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City of Tempe Basket

**SECOND AMENDMENT TO  
DEVELOPMENT AND DISPOSITION AGREEMENT  
(Fifth and Farmer)**

Resolution No. 2010.142  
C2007-98-B

THIS AMENDMENT TO DEVELOPMENT AND DISPOSITION AGREEMENT (this "**Agreement**") is made and entered into as of the 4th day of November, 2010, by and among the CITY OF TEMPE, an Arizona municipal corporation ( "**City**"), FARMER ARTS, LLC, an Arizona limited liability company ( "**Developer**").

**RECITALS**

A. City issued a Request for Proposals (RFP No. 06-130) (the "RFP") for the disposition and development of that certain City-owned real property legally described in Exhibit "A" attached hereto and depicted on that Parcel Map attached hereto as Exhibit "B", containing approximately seven and seven tenths (7.7) gross acres of land area (the "Property").

B. Developer was the successful respondent, having proposed to redevelop the Property as a mixed-use project, including market-rate and affordable dwelling units, and retail and office components, and City and Developer executed a Development and Disposition Agreement dated May 31, 2007 [c2007-98], as amended by a First Amendment dated November 19, 2009 (the "DDA").

C. The Property has unique development constraints and challenges, including but not limited to the Property's narrow, linear shape; the adjacent railroad tracks, rail spur and rail easement; the 230 kV power lines and fiber optics easement running along the Property's eastern boundary; 5th Street bisecting the Property and creating the two Parcels; the irrigation easement that bisects Parcel 2; the existing structures and the possible existence of historical substructures; and the on-going traffic and parking constraints associated with its urban location that may impact, impede or delay the constructions process.

D. City and Developer now desire to amend the DDA in certain respects. This Agreement is a development agreement pursuant to the provisions of A.R.S. §9-500.05.

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 hereby agree as follows:

## A G R E E M E N T

1. Section 1 of the Development Agreement is hereby amended in its entirety to read as follows:

1. **Definitions.** The following terms shall have the meanings set forth below whenever used in this Agreement, except where the context clearly indicates otherwise.

1.1 **“Business Day”** shall mean any day other than a Saturday or Sunday or legal holiday in the State of Arizona. Unless specifically referred to as a “business day”, all days contemplated by this Agreement shall mean calendar days.

1.2 **“Certificate of Occupancy”** shall mean a final written acceptance of a completed and inspected building, structure or improvement located within the Project issued by the City Community Development Department or the City Public Works Department. The City will issue a separate Certificate of Occupancy as Developer completes construction of each building, structure or improvement located within the Project, to be further defined or phased in the PAD, in conformance with this Agreement, the Schedule of Performance and inspection by the City.

1.3 **“City”** shall mean the City of Tempe, Arizona, an Arizona municipal corporation, and any successor public body or entity.

1.4 **“Closing Date”** shall mean the date or dates set for City’s conveyance of title to any portion of the Property to Developer and the performance of all conditions (except those conditions expressly required to be performed earlier) relating thereto.

1.5 **“Developer”** shall mean Farmer Arts, LLC, an Arizona limited liability company, and its permitted successors and assigns.

1.6 **“Development Parcel”** shall mean an individual parcel of real property within the Property, whether created by a separate PAD, by lot split, by condominium declaration or through other means of real property subdivision reasonably approved by the City.

1.7 **“Escrow Agent”** shall mean Lawyer’s Title of Arizona, Inc. Attention: Tiah Brooks.

1.8 **“Improvements”** shall mean all public and private improvements that may be constructed from time to time on the Property, including without limitation, all buildings, structures, libraries, road improvements, driveways, parking structures, parking facilities or surface parking lots, pedestrian parkways, enhanced streetscapes, walls, landscaping and other improvements of any type or kind, or any alteration of the natural terrain to be made or built by Developer pursuant to the terms of this Agreement.

1.9 “**Issuance Date**” shall mean the date on which a Certificate of Occupancy is issued by the City for any building, structure or improvement, or portion or phase thereof, located within the Project.

1.10 “**PAD**” shall mean the planned area developments [PAD07020 and PAD07024] which were approved by the City with respect to the Project on November 8, 2007 [DS071056], which provides for development of a single building or structure or a group of buildings or structures within different parcels or phases of development of the Project, and sets forth the specific uses, densities, features or other development matters with respect to the Property. For the purposes of this agreement, the amended PAD’s which have been approved by the City shall supersede any previously approved PAD.

1.11 “**Parcel 1**” shall mean that certain parcel of land within the Property bounded by University Drive on the south, Farmer Avenue on the west, 5th Street on the north, and 35 feet west of the Union Pacific railroad tracks on the east as depicted in Exhibit “B”. Parcel 1 may hereafter be divided into multiple Development Parcels as contemplated in Section 2.8.1 below.

1.12 “**Parcel 2**” shall mean that certain parcel of land within the Property bounded by 5th Street on the south, Farmer Avenue on the west, the south boundary line of Lot 31E, of "State Plat 12 Amended", a subdivision recorded in Book 69 of Maps, Page 38, Maricopa County Recorder and the easterly prolongation thereof to the east boundary on the north, and 35 feet west of the Union Pacific railroad tracks on the east as depicted in Exhibit B.

1.13 “**Parties**” and “**Party**” shall collectively mean City and Developer as the parties to this Agreement or each of the parties individually, as the context may require.

1.14 “**Project**” shall mean the overall development of the Property or portions thereof for residential, commercial and public uses together with appurtenant parking in general conformance with the PAD.

1.15 “**Property**” shall mean that certain real property referred to in Recital A and legally described in Exhibit A and depicted on the Parcel Map attached as Exhibit B and which has been further divided and described herein as Parcel 1 and Parcel 2.

1.16 “**Public Amenities**” shall mean the following items having an aggregate value of not less than \$6,150,000 determined in accordance with Section 2.10: (a) 16,000 square feet of interior gross floor area (finished to the gray shell standards specified in Exhibit F) which shall be conveyed to City for use as a public library or for such other use agreed upon by Developer and City, (b) a pedestrian parkway containing those elements identified on Exhibit F for public use along the eastern boundary of the Property, (c) an enhanced streetscape in the areas detailed in Exhibit F and containing those elements more conceptually depicted in Exhibit ‘F’; (d) 20 parking spaces of the 100 parking spaces Developer is required to construct on Parcel 2, as further described in Section 3.4 hereof; and (e) perpetual maintenance of items (b), (c) and (d) above, at the

same level as originally constructed. Developer shall have the right to assign the maintenance obligation for Parcel 1 and Parcel 2 to a single owner association with City's prior approval as permitted by Section 10.1.

1.17 "**Schedule of Performance**" shall mean the schedule of performance attached hereto as Exhibit C.

