When recorded, return to:

City of Tempe
31 East Fifth Street
Tempe, Arizona 85281
Attention: City Clerk

C2022-XX
DEVELOPMENT AND DISPOSITION AGREEMENT
(TWO PARCELS OF LAND CONTAINING
APPROXIMATELY 46 ACRES AT THE NORTHEAST CORNER OF
RIO SALADO PARKWAY AND PRIEST DRIVE)
ORDINANCE NO. 2022.XX

THIS DEVELOPMENT AND DISPOSITION AGREEMENT ("Agreement") is entered into as of the ___ day of November 2022 (the "Effective Date"), by and between the CITY OF TEMPE, an Arizona municipal corporation, ("City") and BLUEBIRD DEVELOPMENT LLC, a Delaware limited liability company ("Developer"). City and Developer may be referred to individually as a "Party," and collectively as the "Parties."

RECITALS

A. City owns approximately forty-six (46) acres of real property at the northeast corner of Rio Salado Parkway and Priest Drive (the "Property"), comprised of Maricopa County Assessor parcels 124-27-013 and 124-27-014. The Property is legally described on Exhibit A-1 to this Agreement and depicted on Exhibit A-2 to this Agreement. The Property currently is zoned, in part, as General Industrial but also as R1-6, the zoning category that would allow single-family residences to be constructed on the Property.

B. Developer acknowledges that the City entered into the 1994 Intergovernmental Agreement with the City of Phoenix (the "IGA") in connection with the Federal Aviation Administration (the "FAA") that, due to its proximity to Phoenix Sky Harbor International Airport (the "Airport"), subjects the Property to certain conditions. The two cities understood that each would continue the development of areas subjected to the IGA consistent with their respective long-term plans. In the case of the City, the Rio Salado Project plans and concepts would continue to be developed as the City determined to be in its best interests.

C. Accordingly, the City and the City of Phoenix agreed in the IGA that real property located within certain noise exposure areas would be subject to land use management strategies established in the 1989 F.A.R. Part 150 Noise Compatibility Plan (the "NCP"), including land use compatibility standards for new development within 65-70, 70-75, and 75 plus Ldn. Under the NCP, these land use strategies allow for multifamily residential within the 65-70 Ldn when a 25 dB reduction from outdoor noise levels are achieved. Further, the cities determined that real property like the Property should not be developed with single-family residences but could and may continue to be developed to include multifamily residences. The City and the City of Phoenix confirmed this understanding in an exchange of letters between the then-mayors of each city, which exchange of letters is attached as Exhibit B (the "Cities' Exchange of Letters"). The Cities'

Exchange of Letters did not amend or modify the IGA, but clearly expressed the cities' understanding that single-family residences should not be developed on real property, like the Property, but that multi-family residences could and may be developed on such real property like the Property.

D. The Property previously was used as a landfill, and a portion of the Property presently houses the City's public works yard (the "Yard"). City determined that use of the Property for the Yard was not the highest and best use of the Property given recent development of the surrounding land. City determined to relocate the Yard and facilitate return of the Property to more economically productive uses that will redound to the long-term benefit of City residents. Toward that end, City issued Request for Proposal No. 22-030, dated July 22, 2021 (the "RFP") offering an opportunity to purchase and/or lease and thereafter develop the Property.

E. The RFP sought proposals for development of the Property as a mixed-use project with a focus on creating a sports and entertainment district featuring a professional sports franchise, to include an arena or stadium and practice facility, retail space, residential units, public plaza, and related uses. Developer and its principals and affiliates own a professional hockey franchise, are seeking a suitable location for the operations of that franchise and are engaged in developing and delivering viable commercial and hospitality developments, such as sports and entertainment facilities, hotels, and other hospitality-related developments.

F. A City review committee selected Developer as the successful respondent to the RFP to enter exclusive negotiation with City for a development agreement leading to acquisition and development of the Property for a project as more fully described in this Agreement.

G. The Property previously was operated as a landfill and is presently a "brownfield" site. As such, the Property contains unsuitable soils and potentially hazardous substances and will require extensive and costly environmental remediation, acquisition and importation of fill dirt, dewatering, and shoring up the levee due to the Property's location adjacent to Tempe Town Lake ("Site Remediation").

H. The Property is located east of the Doppler Very High Frequency Omnidirectional Radio Range/Tactical Air Navigation System (DVORTAC) servicing the Airport and is directly east of the Airport, which introduces noise impacts and other impacts, requiring analysis by the FAA with respect to any potential impact of the development of the Property on current or future operations of the Airport. Such plan approval process will consider factors including physical improvements and the potential for wildlife hazards to aviation.

I. Further, and specific to this Agreement, because City seeks to continue its efforts to address concerns raised by the Airport, Developer acknowledges that City will require Developer to undertake significant efforts to accommodate such Airport concerns, notwithstanding that such efforts may not be otherwise legally required. These accommodations are specific to the Property and do not bind the City to impose the same requirements on any other or future development of property located outside the boundaries of the Property. Specifically, however, among other obligations, City will require Developer to undertake, based on, among other things, the Cities' Exchange of Letters, a rezoning of the Property to eliminate the opportunity, as allowed

by the current zoning of the Property, for single-family residences to be developed on the Property. As more fully required in this Agreement, Developer agrees to rezone the Property from R1-6 to MU-4/PAD or such other zoning category that will preclude single-family residential uses.

J. The acquisition of the Property and development of the Project will proceed in four phases (each, a "Phase" and collectively, the "Phases"). Development of that portion of the Property on which the Yard is located (the "Yard Parcel") may proceed only after the Yard has been relocated. To accommodate relocation of the Yard and the Site Remediation, the Parties contemplate that City and Developer enter into an escrow agreement for each Phase pursuant to which City will grant Developer a temporary license to access the Property within that Phase and perform the Site Remediation. On completion of the Site Remediation with respect to a Parcel (defined below), Developer will be entitled to acquire such Parcel and commence construction of the Project.

K. Developer contemplates the first Phase ("Phase 1A") will consist of construction of an approximately 650,000 square foot multi-purpose arena seating approximately 16,000 (the "Arena") and not less than 1100 parking spaces and approximately 54,000 square feet of retail space (the Arena, together with the 1100 parking spaces and 54,000 square feet of retail space, and the practice facility and operations headquarters being developed in Phase 1B, collectively, the "Arena Components"). City desires that the Arena contain certain inclusivity features for attendees with sensory disabilities, which will exceed the requirements of the Americans with Disabilities Act (the "Inclusivity Features"). The second Phase ("Phase 1B") will consist of construction of a practice facility and operations headquarters, an urban event plaza comprised of approximately 68,000 square feet (the "Event Plaza"), an approximately 50,000 square foot music venue (the "Music Venue"), an approximately 200-key boutique hotel (the "Boutique Hotel"), approximately 160,000 square feet of Class A commercial office space (the "Phase 1B Office Space"), approximately 80,000 square feet of retail space, and up to 195 units of multi-family residential dwelling units (collectively, the "Entertainment Components"). The third Phase ("Phase 2A") will consist of approximately 177,000 square feet of Class A office space (the "Phase 2A Office Space"), an approximately 300-key conference hotel (the "Conference Hotel"), up to 600 units of multi-family residential dwelling units, and approximately 39,000 square feet of retail space (collectively, the "Phase 2A Mixed-Use Components"). The fourth Phase ("Phase 2B") will consist of up to 1200 units of multi-family residential dwelling units and approximately 143,000 square feet of retail space (collectively, the "Phase 2B Mixed-Use Components"). The Arena Components, the Entertainment Components, the Phase 2A Mixed-Use Components, and the Phase 2B Mixed-Use Components may be referred to in this Agreement collectively as the "Major Components."

L. Redevelopment of the Property would not be possible without the Site Remediation which cost the City acknowledges it must bear as the owner of the Property and as a condition of its transfer to Developer. Notwithstanding the City's ultimate financial responsibility for the Site Remediation, as more fully set forth in this Agreement, Developer has agreed to advance certain funds to facilitate the Site Remediation associated with Phase 1A, 1B and 2A on the terms of this Agreement, which costs for the Site Remediation and the development of certain other public benefits will be financed from the proceeds of bonds issued by a community facilities district and certain other sources of City to support development of the public improvements as described in

this Agreement. The preliminary estimated cost of Site Remediation of the entire Property is $73,625,166.

M. Completion of the Major Components also will require construction and installation of certain public infrastructure, which will include at a minimum the following onsite and offsite public improvements: public roadways, public rights of way, landscaping, sewer and water lines, relocation and undergrounding of electric transmission lines, re-shoring the levee and improving the Rio Salado Riverbank to assure seamless continuation of the Multi-Use Path along Tempe Town Lake, and other related public improvements all of which are desired by the City and required as a condition to the sale and to allow development of the Property (which, together with the Site Remediation, are described in more detail on Exhibit J, the "Public Infrastructure"). Developer acknowledges the need to ensure that construction and operation of the Project will not create undue burdens on traffic and traffic patterns within the Project and the surrounding neighborhoods and freeway access points. Cognizant of such impacts, Developer has retained a traffic engineer to conduct a traffic impact analysis, the results of which will be shared with City, and will guide the Parties' design and site planning activities relating to traffic mitigation. In connection with the consideration of traffic issues, City and Developer agree that Developer will contribute additional funds to City as described in this Agreement that City intends to use in consultation with the City of Phoenix to address traffic impacts on the access and traffic patterns that may affect the Airport.

N. In addition, City requires certain additional features be included within the Major Components, including a 1500-square foot emergency response and public safety facility (the "Public Safety Facility") to address City's desire for the presence of emergency response and public safety personnel near the surrounding neighborhoods. Further, the Public Safety Facility will offer on-site public safety measures within close proximity to the Arena, and the Event Plaza with associated open park space, all of which will be used by City and others for presentation of programs to the general public which such public uses will enhance visibility of the Project as a venue and encourage its use by residents and visitors to Tempe. Further, as more fully described in this Agreement, the Project will include specific design features to address traffic flow to and from the Project, and a commitment to address additional burdens on public transportation (together with the Public Safety Facility, the "Amenities"). The Public Infrastructure and the Amenities are referred to collectively as the "Infrastructure Improvements."

O. The Major Components, the Public Infrastructure, the Amenities, the Site Remediation, and all associated elements, infrastructure, and attributes to be undertaken by City and Developer pursuant to this Agreement, are referred to in this Agreement collectively as the "Project."

P. The Parties acknowledge that the Infrastructure Improvements all benefit City and the general public, and will highlight, enhance and serve the Project. The Parties intend that, in connection with Developer's construction, relocation, installation, and upgrading of City infrastructure comprising the Infrastructure Improvements, Developer will be reimbursed by City for a portion of the associated Costs (defined and more fully described in Section 7 below) of the Infrastructure Improvements, but not more than the Maximum Reimbursement Amount (as hereafter defined). City acknowledges that Developer's providing the Infrastructure

Improvements as part of the Project will allow the Infrastructure Improvements to be developed in a more cost-effective way while also providing City with the specific benefits of the Infrastructure Improvements for its residents, visitors, and the general public. Subject to compliance with applicable statutory requirements, City and Developer have agreed to form a community facilities district ("CFD") to finance Site Remediation and Public Infrastructure costs if certain conditions are satisfied. The exact timing of such reimbursement and the final determination of the specific elements for which City or CFD may lawfully provide reimbursement will be made at the time each Phase is planned and the schedule for acquisition of the Property is determined.

Q. The Property currently is zoned GID (General Industrial District) and R1-6 (single family residential). Development of the Project will require rezoning and adoption of an amendment to City's General Plan, and subjection of the Property to a MU-4/Planned Area Development ("PAD").

R. Developer has analyzed the Project for itself and has indicated (and by execution of this Agreement represents and acknowledges) (1) that it is satisfied that the Property is suitable for the Project as described in this Agreement; (2) that the Project is viable considering the costs to be incurred by Developer in constructing and thereafter operating the various components of the Project that Developer has committed to construct pursuant to this Agreement and Developer's assessment of the needs of the hockey operations to be housed at the Arena, and the market demand for the hospitality, entertainment, commercial, retail, and residential aspects of the Project; (3) that it has received written confirmation from the National Hockey League that such body (a) has approved relocation of the Coyotes professional hockey franchise to the Project, (b) will approve the size, design, and other aspects of the Arena, and (c) will disallow further relocations of the Coyotes franchise during the thirty-year period commencing on issuance of the certificate of occupancy for the Arena and will formalize such disallowance in a written non-relocation agreement with City to be executed within the time period specified in the Schedule of Performance; and (4) that it believes it has available to it the financial resources to execute, complete, market, and operate the Project either internally or by obtaining the traditional forms of financing associated with projects of a similar nature.

S. Developer has estimated that the cost to construct all elements of the Project will exceed $2.1 billion. During the thirty-year period following completion of the Project, analysis indicates the Project will generate approximately $13.5 billion in on-site spending and $8.7 billion in employee earnings with 3,283 full-time equivalent jobs. During the thirty-year period those revenues are expected to generate approximately $350 million in new revenues from transaction privilege taxes levied on those on-site transactions and approximately $40 million in real property taxes, which only would be achieved as a result of Developer's taking the risk of developing the Project and undertaking the Site Remediation and other Infrastructure Improvements entirely "at risk."

T. Further, City has engaged an expert in sports facilities to provide independent analysis of the above economic results. In connection with that analysis, City has determined that, as more fully required by this Agreement, City should seek, and has received further benefits in addition to those public benefits supported by bonds issued by the CFD. Such additional public

benefits include, among other items, naming rights (as more fully described in this Agreement) associated with the Arena, elimination of certain financial encumbrances, use of the Arena and Music Venue, inclusivity features within the Arena, open space available to the public in the form of the Event Plaza and adjacent open, park space, the inclusion of the Public Safety Facility in the Project, and enhanced public art features, all of which, with other elements provided to City by Developer and the Project, City has determined that over thirty years will be valued, collectively, in excess of Two Hundred Twenty Million Dollars ($220,000.000).

U. City has found and determined that the Project, the Infrastructure Improvements and the associated community benefits flowing from the Project will enhance the City.

V. City and Developer are entering into this Agreement pursuant to Arizona Revised Statutes §9-500.05, which authorizes City to enter into a development agreement related to real property located inside the incorporated area of City with a landowner or other person having an interest in the real property. The Parties acknowledge Developer's interest in the Property, which exists by virtue of this Agreement, and accordingly, desire to enter into this Agreement to facilitate development generally consistent with the initial "Site Plan" proposed by Developer as part of its response to the RFP and attached hereto as Exhibit C, as it may be modified in accordance with this Agreement.

W. The Parties acknowledge and agree that this Agreement is authorized and entered into in accordance with, and the activities described in this Agreement and related to the Project are, economic development activities within the meaning of the laws of the State of Arizona concerning such matters, including but not limited to Arizona Revised Statutes §9-500.11, and that all "expenditures" (as defined therein) by City pursuant to this Agreement constitute the appropriation and expenditure of public monies for and in connection with economic development activities as defined therein. The actions taken by City pursuant to this Agreement will assist in the creation and retention of jobs, foster increased tourism within the City, and will, in other ways, improve and enhance the economic welfare of City residents. City has previously adopted a notice of intent to enter into this Agreement and to make the findings required by A.R.S. §9-500.11, such findings having been verified by an independent third party before City entered into this Agreement.

X. In the exercise of its legislative functions, City has found and determined that the benefits conferred upon Developer are proportionate to the benefits being received by City. In furtherance of such finding, City has authorized the execution and performance of this Agreement. However, City recognizes the magnitude of the Project and potential impact upon all residents of Tempe expected by the relocation to Tempe of a professional sports franchise and creation of associated facilities. Therefore, City has determined that it will implement policy, through this Agreement, whereby it will not object if any of the documents associated with the location in Tempe of a professional franchise and associated facilities are subject to a referendum that would require consideration by Tempe voters. In the instance of the Project, such policy contemplates that this Agreement and the associated legislative actions by the City's City Council may be subject to referendum without objection by the City.

In consideration of the mutual promises and representations set forth in this Agreement, the above Recitals, and for other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, City and Developer agree as follows:

AGREEMENT

1. Incorporation of Recitals. The Parties acknowledge that the Recitals Paragraphs A through X inclusive set forth above are true and correct in all material respects and are incorporated into this Agreement by this reference.

2. Definitions. In this Agreement, unless a different meaning clearly appears from the context:

"2013 Development Agreement" is defined in Section 12.1.2.

"Access Agreement" means the Access Agreement for Performance of Environmental Remediation included as an exhibit to the Escrow Agreement as described in Section 5.3.

"Actual Knowledge of City" is defined in Section 12.2.

"Actual Knowledge of Developer" is defined in Section 12.4.

"ADEQ" means the Arizona Department of Environmental Quality.

"AD Signs" is defined in Section 5.7.3.

"Affiliate" of a Person means any other Person that (a) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person; or (b) owning or controlling fifty-one percent (51%) or more of the outstanding voting securities or interests of such Person, and with respect to Developer shall also mean any Person controlled by Alex Meruelo. The term "control" (and any grammatical derivation thereof) as used in this definition means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Agreement" means this Agreement, as amended and restated or supplemented in writing from time to time and includes all exhibits and schedules hereto. References to Sections or Exhibits are to this Agreement.

"Airport" is defined in Recital B.

"Amended Report" is defined in Section 11.7.1.3.

"Amenities" is defined in Recital N.

"Applicable Laws" means the federal, state, county, and local laws (statutory and common law), ordinances, rules, regulations, permit requirements, and other requirements and

official policies of the City, as they may be adopted, implemented, or amended from time to time, that apply to the development of the Project as of the date of any application or submission.

"Applicable Minimum Improvements" is defined in Section 15.1.

"Approved Title Exceptions" is defined in Section 11.7.1.1.

"Arbitration" is defined in Exhibit I.

"Arena" is defined in Recital K.

"Arena Components" is defined in Recital K.

"Aviation Claims" is defined in Section 12.8.

"Aviation Indemnity" is defined in Section 12.8.

"Base Index" means the Index in effect for the prior 12-month period.

"Bond Redemption Fund" is defined in Section 7.5.6.

"Bond Trustee" is defined in Section 7.5.6.

"Boutique Hotel" is defined in Recital K.

"Business Days" means calendar days other than Saturdays, Sundays, or public holidays under the laws of the State of Arizona or observed by City.

"Call for Election" is defined in Section 12.9.

"Certificate of Occupancy" means either (a) a certificate of occupancy for any buildings or improvements constructed on the Property issued by the Community Development Department and Engineering and Transportation Department of the City of Tempe, or (b) a certificate of completion in the form of Exhibit E hereto issued by the City of Tempe Community Development Department certifying that a building or other improvement constructed on the Property has been substantially completed.

"CFD" is defined in Recital P and Section 7.5.

"CFD Bonds" means bonds issued by the CFD.

"CFD Tax Levy" is defined in Section 7.5.1.

"Cities' Exchange of Letters" is defined in Recital C and as attached as Exhibit B.

"City" means the Party designated as the City on the first page of this Agreement.

"City Additional Approval Process" is defined in Section 5.1.

"City Approvals" is defined in Section 5.1.2.

"City Council" means the City Council of the City of Tempe, Arizona.

"City Independent Review Costs" is defined in Section 4.7.

"City of Phoenix Authorities" is defined in Section 12.8.

"City Representative" is defined in Section 5.7.1.

"City Resources" is defined in Section 7.5.4.

"City's CFD Bond Amount" means such amount as specified on Exhibit J.

"City's CFD Bond Debt Service" means such amount as specified on Exhibit J.

"Claims" means any and all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments and liabilities (including associated attorneys' fees, experts' fees and court costs).

"Closing" is defined in Section 11.6.4.

"Closing Date" is defined in Section 11.6.4.

"Commence Construction" and "Commencement of Construction" mean both (i) the City has notified Developer that permits required to begin the construction of vertical improvements on a Parcel are approved, and (ii) Developer has commenced actual physical construction operations on such Parcel including, without limitation, site preparation or excavation work.

"Completed Construction" and "Completion of Construction" mean the date (or dates) one or more final Certificates of Occupancy have been issued by the City for improvements constructed by the Developer on any Parcel, in accordance with the Regulatory Approvals, Applicable Laws, and this Agreement.

"Conference Hotel" is defined in Recital K.

"Contingency" and "Contingencies" are defined in Section 11.7.

"Conveyance Conditions" is defined in Section 11.1.

"Corporate Succession" means (i) a sale or transfer of all or substantially all of Developer's business assets, (ii) a change in the form of business entity through which Developer

conducts its business, (iii) the merger or consolidation of Developer, or (iv) the acquisition of all of the shares, membership interests, partnership interests or other interests, as applicable, of Developer by another entity.

"Cost Accounting Charges" is defined in Section 7.2.

"Cost Accounting Specialist" is defined in Section 7.2.

"Cost Accounting Submittal" is defined in Section 7.2.

"Cost Accounting Submittal Representative" is defined in Section 7.2.

"Costs" means all costs actually incurred by Developer for work performed by third parties for Site Remediation and designing and constructing the Infrastructure Improvements, including customary management fees, as evidenced by invoices, receipts, contracts and such other evidence of payment and performance of the work as City or the trustee of the Debt Service Expense Fund may reasonably request and as provided in Section 7.2.

"County" means Maricopa County, Arizona.

"CPI Adjustment" is defined in Section 11.3.

"CSP" is defined in Section 5.7.3.

"Debt Service Expense Fund" is defined in Section 7.5.4.

"Declaration" is defined in Section 5.2.8.

"Default" is defined in Section 13.1. and 13.2.

"Developer" means the Party designated as the Developer on the first page of this Agreement and in certain circumstances as defined in Sections 16.4 and 16.7.

"Developer Financing" is defined in Section 11.1.5.

"Developer Representative" is defined in Section 5.7.1.

"Development Claims" is defined in Section 12.7.

"Development Indemnity" is defined in Section 12.7.

"Development Plan" is defined in Section 4.2.

"Dismissal of Litigation" means either the dismissal with prejudice or Final Judgment against the plaintiffs without any further appeal rights of the applicable lawsuit including without limitation an Enforcement Challenge.

"Due Diligence" is defined in Section 11.7.2.

"Due Diligence Indemnity Obligations" is defined in Section 11.7.2.

"Effective Date" is defined in Section 3.

"Enforceability Challenge" and "Enforceability Challenges" are defined in Section 10.

"Entertainment Components" is defined in Recital K.

"Escrow Agent" is defined in Section 11.6.1.

"Escrow Account" is defined in the definition of Escrow Agreement.

"Escrow Agreement" means an agreement in the form of Exhibit G attached hereto to be executed upon exercise of an Option in accordance with Section 5.3, together with any documents attached as exhibits thereto, including an Access Agreement in the form included in Exhibit G and which Escrow Agreement shall provide for establishment of an escrow account (the "Escrow Account") for the deposit of Developer's funds that shall be credited to payment of the Purchase Price for all Phases pursuant to Section 11.5.3.

"Event of Default" is defined in Section 13.1 and. 13.2.

"Event Plaza" is defined in Recital K, and including all associated infrastructure, landscaping, utilities services, lighting, pedestrian elements, and multi-modal features.

"Excess Remediation Costs" is defined on Exhibit J.

"Excluded Sales or Other Transactions" means construction related sales or transactions associated with the construction of the Project.

"FAA" means the Federal Aviation Administration.

"FAA Response" is defined in Section 4.9.1.

"Final Judgment" is defined in Section 9.4.

"Force Majeure Event" is defined in Section 10.

"Formation Agreement" is defined in Section 7.5.

"Foundations" is defined in Section 12.5.2.

"General Plan Amendment" means a minor amendment to the Tempe General Plan 2040.

"GP Lease" is defined in Section 8.4.

"GPLET" is defined in Section 8.

"GPLET Laws" is defined in Section 8.

"IGA" is defined in Recital B.

"Improvements" is defined in Section 12.7.

"Inclusivity Features" is defined in Recital K.

"Indemnified Parties" is defined in Section 12.7.

"Index" means the Consumer Price Index (All Cities-All Items) (1982-84 = 100).

"Infrastructure" means, collectively, the public infrastructure as will be finally determined by the City and Developer in connection with the Project, and that may be funded by CFD Bonds.

"Infrastructure Improvements" is defined in Recital N.

"Initial Approvals" is defined in Section 5.1.

"Interim Withdrawal" is defined in Section 11.6.3.

"Local Access Areas" means any interior roadways and associated pedestrian sidewalks and landscaping within any Parcel necessary to assure access to other Parcels and the remainder of the Project.

"Major Components" is defined in Recital K.

"Major DPR" is defined in Section 4.5.2.

"Maximum Reimbursement Amount" is defined in Section 7.4 and Exhibit J.

"MBE" is defined in Section 12.6.6.

"MBE/WBE/HV/DBE" is defined in Section 12.6.6.

"Minor Attribute Adjustment" is defined in Section 4.5.1.

"Mortgage" is defined in Section 16.1.

"Mortgagee" is defined in Section 16.1.

"Music Venue" is defined in Recital K.

"Naming Rights" means the exclusive rights to designate and/or assign a brand, company, product, or other name to, or have a name association with or sponsorship of, the Project and/or any portion thereof.

"NCP" is defined in Recital C.

"New Plat" is defined in Section 4.3, as completed by Developer pursuant to the City Approval Process.

"Notice" and "Notices" is defined in Section 18.5.

"Officers' Quarters" is defined in Section 5.7.2.

"On-Parcel Infrastructure Improvements" is defined in Section 5.2.6.

"Opening of Escrow" is defined in Section 11.6.2.

"Option" and "Options" is defined in Section 5.3.

"Option Notice" is defined in Section 5.3.

"Option Parcel" and "Option Parcels" are defined in Section 5.3.

"PAD" means as defined in Recital Q.

"Parcel" is defined in 11.4.

"Parcel Purchase Price" is defined in Section 11.3.

"Party" and "Parties" is defined on the first page of this Agreement.

"Payment Period" is defined in Section 7.5.4.

"Person" means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

"Phase" and "Phases" are defined in Recital J.

"Phase 1A" is defined in Recital K.

"Phase 1A Completion Date" is defined in Section 5.

"Phase 1A Minimum Improvements" is defined in Section 5.2.1.

"Phase 1A Option" is defined in Section 5.4.

"Phase 1A Purchase Price" is defined in Section 11.3.

"Phase 1A Parcel" means that portion of the Property on which the Arena Components are to be constructed as depicted on the Site Plan, is intended to include all Parcels and tracts into which the Property in Phase 1A may be divided as part of the Development Plan, the PAD, and the New Plat, and remains subject to modification as provided in Sections 4.1 through 4.4.

"Phase 1B" is defined in Recital K.

"Phase 1B Completion Date" is defined in Section 5.

"Phase 1B Minimum Improvements" is defined in Section 5.2.2.

"Phase 1B Office Space" is defined in Recital K.

"Phase 1B Option" is defined in Section 5.4.

"Phase 1B Purchase Price" is defined in Section 11.3.

"Phase 1B Parcel" means that portion of the Property on which the Arena Components are to be constructed as depicted on the Site Plan, is intended to include all Parcels and tracts into which the Property in Phase 1B may be divided as part of the Development Plan, the PAD, and the New Plat, and remains subject to modification as provided in Sections 4.1 through 4.4.

"Phase 2A" is defined in the Recital K.

"Phase 2A Completion Date" is defined in Section 5.

"Phase 2A Minimum Improvements" is defined in Section 5.2.3.

"Phase 2A Mixed-Use Components" is defined in Recital K.

"Phase 2A Office Space" is defined in Recital K.

"Phase 2A Option" is defined in Section 5.4.

"Phase 2A Purchase Price" is defined in Section 11.3.

"Phase 2A Parcel" means that portion of the Property on which the Phase 2A Mixed-Use Components are to be constructed as depicted on the Site Plan, is intended to include all Parcels and tracts into which the Property in Phase 2A may be divided as part of the Development Plan, the PAD, and the New Plat, and remains subject to modification as provided in Sections 4.1 through 4.4.

"Phase 2B" is defined in Recital K

"Phase 2B Completion Date" is defined in Section 5.

"Phase 2B Minimum Improvements" is defined in Section 5.2.4.

"Phase 2B Mixed-Use Components" is defined in Recital K.

"Phase 2B Option" is defined in Section 5.4.

"Phase 2B Purchase Price" is defined in Section 11.3.

"Phase 2B Parcel" means that portion of the Property on which the Phase 2B Mixed Used Components are to be constructed as depicted on the Site Plan, is intended to include all Parcels and tracts into which the Property in Phase 2B may be divided as part of the Development Plan, the PAD, and the New Plat, and remains subject to modification as provided in Sections 4.1 through 4.4.

"Phase Financing" is defined in Section 8.6.

"Phase Option Exercise Deadline" is defined in Section 5.5.3.

"Phase Sale Transaction" is defined in Section 11.5.

"Phasing Plan" is defined in Section 5.

"Planning Phase" is defined in Section 5.1.

"Policy" is defined in Section 11.7.1.5.

"Pre-Development Access Agreement" is defined in Section 5.8.1.

"Project" is defined in Recital O.

"Project Commencement Date" is defined in Section 5.1.2.

"Project Completion Date" is defined in Section 5.

"Project Documents" is defined in Section 5.2.1.

"Project Element" means any building or structure constructed within the Project.

"Project Initiation Documents" is defined in Section 5.1.1.

"Project-Specific Claims" is defined in Section 12.9.

"Project-Specific Indemnity" is defined in Section 12.9.

"Property" is defined in Recital A.

"Public Infrastructure" is defined in Recital M.

"Public Procurement Requirements" is defined in Section 7.1.

"Public Safety Facility" is defined in Recital N.

"Purchase Price" is defined in Section 11.3.

"Purchase Price Schedule" is defined in Section 11.3 and attached as Exhibit N.

"Referendum Election" is defined in Section 12.9.

"Referral" is defined in Section 12.9.

"Referral Claims" is defined in Section 12.9.

"Referral Indemnity" is defined in Section 12.9.

"Repayment Provisions" means the provisions of Section 7 of this Agreement.

"RFP" is defined in Recital D.

"Riverbank Improvements" is defined in Section 6.3

"ROD" is defined in Section 12.8.

"Schedule of Performance" is defined in Section 5 and attached as Exhibit D.

"Settlement Statement" is defined in Section 11.6.8.

"SF Purchase Price" is defined in Section 11.3.

"Site Plan" is defined in Section 4.2 and attached as Exhibit C.

"Site Remediation" is defined in the Recital G, and is further refined to mean the entirety of the investigation, characterization, and/or remediation of all environmental conditions

affecting the Property in accordance with Applicable Laws, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.A. Section 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C.A. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C.A. Section 6901, et seq.; the Toxic Substances Control Act, 15 U.S.C.A. Section 2601, et. seq.; the Federal Water Pollution Control Act, 33 U.S.C.A. Section 1251, et seq.; the Safe Drinking Water Act, 42 U.S.C.A. Section 300f, et seq.; the Clean Air Act, 42 U.S.C.A. Section 7401, et seq.; Title 49 of Arizona Revised Statutes; any successor to the foregoing, and any judicial or administrative statement of general or specific applicability.

"Suite" is defined in Section 12.5.8.

"Surcharge" is defined in Section 7.5.6.

"Survey" is defined in Section 11.7.1.2.

"Temporary Construction Staging License" is defined in Section 5.8.2 and attached as Exhibit H.

"Temporary License Agreement" means a temporary license agreement in substantially the form of Exhibit F hereto, which is City's standard form and may be modified as necessary to cover different permitted uses authorized in this Agreement.

"Term" is defined in Section 3.

"Termination Agreement" is defined in Section 11.7.1.1.

"Title Insurer" is defined in Section 11.7.1.5.

"Title Report" is defined in Section 11.7.1.1.

"Transfer" is defined in Section 15.1.

"Unpermitted Title Exception" is defined in Section 11.7.1.1.

"Unrestricted Portion" means (i) 1.2% of the 1.8% transaction privilege tax levied by City on the gross income of those business activities identified in Sections 16-405 through 16-485 of the Tempe City Code (except Section 16-447 of the Tempe City Code), and (ii) the additional tax on transient lodging levied by City pursuant to Section 16-447 of the Tempe City Code, all as adopted and approved by the City Council of the City of Tempe and, to the extent required by the Tempe City Charter, approved by the electorate, in either case, without restriction as to effectiveness, use or application.

"Yard" is defined in Recital D.

"Yard Parcel" is defined in Recital J.

"Yard Relocation" is defined in Section 5.7.2.

"Zoning Ordinance" is defined in Section 4.1.

3. Term. The term of this Agreement shall (1) commence on the date this Agreement is approved by the City Council and has been signed by both Parties, (the "Effective Date") and (2) terminate on the earlier of (a) the date on which the Parties have performed all of their obligations under this Agreement, (b) the date this Agreement has been terminated earlier pursuant to Sections 5.1.1, 5.5.4, 11.7.1.4, 11.7.2, 12.20 13.4.1.1, and 17, or (c) the date that is thirty (30) years from the commencement date of the Arena GP Lease (the "Term"), as it may be extended by the application of extensions otherwise set forth in this Agreement. Notwithstanding the foregoing, all indemnity provisions of the Parties will survive any such termination in accordance with the terms of this Agreement. Developer has committed that it will undertake a Referral as more fully set forth in Section 17. Developer acknowledges and agrees that, if the Developer's Referral does not qualify for a Referendum Election, as more fully set forth in Section 17, City, by action of the City Council, may, within ninety (90) days, elect to terminate this Agreement and thereafter provide the Developer with written Notice of such termination. If any of the PAD, the General Plan Amendment, and/or this Agreement is invalidated by a Referendum Election (as defined in Section 17) or other action, this Agreement shall be void *ab initio*. Notwithstanding what may otherwise be provided herein, the effectiveness of this Agreement and "Effective Date" shall be stayed if a Referral (as defined in Section 12.9) relating to the PAD, the General Plan Amendment and/or this Agreement is timely filed until the earlier of (a) the determination pursuant to Applicable Laws that the Referral is not qualified for a Referral Election; (b) the City Council of City declining to Call for Election (as defined in Section 12.9) relating to a Referral pursuant to Applicable Laws; or (c) the successful vote by the Tempe voters approving any Referral of the PAD, the General Plan Amendment and/or this Agreement for which the City Council of City has authorized a Call for Election or as otherwise provided in Section 9.

4. Regulatory Approvals and Related Matters.

4.1 Rezoning; General Plan Amendment. Development of the Property in accordance with the Development Plan will require amendment of the Tempe General Plan 2040, and rezoning to permit development of the Property in accordance with the Site Plan attached hereto as Exhibit C. The Property will be governed by a PAD to be prepared and submitted by Developer, consistent with City's zoning ordinance. The exact location of the Major Components, the Infrastructure Improvements and the Amenities shall be determined by the Parties during the Planning Phase. The City's consideration and possible approval of the PAD is a legislative act and this Agreement does not constitute approval of the PAD, which will be undertaken by separate consideration of the City Council. If Developer has not yet acquired fee title to the portion of the Property that is the subject of the PAD, City agrees to provide such authorizations and consents as may be required to enable Developer to submit the PAD. Upon City's approval of the PAD, the PAD shall govern and control the development of the Property and may be submitted to the City for modification from time to time as allowed in the City of Tempe Zoning and Development Code (the "Zoning Ordinance").

4.2 Site Plan. The Site Plan provides the basis for the Developer's PAD and a development plan for the Property to be submitted and approved from time-to-time, through

administrative action, by the City Council (the "Development Plan"). If and once approved, the PAD will establish the allocation of the commercial, residential, hotel, retail and all other attributes for the Property as City and Developer determine, as refined by the Development Plan (if approved).

4.3 Project Replat. The Parties intend that the Project will include horizontal and vertical developments that include the Major Components. To facilitate the development and financing of each of the Major Components and the Infrastructure Improvements, Developer intends to replat the Property into new parcels and tracts in phases (each a "New Plat"). While the Site Plan reflects the current configuration and placement of the Major Components, the Amenities and the Infrastructure Improvements, such locations and placements are preliminary and subject to revision during the City Approval Process through review and consideration of the New Plat, the Development Plan and the PAD.

4.4 Separate Parcel Designation. Subject to revision during the City Approval Process and in Developer's creating the PAD, the Development Plan and the New Plat, the Preliminary Site Plan reflects the Parties' current conception for the location of the Major Components and the Infrastructure Improvements. Currently, the Arena Components are to be located on the Phase 1A Parcel, the Entertainment Components are to be located on the Phase 1B Parcel, the Phase 2A Mixed Use Components are to be located on the Phase 2A Parcel, and the Phase 2B Mixed Use Components are to be located on the Phase 2B Parcel.

4.5 Minor Attribute Adjustments and DPR Processing.

4.5.1 Attribute Adjustments. As of the Project Commencement Date, the PAD will establish the allocation of the Major Components and the Infrastructure Improvements among the Parcels. When and as Developer elects to develop a Parcel (or portion thereof), as allowed by and contemplated under Arizona Revised Statutes §9-462.04A4, Developer and the City's zoning administrator mutually may agree to alter the attributes of any Major Components within an individual Parcel, but not to equal or exceed, ten percent (10%) as determined pursuant to Tempe Zoning and Development Code, Section 6-312 (each a "Minor Attribute Adjustment"). Any such alteration of Major Components by a Minor Attribute Adjustment, as approved by the City's zoning administrator, shall be considered in substantial conformance to the PAD. The Parties acknowledge that any increase of the Major Components on an individual Parcel by up to ten percent (10%) (as determined pursuant to Tempe City Code Section 6-312) would require an amendment to the PAD, and to the extent necessary, this Agreement, and approval by the City Council following the public hearing process necessary for a zoning map amendment.

4.5.2 DPR Processing. Pursuant to the Zoning and Development Code, Section 6-304(C)(1), a development plan review ("DPR") application is to be processed concurrently with a zoning map amendment, or in other cases with a major PAD overlay. Developer has filed a DPR application for at least one of the Parcels of the Property. Rather than require the DPR processing of the entire Project, upon an affirmative decision on the General Plan Amendment and zoning changes for the Property, City agrees that Developer may from time-to-time as Developer deems appropriate, file the necessary application and submittal items required for a substantive review of each building or Phase, including without limitation, the Arena, the

Music Venue, and the Public Event Plaza. For clarification of the decision-making authority in this instance, all DPR applications or Phases for the Developer that are considered a "Major DPR" pursuant to the Zoning and Development Code, shall be processed having a recommendation by the Development Review Commission before scheduling of a regular meeting for a final decision by the City Council.

4.6 Compliance with Regulatory Approvals and Applicable Laws. Development of the Project will be in accordance with the PAD and Applicable Laws. Review and approval of the Development Plan, or any amendment to the PAD, will be undertaken by City in accordance with its regular and customary procedures, subject to the terms of this Agreement. Developer may request amendments to the PAD and/or Development Plan from time to time. City will review and process any such amendments in accordance with Applicable Laws.

4.7 Development Review. Developer has requested City's assistance in meeting a demanding plan review, building permit and construction schedule. Given the unusual and exigent circumstances, Developer has requested that City provide dedicated personnel or retain independent consultants and advisors and provide expedited review for submittals relating to the PAD, the New Plat and other submittals and inspections of Project construction activities. Given the volume of development activity within the City, and to assure that City can respond appropriately, City agrees to retain private independent consultants and advisors and implement such dedicated review and expedited inspections on City's behalf and Developer agrees to pay the applicable costs of City (collectively, the "City Independent Review Costs"), which costs City estimates to be not less than $318,219 per year for each year before issuance of the Certificate of Occupancy for all of the Arena Components (and prorate for the year in which the last Certificate of Occupancy is issued). If the actual City Independent Review Costs exceed $318,219 in any year, within thirty (30) days after written request from City, accompanied by reasonably detailed documentation evidencing the amount of such additional City Independent Review Costs, Developer shall and hereby promises to pay or reimburse City for payment of such additional Independent Review Costs. Developer acknowledges that the consultants retained by City shall be under City's control and shall take direction only from City. In connection with staffing the Project with such dedicated personnel, Developer shall cause the installation of a temporary office trailer on the Property at Developer's expense. City shall cooperate with Developer to designate a location for such temporary office on the Property.

4.8 Development Rights. In consideration of the expenditures by the Developer for the design and planning required to achieve the PAD, if and once approved, shall be deemed contractually vested as of the Effective Date for the Term and the Developer shall have a right to undertake and complete the development and use of the Property in accordance with the PAD and this Agreement.

4.9 Other Reviews and Approvals. The Property is directly east of the Airport. Developer acknowledges that the location of the Property introduces noise impacts as well as other potential impacts and, accordingly, requires Developer to engage in processes with the FAA. This Section is specific to the Project and does not bind the City to impose the same requirements on any future development of property located outside the boundaries of the Property. In developing and approving the final plan for development of the Property, Developer and City shall consider

all relevant factors including the potential for wildlife hazards to aviation. Developer assumes full responsibility for submitting a FAA Form 7460-1 Application for each Phase and complying with the Federal Regulations, if any, relating to the development of each Phase, including obtaining necessary determinations if any, from the FAA and any other federal agency, the approval of which is required in connection with the development of the Property.

4.9.1 Federal Aviation Administration Acknowledgement. Developer shall have received a determination of "No-Hazard" to air navigation from the FAA to its Form 7460-1 Application regarding the Arena prior to the development of any Parcel(s) and shall not develop any subsequent Parcels without first having received a determination of a no-hazard to air navigation for the building to be located on such Parcels to the extent required by Federal Regulations (a "FAA Response"). Developer shall submit required information for the Arena for review by the FAA in accordance with Federal Regulations within the timeframe specified by 14 C.F.R. Part 77, and, with respect to each Project Element, in no event later than six (6) months after City's review and approval of Developer's geographic coordinates for each such Project Element. Developer shall endeavor promptly to respond to any inquires or requests for additional information made by the FAA in connection with the FAA's review and consideration of each of Developer's Form 7460 -1Applications and the preliminary plans submitted with such application. City shall cooperate in good faith with Developer in connection with its responses to any such requests from the FAA. Developer shall comply with any mitigation, conditions, or other requirements of the FAA specified in a FAA Response in its development of the applicable Parcel.

