

RESOLUTION NO. 6379

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING A DEVELOPMENT AGREEMENT FOR A PROPOSED PROJECT ON PROPERTY LOCATED SOUTH AND WEST OF THE INTERSECTION OF CAMELBACK ROAD AND SCOTTSDALE ROAD.

WHEREAS, Scottsdale's downtown is an important community asset providing significant economic benefits and community amenities for Scottsdale's citizens, businesses and visitors; and

WHEREAS, the City of Scottsdale is committed to maintaining and enhancing these important community benefits; and

WHEREAS, the strength, vitality, stability, and economic enhancement of the established residential and commercial neighborhoods in the vicinity of the Arizona Canal as it passes through downtown Scottsdale are crucial to the future of the residents and business community of that portion of the City of Scottsdale, the entire City of Scottsdale, and the public generally; and

WHEREAS, a large vigorous mixed use development project in this area of Scottsdale will provide an important feature enhancing this area of Scottsdale and the City of Scottsdale generally; and

WHEREAS, such a project will help Scottsdale maintain and enhance its place as a first-class business, residential and cultural community; and

WHEREAS, such a project will expand activities in this area of Scottsdale by providing and encouraging commercial, public and residential opportunities not now available; and

WHEREAS, such a project will enhance Scottsdale's contribution to the greater community; and

WHEREAS, the proposed Waterfront project facilitates the aforesaid community benefits; and

WHEREAS, the project's location provides convenient access to and from other attractions and destinations; and

WHEREAS, the project's location, accessibility, and integration with the community enhances the possibilities for future community enhancements, as well as enhancing, preserving and expanding opportunities for Scottsdale and its citizens generally;

NOW, THEREFORE, be it resolved that:

Section 1. The Mayor is hereby authorized to enter into on behalf of the City of Scottsdale the Development Agreement attached hereto as Attachment "A" and numbered 2003-164-COS.

PASSED AND ADOPTED by the Council of the City of Scottsdale this ____ day of _____, 2003.

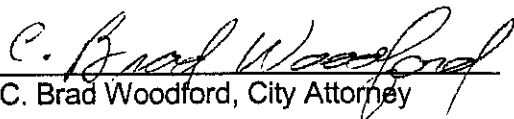
ATTEST:

CITY OF SCOTTSDALE, an Arizona
municipal corporation

Sonia Robertson, City Clerk

Mary Manross, Mayor

APPROVED AS TO FORM:



C. Brad Woodford, City Attorney

WHEN RECORDED, Return to:
One Stop Shop Records
Ed Gawf (Deputy City Manager's Office)
City of Scottsdale
7447 E. Indian School Road Suite 100
Scottsdale, AZ 85251

2003-164-COS

DEVELOPMENT AGREEMENT
(Scottsdale Waterfront)

THIS DEVELOPMENT AGREEMENT (the "**Agreement**") is entered into as of the ____ day of October, 2003, by and between SCOTTSDALE WATERFRONT. L.L.C., an Arizona limited liability company (the "**Owner**") and the CITY OF SCOTTSDALE, ARIZONA, a municipal corporation (the "**City**").

RECITALS

- A. Arizona Revised Statutes ("A.R.S.") § 9-500.05 authorizes the City to enter into a development agreement with a landowner or any other person having an interest in real property located in the City. Additionally, A.R.S. § 9-500.11 authorizes the City to appropriate and spend public monies for and in conjunction with economic development activities.
- B. The Owner owns approximately eleven (11) acres of property located at the southwest corner of Scottsdale Road and Camelback Road, as described and depicted on the attached **Exhibit A** (the "**Property**"). The Owner will develop the Property, in phases, as a first-class high-quality mixed-use development project that consists of retail and office commercial uses, residential uses, and public, semi-public, and private plazas and open space (collectively, the "**Project**"). The Property consists of two smaller parcels, an approximately seven (7) acre parcel (the "**Camelback Parcel**") and an approximately four (4) acre parcel (the "**Goldwater Parcel**") as depicted on **Exhibit A**.
- C. The City desires to obtain those public benefits that will accrue from the development of the Project. Such benefits include convenient retail and office uses, further economic development in the downtown area, public open space and art, new luxury residential dwellings in the downtown area, and public parking.
- D. In addition to the aforementioned benefits and certain other benefits to the City, the City believes that the construction and operation of these facilities will create employment opportunities for City residents and will generate substantial tax revenues for the City. Accordingly, the City has determined that reimbursing the Owner for specified public benefits to encourage the construction of the Project is in furtherance of the objectives of the City's Economic Vitality Strategic Plan and is in the best interest of the City and the health, safety, and welfare of the City's residents. In addition, upon the Owner's granting

to the City an easement for public use of improvements adjacent to the Canal Bank, the City shall abandon certain public plaza easements granted to the City in connection with the PC/PL Redevelopment Agreement.

- E. The Property is currently the subject of that certain PC/PL Redevelopment Agreement, dated October 6, 1996 and recorded as Document Number 96-0714058 in the Official Records of the Maricopa County Recorder's Office. The Owner is the successor in interest to those owners and developers listed in the PC/PL Redevelopment Agreement. Upon the Effective Date as described in Paragraph 22, the PC/PL Redevelopment Agreement shall terminate as to the Property, and the City and the Owner will execute, acknowledge, and record a confirmation of the termination and release of the PC/PL Redevelopment Agreement with respect to the Property.
- F. This Agreement is brought in conjunction with the formation of an infill incentive district on the Property (the "**District**") pursuant to A.R.S. § 36-1471 *et seq.* This Agreement also is brought in conjunction with an infill incentive plan and the development plan for the Property, Case No. 1-II-2003 ("**Development Plan**"). The Development Plan includes the site plan for the Property ("**Site Plan**"), as well as Amended Development Standards and Design Guidelines and stipulations of approval for Case No. 1-II-2003 ("**Stipulations**"). The Development Plan (inclusive of the Site Plan and the Amended Development Standards and Design Guidelines and Stipulations) is contained in the attached **Exhibit B**.
- G. The parties hereto desire to enter into this Agreement to facilitate development consistent with the City's General Plan ("General Plan").
- H. This Agreement is intended to provide: (i) a framework for the implementation of the Site Plan; and (ii) reimbursement for public benefits as permitted by Arizona law.

AGREEMENTS

NOW, THEREFORE, the parties agree as follows:

1. Termination of PC/PL Redevelopment Agreement and Related Documents. The City and the Owner hereby amend the PC/PL Redevelopment Agreement in its entirety to replace its current terms, requirements, and provisions in their entirety with the terms, requirements, and provisions of this Agreement and of the other documents that this Agreement requires. Upon the Effective Date as described in Paragraph 22, the PC/PL Redevelopment Agreement and its exhibits and related documents shall terminate as to the Property, and the City and the Owner will execute, acknowledge, and record a confirmation of the termination and release of: (i) the PC/PL Redevelopment Agreement and the Memorandum of PC/PL Redevelopment Agreement, recorded as Document Number 96-0714059 in the Official Records of the Maricopa County Recorder's Office; (ii) the PC/PL Garage Lease Agreement and the Memorandum of PC/PL Garage Lease Agreement, recorded as Document Number 96-0714060 as amended in Recording Number 97-178049 in the Official Records of the Maricopa County Recorder's Office; (iii) Conditions, Covenants and Restrictions, recorded as Document Number 96-714065; (iv) the Agreement to Substitute Exhibits recorded as Document Number 97-178049 in the Official

Records of the Maricopa County Recorder's Office; and (v) the Tolling Agreement, recorded as Document Number 2002-694136 in the Official Records of the Maricopa County Recorder's Office.

2. Recitals. The recitals set forth above are acknowledged by the parties to be true and correct and are incorporated herein by this reference.

3. Exhibits. The following documents are referred to in this Agreement and are attached to and made a part of this Agreement by this reference:

<u>Exhibit Designation</u>	<u>Description</u>
A	Legal Description and Map
B	Development Plan
C	Phasing Plan and Schedule
D	Open Space Plan
E	Termination of Easements Form
F	Irrevocable Easement Form
G	Access Area Restrictions
H	Parking Easement and Agreement Form
I	Traffic Improvements
J	Public Benefits

4. Interest of the Owner. The Owner hereby represents and warrants to the City that it is the sole fee title owner of the Property, and that it is the sole successor to all owners, interest holders, and developers listed in the PC/PL Redevelopment Agreement.

5. General Plan Conformance. The parties expressly acknowledge and agree that the development contemplated pursuant to this Agreement is consistent with the portions of the General Plan applicable to the Property on the date hereof and that there are no features of the development, including, without limitation, the intensity of development and range of land uses proposed herein, that cannot be accommodated within the scope of the General Plan.

6. District/Development Plan Processing. Prior to or concurrent with the execution of this Agreement, the City will take all steps necessary to process the District and the Development Plan for the Property, which includes the Site Plan and Amended Development Standards and Design Guidelines and Stipulations, set forth in **Exhibit B**. To the extent the Amended Development Standards limit or expand development otherwise permitted by the Zoning

Ordinance of the City of Scottsdale (the “**Zoning Ordinance**”), the Amended Development Standards shall govern.

7. Approval and Processing of Plans. The City hereby acknowledges and agrees that development of the Property may occur over a span of a number of years and will require the City’s ongoing participation in the review and approval of modifications and amendments to the Development Plan, infrastructure plans, drainage plans, design plans, building plans, grading permits, building permits, and other plans, permit applications, and inspections that are a part of the City’s current building and development requirements. The City has approved the Development Plan for the development of the Property, including Development Review Board approval of the Camelback Parcel, and agrees that the Owner may build such development consistent with the Development Plan and its stipulations of approval and the current zoning on the Property, or new zoning to be obtained by the Owner in accordance with the City’s rules and regulations and ordinances and that it is consistent with the General Plan. The Owner will be entitled to build the heights, densities, and intensity of uses as shown on the Development Plan and its stipulations of approval, provided that all development and zoning processes are complied with by the Owner. The City agrees that in connection with all approvals required by the development and zoning processes related to the development of the Property, no extraordinary plan or review requirements will be imposed on the Owner. In accordance with the terms of A.R.S. §§ 9-1201 et. seq., the Development Plan shall be considered a Protected Development Right Plan for a phased project and shall have all the rights accorded such a plan. Nothing herein affects the vesting of the Development Plan and comparable zoning district for the Property as a matter of common law following termination of this Agreement.

8. Development Phases. Development of the Project will be implemented in five (5) phases. The components of each phase and the time frame for commencing and completing construction of each phase are depicted and listed on the attached **Exhibit C (“Phasing Plan and Schedule”)**. With the exception of Phase 1, the Owner shall be able, at its sole discretion, to adjust the order of construction of the phases of development of the Property so long as construction of a phase is commenced and completed no later than dates established in the Phasing Plan and Schedule. (For example, the Owner could switch the timing for construction of phases four and five.) The Owner shall be able, at its sole discretion, to commence and complete construction earlier than the time frames established in the Phasing Plan and Schedule. The Owner shall work continuously and diligently after commencement of construction to complete construction within the prescribed timeframes. The open space area facing the Arizona Canal between Buildings J and K shall be completed concurrently with completion of construction of the later of Building J or Building K. The Owner will develop the Property, in phases, as a first-class high-quality mixed-use development project pursuant to **Exhibit B**.

9. Open Space. The Project includes the following plaza areas on private property, which are depicted on the attached **Exhibit D (“Open Space Plan”)**: (i) adjacent to the Salt River Project/Arizona Canal right-of-way for public use and to accommodate pedestrian movement and connectivity both within the Project and between the Project, the Arizona Canal, and adjacent property (collectively referred to herein as the “**Canal Frontage**”); (ii) interior to the Camelback Parcel and the Goldwater Parcel for limited public use; and (iii) adjacent to the residential buildings (buildings A, B, C, J and K as shown on the Development Plan) typically ten (10) feet of width for private use of Project residents. The Canal Frontage includes a portion

of the Public Amphitheater, discussed in Paragraph 14.3. The Open Space Plan also depicts the Salt River Project right-of-way along the north side of the Arizona Canal from Scottsdale Road to Goldwater Boulevard (the "**Canal Bank**"), discussed in Paragraph 15.3.

9.1 The City currently holds two easements within the Property for pedestrian access and assembly, which easements are recorded as Document Numbers 96-0714069 and 96-0714070 in the Official Records of the Maricopa County Recorder ("**City Easements**"). The easements require the Owner to improve the subject land for public plazas. The Open Space Plan does not correspond with the locations of the City Easements. The City and the Owner agree to replace the City Easements with a new easement for public use of the Canal Frontage. Accordingly, the City shall record the Notice of Termination of Easements for the City Easements on the form attached hereto as **Exhibit E** upon the Owners' grant to the City of an easement for public use and enjoyment of the Canal Frontage in the form attached hereto as **Exhibit F**. The property that is the subject of the easement shall be that area depicted as "private with public access easement" in **Exhibit D**, which is roughly parallel to the Arizona Canal right-of-way and consists of not less than thirty-five thousand (35,000) square feet and shall be controlled by the City generally in accordance with the City's park use restrictions. In addition, the Owner gives to the City public access to that area depicted as "private with public access" as depicted on **Exhibit D**, with such restrictions on use as set forth on **Exhibit G**.

9.2 The Owner shall maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$10,000,000 for each occurrence, \$10,000,000 Products and Completed Operations Annual Aggregate, and a \$10,000,000 General Aggregate Limit. The policy shall cover liability arising from the public's use of and the Owner's maintenance of the Canal Frontage and the Owner's maintenance of the landscape and hardscape improvements (not including pedestrian bridges) to the Canal Bank (collectively, the "Insured Area"). Coverage under the policy will be at least as broad as Insurance Services Office, Inc. policy form CG 00 01 07 98 or equivalent thereof, including but not limited to, separation of insureds clause. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance. The insurance shall name the City as an additional insured. The Owner shall cause coverage for the City to be incorporated into each insurance policy by endorsement. All policies must provide the City with at least thirty (30) days prior to notice of any cancellation, reduction, or other change in coverage. All policies shall require that notices be given to the City in the manner specified for notices to the City under this Agreement. The Owner must clearly show by providing copies of insurance policies, certificates, formal endorsements or other documentation acceptable to City that all insurance coverage required by this Agreement is provided. No deductibles, retentions, or "self insured" amounts shall exceed

9.3 One Hundred Thousand Dollars (\$100,000) in the aggregate per year, except that during periods of construction of landscape and hardscape improvements, the deductible may be up to Five Hundred Thousand Dollars (\$500,000) per occurrence (with no aggregate). The Owner shall be solely responsible for any self-insurance amount or deductible. City may require the Owner from time to time to secure payment of such deductible or self-insured retention by a surety bond or irrevocable and unconditional letter of credit. No deductible shall be applicable to coverage provided to City. City shall provide forms of new or

replacement policies for City's review not less than thirty (30) days prior to the effective date of any new or replacement policy.

9.4 The Owner shall evidence all insurance required by this Agreement by furnishing to City certificates of insurance annually and with each change in insurance coverage. Certificates must evidence that the policy referenced by the certificate is in full force and effect and that the policy satisfies each requirement of this Agreement applicable to the policy. For example, certificates must evidence that City is an additional insured and that insurance proceeds will be paid as required by this Agreement. Certificates must be in a form reasonably acceptable to City. All certificates shall be in addition to the actual policies and endorsements required. The City shall provide updated certificates at City's request.

9.5 All insurance policies required by this Agreement shall be issued by insurers reasonably acceptable to City. At a minimum, all insurers shall be duly licensed (or qualified unlicensed non-admitted insurer) by the State of Arizona, Department of Insurance. At a minimum, all insurers shall have and maintain an A.M. Best, Inc. rating of B++.

9.6 All insurance required by this Agreement shall be primary insurance. Any insurance or self insurance maintained by City shall not contribute to the Owner's insurance.

