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PARKING SPACE DEVELOPMENT AND USE AGREEMENT City Contract No. 121803

THIS PARKING SPACE DEVELOPMENT AND USE AGREEMENT (“**Agreement**”) is entered into as of the 3rd day of July, 2007, by and between the CITY OF PHOENIX, ARIZONA, a municipal corporation (“**City**”) and NPP CITYNORTH, LLC, a Delaware limited liability company authorized to do business in Arizona (which, together with its successors and assigns, is hereinafter referred to as “**Developer**”).

RECITALS

A. Developer is an affiliate of the lessee, pursuant to that 99 year land lease with the State of Arizona dated July 7, 1993, a memorandum of which is recorded in the Official Records of Maricopa County, Arizona as Instrument No. 96-0246603 (the “**ASLD Lease**”), of approximately 144 acres of real property generally bounded by 52nd Street, the Pima Freeway, 56th Street and Deer Valley Drive in Phoenix, Arizona, legally described in *Exhibit “A”* attached hereto (the “**Site**”), upon which Developer intends to develop and construct retail (including hotel), office, residential and associated parking facilities and related amenities (collectively, the “**Project**”) as depicted in *Exhibit “B”* attached hereto (the “**Conceptual Development Plan**”). The Project is currently planned to include approximately 1,200,000 gross square feet of retail, restaurant and hotel space (the “**Retail Center**”), including several major upscale retail tenants.

B. The City desires to obtain those public benefits which will accrue from the development of the Site, particularly from the Retail Center. Such benefits include the creation, retention and expansion of retail uses and employment in the community, stimulation of economic development in the City, construction of infrastructure improvements within the public right-of-way adjacent to the Site and generation of substantial additional sales tax revenues, all of which will contribute to the improvement or enhancement of the economic welfare of the inhabitants of the City.

C. The City has determined that the uses proposed by the Developer will generate a need for convenient structured parking spaces for the free use and safety of the general public at large. The City desires to facilitate the construction of and to secure the long-term availability of public parking structures within the Site to accommodate increased demand for free public parking by customers of the Retail Center, public transit and park and ride users as well as to

support the increased retail activity and employment centers generated by the Project. Developer would not be providing the parking spaces in structures as stated in this Agreement at the times stated in this Agreement but for this Agreement. This Agreement facilitates such parking in structures being provided earlier in the development schedule for the Project, which allows for faster development of office and residential uses, and permits a mixed use development to occur earlier than otherwise possible, therefore increasing the viability of a mixed use, urban village project as desired by the City, and which provides a greater amount of transactions privilege tax to the City at an earlier time than would otherwise be the case without this Agreement.

D. The provision of additional public parking in structures for use by the general public at large at no charge will be in the public interest and serve the public purposes of reducing traffic congestion in and around the Site, reducing the need for on-street parking, encouraging use of public transportation and providing access to employment opportunities and will also promote economic development by substantially enhancing the generation of tax revenues associated with the Project and maximizing job creation within the City.

E. Although Developer has no obligation to provide free public parking at the Site or in structures for the use of the City and/or the general public at large or to provide free parking for public transportation users, in accordance with the terms and conditions of this Agreement Developer has agreed that, as part of the parking structures at the Site, the Project will include certain parking facilities constructed at Developer's sole cost and expense in or adjacent to the Project (collectively, the "**Garages**") within ^{Unofficial Document} which a minimum number of spaces (the "**City Spaces**") will be collectively available at for free off-street public parking for use by the general public-at-large and public transportation users as more particularly provided in this Agreement.

F. The City and Developer acknowledge that this Agreement is a development agreement pursuant to the provisions of A.R.S. §9-500.05 and A.R.S. §9-500.11.

G. Both parties will be benefited if Developer has the ability to provide City Spaces in phases corresponding to development phases as provided in this Agreement.

H. This Agreement has been approved by the Council of the City of Phoenix pursuant to Ordinance S-33743. Among other things, the following findings were adopted by the City Council:

1. The Project is anticipated to raise more revenue for the City than the total amount of the City payments within the duration of this Agreement.

2. In the absence of this Agreement and the City payments to be made pursuant to this Agreement, the Project would not locate in the City in the same time, place or manner.

AGREEMENTS

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual covenants set forth in this Agreement, Developer and City agree that the Recitals are hereby incorporated into this Agreement and further agree as follows:

1. **City Spaces.** Subject to Developer's satisfaction of the Completion Requirement, as defined in Section 5 below, Developer hereby grants to City, and City hereby accepts from Developer, during the Use Term (as defined in Section 2 below) and upon the terms and conditions set forth in this Agreement, the right to use, and to make available for use by the general public-at-large, 3180 parking spaces within the Garages, including at least 200 parking spaces to be designated for public transportation or carpool riders (collectively, the "**City Spaces**"), together with the non-exclusive right of City and the general public-at-large to use certain entrances, exits and driveways and other paved areas from time-to-time located on the Site for reasonable access to and from the City Spaces (the "**Access Rights**").

2. **Term.** This Agreement shall be effective upon execution by both parties. Rights and obligations related to use of the City Spaces shall commence on the earlier of (i) satisfaction of the Completion Requirement or (ii) at Developer's option, with respect to any City Spaces in Garage(s) that has/have been completed, as evidenced by issuance of a temporary certificate of occupancy, and is open for use by the general public, as of the date set forth in written notice from Developer to ^{Unofficial Document} the City (the "**Use Term Commencement Date**"), and shall continue for a period of 45 years thereafter (the "**Use Term**"), unless terminated sooner as provided herein.

3. **Commencement of Construction; Vested Rights.** The City and Developer hereby acknowledge that the City has preliminarily approved the development of the Site pursuant to the Conceptual Development Plan attached hereto. The Conceptual Development Plan sets forth the basic land uses, intensity and density of such uses, relative height, bulk and size of buildings and structures proposed for the Site. The City acknowledges that building permits have been issued and construction of the first phase of the Retail Center has "**commenced**" which, for the purposes of this Agreement, means the pouring of initial concrete footings and foundations has occurred.

Notwithstanding anything contained in the foregoing or elsewhere in this Agreement to the contrary, however, the City acknowledges that, while the Developer intends to develop the Project in general conformance with the Conceptual Development Plan in various phases, in order to make the Project economically viable and otherwise feasible, the Developer's request for the City's approval of preliminary and final site plans for each phase of the Project may contain variations from such Conceptual Development Plan. The parties acknowledge that the development of the Site will be phased over a period of years; that Developer has already expended significant sums of money in connection with such development; and that Developer would not have commenced the development of the Site unless it could complete the development of the Project as originally planned. In that regard the parties acknowledge

that the common law rules of vested rights shall apply to the future development of the Site. Furthermore, with respect only to building height, building setbacks, on-site water retention, landscaping, lighting, parking and signs, the City development standards and permit requirements in effect as of the issuance of the first building permits for the first phase of the Retail Center shall apply to plans for subsequent phases of the Retail Center submitted within four (4) years after the execution of this Agreement, with the exception of any future ordinances, rules, regulations, permit requirements and other requirements and official policies enacted for the general public health and safety and uniformly applied throughout the City; other future land use ordinances, rules, regulations, permit requirements and other requirements and official policies of the City which Developer may agree in writing reasonably apply to the development of the Site; and future land use, safety and construction ordinances, rules, regulations, permit requirements and other requirements and official policies of the City enacted as necessary to comply with mandatory requirements imposed on the City by county, state or federal laws and regulations, court decisions, and other similar superior external authorities beyond the control of the City. The provisions of this Section shall be independent from, and not limit, any vested rights and approvals the Project has under prior approvals and agreements

4. Use Payments; Amount of Use Payment; Nature of Payments. Subject to the provisions of this Section 4, City shall pay to Developer, as consideration for the rights granted by Developer to City herein, and whether or not the City exercises such rights, a use payment (the **"Use Payment"**) for the City Spaces which shall be paid during the Payment Period in accordance with subsection 4.1 below. Unofficial Document Use Payment has been calculated based upon market rates for the long term use of structured public parking considering the terms and conditions of this Agreement. The City's obligation to pay the Use Payment under this Agreement shall not be a general obligation of the City. The parties acknowledge that satisfaction of the Completion Requirement, as defined in Section 5 below, is a condition precedent to the City's obligation to pay the Use Payment and not a covenant of Developer.

4.1. Payment Period; Annual Payment of Use Payment.

(a) The Use Payment for the entire Use Term shall be paid by the City in annual installments commencing on the Payment Period Commencement Date, as established pursuant to Section 5 below, and shall terminate eleven (11) years and three (3) months thereafter (the **"Payment Period"**), subject to the Maximum Use Payment Obligation as defined in subsection 4.3 below. No further payment shall be required to be made by the City during the balance of the Use Term. Each annual installment shall be in an amount equal to fifty percent (50%) of the Eligible Privilege Taxes, as defined below, actually received by the City during the immediately preceding Payment Period Year, as defined in subsection 4.2 below (or partial year, in the case of the final three (3) months of the Payment Period) directly related to the construction of and to business activities at the Project, except to the extent prohibited by law.

(b) For the purposes of this Agreement, **"Eligible Privilege Taxes"** shall mean the construction transaction privilege taxes and privilege taxes received by the City

directly related to the business activities of amusement, commercial property rental, hotels and motels, job printing, publishing, rental of tangible personal property, residential property rental, restaurants and bars, retail sales, and use taxes collected from those improvements, as defined by Chapter 14 of the Code of the City of Phoenix, Arizona (or successor provision or similar provision).

(c) The construction transaction privilege taxes collected by the City in connection with the Project from the date the first such taxes were paid (even though such payment and subsequent payments may have been made prior to the first Payment Period Year) through the end of the first Payment Period Year shall be included in the calculation of Eligible Privilege Taxes received during the first Payment Period Year for the purposes of calculating the first annual payment due hereunder.

4.2. Payment Period Year. Except as provided in 4.1(c), the first “**Payment Period Year**” shall begin on the Payment Period Commencement Date and end on the first day preceding the first annual anniversary of the Payment Period Commencement Date, and each subsequent Payment Period Year shall begin on an annual anniversary of the Payment Period Commencement Date.

4.3. Maximum Use Payment Obligation. When the aggregate amount of the Use Payments made by the City under this Section 4 equals \$97,400,000 (the “**Maximum Use Payment Obligation**”), or when the City has paid all Use Payments Payable during the Payment Period, even if the total of all payments is less than the Maximum Use Payment Obligation, whichever first occurs, the City’s obligation to make Use Payments under this Agreement shall be fully satisfied and discharged, and the City shall be deemed to have paid all Use Payments then due and to become due during the remainder of the Use Term. Accordingly, the City’s obligation to make Use Payments under this Agreement is limited to a maximum amount of \$97,400,000.

5. Payment Period Commencement Date; Completion Requirement. Developer shall deliver written notice to the City at least 60 days in advance of the date Developer elects to begin the Payment Period (the “**Payment Period Commencement Date**”), provided that such date must be no more than one (1) year prior to or no more than three (3) years after the satisfaction of the Completion Requirement, as hereinafter defined. If Developer fails to give notice by the date that is three (3) years after satisfaction of the Completion Requirement, then the Payment Period Commencement Date shall be the third (3rd) anniversary of the date of satisfaction of the Completion Requirement. The City shall not be obligated to make any payments hereunder unless and until the Project is open for business, the Garage(s) have been Completed to the extent necessary to have the City Spaces available for use in accordance with this Agreement and approximately 1.2 million gross square feet of retail space has been Completed (collectively, the “**Completion Requirement**”). Accordingly, if the Completion Requirement has not been satisfied by one year after the date proposed in Developer’s notice then, unless Developer amends its notice prior to the due date of the first City Payment to select another Payment Period Commencement Date permitted by this Section, the first City payment hereunder will not be

due until the Completion Requirement has been satisfied and the Payment Period Commencement Date shall be the date one year prior to the first day of the calendar month immediately following the date of compliance with the Completion Requirement. The term "Retail" or "retail" as used in this Section shall include, without limitation, stores, shops, health clubs, restaurants, bars, hotels and other uses customarily included in or associated with a retail center. For the purposes of this Agreement, "**Completed**" shall mean that a temporary certificate of occupancy has been issued or other City approval of evidence of completion of the shell has been given. Interior build out and installation of tenant improvements shall not be required for any improvement to be "**Completed**". The City and Developer acknowledge that their intent is for the City payment obligation to begin upon completion of a significant portion of the Retail Center and further acknowledge that many variables, such as site conditions, space configuration and other factors may impact the actual gross square footage of the contemplated improvements upon completion. Accordingly, the parties agree that Completion of at least 1,020,000 gross square feet [eighty-five percent (85%) of 1.2 million] of retail space within the Retail Center will be deemed to be "approximately" 1.2 million gross square feet of retail space for the purposes of satisfying the Completion Requirement.

Upon satisfaction of the Completion Requirement, the parties to this Agreement shall cause to be prepared, signed on behalf of each party and recorded in the office of the Maricopa County Recorder a supplement to this Agreement stating the date the Completion Requirement was satisfied and the Payment Period Commencement Date.

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6. Plans for the Garages and Access Rights. With the exception of Garage A-13, which has been previously approved, prior to or concurrently with submitting any application for a building permit from the City for a Garage, Developer shall submit to the City's Community and Economic Development Department (with such department and any successor department thereto as determined by the City Manager being referred to herein as "**CEDD**") plans and specifications for (i) the Garage, including the location of the City Spaces therein, (ii) the entrances, exits, driveways and other paved areas proposed to be subject to the Access Rights (collectively, the "**Access Facilities**"), (iii) the other entrances, exits, driveways and parking areas proposed to be constructed by Developer on the Retail Center in connection with the phase containing a Garage, and (iv) signage stating that the City Spaces are for the use by the general public at large at no charge for parking purposes and designating the spaces for the use of public transportation users. Such plans and specifications shall show the proposed initial location of the City Spaces and the Access Facilities. The parties acknowledge that submittal of the Garage Plans for CEDD approval is for the purpose of determining compliance with the provisions of this Agreement. Accordingly, approval by CEDD shall be given if the plans submitted by Developer (i) contain the required number of City spaces for the phase in question in accordance with Section 1 of this Agreement, after taking into account City Spaces previously provided by Developer; (ii) identify Access Facilities providing reasonable access to the City Spaces; (iii) include reasonable signage identifying the City spaces; and (iv) are otherwise consistent with the provisions of this Agreement. Any notice of disapproval by CEDD shall in the same notice provide the basis for such disapproval.

CEDD shall approve or disapprove such plans and specifications in writing within 18 calendar days after CEDD's receipt of such plans and specifications, and CEDD shall not unreasonably withhold such approval. Any disapproval shall include specific reasons for disapproval and shall specify the changes required to obtain approval. Developer shall then revise such plans and specifications and submit the revised plans and specifications to CEDD for CEDD's review and approval.

CEDD shall approve or disapprove a given set of revised plans and specifications in writing within 15 days after CEDD's receipt of such revised plans and specifications, and CEDD shall not unreasonably withhold such approval. Any disapproval shall include specific reasons for disapproval and shall specify the changes required to obtain approval. Developer shall further revise such plans and specifications and submit the further revised plans and specifications to CEDD for CEDD's review and approval pursuant to this paragraph.

The plans and specifications submitted by Developer and approved by CEDD pursuant to this Section 6 are hereinafter called the "**Approved Plans**." CEDD's review and approval of the Approved Plans, which shall be separate from and in addition to all other necessary City approvals, is intended solely to enable the City to protect its interests as user of the City Spaces and Access Facilities. Such right shall not be construed to create any obligation of the City to review and/or approve the Garages or Access Facilities on behalf of the general public or any party other than the City.

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In the event CEDD disapproves Developer's plans and specifications for the Garages or Access Facilities after the Developer has submitted plans and specifications to CEDD as provided above, and if Developer believes such disapproval was not reasonable or not otherwise permitted by this Agreement, then either party shall have the right to submit the matter to the dispute resolution provisions as set forth in Section 50 below for resolution.

Developer may elect whether or not a parking facility for the Project will be a Garage (meaning a parking facility containing City Spaces) and how many spaces in a Garage will be City Spaces as long as Developer provides the then collective required number of City Spaces.

7. Relocation of City Spaces; Temporary Closures.

(a) Developer shall have the right from time to time, with the prior consent of CEDD given in accordance with Section 6 (which consent shall not be unreasonably withheld, conditioned or delayed), to relocate all or any portion of the City Spaces to another area within the Garages shown on the Approved Plans or to another Garage or to relocate a Garage, so long as:

(i) any temporary relocation during construction is done in accordance with Section 7(b) and, upon completion of construction and completion of such temporary relocation, 3,180 City Spaces shall be available in the Garages; and

(ii) each of the 3,180 City Spaces is contiguous to another City Space or to a driveway area; and

(iii) the Garage to which the City Spaces are to be relocated has been approved in accordance with Section 6.

(b) Developer may temporarily close a portion of the City Spaces to the public or temporarily relocate a portion of the City Spaces to surface parking lots as reasonably required in connection with construction activities at the Project; provided, however, that if such temporary closure or relocation is for more than six (8) months *or* if such temporary closure or relocation affects more than eighteen percent (18%) of the City Spaces at any given time, then the Use Term will be extended by a period of time equal to the duration of the temporary closure.

8. Relocation or Alteration of Access Facilities. Developer hereby retains and shall have the right, from time to time, to:

(a) change the location of any portion of the Access Facilities to another similar area shown on the Approved Plans, Unofficial Document the change of location does not unreasonably interfere with the access of the general public at large to the City Spaces and the Access Facilities and to continuously provide the general public at large with reasonably convenient access to and from the City Spaces;

(b) grant additional non-exclusive easements and other similar rights with respect to the Access Facilities, including without limitation utility easements and licenses, as Developer may reasonably deem necessary, provided that such additional easements and rights do not materially interfere with the use by the general public of the Access Facilities and the City Spaces;

(c) close all or any portion of the Access Facilities, at reasonable times and for reasonable periods, for the purpose of performing repairs to and maintenance of the Access Facilities; provided, however, that any physical change to the site plan for the Retail Center shall be approved by the City's Development Services Department if such approval is required pursuant to the Phoenix City Code; and

(d) designate reserved parking spaces within the Garages to tenants or occupants of the Project for the exclusive use of such tenants or occupants, so long as the City Spaces remain available in the Garages as required pursuant to Section 7 above and subject to Section 14.

9. Use of City Spaces. Subject to Section 14, the City shall have the right to use the City Spaces solely for the purpose of providing passenger vehicle parking for the City and the general public at large. City acknowledges and agrees that the use of the City Spaces for passenger vehicle parking for the general public at large shall, without limitation, include the use of the City Spaces by guests, customers, employees, vendors and suppliers of the Retail Center and related facilities within the Project to be constructed by Developer on the Site. City further acknowledges and agrees that the use of the City Spaces by such guests, customers, employees, vendors and suppliers may from time-to-time result in all of the unreserved City Spaces being used by such guests, customers, employees, vendors and suppliers at no charge.

10. No Charge for Use of City Spaces; Garages Revenue. Neither Developer nor the City shall charge the general public at large for any use of the City Spaces pursuant to this Agreement. Nothing contained herein shall limit or restrict the Developer from charging any tenants or occupants of the Project for any designated, reserved or otherwise restricted parking spaces within the Garages which are not City Spaces, and to install, operate and maintain such parking gates, barriers or other facilities which Developer may desire or which may be necessary in order to ensure the designated reserved and/or restricted nature of such parking spaces, so long as such measures do not restrict, impede or interfere with the reasonable use of the City Spaces or Access Facilities.

11. Use of Access Facilities. City shall have the right to use the Access Facilities solely for the purpose of access by passengers ^{Unofficial Document} operated by the general public to and from the City Spaces.

12. Construction of Improvements. Not later than the Payment Period Commencement Date, Developer shall, at Developer's sole cost and expense and without any contribution by City, have constructed or caused to be constructed the City Spaces, related Garages and Access Facilities substantially in accordance with the Approved Plans and in compliance with all applicable local, state or federal codes, laws, rules and regulations. As acknowledged in herein, City Spaces, Garages and Access Facilities may be phased and portions thereof constructed after the Use Term Commencement Date, as long as there is reasonable access to the then completed City Spaces as of the Use Term Commencement Date.

Developer shall secure any necessary construction easements, licenses or permits required in connection with the construction of the Garages. If, during the Use Term, any code, law, rule or regulation of general application requires any change to or modification of the Garages or the Access Facilities, Developer, at Developer's sole cost and expense and without any contribution by City, shall promptly make or cause to be made such change or modification. Developer shall, however, have the right to challenge, by appropriate administrative and legal actions and proceedings, the validity or applicability of any such code, law, rule or regulation to the Garages and/or the Access Facilities.

Developer expressly acknowledges and agrees that any City approval provided pursuant to this Agreement, including but not limited to CEDD's approval of plans and specifications for the Garages pursuant to Section 6 above, shall be given by City acting in a proprietary capacity as user of the City Spaces, and shall be in addition to and not in substitution for or satisfaction of any other approval required to be obtained by Developer from the City of Phoenix pursuant to any applicable ordinance, code, law, rule or regulation.

13. Operation, Maintenance and Repair. Developer shall, at all times during the Use Term and at Developer's sole cost and expense and without any contribution by City, operate the Garages and maintain the Garages and the Access Facilities in good order, condition and repair and in accordance with the practices prevailing in the operation of similar parking facilities ancillary to comparable retail establishments in the metropolitan Phoenix, Arizona area. The City shall have no responsibility for the maintenance or repair of the Garages, the City Spaces or the Access Facilities. The City acknowledges that a portion of the City Spaces may occasionally be temporarily unavailable for use during the performance of routine maintenance and repair activities.

Without limiting the generality of the preceding paragraph, Developer or a management company hired by Developer shall:

- (a) maintain the surface of the Garages and the Access Facilities in a smooth condition, evenly covered with the type of surfacing described in the Approved Plans, or with a substitute that is in all respects substantially equal in quality, appearance and durability to the surfacing material described in the Approved Plans;
- (b) promptly remove all paper, refuse and debris from, periodically wash and thoroughly sweep the Garages and the Access Facilities;
- (c) maintain such appropriate entrance, exit and directional signs, markers and lights as are reasonably required for the Garages and the Access Facilities, and clean, maintain, repair and replace such signs, markers and lights;
- (d) clean and relamp lighting fixtures in the Garages and on the Access Facilities;
- (e) maintain, repair and replace striping delineating the individual City Spaces and the Access Facilities; and
- (f) maintain repair and replace landscaping and irrigation systems adjacent to the Garages and the Access Facilities.

14. Management. Subject to the requirements of this Agreement, including without limitation, the requirement that the City Spaces be made available for parking by the public at large without payment of any fee or charge (except for the City's remittance of the Use Payments as described herein), Developer shall have and retain the power and authority

to establish and consistently apply and enforce reasonable and lawful rules and regulations governing the use of the City Spaces and the Access Facilities.

Without limiting the generality of the preceding paragraph of this Section 14, the rules and regulations adopted by Developer pursuant to this Section 14 shall include rules and regulations that:

- (a) prohibit the use of the City Spaces or the Access Facilities for the parking of any passenger vehicle overnight;
- (b) prohibit the use of the Garages or the Access Facilities for the parking of any vehicle other than a passenger vehicle;
- (c) prohibit the use of the Garages or the Access Facilities for the parking of any inoperable vehicle, any vehicle not displaying a current license plate, or any vehicle which has one or more tires that is not inflated;
- (d) provide for the exclusion or removal from the Garages or the Access Facilities of any person or vehicle creating a nuisance or unreasonable disturbance or using or attempting to use the Garages or the Access Facilities in violation of any applicable rule or regulation adopted by Developer pursuant to this Section 14 or any applicable law;
- (e) provide for Developer's removal of any vehicle parked or placed in any of the Garages or Access Facilities in violation of any rule or regulation adopted by Developer pursuant to this Section 14 or any applicable law;
- (f) permit the use of those City Spaces designated for public transportation or carpool users on weekdays from 5 a.m. to 7 p.m. to be used by the general public at other times; and
- (g) provide that the location of City Spaces may differ depending upon the time of day and day of week, provided that the total number of City Spaces is not reduced.

15. Compliance with Laws. Developer, as manager of the Garages and the Access Facilities pursuant to Section 14 above, shall, at Developer's sole cost and expense and without contribution by City, conduct only lawful operations in the Garages and the Access Facilities, and shall comply with all applicable local, state or federal codes, laws, rules and regulations. Developer shall operate and manage the Garages in a manner consistent with the operation of a department store anchored shopping facility.

Nothing in this Agreement is intended to or shall be deemed to waive, limit, diminish or relinquish any eminent domain, police or taxing power of the City or any other governmental entity having jurisdiction over Developer or the Site, including without limitation any power of the City pertaining to the acceptance, processing or approval or disapproval of any application for any site plan, building, occupancy or other approval,

certificate or permit relating to the Site or any portion thereof, including without limitation the Garages and the Access Facilities. Developer acknowledges that all of Developer's obligations under this Agreement are in addition to, and not in substitution or satisfaction of, all applicable local, state or federal codes, laws, rules and regulations pertaining to Developer and/or the City Spaces.

16. Taxes. Developer shall, at Developer's sole cost and expense and without contribution by City, timely pay all local, state and federal sales, privilege, income, property and similar or substitute taxes and assessments, including without limitation those imposed by any special purpose district or entity having jurisdiction over the Site or any portion thereof, levied on or with respect to the Site, including without limitation the Garages and the Access Facilities.

17. Insurance. During the Use Term, Developer shall, at Developer's sole cost and expense and without any contribution by City, obtain and maintain insurance with respect to the Garages and the Access Facilities in accordance with the requirements (the "**Insurance Requirements**") stated in *Exhibit "C"* attached hereto, and shall pay all premiums required to cause such insurance to remain in full force and effect.

Developer shall deliver to the City prior to the Use Term Commencement Date certificates of insurance evidencing that the insurance required by the Insurance Requirements is in full force and effect, together with proof of payment of the premium(s) therefor reasonably acceptable to the City. ^{Unofficial Document} 30 days before the expiration of any such policy, Developer shall deliver to the City certificates for a renewal or replacement policy evidencing that the insurance coverage provided by the expiring policy will remain in full force and effect for at least 12 months after such expiration.

18. Quiet Enjoyment. Developer represents and warrants to City that Developer has the authority and right to grant the City the right to use the City Spaces and the Access Rights in the manner described in this Agreement, and that City shall, at all times during the Use Term and so long as no Event of Default (as defined in Section 22 below) has occurred by the City, have the right to use the City Spaces and the Access Rights, subject only to the terms and provisions of this Agreement.

