

C2007_98F-18-1-1--

WHEN RECORDED, RETURN TO:

City of Tempe Basket

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

Resolution No. R2016.09
C2007-98F

THIS THIRD AMENDMENT TO DEVELOPMENT AND DISPOSITION AGREEMENT (this "**Amendment**") is made and entered into as of the 14th day of January, 2016, 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 dated May 31, 2007 (C2007-98) (the "**Original DDA**"), as amended by that First Amendment to Development and Disposition Agreement dated November 19, 2009 (C2007-98A) (the "**First Amendment**"), and that Second Amendment to Development and Disposition Agreement dated November 4, 2010 (C2007-98B) (the "**Second Amendment**"). The Original DDA, First Amendment and Second Amendment are referred to collectively as the "**DDA**." Capitalized terms not otherwise defined in this Amendment shall have the meanings ascribed to them in the DDA.

B. Pursuant to Section 2.8.1 of the Second Amendment, Developer recorded a plat entitled "Farmer Arts District - Parcel 1" on November 12, 2010 at Book 1070, page 15, Official Records of Maricopa County, Arizona (the "**Parcel 1 Plat**"), whereby Parcel 1 was subdivided into four (4) Development Parcels identified as Lot 1 of the Parcel 1 Plat ("**Development Parcel 1**"), Lot 2 of the Parcel 1 Plat ("**Development Parcel 2**"), Lot 3 of the Parcel 1 Plat ("**Development Parcel 3**") and Lot 4 of the Parcel 1 Plat ("**Development Parcel 4**"), and a common area tract identified as Tract A of the Parcel 1 Plat ("**Tract A**"). The foregoing four (4) Development Parcels within the Parcel 1 Plat, and Parcel 2, comprise all of the Development Parcels within the Property.

C. Prior to the date hereof, Developer has acquired Development Parcels 2, 3 and 4 and Tract A pursuant to the terms and conditions of the DDA. Developer has not yet acquired Development Parcel 1 or Parcel 2.

D. Developer has formed Farmer Property Owners Association, an Arizona nonprofit corporation (“**Farmer Property Owners Association**”) and established that certain Declaration of Covenants, Conditions and Restrictions for Farmer Arts District dated April 18, 2011 and recorded as Document No. 2011-0326910, Official Records of Maricopa County, Arizona (as may be amended from time to time, the “**CCRs**”). The Farmer Property Owners Association constitutes the owners association, and the CCRs constitute the covenants, conditions and restrictions, which have been created to serve the Project as contemplated under the Original DDA and Second Amendment.

E. Developer intends to develop Development Parcel 1 with a joint venture partner (a “**DP 1 JV Partner**”), and Developer intends to develop Parcel 2 with a joint venture partner (the “**P2 JV Partner**”).

F. Developer has requested certain updates and clarifications to the DDA so as to separately allocate and confirm the rights and obligations under the DDA that pertain to Development Parcel 1 and Parcel 2, respectively. Developer also desires to clarify and confirm those post-closing rights and obligations that pertain to the Development Parcels previously acquired by Developer.

G. City and Developer also desire to amend and update the DDA in certain other respects, all as more particularly provided in this Amendment. The DDA (as amended by this Amendment) 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. Definitions. The following select definitions set forth in Section 1 of the Original DDA (as previously amended by Section 1 of the Second Amendment), are hereby amended and replaced in their entirety to read as follows:

1.7 “**Escrow Agent**” shall mean Lawyer’s Title, a Division of Commonwealth Land Title Insurance Company (Attention: Debra Nation); 2398 E. Camelback Road, Suite 350, Phoenix, Arizona; Telephone No.: (602) 287-3530; Facsimile No.: (602) 263-0433; E-Mail Address: debranation@ltic.com.

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 office space (finished to the standards specified in Exhibit “F”) which shall be conveyed to City for use as office space or for such other use agreed upon by Developer and City; (b) a pedestrian pathway 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) enhanced on-street parking in the areas detailed

in Exhibit “F”; 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 the Public Amenities for Parcel 1 and Parcel 2 to the Farmer Property Owners Association.

2. Exhibits. Exhibit “C,” Exhibit “F” and Schedule 2.10 of the DDA (as previously amended) are hereby further amended and restated in their entirety and replaced with those Exhibits and Schedule attached hereto.