9.7 City is not required to carry any insurance covering or affecting the Insured Area or use of City's property related to this Agreement. The Owner assumes the risk of any and all loss, damage or claims to the Insured Area or related to the Owner's use of the Insured Area throughout the term hereof. City expressly disclaims any representation that required insurance is adequate to protect any person or property against any risks related to the Insured Area or any activities, uses or improvements related to the Insured Area. The Owner's obligation to provide insurance as set forth in this Agreement is in addition to, and does not limit, any and all other liabilities or obligations of the Owner under or connected with this Agreement. In the event the Owner secures other insurance related to the Insured Area or any improvements, property or uses related thereto, the Owner shall effect an endorsement under such policy waiving any and all insurer's rights of subrogation against City.

9.8 Any sublessees and contractors of the Owner, and all other persons working for or on behalf of the Owner at the Insured Area must also provide for the protection of City all of the liability insurance required from Consultants by this Agreement. The preceding sentence does not require such persons to provide insurance that merely duplicates insurance the Owner provides.

10. Canal Bank/SRP License. The City shall pay all costs and fees associated with the license agreement between the City and the Salt River Project Agricultural Improvement and Power District (the "**License Agreement**"), and shall use reasonable best efforts to keep the license agreement in full force and effect. Due to the Owner's interest in the use of the Canal Bank, future City-initiated amendments and modifications to the License Agreement that would significantly increase the Owner's costs to maintain the Canal Bank shall be subject to the Owner's consent, which consent shall not be unreasonably withheld.

11. Relocation of Water Well. The Owner shall use reasonable efforts to relocate Arcadia Water Company Well No. 9 (the "**Well**"). Also, City representatives shall participate, if requested by the Owner, in meetings with the Arcadia Water Company to work through any issues the Arcadia Water Company may have concerning the Well relocation. Notwithstanding the foregoing, if the Owner determines on or after January 15, 2004 that such Well relocation is not feasible, then (i) the Owner shall provide the City the Retail Space discussed in Paragraph 12 of this Agreement if such Retail Space is available in an alternative location acceptable to the City; (ii) if such Retail Space is not available, the City shall not reimburse the Owner One Million Five Hundred Thousand and No/100ths Dollars for the retail space, as stated in Paragraph 16.1.1 of this Agreement, and (iii) the Site Plan shall be revised to accommodate the Well in its current location. The City shall pay to the Owner the lesser of seven hundred thousand and No/100ths dollars (\$700,000.00) or the amount of the Owner's cost to move the Well (or, if the Well is not relocated, then the cost to attempt to relocate the Well and the architectural, design and engineering costs to redesign the Project so that the Well remains in its current location). In no event shall the City pay to the Owner an amount in excess of one hundred fifty thousand and No/100ths dollars (\$150,000.00) for the architectural, design and engineering costs to redesign the Project so that the Well remains in its current location. Notwithstanding any other provision of this Agreement, the Owner shall have an additional three months to commence and complete construction of Phase 1 in the event that the Well is not relocated.

12. Retail/Office Space. The Owner shall convey by deed to the City four thousand (4,000) square feet of rentable ground floor retail space at the north end of Building D, as shown on **Exhibit B**, to be used for municipal and/or non-profit activities (the "**Retail Space**"). The Retail Space shall have legal access and parking that satisfies Zoning Ordinance requirements. The City shall be responsible for its pro rata share of Project utility, tax, insurance, and maintenance costs. The Owner shall make available to the Arizona Sports Foundation d/b/a The Fiesta Bowl (the "**Fiesta Bowl**") sixteen thousand (16,000) square feet of second level office space at a discounted price pursuant to the terms and conditions of a sales contract between the Owner and the Fiesta Bowl, but only if the Fiesta Bowl executes the sales contract on or before December 31, 2003, and subsequently closes on the sales contract.

13. Public Parking. Development of Phase 1 includes an L-shaped structured parking garage located along Camelback Road and Marshall Way (the "**Garage**") that will contain approximately six hundred (600) parking spaces on two below-grade levels. Upon completion of construction of the Garage, the Owner shall provide the City with a permanent parking easement, a form of which is attached hereto as **Exhibit H**, for three hundred (300) lower level spaces, which shall be available to the general public from six p.m. until eight a.m. on weekdays and at all times on weekends and official holidays (the "**Public Parking**"). The Public Parking in the Garage shall be free and clear of all monetary liens or encumbrances senior to the City's interests and shall be subject only to such exceptions and other matters as appeared of record on the Effective Date, as shown on the title report prepared by Chicago Title Insurance Company and dated August 28, 2003. The Owner shall operate, maintain, and staff the Garage using standards, including requirements for signage within and outside the Garage, that are set forth in attached **Exhibit H ("Parking Agreement")**. The upper level parking spaces in the Garage shall be available to the general public and operated consistent with the City's rules and regulations for public parking, provided the Owner may elect to close such parking spaces between 2:00 a.m. and 6:00 a.m.

14. Other Public Benefits. In addition to any public improvements required of the Owner as part of stipulations placed on the Plan approval, the Owner shall be responsible for providing the following public benefits:

14.1 Marshall Way. The Owner shall design and construct all subsurface improvements in Marshall Way and shall design, construct, and maintain improvements to the area between the back of curb and the Property boundary on the east side of Marshall Way between Camelback Road and the Arizona Canal, as shown on the landscape concept plan contained in **Exhibit B**. In addition, except as inconsistent with the rights and obligations of third-parties, the Owner has the right to maintain the landscaped peninsulas after completion of construction on the west side of Marshall Way between Camelback Road and the Arizona Canal and the north side of Montecito Avenue between Marshall Way and Goldwater Boulevard.

14.2 Camelback Road. The Owner shall design, construct, and maintain improvements to the area between the back of curb and the Property boundary on the south side of Camelback Road between Marshall Way and Scottsdale Road, as shown on the landscape concept plan contained in **Exhibit B**.

14.3 Public Amphitheater. The Owner shall construct the public amphitheater (the "**Public Amphitheater**"), as shown on the landscape concept plan contained in **Exhibit B**, during Phase 1 of development of the Property, as shown on **Exhibit C**. The cost to the Owner of design and construction of the Public Amphitheater shall not exceed the Contracting Taxes received by the City as part of Phase 1 of development of the Property, and the City shall reimburse the Owner for the cost of design and construction of the Public Amphitheater, as discussed in Paragraph 16.1.2 of this Agreement. Prior to construction, the Owner shall submit the design of the Public Amphitheater to the City Manager for approval.

14.4 Public Art. In addition to the amounts that the Owner would be required to pay pursuant to the City's Cultural Improvements Fund, the Owner shall increase its contribution by an additional amount adequate to bring the total amount of its contribution to the City's Cultural Improvement Fund to one million dollars (\$1,000,000.00). The parties shall comply with the procedural approval requirements set forth in the Zoning Ordinance for the use of the Public Art funds.

15. City Public Improvements. On or before the issuance of Temporary Certificate of Occupancy for the first building constructed in Phase 1, the City and the Owner shall cooperate in the design and planning for, and the City shall design and construct public improvements adjacent to the Property as listed in this Section 15.

15.1 Camelback Road and Marshall Way. The City shall construct necessary improvements to the east-bound lanes of Camelback Road between Marshall Way and Scottsdale Road and left/north turn lanes at Scottsdale Road, as set forth in **Exhibit I** (traffic improvements) to this Agreement, and shall construct curb-to-curb surface improvements for Marshall Way south of Camelback Road to and including the cul de sac adjacent to the Arizona Canal and landscaping on the west side of Marshall Way and within the cul de sac, as set forth in **Exhibit B** (design concept) and **Exhibit I** (traffic improvements) to this Agreement. The Owner, at its cost, shall arrange for the preparation of design and construction documents. The City's obligation to

construct the improvements in this Section 15.1 shall not exceed one million dollars (\$1,000,000.00). If the City's cost to construct the improvements to Camelback Road and Marshall Way is less than one million dollars (\$1,000,000.00), then the City shall use the balance to construct public improvements on or adjacent to the Property.

15.2 Canal Bank. The City shall construct improvements to the Canal Bank from Scottsdale Road to Goldwater Boulevard, including bridges across the Arizona Canal. Upon completion of Phase 1 of the development of the Property, as depicted on **Exhibit C**, the Owner shall assume the responsibility to maintain said Canal Bank improvements, excluding the bridges across the Arizona Canal.

16. Reimbursement for Public Benefits.

16.1 Periodic Payments. In recognition of the benefits to the Citizens of Scottsdale set forth in Recitals C and D, and as further described in **Exhibit J** ("**Public Benefits**"), to reimburse the Owner for provision of the Retail Space and the Public Parking; and to reimburse the Owner for Owner's costs associated with the Public Amphitheater, the City shall pay to the Owner the following periodic payments as an inducement for the Owner's commitment to construct the Project, subject to the time limitation set forth in Paragraph 16.3 below.

16.1.1 Periodic Payments to Reimburse Retail Space and Public Parking. Periodic payments equal to ninety percent (90%) of the general fund portion of all privilege taxes paid by tenants and other businesses located within the Project and received by the City after the Effective Date of this Agreement exclusive of the Contracting Taxes, (such 90% hereinafter called the "**Sales Taxes**"). Subject to the time limitation of Section 16.3 below, the City shall make periodic payments of Sales Taxes to the Owner pursuant to this Section 16.1 until the City has paid to the Owner the sum of Three Million and No/100ths Dollars (\$3,000,000.00), together with interest at an annual rate of seven and one-half percent (7.5%) simple interest (not compounding). Payments by the City to the Owner pursuant to this Section 16.1.1 shall be credited first to interest and then to any remaining unpaid portion of the initial Three Million and No/100ths Dollars (\$3,000,000.00) balance. Payments applied to the unpaid portion of that initial balance shall be split equally to reimburse the Owner the sum of One Million Five Hundred Thousand and No/100ths Dollars (\$1,500,000.00) for the Retail Space and the sum of One Million Five Hundred Thousand and No/100ths Dollars (\$1,500,000.00) for the Public Parking.

16.1.2 Periodic Payments to Reimburse Amphitheater. Periodic payments equal to the sum of ninety percent (90%) of the general fund portion of all privilege taxes received by the City after the Effective Date of this Agreement from all contracting activities relating to the construction of all original improvements to Phase 1 of the Project (including, but not limited to, all construction and tenant improvements) (such 90% hereinafter called the "**Contracting Taxes**"). The City shall make periodic payments to the Owner pursuant to this Section 16.1.2 until the end of the time limitation set forth in Paragraph 16.3 of this Agreement. The Owner shall use these periodic payments of Contracting Taxes to cover its responsibility for the Public Amphitheater.

Notwithstanding anything in this Agreement to the contrary, for purposes of calculating the periodic payments to be made pursuant to this Paragraph 16, neither the Sales Taxes nor the Contracting Taxes shall include the 0.4% of the transaction privilege taxes received by the City which has been previously designated for mountain preserve and transportation purposes. Sales Taxes and Contracting Taxes shall include any future increase or decrease in such general fund taxes.

16.2 Timing of Periodic Payments. The first periodic payment shall include all Contracting Taxes paid for construction of Phase 1 and all Sales Taxes accrued through the end of the calendar quarter in which final certificates of occupancy for ninety (90) percent of Phase 1 are issued by the City (the "**Completion Quarter**"). The City shall make the first periodic payment and each subsequent periodic payment contemplated by this Paragraph 16 within ninety (90) days after the end of the quarter to which such periodic payment pertains.

16.3 Time Limitation. Notwithstanding anything to the contrary in this Agreement, the City's obligation to make periodic payments pursuant to this Paragraph 16 shall terminate without notice after the eightieth (80th) quarterly periodic payment has been made.

16.4 Waiver of Miscellaneous Fees. In addition to the foregoing, the City shall waive all, and the Owner shall not pay, any building permit, inspection, plan check, or other fees related to the Owner's design and construction of, or the issuance of a final certificate of occupancy for, the original construction of each phase of the entire Project, up to a total waiver of five hundred thousand dollars (\$500,000.00). Notwithstanding the foregoing, the Owner shall pay the then-current water, water resources, and sewer development fees, subject to all credits available to the Owner.

16.5 Provision of Tax Information. The Owner agrees from time-to-time to cause sufficient information to be provided to the City to substantiate the Sales Taxes and the Contracting Taxes paid for purposes of determining the amount of each Periodic Payment.

17. City Purchase Right. If the Owner fails to perform its obligations to design and commence substantial vertical construction above or below grade of the Phase 1 improvements for the Project pursuant to the time frame contained in the Phasing Plan and Schedule (**Exhibit C**) and such failure continues for a period of one hundred eighty (180) days after receipt of a written notice thereof from the City, then, in addition to and without limiting its remedies under Paragraph 19.3, the City may elect to purchase the Property by delivering written notice of its intent to purchase the Property within ninety (90) days of the Owner's failure to perform. Such right to purchase shall expire upon the Owner's commencement of substantial vertical construction above or below grade of the Phase 1 improvements. If the City elects to purchase the Property pursuant to this Paragraph, then the purchase price shall be thirteen million, five hundred thousand dollars (\$13,500,000). The Property shall be free and clear of all monetary liens or encumbrances and shall be subject only to such exceptions and other matters as appeared of record on the Effective Date, as shown on the title report prepared by Chicago Title Insurance Company and dated August 28, 2003. The closing of the City's purchase of the Property ("**Closing**") shall occur on a date specified by the City within ninety (90) days after the City's notice of its election to purchase is provided to the Owner. The purchase price shall be paid in cash at the Closing. All closing costs, title insurance fees, and similar expenses shall be

allocated by the Escrow Agent in a reasonable and customary manner. Notwithstanding any other provision of this Agreement, the Owner's failure in Phase 1 to complete construction of the south forty (40) feet of Building F, as shown on the Development Plan (**Exhibit B**), to avoid conflicts with construction of later phases shall not be a breach of this Agreement.

18. Termination of Reimbursement. If the Owner fails to perform its obligations to commence and complete construction of Phase 2 and/or subsequent phases for the Project pursuant to the timeframes contained in the Phasing Plan and Schedule (**Exhibit C**) and such failure continues for a period of one hundred eighty (180) days after receipt of a written notice thereof from the City, then, in addition to and without limiting its remedies under Paragraph 19.3, the City may elect to terminate any unpaid portions of the payments to the Owner that are specified in Paragraph 16.1.1 to reimburse the Owner the sum of One Million Five Hundred Thousand and No/100ths Dollars (\$1,500,000.00) for the Public Parking but may not elect to terminate any unpaid portions of its reimbursements to the Owner that are specified in Paragraph 16.1.1 as reimbursement for the Retail Space. The Owner's failure to commence and complete construction of any phase subsequent to Phase 1 shall not be viewed as default under Paragraph 19.3 of this Agreement, the City may not terminate this Agreement, and the remedy for such failure shall only be the right to terminate reimbursement under this Paragraph 18.

19. Mediation and Default.

19.1 Representatives. To further the cooperation of the parties in implementing this Agreement, the City and the Owner each shall designate and appoint a representative to act as a liaison between the City and its various departments and the Owner. The initial representative for the City (the "**City Representative**") shall be the City Manager or designee and the initial representative for the Owner shall be its project manager, as identified by the Owner from time to time (the "**Owner Representative**"). The representatives shall be available at all reasonable times to discuss and review the performance of the parties to this Agreement and the development of the Property.

19.2 Mediation. In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree that there shall be a forty-five (45) day moratorium on litigation during which time the parties agree to attempt to settle the dispute by nonbinding mediation before commencement of litigation. The matter in dispute shall be submitted to a mediator mutually selected by the City and the Owner. In the event that the parties cannot agree upon the selection of a mediator within seven (7) days, then within three (3) days thereafter, the City and the Owner shall request the presiding judge of the Superior Court in and for the County of Maricopa, State of Arizona, to appoint an independent mediator. The mediator selected shall have at least five (5) years' experience in mediating or arbitrating disputes relating to commercial development. The cost of any such mediation shall be divided equally between the City and the Owner. The results of the mediation shall be nonbinding on the parties, and any party shall be free to initiate litigation subsequent to the moratorium.

