

This Real Estate Contract (the "Contract") is made this **28th of May, 2024** (the "Effective Date") by and between **CITY OF GLENDALE**, a municipal corporation of the State of Arizona ("Seller") and **SIMONCRE JC OCOTILLO, LLC**, an Arizona limited liability company, or its successors or assigns ("Buyer").

1. Description of Property. A +/1.48 acre of land plus any improvements located at NEC 55th Avenue and Northern Avenue, Glendale, Maricopa County, Arizona 85301, Parcel Number 148-13-002E and as more particularly described on Exhibit A attached hereto and made a part hereof (the "Property").

2. Sales Price. Nine Hundred Sixty-Five Thousand and No/100ths Dollars (\$965,000.00) (the "Purchase Price") in immediately available cash funds.

3. Earnest Money/Title Company.

a. Buyer shall deposit Ten Thousand and No/100ths Dollars (\$10,000.00) the ("Initial Earnest Money") within five (5) days of the date of the Effective Date of this Contract with Fidelity National Title Insurance Company ("Title Company"), One East Washington Street, Suite 450, Phoenix, Arizona 85004, Attn: Mary Garcia, mary.garcia@fnf.com, (602) 343-7571 (the "Escrow Agent").

b. Within three (3) days following the expiration of the Due Diligence Period (hereinafter defined), Buyer shall deposit with Escrow Agent an additional Fifteen Thousand and No/100 (\$15,000.00) (the "Additional Earnest Money"), and thereafter, all Earnest Monies shall become non-refundable (except in the event of a Seller default). The Initial Earnest Money and the Additional Earnest Money are hereinafter referred to collectively as "Earnest Monies."

c. Earnest Monies shall be applied as a credit against the Purchase Price upon the Close of Escrow (hereinafter defined).

4. Due Diligence /Deliveries/Submittals.

a. Within three (3) business days of the Effective Date, Seller shall provide Buyer with its existing survey of the Property, if available. Buyer will provide and pay for an updated or new survey of the Property, as it deems necessary ("Survey").

b. Within ten (10) days of the Effective Date, Seller shall order a title commitment from the Title Company.

c. Within fifteen (15) days of the Effective Date, Seller shall also deliver to Buyer either all Due Diligence Materials (hereinafter defined) in Seller's possession or control or a written notification that Seller possesses no Due Diligence Materials. Due Diligence Materials include any prior surveys, preliminary and final plats, environmental assessments, engineering plans, soils tests, reports on water and utility availability and quality, tax assessment records, and zoning applications and stipulations that are not otherwise publicly available.

d. Buyer shall have a one hundred fifty (150) day period ("Due Diligence Period") from the date of receipt of either the Due Diligence Materials or Seller's written notification to Buyer that Seller possesses no Due Diligence Materials.

e. Buyer shall have until the expiration of the Due Diligence Period to declare the Property unsuitable for its needs and cancel this Contract by providing written notice to Seller, Escrow Agent and Title Company. If Buyer provides such timely notice, Escrow Agent shall refund the Initial Earnest Money

to Buyer. If Buyer fails to provide such timely notice or if Buyer affirmatively chooses to proceed to Closing in accordance with Section 5 below, Buyer acknowledges that it has determined the Property is suitable for its intended use. Buyer may not thereafter seek any reimbursement or file a claim against Seller for any condition it knew of or could have discovered prior to Closing related to the Property.

f. Buyer shall have one hundred fifty (150) days from the expiration of the Due Diligence Period ("Permit Period") to obtain any Governmental Approvals (as defined below) required for Buyer's proposed development of the Property. "Governmental Approvals" means approval of any: zoning changes or variances; building plans or permits; use permits including any drive-thru permit; sign permits; development permits; construction permits; licenses; or other governmental approvals that may be required for Buyer's development and use of the Property.

