WHEN RECORDED, RETURN TO:

City of Tempe Basket

FIRST AMENDMENT TO
DEVELOPMENT AND DISPOSITION AGREEMENT
(Fifth and Farmer)
Resolution No. __2009.121__

C2007-98 A

THIS FIRST AMENDMENT TO DEVELOPMENT AND DISPOSITION AGREEMENT (this "**Agreement**") is made and entered into as of the 19th day of November, 2009, by and between the CITY OF TEMPE, an Arizona municipal corporation ("**City**"), FARMER ARTS, LLC, an Arizona limited liability company ("**Developer**").

RECITALS:

A.   City and Developer are parties to that certain Development and Disposition Agreement (c2007-98) dated as of May 31, 2007 (the "Development Agreement"), pursuant to which City agreed to convey to Developer certain City-owned real property more particularly described therein (the "Property").   ·

B.   Developer has requested an extension of the time by which its acquisition of the Property must be completed, and although under no prior obligation to do so, City is willing to grant such an extension, but only upon Developer's strict compliance with the terms and conditions hereafter set forth.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto state, confirm and agree as follows:

AGREEMENT

1.   Definitions. Capitalized terms used herein without definition shall have the meanings given such terms in the Development Agreement, except where the context clearly indicates otherwise.

2.   Amendment.

a.   Section 2.7 of the Development Agreement is hereby amended in its entirety to read as follows:

2.7   Close of Escrow. The Closing Date for Parcel 1 Property shall be ten (10) days after the earlier of (a) receipt by City of reasonably satisfactory evidence that Developer has obtained construction financing for an initial phase or Improvement on Parcel I, or (b) City's issuance of permits for construction on Parcel 1, provided however, in no event shall the Closing occur prior to satisfaction of the Conditions Precedent set forth in *Section 2.8* and *Section 2.9*,

respectively, unless expressly waived in writing by Developer, but in no event later than <u>seventy-two</u> months of the date of the execution of this Agreement. The Closing shall take place at the office of the Escrow Agent, or at such other place or time as the City and Developer mutually agree in writing. At or prior to the Closing, the parties hereto shall execute and deliver such documents and perform such acts as are provided for herein, or as are necessary, to consummate the conveyance of Parcel 1, or Parcel 2, as applicable, to Developer. On the Closing date the City shall execute and deliver a Special Warranty Deed for the appropriate Parcel, in substantially the form attached hereto as *Exhibit "D"*.

        b.   Section 2.9.5 of the Development Agreement is hereby amended in its entirety to read as follows:

       2.9.5   Conveyance by the City to the Developer of Parcel 2 must be completed within <u>ninety-six</u> months of the date of the execution of this Agreement, unless the time for conveyance is extended by mutual agreement.

        3.   <u>No Further Modifications</u>. Except as specifically modified or amended in this First Amendment, the terms and conditions of the Development Agreement shall remain in full force and effect, unmodified and unchanged in any way and are hereby ratified and affirmed by the parties.
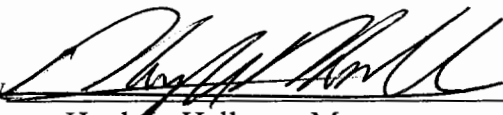
       IN WITNESS WHEREOF, the undersigned have caused this Development, Disposition and Intergovernmental Agreement to be executed as of the day and year first above written.
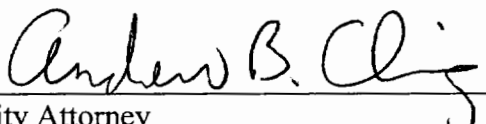
ATTEST:

City Clerk

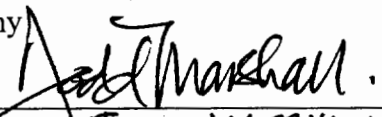CITY OF TEMPE, an Arizona municipal corporation

By

Hugh L. Hallman, Mayor

APPROVED AS TO FORM:

City Attorney

FARMER ARTS, LLC, an Arizona limited liability company

By

Name TODD MARSHALL
by Marshall Urban Development Company, Manager
Title Todd MARSHALL, PRESIDENT.

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