

When Recorded Return To:

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

DEVELOPMENT AND SALE AGREEMENT

C.O.S. Contract No. 2021-XXX-COS
(The Artisan)
(Resolution No. XXXXX)

THIS DEVELOPMENT AND SALE AGREEMENT (the "Agreement") is made and entered into this ___ day of October, 2021, by and between the City of Scottsdale, an Arizona municipal corporation ("City") and Artisan Scottsdale, LLC, an Arizona limited liability company ("Developer"). City and Developer may be referred to in this Agreement individually as a "Party," and collectively as the "Parties."

RECITALS

A. Developer owns or controls six (6) parcels of real property located at the Southwest corner of East Indian School Road and North Marshall Way, in Scottsdale Arizona, as more particularly described and depicted on **Exhibit "A"** (the "Developer Parcels"), which is incorporated in this Agreement by this reference.

B. The City owns residual portions of four (4) parcels of real property located adjacent to the Developer Parcels, which the City seeks to convey to Developer and Developer seeks to receive from the City, as more particularly described and depicted on **Exhibit "B"** (the "City Parcels"), which is incorporated in this Agreement by this reference. The Developer Parcels and the City Parcels collectively may be referred to in this Agreement as the "Property," and each individually as a "Parcel."

C. Developer intends to develop the Property by constructing a new, mixed-use project that will consist of approximately eighty-three (83) residences (the "Residences"), approximately five thousand (5,000) square feet of commercial space (the "Commercial Use Space"), an art-focused space (the "Art Space"), a publicly-accessible plaza sited on portions of the City Parcels (the "Artisan Public Plaza"), and an underground parking facility (the "Parking Facility") that will include at least fifty-five (55) spaces available to the general public (the "Public Parking"), as well as possible additional uses allowed by the Property's zoning that may include, but are not limited to, office, retail, accessory uses, and other amenities (collectively, the "Project").

D. The City owns an alleyway that bisects the Developer Parcels. In connection with Developer constructing the Parking Facility and supplying the Public Parking, the City will supply an easement under the terms of the Subterranean Garage Easement Agreement in the form of **Exhibit "C"** (the "Subterranean Garage Easement Agreement") for Developer's use of the

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underground area of the alleyway as more particularly described and depicted on **Exhibit “D”** (the “Subterranean Alleyway Area”), which is incorporated in this Agreement by this reference.

E. The Project’s integration of residential, limited commercial, art-focused space, the publicly-available plaza, and the addition of public parking in the Old Town area will support and complement the nearby art galleries and cultural venues, as well as add a vital pedestrian connection and public open space along the Marshall Way corridor, thereby energizing and strengthening the Scottsdale Arts District’s connectivity, walkability, sustainability, and success.

F. As more fully described in this Agreement, and concurrently with the approval of this Agreement by the City’s City Council, Developer caused the Property to be rezoned from Central Business District, Downtown Overlay (C-2 DO) to Downtown/Downtown Multiple Use Type-2, Planned Block Development, Downtown Overlay (D/DMU-2, PBD, DO) and Downtown/Downtown Multiple Use Type 1, Planned Block Development, Downtown Overlay (D/DMU-Type 1, PBD, DO). The rezoning was completed pursuant to the adoption of the new zoning, regulatory approvals and stipulations contained in the “Zoning District Map Amendment” (the “Regulatory Approvals”). Pursuant to the Regulatory Approvals, the Project and Property shall be subject to Article VI, Section 6.1300 et. seq. of the City’s Zoning Ordinance (the “PBD Ordinance”). However, other than the application of the PBD Ordinance, the Regulatory Approvals do not provide any bonus amounts for height, density, or gross floor area, and do not provide any amended development standards.

G. As more fully set forth in this Agreement, the terms and conditions for Developer’s acquisition of the City Parcels and the use of the Subterranean Alleyway Area pursuant to the Subterranean Garage Easement Agreement set forth in this Agreement acknowledge that the purchase price for the City Parcels and the value of the Subterranean Alleyway Area will be paid “in kind” by the Developer supplying the Artisan Public Plaza and the Public Parking. Accordingly, pursuant to this Agreement, the City and Developer agree that the Artisan Public Plaza and the Public Parking are improvements for the public’s benefit and that, without Developer’s agreement, would not otherwise be required by the Regulatory Approvals. As more fully set forth in this Agreement and as reflected in the Development Plan, the Parties have determined that the Artisan Public Plaza will be located on the portion of the City Parcel described and depicted on **Exhibit “E”** (the “Plaza Parcel”), which is incorporated into this Agreement by this reference. Further, as more fully set forth in this Agreement and as reflected in the Development Plan, the Public Parking will be located on the area of the Developer Parcels and within the Subterranean Alleyway Area described and depicted on **Exhibit “F”** (the “Public Parking Area”), which is incorporated into this Agreement by this reference.

H. Developer intends to replat the Property into new parcels to align the uses with the parcel designations (the “Replat”) on which Developer intends to develop the Project.

I. The Project is depicted in the development application to the City with associated submittals of development plans (collectively, the “Development Plan”) entitled “The Artisan.” The Development Plan is on file with the Clerk of the City of Scottsdale, was adopted by Resolution No. XXXXX, incorporated into Ordinance No. XXXX, and is incorporated into this Agreement by this reference.

J. This Agreement has been authorized by Resolution No. XXXX to facilitate improvement of the Property. Such improvements shall be made in conformance with the terms and conditions of this Agreement, and the related documents required by this Agreement, which are the Non-Motorized Easement in the form of **Exhibit “G”** (the “Non-Motorized Easement”), the Plazas Covenant and License in the form of **Exhibit “H”** (the “Plazas Covenant and License”), and the Covenant to Maintain Landscaping in the form of **Exhibit “I”** (the “Landscaping Covenant”). The Non-Motorized Easement, the Plazas Covenant and License, the Landscaping Covenant, and the Subterranean Garage Easement Agreement are referred to herein as the “Related Documents.”

K. The Parties acknowledge that City and the public will realize substantial tangible and intangible benefits directly and indirectly from Developer’s performance of its obligations under this Agreement, including the actual costs that Developer will incur in designing and constructing the Artisan Public Plaza and the Public Parking. In addition to the direct benefits that City and the public will receive due to Developer’s conveyances and other performances under this Agreement and the documents that are to be completed in connection with it, City believes that Developer’s construction of the Project would result in these and various other community benefits (collectively, the “Community Benefits”). The Community Benefits provide for new uses of other portions of downtown Scottsdale, the enhanced development of a key economic and commercial area within the City of Scottsdale, increased tax revenues, increased tourism, facilitation of the development of adjoining and nearby areas, and stimulating investment for the economic benefit of the City of Scottsdale and its residents and visitors.

