ORDINANCE NO. O2017.12

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AUTHORIZING THE MAYOR OR HIS DESIGNEE TO EXECUTE DOCUMENTS TO TRANSFER TITLE TO CERTAIN PROPERTY WITHIN THE HAYDEN FERRY LAKESIDE DEVELOPMENT TO COUSINS FUND II PHOENIX IV, LLC AND ACKNOWLEDGE TERMINATION OF A LEASE.

WHEREAS, Hayden Ferry Lakeside, LLC (“HFL”) deeded certain property (the “Property”) to the City of Tempe pursuant to that certain Quit-Claim Deed dated April 22, 2009 and recorded on May 13, 2009 as Document No. 2009-0428198 in the Official Records of Maricopa County Recorder (the “Conveyance”); and

WHEREAS, after the Conveyance, the City of Tempe and HFL entered into that certain Lease dated April 23, 2009 (the “Lease”); and

WHEREAS, a Memorandum of Lease dated April 23, 2009 was recorded in the Official Records of Maricopa County Recorder on June 10, 2009 as Document No. 2009-0527342, and amended pursuant to an amendment recorded on July 16, 2010 in the Official Records of Maricopa County Recorder as Document No. 2010-0607126 (collectively, the “Memorandum”), to provide notice of the existence of the Lease; and

WHEREAS, by mesne conveyances, Cousins Fund II Phoenix IV, LLC, a Delaware limited liability company formerly known as PKY Fund II Phoenix IV, LLC (“Owner”) is the successor-in-interest to HFL, as “Tenant” under the Lease;

WHEREAS, the Lease term expires April 22, 2017, and the parties desire to provide for re-conveyance of the Property to Owner so that it may be returned to the real property tax rolls.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:
Section 1. The Mayor (or his designee) is hereby authorized to execute any documents that may be necessary to terminate the Lease, re-convey the Property, and carry out the provisions of this Ordinance and the Lease, including without limitation, an Agreement to Convey Premises, a Quit Claim Deed and a Notice of Lease Termination, in substantially the forms attached hereto as Exhibits “A”, “B” and “C”, respectively.

Section 2. Pursuant to City Charter, Section 2.12, ordinances are effective thirty (30) days after adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this _____ day of ____________, 2017.

Mark W. Mitchell, Mayor

ATTEST:

Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:

Judith R. Baumann, City Attorney
Exhibit A
of Ordinance No. 2017.XX

AGREEMENT TO CONVEY PREMISES
AND ACKNOWLEDGEMENT OF LEASE TERMINATION

THIS AGREEMENT TO CONVEY PREMISES AND
ACKNOWLEDGEMENT OF LEASE TERMINATION (“Agreement”) is made and entered into to be effective ______________________ ____, 2017 (the “Effective Date”) by and between THE CITY OF TEMPE, an Arizona municipal corporation (“Landlord”), and COUSINS FUND II PHOENIX IV, LLC, a Delaware limited liability company formerly known as PKY Fund II Phoenix IV, LLC (“Tenant”), as the successor-in-interest to Hayden Ferry Lakeside, LLC (“HFL”) and is as follows:

WITNESSETH:

WHEREAS, HFL deeded certain property to the City of Tempe pursuant to that certain Quit-Claim Deed dated April 22, 2009 and recorded on May 13, 2009 as Document No. 2009-0428198 in the Official Records of Maricopa County Recorder (the “Conveyance”); and

WHEREAS, after the Conveyance, Landlord and HFL entered into that certain Lease dated April 23, 2009 (the “Lease”), covering the real property conveyed to the City, and described on Exhibit A attached hereto and incorporated herein by reference (the “Premises”); and

WHEREAS, a Memorandum of Lease dated April 23, 2009 was recorded in the Official Records of Maricopa County Recorder on June 10, 2009 as Document No. 2009-0527342, and amended pursuant to an amendment recorded on July 16, 2010 in the Official Records of Maricopa County Recorder as Document No. 2010-0607126 (collectively, the “Memorandum”), to provide notice of the existence of the Lease; and

WHEREAS, by mesne conveyances, Tenant is the successor-in-interest to HFL; as “Tenant” under the Lease, and

WHEREAS, the term of the Lease will expire April 22, 2017 and the parties desire for Landlord to re-convey the Premises to Tenant, subject to the conditions and in accordance with the terms and provisions of this Agreement as provided below.

NOW, THEREFORE, for Ten and no/100 Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the parties hereby agree as follows:
1. **Conveyance of Premises and Termination of Lease.** Subject to approval of this Agreement by the Tempe City Council at a formal City Council meeting, Landlord shall execute and deliver to Tenant a Quit Claim Deed re-conveying title to the Premises to Tenant in the form attached hereto as Exhibit B (the “Deed”), and a Notice of Termination of Lease in the form attached hereto as Exhibit C (the “Termination”).

