

WHEN RECORDED RETURN TO:

City of Tempe Basket

**DEVELOPMENT PARCEL AGREEMENT
(Business Park Parcel)**

THIS DEVELOPMENT PARCEL AGREEMENT (this "**Agreement**") is entered into this ____ day of _____, 2009, by and among the CITY OF TEMPE, an Arizona municipal corporation ("**City**"), and MIRAVIDA HOLDINGS L.L.C., an Arizona limited liability company ("**Miravista**"), (Miravista is sometimes hereinafter referred to as "**Developer**").

RECITALS

A. City and Miravista are parties to that certain City of Tempe Marketplace Redevelopment Agreement (Loop 101 and Loop 202) (c2003-174), dated as of September 25, 2003, as amended and supplemented (the "Master Agreement"), pursuant to which City and Miravista agreed on certain parameters to govern development of land identified therein as the Master Developer Property.

B. Miravista, as Developer, has prepared a Conceptual Site Plan with respect to the development of that real property within the City of Tempe more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (the "**Property**").

C. The Property is located within the Redevelopment Area established by City pursuant to Resolution No. 2001.44 dated September 13, 2001, as amended by Resolution No. 2002.51 dated January 9, 2003 (the "**Redevelopment Area**").

D. Pursuant to Section 6.3 of the Master Agreement, City and Developer desire to enter into this Agreement to provide for certain matters pertaining to the Property, which constitutes Phase Two of the Project, as defined and described in the Master Agreement.

E. City and Developer believe that the development and redevelopment contemplated in and required by this Agreement will result in improvements to, and new uses of, portions of the Redevelopment Area, and will benefit the City and the public in general. This Agreement is consistent with, and will further the redevelopment goals of, the Slum Clearance and Redevelopment Act of the State of Arizona, A.R.S. §36-1471, et seq., and the Redevelopment Plan approved by the City in Resolution No. 2002.51 dated January 9, 2003, as amended (the "**Redevelopment Plan**") to provide a guideline for redevelopment and other activities in the Redevelopment Area.. Without limiting the foregoing, City finds and determines that it will, directly or indirectly, realize substantial tangible and intangible benefits from Developer's performance of its obligations under this Agreement, including, but not limited to, the redevelopment of a key area within the City, increased tax revenues, increased opportunities for employment within the City, creation and retention of jobs in the City, increased tourism, expansion and improvement of available public parking facilities within the City in general and

the Redevelopment Area in particular, and will otherwise improve or enhance the economic welfare of the inhabitants of the City.

F. This Agreement is a development agreement within the meaning of A.R.S. Section 9-500.05 and shall be construed as such.

AGREEMENT

NOW THEREFORE, in consideration of the above premises, the promises contained in this Agreement and for good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

In addition to words and terms defined elsewhere herein, the following terms shall have the meanings set forth below whenever used in this Agreement, except where the context clearly indicates otherwise.

1.1 "**Commencement of Construction**" (and any derivation thereof) means (a) the obtaining of a building, excavation, grading or similar permit by an Owner for the construction of the subject Improvement, (b) actual commencement of the work described in the permit within thirty (30) days after issuance of such permit, and (c) diligent pursuit of such work to completion.

1.2 "**Developer**" shall mean and refer to Miravista and any successor-in-interest or assignee of Miravista who has assumed the responsibilities of the Developer under Articles III and IV of this Agreement.

1.3 "**Effective Date**" means the date on which this Agreement has been fully executed by all parties after approval by the City Council.

1.4 "**ID Agreement**" means a Development and Waiver Agreement outlining the specific terms and conditions of the Improvement District.

1.5 "**Improvements**" means any and all improvements that may be constructed within the Property.

1.6 "**Improvement District**" means any district created to finance the design and construction of the Public Improvements.

1.7 "**Owner**" or "**Owners**" means any owner of fee simple title to any portion of the Property, and any successor-in-interest to any portion of the Property owned by any such Owner.

1.8 "**PAD**" means a Planned Area Development, approved by the City with respect to the development of the Property within the Redevelopment Area, which sets forth the specific uses, densities, features and other development matters with respect to the Property.

1.9 "**Phase**" shall mean and refer to each separate parcel within the Project which is or may be developed by an Owner pursuant to this Agreement.