L. City has authority under A.R.S. 9-500.05 et seq., A.R.S. 9-500.11, and other applicable statutes and laws (collectively the “Development Laws”) to enter into agreements relating to economic development and the development and redevelopment of real property within City’s territorial boundaries and economic development for the health, safety and welfare of City, its citizens and the public generally. This Agreement is entered into pursuant to the Development Laws.

M. This Agreement is consistent with the portions of City’s general plan applicable to the Property on the date of this Agreement.

In consideration of the above premises, the promises contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows:

AGREEMENT

1. Recitals. The Parties acknowledge that the Recitals set forth above are true and correct in all material respects and are incorporated into this Agreement by this reference.

2. Term of Agreement. The terms of this Agreement shall be as follows:

2.1 Commencement. The Term (defined below) of this Agreement shall be effective and commence upon, and only upon, the date this Agreement is approved by the City

Council, signed by all Parties, all appeal and referendum periods with respect to this Agreement have expired and it has been recorded in the Office of the Maricopa County Recorder (the “Effective Date”). If the City does not record this Agreement once it is approved by the City Council, Developer may do so.

2.2 Term & Expiration. Except as otherwise expressly provided herein, the Agreement will continue in effect for 25 years or until all obligations and rights of the Parties under this Agreement have been performed, terminated by mutual agreement of the Parties, or have expired, whichever is earlier (the “Term”). If the Term expires, the Parties need not take any further act to demonstrate that this Agreement is of no further force and effect.

2.3 Early Termination. This Agreement may be terminated by either Party only to the extent a termination right may be provided expressly in this Agreement. Upon early termination of this Agreement by mutual agreement of City and Developer, the Parties shall execute, acknowledge, and record a notice (the “Termination Notice”) confirming that this Agreement has been terminated, except for those representations, warranties, indemnities and other matters that this Agreement states shall survive the expiration or termination of this Agreement.

2.4 Effect of Termination or Expiration on Regulatory Approvals. Early termination or expiration of the Term of this Agreement shall have no effect on the Regulatory Approvals, which shall continue to be enforceable according to their terms, except as amended under the City’s codes and ordinances. Any Termination Notice with respect to this Agreement shall so state.

2.5 Referendum Termination. If the Regulatory Approvals are subject to a referendum that is certified to appear on a City election ballot, Developer may elect to terminate this Agreement by written notice to the City. Moreover, if the Regulatory Approvals are invalidated by a referendum, then this Agreement shall be void *ab initio*.

2.6 Extension. Except with respect to a minor date adjustment made pursuant to Section 3 of this Agreement, the Term of this Agreement may only be extended by formal recorded mutual written agreement of both Parties and approved by the City’s City Council.

3. Minor Date Adjustments. Dates stated in this Agreement may be extended only by mutual written formal consent of City and Developer, given or withheld in their respective sole and absolute discretion. City's City Manager may exercise authority to consent for City to extensions of any date, but such authority is limited to extensions not exceeding one hundred eighty (180) days, each exercised in the City Manager's sole and absolute discretion.

4. Property Interest of the Developer. The Developer represents and warrants that Developer has, or the fee title owners of each of the Developer Parcels have granted Developer with, a property interest in each of the Developer Parcels, that Developer has authority, or has been granted permission by such fee owners, for purposes of this Agreement, the Development Plan and the Regulatory Approvals to subject the Developer Parcels to the Development Plan, the

Regulatory Approvals and this Agreement, and that the Developer Parcels are located within the municipal limits of the City.

5. City Conveyances.

5.1 City Parcels. City has caused the City Parcels to be appraised and has established that the fair market value of the City Parcels is Two Hundred Fifty Thousand Dollars (\$250,000.00). On the terms and conditions of this Agreement, the City shall convey the City Parcels to Developer by a Special Warranty Deed so that Developer may fulfill its obligations under this Agreement, provided that the conveyance of the City Parcels only shall be conducted on, but immediately on, Developer receiving Developer's first building permits to undertake the Project, as more fully set forth in Section XX of this Agreement. The Special Warranty Deed shall be in the form attached as **Exhibit "J"** (the "Deed"). Within ten (10) days of the opening of the Escrow (defined below), the City shall execute and deposit the Deed into Escrow to be recorded in the records of the Maricopa County Recorder upon the Closing (defined below).

5.2 Subterranean Garage Easement Agreement. The City has established the value of the Subterranean Alleyway Area to be subjected to the Subterranean Garage Easement Agreement at _____ Dollars (\$XX,XXX.XX) (the "Subterranean Alleyway Value"). Within ten (10) days of the opening of the Escrow, the City shall execute and deposit into Escrow the Subterranean Garage Easement Agreement to be executed by Developer and recorded in the records of the Maricopa County Recorder upon the Closing.

6. Developer Obligations. To allow the Property to be developed and improved in accordance with the Development Plan and the Regulatory Approvals, the Developer and City agree to and shall complete the following actions as required by the terms of this Agreement:

6.1 Artisan Public Plaza & Open Space. Pursuant to the Development Plan and the Regulatory Approvals, Developer is to cause the construction of the Artisan Public Plaza on the Plaza Parcel, which will be an open space and plaza that will serve as a park amenity to the general public to be operated and maintained pursuant to the Plaza Covenant and License. The Parties acknowledge that the construction and operation of the Artisan Public Plaza on the Plaza Parcel will impose a cost to the Project of at least (1) the value of the Plaza Parcel as established by the City, and (2) the actual cost of constructing the Artisan Public Plaza. The Parties currently estimate the value of the Plaza Parcel and the cost of constructing the Artisan Public Plaza will be _____ (\$XXX,XXX.XX) (the "Plaza Public Value"). The City and Developer acknowledge that the Developer shall have sole responsibility to develop and maintain the Artisan Public Plaza and that Developer shall be responsible to control the access and uses of the Artisan Public Plaza for the benefit of the City and the public on the terms and conditions of the Plaza Covenant and License.

6.2 Parking Facility and Grant of Garage Access. Pursuant to the Development Plan and the Regulatory Approvals, Developer will construct the Parking Facility to be established under the Developer Parcels and in the Subterranean Alleyway Area, with the latter subject to the Subterranean Garage Easement Agreement. The general public shall have access to the Public Parking contained within the Parking Facility on the terms and conditions of the Subterranean

Garage Easement Agreement. The Parties have determined that the fair market value of the Public Parking spaces is in excess of Forty Thousand Dollars (\$40,000.00) per space based on the City's significant efforts to construct public parking owned and operated by the City. Accordingly, the Parties estimate that the total value of the Public Parking to be available in the Parking Facility exceeds Two Million Two Hundred Eighty Thousand Dollars (\$2,280,000.00) (the "Parking Facility Public Value"). Within ten (10) days of the opening of the Escrow, the Developer shall execute and deposit the Subterranean Garage Easement Agreement into Escrow to be executed by the City and recorded in the records of the Maricopa County Recorder upon the Closing.

6.3 Non-Motorized Easement, Plaza Covenant and License & Landscaping Covenant. Within ten (10) days of the opening of the Escrow, the Developer shall execute and deposit the Non-Motorized Easement, Plazas Covenant and License, and the Landscaping Covenant into Escrow to be executed by the City and recorded in the records of the Maricopa County Recorder upon the Closing. Further, in connection with the deposit of these documents by Developer, the City agrees that it shall process administratively any and all administrative forms, documents and instruments as may be necessary or convenient to cause any easements or other encumbrances the City holds on the Property to be terminated and released by the City on or before the Closing.

6.4 Exchange of Values. In consideration of Developer's undertaking the design and construction of the Artisan Public Plaza and the Public Parking and, thereafter, maintaining them and making them available to the general public in the amount of the Public Parking Facility Value and the Public Plaza Value, the City has agreed to provide in exchange therefor, the City Parcels to the Developer at the City Parcels Value, and the Subterranean Alleyway Area subject to the Subterranean Garage Easement Agreement at the Subterranean Alleyway Value.

6.5 Cultural Improvement Program & Cultural Projects. Pursuant to Section 6.1309.A.2. of the City's Zoning Ordinance (the "Cultural Improvements Program"), the Parties agree that the Cultural Improvements Program applies to the Project and Developer is required to expend certain amounts on artwork with respect to the Project (the "Required Art Investment Amount"). The Required Art Investment Amount will be determined by the City based on the building valuation of all floor area in the Project, as determined pursuant to the valuation process established in the Code as of the date of this Agreement and/or future Code requirement, whichever is less. The Required Art Investment Amount shall be expended by the Developer to commission and install original artwork pursuant to a Final Art Plan. The schedule for installing artwork under the Final Art Plan shall be approved by the Zoning Administrator prior to issuance of the first building permit for any above ground structure in the Development. If Developer does not proceed with a Final Art Plan, in its sole and absolute discretion and in the alternative, the Developer may elect, in its sole and absolute discretion and in full satisfaction of the Required Art Investment Amount, to contribute to the Downtown Cultural Trust Fund in the amount of the Required Art Investment Amount.

6.6 Commitment to Retain Limited Zoning Entitlements. Developer hereby agrees and commits that it shall not seek to rezone any of the Property to increase any height and density from and after the City's City Council approval of this Agreement and the Regulatory

Approvals for a period of twenty-five (25) years. The Developer has submitted to the City a waiver of any and all rights under the Private Property Rights Protection Act, A.R.S. Section 12-1131 et. seq., commonly known as Proposition 207, acknowledging that none of the Developer nor any successor or assign of the Property shall have any claim with respect to the diminution of value to the Property by agreeing to this Section 6.6 of this Agreement. The Developer and any successors or assigns also waive any future claims that may arise out of a future change to the City's General Plan, the Downtown or Old Town Character Area Plans or amendments to the text of Scottsdale Revised Code, Appendix B, Basic Zoning Ordinance, provided the approved and entitled zoning adopted by Ordinance No. XXXX remains in effect with respect to the Property and the zoning entitlements are not otherwise negatively impacted.

6.7 Agreement to Conduct Rezoning if Project Not Commenced.

Notwithstanding the Term of this Agreement, Developer agrees that if Developer does not commence construction (as more fully defined below, "Commencement of Construction") of the Project within five (5) years from the Effective Date ("Commencement of Construction Deadline"), then Developer agrees that it shall apply to cause the Property to be rezoned to apply the zoning that existed on the Property immediately prior to the application of the Regulatory Approvals, provided that the Property shall remain subject to the terms of Ordinance No. XXXX and Resolution XXXXX (the "Rezoning"). Further, if Developer does not achieve such Commencement of Construction and then does not make such application for such Rezoning within six (6) months of the Commencement of Construction Deadline (the "Rezoning Application Deadline"), then the City may undertake the Rezoning on behalf of the Developer. Developer and City acknowledge that, regardless of whether the Developer or the City undertakes the Rezoning as required in this Section 6.7, the Party undertaking the Rezoning shall comply with all requirements of Arizona law to affect the completion of the Rezoning as set forth in A.R.S. Title 9, Article 6.1, Sections 9-462 et. seq. The Developer has submitted to the City a waiver of any and all rights under the Private Property Rights Protection Act, A.R.S. Section 12-1131 et. seq., commonly known as Proposition 207, acknowledging that none of the Developer nor any successor or assign of the Property shall have any claim with respect to the diminution of value to the Property by agreeing to this Section 6.7 of this Agreement.

6.7.1 Power of Attorney. To allow the City to undertake, conduct and complete the Rezoning on Developer's behalf, Developer hereby agrees to establish the City as the holder of a power of attorney in fact, to be issued to the City by Developer (or any successor or assign with respect to any Parcel) in the form of **Exhibit "K"** (the "Power of Attorney"). The Power of Attorney automatically shall be deemed to become effective on the Rezoning Application Deadline unless Developer has undertaken such Commencement of Construction by the Commencement of Construction Deadline or, in the absence thereof, made application for the Rezoning with the City by the Rezoning Application Deadline. Developer shall deposit the executed form of the Power of Attorney with the City on or before the Commencement of Construction Deadline.

6.7.2 Completion of Parking Facility. If the Parking Facility and the Project have achieved Commencement of Construction by the Commencement of Construction Deadline, then, on the date that such Commencement of Construction has been achieved, the City's right to use the Power of Attorney automatically shall be deemed to have expired (the "POA

Expiration”), and the City shall, immediately thereafter, return the original POA to Developer (or the successor or assign that supplied such POA). To demonstrate that the POA Expiration has occurred, the City and Developer shall record a notice that shall so state in the records of the Maricopa County Recorder (the “POA Termination Notice”).

