

WHEN RECORDED, RETURN TO:

City of Tempe
31 East Fifth Street
Tempe, Arizona 85281

DEVELOPMENT AND DISPOSITION AGREEMENT

[C2016-___]

THIS DEVELOPMENT AND DISPOSITION AGREEMENT (“Agreement”) is made as of the ____ day of _____, 2016 (the “Effective Date”) by and between the CITY OF TEMPE, an Arizona municipal corporation (“**City**”) and EASTLINE LAND VENTURES LLC, a Delaware limited liability company (“**Developer**”).

RECITALS

A. Developer owns or has an interest in the real property within the City of Tempe more particularly described and depicted in **Exhibit A** attached hereto (the “**Property**”). The Property includes multiple parcels along the north and south side of Apache Boulevard from Smith Road east to the intersection with River Drive. Each owner of any portion of the Property in which Developer has an interest but does not own has consented to the recordation of this Agreement on its property.

B. Developer intends to develop the Property as an urban village that includes for-sale and rental residential dwelling units, community gathering spaces, neighborhood-serving retail, and other uses allowed in the MU-4 zoning district in a community to be known as “Eastline Village.”

C. The Property is included in the City’s Apache Boulevard Redevelopment Project Area, which was adopted by the City on December 11, 1997 by Resolution No. 97.75 (“Redevelopment Area”).

D. The City owns approximately 1.4 acres, in three separate parcels, adjacent to portions of the Property and described in **Exhibit B** attached hereto (the “City Property”). Pursuant to Resolution No. R2016.15, City selected Developer as the best qualified to successfully develop the City Property, and authorized the City Manager to negotiate with Developer for the purchase and development of the City Property as part of Eastline Village. This Agreement constitutes the development and disposition agreement contemplated by Resolution No. R2016.15.

E. City and Developer hereby acknowledge and agree that significant benefits will accrue to City from development of Eastline Village by Developer, including, without limitation, increased tax revenues and increased opportunities for employment within the City and

development that meets the goals of the Redevelopment Area and enhances nearby property values, 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. §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 the terms defined elsewhere in this Agreement the following terms shall have the meanings set forth below whenever used in this Agreement, except where the context clearly indicates otherwise:

1.1 “**Approved Exceptions**” means those matters reflected on the Title Commitment referenced in Section 3.2(b) hereof which have been approved by Developer in accordance with the procedure outlined in said Section 3.2(b).

1.2 “**Certificate of Occupancy**” means either (a) a certificate of occupancy (final, temporary, shell, conditional, or otherwise) for any buildings or improvements constructed on the Property issued by the Community Development Department and City Public Works Department of the City of Tempe, or (b) a certificate of completion substantially in the form attached as **Exhibit L** issued by the City of Tempe Community Development Department certifying that a building or other improvement constructed on the Property has been substantially completed.

1.3 “**City**” means the City of Tempe, Arizona, an Arizona municipal corporation, and any successor public body or entity.

1.4 “**City Property**” means the approximately 1.4 acres of real property more particularly described in **Exhibit B** attached hereto, consisting of three parcels, one of which is located in Phase I of the Project (the “**Phase I City Property**”), and two of which are located in Phase III of the Project (the “**Phase III City Property**”).

1.5 “**Closing**” means the consummation of the acquisition of any Closing Parcel, as evidenced by the delivery of all required funds and documents to Escrow Agent and recording of a deed.

1.6 “**Closing Parcel**” means the Phase I City Property and one or both of the Phase III City Properties described on Exhibit B hereto, and identified as the portion of the City

Property that Developer elects to purchase from time to time in accordance with this Agreement and as described in an Exercise Notice given pursuant to Section 3.5.

1.7 “**Commencement Date**” means the date on which the Developer submits its request to the Community Development Department for a building permit for the Phase of the Development of which the City Property is a part.

1.8 “**Completion**” (or any variation such as “Complete”) means with respect to the Project or any component thereof, issuance of a Certificate of Occupancy therefor, or, with respect to the Installation Work, any additional items required by Sections 4.9 or 4.10.

1.9 “**Developer**” means Eastline Land Ventures LLC, an Arizona limited liability company, and its successors and assigns permitted in accordance with Section 6.7 below.

1.10 “**Due Diligence Period**” means, with respect to the Phase I City Property, the period of time commencing with the Effective Date and ending on the 60th day following the Effective Date and, with respect to the Phase III City Property, the period of time commencing on Developer’s issuance of an Exercise Notice and ending on the 60th day following the issuance of such Exercise Notice.

1.11 “**Escrow Agent**” and “**Title Company**” means Fidelity National Title Insurance Company, 60 Rio Salado Parkway, 11th Floor, Tempe, AZ 85281.

1.12 “**Force Majeure Delay**” means a delay caused by fire, explosion or other casualty; earthquake, lightning, and other severe or unusual weather conditions for Tempe, AZ or other acts of God; acts of public enemies, war, terrorism, riot, insurrection; governmental regulations of the sale of materials and supplies or the transportation thereof; unusual delays in transportation; strikes, lock outs or boycotts directly affecting the work of construction; embargoes and shortages of material, energy, fuel or labor resulting directly from lack of market availability; governmental control or diversion, delays in approvals required for the Project; concealed conditions in the soil; action or inaction of governmental or quasi-governmental authorities (including any utility companies), including delays in performing any work on or about the Property that is a necessary precedent to construction of the Project; and other similar causes beyond Developer’s reasonable control, excluding financial difficulty or inability.

1.13 “**Improvements**” means all public and private improvements that may be constructed from time to time on a particular Phase of the Property, including, without limitation, all structures, buildings, roads, driveways, parking areas, walls, landscaping and other improvements of any type or kind, or any other alteration built by Developer or City, as the case may be, pursuant to the terms of this Agreement.

1.14 “**Installation Costs**” means all costs actually incurred and paid by Developer to third parties for work performed for the Installation Work, as evidenced by invoices, receipts, contracts and such other evidence of payment and performance of the work as City may reasonably request. Installation Costs may only include all costs, expenses, fees and charges incurred and actually paid to contractors, engineers, surveyors, governmental agencies, and other third parties for materials, labor, design, engineering, surveying, site excavation and preparation, and other direct costs and expenses reasonably necessary for construction of the water line and

sewer line, but excluding any general conditions and fees paid to Developer, attorney's fees and any other indirect costs, expenses or fees.

1.15 “**Installation Work**” means work performed for those activities described in Sections 4.9 and 4.10 hereof.

1.16 “**Option**” means the option to acquire the City Property granted to Developer pursuant to Section 3.4 hereof.

1.17 “**Option Expiration Date**” means the date on which this Agreement is terminated or expires.

1.18 “**PAD**” means a Planned Area Development for the Property approved by City pursuant to Case No. PLI60097, together with amendments hereafter approved by City with respect to the development of the Project or any Phase of the Project that sets forth the specific uses, densities, features and other development matters. References to the PAD shall mean the PAD, as approved by the City Council, together with all stipulations and other provisions contained in the ordinance approving the PAD, as may be amended from time to time.

1.19 “**Parcel**” means a specific portion of the Property which shall be all or a portion of the Property owned by Developer, City or other public or private third parties not part of this Agreement.

1.20 “**Phase**” means each separate component or portion of the Project which is or may be developed by Developer pursuant to this Agreement. For example, a Phase may include all or a portion of the residential components of the Project, all or a portion of the retail components of the Project, and/or the Parking Garage (as hereinafter described).

1.21 “**Project**” means the mixed-use development of the Property described in Recital B and in the PAD.

1.22 “**Property**” means the real property described and depicted in Recital A; provided that once Developer obtains title to the City Property, the term “Property” shall also include the City Property; and to the extent Developer acquires title to any Additional Property as contemplated by and in accordance with, Section 4.2, then upon completion of the procedures outlined in said Section 4.2, such Additional Property shall be included within the term “Property”.

