

or in any City Attorney files. Master Developer hereby acknowledges its receipt of the report entitled North Madison Remediation Site, prepared by NEI Environmental, Project No. 03-075C, dated August 2004. Master Developer shall not attempt to assert any liability against the City by reason of the City's having furnished any data or information pursuant to the terms of this Agreement or by reason of any such data or information becoming or proving to have been incorrect or inaccurate in any respect. Any information that has previously been released to the public cannot be considered confidential or privileged.

#### ARTICLE IV

#### ACQUISITION OF OTHER GOVERNMENTAL PROPERTY; CONVEYANCE OF PROPERTIES

##### 4.1 [Intentionally Deleted]

4.2 Acquisition of Other Governmental Property. The City has invested significant time and funds in its efforts to acquire the Other Governmental Property. The City shall continue to use good faith efforts to negotiate and enter into written purchase agreements with the owners of the remaining Other Governmental Property in order to acquire such parcels under terms and conditions acceptable to the City, in its sole and absolute discretion. From time to time, upon request from Master Developer, the City will meet with Master Developer to discuss the City's progress in acquiring such parcels. In the event the City, for any reason, is unable to acquire one or more parcels of Other Governmental Property which Master Developer intends to improve or cause to be improved pursuant to this Agreement, then this Agreement shall automatically be deemed to be amended to exclude such parcel(s) from the Property and Master Developer shall have no obligation to remediate, redevelop or perform any other services for such parcel(s). Upon the written request of either Party, the other Party shall join the requesting Party in executing, acknowledging and Recording such an amendment to this Agreement.

4.3 Conveyance of Property - City to Master Developer. Effective contemporaneously with the Effective Date of this Agreement, the City and Master Developer shall enter into and execute a mutually approved Amended and Restated First Phase Land and Improvements Lease (the "First Phase Lease"), subject to approval by ordinance adopted by the City Council, pursuant to which the City shall convey to Master Developer a leasehold interest in the Hotel and Conference Center Component comprising the First Phase. At such time as Master Developer desires to acquire any other portions of the Property, by either deed (Section 4.3.3) or lease (Section 4.3.4), and so long as Master Developer is not in Default of this Agreement, Master Developer shall deliver a written notice to the City (the "Transfer Notice"), which shall state: (a) the legal description of the portion of the Property to be conveyed or leased to Master Developer (the "Transfer Land"); (b) the Master Developer's opinion and calculation of the applicable purchase price or lease rate as set forth in Section 4.3.5 below; and (c) the date by which the closing of the conveyance or lease of such Transfer Land is desired by Master Developer; provided, that Exhibit M sets forth the legal description of the Transfer Land for the Residential Component. The Transfer Notice for the Transfer Land which is part of the premises to be leased pursuant to the First Phase Lease shall be delivered by Master Developer to the City contemporaneously with the execution of the First Phase Lease. The City will convey only a



leasehold interest in the Transfer Land for all Components other than the Residential Component; the Transfer Land for the Residential Component will be conveyed by special warranty deed. The City, at its cost, shall provide a standard owner's title insurance or leasehold insurance policy for the Transfer Land; however if the Master Developer requires an ALTA extended policy or any title policy endorsements, the Master Developer shall pay any additional cost thereof. The conveyance or lease of the Transfer Land to Master Developer is subject to approval by ordinance adopted by the City Council, and is further subject to the following:

**4.3.1 Legal Description.** The legal description of the Transfer Land to be conveyed or leased to Master Developer shall be determined in accordance with a survey (the "Survey") prepared by a registered land surveyor in the State of Arizona and mutually and reasonably acceptable to the City and Master Developer. Master Developer shall pay the cost of the Survey.

**4.3.2 Condition of Property.** The City makes no warranty as to the condition of the Property. All Transfer Land and any Improvements conveyed by or leased from City to Master Developer will be delivered in their then "As Is" condition. The City in accordance with Section 3.7 shall make available to the Master Developer to the extent in the City's possession all studies, assessments, information, etc. relating to the condition of the Property and previous City actions related to the Property.

