

When Recorded Return to:

City of Scottsdale
Current Planning Services
7447 E. Indian School Rd., Suite 105
Scottsdale, AZ 85251

Agreement No. 2019-XXX-COS
(9-ZN-2019 – Bishop Lane Project)
Resolution No. XXXXX

DEVELOPMENT AGREEMENT

This Development Agreement (the "Agreement") is entered into this _____ day of _____, 2019, by Morgan Bishop, LLC., a Delaware limited liability company ("Developer"), and the City of Scottsdale, Arizona, an Arizona municipal corporation ("City"), collectively referred to as "the Parties".

RECITALS

- A. Arizona Revised Statutes §9-500.05 authorizes the City to enter into a Development Agreement related to real property located inside the incorporated area of the City with a landowner or other person having an interest in the real property.
- B. The Property that is the subject of this Agreement consists of approximately 1.13 net acres located at 7125 East 2nd Street, 3632 North Bishop Lane, 3638 North Bishop Lane, and 3703 North Bishop Lane, Scottsdale, Arizona (the "Property"). The Property is situated within the incorporated boundaries of the City and is more particularly described on **Exhibit "A"** attached hereto and incorporated herein by reference.
- C. The Developer is the owner of the Property described in **Exhibit A**.
- D. Developer plans to develop the Property by constructing a multifamily residential project of up to 198-dwelling units with associated common areas and parking garage (the "Project").
- E. Developer has made a Development Application with the City for a zoning district map amendment, Case No. 9-ZN-2019, to rezone the Property from Highway Commercial, Downtown Overlay (C-3, DO) to Downtown / Downtown Multiple Use Type-3, Planned Block Development, Downtown Overlay (D/DMU-3, PBD, DO) zoning with a Development Plan that includes a request for bonus height and bonus density.

F. Developer desires to utilize available bonus provisions under the Scottsdale Revised City Code, to increase the residential density of the Project by 122 dwelling units and obtain an additional 11 feet of Building Height by constructing the development in accordance with the City of Scottsdale's code and paying to the City and/or constructing offsetting public improvements, provided the total of any such payments or offsetting improvements in any combination amount to a minimum of One Million Six Hundred Twenty-Two Thousand Six Hundred Ninety-Nine Dollars (\$1,622,699.00) (the "Bonus Obligation").

G. Any portion of Bonus Obligation which is not provided by offsetting public improvements will be deposited into the City's Downtown Special Improvement Trust Fund to be used by the City for the future construction of Special Improvements that achieve public benefits in the Downtown Area specifically within boundaries of the area depicted by the bold outline on **Exhibit "B"** (the "Future Special and Parking Improvement Area") attached hereto and incorporated herein by reference.

H. The Parties understand that following the conclusion of the required public hearings the Scottsdale City Council may vote to deny or approve the Developer's Development Application requests for the Zoning District Map Amendment. This Agreement does not require the City Council to vote in any particular way.

I. The Developer will participate in the Cultural Improvement Program (1% for the Arts) per Scottsdale Revised Code, Appendix B – Basic Zoning Ordinance, Article VI, - Supplementary Districts, Section 6.1309. – Cultural Improvements Program requirements and Article VII, - General Provisions, Section 7.1000. – Cultural Improvements Program, through Section 7.1017.

J. Developer and City acknowledge and agree that development of the Property will benefit the City's residents and the Property.

K. This Agreement is consistent with the portions of the City's General Plan applicable to the Property on the date of this Agreement.

L. The City's governing body has authorized execution of this Agreement by Resolution No. XXXXXXXX

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and representations and the mutual covenants and conditions in this Agreement, The Parties agree as follows:

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

2. Effective date. This agreement shall be effective upon execution by the parties.

3. Property Interest of the Developer. Developer warrants that it is the fee title owner of the Property and that the Property is located within the municipal limits of the City.

4. Developer's Bonus Obligation and Special Improvement Obligations.

4.1 Bonus Development Standards. The Property is zoned Highway Commercial, Downtown Overlay (C-3, DO) and Developer will apply for a Zoning District Map Amendment to Downtown / Downtown Multiple Use Type-3, Planned Block Development, Downtown Overlay (D/DMU-3, PBD, DO) zoning with a Development Plan that includes a request for an increase in height to a total of 95 feet and for an increase in dwelling units up to a total of 199 dwelling units, which requires a Planned Block Development bonus.