3. Amendment of Section 2.9.2. Notwithstanding anything to the contrary in Section 2.9.2 of DDA, the requirement that Developer provide not less than 100 underground parking spaces is hereby relocated to Development Parcel 1.

4. Amendment of Section 3.4. Section 3.4 of the DDA is hereby amended and replaced in its entirety to read as follows:

3.4 Parking. 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 parking spaces to be constructed by Developer on Parcel 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 (or its permitted successors in ownership) is obligated to maintain. The parties agree that it is in the best interest 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.

5. Development Parcel 1. Notwithstanding anything to the contrary in the DDA, Developer and City confirm and agree to the following terms as they relate only to Development Parcel 1 of the Project:

- a. Public Amenities. The Public Amenities and schedule of values attributed to Development Parcel 1 have been modified, as set forth on the revised Exhibit “F” and Schedule 2.10 attached hereto. The modifications to Public Amenities attributed to Development Parcel 1 include, without limitation, deleting all references in the DDA to the “library.”
- b. Development Parcel 1 Ownership. After the conveyance of Development Parcel 1 to Developer, Developer may, without City’s further written consent required, transfer or convey ownership of Development Parcel 1 to Farmer Arts Lot 1, LLC. In addition, Developer and DP 1 JV Partner intend to form a single purpose entity to hold title to Development Parcel 1 (the “**DP 1 Ownership Entity**”). After the DP 1 Ownership Entity has been formed, and provided that Developer has furnished reasonably satisfactory evidence of

construction financing or the financial wherewithal of the DP 1 JV Partner in compliance with Section 2.7(a) of the DDA, then upon written request from Developer, City agrees to consent to the conveyance of ownership of Development Parcel 1 from Farmer Arts Lot 1, LLC to the DP 1 Ownership Entity, and to execute, deliver and record a Notice and Consent in the form attached hereto as Attachment 1 (the “**Notice and Consent**”).

- c. Financial Assurances for Development Parcel 1. Developer acknowledges the obligation in Section 2.2 of the DDA to execute, acknowledge and cause to be recorded the Deed of Trust applicable to Development Parcel 1 at the Closing of Development Parcel 1. Notwithstanding the terms of Section 2.2 of the DDA (as amended) to the contrary, at such time that construction is ready to commence for the Public Amenities for Development Parcel 1, Developer shall have the right to substitute and replace the Deed of Trust with a construction bond, escrowed funds, letter of credit or such other financial assurances as may be mutually agreed to by City and Developer (in each case, the “**Development Parcel 1 Alternative Financial Assurances**”). Promptly upon the posting of any such Development Parcel 1 Alternative Financial Assurances, City shall cause the Deed of Trust recorded against Development Parcel 1 to be fully released. Any such Development Parcel 1 Alternative Financial Assurances shall be in the amount of the credit provided to the Developer for the Public Amenities attributed to Development Parcel 1, and shall be released upon the satisfaction of either (i) the obligation to complete the Public Amenities for Development Parcel 1, or (ii) the repayment to the City of the amount of the credit for the Public Amenities attributed to Development Parcel 1.

- d. GPLET as to Development Parcel 1. Section 7 of the Original DDA (as amended by Section 20 of the Second Amendment) provides that all or portions of the Project are eligible for GPLET. In furtherance of Section 7 of the Original DDA (as amended in part by Section 20 of the Second Amendment), provided that Development Parcel 1 is then in compliance with Exhibit “C” attached hereto, City acknowledges and confirms that Development Parcel 1 remains eligible for GPLET, and that Development Parcel 1 may be subject to a separate Land and Improvements Lease that is applicable only to Development Parcel 1. In the event Developer elects to participate in GPLET for Development Parcel 1, then the rights and obligations under the DDA pertaining to the GPLET for Development Parcel 1 (including but not limited to the obligation in Section 20 of the Second Amendment to pay the annual in-lieu payment to the City, up to \$10,000) shall be treated independently for Development Parcel 1 (and not tied to or conditioned upon any GPLET participation by any one or more other Development Parcels). Furthermore, the participation in GPLET by Development Parcel 1 shall not preclude any other Development Parcel(s) from participating in GPLET from time to time.