1.10 "**Project**" means the mixed use commercial project planned for the Property by Developer as generally depicted on the conceptual site plan attached hereto as **Exhibit B**.

1.11 "**Public Improvements**" means improvements to public streets and roads, public utilities, storm water retention facilities and other onsite and associated offsite public infrastructure that will be designed and constructed by the Improvement District and owned by the City.

1.12 "**Schedule of Performance**" means the schedule of performance attached hereto as **Exhibit C** and incorporated herein by this reference.

ARTICLE II GENERAL DEVELOPMENT ISSUES

2.1 **Development Parcel Agreement.** The Master Agreement contemplated that the development of the Redevelopment Area would be accomplished through a series of sales, leases, joint ventures and/or other agreements such as this Agreement. No default by Master Developer under the Master Agreement shall constitute a default by Developer or any Owner under this Agreement unless such default is also a default by Developer or such Owner under the terms of this Agreement.

ARTICLE III DEVELOPMENT SCHEDULE, PROCESS AND COMPLETION

3.1 **Schedule of Performance.** City and Developer intend that the master-planning and development of the Property shall be achieved pursuant to, and in accordance with, the milestones set forth on, the Schedule of Performance. Developer and the City shall each use commercially reasonable efforts to ensure that the master planning and development of the Property occurs in accordance with the Schedule of Performance. If Developer or any Owner believes that any task or obligation to be performed pursuant to the Schedule of Performance cannot be performed by the date required therefor, then Developer or any Owner may request that the City Manager consent to an extension of any such date pursuant to the City Manager's authority granted pursuant to Section 7.14 below, provided that any such extension shall not exceed eighteen (18) months with respect to any specific task or obligation set forth in the Schedule of Performance without further approval of the City Council.

3.2 **Conceptual Site Plan.** Attached hereto as **Exhibit B** is a conceptual site plan (the "**Conceptual Site Plan**") prepared by Developer, which sets forth the scope of development for the entire Property and depicts the types of basic land uses, permissible range of the intensity and density of such uses, and a permissible range in the relative height, bulk and size of buildings and structures to be developed on the Property. The Conceptual Site Plan also depicts an area that Developer would like City to accept as public park or other public open space; City and Developer agree to work together to determine whether such a park or public open space would be beneficial for City and what terms and conditions would apply before City would ultimately agree to accept a conveyance or dedication of such a park or public open space. City anticipates that Developer would be required to complete any necessary environmental remediation on the park or open space before City would agree to accept a conveyance or dedication. If the parties reach mutual agreement on such terms, such terms shall be set forth in a separate written agreement.

3.3 **PAD.** The Conceptual Site Plan attached hereto as **Exhibit B** sets forth the current plan for development of the entire Property. The specific locations of the buildings, structures and uses, however, will be further defined in a PAD to be submitted by Developer for approval in accordance with normally applicable City submission requirements for such applications. By the date set forth in the Schedule of Performance, Developer shall submit to City the PAD application for the Property and, upon the City's approval of the PAD, the PAD shall govern and control the development of the Property over the Conceptual Site Plan. Notwithstanding anything contained in the foregoing, however, the City acknowledges that, while the Developer intends that the Project be developed in general conformance with the PAD in various Phases, that in order to make the Project economically viable and otherwise feasible, any Owner may request amendments to the PAD as it applies to any Phase owned by such Owner within the Project.

3.4 **Approvals.** City hereby agrees that, in connection with all approval requests relating to the development of the Property and the construction of any Improvements, no new, unusual or extraordinary plan or review requirements, conditions or stipulations will be imposed on Developer or any Owner.

3.5 **Representatives.** To further the cooperation of the parties in implementing this Agreement and to expedite decisions by the City relating to the Project, City agrees to designate a representative ("**City Representative**") of the City to act as a liaison between City and Developer and between the various departments of the City and Developer. The City Representative shall be available at all times to serve as such liaison, it being the intention of this section to provide Developer with one individual as City's principal representative with respect to the Project. Developer shall also designate representatives ("**Developer Representatives**") who shall serve as a liaison between Developer and the City. The initial City Representative shall be the Rio Salado Manager, currently Nancy Ryan, and the initial Developer Representative shall be Brad Wilde, or their respective designees.

