

## OPTION TO PURCHASE REAL ESTATE

This Option to Purchase Real Estate (“**Agreement**”) is dated as of \_\_\_\_\_, 2025, by and between **City of Yuma (“Owner”)** and **Top Quality Products, LLC** and/or its assigns (“**Grantee**”).

WHEREAS, Grantee desires an option to purchase certain real estate owned by Owner; and

WHEREAS, Owner agrees to grant Grantee an option to purchase such real estate pursuant to the terms of this Agreement;

WHEREAS, Grantee and Owner agree to seek alternative replacement premises for the tenant located on the Property; and

NOW, FOR AND IN CONSIDERATION of the monies provided herein and other good and valuable considerations, the receipt and sufficiency of which is hereby accepted and acknowledged, it is agreed as follows:

1. **GRANT OF OPTION.** During the term of this Agreement, Owner does hereby grant unto Grantee the exclusive and irrevocable primary option to purchase (the “**Purchase Option**”) Owner’s property (“**Property**”) located at 2888 S Kyla Avenue, Yuma, Yuma County, Arizona, as further described on Exhibit A attached hereto for the Purchase Price (as defined herein) as provided in this Agreement.

2. **OPTION FEE.** Upon mutual execution of this Agreement, Grantee shall pay Owner the sum of Twenty Thousand Dollars (\$20,000.00) (“**Option Fee**”) as non-refundable consideration for entering into this Agreement.

3. **EXERCISE OF OPTION.** The Purchase Option may not be exercised before the later of (i) January 1, 2027 or (ii) City of Yuma issuance of a permit for grading and site utilities of Phase II of the anticipated project intended to utilize the Property, unless otherwise agreed upon by the parties with the consent by motion of the City Council. To exercise the Purchase Option, Grantee shall deliver written notice to Owner prior to the end of the Term (“**Exercise Notice**”) and deliver concurrent with such Exercise Notice, an earnest money deposit of Fifty-Thousand Dollars (\$50,000) (the “**Purchase Option Deposit**”) with Chicago Title Company (“**Escrow Agent**”).

4. **TERMS OF PURCHASE.** In the event Grantee elects to exercise its Purchase Option granted under the terms of this Agreement, the terms of purchase shall be as follows:

4.1. **CLOSE OF ESCROW:** Within sixty (60) days after Grantee has delivered the Exercise Notice, Owner and Grantee shall close escrow for the purchase of the Property with Chicago Title Company (Kathleen Sirianni, 701 5th Avenue, Suite #2700, Seattle, WA 98104, Ph: (206) 628-5666, kathleen.sirianni@ctt.com).

4.1.1. **PRICE:** Grantee shall pay Owner through Escrow Agent the purchase price of \$930,000.00 (“**Purchase Price**”).

4.1.2. **CLOSING EXPENSES.** Owner will pay the following expenses at closing: (a) the cost of the premium for the ALTA standard owners title policy in the amount of the Purchase Price; (b) the cost of any recording fees or transfer tax applicable to the deeds to convey the Property to Grantee, if any; (c) the cost of obtaining and recording any corrective title

instruments; and (d) one half of the Escrow Agent's escrow fees. Grantee will pay the following expenses at closing: (a) all fees due to Escrow Agent for an extended title policy and/or any additional endorsement coverages, if any; and (b) one half of the Escrow Agent's escrow fees. Any real property taxes, lease payments or utilities shall be prorated as of the closing date.

4.1.3. CLOSING DOCUMENTS. At closing, Owner will convey to Grantee AS-IS fee simple title to the Property by statutory warranty deed sufficient for the Escrow Agent to insure title in Grantee as provided herein, subject only to permitted exceptions. Owner will also execute and deliver or cause to be executed and delivered to Grantee at closing, the following documents and items:

- a. a settlement statement; and
- b. such documents or instruments as may be reasonably required by Escrow Agent to consummate the transaction contemplated by this Agreement.