- e. Construction Financing for Development Parcel 1. Developer will provide reasonably satisfactory evidence in compliance with Section 2.7(a) of the DDA (as amended) that Developer has either obtained construction financing or reasonably demonstrated the financial wherewithal of the DP 1 JV Partner for the Improvements and Public Amenities to be constructed on Development Parcel 1.
- f. Conditions Precedent to Closing of Development Parcel 1. In furtherance of Section 2.8 of the Original DDA (as previously amended by the Second Amendment), City acknowledges and agrees as follows with respect to the conditions precedent to the Closing of Development Parcel 1:
 - a. Section 2.8.1 (Subdividing Parcel 1). The condition precedent set forth in Section 2.8.1 of the Original DDA (as previously amended) has been satisfied prior to the date of this Amendment.
 - b. Section 2.8.2 (Leases). City covenants and agrees to satisfy the condition precedent set forth in Section 2.8.2 of the Original DDA (as previously amended) as it relates to any leases affecting Development Parcel 1 prior to the Closing of Development Parcel 1.
 - c. Section 2.8.2 (Closing of Parcels 3 and 4 and Tract A). The condition precedent set forth in Section 2.8.2 of the Original DDA (as previously amended) as it relates to Parcels 3 and 4 and Tract A has been satisfied prior to the date of this Amendment.
 - d. Section 2.8.3 (No Default). The condition precedent in Section 2.8.3 of the Original DDA (as previously amended) remains in effect until the Closing of Development Parcel 1; provided that City confirms, as of the date of this Amendment, that Developer is not in default under the DDA and City is not aware of any condition that, with the passage of time or giving of notice, would constitute a default by Developer.
 - e. Section 2.8.4 (CCRs). The condition precedent set forth in Section 2.8.4 of the Original DDA (as previously amended) as it relates to CCRs has been satisfied prior to the date of this Amendment; provided that Developer covenants and agrees to annex and subject Development Parcel 1 to the CCRs contemporaneously with the Closing of Development Parcel 1.

6. Parcel 2. Notwithstanding anything to the contrary in the DDA, Developer and City confirm and agree to the following terms as they relate only to Parcel 2 of the Project:

- a. Public Amenities. The Public Amenities and schedule of values attributed to Parcel 2 have been modified, as set forth on the revised Exhibit "F" and Schedule 2.10 attached hereto. The modifications to Public Amenities

attributed to Parcel 2 include, without limitation, adding reference to a 16,000 sf office space to be built on Parcel 2.

- b. Parcel 2 Ownership. After the conveyance of Parcel 2 to Developer, Developer may, without City's further written consent required, (i) transfer or convey ownership of Parcel 2 to Farmer Arts Parcel 2, LLC, and (ii) after Parcel 2 is subdivided pursuant to a final plat, further transfer or convey ownership of the common area tract within Parcel 2 to Farmer Property Owners Association. In addition, Developer and P2 JV Partner intend to form a single purpose entity to hold title to the balance of Parcel 2 (the "**Parcel 2 Ownership Entity**"). After the Parcel 2 Ownership Entity has been formed, and provided that Developer has furnished reasonably satisfactory evidence of construction financing or the financial wherewithal of the P2 JV Partner in compliance with Section 2.7(a) of the DDA, then upon written request from Developer, City agrees to consent to the conveyance of ownership of the balance of Parcel 2 from Farmer Arts Parcel 2, LLC to the Parcel 2 Ownership Entity, and to execute, deliver and record a Notice and Consent in the form attached hereto as Attachment 1 (the "**Notice and Consent**").

- c. Financial Assurances for Parcel 2. Developer acknowledges the obligation in Section 2.2 of the DDA to execute, acknowledge and cause to be recorded the Deed of Trust applicable to Parcel 2 at the Closing of Parcel 2. Notwithstanding the terms of Section 2.2 of the DDA (as amended) to the contrary, at such time that construction is ready to commence for the Public Amenities for Parcel 2, Developer shall have the right to substitute and replace the Deed of Trust with a construction bond, escrowed funds, letter of credit or such other financial assurances as may be mutually agreed to by City and Developer (in each case, the "**Parcel 2 Alternative Financial Assurances**"). Promptly upon the posting of any such Parcel 2 Alternative Financial Assurances, City shall cause the Deed of Trust recorded against Parcel 2 to be fully released. Any such Parcel 2 Alternative Financial Assurances shall be in the amount of the credit provided to the Developer for the Public Amenities attributed to Parcel 2, and shall be released upon the satisfaction of either (i) the obligation to complete the Public Amenities for Parcel 2, or (ii) the repayment to the City of the amount of the credit for the Public Amenities attributed to Parcel 2.