ARTICLE IV IMPROVEMENT DISTRICT

4.1 **Creation of Improvement District.** City and Developer agree to consider the creation of one or more improvement districts (the "**Improvement District**") on or adjacent to the Property or the Redevelopment Area to finance the design and construction of on-site and off-site public infrastructure in accordance with Arizona law and pursuant to and in accordance with the terms and conditions of an ID Agreement in a form acceptable to the parties. As more particularly set forth in the ID Agreement, repayment of all bonds issued by the Improvement District for the purpose of paying the costs and expenses of construction of the Public Improvements described therein shall be paid by assessments established by the Improvement District and imposed against parcels within the Improvement District. Owners shall not be entitled to any delay in billing or payment of the Improvement District assessments. The parties contemplate creation of a public park or open space, as described in Section 3.2; City hereby notifies Owners that it will not accept responsibility for payment of any Improvement District assessments levied against the public park or open space, and that the City will require that such assessments be allocated to other parcels within the Improvement District or paid in full at the time of conveyance or dedication of the park or open space to City.

4.1.1 **Assignment of Reimbursement Rights.** Prior to formation of the Improvement District, Developer will incur certain costs to design and engineer the Public Improvements. Such costs ultimately will be reimbursed to Developer pursuant to the ID Agreement or otherwise (the "**Reimbursement Payment**"). Developer acknowledges that it is currently indebted to City for

certain unpaid assessments (plus interest thereon at the rate of 4.1% per annum) against Lots 2 and 6 of Playa Del Norte for Improvement District 179 (the "ID 179 Assessments"), and desires to authorize City to offset the Reimbursement Payment against the ID 179 Assessments owed by Developer. Developer hereby (a) grants, transfers and assigns to City all of its right, title and interest in and to all payments to be received by Developer pursuant to the ID Agreement, including without limitation the Reimbursement Payment, to secure Developer's obligation for payment of the ID 179 Assessments, together with interest thereon and all other sums payable in respect thereof; and (b) authorizes City to offset the Reimbursement Payment against the ID 179 Assessments owed by Developer without further notice to or authorization from Developer. If for any reason, the Improvement District is not formed within eighteen (18) months after the date this Agreement is executed, or if Developer conveys its interest in the Miravista Property before the ID 179 Assessments owed by Developer are paid in full, Developer and City shall reach a mutually acceptable alternate payment arrangement that provides for immediate commencement of payments to City, and if the Developer and City are unable to agree upon an alternative payment arrangement, City shall be entitled to immediately exercise its right to sell the real property against which the ID 179 Assessments were levied. Further, although the Developer anticipates that the Reimbursement Payment will equal or exceed the amount of the ID 179 Assessments owed by Developer, if the Reimbursement Payment is not sufficient to pay in full the ID 179 Assessments owed by Developer and other amounts payable in respect thereof, then Developer shall pay City the difference in cash within 90 days after City notifies Developer in writing of the amount of any such deficiency, and in the event that Developer fails to remit such amount within said 90 day period, then City shall be entitled to immediately exercise its right to sell the real property against which the ID 179 Assessments were levied.

The provisions of this Section 4.1.1 are personal to Developer and may not be assigned or delegated. If Developer transfers its interest in the Miravista Property or if there is a change in the persons who own and control the Developer, the ID 179 Assessments owed by Developer shall become immediately due and payable in full, and City shall have the right to exercise all available rights and remedies against the real property against which the ID 179 Assessments were levied. Nevertheless, City agrees not to initiate any enforcement action against the real property subject to the ID 179 Assessment liens unless Developer fails to comply with its obligations under this Section 4.1.1.