1.18 "**Affordable Housing**" shall mean housing for those households with incomes insufficient to afford market-rate housing in the communities where they work. For the purposes of this Agreement, Affordable Housing shall be defined as rental and for-sale housing targeted to households that are between 60% and 120% of the Average Median Income (AMI) for the Project site as defined by the US Department of Housing and Urban Development as adjusted annually. Affordable Housing will incorporate a plan for maintaining the sustainability for the targeted AMI levels stated above for a minimum period of fifteen (15) years but not less than the period required by applicable federal and state laws.

2. The introductory paragraph of Section 2 of the Development Agreement is hereby amended in its entirety to read as follows:

2. **Conveyance of Property.** The following provisions shall apply with respect to the City's conveyance of all or any portion of the Property to Developer:

3. The last three sentences of Section 2.1 of the Development Agreement are hereby deleted and replaced in their entirety with the following sentence:

Developer shall pay all costs, expenses and fees associated with the opening and closing of Escrow, including without limitation, the cost of any title insurance coverage it desires to obtain, and also shall pay the cost of all endorsements to any such policy.

4. Section 2.2 of the Development Agreement is hereby amended in its entirety to read as follows:

2.2 Consideration. The Purchase Price for the Property shall be \$6,200,000 (the "**Purchase Price**"). Parcel 1 of the Property has been, or is currently being, subdivided into multiple Development Parcels, and the Purchase Price (and the Public Amenities Purchase Price) has been allocated among the Development Parcels in the manner specified in Schedule 2.10. The Purchase Price shall be paid in full in cash by Developer at each Closing; provided, however, that at each Closing, Developer shall receive a credit against the Purchase Price for each Development Parcel in an amount equal to the estimated cost of constructing the corresponding Public Amenities applicable to each such Development Parcel but not more than the amounts stated in Schedule 2.10.

At each Closing Developer shall execute, acknowledge and cause to be recorded a first priority deed of trust encumbering the Development Parcel being acquired at such Closing, in a form acceptable to City (the "**Deed of Trust**"). The Deed of Trust shall

secure, and shall be released upon the satisfaction of (i) Developer's obligation to complete the Public Amenities for the Development Parcel against which the Deed of Trust is recorded, as evidenced by the acceptance of such completed Public Amenities by City, or (ii) the repayment to the City of the amount of the credit applied to the Development Parcel sought to be released. Developer shall have the right to record a separate junior deed of trust against any Development Parcel to secure Developer's construction financing, and City agrees to subordinate the Deed of Trust to a deed of trust or other encumbrance securing the construction loan provided that the lender providing the construction financing agrees to deposit the funds necessary to complete the Public Amenities in an escrow account for the benefit of the City at no cost to City or otherwise assures City that such funds will be made available for completion of the Public Amenities at no cost to City, or the Developer, in lieu of a Deed of Trust, provides City with a letter of credit or a payment bond in the amount of the credit provided to Developer. City shall have no obligation to subordinate the lien created under the Deed of Trust to any monetary lien or encumbrance. The Deed of Trust shall be evidenced by a lender's policy of title insurance insuring that such Deed of Trust lien is a first priority; Developer shall pay costs of such policy along with the other closing costs.

5. The penultimate sentence of Section 2.3.1 of the Development Agreement is hereby amended in its entirety to read as follows:

If City does not respond or if City's response does not state an intention to fully remove each item to which Developer has objected, then Developer shall deliver to City and Title Company within five (5) days after Developer receives City's response (or five (5) days after City has failed to respond), a written notice stating Developer's election either to (a) to terminate the Agreement, or (b) to waive Developer's objections and proceed with the transaction, subject to Section 2.8, Section 2.9 and Section 2.10 herein. Failure by Developer to make a timely election shall constitute an election to waive Developer's objections and proceed with the transaction, subject to Section 2.8, Section 2.9 and Section 2.10 herein.

6. Section 2.5 of the Development Agreement is hereby amended in its entirety to read as follows:

2.5 Ownership and Maintenance of Parcels Prior to Conveyances. Prior to the conveyance of the Property to Developer, City shall be entitled to receive all rents and other income from the Property and shall bear all costs of maintenance and ownership. City shall retain the right to lease, pledge or encumber any part of the Property not yet conveyed to Developer provided that any such lease shall be terminated by City as of the Closing Date, and provided further, that any encumbrance shall not unreasonably interfere with Developer's ability to proceed with development of the Property in conformance with the PAD.

2.5.1 Notwithstanding the foregoing, the City agrees to seek consent from Developer, which shall not be unreasonably withheld, prior to approving any

permanent encumbrance on the Property which affects the use of such property, including, but not limited to: access restrictions and utility easements. Developer shall have five (5) business days after receipt of a written request for consent from City in which to notify City in writing of any objection and the basis therefore; Developer's failure to respond to City's notice within the five-day period shall be deemed to constitute Developer's consent, and City may proceed with such action without further notice and without liability to Developer. City further agrees to grant Developer use of the property for construction staging, sales trailer, and construction access for temporary remediation or other predevelopment activities without additional fee, pursuant to a temporary right of entry agreement (in substantially the form of Exhibit G hereto). City further agrees to allow predevelopment and construction signage without additional fee, on construction trailer(s) and construction fencing, subject to customary approval and in conformance with the City's Zoning and Development Code.

7. 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 any portion of the Property shall be such date as Developer may designate; provided that such Closing Date occurs within the time periods specified in the Schedule of Performance, and provided further that City shall not be required to convey any portion of the Property to Developer unless and until City has (a) received reasonably satisfactory evidence that Developer has obtained construction financing for the Improvements and Public Amenities to be constructed on that portion of the Property to be conveyed, which evidence may include a commitment letter from a financial institution or other lender with the demonstrated financial capacity to fund the committed amount, or (b) issued construction permits for construction of the Improvements and Public Amenities to be constructed on the portion of the Property to be conveyed to Developer. In no event shall the Closing occur prior to satisfaction of the conditions precedent set forth in Sections 2.8, 2.9 and 2.10, respectively, unless expressly waived in writing by the party for whose benefit the condition exists. The Closing shall take place at the office of the Escrow Agent. 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 to Developer. On the Closing Date the City shall execute and deliver a Special Warranty Deed for the appropriate portion of the Property, in substantially the form attached hereto as Exhibit "D".

