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DISTRICT DEVELOPMENT, FINANCING PARTICIPATION, WAIVER AND INTERGOVERNMENTAL AGREEMENT (PARK CENTRAL COMMUNITY FACILITIES DISTRICT)

City Contract No. 149553-IGA-001

DISTRICT DEVELOPMENT, FINANCING PARTICIPATION, WAIVER AND INTERGOVERNMENTAL AGREEMENT (PARK CENTRAL COMMUNITY FACILITIES DISTRICT)

LIST OF EXHIBITS

THIS DISTRICT DEVELOPMENT, FINANCING PARTICIPATION, WAIVER AND INTERGOVERNMENTAL AGREEMENT (PARK CENTRAL COMMUNITY FACILITIES DISTRICT) (this "**Agreement**"), dated as of April 15, 2019 (the "**Effective Date**"), is entered into by and among the City of Phoenix, Arizona, a municipality duly incorporated and validly existing pursuant to the laws of the State of Arizona (the "**City**"); Park Central Community Facilities District, a community facilities district formed by the City, and duly organized and validly existing pursuant to the laws of the State of Arizona (the "**District**"); and HPPC, LLC, an Arizona limited liability company ("**HPPC, LLC**" or "**Developer**"); and HPPC II, LLC, an Arizona limited liability company, formerly known as Holualoa 157, LLC ("**HPPC II**"), which represent themselves to be all of the current fee owners and equitable owners (collectively, the "**Initial Owners**") of the parcels of real property legally described on **Exhibit A- 1** and depicted on **Exhibit A-2** attached hereto (the "**Property**") and the undersigned lienholders with respect to the Property (together with the Initial Owners, the "**Interested Parties**"), all of whom have consented to the execution, delivery, and recordation of this Agreement on the Property.

WITNESSETH:

A. The Property is commonly known as Park Central Mall. Initial Owners are currently making, and intend to continue to make, a significant upgrade to the Property by developing and redeveloping on the Property various commercial improvements (such as, by way of example and not limitation, office buildings and educational facilities) and related public and private infrastructure improvements. The parties believe and intend that the development of the Property will enhance the economic vitality of the Phoenix midtown area, eliminate blighting influences, beautify streetscapes, encourage public transit by virtue of its proximity to light rail and bus routes and serve as a catalyst for the improvement of other properties.

B. In connection with the development of the Property, on August 15, 2018, the Interested Parties, Dignity Health, a California non-profit public benefit corporation ("**Dignity**"), and a prior owner of a portion of the Property, submitted to the City a petition ("**Petition**") requesting the City to create the Park Central Community Facilities District pursuant to Title 48, Chapter 4, Article 6, Arizona Revised Statutes (as amended, the "**Act**"), to be composed of the Property, for the purpose of designing, constructing, owning and operating "**public infrastructure**" (as such term is defined in the Act), and for the financing of the public infrastructure and subsequent reimbursements or repayments over time. Such public infrastructure consists of a parking garage to be owned by the District, and constructed on a portion of the Property donated by HPPC II to the District (as more specifically defined below and legally described in **Exhibit F-1**, the "**Garage Project Site**"). The Petition also set forth certain proposed financial contributions to be made by the Initial Owners and by the City with respect to the Garage Project.

C. The parties desire to obtain those public benefits that will accrue from continued growth and development along Central Avenue. Such benefits include advancing the goals of the City's General Plan by promoting employment and commercial opportunities along Central Avenue in proximity to residential neighborhoods, replacing surface parking with parking structures to allow for additional commercial development, and enhancing the quality of life for

the City's residents by promoting walkability and the use of public transit. The City also desires to obtain the public benefits that will accrue from the construction of a parking garage on the Property for shared public and private use and from the enhanced accessibility by public transit to City parks, special events, sports facilities and other destinations.

D. In response to the Petition, on August 29, 2018, the Phoenix City Council authorized the formation of the District pursuant to Resolution No. 21669, and authorized entering into this Agreement pursuant to Ordinance S-44953. Among other things, Ordinance S-44953 authorized the City to contribute amounts equal to certain tax revenues generated from the Property toward the management and operation of the Garage Project and debt service, conditioned on the Initial Owners donating the land to the District for the Garage Project and Initial Owners making certain financial contributions toward the Garage Project as described herein.

E. The parties intend that after the execution of this Agreement, special assessment revenue bonds of the District shall be issued, if certain conditions are met, to provide moneys for the Garage Project, which constitutes "**public infrastructure purposes**" (as such term is defined in the Act) described in the General Plan of the District (the "**General Plan**") heretofore approved by the City, including any refunding bonds or refinancing debt (collectively, the "**Assessment Bonds**"). The parties intend that the design, construction, and operation of the Garage Project will be funded by a combination of the proceeds of the Assessment Bonds, the contributions of the Initial Owners, Dignity, the City as described herein, and the revenues generated by the operations of the Garage Project among others, subject to the terms and conditions of this Agreement.

F. If Assessment Bonds are issued as contemplated in this Agreement, then this Agreement also sets forth the advancement and use of the proceeds of the Assessment Bonds, the repayment of the advances, and the disbursement and investment of the proceeds of the Assessment Bonds.

G. If Assessment Bonds are issued, then the Property other than the Garage Project Site will be subject to a lien for assessments to secure repayment of such Assessments Bonds.

H. This Agreement sets forth the written agreement with the Initial Owners as to the manner in which the assessments are to be allocated, inasmuch as the portion of the Property upon which the assessments are to be levied is to be subsequently divided into more than one parcel, and assessments may be prepaid and reallocated.

I. Additionally, this Agreement sets forth the process by which the contribution of amounts equal to certain tax revenues from the City, plus the contribution of certain funds by the Initial Owners, plus the proceeds of the Assessment Bonds, plus the operating revenues from the Garage Project, if held by the Bond Trustee, will be used to pay for debt service on the Assessment Bonds, to serve as a credit in whole or in part against the amount of the assessments that would otherwise be collected on the Property to pay debt service on the Assessment Bonds.

J. In connection with the Assessment Bonds, pursuant to the procedures prescribed by Sections 48-576 through 48-589, Arizona Revised Statutes, as nearly as practicable, or such other procedures as the board of directors of the District (the "**District Board**") provides, assessments of the costs of any public infrastructure purpose on any land in the District may be

based on the benefit determined by the District Board to be received by such land, and, in that respect, the Interested Parties and all subsequent Owners have agreed to waive certain matters and agree to certain other matters with respect thereto, as provided in this Agreement.

K. The parties are entering into this Agreement to set forth their agreement relating (a) to the conveyance of the Garage Project Site by HPPC II to the District; (b) to the design, construction and operation of the Garage Project; (c) to the issuance of the Assessment Bonds; (d) the manner upon which the Assessments are to be levied and allocated inasmuch as a portion of the Property is to be divided into more than one parcel and assessments may be prepaid and reallocated; (e) to the use of the proceeds of the sale of the Assessment Bonds; (f) the contribution of certain funds by the Initial Owners and the City; and (g) other related matters, all pursuant to the Act.

L. This Agreement constitutes a "**Development Agreement**" within the meaning of Arizona Revised Statutes, Section 9-500.05, and that, in accordance therewith, it shall be recorded against the Property in the Office of the Maricopa County Recorder to give notice to all persons of its existence.

M. Pursuant to the Act and Title 11, Chapter 7, Article 3, Arizona Revised Statutes, as amended, the District and the City entered into the specified sections of this Agreement as an "**Intergovernmental Agreement**" with one another for joint or cooperative action for services and to jointly exercise any powers common to them and for the purposes of the planning, design, inspection, ownership, control, maintenance, operation or repair of public infrastructure;

NOW, THEREFORE, in the joint and mutual exercise of their powers, in consideration of the above premises and of the mutual covenants herein contained and for other valuable consideration, and subject to the conditions set forth herein, the parties hereto agree that:

ARTICLE I
DEFINED TERMS; MISCELLANEOUS MATTERS RELATING TO USE THEREOF

Section 1.1 (a) For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the terms defined hereinabove and in this Section 1.1 have the meanings assigned to them in this Section 1.1 and hereinabove and include, as appropriate, the plural as well as the singular:

"**Act**" shall have the meaning provided in **Recital B**.

"**Architect**" means GLHN Architects & Engineers, Inc., the firm of licensed architects retained by HPPC II, for the Garage Project in the manner specified in Section 2.5.

"**A.R.S.**" means Arizona Revised Statutes.

"**Assessed Property**" means those parcels of the Property within the Assessment District upon which Assessments will be levied for the Assessment Bonds.

"**Assessment Bonds**" shall have the meaning provided in **Recital E**.

"**Assessment District**" means that portion of the Property legally described on **Exhibit B- 1** and shown on **Exhibit B-2** attached hereto. The Assessment District consists of Phase I and Phase II, excluding the Garage Project Site.

"**Assessment Engineer's Final Report**" means the Assessment Methodology Final Report, to be issued by EPS Group, Inc. prior to the issuance of any Assessment Bonds by the District.

"**Assessment Engineer's Preliminary Report**" means the Assessment Methodology Preliminary Report, dated March 25, 2019, issued by EPS Group, Inc. and shown on **Exhibit C** attached hereto.

"**Assessments**" means, as to be originally levied and as thereafter reallocated as described herein, the "**not to exceed**" proportionate share of costs and expenses of Work (i.e., the portion of the Project Costs funded with the proceeds of the Assessment Bonds) levied against each parcel of the Assessed Property pursuant to Title 48, Chapter 4, Article 2, Arizona Revised Statutes.

"**Bond Trustee**" means the entity serving as the "**Trustee**" of the Indenture. The Bond Trustee shall be U.S. Bank, National Association, or its successor.

"**Certificate of the District Engineer**" means a certificate of the District Engineer in substantially the form of **Exhibit D-1** (disbursement of funds, includes certification of Development Manager) and **Exhibit D-2** (completion) hereto.

"**City**" shall have the meaning provided in the initial paragraph of this Agreement.

"**City Contribution**" means the contribution by the City for the Garage Project in an amount calculated pursuant to Section 4.3(e).

"**City Contribution Account**" means the account by that name within the Parking Garage Revenue Fund held by the Bond Trustee as provided in Section 4.3(a).

"**Code**" means the Internal Revenue Code of 1986, as amended, and the Treasury Regulations applicable thereto, as amended.

"**Completion**" or "**Complete**" (or words of similar import) means, as to the Garage Project, the completion of the punch list items identified by the District Engineer, the Contractor and the Development Manager, the issuance of a certificate of occupancy (or its equivalent) by the City, and the payment of the Project Costs to accomplish the foregoing.

"**Conclusion Date**" shall have the meaning provided in Section 8.11.

"**Construction Contract**" means the construction contract between HPPC II and the Contractor for construction of the Garage Project, and to be assigned to the District pursuant to Section 2.6.

"**Contractor**" means Kitchell Contractors, Inc., the licensed general contractor retained by HPPC II for the Garage Project in the manner specified in Section 2.5.

"**Conveyance Closing**" means the consummation of the transaction whereby HPPC II conveys the Garage Project Site to the District, and the parties take such other actions as are described in Section 2.6.

"**Cost Cap**" shall have the meaning provided in Section 3.1.

"**Court**" means the Maricopa County Superior Court.

"**Cure Period**" shall have the meaning provided in Section 7.2(a).

"**Debt Service**" means the debt service, as that term is defined in the Act, on the Assessment Bonds.

"**Debt Service Expense Fund**" means the fund by that name to be held by the Bond Trustee as provided in Section 4.3(a).

"**Debt Service Reserve Fund**" means the fund by that name to be held by the Bond Trustee as provided in Section 4.3(a).

"**Designated Lenders**" has the meaning provided in Section 8.1.

"**Developer**" means HPPC, LLC.

"**Developer Contribution**" shall mean the contribution by the Developer described in Section 4.3(d).

"**Development Management Agreement**" means the Development Management Agreement between the District and the Development Manager for development management of the Garage Project in the manner specified in Section 2.5.

"**Development Manager**" means Plaza Del Rio Management Corp. dba Plaza Companies, the licensed construction manager retained by the District to provide development management services for the Garage Project.

"**Dignity**" shall have the meaning provided in **Recital B**.

"**Dignity Construction Account**" shall have the meaning provided in Section 2.2.

"**District**" shall have the meaning provided in the initial paragraph of this Agreement.

"**District Board**" has the meaning provided in **Recital J**.

"**District Budget**" means the budget of the District required for each Fiscal Year by the Act.

"**District Construction Account**" shall have the meaning provided in Section 2.2.

"**District Engineer**" means EPS Group, Inc.

"**District Expenses**" means, to the extent permitted in the Act, the reasonable expenses and costs of the operation and administration of the District (but not O/M Expenses) including the reasonable expenses and costs incurred by the City in connection with the formation of the District; its operations; its relationship with the City; its development and maintenance of the website required by the Act; its issuance of the Assessment Bonds or any similar matters and reasonable fees and related costs and expenses of staff of the City, financial advisors, engineers, appraisers, attorneys and other consultants and including any overhead incurred by the City with respect thereto and specifically and reasonably allocated to the District Expenses. District Expenses also includes the amounts of the insurance premiums arising as a result of procuring insurance as described in Section 5.3. The deductible contributions due from the District described in Section 5.3 shall become "**District Expenses**".

"**District Indemnified Party**" means the City, the Mayor, and each councilmember, director, trustee, member, officer, official, or employee thereof and each person, if any, who controls the City and/or the District within the meaning of the Securities Act.

"**Effective Date**" shall have the meaning provided in the initial paragraph of this Agreement.

"**Engineer's Estimate**" shall have the meaning provided in Section 6.4(a).

"**Excess Funds Long-Term Reserve Fund**" means the account by that name held by the Bond Trustee as provided in Section 4.3(a).

"**Financeable Amount**" means the total of amounts necessary to pay the sums described in Section 3.1. For the avoidance of doubt, the Financeable Amount does not include any amounts payable by the Dignity Construction Account.

"**Fiscal Year**" means the twelve (12) month period beginning on July 1 of any year and ending on June 30 of the following year.

"**Five-Year Forecast**" shall have the meaning provided in Section 3.11(b).

"**Force Majeure**" means any condition or event not reasonably within the control of a party obligated to perform hereunder, including, without limitation, "**acts of God**"; strikes, lock-outs, or other disturbances of employer/employee relations; acts of public enemies; orders or restraints of any kind of the government of the United States or any state thereof or any of their departments, agencies, or officials, or of any civil or military authority; insurrection; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; subsidence; fires; hurricanes; storms; droughts; floods; arrests; restraints of government and of people; explosion; and partial or entire failure of utilities. Failure to settle strikes, lock-outs and other disturbances of employer/employee relations or to settle legal or administrative proceedings by acceding to the demands of the opposing party or parties, in either case when such course is in the judgment of the party hereto unfavorable to such party, shall not constitute failure to use commercially reasonable efforts to remedy such a condition or event.

"**Garage Asset Management Agreement**" has the meaning provided in Section 4.1.

"**Garage Asset Manager**" means HPPC, LLC, or any successor Garage Asset Manager approved pursuant to Section 4.1.

"**Garage Construction Fund**" has the meaning provided in Section 2.2.

"**Garage Operating Agreement**" has the meaning provided in Section 4.1.

"**Garage Operator**" means the entity procured by the Garage Asset Manager to run the day to day operations of the Garage Project.

"**Garage Project**" means a parking structure and associated facilities located on the Garage Project Site and more fully described on **Exhibit E** attached hereto.

"**Garage Project Site**" means the portion of the Property within the District legally described on **Exhibit F-1** and shown on **Exhibit F-2** attached hereto, subject to such minor modifications (if any) as the District Engineer and the Initial Owners may approve prior to the Conveyance Closing; from and after the Conveyance Closing, the "**Garage Project Site**" shall mean the real property as legally described in the Special Warranty Deed.

"**General Plan**" shall have the meaning provided in **Recital E**.

"**HPPC II**" shall have the meaning provided in the initial paragraph of this Agreement.

"**HPPC, LLC**" shall have the meaning provided in the initial paragraph of this Agreement.

"**Indemnified Party**" means the City and the District, the Mayor, and each councilmember, director, trustee, member, officer, official, or employee thereof and each person, if any, who controls the City and/or the District within the meaning of the Securities Act.

"**Indenture**" means the trust indenture pursuant to which the Assessment Bonds are to be issued.

"**Infrastructure**" means any "**public infrastructure**" (as such term is defined in the Act) comprising the Garage Project.

"**Initial Expenses**" means the reasonable expenses and costs of the City and the District incurred prior to the Issuance Date and related to the initial operation and administration of the District, including the reasonable expenses and costs incurred by the City in connection with the formation of the District, its insurance, its operations, its relationship with the City, its issuance of the Assessment Bonds, financial advisors, engineers, appraisers, attorneys and other consultants, but expressly excluding any internal overhead incurred by the City with respect thereto, other than the fees and costs of the in-house legal counsel for the City that are specifically allocated to the Initial Expenses in accordance with the City's customary allocation practice.

"**Initial Owners**" shall have the meaning provided in the initial paragraph of this Agreement.

"**Initial Owners' Construction Account**" shall have the meaning provided in Section 2.4(a).

"**Initiation Notice**" shall have the meaning provided in Section 7.2(c).

"**Interested Parties**" shall have the meaning provided in the initial paragraph of this Agreement. The term "**Interested Parties**" does not include the City or the District.

"**Intergovernmental Agreement Act**" means A.R.S. Title 11, Chapter 7, Article 3, as amended.

"**Issuance Date**" means the date on which the Assessment Bonds are issued.

"**Lender**" and "**Lenders**" shall have the meaning provided in Section 8.1.

"**O/M Expenses**" means the reasonable expenses and costs of the operation and maintenance of the Garage Project (excluding any amounts for reserves) including any overhead incurred by the City with respect thereto and specifically and reasonably allocated to the O/M Expenses.

"**Owner**" means the Initial Owners and any subsequent owner in fee title of any portion of the Assessed Property.

"**Panel**" shall have the meaning provided in Section 7.2(c).

"**Parking Garage Revenue Fund**" means the fund by that name held by the Bond Trustee as provided in Section 4.3(a).

"**Parking User Agreements**" shall have the meaning provided in Section 4.2(b).

"**Parking User Revenue**" means all revenue from parking users, including but not limited to all revenue from tenants and owners of the Assessed Property, Dignity, the users under the Parking User Agreements, and other users of the Garage Project during business hours, all revenue from the apartment parcel, and all revenue from holiday, weekend and evening events, including special events, all revenue generated from the uses described in Section 4.2, and all proceeds of business interruption and other insurance maintained by the District with respect to the Garage Project.

"**Parking User Revenue Account**" means the account by that name within the Parking Garage Revenue Fund held by the Bond Trustee as provided in Section 4.3(a).

"**Petition**" shall have the meaning provided in **Recital B**.

"**Phase I**" means that portion of the Property legally described as such on **Exhibit A-1** and depicted as such on **Exhibit A-2** attached hereto. For the avoidance of doubt, Phase I is the same parcel of land described as Phase I in the Petition.

"**Phase II**" means that portion of the Property legally described as such on **Exhibit A-1** and depicted as such on **Exhibit A-2** attached hereto. For the avoidance of doubt, Phase II is the same parcel of land described as Phase II and as the Catalina Parcel in the Petition, and Phase II includes the Garage Project Site.

"**Plans and Specifications**" means the plans and specifications for the Garage Project which shall be prepared by the Architect and reviewed by the District and the District Engineer in accordance with the requirements for plans and specifications for construction projects of the City similar to the Garage Project.

"**Process**" shall have the meaning provided in Section 7.2(c).

"**Project Costs**" means all hard and soft costs incurred by the Initial Owners, the City, or the District to design, construct and equip the Garage Project, including without limitation (i) all costs payable under the contract with the Architect, (ii) all costs payable pursuant to the Construction Contract, (iii) all costs payable pursuant to the Development Management Agreement, (iv) all costs of permitting the Garage Project and procuring the Garage Project, (v) all costs payable to the District Engineer, and (vi) those categories of costs listed on **Exhibit G**.

"**Property**" shall have the meaning provided in the initial paragraph of this Agreement.

"**Public Access Development Agreement**" means the Development Agreement dated as of July 27, 2018, by and between the City and HPPC, LLC, City Contract No. 148204, and recorded July 27, 2018, as Document No. 2018-0571523, in the official records of Maricopa County, Arizona, as amended from time to time.

"**Replacement Reserve Fund**" means the account by that name held by the Bond Trustee as provided in Section 4.3(a).

"**Report**" means the study of the feasibility and benefits required by the Act for the Garage Project.

"**Securities Act**" means the Securities Act of 1933, as amended.

"**State**" means the State of Arizona.

"**Title Company**" means Landmark Title Assurance Agency, as agent on behalf of First American Title Insurance Company.

"**Title Policy**" shall have the meaning provided in Section 2.6(g).

"**Total Debt Service**" means Debt Service with respect to the Assessment Bonds for the next succeeding Fiscal Year.

"**TPT**" means construction, sales, rental and other transaction privilege tax dollars.

"**Work**" means the work as defined in A.R.S. § 48-571(A)(22) on the Garage Project, the construction of which is to be financed in part with the proceeds of the sale of Assessment Bonds.

For avoidance of doubt, the Work shall not include the portion of the Garage Project that is being funded by the Dignity Construction Account.

(b) All references in this Agreement to designated "**Exhibits,**" "**Articles,**" "**Sections,**" and other subdivisions are to the designated Exhibits, Articles, Sections, and other subdivisions of this Agreement as originally executed. References to "**subsections**" are to subsections of the Section in which the subsections are included.

(c) The words "**herein,**" "**hereof**" and "**hereunder**" and other words of similar import refer to this Agreement as a whole and not to any particular Exhibit, Article, Section or other subdivision.

ARTICLE II
CONSTRUCTION OF PROJECT BY THE DISTRICT; CONVEYANCE OF PROJECT SITE TO DISTRICT

Section 2.1 District Obligation to Construct the Garage Project. If Assessment Bonds are issued, then subject to the terms and conditions of this Agreement, promptly following the Conveyance Closing and the sale and delivery of the Assessment Bonds (subject to the availability of funds pursuant to Section 2.4), the District will cause the Garage Project to be designed, constructed and equipped pursuant to the Construction Contract, the Plans and Specifications, and this Agreement.

Section 2.2 Design and Construction of the Garage Project. The design and construction of the Garage Project has been, and will continue to be, procured to the extent required pursuant to the provisions of A.R.S. Title 34, Chapter 2, Article 1, and in accordance with the requirements for construction projects of the City similar to the Garage Project as specified in Phoenix City Code and any procurement guidelines promulgated in connection therewith. The Construction Contract was entered into with the bidder selected in accordance with the requirements for awarding contracts for projects of the City similar to the Construction Contract as specified by the Phoenix City and guidelines. The Construction Contract requires the Contractor to maintain a payment and performance bond in accordance with Arizona law, and to provide a two (2) year warranty of construction. The City acknowledges that, (a) Initial Owners have provided City documentation and information that describes and evidences HPPC II's procurement process and engagement of the Architect and the Contractor, and (b) based on such documentation and information, such procurement process and documentation comply with the requirements of this Section. Compliance with such requirements also shall be reviewed and certified by the District Engineer. The Construction Contract contains a guaranteed maximum price, and, to the extent such guaranteed maximum price exceeds the sum of (i) the amount deposited from Assessment Bond proceeds pursuant to Section 3.1(d) ("**District Construction Account**"), plus (ii) $8,000,000.00, which is the amount initially deposited by Dignity with the Bond Trustee for the payment of the Project Costs (the "**Dignity Construction Account**"), plus (iii) $1,509,421.00, which is the amount initially deposited by Dignity on behalf of the Initial Owners into the Initial Owners' Construction Account with the Bond Trustee for the payment of the Project Costs as described in Section 2.4(a), then Initial Owners shall promptly deposit with the Bond Trustee, as part of the Initial Owners' Construction Account, an amount equal to the

shortfall (the District Construction Account, the Dignity Construction Account and the Initial Owners' Construction Account, are collectively referred to as the "**Garage Construction Fund**").

Section 2.3 Appointment of Development Manager and District Engineer. In consideration of the Developer Contribution, the District, with the consent of the City, hereby appoints the Development Manager for the purposes of managing the acquisition, construction, development and equipping of the Project; subject to the terms of the Development Management Agreement. The District, with the consent of the City, hereby appoints EPS Group, Inc., as the District Engineer in accordance with A.R.S. Section 48-571.A(8), with all duties, obligations, rights and powers contemplated under (i) the Act, and (ii) the City Improvement District Act, A.R.S. Section 48-571 et. seq.; provided, however, the Development Manager shall have the power to procure the services of other engineers for purposes of preparing surveys, legal descriptions, construction drawings, feasibility studies, and the like, subject to the approval of the District. The District Engineer shall (a) prepare diagrams of the Assessed Property and the Plan of Assessment, (b) review draw requests for approval based on the written materials presented in comparison to the actual work completed, and (c) such other duties as assigned by the District.

Section 2.4 Payment of Project Costs. Following the issuance of the Assessment Bonds, the Bond Trustee shall disburse Advances (as defined on **Exhibit H**) from the Garage Construction Fund to pay Project Costs in accordance with the procedures set forth on **Exhibit H** hereto. The Advances from the Garage Construction Fund shall be made from the District Construction Account, the Dignity Construction Account, and the Initial Owners' Construction Account as follows:

(a) Prior to or concurrently with the issuance of the Assessment Bonds, Dignity will pay to the Bond Trustee, on behalf of the Initial Owners, $1,509,421. In addition, the Initial Owners will pay to the Bond Trustee for deposit into the Initial Owners' Construction Account, promptly upon notice from the District, any additional amount required pursuant to Section 2.2 to cover any budgeted shortfalls described in Section 2.2 and any actual cost overruns described in Section 2.4(d). Additionally, Dignity shall cause to be delivered to the Bond Trustee the sum described in Section 2.2, to be deposited into the Dignity Construction Account. The Bond Trustee shall hold the District Construction Account, the Dignity Construction Account, and the Initial Owners' Construction Account.

(b) With respect to each Advance, the Bond Trustee shall disburse advances from the Dignity Construction Account and the District Construction Account in accordance with Dignity's Proportionate Share (as hereafter defined) and the District's Proportionate Share (as hereafter defined), respectively, for the payment of the Project Costs set forth in such Advance; provided, however, in no event shall the Bond Trustee disburse advances from the Dignity Construction Account in excess of the Dignity Cap and in no event shall the Bond Trustee disburse advances from the District Construction Account in excess of the District Cap. For purposes of this Agreement:

(i) "**Dignity's Proportionate Share**" shall be a ratio, the numerator of which shall be 500 (i.e., the number of spaces in the Garage Project to which Dignity is entitled) and the denominator of which shall be the total number of spaces in the Garage Project as reflected on the Plans and Specifications.

(ii) The "**District's Proportionate Share**" shall be a ratio, the numerator which shall be the total number of spaces in the Garage Project as reflected on the Plans and Specifications less 500 and the denominator of which shall be the total number of spaces in the Garage Project as reflected on the Plans and Specifications.

(iii) The "**Dignity Cap**" shall be the sum of $8,000,000.00.

(iv) The "**District Cap**" shall be the aggregate amount of the District Construction Account.

(c) If, taking into account all prior Advances, the District's Proportionate Share of any Advance would exceed the District Cap, then the Bond Trustee shall first deplete the District Construction Account up to the District Cap and shall then disburse from the Initial Owners' Construction Account the remaining portion of the District's Proportionate Share. If, taking into account all prior Advances, Dignity's Proportionate Share of any Advance would exceed the Dignity Cap, then the Bond Trustee shall first deplete the Dignity Construction Account up to the Dignity Cap and shall then disburse advances from the District Construction Account the remaining portion of Dignity's Proportionate Share; and if such disbursement would exceed the District Cap, then the Bond Trustee shall deplete the District Construction Account and shall disburse advances from the Initial Owners' Construction Account the remaining portion of Dignity's Proportionate Share. The Bond Trustee shall follow this process until Completion of the Garage Project.

(d) Funds will not be advanced for the payment of Project Costs if the District Engineer determines, in its professional opinion, the remaining amount in the Garage Construction Fund (taking into account the Dignity Cap and the District Cap, and the process set forth in Section 2.4(c) above) following such disbursement will be insufficient to Complete the Garage Project in accordance with the Plans and Specifications. In such event, the District Engineer shall promptly notify the Initial Owners, and the Initial Owners shall promptly deposit into the Initial Owners' Construction Account the shortfall. Upon such deposit, the Bond Trustee shall continue to make advances from the Garage Construction Fund in accordance with Section 2.4(c). The Initial Owners' liability under this Section 2.4(d) shall be joint and several.

(e) Following Completion of the Garage Project, the Bond Trustee shall (i) disburse any remaining Initial Owners' Construction Account to the Initial Owners, (ii) disburse any remaining portion of the Dignity Construction Account to Dignity in accordance with Dignity's instructions, and (iii) transfer at the direction of the District any remaining funds in the District Construction Account either to the Redemption Account of the Debt Service Expense Fund, for immediate application by the Bond Trustee toward the special redemption of the Assessment Bonds, or to the Interest Account of the Debt Service Expense Fund.

Section 2.5 Actions by the Initial Owners Prior to Issuance of the Assessment Bonds. Prior to the Effective Date, HPPC II procured the services of the Architect in compliance with A.R.S. Title 34, and entered into the contract with the Architect for the design of the Garage Project and the preparation of the Plans and Specifications. HPPC II agrees to (i) continue to proceed in obtaining, at HPPC II's sole risk, design and cost estimates for the Garage Project and the Architect, in compliance with A.R.S. Title 34, (ii) use reasonable efforts to cause the Architect to

prepare the Plans and Specifications, and (iii) present the design and cost estimates, and the proposed Plans and Specifications, to the City and to the District for approval. HPPC II may, in its sole discretion, elect to enter into the Development Management Agreement or other agreements with design professionals relating to the Garage Project, but any such contracts are subject to approval by the City and the District before the contracts can be assigned to the District. After the Conveyance Closing and prior to or concurrently with the delivery of the Assessment Bonds, HPPC II will assign such contracts to the District and will have no further obligations under this Section, as the District will undertake the obligations to Complete the Garage Project pursuant to Section 2.1.

Section 2.6 Conveyance Closing. In consideration of the construction of the Garage Project, upon receipt of the Engineer's Estimate, subject to the approval of the City, the District, and the Initial Owners, and substantially concurrently with, but immediately prior to, the issuance of the Assessment Bonds, the Conveyance Closing shall occur. At the Conveyance Closing:

(a) Within 180 days prior to the Conveyance Closing, HPPC II shall provide a Phase I Environmental Site Assessment regarding the Garage Project Site. If the Phase I assessment recommends a Phase II report, then HPPC II and the District shall confer and determine whether to obtain a Phase II report (each in its own discretion). For the avoidance of doubt, HPPC II shall have no obligation to provide a Phase II report, and the District shall have no obligation to accept the conveyance of the Garage Project Site unless the District has reviewed and approved the environmental condition of the Garage Project Site in the District's sole and absolute discretion, and such delivery and review shall be a condition to the conveyance but not a covenant by any party. The Phase I assessment and any Phase II report, if applicable, will be provided to the District for review and approval, as well as any environmental records applicable to the Garage Project Site requested by the District in its reasonable discretion, in compliance with the standards required by City Administrative Regulation AR 3.95.

(b) HPPC II will convey to the District by Special Warranty Deed, at no additional cost, fee title to the Garage Project Site. The District will have no obligation to accept the conveyance unless fee title is subject only to (i) those matters set forth on that Title Commitment No. 06181407-128-V60 issued by the Title Company dated March 4, 2019, Amendment No. 2; (ii) the Parking User Agreements, and (iii) such other matters, if any, previously approved by the District in its sole discretion; the foregoing is a condition to the conveyance but not a covenant by HPPC II.

(c) The District will execute the Development Management Agreement (or, if HPPC II previously executed the Development Management Agreement, the same will be assigned to the District pursuant to Section 2.6(d) below), in a form accepted and approved by the District in its reasonable discretion, and HPPC II shall cause the Development Manager to countersign such document.

(d) HPPC II and the District will execute an Assignment and Assumption of Contracts, in a form accepted and approved by the District in its reasonable discretion, pursuant to which HPPC II will assign to the District, and the District will assume, HPPC II's interest under the Construction Contract, the contract with the Architect and any other contracts entered into by HPPC II in connection with the Garage Project and approved by the City.

(e) The parties shall use reasonable efforts to cause the District Engineer and the Development Manager to provide the initial requisition and documentation described in **Exhibit H** so that the same can be presented to the Bond Trustee promptly upon the issuance of the Assessment Bonds, to reimburse the Initial Owners for Project Costs.

(f) The Initial Owners and the District will take such further actions as are reasonably necessary to consummate the Conveyance Closing.

(g) As a condition to the Conveyance Closing, the Title Company will (i) record the Special Warranty Deed, and (ii) unconditionally and irrevocably commit to issue to the District, upon the Conveyance Closing, a standard coverage title insurance policy in the amount of $6,300,000.00, insuring fee title to the Garage Project Site in the District, subject to the matters described in Section 2.6(b) (the "**Title Policy**").

(h) The Title Company's costs to record the Special Warranty Deed and issue the Title Policy shall be paid by the Initial Owners, subject to the further provisions of Section 2.7.

(i) Except as otherwise set forth in this Agreement and the documents executed by the Initial Owners at the Conveyance Closing, the Garage Project Site will be conveyed by HPPC II to the District strictly in an "AS IS" condition, without representation and warranty, express or implied, by the Initial Owners or by anyone acting or purporting to act on behalf of the Initial Owners. The District will acquire title to the Garage Project Site in reliance on its inspections and investigation, and not in reliance on any actual or alleged statement of the Initial Owners, or the Initial Owners' agents, employees, officers, directors, members or contracts, other than any express statements set forth in this Agreement and the documents executed by the Initial Owners at the Conveyance Closing.

Section 2.7 Reimbursement of Initial Owners' Costs. Neither the Initial Owners, nor any entity related to any of them, have been or will be compensated by the City or the District for any Project Costs, except as provided herein. After the sale and delivery of the Assessment Bonds, proceeds of the Assessment Bonds shall be used to reimburse the City, the District, and the Initial Owners for Project Costs advanced prior to the issuance of the Assessment Bonds, including Initial Expenses, as contemplated in Section 2.4, and subject to the limitations in Section 2.5 and Section 2.8. The cost of the Title Policy, and other customary closing costs, shall be paid by the Initial Owners and reimbursed upon the issuance of the Assessment Bonds pursuant to Section 3.1(a) below. The Initial Owners further acknowledge and agree that the District is not obligated to reimburse the Initial Owners for any of these costs until and unless the District issues the Assessment Bonds. In no event shall the City have any obligation to reimburse the Initial Owners for these costs or any other type of costs, including costs for an appraisal and costs for the Assessment Engineer.

Section 2.8 Payment of Project Costs. The District's sole source for paying Project Costs shall be from the District Construction Account and other amounts deposited into the Garage Construction Fund and neither the District nor the City shall have any obligation to use any other funds toward the construction of the Garage Project. Until the sale and delivery of the Assessment Bonds, the District shall not have any obligation to pay such amounts. Neither the District nor the City shall be liable to the Initial Owners (or any contractor or assigns under any Construction

Contract) for payment of any such amount except to the extent available, unrestricted proceeds of the sale of the Assessment Bonds are available for such purpose, and no representation or warranty is given that the Assessment Bonds can be sold or that sufficient, available, unrestricted proceeds from the sale of the Assessment Bonds shall be available to pay such amounts.

ARTICLE III
ISSUANCE OF THE ASSESSMENT BONDS, OTHER OBLIGATIONS OF THE DISTRICT AND ASSESSMENT OF ASSESSED PROPERTY

Section 3.1 Issuance of Assessment Bonds. Subject to the further conditions set forth in this **Article III**, the District Board shall take all such reasonable action necessary for the District to sell and issue, pursuant to the provisions of the Act, an applicable amount (i.e., the Financeable Amount) of the Assessment Bonds in an amount approved by the Initial Owners prior to issuance of the Assessment Bonds. The District also shall take reasonable efforts to issue the Assessment Bonds in an amount, and at a cost, that provides adequate proceeds to fund expected District construction costs, and that forecasted revenues of the District are sufficient to cover debt service payments ("**Cost Cap**"). The District shall confer with Initial Owners with respect to the Cost Cap, but the District shall make all decisions with respect to the Cost Cap. If the District cannot issue the Assessment Bonds at an interest rate at or below the Cost Cap, the District will not issue the Assessment Bonds, and pursuant to Section 3.4, neither the District nor the City shall have any liability to the Initial Owners under this Agreement. The proceeds of the Assessment Bonds shall be applied to pay the following:

(a) Costs of the issuance of the Assessment Bonds, including costs of the rating agencies (if any), bond counsel for the District, counsel for the Bond Trustee (if any), legal fees of the City's law department allocated to the District in accordance with the City's customary practice, financial advisor to the District, placement agent or underwriter costs, the cost of the appraisal described in Section 3.2, the cost of the Assessment Engineer's Preliminary Report and the Assessment Engineer's Final Report, cost of issuance of the Indenture; any funds allocated to this category (a) and remaining after payment of the applicable costs shall be transferred to the District Construction Account and used for the purposes described in Section 3.1(d) below.

(b) Capitalized interest on the Assessment Bonds, in an amount sufficient to pay the Debt Service for a period of up to eighteen (18) months, commencing on the Issuance Date. Such amount shall be maintained by the Bond Trustee in the Interest Account of the Debt Service Expense Fund, and shall be disbursed by the Bond Trustee to pay Debt Service as and when required.

(c) An amount sufficient to fund a Debt Service Reserve Fund, which shall be a reserve to secure payment of debt service on the Assessment Bonds, up to the amount provided in the Indenture ("**Debt Service Reserve Fund**"). Payments from the Debt Service Reserve Fund shall not affect a reduction in the amount of the applicable Assessments, and any amount collected with respect to the applicable Assessments thereafter shall be deposited to such reserve to the extent the applicable Assessments are so paid therefrom.

(d) The balance of the proceeds shall be deposited by the Bond Trustee into the District Construction Account of the Garage Construction Fund. Advances from the District Construction Account shall be made in accordance with Section 2.4. Upon Completion of the Garage Project, the Bond Trustee shall transfer the balance of the District Construction Account as provided in Section 2.4(e).

Section 3.2 Appraisal and Maximum Amount of Bonds.

(a) The Initial Owners acknowledge and agree that for the District to issue Assessment Bonds, the Initial Owners must satisfy certain conditions specified by the City and the District. Among other conditions, at or near the Issuance Date, an appraisal obtained by the District and prepared by an MAI appraiser which shows that the market value of the Assessed Property described in the applicable Report is at least three (3) times the principal amount of the Assessment Bonds. The Initial Owners shall pay the expense of the appraisal, and the same shall be a cost of issuance of the Assessment Bonds which will be funded with proceeds of the Assessment Bonds as described in Section 3.1(a).

(b) Each Owner acknowledges and agrees that, while any Assessment Bonds remain outstanding, it will not sell or convey any portion (i.e., less than the whole) of an Assessed Parcel (other than the Assessed Parcel adjacent to the Garage Project Site and labeled as the Apartment Parcel on **Exhibit I-4**) unless such Owner first provides to the District an appraisal prepared by an MAI appraiser which shows that the market value of each of the new parcel created by such sale or conveyance and the remaining parent parcel following such sale or conveyance, as described in the applicable appraisal, is at least three (3) times the amount of the then remaining Assessment on such parcel, taking into account the required special assessment methodology as outlined in the Assessment Engineer's Final Report. For the avoidance of doubt, this Section does not apply to (i) sales or conveyances of an entire Assessed Parcel, or (ii) any conveyance or sale of a portion of an Assessed Parcel as a result of condemnation or transfer in lieu of condemnation.

Section 3.3 Sale of the Assessment Bonds. The District Board shall, in its sole discretion, determine the method of sale of the Assessment Bonds. The District will consider factors such as public sale or private placement, lien to value ratios, and transfer restrictions, if any, at the time each series of Assessment Bonds is sold.

Section 3.4 Insufficient Assessment Bond Proceeds. Until the sale and delivery of the Assessment Bonds' proceeds, the District shall not have any obligation to pay any Project Costs. Neither the District nor the City shall be liable to the Initial Owners (or any contractor or assigns under the Construction Contract) for payment of any Project Costs except to the extent proceeds of the sale of the Assessment Bonds, plus available amounts on deposit in the Dignity Construction Account and the Initial Owners' Construction Account, are available for such purpose. No representation or warranty is given that the Assessment Bonds can be sold or that sufficient, available proceeds from the sale of the Assessment Bonds shall be available to pay Project Costs. If the Assessment Bonds are not issued or if the Assessment Bonds' proceeds are insufficient to pay any or all of the amounts due described in Section 3.1, then there shall be no recourse against the District or the City for, and neither the District nor the City shall have liability with respect to, payment of such amounts, except from the available proceeds of the sale of the Assessment Bonds, if any and as applicable.

Section 3.5 Other District Obligations. Other than (1) this Agreement and the documents to be signed or assumed by the District as provided in this Agreement (including without limitation the contract with the Architect, the Construction Contract, the Development Management Agreement, the Parking User Agreements, and the Garage Asset Management Agreement), (2) the Assessment Bonds (and refunding or refinancing the Assessment Bonds) and (3) any obligations necessary in connection with either of the foregoing, the District shall not incur, or otherwise become obligated with respect to, any other obligations, except with the consent of all Owners.

Section 3.6 Assessment Lien. The Owners acknowledge that an assessment lien for the Assessments will be recorded against all of the Assessed Property prior to the Issuance Date, together with a notice of the assessment in substantially the form of **Exhibit J**. The Assessments shall be levied based on an allocable share of the Financeable Amount and pursuant to the Assessment Engineer's Final Report, as nearly as practicable, upon the applicable Assessed Property. The Assessments shall be collected pursuant to the procedures prescribed by A.R.S. Section 48-599 and A.R.S. Section 48-600, as nearly as practicable. If there is a nonpayment of any of the Assessments, then the procedures for collection the Assessments and sale of the applicable portion of the Assessed Property prescribed by A.R.S. Sections 48-601 through 48-607, shall apply, as nearly as practicable; provided, however, neither the District nor the City is required to purchase any of the Assessed Property at the sale, if there is no other purchaser.

Section 3.7 Recordation of Assessments. The Owners (which, for the avoidance of doubt, shall include the Initial Owners and the owners of record of the Assessed Property prior to and after the levy of the Assessments, and all successor owners), shall accept the Assessments and the District shall have the Assessments allocated and recorded with the County Recorder of Maricopa County, Arizona, against the various parcels comprising the Assessed Property; provided, however, that the District Board in its sole and absolute discretion may modify the Assessments after the Assessments have been legally assessed to correspond to subsequent changes in ownership of portions of the affected property, as described in the Assessment Engineer's Final Report, but in no case shall the Assessments be reduced below a total necessary to provide for Total Debt Service for the Assessment Bonds.

Section 3.8 Benefit of the Garage Project. The Assessed Property shall receive benefits from the Work equal to not less than the Assessments as so allocated to the parcels into which the Assessed Property is or is to be divided, and the Assessments shall be final, conclusive and binding upon the Owners whether or not Completion of the Work occurs.

Section 3.9 Prepayment of Assessments. Owners and any lenders and other parties involved in future transactions with respect to portions of the Assessed Property may desire or require that liens associated with the Assessments (or applicable portions thereof) be prepaid and released prior to accepting a lien with respect to any such financing. All or any portion of the Assessments may be prepaid. Such prepayment must be paid to the District in cash, and must equal the following: (I) the interest on such portion of the Assessments to the next date the Assessment Bonds may be redeemed plus (II) the unpaid principal amount of such portion of the Assessments in a minimum principal amount of $5,000 and rounded up to the next highest multiple of $1,000 in excess thereof plus (III) any premium due on such redemption date with respect to such portion of the Assessments plus (IV) any administrative or other fees charged by the District

with respect to such prepayment less (V) the amount by which any reserve therefor may be reduced on such redemption date as a result of such prepayment.

