

**CITY CLERK  
ORIGINAL**

**C-9318  
02/14/1997**

**REAL PROPERTY  
PURCHASE AND SALES AGREEMENT**

**DATE:** February 14, 1997

**PARTIES:** MARYLAND INVESTMENTS, INC., an Arizona corporation,  
Successor by merger to PALO VERDE INVESTMENTS, INC.,  
an Arizona corporation, who acquired title as PALO VERDE  
MORTGAGE & TRUST CO., an Arizona corporation  
P.O. Box 16350  
Phoenix, Arizona 85011  
("Seller")

City of Glendale, a municipal corporation  
5850 West Glendale Avenue  
Glendale, Arizona 85301  
Attention: City Attorney  
("City")

Stewart Title Insurance Company  
244 W. Osborn Road  
Phoenix, AZ 85013  
("Escrow Agent")

**PROPERTY:**

The Property to be acquired is generally located at 6322 W. Myrtle, consisting of approximately eighteen (18) acres, in the City of Glendale, Maricopa County, Arizona (the "Property"), and is described fully in Exhibit A attached.

**RECITALS:**

Seller is the owner of Property consisting of roughly 18 acres in 6322 W. Myrtle, Glendale, Arizona

Seller has agreed to sell The Property to the City.

The City intends to expand its field operations facilities.

Seller is willing to sell the Property to the City on the terms and conditions set forth in this Agreement.

**AGREEMENT:**

In consideration of the mutual promises and covenants set forth in this Agreement, Seller agrees to sell, and City agrees to buy, the Property on the terms and conditions set forth in this Agreement.

1. SALES PRICE.

The total price which the City agrees to pay for the Property and Seller's obligations herein is One Million Five Hundred Fifty Thousand Dollars (\$1,550,000). The City will pay to the Escrow Agent prior to close of escrow, Five Hundred Fifty Thousand Dollars (\$550,000) subject to credits for taxes and other expenses that will be reflected in the Escrow Settlement Statement. The remaining One Million Dollars (\$1,000,000) will be paid in two payments of Five Hundred Thousand Dollars (\$500,000) plus eight percent (8%) simple interest from close of escrow. The first payment will be due on July 1, 1997 and the second payment will be due on July 1, 1998.

2. DISBURSEMENTS.

Upon the close of escrow, the amounts paid by City, less any closing costs payable by Seller, shall be disbursed to Seller consistent with paragraph one.

3. PRELIMINARY TITLE REPORT.

Promptly following the opening of Escrow, Escrow Agent shall deliver a current commitment for title insurance (the "Report") issued by Escrow Agent on the Property to City and Seller. The Report shall show the status of title to the property as of the date of the Report and shall be accompanied by legible copies of all documents referred to in the Report.

4. DEED.

At the close of escrow, Seller shall convey title to the City by Special Warranty deed, in form and substance satisfactory to the City, each such deed subject to no defects, exceptions, easements, encumbrances, covenants, conditions, restrictions, mining claims or liens, except:

- (a) The matters set forth in the Report (other than the standard printed exceptions) which have been accepted in writing by City; and
- (b) Any additional matters accepted in writing by City.

5. TITLE POLICIES.

At the close of escrow, Seller shall, at Seller's sole expense, provide the City with a separate owner's policy of title insurance issued by Escrow Agent on the Property together with any endorsements required by the City and specifically insuring against any mechanic's and materialmen's liens on the Property notwithstanding that work may have been performed on the Property, in the full amount of the sales price paid by the City, as applicable, effective as of the close of escrow, insuring City that fee simple title to the Property is vested in City, each subject only to the usual printed exceptions and exclusions contained in such title insurance policies, and to any other matters approved in writing by City. The obligations of seller to provide the title policies called for in this Section shall be satisfied if, at the close of escrow, Title Company has issued a binding commitment to issue each policy in the form required by this Section, and if each such policy is delivered within a reasonable time following the close of escrow.

6. ESCROW.

An escrow for this transaction has been established with Escrow Agent, and Escrow Agent is hereby employed to handle the escrow. This Agreement constitutes escrow instructions to the Escrow Agent and a copy shall be deposited with Escrow Agent for this purpose. Should Escrow Agent require the execution of its standard form printed escrow instructions, City and Seller agree to execute same; however, such instructions shall be construed as applying only to Escrow Agent's employment, and if there are conflicts between the terms of this Agreement and the terms of the printed escrow instructions, the terms of this Agreement shall control.