- d. GPLET as to Parcel 2. Section 7 of the Original DDA (as amended by Section 20 of the Second Amendment) provides that all or portions of the Project are eligible for GPLET. In furtherance of Section 7 of the Original DDA (as amended in part by Section 20 of the Second Amendment), provided that Parcel 2 is then in compliance with Exhibit "C" attached hereto, City acknowledges and confirms that Parcel 2 remains eligible for GPLET, and that Parcel 2 may be subject to a separate Land and Improvements Lease that is applicable only to Parcel 2. In the event Developer elects to participate in GPLET for Parcel 2, then the rights and obligations under the DDA pertaining

to the GPLET for Parcel 2 (including but not limited to the obligation in Section 20 of the Second Amendment to pay the annual in-lieu payment to the City, up to \$10,000) shall be treated independently for Parcel 2 (and not tied to or conditioned upon any GPLET participation by any one or more other Development Parcels). Furthermore, the participation in GPLET by Parcel 2 shall not preclude any other Development Parcel(s) from participating in GPLET from time to time.

- e. Construction Financing for Parcel 2. Developer will provide reasonably satisfactory evidence in compliance with Section 2.7(a) of the DDA (as amended) that Developer has either obtained construction financing or reasonably demonstrated the financial wherewithal of the P2 JV Partner for the Improvements and Public Amenities to be constructed on Parcel 2.
- f. Conditions Precedent to Closing of Parcel 2. In furtherance of Section 2.9 of the Original DDA (as previously amended by the Second Amendment), City acknowledges and agrees as follows with respect to the conditions precedent to the Closing of Parcel 2:
 - a. Section 2.9.1 (No Default). The condition precedent in Section 2.9.1 of the Original DDA (as previously amended) remains in effect until the Closing of Parcel 2; provided that City confirms, as of the date of this Amendment, that Developer is not in default under the DDA and City is not aware of any condition that, with the passage of time or giving of notice, would constitute a default by Developer.
 - b. Section 2.9.2 (Parking). The condition precedent set forth in Section 2.9.2 of the Original DDA (as previously amended) is no longer applicable and is hereby deleted.
 - c. Section 2.9.3 (Leases). City covenants and agrees to satisfy the condition precedent set forth in Section 2.9.3 of the Original DDA (as previously amended) as it relates to any leases affecting Parcel 2 prior to the Closing of Parcel 2.
 - d. Section 2.9.4 (Commencement of Construction on Parcel 1). The condition precedent set forth in Section 2.9.4 of the Original DDA (as previously amended) has been satisfied prior to the date of this Amendment.

7. Relinquishment of Certain Rights by Developer. Developer hereby waives and relinquishes its right to receive “Deferred Development Fees” pursuant to Section 5.2 of the Original DDA (as amended by the Second Amendment).

8. Reservation of Reimbursement Rights to Developer. Any rights and obligations under the DDA (as amended hereby) not otherwise allocated to Development Parcel 1 or Parcel

2 shall remain with Developer. Without limiting the foregoing, the reimbursement rights and benefits up to the maximum aggregate amount set forth in Section 4 of the DDA are specifically allocated to the original named Developer, Farmer Arts, LLC. Any such reimbursement rights and benefits shall remain with Developer and shall not be allocated or assigned to any permitted successor or assign of Development Parcel 1, Parcel 2 or any other Development Parcel(s).

9. Incorporation. The recitals set forth above and all exhibits attached to this Amendment are incorporated herein and made a part hereof. Capitalized terms not otherwise defined in this Amendment shall have the meanings given to such terms in the DDA.

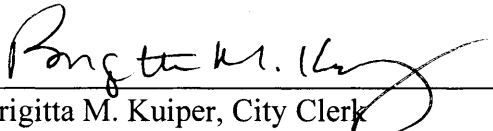
10. Effect of Amendment. Except as amended hereby the DDA is ratified and shall remain in full force and effect.

SIGNATURE PAGE FOLLOWS

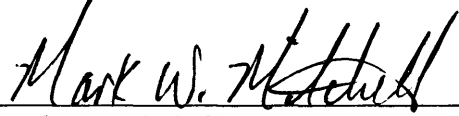
IN WITNESS WHEREOF, the undersigned have caused this Third Amendment to Development and Disposition Agreement to be executed as of the day and year first above written.