Section 3.10 Financeable Amount and Assessments. This Agreement shall be construed to be an express consent by the Owners that, subject to the express provisions of this Agreement including Section 4.3(f), (I) the District shall, with respect to the Assessed Property, incur costs and expenses necessary to Complete the Garage Project, and (II) the District may levy and collect the Assessments in amounts sufficient to pay the applicable Financeable Amount, including the Project Costs, but not in excess of the Financeable Amount.

Section 3.11 Budgeting of District Expenses; Process for Determining Assessments. To provide for expenses and costs for agents or third parties required to administer the Assessment Bonds and the levy and collection of the Assessments and any purposes otherwise related to such activities of the District, District Expenses shall be budgeted by the District Board each Fiscal Year in the District Budget as outlined below, and shall be paid pursuant to Section 4.3.

(a) Every Fiscal Year, commencing with the Fiscal Year that begins July 1, 2019, the City staff on behalf of the District, and in collaboration with the Developer and the Garage Asset Manager, will provide the District Board with an annual financial report reflecting the actual income, expenses, and disbursements of the District for the last two (2) Fiscal Years (provided that the first Fiscal Year covered in the first such report may be a partial Fiscal Year), including without limitation all revenue and expenses described in Section 4.3. The annual financial report will be made available to the public and posted on the District's website. At any time, the District, Developer, Garage Asset Manager or the City may engage an external auditor to audit the annual financial report.

(b) Every calendar year, prior to October 1 of such year, the District will approve the District Budget for the upcoming Fiscal Year as well as a five-year financial plan ("**Five-Year Forecast**"). The District Budget and the Five-Year Forecast will include the following:

(i) Sources of Revenue for the District:

(1) Parking User Revenues.

(2) Developer Contributions provided by the Developer, if any.

(3) City Contributions, which includes TPT projections provided by the City based on the Developer's information on the status of development of within the District, including the Garage Project.

(4) Other revenues, including interest income from the accounts held by the Bond Trustee, to be provided by the City.

(5) Application of funds from the Replacement Reserve Fund.

(6) Application of funds from the Excess Funds Long-Term Reserve Fund, as described in Section 4.3.

(7) Application of funds from the Debt Service Reserve Fund, to the extent permitted under the Indenture.

(8) Application of funds from the Assessment Revenue Fund (as described in Section 4.3(a)), if any.

(ii) Uses of District Revenues. The projected uses of District Revenues include without limitation the following:

(1) Annual Debt Service.

(2) O/M Expenses provided by the Garage Operator and approved by the District in collaboration with Developer as described below.

(3) District Expenses, as approved by the District.

(4) Repair and replacements of capital items associated with the Parking Garage as provided by the Garage Operator and approved by the District in collaboration with Developer as described below.

(5) Funding the Replacement Reserve Fund. The Replacement Reserve Fund shall be funded in an amount equal to $50,000.00 per year, commencing at the end of Fiscal Year six, with Fiscal Year one being the first full Fiscal Year following the Issuance Date.

(c) The City staff, acting on behalf of the District, in collaboration with the Developer and the Garage Asset Manager, will be responsible for accounting and reporting of the District, developing the District Budget and Five-Year Forecast, and coordinating approvals by the District Board. The City, in collaboration with the Developer and the Garage Asset Manager, will also be responsible for calculations and the administration of any Assessments approved by the District Board. The time frames for the process are set forth in the table below.

(d) The purpose of the Assessments is to ensure there is enough money to pay Debt Service and to operate the Garage Project on a continuous basis. The Five-Year Forecast will be used to identify the need for collection of Assessments in the future. Triggers for the collection of Assessments may include, but are not limited to, when the Excess Funds Long-Term Reserve Fund (after factoring in other projected sources of revenue listed above, and the projected uses of revenue listed above) is below 120% of the annual Debt Service at any point during the Five-Year Forecast.

(e) Generally, the Assessments will be calculated initially based on the Assessment Engineer's Final Report. The detailed Assessment Methodology can be found in the Assessment Engineer's Final Report and will be summarized in the Official Statement of the Assessment Bonds.

(f) The table below is an approximate annual schedule for approval of the District Budget for Fiscal Year 2020-2021 and Five-Year Forecast. The time periods set forth in

the table below will apply commencing for Fiscal Year 2020-2021 and will continue to apply to each Fiscal Year thereafter:

Date	Action	Explanation
March 2020* * The process is estimated to be instituted at this date because of the dates when Debt Service is expected to be paid from the proceeds of the Assessment Bonds. These dates assume that Debt Service is due on January and July each year; if the month of payment changes, then all dates will change accordingly.	Developer, Garage Asset Manager and City formulate a proposed Five-Year Forecast to submit to the District Board (Review annually).	Identify budget for District and Assessment needed to pay Debt Service due on January and July of following calendar year 2021 (taking into account the projected credit against the Assessment, in whole or in part, resulting from the application of actual and projected District Revenues).
May or June 2020	District Board meeting (formal District Board meeting happens on same day as formal City Council meeting).	Resolution for proposed District Budget including Assessment amount (Same timing as City budget).
Only Meeting in July 2020	District Board meeting (formal District Board meeting happens on same day as formal City Council meeting) (Example 1st meeting in July 2020).	Adopt the District Budget and approve property Assessment levy to pay Debt Service due in January and June of 2021.
September 15, 2020	No later than September 15, 2020, City staff to provide amounts of Assessment to be billed for collection to City Central Accounts Receivable with invoice date of October 1, 2020.	
December 1, 2020	If an Assessment is owed for collection per the above, then payment is due no later than December 1, 2020.	Source of funds for Debt Service payment due on January 1, 2021.

March 15, 2021	No later than March 15, 2021, City staff to provide amounts of Assessment to be owed for collection to City Central Accounts Receivable with invoice date of April 1, 2021.	
June 1, 2021	If an Assessment is owed for collection per the above, then payment is due no later than June 1, 2021.	Source of funds for Debt Service payment due on July 1, 2021.

The District Board may also be convened at any time if necessary due to an unforeseen event. Collection of Assessments would be implemented not sooner than sixty (60) days after District Board approval.

ARTICLE IV
GARAGE REVENUE, EXPENSE, OPERATION AND USE DISTRICT EXPENSES

Section 4.1 Operation of the Garage Project. Promptly upon issuance of the Assessment Bonds, the District will enter into a Garage Asset Management Agreement ("**Garage Asset Management Agreement**") with the initial Garage Asset Manager. The Garage Asset Management Agreement will set forth the obligations of the Garage Asset Management, and shall include the terms under which the Garage Asset Manager can be removed or resign. The Garage Asset Management Agreement will specify that the Garage Asset Manager shall perform, or cause to be performed, the following services:

(i) Manage the Garage Project for a market rate fee reasonably approved by the City, the District and the Garage Asset Manager, with the express right to oversell parking rights consistent with industry practices;

(ii) Procure (pursuant to applicable public bidding requirements) the Garage Operator and enter into a parking garage operating agreement with the Garage Operator, pursuant to which the Garage Operator shall run the day to day operation of the Garage Project (the "**Garage Operating Agreement**");

(iii) Ensure that the Garage Operator manages and operates the Garage Project in an efficient manner consistent with first class professional garage management services;

(iv) Make available to the District and the Developer its full judgement, experience, and advice with respect to the policies to be pursued for operation of the Garage Project;

(v) Be available for communication with and keep the District and the Developer informed of items which the Garage Asset Manager, at the time, reasonably believes to affect the Garage Project in any significant manner;

(vi) In consultation with the District, use diligent efforts to determine if any hazardous substance or waste is being stored, used or discharged by any party in the Garage Project and upon becoming aware of any storage, dumping, use or leakage of any such hazardous substance or waste on or near the Garage Project, immediately notify the District and the Developer;

(vii) Use reasonable efforts to see that all bills for charges incurred in connection with the services are paid on a timely basis;

(viii) Use reasonable efforts to maximize any and all revenue generated from the Garage Project;

(ix) Ensure that Parking User Revenues are paid to the Bond Trustee in compliance with this Agreement and the Indenture for the Assessment Bonds;

(x) Ensure that the Garage Project is operated in accordance with Parking User Agreements;

(xi) Assist Garage Operator in any collection issues it may encounter for all parking fees and other charges that may become due from any tenant or others for use of the Garage Project;

(xii) Assist the Garage Operator to ensure that tenants are in compliance with rules and regulations implemented for the Garage Project;

(xiii) Review any maintenance and/or repairs that are deemed necessary and make recommendations accordingly to the District; and

(xiv) Consult with the District with regard to any security program for the Garage Project in order to protect the assets of the District and vehicles within the Garage Project.

The form of the Garage Asset Management Agreement shall be reasonably acceptable to the City, the District and the Garage Asset Manager, and shall comply with this Agreement. The form of the Garage Operating Agreement shall be reasonably acceptable to the City, the District and the Garage Operator, subject to compliance with applicable public procurement requirements and this Agreement. The Garage Operator can be removed or resign pursuant to the terms of the Garage Operating Agreement. In the event the initial Garage Operator resigns or is removed, any subsequent Garage Operator and Garage Operating Agreement (and any modifications of same) must be procured and approved in the same manner.

Section 4.2 Use of the Garage Project.

(a) The City will make commercially reasonable efforts to use the Garage Project for weekend/evening events at City parks (including without limitation Margaret T. Hance

Park and Steele Indian School Park), for special events, and for sporting events at the downtown arenas upon reasonable notice by the District and Garage Operator. The Interested Parties and subsequent Owners acknowledge and agree, however, that this is an aspirational goal and nothing in this Agreement commits the City to use the Garage Project at a particular amount or to generate any level of revenue for the Garage Project.

(b) The City and the District acknowledge that the Garage Project Site is currently encumbered by an Easement dated January 6, 1998 and recorded January 23, 1998, at Document No. 98-0051482, Records of Maricopa County, in favor of adjacent property currently operated as a Hampton Inn. The City and the District further acknowledge that the Garage Project Site is also encumbered by an easement agreement in favor of Dignity, dated June 29, 1998 and recorded July 1, 1998, as Document No. 98-0566616, as amended by that amendment dated January 23, 2019, and recorded January 23, 2019, as Document No. 2019-0047394, in the official records of Maricopa County, Arizona. The District and the Initial Owners have approved the parking easements in the forms attached as **Exhibits I-1, I-2 and I-3**, which provide for parking rights to the Parking Garage Project for the benefit of certain portions of the Property. The District and the City have approved the foregoing parking easements. Prior to the Issuance Date, Initial Owners shall cause such agreements to be executed and recorded. A map showing the Dignity property and the portions of the Property benefitted by the foregoing easements is attached as **Exhibit I-4**. Any additional easements or agreements to reserve spaces in the Garage Project (or any modifications to any of the foregoing) are also subject to the reasonable review and approval of the City, the Developer and the District. The current and future easements and agreements as described in this Section 4.2(b) are referred to as the **"Parking User Agreements"**.

(c) The City and the District acknowledge that one of the Parking User Agreements is for the benefit of a portion of the Property adjacent to the Garage Project Site, and intended to be developed for multi-family uses, with structures that will abut upon the parking structure located on the Garage Project Site. Subject to Section 6.15 below, the City and the District shall reasonably cooperate with HPPC II, or the then Owner of such adjacent parcel, to grant such easements for minor encroachments, incidental access, and/or development-related matters as are reasonable and customary for similar projects, at no cost to the City or the District.

Section 4.3 Garage Revenue and Expenses.

(a) On the Issuance Date, the following funds and accounts shall be created by the Bond Trustee:

i. Garage Construction Fund
   a. District Construction Account
   b. Dignity Construction Account
   c. Initial Owners' Construction Account
ii. Assessment Revenue Fund
iii. Parking Garage Revenue Fund
   a. Parking User Revenue Account
   b. City Contribution Account
iv. Debt Service Expense Fund
   a. Interest Account

b. Principal Account
c. Redemption Account

v. Debt Service Reserve Fund
vi. District Expense Fund
vii. O&M Expense Fund
viii. Replacement Reserve Fund
ix. Developer Expense Fund
x. Excess Funds Long-Term Reserve Fund

(b) The funds and accounts shall be held by the Bond Trustee for so long as the Assessment Bonds are outstanding. Once the Assessment Bonds are no longer outstanding, the Bond Trustee shall transfer all monies in the funds and accounts to the District or, at the District's discretion, the City, subject to repayment to the Developer and the Garage Asset Manager pursuant to Section 2.4(b), Section 4.3(g) and Section 4.3(h).

(c) All Parking User Revenues received by the Garage Operator shall be transferred weekly to the Bond Trustee to be deposited into the Parking User Revenue Account. All Parking User Revenues received by the District from the Parking User Agreements shall be transferred monthly to the Bond Trustee, to be deposited into the Parking User Revenue Account. All Parking User Revenues received by the Initial Owners shall be transferred immediately to the Bond Trustee, to be deposited into the Parking User Revenue Account.

(d) The Developer Contribution shall be calculated within fifteen (15) business days following the end of each applicable Fiscal Year described below, and shall be paid immediately to the Bond Trustee for deposit into the Parking User Revenue Account. If there is a shortfall from the amounts set forth in subsections (d)(i), (d)(ii) or (d)(iii) below in Parking User Revenues for the prior Fiscal Year, then the Developer Contribution is the difference between the Parking User Revenues collected during such Fiscal Year and the following amounts:

(i) Beginning at the end of the Fiscal Year two (with Fiscal Year one being the first full Fiscal Year following the Issuance Date), for Fiscal Years two through five: $720,000 per year;

(ii) For Fiscal Years six through seven (with Fiscal Year one being the first full Fiscal Year following the Issuance Date): $792,000 per year; and

(iii) For Fiscal Year eight and continuing for each remaining Fiscal Year while the Assessment Bonds remain outstanding (with Fiscal Year one being the first full Fiscal Year following the Issuance Date): $942,000 per year.

(iv) Prior to or during any Fiscal Year, Developer may, in its sole discretion, elect to fund all or any portion of the Developer Contribution, subject to annual reconciliation and reimbursement as outlined in Section 4.3(g).

(e) The City Contribution shall be paid by the City to the Bond Trustee monthly, for deposit into the City Contribution Account. The City Contribution is limited to the following:

(i) For Fiscal Years one through six (with Fiscal Year one starting on the July 1 following the Issuance Date and ending on the next succeeding June 30): 100% of the City portion (up to 2.3%) (5.3% on the hotel sales tax) of TPT generated from and received by the City from Phase II (including without limitation the Garage Project) and the ground up (new) development on Phase I (i.e., the development on Phase I that is not described in clause (iii) immediately below);

(ii) For Fiscal Years seven and continuing for the remaining term of the Assessment Bonds (with Fiscal Year one starting on the July 1 following the Issuance Date and ending on the next succeeding June 30): 50% of the City portion (up to 2.3%) (5.3% on the hotel sales tax) of TPT generated from and received by the City from Phase II (including without limitation the Garage Project) and the ground up (new) development on Phase I (i.e., the development on Phase I that is not described in clause (iii) immediately below); and

(iii) 50% of the City portion (up to 2.3%) (5.3% on the hotel sales tax) of TPT generated from and received by the City with respect to structures on Phase I that existed as of August 29, 2018, commencing once the final Reimbursement Payment, as defined in City Contract No. 148204, has been made, and continuing for the remaining term of the Assessment Bonds.

(f) Subject to the limitations and conditions in the Indenture and this Agreement, monies in the Parking Garage Revenue Fund will be used to pay Debt Service, O/M Expenses, and District Expenses; to fund the Replacement Reserve Fund; and to reimburse certain payments. As indicated in **Recital F**, the parties desire to establish a process by which the sources of revenues described herein will be used to pay for Debt Service and other expenses associated with the Parking Garage Project, in order to serve as a credit in whole or in part in the Debt Service Expense Fund toward the amount of Assessments that would otherwise be collected on the Assessed Property for such purpose. In that regard, the parties intend that the monies in the Parking Garage Revenue Fund will be applied generally in the following order and priority; provided, however, such the actual order of priority and frequency of application of the Parking Garage Revenue Fund will be as outlined in the Indenture:

(i) First, for payment of Debt Service after depletion of the funds in the Debt Service Expense Fund (or for funding a customary reserve for the next succeeding payment of Debt Service), and taking into consideration any application of funds in the Debt Service Reserve Fund to the extent permitted under the Indenture;

(ii) Second, for payment of O/M Expenses in accordance with the annual District Budget;

(iii) Third, for payment of District Expenses in accordance with the annual District Budget;

(iv) Fourth, to the Replacement Reserve Fund, in an amount equal to $50,000.00 per year, commencing at the end of Fiscal Year six, with Fiscal Year one starting on the July 1 following the Issuance Date;

(v) Fifth, to the Garage Asset Manager, to reimburse the Garage Asset Manager for amounts advanced by the Garage Asset Manager as provided in Section 4.3(h) below;

(vi) Sixth, to the Developer to reimburse the Developer for amounts advanced by the Developer as provided in Section 4.3(g) below; and

(vii) Seventh, the balance to the Excess Funds Long-Term Reserve Fund as a "Reserve", for future Fiscal Year(s) expenses, to be applied as set forth in this Section 4.3.

(g) Subject to Section 4.3(f)(vi) above, within fifteen (15) days following the end of each Fiscal Year, in the event that Developer has elected to make a Developer Contribution in advance pursuant to Section 4.3(d) above, the District will direct the Bond Trustee to refund to Developer from amounts in the Developer Expense Fund (as described in Section 4.3(a)) the amount of the advance payments to the extent that such advance payments exceeded the required Developer Contribution for such Fiscal Year. If such payment is inconsistent with the Five-Year Forecast, then the reimbursement obligation will be carried over to subsequent Fiscal Year(s) until paid, subject to the final accounting in Section 4.6 below.

(h) If the Garage Asset Manager determines that the budgeted amounts for O/M Expenses in any month are insufficient to pay such month's actual O/M Expenses, the Garage Asset Manager may request an additional advance for O/M Expenses under Section 4.3(f)(iii) above (the "**Additional O/M Amount**"). If sufficient funds are available in the O&M Expense Fund to fund the Additional O/M Amount, then the District will direct the Bond Trustee to transfer from the O&M Expense Fund (as described in Section 4.3(a)) the Additional O/M Amount to the Garage Asset Manager. If there are insufficient funds in the O&M Expense Fund to fund the requested amount, then the Garage Asset Manager may, but shall not be obligated to, advance the Additional O/M Amount. If the Garage Asset Manager advances the Additional O/M Amount, then the District will direct the Bond Trustee to refund to the Garage Asset Manager any unpaid Additional O/M Amount as soon as sufficient funds are available in the O&M Expense Fund. If such payment is inconsistent with the Five-Year Forecast, then reimbursement obligation will be carried over to subsequent Fiscal Year(s) until paid, subject to the final accounting in Section 4.6 below. Specific instructions will be included in the Indenture.

(i) If the Initial Owners' Construction Account is used to Complete the Garage Project, or Project Costs were incurred by Initial Owners and not previously reimbursed through the proceeds of the Assessment Bonds, then the District Board may consider and approve reimbursement of all or any portion of such amounts through the Five-Year Forecast, and the Bond Trustee shall make any such reimbursement payments as directed by the District Board.

Section 4.4 Tracking of Information Needed to Calculate City Contribution. In order for City to determine the TPT generated from and received by the City, and to calculate the City Contributions, each Owner shall take the following actions with respect to the portion of Phase I or Phase II owned by such Owner: (i) each Owner shall provide the necessary authorizations, summaries, and any other documentation reasonably requested by City to track TPT generated from and received by the City for taxable activities at the portion of Phase I or Phase II owned by such Owner (the "**Tax Calculation Documents**"); (ii) each Owner shall request or require that any tenant or contractor at Phase I or Phase II, obtain a separate TPT license for activities

conducted on, at, or from the improvements located within Phase I or Phase II for City reporting purposes and provide all Tax Calculation Documents directly to the City; and (iii) because some businesses with multiple locations in the City (a "**Multiple Location Taxpayer**") report their TPT on the basis of revenues for all their locations in the City, rather than separately for each location, Owners shall request that each such Multiple Location Taxpayer located in Phase I or Phase II separately report its TPT in the aforementioned separate TPT license. Solely for purposes of this Section 4.4, the owner of the Garage Project Site (which is part of Phase II), including without limitation the District if it is the owner of the Garage Project Site, shall be deemed an "Owner".

Section 4.5 Transfers from Parking Garage Revenue Fund. The distributions from the Parking Garage Revenue Fund in Section 4.3(f)(i)-(vi) above shall be transferred first from the Parking User Revenue Account, second from the City Contribution Account and third from the Excess Funds Long-Term Reserve Fund if amounts in the Parking Garage Revenue Fund and the City Contribution Account are insufficient to meet requirements; provided that any distributions to pay capital replacements, repairs and other capital expenses shall be transferred first from the Replacement Reserve Fund prior to any distribution from any of the foregoing funds and accounts.

Section 4.6 Final Accounting. Upon written notice from the District that the Assessment Bonds are no longer outstanding, and upon a final accounting and payment of any amounts owed to the Developer, the Garage Asset Manager and the Initial Owners pursuant to Sections 2.7 and 4.3(g), (h) and (i), the District shall direct the Bond Trustee to transfer all remaining funds held within the funds and accounts established in Section 4.3(a) to the City. If there are not sufficient funds to pay such amounts owed to the Developer, the Garage Asset Manager and the Initial Owners pursuant to Sections 2.7 and 4.3(g), (h) and (i), then the District shall direct the Bond Trustee to pay such amounts in the following order of priority until the all funds and accounts are depleted, and neither the City nor the District will be obligated to pay any remaining deficiency: first, to the Garage Asset Manager, second to the Developer, and third to the Initial Owners.

Section 4.7 Conveyance to the City. The parties intend that when the Assessment Bonds are paid in full and no longer outstanding, subject to applicable laws and approval by the District Board and City Council, the City would acquire title to the Garage Project and underlying land, at no additional cost to the City, subject to the Parking User Agreements, and the District would be dissolved. Acquisition by the City assumes that there are no archeological, environmental, or other issues with the Garage Project or underlying land. The parties acknowledge and agree that dissolution of the District and acquisition of the Garage Project by the City is subject to approval by the District Board and the City Council, and nothing in this Agreement obligates the District Board or City Council to do so.

ARTICLE V
INDEMNIFICATION

Section 5.1 Indemnity by the Initial Owners.

(a) The Initial Owners shall, jointly and severally, indemnify and hold harmless each Indemnified Party for, from and against any and all losses, claims, damages or liabilities,

joint or several, arising from any challenge or matter relating to the formation of the District (including the establishment of the Assessed Property), including particularly but not by way of limitation for any losses, claims or damages or liabilities (A) to which any such Indemnified Party may become subject, under any statute or regulation at law or in equity or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact to the extent provided by the Initial Owners and set forth in any offering document relating to the Assessment Bonds, or any amendment or supplement thereto, or arise out of or are based upon the omission or alleged omission by the Initial Owners to state therein a material fact required to be stated therein or which is necessary to make the statements therein, in light of the circumstances in which they were made, not misleading in any material respect and (B) to the extent of the aggregate amount paid in any settlement of any litigation commenced or threatened arising from a claim based upon any such untrue statement or alleged untrue statement or omission or alleged omission if such settlement is effected with the written consent of the Initial Owners (which consent shall not be unreasonably withheld).

(b) The Initial Owners shall reimburse any legal or other expenses reasonably incurred by any such Indemnified Party in connection with investigating or defending any such loss, claim, damage, liability or action; provided, however, that the foregoing shall not apply to any loss, claim, damage or liability relating to or arising from the activities or administration of the District with respect to any portion of the public infrastructure (as that term is defined in the Act) funded pursuant to this Agreement.

(c) Sections 5.1(a) and (b) shall, however, not be applicable to any of the following:

(1) matters involving any gross negligence or willful misconduct of any Indemnified Party,

(2) any loss, claim, damage or liability for which insurance coverage is actually procured which names the District as an insured, in order to provide insurance against the errors and omissions of the District Board or the other representatives, agents or employees of the District and any loss, claim, damage or liability that is covered by any commercial general liability insurance policy actually procured which names the District as an insured (provided, however, that if the Initial Owners also have insurance coverage for any such loss, claim, damage or liability, claims shall be made first against such coverage), or

(3) matters arising from or involving any breach of this Agreement by the District or any other Indemnified Party.

(d) An Indemnified Party shall, promptly after the receipt of notice of a written threat of the commencement of any action against such Indemnified Party in respect of which indemnification may be sought against the Initial Owners, notify the Initial Owners in writing of the commencement thereof and provide a copy of the written threat received by such Indemnified Party. Failure of the Indemnified Party to give such notice shall reduce the liability of the Initial Owners by the amount of damages attributable to the failure of the Indemnified Party to give such notice to the Initial Owners, but the omission to notify the Initial Owners of any such action shall

not relieve the Initial Owners from any liability that any of them may have to such Indemnified Party otherwise than under this Section. In case any such action shall be brought against an Indemnified Party and such Indemnified Party shall notify the Initial Owners of the commencement thereof, the Initial Owners may, or if so requested by such Indemnified Party shall, participate therein or defend the Indemnified Party therein, with counsel reasonably satisfactory to such Indemnified Party and the Initial Owners (it being understood that, except as hereinafter provided, the Initial Owners collectively shall not be liable for the expenses of more than one counsel representing the Indemnified Parties in such action), and after notice from the Initial Owners to such Indemnified Party of an election so to assume the defense thereof, the Initial Owners shall not be liable to such Indemnified Party under this Section for any legal or other expenses subsequently incurred by such Indemnified Party in connection with the defense thereof; provided, however, that unless and until the Initial Owners defends any such action at the request of such Indemnified Party, and the Initial Owners shall have the right to participate at their own expense in the defense of any such action. If the Initial Owners shall not have employed counsel to defend any such action or if an Indemnified Party shall have reasonably concluded that there may be defenses available to it and/or other Indemnified Parties that are different from or additional to those available to the Initial Owners (in which case the Initial Owners shall not have the right to direct the defense of such action on behalf of such Indemnified Party) or to other Indemnified Parties, the legal and other expenses, including the expense of separate counsel, incurred by such Indemnified Party shall be borne by the Initial Owners. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

Section 5.2 District Indemnity. To the extent permitted by applicable law, the District shall indemnify, defend and hold harmless each District Indemnified Party for, from and against any and all liabilities, claims or demands for injury or death to persons or damage to property arising from in connection with, or relating to the performance of this Agreement. The District shall not, however, be obligated to indemnify the District Indemnified Parties with respect to damages caused by the negligence or willful misconduct of the District Indemnified Parties. The District shall not indemnify, defend and hold harmless the City with respect to matters relating to public infrastructure owned by the City.

Section 5.3 Insurance to be Maintained by the District. Prior to the issuance of Assessment Bonds, the District shall maintain public official liability insurance for each Board Member. If the District issues Assessment Bonds, the District also shall maintain appropriate general liability and business interruption insurance policies in customary amounts approved by the District and reasonably approved by the Garage Asset Manager.

Section 5.4 Waiver of Subrogation. Each party hereby waive any claims, causes of action or other rights of any nature that it may have against each other party arising out of any loss or damage to property or injury or death to persons, to the extent the same is covered by insurance policies.

ARTICLE VI
WAIVERS AND ACKNOWLEDGMENTS

Section 6.1 Knowledgeable and Voluntary Action. Each Interested Party by execution hereof represents and agrees for and on behalf of itself that: (i) it has independently and with the assistance of its legal counsel if so desired, reviewed and evaluated the Arizona Revised Statutes and case law governing the formation of community facilities districts including the District and the establishment of assessment districts therein, including the Assessment District, the levying of assessments, the issuance of Assessment Bonds, the collection procedures and the foreclosure processes available to the District upon failure to pay any assessment, including A.R.S. Title 48, Chapter 4, Articles 2 and 6 (collectively, the "**Community Facilities District and Assessment Laws**"); (ii) it has, or has had the opportunity to obtain, knowledge and understanding of the Community Facilities District and Assessment Laws; (iii) it is sufficiently knowledgeable and experienced in financial, real estate development, and construction matters relevant to the Garage Project, to be able to evaluate the risks and merits of including its respective portion of the Property in the District and the Assessment District; (iv) it is voluntarily entering into this Agreement knowing that the terms and provisions of this Agreement shall run with and encumber the Property and bind the entities executing this Agreement and their successors and assigns; and (v) all provisions of this Agreement, including but not limited to all general waivers, waivers of statutory provisions, waivers of due process or other substantive rights, remedies and indemnities contained herein shall be enforceable in strict accordance with their terms.

Section 6.2 Formation of the District. Pursuant to the Petition, the Interested Parties requested that the Mayor and Council establish the District and agreed to promptly execute and deliver all documents and items necessary to cause the formation of the District. All Interested Parties agree that, to the extent of any defect in the Petition required by A.R.S. Section 48-702, this Agreement shall constitute the petition required by law to form and establish the District.

Section 6.3 Approval of Proceedings. The Interested Parties expressly waive any and all irregularities, illegalities or deficiencies which now or hereafter exist in the acts or proceedings related to the District, including but not limited to, the Petition, the General Plan, the resolution forming the District, the waiver of the formation election pursuant to A.R.S. Section 48-707 and the recording or filing of all notices or documents related to the formation of the District or, if necessary, any defect in the proceedings and election establishing the District, as required by A.R.S. Section 48-702 through Section 48-708, inclusive.

Section 6.4 Review and Approval of the Boundaries, Scope of Construction and Assessment.

(a) The Interested Parties have had the opportunity and right to review the proposed boundaries of the Assessment District. Prior to the Issuance Date, the Interested Parties shall have the opportunity to review the preliminary plans and specifications detailing the Garage Project and the engineer's estimate of the cost to Complete the Garage Project (the "**Engineer's Estimate**"). The Interested Parties have reviewed the proposed method of establishing and spreading, now and hereafter, the assessments among the parcels comprising the Property within the Assessment District as described in the Assessment Engineer's Preliminary Report. The Interested Parties hereby approve the following:

(i) the proposed boundaries of the Assessment District; and

(ii) the allocation of the Assessments as described in the Assessment Engineer's Preliminary and Final Report, so long as the Assessment Engineer's Final Report is the same as the Preliminary Report, other than changes to reflect the terms of the Assessment Bonds and the description of the individual parcels within the Assessed Property.

The Interested Parties agree that the Engineer's Estimate of the costs to Complete the Garage Project, including a contingency amount, is anticipated to be $33,466,631 (which number includes the Dignity Construction Account) and the Developer will not enter into a Construction Contract without the written consent of the Interested Parties, if the Construction Contract has a Guaranteed Maximum Price in excess of $29,982,254. The Interested Parties agree that the Assessments will equal the aggregate costs described in Section 3.1.

(b) This Agreement shall be construed to be an express consent by the Interested Parties that, subject to the express covenants of the District and the City contained in this Agreement: (i) the District may establish the Assessment District in accordance with the provisions hereof; (ii) the District may incur costs and expenses necessary to Complete the Garage Project, (iii) the District may levy and collect assessments on the Property sufficient to pay all Project Costs (for the avoidance of doubt, "**Project Costs**" excludes, for purposes of calculating assessments, the portion of the Project Costs paid by the Dignity Construction Account) and the costs of issuance of the Assessment Bonds, but the Project Costs shall not be in excess of the Engineer's Estimate unless such excess is agreed to in writing by the Interested Parties. Notwithstanding the foregoing, the Garage Project Site shall not be assessed for any part of the costs and expenses to Complete the Garage Project.

Section 6.5 No Protest. Objection or Request for Hearings. The Interested Parties hereby agree to allow the establishment of the Assessment District and to allow the District to take all steps necessary to levy and confirm Assessments against the Property, initially allocated on the basis described in Section 3.7 hereof (and such allocation of the Assessments may subsequently be spread and reallocated in the manner described in Section 3.7 hereof), and to issue such Assessment Bonds secured by the Assessments.

Notwithstanding that A.R.S. Section 32-2181(I) may be construed to prevent any waiver of the right to appear before the District Board on any hearing required at or prior to the confirmation of the Assessments, the Interested Parties instead hereby requests that the District Board hold hearings on any protests with respect to the Work and objections to the extent of the Assessed Property (all of which is to be assessed) pursuant to A.R.S. Sections 48-579 and 580, any objections to award of applicable contracts with respect to Completion of the Work pursuant to A.R.S. Section 48-584, and any objections with respect to the Assessments or to any previous proceedings connected therewith or claim that the Work has not been Completed according to any applicable contract or the Plans and Specifications pursuant to A.R.S. Section 48-590, should any protests or objections or any requests for hearings with respect thereto be made prior to the confirmation of the Assessments, the Interested Parties hereby waive all formal requirements of notice (whether to be mailed, posted or published) and the passage of time prior to such hearings and further consents that hearings and proceedings may be consolidated and held by the District

Board on the same day or days. Notwithstanding the foregoing, the Interested Parties do not protest, object or request a hearing for any of the matters set forth above in this Section.

Section 6.6 Waiver. With knowledge of the provisions of the Community Facilities District and Assessment Laws, including the statutes hereafter referenced, and their rights thereunder (or having obtained counsel to advise them of the provisions and their rights, if deemed necessary), the Interested Parties expressly agree to waive the following:

(a) Any and all irregularities, illegalities or deficiencies which may now or hereafter exist in the acts or proceedings related to the establishment of the Assessment District, the adoption of the Resolution of Intention and the Resolution Ordering the Work and the levying of the Assessments against the Assessed Property;

(b) Any and all notices and time periods related thereto provided by A.R.S. Section 48-576 et seq., as amended, including but not limited to the following:

(i) mailing, posting and publication, as applicable, of any notice required in connection with: (A) the adoption of the Resolution of Intention, (B) the Notice of Proposed Improvements, (C) the adoption of the Resolution Ordering the Completion of the Work, (D) notice of passage of the Resolution Ordering the Completion of the Work, (E) Notice of Award of Contract, and (F) any other steps necessary in connection with the Assessment District or the Completion of the Work; and

(ii) Any and all notices pertaining to a hearing on the Assessment;

(c) Any and all objections and protests to the extent of the Assessment District;

(d) Any and all objections to the adoption by the District of the plans and specifications, the Engineer's Estimate and the assessment diagram, all of which provide for and effectuate the Completion of the Work;

(e) Any and all protest rights against the Work and objections to the awarding of one or more acquisition or Construction Contract for the Work;

(f) Any and all defenses they may now or subsequently have against the Assessment Bonds or the payment of the Assessments; and

(g) All demands for cash payment of the Assessments.

Notwithstanding the foregoing, the Interested Parties do waive any provisions of this Agreement, or their rights arising under this Agreement.

Section 6.7 Work as More Than Local and Ordinary Benefit. The Interested Parties agree that the Work is of more than local or ordinary public benefit and that the Work constitutes a public infrastructure purpose (as that term is defined in the Act) purpose and that the Assessed Property which is subject to the Assessment receives a benefit from the Work in an amount not less than the Engineer's Estimate or the greater amount of the Assessment if approved by the Interested Parties pursuant to Section 6.4 hereof.

Section 6.8 Public Bidding. The Interested Parties agree that the public bidding requirements for the design and construction of the Work set forth in A.R.S. Sections 48-581 and 48-584, have been (with respect to the Contractor and the Architect), or will be (with respect to other components of the Work), complied with. Notwithstanding the foregoing, any irregularities, illegalities or deficiencies in such public bidding processes are expressly waived.

Section 6.9 Recording of Assessment. The Interested Parties consent to the recordation of the Assessments against the Property and agree that such Assessments shall be a first lien on the Property assessed subject only to general property taxes and prior special assessments.

Section 6.10 Assessments to Go to Bond. Except as the Interested Parties otherwise notify the District in writing prior to the recording of the Assessments of their intent to pay in cash all or part of the Assessments, Assessments will not be paid in cash. With respect to Assessments not paid in cash, the Interested Parties request that a certified list of unpaid Assessments be filed as soon as possible after the recording of the Assessments and that Assessment Bonds be issued and sold as soon as possible.

Section 6.11 Acceptance of Partial Assessment. The inability of the District or the Assessment District to assess all or any portion of the costs to Complete the Work shall not reduce the obligation of the Interested Parties, so long as they own all or part of the Property to pay their proportionate share of the costs of to Complete the Work.

Section 6.12 Waiver of Collateral Document Provisions. The Interested Parties expressly waive any and all provisions of any collateral security instruments relating to the Property which prohibit the formation of the District, the establishment of the Assessment District, Completion of the Work and the levying, recording and collection of the Assessments against the Property.

Section 6.13 Collection on Tax Rolls. The District shall work with the City to provide for collection of special assessment installments.

Section 6.14 Size and Capacity of Garage Project. The Interested Parties acknowledge and agree that their respective portions of the Property may be assessed their applicable share (according to the methodology set forth in the Assessment Engineer's Final Report) for all of the costs and expenses of the Garage Project of the size and type provided in the Engineer's Estimate. The Interested Parties acknowledge and agree that (a) the Garage Project is the most practical and efficient size to provide the capacity needed by the development of the Property and may result in excess capacity which may be used by the District, the City or others without any compensation to the Interested Parties, but subject to the obligations of the District under this Agreement and the Parking User Agreements; and (b) except as provided in this Agreement and the Parking User Agreements, the Property is not guaranteed capacity in the Garage Project, and the Interested Parties are not guaranteed that capacity will be available in the Garage Project at the time needed for development of their property.

Section 6.15 No Assurance of Zoning, Density or Land Use; Owners' Continued Requirement to Comply with Applicable Land Use Requirements. The levy of the Assessment and the amount thereof against any part of the Property is not a determination of, or an agreement for, any zoning, density or land use for such part of the Property. The density and other determination

concerning land use shall be determined by the City through its regular procedures therefor and applicable law, but without reference to the amount assessed against such part of the Property. Developer and Owners acknowledge and agree that they still must comply with land use regulations, codes and laws affecting the acquisition, ownership, use, improvement, and development of the Property, and the vacation and abandonment of public rights-of-way and easements. Nothing in this Agreement constitutes an exemption or grant of a variance from any applicable codes and laws.

Section 6.16 Dedication of Property Needed to Complete the Garage Project. The Initial Owners shall reasonably cooperate with the District to grant such temporary construction, staging or access licenses as may reasonably be required by the District or the City to Complete the Garage Project.

Section 6.17 Notice to Future Owners. Any subsequent Owner of all or any portion of the Assessed Property shall, by accepting any deed or other conveyance instrument, be deemed to acknowledge and agree (without execution of a further instrument) that it is taking title to such portion of the Assessed Property subject to the Assessments, and that it is has received a copy of this Agreement and has had adequate opportunity to understand the terms and conditions described herein. This Agreement shall constitute notice to all Owners of the existence of the District and the Assessments.

Section 6.18 Encumbrance of the Property. The provisions, terms and restrictions hereof shall run with and bind the real property comprising the Property as equitable servitudes and also as covenants running with the land.

ARTICLE VII
DEFAULT, ENFORCEABILITY AND DISPUTE RESOLUTION

Section 7.1 Enforceability Against the City or District. Notwithstanding any provision of this Agreement to the contrary, except for actions previously authorized by the City and/or the District, no act, requirement, payment, or other agreed upon action to be done or performed by the City or the District which would, under any federal, state, or City constitution, statute, charter provision, ordinance or regulation, require formal action, approval or concurrence by the City Council or the District Board, respectively, shall be required to be done or performed by the City or the District, respectively, unless and until said formal action of the City Council or the District Board, respectively, has been taken and completed. This Agreement in no way acquiesces to or obligates the City or the District to perform a legislative act or take any action in violation of A.R.S. Sections 42-17101 through 42-17110.

Section 7.2 Default by Any Party. The following provisions shall apply to any breach or default by any party to this Agreement.

(a) Failure or unreasonable delay by any party to perform or otherwise act in accordance with any term or provision of this Agreement for a period of thirty (30) days (hereinafter referred to as the "**Cure Period**") after written notice thereof from any other party, shall constitute a default under this Agreement; provided, however, that if the failure or delay is

such that more than thirty (30) days would reasonably be required to perform such action or comply with any term or provision hereof, then such party shall have such additional time as may be necessary to perform or comply so long as such party commences performance or compliance within said thirty (30) day period and diligently proceeds to complete such performance or fulfill such obligation. Said notice shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible. In the event such default is not cured within the Cure Period, any non-defaulting party shall have all rights and remedies that are set forth in Sections 7.2(b) and (c).

(b) The parties shall be limited to the remedies and the dispute resolution procedure set forth in this Section 7.2(b) and Section 7.2(c). Any decision rendered by the Panel (as hereinafter defined) pursuant to the provisions of Section 7.2(c) shall be binding on the parties unless and until a court of competent jurisdiction renders its final decision on the disputed issue, and if any party does not abide by the decision rendered by the Panel during the pendency of an action before the court of competent jurisdiction or otherwise (if no court action), any other party may institute an action for money damages on the issues that were the subject of the Panel's decision and/or any other relief as may be permitted by law.

(c) (1) If an event of default is not cured within the Cure Period, any non-defaulting party may institute the dispute resolution process set forth in this subsection (hereinafter referred to as the "**Process**") by providing written notice initiating the Process (hereinafter referred to as the "**Initiation Notice**") to the defaulting party.

(2) Within fifteen (15) days after delivery of the Initiation Notice, each involved party shall appoint one person to serve on an arbitration panel (herein referred to as the "**Panel**"). Within twenty-five (25) days after delivery of the Initiation Notice, the persons appointed to serve on the Panel shall themselves appoint one person to serve as a member of the Panel. Such person shall function as the chairman of the Panel.

(3) The remedies available for award by the Panel shall be limited to specific performance, declaratory relief and injunctive relief.

(4) Any party can petition the Panel for an expedited hearing if circumstances justify it. Such circumstances shall be similar to what a court would view as appropriate for injunctive relief or temporary restraining orders. In any event, the hearing of any dispute not expedited shall commence as soon as practicable, but in no event later than forty-five (45) days after selection of the chairman of the Panel. This deadline can be extended only with the consent of all parties to the dispute or by decision of the Panel upon a showing of emergency circumstances.

(5) The chairman of the Panel shall conduct the hearing pursuant to the Center For Public Resources' Rules for Non-Administered Arbitration of Business Disputes then in effect. The chairman of the Panel shall determine the nature and scope of discovery, if any, and the manner of presentation of relevant evidence, consistent with the deadlines provided herein, and the parties' objective that disputes be resolved in a prompt and efficient manner. No discovery may be had of privileged materials or information. The chairman of the Panel upon proper application shall issue such orders as may be necessary and permissible under law to protect

confidential, proprietary or sensitive materials or information from public disclosure or other misuse. Any party may make application to the Court to have a protective order entered as may be appropriate to confirm such orders of the chairman of the Panel.

(6) The hearing, once commenced, shall proceed from business day to business day until concluded, absent a showing of emergency circumstances. Except as otherwise provided herein, the Process shall be governed by the Uniform Arbitration Act as enacted in the State.

(7) The Panel shall, within fifteen (15) days from the conclusion of any hearing, issue its decision. The decision shall be rendered in accordance with this Agreement and the laws of the State.

(8) Any involved party may appeal the decision of the Panel to the Court for a de novo review of the issues decided by the Panel, if such appeal is made within thirty (30) days after the Panel issues its decision. The remedies available for award by the Court shall be limited to specific performance, declaratory relief and injunctive relief. The decision of the Panel shall be binding on both parties until the Court renders a binding decision. If a non-prevailing party in. the Process fails to appeal to the Court within the time frame set forth herein, the decision of the Panel shall be final and binding. If one party does not comply with the decision of the Panel during the pendency of the action before the Court or otherwise, then another party shall be entitled to exercise all rights and remedies that may be available under law or equity, including without limitation the right to institute an action for money damages related to the default that was the subject of the Panel's decision and the provisions of this subsection shall not apply to such an exercise of rights and remedies.

(9) All fees and costs associated with the Process before the Panel, including without limitation the fees of the Panel, other fees, and the prevailing party's attorneys' fees, expert witness fees and costs, shall be paid by the non-prevailing party or parties. The determination of prevailing and non-prevailing parties, and the appropriate allocation of fees and costs, shall be included in the decision by the Panel. Similarly, all fees and costs associated with an appeal to the Court or any appellate court thereafter, including without limitation, the prevailing party's attorneys' fees, expert witness fees and costs, shall be paid by the non-prevailing party. The determination of prevailing and non-prevailing parties, and the appropriate allocation of fees and costs, shall be included in the decision by the Court.