2. **Closing Procedures.** Upon receipt of Tempe City Council approval, Landlord shall deliver its original signature counterparts to the Deed and the Termination to Tenant. Tenant shall cause the recordation of the Deed and the Termination within ten (10) business days after the Lease expiration date. Tenant shall pay all costs, expenses and fees associated with the re-conveyance, including without limitation all recording fees. Notwithstanding the foregoing, in accordance with Section 20.4 of the Lease, Tenant is not obligated to pay Landlord’s attorneys’ fees or any commissions payable to any broker retained by Landlord.

3. **Acknowledgement of Lease Termination Date.** Landlord and Tenant acknowledge and agree that the term of the Lease expires at midnight on April 22, 2017.

4. **General Provisions.**

   A. **Attorneys’ Fees and Costs.** In the event of any suit instituted by either party against the other in any way connected with this Agreement, the parties agree that the successful party in any such action shall recover from the other party a reasonable sum for its attorneys’ fees and costs in connection with said suit, such attorneys’ fees and costs to be fixed by the court.

   B. **Entire Agreement.** This Agreement along with any exhibits and attachments hereto constitutes the entire agreement between Landlord and Tenant with respect to the subject matter hereof and this Agreement and the exhibits and attachments may be altered, amended or revoked only by an instrument in writing signed by the party to be bound thereby. Landlord and Tenant agree that all prior or contemporaneous oral agreements between and among themselves and their agents and representatives relative to this Agreement or the subject matter hereof are merged in or revoked by this Agreement.

   C. **Binding Effect; Choice of Law.** All of the provisions of this Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. This Agreement shall be governed by the laws of the State of Arizona.

   D. **Waiver of Jury Trial.** Each party irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or in connection with this Agreement or any matter arising hereunder.

   E. **Notices.** All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered, delivered by a recognized overnight courier service or mailed by United States certified or registered mail, return receipt requested, postage prepaid, as follows:
or to such other place or to such other persons as any party shall from time to time notify the other in writing as provided herein. The date of service of any communications hereunder shall be the date of personal delivery, the date of delivery by overnight courier or 72 hours after the postmark on the certified or registered mail, as the case may be.

F. **Waiver.** No covenant, term or condition or the breach thereof shall be waived, except by written consent of the party against whom the waiver is claimed, and any waiver or the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition.

G. **Counterparts; Facsimile Signatures.** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument. It is further acknowledged and agreed that scanned and/or facsimile copies will be acceptable in place of originals.

H. **Exhibits.** The exhibits described herein and attached to this Agreement are incorporated in this Agreement by this reference.

5. **No Conveyance or Encumbrance by Landlord.** Landlord represents and warrants that it has not transferred, conveyed or encumbered the Premises or its interest in the Lease in any manner except as permitted in the Lease and that Landlord has not
entered into any agreements or contracts regarding the Premises other than as requested or approved by Tenant.

6. **Premises on Tax Rolls.** Tenant acknowledges that the Premises shall be returned to the real property tax rolls for the 2017 tax year, effective on the date on which the Deed is recorded, and for all subsequent tax years. Therefore, there will be no further taxation of the Premises after the recordation of the Deed under the Government Property Lease Excise Tax, A.R.S. §42-6201, et seq.

7. **Assignment of Rights.** Landlord hereby assigns to Tenant all of Landlord’s right, title and interest, if any, in and to all licenses, permits, guaranties and warranties relating to the ownership or operation of the Premises to which the Landlord is a party and which are assignable by Landlord.

**IN WITNESS WHEREOF,** the parties have executed this Agreement to be effective on the date set forth above.

{Signature pages follow}
LANDLORD:

THE CITY OF TEMPE, an Arizona municipal corporation

By:__________________________________________

Mark W. Mitchell, Mayor

ATTEST:

___________________________________________
Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:

___________________________________________
Judith R. Baumann, City Attorney

STATE OF ARIZONA )
 ) ss.
County of Maricopa )

The foregoing instrument was acknowledged before me this ___ day of _____________, 2017 by Mark W. Mitchell the Mayor of The City of Tempe, an Arizona municipal corporation, for and on behalf of said City.

___________________________________________
Notary Public

Notary Seal:
TENANT:

Cousins Fund II Phoenix IV, LLC, a Delaware limited liability company, successor-in-interest to Hayden Ferry Lakeside, LLC

By: Matthew Mooney
Senior Vice President & Managing Director

STATE OF ARIZONA____ )
异地) ss.
County of Maricopa ________)

The foregoing instrument was acknowledged before me this _______ day of ________________, 2017 by Matthew Mooney, Senior Vice President & Managing Director of Cousins Fund II Phoenix IV, LLC, a Delaware limited liability company, for and on behalf thereof.

____________________________
Notary Public

Notary Seal:
Exhibit A
The “Premises”

Parcel R-2, of Hayden Ferry Lakeside West, according to the plat of record in the Office of the County Recorder of Maricopa County, Arizona, recorded in Book 703 of Maps, Page 2.
Exhibit B
The “Deed”

WHEN RECORDED, RETURN TO:
City of Tempe Basket

EXEMPT from the
requirement for an
Affidavit per
A.R.S. § 11-1134(A)(3)

QUIT CLAIM DEED

For 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, CITY OF TEMPE, an Arizona municipal corporation (“Grantor”), does hereby convey, remise, release, sell and quit-claim to Cousins Fund II Phoenix IV, LLC, a Delaware limited liability company, that certain real property described on Exhibit A attached hereto, including all improvements thereon and all appurtenances and privileges thereto (the “Property”).