6.8 Failure to Complete the Parking Facility. Because the Parking Facility is intended to be constructed, in part, under the surface of the Property, the Parties acknowledge that Commencement of Construction of the Parking Facility must be initiated as the first element for construction. Further, the City seeks to avoid the possibility that the Developer undertakes the Commencement of Construction of the Parking Facility and thereafter does not complete it. Accordingly, if Developer does not achieve Completion of Construction of the Parking Facility within three (3) years of its Commencement of Construction (the “Completion Date”), Developer agrees that, on written notice from the City to Developer provided at any time after the Completion Date (and if, but only if, Developer has not achieved Completion of Construction of the Parking Facility) (the “Backfill Notice”), Developer shall cause any subterranean work undertaken to such point to be removed and/or covered, the fill to be compacted, and the surface of the Property be returned to a graded, dust-free condition reasonably acceptable to the City (the “Backfill Condition”). Upon the City issuing the Backfill Notice to Developer, Developer shall have four (4) months to complete the work to achieve the Backfill Condition (the “Backfill Deadline”).

6.8.1 Security for Backfill Condition. To secure Developer’s obligation to complete the Backfill Condition with respect to the Property by the Backfill Deadline, Developer (or any successor or assigns with respect to Parking Facility) shall deposit with the City a standby letter of credit in the amount of Five Hundred Thousand Dollars (\$500,000), in form and substance substantially of **Exhibit “L”** as it may be required to be revised in final form to be issued as determined by the issuing lender and as consented to by the City’s City Manager and Developer, which consent may not be unreasonably withheld (the “Standby Completion Letter of Credit”). Developer shall deposit the Standby Completion Letter of Credit with the City within ten (10) days of Developer’s receiving the City Notice of Permit Availability (defined below) and prior to receiving any Triggering Permits. If Developer does not deposit with the City the Standby Completion Letter of Credit within such ten (10) day period of Developer’s receipt of the City Notice of Permit Availability, City may elect to withhold any Triggering Permits until Developer deposits the Standby Completion Letter of Credit with City. City shall be entitled to draw against the Standby Completion Letter of Credit if Developer does not undertake the work to complete the Backfill Condition with respect to the Property by the Backfill Deadline as determined by the City in its sole discretion (the “Right to LOC Draws”). The amount that City may draw from the Standby Completion Letter of Credit under its Right to LOC Draws shall be equal to the amount required to allow the City to cause the Property to be placed in the Backfill Condition, or the total amount of the Standby Completion Letter of Credit, whichever is less. City may contract with any third-party City deems appropriate in its sole and absolute discretion to undertake and complete the work to achieve the Backfill Condition.

6.8.2 Completion of Parking Facility. If the Parking Facility has achieved Completion of Construction prior to the Completion Date, then, on the date that the Parking Facility Completion of Construction has been achieved, the City’s right to draw against the Standby Completion Letter of Credit automatically shall be deemed to have expired (the “LOC

Expiration”). To demonstrate that the LOC Expiration has occurred, the City and Developer shall record a notice that shall so state in the records of the Maricopa County Recorder (the “LOC Termination Notice”). Further, once the Parking Facility Completion of Construction has been achieved, the City immediately shall return the original Standby Completion Letter of Credit to Developer (or its successors and assigns with respect to the Parking Facility) and the Parties will work cooperatively to assure that the construction of the Project may be undertaken by the Developer, understanding that such construction may interfere with the use of the Parking Facility during such construction.

6.8.3 Definitions. For purposes of this Agreement, Commencement of Construction shall mean both (i) the City has notified Developer that permits required to begin the construction of the Parking Facility or other elements of the Project, as applicable, (the “Triggering Permits”) are approved (the “City Notice of Permit Availability”) and (ii) the Developer has commenced actual physical construction operations on the Parking Facility or other elements of the Project, as applicable. For purposes of this Agreement, Parking Facility Completion of Construction shall mean the occurrence of either of the following: (1) If Commencement of Construction of the Project above the Parking Facility is not to be undertaken within nine (9) months of the Parking Facility structure reaching grade level, then the Developer shall provide the City written notice thereof and shall apply for a Certificate of Occupancy for the Parking Facility, and upon the City’s issuance of such Certificate of Occupancy the Parking Facility shall be deemed to have achieved Completion of Construction; and (2) If the Project above the Parking Facility is undertaken within nine (9) months of the construction of the Parking Facility structure reaching grade level, then the Developer shall provide the City written notice thereof, the Developer may and shall proceed with the construction of the Project above the Parking Facility and the Parking Facility shall be deemed to have achieved Completion of Construction as long as the structure has reached grade level and the status of such construction is acknowledged by the engineer for the Project and the City’s chief engineer, in their respective reasonable discretion.

6.9 Developer’s Mitigation of Construction Impacts. During the installation and construction of the Project and throughout the duration of any such construction, Developer shall mitigate the construction impacts to the immediately adjacent properties at Developer’s expense. Developer shall take all steps reasonably necessary, to (i) keep, or cause to be kept, the Property in neat, orderly and clean condition, free of debris, (ii) employ effective dust control procedures including enhanced street and lot sweeping, and, (iii) protect all property and improvements on the immediately adjacent properties from damage caused by the Developer or its agents, employees, contractors or subcontractors, and immediately repair or replace any such property, once damaged, to its preexisting conditions.

7. Closing Conditions & Procedures. The closing under this Agreement (the “Closing”) shall occur on the date that the City issues to Developer the first permits for construction of the Project (the “Closing Date”). The Closing shall be governed by the following:

7.1 Escrow Agent. First American Title Insurance Company, 2425 East Camelback, Suite 300, Phoenix, Arizona 85016 (“Escrow Agent”) shall administer transactions requiring escrow services when required by this Agreement. This Agreement shall constitute instructions to Escrow Agent for the transactions contemplated by this Agreement. By executing

this Agreement or accepting any escrow hereunder, Escrow Agent agrees to perform the obligations imposed by this Agreement. Escrow Agent's liability under this Agreement is limited to performance of the duties and obligations imposed upon Escrow Agent. Escrow Agent shall in all cases be responsible for any liability or claim arising from its negligence, misconduct or other improper or unlawful act.

7.2 Developer to Open Escrow. Within five (5) days after the Effective Date, Developer shall cause Escrow Agent to establish and open an escrow (the "Escrow") on the terms set out in this Agreement and shall give City notice that the Escrow is open. Such notice shall be accompanied by a complete copy of this entire Agreement (including exhibits) with an original signature by Escrow Agent.

7.3 Closing Location. Not less than three (3) business days prior to the Closing, City shall designate a location for the Closing within Maricopa County, Arizona. Unless City designates a different location, the Closing shall occur in Escrow Agent's office.

7.4 General Closing Conditions. The Closing shall occur only upon satisfaction of all conditions to the Closing and the performance of all acts and delivery of all documents required to be performed or delivered at or prior to the Closing, or upon formal notice of waiver of any such conditions by the Party for whose benefit such conditions exist. A Party is not obligated to cause the Closing to occur if an event has occurred or circumstances exist that are (or with the passage of time or giving of notice, or both, would be) an event of default by the other party under this Agreement. Time is of the essence for the Closing.

7.5 Escrow Fees and Closing Costs. Developer shall pay the costs when due of all escrow and termination fees, recording fees, and similar costs.

7.6 Commissions and Fees. City shall not be liable for any real estate commissions or brokerage fees that may arise in connection with this Agreement or the transactions contemplated herein. To the extent any real estate commissions or brokerage fees may at any time be payable in connection with this Agreement, any transaction contemplated herein, or the Property, such shall be Developer's sole obligations, and Developer shall pay, indemnify, defend and hold City harmless therefrom.

7.7 Other City Property. Except as expressly provided herein, this Agreement does not entitle Developer to acquire any real property interest that is now held or may hereafter be acquired by City, and, except as expressly provided herein, City is not obligated to provide any of its own land or real estate interests for use in developing or operating the Project.

7.8 Deliveries. Recording or other official filing of a document as directed by this Agreement shall constitute delivery of the document to the grantee thereunder and acceptance by the grantee.

7.9 Return of Recorded and Filed Documents. Recorded documents shall be returned to the person designated by the forms attached to this Agreement or as executed by the parties (the "Return Person"). If no designation is made for any document, Escrow Agent shall

mark the form prior to recording to indicate that City's City Attorney is the Return Person. Escrow Agent and the parties shall not change the name or address of the Return Person on any document and shall immediately deliver to the Return Person any recorded document that may come into their possession. The same requirements apply to documents to be filed at any other governmental office.

7.10 Property Taxes. As between City and Developer, all property taxes, assessments, and similar charges applicable to the Property whether arising before or after the Closing shall be paid by Developer.

7.11 Expenses and Deposits. Except as otherwise expressly stated, the intent of this Agreement is that all real estate transactions of every description required by this Agreement or pursuant to this Agreement or in furtherance of this Agreement be accomplished at Developer's sole expense, and without any cost whatsoever to City.

7.12 Priority. All rights and interests held by City from time to time pursuant to this Agreement or pursuant to the Related Documents shall have the same priority as this Agreement. All rights and interests in the Property or this Agreement or held by City from time to time pursuant to this Agreement or pursuant to the Related Documents, shall be senior in priority to any and all liens, interests or items that are created, claimed, arising, conveyed or existing after the date of this Agreement or that are subjected or subordinated to this Agreement or to any of the Related Documents. No act of Developer, City, or others, and no consent or other action or inaction by City, shall in any way subordinate or otherwise impair, City's rights or interests or deprive City's rights or interests of their senior priority. Any real property interests hereafter acquired by Developer or its affiliates or their successors in the Property automatically shall be subject and subordinate to this Agreement and the applicable Related Documents regardless of the manner of acquisition. Upon request by City, Developer and its successors shall from time to time cause to be executed, acknowledged and recorded instruments confirming the same. This paragraph shall not prohibit City from hereafter electing to execute and record a document explicitly subordinating a City interest in the Property, at the City's sole and absolute discretion.

7.13 Merger. City's real property interests shall not merge with any existing or future title held by City or conveyed to or by City in connection with this Agreement or the Related Documents. Developer's interests shall not merge with any existing or future title held by Developer or conveyed to or by Developer.

7.14 City Payment. City is not obligated to pay any amount to Developer in consideration of any conveyance to City whatsoever pursuant to this Agreement.

7.15 Land Acquisition by Eminent Domain. Notwithstanding anything in this Agreement or the Related Documents to the contrary, City is not committed in any way to use condemnation or eminent domain or to assist Developer in any other way to acquire any real property interests or other rights or interest held by third parties for the Project or this Agreement.

8. Closing. The Closing shall be accomplished as follows:

8.1 Closing Documents. On or prior to the Closing Date, City and Developer shall sign, acknowledge, and deposit (or cause to be signed, acknowledged and deposited by all applicable persons) with Escrow Agent the following items (collectively the “Closing Documents”):

8.1.1 Closing Deposits by City. City shall deposit:

8.1.1.1 This Agreement.

8.1.1.2 Regulatory Approvals.

8.1.1.3 The Deed.

8.1.1.4 The Subterranean Garage Easement Agreement as executed
by the City.

8.1.1.5 The Non-Motorized Covenant as executed by the City.

8.1.1.6 The Plazas Covenant and License as executed by the City.

8.1.1.7 The Landscaping Covenant as executed by the City.

8.1.1.8 Such other documents as Escrow Agent may reasonably
request to accomplish the Closing as required by this Agreement.

8.1.2 Closing Deposits by Developer. Developer shall deposit:

8.1.2.1 This Agreement.

8.1.2.2 Regulatory Approvals.

8.1.2.3 The Subterranean Garage Easement Agreement.

8.1.2.4 The Non-Motorized Covenant.

8.1.2.5 The Plazas Covenant and License.

8.1.2.6 The Landscaping Covenant.

8.1.2.7 A waiver of claims for diminution of value in property (the
“Waiver”) in the form attached hereto as **Exhibit “M.”**

8.1.2.8 Instruments in substantially the form attached hereto as
Exhibit “N” (the "Lienholder Consents") executed and acknowledged by each person having or
claiming a lien, lease, or other interest that is or may become possessory in any part of the Property
whereby such person joins in this Agreement and subjects and subordinates its interests to this
Agreement and all requirements, provisions and conveyances of this Agreement. Lienholder
Consents are not required from the City.