19.3 Default. Failure or unreasonable delay by any party to perform any term or provision of this Agreement for a period of ten (10) days after written notice thereof from another party shall constitute a default under this Agreement. If the default is of a nature which is not capable of being cured within ten (10) days, the cure shall be commenced within such

period, and diligently pursued to completion. The notice shall specify the nature of the alleged default and the manner in which the default may be satisfactorily cured. In the event of a default hereunder by any party, the non-defaulting party shall be entitled to all remedies at both law and in equity, including, without limitation, specific performance and the right to perform the obligation(s) of which the defaulting party is in default and to immediately seek reimbursement from the defaulting party of all sums expended in order to cure such default, together with interest on all such sums from the date said sums are expended by the non-defaulting party for the purpose of curing the default to the date such sums are paid in full.

20. Drainage. The City shall indemnify and hold harmless the Owner for all liability, costs, expenses, damages, or other claims that result from any and all acts of the City related to grading, drainage, and flood matters on the Property, which liability, costs, expenses, damages, or other claims result from any decision in the actions captioned *Norwood Sisson v. City of Scottsdale*, Maricopa County Superior Court Cause Nos. CV2002-016073, CV2002-009630 and CV2001-021416, any amendment or appeal thereof.

21. City Review. The City and the Owner agree that the Owner must be able to proceed rapidly with development of the Property. Accordingly, the City will use reasonable best efforts to conduct timely and good faith reviews, permitting, and inspection processes for the development. If the Owner believes the reviews are not timely, the Owner may, at its option and expense, retain outside consultants satisfactory to the City to conduct necessary plan reviews for development of the Property.

22. Effective Date. This Agreement shall be effective ("**Effective Date**") upon satisfaction of the following:

22.1 Execution by the parties hereto and either (i) thirty (30) days after said execution if no referendum is filed regarding this Agreement or the Development Plan; (ii) upon successful defeat of such a referendum by the residents of the City; or (iii) if a referendum filed regarding the Development Plan is successful, upon City approval of the Development Plan through an alternative method; and

22.2 Recordation in accordance with Paragraph 23.11.

23. General Provisions.

23.1 Notices; Manner of Serving. All notices, filings, consents, approvals and other communications provided for herein or given in connection herewith ("Notices") shall be validly given, filed, made, delivered or served if in writing and delivered personally or sent by registered or certified United States Postal Service Mail, return receipt requested, postage prepaid to:

If to the City: The City of Scottsdale
3939 Drinkwater Boulevard
Scottsdale, Arizona 85251
Attn: Economic Vitality General Manager

With a copy to: City of Scottsdale

3939 Drinkwater Boulevard
Scottsdale, Arizona 85251
Attn: City Attorney

If to the Owner: Lee Golub
Scottsdale Waterfront, L.L.C.
C/o Golub & Company
625 North Michigan Avenue, Suite 2000
Chicago, Illinois 60611

With a copy to: Ellis Rinaldi, Esq.
Scottsdale Waterfront, L.L.C.
C/o Starwood Capital Group
591 West Putnam Avenue
Greenwich, Connecticut 06830

Chris Milam
Scottsdale Waterfront, L.L.C.
C/o International Development Management
107 Ranch Road-RR 620 South
PMB 23-F
Austin, Texas 78734

Gallagher & Kennedy, P.A.
2575 East Camelback Road
Phoenix, Arizona 85016-9225
Attn: Dana Stagg Belknap or William F. Allison

Or to such other addresses as either party may from time to time designate in writing and deliver in a like manner. Any such change of address Notice shall be given at least ten (10) days before the date on which the change is to become effective.

23.1.1 Mailing Effective. Notices, given by mail, shall be deemed delivered seventy-two (72) hours following deposit in the U.S. Postal Service, in the manner set forth above.

23.2 Amendment or Cancellation of the Agreement. This Agreement may be amended or canceled, in whole or in part and with respect to all or any portion of the Property, only with the mutual written consent of the City and the Owner. Within ten (10) calendar days after any such amendment or cancellation of this Agreement, the amendment or cancellation shall be recorded by the Owner in the Official Records of Maricopa County, Arizona. Notwithstanding the foregoing, any minor amendments to the Development Plan set forth in **Exhibit B** shall not require a concurrent amendment of this Agreement, but rather shall be incorporated into this Agreement as adopted and approved by the City.

23.3 Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof and no waiver by the parties 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 any other provision of this Agreement. Nothing herein or in the Site Plan shall constitute or be deemed to be a waiver by the Owner of its respective rights to request future rezonings or changes in development standards for all or any portion(s) of the Property pursuant to City procedures and requirements existing at the time of the request. Nothing herein contained shall be deemed to be a waiver by the City of any governmental or regulatory power regarding such future rezoning or change.

23.4 Assignment. The rights and obligations of the Owner under this Agreement may be transferred or assigned, in whole or in part, by written instrument, to any subsequent owner of all or any portion of the Property without further consent from the City. Notice of any transfer or assignment in accordance with this Paragraph shall be provided to the City within ten (10) days of such transfer or assignment. As provided in A.R.S. § 9-500.05.D, the burdens of this Agreement bind, and the benefits of this Agreement inure to, the parties hereto and their successors in interest and assigns, and this Agreement runs with the land, upon the Property except as provided below:

23.4.1 The rights and obligations of the Owner hereunder may only be assigned to a person or entity that has acquired the Property or a portion thereof and only by a written instrument, recorded in the official records of Maricopa County, Arizona, expressly assigning such rights and obligations.

23.4.2 All third party owners, and all future owners of any interest in a portion of the Property, shall be deemed a successor-in-interest to the Owner only as respects the Development Plan and approvals resulting from the Development Plan and as to the obligations to the City, including compliance with terms of the Development Plan and this Agreement, relating to the portion of the Property to which such owner holds title, and such owner shall not be deemed a third-party beneficiary respecting this Agreement or the Development Plan and approvals relating to any other portion of the Property owned by the Owner, which Development Plan and approvals may be amended by an action of the City and the Owner as applicable to the portion of the Property for which such a change to the Development Plan is sought in accordance with, and subject to the limitations of, Paragraph 23.2 of this Agreement.

23.5 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

23.6 Headings. The description headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

23.7 Entire Agreement. This Agreement constitutes the entire agreement between the parties and shall not be changed or added to except in the manner provided in Paragraph 23.2. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, other than specifically incorporated herein by reference, are superseded by this Agreement.

23.8 Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect, provided that the overall intent of the parties is not materially vitiated by such severability.

23.9 Governing Law. The laws of the State of Arizona shall govern the interpretation and enforcement of this Agreement. The parties agree that venue for any action commenced in connection with this Agreement shall be proper only in a court of competent jurisdiction located in Maricopa County, Arizona, and the parties hereby waive any right to object to such venue.

23.10 Recordation. No later than ten (10) days after this Agreement has been executed by the City and the Owner, it shall be recorded in its entirety, by the Owner, in the Official Records of Maricopa County, Arizona.

23.11 Authority. The parties to this Agreement represent to each other that they have full power and authority to enter into this Agreement, and that all necessary actions have been taken to give full force and effect to this Agreement. The Owner and the City warrant to each other that the individuals executing the Agreement on behalf of their respective parties are authorized and empowered to bind the party on whose behalf each individual is signing. The Owner represents to the City that by entering into this Agreement the Owner has bound the Property and all persons and entities having any legal or equitable interest therein to the terms of the Agreement.

23.12 Estoppel. Each of the parties hereto covenants and agrees with the other to provide, within fifteen (15) days of written request from the other, an estoppel certificate signed by a duly authorized representative of such party, indicating that the other party is not then in default under any of the obligations pursuant to this Agreement (but excluding regulatory compliance issues) or specifying in reasonable detail any then claimed default.

23.13 Conflict of Interest. This Agreement is subject to the cancellation provisions of A.R.S. § 38-511.

23.14 Relationship of the Parties. It is understood that the contractual relationship between the parties is undertaken pursuant to the authorization contained in A.R.S. § 9-500.05, and nothing contained in this Agreement shall create any partnership, joint venture or agency relationship between the City and the Owner. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder, whether as a third-party beneficiary or otherwise.

23.15 Force Majeure. Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control, and such delays or failures to perform shall not be a default under Paragraph 19. Such acts shall be riots, acts of war, acts of terror, fire, communication line failures, or power failures or any other act as agreed upon by the City and the Owner or determined as discussed in Paragraph 19.2 to this Agreement.

23.16 Extension. Notwithstanding any other provision of this Agreement, this Agreement and all deadlines for performance contained herein shall be extended automatically (i) during the pendency of any referendum referring this Agreement, the District, the infill plan, or the Development Plan to the approval of the voters of the City and/or (ii) during the pendency of any third-party litigation challenging the validity or enforceability of this Agreement, the District, the infill plan, or the Development Plan, but no extension due to such litigation shall extend more than three (3) years. In addition, notwithstanding anything contained in this Paragraph 23.16, the parties have all rights and obligations to mediate and litigate disputes as set forth in Paragraph 19, including the right to request extensions to the deadlines for performance contained in this Agreement.

23.17 Attorneys' Fees. The Owner shall bear all the costs, attorneys' and witness fees and other litigation costs of both the Owner and the City of defending or prosecuting any claim, action, or suit challenging the validity or enforceability of any provision of this Agreement, each party to be represented by separate counsel of its own choosing, provided, however, that the Owner shall have no obligation to pay for costs, attorneys and witness fees and other litigation costs in any action in which the City takes the position that this Agreement is invalid or unenforceable. In the event any other action or suit or proceeding is brought by either party to enforce compliance with this Agreement or for failure to observe any of the covenants of this Agreement or to vindicate or exercise any rights or remedies hereunder, the prevailing party in such proceeding (as determined by the court (and not a jury) in such proceeding) shall be entitled to recover from the other party such prevailing party's reasonable attorneys' fees and other reasonable litigation costs, provided, however, that (i) the Owner shall, as a condition of such proceeding provide evidence to the City of the rate of payment of the Owner's attorneys' fees to its counsel and (ii) the City shall be entitled to recover payment for attorneys employed by the City (including attorneys who are regular employees of the City) on such proceeding at the same rate of payment if the City is the prevailing party.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

OWNER:

Scottsdale Waterfront, LLC
an Arizona limited liability company

By: Scottsdale Waterfront Partners, LLC
a Delaware limited liability company

By: Golub Waterfront Holdings, LLC
an Illinois limited liability company

By: Golub & Company of Illinois, Inc.
an Illinois corporation

By:
Name:
Title:

CITY:

CITY OF SCOTTSDALE, ARIZONA, a
municipal corporation

By: _____
Mary Manross, Mayor

Attest:

Carolyn Jagger, City Clerk

Approved as to form:

City Attorney

STATE OF ARIZONA §
 §
County of Maricopa §

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2003, by Mary Manross, Mayor of the CITY OF SCOTTSDALE, ARIZONA, a municipal corporation, for and on behalf thereof.

Notary Public

My Commission Expires:

STATE OF ARIZONA §
 §
County of Maricopa §

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2003, by Lee Golub of SCOTTSDALE WATERFRONT, L.L.C., an Arizona limited liability company, for and on behalf thereof.

Notary Public

My Commission Expires:

EXHIBIT A
LEGAL DESCRIPTION AND MAP OF THE PROPERTY



BROOKS, HERSEY & ASSOCIATES, INC.

ENGINEERS/SURVEYORS
CONSTRUCTION ADMINISTRATORS

**LEGAL DESCRIPTION
SCOTTSDALE WATERFRONT
TIED PARCELS**

A portion of the Northeast Quarter of the Southeast Quarter of Section 22, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, being more particularly described as follows:

COMMENCING at the Northeast corner of said Northeast Quarter of the Southeast Quarter of Section 22;

Thence South $88^{\circ}54'09''$ West, along the North line of said Northeast Quarter of the Southeast Quarter, 93.04 feet;

Thence South $01^{\circ}05'51''$ East, 55.00 feet to a point on the Southerly right-of-way line of Camelback Road, said point also being on the Westerly right-of-way line of Scottsdale Road marking the Point of Beginning;

Thence South $00^{\circ}01'51''$ East, along said Westerly right-of-way line of Scottsdale Road, 98.83 feet to a point on the Northerly right-of-way line of the Arizona Canal;

Thence South $41^{\circ}07'13''$ West, along said Northerly right-of-way line, 788.90 feet to the Southwest corner of Paradise Palms, a subdivision recorded in Book 54 of Maps, Page 13, Maricopa County Records;

Thence continuing along said Northerly right-of-way line South $01^{\circ}07'51''$ East, 42.31 feet to a point on the Northerly right-of-way line of the Arizona Canal;

Thence continuing along said Northerly right-of-way line South $40^{\circ}32'09''$ West, 125.75 feet to the beginning of a curve concave Northwesterly and having a radius of 1941.86 feet;

Thence Southwesterly along said curve through a central angle of $10^{\circ}14'30''$, an arc distance of 347.11 feet;

Thence continuing along said Northerly right-of-way line South $50^{\circ}46'40''$ West, 320.68 feet, to the beginning of a non-tangent curve concave Westerly and having a radius of 626.00 feet, a radial to said beginning bears North $83^{\circ}32'29''$ West;

Thence Northerly along said curve through a central angle of $03^{\circ}01'04''$, an arc distance of 32.97 feet;

Thence South $45^{\circ}03'11''$ East, 7.89 feet;

Thence North $44^{\circ}56'49''$ East, 10.00 feet;

Thence North $45^{\circ}03'11''$ West, 16.93 feet to the beginning of a non-tangent curve concave Westerly and having a radius of 626.00 feet, a radial to said beginning bears North $87^{\circ}49'25''$ West;

Thence Northerly along said curve through a central angle of 02°13'41", an arc distance of 24.34 feet;

Thence North 00°03'30" West, 265.18 feet;

Thence North 20°03'30" West, 29.24 feet;

Thence North 00°03'30" West, 94.68 feet;

Thence North 72°53'45" East, 14.24 feet;

Thence North 00°03'30" West, 48.98 feet;

Thence North 41°23'02" East, 11.86 feet to the beginning of a non-tangent curve concave Northerly and having a radius of 210.00 feet, a radial to said beginning bears North 05°54'59" West;

Thence Easterly along said curve through a central angle of 24°17'27", an arc distance of 89.03 feet;

Thence North 59°47'34" East, 112.30 feet, to the beginning of a curve concave Southerly and having a radius of 150.00 feet;

Thence Easterly along said curve through a central angle of 29°09'31", an arc distance of 76.34 feet;

Thence North 88°57'04" East, 175.30 feet;

Thence North 01°05'51" West, 603.97 feet;

Thence North 43°54'09" East, 31.11 feet to the Southerly right-of-way line of Camelback Road;

Thence North 88°54'09" East, along said Southerly right-of-way line, 49.50 feet;

Thence North 01°05'51" West, along said Southerly right-of-way line, 5.50 feet;

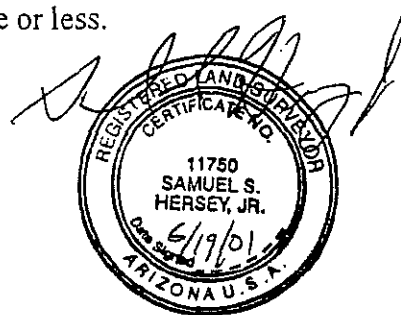
Thence North 88°54'09" East, along said Southerly right-of-way line, 18.53 feet;

Thence North 72°05'59" East, along said Southerly right-of-way line, 12.21 feet;

Thence North 01°23'06" West, along said Southerly right-of-way line, 0.97 feet;

Thence North 88°54'09", East, along said Southerly right-of-way line, 562.56 feet to THE TRUE POINT OF BEGINNING.

Parcel contains 492,3278 square feet, 11.30 acres, more or less.