Developer represents and warrants to, and covenants with, City as follows: it has the authority to grant the foregoing security interest; it has not previously assigned or granted any security or other interest in the Reimbursement Payment; it shall keep the Reimbursement Payment free of all levies, liens, encumbrances and other security interests; it shall as appropriate, execute, deliver, file and/or record such instruments, documents, statements, notices or agreements, in such form and substance, as City may reasonably request, and take such action and obtain such certificates and documents, in accordance with all applicable laws, statutes and regulations as is necessary, to create, preserve, validate, perfect, evidence and/or continue City's security interest in the Reimbursement Payment, and/or to enable City to exercise or enforce its rights with respect to such security interest; it shall supply City with any information City may reasonably request with respect to the Reimbursement Payment and/or the security interest granted pursuant to this Section 4.1.1; and, it shall not enter into any security agreement that creates a security interest in any category of its personal property generally (as distinguished from any specific items thereof), nor sign or authorize the filing of a financing statement that describes the collateral generally by class rather than specifically, unless such security agreement or financing statement expressly excludes the Reimbursement Payment from the application thereof.

Developer specifically authorizes City to execute, deliver, file and/or record such security agreements, financing statements, instruments, and other documents, statements, notices or agreements, in such form and substance as City deems advisable, and take such actions in accordance with all applicable laws, as is necessary, to create, preserve, validate, perfect, evidence and/or continue City's security interest in the Reimbursement Payment, and/or to enable City to exercise or enforce its rights with respect thereto. Developer further authorizes City to from time to time, in its own name or in Developer's name and at Developer's expense, without notice or demand to Developer, and without affecting Developer's liability for the ID 179 Assessments: notify any obligor (including the Improvement District) to make payment to City; and demand, sue for, collect, or make any compromise or settlement with reference to the Reimbursement Payment, and any other sums payable on account thereof, as City in its sole discretion chooses.

4.2 **Dedication, Acceptance and Maintenance of Public Improvements.** When all or a portion of the Public Improvements are completed, then upon written request of Developer, the City shall, in accordance with all city, state, federal and other laws, requirements or policies, accept such Public Improvements. Upon acceptance, the Public Improvements shall become public facilities and property of the City and the City shall bear all risk of loss, damage or failure to such Public Improvements. Until acceptance by the City, Developer shall bear all risk of loss, damage, or failure to the Public Improvements.

4.3 **Determination by the City.** With regard to street and road improvements that constitute part of the Public Improvements, City and Developer shall determine whether to initiate and proceed with condemnation proceedings by separate resolution of the City Council after the City determines that eminent domain proceedings to obtain such rights-of-way are legally proper and appropriate under the terms of this Agreement and all applicable law. If City determines that eminent domain proceedings to obtain such rights-of-way are legally proper and appropriate and the City acquires such rights-of-way through its power of eminent domain, Developer shall be responsible to perform any environmental remediation which may be required by all applicable laws within such rights-of-way pursuant to the provisions set forth in Section 4.5.1 below.

4.4 **City Council Authorization.** Notwithstanding any provision of this Agreement to the contrary, the City shall have no obligation to exercise its power of eminent domain under this Article IV unless the City Council has passed a resolution authorizing the use of such power for the purposes set forth in, and subject to the terms of, this Agreement. Failure of the City Council to take such action shall not constitute a breach of this Agreement.

4.5 **Condemnation Costs and Expenses.** The intent of this Agreement is that all reasonable condemnation costs and expenses and all other costs and expenses of any condemnation shall be paid (or reimbursed to the City within sixty (60) days, if applicable) by Developer, without any cost to the City, except for any City employees' time or the City's general overhead expenses related to such transactions, which shall not be reimbursed. Without limiting the foregoing, the following shall apply:

4.5.1 **Costs and Expenses.** Developer shall pay all reasonable expenses incurred by the City, directly or indirectly, in connection with any condemnation proceedings initiated by the City pursuant to Section 4.3 above. Without limiting the generality of the foregoing, Developer shall pay all environmental, investigation and/or report costs, environmental remediation, title report, title policy and escrow fees, along with all direct and indirect costs, including attorneys' fees (for

litigation, negotiation, documentation or otherwise) and related costs; filing fees; service of process fees; interest on awards and other similar amounts; jury costs; costs for deposition transcripts and the preparation of exhibits; relocation costs and all other costs of every kind or nature relating to the City's acquisition of any portion of the Property by exercise of the power of eminent domain. To maintain some reasonable control over these costs, City and Developer agree where feasible to establish pre-approved budgets for each service for which the City normally establishes a budget. In situations where pre-approved budgets are not feasible, the City agrees to exercise reasonable control over the service provider to assure that costs are consistent with the market rate for that service. Notwithstanding the foregoing, Developer shall not be required to pay for any City employee's time or the City's general overhead expenses related to obtaining any Property by eminent domain or otherwise.

