

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made and entered into this ____ day of _____, 2024 by and between the City of Douglas, Arizona ("City") and Harrell Cooley, LLC, an Arizona limited liability company ("Harrell").

RECITALS

A. On September 10, 2021, the City and Harrell executed a Purchase and Sale Agreement and Escrow Instructions ("PSA") and closed escrow on Harrell's purchase of the real property and improvements located at 357 E. 10th Street, Douglas, Arizona, commonly known as the Rivera Building ("Property").

B. The purchase price for the Property was \$65,000, of which Harrell paid the City a down payment of \$13,922 and the balance was paid in fifty-nine (59) installments in the amount of \$898.43, commencing November 1, 2021, including interest at the rate of 3% per annum, as set forth in a Promissory Note ("Note") executed by Harrell at closing. The Note is secured by a Deed of Trust ("Deed of Trust") recorded against the Property at closing as part of the document recorded on September 10, 2021 as Instrument No. 2021-24164, Cochise County Recorder.

C. As of the date of this Agreement, Harrell has paid the City the sum of \$17,751.74 on the Note, which amount does not include the sum of \$1,796.86 that was paid to the City by Harrell but was returned to Harrell after the City sent its notice of exercise of Reversion Option letter to Harrell.

D. Under the terms of the Deed of Trust, Harrell is required to pay when due the real property taxes on the Property. As of the date of this Agreement, the unpaid property taxes owed on the Property are \$2,271.72, plus accruing interest for 2022 (Tax Certificate purchased 2/13/2024 for 2022 taxes; interest rate is 16.0%) and \$587.23 for the first half of 2023 (due November 1, 2023) and the current real property taxes due are \$597.28 (second half of 2023).

E. Section 14 of the PSA included post-closing obligations of Harrell that included (a) commission a painting of a mural on the side of the Property within ninety (90) days after the Close of Escrow; (b) design and complete the remodel of the first floor of the Property within eighteen (18) months of the Close of Escrow; and (c) apply for and obtain a City business license within eighteen (18) months from the Close of Escrow. Section 14 of the PSA included a reversion option ("Reversion Option") that gave the City the right to take back title to the Property if the post-closing obligations were not timely completed by Harrell.

F. Harrell completed the painting of the mural on the side of the Property. The parties agreed that the time for completing the remodel of the first floor of the Property and obtaining a City business license expired on April 22, 2023.

G. As of April 13, 2023, Harrell had not completed the remodel of the first floor of the Property or obtained a City business license. On April 13, 2023, the City sent a letter to

Harrell giving Harrell notice of exercise of its Reversion Option if Harrell did not complete the required items by May 13, 2023.

H. Harrell disputes the City's right to enforce the Reversion Option and the City disputes that the Reversion Option is not enforceable (the "Dispute".)

I. In accordance with the requirements of Section 16.22 of the PSA, on December 22, 2023, the City and Harrell participated in mediation with the Honorable Lawrence Fleishman serving as mediator in an attempt to resolve their Dispute.

J. During the mediation, the City and Harrell reached an agreement to resolve their Dispute that was subject to the City Council's approval. Now, the Parties have agreed to settle the Dispute on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below and intending to be legally bound thereby, the parties covenant and agree as follows:

AGREEMENT

1. Representations and Warranties.

1.1 The parties each expressly represent and warrant to each other that:

- a. They are authorized to execute this Agreement.
- b. Each of the parties was represented by counsel, or had the opportunity to be represented by counsel and participate in the preparation of this Agreement. In the event of any claim arising from a breach of this Agreement, its language shall not be construed against or in favor of any party due solely to the fact that a party, or its counsel, prepared any version or draft thereof.
- c. They have read the Agreement and they understand the provisions herein.
- d. That they are the owners of the Claims being released hereby, and that they have not previously assigned, transferred or conveyed any of their respective rights, claims or causes of action relating to the Claims and all matters between them and expressly waive all rights they may have to do so.

2. Terms of Settlement.

2.1 Within fifteen days (15) days of approval of the terms of this Agreement by the Douglas City Council and execution of this Agreement by the City and Harrell:

- a. Harrell shall:

1. Pay all past due and current real property taxes owed on the Property, including interest and the redemption fee owed for the 2022 tax certificate purchase.

2. Execute the Special Warranty Deed in the form attached hereto as Exhibit "A" and deliver the Special Warranty Deed to his attorney, Timothy C. Bode at Tiffany & Bosco, who shall deliver the signed Special Warranty Deed to the City Attorney, Denis M. Fitzgibbons at Fitzgibbons Law Offices, P.L.C. for recording.

b. The City shall:

1. Issue a check in the amount of \$25,000 payable to Tiffany & Bosco trust account to be held on behalf of Harrell, which funds shall be released to Harrell under the terms and conditions set forth in paragraph c below.

c. The \$25,000 held in Tiffany & Bosco's trust account shall be released to Harrell when the following conditions have been satisfied:

i. Harrell has paid all past due and current real property taxes on the Property, including interest and fees in connection with redemption of the tax certificate and has presented proof of such payment to the City; and

ii. The Special Warranty Deed has been recorded and proof of recording has been provided to Harrell by the City.