1.23 “**Schedule of Performance**” means the Schedule of Performance attached hereto as **Exhibit C**.

ARTICLE II **DEVELOPMENT PLAN**

2.1 Duration of Development Agreement. Unless sooner terminated, the term of this Agreement shall commence on the Effective Date and continue until December 31, 2030 (“**Term**”).

2.2 General Cooperation. City agrees to use its reasonable best efforts to assist Developer and its affiliates in the development of the Project, including any assistance with other governmental agencies as appropriate. To further the commitment of City and Developer to cooperate in the implementation of this Agreement, City shall designate and appoint a representative to act as liaison between the City and its various departments and Developer shall designate and appoint a representative to act on its behalf under this Agreement. The initial representative for the City (“**City Representative**”) shall be Larry Schmalz, and the initial representative for Developer (“**Developer Representative**”) shall be Eric Carlson. Both the City Representative and the Developer Representative shall be available at reasonable times to discuss and review the performance of the City and Developer under this Agreement and the development of the Property. A party may change its Representative at any time by giving notice to the other party as provided in Section 6.5.

ARTICLE III **OPTION AND PURCHASE PROVISIONS**

3.1 Conveyance of City Property. The City Property will be conveyed by City to Developer as construction of the Project progresses. Developer shall only be entitled to acquire title to those portions of the City Property for which the Commencement Date has occurred, as hereafter provided.

3.2 Due Diligence; Access Rights. Except as specifically set forth in this Agreement, the City Property and all improvements thereon shall be conveyed in their existing “AS IS,” “WHERE IS” condition subject only to Approved Exceptions (as hereafter defined).

(a) Survey; Investigation. During the Due Diligence Period and prior to conveyance, at its sole cost and expense, Developer shall have the right to survey and examine the City Property and any improvements thereon, including, but not limited to, the physical condition of the City Property and any improvements, the availability of access, water, sewer and other utilities and services and the costs of securing same, the existence of hazardous or toxic substances or pollutants, and the zoning and applicable governmental regulations, statutes and ordinances pertaining to the City Property, at any time, with any persons whom it shall designate, including, without limitation of the foregoing, appraisers, contractors, engineers and soil testing personnel. On Developer’s execution of a right of entry agreement in form and substance satisfactory to City, City shall permit access to the City Property to Developer and any persons designated by Developer, and City shall afford them the opportunity to conduct, prepare and perform any surveys, appraisals, and any hydrological, topographical, environmental, traffic, feasibility and other engineering tests, studies, and reports upon the City Property that Developer deems necessary or appropriate. Upon completion of all such tests, studies and reports, and in the event Developer does not proceed to acquire title to the City Property, Developer shall fill all holes produced by it and restore the City Property to its condition existing prior to any tests or inspections. Developer shall indemnify, protect, defend and hold City harmless from all claims, costs, fees or liability of any kind arising out of the acts of Developer or Developer’s agents pursuant to this Section 3.2; except that Developer shall have no liability for discovery of pre-existing conditions (e.g. Developer shall not be responsible for remediating environmental contamination discovered, but not caused or exacerbated, by Developer).

(b) Status of Title. With respect to the Phase I City Property, within ten (10) days after the Effective Date, Developer shall cause Escrow Agent to issue a current commitment for title insurance (the “**Title Commitment**”) for the Phase I City Property disclosing all matters of record which relate to the title to the Phase I City Property, and a legible copy of each instrument and document referred to in the Title Commitment. With respect to the Phase III City Property, within ten (10) days after the Developer’s issuance of an Exercise Notice, Developer shall cause Escrow Agent to issue a Title Commitment for the portion of the Phase III City Property for which the Exercise Notice has been issued, disclosing all matters of record which relate to the title to the Phase III City Property, and a legible copy of each instrument and document referred to in the Title Commitment. During the Due Diligence Period, Developer may object in writing to any matter disclosed by the Title Commitment. If Developer fails to object during the Due Diligence Period, the condition of title to the City Property shall be deemed approved. City shall not be obligated to cure any objection, however, City agrees to cooperate with Developer to remove any matters over which it has control that may impair Developer’s ability to develop the City Property and agrees to notify Developer in writing whether it will or will not exercise reasonable good faith efforts to remove the objections within ten (10) days after receipt of the written objections. The parties acknowledge that their inability to satisfactorily resolve any title objections may impair the future development of the City Property.

(c) Reports. Within ten (10) days after the Effective Date, City shall deliver to Developer copies of all relevant surveys, reports, studies, documents, approvals, drawings, plats, plans, specifications, filings or similar writings (collectively “**Reports**”), in City’s possession on the Effective Date, pertaining to the City Property or its development thereof, including but not limited to all Reports pertaining to drainage, soil, flood, hazardous or toxic substances or pollutants, archaeological or environmental conditions, or power or transmission lines on or adjacent to the City Property, as well as all topographical surveys, plans and specifications for utilities or roadways, preliminary title reports previously received together with underlying documents pertaining thereto, subdivision reports, and approvals received from any city or agency. Any such Reports not in City’s possession concurrently with the execution hereof but which come into City’s possession during the Term of this Agreement shall be delivered to Developer promptly after receipt. If this Agreement is terminated for any reason, Developer shall return the Reports to City. Developer agrees that it shall not attempt to assert any liability against the City by reason of the City’s having furnished any data or information pursuant to the terms of this Agreement or by reason of any such data or information becoming or proving to have been incorrect or inaccurate in any respect.

3.3 Conveyances As Is. Prior to acquisition of title to any Closing Parcel, Developer shall have made its own examination, inspection and investigation of the condition of such Closing Parcel (including, without limitation, the subsurface thereof, all soil, environmental, engineering and other conditions which may affect construction thereon and/or the development thereof) as it deems necessary or appropriate. Except as provided in this Agreement, the Deed and any other documents executed and delivered by City at any Closing, Developer is entering into this Agreement and purchasing the City Property based upon the results of such inspections and investigations and not in reliance on any statements, representations, or agreements of City not contained in this Agreement, the Deed and any other documents executed and delivered by City at any Closing. Developer acknowledges and agrees that it is acquiring the City Property in

an “AS IS” and “WHERE IS” condition, with all faults, except for the representations, warranties and covenants of City as stated in this Agreement, the Deed and any other documents executed and delivered by City at any Closing and that City shall not be responsible or liable to Developer for any conditions affecting the City Property, except for the express representations, covenants and warranties of City set forth in this Agreement, the Deed and any other documents executed and delivered by City at any Closing. Other than with respect to claims arising from City’s breach of this Agreement, the Deed and any other documents executed and delivered by City at any Closing, and except for claims arising as a result of the acts of City or its Council members, officers, employees, representatives and agents which affect the condition of or title to the Property, Developer or anyone claiming by, through or under Developer, hereby fully releases City, its Council members, officers, employees, representatives and agents from any and all claims that it may now have or hereafter acquire against the indemnified parties, for any cost, loss, liability, damage, expense, demand, action or cause of action arising from or related to the condition of the City Property. Developer further acknowledges and agrees that this release shall be given full force and effect according to each of its expressed terms and provisions, including, but not limited to, those relating to unknown and unsuspected claims, damages and causes of action.

3.4 Grant of Option to Acquire Fee Title. City hereby grants Developer an option to purchase the City Property or portions thereof (as hereafter specified), pursuant to one or more transactions on the following terms and subject to the conditions set forth in this Agreement. As Developer acquires title to the City Property, such property shall automatically become part of the “Property” for purposes of this Agreement, without further amendment.