4.5.2 **Interest.** Developer shall be responsible for the payment of legal interest, if any imposed on awards and for all other obligations related to condemnation awards.

4.5.3 **City Control.** City shall control all matters relating to the eminent domain proceedings.

4.6 **Use of Private Attorney.** City shall have the right to select and employ outside counsel at Developer's expense to prosecute any condemnation proceeding filed pursuant to this Article IV. City shall obtain Developer's reasonable approval before the City makes its decision regarding retention of counsel.

ARTICLE V PROPERTY TAX ABATEMENT; WAIVER

5.1 **Incentives to Owners.** Neither Developer nor any Owner shall be entitled to any incentives other than those outlined below with respect to development of the Project, including without limitation, any such additional incentives described in the Master Agreement.

5.2 **Tax Abatement and Excise Tax Incentives.**

5.2.1 **Tax Abatement and Excise Tax.** City acknowledges that the increased costs of environmental remediation and of constructing the Improvements makes the development of the Property economically feasible only if City provides Owners with all statutorily-authorized property tax abatements, including, without limitation, all such abatements currently available pursuant to the provisions of A.R.S. §§ 42-6201 through 42-6209, inclusive. Therefore, with respect to each Phase of the Project which contains a use that qualifies for excise tax abatement under the provisions of A.R.S. §§ 42-6201 through 42 6209, City agrees to grant to the Owner thereof the statutorily-authorized government property lease excise tax abatement pursuant to the provisions of A.R.S. §§ 42-6201 through 42-6209 for the eight (8) year period allowed by statute, and shall apply the applicable government property lease excise tax rate during the remaining term of the lease applicable thereto as hereinafter set forth; provided, however, that during the eight (8) year abatement period, the Owner of such Phase shall pay to the City an annual "in-lieu" payment in the amount of the lesser of (a) that portion of the ad valorem property tax which would have been applicable to such Phase but for the abatement and which would have been payable to the Tempe Unified School District, or (b) such Phase's pro rata share of the amount of \$50,000.00, which pro rata share shall be determined by dividing the total gross land area of the Property (exclusive of any portion of the Property dedicated to the City for public right-of-way or other

public purposes, such as a park or open space) by the total gross land area of such Phase. In connection with such property tax abatements, the City hereby agrees that, at the request of any Owner the City shall accept a conveyance of land and conveyance of Improvements by deed substantially in the form attached hereto as **Exhibit D** and to lease-back all such land and Improvements to the Owner for a term not to exceed forty (40) years, which term shall commence upon the issuance of the certificate of occupancy for the Improvements which are the subject of the lease (the actual term of each lease shall be subject to mutual agreement by the City and Owner, and in connection with the discussion of the term, Developer shall provide such financial, economic and other information as City may reasonably request), and upon the terms and conditions set forth in a lease substantially in the form attached hereto as **Exhibit E**, which lease shall also contain the following additional conditions:

5.2.1.1 **Insurance Provisions for Lease.** Any lease entered with the City for the purpose of providing statutorily-authorized property tax abatements shall provide that during the term of the lease, the tenant shall, at tenant's expense, carry and maintain, for the mutual benefit of the City and tenant, commercial general liability insurance against claims for bodily injury, death or property damage occurring in, upon or about the premises, with limits of not less than \$5,000,000 (which may include umbrella coverage for any amount above \$1,000,000) combined single limit per occurrence for bodily injury and property damage, including coverages for contractual liability (including defense expense coverage for additional insureds), personal injury, broad form property damage, products and completed operations. All of tenant's policies of liability insurance shall name the City and all leasehold mortgagees as additional insured and shall contain no special imitations on the coverage, scope or protection afforded to the City, its officials, employees or volunteers. The tenant's policy of liability insurance shall be primary as respect to the City and any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City. Certificates with respect to all policies of insurance required to be carried by the tenant shall be delivered to the City Representative, and shall be in form and with insurers acceptable to the City which shall clearly evidence all insurance required and provide that such insurance shall not be cancelled, allowed to expire or be materially reduced in coverage.