8. Section 2.8 of the Development Agreement is hereby amended in its entirety to read as follows:

2.8 Conditions Precedent to Closing of Parcel 1. In addition to any other conditions imposed by this Agreement, the Parties hereby acknowledge and agree that the obligations of the Parties to consummate and Close on the conveyance of any portion of Parcel 1 shall be subject to and conditioned upon the satisfaction of the following conditions precedent:

2.8.1 Developer has prepared at its sole cost and expense, a revised plat of the Property dividing Parcel 1 into four (4) Development Parcels similar to those depicted on Exhibit B hereto. The revised plat shall be recorded at Developer's sole cost and expense after execution and recordation of this Agreement; and

2.8.2 City's termination of any existing leases on the Property and the satisfaction of any conditions subsequent to those leases; and

2.8.2 Developer must close on Development Parcels 3 and 4 and Tract A of Parcel 1, at the same time;

2.8.3 Developer shall not then be in an Default under this Agreement; and

2.8.4 Developer shall have prepared covenants, conditions and restrictions (CCR's) and/or other appropriate project governing documents that provide for the ongoing maintenance of the Public Amenities in a form acceptable to the City, acceptance of which shall not be unreasonably withheld.

9. Section 2.9 of the Development Agreement is hereby amended in its entirety to read as follows:

2.9 Conditions Precedent to Closing of Parcel 2. The Parties hereby acknowledge and agree that the obligations of the Parties to consummate the conveyance of Parcel 2 shall be subject to and conditioned upon the satisfaction of the following conditions precedent:

2.9.1 Developer shall not be in Default under this Agreement;

2.9.2 The approved PAD for Parcel 2 provides for the ability to build 100 underground parking spaces. City requires that Developer provide not less than 100 underground parking spaces in the approved PAD for Parcel 2; provided that with the prior written consent of the City (as evidenced by an amendment of this Agreement executed by City and Developer), which consent may be granted or withheld in City's unfettered discretion, the 100 parking spaces may be relocated to another Development Parcel for which the Developer is submitting a Development Plan Review for consideration by the City. The transfer of parking spaces to an approved location shall be considered temporary until a Certificate of Occupancy is issued for an Improvement on the Development Parcel where the parking spaces have been relocated. Each subsequent phase of the Project submitted for Development Plan Review shall take into account the prior allocation and reallocation of the parking spaces.

2.9.3 Termination of any existing leases on the Property and the satisfaction of any conditions subsequent to those leases; and

2.9.4 The Developer shall have commenced construction of the initial phase or Improvement on Parcel 1 of the Property and be diligently pursuing such construction.

10. Section 2.10 of the Development Agreement is hereby amended in its entirety to read as follows:

2.10 City's Purchase of Public Amenities. City has agreed to purchase the Public Amenities actually constructed by Developer. The parties hereby agree that the Purchase Price to be paid by the City to Developer for the Public Amenities shall be equal to the actual cost of constructing such Public Amenities, but not more than \$6,150,000; estimates of such costs are set forth in Schedule 2.10 attached hereto (the "**Public Amenities Purchase Price**"). At Developer's option, the Public Amenities Purchase Price shall be applied against the Purchase Price for the Property, and if the Property is divided into Development Parcels, then the Public Amenities Purchase Price shall be allocated among the Development Parcels in accordance with Schedule 2.10. Developer shall maintain in perpetuity all Public Amenities to the originally constructed standard at no cost to City, such maintenance obligations to be more fully described in a maintenance agreement between City and Developer, or in the CCR's referenced in Section 2.8.4; provided, however, that Developer may assign such maintenance obligations to an owners' association created for the ongoing maintenance and governance of the Project. The City and Developer hereby also acknowledge and agree that Developer is not required to incur construction costs in excess of \$6,150,000 for the Public Amenities ("**Costs**"). A budget detailing the estimated Costs has been prepared by Developer and accepted by City, and is encompassed in Schedule 2.10 attached hereto. The estimated Costs include those anticipated direct costs of the Public Amenities, as well as allocable indirect costs, and any City charges for permits associated with the Public Amenities actually paid by Developer, and which Developer's lender allows to be paid or reimbursed from construction loan proceeds, all as determined in accordance with generally accepted accounting principles applicable to construction projects of similar size and scope.

11. Section 3.1 of the Development Agreement is hereby amended in its entirety to read as follows:

3.1 Rezoning; PAD. Developer has completed the rezoning of the Property and City has approved a PAD for each Parcel.

12. Section 3.3 of the Development Agreement is hereby amended in its entirety to read as follows:



3.3 Phasing of Development. The City hereby acknowledges that the development of the Property contemplates that the Project Improvements will be planned, constructed and completed in phases on separate Development Parcels.

13. Section 3.4 of the Development Agreement is hereby amended in its entirety to read as follows:

3.4 Parking. The City hereby waives the required public parking associated with the library component of the Project. As part of the Public Amenities Developer shall execute and deliver to City a deed or bill of sale conveying to City title to, or if title to such spaces cannot be separately conveyed, the perpetual right to use, 20 full size parking spaces within the 100 spaces to be constructed by Developer on Parcel 2 in accordance with Section 2.9.2, which conveyance shall be made at no cost to City and for which City shall not be obligated to pay any assessments for maintenance or other operating costs pursuant to any covenants, conditions or restrictions affecting such spaces or otherwise, it being the intent of the parties that the 20 parking spaces shall become part of the Public Amenities which Developer is obligated to maintain. The parties agree that it is in the best interests of the Project that the parking requirement for any Affordable Housing provided within the Project shall be equal to one space for each dwelling unit and one bicycle rack for every 4 dwelling units.

14. Section 3.5 of the Development Agreement is hereby amended in its entirety to read as follows:

3.5 Railroad Quiet Zone. The City agrees to use reasonable efforts to install the infrastructure required to activate the approved Quiet Zone area adjacent to the Project prior to completion of the improvements on Development Parcel 3; provided that City shall not be responsible for delays caused by third parties.

15. Section 3.6 of the Development Agreement is hereby amended in its entirety to read as follows:

3.6 Certificate of Occupancy. Promptly after substantial completion of the construction of any Improvements on a Development Parcel within the Property in accordance with the PAD for such Development Parcel, City shall furnish to Developer a Certificate of Occupancy in accordance with City's standard procedures. Upon issuance of the Certificate of Occupancy, Developer may record the Certificate of Occupancy in the Office of the Maricopa County Recorder.

16. The penultimate sentence of Section 3.7 of the Development Agreement is hereby amended in its entirety to read as follows:

The initial representative for the City ("City Representative") shall be Alex Smith, or his designee, and the initial representative for the Developer ("Developer Representative") shall be Todd Marshall, or his designee.

17. Section 4.2 of the Development Agreement is hereby amended and restated in its entirety to read as follows:

4.2 Reimbursement Amount. The City agrees to pay to Developer an aggregate amount equal to \$1,700,000, from the Construction Sales Taxes and the Sales Taxes generated and received by the City from the Project (the "Reimbursement Amount"), in accordance with the terms of this **Section 4**. The City's obligation to make the payments described in this **Section 4** shall terminate at the end of the Reimbursement Period

18. Section 5 of the Development Agreement is hereby amended in its entirety to read as follows:

**5. Fee, Basis and Deferral.**

5.1 Fee Basis. All City fees and permits imposed with respect to the Project, including, but not limited to, planning and building plan check fees, excavating and grading fees, engineering fees, and building permit fees, including, without limitation, mechanical, electrical and plumbing permit fees, paid by Developer prior to January 1, 2013 shall be capped at the rates or charges in effect as of May 31, 2007 (herein, the "Capped Rate"). In the case of a reduced fee or deferred fee as defined herein, the basis for the reduction shall be based on the Capped Rate. All fees and other payments to City on and after January 1, 2013 for any purpose relating to the Project, or any phase thereof, including those items listed above, shall be at the rates and amounts in effect at the time paid; Developer shall not be entitled to prepay all or any portion of any such fees.