Dated __________________, 2017.

THE CITY OF TEMPE, an Arizona municipal corporation

By: ____________________________

Name: __________________________

Title: __________________________

ATTEST:

______________________________
Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:

______________________________
Judith R. Bauman, City Attorney
STATE OF ARIZONA

) ss.

County of Maricopa

The foregoing instrument was acknowledged before me this ____ day of __________, 2017 by ____________________________ the _________________ of

THE CITY OF TEMPE, an Arizona municipal corporation, for and on behalf of said City.

____________________________________

Notary Public

Notary Seal:
EXHIBIT “A”
to Quit Claim Deed

Parcel R-2, of Hayden Ferry Lakeside West, according to the plat of record in the Office of the County Recorder of Maricopa County, Arizona, recorded in Book 703 of Maps, Page 2.
Exhibit C
The “Termination”

WHEN RECORDED, RETURN TO:
City of Tempe Basket

NOTICE OF TERMINATION OF LEASE

THIS NOTICE OF TERMINATION OF LEASE (this “Termination”) is made and entered into to be effective _________________, 2017 by and between THE CITY OF TEMPE, an Arizona municipal corporation (“Landlord”), and Cousins Fund II Phoenix IV, LLC, a Delaware limited liability company formerly known as PKY Fund II Phoenix IV, LLC (“Tenant”), as the successor-in-interest to Hayden Ferry Lakeside, LLC (“HFL”) and is as follows:

W I T N E S S E T H:

WHEREAS, Landlord and HFL previously executed that certain Lease, dated April 23, 2009 (the “Lease”), and that certain Memorandum of Lease dated April 23, 2009, which was recorded in the Official Records of Maricopa County Recorder on June 10, 2009 as Document No. 2009-0527342, and which was amended pursuant to an amendment recorded on July 16, 2010 in the Official Records of Maricopa County Recorder as Document No. 2010-0607126 (collectively, the “Memorandum”) with respect to the real property described therein (the “Premises”); and

WHEREAS, Tenant is the successor-in-interest to HFL (“HFL”), as tenant under the Lease;

WHEREAS, the term of the Lease has expired and simultaneously with execution of this Termination, Landlord has conveyed the Premises to Tenant and, therefore, the parties desire to give constructive notice of the termination of the Lease to all parties dealing with the Premises.

NOW, THEREFORE, the parties hereby acknowledge that the Lease has expired, and is of no further force or effect. The parties shall have no further obligations or liability whatsoever arising under the Lease, except that all liability and indemnification provisions of the Lease relating to periods prior to the termination date and which survive termination of the Lease by the terms thereof shall fully apply notwithstanding the termination of the Lease. Landlord hereby fully and absolutely releases and disclaims and assigns to Tenant any and all of its right, title and/or interest in
and to the Premises, and hereby assigns to Tenant all of Landlord’s right, title and interest, if any, in and to all licenses, permits, guaranties and warranties relating to the ownership or operation of the Premises to which the Landlord is a party and which are assignable by Landlord.

This Notice of Termination shall be governed by the laws of the State of Arizona. Each party and the person signing for each party represents and warrants to the other that it has the full right, ability and power to enter into this Termination, and each party will indemnify and hold harmless the other from and against any and all liability, losses, costs, damages, claims, expenses and attorneys’ fees of any kind incurred as a consequence or result of the breach by the representing party of the representation and warranty contained in this Termination. This Termination may be signed in counterparts, which when taken together shall constitute the entire agreement between the parties.

IN WITNESS WHEREOF, the parties have executed this Notice of Termination to be effective as of the date set forth above.

LANDLORD:

THE CITY OF TEMPE, an Arizona municipal corporation

By:_____________________________

Name:_________________________

Title:___________________________

ATTEST:

______________________________
Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:

______________________________
Judith R. Baumann, City Attorney
STATE OF ARIZONA

County of Maricopa

The foregoing instrument was acknowledged before me this ____ day of ________, 2017 by _________________ the ___________ _________ of the City of Tempe, an Arizona municipal corporation, for and on behalf of said City.

_____________________________________
Notary Public

Notary Seal:
TENANT:

Cousins Fund II Phoenix IV, LLC, a Delaware limited liability company, successor-in-interest to Hayden Ferry Lakeside, LLC

By: Matthew Mooney  
Senior Vice President & Managing Director

STATE OF ARIZONA )
) ss.
County of Maricopa )

The foregoing instrument was acknowledged before me this _____ day of ______________, 2017 by Matthew Mooney, Senior Vice President & Managing Director of Cousins Fund II Phoenix IV, LLC, a Delaware limited liability company, for and on behalf thereof

__________________________________________
Notary Public

Notary Seal: