

FIRST AMERICAN TITLE

WHEN RECORDED RETURN TO:

1671138949295-4-7-4--  
Garcia

CITY OF SCOTTSDALE  
ONE STOP SHOP RECORDS  
7447 East Indian School Road, Suite 100  
Scottsdale, AZ 85251

917508

**PRIOR DEVELOPMENT AGREEMENT TERMINATION**

THIS PRIOR DEVELOPMENT AGREEMENT TERMINATION (the "Agreement") is made and entered into this 21 day of November, 2022, by and between the City of Scottsdale, an Arizona municipal corporation ("City"), and McDowell Mountain Village Declarant LLC, a Delaware limited liability company, and its successors and assigns (collectively "Developer").

RECITALS

A. Developer owns certain real property located at 18777 N. Scottsdale Road, which contains approximately 21.884 gross acres (the "Property").

B. The Property previously was made subject to two development agreements, Development Agreement 2002-142-COS dated November 19, 2002, and recorded at Instrument No. 2002-1240138, and Development Agreement 2002-143-COS dated November 19, 2002, and recorded at Instrument No. 2002-1240139 of the Official Records of the Maricopa County Recorder's Office (collectively, the "Prior Development Agreements").

C. Pursuant to the terms of a Development Agreement C.O.S. Contract No. 2022-175-COS (Optima McDowell Mountain Village), dated November 21, 2022, and recorded at Instrument No. concurrently herewith, City and Developer agreed to terminate, to the extent not already accomplished, the Prior Development Agreements with respect to the Property.

In consideration of the above premises, and the mutual promises and representations contained herein, and other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the Developer and City agree as follows:

**AGREEMENT**

1. Recitals. The recitals set forth above are incorporated into this Agreement by reference.

2. Termination of Prior Development Agreements. To the extent not already accomplished under the terms of the Prior Development Agreements or the Partial Termination and Release of Development Agreement dated May 12, 2003, and recorded that same date at Instrument No. 2003-0602832 in the Official Records of the Maricopa County Recorder's Office, upon the recording of this Agreement, the City and Developer hereby agree that the Prior

Development Agreements shall be deemed to be terminated and of no further force or effect with respect to the Property.

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

3.1 Amendments. This Agreement may not be amended except by a formal writing executed by all the parties.

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

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

3.4 Authority. Each party to this Agreement represents to the other that it has 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.

3.5 Non-liability of City Officials and Employees. No member, official, representative or employee of City shall be personally liable to any party, or to any successor in interest to any party, in the event of any default or breach by City or for any amount that may become due to any party or successor, or with respect to any obligation of City related to this Agreement.

3.6 Integration. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof.

3.7 Interpretation. This Agreement was negotiated on the basis that it shall be construed according to its plain meaning and neither for nor against any party, regardless of their respective roles in preparing this Agreement. The terms of this Agreement were established in light of the plain meaning of this Agreement and this Agreement shall therefore be interpreted according to its plain meaning and without regard to rules of interpretation, if any, that might otherwise favor Developer or City.

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

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

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

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

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

ATTEST:

By: Ben Lane  
Ben Lane, City Clerk

**CITY OF SCOTTSDALE**  
an Arizona municipal corporation

By: [Signature]  
David D. Ortega, Mayor

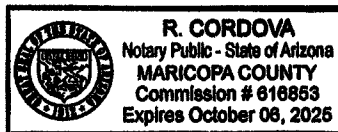
APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE

[Signature]  
Sherry R. Scott, City Attorney  
Eric C. Anderson, Sr. Assistant City Attorney

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

The foregoing instrument was acknowledged before me this 14 day of December, 2022, by David D. Ortega, Mayor of the City of Scottsdale, an Arizona municipal corporation.

My Commission Expires: October 6, 2025        [Signature]  
Notary Public



DEVELOPER:

**MCDOWELL MOUNTAIN VILLAGE DECLARANT LLC**

a Delaware limited liability company

*David C. Hovey, Jr.*  
David C. Hovey, Jr.  
President

STATE OF ARIZONA        )

)

County of Maricopa        )

This instrument was acknowledged before me on the 14<sup>th</sup> day of December, 2022, by David C. Hovey, Jr., President of McDowell Mountain Village Declarant LLC, a Delaware limited liability company, on behalf of the Company.

My Commission Expires: Sep. 27, 2025

*Mark Riehle*  
Notary Public