5.2 Deferral of Sewer, Water and Residential Unit Development Fees. In addition to the foregoing fee waivers, the City hereby agrees to defer payment of all potable water and sanitary sewer fees (the "Deferred Development Fees"), including commercial and landscape meters, until such time as the 15th day after a Certificate of Occupancy is issued relative to the Improvement or phase that is served by such meter. In the case of individual for-sale residential units, the deferred sewer and water fees shall be paid to the City out of escrow at the closing of the sale of each individual unit to a third party purchaser. The Deferred Development Fees shall bear interest at the rate of 4% per annum, compounded daily, from the date such fees would otherwise have been paid until the date all Deferred Development Fees are paid in full, with interest, compounded as aforesaid. Any amounts (including, without limitation, the Deferred Development Fees and interest accrued thereon, together with any charges, costs and fees paid by City as a result of such default) not paid when due shall bear interest at the rate of 10% per annum, compounded daily, from the date due until paid in full. As required by Section 9-463.05 of the Arizona Revised Statutes, as amended, all Deferred Development Fees shall be secured by a first priority deed of trust lien on the Property, which deed of trust shall be in such form as City may require; provided that Developer shall have the

option of providing a cash bond, letter of credit or surety bond in the amount of the Deferred Development Fees.

19. Section 6 of the Development Agreement is hereby amended in its entirety to read as follows:

**6. Housing Matters.**

6.1 Contribution of HOME and/or CDBG Funds. If Developer is successful in securing an allocation of Low Income Housing Tax Credits (LIHTC) for this Project through the Arizona Department of Housing, the City hereby agrees to contribute \$400,000 in either U.S. Department of Housing and Urban Development HOME funds (the "HOME Funds") or Community Development Block Grant funds to the Project for the purpose of contributing toward the financing of affordable housing pursuant to the Developer's successful application for LIHTC. Any contribution of HOME/CDBG funds is contingent upon the Project and the particular use of those funds meeting all Federal requirements related to such funds.

20. The second sentence of Section 7 of the Development Agreement is hereby amended in its entirety to read as follows:

Notwithstanding the foregoing, Developer shall be responsible for an annual in-lieu payment to City (for transmission to the Tempe Union High School District and the Tempe Elementary School District No. 3), during the abatement period in an amount equal to the lesser of: (a) that portion of the property tax which would have otherwise been payable by such portion of the Project but for the abatement and which would have been remitted to the School Districts, or (b) \$10,000 for each of the five Development Parcels

21. Section 10 of the Development Agreement is hereby amended in its entirety to read as follows:

**10. City's Indemnification of Developer.**

City shall assume all incidents of ownership of the Public Amenities (other than maintenance obligations which shall be performed by Developer at its sole cost and expense) when title or easement to same is transferred to City of record, and will thereafter indemnify and hold Developer harmless for any liability arising out of the public's use of the Public Amenities after the date of transfer and not caused by the negligence or willful misconduct of Developer, its agents, invitees, employees or other persons for whose acts, errors, mistakes, omissions, work, services or professional services Developer may be legally liable. The foregoing indemnity shall not extend to any warranty claim or any claim relating to the design and/or construction of the Public Amenities or their operation prior to conveyance to City.

22. Section 11 of the Development Agreement is hereby amended in its entirety to read as follows:

**11. Default; Alternative Dispute Resolution.**

11.1 Default. It shall be a 'Default' hereunder if either party fails to perform any of its obligations hereunder and such failure continues for a period of thirty (30) days after written notice from the non-defaulting party specifying in reasonable detail the nature of the failure.

11.2 Additional Developer Defaults. In addition to the foregoing, it shall be a Default hereunder if:

11.2.1 Developer sells, assigns, conveys, alienates or otherwise transfers this Agreement or the Property, or any part thereof or any interest therein, in any manner, whether voluntarily or involuntarily, without the prior written approval of the City, which approval shall not be unreasonably withheld provided that the party to whom the Developer proposes to convey the Property has demonstrated the financial capacity to perform its obligations under this Agreement; or

11.2.2 any petition or application for a custodian, as defined by Title 11, United States Code, as amended from time to time (the "Bankruptcy Code") or for any form of relief under any provision of the Bankruptcy Code or any other law pertaining to reorganization, insolvency or readjustment of debts is filed by or against Developer or its assets or affairs, and such petition or application is not dismissed within ninety (90) days of such filing; or Developer makes an assignment for the benefit of creditors, is not paying material debts as they become due, or is granted an order for relief under any chapter of the Bankruptcy Code; or a custodian, as defined by the Bankruptcy Code, takes charge of any property of a partner; or garnishment, attachment, levy or execution in an amount in excess of an amount equal to ten percent (10%) of its net worth is issued against any of the property or effects of Developer, and such issuance is not bonded against within ninety (90) days; (c) any change in control of Developer (including a change in those persons who are its managers, or controlling members, partners or shareholders), its merger or consolidation (whether in one transaction or in a series of transactions) with or into any other entity, the sale, lease, transfer or other disposition of all or a substantial part of its assets, including any sale and leaseback transaction without the prior written consent of City (which consent may be granted or withheld in City's unfettered discretion); (d) there is a material default or material breach of any representation, warranty or covenant, or there is a material false statement or material omission, by Developer under this Agreement or any document delivered or information provided to City in connection herewith; or (e) the dissolution or termination of existence of Developer.

Due to the unique ownership structure employed to facilitate the Low Income Housing Tax Credits used to finance the project proposed for Development Parcel 3, Developer may, without City's prior written consent, transfer ownership of Development Parcel 3 of Parcel 1 to 6<sup>th</sup> and Farmer, LLC in a single transaction or a

series of related transactions in which no consideration is paid to Developer, provided Developer submits to City reasonably satisfactory evidence that such entity is a tax credit investor.

Without City's prior written consent, Developer may, transfer or convey that portion of the Property on which the Public Amenities are to be constructed (including, but not limited to, Tract A of the approved Plat, any subsequently approved common area tracts, and/or any undivided condominium interests) to an owner's association created to own, maintain and/or govern the Project so long as City reviews and approves the covenants, conditions and restrictions applicable to any such entity, and such covenants, conditions and restrictions absolutely obligate the association to maintain the Public Amenities in accordance with the terms of this Agreement and any other agreement between City and Developer applicable to such Public Amenities.

