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

EV Development, LLC,
a Delaware limited liability company

==========

_____, 2020

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DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("**Agreement**") is made as of the ____ day of _____, 2020, by and between the CITY OF MESA, ARIZONA, an Arizona municipal corporation ("**City**"); and EV Development, LLC, a Delaware limited liability company ("**Developer**"). City and Developer are sometimes referred to herein collectively as the "**Parties**," or individually as a "**Party**."

RECITALS

A. Developer is a developer with demonstrated proficiency in redevelopment projects, including those that integrate retail and residential experiences.

B. Developer has acquired from City through that certain Purchase and Sale Agreement dated _____, 2020 ("**Purchase Agreement**"), fee ownership of certain real property located near the corner of Pepper Place and Robson within the city limits of City, totaling approximately 38,944 square feet as legally described in Exhibit A attached to this Agreement ("**Property**").

C. Developer intends to develop the Property into a mixed-use commercial project including commercial space, market rate sustainable apartments, a parking garage which will provide parking for the project and for City, and other public improvements, as generally described in this Agreement ("**Project**"). In the event of a conflict between the Project as defined in this Agreement and the Project as defined in the Purchase Agreement, this Agreement shall govern.

D. It is the desire and current intention of Developer to design and build the 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 Central Main Plan and in accordance with this Agreement and the Lease, as the foregoing terms are defined below.

E. The Property is located in the City's Central Main Plan which was adopted by the Mesa City Council in January 2012. The Property is also located in the Town Center redevelopment area within the City's single Central Business District which was initially adopted by the Mesa City Council in 1999. The Mesa City Council found that a substantial number of blight factors still existed within the City's Central Business District and on April 6, 2020, the Mesa City Council by resolution re-designated and renewed the City's Central Business District and Town Center redevelopment area. In the reevaluation of the City's Central Business District, the blight assessment study conducted and presented to the Mesa City Council found the Property to have at least one blight factor. City acknowledges that the redevelopment of this unique Property located near the center of downtown Mesa and two light rail stations, and the development of the Project in conformity with this Agreement and the Approved Plans (as that term is defined below) will reduce the blight in the City's Central Business District and further promote City's vision to redevelop and revitalize its downtown and the Town Center redevelopment area.

F. City believes the redevelopment of the Property will generate substantial monetary

and non-monetary benefits for City, including, without limitation, by, among other things: (i) providing for planned and orderly development of the Property consistent with the General Plan, the Zoning and the Central Main Plan; (ii) increasing tax revenues to City arising from or relating to the Improvements to be constructed on the Property; (iii) increasing utility revenues to City; (iv) increasing parking revenues to City; (v) creating new jobs and otherwise enhancing the economic welfare of the residents of City; (vi) providing a new parking garage consisting of approximately two hundred six (206) parking spaces of which seventy-six (76) parking spaces are reserved for City for City permit parking, downtown businesses and public parking—the remainder of the parking spaces are reserved for the commercial and residential users of the Project; (vii) providing a high-quality sustainable, new multi-residential area in the City's downtown; (viii) providing a dynamic, new commercial development in the City's downtown to benefit City's residents; and (ix) furthering the City Council's objective to reduce the slum and blight in the City's Central Business District and otherwise advancing the goals of the Central Main Plan.

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

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

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

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

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

AGREEMENT

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

1. **DEFINITIONS**.

In this Agreement, unless a different meaning clearly appears from the context:

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

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

(c) "**Annual Assessment**" means as defined in Section 4.22.

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

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

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

(g) "**Bins**" means as defined in Section 4.18.

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

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

(j)

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

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

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

(n) "**City Indemnified Parties**" means as defined in Section 4.13(b).

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

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

(q) "**City Spaces**" means as defined in Section 4.3(c).

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

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

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

(u) "**Commercial Element**" means as defined in Section 4.3(b).

(v) "**Commonly Shared Drive Aisles**" means the drive aisles in the Parking Garage that are used to access the City Spaces; but does not include any other drive aisles in the Parking Garage that are not necessary to access the City Spaces.

(w) "**Completion of Construction"** or "**Complete Construction**" means the date on which one or more temporary or 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.

(x) "**Compliance Date**" means as defined in Section 4.11.

(y) "**Current Charging Stations**" means as defined in Section 4.4(a).

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

(aa) "**Dedicated Property**" means as defined in Section 4.13.

(bb) "**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.

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

(dd) "**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.

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

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

(gg) "**Downtown Businesses**" means as defined in Section 4.3(c).

(hh) "**Downtown Mesa Association**" or "**DMA**" means as defined in Section 4.22.

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

(jj) "**Electric Car Charging Devices**" means the devices with the sole and specific purpose of transferring and transforming electric energy from the Project's "Solar Array" and Mesa's electric utility system to batteries in electric vehicles parked in appropriate parking spaces and connected safely to the devices.

(kk) "**Encroachments**" means as defined in Section 5.5.

(ll) "**Extended Compliance Date**" means as defined in Section 4.11.

(mm) "**Existing Duct Bank**" means as defined in Section 5.3.

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

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

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

(qq) "**Hazardous Materials**" means any substance: (A) that now or in the future is regulated or governed by, requires investigation or remediation under, or is defined as a hazardous waste, hazardous substance, pollutant or contaminant under any governmental statute, code, ordinance, regulation, rule or order, and any amendment thereto, including (by way of illustration and not of limitation) the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 *et seq*., as amended,; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq*., as amended,; the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq*., as amended,; the Safe Drinking Water Act, 42 U.S.C. §§ 300f *et seq*., as amended; the Clean Air Act, 42 U.S.C. § 7401 *et seq*., as amended; the Arizona Hazardous Waste Management Act, A.RS. § 49-921 *et seq*., as amended; the Arizona Environmental Quality Act, A.R.S. § 49-101 *et seq*., as amended, and any other laws, rules, regulations, acts and decisions that deal with

the regulation or protection of the environment, including the ambient air, ground water, surface water and land use, including sub-strata land (collectively, "**Hazardous Materials Laws**"); or (B) that is toxic, explosive, corrosive, flammable, radioactive, carcinogenic, dangerous or otherwise hazardous, including gasoline, diesel fuel, petroleum hydrocarbons, any other petroleum products or by-products, polychlorinated biphenyls, asbestos, lead, radon and urea formaldehyde form insulation; or (C) medical and biohazard wastes regulated by federal, state or local laws or authorities which includes any solid waste which is generated in the diagnosis, treatment or immunization of a human being or animal or in any research relating to that diagnosis, treatment or immunization, or in the production or testing of biologicals.

(rr) "**Improvements**" means the Private Improvements and the Public Improvements, collectively.

(ss) "**Indemnity**" means as defined in Section 6.1.

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

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

(vv) "**New Duct Bank**" means as defined in Section 5.3.

(ww) "**New Duct Bank Site**" means as defined in Section 5.3

(xx) "**New Solid Waste Site**" means as defined in Section 4.18.

(yy) "**Parking Easement**" means as defined in Section 4.20.

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

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

(bbb) "**Permit**" means as defined in Section 5.5(a).

(ccc) "**Private Improvements**" means as defined in Section 4.3.

(ddd) "**Prohibited Uses**" means as defined in Section 4.14.

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

(fff) "**Project Charging Stations**" means as defined in Section 4.3(e)(ii).

(ggg) **"Project Spaces"** means as defined in Section 4.3(c).

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

(iii) "**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.

(jjj) "**Public Improvements**" means as defined in Section 4.9.

(kkk) "**Residential Element**" means as defined in Section 4.3(a).

(lll) "**SID 228**" means as defined in Section 4.22.

(mmm)"**Solar Array**" means a collection of photovoltaic panels mounted on the rooftop of the Building to provide electrical energy to the Project and such energy will be subject to a separate agreement.

(nnn) "**Solid Waste Enclosure**" means as defined in Section 4.18.

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

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

(qqq) "**Transfer**" means as defined in Section 11.2.

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

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

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

2. PARTIES AND PURPOSE OF THIS AGREEMENT.

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

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

(b) The Developer. Developer is EV Development, LLC, a Delaware limited liability company, duly organized and validly existing under the laws of the State of Delaware.

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

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

3. SCOPE AND REGULATION OF DEVELOPMENT.

3.1 Development Plans.

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

(b) Approval Process. The process for the submittal, review and approval of (i) the Approved Plans, and (ii) the Project's design elements including, without limitation, 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 then in effect. The Parties will cooperate reasonably in processing the approval or issuance of any permits, plans, specifications, plats or other development approvals requested by Developer in connection with the development of the Project. 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 reasonable best efforts throughout the pre-development and development stages to resolve any City comments 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. Building permit, inspection, development and other similar fees for the development of the Project (each, a "**Fee**") will be those in effect at the time of any application or submission.

(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 connection with the Approved Plans and the construction of the Project.

4.2 Environmental Remediation; Environmental Compliance. Developer, at Developer's sole cost and expense, and in compliance with all Applicable Laws, 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, at Developer's sole cost and expense, and in compliance with Section 3 of this Agreement and all Applicable Laws, will construct the following improvements ("**Private Improvements**") on or above the Property as shown on the Developer's Approved Plans submitted with the Zoning Clearance for the Project (case number _____), consisting of one (1) building ("**Building**") with a minimum of seven (7) stories with the following elements:

(a) Residential Element. Approximately one hundred two (102) unique sustainable market-rate residential units with approximately thirty-eight (38) two-bedroom apartments ("**Residential Element**"). The Parties acknowledge that the actual number of residential units may need to fluctuate in order to accommodate apartments with more bedrooms or units with greater square footage. Developer is permitted to fluctuate from the intended number of residential units, provided, however, that Developer shall build, within the required seven story Building, a minimum of ninety (90) unique sustainable market-rate residential units of which a minimum of thirty (30) units shall be two-bedroom apartments, and the square footage of the residential portion of the Project shall not be less than what is shown on the Approved Plans.

(b) Commercial Element. Approximately four thousand three hundred twenty-three (4,323) square feet of commercial ("**Commercial Element**"). The Parties acknowledge that the tenant improvements and final build-out may prevent Developer from building the intended square footage. Developer is permitted to fluctuate from the intended commercial square footage, provided, however, that Developer shall build, within the footprint of the Building (as shown on the Approved Plans), a minimum of two thousand seven hundred fifty (2,750) rentable square feet of commercial premises and nine hundred fifty (950) rentable square feet for an administration and rental office.

(c) Parking Garage. A multi-storied parking structure integrated into the Building that contains approximately two hundred six (206) total parking spaces consisting of: (i) the minimum number of parking spaces required by the Zoning Ordinance for the Commercial Element and Residential Element (approximately 130 parking spaces) ("**Project Spaces**"), and (ii) not fewer than seventy-six (76) parking spaces reserved solely for City ("**City Spaces**") and City may designate City Spaces for parking for City parking permit holders, certain businesses located in Downtown Mesa ("**Downtown Businesses**") and the public as determined by City in its sole discretion. In addition, City, in its reasonable discretion, may designate City Spaces for parking for other users as long as such other users do not interfere with Developer's use of the Project. The Project Spaces are reserved solely for the residential and commercial tenants, subtenants and invitees of the Residential Element and Commercial Element. The City Spaces together with the Project Spaces are collectively referred to herein as the "**Parking Garage.**" The Parking Garage will consist of the ground floor of the Building and all additional contiguous floors necessary to provide the required City Spaces and Project Spaces, and the City Spaces will consist of the ground floor of the Parking Garage and any additional contiguous parking spaces necessary to satisfy the requirements for the City Spaces. Developer has submitted to City the design and layout of the Parking Garage for City's review and approval for compliance with City Code and City standards and requirements for public parking.

Developer may design the Building to allow future conversion of the Parking Garage into additional residential or commercial uses if the demand for the parking for the Residential Element or Commercial Element decreases and as long as no City Spaces are converted or relocated; provided, however, Developer may only convert the parking for the Residential Element or Commercial Element, above the ground/first floor and beyond the contiguous parking spaces for the City Parking, and only if the Parking Garage continues to provide City Parking. Developer shall construct such additional residential or commercial improvements consistent with Applicable Laws.

(d) Lighting within Parking Garage. Developer shall install lighting within the Parking Garage as set forth in the Parking Easement.

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

4.4 Electric Charging Stations Within the Parking Garage.

(a) Charging Stations Located Within City Spaces. Developer acknowledges that City currently has three (3) electric vehicle charging stations on the Property for public use ("**Current Charging Stations**"). To replace the Current Charging Stations, Developer has agreed to design the Parking Garage to allow not fewer than nine (9) contiguous City Spaces to spaces that serve as electric vehicle charging stations as further set forth in the Parking Easement.

(b) Charging Stations Located Within Project Spaces. Developer may install electric vehicle charging stations located within the Project Spaces ("**Project Charging Stations**"). Developer shall be responsible, at its sole cost and expense, for all costs associated with the Project Charging Stations including, but not limited to, infrastructure, Electric Car Charging Devices and other equipment, installation, operation, and maintenance. Developer (or its selected third-party service provider) shall also be responsible for payment of the applicable costs for installation of all electrical equipment and infrastructure necessary to extend electric utility service to the Project Charging Stations as provided by City or the Project's Solar Array, or both. If Developer intends to install Project Charging Stations now or in the future, before Completion of Construction of the Parking Garage, Developer, at its sole cost and expense, shall install all of the conduit from the metering location on the Property to the location of the Project Charging Stations. Provided further, Developer is required to have a separate meter for the Project Charging Stations and suitable space and allocation on the Property for a separate service entrance section cabinet.

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

4.6 On-Site Amenities. Developer, at Developer's sole cost and expense, during the Term, and in compliance with all Applicable Laws, will cause the Residential Element to include and offer to all residential tenants the on-site amenities set forth and described in Exhibit E. The Parties agree and acknowledge the City Manager will have the authority, without need for

City Council approval, to make minor adjustments to Exhibit E that are agreed by the Parties and are consistent with the intent of the Parties and this Agreement.

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

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

4.9 Public Improvements. Developer, at Developer's sole cost and expense, shall construct all public improvements as described in Exhibit H-1 and depicted on Exhibit H-2 ("**Public Improvements**"), and in a manner acceptable to City.

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

4.11 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 September 15, 2020, 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 1, 2021, following timely application and payment of all applicable fees, Developer will have received building permits from City for the Improvements.

(c) On or before June 1, 2021, Developer will have Commenced Construction of the Improvements.

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

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

4.12 City Services. During the Term, Developer will use all City of Mesa services available, including (but not limited to) City's water, sewer, electric, solid waste, and natural gas. Developer shall be responsible, at its sole cost and expense, for all utility costs for the Project including but not limited to installing, extending 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. Developer may participate in any applicable City renewable energy, solar incentive or rebate program to the extent then in effect and subject to availability. 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. City services will also be provided subject to payment of the then applicable rates, fees and charges.

4.13 Dedication of Public Improvements. Upon not fewer than ninety (90) days advance request by City, or upon completion of any portion or segment of the Public Improvements offered for dedication by Developer and accepted by City, 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, the "**Dedicated Property**"). Developer will make such dedications without the payment of any additional consideration by City.

(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 have dedicated 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 4.13 (a)), the Public Improvements will become public facilities and property of City, and City will be solely responsible for all subsequent maintenance, replacement or repairs of the Public Improvements, except as otherwise set forth in Sections 4.14 below. With respect to

any Claims (as that term is defined in Section 6.1) arising prior to acceptance of the Public Improvements by City, Developer will bear all risk of, and will indemnify City and its officers, employees, elected and appointed officials, agents, representatives, and volunteers (collectively "**City Indemnified Parties**"), against any Claims arising prior to City's acceptance of the Public Improvements from any injury (personal, economic or other) or property damage to any person, party or utility, arising from the condition, loss, damage to or failure of any of the Public Improvements, except to the extent caused solely by the gross negligence or willful acts or omissions of City Indemnified Parties.

4.14 Maintenance Obligations for Non-Standard Public Improvements. Developer will maintain, repair and replace (as reasonably necessary) all of the Public Improvements (including but not limited to any component of the Public Improvements) within any City right-of-way or easements that are reasonably deemed from time to time by City's Engineer to be non-standard. In the event Developer fails to maintain, repair or replace such Public Improvements (or any component of such Public Improvements), City may, after 30 days written notice to Developer, (but is not obligated to) maintain, repair and replace 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 (with copies of all invoices related thereto), will pay and reimburse City for all such costs of maintenance (including repair or replacement) of such non-standard improvements incurred by City. Developer's obligations of maintenance, repair, replacement, and reimbursement set forth in this Section 4.14 runs with the land and will survive the expiration or earlier termination of this Agreement.

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

4.16 Economic Analysis Costs. In order to ensure compliance with A.R.S. §§ 42-6201 *et seq.*, City obtained a professional analysis of the economic impact of the proposed development of the Project. Prior to the effective date of the Lease, Developer shall reimburse City $3,600.00, which was the cost to obtain that analysis.

4.17 Replacement Parking During Construction. Developer acknowledges that City presently provides seventy-six (76) parking spaces for City and public use including parking for the Downtown Businesses and these spaces will have to be relocated before Commencement of Construction of the Project. The Parties have worked together and have agreed to the Mitigation Plan attached to this Agreement as Exhibit J. The Parties also agree that prior to Developer's receipt of building permits or Commencement of Construction, and thereafter as necessary, the Mitigation Plan may be revised, as necessary, if the revisions are agreed to by the Parties. The City Manager is authorized to approve such revisions administratively and without further approval of the City Council. At all times during the construction of the Private Improvements, Developer shall provide a minimum of seventy-six (76) replacement parking spaces for City, City permit parking, Downtown Businesses, and public use in accordance with the Mitigation Plan.

4.18 Relocation of the Solid Waste Bins for Downtown Businesses. Developer acknowledges City currently has several solid waste bins (referred to herein as "**Bins**") on the Property that provide solid waste collection services for Downtown Businesses. Developer needs to remove the Bins from the Property in order to accommodate the Project (Developer's Project will have separate solid waste service and bins located on the Property). In order to continue to serve the solid waste collection services for the Downtown Businesses the Bins will need to be relocated to a new location that is in close proximity to the Property ("**New Solid Waste Site**"). Developer shall design and construct the new solid waste enclosures for the Bins at the New Solid Waste Site and any other improvements required for the operation of the Bins ("**Solid Waste Enclosure**") pursuant to the terms of Section 5.1(f) of the Purchase Agreement.

The Bins on the New Solid Waste Site are not intended to provide, and shall not be used by Developer and/or its subtenants, employees, or invitees, for the solid waste needs for the Project or by Developer and/or its sublicensees, subcontractors, or employees for the disposal of any construction materials or waste from the construction of the Project. Any violation of this Section 4.18 is subject to fines for illegal dumping pursuant to City Code 8-6. Developer is responsible for all costs and fees for illegal dumping including, but not limited to, the costs of removal and disposal.

4.19 Use of Parking Garage. City will retain exclusive control of the City Spaces and City will retain all revenue generated from the use of the City Spaces. City and Developer will share control of the Commonly Shared Drive Aisles. Except for the City Spaces and Commonly Shared Drive Aisles, the Parking Garage will be subject to the exclusive control of Developer, and Developer will retain all revenue generated from the use of the parking spaces other than the City Spaces.

4.20 Parking Easement. City shall retain rights, in the form of a parking easement on, over, under and across the Property, to provide for the operation and maintenance of, continued use of, and access to, the City Spaces that will be located within the Parking Garage on the Property. The Parties have entered into that certain parking and access easement attached to the Purchase Agreement ("**Parking Easement**"), whereby Developer shall grant to City a perpetual easement for the exclusive right to use the City Spaces for City, City permit parking and other public parking and the right to access and use the Commonly Shared Drive Aisles as set forth in the Parking Easement.

4.21 Structural and Capital Repairs and Replacement of the Private Improvements. Developer is solely responsible, at its sole cost and expense, for all structural and capital repairs and replacement (including operation and maintenance of such structural and capital improvements) of the Parking Garage in perpetuity as further set forth in the Parking Easement.

4.22 Annual Assessment to Mesa Town Center Improvement District. Developer acknowledges the Property is located within the Mesa Town Center Improvement District, specifically within Special Improvement District 228 ("**SID 228**"). Property located within SID 228 are assessed an annual fee in order for City or its designee to provide a greater degree of management and public services and such annual fee may be amended from time to time ("**Annual Assessment**"). City currently contracts with the Downtown Mesa Association ("**DMA**")

to provide this service to SID 228. Developer acknowledges and agrees to annually pay the Annual Assessment to City or City's designee within thirty (30) days of Developer's receipt of an invoice from City or City's designee; provided further, during the term of the Lease, Developer agrees to make an annual, lump-sum in-lieu payment in the amount that would have been assessed by SID 228 and paid by Developer if Developer were the fee owner of the Property and Private Improvements as further set forth in Section 7(H) of the Lease.

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 constituting the Project in compliance with this Agreement, (ii) the Property and Improvements are free and clear of all financial liens and encumbrances, (iii) Developer obtains an ALTA owner's title insurance policy ("**Title Policy**") for the benefit of City in the amount of $1,000,000.00 (the premium for which will have been paid by Developer) in a form satisfactory to City in its sole discretion and reflecting the condition of title as approved (the condition of title is subject to approval by City in its sole discretion (subject to the limitations on City's right to object set forth below), which will include, but is not limited to, having no financial encumbrances and being lien-free), then City will accept conveyance of the Property to City by form of special warranty deed attached as Exhibit N, and City will lease the Property to Developer by means of the Lease attached as Exhibit B. Notwithstanding the City's right to approve the condition of title, the City shall have no right to object to the condition of title if the Title Policy has no Schedule B, Part II exceptions other than those included in Developer's title insurance policy issued to Developer at its acquisition in accordance with the Purchase Agreement. 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 4.11; or (b) Developer is in Default or an Event of Default under this Agreement of any (subject to the right to cure under Section 9.3 below); or (c) ad valorem taxes and similar assessments with respect to the Property and Private Improvements due and owing beyond the year of conveyance to City are unpaid; or (d) the Property and Private Improvements are burdened by any financial liens or encumbrances (including mechanics' or materialmen's liens); provided, however, that this Section 5.1 does not restrict the right of Developer to encumber its leasehold interest in accordance with the terms of the Lease; and provided further that if Developer, as tenant, diligently seeks to challenge any mechanics or materialmen's liens, Developer may discharge such liens of record by bond, deposit or order of a court of competent jurisdiction or alternately cause them to be insured over by title insurance endorsement reasonably satisfactory to City as the landlord.

5.2 Relocation of the Bins. After Developer has designed and constructed the Solid Waste Enclosures and prior to Commencement of Construction, City will relocate the Bins (or remove the Bins from the Property and provide new bins) to the Solid Waste Enclosure as set forth in Section 5.1(f) of the Purchase Agreement.

5.3 Abandonment and Replacement of Duct Bank. The Parties acknowledge there is 12 kV duct bank and associated improvements such as electrical conduit (collectively the

"**Existing Duct Bank**") on the Property that will need to be removed or abandoned, or both and a new 12 kV duct bank and associated improvements designed and constructed ("**New Duct Bank Site**") before Developer can construct the entire Project. On or before June 1, 2021 ("**Due Date**"), City, at its sole cost and expense, will remove the electrical wire from the Existing Duct Bank (deenergize the Existing Duct Bank) and abandon in-place the other Existing Duct Bank improvements, and design and construct a new duct bank and other improvements necessary to enable City to continue providing City electrical service to existing City electric users ("**New Duct Bank**"), as was provided by Existing Duct Bank. City, in its sole discretion, will determine the exact location of the New Duct Bank Site and may locate the New Duct Bank Site on a portion of the Property provided that the New Duct Bank Site does not interfere with the footprint of the Building. Developer hereby grants to City the right to enter on to the Property in order for City to deenergize, remove, and abandon the Existing Duct Bank, and to install the New duct Bank on the New Duct Bank Site. Provided further, after City has completed construction of the New Duct Bank, Developer shall grant to City a utility easement (in City's standard form for such easement) on, over, under and across the Property to provide for repair and maintenance of, continued use of, and access to, the New Duct Bank. As will be further set forth in a separate service agreement between City and Developer, and except for the removal of the electrical wire by City as provided above, in order to facilitate the construction of public infrastructure Developer shall remove the Existing Duct Bank (in compliance with Title 34 if and to the extent applicable) and City will provide a credit for such costs against future electric service charges or other electric fees or charges as set forth in the service agreement.

To keep Developer apprised of the City's progress on completing the New Duct Bank by the Due Date, City agrees to meet monthly with Developer to review the construction schedule. Additionally, City shall provide Developer with written notice if, at any time, City determines it will not be able to construct the New Duct Bank by the Due Date. Furthermore, not less than sixty (60) days prior to the Due Date or if City provides written notice to Developer that it will not be able to construct the New Duct Bank by the Due Date, whichever occurs first, the Parties agree to meet weekly to review the construction schedule for the New Duct Bank, the City's progress and the timeframe for the completion of the New Duct Bank until the New Duct Bank is constructed. Provided further, if City does not complete the construction of the New Duct Bank on or before June 1, 2021, then Developer shall be given a day-for-day extension of the dates in Section 4.11 (c) and Section 4.11(d) for each day after the Due Date it takes City to complete the construction of the New Duct Bank. City, at City's sole cost and expense, and in compliance with all Applicable Laws including all Hazardous Materials Laws, will undertake and complete any required removal and remediations of any Hazardous Materials from the Existing Duct Bank.

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

5.5 Encroachment into Right-of-Way. Subject to compliance with this Agreement and all Applicable Laws, City will permit those certain encroachments above the first floor as described in and depicted on Exhibit K-1 ("**Encroachments**") subject to the following terms, conditions, limitations, and requirements:

(a) Under the City Code, encroachments in Mesa's right-of-way and public easements are prohibited except with the authorization of a right-of-way permit under City Code 9-2-3(A). This Section 5.5(a) is intended to be such right-of-way permit ("**Permit**"), and no further right-of-way permit under City Code 9-2-3(A) is required.

(b) City permits Developer to construct and maintain only the Encroachments depicted on Exhibit K-1. The Encroachments shall be above the first-floor level and at the heights above-grade and extend only into that portion of the right-of-way as depicted on Exhibit K-2. The City Engineer has the authority to make adjustments to the Encroachments in order to accommodate reasonable changes necessitated by design or construction matters discovered or determined subsequent to the execution of this Agreement. No at-grade encroachments are permitted under this Section 5.5; however, Developer may request at-grade encroachments through the standard City processes and standard City encroachment agreement.

(c) The Permit does not otherwise modify, change or alter the City's Code requirements, ordinances or regulations; accordingly, separate from this Agreement, Developer will obtain all applicable permits and approvals as required by City for the construction, installation and maintenance of the Encroachments.

(d) Developer will be solely responsible and liable for, and defend, indemnify, and hold harmless City Indemnified Parties from and against, any and all claims arising from, or related to, the design, construction, installation, location or maintenance of the Encroachments, or the use of the right-of-way for the Encroachments. The obligations to defend, indemnify, and hold harmless are in addition to, and do not limit, the indemnity obligations in Section 6.

(e) Developer, at its sole cost and expense, and at all times, will maintain the Encroachments in a first-class, sound, clean and attractive manner. Developer will repair any and all damage to the Encroachments including, but not limited to, damage caused by third parties, vehicles, vandalism, and damage caused by contractors and utility companies while working in the right-of-way or public easement.

(f) The Permit is a nonexclusive license and nothing in this Agreement will be construed to prevent or restrict, in any way, City from using or granting others the right to use the right-of-way or public easement property where the Encroachment is located so long as such use does not unreasonably interfere with Developer's use as permitted under this Section 5.5.

(g) All provisions of the Permit, including the benefits and burdens, run with the land, and are binding upon and shall inure to the benefit of the successors and assigns of City and Developer. Developer may not assign its rights under the Permit apart from an assignment of the Agreement and without the prior written consent of City, which consent may be given or withheld in City's sole discretion. Any purported assignment without City's consent is void (and not voidable), and the purported assignee will acquire no rights under the Permit.

(h) Upon Completion of Construction of the Private Improvements in compliance with this Agreement, the provisions of this Section 5.5 will run with the land and will

survive the expiration or any earlier termination of this Agreement; provided, however, that this Permit will expire if the Compliance Dates (or any applicable Extended Compliance Date) are not timely met.

5.6 Acceptance and Maintenance of Public Improvements. The acceptance of the Public Improvements (or a portion of such Public Improvements) and the maintenance of the Public Improvements are set forth in Section 4.13 above.

6. INDEMNITY; RISK OF LOSS.

6.1 Indemnity of City by Developer. Developer will pay, defend, indemnify and hold harmless City Indemnified Parties from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including reasonable attorneys' fees, experts' fees and court costs associated with such matters; all of the foregoing, collectively "**Claims**") which arise from or relate in any way, whether in whole or in part, to (i) any act or omission by Developer, or its employees, contractors, subcontractors, agents or representatives, undertaken in fulfillment of Developer's obligations under this Agreement or (ii) any loss of or reduction in state shared monies arising in connection with a claim brought or maintained under A.R.S. § 41-194.01 (collectively, "**Indemnity**"). The obligations of Indemnity set forth in this Section 6.1, expressly include all Claims relating to or arising from design, construction and structural engineering acts or omissions related in any way to, of or in connection with, the Parking Garage and other work and improvements by or on behalf of Developer and shall survive the expiration or earlier termination of this Agreement for a period of two (2) years.

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 City assumes the risk of any and all loss, damage or Claims to any portion of the Public Improvements transferred to the City, except as otherwise set forth in Section 4.14. 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 and Developer shall have no liability therefor, unless specifically stated otherwise herein. Acceptance of the Public Improvements will be conditioned on City's receipt of the two (2) year warranty of workmanship, materials and equipment set forth in Section 4.13 in form and content reasonably acceptable to City, provided however that such warranty or 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 extend 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 proof of payment of premiums and certificates of insurance showing that Developer is carrying, or causing its contractor(s) to carry, builder's risk insurance, comprehensive general liability and worker's compensation insurance policies in amounts and coverages set forth in Exhibit L Such policies of insurance will be placed with

financially sound and reputable insurers, and Developer will use reasonable and good faith efforts to require the insurer to give at least thirty (30) days advance written notice of cancellation to City, and Developer will name City as an additional insured on such policies.

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

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

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

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

7.4 As of the date of this Agreement, City has no actual knowledge of any litigation, proceeding, initiative, referendum, investigation or threat of any of the same contesting the powers of City or its officials with respect to this Agreement that has not been disclosed in writing to Developer. The term "actual knowledge" means the actual knowledge of Jeff McVay, Downtown Transformation Manager, and Jeffrey Robbins, Economic Development Project Manager, as of the Effective Date. Notwithstanding anything herein to the contrary, neither Mr. McVay nor Mr. Robbins are Parties to this Agreement, and neither shall have any personal liability or liability whatsoever with respect to any matters set forth in this Agreement or Developer's representations and/or warranties herein being or becoming untrue, inaccurate or incomplete in any respect.

7.5 The execution, delivery and performance of this Agreement by City is not prohibited by, and does not conflict with, any other agreements, instruments or judgments or decrees to which City is a party or is otherwise subject, and this Agreement (and each undertaking of City contained herein) constitutes a valid, binding and enforceable obligation of City, enforceable according to its terms.

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

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

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

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

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

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

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

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

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

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

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

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

(a) Any representation or warranty made in this Agreement by Developer was materially inaccurate when made or is proven to be materially inaccurate during the Term and has an 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 or any action or inaction of City;

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

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

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

(a) Any representation or warranty made in this Agreement by City was materially inaccurate when made or is proven to be materially inaccurate during the Term and has an adverse impact on City's or Developer's ability to perform under this Agreement;

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

(c) City transfers or attempts to transfer or assign this Agreement in violation of Section 11.2.2.

9.3 Grace Periods; Notice and Cure. Upon the occurrence of an Event of Default by any Party, such Party will, upon written notice from the other Party, proceed immediately to cure or remedy such Default and, in any event, such Default must be cured within thirty (30) days after receipt of such notice; or, if such Default is of a nature is not capable of being cured within thirty (30) days must be commenced within such period and diligently pursued to completion, but not to exceed ninety (90) days in total. Provided further, if Developer is working diligently and in good faith to cure a non-monetary Default, the City Manager, in the City Manager's sole discretion, may extend the period of time the Developer has to cure the non-monetary Default for another 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, subject to any additional notice and cure periods provided in this Section 9.4:

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

(i) If an uncured Event of Default by Developer occurs prior to Completion of Construction and with respect to Developer's failure to construct or develop the Private Improvements and/or the Public Improvements in accordance with the terms of this Agreement, City may seek any of the following remedies:

(A) 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.

(B) City may require Developer to remove any improvements on the Property that prohibit the use of the Property for the seventy-six (76) City Spaces within ninety (90) days from written notice to Developer, and if Developer does not timely remove the improvements, then City may remove the improvements and convert the Property to a parking lot and City will be entitled to reimbursement of its expenses from the Developer.

(C) City may require Developer to return the Property, excluding the Existing Duct Bank, back to a condition equal to the condition of the Property prior to Developer purchasing the Property including returning the seventy-six (76) parking spaces.

(D) In addition to the remedies above, for every day City is unable to use the Property as a parking lot for the seventy-six (76) City Spaces, Developer shall pay liquidated damages in the amounts set forth below:

Time Period	**Liquidated Damages**
First thirty (30) days after Default	One hundred dollars ($100.00) per day
Thirty-one (31) to sixty (60) days after Default	Two hundred dollars ($200.00) per day
Sixty-one (61) days after Default and thereafter	Three hundred dollars ($300.00) per day

The Parties agree and hereby stipulate that the exact amount of damages from the loss of the use of the Property for the seventy-six (76) City Spaces would be extremely difficult or impossible to ascertain and that liquidated damages set forth in this Section constitutes a reasonable and fair approximation of such damages.

(ii) If an Event of Default by Developer occurs following Completion of Construction then, and only after the written notice has been provided and the cure periods expired without cure in accordance with Section 9.3, City may suspend any of its obligations under this Agreement, may terminate this Agreement by written notice thereof to Developer, and may terminate the Lease in accordance with the terms of the Lease.

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

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

(v) Notwithstanding the foregoing, City has and retains its specific rights set forth in Section 6.1, in addition to any other rights or remedies granted to or reserved by City in this Agreement that survive termination.

(vi) In no event shall City be entitled to punitive, consequential or special damages.

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

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

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

9.7 Rights and Remedies Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by either Party of any one or more of such rights will not preclude the exercise by it, at the same or different times, of any other right or remedy for any other Default by the other Party.

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

11. **MISCELLANEOUS PROVISIONS**.

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

11.2 Restrictions on Assignment and Transfer.

11.2.1 Restriction on Transfers. Prior to Completion of Construction, no assignment or similar transfer of Developer's interest in the Property or this Agreement, or in the current management, ownership or control of Developer (each, a "**Transfer**" and collectively, "**Transfers**") shall occur without the prior written consent of City, which consent may be given or withheld in City's sole and unfettered discretion; provided, however, that the foregoing restriction will not apply up to a maximum of two Transfers to an Affiliate of Developer upon City's reasonable determination that the management and control of the Affiliate transferee is materially the same as the management and control of Developer as of the Effective Date. The restrictions on Transfers set forth in this Section 11.2 shall terminate automatically, and without further notice or action, upon Completion of Construction and conveyance of the Property and Improvements to City; provided, however, that no Transfer shall release or discharge Developer

from any of its obligations arising in or under this Agreement or the Lease, including but not limited to the obligations of indemnification set forth in Section 4.13(b) and Section 6.1; and further provided that, upon a Transfer, the transferee (without further act or writing required) is deemed fully, automatically and unconditionally to have assumed all obligations of Developer arising in or under this Agreement, including but not limited to all obligations of indemnity set forth in Section 4.13(b), Section 6.1, or elsewhere in this Agreement. No voluntary or involuntary successor in interest to Developer shall acquire any rights or powers under this Agreement, except as expressly set forth herein, and any Transfer in violation of this Agreement shall be void, and not voidable.

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.

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

11.5 Notices.

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

If to City:

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

and

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

With a required copy to:

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

If to Developer:

EV Development, LLC
844 N. 4th Avenue
Phoenix, Arizona 85004
Attn: Tim Sprague
Telephone: 602-325-1152
Email: tsprague@habitatmetro.com

With a required copy to:

Burch & Cracchiolo
1850 N. Central Ave. 17th Floor
Phoenix, AZ 85004
Attn: Sharon J. Oscar
Telephone: 602-234-9916
Email: soscar@bcattorneys.com

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

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

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

11.8 Attorneys' Fees Provisions.

(a) Between the Parties. In the event of a breach by any Party and commencement of a subsequent legal action 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, but not limited to, 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.

(b) Third-Party Claim Naming Developer. Developer at its sole cost and expense will defend the validity and enforceability of this Agreement in the event of any proceeding or litigation 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.

(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 City's rights described in Section 11.13 of this Agreement, the compliance of this Agreement with any state or federal law (including but not limited to 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 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 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 City may elect in its sole and absolute discretion.

(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. No person or entity will be a third party beneficiary to this Agreement, except for permitted transferees, assignees, or lenders under Section 11.22 to the extent that they assume or succeed to the rights and/or obligations of Developer under this Agreement, and except that the indemnified Parties referred to in the indemnification provisions of Section 6.1 (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 but not limited to A.R.S. § 42-6201 *et seq.*), City and Developer shall use all and best faith efforts to modify the Agreement so as to fulfill each Parties obligations in the Agreement while resolving the violation with the Attorney General. If within thirty (30) days of notice from the Attorney General pursuant to and under the provisions of A.R.S. § 41-194.01(B)(1), City and Developer cannot agree to modify this Agreement so as to resolve the violation with the Attorney General, this Agreement shall automatically terminate at midnight on the thirtieth (30^{th}) day after receiving such notice from the Attorney General, and upon such termination the Parties shall have no further obligations under this Agreement. Additionally, if the Attorney General determines that this Agreement may violate a provision of state law or the Constitution of Arizona under A.R.S. § 41-194.01(B)(2), and requires the posting of a bond under A.R.S. § 41-194.01(B)(2), City shall be entitled to terminate this Agreement, except if Developer posts such bond, if required; and provided further, that if the Arizona Supreme Court, determines that this Agreement violates any provision of state law or the Constitution of Arizona, City may terminate this Agreement and the Parties shall have no further rights, interests or obligations in this Agreement or claim against the other Party for a breach or default under this Agreement.

11.14 Further Assurances. Each Party agrees to perform such other and further acts and to execute and deliver such additional agreements, documents, affidavits, certifications, acknowledgments and instruments as any other Party may reasonably require to consummate,

evidence, confirm or carry out the matters contemplated by this Agreement or confirm the status of (a) this Agreement as in full force and effect and (b) the performance of the obligations hereunder at any time during its Term.

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

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

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

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

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

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

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

11.22 Rights of Lenders.

(a) City is aware that Developer may obtain financing or refinancing for acquisition, development and/or construction of the Property and 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 to secure such financing with a lien or liens against the Property and Private Improvements (and shall not lien the Public Improvements). Notwithstanding the foregoing, 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. If a Lender is permitted, under the terms of its non-disturbance agreement with City to cure the Event of Default and/or to assume Developer's position with respect to this Agreement, City agrees to recognize such rights of the Lender and to otherwise permit the Lender to assume all of the rights and obligations of Developer under this Agreement. City will, at any time upon reasonable request by Developer, provide to any Lender an estoppel certificate or other document evidencing that (i) this Agreement is in full force and effect and (ii) no Event of Default by Developer exists hereunder (or, if appropriate, specifying the nature and duration of any existing Event of Default). Upon request by a Lender, City will enter into a separate non-disturbance agreement with such Lender, substantially in the form attached to

this Agreement as Exhibit M, or in such other form requested by Lender that is acceptable to City in its sole discretion.

11.23 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. 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 under the Parking Easement, special warranty deed with right of reverter conveying the Property to Developer or imposed on the Project or the Property by this Agreement or the Approved Plans, City's approval of Developer's plans and specifications for the Project, the issuance of any permits, and all related zoning, land use, building and development matters arising from, relating to, this Agreement; except the foregoing Waiver does not apply to any City initiated rezoning after Completion of Construction of the Improvements. The terms of this Waiver shall run with all land that is the subject of this Agreement and shall be binding upon all subsequent landowners, assignees, lessees and other successors, and shall survive the expiration or earlier termination of this Agreement.

Signatures are on the following two (2) pages

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

CITY

CITY OF MESA, ARIZONA, an Arizona municipal corporation

By: _____

Its: City Manager

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by _____ the _____ of the City of Mesa, an Arizona municipal corporation, who acknowledged that he/she signed the foregoing instrument on behalf of City.

_____
Notary Public

My commission expires:

_____

DEVELOPER

EV DEVELOPMENT, LLC, a Delaware limited liability company

By: _____

Name: _____

Its: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by _____, the _____ of, EV Development, LLC, a Delaware limited liability company, who acknowledged that he/she signed the foregoing instrument on behalf of Developer.

_____
Notary Public

My commission expires:

_____

EXHIBIT A TO DEVELOPMENT AGREEMENT

EXHIBIT A

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF MARICOPA, STATE OF ARIZONA, AND IS DESCRIBED AS FOLLOWS:

PARCEL NO. 1: (APN NO. 138-35-010A)

Lot 11, of PEPPER DRIVE TRACT, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 8 of Maps, page 22;

EXCEPT THE West 14.16 feet thereof.

(NOTE: A plat of Mesa, recorded in Book 23 of Maps, page 18, records of Maricopa County, Arizona, purports to show the within property as Lot 11, Tract A, MESA.)

PARCEL NO. 2: (APN NO. 138-35-011)

Lot 12, of PEPPER DRIVE TRACT, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 8 of Maps, page 22.

(NOTE: A plat of Mesa recorded in Book 23 of Maps, Page 18, records of Maricopa County, Arizona, purports to show the within property as Lot 12, Tract A, MESA.)

PARCEL NO. 3: (138-35-012)

Lots 13 and 14, of PEPPER DRIVE TRACT, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 8 of Maps, page 22.

PARCEL NO. 4: (138-35-053)

The West 53 feet of the East 321.25 feet of the South 135 feet of Lot 8, Block 5, of MESA CITY, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 3 of Maps, page 11.

(NOTE: A plat of Mesa recorded in Book 23 of Maps, Page 18 purports to show said premises as a portion of Lot 8, Blok 5, Tract B, Mesa.)

PARCEL NO. 5: (138-35-054)

The West 10.15 feet of the South 135 feet of Lot 8, of PEPPER DRIVE TRACT, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 8 of Maps, page 22.

(NOTE: A plat of Mesa recorded in Book 23 of Maps, Page 18 purports to show said premises as a portion of Lot 8, of Tract B, Block 5, Mesa.)

EXHIBIT A
(Continued)

PARCEL NO. 6: (138-35-056)

That part of Lot 8, Block 5, of MESA CITY, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 3 of Maps, page 11, more particularly described as follows:

BEGINNING at a point in the East line of said Lot 8, Block 5, at the intersection of North McDonald Street and Pepper Drive being 135 feet Northerly from the Southeast corner of said Lot 8;

RUNNING THENCE Westerly along the South line of Pepper Drive 218 ¼ feet to the TRUE POINT OF BEGINNING;

THENCE running Southerly 135 feet parallel to the East line of said Lot 8 to an alley;

THENCE running Westerly along the North line of said alley 50 feet;

THENCE running Northerly 135 feet parallel to the West line of the said Lot 8 to the South line of Pepper Drive;

THENCE Easterly 50 feet along said South line of Pepper Drive to the TRUE POINT OF BEGINNING.

APN: **138-35-011, 13835-010A, 138-35-053, 138-35-054, 138-35-012, 138-35-056**

EXHIBIT B TO DEVELOPMENT AGREEMENT
LEASE

[To be attached after City Council approval]

EXHIBIT C TO DEVELOPMENT AGREEMENT

CUSTOMIZED REVIEW SCHEDULE

The City and the Developer have agreed to a Customized Review Schedule for the Eco Mesa project ("Project"). The implementation of the Customized Review Schedule will follow the meeting and submittal process below.

Project Review Meetings as follows:

1. First, Developer will contact the Downtown Transformation Office ("DTO") to discuss the Project timeline and anticipated needs. The 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. The 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 the Developer or the Developer's design team, City staff will meet with the 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 the Developer's design team may request a meeting with City staff to discuss any questions about the 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 the 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 the City POC is not notified on the Submission Date the documents will be reviewed by City pursuant to the City's standard review cycle which is currently 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 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 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, 100-percent 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 DEVELOPMENT AGREEMENT
PROGRAM COMPLIANCE

- All construction by Developer will be designed and constructed to LEED Gold Standard or equivalent other green/sustainable building rating method, such as WELL Building (https://www.wellcertified.com/) agreed upon with City. Developer may, at its election and sole cost, have the building certified by the chosen rating agency. In the event Developer chooses to self-certify compliance with the chosen rating method, Developer will promptly provide City, through the building permitting and inspection process, certification of compliance with the rating standards, but in no event later than Completion of Construction.
- Developer will implement a waste recycling program during construction, with a goal of recycling 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 Mesa Solid Waste to haul diverted materials.
- Developer agrees to contract for and use the City of Mesa Solid Waste Services ("**Solid Waste Services**") for the Commercial and Residential Elements of the Project. Additionally, Developer is to obtain from City and provide to residential unit's solid waste containers for their use for Solid Waste Services.
- Developer will design to Crime Prevention Through Environmental Design (CPTED) principles and will participate in the Tri-Star Program of the Mesa Police Department as a Level Three Property.

EXHIBIT E TO DEVELOPMENT AGREEMENT
ON-SITE AMENITIES

- Covered/structured parking for all resident parking
- Fitness center
- Fiber-optic (FTTP) served Wi-Fi and a minimum of two ports for direct network access within all resident common areas, excluding hallways
- Hybrid car sharing program
- Water catchment system for landscape irrigation
- Micro and Macro energy use display
- Secure building entries and controlled access to on-site amenities
- Secure indoor bicycle storage (Minimum 1 bicycle storage space/5 units)
- Pet-friendly policies and amenities
- Clubhouse/community room/party room
- Centralized resident package delivery and receiving, including storage for oversized packages

EXHIBIT F TO DEVELOPMENT AGREEMENT
UNIT AMENITIES

- Private deck, minimum 4’ by 8’ balcony, or patio (minimum 50 percent of units)
- Each residential unit wired with Cat7 or Cat8 equivalent ethernet cable
- Walk-in closet(s) within each residential unit – Not including studios
- Full size washer and dryer – except studios
- High quality appliances (refrigerator, stove/oven, dishwasher, microwave)
- Energy star rating for all major appliances (washer, dryer, refrigerator, stove/oven, dishwasher, microwave)
- High quality plumbing fixtures with sensitivity for sustainable water usage
- Central heating and air-conditioning for each residential unit
- Smart thermostat for each residential unit
- Hard, natural kitchen and bathroom countertop materials for each residential unit (e.g., stone, engineered stone, polished concrete)
- Tile, hardwood, or similar flooring in at least living areas, bathroom, and kitchen (no linoleum). Carpet ok for bedrooms.
- Minimum 9-foot ceilings
- Ceiling fans with integrated lighting in living room and tenant option in bedrooms
- At least one charging outlet with integrated USB port in kitchen, living room, and each bedroom
- At least one port for direct internet access in kitchen, living room, or each bedroom
- LED lighting throughout each residential unit
- Mid-grade or higher cabinetry
- A Sound Transmission Class (STC) of 56, or greater on exterior and party walls, floors, and ceilings, as defined by the Uniform Building Code
- An Impact Isolation Class (IIC) of 56, or greater on party walls, floors, and ceilings, as defined by the Uniform Building Code

EXHIBIT G TO DEVELOPMENT AGREEMENT
EXTERIOR QUALITY STANDARDS

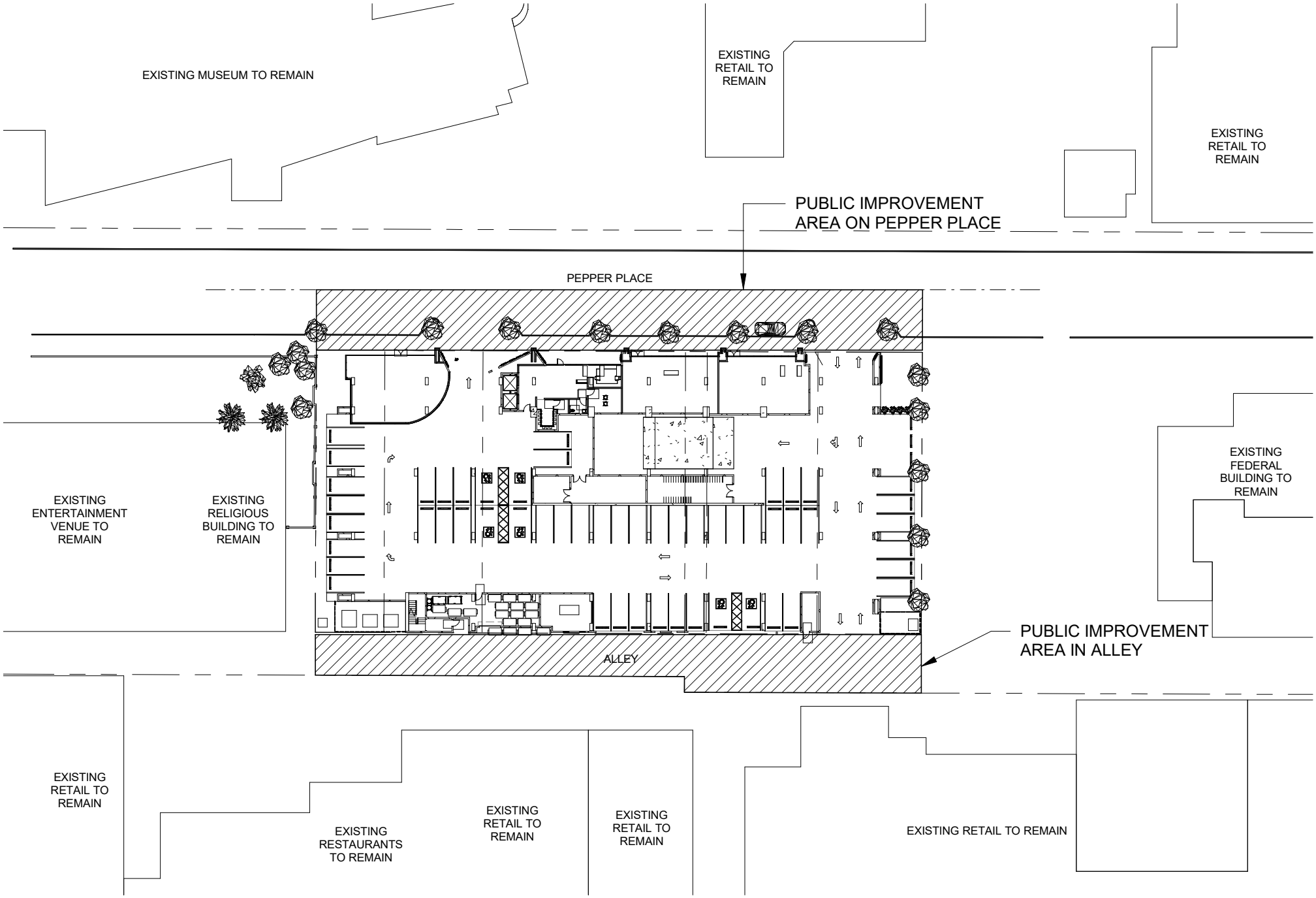
- All exterior elevations will incorporate high quality design, i.e., four-sided architecture
- Minimum three high quality and durable exterior building materials
- All building mounted equipment screened from public view – Solar Array excluded
- All exterior building vents, such as furnace and dryer, are integrated into the building architecture
- Energy star rated exterior windows with high-performance glazing on south facing windows
- Highly reflective white-painted roof, solar panels, green roof, or another solution that results in a cool roof
- Shade elements integrated into building façade for exterior windows of south, west and east facing residential units
- Pedestrian shade elements integrated into building façade
- Minimum seventy-five percent (75%) ground floor transparency
- Incorporation of one (1) attached neon project identification sign
- Incorporation of pedestrian scale signage, e.g., blade or projecting, for ground floor commercial tenant space(s)
- Incorporation of a consistent sign area for one attached sign per ground floor commercial tenant space
- Pedestrian areas incorporate pavers, stamped or colored concrete, or similar paving materials
- Minimum forty-eight-inch (48") box size trees planted twenty-five feet (25') on center along Pepper Street. All trees will have integrated grates and be planted within a minimum 500 cubic feet of structured soil.
- 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/
- Electric vehicle charging stations

EXHIBIT H-1 TO DEVELOPMENT AGREEMENT
DESCRIPTION OF PUBLIC IMPROVEMENTS

Streetscape Improvements to Pepper Place:

- Relocate or add public utilities in or along Pepper Place
- Add parallel parking stalls with triangular street tree wells
- Add street light poles to match standard pole available in the downtown district with banner attachments.
- Add trees (in structured earth) along the street frontage to create pedestrian shade with a street tree pattern
- Provide deep water bubblers for all street trees
- Add up lights to street trees

EXHIBIT H-2 TO DEVELOPMENT AGREEMENT
DEPICTION OF PUBLIC IMPROVEMENTS



STREETSCAPE IMPROVEMENTS

1 PUBLIC IMPROVEMENTS

1" = 60'-0"

EXHIBIT I TO DEVELOPMENT AGREEMENT
PROHIBITED USES

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

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

EXHIBIT J TO DEVELOPMENT AGREEMENT

MITIGATION PLAN

PHASING.

After relocation of the wire within the bifurcating duct bank by the City, Project construction shall be in three Phases.

Phase 1 – Phase 1 construction will begin with Site work and demolition of existing improvements and preparation for vertical improvements. Prior to closing, solid waste enclosures shall be constructed on the adjacent Federal Building lot to the east of the Project site.

Phase 2 – Phase 2 shall include the construction of the new parking garage including the grade level Public Parking replacing the current Purple Lot spaces, levels 2 and 3 parking areas for residential parking of the project, and the Podium base for the construction of the 4 levels of residential units.

Phase 3 – Phase 3 shall include the improvement of commercial space at grade level fronting Pepper Place and the framing and finishes of all residential units, landscape, hardscape and other construction activities to complete the Project.

CONSTRUCTION MITIGATION PLAN.

The Developer and its contractors shall minimize the impact Project construction work has on adjacent businesses and City operations as provided in this Mitigation Plan as may be amended from time to time with the approval of each Party.

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

Communication Plan:

Developer communication will include the following mediums:

- Creation of an ECO MESA information website that will include forecasted construction events, notice of any information regarding any unusual or extraordinary construction events and the timing of such activities, any disruption events (alley closures, etc.), significant noise events and general construction updates. It will also include construction progress and any potential impact from the 30-day look ahead schedule.
- Distribution of general Construction Update emails and/or paper flyers to all neighboring businesses, organizations, and property owners within a quarter-mile radius of the Project Site. The emails and/or flyers will contain information regarding any unusual or extraordinary construction events and the timing of such activities. It will also include construction progress and any potential impact from the 30-day look ahead schedule.

Parking:

The Parking Plan for the Purple Lot during Project construction work is described in the attached Exhibit which includes parking in the Orange Lot, as needed. The Parking Plan will be modified as needed to meet the parking needs of the Purple Lot properties and businesses. As described in the Parking Plan, wayfinding signage will be strategically placed around the Purple Lo and Orange Lot areas listing affected businesses and the location of alternate, accommodating parking.

Construction parking will be offsite in non-competing locations to the Purple Lot Parking Plan. Construction workers will be repeatedly notified that parking in the Parking Plan areas or other adjacent business parking lots is prohibited.

Noise:

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

Hours of Work:

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

April through September: 5:00 am to 7 pm (in accordance with Afterhours permit allowing 5:00 am start time)
October through March: 6:00 am to 6 pm

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

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

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

Closures of Pepper Place Parking, Sidewalk and Occasional Narrowing of East Bound Traffic – Alley Access:

The Developer will request the closure of the sidewalk on the south side of Pepper Place fronting the Purple Lot and the on-street parking located on the southern frontage of Pepper Place as depicted on the attached plan in order to use that location for the project tower crane, construction trailers, dumpsters and material storage. Occasional narrowing of the east bound Pepper Place traffic may occur to accommodate placement of the tower crane and movement of construction equipment. Notice of any such narrowing will be given to the surrounding properties and businesses as per the Communication Plan described above.

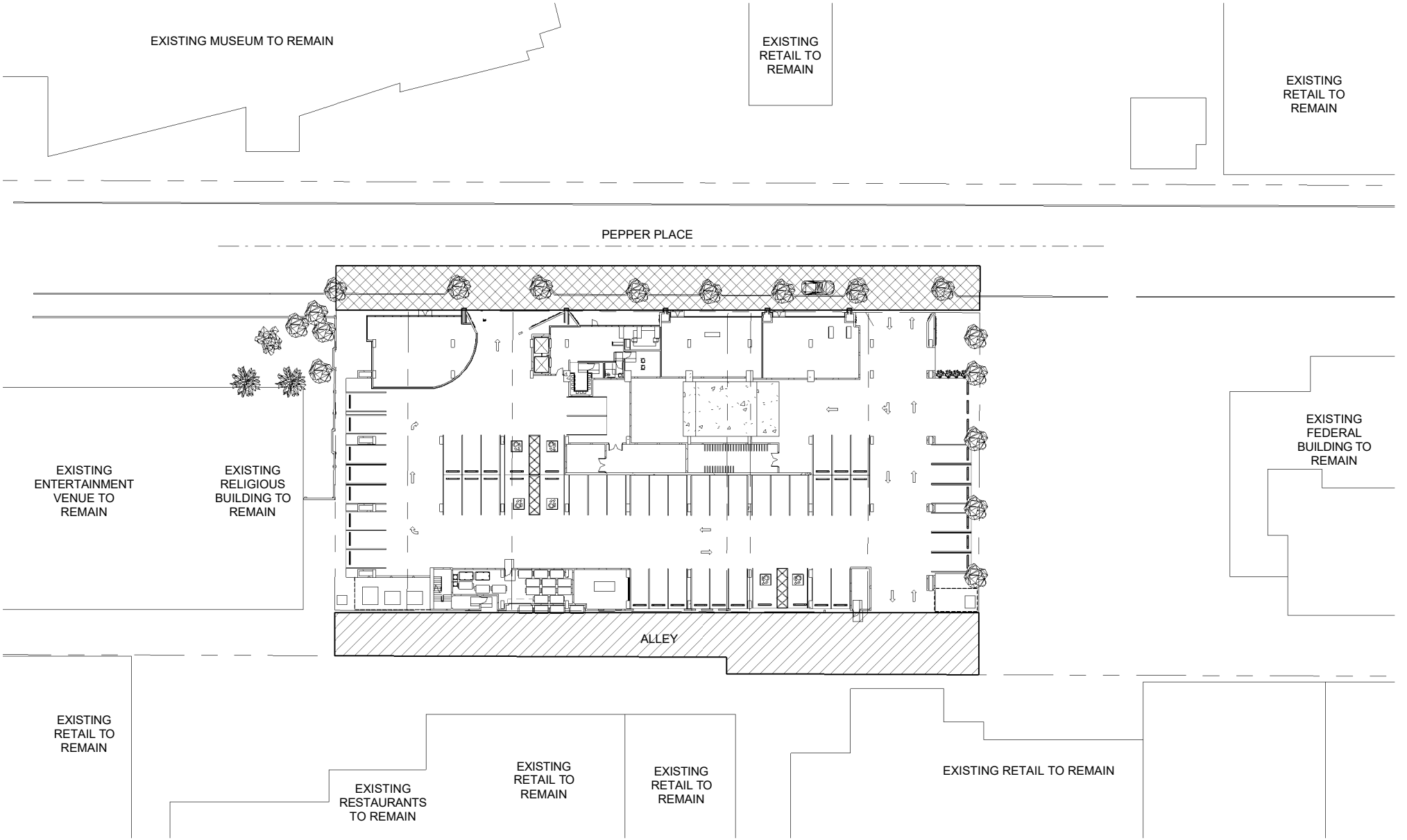
All reasonable efforts will be made to continue access to the alley on the southern boundary of the Purple Lot as depicted on the attached plan during the course of construction. Notice of any disruption of alley access shall be provided as per the Communication Plan for any planned activity.

Developer shall provide the City with a Construction Staging Map depicting which portions of Pepper Place will be affected by construction activities. The Map will also show any temporary fencing, dumpster locations, material stock areas, signage, and locations of any major construction equipment. Any closures or rerouting of Pepper Place traffic is subject to the City's prior approval of the Construction Staging Map, and Developer obtaining and paying for all applicable City permits and fees.

Contact Information:

Developer – Habitat Metro, Tim Sprague Phone – 602.325.1152

Email – eco@habitatmetro.com



CLOSED THROUGHOUT ECO MESA CONSTRUCTION

PRIMARY ACCESS TO CONSTRUCTION SITE FROM PEPPER - INTERMITTENT, NOTICED INTERRUPTIONS DURING ECO MESA CONSTRUCTION - ALL INTERRUPTONS WITH NOTICE TO AFFECTED PROPERTIES

1 MITIGATION PLAN
1" = 60'-0"

Purple Lot Parking Plan
ECO MESA Development

The parking plan for the Purple Lot during construction of the ECO MESA development is the collaborative work of the City of Mesa office of Downtown Transformation Project Management and the Habitat Metro team. Please note upfront, this plan does not include the possible use of the Federal Building parking lot. The City is currently evaluating the Federal Building renovation schedule which may coincide with the development of ECO Mesa. If the construction timelines do not align, the City will consider allocating Purple parking spaces to the Federal Building parking lot.

The Plan.

- The Purple Lot contains 76 parking spaces of which 26 are permitted spaces. The 76 Purple Lot parking spaces will return to public use as covered parking in the same location under the ECO MESA structure after an estimated construction period of 20 months.
- The Orange parking lot currently has 199 spaces. 45 of these spaces are occupied by DES leaving a remaining 154 spaces for public parking—twice the capacity of the Purple Lot. There are currently no Orange Lot parking permits.
- The Plan proposes to relocate 64 Purple parking spaces to the Orange Lot.
- Additionally, 12 Purple spaces will relocate to on-street parking along Pepper Street at the northwest corner of Pepper and Macdonald between the Federal Building and the Natural History Museum research building. These 12 spaces would be either time restricted or permitted spaces depending on what Purple Lot stakeholders prefer.
- The remaining Purple Lot permits will relocate to the Orange Lot.

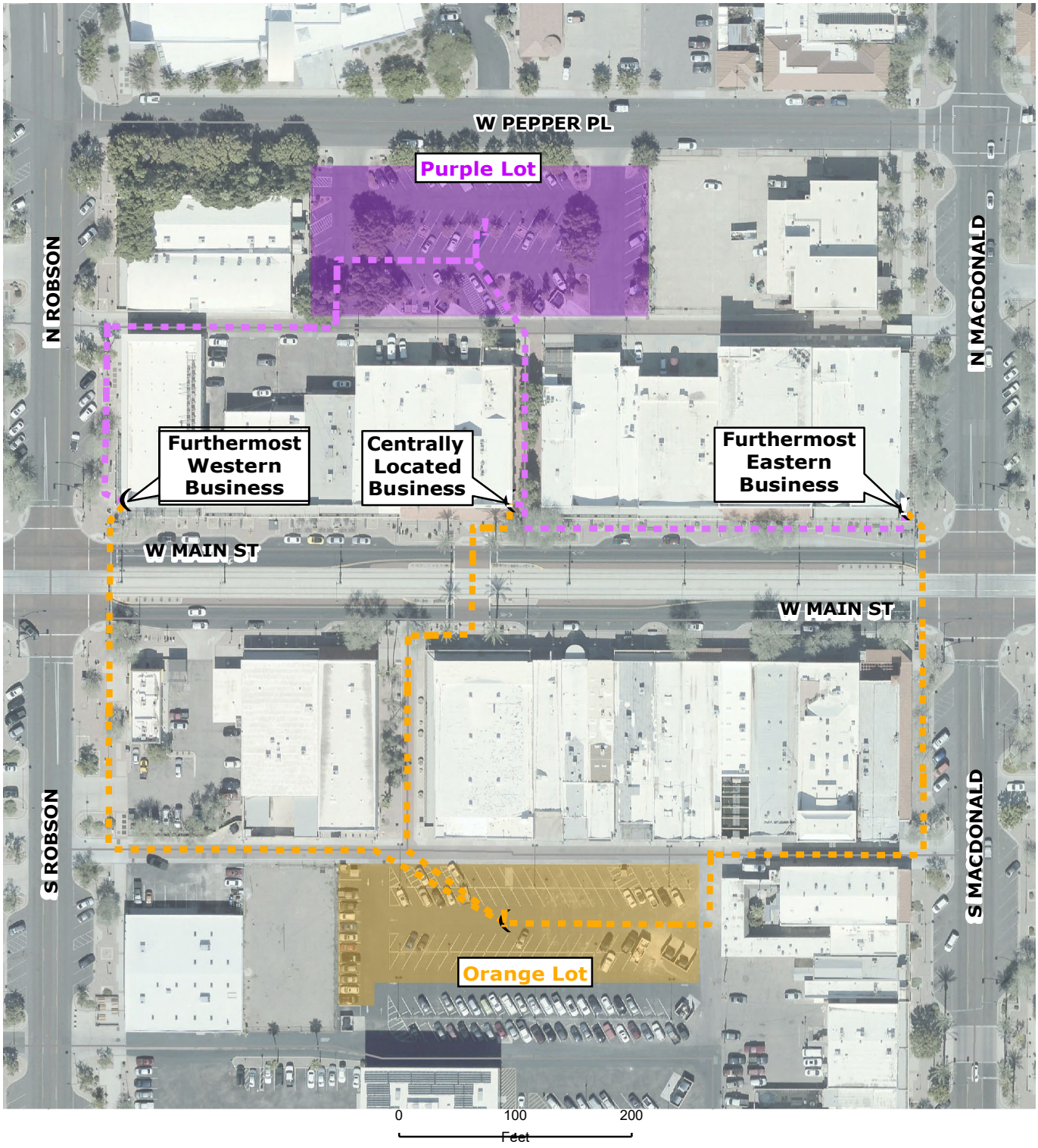
Please take a moment to review the analysis below for "walk times" to the Purple Lot and to the Orange Lot for businesses located on Main Street. As you can see, the walk times are quite similar. With proper wayfinding signage identifying businesses and appropriate parking access, the impact of the Purple Lot temporary closure will be limited. The location and identity language included on the signage will be formulated from neighborhood input.
Business activity on the south side of Main between Robson and Macdonald is currently low. Three of the largest capacity buildings on this section of Main are vacant and as many as five of the Tre Bella reception hall suites have closed permanently due to impacts from COVID-19. Subway uses a private parking lot and Cider Corps visitors prefer Robson on-street parking and their building's private lot. Tacos Chiwas, a new restaurant, will drive some traffic to the Orange Lot. The Nile will attract primarily nighttime traffic once their concert hall reopens. The remaining tenants on the Orange Lot block are low-intensity office uses. The City is currently conducting a drone flight aerial survey over a two-week period to verify current activity in the Orange Lot.

Occupancy will change over the ECO construction period and the City and Habitat Metro will monitor parking capacity closely to adjust Purple Lot parking relocation as circumstances dictate.

Please contact Jeff Robbins with the City of Mesa (480-644-5249 | Jeffrey.Robbins@mesaaz.gov) or Tim Sprague with Habitat Metro (Cell 602.377.6877 | tsprague@habitatmetro.com) with any questions.

Walking Times

O



	Distance in ft from Purple Lot	Walking Time from Purple Lot	Distance in ft from Orange Lot	Walking Time from Orange Lot	Additional Time from Orange Lot
Furthermost Western Business	± 562	± 2:02 minutes	± 660	± 2:23 minutes	± 98 ft/21 seconds
Centrally Located Business	± 262	± 0:57 minutes	± 487	± 1:46 minutes	± 225 ft/49 seconds
Furthermost Eastern Business	± 612	± 2:15 minutes	± 723	± 2:37 minutes	± 111 ft/22 seconds

Walking times are based on ± 4.6 feet per second and do not account for any time waiting at crosswalk.

Map created by Engineering GIS DATE SAVED: 7/28/2020 Path: I:\GIS_Mapping\Project_Files\DowntownManager\OrangePurpleAndStreetParkingMaps\WalkingTimes.mxd

EXHIBIT K -1 TO DEVELOPMENT AGREEMENT
DESCRIPTION OF ENCROACHMENTS

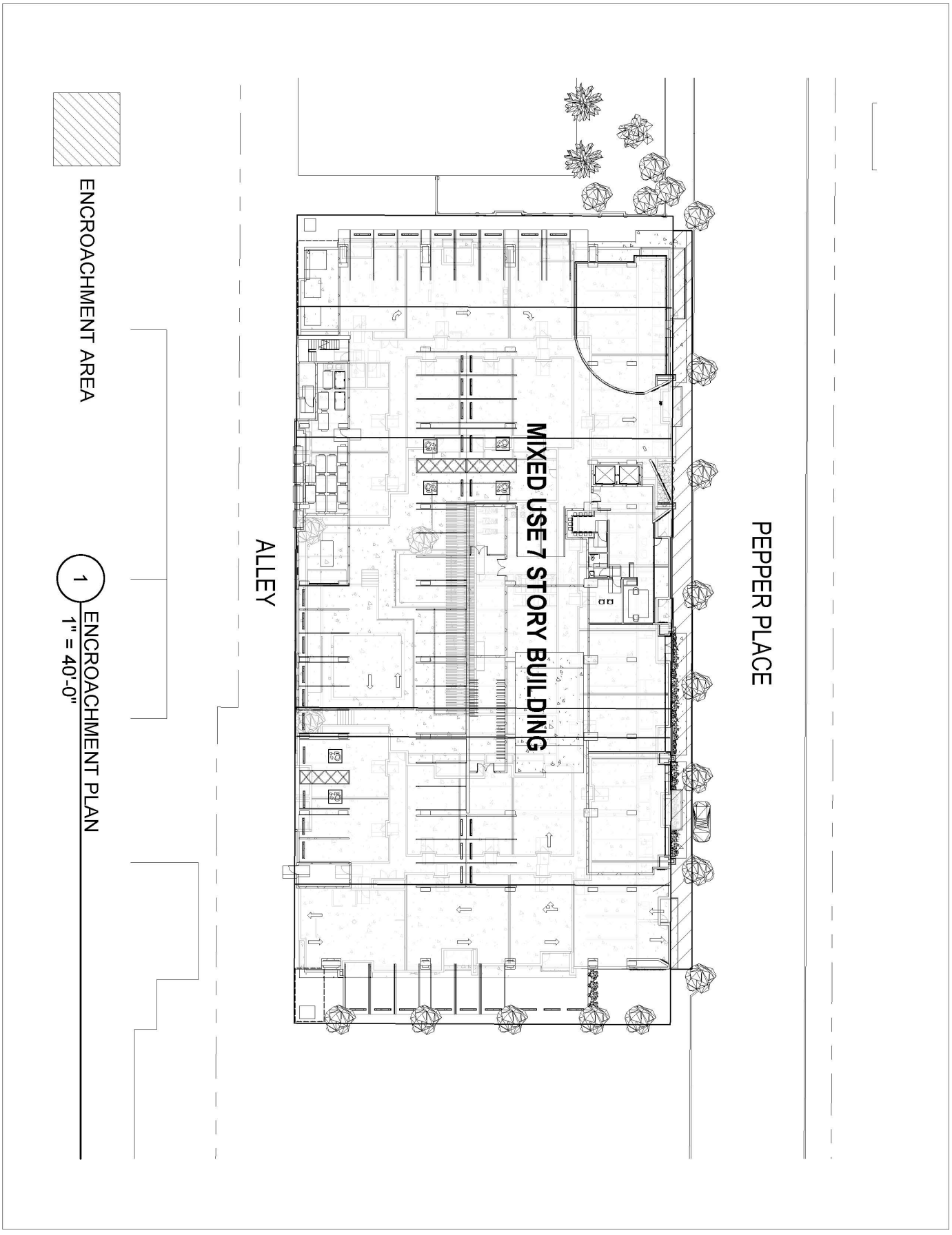
Current encroachments of the Eco Mesa project are as follows:
North property line:

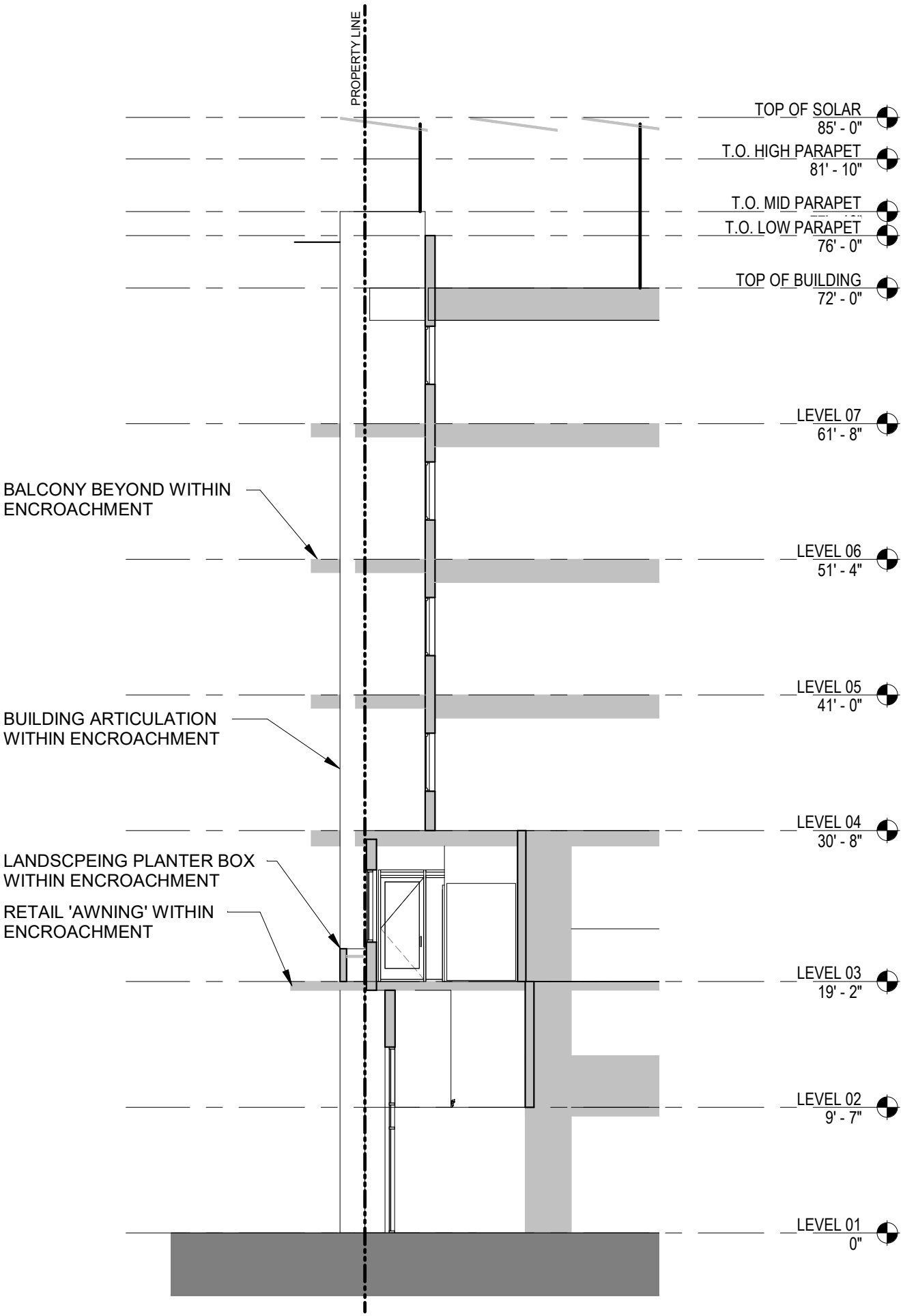
- Shade ‘awnings’ that are 18’-6” above sidewalk, minimum 2’-0” from curb
- Building articulation
- Unit balconies; level 4 and above
- Solar panels structured above the roof and parapet line

South property line: N/A
East & West property lines: N/A

See plan and section exhibits describing the encroachments.

EXHIBIT K-2 TO DEVELOPMENT AGREEMENT
DEPICTION OF LOCATION OF ENCROACHMENTS





1 ENCROACHMENT SECTION
1" = 10'-0"

EXHIBIT L TO DEVELOPMENT AGREEMENT
CITY OF MESA INSURANCE REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) All certificates required by this Agreement will be sent directly to City of Mesa, Attn: Lisa Lorts, Risk Manager, 20 E. Main Street, P.O. Box 1466, Mesa, Arizona 85211-1466. City reserves the right to require complete, certified copies of all insurance policies and endorsements required by this Exhibit L 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 designee), whose decision will be final. Such action will not require formal contract amendment, but may be made by administrative action.

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

[See Attached]

When recorded, return to:

_____
_____
_____

==========

NON-DISTURBANCE AND RECOGNITION AGREEMENT

==========

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

1. Recitals.

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

1.2 Developer's obligations arising under the Agreement include but are not limited to the 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 but not limited to a leasehold deed of trust for the use and benefit of Lender (the "**Deed of Trust**") and an assignment of Developer's rights under the Agreement (the "**Assignment**") to secure the loan from Lender to Developer (the "**Loan**"). The Deed of Trust, the Assignment and certain other Loan Documents will be recorded in the Official Records of Maricopa County, Arizona, and will encumber the Property.

1.4 Lender has certain rights under the Loan Documents in the event of a Default by Developer of its obligations either under the Loan Documents or the Agreement, including but not limited to the right of Lender to be substituted for Developer under the Agreement and to assume Developer's position with respect to the Agreement; and the Agreement states in Section 11.21 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 30 days following the expiration of Developer's cure period under the Agreement to cure such claimed Event of Default (as the Agreement exists as of the date of this NDRA), prior to terminating the Agreement or invoking such other remedies as may be available to City under the Agreement.

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

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

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

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

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

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

4. Non-disturbance and Recognition.

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

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

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

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

5. Estoppel

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

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

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

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

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

6. Miscellaneous.

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

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

If to City:

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

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

With required copy to:

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

EV Development, LLC
844 N. 4th Avenue
Phoenix, Arizona 85004
Attn: Tim Sprague
Telephone: 602-325-1152
Email: tsprague@habitatmetro.com

With a required copy to:

Burch & Cracchiolo
1850 N. Central Ave. 17th Floor
Phoenix, AZ 85004

Attn: Sharon J. Oscar
Telephone: 602-234-9916
Email: soscar@bcattorneys.com

If to Lender: _____
_____
_____
_____

With required copy to: _____
_____
_____
_____

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

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

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

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

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

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

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

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

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY

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

"CITY"

CITY OF MESA, an Arizona municipal corporation

By: _____

Name: _____

Its: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing was acknowledged before me this _____day of _____, 2020, by _____, the City _____ of the City of Mesa, Arizona, on behalf of the City.

_____
Notary Public

My commission expires:

_____

"DEVELOPER"

EV DEVELOPMENT, LLC, a Delaware limited liability company

By: _____

Name: _____

Its: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by _____, the _____ of, EV Development, LLC, a Delaware limited liability company, who acknowledged that he/she signed the foregoing instrument on behalf of Developer.

_____
Notary Public

My commission expires:

_____

"LENDER"

By: _____

Name: _____

Its: _____

STATE OF ARIZONA)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by _____, _____ of, _____, who acknowledged that he/she signed the foregoing instrument on behalf of Lender.

_____
Notary Public

My commission expires:

_____

EXHIBIT N TO DEVELOPMENT AGREEMENT
SPECIAL WARRANTY DEED

When recorded, return to:

City of Mesa
Real Estate Services
20 East Main Street
P. O. Box 1466
Mesa, Arizona 85211-1466

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SPECIAL WARRANTY DEED

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

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

SUBJECT TO those matters described in Exhibit "B" attached hereto and by this reference made a part hereof; all matters of record; municipal and public taxes and assessment; and to any and all conditions, easements, encroachments, rights-of-way, or restrictions which a physical inspection, or accurate ALTA survey, of the Property would reveal; 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:

EV Development, LLC, a Delaware limited liability company

By:_____
Name: _____
Its:_____

STATE OF _____)
) ss.
County of _____)

On this the ____ day of _____, 20___, before me, the undersigned Notary Public, personally appeared _____, who acknowledged ____self to be the _____ of EV Development, LLC, a Delaware limited liability company, and that, being authorized so to do, __he executed the foregoing Special Warranty Deed on behalf of the Grantee.

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

_____
Notary Public

My Commission Expires:

_____

EXHIBIT A TO THE SPECIAL WARRANTY DEED
LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT A

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF MARICOPA, STATE OF ARIZONA, AND IS DESCRIBED AS FOLLOWS:

PARCEL NO. 1: (APN NO. 138-35-010A)

Lot 11, of PEPPER DRIVE TRACT, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 8 of Maps, page 22;

EXCEPT THE West 14.16 feet thereof.

(NOTE: A plat of Mesa, recorded in Book 23 of Maps, page 18, records of Maricopa County, Arizona, purports to show the within property as Lot 11, Tract A, MESA.)

PARCEL NO. 2: (APN NO. 138-35-011)

Lot 12, of PEPPER DRIVE TRACT, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 8 of Maps, page 22.

(NOTE: A plat of Mesa recorded in Book 23 of Maps, Page 18, records of Maricopa County, Arizona, purports to show the within property as Lot 12, Tract A, MESA.)

PARCEL NO. 3: (138-35-012)

Lots 13 and 14, of PEPPER DRIVE TRACT, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 8 of Maps, page 22.

PARCEL NO. 4: (138-35-053)

The West 53 feet of the East 321.25 feet of the South 135 feet of Lot 8, Block 5, of MESA CITY, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 3 of Maps, page 11.

(NOTE: A plat of Mesa recorded in Book 23 of Maps, Page 18 purports to show said premises as a portion of Lot 8, Blok 5, Tract B, Mesa.)

PARCEL NO. 5: (138-35-054)

The West 10.15 feet of the South 135 feet of Lot 8, of PEPPER DRIVE TRACT, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 8 of Maps, page 22.

(NOTE: A plat of Mesa recorded in Book 23 of Maps, Page 18 purports to show said premises as a portion of Lot 8, of Tract B, Block 5, Mesa.)

EXHIBIT A
(Continued)

PARCEL NO. 6: (138-35-056)

That part of Lot 8, Block 5, of MESA CITY, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 3 of Maps, page 11, more particularly described as follows:

BEGINNING at a point in the East line of said Lot 8, Block 5, at the intersection of North McDonald Street and Pepper Drive being 135 feet Northerly from the Southeast corner of said Lot 8;

RUNNING THENCE Westerly along the South line of Pepper Drive 218 ¼ feet to the TRUE POINT OF BEGINNING;

THENCE running Southerly 135 feet parallel to the East line of said Lot 8 to an alley;

THENCE running Westerly along the North line of said alley 50 feet;

THENCE running Northerly 135 feet parallel to the West line of the said Lot 8 to the South line of Pepper Drive;

THENCE Easterly 50 feet along said South line of Pepper Drive to the TRUE POINT OF BEGINNING.

APN: **138-35-011, 13835-010A, 138-35-053, 138-35-054, 138-35-012, 138-35-056**

Exhibit B to Special Warranty Deed

[Scheduled Exceptions to Title]

(To be Attached)