NE COR. OF NE 1/4 SE 1/4 SEC. 22

S88°54'09"W
93.04'
S00°01'51"E
55.00'
P.O.B.

CAMELBACK ROAD

SCOTTSDALE ROAD

N43°54'09"E
31.11'

L9 L10

N 88°54'09" E 562.56'

N88°54'09"E
49.50'

S00°01'51"E
98.83'

LINE TABLE		
LINE	LENGTH	BEARING
L8	5.50	N01°05'51"W
L9	18.53	N88°54'09"E
L10	12.21	N72°05'59"E
L11	0.97	N01°23'06"W

MARSHALL WAY

603.97'
N01°05'51"W

S41°07'13"W 788.90'

ARIZONA CANAL

MONTECITO DRIVE

N88°57'04"E
175.30'

C3 N59°47'34"E
112.30'

L7 C4 N00°03'30"W
48.98'

S01°07'51"E
42.31'

S40°32'09"W
125.75'

R1941.86'
L347.11'
Δ 10°14'30"



N.T.S.

GOLDWATER BLVD.

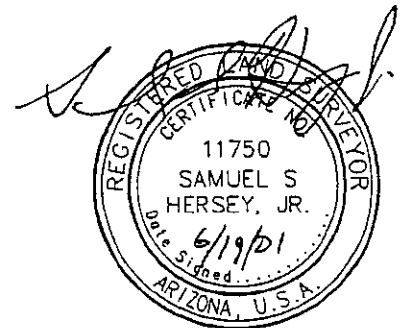
N00°03'30"W
94.68'

N00°03'30"W 265.18'

L2 C5 S55°46'40"W 320.68'

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	32.97	626.00'	03°01'04"
C2	NOT USED		
C3	89.03	210.00'	24°17'27"
C4	76.34	150.00'	29°09'31"
C5	24.24	626.00'	02°13'41"

LINE TABLE		
LINE	LENGTH	BEARING
L1	NOT USED	
L2	7.89	S45°03'11"E
L3	10.00	N44°56'49"E
L4	16.93	N45°03'11"W
L5	29.24	N20°03'30"W
L6	4.24	N72°53'45"E
L7	11.85	N41°23'02"E



NOTE: THIS EXHIBIT WAS PREPARED SOLELY AS A REFERENCE FOR THE LEGAL DESCRIPTION TO WHICH IT IS ATTACHED. IT IS NOT MEANT TO BE A STANDALONE DOCUMENT FOR THE RESULT OF A FIELD SURVEY.



4602 E. ELWOOD STREET, 16
Phoenix, Arizona 85040

Phone (602) 437-3733
Fax (480) 858-0204

EXHIBIT B
SITE PLAN

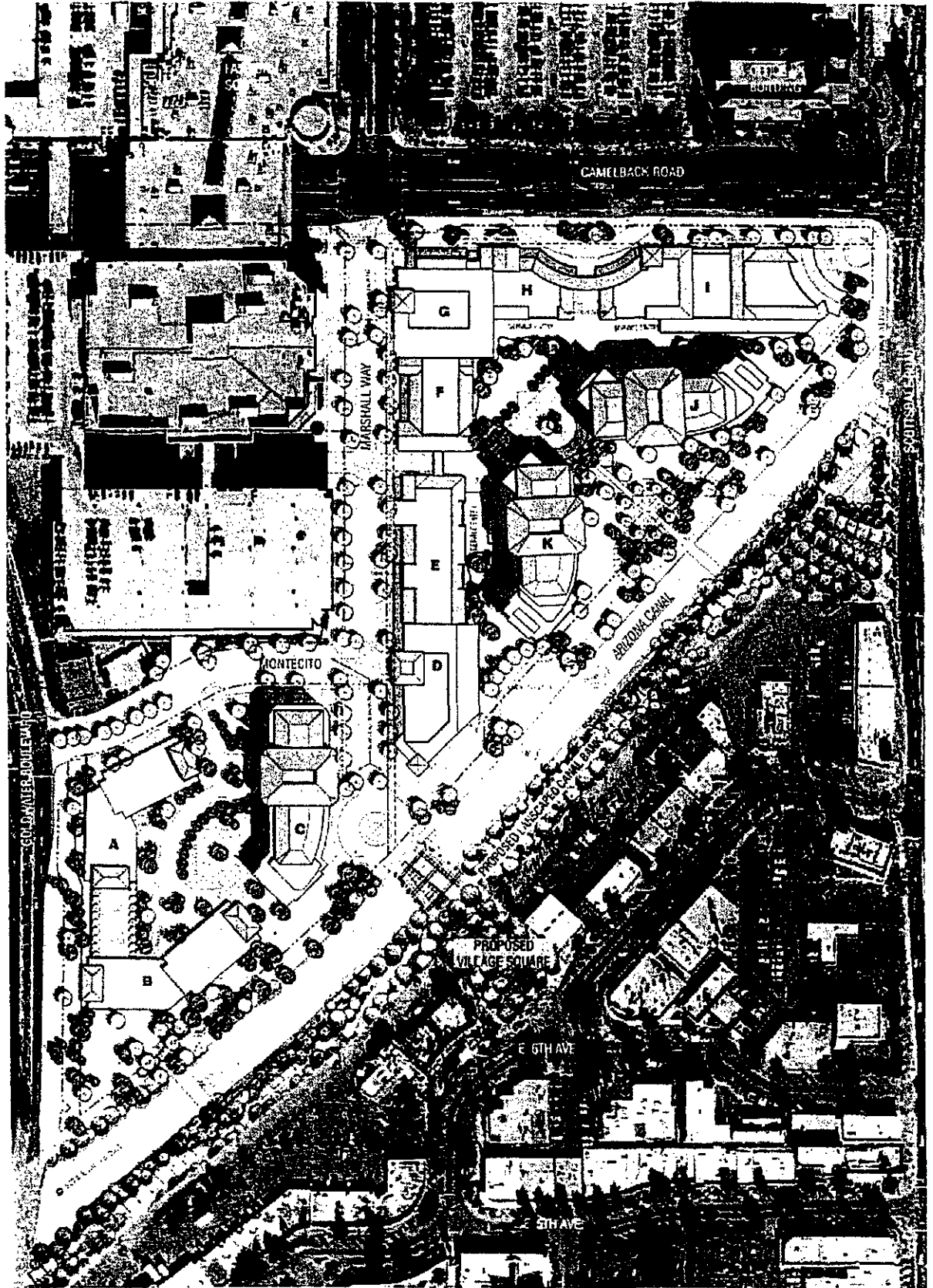
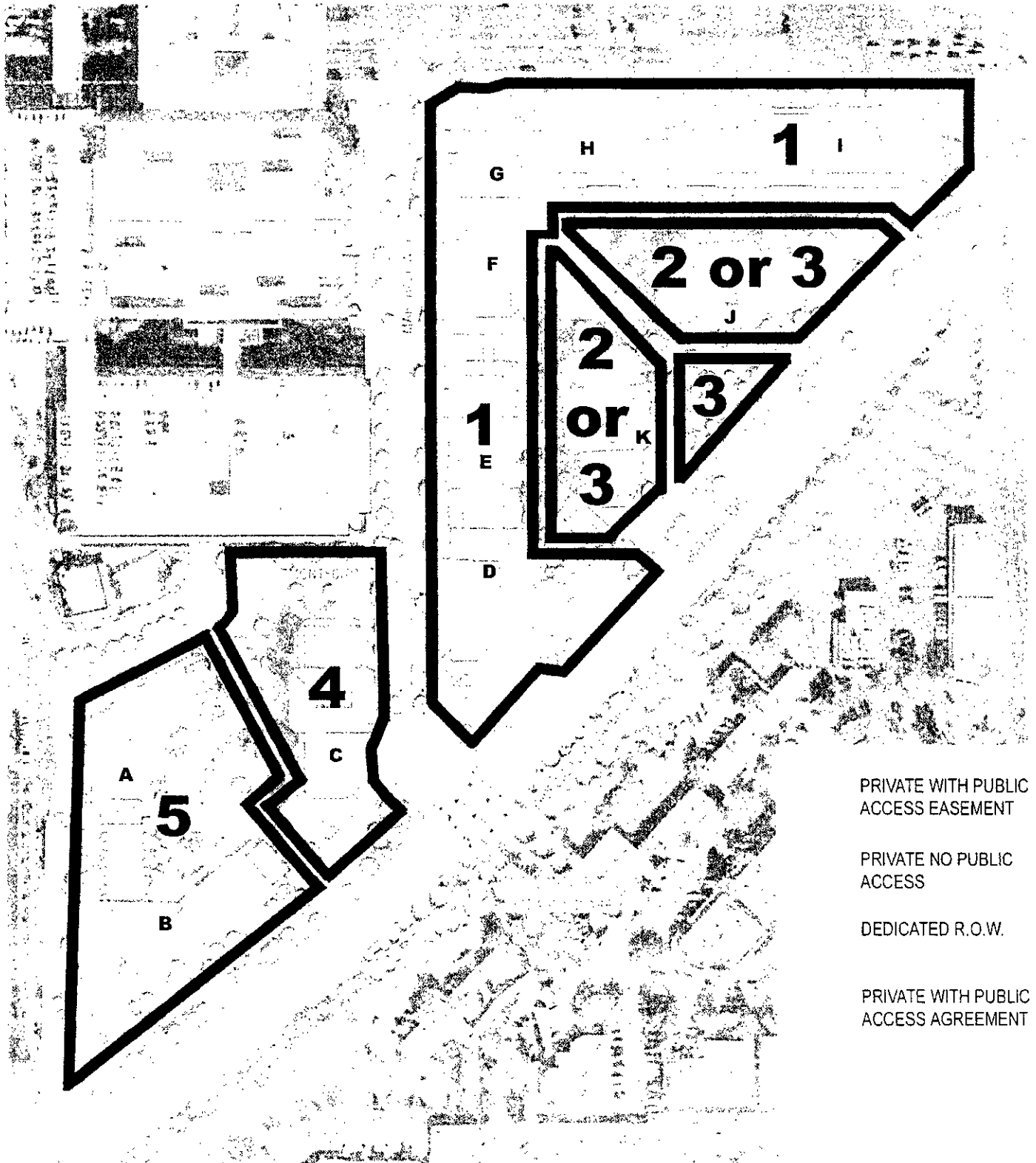


EXHIBIT C
PHASING SCHEDULE

Phase	Commence Construction (substantial vertical construction above or below grade)	Complete Construction (Issuance of Temporary Certificate of Occupancy)
1	3-31-05	12-31-06
2	6-30-07	6-30-09
3	9-30-09	9-30-11
4	12-31-09	12-31-11
5	12-31-10	12-31-12



PRIVATE WITH PUBLIC
ACCESS EASEMENT

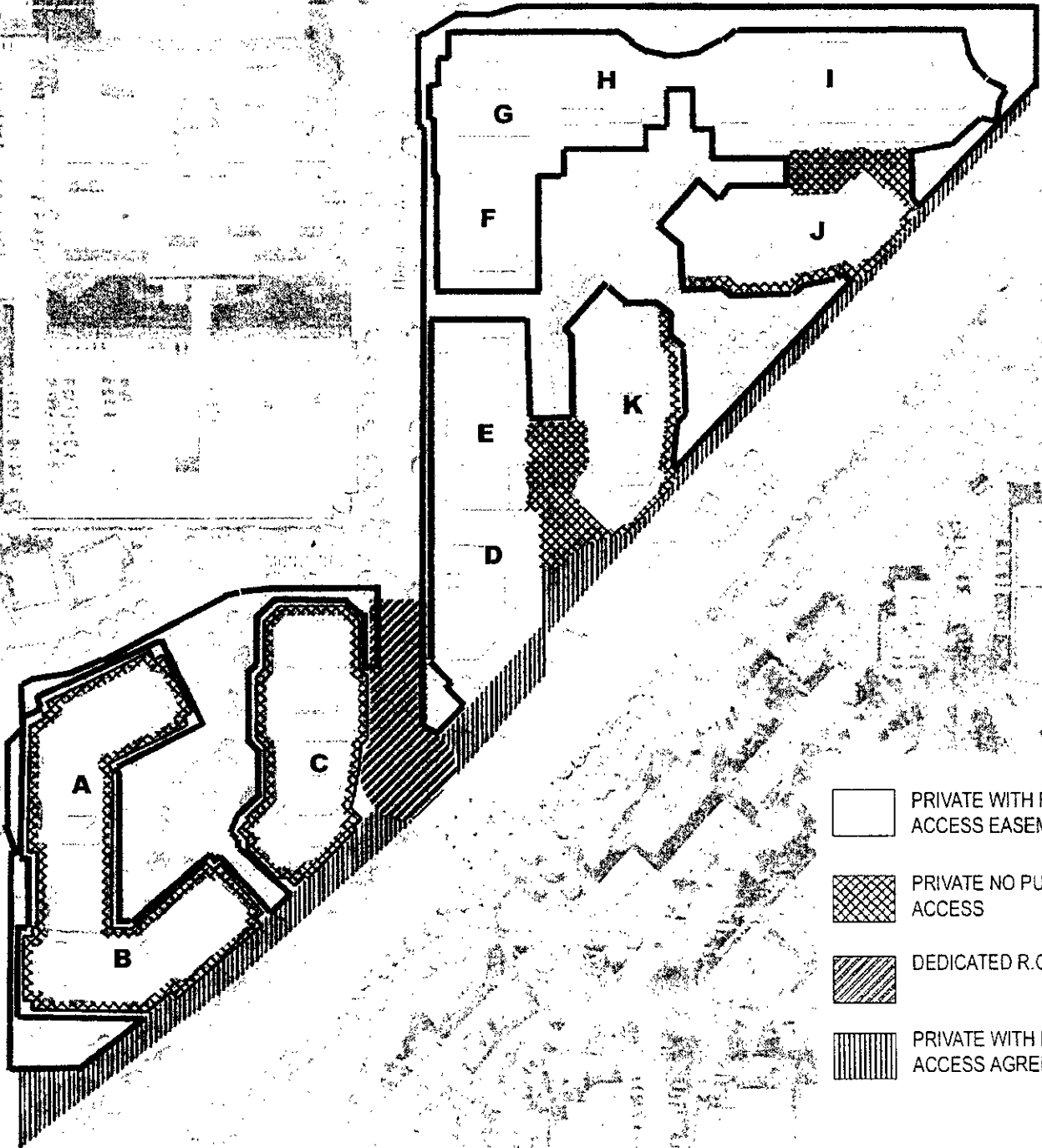
PRIVATE NO PUBLIC
ACCESS

DEDICATED R.O.W.

PRIVATE WITH PUBLIC
ACCESS AGREEMENT



EXHIBIT D
OPEN SPACE PLAN



↑

9.22.03

OPEN SPACE PLAN
 Scottsdale Waterfront
 W. MICHAEL J. ...

EXHIBIT E
TERMINATION OF EASEMENTS FORM

WHEN RECORDED, RETURN TO:

James B. Connor, Esq.
Gallagher & Kennedy, P.A.
2575 East Camelback Road
Phoenix, Arizona 85016-9225

RELEASE AND TERMINATION OF EASEMENTS

This Release and Termination of Easements is executed by the City of Scottsdale, an Arizona municipal corporation (the "**City**"), as of this ____ day of _____, 2003.

WHEREAS, pursuant to that Pedestrian Plaza Easement Agreement (Palm Circle Parcel), dated October 6, 1996, and recorded October 7, 1996 as instrument number **96-0714070** in the Official Records of Maricopa County, Arizona, PVD Palm Circle, L.L.C., a Delaware limited liability company granted certain easement rights to the City; and

WHEREAS, pursuant to that Pedestrian Plaza Easement Agreement (Periphery Land), dated October 6, 1996, and recorded October 7, 1996 as instrument number **96-0714069** in the Official Records of Maricopa County, Arizona, PVD Periphery, L.L.C., a Delaware limited liability company granted certain easement rights to the City; and

WHEREAS, the need by the City for the two easements referenced in the foregoing paragraphs (the "**Easements**") has expired and the City is willing to release, relinquish, terminate and cancel said Easements, in accordance with **Section 10** of each of the Easements; and

WHEREAS, concurrently with termination of the Easements, the City has been granted a new easement pursuant to the terms of that certain Development Agreement dated _____, 2003 and recorded _____, 2003 as instrument number _____ in the Official Records of Maricopa County, Arizona.

THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned hereby releases, relinquishes, terminates and cancels the Easements. The undersigned further represents that it is the sole holder of the above-referenced Easement, and no consents of any other person is required to allow this release and termination to be effective.

IN WITNESS WHEREOF, the undersigned has executed this Release and Termination of Easement to be effective as of the date first written above.

CITY OF SCOTTSDALE, an Arizona
municipal corporation

By: _____
Its: _____

STATE OF ARIZONA)
)ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____,
2003, by _____, as _____ of the City of Scottsdale, an Arizona
municipal corporation.

Notary Public

My Commission Expires:

EXHIBIT F
IRREVOCABLE EASEMENT FORM

When recorded, return to:

One Stop Shop Records
Ed Gawf (Deputy City Manager's Office)
City of Scottsdale
7447 E. Indian School Road Suite 100
Scottsdale, AZ 85251

IRREVOCABLE PUBLIC ACCESS EASEMENT AGREEMENT

THIS IRREVOCABLE PUBLIC ACCESS EASEMENT AGREEMENT ("**Easement Agreement**") is made and entered into effective as of the ____ day of _____, 200_ ("**Effective Date**"), by and between SCOTTSDALE WATERFRONT, L.L.C., an Arizona limited liability ("**SWF**") and CITY OF SCOTTSDALE, an Arizona municipal corporation and a political subdivision of the State of Arizona ("**City**"). SWF and the City are sometimes referred to in this Agreement collectively as the "Parties" or individually as a "Party".

RECITALS:

A. SWF is proposing to design, develop, construct and operate a mixed-use real estate project (the "**Project**") on property generally located at the southwest corner of Camelback and Scottsdale Roads in Scottsdale, Arizona. Such Project shall include certain walkway and open areas. City desires that SWF pursue and complete such Project, but City has requested that portions of the Project generally located along the boundary with the Arizona Canal (the "**Easement Area**") be available for use by the general public. The Easement Area is legally described on the attached **Exhibit A**.

B. SWF and City have entered into that certain "**Development Agreement**" (herein so called), dated _____, 2003, which is recorded in the Recorder's Office for Maricopa County, Arizona (the "**Recorder's Office**"). The Development Agreement provides that SWF will grant an easement to City upon the Easement Area for the Permitted Uses (as defined below), as well as the non-exclusive right and easement to utilize all reasonable means of ingress and egress thereto and other related rights appurtenant thereto to permit the unobstructed use of the Easement Area for the Permitted Uses by the general public at the times and upon the terms and conditions set forth in this Agreement.

C. All references in this Agreement to SWF will be deemed to be the then-owner of fee title to the Land (or, if more than one, then the owners of any portion of the Land) and/or its respective successor-in-interest.

D. All capitalized terms used in this Agreement which are not defined in this Agreement shall have the meaning ascribed to such terms in the Development Agreement.

AGREEMENTS:

NOW, THEREFORE, in consideration of the mutual representations, promises, warranties, covenants and agreements contained below, the conveyance to be made under this Easement Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Grant of Easement.** SWF hereby grants to City, subject to the terms and conditions set forth herein, an easement to use the Easement Area, together with a non-exclusive right and easement to use all reasonable means of ingress and egress thereto located on the Project and other related rights appurtenant thereto for the purpose of providing unobstructed pedestrian access for the general public to and from the Easement Area (collectively, the "**Easement Premises**"); provided, however that: (i) SWF shall have the right to alter the location of any entrance, exit, accessway or facility located on the Easement Premises owned by SWF as long as each replacement entrance, exit, accessway or facility is comparable in size and convenience to City and the general public, the relocation activities do not unduly interfere with City's and the general public's use of the Easement Premises, and in all other respects SWF exercises such relocation rights in its reasonable discretion; and (ii) SWF shall have the right to grant additional non-exclusive easements and such other similar rights with respect to the Easement Premises as may be necessary for utilities and such other similar matters as SWF deems necessary in its reasonable discretion, provided that such easements and other rights do not unreasonably interfere with City's or the general public's use and enjoyment of the Easement Premises and the rights granted under this Agreement.

2. **Term.** The burdens and benefits of this Agreement are perpetual in duration and are intended to be appurtenant to, and to run with, the land. Without the consent of City, this Agreement shall not be terminated.

3. **Use and Enjoyment of Easement Area.** The City shall control the Easement Area generally in accordance with the City's park use restrictions.

4. **Maintenance and Repair of the Easement Area.** SWF hereby acknowledges and agrees that SWF shall at all times keep and maintain the Easement Area and all improvements or personalty placed thereon in a good state of repair and that any and all costs and expenses incurred in connection with the construction, maintenance, repair, restoration or replacement of the Easement Premises shall be the sole responsibility of SWF.

5. **Damage to or Destruction of the Easement Area.** If, during the Agreement term, the Easement Area shall be damaged or destroyed by fire or other casualty or any other cause whatsoever, either in whole or in part, SWF shall, promptly and in a commercially reasonable manner, remove any resulting debris and repair and/or rebuild the damaged or destroyed structures and other improvements, including any improvements made by SWF or City, in accordance with the plans and specifications pursuant to which the Easement Area was constructed. City and SWF agree that any insurance proceeds shall be made available to SWF for the restoration and repair of the Easement Area.

6. **City Indemnity Obligation.** City shall indemnify, defend and hold SWF harmless from and against any and all losses, costs and expenses (including reasonable attorneys' fees) that are caused by any negligent acts, errors or omissions of City or its agents, employees, contractors, subcontractors, representatives or delegates, except for any such loss, cost or expense caused by SWF's own negligence or misconduct. Such indemnity obligation shall survive a termination of City's rights under this Easement Agreement.

7. **SWF Indemnity Obligation.** SWF shall indemnify, defend and hold City harmless from and against any and all losses, costs and expenses (including reasonable attorneys' fees) that are caused by any negligent acts, errors or omissions of SWF or its agents, employees, contractors, subcontractors, representatives or delegates, except for any such loss, cost or expense caused by City's own negligence or misconduct. Such indemnity obligation shall survive a termination of City's other rights under this Easement.

8. **Taxes.** SWF shall timely pay any and all real property taxes or assessments levied against and/or allocable to the Easement Premises.

9. **Attorneys' Fees.** If any of the Parties hereto shall initiate suit against any other Party as a result of any alleged breach or failure of the other to fulfill or perform an covenants or obligations to be performed by it under this Easement Agreement, or for declaratory relief seeking any determination of such Parties' rights or obligations hereunder, then in such event, the prevailing Party in such action shall, in addition to any other relief granted or awarded by the Court, be entitled to judgment for reasonable attorneys' fees incurred by reason of such action and all costs of suite and those incurred in preparation thereof, at both trial and appellate levels.

10. **Entire Agreement.** This Easement Agreement and the Development Agreement, together with all Exhibits attached thereto, contain the entire agreement and understanding of SWF and City and supersede all prior agreements and understandings, as to the subject matter hereof. The Parties expressly acknowledge and agree that any discussion outlines and transaction outlines utilized during the course of negotiations do not constitute binding agreements of the Parties and shall not be utilized to interpret or construe any provision of this Easement Agreement. This Easement Agreement shall not be modified, superseded or revoked, except by an agreement in writing duly executed and delivered by the Parties hereto.

11. **Release of Easement.** City or its successors and assigns may terminate this Easement Agreement by recording a release in recordable form at the Office of the Recorder of Maricopa County, Arizona, whereupon all rights, duties and liabilities hereby created shall terminate.

12. **Nondisturbance.** SWF, its successors and assigns, shall not encumber or take any action to cause the Easement Premises to be encumbered with a lien or encumbrance superior or prior to the City's rights pursuant to this Easement Agreement. If at the present time, or at any time or times, the Easement Premises, or any part thereof, is or becomes encumbered by a lien or encumbrance superior or prior to the City's rights pursuant to this Easement Agreement, then SWF, its successors or assigns, shall take all action necessary to remove and discharge such prior lien or encumbrance from the Easement Premises.

13. **Estoppel Certificate.** From time to time upon written request by a requesting Party, the other Party shall, within twenty (20) days of such request, deliver to the requesting Party a certificate: (i) stating that this Agreement (without regard to, and excluding compliance with, governmental and regulatory matters) is in full force and effect and that the requesting Party is not in default under this Agreement (or specifying any default which the certifying Party may wish to allege); (ii) certifying the commencement date of this Agreement; (iii) certifying as to a true, correct and complete copy of this Agreement; (iv) certifying that such certifying Party does not hold any claims or demands under this Agreement against the requesting Party (or specifying any such claims or demands which such certifying Party may wish to allege); and (v) setting forth such other information about this Agreement which the requesting Party may reasonably request. The certifying Party understands and agrees that any such certificate may be relied upon by any third parties to whom the same is presented.

14. **Running of Benefits and Burdens.** All provisions of this Easement Agreement, including the benefits and burdens, run with the land and are binding upon and inure to the benefit of the tenants, heirs, assigns, successors and personal representatives of the Parties.

15. **No Waiver.** The waiver by one Party of the performance or observance of any covenant or condition to be performed or observed by the other hereunder shall not invalidate this Easement Agreement, nor constitute a waiver by such Party of any other covenant or condition to be performed or observed by the other hereunder.

16. **Non-liability of City Officials and Members of SWF.** No official, representative, agent, attorney or employee of City shall be personally liable to SWF, or to any successor in interest to SWF, in the event of any default or breach by City or for any amount which may become due to SWF or its successors, or with respect to any obligation of City under the terms of this Easement Agreement. Notwithstanding anything contained in this Easement Agreement to the contrary, the liability of SWF under this Easement Agreement shall be limited solely to its assets and shall not extend to or be enforceable against the individual assets of (i) any of the members of SWF; or (ii) officers or directors of any members of SWF.

17. **Construction.** This Easement Agreement shall be construed in accordance with the laws of the State of Arizona. The rule of strict construction shall not apply to this Easement Agreement. The Section headings contained in this Easement are for convenience in reference only and are not intended to define or limit the scope of any provision of this Easement. This Easement Agreement shall be given a reasonable construction so that the intention of the Parties to confer a usable right of enjoyment upon the City is implemented.

18. **No Third Party Beneficiaries.** No person or entity shall be a third party beneficiary to this Agreement, except the Indemnified Parties referred to in the indemnification provisions of this Agreement shall be third party beneficiaries of such indemnification provisions.

IN WITNESS WHEREOF, this Agreement is executed to be effective as of the Effective Date.

SWF:

SCOTTSDALE WATERFRONT, LLC, an Arizona limited liability company

By: Scottsdale Waterfront Partners, LLC, a Delaware limited liability company

By: Golub Waterfront Holdings, LLC, an Illinois limited liability company

By: Golub & Company of Illinois, Inc., an Illinois corporation

By: _____
Name: _____
Title: _____

CITY:

CITY OF SCOTTSDALE, an Arizona municipal corporation

By: _____
Its: _____

State of Arizona)
) ss.
County of Maricopa)

SUBSCRIBED AND SWORN TO before me this ____ day of _____, 200_, by _____, the _____ of Scottsdale Waterfront, LLC, an Arizona limited liability company, on behalf of the company.

Notary Public

My Commission Expires:

State of Arizona)
) ss.
County of Maricopa)

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 200_, by
_____, the _____ of City of Scottsdale, an Arizona municipal
corporation, on behalf of the corporation.

Notary Public

My Commission Expires:

EXHIBIT "A"

LEGAL DESCRIPTION OF LAND

[to be determined – not entire Project – just Easement Area identified as “private with Public Access Easement” on Open Space Plan]

EXHIBIT G
ACCESS AREA RESTRICTIONS

The following restrictions shall apply use of the public access area:

- All persons using the area shall comply with all federal, state, county, and city laws, rules, and regulations.
- The owner or person in custody of a dog shall immediately pick up all dog droppings and deposit them in a trash receptacle or remove them from the area.
- No person shall throw, deposit or place any commercial or non-commercial handbill in the area.
- No littering shall be permitted.
- No loud noise, public address system, disorderly conduct, disruptive behavior, or panhandling shall be permitted.
- No sale of food, beverages, and other merchandise shall be permitted.
- No glass, ceramic, or breakable plastic food or beverage containers shall be permitted.
- No camping, sleeping, or open or contained fires shall be permitted.
- No bathing in fountains or other water features shall be permitted.
- No person shall ride skateboards, roller skates or roller blades, bicycles, or scooters.
- No deadly weapons shall be permitted unless carried pursuant to a valid permit. A deadly weapon is anything designed for lethal use and includes firearms.
- No discharge of firearms shall be permitted.
- No person shall be in or use the area at any time between 10:00 p.m. and sunrise unless otherwise approved by the owner of the access area.
- No vehicles, other than maintenance vehicles, shall be permitted.
- No gas powered model airplanes or incendiary model rockets shall be permitted.
- No willful, negligent, or reckless discharge or other use that could propel any object or projectile capable of causing serious physical injury, including archery, air gun, BB gun, pellet gun, dart gun, cross bow, slingshot, blowgun, javelin, or spear, shall be permitted. Serious physical injury shall include any injury that create a reasonable risk of death or which causes serious and permanent disfigurement, serious impairment of heath or loss or protracted impairment of the function of any bodily organ or limb.
- No person shall tether, launch or land a hot air balloon in the area, except in the case of emergency.
- No public protest, organized or spontaneous, shall be permitted.

EXHIBIT H
PARKING EASEMENT AND AGREEMENT FORM

WHEN RECORDED, RETURN TO:

GALLAGHER & KENNEDY, P.A.
2575 East Camelback Road
Phoenix, Arizona 85016-9225
Attention: James A. Connor

PARKING EASEMENT AGREEMENT

by and between

**SCOTTSDALE WATERFRONT, L.L.C.,
an Arizona limited liability company,**

and

**CITY OF SCOTTSDALE,
an Arizona municipal corporation, as City**

PARKING EASEMENT AGREEMENT

This PARKING EASEMENT AGREEMENT (this "**Easement**") is made and entered into effective as of the ____ day of _____, 2003 (the "**Effective Date**"), by and between SCOTTSDALE WATERFRONT, L.L.C., an Arizona limited liability company ("**SWF**"), and CITY OF SCOTTSDALE, an Arizona municipal corporation ("**City**"). SWF and City are sometimes referred to in this Agreement collectively as the "**Parties**" or individually as a "**Party**".

RECITALS:

A. SWF has constructed one or more phases of a mixed-use real estate project (the "**Project**") on property generally located at the southwest corner of Camelback and Scottsdale Roads, in Scottsdale, Arizona. Such Project included parking facilities upon a portion thereof (the "**Garage**"), which is legally described on **Exhibit "A"** attached hereto. City has requested that certain parking spaces be provided in the Garage for use by the general public.

B. SWF and City have entered into that certain "**Development Agreement**" (herein so called), dated _____, 2003, which is recorded in the Recorder's Office for Maricopa County, Arizona (the "**Recorder's Office**"). The Development Agreement provides that SWF will grant an easement right to City in regard to 300 parking spaces in the Garage for the Permitted Uses (as defined below), as well as the non-exclusive right and easement to utilize all entrances, exits, driveways, accessways, garage facilities and other related rights appurtenant thereto to permit the unobstructed use of the 300 parking spaces for the Permitted Uses by the general public at the times, and upon the terms and conditions set forth in this Agreement.

C. All references in this Agreement to SWF will be deemed to be the then-owner of fee title to the Garage and/or its respective successor-in-interest.