5.2.1.1 **Indemnification Provision for Lease.** Any lease entered with the City for the purpose of providing statutorily-authorized property tax abatements shall provide that during the term of the lease, the tenant shall indemnify, protect, defend and hold harmless, the City, its council members, officers, employees, and agents from any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and costs of defense arising, directly or indirectly, in whole or in part, out of the exercise of the lease.

5.3 **Waiver of Certain Development Fees.** The parties acknowledge that the future development of multi-family housing on Lots 2 and 5 as shown on the Conceptual Site Plan may be economically feasible only by the commitment of the City to waive fees for all planning, engineering, and building safety processing, excluding water and sewer development fees and residential development taxes associated with development on those lots. City agrees to waive said fees so long as construction of Improvements on Lots 2 and 5 (or such other lots as are reserved for use as multi-family housing in the PAD, but not more than two (2) lots) commences within 36 months after the date this Agreement is signed.

ARTICLE VI
DEFAULT; REMEDIES; TERMINATION

6.1 **Events Constituting Default.** A party shall be deemed to be in default under this Agreement if such party breaches or otherwise fails to perform any obligation required to be performed by such party hereunder or in the Schedule of Performance, within any time period required for such performance, or if no time for performance is specified, then sixty (60) days after written notice from the non-defaulting party specifying in reasonable detail the nature of such failure; provided, however, if such breach or default cannot reasonably be cured within such sixty (60) day period, then the party shall be in default if it fails to commence the cure of such breach within the sixty (60) days and diligently pursue the same to completion within ninety (90) days thereafter. Absent written agreement to the contrary, if such default is not cured within the above-described period, this Agreement may be automatically terminated, at the sole and absolute discretion of the non-breaching party as to the breaching party, but not as to any other parties to this Agreement. A default under the Master Agreement shall not constitute a default under this Agreement by any party, unless there has also been a default by such party under the terms of this Agreement.

6.1.1 **Additional Owner Defaults.** In addition to the foregoing, an Owner shall be deemed in default hereunder if: (a) such Owner sells, assigns, conveys or alienates any portion of the Property owned by such Owner, or any part thereof, or shall be divested of title or any interest therein in any manner or way, whether voluntarily or involuntarily except as expressly permitted herein or otherwise approved by City; (b) any petition or application for a custodian, as defined by Title 11, United States Code, as amended from time to time (the "**Bankruptcy Code**"), or for any form of relief under any provision of the Bankruptcy Code or any other law pertaining to reorganization, insolvency or readjustment of debts is filed by or against such Owner, and such petition or application is not dismissed within ninety (90) days of such filing; (c) such Owner makes an assignment for the benefit of creditors, is not paying material debts as they become due, or is granted an order for relief under any chapter of the Bankruptcy Code; (d) a custodian, as defined by the Bankruptcy Code, takes charge of any portion of the Property then owned by such Owner; (e) the dissolution or termination of existence of such Owner at any time while Owner continues to have an interest in the Property; or (f) there is a material default or material breach of any representation, warranty or covenant, or there is a material false statement or material omission, by such Owner under this Agreement.

6.2 **Dispute Resolution.** If a dispute arises under this Agreement that the parties cannot resolve between themselves, 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 mediation shall be held under the commercial mediation rules of the American Arbitration Association. The mediator selected shall have at least five (5) years' experience in mediating or arbitrating disputes relating to commercial property development. The cost of any such mediation shall be divided equally between the parties, or in such other fashion as the mediator may order. The results of the mediation shall be nonbinding on the parties, and any party shall be free to initiate litigation upon the conclusion of mediation.

6.3 **No Personal Liability.** No member, official or employee of the City shall be personally liable to any Owner, or any successor or assignee, (a) in the event of any default or breach by the City, (b) for any amount which may become due to such Owner or any successor or assignee, or (c) pursuant to any obligation of the City under the terms of this Agreement.

6.4 **Owner's Remedies.** If the City is in default under this Agreement and fails to cure any such default within the time period required as set forth in Section 6.1 above, then any Owner (a "**Terminating Owner**") may terminate this Agreement as to the portion of the Property owned by such Owner only by written notice delivered to the City; provided, however, that any such termination shall not affect, and this Agreement shall continue in full force and effect with respect to, those parcels within the Property which are not owned by a Terminating Owner or upon which Improvements have been constructed or Construction has Commenced.