At closing, Grantee will deliver to Owner:

- a. the Purchase Price by wire transfer, adjusted by prorations and credits as specified herein. The Purchase Option Deposit and Option Fee shall be applied to the Purchase Price at closing.
- b. proof of Grantee's organization and good standing in its state of organization and its authorization to transact business in the state in which the Property is located;
- c. a resolution or secretary's certificate authorizing the transaction described herein and the execution and delivery of the closing documents by Grantee's representative;
- d. a settlement statement; and
- e. such documents or instruments as may be reasonably required Escrow Agent to consummate the transaction contemplated by this Agreement.

4.2. COVENANTS OF PARTIES. At closing, Owner and Grantee shall execute and deliver all documents and agreements required to be executed and delivered by it pursuant to the terms of this Agreement, together with such documents or instruments as may be reasonably required by the Escrow Agent insuring the Property to consummate the transaction contemplated by this Agreement, including without limitation, the issuance of an ALTA policy of title insurance.

5. TERM. The term of this Agreement shall commence on the Effective Date and shall expire on December 31, 2031 ("**Term**"). This Agreement may be extended for an additional five (5) years should Grantee provide written notice to Owner on or before the expiration of the Term of such extension, and simultaneously deliver to Owner an additional non-refundable sum of Fifty Thousand Dollars (\$50,000.00) (such amount to be added to and made a part of the "**Option Fee**") prior to the expiration of the initial Term.

6. DUE DILIGENCE. From and after the Effective Date, Grantee shall have the right to (a) consult with any party, including, without limitation, governmental authorities for any purpose relating to the Property (including, without limitation, obtaining customary zoning, environmental reports and other diligence reports), and (b) enter upon the Property following not less than five (5) days' prior written notice to Owner for non-invasive access and subject to any tenant/occupant notice requirements, and following seven (7) days' notice prior to any invasive testing access at

Grantee's sole cost (e.g. for environmental Phase I and/or Phase II testing, geotechnical borings, soils, seismic, hydrogeologic and engineering tests); provided, however, (i) Grantee shall promptly repair any alteration of or damage to the Property caused thereby. Prior to entering the Property, Grantee or its applicable agents entering the Property shall obtain a policy of commercial general liability with limits of not less than Two Million Dollars (\$2,000,000) in the aggregate for bodily injury and property damage.

7. ONGOING OPERATIONS. Owner will keep and maintain the Property in substantially its condition as of the Effective Date, ordinary wear and tear, casualty and condemnation excepted. Owner will perform all of Owner's material obligations under that certain Lease of City of Yuma Property dated October 2, 2013 (the "**Lease**") by and between Owner, as landlord, and Zayo Group, Inc., as tenant ("**Tenant**") affecting 10,160 square feet of the Property. The Property contains two modular buildings. **Building One** is within the footprint of the Lease and is used by Tenant. **Building Two** is used by the Owner as an evidence storage facility.

8. REPLACEMENT PREMISES. Grantee agrees to work cooperatively with Owner and Tenant, as applicable, to seek alternative replacement premises that would allow Tenant to continue operations beyond the Lease term. If Grantee exercises the Purchase Option under this Agreement, Grantee shall transfer fee title of up to 10,000 square feet of reasonably suitable nearby property to the Owner ("**Replacement Property**") and allow the Owner to remove Building Two from the Property and relocate it to the Replacement Property for purposes of Owner entering into a new Lease with Tenant, in which case the Property will transfer to Grantee at closing free and clear of the existing Lease encumbrance and rights. The purchase price for the Replacement Property shall be equal to \$8.60 per square feet of land that consists of the Replacement Property (e.g. 10,100 square feet of land would cost \$86,860), which shall be paid as a deduction from the Purchase Price of the Property. The Replacement Property shall be "suitable" to Owner if such property has or is able to be serviced by local electric utility providers (water/sewer not required) and has access to existing fiber lines on the Union Pacific rail right of way and existing fiber lines connecting to Tenant's customers.

9. DEFAULT. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, and assigns of the parties hereto. The parties acknowledge default could result in irreparable harm and that in the event of default either party may seek injunction, specific performance, and/or other equitable relief. In the event of a default and a suit, action, arbitration, or other proceeding of any nature whatsoever, is instituted, or the services of an attorney are retained, to interpret or enforce any provision of this Agreement or with respect to any dispute relating to this Agreement, the prevailing or non-defaulting party shall be entitled to recover from the losing or defaulting party its attorneys' fees and all other fees, costs, and expenses actually incurred in connection therewith.