2.2 Harrell, on behalf of itself and its members, represents and warrants that as of the date of this Agreement (i) there is no mortgage or deed of trust encumbering the Property, except for the City's Deed of Trust referenced in Recital B; (ii) there are no mechanic's liens, judgments or any other financial liens encumbering the Property; and (iii) except for the Dispute, there is no pending or threatened litigation, claim, action proceeding, suit or arbitration before any court, tribunal or agency which would result in any unsatisfied lien, charge, encumbrance or judgment against any part of or any interest in the Property, and no such litigation, claim, action, proceeding, suit or arbitration exists.

2.3 Effective upon the execution of this Agreement, the City shall be deemed to have released, dismissed and discharged forever Harrell from all claims described below in this Section 2.3. For purposes of this Section 2.3, "Harrell" shall include: its members, officers, agents, attorneys and representatives. For purposes of this Section 2.3, "Claims" means and includes any and all manner of actions, causes of action, suits, sums of money, accounts, covenants, contracts, controversies, agreements, promises, damages, costs, expenses, attorneys' fees, judgments, obligations, claims and demands whosoever, whether known or unknown, vested or contingent, in law or in equity, for or on account of any matter or thing whatsoever, from the beginning of time to the date of this Agreement concerning or arising out of the Property, the Note, the Deed of Trust, the Reversion Option and the Dispute, but excluding any claim to enforce this Agreement.

2.4 Effective upon execution of this Agreement, Harrell shall be deemed to have

released, dismissed and discharged forever the City from all claims described below in this Section 2.4. For purposes of this Section 2.4, "City" shall include: its Mayor and Council, officials, officers, employees, agents, attorneys and representatives. For purposes of this Section 2.4, "Claims" means and includes any and all manner of actions, causes of action, suits, sums of money, accounts, covenants, contracts, controversies, agreements, promises, damages, costs, expenses, attorneys' fees, judgments, obligations, claims and demands whosoever, whether known or unknown, vested or contingent, in law or in equity, for or on account of any matter or thing whatsoever, from the beginning of time to the date of this Agreement concerning or arising out of the Property, the Note, the Deed of Trust, the Reversion Option and the Dispute, but excluding any claim to enforce this Agreement.

2.5 Effective upon execution of this Agreement, the Parties agree that they are each responsible for their own attorney's fees and costs incurred regarding the Dispute and this Agreement.

3. Miscellaneous Provisions.

3.1 The parties waive the benefits of any provision of the laws of Arizona or any other state which provides that a general release does not extend to claims which the party does not know or expect to exist in its favor at the time of executing this Agreement, which if known to him may have materially affected the settlement. It is the intention of the parties to forever discharge and release known and unknown, present and future claims within the scope of the releases set forth herein. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT A PORTION OF THE CONSIDERATION BEING GIVEN UNDER THIS AGREEMENT IS IN CONSIDERATION FOR THE RELEASE OF CLAIMS THE NATURE, EXTENT AND AMOUNT OF WHICH ARE NOT, AND DESPITE REASONABLE DILIGENCE COULD NOT NOW BE, KNOWN ("UNKNOWN CLAIMS") AND THAT, ANY PRINCIPAL OR RULE OF LAW TO THE CONTRARY, THE INTENT AND AGREEMENT OF THE PARTIES IS THAT ANY AND ALL UNKNOWN CLAIMS ARE AND SHALL BE RELEASED BY VIRTUE OF THE PROVISIONS OF THIS AGREEMENT.

3.2 Each party hereto agrees to do all such things and take all such actions, and to make, execute and deliver such other documents and instruments, as shall be reasonably requested to carry out the provisions, intent and purpose of this Agreement.

3.3 Subject to the terms herein, this Agreement shall be binding upon and inure to the benefit of the parties, and their representatives, agents, attorneys, successors, and assigns.

3.4 This Agreement shall be enforced and construed in accordance with the laws of the State of Arizona. If any action is filed to enforce the terms of this Agreement, the parties agree that Cochise County Superior Court shall be the exclusive venue to hear any matter regarding this Agreement.

3.5 This Agreement represents the entire agreement of the parties with respect to the subject matter hereof, and all agreements entered into prior hereto are revoked and superseded by this Agreement, and no representations, warranties, inducements, or oral agreements have been made by any of the parties except as expressly set forth herein, or in other contemporaneous written agreements. This Agreement may not be changed, modified or rescinded except in

writing, signed by all parties hereto, and any attempt at oral modification of this Agreement shall be void and of no effect.

3.6 The parties agree that if, for any reason, any provision of this Agreement shall be or become unenforceable, all other provisions of this Agreement shall nonetheless remain binding and enforceable against the parties.

3.7 This Agreement may be executed in any number of counterparts, each of which when taken together will constitute one binding contract and instrument.

3.8 The signatories to this Agreement sign it willingly (or willingly directs another to sign for them), and that each of them hereby signs this Agreement acknowledging that they are of legal age, of sound mind, and under no constraint or undue influence.

3.9 The Recitals are incorporated into the body of the Agreement by this reference. The parties hereby acknowledge and agree that all of the above Recitals A through J are true and accurate.

AGREED TO on the date set forth above.

“City”

City of Douglas, Arizona,
An Arizona municipal corporation

By:_____

Its:_____

“Harrell”

Harrell Cooley, LLC,
an Arizona limited liability company

By:_____

Its:_____