4.9.2 Noise Mitigation. City and Developer acknowledge that the Property falls within certain noise contours and corresponding land use management strategies established by the 1989 F.A.R. Part 150 NCP in connection with the operation of the Airport, and that it is incumbent upon Developer to obtain applicable noise contour maps. City recommends that Developer adhere to the Land Use Compatibility Standards and accompanying Noise Level Reduction standards to achieve noise attenuation into the construction and design for all new construction in the area within which the Property is located. Any multifamily residential dwelling units constructed as part of the Project shall require that sound be mitigated to ensure that indoor noise levels meet the reduction in ambient noise levels from outdoor noise levels by the amount recommended by FAA in 14 C.F.R. Part 150, Appendix A, Table 1, Note 1.

4.9.3 Recorded Notice; Avigation and Noise Easement. Prior to the issuance of a final building permit for vertical construction of any building that contains residential dwelling units, Developer shall record (a) an instrument that includes a Notice to Prospective Purchasers of Proximity to the Airport to disclose the existence and operation of the Airport to future owners or tenants of the Property substantially in the form of Exhibit P, and (b) an Avigation and Noise Easement substantially in the form of Exhibit Q for noise and other negative impacts relating to aircraft traffic due to proximity of the Project to the Airport.

4.9.4 Architectural Features. Prior to issuance of a building permit for any building within the Project, Developer shall inform Phoenix of its design of such building and its plans to address indoor noise impacts relating to air traffic due to proximity of the Project to the Airport.

4.9.5 Indemnification Against Residential Suits. Upon issuance of a Certificate of Occupancy for any building authorized for residential use, Developer shall execute and provide an indemnity agreement in the form of Exhibit R attached hereto with the City of Phoenix pursuant to which it agrees to indemnify the City of Phoenix against litigation Claims filed by owners or residents of individual residential units in the Project for Claims relating to interior noise impacts relating to air traffic due to the proximity of such building to the Airport.

4.9.6 Additional Airport-Related Conditions for this Project. To accommodate concerns often raised by the Airport, regardless that such elements are not required by law, City requires that Developer, and Developer shall (a) prohibit events and displays at the Property that would impact air navigation safety such as conducting laser shows or using laser lighting that emanates from the Property, launch fireworks, or employ the use of spotlights or similar lighting features on the Property; (b) refuse to host events that would require any temporary shutdown of the Airport, such as the conduct of a presidential debate; (c) preclude the use of drones unless in full compliance with all FAA regulations related to drone usage around the Airport; (d) provide the Airport with a copy of all general plan amendments and provide any resulting written comments to the City; (e) engage a qualified biologist to study the Project's potential to create water fowl hazards to aviation; and (f) use materials on the exterior of Project buildings that reduce reflection and meet applicable reflectivity standards.

5. Developer Undertakings. The Parties have established a Schedule of Performance attached as Exhibit D (the "Schedule of Performance") and a plan for developing the Project in Phases as set forth in this Section 5 (the "Phasing Plan"). Subject to the Schedule of Performance, Developer shall (a) Commence Construction of the Project within eighteen (18) months from the Project Commencement Date (defined in Section 5.1.2 below), (b) Commence Construction of all the Major Components and Infrastructure Improvements on Phase 1A within three (3) years after the Project Commencement Date and complete such construction within forty (40) months following such Commencement of Construction (the "Phase 1A Completion Date"), (c) Commence Construction of all the Major Components and Infrastructure Improvements on Phase 1B within five (5) years after the Project Commencement Date and complete such construction within thirty (30) months following such Commencement of Construction (the "Phase 1B Completion Date"), (d) Commence Construction of all the Major Components and Infrastructure Improvements on Phase 2A within seven (7) years from the Project Commencement Date and complete such construction within thirty (30) months following such Commencement of Construction (the "Phase 2A Completion Date"), (e) Commence Construction of all the Major Components and Infrastructure Improvements on Phase 2B within nine (9) years from the Project Commencement Date and complete such construction within thirty (30) months following such Commencement of Construction (the "Phase 2B Completion Date") and have Completed Construction of all Major Components and all Infrastructure Improvements of the Project by the Phase 2B Completion Date (the "Project Completion Date").

5.1 Planning. No later than the Effective Date, Developer shall have determined the features of, and received formal approval of the PAD, and the General Plan Amendment (the "Initial Approvals"). Further, thereafter, Developer shall seek formal approval of a proposed Development Plan for the Arena and parking spaces to be developed on Phase 1A and proposed New Plat for the Project ("City Additional Approval Process") and expeditiously

pursue City Council approval (the period from the Effective Date until such City Council approval, as more fully described below, the "Planning Phase").

5.1.1 Obligation to Seek Planning Approvals; Failure to Proceed. Developer shall have submitted the application for the PAD and General Plan Amendment pursuant to the City's initial submittal process such that they are considered by the City Council concurrently with this Agreement. For the City Additional Approval Process, Developer shall have submitted a draft of the Development Plan for the Arena and parking spaces to be developed on Phase 1A and a draft of the New Plat for the Project (collectively, the "Project Initiation Documents") to City within nine (9) months after the Effective Date. If Developer does not timely provide the City with the Project Initiation Documents as required by this Section (subject to the provisions of Sections 9 and 12), then this Agreement may be terminated at the discretion of the City Council. If the City Council elects to terminate the Agreement, it shall thereafter be null and void and of no further force or effect, except as otherwise provided and subject to the provisions in Sections 9 and 12.

5.1.2 City Additional Approval Process & Project Commencement Date. Developer expeditiously will pursue the City Additional Approval Process for each Development Plan for the Arena and parking spaces to be developed on Phase 1A and the first New Plat to gain City Council approval of each of these planning activities (the "City Approvals"). The Parties acknowledge that they will in good faith seek to complete the Planning Phase, the City Additional Approval Process and seek to achieve the City Approvals within fifteen (15) months after the Effective Date. City agrees that, once City Approvals have been achieved, City shall take any and all actions required to allow Developer to record all necessary documents, including the New Plat in the official records of the County. The "Project Commencement Date" shall be deemed to be the date by which (i) City has issued the City Approvals for the Development Plan for the Arena and parking spaces to be developed on Phase 1A and the New Plat, and (ii) Developer has received the FAA Response for the Major Components to be developed on Parcel 1A.

5.2 Project Phasing; Minimum Phase Improvements.

5.2.1 Phase 1A. At its sole cost and expense, and in compliance with the Schedule of Performance, this Agreement, the PAD, the General Plan Amendment, and the Development Plan (the "Project Documents"), and all Applicable Laws, Developer shall submit Construction Plans to the City and thereafter, prior to the Phase 1A Completion Date for Phase 1A, Developer shall construct at a minimum the Arena Components and the Phase 1A Infrastructure Improvements that the Parties agree must be constructed in connection with Phase 1A. In all events, Developer must complete Site Remediation of a Parcel within the Phase 1A Parcel (the "Phase 1A Minimum Improvements") prior to its acquisition of such Parcel within the Phase 1A Parcel. The Parties mutually will determine during the Planning Phase the timing of construction of the Infrastructure Improvements that are necessary to support the Major Components undertaken as part of each Phase, beginning with Phase 1A. Subject to revision by mutual agreement of the Parties during the Planning Phase and subject to administrative approval by the City Council in connection with the Development Plan, the Parties' current intention is that all of the municipal infrastructure that would be necessary to allow a developer to undertake development of a Parcel to support a Major Component will be completed to at least the boundary

of the Parcels within each Phase to allow a developer thereafter to install the On-Parcel Infrastructure Improvements (defined in Section 5.2.6 below) without further interruption of the use of any Local Access Areas previously constructed for installation of such On-Parcel Infrastructure Improvements. Developer may not elect to construct in advance any Infrastructure Improvements located on a Parcel for which Site Remediation has not been completed.

5.2.2 Phase 1B. At its sole cost and expense, and in compliance with the Project Documents and all Applicable Laws, Developer shall submit Construction Plans to City and thereafter, prior to the Phase 1B Completion Date, Developer shall construct at a minimum the Entertainment Components and the Phase 1B Infrastructure Improvements that the Parties agree must be constructed in connection with Phase 1B and in all events must complete Site Remediation of a Parcel within the Phase 1B Parcel (the "Phase 1B Minimum Improvements") prior to its acquisition of such Parcel within the Phase 1B Parcel.

5.2.3 Phase 2A. At its sole cost and expense, and in compliance with the Project Documents and all Applicable Laws, Developer shall submit Construction Plans to the City and thereafter, prior to the Phase 2A Completion Date, Developer shall construct at a minimum the Phase 2A Mixed Use Components and the Phase 2A Infrastructure Improvements that the Parties agree must be constructed in connection with Phase 2A and in all events Developer must complete the Site Remediation of a Parcel within the Phase 2A Parcel (the "Phase 2A Minimum Improvements") prior to its acquisition of such Parcel within the Phase 2A Parcel.

5.2.4 Phase 2B. At its sole cost and expense, and in compliance with the Project Documents and all Applicable Laws, Developer shall submit Construction Plans to the City and thereafter, prior to the Phase 2B Completion Date, Developer shall construct at a minimum the Phase 2B Mixed Use Components and the Phase 2B Infrastructure Improvements that the Parties agree must be constructed in connection with Phase 2B and in all events must complete the Site Remediation of a Parcel within the Phase 2B Parcel (the "Phase 2B Minimum Improvements") prior to its acquisition of such Parcel within the Phase 2B Parcel.

5.2.5 Compression of Phases. Notwithstanding the above Planning Phase description and the Schedule of Performance, nothing in this Agreement or the Schedule of Performance shall preclude Developer from undertaking development and construction of the Major Components and Infrastructure Improvements more rapidly than provided in this Agreement or the Schedule of Performance subject to completion of Site Remediation on any Parcel on which such Major Components or Infrastructure Improvements are to be constructed and compliance with the other provisions of this Agreement.

5.2.6 On-Parcel Infrastructure. The Developer shall construct as part of the Applicable Minimum Improvements of each Phase and in conformance with the Project Documents and Applicable Laws, all on-Parcel infrastructure elements, such as water, sewer, drainage, electrical and other utility infrastructure in such Phase as the City reasonably designates to be necessary pursuant to the Tempe City Code during the Planning Phase for the development and operation of such Phase to provide public services to each Major Component undertaken in such Phase (the "On-Parcel Infrastructure Improvements").

5.2.7 Construction and Maintenance of Infrastructure Improvements. Developer acknowledges that, subject to the Schedule of Performance, Developer will undertake to construct the Infrastructure Improvements as determined by the Parties in the Planning Phase, but in no event later than in connection with Developer's completion of a Phase's Applicable Minimum Improvements (including Local Access Areas), on the associated Parcels, if any. Developer's obligations for the construction of off-site Infrastructure Improvements shall be limited to the applicable requirements of the Tempe City Code, with the understanding that any required roadway improvements by Developer shall be limited to the "half street" improvements on those roadways adjacent to the Property. At the time of acquiring the applicable Parcel for such Phase, Developer and City shall confirm in a written agreement the components of the completed Infrastructure Improvements associated with the Phase that will be conveyed to the City or other public or private utility companies after Developer's completion of the applicable Infrastructure Improvements. Once constructed, Developer shall be obligated, at the Project's cost and expense (and subject to the Declaration (defined below)), to secure, maintain and coordinate (with City) the operation of the Local Access Areas and any Infrastructure Improvements not conveyed to the City or to public utilities or other entities that will maintain and operate the applicable Infrastructure Improvement.

5.2.8 Maintenance of Infrastructure Improvements. Prior to the Arena opening for business to the public, Developer will establish a property owners' association for the Parcels that shall be subject to a declaration of conditions, covenants, and restrictions in form and substance reasonably acceptable to the Parties (the "Declaration") to be recorded against Phase 1A. As Developer acquires title to subsequent Phases of the Project, the Declaration will be amended to add the Property within that Phase. The final form of the Declaration shall reasonably allocate among the Parcels and the Major Components that are finally constructed on the Parcels the common area expenses associated with the operation and maintenance of the Local Access Areas and the Infrastructure Improvements that will be operated and maintained by the association, and other expenses associated with the Project and not otherwise specifically allocated in the Declaration to a Parcel and its associated Project Element. The Declaration shall provide that the City shall have no allocation of maintenance expenses to it for Parcels owned by the City prior to termination of this Agreement. Upon termination of this Agreement, pursuant to the final Declaration, the then owner of any Parcel shall be responsible for payment of its proportionate share of the common area expenses allocated to such Parcel, regardless of the status of completion of the associated Project Element on such Parcel pursuant to the terms of the Declaration. The Declaration may allocate common area expenses in different percentages based on the use classification of the owner's property and the status of completion of the improvements on the owner's property provided that such allocations are consistently applied to all owners within a particular use category established by the Declaration.

5.3 Options and Terms. To facilitate Developer's performance of the Site Remediation and corresponding Infrastructure Improvements, and enable Developer to complete any remaining Planning activities, City hereby grants Developer an option (each, an "Option" relating to the particular Phase 1A, 1B, 2A or 2B, and together, the "Options") to initiate acquisition of any portion of the Property, which shall be exercised by Developer delivering to City a written Notice of such intent (each, an "Option Notice") (a) certifying that Developer has not committed and allowed to persist an uncured Event of Default under this Agreement (or, if

there then exists an uncured and continuing Event of Default, Developer must cure such Default as a condition of the exercise of the Option), and (b) specifying the Phase to which it relates. Within ten (10) days after receipt of the Option Notice, City and Developer shall enter into an Escrow Agreement with respect to the Phase subject to the Option Notice and all of the Parcels within such Phase (each, an "Option Parcel" and collectively, the "Option Parcels"). As soon as possible after execution of each Escrow Agreement, City and Developer shall execute an Access Agreement for Performance of Environmental Remediation in the form attached to the Escrow Agreement (an "Access Agreement") and pursuant to which Developer shall be given access to the Option Parcels for the purpose of completing the Site Remediation thereon. City will not convey fee title to any Option Parcel to Developer until the conditions relating to the applicable Option Parcel specified in Section 11.1 (the "Conveyance Conditions") have been satisfied fully. Each Access Agreement shall expire on the earlier of sixty (60) days after completion of Site Remediation of the Option Parcels or the Closing Date of Developer's purchase of the last Option Parcel in the applicable Phase. Closing under each Escrow Agreement shall occur following satisfaction of the Conveyance Conditions in accordance with Section 11 of this Agreement, but no later than sixty (60) days after completion of the Site Remediation for all Option Parcels within the applicable Phase. If any Escrow Agreement is terminated prior to completion of the Site Remediation or due to Developer's failure to satisfy the Conveyance Conditions (with such termination to be subject to all applicable notice requirements and the expiration of all applicable cure rights of Developer as set forth in this Agreement), City shall have no obligation to convey the unacquired Option Parcels subject to that Escrow Agreement to Developer or to reimburse Developer for any Costs incurred prior to such termination; provided, however, to the extent Developer has not paid or received reimbursement for payment of Costs from Interim Withdrawals made by it pursuant to the Escrow Agreement and funds remain available for Interim Withdrawals in the Escrow Account established under the Escrow Agreement, then Developer shall remain entitled to receive payment or reimbursement of its Costs from funds held in the Escrow Account pursuant to the Escrow Agreement.

5.4 Option Phasing. The Option for Phase 1A (the "Phase 1A Option") shall include all Phase 1A Parcels. The Option for Phase 1B (the "Phase 1B Option") shall include all Phase 1B Parcels. The Option for Phase 2A (the "Phase 2A Option") shall include all Phase 2A Parcels. The Option for Phase 2B (the "Phase 2B Option") shall include all Phase 2B Parcels.

5.5 Option Terms. Developer may exercise the Option as to any Phase and execute an Escrow Agreement for such Phase within the following time periods:

5.5.1 Developer shall have until 5:00 p.m. on the 6th month following the Project Commencement Date to exercise the Phase 1A Option and execute the Escrow Agreement for the Phase 1A Parcels.

5.5.2 Unless City otherwise consents in writing, Developer may only exercise an Option if Developer (a) has exercised the Option for the prior Phase in numerical sequence and commenced Site Remediation on the Phase subject to such prior Option, and (b) has not otherwise committed and allowed to persist at such time an uncured Event of Default under this Agreement (or, if there then exists an uncured and continuing Event of Default, Developer must cure such Default as a condition of the exercise of the applicable Option).

5.5.3 Regardless of when Developer's right to exercise an Option for a Phase commences, such Option shall expire thirty (30) days prior to the last date established for Developer to Commence Construction of the Minimum Improvements applicable to that Phase as set forth in Section 5 (each a "Phase Option Exercise Deadline"). Thus (i) regardless of when the Phase 1B Option commences, the Phase 1B Option shall expire thirty (30) days prior to the last date established for Developer to Commence Construction of the Phase 1B Minimum Improvements as set forth on the Schedule of Performance, (ii) regardless of when the Phase 2A Option commences, the Phase 2A Option shall expire thirty (30) days prior to the last date established for Developer to Commence Construction of the Phase 2A Minimum Improvements as set forth on the Schedule of Performance, and (iii) regardless of when the Phase 2B Option commences, the Phase 2B Option shall expire thirty (30) days prior to the last date established for Developer to Commence Construction of the Phase 2B Minimum Improvements as set forth on the Schedule of Performance.

5.5.4 Notwithstanding anything in this Agreement to the contrary but subject to the Schedule of Performance and this Agreement, if Developer has not exercised all of the Options by delivery of an Option Notice for each Phase on or before each of their respective Phase Option Exercise Deadlines, then, unless provided in the Schedule of Performance or City otherwise has extended the time for Developer's exercise of any of such Options, any remaining unexercised Options shall, from and after the failure to timely exercise an Option by its applicable Phase Option Exercise Deadline, be null and void and of no further force or effect. Accordingly, except for any Option Parcels and Phases with respect to which Developer timely has exercised Options and as otherwise expressly provided in this Agreement, this Agreement shall terminate and be of no further force or effect as it relates to the unexercised Option Parcels and Phases, except as otherwise provided in Sections 11.5 and 12, or unless otherwise determined by the City's City Council.

5.6 Developer Obligations Upon Exercise of Option. After Developer and City execute an Escrow Agreement for any Phase and the related Access Agreement for the Phase, Developer will perform, at its sole cost and expense, and subject to the other terms and conditions of this Agreement, the following activities:

5.6.1 Remediation. Developer shall manage and conduct the Site Remediation with reasonable diligence and shall provide and keep City informed of its schedule for completion of the Site Remediation, with the goal of obtaining any required "no further action" determination for soil remediation from ADEQ under ARS 49-181, a letter of completion under Arizona Administrative Code R18-7-208, or a similar determination that such remediation is complete from ADEQ or other government agency with appropriate jurisdiction. Developer shall be responsible for securing all governmental approvals, if any, required in connection with the Site Remediation. Developer shall provide City on an ongoing basis with copies of all final test results or data and all final work plans, reports and other documents obtained by Developer in the course of performing the Site Remediation, whether or not such documents are submitted to ADEQ or any other governmental body. As and when requested by City, Developer shall furnish such information as City reasonable requests regarding the status of the Site Remediation.

5.6.2 Planning. Developer shall complete any planning and other activities necessary to enable Commencement of Construction of the applicable Phase.

5.6.3 Other. Developer shall complete any and all other activities specified to be completed and performed by Developer during the term of such Escrow Agreement.

5.6.4 Satisfaction of Conveyance Conditions. Developer shall perform any activities necessary to enable Developer to satisfy the Conveyance Conditions.

5.7 City Obligations.

5.7.1 General Cooperation. City and Developer acknowledge and agree that they shall cooperate in good faith with each other and use their respective good-faith and commercially reasonable efforts to pursue development of the Property in accordance with the Development Plan and otherwise as contemplated by this Agreement. City agrees to use its reasonable best efforts to assist Developer in obtaining all approvals required by state, federal, county or other governmental authorities in order to develop the Property in accordance with the Development Plan and the Schedule of Performance. To further the commitment of City and Developer to cooperate in the implementation of this Agreement, City shall designate and appoint a representative to act as liaison between the City and its various departments and Developer shall designate and appoint a representative to act on its behalf under this Agreement. The initial representative for the City ("City Representative") shall be the City's City Manager or his designee, and the initial representative for Developer ("Developer Representative") shall be Xavier Gutierrez. Both the City Representative and the Developer Representative shall be available at reasonable times to discuss and review the performance of the City and Developer under this Agreement and the development of the Property. A Party may change its Representative at any time by giving Notice to the other Party.

5.7.2 Yard Relocation; 2013 Development Agreement. City and Developer recognize that construction of Phase 2A of the Project can be commenced only after the Yard has been relocated to another location (the "Yard Relocation"). The Yard Relocation does not include demolition of any structures located on the Yard Parcel, or any Site Remediation; provided, however, City shall remove the two World War II officer's quarters buildings originally located in the Camp Papago Park Prisoner of War facility that were relocated to the Yard Parcel in 2005 and remain present (the "Officers' Quarters") with financial assistance from Developer as provided in Section 12.6.8. City shall provide written Notice to Developer of its completion of the Yard Relocation. Any personal property remaining on the Yard Parcel following City's completion of the Yard Relocation shall be deemed abandoned property and Developer may dispose of such personal property following its execution of an Access Agreement applicable to the Yard Parcel. Accordingly, City agrees to complete and provide Notice to Developer of its completion of the Yard Relocation no later than September 1, 2025, at City's expense, (except for the $8,000,000 disbursement to City from the Bond Repayment Fund as provided in Exhibit J). If City does not complete the Yard Relocation and provide Notice to Developer by such date, City's right to disbursement for the Yard Relocation costs from the Bond Repayment Fund shall be reduced by $100,000 for the first ninety (90) days past September 1, 2025, an additional $250,000 for the second ninety (90) days past September 2025, $500,000 for the third ninety (90) days past

September 1, 2025, and $1,000,000 for the fourth ninety (90) days past September 1, 2025, and thereafter by the balance of the $8,000,000 original disbursement that was to be made to the City from the bond Repayment Fund, all to be applied until City provides Notice to Developer of its completion of the Yard Relocation and the dates for Developer's performance of its obligations with respect to Phase 2A of the Project, as set forth in this Agreement and on the Schedule of Performance, shall be extended day-for-day until City provides Notice to Developer of its completion of the Yard Relocation, but City shall not otherwise be liable to Developer for any Claims relating to or arising from failure to complete the Yard Relocation by September 1, 2025. Further, if City has not completed the Yard Relocation by September 1, 2026, Developer shall be entitled to pursue specific performance against City with respect to completing the Yard Relocation.

5.7.3 Signage. City and Developer hereby acknowledge that the distinctive project, and its redevelopment as contemplated in this Agreement, present a unique opportunity to enhance the visibility and high-profile nature of the Project. As a result, the Parties acknowledge and agree that appropriate signage will and should be an integral part of the Project and will be necessary to attract high quality tenants to the Project. Accordingly, a comprehensive sign package will be required for all building mounted tenant signage, all freestanding tenant signage, stadium identification and freeway signage (off-premise advertising signs) within the development, and City and Developer agree to coordinate their efforts and agree on appropriate signage for the Project. Signage for the Project will be approved via the DPR process referenced in Section 4.5.2 or by administrative process as may be directed by the Director of Community Development. The overall Project will have a Comprehensive Signage Plan ("CSP"), that will provide the sign criteria for all signs within the Project. The CSP shall be subject to approval prior to installation of any signage within the Project. The sign criteria shall, at minimum, allow for all signage types as found in Chapter 9, with specific sign standards (including type, size, color, and location) to be as established by the Developer. City authorizes and empowers the Director of Community Development to consent to any additional request of the Developer for sign approval that meet the intent of the Project and deviate from Tempe Zoning & Development Code. Specifically, City hereby authorizes the construction of not more than two (2) artistic display, "off-premise advertising signs" ("AD Signs") on the Property, to be included within the CSP, but which shall be subject to an administrative DPR process. The AD Signs standards within the CSP shall permit height up to 85 feet and a minimum sign face size of 14 feet high and 48 feet wide (672 square feet), multiple sign faces and static or electronic sign faces. The CSP shall be consistent with the overall design theme of the Major Components to express a unified appearance for the Project. To the extent requested by City, Developer shall make all on-site electronic and LED display signs available to City and its various departments for both city-related advertising/public service announcements and for use during emergency situations for a period of 30 years from their activation. The exact parameters of City advertising use will be the allowance of placement of up to four static messages of the City's choice and design per month, each repeating every eight seconds for one minute, during the hours of 7-8 a.m., 12-1 p.m., 5-6 p.m., and 9-10 p.m. daily. The parameters of emergency use will include allowance of placement of static messages, of the City's choice and design, during verifiable public safety or environmental emergencies, that overrides all other advertising messages and repeats every eight (8) seconds for up to four hours or until City notifies Developer that the emergency is resolved. The CSP shall limit electronic display signs to: (i) messaging changes no more frequent than every eight (8) seconds; (ii) static messages only; (iii) messages that do not include flashing, blinking, or moving lights; (iv) change

copy instantaneously with no sense of movement during the transition from one ad to the next; and (v) include a dimmer that will operate to reduce the Nit level to 300 Nits after sunset. Due to the high visibility of the AD Signs to the community, these signs may only be used for the graphic display of information or products that are consistent with the community and moral standards of City.

5.8 Construction Logistics.

5.8.1 Use of Parcels for Pre-Development and Other Activities. City agrees that Developer shall be allowed access to portions of the Property pursuant to a Pre-Development Access Agreement in the form of Exhibit M attached hereto (the "Pre-Development Access Agreement") to perform Developer's site due diligence, surveys, environmental studies, development plans and other similar activities subject to the terms of this Agreement and such Pre-Development Access Agreement. City further agrees to grant Developer additional temporary license rights pursuant to license agreements in substantially the form attached hereto as Exhibit F (a "Temporary License Agreement") as reasonably requested by Developer to facilitate Developer's planning and development activities pursuant to this Agreement. Notwithstanding the foregoing, prior to the completion of the Yard Relocation, City shall have no obligation to grant Developer any rights pursuant to a Temporary License Agreement or otherwise that will allow access to or use of the Yard Parcel for any purpose, other than granting Developer license rights pursuant to the Pre-Development Access Agreement.

5.8.2 Construction Staging. To facilitate the orderly and efficient construction of the Project, if construction of a Project Element or Site Remediation activities requires use for parking by contractors and their construction and related crews during construction, temporary construction access and staging of construction materials on portions of the Property (other than the Yard Parcel prior to completion of the Yard Relocation) for which an Option has not been exercised, then City will provide Developer reasonable access and use of such portion of the Property pursuant to a Temporary Construction Staging License substantially the form attached hereto as Exhibit H ("Temporary Construction Staging License"). The use of such portion of the Property for Developer's construction access and staging will be as reasonably determined by City concurrently with the approval of building permits for such Project Element, pursuant to such Temporary Construction Staging License at no additional charge to Developer. Developer shall not be required to repair or replace the surface on any such licensed area on the Property on which Developer will be performing Site Remediation in connection with a subsequent Phase as provided in this Agreement unless Developer fails to acquire such Parcel, in which event Developer promptly shall undertake restoration of the Property to its condition prior to such use.

6. Infrastructure Improvements. Developer agrees that, in connection with the development of the Project, and as set forth in the Phasing Plan and in the provisions of this Agreement regarding the Phases and exercise of the Options, Developer shall provide the Infrastructure Improvements when and as required in the Phasing Plan, the provisions of Section 4 and 5 of this Agreement, and the Schedule of Performance, as it may be adjusted pursuant to this Agreement. The Infrastructure Improvements consist of the infrastructure described in Sections 6.1 through 6.5.

6.1 Inclusivity Features. Developer shall cause the Inclusivity Features to be included in the design of the Arena and shall cause the Inclusivity Features to be constructed as part of the Arena.

6.2 Local Access Areas. Developer shall cause to be constructed those roadways and rights of way and related landscaping necessary to provide vehicular and pedestrian access throughout the Project, all as agreed by City and Developer during the Planning Phase and as set forth in the Development Plan. The Local Access Areas within each Phase shall be constructed in accordance with Section 6.2 hereof prior to Developer's receipt of any certificate of occupancy for any Project Component undertaken in the Phase in which such elements are included.

6.3 Riverbank Improvements. Developer shall cause the "Riverbank Improvements" (consisting of certain improvements required by City to assure seamless continuation of the Multi-Use Path along Tempe Town Lake as set forth in the Development Plan and agreed upon by City and Developer during the Planning Phase) to be constructed within Phases 1 and 3. The Riverbank Improvements shall be considered part of the Infrastructure Improvements and be completed prior to City's issuing any certificate of occupancy for any Project Component located on any portion of the Property for a Phase adjacent to the riverbank.

6.4 Utilities. Developer shall cause the installation of sewer and water lines, and the relocation and undergrounding of transmission lines as necessary for completion of each Phase, concurrently with constructing such Phase and prior to Developer's receipt of any Certificate of Occupancy for any Project Element incorporated in such Phase.

6.5 City Grant of Easements Required. City shall grant any easements necessary for construction of the Local Access Areas and the Infrastructure Improvements. In addition, City will cooperate and assist Developer in securing and providing any easements necessary for construction of the Major Components and in obtaining the abandonment or relocation of any existing easements, alleys, or licenses.

7. Repayment Provisions; CFD and CFD Bond Issuance Provisions.

7.1 Costs. Costs (defined below) may be paid from Interim Withdrawals under the Escrow Agreements or if sufficient funds are not available, from the CFD Bond proceeds once any such CFD Bonds are issued. Notwithstanding anything herein to the contrary, neither Developer nor its general contractor or other vendors shall receive payment of the Costs unless Developer complies with the provisions of Title 34, Chapter 2, Article 1, Arizona Revised Statutes and the requirements for construction projects and plans and specifications, respectively, of City as specified in the Tempe City Code and any procurement guidelines promulgated in connection therewith for design and construction of the Infrastructure Improvements (collectively, the "Public Procurement Requirements").

7.2 Accounting for Costs. As Developer or its general contractor or vendors incurs Costs, Developer shall submit to City and any other relevant person on a regular basis, (but not more often than monthly and no less often than quarterly) reasonably detailed documentation

and other proof of the Costs in a form mutually acceptable to City and Developer (each, a "Cost Accounting Submittal"). In connection with each Cost Accounting Submittal, Developer shall appoint a representative to act on its behalf. The initial representative for the Developer (the "Cost Accounting Submittal Representative") shall be Thomas Duensing. City shall retain an independent cost accounting firm or other accounting professional (the "Cost Accounting Specialist") to review each Cost Accounting Submittal and notify Developer of any objections thereto or provide authorization from City for the payment of the Cost Accounting Submittal (as provided in the applicable Escrow Agreement) within fifteen (15) days after receipt of such Cost Accounting Submittal. Within thirty (30) days after execution of the Escrow Agreement for Phase 1A, and annually thereafter until the final Cost Accounting Submittal has been received and reviewed and all objections resolved, Developer shall pay to City all sums necessary to pay the reasonable costs associated with retaining such Cost Accounting Specialist (the "Cost Accounting Charges") as notified by City in writing periodically. Developer may elect to pay such Cost Accounting Charges by using Interim Withdrawals under the Escrow Agreement if sufficient funds are available for such purpose. If no funds are available under the Escrow Agreement, then Developer shall pay to City within ten (10) days after written request, the amount needed to pay the Cost Accounting Charges. Such Cost Accounting Specialist shall be under City's sole control and shall take direction only from City. If City timely objects to a Cost Accounting Submittal, City and the Developer promptly shall meet to attempt to resolve City's objections within thirty (30) days after Developer's receipt of such objections. To the extent that the City does not object to a Cost Accounting Submittal, the City (or the Cost Accounting Specialist with City's authorization) immediately shall acknowledge its acceptance of the Cost Accounting Submittal to the Developer and Escrow Agent pursuant to the Escrow Agreement and that any amounts that are not in dispute shall be deemed Costs for which Developer may be repaid. Developer's acceptance of any determination by the City of a partial amount of a Cost Accounting Submittal under this provision shall not be deemed a waiver of any other amounts contained in the Cost Accounting Submittal. If the Parties are not able to reach an agreement with respect to a Cost Accounting Submittal, then the Parties shall submit the issues to Arbitration (as defined in and pursuant to the process set forth in Exhibit I) to resolve any disagreement between the Parties regarding any Cost Accounting Submittal. Notwithstanding the foregoing, the Cost Accounting Charges should not be duplicative of the administration by the CFD of the CFD Bond proceeds and disbursement of such proceeds pursuant to the terms of this Agreement and the requirements of the governing documents of the CFD; however, Developer recognizes that some duplication will be inevitable as the CFD will not have been formed at the time the Interim Withdrawals are made, and the CFD necessarily will undertake such actions as it deems appropriate to confirm and verify that amounts expended prior to its formation are properly chargeable to the CFD in accordance with Applicable Laws.

7.3 Reimbursement. If Developer is entitled to reimbursement of Costs, such reimbursement obligation shall be subject to the Reimbursement Limitations set forth in Sections 7.4 and 7.5.4, and payable only from Interim Withdrawals or from the proceeds of any CFD Bonds; provided, however, that at its option, and without any obligation to do so, City may elect to reimburse to Developer the Costs from City's Capital Improvement Program or any other City identified source of funds.

7.4 Reimbursement Limitations. City agrees to pay or reimburse Developer for Costs not to exceed the "Maximum Reimbursement Amount" calculated and determined as set forth on Exhibit J attached hereto from those sources identified herein. Exhibit J also includes estimated amounts for the Public Infrastructure anticipated to be developed on each Parcel, which estimates City and Developer acknowledge and agree are preliminary and are subject to adjustment among such uses in connection with issuance of the CFD Bonds correlated with each Phase. The Maximum Reimbursement Amount represents City's reasonable calculation of the costs that would have been incurred by City for the Site Remediation, and for the planning, design and construction of the Public Infrastructure, subject to the limitations set forth on Exhibit J and as further limited as set forth in Sections 7.5.4 and 7.5.6. It is anticipated that CFD Bonds be issued, at a minimum, in an amount at least equal to the City's CFD Bond Amount, but that in no instance shall the City Resources be used to repay CFD Bonds (and associated debt service) in excess of the Maximum Reimbursement Amount.

7.5 Community Facilities District. City and Developer agree to create a community facilities district (the "CFD") the boundaries of which shall include the Property and the area encompassing the River Bank Improvements that are adjacent to the Property to finance the Site Remediation and the design, construction and acquisition of the Infrastructure Improvements (which includes any required offsite Infrastructure Improvements included in the definition of Infrastructure Improvements) in accordance with Arizona law and pursuant to a Formation and Waiver Agreement (the "Formation Agreement") in a form to be agreed upon by the Parties within four (4) months following the Effective Date. Such Formation Agreement shall contain such terms and provisions as are acceptable to City and Developer, but at a minimum shall provide as follows:

7.5.1 Formation and Operating Expenses; Waiver. Developer shall agree to pay or reimburse City for all costs, expenses and fees relating to formation of the CFD. Subject to the application of the proceeds of the statutorily authorized *ad valorem* tax levy for maintenance and support of the CFD (the "CFD Tax Levy"), all ongoing operating expenses of the CFD, including fidelity bonds and other forms of insurance as the CFD may deem appropriate shall be paid from CFD Bond proceeds. The Parties intend that City will form the CFD not later than four (4) months following the Effective Date. While the Parties intend that the entirety of the Property eventually will be included within the CFD, City shall have the right and ability to phase and adjust the boundaries of the CFD to conform to the Phasing Plan and overall timing of the development of the Project. Developer waives any right it might have to object to the CFD levying statutorily authorized ad valorem taxes for maintenance and support of the CFD, the CFD Tax Levy and agrees that the CFD may impose such levy before or after the conveyance of any portion of the Property to Developer.

7.5.2 Compliance with City and Statutory Procedures. City and Developer shall comply with all Applicable Laws relating to formation and operation of the CFD, as well as any policies and procedures established by City or the CFD.

7.5.3 Issuance of Bonds. Developer has requested that all CFD Bonds be issued as special assessment bonds pursuant to of A.R.S. Section 48-721. City does not intend to allow the CFD to levy assessments against Property to which Developer has not acquired title (or

will not acquire title concurrently with such levy), and CFD Bonds may not be issued until Developer has provided the requisite evidence of Developer Financing in accordance with Section 11.1.5. However, City acknowledges that the Site Remediation Costs are expected to exceed the amounts available to Developer as Interim Withdrawals and that Developer desires for the CFD to use CFD Bond proceeds to pay Costs in excess of the amount available to the Developer as Interim Withdrawals. Therefore, if the CFD agrees to levy any such assessments and thereafter issue special assessment bonds, then City and Developer agree that the CFD shall require that any CFD Bond proceeds that exceed the Purchase Price of the Property at issue shall be retained by the Bond Trustee and shall not be disbursed until title to the Property is conveyed to Developer or otherwise in accordance with Section 11.1.5. City agrees that the CFD shall be authorized to issue bonds at the time of closing Developer's purchase of each Phase in an amount for Public Infrastructure for each Phase reflected on Exhibit J attached hereto (as the amounts for specific Public Infrastructure may be modified), but in no event may CFD Bonds for Public Infrastructure be issued in an amount that exceeds the total of the City's CFD Bond Amount. The preceding sentence shall not be deemed to preclude Developer from seeking to cause the CFD to issue additional CFD Bonds for other public infrastructure purposes or to provide funds for cost overruns in excess of the estimated costs set forth in Exhibit J, subject to the other limitations and provisions of this Agreement. Developer acknowledges that neither City nor the CFD can guarantee that any CFD Bonds can or will be sold at all or on any particular terms, or that any such CFD if formed, will have the ability under Applicable Law to issue CFD Bonds in an amount sufficient to pay all allowable Site Remediation and Infrastructure Improvements Costs. If the CFD is not able to issue its CFD Bonds, Developer shall seek financing from other sources, although City shall not be required to make any payments other than those payments referenced in Section 7.5.4 in the amounts and at the times specified therein, which payments City will make directly to Developer with respect to such alternate financing during the Payment Period, up to the Maximum Reimbursement Amount. City and Developer agree that Developer, with the consent of City, which consent cannot be unreasonably withheld, shall have the right to select the underwriter(s) for any CFD Bonds.

7.5.4 City Contribution to Debt Service Expense Fund; Limitations. In connection with the formation of the CFD, the Parties and the CFD shall enter into an agreement pursuant to which, among other things City will agree to establish a CFD Debt Service Expense Fund for the benefit of the CFD (the "Debt Service Expense Fund") into which City will deposit the following amounts (but not to exceed the Maximum Reimbursement Amount, the "City Resources") during the thirty-year period commencing on the date of commencement of the Site Remediation and ending on the earlier of (i) the 30th anniversary of the commencement of the GPLET Lease on the Arena, or (ii) the date on which City has contributed an amount equal to the Maximum Reimbursement Amount (the "Payment Period"), subject to the limitations set forth in this Section 7.5.4:

7.5.4.1 Seventy-five percent (75%) of the Unrestricted Portion of the transaction privilege tax levied by City on the gross income of those business activities identified in Sections 16-405 through 16-485 of the Tempe City Code (except Section 16-447 of the Tempe City Code), generated and paid by the Project's users and actually received by City during and prior to the end of the Payment Period. The Unrestricted Portion of the above Transaction Privilege Tax is currently 1.2%; 75% of 1.2% is 0.9%;

7.5.4.2 Seventy-five percent (75%) of the Unrestricted Portion of the additional tax on transient lodging levied by City pursuant to Section 16-447 of the Tempe City Code generated and paid by the Project's users and actually received by City during and prior to the end of the Payment Period. Such additional Transaction Privilege Tax on transient lodging is currently 5.00%, and 75% of 5.00% is 3.75%;

7.5.4.3 Sixty-One and eight tenths of one percent (61.8%) of the City's allocation of unencumbered ad valorem real property taxes (primary property taxes) levied against the Property and actually received by City during and prior to the end of the Payment Period. The unrestricted portion of such ad valorem real property taxes currently represents 36.9% of all ad valorem real property taxes paid to City, and 61.8% of 36.9% is 22.8%; however, such amount is subject to future adjustment by City in its sole and absolute discretion, but such adjustment shall not reduce the proportion of the unencumbered portion of such ad valorem real property taxes deposited into the Debt Service Expense Fund.

7.5.4.4 Timing of Payment of City Contribution. City shall begin payment of the City contribution to the CFD Bond Trustee of the Debt Service Expense Fund established under Section 7.5.4 within ninety (90) days after the date of the Escrow Agreement for Phase 1A based on taxes actually received by City from the effective date of such Escrow Agreement. Thereafter payments shall be made no less frequently than quarterly until the end of the Payment Period. City's obligation to make the payments shall terminate at the end of the Payment Period. City shall not be required to make any payment until the Unrestricted Portion of any tax is actually generated and received by City. If after having made a payment, City subsequently determines that there has been an overpayment, City may deduct such overpayment from a future payment but shall provide Notice of such future deduction to Developer and the CFD within thirty (30) days after becoming aware of such overpayment. City payments may be delayed if the responsible taxable party fails to file the applicable tax returns and make the applicable tax payments for the period to which the City payment relates. If such a failure occurs, City shall make the required payment within ninety (90) days after the applicable taxable party files the applicable tax return and/or makes the applicable tax payment and such payment is actually received by City. If the Project tax revenues are reported on tax returns filed by different entities, City will make the payments from each applicable return, as described above.