19. Hazardous Materials. Except as permitted by and in accordance with applicable local, state or federal codes, laws, rules and regulations, neither Developer nor the City shall produce, dispose, transport, treat, use or store any hazardous material or hazardous waste in the Garages or on the Access Facilities. For the purposes of this Agreement, the terms "hazardous material" and "hazardous waste" shall mean and include any material or substance that is subject to regulation, now or at any time during the Use Term, under any local, state or federal code, law, rule, regulation, court order or decree, or administrative guideline, order or policy relating to the environment, natural resources, animal or human health, safety (occupational or otherwise) or industrial hygiene. Developer shall at all times bear all risks associated with the environmental condition of the Garages and the Access

Facilities, except to the extent, and only to the extent, caused by an affirmative action by the City or its employees.

20. Developer's Indemnification. Subject to receiving reasonable notice and opportunity to defend, Developer shall defend, indemnify and hold harmless the City and its elected and appointed officials, employees and agents (each individually a "**Developer Indemnified Party**") from and against all claims, lawsuits, causes of action, demands, damages and liabilities associated with injuries to persons or property (including all reasonable attorneys' fees and costs and expenses incurred in connection therewith) arising out of, resulting from or related in any way to:

- (a) the performance by Developer or its agents, employees, contractors, sub-contractors, representatives or delegates of any obligation or exercise of any right of Developer under this Agreement;
- (b) the condition of the Garages and/or the Access Facilities;
- (d) the construction or repair of the Garages or the Access Facilities; or
- (e) the use of the City Spaces, the Garages or the Access Facilities during the Use Term;

except to the extent, and only to the extent Unofficial Document the negligence or intentional misconduct of any Developer Indemnified Party.

The City's right to indemnification from Developer regarding third party claims against the City is not intended to create any obligation of Developer to anyone other than the City.

The indemnification obligations of Developer under this Section 20 shall survive the expiration and any termination of the Use Term and/or this Agreement.

21. Repair and Maintenance Reserves; Recordkeeping; Audit. The Term "**Developer**" as used in this Section 21 shall mean the owner or operator at a given time of the applicable Garage or Access Facilities. Developer shall or shall cause the management company operating each Garage to establish a repair and maintenance reserve fund for uninsured losses and such maintenance as may be required during the Use Term ("**Reserve Fund**") for the purpose of ensuring the availability of adequate funds for Developer to perform its obligations under Sections 13 and 14 of this Agreement. Developer shall require sufficient funds to be deposited into the Reserve Fund(s) to provide for the ongoing maintenance and repair of the Garages and Access Facilities and for Developer to perform its obligations under this Agreement. All of the books, records and other documentation pertaining to the Reserve Fund will be maintained by Developer and open to inspection, examination or audit by the City or its designated representative, at City's cost and expense, upon giving reasonable written notice. If Developer is found to be deficient in maintaining,

preserving or retaining any such funds, documents, books or records, Developer will reimburse the City for all reasonable expenses incurred in determining the deficiencies including, without limitation, any audit or examination fees and any costs incurred by the City as a result of performing or causing to be performed any obligation hereunder which Developer fails to perform, along with interest at the rate of one percent (1%) per month from the date notified of the amount due until paid.

22. Events of Default. Each of the following shall be an “**Event of Default**” under this Agreement:

(a) **Monetary Default.** The failure by a party hereto (the “**Paying Party**”) to make a payment of money due under this Agreement within 15 days after (i) such payment is due and payable under this Agreement, and (ii) the other party hereto has given the Paying Party written notice of such failure.

(b) **Non-Monetary Default.** The failure, other than a failure described in subsection (a) above, by a party hereto (the “**Non-Performing Party**”) to observe or perform, in any material respect, any covenant, agreement or obligation under this Agreement within 30 days after (i) such observance or performance is required under this Agreement, and (ii) the other party hereto has given the Non-Performing Party written notice of such failure; provided, however, that if it is not reasonably possible to cure such failure within such 30-day cure period, such cure period shall, if and so long as the Non-Performing Party has commenced a cure of such failure within such cure period and thereafter diligently pursues such cure, be extended for the additional time reasonably required to complete such cure.

23. Remedies. Upon the occurrence of any Event of Default, and at any time thereafter while the Event of Default continues, the non-defaulting party hereto (the “**Non-Defaulting Party**”) may, at the Non-Defaulting Party’s option and from time-to-time, exercise all, any or any combination of the following remedies, in any order and repetitively, all at the Non-Defaulting Party’s option:

(a) **Termination.** The Non-Defaulting Party may terminate this Agreement effective immediately upon written notice of termination given by the Non-Defaulting Party to the other party hereto (the “**Defaulting Party**”), in which event the right of Developer to receive Use Payments from the City and the right of the general public to use the City Spaces within the Garages at no cost shall automatically terminate and be of no further force and effect. If Developer is the Defaulting Party and the City elects to terminate this Agreement, then the City shall be entitled to a refund of any prepayments made as though termination had occurred under Section 26. If the City is the Defaulting Party, then the City shall not be entitled to any refund of prepayments under Section 26 or otherwise, and any payments made by the City through the date of such termination shall be retained by Developer.

(b) **Performance or Payment by Non-Defaulting Party.** The Non-Defaulting Party may pay or perform, or cause to be paid or performed, for the Defaulting

Party's account and at the Defaulting Party's sole cost and expense, any or all payments or performance required under this Agreement to be paid or performed by the Defaulting Party, without any liability of the Non-Defaulting Party for any loss or damage that may be sustained or incurred by the Defaulting Party as a result of such payment or performance by the Non-Defaulting Party, and following which payment or performance by the Non-Defaulting Party the Defaulting Party shall immediately upon demand by the Non-Defaulting Party reimburse the Non-Defaulting Party for all such payments made by the Non-Defaulting Party and all costs and expenses incurred by the Non-Defaulting Party in connection with such performance, together with interest thereon at the rate of twelve percent (12%) per annum from the date such payment was made or such cost or expense was incurred by the Non-Defaulting Party.

(c) **Specific Performance.** The Non-Defaulting Party may seek a court order compelling specific performance of the Defaulting Party's obligations under this Agreement.

(d) **Actual Damages; Waiver of Consequential and Other Damages.** The Non-Defaulting Party may pursue actual damages and all other remedies to which the Non-Defaulting Party may then be entitled at law, in equity or under the provisions of this Agreement; provided that both parties hereby waive the right to consequential, special or punitive damages.

(e) **Recovery of Amounts.** Unofficial Document The Non-Defaulting Party may pursue collection of any monetary amounts due under this Agreement.

(f) **Remedies Cumulative.** The rights and remedies of the parties hereto under this Agreement are intended to be and shall be cumulative, and the exercise or attempted exercise by a party hereto of a given remedy shall not preclude or limit the right or ability of such party to exercise, at the same or at any different time, any other remedy or remedies.

24. City's Non-Disturbance, Subordination and Attornment. In the event any deed of trust or mortgage (each a "**Deed of Trust**") is recorded as a lien against all or any portion of the Garages by Developer, then Developer shall obtain a written agreement (the "**Non-Disturbance Agreement**"), in recordable form and with provisions reasonably satisfactory to the City, by which the beneficiary or mortgagee under such Deed of Trust (the "**Holder**");

(a) recognizes this Agreement;

(b) agrees that in the event of any foreclosure or action under or pursuant to, or any acceptance of any conveyance or transfer in lieu of any such foreclosure or action under or pursuant to, such Deed of Trust, the City's possession and use of the City Spaces and the Access Rights shall not be disturbed so long as there is no Event of Default by the City under this Agreement;

(c) agrees that the City shall not, so long as there is no Event of Default by the City under this Agreement, be named as a defendant or other party in any action or proceeding brought by or for the benefit of such beneficiary or mortgagee under such Deed of Trust (except solely to the extent needed to complete a judicial foreclosure, but such foreclosure would still otherwise be subject to this Non-Disturbance provision and in no event would City have any liability); and

(d) agrees that, in the event the Holder acquires Developer's interest in the Garages and so long as there is no Event of Default by the City under this Agreement, the Holder and its successors and assigns with respect to the Garages shall recognize and accept City's right to use the City Spaces and the Access Rights under this Agreement;

provided, however, that the Non-Disturbance Agreement may, at the option of the Holder, provide for (x) City's subordination of this Agreement to the lien of such Deed of Trust, and (y) the right of the Holder to, upon acquisition of title to the Retail Center or all or a portion of the Garages by the Holder (or a nominee or successor thereof) pursuant to such Deed of Trust or any conveyance or transfer in lieu of the foreclosure thereof, to terminate this Agreement (and the obligations of the Holder under the Non-Disturbance Agreement) as to the Garage then owned by Holder (or nominee or successor) by written notice of termination to City and payment by the Holder (or nominee or successor) to City the amount of prepaid Use Payments described in Section 26 below applicable to the City Spaces subject to the termination. The City acknowledges that D^{Unofficial Document} intends to obtain private sector financing for construction of all of the improvements comprising the Garages and the City agrees to reasonably cooperate and provide documentation as reasonably required by Developer or its lender to obtain and maintain such financing consistent with the terms of this Agreement.

25. Estoppel Certificates. From time-to-time upon written request by a party to this Agreement (the "**Requesting Party**") the other party to this Agreement (the "**Responding Party**") shall, within 20 days after the date on which the Responding Party receives the Requesting Party's request, deliver to the Requesting Party a written certificate signed on behalf of the Responding Party and:

(a) stating that this Agreement is in full force and effect and that the Requesting Party is not then in default under this Agreement (or specifying any default by the Requesting Party that the Responding Party then asserts exists);

(b) certifying as to a true, correct and complete copy of this Agreement to be attached to such certificate;

(c) certifying the Agreement Commencement Date;

(d) certifying that the Responding Party does not then have any claims or demands against the Requesting Party under this Agreement other than for future

performance as required by the provisions of this Agreement (or specifying any such claims or demands that the Responding Party then asserts); and

(e) setting forth such other facts regarding this Agreement as the Requesting Party may have reasonably requested in writing in the Requesting Party's written request.

Each party hereto acknowledges and agrees that any third party to which such a certificate is specifically addressed may rely on the statements made in such certificate.

26. Termination of Agreement; Refund of Prepayment. If the City has prepaid Use Payments in the amount of the Maximum Use Payment Obligation, Developer shall have the right to terminate this Agreement prior to the expiration of the Use Term for any reason or no reason by (i) giving the City at least 60 days prior written notice of such termination stating the effective date of such termination; and (ii) paying to the City on or before such effective date the applicable prepayment refund amount set forth in *Exhibit "D"* attached hereto.

If the City has made a prepayment pursuant to the provisions of this Section 26, but that prepayment is less than the Maximum Use Payment Obligation, the Developer shall have the right to terminate this Agreement prior to the expiration of the Use Term for any reason or no reason by (i) giving the City at least 60 days prior written notice of such termination stating the effective date of such termination, Unofficial Document paying to the City on or before such effective date the amount that is determined by multiplying the applicable prepayment refund amount set forth in *Exhibit "D"* by a fraction, the numerator of which is the amount of the aggregate prepayment made by the City pursuant to Section 4 above and the denominator of which is the Maximum Use Payment Obligation.

The applicable prepayment refund amount for a given Payment Period Year shall apply to any termination of this Agreement at any time during such Payment Period Year, and such amount shall not be prorated in any way.

The provisions of this Section 26 shall survive any termination of this Agreement.

27. Recordation of Agreement. Contemporaneously with the execution of this Agreement, Developer and the City cause this Agreement to be recorded in the Office of the Maricopa County Recorder.

28. Condemnation and Casualty. In the event any governmental entity other than the City acquires the Garages by condemnation or right of eminent domain then, unless Developer elects, by notice to the City within 270 days, to relocate the City Spaces, this Agreement may thereafter be terminated by either party in whole or in part, effective 60 days after receipt of written notice to the other party unless, during such 60 day period, Developer notifies the City of its election to relocate the City Spaces. In such event, Developer shall, from the net proceeds of any condemnation award or payment in lieu of an award actually

received by Developer with respect to such acquisition and only from such net proceeds, reimburse the City the portion of prepaid Use Payments described in Section 26 above.

In the event any governmental entity other than the City acquires by condemnation or right of eminent domain any portion but not all of the Garages, which acquisition will materially interfere with the City's use of the City Spaces and the Access Rights for the purposes described in this Agreement, or in the event such governmental entity acquires such a portion of the Garages pursuant to a conveyance or transfer in lieu of such an action or proceeding then, unless Developer elects, by notice to the City within 270 days, to relocate the City Spaces, this Agreement may thereafter be terminated by either party in whole or in part, effective 60 days after receipt of written notice to the other party unless, during such 60 day period, Developer notifies City of its election to relocate the City Spaces. In the event of such termination, Developer shall, from the net proceeds of any condemnation award or payment in lieu of an award actually received by Developer, reimburse the City the portion of prepaid Use Payments described in Section 26 above. If, following such acquisition, neither City nor Developer terminates this Agreement pursuant to this Section 28, this Agreement shall remain in full force and effect, and Developer shall relocate the City Spaces in accordance with this Agreement.

Any condemnation or exercise of eminent domain by the City with regard to the City Spaces or any Garage or Access Facility shall not reduce the City's obligations under this Agreement or result in any refund to the City.

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If, at any time during the Use Term, the Garages or any part thereof shall be damaged or destroyed by fire or other occurrence of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, Developer shall immediately secure the Garage(s) and undertake temporary repairs and work necessary to protect the public and to protect the Garage(s) from further damage. Developer shall have a commercially reasonable time (at least 270 days) to decide whether or not to rebuild the damaged improvements. If Developer elects to rebuild the damaged improvements, Developer at its sole cost and expense, and whether or not the insurance proceeds, if any, shall be sufficient for the purpose, shall proceed with reasonable diligence to repair, alter, restore, replace, or rebuild the same as nearly as possible to its value, condition, and character immediately prior to such damage or destruction. In such event, all insurance proceeds on account of such damage or destruction under the policies of insurance required hereunder, less the cost, if any, incurred in connection with the adjustment of the loss and the collection thereof shall be paid to Developer and no Use Payment adjustment will be required.

If Developer elects not to rebuild the City Spaces, then the City may terminate this Agreement with 60 days written notice, unless Developer notifies the City during such 60 day period of its intend to rebuild, and Developer shall pay to the City the applicable prepayment refund pursuant to Section 26 above.

With regard to either condemnation or casualty if, within 18 months after an election to rebuild or relocate, Developer is unable to relocate all or a portion of the City Spaces while the

damaged spaces are being restored so that at least seventy-five percent (75%) of the total number of City Spaces required to be provided hereunder remains available for use by the public or if the total number of City Spaces is not restored within twenty-four (24) months after an election, then the Use Term shall be extended by the amount of time thereafter that the City Spaces were unavailable.

In the event of condemnation or casualty affecting some but not all of the City Spaces, then to the extent either party has a right to terminate this Agreement under this Section 28, such party may elect to terminate only as to the City Spaces affected, and the payment due under Section 26 shall be prorated in accordance therewith.

29. Agreement Runs with Land. The provisions of this Agreement shall run with and bind the successors and assigns of Developer. Upon any transfer of Developer's interest in the Garages, Developer's successors shall, without further action by either party hereto, be bound by this Agreement and shall receive the rights of Developer (except the right to receive Use Payments), and the Developer upon the effectiveness of such transfer or conveyance shall, without further action by either party hereto, be released and discharged from all obligations and liabilities of the Developer under this Agreement with respect to the transferred property that arise after the effectiveness of such transfer or conveyance. Subject to the provisions of Section 48, Developer shall provide the City with written notice of any transfer of its interest in the Site or any portion thereof. Developer's right to receive Use Payments shall not run with the land, shall be personal to Developer, and may be assigned by Developer by a written assignment. Developer ^{Unofficial Document} assign, in whole or part, its rights in this Agreement to one or more lenders or other entities, from time to time. Developer shall give notice to City of any assignment.

30. Captions. The section and paragraph headings that appear in this Agreement are only for the convenience of the reader, are not intended to be a part of the substance of this Agreement, and shall not be considered in interpreting this Agreement.

31. Entire Agreement; Modification. This Agreement is executed in three (3) duplicate originals each of which is deemed to be an original. This Agreement contains thirty-eight (38) pages of text and the below listed attachments, which are incorporated herein by this reference, and constitute the entire understanding and agreement of the parties.

Exhibit A - Legal Description of Site

Exhibit B – Conceptual Development Plan

Exhibit C –Insurance Requirements

Exhibit D – Prepayment Schedule

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City or Developer, and all amendments hereto must be in writing and signed by the appropriate authorities of the parties hereto.

32. Binding Effect. Subject to the provisions of Section 29 above, this Agreement shall bind and benefit the parties hereto and their respective permitted successors and assigns.

33. Controlling Law; Jurisdiction; Venue. This Agreement is made under and shall be governed by and interpreted by applying the laws of the State of Arizona. Any action to interpret, construe or enforce (or to avoid the enforcement of) any provision of this Agreement, or to declare the rights of the parties hereto under this Agreement, shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa or, if such court lacks subject matter jurisdiction, the United States District Court for the District of Arizona, and appropriate appellate courts. Each party hereto hereby consents to the jurisdiction of such courts for the purpose of granting such courts personal jurisdiction over such party. Each party hereby consents to venue of such courts and waives and relinquishes any claim that venue in such courts is not proper or convenient. In the event of such action, the prevailing party shall be entitled to reasonable attorney's fees and court costs and interest at the legal rate from the date of entry of judgment until the date paid, provided that amounts not paid when due under this Agreement shall bear interest at the legal rate from the date due until the date paid.

34. Waivers. Any failure of any ^{Unofficial Document} party to insist upon the prompt and punctual performance of any term or provision of this Agreement shall not constitute a waiver of such term or provision, and no waiver of any provision of this Agreement shall be effective unless in writing and signed by the waiving party. Any effective waiver of any term or provision of this Agreement on any specific occasion shall not be deemed a waiver of such term or provision in any other or later occasion.

35. Timing. If any action is required to be performed hereunder, or any notice is required to be given or received hereunder, on a day that is a Saturday, Sunday or legal holiday in the State of Arizona, the performance of such act shall be deemed to be required to be performed, given or received on the next succeeding day that is not a Saturday, Sunday or legal holiday in the State of Arizona. Any act to be performed or notice to be given or received on a specific day shall be deemed to be required to be performed, given or received by 5:00 p.m., Arizona time, on such day.

36. Time of Essence. Time is of the essence under this Agreement.

37. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

38. Provisions Severable. Each provision of this Agreement is independent of and severable from the other provisions of this Agreement, except as expressly provided in

Section 29, and no provision of this Agreement shall be affected or rendered invalid or unenforceable by the invalidity or unenforceability of any other provision of this Agreement.

39. Interpretation. This Agreement shall be interpreted in accordance with its fair meaning, and no provision of this Agreement shall be interpreted for or against any party hereto because that party or that party's counsel drafted such provision. Further, this Agreement shall be interpreted in a manner consistent with Ordinance S-33743 passed by the City Council on March 7, 2007.

40. Notices. All notices, demands, requests or other communications required or permitted under this Agreement shall be in writing and, until otherwise specified in a written notice given in the manner specified in this Section 40, be sent to the parties hereto at the following addresses:

City: Community and Economic Development Department
200 West Washington Street, 20th Floor
Phoenix, Arizona 85003-1611
Attention: Director
Fax: (602) 495-5097

and City Clerk
200 West Washington Street, 15th Floor
Phoenix, Arizona 85004 Unofficial Document

Developer: NPP CityNorth, LLC
c/o Thomas J. Klutznick Company
900 N. Michigan Avenue – Suite 1850
Chicago, Illinois 60611
Attn: Mr. John F. Klutznick

Copy to: Grady Gammage, Jr., Esq.
Thomas J. McDonald, Esq.
GAMMAGE & BURNHAM
Two North Central Avenue, 18th Floor
Phoenix, Arizona 85004

Each communication to which this Section 40 refers shall be given (i) by personal delivery; or (ii) by overnight delivery service guaranteeing next business day delivery. Each communication given under this Section 40 shall be deemed to have been given (x) if given under clause (i) of the preceding paragraph, on date of personal delivery; or (y) if given under clause (ii) of the preceding paragraph, one (1) business day following delivery of such communication to the delivery service.

41. Relationship of Parties. The relationship of the parties hereto created by this Agreement shall be solely that of Developer and the City, and nothing in this Agreement is

intended or shall be construed to create any other relationship, including without limitation any relationship of partners or joint venturers.

42. No Liability of City Officials or Employees. No elected or appointed official, representative, employee or agent of the City shall be personally liable to Developer in the event of any default or Event of Default by the City under this Agreement, or for any amount that may be due and owing by the City to Developer under this Agreement, or with respect to any obligation of the City under this Agreement.

43. No Third Party Beneficiaries. Except as expressly provided in Sections 24, 25 and 29, no person or entity shall be a third party beneficiary under this Agreement, except the Developer Indemnified Parties with respect to the indemnification obligations of Developer expressly set forth in this Agreement.

44. Statutory Conflict of Interest Provision. This Agreement is subject to and therefore may be terminated by the City in accordance with the provisions of Arizona Revised Statutes, §38-511.

45. Warranty Against Payment of Consideration for Agreement. Developer warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers, realtors and attorneys.

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46. Unavoidable Delay: Extension of Time of Performance. In addition to specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes, lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability (when either party is faultless) of any contractor, subcontractor or supplier; or acts of the other party. An extension of time for any such cause shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of the cause. If, however, notice by the party claiming such extension is sent to the other parties more than thirty (30) calendar days after the commencement of the cause, the period shall commence to run only thirty (30) calendar days prior to the giving of such notice. Times of performance under this Agreement may also be extended in writing by the parties hereto.

47. City Council Action Requirement. The City Manager is authorized to enter into and perform all obligations of the City under this Agreement without further City Council action pursuant to Ordinance S-33743 passed by City Council on March 7, 2007. The City and Developer acknowledge that any additional act, requirement, payment or other agreed-upon action to be done or performed by the City under any amendment to this Agreement or subsequent document which was not authorized by the referenced Ordinance and which would, under any federal, state or city constitution, statute, charter provision, ordinance or regulation,

require further or additional formal action, approval or concurrence by the City Council, will not be required to be done or performed by the City unless and until said formal City Council action has been taken and is no longer subject to referendum action.

48. Assignments. Notwithstanding the provisions of Section 29 above and with the exception of assignments related to Project construction financing or to an entity controlling, controlled by or under common control with Developer, prior to satisfaction of the Completion Requirement, Developer shall obtain written approval from the City, which shall not be unreasonably withheld, conditioned or delayed, prior to any transfer of Developer's interest in this Agreement.

49. Challenges to Agreement/Change in Law.

a) Both City and Developer believe this Agreement complies with all applicable laws and is not subject to challenge. Both City and Developer believe any change in law should not apply to this Agreement because Developer has relied on the approvals previously given by City Council, as reflected in Section 47 hereof, by commencing construction as stated in Section 3 hereof. City and Developer also believe for the same reasons that no legal basis exists for another government entity to impose a monetary charge or reduce any payment due to the City as a result of this Agreement or performance hereunder. If a Claim (as defined in Section 49(b)(1)) is made regarding or related to this Agreement, then the City shall contest such Claim at the City's cost. The City shall only be responsible for costs and fees incurred by City in contesting a Claim, and ~~Unofficial Document~~ or shall pay costs and fees incurred by Developer if Developer elects to also contest such Claim.

b) (1) Subject to the notice and other requirements in this Section 49, and except as provided in Section 49(b)(2), subject to first challenging the Claim (as defined below) and receiving an adverse finding from a court of competent jurisdiction, the City's obligation to make any payment or perform any obligation hereunder shall be relieved if and to the extent that, at any time during the Term, such payment or performance (i) shall cease to be an obligation that can be legally performed by the City whether due to a change in law or interpretation by a court of competent jurisdiction, or (ii) will result in the imposition against the City of any monetary charge by a government entity or in the reduction or loss of any federal or state funding, state shared revenues or any other funds, payments or credits to which the City would otherwise be entitled from any government source (any of the foregoing in subsections (i) or (ii) a "**Claim**"). To the extent the City is relieved of a payment or other obligation, Developer shall also be relieved of any corresponding obligation (for example if City is not obligated to make Use Payments, Developer shall not be obligated to make City Spaces available for use pursuant to this Agreement; or if the City is not obligated to make fifty percent (50%) of the Use Payment then Developer can reduce the City Spaces or Use Term by fifty percent (50%), or reduce each of the Use Term and the City Spaces by twenty-five percent (25%)).

(2) Provided City has given Developer the notices requested by Section 49(b)(3), the City, at its option, after receipt of notice of a Claim, but prior to resolution of such Claim by a court of competent jurisdiction, may elect to hold in trust for the benefit of

Developer and City the portion of payment(s) due the Developer subject to potential relief under Section 49(b)(1) as a result of such Claim while such Claim is being resolved, rather than make such payment(s) to Developer. Such funds shall be identified as held in trust and shall be deposited in one or more interest bearing account(s) with financial institutions selected by City. Upon dismissal of a Claim, or to the extent there is a determination by a court that City is not entitled to relief of a payment under this Section 49, then the payment not subject to relief held in trust as a result of such Claim, and interest attributable thereto, shall be paid to Developer. If and to the extent a Claim is upheld by a court of competent jurisdiction and final appeal such that a payment to Developer may be relieved under this Section 49, then the payment subject to relief held in trust as a result of such Claim and interest attributable thereto shall be paid into the City's general fund.

(3) Prior to relieving payment and/or performance, and prior to electing to hold a payment in trust, the City must have given at least sixty (60) days prior notice to Developer of its intent to relieve (or hold in trust) payment or performance, the payment or performance to be relieved (or held in trust), and the Claim providing the basis for such relief or potential relief. The City shall also, in all events, give Developer notice of any Claim or circumstance affecting any City obligation or Developer right under this Section 49 within ten (10) days of receipt of notice by City of such Claim or circumstance and copies of any pleadings or other communications received thereafter regarding such Claim within five (5) days of receipt.

c) Developer shall have the right, but not the obligation, to contest any Claim including, without limitation by appearing in any administrative action, trial, or appeal concerning such Claim, and to contest the relief of, and/or the computation of any relief of, payment and/or performance by City pursuant to this Section 49 at Developer's own cost. If Developer contests the Claim and proposed relief by the City or computation of such relief, then except as provided in Section 49(b)(2), the City shall not have the right to relieve payment or performance, and the City shall not have the right to move the funds held in trust under Section 49(b)(2) into the general fund, unless and until all actions and appeals have been adversely decided against Developer or dismissed. The Developer's right to contest shall include without limitation the right to contest: (i) the validity of any new law or interpretation allegedly causing this Agreement or any portion hereof to cease being an obligation that can be legally performed by City; (ii) the right of any other government entity to impose any monetary charge, reduction or loss on to the City as a result of this Agreement; (iii) whether an event has occurred or will occur giving the City the right to relieve payment or performance; and/or (iv) the computation of any proposed relief.

d) In no event shall the City be entitled to relieve payment or performance beyond the harm to be suffered by the City (as an example, a fine or penalty of one million dollars shall only permit City to relieve payment by one million dollars). The rights of City under this Section 49 to relieve payment or performance shall only apply to payments and performance not yet due. In no event will Developer have any obligation as a result of a Claim to refund any payment previously made unless and except to the extent City timely gives Developer all notices required under this Section 49 regarding such Claim prior to making the

payment (including, without limitation, the notice required sixty (60) days prior to the due date of such payment and the notice required within ten (10) days of receipt of the Claim), the City contests the Claim, the City makes the full payment due, and a court of competent jurisdiction thereafter holds that all or a portion of the payment under this Agreement shall be refunded by Developer pursuant to this Section 49 because the City is entitled to a reduction under this Section 49, and all appeals and actions filed by Developer have been dismissed or denied.

50. Alternative Dispute Resolution. In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree that there shall be a 45 day moratorium on litigation during which time the parties agree to attempt to settle the dispute by nonbinding mediation before the commencement of litigation. The mediation shall be held under the Commercial Mediation Rules of the American Arbitration Association. The mediator selected shall have at least five (5) years experience in mediating or arbitrating disputes relating to commercial property development. The costs of any such mediation shall initially be borne by the Developer, but ultimately be paid by the non-prevailing party in any litigation arising from the same dispute. The results of the mediation shall be nonbinding on the parties and any party shall be free to initiate litigation upon the conclusion of mediation.

51. Rights Subordinate to ASLD Lease. The City hereby acknowledges and agrees that the interest of Developer in the Site is a leasehold interest only granted pursuant to the ASLD Lease, and that all of the rights granted to the City pursuant to the terms of this Agreement are subject and subordinate to the terms and conditions of the ASLD Lease. In connection therewith, the City hereby acknowledges that in the event the ASLD Lease expires or is terminated for any reason, the rights of the City shall, if and to the extent elected by the Arizona State Land Department, automatically terminate and become null and void and of no further force or effect.

52. Compliance with A.R.S. Section 9-500.11. Prior to execution of this Agreement, City has satisfied all obligations under A.R.S. §9-500.11 in order to be able to enter this Agreement and perform hereunder, including without limitation under subsections C, D, F, H, I, J and K thereof. The City shall present a status report of revenue and expenses associated with this Agreement every two (2) years for the duration of this Agreement in a public meeting as required by A.R.S. §9-500.11 G.



ATTEST:

Mario P. [Signature]
City Clerk

CITY OF PHOENIX, a municipal corporation
FRANK FAIRBANKS, City Manager

By: *[Signature]*
Donald L. Maxwell, Director
Community and Economic Development Department

CITY CLERK DEPT.
2007 JUL 13 AM 8:49

APPROVED AS TO FORM:

William Beck
 ACTING City Attorney *gab*

STATE OF ARIZONA)
) ss.
 County of Maricopa)

On this, the 11th day of July, 2007, before me, the undersigned Notary Public, personally appeared Don Maxwell, who acknowledged himself to be the Community and Economic Development Department Director of the City of Phoenix, a municipal corporation of the State of Arizona, and that as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

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

Bette Herrera
 Notary Public

My Commission Expires:

Unofficial Document



EXPIRES JUNE 12, 2008

NPP CityNorth, LLC, a Delaware
limited liability company

By 

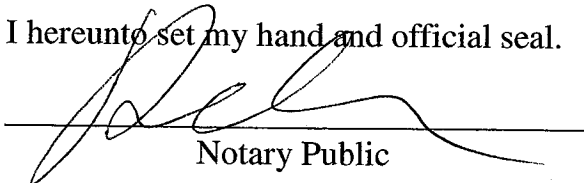
Name STEVEN R. RUDOLPH

Title Authorized Representative

Illinois
STATE OF ~~ARIZONA~~)
COOK) ss.
County of ~~Maricopa~~)

On this, the 5TH day of July, 2007, before me, the undersigned Notary Public, personally appeared STEVEN R. RUDOLPH, who acknowledged himself to be the Authorized Rep. of NPP CityNorth, LLC, a Delaware limited liability company, and that as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

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


Notary Public

Unofficial Document

My Commission Expires:

1-19-2009



EXHIBIT A
LEGAL DESCRIPTION

PARCEL NO. 1:

TRACT 3, BLOCK 5, OF STATE PLAT NO. 24, DESERT RIDGE AMENDED, AS RECORDED IN BOOK 376 OF MAPS, PAGE 26, RECORDS OF MARICOPA COUNTY, ARIZONA, AND LOCATED IN SECTION 20, TOWNSHIP 4 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN;

LESS THAT PORTION OF PARCEL 1 DESCRIBED AS FOLLOWS:

A PORTION OF TRACT 3, BLOCK 5, OF STATE PLAT NO. 24, DESERT RIDGE AMENDED, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, IN BOOK 376 OF MAPS, PAGE 26 AND LOCATED IN A PORTION OF SECTION 20, TOWNSHIP 4 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE WESTERLY LINE OF SAID TRACT 3, BLOCK 5 AND THE NORTHERLY RIGHT-OF-WAY LINE OF THE PIMA FREEWAY;

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THENCE NORTH 00 DEGREES 01 MINUTES 08 SECONDS EAST ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 20, A DISTANCE OF 853.20 FEET TO THE WEST QUARTER CORNER OF SAID SECTION 20;

THENCE NORTH 00 DEGREES 01 MINUTES 35 SECONDS EAST (NORTH 00 DEGREES 01 MINUTES 28 SECONDS EAST, RECORD) ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 20, A DISTANCE OF 395.94 FEET TO THE POINT OF CURVATURE FOR A TANGENT CURVE CONCAVE TO THE EAST HAVING A RADIUS OF 4975.00 FEET;

THENCE DEPARTING SAID WEST LINE ALONG THE WESTERLY LINE OF SAID TRACT 3, ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 10 DEGREES 08 MINUTES 39 SECONDS, AN ARC LENGTH OF 880.82 FEET TO THE NORTHWESTERLY CORNER OF SAID TRACT 3;

THENCE SOUTH 72 DEGREES 48 MINUTES 18 SECONDS EAST ALONG THE NORTHERLY LINE OF SAID TRACT 3, A DISTANCE OF 974.82 FEET TO THE POINT OF CURVATURE FOR A TANGENT CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 10,000 FEET;

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THENCE SOUTHEASTERLY ALONG THE NORTHERLY LINE OF SAID TRACT 3, ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 03 DEGREES 04 MINUTES 16 SECONDS, AN ARC LENGTH OF 536.01 FEET TO THE POINT OF TANGENCY;

THENCE SOUTH 69 DEGREES 44 MINUTES 02 SECONDS EAST ALONG THE NORTHERLY LINE OF SAID TRACT 3, A DISTANCE OF 1092.77 FEET;

THENCE DEPARTING SAID NORTHERLY LINE, SOUTH 20 DEGREES 15 MINUTES 58 SECONDS WEST, A DISTANCE OF 70.00 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF DEER VALLEY ROAD AS SHOWN ON SAID STATE PLAT NO. 24 DESERT RIDGE AMENDED;

THENCE SOUTH 20 DEGREES 15 MINUTES 58 SECONDS WEST, A DISTANCE OF 364.94 FEET;

THENCE SOUTH 04 DEGREES 09 MINUTES 03 SECONDS WEST, A DISTANCE OF 371.62 FEET;

THENCE SOUTH 15 DEGREES 00 MINUTES 13 SECONDS WEST, A DISTANCE OF 410.29 FEET;

THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS WEST, A DISTANCE OF 505.07 FEET;

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THENCE SOUTH 24 DEGREES 29 MINUTES 18 SECONDS WEST, A DISTANCE OF 230.70 FEET, TO A POINT ON A NON-TANGENT CURVE, CONCAVE SOUTHERLY, SAID POINT HAVING A RADIAL BEARING OF NORTH 18 DEGREES 51 MINUTES 14 SECONDS EAST, SAID POINT IS ALSO ON THE NORTHERLY RIGHT-OF-WAY OF THE PIMA FREEWAY RIGHT-OF-WAY AS SHOWN ON SAID STATE PLAT NO. 24 DESERT RIDGE AMENDED;

THENCE WESTERLY ALONG SAID CURVE AND SAID NORTHERLY RIGHT-OF-WAY LINE, HAVING A RADIUS OF 4696.38 FEET, THROUGH A CENTRAL ANGLE OF 18 DEGREES 40 MINUTES 42 SECONDS FOR A ARC DISTANCE OF 1531.01 FEET, TO A POINT OF TANGENCY;

THENCE CONTINUING ALONG SAID NORTHERLY RIGHT-OF-WAY NORTH 89 DEGREES 49 MINUTES 28 SECONDS WEST, 510.52 FEET;

THENCE NORTH 44 DEGREES 54 MINUTES 13 SECOND WEST, A DISTANCE OF 120.38 FEET, TO A POINT THAT IS PERPENDICULAR 65.00 FEET FROM THE WEST LINE OF SAID TRACT 3, BLOCK 5;

THENCE NORTH 00 DEGREES 01 MINUTES 08 SECONDS EAST ALONG A LINE
PARALLEL TO AND 65.00 FEET DISTANCE FROM SAID WEST LINE, A DISTANCE OF
264.65 FEET;

THENCE NORTH 89 DEGREES 58 MINUTES 52 SECONDS WEST, A DISTANCE OF
65.00 FEET TO THE POINT OF BEGINNING;

PARCEL NO. 2:

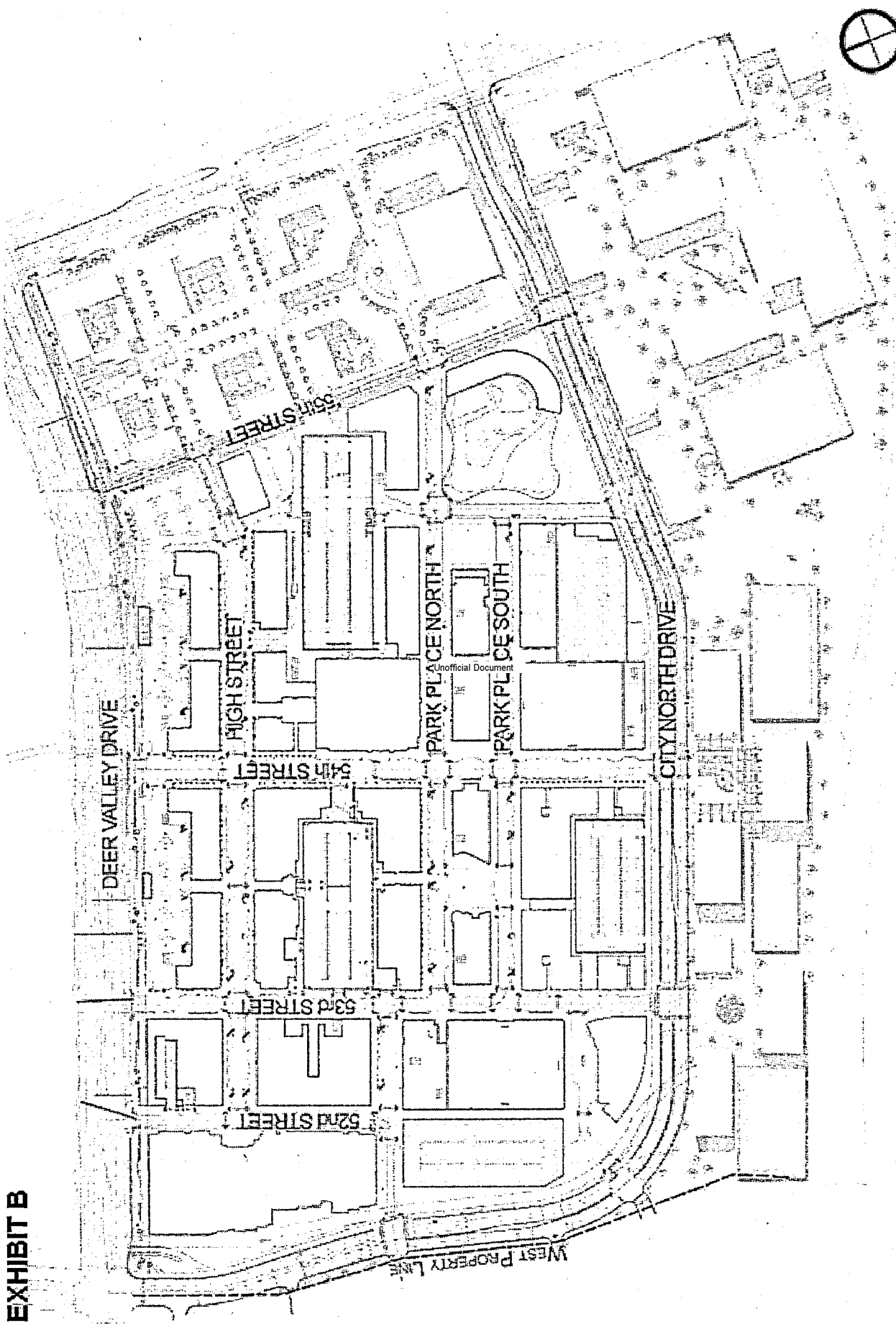
TRACT 7, BLOCK 5 OF STATE PLAT NO. 24, DESERT RIDGE AMENDED, AS
RECORDED IN BOOK 376 OF MAPS ON PAGE 26, RECORDS OF MARICOPA COUNTY,
ARIZONA AND LOCATED IN SECTION 29, TOWNSHIP 4 NORTH, RANGE 4 EAST OF
THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA.

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Exhibit B
CONCEPTUAL PLAN

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EXHIBIT B



Conceptual Development Plan is subject to change.

CONCEPTUAL DEVELOPMENT PLAN

June 14, 2007

Exhibit C INSURANCE REQUIREMENTS

Developer and its subcontractors shall procure and maintain until all of their obligations under this Agreement are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Developer, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The City in no way warrants that the minimum limits contained herein are sufficient to protect the Developer from liabilities that might arise out of the performance of the work under this Agreement by the Developer, his agents, representatives, employees or subcontractors and Developer is free to purchase additional insurance as may be determined necessary. In consideration of the execution of this Agreement, the Developer agrees to waive all rights of subrogation against the City, its officers, officials, agents and employees for losses arising from the work performed by the Developer under this Agreement.

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Developer shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.

1. **Commercial General Liability – ^{Unofficial Document} Occurrence Form**

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

• General Aggregate	\$2,000,000
• Products – Completed Operations Aggregate	\$1,000,000
• Personal and Advertising Injury	\$1,000,000
• Each Occurrence	\$1,000,000

The policy shall be endorsed to include the following additional insured language: "The City of Phoenix shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Developer".

2. **Automobile Liability**

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of this Agreement.

Combined Single Limit (CSL)	\$1,000,000
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The policy shall be endorsed to include the following additional insured language: "The City of Phoenix shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Developer, including automobiles owned, leased, hired or borrowed by the Developer".

3. Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

a. Policy shall contain a waiver of subrogation against the City of Phoenix.

b. This requirement shall not apply when a Developer or subcontractor is exempt under A.R.S. 23-901, AND when such Developer or subcontractor executes the appropriate sole proprietor waiver form.

B. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:

1. On insurance policies where the City of Phoenix is named as an additional insured, the City of Phoenix shall be an additional insured to the full limits of liability purchased by the Developer even if those limits of liability are in excess of those required by this Agreement.

2. The Developer's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

C. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the City, except when cancellation is for non-payment of premium, then ten (10) days. ^{Unofficial Document} Prior notice may be given. Such notice shall be sent directly to City of Phoenix Community and Economic Development Department, 200 West Washington Street, 20th Floor, Phoenix, Arizona 85003-1611.

D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an "A.M. Best" rating of not less than B+ VI. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect the Developer from potential insurer insolvency.

E. **VERIFICATION OF COVERAGE:** Developer shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of Agreement.

All certificates required by this Agreement shall be sent directly to City of Phoenix Community and Economic Development Department, 200 West Washington Street, 20th Floor, Phoenix, Arizona 85003-1611. The City contract number and project description shall be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE**

CITY'S RISK MANAGEMENT DIVISION.

F. SUBCONTRACTORS: Developers' certificate(s) shall include all subcontractors as additional insureds under its policies or Developer shall furnish to the City separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

G. APPROVAL: Any modification or variation from the insurance requirements in this Agreement shall be made by the Law Department, whose decision shall be final. Such action will not require a formal Agreement amendment, but may be made by administrative action.

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Exhibit D
PREPAYMENT REFUND SCHEDULE

Use Term Year	Prepayment Refund Amount
1	97,400,000
2	95,235,556
3	93,071,111
4	90,906,667
5	88,742,222
6	86,577,778
7	84,413,333
8	82,248,889
9	80,084,444
10	77,920,000
11	75,755,556
12	73,591,111
13	71,426,667
14	69,262,222
15	67,097,778
16	64,933,333
17	62,768,889
18	60,604,444
19	58,440,000
20	56,275,556
21	54,111,111
22	51,946,667
23	49,782,222
24	47,617,778
25	45,453,333

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26	43,288,889
27	41,124,444
28	38,960,000
29	36,795,556
30	34,631,111
31	32,466,667
32	30,302,222
33	28,137,778
34	25,973,333
35	23,808,889
36	21,644,444
37	19,480,000
38	17,315,556
39	15,151,111
40	12,986,667
41	10,822,222
42	8,657,778
43	6,493,333
44	4,328,889
45	2,164,444

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