D. All capitalized terms used in this Agreement which are not defined in this Agreement shall have the meaning ascribed to such terms in the Development Agreement.

AGREEMENTS:

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained in the Development Agreement and in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, SWF and City agree as follows:

1. **Easement.** During the term of this Agreement, SWF hereby grants to City, subject to the terms and conditions set forth herein, an easement to use 300 second-level parking spaces (to be designated by SWF) in the Garage as described in **Exhibit A**, together with a non-exclusive right and easement to use all entrances, exits, driveways, accessways and garage facilities located in and adjacent to the Garage and other related rights appurtenant thereto for the purpose of providing unobstructed vehicular and pedestrian access for the general public to and from the 300 parking spaces in the Garage and the use of such parking spaces by the general public (collectively, the "**Easement Premises**"); provided, however that: (i) SWF shall have the right to

alter the location of any entrance, exit, driveway, accessway or garage facility located on the Easement Premises owned by such SWF as long as each replacement entrance, exit, driveway, accessway or garage facility is comparable in size and convenience to City and the general public, the relocation activities do not unduly interfere with City's and the general public's use of the Easement Premises, and in all other respects SWF exercises such relocation rights in its reasonable discretion; and (ii) SWF shall have the right to grant additional non-exclusive easements and such other similar rights with respect to the Easement Premises as may be necessary for utilities and such other similar matters as SWF deems necessary in its reasonable discretion, provided that such easements and other rights do not unreasonably interfere with City's or the general public's use and enjoyment of the Easement Premises and the rights granted under this Agreement.

2. Term.

2.1 Time of day. The 300 parking spaces provided hereby shall be designated and available at all times except for between the hours of 8:00 a.m. to 6:00 p.m. Monday through Friday (excluding public holidays). Notwithstanding the foregoing, SWF may close portions of the Garage, including the Easement Premises, from time to time as reasonably required in order to repair, maintain, replace, and restore including as part of normal operations, or in the event of a casualty or condemnation.

2.2 Perpetual. The burdens and benefits of this Agreement are perpetual in duration and are intended to be appurtenant to, and to run with, the land. Without the consent of City, this Agreement shall not be terminated.

2.3 Commencement. The burdens and benefits of this Agreement shall commence upon completion of construction of the Garage.

2.4 Early Termination. Notwithstanding any terms to the contrary set forth in this Agreement, this Agreement is subject to early termination only upon the mutual agreement of the parties.

3. Compensation. City shall not be obligated to pay any compensation to SWF pursuant to this Agreement, except in the event City agrees or elects to charge or impose a fee, rent or similar charge, or any other consideration to the public, for the use of the Easement Premises, including without limitation, charges imposed in conjunction with parking valet services (as may be specifically permitted under this Agreement). In the event City does so agree or elect, then City and SWF shall agree upon a reasonable method and means for City to pay its reasonably allocated share of operating and maintenance costs and expenses, costs for insurance, taxes (including transaction privilege or similar taxes, if applicable), utilities and security, and costs of alteration including improvements (as described herein). For this purpose, the parties may agree to engage a third party parking facilities operator.

4. Permitted Uses. City shall use the Easement Premises for public parking (the "Permitted Uses"). The Permitted Uses shall not include City's use of the Easement Premises for storage of city vehicles.

4.1 **Valet Parking.** Either party is expressly authorized to use a reasonable number of parking spaces within the Garage, including the Easement Premises, for valet parking in accordance with a validly issued valet license and, subject to **Section 3**, above, to charge a reasonable amount for valet services; provided, however, that such valet services must be available to the general public and must be provided by a reputable valet operator.

4.2 **Public Use.** In absence of an agreement between the parties pursuant to **Section 3**, neither SWF nor City shall charge the public for use of all or any part of the Easement Premises.

5. **Alterations and Maintenance.** Except as expressly provided in this Agreement, SWF shall be solely responsible for all improvements to and maintenance of the Garage during the Agreement Term.

5.1 **Alterations.** SWF, at SWF's sole cost and expense, and with approval of the City, which approval will not unreasonably be withheld, shall make any and all alterations and additions to the Garage necessary to maintain the Garage in accordance with the standards set forth below. If, during the Agreement term, any law, rule or regulation of general application shall require any change, alteration, addition or correction to the Garage, SWF, at SWF's sole cost and expense, shall promptly make such change, alteration, addition or correction in accordance with plans and specifications approved in writing by City; provided, however, that nothing in this Section shall prohibit SWF from challenging, by appropriate administrative and legal proceedings, the applicability of any law, rule or regulation to the Garage. Any approved alterations, modifications or additions shall be completed by SWF, at SWF's sole cost and expense, and City shall not, under any circumstances, have any obligation to compensate SWF in any manner for any of the alterations, modifications or additions.

5.2 **Maintenance by SWF.** SWF shall at all times during the Agreement Term, at SWF's sole cost and expense, maintain the Garage in good order, condition and repair and in accordance with the practices prevailing in the operation of similar type multi-level garage structures in the greater metropolitan Phoenix, Arizona area. City shall have no maintenance or repair obligations with respect to the Garage. Without limiting the generality of the foregoing, SWF shall be responsible for and shall do the following:

5.2.1 Maintain the surface of parking and pedestrian facilities within the Garage and of all sidewalks on the Easement Premises, smooth and evenly covered with the type of surfacing material originally installed on such surfaces, or with a substitute that is in all respects substantially equal in quality, appearance and durability to the original type of surfacing material;

5.2.2 Remove all papers, debris, filth and refuse and wash or thoroughly sweep paved areas as required;

5.2.3 Maintain such appropriate parking area entrance, exit and directional signs, markers and lights as shall be reasonably required and clean, maintain, relamp and repair such signs, markers and lights;

5.2.4 Clean lighting fixtures in and on the Garage and the Easement Premises and relamp as needed, and maintain lighting with electric time switches on a 7-day program;

5.2.5 Maintain, repaint, repair and replace striping, markers, directional signs, etc.;

5.2.6 Maintain, repair and replace landscaping as necessary;

5.2.7 Clean, maintain, repair and replace the structure and wall surfaces, doors, vertical transportation and stairs of the Garage and other appurtenances to the Garage;

5.2.8 Employ uniformed personnel for patrol, in such numbers, and during such hours as are prudent for the orderly operation of the Garage;

5.2.9 Clean, maintain, repair and replace all utility lines and systems that are part of the Garage to the extent that the same is not the responsibility of any public or private utility or governmental agency; and

5.2.10 Maintain not less than the 300 minimum number of parking spaces.

5.3 **Management.** Subject to the requirements of this Agreement, management of the Garage shall be in the sole control of SWF, and SWF shall establish the rules and regulations applicable to the Garage. Notwithstanding the foregoing, SWF may assign or delegate its management obligations to third persons; provided, however, that such delegation shall not in any way release SWF from the obligation to see that all of its obligations are timely and properly performed and SWF shall continue to be obligated to render all performances required under this Agreement.

5.4 **Security.** SWF shall provide, consistent with a first class parking facility, security patrols and such other security equipment and personnel as SWF reasonably deems necessary for the health and safety of all persons using the Garage.

6. **Utilities.** SWF shall cause to be furnished to the Garage on a 24-hour per day, seven days a week basis, electricity, water, sewer, waste disposal services, telephone and all other utilities necessary for the operation of the Garage as a public parking facility and shall timely pay all charges, fees, deposits and other amounts owed for such utilities.

7. **Taxes, Liens and Assessments.** SWF shall pay all sales, transaction privilege, income and similar taxes and all Real Property Taxes (as defined below) applicable to the Garage or the Easement Premises during the Agreement Term. All such payments shall be made at least five (5) days prior to the delinquency date for such payment. As used in this Agreement, the term "**Real Property Taxes**" shall include any form of real estate tax or assessment imposed on the Garage or the Easement Premises by any authority having the direct or indirect power to tax, including any local, state or federal government, or any school, agricultural, sanitary, fire, street, drainage or other improvement district thereof.

8. **Covenant of Non-Interference.** During the Agreement Term, SWF and City shall take no action, construct no improvement and adopt no policy which interferes in any material respect with the right of the public to utilize the Easement Premises (subject to the valet provisions set forth in **Section 4.1** of this Agreement and construction of subsequent Garage phases) within the Garage, unless any such interference or restriction is approved in advance, in writing, by SWF or City, as the case may be, in its reasonable discretion.

9. **Insurance Required.** SWF shall obtain and cause to be in force and effect the following insurance:

9.1 **Commercial General Liability.** SWF shall maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$10,000,000 for each occurrence, \$10,000,000 Products and Completed Operations Annual Aggregate, and a \$10,000,000 General Aggregate Limit. The policy shall cover liability arising from Easement Premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as Insurance Services Office, Inc. policy form CG 00 01 07 98 or equivalent thereof, including but not limited to, separation of insureds clause. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

9.2 **Automobile Liability.** SWF shall maintain Business Automobile Liability insurance with a limit of \$5,000,000 for each accident for SWF's owned, hired, and non-owned vehicles assigned to or used in the performance of the work or services under this Lease. Coverage will be at least as broad as Insurance Services Office, Inc. coverage code "1" "any auto" policy form CA 00 01 07 97 or equivalent thereof. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

9.3 **Workers' Compensation.** SWF shall maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes governing SWF's employees engaged in the performance of work or services under this Agreement, and shall also maintain Employers' Liability Insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.

9.4 **Special Risk Property.** SWF shall maintain Special Risk Causes of Loss Property coverage, as defined by Insurance Services Office, Inc., in an amount per occurrence equal to full replacement cost of the Easement Premises and all personal property used in connection with the Easement Premises. Property coverage shall include Pollutant Clean Up and Removal with minimum limits of coverage of \$100,000.

9.5 **Boiler and Machinery Insurance.** If applicable, boiler and machinery insurance in the amount of the full replacement cost of all machinery and mechanical equipment.

9.6 **Contractor's Protective.** With respect to any construction involving the Easement Premises, "contractor's protective insurance" covering the interests of contractors, City and SWF, with a minimum limit of One Million Dollars (\$1,000,000) for each occurrence

and a Two Million Dollars (\$2,000,000) general aggregate limit per policy year. This coverage may be included with the commercial general liability coverage described above.

9.7 Builders' Risk Property Insurance. Builders' risk insurance in the amount of the entire cost of any construction work at or related to the Easement Premises as well as subsequent modifications thereto. Such builder's risk insurance shall be maintained until final payment for such construction work and materials has been made and until no person or entity other than SWF and City has an insurable interest in the Easement Premises, whichever is later. This insurance shall include interests of City, SWF and all subcontractors and sub-subcontractors involved in any SWF's Improvements or other construction work at or related to the Easement Premises during the course of any such construction, and shall continue until all such work is completed and accepted by SWF and City. SWF bears full responsibility for loss or damage to all work being performed at the Easement Premises. Builders' risk insurance shall be on special form (all-risk) policy form and shall also cover false work and temporary buildings and shall insure against risks of direct physical loss or damage from external causes including debris removal and demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for architect's service and expenses required as a result of such insured loss and other "soft costs". Builders' risk insurance must provide coverage from the time any covered property comes under SWF's control and/or responsibility, and continue without interruption during construction or renovation or installation, including any time during which the covered property is being transported to the Easement Premises, and while on the Easement Premises awaiting installation. The policy will continue to provide coverage when the Easement Premises or any part thereof are occupied. Builders' risk insurance shall be primary and not contributory.

9.8 Other Insurance. Any other insurance City may reasonably require (by notice to SWF describing the same) for the protection of City and City's employees, officials, representatives, officers, directors, and agents (collectively "**Additional Insureds**"), the Easement Premises, SWF, or the activities carried on or about the Easement Premises. Likewise, City may elect by notice to SWF to increase the amount of any insurance to account for inflation, changes in risk, or any other factor that City reasonably determines to affect the prudent amount of insurance to be provided. Such insurance shall be limited to insurance a reasonable person owning, leasing, designing, constructing, occupying, or operating similar facilities could reasonably purchase. City agrees, however, not to unreasonably withhold its consent to a modification of the insurance requirements set forth herein, if SWF provides reasonable evidence that the type, nature, scope or limits of any insurance coverage is not available on commercially reasonable bases or rates.

9.9 Form of All Insurance. All insurance required by this Agreement shall meet the following requirements:

9.9.1 All liability policies except workers' compensation must name City and the other Additional Insureds as additional insureds. SWF shall cause coverage for Additional Insureds to be incorporated into each insurance policy by endorsement. City may give SWF notice of City's election from time to time that any or all of the Additional Insureds not be named as Additional Insureds with respect to specific insurance coverages.

9.9.2 All applicable casualty policies must name City as a loss payee.

9.9.3 All policies must provide City with at least thirty (30) days prior notice of any cancellation, reduction or other change in coverage.

9.9.4 All policies shall require that notices be given to City in the manner specified for notices to City under this Agreement.

9.9.5 The insurer's duty to notify City of changes in coverage shall not include phrases such as "endeavor to" or "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives".

9.9.6 All policies shall contain provisions that neither SWF's breach of a policy requirement or warranty, nor failure to follow claims reporting procedures, shall affect coverage provided to City.

9.9.7 All policies shall contain a waiver of any transfer rights of recovery (subrogation) against City and all other Additional Insureds.

9.10 **Form of Required Insurance.** All insurance policies required by this Agreement shall meet the following requirements:

9.10.1 "Occurrence" coverage is required. "Claims made" insurance is not permitted.

9.10.2 Policies must also cover and insure SWF's activities relating to the business operations and activities conducted from the Easement Premises.

9.10.3 SWF must clearly show by providing copies of insurance policies, certificates, formal endorsements or other documentation acceptable to City that all insurance coverage required by this Agreement is provided.

9.10.4 No deductibles, retentions, or "self insured" amounts shall exceed One Hundred Thousand Dollars (\$100,000) in the aggregate per year. SWF shall be solely responsible for any self-insurance amount or deductible. City may require SWF from time to time to secure payment of such deductible or self-insured retention by a surety bond or irrevocable and unconditional letter of credit.

9.10.5 No deductible shall be applicable to coverage provided to City.

9.10.6 City shall provide forms of new or replacement policies for City's review not less than thirty (30) days prior to the effective date of any new or replacement policy.

9.11 **Insurance Certificates.** SWF shall evidence all insurance required by this Agreement by furnishing to City certificates of insurance annually and with each change in insurance coverage. Certificates must evidence that the policy referenced by the certificate is in full force and effect and that the policy satisfies each requirement of this Agreement applicable to the policy. For example, certificates must evidence that City and the other Additional

Insureds are additional insureds and that insurance proceeds will be paid as required by this Agreement. Certificates must be in a form reasonably acceptable to City. All certificates shall be in addition to the actual policies and endorsements required. SWF shall provide updated certificates at City's request.

9.12 **Acceptable Insurers.** All insurance policies required by this Agreement shall be issued by insurers reasonably acceptable to City. At a minimum, all insurers shall be duly licensed (or qualified unlicensed non-admitted insurer) by the State of Arizona, Department of Insurance. At a minimum, all insurers shall have and maintain an A.M. Best, Inc. rating of B++ 6.

9.13 **Primary Insurance.** All insurance required by this Agreement shall be primary insurance. Any insurance or self insurance maintained by City shall not contribute to SWF's insurance.

9.14 **Risk of Loss.** City is not required to carry any insurance covering or affecting the Easement Premises or use of City's property related to this Agreement. SWF assumes the risk of any and all loss, damage or claims to the Easement Premises or related to SWF's use of the Easement Premises or other property of City, SWF or third parties throughout the term hereof. City expressly disclaims any representation that required insurance is adequate to protect any person or property against any risks related to the Easement Premises or any activities, uses or improvements related to the Easement Premises. SWF's obligations to indemnify do not diminish in any way SWF's obligations to insure as set forth in this Agreement; and SWF's obligations to insure do not diminish in any way SWF's obligations to indemnify as set forth in this Agreement. SWF's obligations to indemnify and provide insurance as set forth in this Agreement are in addition to, and do not limit, any and all other liabilities or obligations of SWF under or connected with this Agreement. SWF shall be responsible for any and all damages to its property and equipment related to this Agreement and shall hold harmless and indemnify City with respect thereto regardless of the cause of such damages. In the event SWF secures other insurance related to the Easement Premises or any improvements, property or uses related thereto, SWF shall effect an endorsement under such policy waiving any and all insurer's rights of subrogation against City and the other Additional Insureds.