7.5.5. Multiple Bond Issuances. City and Developer contemplate that the CFD may issue multiple series of CFD Bonds to finance the Site Remediation and Infrastructure Improvements. City and Developer currently anticipate that four separate series of CFD Bonds might be issued. The City contribution of City Resources will be applied to payment of the CFD Bonds in the order issued and with respect to those CFD Bonds the original aggregate principal amount thereof is not in excess of the Maximum Reimbursement Amount. The City's contribution of City Resources will be applied to such CFD Bonds on a *pari passu* basis. No interest will accrue on the unpaid balance of the Maximum Reimbursement Amount. Developer acknowledges that the City payments will be spread over a number of years and the date on which the Maximum Reimbursement Amount will have been paid and whether the entire Maximum Reimbursement Amount will have been paid by the end of the Payment Period will depend on the success of the operations of the Project, generation of sufficient funds comprising the individual components of the City payment, actual receipt of such funds by City, and the amount of funds generated by, among other elements, the application of the Surcharge. In no event will City be required to make

any payment in excess of the amount of the Unrestricted Portions described above generated over the Payment Period, which could be less than the Maximum Reimbursement Amount, and less than the debt service on the CFD Bonds. In the event of any shortfall, Developer will be required to adjust the Surcharge (defined in Section 7.5.6) to make up the difference.

7.5.6 Developer Contribution to Debt Service Expense Fund; Developer Surcharge. Developer will impose on property or business owners within the Project via the Declaration or other appropriate recorded document and in the written agreement with the CFD, a surcharge on the aggregate of gross sales and other transactions (other than Excluded Sales or Other Transactions) that are subject to the transaction privilege taxes referenced in Section 7.5.4.1 and 7.5.4.2 (the "Surcharge"). The Surcharge shall be applicable to sales and other transactions commencing following issuance of a Certificate of Occupancy for a Project Element and the commencement of sales and other transactions from business activity at or within the Project Element. During the period in which there are any outstanding CFD Bonds, Developer shall impose a minimum Surcharge to assure that any and all payments that will come due within the following fiscal year with respect to any CFD Bonds then outstanding will be made and that all such payments shall remain current. Upon collection, the amount of any Surcharge and any assessments paid by the Developer shall be deposited by the Developer no less often than quarterly with the bond trustee for the CFD Bonds (the "Bond Trustee"). On or before September 30th of each year, Bond Trustee shall submit to Developer, City and the CFD a reconciliation with respect to the fiscal year ending on the preceding June 30th confirming whether all payments on the CFD Bonds are current, whether all reserve funds required under the indenture for the CFD Bonds are fully funded and whether any amounts designated for deposit in the debt service fund established under the indenture for the CFD Bonds have not been deposited. To the extent that any amounts due are unpaid or any reserve fund or the debt service fund for the Bonds is not fully funded, then any excess funds then held by the Bond Trustee will be applied in the following order: (1) First to pay any amounts due but unpaid; (2) Second to fund any required reserve fund under the indenture for the CFD Bonds; and (3) Third, if such remaining excess were generated from the Surcharge, to be deposited into the account designated for the debt service fund established under the Bond Indenture for the CFD Bonds. If the reconciliation reflects that a material shortfall or material excess exists, Developer shall adjust the rate of the Surcharge (whether up or down) to seek to ensure that the aggregate amount of the Surcharge and payments by City of City Resources are sufficient to eliminate any such remaining material shortfall, the payments coming due in the following fiscal year with respect to any CFD Bonds then outstanding will be made, and that all such payments shall remain current. If the reconciliation reflects that any excess funds remain and such funds were generated from City Resources, after application of items (1) and (2), above, such excess funds shall be deposited by the Bond Trustee into a bond redemption fund (the "Bond Redemption Fund") established under the indenture for the CFD Bonds and used to redeem outstanding CFD Bonds on the earliest call date for such CFD Bonds. Any amounts in the Bond Redemption Fund used to redeem outstanding CFD Bonds shall be deemed to be a redemption of the City's CFD Bond Amount as calculated pursuant to Exhibit J, with the concomitant reduction in the associated City's CFD Debt Service associated therewith, which shall thereafter also be deemed a reduction in the City's Maximum Reimbursement Amount as originally established pursuant to the terms of Exhibit J.

7.5.7 Administration. City payments and Developer Surcharge payments shall be deposited into the Debt Service Expense Fund that shall be maintained by the CFD (or a

bond trustee appointed by the CFD) in accordance with the terms of the bonds to be used solely for the purpose of making the periodic debt service payments on such bonds, except that, if City makes any payment such that the amount provided would cause the City's total payments to exceed the Maximum Reimbursement Amount, all such excess immediately shall be refunded to City. The CFD will levy an assessment against Property within the CFD, which will be a first lien on the property assessed, subject only to general property taxes and prior special assessments. The levy will be in an amount sufficient to pay debt service on all outstanding CFD Bonds; however, the CFD will only take action to collect the assessments if the funds deposited by City Resources and the Developer Surcharges as described in Sections 7.5.5 and 7.5.6, and other funds available to the CFD Bond Trustee are not sufficient to make the payments on the CFD Bonds. The mechanics of the collection process and CFD Bond payments, as well as other terms relating to the CFD Bonds will be set forth in the bond indenture agreement to be executed at the time the CFD Bonds are issued.

7.5.8 Conditions to Issuance. City shall not be obligated to cause the CFD to issue any bonds with respect to a Phase until the Conveyance Conditions with respect to the Phase Parcel have been satisfied; provided, however the CFD Bonds issued with respect to a Phase owned by Developer may be used to pay or reimburse Costs related to another Phase for which the Conveyance Conditions are not yet satisfied.

7.5.9 City Payment from Initial Issuance of CFD Bonds. City shall have the right to receive proceeds of CFD Bonds for (a) Interim Withdrawals made by Developer for payment and/or reimbursement of Costs pursuant to the Escrow Agreement, (b) amounts withdrawn by City in connection with the Termination Agreement, and (c) amounts paid or incurred by City for the Yard Relocation pursuant to Section 5.7.2.

8. Government Property Lease Excise Tax Provisions. The Parties agree that they seek to apply the provisions of A.R.S. §§ 42-6201 through 42-6210 (the "GPLET Laws") to the Project on the terms and conditions of this Section 8. Except during any properly exercised abatement period thereof, the Developer (or any successor as to all or any portion of the Project) will be responsible for the payment of any in-lieu government property lease excise taxes ("GPLET") during the term of any GP Lease.

8.1 Payment of GPLET During Non-Abatement Period. In accordance with A.R.S. § 42-6206(A), failure by the Developer (or any successor as to all or any portion of the Project) to pay the GPLET during any non-abatement period of the Lease, if any, after written Notice and an opportunity to cure, in accordance with Section 13 is an Event of Default that could result in termination of the GP Lease and divesting the Developer (or any successor as to all or any portion of the Project) of any interest in or right of occupancy under the GP Lease for the Parcel subject to the GP Lease.

8.2 GPLET Abatement. As required determinations under the GPLET Laws, the City has examined and ultimately determined that the development of the Property with the Project and the lease of all or a portion of the Project subject to tax abatement and tax liability under the GPLET, in conformance with the statutory requirements of the GPLET Laws, will enhance the economic viability of the City in numerous ways, including, without limitation, (A)

increasing transaction privilege tax revenues and other revenues to the City, (B) increasing the City's employment base, (C) stimulating further economic development, (D) otherwise improving and enhancing the economic welfare of the residents of the City, (E) is not likely to occur without the benefits provided in this Agreement, and (F) will generate revenues and other benefits to the City that exceed or outweigh the costs associated with these benefits.

8.3 Application of GPLET to Project Phases. City hereby acknowledges and agrees that, if a Certificate of Occupancy has been issued for a building within a Phase, and Developer has otherwise satisfied its obligations, in all material respects, under this Agreement, then Developer shall be entitled for a period of thirty (30) or eight (8) years, as applicable, to the statutorily-authorized abatement of GPLET available pursuant to the GPLET Laws, subject to the terms and conditions of a GP Lease. City acknowledges that Developer's execution of this Agreement constitutes its or its permitted assigns' application for the tax abatement provided by A.R.S. § 42-6208(4) for the Arena Components and Music Venue and the application for tax abatement provided by A.R.S. § 42-6209(B) for the rest of the Major Components (as described in Recital K and excluding the Arena Components and Music Venue) and other eligible Project Elements. In connection with the City's authorization of the application of the GPLET as provided herein, the City has undertaken (at its sole cost and expense), an economic impact analysis of the Project. Such analysis specifically monetizes, reasonably and specifically determines in a non-speculative manner, and evaluates, the direct and (as statutorily required) indirect value of the community benefits to be generated by the Project.

8.4 Implementation Timing. When each Project Element of the Project meets the statutory minimum requirements of the GPLET Laws, upon issuance of a Certificate of Occupancy for such Project Element, (i) Developer may, at Developer's election, convey title to such Phase to City, within not more than six (6) months from the date of the Project Element's Certificate of Occupancy, by a special warranty deed in substantially the form of Exhibit K attached hereto, and City shall accept such conveyance, and (ii) contemporaneously with such conveyance, City shall lease back the Parcel to Developer pursuant to a Government Property Land and Improvements Lease substantially in the form attached hereto as Exhibit L (a "GP Lease"). Developer acknowledges and agrees to cooperate with the City, at Developer's sole cost and expense, in performing such reasonable and prudent due diligence investigation, and obtaining such reports and assessments for the benefit of the City, as a condition to the City's acceptable of title to each Phase.

8.5 GP Lease Term. The term of the Arena GP Lease and any GP Lease for the other Arena Components and the Music Venue shall be thirty (30) years from the date of conveyance of the applicable improved Parcel to City and execution of the GP Lease, and the term of all other GP Leases shall be eight (8) years from the date of conveyance of the relevant Parcel to City and execution of the GP Lease. The term of all GP Leases must commence, if at all, pursuant to the requirements of GPLET Laws, and the term of the abatement of the GPLET is governed by the GPLET Laws. As soon as reasonably practicable, but within twelve (12) months after the expiration of a GP Lease the City must reconvey title to the subject Parcel to Developer or its successor. City shall not be responsible for any capital expenditures, repairs or other improvements during the term of any GP Lease.

8.6 Limitation on Liens. Each Parcel must be conveyed to the City free of all monetary liens or encumbrances other than liens for current property taxes and assessments and any CFD assessments and encumbrances, all of which must be not yet due and payable in full and all of which shall remain Developer's obligation for payment pursuant to the terms of the GP Lease. Any deed of trust liens and other security agreements or instruments for securing development of a Phase ("Phase Financing") shall be released from the fee interest in the Phase and converted to leasehold deeds of trust encumbering only Developer's leasehold interest under the GP Lease contemporaneously with conveyance of the Parcel to City. Without limitation of the foregoing, each secured party shall acknowledge and agree that City has no liability or recourse for any of the obligations secured by the applicable deeds of trust or other security agreements or instruments. While City acknowledges for the benefit of Developer that pursuant to Applicable Laws the property owner is not personally liable for the CFD assessments, the City desires for any lender to understand that the City is not assuming any obligations that an owner of real property might otherwise assume, that the City will hold bare, naked title to the Property, will not be making any payments that an owner of real property might in other circumstances make, and that neither Developer nor any such lender shall have any recourse against City if City loses title to the Property for failure to pay any taxes or other assessments against the Property, including CFD assessments, or to take any other action with respect to the property.

8.7 Consultation with Other Jurisdictions. City and Developer acknowledge that the provisions of the GPLET Laws require certain notice and engagement with other taxing and regulatory jurisdictions in connection with City providing the use of the GPLET abatement. The Parties acknowledge and agree that, in connection with the approval of this Agreement, the Parties have complied with such provisions of the GPLET Laws.

9. Performance Extensions.

9.1 Four (4) Three-Month Extensions. Developer may extend each and all of the dates within the Phasing Plan and stated on the Schedule of Performance four (4) times for any period not to exceed ninety (90) days for each extension by giving written Notice to City not less than forty-five (45) days before the then-scheduled performance dates. This right may be exercised only four times, and, if exercised, will operate to extend all dates within this Agreement, the Phasing Plan and stated on the Schedule of Performance arising after the date of exercise.

9.2 Fee Payment for Additional Extension. In addition to the extension rights provided in Section 9.1, Developer may extend all of the dates listed within the Phasing Plan and stated on the Schedule of Performance (on a per date basis and whether or not a prior extension has been obtained) for one (1) additional period not to exceed twelve (12) months, by giving written Notice to City not less than forty-five (45) days before the then-scheduled performance dates and paying to City a nonrefundable extension fee of One Hundred Thousand Dollars ($100,000). Such extension fee shall solely be consideration for the extension and shall not be credited against the Parcel Purchase Price for any Parcel or portion thereof. This right, if exercised, will operate to extend all dates within this Agreement, the Phasing Plan and stated on the Schedule of Performance arising after the date of exercise.

9.3 Extension Due to the City Delay. Because Developer is subject to deadlines and consequences if Developer delays its performance, if the City fails timely to complete the Yard Relocation and to satisfy all conditions to be met by City for conveyance of the Yard Parcel to Developer as provided in this Agreement, then Developer shall receive a day-for-day extension of the dates set forth on the Schedule of Performance for each day by which the City's inability to relocate the Yard and satisfy such conditions delays Developer's development of any Parcel pursuant to the Schedule of Performance and Developer shall not be entitled to any other relief or damages as a result of any such delay except as provided in Section 5.7.2. This right, if exercised, will operate to extend all dates within this Agreement, the Phasing Plan and stated on the Schedule of Performance arising after the date of exercise.

9.4 Extension Due to Enforceability Challenge. The dates for performance of all obligations of Developer under this Agreement shall, at Developer's option, be extended during the pendency of any Enforceability Challenge until the Enforceability Challenge is concluded as evidenced by a non-appealable order of judgment entered by a court of competent jurisdiction, or where applicable, an appellate court of competent jurisdiction shall issue a final judicial decision (a "Final Judgment") or other final resolution of such Enforceability Challenge.

9.5 At City Discretion. In addition to the extensions provided in Sections 9.1, 9.2, and 9.3, Developer may, at any time, request an extension of the dates set forth within the Phasing Plan and stated on the Schedule of Performance. However, the City may grant or deny any such request in its unfettered discretion.

10. Force Majeure Event. Neither City nor Developer, as the case may be, will be considered not to have performed its obligations under this Agreement or to be in Default in the event of force majeure ("Force Majeure Event") due to causes beyond its control and without its fault, negligence, or failure to comply with Applicable Laws, that prohibit, materially interfere with, delay, or alter the performance of the applicable duty under this Agreement including, but not restricted to, acts of God, acts of public enemy, litigation or other legal challenges concerning the validity and enforceability of this Agreement or relating to transactions contemplated hereby (including the effect of petitions for initiative or referendum) (an "Enforceability Challenge" and together "Enforceability Challenges") pending a Final Judgment or Dismissal of Litigation regarding the Enforceability Challenge(s), fires, floods, lightning, strikes, embargoes, labor disputes, unusually severe weather, and/or the delays of subcontractors or materialmen due to such causes, shortages of materials (excluding those caused by lack of funds), failure of or inability to obtain essential and major equipment or machinery critical to the development of Project Elements (excluding if due to lack of funds), act of a public enemy, war or war like action (whether actual and pending or expected, and whether de jure or de facto), terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), nuclear reaction or radiation, radioactive contamination, explosion, pandemic, epidemic, declaration of national or state emergency or national or state alert, blockade, insurrection, riot, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain, condemnation, or other taking, confiscation or seizure by the action of any governmental body on behalf of any public, quasi-public, or private entity, or declaration of moratorium or similar hiatus directly affecting the Project (whether permanent or temporary) by any public, quasi-public, or private entity, injunction, restraining order or other court or governmental order or decree. In no event will a Force Majeure

Event include any delay resulting from general economic or market conditions, unavailability for any reason of particular tenants or portions of the Project other than the Yard Parcel, it being agreed that Developer will bear all risks of delay that are not Force Majeure Events. In the event of the occurrence of any such Force Majeure Event, the time or times for performance of the obligations of the Party claiming delay will be extended for a period of the Force Majeure Event plus a reasonable time thereafter for resumption of performance; provided that, as a condition to availing itself to the extensions described above, based on a Force Majeure Event, the Party shall give written Notice promptly to the other Party. If, however, notice by a Party claiming such extension is sent to the other Party more than thirty (30) calendar days after the commencement of the event of Force Majeure Event, the period shall commence to run only thirty (30) calendar days prior to the giving of such Notice.

11. Sale Process.

11.1 Conveyance Conditions. City will not convey fee title to any portion of the Property to Developer unless the following conditions shall have been satisfied (the "Conveyance Conditions"):

11.1.1 Completion of Site Remediation. Developer shall have completed the Site Remediation for the Parcel to be conveyed as described in this Agreement and any Escrow Agreement.

11.1.2 Formation of CFD. The CFD shall have been formed and the Developer and other relevant parties shall have executed the Formation Agreement and other documents contemplated in Section 7.5;

11.1.3 Recording Use Restrictions. Prior to the conveyance of the Arena Parcel, City shall have recorded a use restriction limiting use of such Parcel to operation of an arena for the Coyotes NHL team and other ancillary uses, a practice facility for the Coyotes NHL team, and related uses consistent with the Arena Components for a period not less than the later of (a) retirement of any CFD Bonds (including any refunding bonds) issued to provide financing for the Infrastructure Improvements, or (b) the expiration date of any GP Lease covering the Arena Parcel.

11.1.4 Concurrent Bond Issuance. Subject to Sections 7.5.3 of this Agreement, concurrently with each Closing, if the CFD is issuing CFD Bonds to provide financing for Site Remediation or Infrastructure Improvements Costs, then such bond issuance shall include bonds in an amount sufficient to pay Costs associated with the Phase covered by the Escrow Agreement, including any Interim Withdrawal relating to such Phase, plus costs, expenses and fees incurred in connection with issuance of any such bonds.

11.1.5 Developer Financing. Developer acknowledges that the consideration for conveyance of the Property includes the cash payments to be made to City at each Closing (and which is denominated as the Purchase Price), but also receipt by City of the Project Components Developer has committed to construct on the Property, and the public benefits Developer has agreed to provide elsewhere in this Agreement. Accordingly, it is critical to City

that Developer provide satisfactory evidence of its ability to deliver the non-cash elements of the consideration. Therefore, City requires that, prior to conveyance of title to any portion of the Property, Developer provide such evidence in the form of actual loan commitments, equity investments, or other substantial documentation acceptable to City (the "Developer Financing"), which Developer may provide to a third-party financial advisor designated by City subject to nondisclosure requirements to preserve confidential information of Developer and its owners, or Developer shall have obtained financing in amounts sufficient to construct all Project Components to be constructed on the Property being conveyed to Developer.

11.2 Purchase and Sale Obligation and Process. City agrees to sell each Parcel of the Property to Developer and Developer agrees to purchase each Parcel of the Property from City on the terms and conditions contained in this Section and the Escrow Agreement relating to such Parcel. This Agreement constitutes the binding agreement of the Parties for the sale and purchase of the Property, subject to the terms, conditions, and covenants set forth in this Agreement, and shall inure to the benefit of the Parties and their respective successors and assigns.

11.3 Purchase Price Established; Purchase Price Adjustments. The estimated cash "Purchase Price" to be paid with respect to that portion of the Property within each Phase (individually, the, "Phase 1A, 1B, 2A or 2B Purchase Price", as applicable) preliminarily has been calculated by multiplying $25.00 (the "SF Purchase Price") times the gross square footage included within the Property as a whole, and then allocating that amount to each Phase (and each Parcel within that Phase) based upon the gross square footage of Property within that Phase (and any Parcel in such Phase) as indicated on the Preliminary Site Plan. The results of those calculations are set forth on the "Purchase Price Schedule" set forth on Exhibit N attached hereto. The Parties may mutually agree to adjust the square footage of each Phase and Parcel based on the final configuration and size of each Parcel as set forth on the Development Plan (and any survey completed with respect to establishing the New Plat), and thereafter shall modify the Purchase Price for each Phase to reflect any such adjustments and establish the "Parcel Purchase Price" for each Parcel within each Phase; provided that the aggregate total Purchase Price will not change, only the amount allocated to each Phase and the Parcels within each Phase will be adjusted. The Parties acknowledge that the SF Purchase Price will be attributed to the Infrastructure Parcels on the same, square-foot basis as the SF Purchase Price is applied to all other Parcels, i.e., there shall be no deduction or other adjustment to the SF Purchase Price for the Local Access Areas or the other Infrastructure Parcels (if any), notwithstanding that such Local Access Areas or Infrastructure Parcels may not be subject to ad valorem real property taxes (as public facilities). The Parties agree that the SF Purchase Price shall apply for purposes of determining the applicable Parcel Purchase Price for each Parcel for which Developer will close its purchase prior to the deadline for Commencement of Construction of the Parcel specified in the Schedule of Performance (subject to extension of such dates pursuant to this Agreement including due to a Force Majeure Event). For any Parcel where Developer fails to close its purchase prior to the deadline for Commencement of Construction, the Purchase Price for the Parcel determined pursuant to this Section 11.3 shall be adjusted for any applicable Parcel based on changes in the Index (each a "CPI Adjustment") measured from the applicable Commencement of Construction deadline to the Closing Date for the Parcel. In no event will the Parcel Purchase Price be reduced as a result of the adjustments.

11.4 Definition of Parcel. For purposes of the conveyance of any Parcel by City to Developer under this Agreement, "Parcel" shall mean and include: (i) the real property; (ii) all improvements (if any) located on the real property; and (iii) all rights, privileges, easements and appurtenances thereto, if any, whether or not of public record, used in connection with the real property.

11.5 Phasing of the Sales. Subject to the terms, conditions, and covenants of this Agreement, the City shall sell each Parcel within the Property to Developer in separate sale transactions corresponding to the Phases described in Section 5 of this Agreement, each of which shall correspond to the Phase of the Project for which Developer has provided the City with its Option Notice pursuant to Section 5 of this Agreement and executed an Escrow Agreement (each a "Phase Sale Transaction"). Upon Developer providing the City with an Option Notice for a Phase after compliance with the terms of the Escrow Agreement, the Phase Sale Transaction for each associated Option Parcel shall comply with the following terms and conditions:

11.5.1 Phase Parcel Sale: Within sixty (60) days of satisfaction of the Conveyance Conditions specified in this Section 11, City shall sell to Developer and Developer shall purchase from City each Parcel that is the subject of an Escrow Agreement according to the terms of this Section 11. The Escrow Agreement shall be terminated as to each Phase upon Closing of Developer's purchase of all the Parcels within that Phase.

11.5.2 Parcel Purchase Price: The initial Parcel Purchase Price for each Parcel shall be as set forth on Exhibit N.

11.5.3 Payment of Parcel Purchase Price. At Closing (defined below), Developer shall pay the Parcel Purchase Price (as may be adjusted or subject to offset or credit as provided for herein) for each applicable Parcel described in the applicable Option Notice at Closing in cash or other immediately available funds, including by crediting funds Developer deposited in the Escrow Account.

11.6 Escrow and Closing Related Matters.

11.6.1 Escrow Agent; Escrow Instructions. Developer shall select an escrow agent, subject to City's reasonable approval, to serve as the "Escrow Agent" for each Phase Sale Transaction. If requested by Escrow Agent, in addition to the Escrow Agreement, the Parties shall mutually approve and execute the standard form escrow instructions of Escrow Agent, subject to their mutually approved revisions, and with the provisions of this Agreement applicable to the Escrow Agent, which together shall constitute the escrow instructions between City, Developer and Escrow Agent. If there is any conflict or inconsistency between the provisions of the standard form escrow instructions and this Agreement or any deed, instrument or document executed or delivered in connection with the Phase Sale Transaction contemplated hereby, the provisions of this Agreement, or such deed, instrument, or document, shall control. Escrow Agent shall open a separate Escrow for each Parcel subject to the Closing and the associated Phase Sale Transaction.

11.6.2 Opening of Escrow. For purposes of this Agreement, the opening of an escrow (each, an "Opening of Escrow") shall be deemed to be for the purchase of each Parcel designated in the Option Notice and shall be deemed to have occurred on the date on which two (2) executed original counterparts of the Escrow Agreement or authorized electronically transmitted executed counterparts of the Escrow Agreement are delivered to and accepted by Escrow Agent.

11.6.3 Deposit of Purchase Price; Interim Payments. Concurrently with (but in any event within five (5) Business Days after) the execution of the Escrow Agreement for Phase 1A, Developer shall deposit into the Escrow Account established pursuant to the Escrow Agreement, Forty Million Dollars ($40,000,000) which shall be credited to Developer's payment of the Purchase Prices for all Phases, as applicable, until fully credited and applied. Concurrently with (but in any event within five (5) Business Days after) the execution of the Escrow Agreement for Phase 2A, Developer shall deposit into the Escrow Account, Ten Million Three Hundred Seventy-Seven Thousand One Hundred Forty Dollars ($10,377,140), which shall be credited to payment of the Purchase Price for Phase 2A and 2B, as applicable, until fully credited and applied. In each Escrow Agreement, the Parties shall authorize the Escrow Agent to transfer funds between and among each Escrow to affect the application and credit of funds deposited by Developer to each Closing as may be necessary. The initial $40,000,000 deposited into Escrow shall become nonrefundable on the date Developer commences Site Remediation on Phase 1A and applied as a credit to Developer's payment of the Purchase Price for all Parcels as described herein (subject to the express provisions of this Agreement). The deposit of the $10,377,140 into Escrow shall become nonrefundable on the date Developer commences Site Remediation on Phase 2A and applied as a credit to Developer's payment of the Purchase Price for Parcels 2A and 2B as described herein (subject to the express provisions of this Agreement). If the conditions specified in the Escrow Agreement for Phase 1A are satisfied, City has agreed to allow Escrow Agent to permit Developer to withdraw funds from the Escrow (each, an "Interim Withdrawal") periodically for payment of Costs, as applicable, with the amount of such Costs paid from an Interim Withdrawal to be credited to Developer's payment of the Parcel Purchase Price at the time of Closing each respective Phase Sale Transaction for Parcels within Phase 1A, Phase 1B and Phase 2A, as applicable. When and if the conditions specified in the Escrow Agreement for Phase 2A are satisfied, City has agreed to allow Escrow Agent to permit Developer to make Interim Withdrawals periodically for the payment of Costs, as applicable, with the amount of such Costs paid from an Interim Withdrawal to be credited to Developer's payment of the Parcel Purchase Price at the time of Closing each respective Phase Sale Transaction for Parcels within Phase 2A. The total of the Interim Withdrawals relating to the Escrow Account established for Phase 1A shall be in an amount not to exceed the total of the Phase 1A Purchase Price, the Phase 1B Purchase Price and the amount of any remaining funds available for payment of any portion of the Phase 2A Purchase Price and may be used by Developer solely to pay or reimburse Developer for payment of the Costs of Site Remediation for Phase 1A, Phase 1B and Phase 2A. If Developer elects not to request an Interim Withdrawal for Phase 1A, Phase 1B or Phase 2A, then the deposits made to the Escrow Accounts established pursuant to the Escrow Agreements for Phase 1A, Phase 1B and Phase 2A pursuant to this Section 11.6.3 shall remain in Escrow and shall be disbursed to City to pay the Phase Purchase Price at the time of Closing each Phase Sale Transactions for Parcels within Phase 1A, Phase 1B and Phase 2A, respectfully. As more fully set forth in the Escrow Agreement, prior to or concurrently with each Closing, the Parties shall cause the Bond

Trustee to deposit into Escrow from CFD Bond Proceeds an amount necessary to ensure the Escrow Agent has sufficient funds to pay to City the Phase 1A, Phase 1B, Phase 2A or Phase 2B Purchase Price given the amount of the aggregate Interim Withdrawals.

11.6.4 Closing. The closing of an escrow (each, a "Closing") opened with respect to a Phase Sale Transaction shall occur on a date to be specified by Developer not later than sixty (60) days following Developer's completion of the Site Remediation for that Phase (the "Closing Date").

11.6.5 Closing Time. All Closings shall take place in the office of Escrow Agent on the applicable Closing Date, or at such other time and location as the Parties may mutually agree.

11.6.6 Developer's Conditions to Closing. The Closing of the purchase of any Parcels by Developer pursuant to the terms of this Agreement shall be subject to and conditioned upon the Developer's satisfaction of the applicable conditions precedent to such Closing as set forth above with respect to each Phase.

11.6.7 Insured Closing Protection Letter. At any Opening of Escrow, Escrow Agent shall deliver to each of City and Developer, the standard insured closing protection letter of its underwriter.

11.6.8 Settlement Statement. Escrow Agent shall deliver a "pre-audit" settlement statement (the "Settlement Statement") to City and Developer for review and approval no later than one week prior to each applicable Closing.

11.6.9 City Obligations for a Closing. At each Closing, City shall deliver or cause to be delivered to Escrow Agent (if not otherwise previously delivered) all of the following instruments dated as of the Closing, fully executed and, if appropriate, acknowledged, for prompt recordation, filing or delivery to Developer:

11.6.9.1 A fully executed and acknowledged Special Warranty Deed in the form attached hereto as Exhibit K conveying the applicable Phase Parcel to Developer subject to only Permitted Title Exceptions.

11.6.9.2 This Agreement and any applicable amendments to this Agreement; and

11.6.9.3 Such other instruments or documents as are reasonably necessary to fulfill the covenants and obligations to be performed by City pursuant to this Agreement.

11.6.10 Developer Obligations for a Closing. At each Closing, Developer shall deliver or cause to be delivered to Escrow Agent (if not otherwise previously delivered) all of the following instruments dated as of the Closing, fully executed and, if appropriate, acknowledged, for prompt recordation, filing or delivery to City:

11.6.10.1 This Agreement and any applicable amendment to this Agreement; and

11.6.10.2 Such other funds, instruments, or documents as are reasonably necessary to fulfill the covenants and obligations to be performed by Developer pursuant to this Agreement.

11.6.11 Closing by Escrow Agent. At each Closing, Escrow Agent will (and in the following sequence): (i) record the Deed in the Official Records of County; (ii) record any Mortgage securing any Phase Financing; (iii) record this Agreement and any applicable amendment to this Agreement against the applicable Parcels; (iv) disburse all funds in accordance with the Settlement Statement approved by Developer and City; and (v) do such other items requested by Developer and City, in writing, consistent with this Agreement.

11.6.12 Closing Costs. The escrow fee payable to Escrow Agent in respect of the conveyance and transfer of any Parcel and the premium for any title insurance for Developer or its lender shall be the sole responsibility of Developer. All other fees, recording costs, charges or expenses incidental to the sale, transfer and assignment of a Parcel to Developer shall, except as otherwise herein expressly provided, be paid according to the custom of practice for similar real estate transactions in Phoenix, Arizona, as determined by Escrow Agent.

11.6.13 Proration and Payment of Taxes and Assessments. Developer acknowledges that the Property currently is owned by the City and so is not assessed for real property taxes and, accordingly, there is no need to prorate real property taxes; provided, however, City shall be responsible for releasing all Unpermitted Title Exceptions at its sole expense (subject to repayment from CFD Bond proceeds as authorized by this Agreement). Developer will be solely responsible for all real property (and similar) taxes and assessments charged against a Parcel from and after the date of any applicable Closing, subject to the terms of Section 8 of this Agreement.

11.7 Feasibility; Contingencies. Prior to issuing an Option Notice, the Developer must meet and/or determine its satisfaction with each of the following conditions (each a "Contingency" and, collectively, the "Contingencies").

11.7.1 Condition of Title.

11.7.1.1 Title Report. Within thirty (30) days after the Effective Date, Escrow Agent shall prepare and deliver to City and Developer a commitment for title insurance by a title company acceptable to Developer (the "Title Report") for each Parcel of the Property, to include legible copies of all instruments of record referred to on Schedule B, Section II thereof and express the requirements of the Title Insurer (defined below), for the issuance of an ALTA extended coverage title insurance policy in the amount of the Parcel Purchase Price for each Parcel that will insure Developer's interest in each Parcel subject only to the Approved Title Exceptions (defined below) and this Agreement. If Developer does not object to an exception to title as disclosed by the Title Report within sixty (60) days after receipt, the matter

(other than Unpermitted Title Exceptions) will be deemed to have been approved by Developer. The matters shown in the Title Report and any Amended Report (defined below) (other than standard printed exceptions and exclusions that will be included in the Title Policy (defined below)) that are approved or deemed approved by Developer in accordance with this Section, any other matters approved by Developer in writing, and all matters arising from Developer's actions, are referred to in this Agreement collectively as the "Approved Title Exceptions." Developer agrees and acknowledges that City has no obligation to cure, remove, remediate, or obtain an "endorsement over" any title exception whatsoever other than "Unpermitted Title Exceptions." Unpermitted Title Exceptions means any and all consensual monetary liens created by City or as a result of any action taken by or on behalf of City, such as mortgages, deeds of trust, mechanics liens (other than with respect to any ongoing work of Developer pursuant to an Escrow Agreement) for work, labor and/or materials procured by, or at the direction of City, judgment liens, tax liens or any other monetary liens or monetary encumbrances (other than for non-delinquent real estate taxes or non-delinquent assessments that are a lien but not yet due and payable or any amount with respect to work undertaken by Developer) encumbering title to the Property, and the 2013 Development Agreement, and any new encumbrance or lien City caused or authorized to be recorded against the Property during Term of this Agreement that is not expressly authorized by this Agreement, unless expressly authorized to do so by an applicable GP Lease, this Agreement, or Developer. City shall also terminate the 2013 Development Agreement as it pertains to the Yard Parcel by executing a termination agreement relating to same ("Termination Agreement") and recording the Termination Agreement in the official records of County, thereby removing it as an Unpermitted Title Exception affecting the Yard Parcel, pursuant to the terms of such Termination Agreement that shall provide for the closing of the transaction specified in such Termination Agreement to occur only after Developer exercises the Phase 1A Option and on or before the Closing of Developer's purchase of Phase 1A. Developer is responsible for negotiating the terms of the Termination Agreement with all third parties holding rights pursuant to the 2013 Development Agreement as it relates to the Yard Parcel that shall specify the terms on which they agree to release and terminate their rights under the 2013 Development Agreement and to execute and deliver a Termination Agreement to City, although City agrees reasonably to assist Developer (at no cost or expense to City) to affect the negotiation of the Termination Agreement. Developer hereby authorizes City to make an Interim Withdrawal from the Escrow Account established for Phase 1A for payment of all amounts payable by City pursuant to the Termination Agreement. The Escrow Agreement for Phase 1A shall also authorize the escrow agent under such Escrow Agreement to release funds held pursuant to such Escrow Agreement to City for such purpose. City shall execute the Termination Agreement provided that City reasonably approves its terms and confirms that its obligations under the Termination Agreement are only to (i) pay amounts due in consideration for the Termination Agreement required by the Termination Agreement and any customary escrow and recording fees, and (ii) to execute and authorize recordation of the Termination Agreement. Notwithstanding any provision in this Agreement to the contrary, City shall be responsible to convey the Property as provided in Section 11 free and clear of any Unpermitted Title Exceptions and shall not record or cause any new encumbrances to become liens against the Property during the Term of this Agreement unless expressly authorized to do so by an applicable GP Lease, this Agreement, or Developer.

11.7.1.2 Survey. Once the New Plat has been recorded, Escrow Agent shall notify Developer whether an additional survey will be required by its Title Department. If so, Developer will at its own cost and expense obtain an ALTA Survey ("Survey")

for each Parcel. Upon receipt of the Survey, Developer shall furnish copies to City, City's legal counsel and Escrow Agent. Escrow Agent shall update the Title Report to reflect Escrow Agent's interpretation of the Survey.

11.7.1.3 Amended Reports. If Escrow Agent subsequently issues any amendment to the Title Report (an "Amended Report") disclosing any additional title matters or modifications to the previously disclosed title matters that are not Approved Title Exceptions, then Developer shall be entitled to object to any such matter disclosed on the Amended Report by delivering written Notice of such objection to City and Escrow Agent on or before thirty (30) days after Escrow Agent has delivered to Developer the Amended Report together with copies of all recorded documents disclosed for the first time in the Amended Report. If Developer, in its sole and absolute discretion, fails to approve or disapprove the Amended Report by giving written Notice of the satisfaction of this Contingency to City and Escrow Agent on or before thirtieth (30^{th}) day, then Developer will be deemed to have approved the title matters disclosed in the Amended Report except for any Unpermitted Title Exceptions.

11.7.1.4 Developer's Objection; City's Cure. If Developer timely delivers Notice of an objection specifying in reasonable detail its objection to any matter(s) contained in the Title Report or Amended Report, City may, but shall have no obligation whatsoever to, attempt to cure the matter(s) objected to by Developer (except for any Unpermitted Title Exceptions on a Parcel which shall be removed as liens on or before the Closing relating to the applicable Parcel). If City elects to attempt to cure Developer's objections, City shall notify Developer of such election within ten (10) days following City's receipt of Developer's objection. If City fails to so notify Developer within such ten (10) day period, City shall be deemed to have elected not to attempt to cure Developer's objections (except City shall be responsible for removing any Unpermitted Title Exceptions). If City notifies Developer and Escrow Agent of its unwillingness, or inability, to cure such objections or fails to elect to cure such objections (other than Unpermitted Title Exceptions), then Developer shall, within five (5) Business Days following receipt of such Notice, or within five (5) Business Days after City's deemed election not to cure, as applicable, elect either to (i) waive the matters previously objected to by delivering written Notice to City and Escrow Agent and thereafter conduct the Closing contemplated hereby in accordance with the terms hereof, taking title subject to all such matters waived by Developer (provided City shall remain responsible to remove any Unpermitted Title Exceptions), or (ii) terminate this Agreement as provided below with respect to the applicable Parcel. Developer shall not in any circumstance commence or be allowed to commence Site Remediation prior to its approval of the condition of title. Developer is undertaking the Site Remediation at its risk, and Developer shall have satisfied itself that it desires to obtain title to the Property or commit resources to Site Remediation before it will be allowed to commence Site Remediation.

11.7.1.5 Title Insurance Policy. At each Closing, Escrow Agent will deliver to Developer an ALTA extended coverage title insurance policy ("Policy") issued by Escrow Agent or the title insurance underwriter, or the unconditional commitment of the title insurer ("Title Insurer") to issue such Policy, insuring title to the subject Parcel in Developer in the amount of the then applicable Parcel Purchase Price (as it may have been adjusted pursuant to this Agreement), subject only to the Approved Title Exceptions. Developer shall pay the premium associated with the Policy, including the additional premium for extended coverage and

any endorsements requested by Developer (except for any endorsements issued to cure any title objections that City may elect to cure with the express understanding and agreement that City has no obligation whatsoever to cure any title objection other than removing any Unpermitted Title Exception).

11.7.2 Condition of Property; Delivery and Redelivery of Reports and Studies. The Parties hereby acknowledge that, pursuant to the terms and conditions of this Agreement, the Developer shall have the continuing right to enter upon those portions of the Property not yet acquired by Developer for the purpose of conducting, at its sole cost and expense, due diligence with respect to the Property, including undertake, among other efforts, any survey and examine the Property and any improvements thereon, at any time after the Effective Date, with any Persons whom it shall designate, including, without limitation of the foregoing, appraisers, contractors, engineers and soil testing personnel (the "Due Diligence") until Developer gives City an Option Notice with respect to a Parcel, at which time Developer shall be deemed to have accepted the subject Parcel in such condition and with such flaws as Developer may have discovered or failed to discover during Developer's Due Diligence. Subject to the following sentence, City shall permit access to the Property to Developer and any Persons designated by Developer, and shall afford them the opportunity to conduct, prepare and perform any surveys, appraisals, and any environmental, feasibility and other engineering tests, studies, and reports that Developer deems necessary or appropriate pursuant to the Pre-Development Access Agreement. Developer shall not be allowed to disrupt operations on the Yard Parcel or to conduct any invasive tests on the Yard Parcel without first notifying and coordinating such activities with City's Public Works, Engineering and Transportation Directors. Developer shall maintain in full force and effect policies of commercial general liability and workers' compensation insurance in amounts reasonably acceptable to the City and approved by City's Risk Manager prior to being granted access to the Property. All such policies shall name the City of Tempe, its employees, agents and officers as additional insured and shall state that they may not be cancelled prior to expiration without thirty (30) days prior written Notice to City. Developer shall indemnify, protect, defend and hold City harmless from all claims, costs, fees or liability of any kind to the extent arising out of the acts of Developer or Developer's agents pursuant to this Section, except that Developer shall have no liability related to the discovery or release of pre-existing conditions (unless Developer's, or Developer's agents', acts exacerbate a pre-existing condition) or for any claims or liabilities resulting or arising from the acts or negligence of City or its agents (the "Due Diligence Indemnity Obligations"). Developer is acquiring the Property in its "as is" condition and after the exercise of any Option will complete the purchase in accordance with this Agreement. However, Developer may elect not to exercise all of the Options, in which event this Agreement will terminate with respect to such unexercised Options and the Option Parcels associated therewith, and Escrow Agent shall return all documents and instruments to the Party providing such material to Escrow Agent, and this Agreement shall be null and void and of no further force or effect except for the Developer's Due Diligence Indemnity Obligations, and Section 12, each of which shall survive termination of this Agreement.

11.8 Conveyances As Is. Prior to acquisition of title to any portion of the Property, Developer shall have made its own examination, inspection and investigation of the condition thereof (including, without limitation, the subsurface thereof, all soil, environmental, engineering and other conditions that may affect construction thereon and/or the development

thereof) as it deems necessary or appropriate. Except as provided in this Agreement, the Deed and any other documents executed and delivered by City at any Closing, Developer is entering into this Agreement and purchasing the Property based upon the results of such inspections and investigations and not in reliance on any statements, representations, or agreements of City not contained in this Agreement, the Deed and any other documents executed and delivered by City at any Closing. Developer acknowledges and agrees that it is acquiring the Property in an "AS IS" and "WHERE IS" condition, with all faults, except for the representations, warranties and covenants of City as stated in this Agreement, the Deed and any other documents executed and delivered by City at any Closing and that City shall not be responsible or liable to Developer for any conditions affecting the Property, except for the express representations, covenants and warranties of City set forth in this Agreement, the Deed and any other documents executed and delivered by City at any Closing or otherwise. Other than with respect to Claims arising from City's breach of this Agreement, the Deed and any other documents executed and delivered by City at any Closing, and except for Claims arising as a result of the acts of City or its Council members, officers, employees, representatives and agents which affect the condition of or title to the Property, Developer or anyone claiming by, through or under Developer, hereby fully releases City, its Council members, officers, employees, representatives and agents from any and all Claims that it may now have or hereafter acquire against the indemnified parties, for any cost, loss, liability, damage, expense, demand, action or cause of action arising from or related to the condition of the Property. Developer further acknowledges and agrees that this release shall be given full force and effect according to each of its expressed terms and provisions, including, but not limited to, those relating to unknown and unsuspected Claims, damages and causes of action.