g. If Buyer is unable to obtain the required Governmental Approvals during the Permit Period, Buyer may either proceed to Closing or terminate this Contract by providing written notice to Seller, Escrow Agent and Title Company. Except as provided in Paragraph 11 herein, if Buyer terminates this Contract, Escrow Agent shall not refund the Earnest Money to Buyer.

h. Nothing in this Agreement requires Seller to issue any Governmental Approvals, including approving any building plans or permit(s) or any use permit, including any drive-thru permit, within the Period Permit or at any other time before or after Closing. Failure of the Seller to issue any required Governmental Approval shall not to be construed as a breach of this Contract.

i. Seller agrees to provide reasonable access to the Property to Buyer during the Due Diligence Period so that Buyer may conduct any investigations, assessments, testing and reviews it deems appropriate.

A. Buyer agrees that, in making any physical or environmental inspections of the Property, Buyer or Buyer's agents will: (i) carry not less than \$1,000,000.00 in commercial general liability insurance prior to the entering upon the Property to make such inspection; (ii) will not reveal to any third party not approved by Seller (other than Buyer's agents, employees, contractors, design professionals, and lenders with a need to know) the results of its inspections; and (iii) will restore promptly any physical damage caused by the inspections.

B. Prior to Buyer and Buyer's agents, representatives, employees, independent contractors and invitees entry on to the Property to perform any Due Diligence activities, including, but not limited to, any subsurface testing, drilling, or excavation of the Property, Buyer will obtain Seller's approval, which will not be unreasonable delayed or withheld.

C. Buyer shall indemnify, defend, and hold harmless Seller, and Seller's agents, employees, officers, elected officials, directors, shareholders, partners, members, affiliates, successors, assigns, and representatives for, from, and against any and all liabilities, losses, claims, demands, damages, including reasonable attorneys' fees, experts fees, consultants fees, courts costs, and any other expenses to the extent they result from or arise out of or are in any way connected with:

1. Buyer's inspection of the Property;
2. Buyer's accessing the Property to conduct Studies; and
3. Buyer's failure to restore the Property in accordance with this Section 4.

This indemnification shall survive the Close of Escrow or any early termination of this Agreement; provided, however, that Buyer's obligation above to indemnify, defend, and hold harmless shall not extend to Seller's negligence or any claims or liabilities arising out of the discovery or disturbance of any pre-existing conditions on the Property.

5. Closing. The closing of the purchase and sale contemplated by this Contract shall occur on or before sixty (60) days after the expiration of the Permit Period (the "Close of Escrow"). The Close of Escrow shall take place at the office of Escrow Agent or at such other place as may be agreed to by Seller and Buyer. Seller agrees to deliver possession of the Property to Buyer on the Close of Escrow.

6. Closing Obligations. At closing, Seller shall execute and deliver to Buyer the following (collectively, "Seller's Closing Documents"):

- a. Deed. A Special Warranty Deed, conveying the Property to Buyer, free and clear of all encumbrances, except any permitted encumbrances hereafter defined.
- b. Seller's Affidavit. An affidavit of title by Seller indicating that on the Close of Escrow there are no outstanding, unsatisfied judgments, tax liens or bankruptcies against or involving Seller; that there has been no skill, labor or material furnished to the Property by order of Seller for which payment has not been made or for which mechanic's liens could be filed; that there are no other unrecorded interests in the Property created by Seller other than the Permitted Encumbrances, together with whatever standard owner's affidavit and/or indemnity which may be required by Title to issue an owner's policy of title insurance.
- c. FIRPTA Affidavit. A non-foreign affidavit, properly executed and in recordable form, containing such information as is required by the IRC Section 1445(b)(2) and its regulations.
- d. IRS Form. A designation agreement designating the "reporting person" for purposes of completing Internal Revenue Form 1099 and, if applicable, Internal Revenue Form 8594.
- e. Other Documents. All other documents reasonably determined by Title Insurer to be necessary to transfer the Real Property to Buyer.
- f. On the Close of Escrow, Buyer shall execute and/or deliver to Seller the following (collectively "Buyer's Closing Documents"):
 - A. Purchase Price. The Purchase Price, by wire transfer of U.S. Federal Funds to be received by Seller on or before 3:00 p.m. (MST) on the Close of Escrow.
 - B. Title Documents. Such affidavits, certificates of value or other documents as may be reasonably required by Title in order to record the Seller's Closing Documents and issue the title insurance policy required by this Contract.
 - C. IRS Form. A Designation Contract designating the "reporting person" for purposes of completing Internal Revenue Form 1099 and, if applicable, Internal Revenue Form 8594.