ATTEST:

CITY OF TEMPE, an Arizona municipal corporation

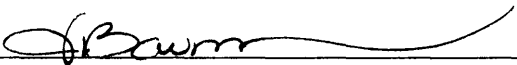


Brigitta M. Kuiper, City Clerk

By: 

Mark W. Mitchell, Mayor


APPROVED AS TO FORM:



Judith R. Baumann, City Attorney

C2007-98F

FARMER ARTS, LLC, an Arizona limited liability company

BY: MARSHALL URBAN DEVELOPMENT COMPANY
(IR) MANAGER
By: 

Name Todd Marshall
Title PRESIDENT

List of Amended Exhibits

Exhibit "C"	Schedule of Performance
Exhibit "F"	Map and Depiction of Public Amenities
Schedule 2.10	
Attachment 1	Form of Notice and Consent

Exhibit "C"
Schedule of Performance

This Schedule of Performance is attached to and made a part of that certain Third Amendment to Development and Disposition Agreement (Fifth and Farmer) (C2007-98F) (the "Amendment")

1. The Closing of Development Parcel 1 shall have occurred, and Developer agrees to initiate the development of Development Parcel 1, on or before the date that expires five (5) years after the date of the Amendment. For purposes of this paragraph, initiating development of Development Parcel 1 shall be evidenced by the issuance of building permits for the Improvements to be constructed thereon.

2. The Closing of Parcel 2 shall have occurred, and Developer agrees to initiate the development of Parcel 2, on or before the date that expires five (5) years after the date of the Amendment. For purposes of this paragraph, initiating development of Parcel 2 shall be evidenced by the issuance of building permits for the Improvements to be constructed thereon.

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 2
Depiction of Public Amenities

Office

The Office is physically and programmatically integrated into the Farmer Avenue side of the structured parking at the north end of Parcel 2. This location is immediately adjacent to the Yard at Farmer Arts District. The development program is +/-16,000 sf of street level space. The design and development of the Office space will be delivered in a Gray Shell format further defined below. The Furniture, Fixture and Equipment package is not assumed or provided.

Gray Shell includes the building structure, envelope, circulation, public spaces, mechanical system support space(s), and site improvements. Specifically:

- Site improvements adequate to comply with life safety, building code and zoning regulations. 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 GWB on public sides.
- Two sets of restrooms. Each set shall contain one restroom for men and one for women. Fixture count shall be established to meet minimum code requirements except that each restroom shall have one shower (for a total of four showers) for use by the Office tenants. One set of bathrooms shall be located towards the north end of the 16,000 sf space and the other set shall be located towards the south end to allow for divisibility of the office space. Bathroom finish shall include toilets, tile, mirrors, sinks, faucets and ready to add toiletries for use.
- Electrical and mechanical systems including; heating, ventilation and air conditioning systems, building automation system, and emergency lighting for egress.
- Combination fire standpipe/sprinkler system and fire 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.