12. Representations of the Parties; Developer Covenants and Ongoing Obligations.

12.1 Representations and Warranties of City. City acknowledges, represents, warrants, and covenants to Developer that, except as known to Developer, the following are true as of the Effective Date and will be true as of each Closing, and in entering into this Agreement Developer is relying upon, the following:

12.1.1 To City's actual knowledge, there are no pending, threatened, or contemplated actions, suits, proceedings or investigations, at law or in equity, or otherwise in, for or by any court or governmental board, commission, agency, department or office arising from or relating to this Agreement or the Property.

12.1.2 To City's actual knowledge, except for the option granted pursuant to that certain Development and Disposition Agreement dated February 14, 2013, recorded on March 18, 2013, as Document No. 20130246646 Official Records of County (the "2013 Development Agreement"), City has not granted any options or rights of first refusal to purchase all or any part of the Property.

12.1.3 All consents and approvals necessary to the execution, delivery, and performance of this Agreement have been obtained, and no further City Council action needs to be taken in connection with such execution, delivery, and performance.

12.1.4 To the actual knowledge of City, although the Property is a brownfield site, City has received no written Notice of any noncompliance with any Applicable Laws and orders relating to environmental matters with respect to the Property.

12.1.5 Following the Effective Date of this Agreement, other than completing the Relocation of the Yard (including removal of the compost yard), City shall not materially alter or change the physical condition of the Property, and shall not record any easement, encumbrance, instrument, or other agreement against the Property that would survive the Closing of the acquisition of any Parcel therein by Developer without first obtaining the Developer's prior written consent thereto.

12.1.6 This Agreement (and each undertaking of City contained in this Agreement) constitutes a valid, binding and enforceable obligation of City, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other Applicable Laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity. The City will defend the validity and enforceability of this Agreement in the event of any proceeding or litigation by a third party arising from its terms that names the City or Developer as a party in an Enforceability Challenge, including without limitation a proceeding or litigation that challenges the authority of the City to enter into or perform any of its obligations hereunder. In the event of an Enforceability Challenge, if named as a party, Developer shall, and if not named as a party Developer may elect to, intervene and/or join such action to, but in all cases at its sole cost and expense, defend against any such Enforceability Challenge. If such a defense of this Agreement is undertaken under this Section, the City and Developer shall cooperate in defending the Enforceability Challenge and may, by mutual agreement, select joint legal counsel and enter into a joint defense agreement with respect to the Enforceability Challenge. Further, Developer will cooperate with City and comply with any court order affecting the enforceability of this Agreement and hereby acknowledges that Developer shall not have any claim against the City if one or more provisions of this Agreement are deemed, as a result of an Enforceability Challenge and pursuant to such court order, to be void and legally unenforceable. Accordingly, the severability provision in Section 18.2 will apply in the event of any successful challenge to this Agreement.

12.2 Actual Knowledge of City. When used in this Agreement, the term "actual knowledge of City" (or words of similar import) shall mean and be limited to the actual (and not imparted, implied or constructive) current knowledge of the City's City Attorney, and the City's City Manager, without any duty or obligation of inquiry or investigation. Notwithstanding anything herein to the contrary, no such person is a party to this Agreement and shall not have any personal liability or liability whatsoever with respect to any matters set forth in this Agreement or City's representations and/or warranties herein being or becoming untrue, inaccurate, or incomplete in any respect.

12.3 Representations and Warranties of Developer. Developer acknowledges, represents, warrants, and covenants to City that the following are true as of the Effective Date and will be true as of each Closing, and in entering into this Agreement City is relying upon, the following:

12.3.1 The person or persons executing this Agreement on behalf of Developer are duly authorized to do so and thereby bind Developer hereto without the signature of any other person.

12.3.2 Developer has all requisite corporate power and authority to enter into and perform this Agreement and to incur the obligations provided for herein and has taken all action necessary to authorize the execution, delivery, and performance of this Agreement, subject to the express terms and limitations in this Agreement.

12.3.3 The execution, delivery, and performance of this Agreement by Developer does not result in any violation of, and does not conflict with, or constitute a default under, any present agreement, mortgage, deed of trust, indenture, credit extension agreement, license, security agreement, or other instrument to which Developer is a party, or any judgment, decree, order, statute, rule or governmental regulation.

12.3.4 No approvals or consents by third parties or governmental authorities are required for Developer to consummate the transactions contemplated hereby, except those approvals and consents that must be obtained as set forth in this Agreement.

12.3.5 Developer covenants and agrees that it, except as expressly allowed in this Agreement, has not, and shall not, encumber any Parcel of the Property or any portion of such Parcel prior to the applicable Closing.

12.3.6 There are no attachments, levies, executions, assignments for the benefit of creditors, receiverships, conservatorships, or voluntary or involuntary proceedings in bankruptcy or any other debtor relief actions contemplated by Developer or filed by Developer, or to Developer's knowledge, pending in any current judicial or administrative proceeding against Developer.

12.3.7 This Agreement (and each undertaking of Developer contained in this Agreement) constitutes a valid, binding, and enforceable obligation of Developer, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency, and other Applicable Laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity and further subject to the express terms of this Agreement and Applicable Laws. Except as set forth in Section 12.1.6, Developer at its sole cost and expense, but with the full cooperation of the City, will defend the validity and enforceability of this Agreement in the event of any proceeding or litigation arising from its terms that names Developer as a party or that challenges the authority of Developer to enter into or perform any of its obligations hereunder and will cooperate with City in connection with any other action by a third party in which City is a party and the benefits of this Agreement to City are challenged. The severability provision in Section 18.2 will apply in the event of any successful challenge to this Agreement.

12.3.8 Developer has the requisite financial capacity and capital resources necessary to complete the Project successfully in accordance with the terms of this Agreement and the Schedule of Performance.

12.3.9 To actual knowledge of Developer all information, including without limitation all financial and historical and projected financial and business operations of Developer and its principals is fair and accurate.

12.4 Actual Knowledge of Developer. When used in this Agreement, the term "actual knowledge of Developer" (or words of similar import) shall mean and be limited to the actual (and not imparted, implied or constructive) current knowledge of Xavier Gutierrez, authorized agent of Developer and Chief Executive Officer of IceArizona Hockey Co., without any duty or obligation of inquiry or investigation. Notwithstanding anything herein to the contrary, no such person is a party to this Agreement and shall not have any personal liability or liability whatsoever with respect to any matters set forth in this Agreement or Developer's representations and/or warranties herein being or becoming untrue, inaccurate, or incomplete in any respect.

12.5 Additional Developer Covenants for Support of City.

12.5.1 Naming Rights. During the thirty-year (30) year period after commencement of the GP Lease for the Arena Parcel, (i) the name of the Arena will be [Future Naming Rights Partner] Arena, as determined by Developer, (ii) the entertainment area shall be a variant of Tempe [Future name of Entertainment District] or other similar moniker that includes the word "Tempe," as determined by Developer, (iii) after the name of the entertainment area is initially determined by Developer, it shall not be changed without the prior written consent of City, which consent shall not be unreasonably withheld, and shall not preclude a future naming rights partnership for the entertainment area, and (iv) the name "Tempe" will be included on center ice of the Arena and in equivalent locations for non-hockey events at the Arena. All exhibitions, displays and presentations associated with Naming Rights shall be posted, exhibited, displayed, and presented (a) at the sole expense of Developer, and (ii) in accordance with the Project Documents and Applicable Laws. Developer shall cause all names pursuant to Naming Rights that are posted, exhibited, displayed, and presented at, on or in the entertainment area to comply with community decency standards (from time to time actually prevailing in the City) and to be maintained in a safe, clean and orderly condition.

12.5.2 Contribution in Support of Education. Although under no prior independent obligation to do so, to assist the Tempe Unified High School District Education Foundation and the Tempe Impact Education Foundation (together, the "Foundations") with their important educational missions, City has requested, and Developer hereby agrees to make contributions to the Foundations in the amount of Fifty Thousand Dollars ($50,000) per Foundation, which contributions shall be payable in the amount of Twenty-Five Thousand Dollars ($25,000) paid to each Foundation on the commencement date of the term of the GP Lease for the Arena Parcel and on the first anniversary of such commencement date. The aggregate of such contributions to be paid during the first two (2) years of the GP Lease for the Arena equals One Hundred Thousand Dollars ($100,000). Developer may at any time elect to prepay such amounts in whole or part, as long as the entire One Hundred Thousand Dollars ($100,000) is paid on or before the first anniversary of the commencement date of the GP Lease for the Arena. The Foundations are intended third party beneficiaries of the provisions of this Section and shall have the exclusive power to enforce such provisions during the Term of this Agreement.

12.5.3 Contribution in Support of Public Transit Improvements**.** Although under no prior independent obligation to do so, City has requested and Developer hereby agrees that to allay concerns that may arise regarding increased traffic flow after completion of the Project, Developer shall contribute to City the amount of Fifty Thousand Dollars ($50,000) per annum to defray the costs that may be incurred by City to adjust routes and interval frequency of public transportation serving the Project and surrounding areas, payable annually commencing on the commencement date of the GP Lease for the Arena Parcel and continuing on each anniversary thereof until the aggregate amount of such payments equals One Million Five Hundred Thousand Dollars ($1,500,000). Developer may at any time elect to prepay such amount in whole or part as long as the total payments equal One Million Five Hundred Thousand Dollars ($1,500,000).

12.5.4 Public Safety Facility. Developer shall design to City's specifications, the Public Safety Facility containing not less than 1500 square feet and cause such facility to be constructed as part of Phase 1A or 1B of the Project at Developer's sole cost and expense, although Developer shall not be required to furnish the interior of the Public Safety Facility apart from built-ins and standard tenant improvements. On completion, the Public Safety Facility shall be made available to City without payment of rent or common area maintenance and operation costs for a period not less than thirty (30) years during the term of the GP Lease for the Arena Parcel. The City shall be responsible for maintenance, repair, operation and liability relating to its use of the Public Safety Facility (and shall maintain personal property insurance and commercial liability insurance coverage in customary amounts mutually approved by City and Developer, subject to such insurance being provided pursuant to any self-insurance program of City disclosed to Developer, listing Developer as an additional insured party) (excluding the structural components, but including the windows, plumbing and roof) and for payment of all separately metered utilities and services such as for electricity, gas, telephone, internet and cable services. Developer shall not have access to the Public Safety Facility during its use by the Tempe police, fire, and other emergency response departments except for supervised access as required for any building maintenance to be performed by Developer. The exact design and construction parameters shall be mutually agreed upon by City and Developer during the Planning Phase and shall be embodied in the Development Plan. City and Developer shall execute a lease consistent with the foregoing terms to document their agreement relating to the Public Safety Facility as provided herein.

12.5.5 Cost Sharing. Although under no prior independent obligation to do so, City has requested and in recognition of the potential need for increased public safety expenditures by City resulting from completion of the Project, Developer hereby agrees to make a contribution to City in an amount not less than One Million One Hundred Thousand Dollars ($1,100,000) per annum, payable annually commencing on the date of execution of the GP Lease for the Arena Parcel and continuing on each anniversary thereof until expiration of the GP Lease for the Arena Parcel. On each anniversary of the date of execution of the GP Lease for the Arena Parcel, the amount of the payment shall be adjusted to reflect any changes in the Index that have occurred during the preceding twelve (12) month period, but in no event will the amount payable be reduced to an amount less than One Million One Hundred Thousand Dollars ($1,100,000); provided that on each anniversary of the execution of the GP Lease for the Arena Parcel, the amount payable shall be adjusted to reflect changes in the Index during the preceding twelve (12) month period. Developer acknowledges that the support payments are not associated with any

particular level of service at the Project, and do not entitle Developer to any form of traffic control, public safety personnel, or presence of other City personnel in connection with any event or ongoing operations at the Project. City shall not be obligated or required to provide any such traffic control, public safety personnel or emergency response services except in accordance with a separate written agreement consistent with City's normal procedures and standard rates for the provision of such services. Developer acknowledges that it alone shall be and remain responsible and liable for all costs associated with the operation of the Project and all of its various components, including during the term of any GP Lease.

12.5.6 Contribution in Support of Workforce and Other Affordable Housing Initiatives. Although under no prior independent obligation to do so, and to support City's efforts to promote construction of affordable workforce housing within the City, City has requested and Developer hereby agrees to make a contribution to City in the amount of Two Million Dollars ($2,000,000), payable in four (4) annual installments of Five Hundred Thousand Dollars ($500,000) each, commencing on the date of execution of the GP Lease for the Arena Parcel and continuing on each anniversary thereof until the aggregate amount of such payments equals Two Million Dollars ($2,000,000); provided that Developer may at any time elect to prepay such amount, so long as the entire Two Million Dollars ($2,000,000) is paid.

12.5.7 Contribution to Discretionary Funds. Although under no prior independent obligation to do so, and to support City's efforts to promote enhancements to the City, Developer agrees to make a contribution to City in the amount of One Million Five Hundred Thousand Dollars ($1,500,000), payable in eight (8) annual installments of One Hundred Eighty-Seven Thousand Five Hundred Dollars ($187,500) each, commencing on the date of execution of the GP Lease for the Arena Parcel and continuing on each anniversary thereof until the aggregate amount of such payments equals One Million Five Hundred Thousand Dollars ($1,500,000); provided that Developer may at any time elect to prepay such amount, as long as the entire One Million Five Hundred Thousand Dollars ($1,500,000) is paid. City shall use such funds for the provision of social services and other uses as the City's City Council determines is appropriate in its discretion.

12.5.8 Marketing Suite. Developer will provide City free use of a premium area suite (the "Suite") in the Arena until the expiration, or earlier termination, of the Arena GP Lease. In that regard, City will receive free tickets (in the amount of fixed seats and allowed overflow) in the Suite for each ticketed Coyotes game and non-Coyote events held at the Arena during that time period. If a non-Coyote event has more than one performance date, City may select only one of the performance dates. The location of the Suite shall be determined by the Developer in its sole discretion. City will be responsible for the purchase of any and all food and beverage served in the Suite. All food and beverages served in the Suite must be purchased from the Arena operator.

12.6 Additional Developer Agreements. Developer shall provide the following additional items:

12.6.1 During the term of the GP Lease for the Music Venue (or other relevant portion of the Arena Components), Developer shall allow City to use at no cost to City

(including without limitation rent, utilities, or other assessments) for such purposes as City may desire, on days and times approved by Developer and subject to the applicable rules and regulations and terms of the Declaration regarding use thereof (a) the Music Venue for no fewer than five (5) days per year, (b) the Arena for no fewer than three (3) days per year, and (c) the outdoor covered venue for no fewer than ten (10) days per year.

12.6.2 During the term of the GP Lease for the Arena Component, Developer shall pay to Valley Metro an amount not less than Four Hundred Fourteen Thousand Dollars ($414,000) per year to defray the costs of additional ride-sharing services Developer may request from Valley Metro to and from the Project during high-capacity events at the Arena, and for any additional shuttle service Developer may request between the light rail stops and the Arena on high-capacity event nights.

12.6.3 During the term of the GP Lease for the Arena Component, Developer shall provide City with the use of not less than three thousand (3,000) square feet of class A office space within the Project, at Developer's cost and expense, although Developer shall not be required to furnish the interior of such office space apart from built-ins and standard tenant improvements. The office space shall be made available to City without payment of rent or common area maintenance and operation costs for a period not less than thirty (30) years during the term of the GP Lease for the Arena Parcel. The City shall be responsible for maintenance, repair, operation and liability relating to its use of the office space (and shall maintain personal property insurance and commercial liability insurance coverage in customary amounts mutually approved by City and Developer, subject to such insurance being provided pursuant to any self-insurance program of City disclosed to Developer, listing Developer as an additional insured party) (excluding the structural components, but including the windows, plumbing and roof) and for payment of all separately metered utilities and services such as for electricity, gas, telephone, internet and cable services. Developer shall not have access to the office space during its use by the City except for customary access rights provided to commercial landlords. City and Developer shall execute a lease consistent with the foregoing terms to document their agreement relating to the office space as provided herein.

12.6.4 City and Developer hereby acknowledge that the distinctive location of the Project, and its development into a mixed-use development presents a unique opportunity to enhance the visual design elements to be incorporated into the Project. The standard City requirements for expenditures toward Art in Private Development and Art in Public Spaces (as defined in and determined in accordance with Section 4-407 of the City of Tempe Zoning and Development Code) would require expenditure of approximately Two Million Five Hundred Thousand Dollars ($2,500,000); however, in recognition of Developer's desire to further enhance the prestige of the Project, Developer has committed to expending no less than Seven Million Dollars ($7,000,000) for the exhibition and integration, of public art within the Project (which expenditures shall not include design, construction or installation of standard architectural elements of any Improvements (i.e., elements which are not works of art or other integrated artwork designed by an artist). Developer shall retain a public art consultant to act as a liaison with the City's Public Art Manager for purposes of submitting plans for public art to be installed in the Project for review and comment by the City of Tempe's Arts and Culture staff. The Public Art Plan will also be presented to the and Tempe Arts and Culture Commission for review and

comment. Public art submittals will include the proposed location within the Site Plan, artist information including biography, resume and past work examples (subject to modification of this requirement in connection with youth artist or other novice or artist submittals selected by Developer and subject to use of Developer's additional resources), and the proposed artworks or plans for same.

12.6.5 During the term of the GP Leases for the Arena Components, Developer shall allow City to use the Event Plaza, at no cost to City (including without limitation rent, utilities, or other assessments) for no fewer than five (5) days per year for such purposes as City may desire on days and times approved by Developer and subject to the applicable rules and regulations and terms of the Declaration and Developer's customary Event Plaza license agreement.

12.6.6 Developer, an Affiliate of the ownership group of the Arizona Coyotes, is a minority owned business ("MBE") and recognizes the importance of supporting similar enterprises, including minority, woman, handicapped, veteran, disadvantaged business enterprises ("MBE/WBE/HV/DBE"). Further, to the extent permitted by state law, Developer agrees that, with respect to the Project, Developer shall cause the general contractor or construction manager at risk to apply reasonable efforts to register and utilize one or more apprenticeships and skilled worker programs to provide high quality training for skilled workers. Moreover, in supporting MBE/WBE/HV/DBE, Developer voluntarily has offered, and the City and Developer have agreed, that the following points will be required as part of the contract with the general contractor or construction manager at risk:

12.6.6.1 Onsite construction of the Arena and practice facility will include a requirement that the trade partners and sub-contractors be licensed and highly skilled in their trades. To assure the application of the preceding sentence, the general contractor and/or construction manager will ensure at least twenty percent (20%) by dollar volume of the subcontracts for work for the Arena and practice facility will be awarded to firms falling within a collective bargaining agreement in Arizona.

12.6.6.2 Onsite construction of Infrastructure Improvements will include a requirement that the respective trade partners and sub-contractors be licensed and highly skilled in their trades. To assure the application of the preceding sentence, the general contractor and/or construction manager will ensure at least twenty percent (20%) by dollar volume of the subcontracts for work for the Public Infrastructure (excluding excavation and remediation), be awarded to firms falling within a collective bargaining agreement in Arizona.

12.6.7 Developer shall provide the City a payment of Two Hundred Thousand Dollars ($200,000) annually during the term of the GPLET Lease for the Arena toward the City's expenditure for traffic control improvements at the Priest Drive and 202/143 entrance directed toward enhancing access to the Airport and reducing "cut-through" traffic into and out of the Airport grounds. City agrees that it will work in combination with the City of Phoenix in expenditure of such funds; provided that on each anniversary of the execution of the GP Lease for the Arena Parcel, the amount payable shall be adjusted to reflect changes in the Index during the preceding twelve (12) month period.

12.6.8 Relocation of Historic Officers' Quarters. Developer will require that the Officers' Quarters be relocated in connection with the Yard Relocation as provided in Section 5.7.2, which City is willing to undertake with Developer's financial support. Accordingly, Developer shall reimburse City up to Twenty Thousand Dollars ($20,000) for the direct costs City incurs in relocating the Officer's Quarters buildings to a site selected by City.

12.7 Indemnity of City by Developer. Subject to Applicable Laws, Developer agrees to pay, defend, indemnify, and hold harmless City and its City Council members, officers and employees (the "Indemnified Parties") from and against Claims set forth in, or arising from, a lawsuit in which the City is a named defendant with respect to or in connection with any action taken by the City or its City Council with respect to the terms of Developer's design, construction, and structural engineering acts or omissions related in any way to, of, or in connection with, any Infrastructure Improvements and the Major Components constructed on the Property (collectively, the "Improvements") (including, but not limited to, land used for construction staging pursuant to temporary construction licenses), all subsequent design, construction, engineering, and other work by or on behalf of Developer in connection with such Improvements, and Developer's maintenance pursuant to Sections 5.2.7 and 5.2.8 (all of the foregoing collectively "Development Claims" and Developer's obligation, the "Development Indemnity"). Such Development Indemnity shall survive the expiration or earlier termination of this Agreement. The Development Indemnity shall not apply to the extent such Claims arise from or relate solely to the grossly negligent or intentional acts or omissions of the Indemnified Parties. If the Indemnified Parties are made defendant(s) in any action, suit or proceeding brought by a third party by reason of any of the occurrences described in this Section, City or such other Indemnified Party shall tender defense of any such Claim subject to Developer's Development Indemnity to Developer promptly and in sufficient time to avoid prejudice, and Developer shall have the right to assume and control the defense thereof with counsel selected by Developer and reasonably approved by the Indemnified Party. Any additional counsel hired or engaged by an Indemnified Party shall be the sole cost and expense of the Indemnified Party and/or City, as applicable. Following an Indemnified Party tendering of defense of any such Claim subject to Developer's Development Indemnity hereunder to Developer, Developer shall at its own expense: (i) resist and defend such action suit or proceeding or cause the same to be resisted and defended by such counsel designated by Developer; and (ii) if any such action, suit or proceeding results in a Final, Judgment against the Indemnified Party, Developer promptly shall satisfy and discharge such Final Judgment or shall cause such Final Judgment to be promptly satisfied and discharged.

12.8 Indemnity and Defense of Aviation Related Suits. City's consideration of the Project and negotiation of the Development Agreement have generated outside interest. Accordingly, and to induce City to enter this Agreement, Developer agrees to pay, defend, indemnify, and hold harmless the Indemnified Parties from and against all Claims set forth in, or arising from, a lawsuit brought by the City of Phoenix, any entity designated to operate the Airport, or any entity related to them (the "City of Phoenix Authorities") where City is a named defendant with respect or relating, directly or indirectly, to the residential components of the Project if authorized for development on the Property and if challenged as being in violation of the IGA or the Record of Decision entered by the FAA originally dated January 18, 1994, but amended to accommodate the City's requirements with respect to the IGA for noise abatement procedures by an Amendment to Approved Record of Decision dated September 13, 1994 (collectively, and as

amended from time to time, the "ROD"), all of the foregoing, collectively, "Aviation Claims" and Developer's obligation, the "Aviation Indemnity." If City finds it necessary to countersue either the FAA or the City of Phoenix due to any Aviation Claims, Developer agrees to pay, defend, indemnify, and hold harmless the Indemnified Parties from and against all such counterclaims with respect to such Aviation Claims.

12.9 Indemnity and Defense of Referendum Related Suits. Developer has indicated that Developer shall submit the PAD, the General Plan Amendment, and the Development Agreement to Tempe voters in accordance with Title 19 of the Arizona Revised Statutes, as amended (the "Referral") by filing petitions for the Referral to qualify for a special election (the "Referendum Election") subject to City and County undertaking actions relating thereto pursuant to Applicable Laws. In connection with seeking to qualify the Referral for the Referendum Election, Developer acknowledges that City's City Council must undertake a "call" for an election (a "Call for Election"). Subject to Applicable Laws, Developer agrees to pay, defend, indemnify, and hold harmless the Indemnified Parties from and against all Claims set forth in, or arising from, a lawsuit in which the City is a named defendant with respect to or in connection with any action taken by the City or its City Council with respect to the Referral, the Call for Election, or the Referendum Election; (all of the foregoing, collectively, "Referral Claims" and Developer's obligation, the "Referral Indemnity"). The Referral Claims, Airport Claims and Development Claims shall be referred to herein, collectively, as the "Project-Specific Claims." Developer's obligations for the Referral Indemnity, Aviation Indemnity and Development Indemnity shall be referred to herein collectively as the "Project-Specific Indemnity." Such Project-Specific Indemnity shall survive the expiration or earlier termination of this Agreement.

12.10 Limitations and Application of Indemnity. The Project-Specific Indemnity shall not apply to the extent the Project-Specific Claims arise from or relate to: (1) the grossly negligent or intentional act(s) or omission(s) of an Indemnified Party; (2) the City's nonfulfillment, nonperformance, inaccuracy in, or breach of any covenant, agreement, representation or warranty of City unrelated to the residential components of the Project, if and as judicially determined, as set forth (y) with respect to Aviation Claims, in the IGA, any other document or agreement between City and the City of Phoenix Authorities (including any such agreement also involving third-parties such as other governmental entities) or given by or on behalf of City to the FAA, City of Phoenix or any other party to the IGA in connection with such agreement, in any such case unrelated to the residential components of the Project, or (z) with respect to any Referral Claims, related to the Referral, Referendum Election or Call for Election. The Project Specific Indemnity also shall not apply to any Project-Specific Claims that Applicable Laws prohibit from being imposed upon the indemnitor. Notwithstanding anything else in this Agreement, such "negligent acts" shall not be deemed to include any action or omission of an Indemnified Party in reliance on materials, representations, or claims expressly made by Developer in any written materials or document provided by Developer to an Indemnified Party. If City or any other Indemnified Party is made a defendant in any action, suit or proceeding brought by a third party for a Project-Specific Claim, City or such other Indemnified Party shall tender defense of any such Project-Specific Claim subject to Developer's Project-Specific Indemnity hereunder to Developer promptly and in sufficient time to avoid prejudice, and Developer shall have the right to assume and control the defense thereof with counsel selected by Developer and reasonably approved by the Indemnified Party. Any additional counsel hired or engaged by an Indemnified Party shall be the sole cost and expense of the Indemnified Party

and/or City, as applicable. Following an Indemnified Party tendering of defense of any such Project-Specific Claim subject to Developer's Project-Specific Indemnity hereunder to Developer, Developer shall at its own expense: (i) resist and defend such action suit or proceeding or cause the same to be resisted and defended by such counsel designated by Developer; and (ii) if any such action, suit or proceeding results in a final, non-appealable judgment against the Indemnified Party, Developer promptly shall satisfy and discharge such judgment or shall cause such judgment to be promptly satisfied and discharged; provided, however, Developer may elect in its sole discretion to satisfy and discharge any non-final, appealable judgment against the Indemnified Party rather than appealing same, to settle the Project-Specific Claim at Developer's sole expense or to voluntarily terminate this Agreement and thereby render the Project-Specific Claim to be moot, in which case Developer shall seek, with City's full cooperation, Dismissal of Litigation regarding any such Project-Specific Claim. Notwithstanding anything in the foregoing provisions of Sections 12.7, 12.8 and 12.9 to the contrary, (x) the Project-Specific Indemnity obligations of Developer under this Agreement shall be offset or reduced by the full amount of such net insurance proceeds and/or such indemnity, contribution or other similar payment received by the Indemnified Party or Parties in connection with the related Project-Specific Claim(s), and (y) Developer voluntarily terminates the Development Agreement, Developer's Project-Specific Indemnity obligations under this Agreement automatically shall terminate as of the date of such termination, as applicable, shall be of no further force and effect, and shall not thereafter survive the termination of this Agreement, except as expressly set forth in this Agreement. The Indemnified Parties shall cooperate with and vigorously support Developer's indemnification efforts in connection with the defense of any Project-Specific Claim against any Indemnified Parties including assisting with discovery and disclosure efforts and requirements and, if requested by Developer, shall authorize Developer's intervention in any proceeding relating to a Project Specific Claim.

12.11 Risk of Loss. Developer assumes the risk of any and all loss, damage or claims to any portion of the Infrastructure Improvements unless and until title to any Infrastructure Improvements passes to the City. At the time title to the Infrastructure Improvements passes to the City by dedication deed, plat recordation, or as otherwise required by the City, Developer will, to the extent allowed by Applicable Laws, assign to City any unexpired warranties relating to the design, construction and/or composition of such Infrastructure Improvements.

12.12 Insurance. During any period of construction on the Property and with respect to any construction activities related to the same, Developer will obtain and provide City with proof of payment of premiums and certificates of insurance showing that Developer is carrying, or causing its contractor(s) to carry, policies of insurance in amounts and coverages set forth on Exhibit O. Such policies of insurance will be placed with financially sound and reputable insurers, require the insurer to give at least thirty (30) days advance written Notice of cancellation to City, and will name City as an additional insured on such policies.

13. Breach & Remedies.

13.1 Events of Default by Developer. "Default" or an "Event of Default" by Developer under this Agreement will mean the breach, default, or failure by Developer to satisfy any obligation or agreement herein, including without limitation, one or more of the following:

13.1.1 Any representation or warranty made in this Agreement by Developer materially was inaccurate when made or will prove to be materially inaccurate during the Term;

13.1.2 Developer fails to comply with any Developer deadline in the Schedule of Performance (as it may be adjusted pursuant to this Agreement);

13.1.3 Foreclosure (or deed in lieu of foreclosure) upon any mechanic's, materialmen's or other lien on any Parcel of the Property prior to Completion of Construction of the required Minimum Improvements to be constructed on the Parcel, but such lien will not constitute a Default if Developer deposits in escrow sufficient funds to discharge the lien, bonds over such lien in a customary fashion or takes prompt action to secure the release of the lien while keeping City informed regarding the steps Developer is undertaking to secure the release of such lien pending the resolution of any disputed lien claim;

13.1.4 Developer Transfers this Agreement in violation of Section 15; or

13.1.5 Developer fails to observe or perform any other material covenant, obligation, or agreement required of it under this Agreement, including without limitation any such covenants relating to collection of the Developer Surcharge.

13.2 Events of Default by City. "Default" or an "Event of Default" by City under this Agreement will mean one or more of the following:

13.2.1 Any representation or warranty made in this Agreement by City was materially inaccurate when made or will prove to be materially inaccurate during the Term;

13.2.2 City fails to comply with any City deadline in the Schedule of Performance (as it may be adjusted pursuant to this Agreement); or

13.2.3 City fails to observe or perform any other material covenant, obligation, or agreement required of it under this Agreement.

13.3 Grace Periods; Notice; Cure. Upon the occurrence of an Event of Default by any Party, such Party will, upon written Notice from the other Party specifying in reasonable detail the Event of Default and requirements for the cure of such Event of Default, proceed immediately to cure or remedy such Default and, in any event, (1) such Default will be cured within thirty (30) days after receipt of such Notice; or (2) if such Default is of a nature that it is not capable of being cured within thirty (30) days following receipt of such Notice, such cure or remedy will be commenced within such period and diligently pursued to completion.

13.4 Remedies for Default. Whenever any Event of Default occurs and is not cured (or cure undertaken) by the defaulting Party in accordance with this Agreement, the other Party may take any of one or more of the following actions:

13.4.1 Remedies of City. City's remedies for an uncured Event of Default by Developer shall be all remedies available at law or in equity, including, without limitation, any of the following:

13.4.1.1 If an uncured Event of Default by Developer occurs prior to Completion of Construction of the Minimum Improvements required by the terms of this Agreement for any Phase, City may terminate this Agreement and any license or lease; provided, however, that in no event shall any such termination affect any Parcel within the Project previously acquired by Developer and with respect to which Developer has Commenced Construction of Improvements thereon.

13.4.1.2 Notwithstanding the foregoing, at any time City may seek special action or other similar relief (whether characterized as mandamus, injunction or otherwise), requiring Developer to undertake and fully and timely to address or to enjoin any construction or activity undertaken by Developer that is an Event of Default under this Agreement.

13.4.1.3 Notwithstanding the foregoing, City at any time may seek indemnity (including but not limited to an action for damages) arising under Developer's obligations of Indemnity set forth in Section 12.

13.4.1.4 Notwithstanding the foregoing, the CFD at any time may enforce its rights given under any bond or similar financial assurance given or provided by or for the benefit of Developer pursuant to this Agreement or any agreement associated with such bond.

13.4.2 Remedies of Developer. Developer's remedies for an uncured Event of Default by City shall be all remedies available at law or in equity, including, without limitation, filing a special action or other similar relief (whether characterized as mandamus, injunction or otherwise) requiring City to undertake and fully and timely to perform its obligations under this Agreement and as provided in Section 11, if City fails to convey the Property or any portion thereof to Developer pursuant to this Agreement.

13.5 Waiver of Certain Damages. Notwithstanding anything in this Agreement to the contrary, each of City and Developer waives its right to seek and recover consequential, exemplary, special, beneficial, numerical, punitive, or similar damages from the other, the only permitted claim for damages being actual damages reasonably incurred by the aggrieved Party.

13.6 Delays; Waivers. Except as otherwise expressly provided in this Agreement, any delay by any Party in asserting any right or remedy under this Agreement will not operate as a waiver of any such rights or limit such rights in any way; and any waiver in fact made by such Party with respect to any Default by the other Party will not be considered as a waiver by the performing Party of rights with respect to any other Default or with respect to the particular Default except to the extent specifically waived in writing. It is the intent of the Parties that this provision will enable each Party to avoid the risk of being limited in the exercise of any right or remedy provided in this Agreement by waiver, laches or otherwise at a time when it may still hope to resolve the problems created by the Default involved.

14. Compliance with Law. Developer shall comply with all Applicable Laws that affect the Property as are now in effect or as may hereafter be adopted or amended. City shall comply with all Applicable Laws relating to City's performance of its obligations under this Agreement.

15. Assignability.

15.1 Restriction on Transfers. The rights established under this Agreement and the Development Plan are not personal rights but attach to and run with the Property; provided that in connection with the conveyance by Developer of a Parcel or Project Element to a third-party or conveyance of residential units located within a Project Element to a third-party, the purchaser shall not succeed to Developer's obligations under this Agreement and Developer shall retain such obligations unless they are expressly assigned to and assumed by the purchaser. All the provisions here of shall inure to the benefit of and be binding upon the successors and assigns of the Parties hereto pursuant to A.R.S. 9-500.05(D). Notwithstanding the foregoing, prior to Completion of Construction of respectively, the Phase 1A Minimum Improvements, the Phase 1B Minimum Improvements, the Phase 2A Minimum Improvements and the Phase 2B Minimum Improvements (each, the "Applicable Minimum Improvements") for each applicable Phase, no assignment or similar transfer of Developer's interest in the Property or this Agreement, or in the current management, ownership or control of Developer (each, a "Transfer") may occur without the City's written consent, except that as to this Agreement, the Project and each Phase, Developer shall have the right to assign its rights under this Agreement and with respect to the Project and each Phase, without first obtaining the prior consent of the City, as long as the assignee and related assignment is to: (a) an Affiliate of Developer (or of an authorized assignee of Developer or its authorized successor); (b) a successor pursuant to a Corporate Succession; (c) a Mortgagee or one or more other lenders related to financing of all or any portion of the Project and Developer's grant of any security interest in Developer's interest in all or any portion of the Property and this Agreement (subject to the requirements of this Agreement; and (d) the grant of easements, permits, licenses and dedications in connection with development of the Project. Any other assignment of Developer's rights under this Agreement shall require City's prior written consent thereto, which may be withheld in City's sole discretion. Developer shall provide City with a true and correct copy of any such assignment, together with a copy of the document or instrument pursuant to which such assignee fully assumes all of Developer's covenants and obligations under this Agreement and agrees to be bound by the terms and conditions of this Agreement. Except as otherwise expressly provided in this Agreement, the assignment by Developer of its rights under this Agreement shall not relieve Developer personally of any obligations, unless the assignment is to an authorized Affiliate of Developer, to a successor pursuant to a Corporate Succession, or City expressly agrees to such relief in writing, and any assignment that does not comply in all respects with this Section shall be void, and not voidable.

15.2 Termination of Restrictions on Transfers. The restrictions on any Transfer set forth in this Section 15 will terminate automatically, and without further Notice or action, with respect to each Parcel upon Completion of Construction of the Applicable Minimum Improvements on such applicable Parcel; provided, however, that no Transfer will release or discharge Developer from any of its obligations arising in or under this Agreement prior to the

date of such Transfer on Completion of Construction, including but not limited to the obligations of indemnity, and further provided that, upon a Transfer, the transferee (without further act or writing required) is deemed fully, automatically, and unconditionally to have assumed all obligations of Developer arising in or under this Agreement, including but not limited to all obligations of indemnity, but only with respect to the specific Parcel acquired by such transferee. No voluntary or involuntary successor in interest to Developer may acquire any rights or powers under this Agreement except as expressly set forth in this Agreement, and any Transfer in violation of this Agreement will be void, and not voidable.

16. Mortgagees.

16.1 Developer may, at any time, and from time to time, encumber and/or assign all or any portion of its interest in this Agreement and in the Property and/or any Parcel(s) that are subject to this Agreement pursuant to one or more deeds of trust, mortgages or other security instruments with respect to Developer Financing as set forth in this Agreement (each a "Mortgage" and the holder of a Mortgage shall be referred to herein as a "Mortgagee"), without City's prior consent; provided, however, the terms of each Mortgage must satisfy the conditions of this Section. City agrees that each Mortgage may be a lien on all or any portion of Developer's interests in and to the Property (or any portion(s) thereof), this Agreement or other agreements between Developer and third parties relating to the construction or operation of the Project Improvements. Except as specifically set forth herein, each Mortgage shall be subject to the terms and provisions of this Agreement; and the holder of any Mortgage, or anyone claiming by, through or under the same, shall not, by virtue thereof, acquire any greater rights hereunder than Developer has under this Agreement. No Mortgagee shall be obligated under this Agreement unless and until such Mortgagee has foreclosed on the interest of Developer, or received a deed in lieu or similar agreement, with respect to the particular Improvements subject to their interest and has so notified the City in writing.

16.2 A Mortgagee must give written Notice to City of its name and Notice address if it wishes to benefit from the provisions of this Section. If such written Notice is given, City shall give to such Mortgagee a copy of each Notice of Default by Developer at the same time as such Notice of Default is given to Developer, addressed to such Mortgagee at its address last furnished to City. No such Notice by City to Developer hereunder shall be deemed to have been duly given unless and until a copy thereof has been served on such Mortgagee in the manner provided in this Agreement.

16.3 If City has a right to terminate this Agreement as a result of an Event of Default, City shall not terminate this Agreement because of such Event of Default hereunder on the part of Developer if such Mortgagee, within the period of sixty (60) days, with respect to a monetary Default by Developer, or sixty (60) days, with respect to a non-monetary Default, after service of written Notice by City to the Mortgagee of City's intention to terminate this Agreement for such Event of Default, cures such Default (or if a non-monetary Default cannot be cured or corrected within that time, then such additional time as may be necessary if such Mortgagee has commenced such cure within such additional sixty (60) day period, communicated the course of its actions to the City and is diligently and persistently pursuing to completion the remedies or steps necessary to cure or correct such Default). If reasonably requested by City, each Mortgagee

shall provide evidence to City of the steps and remedies such Mortgagee is taking diligently to cure or correct such Default. If Developer commits a Default with respect to the performance of its obligations hereunder, such Mortgagee shall have the right to remedy such Default or cause the same to be remedied within the period and otherwise as provided herein. Notwithstanding Section 16.1 above, City will accept performance by any such Mortgagee of any covenant, condition, or agreement on Developer's part to be performed hereunder with the same force and effect as though performed by Developer.

16.4 The time of the Mortgagee to cure any Default by Developer that reasonably requires that said Mortgagee be in possession of the portion of the Property and Project Improvements subject to its interest to do so shall be deemed extended to include the period of time required by said Mortgagee to obtain such possession (by foreclosure or otherwise) in good faith with due diligence; provided, however, that such Mortgagee shall have commenced proceedings to acquire possession of the portion of the Property and Project Improvements subject to its interest within the time periods for cure set forth in Section 16.3, above, and communicated its intent to the City. If a Mortgagee is seeking to foreclose on such Mortgagee's security interest in the Property and Project Improvements, City shall not seek to terminate this Agreement as a result of an Event of Default as long as the Mortgagee is diligently seeking to foreclose on Developer's interest in the Property and Project Improvements and as long as any monetary Default has been cured or is being cured within the time frames set forth above. If reasonably requested by City, each Mortgagee shall provide evidence to City of the steps and remedies such Mortgagee is taking diligently to foreclose on Developer's interest. If any Mortgagee forecloses on Developer's interest in any Parcel, the Property or the Project Improvements, City shall recognize such Mortgagee or other Developer at a foreclosure sale as "Developer" for all purposes under this Agreement. Upon the foreclosure of any Mortgage, any non-monetary Default that is personal to Developer, which does not pertain to any Parcel, the Property or the Project Improvements, and that is not capable of being cured shall be deemed waived by City (it being acknowledged that a use of the Property and Project Improvements after a foreclosure in violation of this Agreement is not personal to Developer).