4.2 Bonus Provisions. Developer shall be entitled to utilize available bonus provisions under Scottsdale Revised City Code, Appendix B – Basic Zoning Ordinance, Article VI, - Supplemental Districts, Section 6.1310 to obtain an increase in dwelling units and obtain additional building height for the Project not to exceed the amount approved in the Development Plan for Case No. 9-ZN-2019, if Developer:

4.2.1 Constructs offsetting qualifying public improvements (“Qualifying Improvements”) as defined under Scottsdale Revised City Code, Appendix B – Basic Zoning Ordinance, Article VI, - Supplemental Districts, Section 7.1200 and/or;

4.2.2 Pays into the City's Downtown Special Improvement Trust Fund (“Bonus Standard Payments”), provided that;

4.2.3 The combination of any such Bonus Standards Payments or Qualifying Improvement equals a minimum of One Million Six Hundred Thirty-Five Thousand Nine Hundred Dollars (\$1,635,900.00), as calculated by the Contribution Cost formula defined under Scottsdale Revised City Code, Appendix B – Basic Zoning Ordinance, Article VI, - Supplemental Districts, Section 7.1200.D.

4.3 Developer's Additional Terms Related to Qualifying Improvements and Bonus Standard Payments.

4.3.1 Prior to the issuance of any permit to construct any vertical improvements above grade, the Developer shall receive permits to construct any Qualifying Improvements or pay any Bonus Standards Payments to satisfy the bonus provisions of Section 4.2.

4.4 City's Additional Terms Related to the Qualifying Improvements and

Bonus Standard Payments.

4.4.1 The City shall deposit the Bonus Standard Payments into the City's Downtown Special Improvement Trust Fund.

4.4.2 The City shall use the Bonus Standard Payment to construct future Special Improvements that serve as a public benefit within the Future Special and Parking Improvement Area.

4.4.3 The City agrees to own and maintain the Special Improvements constructed by the City with the Bonus Standard Payments.

5. Artwork

5.1 Artwork Requirement. Developer will participate in the Cultural Improvement Plan and in doing so may commission and install an original artwork on the Property in accordance with Scottsdale Revised Code, Appendix B – Basic Zoning Ordinance, Article VI, - Supplementary Districts, Section 6.1309. – Cultural Improvements Program requirements. And Article VII, - General Provisions, Section 7.1000. – Cultural Improvements Program, through Section 7.1017.

5.2 Artwork Cost Requirement. The minimum cost of the artwork shall be calculated in accordance with Scottsdale Revised Code, Appendix B – Basic Zoning Ordinance, Article VI, - Supplementary Districts, Section 6.1309. – Cultural Improvements Program requirements. And Article VII, - General Provisions, Section 7.1004. – General Provisions.

5.3 Conceptual Art Plan Approval.

5.3.1 The Developer and the City agree that the Developer may defer approval of the Conceptual Art Plan from the Cultural Council and Development Review Board in accordance with the Scottsdale Revised Code, Appendix B – Basic Zoning Ordinance, Article VII, - General Provisions, Section 7.1014. – Deferment of artwork of the Cultural Improvements Program.

5.3.2 The Developer agrees that the approval of the Conceptual Art Plan from the Cultural Council and from the Development Review Board shall be obtained prior to the issuance of any building permit to construct any vertical improvements, above or below grade, excluding excavation, on the Property.

5.4 Artwork Installation and Certificate of Completion.

5.4.1 City and the Developer agree that the Developer may obtain a Temporary Certificate-of-Occupancy, as determined by the City's Building Official, for the parking garage that is connected to the Project prior to the Certificate of Completion for the artwork so that the garage may be utilized during construction of the Project by the

Developer's construction contractor and employees that are associated with construction of the Project.

5.4.2 The Developer agrees that the City may revoke any Temporary Certificate-of-Occupancy issued by the City's Building Official for the parking garage that is connected to the Project if the Developer fails to install the artwork prior to obtaining a final site inspection for the Project.

