

When Recorded, Return To:

City of Tempe Basket

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (the “**First Amendment**”) is entered into this ____ day of _____, 2016, by, between and among the CITY OF TEMPE, ARIZONA, an Arizona municipal corporation (the “**City**”); and LCV PROPERTY, INC., a Delaware corporation (“**LCV**”) and TEMPE INVESTORS, LLC, a Delaware limited liability company (“**Investors**”). The City, LCV, and Investors are sometimes referred to herein collectively as the “**Parties**,” or individually as a “**Party**.”

RECITALS

A. The Parties previously entered that certain Development Agreement [C2015-288-48-2-1] dated as of December 17, 2015, and recorded on January 14, 2016, in the Official Records of Maricopa County Recorder of Arizona, as Instrument No. 2016-0025590 (the “Original Development Agreement”).

B. The Parties desire to amend the Original Development Agreement to further refine the commercial development of the Property which is the subject of the Original Development Agreement.

AGREEMENTS

Now, therefore, in consideration of the foregoing recitals and representations and the mutual promises contained in this First Amendment, the Parties agree as follows:

1. **Definitions.** In this First Amendment, the Definitions set forth in the Original Development Agreement shall apply.

2. **Recitals.** The recitals set forth above are acknowledged by the Parties to be true and correct and are incorporated by this reference.

3. **Signage.** Section 3.1(e) of the Original Development Agreement is amended by adding a new item (xi) to read:

(xi) The Parties hereby acknowledge that the distinctive location of the Commercial Parcel, and its redevelopment to a mixed-use office, retail, and commercial development present a unique opportunity to enhance the visibility and high-profile nature of the Commercial Parcel. As a result, the Parties acknowledge and agree that appropriate signage will and should be an integral part of the Commercial Improvements and will be necessary to attract high quality employers and tenants to the Commercial Parcel. In consideration of the above, City agrees to work with the Developer of the Commercial Parcel to coordinate efforts to agree on appropriate signage for the Commercial Parcel. Without limiting the generality of the foregoing, City specifically agrees that the Developer of the Commercial

Parcel may erect and maintain the permanent signage identified in Exhibit C-6. The highest point of this signage shall in no event exceed the overall height of the building. Notwithstanding such approval, the City's approval is conditioned upon the Developer of the Commercial Parcel submitting all applications, plans and other information as City requires in accordance with City's normal process for approving signs and issuing signage permits, and the payment by the Developer of the Commercial Parcel of all fees associated therewith. City authorizes and empowers the Director of Community Development to consent to additional reasonable requests of Developer for approval of signs that deviate from Exhibit C-6 to the extent such deviations do not specifically require the approval of the City Council under the City of Tempe Zoning and Development Code.

4. **Site Plan.** Exhibit B of the Original Development Agreement is hereby amended by adding Exhibit B-1, which shall be a part of Exhibit B of the Original Development Agreement. Exhibit B-1 is attached and hereby incorporated into both the Original Development Agreement and this First Amendment by this reference. In the Original Development Agreement, reference to "Exhibit B" and "Site Plan" shall be inclusive of Exhibit B-1.

5. **General.**

5.1 **Continued Effectiveness.** Except as amended hereby, the Original Development Agreement shall remain in full force and effect. Nothing in this First Amendment shall affect the continued effectiveness of the Original Development Agreement.

5.2 **Arizona Law.** This First Amendment shall be governed by, and construed in accordance with, the laws of the State of Arizona.

5.3 **Captions.** The descriptive headings of the Articles and the Sections of this First Amendment are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

5.4 **No Agency Created.** Nothing contained in this First Amendment creates any partnership, joint venture, or agency relationship among or between any of the Parties. No term or provision of this First Amendment is intended to be for the benefit of any person, firm, organization, or corporation not a party hereto, and no other person, firm, organization, or corporation may have any right or cause of action hereunder.

5.5 **Additional Documents.** The Parties agree to execute and deliver all documents and take all actions reasonably necessary to implement this First Amendment.

6. **Recordation.** Within ten (10) days after this First Amendment has been approved by the City and executed by the Parties, the City shall cause this First Amendment to be recorded in the Official Records of Maricopa County, Arizona.

Signatures and notary jurats are on the following three (3) pages.

INVESTORS:

TEMPE INVESTORS, LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by _____, the _____ of Tempe Investors, LLC, a Delaware limited liability company.

Notary Public

My commission expires:

CITY:

CITY OF TEMPE, an Arizona municipal corporation

By: _____
Mark Mitchell

Its: Mayor

ATTEST:

By: _____
Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:

By: _____
Judith R. Baumann, City Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by _____, the _____ of the City of Tempe, who acknowledged that he/she signed the foregoing instrument on behalf of the City.

Notary Public

My commission expires:

**EXHIBIT B-1
SITE PLAN**

EXHIBIT C-6
SIGNAGE