16.5 If this Agreement is terminated for any reason, or if this Agreement is rejected in a bankruptcy proceeding, City shall give Notice to each Mortgagee of such termination upon the City having knowledge of such termination. Within thirty (30) days after a Mortgagee receives Notice of such termination, the Mortgagee may elect, by delivering written Notice to City within such thirty (30) day period, to enter into a new agreement with the City upon the same terms and conditions as this Agreement, provided, that, (i) prior to entering into such new agreement, such Mortgagee shall have cured each monetary Default and each non-monetary Default that is capable of being cured (or, with respect to non-monetary Defaults only, has provided adequate assurances to City, as determined by City in its reasonable discretion, that any such non-monetary Default that is capable of being shall be cured), and (ii) if there is more than one such Mortgagee, the Mortgagee with the senior-most perfected lien shall have the first option to enter into such new agreement, provided, if such senior Mortgagee fails or declines to enter into such new agreement, the next most senior Mortgagee shall have such right. Upon entering into any such new agreement, each non-monetary Default that is personal to Developer and that is not capable of being cured shall be deemed waived by City with respect to the Mortgagee (it being acknowledged that a use

of the Project Improvements after a foreclosure in violation of this Agreement is not personal to Developer).

16.6 If a Mortgagee becomes the successor to Developer hereunder, whether by foreclosure or deed in lieu of foreclosure, or under a new agreement in accordance with Section 16.5 above, the Parties acknowledge and agree that such Mortgagee shall not be liable or responsible for and shall not be deemed to have assumed liability for any other prior actions, omissions, defaults, breaches or other events caused by or relating to the actions (or inactions) of Developer. Rather, such Mortgagee shall only be liable and responsible for acts, omissions, defaults, breaches, or events occurring while it is the developer hereunder. Any obligations of Mortgagee (or any successor) is limited to its interest in the Property and the City shall not attempt to collect any judgment or obligations out of any other assets of such Mortgagee (or any successor). Nothing in this paragraph is intended to release or limit Developer's obligations pursuant to this Agreement prior to such time as Mortgagee becomes the successor to Developer hereunder.

16.7 If a Mortgagee or its affiliates succeed to Developer's interest in the Property and the Project Improvements, the Mortgagee shall provide Notice to City. Notwithstanding Section 15.1, Mortgagee shall have the right to transfer the Property and the Project Improvements the Mortgagee possesses, subject to the provisions of this Agreement. In no event shall City's consent be required for any Transfer to a Mortgagee as a result of a foreclosure, trustee's sale, or delivery of a deed in lieu of foreclosure. Upon the Transfer of this Agreement by Mortgagee or its affiliates to a third party, and approval thereof (as provided herein) by the City, then such Mortgagee or its affiliates shall have no further obligations under this Agreement arising from and after the date of such Transfer provided that the Mortgagee has provided Notice of such transfer to the City. Notwithstanding the foregoing, Mortgagee shall remain liable for its acts during such time as the Mortgagee was the "Developer" for purposes of this Agreement.

16.8 City shall not agree to any amendment, modification, or cancellation of this Agreement or terminate this Agreement (except for an Event of Default that has not been cured within the time periods permitted under this Agreement including all applicable Notice and cure periods given to a Mortgagee under this Agreement) unless Developer has, at Developer's sole cost and expense, first obtained and delivered to City a copy of each Mortgagee's prior written consent.

16.9 At any time within twenty-one (21) days after Notice of request by either City or Developer, the other Party shall execute, acknowledge, and deliver to the requesting Party, or any lender to or Developer from such Party, a statement certifying to the following facts regarding this Agreement: that this Agreement is unmodified (or stating any modifications that are in existence) and in full force and effect and that no Default exists on the part of either City or Developer (or specifying the nature of any Default that does exist) or any other statements as may reasonably be requested by a Mortgagee or a Developer as long as such additional statements do not increase or modify City's or Developer's obligations or liabilities under this Agreement. The statement may be relied upon by any auditor for, creditor of, or Developer from the requesting Party.

16.10 City and Developer shall cooperate in including in this Agreement, by suitable amendment from time to time, any provision which may be reasonably requested by any proposed Mortgagee for the purpose of implementing the mortgagee-protection provisions contained in this Agreement, and otherwise as may be requested to allow Mortgagee reasonable means to protect or preserve the lien of any Mortgage upon the occurrence of a Default under this Agreement, and of confirming the elimination of the ability of Developer to amend, modify, cancel or terminate or waive this Agreement or any of its provisions, except as otherwise stated herein, without the prior written approval of Mortgagee. The City and Developer each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to affect any such amendment; provided, however, that any such amendment shall not, in any material way, adversely affect any rights of the City under this Agreement.

16.11 If there is a conflict between any other provision of this Agreement and this Section 16, the provisions of this Section 16 shall control. Each Mortgagee is a third-party beneficiary of the provisions of this Section 16.

17. Referendum; Termination of this Agreement for Failure to Pursue Referendum. Developer has indicated that it intends to submit petitions to the City Clerk for the referral of the PAD, the General Plan Amendment, and this Agreement to City of Tempe voters in accordance with Title 19 of the Arizona Revised Statutes, as amended as a Referral. In such case, Developer shall timely file petitions with at least the minimum required number of signatures pursuant to A.R.S. Section 19-142 for the Referral to qualify for a special Referendum Election and thereafter shall pursue with diligence and perform all actions required of Developer pursuant to Applicable Laws that relate to the referendum process. If at any time thereafter Developer fails to take those steps required of it by Title 19 of the Arizona Revised Statutes, as amended, then the City Council may, within ninety (90) days of such failure, vote to rescind this Agreement, in which case this Agreement shall terminate and be of no further force or effect, except for those provisions that explicitly state they are to survive termination. Developer shall bear the third-party, nonrecoverable actual costs, expenses, and fees associated with the Referral and the Referendum Election, including all third-party, non-recoverable actual costs that may be incurred by City in connection with the Referendum Election. Concurrently with submission of Developer's initial petition for Referral, Developer shall provide the City Clerk with a deposit in an amount equal to the then current per signature rate set forth in A.R.S. §19-121.05, as amended, if such amount is payable by City to County; subject, however to the return of such amount or the credit of same to reimbursable costs payable by Developer to City pursuant to this Section 17, if City or County is reimbursed for such deposit by the Arizona Secretary of State as provided in said statute. If any of the PAD, the General Plan Amendment, or this Agreement is invalidated by referendum or other action, this Agreement shall be void *ab initio.*

18. Miscellaneous. The following additional provisions apply to this Agreement:

18.1 Amendments and Interpretation. This Agreement may not be amended except by a formal writing executed by both Parties. The City Manager may exercise his or her administrative authority to correct scrivener's errors in this Agreement and to interpret and administer this Agreement; however, any material deviations from the provisions of this Agreement must be authorized by the City Council by written amendment to this Agreement.

18.2 Severability. If any term, condition, covenant, stipulation, agreement, or provision in this Agreement is held to be invalid or unenforceable for any reason, the invalidity of any such term, condition, covenant, stipulation, agreement, or provision shall in no way affect any other term, condition, covenant, stipulation, agreement, or provision of this Agreement.

18.3 Conflicts of interest. No member, official, or employee of City shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement, that is prohibited by law. This Agreement is subject to the cancellation provisions of A.R.S. §38-511.

18.4 No Partnership. This Agreement and the transactions and performances contemplated hereby shall not create any sort of partnership, joint venture, or similar relationship between the Parties.

18.5 Notices. Notices hereunder (each, a "Notice") shall be given in writing delivered to the other Party or other applicable Person, or mailed by registered or certified mail, return receipt requested, postage prepaid, or by FedEx or other reliable overnight courier service that confirms delivery. With respect to the Parties, a Notice shall be addressed to a Party as follows:

If to City: City Manager
City of Tempe
31 East Fifth Street
Tempe, Arizona 85281

Copy to: City Attorney
City of Tempe
21 East Sixth Street, Suite 201
Tempe, Arizona 85281

If to Developer: Bluebird Development LLC
8465 North Pima Road, Suite 100
Scottsdale, AZ 85258
Attn: Xavier Gutierrez and Legal Department

Copy to: Snell & Wilmer, LLP
1 East Washington Street, Suite 2700
Phoenix, AZ 85004
Attn: Nick Wood and Joyce Wright

Service of any Notice by mail in accordance with the foregoing shall be deemed to be complete three (3) days (excluding Saturday, Sunday, and legal holidays) after the Notice is deposited in the United States mail. Service of any Notice by overnight courier in accordance with the foregoing shall be deemed to be complete upon receipt or refusal to receive. By Notice from time to time in accordance herewith, either Party (or any other Person seeking to provide Notice) may give Notice

(in recordable form) designating any other street address or addresses as its address or addresses for receiving Notices. A designation by a Party of a new address for shall not be binding or effective unless and until a document referencing this Agreement is recorded in the Official Records of County.

18.6 Payments. Payments shall be made and delivered in the same manner as Notices and shall be effective at the same time that a Notice would be deemed effective under Section 18.5.

18.7 Integration. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all other written or verbal agreements between the Parties with respect to the Property and the Project.

18.8 Construction. Whenever the context of this Agreement requires, the singular shall include the plural, and the masculine shall include the feminine. This Agreement was negotiated on the basis that it shall be construed according to its plain meaning and neither for nor against either Party, regardless of their respective roles in preparing this Agreement. The terms of this Agreement were established in light of the plain meaning of this Agreement and this Agreement shall therefore be interpreted according to its plain meaning and without regard to rules of interpretation, if any, that might otherwise favor Developer or City.

18.9 Section Headings. The Section headings contained herein are for convenience in reference and not intended to define or limit the scope of any provision of this Agreement.

18.10 No Third-Party Beneficiaries. No Person shall be a third-party beneficiary to this Agreement or shall have any right or cause of action hereunder, except with respect to a Mortgagee as specifically set forth in Section 16. City shall have no liability to third parties for any approval of plans, Developer's construction of Project Improvements, Developer's negligence, Developer's failure to comply with the provisions of this Agreement, or otherwise as a result of the existence of this Agreement.

18.11 Exhibits. All exhibits attached hereto as specified herein are hereby incorporated into and made an integral part of this Agreement for all purposes.

18.12 Days; Time. If the last day of any time period stated in this Agreement or the date on which any obligations to be performed under this Agreement falls on a day other than a Business Day, then the duration of such time period or the date of performance, as applicable, shall be extended so that it shall end on the next succeeding Business Day. All references in this Agreement to performance by a particular time of day mean the time of day in Tempe, Arizona.

18.13 Attorneys' Fees. If legal action is brought by a Party because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing Party is entitled to reasonable attorney fees and costs as determined by the court or other decision maker.

18.14 Choice of Law. This Agreement shall be governed by the internal laws of the State of Arizona without regard to choice of law rules.

18.15 Venue and Jurisdiction. Except where Arbitration is required under this Agreement, legal actions regarding this Agreement shall be instituted in the Superior Court of the County of Maricopa, State of Arizona, or in the Federal District Court in the District of Arizona sitting in Maricopa County. City and Developer agree to the exclusive jurisdiction of such courts. Claims by Developer shall comply with time periods and other requirements of City's claims procedures from time to time.

18.16 No Liability of City Officials. No City Council Member, official, representative, agent, attorney or employee of the City shall be personally liable to Developer, or to any successor in interest to Developer, in the Event of Default by the City or for any amount that may be come due to Developer or its successors, or with respect to any obligation of the City under the terms of this Agreement.

18.17 No Waiver. Except as otherwise expressly provided in this Agreement, any failure or delay by any Party in asserting any of its rights or remedies as to any Event of Default, will not operate as a waiver of any Event of Default, or of any such rights or remedies, or deprive any such Party of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert, or enforce any such rights or remedies, including but not limited to rights and remedies existing at common law. Further, all waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of City or Developer, and no waiver by a Party of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or of any other provision of this Agreement.

18.18 Binding Effect. The benefits and burdens of this Agreement shall run with the Property and be binding upon and shall inure to the benefit of the Parties hereto and their respective permitted successors in interest and assigns.

18.19 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall be deemed to be one and the same instrument.

[The balance of this page is blank. Signatures appear on the following pages.]

IN WITNESS WHEREOF, the Parties have executed this Agreement after its approval by the City Council on November __, 2022, to be effective on the Effective Date.

CITY:

CITY OF TEMPE,
an Arizona municipal corporation

By: _____
Corey D. Woods, Mayor

ATTEST:

_____
Carla Reece, City Clerk

APPROVED AS TO FORM:

_____
Sonia Blain, City Attorney

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of November, 2022, by Corey D. Woods, the Mayor of the City of Tempe, an Arizona municipal corporation.

My Commission Expires:

_____
Notary Public

DEVELOPER:

Bluebird Development LLC,
a Delaware limited liability company

By_____

Its_____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing Development and Disposition Agreement was acknowledged before me this _____ day of _____, 2022, by _____ the _____ of Bluebird Development LLC, a Delaware limited liability company, and that in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____

Notary Public

EXHIBIT A-1

LEGAL DESCRIPTION

LOT 1, OF ELEMENTS AT TEMPE CENTER FOR THE ARTS, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY ARIZONA IN BOOK 1021 OF MAPS, PAGE 49.

LOT 2, OF ELEMENTS AT TEMPE CENTER FOR THE ARTS, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, IN BOOK 1021 OF MAPS, PAGE 49.

EXHIBIT A-2

PROPERTY DEPICTION

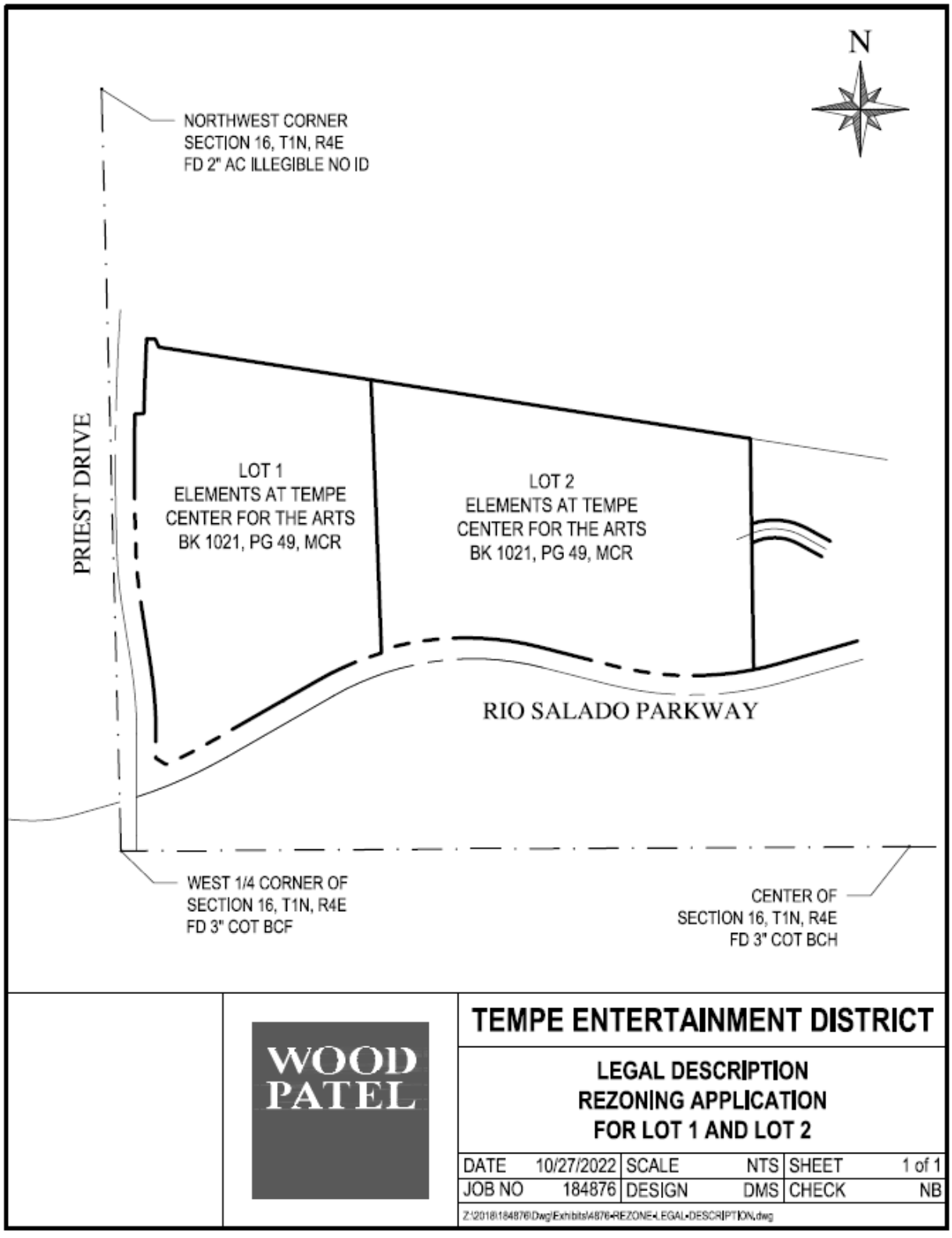


EXHIBIT B

CITIES EXCHANGE OF LETTERS

[*CONTINUES ON FOLLOWING PAGE*]

March 18, 1996

The Honorable Skip Rimsza
Mayor of City of Phoenix
200 W. Washington St., 11th Floor
Phoenix, AZ 85003

Dear Skip:

This letter is to confirm our understanding concerning the transference of Bureau of Land Management (BLM) property to Tempe and our understanding concerning certain land uses in the 65 DNL contour.

The Mayors of the City of Phoenix and the City of Tempe agree that:

BLM land:

1. The City of Tempe will not allow any residential uses on the land described in the attached BLM Notice that the City purchases from the federal Bureau of Land Management. This restriction will be implemented by means of a Deed or Patent Restriction that is recorded as part of the purchase from BLM, and does not apply to hotels, motels and extended stay facilities as that term is defined in the Deed Restriction. In the event that the BLM fails to include the Patent Restriction in the Patent, the City of Tempe will voluntarily restrict the BLM lands to non-residential use, prior to any subsequent transfer, by imposing a conservation easement, zoning or by any other legal means.

2. The City of Phoenix will not protest the City of Tempe's purchase of such BLM land, providing that the City of Tempe complies in full with Point #1 above.

3. It is in the public interest to incorporate the Patent restriction in the BLM Patent in order to insure proper land use in perpetuity.

Land uses in 65 DNL:

4. The Mayors intend to proceed with the development, to the extent permitted by law, of a land use restriction to prohibit any new single-family residential zoning, either for attached or detached dwelling units, within the 65 DLN contour line around Sky Harbor International Airport, "single-family" use denotes allowing no more than one residential dwelling unit on a parcel of land; and

5. The Mayors intend to proceed with the development and implementation of avigation (noise) easements, to the extent that is allowed by law, for any new multi-family residential land use within the 65 DNL contour line. "multi-family" use denotes allowing more than one residential dwelling unit on a parcel of land.

I hope that this letter captures the essence of our discussions. If you agree, please send back a similar letter to indicate the City of Phoenix's intent to follow these policies.

In Service,

Neil G. Giuliano
Mayor

Attachment: BLM Notice

file BLM land

City of Phoenix
OFFICE OF THE MAYOR

RECEIVED
APR 2 2 1996
MAYOR

Winner of the Carl Bertelsmann Prize

SKIP RIMSZA
Mayor

200 West Washington Street, 11th Floor
Phoenix, Arizona 85003-1611
602-262-7111
FAX: 602 495-5583

April 18, 1996

The Honorable Neil G. Giuliano
Mayor of the City of Tempe
31 East Fifth Street
Tempe, Arizona 85280

Dear Neil:

Thank you for your letter of March 29, 1996 relating to our agreement regarding the transference of Bureau of Land Management (BLM) property to Tempe. I confirm that your letter correctly recites our understanding that:

The Mayors of the City of Phoenix and the City of Tempe agree that:

BLM land:

1. The City of Tempe will not allow any residential uses on the land described in the attached BLM Notice that the City purchases from the federal Bureau of Land Management. This restriction will be implemented by means of a Deed or Patent Restriction that is recorded as part o the purchase from BLM, and does not apply to hotels, motels and extended stay facilities as that term is defined in the Deed Restriction. In the event that the BLM fails to include the Patent Restriction in the Patent, the City of Tempe will voluntarily restrict the BLM lands to non residential use, prior to any subsequent transfer, by imposing a conservation easement, zoning or by any other legal means.

2. The City of Phoenix will not protest the City of Tempe's purchase of such BLM land, providing that the City of Tempe complies in full with Point #1 above.

3. It is in the public interest to incorporate the Patent restriction in the BLM Patent in order to ensure proper land use in perpetuity.

Land uses in 65 DNL:

4. The Mayors intend to proceed with the development, to the extent permitted by law, of a land use restriction to prohibit any new single-family residential zoning, either for attached or detached dwelling units, within the 65 DNL contour line around Sky Harbor International Airport. "Single-family" use denotes allowing no more than one residential dwelling unit on a parcel of land; and

5. The Mayors intend to proceed with the development and implementation of avigation (noise) easements, to the extent that is allowed by law, for any new multi-family residential land use within the 65 DNL contour line. "Multi-family" use denotes allowing more than one residential dwelling unit on a parcel of land.

I welcome the spirit of cooperation exhibited by Tempe in our mutual efforts to maximize the benefits to our respective communities from the airport facilities serving our constituents.

Sincerely,

Skip Rimsza
Mayor

T:\CHERYL\GIULIANO.W61
Attachment: BLM Notice
c: Frank Fairbanks
Jack Tevlin

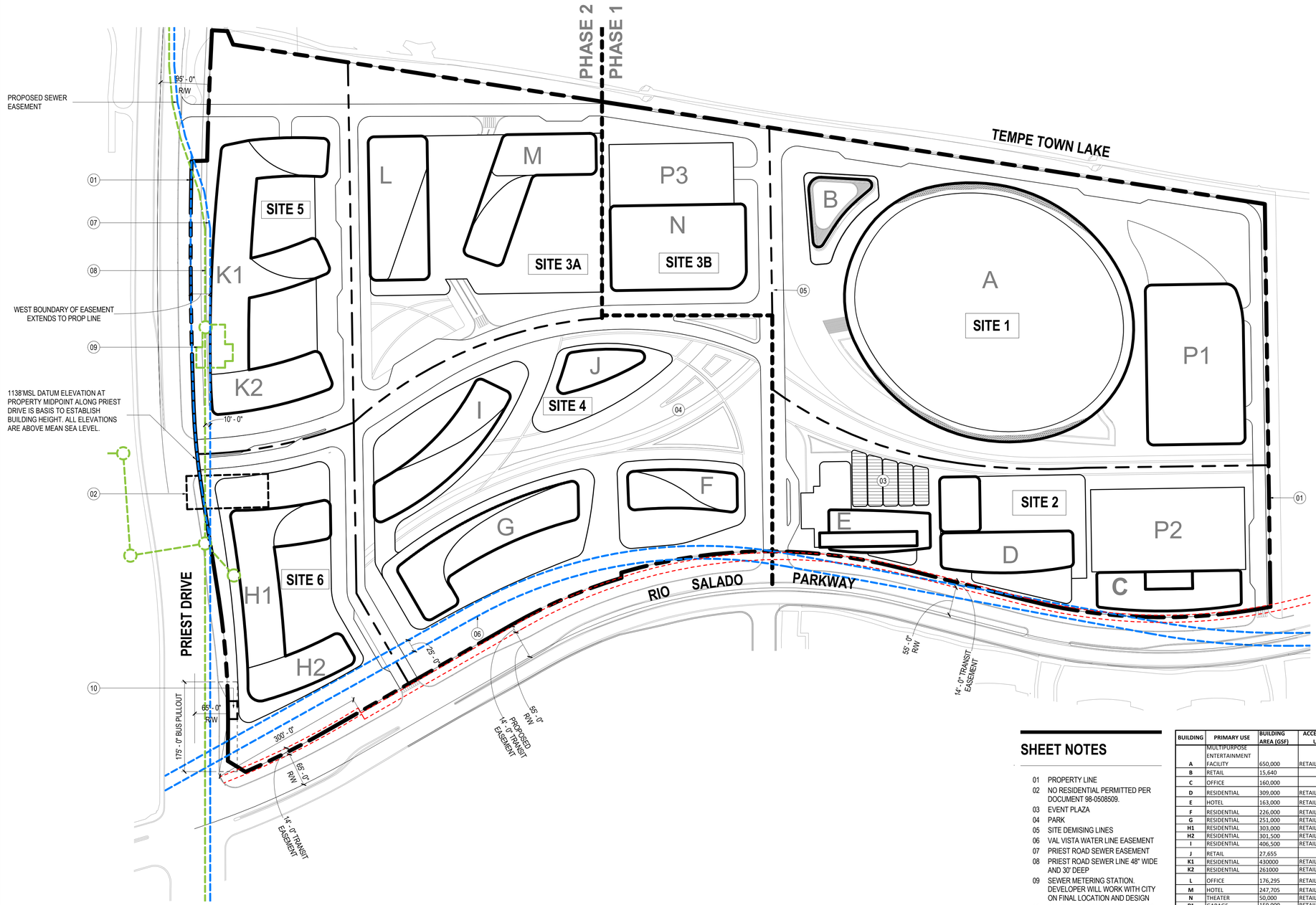
EXHIBIT C

PRELIMINARY SITE PLAN

[*CONTINUED ON FOLLOWING PAGE*]

PLANNED AREA DEVELOPMENT FOR TEMPE ENTERTAINMENT DISTRICT

A PORTION OF THE NORTHWEST QUARTER, SECION 16, TOWNSHIP 1 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY ARIZONA



SHEET NOTES

01 PROPERTY LINE
02 NO RESIDENTIAL PERMITTED PER DOCUMENT 98-0508509.
03 EVENT PLAZA
04 PARK
05 SITE DEMISING LINES
06 VAL VISTA WATER LINE EASEMENT
07 PRIEST ROAD SEWER EASEMENT
08 PRIEST ROAD SEWER LINE 48" WIDE AND 30' DEEP
09 SEWER METERING STATION. DEVELOPER WILL WORK WITH CITY ON FINAL LOCATION AND DESIGN
10 175' BUS PULLOUT THAT INCLUDES A 35' X 18' SHELTER PAD PER CITY OF TEMPE STANDARDS (TOTAL CURB TO BACK OF PAD 37.5' | 11.5' PULLOUT | 8' S/W | 18' PAD

BUILDING	PRIMARY USE	BUILDING AREA (GSF)	ACCESSORY USE	BUILDING AREA (GSF)	BUILDING HEIGHT	GUEST ROOMS	DWELLING UNITS
A	MULTIPURPOSE ENTERTAINMENT FACILITY	650,000	RETAIL	17,958	120'	--	--
B	RETAIL	15,640			48'	--	--
C	OFFICE	160,000			120'	--	--
D	RESIDENTIAL	309,000	RETAIL	27,611	118'	--	194
E	HOTEL	163,000	RETAIL	28,611	108'	200	--
F	RESIDENTIAL	226,000	RETAIL	10,457	110'	--	166
G	RESIDENTIAL	251,000	RETAIL	16,814	110'	--	316
H1	RESIDENTIAL	303,000	RETAIL	18,253	110'	--	244
H2	RESIDENTIAL	301,500	RETAIL	18,253	110'	--	263
I	RESIDENTIAL	406,500	RETAIL	51,147	110'	--	212
J	RETAIL	27,655			110'	--	--
K1	RESIDENTIAL	430000	RETAIL	13410	85'	--	388
K2	RESIDENTIAL	261000	RETAIL	13410	110'	--	212
L	OFFICE	176,295	RETAIL	4,527	90'	--	--
M	HOTEL	247,705	RETAIL	7,413	110'	300	--
N	THEATER	50,000	RETAIL	5,360	60'	--	--
P1	GARAGE	159,000	RETAIL	21,161	72'	--	--
P2	GARAGE	358,000	RETAIL	17320	82'	--	--
P3	GARAGE	200,000			72'	--	--
TOTAL		3,978,295		271,705		500	1995
TOTAL BUILDING AREA				4,250,000			

DS221634 PAD220019 REC22111

BLUEBIRD DEVELOPMENT,LLC
8825 N 23RD AVENUE STE 100,
PHOENIX, AZ, 85021

Gensler
2575 East Camelback Road
Suite 175
Phoenix, AZ 85016
United States
Tel 602.523.4900
Fax 602.523.4949

MANICA architecture
Kansas City | London | Shanghai
1915 West 43rd Street
Kansas City, KS 66103
Tel: +1 816 421 8890
www.manicaarchitecture.com

△ Date	Description
11.04.22	PAD Submittal

REC22111
PAD220019
DS221634

Seal / Signature

Project Name
Tempe Entertainment District - Site 02 - Building C - Office Building

Project Number
57.8314.000

Description
SITE PLAN

Scale
1" = 100'-0"

P1.001

EXHIBIT D

SCHEDULE OF PERFORMANCE

Pre-Development	
Submit Project Initiation Documents	Effective Date + 9 months
Submit for FAA Review of Arena Geographic Coordinates	6 months after City Review and Approval of Arena Coordinates
Complete Planning Phase	Effective Date + 15 months
Project Commencement Date	(i) City Approval of Arena Development Plans, Phase 1A parking spaces, and first New Plat and (ii) FAA Response that Arena is a "No-Hazard" to Air Navigation
Execute Non-Relocation Agreement with National Hockey League	Project Commencement Date + 6 months
Submit evidence of approval by NHL of Coyotes relocation and size, design and other aspects of the Arena per Recital R	Project Commencement Date + 6 months
Commence Construction of the Project	Project Commencement Date + 18 months
Phase 1A	
Exercise Phase 1A Option	Project Commencement Date + 6 months
Commence Construction of all Major Components and Public Infrastructure	Project Commencement Date + 3 years
Phase 1A Completion Date	Construction Commencement Date + 40 months
Phase 1B	
Exercise Phase 1B Option	Project Commencement Date + 35 months

Commence Construction of all Major Components and Public Infrastructure	Project Commencement Date + 5 years
Phase 1B Completion Date	Construction Commencement Date + 30 months
Phase 2A	
Exercise Phase 2A Option	Project Commencement Date + 59 months
Commence Construction of all Major Components and Public Infrastructure	Project Commencement Date + 7 years
Phase 2A Completion Date	Construction Commencement Date + 30 months
Phase 2B	
Exercise Phase 2B Option	Project Commencement Date + 83 months
Commence Construction of all Major Components and Public Infrastructure	Project Commencement Date + 9 years
Phase 2B Completion Date	Construction Commencement Date + 30 months

EXHIBIT G

FORM OF ESCROW AGREEMENT

ESCROW AGREEMENT AND INSTRUCTIONS TO ESCROW AGENT

This Escrow Agreement and Instructions to Escrow Agent (this "Agreement") is made and entered into as of _____, 2023 (the "Effective Date") by and between the City of Tempe, an Arizona municipal corporation ("City"), and Bluebird Development LLC, a Delaware limited liability company ("Developer"). In this Agreement City and Developer may be referred to as a "Party" individually, and as the "Parties" collectively.

RECITALS

A. City and Developer are parties to a Development and Disposition Agreement dated as of November _____, 2022 (the "Development Agreement"), pursuant to which City agreed to sell to Developer and Developer agreed to purchase from City the Property, as defined and described therein. (Capitalized terms used herein without definition shall have the meanings given such terms in the Development Agreement.)

B. The Property is to be acquired in phases, initiated upon delivery of an Option Notice. Developer has delivered an Option Notice for that portion of the Property designated as [Phase 1A, 1B, 2A or 2B] described on Exhibit A attached hereto. The Parcels within such Phase [1A, 1B, 2A or 2B] are referred to herein individually as an "Option Parcel" and collectively as "Option Parcels."

C. Section 5.3 of the Development Agreement requires that City and Developer execute this Agreement within ten (10) days after receipt of the Option Notice to facilitate the Site Remediation of Phase [1A, 1B, 2A or 2B] and the Option Parcels within such Phase.

AGREEMENT

In light of the foregoing recitals, which are incorporated herein by this reference, and in consideration of the promises, covenants and agreements set forth below, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

ARTICLE I
ACTIONS TO BE TAKEN

1.1 Retention of Escrow Agent. This Agreement is entered into pursuant to Section 5.3 of the Development Agreement. The Parties hereby retain _____ ("Escrow Agent") to serve as escrow agent hereunder and under the Development Agreement, to perform those duties specified herein and in Sections 5.3 and 11.5 of the Development Agreement. A true and correct copy of the Development Agreement is attached hereto as Exhibit B.

1.2 Deposit of Purchase Price. No later than the fifth (5th) Business Day following the execution of this Agreement, Developer shall deposit into Escrow the sum of [Forty Million Dollars][1], which represents the initial [Phase 1A, 1B, 2A and partially 2B] Purchase Price payable to City at Closing pursuant to Section 11.5.3 of the Development Agreement (referred to herein as the "Escrowed Funds").

1.3 Establishment of Escrow. Upon its receipt of executed counterparts of this Agreement, Escrow Agent shall execute this Agreement and shall establish an escrow (the "Escrow") and related account (the "Escrow Account") for the purpose of receiving, holding, retaining and administering the Escrowed Funds and drawing upon, disbursing and releasing the Escrowed Funds from the Escrow Account from time to time in accordance with the terms and conditions of this Agreement. Escrow Agent hereby accepts the duty to perform in accordance with the terms and conditions hereof for the benefit of City and Developer.

1.4 Execution of Temporary Access Agreement. As soon as possible, and in any event within ten (10) days after execution of this Agreement, City and Developer shall execute a temporary access agreement in the form attached to this Agreement as Exhibit C (the "Access Agreement"), pursuant to which Developer is being given access to the Option Parcels for the purpose of completing the Site Remediation.

ARTICLE II
INTERIM WITHDRAWALS

2.1 Interim Withdrawals. Developer must complete the Site Remediation of an Option Parcel before it may obtain title to such Option Parcel. City and Developer have agreed that Developer may withdraw the Escrowed Funds from Escrow (each, a "Withdrawal") to pay the Site Remediation costs in accordance with the procedure outlined below. In addition, City may request a Withdrawal to pay the amounts payable pursuant to the Termination Agreement as provided in Section 11.7.1.1 of the Development Agreement.

2.2 Requirement to Replenish Escrowed Funds. Developer is not required to complete the acquisition of the Option Parcels. If this Agreement is terminated prior to completion of the Site Remediation or due to Developer's failure to satisfy the Conveyance Conditions (subject to all applicable notice requirements and the expiration of all applicable cure rights of Developer as set forth in this Agreement), City shall have no obligation to convey any unacquired Option Parcel to Developer or to reimburse Developer for any Costs incurred prior to such termination; however, to the extent Developer has not paid or received reimbursement for payment of Costs from Withdrawals made by it pursuant to this Agreement and Escrowed Funds remain available for such purpose, then Developer shall remain entitled to receive payment or reimbursement of its Costs from the Escrowed Funds then held in the Escrow Account. The Escrowed Funds represent the Purchase Price payable to City at Closing for [insert reference to the applicable Phases] and prior to or concurrently with the Closing of the Phase Sale Transaction for the Option Parcel, the Parties shall cause the Bond Trustee to deposit into

[1] The amount shall be consistent with the amount required for the applicable Escrow Agreement pursuant to the Development Agreement.

Escrow from CFD Bonds Proceeds an amount necessary to ensure the Escrow Agent has sufficient funds to pay to City the Purchase Price for the Option Parcels given the aggregate Withdrawals made prior to the Closing.

2.3 Disbursement Procedure.

a. Developer may request a Withdrawal by submitting to City and Escrow Agent the "Cost Accounting Submittals" referenced in Section 7.2 of the Development Agreement, together with copies of invoices and/or paid receipts (collectively, "Invoices") from suppliers, contractors or subcontractors. All Invoices shall contain the following information: (i) the date of the invoice, (ii) the amount of the invoice, (iii) the name and address of the supplier/contractor/subcontractor, and (iv) a list of materials supplied or work performed; and be accompanied by a conditional lien waiver (subject only to payment) from the contractors responsible for the performance of that portion of the work described in the Invoices evidencing that all such work has been performed free and clear of liens and encumbrances.

b. On receipt of the Cost Account Submittals, City's Cost Accounting Specialist shall perform the review contemplated in Section 7.2 of the Development Agreement. If after expiration of the time periods specified in Section 7.2 of the Development Agreement, no objections are lodged or remain unresolved as to such Withdrawal request, Escrow Agent is directed to disburse the amount (or so much thereof to which no objection has been lodged) requested by check payable to Developer or the supplier/contractor/subcontractor to whom the Invoices relate, as applicable.

c. In acting with respect to disbursements, Escrow Agent shall be entitled to rely on the accuracy and completeness of the information furnished therein and neither the City nor Escrow Agent shall be deemed to have waived any inaccuracies.

ARTICLE III
TITLE AND DUE DILIGENCE MATTERS

3.1 Title Matters. All title matters are to be handled in accordance with Section 11.6 of the Development Agreement.

3.2 Due Diligence Matters. All feasibility and due diligence review shall be handled in accordance with Section 11.6 of the Development Agreement.

ARTICLE IV
CLOSING

4.1 Closing. On completion of the Site Remediation of an Option Parcel, the Closing of the conveyance of such Option Parcel to Developer shall be handled in accordance with Section 11 of the Development Agreement. At the appropriate time, and with the prior approval of the Parties, Escrow Agent is authorized to transfer funds between and among the several Escrow Agreements between City and Developer relating to other Phases to ensure the Escrowed Funds are available for application to the Purchase Price for the Option Parcels within such other Phases as contemplated by the Development Agreement.

ARTICLE V
ESCROW AGENT

5.1 Acceptance of Duties. Escrow Agent hereby accepts the duties imposed upon it by this Agreement, represents that it is fully empowered under any Applicable Laws and regulations to accept such duties, and agrees to perform such duties, but only upon and subject to the express terms and conditions set forth below.

5.2 Requests for Accounting**.** On request of any Party, a copy of Escrow Agent's record of accounting for funds received and disbursed, on Escrow Agent's form, shall be furnished to the parties hereto.

5.3 Indemnification. City and Developer hereby indemnify and promise to hold harmless Escrow Agent against but not limited to all costs, damages, attorneys' fees, expenses, and liabilities that Escrow Agent may incur or sustain in connection with this Agreement, or any court action arising out of this Agreement, and each Party shall pay one-half of same, except claims arising out of Escrow Agent's negligence, bad faith, recklessness, intentional misconduct or breach of this Agreement.

5.4 Conflicting Demands. If conflicting demands are made upon Escrow Agent, Escrow Agent may hold any money or documents subject to such conflicting demands until Escrow Agent receives mutual written instructions from both Parties or until the rights of the Party making such conflicting demands have been determined by court action or by arbitration if required pursuant to the terms of the Development Agreement. Escrow Agent may at any time in its discretion commence a civil action to interplead any conflicting demands to a court of competent jurisdiction.

5.5 Limitation of Liability. Notwithstanding any other provisions of this Escrow Agreement, Escrow Agent has no responsibility nor liability for completion of the Site Remediation; or to guarantee that the funds deposited into escrow are sufficient to complete the Site Remediation; or for any mechanic's or materialmen's liens that may be filed except to the extent that Escrow Agent fails to properly disburse monies pursuant to this Agreement and these instructions. Escrow Agent shall not be liable for any action taken or omitted by it, except for its own negligence, bad faith, or willful misconduct; nor shall it be liable or responsible for the validity, enforceability or sufficiency of any document furnished to it pursuant to any provision thereof; nor shall it be responsible for any representation or statements made in any of those documents.

5.6 Advice of Counsel; Right to Rely. Escrow Agent shall be entitled to rely upon advice of counsel concerning legal matters and upon any document or notice delivered to it hereunder which it believes to be genuine or to have been presented by a proper person. Escrow Agent shall incur no liability in acting upon any notice, request, consent, waiver, certificate, statement, opinion or other document which it shall reasonably believe to be genuine and to have been signed by the proper person and to have been prepared and furnished in connection with any of the provisions of this Agreement, and Escrow Agent shall be under no duty to make any

investigation or inquiry as to any statement contained or matters referred to in any such instrument, but may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements. Without limiting the generality of the foregoing, Escrow Agent shall have no duty to verify any representation, warranty or statement made in or in connection with any Invoice, Cost Accounting Submittal, or draw request.

5.7 Compensation. Escrow Agent shall be entitled to receive compensation for its services hereunder in accordance with then-applicable market rates. Escrow Agent is hereby authorized to deduct its fees from the Escrowed Funds. If the amount available on deposit in the Escrow is not sufficient to pay such compensation, Escrow Agent shall invoice Developer, who agrees to pay such invoice within thirty (30) days after receipt.

5.8 No Expenditures. No provision of this Agreement shall require Escrow Agent to expend or risk its own funds in the performance of any of its duties or the exercise of any of its rights or powers.

5.9 No Obligation to Inspect. Escrow Agent shall have no responsibility to inspect any work related to the Site Remediation or to determine the state of completion or the quality or quantity of either workmanship or materials, or both, as the work is completed.

5.10 Resignation. Escrow Agent has the right to resign upon written notice thereof mailed to City and Developer thirty (30) days prior to the effective date of such resignation. If such right is exercised, all funds and documents shall be delivered to a mutually appointed substitute Escrow Agent or as otherwise directed by City and Developer.

ARTICLE VI
DEVELOPER COVENANTS

6.1 Covenants of Developer. During the term of this Agreement, and until the Closing, Developer agrees as to the following matters:

a. Application of Withdrawn Funds. Developer shall use the Withdrawn Funds solely for payment or reimbursement of Site Remediation Costs for which Cost Accounting Submittals have been made under the Development Agreement and to which no objections have been lodged or having been lodged remain unresolved.

b. Compliance. Developer will comply with, conform to and obey, all Applicable Laws and shall perform all of its obligations under this Agreement, the Development Agreement and any other documents or instruments executed in connection herewith or therewith.

c. Organic Changes. Without the advance written consent of the City, Developer shall not: (a) merge or consolidate (whether in one transaction or in a series of transactions) with or into any other entity, or engage in any other transaction that results in a change in control of Developer; (b) sell, lease, transfer or otherwise dispose of all or a substantial part of its assets; (c) enter into a dissolution or liquidation; (d) acquire all or substantially all of

the assets or the business of any person; or (e) change its name or any name under which it does business.

d. Removal of Liens. If any lien or encumbrance is filed against any Option Parcel or any portion thereof as a result of any action of Developer, and such lien is not removed within any time period allowed in the Access Agreement for Developer to cause such lien to be released, Developer agrees that City may authorize Escrow Agent to pay from the Escrowed Funds any amounts necessary to procure the release of such lien.

