

ADOPTED BY THE  
MAYOR AND COUNCIL

---

RESOLUTION NO. 20839

RELATING TO DEVELOPMENT; APPROVING AND AUTHORIZING A DEVELOPMENT AND SALE AGREEMENT WITH TOWN WEST DESIGN DEVELOPMENT, INC. FOR THE DEVELOPMENT OF THE EL MIRADOR DEVELOPMENT PROJECT; AND DECLARING AN EMERGENCY.

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF TUCSON, ARIZONA, AS FOLLOWS:

SECTION 1. The Development and Sale Agreement for the El Mirador Development Project with Town West Design Development, Inc. attached hereto as Exhibit A, is approved.

SECTION 2. The Mayor is authorized and directed to execute the Development and Purchase Agreement for and on behalf of the City of Tucson and the City Clerk is directed to attest to the same.

SECTION 3. The various City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this resolution.

SECTION 4. WHEREAS, it is necessary for the preservation of the peace, health and safety of the City of Tucson that this resolution become

immediately effective, an emergency is declared to exist and this resolution shall be effective immediately upon its passage and adoption.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Tucson, Arizona on \_\_\_\_\_.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

REVIEWED BY:

  
\_\_\_\_\_  
CITY ATTORNEY

\_\_\_\_\_  
CITY MANAGER

MR/dc  
11/26/2007 10:18 AM

**DEVELOPMENT AND SALE AGREEMENT**  
**for**  
**Town West Design Development, Inc.**

This Development and Sale Agreement ("Agreement") is entered into by and between the CITY OF TUCSON ("City"), a municipal corporation, and TOWN WEST DESIGN DEVELOPMENT, INC., an Arizona corporation ("Developer"). City and Developer are sometimes referred to in this Agreement individually as "the Party" or collectively as "the Parties."

***RECITALS***

- A. City is a municipal corporation. Developer is an Arizona corporation.
- B. On or about September 6, 2006, the City, through the Mayor and City Council, approved the form of a Development and Purchase Agreement (the "Preliminary Agreement") which was subject to and contingent upon the resolution of several matters. Those matters have now been resolved and are incorporated into this Agreement. Effective upon the execution of this Agreement, the Preliminary Agreement shall be null and void.
- C. City acknowledges that Developer may assign some or all of its rights under this Agreement and an interest in the Property to an entity that will be formed and of which Developer will be a Manager (the "Related Entity"). Developer and/or the Related Entity intend to design and construct an integrated mixed-use project that may include one or more of the following: multi-story residential condominiums that may be sold and/or leased, office condominiums that may be sold and/or leased, a hotel located as part of one or more of the towers, an apartment concept, retail space, restaurant space and/or other commercial uses (the "Project").
- D. City owns that certain real property, containing approximately 2.5 acres, legally described in **Exhibit "A"** attached hereto, located at Franklin Street and Stone Avenue (the "Property").
- E. Upon satisfaction of certain terms and conditions in this Agreement, City intends to transfer and/or convey the Property to Developer.
- F. In exchange for the transfer and/or conveyance of all the Property and commitments made by City herein, Developer agrees to develop the Property pursuant to this Agreement.
- G. This Agreement is intended to be a development agreement between City, and Developer pursuant to A.R.S. § 9-500.05 for purposes of determining the Parties' respective rights and obligations in connection with the purchase and sale and development of the Property.
- H. A Phase II Environmental Site Assessment (the "Assessment") has been conducted on the Property on behalf of the City by SCS Engineers.
- I. City expressly finds and determines that the consideration and commitments herein outlined from Developer and City in this Agreement are justified based on the other consideration provided under this Agreement, including without limitation the economic development benefits to the community resulting from this Agreement.
- J. This Agreement is subject to the provisions of A.R.S. § 38-511.

EXHIBIT A TO RESOLUTION NO. 20839

## *AGREEMENT*

Now, therefore, based on the foregoing recitals, which are incorporated here as the intention of the Parties in entering into this Agreement and for good and valuable consideration the sufficiency of which is hereby acknowledged, the Parties agree as follows:

### **1. Purchase and Sale.**

#### **1.1 *The Property.***

1.1.1. Sales Price for the Property. City shall sell the Property to Developer for \$700,000.00 (the "Sales Price"). The Sales Price shall be paid in full upon the Closing (as defined herein) with credit given to Developer for all Earnest Money and interest earned thereon, if any. Certain portions of the Property will be conveyed back to the City through the Final Plat, including, without limitation, City owned common areas, parks, art walks, sidewalks, and parking spaces, and the portions of the Property shall be retained and maintained by the City subject to the provisions set forth below regarding the improvement thereof. The Property shall be transferred and/or conveyed to Developer by Special Warranty Deed.

1.1.2. Closing. The "Closing" shall occur upon City's issuance of the first foundation building permit to Developer or its agents or assigns for the Project, and after the Developer provides an assurance bond or letter of credit to the City in the amount of Three Hundred Thousand Dollars (\$300,000.00) (the "Closing Bond"). The Closing shall occur in a time period not to exceed twenty-one (21) months from the execution of this Agreement, with four "Contingency Periods" including an initial 9-month period, followed by three 4-month periods. As provided herein, for each Contingency Period, Developer shall provide an assurance bond or a letter of credit in lieu of cash to City, the total of which, together with the Closing Bond, shall be referred to as the "Bond." The Bond shall be held by City until Substantial Completion of the Project. "Substantial Completion" shall be established by the issuance of a temporary certificate of occupancy for either a commercial or residential unit, at which time the Bond will be released. If Substantial Completion does not occur within the time frame set out in Section 2.8 hereof, the City may proceed against the Bond. Developer shall be allowed two six month extensions for the Closing; however, each extension if exercised by Developer shall be accompanied by a \$15,000 increase in the amount of the Bond, as security for the faithful performance by Developer of the provisions of this agreement.

1.1.3.1. If Developer meets all of the requirements of any Contingency Period by the deadline for such Contingency Period, Developer shall automatically proceed to the next Contingency Period. If Developer meets all of the requirements of any Contingency Period before the deadline for such Contingency Period, Developer may elect to proceed to the next Contingency Period early by tendering to City the required Bond and written notification of Developer's election to proceed to the next Contingency Period. If Developer meets all submittal deadlines for any Contingency Period and works diligently to complete and obtain the required approvals for such submittals, such Contingency Period shall be extended for the time necessary to obtain approval of such submittals and/or required resubmittals as may be necessary to satisfy the requirements of such Contingency Period.

1.1.3.2. If for reasons outside of Developer's control, as reasonably determined by the City, Developer does not meet all of the requirements of any Contingency Period within the time provided in this Agreement, as such may be extended pursuant to **Sections 1.1.3.1 and 1.1.3.4** herein, this Agreement may be cancelled by Developer. Upon such cancellation, City shall immediately return to Developer the Bond.

1.1.3.3. If for reasons that are not outside of Developer's control, as reasonably determined by the City, Developer does not meet all of the requirements of any Contingency Period within the time provided in this Agreement, as such may be extended pursuant to **Sections 1.1.3.1 and 1.1.3.4** herein, this Agreement may be cancelled by City. Upon such cancellation, City shall have the right to proceed against the Bond.

1.1.3.4. Upon Developer's written request to City, to be provided at least five (5) business days before the end of any Contingency Period and which shall not be unreasonably denied, City may waive any of the requirements of any Contingency Period or may extend the time in which Developer shall meet the requirements of any Contingency Period.

1.1.3.5. Developer may request an extension of the Closing by providing written notice to City at least ten (10) days before the date on which the Closing is scheduled to occur. City shall not unreasonably deny such request if the extension is required due to delays outside of Developer's control. Within five (5) business days after City approves each extension as provided in this Section, Developer shall provide to City a \$15,000 increase in the amount of the Bond.

1.1.4. Initial 9-Month Contingency Period. During this Contingency Period, which begins upon the complete execution of this Agreement ("Effective Date"), the following shall occur:

1.1.4.1. Initial Bond. Developer shall provide to City a \$15,000 Bond upon the Effective Date of this Agreement.

1.1.4.2. Preliminary Concept Plan Submittal. Within sixty (60) days of the Effective Date, Developer shall submit preliminary conceptual architectural elevations and a preliminary development plan to City.

1.1.4.3. Concept Plan Approval. Developer shall obtain City's approval of conceptual architectural elevations for the Project (the "Concept Plans"). City's approval of the Concept Plans shall not be unreasonably withheld, delayed, or conditioned. City's approval shall be deemed given if City fails to respond to an approval request within ten (10) days after such request had been made by Developer, provided such submission includes the following language in bold text: **Failure to respond to this submission for approval within ten (10) days of City's receipt of this request shall be deemed an approval by City.** In the event that City does not approve of the Concept Plans or does not provide Developer with suggested revisions reasonably agreeable to Developer, then Developer's sole and exclusive remedy will be to terminate this Agreement by delivering written notice of such termination to City on or before fifteen (15) business days after Developer's receipt of City's disapproval or suggested revisions to the Concept Plans and the City will provide written notification of its relief of the Bond. During the fifteen (15) business days after delivery of written notice of City's disapproval or suggested revisions that are unacceptable to Developer,

representatives of the City and the Developer shall meet and make a good faith effort to resolve any issues. Developer's failure to timely cancel this Agreement pursuant to this Section shall be deemed Developer's acceptance of the Concept Plans as revised by City's suggested revisions and a waiver of its right to terminate this Agreement pursuant to this Section. Upon City's approval or deemed approval of the Concept Plans as submitted to City, together with City's suggested revisions thereto, such plans shall be deemed the "Approved Concept Plans" and Developer shall not be required to submit further concept plans for City approval. Any significant deviations from the Approved Concept Plans must be approved by the City in the manner outlined in this Section and City's approval of the requested changes shall not be unreasonably withheld.

1.1.5. First 4-Month Contingency Period. During this Contingency Period, the following shall occur:

1.1.5.1. Increase in Bond. Developer shall provide to City a \$15,000 increase in the amount of the Bond by the first business day of this Contingency Period.

1.1.5.2. Preliminary Financing. Developer shall deliver to City a copy of Developer's preliminary financing letter and a general explanation of Developer's proposed equity financing structure.

1.1.5.3. Advanced Plans. Developer shall submit to City advanced architectural elevations and an advanced or completed development plan for the Project that shall be in substantial conformance to the Approved Concept Plans as provided in **Section 1.1.4.3.**

1.1.6. Second 4-Month Contingency Period. During this Contingency Period, the following shall occur:

1.1.6.1. Increase in Bond. Developer shall provide to City a \$15,000 increase in the amount of the Bond by the first business day of this Contingency Period.

1.1.6.2. Construction Drawing Submittal. Developer shall submit to City construction drawings for the Project.

1.1.7. Third 4-Month Contingency Period. During this Contingency Period, the following shall occur:

1.1.7.1. Increase in Bond. Developer shall provide to City a \$15,000 increase in the amount of the Bond by the first business day of this Contingency Period.

1.1.7.2. Final Financing. Developer shall deliver to City copies of Developer's final financing commitments showing that presale requirements (if any) imposed by the lender have been met or that Developer can obtain a commitment of financing adequate to finance the Project, provided however, that Developer has sixty (60) days after the date of the City's approval of Developer's final construction drawings to obtain the final financing commitments.

1.1.7.3. Construction Plan Approval/Building Permit Issuance. Developer shall obtain City approval of Developer's final construction drawings and issuance of foundation building permits for the Project, provided that Developer has proceeded and submitted the construction drawings in a timely and good

faith manner and any delay as a result of the review and approval process thereof shall not be a Developer violation of the third Contingency Period.

1.1.7.4. Preliminary Marketing/Presales. Developer shall, after the Effective Date, begin marketing/presales activities including preparing marketing information describing the Project and soliciting expressions of interest, installing Project informational signage soliciting interest, and establishing a list of interested parties.

1.1.8. Acceptance of City Property.

1.1.8.1. In General. By taking possession from City of the Property, Developer accepts the Property in the condition existing as of the Closing. The City makes no representation or warranty with respect to the condition of such Property and shall not be liable for any latent or patent defect in such Property. Developer has fully investigated the condition of such Property, including without limitation the use or occupation that may be made of such Property, City's title to such Property, and any subsurface or soil or fill conditions or any latent defects of such Property. City shall not be liable for any claims relating to the condition of such Property. Except as provided in **Section 1.1.8.2**, the City shall not be required under this Agreement to remediate any environmental or other condition of such Property.

1.1.8.2. Remediation. The Assessment recommended that additional environmental investigation of the Property be conducted to define and characterize the extent of contaminants and that a health risk assessment be conducted for the site. It is agreed that the City shall conduct such studies as recommended in the Assessment within sixty (60) days from the Effective Date. Thereafter the City shall, at its sole cost and expense, agree to carry out any and all remediation of the Property as is called for in the Assessment and as a consequence of the further investigations and as is necessary to obtain clearance of the Property to develop the Project, from all local, state and federal agencies having jurisdiction over environmental matters (the "Remediation"). The City must complete the Remediation in a good faith and timely manner but no later than thirty (30) days prior to Closing. If the Remediation is not completed within the date established herein, the Closing shall be postponed day for day that the Remediation is not completed. If the Remediation is not completed within sixty (60) days of the date established herein, City may request that Developer grant City additional time, which request Developer shall not unreasonably deny, in which case the Closing shall be postponed day for day as set out above. If City does not request additional time, or if such a request is reasonably denied, Developer may declare a breach on the part of the City and proceed to enforce its rights consistent with the terms hereof.

**2. Developer Development Rights and Obligations.**

2.1 *Conditions of Conveyance and Development.* Developer shall initiate and proceed with development in accordance with this Agreement and with the rezoning as approved by Mayor and Council. Except as may be otherwise set out in this Agreement, Developer shall, at its expense, comply with all existing and future federal, state, county, and municipal laws, ordinances, rules, and regulations in connection with the use, operation, maintenance, and construction of all improvements on the Property. The Project shall include the approximate square footage, uses, and program elements as listed on **Exhibit "B"** attached hereto.

2.2 *Intentionally Left Blank.*

2.3 *Right of Entry.* City shall grant Developer a "Right of Entry" in the form routinely used by City for such purposes to allow Developer the right to enter the Property at any time during the term of this Agreement and prior to the Closing to effect design and construction planning of the Property.

2.4 *Standards for Construction of Property.*

2.4.1. Developer shall use and employ only licensed and qualified contractors.

2.4.2. All improvements shall be constructed in a good and workmanlike manner, and constructed and maintained in compliance with all applicable laws, rules, ordinances and regulations.

2.4.3. Developer shall construct in accordance to requirements of the LUC, Development Agreement, zoning requirements, and all Federal and State regulations.

2.5 *Development Review and Approval.* In order to facilitate expeditious City processing of Development Approval or Approvals (as defined herein), Developer shall submit thorough and complete plans, permit applications, and other applications, including all construction and building permit applications, to City's satisfaction.

2.6 *Governmental Approvals.* Developer shall obtain all necessary government approvals, permits or licenses that are necessary to Developer's construction, operation, use, or improvement of the Property. If any certificate, permit, license, or approval issued to Developer is cancelled, expires, lapses, or is otherwise withdrawn by any such governmental authority, Developer shall make every effort to obtain replacement permits for the governmental approval to the satisfaction of City. Failure to do so shall constitute a default under this Agreement.

2.7 *Mechanics' and Materialmen's Liens.* Developer shall promptly and diligently take whatever action is necessary to remove any mechanic's or materialmen's liens.

2.8 *Schedule.* "Start of Construction" shall be defined as the date on which work permitted by City begins on the Property. Start of Construction shall occur within one hundred twenty (120) days after the issuance of all necessary building permits. Construction shall be completed within thirty-nine (39) months of the Closing pursuant to the terms and conditions of this Agreement, with reasonable delay for force majeure events permitted.

2.9 *Signs.* Prior to the Closing, Developer may place signs on the Property with City's prior written consent to design, size, and location, said consent to be provided or denied by City within no more than ten (10) business days of request by Developer.

2.10 *Major Uses.* Developer may enter into agreements with third parties for the construction and/or operation of some or all of the uses described in Recital C of this Agreement. For those third party agreements for uses of more than 10,000 square feet ("Major Use(s)"), which may provide for a portion of the Property to be sold, leased, conveyed and/or transferred to a person or entity which will conduct a Major Use (the "Major User"), the City must approve such agreement, and any plans contained therein, prior to its execution by Developer, such approval to not be unreasonably withheld or such agreement must contain a provision providing that such agreement is subject to City approval and will be void if such approval is not given within twenty (20) days after the submission to the City of all documentation required pursuant to the terms of this

Section. If the City does not approve any such agreement and Developer and third party nevertheless enter into the agreement or fail to cancel an agreement which was entered into subject to the City's approval, this Agreement shall immediately terminate with each Party bearing any costs associated with its performance under this Agreement. In order for the City to approve any such agreement, it shall contain financial performance conditions to be met by the third party, including but not limited to providing a business plan and financial projections, providing proof of adequate capitalization including the ability to obtain financing and maintaining for the first year of operation adequate operating reserves. Such financial performance conditions must require that the in the event of their default by a Major User, Developer shall cancel the agreement and develop the portion of the Project designated for such use for other uses which must be approved in advance by the City Manager of the City, which approval cannot be unreasonably denied.

2.11 *Taxes, Fees, and Other Developer Payables.*

2.11.1. After the Closing for the Property, Developer shall bear, pay, and discharge all of the following (which are collectively referred to in this Agreement as "Impositions") as they apply to the Property at least fifteen (15) days before the last day when payment may be made without penalty or interest and before the nonpayment constitutes a default under the provisions of any mortgage on the Property after the Closing.

2.11.2. All taxes, assessments, water rents, rates and charges, sewer rents, license and permit, fees, and all other governmental impositions and charges of every kind and nature whatsoever, general and special, ordinary, and extraordinary, foreseen and unforeseen, of any kind or nature whatsoever and each and every installment thereof, which shall prior to and during the term of this Agreement be charged, laid, levied, assessed, imposed, become due and payable, or arise.

2.11.3. All taxes charged, laid, levied, assessed, or imposed in lieu of or in addition to the foregoing under or by virtue of all present or future laws, ordinances, requirements, orders, directions, rules, or regulations of the federal, state, county, and municipal governments and of all other governmental authorities whatsoever and in connection with the use, occupancy, or possession of or grow due or payable out of or for the Property or any part it or any building, appurtenances, or equipment on or in the Property or any part of it or the sidewalks or streets in front of or adjoining the Property or any rents or additional rents payable under this Agreement.

2.11.4. To the extent permitted by law and by any mortgage, Developer shall have the right to apply for the conversion of any special assessment for local improvements to cause the same to be payable in installments and upon such conversion Developer shall be obligated to pay and discharge punctually only such of said installments (with interest and charges thereon) as shall become due and payable during the term of this Agreement.

2.11.5. Developer shall pay, as they become due and payable, all fees, charges, taxes, and expenses required for licenses and/or permits required for or occasioned by Developer's use of the Property.

2.12 *Improvements to the Steinfeld Warehouse.*

2.12.1. Subject to the requirements of paragraph 2.15 of this Agreement, Developer shall coordinate the design, planning and construction of the

improvements of the Steinfeld Warehouse pursuant to plans approved by the City. The planning for the renovation shall commence at the time that the rezoning, as provided for herein, is granted by the City with the commencement of the actual construction to coincide with the commencement of construction activities at the Project by Developer. Developer shall complete the renovation of the Steinfeld Warehouse within four years from the date of the Development Agreement. If the renovation has not been completed within the four year time period Developer shall pay to the City within ten (10) days of written demand by the City the amount of \$250,000 as liquidated damages for its failure to complete the renovation. The City shall be responsible for the initial stabilization of the Steinfeld Warehouse which shall be carried out on or about one year from the date of complete execution of this Development Agreement. The Developer shall pay for any costs associated in the renovation which are not funded by other sources with a maximum Developer cost of \$1,600,000.00. The total value of the Developer's contribution including architectural and engineering fees, supervision expenses, and the actual costs of construction, including all amounts paid to selected contractors, shall be repaid by the City to the Developer as set forth in Section 2.14 hereof. Notwithstanding the above, in the event that the Developer has not obtained legal title to the Franklin & 9<sup>th</sup> Avenue Property pursuant to the provisions of Section 6 below, within 30 months from the date of the complete execution of this Agreement then the liquidated damage provision set forth herein shall be reduced from \$250,000 to \$100,000.

2.13 *Construction of Public Improvements by Developer.*

2.13.1. Subject to the requirements of paragraph 2.15 of this Agreement, as part of the construction of the Project, the Developer shall design, plan and oversee the construction of all public improvements included thereon as depicted on the final construction drawings for the project; which improvements shall remain the property of the City. The public improvements include but are not limited to the amphitheater, park, plaza, art walk and the like. The total value of the Developer's contribution including architectural and engineering fees, supervision expenses, and the actual costs of construction, including all amounts paid to selected contractors as approved by the City, shall be repaid by the City to the Developer as set forth in Section 2.14 hereof.

2.14 *Repayment of Developer Advances by the City.*

2.14.1. City shall repay Developer for Developer's authorized and lawful expenditures for the public improvements as described in paragraphs 2.12, 2.13 and 3.2.4 of this Agreement. The first payment by the City shall occur 365 days after the date of issuance of the first Certificate of Occupancy for a commercial use on the Property. City shall make to Developer one (1) annual payment. Each annual payment shall be equal to the amount of transaction privilege tax and construction sales tax reported for the Property during the 12 months immediately preceding the payment. The total amount repaid to Developer under this paragraph shall not exceed the authorized amount expended by Developer for the improvements described in paragraphs 2.12, 2.13 and 3.2.4 of this Agreement plus a yearly factor equivalent to the interest rate that Developer is charged on the Project's primary construction loan calculated for each individual year until the repayment is complete. Interest shall accrue on all of

Developer's expenditures for public improvements as described in paragraphs 2.12, 2.13 and 3.2.4 of this Agreement from the date of the expenditure. Regardless of the preceding sentence in the event that Developer completes the renovation of the Steinfeld Warehouse within the time provisions set forth in Section 2.12.1 hereof but fails to start the construction of the Project within four years of the date of the Development Agreement, Developer shall not be entitled to any interest on the money it has spent for the renovation of the Steinfeld Warehouse until such time as construction on the Project has commenced.

2.15 *Statutory Compliance for Construction.* Construction of all improvements which are funded or repaid all or in part with public funds, including the improvements described in paragraphs 2.12, 2.13 and 3.2.4 and including the funds provided in accordance with paragraph 2.14, shall be accomplished in conformance with the requirements of A.R.S. Title 34. These provisions generally require publicly funded construction projects to be put out to bid and awarded to the lowest qualified bidder. In order to ensure compliance with these requirements, Developer agrees that the City shall administer the bids for these improvements through its Procurement Department.

### **3. City Development Obligations.**

#### *3.1 Survey, Environmental, and Archeology Review.*

3.1.1. The City shall prepare and deliver to Developer a final archeological survey of the Property. The City shall provide any required archeology clearance for the Project within three (3) months of the Effective Date. The City shall also provide to Developer any information the City has in its possession concerning any environmental tests or surveys done on the Property. The City shall also deliver the Assessment to the Developer. If during the construction of the Project any archeological condition is discovered that requires remediation the City shall be responsible for the cost of any such remediation.

3.1.2. City shall be responsible at its cost to remove all improvements on the Property (including paving, asphalt, concrete pads and the like) and to deliver the Property to Developer at Closing in a level, graded condition, with no obligation to import dirt to the site other than as needed to fill any holes caused by the removal of improvements. Such work shall be completed by Closing.

#### *3.2 Utilities.*

3.2.1. Utilities to the Property. The City shall cooperate to provide sufficient utility capacity to the Property's property line for the uses as contained in Developer's Approved Construction Drawings.

3.2.2. Wastewater Permitting. City shall support expedited wastewater permitting for the Project.

3.2.3. Participating Rates. City shall cooperate and assist the Developer in attempting to obtain participating rates for sewer hookups from Wastewater Management.

3.2.4. Underground Utilities. Developer shall be responsible for causing all utilities which service or pass in front of any property line of the Property to be placed underground after approval of the final plat. This includes, but is not limited to, utilities fronting on Church, Franklin, Stone Avenue, 6<sup>th</sup> Street and 9<sup>th</sup> Avenue as portions of those streets border any of the property lines of the Property. Subject to the

requirements of paragraph 2.15 of this Agreement, Developer shall cause this work to be conducted and shall pay for the cost thereof subject to its right to be repaid by the City pursuant to the provisions of Section 2.14, hereof.

3.3 *Future Rio Nuevo and Downtown Zone Benefits.* This Agreement confers upon Developer certain assistance or benefits available for development located within the Rio Nuevo Multipurpose Facilities District, the Rio Nuevo and Downtown Zone and the Downtown Area Infill Incentive District. The Mayor and Council may approve future additional assistance or benefits for such development. In the event that the Mayor and Council approve such future assistance or benefits, Developer may apply to receive such future assistance or benefits for the Project, if eligible, and the Mayor and Council may also consider making such future additional assistance or benefits available to Developer as of the Effective Date.

3.4 *Development Impact Fees.* For the purpose of the application of the City's development impact fees pursuant to Tucson Code Section 23A-71 *et seq.* ("Impact Fees"), the following determinations shall guide the calculation and assessment of Impact Fees (if any):

3.4.1. Central Benefit District. The Project is located in the Central Benefit District for purposes of the Impact Fees assessed under Tucson Code Section 23A-81(8). Developer may apply for eligible offsets where applicable.

3.4.2. Downtown Area Infill Incentive District. The Project is located in the Downtown Area Infill Incentive District ("Infill District") and to the extent that the Infill District allows for the waiver, reduction and/or offsets to Fees the Project shall be entitled to all such benefits.

3.5 *Temporary Revocable Easements.* It is anticipated that development of the Property will include incorporation of private improvements on the public rights-of-way. City shall process any requests for use of public rights-of-way for private purposes using a temporary revocable easement ("TRE") or permanent easement, as appropriate. Annual payments for TRE's will be waived by City, but issuance of any TRE's will be subject to applicant securing right of way permits in accordance with the standards established by City's standard development review and building permit processes and approvals as needed. Examples of the types of uses for TREs include, but are not limited to, patio seating, temporary merchandise displays, beverage and food carts, portable propane heaters, portable lighting or seasonal decorative lighting, decorative displays associated with a store or business, roof drainage elements, and awnings. Any agreement relating to TRE's will be executed between the parties before closing.

3.6 *Air Right Conveyance.* The development of the Property may include incorporation of private improvements placed above the public rights-of-way (for example, balconies and living space). City shall process any requests for conveyance of air rights pursuant to a deed above public rights-of-way as a standard Real Estate Services ("RES") request using a form developed specifically for the Property and mutually agreed to by the Parties within thirty (30) days after submittal of the first set of building plans for the Property. City shall provide air right conveyance to the applicant at

no cost to the applicant. As long as the request for conveyance or air right meets all standard development review and building permit requirements, City shall not unreasonably withhold approval of such request.

3.7 *Plan Review.* Developer may use third-party Building Code and LUC review of all plans for the Property at Developer's sole cost and City shall cooperate with Developer and the third-party reviewers to ensure that Developer realizes the greatest possible reduction of the time required for the review of such plans. City shall, consistent with its adopted policies, expeditiously review and, if appropriate, approve all Developer's plans, permits and other applications, including all construction and building approvals (collectively, the "Development Approval or Approvals"). City agrees to designate a project manager who shall be responsible for coordinating and expediting to the greatest extent practicable all required reviews.

3.8 *Overlapping Development Review.* City will cooperate with Developer to identify opportunities for "overlapping" development review so as to reduce the overall time required for plan review and Project construction. For example, City agrees that it may be possible to accelerate the submittal of certain construction plans, demolition and grading/excavation plans, underground site utility plans, and foundation plans, before approval of a final plat or development plan. Subject to Developer's assumption of risk in the event of design changes, the Parties will cooperate to allow the submittal of such construction plans following the second review of the development plan.

3.9 *Condominium Ownership.* City acknowledges that Developer shall be required to submit final plats in order to create a condominium form of ownership of individual residential units in the Project. Because of the specialized nature of a final plat which creates a condominium form of ownership, City will cooperate with Developer to identify how, if Developer so elects, the submittal and review of the final plat may be accelerated.

3.10 *Parking Garage.* The City shall own, finance and operate a garage of no less than 500 spaces that shall be constructed in accordance with the project schedule. The Developer will work with the City to assure that design, function and garage delivery are in accordance with the Project's development schedule.

Developer shall be entitled to purchase or lease spaces in the Parking Garage through a nominee either being a Home Owners Association established to control the residential condominium units or directly by owners of the condominiums. The exact terms of the Parking Agreement shall be agreed to by the City Manager and Developer.

The Hotel component of the Project shall be able to lease spaces in the Parking Garage based on a lump sum monthly payment for a minimum number of spaces with additional spaces as needed being able to be leased at the same cost per space used as the calculation of the lump sum payment. This Agreement shall also be worked out between the City Manager and the Developer and/or the operator of the Hotel during the Initial 9 Month Contingency Period. If the Parties fail to work out this Parking Garage Agreement during the Initial 9 Month Contingency Period, then either Party may cancel and terminate this Development Agreement, with each Party bearing its own costs.

3.11 *Intentionally Left Blank.*

3.12 *Ongoing Maintenance Obligations.* City shall be responsible for all ongoing maintenance and repair obligations for all government owned common areas within the Project, the ownership of which is retained by the City.

3.13 *Removal of Billboard.* City shall assist the Developer in removing any billboards located on the Property. If the existing billboard is on the adjoining property owned by the Southern Pacific Railroad, the City shall cooperate with the Developer in attempting to have that billboard removed. In no event shall the City be required to exercise its powers of eminent domain or otherwise be required to financially assist in any billboard's removal.

3.14 *Incorporation of 9<sup>th</sup> Avenue.* The Developer acknowledges that in order for the parts of 9<sup>th</sup> Avenue needed for the Project to be incorporated therein, the City must abandon such parts requiring approval of the Mayor and Council. The City Manager shall request the Mayor and Council to approve such abandonment as it runs through the Project if necessary so that 9<sup>th</sup> Avenue can be incorporated into the Project as a public space so as to provide for pedestrian and bicycle linkages along with on-street parking, pending the Developer's approved Traffic Impact Analysis which shows it is a mutual benefit to the City and Developer. Subject to the requirements of paragraph 2.15, the Developer shall pay for the relocation of any utilities necessary due to the abandonment of 9<sup>th</sup> Avenue pursuant to this Section, but shall have the right to be repaid by the City pursuant to the provisions of Section 2.14, hereof.

3.16 *Affordable Housing Component.* The Developer shall contribute \$2000 per residential condominium unit to the affordable housing trust fund. Payment must be paid on a per unit basis before the time of closing on each unit.

3.17 *Public Meetings.* The Developer shall hold and advertise all public meetings as required as part of the City's rezoning procedure and notify City staff of said meetings in advance of the meeting taking place.

3.18 *Rezoning.* City shall, to the fullest extent practicable, facilitate and expedite the necessary rezoning of the Property in accordance with the terms of the LUC and City development guidelines.

3.19 *Parking Requirement.* City shall apply Rio Nuevo Overlay requirements for public and private parking on property. City shall approve reasonable parking standards as part of the concept plan in **Section 1.1.4.3** herein consistent with existing City parking requirements.

3.20 *Fee Waivers.* City shall, consistent with LUC requirements, provide all waivers as associated and applied in the Rio Nuevo Overlay District regulations

3.21 *Plan Check Review.* City shall, to the fullest extent practicable, expedite all plan check review for the Project in accordance with the terms of the LUC and City development guidelines.

3.22 *Stone Avenue Bridge.* A pedestrian crossing at Stone Avenue, including but not limited to a continuation of the City planned Art Walk, if approved by the City, shall be constructed and paid for by the City.

3.23 *Train Crossing.* City shall pay for the installation of two Silent Train Crossings at the east and west ends of Stone Avenue immediately north of the Property, pending all proper private, State, and Federal approvals.

3.24 *Timeline for Completion.* The City shall complete all of the conditions set forth in this **Section 3** within one year of Start of Construction unless causes for delays occur which are outside the control of the City.

3.25 *Taxes, Fees, and Other Developer Payables.* City shall bear, pay, and discharge the Impositions as they apply to the Property at least fifteen (15) days before the last day when payment may be made without penalty or interest and before the nonpayment constitutes a default under the provisions of any mortgage on the Property until the Closing after which date Developer shall be responsible for the Impositions as provided in **Section 2.11** of this Agreement.

3.26 *Compliance with Applicable Laws.* In performing all obligations under this Agreement, City shall be subject to and shall comply with all applicable laws, statutes, codes and constitutional provisions.

3.27 *Reduction in Taxes, Fees and Other Developer Payables.* To the extent that a reduction in taxes, fees and other developer payables now exist or come into existence in the future and are applied to any other project developed in the greater downtown Tucson area, such fee reductions shall also be made available to Developer.

3.28 *Bond Programs.* The City shall cooperate and assist Developer in obtaining financing as available through the Enterprise Zone Bond Program to finance part or all of the construction of the commercial aspects of the Project. The City shall designate a member of its staff to assist Developer with the application for enterprise zone bonds.

3.29 *Certificate of Occupancies.* To the extent authorized by and consistent with the requirements of the Tucson Code, the City shall cooperate with the Developer in allowing the Developer to sell certain of the condominium units prior to the time that the interior buildout thereof has been completed.

3.30 *Hotel Use.* If determined to be feasible by the Developer, the Developer shall be able to locate a hotel within a part of the Project, subject to all applicable laws and codes and necessary approvals.

3.31 *Apartment Use.* If it is determined to be feasible by the Developer, the Developer shall be able to locate an apartment within a part or portion of the Project subject to all applicable laws and codes and necessary approvals.

#### **4. Default Provisions/Remedies.**

4.1 *Developer Default.* Developer shall be in default under this Agreement if it:

4.1.1. fails to make payment of any amounts required hereunder when due and does not cure such nonpayment within ten days after written notice from City specifying the default complained of; or

4.1.2. fails to perform any other covenant or condition of this Agreement and does not cure such failure within thirty (30) days after written notice from City or such allowable longer period of time in the event Developer is, in the reasonable opinion of City, diligently attempting to cure the non-monetary default.

4.1.3. In the event of a default by the Developer, the City shall be entitled to the relief specifically set forth in this Agreement.

4.2 *City Default.* City shall be in default under this Agreement if either:

4.2.1. City fails to make payment upon receipt of valid requests when due and does not cure such nonpayment within ten days after written notice from Developer specifying the default complained of; or

4.2.2. City fails to perform any other covenant or condition of this Agreement and does not cure such failure within thirty (30) days after written notice from Developer, or such allowable longer period of time in the event City is, in the reasonable opinion of Developer, diligently attempting to cure the non-monetary default.

4.2.3 In the event of a default by the City, the Developer shall be entitled to the relief specifically set forth in this Agreement and if no relief is set forth, the Developer shall be entitled to either cancel this Agreement and receive a return of the Bond previously posted or to pursue an action seeking damages and/or specific performance.

## **5. General Provisions.**

5.1 *Zoning Compliance.* City intends that the Project be completed substantially as proposed by this Agreement. Construction shall be in conformance with the requirements of the LUC. This provision shall not preclude or limit City or Developer's right to seek text amendments, rezoning, or variances as may be permissible under and in accordance with the LUC and Arizona law.

5.2 *Disclaimer of Liability.* No Party to this Agreement shall at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of the other Party's construction, maintenance, repair, use, management, operation, condition, or dismantling of the improvements on the Property except in the event of negligence or intentional acts of the other Party.

5.3 *Notices.* All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed given and received two (2) days after being personally delivered or mailed, certified mail, return receipt requested and/or FedEx'd; to the following addresses:

If to City:

City of Tucson  
City Clerk's Office  
P. O. Box 27210  
Tucson, AZ 85726-7210

With copies to:

City of Tucson  
Real Estate Division  
Attention: Tim Murphy  
P. O. Box 27210  
Tucson, AZ 85726-7210

City Attorney's Office  
255 West Alameda, 7th Floor  
P.O. Box 27210  
Tucson, Arizona 85726-7210

If to Developer:

Town West Design Development, Inc.  
Attention: Jim Horvath  
3002 North Campbell Avenue, #200  
Tucson, AZ 85719

With copies to:

Jodi Bain  
Town West Design Development, Inc.  
3002 North Campbell Avenue, #200  
Tucson, AZ 85719

Robert L. Gugino  
Gugino & Mortimer, PLC  
4564 East Camp Lowell Drive  
Tucson, AZ 85712

5.4 *Successors and Assigns.* All of the provisions of this Agreement shall inure to the benefit of and be binding upon successors and assigns of the parties to this Agreement pursuant to A.R.S. § 9-500.05(D). This Agreement shall be assignable to any person or entity in any way controlled by Developer, or to any entity in which Developer is a member, partner or shareholder with at least a fifty (50) percent equity interest, or if to an entity in which the Developer retains less than a fifty (50) percent equity interest, provided that Developer is a manager or officer of such entity. In connection with the development of the Project, the Parties acknowledge that Developer and the Related Entity (as defined herein) may enter into an agreement for the marketing and sale of all or certain of the residential or commercial condominiums within the Project. Accordingly, each reference to an obligation of Developer in this Agreement with respect to the Project shall be deemed to refer to an obligation of Developer or to the Related Entity to the extent the rights with respect to a divided or undivided portion of the Property to which such obligation relates are assigned by Developer to such Related Entity pursuant to this Agreement.

5.5 *No Waiver of Strict Performance.* The failure of either Party to insist upon a strict performance of any of the agreements, terms, covenants, and conditions of this Agreement shall not be deemed a waiver of any rights or remedies that either Party may have and shall not be deemed a waiver of any subsequent breach or default in any of such agreements, terms, covenants, and conditions.

5.6 *Quiet Enjoyment.* City covenants that, as long as Developer shall faithfully perform the agreements, terms, covenants and conditions hereof, Developer shall and may peaceably and quietly have, hold and enjoy the Property and the rights granted by this Agreement for the Term granted without molestation or disturbance by or from City or third parties, subject, however, to all of the provisions of this Agreement and

all encumbrances to which this Agreement is made subject and subordinate as herein provided.

5.7 *Authority to Execute Agreement; Authority to Manage Agreement.* The individuals executing this Agreement represent that they have full right, power, and authority to execute this Agreement on behalf of their respective Parties. Further, each Party to this Agreement covenants to the other Parties that such Party has the legal capacity and authority to enter into this Agreement and to consummate the transactions contemplated hereunder.

5.8 *Entire Agreement.* This Agreement constitutes the entire agreement and understanding of the parties pertaining to the subject matter of the Agreement and supersedes all offers, negotiations, and other agreements of any kind. All prior and contemporaneous agreements, representations, and understandings of the Parties, oral or written, are superseded and merged in this Agreement. There are no representations or understandings of any kind not set forth herein.

5.9 *Governing Law.* This Agreement shall be construed in accordance with the laws of the State of Arizona.

5.10 *Non-Severability.* The provisions of this Agreement shall not be given effect individually, and to this end, the provisions of this Agreement are not severable.

5.11 *Anti-Moratorium.* No moratorium, as that term is defined in A.R.S. § 9-463.06, shall be imposed on the Property unless it is imposed pursuant to an ordinance that complies with A.R.S. § 9-463.06, as it may be amended.

5.12 *Headings.* The descriptive headings of the Sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the Agreement's provisions.

5.13 *Exhibits.* Any exhibit attached to this Agreement shall be deemed to have been incorporated in this Agreement by this reference with the same force and effect as if it were fully set forth in the body of the Agreement

5.14 *Further Acts.* Each of the Parties to this Agreement shall promptly and expeditiously execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

5.15 *Recordation.* The Parties shall cause an original counterpart of this Agreement to be recorded in its entirety in the official records of Pima County, Arizona, not later than ten (10) days after this Agreement is executed by all Parties and a Resolution is enacted by the Mayor and Council authorizing this Agreement.

5.16 *Amendments.* No change or addition is to be made to this Agreement except by a written amendment executed by all of the Parties. An amendment shall be recorded in the official records of Pima County, Arizona within ten days after its execution.

5.17 *Time of Essence.* Time is of the essence of this Agreement.

5.18 *Force Majeure.* Notwithstanding any other term, condition, or provision of this Agreement to the contrary, if any Party to this Agreement is precluded from satisfying or fulfilling any duty or obligation imposed upon it due to labor strikes, material shortages, war, civil disturbances, weather conditions, natural disasters, acts of God, or other events beyond the control of such Party, the time period provided herein for

the performance by such Party of such duty or obligation shall be extended for a period equal to the delay occasioned by such events.

5.19 *Attorneys' Fees.* In the event any Party hereto shall commence any civil action against the others to enforce or terminate this Agreement or to recover damages for the breach of any of the provisions, covenants, or terms of this Agreement on the part of the other Parties, the prevailing Party in such civil action shall be entitled to recover from the other Parties, in addition to any relief to which such prevailing Party may be entitled, all costs, expenses, and reasonable attorneys' fees incurred in connection therewith.

5.20 *Damage or Destruction.* Subject to **Section 5.18**, if the Property or any portion of it is destroyed or damaged through no fault or negligence of Developer in a way that materially hinders its effective use, Developer shall make necessary repairs within a reasonable period of time, unless mutually deemed infeasible. The City shall have no obligation to repair any damage to any portion of the Property.

5.21. *Insurance.* Developer shall maintain, or cause to be maintained, in full force and effect and at its sole cost and expense, the following types and limits of insurance to be effective on the Closing Date:

5.21.1. Worker's compensation insurance meeting applicable statutory requirements and employer's liability insurance with minimum limits of One Hundred Thousand Dollars (\$100,000) for each accident.

5.21.2. Comprehensive commercial general liability insurance with minimum limits of One Million Dollars (\$1,000,000) as the combined single limit for each occurrence of bodily injury, personal injury and property damage. The policy shall provide blanket contractual liability insurance for all written contracts, and shall include coverage for products and completed operations liability, independent contractor's liability; coverage for property damage from perils of explosion, collapse, or damage to underground utilities, commonly known as XCU coverage. This liability coverage will extend to the temporary construction sites, as defined in the right of entry agreement.

5.21.3. Automobile liability insurance covering all owned, hired, and non-owned vehicles in use by Developer, its employees and agents, to comply with the provisions of state law with minimum limits of One Million Dollars (\$1,000,000) as the combined single limit for each occurrence for bodily injury and property damage.

5.21.4. At the start of, during and only until completion of any Developer construction, builders all-risk insurance, together with an installation floater or equivalent property coverage covering cables, materials, machinery, and supplies of any nature whatsoever which are to be used in or incidental to the construction of the Improvements. Upon completion of the Improvements, Developer shall substitute for the foregoing insurance policies of fire, extended coverage, and vandalism and malicious mischief insurance on the Property. The amount of insurance at all times shall be representative of the insurable values installed or constructed.

5.21.5. All policies shall be written on an occurrence and not on a claims-made basis.

5.21.6. The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those stated.

5.21.7. *Additional Insured:* All policies, except for worker's compensation and all risk property, shall include City, and the officers, employees, boards, commissions, agents, attorneys, and contractors of the foregoing entities, as their respective interests may appear as additional insured (herein referred to as the "Additional Insured"). Each policy which is to be endorsed to add Additional Insured hereunder, shall contain the following cross-liability wording: "In the event of a claim being made hereunder by one insured for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is or may be made in the same manner as if separate policies had been issued to each insured hereunder." However, this condition does not operate to increase the insurance company's limit of liability.

5.21.8. *Evidence of Insurance:* Certificates of insurance for each insurance policy required to be obtained by Developer in compliance with this paragraph, along with written evidence of payment of required premiums, shall be filed and maintained with City. Developer shall immediately advise City of any claim or litigation that may result in liability to City.

5.21.9. *Cancellation of Policies of Insurance:* All insurance policies maintained pursuant to this Agreement shall contain the following endorsement: "At least thirty (30) days prior written notice shall be given to the City of Tucson by the insurer of any intention not to renew such policy or to cancel, replace, or materially alter same, such notice to be given by registered mail to the parties named in this paragraph of the Agreement."

5.21.10. *Insurance Companies:* All insurance shall be effected under valid and enforceable policies, insured by insurers licensed to do business by the State of Arizona or surplus line carriers on the State of Arizona Department of Insurance approved list of companies qualified to do business in the State of Arizona. All insurance carriers and surplus line carriers shall be rated A or better by A.M. Best Company.

5.21.11. *Deductibles/Self Insurance or Retentions:* All insurance policies may be written with deductibles, not to exceed Fifty Thousand Dollars (\$50,000) unless approved in advance by City. Developer agrees to indemnify and save harmless City, the Indemnitees, and Additional Insured from and against the payment of any deductible and from the payment of any premium on any Developer insurance policy required to be furnished by this Agreement.

5.22 *Counterparts.* This Agreement may be executed in three or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all parties may be physically attached to a single document.

5.23 *Effective Date.* This Agreement shall be considered effective upon the date of the execution by all the Parties of this Agreement (the "Effective Date").

5.24 *Term.* The "Term" of this Agreement begins as of the Effective Date and continues until terminated by mutual written consent of the Parties, unless terminated earlier as otherwise provided in this Agreement.

## 6. PROPERTY WEST OF 9<sup>TH</sup> AVENUE

### 6.1 *Property located West of 9<sup>th</sup> Avenue.*

6.1.1 Description of the property west of 9<sup>th</sup> Avenue. The City currently holds easement rights for the use of certain parcels of real property, containing approximately 40,000 square feet, legally described in Exhibit “C”, attached hereto, and located on Franklin Street immediately west of 9<sup>th</sup> Avenue (the “Franklin & 9<sup>th</sup> Avenue Property”). The Franklin & 9<sup>th</sup> Avenue Property is currently owned by the State of Arizona (specifically, the Arizona Department of Transportation). The City intends to attempt to acquire titled ownership of the Franklin & 9<sup>th</sup> Avenue property.

6.1.2. Negotiation for Sale of Franklin & 9<sup>th</sup> Avenue Property. In the event that the City obtains legal title to the Franklin & 9<sup>th</sup> Avenue Property is shall notify Developer thereof within 10 days of the recording of a Deed to the Franklin & 9<sup>th</sup> Avenue Property. Thereafter the City and Developer shall attempt to negotiate the terms of a sale of the Franklin & 9<sup>th</sup> Avenue Property to the Developer by the City upon terms agreeable to the Parties. In the event that the City and Developer agree upon a purchase price for the Franklin & 9<sup>th</sup> Avenue Property a condition of the sale shall be that the City shall obtain a Phase I and or Phase II, if necessary, Environmental Report on the Franklin & 9<sup>th</sup> Avenue Property within 30 days from the date of the execution of a Purchase Agreement, between the Parties and shall perform any remediation called for there under or as is necessary to obtain clearance of the Franklin & 9<sup>th</sup> Avenue Property from all local, state and federal agencies having jurisdiction over environmental matters (the “Remediation”) in a good faith and timely manner, but in no event later than 10 days before the date scheduled for the Closing of the transaction. If the Remediation is not completed within the date established herein, the Closing shall be postponed day for day that the Remediation is not completed. If the Remediation is not completed within 60 days of the date established herein, Developer shall be entitled to either grant the City additional time, in which case the Closing shall be postponed day for day, as set out above, undertake the Remediation on it’s own and deduct from the purchase price the cost of Remediation or declare a breach on the part of the City and proceed to enforce it’s rights consistent with the terms hereof.

6.1.3 Right of First Refusal. The City hereby grants to Developer a Right of First Refusal to acquire the Franklin & 9<sup>th</sup> Avenue Property in the event that the City is successful in obtaining the Franklin & 9<sup>th</sup> Avenue Property from the State of Arizona. At such times as the city obtains legal title to the Franklin & 9<sup>th</sup> Avenue Property the parties hereto shall agree upon the form of a Right of First Refusal to be recorded against the property or if such agreement can not be reached then this Development and Sale Agreement shall be recorded to act as the Right of First Refusal. The terms of the Right of First Refusal shall include that in the event that the City obtains legal title to the Franklin & 9<sup>th</sup> Avenue Property and can not agree upon terms for sale to Developer, and obtains an offer from a third party which is satisfactory to the City, the Developer shall be presented with a written form of Purchase Agreement signed by the

potential purchaser and the City containing all of the necessary terms of the sale as would normally be included in a purchase contract for properties of this type in Pima County, Arizona. The written offer shall be presented to Developer and Developer shall have 60 days from the date of receipt of the Purchase Agreement to notify the City whether it will exercise its Right of First Refusal and purchase the Franklin & 9<sup>th</sup> Avenue Property on the same terms as set forth in the written purchase agreement between the City and the third party buyer. In the event that the Developer exercises its right it shall have the right to purchase the Franklin and 9<sup>th</sup> Avenue Property upon the same terms and conditions including any periods for inspection and the like.

6.1.4 Sections 6.1.2 and 6.1.3 of this Agreement shall be null and void and of no effect if the provisions therein would prevent the State of Arizona from directly conveying the Franklin and 9<sup>th</sup> Avenue Property to the City without a public sale or auction.

Executed this \_\_\_ day of \_\_\_\_\_, 2007.

TOWN WEST DESIGN DEVELOPMENT, INC.,  
an Arizona corporation

\_\_\_\_\_  
By: Jim Horvath  
Its: \_\_\_\_\_

CITY OF TUCSON an Arizona municipal corporation

By: \_\_\_\_\_  
Mayor

Dated: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
City Clerk

Dated: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

Dated: \_\_\_\_\_

## **EXHIBITS**

- Exhibit "A" Legal Description of the Stone & Franklin Property
- Exhibit "B" Square Footage and Uses (Approximate)
- Exhibit "C" Legal Description of the Franklin & 9<sup>th</sup> Avenue Property

**EXHIBIT "A"**  
**(Legal Description of the Stone & Franklin Property)**