ORDINANCE NO. 019-69

AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE CITY MANAGER TO EXECUTE ALL NECESSARY DOCUMENTS FOR THE ACQUISITION OF REAL PROPERTY FROM FERRANTINO ENTERPRISES - ARIZONA, LLC FOR THE BALL PARK BOULEVARD EXTENSION PROJECT AND DIRECTING CITY CLERK TO RECORD A CERTIFIED COPY OF THIS ORDINANCE.

WHEREAS, the City of Glendale wishes to acquire 6.44± acres of land from Ferrantino Enterprises - Arizona, LLC, a Michigan limited liability company (“FERRANTINO”), to extend the right-of-way of Ball Park Boulevard between the New River and 99th Avenue, generally along the Maryland Avenue alignment; and

WHEREAS, the City of Glendale will construct the roadway extension and certain utility improvements within the Ball Park Boulevard right-of-way, and provide other benefits to FERRANTINO, in exchange for acquiring the property for the Ball Park Boulevard right-of-way from FERRANTINO; and

WHEREAS, The City and FERRANTINO wish to enter into the Real Property Transfer Agreement, as attached hereto as Exhibit A to accomplish property transfer. Pursuant to this Agreement, FERRANTINO will transfer a portion of 2 parcels, which are identified by Maricopa County Tax Assessor as APN 102-60-017B and APN 102-60-016A and are legally described in Exhibits 2 and 3 to Exhibit A, to the City of Glendale.

WHEREAS, the acquisition of the property from FERRANTINO and the construction of the Ball Park Boulevard extension and utility improvements project is in the public interest.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

SECTION 1. The City Manager and City Clerk be authorized and directed to execute all documents necessary to acquire the real property, including the Real Property Transfer Agreement, for the City from FERRANTINO.

SECTION 2. That the City Clerk is accordingly instructed and authorized to forward a certified copy of this ordinance for recording to the Maricopa County Recorder’s Office.

SECTION 3. That the provisions of this ordinance shall become effective thirty (30) days after passage of this ordinance by the Glendale City Council.
PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this 13th day of August, 2019.

_________________________  
Mayor Jerry P. Weiers

ATTEST:

_________________________  
Julie K. Bower, City Clerk (SEAL)

APPROVED AS TO FORM:

_________________________  
Michael D. Bailey, City Attorney

REVIEWED BY:

_________________________  
Kevin R. Phelps, City Manager
REAL PROPERTY
TRANSFER AGREEMENT

DATE: \textsc{Jun 28}, 2019

PARTIES:
FERRANTINO ENTERPRISES – ARIZONA LLC

Ferrantino Enterprises-Arizona, LLC
101 N. Main Street, Suite 350
Ann Arbor, MI 48104
Attention: Michael J. Ferrantino, Manager
("FERRANTINO")

CITY OF GLENDALE, an Arizona municipal corporation
5850 West Glendale Avenue
Glendale, Arizona 85301
Attention: City Attorney
("Glendale")

This Real Property Transfer Agreement ("Agreement") is made and entered into this 28\textsuperscript{th} day of \texttt{June}, 2019 ("Effective Date") by and between the City of Glendale, an Arizona municipal corporation, ("Glendale" or "City") and FERRANTINO ENTERPRISES – ARIZONA LLC. ("FERRANTINO"), a Michigan limited liability company authorized to do business in Arizona.

RECITALS

A. Glendale wishes to acquire certain undeveloped real property to construct an extension of Ballpark Boulevard. Glendale wishes to improve and extend Ballpark Boulevard Northerly up to and along the Maryland Avenue alignment to its terminus at 99\textsuperscript{th} Avenue, as generally depicted in the attached Exhibit 1 and referred to as "the Roadway".

B. FERRANTINO owns approximately 66 acres of real property bounded on the west by the New River, on the north by Glendale Avenue, on the east by 99\textsuperscript{th} Avenue and on the south by the Maryland Avenue alignment.

C. In order to construct the Ballpark Boulevard Extension Project along the proposed Maryland Avenue alignment, FERRANTINO will transfer certain portions of its parcels identified by the Maricopa County Assessor as APN 102-60-016A and APN 102-60-017B to the City (the "PARCELS"): These PARCELS are legally described in record document number 2006-0964236 of official records of Maricopa County, Arizona. The portion of the PARCELS FERRANTINO is transferring to the City is approximately 6.44 acres, referred to herein as the "STRIP", being legally described in the attached Exhibit 2 (portion of APN 102-60-017B) and Exhibit 3 (portion of APN 102-016A).
D. In exchange for the STRIP being transferred to the City in fee simple, Glendale will construct the Roadway, dedicate the Roadway to public use, construct the main and connecting water and sewer lines to the remainder of the PARCELS, and perform any future repair, maintenance and replacement of such lines. Glendale will also provide FERRANTINO with a 2-acre open space credit for any subsequent development of some or all of the PARCELS.

E. Glendale and FERRANTINO desire to enter into this Agreement on the terms and conditions set forth below.

AGREEMENT

In consideration of the mutual promises and covenants set forth in this Agreement, the parties agree to exchange their interests in the Parcels on the terms and conditions set forth below.

1. **EXCHANGE TERMS & CONDITIONS.**

(a) **Transfer STRIP to City in Fee Simple.** No later than September 30, 2019, FERRANTINO will transfer and dedicate to Glendale, free and clear of any mortgages, collateralization, or other monetary liens voluntarily agreed to by FERRANTINO, the STRIP, which will be incorporated into the Roadway. The STRIP will be transferred by a special warranty deed and dedicated to public use in the form of an executed and recorded Map of Dedication.

(b) **Temporary and Permanent Access.** FERRANTINO agrees to:

i. provide access to the PARCELS until the Roadway construction is complete so that Glendale can construct the Roadway; and

ii. to grant the City a permanent easement to the PARCELS so that the City may operate, maintain, repair and replace the sewer lift station that will be built on a third party’s property adjacent to the PARCELS. Such easement shall be drafted, executed and recorded once the construction of the sewer lift station is completed by the City.

(c) **Pending its City Council approval, as necessary, and in exchange for the STRIP, Glendale shall:**

i. Design and construct the Ballpark Boulevard extension and any necessary roadway improvements along an alignment generally between Bethany Home and Maryland Avenues, in accordance with, at minimum Maricopa Association of Government (MAG) Standards.

ii. Design and construct the “Related Improvements” described in subsection (d) below, at its own cost and in accordance with all applicable federal, state or City rules, codes, regulations and statutes.
iii. Provide FERRANTINO with a 2-acre open space credit for any subsequent development of the PARCELS. FERRANTINO alone will decide how to apply this credit to its subsequent development.

(d) Related Improvements:

The City will construct all necessary water and sewer infrastructure at its own cost to serve the PARCELS. City also agrees to maintain, repair and, if necessary, replace any water or sewer lines, including any main lines, at its own cost.

(e) Glendale will pay all closing costs, recording fees and escrow fees, if any, to effectuate the acquisition of the STRIP as provided herein.

(f) Remedies Subsequent to Conveyance. In the event Glendale breaches this Agreement by failing to materially complete the construction of the Ballpark Boulevard extension or the Related Improvements described in this Section within one (1) year of its Effective Date of this Agreement, FERRANTINO may, in its sole discretion: (a) take legal action to enforce its rights and remedies under this Agreement, including filing a complaint seeking to compel specific performance by the City. or (b) seek reconveyance of the STRIP to FERRANTINO, without charge by the City and free and clear of all liens and encumbrances.

2. TITLE POLICIES AND SURVEY.

The City shall pay for a title policy or survey of the STRIP to facilitate this acquisition.

3. FERRANTINO’S REPRESENTATIONS AND WARRANTIES.

FERRANTINO 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 Effective Date of this Agreement and will be true and accurate upon execution of this Agreement, and which shall survive the transfer of the STRIP.

(a) Action. All actions on the part of FERRANTINO which are required for the execution, delivery and performance by FERRANTINO of this Agreement and each of the documents and agreements to be delivered by FERRANTINO 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 executed by FERRANTINO constitutes a legal, valid and binding obligation of FERRANTINO, enforceable against FERRANTINO in accordance with its terms;

(c) Litigation. FERRANTINO is not a party to any pending or threatened action, suit, 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 STRIP or to the past or present operations and activities of FERRANTINO upon or relating to this Property; and
(d) Environmental Matters. FERRANTINO has not been advised that either FERRANTINO or any condition found on the PARCELS, including the STRIP, 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, FERRANTINO has not been advised that the PARCELS, including the STRIP, or any underlying groundwater contains any material concentrations of regulated substances, hazardous substances, hazardous materials, toxic substances, or similar substances, residues, and waste. Should any such environmental issues arise (as listed above) after the execution of this Agreement and related documents, Glendale and FERRANTINO shall work together to resolve any such issues.

4. CITY’S REPRESENTATIONS AND WARRANTIES.

Glendale 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 upon execution of this Agreement, and which shall survive the transfer of the STRIP:

(a) Action. All actions on the part of Glendale which are required for the execution, delivery and performance by Glendale of this Agreement and each of the documents and agreements to be executed and delivered by Glendale have been duly and effectively taken.

(b) Enforceable Nature of Agreement. This Agreement and each of the documents and agreements to be delivered by Glendale constitutes a legal, valid and binding obligation of Glendale, enforceable against Glendale in accordance with its terms.

5. COMMISSIONS.

The parties represent and warrant to each other 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 in connection with the transaction contemplated by this Agreement. Glendale and FERRANTINO shall each indemnify, defend and hold the other party harmless for, from and against any and all claims arising from any claim by any broker, agent or finder for fee or commissions earned as a result of the transactions contemplated hereunder because of any act of Glendale or FERRANTINO, respectively.

6. INDEMNITY.

Without limiting the specific indemnities provided for in this Agreement, 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, Glendale hereby covenants and agrees to indemnify and hold FERRANTINO harmless for, from and against any and all claims, damages, costs and expenses (including attorneys’ fees) relating in any way to the Ballpark Boulevard extension project, even though now unknown and unsuspected; and FERRANTINO hereby covenants and agrees to indemnify and hold Glendale harmless for, from and against any and all claims, damages, costs and expenses (including attorneys’ fees) relating in any way to the PARCELS, including the STRIP, and accruing prior to the close of escrow, even though now unknown and unsuspected.

7. 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.

8. 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.

9. 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.

10. GOVERNING LAW.

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.

11. CONFLICT

FERRANTINO and Glendale acknowledge this Agreement is subject to A.R.S. § 38-511, which allows for cancellation of this Agreement in the event any person who is significantly involved in initiating, negotiating, securing, drafting, or creating the agreement on City’s or FERRANTINO’s behalf, respectively is also an employee, agent, or consultant of any other party to this Agreement.

12. 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 FERRANTINO and Glendale 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.

Glendale:
City Manager
City Engineer
City of Glendale
5850 W. Glendale Avenue
Glendale, Arizona 85301

and

City Attorney
City of Glendale
5850 W. Glendale Avenue
Glendale, Arizona 85301

FERRANTINO: Ferrantino Enterprises-Arizona, LLC
101 N. Main, Suite 350
Ann Arbor, MI 48104
Attention: Michael J. Ferrantino

13. DOCUMENTATION.

This Agreement, including Exhibits 1 through 3, which are incorporated herein by this reference, constitutes the entire agreement between the parties pertaining to the subject matter contained herein. Each party also 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.

14. 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.

15. AMENDMENTS.

This Agreement constitutes the entire agreement of the parties and supersedes any negotiations, discussions, undertakings, correspondence or informal agreements of the parties. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are superseded by and merged in this Agreement. No supplement, modification, or amendment
of this Agreement shall be binding unless in writing and executed by FERRANTINO and Glendale and are not effective until approved by the City Council, if necessary.

16. **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.

17. **COVENANTS RUN WITH THE LAND.**

The obligations and benefits set forth in this Agreement shall run with the land and shall be binding upon the successors and assigns of the parties hereto.

18. **ORIGINALS.**

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

CITY OF GLENDALE,
an Arizona municipal corporation

By: Kevin R. Phelps
Its: City Manager

ATTEST:

Julie K. Bower
City Clerk

APPROVED AS TO FORM:

Michael D. Bailey
City Attorney
FERRANTINO ENTERPRISES – ARIZONA LLC

By: Michael T. Ferrantino
Its: Manager

ATTEST:

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EXHIBIT 2

LEGAL DESCRIPTION

THAT PART OF PARCEL NO. 2 DESCRIBED IN DOCUMENT NO. 2006-0964236, RECORDS OF MARICOPA COUNTY, ARIZONA, SITUATED WITHIN THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 2 NORTH, RANGE 1 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA (ALSO KNOWN AS "FARM UNIT "A") BEING PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 8;

THENCE S88°55'54"W, ALONG THE NORTH LINE OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 8, A DISTANCE OF 536.53 FEET TO THE SOUTHEASTERLY LINE OF THE EXCEPTION TO PARCEL NO. 2, DESCRIBED IN DOCUMENT NO. 2006-0964236, RECORDS OF MARICOPA COUNTY, ARIZONA;

THENCE, S38°18'18"W, ALONG SAID SOUTHEASTERLY LINE OF THE EXCEPTION TO PARCEL NO. 2, A DISTANCE OF 919.19 FEET TO THE NORTHEASTERLY LINE OF THE GRAND CANAL DRAIN, AND ASSOCIATED TYPE II NON-IRRIGATION GRANDFATHERED WATER RIGHTS, AS RESERVED BY THE INSTRUMENT RECORDED IN DOCUMENT NO. 2006-0550252, RECORDS OF MARICOPA COUNTY, ARIZONA;

THENCE S53°36'20"E, ALONG SAID NORTHEASTERLY LINE OF THE GRAND CANAL DRAIN, A DISTANCE OF 18.98 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PART, ALSO BEING THE BEGINNING OF A CURVE HAVING A RADIUS OF 825.00 FEET, AND A CHORD THAT BEARS N89°59'46"E;

THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE BEING CONCAVE SOUTHERLY, THROUGH A CENTRAL ANGLE OF 76°27'36", A DISTANCE OF 1100.95 FEET;

THENCE S51°46'26"E A DISTANCE OF 74.86 FEET TO THE WEST LINE OF PARCEL NO. 3 DESCRIBED IN SAID DOCUMENT NO. 2006-0964236, RECORDS OF MARICOPA COUNTY, ARIZONA;

THENCE S00°48'09"W, ALONG SAID WEST LINE, A DISTANCE OF 138.51 FEET;

THENCE N51°46'26"W A DISTANCE OF 159.04 FEET TO THE BEGINNING OF A CURVE HAVING A RADIUS OF 715.00 FEET, AND A CHORD THAT BEARS N88°47'05"W;

THENCE NORTHWASTERLY ALONG THE ARC OF SAID CURVE, BEING CONCAVE SOUTHERLY, THROUGH A CENTRAL ANGLE OF 74°01'19", A DISTANCE OF 923.73 FEET TO SAID NORTHEASTERLY LINE OF THE GRAND CANAL DRAIN;

THENCE N53°36'20"W, ALONG SAID NORTHEASTERLY LINE, A DISTANCE OF 114.75 FEET TO THE POINT OF BEGINNING.

CONTAINING 2.85 ACRES, +/-
EXHIBIT 3
LEGAL DESCRIPTION

THAT PART OF PARCEL NO. 3 DESCRIBED IN DOCUMENT NO. 2006-0964236, RECORDS OF MARICOPA COUNTY, ARIZONA, SITUATED WITHIN THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 2 NORTH, RANGE 1 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 8;

THENCE S00°48'09"W, ALONG THE WEST LINE OF SAID PARCEL NO. 3, A DISTANCE OF 788.90 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PART;

THENCE S51°46'26"E A DISTANCE OF 300.11 FEET TO THE BEGINNING OF A CURVE HAVING A RADIUS OF 715.00 FEET, AND A CHORD THAT BEARS S70°46'10"E;

THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, BEING CONCAVE NORTHERLY, THROUGH A CENTRAL ANGLE OF 37°59'29", A DISTANCE OF 474.10 FEET;

THENCE S89°45'55"E, ALONG A LINE BEING PARALLEL WITH AND 113.00 FEET NORTHERLY OF THE SOUTH LINE OF SAID SOUTHWEST QUARTER, A DISTANCE OF 654.96 FEET TO THE EAST LINE OF SAID PARCEL NO. 3;

THENCE S00°24'43"W, ALONG SAID EAST LINE, A DISTANCE OF 110.00 FEET;
THENCE N89°45'55"W, ALONG A LINE BEING PARALLEL WITH AND 3.00 FEET NORTHERLY OF SAID SOUTH LINE, A DISTANCE OF 654.62 FEET TO THE BEGINNING OF A CURVE HAVING A RADIUS OF 825.00 FEET, AND A CHORD THAT BEARS N70°46'10"W;

THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, BEING CONCAVE NORTHERLY, THROUGH A CENTRAL ANGLE OF 37°59'29", A DISTANCE OF 547.04 FEET;

THENCE N51°46'26"W A DISTANCE OF 215.93 FEET TO SAID WEST LINE OF PARCEL NO. 3;

THENCE N00°48'09"E, ALONG SAID WEST LINE OF PARCEL NO. 3, A DISTANCE OF 138.51 FEET TO THE POINT OF BEGINNING.

CONTAINING 3.59 ACRES, +/-