6.5 **City's Remedies.** If any Owner is in default under this Agreement and fails to cure such default within the time period required by Section 6.1 (a "**Defaulting Owner**"), then City shall have the right to terminate this Agreement immediately as to that portion of the Property owned by such Defaulting Owner only, by giving written notice thereof to the Defaulting Owner; provided, however, that any such termination shall not affect, and this Agreement shall continue in full force and effect with respect to, those parcels within the Project not owned by the Defaulting Owner or upon which Improvements have been constructed or substantial construction has commenced.

6.6 **Liability and Indemnification.** Each Owner hereby agrees to, and shall, unconditionally indemnify, protect, defend and hold harmless the City, its Council members, officers, employees, volunteers and agents from any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and costs of defense arising, directly or indirectly, in whole or in part, out of the performance of this Agreement by City or such Owner, or nonperformance of this Agreement by such Owner, except to the extent such damages are the result of the sole negligence or willful misconduct of the City.

6.7 **Effect of Event of Termination.** Upon the termination of this Agreement as the result of the default or breach of a Defaulting Owner, such Defaulting Owner shall have no further rights under this Agreement; provided, however, that any such termination shall not affect, and this Agreement shall continue in full force and effect with respect to, those parcels within the Project which are owned by the Owners or upon which Improvements have been constructed or substantial construction has commenced.

ARTICLE VII GENERAL PROVISIONS

7.1 **Cooperation.** City and Developer hereby acknowledge and agree that they shall cooperate in good faith with each other and use its commercial best efforts to pursue the economic development of the Property as contemplated by this Agreement. Unless another standard is specified in this Agreement, all consents and approvals provided for in this Agreement shall not be unreasonably denied, conditioned, or delayed.

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

7.3 **Conflict of Interest.** Pursuant to Arizona law, rules and regulations, no member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. This Agreement is subject to cancellation pursuant to A.R.S. § 38-511.

7.8 **Waiver.** No waiver by either party of any breach of any of the terms, covenants or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same for any other term, covenant or condition herein contained.

7.9 **Attorneys' Fees.** In the event of any actual litigation between the parties in connection with this Agreement, the party prevailing in such action shall be entitled to recover from the other party all of its costs and fees, including reasonable attorneys' fees, which shall be determined by the court and not by the jury.

7.10 **Severability.** In the event that any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the extent that the material obligations and intent of this Agreement are not vitiated.

7.11 **Schedules and Exhibits.** All schedules and exhibits attached hereto are incorporated herein by this reference as though fully set forth herein.

7.12 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.

7.13 **Recordation of Agreement.** This Agreement shall be recorded in the Official Records of Maricopa County, Arizona, within ten (10) days after its approval and execution by the City.

7.14 **City Manager's Power to Consent.** The City hereby acknowledges and agrees that any unnecessary delay hereunder would adversely affect an Owner and/or the development of the Property, and hereby authorizes and empowers the City Manager to consent to any and all requests of any Owner requiring the consent of the City hereunder without further action of the City Council, except for any actions requiring City Council approval as a matter of law, including, without limitation, any amendment or modification of this Agreement.

7.15 **Assignment.** Subject to the provisions of this Agreement, no Owner shall have the right to assign any portion or all of such Owner's rights under this Agreement, in whole or part, except in connection with the sale, transfer or conveyance of any portion of the Property owned by such Owner and so long as such Owner has provided written notice to the City of such sale, transfer or conveyance and the identity and notice address information for the transferee. No assignment shall relieve any Owner of its obligations hereunder, unless City otherwise agrees in writing. If required by City, any assignee or transferee shall submit to City a written agreement to be fully bound by the provisions hereof. Notwithstanding that this Agreement is being recorded in the Official Records of Maricopa County, it is intended that this Agreement shall not be an encumbrance upon the title of any person purchasing or owning any portion of the Property, and that the terms and conditions of this Agreement are not covenants running with the land and that no person is bound by (or entitled to) the burdens and benefits of this Agreement unless such burdens are expressly assumed by or such benefits are expressly assigned to such person.