ARTICLE VII
SPECIAL PROVISIONS

7.1 Default. The existence or occurrence of any one or more of the following shall constitute a default under this Agreement by either Party:

7.1.1 Failure to Perform Monetary Obligations. Failure to pay any monies due under this Agreement within five (5) Business Days immediately following receipt of notice from another Party that such payment is due; or

7.1.2 Failure to Perform Non-Monetary Obligations. Failure to fully and timely perform any non-monetary obligations under this Agreement within ten (10) days immediately following receipt of notice from the other Party of such failure unless the nature of such failure renders it inherently incapable of being cured within such ten-day period, in which event the non-performing Party shall not be deemed to be in default if it commences such cure within the 10-day period and thereafter diligently prosecute such cure to completion within thirty (30) days after the original notice; or

7.1.3 Bankruptcy; Insolvency. (a) The making by a Party of any general assignment for the benefit of creditors; (b) the filing by or against a Party of a petition to have such Party adjudged bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against the Party, the same is dismissed within 60 days); (c) the appointment of a trustee or receiver to take possession of substantially all of a Party's assets or of a Party's interest in this Agreement and possession is not restored to such Party within 60 days; or (d) the attachment, execution or other judicial seizure of substantially all of a Party's assets or of a Party's interest in this Agreement and such seizure is not discharged within 60 days.

7.2 Remedies.

7.2.1 General. If any Party is in default under this Agreement, any other Party shall be entitled to pursue all remedies at law or in equity against the defaulting Party. All such remedies shall be cumulative and concurrent and may be pursued singly, successively, or together, at the sole discretion of any non-defaulting Party, and may be exercised as often as occasion therefor shall occur; and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof. Notwithstanding anything in this Agreement to the contrary, each Party waives its right to seek and recover consequential, exemplary, special,

beneficial, numerical, punitive, or similar damages from the other, the only permitted claim for damages being actual damages reasonably incurred by the aggrieved Party.

7.2.2 WAIVER OF JURY TRIAL. EACH PARTY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, ANY ASPECT OF THIS AGREEMENT OR ANY DOCUMENT EXECUTED OR DELIVERED IN CONNECTION WITH THIS AGREEMENT. EACH PARTY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY MAKES THIS WAIVER. EACH PARTY ACKNOWLEDGES THAT NO ONE HAS MADE ANY REPRESENTATIONS OF FACT TO INDUCE THIS WAIVER OF TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. EACH PARTY FURTHER ACKNOWLEDGES HAVING BEEN REPRESENTED IN CONNECTION WITH THIS TRANSACTION AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, SELECTED BY EACH PARTY'S OWN FREE WILL (OR THAT SUCH PARTY HAS CONSCIOUSLY AND VOLUNTARILY CHOSEN NOT TO SEEK OR USE SUCH LEGAL COUNSEL). EACH PARTY FURTHER ACKNOWLEDGES HAVING READ AND UNDERSTOOD THE MEANING AND RAMIFICATIONS OF THIS WAIVER PROVISION.

7.3 Miscellaneous. The following additional provisions apply to this Agreement:

7.3.1 Amendments and Interpretation. This Agreement may not be amended except by a formal writing executed by both Parties. The City's City Manager may exercise his or her administrative authority to correct scrivener's errors in this Agreement and to interpret and administer this Agreement; however, any material deviations from the provisions of this Agreement must be authorized by the City Council by written amendment to this Agreement except to the extent the City Manager is authorized pursuant to Section 11.6.1 of the Development Agreement to execute additional or supplemental escrow instructions requested by Escrow Agent.

7.3.2 Severability. If any term, condition, covenant, stipulation, agreement, or provision in this Agreement is held to be invalid or unenforceable for any reason, the invalidity of any such term, condition, covenant, stipulation, agreement, or provision shall in no way affect any other term, condition, covenant, stipulation, agreement, or provision of this Agreement.

7.3.3 Conflicts of interest. No member, official, or employee of City shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement, that is prohibited by law. This Agreement is subject to the cancellation provisions of A.R.S. §38-511.

7.3.4 No Partnership. This Agreement and the transactions and performances contemplated hereby shall not create any sort of partnership, joint venture, or similar relationship between the Parties.

7.3.5 Notices. Notices hereunder (each, a "Notice") shall be given in writing delivered to the other Party or other applicable person or entity, or mailed by registered or certified mail, return receipt requested, postage prepaid, or by FedEx or other reliable overnight

courier service that confirms delivery. With respect to the Parties, a Notice shall be addressed to a Party as follows:

If to City: City Manager
City of Tempe
31 East Fifth Street
Tempe, Arizona 85281

Copy to: City Attorney
City of Tempe
21 East Sixth Street, Suite 201
Tempe, Arizona 85281

If to Developer: Bluebird Development LLC
8465 North Pima Road, Suite 100
Scottsdale, AZ 85258
Attn: Xavier Gutierrez and Legal Department

Copy to: Snell & Wilmer, LLP
Attn: Nick Wood and Joyce Wright
1 East Washington Street, Suite 2700
Phoenix, AZ 85004

Escrow Agent:_____
_____
_____
_____

Service of any Notice by mail in accordance with the foregoing shall be deemed to be complete three (3) days (excluding Saturday, Sunday, and legal holidays) after the Notice is deposited in the United States mail. Service of any Notice by overnight courier in accordance with the foregoing shall be deemed to be complete upon receipt or refusal to receive. By Notice from time to time in accordance herewith, either Party (or any other person or entity seeking to provide Notice) may give Notice (in recordable form) designating any other street address or addresses as its address or addresses for receiving Notices. A designation by a Party of a new address shall not be binding or effective unless and until a document referencing this Agreement is recorded with the County Recorder of Maricopa County, Arizona.

7.3.6 Integration. Together with the Development Agreement, this Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all other written or verbal agreements between the Parties with respect to such subject matter. In the event of any conflict between this Agreement and the Development Agreement, the Development Agreement shall control.

7.3.7 Construction. Whenever the context of this Agreement requires, the singular shall include the plural, and the masculine shall include the feminine. This Agreement was negotiated on the basis that it shall be construed according to its plain meaning and neither for nor against either Party, regardless of their respective roles in preparing this Agreement. The terms of this Agreement were established in light of the plain meaning of this Agreement and this Agreement shall therefore be interpreted according to its plain meaning and without regard to rules of interpretation, if any, that might otherwise favor Developer or City.

7.3.8 Section Headings. The Section headings contained herein are for convenience in reference and not intended to define or limit the scope of any provision of this Agreement.

7.3.9 No Third-Party Beneficiaries. No person or entity shall be a third-party beneficiary to this Agreement or shall have any right or cause of action hereunder.

7.3.10 Exhibits. All exhibits attached hereto as specified herein are hereby incorporated into and made an integral part of this Agreement for all purposes.

7.3.11 Days; Time. If the last day of any time period stated in this Agreement or the date on which any obligations to be performed under this Agreement falls on day other than a Business Day, then the duration of such time period or the date of performance, as applicable, shall be extended so that it shall end on the next succeeding Business Day. "Business Day" means a calendar day other than a Saturday, Sunday, or public holiday under the laws of the State of Arizona or observed by City. All references in this Agreement to performance by a particular time of day mean the time of day in Tempe, Arizona.

7.3.12 Attorneys' Fees. If legal action is brought by a Party because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing Party is entitled to reasonable attorney fees and costs as determined by the court or other decision maker.

7.3.13 Choice of Law. This Agreement shall be governed by the internal laws of the State of Arizona without regard to choice of law rules.

7.3.14 Venue & Jurisdiction. Except where Arbitration is required under this Agreement or the Development Agreement, legal actions regarding this Agreement shall be instituted in the Superior Court of the County of Maricopa, State of Arizona, or in the Federal District Court in the District of Arizona sitting in Maricopa County. City and Developer agree to the exclusive jurisdiction of such courts. Claims by Developer shall comply with time periods and other requirements of City's claims procedures from time to time.

7.3.15 No Liability of City Officials. No City Council Member, official, representative, agent, attorney or employee of the City shall be personally liable to Developer, or to any successor in interest to Developer, in the Event of Default by the City or for any amount that may be come due to Developer or its successors, or with respect to any obligation of the City under the terms of this Agreement.

7.3.16 No Waiver. Except as otherwise expressly provided in this Agreement, any failure or delay by any Party in asserting any of its rights or remedies as to any Default, will not operate as a waiver of any Default, or of any such rights or remedies, or deprive any such Party of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert, or enforce any such rights or remedies, including but not limited to rights and remedies existing at common law. Further, all waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of City or Developer, and no waiver by a Party of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or of any other provision of this Agreement.

7.3.17 Binding Effect. The benefits and burdens of this Agreement shall run with the Option Parcels and be binding upon and shall inure to the benefit of the Parties hereto and their respective permitted successors in interest and assigns.

7.3.18 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall be deemed to be one and the same instrument.

[Remainder of page is blank. Signatures appear on following pages.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

CITY:

CITY OF TEMPE,
an Arizona municipal corporation

By: _____
Corey D. Woods, Mayor

ATTEST:

_____
Carla Reece, City Clerk

APPROVED AS TO FORM:

_____
Sonia Blain, City Attorney

DEVELOPER:

Bluebird Development LLC,
a Delaware limited liability company

By:_____
Its:_____

Accepted by Escrow Agent:

[_____] hereby acknowledges that it has received a fully executed counterpart of the foregoing Escrow Agreement and Instructions for Escrow Agent and agrees to act as Escrow Agent hereunder and to be bound by and perform the terms thereof as such terms apply to Escrow Agent.

Dated: _____ By: _____

Name: _____

Its: _____

Exhibit A
Legal Description

Exhibit B
Copy of Development Agreement

To come.

Exhibit C

FORM OF ACCESS AGREEMENT

ACCESS AGREEMENT FOR PERFORMANCE
OF ENVIRONMENTAL REMEDIATION

This Access Agreement for Performance of Environmental Remediation ("Agreement") is made and entered into as of , 202__ (the "Effective Date"), between the CITY OF TEMPE, an Arizona municipal corporation ("City"), and BLUEBIRD DEVELOPMENT LLC, a Delaware limited liability company ("Developer"). In this Agreement City and Developer may be referred to as a "Party" individually, and as the "Parties" collectively.

RECITALS

A. City and Developer are parties to a Development and Disposition Agreement dated as of November , 2022 (the "Development Agreement"), pursuant to which City agreed to sell to Developer and Developer agreed to purchase from City the Property, as defined and described therein. (Capitalized terms used herein without definition shall have the meanings given such terms in the Development Agreement.)

B. The Property is to be acquired in phases, initiated upon delivery of an Option Notice. Developer has delivered a Phase [1A, 1B, 2A or 2B] Option Notice for that portion of the Property described on Exhibit A attached hereto (the "Option Parcels").

C. Pursuant to the Development Agreement, City has requested that Developer perform certain Site Remediation on the Option Parcels prior to Developer taking title to, and assuming operational control of, the Option Parcels, and Developer has agreed to perform such Site Remediation on the City's behalf.

D. Pursuant to the Development Agreement, Developer desires to conduct the Site Remediation with and through its contractor, [_____] ("Contractor"), and City desires to grant Developer, Contractor, and their respective employees, agents, suppliers, vendors, consultants, contractors and sub-contractors (the "Licensee Parties"), a limited access right to the Option Parcels for that purpose.

AGREEMENT

THEREFORE, City and Developer hereby agree as follows:

1. Site Remediation.

a. City hereby grants to the Licensee Parties a limited and non-exclusive license (the "License") to enter the Option Parcels for the purpose of conducting the Site Remediation, including visual inspection, soil sampling and testing, excavation, removal and disposal of contaminated media, and related activities, pursuant to a workplan mutually agreed to

by the Parties prior to execution of this Agreement ("Workplan"). City acknowledges that it has reviewed and approved the Workplan. Any proposed amendment to the Workplan must be provided in writing to City and must be approved in writing by City prior to the implementation of such amendment.

b. The License extends to the Licensee Parties. The License also includes the right to make photographs and video recordings relating to the conduct of the Site Remediation, and the right to conduct other activities necessary or appropriate to the conduct of the Site Remediation. Developer agrees to take all actions necessary or appropriate to assure that the Licensee Parties comply with all requirements imposed upon Developer by this Agreement.

c. Developer agrees that City's employees, agents, contractors, and legal representatives will be allowed to observe all activities conducted by Developer at the Option Parcels; provided, that (i) City shall use reasonable efforts to provide not less than one business day's advance notice of any entrance onto the Option Parcels for such purpose except in the event of an emergency, in which event no notice shall be required, (ii) City shall comply with Developer's and Contractor's safety and security requirements during such entry, and (iii) City shall be accompanied by a representative of Developer during any such entry. Upon request, City will be furnished split samples of all samples collected at the Option Parcels for the purpose of analysis or holding for possible future analysis by City at its own cost.

d. Developer shall comply with all reporting requirements set forth in the Development Agreement, and provide City with copies of all data, photographs, and video recordings acquired or produced in the course of the Site Remediation conducted by Developer at the Option Parcels. Developer will notify City promptly upon the completion of the Site Remediation. Upon completion of the Site Remediation, Developer shall prepare a final report relating to the Site Remediation and shall deliver the same to City.

e. Neither Developer nor any Licensee Party will install any permanent groundwater monitoring wells or other permanent equipment at the Option Parcels without the prior written authorization of City. Developer will install any monitoring devices in accordance with state and local permit requirements, including without limitation all applicable requirements of Arizona Department of Environmental Quality ("ADEQ"), after consultation with City. Developer understands that ADEQ and other federal, state, and local government agencies may require access to the Option Parcels for the purposes of inspection and oversight of the activities of Developer at the Option Parcels. Accordingly, Developer agrees not to prohibit or hinder access by such agencies and their employees, agents, contractors, and legal representatives upon their presentation to Developer of proper identification.

f. This Agreement, in and of itself, is not intended to, and does not, affect in any way the legal rights or liabilities of either City or Developer under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675, the Arizona Water Quality Assurance Revolving Fund Act, A.R.S. §§ 49-281-298, or other federal, state, or local laws or regulations establishing rights and liabilities among parties with respect to releases of hazardous substances or other environmental contamination, except as otherwise

provided herein. This Agreement is not intended to, and does not, create any rights or liabilities on the part of any party not a signatory hereto.

g. This Agreement does not confer a right of access to the Option Parcels by Developer for any purpose other than as specifically stated herein.

2. Insurance. Developer shall require Contractor to maintain that insurance required by City pursuant to Section 12.12 and Exhibit O of the Development Agreement.

3. Indemnification.

a. Developer Release and Indemnity. Developer understands that City does not warrant the condition of the Option Parcels. In no event will City be held responsible or accountable for any damage to Developer's real or personal property which occurs as a result of or in conjunction with Developer's activities at the Option Parcel. Developer agrees to indemnify, defend and hold City harmless from and against any claims, causes of action, or lawsuits brought by a third party relating to the performance of the Site Remediation (including mechanic's and materialman's liens) ("Claim"), provided that in no event shall Developer be responsible for claims, causes of action, or lawsuits regarding pre-existing conditions, including environmental conditions, at the Option Parcels and Property not directly caused or exacerbated (provided however that the phrase "exacerbated" shall not be deemed to include encountering, disturbing, grading, removing, or relocating contaminated soil or groundwater) by Developer or the other Licensee Parties as part of the Site Remediation work ("Developer's Indemnity Obligations"). The amount and type of insurance coverage requirement set forth herein will in no way be construed as limiting the scope of indemnity in this paragraph. Notwithstanding anything to the contrary, the indemnification obligations of Developer under this Agreement shall be offset or reduced by the full amount of such net insurance proceeds and/or such indemnity, contribution or other similar payment received by City and its City Council members, officers, and employees. Furthermore, outdistancing anything to the contrary, nothing herein shall be deemed to impose on Developer any of Developer's Indemnity Obligations that the law prohibits from being imposed upon Developer. If City is made a defendant in any action, suit or proceeding brought by a third party for a Claim, City shall tender defense of any such Claim subject to Developer's Indemnity Obligations hereunder to Developer promptly and in sufficient time to avoid prejudice, and Developer shall have the right to assume and control the defense thereof with counsel selected by Developer and reasonably approved by City. Any additional counsel hired or engaged by City shall be the sole cost and expense of City. Following City's tendering of defense of any such Claim subject to Developer's Indemnity Obligations hereunder to Developer, Developer shall at its own expense: (i) resist and defend such action suit or proceeding or cause the same to be resisted and defended by such counsel designated by Developer; and (ii) if any such action, suit or proceeding results in a final, non-appealable judgment against City, Developer promptly shall satisfy and discharge such judgment or shall cause such judgment to be promptly satisfied and discharged; provided, however, Developer may elect in its sole discretion to satisfy and discharge any non-final, appealable judgment against City rather than appealing same, to settle the Claim at Developer's sole expense. City shall cooperate with and vigorously support Developer's indemnification efforts in connection with the defense of any Claim against City including assisting with discovery and disclosure efforts

and requirements and, if requested by Developer, shall authorize Developer's intervention in any proceeding relating to a Claim.

b. City Indemnity. City agrees to indemnify, defend and hold Developer harmless from and against any claims, causes of action, or lawsuits brought by a third party relating to any pre-existing environmental conditions at the Option Parcels not directly caused by Developer or the other Licensee Parties. Developer agrees that City shall have the right to contest the validity of any and all such claims and defend, settle and compromise any and all such claims of any kind or character and by whomsoever claimed, in the name of Developer, as City may deem necessary, provided that the expenses thereof shall be paid by City.

c. Survival. The provisions of this Section 3 shall survive the expiration or other termination of this Agreement.

4. Termination. This Agreement will terminate automatically upon the completion of Site Remediation pursuant to this Agreement and submittal of a final report by Developer to City in connection therewith.

5. General Provisions.

a. Default. It is a default if either party fails to perform its obligations under this Agreement and such failure is not cured after written notice from the non-defaulting party specifying in reasonable detail the nature of the failure to perform. The receiving party shall proceed immediately to cure or remedy such default within thirty (30) days after receipt of such notice, or if such default is of a nature that it is not capable of being cured within the thirty-day period following receipt of such notice, such cure or remedy must be commenced within such period and diligently pursued to completion. Upon default, a Party shall have all rights and remedies available at law or in equity, subject to the terms of 13.4 of the Development Agreement.

b. The Parties shall cooperate with one another to ensure that any circumstance involving adverse health or safety conditions are addressed immediately and in compliance with Applicable Laws.

c. Liens. Developer shall, within thirty (30) days of written notice from City, fully discharge any mechanics' or other liens to be placed upon the Option Parcels in connection with any work or service done by or for the benefit of Developer by settlement, by bonding or by insuring over the lien in the manner prescribed by the applicable lien law.

d. Attorneys' Fees. In the event of any suit instituted by either Party against the other in any way connected with this Agreement, the parties respectively agree that the successful Party to any such action shall recover from the other Party a reasonable sum for its attorneys' fees and costs in connection with said suit, such attorneys' fees and costs to be fixed by the court and not by a jury.

e. Assignment. Developer may assign this Agreement as permitted with respect to the Development Agreement pursuant to Section 15 of the Development Agreement. This Agreement may not otherwise be assigned by either Party without the advance written consent of the other Party.

f. Severability. If any term or provision of this Agreement, to any extent, is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

g. Binding Effect; Choice of Law. The parties hereto agree that all the provisions hereof are to be construed as both covenants and conditions as though the words importing such covenants and conditions were used in each separate paragraph hereof. All the provisions hereof shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. This Agreement shall be governed by the laws of the State of Arizona.

h. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if (i) personally delivered, (ii) mailed by United States certified or registered mail, return receipt requested, postage prepaid, or (iii) if delivered by a recognized overnight courier (e.g., FedEx, United Parcel Service) for next business day delivery, addressed as follows:

If to City:	City Manager City of Tempe 31 East Fifth Street Tempe, Arizona 85281
With a copy to:	City Attorney City of Tempe 21 East Sixth Street, Suite 201 Tempe, Arizona 85281
If to Developer:	Bluebird Development LLC 8465 North Pima Road, Suite 100 Scottsdale, AZ 85258 Attn: Xavier Gutierrez and Legal Department
With a copy to:	Snell & Wilmer, LLP 1 East Washington Street, Suite 2700 Phoenix, AZ 85004 Attn: Nick Wood and Joyce Wright

or at such other place or to such other persons as any Party shall from time to time notify the other in writing as provided herein. The date of service of any communication hereunder shall

be the date of personal delivery, the date of delivery by courier, or the third business day after the postmark on the certified or registered mail, as the case may be.

i. Waiver. No covenant, term or condition or the breach hereof shall be deemed waived, except by written consent of the Party against whom the waiver is claimed, and any waiver or the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition.

j. Negation of Partnership. City shall not become or be deemed a partner or a joint venturer with Developer by reason of the provisions of this Agreement.

k. Conflicts of Interest. No member, official, or employee of City shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement, that is prohibited by law. This Agreement is subject to the cancellation provisions of A.R.S. §38-511.

IN WITNESS WHEREOF, the parties hereto executed this Agreement as of the Effective Date specified above.

CITY:

CITY OF TEMPE,
an Arizona municipal corporation

APPROVED AS TO FORM:

By: _____
Andrew B. Ching, City Manager

_____
City Attorney

DEVELOPER:

BLUEBIRD DEVELOPMENT LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

EXHIBIT E

CERTIFICATE OF COMPLETION

When recorded, return to

City of Tempe
31 East Fifth Street
Tempe, Arizona 85281
Attention: City Clerk

CERTIFICATE OF COMPLETION

In accordance with the terms of the Development and Disposition Agreement dated _____ _____, 2022, by and between the CITY OF TEMPE (CITY) and Bluebird Development, LLC, and recorded _____ at Recorders No. _____, this Certificate of Completion is issued for the building located on the following described parcel of land:

Construction of improvements were initiated on or about _____, and were completed on or about _____, as evidenced by the Letter of Compliance attached as **Exhibit A**.

Dated:_____.

Respectfully,

_____
Community Development Manager
City of Tempe, Arizona

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing Certificate of Completion, consisting of two (2) pages, was acknowledged before me this _____ day of _____, 2022, by _____ the Community Development Manager of the City of Tempe, an Arizona municipal corporation, and that in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____
Notary Public

My Commission Expires:

_____

LETTER OF COMPLIANCE

DATE:

So far as ascertained by or made known to the undersigned, the basic or pre-lease building located at_____, constructed under Permit # _____ as a commercial shell building, Type _____, _____ occupancy, totaling _____ square feet, has been constructed in accordance with the applicable Codes and Ordinances of the City of Tempe with the exception of tenant improvements which are to be constructed under separate permits. No occupancy of the building is permitted until a Certificate of Occupancy has been issued for the building or a designated portion of the building.

BY:_____
Community Development Department
Building Safety Division

EXHIBIT F

TEMPORARY LICENSE AGREEMENT

This License Agreement ("**Agreement**") is executed as of _____, 2023 ("**Agreement Date**"), by and between the City of Tempe, an Arizona municipal corporation (the "**City**"), and _____ ("**Licensee**").

BACKGROUND

A. As of the Agreement Date, the City is the owner of the real property (the "Land") described on the attached Exhibit "A", which is located at _____ in Tempe, Arizona.

B. In connection with certain activities of Licensee and/or its affiliates on or in the vicinity of the Land (the "**Project Construction Activities**") pursuant to that certain C2022-XX Development and Disposition Agreement dated as of _____, 2022 by and between the City and Licensee and/or its affiliates (the "**DDA**"), Licensee has requested that the City grant it and its employees, agents, suppliers, vendors, consultants, contractors and sub-contractors (the "**Licensee Parties**") a license to use a portion of the Land more particularly described on Exhibit "B" hereto (the "City Property") for [*insert description of activities*] (the "**Permitted Use**"). Any capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the DDA.

C. The City is agreeable to granting a license for the Permitted Use upon the terms and conditions set forth in this Agreement.

AGREEMENTS

For valuable consideration, the receipt and sufficiency of which are acknowledged, Licensee and the City (the "**Parties**") agree as follows.

1. License Matters

a. Grant of License. The City grants to Licensee a temporary, non-exclusive license ("**License**") over, on, across and through the City Property for the Permitted Use, including for parking purposes by Licensee and the Licensee Parties, together with reasonable rights of access, ingress and egress over, on, across and through the City Property in connection therewith.

b. Term. The License shall commence on the Agreement Date and shall automatically expire if not sooner terminated, on the earlier of (i) [*To be removed/revised if not applicable for specific license purpose: the date Licensee enters into an Access Agreement to perform Site Remediation as provided in the DDA*], (ii) any event of default by Licensee under

the DDA (beyond any applicable notice and cure periods), or (iii) Licensee's completion or cessation of the Permitted Use.

c. Indemnity. To the fullest extent permitted by law, Licensee shall defend, indemnify and hold harmless the City, its agents, officers, officials, employees and volunteers (collectively, the "**Indemnified Parties**") for, from and against all claims, damages, losses and expenses, including but not limited to, reasonable attorney's fees, court costs, and the costs of appellate proceedings (collectively, "**Claims**"), arising from or related to the negligent acts or omissions of the Licensee Parties, except to the extent such claims arise from or relate to the grossly negligent or intentional acts or omissions of the City and its City Council members, officers, employees, consultants, outside legal counsel, and contractors, and except that Licensee shall have no liability related to the discovery or release of pre-existing conditions, unless the acts of Licensee or Licensee's agents exacerbate a pre-existing condition (the "**Indemnity Obligations**"). The amount and type of insurance coverage requirement set forth herein will in no way be construed as limiting the scope of indemnity in this paragraph. Notwithstanding anything to the contrary, the indemnification obligations of Licensee under this Agreement shall be offset or reduced by the full amount of such net insurance proceeds and/or such indemnity, contribution or other similar payment received by City and its City Council members, officers, and employees. Furthermore, outdistancing anything to the contrary, nothing herein shall be deemed to impose any Indemnity Obligations on Licensee that the law prohibits from being imposed upon Licensee. If City or any other Indemnified Party is made a defendant in any action, suit or proceeding brought by a third party for a Claim, City or such other Indemnified Party shall tender defense of any such Claim subject to Licensee's Indemnity Obligations hereunder to Licensee promptly and in sufficient time to avoid prejudice, and Licensee shall have the right to assume and control the defense thereof with counsel selected by Licensee and reasonably approved by the Indemnified Party. Any additional counsel hired or engaged by an Indemnified Party shall be the sole cost and expense of the Indemnified Party and/or City, as applicable. After an Indemnified Party tenders defense of any such Claim subject to Licensee's Indemnity Obligations hereunder to Licensee, Licensee shall at its own expense: (i) resist and defend such action, suit or proceeding or cause the same to be resisted and defended by such counsel designated by Licensee; and (ii) if any such action, suit or proceeding results in a final, non-appealable judgment against the Indemnified Party, Licensee promptly shall satisfy and discharge such judgment or shall cause such judgment to be promptly satisfied and discharged; provided, however, Licensee may elect in its sole discretion to satisfy and discharge any non-final, appealable judgment against the Indemnified Party rather than appealing same, or to settle the Claim at Licensee's sole expense. The Indemnified Parties shall cooperate with and vigorously support Licensee's indemnification efforts in connection with the defense of any Claim against any Indemnified Parties including assisting with discovery and disclosure efforts and requirements and, if requested by Licensee, and shall authorize Licensee's intervention in any proceeding relating to a Claim. This indemnity shall survive the termination of this Agreement.

d. No Liens. Licensee shall not permit any liens to attach to the City Property as a result of the acts or omissions of any of the Licensee Parties, and if any such liens do attach, Licensee shall promptly cause them to be released or bonded over to the reasonable satisfaction of the City.

e. Insurance. During the term of the License, Licensee or its general contractor shall maintain, or cause the applicable Licensee Parties to maintain, in full force and effect policies of general liability and automobile liability insurance in amounts not less than $1,000,000 combined single limit per occurrence and in the aggregate. All such policies shall name the City as additional insured and shall state that they may not be cancelled prior to expiration without thirty (30) days prior written notice to the City. Prior to commencing activities pursuant to this Agreement, Licensee shall furnish the City a Certificate of Insurance evidencing Licensee's policy or policies of insurance in full force and effect as required by this Agreement and naming the City as an additional insured and as a certificate holder. The policies shall contain a waiver of subrogation against the City. Licensee shall comply with all claim reporting provisions of the policy and cause no breach of the policy warranty that would affect coverage afforded under the policy to protect the City. Licensee shall include all contractors and subcontractors as insureds under its policies or it shall furnish separate certificates and endorsements for each such contractor and subcontractor to the City.

f. Restoration. [*To be removed/revised if not applicable for specific license purpose: If Licensee does not timely enter into an Access Agreement to perform Site Remediation for the City Property as provided in the DDA*,] then within ninety (90) days after expiration or other termination of this License, Licensee shall promptly remove all of its equipment, supplies, and material from the City Property and shall restore the City Property to substantially the same the condition in which it existed as of the Agreement Date.

2. Representations, Warranties and Covenants of Licensee.

a. During the term of this Agreement, Licensee shall not cause or knowingly permit the Licensee Parties to cause any generation, production, location, transportation, storage, treatment, discharge, disposal, or release upon or under the City Property of any substance regulated under any local, state or federal environmental protection law or regulation in violation of any local, state or federal environmental protection law or regulation.

b. The City shall at all times have access to the City Property provided that such access by the City shall not unreasonably interfere with the rights granted to Licensee under this Agreement.

c. Licensee, at its sole cost and expense, shall engage in the Permitted Use in a good and safe manner, and shall keep the keep the City Property free from debris and trash associated with any entry onto or activities on the City Property in connection with the Permitted Use. Licensee shall comply with, conform to and obey, and use commercially reasonable efforts to cause each of the Licensee Parties to comply with, conform to and obey all laws, ordinances, rules, regulations and all other legal requirements applicable to them, including, without limitation, laws and regulations relating to occupational safety and health and environmental protection, and all orders, writs, judgments, injunctions, decrees or awards of any court or governmental authority with jurisdiction over Licensee or the City Property. Licensee shall obtain promptly and keep in full force and effect all licenses, permits, authorizations, registrations, rights and franchises necessary for the Permitted Use and as may be otherwise required for Licensee's performance under this Agreement.

d. At all times during the term of this Agreement, Licensee, at Licensee's cost and expense, shall conduct the Permitted Use in compliance with all applicable laws, rules, ordinances and requirements, provided, however, Licensee shall have no responsibility, obligation or liability with respect to any condition or matter on the City Property in existence as of the Agreement Date or not caused or exacerbated by Licensee or the Licensee Parties. Licensee shall at all times use commercially reasonable efforts to minimize the risk of loss, theft or damage by vandalism, sabotage or other means to any of Licensee's or the Licensee Parties' construction office trailers, fencing, vehicles, equipment, files, supplies and other personal property located on or within the City Property. Licensee agrees to take reasonable safety and security precautions (including but not limited to maintaining and locking its temporary perimeter fence during non-business hours, and monitoring suspicious activity) to attempt to prevent loss, damage, vandalism or theft of Licensee's or the Licensee's Parties' construction office trailers, fencing, vehicles, equipment, files, supplies and other personal property located on or within the City Property; provided, however, that Licensee acknowledges and agrees that Licensee makes no assurances as to the safety or security of the City Property. By accepting this License, Licensee agrees, for itself and the Licensee Parties, to assume all risks arising out of or relating to the entry upon and/or the occupancy and use of the City Property, including but not limited to any risk of loss by fire, theft or damage to any of Licensee's or the Licensee Parties' construction office trailers, fencing, vehicles, equipment, files, supplies and other personal property located on or within the City Property. The provisions of this paragraph shall survive any termination or expiration of this Agreement. Licensee shall at all times be responsible for the conduct and discipline of the Licensee Parties participating in the Permitted Use.

3. Default; Remedies. It is a default if either party fails to perform its obligations under this Agreement and such failure is not cured within thirty (30) days after written notice from the non-defaulting party. The non-defaulting party shall be entitled to full and adequate relief by all available legal and equitable remedies, including, without limitation, termination of this Agreement and specific performance.

4. Governing Law. This Agreement shall be interpreted according to, and governed by, the procedural and substantive laws of the State of Arizona. The Parties irrevocably consent to jurisdiction and venue in the State of Arizona and agree that they will not attempt to remove or transfer any action properly commenced in the State of Arizona. The successful party in any court action brought to enforce or interpret any provision of this Agreement will be entitled to recover its reasonable attorney's fees and court costs from the unsuccessful party.

5. Notices. All notices or other communications required or permitted to be provided pursuant to this Agreement shall be in writing and shall be hand delivered, sent by United States Postal Service, postage prepaid, by a nationally recognized courier service. All notices shall be deemed to have been given when delivered if hand delivered, when received if sent by courier, or forty-eight (48) hours following deposit in the United States Postal Service. Notices shall be addressed as follows:

If to Licensee: Bluebird Development LLC
8465 N Pima Rd, Suite 100
Scottsdale, AZ 85258

Attn: Xavier Gutierrez

with copy to: Snell & Wilmer L.L.P.
1 East Washington, Suite 2700
Phoenix, AZ 85004
Attn: Nick Wood & Joyce Wright

If to the City: City of Tempe
Public Works, Engineering Division
31 East Fifth Street
Tempe, AZ 85251

with copy to: City Attorney
City of Tempe
21 East Sixth Street
Tempe AZ 85251

6. Entire Agreement. Except as otherwise set forth in the DDA, this Agreement, together with its Exhibits, is the entire agreement of the Parties and supersedes any and all prior oral or written agreements or understandings between the Parties pertaining to the subject matter of this Agreement. The Parties have made no representations, warranties, or inducements, express or implied, other than as set forth in this Agreement and the DDA.

7. Invalidity. Every term of this Agreement shall be enforceable to the fullest extent permitted by law. If any term of this Agreement is determined to be to any extent unenforceable, that provision will be deemed modified in the most minimal manner so as to make it enforceable, and the remainder of this Agreement shall not be affected. This Agreement is subject to cancellation pursuant to A.R.S. §38-511.

8. Time of the Essence. Time is of the essence of all provisions of this Agreement in which time is a relevant factor.

9. General Provisions. Each person executing this Agreement personally represents that he or she has the full legal right to do so in the capacity indicated. No waiver of any term of this Agreement shall be deemed to be a continuing waiver of that term or a waiver of any other term of this Agreement. This Agreement may be executed in one or more counterparts, whether by original, copy, or telecopy signature, each of which together will form one binding agreement of the Parties. This Agreement may only be amended by a written instrument executed by both parties. Licensee may assign this Agreement as expressly permitted under Section 15 of the DDA. This Agreement may not otherwise be assigned by either party without the advance written consent of the other party.

[SIGNATURE PAGES TO FOLLOW]

Executed as of the Agreement Date.

Licensee: _____,
a _____

By: _____
Its: _____

"CITY" The City of Tempe,
an Arizona municipal corporation

By: _____
Its: _____

EXHIBIT "A"
[Legal Description of City Property]

EXHIBIT "B"
[Legal Description of Licensed Portion of City Property]

EXHIBIT H

TEMPORARY CONSTRUCTION STAGING LICENSE

This License Agreement ("**Agreement**") is executed as of _____, 2023 ("**Agreement Date**"), by and between the City of Tempe, an Arizona municipal corporation (the "**City**"), and _____ ("**Licensee**").

BACKGROUND

A. As of the Agreement Date, the City is the owner of the real property ("Land") described on the attached Exhibit "A", which is located at _____ in Tempe, Arizona.

B. In connection with certain activities of Licensee and/or its affiliates on or in the vicinity of the Land (the "**Project Construction Activities**") pursuant to that certain C2022-XX Development and Disposition Agreement dated as of _____, 2022 by and between the City and Licensee and/or its affiliates (the "**DDA**"), Licensee has requested that the City grant it and its employees, agents, suppliers, vendors, consultants, contractors and sub-contractors (the "**Licensee Parties**") a license to use a portion of the Land more particularly described on Exhibit "B" hereto (the "City Property") as a temporary construction staging area for purposes of facilitating, coordinating and effectuating the Project Construction Activities (the "**Permitted Use**"). Any capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the DDA.

C. The City is agreeable to granting a license for the Permitted Use upon the terms and conditions set forth in this Agreement.

AGREEMENTS

For valuable consideration, the receipt and sufficiency of which are acknowledged, Licensee and the City (the "**Parties**") agree as follows.

1. License Matters

a. Grant of License. The City grants to Licensee a temporary, non-exclusive license ("**License**") over, on, across and through the City Property for the Permitted Use, including for parking purposes by Licensee and the Licensee Parties, together with reasonable rights of access, ingress and egress over, on, across and through the City Property in connection therewith.

b. Term. The License shall commence on the Agreement Date and shall automatically expire if not sooner terminated, on the earlier of (i) the date Licensee enters into an Access Agreement to perform Site Remediation as provided in the DDA, (ii) any event of default by Licensee under the DDA (beyond any applicable notice and cure periods), or (iii) Licensee's completion or cessation of the Permitted Use.

c. Indemnity. To the fullest extent permitted by law, Licensee shall defend, indemnify and hold harmless the City, its agents, officers, officials, employees and volunteers (collectively, the "**Indemnified Parties**") for, from and against all claims, damages, losses and expenses, including but not limited to, reasonable attorney's fees, court costs, and the costs of appellate proceedings (collectively, "**Claims**"), arising from or related to the negligent acts or omissions of the Licensee Parties, except to the extent such claims arise from or relate to the grossly negligent or intentional acts or omissions of the City and its City Council members, officers, employees, consultants, outside legal counsel, and contractors, and except that Licensee shall have no liability related to the discovery or release of pre-existing conditions, unless the acts of Licensee or Licensee's agents exacerbate a pre-existing condition (the "**Indemnity Obligations**"). The amount and type of insurance coverage requirement set forth herein will in no way be construed as limiting the scope of indemnity in this paragraph. Notwithstanding anything to the contrary, the indemnification obligations of Licensee under this Agreement shall be offset or reduced by the full amount of such net insurance proceeds and/or such indemnity, contribution or other similar payment received by City and its City Council members, officers, and employees. Furthermore, outdistancing anything to the contrary, nothing herein shall be deemed to impose any Indemnity Obligations on Licensee that the law prohibits from being imposed upon Licensee. If City or any other Indemnified Party is made a defendant in any action, suit or proceeding brought by a third party for a Claim, City or such other Indemnified Party shall tender defense of any such Claim subject to Licensee's Indemnity Obligations hereunder to Licensee promptly and in sufficient time to avoid prejudice, and Licensee shall have the right to assume and control the defense thereof with counsel selected by Licensee and reasonably approved by the Indemnified Party. Any additional counsel hired or engaged by an Indemnified Party shall be the sole cost and expense of the Indemnified Party and/or City, as applicable. After an Indemnified Party tenders defense of any such Claim subject to Licensee's Indemnity Obligations hereunder to Licensee, Licensee shall at its own expense: (i) resist and defend such action, suit or proceeding or cause the same to be resisted and defended by such counsel designated by Licensee; and (ii) if any such action, suit or proceeding results in a final, non-appealable judgment against the Indemnified Party, Licensee promptly shall satisfy and discharge such judgment or shall cause such judgment to be promptly satisfied and discharged; provided, however, Licensee may elect in its sole discretion to satisfy and discharge any non-final, appealable judgment against the Indemnified Party rather than appealing same, or to settle the Claim at Licensee's sole expense. The Indemnified Parties shall cooperate with and vigorously support Licensee's indemnification efforts in connection with the defense of any Claim against any Indemnified Parties including assisting with discovery and disclosure efforts and requirements and, if requested by Licensee, and shall authorize Licensee's intervention in any proceeding relating to a Claim. This indemnity shall survive the termination of this Agreement.

d. No Liens. Licensee shall not permit any liens to attach to the City Property as a result of the acts or omissions of any of the Licensee Parties, and if any such liens do attach, Licensee shall promptly cause them to be released or bonded over to the reasonable satisfaction of the City.

e. Insurance. During the term of the License, Licensee or its general contractor shall maintain, or cause the applicable Licensee Parties to maintain, in full force and effect policies of general liability and automobile liability insurance in amounts not less than

$2,000,000 combined single limit per occurrence and in the aggregate. All such policies shall name the City as additional insured and shall state that they may not be cancelled prior to expiration without thirty (30) days prior written notice to the City. Prior to commencing activities pursuant to this Agreement, Licensee shall furnish the City a Certificate of Insurance evidencing Licensee's policy or policies of insurance in full force and effect as required by this Agreement and naming the City as an additional insured and as a certificate holder. The policies shall contain a waiver of subrogation against the City. Licensee shall comply with all claim reporting provisions of the policy and cause no breach of the policy warranty that would affect coverage afforded under the policy to protect the City. Licensee shall include all contractors and subcontractors as insureds under its policies or it shall furnish separate certificates and endorsements for each such contractor and subcontractor to the City.

f. Restoration. If Licensee does not timely enter into an Access Agreement to perform Site Remediation for the City Property as provided in the DDA, then within ninety (90) days after expiration or other termination of this License, Licensee shall promptly remove all of its equipment, supplies, and material from the City Property and shall restore the City Property to substantially the same the condition in which it existed as of the Agreement Date.