8.1.2.9 Such other documents as Escrow Agent may reasonably request to accomplish the Closing as required by this Agreement.

8.2 Deliveries at Closing. The following shall occur at the Closing in the order listed:

8.2.1 Escrow Agent shall record all of the Closing Documents in the office of the Maricopa County Recorder in the order listed above.

8.2.2 Escrow Agent shall retain for itself Escrow Agent's escrow fee for the Closing.

8.3 Closing Outside Escrow. Unless City or Developer gives notice at least seven (7) days in advance of the Closing, the Closing shall occur outside escrow, with Developer performing the duties of Escrow Agent.

9 Project. Developer's development shall comply with the following:

9.1 No Construction Obligation. Notwithstanding anything else in this Agreement, the Related Documents, or the Regulatory Approvals, and specifically with respect to Section 6 of this Agreement, Developer has no obligation to develop the Property or undertake or complete the Project, and may terminate Developer's further performance under this Agreement, the Related Documents, and the Regulatory to the extent any further performance would otherwise thereafter be required unless Developer can obtain financing acceptable to Developer in Developer's sole and absolute discretion.

9.2 Regulatory Approvals. Developer and City agree the Regulatory Approvals are incorporated into this Agreement as if they were set out in detail herein. If the City Council amends the Regulatory Approvals at the request of the Developer through a public hearing process, the City concurrently shall process an amendment to this Agreement to amend this Agreement as necessary.

9.3 Inspection. City shall have access to the portions of the Property that Developer owns at all times during normal business hours upon reasonable notice (and at all times and without notice in the event of an emergency) for the purpose of administering, monitoring Developer's compliance with, and enforcing this Agreement and the Related Documents, or evaluating the Property or exercising City's other rights hereunder. This right of access is in addition to access rights for City inspectors or other employees and officers acting within their legal authority, but only may be exercised reasonably.

10 Breach. Developer materially shall comply with, perform and do each performance and thing required of Developer. Developer's material failure to do so shall be a breach by Developer of this Agreement.

10.1 Events of Default. Developer shall be in default (an "Event of Default") if Developer fails or neglects timely and completely to do or perform or observe any material provision of this Agreement or the Related Documents and such failure or neglect continues for a period of sixty (60) days after City has notified Developer in writing of such failure or neglect.

The sixty (60) day period shall be extended an additional sixty (60) days upon Developer's request given by notice to City prior to the end of the first sixty (60) days. If performance to cure such Event of Default, in the exercise of reasonable diligence, would take longer than such period, such period shall be deemed to be extended to allow completion of performance reasonably and diligently pursued.

10.2 City's Remedies. Upon the occurrence of any Event of Default or at any time thereafter, City may, at its option and from time to time, exercise any or all or any combination of the following cumulative remedies in any order and repetitively at City's option:

10.2.1 Terminate this Agreement.

10.2.2 Pay or perform, for Developer's account, in Developer's name, and at Developer's expense, any or all payments or performances required hereunder to be paid or performed by Developer.

10.2.3 Abate at Developer's expense any violation of this Agreement.

10.2.4 Be excused without any liability to Developer therefor from further performance of any or all of City's obligations under this Agreement.

10.2.5 Insist upon Developer's full and faithful performance under this Agreement during the entire remaining term of this Agreement.

10.2.6 Assert, exercise or otherwise pursue at Developer's expense any and all other rights or remedies, legal or equitable, to which City may be entitled.

10.2.7 Exercise any remedy provided to City in the Related Documents.

10.2.8 Notwithstanding the foregoing, Developer shall not be liable for the following:

10.2.8.1 Punitive or other exemplary or multiple damages.

10.2.8.2 Damages due to City's or the public's failure to receive the Community Benefits.

10.3 City Default and Developer's Remedies. Upon any material breach of this Agreement by City not cured within sixty (60) days after notice from Developer, Developer may pursue any and all remedies, legal, equitable or otherwise, to which Developer may be entitled. Notwithstanding the preceding sentence or anything else in this Agreement or the Related Documents and as a condition of City's willingness to enter into this Agreement, and notwithstanding anything else contained in this Agreement, or contained in any exhibit attached hereto, or contained in or related to this Agreement or the Related Documents, or any instrument or agreement now or hereafter related hereto, or existing or implied at law or equity, the following limits shall apply to this Agreement, the Related Documents, and all transactions related thereto:

10.3.1 In no event shall City be liable for any money damages other than payment of the actual amount that this Agreement requires City to pay but City wrongfully does not pay, and additional out-of-pocket expenses Developer incurs.

10.3.2 City shall not be liable for any other incidental or consequential damages or any punitive or other exemplary or multiple damages.

10.3.3 Developer hereby unconditionally and irrevocably waives on behalf of itself and all persons claiming through Developer or through this Agreement or under or related to this Agreement or the Related Documents any remedies inconsistent with these limitations.

10.3.4 All limitations on Developer's remedies shall also apply to all remedies against City's officers, employees and other agents and representatives and any other person for whom City may in any event be liable for any reason.

10.3.5 All limitations on Developer's remedies shall apply to Developer and to any person otherwise asserting against City, any claim whatsoever related to this Agreement or the Related Documents.

10.4 Non-waiver and City Contract Administrator Authority. No failure by City or Developer to demand any performance required of the other under this Agreement, and no acceptance by City or Developer of any imperfect or partial performance under this Agreement, shall excuse such performance, or waive or impair in any way the other's ability to insist, prospectively and retroactively upon full compliance with this Agreement. Only City's formally designated contract administrator (who shall be designated by City's city manager from time to time) shall be authorized to administer this Agreement and the Related Documents for City or speak for City regarding this Agreement or the Related Documents, except that the New Stipulations shall be administered for City by City's planning and development services department through its normal processes.

11 Condemnation. In the event of any taking or condemnation, the condemnation proceeds shall be divided between City and Developer as their interests may appear.

12 Indemnity and Insurance. Developer shall insure the Property and its property and activities at and about the Property and shall provide insurance and indemnification as follows:

12.1 Insurance. Developer shall provide insurance as required by this Agreement or applicable law, as set forth on **Exhibit "O-1,"** and third parties shall provide such insurance, where required, as set forth on **Exhibit "O-2."**

12.2 Indemnity. In addition to all other obligations hereunder, to the fullest extent permitted by law, throughout the term of this Agreement and until all obligations and performances under or related to this Agreement are satisfied and all matters described in this paragraph are completely resolved, Developer (and all other persons claiming through Developer or this Agreement) shall jointly and severally pay, indemnify, defend and hold harmless City and City's employees, officials, representatives, and agents (the "Additional Insureds") for, from and against any and all claims or harm related to Developer's ownership or other rights in the Property

or arising from Developer's development of the Property pursuant to this Agreement (the "Indemnity"). Without limitation, the Indemnity shall include and apply to any and all allegations, demands, judgments, assessments, taxes, impositions, expenses, proceedings, liabilities, obligations, suits, actions, claims (including without limitation claims of personal injury, bodily injury, sickness, disease, death, property damage, destruction, loss of use or other impairment), damages, losses, expenses, penalties, fines or other matters (together with all attorney fees, court costs, and the cost of appellate proceedings) that may arise in any manner out of any use of City's property pursuant to this Agreement or any actions, acts, errors, mistakes or omissions relating to work or services in Developer's performances under this Agreement, including any injury or damages or cause of action claimed or caused by any employees, contractors, subcontractors, tenants, subtenants, agents or other persons upon or using the Property or surrounding areas pursuant to this Agreement, including without limitation, claims, liability, harm or damages caused in part by City or any other Additional Insured or anyone for whose mistakes, errors, omissions or negligence Developer or City may be liable. The Indemnity shall also include and apply to any environmental injury, personal injury or other liability relating to City's or Developer's acquisition, ownership or use of real property developed, operated, owned, used, controlled or possessed by City or Developer under this Agreement. Notwithstanding the foregoing, the Indemnity does not apply to:

12.2.1 Claims arising only from the gross negligence of City.

12.2.2 Claims that the law prohibits from being imposed upon Developer.

12.3 Risk of Loss. City is not required to carry any insurance covering or affecting the Property or use of City's property related to this Agreement. If Developer secures other insurance related to the Property or any improvements, property or uses related thereto, Developer shall affect an endorsement under such policy waiving any and all insurer's rights of subrogation against City and the other Additional Insureds.

12.4 Insurance to be Provided by Others. Contractors or other persons occupying, working on or about, or using the Property pursuant to this Agreement must also provide for the protection of City and all other Additional Insureds all of the insurance and indemnification required by this Agreement. The preceding sentence does not require such persons to provide insurance that merely duplicates insurance Developer provides.

13 Developer's Records. City shall have access to records regarding the Project as follows:

13.1 Scope of Records. This Article applies only to records that evidence whether City and Developer are in compliance with this Agreement or the Related Documents.

13.2 Information. Developer shall furnish, from time to time, such information as City reasonably may request pertaining to Developer's and City's respective rights and obligations with respect to this Agreement as reasonably determined by City. Developer need not disclose information that is not related to City's rights and obligations related to the Project, this Agreement and the Related Documents.

13.3 Right of Inspection. Developer shall (i) permit and assist City and its representatives at all reasonable times to inspect, audit, copy and examine, as applicable, Developer's records, (ii) cause its employees and agents to give their full cooperation and assistance in connection with any such visits or inspections, and (iii) make available such further information concerning Developer's business and affairs relating to the Property as City may from time to time reasonably request. Such inspection shall be limited to matters relevant to City's and Developer's rights and obligations under this Agreement as reasonably determined by City.

14 Compliance with Law. Developer shall comply with all federal, state, county and local laws, ordinances, regulations or other rules or policies that affect the Property as are now in effect or as may hereafter be adopted or amended. Without limiting in any way the generality of the foregoing, Developer shall comply with all and each of the following:

14.1 Taxes, Liens and Assessments. In addition to all other amounts herein provided, Developer shall pay, when the same become due and payable, all taxes and general and special fees, charges and assessments of every description that during the term of this Agreement may be levied upon or assessed with respect to Developer's interests in the Property, the operations conducted therein, any amounts paid or other performances under this Agreement.

14.2 Work on Public Land and Improvements. Prior to commencing construction on City rights-of-way or commencing construction of improvements for public use, Developer shall obtain City standard form encroachment permits (which City shall issue on the same terms City issues encroachment permits for other projects), if applicable, and shall provide to City Public Improvements Covenant to Construct documents in the form attached hereto as **Exhibit "P."** Developer may elect to provide a single Public Improvements Covenant to Construct the entire Project or a separate Public Improvements Covenant to Construct for each portion of such construction. The blanks in each Public Improvements Covenant to Construct shall be completed as follows:

14.2.1 The date of the Public Improvements Covenant to Construct shall be a date prior to issuance of the building permits for the work thereunder.

14.2.2 The "Land Approvals" shall be the New Stipulations as defined by this Agreement.

14.2.3 The "Approved Plans" shall be the final seated plans prepared by Developer's engineers for the proposed construction.

14.2.4 The "Estimated Cost" shall be Developer's engineer's estimate of the cost of the "Work", subject to review and approval by City, plus an additional amount of thirty percent (30%) of such estimate.

14.2.5 The completion deadline shall be two (2) year after the date of the Public Improvements Covenant to Construct.

14.2.6 Notwithstanding paragraph 8.6 of the Public Improvements Covenant to Construct, proceeds of property insurance for the land covered by the Amended & Restated Plazas Covenant shall first be used for rebuilding and then remaining proceeds applied as provided in said paragraph 8.6.

14.3 Building and Other Permits. Developer shall obtain at its own expense all building or other permits in connection with all construction performed by Developer and shall comply with all zoning as of the date of this Agreement, building safety, fire and similar laws and procedures of every description.

14.4 Local Workers. If and to the extent A.R.S. §41-4401 is applicable to this Agreement, Developer shall comply with laws regarding workers as follows:

14.4.1 Developer warrants to City that Developer and all its subcontractors will comply with all federal immigration laws and regulations that relate to their employees and that Developer and all its subcontractors now comply with the E-Verify Program under A.R.S. §23-214(A).

14.4.2 A breach of the foregoing warranty by Developer shall be deemed a material breach of this Agreement that is subject to penalties up to and including termination of this Agreement.

14.4.3 City retains the legal right to inspect the papers of any employee of Developer or any subcontractor who works on elements governed by this Agreement to ensure that they or the subcontractor is complying with the warranty given above.

14.4.4 City may conduct random reconciliation of Developer's and its subcontractors' employment records to ensure compliance with the warranty given above.

14.4.5 Developer shall indemnify, defend and hold City harmless for, from and against all losses and liabilities arising from any and all violations of the warranty given above.

