

WHEN RECORDED, RETURN TO:

City of Tempe Basket

C2007\_980-5-1-1--  
jonesk

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

C2007-980

THIS FOURTH AMENDMENT TO DEVELOPMENT AND DISPOSITION AGREEMENT (this “**Amendment**”) is made and entered into as of the 19<sup>th</sup> day of November, 2020, by and between the CITY OF TEMPE, an Arizona municipal corporation (“**City**”), and 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**”), that Second Amendment to Development and Disposition Agreement dated November 4, 2010 (C2007-98B) (the “**Second Amendment**”), and that Third Amendment to Development and Disposition Agreement dated January 14, 2016 (C2007-98F) (the “**Third Amendment**”). The Original DDA, First Amendment, Second Amendment and Third 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. Exhibit C to the DDA (as previously amended by the Third Amendment) sets forth a “Schedule of Performance” with respect to Development Parcel 1 and Parcel 2 of the Project.

C. Prior to the date hereof, Developer has acquired Development Parcel 1, initiated the development of Development Parcel 1, and commenced construction of the Improvements on Parcel 1, all in accordance with the Schedule of Performance.

D. As of the date of this Amendment, Developer has acquired Lot 1 of Parcel 2, but Developer has not yet initiated development of Parcel 2 or commenced construction of the Improvements on Parcel 2 in accordance with the Schedule of Performance. Developer has requested certain updates to the Schedule of Performance attached as Exhibit C to the DDA that pertain to Parcel 2.

E. City and Developer desire to amend and update the DDA 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:

### AGREEMENT

1. Exhibit C. Exhibit C of the DDA (as previously amended by the Third Amendment) is hereby further amended and restated in its entirety and replaced with Exhibit C attached hereto.

2. Incorporation. The recitals set forth above and any exhibit 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.

3. 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 Fourth Amendment to Development and Disposition Agreement to be executed as of the day and year first above written.

ATTEST:

CITY OF TEMPE, a municipal corporation

By: Kara A. DeArastia  
City Clerk

By: Andrew B. Ching  
Name: Andrew Ching  
Title: City Manager

APPROVED AS TO FORM:

Sonia M. Bli for  
City Attorney

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

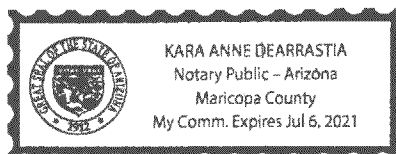
On this 19th day of November, 2020, before me, the undersigned, a Notary Public in and for the State of Arizona, duly commissioned and sworn personally appeared Andrew B. Ching, known to me to be the City Manager of City of **Tempe**, an Arizona municipal corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

WITNESS my hand and official seal hereto affixed the day and year in the certificate above written.

Kara Anne DeArastia  
Signature  
Kara Anne DeArastia  
Print Name

NOTARY PUBLIC in and for the State of Arizona, residing at Maricopa County  
My commission expires July 6, 2021.



FARMER ARTS, LLC,  
an Arizona limited liability company

By: Marshall Urban Development Company,  
an Arizona corporation, its Manager

By: [Signature]  
Name: Todd Marshall  
Its: President

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

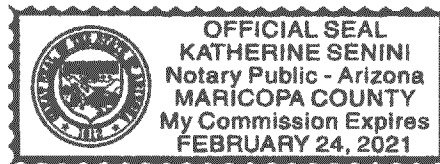
On this 18 day of November, 2020, before me, the undersigned, a Notary Public in and for the State of Arizona, duly commissioned and sworn personally appeared Todd Marshall, the President of Marshall Urban Development Company, an Arizona corporation, Manager of Farmer Arts, LLC, an Arizona limited liability company, that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

WITNESS my hand and official seal hereto affixed the day and year in the certificate above written.

[Signature]  
Signature  
Katherine Senini  
Print Name

NOTARY PUBLIC in and for the State of  
Arizona, residing at Maricopa County  
My commission expires February 24, 2021



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

This Schedule of Performance is attached to and made a part of that certain Fourth Amendment to Development and Disposition Agreement (Fifth and Farmer) (C2007-980) (the "Amendment")

**2. The Closing of Tract A of Parcel 2 shall have occurred, and Developer agrees to initiate the development of Parcel 2, on or before January 14, 2023. 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 Parcel 2 within 180 days after City's issuance of building permits for the Improvements to be constructed thereon.**

\*\*\*