7 OPENING AND CLOSING DATES.

Escrow has been opened, subject to terms of this Agreement. The closing of this transaction and escrow (referred to in this Agreement as the "closing" or the "close of escrow") shall occur on February 14, 1997 or as soon thereafter as is mutually agreeable.

8. ESCROW CANCELLATION CHARGES.

If the escrow fails to close because of Seller's default, Seller shall be liable for all customary escrow cancellation charges. If the escrow fails to close because of City's default, City shall be liable for all customary escrow cancellation charges. If the escrow fails to close for any other reason, Seller and City shall each be liable for one-half of all customary escrow cancellation charges.

9. CLOSING COSTS.

- (a) Upon the close of escrow, Seller agrees to pay one-half of the escrow charges and the entire cost of a standard coverage owner's policy of title insurance.
- (b) Upon the close of escrow, City agrees to pay one-half of the escrow charges, the additional premium to issue an extended coverage owner's policy of title insurance and the cost of any endorsements issued in connection with such policy.
- (c) Real estate taxes and irrigation assessments, either existing or proposed, shall be prorated in the escrow as of the close of escrow, based upon the latest available information. Improvement liens and other special assessments shall be paid in full by Seller on or before the close of escrow. Any other closing costs shall be paid by City and Seller according to the usual and customary practice in Maricopa County, Arizona of Escrow Agent.
- (d) Seller agrees that all closing costs payable by Seller shall be deducted from Seller's proceeds at the close of escrow. On or before the close of escrow, City agrees to deposit with Escrow Agent a warrant in an amount sufficient to pay all closing costs payable by City.
- (e) The parties agree that there has not been and shall be no broker or representative acting for either party in this transaction that is entitled to a fee or commission other than:

Landmark Realty Advisors  
2633 E. Indian School Road #340  
Phoenix, AZ 85016  
277-9900, FAX 277-9970

Who is hired by and to be paid by Seller exclusively.

10. POSSESSION.

Possession of the Property shall be delivered to City upon the close of escrow. From time to time prior to the close of escrow, City may enter upon the Property with City's representatives and agents for the purpose of examining the Property, conducting soil tests and engineering feasibility studies, and planning the proposed development of the Property.

11. RISK OF LOSS.

Except as otherwise provided, the risk of loss or damage to the Property and all liability to third persons shall be borne by Seller until the Property has been delivered to City upon the close of escrow.

12. SELLER'S REPRESENTATIONS AND WARRANTIES.

Seller makes the following representations and warranties which shall apply to the Property, which are agreed to constitute a material part of the consideration hereunder, which are true and accurate as of the Opening Date, will be true and accurate as of the close of escrow, and which shall survive the close of escrow:

- (a) Action. All actions on the part of Seller which are required for the execution, delivery and performance by Seller of this Agreement and each of the documents and agreements to be delivered by Seller at the closing have been duly and effectively taken;
- (b) Enforceable Nature of Agreement. This Agreement and each of the documents and agreements to be delivered by Seller at the closing constitutes a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms;
- (c) Violations; Consents; Defaults. Neither the execution of this Agreement nor the performance hereof by Seller will result in any breach or violation of the terms of any law, rule, ordinance, or regulation or of any decree, judgment or order to which Seller is a party now in effect from any court or governmental body. There are no consents, waivers, authorizations or approvals from any third party necessary to be obtained by Seller in order to carry out the transactions contemplated by this Agreement. The execution and delivery of this Agreement and performance hereof by Seller will not conflict with, or result in a breach of, any of the terms, conditions or provisions of, or constitute a default under or result in the creation of any new, or the acceleration of any existing, lien, charge, or encumbrance upon the Property, or any indenture, mortgage, lease, agreement or other instrument to which Seller is a party or by which Seller or any of its assets may be bound;
- (d) Litigation. Seller is not a party to any pending or threatened action, suite, proceeding or investigation, at law or in equity or otherwise, in, for or by any court or governmental board, commission, agency, department or officer, arising from or relating to the Property or to the past or present operations and activities of Seller upon or relating to the Property;
- (e) Governmental Restrictions. Seller has not received, nor is aware of, any notifications, restrictions, or stipulations from the United States of America, the State

of Arizona, Maricopa County, or any other governmental authority requiring any work to be done on the Property or threatening the use of the Property. There are no pending or threatened condemnation proceedings affecting any portion of the Property;

- (f) Title. Fee simple title to the Property is currently vested in Seller;
- (g) Leases and Agreements. There are no unrecorded leases, arrangements, agreements, understandings, options, contracts, or rights of first refusal, or liens on crops affecting or relating to the Property in any way; except: (1) A lease dated June 24, 1994, between C.-CALL CORP. and Maryland Investments, Inc., and (2) A lease between Redge Stephens dba The Bargain Barn and Maryland Investments, Inc. Seller will terminate the lease with Redge Stephens dba The Bargain Barn prior to March 4, 1997.
- (h) Compliance. To the best of Seller's knowledge, Seller has complied, in all respects, with all laws, ordinances, rules, regulations, requirements and orders of federal, state, or local governments and/or their agencies with respect to the Property;
- (i) Environmental Matters. Seller has not been advised that either Seller or the Property is in material violation of applicable environmental law, regulation, ordinance or order of any government entity, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, the Resource Conservation and Recovery Act, as amended, the Federal Clean Water Act, as amended, the Federal Clean Air Act, as amended, the Federal Toxic Substances Control Act, as amended, and any regulations promulgated thereunder, or any other federal, state, or local laws relating to contamination of or adverse effects on the environment. In addition, Seller has not been advised that the Property or any underlying groundwater contains any material concentrations of regulated substances, hazardous substances, hazardous materials, toxic substances, or similar substances, residues, and waste;
- (j) Taxes. Seller does not have any liability for any taxes, or any interest or penalty in respect thereof, of any nature that may be assessed against City or that are or may become a lien against the Property;
- (k) Mechanics' Lien. No work has been performed on or about the Property or to any improvements located thereon within six months prior to the Opening Date that could give rise to any mechanics' or materialmen's liens whatsoever.
- (l) Existing Improvements. Seller does not warrant the condition of any existing improvements on the property. City accepts these improvements in an "as is" condition.

13. CITY'S REPRESENTATIONS AND WARRANTIES.

City makes the following representations and warranties which are agreed to constitute a material part of the consideration hereunder, which are true and accurate as of the date of this Agreement, and will be true and accurate as of the close of escrow, and which shall survive the close of escrow:

- (a) Authority. City has full power and authority to enter into and to perform its obligations under this Agreement. The persons executing this Agreement on behalf of City have full power and authority to do so and to perform every act and to execute and deliver every document and instrument necessary or appropriate to consummate the transactions contemplated hereby; and
- (b) Enforceable Nature of Agreement. This Agreement and each of the documents and agreements to be delivered by City at the closing constitutes a legal, valid and binding obligation of City, enforceable against City in accordance with its terms.

14. INDEMNITY.

Each party to this Agreement agrees to indemnify each other party and hold it harmless for, from and against all claims, damages, costs and expenses (including attorneys' fees) attributable, directly or indirectly, to the breach by such indemnifying party of any obligation hereunder, or the inaccuracy of any representation or warranty made by such indemnifying party herein, or in any instrument delivered pursuant thereto, or in connection with the transactions contemplated hereby. In addition, Seller hereby covenants and agrees to indemnify and hold City harmless for, from and against any and all claims, damages, costs and expenses (including attorneys' fees) relating in any way to the Property and accruing prior to the close of escrow, even though now unknown and unsuspected.

15. SELLER'S REMEDIES.

If City fails to deposit the sales price in the time and manner set forth in this Agreement, or to perform when due any other act required by this Agreement, then Seller's sole and exclusive remedy shall be to cancel this Agreement and the escrow, without further liability hereunder, such cancellation to be effective immediately upon Seller giving written notice of cancellation to City and Escrow Agent.

16. CITY'S REMEDIES.

If Seller fails to perform when due any act required by this Agreement to be performed, then, in addition to whatever other remedies are available to City at law or in equity, including the right to have specific performance of this Agreement, City may cancel this Agreement and the escrow, without further liability hereunder, such cancellation to be effective immediately upon City giving written notice of cancellation to Seller and Escrow Agent.

17. COOPERATION.

Seller shall cooperate fully with City in obtaining any necessary governmental approvals to the transfer of any item of property being sold to City pursuant to this Agreement.

18. BINDING EFFECT.

The provisions of this Agreement are binding upon, and shall inure to the benefit of, the parties and their respective heirs, personal representatives, executors, administrators, successors and assigns.

19. ATTORNEYS' FEES.

If any action is brought by either party in respect to its rights under this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and court costs as determined by the court.

20. WAIVERS.

No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver be a continuing waiver. Except as expressly provided in this Agreement, no waiver shall be binding unless executed in writing by the party making the waiver. Either party may waive any provision of this Agreement intended for its benefit; provided, however, such waiver shall in no way excuse the other party from the performance of any of its other obligations under this Agreement.

21. CONSTRUCTION.

This Agreement shall be subject to, and construed according to, the laws of the State of Arizona without the application of any principles of conflicts of law that would require or permit the application of the laws of any other jurisdiction.

22. TIME.

Time is of the essence of this Agreement.

23. NOTICES.

Notices shall be in writing and shall be given by personal delivery, by deposit in the United States mail, certified mail, return receipt requested, postage prepaid, or by express delivery service, freight prepaid, in each case by delivery to Seller and City at the addresses set forth on the first page of this Agreement or at such other address as a party may designate in writing. The date notice is given shall be the date on which the notice is delivered, if notice is given by personal delivery, or five (5) calendar days after the date of deposit in the mail or with an express delivery service, if the notice

is sent through the United States mail. A copy of any notice given to a party shall also be given to Escrow Agent by regular mail.

24. FURTHER DOCUMENTATION.

Each party agrees in good faith to execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

25. TIME PERIODS.

Except as expressly provided for herein, the time for performance of any obligation or taking any action under this Agreement shall be deemed to expire at 5:00 p.m. (Phoenix time) on the last day of the applicable time period provided herein. If the time for the performance of any obligation or taking any action under this Agreement expires on a Saturday, Sunday or legal holiday, the time for performance or taking such action shall be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday.

26. CONFLICTS:

This Agreement is subject to cancellation by the City, without penalty or further obligation, pursuant to A.R.S. § 38-511, if any person significantly involved in initiating, negotiating, securing, drafting on creating this Agreement on behalf of the City is, at any time during the Agreement, an employee or agent of any other party to the Agreement in any capacity or a consultant to any other party.

27. AMENDMENTS:

Any amendments or modifications to this Agreement must be in writing, executed by both parties, and are subject to City Council approval. This Agreement constitutes the entire agreement of the parties and supersedes any negotiations, discussions, undertakings, correspondence or informal agreements of the parties.

28. INTERPRETATION:

Both parties have been represented by counsel in negotiating and approving this Agreement. This Agreement shall be interpreted, applied and enforced according to the fair meaning of its terms and shall not be construed in favor of, or against, either party, regardless of which party may have drafted or proposed any of its provisions or terms.

29. ORIGINALS:

This Agreement is executed in triplicate and each executed copy shall be considered an original.

30. ACCEPTANCE.

This Agreement shall be of no force and effect unless all parties hereto shall have executed and delivered a fully executed original to Escrow Agent on or before 5 o'clock p.m. (Phoenix time), on February 14, 1997.

**SELLER**

MARYLAND INVESTMENTS, INC  
By: [Signature]  
By: [Signature]

APPROVED AS TO FORM:

\_\_\_\_\_  
Seller's Attorney

**BUYER**

City of Glendale, a municipal corporation  
[Signature]  
By: Martin Vanacour, City Manager

ATTEST:

[Signature]  
Pamela Oliveira, City Clerk

APPROVED AS TO FORM:

[Signature]  
Peter Van Haren, City Attorney

Escrow Agent hereby accepts employment to handle the escrow establishment by this Agreement in accordance with the terms set forth in this Agreement.

Stewart Title Insurance Company

By: [Signature] Lynke Russell  
Its: [Signature]  
[Escrow Agent]

EXHIBIT "A"

LEGAL DESCRIPTION

ORDER NO. 96112948

Lot Nineteen (19), HADSELL'S ADDITION TO GLENDALE, in the City of Glendale, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 2 of Maps, page 10;

EXCEPT any portion lying within right of way conveyed to SALT RIVER VALLEY WATER USER'S ASSOCIATION in Book 228 of Deeds, page 215; and

EXCEPT that portion conveyed to The CITY OF GLENDALE for roadway in Deed recorded in Docket 1656, page 507.