10. REPRESENTATIONS; COOPERATION. The parties hereto mutually agree to cooperate to effectuate the terms of this Agreement.

10.1. Grantee agrees to allow Tenant to occupy and remain on the Lease premises through the end of the Lease term (as provided therein).

10.2. Owner agrees not to solicitate, engage, accept or otherwise engage with any other person or party for the sale of the Property during the Term of this Agreement. Owner agrees not to extend, modify, otherwise alter, or enter into any Lease or occupancy agreement affecting the Property during the initial Term without Grantee's prior written approval. Owner further agrees to provide copies of any publicly available items relating to the ownership, operation, and

maintenance of the Property to the extent now in existence and to the extent such items are within Owner's possession: plans, surveys, environmental reports, structural reports, and any other documents relating to ownership, operation, and maintenance of the Property.

11. EFFECTIVE DATE. The "Effective Date" of this Agreement shall be the later dated signature below.

12. GOVERNING LAW/VENUE. This Agreement shall be governed by the laws of the State of Arizona. Any action to enforce any provision of this Agreement or to obtain any remedy with respect to this Agreement shall be brought exclusively in the Superior Court, Yuma County, Arizona (or, as may be appropriate, in the Justice Courts of Yuma County, Arizona or in the United States District Court for the District of Arizona, if, and only if, the Superior Court lacks jurisdiction over such action). The Parties expressly and irrevocably consent to the exclusive jurisdiction and venue of such courts and expressly waive the right to transfer or remove any such action.

13. COUNTERPART SIGNATURES. This Agreement may be executed and delivered in counterparts, electronically or otherwise (e.g. DocuSign accepted), each of which shall constitute an original and all of which together shall constitute one and the same Agreement.

14. AMENDMENT AND/OR MODIFICATION. Neither this Agreement nor any term or provision hereof may be changed, waived, discharged, amended or modified orally, or in any manner other than by an instrument in writing signed by all of the parties hereto.

15. CONFLICT OF INTEREST. No member, official or employee of Owner may have any direct or indirect interest in this Agreement, nor participated in any decision relating to the Agreement that is prohibited by law. This Agreement is subject to cancellation for a conflict of interest pursuant to A.R.S. § 38-511.

16. NO THIRD-PARTY BENEFICIARIES. Only Owner or Grantee may seek enforcement of this Agreement. No person or entity, including Tenant, shall be a third-party beneficiary to this Agreement or shall have any (a) right, title or interest in this Agreement or the real or personal property that may be affected by this Agreement or (b) cause of action hereunder.

*[Signatures on the following page]*

IN WITNESS WHEREOF, the parties represent and affirm that they have authority to execute this Agreement on behalf of their respective entities and thereby execute this Agreement intending to be bound thereby as of the date below.

**OWNER:**

**City of Yuma, an Arizona Municipal Corporation**

By: \_\_\_\_\_  
Name: John D. Simonton  
Title: Acting City Administrator  
Dated: \_\_\_\_\_

**Attested:**

**Approved as to Form:**

By: \_\_\_\_\_  
Lynda L. Bushong, City Clerk

By: \_\_\_\_\_  
Richard W. Files, City Attorney

**GRANTEE**

**Top Quality Products, LLC**

By: \_\_\_\_\_  
Name: Rodney Jarvis  
Title: Authorized Signatory  
Dated: \_\_\_\_\_

**Exhibit A**

**Property Legal Description**

A portion of the Northeast quarter of the Southeast quarter (NE<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>) of Section 6, Township 9 South, Range 22 West of the Gila and Salt River Base and Meridian, City of Yuma, County of Yuma, State of Arizona, and more particularly described as follows:

Lot 46A of the 360 Networks (USA) Lot Tie, dated 1/5/2001, Fee # 2001-00387, Recorded in Book 17 of Plats, Page 57, Yuma County Records.

Containing 2.41 acres, more or less

Except all uranium, thorium or any other material which is or may be determined to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, as reserved in Patent from the United States of America.

Legal Description Verified by:	Andrew McGarvie
Date:	7/1/2025