5.4.3 Exclusive of paragraph 7.4.1, Developer agrees to obtain a Certificate of Completion from the Zoning Administrator for the installation of the Artwork prior to the issuance of a Temporary Certificate-of-Occupancy, Final Site Inspection, Certification of Shell Building or Certificate-of-Occupancy for the Project.

5.5 Ownership and Maintenance of Artwork. The current Property owner(s) and its successors and assigns shall own and maintain the Artwork in accordance with the Scottsdale Revised Code, Appendix B – Basic Zoning Ordinance.

6. Compliance with all Laws. Developer shall develop the Property in compliance with all Federal, State, County and local laws, ordinances, rules, regulations, permit requirements, or any other policies of the City.

7. General Provisions.

7.1 Notices. 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
Attention: City Attorney
3939 North Drinkwater Boulevard
Scottsdale, Arizona 85251

Copy to: City of Scottsdale
Attention: Zoning Administrator
Planning and Development Services
Department
7447 E. Indian School Rd., Suite 105
Scottsdale, AZ 85251

City of Scottsdale
Attention: City Manager
3939 North Drinkwater Boulevard
Scottsdale, AZ 85251

If to Developer: Morgan Group, Inc.
Attention: Brian Gilchrist
5606 S. Rice Avenue
Houston, TX 77081

Copy to: Withey Morris, PLC
Attention: Jason Morris
2525 East Arizona Biltmore Circle, Suite A-212
Phoenix, AZ 85016

7.2 Mailing Effective. Notices given by registered or certified mail shall be deemed delivered 72 hours following deposit in the U.S. Postal Service in the manner set forth above.

7.3 Approvals. When a party's consent is required pursuant to this agreement, the consenting party shall not unreasonably withhold, delay or condition its approval.

7.4 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 of any other provision of this Agreement

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

7.6 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.

7.7 Entire Agreement. The Agreement, including exhibits, constitutes the entire Agreement between the parties.

7.8 Severability. If any provision of this Agreement limiting the uses of the Property is declared void or unenforceable, then the entire Agreement shall be void. If any other 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 fundamental purposes of this Agreement are not defeated by such severability.

7.9 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.

7.10 Recordation. This Agreement, and any amendment or cancellation of this Agreement, shall be recorded, in its entirety, in the official records the county recorder's office in Maricopa County, Arizona, no later than ten (10) days after the effective date of this Agreement, amendment, or cancellation, as required by A.R.S. § 9-500.05.

7.11 Remedies. If any party to this Agreement breaches any provision of the Agreement, the non-defaulting party shall be entitled to all remedies available at both law and in equity, including specific performance.

7.12 Attorneys' Fees and Costs. If any party brings a legal action either because of a breach of the Agreement or to enforce a provision of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees and court costs.

7.13 Binding Effect. The benefits and burdens of this Agreement shall run with the Property and be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors in interest, and assigns. This Agreement shall be incorporated by reference in any instrument purporting to convey an interest in the Property.

7.14 Third Parties. There are no third-party beneficiaries to this Agreement, and no person or entity not a party hereto shall have any right or cause of action hereunder.

7.15 No Agency Created. Nothing contained in this Agreement shall create any partnership, joint venture, or agency relationship between the parties.

7.16 Contract Administrator. The City's contract administrator for this Agreement shall be City Manager, for the City of Scottsdale, or designee.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

THE CITY OF SCOTTSDALE:
an Arizona municipal corporation

ATTEST:

By: _____
Carolyn Jagger, City Clerk

By: _____
W. J. "Jim" Lane, Mayor

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

By: _____
Bruce Washburn, City Attorney
By: Joe Padilla, Deputy City Attorney

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by W. J. "Jim" Lane, Mayor of the City of Scottsdale, Arizona, a municipal corporation.

Notary Public

My Commission Expires:

DEVELOPER:

Morgan Bishop, LLC, a Delaware Limited Liability Company

By: _____

Brian Gilchrist

Its: Partner

STATE OF _____)

) ss.

County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by Brian Gilchrist, Partner of Morgan Bishop, LLC, a Delaware Limited Liability Corporation.

Notary Public

My Commission Expires:

Exhibit A
The Property

[see attached]

DRAFT

Exhibit B
The Property

[see attached]

DRAFT