9.15 **Insurance to be Provided by Sublessees and Others.** Any sublessees and contractors of SWF, and all other persons working for or on behalf of SWF at the Easement Premises must also provide for the protection of City and all other Additional Insureds all of the liability insurance required from Consultants by this Agreement. The preceding sentence does not require such persons to provide insurance that merely duplicates insurance SWF provides.

10. **Damage to or Destruction of the Garage.** If, during the Agreement Term, the Garage shall be damaged or destroyed by fire or other casualty or any other cause whatsoever, either in whole or in part, SWF shall, promptly and in a commercially reasonable manner, remove any resulting debris and repair and/or rebuild the damaged or destroyed structures and other improvements, including any improvements made by SWF or City, in accordance with the plans and specifications pursuant to which the Garage was constructed. City and SWF agree that any insurance proceeds shall be made available to SWF for the restoration and repair of the

Garage. Once repairs have been commenced by SWF, SWF shall diligently pursue such repairs until completion, subject to Force Majeure.

11. Indemnification.

11.1 **SWF's Indemnification.** SWF jointly and severally agrees to defend, pay, indemnify and hold harmless City, its subleases, representatives, agents and employees (collectively, "**SWF's Indemnified Parties**"; individually, "**SWF's Indemnified Party**") from and against all claims, lawsuits, causes of action, demands, damages and liabilities (including all reasonable attorneys' fees, costs and expenses incurred in connection therewith), arising out of, resulting from or related in any way to: (i) any action or failure to act, and any representation or admission committed, made, taken or omitted by SWF during the Agreement term; (ii) the performance by SWF or its respective agents, employees, contractors, sub-contractors, representatives or delegates of any of SWF's obligations under this Agreement; (iii) any failure of SWF to comply with any and all of its obligations under this Agreement; (iv) any condition of, in or on the Garage or the Easement Premises; or (v) any injury, loss or damage whatsoever caused to any person or to the property of any person which shall occur on, in or adjacent to the Garage and which shall be directly or indirectly caused by any acts performed by or any errors or omissions of SWF or its agents, employees, contractors, sub-contractors, representatives or delegates. Notwithstanding the foregoing, no SWF's Indemnified Party shall be indemnified for any claims arising out of or resulting from the SWF's Indemnified Party's own negligence or misconduct.

11.2 **Consultant Indemnity.** During the entire term of this Agreement, SWF shall cause all architects, engineers, contractors, construction managers and other consultants, including itself to the extent SWF provides any such services, (collectively "Consultants") contracted to provide professional services in the design, construction, operation or other work regarding the Easement Premises to provide to City the following protections:

11.2.1 To the fullest extent permitted by law, Consultants shall defend, indemnify and hold harmless SWF, City and their respective agents, representatives, officers, directors, officials and employees (including without limitation the Additional Insureds) from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of or resulting from the Consultant's acts, errors, mistakes or omissions relating to professional services relating to the Easement Premises. Consultant's said duty to defend, hold harmless and indemnify shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death; or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused by any acts, errors, mistakes or omissions related to Consultant's professional services relating to the Easement Premises including any person for whose acts, errors, mistakes or omissions the Consultant may be legally liable. This indemnity does not increase or decrease any non-contract liability that may or may not exist independent of this provision and may or may not be covered or coverable by insurance.

11.2.2 Professional liability insurance covering acts, errors, mistakes and omissions arising out of the professional services or work performed by the Consultant or any person employed by him or for whose acts he may be liable, with a limit of not less than Two

Million Dollars (\$2,000,000) for each claim. Any "claims made" coverage must extend not less than three (3) years after completion of the work.

11.3 **Survival**. The indemnity obligations set forth in this **Section 11** shall survive the expiration and/or termination of this Agreement.

12. **SWF's Records**. SWF shall maintain in a secure and fixed place at the Garage or within the metropolitan Phoenix, Arizona area, for not less than three (3) years after any transaction or event, proper and accurate books, records, ledgers, correspondence and other papers and repositories of information, relating to this Agreement. SWF shall, at SWF's sole cost and expense, permit and assist City and City's representatives at all reasonable times and with reasonable notice to inspect and audit any or all of such information at City's expense. The foregoing shall not apply to confidential records, correspondence and other papers and repositories that are subject to the attorney-client privilege.

12.1 **Activity Report**. Within ninety (90) days following the end of each fiscal year of City, SWF shall, upon written request, assist City in the preparation of a written report (and, if requested by City, a presentation to City's governing Council, its Redevelopment Board, or any other designee) regarding use of the Garage, which shall include a summary of services provided, space usage, community involvement, publicity and other activities.

13. **Compliance with Law**. SWF, as manager, shall, at SWF's sole cost and expense, conduct only lawful operations at the Garage and on the Easement Premises, and shall comply with all applicable federal, state, county and local laws, ordinances, regulations or other rules; provided, however, that no conviction of SWF for violation of the foregoing and no judicial or administrative finding of such a violation, will constitute an Event of Default (as defined below) if the violation that is the basis of the conviction is cured within the applicable notice and cure periods set forth in **Section 15.1** of this Agreement. SWF acknowledges that this Agreement does not constitute, and City has not promised or offered, any type of waiver of, or agreement to waive (or show any type of forbearance or favoritism to SWF with regard to), any law, ordinance, power, regulation, tax, assessment or other legal requirement now or hereafter imposed by the City of Scottsdale or any other governmental body upon or affecting SWF, the Garage, the Easement Premises or SWF's use of the Garage or the Easement Premises. SWF acknowledges that all of SWF's obligations under this Agreement are in addition to, and cumulative upon (and not to any extent in substitution or satisfaction of), all laws and regulations applicable to SWF. In the case of an ordinance or other law of the City of Scottsdale authorizing a credit, reduction in tax or amount assessed, or any similar benefit as a result of performances rendered under this Agreement, SWF expressly repudiates all such benefits with respect to performances rendered under this Agreement. SWF further agrees that this Agreement is not intended to diminish any obligations of SWF to the City of Scottsdale that would be required of SWF by law if this Agreement had been made between SWF and a private citizen. City has not relinquished any right of condemnation or eminent domain over the Garage or the Easement Premises. This Agreement is not intended in any way to impair the City of Scottsdale's power to enact, apply or enforce any laws or regulations, or exercise any governmental powers, affecting in any way SWF or the Garage or the Easement Premises. SWF promises to comply with all applicable laws and City's rights and remedies under this Agreement for breach of such promise

by SWF are in addition to and do not replace any otherwise existing powers of City or any other governmental body.

14. **Title and Quiet Enjoyment.** SWF represents to City that, at all times that City is not in default under this Agreement, City shall have the peaceable and quiet enjoyment and use of the Easement Premises and the easement rights referred to in **Section 1** of this Agreement, subject to all other terms of this Agreement, including the provisions of **Section 16** hereof.

15. **Default.**

15.1 **Events of Default.** Each and every one of the following events shall constitute an "**Event of Default**" under this Agreement:

(a) **Monetary Default.** The failure by City or SWF to make a payment due under this Agreement if such failure continues for sixty (60) days after the non-defaulting Party has given written notice to the other of such non-payment.

(b) **Non-Monetary Default.** Subject to Force Majeure, if City or SWF fails to observe or perform, in any material respect, any of the other (i.e., the non-monetary) covenants, agreements or provisions in this Agreement and such failure is not cured within thirty (30) days after written notice to such defaulting Party; provided, however, that if it is not reasonably possible to cure such default within such thirty (30) day cure period, such cure period shall be extended if within thirty (30) days after such written notice, the defaulting Party commences diligently and thereafter continues commercially reasonable efforts to cure such default.

15.2 **Remedies.** Upon the occurrence of any Event of Default, or at any time thereafter while the Event of Default continues, the non-defaulting Party may, at its option and from time to time, exercise any, all or any combination of the following remedies, in any order and repetitively, at the non-defaulting Party's option:

(a) **Receivership.** Cause a receiver to be appointed for, and for the continuing operation of, the Garage.

(b) **Performance by Non-Defaulting Party.** Pay or perform, to the extent feasible, for the defaulting Party's account and at the defaulting Party's expense, any or all payments or non-construction performances required under this Agreement to be paid or performed by the defaulting Party without liability to the defaulting Party for any loss or damage that may occur to the defaulting Party by reason of such payment or performance by the non-defaulting Party, and if the non-defaulting Party makes such payment or performance, the defaulting Party shall pay to the non-defaulting Party for the amounts so paid immediately upon demand therefore, together with interest thereon at the rate of ten percent (10%) per annum from the date of payment by the non-defaulting Party until repaid in full.

(c) **Specific Performance.** Seek specific performance of the defaulting Party's full and faithful performance of its obligations under this Agreement, other than the defaulting Party's initial construction obligations with respect to the Garage.

(d) **Additional Remedies.** Subject to the restrictions set forth in **Section 15.2(a)** of this Agreement, in addition to the remedies set forth in **Sections 15.2(a)** through **15.2(d)** of this Agreement, the non-defaulting Party may pursue any and all other remedies (legal, equitable or otherwise) to which a non-defaulting Party may be entitled at law, in equity or under the terms of this Agreement.

15.3 **Cumulative Remedies.** Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by any Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same Event of Default or any other Event of Default by the other Party.

15.4 **Limitation by Liability.** Notwithstanding any other provision of this Agreement to the contrary, in any action or proceeding by a Party (or any other person claiming by, through or as a result of its relationship to such Party) against the other Party which arises from or relates to this Agreement or any alleged breach of this Agreement, the claiming Party shall not be entitled to recover consequential, punitive or multiple damages of any kind or nature against the breaching Party (or any other person for whom the breaching Party is vicariously liable) and any right to recovery of such damages in the absence of this provision is expressly waived.

16. **Non-Disturbance and Attornment.**

16.1 **Quiet Possession.** SWF hereby covenants, warrants and agrees that at all times during the Agreement term, provided an Event of Default by City has not occurred which remains uncured, City shall have full, peaceful and quiet use of the Easement Premises.

16.2 **City's Non-Subordination and Attornment.** Any Trust Deed (as defined below) placed on all or any portion of the Easement Premises shall be subordinate to this Agreement and to all of City's rights hereunder. In the event of any default under the Trust Deed, or any foreclosure action, forced sale, or other proceeding in connection with the Trust Deed, the rights of City under this Agreement, and City's possession of the Easement Premises and other rights under this Agreement shall not be disturbed, City shall not be named as defendant in any such proceedings, and that in the event Lender (as defined below) becomes owner of all or any portion of the Easement Premises, Lender shall accept City as City under this Agreement.

16.3 **Trust Deed and Lender Defined.** As used in this Agreement, the term "**Trust Deed**" includes mortgages, deeds of trust or other similar security instruments and all modifications, consolidations, extensions, renewals, replacements and substitutions thereof, and the word "**Lender**" shall mean any ground lessor, mortgagee, beneficiary or other lender holding security now or hereafter placed upon the Easement Premises, together with any such person's successors and assigns, for which SWF has given City written notice identifying the name and address thereof.

16.4 **Lender's Right to Cure.** City hereby agrees that it will not exercise any right or remedy granted under this Agreement or provided at law or in equity, without first

giving prior written notice of City's intent to so exercise any right or remedy to any Lender, which notice shall include a statement of the default or event on which such intent to exercise any right or remedy is based. Thereafter, City shall not take any remedial action, if Lender cures such default within thirty (30) days of Lender's receipt of such notice; provided, however, that if such default cannot reasonably be cured within such thirty (30) day period, Lender shall have such longer time as may be reasonably necessary to cure the default but in no event more than ninety (90) days from Lender's receipt of the notice referred to in the preceding sentence.

17. **Assignment**. This Agreement and all rights hereunder are not assignable or transferable by either Party, in whole or in part, except in strict compliance with the following, and any purported or attempted assignment or transfer in violation of this **Section 17** shall be null and void and of no force or effect whatsoever, shall constitute a breach of this Agreement and shall vest no rights in the purported transferee or assignee.

17.1 **Transfer By SWF**. SWF shall not assign, transfer, convey or sell (collectively, a "**Transfer**") this Agreement or all or any portion of the Easement Premises except as contemplated by the Development Agreement and as provided in this **Section 17**, without the prior written consent of City, which consent shall not be unreasonably withheld or delayed. Subject to the consent of City, SWF may assign its interests in this Agreement to an association of owners of the Project. City consent is not required for reasonable and customary grants by SWF of reserved parking rights in connection with office leases outside of City easement hours as established in **Section 2.1**.

17.2 **Release of SWF**. Upon any Transfer by SWF complying with the provisions of **Section 17.1**, SWF herein named shall be relieved of its obligations under this Agreement occurring after the date of such Transfer provided the transferee executes and delivers to City an assumption agreement, pursuant to which such transferee agrees to assume and be bound by the this Agreement, from and after the Transfer.

17.3 **Transfer By City**. City shall not Transfer this Agreement or any rights hereunder without the prior written consent of SWF, which consent shall not be unreasonably withheld or delayed.

17.4 **City's Consent Delegation Rights**. Except as provided in this **Section 17.4**, City has the right to impose upon any consent to a Transfer with respect to this Agreement, such conditions and requirements as City may reasonably deem appropriate, particularly in light of its redevelopment goals and the undertakings of City in reliance upon SWF's personal participation in the Project (as defined in the Development Agreement). Notwithstanding the foregoing, SWF may contract with third persons for such third persons to perform all or part of SWF's obligations under this Agreement; provided, however, that such delegation (except as provided in **Section 17.2**) shall not in any way release SWF from its obligation to see that all of its obligations are timely and properly performed and SWF shall continue to be obligated to render all performances required under this Agreement.

18. **Signs**. SWF shall install and maintain exterior signs at all vehicular and pedestrian entrances to the Garage to identify that the Garage is open to City and the general public and will not install any exterior signage to indicate there are any restrictions on the use of the Garage for

public parking by the general public. The location, size, content and style of each such sign shall be subject to the provisions of the applicable sign ordinance.

19. **Estoppel Certificate.** From time to time upon written request by a requesting Party, the other Party shall, within twenty (20) days of such request, deliver to the requesting Party a certificate: (i) stating that this Agreement (without regard to, and excluding compliance with, governmental and regulatory matters) is in full force and effect and that the requesting Party is not in default under this Agreement (or specifying any default which the certifying Party may wish to allege); (ii) certifying the commencement date of this Agreement; (iii) certifying as to a true, correct and complete copy of this Agreement; (iv) certifying that such certifying Party does not hold any claims or demands under this Agreement against the requesting Party (or specifying any such claims or demands which such certifying Party may wish to allege); and (v) setting forth such other information about this Agreement which the requesting Party may reasonably request. The certifying Party understands and agrees that any such certificate may be relied upon by any third parties to whom the same is presented.

20. **Condemnation.**

20.1 **Restoration Obligations.** In the event of a condemnation of the Easement Premises, this Agreement shall continue in full force and effect, and SWF, at SWF's and the City's cost and expense but limited to the condemnation proceeds received by SWF and the City (which the City shall make available for such purposes), shall expeditiously restore, repair and remodel the Garage to the extent necessary to restore the Easement Premises, to the extent possible, to the condition the Easement Premises were in prior to the taking, or to the sale or transfer, and to provide the Easement Premises.