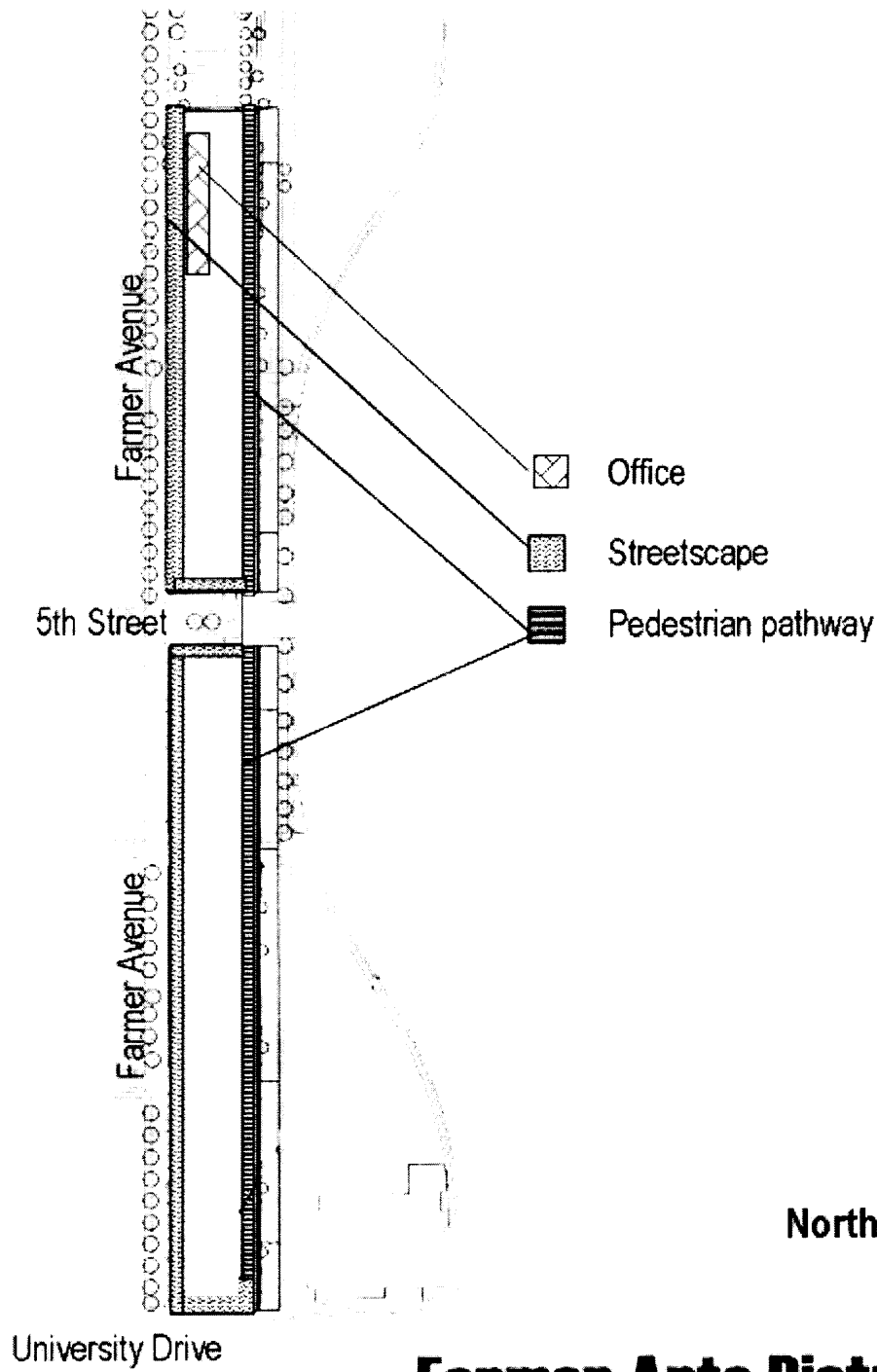
Linear Park (pedestrian pathway)

Providing a 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 2
Map of Public Amenities
Schedule 2.10



Farmer Arts District

When the best of the neighborhood meets the best of the city

Schedule 2.10

Development Parcel ("DP")	Plat	Purchase Price	Public Amenities	Public Amenities Purchase Price
Parcel 1				
DP1	Lot 1	\$ 581,732	Enhanced Streetscape Pedestrian Pathway	\$ 581,732
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
Parcel 2				
		\$ 4,107,468	16,000 sf office space Enhanced Streetscape Pedestrian Pathway Parking (\$400,000)	\$ 4,082,468
		\$ 487,205	Amenities Perpetual O/M	\$ 487,205
Total		\$ 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

ATTACHMENT 1

[Template to use with each of DP1 and Parcel 2, as and when applicable]

WHEN RECORDED, RETURN TO:

Zwillinger Greek & Knecht PC
2425 East Camelback Road, Suite 600
Phoenix, Arizona 85016
Attention: Jim Gibson

**NOTICE AND CONSENT
UNDER
DEVELOPMENT AND DISPOSITION AGREEMENT
([Development Parcel ____] - Fifth and Farmer)**

C2007-98

THIS NOTICE AND CONSENT UNDER DEVELOPMENT AND DISPOSITION AGREEMENT (this “**Notice**”) is made and entered into as of the ____ day of _____, 20 __, by the CITY OF TEMPE, an Arizona municipal corporation (“**City**”).