(a) Phase I City Property. As long as no then-current Developer Default is continuing, Developer may exercise the Option to acquire the Phase I City Property at any time after the Effective Date until 12:00 Noon, Phoenix, Arizona time on the Option Expiration Date. The Phase I City Property must be acquired in its entirety in a single transaction.

(b) Phase III City Property. As long as no then-current Developer Default is continuing, Developer may exercise the Option to acquire one or both parcels of the Phase III City Property at any time after the Effective Date until 12:00 Noon, Phoenix, Arizona time on the Option Expiration Date. The Phase III City Property may be acquired in its entirety in a single transaction, or in two transactions.

3.5 General Terms and Conditions of Option Exercise.

(a) To exercise the Option as to any Closing Parcel, Developer shall provide City and Escrow Agent with a formal written notice of exercise together with a description of the Closing Parcel to be acquired, a calculation of the Purchase Price for the Closing Parcel, the date on which Developer desires to close, and an earnest money deposit of \$50,000.00 by wire transfer of immediately available Federal funds (the “**Exercise Notice**”). The earnest money deposit (and any interest thereon) shall be credited against the Purchase Price at Closing, shall be fully nonrefundable and paid to City as liquidated damages if, after giving an Exercise Notice, Developer fails to close on the Closing Parcel for any reason other than City’s inability to deliver good title or otherwise fails to perform any of its covenants or obligations under this Agreement that are to be performed by City prior to the Closing, in which event the earnest money deposit

will be returned to Developer. In the event any Closing fails to occur, and this Agreement is not terminated, the Closing Parcel identified in the Exercise Notice shall remain subject to the Option, and any forfeited earnest money deposit may be applied by Developer as a credit against the Purchase Price for any other Closing Parcel; if any Closing fails to occur and this Agreement is terminated in accordance with Article 10, the earnest money shall be paid to City as liquidated damages.

(b) As and when Developer exercises the Option, the Closing of the purchase and sale of the Closing Parcel shall occur on the date specified by Developer in the Exercise Notice, which shall not be later than ninety (90) days after the date of the Exercise Notice, at the office of Escrow Agent, or at a location within the State of Arizona as may be agreed upon by City and Developer.

(c) Upon the Option Expiration Date, this Agreement shall become null and void and of no further force or effect except as provided in Article V of this Agreement and except for those provisions designated in this Agreement to survive.

3.6 Escrow. As and when Developer gives an Exercise Notice, then this Agreement shall constitute a contract of purchase and sale between City as seller and Developer as buyer, on the terms and conditions stated herein, and escrow instructions to Escrow Agent. To facilitate the consummation of the conveyances contemplated herein, concurrently with issuance of an Exercise Notice, City and Developer shall open an escrow with Escrow Agent, who shall hold all documents, receive all monies, and perform such other acts as are normal and customary for a commercial escrow agent in similar transactions. If required by Escrow Agent, the parties shall execute Escrow Agent's usual form of printed escrow instructions for transactions of this type; provided, however, that in the event of any conflict or inconsistency between such form escrow instructions and this Agreement, the provisions of this Agreement shall prevail.

3.7 Purchase Price. The Purchase Price for any portion of the City Property (the "**Purchase Price**") shall be equal to the product obtained by multiplying \$25.06 (the "**Per Square Foot Price**") by the gross square footage of the Closing Parcel. Gross square footage shall be determined by calculating the gross square footage of the entire Closing Parcel (exclusive of existing right-of-way). The Purchase Price for each Closing Parcel shall be paid in full in cash at each Closing.

On the fifth anniversary of the Effective Date (the "**Adjustment Date**"), the Per Square Foot Price shall be increased by an amount equal to 5% of its previous level. Thereafter, on each subsequent anniversary of the Adjustment Date, the Per Square Foot Price shall be increased by an amount equal to 2% of its previous level until Developer has acquired all of the City Property.

The Purchase Price shall be reduced by the lesser of (x) all Installation Costs actually incurred by Developer prior to the Closing and not previously applied to the Purchase Price for any other Closing Parcel, or (y) the sum of \$289,517 (the "**Installation Cost Cap**"). At least annually during the term of this Agreement, Developer shall submit to City documentation reasonably satisfactory to City as to all Installation Costs previously incurred by Developer, which documentation shall include but not be limited to invoices issued by third

parties. If the Installation Costs allocable to a particular Closing Parcel exceed the Purchase Price for such parcel, Developer shall be entitled to a future credit and City shall not ever be required to make any payment to Developer as a result of the application of Installation Costs to the Purchase Price or to refund or reimburse Developer for any Installation Costs.

City understands that the Installation Work is not likely to be completed prior to the first Closing. Therefore, at the first Closing, Escrow Agent shall establish a new escrow (the "Infrastructure Escrow") and deposit therein from the Purchase Price an amount equal to the Installation Cost Cap. After the first Closing, when Developer is prepared to enter into a guaranteed maximum price contract for all of the Installation Work (the "GMP Contract"), then Developer shall provide to City and Escrow Agent a copy of such GMP Contract, and (i) if the amount equal to 110% of such GMP Contract is less than the Installation Cost Cap, then Escrow Agent shall retain in the Infrastructure Escrow an amount equal to 110% of the GMP Contract and immediately return all excess sums (if any) deposited in the Infrastructure Escrow to City, or (ii) if the amount equal to 110% of the GMP Contract is more than the Installation Cost Cap, then concurrently with delivery of the copy of the GMP Contract, Developer shall deliver to Escrow Agent the amount of the shortfall so that the Infrastructure Escrow is funded with 110% of the amount of the GMP Contract. Escrow Agent will hold and disburse the funds in the Infrastructure Escrow as follows:

(i) Escrow Agent shall disburse funds from the Infrastructure Escrow to Developer not more often than once each calendar month on the next Business Day after Escrow Agent's receipt of a notice from Developer specifying the amount to be released to Developer. Concurrently with each request for funds, Developer shall provide to Escrow Agent, for immediate delivery to City, a report that includes: (1) a description of the work most recently performed and the status of completion of the Installation Work; (2) a statement of the amount of all sums previously disbursed to Developer from the Infrastructure Escrow and the amount of Developer's current request for disbursement; (3) Developer's good faith estimate of the cost to complete the Installation Work; and (4) copies of the disbursement request and lien waivers submitted by Developer's contractor in connection with the Installation Work for which payment is being requested; and (5) evidence that the Installation Work completed to date has been inspected and approved by City of Tempe Public Works personnel.

(ii) Within ten (10) days after the Installation Work is Complete, Developer and City shall deliver a notice to Escrow Agent authorizing and directing Escrow Agent to disburse any remaining balance in the Infrastructure Escrow, either to City, if the Installation Costs were equal to or less than the Installation Cost Cap, or to the Developer, if the Installation Costs were greater than the Installation Cost Cap, on the next business day after Escrow Agent receives the notice.

(iii) Developer shall have the Installation Work inspected periodically by City of Tempe Public Works personnel, who shall review the status of construction and Developer's estimate of completion to determine the accuracy of such estimates. Such inspections shall be conducted at intervals mutually agreed on by City and Developer, but not less than monthly. Developer shall cooperate with such personnel as

reasonably necessary to schedule and complete the inspections, to determine the status of the Installation Work and to verify the remaining balance of Installation Costs. If City reasonably determines that the remaining Installation Costs exceed the amount on deposit in the Infrastructure Escrow, then City and Developer shall confer and agree on a course of action, after which Developer shall deposit into the Infrastructure Escrow such amount as may be necessary to cause the amount on deposit to equal the remaining unpaid Installation Costs.

If requested by Escrow Agent, Developer and City shall enter into escrow instructions for the Infrastructure Escrow at the Closing in Escrow Agent's customary form, with such changes as are mutually acceptable to Developer and City consistent with the foregoing.

3.8 Other Closing Matters.

(a) Purchase Price. At each Closing, Developer shall pay the Purchase Price for the Closing Parcel being acquired, calculated in accordance with Section 3.7, together with all other costs charged to Developer at Closing, in cash or by wire transfer of immediately available Federal funds.

(b) Form of Deed; Conveyance. At each Closing, fee simple title to the applicable Closing Parcel shall be conveyed by City to Developer pursuant to a Deed executed by the City, and any other instruments of assignment or transfer that may be necessary or appropriate, free and clear of all liens, restrictions, reservations, encumbrances and exceptions to title whatsoever, except only Approved Exceptions. City shall not sell, convey, assign, lease or otherwise transfer all or any part of the City Property, or cause or permit any new liability, encumbrance or obligation to be placed or imposed upon all or any part of the City Property from the Effective Date until the Option Expiration Date, without the prior approval of Developer, which approval will not be unreasonably withheld, delayed or conditioned.

(c) Prorations. All real property taxes and assessments (if any) shall be prorated between City and Developer as of the date of Closing and conveyance of any Closing Parcel to Developer, based upon the latest available information.

(d) Escrow Fees. Developer shall pay all costs, expenses and fees (including title insurance premiums) associated with each Closing. Developer shall also pay all properly chargeable expenses incurred by the Escrow Agent to the date of cancellation if it fails to close after giving an Exercise Notice.

3.9 Title Insurance. At each Closing, City shall cause to be delivered to Developer, or cause the Title Company to give its irrevocable commitment to deliver to Developer, an ALTA extended owner's policy of title insurance ("**Title Policy**") issued by the Escrow Agent in the full amount of the Purchase Price being paid to City at such Closing, with such endorsements thereto as requested by Developer, which shall insure Developer as the owner of the Closing Parcel subject only to the Approved Exceptions. Developer shall pay the cost of such title insurance policy and the cost of all endorsements to such policy. City and Developer shall each bear their own costs, including attorneys' fees in connection with the conveyance, including without limitation negotiation, due diligence, investigation and closing.

3.10 Further Assurances. City agrees to execute such additional documents and instruments as may be necessary to consummate the transactions contemplated herein.

3.11 Purchase of City Right of Way. At any time prior to the earlier of (a) the tenth anniversary of the Effective Date, or (b) the expiration or termination of this Agreement, if Developer shall have acquired title to the portion of the Additional Property located adjacent to those specific portions of the right-of-way and alley depicted on the diagram attached hereto as **Exhibit D** (the “**ROW Parcel**” and the “**Alley Parcel**”), then Developer shall have the option to request that the ROW Parcel and Alley Parcel be abandoned to allow Developer to acquire fee title thereto. To exercise such option, Developer shall give City written notice specifying the desired closing date which shall not be less than ninety (90) days after the date of such notice. Promptly after receipt of the notice from Developer, City shall process the abandonment in accordance with City’s normal and customary procedures (including without limitation Developer’s payment of all requisite fees and relocation of any existing utilities), and City shall process all applications for abandonment, authorizations and ordinances which may be necessary to abandon the alley and any utility easements located therein, in accordance with City’s normal procedures. The purchase price for the ROW Parcel and the Alley Parcel shall be the same as the then-applicable Per Square Foot Price, and shall be due and payable in full at Closing. If Developer exercises the option to acquire the ROW Parcel and/or the Alley Parcel, on the closing date, City shall deliver to Developer a special warranty deed, subject to receipt of the purchase price, and such purchase shall be consummated in general conformance with the balance of this Article III.

ARTICLE IV **DEVELOPMENT MATTERS**

4.1 Development Requirements. Development of the Property shall be consistent with and governed by the provisions, requirements, and restrictions of any PAD approved for the Property or applicable portion thereof.

4.2 Additional Property. If Developer acquires title to any of the contiguous or adjacent real property depicted on **Exhibit E** attached hereto (the “Additional Property”), and submits a written request that such Additional Property be incorporated into this Agreement, then the City Manager is hereby authorized to execute one or more supplements to this Agreement for the sole purpose of revising the legal description of the Property to include the whole or any portion of the Additional Property. City and Developer agree that if Developer elects to incorporate such Additional Property or portions thereof thereafter, such Additional Property shall be included in the Property and shall be subject to and shall benefit from all provisions of this Agreement applicable thereto and any reference herein to the Property shall include such Additional Property.

4.3 Phasing. The Project, including Improvements, is intended by Developer to be carried out in phases over a number of years. Phases may be contiguous or noncontiguous. Developer intends to complete the first two phases of the Project within the time periods specified in the Schedule of Performance attached hereto as **Exhibit C**.

4.4 Parcel Development Agreements. City and Developer hereby acknowledge that the development of the Property in accordance with the PAD may be accomplished by Developer through assignments, subleases, joint ventures and/or other dispositions to or arrangements with other experienced investors in or developers of real property. In connection therewith, it is anticipated and contemplated by City and Developer that such persons might desire to become parties to this Agreement or to enter into separate and subordinate Parcel Development Agreements with City and/or Developer. City and Developer hereby agree that any and all Parcel Development Agreements entered into by City with any such developer, investor or Developer shall be subordinate in all respects to the terms and conditions of this Agreement, and in the event of any conflict or discrepancy between the provisions of any such Parcel Development Agreement and the terms and conditions of this Agreement, this Agreement shall govern and control.

4.5 Schedule of Performance; Extensions. City and Developer intend that the planning and development of the Property shall be achieved pursuant to the PAD and Schedule of Performance. From time to time following the Effective Date, however, Developer and City shall, by mutual written agreement, refine and revise the Schedule of Performance and Developer may revise and refine the PAD as may be necessary to accommodate any factors, events or occurrences which may necessitate such refinement or revision. Developer and City shall each use commercially reasonable efforts to enable development of the Property to occur in accordance with the PAD and Schedule of Performance. Subject to any extensions authorized by this Agreement (as set forth below), if Developer fails to complete the Project in accordance with the Schedule of Performance (as extended), then this Agreement shall automatically terminate. No notice of such termination shall be required, as the passage of time without completion of the appointed task cannot be cured. On any such termination, this Agreement shall be null and void and Developer shall have no further right to develop the Property pursuant to this Agreement.

So long as no then-current Developer Default is continuing, extensions to the Schedule of Performance may be obtained as follows:

(a) Developer may extend the dates listed on the Schedule of Performance once for a period not to exceed twelve (12) months by giving written notice to City not less than forty-five (45) days before the then-scheduled performance dates and paying to City a nonrefundable extension fee of \$200,000; such extension fee shall not be credited against the Purchase Price for any part of the City Property, the ROW Parcel or the Alley Parcel.

(b) In addition to the extension provided in subsection (a), Developer may extend the dates listed on the Schedule of Performance (whether or not a prior extension has been obtained) for one additional period not to exceed twelve (12) months, by giving written notice to City not less than forty-five (45) days before the then-scheduled performance dates and paying to City a nonrefundable extension fee of \$200,000; such extension fee shall not be credited against the Purchase Price for any part of the City Property, the ROW Parcel or the Alley Parcel.

(c) Finally, in addition to the extensions provided in subsections (a) and (b), Developer is free at any time to request an extension of the dates set forth in the Schedule of Performance; however, City may grant or deny any such request in its unfettered discretion.

4.6 Housing Options. City desires to promote home ownership in redevelopment areas where and when appropriate. In this regard, Developer hereby agrees as follows:

(d) For-Sale Units. Developer shall construct a minimum of ten (10) for-sale residential dwelling units (“**For-Sale Units**”) in Phase I, five (5) of which will be placed within Building 1 and five (5) of which will be placed within Building 2, as shown on the PAD. In addition, if and when Developer proceeds with the residential development of the portion of the Property on the north side of Apache Boulevard (anticipated to be within Phases III and V of the Project), then Developer shall construct townhome style For-Sale Units adjacent to Lemon Street to provide a buffer between the single family neighborhood to the north and the multi-family projects to be developed to the south; no other form of residential construction shall be allowed along Lemon Street north of Apache Boulevard except as may be approved in the PAD.

(e) Building Design. Developer shall develop those portions of the Project designated as residential dwelling units with amenities and interior finishes that are consistent with amenities and interior finishes that are found in condominium projects. Each residential unit will be individually metered for electricity and the water system in the Project will be designed in such a manner that each residential unit may be retrofitted for individual water metering prior to that unit’s sale. The Project will be built with high quality, durable construction interior conditioned corridors and other enhanced building standards, which may include, but are not limited to, the standards listed on the attached **Exhibit F**. The intent is to facilitate the ability of successor owners to offer the individual units for sale to retail buyers if they later decide to do so. Accordingly, Developer agrees to prepare and process for approval prior to execution of any Government Property Lease (as defined in Section 4.13), a condominium plat designating each dwelling unit as a separate condominium unit. Following approval by the City, the approved plat executed by Developer shall be held in escrow with Escrow Agent, with irrevocable instructions to record same in the records of Maricopa County, Arizona or deliver same to City for recording, in no event sooner than nine (9) years from the date the Certificate of Occupancy for the premises described in the Government Property Lease, but thereafter on the expiration or termination of any Government Property Lease, in which case the condominium plat shall be recorded prior to reconveyance of the premises described therein to Developer. Although City encourages future owners to consider sales of the units at the appropriate time, neither Developer nor any successor shall be required to offer the individual dwelling units for sale to retail buyers, and nothing contained herein shall limit Developer or its successors from offering such dwelling units for rent. Developer shall pay all costs, expenses and fees associated with the escrow and recording of the condominium plat.

4.7 Project Amenities. As depicted and described in the PAD, Phase I of the Project will include an approximate 15,940 square foot plaza (which will not be dedicated to City), as shown on the PAD. To separate and delineate the Project from the surrounding community, the Project shall also include cohesive landscaping along River Drive from Apache Boulevard north to Lemon Street and south to Wildermuth Drive, consistent with the illustration included as part of **Exhibit G**. As part of Phase I, Developer shall either install such landscaping on River Drive from Apache Boulevard north to Lemon Street at its sole cost and expense, or deposit with City, for application to installation of the appropriate landscaping, the sum of \$25,000. Concurrent with the development of Phase II, Developer shall install such landscaping on River Drive from Apache Boulevard south to Wildermuth Drive. Prior to completion of the landscaping

improvements, City and Developer shall execute a maintenance agreement describing Developer's obligation to maintain the landscaping both along River Drive and adjacent to the Project, which agreement shall be on City's standard form. Notwithstanding the foregoing, if a third party (other than City or Developer) agrees to fund all or a portion of the cost of acquisition of the landscaping materials (and City anticipates that up to \$7,500 will be available for such purpose), then Developer agrees to complete the installation of such landscaping materials (including any necessary infrastructure), on River Drive from Apache Boulevard north to Lemon Street before December 31, 2016, or as soon thereafter as is reasonable once the landscaping materials or funds have been delivered.

4.8 Commercial Operations. Developer and City agree that the continuous operation of commercial enterprises within the Project is a crucial component for activating the Project and furtherance of its intended "urban village" concept. Toward that end, Developer shall use commercially reasonable efforts to maintain a high level of occupancy and usage of the commercial space within the Project. The PAD presently calls for construction of approximately 20,641 square feet of commercial space within Phase I. While City acknowledges that Developer cannot guaranty the continuous operation of any particular tenants in the Project, Developer hereby agrees to complete construction of such commercial space as is included in the PAD and thereafter to maintain a 50% occupancy level in the commercial space within the Project, whether pursuant to leases or other forms of occupancy or license agreements (the "**Minimum Commercial Occupancy Level**").

4.9 Water Line Installation. Developer shall construct a water line in the location identified on **Exhibit H** hereto as part of the Project, and shall dedicate and convey same to City on completion. Such construction shall be completed in accordance with City's normal process, including without limitation City review and approval of the plans and specifications therefor, and the completed work shall have been approved for acceptance into the City's utility system. In connection therewith, and at no cost to Developer, City shall process all required abandonments of existing public utility easements covering the water line and related improvements to be constructed. Developer shall diligently prosecute construction of the water line following the Closing on the Phase I City Property.

Developer shall retain all invoices and other evidence of payment of Installation Costs pertaining to the water line and make same available for review by City. City shall have the right to review and audit Developer's records and accounts to verify that all expenditures have been accurately allocated.

4.10 Sewer Line Installation. Developer also shall construct certain sewer lines in the location identified on **Exhibit I** hereto as part of the Project. Developer hereby covenants and agrees to commence and diligently proceed with construction of the sewer lines in accordance with plans and specifications therefor which have been or will be approved by City, all in accordance with City's normal and customary procedures for same, and the completed work has been accepted or approved for acceptance into the City's sewer system. In connection therewith, and at no cost to Developer, City shall process all required abandonments of public utility easements covering the sewer lines and related improvements to be constructed. Developer shall diligently prosecute construction of the sewer lines following the Closing of the Phase I City Property.

Developer shall retain all invoices and other evidence of payment of Installation Costs pertaining to the sewer line and make same available for review by City. City shall have the right to review and audit Developer's records and accounts to verify that all expenditures have been accurately allocated.

4.11 Signage. City and Developer hereby acknowledge and agree that signage for the Project is a material part of the distinctive character and nature of the Project and is otherwise essential to the successful development, marketing, and leasing of the Project. Therefore, the parties acknowledge and agree that appropriate signage will and should be an integral part of the Project and will be necessary to attract high quality tenants to the Project. City and Developer agree to coordinate their efforts and agree on appropriate signage for the Project. City agrees that it will consider approval of unique signage concepts which may be proposed by Developer for the Project in accordance with its normal process for such requests. City authorizes and empowers the Director of Community Development to consent to and approve any request of Developer for sign approval that meets the intent of the Project and deviates from the Tempe Zoning and Development Code.

4.12 Art in Private Development. City agrees that if Developer constructs Art in Private Development amenities that meet the requirements of the City Code (and such has been approved in accordance with City's usual and customary procedures therefor) prior to the date required by the Code, Developer will be given appropriate credit for such expenditures.

4.13 Government Property Lease; Tax Abatement. City hereby acknowledges and agrees that as the Project is completed as contemplated and in compliance with the Schedule of Performance (as it may be amended or extended), and Developer has otherwise satisfied its obligations under this Agreement, then Developer shall be entitled to all statutorily-authorized property tax abatements available pursuant to the provisions of A.R.S. §§ 42-6201 through 42-6209, inclusive, as in effect on May 20, 2010 which were reserved in Resolution 2010.76. Upon execution of this Agreement, the conditions stated in Section 2 of such Resolution shall have been satisfied. If Developer has fully performed its obligations thereunder and under this Agreement, then to facilitate property tax abatements, City hereby agrees that, at the request of Developer from time to time, City shall accept conveyances of any Property within Phase I of the Project and the Improvements thereon by deed substantially in the form attached hereto as **Exhibit J** and shall lease-back all such Parcels and Improvements to Developer upon the terms and conditions set forth in a lease substantially in the form attached hereto as **Exhibit K**.

(a) Lease Term. The term of each such lease covering all or portions of the Property and Improvements within Phase I of the Project shall be for a period of 15 years from the date of issuance of a Certificate of Occupancy for the improvements constructed on the Parcel subject to the lease; provided, however, that such lease shall automatically terminate if:

(i) Developer fails to complete construction of Building 3 of Phase II by the date specified in the Schedule of Performance unless (x) such date has been extended pursuant to Section 4.5 hereof, or (y) at the time the lease would otherwise terminate, construction of Building 3 is 80% complete, as certified by Developer's architect, and Developer diligently pursues construction to completion within six months after the date the lease would otherwise have terminated, in which event the lease shall continue to the end of its stated term,

provided that if construction is not completed within said six-month period the lease shall terminate immediately at the end of the sixth month; or

(ii) Developer (x) fails to reach the Minimum Commercial Occupancy Level by the second anniversary of the date of execution of such lease, or (y) thereafter fails to maintain the Minimum Commercial Occupancy Level during the remaining term of such lease, for a period of 360 consecutive days. The intent of the parties is that the Minimum Commercial Occupancy Level be satisfied at all times during the entire term of the lease; however, if Developer is unable after the application of its commercially reasonable efforts to meet or maintain such level, Developer may so notify City and elect to continue the lease, in which case it shall commence payment of rent under the lease, in an amount equal to \$2,000 per month (or portion thereof), such rent to be payable to City retroactively to the date the Minimum Commercial Occupancy Level fell below the requisite minimum level (but no sooner than the second anniversary of the date of execution of such lease) and continuing on the first day of every month until Developer achieves the Minimum Commercial Occupancy Level.

(b) Voluntary Contribution. To assist the Tempe Union High School Foundation and the Tempe Impact Education Foundation (together, the “Foundations”) with their important educational missions, Developer agrees to make a voluntary contribution to each of the Foundations in the amount of \$50,000, which payments shall be made within two weeks of Developer’s and City’s execution of the first lease described in Section 4.13. The Foundations are an intended third party beneficiary of this provision of the Agreement, and shall have the exclusive power to enforce this provision during the term of this Agreement.

4.14 Public Financing Opportunities. City will work cooperatively with Developer to access public financing options that may be available to support transit-oriented development and leverage the existing public investment in public transit, including but not limited to submitting and pursuing applications for federal grants or other financing options identified by Developer, and at Developer’s cost. Furthermore, City hereby acknowledges and agrees that if, for any reason, any incentive programs provided herein are amended, modified or repealed or rescinded such that the full benefits thereof as currently provided on the date of the execution of this Agreement are no longer in effect, then, in that event, City will use its best efforts to provide alternative development incentives and to cooperate with Developer with respect to any other available tax abatement programs or other public financing mechanisms provided for under Arizona law or otherwise available in order to obtain essentially the same economic benefits for the Property as are currently provided under existing law. Said incentives or tax abatement programs shall be limited such that they result in no greater cost to City than those agreed to herein.

ARTICLE V **DEFAULTS; REMEDIES**

5.1 Default. It shall be a default under this Agreement (a “**Default**”) if either party fails to perform any of its obligations of this Agreement and such failure continues for a period of thirty (30) days after written notice from the non-defaulting party specifying in reasonable detail the nature of such failure. If the nature of the Default is such that it cannot reasonably be cured within the 30-day period, no Default shall be deemed to exist if the defaulting party

commences a cure within such 30-day period and diligently and expeditiously pursues such cure to completion.

5.2 Additional Developer Defaults. In addition to the foregoing, it shall be a Default of this Agreement if: (a) 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 Developer or its respective assets or affairs, and such petition or application is not dismissed within ninety (90) days of such filing; (b) Developer makes an assignment for the benefit of creditors or is granted an order for relief under any chapter of the Bankruptcy Code; (c) a custodian, as defined by the Bankruptcy Code, takes charge of the Property; (d) garnishment, attachment, levy or execution in an amount in excess of an amount equal to ten percent (10%) of its net worth is issued against Developer, and such issuance is not discharged or bonded against within ninety (90) days; (e) the dissolution or termination of existence of Developer unless its successor by transfer or operation of law is continuing the business of operating the Project; or (f) there is a material breach of any representation and warranty by Developer in this Agreement when made.

5.3 Developer’s Remedies. If City is in Default under this Agreement (beyond any applicable cure period) and the parties are unable to resolve City’s Default, Developer shall have the right to terminate this Agreement upon written notice to City. Developer shall also have the right to pursue all other legal and equitable remedies which Developer may have at law or in equity, including, without limitation, the right to seek specific performance, the right to seek and obtain damages, and the right to self-help; provided that City shall in no event be liable for punitive, incidental or consequential damages.

5.4 City’s Remedies. If Developer is in Default under this Agreement (beyond any applicable cure period) and the parties are unable to resolve Developer’s Default, then City shall have the right to terminate this Agreement immediately upon written notice to Developer and to pursue any other rights or remedies provided hereunder, at law or in equity; provided that Developer shall in no event be liable for punitive, incidental or consequential damages. No exercise by City of its remedies under this Agreement shall entitle City to exercise remedies under any Government Property Lease previously executed by Developer and City in the circumstance where Improvements have been constructed on the Property except to the extent there is a default under such Government Property Lease.

5.5 Effect of Event of Termination. Upon the termination of this Agreement as the result of the Default or breach by Developer (beyond any applicable cure period), Developer shall have no further rights to acquire the City Property nor any right to any City-provided development incentives pursuant to this Agreement accruing from and after the termination of this Agreement. No termination of this Agreement shall, in and of itself, result in the termination of any Government Property Lease to be executed by Developer and City with respect to improvements and land in the circumstance where a building has been constructed on the Property subject to such lease.

ARTICLE VI
GENERAL PROVISIONS

6.1 No Personal Liability. No member, shareholder, director, partner, manager, officer or employee of Developer shall be personally liable to City, or any successor or assignee, (a) in the event of any Default or breach by Developer, (b) for any amount which may become due to City or its successor or assign, or (c) pursuant to any obligation of Developer under the terms of this Agreement.

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

6.3 Liability and Indemnification. Developer hereby agrees to indemnify, protect, defend and hold harmless 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 attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, out of Developer's performance or failure to perform its obligations under this Agreement unless resulting from the gross negligence or willful misconduct of City.

6.4 Conflict of Interest. Pursuant to Arizona law, rules and regulations, no member, official or employee of 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 A.R. S. § 38-511.

6.5 Notice. All notices which shall or may be given pursuant to this Agreement shall be in writing and transmitted by registered or certified mail, return receipt requested, or by personal delivery or by overnight mail, addressed as follows:

To the Developer: Eastline Development LLC
Attn: Eric Carlson
7600 E. Doubletree Ranch Rd., Suite 300
Scottsdale, AZ 85258-2137

With a copy to: Eastline Development LLC
Attn: Mary Alexander, Esq.
7600 E. Doubletree Ranch Rd., Suite 300
Scottsdale, AZ 85258-2137

And to: JAO Universal, L.L.L.P.
Attn: Jeff Jones
4422 N. Civic Center Plaza, Suite 202
Scottsdale, AZ 85251

To City: City Manager
City of Tempe
31 East Fifth Street
Tempe, Arizona 85281

With a copy to: City Attorney
City of Tempe
21 East Sixth Street, Suite 201
Tempe, Arizona 85281

Either party may designate any other address for this purpose by written notice to the other party in the manner described herein. The date of service of any communication hereunder shall be the date of personal delivery or seventy-two (72) hours after the postmark on the certified or registered mail, or the date received if sent by overnight mail, as the case may be.

6.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. This Agreement has been made and entered into in Maricopa County, Arizona.

6.7 Successors and Assigns; Restrictions on Assignment. This Agreement shall run with the land and all of the covenants and conditions set forth herein shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. Notwithstanding anything contained in the foregoing to the contrary, this Agreement shall not impose any obligations upon and shall terminate without the execution or recordation of any further document or instrument as to any condominium unit which has been finally subdivided and sold and for which a certificate of occupancy or equivalent has been issued. Thereafter, such condominium unit shall be released from and no longer be subject to or burdened by the provisions of this Agreement. In addition, notwithstanding anything contained in the foregoing to the contrary, unless otherwise approved by City, until Completion of construction of the Project or a component thereof, the right of Developer to assign its rights, duties and obligations under this Agreement without the approval of City shall be limited and restricted to the following:

(a) An assignment of the right of Developer to develop a specific component of the Project (such as the residential units, retail, or hotel) to a reputable and financially capable developer (or affiliate thereof) which has experience (directly or through an affiliate) in the financing, development and/or operation of such projects or to a user which will ultimately own such component (such as the owner/operator of a hotel);

(b) An assignment by Developer of its rights under this Agreement to a financially capable corporation, partnership, joint venture, limited liability company, trust or other legal entity in Developer or which an affiliate of Developer has an ownership interest; or

(c) A collateral assignment as security for one or more lenders in connection with Project financing.

Following Completion of construction of the Project or a component thereof, Developer may assign its rights, duties and obligations under this Agreement without the approval of City.

Following an assignment by Developer of any specific rights, obligations or duties under this Agreement and an assumption by the assignee of the same, Developer shall be released from such obligations and duties hereunder.

6.8 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.

6.9 Severability. If 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 fullest extent permitted by law, provided that the overall intent of the parties is not materially vitiated by such severability.

6.10 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.

6.11 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.

6.12 Recitals, Schedules and Exhibits. All recitals above and schedules and exhibits attached hereto are incorporated herein by this reference as though fully set forth herein.

6.13 Recordation of Agreement. This Agreement shall be recorded in the Official Records of Maricopa County, Arizona, within ten (10) business days after execution of this Agreement by City.

6.14 No Third Party Rights; No Partnership. No provision of this Agreement shall be construed to permit anyone other than Developer, City and their respective successors and assigns to rely upon the covenants and agreements herein contained nor to give any such third party a cause of action (as a third party beneficiary or otherwise) on account of any nonperformance hereunder. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between Developer and City.

6.15 City Manager's Power to Consent. City authorizes and empowers the City Manager to consent to any and all requests of Developer requiring the consent of 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.

6.16 Rights of Lenders. City is aware that financing for acquisition, development and/or construction of the Property and Improvements may be provided, in whole or in part, from time to time, by one or more third parties (each a “**Lender**”) and that each Lender may request a collateral assignment of this Agreement as part of the collateral for its loan(s) to Developer or any assignee (a “**Borrower**”). City agrees that such collateral assignments are permissible without further consent on the part of City. If a Lender is permitted, under the terms of its agreement with Borrower, to cure a Default by Borrower and/or to assume Borrower’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 Borrower under this Agreement. If City is notified in writing of any such collateral assignment and the identity and address of any such Lender, and City gives any notice, demand, election or other communication required under this Agreement (collectively called “**Notices**”) to Developer, City shall concurrently give a copy of each such Notice to the Lender at the address designated by the Lender. Such copies of the Notices shall be given to the Lender pursuant to Section 6.5. No Notice given by City to a Borrower shall be binding upon or affect the Lender unless a copy of the Notice is given to the Lender pursuant to this Section 6.16. In the case of an assignment of the loan or change in address of the Lender, the assignee or Lender may change the address to which copies of Notices are to be sent by giving written notice to City. The Lender shall have the right for a period of thirty (30) days after the expiration of any grace period afforded a Borrower (or such longer period as the Lender may reasonably require) to perform any term, covenant or condition and to remedy any uncured default by the Borrower, and City shall accept such performance with the same force and effect as if furnished by the Borrower and the Lender shall thereby and hereby be subrogated to the rights of City. Nothing contained in this Agreement shall be deemed to prohibit, restrict or limit in any way the right of the 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 (each a “foreclosure”), and following any such foreclosure, Lender will not have any obligation to Complete construction of the Project. Upon request by a Lender, City will enter into a separate assumption or similar agreement with such Lender consistent with the provisions of this Section 6.16.

6.17 Cooperation. City and Developer hereby acknowledge and agree that they shall cooperate in good faith with each other and use best efforts to pursue the economic development of the Project 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.

6.18 Estoppels. City shall, within a reasonable time (but in no event sooner than 15 days) after receipt of a written request by Developer or any successor or assign, provide an estoppel certificate 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 Developer or any successor or assign exists hereunder (or, if appropriate, specifying the nature and duration of any existing Default) and certifying to such other matters reasonably requested by Developer or its successor or assign.

6.19 City's Authorization. City hereby represents and warrants to Developer that the execution and delivery of this Agreement has been duly authorized by all requisite city council action and as otherwise required under any and all applicable laws and ordinances.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed to be effective on the Effective Date.

[signatures on following pages]

EASTLINE LAND VENTURES LLC,
a Delaware limited liability company

By: DMB Associates, Inc., an Arizona
corporation, its Manager

By: _____
Name: _____
Its: _____

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this day of,
2016, by _____, as _____ of DMB Associates, an Arizona
corporation, as Manager of Eastline Land Ventures LLC, a Delaware limited liability company,
for and on behalf of the company.

.....
Notary Public

My commission expires:
.....

CITY OF TEMPE,
an Arizona municipal corporation

By _____
Mark W. Mitchell, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

On this ____ day of _____, 2016, before me, the undersigned officer, personally appeared Mark W. Mitchell, who acknowledged himself to be Mayor of THE CITY OF TEMPE, an Arizona municipal corporation, whom I know personally and he, in such capacity, being authorized to do so, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My commission expires:

Consented to by the Owners Listed Below

Owners of Parcels Set Forth on Schedule 2:

FIDELITY NATIONAL TITLE INSURANCE COMPANY, INC.,
an Arizona corporation, as Trustee under Trust No. 95000148 and
not in its corporate capacity

By: _____
Name: _____
Its: _____ Trust Officer _____

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this day of, 2016, by
_____, as _____, of _____, for and on behalf of the
company as Trustee under Trust No. 95000148 and not in its corporate capacity.

.....
Notary Public

My commission expires:

.....

APACHE PARTNERS 1 LLC,
an Arizona limited liability company

By: Munger Holdings, L.L.C., an Arizona
limited liability company, Member

By: _____
James H. Jones, Manager

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this day of,
2016, by James H. Jones, as Manager of Munger Holdings, L.L.C., an Arizona limited liability
company, as a Member of Apache Partners 1 LLC, an Arizona limited liability company, for and
on behalf of the company.

.....
Notary Public

My commission expires:

.....

By: JAO Universal, L.L.L.P., an Arizona limited
liability limited partnership, Member

By: _____
Jeff Jones, Manager

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this day of,
2016, by Jeff Jones, as Manager of JAO Universal, L.L.L.P., an Arizona limited liability
company, as a Member of Apache Partners 1 LLC, an Arizona limited liability company, for and
on behalf of the company.

.....
Notary Public

My commission expires:

.....

By: Apache Funding LLC, an Arizona limited liability company, Member

By: B.T. Development, L.L.C., an Arizona limited liability company, Manager

By: _____
Larry D. LeSueur, Member

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this day of, 2016, by Larry D. LeSueur, as Member of B.T Development, L.L.C., an Arizona limited liability company, as a Member of Apache Funding LLC, an Arizona limited liability company, as a Member of Apache Partners 1 LLC, an Arizona limited liability company, for and on behalf of the company.

.....
Notary Public

My commission expires:

.....

APACHE PARTNERS 2 LLC,
an Arizona limited liability company

By: Munger Holdings, L.L.C., an Arizona
limited liability company, Member

By: _____
James H. Jones, Manager

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this day of,
2016, by James H. Jones, as Manager of Munger Holdings, L.L.C., an Arizona limited liability
company, as a Member of Apache Partners 2 LLC, an Arizona limited liability company, for and
on behalf of the company.

.....
Notary Public

My commission expires:

.....

By: JAO Universal, L.L.L.P., an Arizona limited
liability limited partnership, Member

By: _____
Jeff Jones, Manager

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this day of,
2016, by Jeff Jones, as Manager of JAO Universal, L.L.L.P., an Arizona limited liability
company, as a Member of Apache Partners 2 LLC, an Arizona limited liability company, for and
on behalf of the company.

.....
Notary Public

My commission expires:

.....

By: Apache Funding LLC, an Arizona limited liability company, Member

By: B.T. Development, L.L.C., an Arizona limited liability company, Manager

By: _____
Larry D. LeSueur, Member

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this day of, 2016, by Larry D. LeSueur, as Member of B.T Development, L.L.C., an Arizona limited liability company, as a Member of Apache Funding LLC, an Arizona limited liability company, as a Member of Apache Partners 2 LLC, an Arizona limited liability company, for and on behalf of the company.

.....
Notary Public

My commission expires:

.....

APACHE PARTNERS 3 LLC,
an Arizona limited liability company

By: Munger Holdings, L.L.C., an Arizona
limited liability company, Member

By: _____
James H. Jones, Manager

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this day of,
2016, by James H. Jones, as Manager of Munger Holdings, L.L.C., an Arizona limited liability
company, as a Member of Apache Partners 3 LLC, an Arizona limited liability company, for and
on behalf of the company.

.....
Notary Public

My commission expires:

.....

By: JAO Universal, L.L.L.P., an Arizona limited
liability limited partnership, Member

By: _____
Jeff Jones, Manager

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this day of,
2016, by Jeff Jones, as Manager of JAO Universal, L.L.L.P., an Arizona limited liability
company, as a Member of Apache Partners 3 LLC, an Arizona limited liability company, for and
on behalf of the company.

.....
Notary Public

My commission expires:

.....

By: Apache Funding LLC, an Arizona limited liability company, Member

By: B.T. Development, L.L.C., an Arizona limited liability company, Manager

By: _____
Larry D. LeSueur, Member

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this day of, 2016, by Larry D. LeSueur, as Member of B.T Development, L.L.C., an Arizona limited liability company, as a Member of Apache Funding LLC, an Arizona limited liability company, as a Member of Apache Partners 3 LLC, an Arizona limited liability company, for and on behalf of the company.

.....
Notary Public

My commission expires:

.....

APACHE PARTNERS 5 LLC,
an Arizona limited liability company

By: Munger Holdings, L.L.C., an Arizona
limited liability company, Member

By: _____
James H. Jones, Manager

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this day of,
2016, by James H. Jones, as Manager of Munger Holdings, L.L.C., an Arizona limited liability
company, as a Member of Apache Partners 5 LLC, an Arizona limited liability company, for and
on behalf of the company.

.....
Notary Public

My commission expires:

.....

By: JAO Universal, L.L.L.P., an Arizona limited
liability limited partnership, Member

By: _____
Jeff Jones, Manager

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this day of,
2016, by Jeff Jones, as Manager of JAO Universal, L.L.L.P., an Arizona limited liability
company, as a Member of Apache Partners 5 LLC, an Arizona limited liability company, for and
on behalf of the company.

.....
Notary Public

My commission expires:

.....

By: Apache Funding LLC, an Arizona limited liability company, Member

By: B.T. Development, L.L.C., an Arizona limited liability company, Manager

By: _____
Larry D. LeSueur, Member

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this day of, 2016, by Larry D. LeSueur, as Member of B.T Development, L.L.C., an Arizona limited liability company, as a Member of Apache Funding LLC, an Arizona limited liability company, as a Member of Apache Partners 5 LLC, an Arizona limited liability company, for and on behalf of the company.

.....
Notary Public

My commission expires:

.....

APACHE PARTNERS 6 LLC,
an Arizona limited liability company

By: Munger Holdings, L.L.C., an Arizona
limited liability company, Member

By: _____
James H. Jones, Manager

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this day of,
2016, by James H. Jones, as Manager of Munger Holdings, L.L.C., an Arizona limited liability
company, as a Member of Apache Partners 6 LLC, an Arizona limited liability company, for and
on behalf of the company.

.....
Notary Public

My commission expires:

.....

By: JAO Universal, L.L.L.P., an Arizona limited
liability limited partnership, Member

By: _____
Jeff Jones, Manager

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this day of,
2016, by Jeff Jones, as Manager of JAO Universal, L.L.L.P., an Arizona limited liability
company, as a Member of Apache Partners 6 LLC, an Arizona limited liability company, for and
on behalf of the company.

.....
Notary Public

My commission expires:

.....

By: Apache Funding LLC, an Arizona limited liability company, Member

By: B.T. Development, L.L.C., an Arizona limited liability company, Manager

By: _____
Larry D. LeSueur, Member

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this day of, 2016, by Larry D. LeSueur, as Member of B.T Development, L.L.C., an Arizona limited liability company, as a Member of Apache Funding LLC, an Arizona limited liability company, as a Member of Apache Partners 6 LLC, an Arizona limited liability company, for and on behalf of the company.

.....
Notary Public

My commission expires:

.....

APACHE LK LLC,
an Arizona limited liability company

By: _____
Larry D. LeSueur, Member

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this day of,
2016, by Larry D. LeSueur, as Member of Apache LK LLC, an Arizona limited liability
company, for and on behalf of the company.

.....
Notary Public

My commission expires:
.....

By: _____
Norman O. King, Member

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this day of,
2016, by Norman O. King, as Member of Apache LK LLC, an Arizona limited liability
company, for and on behalf of the company.

.....
Notary Public

My commission expires:
.....

Owner of Parcels Set Forth on Schedule 3:

APACHE PARTNERS 4 LLC,
an Arizona limited liability company

By: Munger Holdings, L.L.C., an Arizona
limited liability company, Member

By: _____
James H. Jones, Manager

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this day of,
2016, by James H. Jones, as Manager of Munger Holdings, L.L.C., an Arizona limited liability
company, as a Member of Apache Partners 4 LLC, an Arizona limited liability company, for and
on behalf of the company.

.....
Notary Public

My commission expires:
.....

By: JAO Universal, L.L.L.P., an Arizona limited
liability limited partnership, Member

By: _____
Jeff Jones, Manager

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this day of,
2016, by Jeff Jones, as Manager of JAO Universal, L.L.L.P., an Arizona limited liability
company, as a Member of Apache Partners 4 LLC, an Arizona limited liability company, for and
on behalf of the company.

.....
Notary Public

My commission expires:
.....

By: Apache Funding LLC, an Arizona limited liability company, Member

By: B.T. Development, L.L.C., an Arizona limited liability company, Manager

By: _____
Larry D. LeSueur, Member

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this day of, 2016, by Larry D. LeSueur, as Member of B.T Development, L.L.C., an Arizona limited liability company, as a Member of Apache Funding LLC, an Arizona limited liability company, as a Member of Apache Partners 4 LLC, an Arizona limited liability company, for and on behalf of the company.

.....
Notary Public

My commission expires:

.....

LIST OF EXHIBITS

EXHIBIT A	Legal Description and Depiction of the Property
EXHIBIT B	City Property
EXHIBIT C	Schedule of Performance
EXHIBIT D	Depiction of City Right-of-Way and Alley
EXHIBIT E	Additional Property
EXHIBIT F	Building Design
EXHIBIT G	Landscape Illustration
EXHIBIT H	Water Line
EXHIBIT I	Sewer Line
EXHIBIT J	Form of Deed
EXHIBIT K	Form of Land and Improvements Lease
EXHIBIT L	Form of Certificate of Completion