ARTICLE VIII
MISCELLANEOUS

Section 8.1 Rights of Lenders. The City and District is aware that each Initial Owner has and/or may obtain financing or refinancing for acquisition, development and/or construction of the real property and/or improvements to be constructed on the Property, in whole or in part, from time to time, by one or more third parties (individually a "**Lender**", and collectively the "**Lenders**"). In the event of a breach or default by the Initial Owners under this Agreement, the City and the District shall provide notice of such event at the same time notice is provided to the Initial Owners, to any Lenders previously designated by the Initial Owners to receive such notice (the "**Designated Lenders**") whose names and addresses were provided by written notice to the

City and the District in accordance with Section 8.12. The City and the District shall give the Initial Owners copies of any such notice provided to such Designated Lenders. If a Lender is permitted, under the terms of any nondisturbance agreement with the City and the District, to cure the breach or default and/or to assume the applicable Initial Owner's position with respect to this Agreement, the City and the District agree to recognize such rights of the Lender and to otherwise permit the Lender to assume all of the rights and obligations of the applicable Initial Owner under this Agreement. Upon request by a Lender, the City and the District will enter into a separate nondisturbance agreement with a Lender, in a form reasonably approved by the City, the District and the Lender. Owners acknowledge and agree that these sections do not apply to Owners' obligations to pay any Assessments on the Property or any obligations of Owners that are not specifically designated as obligations of Initial Owners.

Section 8.2 Assignability.

(a) By Developer. Prior to Completion of Construction, Developer's rights and obligations under this Agreement are personal to HPPC, LLC, and do not run with title to the Property. During such period, Developer shall have the right to assign its interest under this Agreement only with the prior consent of the City and the District, not to be unreasonably withheld or delayed; provided that the City's consent and the District's consent shall not be required for a Lender Transfer, as hereafter defined. Following Completion of Construction, Developer's rights and obligations under this Agreement shall run with the land as to Phase I, or to such portion of Phase I that Developer designates in an instrument executed by Developer and the then-Owner of such portion of Phase I, if not Developer, and recorded in the official records of Maricopa County, Arizona. HPPC, LLC and any successor in title to HPPC, LLC shall not remain liable for any default by Developer (in such capacity) under this Agreement occurring after conveyance of its fee title in and to Phase I (or such applicable portion Phase I as Developer may designate pursuant to the immediately preceding sentence), and each successor in title shall be deemed to have assumed all of the duties and obligations of Developer arising under this Agreement after conveyance to such successor.

(b) By Initial Owners. The Initial Owners' rights and obligations under this Agreement are personal to the applicable entities named on page one of this Agreement, and do not run with title to the Property. Each Initial Owner shall have the right to assign its interest under this Agreement only with the prior consent of the City and the District, not to be unreasonably withheld or delayed; provided that the City's consent and the District's consent shall not be required for a Lender Transfer, as hereafter defined.

(c) By Owners. The Owners' rights and obligations under this Agreement, including each Owner's obligation to pay Assessments on the Assessed Property, run with title to the Property.

(d) To a Lender. The City's consent and the District's consent shall not be required for any of the following transfers by Developer or either Initial Owner ("**Lender Transfer**"): (i) a pledge, collateral assignment, encumbrance or similar financing or refinancing transaction to any Lender that provides acquisition, construction, permanent, working capital, tenant improvement or other financing, directly or indirectly, to the Developer or any Initial Owner for all or any part of the Property, provided that the Developer or such Initial Owner provides

written notice to the City and the District in advance of such Lender Transfer; and (ii) the exercise of remedies by any Lender referred to in Section 8.1, which Lender has entered into a non-disturbance agreement with the City and the District.

(e) By the City or the District. The City's and the District's rights and obligations under this Agreement shall be non-assignable and non-transferable, without the prior express written consent of the Developer and the Initial Owners, not to be unreasonably withheld, conditioned, or delayed.

Section 8.3 Estoppel Certificates. Each party shall, within thirty (30) days after receipt of the written request of any other party or any other interested party (including any Lender), furnish a certificate regarding whether to such certifying party's knowledge (i) this Agreement is in full force and setting forth any amendments to this Agreement, and (ii) any breach or default exists under in this Agreement, or any other event exists which, with the passage of time and the giving of any notice required under this Agreement, would constitute a breach or default under this Agreement. The recipient of such certificate, without actual notice to the contrary, shall be entitled to rely on said certificate with respect to all matters set forth therein.

Section 8.4 Due Authority. Each party acknowledges and warrants that (i) it is fully authorized and empowered to execute this Agreement by and through the individuals executing below, and (ii) this Agreement (and each undertaking of such party contained herein) constitutes a valid, binding and enforceable agreement of such party, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity.

Section 8.5 Further Assurance. Each party hereto shall, promptly upon the request of any other, have acknowledged and delivered to the other any and all further instruments and assurances reasonably requested or appropriate to evidence or give effect to the provisions of this Agreement.

Section 8.6 Entire Agreement; Amendment. This Agreement sets forth the entire understanding of the parties as to the matters set forth herein as of the date this Agreement is executed and cannot be altered or otherwise amended except pursuant to an instrument in writing signed by the District, the City, the Developer and Initial Owners, and recorded in the official records of Maricopa County, Arizona. This Agreement is intended to reflect the mutual intent of the parties with respect to the subject matter hereof, and no rule of strict construction shall be applied against any party.

Section 8.7 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State.

Section 8.8 Waiver. The waiver by any party hereto of any right granted to it under this Agreement shall not be deemed to be a waiver of any other right granted in this Agreement nor shall the same be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived under or by this Agreement.

Section 8.9 Counterparts. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original, but all of which taken together shall constitute one of the same instrument.

Section 8.10 Cancellation of Agreement by City and District. Pursuant to A.R.S. § 38-511, the City and the District may, within three years after its execution, cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City or the District, respectively, is, at any time while this Agreement is in effect, an employee or agent of the Initial Owners in any capacity or a consultant to any other party of this Agreement with respect to the subject matter of this Agreement and may recoup any fee or commission paid or due any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City or the District, respectively, from the Initial Owners arising as the result of this Agreement. The Initial Owners have not taken and shall not take any action which would cause any person described in the preceding sentence to be or become an employee or agent of the Initial Owners in any capacity or a consultant to any party to this Agreement with respect to the subject matter of this Agreement.

Section 8.11 Term and Termination; Survival. The term of this Agreement shall be as of the date of the execution and delivery hereof by each of the parties hereto and shall expire upon the earlier of (i) the agreement of the District, the City, the Developer and the Initial Owners to the termination hereof, and (ii) the date on which all of the Assessment Bonds are paid in full or defeased to the fullest extent possible pursuant to the Act, and all payments have been made by or to the Developer, the Initial Owners and the Garage Asset Manager as provided in Section 4.6 (**"Conclusion Date"**). On the Conclusion Date, the parties' obligations under this Agreement shall be deemed satisfied. Each party shall, within ten (10) business days after the written request of any other party or any other interested party (including any Lender) execute a document in recordable form evidencing the termination of this Agreement. Unless otherwise expressly provided, the representations, covenants, indemnities and other agreements contained herein shall be deemed to be material and continuing, shall not be merged and shall survive any conveyance or transfer provided herein, but shall not survive the Conclusion Date except as provided in the immediately preceding sentence.

Section 8.12 Notices. All notices, demands or other writings in this agreement provided to be given, made or sent by any party hereto to other parties must be made in writing and will be deemed to have been fully given, made or sent (i) on the day personally delivered or (ii) two (2) business after deposit in the United States mail postage prepaid and sent by registered or certified mail, and in each case addressed as follows:

To the District: District Treasurer
Park Central Community Facilities District
City of Phoenix
251 West Washington Street, 9th Floor
Phoenix, Arizona 85003

To the City: Director
Community and Economic Development Department
City of Phoenix
200 West Washington Street, 20th Floor
Phoenix, Arizona 85003-1611

and

City Clerk
City of Phoenix
200 West Washington Street, 15th Floor
Phoenix, Arizona 85003-1611

To Initial Owners: HPPC, LLC
HPPC II, LLC
c/o Holualoa Companies
3573 East Sunrise Drive, Suite 225
Tucson, Arizona 85718
Attn: Stanton A. Shafer
Rick Kauffman

and:

HPPC, LLC
HPPC II, LLC
c/o Plaza Companies
9401 W. Thunderbird Road, Suite 200
Peoria, Arizona 85381
Attn: Sharon Harper

The address to which any notice, demand or other writing may be given, made or sent to any party may be changed by written notice as above provided.

Section 8.13 Severability. If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision thereof.

Section 8.14 Headings. The headings or titles of the several Articles and Sections hereof and in the Exhibits hereto, and any table of contents appended to copies hereof and thereof, shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Agreement.

Section 8.15 No Relief of Obligations. This Agreement does not relieve any party hereto of any obligation or responsibility imposed upon it by law.

Section 8.16 Recordation of Agreement. No later than ten (10) days after this Agreement is executed and delivered by each of the parties hereto, the City shall record a copy of this Agreement with the County Recorder of Maricopa County, Arizona.

Section 8.17 Force Majeure. If any party hereto shall be unable to observe or perform any covenant or condition herein by reason of Force Majeure, then the failure to observe or perform such covenant or condition shall not constitute a default hereunder so long as such party shall use its best efforts to remedy with all reasonable dispatch the event or condition causing such inability and such event or condition can be cured within a reasonable amount of time.

Section 8.18 Consent. Whenever the consent or approval of any party hereto, or of any agency therefor, shall be required under the provisions hereof, such consent or approval shall not be unreasonably withheld, conditioned or delayed unless specifically otherwise limited as provided herein.

Section 8.19 Intergovernmental Agreement Act. Notwithstanding any other provision of this Agreement to the contrary, the provisions of Sections 4.2, 4.3, 4.4, 7.1, 7.2, and 8.1-8.20 are the only provisions that are effective against the City for purposes of the Intergovernmental Agreement Act and as the Intergovernmental Agreement Act is intended to be applied for purposes of this Agreement.

Section 8.20 Records.

(a) To ensure that the Initial Owners and their subcontractors are complying with the warranty under Section 8.21 below, the Initial Owners' and their subcontractor's books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of the Initial Owners and their subcontractors' employees who perform any work or services pursuant to this Agreement (all of the foregoing hereinafter referred to as "**Records**"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the District, to the extent necessary to adequately permit (A) evaluation and verification of any invoices, payments or claims based on the Initial Owners' and its subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement and (B) evaluation of the Initial Owners' and its subcontractors' compliance with the Arizona employer sanctions laws referenced in Section 8.21 below. To the extent necessary for the District to audit Records as set forth in this subsection, the Initial Owners and its subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the District shall have access to said Records, even if located at its subcontractors' facilities, from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the District to the Initial Owners pursuant to this Agreement. The Initial Owners and its subcontractors shall provide the District with adequate and appropriate workspace so that the District can conduct audits in compliance with the provisions of this subsection. The District shall give the Initial Owners or their subcontractors reasonable advance notice of intended audits. The Initial Owners shall require its subcontractors to comply with the provisions of this subsection by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

(b) To ensure that the District and the City are complying with their obligations under Section 4.3, the applicable records of the District and the City shall be open to inspection and subject to audit and/or reproduction during normal working hours by the Initial Owners and Developer, to the extent necessary to adequately permit evaluation and verification of compliance with Section 4.3. To the extent necessary for the Developer and the Initial Owners to audit the foregoing records as set forth in this subsection, the District and the City hereby waive any rights to require the Developer and the Initial Owners to submit a public records request or to otherwise keep such Records confidential. The City and the District shall provide the Initial Owners and the Developer with adequate and appropriate workspace so that the District can conduct audits in compliance with the provisions of this subsection. The Initial Owners and the Developer shall give the City and the District reasonable advance notice of intended audits.

Section 8.21 Immigration Compliance. To the extent applicable under A.R.S. Section 41-4401, the Initial Owners and their subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under A.R.S. Section 23-214(A). The Initial Owners' or their subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the District.

[Signatures appear on following pages]

SIGNATURE PAGE TO DISTRICT DEVELOPMENT, FINANCING PARTICIPATION, WAIVER AND INTERGOVERNMENTAL AGREEMENT (PARK CENTRAL COMMUNITY FACILITIES DISTRICT)

IN WITNESS WHEREOF, the officers of the City and of the District have duly affixed their signatures and attestations, and the authorized signatories of the Initial Owners their signatures, all as of the day and year first written above.

"**City**"

CITY OF PHOENIX,
an Arizona municipal corporation
By: ED ZUERCHER, City Manager

By: _____
Denise Olson, Chief Financial Officer

ATTEST:

_____
City Clerk - Acting

Pursuant to A.R.S. Section 11-952(D), this Agreement has been reviewed by the undersigned attorney for the City who has determined that this Agreement is in proper form and is within the powers and authority granted pursuant to the laws of this State to the City.

_____
Acting City Attorney TCS

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On April 11, 2019, before me personally appeared Denise Olson, as Chief Financial Officer of the CITY, OF PHOENIX, an Arizona municipal corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he/she claims to be, and acknowledged that he/she signed the above document, on behalf of the City of Phoenix.

_____
Notary Public

(Affix notary seal here)

BECKY C KIVIOJA
NOTARY PUBLIC, ARIZONA
MARICOPA COUNTY
My Commission Expires
March 24, 2020

SIGNATURE PAGE TO DISTRICT DEVELOPMENT, FINANCING PARTICIPATION, WAIVER AND INTERGOVERNMENTAL AGREEMENT (PARK CENTRAL COMMUNITY FACILITIES DISTRICT)

"District"

PARK CENTRAL COMMUNITY FACILITIES DISTRICT,
an Arizona community facilities district
By: ED ZUERCHER, District Manager

By: _____
Denise Olson, District Treasurer

ATTEST:

_____
District Clerk - Actng

Pursuant to A.R.S. Section 11-952(D), this Agreement has been reviewed by the undersigned attorney for the District, who has determined that this Agreement is in proper form and is within the powers and authority granted pursuant to the laws of this State to the District.

_____
District Counsel TGS

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On April 11, 2019, before me personally appeared Denise Olson, as District Treasurer of Park Central Community Facilities District, an Arizona community facilities district, whose identity was proven to me on the basis of satisfactory evidence to be the person who he/she claims to be, and acknowledged that he/she signed the above document, on behalf of the District.

_____
Notary Public

(Affix notary seal here)

BECKY C KIVIOJA
NOTARY PUBLIC, ARIZONA
MARICOPA COUNTY
My Commission Expires
March 24, 2020

SIGNATURE PAGE TO DISTRICT DEVELOPMENT, FINANCING PARTICIPATION, WAIVER AND INTERGOVERNMENTAL AGREEMENT (PARK CENTRAL COMMUNITY FACILITIES DISTRICT)

RESPECTFULLY SUBMITTED this 11th day of April, 2019.

"Initial Owner" and "Developer"

HPPC, LLC, an Arizona limited liability company

By: HPPC Sponsor, LLC, an Arizona limited liability company
Its: Manager

By: Holualoa Capital Management, LLC, an Arizona limited liability company
Its: Manager

By: _____
Name: Stanton Shafer
Title: Chief Operating Officer

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 11th day of April, 2019, by Stanton Shafer, the Chief Operating Officer of HOLUALOA CAPITAL MANAGEMENT, LLC, an Arizona limited liability company, in its capacity as manager of HPPC SPONSOR, LLC, an Arizona limited liability company, in its capacity as manager of HPPC, LLC, an Arizona limited liability company, for and on behalf thereof.

_____
Notary Public

My Commission Expires: 4-5-22

OFFICIAL SEAL
GINGER L. CHILCOTE
Notary Public - State of Arizona
MARICOPA COUNTY
My Comm. Expires April 5, 2022

SIGNATURE PAGE TO DISTRICT DEVELOPMENT, FINANCING PARTICIPATION, WAIVER AND INTERGOVERNMENTAL AGREEMENT (PARK CENTRAL COMMUNITY FACILITIES DISTRICT)

RESPECTFULLY SUBMITTED this 11th day of April, 2019.

"Initial Owner"

HPPC II, LLC, an Arizona limited liability company

By: HPPC Sponsor II, LLC, an Arizona limited liability company
Its: Manager

By: Holualoa Capital Management, LLC, an Arizona limited liability company
Its: Manager

By: _____
Name: Stanton Shafer
Title: Chief Operating Officer

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 11th day of April, 2019, by Stanton Shafer, the Chief Operating Officer of HOLUALOA CAPITAL MANAGEMENT, LLC, an Arizona limited liability company, in its capacity as manager of HPPC SPONSOR II, LLC, an Arizona limited liability company, in its capacity as manager of HPPC II, LLC, an Arizona limited liability company, for and on behalf thereof.

OFFICIAL SEAL
GINGER L. CHILCOTE
Notary Public - State of Arizona
MARICOPA COUNTY
My Comm. Expires April 5, 2022

_____
Notary Public

My Commission Expires: 4-5-22

LIENHOLDER CONSENT

RESPECTFULLY SUBMITTED this 8th day of April, 2019.

The undersigned is a lienholder with an interest in the property proposed to be included in the District described herein and consents to the terms and conditions of the DISTRICT DEVELOPMENT, FINANCING PARTICIPATION, WAIVER AND INTERGOVERNMENTAL AGREEMENT (PARK CENTRAL COMMUNITY FACILITIES DISTRICT).

WESTERN ALLIANCE BANK, an Arizona corporation ("**Lender**"), as beneficiary under that Construction Deed of Trust and Fixture Filing (With Assignment of Rents and Security Agreement) dated October 18, 2017 and recorded on October 18, 2017 as Document No. 20170772667, Records of Maricopa County, Arizona ("**Deed of Trust**"), hereby subordinates the Deed of Trust to the foregoing District Development, Financing Participation, Waiver and Intergovernmental Agreement (Park Central Community Facilities District) (the "**Agreement**"), consents to the execution and recording of the Agreement, and agrees that any foreclosure or other enforcement of the Deed of Trust or conveyance in lieu thereof shall not terminate or otherwise affect the continued enforceability of the Agreement. The undersigned certifies that this Consent has been duly authorized, executed and delivered by the undersigned, and is the legal, valid and binding obligation of the undersigned.

WESTERN ALLIANCE BANK, an Arizona corporation

By: _____
Name: Chris Burson
Title: Senior Vice President

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 8th day of April, 2019, by Chris Burson, the Senior Vice President of WESTERN ALLIANCE BANK, an Arizona corporation, for and on behalf thereof.

_____
Notary Public

My Commission Expires 3/28/20

OFFICIAL SEAL
LINDSEY FULLERTON
NOTARY PUBLIC - State of Arizona
MARICOPA COUNTY
My Comm. Expires March 28, 2020

LIENHOLDER CONSENT

RESPECTFULLY SUBMITTED this 5th day of April, 2019.

The undersigned is a lienholder with an interest in the property proposed to be included in the District described herein and consents to the terms and conditions of the DISTRICT DEVELOPMENT, FINANCING PARTICIPATION, WAIVER AND INTERGOVERNMENTAL AGREEMENT (PARK CENTRAL COMMUNITY FACILITIES DISTRICT).

PARK CENTRAL MALL, L.L.C., an Arizona limited liability company ("**Lender**"), as beneficiary under that Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of October 10, 2018 and recorded October 10, 2018 as Document No. 2018-0759928, Records of Maricopa County, Arizona ("**Deed of Trust**"), hereby subordinates the Deed of Trust to the foregoing District Development, Financing Participation, Waiver and Intergovernmental Agreement (Park Central Community Facilities District) (the "**Agreement**"), consents to the execution and recording of the Agreement, and agrees that any foreclosure or other enforcement of the Deed of Trust or conveyance in lieu thereof shall not terminate or otherwise affect the continued enforceability of the Agreement. The undersigned certifies that this Consent has been duly authorized, executed and delivered by the undersigned, and is the legal, valid and binding obligation of the undersigned.

PARK CENTRAL MALL, L.L.C.,
an Arizona limited liability company

By: MC Ventures, LLC,
an Alaska limited liability company
Its: Manager

By: _____
Name: J. Kevin Burdette
Title: Manager

STATE OF Arizona)
)
COUNTY OF Maricopa)

The foregoing instrument was acknowledged before me this 5th day of April, 2019, by J. Kevin Burdette, the Manager of MC VENTURES, LLC, an Alaska limited liability company, in its capacity as manager of PARK CENTRAL MALL, L.L.C., an Arizona limited liability company, for and on behalf thereof.

Tracy Bea Hart
Notary Public

My Commission Expires:

TRACY BEA HART
Notary Public, State of Arizona
Maricopa County
My Commission Expires
September 15, 2019

COLLATERAL ASSIGNEE CONSENT AND SUBORDINATION

RESPECTFULLY SUBMITTED this 9th day of April, 2019.

The undersigned is a lienholder with an interest in the property proposed to be included in the District described herein and consents to the terms and conditions of the DISTRICT DEVELOPMENT, FINANCING PARTICIPATION, WAIVER AND INTERGOVERNMENTAL AGREEMENT (PARK CENTRAL COMMUNITY FACILITIES DISTRICT).

The undersigned, pursuant to the terms of that certain Collateral Assignment of Deed of Trust dated October 11, 2018, recorded October 12, 2018 as Instrument No. 20180768431 in the Official Records of the Maricopa County, Arizona Recorder (the "**Collateral Assignment**"), is the present holder of the interest of the collateral assignee of the beneficial interest under that Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of October 10, 2018 and recorded October 10, 2018 as Instrument No. 20180759928 in the Official Records of the Maricopa County, Arizona Recorder (collectively with any other documents relating to such deed of trust and/or the loan which it secures, including any future modifications or assignments thereof, the "**Deed of Trust**") under which Park Central Mall, L.L.C. is named the beneficiary.

The undersigned hereby subordinates the Collateral Assignment and Deed of Trust to the foregoing District Development, Financing Participation, Waiver and Intergovernmental Agreement (Park Central Community Facilities District) (the "**Agreement**"), consents to the execution and recording of the Agreement and agrees that any foreclosure or other enforcement of the Deed of Trust or conveyance in lieu thereof shall not terminate or otherwise affect the continued enforceability of the Agreement. The undersigned certifies that this Consent has been duly authorized, executed and delivered by the undersigned, and is the legal, valid and binding obligation of the undersigned.

PACIFIC COACH, INC.,
an Arizona corporation

By: _____
Name: Andrew Cohn
Title: Vice President

STATE OF Arizona)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 9th day of April, 2019, by Andrew Cohn, the Vice President of PACIFIC COACH, INC., an Arizona corporation, for and on behalf thereof.

_____
Notary Public

My Commission Expires: 4-12-19

OFFICIAL SEAL
LISA BULLINGTON
Notary Public - State of Arizona
MARICOPA COUNTY
My Comm. Expires April 12, 2019

EXHIBIT A-1

LEGAL DESCRIPTION OF THE PROPERTY

The Property is that real property legally described by metes and bounds in Exhibit A to the Certificate of Receipt for Petition for Adoption of a Resolution Ordering and Declaring Formation of Park Central Community Facilities District recorded at Document 2019-0144667 (the "**Certificate**') and in Exhibit A to the Notice of Formation of Park Central Community Facilities District recorded at Document No. 2019-0135977, Records of Maricopa County, Arizona (the "**Notice of Formation**"). Such property has since been platted, and is now known as Lots 1 through 6, inclusive, PARK CENTRAL AMENDED, according to Book 1451 of Maps, page 35, records of Maricopa County, Arizona.

Phase I of the Property is that parcel described as Phase I in Exhibit A of the above Certificate and as Phase I in Exhibit A of the Notice of Formation.

Phase II of the property consists of the Catalina Parcel and Phase II, as those parcels are described in Exhibit A of the above Certificate and as the Catalina Parcel and Phase II in Exhibit A of the Notice of Formation.

EXHIBIT A-2
DEPICTION OF THE PROPERTY

[See attached]

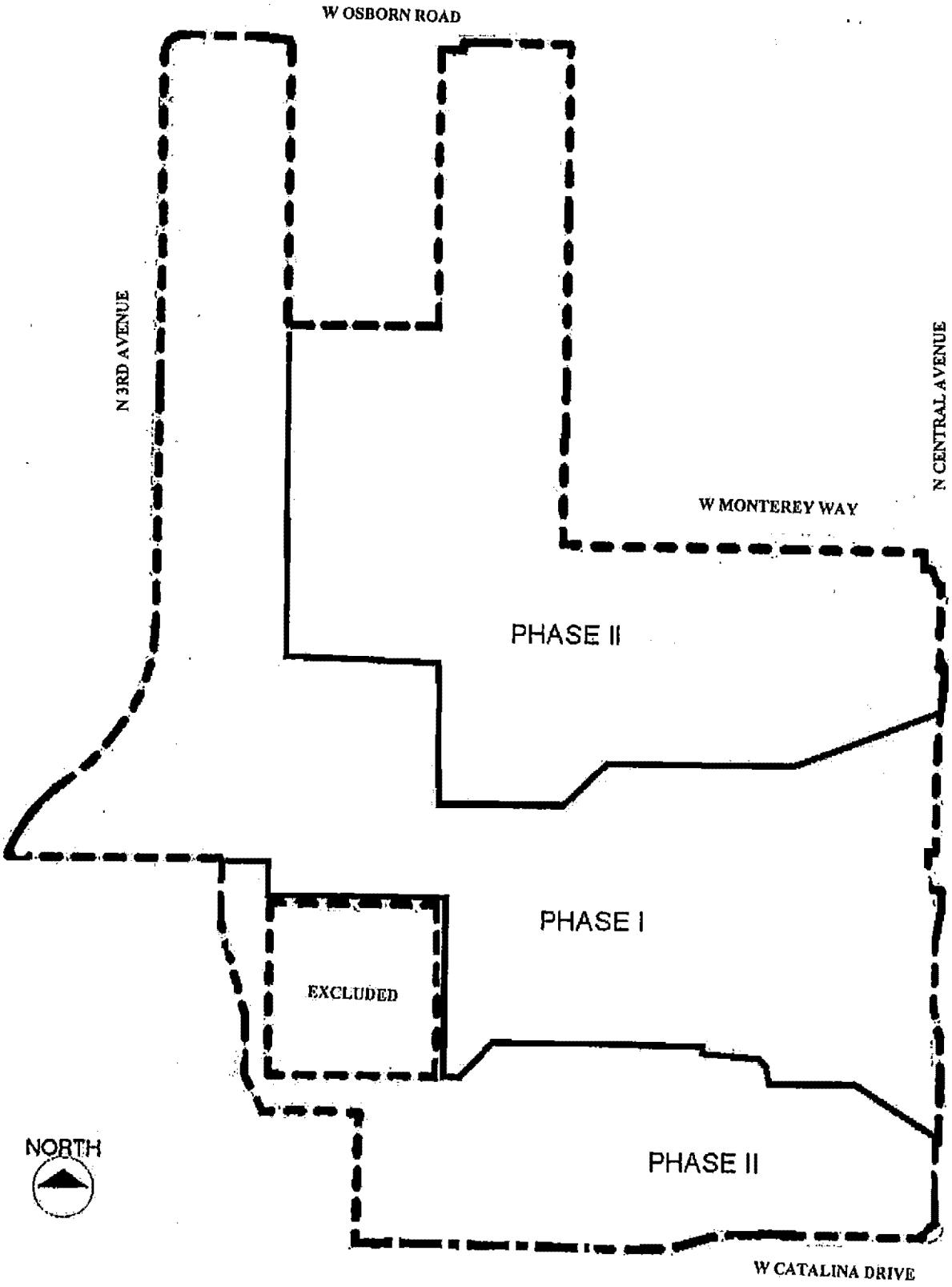
W OSBORN ROAD
N 3RD AVENUE
N CENTRAL AVENUE
W MONTEREY WAY
PHASE II
PHASE I
EXCLUDED
PHASE II
NORTH
W CATALINA DRIVE

EXHIBIT A-2-2

EXHIBIT B-1

LEGAL DESCRIPTION OF THE ASSESSMENT DISTRICT

Lots 1 through 5, inclusive, PARK CENTRAL AMENDED, according to Book 1451 of Maps, page 35, records of Maricopa County, Arizona.

EXHIBIT B-2

DEPICTION OF THE ASSESSMENT DISTRICT

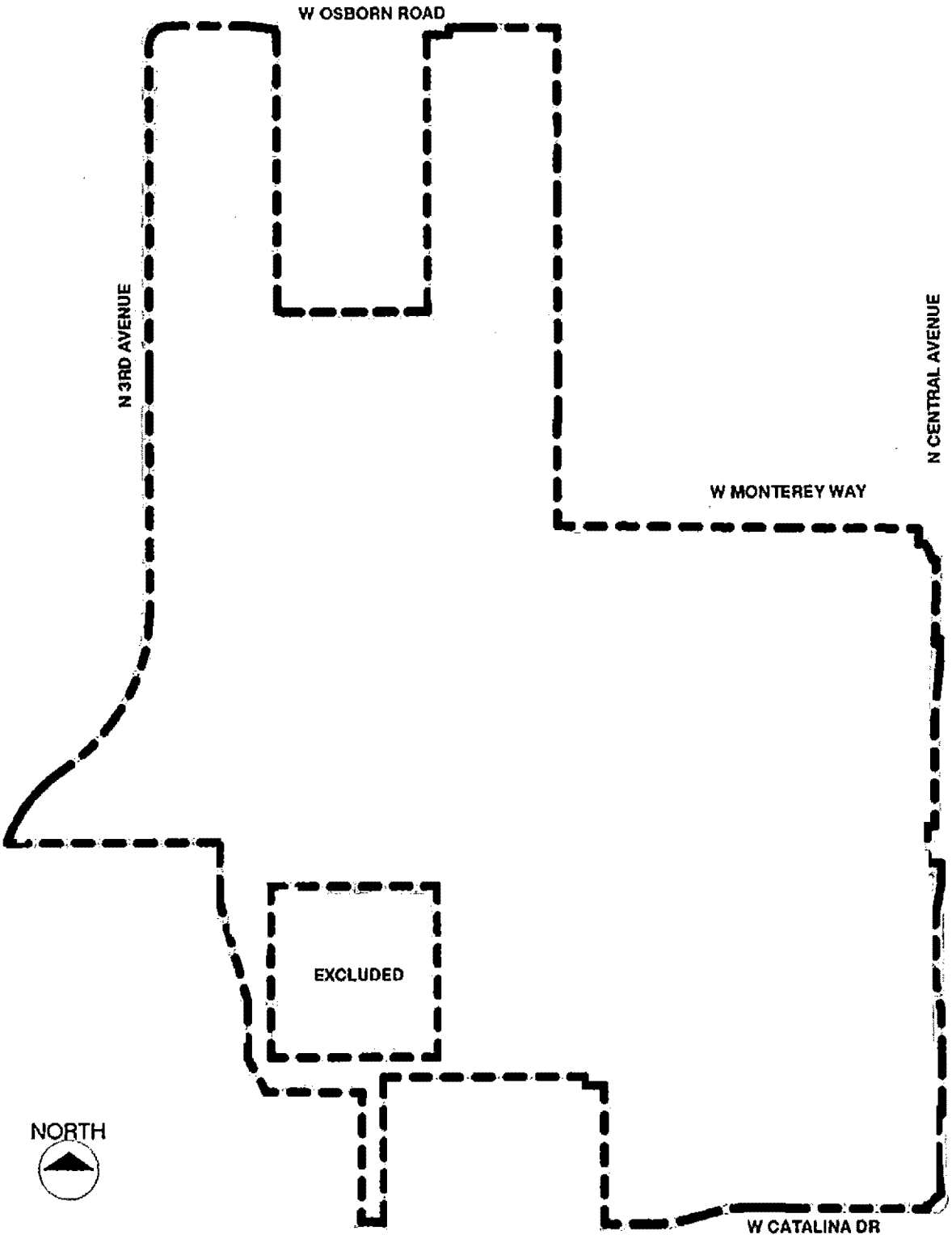

EXHIBIT B-2-1

EXHIBIT C

ASSESSMENT ENGINEER'S PRELIMINARY REPORT

[See attached]

PRELIMINARY ASSESSMENT METHODOLOGY REPORT

FOR

PARK CENTRAL COMMUNITY FACILITIES DISTRICT

Parking Garage Assessment District

City of Phoenix, Arizona

March 25, 2019

EPS GROUP

125 S. AVONDALE BOULEVARD
SUITE 115
AVONDALE, ARIZONA 85323
623.547.4661

EXHIBIT C-2

PARK CENTRAL COMMUNITY FACILITIES DISTRICT
Parking Garage Assessment District
Preliminary Assessment Methodology Report
March 25, 2019

Background
The redevelopment of the former Park Central Mall located at Central Avenue and Catalina Drive is the catalyst for the proposed construction of a 2001-space parking garage (the "Catalina Garage") on the north side of Catalina Drive between Central Avenue and 3rd Avenue within the boundaries of the below-described Park Central Community Facilities District (the "District").

The Park Central developer proposes that the costs of the Catalina Garage be financed in part by the District, which was established by resolution of the Mayor and Council of the City Phoenix (the "City") on August 29, 2018. The general boundaries of the District are Osborn Road on the north, Catalina Drive on the south, 3rd Avenue on the west and Central Avenue on the east. The entity HPPC, LLC (the "Developer") has selected an architect and a general contractor to design and construct the Catalina Garage. The District will be requested to sell District Special Assessment Revenue Bonds (the "Special Assessment Bonds"), payable from revenues of special assessment payments derived from, and secured by, levy assessment liens on the identified parcels within the District that benefit from the Catalina Garage (referred to herein as the "Assessment Area"). Proceeds from the bond sale will be used, together with other funds described herein, to construct the Catalina Garage. Principal and interest payments to retire the Special Assessment Bonds would be made to the District by the parcel owners.

Purpose
The purpose of this report is to present an assessment methodology for assessing the District parcels for the cost of the Catalina Garage. However, until the final Catalina Garage cost estimate and other costs of developing the Catalina Garage are known and the bond amount is determined, the assessment amounts cannot be finalized. Thus, this report will recommend the framework for the final assessment calculations to be made when the size of bond issue is finalized. At that time, this report will be modified as necessary to become a "Final Assessment Methodology Report."

Ownership at Creation of District and Subsequent Transfers
Figure 1 shows the District boundaries, the general location of, and the ownership of the tax parcels as they existed at the time the District was formed.

The owners of the property within the District at the time of creation of the District were HPPC, LLC, Dignity Health (Dignity), and Park Central Mall, LLC. Since the time of District formation, the properties formerly owned by Dignity and Park Central Mall, LLC were conveyed to HPPC II, LLC. The land within the District is currently comprised of six parcels of land. All parcels are currently owned by HPPC, LLC and HPPC II, LLC (together the Initial Owners). Within the parcel on which the Catalina Garage and a future apartment building will be developed (APN 118-37-030A), a small "island" parcel exists, which is owned by the City (APN 118-37-030B). This City parcel was excepted from the legal description for the District boundaries and is not included within the boundaries of the District. Another parcel owned by Dignity (APN 118-37-028) is surrounded by the

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District's boundaries, but is excluded from the District. The following table provides basic information for the parcels within the District as they currently exist.

Table 1 – Current Parcels within Proposed District Boundaries

Parcel Number (APN)	Owner	Size (square feet)	Size (acres)
118-37-027A	HPPC, LLC	759,789	17.44
118-37-027E	HPPC II, LLC	423,853	9.73
118-37-013B	HPPC II, LLC	95,571	2.19
118-37-031	HPPC II, LLC	25,570	0.59
118-37-027D	HPPC II, LLC	153,339	3.52
118-37-030A	HPPC II, LLC	140,581	3.23
Totals		**1,598,703**	**36.70**

Parcel 118-37-030A will be split into two parcels; the Catalina Garage will be built on one of the new parcels. That parcel will be conveyed to the District prior to the issuance of the Special Assessment Bonds and will, therefore, be unassessable. The remainder of Parcel 118-37-030A is planned for an apartment building. The future apartment parcel will remain in the District and be assessed accordingly.

Park Central Mall, LLC, a predecessor to HPPCII, entered into an agreement with Mercy Healthcare Arizona (MHA) in 1998 titled *Declaration of Reciprocal Easements, and Covenants, Conditions and Restrictions* (the "1998 Agreement"). The 1998 Agreement granted easements to MHA for 990 parking spaces in three specific locations within the Park Central site. Dignity is the successor in interest to MHA under the 1998 Agreement. An amendment to the 1998 Agreement recorded on January 23, 2019 (the "2019 Amendment") provides that Dignity will contribute $8 million to the construction of the Catalina Garage in return for 500 parking spaces in the Catalina Garage, some of which are reserved for Dignity's use. Under the 2019 Amendment, Dignity will continue to have rights to parking on certain Park Central parking areas and within the existing Park Central garage. Thus, the new 500 spaces within the Catalina Garage are in addition to the 990 spaces already provided under the 1998 Agreement as amended by the 2019 Amendment. As a result, Dignity will have access to a total of 1,490 spaces throughout the Park Central site. This total includes 405 existing parking spaces located on Parcel P, which is located outside the boundaries of the District (see Figure 3).

The Developer and HPPCII intend to sell portions of the above described parcels to others for development of various uses such as the apartments, senior housing, office buildings, hotels, and mixed-use buildings. A platting process is currently underway through the City to create the apartment and Catalina Garage parcels, as well as a new parcel to be acquired by Creighton University. This plat will also combine current tax parcels into larger parcels. Figure 2 shows the locations and layout of the District parcels as they will exist upon completion of the platting process, which is estimated to occur in April 2019 and prior to the issuance of the Special Assessment Bonds.

The Developer is planning to sell additional parcels following recordation of the special assessment liens. When those future parcel sales occur, the District assessment that has been recorded on

each parcel must be modified to split the special assessment between the new parcel and the remainder of the parent parcel. This assessment modification process should be based on the original assessment methodology. An example of a future modification process is included in this report.

Catalina Garage Costs

The Catalina Garage is planned to have 10 levels and is estimated to cost approximately $33.3 million for design, construction, soft costs, and contingencies. Table 2 provides a breakdown of the estimated garage construction costs.

Table 2 – Estimated Garage Construction Costs

Construction Costs	Cost
Design Costs	$1,004,232
Other Soft Costs	$342,500
Construction Contract	$29,982,254
Parking Gates Allowance	$250,000
Development Fee	$1,287,645
Total	$32,866,631
Owner Contingency	$600,000
Total	**$33,466,631**

City staff, acting as agents of the District, a Development Manager retained by the District, and a District Engineer retained by the District, will administer the District construction process. A portion of the costs to make payments to the contractor and to pay other costs associated with the construction and financing of the Catalina Garage will be financed by the District using proceeds from the sale of the Special Assessment Bonds. In addition, Dignity, which owns a building surrounded by District land but is not included within the District, has agreed with the Initial Owners within the District to contribute $8,000,000 toward the construction of the Catalina Garage in exchange for receiving 500 parking spaces in the Catalina Garage for its use. Pursuant to the terms of a Development Agreement (the "Development Agreement") among the City, the District, and each of the Initial Owners and their related lenders, any construction and other associated costs of the Catalina Garage in excess of amounts provided by the District from Special Assessment Bonds and the Dignity contribution are the responsibility of the Initial Owners.

The Special Assessment Bonds will be secured by special assessment liens placed on the participating parcels within the Assessment Area. The Special Assessment Bond sale and recording of liens on the parcels must occur prior to the start of construction of the Catalina Garage. The Special Assessment Bond amount will be based on an estimate of the total Catalina Garage project cost being financed by the District, including construction and non-construction costs. Non-construction costs can include professional services for design and managing the construction, other technical services, bond issuance costs and fees, land costs, and permit fees.

City Parking Requirements

Parking requirements, based on the proposed land use, are established in Section 702 of the City's Zoning Code for off-street parking. The Current C-2 H-R zoning for the Park Central property was approved in 1986 (Case 183-86) for Intermediate Commercial High Rise uses. In 2009, the original stipulations for the 1986 zoning were modified by the City to include development of the site in conformance with a site plan and supporting documents. The parking ratios shown in the 2009 modification for the various proposed uses conform to those listed in the Section 702 table.

In 2003, the City adopted Ordinance G-4559, which established the Interim Transit-Oriented Zoning Overly District One (TOD-1) on portions of downtown Phoenix including the entire Park Central site. That ordinance allows for reductions in required parking depending on the land use and proximity to a light rail transit station. That ordinance allows for a reduction in required parking spaces if the development is located within 1,320 feet of a light rail station; 25 percent reduction for residential/multifamily uses, and 15 percent reduction for commercial uses. Light rail stations are located on Central Avenue, adjacent to Park Central, south of Osborn Road and north of Thomas Road. Thus, all of the proposed District Assessment Parcels are located entirely or partially within the 1,320-foot distance from light rail stations.

Assessment Considerations

By statute, the amount of the assessment to be levied upon each participating parcel in the Assessment Area must be based on the benefit received by the parcel from the infrastructure being financed by the District; in this case, the Catalina Garage. The assessment for a parking garage may be viewed as similar to the demand for water supply to a piece of property. In the case of the garage, the demand is for parking spaces. Thus, the starting point for determining assessments in this case is the number of parking spaces allocated to each of the parcels that are participating in the District.

Similar to the water analogy, the assessments could be calculated based on the simple area of each participating parcel on a pro rata basis in square feet or acres. However, unlike a water supply, the parking garage will not be located adjacent to all lands within the District. This proximity issue and others unique to this project are discussed as follows:

Proximity – While the proposed apartment parcel is located adjacent to the parking garage, the other four parcels are located at varying distances from the proposed garage. The farthest extent of one of the parcels is approximately 1,700 feet, in a straight line, from the garage. As the distance of the parcel from the garage increases, visitors to the site will be less likely to utilize the garage and will find other parking options closer to their destination. Thus, the benefit of the garage that each parcel receives decreases with distance from the garage. This issue does not substantially affect the initial assessments, because they are based on the City parking requirements and agreements between the owners. This issue will need to be accounted for in the future modifications of the assessments as the parcels are split and portions sold to others.

Other Parking Options – For the foreseeable future, the existing Park Central parking garage will remain in service as a part of the redevelopment effort. This existing two-level garage is centrally located within the District boundaries, whereas the proposed Catalina Garage is

located at the south end of the site. In addition, plans of the proposed development show some surface parking to be located along drive aisles and in front of buildings throughout the site. Thus, visitors to the northern portions of the redeveloped Park Central site will have the option of using the existing garage or surface parking that is closer to their destination than the Catalina Garage.

The surface parking option does not affect the benefit received by the current parcels, because the surface parking will be spread out uniformly throughout the Park Central site. The option represented by the existing parking garage will reduce the benefit that the Catalina garage represents for the more remote portions of the District parcels. This reduced benefit does not apply to the initial assessments for the same reason provided above, but will need to be accounted for when future parcels are split from the current parcels and sold to others, which will occur in the assessment modification process.

Public Benefit – The proposed Catalina Garage will be open to the public subject to certain reservations of parking spaces for District and Non-District parcel uses, such as the proposed apartments and the Dignity building. However, with public access to the garage, there is a benefit to members of the public in general who may wish to park in the Catalina garage even though their destination is not located within the District boundaries. The public benefit in this case is considered to be minor due to the large number of parking options provided by the surrounding land uses.

Hampton Inn Parking Spaces - Hampton Inn is an existing motel located immediately west of the Catalina Garage site. When the Hampton Inn was developed, the owner of the future Catalina Garage site granted a non-exclusive parking easement for 16 parking spaces on the Catalina Garage site, which is the current location of the Dignity covered parking. The 16 Hampton Inn spaces lost as a result of the Catalina Garage construction will be replaced in the Catalina Garage as a part of the Phase 2 Parcel allocation.

Dignity Parking Spaces – Dignity owns a parcel of land that is located adjacent to the Park Central site, which is surrounded by the boundaries of the District, but is excluded from the District. The Dignity parcel is located adjacent to the proposed Catalina Garage site. In recognition of existing parking rights for the land on which the garage will be built, Dignity will receive rights to 500 parking spaces within the new garage. These spaces, together with the 16 Hampton Inn spaces, will reduce the number of spaces available for use by the District parcels to 1,485. This impact is offset by a proposed payment by Dignity of $8 million for those 500 spaces. Thus, the District will finance the remaining cost of the garage and the parcel owners will have rights to 1,485 spaces.