2. Representations, Warranties and Covenants of Licensee.

a. During the term of this Agreement, Licensee shall not cause or knowingly permit the Licensee Parties to cause any generation, production, location, transportation, storage, treatment, discharge, disposal, or release upon or under the City Property of any substance regulated under any local, state or federal environmental protection law or regulation in violation of any local, state or federal environmental protection law or regulation.

b. The City shall at all times have access to the City Property provided that such access by the City shall not unreasonably interfere with the rights granted to Licensee under this Agreement.

c. Licensee, at its sole cost and expense, shall engage in the Permitted Use in a good and safe manner, and shall keep the City Property free from debris and trash associated with any entry onto or activities on the City Property in connection with the Permitted Use. Licensee shall comply with, conform to and obey, and use commercially reasonable efforts to cause each of the Licensee Parties to comply with, conform to and obey all laws, ordinances, rules, regulations and all other legal requirements applicable to them, including, without limitation, laws and regulations relating to occupational safety and health and environmental protection, and all orders, writs, judgments, injunctions, decrees or awards of any court or governmental authority with jurisdiction over Licensee or the City Property. Licensee shall obtain promptly and keep in full force and effect all licenses, permits, authorizations, registrations, rights and franchises necessary for the Permitted Use and as may be otherwise required for Licensee's performance under this Agreement.

d. At all times during the term of this Agreement, Licensee, at Licensee's cost and expense, shall conduct the Permitted Use in compliance with all applicable laws, rules, ordinances and requirements, provided, however, Licensee shall have no responsibility, obligation or liability with respect to any condition or matter on the City Property in existence as

of the Agreement Date or not caused or exacerbated by Licensee or the Licensee Parties. Licensee shall at all times use commercially reasonable efforts to minimize the risk of loss, theft or damage by vandalism, sabotage or other means to any of Licensee's or the Licensee Parties' construction office trailers, fencing, vehicles, equipment, files, supplies and other personal property located on or within the City Property. Licensee agrees to take reasonable safety and security precautions (including but not limited to maintaining and locking its temporary perimeter fence during non-business hours, and monitoring suspicious activity) to attempt to prevent loss, damage, vandalism or theft of Licensee's or the Licensee's Parties' construction office trailers, fencing, vehicles, equipment, files, supplies and other personal property located on or within the City Property; provided, however, that Licensee acknowledges and agrees that Licensee makes no assurances as to the safety or security of the City Property. By accepting this License, Licensee agrees, for itself and the Licensee Parties, to assume all risks arising out of or relating to the entry upon and/or the occupancy and use of the City Property, including but not limited to any risk of loss by fire, theft or damage to any of Licensee's or the Licensee Parties' construction office trailers, fencing, vehicles, equipment, files, supplies and other personal property located on or within the City Property. The provisions of this paragraph shall survive any termination or expiration of this Agreement. Licensee shall at all times be responsible for the conduct and discipline of the Licensee Parties participating in the Permitted Use.

3. Default; Remedies. It is a default if either party fails to perform its obligations under this Agreement and such failure is not cured within thirty (30) days after written notice from the non-defaulting party. The non-defaulting party shall be entitled to full and adequate relief by all available legal and equitable remedies, including, without limitation, termination of this Agreement and specific performance.

4. Governing Law. This Agreement shall be interpreted according to, and governed by, the procedural and substantive laws of the State of Arizona. The Parties irrevocably consent to jurisdiction and venue in the State of Arizona and agree that they will not attempt to remove or transfer any action properly commenced in the State of Arizona. The successful party in any court action brought to enforce or interpret any provision of this Agreement will be entitled to recover its reasonable attorney's fees and court costs from the unsuccessful party.

5. Notices. All notices or other communications required or permitted to be provided pursuant to this Agreement shall be in writing and shall be hand delivered, sent by United States Postal Service, postage prepaid, by a nationally recognized courier service. All notices shall be deemed to have been given when delivered if hand delivered, when received if sent by courier, or forty-eight (48) hours following deposit in the United States Postal Service. Notices shall be addressed as follows:

If to Licensee: Bluebird Development LLC
8465 N Pima Rd, Suite 100
Scottsdale, AZ 85258
Attn: Xavier Gutierrez

with copy to: Snell & Wilmer L.L.P.

1 East Washington, Suite 2700
Phoenix, AZ 85004
Attn: Nick Wood & Joyce Wright

If to the City: City of Tempe
Public Works, Engineering Division
31 East Fifth Street
Tempe, AZ 85251

with copy to: City Attorney
City of Tempe
21 East Sixth Street
Tempe AZ 85251

6. Entire Agreement. Except as otherwise set forth in the DDA, this Agreement, together with its Exhibits, is the entire agreement of the Parties and supersedes any and all prior oral or written agreements or understandings between the Parties pertaining to the subject matter of this Agreement. The Parties have made no representations, warranties, or inducements, express or implied, other than as set forth in this Agreement and the DDA.

7. Invalidity. Every term of this Agreement shall be enforceable to the fullest extent permitted by law. If any term of this Agreement is determined to be to any extent unenforceable, that provision will be deemed modified in the most minimal manner so as to make it enforceable, and the remainder of this Agreement shall not be affected. This Agreement is subject to cancellation pursuant to A.R.S. §38-511.

8. Time of the Essence. Time is of the essence of all provisions of this Agreement in which time is a relevant factor.

9. General Provisions. Each person executing this Agreement personally represents that he or she has the full legal right to do so in the capacity indicated. No waiver of any term of this Agreement shall be deemed to be a continuing waiver of that term or a waiver of any other term of this Agreement. This Agreement may be executed in one or more counterparts, whether by original, copy, or telecopy signature, each of which together will form one binding agreement of the Parties. This Agreement may only be amended by a written instrument executed by both parties. Licensee may assign this Agreement as expressly permitted under Section 15 of the DDA. This Agreement may not otherwise be assigned by either party without the advance written consent of the other party.

[SIGNATURE PAGES TO FOLLOW]

Executed as of the Agreement Date.

Licensee: _____,
a _____

By: _____
Its: _____

"CITY" The City of Tempe,
an Arizona municipal corporation

By: _____
Its: _____

EXHIBIT "A"
[Legal Description of City Property]

EXHIBIT "B"

[Legal Description of Licensed Portion of City Property]

EXHIBIT I

ARBITRATION DISPUTE RESOLUTION PROCESS

If a dispute arises between the Parties with respect to this Agreement and the Parties are unable to resolve the matter through: 1) discussions; 2) negotiations between principals; and 3) mediation, all of which shall be carried out on a reasonable efforts basis, and all three of which are conditions precedent to arbitration, either Party may submit such dispute (the "Arbitration Dispute") to arbitration ("Arbitration") according to the procedures under this Exhibit by providing written notice to the other Party of the Arbitration Dispute ("Written Notice").

The Arbitration Dispute shall be decided by a panel consisting of three arbitrators (the "Arbitrators"). The Arbitration panel selection process shall commence upon the receipt of the Written Notice. Within ten (10) days of receipt of Written Notice, each Party shall select one (1) individual to serve as an Arbitrator on the panel. Within twenty (20) days of receipt of Written Notice, the two Arbitrators selected by each Party shall jointly select the third individual to serve as an Arbitrator on the panel of Arbitrators. If the two Arbitrators selected by each Party cannot agree on a mutually acceptable individual to act as the third Arbitrator for the Arbitration Dispute within twenty (20) days of receipt of Written Notice, the selection of the third Arbitrator shall be made by the regional vice president (or his/her equivalent) of the American Arbitration Association (the "AAA") with authority over Arizona (the "AAA Process"). Each Arbitrator selected by each Party, and the third Arbitrator picked by the two Arbitrators or by the AAA must be independent, impartial, neutral, and have experience in resolving, litigating, or deciding disputes in the area of law directly related to the subject matter of the dispute or disputes related to development and construction similar to that of the project with at least 10 years of experience; provided that to the extent the Arbitration Dispute involves a Cost Accounting Submittal, each Arbitrator shall be experienced accounting professionals with a minimum of five (5) years' experience in the field of cost accounting.

Each Arbitration shall be conducted by the Arbitrators at a location in Maricopa County, Arizona, mutually agreed by the Parties, and if no agreement is reached, at a location in Maricopa County then selected by the Arbitrators. Unless otherwise mutually agreed by the Parties, the Arbitration shall be conducted under the Arizona Revised Uniform Arbitration Act, A.R.S. ¸ 12-3001 et seq., the Judicial Arbitration and Mediation Services ("JAMS") Comprehensive Rules and Procedures, and the JAMS Optional Arbitration Appeal Procedure in accordance with this Agreement and this Exhibit. Arbitration shall not, however, be submitted to or administered by JAMS or the AAA.

The Parties shall make good faith efforts to agree on reasonable discovery rules and the extent and scope of reasonable discovery with respect to any Arbitration Dispute. If the Parties are not able to agree on such rules and the extent and the scope of such discovery, all discovery issues shall be resolved by the Arbitrators in the Arbitrators' sole discretion. Each party shall bear its own fees and costs. The Arbitrators shall have no discretion or right to award fees and costs. The Arbitrators shall have the authority and power to decide questions, issues, or disputes relating to the arbitrability of the dispute, issue, or question, and shall have the power and authority to issue summary judgment and injunctive relief.

Unless waived by each of the Parties participating in the Arbitration, the Arbitrators shall conduct an Arbitration hearing at which the participating Parties and their respective counsel may be present and have the opportunity to present and to object to evidence, to examine and cross-examine witnesses, and to deliver an opening statement and closing statement. The Parties may seek preliminary injunctions or provisional relief from a court in aid of arbitration or to maintain the status quo or to preliminarily decide the issue until such time as a final and binding decision is made by the Arbitrators.

EXHIBIT J

MAXIMUM REIMBURSEMENT AMOUNT
&
BOND REDEMPTION APPLICATION

The "Maximum Reimbursement Amount" shall be the sum of:

(a) $209,000,000 (plus any "Excess Remediation Costs") (the "City's CFD Bond Amount"); plus

(b) City's CFD Bond Debt Service on the City's CFD Bond Amount.

In no event shall the Maximum Reimbursement Amount exceed $247,134,726.

"Excess Remediation Costs" means the remediation costs Developer incurs in remediating the Property in excess of $73,625,166, but not more than $20,000,000.

"City's CFD Bond Debt Service" means interest on the principal amount of CFD Bonds comprising the City's CFD Bond Amount determined based on the weighted average of the actual issuances of CFD Bonds and the interest rates thereon.

In no event shall the City's CFD Bond Amount exceed the actual costs of the Public Infrastructure for which City's CFD Bond Amount are applied, as determined in accordance with the Accepted Cost Accounting Submittals.

If CFD Bonds are redeemed early through the application of City Resources in excess of amounts required to fund CFD Bonds representing the City's CFD Bond Amount and the associated City's CFD Bond Debt Service, any such CFD Bonds to which such excess City Resources are applied shall be deducted from the City's CFD Bond Amount and the future City's CFD Bond Debt Service associated therewith for purposes of calculating the then applicable Maximum Reimbursement Amount.

The following table displays the Parties' current estimated CFD Bond uses for Public Infrastructure. The amounts that will be finally allocated to the items of Public Infrastructure will be finalized as part of the CFD Bond issuances. Such amounts may be reallocated by Developer among the items of Public Infrastructure listed below, but the aggregate amount for such Public Infrastructure comprising the City's CFD Bond Amount as calculated pursuant to (a) above.

	Total ($)	Phase 1A ($)	Phase 1B ($)	Phase 1C ($)	Phase 1D ($)
Site Remediation	73,625,166	43,992,049	0	29,633,117	0
Acquisition Cost	50,377,140	12,087,900	14,668,830	9,448,164	14,172,246
Yard Relocation	8,000,000	0	0	8,000,000	0
Transmission Line Relocation	10,089,159	0	10,089,159	0	0
Levee Shoring and Dewatering	14,857,598	14,857,598	0	0	0
Local Access Areas/Roadways	19,662,044	0	12,706,399	0	6,955,644
Riverbank Improvements	11,534,826	0	11,534,826	0	0
ROW Landscaping					
(Priest/Rio Salado)	2,086,693	0	0	0	2,086,693
(Rio Salado)	1,447,270	0	0	601,000	846,270
Imported Clean Fill Dirt	3,038,874	0	0	0	3,038,874
Contingency for Hard Costs	13,634,163	5,884,965	3,433,038	3,023,412	1,292,748
Soft Costs	13,634,163	5,884,965	3,433,038	3,023,412	1,292,748
Miscellaneous	5,000,000	1,199,741	1,455,901	937,743	1,406,615
Option Termination	10,000,000	0	10,000,000	0	0
Bond Underwriting/Issuance Costs	4,415,960	1,064,240	1,630,280	1,011,240	710,200
Debt Service Reserve Fund	4,060,000	0	0	2,385,000	1,675,000
Capitalized Interest	13,091,300	5,170,600	7,920,700	0	0
Total	258,554,355	90,142,056	76,872,173	58,063,088	33,477,069
Cash Contribution	(50,377,140)	(40,000,000)		(10,377,140)	0
City's CFD Bond Amount	208,177,215*	50,142,056	76,872,173	47,685,948.	33,477,069

*Such amount may never exceed $209,000,000 plus any applicable Excess Remediation Costs.

EXHIBIT K

FORM OF DEED

WHEN RECORDED, RETURN TO:

City of Tempe
21 East Fifth Street
Tempe, Arizona 85281
Attention: City Clerk

EXEMPT from the
requirement for an
Affidavit per
11-1134A3

SPECIAL WARRANTY DEED

For the consideration of Ten Dollars ($10.00) and other valuable considerations, The City of Tempe, an Arizona municipal corporation ("**Grantor**"), hereby conveys to _____ ("**Grantee**"), whose address is _____, the following real property situated in Maricopa County, Arizona:

See Exhibit A attached hereto and incorporated herein by this reference (the "**Property**")

TOGETHER WITH all improvements, buildings, structures and fixtures located thereon; all easements, if any, benefiting the Property; all rights, benefits, privileges and appurtenances pertaining to the Property, including any right, title and interest of Grantor in and to any property lying in or under the bed of any street, alley, road or right-of-way, open or proposed, abutting or adjacent to the Property; the strips, gaps or gores, if any, between the Property and abutting property; all water, water rights, oil, gas or other mineral interests, if any, in, on, under or above the Property; and all rights and interests to receive any condemnation awards from any condemnation proceeding pertaining to the Property, sewer rights, water courses, wells, ditches and flumes located on or appurtenant to the Property.

SUBJECT TO current real property taxes and other assessments; patent reservations; and all easements, rights of way, covenants, conditions, restrictions and other matters as may appear of record in the Official Records of Maricopa County, Arizona, or which an accurate survey or physical inspection of the Property would reveal.

AND Grantor hereby binds itself and its successors to warrant and defend the title against all acts of Grantor and no other, subject to the matters above set forth.

IN WITNESS WHEREOF, Grantor has caused this Special Warranty Deed to be executed on this _____ day of _____, 2023.

CITY OF TEMPE,
an Arizona municipal corporation

By:_____
Corey D. Woods, Mayor

ATTEST:

_____
Carla Reece, City Clerk

APPROVED AS TO FORM:

_____
Sonia Blain, City Attorney

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023 by Corey D. Woods, the Mayor of The City of Tempe, an Arizona municipal corporation, who acknowledged that he signed the foregoing instrument on behalf of the City.

_____
Notary Public

My Commission Expires:

_____

Exhibit A of K
The Property

EXHIBIT L

LAND AND IMPROVEMENTS LEASE

THIS LAND AND IMPROVEMENTS LEASE ("**Lease**") is made and entered into as of the ____ day of _____ (the "**Effective Date**") [INSERT DATE OF CONVEYANCE OF THE PREMISES TO CITY] by and between the CITY OF TEMPE, an Arizona municipal corporation ("**Landlord**"), and _____, a _____limited liability company [INSERT DEVELOPER OR SPE FORMED BY DEVELOPER, AS APPLICABLE] ("**Tenant**").

RECITALS

A. Landlord has title of record to the real property described in **Exhibit "A"** attached hereto (the "**Land**"), together with all rights and privileges appurtenant thereto and all improvements and future additions thereto or alterations thereof (collectively, the "**Premises**").

B. Landlord acquired title to the Land and Premises from [TENANT OR BLUEBIRD DEVELOPMENT LLC AN AFFILIATE OF TENANT] pursuant to that certain Development and Disposition Agreement dated _____, 202__ by and between Landlord and [TENANT OR BLUEBIRD DEVELOPMENT LLC AN AFFILIATE OF TENANT], and recorded in the Official Records of Maricopa County as Document No. _____ (the "**DDA**").

C. The Premises are located in a single central business district in a redevelopment area established pursuant to Title 36, Chapter 12, Article 3 of Arizona Revised Statutes (A.R.S. §§36-1471 *et seq*.). Tenant's construction of the improvements to or upon the Premises resulted in an increase in property value of at least one hundred percent.

D. The Premises will be subject to the Government Property Lease Excise Tax as provided for under A.R.S. §42-6203 (A) and (B) (the "**Tax**"). The Tax shall be abated for the period commencing on the Effective Date (the "**Commencement Date**") for the [eight (8) or thirty (30)] year period following the date of the issuance of a certificate of occupancy for the Premises.

AGREEMENT

For and in consideration of the Rental and of the covenants and agreements hereinafter set forth to be kept and performed by Tenant, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises for the Term, at the Rental and subject to and upon all of the terms, covenants and agreements hereinafter set forth.

1. Quiet Enjoyment. Landlord covenants and agrees with Tenant that conditioned upon Tenant's paying the Total Rent (defined below) when and as due, and performing and fulfilling all the covenants, agreements, conditions and provisions herein to be kept, observed or performed by Tenant, Tenant may at all times during the Term hereof peaceably, quietly and exclusively have, hold and enjoy the Premises, free from hindrance or interference from

Landlord or anyone claiming an interest in the Premises acquired from Landlord. During the Term of the Lease, Landlord shall not transfer title to the Premises to any third party or consent to or cause to be placed any liens or encumbrances on the Premises unless Landlord receives approval to do so from Tenant as provided in Section 37.2.

2. Term; Conveyance of Land and Premises to Tenant. The term ("**Term**") of this Lease shall be for [eight (8)] or [thirty (30)] years, commencing on the Commencement Date and ending at midnight on the [eighth (8th)] or [thirtieth (30^{th})] anniversary of the Commencement Date, subject to earlier termination at Tenant's option, as provided herein. Landlord and Tenant acknowledge and agree that the certificate of occupancy for the Premises was issued on _____. As more fully set forth in Article 32 below, on the last day of the Term of this Lease or upon any termination of this Lease, whether under Article 16 below or otherwise, title to the Land and Premises (including all improvements constituting a part thereof) shall automatically vest in Tenant.

3. Rental; Tenant's Payment Obligations.

3.1 Tenant covenants to pay to Landlord as rental ("**Rental**") for the Premises the sum of $10.00 per year, payable on the Commencement Date and every anniversary thereof during the Term of this Lease ("**Total Rent**"). Tenant shall have the right to prepay the Total Rent for the entire Term of this Lease, without prejudice to its right to terminate this Lease as provided herein, but upon any early termination of this Lease, Landlord shall not be obligated to refund any portion of the prepaid rent. The consideration for this Lease includes, without limitation: Tenant's payment of the entire cost of construction of the improvements constituting the Premises, Tenant's performance of all of the covenants and obligations under this Lease and Tenant's contribution toward fulfillment of Landlord's policy and desire to promote development within a redevelopment area, to encourage the creation of jobs within the City of Tempe, and to enhance tax revenues resulting from the operation of businesses on the Premises, including transaction privilege taxes.

3.2 In addition to the Total Rent payable by Tenant pursuant to Section 3.1 above, Tenant agreed to certain terms and provisions concerning payment of certain amounts in support of education pursuant to Section 12.5.2 of the DDA. All requirements of the DDA are incorporated herein by this reference regarding Tenant's payment of in-lieu amounts to support education described in the DDA.

4. Leasehold Mortgage of Premises.

4.1 Subject to the applicable provisions of this Lease, Tenant is hereby given the absolute right without any requirement for Landlord's consent to create a security interest in Tenant's leasehold interest under this Lease (and in any subleases and the rents, income and profits therefrom) by mortgage, deed of trust or collateral assignment or otherwise. Any such security interest shall be referred to herein as a **"Leasehold Mortgage,"** and the holder of a Leasehold Mortgage shall be referred to herein as a **"Leasehold Mortgagee."**

4.2 No liability for the performance of Tenant's covenants and agreements hereunder shall attach to or be imposed upon any Leasehold Mortgagee, unless such Leasehold Mortgagee forecloses its interest and becomes the Tenant hereunder, following which the liability shall attach only during the term of ownership of the leasehold estate by said Leasehold Mortgagee.

5. Taxes; Lease Obligations.

5.1 Payment. Tenant shall pay and discharge all general and special real estate and/or personal property taxes and assessments levied or assessed against or with respect to the Premises during the Term hereof and all charges, assessments or other fees payable with respect to or arising out of this Lease and all recorded deed restrictions affecting or relating to the Premises. Any sales, use, excise or transaction privilege tax consequences incurred by Landlord because of this Lease or in relation to the Premises or improvements included therein may be passed on to the Tenant either directly if applicable or as "**additional rent**."

5.2 Protest. Tenant may, at its own cost and expense protest and contest, by legal proceedings or otherwise, the validity or amount of any such tax or assessment herein agreed to be paid by Tenant and shall first pay said tax or assessment under protest if legally required as a condition to such protest and contest, and Tenant shall not in the event of and during the bona fide prosecution of such protest or proceedings be considered as in default with respect to the payment of such taxes or assessments in accordance with the terms of this Lease.

5.3 Procedure. Landlord agrees that any proceedings contesting the amount or validity of taxes or assessments levied against the Premises or against the rentals payable hereunder may be filed or instituted in the name of Landlord or Tenant, as the case may require or permit, and the Landlord does hereby appoint Tenant as its agent and attorney-in-fact, during the Term of this Lease, to execute and deliver in the name of Landlord any document, instrument or pleading as may be reasonably necessary or required to carry on any contest, protest or proceeding contemplated in this Section. Tenant shall hold the Landlord harmless from any liability, damage or expense incurred or suffered in connection with such proceedings.

5.4 Allocation. All payments contemplated by this Article 5 shall be prorated for partial years at the Commencement Date and at the end of the Term.

5.5 Government Property Lease Excise Tax; Notice of Potential Termination in the Event of Failure to Pay Tax. As required under A.R.S. §42-6206, Tenant is hereby notified of its potential tax liability under the Government Property Lease Excise Tax provisions of A.R.S. §42-6201, *et seq.* Failure of Tenant under this Lease to pay the tax during any non-abatement period of this Lease, if any, after notice and an opportunity to cure is an Event of Default that could result in the termination of Tenant's interest or right of occupancy of the government property improvements that are the subject of this Lease and reconveyance of the Premises to Tenant by Landlord. The foregoing sentence constitutes the provision required under A.R.S. §42-6206(2) that failure by the prime lessee to pay the Tax after notice and an opportunity to cure is an Event of Default that could result in divesting the prime lessee of any interest or right or occupancy of the government property improvement. Tenant shall be entitled

to all statutorily authorized abatement of GPLET pursuant to [A.R.S. §42-6209 for a period of eight (8)] [A.R.S. §42-6208.4 for a period of thirty (30)] years after the initial Certificate of Occupancy/Completion is issued for the Premises. In accordance with A.R.S. § 42-6209.B, Tenant agrees to timely provide notice to the Maricopa County Treasurer and apply for GPLET abatement; provided, however, Landlord hereby waives the requirement for Tenant to provide further notice or to apply to Landlord for abatement of GPLET.

6. Use. Subject to the applicable provisions of this Lease and A.R.S. §42-6201(2), the Premises may be used and occupied by Tenant for any lawful purpose, including without limitation the sale of alcoholic beverages, subject to Tenant obtaining all required permits, licenses, and approvals from the Arizona Department of Liquor Licenses and Control.

7. Landlord Non-Responsibility. Landlord shall have no responsibility, obligation or liability under this Lease whatsoever with respect to any of the following (1) Utilities, including gas, heat, water, light, power, telephone, sewage, and any other utilities supplied to the Premises; (2) Disruption in the supply of services or utilities to the Premises; (3) Maintenance, repair or restoration of the Premises; (4) Any other cost, expense, duty, obligation, service or function related to the Premises.

8. Entry by Landlord. Landlord and Landlord's agents shall have the right at reasonable times and upon reasonable notice to enter upon the Premises for inspection, except that Landlord shall have no right to enter portions of any building on the Premises without consent of the occupant or as provided by law.

9. Alterations. Subject to the applicable provisions of this Lease, Tenant shall have the right to construct additional improvements and to make subsequent alterations, additions or other changes to any improvements or fixtures existing from time to time, and the Premises shall constitute all such improvements as they exist from time to time. In connection with any action that Tenant may take with respect to Tenant's rights pursuant hereto, Landlord shall not be responsible for, and Tenant shall pay all costs, expenses and liabilities arising out of or in any way connected with such improvements, alterations, additions or other changes made by Tenant, including without limitation materialmen's and mechanic's liens. Tenant covenants and agrees that Landlord shall not be called upon or be obligated to make any improvements, alterations, or repairs whatsoever in or about the Premises, and Landlord shall not be liable or accountable for any damages to the Premises or any property located thereon. Tenant shall have the right at any time to demolish or substantially demolish improvements located upon the Premises without Landlord's consent. In making improvements and alterations, Tenant shall not be deemed Landlord's agent and shall hold Landlord harmless from any expense or damage Landlord may incur or suffer. During the Term of this Lease, title to all improvements shall always be vested in Landlord, subject to Tenant's rights thereto under this Lease.

10. Easements, Dedications and Other Matters. At the request of Tenant, and provided that no Event of Default shall have then occurred and be continuing, Landlord shall dedicate or initiate a request for dedication to public use of the improvements owned by Landlord within any roads, alleys or easements and convey any portion so dedicated to the appropriate governmental authority, execute (or participate in a request for initiation by the

appropriate commission or department of) petitions seeking a change in zoning for all or a portion of the Premises, consent to the making and recording, or either, of any map, plat, condominium documents, or declaration of covenants, conditions and restrictions of or relating to the Premises or any part thereof, join in granting any easements on the Premises, and execute and deliver (in recordable form where appropriate) all other instruments and perform all other acts reasonably necessary or appropriate to the development, construction, demolition, redevelopment or reconstruction of the Premises or requirements of any governmental authority or existing or proposed Leasehold Mortgagee.

11. Insurance. During the Term of this Lease, the Tenant shall, at Tenant's expense, maintain general public liability insurance against claims for personal injury, death or property damage occurring in, upon or about the Premises. The limitation of liability of such insurance during the first five years of the Term shall not be less than $5,000,000.00 combined single limit. The minimum policy limits shall be increased whenever reasonably deemed appropriate by Landlord's Risk Management to adequately reflect current market conditions; provided, however, Tenant shall receive written notice of such increased minimum policy limits and an explanation of the changed market conditions at least ninety (90) days prior to the effective date of the new requirements. Following receipt of a notice of an increase in such minimum policy limits, Tenant may respond to Landlord's Risk Management Department and request a modification of the increased minimum policy limits, including expressing its objection to the proposed increase and providing additional information regarding current market conditions for Landlord's consideration prior to implementation of the increased minimum policy limits.

12. All of Tenant's policies of liability insurance shall name Landlord and all Leasehold Mortgagees as additional insureds, and, at the written request of Landlord, certificates with respect to all policies of insurance or copies thereof required to be carried by Tenant under this Section 12 shall be delivered to Landlord. Each policy shall contain an endorsement prohibiting cancellation or non-renewal without at least thirty (30) days prior notice to Landlord (ten (10) days for nonpayment) if such endorsement is available on commercially reasonable terms. Tenant may self-insure the coverages required by this Section with the prior approval of Landlord, which will not be unreasonably withheld, and may maintain such reasonable deductibles and retention amounts as Tenant may determine.

13. Liability; Indemnity. Tenant covenants and agrees that Landlord is to be free from liability and claim for damages by reason of any injury to any person or persons, including Tenant, or property of any kind whatsoever and to whomsoever while in, upon or in any way connected with the Premises during the Term of this Lease or any extension hereof, or any occupancy hereunder, Tenant hereby covenanting and agreeing to indemnify, defend and save harmless Landlord, to the extent authorized by applicable laws, from all liability, loss, costs and obligations on account of or arising out of any such injuries or losses, however occurring ("**Claim**"), unless caused by the gross negligence or willful misconduct of Landlord, its agents, employees, or invitees ("**Tenant's Indemnity Obligations**"). The foregoing indemnity shall not apply to any Claim the law prohibits from being imposed upon the indemnitor. The amount and type of insurance coverage requirement set forth herein will in no way be construed as limiting the scope of indemnity in this paragraph. Notwithstanding anything to the contrary, the indemnification obligations of Tenant under this Lease shall be offset or reduced by the full

amount of such net insurance proceeds and/or such indemnity, contribution or other similar payment received by Landlord and its city council members, officers, and employees. If Landlord is made a defendant in any action, suit or proceeding brought by a third party for a Claim, Landlord shall tender defense of any such Claim subject to Tenant's Indemnity Obligations hereunder to Tenant promptly and in sufficient time to avoid prejudice, and Tenant shall have the right to assume and control the defense thereof with counsel selected by Tenant and reasonably approved by Landlord. Any additional counsel hired or engaged by Landlord shall be the sole cost and expense of Landlord. Following Landlord's tendering of defense of any such Claim subject to Tenant's Indemnity Obligations hereunder to Tenant, Tenant shall at its own expense: (i) resist and defend such action suit or proceeding or cause the same to be resisted and defended by such counsel designated by Tenant; and (ii) if any such action, suit or proceeding results in a final, non-appealable judgment against Landlord, Tenant promptly shall satisfy and discharge such judgment or shall cause such judgment to be promptly satisfied and discharged; provided, however, Tenant may elect in its sole discretion to satisfy and discharge any non-final, appealable judgment against Landlord rather than appealing same, to settle the Claim at Tenant's sole expense. Landlord shall cooperate with and vigorously support Tenant's indemnification efforts in connection with the defense of any Claim against Landlord including assisting with discovery and disclosure efforts and requirements and, if requested by Tenant, shall authorize Tenant's intervention in any proceeding relating to a Claim. The provisions of this Article shall survive the expiration or other termination of this Lease.

14. Fire and Other Casualty. If all or any improvements or fixtures within the Premises are totally or partially destroyed or damaged by fire or other insurable casualty, then, at Tenant's election, either: (i) this Lease shall continue in full force and effect, and, subject to the applicable provisions of this Lease, Tenant, at Tenant's sole cost and expense, may, but shall not be obligated to, rebuild or repair the same; or (ii) this Lease shall terminate with respect to all of the Premises or to such portions of the Premises as Tenant may elect. Landlord and Tenant agree that the provisions of A.R.S. § 33-343 shall not apply to this Lease. Subject to the applicable provisions of this Lease, if Tenant elects to repair or rebuild the improvements, any such repair or rebuilding shall be performed at the sole cost and expense of Tenant. If there are insurance proceeds resulting from such damage or destruction, Tenant shall be entitled to such proceeds, whether or not Tenant rebuilds or repairs the improvements or fixtures, subject to the applicable provisions of this Lease and of any Leasehold Mortgage.

15. Condemnation.

15.1 Entire or Partial Condemnation. If the whole or any part of the Premises are taken or condemned by any competent authority for any public use or purposes during the Term of the Lease, this Lease shall terminate with respect to the part of the Premises so taken and any other portion of the Premises as may be specified by Tenant, and, subject to the applicable provisions of this Lease, Tenant reserves unto itself the right to claim and prosecute its claim in all appropriate courts and agencies for any award or damages based upon loss, damage or injury to its leasehold interest (as well as relocation and moving costs). In consideration of Tenant's payment for all of the cost of construction of the improvements constituting the Premises, Landlord hereby assigns to Tenant all claims, awards and entitlements

relating to the Premises arising from the exercise of the power of condemnation or eminent domain.

15.2 Continuation of Lease. If a taking of less than all of the Premises occurs, this Lease shall continue in effect with respect to the portion of the Premises not so taken or specified by Tenant to be removed from this Lease.

15.3 Temporary Taking. If the temporary use of the whole or any part of the Premises or the appurtenances thereto are taken, the Term of this Lease shall not be reduced or affected in any way. The entire award of such taking (whether paid by way of damages, rent, or otherwise) shall be payable to Tenant, subject to the applicable provisions of this Lease and of any Leasehold Mortgage.

15.4 Notice of Condemnation. If any action is filed to condemn the Premises or Tenant's leasehold estate or any part thereof by any public or quasi-public authority under the power of eminent domain or if an action is filed to acquire the temporary use of the Premises or Tenant's leasehold estate or any part thereto, or if an action is threatened or any public or quasi-public authority communicates to Landlord or Tenant its desire to acquire the temporary use thereof, by a voluntary conveyance or transfer in lieu of condemnation, either Landlord or Tenant shall give prompt notice thereof to the other and to any Leasehold Mortgagee. Tenant and each Leasehold Mortgagee shall each have the right, at its own cost and expense, to represent its respective interest in each proceeding, negotiation or settlement with respect to any taking or threatened taking. No agreement, settlement, conveyance or transfer to or with the condemning authority affecting Tenant's leasehold interest and its reversionary interest in the Premises shall be made without the consent of Tenant and each Leasehold Mortgagee.

16. Termination Option.

16.1 Grant of Option. If changes in applicable law nullify, remove, or vitiate the economic benefit to Tenant provided by this Lease or if any person or entity succeeds to Tenant's interest hereunder by foreclosure sale, trustee's sale, or deed in lieu of foreclosure (collectively, "**Foreclosure**"), or if Tenant, in its sole and absolute discretion, so elects for any reason whatsoever at any time, in its sole and absolute discretion, Tenant or Tenant's successor by Foreclosure (as applicable) shall have the option, exercisable by written notice to Landlord, to terminate this Lease as to the entire Premises or as to such portions of the Premises as Tenant or Tenant's successor by Foreclosure (as applicable) may specify effective sixty days after the date of the notice. Simultaneously with, and effective as of such termination, title to the Premises (including all improvements constituting a part thereof) shall automatically vest in Tenant and Landlord shall comply with the obligations under Article 32.

16.2 Condominium Release Provisions. From time to time during the Term of this Lease upon written request by Tenant, Landlord shall allow the Premises or portion thereof to be subdivided into legally defined condominium units ("**Units**") and, thereafter, subjected to a horizontal property regime to allow condominium ownership and sales. Tenant shall have the right to have Units released from this Lease and the fee simple interest in the Units conveyed to the Tenant for the purposes of facilitating the sale of one or more of the Units as condominiums.

Landlord and Tenant agree to cooperate in all respects to ensure that the remaining unreleased portions of the Premises shall remain subject to this Lease and the abatement of the Tax as described in this Lease.

17. Assignment; Subletting.

17.1 Transfer by Tenant. At any time and from time to time Tenant shall have the right to assign this Lease and Tenant's leasehold interest or to sublease all of or any part of the Premises to any person or persons for any use permitted under this Lease, without the consent of the Landlord. Tenant may sublease portions of the Premises in the normal course of Tenant's business for occupancy consistent with the uses permitted by this Lease, subject to the rights of Landlord, and neither the consent of Landlord nor the assumption of this Lease will be required in connection with such subleasing.

17.2 Liability. Each assignee, other than any residential or commercial subtenant, hereby assumes all the obligations of Tenant under this Lease (but not for liabilities or obligations arising prior to such assignment becoming effective). Each assignment shall automatically release the assignor from any personal liability in respect of any obligations or liabilities arising under this Lease from and after the date of assignment, and Landlord shall not seek recourse for any such liability against any assignor or its personal assets. Landlord agrees that performance by a subtenant or assignee of Tenant's obligations under this Lease shall satisfy Tenant's obligations hereunder and Landlord shall accept performance by any such subtenant.

18. Default Remedies; Protection of Leasehold Mortgagee and Subtenants.

18.1 Default. The failure by Tenant to observe and perform any material provision of this Lease to be observed or performed by Tenant or a failure to pay when due any taxes or assessments levied or assessed against the Property as required by Applicable Law and in accordance with Section 5.1 above, where such failure continues for sixty (60) days after written notice thereof by Landlord to Tenant ("**First Notice**") shall constitute an "**Event of Default**"; provided, however, that if the nature of such default is such that the same cannot reasonably be cured within such sixty (60) day period, no Event of Default shall be deemed to have occurred if Tenant shall within thirty (30) days of the occurrence of the Event of Default commence commercially reasonable efforts to cure such Event of Default, and thereafter diligently prosecute the same to completion.

18.2 Remedies. If the Event(s) of Default specified in the First Notice is/are not timely cured prior to expiration of the applicable cure periods of Tenant and any Leasehold Mortgagees specified in this Lease or pursuant to applicable laws, Landlord may at any time thereafter, but not after such Event of Default is cured, by written notice to Tenant specifying the uncured Event of Default ("**Second Notice**") and stating that this Lease and the Term shall expire and terminate on the date specified in such Second Notice unless the default is cured prior to the specified termination date, which termination date shall be no later than twenty (20) days after the giving of such Second Notice. If this Lease is terminated by Landlord due to an Event of Default, this Lease shall terminate as though such date were the date originally set forth herein for expiration of the Term and Landlord shall convey the Premises to Tenant in accordance with

the terms and provisions of Section 32. Tenant hereby irrevocably agrees to accept title to the Premises at such time as Landlord terminates the Lease as provided in this Section 18.2.

18.3 Leasehold Mortgagee Default Protections. If any Leasehold Mortgagee gives written notice to Landlord of its Leasehold Mortgage, together with the name and address of the Leasehold Mortgagee, then, notwithstanding anything to the contrary in this Lease, until the time, if any, that the Leasehold Mortgage is satisfied and released of record or the Leasehold Mortgagee gives to Landlord written notice that said Leasehold Mortgage has been satisfied, Landlord shall provide written notice of any default under this Lease to the Leasehold Mortgagee and the Leasehold Mortgagee shall have the cure rights described in Section 19 of this Lease.

19. Notice to Leasehold Mortgagee. If Landlord gives any notice, demand, election or other communication required hereunder (hereafter collectively "**Notices**") to Tenant, Landlord shall concurrently give a copy of each such Notice to the Leasehold Mortgagee at the address designated by the Leasehold Mortgagee. Such copies of Notices shall be sent by registered or certified mail, return receipt requested, and shall be deemed given seventy-two (72) hours after the time such copy is deposited in a United States Post Office with postage charges prepaid, addressed to the Leasehold Mortgagee. No Notice given by Landlord to Tenant shall be binding upon or affect Tenant or the Leasehold Mortgagee unless a copy of the Notice shall be given to the Leasehold Mortgagee pursuant to this Article. In the case of an assignment of the Leasehold Mortgage or change in address of the Leasehold Mortgagee, the assignee or Leasehold Mortgagee, by written notice to Landlord, may change the address to which such copies of Notices are to be sent.

20. Leasehold Mortgagee Cure Rights. The Leasehold Mortgagee shall have the right for a period of sixty (60) days after the expiration of any notice, grace or cure period afforded Tenant to perform any term, covenant, or condition and to remedy any Event of Default by Tenant hereunder or such longer period as the Leasehold Mortgagee may reasonably require to affect a cure, and Landlord shall accept such performance with the same force and effect as if furnished by Tenant, and the Leasehold Mortgagee shall thereby and hereby be subrogated to the rights of Tenant. The Leasehold Mortgagee shall have the right to enter upon the Premises (excluding any portion of the Premises leased to a subtenant) to give such performance.

21. Prosecution of Foreclosure or Other Proceedings. In case of an Event of Default by Tenant in the performance or observance of any nonmonetary term, covenant or condition to be performed by it hereunder, if such default cannot practicably by cured by the Leasehold Mortgagee without taking possession of the Premises, in such Leasehold Mortgagee's reasonable opinion, or if such default is not susceptible of being cured by the Leasehold Mortgagee, then Landlord shall not serve a notice of lease termination pursuant to Section 18.2, if and as long as:

21.1 the Leasehold Mortgagee proceeds diligently to obtain possession of the Premises as mortgagee (including possession by a receiver), and, upon obtaining such possession, provides notice of the same to Landlord and proceeds diligently to cure Events of Default as are reasonably susceptible of cure (subject to any order by a court of competent jurisdiction staying or otherwise precluding such Leasehold Mortgagee from obtaining such possession); or

21.2 the Leasehold Mortgagee shall institute Foreclosure proceedings and diligently prosecute the same to completion (unless in the meantime it shall acquire Tenant's estate hereunder, either in its own name or through a nominee, by assignment in lieu of Foreclosure and subject to any order by a court of competent jurisdiction staying or otherwise precluding such Leasehold Mortgagee from obtaining such possession).

22. Effect of Cure Upon Event of Default. The Leasehold Mortgagee shall not be required to obtain possession or to continue in possession as mortgagee of the Premises pursuant to Section 21.1 above, or to continue to prosecute Foreclosure proceedings pursuant to Section 21.2 above, if and when such Event of Default is cured. If a Leasehold Mortgagee, its nominee, or a purchaser at a Foreclosure sale acquires title to Tenant's leasehold estate hereunder, an Event of Default that is not reasonably susceptible to cure by the person succeeding to the leasehold interest shall no longer be deemed an Event of Default hereunder.

23. Extension of Foreclosure or Other Proceedings. If any Leasehold Mortgagee is prohibited from commencing or prosecuting Foreclosure or other appropriate proceedings in the nature thereof by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Tenant, the times specified in Sections 21.1 and 21.2 above, for commencing or prosecuting Foreclosure or other proceedings shall be extended for the period of the prohibition.

