

FIRST AMENDMENT TO SETTLEMENT AGREEMENT AND RELEASE

This First Amendment to Settlement Agreement and Release (the “*First Amendment—Settlement*”) is made and entered into by and among the City of Tempe, Arizona (the “*City*”), City officials, Council members and former Council members David Nakagawara, Mark Mitchell, Onnie Shekerjian, Robin Arredondo-Savage, Shana Ellis, Kolby Granville, Joel Navarro, and Corey Woods (collectively, with the City, the “*City Defendants*”), Tempe Investors, LLC (“*Tempe Investors*”) and LCV Property Inc. (“*LCV*”). The City Defendants, Tempe Investors and LCV are sometimes referred to collectively as the “*Parties*” or; individually, as a “*Party*.” Tempe Investors and LCV are also sometimes referred to collectively as “*Developer*.”

RECITALS

A. The Parties previously entered that certain Settlement Agreement and Release, dated December 17, 2015, (“*Original Settlement Agreement*”) which resolved a civil action in the Arizona Superior Court in and for the County of Maricopa against the City and the other City Defendants (*Tempe Investors, LLC, et al. v. City of Tempe, et al.*, Case No. CV2014-013173).

B. Under the Original Settlement Agreement, the Parties agreed to certain terms specifying the manner of development of certain improved real property, commonly known as Lake Country Village, located in the vicinity of the intersection of East Baseline Road and Lakeshore Drive in Tempe, Arizona, and more particularly described by the legal description in Section 1 of Tempe City Ordinance No. 2010.08 (“*Property*”).

C. The Parties desire to amend the Original Settlement Agreement to further refine the commercial development of the Property.

AGREEMENTS

NOW, THEREFORE, in consideration of the mutual promises, undertakings, and agreements provided for in this First Amendment—Settlement, the receipt and sufficiency of which consideration is hereby acknowledged, the Parties agree as follows.

1. Recitals, Exhibits, and Definitions. Recitals “A” through “C” (the “*Recitals*”) of this First Amendment—Settlement are incorporated by reference as if fully set forth herein. Capitalized terms not otherwise defined in this First Amendment—Settlement shall have the meanings ascribed to them in 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”).

2. Amendment of Section 2(c). Section 2(c) of the Original Settlement Agreement is hereby deleted in its entirety and replaced with a new Section 2(c) to read as follows:

- c. Development of the residential portion of the Property and of the Paseo within the residential portion of the Property shall be subject to, and shall in all respects comply with: (i) the Amended Planned Area Development Overlay for Lake Country Village (“*Amended PAD*”), which shall be in form and content identical to “Exhibit 3”; (ii) the Amended Subdivision Plat for Lake Country Village (the “*Amended Subdivision Plat*”), which shall be in form and content identical to “Exhibit 4”; and (iii) the Development Agreement. Development of the commercial portion of the Property shall conform to and fully comply with certain other requirements set forth in the Development Agreement, including but not limited to (i) the requirement that parking in the commercial portion of the Property shall not be adjacent to Baseline Road (except for up to 15 parking spaces associated with, and appurtenant to, the relocated Wendy’s drive-through restaurant); (ii) the requirement that parking in the commercial portion of the Property shall not be adjacent to the Paseo (except for up to 11 parking spaces along the western side of the Paseo and up to 4 parking spaces on the eastern side of the Paseo, all in the vicinity of the Roundabout and away from Baseline Road); and (iii) the requirement that there shall be no entrance from the Paseo to the parking areas in the commercial portion of the Property except at the north end of the commercial Property in the vicinity of the Roundabout. Subject to the foregoing portions of this Section 2(c), development of the commercial portion of the Property shall be substantially as shown in Exhibit 1, Exhibit 3 and Exhibit 4.

8. General.

- a. Except as amended hereby, the Original Settlement Agreement shall remain in full force and effect. Nothing in this First Amendment—

Settlement shall affect the continued effectiveness of the Original Settlement Agreement.

- b. This First Amendment—Settlement shall be governed by, and construed in accordance with, the laws of the State of Arizona.
- c. The descriptive headings of the Articles and the Sections of this First Amendment—Settlement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.
- d. Nothing contained in this First Amendment—Settlement creates any partnership, joint venture, or agency relationship among or between any of the Parties. No term or provision of this First Amendment—Settlement 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.
- e. The Parties agree to execute and deliver all documents and take all actions reasonably necessary to implement this First Amendment—Settlement.

[Signatures appear on the following pages]

AGREED TO this _____ day of _____, 2016 by:

TEMPE INVESTORS, LLC,
a Delaware limited liability company,

LCV PROPERTY INC.,
a Delaware corporation,

By _____
Its _____

By _____
Its _____

CITY OF TEMPE, an Arizona
municipal corporation,

By _____
Its _____

ATTEST:

By _____
City Clerk

APPROVED AS TO FORM:

By _____
City Attorney

David Nakagawara

Shana Ellis

Mark Mitchell

Kolby Granville

Onnie Shekerjian

Joel Navarro

Robin Arredondo-Savage

Corey Woods