WHEN RECORDED RETURN TO:

City of Mesa
Attn: City Clerk
20 East Main Street
Mesa, Arizona 85211

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DEVELOPMENT AGREEMENT

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CITY OF MESA, ARIZONA,
an Arizona municipal corporation

AND

DOBSON PROPERTIES SUB-FUND, LLC,
an Arizona limited liability company

==========

_____, 2021

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DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("**Agreement**") is made as of the ____ day of _____, 2021, by and between the CITY OF MESA, ARIZONA, an Arizona municipal corporation ("**City**") and DOBSON PROPERTIES SUB-FUND, LLC, an Arizona limited liability company ("**Developer**"). City and Developer are sometimes referred to in this Agreement collectively as the "**Parties**," or individually as a "**Party**."

RECITALS

A. Developer has acquired fee ownership of certain real property located at 139 North Dobson Road near the intersection of North Dobson Road and West Main Street within the city limits of City, totaling approximately 6.08 acres (Assessor Parcel Number: 135-48-003H), as legally described in Exhibit A to this Agreement, referred to in this Agreement as the "**Property**".

B. Developer intends to develop the Property into a four-story, multi-family residential development with market-rate apartments and other public improvements consistent with the Zoning and Zoning Clearance (as those terms are defined below), as generally described in this Agreement ("**Project**"). City has reviewed Developer's portfolio of previous developments and has determined Developer demonstrates proficiency in development projects, including multi-family residential developments.

C. Developer desires and intends to design and build the Improvements, to convey the Property and Improvements to City following Completion of Construction of the Improvements, to lease the Property and Private Improvements from City pursuant to A.R.S. §§ 42-6201 *et seq*., and thereafter to operate the Project in furtherance of the General Plan, West Main Street Area Plan, and Smart Growth Community Plan and in accordance with this Agreement and the Lease (as those terms are defined below).

D. The Property is located in the West Redevelopment Area within City's single Central Business District initially adopted by City Council in 1999. City Council found a substantial number of blight factors still existed within the Central Business District and on April 6, 2020, by Resolution No. 11471, redesignated and renewed the Central Business District and West Redevelopment Area. The Property was originally developed in 1968 as part of an enclosed shopping mall with anchor stores Diamond's and J.C. Penney ("**Tri-City Mall**"). Beginning in the late 1970s, partially due to competition from other malls in City, Tri-City Mall underwent a period of decline that continued through the late 1990s. In 1984, Diamond's closed its store to consolidate with another location, and in 1998, J.C. Penney also closed. Following the closure of its two anchor stores, Tri-City Mall was demolished in 1999, and the current strip mall shopping center anchored by the Safeway grocery store was built on the adjacent parcel. Since then, the Property has been underutilized as a surface parking area. In the reevaluation of the Central Business District, the blight assessment study conducted and presented to City Council found the Property to have at least one (1) blight factor: the existence of conditions that endanger life or property. Per the blight assessment study, the crime rate by census tract for the area of the Property was 253% higher than the City average and the code compliance violation rate by census tract for the area of the Property was 285% higher than the City average. City acknowledges the redevelopment of this unique Property located near the Sycamore Station light rail station and the development of the Project in conformity with this Agreement and the Approved Plans (as those terms are defined below), will reduce the blight in the Central Business District and further promote City's vision to redevelop and revitalize its downtown and the West Redevelopment Area.

E. The Property is located in City's West Main Street Area Plan adopted by City Council in 2007 by Resolution No. 9132 ("**West Main Street Area Plan**"). The West Main Street Area Plan is a sub-area plan called for in the General Plan (as that term is defined below) to allow for more focused evaluation

and planning in the specific area. The intent and vision of the West Main Street Area Plan is to shape the surrounding neighborhoods to promote transit, pedestrian-friendly design, moderate density at key locations near light rail stations, the extension of the light rail into West Mesa, civic spaces, and economically balanced neighborhoods. The Property is also located in the Sycamore Station Smart Growth Community Plan adopted by City Council in 2016 ("**Smart Growth Community Plan**"). The intent of the Smart Growth Community Plan is to improve the environment and human habitat in the area by developing underutilized property to provide housing of various sizes and density, create a network of thoroughfares and pedestrian paths that will increase walkability and circulation, promote mass transit including use of the light rail, and create a mix of housing, civic, and retail services in a compact environment.

F. In addition to gains arising from the Project's promotion of the redevelopment and revitalization in Mesa, the public will receive the benefit of the use of the Thoroughfare constructed by Developer as set forth in Section 4.3(c) of this Agreement. The Thoroughfare, as set forth more fully below, will consist of two (2) east-west drive aisles connected to existing east-west drive aisles on the adjoining parcel, providing for public access through the Property and facilitating access to the Valley Metro park and ride facility and additional access points for the fire department, other emergency personnel, and solid waste and recycling services, all at no cost to the public or the City. The Project will also provide for a Vehicular Ingress and Egress Area constructed by Developer as set forth in Section 4.3(d) of this Agreement which will consist of a north-south drive aisle connected to an east-west drive aisle of the Thoroughfare and providing an access route for buses and the public traveling through the Property to access the Webster Elementary School Property (as that term is defined below) supporting Mesa Public School District ("**Mesa Public Schools**"), at no cost to Mesa Public Schools, the public, or the City.

G. Additionally, as set forth more fully in Section 4.3(e) of this Agreement, Mesa Public Schools will receive the benefit of either ownership of the Adjacent Southern Parcel (as that term is defined below) to be acquired by Developer and deeded to Mesa Public Schools, at no cost to Mesa Public Schools, the public, or the City, or, alternatively, if Developer does not acquire ownership of the Adjacent Southern Parcel, then Mesa Public Schools will receive the benefit of improvements made along the southern portion of the Webster Elementary School Property (as that term is defined below) which shall be constructed by Developer at no cost to Mesa Public Schools, the public, or the City.

H. As part of its development of the Project, Developer at its sole cost and expense will construct certain Public Improvements which it will dedicate to City, and Developer thereafter will Maintain the Public Improvements in perpetuity at its sole cost and expense as set forth in this Agreement.

I. City believes the development of the Property will generate substantial monetary and non-monetary benefits for City and Mesa Public Schools, including, without limitation, by, among other things: (i) providing for the planned and orderly development of the Property consistent with the General Plan, West Main Street Area Plan, Smart Growth Community Plan, Zoning, and Central Business District; (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) creating new jobs and otherwise enhancing the economic welfare of the residents of City; (v) providing the new Thoroughfare described in Recital F and Section 4.3(c) benefitting the public and the new Vehicular Ingress and Egress Area described in Recital F and Section 4.3(d) benefitting the public and Mesa Public Schools; (vi) deeding to Mesa Public Schools a parcel of land located along the southern edge of the Webster Elementary School Property (as that term is define below), or, alternatively, providing the new Webster Elementary School Property Improvements (as that term is defined below) described in Recital G and Section 4.3(e) benefitting Mesa Public Schools, at no cost to Mesa Public Schools, the public, or the City; (vii) the collection of permit fees and transaction privilege tax in the construction of the Project including the collection of the Construction Tax described in Section 4.16; and (viii) otherwise advancing the goals of the West Main Street Area Plan and the Smart Growth Community Plan by creating a walkable urban environment by developing a high-quality,

sustainable multi-family residential development near public transit and surrounding businesses.

J. City also acknowledges its intention and ability to provide the City Undertakings described in Section 5, subject to the terms and conditions of this Agreement.

K. 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 needed to finance the construction and completion of, the Improvements, subject to and in accordance with the terms of this Agreement, and to complete all the Developer Undertakings described in Section 4.

L. 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 and subject to the conditions and limitations set forth in this Agreement.

M. The Parties also understand and acknowledge this Agreement is authorized by and entered into in accordance with the terms of A.R.S. § 9-500.11 (Version 2). 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 (Version 2), 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; however, the Parties acknowledge that this Agreement is not a "retail development tax incentive agreement" as may be authorized pursuant to A.R.S. § 9-500.11 (Version 2).

N. City is entering into this Agreement to implement and facilitate development of the Property consistent with the policies of City reflected in the General Plan, West Main Street Area Plan, Smart Growth Community Plan, and Zoning.

AGREEMENTS

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, unless a different meaning clearly appears from the context, the below words and phrases shall be construed as defined in this Section, including the use of such in the Recitals. Words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The use of the term "shall" in this Agreement means a mandatory act or obligation. The term "including" means including without limiting the generality of any description that precedes such term and will be deemed to be followed by the phrase "but not limited to" or words of similar import.

(a) "**Adjacent Southern Parcel**" means as defined in Section 4.3(e).

(b) "**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.

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

(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 Plans**" means as defined in Section 3.1(a).

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

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

(h) "**City**" means the City of Mesa, Arizona, as the Party designated as City on the first page of this Agreement.

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

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

(k) "**City Indemnified Parties**" means as defined in Section 6.1.

(l) "**City Manager**" means the person designated by City as its City Manager or its designee.

(m) "**City Representative**" means as defined in Section 10.1.

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

(o) "**Claims**" means as defined in Section 6.1.

(p) "**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 vertical construction operations or installation or relocation of utility infrastructure on the Property in a manner necessary to achieve Completion of Construction.

(q) "**Completion of Construction**" or "**Complete Construction**" means the date on which one or more final certificates of occupancy have been issued by City for the Private Improvements and means the date on which a letter of acceptance has been issued by City for the Public Improvements.

(r) "**Compliance Date**" means as defined in Section 4.8.

(s) "**Construction Tax**" means as defined in Section 4.16.

(t) "**Customized Review Schedule**" means as defined in Section 3.2(c).

(u) "**Dedicated Property**" means as defined in Section 4.10.

(v) "**Default**" or "**Event of Default**" means one or more of the 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.

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

(x) "**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.

(y) "**Developer Representative**" means as defined in Section 10.1.

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

(aa) "**District**" or "**Districts**" means as defined in Section 4.15.

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

(cc) "**Exterior Quality Standards**" means as defined in Section 4.3(f).

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

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

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

(gg) "**Hazardous Materials**" means any substance: (i) 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 (ii) 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 (iii) 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 the Private Improvements and the Public Improvements, collectively.

(ii) "**Indemnify**" means as defined in Section 6.1.

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

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

(ll) "**Maintenance**" or "**Maintain**" means (or refers to), collectively, maintenance (both routine and extraordinary), as well as repair and replacement, including all damage caused by normal wear and tear or intentional loss or damage from any source.

(mm) "**Mesa Public Schools**" means as defined in Recital F.

(nn) "**On-Site Amenities**" means as defined in Section 4.3(b)(i).

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

(pp) "**Permitted Mortgage**" means as defined in Section 5(ff) of the Lease.

(qq) "**Private Improvements**" means as defined in Section 4.3 and shall include the Thoroughfare and Vehicular Ingress and Egress Area including the drive aisles and landscape improvements in both the Thoroughfare and Vehicular Ingress and Egress Area and the Webster Elementary School Property Improvements.

(rr) "**Prohibited Uses**" means as defined in Section 4.12.

(ss) "**Project**" means as defined in Recital B.

(tt) "**Property**" means as defined in Recital A.

(uu) "**Public Health Event**" means any one or more of the following but only if and as declared by an applicable governmental 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.

(vv) "**Public Improvements**" means as defined in Section 4.6.

(ww) "**Smart Growth Community Plan**" means as defined in Recital D.

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

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

(zz) "**Thoroughfare**" means as defined in Section 4.3(c).

(aaa) "**Thoroughfare Easement**" means the perpetual easement given by Developer to City over the Thoroughfare, as described more fully in Section 4.7(a) and set forth in the form attached as Exhibit M.

(bbb) **"Transfer"** means as defined in Section 11.2.1.

(ccc) "**Unit Amenities**" means as defined in Section 4.3(b)(ii).

(ddd) "**Vehicular Ingress and Egress Area**" means as defined in Section 4.3(d).

(eee) "**Vehicular Ingress and Egress Easement**" means the perpetual easement given by Developer to Mesa Public Schools over the Vehicular Ingress and Egress Area, as described more fully in Section 4.7(b) and set forth in the form attached as Exhibit N.

(fff) "**Waiver**" means as defined in Section 11.26.

(ggg) "**Webster Elementary School Property**" means as defined in Section 4.3(e).

(hhh) "**Webster Elementary School Property Improvements**" means as defined in Section 4.3(e).

(iii) "**West Main Street Area Plan**" means as defined in Recital D.

(jjj) "**Zoning**" or "**Zoning Ordinance**" means the Form-based Code within the Zoning Ordinance of City, as the same may be amended from time-to-time during the Term.

(kkk) "**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) 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) Developer. Developer is Dobson Properties Sub-Fund, LLC, a limited liability company duly organized and validly existing under the laws of the State of Arizona and authorized to transact business in 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 General Plan, West Main Street Area Plan, Smart Growth Community Plan, Approved Plans, Zoning, and this Agreement; provide for the Private and Public Improvements to be designed and constructed by Developer or at Developer's direction; and acknowledge Developer Undertakings and City Undertakings.

2.3 Term Survival of Certain Obligations. The term of this Agreement ("**Term**") is that period of time, commencing on the Effective Date, and expiring on the date on which the Parties have performed all of their obligations under this Agreement, City has reconveyed the Property and Private Improvements to the tenant named in the Lease and the Lease has expired in accordance with its terms (unless terminated earlier pursuant to the terms of this Agreement or the Lease). Notwithstanding the foregoing, the following obligations of Developer set forth in this Agreement will survive the termination or expiration of this Agreement: (a) all obligations of Developer to Indemnify the City Indemnified Parties; (b) Developer's obligations of Maintenance set forth in Section 4.11; and (c) the restrictions and prohibitions on use of the Property set forth in Section 4.12. The Parties acknowledge that the Lease, Thoroughfare Easement, and Vehicular Ingress and Egress Easement, although related to the development of the Project described in this Agreement, are separate and distinct agreements between the Parties and the termination or expiration of this Agreement shall not impact the rights and obligations under the Lease, Thoroughfare Easement, or Vehicular Ingress and Egress Easement unless specifically set forth in this Agreement or in the Lease, Thoroughfare Easement, or Vehicular Ingress and Egress Easement, respectively.

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 (individually 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, West Main Street Area Plan, Smart Growth Community Plan, Zoning and Zoning Clearance requirements, and (ii) set forth the basic land uses and all other matters relevant to the development of the Project in accordance with this Agreement. Developer has submitted to City a preliminary plan for the Project and Developer shall 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. Developer has begun the City's Zoning Clearance process for the Project through application No. ADM21-00121.

(b) Approval Process. The process for the submittal, review and approval of (i) the Approved Plans, and (ii) the Project's design elements, including building materials, colors, architectural plans, landscaping, enhanced paving plans, irrigation, lighting, pedestrian linkages, signage and the architectural and thematic character of the Project, are subject to City's ordinary submittal, review and approval processes, and the building permit, inspection, development and other similar fees for the development of the Project in effect at the time of application or submission (each, a "**Fee**"). The Parties will cooperate reasonably in processing the approval or issuance of any permits, plans, specifications, plats, site plans or other development approvals requested by Developer in connection with development of the Project. City may act through the City Representative to assist Developer through the approval processes and the Customized Review Schedule defined in Section 3.2(c) below.

(c) Cooperation in the Implementation of the Approved Plan. Developer and City will work together using commercially reasonable efforts throughout the pre-development and development stages to resolve any City comments or conflicts between the Parties regarding implementation of the Approved Plans.

3.2 Development Regulation.

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

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

(c) Customized Review Schedule. Review and approval of all plans, applications and other submissions by or on behalf of Developer will be in accordance with the customized review schedule ("**Customized Review Schedule**") set forth in Exhibit C which generally describes the review schedule for the Project but may not include certain tasks or deadlines. The Parties agree to work in good faith to modify the Customized Review Schedule, if necessary, to add more details or specifications. The Parties further agree the Customized Review Schedule may need to be amended from time to time to accommodate reasonable changes necessitated by design and construction matters. The City's Downtown Transformation Manager or designee in conjunction with the City's Development Services Department is authorized to administratively approve amendments to the Customized Review Schedule that are agreed to by the Parties. Additionally, the Customized Review Schedule will not result in or require the payment of an additional Fee by Developer for expediting the processing and approval of Developer's submittals.

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 all existing improvements and other materials on the Property that are required to be demolished and removed in compliance 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, will undertake and complete all required removal and remediation of all Hazardous Materials from the Project. Developer's removal and remediation of Hazardous Materials and construction (and subsequent use and occupancy) of the Project will at all times comply with all Hazardous Materials Laws.

4.3 Minimum Private Improvements. Developer intends for the Project to be an urban market-rate, multi-family development consisting of at least two hundred and forty-five (245) residential apartments, and other improvements consistent with the Zoning and Zoning Clearance. As a part of the Project and an element of the consideration for City entering into this Agreement and performing the City Undertakings, in compliance with this Agreement and all Applicable Laws, Developer will construct on or above the Property, at its sole cost and expense and in compliance with the Compliance Dates, the minimum improvements set forth in this Section 4.3 ("**Private Improvements**") in compliance with the final Approved Plans, with the preliminary plans having been submitted to City with the Zoning Clearance for the Project (No. ADM21-00121):

(a) Building. Developer will construct one (1) building ("**Building**") on the Property that will be a minimum of four (4) stories totaling approximately 277,000 square feet and consisting of at least two hundred and forty-five (245) residential apartment units as follows: twenty-five

(25) studio units, one hundred and twenty-seven (127) one-bedroom units, and ninety-three (93) two-bedroom units. The apartments in the Building will be leased at market-rate rents.

(b) Amenities and Quality Standards. Developer will cause to be constructed the certain amenities set forth below in this Section 4.3(b).

(i) On-Site Amenities. Developer will cause the Building to have the on-site amenities set forth and described on Exhibit D ("**On-Site Amenities**") available to the residential tenants of the Project. The Parties agree and acknowledge that the City Manager will have the authority, without need for City Council approval, to make minor adjustments to Exhibit D that are agreed upon by the Parties and are consistent with the intent of the Parties and this Agreement. In the event of any conflict between Exhibit D and the Approved Plans, the Approved Plans will govern and control.

(ii) Unit Amenities. Developer will construct the unit amenities set forth and described on Exhibit E ("**Unit Amenities**"). The Parties agree and acknowledge that the City Manager will have the authority, without need for City Council approval, to make minor adjustments to Exhibit E that are agreed upon by the Parties and are consistent with the intent of the Parties and this Agreement. In the event of any conflict between Exhibit E and the Approved Plans, the Approved Plans will govern and control.

(c) Thoroughfare. Developer will construct on the area identified and depicted in Exhibit F two (2) drive aisle areas facilitating motor vehicle and pedestrian access through the Property which will provide public access to the Valley Metro park and ride facility on the adjoining parcel and an additional access route for the fire department and other emergency personnel, and for solid waste and recycling services ("**Thoroughfare**"). The total area of the Thoroughfare will contain approximately 33,988 square feet which shall include the following minimum improvements: (i) an east-west drive aisle on the northern portion of the Property of approximately 18,341 square feet connecting North Dobson Road to an existing drive aisle on the eastern adjoining parcel providing access to the Valley Metro park and ride facility located in the northwest corner of the intersection of North Sycamore and West Main Street and providing additional access for the fire department, emergency personnel, and solid waste and recycling services; (ii) an east-west drive aisle on the southern portion of the Property of approximately 15,647 square feet connecting North Dobson Road to an existing drive aisle on the eastern adjoining parcel providing access to the Valley Metro park and ride facility located in the northwest corner of the intersection of North Sycamore and West Main Street and providing additional access for the fire department, emergency personnel, and solid waste and recycling services; and (iii) landscape improvements along both drive aisles. The Parties agree and acknowledge that the City Manager will have the authority, without need for City Council approval, to make minor adjustments to Exhibit F and the square footage of the Thoroughfare that are agreed upon by the Parties and are consistent with the intent of the Parties and this Agreement. Developer must provide City an easement over the Thoroughfare for public access to and use of the area as set forth in Section 4.7(a) below.

(d) Vehicular Ingress and Egress Area. Developer will construct on the area identified and depicted in Exhibit G a drive aisle facilitating vehicular ingress and egress between the Thoroughfare and the Webster Elementary School Property ("**Vehicular Ingress and Egress Area**"). The total area of the Vehicular Ingress and Egress Area will contain approximately 6,355 square feet which shall include the following minimum improvements: (i) a north-south drive aisle of approximately 6,355 square feet connecting the northern drive aisle of the Thoroughfare with the southern side of the Webster Elementary School Property facilitating all vehicular access and temporary parking related to the Webster Elementary School Property at all times, including vehicular access and temporary parking for school buses, student drop-off and pick-up, events held at the school, use of Webster Recreation Center, and maintenance; and (ii) landscape improvements along the drive aisle. Prior to the issuance of a certificate of occupancy for any improvement constructed on the Property, Developer must provide Mesa Public Schools an

easement over the Vehicular Ingress and Egress Area for public access to and use of the area as set forth in Section 4.7(b) below, to be attached as Exhibit N to this Agreement.

(e) Mesa Public Schools Benefit. Prior to the issuance of a certificate of occupancy for any improvement constructed on the Property, Developer shall, at no cost to Mesa Public Schools, the public, or the City, either: (i) acquire ownership of the property identified as Assessor Parcel Number 135-48-001N that is legally described in Exhibit H ("**Adjacent Southern Parcel**"), and transfer ownership of the Adjacent Southern Parcel to Mesa Public Schools at no cost to Mesa Public Schools as evidenced by a deed recorded in the Office of the Recorder of Maricopa County; or (ii) enter into an agreement with Mesa Public Schools obligating Developer to construct at its sole cost and expense certain improvements on the Webster Elementary School property located at 202 North Sycamore, Assessor Parcel No. 135-48-001D, ("**Webster Elementary School Property**") that allow for convenient access to, from, and across the Webster Elementary School Property in such a manner that will permit Mesa Public Schools, at Mesa Public Schools' sole discretion, to save the costs associated with utilizing the current drive aisle located on the Adjacent Southern Parcel. It is intended by the Parties that if constructed, the improvements on the Webster Elementary School Property will consist of a reconfigured drive aisle, landscape improvements, and other improvements along the southern portion of the Webster Elementary School Property, north of the Adjacent Southern Parcel as described and depicted in Exhibit I ("**Webster Elementary School Property Improvements**"); however, the City and Developer acknowledge that the specific improvements in Exhibit I may need to be modified based on the reasonable needs and requests of Mesa Public Schools. The City Manager will have the authority, without need for City Council approval, to make adjustments to Exhibit I that are consistent with the intent of the Parties and this Agreement, provided that the Webster Elementary School Property Improvements shall, at a minimum be: (i) for the benefit of Mesa Public Schools, specifically that they be improvements that would allow Mesa Public Schools to eliminate the need to utilize a drive aisle located on the Adjacent Southern Parcel for access to and from the Webster Elementary School Property, thus providing Mesa Public Schools with the opportunity, at Mesa Public Schools' sole discretion, to save the costs associated with utilizing the drive aisle on the Adjacent Southern Parcel; (ii) mutually agreed upon by the Parties in consultation with Mesa Public Schools; (iii) constructed by Developer at no cost to Mesa Public Schools, the public, or the City; and (iv) located completely within the Webster Elementary School Property unless otherwise agreed to by any adjacent property owner or allowed by City in City right of way. Additionally, should Developer construct the Webster Elementary School Property Improvements, Developer shall also construct, in accordance with the requirements for the Private Improvements set forth in this Agreement, additional related Private Improvements to the Property necessary to accommodate the Webster Elementary School Property Improvements. It is the intent of the Parties that, if the Webster Elementary School Property Improvements are constructed, then Mesa Public Schools, at its sole cost and expense, will accept ownership of and be responsible in perpetuity for the Maintenance of such improvements as more fully described and depicted in Exhibit I. The Parties acknowledge and agree that the owner of the Adjacent Southern Parcel is a Third Party that is not a party to, nor a Third Party beneficiary of, this Agreement. Nothing in this Agreement shall be deemed as an obligation or requirement of, or a benefit to, the owner of the Adjacent Southern Parcel.

(f) Exterior Quality Standards. In the construction of the Private Improvements, Developer will comply in all material respects with those exterior quality standards described on Exhibit J ("**Exterior Quality Standards**"). The Parties agree and acknowledge that City Manager will have the authority, without need for City Council approval, to make minor adjustments to Exhibit J that are agreed by the Parties and are consistent with the intent of the Parties and this Agreement.

4.4 Administrative Adjustments to Public Improvements and Private Improvements. Notwithstanding the foregoing in Section 4.3, the City Manager has the authority (without further act or approval required by City Council) to make administrative adjustments in accordance with Applicable Law

in the amount of improvements, types of improvements, and areas involving improvements described in Section 4.3 in order to accommodate reasonable changes necessitated by design and construction matters discovered or determined subsequent to the Effective Date.

4.5 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 on Exhibit K. The Parties agree and acknowledge that City Manager will have the right and ability, without need for City Council approval, to make minor adjustments to Exhibit K that are agreed by the Parties and are consistent with the intent of the Parties and this Agreement.

4.6 Public Improvements. Developer shall (i) at Developer's sole cost and expense, (ii) in compliance with all Applicable Laws, and (iii) prior to the issuance of a certificate of occupancy for any improvement constructed on the Property, construct all public improvements set forth in Exhibit L as depicted on the final approved construction plans as stipulated in the Zoning Clearance for the Project ("**Public Improvements**") which is subject to City's approval including the following:

(a) Enhanced landscaping along the west side of the Property in the right-of-way of North Dobson Road which will include installation of a screen-wall, additional trees, shrubs, groundcovers and hardscape surfaces as well as related irrigation lines, controllers, and lighting.

(b) Easements abutting the Property that are reasonably deemed from time-to-time by the City Engineer to be non-standard.

4.7 Easements.

(a) Thoroughfare Easement. As a condition to City and Developer entering into the Lease, Developer shall grant to City a perpetual easement over the Thoroughfare, free and clear of all liens, claims and encumbrances for financing (or with a consent from any such financing lienholder subordinating its lien to the Thoroughfare Easement, such consent to be in the form attached to the Thoroughfare Easement or other form reasonably approved by City), that will specifically allow the general public access to and use of the Thoroughfare, at no cost to the public or City, for the purpose of accessing and using the Thoroughfare drive aisles as motor vehicle and pedestrian access through the Property and to the Valley Metro park and ride facility located on the northwest corner of West Main Street and North Sycamore, and an additional access route for the fire department and other emergency personnel, and for solid waste and recycling services ("**Thoroughfare Easement**"). The form of the Thoroughfare Easement, including the description and depiction of the real property covered by the Thoroughfare Easement, is attached as Exhibit M. When construction of the Thoroughfare is completed, Developer will cause a licensed surveyor or engineer to prepare a legal description of the Thoroughfare and depiction of the Thoroughfare, to be attached as exhibits to the Thoroughfare Easement. In the event of a conflict or ambiguity between this Section 4.7 and the Thoroughfare Easement, the Thoroughfare Easement will prevail.

(b) Vehicular Ingress and Egress Easement. As a condition to City and Developer entering to the Lease, prior to the issuance of a certificate of occupancy for any improvement constructed on the Property, Developer shall grant to Mesa Public Schools and cause to be recorded in the Office of the Recorder of Maricopa County a perpetual easement over the Vehicular Ingress and Egress Area, free and clear of all liens, claims and encumbrances for financing (or with a consent from any such financing lienholder subordinating its lien to the Vehicular Ingress and Egress Easement, such consent to be in in the form attached to the Vehicular Ingress and Egress Easement or other form reasonably approved by Mesa Public Schools), that will specifically allow all vehicular access and temporary parking related to the Webster Elementary School Property at all times, including vehicular access and temporary parking for

school buses, student drop-off and pick-up, events held at the school, use of Webster Recreation Center, and maintenance, at no cost to Mesa Public Schools, the public, or City ("**Vehicular Ingress and Egress Easement**"). Upon recordation of the Vehicular Ingress and Egress Easement, City shall cause to be executed and recorded a termination of the portion of the easement recorded in the Office of the Recorder of Maricopa County, Arizona as Instrument No. 2001-1194851, on the property owned by Developer only; the easement created by the easement recorded in the Office of the Recorder of Maricopa County, Arizona as Instrument No. 2001-1194851 shall remain on all property not owned by Developer. When construction of the Vehicular Ingress and Egress Area is completed, Developer will cause a licensed surveyor or engineer to prepare a legal description of the Vehicular Ingress and Egress Area and depiction of the Vehicular Ingress and Egress Area, to be attached as exhibits to the Vehicular Ingress and Egress Easement. Prior to the issuance of a certificate of occupancy for any improvement constructed on the Property, the form of the Vehicular Ingress and Egress Easement, including the description and depiction of the real property covered by the Vehicular Ingress and Egress Easement, will be attached to this Agreement as Exhibit N. In the event of a conflict or ambiguity between this Section 4.7 and the Vehicular Ingress and Egress Easement, the Vehicular Ingress and Egress Easement will prevail.

4.8 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 November 30, 2021, following timely application and payment of all applicable fees, Developer must obtain a Zoning Clearance from City for the Project.

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

(c) On or before June 30, 2024, Developer will have Completed Construction of all of the Improvements.

The City Manager, in the City Manager's sole and absolute discretion, may extend any of the foregoing dates in this Section 4.8 for a period of time not to exceed forty-five (45) days per extension, with a maximum of three (3) extensions per event. In the event of any extension by the City Manager, each subsequent Compliance Date will automatically be adjusted in conformity.

4.9 City Services. During the Term, Developer will use for the Project all available City of Mesa utility services as permitted by Applicable Law, including City's water, sewer, solid waste and natural gas, and City shall provide City utility services in accordance with City's standard terms and conditions for the provision of such City services. Developer shall be responsible, at its sole cost and expense, for all utility costs for the Project, including installing, extending, connecting or upgrading the infrastructure to connect the Project to the City's utility systems, as necessary, for the provision of utility services which may require Developer to enter into a separate utility agreement with City. The Project's use and payment of City Services will result in additional revenues to City. All utility services to the Property shall be subject to the City's Terms and Conditions for the Sale of Utilities, the City Code, and all other Applicable Laws. Utility service will also be provided subject to payment of the then applicable rates, fees and charges. Developer acknowledges and agrees that the increase in City utility usage at the Property is a benefit to City and an element of the consideration for City entering into this Agreement.

4.10 Dedication of Public Improvements. In accordance with this Agreement and City policy, and prior to the Completion of Construction, upon completion of any portion or segment of the Public Improvements, Developer will dedicate and grant to City the Public 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 Building as planned (collectively, including the Public Improvements, the "**Dedicated Property**"). Developer will make such dedications and grants of the Dedicated Property (1) upon such additional terms and conditions required by City in connection with dedications of similar public improvements and real property interests; (2) using City's standard forms with such changes requested by Developer as may be approved by City at its sole discretion; (3) without the payment of any additional consideration by City; and (4) free and clear of all monetary liens, except current taxes and assessments and improvement district liens.

(a) With respect to such dedicated Public 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 dedicate all Public Improvements and Dedicated Property to City before City is obligated to issue a certificate of occupancy for any portion of the Private Improvements. 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 4.10(a), the Public Improvements will become public facilities and property of City. Developer will bear all risk of, and will Indemnify the City Indemnified Parties for, from and against any and all Claims arising prior to City's acceptance of the Dedicated Property arising from the condition, loss, damage to or failure of any of the Dedicated Property, except to the extent such Claims are caused solely and directly by the gross negligence or willful acts or omissions of City Indemnified Parties.

4.11 Maintenance Obligations of Public Improvements.

(a) Obligation. Developer, at its sole cost and expense, will be responsible in perpetuity for the Maintenance of all the Public Improvements as more fully described and depicted in Exhibit L. The obligation of Maintenance by Developer set forth in this Section 4.11 survives the termination or expiration of this Agreement pursuant to Section 2.3.

(b) Maintenance Standard. All Maintenance of the Public Improvements by Developer must, at a minimum: (1) comply with the requirements of Applicable Laws then in effect for work done in, on or about a right of way, including all applicable procedures regarding safety and minimizing any inconvenience to the public; (2) be performed in a first-class, sound, clean, safe and attractive manner that at all times maintains the safety of the public; and (3) be performed within a commercially reasonable period of time.

(c) Failure of Developer to Maintain. In the event that Developer fails to provide Maintenance for the Public Improvements (or any component of such Public Improvements), after written notice from City to Developer and a reasonable period of time to remedy such failure, City may (but is not obligated to) provide Maintenance for such Public Improvements (or component of such Public Improvements) at Developer's expense, in which event Developer, promptly upon receipt of an invoice from City for City's costs and expenses, will pay and reimburse City for all such costs of Maintenance incurred by City.

(d) City Maintenance Authority. In addition to the authority of City to provide Maintenance of the Public Improvements set forth in Section 4.11(c) above, City reserves its existing authority as the local government owner of the right of way in which the Public Improvements are located, to undertake any Maintenance of the Public Improvements including, without limitation, that which: (1) are required, in the reasonable opinion of the City Manager or his/her designee, to address an emergency or threat to public safety; (2) are otherwise appropriate under applicable City standards; or (3) City has the

right to maintain tree canopies that negatively impact street lighting.

(e) Non-Waiver; Runs with the Land. The performance of any Maintenance of the Public Improvements by City pursuant to Section 4.11 shall not be deemed a waiver of any of the obligations of Developer in this Agreement. Developer's obligations of Maintenance and reimbursement set forth in this Section 4.11 runs with the land and will survive the expiration or earlier termination of this Agreement.

4.12 Prohibited Uses. Notwithstanding anything in Applicable Laws (including the Zoning and Zoning Clearance), the uses described on Exhibit O will at all times be prohibited on the Property (the "**Prohibited Uses**"). As a condition of City's obligation to accept title to the Property and Improvements pursuant to the provisions of Section 5.1, Developer shall cause to be recorded against the Property and Improvements a Declaration of Use Restrictions or Declaration of Conditions, Covenants, and Restrictions which shall incorporate the Prohibited Uses and which shall e applicable to the entirety of the Property and Improvements.

4.13 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.

4.14 Repairs, Operation and Maintenance of Private Improvements. Developer is solely responsible, at its sole cost and expense, for all operation and Maintenance, of the Private Improvements in perpetuity, in accordance with Applicable Laws, except for the Maintenance of the Webster Elementary School Improvements, which shall be the responsibility of Mesa Public Schools, as set forth in Section 4.3(e). Nothing contained in this Agreement shall require Developer to restore or repair the Private Improvements after Completion of Construction of the Private Improvements due to casualty, condemnation, or otherwise; provided, however, during the term of the Lease, Developer maintains all responsibilities for maintenance, operation, repair, and replacement of the Private Improvements required under the Lease.

4.15 Payments In-Lieu to Districts. As set forth more fully in the Lease, and as permitted by this Agreement and Applicable Law, the Parties intend to abate the government property lease excise taxes for the Property under A.R.S. Title 42, Chapter 6, Article 5. In order to help mitigate any reduced tax revenue for the Mesa Public School District (also referred to herein as "Mesa Public Schools"), Maricopa Community College District, and the East Valley Institute of Technology District (individually, a "**District**" or collectively, the "**Districts**"), Developer agrees that it shall make a one-time, lump sum payment directly to each District in an amount based on the taxes assessed against Property as of the Effective Date which the Districts would have otherwise received had the tax not been abated. The parties acknowledge and agree that the amount payable to the Mesa Public School District shall be $178,482.00; the amount payable to the Maricopa Community College District shall be $31,196.00; and the amount payable to the East Valley Institute of Technology District shall be $1,211.00. The in-lieu payments must be paid prior to the execution of the Lease by the Parties, shall be non-refundable, and shall not be off-set against any payments owed to City or that Developer may otherwise owe to the Districts. Developer shall concurrently with its in-lieu payments provide evidence of the payment to City. As set forth more fully in the Lease, the failure to make the in-lieu payment to any of the Districts as required under this Section 4.15 shall be grounds for City to terminate the Lease. The termination of the Lease at any time prior to the expiration of the Rental Period (as defined in the Lease) will not entitle Developer to a refund of any portion of any in-lieu payment to a District.

4.16 Minimum Construction Sales Tax. In the development and construction of the Project, including the Improvements, Developer has pledged to City that a minimum amount of construction transaction privilege tax (commonly referred to as sales tax) will be generated and paid to City pursuant to the Mesa City Code Section 5, Chapter 10 in the minimum amount of $500,000.00 ("**Construction Tax**"). The amount of the generated Construction Tax is material to City entering into this Agreement and to the performance by City of the City Undertakings. Should the development and construction of the Project fail to generate for City the minimum amount of Construction Tax set forth in this Section on or before Completion of Construction, Developer shall be obligated, as a condition precedent to City entering into the Lease (see Section 5.1), for Developer to pay to City the difference in the amount of the construction transaction privilege tax generated by the Project and received by City, and the minimum amount of Construction Tax set forth in this Section.

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

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 by the required Compliance Date in Section 4.8 and no act or omission by Developer has occurred and is continuing that with the giving of notice or passage of time would constitute a Default by Developer, (ii) Developer is not in Default under Section 9.1, (iii) the fee title interest in the Property and Improvements are free and clear of all financial liens and encumbrances, except current property taxes and assessments and the lien of any deed of trust or mortgage recorded for the benefit of any lender must be removed from the Property and Improvements and converted to a leasehold deed of trust or leasehold mortgage concurrently with the conveyance of fee title to the Property and Improvements by Developer to City, (iv) Developer obtains an ALTA title insurance 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 reasonably 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) except for the lien of any deed of trust or mortgage recorded for the benefit of any lender that will be removed from the Property and Improvements and converted to a leasehold deed of trust or leasehold mortgage concurrently with the conveyance of fee title to the Property and Improvements by Developer to City, (v) Developer has signed and delivered to City in the agreed-upon form for the Thoroughfare Easement and Vehicular Ingress and Egress Easement as set forth in Section 4.7, (vi) Developer has made the required in-lieu payments to the Districts pursuant to Section 4.15, and (vii) Developer has paid to City the required minimum amount of Construction Tax pursuant to Section 4.16, then City will accept conveyance of the Property to City by form of special warranty deed in the form attached as Exhibit P, with Developer paying all escrow and closing costs for such transfer of the Property, 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 Section 4.8; (b) Developer is in Default under Section 9.1 following the applicable notice and cure periods under Section 9.3; (c) ad valorem taxes and similar assessments with respect to the Property and Private Improvements are delinquent; (d) the Property and Private Improvements are burdened by any financial liens or encumbrances (including mechanics' or materialmen's liens) except for lien of any deed of trust or mortgage recorded for the benefit of any lender that will be removed from the Property and Improvements and converted to a leasehold deed of trust or leasehold mortgage concurrently with the conveyance of fee title to the Property and Improvements by Developer to City; or (e) Developer has not

paid the required in-lieu payments to the Districts or the minimum required Construction Tax; 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 mechanic's 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 Acceptance of Public Improvements. City will accept title to the Public Improvements in accordance with Section 4.10.

5.3 Municipal Services. City, in accordance with its standard terms and conditions for the provision of utilities, will provide the Project the following municipal services: water, sewer, solid waste, and natural gas, if applicable. Developer may be required to enter into a normal and customary utility agreement with City. All utility services to the Property shall be subject to the City's Terms and Conditions for the Sale of Utilities, the City Code, and all other Applicable Laws. Utility service will also be provided subject to payment by Developer of the then applicable rates, fees and charges.

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

6. **INDEMNITY; RISK OF LOSS**.

6.1 Indemnity of City Indemnified Parties by Developer. Developer will pay, defend, indemnify and hold harmless (collectively, "**Indemnify**") City and its City Council members, officers, officials, agents, and employees (collectively, including City, "**City Indemnified Parties**") for, from and against any and all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including attorneys' fees, experts' fees and court costs associated with all such matters) which may be imposed upon, incurred by or asserted against City Indemnified Parties by Third Parties ("**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, including the development and construction of the Project or Maintenance of the Private Improvements or Public Improvements; (ii) the use of the Thoroughfare by the public as described and depicted in the Thoroughfare Easement (Exhibit M); or (iii) the use of the Vehicular Ingress and Egress Area by the public or Mesa Public Schools for vehicular access and temporary parking as described and depicted in the Vehicular Ingress and Egress Easement (Exhibit N). The obligation of Developer to Indemnify shall extend to and encompass all costs incurred by City Indemnified Parties in defending against the Claims, including attorney, witness and expert fees, and any other litigation-related expenses. The provisions of this Section 6.1, however, will not apply to Claims to the extent such Claims are solely and directly caused by the acts or omissions of City Indemnified Parties. The obligations of Developer under this Section 6.1 shall survive the termination or expiration of this Agreement.

6.2 Risk of Loss. Developer assumes the risk of any and all loss, damage or Claims to the Private Improvements and to any portion of the Public Improvements unless and until title to the Public Improvements is transferred to City , at which time the City is deemed to have assumed the risk of loss of any and all loss, damage, or Claims to any portion of the Public Improvements, subject to Developer's obligations to Indemnify the City Indemnified Parties as provided in Section 6.1 of this Agreement. At the time title to the Public Improvements is transferred to City by dedication deed, plat recordation, or otherwise, Developer will, to the extent allowed by law, assign to City any unexpired warranties relating to the design, construction and/or composition of such Public Improvements. Acceptance of the Public Improvements will be conditioned on City's receipt of a two (2) year warranty of

workmanship, materials and equipment, in form and content reasonably acceptable to City, provided however that such warranties may be provided by Developer's contractor or contractors directly to City and are not required from Developer, and that any such warranties will commence from the date of completion of any Public Improvement, any component thereof, or the work of any specific trade or contractor, as applicable.

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

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

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

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

7.3 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, the City's Downton Transformation Manager as of the Effective Date, without any independent inquiry or investigation. Notwithstanding anything herein to the contrary, Mr. McVay is not a Party to this Agreement, and neither shall he have any personal liability or liability whatsoever with respect to any matters set forth in this Agreement or City's representations and/or warranties in this Agreement being or becoming untrue, inaccurate or incomplete in any respect.

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

7.5 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 authority to enter into and perform this Agreement and of the obligations and undertakings of Developer under this Agreement. Developer's execution, delivery and performance of this Agreement has been duly authorized and agreed to in compliance with the organizational documents of Developer.

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

8.3 As of the Effective Date, 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. The term "actual knowledge" means the actual knowledge of Sandy Schmid, Senior Vice President of Acquisitions & Development for StarPoint Properties, an employee of Developer, as of the Effective Date, without any independent inquiry or investigation. Notwithstanding anything in this Agreement to the contrary, Sandy Schmid is not a Party to this Agreement, and neither shall such individual have any personal liability or liability whatsoever with respect to any matters set forth in this Agreement or Developer's representations and/or warranties in this Agreement being or becoming untrue, inaccurate or incomplete in any respect.

8.4 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.

8.5 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.

8.6 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, construction managers, and attorneys.

8.7 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 and has a materially adverse impact on City's or Developer's ability to perform under this Agreement;

(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 prior to Completion of Construction or upon any improvements on such Property, 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 fails to make any of the in-lieu payments to the Districts required under Section 4.15 or fails to pay to City the minimum amount of Construction Tax under Section 4.16;

(e) Developer Transfers or attempts to Transfer or assign this Agreement in violation of Section 11.2;

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

(g) Any Event of Default of Developer (as "Grantor") (or the party responsible for the obligations of Developer, as Grantor) under the Thoroughfare Easement, subject to all grace periods and cure periods provided in the Thoroughfare Easement;

(h) Any Event of Default of Developer (as "Grantor") (or the party responsible for the obligations of Developer, as Grantor) under the Vehicular Ingress and Egress Easement, subject to all grace periods and cure periods provided in the Vehicular Ingress and Egress Easement; or

(i) Any Event of Default of Developer (as "Tenant") (or the party responsible for the obligations of Developer, as Tenant) under the Lease, subject to all grace periods and cure periods provided in the Lease.

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 proved to be materially inaccurate during the Term and has a materially adverse impact on City's or Developer's ability to perform under this Agreement; or

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

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 promptly 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 that it is not capable of being cured within thirty (30) days, then the Defaulting Party must commence to cure such Default within such thirty (30) day period and diligently pursue such cure 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 and absolute discretion, may extend the period of time the Developer has to cure the non-monetary Default for another ninety (90) days; however, in no event shall the overall period of time for completion exceed one hundred eighty (180) 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:

9.4.1 Remedies of City. City's sole and exclusive remedies for an uncured Event of Default by Developer under this Agreement will consist of, and will be limited to the following:

(i) City may suspend any of its obligations under this Agreement and may terminate this Agreement by written notice thereof to Developer, and may terminate the Lease in accordance with the terms of the Lease.

(ii) Notwithstanding the foregoing, at any time, City may seek special action or other similar relief (whether characterized as mandamus, injunction or otherwise), requiring Developer to undertake and to fully and timely perform its obligations under this Agreement (except for Developer's obligations for the Completion of Construction of the Improvements) and/or undertake and to fully and timely address a public safety concern or to enjoin any construction or activity undertaken by

Developer or Transfer by Developer, in each case which is not in accordance with the terms of this Agreement.

(iii) 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 to Indemnify the City Indemnified Parties including City's ability to seek or recover all damages assessed against City in connection with Developer's obligation to Indemnify.

(iv) Notwithstanding the foregoing, City has and retains its specific rights: (a) set forth in this Agreement; (b) under Applicable Laws as the municipal government authority in which the Project is located including those related to the enforcement of Zoning, construction, and development; (c) under the Lease, Thoroughfare Easement, and Vehicular Ingress and Egress Easement; and (d) for recovery of any enforcement costs pursuant to Section 11.8. Provided, however, that nothing in this Section 9.4.1 shall require Developer's Completion of Construction of the Improvements.

(v) Notwithstanding anything to the contrary in this Section 9.4.1, except as it pertains to Developer's obligation to Indemnify the City Indemnified Parties from Claims, City hereby waives any and all right to recover special, consequential, incidental, indirect, punitive, exemplary, or similar types of damages.

9.4.2 Remedies of Developer. Developer's sole and exclusive remedies for an Event of Default by City under this Agreement will consist of and will be limited to a special action or other similar relief (whether characterized as mandamus, injunction or otherwise), requiring specific performance by 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, special, incidental, direct, exemplary, consequential, punitive, and any other similar types of damages whatsoever or to seek any other remedies against City for an Event of Default, except for recovery of any enforcement costs for such action pursuant to Section 11.8 (if applicable). Notwithstanding the foregoing, Developer has and retains its specific rights under the Lease, Thoroughfare Easement, and Vehicular Ingress and Egress Easement.

9.5 Delays; Waivers. Except as otherwise expressly provided in this Agreement (including Force Majeure), 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 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); fires, floods, strikes, embargoes, material shortages, labor disputes, 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 bio-terrorism or eco-terrorism); nuclear radiation; a Public Health Event; declaration of national emergency or national alert; blockade, insurrection, riot, labor strike or interruption; extortion, sabotage, or similar occurrence; 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 Building, 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 Building, 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, within thirty (30) days after such event, the Party seeking the benefit of the provisions of this Section 9.6 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 (if the Party alleging Force Majeure fails to timely notify the other Party, the commencement of any tolling period will be thirty (30) days prior to delivery of such written notice, notwithstanding the actual date of the event).

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.

10.1 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 the City's Downtown Transformation Manager (the "**City Representative**"), and the initial representative for Developer will be its project manager, as identified by Developer from time to time (the "**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.

11.2.1 Restriction on Transfers. Prior to Completion of Construction, no assignment or similar transfer of Developer's interest in all or any portion of either the Property or this Agreement, or in the current management, ownership or control of Developer (each, a "**Transfer**") shall occur without the prior written consent of City, which consent may be given or withheld in City's sole and unfettered discretion, and in accordance with Applicable Laws. Notwithstanding the foregoing, the restrictions on Transfer will not apply to a one-time Transfer 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 Transfer set forth in this Section 11.2.1 shall terminate automatically, without further notice or action, upon the earlier of (i)

Completion of Construction or (ii) the expiration or termination of this Agreement, and thereafter Developer may freely Transfer all of its rights and obligations under this Agreement so long as there is a concurrent Transfer to the same transferee of all of Developer's rights and obligations arising under the Lease, Thoroughfare Easement, and Vehicular Ingress and Egress Easement; 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 the obligations of Developer to Indemnify set forth in Section 4.10(b), Section 6.1, and Section 9.4.1, or elsewhere in this Agreement; 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 all obligations to Indemnify set forth in Section 4.10(b), Section 6.1, and Section 9.4.1 of this Agreement, 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 in the Agreement. No Transfer of this Agreement (in whole or in part) may be made apart from a concurrent Transfer to the same transferee of all of Developer's rights and obligations arising under the Lease, Thoroughfare Easement, and Vehicular Ingress and Egress Easement. Any Transfer made in violation of this Agreement shall be void, and not voidable.

11.2.2 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. If either Party determines in its reasonable judgment that the reformed agreement does not provide essentially the same rights and benefits (economic and otherwise) to the Party as if such severance and reformation were not required, such Party may terminate this Agreement by written notice to the other Party, subject to Section 11.21, without penalty to either Party.

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, (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 a Party may designate in

writing pursuant to the terms of this Section 11.5(a), (iii) any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), delivery charges prepaid, or (iv) electronic delivery provided that such notice is concurrently given by one of the other methods of delivery provided above:

If to City:

City of Mesa
Attn: City Manager
20 East Main Street
Mesa, Arizona 85211
Telephone: 480-644-2066
Email: chris.brady@mesaaz.gov

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

and

City of Mesa
Attn: Downtown Transformation Manager
20 East Main Street
Mesa, Arizona 85211
Telephone: 480-644-5379
Email: jeff.mcvay@mesaaz.gov

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

With a 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:
Post Office Box 1466
Mesa, Arizona 85211-1466

If to Developer:

Dobson Properties Sub-Fund, LLC
c/o Starpoint Properties
Attn: Sandy Schmid
433 North Camden Drive, Suite 1000
Beverly Hills, CA 90210

With required copy to:

Dobson Properties Sub-Fund, LLC
c/o Starpoint Properties
Attn: Mike Treiman, General Counsel
433 North Camden Drive, Suite 1000
Beverly Hills, CA 90210

(b) Effective Date of Notices. 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 given by electronic delivery will be deemed effective upon transmission if such transmission is made prior to 5:00 p.m., Arizona time, on a business day (otherwise such notice will be deemed effective on the next succeeding business day). 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 provided in this Agreement. 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 in an appropriate forum, the prevailing Party in any such dispute will be entitled to reimbursement of its reasonable attorneys' fees and court costs including its reasonable costs of expert witnesses, transportation, lodging and meal costs of out-of-town parties and witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental costs of such dispute which challenges the authority of City and/or Developer to enter into or perform any of its obligations in this Agreement and will cooperate with City in connection with any other action by a Third Party.

(b) Third Party Claim Naming Developer. Developer at its sole cost and expense, by counsel of its own choosing, and subject to its reasonable business judgment, will defend the validity and enforceability of this Agreement in the event of any proceeding or litigation arising from its terms that names Developer as a party or which challenges the authority of Developer to enter into or perform any of its obligations hereunder and will cooperate with City in connection with any other action by a Third Party in which City is a party and the benefits of this Agreement to City are challenged. City will cooperate with Developer in connection with any other action by a Third Party in which Developer (but not City) is a party in such action and the benefits of this Agreement to City are challenged.

(c) Third Party Claim Naming City. City at its sole cost and expense, and by counsel of its own choosing, will defend the validity and enforceability of this Agreement in the event of any proceeding or litigation arising from its terms that names City as a party to such proceeding or litigation and which challenges (i) the authority of City to enter into this Agreement or perform any of its obligations under this Agreement, (ii) the validity or any term or condition of this Agreement, or (iii) subject to Section 11.13 of this Agreement, the compliance of this Agreement with any Applicable Law (including a claim or determination arising under A.R.S. § 41-194.01), and City will cooperate with Developer in connection with any other action by a Third Party in which Developer (but not City) is a party in such action and the benefits of this Agreement to City are challenged; provided, however, that Developer (within thirty days of written demand from City) must reimburse City for one-half of City's actual out-of-pocket attorneys' fees and costs incurred under this Section 11.8(c); and further provided that City has no obligation to maintain

such defense if City has incurred actual out-of-pocket attorneys' fees in excess of $50,000.00 after reimbursement by Developer; and further provided that City may settle any such proceeding or litigation on such terms and conditions as City may elect in its sole and absolute discretion, but at no expense or liability to Developer without Developer's approval, however the term "expense or liability to Developer" shall not include the loss of any benefit anticipated by Developer to be obtained by Developer under this Agreement, the Lease, Thoroughfare Easement, or Vehicular Ingress and Egress Easement including the abatement of any tax.

(d) 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. If Developer is required to construct the Webster Elementary School Improvements as set forth in Section 4.3(e) of this Agreement, Mesa Public Schools will be a Third Party beneficiary of the Webster Elementary School Property Improvements set forth in Section 4.3(e) of this Agreement and described and depicted in Exhibit I only. No person or entity will be a Third Party beneficiary to this Agreement, except for: (i) Mesa Public Schools only to the extent stated herein; (ii) permitted transferees, assignees, or lenders under Section 11.21 to the extent that they assume or succeed to the rights and/or obligations of Developer under this Agreement; and (iii) the City Indemnified Parties referred to in the indemnification provisions of Section 4.10(b), Section 6.1, and Section 9.4.1 (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 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 rights and 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 or Developer 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 at 5:00 p.m., Arizona time, 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 not be unreasonably withheld, delayed, or conditioned by such Party; notwithstanding, the requirements of this Section 11.16 shall not apply to any consent or approval of City as the local government authority in which the Project is located including acts related to Zoning. 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, the Thoroughfare Easement, the Vehicular Ingress and Egress Easement (if applicable), 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 in this Agreement, 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 Party 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 obligations to Indemnify contained in Section 4.10(b), Section 6.1, and Section 9.4.1 of this Agreement (or elsewhere in this Agreement) will survive the execution and delivery of this Agreement, the closing of any transaction contemplated in this Agreement, 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 Private Improvements (and appurtenant Public 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 Private Improvements (and appurtenant Public Improvements) and to secure such financing with a lien or liens against the Property and Private Improvements (and Public Improvements). Notwithstanding the foregoing, the provisions of Section 4.10 control in the event that Developer conveys the Public Improvements to City and the provisions of Section 5.1 control in the event that Developer conveys the Property (and Private Improvements constructed on the Property) to City for the purposes of leasing back the Property and Private Improvements.

(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 Private Improvements, 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. Lender shall have the right, but not the obligation, for a period of thirty (30) days after the expiration of any grace period afforded Developer (or such longer period as Lender may reasonably require to perform any term, covenant or condition and to remedy any uncured default by the Developer as the Borrower named therein), and City shall accept such performance with the same force and effect as if furnished by the Developer as the Borrower named therein and the Lender shall thereby and hereby be subrogated to the rights of City. If a Lender is permitted, under the terms of its agreement with Developer to cure the Event of Default and/or to replace Developer with respect to this Agreement, City agrees to recognize such rights of the Lender and to otherwise permit the Lender to be substituted for Developer and accept all of the rights and obligations of Developer under this Agreement (during its ownership of the Property). City will, at any time upon reasonable request by Developer, provide to any Lender an estoppel certificate, acknowledgement of collateral assignment, consent to collateral assignment, or other document evidencing that this Agreement 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, in the form attached to this Agreement as Exhibit R, or in such other form requested by Lender that is acceptable to City in its sole discretion.

11.23 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.

11.24 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.

11.25 No Boycott of Israel. To the extent enforceable under Applicable Law, 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.

11.26 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, the Project and the Property by this Agreement or the Zoning, City's approval of Developer's plans and specifications for the Project, the issuance of any permits, and all other actions to be taken by City pursuant to this Agreement. 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.

11.27 City Council Action. City and Developer acknowledge that, notwithstanding any language of this Agreement or any subsequent additional document, no act, requirement, payment or other agreed-upon action to be done or performed by City which would, under any federal, state or local constitution, statute, charter provision, ordinance or regulation, require formal action, approval or concurrence by City Council, will be required to be done or performed by City unless and until said formal City Council action has been taken and completed. "Completed" under this provision means that such City Council action is no longer subject to referendum action. This Agreement does not bind City Council or remove its independent authority to make determinations related to formal action of City Council in any way.

11.28 Consent. Wherever City's consent is required to be given in this Agreement, such consent will be the consent of the City Manager (or his/her designee), without the requirement of the prior approval of City Council unless required by Applicable Law, City policy, or the City Manager, and the City Manager (or his/her designee) will enter into such amendments to this Agreement demonstrating such consent as deemed necessary or appropriate by the Parties.

11.29 Estoppel Certificates. City will, upon reasonable request by Developer, provide an estoppel certificate to Developer, or any prospective lender, investor, or purchaser, certifying that (i) this

Agreement and to the extent then applicable the Lease and Thoroughfare Easement are in full force and effect, (ii) no Event of Default, or act or omission actually known to the City's Downtown Transformation Manager that with the giving of notice and/or passage of time could become an Event of Default, by Developer exists hereunder or under the Lease or Thoroughfare Easement (or, if appropriate, specifying the nature and duration of any existing Event of Default), (iii) No Event of Default, or act or omission actually known to the City's Downtown Transformation Manager that with the giving of notice and/or passage of time could become an Event of Default, by City exists hereunder or under the Lease (or, if appropriate, specifying the nature and duration of any existing Event of Default), (iv) City has received no formal notice of claim requiring Developer to Indemnify the City Indemnified Parties, and (v) if applicable, for the purpose of satisfying Section 5.1(i) related to the conditions precedent for City entering into the Lease, the Public Improvements were built in accordance with the Approved Plans and dedicated to, and accepted by, City, and the Private Improvements were built in accordance with the Approved Plans.

(*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 _____, 20_____, by _____ the _____ of the City of Mesa, Arizona, an Arizona municipal corporation, who acknowledged that he/she signed the foregoing instrument on behalf of City.

_____
Notary Public

My commission expires:

_____

DEVELOPER

_____, a _____

By: _____

Name: _____

Its: _____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this _____ day of _____, 20___, by _____, the _____ of _____, a _____, who acknowledged that he/she signed the foregoing instrument on behalf of Developer.

_____
Notary Public

My commission expires:

_____

LIST OF EXHIBITS

Exhibit A. **LEGAL DESCRIPTION OF PROPERTY**

Exhibit B. **LEASE**

Exhibit C. **CUSTOMIZED REVIEW SCHEDULE**

Exhibit D. **ON-SITE AMENITIES**

Exhibit E. **UNIT AMENITIES**

Exhibit F. **DEPICTION OF THOROUGHFARE**

Exhibit G. **DEPICTION OF VEHICULAR INGRESS AND EGRESS AREA**

Exhibit H. **LEGAL DESCRIPTION OF ADJACENT SOUTHERN PARCEL**

Exhibit I. **WEBSTER ELEMENTARY SCHOOL PROPERTY IMPROVEMENTS DESCRIPTION AND DEPICTION**

Exhibit J. **EXTERIOR QUALITY STANDARDS**

Exhibit K. **PROGRAM COMPLIANCE**

Exhibit L. **PUBLIC IMPROVEMENTS DESCRIPTION AND DEPICTION**

Exhibit M. **THOROUGHFARE EASEMENT AGREEMENT**

Exhibit N. **VEHICULAR INGRESS AND EGRESS EASEMENT AGREEMENT**

Exhibit O. **PROHIBITED USES**

Exhibit P. **SPECIAL WARRANTY DEED**

Exhibit Q. **INSURANCE REQUIREMENTS**

Exhibit R. **NON-DISTURBANCE AND RECOGNITION AGREEMENT**

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

PARCEL NO. 1:
That portion of the Northwest quarter of Section 20, Township 1 North, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, shown as Parcel C, of LOT SPLIT OF TRI CITY PAVILIONS, according to Book 884 of Maps, page 48, records of Maricopa County, Arizona.

PARCEL NO. 2:
A non-exclusive easement for ingress and egress for vehicular and pedestrian traffic over the Common Areas described in the Declaration of Covenants, Conditions and Restrictions and Grant of Easements in Recording No. 2002-0031777 and Amended and Restated in Recording No. 2005-1870410 and First Amendment to Amended and Restated Declaration of Covenants, Conditions and Restrictions and Grant of Easements in Recording No. 20140131865, Second Amendment in Recording No. 20160220101 and Third Amendment in Recording No. 20160883921, records of Maricopa County, Arizona.
APN: 135-48-003H

EXHIBIT B
LEASE

EXHIBIT C
CUSTOMIZED REVIEW SCHEDULE

City and Developer have agreed to a Customized Review Schedule for the Project. The implementation of the Customized Review Schedule will follow the meeting and submittal process below.

Project Review Meetings:
1. First, Developer will contact the Downtown Transformation Office ("**DTO**") to discuss the Project timeline and anticipated needs. Developer will prepare an anticipated timeline or key Project milestones for this meeting that will include, at a minimum, the planned permit submittal and construction commencement dates for land development and vertical construction. Developer will request this meeting at their earliest ability to allow DTO to coordinate with the Development Services Department to establish the Customized Review Schedule.
2. Code Analysis Meeting: If requested by Developer or Developer's design team, City staff will meet with Developer's design team prior to submittal of Project documents to discuss any code related questions that arise during the design phase.
3. Plan Review Comment Meeting(s): Prior to resubmittal of Project documents, Developer or Developer's design team may request a meeting with City staff to discuss any questions about City's review comments.

Submittal Process:
City and Developer will both provide a single point of contact ("**POC**") for coordination during the submittal process. Submittal of plans for the Project will be made in Mesa's online permitting system (DIMES). At the request of Developer or Developer's design team, City staff will assist Developer or Developer's design team with the submittal of Project documents in DIMES.

First Review:
On the date Developer or Developer's design team submits Project documents in DIMES ("**Submission Date**") Developer shall notify City POC of the submittal ("**Notification**"). If City POC is not notified on the Submission Date the documents will be reviewed by City pursuant to City's standard review cycle which is currently eighteen (18) days. Upon receiving Notification and if the submittal documents associated with the Notification are deemed complete and approvable (as determined by City in its sole discretion) the City will complete a review within City of Mesa business days from the Submission Date.

Subsequent Review(s):
Developer shall notify City POC of construction document submittal to DIMES on the date of submittal. If the City POC is not notified of the submittal the review cycle will be set to eighteen (18) days (standard review cycle). Upon approval of improvement plans the City shall issue the appropriate permits within business days.

If requested, following the completion of any Subsequent Review, should there be only minor noncompliance issues that need to be addressed prior to the issuance of building permit(s), the Building Official has the option to extend the Subsequent Review period to allow the Development/Project Team time to address such minor comments without a Subsequent Review.

Project Documents:
Developer acknowledges and agrees that in order to establish accurate review timeframes in the Customized Review Schedule it requires Developer to submit Project documents that are high quality and one hundred percent (100%) complete. Developer guarantees to City that the quality of the Project documents, including the coordination between the design disciplines (e.g. civil, architectural, mechanical, electrical, plumbing, landscaping), Developer submits to City will be of such a quality that

warranty's the timing in the Customized Review Schedule. The City, is not required to comply with the Customized Review Schedule if the Project documents do not represent a quality, one hundred percent (100%) complete and approvable submittal, as determined by City in its sole discretion. Should issues with the quality and completeness of the Project documents arise, the City will notify the Developer prior to the end of the review period and meet with the Developer or the Developer's design team to resolve the issues.

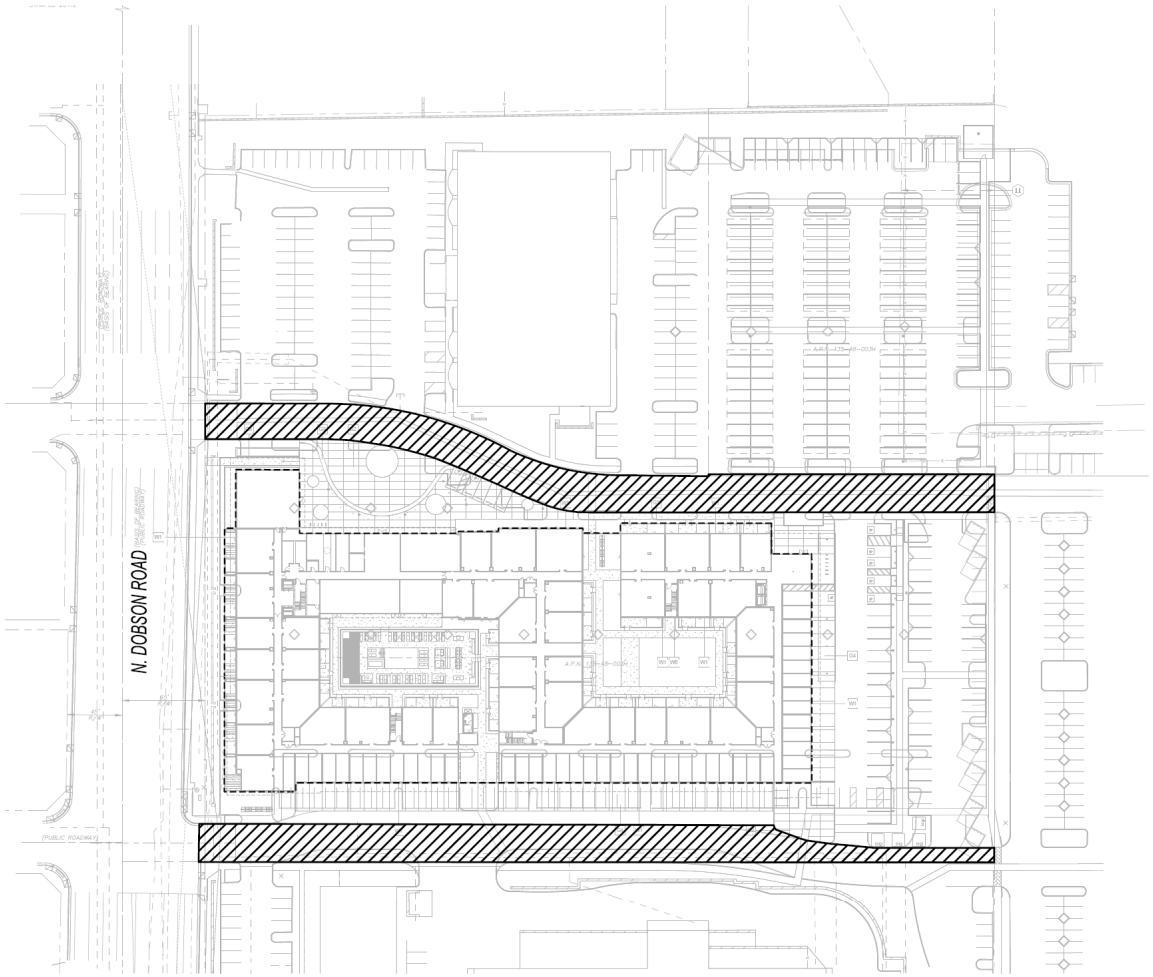
EXHIBIT D
ON-SITE AMENITIES

1. Public art will be incorporated into the design of the entry island. Element will be a central focal point for the project. Design and installation not to exceed twenty-five thousand dollars ($25,000.00).
2. Public art mural will be incorporated into the north wall elevation near main entry. Artist selection will be coordinated with the Mesa Arts Center. Labor and materials not to exceed seven thousand five hundred dollars ($7,500.00).
3. Covered/shaded parking for a minimum of fifty percent (50%) of resident parking will be provided within project, using a variety of elements including shade structures and garages.
4. Shade parking canopies will be architecturally designed to be complementary to the building architecture.
5. Refuse enclosure gates will be architecturally designed to be complementary to the building architecture.
6. Fiber-optic (FTTP) served Wi-Fi and a minimum of two (2) ports for direct network access will be provided within all resident common areas, excluding hallways and exterior amenities.
7. Ten (10) electric car charging stations will be provided in the parking field which will serve twenty (20) vehicles at project opening and allows expansion to twenty (20) electric car charging stations to serve forty (40) vehicles in the future.
8. An Electrical outlet sufficient to charge an electric vehicle (220 amps or similar) will be provided in all covered garages.
9. The project will incorporate water conservation features such as low flow faucets and shower heads, drip irrigation, drought tolerant plant material, water usage monitoring, and leak detections systems.
10. Secure building entries and controlled access to On-Site Amenities.
11. Secure indoor/outdoor bicycle storage and a minimum of one (1) bicycle storage space for every five (5) residential units. Forty (40) indoor and ten (10) outdoor bicycle storage spaces will be provided.
12. Pet-friendly policies and amenities.
13. A minimum of a six hundred (600) square foot dog run/park.
14. Fitness center.
15. Pool cabanas.
16. Yoga/lounge space.
17. Hammocks.
18. Game court.
19. Clubhouse/community room/party room. The clubhouse/community room/party room will be available for use by the City two (2) times per year at no charge to the City. The terms, notice provisions, and hours for the clubhouse/community room/party room will be consistent with the operational procedures and industry standards for similar buildings/uses.
20. Centralized resident package delivery and receiving, including storage for oversized packages.
21. All pedestrian connections to the public right of way will consist of upgraded materials (stamped colored asphalt, pavers, or a similar upgraded material.
22. The project will host a “Hero’s Refrigerator” with beverages for first responders including local police, fire fighters, and Emergency Medical Technicians.
23. The project design will incorporate features of the City of Mesa Low Impact Development standards including various Green Street techniques, disconnected downspouts where possible, stabilized aggregate, and vegetated swales.
24. The project will include a co-working space and coffee bar for residents.

EXHIBIT E
UNIT AMENITIES

1. For at least fifty percent (50%) of the residential units, private decks, balconies, or patios which will each be a minimum of four feet by eight feet (4'x8') in dimension.
2. Fiberoptic cabling will be run to the communications panel in each residential unit to supply high speed internet, data, and communications capabilities.
3. Fiberoptic cabling will be run to the amenity areas and leasing offices and building Wi-Fi will be available for resident subscription.
4. Walk-in closet(s) within each residential unit, except studio units.
5. Full size washer and dryer within each residential unit, except studio units.
6. High quality appliances with energy star rating (refrigerator, stove/oven, dishwasher, microwave).
7. High efficiency Water Sense or equivalent rated plumbing fixtures with sensitivity for sustainable water usage.
8. High efficiency heating and air-conditioning with a minimum SEER rating of 16 (or equivalent) for each residential unit.
9. Smart thermostat for each residential unit.
10. Hard, kitchen and bathroom countertop materials for each residential unit (e.g. stone, engineered stone, polished concrete, ceramic tile).
11. Tile, hardwood, vinyl plank or similar flooring in, at a minimum, all living areas, bathrooms, and kitchens. Carpet can be used in bedrooms only.
12. Ceiling fans with integrated lighting will be included in the residential unit master bedrooms and J-Boxes for tenant options will be installed in the living room and secondary bedrooms.
13. At least one (1) charging outlet with integrated USB port in each kitchen and living room.
14. At least one (1) port for direct internet access in each unit.
15. LED lighting throughout each residential unit.
16. Mid-grade or higher cabinetry.
17. A Sound Transmission Class (STC) of fifty (50) or greater on exterior and party walls, floors, and ceilings, as defined by the Uniform Building Code. Enhanced sound transmission measures will be provided on units adjacent to amenity rooms to further mitigate sound.
18. An Impact Isolation Class (IIC) of fifty (50) or greater on party walls, floors, and ceilings, as defined by the Uniform Building Code. Enhanced sound transmission measures will be provided on units adjacent to amenity rooms to further mitigate sound.

EXHIBIT F - <u>DEPICTION OF THOROUGHFARE</u>



DEPICTION OF THOROUGHFARES
NTS

KBELL ENGINEERING
1355 N 86TH PLACE
MESA, ARIZONA 85207
PH: 602.980.8246
Copyright © 2021

139 N. DOBSON ROAD
MESA, ARIZONA

STARPOINT PROPERTIES

EXHIBIT F
THOROUGHFARE EXHIBIT

PROJECT NO.: 103701
DATE: 10/27/2021
SCALE: SCALE
CAD: JJB DES: KJB/JJB

SHEET 1 OF 1

EXHIBIT G - DEPICTION OF VEHICULAR INGRESS AND EGRESS AREA

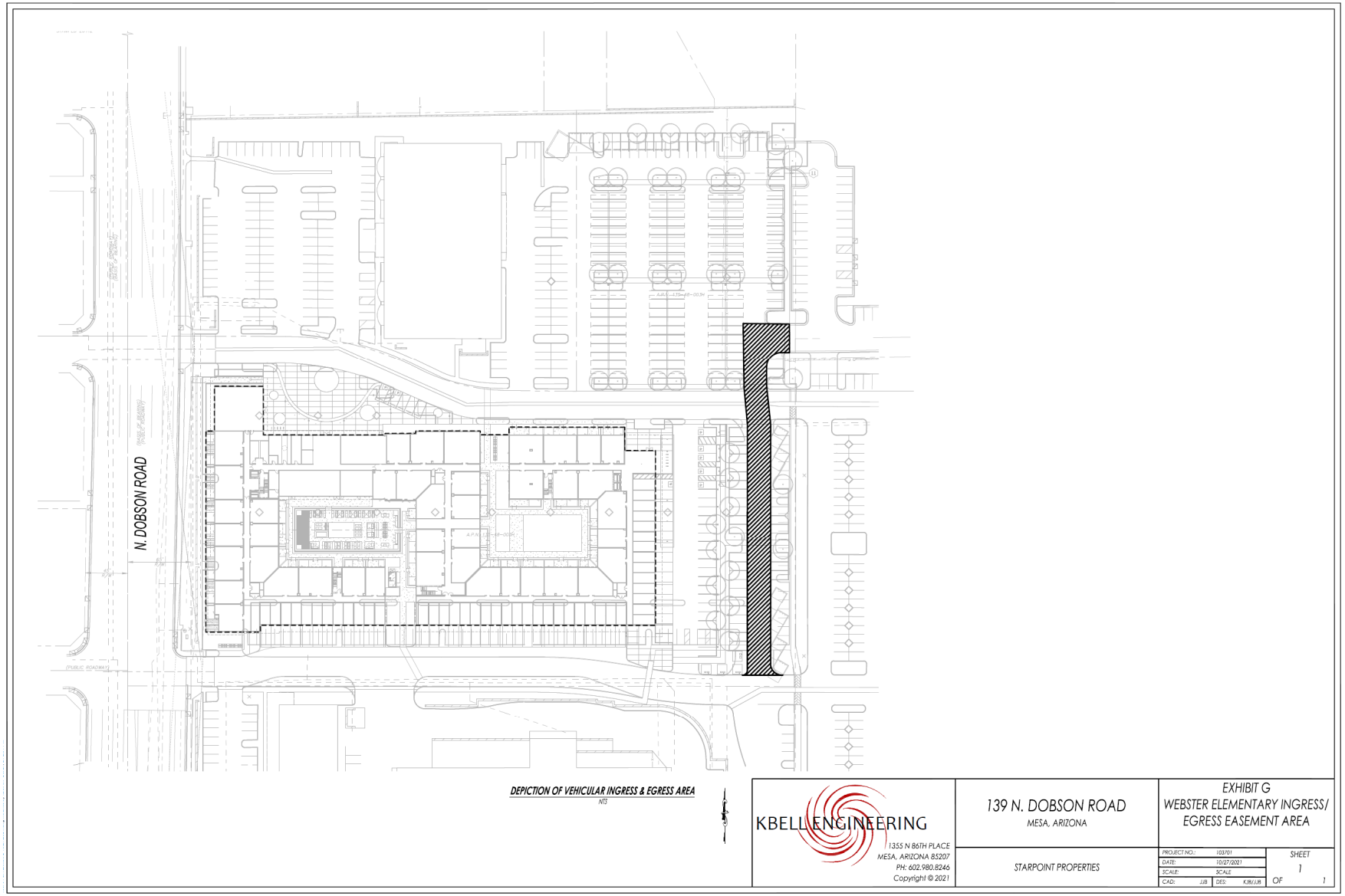


EXHIBIT H
LEGAL DESCRIPTION OF ADJACENT SOUTHERN PARCEL

A portion of the northwest quarter of Section 20, Township 1 North, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona being more particularly described as follows:
Commencing at a brass cap in handhole at the intersection of Main Street and Dobson Road marking the West quarter corner of Section 20 from which a brass cap flush at the intersection of Main Street and Sycamore bears North 89 degrees 06 minutes and 00 seconds East a distance of 1366.30 feet, said line being the South line of the Northwest quarter of said Section 20 and the basis for the bearings in this description;
Thence North 89 degrees 06 minutes 00 second East 485.29 along said South line;
Thence North 00 degrees 54 minutes 00 second West 398.00 feet;
Thence north 89 degrees 06 minutes 00 seconds East 204.34 feet
Thence north 00 degrees 01minute 50 seconds East 741.13 feet to the Point of Beginning;
Thence continuing North 00 degrees 01 minutes 50 seconds East 20.00 feet;
Thence North 89 degrees 11 minutes 40 seconds East 653.73 feet to a line 30.00 feet West of and parallel with the monument line of Sycamore;
Thence South 00 degrees 03 minutes 40 seconds West 20.00 feet;
Thence South 89 degrees 11 minutes 40 seconds West 653.72 feet to the Point of Beginning.

APN 135-48-001N

EXHIBIT I
WEBSTER ELEMENTARY SCHOOL PROPERTY IMPROVEMENTS DESCRIPTION AND DEPICTION

1. Reconfiguration of existing driveway approach.
2. Relocation of hydrants, valves, lighting, and trash enclosure.
3. Construction of new fencing on south property line.
4. Construction of new vehicular gate, curb, gutter, landscaping, pavement overlay, and striping to support vehicular traffic circulation to the west from North Sycamore.

EXHIBIT I

WEBSTER ELEMENTARY SCHOOL PROPERTY IMPROVEMENTS DESCRIPTION AND DEPICTION

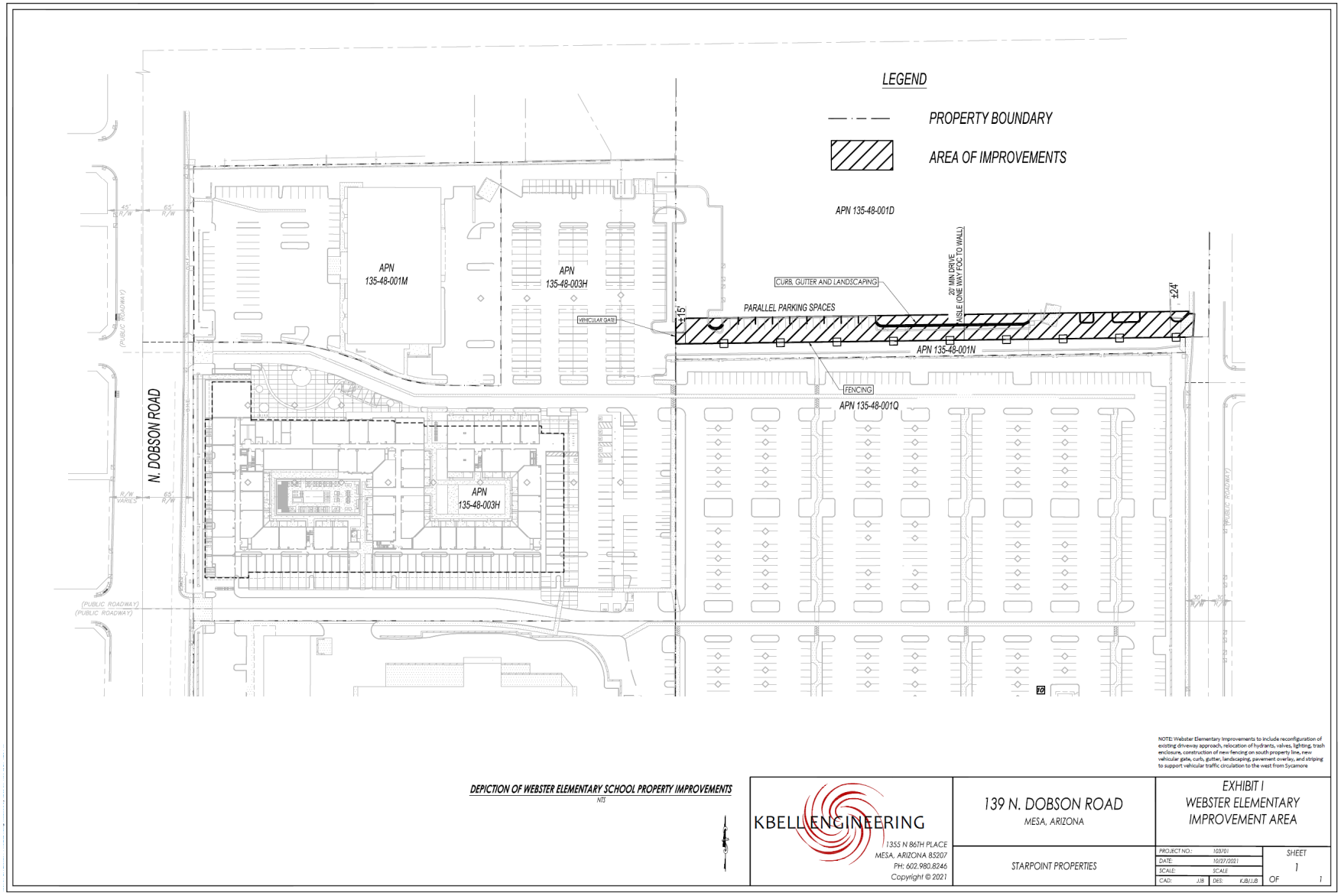


EXHIBIT J
EXTERIOR QUALITY STANDARDS

1. All exterior elevations will incorporate high quality design (i.e. four-sided architecture).
2. Minimum of three (3) high quality and durable exterior building materials.
3. All building mounted equipment screened from public view, except solar array.
4. All exterior building vents, such as furnace and dryer, to be compatible with building exterior architectural treatment(s).
5. Minimum 1" Low-E insulated glazing to be provided at all windows.
6. Highly reflective white-painted roof, solar panels, green roof, or another solution that results in a cool roof.
7. Shade elements integrated into building façade for exterior windows of south, west and east facing residential units. Elements may include but are not limited to louvers, fins, inset windows, roof and balcony projections and other massing elements.
8. Pedestrian shade elements integrated into building façade, streetscape and landscaping treatments including roof overhangs, building canopies, canopy trees and other elements.
9. Minimum seventy-five percent (75%) ground floor transparency at non-residential spaces.
10. Incorporation of one (1) attached LED or neon project identification sign.
11. Pedestrian areas shall incorporate pavers, stamped, treated, scored, or colored concrete, or similar specialty paving materials/techniques including porous pavement or similar water quality/treatment features.
12. Minimum of fifty percent (50%) of the trees on Dobson Road will be forty-eight-inch (48") box and remaining trees along public streets will be minimum thirty-six (36") box. All trees on Dobson Road will have integrated grates and be planted per City of Mesa Tree Planting detail M-103.03
13. All on-site landscape will be native, or desert adapted species as included in *Landscape Plants for the Arizona Desert* http://www.amwua.org/plants/

EXHIBIT K
PROGRAM COMPLIANCE

1. All construction by Developer will be designed and constructed to comply with green/sustainable building rating method, such as WELL Building (https://www.wellcertified.com/), Fitwel (fitwel.org), LEED (usgbc.org) (or Green Globes (greenglobes.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.

2. Developer will implement a waste recycling program during construction, with a goal of recycling seventy-five (75%) 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 the Mesa Solid Waste to haul diverted materials.

3. Developer agrees to contract for and use the City of Mesa Solid Waste Services ("**Solid Waste Services**") for the Commercial and Residential Elements of the Project. Additionally, Developer is to obtain from City and provide to residential units solid waste containers for their use for Solid Waste Services.

4. 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 L
PUBLIC IMPROVEMENTS DESCRIPTION & DEPICTION

1. Access easement benefiting Mesa Public Schools.
2. Elimination of Mesa Public Schools property lease.
3. Installation and maintenance of new landscaping in the Dobson Road public right of way.
4. Landscape and improvements in the Public Access Easement and Thoroughfares.
5. Cross-access to the Valley Metro park-and-ride and to the Sycamore Station train and bus transit station.
6. Installation and maintenance of the Project Public Art feature, $25,000.
7. Installation and maintenance of a public art mural, $7,500.
8. City of Mesa use of the project community room for meetings two times per calendar year.
9. Hosting of a "Hero's Beverage Fridge" for City of Mesa police, fire, and emergency personnel.

EXHIBIT L - PUBLIC IMPROVEMENTS DESCRIPTION & DEPICTION

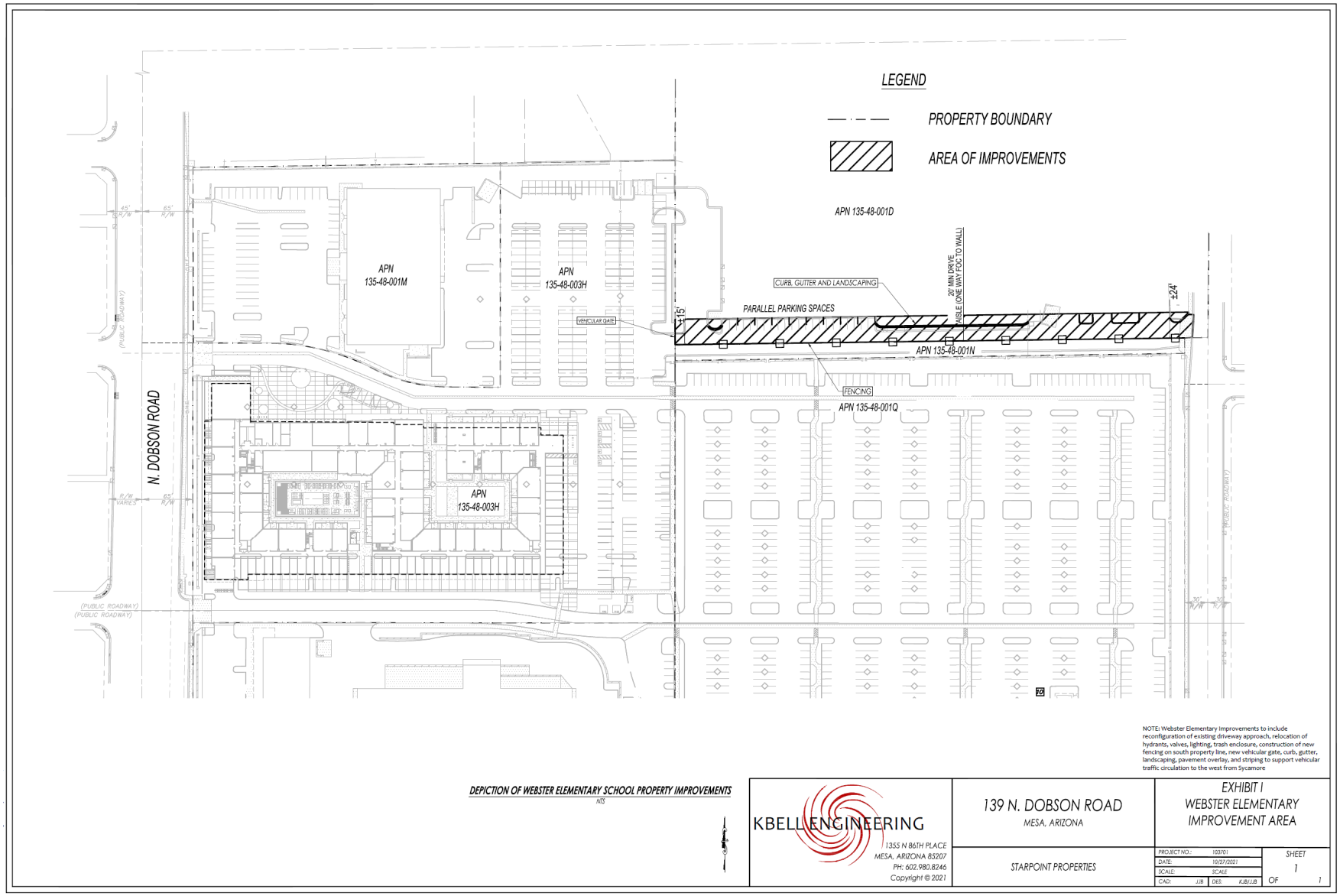


EXHIBIT M -
THOROUGHFARE EASEMENT AGREEMENT

EXHIBIT N
VEHICULAR INGRESS AND EGRESS EASEMENT AGREEMENT

[To be attached per Section 4.7(b) of this Agreement]

EXHIBIT O
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:

1. Group Residential, as defined by Chapter 64 of the Mesa Zoning Ordinance.
2. Non-chartered Financial Institution, as defined by Chapter 64 of the Mesa Zoning Ordinance.
3. Pawn Shops, as defined by Chapter 64 of the Mesa Zoning Ordinance.
4. Social Service Facilities, as defined by Chapter 64 of the Mesa Zoning Ordinance.
5. Tattoo and Body Piercing Parlors, as defined by Chapter 64 of the Mesa Zoning Ordinance.
6. Group Residential such as Boarding House, Correctional Transitional Housing Facility, and Group Home for the Handicapped, as each term is defined by Chapter 86 of the Mesa Zoning Ordinance.
7. Off-Track Betting Establishment, as defined by Chapter 86 of the Mesa Zoning Ordinance.
8. Medical Marijuana Dispensary, as defined by Chapter 86 of the Mesa Zoning Ordinance.
9. Package liquor stores, except for stores selling beer and/or wine.
10. Kennels.

EXHIBIT P
SPECIAL WARRANTY DEED

When Recorded, Mail to:

==========

SPECIAL WARRANTY DEED

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For the consideration of the sum of Ten Dollars ($10.00) and other valuable consideration received, _____, a _____ ("Grantor"), does hereby convey to _____, a _____ ("Grantee"), all of Grantor's right, title and interest in and to the following described real property (the "Property") situated in _____ 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

SUBJECT ONLY TO those matters described in Exhibit "B" attached hereto and by this reference made a part hereof; accrued municipal and public taxes and assessments not yet due and payable; and 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:

By:_____
Printed Name: _____
Its: _____

EXHIBIT Q
INSURANCE REQUIREMENTS

Developer, at its sole cost and expense, will maintain or cause to be maintained 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 directly 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 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 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 at any time.

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

N. Miscellaneous. References to "Developer" in this Exhibit will mean Developer and include its general contractor(s). References to "the Agreement" will mean the Development Agreement of which this Exhibit is a part. Capitalized terms not otherwise defined in this Exhibit 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 R
NON-DISTURBANCE AND RECOGNITION AGREEMENT

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 leasing and development of the Property, and the construction of improvements upon the Property, and the construction of certain "**Public Improvements**" (as defined in the Agreement) in and around the Property (collectively, the "**Obligations**").

1.3 Lender has agreed to lend money to Developer, and Developer will execute certain loan documents (the "**Loan Documents**") including 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 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 11.21 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 11.21 of the Agreement, City will give Lender written notice of any claimed Event of Default by Developer (the "**Notice**") under the Agreement and thirty (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 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. Nondisturbance 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 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 85211

With required copy to: City of Mesa
Attn: City Attorney
20 East Main Street
Mesa, Arizona 85211

If to Developer: Starpoint Properties
Attn: Sandy Schmid
433 Camden, Suite 1000
Beverly Hills, CA 90210

With required copy to: Starpoint Properties
Attn: Mike Treiman General Counsel
433 Camden, Suite1000
Beverly Hills, CA 90210

If to Lender: _____
_____

With required copy to: _____
_____

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 NRDA by such party, and that the person executing this NRDA 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: _____
Its:_____

"DEVELOPER"

_____

By: _____
Name:_____
Its:_____

"LENDER"

_____, a(n) Arizona _____

By: _____
Name:_____
Its: _____

Acknowledgment by City

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STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing was acknowledged before me this day of _____, 20__, by _____, the City _____ of the City of Mesa, Arizona, on behalf of the City.

_____
Notary Public

My Commission Expires:
_____

Acknowledgment by Developer

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STATE OF ARIZONA)
) ss.
County of _____)

The foregoing was acknowledged before me this day of _____, 20__, by _____, the _____ of _____, on behalf of the _____.

_____
Notary Public

My Commission Expires:
_____

Acknowledgment by Lender

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STATE OF ARIZONA)
) ss.
County of _____)

The foregoing was acknowledged before me this day of _____, 20__, by _____, the _____of _____, a _____, on behalf of the _____.

_____
Notary Public

My Commission Expires:
_____