11.4 Mediation. After the occurrence of an Event of Default, the parties hereby agree that there shall be a ninety (90) day moratorium on litigation during which time the parties shall attempt to settle the dispute by nonbinding mediation before commencement of litigation. The mediation shall be held under the Commercial Mediation Rules of the American Arbitration Association. The matter in dispute shall be submitted to a mediator mutually selected by the parties involved in the dispute. In the event the parties involved in the dispute cannot agree upon the selection of a mediator within ten (10) days, then, within five (5) days thereafter, such parties shall request the presiding judge of the Superior Court of Maricopa County, Arizona to appoint the mediator. The mediator selected shall have at least ten (10) years experience in mediating or arbitrating disputes relating to commercial property. The cost of any such mediation shall be divided equally between the parties involved in the dispute. The mediator shall not have the right to award punitive damages. The results of the mediation shall be nonbinding and any party involved in the dispute shall have the right to initiate litigation to enforce the terms and conditions of this Agreement upon the latter of the conclusion of the mediation or ninety (90) days after the Event of Default.

11.5 Developer's Remedies. If the City is in default under this Agreement and the parties do not resolve the City's default pursuant to the nonbinding mediation process described above, then Developer shall have the right to terminate this Agreement immediately upon written notice to the City and to pursue all other legal and equitable remedies which the Developer may have at law or in equity, including, without limitation, the right to seek specific performance, the right to seek and obtain damages and the right to self-help.

11.6 City's Remedies. If the Developer is in default under this Agreement and the parties do not resolve the Developer's default pursuant to the nonbinding mediation process described above, then the City shall have the right to terminate this Agreement immediately upon written notice to Developer and to pursue any other rights or remedies provided hereunder, at law or in equity. In addition, if this Agreement is terminated the City shall have all rights and remedies provided in the Deed of Trust as to that portion of the Property that is subject to the Deed of Trust. If City terminates this Agreement,

Developer shall have no further rights to develop the Property pursuant to this Development Agreement and shall have no further right to any incentives or other benefits provided for herein.

Notwithstanding the foregoing, if at the time the Development Agreement is terminated, there exist any fully executed Government Property Leases as to any Parcels or Development Parcels which have satisfied the requirements for Public Amenities, including but not limited to the release of the Deed of Trust, and if Developer is then in compliance with all maintenance requirements, then any such GPLET Leases shall remain in effect for the remaining term of such lease.

11.8 Rights and Remedies Applicable to Section 11.2.1. Notwithstanding anything to the contrary, the limitations on transferability set forth in Sections 11.2.1 and 11.2.2(c) shall expire as to each Development Parcel upon the date that on which a Certificate of Occupancy is issued for any Improvements on the Property which Improvements substantially conform to the PAD(as applicable to each Development Parcel, a “**Limitation Period**”). Those limitations are designed to reflect the fact that the assistance provided in this Agreement is personal to Developer, and not intended for the benefit of any other person, including any subsequent owner of the Property. In the event of a breach of Section 11.2.1 during the applicable Limitation Period, then City shall be entitled, as City’s sole and exclusive remedy for such breach, to receive liquidated damages in an amount equal to the positive difference, if any, between (i) the total monetary consideration paid or to be paid by the transferee to Developer in connection with the transfer of a Development Parcel or any rights in this Agreement in violation of Section 11.2.1, minus (ii) an amount equal to 118% of the Purchase Price paid by Developer to City for such Development Parcel pursuant to this Agreement. Developer acknowledges and agrees that City’s damages in the event of such a breach of Section 11.2.1 would be difficult, if not impossible, to calculate and that the liquidated damages called for above represent a reasonable and good faith estimate of such damages.

23. Exhibits ‘B’, ‘C’ and ‘F’ of Development Agreement are hereby amended in their entirety and replaced with those Exhibits attached hereto.

24. Except as amended hereby the Development Agreement shall remain in full force and effect.

**SIGNATURE PAGE FOLLOWS**

IN WITNESS WHEREOF, the undersigned have caused this Amendment to Development and Disposition Agreement to be executed as of the day and year first above written.

**ATTEST:**

CITY OF TEMPE, an Arizona municipal corporation

Ernst M. King  
City Clerk

By: [Signature]  
Hugh L. Hallman, Mayor

**APPROVED AS TO FORM:**

Andrew B. Cling  
City Attorney

FARMER ARTS, LLC, an Arizona limited liability company

BY: MARSHALL URBAN DEVELOPMENT COMPANY, MEMBER

By: [Signature]

Name Todd Marshall

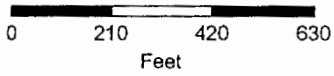
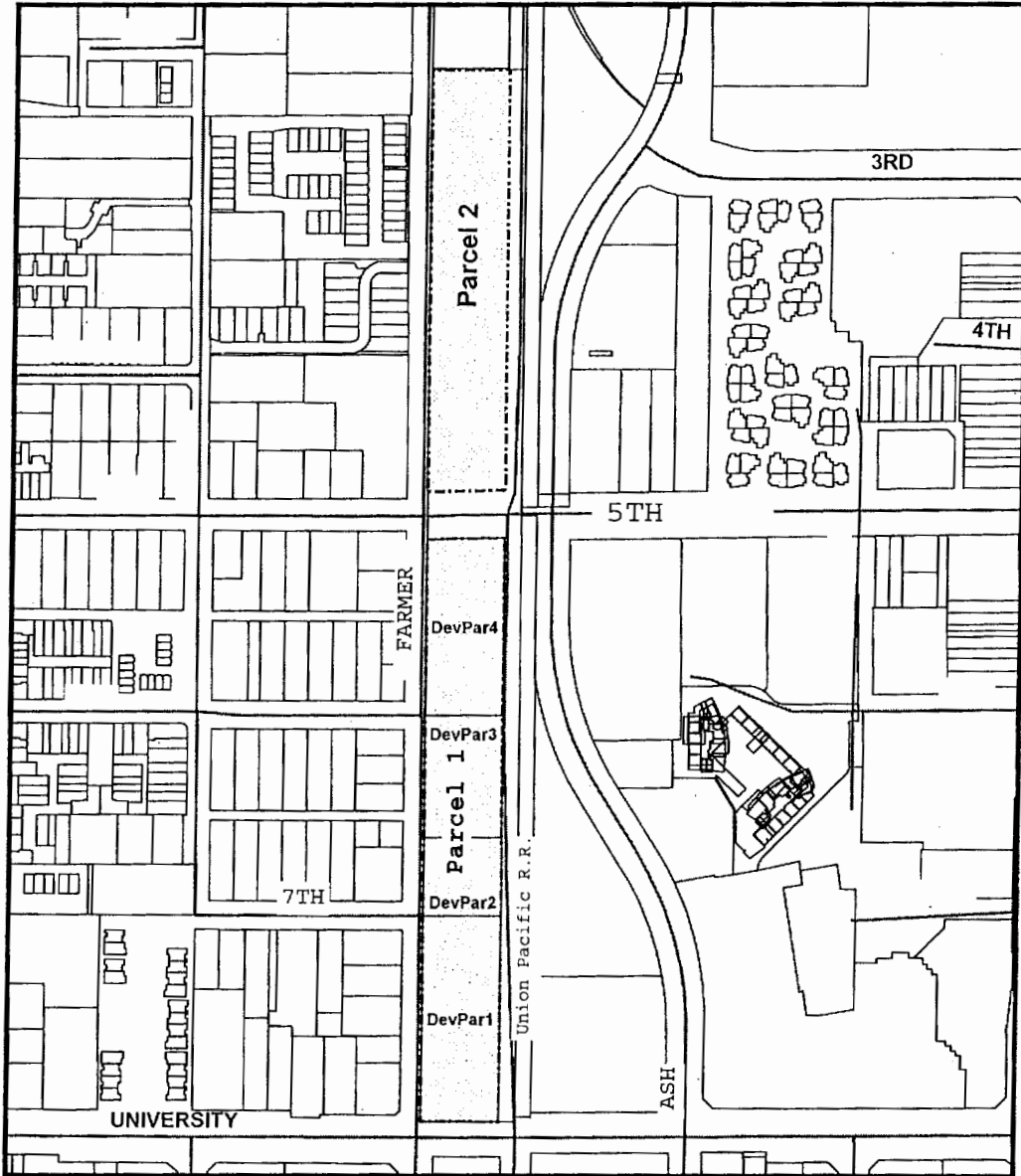
Title PRESIDENT.

*List of Exhibits*

Exhibit "B"	Map of Parcel 1 and Parcel 2
Exhibit "C"	Schedule of Performance
Exhibit "F"	Map and Depiction of Public Amenities
Schedule 2.10	



Exhibit "B"  
Map of Parcel 1 and 2



**Exhibit "C"**  
**Schedule of Performance**

- 1. Closing Date for all Development Parcels of Parcel 1 must occur on or before January 29, 2016**
- 2. Closing Date for Parcel 2 must occur on or before January 29, 2018**
- 3. Commence Construction of the Improvements on each Development Parcel within 180 days after City's issuance of building permits for the Improvements to be constructed thereon.**

**Exhibit “F”**  
**1 of 4**  
**Depiction of Public Amenities**

**Library**

The Library at Farmer Arts District is physically and programmatically integrated into the proposed residential building at the NEC of Farmer Avenue and University Drive. This location serves four distinct neighborhoods that meet at this intersection. The library promotes life-long learning to serve knowledge seekers of all ages. The development program is +/-16,000 sf of interior gross floor area including a mezzanine overlook creating a compact yet dramatic urban learning space. The design and development of the library includes a Gray Shell, as defined below and a public plaza. The Furniture, Fixture and Equipment package is not assumed or provided.

The term “Gray Shell” shall mean and include the building structure, envelope, circulation, public spaces, physical plant support spaces, and site improvements associated with the Library. Specifically:

- Site improvements adequate to comply with life safety, and zoning including: ground cover, planting, irrigation systems, sidewalks, lighting, signage, fences, screens, and buffer zones.
- Building structure including; foundation, beams, columns, floor slabs, and roof structure.
- Building envelope including; insulated exterior walls, exterior glazing, and roof.
- Building standard finished ceiling and ambient lighting.
- Common corridor stud walls, if any, including gypsum wall board on public sides.
- Common areas including; entrance vestibule, lobby, fire egress stairways and corridors, mechanical, electrical switchgear and communication equipment rooms, and elevator shafts and equipment room.
- Public toilets.
- Electrical and mechanical systems including; heating, ventilation and air conditioning systems, building automation system, and emergency generator.
- Combination fire standpipe/sprinkler system and central alarm system.
- Building utility distribution system including; potable domestic water, sanitary and storm drain systems, sanitary vent, electrical power distribution panels and circuit breakers in an electrical closet, designated connection point to the central fire alarm system, and a distribution backboard within a wire closet. All services provide for connections to the tenant functions.

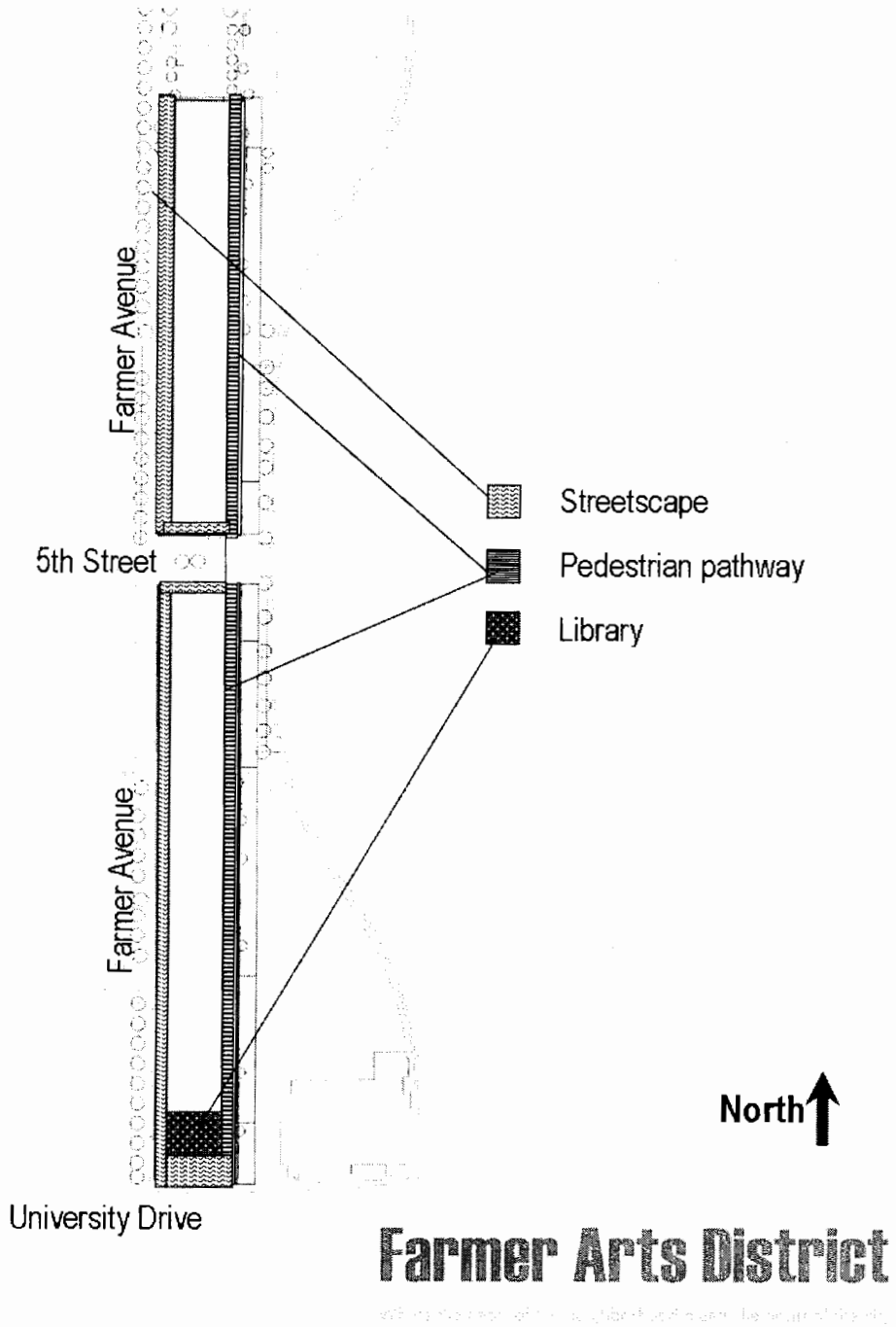
**Pedestrian Pathway**

Providing the dedicated north/south public access way of 15 to 20 feet on average. The linear park serves as a boardwalk connecting the four neighborhoods to important City amenities and resources. The design provides for an accessible path compliant with ADA standards, shade, park furnishings and appropriate lighting. Upon completion, an access easement or dedication will be provided to the City ensuring continued enjoyment for future generations.

**Streetscape**

The current industrial streetscape that is Farmer Avenue has been redefined to include an integrated pedestrian oriented sidewalk and a design that establishing the vision for tree lined streets, appropriate lighting and vibrant urban neighborhood uses.

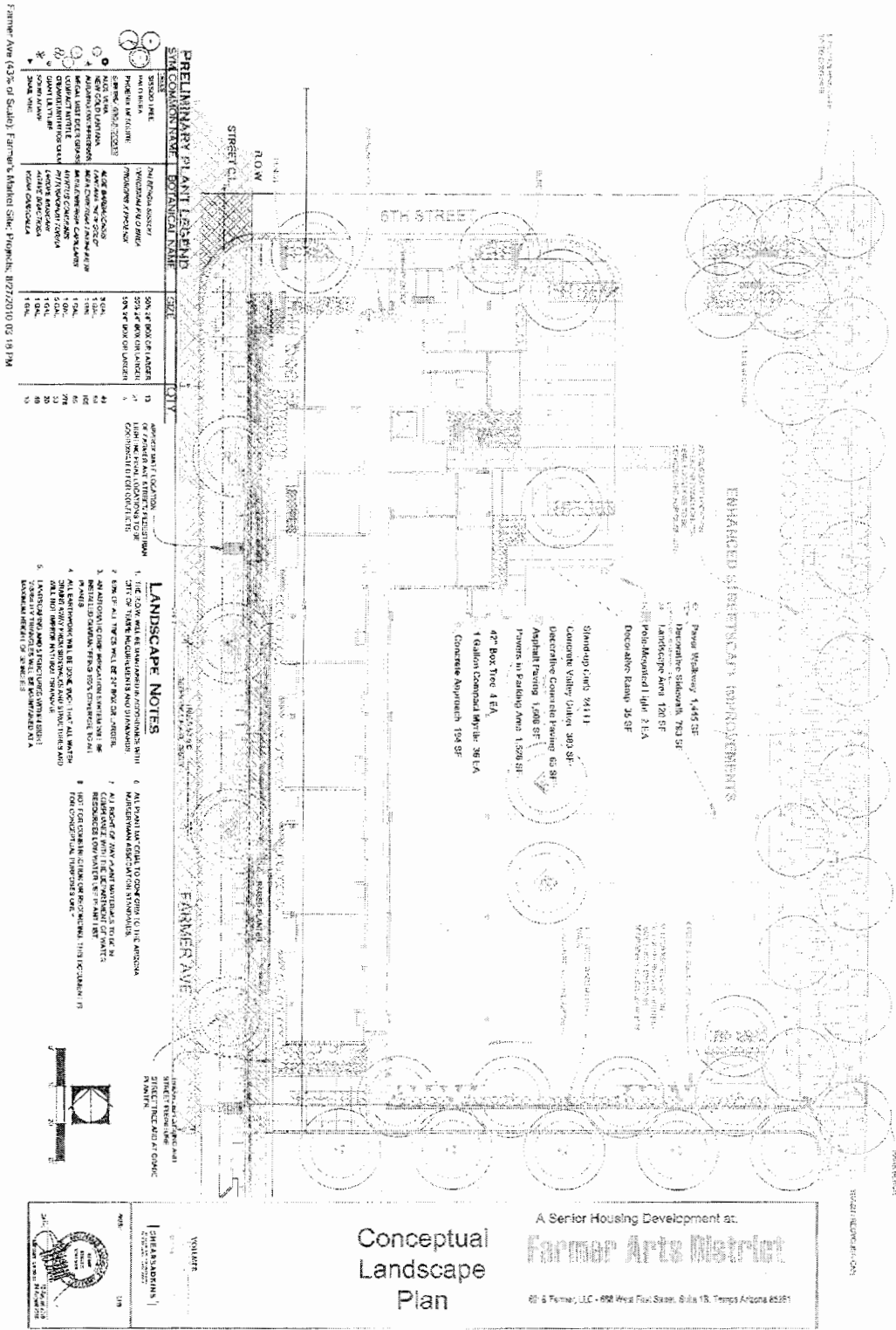
**Exhibit "F"**  
**2 of 4**  
**Map of Public Amenities**