15 Assignability. This Agreement runs with the land upon the Property and Developer's rights hereunder automatically shall be deemed to be assigned to and assumed by each successor in title to Developer. No other assignment shall occur without City's consent, which City may limit, condition or withhold in its absolute discretion.

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

16.1 Amendments. This Agreement may not be amended except by a formal writing executed by both Parties.

16.2 Survival of Covenants, Warranties and Indemnifications. All covenants, representations, warranties and indemnifications contained in this Agreement shall survive the execution and delivery of this Agreement, the Closing, all conveyances contemplated by this

Agreement, and the rescission, cancellation, expiration or termination of this Agreement for any reason.

16.3 Severability. If any term, condition, covenant, stipulation, agreement or provision herein contained 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 herein contained.

16.4 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.

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

16.6 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.

16.7 Notices. Notices hereunder shall be given in writing delivered to the other party or mailed by registered or certified mail, return receipt requested, postage prepaid addressed to:

If to City: Jim Thompson
 City Manager
 City of Scottsdale
 7447 E. Indian School Rd.
 Scottsdale, AZ 85251

Copy to: Sherry Scott
 City Attorney
 City of Scottsdale
 3939 Drinkwater Blvd.
 Scottsdale, AZ 85251

If to Developer: Sub4, LLC

And to Developer: Jackson Dearborn Partners, LLC

Copies to:

John Berry, Esq. and Hugh Hallman, Esq.
Berry & Riddell, LLC
6750 E. Camelback Rd., Suite 100
Scottsdale, AZ 85251
Phone: (480) 385-2727

By notice from time to time, a person may designate any other street address within Maricopa County, Arizona as its address for giving notice hereunder. Any designation by Developer of a new address for notices by City to Developer (an "Address Change Notice") shall not be binding or effective on City unless the Address Change Notice is in the form attached hereto as **Exhibit "Q"** and is recorded by Developer with the County Recorder of Maricopa County, Arizona. After the Project is completed, notices to Developer may also be hand delivered to Developer's management office at the premises of the Project. Service of any notice by mail shall be deemed to be complete three (3) days (excluding Saturday, Sunday and legal holidays) after the notice is deposited in the United States mail.

16.8 Integration. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior agreement, understanding, negotiation, draft documents, discussion outlines, correspondence, memoranda or representation regarding the Property.

16.9 Governmental Powers Preserved. Developer 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, priority or favoritism to Developer with regard to), any law, ordinance, power, regulation, tax, assessment or other legal requirement now or hereafter imposed by City or any other governmental body upon or affecting Developer, the Property or Developer's use of the Property. Developer acknowledges that all of Developer's obligations hereunder are in addition to, and cumulative upon (and not to any extent in substitution or satisfaction of), all existing or future laws and regulations applicable to Developer. Developer further agrees that this Agreement is not intended to diminish any performances to City that would be required of Developer by law if this Agreement had been made between Developer and a private citizen. City has not relinquished or limited any right of condemnation or eminent domain over the Property. In the event of any condemnation or eminent domain involving property interests owned by Developer, Developer shall not be entitled to increased compensation attributable to this Agreement. This Agreement does not impair the City's power to enact, apply or enforce any laws or regulations. City's rights and remedies hereunder for Developer's failure to comply with all applicable laws supplement and are in addition to and do not replace all otherwise existing powers of the City of Scottsdale or any other governmental body. This Agreement includes, replaces and supersedes all economic or other incentives from or through the City applicable to the Project. In the case of an existing ordinance or other existing law of the City authorizing a credit, reduction in tax or amount assessed, or any other benefit as a result of performances rendered under this Agreement, Developer expressly waives, relinquishes and repudiates all such benefits with respect to performances rendered under this Agreement.

16.10 Construction. Whenever the context of this Agreement requires, the singular shall include the plural, and the masculine shall include the feminine. This Agreement was negotiated on the basis that it shall be construed according to its plain meaning and neither for nor against 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.

16.11 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.

16.12 No Third Party Beneficiaries. No person or entity shall be a third party beneficiary to this Agreement or shall have any right or cause of action hereunder. Neither City nor Developer shall have any liability to third parties for any approval of plans, Developer's construction of improvements, Developer's failure to comply with the provisions of this Agreement (including any absence or inadequacy of insurance required to be carried by Developer), or otherwise as a result of the existence of this Agreement or the Related Documents, and City shall have no liability to any third party for Developer's negligence.

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

16.14 Attorneys' Fees. Each party shall bear its costs, attorneys and witness fees and other litigation costs of defending or prosecuting, any claim, action or suit challenging the validity or enforceability of any provision of this Agreement or the Related Documents, in instances in which City and Developer are not adverse to one another, including when each party is represented by separate counsel of its own choosing. Further, 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 (a) Developer shall, as a condition of such proceeding provide evidence to City of the rate of payment of Developer's attorneys' fees to its counsel and (b) City shall be entitled to recover payment for attorneys employed by City (including attorneys who are regular employees of City) on such proceeding at the same rate of payment if City is the prevailing Party.

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

16.16 Institution of Legal Actions. 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.

16.17 Approvals and Inspections. All approvals, review and inspections by City under this Agreement or otherwise are for City's sole benefit.

16.18 Statutory Cancellation Right. In addition to its other rights hereunder, City shall have the rights specified In A.R.S § 38-511.

EXECUTED as of the date first given above.

ATTEST:

THE CITY OF SCOTTSDALE:
an Arizona municipal corporation

By: _____
Ben Lane, City Clerk

By: _____
David D. Ortega, Mayor

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

By: _____
Sherry R. Scott, City Attorney
By: Joe Padilla, Deputy City Attorney

ARTISAN SCOTTSDALE, LLC
a Delaware limited liability company

By: SUB4, LLC
a Delaware limited liability company
Its: Initial Managing Member

By: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ___ day of October, 2021, by David D. Ortega, Mayor of the City of Scottsdale, Arizona, a municipal corporation.

My Commission Expires:

Notary Public

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ___ day of October, 2021, by _____, an Authorized Representative of Artisan Scottsdale, LLC, a Delaware limited liability company, who executed the foregoing on behalf of the limited liability company, being authorized to do so for the purposes therein contained.

My Commission Expires:

Notary Public

ESCROW ACCEPTED AND AGREED TO BY:

Escrow Agent: First American Title Insurance Company

By: _____

Its: Escrow Agent