24. Leasehold Mortgagee Rights Agreement. Landlord covenants and agrees with Tenant that Landlord shall, at the request of Tenant made from time to time and at any time, enter into a mortgagee's rights agreement with any Leasehold Mortgagee (or potential Leasehold Mortgagee) identified by Tenant, which mortgagee rights agreement shall be consistent with the terms and provisions contained in this Lease that apply to Leasehold Mortgagees and Leasehold Mortgages. Within thirty (30) days after Tenant's written request for a mortgagee rights agreement pursuant to the provisions of this Section 24, time being of the essence, Landlord shall execute and deliver to Tenant such mortgagee's rights agreement benefiting the identified Leasehold Mortgagee (or potential Leasehold Mortgagee) and such Leasehold Mortgagee's Leasehold Mortgagee (or potential Leasehold Mortgagee's potential Leasehold Mortgage), which executed mortgagee's rights agreement shall be in a form and substance that is reasonably acceptable to Landlord and such Leasehold Mortgagee (or potential Leasehold Mortgagee) and that is consistent with and, at the option of such Leasehold Mortgagee (or potential Leasehold Mortgagee) incorporates, the terms and provisions of this Lease that apply to Leasehold Mortgagees and Leasehold Mortgages (such as the Leasehold Mortgagee notice provisions and Leasehold Mortgagee cure rights set forth in this Lease).

25. Protection of Subtenant. Landlord covenants that, notwithstanding any default under or termination of this Lease or of Tenant's possessory rights, Landlord: (i) as long as a subtenant within the Premises complies with the terms and conditions of its sublease, shall not disturb the peaceful possession of the subtenant under its sublease, and in the event of a default by a subtenant, Landlord may only disturb the possession or other rights of the subtenant as provided in the subtenant's sublease, (ii) shall recognize the continued existence of the sublease, (iii) shall accept the subtenant's attornment, as subtenant under the sublease, to Landlord, as

landlord under the sublease, and (iv) shall be bound by the provisions of the sublease, including all options, and shall execute documents as may be reasonably required by such subtenants to evidence these agreements. Notwithstanding anything to the contrary in this Lease, no act or agreement between or on the part of Landlord or Tenant to cancel, terminate, surrender or modify this Lease or Tenant's right to possession shall be binding upon or effective as against any subtenant without its prior written consent.

26. New Lease.

26.1 Right to Lease. Landlord agrees that, in the event of termination of this Lease prior to expiration of the Term, other than a termination of this Lease by Tenant through its exercise of its termination option rights pursuant to Section 16, Landlord, if requested by any Leasehold Mortgagee, will enter into a new lease of the Premises with the most senior Leasehold Mortgagee requesting a new lease or, at the request of the most senior Leasehold Mortgagee, with its assignee, designee, or nominee, which new lease shall commence as of the date of termination of this Lease and shall run for the remainder of the original Term of this Lease, at the rent and upon the terms, covenants and conditions herein contained, provided:

a. Such Leasehold Mortgagee makes written request upon Landlord for the new lease within sixty (60) days after the date such Leasehold Mortgagee receives written notice from Landlord that the Lease has been terminated;

b. Such Leasehold Mortgagee pays to Landlord at the time of the execution and delivery of the new lease any and all sums that would, at that time, be due and unpaid pursuant to this Lease but for its termination, and in addition thereto all reasonable expenses, including reasonable attorneys' fees, that Landlord shall have incurred by reason of such termination; and

c. Such Leasehold Mortgagee shall perform, assume and observe all covenants in this Lease to be performed and observed by Tenant and shall further remedy any other conditions that Tenant under the Lease was obligated to perform under its terms, to the extent the same are reasonably susceptible of being cured by the Leasehold Mortgagee.

26.2 The tenant under the new lease shall have the same right of occupancy to the buildings and improvements on the Premises as Tenant had under the Lease immediately prior to its termination.

26.3 Notwithstanding anything to the contrary expressed or implied in this Lease, any new lease made pursuant to this Article 26 shall have the same priority as this Lease with respect to any mortgage, deed of trust, or other lien, charge, or encumbrance on the leasehold interest in the Premises permitted under Section 37.2 of this Lease, and any sublease under this Lease shall be a sublease under the new Lease and shall not be deemed to have been terminated by Landlord's termination of this Lease.

27. No Obligation. Nothing herein contained shall require any Leasehold Mortgagee to enter into a new lease pursuant to Article 26 or to cure any default of Tenant referred to above.

28. Possession. If any Leasehold Mortgagee demands a new lease as provided in Article 26, Landlord agrees, at the request of, on behalf of and at the expense of the Leasehold Mortgagee, upon a guaranty from it reasonably satisfactory to Landlord, to institute and pursue diligently to conclusion the appropriate legal remedy or remedies to oust or remove the original Tenant from the Premises, but not any subtenants actually occupying the Premises or any part thereof.

29. Grace Period. Unless and until Landlord has received notice from each Leasehold Mortgagee that the Leasehold Mortgagee elects not to demand a new lease as provided in Article 26, or until the period therefore has expired, Landlord shall not cancel or agree to the termination or surrender of any existing subleases nor enter into any new leases or subleases with respect to the Premises without the prior written consent of each Leasehold Mortgagee.

30. Effect of Transfer. Neither the Foreclosure of any Leasehold Mortgage (whether by judicial proceedings or by virtue of any power of sale contained in the Leasehold Mortgage), nor any conveyance of the leasehold estate created by this Lease by Tenant to any Leasehold Mortgagee or its designee by an assignment or by a deed in lieu of Foreclosure or other similar instrument shall require the consent of Landlord under, or constitute a default under, this Lease, and upon such Foreclosure, sale or conveyance, Landlord shall recognize the purchaser or other transferee in connection therewith as the Tenant under this Lease.

31. No Merger. In no event shall the leasehold interest, estate or rights of Tenant hereunder, or of any Leasehold Mortgagee, merge with any interest, estate or rights of Landlord in or to the Premises. Such leasehold interest, estate and rights of Tenant hereunder, and of any Leasehold Mortgagee, shall be deemed to be separate and distinct from Landlord's interest, estate and rights in or to the Premises, notwithstanding that any such interests, estates or rights shall at any time be held by or vested in the same person, corporation or other entity.

32. Surrender, Reconveyance.

32.1 Reconveyance Upon Termination or Expiration. On the last day of the Term of this Lease or upon any earlier termination of this Lease, whether under Article 16 above or otherwise, title to the Land and Premises (including all improvements constituting a part thereof) shall automatically vest in Tenant at no cost or expense to Tenant other than as set forth in Article 33 below.

32.2 Reconveyance Documents. Without limiting the foregoing, Landlord upon request shall execute and deliver: (i) a special warranty deed reconveying all of Landlord's right title and interest in the Land and Premises to Tenant; (ii) a memorandum in recordable form reflecting the termination of this Lease; (iii) an assignment of Landlord's right, title and interest in and to all licenses, permits, guaranties and warranties relating to the ownership or operation of the Premises to which Landlord is a party and that are assignable by Landlord, and (iv) such other reasonable and customary documents as may be required by Tenant or its title insurer including, without limitation, FIRPTA, owner's and mechanic's lien affidavits and any other

documents required for title insurance or conveyance purposes, to confirm the termination of this Lease and the vesting of title to the Land and Premises in all respects in Tenant.

33. Title and Warranties. Notwithstanding anything to the contrary in this Article, Landlord shall convey the Premises to Tenant subject only to: (i) all matters affecting title as of the date of this Lease, and (ii) matters created by or with the written consent of Tenant. The Premises shall be conveyed "AS IS, WHERE IS" without representation or warranty whatsoever other than as set forth in the DDA. Notwithstanding the prohibition on the creation of any liens by or through Landlord set forth in this Article, upon any reconveyance, Landlord shall satisfy all liens and monetary encumbrances on the Premises created by Landlord.

34. Expenses. All costs of title insurance, escrow fees, recording fees and other expenses of the reconveyance, except Landlord's own attorneys' fees and any commissions payable to any broker retained by Landlord, shall be paid by Tenant.

35. Trade Fixtures, Machinery and Equipment. Landlord agrees that all trade fixtures, machinery, equipment, furniture or other personal property of whatever kind and nature kept or installed on the Premises by Tenant or Tenant's subtenants may be removed by Tenant or Tenant's subtenants, or their agents and employees, in their discretion, at any time and from time to time during the entire Term or upon the expiration of this Lease. Tenant acknowledges that Landlord shall have no responsibility or liability to Tenant or otherwise as a result of damage to the Premises due to such removal. Upon request of Tenant or Tenant's assignees or any subtenant, Landlord shall execute and deliver any consent or waiver forms submitted by any vendors, Landlords, chattel mortgagees or holders or owners of any trade fixtures, machinery, equipment, furniture or other personal property of any kind and description kept or installed on the Premises by any subtenant setting forth the fact that Landlord waives, in favor of such vendor, Landlord, chattel mortgagee or any holder or owner, any lien, claim, interest or other right therein superior to that of such vendor, Landlord, chattel mortgagee, owner or holder. Landlord shall further acknowledge that property covered by such consent or waiver forms is personal property and is not to become a part of the realty no matter how affixed thereto and that such property may be removed from the Premises by the Tenant or the subtenant, free and clear of any claim or lien of Landlord.

36. Estoppel Certificate. Landlord shall at any time and from time to time upon not less than ten (10) days' prior written notice from Tenant or any Leasehold Mortgagee execute, acknowledge and deliver to Tenant or the Leasehold Mortgagee an estoppel certificate in writing (i) certifying that this Lease is unmodified and in full force and effect (or if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the dates to which the Rental and other charges are paid in advance, if any; (ii) acknowledging that there are not, to Landlord's knowledge, any uncured defaults on the part of Tenant hereunder, or specifying such defaults if they are claimed; and (iii) certifying such other matters relating to this Lease and Tenant's rights and obligations or the Leasehold Mortgagee's rights and obligations as may reasonably be requested. Any such estoppel certificate may be relied upon by any prospective purchaser or encumbrancer of all or any portion of the leasehold estate and/or the improvements. Tenant shall reimburse Landlord for its reasonable out of

pocket expenses incurred in reviewing and responding to any request for an estoppel certificate, including without limitation, Landlord's legal counsel fees.

Landlord's failure to deliver an estoppel certificate within the time prescribed shall be conclusive upon Landlord (i) that this Lease is in full force and effect, without modification except as may be represented by Tenant; (ii) that there are no uncured defaults in Tenant's performance; and (iii) the accuracy of such other matters relating to this Lease as Tenant or the Leasehold Mortgagee may have set forth in the request.

37. General Provisions.

37.1 Attorneys' Fees. In the event of any suit instituted by either party against the other in any way connected with this Lease or for the recovery of possession of the Premises, the parties respectively agree that the successful party to any such action shall recover from the other party a reasonable sum for its attorneys' fees and costs in connection with said suit, such attorneys' fees and costs to be fixed by the court and not by a jury.

37.2 Transfer or Encumbrance of Landlord's Interest. Landlord may not encumber, transfer or convey its interest in this Lease or in the Land and Premises during the Term of this Lease without the prior written consent of Tenant, which consent may be given or withheld in Tenant's sole and absolute discretion. In the event of a permitted sale or conveyance by Landlord of Landlord's interest in the Premises, other than a transfer for security purposes only, Landlord shall be relieved, from and after the date specified in such notice of transfer, of all obligations and liabilities accruing thereafter on the part of the Landlord, provided that any funds in the hands of Landlord at the time of transfer in which Tenant has an interest, shall be delivered to the successor of Landlord. This Lease shall not be affected by any such sale and Tenant agrees to attorn to the purchaser or assignee provided all of Landlord's obligations hereunder are assumed in writing by the transferee. Landlord shall not grant or create mortgages, deeds of trust or other encumbrances of any kind against the Premises or rights of Landlord hereunder, and, without limiting the generality of the foregoing, Landlord shall have no right or power to grant or create mortgages, deeds of trust or other encumbrances on the Land and the Premises without the consent of Tenant in its sole and absolute discretion. Any mortgage, deed of trust or other encumbrance granted or created by Landlord shall be junior and subject to this Lease, all subleases and all their respective provisions including, without limitations, the options under this Lease and any subleases with respect to the purchase of the Premises.

37.3 Captions; Attachments; Defined Terms.

a. The captions of the Articles or Sections of the Lease are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any Article or Section of this Lease.

b. Exhibits attached hereto, and addendums and schedules accompanying this Lease, are deemed by attachment to constitute part of this Lease and are incorporated herein.

c. The words "Landlord" and "Tenant", as used herein, shall include the plural as well as the singular. The obligations contained in this Lease to be performed by Tenant and Landlord shall be binding on Tenant's and Landlord's successors and assigns only during their respective periods of ownership.

37.4 Entire Agreement. This Lease along with any addenda, exhibits and attachments hereto constitutes the entire agreement between Landlord and Tenant relative to the Premises and this Lease and the addenda, exhibits and attachments may be altered, amended or revoked only by an instrument in writing signed by the party to be bound thereby. Landlord and Tenant agree that all prior or contemporaneous oral agreements between and among them and their agents or representatives relative to the leasing of the Premises are merged in or revoked by this Lease, except as set forth in any addenda hereto.

37.5 Severability. If any term or provision of this Lease, to any extent, is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

37.6 Binding Effect; Choice of Law. The parties hereto agree that all the provisions hereof are to be construed as both covenants and conditions as though the words importing such covenants and conditions were used in each separate paragraph hereof. All the provisions hereof shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. This Lease shall be governed by the laws of the State of Arizona.

37.7 Memorandum of Land and Improvements Lease. The parties shall, concurrently with the execution of this Lease, complete, execute, acknowledge and record (at Tenant's expense) a Memorandum of Land and Improvements Lease, a form of which is attached hereto as **Exhibit "B"**.

37.8 Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if (i) personally delivered, (ii) mailed by United States certified or registered mail, return receipt requested, postage prepaid, or (iii) if delivered by a recognized overnight courier (e.g., FedEx, United Parcel Service) for next business day delivery, addressed as follows:

If to Landlord:
City Manager
City of Tempe
31 East Fifth Street
Tempe, Arizona 85281

With a copy to:
City Attorney
City of Tempe
21 East Sixth Street, Suite 201
Tempe, Arizona 85281

If to Tenant: _____
_____
_____
_____

With a copy to: _____
_____
_____
_____

or at such other place or to such other persons as any party shall from time to time notify the other in writing as provided herein. The date of service of any communication hereunder shall be the date of personal delivery, the date of delivery by courier, or the third business day after the postmark on the certified or registered mail, as the case may be.

37.9 Waiver. No covenant, term or condition or the breach hereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver or the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition.

37.10 Negation of Partnership. Landlord shall not become or be deemed a partner or a joint venturer with Tenant by reason of the provisions of this Lease.

37.11 Leasehold Mortgagee Further Assurances. Landlord and Tenant shall cooperate in including in this Lease by suitable amendment from time to time any provision that may be reasonably requested by any proposed Leasehold Mortgagee for the purpose of implementing the mortgagee protection provisions contained in this Lease, of allowing that Leasehold Mortgagee reasonable means to protect or preserve the lien of its Leasehold Mortgage upon the occurrence of a default under the terms of this Lease and of confirming the elimination of the ability of Tenant to modify, terminate or waive this Lease or any of its provisions without the prior written approval of the Leasehold Mortgagee. Landlord and Tenant each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effect any such amendment; provided, however, that any such amendment shall not in any way affect the Term or Rental under this Lease nor otherwise in any material respect adversely affect any rights of Landlord under this Lease. Tenant shall reimburse Landlord for its reasonable out of pocket expenses incurred in reviewing and responding to any request for an amendment to this Lease, including without limitation, Landlord's legal counsel fees.

38. Development Agreement. Landlord and Tenant entered into that Development Parcel Agreement dated _____, as thereafter amended from time-to-time (the "**Development Agreement**") pursuant to which Landlord agreed to abate the tax otherwise due hereunder pursuant to A.R.S. §42-6209, and Tenant agreed to certain terms and provisions relating to tax abatement, including payment of certain amounts in support of education. All requirements of the Development Agreement are incorporated herein by this reference regarding Tenant's payment of in-lieu amounts to support education described in the Development

Agreement, such that if Tenant fails to pay such amounts, or to perform any other covenants in the Development Agreement, and does not cure the same within any grace or cure period specified in the Development Agreement, Landlord may elect to terminate this Lease and convey the Premises to Tenant, in addition to any other remedies available to Landlord against Tenant for such default by Tenant.

39. Disclaimer. Landlord disclaims any obligation or liability in regard to the anticipated benefits by Tenant, which may arise under the Government Property Lease Excise Tax as provided under A.R.S. § 42-6201 *et seq*., or any representation or warranty in regard to such benefits.

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

LANDLORD:

CITY OF TEMPE,
an Arizona municipal corporation

By: _____
Andrew B. Ching, City Manager

TENANT:

_____
a _____limited liability company

By: _____

EXHIBIT “A” TO LAND AND IMPROVEMENT LEASE

EXHIBIT "B" TO LAND AND IMPROVEMENTS LEASE

WHEN RECORDED, RETURN TO:

MEMORANDUM OF LAND AND IMPROVEMENTS LEASE

THIS MEMORANDUM OF LAND AND IMPROVEMENTS LEASE ("Memorandum") is made and entered into as of the ____ day of _____, 202___ (the "**Effective Date**") by and between the between the **CITY OF TEMPE,** an Arizona municipal corporation ("**City**"), and **_____,** a _____ limited liability company, ("**Tenant**").

1. The City and Tenant have entered into that certain Land and Improvements Lease, dated _____, 20__ ("**Lease**"), whereby the City leases to Tenant and Tenant leases from City that real property more particularly described in **Exhibit "A"** attached hereto and by this reference incorporated herein together with all rights and privileges appurtenant thereto and all improvements and future additions thereto or alterations thereof (collectively, the "**Premises**") for the period commencing on the Effective Date and ending on _____, 20__, the [eighth (8^{th}) or thirtieth (30^{th})] anniversary of the Effective Date (the"**Term**").

2. The Premises are located in a single central business district in a redevelopment area established pursuant to Title 36, Chapter 12, Article 3 of Arizona Revised Statutes ("**A.R.S.**") (A.R.S. §§36-1471 *et seq*.).

3. City and Tenant entered into a Development and Disposition Agreement dated _____, 20__ and recorded _____, 20__, as Document No. _____ in the Official Records of the Maricopa County, Arizona (the "**DDA**"), providing for redevelopment of the Premises pursuant to City Ordinance _____ dated ____, 2022, that authorized the DDA and Lease. Pursuant to the DDA, Tenant transferred the Premises to City and City has leased the Premises to Tenant.

4. This Memorandum is being recorded to give constructive notice to all persons dealing with the Premises that the City leases to Tenant the Premises, and that the City and Tenant consider the Lease to be a binding agreement between the City and Tenant regarding the Premises. In addition, this Memorandum is being recorded to provide notice (i) pursuant to A.R.S. § 42-6202 that the Lease is a government property improvement lease and (ii) of certain terms of the Lease, as follows:

(a) The annual rent payable pursuant to the Lease is $10.00, and the total rent payable during the entire Term is [$80.00 or $300.00].

(b) The Lease prohibits conveyances, grants, transfers and encumbrances of the Premises by City without Tenant's consent.

(c) In accordance with A.R.S. § 42-6206: (1) notice is hereby given to Tenant of its government lease excise tax liability pursuant to A.R.S. § 42-6201 *et seq*.; and (2) failure by

Tenant, after notice and an opportunity to cure, to pay the tax imposed by A.R.S. § 42-6201 *et seq*. is an event of default that could result in divesting Tenant of any interest in or right of occupancy of the government property improvements that are the subject of the Lease.

(e) The Project described in the DDA has been completed and Tenant received the Certificate of Occupancy for the Project on _____, 20__.

(f) Tenant has an option to terminate the Lease during the Term as provided in Section 16 of the Lease.

(g) The addresses for notices to the current parties to the Lease are:

If to Landlord:

City of Tempe
City Manager's Office
31 East 5th Street
Tempe, Arizona 85281

With a copy to:

City of Tempe
City Attorney's Office
31 East 5th Street
Tempe, Arizona 85281

If to Tenant:

_____
_____
_____
_____

With a copy to:

_____
_____
_____
_____

5. This Memorandum is not a complete summary of the Lease. The provision of this Memorandum shall not be used in interpreting the Lease. If any conflict arises between the terms and provisions of this Memorandum and the Lease, the terms and provisions of the Lease shall govern and control.

CITY:

CITY OF TEMPE, an Arizona municipal corporation

BY: _____
Name: _____
Title: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

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

My Commission Expires:

_____
Notary Public

TENANT:

_____
a _____ limited liability company

By: _____
Name: _____
Title: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____, the _____ of _____, a _____ limited liability company, as Manager of Tenant.

My Commission Expires:

_____
Notary Public

EXHIBIT 'A' TO
MEMORANDUM OF LAND AND IMPROVEMENTS LEASE

EXHIBIT M

PRE-DEVELOPMENT ACCESS AGREEMENT

This Pre-Development Access Agreement ("**Agreement**") is executed as of _____ _____, 2023 ("**Agreement Date**"), by and between the City of Tempe, an Arizona municipal corporation (the "**City**"), and _____ _____ ("**Licensee**").

BACKGROUND

A. As of the Agreement Date, the City is the owner of the real property ("Land") described on the attached Exhibit "A", which is located at _____ _____ in Tempe, Arizona.

B. In connection with Licensee's due diligence related to the potential acquisition of the Land (the "**Diligence Activities**") pursuant to that certain C2022-XX Development and Disposition Agreement dated as of _____, 2022 by and between the City and Licensee and/or its affiliates (the "**DDA**"), Licensee has requested that the City grant it and its employees, agents, suppliers, vendors, consultants, contractors and sub-contractors (the "**Licensee Parties**") a license to access that portion of the Land more particularly described or depicted on Exhibit "B" hereto (the "City Property"), to conduct, prepare and perform any surveys, appraisals, and any environmental, feasibility and other engineering tests, studies, and reports that Licensee deems necessary or appropriate in connection with the Diligence Activities as described in and limited by the DDA (the "**Permitted Use**"). Any capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the DDA.

D. The City is agreeable to granting a license for the Permitted Use upon the terms and conditions set forth in this Agreement.

AGREEMENTS

For valuable consideration, the receipt and sufficiency of which are acknowledged, Licensee and the City (the "**Parties**") agree as follows.

1. License Matters

a. Grant of License. The City grants to Licensee a temporary, non-exclusive license ("**License**") over, on, across and through the City Property for the Permitted Use, including for parking purposes by Licensee and the Licensee Parties, together with reasonable rights of access, ingress and egress over, on, across and through the City Property in connection therewith.

b. Term. The License shall commence on the Agreement Date and shall automatically expire if not sooner terminated, on the earlier of (i) the date Licensee enters into an Access Agreement to perform Site Remediation as provided in the DDA, (ii) any event of default

by Licensee under the DDA (beyond any applicable notice and cure periods), or (iii) Licensee's completion or cessation of the Permitted Use.

c. Indemnity. To the fullest extent permitted by law, Licensee shall defend, indemnify and hold harmless the City, its agents, officers, officials, employees and volunteers (collectively, the "**Indemnified Parties**") for, from and against all claims, damages, losses and expenses, including but not limited to, reasonable attorney's fees, court costs, and the costs of appellate proceedings (collectively, "**Claims**"), arising from or related to the negligent acts or omissions of the Licensee Parties, except to the extent such claims arise from or relate to the grossly negligent or intentional acts or omissions of the City and its City Council members, officers, employees, consultants, outside legal counsel, and contractors, and except that Licensee shall have no liability related to the discovery or release of pre-existing conditions, unless the acts of Licensee or Licensee's agents exacerbate a pre-existing condition (the "**Indemnity Obligations**"). The amount and type of insurance coverage requirement set forth herein will in no way be construed as limiting the scope of indemnity in this paragraph. Notwithstanding anything to the contrary, the indemnification obligations of Licensee under this Agreement shall be offset or reduced by the full amount of such net insurance proceeds and/or such indemnity, contribution or other similar payment received by City and its City Council members, officers, and employees. Furthermore, outdistancing anything to the contrary, nothing herein shall be deemed to impose any Indemnity Obligations on Licensee that the law prohibits from being imposed upon Licensee. If City or any other Indemnified Party is made a defendant in any action, suit or proceeding brought by a third party for a Claim, City or such other Indemnified Party shall tender defense of any such Claim subject to Licensee's Indemnity Obligations hereunder to Licensee promptly and in sufficient time to avoid prejudice, and Licensee shall have the right to assume and control the defense thereof with counsel selected by Licensee and reasonably approved by the Indemnified Party. Any additional counsel hired or engaged by an Indemnified Party shall be the sole cost and expense of the Indemnified Party and/or City, as applicable. After an Indemnified Party tenders of defense of any such Claim subject to Licensee's Indemnity Obligations hereunder to Licensee, Licensee shall at its own expense: (i) resist and defend such action, suit or proceeding or cause the same to be resisted and defended by such counsel designated by Licensee; and (ii) if any such action, suit or proceeding results in a final, non-appealable judgment against the Indemnified Party, Licensee promptly shall satisfy and discharge such judgment or shall cause such judgment to be promptly satisfied and discharged; provided, however, Licensee may elect in its sole discretion to satisfy and discharge any non-final, appealable judgment against the Indemnified Party rather than appealing same, or to settle the Claim at Licensee's sole expense. The Indemnified Parties shall cooperate with and vigorously support Licensee's indemnification efforts in connection with the defense of any Claim against any Indemnified Parties including assisting with discovery and disclosure efforts and requirements and, if requested by Licensee, and shall authorize Licensee's intervention in any proceeding relating to a Claim. This indemnity shall survive the termination of this Agreement.

d. No Liens. Licensee shall not permit any liens to attach to the City Property as a result of the acts or omissions of any of the Licensee Parties, and if any such liens do attach, Licensee shall promptly cause them to be released or bonded over to the reasonable satisfaction of the City.

e. Insurance. During the term of the License, Licensee or its general contractor shall maintain, or cause the applicable Licensee Parties to maintain, in full force and effect policies of general liability and automobile liability insurance in amounts not less than $1,000,000 combined single limit per occurrence and in the aggregate. All such policies shall name the City as additional insured and shall state that they may not be cancelled prior to expiration without thirty (30) days prior written notice to the City. Prior to commencing activities pursuant to this Agreement, Licensee shall furnish the City a Certificate of Insurance evidencing Licensee's policy or policies of insurance in full force and effect as required by this Agreement and naming the City as an additional insured and as a certificate holder. The policies shall contain a waiver of subrogation against the City. Licensee shall comply with all claim reporting provisions of the policy and cause no breach of the policy warranty that would affect coverage afforded under the policy to protect the City. Licensee shall include all contractors and subcontractors as insureds under its policies or it shall furnish separate certificates and endorsements for each such contractor and subcontractor to the City.

f. Restoration. If Licensee does not timely enter into an Access Agreement to perform Site Remediation for the City Property as provided in the DDA, then within ninety (90) days after expiration or other termination of this License, Licensee shall promptly remove all of its equipment, supplies, and material from the City Property and shall restore the City Property to substantially the same the condition in which it existed as of the Agreement Date.

2. Representations, Warranties and Covenants of Licensee.

a. During the term of this Agreement, Licensee shall not cause or knowingly permit the Licensee Parties to cause any generation, production, location, transportation, storage, treatment, discharge, disposal, or release upon or under the City Property of any substance regulated under any local, state or federal environmental protection law or regulation in violation of any local, state or federal environmental protection law or regulation.

b. The City shall at all times have access to the City Property provided that such access by the City shall not unreasonably interfere with the rights granted to Licensee under this Agreement.

c. Licensee, at its sole cost and expense, shall engage in the Permitted Use in a good and safe manner, and shall keep the keep the City Property free from debris and trash associated with any entry onto or activities on the City Property in connection with the Permitted Use. Licensee shall comply with, conform to and obey, and use commercially reasonable efforts to cause each of the Licensee Parties to comply with, conform to and obey all laws, ordinances, rules, regulations and all other legal requirements applicable to them, including, without limitation, laws and regulations relating to occupational safety and health and environmental protection, and all orders, writs, judgments, injunctions, decrees or awards of any court or governmental authority with jurisdiction over Licensee or the City Property. Licensee shall obtain promptly and keep in full force and effect all licenses, permits, authorizations, registrations, rights and franchises necessary for the Permitted Use and as may be otherwise required for Licensee's performance under this Agreement.

d. At all times during the term of this Agreement, Licensee, at Licensee's cost and expense, shall conduct the Permitted Use in compliance with all applicable laws, rules, ordinances and requirements, provided, however, Licensee shall have no responsibility, obligation or liability with respect to any condition or matter on the City Property in existence as of the Agreement Date or not caused or exacerbated by Licensee or the Licensee Parties. Licensee agrees to take reasonable safety and security precautions to attempt to prevent loss, damage, vandalism or theft of Licensee's or the Licensee's Parties' vehicles, equipment, supplies and other personal property located on or within the City Property; provided, however, that Licensee acknowledges and agrees that Licensee makes no assurances as to the safety or security of the City Property. By accepting this License, Licensee agrees, for itself and the Licensee Parties, to assume all risks arising out of or relating to the entry upon and/or the occupancy and use of the City Property, including but not limited to any risk of loss by fire, theft or damage to any of Licensee's or the Licensee Parties' construction vehicles, equipment, supplies and other personal property located on or within the City Property. The provisions of this paragraph shall survive any termination or expiration of this Agreement Licensee shall at all times be responsible for the conduct and discipline of the Licensee Parties participating in the Permitted Use.

3. Default; Remedies. It is a default if either party fails to perform its obligations under this Agreement and such failure is not cured within thirty (30) days after written notice from the non-defaulting party. The non-defaulting party shall be entitled to full and adequate relief by all available legal and equitable remedies, including, without limitation, termination of this Agreement and specific performance.

4. Governing Law. This Agreement shall be interpreted according to, and governed by, the procedural and substantive laws of the State of Arizona. The Parties irrevocably consent to jurisdiction and venue in the State of Arizona and agree that they will not attempt to remove or transfer any action properly commenced in the State of Arizona. The successful party in any court action brought to enforce or interpret any provision of this Agreement will be entitled to recover its reasonable attorney's fees and court costs from the unsuccessful party.

5. Notices. All notices or other communications required or permitted to be provided pursuant to this Agreement shall be in writing and shall be hand delivered, sent by United States Postal Service, postage prepaid, by a nationally recognized courier service. All notices shall be deemed to have been given when delivered if hand delivered, when received if sent by courier, or forty-eight (48) hours following deposit in the United States Postal Service. Notices shall be addressed as follows:

If to Licensee: Bluebird Development LLC
8465 N Pima Rd, Suite 100
Scottsdale, AZ 85258
Attn: Xavier Gutierrez

with copy to: Snell & Wilmer L.L.P.
1 East Washington, Suite 2700
Phoenix, AZ 85004
Attn: Nick Wood & Joyce Wright

If to the City: City of Tempe
Public Works, Engineering Division
31 East Fifth Street
Tempe, AZ 85251

with copy to: City Attorney
City of Tempe
21 East Sixth Street
Tempe AZ 85251

6. Entire Agreement. Except as otherwise set forth in the DDA, this Agreement, together with its Exhibits, is the entire agreement of the Parties and supersedes any and all prior oral or written agreements or understandings between the Parties pertaining to the subject matter of this Agreement. The Parties have made no representations, warranties, or inducements, express or implied, other than as set forth in this Agreement and the DDA.

7. Invalidity. Every term of this Agreement shall be enforceable to the fullest extent permitted by law. If any term of this Agreement is determined to be to any extent unenforceable, that provision will be deemed modified in the most minimal manner so as to make it enforceable, and the remainder of this Agreement shall not be affected. This Agreement is subject to cancellation pursuant to A.R.S. §38-511.

8. Time of the Essence. Time is of the essence of all provisions of this Agreement in which time is a relevant factor.

9. General Provisions. Each person executing this Agreement personally represents that he or she has the full legal right to do so in the capacity indicated. No waiver of any term of this Agreement shall be deemed to be a continuing waiver of that term or a waiver of any other term of this Agreement. This Agreement may be executed in one or more counterparts, whether by original, copy, or telecopy signature, each of which together will form one binding agreement of the Parties. This Agreement may only be amended by a written instrument executed by both parties. Licensee may assign this Agreement as expressly permitted under Section 15 of the DDA. This Agreement may not otherwise be assigned by either party without the advance written consent of the other party.

[SIGNATURE PAGES TO FOLLOW]

Executed as of the Agreement Date.

Licensee: _____,
a _____

By: _____
Its: _____

"CITY" The City of Tempe,
an Arizona municipal corporation

By: _____
Its: _____

EXHIBIT "A"
[Legal Description of City Property]

EXHIBIT "B"
[Legal Description of Licensed City Property]

EXHIBIT N

PURCHASE PRICE SCHEDULE

Pursuant to the provisions of Section 11.3 of the Agreement, the Parties will establish the final Purchase Price for each Phase and attach such final Schedule of Parcel Purchase Prices to this Agreement as a new and final Exhibit "M".

Phase 1A
11.10 acres x $25 psf = $12,087,900

Phase 1B
13.47 acres x $25 psf = $14,668,830

Phase 2A
8.68 acres x $25 psf = $9,448,164

Phase 2B
13.01 acres x $25 psf = $14,172,246

EXHIBIT O

INSURANCE PROVISIONS

During the Term of this Agreement, Developer shall, at Developer's expense, maintain commercial general liability insurance and, if necessary, commercial umbrella insurance against applicable claims for personal injury, death or property damage occurring in, upon or about the Property. The limitation of liability of such insurance shall not be less than $5,000,000.00 per occurrence. The minimum policy limits may be increased whenever reasonably deemed appropriate by City's Risk Management to adequately reflect current market conditions. The above Developer's policy(ies) of liability insurance shall name City as an additional insured, and, at the written request of City, certificates with respect to all policies of insurance or copies thereof required to be carried by Developer under this Agreement shall be delivered to City. The above policy(ies) shall contain an endorsement providing for cancellation or non-renewal notice with at least thirty (30) days prior notice to City (ten (10) days for nonpayment). Developer may self-insure the coverages required by this Agreement with the prior approval of City, which will not be unreasonably withheld, and may maintain such reasonable deductibles and retention amounts as Developer may determine.

EXHIBIT P

NOTICE TO PURCHASERS OF PROXIMITY TO PHOENIX SKY HARBOR INTERNATIONAL AIRPORT

Each owner acknowledges that as of the date of this notice:

To include in CC&R's or disclosure notice:

Proximity to Airport.
Each Owner of a Unit in the Airport Influence Area [insert Code reference] acknowledges that, as of the date of this notice:

(a) The Unit is close to the Phoenix Sky Harbor International Airport (the "Airport"), located at 3400 East Sky Harbor Boulevard in Phoenix, Arizona.

(b) The Airport is operated as a general aviation service airport for _____, and used generally for airplanes, jets and helicopters.

(c) Aircraft using the Airport may fly over the Property and adjacent properties at altitudes that vary for several reasons, including weather conditions, aircraft type, aircraft performance and pilot proficiency.

(d) The majority of takeoffs and landings occur between 6:00 a.m. and 11:00 p.m., but the Airport is open 24 hours each day, so takeoffs and landings may occur at any time.

(e) The number of takeoffs and landings at the Airport average approximately _____each day, but that number varies and may increase.

(f) Aircraft using the Airport will generate noise, the volume, pitch, amount and frequency of which will vary for several reasons, including weather conditions, aircraft type, aircraft altitude and aircraft number.

(g) Airport management attempts to minimize aircraft noise and its influence on Units in the Airport Influence Zone, but there is no guarantee that such attempts will be effective or remain in place.

The Owner accepts and assumes any and all risks, burdens and inconvenience caused by or associated with the Airport and its operations (including noise), and agrees not to assert or make any claim arising out of the Airport and its operations against the City of Phoenix, its elected and appointed officials, officers, directors, commissioners, representatives, employees, and agents, arising from the burdens imposed upon the Unit and the Owner by the proximity to the Airport, including noise, vibrations, fumes, and other negative impacts in connection with the use of Airport; provided, however, nothing herein releases the Airport operators, and aircraft operators using the Airport in connection with airport operations from liability for claims, losses, liabilities, and expenses caused by falling aircraft or falling physical objects from aircraft, except with respect to ordinary impacts such as noise, fumes, dust, fuel and lubricant particles.

Any questions regarding the operation of the Airport can be directed to the Airport Administration office at _____.

EXHIBIT Q

AVIGATION AND NOISE EASEMENT

WHEN RECORDED, RETURN TO:

City of Phoenix
Aviation Department
3400 East Sky Harbor Boulevard
Suite 3300
Phoenix, Arizona 85034-4405
Attn: Law Department

Exempt under A.R.S. § 11-1134(A)(2)

AVIGATION AND NOISE EASEMENT

This Avigation and Noise Easement (this "Easement") is made and entered into this _____ day of _____, 202___ by and between the City of Phoenix, an Arizona municipal corporation ("Phoenix"), as Grantee, and the undersigned ("Owner"), as Grantor.

RECITALS

A. Phoenix is the owner and operator of Phoenix Sky Harbor International Airport located at 3400 East Sky Harbor Boulevard, Phoenix, Arizona (the "Airport").

B. Owner is the owner of real property legally described on Exhibit A attached hereto (the "Property").

AVIGATION AND NOISE EASEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby mutually acknowledged, the Parties for themselves and their successors and assigns agree as follows:

1. The Recitals are a material part of this Easement and are incorporated herein by this reference.

2. This Easement is effective on the date set forth above and shall automatically terminate when the Airport is no longer used for airport purposes and

revert to Owner, their successors and assigns, and the easement herein granted shall no longer exist as an easement upon and over the Property.

3. Owner hereby grants and conveys to Phoenix and its successors and assigns a perpetual, non-exclusive avigation and noise easement upon and over the Property for all existing and future activities that are inherent in the operation of the Airport and Aircraft using the Airport, including landing at, taking off from, and maneuvering about the Airport and communicating with Aircraft at and around the Airport (collectively, "Airport Operations"). This Easement permits the imposition of light, smoke, air currents, electronic and other emissions, vibrations, noise, discomfort, inconvenience, and interference with the use and quiet enjoyment of the Property caused by Airport Operations, including interference with sleep, communications, or other effects. "Aircraft" means any type of vehicle that is designed for flight in the air by buoyancy or by the dynamic action of air on the vehicle's surfaces, including jet airplanes, propeller-driven airplanes, helicopters, gliders, ultralights, drones, model airplanes, hot air balloons, and blimps.

4. The rights granted to Phoenix under this Easement include the following, all of which may be exercised only in a manner consistent with applicable law and with Owner's ability to develop the Property in any permissible manner not inconsistent with the Easement granted herein:

A. The right of Phoenix, the general public, and any other authorized persons to fly or permit the flight of any Aircraft in, through, across, and about the airspace beginning two hundred (200) feet above the surface of the Property (the "Airspace") solely in connection with the operation of Aircraft landing at, taking off from, and maneuvering about the Airport in connection with Airport Operations.

B. The right of Phoenix, the general public, and any other authorized persons to cause, create, or permit to be caused or created within the Airspace such noise, vibration, dust, air currents, illumination, fuel consumption, and other impacts solely in connection with the operation of Aircraft landing at, taking off from, and maneuvering about the Airport in connection with Airport Operations.

C. The right of Phoenix to enter the Property to enforce its rights under this Easement at Owner's expense; provided that any such entry does not impair Owner's ability to develop and operate the Property in a manner not inconsistent with the Easement granted herein.

D. The right of Phoenix to enter the Property to place a reasonable, permanent marker or light on any building, structure, improvement, or other object that extends into the Airspace only in a manner consistent with applicable law; provided that any such marker does not impair Owner's ability to develop and operate the Property in a manner not inconsistent with the Easement granted herein.

E. The right of Phoenix to enter the Property to eliminate or abate any interference with radio communications or radar operations between the Airport and any Aircraft, whether or not the Aircraft is above the Property or in the Airspace.

5. For the benefit of Phoenix, the Airport, and the general public, Owner, on behalf of itself and its successors and assigns, hereby agrees to the following restrictive covenants on the Property:

A. Owner shall not construct, install, or allow any person to construct or install on the Property any building, structure, improvement, or other object, including trees, that extends into the Airspace or that constitutes an obstruction to Airport Operations in the Airspace.

B. Owner shall not create, cause, or allow any person to create or cause on the Property any electrical or electronic interference with radio communications or radar operations between the Airport and any Aircraft, whether or not the Aircraft is above the Property or in the Airspace.

C. Owner shall not use or allow others to use the Property in any manner that may interfere with Airport Operations in the Airspace or that may constitute a hazard to the Airport or any Aircraft, whether or not the Aircraft is above the Property or in the Airspace.

D. Owner shall not use the Property in any manner that is inconsistent with this Easement.

6. This Easement is appurtenant to and is for the benefit of the Airport. This Easement is also in gross for the benefit of Phoenix and all members of the general public solely in connection with the operation of Aircraft landing at, taking off from, and maneuvering about the Airport in connection with Airport Operations.

7. This Easement binds Owner and its successors and assigns and is a covenant that runs with the Property. For avoidance of doubt, in the event of the sale of the Property or any portion thereof, the conveying owner shall be entirely freed and

relieved of all liability relating to such owner's covenants and obligations hereunder arising subsequent to such conveyance.

8. Owner hereby releases Phoenix, Airport operators, and Aircraft operators using the Airport in connection with Airport Operations from all claims, losses, liabilities, and expenses (collectively, "Losses") arising from the burdens imposed upon the Property and Owner by this Easement, including noise, vibrations, fumes, and other negative impacts in connection with the use of the Airspace in connection with Airport Operations. Owner hereby waives its right to sue for damages incurred in connection with the Losses and agrees not to attempt to enjoin the burdens imposed upon the Property and Owner by this Easement. Nothing herein releases the Airport operators, and Aircraft operators using the Airport in connection with Airport Operations from liability for Losses caused by falling Aircraft or falling physical objects from Aircraft, except with respect to ordinary impacts such as noise, fumes, dust, fuel and lubricant particles.

9. Phoenix shall cause this Easement to be recorded in the Office of the Maricopa County Recorder.

Dated this _____ day of October, 202___.

GRANTOR

GRANTEE

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT R

CITY OF PHOENIX INDEMNITY

[*To be in a form mutually agreeable to City and Developer*]