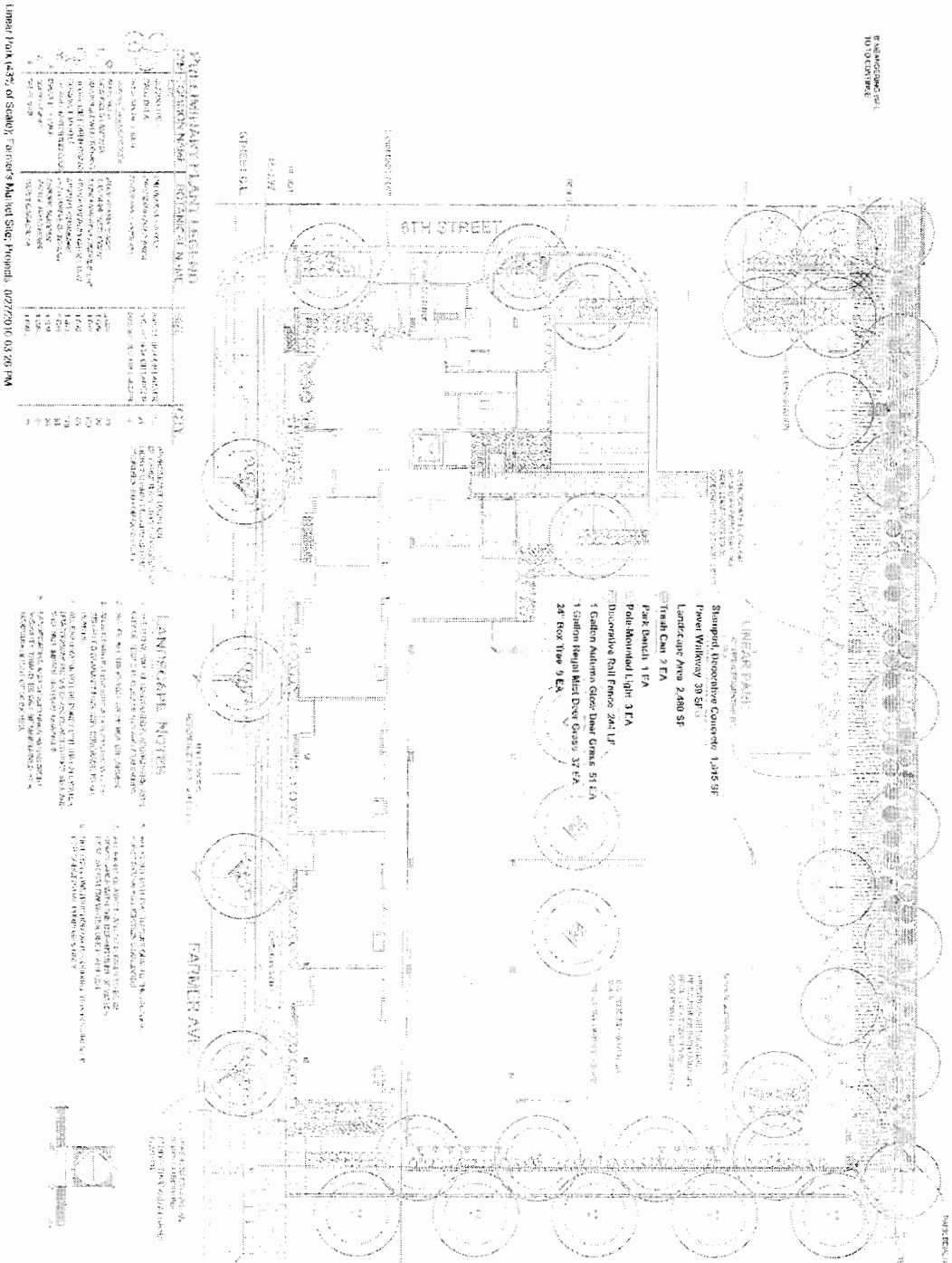
# Exhibit "F"

## 3 of 4

### Streetscape Detail



# Exhibit "F" 4 of 4 Pedestrian Pathway Detail



**PLANTING SCHEDULE**

NO.	PLANT SPECIES	PLANT SIZE	PLANT QUANTITY	PLANT NOTES
1	DOGWOOD	4" DIA.	10	PLANT IN 10' SPACES ALONG WALKWAY
2	DOGWOOD	4" DIA.	10	PLANT IN 10' SPACES ALONG WALKWAY
3	DOGWOOD	4" DIA.	10	PLANT IN 10' SPACES ALONG WALKWAY
4	DOGWOOD	4" DIA.	10	PLANT IN 10' SPACES ALONG WALKWAY
5	DOGWOOD	4" DIA.	10	PLANT IN 10' SPACES ALONG WALKWAY
6	DOGWOOD	4" DIA.	10	PLANT IN 10' SPACES ALONG WALKWAY
7	DOGWOOD	4" DIA.	10	PLANT IN 10' SPACES ALONG WALKWAY
8	DOGWOOD	4" DIA.	10	PLANT IN 10' SPACES ALONG WALKWAY
9	DOGWOOD	4" DIA.	10	PLANT IN 10' SPACES ALONG WALKWAY
10	DOGWOOD	4" DIA.	10	PLANT IN 10' SPACES ALONG WALKWAY

**LANDSCAPE NOTES**

1. ALL PLANTING TO BE INSTALLED BY THE CONTRACTOR.
2. ALL PLANTING TO BE INSTALLED IN ACCORDANCE WITH THE CITY OF CHICAGO PLANTING SPECIFICATIONS.
3. ALL PLANTING TO BE INSTALLED IN ACCORDANCE WITH THE CITY OF CHICAGO PLANTING SPECIFICATIONS.
4. ALL PLANTING TO BE INSTALLED IN ACCORDANCE WITH THE CITY OF CHICAGO PLANTING SPECIFICATIONS.
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9. ALL PLANTING TO BE INSTALLED IN ACCORDANCE WITH THE CITY OF CHICAGO PLANTING SPECIFICATIONS.
10. ALL PLANTING TO BE INSTALLED IN ACCORDANCE WITH THE CITY OF CHICAGO PLANTING SPECIFICATIONS.

**SEAL**

**Conceptual Landscape Plan**

A Senior Housing Development at:  
**FARMER ARBOR**

5th & Farmer, LLC - 800 West West Street, Suite 19, Tampa, Arizona 85781

Schedule 2.10

Development Parcel ("DP")	Plat	Purchase Price	Public Amenities	Public Amenities Purchase Price
<b>Parcel 1</b>				
DP1	Lot 1	\$ 3,144,562	Library Enhanced Streetscape Pedestrian Pathway	\$ 3,144,562
DP2	Lot 2	\$ 197,419	Enhanced Streetscape Pedestrian Pathway	\$ 197,419
DP3	Lot 3 Tract A	\$ 300,658	Enhanced Streetscape Pedestrian Pathway	\$ 275,658
DP4	Lot 4	\$ 525,518	Enhanced Streetscape Pedestrian Pathway	\$ 525,518
<hr/>				
<b>Parcel 2</b>		\$ 1,544,638	Enhanced Streetscape Pedestrian Pathway Parking (\$400,000)	\$ 1,519,638
<hr/>				
		\$ 487,205	Amenities Perpetual O/M	\$ 487,205
<hr/>				
	<b>Total</b>	\$ 6,200,000		\$ 6,150,000

**Conveyance notes:**

- 1 DP3 (Lot 3 along with Tract A) to be conveyed in initial closing. Public Amenities will be constructed on Lot 2 (Enhanced Streetscape \$126,751) and Lot 4 (Pedestrian Pathway \$149,661) concurrent with the construction of Public Amenities on Lot 3.
- 2 Cash to be paid at Closing of DP3 and Parcel 2