7.16 **Rights of Lenders**. The City is aware that financing for acquisition, development and/or construction of the Improvements may be provided, in whole or in part, from time to time, by one or more third parties (collectively "**Lender**") and that Lender may request a collateral assignment of this Agreement as part of the collateral for its loan to an Owner. City agrees that such collateral assignments are permissible without further consent on the part of City. If an Owner defaults under this Agreement, City shall provide notice of such Event of Default, at the same time notice is provided to such Owner, to any Lender who requests in writing that it be notified of such event and who provides City with an address to which notices are to be sent. If a Lender is permitted under the terms of its agreement with the Owner to cure a default and/or to assume such Owner's position with respect to this Agreement, City agrees to recognize such rights of Lender and to otherwise permit Lender to assume all of the rights and obligations of Owner under this Agreement. If City shall give any notice, demand, election or other communication required under this Agreement (collectively "**Notices**") to the Owner, the City shall concurrently give a copy of each such Notice to the Lender at the address designated by the Lender. Nothing contained in this Agreement shall be deemed to prohibit, restrict, or limit in any way the right of a Lender to take title to all or any portion of its collateral, pursuant to a foreclosure proceeding, trustee's sale, or deed in lieu of foreclosure. The City shall, at any time upon request by an Owner or its Lender, provide to any Lender an estoppel certificate, acknowledgement of collateral assignment, consent to collateral assignment, or other document evidencing that this Agreement is in full force and effect, that it has not been amended or modified (or, if appropriate, specifying such amendment or modification), and that no default by such Owner exists hereunder (or, if appropriate, specifying the nature and duration of any existing default) and certifying to such other matters reasonably requested by the Owner or its Lender. Upon request by a Lender, the City will enter into a separate assumption or similar agreement with such Lender consistent with the provisions of this paragraph.

SIGNATURE PAGES FOLLOW

IN WITNESS WHEREOF, the parties have executed this Development Parcel Agreement as of the date first set forth above.

CITY:

CITY OF TEMPE, an Arizona municipal corporation

By: _____
Hugh L. Hallman, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2009, by Hugh L. Hallman, Mayor of the City of Tempe, who acknowledged that he/she signed the foregoing instrument on behalf of the City.

Notary Public

NOTARY SEAL:

DEVELOPER:

MIRAVISTA HOLDINGS, L.L.C.,
an Arizona limited liability company

By: _____
Its: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2009, by _____, Manager of Miravista Holdings, L.L.C., an Arizona limited liability company, who acknowledged that he signed the foregoing instrument on behalf of the company.

Notary Public

NOTARY SEAL:

EXHIBIT A
Legal Description of Property

EXHIBIT B
Conceptual Site Plan

EXHIBIT C
SCHEDULE OF PERFORMANCE

Timeline to Perform Task from Execution of Agreement	Task/Obligation
6 months	Submit entitlement package including the PAD
24 months	Commence Environmental Clean-up and Geotechnical Work
36 months	Commence Construction of Improvements
52 months	Substantially complete construction of initial building improvements within any Phase of the Project pursuant to the approved PAD

EXHIBIT D

Deed and Bill of Sale for Improvements

WHEN RECORDED, RETURN TO:

City of Tempe Basket

DEED AND BILL OF SALE FOR IMPROVEMENTS

FOR THE CONSIDERATION OF TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the undersigned, _____, a(n) _____ ("**Grantor**"), does hereby convey to the CITY OF TEMPE, an Arizona municipal corporation ("**Grantee**"), all improvements constructed for and by Grantor which are located on that certain real property described on Exhibit A which is incorporated herein by this reference. Subject to current taxes, assessments, reservations in patents and all easements, rights-of-way, encumbrances, liens, covenants, conditions and restrictions as may appear of record, the undersigned does hereby warrant the title to such improvements against all persons whomsoever.

DATED this ____ day of _____, 200__.

_____, a(n) _____

By: _____

Its: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__ by _____, as _____ of _____, a(n) _____, for and on behalf of such _____.

Notary Public

My Commission Expires: _____

EXHIBIT E
LAND AND IMPROVEMENTS LEASE