20.2 **Condemnation Award.** SWF and City shall be entitled to claim and retain its respective share of any award for the condemnation of the Easement Premises or any interest in the Easement Premises

21. **General Provisions.**

21.1 **Survival.** No termination or expiration of this Agreement for any reason shall relieve SWF or City of any obligation owing to the other where such obligation accrues or arises prior to such termination or expiration and all, representations, warranties and indemnifications contained in this Agreement shall survive such termination or expiration.

21.2 **Notices.** All notices under this Agreement shall be in writing and delivered personally, delivered by a reputable overnight courier service or mailed by registered or died mail, postage prepaid, return receipt requested, to the parties as follows:

If to SWF: Scottsdale Waterfront, L.L.C.
 C/o Golub & Company
 625 North Michigan Avenue, Suite 2000
 Chicago, Illinois 60611
 Attn: Lee Golub

With a copy to: Ellis Rinaldi, Esq.
 Scottsdale Waterfront, L.L.C.
 C/o Starwood Capital Group
 591 West Putnam Avenue
 Greenwich, Connecticut 06830

And: Scottsdale Waterfront, L.L.C.
 C/o International Development Management
 107 Ranch Road—RR 620 South PMB 23-F
 Austin, Texas 78734

If to Lendor: _____

If to City: City of Scottsdale
 3939 Civic Center Boulevard
 Scottsdale, Arizona 85251
 Attn: Development Administrator

With copy to: City of Scottsdale
 3939 Civic Center Boulevard
 Scottsdale, Arizona 85251
 Attn: City Attorney

or to such other street address as may be designated by the respective parties in writing from time to time. If a notice is sent by registered or certified mail, it shall be deemed received on the second business day following the mailing date; if personally delivered, it shall be deemed received on the date delivered; and, if delivered by courier, it shall be deemed received on the business day following the date delivered to the courier. Any payment required by this Agreement shall utilize the same procedures as are required for notices.

21.3 **Time of Essence.** Time is of the essence of each and every provision of this Agreement.

21.4 **Non-liability of City Officials and Employees.** No official, representative, agent, attorney or employee of City shall be personally liable to SWF, or to any successor in interest to SWF, in the event of any default or breach by City or for any amount which may become due to SWF or successor, or with respect to any obligation of City under the terms of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the liability of SWF under this Agreement shall be limited solely to the assets of SWF and shall

not extend to or be enforceable against: (i) the individual assets of any of the individuals who are shareholders, officers or directors of the general partners of each SWF; (ii) partners in each SWF; or (iii) officers of each SWF.

21.5 **Limited Severability.** If any provision of this Agreement is declared void or unenforceable (or is construed as requiring City to do any act in violation of any constitutional provision, law, regulation, City code or City charter), such provision shall be deemed severed from this Agreement shall otherwise remain in full force and effect, provided that this Agreement shall retroactively be deemed reformed, to the extent reasonably possible, in such a manner so that the reformed agreement and the Development Agreement provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. The Parties further agree, in such circumstances, to do all acts and to execute all amendments, instruments and consents necessary to accomplish and to, give effect to the purposes of this Agreement, as reformed.

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

21.7 **Attorneys' Fees.** In the event any action, suit or proceeding is brought by City or SWF to enforce compliance with this Agreement, to exercise any rights or remedies under this Agreement or to declare the rights of the Parties to this Agreement, the Party which does not prevail shall pay to the prevailing Party all costs and expenses of such action, suit or proceeding, together with such sum as the court (and not the jury) may adjudge reasonable as attorneys' fees to be allowed in said suit, action or proceeding.

21.8 **Waiver.** No waiver or modification of this Agreement or of any covenant, condition or limitation contained in this Agreement shall be valid unless in writing and duly executed by the Party to be charged therewith, and no evidence of any waiver or modification shall be offered or received in evidence of any proceeding, arbitration or litigation between the Parties to this Agreement arising out of or affecting this Agreement, or the rights or obligations of the Parties, unless such waiver or modification is in writing, duly executed as set forth above, and the Parties further agree that the provisions of this **Section 21.8** may not be waived except as set forth in this Agreement.

21.9 **No Third Party Beneficiaries.** No person or entity shall be a third party beneficiary to this Agreement, except the Indemnified Parties referred to in the indemnification provisions of this Agreement shall be third party beneficiaries of such indemnification provisions.

21.10 **Exhibits; Recitals.** All Exhibits attached to this Agreement and all of the recitals set forth above are incorporated into and made an integral part of this Agreement for all purposes by this reference.

21.11 **Integration.** Except as expressly provided herein, this Agreement (including the Exhibits attached hereto), and the Development Agreement (and the Exhibits thereto) constitute the entire agreement between the Parties with respect to the subject matter

hereof and supersedes any prior agreement, understanding, negotiation or representation regarding the Easement Premises and the Garage. The Parties expressly acknowledge and agree that Discussion Outlines and Transaction Outlines utilized during the course of negotiations do not constitute binding agreements of the Parties and shall not be utilized to interpret or construe any provision of this Agreement.

21.12 **Construction**. Whenever the context of this Agreement requires, the singular shall include the plural, and the masculine, neutral or feminine shall include each of the other. This Agreement is the result of negotiations among the Parties and their respective counsel and shall not be construed for or against any Party as a consequence of its role or the role of its counsel in the preparation or drafting of this Agreement or any Exhibit hereto. As used in this Agreement: (i) the term "**Affiliate**", as applied to any person, means any person directly or indirectly controlling, controlled by, or under common control with, that person or a blood relative or spouse of such person, if such person is a natural person. For the purposes of this definition, "**control**" (including with correlative meaning, the terms "**controlling**," "**controlled by**" and "**under common control**"), as applied to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies with respect to financing and transfer of assets of that person, whether through the ownership of voting securities, by contract or otherwise, and "**person**" (for purposes of this definition and for purposes of this Agreement generally) means and includes natural persons, corporations, limited liability companies, limited partnerships, general partnerships, joint stock companies, joint ventures, associations, companies, trusts, land trusts, business trusts or other organizations, whether or not legal entities; (ii) the term "**Date of Completion of Construction**" means the date certificates of occupancy have been issued for the Garage; (iii) the term "**on**," means on, above, and/or below, as the context requires; and (iv) when "compliance is required with any provision of this Agreement, the term "**compliance**" shall mean that such provision shall be substantially and materially complied with.

21.13 **Choice of Law**. This Agreement is made and is to be performed in the State of Arizona and shall be governed by the internal, substantive laws of the State of Arizona without regard to any conflict of law principles. Any action brought to interpret, enforce or construe any provision of this Agreement or to declare the rights of the Parties shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa (or, as may "be appropriate, in the Justice Courts of Maricopa County or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this **Section 21.13**.

21.14 **Business Days**. If the last day of any time period stated in this Agreement or the date on which any obligation to be performed under this Agreement shall fall on a Saturday, Sunday or legal holiday, 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 day which is not a Saturday, Sunday or legal holiday.

21.15 **Consents and Approvals**. Wherever this Agreement requires or permits the consent or approval of City to any act, document, use or other matter, such consent or

approval may be given or denied by City in its reasonable discretion, unless this Agreement expressly provides otherwise.

21.16 **Counterparts.** This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement, binding on SWF and City.

21.17 **Inurement.** Subject to **Sections 16 and 17**, above, all of the terms, covenants and conditions of this Agreement shall be binding upon, and shall inure to the benefit of SWF and City and the successors and assigns of SWF and City, respectively. Wherever the term "**Party**" or the name of any particular Party (i.e., "**SWF**" or "**City**") is used in this Agreement, such term shall include any such permitted successors and assigns.

21.18 **Force Majeure.** Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control, and such delays or failures to perform shall not be a default under Paragraph 15. Such acts shall be floods, riots, acts of war, acts of terror, fire, communication line failures, or power failures or any other act as agreed upon by the City and SWF or determined as discussed in Paragraph 19.2 to the Development Agreement.

21.19 **Conflict of Interest.** This Agreement is subject to, and may be terminated by City in accordance with, the provisions of A.R.S. § 38-511.

IN WITNESS WHEREOF, this Agreement is executed to be effective as of the Effective Date.

SCOTTSDALE WATERFRONT, LLC, an
Arizona limited liability company

By: _____
Its: _____

CITY OF SCOTTSDALE, an Arizona municipal
corporation

By: _____
Its: _____

State of Arizona)
) ss.
County of Maricopa)

SUBSCRIBED AND SWORN TO before me this ____ day of _____, 2003, by _____, the _____ of Scottsdale Waterfront, LLC, an Arizona limited liability company, on behalf of the company.

Notary Public

My Commission Expires:

State of Arizona)
) ss.
County of Maricopa)

SUBSCRIBED AND SWORN TO before me this ____ day of _____, 2003, by _____, the _____ of City of Scottsdale, an Arizona municipal corporation, on behalf of the corporation.

Notary Public

My Commission Expires:

EXHIBIT "A"

LEGAL DESCRIPTION OF LAND

[to be determined – not entire Project – just footprint of Garage]

EXHIBIT I
TRAFFIC IMPROVEMENTS

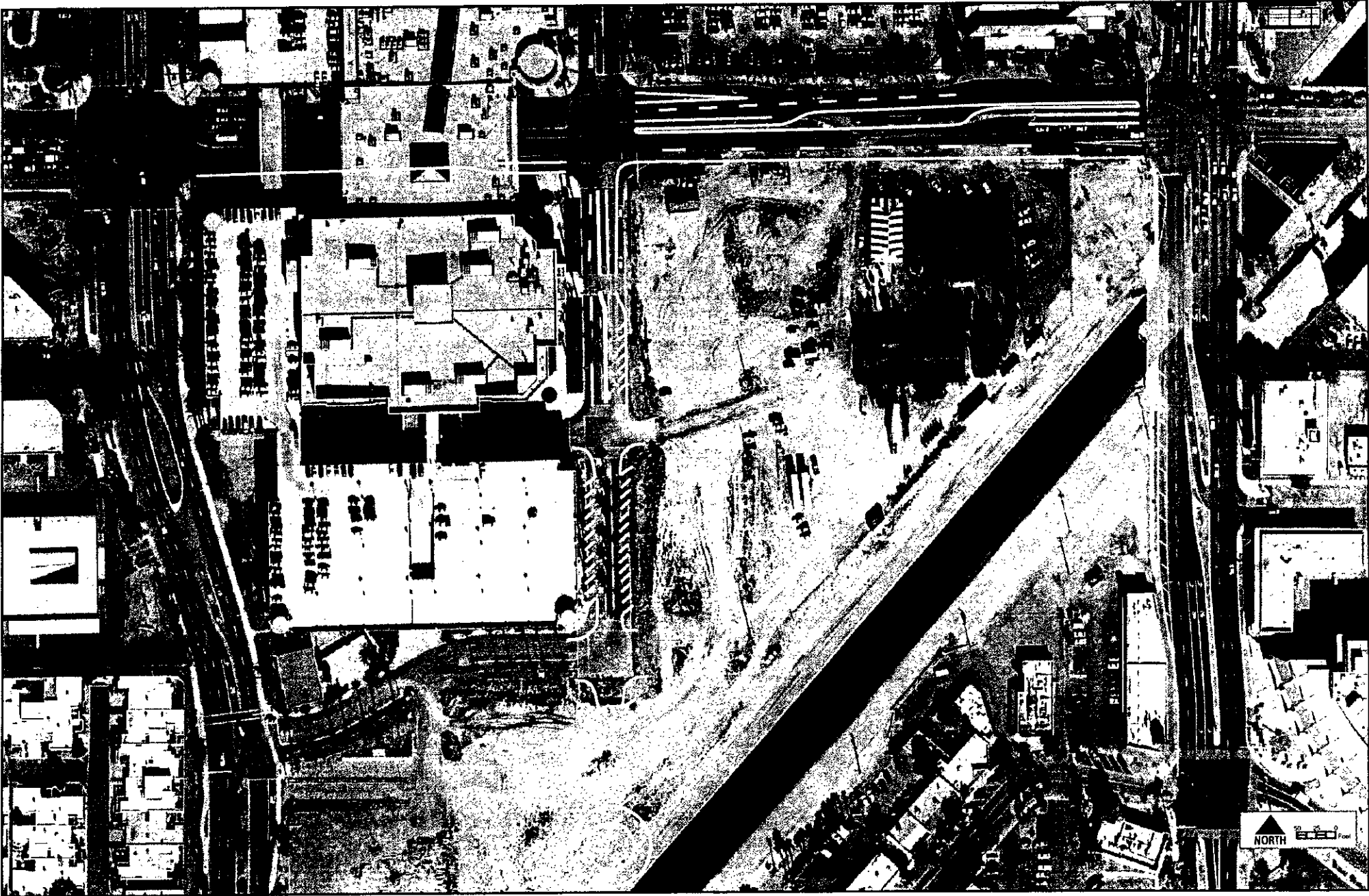


EXHIBIT J
PUBLIC BENEFITS

Public Benefits

Public Infrastructure

Easements for public open space totaling approximately at least 35,000 square feet including a promenade the length of the canal between Scottsdale Rd and Goldwater Blvd.

Relocation of an existing water well to facilitate contiguous retail development along Marshall Way.

4,000 square feet of first floor retail space for Fiesta Bowl museum or other public uses.

Acquisition of 16,000 square feet of office space for Fiesta Bowl Headquarters at a discounted rate.

300 parking spaces available at peak demand hours (evening and weekends).

Pedestrian improvements, landscaping and maintenance thereof along: a new third eastbound lane on Camelback Rd, Marshall Way from Camelback to the Arizona Canal and the north side of Montecito from Marshall Way to Goldwater Blvd.

Maintenance of all public infrastructure on City controlled property on the canal bank on the north side of the Arizona Canal.

Improvements and easements on the north bank of the Arizona Canal including a Public Amphitheater.

\$1.0 million budget for public art. Amount over code required - \$750,000.

Economic Sustainability

Development of a signature project within the heart of downtown Scottsdale.

Development of highly visible infill site in downtown Scottsdale.

Creation of the long sought linkage between 5th Avenue other downtown districts and Scottsdale Fashion Square.

Increase in the number of full time residents in downtown by approximately 700 people.

Increase in the daytime population from approximately 100,000 square feet of new office space.

Establishes Scottsdale as the home of the Fiesta Bowl Headquarters and its Museum.

Generation of approximately \$16.3 million in total sales tax revenue to the City over a 25 year period - distributed as follows:

General Fund:	\$11.64 million
Transportation:	\$ 2.33 million
Preserve:	\$ 2.33 million

Generation of approximately \$5.0 million in city property taxes over 25 years.

New capital investment in downtown Scottsdale between \$150 million and \$200 million.

RESOLUTION NO. 6385

**A RESOLUTION OF THE COUNCIL OF THE CITY OF
SCOTTSDALE, MARICOPA COUNTY, ARIZONA, FOR THE
PURPOSE OF REPEALING THE REDEVELOPMENT AREA
DESIGNATION FOR THE WATERFRONT**

WHEREAS, by resolution No. 3722, adopted February 16, 1993, the Council of the City of Scottsdale established the Waterfront Redevelopment Area; and

WHEREAS, the City Council has approved an Infill Incentive District and a Development Agreement with Scottsdale Waterfront, L.L.C. which will revitalize and stimulate development adjacent to the Arizona Canal; and

WHEREAS, the City Council has determined that, because of the benefits of the new Development Agreement and the Infill Incentive District, the public interest can be best advanced by terminating the redevelopment area designation for the Waterfront Redevelopment Area.

NOW, THEREFORE, be it resolved that:

Section 1. Resolution No. 3722 is hereby repealed, the designation of the Waterfront Redevelopment Area is hereby terminated, and the Waterfront Redevelopment Area is hereby dissolved.

Section 2. This Resolution is not effective unless and until the Infill Incentive District and the new Development Agreement become effective under applicable law.

PASSED AND ADOPTED by the Council of the City Scottsdale this _____ day of _____, 2003

Mary Manross, Mayor

ATTEST:

By: _____
Carolyn Jagger, City Clerk

APPROVED AS TO FORM:

By: C. Brad Woodford
C. Brad Woodford