7. Prorations. It is the intention of the parties that Seller be responsible for all costs and obligations relating to the Property and accruing prior to the Close of Escrow (except as otherwise expressly agreed by Buyer) and that Buyer shall be responsible for all costs and obligations relating to the Property and accruing from and after the Close of Escrow (except as otherwise expressly agreed by Seller). Seller

shall be responsible for any transfer taxes or any other such taxes at the Close of Escrow. Buyer and Seller shall equally split any escrow fees.

8. Taxes. Real estate taxes, personal property taxes, and special assessments relating to the Property for the year in which the Close of Escrow occurs shall be prorated as of the Close of Escrow. If the Close of Escrow shall occur before the actual taxes and special assessments payable during that year are known, then the proration of those taxes and assessments shall be made upon the basis of the taxes and assessments for the Property payable during the immediately preceding year.

9. Title Insurance. Upon and as a condition of Buyer's obligation to close, Escrow Agent shall be unconditionally and irrevocably committed to issue to Buyer its extended coverage owner's policy of title insurance, in the full amount of the Purchase Price, insuring that Buyer holds fee simple title to the Property subject only to: (i) the usual exceptions, stipulations, and conditions appearing in the printed form of the policy; and (ii) any permitted title exceptions. Seller shall pay the premium for a standard coverage owner's title insurance policy in the amount of the Purchase Price. Buyer shall pay the difference between the cost of standard and extended coverage and the cost of any endorsements requested by Buyer. Buyer shall pay the entire premium for any lender's policy with respect to the Property. If the Title Commitment is amended shortly before the Close of Escrow, then the Close of Escrow shall be extended if, and to the minimum extent necessary: (i) to provide Buyer time to review and deliver an objection notice; and (ii) to provide Seller a reasonable period to cure the matter(s) to which Buyer has objected, however, if Seller cannot cure such objection then Buyer shall have the right to terminate this Contract and receive a refund of its Earnest Money.

10. Leases. From the Effective Date of this Contract until the Close of Escrow, Seller shall not have the right to execute any new leases or amend, terminate, or accept the surrender of any existing tenancy or approve any sublease or assignment of any lease (collectively, a "Lease Event") without first obtaining Buyer's prior written consent.

11. Default. If Buyer is in default under this Contract, then Seller shall give notice to Buyer of Buyer's default. If Buyer fails to cure the default within 5 business days after receipt of Seller's notice of default (or within a reasonable time if the default cannot reasonably be cured within 5 days), then Seller's sole and exclusive right and remedy shall be to terminate this Contract and the Escrow by notice to Buyer and Escrow Agent and to be paid the Earnest Money (and any interest earned thereon) as liquidated damages and not as a penalty. Buyer and Seller hereby acknowledge that actual damages in the event of Buyer's default would be difficult to calculate with certainty and agree that the Earnest Money (and any interest earned thereon) is a reasonable approximation of actual damages. Seller waives and covenants not to assert any other rights and remedies for a default by Buyer. Notwithstanding Seller's waiver of certain rights and remedies in this section, any obligation of either party to indemnify the other in accordance with this Contract shall be specifically enforceable.

If Seller defaults under this Contract prior to the Close of Escrow, Buyer, as its sole and exclusive remedy, may terminate this Contract by providing written notice to Seller. and All Earnest Monies shall then be refunded promptly to Buyer

12. Governing Law. This Contract shall be construed under in accordance with the laws of the state of Arizona.

13. 1031 Exchange. Seller or Buyer may consummate the sale/purchase of the Property as part of a so-called like kind or deferred exchange (the "Exchange") pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended. Without limitation on the foregoing, Seller or Buyer may, at its option, assign this Contract and any Earnest Money deposited hereunder to one or more independent third party

facilitators or intermediaries who will facilitate the Exchange. Buyer and Seller agree to cooperate with the other in the perfection of such an Exchange and to execute any and all documents reasonably necessary to accomplish same; provided, neither party shall be required to take title to any replacement property or expend funds in relation to its cooperation, nor will the time periods provided hereunder be extended.

14. Seller's Representations and Warranties. Seller acknowledges, covenants, represents, and warrants to Buyer that the following are true in all material respects as of the date of this Contract, and in entering into this Contract, Buyer is relying upon, the following:

a. **Due Organization, Authorization, and Conflicts.** Seller is duly authorized to transact business in Arizona. Seller's execution and delivery of this Contract and the consummation of the transactions contemplated and required by this Contract will not result in any violation of, or default under, any term or provision of any agreement, instrument, mortgage, loan agreement, or similar document to which Seller is a party or any judgment, writ, decree, order, injunction, rule or governmental requirement to which Seller is subject. Seller is not a partner or joint venturer with Buyer in connection with the transactions contemplated by this Contract and is entering into this Contract and any other contract, instrument, and document contemplated by this Contract voluntarily and solely for its own benefit. Seller has the full power and authority to enter into and perform this Contract according to its terms, and the individual executing this Contract on Seller's behalf is authorized to do so, and upon that individual's execution hereof, this Contract shall be binding and enforceable upon Seller in accordance with its terms.

b. **Foreign Person.** Seller is not a foreign person, as that term is defined under Section 1445 of the Internal Revenue Code.

c. **No Litigation.** To the best of Seller's knowledge, there is no litigation, investigation, or proceeding pending, contemplated, or threatened against Seller or the Property that would impair or adversely affect Seller's ability to perform its obligations under this Contract or under any contract, instrument, or document related to this Contract.

d. **No Condemnation.** To the best of Seller's knowledge, there are no existing, pending or anticipated condemnation, eminent domain, or similar proceedings against or involving the Property.

e. **No Violations of Laws or Agreements.** To the best of Seller's knowledge, there are no uncured violations of any federal, state, or local laws, rules, regulations, ordinances, codes, covenants, conditions, restrictions, or agreements applicable to the Property. Seller has not received any notices from any insurance companies, governmental agencies, or any other parties with respect to any of the foregoing violations or alleged violations or any other matters affecting the Property. If any notices are received after the date of this Contract, then Seller shall promptly deliver a copy of the notice to Buyer.

f. **As-Is Sale.** Buyer acknowledges and agrees that it is purchasing the Property on an "as is" basis and "with all faults" basis, and acknowledges its prior use as location of the parking lot, clubhouse and certain maintenance facilities serving the Glen Lakes Golf Course. Buyer acknowledges that it has been given the opportunity to make a full and complete investigation and inspection of the Property and that Buyer has had an opportunity to make full inquiry of Seller as to all matters deemed relevant by Buyer in evaluating the Property. Buyer acknowledges and agrees that, except as expressly provided in this Agreement, Seller has made no representations or warranties and has no continuing responsibility or liability regarding the Property, including, without limitation, its physical condition and its "Environmental Condition" (as defined below). Buyer is not relying in any way upon any representations, statements, agreements, warranties, studies, plans, reports, descriptions, guidelines or other information or material furnished by Seller or its representatives, whether oral or written, express or implied, of any nature whatsoever, except as expressly provided in this Agreement. Further, nothing in this Agreement requires Seller to conduct any

investigation or commission any reports or studies to assess the environmental condition of the Property, but only to provide any Due Diligence Materials already in its possession and control as provided in Section 4 above.

A. For purposes of this Agreement, “**Environmental Condition**” shall mean any condition with respect to soil, surface water or groundwater at, from or below the Property or other conditions present at the Property. Such conditions need not be in violation of Environmental Laws (as herein defined), require remedial action, and/or cause, result in, give rise to or have the potential to give rise to any claims, demands, and/or liabilities to third parties, including but not limited to, governmental entities.

B. Without limiting the generality of the foregoing, Buyer expressly waives and relinquishes any and all rights and remedies Buyer may now or in the future have against Seller, whether known or unknown, with respect to the Environmental Condition of the Property except as expressly provided in this Agreement.

C. As used herein, “**Environmental Laws**” shall include, without limitation, federal, state, local, and regional statutes, rules, regulations, and the common law relating to the environment, including, without limitation, the Arizona Environmental Quality Act, contained in Title 49 of the Arizona Revised Statutes, as amended; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. (“**CERCLA**”); the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901, et seq. (“**RCRA**”); the Hazardous Materials Transportation Act, as amended, 49 U.S.C. Section 1801, et seq. (“**HMTA**”); the Clean Air Act, as amended, 42 U.S.C. Section 7401, et seq.; the Emergency Planning and Community Right-To-Know Act of 1986, as amended, 42 U.S.C. Section 11001 et seq. (“**EPCRA**”); the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. Section 136, et seq.; the Clean Water Act, as amended, 33 U.S.C. Section 1251, et seq.; the National Environmental Policy Act, as amended, 42 U.S.C. Section 4321, et seq.; the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651 et seq.; the Endangered Species Act, as amended, 16 U.S.C. Section 1531, et seq.; the Rivers and Harbors Act of 1899, as amended, 33 U.S.C. Section 401 et seq.; the Oil Pollution Act of 1990, as amended; the Pollution Prevention Act of 1990, as amended; the Safe Drinking Water Act, as amended, 42 U.S.C. Section 300[f] et seq.; the Toxic Substances Control Act, as amended, 7 U.S.C. Section 136 et seq. (“**TSCA**”); any regulations promulgated under or pursuant to any of the foregoing; and all other federal, state, and local laws, ordinances, statutes, codes, rules, regulations, orders, and decrees now in effect relating to the existence of Hazardous Materials (as herein defined) located at the Property. As used herein, the term “**Hazardous Material(s)**” includes, without limitation, any hazardous waste, solid waste or toxic materials, hazards, substances, pollutants, or contaminants located at or emanating from the Property, as defined in the applicable Environmental Laws described herein.

g. Title. Seller holds and will convey to Buyer at the Close of Escrow good and marketable fee simple title to the Property.

h. No Bankruptcy. There are no attachments, executions, assignments for the benefit of creditors, receiverships, conservatorships, or voluntary or involuntary proceedings in bankruptcy or pursuant to any other laws for relief of debtors contemplated or filed by Seller pending against Seller or affecting or involving the Property.

i. No Default Under Encumbrances. To the best of Seller's knowledge, there is no default, nor has any event occurred that, with the passage of time or the giving of notice or both would constitute a default under any contract, mortgage, deed of trust, lease, or other instrument that relates to or affects the Property in any manner whatsoever.

15. Buyer's Representations and Warranties.

Buyer represents and warrants to Seller that Buyer has the full right, power, and authority to enter into this Agreement and to perform its obligations hereunder.

16. Miscellaneous.

(1) Entire Contract. This Contract, together with any exhibits, schedules, and other matters attached hereto or incorporated herein by reference, constitutes one entire contract between the parties. All terms, conditions, representations, warranties, understandings, and interpretations contained in any other oral or written communications between the parties are hereby superseded. In executing this Contract, the parties acknowledge that they are relying solely on the matters set forth in this Contract, and not on any other inducements, written or oral, by the other party or by any agent, employee, elected official or representative thereof.

(2) Modification of Contract; Waiver. No modification of this Contract shall be effective unless it is in writing and signed by all of the parties to this Contract. No waiver of any term or condition of this Contract shall be effective unless it is in writing and signed by the party against whom the waiver is sought, and then only in the particular circumstances specified in the writing. No failure by a party to exercise any right or privilege provided by this Contract, or to require the timely performance of any obligation set forth in this Contract in strict accordance with its provisions, shall preclude the exercise of those rights or privileges or the enforcement of those obligations in different circumstances or upon the reoccurrence of the same or similar circumstances. Moreover, the exercise of any remedy provided at law, in equity, or in this Contract shall not impliedly preclude the exercise of any other remedy except when, and only to the extent that, the other remedy is expressly forbidden or limited by the provisions of this Contract.

(3) Commissions. Each party represents and warrants to the other that no real estate sales or brokerage commissions, finders fees, or similar payments are or will be due in connection with this transaction as a result of any act of the party so representing and warranting. Each party shall defend, indemnify, and hold the other harmless for, from, and against any other claims made as a result of any act of the party so representing for real estate sales or brokerage commissions, finders fees, or similar payments in connection with the transaction contemplated by this Contract, as well as all costs and expenses incurred by the indemnitee in connection therewith, including, but not limited to, reasonable attorneys' fees. The indemnification obligations in this Section shall survive the Close of Escrow or the termination of this Contract. If the transaction fails to close for any reason, no broker shall have any right to any portion of the Earnest Money (or any interest earned thereon) released to Seller or returned to Buyer pursuant to this Contract. Buyer acknowledges that Seller and/or certain of Seller's employees, officers, elected officials, affiliates and constituent partners or members are licensed real estate brokers and/or real estate salespersons in the State of Arizona.

(4) Notices. Notices and other deliveries pursuant to this Contract shall be delivered by private messenger service, mail, overnight courier, email, or facsimile. Any notice or document required or permitted to be delivered either party shall be in writing and shall be deemed to be given on the date received by (or on the date receipt was refused by) the party; provided, however, that all notices and documents mailed to a party in the United States Mail, postage prepaid, certified mail, return receipt requested, shall

be deemed to have been received 5 days after mailing; provided further that all notices sent by facsimile shall be deemed to have been received upon machine confirmation (by the receiving party's facsimile machine) of receipt, but if the party receives the notice after 5:00 p.m. (Arizona time), then the date of receipt shall be the next judicial day after the date of receipt; and provided further that notices delivered by overnight courier shall be deemed received the next judicial day after deposit with a reputable overnight courier service for overnight delivery. The address of the parties shall for all purposes be the following, unless otherwise changed by the party by notice to the other as provided in this Section 15 (4):

If to Seller:

City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301
Attention: Kevin Phelps, City Manager
kphelps@glendaleaz.com

City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301
Attention: Michael Bailey
mbailey@glendaleaz.com

If to Buyer:

SimonCRE JC Ocotillo, LLC
c/o SimonCRE
6900 East 2nd Street
Scottsdale, Arizona 85251
Attention: Joshua Simon
Phone: (480) 588-2999
Facsimile: (480) 588-4150
Email: Joshua@simoncre.com

IN WITNESS WHEREOF, Seller and Buyer have executed this Contract as of the Effective Date.

ATTEST:

Julie K. Bower (SEAL)
City Clerk

APPROVED AS TO FORM:

Michael D. Bailey
City Attorney

SELLER:

CITY OF GLENDALE, a municipal corporation
of the State of Arizona

By: _____
Name: _____
Its: _____

BUYER:

SIMONCRE JC OCOTILLO, LLC, an Arizona
limited liability company

By: DocuSigned by:
JOSHUA SIMON 5/9/2024
4B992C1D50EC47C...
Joshua Simon, its Manager

EXHIBIT A
Legal Description

+/- 1.48 acres of land plus any improvements located at NEC 55th Avenue and Northern Avenue, Glendale, Maricopa County, Arizona/Parcel No. 148-13-002E.