RECITALS

A. City and Farmer Arts, LLC, an Arizona limited liability company (“**Developer**”) are parties to that certain Development and Disposition Agreement (Fifth and Farmer) (C2007-98) dated May 31, 2007 and recorded in Document No. 2007-0727441, Maricopa County Recorder; and that certain First Amendment to Development and Disposition Agreement (Fifth and Farmer) dated November 19, 2009 and recorded in Document No. 2010-0077487, Maricopa County Recorder; and that certain Second Amendment to Development and Disposition Agreement dated November 4, 2010 and recorded in Document No. 2010-0991120, Maricopa County Recorder; and that certain Third Amendment to Development and Disposition Agreement dated January _____, 2016 and recorded in Document No. 2016-_____, Maricopa County Recorder (collectively, the “**DDA**”). Capitalized terms not otherwise defined herein shall have the meanings given them in the DDA.

B. The DDA pertains to certain real property located in the City of Tempe, Maricopa County, Arizona (the “**Property**”) including, but not limited to, [Development Parcel ____] of Farmer Arts District – Parcel [____], according to Book ____ of Maps, page _____, records of Maricopa County, Arizona (the “**Development Parcel**”).

C. As of the recordation of this Notice, Developer has closed escrow on the Development Parcel in accordance with the terms of the DDA, and Developer has conveyed

ownership of the Development Parcel to [Farmer Arts _____, LLC] (the “**Interim Ownership Entity**”) as permitted pursuant to the DDA.

D. [Name of JV Entity _____, LLC] (the “**Ownership Entity**”) has been formed to hold title to the Development Parcel. Interim Ownership Entity now intends to transfer and convey ownership of the Development Parcel to the Ownership Entity (the “**Transfer**”).

D. Pursuant to Section 11.2 of the DDA, Developer is required to obtain the City’s prior written approval, which approval shall not be unreasonably withheld, before Developer sells, assigns, conveys, alienates or otherwise transfers the Property or any portion of the Property subject to the DDA.

E. City has agreed to enter into this Notice to evidence City’s acknowledgement, consent and approval of such Transfer, if and to the extent such City consent and approval is required under Section 11.2 of the DDA, and to set forth the rights, obligations, terms and conditions under the DDA as they pertain to the Development Parcel.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, receipt whereof is hereby acknowledged, City hereby agrees as follows:

1. Incorporation of Recitals. The above Recitals are incorporated herein and made a part hereof.

2. Transfer. City has consented to the conveyance of ownership of the Development Parcel from Developer to the Interim Ownership Entity, and from the Interim Ownership Entity the Ownership Entity.

3. Acknowledgement of Rights and Obligations Pertaining to Development Parcel.

(a) The rights, obligations, terms and conditions under the DDA that are allocated to the Development Parcel shall be severed from (and independent from) any rights, obligations, terms and conditions under the DDA pertaining to any one or more other portions of the Property.

(b) City agrees that the following general duties and obligations under the DDA are allocated to the Development Parcel on a non-exclusive basis, but in each case only as it relates to the Development Parcel and no other portion of the Property: (i) the duties relating to the Development Parcel as provided in Section 3.7 of DDA, and (ii) the duty of indemnification for matters pertaining to the Development Parcel (as provided in Section 9 of the DDA). The duties and obligations attributed to the Development Parcel are the several (and not joint) duties and obligations of the Development Parcel. In no event shall the Development Parcel or the Ownership Entity have any responsibility to any other development parcel within the Project or any other party under the DDA.

(c) The Development Parcel and the Ownership Entity are subject to those rights, remedies and limitations set forth in Section 11 of the DDA, including but not limited to the duty to submit to mediation pursuant to Section 11.4 of the DDA, but only as it relates to the Development Parcel and no other development parcel within the Project. In the event of any default or alleged default pertaining to the Development Parcel, City's rights and remedies shall be limited to the Development Parcel, the Developer and the Ownership Entity. Similarly, a default or alleged default pertaining to one or more other development parcels within the Project shall not constitute a default by the Development Parcel or Ownership Entity.

4. General Terms. All terms, covenants, conditions and provisions of the DDA are hereby reinstated, ratified, affirmed and remain in full force and effect, subject to the terms of this Notice. This Notice may be executed in counterparts, each of which shall be deemed an original and all of which together shall be deemed one and the same instrument.

[SIGNATURES FOLLOWING PAGE]

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

CITY OF TEMPE, an Arizona municipal corporation

By: _____
Mark W. Mitchell, Mayor

APPROVED AS TO FORM:

Judith R. Baumann, City Attorney

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____ by _____, the _____ of the City of Tempe, an Arizona municipal corporation.

Notary Public

My commission expires:
