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MASTER DEVELOPMENT & DISPOSITION AGREEMENT (DANELLE PLAZA)

THIS MASTER DEVELOPMENT & DISPOSITION AGREEMENT ("**Agreement**") is entered into by and between the City of Tempe, an Arizona municipal corporation, ("**City**") Guina Affiliated Developers, LLC, an Arizona limited liability company, ("**Guina**") Desert Viking—Danelle Plaza, LLC, an Arizona limited liability company, ("**Viking**") and their respective successors and assigns. City, Guina, and Viking may be referred to herein collectively as the "**Parties**" and each individually as a "**Party**." Guina and Viking may be referred to herein individually as a "**Developer**" collectively as "**Developers**."

RECITALS

A. The Parties seek to cause the redevelopment of a property located at the southwest corner of Mill Avenue and Southern Avenue in Tempe, Arizona and historically referred to as "Danelle Plaza," which originally was legally described on Exhibit A-1 and was originally as depicted on Exhibit A-2, attached hereto and incorporated herein by this reference ("**Danelle Plaza**"). Danelle Plaza was first developed in the early 1960's and was intended to be a destination shopping center. An original plat of Danelle Plaza was recorded on December 21, 1962, at Instrument No. 1962-0153784 and Book 101, Page 15 of the Records of the Maricopa County Recorder (the "**1962 Plaza Plat**"). The 1962 Plaza Plat established fifty-two (52) separate lots (each a "**Lot**" and collectively, the "**Lots**") and "common area" designated as "Tract A" on the Original Plat (the "**Common Area**").

B. The 1962 Plaza Plat was accompanied by an "Agreement" dated January 30, 1963, and recorded on January 30, 1963, Instrument No. 1963-0088425 and Docket 4446 Page 361 of the Records of the Maricopa County Recorder (the "**Original Plaza Declaration**"). The Original Plaza Declaration established the "easements, covenants, restrictions, liens and charges" to be imposed on the property comprising Danelle Plaza (the "**Restrictions**"). Because the Original Plaza Declaration purported to impose the Restrictions on Danelle Plaza, the Original Plaza Declaration was then deemed a "Horizontal Property Regime," a predecessor to the condominium shared property regime, eventually codified in the Arizona Condominium Act, Arizona Revised Statutes §33-1201, et seq., as amended from time to time (the "**Condominium Act**"). The Condominium Act now governs the creation and management of commercial condominiums in Arizona. The Restrictions originally were established to provide for the management of the common amenities to be included in Danelle Plaza. Although the Original Plaza Declaration does not use the word "condominium," Section 5(b) and Section 5(c) of the Original Plaza Declaration contemplates the joint management, control, and operation of the Common Area by the owners of the fifty-two (52) Lots originally comprising Danelle Plaza as depicted on Exhibit A-2.

C. In 1977, the Original Plaza Declaration was amended by an "Amended Agreement" dated January 12, 1977, and recorded on January 14, 1977, at Instrument No. 1977-0011399 and

Docket 12035, Page 353 of the Records of the Maricopa County Recorder (the "**Amended Plaza Declaration**"). The Amended Plaza Declaration contains additional provisions describing the common maintenance of the Common Area by the owners of the Lots as well as the shared rights granted to each owner for the use of the Common Area.

D. Under the Amended Plaza Declaration, Danelle Plaza's owners are members in the Danelle Plaza condominium association (the "**Danelle Plaza Association**"). As members of the Danelle Plaza Association, the property owners as "members" elect representatives to the Danelle Plaza Association's Board of Directors (the "**Association Board**"). Currently, the Association Board has three members. The three members currently are owner-representatives of the City, Guina, and Viking.

E. Over several decades, Lots were sold and businesses located to Danelle Plaza. During the redevelopment of the City's original City Hall, Danelle Plaza even became the temporary home of the City's city government. Unfortunately, Danelle Plaza never achieved its intended potential, many of the Lots never were developed, and Danelle Plaza has been in a state of significant disrepair for decades.

F. Notwithstanding its general condition, a few of the businesses have survived at Danelle Plaza, including the community's long-appreciated "Yucca Taproom." The Yucca Taproom has supplied the City with a hospitality and music venue that has supported the development of local music talent into nationally and even internationally acclaimed artists. The Yucca Taproom continues to be viewed as an important cultural amenity for the City and, accordingly, the Parties seek to retain its presence in any redevelopment of Danelle Plaza. The Parties seek to use the Yucca Taproom's presence to create a music and arts-driven project that also serves other community needs, as more fully described below.

G. Because of its condition, Danelle Plaza often has been the source of significant public safety concerns and has required significant expenditure of City resources to address calls for service, illegal drug sales and abuse, challenges of homelessness, and similar social issues. The City has sought to cause Danelle Plaza to be redeveloped as, among other things, a means to address such challenges. To facilitate such redevelopment, the City itself began acquiring Danelle Plaza Lots in the hope of assembling sufficient property to allow third parties successfully to complete the assemblage of all the Danelle Plaza property and undertake a redevelopment. In that effort, the City acquired Lots 21 through 44. However, to date, the City has not been able consensually to assemble or cause the assemblage of all the property comprising Danelle Plaza.

H. In 2013, the City sought and obtained with the other owners of Danelle Plaza Lots a replat of Danelle Plaza titled "Danelle Plaza II," which was recorded on December 17, 2013, at Instrument No. 2013-1065458 and Book 1170, Page 15 of Maps in the Records of the Maricopa County Recorder (the "**2013 Plaza Plat**"). The 2013 Plaza Plat is attached as Exhibit A-3. Through the 2013 Plaza Plat, the City's holdings were rearranged and consolidated into a single "Lot," with Lots 35 through 44 and portions of Tract A (as depicted on the 1962 Plaza Plat shown on Exhibit A-2) designated as a new (and additional) "Lot 1" (the "**City Property**"). The remainder of Tract A and the City's Lots 21 through 34 were re-designated in the 2013 Plaza Plat

as a new Danelle Plaza II Tract A and designated as Common Area. The City Property comprises approximately 3.146 acres of land.

I. Guina has acquired Lots 10 through 14, and Lots 49 through 52 (the "**Guina Property**") as depicted on Exhibits A-2 and A-3. The Guina Property comprises approximately 1.269 acres of land. Viking owns Lots 1 to 8, 9, and 18 through 20, as well as the middle third of Lot 16 (the "**Viking Property**"). The Viking Property comprises approximately 1.352 acres of land. The City Property, the Guina Property, and the Viking Property may be referred to herein as the "**Party-Held Property**."

J. Third parties (collectively, the "**Non-Participating Owners**" and individually, a "**Non-Participating Owner**") currently own only six and two-thirds (6 and 2/3) Lots of the original fifty-two (52) Lots, which are Lots 15, 17, Lots 45 through 48, and the exterior thirds of Lot 16 (the "**Non-Participating Lots**"). The Non-Participating Lots comprise approximately 0.986 acres of land. The City Property, the Guina Property, and the Viking Property, collectively, comprise approximately 5.721 acres of land and, with the Non-Participating Lots comprise approximately 6.754 acres of land (collectively the "**Fee-Owned Property**").

K. In addition to the Party-Held Property and the Non-Participating Lots, Danelle Plaza has the Common Area, noted as "common area" and as "Tract A" on the 1962 Plaza Plat and now, as reconfigured on the 2013 Plaza Plat. Under the Original Plaza Declaration, the Amended Plaza Declaration, and the Condominium Act, the Common Area currently is held "in common" as "undivided interests" by the owners of the Party-Held Property and the Non-Participating Lots in proportion to the respective owners' interest in the real property comprising Danelle Plaza. The Common Area comprises approximately 7.701 acres of land. The Common Area and the Fee-Owned Property comprise approximately 14.455 acres of land, and collectively may be referred to in this Agreement as the "**Site.**"

L. On August 24, 2022, the City issued a Request for Qualifications (RFQ 23-049) inviting qualified firms to submit their qualifications to serve as the development team for the mixed-use redevelopment of Danelle Plaza to include the City Property. Developers submitted concurrent proposals, and on September 22, 2022, the Tempe City Council awarded the RFQ to both Developers and authorized staff to negotiate a development agreement with Developers.

M. The City and Developers seek to redevelop a substantial portion of Danelle Plaza into a project (the "**Project**") comprising residential buildings with significant residential units, and retail, performing and visual arts venues, restaurant spaces, and other hospitality functions.

N. On September 7, 2023, the Tempe City Council passed a Resolution (R2023.134) (the "**Resolution**") authorizing the City to enter into a development agreement with Developers for redevelopment of Danelle Plaza. The Resolution gave specific authority to the City Manager to enter into a development agreement providing for the Parties to (1) jointly pursue options to address the Amended Plaza Declaration; (2) contract with an appraiser to determine the fair market value of the City Property and negotiate a purchase price to be paid by means of a land swap, cash payment, and/or other consideration; (3) negotiate public benefits to be provided by Developers as part of the Project, including a percentage of affordable housing units to be secured by a restrictive

covenant and significant public art throughout the Property; (4) evaluate the possibility of providing Developers with sales tax rebates and/or other consideration in an amount supported by an economic impact study and public benefit analysis; and (5) consider modifications to the City's Zoning and Development Code to accommodate the Project.

O. Due to the complexities associated with the site, the Parties intend for development to be conducted in phases. This Agreement establishes that the Parties must first complete the assemblage of Danelle Plaza property that is to be included within the Project. Accordingly, the Parties acknowledge that, before any formal efforts can or will be undertaken to determine the proposed size, density, height, and other aspects of the Project and otherwise establish the development plan for the Project, the Parties acknowledge they will, following assemblage of the Property, undertake the Planning Phase (defined below), with the desired community participation.

P. The City acknowledges that the Developers already have expended significant resources responding to the City's Requests for Proposals and Qualifications, working collaboratively with the City in the initial assemblages, establishing the initial vision of the Project, and the creation of this Agreement and its associated documents. Moreover, the City acknowledges that Developers will be required to undertake further significant efforts and expenditure of resources to complete the assemblage, in which the City already has indicated it likely will not participate financially. As a result, the City and the Developers contemplate that the Developers, with City support, will determine and complete appropriate assemblage of Danelle Plaza. Notwithstanding that anticipated effort and expenditure of resources, the Parties acknowledge that sufficient assemblage of Danelle Plaza already has occurred to allow the Parties to proceed in creating the Project if no additional Non-Participating Lots are included within the Project.

Q. In connection with the redevelopment of Danelle Plaza, the Parties acknowledge that a replat of the property comprising Danelle Plaza will be required (a "**New Plat**") to establish the new parcels (each a "**Parcel**" and collectively the "**Parcels**") that will be included within the Project's redevelopment area (the "**Project Property**"). In connection with creating the New Plat, the Parties have determined that the Project may proceed without incorporating the Non-Participating Lots, which may remain in place as currently configured, the depiction of which is attached as Exhibit B. However, Developers will, as more fully described in this Agreement, seek to provide each Non-Participating Owner an opportunity to have such Non-Participating Owner's portion of the Non-Participating Lots incorporated within the Project on terms acceptable to the Developers and such Non-Participating Owners.

R. In creating the New Plat, as more fully described in this Agreement, the Developers will, upon final determination of the status of each of the Non-Participating Lots, incorporate such Non-Participating Lots within, or exclude such Non-Participating Lots from, the new Parcels. Further, most easily to accomplish the redevelopment of Danelle Plaza, including undertaking and completing the New Plat, the City and Developers will take all reasonable steps, as more fully described in this Agreement, to terminate the Original Plaza Declaration and the Amended Plaza Declaration as contemplated and allowed under the Condominium Act, thereby terminating the Amended Plaza Declaration for Danelle Plaza (the "**Condo Reorganization**"). Thereafter, the New Plat will establish the boundaries of the new Parcels and reestablish the boundaries of the

Non-Participating Lots that any Non-Participating Owner has determined to retain, if any. As more fully described in this Agreement, pursuant to the Condo Reorganization, the Non-Participating Lots will be granted their proportionate share of the Common Area and easements for ingress and egress to the Non-Participating Lots, among other rights and obligations as may be established under the Condo Reorganization.

S. This Agreement is undertaken in anticipation of the City and Developers creating a development plan (the "**Development Plan**") and completing the New Plat during the Planning Phase and with significant community involvement to allow Developers to apply for and cause the Project Property to be rezoned (the "**Rezoning**"). The Development Plan, the New Plat, and the Rezoning, as each may be completed under the City's Zoning Ordinance and General Plan, are referred to in this Agreement as the "**Regulatory Approvals**."

T. As part of the Development Plan, the City and Developers shall agree on various public benefits to be included within the Project. These public amenities may include environmental remediation; multimodal pathway options; bike parking and storage; infrastructure development; a publicly available, but privately maintained and managed park and associated outdoor amphitheater and event space to support the Project and the community at large (the "**Park**"); public parking to support the Park and park-and-ride options; preservation of a live music venue within the Project; publicly available EV charging spaces; and other public amenities as may be agreed upon by the Parties. In addition, in honor of the currently existing murals located, unfortunately, on dilapidated buildings, the City and Developers seek to incorporate art walls to make available "canvases" for the relocation of those current murals that may be relocated, the reestablishment or recreation of existing visual art (as possible), and the creation of new visual art within the Project (the "**Art Wall Canvases**"). Developers shall also reserve an agreed-upon number of residential units within the Project for affordable housing (the "**Supported Housing Units**") as the City and Developers may establish in the Planning Phase. The public amenities constructed or designated by Developers for the City, including the Art Wall Canvases, and the Supported Housing Units, are collectively be referred to as the "**Community Benefits.**" The Parties acknowledge that final approval of the Community Benefits may require approval by the City's City Council.

U. The City acknowledges that provision of the Community Benefits in the Project will not be possible without support from the City. The City agrees that it will evaluate various types of support for the Developers as consideration for the Community Benefits. Such support may include (1) credit against the purchase price of the City Property; (2) reimbursement or waiver of development fees associated with the Project; (3) rebates of all or a portion of the City's share of construction sales taxes and excise sales taxes generated by the Project; and/or (4) any other source agreed upon by the City and the Developers (collectively, the "**Development Support**"). The Parties acknowledge that the final approval of the Development Support shall require support from an economic impact study ("**EIS**"), a public benefit analysis, approval by the City Council, and, in the case of any tax rebates, appropriate notice as required by the Arizona Revised Statutes ("**A.R.S.**")

V. This Agreement is a "development agreement" within the meaning of A.R.S. §9-500.05 and that, in accordance therewith, this Agreement shall be recorded in the Office of the

Maricopa County Recorder establishing the interest of Developers in the Project Property to give notice to all persons of its existence and of the Parties' intent that the burdens and benefits contained herein be binding on the Project Property as currently configured and as it may be added to and reconfigured under the New Plat, and inure to the benefit of the Parties and all their successors in interest and assigns.

In consideration of the above premises, the promises set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, Parties agree as follows:

AGREEMENT

1. Recitals. The Recitals set forth above are acknowledged by the Parties to be true and correct in all material respects and are incorporated herein by this reference.

2. Term & Termination. The term of this Agreement is that period of time (1) commencing on the date this Agreement is approved, has been signed by all Parties, and all appeal and referendum periods with respect to this Agreement, if any, have expired (the "**Effective Date**") and (2) terminating on the earlier of (a) the date on which the Parties have performed all of their respective obligations under this Agreement, (b) the date this Agreement has been terminated earlier pursuant to this Agreement, or (c) the date that is twenty (20) years from the Effective Date (the "**Term**"), as such term may be extended by the application of extensions otherwise set forth in this Agreement. If the Regulatory Approvals are subject to a referendum and the referendum qualifies for the ballot, thereafter each of the Developers may elect to terminate this Agreement with respect to such Developer's property by providing the City with written Notice (defined below) of such termination. If the Regulatory Approvals are invalidated by a referendum or other action, this Agreement shall be void *ab initio*. The mere termination or expiration of the Term of this Agreement shall have no effect on the Regulatory Approvals, which shall continue to be enforceable according to their terms subject only to invalidation by referendum. Any notice of termination or expiration of this Agreement shall so state.

3. Project Description and Phasing. The Parties intend that the Project be developed as a mixed-use project that incorporates the Community Benefits. To proceed with planning and developing Danelle Plaza as the Project, the Parties acknowledge that up to four phases of effort must be undertaken cooperatively by the Parties. They must (1) undertake the assemblage of any additional Lots comprising any of the Non-Participating Lots (the "**Assembly Phase**"); (2) proceed with the Condo Reorganization later to allow the replat of Danelle Plaza through the New Plat (the "**Reorganization Phase**"); (3) present to the City's City Council the determination regarding whether to proceed with the transfer of the City Property from the City to Developers pursuant to Section 8 of this Agreement (the "**Property Transfer Process**"); and (4) a planning process for the Project that will establish the development attributes of height, density, layout, and other development features for the Project (which is more fully described in this Agreement as the "**Planning Phase**"). Each of the Assembly Phase, the Reorganization Phase, the Property Transfer Process, and the Planning Phase are more fully described below, which the Parties acknowledge may take place serially or concurrently as the Parties determine. The Parties acknowledge that the

Planning Phase requires significant involvement by the Parties with the broader community to create a result desired by the Parties.

a. The Assembly Phase. A preliminary depiction of the current ownership of the Party-Held Property and the Non-Participating Lots is attached as Exhibit B. Further, a conceptual, but not definitive, example of the allocation of the Common Area to the Party-Held Property and the Non-Participating Lots is depicted on Exhibit B.

i. Non-Participating Owner Opportunity. Prior to conducting the Condo Reorganization, the City agrees that the Developers are entitled to, and the Developers agree that they shall, work together to offer to the Non-Participating Owners the opportunity to have their Non-Participating Lots acquired by, or enter into a contract for such acquisition with, Developers, provided that Developers are entitled to determine, in their sole and absolute discretion, whether and for what price to acquire or enter into a contract for any particular Non-Participating Lot (the "**Consensual Assembly Process**"). If Developers acquire or enter into a contract to acquire a Non-Participating Lot in the Consensual Assembly Process, Developers and City agree that such Lot and associated Common Area will, if ultimately acquired, become incorporated into the Project Property. The Parties acknowledge that Developers may spend up to one hundred eighty (180) days undertaking the Consensual Assembly Process to seek to include all Non-Participating Lots, but Developers shall determine when to conclude the Consensual Assembly Process. The Developers acknowledge that the City may elect to participate financially in the Consensual Assembly Process to acquire Non-Participating Lots, but the City has no obligation to do so.

ii. Reorganization Phase. Following Developers' conduct and termination of the Consensual Assembly Process, Developers shall present to the Association Board, and the Developers and the City agree that they will work together in good faith, and take all actions reasonably necessary, to cause their respective membership on the Association Board to vote to conduct the Condo Reorganization as contemplated and established under the Condominium Act. The Parties acknowledge that, on undertaking the Condo Reorganization, they will thereby terminate the Original Plaza Declaration and the Amended Plaza Declaration in the effort to complete the process of creating the New Plat. The City acknowledges and agrees that, during the Condo Reorganization process, the Developers shall be entitled to, and the Developers agree that they shall, work together to offer to the Non-Participating Owners the opportunity to have their Non-Participating Lots acquired by, or to enter into a contract for such acquisition with, Developers, provided that Developers are entitled to determine, in their sole and absolute discretion, whether and for what price to acquire or to enter into any contract to acquire any particular Non-Participating Lot (the "**Reorganization Consensual Acquisition Process**"). If Developers acquire or enter into a contract to acquire a Non-Participating Lot in the Reorganization Consensual Acquisition Process, Developers and City agree that such Lot and associated Common Area will, if ultimately acquired, become incorporated into the Project Property. The Parties acknowledge that Developers may spend one hundred eighty (180) days undertaking the Reorganization Consensual Acquisition Process to seek to include all Non-Participating Lots, but Developers shall determine when to conclude the Reorganization Consensual Acquisition Process. The Developers acknowledge that the City may elect financially to participate in the Reorganization Consensual Acquisition Process to acquire Non-Participating Lots, but the City

has no obligation to do so. Further, the Parties acknowledge that the Condominium Act may allow the Association Board to elect to cause the acquisition of all Non-Participating Lots, which the Parties agree they will work together in good faith, and take all actions reasonably necessary, to cause their respective membership on the Association Board to vote to conduct such acquisition (by the Developers) as the Developers may determine in their sole and absolute discretion (the "**Final Acquisition Process**"). The Parties acknowledge that Developers may spend up to one hundred eighty (180) days undertaking the Final Acquisition Process to seek to include all Non-Participating Lots, but Developers shall determine when to conclude the Final Acquisition Process.

b. Property Transfer Phase. The Developers acknowledge that conveyance of the City Property requires an ordinance approved by the City's City Council. If the City Council approves such an ordinance, upon completion of the Final Acquisition Process, the Parties shall proceed with the Property Transfer Process to be conducted pursuant to Section 8 of this Agreement.

c. Planning Phase. Following the City Council approval of the Property Transfer Process, if so approved, completion of the Final Acquisition Process, and transfer of the City Property to Developers, City and Developers shall conduct the Planning Phase to determine the configuration of the Parcels and undertake creating the New Plat and work to establish the height of the Residential Buildings and Cultural Venues, the residential density of the Project, the square footage of the commercial, retail, and other non-residential uses (collectively, the "**Development Attributes**"), and the location and extent of the Community Benefits in the Development Plan. Further, during or following the conduct of the Condo Reorganization, the Developers shall initiate the City's formal approval process with respect to the Development Plan for the Project, including the conduct of all required and any additionally desired community meetings, the approval of the New Plat, and initiate the conduct of the Rezoning to achieve the Regulatory Approvals ("**City Approval Process**") and expeditiously pursue the City's City Council approval (the period from the Effective Date until such City Council approval of the Regulatory Approvals, as more fully described below, the "**Planning Phase**"). City shall cooperate and take any and all actions necessary to assist Developers in removing and relocating easements and other encumbrances on the Site in connection with the creation of the New Plat, to the extent such easements and other encumbrances are within the control of the City.

d. City Approval Process and Project Commencement Date. Developers expeditiously will pursue the City Approval Process for each of the Rezoning, the Development Plan, and the New Plat to gain the City's City Council approval of each and all these planning and zoning activities (the "**City Approvals**"). The Parties acknowledge that they seek to complete the Planning Phase, the City Approval Process and achieve the City Approvals within eighteen (18) months of the completion of the Final Acquisition Process. The City agrees that, once City Approvals have been achieved, the City shall take any and all actions required to allow Developers to record all necessary documents, including the New Plat. The date by which the City has issued the City Approvals, and all appeal and referendum periods, if any, have expired with respect to the City Approvals for each and all the Rezoning, the Development Plan, and the New Plat shall be deemed to be the "**Project Approvals Date**."

e. Re-plating Configuration. After the Condo Reorganization is completed and while undertaking the re-plating process for the New Plat, City and Developers will take appropriate measures to include in the New Plat the descriptions of each Non-Participating Lot not included the Project Property, to allocate to such Non-Participating Lots their proportion of the Common Area, and to establish the means of ingress and egress for each Non-Participating Lot and associated allocation of Common Area, as well as establish any other easements and licenses they deem appropriate to provide the Non-Participating Owners with all appropriate rights and interests to continue to operate their respective Non-Participating Lots. All these activities shall be conducted cooperatively among the City and Developers during the Planning Phase.

f. Division of Uses on Project Property. The Parties acknowledge that Viking and Guina initially intend to subdivide the Project Property into two areas, with one area containing, primarily the Cultural Venues (the "**Cultural Project Property**") and the other area containing, primarily, the Residential Buildings (the "**Residential Project Property**"). Given the need first to attend to the activities described in Section 3a of this Agreement, the determination of the precise location and boundaries of the Cultural Project Property and the Residential Project Property have not yet been determined, and Guina and Viking retain the right, in their respective absolute discretion, to enter into agreements to allocate portions of the Project Property to one or the other Developer, and to determine the areas and uses for which each Developer shall have primary responsibility, if any. Accordingly, the City and Developers acknowledge that they will establish in their respective sole and absolute discretion, during the Planning Phase and the City Approval Process, and in connection with the creation of the New Plat, and as part of the Regulatory Approvals, the final boundaries of (a) the Non-Participating Lots and allocated Common Area, (b) the Project Property (including the portion of the Common Area to be allocated to the Party-Held Property and any acquired and previously designated Non-Participating Lots and allocated Common Area), (c) the Cultural Project Property, and (d) the Residential Project Property.

g. Commencing Planning Phase and Failure to Proceed. Subject to Section 11 of this Agreement, the Parties will established a preliminary Schedule of Performance in the form and substance as the Parties mutually agree within one hundred twenty (120) days of the Effective Date (the "**Schedule of Performance**") for the Assembly Phase, the Reorganization Phase, and the Planning Phase and to achieve the City Approvals. The Schedule of Performance also includes proposed timelines for the Developers to undertake designing and constructing the Project, as more fully described below. On the basis of the Schedule of Performance, Developers shall submit the application for the Rezoning pursuant to the City's initial submittal process, a draft of the Development Plan, and a draft of the New Plat (collectively, the "**Project Initiation Documents**") to the City, subject to Section 11 of this Agreement, within one (1) year of the completion of the Final Acquisition Process (the "**Initiation Commencement Deadline**"). If Developers do not provide the City with the Project Initiation Documents by the Initiation Commencement Deadline as required by this Section, then this Agreement shall terminate automatically thereafter and be null and void and of no further force or effect, except as otherwise provided in Section 11 of this Agreement.

4. Conveyance of City Property. Immediately on executing this Agreement, the City shall acquire an updated title report showing all encumbrances on the City Property and provide

such updated title report to the Developers. The Parties acknowledge that authorization for conveyance of the City Property requires an ordinance passed by City's City Council. The Parties agree that prior to Developers undertaking the Consensual Assembly Process, or at a time mutually agreed upon by the Parties, the City shall submit an ordinance for the conveyance of the City Property to the City Council for consideration. If the City Council does not approve such ordinance within one hundred and twenty (120) days of the Effective Date, then the City and Developers shall discuss a basis on which the City's City Council would approve such ordinance or otherwise reach agreement regarding the disposition of the City Property, the Guina Property and/or the Viking Property. If, after no more than twenty-four (24) months, the City and Developers are not able to reach a mutually acceptable basis on which the City's City Council will and does approve the required ordinance or the City and Developers otherwise reach agreement on a disposition of the Party-Held Property, then this Agreement shall be deemed to be terminated. In the event of any termination under this Section, the Escrow Agent shall return all documents and instruments to a Party providing such material to Escrow Agent, and this Agreement shall be null and void and of no further force or effect except for the Developer's Indemnity Obligations (defined below), which shall survive for a period of four (4) years from the date of such termination. If the City's City Council approves such ordinance, then the period for Developer's undertaking the Consensual Assembly Process shall commence on the following business day.

a. Agreement to Convey City Property. City shall continue to hold fee title to the City Property until the City Council approves the Property Transfer Process, after which Developers may request the conveyance of some or all of the portion of the City Property. The Developers shall provide written notice to the City requesting conveyance of such City Property (a "**Conveyance Notice**"). During the pendency of this Agreement, City agrees not further encumber the City Property (including, without limitation, granting any easements, licenses, or other agreements with respect to the City Property) or any portion thereof, without the prior written consent of each Developer. Each Developer agrees that it may not provide a Conveyance Notice except by mutual agreement of the Developers.

b. Deadline for Conveyance of City Property. Upon the Developers completing the Final Acquisition Process and the City Council approving the Property Transfer Process, and as long as each Developer has satisfied the requirements of this Agreement and provided that Developer has not then caused an Event of Default under this Agreement to occur with respect to Developer's portion of the Property, the Developers may deliver the Conveyance Notice to City specifying the date by which the Developers elect to consummate the acquisition (by transfer of title to the Developers or in such division as the Developers determine) of the City Property. Developers' election and the date chosen by Developer must occur on or before the one-year anniversary of the City Council approving the Property Transfer Process (the "**Conveyance Deadline Date**"). If Developers do not supply the City with the Conveyance Notice or do not establish a date for City to convey the City Property to Developers that is prior to the Conveyance Deadline Date, City may give Developers written notice (a "**City Conveyance Demand**") that Developers must supply a Conveyance Notice, in which event Developers will have fourteen (14) days in which to supply the City with such Conveyance Notice. The Conveyance Notice must establish a date for the City's conveyance of the City Property within thirty (30) days of the date that the City Conveyance Demand has been received by Developers. If the Developers do not provide the City with the Conveyance Notice in such fourteen (14) day period as required by this

Section, or if Developers give City written notice to the City prior to the Conveyance Deadline Date of their rejection of the City Property, then this Agreement shall be deemed to be terminated. In the event of any termination under this Section, the Escrow Agent shall return all documents and instruments to a Party providing such material to Escrow Agent, and this Agreement shall be null and void and of no further force or effect except for the Developer's Indemnity Obligations, which shall survive for a period of four (4) years from the date of such termination.

c. Purchase Price. The City will have caused the City Property finally to be appraised, to which appraisal Developers may agree, all of which shall be completed within one hundred twenty (120) days of the Effective Date, and such value shall be the City Property's full fair market value (and shall be based on the assumptions that the City Property is raw land, free of the dilapidated buildings, and free of environmental contamination, which the Parties acknowledge it is not). Accordingly, subject to all terms, covenants and conditions of this Agreement, the purchase price for the City Property shall be a square foot price as established by the appraisal as mutually agreed to within one hundred twenty (120) days of the Effective Date, which per square foot valuation shall be applied to each Developer's portion of the City Property (the "**Purchase Price**"). At a Closing (defined below), the applicable Developer shall pay the Purchase Price by supplying a promissory note in the amount of the Purchase Price in form and substance as the Parties mutually agree within one hundred twenty (120) days of the Effective Date (each, a "**Note**"). Each Note shall be secured by a deed of trust in form and substance as the Parties mutually agree within one hundred twenty (120) days of the Effective Date (each, a "**Deed of Trust**"). Each Deed of Trust shall be recorded against the Developer's portion of the City Property at the Closing.

d. Opening of Escrow. Upon execution of this Agreement, City and each Developer shall open an escrow (each, an "**Opening of Escrow**") with Escrow Agent (defined below) and deposit a fully executed original of this Agreement with Escrow Agent. Escrow Agent shall hold this Agreement and all other documents deposited by the City and the respective Developer and perform such other acts as are normal and customary for a commercial escrow agent in similar transactions.

e. Escrow Fees. Each Developer shall pay all costs associated with the Opening of Escrow and the Closing of the transaction contemplated by this Agreement equally, including without limitation, the cost of any surveys, title insurance policies, recording fees and investigations the Developers mutually conduct with regard to the City Property. Except as any of the Parties may agree among themselves, the City and each such Developer shall each bear their own costs, including attorney's fees, in connection with the negotiation, due diligence, investigation and consummation of the transaction contemplated by this Agreement.

f. Prorations. Each Developer shall pay all real property taxes and assessments with respect to the Developer's portion of the City Property acquired and accruing after Closing. The City shall not be liable for any taxes assessed by the Maricopa County Assessor with respect to the City Property prior to Closing due to it being exempt from the obligation to pay ad valorem taxes.

g. Form of Deed. At each Closing, the City shall convey fee title to the applicable Developer of its portion of the City Property by Special Warranty Deed in the form and substance as the Parties mutually agree within one hundred twenty (120) days of the Effective Date (each a "**Deed**"), free of all consensual monetary liens created or assumed by City or caused by the actions or inactions of City.

h. As-Is Purchase. Each Developer acknowledges and agrees that it is acquiring and accepting its portion of the City Property in its AS IS, WHERE IS condition, and that the only representations or warranties made by City with respect to the City Property are those set forth in this Agreement and the Deed by which the Developer's portion of the City Property will be conveyed to Developer. Developer acknowledges that it assumes the risks associated with the condition of the Developer's portion of the City Property.

i. Due Diligence. Each Developer shall have the right, at its sole cost and expense, to conduct its due diligence with respect to the Developer's portion of the City Property that it may acquire, including undertake, among other efforts, any survey and examine the Developer's portion of the City Property and any improvements thereon, at any time after the execution of this Agreement, with any persons whom it shall designate, including, without limitation of the foregoing, appraisers, contractors, engineers and soil testing personnel (the "**Due Diligence**") until Developers give the City the Conveyance Notice, at which time Developers shall be deemed to have accepted the Developer's portion of the City Property in such condition and with such flaws as Developer may have discovered or failed to discover during Developer's Due Diligence. Subject to the following sentence, City shall permit access to the Developers to the City Property and any persons designated by either Developer, and shall afford them the opportunity to conduct, prepare and perform any surveys, appraisals, and any environmental, feasibility and other engineering tests, studies, and reports that each Developer deems necessary or appropriate. Upon completion of all such tests, studies and reports, the Developer conducting such tests and studies shall fill all holes produced by it and restore the City Property to substantially the condition that existed prior to any tests or inspections performed by Developer. Each Developer shall maintain in full force and effect policies of commercial general liability and workers' compensation insurance in amounts reasonably acceptable to the City and approved by City's Risk Manager prior to being granted access to the City Property. All such policies shall name the City of Tempe, its employees, agents, and officers as additional insured and shall state that they may not be cancelled prior to expiration without thirty (30) days prior written notice to City. Developer shall indemnify, protect, defend, and hold City harmless from all claims, costs, fees, or liability of any kind to the extent arising out of the acts of Developer or Developer's agents pursuant to this Section, except that Developer shall have no liability related to the discovery or release of pre-existing conditions (unless Developer's, or Developer's agents', acts exacerbate a pre-existing condition) or for any claims or liabilities resulting or arising from the acts or negligence of City or its agents (the "**Indemnity Obligations**").

j. Further Acts and Assurances. In addition to those documents expressly identified herein, each Party agrees to perform such other and further acts and to execute and deliver such additional instruments, documents, affidavits, certifications, and acknowledgements as may be necessary or reasonably requested by the other Party to fully effectuate the terms and provisions of this Section 8 and the conveyance of the City Property to Developers.

k. Title Insurer. Except as otherwise expressly provided, or with the consent of the Party receiving title insurance, all title insurance policies, and reports ("**Title Insurance**") shall be obtained from Lawyers Title of Arizona, Inc. (the "**Title Insurer**") located at 3131 East Camelback Road, Suite 220, Phoenix, AZ 85016. The Party receiving Title Insurance shall have power to select a different title insurer if Title Insurer is unable or unwilling to provide any Title Insurance required under this Agreement.

l. Title Insurance. Except where this Agreement requires Title Insurance:

i. No Party is required to obtain or provide Title Insurance.

ii. Title Insurer's willingness to issue any Title Insurance not required by this Agreement is not a condition to any Party's obligations under this Agreement.

iii. Any Party desiring to obtain Title Insurance not required by this Agreement shall pay all premiums, survey costs, endorsement fees and other charges of any kind or nature associated with such policy or policies.

m. Escrow Agent. Title Insurer also shall act as escrow agent (the "**Escrow Agent**") under this Agreement. Escrow Agent shall administer transactions requiring escrow services under this Agreement. This Agreement shall constitute instructions to Escrow Agent for the transactions contemplated by this Agreement. By executing this Agreement or accepting any escrow hereunder, Escrow Agent agrees to perform the obligations imposed by this Agreement. Escrow Agent's liability under this Agreement as an escrow agent is limited to performance of the duties and obligations imposed upon Escrow Agent. Escrow Agent shall in all cases be responsible for any liability or claim arising from its negligence, misconduct, or other improper or unlawful act. If Escrow Agent is not the Title Insurance underwriter, then Escrow Agent and a Developer shall cause Title Insurer to provide to the Developer an insured closing letter in form acceptable to the Developer issued by Title Insurer's Title Insurance underwriter making Title Insurer's underwriter financially responsible for covering Escrow Agent's proper performance of its duties related to this Agreement. Not less than two (2) weeks prior to a Closing, Title Insurer shall provide to a Developer and to City's city attorney's office copies of the proposed closing letters.

n. Closing Location. If City so elects, not less than three (3) business days prior to a Closing, City may designate a location for the Closing within Maricopa County, Arizona. If the City does not designate a location, the Closing shall occur in Escrow Agent's office.

o. Closing Conditions. A Closing shall occur only upon the performance of all acts and delivery of all documents required to be performed or delivered at or prior to the Closing, or upon formal notice of waiver of any such conditions or performances by the Party for whose benefit such conditions or performances exist. A Party is not obligated to allow the Closing to occur if an event has occurred or circumstance exists that is (or with the passage of time or giving of notice, or both, would be) an Event of Default (defined below) by the other Party involved in the Closing under this Agreement.

p. Deliveries. Recording or other official filing of a document as directed by this Agreement shall constitute delivery of the document to the grantee thereunder and acceptance by the grantee.

q. Return of Recorded and Filed Documents. Recorded documents shall be returned to the person designated by the forms attached to this Agreement (the "**Return Person**"). If no designation is made for any document, Escrow Agent shall mark the form prior to recording to indicate that City's city attorney is the Return Person. Escrow Agent and the Parties involved in a Closing shall not change the name or address of the Return Person on any document and shall immediately deliver to the Return Person any recorded document that may come into their possession. The same requirements apply to all other documents.

r. Possession. City shall deliver exclusive possession and control of the City Property to the Developers, subdivided between the Developers if they agree to such subdivision, at the applicable Closing.

s. Risk of Loss. Except as to damage caused by a Developer or its agents, all risk of loss or damage to the City Property shall remain with the City until the applicable Closing. The City shall give to Developers prompt written notice of damage to any part of the City Property. If any part of the City Property is damaged prior to the applicable Closing, other than by a Developer or its agents, to a degree that restoration would cost more than One Hundred Thousand Dollars ($100,000.00), then the Developers, acting together, may terminate this Agreement by giving written notice thereof to the City, in which case this Agreement shall be null and void and of no further force or effect with respect to the City Property, except for the Indemnity Obligations, which shall survive for a period of four (4) years from the date of such termination.

t. Closing. The closing of the conveyance of the City Property from City to Developers contemplated by this Agreement, including if subdivided and conveyed to each Developer at a different time (each, a "**Closing**") shall be accomplished as follows:

i. Closing Date. The date for a Closing for a specific Developer's portion of the City Property (the "**Closing Date**") shall be within thirty (30) calendar days following the Developer's providing to the City the Conveyance Notice.

ii. Closing Documents. On or prior to a Closing Date, City and Developer shall sign, acknowledge, and deposit (or cause to be signed, acknowledged, and deposited by all applicable persons) with Escrow Agent the following items (collectively the "**Closing Documents**"):

(a) Closing Deposits by City. City shall deposit:

(1) Instruments adequate to cause Title Insurer to issue all Title Insurance that this Agreement requires or allows to be issued to a Developer for the Developer's portion of the City Property in connection with the Closing and to satisfy all requirements related to such Title Insurance.

(2) The Deed executed and acknowledged by City for the applicable Developer's portion of the City Property, subject to the reservation of easements and other encumbrances accepted by Developer.

(3) Non-foreign person affidavits and similar legally required documents necessary for the Closing.

(b) Closing Deposits by a Developer. A Developer shall deposit for its Closing with respect to its Developer's portion of the City Property:

(1) The Note for the Purchase Price.

(2) The Deed of Trust.

(3) All the Closing Expenses, including any escrow fee charges, title charges, title insurance premiums, and recording fees.

(4) Foreign and Non-foreign person affidavits and similar legally required documents necessary for the Closing.

iii. Deliveries at Closing. The following shall occur at each Closing in the order listed:

(a) Escrow Agent shall record in the office of the Maricopa County Recorder the following Closing Documents in the order listed:

(1) The applicable Deed.

(2) The fully executed original of this Agreement.

(3) The applicable Deed of Trust.

(4) Escrow Agent shall deliver to City the applicable Note.

(b) Escrow Agent shall deliver to Title Insurer all Title Insurance premiums for Title Insurance policies required by any Party for the Closing.

(c) Escrow Agent shall retain for itself Escrow Agent's escrow fee for the applicable Closing.

(d) Escrow Agent shall record, file, and deliver all other Closing Documents required to complete the applicable Closing as contemplated by this Agreement.

5. Proposed Community Benefits. The City seeks to have Developers plan, design, construct, and undertake, as applicable, Community Benefits within the Project for the benefit of the City and the community at large. The Parties acknowledge that the Community Benefits described above and listed below are proposed, and that the final list of Community Benefits for the Project may omit items listed herein or include other items not currently listed. The Parties agree that they will work together to determine those Community Benefits that will be integrated into the final Project, and that they will agree upon values for those Community Benefits based, in part, on a public benefits analysis. Developers shall receive compensation for the Community Benefits ultimately agreed upon and constructed through one of the methods described in Section 6 of this Agreement.

a. Supported Housing Units. The Project will consist of apartment rental units, with the number of units (the "**Residential Units**") determined during the Planning Phase. Further, City and Developers will determine the number of Supported Housing Units to be designed for tenants who qualify ("**Qualified Tenants**") for the Supported Housing Units.

i. The number of Residential Units that may be incorporated into the Project is dependent on the final determinations made by the City and Developers during the Approvals Process. During the Planning Phase, the City and Developers will cooperate to determine the total Residential Units and the actual number of Supported Housing Units to be incorporated into the entire Project Property.

ii. The Supported Housing Units may only be rented to Qualified Tenants at rental rates established in accordance with the City's Supported Housing rental rates (the "**Supported Housing Rental Rates**"), as set forth in the City's Housing Maximum Rent Schedule in a form as the Parties mutually agree within one hundred twenty (120) days of the Effective Date and as the City may thereafter adjust such Supported Housing Rental Rates from time to time in accordance with federal guidelines. The Project's Supported Housing Units are to be provided to households earning median income based on the determination of the Parties during the Planning Phase (as the Parties determine during the Planning Phase, the "**Qualification Standard**") The Parties agree that they will use median income information compiled by Fannie Mae and available on Fannie Mae's "Area Median Income Lookup Tool" in determining the Qualification Standard. The Parties acknowledge that the City may adjust the Qualification Standard annually to reflect the federal guidelines under which the Qualification Standard is to be determined.

iii. To secure Developers' compliance with the requirements to supply the Supported Housing Units subject to the Qualification Standard at the Supported Rental Housing Rates, upon the conveyance by the City of any portion of the City Property for inclusion in the - Project, the City and Developers immediately thereafter shall enter into the Restrictive Covenant in the form as the Parties mutually agree within one hundred twenty (120) days of the Effective Date (the "**Restrictive Covenant**"). The Restrictive Covenant shall be recorded against the applicable Project Property.

iv. The Parties have agreed that Developers will be entitled to receive a credit for the number of Supported Housing Units supplied in the Project and the resulting amount of the foregone value such Developer will incur by restricting the use the Project Residential Units for Supported Housing Units to be rented at the Supported Housing Rental Rates. The City and Developer acknowledge that, but for the application of the Supported Housing Rental Rates to the Supported Housing Units, the Supported Housing Units would be leased by the Developer at rental rates reflected in the market for units in the Project, as set by the Developer in its ordinary course of business as otherwise would be published and advertised for units in the Project (without the application of special discounts and other reductions used in the market for the Project's units) (the "**Unit Market Rental Rates**"). The Parties will estimate their initial calculation of the amount of the reduction in value that Developers will bear as a result of the applications of Supported Housing Rental Rates rather than Unit Market Rental Rates (the "**Required Housing Support**") during the term of the Restrictive Covenant as the City and the Developer ultimately may determine (the "**Rental Rate Reduction Period**"). The initial estimate of the Required Housing Support will be as the Parties mutually agree during the Planning Phase (the "**Initial Required Housing Support**"). The applicable Developer shall apply the Supported Housing Rental Rates to the Supported Housing Units during the Rental Rate Reduction Period and will bear the resulting reductions in value of the Property as reflected in the Parties' calculation of the amount of the Required Housing Support in consideration of the City providing compensation in the form to be determined during the Planning Phase, to be applied by the applicable Developer as set forth in this Agreement, for the amount of the Required Housing Support (the "**Housing Support Compensation**").

v. Once the City provides its final approval on the construction documents associated with the Project, the City and the Developer shall meet and determine the actual total number of Supported Housing Units that must be supplied by the Developer within the Project and that will be subject to the Restrictive Covenant, and thereby adjust the amount of the Initial Required Housing Support to establish the determination of the final amount of the Required Housing Support and the resulting Housing Support Compensation to be applied as set forth in this Agreement. To the extent that the final Project has a lesser or greater number of total residential units constructed and, accordingly, a commensurate decrease or increase in the total number of Supported Housing Units than currently is estimated in the calculation of the Initial Required Housing Support, the City and Developer shall adjust the amount of the final Required Housing Support pursuant to a formula as the Parties mutually agree within one hundred twenty (120) days of the Effective Date. The adjusted amount shall be deemed the final amount of the Required Housing Support and will establish the final amount of the Housing Support Compensation to be received by the Developer as set forth in this Agreement.

b. Cultural Preservation. Danelle Plaza is currently home to the Yucca Taproom, a popular live music venue that is culturally significant for the City of Tempe and its residents. In the interest of maintaining Danelle Plaza's cultural significance as a live music hub after redevelopment, City and Developers may agree to negotiate and record a restrictive covenant (the "**Cultural Restrictive Covenant**") requiring Developers to continue to operate the Yucca Taproom or a live music venue of similar size and character upon the Property for a period of time to be agreed upon by the Parties.

c. Art Wall Canvasses. Developers may construct Art Wall Canvasses for the display of public art at various locations throughout the Project to be more fully determined by the City and Developers, inclusive of community input, during the Planning Phase.

d. Park. Developers shall design, construct, and thereafter maintain a Park on the Property. To assure public accessibility of the Park while also assuring the Park will be maintained, the Park will be subject to the Park License Agreement which will be in the initial form as the Parties mutually agree within one hundred twenty (120) days of the Effective Date (the "**Park License Agreement**").

e. Public Parking Facilities. Developers intend to construct a parking structure to accommodate the various parking needs for the Project. Developers shall ensure that an agreed upon number of spaces within the Parking Facilities are made available to the general public at a minimum during the Park's hours of operation and for park-and-ride uses (the "Public Parking Facilities").

f. EV Charging Spaces. The City and Developers agree that they shall determine the infrastructure and the number of publicly available EV Charging Stations that Developers shall design, construct, and install, and the City shall take title to and that are to be included within the Public Parking Facilities. Upon the Parties final determination of the number and location of the EV Charging Stations and EV Charging Spaces, the City will cause an exhibit to be prepared indicating the location of the EV Charging Stations and EV Charging Spaces.

g. Remediation. The City and Developers agree that the Danelle Plaza property requires environmental remediation, which the Parties agree will, when completed, provide a benefit to the City and the surrounding community.

h. Multimodal Pathway. Dannelle Plaza abuts a tract of land that serves as a buffer between the western edge of Dannelle Plaza and the eastern edge of the Union Pacific rail line. In the downtown area of the City, this area has been converted into a multimodal pathway. As part of the Project, the Parties seek to develop the pathway eventually to allow its connection to the north portion of the City's multimodal pathway.

i. Infrastructure Redevelopment. The Parties acknowledge that the City's infrastructure serving the area has aged out. Accordingly, the City may seek to install new infrastructure to serve the area in connection with the construction of the Project.

j. Other Public Benefits. Other public benefits as may be agreed upon by the Parties and approved by the City Council.

6. Potential Development Support. The City acknowledges that development of the Project and, more specifically, inclusion of the Community Benefits in the Project will not be possible without support from the City. As a result, in consideration of the Public Benefits to be constructed by Developers as part of the Project, the City will evaluate providing Developers certain support should it be supported by an Economic Impact Study ("EIS") and public benefit analysis and approved by the City Council. Such support may include:

a. Credit Against Purchase Price of City Property. Should the conveyance of the City Property be approved by City's City Council, Developers shall receive a credit against the Purchase Price of the City Property (or the Note as described in Section 4(c)) in an amount equal to the estimated value of the corresponding Public Benefits.

b. Development Fees. City may reimburse or waive development fees associated with the Project.

c. Sales Tax Rebates. City may rebate to Developers a portion of the City's share of construction sale taxes ("**Construction Sales Taxes**") and excise sales taxes ("**Sales Taxes**") generated by the Project. City will evaluate Developers' request for a rebate of a portion of the City's share of Construction Sales Taxes and Sales Taxes generated by the Project as additional information and documentation is supplied to the City to support such a request. The Parties expressly acknowledge that the implementation of the rebate for the portion of the City's share of Construction Sales Taxes and Sales Taxes requires an additional ordinance from the City Council. Pending City Council implementation, the Parties expressly acknowledge that the amount of the rebate of the City's share of Construction Sales Taxes and Sales Taxes generated by the Project must be supported by an EIS and public benefit analysis.

d. Other Sources. Any other source agreed upon by the City and Developers and approved by City Council.

7. Anticipated Development Process Following Project Approvals Date; Potential Division of Development Responsibilities. The Parties acknowledge that this Agreement establishes the Parties obligations to allow the City and Developers to undertake the Planning Phase to achieve the City Approvals but, thereafter, the Parties may proceed with the Project and develop the Project Property through two separate "projects" that may be undertaken pursuant to additional development agreements.

a. Division of Development. The Parties acknowledge that, except as otherwise agreed to in writing by the Parties during the Planning Phase and the City Approval Process, the Developers will determine which Developer will be responsible for the development of the Cultural Venues on the Cultural Property the Residential Buildings on the Residential Property, as the boundaries and elements of which are to be determined by the Developers in their sole and absolute discretion as between them, but subject entirely to the City's participation and agreement during the Planning Phase. The division of the development responsibilities contained in this Agreement (and subsequent amendments) between Developers shall be memorialized in separate development agreements (the "**Sub-Project Agreements**"). The Sub-Project Agreements shall, among other things, establish the division of property within the Project, assign responsibility for agreed upon Community Benefits, and establish entitlement to approved Development Support. Notwithstanding any division of the responsibilities under this Master Development Agreement into Sub-Project Agreements, the Parties explicitly acknowledge the expectation that the Project as a whole will be completed within the timelines contemplated by this Master Development Agreement, except as expressly amended by any Sub-Project Agreement.

8. Terms Applicable to Planning Phase and Upon Project Approvals.

a. Meeting Participation. Beginning one month after the Effective Date of this Agreement, and until a Developer has received a certificate of occupancy or certificate of completion for all of the Project Improvements for the Developer's Sub-Project (as defined below), each Developer agrees to meet monthly with City or provide status updates regarding the progress of the Assembly Phase and the Reorganization Phase, and if and when undertaken, the Planning Phase. Such status updates will include information, to the extent available, regarding the conduct of the Consensual Assembly Process, the Condo Reorganization, the Reorganization Consensual Acquisition Process, the Final Acquisition Process, the preparation of the Development Plan and the New Plat, and the Rezoning. The Developers and the City agree that they intend and will seek to conduct significant community and other public meetings during the Planning Phase to encourage community input toward the design of the Project. Once the Developers initiate the City Approval Process, each Developer and the City agrees that, at the request of the others, it will attend community and other public meetings of which it has reasonable notice and make presentations regarding the development of the Project, the Project Improvements, and the Community Benefits. Each Developer and the City agrees that, even if a certificate of occupancy or certificate of completion has been granted for a particular Phase, the Developer and City shall continue to hold community and other public meetings for undeveloped Phases until all the Project Improvements and Community Benefits have been completed.

b. Minor Amendments. As of the Project Approvals Date, the Regulatory Approvals will establish each Parcel's Development Attributes, as set forth in the Regulatory Approvals. When and as a Developer elects to develop a portion of the Project Property (or portion thereof), as allowed by and contemplated under Arizona Revised Statutes §9-462.04A4, such Developer and the City's zoning administrator mutually may agree to alter Development Attributes only to the extent any such alteration does not equal or exceed, a ten percent (10%) increase in any such attribute (each a "**Minor Attribute Adjustment**"). Any such alteration of Development Attributes by a Minor Attribute Adjustment, as approved by the City's zoning administrator, shall be considered in substantial conformance to the Regulatory Approvals. The Parties acknowledge that any increase of any Development Attribute by ten percent (10%) or more would require an amendment to the Regulatory Approvals, and to the extent necessary, this Agreement, and approval by the City's City Council following the public hearing process necessary for a zoning amendment.

c. Compliance with Regulatory Approvals and Applicable Laws. Prior to Project Commencement, each Developer will prepare and be responsible for all requested documents and applications and will obtain all approvals and permits required for Developer's work and activity for construction of the Project Improvements and the Community Benefits associated with the Developer's Sub-Project. Development of the Project and each Sub-Project will be in accordance with the Regulatory Approvals and applicable laws. Review and approval of the Regulatory Approvals, or any amendment to the Regulatory Approvals, will be undertaken by the City in accordance with its regular and customary procedures, subject to Section 4b and the other terms of this Agreement. Each Developer may request amendments to the Regulatory Approvals applicable to the Developer's portion of the Project, from time to time, and any such

amendments will be reviewed and processed by the City pursuant to this Agreement and in accordance with applicable laws.

d. Development Rights. In consideration of the expenditures by the Developers for the design and planning required to achieve the Regulatory Approvals, as of the Project Approvals Date, the Regulatory Approvals shall be deemed contractually vested as of the Effective Date. Thereafter, the Developers shall have a right to undertake and complete the development and use of the Project Property in accordance with the Regulatory Approvals and this Agreement.

e. Project Completion; Outside Completion Date. In addition to the Assembly Phase, the Reorganization Phase, and the Planning Phase timelines, the Schedule of Performance also establishes, following the City Approvals, a proposed timeline for developing each portion of the Project, which will be conducted in phases (each a "**Phase**" and collectively, the "**Phases**") as set forth in the Schedule of Performance (the "**Phasing Plan**"). Further, the Parties acknowledge that, each of Viking and Guina will, subject to Section 11 of this Agreement and the Schedule of Performance, apply for and receive a first building permit for construction of such Developer's Sub-Project ("**Project Commencement**") within eighteen (18) months from the Project Approvals Date (the "**Project Commencement Date**"). Thereafter, each Developer will, subject to Section 11 of this Agreement and the Schedule of Performance, complete that Developer's Sub-Project, including the Sub-Project's obligations for Community Benefits ("**Project Completion**") within four (4) years of the Project Commencement (the "**Project Completion Date**") for that Developer's portion of the Project. Subject to Section 11 of this Agreement, each Developer acknowledges that the period of time between the Project Commencement and the Project Completion for such Developer's Sub-Project shall be deemed the "**Project Performance Period.**"

9. City Further Obligations. Independent of whether a Developer completes its portion of the Project, during the pendency of a Developer's efforts to do so, the following shall apply to such Developer and the Developer's Sub-Project.

a. Support Assistance. During the Planning Phase and through the Project Completion Date, the City will use its reasonable efforts to assist each Developer in qualifying for local, state, and federal assistance programs, including but not limited to programs that are offered to support workforce and affordable housing and to support green energy application to the Project.

b. Parking Use Model. With respect to the Project Parking Facility, the City shall apply the City's shared parking model as in effect on the Effective Date (or as it may be revised to reduce required parking in light of current trends toward car-sharing, self-driving vehicles, and the availability of public transit options surrounding the Project Property). Notwithstanding the preceding sentence, each Developer may provide as many more parking spaces in excess of the City's minimum for the Developer's Sub-Project as each Developer deems appropriate to supply the Developer's Sub-Project's parking space needs.

c. Encroachments into Rights-of-Way. As the Development Plan is refined, Developers may request that the Project encroach into certain of the City's right-of-way and other

dedicated property, easements or other real property owned or controlled by the City. If the City agrees that such encroachment is acceptable, the Parties will document the agreement pursuant to mutually acceptable instruments.

10. Mortgagees.

a. Mortgages. Each Developer may, at any time from and after the Project Approvals Date, and from time to time thereafter, encumber and/or assign all or any portion of its interest in the Project Property or this Agreement pursuant to one or more deeds of trust, mortgages, or other security instruments with respect to a Phase, the Phases, or the entire Project Property comprising Developer's Sub-Project without City's prior consent (each a "**Mortgage**"); provided, however, the terms of each Mortgage must satisfy the conditions of this Section. The City agrees that it shall subordinate its interest in the Project Property, if any, to each Mortgage (to be granted pursuant to a Phase) acquired by the lender (each a "**Mortgagee**"), and such Mortgage may be a lien on all of a Developer's interests in and to the Project Property or portion thereof or this Agreement or other agreements between the Developer and third parties relating to the construction or operation of the Project Improvements that are part or, or included within, the Developer's Sub-Project. Except as specifically set forth herein, each Mortgage shall be subject to the terms and provisions of this Agreement; and the holder of any Mortgage, or anyone claiming by, through or under the same, shall not, by virtue thereof, acquire any greater rights hereunder than a Developer has under this Agreement. No Mortgagee shall be obligated under this Agreement unless and until such Mortgagee has foreclosed on the interest of the Developer, or received a deed in lieu or similar agreement, with respect to the particular Project Improvements subject to their interest and the Mortgagee has so notified the City.

b. Notice to City. A Mortgagee must give written Notice to City of its name and Notice address if it wishes to benefit from the provisions of this Section. If such written Notice is given, City shall give to such Mortgagee a copy of each Notice of Default (defined below) by a Developer at the same time as such Notice of Default is given to a Developer, addressed to such Mortgagee at its address last furnished to City. No such Notice by City to a Developer hereunder shall be deemed to have been duly given unless and until a copy thereof has been served on such Mortgagee in the manner provided in this Agreement.

c. Termination; Mortgagee Protection. If City has a right to terminate this Agreement as a result of an Event of Default, City shall not terminate this Agreement because of such Event of Default hereunder on the part of a Developer if a Mortgagee, within the period of thirty (30) days, with respect to a monetary Default by a Developer, or sixty (60) days, with respect to a non-monetary Default, after service of written Notice by City to the Mortgagee of City's intention to terminate this Agreement for such Event of Default, cures such default (or if a non-monetary Event of Default cannot be cured or corrected within that time, then such additional time as may be necessary if such Mortgagee has commenced such cure within such additional sixty (60) day period, communicated the course of its actions to the City and diligently and persistently is pursuing to completion the remedies or steps necessary to cure or correct such Event of Default). If reasonably requested by City, a Mortgagee shall provide evidence to City of the steps and remedies a Mortgagee is taking diligently to cure or correct such Event of Default. If a Developer commits an Event of Default with respect to the performance of its obligations hereunder, a Mortgagee shall have the right to remedy such Event of Default or cause the same to be remedied

within the period and otherwise as provided herein. Notwithstanding Section 10b above, City will accept performance by a Mortgagee of any covenant, condition, or agreement on Developer's part to be performed hereunder with the same force and effect as though performed by a Developer.

d. Time for Mortgagee Cure. The time of the Mortgagee to cure any Event of Default by a Developer that reasonably requires that said Mortgagee be in possession of the portion of the Project Property and Project Improvements subject to its interest to do so shall be deemed extended to include the period of time required by said Mortgagee to obtain such possession (by foreclosure or otherwise) in good faith with due diligence; provided, however, that such Mortgagee shall have commenced proceedings to acquire possession of the portion of the Project Property and Project Improvements subject to its interest within the time periods for cure set forth in Section 10c, above, and communicated its intent to the City. If a Mortgagee is seeking to foreclose on such Mortgagee's security interest in such Project Property and Project Improvements, City shall not seek to terminate this Agreement as a result of an Event of Default as long as the Mortgagee diligently is seeking to foreclose on Developer's interest in the Project Property and Project Improvements and as long as any monetary Event of Default has been cured or is being cured within the time frames set forth above. If reasonably requested by City, a Mortgagee shall provide evidence to City of the steps and remedies such Mortgagee is taking diligently to foreclose on a Developer's interest in the Project Property and the Project Improvements. If a Mortgagee forecloses on a Developer's interest in any portion of the Project Property or the Project Improvements, City shall recognize such Mortgagee or other developer at a foreclosure sale as a "Developer" for all purposes under this Agreement with respect to such Project Property and Project Improvements. Upon the foreclosure of any Mortgage, any non-monetary Event of Default that is personal to a Developer, that does not pertain to any portion of the Project Property or the Project Improvements, and that is not capable of being cured shall be deemed waived by City (it being acknowledged that a use of the Project Property and Project Improvements after a foreclosure in violation of this Agreement is not personal to Developers).

e. Termination or Rejection of Agreement. If this Agreement is terminated for any reason, or if this Agreement is rejected in a bankruptcy proceeding, City shall give Notice to each Mortgagee of such termination upon the City having knowledge of such termination. Within thirty (30) days after a Mortgagee receives Notice of such termination, the Mortgagee may elect, by delivering written Notice to City within such thirty (30) day period, to enter into a new agreement with respect to such Project Property and Project Improvements with the City upon the same terms and conditions as this Agreement, provided, that, (i) prior to entering into such new agreement, such Mortgagee shall have cured each monetary Event of Default and each non-monetary Event of Default that is capable of being cured (or, with respect to non-monetary Events of Default only, has provided adequate assurances to City, as determined by City in its reasonable discretion, that any such non-monetary Event of Default that is capable of being shall be cured), and (ii) if there is more than one such Mortgagee, the Mortgagee with the senior-most perfected lien with respect to such Project Property and Project Improvements shall have the first option to enter into such new agreement, provided, if such senior Mortgagee fails or declines to enter into such new agreement, the next most senior Mortgagee shall have such right. Upon entering into any such new agreement, each non-monetary Event of Default that is personal to a Developer and that is not capable of being cured shall be deemed waived by City with respect to the Mortgagee (it being acknowledged that a use of the Project Property and Project Improvements after a foreclosure in violation of this Agreement is not personal to a Developer).

f. Mortgagee's Succession to Property. If a Mortgagee or its affiliates succeed to a Developer's interest in any portion of the Project Property or Project Improvements, the Mortgagee shall provide Notice to City. Notwithstanding anything in this Agreement to the contrary, Mortgagee shall have the right to transfer the Project Property and the Project Improvements the Mortgagee possesses, subject to the provisions of this Agreement. In no event shall City's consent be required for any transfer to a Mortgagee as a result of a foreclosure, trustee's sale, or delivery of a deed in lieu of foreclosure. Upon the assignment of this Agreement by Mortgagee or its affiliates to a third party, and approval thereof (as provided herein) by the City, then such Mortgagee or its affiliates shall have no further obligations under this Agreement arising from and after the date of such transfer provided that the Mortgagee has provided Notice of such transfer to the City. Notwithstanding the foregoing, Mortgagee shall remain liable for its acts during such time as the Mortgagee was a "Developer" for purposes of this Agreement.

g. No Modification without Mortgagee Consent. City shall not agree to any amendment, modification, or cancellation of this Agreement or terminate this Agreement (except for an Event of Default that has not been cured within the time periods permitted under this Agreement including all applicable Notice and cure periods given to a Mortgagee under this Agreement) unless a Developer has, at the Developer's sole cost and expense, first obtained and delivered to City a copy of each Mortgagee's prior written consent.

h. Estoppel. At any time within twenty-one (21) days after Notice of request by either City or a Developer, the City or the Developer (as the case may be) shall execute, acknowledge, and deliver to the requesting Party, or any lender to such Party, a statement certifying to the following facts regarding this Agreement: that this Agreement is unmodified (or stating any modifications that are in existence) and in full force and effect and that no Event of Default exists on the part of either City or the Developer (or specifying the nature of any Event of Default that does exist) or any other statements as may reasonably be requested by a Mortgagee or the Developer as long as such additional statements do not increase or modify City's or Developer's obligations or liabilities under this Agreement. The statement may be relied upon by any auditor for, or creditor of, the requesting Party.

i. Controlling Provisions. If there is a conflict between any other provision of this Agreement and this Section 10, the provisions of this Section 10 shall control. Each Mortgagee is a third-party beneficiary of the provisions of this Section 10.

11. Extensions and Consent. As long as no uncured Event of Default by a Developer is in existence or continuing under this Agreement, then extensions to the dates set forth in this Agreement may be obtained as follows:

a. Three (3) Month Extensions. A Developer may extend the dates set forth in this Agreement eight (8) times for a period not to exceed three (3) months each with respect to such Developer's Sub-Project by giving written notice to City not less than forty-five (45) days before the then-scheduled performance dates. This right may be exercised only eight (8) times by a Developer, and, if exercised, will operate to extend all dates stated in this Agreement and on the Schedule of Performance arising after the date of exercise.

b. Market Condition Extensions. Developers may request to extend the dates set forth in this Agreement up to two (2) times for a period not to exceed one (1) year each due to adverse or disadvantageous market conditions (each a "Market Condition Extension"). The Developers may request a Market Condition Extension by giving written notice to the City including a brief summary of the basis for the extension. The City shall have thirty (30) calendar days to respond to a request for a Market Condition Extension, and failure to respond in that time period shall be deemed as consent to the extension. The City agrees that consent to a Market Condition Extension will not be unreasonably withheld.

c. Fee Payment for Additional Extension. In addition to the extension rights provided in Sections 11a and 11b, a Developer may extend each of the dates listed within the Schedule of Performance and in this Agreement with respect to such Developer's Sub-Project and (whether or not a prior extension has been obtained) for one (1) additional period not to exceed twelve (12) months, by giving written Notice to City not less than forty-five (45) days before the then-scheduled performance dates and paying to City a nonrefundable extension fee of fifty thousand dollars ($50,000). Such extension fee solely shall be consideration for the extension and shall not be credited as any Developer Cost for such Developer.

d. Extension By Request. In addition to the extensions provided in subsections (a), (b), and (c), a Developer may, at any time, request an extension of the dates set forth in this Agreement and on the Schedule of Performance with respect to such Developer's Sub-Project. However, the City's City Manager may grant or deny any such request in the City's unfettered discretion.

e. Force Majeure. The dates specified in this Agreement and on the Schedule of Performance shall be extended day-for-day during, and performance by a Developer under this Agreement with respect to such Developer's Sub-Project shall not be deemed a default where delays are caused by, any occurrence and the continuation of any Force Majeure Event. "**Force Majeure Event**" means any event caused by fire, explosion, or other casualty beyond Developer's reasonable control and reasonably validated to be beyond Developer's reasonable control by the City; floods, earthquakes, fires, severe or unusual weather conditions for Tempe, Arizona, or other acts of God; strikes or lockouts; shortages of material or labor (excluding those caused by Developer's lack of funds); acts of the public enemy; confiscation or seizure by any government or public authority; injunction, restraining order, or other executive or court order or decree, initiative or referendum action; instability in financial markets; wars or war-like action (whether actual and pending or expected, and whether de jure or de facto); blockades, embargoes, moratorium, lack of transportation, or unforeseeable inability to obtain labor or materials; inability (when the Developer is faultless) to obtain financing, or of any contractor, subcontractor, or supplier by reason of a Force Majeure Event; insurrections; riots; civil disturbances, epidemic, pandemic, or quarantine restrictions, or other disturbance of social stability; any other act, event, or condition that prohibits or materially interferes with, delays, or alters the performance of the applicable duty under this Agreement. The time for performance of an obligation(s) hereunder (other than the payment of money) shall be extended and the performance excused for any such Force Majeure Event only for the period of the enforced delay, which period shall commence to run from the time of the commencement of the Force Majeure Event. To obtain the benefits of this Section 11d, a Developer must put in writing the factual basis supporting its conclusion that a

Force Majeure Event has occurred. City must reasonably respond to the request including the timeline requested by the Developer.

f. Early Performance Allowed. Nothing in this Agreement shall preclude a Developer from proceeding with respect to the Developer's Sub-Project by dates that are sooner than each and every date by which the Developer otherwise is obligated to complete its performance under this Agreement.

g. City Manager's Power to Consent. Subject to the rights granted to a Mortgagee hereunder, and a Developer's right to extend performance dates, failure of a Developer to meet any of the performance dates or requirements of this Agreement or the Schedule of Performance beyond all applicable notice and cure periods may result in termination of this Agreement at City's sole discretion with respect to, and only with respect to, such Developer and the Developer's Sub-Project. The City authorizes and empowers the City Manager to consent to any and all requests of a Developer requiring the consent of the City hereunder without further action of the City Council except for any actions requiring City Council approval as a matter of law, including without limitation, any amendment or modification of this Agreement that is within the initial authority for this Project granted by the City Council.

12. Indemnification of City. Each Developer agrees to indemnify, defend, save, and hold harmless the City, any jurisdiction, department, or agency issuing any permits for any work included in the development of the Developer's Sub-Project and their respective directors, officers, officials, agents, employees, and volunteers (collectively "**Indemnitee**") from and against all claims, demands, actions, liabilities, damages, losses, or expenses (including court costs, attorney's fees, and costs of claim processing, investigation, and litigation) (collectively "**Claims**") for personal injury (including death) or property damage caused, or alleged to be caused, in whole or in part by the negligent or willful acts, errors, or omissions of the Developer or any of the Developer's directors, officers, agents, assignees, employees, volunteers, or contractors arising out of or resulting from this Agreement; provided, however, the foregoing shall not apply to any Claims arising as a result of any Indemnitee's negligence, willful misconduct, breach of this Agreement, or breach of applicable law as established by a court of competent jurisdiction. This indemnity includes any claim or amount arising under the worker's compensation laws or arising out of the failure of Developer to conform to any federal, state, or local law, statute, ordinance, rule, regulation, court decree, or for any of Developer's breach or violation of this Agreement, or for Developer's work or actions related to this Agreement. This indemnity shall survive the termination of this Agreement with respect to such Developer and the Developer's Sub-Project.

13. Insurance Requirements. Upon execution of this Agreement, each Developer and its contractors and subcontractors must procure and maintain insurance according to the terms and in the amounts as the Parties mutually agree within one hundred twenty (120) days of the Effective Date. During the construction of each Phase of the Developer's Sub-Project (or portion thereof), a Developer must cause its design consultant and subconsultants to procure and maintain insurance according to the terms and in the amounts as the Parties mutually agree within one hundred twenty (120) days of the Effective Date.

14. Non-discrimination. In performing under this Agreement, each Developer may not discriminate against any worker, employee or applicant, or any member of the public, because

of race, color, religion, sex, national origin, age, or disability nor otherwise commit an unfair employment practice. Each Developer will ensure that the Developer's applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, gender, or disability. Such actions include: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including for apprenticeship. Each Developer further agrees that this clause will be incorporated in all such Developer's subcontracts with all labor organizations furnishing skilled, unskilled, and union labor, or who may perform any such labor or services in connection with this Agreement. Each Developer further agrees that this clause will be incorporated in all such Developer's contracts, subcontracts, job-consultant agreements, or subleases of this Agreement entered into by supplier/lessee. A Developer may be required to provide additional documentation to the City affirming that a nondiscriminatory policy is being utilized by the Developer. The City will monitor each Developer's employment policies and practices as deemed necessary. The City is authorized to conduct on-site compliance reviews of selected firms, which may include an audit of personnel and payroll records, if necessary.

15. Recordkeeping, Audits. Each Developer's books, accounts, reports, files, and other records related to this Agreement or the Developer's Project Improvements, electronic or otherwise, are subject at all reasonable times to inspection and audit by City, for a period of five (5) years after completion of each Phase of the Developer's Sub-Project contemplated under this Agreement. Such records will be made available to City at the Developer's office located on the Developer's portion of the Project Property Developer's offices located in Tempe, Arizona, upon reasonable written Notice to the Developer, as provided in Section 22a of this Agreement, which shall be given not less than ten (10) calendar days prior to the date upon which City desires the inspection and audit to commence. Each Developer acknowledges that any and all documentation in the City's possession may be subject to a Public Records Request. The City shall notify a Developer if the City receives such a request for documentation and shall notify the Developer of the date on which the City intends to disclose the documentation to allow the Developer to seek court intervention prohibiting the City from disclosing the documentation if it wishes to do so.

16. Legal Worker Requirements. City is prohibited by A.R.S. § 41-4401 from awarding an agreement to any contractor who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A). Therefore, each Developer agrees that the Developer and each contractor or subcontractor it uses will warrant their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with § 23-214, subsection A. A breach of this warranty shall be deemed a material breach of this Agreement and is subject to the provisions of Section 17 hereof to the extent permitted by law. City retains the legal right to inspect the papers of each Developer's employees or those of its contractor or subcontractor employee(s) who work(s) on this Agreement to ensure that the Developer or its contractor or subcontractor is complying with the provisions of this Section.

17. Events of Default. The happening of any of the following events after the related applicable notice and cure periods (each, an "**Event of Default**") shall be considered a material breach and default by a Party to this Agreement:

a. If there occurs a delay or failure to pay in the due and punctual payment of any monetary amount owed by a Party to another Party under this Agreement within twenty (20) days after written notice thereof to the other Party;

b. If a Party fails in performance of or compliance with any of the covenants, agreements, terms, limitations, performance deadlines, or conditions of this Agreement, other than those referred to in the foregoing Section 17a, and such failure continues for a period of sixty (60) days after written notice thereof from a non-defaulting Party to the defaulting Party (provided, that if the defaulting Party proceeds with due diligence during such sixty (60) day period substantially to cure such default and is unable by reason of the nature of the work involved, to cure the same within the required sixty (60) days, the Party's time to do so shall be extended by the time reasonably necessary to cure the same as reasonably determined by the other Party); or

c. Notwithstanding anything to the contrary, if a Developer fails to meet the Project Completion Date with respect to the Developer's Sub-Project and such failure continues for one hundred eighty (180) days after written notice from the City to the Developer, the City shall have the right to terminate this Agreement with respect to all portions of the Developer's Sub-Project for which the Developer has not then commenced construction without any further action or cure periods. For purposes hereof, a Developer shall be deemed to have commenced construction for a Phase at such time as the Developer has poured the foundation for a building to be constructed within such Phase of the Sub-Project.

18. Remedies.

a. Upon the occurrence of an Event of Default by a Developer hereunder, the City shall have the right, subject to the rights granted to a Mortgagee herein, to elect either (i) to seek specific performance for the Phase or (ii) to terminate this Agreement with respect to any future Phases for which the Developer has not commenced construction.

b. Upon the occurrence of an Event of Default by City with respect to a Developer or its Sub-Project hereunder, the Developer shall have the right pursue all remedies available at law or in equity.

19. Rights and Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by any Party of one or more of such rights or remedies will not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same Event of Default or any other Event of Default by a defaulting Party.

20. Apprenticeship and Highly Skilled Worker Programs. To the extent permitted by state law, Developers agree to use its commercially reasonable efforts to register and utilize apprenticeship and highly skilled worker programs that meet federal and state standards in the undertaking of the duties and obligations contemplated herein. Each Developer acknowledges and agrees that it will comply with applicable federal and state law with regard to the use of apprenticeship and highly skilled worker programs, and that its contractors and/or subcontractors shall agree to provide high quality training for the production of skilled, competent workers for

the Developer's Sub-Project. For the purposes of this Section 11.17, the City and Developer agree that the preferred method of demonstrating the use of skilled, competent workers is participation in a registered apprenticeship program that has graduated journeymen three of the last five years.

21. Land Acknowledgement. On January 14, 2021, Tempe City Council adopted a resolution acknowledging the land that comprises present day Tempe as being culturally affiliated with the O'Odham, Piipaash, and their ancestors be reverently memorialized and made available for use in City of Tempe educational endeavors, programs, ceremonies, holiday observances, land use decisions, and other applicable purposes: The resolution included the following statements:

"We wish to acknowledge that Tempe is the homeland of the Native people who have inhabited this landscape since time immemorial. Anthropological studies document large and advanced Ancestral O'Odham settlements located throughout the entirety of present-day Tempe and recognize the ancestral lands of the O'Odham (known as the Pima), Piipaash (known as the Maricopa), and their ancestors as extending far beyond our community. This land continues to be spiritually connected to the O'Odham of the Salt River Pima-Maricopa Indian Community and Gila River Indian Community. The SRP-MIC and GRIC, located northeast and south of Tempe, respectively, are confederations of two unique groups with their own languages, customs, cultures, religions, and histories; the O'Odham and the Piipaash. Both the O'Odham and the Piipaash are oral history cultures.

The landscape is sacred to the O'Odham and Piipaash and reflects cultural values that are central to their way of life and their self-definition. Their oral history and song culture are indelibly tied to tangible places that are associated with specific historic, cultural, and religious values. Settlement patterns, advanced irrigation practices, and other lifeways driven by a deep understanding of and respect for the landscape are directly attributable to the ancestors of the O'Odham and Piipaash and served as the template for the establishment of Tempe. We accept the responsibility of stewarding those places and solemnly pledge to consider this commitment in every action."

22. General Provisions.

a. Notices. All Notices that shall or may be given pursuant to this Agreement shall be in writing and may be given in person or transmitted by registered or certified mail, return receipt requested, addressed as follows (each a "**Notice**"):

To the City:
City Manager
City of Tempe
P.O. Box 5002
31 E. Fifth Street
Tempe, Arizona 85281

With a copy to:
City Attorney
Tempe City Attorney's Office
P.O. Box 5002
21 E. Sixth Street, Suite 201
Tempe, Arizona 85281

To Guina:	Guina Affiliated Developers, LLC 129 W Southern Avenue Tempe, Arizona 85282
With a copy to:	Berry Riddell 6750 E. Camelback Road, Suite 100 Scottsdale, Arizona 85251 Attn: Wendy Riddell Email: wr@berryriddell.com
To Viking:	Desert Viking Development, LLC C/O Niels Kreipke 3002 East Washington Stree Phoenix, AZ 85034
With a copy to:	Gammage & Burnham Attention: Manjula Vaz 40 N Central Ave 20th Floor, Phoenix, AZ 85004

Any Party hereto shall have the right to change its designated notice address by providing to the other Parties written Notice of such change in the manner described above.

b. Acceptance of Legal Process. If any legal action is commenced by a Developer against City, service of process on City will be made by personal service upon City Clerk of City of Tempe, 31 East Fifth Street, Second Floor, Tempe, Arizona 85281, or in such other manner as may be provided by law. If any legal action is commenced by City against a Developer, service of process will be made by personal service upon the address provided in Section 22a, or in such other manner as may be provided by law.

c. Dispute Resolution. Except with respect to the Arbitration required by Section 22t, if there is a dispute hereunder that any of the Parties cannot resolve between themselves, the Parties agree that there shall be a forty-five (45) day moratorium on litigation during which time the disputing Parties agree to attempt to settle the dispute by nonbinding mediation before commencement of litigation. The mediation shall be held under the commercial mediation rules of the American Arbitration Association. The matter in dispute shall be submitted to a mediator mutually selected by the disputing Parties. If the disputing Parties cannot agree upon the selection of a mediator within seven (7) days, then within three (3) days thereafter, the disputing Parties shall request the presiding judge of the Superior Court in and for the County of Maricopa, State of Arizona, to appoint an independent mediator. The mediator selected shall have at least five (5) years' experience in mediating or arbitrating disputes relating to commercial property development. The cost of any such mediation shall be divided equally between the disputing Parties. The results of the mediation shall be nonbinding on the disputing Parties, and any disputing Party shall be free to initiate litigation subsequent to the moratorium.

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

e. Successors and Assigns. This Agreement shall run with the land and all of the covenants and conditions set forth herein shall inure to the benefit of and be binding upon the successors and assigns of the owners of any such land. Notwithstanding the preceding sentence, nothing in this Agreement shall be deemed to apply to or bind any of the Non-Participating Lots, which shall not be deemed to be encumbered by this Agreement unless and until any such Non-Participating Lot is incorporated into the Project Property by agreement of the respective Non-Participating Owner or its successor or assign as reflect bn the recording of the New Plat and the inclusion of such previously Non-Participating Lot within the Project Property. Each Developer shall have the right to assign its rights under this Agreement and with respect to its interest in the land without first obtaining the prior consent of the City, as long as the assignee is a corporation, partnership, joint venture, limited liability company, trust or other legal entity that is controlled by, under common control with, or that controls such Developer. In all other instances, a Developer may assign this Agreement with respect to some or all of such Developer's interest in such land by written instrument, to any subsequent owner of the portion of the Developer's interest in such land assigned with, and only with, the written consent of the City. Before consenting to an assignment for which its consent is required, the City may request documents and information to evaluate factors relevant to its consent, including potential assignees' financial health and ability to fulfill the terms and conditions of this Agreement. In all cases of assignment, the assignor shall only be deemed released from the terms of this Agreement upon an assignee's acceptance of all of the assignor's obligations under this Agreement with respect to the interest in the land so assigned, and such release of the assignor from this Agreement only shall apply with respect to the portion of the land so assigned. Notice of any assignment in accordance with this Section shall be provided by the assignor (or its successor or assign) to the other Parties (or their respective successors and assigns).

f. Waiver. No waiver by any Party of any breach of any of the terms, covenants, or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same for any other term, covenant, or condition herein contained.

g. Attorneys' Fees. If any dispute arises between the Parties in connection with this Agreement, excluding the Arbitration to take place pursuant to Section 22t, the Party prevailing in such action shall be entitled to recover from the other Party or Parties all its costs and fees, including reasonable attorneys' fees, which shall be determined by the court and not by the jury.

h. Severability; No Merger. If any phrase, clause, sentence, paragraph, section, article, or other portion of this Agreement becomes illegal, null, or void or against public policy, for any reason, or is held by any court of competent jurisdiction to be illegal, null, or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permitted by law, to the extent the material provisions of this agreement are not vitiated.

i. Exhibits. All exhibits attached hereto are incorporated herein by this reference as though fully set forth herein.

j. Affirmation and Entire Agreement. This Agreement and all its Exhibits constitute the entire agreement among the Parties pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations, negotiations, and understandings of the Parties hereto, oral or written, are hereby superseded and merged herein.

k. Amendments. Any amendments or other modifications to this Agreement must be in writing and signed by the appropriate authorities of the Parties to be bound.

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

m. Recordation of Agreement. This Agreement shall be recorded in the Official Records of Maricopa County, Arizona, within ten (10) days after its approval and execution by the City.

n. No Partnership or Joint Venture. Under no circumstances shall the Parties be considered partners or joint venturers.

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

p. Captions. The captions contained in this Agreement are merely a reference and are not to be used to construe or limit the text.

q. Conflict of Interest. No member, official, or employee of City may have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement that is prohibited by law. All Parties hereto acknowledge that this Agreement is subject to cancellation pursuant to the provisions of A.R.S. § 38-511.

r. Warranty Against Payment of Consideration for Agreement. Each 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, consultants, engineers, and attorneys.

s. Additional Documents. City and Developers each agree to execute and deliver all documents and take all actions reasonably necessary to implement and enforce this Agreement.

The Parties have caused this Agreement to be duly executed on or as of the day and year first above written.

C2023-327

ATTEST:

Kara DeArrastia, City Clerk

THE CITY OF TEMPE
an Arizona municipal corporation

Rosa Inchausti, City Manager

APPROVED AS TO FORM:

Sonia Blain, City Attorney

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me on this 29 day of November 2023, by Rosa Inchausti, City Manager of the City of Tempe.

My Commission Expires: 10/06/2026

Notary Public

Notary Public State of Arizona
Maricopa County
Benicia Benson
My Commission Expires 10/6/2026
Commission Number 636594

GUINA AFFILIATED DEVELOPERS LLC
an Arizona limited liability company

By: _____
Eric Guina, Manager

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me on this 27th day of November 2023 by Eric Guina, Manager of Guina Affiliated Developers LLC, an Arizona limited liability company, on behalf of the company.

My Commission Expires:

_____
Notary Public

EVELIN MALDONADO
Notary Public - State of Arizona
MARICOPA COUNTY
Commission # 630390
Expires May 30, 2026

DESERT VIKING—DANELLE PLAZA, LLC
an Arizona limited liability company

By: DESERT VIKING DEVELOPMENT, LLC
an Arizona limited liability company
Manager

By: _____
Niels Kreipke, Manager

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me on this 27th day of November, 2023 by Niels Kreipke, Manager of Desert Viking Development, LLC, an Arizona limited liability company, Manager of Desert Viking—Danelle Plaza, LLC, an Arizona limited liability company, on behalf of the company.

My Commission Expires:

_____
Notary Public

EVELIN MALDONADO
Notary Public - State of Arizona
MARICOPA COUNTY
Commission # 630390
Expires May 30, 2026

Exhibit A-1

PROPERTY LEGAL DESCRIPTION

Lots 1 through 52, inclusive, DANELLE PLAZA, according to the plat recorded in Book 101 of Maps, Page 15, records of Maricopa County, Arizona.

Tract A, DANELLE PLAZA, according to the plat recorded in Book 101 of Maps, Page 15, records of Maricopa County, Arizona.

Exhibit A-2

DANELLE PLAZA DEPICTION

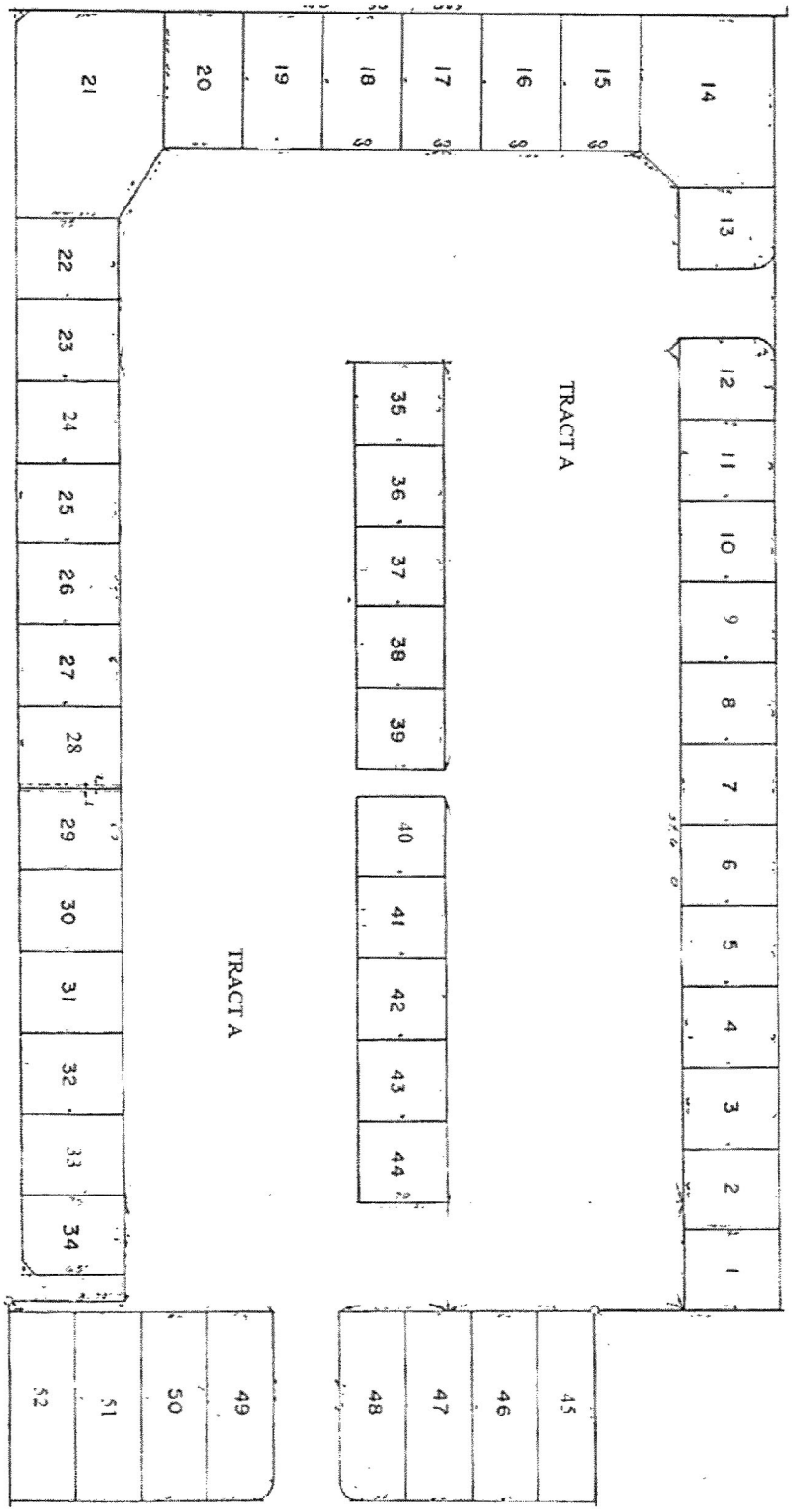

Exhibit A-3

DANELLE PLAZA 2013 PLAT

See that Subdivision Plat for "Danelle Plaza II" recorded in Book 101 of Maps, Page 15 of the County Recorder, Maricopa County, Arizona.

Exhibit B

NON-PARTICIPATING LOTS AND ALLOCATION OF COMMON AREA EXAMPLE