

When recorded, return to:

City of Tempe
31 East Fifth Street
Tempe, Arizona 85281
Attention: City Clerk

**SECOND AMENDMENT TO
DEVELOPMENT AND DISPOSITION AGREEMENT**
(Apache ASL Trails)
C2008-29

THIS SECOND AMENDMENT TO DEVELOPMENT AGREEMENT (this "Second Amendment") is made and entered into as of the ____ day of September, 2009, by and between the CITY OF TEMPE, an Arizona municipal corporation ("City"), and Cardinal Capital Management, Inc., an Arizona Corporation ("Developer").

R E C I T A L S

A. The City and Developer executed that certain Development and Disposition Agreement dated February 7, 2008 and recorded June 28, 2008 as Document No. 2004-0730290, Official Records of Maricopa County, Arizona, as amended by that certain First Amendment to Development and Disposition Agreement dated August 14, 2008 (the "Development Agreement"), with respect to the development of that certain real property previously owned by the City and now owned by Developer and described in the Development Agreement (the "Property").

B. Pursuant to the terms of the Development Agreement, the parties agreed that, the developer would create a new mix use development that would include affordable housing.

C. The City and Developer acknowledge that the project is being developed in two phases and covers two parcels, one that the developer previously owned and the one that the developer is purchasing from the City.

D. The City and Developer acknowledge that, as a result of the certain inherent risks and the costs of developing new affordable housing at the income levels required for a Low Income Tax Credit project, the economic incentives hereinafter set forth are necessary and appropriate for the economic viability of the project (Phase 1 and Phase 2) and to otherwise aide in the development of the property.

E. The City and Developer are deemed to be in compliance with the Development Agreement on the date this Second Amendment to the Development Agreement is executed.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer and the City hereby amend and modify the Development Agreement as follows:

AMENDMENT

1. Definitions. All initial capitalized terms used herein shall have the meanings ascribed thereto in the Development Agreement unless specifically and otherwise defined herein.

2. Schedule of Performance Modifications. Exhibit "C" Schedule of Performance is hereby modified as follows:

a. Items "b" and "c" regarding the Easement Improvements are to be deleted in their entirety, with the remaining items to be re-alphabetized.

b. A new item "d" is hereby inserted to read as follows: "Design plans for the Easement Improvements will be incorporated into the design plans for Phase II of the Project and be completed prior to the issuance of a Certificate of Completion for Phase II.

3 A new Section 9 is hereby added to the Development Agreement as follows:

9. Extension of Entitlement Approval and Plan Review Period The City and Developer acknowledge that, as a result of the certain inherent risks and the costs of developing new affordable housing at the income levels required for a Low Income Tax Credit project, the extensions hereinafter set forth are necessary and appropriate for the economic viability of the project (Phase 1) and to otherwise aid in the development of the property.

The City has approved a Planned Area Development Overlay (PAD08018), Development Plan Review (DPR08001), General Plan Amendment (GEP08001), and Zoning (ZON08001) for the Project Property (collectively, the "Approvals"). The City agrees that the Approvals will remain in effect for a period of not more than 36 months following the date of issuance of building permits.

The Developer has submitted plans for Building Permit (PC080234), and the City has reviewed those plans. The City agrees that the plan review completed to date will remain effective if the building permits are issued on, or before , December 31st, 2009.

The Developer has submitted plans for engineering plan review (EN080031), and the City has reviewed those plans. The City agrees that the plan review completed to date will remain effective if the engineering permits are issued, on, or before December 31st, 2009.

If the building permits are issued after December 31st, 2009 the Developer shall modify the building plans to meet the fire, life safety, structural, accessibility, and exiting portions of the current building codes prior to permit issuance. Developer shall review the new codes and prepare a written report noting any code changes to structural, accessibility, fire or life safety provisions. Developer shall revise the plans to comply with the new code provisions and shall submit the revised plans to City for review, together with a copy of the report. City shall review the revised plans and verify compliance. Developer shall pay the hourly rate then in effect for verification plan review. Developer shall pay the fees and rates then in effect for all future development services and permits, including without limitation, permits, plan review, sewer and water development, etc.

If the engineering permits are issued after December 31st, 2009 the developer shall modify the civil plans to meet the current Engineering Design Criteria and MAG Standard Details prior to permit issuance. Developer shall revise the plans to comply with the new code provisions and shall submit the revised plans to City for review. Developer shall pay the fees and rates then in effect for all future engineering services and permits, including without limitation review of any revised plans.

4. No Further Modifications. Except as specifically modified or amended in this First Amendment, the terms and conditions of the Development Agreement shall remain in full force and effect, unmodified and unchanged in any way and are hereby ratified and affirmed by the parties.

SIGNATURE PAGES FOLLOW

