WHEN RECORDED RETURN TO:

City of Mesa
Attn: Real Estate Services
20 East Main Street
Mesa, Arizona
85201-7425

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DEVELOPMENT AGREEMENT AND PERPETUAL MAINTENANCE OBLIGATION

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CITY OF MESA, ARIZONA,
an Arizona municipal corporation

AND

MHA III. LLC,
an Arizona limited liability company

==========

_____, 2021

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DEVELOPMENT AGREEMENT AND PERPETUAL MAINTENANCE AGREEMENT

THIS DEVELOPMENT AGREEMENT AND PERPETUAL MAINTENANCE ("**Agreement**") is made as of the _____day of_____, 2021, by and between the CITY OF MESA, ARIZONA, an Arizona municipal corporation ("**City**"); and MHA III, LLC, an Arizona limited liability company ("**Developer**"). City and Developer are sometimes referred to herein collectively as the "**Parties**," or individually as a "**Party**."

RECITALS

A. Developer is experienced in building residential redevelopment projects and has built other high-quality residential communities in downtown Mesa including the affordable housing project adjacent to the Property, which is the second phase ("**Residences on First Phase II**") of a three phased project known as Residences on First.

B. Developer has acquired from City through that certain Agreement to Purchase Real Property and Escrow Instructions dated _____, 2021, ("**Purchase Agreement**"), fee ownership of certain real property located near the southeast corner of Macdonald and First Avenue within the city limits of City, totaling approximately 1.48 acres as depicted on Exhibit A attached to this Agreement ("**Property**").

C. Developer intends to develop the Property as an urban multiple residence community consisting of three buildings with no fewer than 72 market rate residential units as described in this Agreement ("**Project**"), which will be the third phase of the Residences on First development. In the event of a conflict between the Project as defined in this Agreement and the Project as defined in the Purchase Agreement, this Agreement shall govern.

D. It is the desire and current intention of Developer to design and build the Project and Improvements, to convey the Property and Improvements to City following Completion of Construction of the Improvements, and thereafter to lease the Property and Buildings from City pursuant to A.R.S. §§ 42-6201 *et seq*., and thereafter to operate the Project in furtherance of the Central Main Plan and in accordance with this Agreement and the Lease, as the foregoing terms are defined below.

E. The Property is located in the City's Central Main Plan which was adopted by the Mesa City Council in January 2012. The Property is also located in the Town Center redevelopment area within the City's single Central Business District which was initially adopted by the Mesa City Council in 1999. The Mesa City Council found that a substantial number of blight factors still existed within the City's Central Business District and on April 6, 2020, the Mesa City Council by resolution re-designated and renewed the City's Central Business District and Town Center redevelopment area. In the reevaluation of the City's Central Business District, the blight assessment study conducted and presented to the Mesa City Council found the Property to have at least two blight factors. City acknowledges that the redevelopment of the Property

located near the center of downtown Mesa and two light rail stations, and the development of the Project in conformity with this Agreement and the Approved Plans (as that term is defined below) will reduce the blight in the City's Central Business District and further promote City's vision to redevelop and revitalize its downtown and the Town Center redevelopment area.

F. City believes the development of the Property will generate substantial monetary and non-monetary benefits for City, including, without limitation, by, among other things: (i) providing for planned and orderly development of the Property consistent with the General Plan, the Zoning and the Central Main Plan; (ii) increasing tax revenues to City arising from or relating to the Improvements to be constructed on the Property; (iii) increasing utility revenues to City; (iv) enhancing the streetscape improvements along Macdonald; (v) enhancing the economic and social welfare of the residents of City; (v) providing a new, high-quality multiple residence community in the City's downtown to benefit City's residents; and (vi) furthering the City Council's objective to reduce the slum and blight in the City's Central Business District and otherwise advancing the goals of the Central Main Plan.

G. City also acknowledges its intention and ability to provide the City Undertakings described in this Agreement, subject to the terms and conditions of this Agreement.

H. As a condition of, and concurrent with, development of the Property, and subject to the other terms and conditions of this Agreement, Developer has agreed to advance or otherwise cause to be provided all funds required for, and otherwise to finance the construction and completion of, the Improvements, subject to and in accordance with the terms of this Agreement, and to complete all of the Developer Undertakings.

I. The Parties understand and acknowledge that this Agreement is a "Development Agreement" within the meaning of, and entered into pursuant to the terms of, A.R.S. § 9-500.05, and that the terms of this Agreement constitute covenants running with the Property as more fully described in this Agreement.

J. The Parties also understand and acknowledge that this Agreement is authorized by and entered into in accordance with the terms of A.R.S. § 9-500.11. The actions taken by City pursuant to this Agreement are for economic development activities as that term is used in A.R.S. § 9-500.11, will assist in the creation and retention of jobs, and will in numerous other ways improve and enhance the economic welfare of the residents of City.

K. City is entering into this Agreement to implement and to facilitate development of the Property consistent with the policies of City reflected in the General Plan, Central Main Plan and Zoning.

AGREEMENT

Now, therefore, in consideration of the foregoing recitals and representations and the mutual promises contained in this Agreement, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. **DEFINITIONS**.

In this Agreement, the following terms shall have the respective means set forth below, unless a different meaning clearly appears from the context:

(a) "**Affiliate**," as applied to any person, means any person directly or indirectly controlling, controlled by, or under common control with, that person or a blood relative or spouse of such person, if such person is a natural person. For the purposes of this definition, (i) "**control**" (including with correlative meaning, the terms "controlling," "controlled by" and "under common control"), as applied to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that person, whether through the ownership of voting securities, by contract or otherwise, and (ii) "**person**" means and includes natural persons, corporations, limited partnerships, general partnerships, joint stock companies, joint ventures associations, limited liability companies, limited liability partnerships, trusts, land trusts, business trusts or other organizations, whether or not legal entities.

(b) "**Agreement**" means this Agreement, as amended and restated or supplemented in writing from time to time, and includes all exhibits and schedules hereto. References to Sections or Exhibits are to this Agreement unless otherwise qualified. The Recitals set forth in Paragraphs A through K, inclusive, are incorporated into this Agreement by reference and form a part of this Agreement.

(c) "**Annual Assessment**" means as defined in Section 4.17.

(d) "**Applicable Laws**" means the federal, state, county and local laws (statutory and common law) ordinances, rules, regulations, permit requirements, and other requirements and official policies of City, as they may be amended from time to time.

(e) "**Approved Plan**" **or** "**Approved Plans**" means as defined in Section 3.1(a).

(f) "**A.R.S.**" means the Arizona Revised Statutes as now or hereafter enacted or amended.

(g) "**Building**" or "**Buildings**" means as defined in Section 4.3.

(h) "**Central Main Plan**" means that *mesa central main plan* as adopted by the City of Mesa Arizona.

(i) "**City**" means the Party designated as City on the first page of this Agreement.

(j) "**City Code**" means the Code of the City of Mesa, Arizona as amended from time to time.

(k) "**City Council**" means the City Council of City.

(l) "**City Indemnified Parties**" means as defined in Section 4.14(d).

(m) "**City Manager**" means the person designated by City as its City

Manager or its designee.

(n) "**City Representative**" means as defined in Section 10.

(o) "**City Undertakings**" means as defined in Section 5.

(p) "**Claims**" means as defined in Section 6.

(q) "**Commencement of Construction**" or "**Commence Construction**" means both (i) the obtaining of permits by Developer that are required to begin the construction of vertical improvements on the Property, and (ii) the actual commencement of physical construction operations on the Property in a manner necessary to achieve Completion of Construction of the Buildings.

(r) "**Completion of Construction**" or "**Complete Construction**" means the date on which both has occurred, (i) one or more temporary or final certificates of occupancy have been issued by City for the Buildings, and (ii) a letter of acceptance has been issued by City for the Public Improvements and Streetscape Improvements.

(s) "**Compliance Date**" means as defined in Section 4.12.

(t) "**Dedicated Property**" means as defined in Section 4.14.

(u) "**Default**" **or "Event of Default**" means one or more of events described in Section 9.1 or Section 9.2; provided, however, that such events will not give rise to any remedy until effect has been given to all grace periods, cure periods and/or periods of Force Majeure provided for in this Agreement and that in any event the available remedies will be limited to those set forth in Section 9.

(v) "**Designated Lenders**" means as set forth in Section 11.22(d).

(w) "**Developer**" means the Party designated as Developer on the first page of this Agreement, and its successors and assigns that conform with the requirements of this Agreement.

(x) "**Developer Representative**" means as defined in Section 10.

(y) "**Developer Undertakings**" means as defined in Section 4.

(z) "**Downtown Mesa Association**" or "**DMA**" means as defined in Section 4.17.

(aa) "**Effective Date**" means the date on which all of the following has occurred: this Agreement has been adopted and approved by the City Council, executed by duly authorized representatives of City and Developer, and recorded in the office of the Recorder of Maricopa County, Arizona.

(bb) "**Extended Compliance Date**" means as defined in Section 4.12.

(cc) "**Fee**" means as defined in Section 3.2(b).

(dd) "**Force Majeure**" means as defined in Section 9.6.

(ee) "**General Plan**" means *This is My Mesa: Mesa 2040 General Plan*, as adopted by the City of Mesa, Arizona.

(ff) "**Hardscape**" means as defined in Exhibit H attached to this Agreement.

(gg) "**Hazardous Materials**" means any substance: (A) that now or in the future is regulated or governed by, requires investigation or remediation under, or is defined as a hazardous waste, hazardous substance, pollutant or contaminant under any governmental statute, code, ordinance, regulation, rule or order, and any amendment thereto, including (by way of illustration and not of limitation) the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 *et seq*., as amended,; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq*., as amended,; the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq*., as amended,; the Safe Drinking Water Act, 42 U.S.C. §§ 300f *et seq*., as amended; the Clean Air Act, 42 U.S.C. § 7401 *et seq*., as amended; the Arizona Hazardous Waste Management Act, A.RS. § 49-921 *et seq*., as amended; the Arizona Environmental Quality Act, A.R.S. § 49- 101 *et seq*., as amended, and any other laws, rules, regulations, acts and decisions that deal with the regulation or protection of the environment, including the ambient air, ground water, surface water and land use, including sub-strata land (collectively, "**Hazardous Materials Laws**"); or (B) that is toxic, explosive, corrosive, flammable, radioactive, carcinogenic, dangerous or otherwise hazardous, including gasoline, diesel fuel, petroleum hydrocarbons, any other petroleum products or by-products, polychlorinated biphenyls, asbestos, lead, radon and urea formaldehyde form insulation; or (C) medical and biohazard wastes regulated by federal, state or local laws or authorities which includes any solid waste which is generated in the diagnosis, treatment or immunization of a human being or animal or in any research relating to that diagnosis, treatment or immunization, or in the production or testing of biologicals.

(hh) "**Improvements**" means collectively the Buildings, Public Improvements, and Streetscape Improvements.

(ii) "**Indemnity**" means as defined in Section 6.

(jj) "**Lease**" means the lease attached to this Agreement as Exhibit B.

(kk) "**Lender**" or "**Lenders**" means as defined in Section 11.22(a).

(ll) "**Party**" or "**Parties**" means as designated on the first page of this Agreement.

(mm) "**Prohibited Uses**" means as defined in Section 4.15.

(nn) "**Project**" means as defined in Recital C.

(oo) "**Property**" means as defined in Recital B.

(pp) "**Public Health Event**" means any one or more of the following but only if and as declared by an applicable government authority (or its designee): epidemics; pandemics; plagues; viral, bacterial or infectious disease outbreaks; public health crises; national health or medical emergencies; governmental restrictions on the provision of goods or services or on citizen liberties, including travel, movement, gathering or other activities, in each case arising in connection with any of the foregoing, and including governmentally-mandated closure, quarantine, "stay-at-home," "shelter-in-place" or similar orders or restrictions; or workforce shortages or disruptions of material or supply chains resulting from any of the foregoing.

(qq) "**Public Improvements**" means as defined in Section 4.9 (but does not include Streetscape Improvements).

(rr) "**SID 228**" means as defined in Section 4.17.

(ss) "**Streetscape Improvements**" means as defined in Section 4.10.

(tt) "**Term**" means as defined in Section 2.3.

(uu) "**Third Party**" means any person (as defined in Section 1(a) above) other than a Party, or an Affiliate of any Party.

(vv) "**Transfer**" or "**Transfers**" means as defined in Section 11.2.

(ww) "**Waiver**" means as defined in Section 11.28.

(xx) "**Zoning**" or "**Zoning Ordinance**" means the Zoning Ordinance of City, as the same may be amended from time to time during the Term.

(yy) "**Zoning Clearance**" means the review process in Article 6 Form-Based Code of the Zoning Ordinance that is used to determine if a project complies with the Form-Based Code and other requirements in the Zoning Ordinance.

2. PARTIES AND PURPOSE OF THIS AGREEMENT.

2.1 Parties to the Agreement. The Parties to this Agreement are City and Developer.

(a) The City. City is the City of Mesa, Arizona, a municipal corporation and a political subdivision of the State of Arizona, duly organized and validly existing under the laws of the State of Arizona, exercising its governmental functions and powers.

(b) The Developer. Developer is MHA III, LLC, an Arizona limited

liability company, duly organized and validly existing under the laws of the State of Arizona.

2.2 Purpose. Among the purposes of this Agreement are: to provide for the development of the Property in accordance with the Approved Plans and this Agreement; to provide for the Project and the Streetscape Improvements to be designed and constructed by Developer or at Developer's direction, and to acknowledge Developer Undertakings and City Undertakings.

2.3 Term. The term of this Agreement ("**Term**") is that period of time, commencing on the Effective Date, and terminating on the date on which the Parties have performed all of their obligations under this Agreement, City has reconveyed the Property and Buildings to the tenant named in the Lease and the Lease has terminated in accordance with its terms (unless terminated earlier pursuant to Section 9 of this Agreement or Section 21 of the Lease); provided, however, that all obligations of indemnification and Developer's maintenance, repair and replacement obligations in this Agreement or in the Lease, will survive in accordance with the terms of this Agreement or the Lease, as applicable.

3. SCOPE AND REGULATION OF DEVELOPMENT.

3.1 Development Plans.

(a) Approved Plans. Development of the Project will be in accordance with one or more plans (each, an "**Approved Plan**" or, collectively, "**Approved Plans**," as the same may be amended from time to time) prepared and submitted by Developer to City for approval, and which must (i) comply with the General Plan, the Central Main Plan, and the Zoning, and (ii) set forth the basic land uses and all other matters relevant to the development of the Project in accordance with this Agreement. Provided further, Developer has submitted to City a preliminary plan for the Project but Developer must submit to City, as part of the City's Zoning Clearance process, a final Approved Plan, which is subject to the approval process set forth in Section 3.1(b) below.

(b) Approval Process. The City's ordinary process then in effect will be used for the submittal, review, and approval of the Approved Plans including, but not limited to, any permits, plans, Project design elements (such as building materials, colors, architectural plans, landscaping, enhanced paving plans, irrigation, lighting, pedestrian linkages, signage and the architectural and thematic character of the Project) or other development approval in connection with the development of the Project. The Parties will cooperate reasonably throughout pre-development and development stages to resolve any City comments regarding implementation of the Approved Plans or in processing the approval or issuance of any permits, plans, specifications, plats or other development approvals requested by Developer in connection with the development of the Project.

3.2 Development Regulation.

(a) Applicable Laws. Developer will comply with all Applicable Laws that apply to the development of the Project as of the date of any application or submission.

(b) Permit and Other Fees. Building permit, inspection, development, and other similar fees for the development of the Project (each, a "**Fee**") will be those in effect at the time of any application or submission.

4. **DEVELOPER UNDERTAKINGS**. In consideration of the timely performance by City of City Undertakings, Developer will perform the obligations contained in this Section 4 ("**Developer Undertakings**") as follows:

4.1 Demolition of Existing Improvements. Developer, at Developer's sole cost and expense, and in compliance with all Applicable Laws, will demolish and remove, or cause to be demolished or removed, all existing improvements and other materials on the Property that are required to be demolished and removed in connection with the Approved Plans and the construction of the Project.

4.2 Environmental Remediation; Environmental Compliance. Developer, at Developer's sole cost and expense, and in compliance with all Applicable Laws and Hazardous Materials Laws will undertake and complete all required removal and remediation of all Hazardous Materials from the Property prior to Commencement of Construction.

4.3 Minimum Project Improvements. Developer, at Developer's sole cost and expense, and in compliance with Section 3 of this Agreement and all Applicable Laws, will construct three multiple residence buildings (each a "**Building**" and collectively "**Buildings**") on or above the Property as shown on the Developer's Approved Plans submitted with the Zoning Clearance for the Project (case number ADM21-01180), as follows:

(a) The Buildings will be built concurrently in a single phase of construction and each Building will have a minimum of three (3) stories with twenty-four (24) apartment units; and collectively distributed among the Buildings there will be a minimum of seventy-two (72) apartment units consisting of a minimum of twelve (12) two-bedroom apartment units and sixty (60) one-bedroom apartment units.

(b) The Approved Plan for the Project may be amended by Developer from time to time and any such amendments will be subject to City's standard review procedures and processes in accordance with Section 3.1(b). Additionally, the City Manager has the authority (without further act or approval required by the City Council) to make administrative adjustments in the amounts described in this Section 4.3 in order to accommodate reasonable changes necessitated by design and construction matters discovered or determined subsequent to the execution of this Agreement by the Parties.

4.4 Program Compliance. Developer, at Developer's sole cost and expense, during the Term, and in compliance with all Applicable Laws, will comply in all material respects with those programs and policies set forth and described in Exhibit C. The Parties agree and acknowledge the City Manager will have the right and ability, without need for City Council approval, to make minor adjustments to Exhibit C that are agreed to by the Parties and are consistent with the intent of the Parties and this Agreement.

4.5 On-Site Amenities. Developer, at Developer's sole cost and expense, during

the Term, and in compliance with all Applicable Laws, will cause the Buildings to include and offer to all residential tenants the on-site amenities set forth and described in Exhibit D. The Parties agree and acknowledge the City Manager will have the authority, without need for City Council approval, to make minor adjustments to Exhibit D that are agreed by the Parties and are consistent with the intent of the Parties and this Agreement.

4.6 Unit Amenities. Developer, at Developer's sole cost and expense, during the Term, and in compliance with all Applicable Laws, will cause all individual rental units within the Buildings to include and contain the unit amenities set forth and described in Exhibit E. The Parties agree and acknowledge the City Manager will have the authority, without need for City Council approval, to make minor adjustments to Exhibit E that are agreed by the Parties and are consistent with the intent of the Parties and this Agreement.

4.7 Exterior Quality Standards. Developer, at Developer's sole cost and expense, during the Term, and in compliance with all Applicable Laws, will comply in all material respects with those exterior quality standards described in Exhibit F. The Parties agree and acknowledge the City Manager will have the authority, without need for City Council approval, to make minor adjustments to Exhibit F that are agreed by the Parties and are consistent with the intent of the Parties and this Agreement.

4.8 Project Users Use of Adjacent Amenities. Developer has constructed and currently owns Residences on First Phase II located at 59 W. 1st. Avenue (the "**Phase II Property**"), which is adjacent to the Property. Developer agrees to grant the residences, guests and invitees of the Project (collectively, "**Project Users**"), at no cost or expense to the Project Users, perpetual non-exclusive use of, and access to, the Residences on First Phase II amenities described in and depicted on Exhibit G (the "**Phase II Amenities**"). Prior to City executing the Lease, Developer will record in the office of the Recorder of Maricopa County, Arizona, an agreement that grants and establishes, for the benefit of the Project Users a perpetual, non-exclusive easement for open and continuous use of the Phase II Amenities and ingress and egress for pedestrian traffic over, through and across the Phase II Property (the "**Use Agreement**"). This Section 4.8 will survive the expiration or any earlier termination of this Agreement.

4.9 Public Improvements. In connection with the development of the Project on the Property and prior to the issuance of a certificate of occupancy for any Building constructed on the Property, Developer must design, construct (or cause to be constructed), and install, at Developer's sole cost and expense, the offsite improvements (e.g., water, wastewater, drainage, and roadway improvements) to applicable City standards, as required by Mesa City Code and Applicable Laws (the "**Public Improvements**").

4.10 Additional Streetscape Improvements.

(a) Developer Obligation to Install Streetscape Improvements. In addition to the Public Improvements, Developer, at Developer's sole cost and expense, and in compliance with Applicable Laws and this Agreement, will design, construct, or cause to be constructed, and maintain the streetscape improvements described in Exhibit H, in the right-of-

way on Macdonald Street adjacent to the Property and extending north to 1st Avenue as depicted on Exhibit H-1 (the "**Streetscape Improvements**"). The specific design of the Streetscape Improvements will be approved through the Zoning Clearance process. The Developer's willingness to install and maintain the Streetscape Improvements is material consideration to City for entering into this Agreement. Provided further, the Parties acknowledge and agree that City would not have entered into this Agreement or the Lease but for Developer's commitment to install and maintain the Streetscape Improvements.

(b) Maintenance Obligations of Streetscape Improvements. Developer at Developer's sole cost and expense (prior to and after the Streetscape Improvements have been accepted by City pursuant to Section 4.14) will maintain the Streetscape Improvements, excluding the Hardscape, in a first-class, sound, clean and attractive manner, and will repair, replace, or both any and all damage to the Streetscape Improvements (excluding the Hardscape), including but not limited to, damage caused by third parties, vehicles, vandalism, and damage caused by contractors and utility companies while working in the right-of-way or public easement. In the event Developer fails to maintain, repair or replace such Streetscape Improvements, City, after 30 days written notice to Developer, may (but is not obligated to) maintain, repair and replace such Streetscape Improvements at Developer's expense, in which event Developer, promptly upon receipt of an invoice from City for City's costs and expenses (with copies of all invoices related thereto), will pay and reimburse City for all costs of maintenance (including repair or replacement) of such improvements incurred by City. Developer's obligations of maintenance, repair, replacement and reimbursement set forth in this Section 4.10(b) run with the land and will survive the expiration or earlier termination of this Agreement.

4.11 Payment and Performance Bonds for the Improvements. In connection with its construction of the Improvements, and to ensure full and timely completion of the Project, Developer, at Developer's sole cost and expense, will provide City with either: (i) payment and performance bonds (which may be dual-obligee bonds with Developer's lender or lenders, that name City as an additional obligee), (ii) an irrevocable letter of credit in favor of City that complies with the following: (a) issued by a national banking association, (b) in an amount not less than the construction cost required to complete the construction of the Improvements, (c) for presentation in Phoenix, Arizona, (d) with an expiration date (or a series of automatic, irrevocable renewals) permitting completion of the Project, and (e) in a form and subject only to conditions otherwise reasonably satisfactory to City, or (iii) such other evidence or arrangement (e.g., escrow account and agreement) that reasonably satisfies the City that the Developer has the financial ability to timely complete the Project and the Improvements or return the Property and the property where the Improvements are located to the condition as it existed prior to Commencement of Construction (e.g., escrowing $2,000,000).

4.12 Compliance Dates. Developer will perform or complete each of the following on or before the date set forth below for the applicable act (each, a "**Compliance Date**"):

(a) On or before June 30, 2022, following timely application and payment of all applicable fees, Developer will have received building permits from City for the Improvements.

(b) On or before August 31, 2022, Developer will have Commenced Construction of the Improvements.

(c) On or before December 31, 2023, Developer will have Completed Construction of all of the Improvements.

If requested by Developer, the City Manager, in the City Manager's sole discretion, may extend any of the foregoing dates for a period of time not to exceed forty-five (45) days per extension, with a maximum of three (3) extensions per event (each, an "**Extended Compliance Date**"). In the event of any extension by the City Manager, each subsequent Compliance Date will automatically be adjusted in conformity.

4.13 City Services. During the Term, Developer will contract for and use all City of Mesa services available. All utility services to the Property are subject to the City's Terms and Conditions for the Sale of Utilities, the City Code, and all other Applicable Laws. City services will also be provided subject to payment of the then applicable rates, fees and charges.

4.14 Dedication of Public Improvements and Streetscape Improvements. Upon not fewer than ninety (90) days advance request by City, or upon completion of any portion or segment of the Public Improvements or Streetscape Improvements offered for dedication by Developer and accepted by City, Developer will dedicate and grant to City the Public Improvements and Streetscape Improvements and any real property or real property interests owned or retained by Developer which (i) constitute a part of the Property; (ii) are reasonably necessary for right-of- way purposes or otherwise required for the construction, maintenance, or operation of the Public Improvements on or within the Property; and (iii) do not materially interfere with the development of the Buildings as shown on the Approved Plans (collectively, the "**Dedicated Property**"). Developer will make such dedications without the payment of any additional consideration by City.

(a) Warranty. With respect to such dedicated Public Improvements and Streetscape Improvements, Developer will demonstrate to City's reasonable satisfaction that all contractors and suppliers of materials have been paid for their work and will provide a two (2) year warranty (which may be by assignment of a contractor's warranty) of materials and workmanship.

(b) Developer will have dedicated all Public Improvements and Streetscape Improvements and Dedicated Property to City before City is obligated to issue a certificate of occupancy for any portion of the Buildings. Upon acceptance by City (which acceptance shall not be unreasonably conditioned, but may include, among other reasonable conditions, a warranty as set forth in Section 4.14(a)), the Public Improvements and Streetscape Improvements will become public facilities and property of City.

(c) Maintenance.

(i) Maintenance of Public Improvements and Streetscape Improvements. Upon City's acceptance of the Public Improvements, City will be solely

responsible for all maintenance, replacement and repairs of the Public Improvements and the Hardscape.

(ii) Maintenance of Streetscape Improvements. The maintenance, replacement, and repair obligations of the Streetscape Improvements, excluding the Hardscape, will remain with the Developer as set forth in Section 4.10(b).

(d) Indemnification.

(i) Indemnification – Public Improvements. With respect to any Claims (as that term is defined in Section 6) arising prior to acceptance of the Public Improvements by City pursuant to Section 4.14, Developer will assume the risk of any and all loss or damage to any portion of the Public Improvements and will pay, defend, indemnify and hold harmless City and its officers, employees, elected and appointed officials, agents, representatives, and volunteers (collectively "**City Indemnified Parties**"), against any Claims arising prior to City's acceptance of the Public Improvements from any injury (personal, economic or other) or property damage to any person, party or utility, arising from the condition, loss, damage to or failure of any of the Public Improvements, except to the extent caused solely by the gross negligence or willful acts or omissions of City Indemnified Parties.

(ii) Indemnification – Streetscape Improvements. Prior to and after acceptance of the Streetscape Improvements by City pursuant to Section 4.14, Developer will assume the risk of any and all loss or damage to any portion of the Streetscape Improvements and will pay, defend, indemnify and hold harmless City Indemnified Parties against any Claims arising from any injury (personal, economic or other) or property damage to any person, party or utility, arising from the condition, loss, damage to or failure of any of the Streetscape Improvements or the Developer's failure to maintain, repair or replace the Streetscape Improvements (except the Hardscape) except to the extent caused solely by the gross negligence or willful acts or omissions of City Indemnified Parties. The obligations to pay, defend, indemnity and hold harmless set forth in this Section 4.14(d)(ii) shall survive the expiration or earlier termination of this Agreement in perpetuity.

(e) Insurance. During the period of any construction involving the Public Improvements, Streetscape Improvements, or both, and with respect to any construction activities relating to the Public Improvements, Streetscape Improvements, or both, Developer will obtain and provide City with proof of payment of premiums and certificates of insurance showing that Developer is carrying, or causing its contractor(s) to carry, builder's risk insurance, comprehensive general liability and worker's compensation insurance policies in amounts and coverages set forth in Exhibit I Such policies of insurance will be placed with financially sound and reputable insurers, and Developer will use reasonable and good faith efforts to require the insurer to give at least thirty (30) days advance written notice of cancellation to City, and Developer will name City as an additional insured on such policies.

4.15 Prohibited Uses. Notwithstanding anything in Applicable Laws (including but not limited to the Zoning), the uses described in Exhibit J will at all times be prohibited on the Property.

4.16 Economic Analysis Costs. In order to ensure compliance with A.R.S. §§ 42-

6201 *et seq.*, City obtained a professional analysis of the economic impact of the proposed development of the Project. Prior to the effective date of the Lease, Developer shall reimburse City $3,100.00, which was the cost to obtain that analysis.

4.17 Annual Assessment to Mesa Town Center Improvement District. Developer acknowledges the Property is located within the Mesa Town Center Improvement District, specifically within Special Improvement District 228 ("**SID 228**"). Property located within SID 228 are assessed an annual fee in order for City or its designee to provide a greater degree of management and public services and such annual fee may be amended from time to time ("**Annual Assessment**"). City currently contracts with the Downtown Mesa Association ("**DMA**") to provide this service to SID 228. Developer acknowledges and agrees to annually pay the Annual Assessment to City or City's designee within thirty (30) days of Developer's receipt of an invoice from City or City's designee; provided further, during the term of the Lease, Developer agrees to make an annual, lump-sum in-lieu payment in the amount that would have been assessed by SID 228 and paid by Developer if Developer were the fee owner of the Property and Buildings as further set forth in Section 7(H) of the Lease.

4.18 Mitigation Plan. The Parties have worked together and have agreed to the Mitigation Plan attached to this Agreement as Exhibit K. The Parties also agree that prior to Developer's receipt of building permits or Commencement of Construction, and thereafter as necessary, the Mitigation Plan may be revised, as necessary, if the revisions are agreed to by the Parties. The City Manager is authorized to approve such revisions administratively and without further approval of the City Council.

5. **CITY UNDERTAKINGS**. In consideration of the timely performance by Developer of the Developer Undertakings, City will perform the obligations contained in this Section 5 ("**City Undertakings**") as follows:

5.1 Lease and Conditions Precedent to Entering into Lease. If (i) Developer Completes Construction of all Improvements in compliance with this Agreement, (ii) Developer records the Use Agreement on the Phase II Property, (iii) the Property and Improvements are free and clear of all financial liens and encumbrances, except for non-financial encumbrances to the extent allowed by the form of special warranty deed attached as Exhibit L, (iii) Developer obtains an ALTA owner's title insurance policy ("**Title Policy**") for the benefit of City in the amount of $1,000,000.00 (the premium for which will have been paid by Developer) in a form satisfactory to City in its sole discretion and reflecting the condition of title as approved (the condition of title is subject to approval by City in its sole discretion, which will include, but is not limited to, having no financial encumbrances and being lien-free), then City will accept conveyance of the Property to City by form of special warranty deed attached as Exhibit L, and City will lease the Property to Developer by means of the Lease attached as Exhibit B. Notwithstanding the foregoing, City will not enter into the Lease, and shall have no obligation to accept the conveyance of the Property from Developer, if (a) Developer has not Completed Construction of the Improvements in compliance with this Agreement; or (b) Developer has not recorded the Use Agreement in compliance with this Agreement; or (c) Developer is in Default or an Event of Default under this Agreement of any (subject to the right to cure under Section 9.3 below); or (d) ad valorem taxes and similar assessments with respect to the Property and Buildings due and

owing beyond the year of conveyance to City are unpaid; or (e) the Property and Buildings are burdened by any financial liens or encumbrances (including mechanics' or materialmen's liens); provided, however, that this Section 5.1 does not restrict the right of Developer to encumber its leasehold interest in accordance with the terms of the Lease; and provided further that if Developer, as tenant, diligently seeks to challenge any mechanics or materialmen's liens, Developer may discharge such liens of record by bond, deposit or order of a court of competent jurisdiction or alternately cause them to be insured over by title insurance endorsement reasonably satisfactory to City as the landlord.

5.2 Impact Fee Offset. City, in accordance with Mesa City Code 5-17-5(C)(5), may provide an offset for impact fees, as applicable.

5.3 Acceptance of Public Improvements and Streetscape Improvements. The acceptance of the Public Improvements and Streetscape Improvements (or a portion of such Public Improvements or Streetscape Improvements).

6. **INDEMNITY**. Developer will pay, defend, indemnify and hold harmless City Indemnified Parties from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including reasonable attorneys' fees, experts' fees and court costs associated with such matters; all of the foregoing, collectively "**Claims**") which arise from or relate in any way, whether in whole or in part, to (i) any act or omission by Developer, or its employees, contractors, subcontractors, agents or representatives, undertaken in fulfillment of Developer's obligations under this Agreement or (ii) any loss of or reduction in state shared monies arising in connection with a claim brought or maintained under A.R.S. § 41-194.01 (collectively, "**Indemnity**"). The obligations of Indemnity set forth in this Section 6, expressly include all Claims relating to or arising from design, construction and structural engineering acts or omissions related in any way to, of or in connection with, the work, Buildings, and improvements by or on behalf of Developer and shall survive the expiration or earlier termination of this Agreement for a period of two (2) years.

7. **CITY REPRESENTATIONS**. City represents and warrants to Developer that:

7.1 City's execution, delivery and performance of this Agreement have been duly authorized and agreed to in compliance with the requirements of the City Code.

7.2 All consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.

7.3 City will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

7.4 As of the date of this Agreement, City has no actual knowledge of any litigation, proceeding, initiative, referendum, investigation or threat of any of the same contesting the powers of City or its officials with respect to this Agreement that has not been disclosed in writing to Developer. The term "actual knowledge" means the actual knowledge of Jeff McVay, Downtown Transformation Manager, and Jeffrey Robbins, Economic Development Project

Manager, as of the Effective Date. Notwithstanding anything herein to the contrary, neither Mr. McVay nor Mr. Robbins are Parties to this Agreement, and neither shall have any personal liability or liability whatsoever with respect to any matters set forth in this Agreement or Developer's representations and/or warranties herein being or becoming untrue, inaccurate or incomplete in any respect.

7.5 The execution, delivery and performance of this Agreement by City is not prohibited by, and does not conflict with, any other agreements, instruments, judgments or decrees to which City is a party or to which City is otherwise subject.

7.6 City has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

8. **DEVELOPER REPRESENTATIONS**. Developer represents and warrants to City that:

8.1 Developer has the full right, power and authorization to enter into and perform this Agreement and of the obligations and undertakings of Developer under this Agreement, and the execution, delivery and performance of this Agreement by Developer has been duly authorized and agreed to in compliance with the organizational documents of Developer.

8.2 All consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.

8.3 Developer will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

8.4 As of the date of this Agreement, Developer has no actual knowledge of any litigation, proceeding or investigation pending or threatened against or affecting Developer which could have a material adverse effect on Developer's performance under this Agreement that has not been disclosed in writing to City. The term "actual knowledge" means the actual knowledge of Todd Marshall, Charles Huellmantel, and Chad Rennaker as of the Effective Date. Notwithstanding anything herein to the contrary, neither Mr. Marshall, nor Mr. Huellmantel, nor Mr. Rennaker are Parties to this Agreement, and neither shall have any personal liability or liability whatsoever with respect to any matters set forth in this Agreement or City's representations and/or warranties herein being or becoming untrue, inaccurate or incomplete in any respect.

8.5 This Agreement (and each undertaking of Developer contained herein) constitutes a valid, binding and enforceable obligation of Developer, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity.

8.6 The execution, delivery and performance of this Agreement by Developer is not prohibited by, and does not conflict with, any other agreements, instruments, judgments or

decrees to which Developer is a party or to which Developer is otherwise subject.

8.7 Developer has not paid or given, and will not pay or give, any Third Party any money or other consideration for obtaining this Agreement other than normal costs of conducting business and costs of professional services such as the services of architects, engineers, financial advisors, brokers and attorneys.

8.8 Developer has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

9. **EVENTS OF DEFAULT; REMEDIES**.

9.1 Events of Default by Developer. "**Default**" or an "**Event of Default**" by Developer under this Agreement will mean one or more of the following (subject to Section 9.3):

(a) Any representation or warranty made in this Agreement by Developer was materially inaccurate when made or is proven to be materially inaccurate during the Term~~;~~

(b) Developer fails to comply with the dates established in this Agreement for the Commencement of Construction or the Completion of Construction, for any reason other than Force Majeure;

(c) Foreclosure (or deed in lieu of foreclosure) upon any mechanic's, materialmen's or other lien on the Property or any improvements thereon prior to Completion of Construction, but such lien will not constitute a Default if Developer deposits in escrow sufficient funds to discharge the lien or otherwise bonds over such liens in a customary fashion;

(d) Developer transfers or attempts to transfer or assign this Agreement in violation of Section 11.2; or

(e) Developer fails to observe or perform any other covenant, obligation or agreement required of it under this Agreement.

9.2 Events of Default by City. Default or an Event of Default by City under this Agreement will mean one or more of the following (subject to Section 9.3):

(a) Any representation or warranty made in this Agreement by City was materially inaccurate when made or is proven to be materially inaccurate during the Term;

(b) City fails to observe or perform any other covenant, obligation or agreement required of it under this Agreement; or

(c) City transfers or attempts to transfer or assign this Agreement in

violation of Section 11.2(b).

9.3 Grace Periods; Notice and Cure. Upon the occurrence of an Event of Default by any Party, such Party will, upon written notice from the other Party, proceed immediately to cure or remedy such Default and, in any event, such Default must be cured within thirty (30) days after receipt of such notice; or, if such Default is of a nature is not capable of being cured within thirty (30) days must be commenced within such period and diligently pursued to completion, but not to exceed ninety (90) days in total. Provided further, if Developer is working diligently and in good faith to cure a non-monetary Default, the City Manager, in the City Manager's sole discretion, may extend the period of time the Developer has to cure the non-monetary Default for another thirty (30) days, however, in no event shall the overall period of time for completion exceed one hundred eighty (120) days.

9.4 Remedies for Default. Whenever any Event of Default occurs and is not cured (or cure undertaken) by the defaulting Party in accordance with Section 9.3 of this Agreement, the other Party may take any of one or more of the following actions:

(a) Remedies of City. City's exclusive remedies for an uncured Event of Default by Developer will consist of, and will be limited to the following:

(i) If an uncured Event of Default by Developer occurs prior to Completion of Construction and with respect to Developer's failure to construct or develop the Improvements in accordance with the terms of this Agreement, City may suspend any of its obligations under this Agreement and may terminate this Agreement by written notice thereof to Developer.

(ii) If an uncured Event of Default by Developer occurs following Completion of Construction, City may suspend any of its obligations under this Agreement, may terminate this Agreement by written notice thereof to Developer, and may terminate the Lease in accordance with the terms of the Lease.

(iii) Notwithstanding the foregoing, at any time, City may seek special action or other similar relief (whether characterized as mandamus, injunction, specific performance, or otherwise), requiring Developer to undertake and to fully and timely perform its obligations under this Agreement and/or undertake and to fully and timely address a public safety concern or to enjoin any construction or activity undertaken by Developer which is not in accordance with the terms of this Agreement.

(iv) Notwithstanding the foregoing, the limitations on City's remedies will not limit City's remedies for actions against Developer with respect to Developer's obligations of indemnification, duty to defend and hold harmless including, but not limited to, City's ability to seek damages in relation thereto.

(v) In no event shall City be entitled to punitive, consequential or special damages, except this is not a limitation on Developer's obligation to indemnify, defend and hold harmless.

(vi) Notwithstanding the foregoing, City has and retains its specific rights set forth in Section 4.14(d), Section 4.14(e), Section 5.1 and Section 6, in addition to any other rights or remedies granted to or reserved by City in this Agreement that survive termination.

(b) Remedies of Developer. Developer's exclusive remedies for an uncured Event of Default by City will consist of and will be limited to a special action or other similar relief (whether characterized as mandamus, injunction, specific performance or otherwise), requiring City to undertake and to fully and timely perform its obligations under this Agreement, and Developer hereby waives any and all right to recover actual, punitive, consequential, special, and any other type of damages whatsoever.

9.5 Delays; Waivers. Except as otherwise expressly provided in this Agreement (including, but not limited to, Force Majeure under Section 9.6), any delay by any Party in asserting any right or remedy under this Agreement will not operate as a waiver of any such rights or limit such rights in any way; and any waiver in fact made by such Party with respect to any Default by the other Party will not be considered as a waiver of rights with respect to any other Default by the performing Party or with respect to the particular Default except to the extent specifically waived in writing. It is the intent of the Parties that this provision will enable each Party to avoid the risk of being limited in the exercise of any right or remedy provided in this Agreement by waiver, laches or otherwise at a time when it may still hope to resolve the problems created by the Default involved.

9.6 Force Majeure in Performance for Causes Beyond Control of Party. Neither City nor Developer, as the case may be, will be considered not to have performed its obligations under this Agreement in the event of force majeure ("**Force Majeure**") due to causes beyond its control and without its fault, negligence or failure to comply with Applicable Laws, including, but not restricted to, acts of God, acts of public enemy, litigation concerning the validity and enforceability of this Agreement or relating to transactions contemplated hereby (including the effect of petitions for initiative or referendum), a Public Health Event, strikes, embargoes, labor disputes, fires, floods, and unusually severe weather or the delays of subcontractors or materialmen due to such causes, act of a public enemy, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), nuclear radiation, declaration of national emergency or national alert, blockade, insurrection, riot, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain, condemnation, or other taking by the action of any governmental body on behalf of any public, quasi-public, or private entity, or declaration of moratorium or similar hiatus directly affecting the Property (whether permanent or temporary) by any public, quasi-public or private entity. In no event will Force Majeure include any delay resulting from general economic or market conditions, unavailability for any reason of particular tenants of portions of the Buildings, nor from the unavailability for any reason of particular contractors, subcontractors, vendors, investors or lenders desired by Developer in connection with the acquisition of the Property or the design and construction of the Buildings, it being agreed that Developer will bear all risks of delay which are not Force Majeure. In the event of the occurrence of any such Force Majeure, the time or times for performance of the obligations of the Party claiming delay will be extended for a period of the Force Majeure; provided that the Party seeking the benefit of the provisions of this Section 9.6, within thirty (30) days after such event, must notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Force Majeure.

9.7 Rights and Remedies Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by either Party of any one or more of such rights will not preclude the

exercise by it, at the same or different times, of any other right or remedy for any other Default by the other Party.

10. **DESIGNATED REPRESENTATIVES**. To further the cooperation of the Parties in implementing this Agreement, City and Developer each will designate and appoint a representative to act as a liaison between City and its various departments and Developer. The initial representative for City will be Jeff McVay, Downtown Transformation Manager ("**City Representative**"), and the initial representative for Developer will be its Project Manager, as identified by Developer from time to time ("**Developer Representative**"). The City Representative and the Developer Representative will be available at all reasonable times to discuss and review the performance of the Parties to this Agreement and the development of the Property.

11. **MISCELLANEOUS PROVISIONS**.

11.1 Governing Law; Choice of Forum. This Agreement will be deemed to be made under, will be construed in accordance with, and will be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this Agreement must be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa (or, as may be appropriate, in the Justice Courts of Maricopa County, Arizona, or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section 11.1.

11.2 Restrictions on Assignment and Transfer.

(a) Restriction on Transfers. Prior to Completion of Construction, no assignment or similar transfer of Developer's interest in the Property or this Agreement, or in the current management, ownership or control of Developer (each, a "**Transfer**" and collectively, "**Transfers**") shall occur without the prior written consent of City, which consent may be given or withheld in City's sole and unfettered discretion; provided, however, that the foregoing restriction will not apply up to a maximum of two Transfers to an Affiliate of Developer upon City's reasonable determination that the management and control of the Affiliate transferee is materially the same as the management and control of Developer as of the Effective Date. The restrictions on Transfers set forth in this Section 11.2 shall terminate automatically, and without further notice or action, upon Completion of Construction and conveyance of the Property and Improvements to City; provided, however, that no Transfer shall release or discharge Developer from any of its obligations arising in or under this Agreement or the Lease, including but not limited to the obligations of indemnification set forth in Section 4.14(d) and Section 6; and further provided that, upon a Transfer, the transferee (without further act or writing required) is deemed fully, automatically and unconditionally to have assumed all obligations of Developer arising in or under this Agreement, including but not limited to all obligations of indemnity set forth in Section 4.14(d), Section 6, or elsewhere in this Agreement. No voluntary or involuntary successor in interest to Developer shall acquire any rights or powers under this Agreement, except as expressly set forth herein, and any Transfer in violation of this Agreement shall be void, and

not voidable.

(b) Transfers by City. City's rights and obligations under this Agreement will be non-assignable and non-transferable, without the prior express written consent of Developer, which consent may be given or withheld in Developer's sole and unfettered discretion.

11.3 Limited Severability. City and Developer each believes that the execution, delivery and performance of this Agreement are in compliance with all Applicable Laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring City to do any act in violation of any Applicable Laws, constitutional provision, law, regulation, City code or City charter), such provision will be deemed severed from this Agreement and this Agreement will otherwise remain in full force and effect; provided that this Agreement will retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. The Parties further agree, in such circumstances, to do all acts and to execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

11.4 Construction. The terms and provisions of this Agreement represent the results of negotiations between the Parties, each of which has been or has had the opportunity to be represented by counsel of its own choosing, and none of which has acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Agreement will be interpreted and construed in accordance with their usual and customary meanings, and the Parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Agreement that ambiguous or conflicting terms or provisions contained in this Agreement will be interpreted or construed against the Party who prepared or whose attorney prepared the executed Agreement or any earlier draft of the same.

11.5 Notices.

(a) Addresses. Except as otherwise required by law, any notice required or permitted under this Agreement will be in writing and will be given by (i) personal delivery or (ii) any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), delivery charges prepaid:

If to City:

City of Mesa
Attn: City Manager 20
East Main Street
Mesa, Arizona 85201-7425
Telephone: 480-644-2066
Email: chris.brady@mesaaz.gov

and

City of Mesa

Attn: Downtown Transformation Manager
20 East Main Street
Mesa, Arizona 85201-7425
Telephone: 480-644-5379
Email: jeff.mcvay@mesaaz.gov

With a required copy to:

City of Mesa
Attn: City Attorney
20 East Main Street, Suite 850
Mesa, Arizona 85201-7425
Telephone: 480-644-3497
Email: jim.smith@mesaaz.gov

If to Developer:

MHA III, LLC
233 East Southern,
Number 24641
Tempe, Arizona 85282
Attn: Todd Marshall
Telephone: 480-966-
3008
Email: tmarshall@marshallcompany.com

With required copy to:

Stoel Rives LLP
600 University Street, Suite
3600.
Seattle, WA 98101
Attn: Joseph P. McCarthy
Telephone: 206-386-7534
Email: Joseph.mccarthy@stoel.com

(b) Effective Date of Notices. Any notice sent by a recognized national overnight delivery service will be deemed effective one (1) business day after deposit with such service. Any notice personally delivered or delivered through a same-day delivery/courier service will be deemed effective upon its receipt (or refusal to accept receipt) by the addressee. Any Party may designate a different person or entity or change the place to which any notice will be given as herein provided. Telephone numbers and email addresses are provided for informational purposes only and shall not be deemed notice.

11.6 Time of Essence. Time is of the essence of this Agreement and each provision hereof.

11.7 Section Headings. The Section headings contained in this Agreement are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement.

11.8 Attorneys' Fees Provisions.

(a) Between the Parties. In the event of a breach by any Party and commencement of a subsequent legal action (that only involves the Parties) in an appropriate forum, each Party shall its own cost for any such dispute and will not be entitled and hereby waives any right to reimbursement of any attorneys' fees or any costs or fees.

(b) Third-Party Claim Naming Only Developer. Developer at its sole cost and expense will defend the validity and enforceability of this Agreement in the event of any proceeding or litigation that names only Developer (but not City) as a party to such proceeding or litigation.

(c) Third-Party Claim Naming City. Subject to Section 11.13, City will defend the validity and enforceability of this Agreement in the event of any proceeding or litigation that names only City (but not Developer) as a party or names both City and Developer as parties to such proceeding or litigation according to the following terms: (i) City in its sole discretion will choose its counsel; and (ii) Developer within thirty days of written demand from City must reimburse City for one-half of City's attorneys' fees and costs incurred under this Section 11.8(c); and (iii) City has no obligation to maintain such defense if City has incurred attorneys' fees in excess of $50,000.00 after reimbursement by Developer; and (iv) City may settle any such proceeding or litigation on such terms and conditions City may elect in its sole and absolute discretion, and (v) in cases naming both City and Developer, Developer in its sole discretion will choose its counsel and pay for all costs associated with its counsel. Provided further, the severability and reformation provisions of Section 11.3 will apply in the event of any successful challenge to this Agreement.

11.9 Waiver. Without limiting the provisions of Section 9.5 of this Agreement, the Parties agree that neither the failure nor the delay of any Party to exercise any right, remedy, power or privilege under this Agreement will operate as a waiver of such right, remedy, power or privilege, nor will any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor will any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver will be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

11.10 Third Party Beneficiaries. No person or entity will be a third party beneficiary to this Agreement, except for permitted transferees, assignees, or lenders under Section 11.22 to the extent that they assume or succeed to the rights and/or obligations of Developer under this Agreement, and except that the indemnified Parties referred to in the indemnification provisions of Section 6 (or elsewhere in this Agreement) will be third party beneficiaries of such indemnification provisions.

11.11 Exhibits. Without limiting the provisions of Section 1 of this Agreement, the Parties agree that all references to this Agreement include all Exhibits designated in and attached to this Agreement, such Exhibits being incorporated into and made an integral part of this Agreement for all purposes.

11.12 Integration. Except as expressly provided herein, this Agreement constitutes the entire agreement between the Parties with respect to the subject matters hereof and supersedes any prior agreement, understanding, negotiation or representation regarding the subject matters covered by this Agreement.

11.13 Preserve State Shared Revenue. Notwithstanding any other provision of, or limitation in, this Agreement to the contrary, if pursuant to A.R.S. § 41-194.01 the Attorney General determines that this Agreement violates any provision of state law or the Constitution of Arizona (including but not limited to A.R.S. § 42-6201 *et seq.*), City and Developer shall use all and best faith efforts to modify the Agreement so as to fulfill each Parties obligations in the Agreement while resolving the violation with the Attorney General. If within thirty (30) days of notice from the Attorney General pursuant to and under the provisions of A.R.S. § 41-194.01(B)(1), City and Developer cannot agree to modify this Agreement so as to resolve the violation with the Attorney General, this Agreement shall automatically terminate at midnight on the thirtieth (30^{th}) day after receiving such notice from the Attorney General, and upon such termination the Parties shall have no further obligations under this Agreement. Additionally, if the Attorney General determines that this Agreement may violate a provision of state law or the Constitution of Arizona under A.R.S. § 41-194.01(B)(2), and requires the posting of a bond under A.R.S. § 41-194.01(B)(2), City shall be entitled to terminate this Agreement, except if Developer posts such bond, if required; and provided further, that if the Arizona Supreme Court, determines that this Agreement violates any provision of state law or the Constitution of Arizona, City may terminate this Agreement and the Parties shall have no further rights, interests or obligations in this Agreement or claim against the other Party for a breach or default under this Agreement.

11.14 Further Assurances. Each Party agrees to perform such other and further acts and to execute and deliver such additional agreements, documents, affidavits, certifications, acknowledgments and instruments as any other Party may reasonably require to consummate evidence, confirm, or carry out the matters contemplated by this Agreement or confirm the status of (a) this Agreement as in full force and effect and (b) the performance of the obligations hereunder at any time during its Term.

11.15 Business Days. If the last day of any time period stated in this Agreement or the date on which any obligation to be performed under this Agreement falls on a Saturday, Sunday or legal holiday, then the duration of such time period or the date of performance, as applicable, will be extended so that it will end on the next succeeding day which is not a Saturday, Sunday or legal holiday.

11.16 Consents and Approvals. Wherever this Agreement requires or permits the consent or approval of a Party to any act, document, use or other matter, such consent or approval will be given or denied by such Party in its reasonable discretion, unless this Agreement expressly provides otherwise. Any consent or approval required by this Agreement may be provided by the City Manager (or designee), unless otherwise specified or required by Applicable Laws. In addition, the City Manager is expressly authorized to execute and deliver all amendments to this Agreement, the Lease, and other transaction documents required by, contemplated under or

authorized in this Agreement.

11.17 Covenants Running With Land; Inurement. The covenants, conditions, terms and provisions of this Agreement relating to use of the Property will run with the Property and will be binding upon, and will inure to, the benefit of the Parties and their respective permitted successors and assigns with respect to such Property. Wherever the term "Party" or the name of any particular Party is used in this Agreement such term will include any such Party's permitted successors and assigns.

11.18 Recordation. Within ten (10) days after this Agreement has been executed by the Parties, City will cause this Agreement to be recorded in the Official Records of Maricopa County, Arizona.

11.19 Amendment. No change or addition is to be made to this Agreement except by written amendment executed by City and Developer. Within ten (10) days after any amendment to this Agreement, such amendment will be recorded in the Official Records of Maricopa County, Arizona. Upon amendment of this Agreement as established herein, references to "Agreement" or "Development Agreement" will mean the Agreement as amended. If, after the effective date of any amendment(s), the Parties find it necessary to refer to this Agreement in its original, unamended form, they will refer to it as the "Original Development Agreement." When the Parties mean to refer to any specific amendment to the Agreement which amendment is unmodified by any subsequent amendments, the Parties will refer to it by the number of the amendment as well as its effective date.

11.20 Good Faith of Parties. Except where any matter is expressly stated to be in the sole discretion of a Party, in performance of this Agreement or in considering any requested extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily or capriciously and will not unreasonably withhold, delay or condition any requested approval, acknowledgment or consent.

11.21 Survival. All indemnification provisions contained in this Agreement will survive the execution and delivery of this Agreement, the closing of any transaction contemplated herein, and the rescission, cancellation, expiration or termination of this Agreement upon the terms and for the period set forth in each respective Section, and if none is specified, then for a period of two (2) years.

11.22 Rights of Lenders.

(a) City is aware that Developer may obtain financing or refinancing for acquisition, development and/or construction of the Property and Buildings and any improvements to be constructed on the Property, in whole or in part, from time to time, by one or more Third Parties (individually a "**Lender**," and collectively the "**Lenders**").

(b) Developer shall have the right at any time, and as often as it desires, to finance the construction of the Buildings and to secure such financing with a lien or liens

against the Property and Buildings (and shall not lien the Public Improvements or Streetscape Improvements). Notwithstanding the foregoing, the provisions of Section 5.1 control in the event that Developer conveys the Property (and Buildings constructed on the Property) to City for the purposes of leasing back the Property and Buildings.

(c) Notwithstanding any other provision of this Agreement, Developer may collaterally assign all or part of its rights and duties under this Agreement as security to any financial institution from which Developer has borrowed funds for use in constructing the Buildings, obtaining furniture, fixtures and equipment or otherwise developing the Property without such financial institution assuming the obligations of Developer under this Agreement, but without releasing Developer from its obligations under this Agreement.

(d) In the event of an Event of Default by Developer, City will provide notice of such Event of Default, at the same time notice is provided to Developer, to not more than two (2) of such Lenders as previously designated by Developer to receive such notice (the "**Designated Lenders**") whose names and addresses were provided by written notice to City in accordance with Section 11.5. City will give Developer copies of any such notice provided to such Designated Lenders and, unless Developer notifies City that the Designated Lenders names or addresses are incorrect (and provides City with the correct information) within three (3) business days after Developer receives its copies of such notice from City, City will be deemed to have given such notice to the Designated Lenders even if their names or addresses are incorrect. Developer may provide notices to other Lenders. If a Lender is permitted, under the terms of its non-disturbance agreement with City to cure the Event of Default and/or to assume Developer's position with respect to this Agreement, City agrees to recognize such rights of the Lender and to otherwise permit the Lender to assume all of the rights and obligations of Developer under this Agreement. City will, at any time upon reasonable request by Developer, provide to any Lender an estoppel certificate or other document evidencing that (i) this Agreement is in full force and effect and (ii) no Event of Default by Developer exists hereunder (or, if appropriate, specifying the nature and duration of any existing Event of Default). Upon request by a Lender, City will enter into a separate non-disturbance agreement with such Lender, substantially in the form attached to this Agreement as Exhibit M, or in such other form requested by Lender that is acceptable to City in its sole discretion.

11.25 Nonliability of City Officials, Etc., and of Employees, Members and Partners, Etc. of Developer. No City Council member, official, representative, agent, attorney, or employee of City will be personally liable to any of the other Parties hereto, or to any successor in interest to any of the other Parties, in the event of any Default or breach by City or for any amount which may become due to any of the other Parties or their successors, or with respect to any obligation of City under the terms of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the liability of Developer under this Agreement will be limited solely to the assets of Developer and will not extend to or be enforceable against: (i) the individual assets of any of the individuals or entities who are shareholders, members, managers constituent partners, officers or directors of the general partners or members of Developer, (ii) the shareholders, members or managers or constituent partners of Developer; or (iii) officers of Developer.

11.26 Conflict of Interest Statute. This Agreement is subject to, and may be

terminated by City in accordance with, the provisions of A.R.S. § 38-511.

11.27 No Boycott of Israel. Developer certifies pursuant to A.R.S. § 35-393.01 that it is not currently engaged in, and for the duration of this Agreement will not engage in, a boycott of Israel.

11.28 Proposition 207 Waiver. Developer hereby waives and releases City ("**Waiver**") from any and all claims under A.R.S. § 12-1134, *et seq.*, including any right to compensation for reduction to the fair market value of all or any part of the Property, as a result of City's approval of this Agreement, any and all restrictions and requirements imposed on Developer by this Agreement or the Zoning, City's approval of the Approved Plans, City's approval of Developer's plans and specifications for the Project, the issuance of any permits, and all related zoning, land use, building and development matters arising from, or relating to, this Agreement; except the foregoing Waiver does not apply to any City initiated rezoning after Completion of Construction of the Improvements. The terms of this Waiver shall run with all land that is the subject of this Agreement and shall be binding upon all subsequent landowners, assignees, lessees and other successors, and shall survive the expiration or earlier termination of this Agreement.

Signatures are on the following two (2) pages

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

CITY

CITY OF MESA, ARIZONA, an Arizona municipal corporation

By: _____

Its: City Manager

ATTEST:

By:_____
City Clerk

APPROVED AS TO FORM:

By:_____
City Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this ___day of_____, 2021, by_____ the_____of the City of Mesa, an Arizona municipal corporation, who acknowledged that he/she signed the foregoing instrument on behalf of City.

_____
Notary Public

My commission expires:

_____

DEVELOPER

MHA III, LLC, an Arizona limited liability company

By: Urban Housing Partners VI, LLC, an Arizona limited liability company

Its: Manager

By:_____

Name: Todd Marshall

Its: Member

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this_____ day of_____, 2021, by_____, the_____of MHA III, LLC, an Arizona limited liability company, who acknowledged that he/she signed the foregoing instrument on behalf of Developer.

_____
Notary Public

My commission expires:

_____

EXHIBIT A TO DEVELOPMENT AGREEMENT

DEPICTION OF PROPERTY

[See Attached]

NE S Macdonald & W 2nd Ave

mesa·az

Assessor Parcel

Assessor Parcels to be Conveyed for Approximate Development Area

0 50 100
Feet

N

Map created by Engineering GIS DATE SAVED: 12/7/2021 Path: Z:\Project_Files\DowntownManager\NES\MacdonaldAndW2nd\NESMacdonaldAndW2nd.mxd

EXHIBIT B TO DEVELOPMENT AGREEMENT

LEASE

EXHIBIT C TO DEVELOPMENT AGREEMENT

PROGRAM COMPLIANCE

- All construction by Developer will be designed and constructed to National Green Building Standards (NGBS, https://www.ngbh.com/) or equivalent other green/sustainable building rating method, such as WELL Building (https://www.wellcertified.com/) agreed upon with City. Developer may, at its election and sole cost, have the building certified by the chosen rating agency. In the event Developer chooses to self-certify compliance with the chosen rating method, Developer will promptly provide City, through the building permitting and inspection process, certification of compliance with the rating standards, but in no event later than Completion of Construction.
- Developer will implement a waste recycling program during construction, with a goal of recycling 50% of construction waste, which program will include, without limitation, diverting construction and land-clearing debris from disposal in landfills and incinerators, redirecting recyclable recovered resources back to the manufacturing process, and redirecting reusable materials to appropriate sites. Soil may not be counted towards diversion totals. Developer will engage Mesa Solid Waste to haul diverted materials.
- Developer agrees to contract for and use the City of Mesa Solid Waste Services ("**Solid Waste Services**") for the Residential Elements of the Project. Additionally, Developer is to obtain from City and provide to residential unit's solid waste containers for their use for Solid Waste Services.
- Developer will design to Crime Prevention Through Environmental Design (CPTED) principles and will participate in the Tri-Star Program of the Mesa Police Department as a Level Three Property.

EXHIBIT D TO DEVELOPMENT AGREEMENT

ON-SITE AMENITIES

- Covered parking for fifteen resident parking spaces
- A minimum of two parking spaces served by an electric automobile charging stations
- Fitness center
- Wi-Fi within all resident common areas, excluding hallways
- Passive water harvesting
- Secure building entries and controlled access to on-site amenities
- Pet-friendly policies and pet-friendly amenities, including a pet park
- Access to community room and pool area for all residents
- Centralized resident package lockers

EXHIBIT E TO DEVELOPMENT AGREEMENT

UNIT AMENITIES

- Private deck, minimum 4’ by 10’ balcony, or patio (minimum 70 percent of units)
- Each residential unit wired with Cat 5e or 6 equivalent ethernet cables
- In-unit washer and dryers
- High quality appliances (refrigerator, stove/oven, dishwasher, microwave)
- Energy star rating for all major appliances (washer, dryer, refrigerator, stove/oven, dishwasher, microwave)
- High quality plumbing fixtures with sensitivity for sustainable water usage
- Central heating and air-conditioning for each residential unit
- Smart thermostat for each residential unit
- Hard kitchen and bathroom countertop materials for each residential unit (e.g., stone, engineered stone, polished concrete)
- Tile, hardwood, Luxury Vinyl Tile (LVT) or similar flooring in at least living areas, bathrooms, and kitchen (no linoleum). Carpet OK for bedrooms.
- Minimum 8-foot 10-inch+ ceilings in all non-furred down areas in each unit
- Ceiling fans with integrated lighting in living room and tenant option in bedrooms
- At least one charging outlet with integrated USB port in the kitchen, living room, and each bedroom
- At least one port for direct internet access in kitchen, living room, desk/study area or each bedroom
- LED lighting throughout each residential unit
- Mid-grade or higher cabinetry
- A Sound Transmission Class (STC) of 56, or greater on party walls, floors, and ceilings and a 50 or greater on exterior walls, as defined by the Uniform Building Code
- An Impact Isolation Class (IIC) of 55, or greater on, floors, and ceilings, as defined by the Uniform Building Code

EXHIBIT F TO DEVELOPMENT AGREEMENT

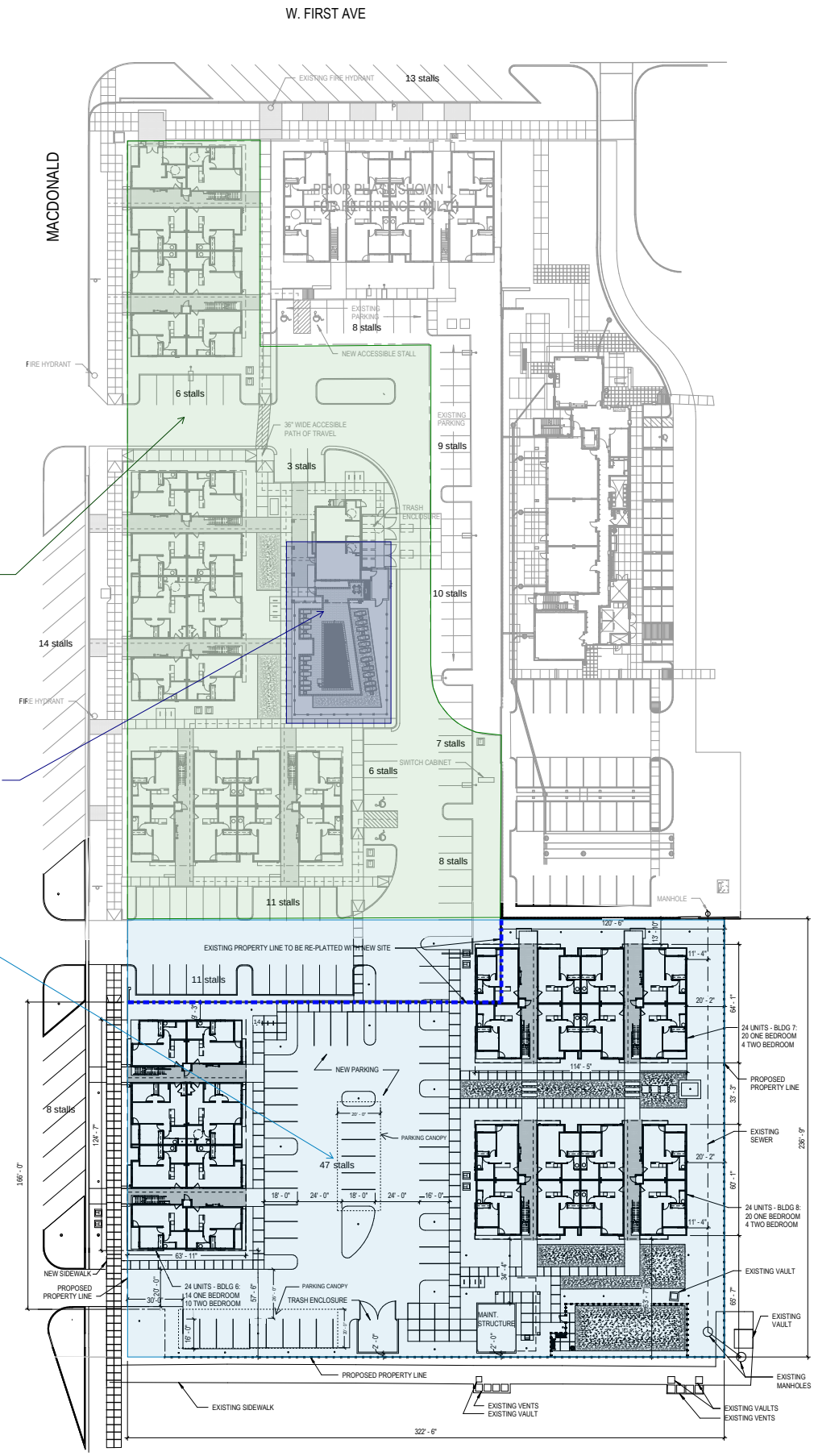
EXTERIOR QUALITY STANDARDS

- All exterior elevations will incorporate high quality design, i.e., four-sided architecture
- Minimum three high quality and durable exterior building materials
- All building mounted equipment screened from public view – Solar Array excluded
- All exterior building vents, such as furnace and dryer, are integrated into the building architecture
- Energy star rated exterior windows
- Highly reflective, white-painted roof, solar panels, green roof, or another solution that results in a cool roof
- Pedestrian shade elements at unit entries integrated into building façade
- Incorporation of one internally illuminated address numerals
- Pedestrian areas incorporate pavers, etched concrete, or similar paving materials
- Minimum thirty-six-inch (36") box size trees planted twenty-five feet (25') on center along Macdonald Street.
- All on-site landscape will be native, or desert adapted species
- Electric vehicle charging stations to service at least two parking stalls

EXHIBIT G TO DEVELOPMENT AGREEMENT

DESCRIPTION AND DEPICTION OF PHASE II AMENITIES

[See Attached]



SITE PLAN

SCALE: 1" = 30'-0"

EXHIBIT H TO DEVELOPMENT AGREEMENT

DESCRIPTION OF STREETSCAPE IMPROVEMENTS

Developer Obligations.

Developer is responsible, at its sole cost and expense, for the design and construction of enhanced streetscape improvements which include but are not limited to:

- Reconfigure the existing parking stalls to create diagonal parking stalls and install new landscape islands as shown on, and in conformance with, the site plan and the Approved Plans.
- Install trees, plants, shrubs and groundcover ("**Landscaping**") in the landscaping islands and irrigation in conformance with the Zoning Ordinance and requirements of the Planning Division including but not limited to Chapter 33.
- Design and install an underground automatic irrigation system that is appropriate for the Landscaping, including but not limited to, deep water irrigation of all trees.

All of the above improvements are referred to collectively as "**Streetscape Improvements**". Developer is responsible, at its sole cost and expense, for the maintenance, repair and replacement of the Streetscape Improvements (excluding Hardscape) including but is not limited to Landscaping, irrigation, timers and irrigation distribution.

City Obligation.

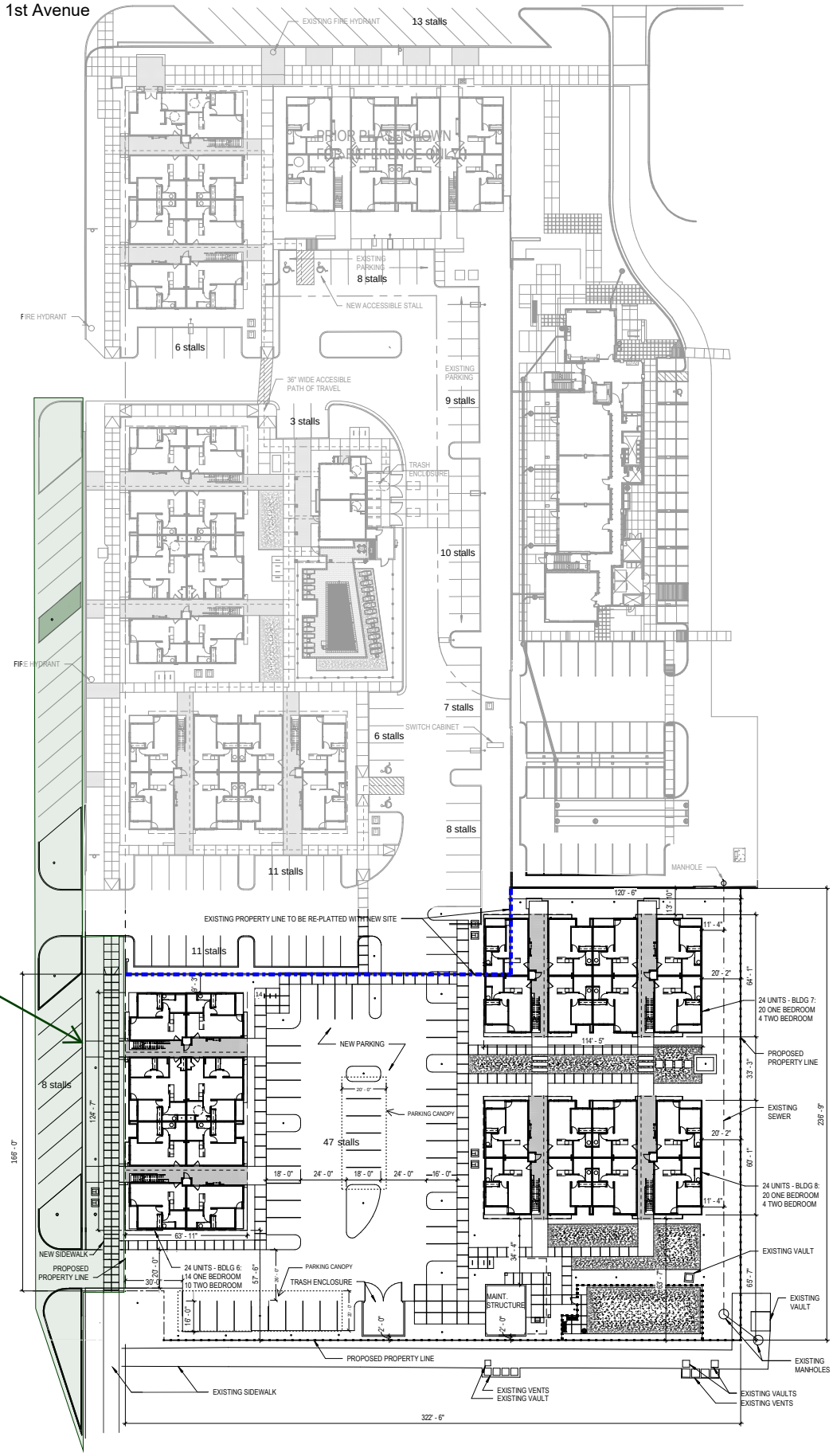
City's obligation is limited to the maintenance, repair, and replacement of the Hardscape (at its sole cost and expense) upon acceptance of the Public Improvements by City. Hardscape is limited to, and only includes the striping of the diagonal parking stalls and the asphalt and curb and gutter around the landscape islands, depicted on Exhibit H-1 (collectively the "**Hardscape"**). City has no other obligations to the Streetscape Improvements or the Hardscape.

EXHIBIT H-1 TO DEVELOPMENT AGREEMENT

DEPICTION OF LOCATION OF STREETSCAPE IMPROVEMENTS

[See Attached]

EXHIBIT H-1
STREETSCAPE IMPROVEMENTS



Phase III Streetscape Improvements

NORTH

SITE PLAN

SCALE: 1" = 30'-0"

EXHIBIT I TO DEVELOPMENT AGREEMENT

CITY OF MESA INSURANCE REQUIREMENTS

Developer, at its sole cost and expense, will maintain insurance coverage as follows:

A. Property. During the period of any construction involving the Public Improvements, builder's risk insurance on an all-risk, replacement cost basis for the Public Improvements.

B. Liability. During the period of any construction involving the Public Improvements, insurance covering the Developer and (endorsing as an additional insured) City against liability imposed by law or assumed in any written contract, and/or arising from personal injury, bodily injury or property damage, with a limit of liability of $5,000,000.00 per occurrence with a $5,000,000.00 products/completed operations limit and a $10,000,000.00 general aggregate limit. Such policy must be primary and written to provide blanket contractual liability, broad form property damage, premises liability and products and completed operations.

C. Contractor. During the period of any construction involving the Public Improvements, each of the general or other contractors with which the Developer contracts for any such construction will be required to carry liability insurance of the type and providing the minimum limits set forth below:

(1) Workman's Compensation insurance and Employer's Liability with limits of $1,000,000.00 per accident, $1,000,000.00 per disease and $1,000,000.00 policy limit disease.

(2) Commercial general liability insurance on a $5,000,000.00 per occurrence basis providing coverage for (and endorsing the City as additional insured for):

Products and Completed Operations
Blanket Contractual Liability
Personal Injury Liability
Broad Form Property Damage
X.C.U.

(3) Business automobile liability including all owned, non-owned and hired autos with a limit of liability of not less than $1,000,000.00 combined single limit for personal injury, including bodily injury or death, and property damage.

D. Architect. In connection with any construction involving the Public Improvements, the Developer's architect will be required to provide architect's or engineer's professional liability insurance with a limit of $1,000,000.00 per claim. This policy, or other policies, will cover claims for a period of not less than three (3) years after the Completion of Construction involving the Property and the Public Improvements.

E. Engineer. In connection with any construction involving the Public Improvements, the Developer's soils engineer or environmental contractor will be required to provide engineer's

professional liability insurance with a limit of $1,000,000.00 per claim. This policy, or other policies, will cover claims for a period of not less than three (3) years after the Completion of the Construction involving the Property and the Public Improvements.

F. CPI Adjustments. The minimum coverage limits set forth above will be adjusted every five (5) years by rounding each limit up to the million-dollar amount which is nearest the percentage of change in the Consumer Price Index (the "**CPI**") determined in accordance with this paragraph. In determining the percentage of change in the CPI for the adjustment of the insurance limits for any year, the CPI for the month October in the preceding year, as shown in the column for "All Items" in the table entitled "All Urban Consumers" under the "United States City Averages" as published by the Bureau of Labor Statistics of the United States Department of Labor, will be compared with the corresponding index number for the month of October one (1) year earlier.

G. Primary Coverage. Developer's insurance coverage will be primary insurance with respect to City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by City, its officers, officials, agents, and employees will be in excess of the coverage provided by Developer and will not contribute to it.

H. Indemnities. Coverage provided by the Developer will not be limited to the liability assumed under the indemnification provisions of the Agreement.

I. Waiver of Subrogation. All policies will contain a waiver of subrogation against City, its officers, officials, agents, and employees.

J. Notice of Cancellation**:** Developer will use reasonable and good faith efforts to cause each insurance policy to include provisions to the effect that it may not be suspended, voided, cancelled, or reduced in coverage except after thirty (30) days' prior written notice has been given to City. Such notice must be provided directly to City in accordance with the provisions of Section 11.5 of the Agreement.

K. Acceptability of Insurers**:** Insurance is to be placed with insurers duly licensed of approved unlicensed companies in the State of Arizona and with an "A.M. Best" rating of not less than A- VII. City in no way warrants that the above-required minimum insurer rating is sufficient to protect Developer from potential insurer insolvency.

L. Endorsements and Verification of Coverage**:** Developer will furnish City with endorsements naming the City, its officers, officials, agents, and employees as additional insureds. The endorsements will be original certificates of insurance on ACCORD forms approved by City. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict of limit coverage will be clearly noted on the certificate of insurance.

(1) All certificates are to be received and approved by City before the Commencement of Construction. Each insurance policy must be in effect at or prior to the Commencement of Construction and must remain in effect for the duration of the Agreement.

Failure to maintain the insurance policies as required by this Agreement or to provide timely evidence of renewal will be considered a material breach of the Agreement.

(2) All certificates required by this Agreement will be sent directly to City of Mesa, Attn: Lisa Lorts, Risk Manager, 20 E. Main Street, P.O. Box 1466, Mesa, Arizona 85211-1466. City reserves the right to require complete, certified copies of all insurance policies and endorsements required by this Exhibit K at any time.

M. Approval**:** Any modification or variation from the insurance requirements in this Exhibit I must have prior approval from the City Manager (or designee), whose decision will be final. Such action will not require formal contract amendment, but may be made by administrative action.

N. Miscellaneous. References to "Developer" in this Exhibit I will mean Developer and include its general contractor(s). References to "the Agreement" will mean the Development Agreement of which this Exhibit I is a part. Capitalized terms not otherwise defined in this Exhibit I will have the meanings set forth in the Agreement. City in no way warrants that the minimum limits contained herein are sufficient to protect Developer from liabilities that might arise, and Developer may purchase such additional insurance as Developer determines necessary.

EXHIBIT J TO DEVELOPMENT AGREEMENT

PROHIBITED USES

Project will develop with land uses consistent with Chapter 64 of the Mesa Zoning Ordinance. In addition, the below uses are expressly prohibited from the Project:

- Non-chartered Financial Institution, as defined by Chapter 64 of the Mesa Zoning Ordinance
- Pawn Shops, as defined by Chapter 64 of the Mesa Zoning Ordinance
- Social Service Facilities, as defined by Chapter 64 of the Mesa Zoning Ordinance
- Tattoo and Body Piercing Parlors, as defined by Chapter 64 of the Mesa Zoning Ordinance
- Group Housing, Boarding House, Correctional Transitional Housing Facility, Community Residence (Family Community Residence and Transitional Community Residence), Assisted Living Facility, Assisted Living Home, Assisted Living Center, Skilled Nursing Facility, Residential Care Institution, Nursing and Convalescent Homes as each term is defined by Chapter 86 of the Mesa Zoning Ordinance
- Off-Track Betting Establishment, as defined by Chapter 86 of the Mesa Zoning Ordinance
- All Marijuana Facilities, including but not limited to Dual Licensee Facility, Medical Marijuana Dispensary, Marijuana Cultivation Facility, Marijuana Establishment, and Marijuana Infusion Facility as defined by Chapter 86 of the Mesa Zoning Ordinance
- Package liquor stores, except for stores selling beer and/or wine
- Kennels

EXHIBIT K TO DEVELOPMENT AGREEMENT

MITIGATION PLAN

CONSTRUCTION MITIGATION PLAN.

The Developer and its contractors shall utilize good construction practices to minimize the impact Project construction work has on adjacent businesses and City operations as provided in this Mitigation Plan as may be amended from time to time with written approval by City and Developer. The City retains its sole right to control public parking.

The Developer and its contractors will take the following steps to minimize disruption and inconvenience for the businesses adjacent to the Project.

Parking:

Construction parking will be offsite in designated parking areas as shown in this Mitigation Plan. Construction workers will be repeatedly notified that parking outside the designated parking area or other adjacent business parking lots is prohibited.

Noise:

The Developer will take all commercially reasonable steps to reduce construction noise during the course of the regular workday. For example, concrete pours will be scheduled for early morning to avoid conflicts with the work environments. In addition, neighboring businesses, organizations, and property owners within a five hundred foot radius shall be notified five (5) calendar days in advance of any conditions of construction which may impact their operation.

Hours of Work:

During the course of construction, construction work hours will be as follow:

- 6:00 am to 8:00 pm year round (hours may vary from those listed if the Developer obtains an After Hours Work Permit through the City)

The Developer intends to apply for an After Hours Work Permit for concrete pours and other work required to be performed during alternative hours. Developer will adhere to all permit requirements.

At times during construction, it may be necessary for work to take place in two shifts. The City will be notified one-week in advance of such times and the number of days that the two shift components of the work will take place.

During high impact or excessively noisy work, the Developer will schedule such work before and after normal work hours to reduce the impact on neighboring businesses.

Occasional narrowing of the Macdonald Street traffic will occur to accommodate movement of construction equipment and to construct the improvements in this area. Streets will not be used for material and equipment lay down without prior authorization from the City. Developer will obtain a Temporary Traffic Control permit through the City using standard application procedures for any narrowing of Macdonald and temporary work requiring use of traffic lane(s) on Macdonald. Approval of Traffic Control Permits is at the sole discretion of the City. Developer must provide notice of any such narrowing of Macdonald to the surrounding properties and businesses.

A ten (10) day advanced notification for each occurrence is required and any other requirements per the Temporary Traffic Control Permit. The City's application review typically requires two to four (2-4) working days and any revisions will require and additional two to four (2-4) working days of review time. Developer shall provide the City with a Construction Staging Map depicting which portions of Macdonald will be affected by construction activities. The Map must also show any off-site temporary fencing, dumpster locations, material stock areas, signage, and locations of any major construction equipment. Any closures or rerouting of Macdonald Street traffic is subject to the City's prior approval of the Construction Staging Map, and Developer obtaining and paying for all applicable City permits and fees.

Contact Information:
Developer – MHA III, LLC , Todd Marshall
Phone – 480.966.3008
Email – tmarshall@marshallcompany.com

EXHIBIT L TO DEVELOPMENT AGREEMENT

SPECIAL WARRANTY DEED

When recorded, return to:

City of Mesa
Real Estate Services
20 East Main Street,
Suite 850
Mesa, Arizona 85201-7425

==========

SPECIAL WARRANTY DEED

==========

For the consideration of the sum of Ten Dollars ($10.00) and other valuable consideration received, MHA III, LLC, an Arizona limited liability company ("**Grantor**"), does hereby convey to City of Mesa, Arizona, an Arizona municipal corporation ("**Grantee**"), all of Grantor's right, title and interest in and to the following described real property (the "**Property**") situated in Maricopa County, Arizona, together with all improvements thereon and all of Grantor's interest in any rights and privileges appurtenant thereto:

SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS
REFERENCE MADE A PART HEREOF

BUT EXCLUDING all rights granted (by plat or separate instrument) to or for the benefit of, or existing use by, the City of Mesa, an Arizona municipal corporation, or any department or agency of the City of Mesa, for rights-of-way, existing public utilities, public utility and facility easements, drainage and storm water easements, and such other easements for the benefit of the public (collectively, "**Public Rights**"), which Public Rights shall not merge with this Special Warranty Deed and shall remain as granted to or held by the City of Mesa, and its departments and agencies [Note: Only add this paragraph when City conveying the Property to Developer.]; and

SUBJECT ONLY TO matters of record and to any and all conditions, easements, encroachments, rights-of-way, public utilities, or restrictions which a physical inspection, or accurate ALTA survey, of the Property would reveal, and to all applicable municipal, county, state or federal zoning and use regulations.

AND GRANTOR hereby binds itself and its successors to warrant and defend the title against all of the acts of Grantor and no other, subject to the matters set forth above.

IN WITNESS WHEREOF, Grantor has caused this Special Warranty Deed to be executed as of this____day of_____, 20___.

GRANTOR:

MHA III, LLC, an Arizona limited liability company

By: Urban Housing Partners VI, LLC, an Arizona limited liability company

Its: Manager

By:_____

Name: Todd Marshall

Its: Member

STATE OF _____)
) ss.
County of _____)

On this the _____day of_____, 20__, before me, the undersigned Notary Public, personally appeared_____, who acknowledged self to be the _____of MHA III, LLC, an Arizona limited liability company, and that, being authorized so to do, he executed the foregoing Special Warranty Deed on behalf of the Grantee.

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

_____
Notary Public

My Commission Expires:

_____

EXHIBIT A TO THE SPECIAL WARRANTY DEED

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT M TO DEVELOPMENT AGREEMENT

NON-DISTURBANCE AND RECOGNITION AGREEMENT

[See Attached]

When recorded, return to:

_____

_____

_____

==========

NON-DISTURBANCE AND RECOGNITION AGREEMENT

==========

THIS NON-DISTURBANCE AND RECOGNITION AGREEMENT (this "**NDRA**") is made as of the____day of_____, 20___, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, by and among: (a) _____ ("**Developer**"); (b) _____("**Lender**"); and (c) City of Mesa, Arizona, an Arizona municipal corporation ("**City**").

1. Recitals.

1.1 Developer is the present developer under a Development Agreement entered into with City, dated_____, 20___, and recorded in the Official Records of Maricopa County, Arizona, at_____(the "**Agreement**"), which Agreement sets forth certain rights and responsibilities of Developer with respect to the development of that certain real property referred to in the Agreement (and herein) as the "**Property**," and more particularly described in Exhibit "A" attached hereto.

1.2 Developer's obligations arising under the Agreement include but are not limited to the development of the Property, and the construction of Buildings (as that term is defined in the Agreement) and improvements upon the Property, and the construction of Streetscape Improvements and Public Improvements (as these two terms are defined in the Agreement) (collectively, the "**Obligations**").

1.3 Lender has agreed to lend money to Developer, and Developer will execute certain loan documents (the "**Loan Documents**") including but not limited to a leasehold deed of trust for the use and benefit of Lender (the "**Deed of Trust**") and an assignment of Developer's rights under the Agreement (the "**Assignment**") to secure the loan from Lender to Developer (the "**Loan**"). The Deed of Trust, the Assignment and certain other Loan Documents will be recorded in the Official Records of Maricopa County, Arizona, and will encumber the Property.

1.4 Lender has certain rights under the Loan Documents in the event of a Default by Developer of its obligations either under the Loan Documents or the Agreement, including but not limited to the right of Lender to be substituted for Developer under the Agreement and to assume Developer's position with respect to the Agreement; and the Agreement states in Section 11.22 thereof that a Lender may be allowed to assume Developer's rights and obligations with respect to the Agreement (collectively, "**Developer's Position**").

1.5 Accordingly, the parties have executed this NDRA to be effective as of the date set forth above.

2. No Subordination. Subject only to the specific provisions of (i) Section 3 of this NDRA regarding the right of Lender to assume Developer's Position with respect to the Agreement and (ii) Section 4 of this NDRA regarding non-disturbance and recognition, all rights of Developer and Lender under the Deed of Trust are and will continue to be junior, inferior, subject and subordinate to the Agreement, as it may hereafter be modified, amended, restated or replaced.

3. Notice of Developer Default.

3.1 If Lender is a "Designated Lender" as defined in Section 11.22 of the Agreement, City will give Lender written notice of any claimed Event of Default by Developer (the "**Notice**") under the Agreement and 30 days following the expiration of Developer's cure period under the Agreement to cure such claimed Event of Default (as the Agreement exists as of the date of this NDRA), prior to terminating the Agreement or invoking such other remedies as may be available to City under the Agreement.

3.2 Lender will have the option, following Lender's receipt of the Notice, and within the time period set forth herein for curing an Event of Default of Developer, in its sole election either: (a) to cure the Default of Developer, in which event Developer will retain its position with respect to the Agreement; or (b) in addition to any other remedies available to Lender under law, equity or contract (including but not limited to the Deed of Trust and the Assignment) to assume Developer's Position with respect to the Agreement (to "**Assume**" or an "**Assumption**"). Lender will give written notice to City of its intention to Assume on or before the expiration of any applicable cure period available to Lender.

3.3 If Lender agrees to Assume Developer's Position with respect to the Agreement, Lender and City will execute an amendment to the Agreement (an "**Amendment**") and will cause the Amendment to be recorded in the Official Records of Maricopa County, Arizona. The Amendment will state that Lender has fully assumed Developer's Position with respect to the Agreement, and that Lender is thereafter substituted for Developer with respect to all Obligations, payment and performance rights and responsibilities arising under or in connection with the Agreement. The execution or approval by Developer of the Amendment will not be necessary or required, and upon execution and recordation of the Amendment, City will (i) look to Lender and/or Developer for performance of the Obligations under the Agreement and (ii) make to Lender all payments, and render all performance required to be made by the City, required to be made to Developer under the Agreement.

3.4 In connection with (i) any foreclosure by Lender (whether by notice or judicially) of the Deed of Trust, or any other acquisition by Lender of the Property in lieu of such foreclosure (collectively, a "**Foreclosure**") and (ii) the transfer of the Property to a third-party purchaser or purchasers (by way of illustration and not in limitation, a purchaser or purchasers at a trustee's sale conducted pursuant to A.R.S. § 33-810) concurrently with such Foreclosure or thereafter (a "**Purchaser**"), the Developer's Position under the Agreement will accompany and be deemed covenants running with the Property, and the Purchaser will be deemed to have assumed Developer's Position with respect to the Agreement. Upon the acquisition of the Property by a Purchaser, City will (i) look to Purchaser and/or Developer for performance of the Obligations

under the Agreement and (ii) make to Purchaser all payments, and render all performance required to be made by the City, required to be made to Developer under the Agreement.

3.5 Until an Assumption as defined herein, nothing in this NDRA will constitute an assumption by Lender of any Obligation. Developer will continue to be liable for all of the Obligations thereunder and will perform all such Obligations, will comply with all terms and conditions of the Agreement applicable to Developer, and will take such steps as may be necessary or appropriate to secure performance by City under the Agreement.

3.6 Whether before or after an Assumption as defined herein, nothing in this NDRA will constitute a release of Developer of any Obligation.

4. Non-disturbance and Recognition.

4.1 In the event that City institutes any proceedings to enforce the Agreement, City agrees that, so long as Lender is not in default (beyond any applicable cure period provided to Lender under this NDRA) under the Agreement:

4.1.1 City will not interfere with or disturb Lender's rights under the Agreement and this NDRA; and

4.1.2 Lender will not be made a party to any proceeding commenced pursuant to the Agreement, unless Lender is determined to be a necessary party for purposes of maintaining the action or securing other necessary relief not involving the termination of Lender's interest under the Deed of Trust or the Assignment, provided that nothing herein will prevent City from giving any required notice to Lender.

4.2 Upon and following an Assumption, Lender will recognize the City's rights under the Agreement for the balance of the Term thereof. The recognition described in this Section 4.2 will automatically become effective upon an Assumption by Lender.

5. Estoppel

5.1 City and Developer hereby confirm to Lender that as of the date of this NDRA and to the best of their respective actual knowledge:

(a) Neither City nor Developer has acted or failed to act in a manner giving rise to an Event of Default under the Agreement;

(b) The Agreement has not been assigned, modified or amended in any way except as set forth in Recital 1.1;

(c) The Agreement is in full force and effect; and

(d) [If applicable] "Completion of Construction," as defined in the Agreement, occurred on_____.

6. Miscellaneous.

6.1 This NDRA will be binding upon and inure to the benefit of City, Developer and Lender and their respective successors and assigns, including, without limitation, any successful bidder at any judicial foreclosure or trustee's sale.

6.2 Except as otherwise required by law, any notice required or permitted under this NDRA will be in writing and will be given by (i) personal delivery, (ii) deposit in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the parties at their respective addresses set forth below, or at such other address as such party may designate in writing pursuant to the terms of this Section, or (iii) any nationally recognized express or overnight delivery service (*e.g.*, Federal Express or UPS), delivery charges prepaid:

If to City:

City of Mesa
Attn: City Manager
20 East Main Street
Mesa, Arizona 85201
Telephone: 480-644-2066
Email: chris.brady@mesaaz.gov

If by United States Postal Service:
Post Office Box 1466
Mesa, Arizona 85211-1466

With required copy to:

City of Mesa
Attn: City Attorney
20 East Main Street,
Suite 850
Mesa, Arizona 85201
Telephone: 480-644-3497
Email: jim.smith@mesaaz.gov

If by United States Postal Service:
Mesa City Attorney's Office MS-1070
Post Office Box 1466
Mesa, Arizona 85211-1466

If to Developer:

MHA III, LLC
688 West First Street, Suite 1B
Tempe, Arizona 85281 Attn: Todd Marshall
Telephone: 480-966-3008
Email: tmarshall@marshallcompany.com

With required copy to:

Stoel Rives LLP
600 University Street, Suite 3600
Seattle, WA 98101
Attn: Joseph McCarthy
Telephone: 206-386-7534

Email: joseph.mccarthy@stoel.com

If to Lender: _____
_____
_____
_____

With required copy to: _____
_____
_____
_____

(Telephone numbers and email addresses are provided for informational purposes only and shall not be deemed notice.)

Any notice sent by United States Postal Service certified or registered mail will be deemed to be effective the earlier of the actual delivery, or three (3) business days after deposit in a post office operated by the United States Postal Service. Any notice sent by a recognized national overnight delivery service will be deemed effective one (1) business day after deposit with such service. Any notice personally delivered or delivered through a same-day delivery/courier service will be deemed effective upon its receipt or refusal to accept receipt by the addressee. Any party may designate a different person or entity or change the place to which any notice will be given as herein provided, by giving notice to the other parties as provided in this Section 6.2.

6.3 This NDRA is delivered in and relates to property located in Maricopa County, Arizona, and the rights and obligations of the parties hereunder will be governed by and construed in accordance with the substantive laws and judicial decisions of the State of Arizona (regardless of Arizona conflict of laws principles or the residence, location, domicile or place of business of the parties and their constituent principals) and applicable federal laws, rules and regulations, subject to Section 11.1 of the Agreement.

6.4 This NDRA integrates all of the terms and conditions of the parties' agreement regarding the subordination of the Deed of Trust and Lender's interest thereunder to the Agreement, and supersedes all prior oral or written agreements with respect to such subordination (only to the extent, however, as would affect the priority between the Agreement and the Deed of Trust). This NDRA may not be modified or amended except by a written agreement signed by the parties or their respective successors in interest.

6.5 This NDRA may be executed and acknowledged in one or more counterparts, each of which may be executed by one or more of the signatory parties. Signature and notary pages may be detached from the counterparts and attached to a single copy of this NDRA physically to form one legally effective document.

6.6 This NDRA is subject to, and may be terminated by the City in accordance with, the provisions of A.R.S. § 38-511.

6.7 Each party to this NDRA represents and warrants to the others that all necessary company, corporate and/or governmental approvals, consents and authorizations have been obtained prior to the execution of this NDRA by such party, and that the person executing this NDRA on behalf of such party is duly authorized to do so to bind such party.

6.8 Capitalized terms not defined herein will have the definitions set forth in the Agreement.

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY

IN WITNESS WHEREOF, the parties hereto have each caused this NDRA to be executed on or as of the day and year first above written.

"CITY"

CITY OF MESA, an Arizona municipal corporation

By:_____

Name:_____

Its: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing was acknowledged before me this _____day of_____, 2021, by_____, the City_____of the City of Mesa, Arizona, on behalf of the City.

_____
Notary Public

My commission expires:

_____

"DEVELOPER"

MHA III, LLC, an Arizona limited liability company

By: Urban Housing Partners VI, LLC, an Arizona limited liability company

Its: Manager

By: _____

Name: Todd Marshall

Its: Member

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this_____ day of_____, 2021, by_____, the_____of, MHA III, LLC, an Arizona limited liability company, who acknowledged that he/she signed the foregoing instrument on behalf of Developer.

_____
Notary Public

My commission expires:

_____

"LENDER"

By:_____

Name:_____

Its: _____

STATE OF ARIZONA)
) ss.
County of_____)

The foregoing instrument was acknowledged before me this_____ day of_____, 2021, by_____,_____of,_____, who acknowledged that he/she signed the foregoing instrument on behalf of Lender.

_____
Notary Public

My commission expires:

_____

EXHIBIT A TO NON-DISTURBANCE AND RECOGNITION AGREEMENT

LEGAL DESCRIPTION OF THE PROPERTY