Catalina Garage Parcel – The Catalina Garage parcel, which will be created by the re-platting process currently underway by the Developer and the City, is currently burdened by the existing parking easement agreements, as discussed previously. Amendments to the prior agreements and the new agreements recognize that the Catalina Garage parcel will no longer be available for surface parking and provide for certain replacement spaces within the Catalina Garage.

Financing Plan

In addition to the cost to construct the garage as shown in Table 1, costs related to the issuance of the Special Assessment District bonds will be incurred. To offset these costs, funds will be contributed by HPPC, LLC and Dignity (as described above). Table 3 provides the estimated sources and uses of funds for this project. Based on the current cost estimates, the proceeds from the sale of the bonds are estimated to be $29,654,676. However, because the bond sale has not yet occurred, the preliminary assessments to be calculated in this report will be based on a total estimated bond amount of $30 million. As the time for the bond closing and levying of the assessments approaches, the final bond amount will be determined and will be used in the Final Assessment Methodology Report to calculate the assessments to be levied.

Table 3 – Estimated Sources and Uses of Funds

Sources	Amount
Dignity Funds	$ 8,000,000
Developer Contribution	$ 362,500
Bond Proceeds	$30,000,000
Total	**$38,587,477**
Uses	**Amount**
Construction Costs	$33,466,631
Issuance Costs	$ 1,002,539
Debt Service Reserve	$ 2,361,394
Capitalized Interest	$ 1,756,913
Total	**$38,587,477**

Assessment Methodology

The Park Central site currently contains 3,139 parking spaces. A total of 405 spaces are located outside the boundaries of the District, but figure into the allocation of parking spaces among the various Park Central users as presented below. The existing two-level parking structure on the Park Central site provides 704 spaces, which are included in the total of 3,139 spaces. Thus, most of the existing parking is surface parking located throughout the site, some of which will remain as the site is redeveloped. Through a 2019 access agreement, replacing an obsolete 2000 agreement, the owners of the Phase 1 Parcel and the Phase 2 Parcel have agreed that the Phase 2 Parcel is entitled to 1,000 parking spaces on the Park Central site, conditionally reduced to 825 spaces as described below. In addition, pursuant to the 1998 Agreement as modified by the 2019 Amendment, Dignity, which is not an owner of land within the District, has rights to 990 unreserved parking spaces in specified areas of the Park Central site, 250 spaces of which are convertible to limited access spaces in the Catalina Garage as described below.

The City of Phoenix requires that commercial projects, such as Park Central, provide adequate parking for the planned uses. These parking requirements are established by utilizing ratios

embodied in the City's zoning code. The existing parking ratios for the Park Central site are shown in the following table.

Table 4 - Current Parking Ratios

User	Spaces	Building Area (SF)	Parking Ratio (spaces/1,000 SF)	Zoning Code Ratio
Phase 1 (office/retail)	1,149	270,000	4.2	4.0
Phase 2 (office)	1,000	193,000	5.2	3.5
Dignity (medical)	990*	165,000	6.0	5.0
Total	**3,139**			

* 405 of these spaces are located on a parcel outside of the District.

These current Park Central parking ratios can be compared to ratios for other existing projects of a similar nature in the area. Data provided by the City's Economic Development office was examined to find office buildings and medical facilities located in the central Phoenix area. Thirty-five existing office buildings and medical facilities were identified of a size of at least 10,000 square feet and located within a three-mile radius of Park Central site. The average parking ratio for these 35 buildings, weighted based on square footage, is 4.45 parking spaces per 1,000 square feet of building area. Therefore, the parking ratios for the existing uses within the Park Central site not only meet the requirements of the City's zoning code, but also compare well with existing similar uses within the general area.

Upon completion of the Catalina Garage, the total amount of parking spaces within the Park Central site will increase to 4,378 spaces. A total of 762 spaces will be lost when the Catalina Garage is built on a portion of the site and when Assessment Parcel 4 is developed by Creighton University. But, the Catalina Garage will add 2,001 spaces to the site, for a net increase of 1,239 spaces.

The access agreement between the owners of Phase 1 and Phase 2 provides for 175 parking spaces within the existing garage to be transferred from Phase 2 to Phase 1 at the time an outstanding loan is paid off by the owner of Phase 2, which is scheduled to occur on or before October 10, 2020. However, this agreement does not create new parking spaces within the Park Central site and does not affect the size of or allocation of spaces within the Catalina Garage. Table 5 illustrates the effect this transfer will have on the number of spaces allocated to each current user and their respective ratios.

Table 5 - Current Parking Ratios after October 10, 2020

User	Spaces	Building Area (SF)	Parking Ratio (spaces/1,000 SF)	Zoning Code Ratio
Phase 1 (office/retail)	1,324	270,000	4.9	4.0
Phase 2 (office)	825	193,000	4.3	3.5
Dignity (medical)	990*	165,000	6.0	5.0
Total	**3,139**			

* 405 of these spaces are located on a parcel outside of the District.

Assessment Parcel 1 includes existing buildings with a total floor area of 270,000 square feet, which are being redeveloped for mixed-use tenants. The City parking code requires the total parking to be provided for a mixed-use project to be the sum of the requirements for each use based on the ratios stated in the Code. If the entire 270,000 square feet was developed as office space, the parking ratio would be 3.2 spaces per 1,000 square feet of building. Restaurants and retail uses, per the Code, require higher ratios, i.e. more parking per square foot of building. Because the final mix of uses within the buildings on Assessment Parcel 1 are not known at this time, this analysis will utilize a parking ratio of 4 spaces per 1,000 square feet of building. At that ratio, Assessment Parcel 1 requires 1,032 parking spaces. It qualifies for a 15 percent reduction in required parking based on its proximity to light rail stations. Therefore, the required parking is reduced to 877 spaces. Assessment Parcel 1 will be allocated 457 spaces in the Catalina garage. The 420 additional spaces needed to meet the City's parking requirements exist on the Park Central site in proximity to the Phase 1 parcel.

Assessment Parcel 2 is a remnant of the property previously owned by Park Central Mall, LLC. The 1998 Agreement between Park Central Mall, LLC, as predecessor to HPPCII, LLC, and MHA, now Dignity, granted easements to MHA for 990 parking spaces in three specific locations within the Park Central site:

1. 150 reserved spaces within the existing Park Central parking garage exclusively for MHA use.
2. 399 spaces on the Expansion Lot (originally platted Lot 3) on an unreserved, non-exclusive, first come-first served basis.
3. 441 spaces on the Catalina Parcel (location of the currently planned Catalina Garage) on an unreserved, non-exclusive, first come-first served basis. MHA had the option to replace these spaces with up to 250 spaces for the sole use of MHA during normal business hours. The 250 spaces could be covered and controlled by gates, card readers, etc. MHA apparently took advantage of that provision as evidenced by the covered, controlled access parking lot currently located on the Catalina Garage parcel. The construction of the Catalina Garage will eliminate these 250 spaces.

Another provision of the 1998 Agreement allowed Park Central Mall, LLC, to replace any of the 990 spaces with comparable parking spaces on portions of the Park Central site identified for permanent parking relocations, including the Catalina Garage site. The replacement spaces shall be equivalent with respect to being covered and reserved.

Dignity, its property, and its contribution to the Catalina Garage construction cost are outside of the District. However, construction of the Catalina Garage will eliminate Dignity's 250 spaces described above. Per the 1998 Agreement, the owner of Assessment Parcel 2 is obligated to provide those spaces for Dignity. Therefore, the assessment to be placed on Assessment Parcel 2 represents its owner's obligation to provide 250 spaces within the Catalina Garage for the use of Dignity under the 1998 Agreement and the 2019 Amendment.

Assessment Parcel 3, the Apartments, is required by City Code to provide parking according to the size of the units and the number of bedrooms in each unit. According to Matthew Schildt of

TDC Properties, the current plan for the Apartments provides for 278 units with a breakdown of unit sizes shown in Table 6. Per this plan and the City's parking code, Assessment Parcel 3 is required to have 402 parking spaces.

Table 6 – Apartments Parking Requirements

Apartment Units		Unit Size	Parking Ratio	Parking Spaces Required
Number	Type	(Sq. Ft.)	(per unit)	
28	Studio	597	1.0	28
5	Studio	604	1.3	6.5
3	Studio	724	1.3	3.9
45	1 -1	698	1.5	67.5
76	1 -1	756	1.5	114
5	1 -1	698	1.5	7.5
15	1 -1	849	1.5	22.5
11	1 -1	854	1.5	16.5
8	1 -1	856	1.5	12
8	1 -1	756	1.5	12
2	1 -1	865	1.5	3
8	1 -1	1,080	1.5	12
2	1 -1	797	1.5	3
1	1 -1	867	1.5	1.5
1	1 -1	865	1.5	1.5
34	2 - 2	1,051	1.5	51
8	2 - 2	1,436	1.5	12
8	2 - 2	1,364	1.5	12
4	2 - 2	1,062	1.5	6
1	2 - 2	1,087	1.5	1.5
5	2 - 2	1,056	1.5	7.5
278	Total/Avg	834		401.4

Because of its proximity to light rail stations, Assessment Parcel 3 is eligible for a 25 percent reduction in required parking. The required parking for Assessment Parcel 3 then becomes 302 spaces.

Assessment Parcel 3 will have a total of 278 spaces in the Catalina garage which are reserved for the exclusive use of apartment residents. Another 100 spaces in the Catalina garage will be available for the use of the apartment residents and their invitees during non-business hours; i.e. evenings, weekends and holidays. Thus, the sum of these reserved and off-hours spaces in the Catalina garage (378 spaces) meets the City's parking requirements for this apartment project.

However, the absolute reservation of the 278 spaces for Assessment Parcel 3, and the use by Assessment Parcel 3 of another 100 spaces during nights and weekends, represents an

Increased benefit to Assessment Parcel 3 and a reduced benefit to the other Assessment Parcels. Therefore, Assessment Parcel 3 should have a higher assessment on a per-space basis.

Assessment Parcel 4 is planned for a Creighton University campus to include a four-year medical school, nursing school, occupational and physical therapy schools, pharmacy school, physician assistant school, and emergency medical services program. According to information provided by representatives of Creighton, the campus will include a 185,000 square foot building in the first phase and a planned student population of about 900, which will be a mixture of on-site students and those whose schedules do not require them to be on campus daily. The student population is currently expected to consist of 260 students attending the campus daily, 312 students whose attendance will vary, and 320 clinical students who are generally off campus.

Through the land purchase agreement, Creighton has been allocated a total of 500 spaces within the Catalina Garage. The parking requirement for this project is based on the City's parking code, but is based on the "Office" category as a worst case scenario. For a building of this size, the code requires 3.5 parking spaces per 1,000 square feet of office space, which is 648 spaces. Proximity of the site to the light rail allows for a 15 percent reduction in required spaces. The resulting number of spaces is 551. This parking requirement is met by the 500 spaces within the Catalina Garage and 60 parking spaces elsewhere, following development of the Creighton parcel.

Assessment Parcel 5 consists of drive aisles and some surface parking. Because of its geometry, this parcel is considered to be undevelopable for uses other than drive aisles and parking. While Parcel 5 has value to the overall Park Central project by providing access, traffic circulation, and parking, it is considered to have no value in support of assessment bonds for the garage. Because this parcel cannot be developed independently of the adjacent parcels, it should not carry a significant assessment. If Parcel 5 had to be foreclosed upon by the District in order to pay off its share of the bond debt, the District would likely not receive enough proceeds from the foreclosure sale to cover the bond debt. Therefore, it is recommended that Parcel 5 be assessed at $1.00.

Proposed Parking Allocations after October 10, 2020 and with the Catalina Garage in place are shown in Table 7.

Table 7 - Parking Ratios after October 10, 2020 with Catalina Garage

User	Current Spaces	Loss/ Reallocation of Current Spaces	Catalina Garage Spaces	Total Spaces	Building Area (SF)	Parking Ratio (spaces/ 1,000 SF)	Zoning Code Ratio
Phase 1 (office/retail)	1,308	-496*	457	1,269	258,000	4.9	4.0
Phase 2 (office)	825	-250	250	825	193,000	4.3	3.5
Dignity (medical)	990	0	0	990	165,000	6.0	5.0
Dignity (addl. uses)	0	0	500	500	N/A	-	-
Apartments	0	0	278	278	N/A	***	***
Creighton	0	0	500	500	185,000	2.7	3.2
Hampton Inn**	16	-16	16	16	N/A	N/A	
Totals	**3,139**	**-762**	**2,001**	**4,378**			

* Includes 362 for Catalina Garage site, 45 for Parcel R, and 89 from the Creighton site.

** Hampton Inn (not included in District) is provided with 16 parking spaces in Catalina Garage pursuant to 1998 Easement Agreement with Phase 2 owner.

*** See Table 6.

The right of Assessment Parcels 1 through 4 to use parking spaces within the Catalina Garage will be secured by an easement placed on the Catalina Garage site to the benefit of each Assessment Parcel. Because the easement creates and secures the benefit for each Assessment Parcel, it is essential that the easements be recorded prior to the assessment liens being recorded against the Assessment Parcels.

Recommended Assessments

Through previous and currently drafted agreements and easements, all owners within the Park Central site have adequate parking to allow for development of their parcels as currently planned. While the construction of the Catalina Garage will eliminate some existing surface parking spaces, it will also create 2,001 additional spaces. These new spaces, along with the currently planned allocation of existing surface parking, provide adequate parking for the existing buildings, the Apartments, Dignity, and Creighton University. New uses and buildings on the currently vacant parcels will be required to provide additional parking as needed depending on their uses as they develop.

Based on this analysis and conclusions, it is recommended that the preliminary assessments for the cost of the Catalina Garage be based on the allocation of spaces within the Garage with two exceptions. First, Assessment Parcel 5, as discussed above, will be assessed $1.00. Second, the assessment for the Apartments parcel is slightly higher than a straight allocation, because the spaces allocated to the Apartments are reserved on a 24/7 basis for the residents and their guests. Also, the Apartments residents will have the use of another 100 parking spaces during nights and weekends.

Regarding the downward adjustment for Assessment Parcel 4 (Creighton), it is appropriate to reduce this assessment for two reasons. First, because Assessment Parcels 1 and 4 have nearly the same number of spaces allocated within the Catalina Garage, their assessments

should be similar. Second, the Creighton campus is not allocated the full number of Catalina Garage spaces needed to serve its site. Creighton needs 551 spaces under the City code, but is allocated only 500 within the Catalina Garage.

Table 8 provides the recommended preliminary assessments.

Table 8 – Recommended Preliminary Assessments

Assessment Parcel No.	Parcel Owner or Future Owner	Number of Parking Spaces Allocated	Pro Rata Share Based on Spaces	Adjusted Share	Recommended Assessment
1	HPPC	457	30.77%	31%	$9,300,000
2	HPPC II	250	16.84%	17%	$5,100,000
3	Apartments*	278	18.72%	21%	$6,300,000
4	Creighton*	500	33.67%	31%	$9,300,000
5	HPPC II	0	0.00%	0%	$1
Totals		**1,485**	**100.00%**	**100%**	**$30,000,001**

* These acquisitions are pending and may not have occurred at the time of preparation of this report.

Assessment Modification Approach

After the initial assessments are levied and recorded against the participating parcels, portions of Assessment Parcels 1, 2 and 4 may be split off and sold. The Developer has prepared a master plan for these future parcels (Figure 3). When a new parcel is split from the original Assessment Parcel, City staff will be required to process a modification of that assessment. All assessment modifications will be subject to approval by the District Board of Directors.

The proximity issue described above will apply to the future modification process and should be recognized in the modified assessments, in a manner similar to the initial assessments.

Most of the parcels that will be sold in the future are currently vacant, i.e. parking areas. However, the parent parcels (i.e. the HPPC and HPPCII parcels) already have significant existing structures that are in use and will continue to be used in the redevelopment of the site. In the case of Assessment Parcel 4 (Creighton), the Phase 1 portion would be developed as the campus, while the Phase 2 portion would remain vacant. Thus, the value of the land, without buildings, should be the basis for making the pro rata adjustments in the assessment modification process. This approach will allow an equitable modification for splitting vacant parcels from the parent parcels which have comparatively significant values based on the existing buildings. For this example, it is assumed that the value of the land is ten percent of the total value of the parcel. Moreover, because any land parcel sold for further development will have no direct easement rights to the Catalina Garage and will need to accommodate its parking requirements separately, the only benefit these future parcels will receive from the

Catalina Garage will be the public use of the Catalina Garage, which is also estimated to be ten percent of the Catalina Garage's use.

Under this approach, the already developed parent parcel, i.e. Assessment Parcel 1 or 2, or Creighton Phase 1, will retain the majority of the original assessment. However, this approach is considered to be equitable, because the parent parcel will enjoy the benefit of the Catalina Garage beginning immediately upon completion of its construction, whereas a vacant parcel will not receive benefit until it is developed, but in the meantime the owner will be making assessment payments. Furthermore, as parcels are sold, the parent parcel will increasingly rely on the Catalina Garage to provide parking for the remainder of the parent parcel. In addition, it is likely that, depending on land use, the parcel that is sold may have to use some of its area for parking to supplement what the Catalina Garage provides or find alternate parking consistent with its intended use.

During future assessment modifications, it will be important to maintain a minimum value-to-lien ratio of 3 to 1, not only for the new parcel, but also for the remaining parent parcel. Evaluating these ratios will require updated appraisals of value for each modification.

Using the plan shown in Figure 3 and relative parcel sizes, Table 9 provides an example of how the future assessment modification calculations could be made.

The proposed adjustments to the assessments are based on a percentage factor considering the distance of each parcel from the Catalina Garage, with closer parcels having a positive adjustment and more distant parcels having a negative adjustment. This approach is based on the relative likelihood that a person will park in the Catalina Garage and walk to a use located on one of the future parcels. The adjustments are not necessarily linear with distance, because longer distances from the Garage will more greatly discourage visitors from using the Garage. The rationale for the adjustments shown in Table 9 is described as follows:

- Parcel M is the farthest from the Catalina Garage and should have the largest reduction at 11 percent.
- Parcel 118-37-031 is equally distant from the Catalina Garage as Parcel M. But, the small size of the parcel, which makes it more difficult to provide additional on-parcel parking, warrants a lesser reduction to 3 percent.
- Parcels I and N receive neutral adjustments of zero percent, because they are more or less in the center of the site and have other parking options.
- Parcels O, B, and K receive similar positive adjustments due to their relatively similar proximity to the Catalina Garage.

When assessment payments are made to the District by the Assessment Parcel owners over time, the remaining assessments will be reduced accordingly. At the time a parcel is split from the parent parcel and sold to a new owner, the remaining assessment on the parent parcel is the number that will be inserted into the spreadsheet to allow a new spread of the assessment to be made. That calculation will preserve the original modification approach, but base the

assessment for the new parcel on the outstanding balance of the assessment remaining at the time the parcel is created.

EXHIBIT C-17

This exhibit is not recordable and is therefore not recorded with this Development Agreement.

This exhibit is on file and can be viewed at the City Clerk's Office, City of Phoenix.

FIGURES

EXHIBIT C-19

This exhibit is not recordable and is therefore not recorded with this Development Agreement.

This exhibit is on file and can be viewed at the City Clerk's Office, City of Phoenix.

EXHIBIT C-20

This exhibit is not recordable and is therefore not recorded with this Development Agreement.

This exhibit is on file and can be viewed at the City Clerk's Office, City of Phoenix.

EXHIBIT C-21

This exhibit is not recordable and is therefore not recorded with this Development Agreement.

This exhibit is on file and can be viewed at the City Clerk's Office, City of Phoenix.

EXHIBIT D-1

FORM OF CERTIFICATE FOR PAYMENTS
(To be Attached to Each Request for Disbursement from the Garage Construction Fund)

CERTIFICATE OF DEVELOPMENT MANAGER
WITH APPROVAL OF DISTRICT ENGINER
FOR PAYMENT OF PROJECT COSTS RELATED TO CONSTRUCTION PROJECT

GARAGE PROJECT
A 10-story, approximately 2,001 space parking structure in Phoenix, Arizona, along Catalina Drive, west of Central Avenue, together with associated landscaping, lighting, signage, driveways, and related facilities.

STATE OF ARIZONA)
COUNTY OF MARICOPA)
CITY OF PHOENIX) ss.
PARK CENTRAL COMMUNITY)
FACILITIES DISTRICT)

CERTIFICATE OF DEVELOPMENT MANAGER:

_____, being the Development Manager for Park Central Community Facilities District (hereinafter referred to as the "District"), hereby certifies for purposes of the District Development, Financing Participation, Waiver and Intergovernmental Agreement (Park Central Community Facilities District), dated as of _____, 2019 (hereinafter referred to as the "Agreement"), by and among the District, City of Phoenix and the Initial Owners, and for the purpose of disbursements from the Garage Construction Fund from time to time, that:

1. It has reviewed and approved the current payment application submitted by the Contractor, a copy of which is attached as Schedule 1, and which includes copies of all invoices for the amounts to be paid. The total amount to be paid pursuant to this Certificate is $_____. The total amount to be paid should be allocated and paid as follows:

$_____ from District Construction Account
$_____ from Dignity Construction Account
$_____ from Initial Owners' Construction Account

The above allocation complies with the requirements and limitations contained in Section 2.4 of the Agreement.

2. The current payment application submitted by the Contractor includes a current schedule of values, indicating percentage completion of line items. The Contractor's estimate of the cost to achieve Completion, after payment of the amounts requested by this Certificate, is $_____. The undersigned concurs with such estimate.

3. The Project Costs to be paid by this Certificate are for work actually performed or materials supplied. The Contractor's payment application is accompanied by statutory conditional lien waivers and releases from all suppliers, contractors, subcontractors, and other lower tier providers of labor, materials, equipment, services, and other work (excluding subcontractors and materials suppliers who have not filed a preliminary twenty day lien notice) ("Lien Claimants") that are to be paid pursuant to this Certificate, and unconditional lien waivers from Lien Claimants with respect to work and materials funded in the immediately prior Certificate (if applicable).

4. The attached payment application submitted by the Contractor includes a signed certification as to the accuracy of the payment application, and a current construction schedule.

5. The undersigned ratifies and confirms the provisions of Exhibit H to the Agreement with respect to this Certificate.

SIGNATURE OF DEVELOPMENT MANAGER:

_____

By: _____
Name: _____
Title: _____
Dated: _____

APPROVAL OF DISTRICT ENGINEER:

_____, being a Professional Engineer in the State of Arizona and the duly appointed District Engineer for the District, hereby certifies and directs as follows:

A. I have reviewed and hereby approve the certification of the Development Manager set forth above, and the attached payment application from the Contractor.

B. I hereby direct the Bond Trustee to disburse the aggregate amount of $_____ from the Garage Construction Fund as payment for the sums identified on Schedule 2. This aggregate amount shall be drawn from the District Construction Account, the Dignity Construction Account and the Initial Owners' Constructions Account as follows:

$_____ District Construction Account
$_____ Dignity Construction Account
$_____ Initial Owners' Construction Account

C. The disbursement of funds described in Paragraph (B) above complies with the requirements and limitations described in Section 2.4 of the Agreement. In my professional opinion, based on the Contractor's estimate to Complete the Garage Project, after disbursement of funds according to Paragraph (B) above, the remaining Garage Construction Fund (taking into account the Dignity Cap and the District Cap and the amount of the Initial Owners' Construction Account being held by the Bond Trustee) will be sufficient to Complete the Garage Project in accordance with the Plans and Specifications.

Capitalized terms not otherwise defined in this Certificate will have the meaning set forth in the Agreement.

SIGNATURE OF DISTRICT ENGINEER:

DATED AND SEALED THIS _____ DAY OF _____, 20__

By

_____
District Engineer

[P.E. SEAL]

[See attached]

EXHIBIT D-2

FORM OF CERTIFICATE OF DISTRICT ENGINEER AT COMPLETION

CERTIFICATE OF DISTRICT ENGINER FOR COMPLETION OF CONSTRUCTION PROJECT

GARAGE PROJECT

A 10-story, approximately 2,001 space parking structure in Phoenix, Arizona, along Catalina Drive, west of Central Avenue, together with associated landscaping, lighting, signage, driveways, and related facilities.

STATE OF ARIZONA)
COUNTY OF MARICOPA)
CITY OF PHOENIX) ss.
PARK CENTRAL COMMUNITY)
FACILITIES DISTRICT)

I the undersigned, being a Professional Engineer in the State of Arizona and the duly appointed District Engineer for Park Central Community Facilities District (hereinafter referred to as the "District"), hereby certify for purposes of the District Development, Financing Participation, Waiver and Intergovernmental Agreement (Park Central Community Facilities District), dated as of _____, 2019 (hereinafter referred to as the "Agreement"), by and among the District, City of Phoenix and the Initial Owners that:

6. The Garage Project indicated above has been performed in every detail pursuant to the Plans and Specifications (as such term and all of the other initially capitalized terms in this Certificate are defined in the Agreement) and the Construction Contract (as modified by any change orders permitted by the Agreement) for such Garage Project.

7. The Project Costs as publicly bid and including the cost of approved change orders and other eligible costs is $_____.

8. The District provided for compliance with the requirements for public bidding for the Garage Project as required by the Agreement (including, particularly but not by way of limitation, Title 34, Chapter 2, Article 1, Arizona Revised Statutes, as amended) in connection with award of the Construction Contract for such Garage Project.

9. The District filed all construction plans, specifications, contract documents, and supporting engineering data for the construction or installation of the Garage Project with the City of Phoenix.

10. The District obtained good and sufficient performance and payment bonds in connection with such Contract.

11. Completion of the Garage Project has occurred: the punch list items identified by the undersigned, the Contractor and the Development Manager have been completed; a certificate of occupancy (or its equivalent) has been issued by the City of Phoenix for the Garage Project; and all Project Costs to accomplish the foregoing have been paid.

12. The undersigned hereby directs the Bond Trustee to (i) disburse any remaining Initial Owners' Construction Account to the Initial Owners in accordance with instructions from the Initial Owners, (ii) disburse any remaining portion of the Dignity Construction Account to Dignity in accordance with Dignity's instructions, and (iii) transfer any remaining District Construction Account to the Redemption Account or the Interest Account of the Debt Service Expense Fund, as directed by the District.

Capitalized terms not defined in this Certificate have the meanings set forth in the Agreement.

DATED AND SEALED THIS _____ DAY OF _____, 20__

By

_____

District Engineer

[P.E. SEAL]

EXHIBIT E

DESCRIPTION OF GARAGE PROJECT

A 10-story, approximately 2,001 space parking structure in Phoenix, Arizona, along Catalina Drive, west of Central Avenue, together with associated access easements, landscaping, lighting, signage, driveways, and related facilities.

EXHIBIT F-1

LEGAL DESCRIPTION OF THE GARAGE PROJECT SITE

Lot 6, PARK CENTRAL AMENDED, according to Book 1451 of Maps, page 35, records of Maricopa County, Arizona.

EXHIBIT F-2-1

This exhibit is not recordable and is therefore not recorded with this Development Agreement.

This exhibit is on file and can be viewed at the City Clerk's Office, City of Phoenix.

EXHIBIT F-2-2

This exhibit is not recordable and is therefore not recorded with this Development Agreement.

This exhibit is on file and can be viewed at the City Clerk's Office, City of Phoenix.

EXHIBIT G

EXAMPLES OF PROJECT COSTS

DESIGN

Parking Structure - Architectural & Engineering
Civil Engineer
Reimbursables - printing, mileage, courier, etc.
Landscape Architect

CONSTRUCTION COSTS

Parking Structure - Construction Costs, Insurances, Bonds, etc.
Change Orders
Contingency

PROJECT SOFT COSTS

Environmental
Insurance
Legal Fees - associated with design, construction, and procurement
Third Party Inspections
Testing & Inspections
Permits & Development Impact Fees - Parking Structure
Geotechnical Report
Site Survey
Contingency

DEVELOPMENT MANAGEMENT FEES

Development Management Fee
Development Management Reimbursable Expenses

EXHIBIT H

PROCEDURES FOR DISBURSEMENT OF PROJECT COSTS

I. **Requests for Disbursements.**

A. The Development Manager may request disbursements (**"Disbursements"** or **"Advances"**) of the Garage Construction Fund not more frequently than monthly. Disbursements shall be made upon requisitions in such form as may be prescribed by the District from time to time, signed by an authorized representative of the Development Manager, and approved by the District Engineer or by such persons as the District Engineer may direct. The Bond Trustee shall fund each such requisition within ten (10) business days following receipt of all supporting instruments and documents which the District may require pursuant to this Agreement. In connection with Disbursements, the District may require on-site inspections and a review of construction (i) to verify percentage of completion and the estimated cost to complete the Garage Project, and (ii) to certify disbursement requests. Any such inspections shall be for the sole use and benefit of the District, and neither the Development Manager nor any third party shall be entitled to rely thereon for any purpose.

B. Each requisition shall thereby constitute, without the necessity of specifically containing a written statement, a representation and warranty by the Development Manager with respect to the item for which payment is requested that (i) if the item is work or materials, it has been physically incorporated into or stored on the Garage Project Site, free of all liens and encumbrances (except for those to be discharged in full with the proceeds of the requested advance), (ii) the item is included in the construction budget, (iii) the cost of the item is as specified in the requisition and construction budget, including any contingency (or if not, that any excess has been paid out by the Initial Owners), (iv) the work, materials or other item substantially conforms to the Plans and Specifications and/or construction budget and all applicable statutes, laws, ordinances, administrative rules, regulations and other legal requirements, (v) the item has been approved by all zoning, building and other governmental officers, offices or departments having jurisdiction and whose approval is required, and (vi) the representations and warranties of the Development Manager contained in the Development Management Agreement are true and correct in all respects as if made on the date of the request for disbursement.

II. **Amount of and Conditions to Disbursements.**

A. The Development Manager shall not be entitled to any Advance unless:

1. the representations and warranties as specified in **Section I** shall be true and correct in all material respects at the date of the Advance;

2. the costs set forth in all prior requisitions which were funded by the Bond Trustee have been duly paid by the Development Manager;

3. the Development Manager shall have furnished to the District copies of receipts for the payment of bills and copies of Unconditional Lien Waivers and Releases covering work completed and/or materials furnished in connection with

the work which was to have been paid from the prior disbursement, each as requested by the District;

4. no Event of Default exists under this Agreement, the Development Management Agreement, or the Construction Contract, nor any event exists which, with the giving of notice or the passage of time, or both, would constitute an Event of Default hereunder or thereunder (for purposes of this Exhibit, an "**Event of Default**" shall mean a breach or default under the applicable document which remains uncured after any applicable notice and cure period provided in such document);

5. if required by the District, the District has received and approved true, correct and complete copies of (i) the Construction Contract and any subcontracts executed by the Contractor since the last disbursement and not previously delivered to the District, (ii) all construction bonds on the Construction Contract and such subcontracts which have been obtained by the Contractor or such subcontractors, and (iii) all change orders to the Construction Contract and any such subcontracts not previously delivered to the District;

B. Provided that the foregoing conditions and the conditions set forth in **Section 2.4(b)** of the Agreement are satisfied, the District shall disburse (within the period set forth in **Section I(a)** above), the amount of the Advance requested by the Development Manager, which amount shall not exceed the difference between (A) the cost of construction work in place and any other costs, expenses and fees actually paid or payable by the Development Manager for approved Project Costs as of the date of the request for a disbursement, and (B) any amounts previously disbursed hereunder.

EXHIBIT I-1

FORM OF EASEMENT AGREEMENT (HPPC)

[See Attached]

LRRC 04-03-2019 DRAFT

When recorded, return to:
Lewis Roca Rothgerber Christie LLP
One South Church Avenue, Suite 2000
Tucson, Arizona 85701
Attn: Lewis D. Schorr, Esq.

(Space above this line for Recorder's use)

PARKING EASEMENT AGREEMENT

THIS PARKING EASEMENT AGREEMENT (the "**Agreement**") is made and entered into as of _____, 201__ (the "**Effective Date**") between HPPC II, LLC, an Arizona limited liability company ("**Grantor**"), and HPPC, LLC, an Arizona limited liability company ("**Grantee**"), with reference to the facts set forth below.

RECITALS

A. Grantor is the owner of certain real property located in the City of Phoenix, County of Maricopa, Arizona, legally described and depicted on **Exhibit A** attached hereto (the "**Garage Parcel**").

B. Grantor anticipates that, following the Effective Date, Grantor will convey the Garage Parcel to Park Central Community Facilities District, a community facilities district formed by the City of Phoenix ("**CFD**"), which will have the legal authority to own the Garage Parcel and to construct thereon a ten-story parking structure containing approximately 2,001 parking spaces (the "**Parking Structure**" and collectively with the Garage Parcel, the "**Parking Project**"). The Parking Project shall include without limitation, parking facilities and open areas, any parking deck, and incidental and interior roadways, pedestrian stairways, walkways, light standards, directional signs, driveways, curbs and landscaping within or adjacent to areas used for parking of motor vehicles on the Garage Parcel.

C. Grantee is the fee title owner of that certain real property located in the City of Phoenix, County of Maricopa, Arizona, legally described and depicted on **Exhibit B** attached hereto (the "**HPPC Property**") which Grantee currently intends to redevelop and operate for retail, office and other commercial uses (the "**HPPC Project**"). The Garage Parcel and the HPPC Property are sometimes individually referred to herein as a "**Parcel**" and collectively as the "**Parcels**".

D. Grantor and Grantee (individually a "**Party**" and collectively, the "**Parties**") desire to enter into this Agreement in order to, among other things, provide for the following, upon the terms and conditions set forth below in this Agreement:

1. An easement for pedestrian and vehicular access over, and use of, the walkways, sidewalks, roadways, driveways, parking area access lanes, other paved areas, elevators, stairways and other similar areas and improvements now or hereafter located at

the Parking Project (collectively, the "**Access Areas**") to allow for use of the Spaces (as defined in **Section 2**) by Grantee and its tenants, occupants, customers, employees, agents, contractors and invitees (collectively, "**Permittees**");

2. An easement for parking by Grantee and its Permittees with respect to the Spaces;

3. Certain parking-related charges to be paid by Grantee to Grantor in consideration for the rights granted herein by Grantor to Grantee; and

4. Certain other obligations of the Parties relating to insurance, indemnification and other issues, all as more particularly described below.

AGREEMENT

NOW, THEREFORE, the Parties, for themselves, and for their successors and assigns, hereby declare that the Parcels and all improvements now or hereafter located thereon are and shall be owned, held, transferred, mortgaged, sold, conveyed and occupied subject to the easements, charges, liens, and other provisions hereinafter set forth:

1. Grant of Access Easement. Grantor hereby grants, sells and conveys to Grantee, its successors and assigns, for the use and benefit of Grantee and its Permittees, as an appurtenance to the HPPC Property, a perpetual, non-revocable, non-exclusive vehicular and pedestrian easement to use all of the Access Areas for their intended purposes in order to allow Grantee and its Permittees vehicular and pedestrian access to and from the Spaces (the "**Access Easement**"). The Access Easement may be used by Grantee and its Permittees 24 hours per day, 7 days per week.

2. Grant of Parking Easement; Scope of Parking Easement; Description of Spaces. Grantor hereby grants to Grantee, its successors and assigns, for the use and benefit of Grantee and its Permittees, as an appurtenance to the HPPC Property, a perpetual easement to use the Spaces for vehicular parking, subject to this Agreement and any rules and regulations adopted by Grantor pursuant to **Section 7** below (the "**Parking Easement**"). The Parking Easement may be used by Grantee and its Permittees 24 hours per day, 7 days per week. As used herein, "**Spaces**" means up to a total of 457 parking spaces located in the Parking Structure available for use by Grantee and its Permittees, as elected by Grantee from time to time. Up to 9 of the Spaces, at the election of Grantee, shall be reserved for use by Grantee and its Permittees (such reserved parking spaces, the "**Reserved Spaces**"). The Parking Easement, as it relates only to the Reserved Spaces, shall be an exclusive easement. Other than the Reserved Spaces, all other Spaces shall be available for use by Grantee and its Permittees on an unreserved, first come, first served basis. Grantor shall provide the Reserved Spaces as reserved, signed parking spaces designated only for Grantee and its Permittees. The Reserved Parking Spaces shall include the number of handicap parking spaces that Grantee is required to provide under applicable law for use by the Permittees of the HPPC Project and shall consist of nine (9) Reserved Spaces located evenly on floors 2, 3 and 4. Grantor shall have the right to designate or change the locations of all or some of the Reserved Spaces after obtaining Grantee's prior written consent (not to be unreasonably withheld, delayed or conditioned); provided, however, no change in the location of the Reserved Spaces shall occur

without at least thirty (30) days advance written notice to Grantee or prior to any relocated parking spaces that are to become Reserved Spaces having been properly marked as reserved spaces for the benefit of Grantee and its Permittees and provided further that at all times, there shall be no less than 9 Reserved Spaces. Grantor shall implement access control to the Parking Structure, consistent with Grantee's rights hereunder, through the use of methods selected by Grantor or its parking garage manager and approved by Grantee in its reasonable discretion, which may, by way of example only, include the use of access cards or similar methods of controlling access to the Parking Structure. In the event Grantor installs any access gate, vehicle identification system, key or card entry system, or other restraints on access over, across or upon the Access Areas or the Spaces, Grantor shall provide to Grantee the combination and/or one (1) key, sticker or access card for each of the Spaces located on or within such restricted area, as are necessary to provide access to and from the Access Areas and Spaces. The Spaces shall only be used for normal passenger cars and passenger truck parking and not for the parking of any oversized vehicles. Moreover, the Spaces shall not be used to allow the repair or washing of any vehicles. All of the Reserved Spaces shall be covered and not be located on any uncovered parking deck that is part of the Parking Structure. If the Grantor does not enforce the reserved parking rights of Grantee after written notice of violations thereof from Grantee or Grantee's designated property manager, Grantee is authorized to take all reasonable steps to enforce such reserved parking rights as a Self-Help Reimbursement Amount (as defined below) and to be reimbursed for the cost thereof by offset against the Parking Fees; provided, however, Grantor shall not be responsible for any towing or costs thereof. The total number of parking spaces in the Parking Structure (including, without limitation, the Reserved Spaces) to which Grantor has granted exclusive rights to park shall in no event exceed 1,000 parking spaces.

3. Maintenance of Parking Project. Grantor shall pay for and have sole responsibility for and shall maintain, repair and replace all portions of the Parking Project in accordance with any and all applicable laws, so as to keep Parking Project at all times in a safe, sightly, good and functional condition to standards of comparable structured parking facilities in the City of Phoenix (such obligations, the "**Maintenance Obligations**"). The Maintenance Obligations shall include, but not be limited to: (i) keeping the Parking Project clean and free from refuse and rubbish; (ii) repaving, restriping and replacing marking on the surface of the access ways and parking spaces from time to time located on and in the Parking Project as and when necessary so as to provide for the orderly ingress and egress of vehicles and pedestrians and the orderly parking of vehicles; (iii) replanting the landscaping at the Parking Project and maintaining, repairing and replacing the irrigation systems serving such landscaping; (iv) illuminating the Parking Project at such times and during such periods as may be reasonably determined by Grantor from time to time for the security of the Permittees and maintaining, repairing and replacing, as necessary, all lighting equipment; (v) maintaining, repairing and replacing, as necessary, any signage located on or at the Parking Project; and (vi) keeping all culverts and drainage areas free from papers, debris, filth and refuse and promptly disposing of any collecting waters. All Maintenance Obligations shall be done in such a manner as to not unreasonably interfere with the rights of Grantee or any Permittee granted under this Agreement. Grantor shall not close off or unreasonably restrict or impede access to the Access Areas or Spaces without the prior written consent of Grantee, which consent may not be unreasonably withheld, conditioned or delayed; provided, that no such consent shall be required during the period an emergency exists as long as Grantor takes efforts to reasonably limit any such closures, restrictions, or impediments to the Access Areas or Spaces actually affected by such emergency.

4. Failure to Maintain. If Grantor fails to perform the Maintenance Obligations in accordance with this Agreement, Grantee may notify the Grantor in writing thereof, such notice to specifically set forth the Maintenance Obligations which were not performed (the "**Specified Maintenance Failure**"). If, following such notice, the Specified Maintenance Failure becomes a Default (as defined in **Section 15**), Grantee shall have the right, but not the obligation, through its agents, contractors and employees, to cure the Specified Maintenance Failure. Notwithstanding the foregoing, Grantee may notify Grantor via telephone of a Specified Maintenance Failure and may commence to cure such Specified Maintenance Failure immediately thereafter if such Specified Maintenance Failure results in imminent threat of material damage to property or injury to persons and if Grantor has not then commenced such cure. If Grantee elects to cure the Specified Maintenance Failure, Grantor shall be obligated to reimburse Grantee the actual and reasonable costs of doing so, excluding, however, costs incurred by Grantee in repairing any damage to the Parking Project to the extent such results from the negligent acts or omissions of Grantee or its agents, contractors and employees in the exercise of its repair and cure rights. After Grantee cures the Specified Maintenance Failure, the Grantee shall deliver a bill, together with copies of paid invoices and other reasonable evidence of the amounts so incurred (collectively, a "**Bill**"), to Grantor for such costs incurred in doing so (the "**Self-Help Reimbursement Amount**"). Grantor shall reimburse Grantee for the Self-Help Reimbursement Amount within ten (10) business days after receipt of the Bill. If Grantor fails to reimburse Grantee for the Self-Help Reimbursement Amount within such ten (10) business day period, Grantee shall have the right to offset such amount against the next accruing installments of Parking Fees owed hereunder. The remedies described in this **Section 4** shall not limit any other remedies available to Grantee under this Agreement.

5. Self-Help Easements. Grantor hereby grants to Grantee, its successors and assigns, for the use and benefit of Grantee and its employees, agents and contractors, as an appurtenance to the HPPC Property, a non-exclusive access easement in, through, over, and across the Access Areas and for the use of the Access Areas for the purpose of performing Grantee's rights pursuant to **Section 2, Section 4 and Section 35**.

6. Parking Fees. Grantee shall pay to Grantor as consideration for the easements granted hereunder and all of Grantor's other obligations hereunder, parking fees equal to the following (the "**Parking Fees**"): (i) for the period commencing on the Parking Fee Commencement Date (as defined in this Section) until the day which is the five year anniversary of the Parking Fee Commencement Date, $50.00 per Space per month (being $23,600.00 per month); and (ii) from and after the day following the fifth anniversary of the Parking Fee Commencement Date, an amount per Space equal to the then prevailing monthly rate that Grantor charges private parties for use of similar spaces at the Parking Structure (the "**Market Rate Fee**"). Grantor may provide written notice to the Grantee with additional instructions regarding how to tender payment of the Parking Fees, as well as any subsequent changes to those instructions. At least thirty (30) days prior to the fifth anniversary of the Parking Fee Commencement Date, Grantor shall provide written notice to Grantee (an "**Adjustment Notice**") of its determination of the Market Rate Fee that shall be applicable from and after the day following the fifth anniversary of the Parking Fee Commencement Date until such time as the Market Rate Fee is changed in accordance with the terms of this Section. Thereafter, Grantor may annually increase the then effective Market Rate Fee to reflect an updated Market Rate Fee after the giving of an Adjustment Notice with respect to such newly determined Market Rate Fee, which newly determined Market

Rate Fee will become effective thirty (30) days after the giving of the Adjustment Notice specifying such newly determined Market Rate Fee. There shall be no additional charge for the use of the Spaces in accordance with the terms of this Agreement. As used herein, "**Completion Date**" means the date that the Parking Structure is completed to the extent necessary so that it can be used for its intended purposes in accordance with applicable laws and has been opened to the general public for such use. Grantor shall provide written notice to Grantee of the occurrence of the Completion Date no later than five (5) business days following such occurrence (the "**Completion Date Notice**"). As used herein, the "**Parking Fee Commencement Date**" means the date that is the later of (i) five (5) business days after the date when Grantee receives the Completion Date Notice; or (ii) the date when Grantor provides Grantee and its Permittees access to the Spaces. Parking Fees shall be due and payable on the first day of each month; provided, however, Parking Fees for the first month or partial month following the Parking Fee Commencement Date shall be due no later than five (5) business days following the Parking Fee Commencement Date and shall be prorated based on the actual number of days in a partial month, if applicable, after the Parking Fee Commencement Date.

7. Garage Manager. Grantor shall hire a parking garage asset manager (the "**Parking Garage Asset Manager**") to coordinate and cause to perform Grantor's obligations under this Agreement. Grantee shall have the right to be consulted on the selection of the Parking Garage Asset Manager; provided that if Grantor retains the Parking Garage Asset Manager without using a public procurement process, the Parking Garage Asset Manager must be approved by Grantee, which approval may not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing sentence, Grantee's consent shall not be required if either (A) the City of Phoenix is Grantor and elects to retain as Parking Garage Asset Manager a department or division of the City of Phoenix, provided that such department or division is then managing two or more parking garages, each of which has approximately the same number of parking spaces as the Parking Structure or (B) during the term of that certain District Development, Financing Participation, Waiver and Intergovernmental Agreement (Park Central Community Facilities District) among the City of Phoenix, Grantee, and Grantor, the Parking Garage Asset Manager is Grantee, Grantor, their respective successors in interest as the "Initial Owners" under the Development Agreement, or their Affiliates. For purposes of the preceding clause (B), an "**Affiliate**" of a business entity shall mean any business entity who, directly or indirectly, controls, is controlled by, or is under common control with the first entity. For purposes of this definition, "**control**" of an entity shall mean the power (through ownership of voting equity interests or through any other means) to direct the management and policies of an entity. Grantee shall also have the right to be consulted on the selection of any third party day-to-day manager of the Parking Structure (the "**Parking Garage Operator**") employed by the Parking Garage Asset Manager by separate written agreement; provided that if retaining a Parking Garage Operator does not involve a public procurement process, the Parking Garage Operator must be approved by Grantee, which approval may not be unreasonably withheld, delayed or conditioned. The hiring of such a Parking Garage Asset Manager by Grantor shall in no way relieve Grantor from any of its obligations hereunder. Grantor may, from time to time, promulgate rules and regulations with respect to the use of the Parking Project, provided, however, such rules and regulations shall not be in conflict with the terms of this Agreement, shall be reasonable and nondiscriminatory in scope and effect, shall be applicable to all holders of parking easements or licenses and other parking garage users in a uniform manner and shall not become effective with respect to the Grantee and its Permittees unless and until written notice thereof is provided at least thirty (30) days in advance to Grantee.

8. Liability Insurance; Insurance Requirements Generally. Grantor and Grantee each shall, at all times while this Agreement is in effect, maintain or cause to be maintained in full force and effect a commercial general liability insurance policy (on an occurrence and a per location basis) insuring against all claims for personal injury, death or property damage occurring upon, in or about such Party's Parcel and, with respect to Grantee, the easement areas appurtenant to the HPPC Property as described in this Agreement, with combined single limits of at least Two Million Dollars ($2,000,000.00) per occurrence, which insurance shall include broad form blanket contractual coverage covering the insured's obligations hereunder. Notwithstanding the foregoing, Grantee acknowledges and agrees that if the Garage Parcel is conveyed to the City of Phoenix (the "**City**"), the City may elect to self-insure some or all of the risks covered by the insurance that it is otherwise obligated to maintain under the terms of this **Section 8** and **Section 9** below and, accordingly, not to maintain the policies that are otherwise required hereunder, subject to the requirements set forth below in this **Section 8**. At any time when the City is self-insuring the risks required to be insured under this Agreement, the City shall itself be acting as though it were the insurance company providing the insurance required under the provisions hereof rather than placing insurance with a third-party insurer and shall pay any amounts due in lieu of insurance proceeds which would have been payable if the insurance policies had been carried, which amounts shall be treated as insurance proceeds for all purposes under this Agreement. All amounts which are paid or are required to be paid and all loss or damages resulting from risks for which the City has elected to self-insure shall be subject to the waiver of subrogation provisions of **Section 9** below as to property insurance. The City's right to self-insure and to continue to self-insure is conditioned upon and subject to the City's maintaining appropriate loss reserves which are actuarially derived in accordance with accepted standards of the insurance industry and accrued (i.e., charged against earnings) or otherwise funded. In the event the City fails to fulfill the requirements of this **Section 8**, then the City shall lose the right to self-insure and shall be required to provide the insurance required under this Agreement. All insurance policies required by the terms of this Agreement shall be issued by a company or companies authorized to issue insurance policies in the State of Arizona rated "A/VII" or better by A.M. Best Co., in Best's Key guide and shall include a statement, if available, that such insurance shall not be cancelable or subject to reduction of coverage or other modification except upon at least thirty (30) day's advance written notice by the insurer to the other Party hereto (ten (10) days for nonpayment of premium). Either Party shall, upon the request of the other Party, furnish to the other Party reasonably satisfactory evidence (including, without limitation, certificates of insurance) that the Party maintains insurance in accordance with the terms of this Section. In no event shall the limits of any coverage maintained by any Party or pursuant to this Agreement be considered as limiting such Party's liability under this Agreement. The required amount of insurance stated above in this Section shall be increased on each five (5) year anniversary of the Effective Date (an "**Insurance Adjustment Date**") by an amount equal to the increase in the Consumer Price Index for the five (5) year period immediately preceding the Insurance Adjustment Date. The adjusted amount shall become the required insurance amount for the next five (5) year period. The Consumer Price Index hereinabove referred to is the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers All Items for Phoenix-Mesa-Scottsdale (December 2001=100). Should the Bureau of Labor Statistics discontinue publication of the Consumer Price Index, then the computation of the adjustment shall be based upon a similar index as reasonably agreed between the Parties. Any insurance required to be carried pursuant to this Section may be carried under a policy or policies covering other liabilities and locations of a Party;

provided, however, that such policy or policies apply to the Parcels required to be insured by this Section in an amount not less than the amount of insurance required to be carried by such Party with respect thereto, pursuant to this Section.

9. Casualty Insurance. Grantor, at its sole cost and expense, shall obtain and keep in force while this Agreement remains in effect a policy or policies of insurance, covering loss or damage to the Parking Project, in the amount of the full replacement value thereof, exclusive of footings and foundations, providing protection against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief and special extended perils (special form). Grantor shall, upon the request of Grantee, furnish to Grantee reasonably satisfactory evidence (including, without limitation, certificates of insurance) that Grantor maintains insurance in accordance with the terms of this Section. Grantor hereby waives any and all rights of recovery against Grantee or against the officers, partners, employees, agents, representatives or Permittees of Grantee, for loss of or damage to Grantor's property or the property of others under its control, where such loss or damage is insured against or required to be insured against under the insurance policy described in this Section, but such waiver extends only to the extent of the actual insurance coverage or the amount of insurance coverage required to be maintained under this Section, whichever is greater. Grantor shall, upon obtaining the policy of insurance required under this Section give notice to the insurance carrier that the foregoing waiver of subrogation is contained in this Agreement. Grantee (and, if requested, Mortgagee) shall be named as a named insured on the policies maintained by Grantor under this **Section 9**.

10. Indemnification. To the extent permitted by law and except as limited by any waiver of subrogation pursuant to **Section 9**, each Party shall indemnify, defend, protect, and save the other Party harmless from and against any and all demands, liabilities, damages, expenses, causes of action, suits, claims, and judgments, including reasonable attorneys' fees (collectively, "**Claims**"), arising out of or in any way connected with such Party's own negligence, intentional misconduct, or breach of this Agreement. In no event shall either Party be required to indemnify the other Party for any Claims to the extent same are caused by the willful misconduct, intentional acts or gross negligence of the Party being indemnified or such Party's agents.

11. Covenant Running with the Land; Sub-Parcel Agreements. The covenants, conditions, easements, and restrictions contained in this Agreement shall run with the Parcels and shall bind and inure to the benefit of each Party and their respective successors and assigns. Upon conveyance by any Party of its interest in its Parcel or any portion of its Parcel, such party shall be relieved of and from any claim of liability arising by reason of any act or occurrence relating to such Parcel (or, if applicable, portion thereof) after the date of such conveyance. Grantor and Grantee agree that in the event Grantee or its successors or assigns shall convey or ground lease less than all of the HPPC Property (a "**Sub-Parcel**"), Grantee and its transferee or, if applicable, ground lessee (in either case, a "**Transferee**") may enter into a recorded agreement (a "**Sub-Parcel Agreement**") whereby the parties to the Sub-Parcel Agreement allocate between themselves the rights and obligations under this Agreement pertaining to the parcels owned by such parties within the HPPC Property. Without limiting the foregoing, a Sub-Parcel Agreement may, among other things: (i) allocate between the parties to such Sub-Parcel Agreement the right to use the Spaces, the obligation to pay Parking Fees, and/or other rights and obligations hereunder that were originally appurtenant to the entire HPPC Property; or (ii) contain an agreement that the Sub-Parcel which is the subject of the Sub-Parcel Agreement is completely released from all benefits and

burdens under this Agreement from and after the date of recordation of such Sub-Parcel Agreement. Grantor shall recognize any Sub-Parcel Agreement; provided, however, notwithstanding anything to the contrary contained in this Agreement, in no event shall any Sub-Parcel Agreement(s) increase the total number of Spaces (including Reserved Spaces) subject to use by Grantee, any Transferee(s), or their respective Permittees or release that portion of the HPPC Property legally described and depicted on **Exhibit C** attached hereto (the "**Non-Releasable Parcel**") or any then-current owner of the Non-Releasable Parcel from the obligation to pay the Parking Fees for all of the Spaces or from the lien rights described in **Section 38** below. In the event the Transferee under a Sub-Parcel Agreement is a ground lessee and the Sub-Parcel Agreement does not operate to completely release the Sub-Parcel which is the subject of such Sub-Parcel Agreement from all benefits and burdens under this Agreement from and after the date of recordation of such Sub-Parcel Agreement, as described above, the lien rights described in **Section 38** below (including any market rate increase that may become applicable under **Sections 6** or **26** and any late charge that may become applicable under **Section 26**) shall be enforceable against the fee of such Sub-Parcel. Each and every portion of the Non-Releasable Parcel shall be subject, on a joint and several basis, to all rights and remedies of Grantor (including any market rate increase that may become applicable under **Sections 6** or **26**, any late charge that may become applicable under **Section 26**, and the lien rights described in **Section 38**).

12. No Public Dedication. The provisions of this Agreement shall not be deemed to constitute a dedication for public use nor to create any rights in the general public of any kind.

13. Estoppel Certificate. Grantor shall, within thirty (30) days' after receipt of a written request by Grantee, furnish to Grantee or its designee a written statement (a) setting forth (i) the date to which Grantee's Parking Fees have been paid and (ii) the amount, if any, of any sums billed to Grantee that remain unpaid as of the date of such statement and (b) stating, to the knowledge of Grantor, that either (i) Grantee is not in Default in the performance of any of its obligations under this Agreement, nor do any conditions then exist that, with the giving of notice or passage of time, would constitute a default under this Agreement or, (ii) if in Default or if such conditions then exist that, with the giving of notice or passage of time, would constitute a Default under this Agreement, setting forth the nature of such Default or conditions, as applicable. Notwithstanding the foregoing, Grantor will not have any obligation to deliver more than one such written statement with respect to Grantee within any six (6)-month period unless same is requested by Grantee in connection with a sale or financing of the HPPC Property. If Grantor issues a statement pursuant to this **Section 13**, Grantor will be estopped from asserting a lien pursuant to **Section 38** against Grantee for any amount that was due and owing at the time such statement was issued, unless such amount was reflected on such statement.

14. Notice. All notices required or permitted to be given under this Agreement shall be in writing and shall be given by personal delivery, recognized overnight courier service, email with a follow-up copy by first class United States mail, or by deposit in the United States mail, certified mail, return receipt requested, postage prepaid, addressed to Grantor or Grantee at the addresses set forth below or at such other address as a Party may designate by notice similarly given. Notice shall be deemed given and received on the date on which the notice is actually received, whether notice is given by personal delivery, recognized overnight courier, email, or by mail. At the request of the holder of any Mortgage (a "**Mortgagee**") or the Grantee, the Parties shall mail or deliver to such holder a duplicate copy of any and all notices one Party may from

time to time give to or serve upon another Party pursuant to the provisions of this Agreement and such copy shall be mailed or delivered to each holder of a Mortgage simultaneously with and in the same manner as the mailing or delivery of the other Party. As used herein, the term "**Mortgage**" shall mean any mortgage or deed of trust given for value and recorded against the Garage Parcel or the HPPC Property.

If to Grantor: HPPC II, LLC
3573 East Sunrise Drive, Suite 225
Tucson, Arizona 85718
Attn: Stan Shafer
E-Mail: stan@holualoa.com

With a copy to: Lewis Roca Rothgerber Christie LLP
One South Church Avenue, Suite 2000
Tucson, Arizona 85701
Attn: Lewis D. Schorr
E-Mail: lschorr@lrrc.com

If to Grantee: HPPC, LLC
3753 East Sunrise Drive, Suite 225
Tucson, Arizona 85718
Attn: Stanton Shafer
E-Mail: stan@holualoa.com

With a copy to: Lewis Roca Rothgerber Christie LLP
One South Church Avenue, Suite 2000
Tucson, Arizona 85701
Attn: Lewis D. Schorr, Esq.
E-Mail: lschorr@lrrc.com

15. Default; Cure Rights. In the event of a Default under this Agreement, the Party that is affected by such Default (the "**Non-Defaulting Party**") shall be entitled to institute proceedings for relief from the consequences of said Default. In addition to any remedies specified in this Agreement, in the event a Party is in Default of this Agreement (the "**Defaulting Party**"), the Non-Defaulting Party shall be entitled to pursue all remedies available in law or equity against the Defaulting Party, including specific performance, injunctive relief, declaratory judgment, damages or other suitable legal or equitable remedy. The unsuccessful Party in any action shall pay to the prevailing Party the prevailing Party's reasonable attorneys' fees incurred in connection with such action. Each Party acknowledges and agrees that the other Party has relied and has the right to rely upon such Party's compliance with the terms of this Agreement and that the damages for any Default hereunder will be difficult or impractical to ascertain. As a result, each Party expressly acknowledges and agrees that the remedy of specific performance shall be available to enforce all obligations hereunder. Notwithstanding anything to the contrary contained in this Agreement, a failure by a Party to comply with the terms of this Agreement shall become a "**Default**" hereunder by such Party unless: (i) in the case of a failure that involves only the failure of one Party to timely pay the other Party, such failure is not cured within ten (10) days following written notice of such failure; and (ii) in the case of any failure to perform hereunder, other than as described in (i) above

or as described in **Sections 35** and **37**, such failure is not cured within twenty (20) days following written notice of such failure, provided, however, if such failure cannot reasonably be cured within twenty (20) days, such twenty (20) day period shall be extended by not more than an additional twenty (20) days if the Party who failed to perform its obligations hereunder commences the cure of such failure within the original 20-day period and thereafter continues such efforts at a cure using commercially reasonable, diligent efforts.

16. Headings. The headings of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Agreement nor in any way affect the terms and provisions hereof.

17. Exhibits and Recitals. All exhibits attached hereto and all recitals set forth above are incorporated into this Agreement by reference as though fully set forth herein.

18. No Merger. It is not intended, nor shall there be, a merger of the dominant and servient tenements and estates created by any easements or agreements established hereby by virtue of the present or future ownership of any portion of said tenements or estates being vested in the same person(s) or Party(ies), but instead, it is intended that the easements and servitudes established hereby shall not be extinguished thereby and that said dominant and servient tenements be kept separate.

19. Conformity with all Applicable Laws. Nothing in this Agreement shall be construed as requiring or permitting any person or entity to perform any act or omission in violation of any local, state or federal law, regulation or requirement in effect at the time the act or omission would occur. Provisions in this Agreement that may require or permit such a violation shall yield to the law, regulation, or requirement.

20. Governing Law. This Agreement and the obligations of the Parties hereunder shall be interpreted, construed, and enforced in accordance with the laws of the State of Arizona. The venue for any judicial action or suit brought hereunder (to the extent permitted hereunder) shall be in Maricopa County, Arizona.

21. Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are superseded by this Agreement. The provisions of this Agreement shall be construed as a whole according to their common meaning and not strictly for or against any Party.

22. Duration. This Agreement shall remain in effect unless and until all Parties elect to terminate this Agreement in accordance with **Section 25** below.

23. Severability. If any part of this Agreement or the application of this Agreement or a set of circumstances is for any reason held to be unconstitutional, invalid, or unenforceable, the validity of the remaining portions of this Agreement shall not be affected thereby. All provisions of this Agreement are severable for the purpose of maintaining in full force and effect the remaining provisions of this Agreement.

24. Consent by Mortgagee of HPPC Property. This Agreement shall not become effective unless and until the Consent by Mortgagee attached hereto is executed by the lender whose deed of trust encumbers the HPPC Property.

25. Modification and Termination. Except as provided in **Section 26** below (which applies only to a modification), this Agreement may be modified, amended, or terminated only by the action of the then fee title owners of the Parcels. Such unanimous action shall only become effective after it has been reduced to writing, signed by all of such owners and recorded in the Official Records of Maricopa County, Arizona.

26. Late Charge; Failure to Make Payments; Increase in Parking Fees and Suspension of Access. Any amounts due from either Party in accordance with this Agreement not paid when due shall be delinquent. Any amount that is delinquent and that remains delinquent for a period of five (5) business days following written notice of delinquency shall incur a late payment fee equal to ten percent (10%) of the delinquent amount; provided, however, that such late payment fee shall not apply with respect to the first delinquent amount within a calendar year, if any. Additionally, if Grantee fails to pay Parking Fees (subject to Grantee's offset rights under **Section 4**) and they remain delinquent for at least ten (10) days following written notice of delinquency (a "**First Fee Increase Notice**"), Grantor shall send a second notice to Grantee which second notice (a "**Final Fee Increase Notice**") shall contain a conspicuous legend at the top of the first page substantially in the below form:

> **SECOND AND FINAL NOTICE: THIS IS A NOTICE TO INFORM YOU THAT PARKING FEES DUE UNDER THAT CERTAIN PARKING EASEMENT AGREEMENT DATED AS OF _____, 20___ ORIGINALLY BETWEEN HPPC II, LLC, AS GRANTOR, AND HPPC, LLC, AS GRANTEE, HAVE REMAINED DELINQUENT FOR AT LEAST TEN (10) DAYS FOLLOWING THE FIRST FEE INCREASE NOTICE GIVEN TO YOU. IF SUCH PARKING FEES REMAIN DELINQUENT FOR MORE THAN THIRTY (30) DAYS FOLLOWING THIS FINAL FEE INCREASE NOTICE, GRANTOR WILL HAVE THE RIGHT PURSUANT TO THE PARKING EASEMENT AGREEMENT TO INCREASE YOUR PARKING FEES TO A MARKET RATE FEE, AND ACCESS OF THE GARAGE PARCEL BY YOU AND YOUR PERMITTEES WILL BE SUSPENDED UNTIL ALL DELINQUENT UNCONTESTED PARKING FEES ARE PAID.**

If such delinquency continues uncured for more than thirty (30) days following the Final Fee Increase Notice to Grantee, Grantee's Parking Fees for the period commencing on the date that is thirty (30) days after the Final Fee Increase Notice (the "**Fee Increase Date**") shall be adjusted to an amount equal to the Market Rate Fee as set forth in a written notice from Grantor to Grantee, and all access to the Garage Parcel by Grantee and its Permittees will be suspended from the Fee Increase Date until the date of payment unless Grantee pays all delinquent uncontested Parking Fees on or before the Fee Increase Date. Even if Grantee pays the delinquency following the expiration of the 30 day cure period provided under the Final Fee Increase Notice, all future Parking Fees commencing on the Fee Increase Date shall be calculated based on the Market Rate Fee if Grantor has provided written notice thereof to Grantee, subject to annual increases by Grantor (using the same Adjustment Notice procedure set forth in **Section 6**). The remedies

provided in this Section are in addition to all other remedies allowed by this Agreement. Notwithstanding anything herein to the contrary, Grantor shall not have the right to increase the Parking Fees to a Market Rate Fee under this **Section 26** or suspend access to the Garage Parcel under this **Section 26** if both (i) Grantee has notified Grantor in writing that it is contesting its obligation to pay the delinquent Parking Fees due to the Grantee's exercise of its offset rights in accordance with the procedure set forth in **Section 4** above, and (ii) Grantee has paid any uncontested Parking Fees as of when same are due hereunder (being those Parking Fees that are then due less any Self-Help Reimbursement Amount then being claimed by Grantee).

27. No Termination for Breach. Notwithstanding anything herein to the contrary, no breach hereunder shall entitle either Party, or its successors or assigns, to cancel, rescind, or otherwise terminate this Agreement, but such limitation shall not affect, in any manner, any other rights or remedies, which a Party, or its successors or assigns, may have hereunder by reason of a breach of this Agreement. No breach hereunder shall defeat or render invalid the lien of any mortgage or deed of trust upon all or any portion of the Garage Parcel or the HPPC Property made in good faith for value. The easements, covenants, and conditions hereof shall be binding upon and effective against any Party, or its successors or assigns, whose title thereto is acquired by foreclosure, trustee's sale, deed in lieu thereof, or otherwise.

28. Casualty and Condemnation. In the event that the whole or any part of the Parking Project shall be taken by any governmental agency or utility under the power of eminent domain, both parties shall pursue their own damage awards with respect to any such taking; provided, however, that (i) Grantee shall be entitled to the award in connection with any condemnation insofar as the same represents compensation for the easement estate created by this Agreement; (ii) Grantor shall be entitled to the entirety of any award insofar as same represents compensation for or damage to the fee title to the Parking Structure; and (iii) Grantor and Grantee shall use commercially reasonable efforts to allocate any damage awards between the parties in accordance with this section. If Grantor is unable to provide use of, or access to, the Parking Structure to Grantee and its Permittees as a result of a casualty to the Parking Project or condemnation by the Grantor or other condemning authority, Grantee shall not have any obligation to pay Parking Fees until such use or access is restored. In addition, in such event, Grantor shall either provide alternate parking in a location acceptable to Grantee in its reasonable discretion at no cost to Grantee and this Agreement shall be modified to reflect the change in the location of the Parking Easement and the Access Easement, or Grantee shall have the right to find alternative parking and Grantor shall reimburse Grantee for the cost of such parking within thirty (30) days after Grantee provides Grantor with an invoice showing the costs therefor. In the event of casualty to the Parking Structure, Grantor shall commence restoration and repairs in and to the Parking Structure and the Access Areas within a reasonable period of time, and thereafter diligently prosecute such restoration or repairs to completion.

29. Limited Liability of Grantor and Grantee; Limitation on Damages. Notwithstanding anything to the contrary contained in this Agreement, none of the shareholders, directors, officers, trustees, members, managers, partners, or employees, of Grantor, Grantee, or their constituent parties nor any other person, partnership, corporation, company, or trust, as principal of Grantor or Grantee, whether disclosed or undisclosed (collectively, the "**Exculpated Parties**") shall have any personal obligation or liability hereunder, and neither Grantor nor Grantee shall seek to assert any claim or enforce any of

its rights hereunder against any Exculpated Party. Grantor and Grantee shall look solely to the other party's assets for the payment of any claim under this Agreement. Additionally, notwithstanding anything to the contrary, neither Grantor nor Grantee shall in any event be responsible or liable for consequential, exemplary or punitive damages as a result of any act or omission in connection with this Agreement.

30. Signage and Lighting. Grantor, at its sole cost and expense, shall install such directional signage as is necessary for the Permittees to locate the Reserved Spaces and such lighting as is necessary for the safety of all users of the Garage. Grantee shall have the right to install reserved parking signs at the location of each Reserved Space, at Grantee's sole cost and expense, and it shall have the right to maintain and replace such signs pursuant to the self-help easements granted to Grantee and its employees, agents and contractors under **Section 4** above.

31. Waiver. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver be a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver. Any Party may waive any provision of this Agreement intended for its sole benefit; however, unless otherwise provided for herein, such waiver shall in no way excuse any other Party from the performance of any of its other obligations under this Agreement.

32. Real Estate Taxes. If Grantor is subject to taxation, Grantor shall be responsible for and shall pay prior to delinquency, all real and personal property taxes, general and special assessments, and other similar charges levied on or assessed against Grantor or the Parking Project (the "**Parking Project Taxes**"). Grantor shall promptly submit to Grantee a copy of all notices, tax bills and other correspondence Grantor receives from any taxing authorities regarding the Parking Project Taxes as well as proof of payment of such taxes no later than fifteen (15) days after same are due. Grantor shall have the right to contest by lawful means the correctness or validity of any Parking Project Taxes so long as such contest does threaten loss of or to the Parking Project or impose any penalties, interest or other amounts on Grantor, and Grantor shall be entitled to any refund or rebate of any Parking Project Taxes. If Grantor fails to pay the Parking Project Taxes in accordance with this **Section 32**, Grantor shall automatically be in Default hereunder without the requirement of giving of any notice or any cure or grace period.

33. Security Services. Grantee may, at its sole cost and expense, provide security guards, patrols, devices, and/or systems for Grantee, its Permittees and their respective personal property, provided that the same do not interfere with the normal operation of the Parking Structure. Any security guards, patrols, devices, or systems provided by Grantee pursuant to the foregoing sentence shall in no way be implied to provide security services for, nor shall Grantee be liable for injury or damage to (except to the extent resulting from the negligence or willful misconduct of Grantee or its security guards or patrols) any other parties using the Parking Structure or personal property located in the Parking Structure. Grantor shall have no obligation to provide security guards, patrols, devices, or systems for the Parking Project, nor shall Grantor nor Parking Garage Asset Manager be liable for any failure to provide the same. In no event will Grantor be liable to Grantee, and Grantee hereby waives any claim against Grantor, for (a) any entry of third parties into the Parking Structure or Parking Project; (b) any damage or injury to persons or property; or (c) any loss of property

in or about the Parking Structure or the Parking Project, if the subject event described in the foregoing clause (a), (b) or (c) occurs as a result of any unauthorized or criminal acts of third parties, regardless of any action, inaction, failure, breakdown, malfunction or insufficiency of security services provided by Grantor, if any, except to the extent of Grantor's negligence or willful misconduct.

34. Timing. The phrase "**business days**" as used herein shall mean the days of Monday through Friday, excepting only holidays recognized under the laws of the State of Arizona. The phrase "**days**" as used herein shall mean all days of the week, including all holidays. The term "days" without reference to calendar or business days shall mean calendar days. Whenever under the terms of this Agreement the time for performance of any act, covenant or condition or the expiration of any time period falls on a day that is not a business day, such expiration time or time for performance shall be extended to the next business day.

35. Emergency Self-Help. If access to the Parking Structure is not provided as required under this Agreement by reason of a Default, the Non-Defaulting Party shall provide written notice of the same to the Defaulting Party and Parking Garage Asset Manager; provided, however, the Non-Defaulting Party shall only be required to notify the Defaulting Party and Parking Manager by telephone if there is complete lack of access to the Parking Structure and/or imminent threat of material damage to property or injury to persons. The Non-Defaulting Party may exercise self-help rights twenty-four (24) hours following such written notice, unless there is complete lack of access to the Parking Structure and/or an imminent threat of material damage to property or injury to persons, in which events, the Non-Defaulting Party may exercise self-help rights immediately following such telephonic notice. Notwithstanding anything to the contrary herein, the Non-Defaulting Party shall not exercise or continue exercising self-help rights if the Defaulting Party has commenced and is diligently pursuing efforts to provide access to the Parking Structure in accordance with this Agreement.

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

37. Mechanic's Liens. Grantor shall keep the Parking Project free and clear of, and indemnify, defend and hold Grantee harmless from and against all mechanics' and materialmen's liens arising solely and directly from Grantor's construction, operation, maintenance, repair or related activities in, on, under or through the Access Areas or the Spaces. If any such lien is filed, Grantor shall cause the lien to be released or bonded around in accordance with applicable law and at its sole cost and expense on or before the date that is thirty (30) days following the date Grantor receives written notice of the filing of such lien. Further, if any such lien is filed and Grantor fails to cause such lien to be released or bonded around within such thirty-day period, Grantee may pay the amount or take such other action as Grantee reasonably deems necessary to remove such lien, without being responsible for investigating the validity thereof. The amount so paid and costs incurred by Grantee, including any reasonable attorneys' fees, shall be payable upon demand, without limitation as to other remedies available to Grantee under this Agreement.

38. Lien Rights for Non-Payment by Grantee. Grantee covenants and agrees to pay all amounts due to Grantor pursuant to the terms of this Agreement. Any amounts due from Grantee to Grantor pursuant to the terms of this Agreement, together with late payment fees, as described above, and together with such costs and reasonable attorneys' fees as may be incurred in seeking

to collect such amounts (the "**Past Due Amounts**"), shall be not only the personal obligation of Grantee, but shall also be a charge on the HPPC Property and shall be a continuing lien in favor of Grantor, which lien shall bind the HPPC Property and Grantee (including, without limitation, any Mortgagee, deed of trust beneficiary, or other person who obtains title to the HPPC Property as a result of foreclosure, trustee's sale, or deed in lieu thereof provided that such party shall not have any obligation to pay amounts owed hereunder by Grantee to Grantor prior to the effective date when such party acquires title to the HPPC Property), provided that such lien shall be subordinate and inferior to: (a) the lien of all taxes, bonds, assessments and other levees which, by law, would be superior thereto; and (b) the lien of any Mortgage made for value and recorded against the HPPC Property prior to the time a notice of lien was recorded pursuant hereto. If a lien arises hereunder in favor of Grantor, Grantor shall be entitled to record a notice of lien ("**Notice of Lien**") against the HPPC Property once the failure to pay by Grantee has become a Default hereunder, but shall cause such notice of lien to be released of record upon payment of all sums secured by such lien. Such lien may be foreclosed in the same manner required under Arizona law for the foreclosure of mortgages against real property. A notice of lien recorded in compliance with the terms of this Section shall be deemed consensual in nature and shall not be subject to the terms of A.R.S. § 33-421 or any successor statute thereto governing the recordation of non-consensual liens. The remedy provided in this Section is in addition to all other remedies allowed under this Agreement. Notwithstanding the foregoing to the contrary, Grantor agrees that it shall not record a Notice of Lien hereunder until it has given any Mortgagee a notice of Default in accordance with **Section 15** above and such Mortgagee has not paid any Past Due Amounts owed by Grantee to Grantor hereunder within fifteen (15) business days after the receipt of such notice. Further, Grantor shall not file a Notice of Lien that includes any Self-Help Reimbursement Amount if Grantee has notified Grantor in good faith of Grantee's claim to such Self-Help Reimbursement Amount prior to the filing of such Notice of Lien.

[Signature Page Follows]

EXECUTED BY Grantor to be effective as of the date first above written.

GRANTOR: HPPC II, LLC,
an Arizona limited liability company

By: HPPC Sponsor II, LLC,
an Arizona limited liability company
Its. Manager

By: Holualoa Capital Management, LLC
an Arizona limited liability company
Its: Manager

By: _____

Name: _____

Its: _____

STATE OF ARIZONA)
) ss.
County of MARICOPA)

On _____, before me, _____ personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

_____
Notary Public

[SEAL]

EXECUTED BY Grantee to be effective as of the date first above written.

GRANTEE:

HPPC, LLC,
an Arizona limited liability company

By: HPPC Sponsor, LLC,
an Arizona limited liability company
Its: Manager

By: Holualoa Capital Management, LLC,
an Arizona limited liability company
Its: Manager

By: _____
Name: _____
Title: _____

STATE OF _____)
) ss.
County of _____)

On _____, before me, _____ personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

_____
Notary Public

[SEAL]

LRRC 04-03-2019 DRAFT

CONSENT BY MORTGAGEE OF HPPC PROPERTY

The undersigned lender hereby consents to the terms of this Agreement and further agrees that the exercise of any of its remedies under that certain Deed of Trust recorded as Instrument No. Construction Deed of Trust and Fixture Filing (With Assignment of Rents and Security Agreement) (Variable Rate) dated as of October 18, 2017 and recorded October 18, 2017 as Instrument No. 20170772667, Official Records of Maricopa County, Arizona (encumbering the HPPC Property), or under any other loan documents that evidence or secure the obligations described in said Deed of Trust shall have no effect on the continuing validity of the Agreement.

WESTERN ALLIANCE BANK,
an Arizona corporation

By:_____
Name:_____
Title:_____

Date:_____

STATE OF _____)
) ss.
County of _____)

On _____, before me, _____ personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

_____
Notary Public

[SEAL]

EXHIBIT I-2-20

This exhibit is not recordable and is therefore not recorded with this Development Agreement.

This exhibit is on file and can be viewed at the City Clerk's Office, City of Phoenix.

EXHIBIT I-1-21

This exhibit is not recordable and is therefore not recorded with this Development Agreement.

This exhibit is on file and can be viewed at the City Clerk's Office, City of Phoenix.

EXHIBIT I-2-22

This exhibit is not recordable and is therefore not recorded with this Development Agreement.

This exhibit is on file and can be viewed at the City Clerk's Office, City of Phoenix.

LRRC 04-03-2019 DRAFT

EXHIBIT B
HPPC Property

PARCEL NO. 1: (Lot 1A)

That portion of Lot 1, PARK CENTRAL MALL, according to Book 467 of Maps, page 14, records of Maricopa County, Arizona, described as follows:

COMMENCING at the East-Northeast corner of said Lot 1, said point also being on the Westerly right-of-way of Central Avenue;

Thence South 00 degrees 00 minutes 00 seconds West, a distance of 171.63 feet to the TRUE POINT OF BEGINNING;

Thence continuing South 00 degrees 00 minutes 00 seconds West, a distance 33.54 feet;

Thence South 05 degrees 08 minutes 54 seconds West, a distance of 100.30 feet;

Thence South 00 degrees 00 minutes 00 seconds West, a distance of 162.00 feet;

Thence North 89 degrees 18 minutes 36 seconds West, a distance of 12.00 feet;

Thence South 00 degrees 00 minutes 00 seconds West, a distance of 58.00 feet;

Thence South 89 degrees 18 minutes 36 seconds East, a distance of 21.00 feet;

Thence South 00 degrees 00 minutes 00 seconds West, a distance of 34.00 feet;

Thence South 10 degrees 12 minutes 14 seconds West, a distance of 50.80 feet;

Thence South 00 degrees 00 minutes 00 seconds West, a distance of 100.00 feet;

Thence South 10 degrees 12 minutes 14 seconds East, a distance of 50.80 feet;

Thence South 00 degrees 00 minutes 00 seconds West, a distance of 162.01 feet;

Thence North 45 degrees 00 minutes 00 seconds West, a distance of 184.86 feet;

Thence North 90 degrees 00 minutes 00 seconds West, a distance of 197.64 feet;

Thence North 65 degrees 34 minutes 24 seconds West, a distance of 76.37 feet;

Thence North 90 degrees 00 minutes 00 seconds West, a distance of 65.94 feet;

Thence North 00 degrees 00 minutes 00 seconds East, a distance of 28.62 feet;

Thence North 90 degrees 00 minutes 00 seconds West, a distance of 209.89 feet;

Thence South 43 degrees 18 minutes 56 seconds West, a distance of 134.63 feet;

Thence North 89 degrees 56 minutes 12 seconds West, a distance of 30.33 feet;

Thence North 00 degrees 02 minutes 35 seconds West, a distance of 269.60 feet;

Thence North 89 degrees 57 minutes 59 seconds West, a distance of 300.55 feet;

Thence North 00 degrees 00 minutes 00 seconds East, a distance of 71.91 feet;

Thence North 89 degrees 57 minutes 59 seconds West, a distance of 384.54 feet to a point of curvature, from which the radius bears South 70 degrees 48 minutes 07 seconds East, a distance of 226.00 feet;

Thence Northeasterly along said curve, through a central angle of 36 degrees 11 minutes 33 seconds, a distance of 142.76 feet to a point of reverse curvature, from which the radius bears North 33 degrees 18 minutes 30 seconds West, a distance of 296.00 feet;

Thence Northeasterly along said curve, through a central angle of 20 degrees 49 minutes 45 seconds, a distance of 107.61 feet to a point of compound curvature, from which the radius bears North 51 degrees 45 minutes 00 seconds West, a distance of 280.00 feet;

Thence Northeasterly along said curve, through a central angle of 38 degrees 04 minutes 50 seconds, a distance of 186.10 feet to a point of tangency;

Thence North 00 degrees 10 minutes 10 seconds East, a distance of 895.76 feet, to a point of curvature from which the radius bears South 89 degrees 49 minutes 50 seconds East, a distance of 30.00 feet;

Thence Northeasterly along said curve, through a central angle of 90 degrees 26 minutes 27 seconds, a distance of 47.35 feet to a point of tangency;

Thence South 89 degrees 23 minutes 23 seconds East, a distance of 132.65 feet;

Thence South 82 degrees 30 minutes 46 seconds East, a distance of 41.90 feet;

Thence South 00 degrees 03 minutes 00 seconds West, a distance of 446.57 feet;

Thence South 89 degrees 57 minutes 00 seconds East, a distance of 7.96 feet;

Thence South 00 degrees 01 minutes 14 seconds West, a distance of 171.43 feet;

Thence North 89 degrees 58 minutes 46 seconds West, a distance of 23.60 feet;

Thence South 00 degrees 01 minutes 14 seconds West, a distance of 330.04 feet;

Thence South 89 degrees 58 minutes 46 seconds East, a distance of 265.68 feet;

Thence South 00 degrees 01 minutes 14 seconds West, a distance of 230.96 feet;

Thence South 90 degrees 00 minutes 00 seconds East, a distance of 247.45 feet;

Thence North 32 degrees 20 minutes 18 seconds East, a distance of 92.99 feet;

Thence South 90 degrees 00 minutes 00 seconds East, a distance of 365.97 feet;

Thence North 45 degrees 00 minutes 00 seconds East, a distance of 191.23 feet to the TRUE POINT OF BEGINNING;

EXCEPT that portion of area noted as "Exception", on Park Central Mall, according to Book 467 of Maps, page 14, records of Maricopa County, Arizona; and

EXCEPT 2 parcels being Parcel 30.2176 on Final Order of Condemnation recorded in Recording No. 2012-1020332, records of Maricopa County, Arizona, being a part of Lot 1 of Park Central Mall Subdivision as recorded

in Book 467 of Maps, page14 and located in the Northwest quarter of Section 29, Township 2 North, Range 3 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at a (brass cap flush) monument at the South quarter corner of said Section 29 and the intersection of Central Avenue and Thomas Road which bears South 00 degrees 01 minutes 56 seconds West, a distance of 2648.41 feet from a (brass cap flush) monument at the center of said Section 29 and the intersection of Central Avenue and Osborn Road;

Thence North 00 degrees 02 minutes 06 seconds East, a distance of 721.91 feet, to a (brass cap flush) monument at the intersection of Central Avenue and Catalina Drive (West);

Thence North 00 degrees 01 minutes 39 seconds East, a distance of 602.35 feet to a (brass cap flush) monument at the intersection of Central Avenue and Earll Drive;

Thence North 00 degrees 02 minutes 03 seconds East, a distance of 504.03 feet to a (brass cap flush) monument at the intersection of Central Avenue and Monterey Way which bears South 00 degrees 01 minutes 57 seconds West, a distance of 820.12 feet from a (brass cap flush) monument at the center of said Section 29 and the intersection of Central Avenue and Osborn Road;

Thence South 00 degrees 02 minutes 03 seconds West, returning along the centerline of said Central Avenue, a distance of 178.56 feet;

Thence North 89 degrees 57 minutes 57 seconds West, a distance of 50.00 feet to a point on the existing Westerly right-of-way boundary of said Central Avenue and the POINT OF BEGINNING;

Thence South 00 degrees 02 minutes 03 seconds West, along said Westerly boundary, a distance of 33.54 feet;

Thence South 05 degrees 10 minutes 57 seconds West, continuing along said Westerly boundary, a distance of 100.30 feet;

Thence South 00 degrees 02 minutes 03 seconds West, continuing along said Westerly boundary, a distance of 1.00 foot;

Thence North 89 degrees 57 minutes 57 seconds West, a distance of 0.04 feet;

Thence North 00 degrees 00 minutes 33 seconds West, a distance of 99.57 feet;

Thence North 01 degrees 08 minutes 12 seconds East, a distance of 26.25 feet;

Thence North 45 degrees 02 minutes 03 seconds East, a distance of 12.18 feet, returning to the POINT OF BEGINNING.

AND ALSO

COMMENCING at a (brass cap flush) monument at the South quarter corner of said Section 29 and the intersection of Central Avenue and Thomas Road which bears South 00 degrees 01 minutes 56 seconds West, a distance of 2648.41 feet from a (brass cap flush) monument at the center of said Section 29 and the intersection of Central Avenue and Osborn Road:

Thence North 00 degrees 02 minutes 06 seconds East, a distance of 721.91 feet, to a (brass cap flush) monument at the intersection of Central Avenue and Catalina Drive (West);

Thence North 00 degrees 01 minutes 39 seconds East, a distance of 602.35 feet, to a (brass cap flush) monument at the intersection of Central Avenue and Earll Drive;

Thence North 00 degrees 02 minutes 03 seconds East, a distance of 55.07 feet;

Exhibit B

Thence North 89 degrees 57 minutes 57 seconds West, a distance of 59.01 feet, to a point on the existing Westerly right-of-way boundary of said Central Avenue and the POINT OF BEGINNING;

Thence South 00 degrees 02 minutes 03 seconds West, along said Westerly boundary, a distance of 25.03 feet;

Thence North 89 degrees 16 minutes 45 seconds West, along said Westerly boundary, a distance of 12.00 feet;

Thence South 00 degrees 01 minutes 51 seconds West, along said Westerly boundary, a distance of 58.00 feet;

Thence South 89 degrees 16 minutes 45 seconds East, along said Westerly boundary, a distance of 21.00 feet;

Thence South 00 degrees 01 minutes 39 seconds West, along said Westerly boundary, a distance of 34.00 feet;

Thence South 10 degrees 13 minutes 53 seconds West, along said Westerly boundary, a distance of 38.57 feet;

Thence North 00 degrees 00 minutes 33 seconds West, a distance of 41.71 feet;

Thence North 89 degrees 45 minutes 05 seconds West, a distance of 5.14 feet;

Thence North 00 degrees 01 minutes 39 seconds East, a distance of 3.38 feet, to the beginning of a non tangent curve whose 10.62 foot radius bears South 77 degrees 31 minutes 28 seconds West;

Thence Northwesterly along said curve through an interior angle of 52 degrees 09 minutes 01 seconds the arc length of 9.66 feet;

Thence North 84 degrees 38 minutes 53 seconds West, a distance of 12.12 feet;

Thence North 89 degrees 54 minutes 25 seconds West, a distance of 2.95 feet;

Thence North 00 degrees 06 minutes 14 seconds West, a distance of 80.05 feet;

Thence North 89 degrees 53 minutes 46 seconds East, a distance of 7.57 feet;

Thence North 45 degrees 19 minutes 15 seconds East, a distance of 4.64 feet;

Thence North 00 degrees 11 minutes 34 seconds West, a distance of 18.22 feet;

Thence North 89 degrees 58 minutes 33 seconds East, a distance of 13.23 feet, returning to the POINT OF BEGINNING; and

FURTHER EXCEPT the parcel legally described and depicted on Appendix 1 to this Exhibit B and incorporated herein by this reference.

Wood, Patel & Associates, Inc.
(602) 335-8500
www.woodpatel.com

Revised April 11, 2019
April 10, 2019
WP#174723.81

See Exhibit "A"

PARCEL DESCRIPTION
Park Central Mall
Creighton North Parcel

A portion of Lot 4, Park Central Amended, recorded in Book 1451, page 35, Maricopa County Records (M.C.R.), lying within Section 29, Township 2 North, Range 3 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

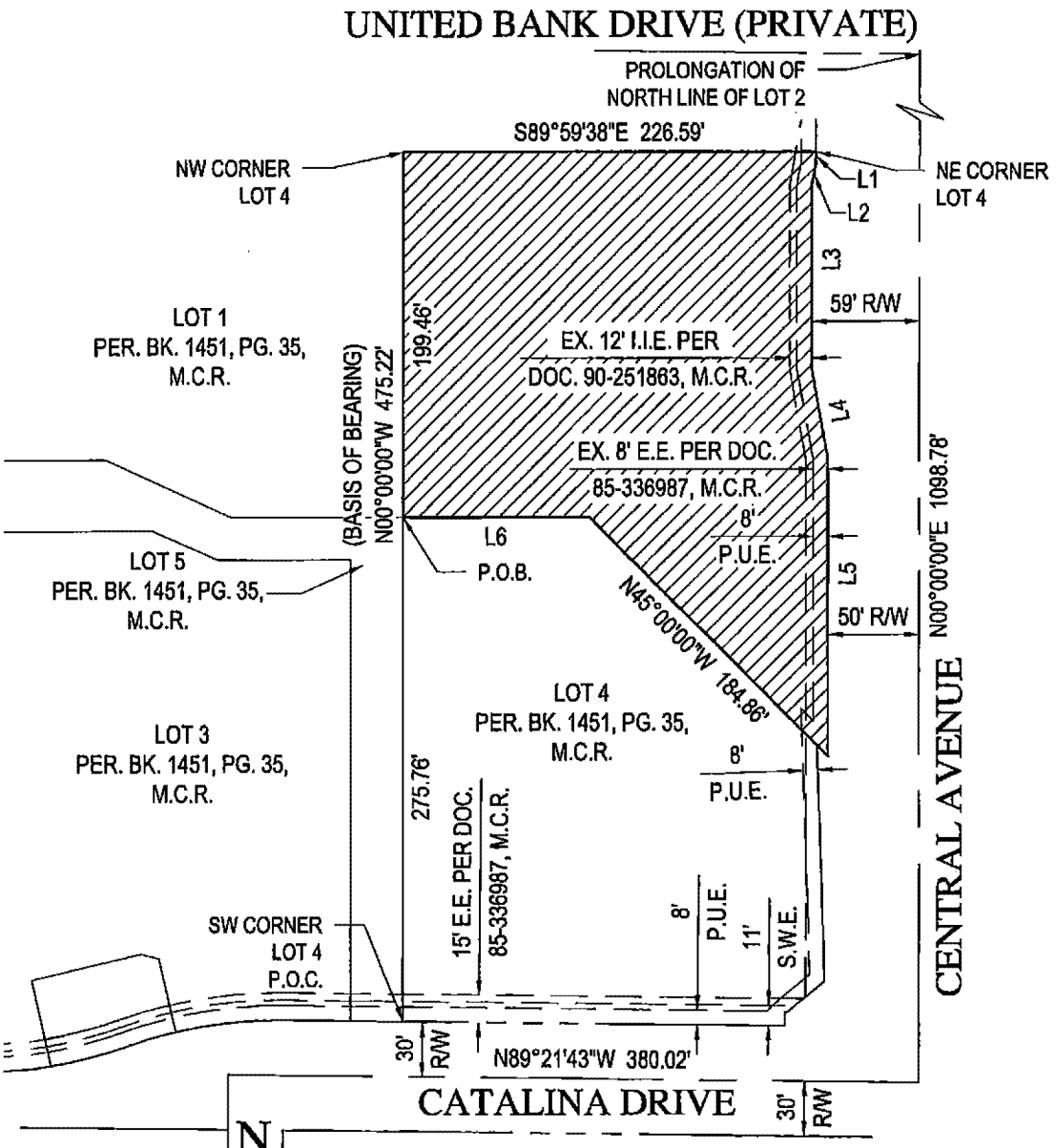
COMMENCING at the southwest corner of said Lot 4, from which the northwest corner of said lot, bears North 00°00'00" West (basis of bearing), a distance of 475.22 feet;
THENCE along the west line of said lot, North 00°00'00" West, a distance of 275.76 feet, to the **POINT OF BEGINNING;**
THENCE continuing along said west line, North 00°00'00" West, a distance of 199.46 feet, to said northwest corner;
THENCE leaving said west line, along the north line of said lot, South 89°59'38" East, a distance of 226.59 feet, to the northeast corner of said lot;
THENCE leaving said north line, along the east line of said lot, South 00°02'36" East, a distance of 6.10 feet;
THENCE South 10°15'44" West, a distance of 12.24 feet;
THENCE South 00°00'00" West, a distance of 100.00 feet;
THENCE South 10°12'14" East, a distance of 50.80 feet;
THENCE South 00°00'00" West, a distance of 162.01 feet;
THENCE leaving said east line, North 45°00'00" West, a distance of 184.86 feet;
THENCE South 90°00'00" West, a distance of 102.70 feet, to the **POINT OF BEGINNING;**

Containing 53,835 square feet or 1.2359 acres, more or less.

Subject to existing rights-of-way and easements.

This parcel description is based on client provided information and is located within an area surveyed by Wood, Patel & Associates, Inc. during the month of September, 2018. Any monumentation noted in this parcel description is within acceptable tolerance (as defined in Arizona Boundary Survey Minimum Standards dated 02/14/2002) of said positions based on said survey.

Y:\WP\Parcel Descriptions\2017\174723 Park Central Mall North Parcel L24R01 04-11-19.docx



REGISTERED LAND SURVEYOR
CERTIFICATE NO. 23945
BRIAN J. DIEHL
Date Signed 4/11/19
ARIZONA, U.S.A.
EXPIRES 09-30-20

WOOD/PATEL
MISSION: CLIENT SERVICE ®
(602) 335-8500
WWW.WOODPATEL.COM

EXHIBIT "A"

PARK CENTRAL MALL
CREIGHTON NORTH PARCEL
REVISED 4/11/2019
WP# 174723.81
PAGE 2 OF 3
NOT TO SCALE
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LINE TABLE		
LINE	BEARING	DISTANCE
L1	S00°02'36"E	6.10'
L2	S10°15'44"W	12.24'
L3	S00°00'00"W	100.00'
L4	S10°12'14"E	50.80'
L5	S00°00'00"W	162.01'
L6	S90°00'00"W	102.70'

WOOD/PATEL
MISSION: CLIENT SERVICE®
(602) 335-8500
WWW.WOODPATEL.COM

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
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PARK CENTRAL MALL
CREIGHTON NORTH PARCEL
REVISED 4/11/2019
WP# 174723.81
PAGE 3 OF 3
NOT TO SCALE
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Wood, Patel & Associates, Inc.
(602) 335-8500
www.woodpatel.com

Revised April 5, 2019
April 2, 2019
WP#174723.81

See Exhibit "A"

PARCEL DESCRIPTION
Park Central Mall
Non-Releasable Parcel

A portion of Lot 1, Park Central Mall, recorded in Book 467, page 14, Maricopa County Records (M.C.R.), and a portion of that certain parcel of land described in Document Number 2017-0772666, M.C.R., lying within Section 29, Township 2 North, Range 3 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the intersection of the easterly prolongation of the north line of said Lot 1 and the centerline of Central Avenue, from which the intersection of said Central Avenue and Catalina Drive, bears South 00°00'00" West (basis of bearing), a distance of 1098.78 feet;
THENCE along said easterly prolongation and along said north line, North 89°18'36" West, a distance of 84.74 feet, to the westerly right-of-way line of said Central Avenue described in Exhibit E, recorded in Document Number 2012-1020332, M.C.R.;
THENCE leaving said north line, along said westerly right-of-way line, South 00°06'46" West, a distance of 25.25 feet;
THENCE South 89°08'10" East, a distance of 10.50 feet;
THENCE South 72°11'55" East, a distance of 2.16 feet;
THENCE South 44°44'35" East, a distance of 3.92 feet;
THENCE South 20°20'00" East, a distance of 20.79 feet;
THENCE South 00°25'55" West, a distance of 1.77 feet;
THENCE South 89°46'08" East, a distance of 5.01 feet;
THENCE South 00°01'53" East, a distance of 56.77 feet;
THENCE South 01°08'03" West, a distance of 73.82 feet, to the northeast corner of said parcel of land;
THENCE leaving said westerly right-of-way line, along the northerly line of said parcel of land, South 45°00'00" West, a distance of 178.99 feet;
THENCE South 90°00'00" West, a distance of 126.66 feet, to the **POINT OF BEGINNING**;
THENCE leaving said northerly line, South 00°00'00" West, a distance of 483.61 feet, to the southerly line of said parcel of land;
THENCE along said southerly line, South 90°00'00" West, a distance of 66.47 feet;
THENCE North 65°34'24" West, a distance of 76.37 feet;
THENCE South 90°00'00" West, a distance of 65.94 feet;
THENCE North 00°00'00" East, a distance of 28.62 feet;
THENCE South 90°00'00" West, a distance of 209.89 feet;
THENCE South 43°18'56" West, a distance of 134.63 feet;
THENCE North 89°56'12" West, a distance of 30.33 feet;
THENCE North 00°02'35" West, a distance of 269.60 feet;
THENCE North 89°57'59" West, a distance of 299.11 feet;

Parcel Description
Park Central Mall
Non-Releasable Parcel

Revised April 5, 2019
April 2, 2019
WP#174723.81

See Exhibit "A"

THENCE leaving said southerly line, North 00°00'34" East, a distance of 347.72 feet, to a point of intersection with a non-tangent curve;
THENCE northerly along said non-tangent curve to the right, having a radius of 58.51 feet, concave easterly, whose radius bears South 87°25'23" East, through a central angle of 23°05'49", a distance of 23.58 feet, to a point of intersection with a non-tangent line;
THENCE North 25°44'00" East, a distance of 37.31 feet, to the westerly prolongation of the northerly line of said parcel of land;
THENCE along said westerly prolongation and along said northerly line, South 89°58'46" East, a distance of 275.45 feet;
THENCE South 00°01'14" West, a distance of 230.96 feet;
THENCE North 90°00'00" East, a distance of 247.45 feet;
THENCE North 32°20'18" East, a distance of 92.99 feet;
THENCE North 90°00'00" East, a distance of 239.31 feet, to the **POINT OF BEGINNING.**

Containing 341,561 square feet or 7.8412 acres, more or less.

Subject to existing rights-of-way and easements.

This parcel description was prepared without the benefit of survey fieldwork and is based a client provided unrecorded ALTA Survey prepared by Republic National, dated April 3, 2018 and the Final Plat for Park Central Mall, recorded in Book 467, page 14, M.C.R.. Any monumentation noted in this parcel description is based on said client provided information.

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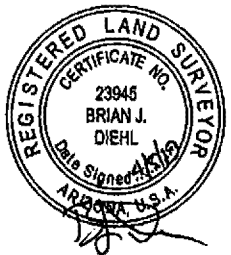

EXPIRES 09-30-20

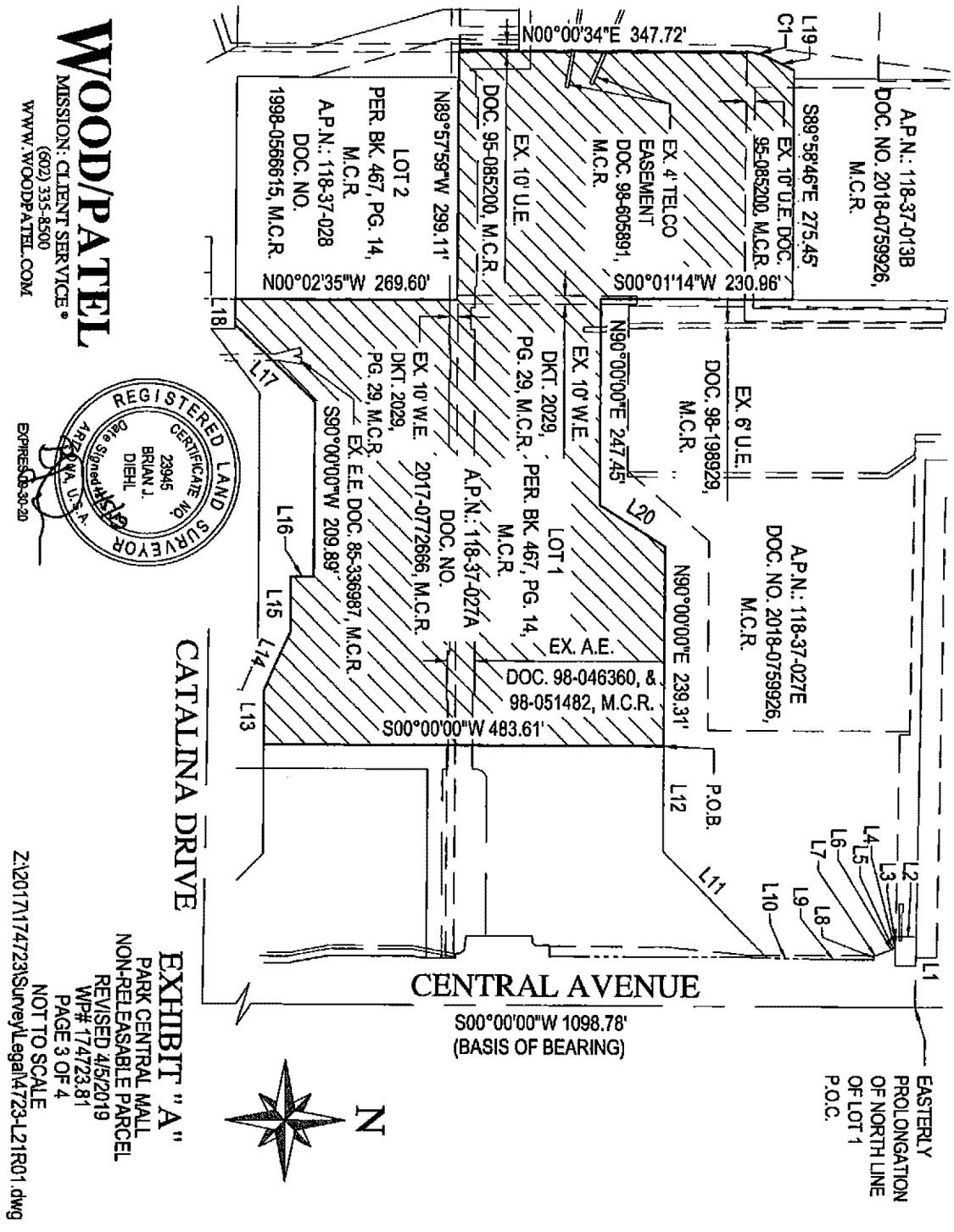
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EXHIBIT "A"
PARK CENTRAL MALL
NON-RELEASABLE PARCEL
REVISED 4/5/2019
WP# 174723.81
PAGE 3 OF 4
NOT TO SCALE
Z:\2017\174723\Survey\Legal\4723-L21R01.dwg
CENTRAL AVENUE
S00°00'00"W 1098.78'
(BASIS OF BEARING)
CATALINA DRIVE
EASTERLY PROLONGATION OF NORTH LINE OF LOT 1 P.O.C.
P.O.B.
A.P.N.: 118-37-013B
DOC. NO. 2018-0759926, M.C.R.
A.P.N.: 118-37-027E
DOC. NO. 2018-0759926, M.C.R.
LOT 1
PER. BK. 467, PG. 14, M.C.R.
A.P.N.: 118-37-027A
LOT 2
PER. BK. 467, PG. 14, M.C.R.
A.P.N.: 118-37-028
DOC. NO. 1998-0566615, M.C.R.
EX. 10' U.E. DOC. 95-085200, M.C.R.
EX. 4' TELCO EASEMENT DOC. 98-605891, M.C.R.
EX. 6' U.E. DOC. 98-198929, M.C.R.
EX. 10' W.E. DKT. 2029, PG. 29, M.C.R.
EX. 10' W.E. 2017-0772666, M.C.R.
EX. E.E. DOC. 85-336987, M.C.R.
EX. A.E. DOC. NO. 98-046360, & 98-051482, M.C.R.
N00°00'34"E 347.72'
S89°58'46"E 275.45'
S00°01'14"W 230.96'
N90°00'00"E 247.45'
N90°00'00"E 239.31'
S00°00'00"W 483.61'
N89°57'59"W 299.11'
N00°02'35"W 269.60'
S90°00'00"W 209.89'
REGISTERED LAND SURVEYOR
CERTIFICATE NO.
23945
BRIAN J. DIEHL
Date Signed
ARIZONA, U.S.A.
EXPIRES 09-30-20
N

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N89°18'36"W	84.74'
L2	S00°06'46"W	25.25'
L3	S89°08'10"E	10.50'
L4	S72°11'55"E	2.16'
L5	S44°44'35"E	3.92'
L6	S20°20'00"E	20.79'
L7	S00°25'55"W	1.77'
L8	S89°46'08"E	5.01'
L9	S00°01'53"E	56.77'
L10	S01°08'03"W	73.82'

LINE TABLE		
LINE	BEARING	DISTANCE
L11	S45°00'00"W	178.99'
L12	S90°00'00"W	126.66'
L13	S90°00'00"W	66.47'
L14	N65°34'24"W	76.37'
L15	S90°00'00"W	65.94'
L16	N00°00'00"E	28.62'
L17	S43°18'56"W	134.63'
L18	N89°56'12"W	30.33'
L19	N25°44'00"E	37.31'
L20	N32°20'18"E	92.99'

CURVE TABLE			
CURVE	DELTA	RADIUS	ARC
C1	23°05'49"	58.51'	23.58'

EXHIBIT I-1-33

20190264711

WOOD/PATEL
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(602) 335-8500
WWW.WOODPATEL.COM

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
23945
BRIAN J.
DIEHL
Date Signed 4/5/19
ARIZONA, U.S.A.
EXPIRES 09-30-20

EXHIBIT "A"

PARK CENTRAL MALL
NON-RELEASABLE PARCEL
REVISED 4/5/2019
WP# 174723.81
PAGE 4 OF 4
NOT TO SCALE
Z:\2017\174723\Survey\Legal\4723-L21R01.dwg

EXHIBIT I-2

FORM OF EASEMENT AGREEMENT (MULTIFAMILY)

[See attached]

LRRC 04-03-2019 DRAFT

When recorded, return to:
Lewis Roca Rothgerber Christie LLP
One South Church Avenue, Suite 2000
Tucson, Arizona 85701
Attn: Lewis D. Schorr, Esq.

(Space above this line for Recorder's use)

DECLARATION OF PARKING EASEMENT

THIS DECLARATION OF PARKING EASEMENT (the "**Declaration**") is made and entered into as of _____, 201__ (the "**Effective Date**") by HPPC II, LLC, an Arizona limited liability company ("**Declarant**"), with reference to the facts set forth below.

RECITALS

A. Declarant is the owner of certain real property located in the City of Phoenix, County of Maricopa, Arizona, legally described and depicted on **Exhibit A** attached hereto (the "**Garage Parcel**").

B. Declarant anticipates that following the Effective Date, Declarant will convey the Garage Parcel to Park Central Community Facilities District, a community facilities district formed by the City of Phoenix ("**CFD**"), which will have the legal authority to own the Garage Parcel and to construct thereon a ten-story parking structure containing approximately 2,001 parking spaces (the "**Parking Structure**" and collectively with the Garage Parcel, the "**Parking Project**"). If and when such conveyance of the Garage Parcel to the CFD occurs, the CFD will automatically become the Declarant hereunder, the then-serving Declarant will automatically cease to be the Declarant hereunder, all rights under this Declaration that inure to the benefit of Declarant shall inure to the benefit of the CFD, and all obligations of the Declarant hereunder shall bind the CFD, all as further described below. The Parking Project shall include without limitation, parking facilities and open areas, any parking decks, incidental and interior roadways, pedestrian stairways, walkways, light standards, directional signs, driveways, curbs and landscaping within or adjacent to areas used for parking of motor vehicles on the Garage Parcel.

C. Declarant anticipates that following the Effective Date, Declarant will sell and convey that certain real property located in the City of Phoenix, County of Maricopa, Arizona, legally described and depicted on **Exhibit B** attached hereto (the "**Apartments Parcel**") to a developer of multi-family residential projects upon which will be constructed a 278 unit multi-family residential development (the "**Apartments Project**"). The Garage Parcel and the Apartments Parcel are sometimes individually referred to herein as a "**Parcel**" and collectively as the "**Parcels**".

D. Declarant desires to enter into this Declaration in order to, among other things, provide for the following, upon the terms and conditions set forth below in this Agreement:

1. An easement for pedestrian and vehicular access over, and use of, the walkways, sidewalks, roadways, driveways, parking area access lanes, other paved areas, elevators, stairways and other similar areas and improvements now or hereafter located at the Parking Project (collectively, the "**Access Areas**") to allow for use of the Spaces (as defined in **Section 2**) by the fee title owner of the Apartments Parcel from time to time (the "**Apartments Owner**") and its tenants, occupants, customers, employees, agents, contractors and invitees (collectively, "**Permittees**");

2. An easement for parking by the Apartments Owner and its Permittees with respect to the Spaces;

3. Certain parking-related charges to be paid by Apartments Owner to Declarant in consideration for the rights established herein that benefit Apartments Owner; and

4. Certain other obligations of all parties bound by this Declaration relating to insurance, indemnification and other issues, all as more particularly described below.

AGREEMENT

NOW, THEREFORE, Declarant hereby declares that the Parcels and all improvements now or hereafter located thereon are and shall be owned, held, transferred, mortgaged, sold, conveyed and occupied subject to the easements, charges, liens, and other provisions hereinafter set forth:

1. Establishment of Access Easement. Declarant hereby establishes for Apartments Owner, its successors and assigns, for the use and benefit of Apartments Owner and its Permittees, as an appurtenance to the Apartments Parcel, a perpetual, non-revocable, non-exclusive vehicular and pedestrian easement to use all of the Access Areas for their intended purposes in order to allow Apartments Owner and its Permittees vehicular and pedestrian access to and from the Spaces (the "**Access Easement**"). The Access Easement may be used by Apartments Owner and its Permittees 24 hour per day, 7 days per week.

2. Grant of Parking Easement; Scope of Parking Easement; Description of Spaces. Declarant hereby establishes for Apartments Owner, its successors and assigns, for the use and benefit of Apartments Owner and its Permittees, as an appurtenance to the Apartments Parcel, a perpetual easement to use the Spaces for vehicular parking, subject to this Declaration and any rules and regulations adopted by Declarant pursuant to **Section 7** below (the "**Parking Easement**"). The Parking Easement, as it relates only to the Reserved Spaces (as defined in this Section), shall be an exclusive easement and may be used by Apartments Owner and its Permittees 24 hours per day, 7 days per week. The Parking Easement, as it relates only to the Unreserved Spaces (as defined below) shall be a non-exclusive easement and may be used by Apartments Owner and its Permittees only from 5:30 p.m. until 8:00 a.m., Arizona time, on all days other than Saturdays, Sundays and national holidays and at all times on Saturdays, Sundays and national

holidays. As used in this Agreement, "**Reserved Spaces**" means 278 parking spaces for full sized cars located in the Parking Structure, which Reserved Spaces shall be approximately evenly allocated among floors one through nine of the Parking Structure and shall be located toward the east end of each of such floors. Declarant shall provide the Reserved Spaces as reserved, signed parking spaces designated only for Apartments Owner and its Permittees. The Reserved Parking Spaces shall include the number of handicap parking spaces that Apartments Owner is required to provide under applicable law for use by the tenants of the Apartments Project and shall initially be located as shown in **Exhibit C** attached hereto; provided, however, that upon written request of Apartments Owner and approval of Declarant (not to be unreasonably withheld, delayed or conditioned), such initial locations are subject to change such that the number of Reserved Spaces located on each floor of the Parking Structure corresponds to the number of units actually constructed on each floor of the Apartments Project building. Declarant shall have the right to change the locations of all or some of the Reserved Spaces after obtaining Apartments Owner's prior written consent (not to be unreasonably withheld, delayed or conditioned); provided, however, no change in the location of the Reserved Spaces shall occur without at least thirty (30) days advance written notice to Apartments Owner or prior to any relocated parking spaces that are to become Reserved Spaces having been properly marked as reserved spaces for the benefit of Apartments Owner and its Permittees and provided further that at all times, there shall be no less than 278 Reserved Spaces. Declarant shall implement access control to the Parking Structure, consistent with Apartments Owner's rights hereunder, through the use of methods selected by Declarant or its parking garage manager and approved by Apartments Owner in its reasonable discretion, which may, by way of example only, include the use of access cards or similar methods of controlling access to the Parking Structure. Subject to applicable law and any rules and regulations adopted by Declarant pursuant to **Section 7** below, Apartments Owner shall, at no cost to Declarant, have the right to "boot" vehicles that are improperly parked in Reserved Spaces at the cost of the owner of the "booted" vehicle. In the event Declarant installs any access gate, vehicle identification system, key or card entry system, or other restraints on access over, across or upon the Access Areas or the Spaces, Declarant shall provide to Apartments Owner, the combination and/or one (1) key, sticker or access card for each of the Spaces located on or within such restricted area, as are necessary to provide access to and from the Access Areas and Spaces. As used herein, "**Unreserved Spaces**" means 100 parking spaces located in the Parking Structure available for use by Apartments Owner and its Permittees on an unreserved, first come, first served basis, but only during the hours and days specified above in this Section. As used herein, "**Spaces**" means the Reserved Spaces and the Unreserved Spaces collectively. The Spaces shall only be used for normal passenger cars and passenger truck parking and not for the parking of any oversized vehicles. Moreover, the Spaces shall not be used to allow the repair or washing of any vehicles. All of the Reserved Spaces shall be covered and not be located on any uncovered parking deck that is part of the Parking Structure. If Declarant does not enforce the reserved parking rights of Apartments Owner after written notice of violations thereof from Apartments Owner or Apartments Owner's designated property manager, Apartments Owner is authorized to take all reasonable steps to enforce such reserved parking rights as a Self-Help Reimbursement Amount (as defined below) and to be reimbursed for the cost thereof by offset against the Parking Fees; provided, however, Declarant shall not be responsible for any towing or costs thereof. The total number of parking spaces in the Parking Structure (including, without limitation, the Reserved Spaces) to which Declarant has granted or established exclusive rights to park shall in no event exceed 1,000 parking spaces.

3. Maintenance of Parking Project. Declarant shall pay for and have sole responsibility for and shall maintain, repair and replace all portions of the Parking Project in accordance with any and all applicable laws, so as to keep Parking Project at all times in a safe, sightly, good and functional condition to standards of comparable structured parking facilities in the City of Phoenix (such obligations, the "**Maintenance Obligations**"). The Maintenance Obligations shall include, but not be limited to: (i) keeping the Parking Project clean and free from refuse and rubbish; (ii) repaving, restriping and replacing marking on the surface of the access ways and parking spaces from time to time located on and in the Parking Project as and when necessary so as to provide for the orderly ingress and egress of vehicles and pedestrians and the orderly parking of vehicles; (iii) replanting the landscaping at the Parking Project and maintaining, repairing and replacing the irrigation systems serving such landscaping; (iv) illuminating the Parking Project at such times and during such periods as may be reasonably determined by Declarant from time to time for the security of the Permittees and maintaining, repairing and replacing, as necessary, all lighting equipment; (v) maintaining, repairing and replacing, as necessary, any signage located on or at the Parking Project; and (vi) keeping all culverts and drainage areas free from papers, debris, filth and refuse and promptly disposing of any collecting waters. All Maintenance Obligations shall be done in such a manner as to not unreasonably interfere with the rights of Apartments Owner or any Permittee granted under this Agreement. Declarant shall not close off or unreasonably restrict or impede access to the Access Areas or Spaces without the prior written consent of Apartments Owner, which consent may not be unreasonably withheld, conditioned or delayed; provided, that no such consent shall be required during the period an emergency exists as long as Declarant takes efforts to reasonably limit any such closures, restrictions, or impediments to the Access Areas or Spaces actually affected by such emergency. In addition, except for signage installed on the Parking Structure, Declarant shall not otherwise materially alter or modify the exterior façade of the Parking Structure after the initial construction and completion of the Parking Structure without the prior written consent of Apartments Owner, which consent may not be unreasonably withheld, delayed or conditioned.

4. Failure to Maintain. If Declarant fails to perform the Maintenance Obligations in accordance with this Agreement, Apartments Owner may notify the Declarant in writing thereof, such notice to specifically set forth the Maintenance Obligations which were not performed (the "**Specified Maintenance Failure**"). If, following such notice, the Specified Maintenance Failure becomes a Default (as defined in **Section 15**), Apartments Owner shall have the right, but not the obligation, through its agents, contractors and employees, to cure the Specified Maintenance Failure. Notwithstanding the foregoing, Apartments Owner may notify Declarant via telephone of a Specified Maintenance Failure and may commence to cure such Specified Maintenance Failure immediately thereafter if such Specified Maintenance Failure results in imminent threat of material damage to property or injury to persons and if Declarant has not then commenced such cure. If Apartments Owner elects to cure the Specified Maintenance Failure, Declarant shall be obligated to reimburse Apartments Owner the actual and reasonable costs of doing so, excluding, however, costs incurred by Apartments Owner in repairing any damage to the Parking Project to the extent that such results from the negligent acts or omissions of Apartments Owner or its agents, contractors, and employees in the exercise of its repair and cure rights. After Apartments Owner cures the Specified Maintenance Failure, the Apartments Owner shall deliver a bill, together with copies of paid invoices, and other reasonable evidence of the amounts so incurred (collectively, a "**Bill**"), to Declarant for such costs incurred in doing so (the "**Self-Help Reimbursement Amount**"). Declarant shall reimburse Apartments Owner for the Self-Help Reimbursement

Amount within ten (10) business days after receipt of the Bill. If Declarant fails to reimburse Apartments Owner for the Self-Help Reimbursement Amount within such ten (10) business day period, Apartments Owner shall have the right to offset such amount against the next accruing installments of Parking Fees owed hereunder. The remedies described in this **Section 4** shall not limit any other remedies available to Apartments Owner under this Agreement.

5. Self-Help Easements. Declarant hereby establishes for Apartments Owner, its successors and assigns, for the use and benefit of Apartments Owner and its employees, agents and contractors, as an appurtenance to the Apartments Parcel, a non-exclusive access easement in, through, over, and across the Access Areas and for the use of the Access Areas for the purpose of performing Apartments Owner's rights pursuant to **Section 2**, **Section 4** and **Section 35**.

6. Parking Fees. Apartments Owner shall pay to Declarant as consideration for the easements granted hereunder and all of Declarant's other obligations hereunder, parking fees equal to the following (the "**Parking Fees**"): (i) for the period commencing on the Parking Fee Commencement Date (as defined in this Section) until the day which is the five year anniversary of the Parking Fee Commencement Date, $50.00 per Reserved Space per month (being $13,900.00 per month); and (ii) from and after the day following the fifth anniversary of the Parking Fee Commencement Date $60.00 per Reserved Space per month (being $16,680.00 per month). Declarant may provide written notice to the Apartments Owner with additional instructions regarding how to tender payment of the Parking Fees, as well as any subsequent changes to those instructions. After the twenty-fifth anniversary of the Parking Fee Commencement Date (the "**Adjustment Date**"), Declarant, following at least thirty (30) days' advance notice to Apartments Owner (an "**Adjustment Notice**"), may annually increase the Parking Fees to up to an amount equal to the lesser of (A) eighty percent (80%) of the prevailing monthly rate as of the Adjustment Date that Declarant would charge a private Owner for use of similar spaces at the Parking Structure or (B) the amount of Parking Fees payable as of the fifth anniversary of the Parking Fee Commencement Date increased by an amount equal to the increase in the Consumer Price Index for the twenty (20) year period immediately preceding the Adjustment Notice. The adjusted amount shall become the Parking Fees payable by Apartments Owner from and after the date thirty (30) days after the date of the Adjustment Notice. The Consumer Price Index hereinabove referred to is the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers, All Items for Phoenix-Mesa-Scottsdale (December 2001=100). Should the Bureau of Labor Statistics discontinue publication of the Consumer Price Index, then the computation of the adjustment shall be based upon a similar index as reasonably agreed between Declarant and Apartments Owner. There shall be no additional charge for the use of the Unreserved Spaces in accordance with the terms of this Agreement. As used herein, "**Completion Date**" means the date that the Parking Structure is completed to the extent necessary so that it can be used for its intended purposes in accordance with applicable laws and has been opened to the general public for such use. Declarant shall provide written notice to Apartments Owner of the occurrence of the Completion Date no later than five (5) business days following such occurrence (the "**Completion Date Notice**"). As used herein, the "**Parking Fee Commencement Date**" means the date that is the later of (i) five (5) business days after the date when Apartments Owner receives the Completion Date Notice; or (ii) the date when Declarant provides Apartments Owner and its Permittees access to the Spaces. Parking Fees shall be due and payable on the first day of each month; provided, however, Parking Fees for the first month or partial month following the Parking Fee Commencement Date shall be due no later than five (5) business days following the

Parking Fee Commencement Date and shall be prorated based on the actual number of days in a partial month, if applicable, after the Parking Fee Commencement Date.

7. Garage Manager. Declarant shall hire a parking garage asset manager (the "**Parking Garage Asset Manager**") to coordinate and cause to perform Declarant's obligations under this Agreement. Apartments Owner shall have the right to be consulted on the selection of the Parking Garage Asset Manager; provided that if Declarant retains the Parking Garage Asset Manager without using a public procurement process, the Parking Garage Asset Manager must be approved by Apartments Owner, which approval may not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing sentence, Apartments Owner's consent shall not be required if either (A) the City of Phoenix is Declarant and elects to retain as Parking Garage Asset Manager a department or division of the City of Phoenix, provided that such department or division is then managing two or more parking garages, each of which has approximately the same number of parking spaces as the Parking Structure or (B) during the term of that certain District Development, Financing Participation, Waiver and Intergovernmental Agreement (Park Central Community Facilities District) among the City of Phoenix, HPPC, LLC, an Arizona limited liability company ("**HPPC**"), and HPPC II, LLC, an Arizona limited liability company ("**HPPC II**"), the Parking Garage Asset Manager is HPPC, HPPC II, their respective successors in interest as the "Initial Owners" under the Development Agreement, or their Affiliates. For purposes of the preceding clause (B), an "**Affiliate**" of a business entity shall mean any business entity who, directly or indirectly, controls, is controlled by, or is under common control with the first entity. For purposes of this definition, "**control**" of an entity shall mean the power (through ownership of voting equity interests or through any other means) to direct the management and policies of an entity. Apartments Owner shall also have the right to be consulted on the selection of any third Owner day-to-day manager of the Parking Structure (the "**Parking Garage Operator**") employed by the Parking Garage Asset Manager by separate written agreement; provided that if retaining a Parking Garage Operator does not involve a public procurement process, the Parking Garage Operator must be approved by Apartments Owner, which approval may not be unreasonably withheld, delayed or conditioned. The hiring of such a Parking Garage Asset Manager by Declarant shall in no way relieve Declarant from any of its obligations hereunder. Declarant may, from time to time, promulgate rules and regulations with respect to the use of the Parking Project, provided, however, such rules and regulations shall not be in conflict with the terms of this Agreement, shall be reasonable and nondiscriminatory in scope and effect, shall be applicable to all holders of parking easements or licenses and other parking garage users in a uniform manner and shall not become effective with respect to the Apartments Owner and its Permittees unless and until written notice thereof is provided at least thirty (30) days in advance to Apartments Owner.

8. Liability Insurance; Insurance Requirements Generally. Declarant and Apartments Owner (individually sometimes referred to herein as an "**Owner**" and collectively as the "**Owners**") each shall, at all times while this Agreement is in effect, maintain or cause to be maintained in full force and effect a commercial general liability insurance policy (on an occurrence and a per location basis) insuring against all claims for personal injury, death or property damage occurring upon, in or about such Owner's Parcel and, with respect to Apartments Owner, the easement areas appurtenant to the Apartments Parcel as described in this Agreement, with combined single limits of at least Two Million Dollars ($2,000,000.00) per occurrence, which insurance shall include broad form blanket contractual coverage covering the insured's obligations hereunder. Notwithstanding the foregoing, Apartments Owner acknowledges and agrees that if

the Garage Parcel is conveyed to the City of Phoenix (the "**City**"), the City may elect to self-insure some or all of the risks covered by the insurance that it is otherwise obligated to maintain under the terms of this **Section 8** and **Section 9** below and, accordingly, not to maintain the policies that are otherwise required hereunder, subject to the requirements set forth below in this **Section 8**. At any time when the City is self-insuring the risks required to be insured under this Agreement, the City shall itself be acting as though it were the insurance company providing the insurance required under the provisions hereof rather than placing insurance with a third-party insurer and shall pay any amounts due in lieu of insurance proceeds which would have been payable if the insurance policies had been carried, which amounts shall be treated as insurance proceeds for all purposes under this Agreement. All amounts which are paid or are required to be paid and all loss or damages resulting from risks for which the City has elected to self-insure shall be subject to the waiver of subrogation provisions of **Section 9** below as to property insurance. The City's right to self-insure and to continue to self-insure is conditioned upon and subject to the City's maintaining appropriate loss reserves which are actuarially derived in accordance with accepted standards of the insurance industry and accrued (i.e., charged against earnings) or otherwise funded. In the event the City fails to fulfill the requirements of this **Section 8**, then the City shall lose the right to self-insure and shall be required to provide the insurance required under this Agreement. All insurance policies required by the terms of this Agreement shall be issued by a company or companies authorized to issue insurance policies in the State of Arizona rated "A/VII" or better by A.M. Best Co., in Best's Key guide and shall include a statement, if available, that such insurance shall not be cancelable or subject to reduction of coverage or other modification except upon at least thirty (30) day's advance written notice by the insurer to the other Owner hereto (ten (10) days for nonpayment of premium). Either Owner shall, upon the request of the other Owner, furnish to the other Owner reasonably satisfactory evidence (including, without limitation, certificates of insurance) that the Owner maintains insurance in accordance with the terms of this Section. In no event shall the limits of any coverage maintained by any Owner or pursuant to this Agreement be considered as limiting such Owner's liability under this Agreement. The required amount of insurance stated above in this Section shall be increased on each five (5) year anniversary of the Effective Date (an "**Adjustment Date**") by an amount equal to the increase in the Consumer Price Index for the five (5) year period immediately preceding the Adjustment Date. The adjusted amount shall become the required insurance amount for the next five (5) year period. The Consumer Price Index hereinabove referred to is the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers, All Items for Phoenix-Mesa-Scottsdale (December 2001=100). Should the Bureau of Labor Statistics discontinue publication of the Consumer Price Index, then the computation of the adjustment shall be based upon a similar index as reasonably agreed between the Parties. Any insurance required to be carried pursuant to this Section may be carried under a policy or policies covering other liabilities and locations of a Owner; provided, however, that such policy or policies apply to the Parcels required to be insured by this Section in an amount not less than the amount of insurance required to be carried by such Owner with respect thereto, pursuant to this Section.

9. Casualty Insurance. Declarant, at its sole cost and expense, shall obtain and keep in force while this Agreement remains in effect a policy or policies of insurance, covering loss or damage to the Parking Project, in the amount of the full replacement value thereof, exclusive of footings and foundations, providing protection against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief and special extended perils (special form). Declarant shall, upon the request of Apartments Owner, furnish to Apartments Owner

reasonably satisfactory evidence (including, without limitation, certificates of insurance) that Declarant maintains insurance in accordance with the terms of this Section. Declarant hereby waives any and all rights of recovery against Apartments Owner or against the officers, partners, employees, agents, representatives or Permittees of Apartments Owner, for loss of or damage to Declarant's property or the property of others under its control, where such loss or damage is insured against or required to be insured against under the insurance policy described in this Section, but such waiver extends only to the extent of the actual insurance coverage or the amount of insurance coverage required to be maintained under this Section, whichever is greater. Declarant shall, upon obtaining the policy of insurance required under this Section give notice to the insurance carrier that the foregoing waiver of subrogation is contained in this Agreement. Apartments Owner (and, if requested, Mortgagee) shall be named as a named insured on the policies maintained by Declarant under this **Section 9**.

10. Indemnification. To the extent permitted by law and except as limited by any waiver of subrogation pursuant to **Section 9**, each Owner shall indemnify, defend, protect, and save the other Owner harmless from and against any and all demands, liabilities, damages, expenses, causes of action, suits, claims, and judgments, including reasonable attorneys' fees (collectively, "**Claims**"), arising out of or in any way connected with such Owner's own negligence, intentional misconduct, or breach of this Agreement. In no event shall either Owner be required to indemnify the other Owner for any Claims to the extent same are caused by the willful misconduct, intentional acts or gross negligence of the Owner being indemnified or such Owner's agents.

11. Covenant Running with the Land; Declarant Rights and Obligations. The covenants, conditions, easements, and restrictions contained in this Agreement shall run with the Parcels and shall bind and inure to the benefit of each Owner and their respective successors and assigns. Upon conveyance by any Owner of its interest in its Parcel, such Owner shall be relieved of and from any claim of liability arising by reason of any act or occurrence relating to such Parcel after the date of such conveyance. The status of Declarant under this Declaration automatically runs with title to the Garage Parcel, is appurtenant thereto and may not be assigned separate and apart from title to the Garage Parcel. Without limiting the foregoing, upon conveyance of the Garage Parcel, the new Declarant shall thereafter succeed to all rights of the Declarant hereunder and be bound to perform all obligations of the Declarant hereunder. Any former fee title owner of the Garage Parcel, immediately and automatically upon conveyance thereof (whether voluntary or by foreclosure) shall thereafter have no further rights or obligations as Declarant hereunder. The status of Apartments Owner under this Declaration automatically runs with title to the Apartments Parcel, is appurtenant thereto and may not be assigned separate and apart from title to the Apartments Parcel. Without limiting the foregoing, upon conveyance of the Apartments Parcel, the new Apartments Owner shall thereafter succeed to all rights of the Apartments Owner hereunder and be bound to perform all obligations of the Apartments Owner hereunder. In the event that Grantee subdivides the Apartments Parcel into two or more sub-parcels (including any condominium units created by such subdivision), all sub-parcels remain jointly and severally liable for the Parking Fees payable under **Section 6** above, and subject to the lien rights described in **Section 38** below; provided, however, that if the Grantee subjects the Apartments Parcel to a condominium declaration for the purpose of creating a condominium regime (the "**Condo Declaration**"), Grantee shall have the right to pass liability for payment of the Parking Fees to the condominium association (the "**Condo Association**"), which Condo Association shall have the

right to assess the individual unit owners for their share of the Parking Fees, as set forth in the Condo Declaration or any governing document of the Condo Association. Declarant shall accept from any Condo Association payment of Parking Fees owed by any individual condominium unit owner.

12. No Public Dedication. The provisions of this Agreement shall not be deemed to constitute a dedication for public use nor to create any rights in the general public of any kind.

13. Estoppel Certificate. Declarant shall, within thirty (30) days' after receipt of a written request by Apartments Owner, furnish to Apartments Owner or its designee a written statement (a) setting forth (i) the date to which Apartments Owner's Parking Fees have been paid and (ii) the amount, if any, of any sums billed to Apartments Owner that remain unpaid as of the date of such statement and (b) stating, to the knowledge of Declarant, that either (i) Apartments Owner is not in Default in the performance of any of its obligations under this Agreement, nor do any conditions then exist that, with the giving of notice or passage of time, would constitute a default under this Agreement or, (ii) if in Default or if such conditions then exist that, with the giving of notice or passage of time, would constitute a Default under this Agreement, setting forth the nature of such Default or conditions, as applicable. Notwithstanding the foregoing, Declarant will not have any obligation to deliver more than one such written statement with respect to Apartments Owner within any six (6)-month period unless same is requested by Apartments Owner in connection with a sale or financing of the Apartments Parcel. If Declarant issues a statement pursuant to this **Section 13**, Declarant will be estopped from asserting a lien pursuant to **Section 38** against Apartments Owner for any amount that was due and owing at the time such statement was issued, unless such amount was reflected on such statement.

14. Notice. All notices required or permitted to be given under this Agreement shall be in writing and shall be given by personal delivery, recognized overnight courier service, email with a follow-up copy by first class United States mail, or by deposit in the United States mail, certified mail, return receipt requested, postage prepaid, addressed to Declarant or Apartments Owner at the addresses set forth below or at such other address as a Owner may designate by notice similarly given. Notice shall be deemed given and received on the date on which the notice is actually received, whether notice is given by personal delivery, recognized overnight courier, email, or by mail. At the request of the holder of any Mortgage (a "**Mortgagee**") or the Apartments Owner, the Parties shall mail or deliver to such holder a duplicate copy of any and all notices one Owner may from time to time give to or serve upon another Owner pursuant to the provisions of this Agreement and such copy shall be mailed or delivered to each holder of a Mortgage simultaneously with and in the same manner as the mailing or delivery of the other Owner. As used herein, the term "**Mortgage**" shall mean any mortgage or deed of trust given for value and recorded against the Garage Parcel or the Apartments Parcel.

If to Declarant: HPPC II, LLC
3573 East Sunrise Drive, Suite 225
Tucson, Arizona 85718
Attn: Stan Shafer
E-Mail: stan@holualoa.com

With a copy to: Lewis Roca Rothgerber Christie LLP
One South Church Avenue, Suite 2000
Tucson, Arizona 85701
Attn: Lewis D. Schorr
E-Mail: lschorr@lrrc.com

If to Apartments Owner: HPPC II, LLC
3753 East Sunrise Drive, Suite 225
Tucson, Arizona 85718
Attn: Stanton Shafer
E-Mail: stan@holualoa.com

With a copy to: Lewis Roca Rothgerber Christie LLP
One South Church Avenue, Suite 2000
Tucson, Arizona 85701
Attn: Lewis D. Schorr
E-Mail: lschorr@lrrc.com

The address to which any notice, demand, or other writing may be given, made or sent to any Owner under this Declaration may be changed by written notice given by such Owner as provided. Within ten (10) days after the conveyance of the Garage Parcel or Apartments Parcel, the new fee title Owner shall provide written notice to the current Owner of the other parcel of the change in ownership.

15. Default; Cure Rights. In the event of a Default under this Agreement, the Owner that is affected by such Default (the "**Non-Defaulting Owner**") shall be entitled to institute proceedings for relief from the consequences of said Default. In addition to any remedies specified in this Agreement, in the event a Owner is in Default of this Agreement (the "**Defaulting Owner**"), the Non-Defaulting Owner shall be entitled to pursue all remedies available in law or equity against the Defaulting Owner, including specific performance, injunctive relief, declaratory judgment, damages or other suitable legal or equitable remedy. The unsuccessful Owner in any action shall pay to the prevailing Owner the prevailing Owner's reasonable attorneys' fees incurred in connection with such action. Each Owner acknowledges and agrees that the other Owner has relied and has the right to rely upon such Owner's compliance with the terms of this Agreement and that the damages for any Default hereunder will be difficult or impractical to ascertain. As a result, each Owner expressly acknowledges and agrees that the remedy of specific performance shall be available to enforce all obligations hereunder. Notwithstanding anything to the contrary contained in this Agreement, a failure by a Owner to comply with the terms of this Agreement shall become a "**Default**" hereunder by such Owner unless: (i) in the case of a failure that involves only the failure of one Owner to timely pay the other Owner, such failure is not cured within ten (10) days following written notice of such failure; and (ii) in the case of any failure to perform hereunder, other than as described in (i) above or as described in **Sections 35 and 37**, such failure is not cured within twenty (20) days following written notice of such failure, provided, however, if such failure cannot reasonably be cured within twenty (20) days, such twenty (20) day period shall be extended by not more than an additional twenty (20) days if the Owner who failed to perform its obligations hereunder commences the cure of such failure within the original 20-day

period and thereafter continues such efforts at a cure using commercially reasonable, diligent efforts.

16. Headings. The headings of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Agreement nor in any way affect the terms and provisions hereof.

17. Exhibits and Recitals. All exhibits attached hereto and all recitals set forth above are incorporated into this Agreement by reference as though fully set forth herein.

18. No Merger. It is not intended, nor shall there be, a merger of the dominant and servient tenements and estates created by any easements or agreements established hereby by virtue of the present or future ownership of any portion of said tenements or estates being vested in the same person(s) or Owner(ies), but instead, it is intended that the easements and servitudes established hereby shall not be extinguished thereby and that said dominant and servient tenements be kept separate.

19. Conformity with all Applicable Laws. Nothing in this Agreement shall be construed as requiring or permitting any person or entity to perform any act or omission in violation of any local, state or federal law, regulation or requirement in effect at the time the act or omission would occur. Provisions in this Agreement that may require or permit such a violation shall yield to the law, regulation, or requirement.

20. Governing Law. This Agreement and the obligations of the Parties hereunder shall be interpreted, construed, and enforced in accordance with the laws of the State of Arizona. The venue for any judicial action or suit brought hereunder (to the extent permitted hereunder) shall be in Maricopa County, Arizona.

21. Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are superseded by this Agreement. The provisions of this Agreement shall be construed as a whole according to their common meaning and not strictly for or against any Owner.

22. Duration. This Agreement shall remain in effect unless and until all Parties elect to terminate this Agreement in accordance with **Section 25** below.

23. Severability. If any part of this Agreement or the application of this Agreement or a set of circumstances is for any reason held to be unconstitutional, invalid, or unenforceable, the validity of the remaining portions of this Agreement shall not be affected thereby. All provisions of this Agreement are severable for the purpose of maintaining in full force and effect the remaining provisions of this Agreement.

24. Intentionally Omitted.

25. Modification and Termination. Except as provided in **Section 26** below (which applies only to a modification), this Agreement may be modified, amended, or terminated only by the action of the then fee title owners of the Parcels. Such unanimous action shall only become

effective after it has been reduced to writing, signed by all of such owners and recorded in the Official Records of Maricopa County, Arizona.

26. Late Charge; Failure to Make Payments; Increase in Parking Fees and Suspension of Access. Any amounts due from either Owner in accordance with this Agreement not paid when due shall be delinquent. Any amount that is delinquent and that remains delinquent for a period of five (5) business days following written notice of delinquency shall incur a late payment fee equal to ten percent (10%) of the delinquent amount; provided, however, that such late payment fee shall not apply with respect to the first delinquent amount within a calendar year, if any. Additionally, if Apartments Owner fails to pay Parking Fees (subject to Apartments Owner's offset rights under **Section 4**) and they remain delinquent for at least ten (10) days following written notice of delinquency (a "**First Fee Increase Notice**"), Declarant shall send a second notice to Apartments Owner which second notice (a "**Final Fee Increase Notice**") shall contain a conspicuous legend at the top of the first page substantially in the below form:

> **SECOND AND FINAL NOTICE: THIS IS A NOTICE TO INFORM YOU THAT PARKING FEES DUE UNDER THAT CERTAIN DECLARATION OF PARKING EASEMENT DATED AS OF _____, 2019 NAMING HPPC II, LLC AS THE ORIGINAL DECLARANT THEREUNDER, HAVE REMAINED DELINQUENT FOR AT LEAST TEN (10) DAYS FOLLOWING THE FIRST FEE INCREASE NOTICE GIVEN TO YOU. IF SUCH PARKING FEES REMAIN DELINQUENT FOR MORE THAN THIRTY (30) DAYS FOLLOWING THIS FINAL FEE INCREASE NOTICE, DECLARANT WILL HAVE THE RIGHT PURSUANT TO THE PARKING EASEMENT AGREEMENT TO INCREASE YOUR PARKING FEES TO A MARKET RATE FEE, AND ACCESS OF THE GARAGE PARCEL BY YOU AND YOUR PERMITTEES WILL BE SUSPENDED UNTIL ALL DELINQUENT UNCONTESTED PARKING FEES ARE PAID.**

> If such delinquency continues uncured for more than thirty (30) days following the Final Fee Increase Notice to Apartments Owner, Apartments Owner's Parking Fees for the period commencing on the date that is thirty (30) days after the Final Fee Increase Notice (the "**Fee Increase Date**") shall be adjusted to an amount equal to the prevailing monthly rate that Declarant would charge a private Owner for use of similar spaces at the Parking Structure ("**Market Rate Fee**") as set forth in a written notice from Declarant to Apartments Owner (which notice shall include the method for Declarant's calculation of the Market Rate Fee), and all access to the Garage Parcel by Apartments Owner and its Permittees will be suspended from the Fee Increase Date until the date of payment unless Apartments Owner pays all delinquent uncontested Parking Fees on or before the Fee Increase Date. Even if Apartments Owner pays the delinquency following the expiration of the 30 day cure period provided under the Final Fee Increase Notice, all future Parking Fees commencing on the Fee Increase Date shall be calculated based on the Market Rate Fee if Declarant has provided written notice thereof to Apartments Owner, subject to annual increases by Declarant. The remedies provided in this Section are in addition to all other remedies allowed by this Agreement. Notwithstanding anything herein to the contrary, Declarant shall not have the right to increase the Parking Fees to a Market Rate Fee or suspend access to the Garage Parcel under this **Section 26** if both (i) Apartments Owner has notified Declarant in writing that it is contesting its obligation to pay the

delinquent Parking Fees due to the Apartments Owner's exercise of its offset rights in accordance with the procedure set forth in **Section 4** above, and (ii) Apartments Owner has paid any uncontested Parking Fees as of when same are due hereunder (being those Parking Fees that are then due less any Self-Help Reimbursement Amount then being claimed by Apartments Owner).

27. No Termination for Breach. Notwithstanding anything herein to the contrary, no breach hereunder shall entitle either Owner, or its successors or assigns, to cancel, rescind, or otherwise terminate this Agreement, but such limitation shall not affect, in any manner, any other rights or remedies, which a Owner, or its successors or assigns, may have hereunder by reason of a breach of this Agreement. No breach hereunder shall defeat or render invalid the lien of any mortgage or deed of trust upon all or any portion of the Garage Parcel or the Apartments Parcel made in good faith for value. The easements, covenants, and conditions hereof shall be binding upon and effective against any Owner, or its successors or assigns, whose title thereto is acquired by foreclosure, trustee's sale, deed in lieu thereof, or otherwise.

28. Casualty and Condemnation. In the event that the whole or any part of the Parking Project shall be taken by any governmental agency or utility under the power of eminent domain, both parties shall pursue their own damage awards with respect to any such taking; provided, however, that (i) Apartments Owner shall be entitled to the award in connection with any condemnation insofar as the same represents compensation for the easement estate created by this Agreement; (ii) Declarant shall be entitled to the entirety of any award insofar as same represents compensation for or damage to the fee title to the Parking Structure; and (iii) Declarant and Apartments Owner shall use commercially reasonable efforts to allocate any damage awards between the parties in accordance with this section. If Declarant is unable to provide use of, or access to, the Parking Structure to Apartments Owner and its Permittees as a result of a casualty to the Parking Project or condemnation by the Declarant or other condemning authority, Apartments Owner shall not have any obligation to pay Parking Fees until such use or access is restored. In addition, in such event, Declarant shall either provide alternate parking in a location acceptable to Apartments Owner in its reasonable discretion at no cost to Apartments Owner and this Agreement shall be modified to reflect the change in the location of the Parking Easement and the Access Easement, or Apartments Owner shall have the right to find alternative parking and Declarant shall reimburse Apartments Owner for the cost of such parking within thirty (30) days after Apartments Owner provides Declarant with an invoice showing the costs therefor. In the event of casualty to the Parking Structure, Declarant shall commence restoration and repairs in and to the Parking Structure and the Access Areas within a reasonable period of time, and thereafter diligently prosecute such restoration or repairs to completion.

29. Limited Liability of Declarant and Apartments Owner; Limitation on Damages. Notwithstanding anything to the contrary contained in this Agreement, none of the shareholders, directors, officers, trustees, members, managers, partners, or employees, of Declarant, Apartments Owner, or their constituent parties nor any other person, partnership, corporation, company, or trust, as principal of Declarant or Apartments Owner, whether disclosed or undisclosed (collectively, the "**Exculpated Parties**") shall have any personal obligation or liability hereunder, and neither Declarant nor Apartments Owner shall seek to assert any claim or enforce any of its rights hereunder against any Exculpated Owner. Declarant and Apartments Owner shall look solely to the other Owner's assets for the payment

of any claim under this Agreement. Additionally, notwithstanding anything to the contrary, neither Declarant nor Apartments Owner shall in any event be responsible or liable for consequential, exemplary or punitive damages as a result of any act or omission in connection with this Agreement.

30. Signage and Lighting. Apartments Owner shall have the right to approve all signage and lighting on the outside of the Parking Structure that is on the east boundary line of the Garage Parcel, which approval shall not be unreasonably withheld, conditioned, or delayed. Declarant, at its sole cost and expense, shall install such directional signage as is necessary for the Permittees to locate the Reserved Spaces and such lighting as is necessary for the safety of all users of the Garage. Apartments Owner shall have the right to install reserved parking signs at the location of each Reserved Space, at Apartments Owner's sole cost and expense, and it shall have the right to maintain and replace such signs pursuant to the self-help easements granted to Apartments Owner and its employees, agents and contractors under **Section 4** above.

31. Waiver. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver be a continuing waiver. No waiver shall be binding unless executed in writing by the Owner making the waiver. Any Owner may waive any provision of this Agreement intended for its sole benefit; however, unless otherwise provided for herein, such waiver shall in no way excuse any other Owner from the performance of any of its other obligations under this Agreement.

32. Real Estate Taxes. If Declarant is subject to taxation, Declarant shall be responsible for and shall pay prior to delinquency, all real and personal property taxes, general and special assessments, and other similar charges levied on or assessed against Declarant or the Parking Project (the "**Parking Project Taxes**"). Declarant shall promptly submit to Apartments Owner a copy of all notices, tax bills and other correspondence Declarant receives from any taxing authorities regarding the Parking Project Taxes as well as proof of payment of such taxes no later than fifteen (15) days after same are due. Declarant shall have the right to contest by lawful means the correctness or validity of any Parking Project Taxes so long as such contest does threaten loss of or to the Parking Project or impose any penalties, interest or other amounts on Declarant, and Declarant shall be entitled to any refund or rebate of any Parking Project Taxes. If Declarant fails to pay the Parking Project Taxes in accordance with this **Section 32**, Declarant shall automatically be in Default hereunder without the requirement of giving of any notice or any cure or grace period.

33. Security Services. Apartments Owner may, at its sole cost and expense, provide security guards, patrols, devices, and/or systems for Apartments Owner, its Permittees and their respective personal property, provided that the same do not interfere with the normal operation of the Parking Structure. Any security guards, patrols, devices, or systems provided by Apartments Owner pursuant to the foregoing sentence shall in no way be implied to provide security services for, nor shall Apartments Owner be liable for injury or damage to (except to the extent resulting from the negligence or willful misconduct of Apartments Owner or its security guards or patrols) any other parties using the Parking Structure or personal property located in the Parking Structure. Declarant shall have no obligation to provide security guards, patrols, devices, or systems for the Parking Project, nor shall Declarant nor Parking Garage Asset Manager be liable for any failure to provide the same. In no event will Declarant

be liable to Apartments Owner, and Apartments Owner hereby waives any claim against Declarant, for (a) any entry of third parties into the Parking Structure or Parking Project; (b) any damage or injury to persons or property; or (c) any loss of property in or about the Parking Structure or the Parking Project, if the subject event described in the foregoing clause (a), (b) or (c) occurs as a result of any unauthorized or criminal acts of third parties, regardless of any action, inaction, failure, breakdown, malfunction or insufficiency of security services provided by Declarant, if any, except to the extent of Declarant's negligence or willful misconduct.

34. Timing. The phrase "**business days**" as used herein shall mean the days of Monday through Friday, excepting only holidays recognized under the laws of the State of Arizona. The phrase "**days**" as used herein shall mean all days of the week, including all holidays. The term "days" without reference to calendar or business days shall mean calendar days. Whenever under the terms of this Agreement the time for performance of any act, covenant or condition or the expiration of any time period falls on a day that is not a business day, such expiration time or time for performance shall be extended to the next business day.

35. Emergency Self-Help. If access to the Parking Structure is not provided as required under this Agreement by reason of a Default, the Non-Defaulting Owner shall provide written notice of the same to the Defaulting Owner and Parking Garage Asset Manager; provided, however, the Non-Defaulting Owner shall only be required to notify the Defaulting Owner and Parking Manager by telephone if there is complete lack of access to the Parking Structure and/or imminent threat of material damage to property or injury to persons. The Non-Defaulting Owner may exercise self-help rights twenty-four (24) hours following such written notice, unless there is complete lack of access to the Parking Structure and/or an imminent threat of material damage to property or injury to persons, in which events, the Non-Defaulting Owner may exercise self-help rights immediately following such telephonic notice. Notwithstanding anything to the contrary herein, the Non-Defaulting Owner shall not exercise or continue exercising self-help rights if the Defaulting Owner has commenced and is diligently pursuing efforts to provide access to the Parking Structure in accordance with this Agreement.

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

37. Mechanic's Liens. Declarant shall keep the Parking Project free and clear of, and indemnify, defend and hold Apartments Owner harmless from and against all mechanics' and materialmen's liens arising solely and directly from Declarant's construction, operation, maintenance, repair or related activities in, on, under or through the Access Areas or the Spaces. If any such lien is filed, Declarant shall cause the lien to be released or bonded around in accordance with applicable law and at its sole cost and expense on or before the date that is thirty (30) days following the date Declarant receives written notice of the filing of such lien. Further, if any such lien is filed and Declarant fails to cause such lien to be released or bonded around within such thirty-day period, Apartments Owner may pay the amount or take such other action as Apartments Owner reasonably deems necessary to remove such lien, without being responsible for investigating the validity thereof. The amount so paid and costs incurred by Apartments Owner, including any reasonable attorneys' fees, shall be payable upon demand, without limitation as to other remedies available to Apartments Owner under this Agreement.

38. Lien Rights for Non-Payment by Apartments Owner. Apartments Owner covenants and agrees to pay all amounts due to Declarant pursuant to the terms of this Agreement. Any amounts due from Apartments Owner to Declarant pursuant to the terms of this Agreement, together with late payment fees, as described above, and together with such costs and reasonable attorneys' fees as may be incurred in seeking to collect such amounts (the "**Past Due Amounts**"), shall be not only the personal obligation of Apartments Owner, but shall also be a charge on the Apartments Parcel and shall be a continuing lien in favor of Declarant, which lien shall bind the Apartments Parcel and Apartments Owner (including, without limitation, any Mortgagee, deed of trust beneficiary, or other person who obtains title to the Apartments Parcel as a result of foreclosure, trustee's sale, or deed in lieu thereof provided that such Owner shall not have any obligation to pay amounts owed hereunder by Apartments Owner to Declarant prior to the effective date when such Owner acquires title to the Apartments Parcel), provided that such lien shall be subordinate and inferior to: (a) the lien of all taxes, bonds, assessments and other levees which, by law, would be superior thereto; and (b) the lien of any Mortgage made for value and recorded against the Apartments Parcel prior to the time a notice of lien was recorded pursuant hereto. If a lien arises hereunder in favor of Declarant, Declarant shall be entitled to record a notice of lien ("**Notice of Lien**") against the Apartments Parcel once the failure to pay by Apartments Owner has become a Default hereunder, but shall cause such notice of lien to be released of record upon payment of all sums secured by such lien. Such lien may be foreclosed in the same manner required under Arizona law for the foreclosure of mortgages against real property. A notice of lien recorded in compliance with the terms of this Section shall be deemed consensual in nature and shall not be subject to the terms of A.R.S. § 33-421 or any successor statute thereto governing the recordation of non-consensual liens. The remedy provided in this Section is in addition to all other remedies allowed under this Agreement. Notwithstanding the foregoing to the contrary, Declarant agrees that it shall not record a Notice of Lien hereunder until it has given any Mortgagee a notice of Default in accordance with **Section 15** above and such Mortgagee has not paid any Past Due Amounts owed by Apartments Owner to Declarant hereunder within fifteen (15) business days after the receipt of such notice. Further, Declarant shall not file a Notice of Lien that includes any Self-Help Reimbursement Amount if Apartments Owner has notified Declarant in good faith of Apartments Owner's claim to such Self-Help Reimbursement Amount prior to the filing of such Notice of Lien.

[Signature Page Follows]

EXECUTED BY Declarant to be effective as of the date first above written.

DECLARANT:

HPPC II, LLC,
an Arizona limited liability company

By: HPPC Sponsor II, LLC,
an Arizona limited liability company
Its. Manager

By: Holualoa Capital Management, LLC
an Arizona limited liability company
Its: Manager

By: _____

Name: _____

Its: _____

STATE OF ARIZONA)
) ss.
County of MARICOPA)

On _____, before me, _____ personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

_____
Notary Public

[SEAL]

EXHIBIT I-2-19

This exhibit is not recordable and is therefore not recorded with this Development Agreement.

This exhibit is on file and can be viewed at the City Clerk's Office, City of Phoenix.

EXHIBIT I-1-20

This exhibit is not recordable and is therefore not recorded with this Development Agreement.

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EXHIBIT I-2-21

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EXHIBIT I-2-29

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EXHIBIT I-3

FORM OF EASEMENT AGREEMENT (MEDICAL FACILITIES)

[See attached]

LRRC 04-03-19 DRAFT

When recorded, return to:
Lewis Roca Rothgerber Christie LLP
One South Church Avenue, Suite 2000
Tucson, Arizona 85701
Attn: Lewis D. Schorr, Esq.
(Space above this line for Recorder's use)

PARKING EASEMENT AGREEMENT

THIS PARKING EASEMENT AGREEMENT (the "**Agreement**") is made and entered into as of _____, 201__ (the "**Effective Date**") between HPPC II, LLC, an Arizona limited liability company ("**Grantor**"), and Creighton University, a Nebraska not-for-profit corporation ("**Grantee**"), with reference to the facts set forth below.

RECITALS

A. Grantor is the owner of certain real property located in the City of Phoenix, County of Maricopa, Arizona, legally described and depicted on **Exhibit A** attached hereto (the "**Garage Parcel**").

B. Grantor anticipates that, following the Effective Date, Grantor will convey, subject to the terms, conditions, and easements established in this Agreement, the Garage Parcel to Park Central Community Facilities District, a community facilities district formed by the City of Phoenix ("**CFD**"), which will have the legal authority to own the Garage Parcel and to construct thereon a ten-story parking structure containing approximately 2,001 parking spaces (the "**Parking Structure**" and collectively with the Garage Parcel, the "**Parking Project**"). The Parking Project shall include without limitation, parking facilities and open areas, any parking deck, incidental and interior roadways, pedestrian stairways, walkways, light standards, directional signs, driveways, curbs and landscaping within or adjacent to areas used for parking of motor vehicles on the Garage Parcel.

C. Grantee is the fee title owner of those certain adjacent parcels of real property located in the City of Phoenix, County of Maricopa, Arizona, legally described and depicted on **Exhibit B-1** attached hereto (the "**North Parcel**") and **Exhibit B-2** attached hereto (the "**South Parcel**" and collectively with the North Parcel, and as may be modified under **Section 11** below, the "**Creighton Property**") upon which Grantee currently intends to construct a non-profit educational project providing instruction to at least 600 health science graduate students in healthcare related fields, a clinic or hospital, and medical office space, totaling at least 185,000 square feet of building space (the "**Creighton Project**"). The Garage Parcel, the North Parcel and the South Parcel are sometimes individually referred to herein as a "**Parcel**" and collectively as the "**Parcels**".

D. Grantor and Grantee (individually a "**Party**" and collectively, the "**Parties**") desire to enter into this Agreement in order to, among other things, provide for the following, upon the terms and conditions set forth below in this Agreement:

1. An easement for pedestrian and vehicular access over, and use of, the walkways, sidewalks, roadways, driveways, parking area access lanes, other paved areas, elevators, stairways and other similar areas and improvements now or hereafter located at the Parking Project (collectively, the "**Access Areas**") to allow for use of the Spaces (as defined in **Section 2**) by Grantee and its tenants, occupants, students, faculty, visitors, customers, employees, agents, contractors and invitees (collectively, "**Permittees**");

2. An easement for parking by Grantee and its Permittees with respect to the Spaces;

3. Certain parking-related charges to be paid by Grantee to Grantor in consideration for the rights granted herein by Grantor to Grantee; and

4. Certain other obligations of the Parties relating to insurance, indemnification and other issues, all as more particularly described below.

AGREEMENT

NOW, THEREFORE, the Parties, for themselves, and for their successors and assigns, hereby declare that the Parcels and all improvements now or hereafter located thereon are and shall be owned, held, transferred, mortgaged, sold, conveyed and occupied subject to the easements, charges, liens, and other provisions hereinafter set forth:

1. Grant of Access Easement. Grantor hereby grants, sells and conveys to Grantee, its successors and assigns, for the use and benefit of Grantee and its Permittees, as an appurtenance to the Creighton Property, a perpetual, non-revocable, non-exclusive vehicular and pedestrian easement to use all of the Access Areas for their intended purposes in order to allow Grantee and its Permittees vehicular and pedestrian access to and from the Spaces (the "**Access Easement**"). The Access Easement may be used by Grantee and its Permittees 24 hours per day, 7 days per week.

2. Grant of Parking Easement; Scope of Parking Easement; Description of Spaces. Grantor hereby grants to Grantee, its successors and assigns, for the use and benefit of Grantee and its Permittees, as an appurtenance to the Creighton Property, a perpetual easement to use the Spaces for vehicular parking, subject to this Agreement and any rules and regulations adopted by Grantor pursuant to **Section 7** (the "**Parking Easement**"). The Parking Easement may be used by Grantee and its Permittees 24 hours per day, 7 days per week. As used herein, "**Spaces**" means 500 parking spaces located in the Parking Structure available for use by Grantee and its Permittees. Up to 30 of the Spaces, at the election of Grantee, shall be reserved for use by Grantee and its Permittees (such reserved parking spaces, the "**Reserved Spaces**"). The Parking Easement, as it relates only to the Reserved Spaces (as defined in this Section), shall be an exclusive easement. Other than the Reserved Spaces, all other Spaces (the "**Unreserved Spaces**") shall be available for use by Grantee and its Permittees on an unreserved, first come, first served basis. Grantor shall

provide the Reserved Spaces as reserved, signed parking spaces designated only for Grantee and its Permittees. The Reserved Parking Spaces shall include the number of handicap parking spaces that Grantee is required to provide under applicable law for use by the Permittees of the Creighton Project and shall consist of ten (10) Reserved Spaces located on floors 2 and 3 and twenty (20) Reserved Spaces distributed evenly among floors 5 through 8. Grantor shall have the right to designate or change the locations of all or some of the Reserved Spaces after obtaining Grantee's prior written consent (not to be unreasonably withheld, delayed or conditioned); provided, however, no change in the location of the Reserved Spaces shall occur without at least thirty (30) days advance written notice to Grantee or prior to any relocated parking spaces that are to become Reserved Spaces having been properly marked as reserved spaces for the benefit of Grantee and its Permittees and provided further that at all times, there shall be no less than 30 Reserved Spaces. Grantor shall implement access control to the Parking Structure, consistent with Grantee's rights hereunder, through the use of methods selected by Grantor or its parking garage manager and approved by Grantee in its reasonable discretion, which may, by way of example only, include the use of access cards or similar methods of controlling access to the Parking Structure. In the event Grantor installs any access gate, vehicle identification system, key or card entry system, or other restraints on access over, across or upon the Access Areas or the Spaces, Grantor shall provide to Grantee, the combination and/or one (1) key, sticker or access card for each of the Spaces located on or within such restricted area, as are necessary to provide access to and from the Access Areas and Spaces. The Spaces shall only be used for normal passenger cars and passenger truck parking and not for the parking of any oversized vehicles. Moreover, the Spaces shall not be used to allow the repair or washing of any vehicles. All of the Reserved Spaces shall be covered and not be located on any uncovered parking deck that is part of the Parking Structure. If the Grantor does not enforce the reserved parking rights of Grantee after written notice of violations thereof from Grantee or Grantee's designated property manager, Grantee is authorized to take all reasonable steps to enforce such reserved parking rights as a Self-Help Reimbursement Amount (as defined below) and to be reimbursed for the cost thereof by offset against the Parking Fees; provided, however, Grantor shall not be responsible for any towing or costs thereof. The total number of parking spaces in the Parking Structure (including, without limitation, the Reserved Spaces) to which Grantor has granted exclusive rights to park shall in no event exceed 1,000 parking spaces.

3. Maintenance of Parking Project. Grantor shall pay for and have sole responsibility for and shall maintain, repair and replace all portions of the Parking Project in accordance with any and all applicable laws, so as to keep Parking Project at all times in a safe, sightly, good and functional condition to standards of comparable structured parking facilities in the City of Phoenix (such obligations, the "**Maintenance Obligations**"). The Maintenance Obligations shall include, but not be limited to: (i) keeping the Parking Project clean and free from refuse and rubbish; (ii) repaving, restriping and replacing marking on the surface of the access ways and parking spaces from time to time located on and in the Parking Project as and when necessary so as to provide for the orderly ingress and egress of vehicles and pedestrians and the orderly parking of vehicles; (iii) replanting the landscaping at the Parking Project and maintaining, repairing and replacing the irrigation systems serving such landscaping; (iv) illuminating the Parking Project at such times and during such periods as may be reasonably determined by Grantor from time to time for the security of the Permittees and maintaining, repairing and replacing, as necessary, all lighting equipment; (v) maintaining, repairing and replacing, as necessary, any signage located on or at the Parking Project; and (vi) keeping all culverts and drainage areas free from papers, debris, filth and refuse and promptly disposing of any collecting waters. All Maintenance Obligations

shall be done in such a manner as to not unreasonably interfere with the rights of Grantee or any Permittee granted under this Agreement. Grantor shall not close off or unreasonably restrict or impede access to the Access Areas or Spaces without the prior written consent of Grantee, which consent may not be unreasonably withheld, conditioned or delayed; provided, that no such consent shall be required during the period an emergency exists as long as Grantor takes efforts to reasonably limit any such closures, restrictions, or impediments to the Access Areas or Spaces actually affected by such emergency.

4. Failure to Maintain. If Grantor fails to perform the Maintenance Obligations in accordance with this Agreement, Grantee may notify the Grantor in writing thereof, such notice to specifically set forth the Maintenance Obligations which were not performed (the "**Specified Maintenance Failure**"). If, following such notice, the Specified Maintenance Failure becomes a Default (as defined in **Section 15**), Grantee shall have the right, but not the obligation, through its agents, contractors and employees, to cure the Specified Maintenance Failure. Notwithstanding the foregoing, Grantee may notify Grantor via telephone of a Specified Maintenance Failure and may commence to cure such Specified Maintenance Failure immediately thereafter if such Specified Maintenance Failure results in imminent threat of material damage to property or injury to persons and if Grantor has not then commenced such cure. If Grantee elects to cure the Specified Maintenance Failure, Grantor shall be obligated to reimburse Grantee the actual and reasonable costs of doing so, excluding, however, costs incurred by Grantee in repairing any damage to the Parking Project to the extent that such results from the negligent acts or omissions of Grantee or its agents, contractors, and employees in the exercise of its repair and cure rights. After Grantee cures the Specified Maintenance Failure, the Grantee shall deliver a bill, together with copies of paid invoices, and other reasonable evidence of the amounts so incurred (collectively, a "**Bill**"), to Grantor for such costs incurred in doing so (the "**Self-Help Reimbursement Amount**"). Grantor shall reimburse Grantee for the Self-Help Reimbursement Amount within ten (10) business days after receipt of the Bill. If Grantor fails to reimburse Grantee for the Self-Help Reimbursement Amount within such ten (10) business day period, Grantee shall have the right to offset such amount against the next accruing installments of Parking Fees owed hereunder. The remedies described in this **Section 4** shall not limit any other remedies available to Grantee under this Agreement.

5. Self-Help Easements. Grantor hereby grants to Grantee, its successors and assigns, for the use and benefit of Grantee and its employees, agents and contractors, as an appurtenance to the Creighton Property, a non-exclusive access easement in, through, over, and across the Access Areas and for the use of the Access Areas for the purpose of performing Grantee's rights pursuant to **Section 2**, **Section 4** and **Section 35**.

6. Parking Fees. Grantee shall pay to Grantor as consideration for the easements granted hereunder and all of Grantor's other obligations hereunder, parking fees equal to the following (the "**Parking Fees**"): (i) for the period commencing on the Parking Fee Commencement Date (as defined in this Section) until the day which is the five year anniversary of the Parking Fee Commencement Date, $50.00 per Space per month (being $25,000.00 per month); and (ii) from and after the day following the fifth anniversary of the Parking Fee Commencement Date $60.00 per Space per month (being $30,000.00 per month). Grantor may provide written notice to the Grantee with additional instructions regarding how to tender payment of the Parking Fees, as well as any subsequent changes to those instructions. If the Creighton

Project ceases, for more than thirty (30) continuous days, to be used for its intended purpose (except in the case such cessation is caused by casualty, condemnation, or planned renovation causing the Creighton Project to temporarily shut down for a period not to exceed 180 days), Grantor, following at least thirty (30) days' advance notice to Grantee (an "**Adjustment Notice**"), may annually increase the Parking Fees to the prevailing monthly rate, as of the date that is thirty (30) days after the giving of the Adjustment Notice (the "**Parking Fee Adjustment Date**"), that Grantor would charge a private party for use of similar spaces at the Parking Structure. The adjusted amount shall become the Parking Fees payable by Grantee from and after the Parking Fee Adjustment Date. As used herein, "**Completion Date**" means the date that the Parking Structure is completed to the extent necessary so that it can be used for its intended purposes in accordance with applicable laws and has been opened to the general public for such use. Grantor shall provide written notice to Grantee of the occurrence of the Completion Date no later than five (5) business days following such occurrence (the "**Completion Date Notice**"). As used herein, the "**Parking Fee Commencement Date**" means the date that is the later of (i) five (5) business days after the date when Grantee receives the Completion Date Notice; or (ii) the date when Grantor provides Grantee and its Permittees access to the Spaces. Parking Fees shall be due and payable on the first day of each month; provided, however, Parking Fees for the first month or partial month following the Parking Fee Commencement Date shall be due no later than five (5) business days following the Parking Fee Commencement Date and shall be prorated based on the actual number of days in a partial month, if applicable, after the Parking Fee Commencement Date.

7. Garage Manager. Grantor shall hire a parking garage asset manager (the "**Parking Garage Asset Manager**") to coordinate and cause to perform Grantor's obligations under this Agreement. Grantee shall have the right to be consulted on the selection of the Parking Garage Asset Manager; provided that if Grantor retains the Parking Garage Asset Manager without using a public procurement process, the Parking Garage Asset Manager must be approved by Grantee, which approval may not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing sentence, Grantee's consent shall not be required if either (A) the City of Phoenix is Grantor and elects to retain as Parking Garage Asset Manager a department or division of the City of Phoenix, provided that such department or division is then managing two or more parking garages, each of which has approximately the same number of parking spaces as the Parking Structure or (B) during the term of that certain District Development, Financing Participation, Waiver and Intergovernmental Agreement (Park Central Community Facilities District) among the City of Phoenix, HPPC, LLC, an Arizona limited liability company ("**HPPC**"), and Grantor, the Parking Garage Asset Manager is HPPC, Grantor, their respective successors in interest as the "Initial Owners" under the Development Agreement, or their Affiliates. For purposes of the preceding clause (B), an "**Affiliate**" of a business entity shall mean any business entity who, directly or indirectly, controls, is controlled by, or is under common control with the first entity. For purposes of this definition, "**control**" of an entity shall mean the power (through ownership of voting equity interests or through any other means) to direct the management and policies of an entity. Grantee shall also have the right to be consulted on the selection of any third party day-to-day manager of the Parking Structure (the "**Parking Garage Operator**") employed by the Parking Garage Asset Manager by separate written agreement; provided that if retaining a Parking Garage Operator does not involve a public procurement process, the Parking Garage Operator must be approved by Grantee, which approval may not be unreasonably withheld, delayed or conditioned. The hiring of such a Parking Garage Asset Manager by Grantor shall in no way relieve Grantor from any of its obligations hereunder. Grantor may, from time to time, promulgate rules and

regulations with respect to the use of the Parking Project, provided, however, such rules and regulations shall not be in conflict with the terms of this Agreement, shall be reasonable and nondiscriminatory in scope and effect, shall be applicable to all holders of parking easements or licenses and other parking garage users in a uniform manner and shall not become effective with respect to the Grantee and its Permittees unless and until written notice thereof is provided at least thirty (30) days in advance to Grantee.

8. Liability Insurance: Insurance Requirements Generally. Grantor and Grantee each shall, at all times while this Agreement is in effect, maintain or cause to be maintained in full force and effect a commercial general liability insurance policy (on an occurrence and a per location basis) insuring against all claims for personal injury, death or property damage occurring upon, in or about such Party's Parcel(s) and, with respect to Grantee, the easement areas appurtenant to the Creighton Property as described in this Agreement, with combined single limits of at least Two Million Dollars ($2,000,000.00) per occurrence, which insurance shall include broad form blanket contractual coverage covering the insured's obligations hereunder. Notwithstanding the foregoing, Grantee acknowledges and agrees that if the Garage Parcel is conveyed to the City of Phoenix (the "**City**"), the City may elect to self-insure some or all of the risks covered by the insurance that it is otherwise obligated to maintain under the terms of this **Section 8** and **Section 9** below and, accordingly, not to maintain the policies that are otherwise required hereunder, subject to the requirements set forth below in this **Section 8**. At any time when the City is self-insuring the risks required to be insured under this Agreement, the City shall itself be acting as though it were the insurance company providing the insurance required under the provisions hereof rather than placing insurance with a third-party insurer and shall pay any amounts due in lieu of insurance proceeds which would have been payable if the insurance policies had been carried, which amounts shall be treated as insurance proceeds for all purposes under this Agreement. All amounts which are paid or are required to be paid and all loss or damages resulting from risks for which the City has elected to self-insure shall be subject to the waiver of subrogation provisions of **Section 9** below as to property insurance. The City's right to self-insure and to continue to self-insure is conditioned upon and subject to the City's maintaining appropriate loss reserves which are actuarially derived in accordance with accepted standards of the insurance industry and accrued (i.e., charged against earnings) or otherwise funded. In the event the City fails to fulfill the requirements of this **Section 8**, then the City shall lose the right to self-insure and shall be required to provide the insurance required under this Agreement. All insurance policies required by the terms of this Agreement shall be issued by a company or companies authorized to issue insurance policies in the State of Arizona rated "A/VII" or better by A.M. Best Co., in Best's Key guide and shall include a statement, if available, that such insurance shall not be cancelable or subject to reduction of coverage or other modification except upon at least thirty (30) day's advance written notice by the insurer to the other Party hereto (ten (10) days for nonpayment of premium). Either Party shall, upon the request of the other Party, furnish to the other Party reasonably satisfactory evidence (including, without limitation, certificates of insurance) that the Party maintains insurance in accordance with the terms of this Section. In no event shall the limits of any coverage maintained by any Party or pursuant to this Agreement be considered as limiting such Party's liability under this Agreement. The required amount of insurance stated above in this Section shall be increased on each five (5) year anniversary of the Effective Date (an "**Insurance Adjustment Date**") by an amount equal to the increase in the Consumer Price Index for the five (5) year period immediately preceding the Insurance Adjustment Date. The adjusted amount shall become the required insurance amount for the next five (5) year period. The Consumer Price Index

hereinabove referred to is the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers All Items for Phoenix-Mesa-Scottsdale (December 2001=100). Should the Bureau of Labor Statistics discontinue publication of the Consumer Price Index, then the computation of the adjustment shall be based upon a similar index as reasonably agreed between the Parties. Any insurance required to be carried pursuant to this Section may be carried under a policy or policies covering other liabilities and locations of a Party; provided, however, that such policy or policies apply to the Parcels required to be insured by this Section in an amount not less than the amount of insurance required to be carried by such Party with respect thereto, pursuant to this Section.

9. Casualty Insurance. Grantor, at its sole cost and expense, shall obtain and keep in force while this Agreement remains in effect a policy or policies of insurance, covering loss or damage to the Parking Project, in the amount of the full replacement value thereof, exclusive of footings and foundations, providing protection against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief and special extended perils (special form). Grantor shall, upon the request of Grantee, furnish to Grantee reasonably satisfactory evidence (including, without limitation, certificates of insurance) that Grantor maintains insurance in accordance with the terms of this Section. Grantor hereby waives any and all rights of recovery against Grantee or against the officers, partners, employees, agents, representatives or Permittees of Grantee, for loss of or damage to Grantor's property or the property of others under its control, where such loss or damage is insured against or required to be insured against under the insurance policy described in this Section, but such waiver extends only to the extent of the actual insurance coverage or the amount of insurance coverage required to be maintained under this Section, whichever is greater. Grantor shall, upon obtaining the policy of insurance required under this Section give notice to the insurance carrier that the foregoing waiver of subrogation is contained in this Agreement. Grantee (and, if requested, Mortgagee) shall be named as a named insured on the policies maintained by Grantor under this **Section 9**.

10. Indemnification. To the extent permitted by law and except as limited by any waiver of subrogation pursuant to **Section 9**, each Party shall indemnify, defend, protect, and save the other Party harmless from and against any and all demands, liabilities, damages, expenses, causes of action, suits, claims, and judgments, including reasonable attorneys' fees (collectively, "**Claims**"), arising out of or in any way connected with such Party's own negligence, intentional misconduct, or breach of this Agreement. In no event shall either Party be required to indemnify the other Party for any Claims to the extent same are caused by the willful misconduct, intentional acts or gross negligence of the Party being indemnified or such Party's agents.

11. Covenant Running with the Land; Sub-Parcel Agreements. The covenants, conditions, easements, and restrictions contained in this Agreement shall run with the Parcels and shall bind and inure to the benefit of each Party and their respective successors and assigns. Upon conveyance by any Party of its interest in its Parcel(s) or any portion of its Parcel(s), such party shall be relieved of and from any claim of liability arising by reason of any act or occurrence relating to such Parcel(s) (or, if applicable, portion thereof) after the date of such conveyance. Grantor and Grantee agree that in the event Grantee or its successors or assigns shall convey or ground lease less than all of the Creighton Property (a "**Sub-Parcel**"), Grantee and its transferee or, if applicable, ground lessee (in either case, a "**Transferee**") may enter into a recorded agreement (a "**Sub-Parcel Agreement**") whereby the parties to the Sub-Parcel Agreement allocate

between themselves the rights and obligations under this Agreement pertaining to the parcels owned by such parties within the Creighton Property. Without limiting the foregoing, a Sub-Parcel Agreement may, among other things: (i) allocate between the parties to such Sub-Parcel Agreement the right to use the Spaces, the obligation to pay Parking Fees, and/or other rights and obligations hereunder that were originally appurtenant to the entire Creighton Property; or (ii) contain an agreement that the Sub-Parcel which is the subject of the Sub-Parcel Agreement is completely released from all benefits and burdens under this Agreement from and after the date of recordation of such Sub-Parcel Agreement. Grantor shall recognize any Sub-Parcel Agreement; provided, however, notwithstanding anything to the contrary contained in this Agreement, in no event shall any Sub-Parcel Agreement(s) increase the total number of Spaces (including Reserved Spaces) subject to use by Grantee, any Transferee(s), or their respective Permittees or release that portion of the Creighton Property legally described and depicted on **Exhibit C** attached hereto (the "**Non-Releasable Parcel**") or any then-current owner of the Non-Releasable Parcel from the obligation to pay the Parking Fees for all of the Spaces or from the lien rights described in **Section 38** below. In the event the Transferee under a Sub-Parcel Agreement is a ground lessee and the Sub-Parcel Agreement does not operate to completely release the Sub-Parcel which is the subject of such Sub-Parcel Agreement from all benefits and burdens under this Agreement from and after the date of recordation of such Sub-Parcel Agreement, as described above, the lien rights described in **Section 38** below (including any market rate increase that may become applicable under **Sections 6** or **26** and any late charge that may become applicable under **Section 26**) shall be enforceable against the fee of such Sub-Parcel. Each and every portion of the Non-Releasable Parcel shall be subject, on a joint and several basis, to all rights and remedies of Grantor (including any market rate increase that may become applicable under **Sections 6** or **26**, any late charge that may become applicable under **Section 26**, and the lien rights described in **Section 38**).

12. No Public Dedication. The provisions of this Agreement shall not be deemed to constitute a dedication for public use nor to create any rights in the general public of any kind.

13. Estoppel Certificate. Grantor shall, within thirty (30) days' after receipt of a written request by Grantee, furnish to Grantee or its designee a written statement (a) setting forth (i) the date to which Grantee's Parking Fees have been paid and (ii) the amount, if any, of any sums billed to Grantee that remain unpaid as of the date of such statement and (b) stating, to the knowledge of Grantor, that either (i) Grantee is not in Default in the performance of any of its obligations under this Agreement, nor do any conditions then exist that, with the giving of notice or passage of time, would constitute a default under this Agreement or, (ii) if in Default or if such conditions then exist that, with the giving of notice or passage of time, would constitute a Default under this Agreement, setting forth the nature of such Default or conditions, as applicable. Notwithstanding the foregoing, Grantor will not have any obligation to deliver more than one such written statement with respect to Grantee within any six (6)-month period unless same is requested by Grantee in connection with a sale or financing of the Creighton Property. If Grantor issues a statement pursuant to this **Section 13**, Grantor will be estopped from asserting a lien pursuant to Section 38 against Grantee for any amount that was due and owing at the time such statement was issued, unless such amount was reflected on such statement.

14. Notice. All notices required or permitted to be given under this Agreement shall be in writing and shall be given by personal delivery, recognized overnight courier service, email with a follow-up copy by first class United States mail, or by deposit in the United States mail,

certified mail, return receipt requested, postage prepaid, addressed to Grantor or Grantee at the addresses set forth below or at such other address as a Party may designate by notice similarly given. Notice shall be deemed given and received on the date on which the notice is actually received, whether notice is given by personal delivery, recognized overnight courier, email, or by mail. At the request of the holder of any Mortgage (a "**Mortgagee**") or the Grantee, the Parties shall mail or deliver to such holder a duplicate copy of any and all notices one Party may from time to time give to or serve upon another Party pursuant to the provisions of this Agreement and such copy shall be mailed or delivered to each holder of a Mortgage simultaneously with and in the same manner as the mailing or delivery of the other Party. As used herein, the term "**Mortgage**" shall mean any mortgage or deed of trust given for value and recorded against the Garage Parcel or the Creighton Property.

If to Grantor: HPPC II, LLC
3573 East Sunrise Drive, Suite 225
Tucson, Arizona 85718
Attn: Stan Shafer
E-Mail: stan@holualoa.com

With a copy to: Lewis Roca Rothgerber Christie LLP
One South Church Avenue, Suite 2000
Tucson, Arizona 85701
Attn: Lewis D. Schorr
E-Mail: lschorr@lrrc.com

If to Grantee: Creighton University
2500 California Plaza
Omaha, Nebraska 68178
Attn: John Jesse and Jim Jansen
E-Mail: JohnJesse@creighton.edu
JimJansen@creighton.edu

With a copy to: Kutak Rock LLP
8601 North Scottsdale Road, Suite 300
Scottsdale, Arizona 85253
Attn: Jason D. Stych, Esq. and Lynne Ziolko, Esq.
E-Mail: Jason.stych@kutakrock.com
Lynn.ziolko@kutakrock.com

15. Default; Cure Rights. In the event of a Default under this Agreement, the Party that is affected by such Default (the "**Non-Defaulting Party**") shall be entitled to institute proceedings for relief from the consequences of said Default. In addition to any remedies specified in this Agreement, in the event a Party is in Default of this Agreement (the "**Defaulting Party**"), the Non-Defaulting Party shall be entitled to pursue all remedies available in law or equity against the Defaulting Party, including specific performance, injunctive relief, declaratory judgment, damages or other suitable legal or equitable remedy. The unsuccessful Party in any action shall pay to the prevailing Party the prevailing Party's reasonable attorneys' fees incurred in connection with such action. Each Party acknowledges and agrees that the other Party has relied and has the right to rely upon such Party's compliance with the terms of this Agreement and that the damages for any

Default hereunder will be difficult or impractical to ascertain. As a result, each Party expressly acknowledges and agrees that the remedy of specific performance shall be available to enforce all obligations hereunder. Notwithstanding anything to the contrary contained in this Agreement, a failure by a Party to comply with the terms of this Agreement shall become a "**Default**" hereunder by such Party unless: (i) in the case of a failure that involves only the failure of one Party to timely pay the other Party, such failure is not cured within ten (10) days following written notice of such failure; and (ii) in the case of any failure to perform hereunder, other than as described in (i) above or as described in **Sections 35 and 37**, such failure is not cured within twenty (20) days following written notice of such failure, provided, however, if such failure cannot reasonably be cured within twenty (20) days, such twenty (20) day period shall be extended by not more than an additional twenty (20) days if the Party who failed to perform its obligations hereunder commences the cure of such failure within the original 20-day period and thereafter continues such efforts at a cure using commercially reasonable, diligent efforts.

16. Headings. The headings of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Agreement nor in any way affect the terms and provisions hereof.

17. Exhibits and Recitals. All exhibits attached hereto and all recitals set forth above are incorporated into this Agreement by reference as though fully set forth herein.

18. No Merger. It is not intended, nor shall there be, a merger of the dominant and servient tenements and estates created by any easements or agreements established hereby by virtue of the present or future ownership of any portion of said tenements or estates being vested in the same person(s) or Party(ies), but instead, it is intended that the easements and servitudes established hereby shall not be extinguished thereby and that said dominant and servient tenements be kept separate.

19. Conformity with all Applicable Laws. Nothing in this Agreement shall be construed as requiring or permitting any person or entity to perform any act or omission in violation of any local, state or federal law, regulation or requirement in effect at the time the act or omission would occur. Provisions in this Agreement that may require or permit such a violation shall yield to the law, regulation, or requirement.

20. Governing Law. This Agreement and the obligations of the Parties hereunder shall be interpreted, construed, and enforced in accordance with the laws of the State of Arizona. The venue for any judicial action or suit brought hereunder (to the extent permitted hereunder) shall be in Maricopa County, Arizona.

21. Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are superseded by this Agreement. The provisions of this Agreement shall be construed as a whole according to their common meaning and not strictly for or against any Party.

22. Duration. This Agreement shall remain in effect unless and until all Parties elect to terminate this Agreement in accordance with **Section 25** below.

23. Severability. If any part of this Agreement or the application of this Agreement or a set of circumstances is for any reason held to be unconstitutional, invalid, or unenforceable, the validity of the remaining portions of this Agreement shall not be affected thereby. All provisions of this Agreement are severable for the purpose of maintaining in full force and effect the remaining provisions of this Agreement.

24. Consent by Mortgagee of Creighton Property. This Agreement shall not become effective unless and until the Consent by Mortgagee attached hereto is executed by the lender whose deed of trust encumbers the Creighton Property.

25. Modification and Termination. Except as provided in **Section 26** below (which applies only to a modification), this Agreement may be modified, amended, or terminated only by the action of the then fee title owners of the Parcels. Such unanimous action shall only become effective after it has been reduced to writing, signed by all of such owners and recorded in the Official Records of Maricopa County, Arizona.

26. Late Charge; Failure to Make Payments; Increase in Parking Fees and Suspension of Access. Any amounts due from either Party in accordance with this Agreement not paid when due shall be delinquent. Any amount that is delinquent and that remains delinquent for a period of five (5) business days following written notice of delinquency shall incur a late payment fee equal to ten percent (10%) of the delinquent amount; provided, however, that such late payment fee shall not apply with respect to the first delinquent amount within a calendar year, if any. Additionally, if Grantee fails to pay Parking Fees (subject to Grantee's offset rights under **Section 4**) and they remain delinquent for at least ten (10) days following written notice of delinquency (a "**First Fee Increase Notice**"), Grantor shall send a second notice to Grantee which second notice (a "**Final Fee Increase Notice**") shall contain a conspicuous legend at the top of the first page substantially in the below form:

> **SECOND AND FINAL NOTICE: THIS IS A NOTICE TO INFORM YOU THAT PARKING FEES DUE UNDER THAT CERTAIN PARKING EASEMENT AGREEMENT DATED AS OF _____, 20___ ORIGINALLY BETWEEN HPPC II, LLC, AS GRANTOR, AND CREIGHTON UNIVERSITY, AS GRANTEE, HAVE REMAINED DELINQUENT FOR AT LEAST TEN (10) DAYS FOLLOWING THE FIRST FEE INCREASE NOTICE GIVEN TO YOU. IF SUCH PARKING FEES REMAIN DELINQUENT FOR MORE THAN THIRTY (30) DAYS FOLLOWING THIS FINAL FEE INCREASE NOTICE, GRANTOR WILL HAVE THE RIGHT PURSUANT TO THE PARKING EASEMENT AGREEMENT TO INCREASE YOUR PARKING FEES TO A MARKET RATE FEE, AND ACCESS OF THE GARAGE PARCEL BY YOU AND YOUR PERMITTEES WILL BE SUSPENDED UNTIL ALL DELINQUENT UNCONTESTED PARKING FEES ARE PAID.**
>
> If such delinquency continues uncured for more than thirty (30) days following the Final Fee Increase Notice to Grantee, Grantee's Parking Fees for the period commencing on the date that is thirty (30) days after the Final Fee Increase Notice (the "**Fee Increase Date**") shall be adjusted to an amount equal to the prevailing monthly rate that Grantor would charge a private party for use of similar spaces at the Parking Structure ("**Market Rate**

Fee") as set forth in a written notice from Grantor to Grantee (which notice shall include the method for Grantor's calculation of the Market Rate Fee), and all access to the Garage Parcel by Grantee and its Permittees will be suspended from the Fee Increase Date until the date of payment unless Grantee pays all delinquent uncontested Parking Fees on or before the Fee Increase Date. Even if Grantee pays the delinquency following the expiration of the 30 day cure period provided under the Final Fee Increase Notice, all future Parking Fees commencing on the Fee Increase Date shall be calculated based on the Market Rate Fee if Grantor has provided written notice thereof to Grantee, subject to annual increases by Grantor. The remedies provided in this Section are in addition to all other remedies allowed by this Agreement. Notwithstanding anything herein to the contrary, Grantor shall not have the right to increase the Parking Fees to a Market Rate Fee or suspend access to the Garage Parcel under this **Section 26** if both (i) Grantee has notified Grantor in writing that it is contesting its obligation to pay the delinquent Parking Fees due to the Grantee's exercise of its offset rights in accordance with the procedure set forth in **Section 4** above, and (ii) Grantee has paid any uncontested Parking Fees as of when same are due hereunder (being those Parking Fees that are then due less any Self-Help Reimbursement Amount then being claimed by Grantee).

27. No Termination for Breach. Notwithstanding anything herein to the contrary, no breach hereunder shall entitle either Party, or its successors or assigns, to cancel, rescind, or otherwise terminate this Agreement, but such limitation shall not affect, in any manner, any other rights or remedies, which a Party, or its successors or assigns, may have hereunder by reason of a breach of this Agreement. No breach hereunder shall defeat or render invalid the lien of any mortgage or deed of trust upon all or any portion of the Garage Parcel or the Creighton Property made in good faith for value. The easements, covenants, and conditions hereof shall be binding upon and effective against any Party, or its successors or assigns, whose title thereto is acquired by foreclosure, trustee's sale, deed in lieu thereof, or otherwise.

28. Casualty and Condemnation. In the event that the whole or any part of the Parking Project shall be taken by any governmental agency or utility under the power of eminent domain, both parties shall pursue their own damage awards with respect to any such taking; provided, however, that (i) Grantee shall be entitled to the award in connection with any condemnation insofar as the same represents compensation for the easement estate created by this Agreement; (ii) Grantor shall be entitled to the entirety of any award insofar as same represents compensation for or damage to the fee title to the Parking Structure; and (iii) Grantor and Grantee shall use commercially reasonable efforts to allocate any damage awards between the parties in accordance with this section. If Grantor is unable to provide use of, or access to, the Parking Structure to Grantee and its Permittees as a result of a casualty to the Parking Project or condemnation by the Grantor or other condemning authority, Grantee shall not have any obligation to pay Parking Fees until such use or access is restored. In addition, in such event, Grantor shall either provide alternate parking in a location acceptable to Grantee in its reasonable discretion at no cost to Grantee and this Agreement shall be modified to reflect the change in the location of the Parking Easement and the Access Easement, or Grantee shall have the right to find alternative parking and Grantor shall reimburse Grantee for the cost of such parking within thirty (30) days after Grantee provides Grantor with an invoice showing the costs therefor. In the event of casualty to the Parking Structure, Grantor shall commence restoration and repairs in and to the Parking Structure and the

Access Areas within a reasonable period of time, and thereafter diligently prosecute such restoration or repairs to completion.

29. Limited Liability of Grantor and Grantee; Limitation on Damages. Notwithstanding anything to the contrary contained in this Agreement, none of the shareholders, directors, officers, trustees, members, managers, partners, or employees, of Grantor, Grantee, or their constituent parties nor any other person, partnership, corporation, company, or trust, as principal of Grantor or Grantee, whether disclosed or undisclosed (collectively, the "**Exculpated Parties**") shall have any personal obligation or liability hereunder, and neither Grantor nor Grantee shall seek to assert any claim or enforce any of its rights hereunder against any Exculpated Party. Grantor and Grantee shall look solely to the other party's assets for the payment of any claim under this Agreement. Additionally, notwithstanding anything to the contrary, neither Grantor nor Grantee shall in any event be responsible or liable for consequential, exemplary or punitive damages as a result of any act or omission in connection with this Agreement.

30. Signage and Lighting. Grantor, at its sole cost and expense, shall install such directional signage as is necessary for the Permittees to locate the Reserved Spaces and such lighting as is necessary for the safety of all users of the Garage. Grantee shall have the right to install reserved parking signs at the location of each Reserved Space, at Grantee's sole cost and expense, and it shall have the right to maintain and replace such signs pursuant to the self-help easements granted to Grantee and its employees, agents and contractors under **Section 4** above.

31. Waiver. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver be a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver. Any Party may waive any provision of this Agreement intended for its sole benefit; however, unless otherwise provided for herein, such waiver shall in no way excuse any other Party from the performance of any of its other obligations under this Agreement.

32. Real Estate Taxes. If Grantor is subject to taxation, Grantor shall be responsible for and shall pay prior to delinquency, all real and personal property taxes, general and special assessments, and other similar charges levied on or assessed against Grantor or the Parking Project (the "**Parking Project Taxes**"). Grantor shall promptly submit to Grantee a copy of all notices, tax bills and other correspondence Grantor receives from any taxing authorities regarding the Parking Project Taxes as well as proof of payment of such taxes no later than fifteen (15) days after same are due. Grantor shall have the right to contest by lawful means the correctness or validity of any Parking Project Taxes so long as such contest does threaten loss of or to the Parking Project or impose any penalties, interest or other amounts on Grantor, and Grantor shall be entitled to any refund or rebate of any Parking Project Taxes. If Grantor fails to pay the Parking Project Taxes in accordance with this **Section 32**, Grantor shall automatically be in Default hereunder without the requirement of giving of any notice or any cure or grace period.

33. Security Services. Grantee may, at its sole cost and expense, provide security guards, patrols, devices, and/or systems for Grantee, its Permittees and their respective personal property, provided that the same do not interfere with the normal operation of the

Parking Structure. Any security guards, patrols, devices, or systems provided by Grantee pursuant to the foregoing sentence shall in no way be implied to provide security services for, nor shall Grantee be liable for injury or damage to (except to the extent resulting from the negligence or willful misconduct of Grantee or its security guards or patrols) any other parties using the Parking Structure or personal property located in the Parking Structure. Grantor shall have no obligation to provide security guards, patrols, devices, or systems for the Parking Project, nor shall Grantor nor Parking Garage Asset Manager be liable for any failure to provide the same. In no event will Grantor be liable to Grantee, and Grantee hereby waives any claim against Grantor, for (a) any entry of third parties into the Parking Structure or Parking Project; (b) any damage or injury to persons or property; or (c) any loss of property in or about the Parking Structure or the Parking Project, if the subject event described in the foregoing clause (a), (b) or (c) occurs as a result of any unauthorized or criminal acts of third parties, regardless of any action, inaction, failure, breakdown, malfunction or insufficiency of security services provided by Grantor, if any, except to the extent of Grantor's negligence or willful misconduct.

34. Timing. The phrase "**business days**" as used herein shall mean the days of Monday through Friday, excepting only holidays recognized under the laws of the State of Arizona. The phrase "**days**" as used herein shall mean all days of the week, including all holidays. The term "days" without reference to calendar or business days shall mean calendar days. Whenever under the terms of this Agreement the time for performance of any act, covenant or condition or the expiration of any time period falls on a day that is not a business day, such expiration time or time for performance shall be extended to the next business day.

35. Emergency Self-Help. If access to the Parking Structure is not provided as required under this Agreement by reason of a Default, the Non-Defaulting Party shall provide written notice of the same to the Defaulting Party and Parking Garage Asset Manager; provided, however, the Non-Defaulting Party shall only be required to notify the Defaulting Party and Parking Manager by telephone if there is complete lack of access to the Parking Structure and/or imminent threat of material damage to property or injury to persons. The Non-Defaulting Party may exercise self-help rights twenty-four (24) hours following such written notice, unless there is complete lack of access to the Parking Structure and/or an imminent threat of material damage to property or injury to persons, in which events, the Non-Defaulting Party may exercise self-help rights immediately following such telephonic notice. Notwithstanding anything to the contrary herein, the Non-Defaulting Party shall not exercise or continue exercising self-help rights if the Defaulting Party has commenced and is diligently pursuing efforts to provide access to the Parking Structure in accordance with this Agreement.

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

37. Mechanic's Liens. Grantor shall keep the Parking Project free and clear of, and indemnify, defend and hold Grantee harmless from and against all mechanics' and materialmen's liens arising solely and directly from Grantor's construction, operation, maintenance, repair or related activities in, on, under or through the Access Areas or the Spaces. If any such lien is filed, Grantor shall cause the lien to be released or bonded around in accordance with applicable law and at its sole cost and expense on or before the date that is thirty (30) days following the date Grantor receives written notice of the filing of such lien. Further, if any such lien is filed and Grantor fails

to cause such lien to be released or bonded around within such thirty-day period, Grantee may pay the amount or take such other action as Grantee reasonably deems necessary to remove such lien, without being responsible for investigating the validity thereof. The amount so paid and costs incurred by Grantee, including any reasonable attorneys' fees, shall be payable upon demand, without limitation as to other remedies available to Grantee under this Agreement.

38. Lien Rights for Non-Payment by Grantee. Grantee covenants and agrees to pay all amounts due to Grantor pursuant to the terms of this Agreement. Any amounts due from Grantee to Grantor pursuant to the terms of this Agreement, together with late payment fees, as described above, and together with such costs and reasonable attorneys' fees as may be incurred in seeking to collect such amounts (the "**Past Due Amounts**"), shall be not only the personal obligation of Grantee, but shall also be a charge on the Creighton Property and shall be a continuing lien in favor of Grantor, which lien shall bind the Creighton Property and Grantee (including, without limitation, any Mortgagee, deed of trust beneficiary, or other person who obtains title to the Creighton Property as a result of foreclosure, trustee's sale, or deed in lieu thereof provided that such party shall not have any obligation to pay amounts owed hereunder by Grantee to Grantor prior to the effective date when such party acquires title to the Creighton Property), provided that such lien shall be subordinate and inferior to: (a) the lien of all taxes, bonds, assessments and other levees which, by law, would be superior thereto; and (b) the lien of any Mortgage made for value and recorded against the Creighton Property prior to the time a notice of lien was recorded pursuant hereto. If a lien arises hereunder in favor of Grantor, Grantor shall be entitled to record a notice of lien ("**Notice of Lien**") against the Creighton Property once the failure to pay by Grantee has become a Default hereunder, but shall cause such notice of lien to be released of record upon payment of all sums secured by such lien. Such lien may be foreclosed in the same manner required under Arizona law for the foreclosure of mortgages against real property. A notice of lien recorded in compliance with the terms of this Section shall be deemed consensual in nature and shall not be subject to the terms of A.R.S. § 33-421 or any successor statute thereto governing the recordation of non-consensual liens. The remedy provided in this Section is in addition to all other remedies allowed under this Agreement. Notwithstanding the foregoing to the contrary, Grantor agrees that it shall not record a Notice of Lien hereunder until it has given any Mortgagee a notice of Default in accordance with **Section 15** above and such Mortgagee has not paid any Past Due Amounts owed by Grantee to Grantor hereunder within fifteen (15) business days after the receipt of such notice. Further, Grantor shall not file a Notice of Lien that includes any Self-Help Reimbursement Amount if Grantee has notified Grantor in good faith of Grantee's claim to such Self-Help Reimbursement Amount prior to the filing of such Notice of Lien. If a Sub-Parcel Agreement is recorded that acts to release a Sub-Parcel from this Agreement under Section 11(ii) above, then the lien rights under this Section 38 will apply only to the unreleased balance of the Creighton Property.

[Signature Page Follows]

EXECUTED BY Grantor to be effective as of the date first above written.

GRANTOR:

HPPC II, LLC,
an Arizona limited liability company

By: HPPC Sponsor II, LLC,
an Arizona limited liability company
Its. Manager

By: Holualoa Capital Management, LLC
an Arizona limited liability company
Its: Manager

By: _____

Name: _____

Its: _____

STATE OF ARIZONA)
) ss.
County of MARICOPA)

On _____, before me, _____ personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

_____
Notary Public

[SEAL]

EXECUTED BY Grantee to be effective as of the date first above written.

GRANTEE: Creighton University, a Nebraska not-for-profit corporation

By: _____
Name: _____
Title: _____

STATE OF _____)
) ss.
County of _____)

On _____, before me, _____ personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

_____
Notary Public

[SEAL]

LRRC 04-03-19 DRAFT

CONSENT BY MORTGAGEE
OF CREIGHTON PROPERTY

The undersigned lender hereby consents to the terms of this Agreement and further agrees that the exercise of any of its remedies under that certain Deed of Trust recorded as Instrument No. _____, Official Records of Maricopa County, Arizona (encumbering the Creighton Property), or under any other loan documents that evidence or secure the obligations described in said Deed of Trust shall have no effect on the continuing validity of the Agreement.

_____

By: _____
Name: _____
Title: _____

Date: _____

STATE OF _____)
) ss.
County of _____)

On _____, before me, _____ personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

_____
Notary Public

[SEAL]

EXHIBIT I-3-20

This exhibit is not recordable and is therefore not recorded with this Development Agreement.

This exhibit is on file and can be viewed at the City Clerk's Office, City of Phoenix.

EXHIBIT I-3-21

This exhibit is not recordable and is therefore not recorded with this Development Agreement.

This exhibit is on file and can be viewed at the City Clerk's Office, City of Phoenix.

EXHIBIT I-3-22

This exhibit is not recordable and is therefore not recorded with this Development Agreement.

This exhibit is on file and can be viewed at the City Clerk's Office, City of Phoenix.

Wood, Patel & Associates, Inc.
(602) 335-8500
www.woodpatel.com

Revised April 11, 2019
April 10, 2019
WP#174723.81

See Exhibit "A"

PARCEL DESCRIPTION
Park Central Mall
Creighton North Parcel

A portion of Lot 4, Park Central Amended, recorded in Book 1451, page 35, Maricopa County Records (M.C.R.), lying within Section 29, Township 2 North, Range 3 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the southwest corner of said Lot 4, from which the northwest corner of said lot, bears North 00°00'00" West (basis of bearing), a distance of 475.22 feet;
THENCE along the west line of said lot, North 00°00'00" West, a distance of 275.76 feet, to the **POINT OF BEGINNING**;
THENCE continuing along said west line, North 00°00'00" West, a distance of 199.46 feet, to said northwest corner;
THENCE leaving said west line, along the north line of said lot, South 89°59'38" East, a distance of 226.59 feet, to the northeast corner of said lot;
THENCE leaving said north line, along the east line of said lot, South 00°02'36" East, a distance of 6.10 feet;
THENCE South 10°15'44" West, a distance of 12.24 feet;
THENCE South 00°00'00" West, a distance of 100.00 feet;
THENCE South 10°12'14" East, a distance of 50.80 feet;
THENCE South 00°00'00" West, a distance of 162.01 feet;
THENCE leaving said east line, North 45°00'00" West, a distance of 184.86 feet;
THENCE South 90°00'00" West, a distance of 102.70 feet, to the **POINT OF BEGINNING**;

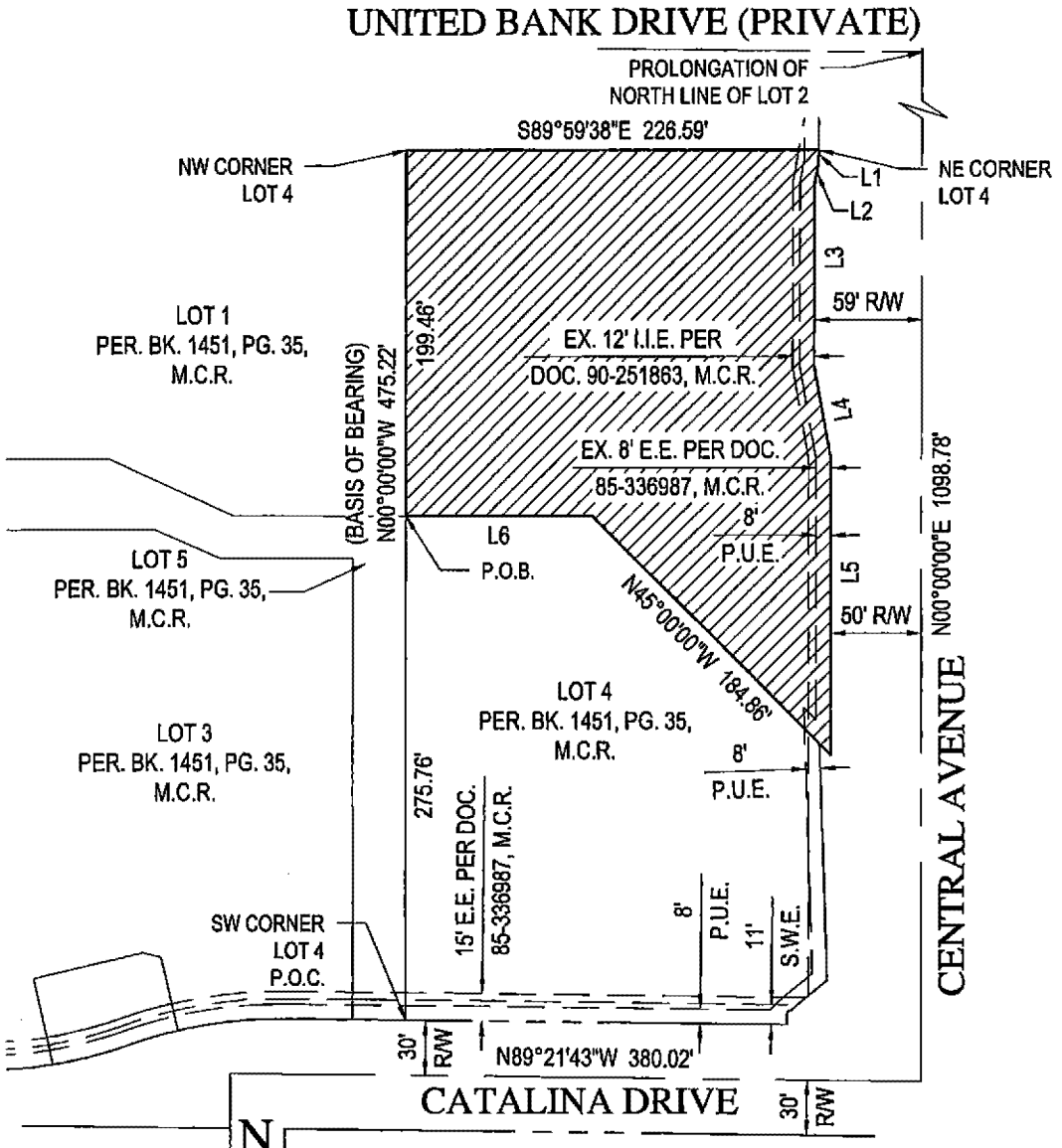
Containing 53,835 square feet or 1.2359 acres, more or less.

Subject to existing rights-of-way and easements.

This parcel description is based on client provided information and is located within an area surveyed by Wood, Patel & Associates, Inc. during the month of September, 2018. Any monumentation noted in this parcel description is within acceptable tolerance (as defined in Arizona Boundary Survey Minimum Standards dated 02/14/2002) of said positions based on said survey.

Y:\WP\Parcel Descriptions\2017\174723 Park Central Mall North Parcel L24R01 04-11-19.docx

EXPIRES 09-30-20



REGISTERED LAND SURVEYOR
CERTIFICATE NO. 23945
BRIAN J. DIEHL
Date Signed 11/19
ARIZONA, U.S.A.
EXPIRES 09-30-20

WOOD/PATEL
MISSION: CLIENT SERVICE®
(602) 335-8500
WWW.WOODPATEL.COM

EXHIBIT "A"

PARK CENTRAL MALL
CREIGHTON NORTH PARCEL
REVISED 4/11/2019
WP# 174723.81
PAGE 2 OF 3
NOT TO SCALE
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LINE TABLE		
LINE	BEARING	DISTANCE
L1	S00°02'36"E	6.10'
L2	S10°15'44"W	12.24'
L3	S00°00'00"W	100.00'
L4	S10°12'14"E	50.80'
L5	S00°00'00"W	162.01'
L6	S90°00'00"W	102.70'

WOOD/PATEL
MISSION: CLIENT SERVICE •
(602) 335-8500
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REGISTERED LAND SURVEYOR
CERTIFICATE NO.
23945
BRIAN J.
DIEHL
Date Signed 4/11/19
ARIZONA, U.S.A.
EXPIRES 09-30-20

EXHIBIT "A"

PARK CENTRAL MALL
CREIGHTON NORTH PARCEL
REVISED 4/11/2019
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PAGE 3 OF 3
NOT TO SCALE
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Wood, Patel & Associates, Inc.
(602) 335-8500
www.woodpatel.com

April 10, 2019
WP#174723.81

See Exhibit "A"

PARCEL DESCRIPTION
Park Central Mall
Creighton South Parcel

A portion of Lot 4, Park Central Amended, recorded in Book 1451, page 35, Maricopa County Records (M.C.R.), lying within Section 29, Township 2 North, Range 3 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the southwest corner of said Lot 4, from which the northwest corner of said lot, bears North 00°00'00" West (basis of bearing), a distance of 475.22 feet;
THENCE along the west line of said lot, North 00°00'00" West, a distance of 275.76 feet;
THENCE leaving said west line, North 90°00'00" East, a distance of 102.70 feet;
THENCE South 45°00'00" East, a distance of 176.44 feet, to the easterly line of said lot;
THENCE along said easterly line, South 01°56'55" East, a distance of 90.06 feet, to the beginning of a curve;
THENCE southerly along said curve to the right, having a radius of 4158.00 feet, concave westerly, through a central angle of 00°32'17", a distance of 39.05 feet, to a point of intersection with a non-tangent line;
THENCE South 50°58'07" West, a distance of 19.11 feet;
THENCE South 48°49'25" West, a distance of 7.26 feet;
THENCE South 79°10'33" West, a distance of 1.35 feet;
THENCE South 00°01'02" West, a distance of 7.23 feet, to the southern most southeast corner of said lot;
THENCE leaving said easterly line, along the south line of said lot, North 89°21'43" West, a distance of 210.04 feet, to the **POINT OF BEGINNING**;

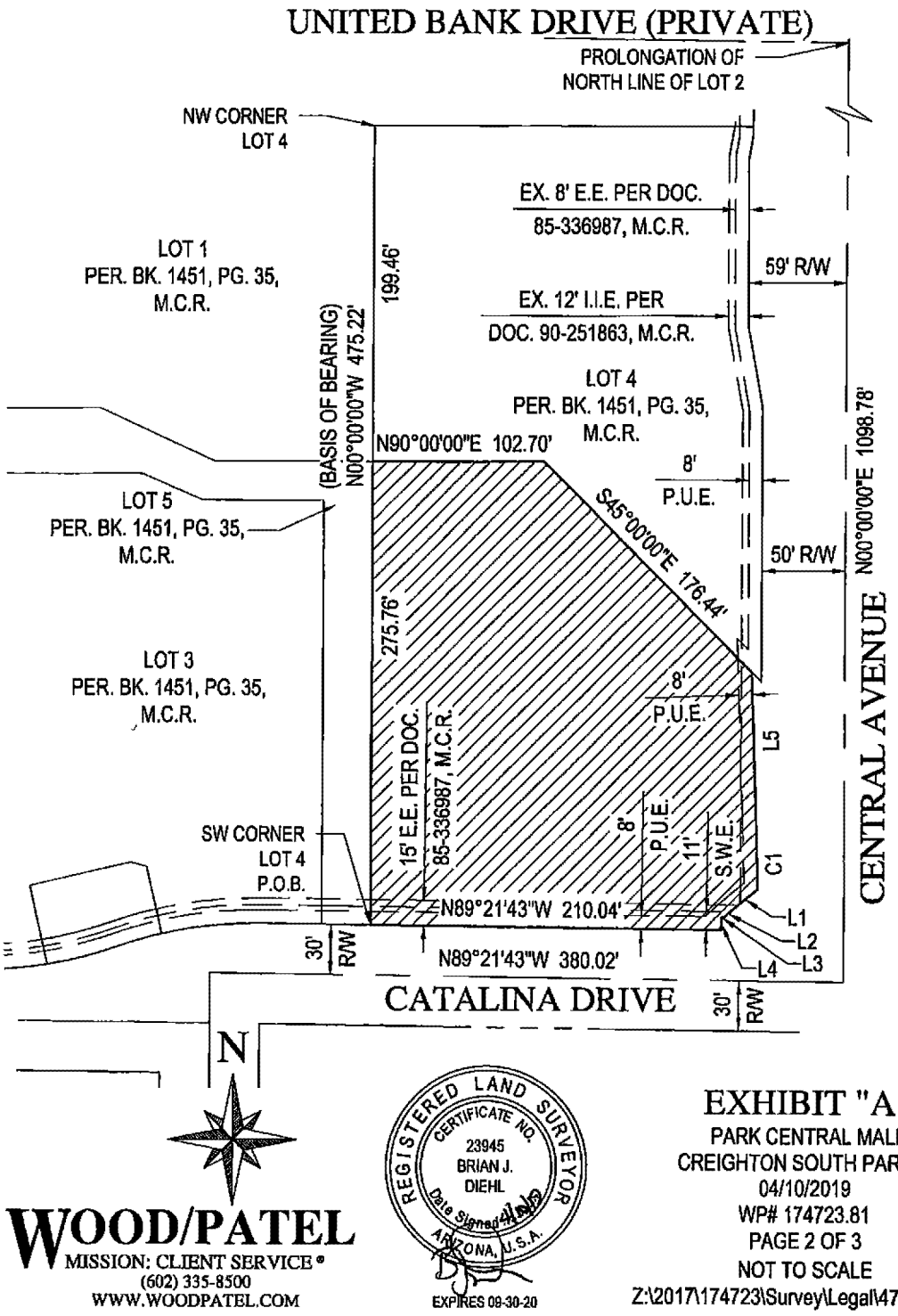
Containing 55,276 square feet or 1.2690 acres, more or less.

Subject to existing rights-of-way and easements.

This parcel description is based on client provided information and is located within an area surveyed by Wood, Patel & Associates, Inc. during the month of September, 2018. Any monumentation noted in this parcel description is within acceptable tolerance (as defined in Arizona Boundary Survey Minimum Standards dated 02/14/2002) of said positions based on said survey.

Y:\WP\Parcel Descriptions\2017\174723 Park Central Mall South Parcel L23 04-10-19.docx

EXPIRES 09-30-20



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REGISTERED LAND SURVEYOR
CERTIFICATE NO. 23945
BRIAN J. DIEHL
Date Signed 4-19-19
ARIZONA, U.S.A.
EXPIRES 09-30-20

EXHIBIT "A"

PARK CENTRAL MALL
CREIGHTON SOUTH PARCEL
04/10/2019
WP# 174723.81
PAGE 2 OF 3
NOT TO SCALE
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LINE TABLE		
LINE	BEARING	DISTANCE
L1	S50°58'07"W	19.11'
L2	S48°49'25"W	7.26'
L3	S79°10'33"W	1.35'
L4	S00°01'02"W	7.23'
L5	S01°56'55"E	90.06'

CURVE TABLE			
CURVE	DELTA	RADIUS	ARC
C1	0°32'17"	4158.00'	39.05'

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WWW.WOODPATEL.COM

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
23945
BRIAN J.
DIEHL
Date Signed 4/10/19
ARIZONA, U.S.A.
EXPIRES 09-30-20

EXHIBIT "A"

PARK CENTRAL MALL
CREIGHTON SOUTH PARCEL
04/10/2019
WP# 174723.81
PAGE 3 OF 3
NOT TO SCALE
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Wood, Patel & Associates, Inc.
(602) 335-8500
www.woodpatel.com

April 2, 2019
WP#174723.81

See Exhibit "A"

PARCEL DESCRIPTION
Park Central Mall
Non-Releasable Parcel

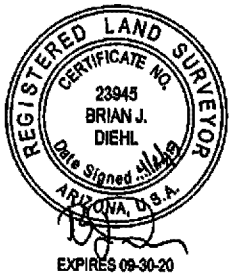
A portion of Lot 1, Park Central Mall, recorded in Book 467, page 14, Maricopa County Records (M.C.R.), and a portion of that certain parcel of land described in Document No. 2017-07726660, M.C.R., and a portion of that certain parcel of land described in Document No. 2018-0759926 M.C.R., lying within Section 29, Township 2 North, Range 3 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the intersection of Central Avenue and Catalina Drive, from which the intersection of the easterly prolongation of the north line of said Lot 1 and the centerline of said Central Avenue, bears North 00°00'00" East (basis of bearing), a distance of 1098.78 feet;
THENCE along the centerline of said Central Avenue, North 00°00'00" East, a distance of 246.15 feet;
THENCE leaving said centerline, South 90°00'00" West, a distance of 50.02 feet, to the west right-of-way line of said Central Avenue, shown on the Final Plat for Park Central Mall and the **POINT OF BEGINNING**;
THENCE leaving said west right-of-way line, continuing South 90°00'00" West, a distance of 233.42 feet;
THENCE North 00°00'00" East, a distance of 262.23 feet;
THENCE South 89°59'38" East, a distance of 226.59 feet, to said west right-of-way line;
THENCE along said west right-of-way line, South 00°02'36" East, a distance of 6.10 feet;
THENCE South 10°15'44" West, a distance of 12.24 feet;
THENCE South 00°00'00" West, a distance of 100.00 feet;
THENCE South 10°12'14" East, a distance of 50.80 feet;
THENCE South 00°00'00" West, a distance of 94.06 feet, to the **POINT OF BEGINNING**.

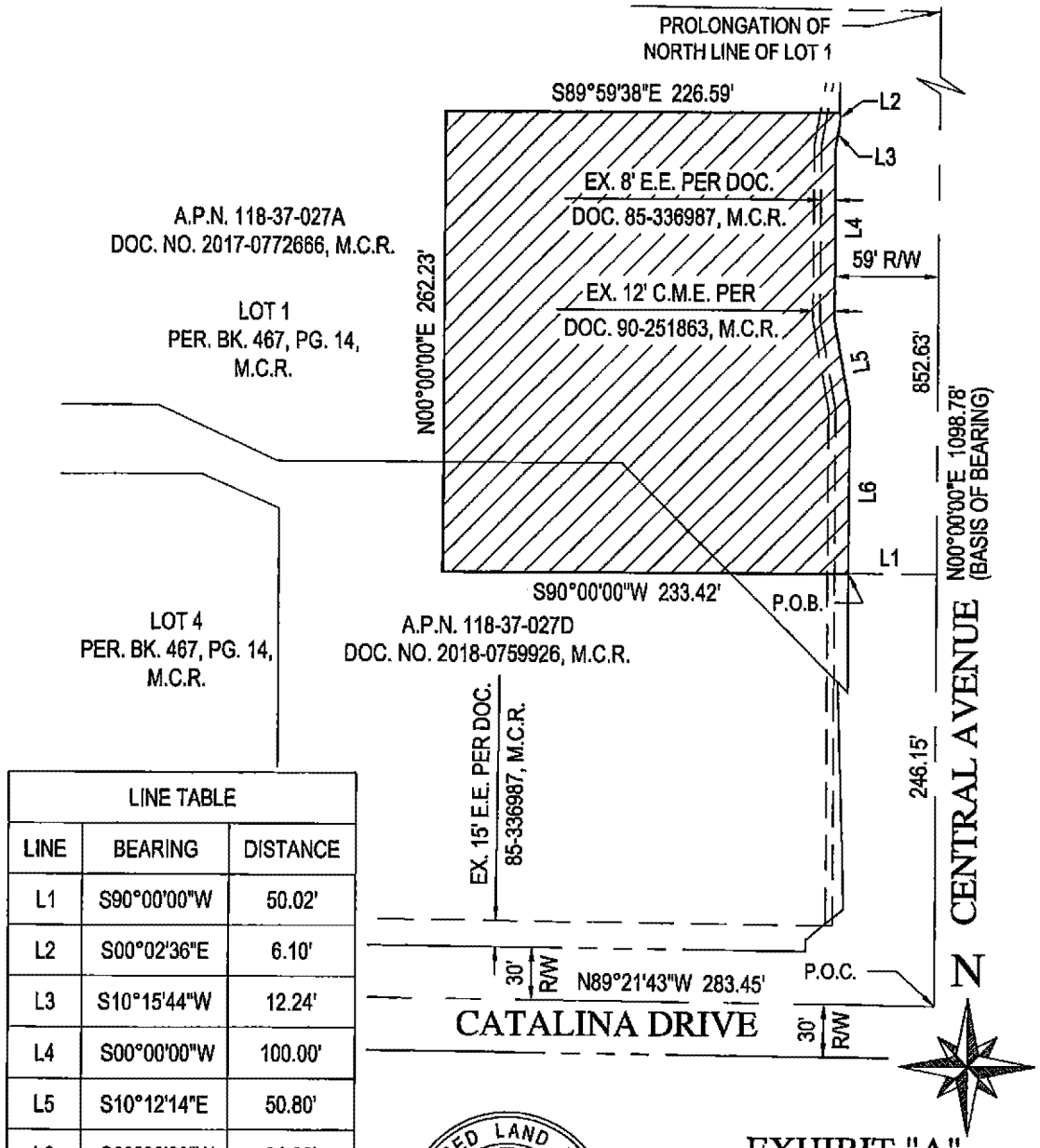
Containing 59,944 square feet or 1.3761 acres, more or less.

Subject to existing rights-of-way and easements.

This parcel description was prepared without the benefit of survey fieldwork and is based a client provided unrecorded ALTA Survey prepared by Republic National, dated April 3, 2018 and the Final Plat for Park Central Mall, recorded in Book 467, page 14, M.C.R. Any monumentation noted in this parcel description is based on said client provided information.



EXPIRES 09-30-20



LINE TABLE		
LINE	BEARING	DISTANCE
L1	S90°00'00"W	50.02'
L2	S00°02'36"E	6.10'
L3	S10°15'44"W	12.24'
L4	S00°00'00"W	100.00'
L5	S10°12'14"E	50.80'
L6	S00°00'00"W	94.06'

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
23945
BRIAN J.
DIEHL
Date Signed 4/4/19
ARIZONA, U.S.A.
EXPIRES 09-30-20

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EXHIBIT "A"

PARK CENTRAL MALL
NON-RELEASABLE PARCEL
4/2/2019
WP# 174723.81
PAGE 2 OF 2
NOT TO SCALE
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EXHIBIT J

FORM OF NOTICE OF ASSESSMENT LIEN

When recorded return to:

Thomas G. Stack, Esq.
City of Phoenix
200 West Washington Street
Suite 1300
Phoenix, Arizona 85003

NOTICE OF RECORDING OF ASSESSMENT
FOR
PARK CENTRAL COMMUNITY FACILITIES DISTRICT

TO WHOM IT MAY CONCERN:

Please take notice that on _____, 2019 the District Manager of Park Central Community Facilities District recorded, in his office, the assessment pertaining to Park Central Community Facilities District Assessment Revenue Bonds, which assessment encumbers and liens the real property described on the Exhibit hereto. Pursuant to Section 48-721(B), Arizona Revised Statutes, the assessment constitutes a first lien on the property assessed (described on the Exhibit hereto) subject only to general taxes and prior special assessments. Information pertaining to the amount of the assessment, method of payment or prepayment and reallocation of the assessment may be addressed to the District Manager at 251 W. Washington Street, 9th floor, Phoenix, Arizona 85003.

PARK CENTRAL COMMUNITY FACILITIES DISTRICT

By:_____
_____, District Manager

[Include Notary for signature]
Attachment:

Exhibit: Legal Description of Assessed Property

NOTICE OF RECORDING OF ASSESSMENT
FOR
PARK CENTRAL COMMUNITY FACILITIES DISTRICT

EXHIBIT

LEGAL DESCRIPTION ASSESSED PROPERTY

[See attached]