**4.3.3 Transfer Land for Residential Component.** Fee simple title to the Transfer Land for the Residential Component will be conveyed by the City to Master Developer pursuant to a special warranty deed executed by the City in a form substantially as shown on Exhibit H attached hereto and incorporated herein. The City and Master Developer shall enter into an escrow with a third party escrow agent mutually acceptable to the City and Master Developer ("Escrow Agent"), who shall hold all documents, receive all monies and perform such other acts as are normal and customary for a commercial escrow agent in similar transactions. Notwithstanding anything to the contrary in this Agreement or elsewhere, the following conditions must be satisfied before the City conveys the Development Site land to Master Developer for the Residential Component:

**4.3.3.1 Certificate of Occupancy for Hotel and Conference Center Component.** The City shall have issued a Certificate of Occupancy for the Hotel and Conference Center Component.

**4.3.3.2 Old City Hall.** The Master Developer shall have performed or completed the following work (the "Old City Hall Work") in connection with the old existing City Hall (the "Old City Hall Building") as depicted on the Old City Hall Site Plan attached as Exhibit N hereto, all at the sole cost and expense of Master Developer and subject to the reasonable approval of the City, such approval to be given if the Old City Hall Work has been performed or completed in accordance with the ADP for such work approved by the City pursuant to Section 3.3:

(a) That portion of the existing Old City Hall Building designated as "Building to be Removed" on the Old City Hall Building Site Plan shall be demolished and, together with all resulting debris, removed from the Riverfront Redevelopment Area, with all utility lines serving such demolished portion to be capped off and all environmental conditions resulting solely from the demolition of that portion of the Old City Hall Building to be remediated in accordance with Section 4.3.3.3 below;

(b) The existing vehicular parking for the Old City Hall Building will be reconfigured into 24 parking spaces as depicted on the Old City Hall Site Plan; and

(c) The existing plant material, boulders and other landscape features for the Old City Hall Building will be reconfigured and replanted as depicted on the Old City Hall Site Plan, with any irrigation system piping of no further use to be capped off.

The City shall be responsible for all exterior and other work to the portion of the Old City Hall Building which remains after such demolition, and such work shall be completed by the date on which the Old City Hall Work is completed.

**4.3.3.3 Environmental Remediation.** The Old City Hall Work shall include all environmental remediation required by and in accordance with Applicable Laws for only the portion of the Old City Hall Building to be removed, it being agreed by the City that the City shall be responsible for the remediation, if any, required for the portion of the Old City Hall Building which remains after such demolition. Upon completion of such environmental remediation Master Developer will provide the City with a Phase I environmental report of the Old City Hall site reasonably acceptable to and naming the City as a reliant party.

**4.3.3.4 Insurance; Bonds.** The insurance requirements of Section 9.4 shall apply with respect to the Old City Hall Work. In addition, Master Developer shall provide the City with performance and payment bonds reasonably satisfactory to the City prior to the commencement of the Old City Hall Work.

**4.3.3.5 Indemnity.** Master Developer shall indemnify, defend and hold the City and its officers, employees, contractors, agents and representatives harmless from any and all injuries, damages, claims, costs, fees (including court costs and witness and attorney's fees), losses, damages and liabilities of any kind, expressly excluding those incurred to the extent of the gross negligence or willful misconduct of the City or its officers, agents, contractors or employees, but including, without limitation, mechanics' or materialmen's liens, which may be asserted against or incurred by the City, or the Property resulting from or arising out of the Old City Hall Work. Notwithstanding any provision in this Agreement



to the contrary, Master Developer and the City agree that the foregoing indemnification obligations shall survive the closing of any transaction involving the Property or the rescission, cancellation or termination of this Agreement for any reason.

**4.3.3.6 Historic District Review Commission Approval.** The HDRC shall have approved the Old City Hall Work prior to the commencement thereof.

**4.3.4 Land and Improvements Lease.** In addition to the Components leased pursuant to the First Phase Lease, the City shall convey a leasehold interest in the other Components of the Property, except the Residential Component, by Land and Improvements Leases, each such Land and Improvements Lease to be substantially in the form of the First Phase Lease, with such revisions as are appropriate for the particular Component or Components involved, including, without limitation, the relevant lease rate as determined in accordance with Section 4.3.5 below. At the end of the term of any Land and Improvements Lease, such Land and Improvements Lease shall terminate, and quiet and peaceable possession of the demised premises, including all Improvements and additions thereto and alterations thereof, shall be surrendered in good condition and repair (reasonable wear and tear excepted), free of any debt or other encumbrances not previously approved in writing by the City.

**4.3.5 Purchase Price or Lease Rate.** The purchase price of the Transfer Land for the Residential Component, and the lease rate of each Component of the Property other than the Residential Component (regardless of whether such leased Components are severally or jointly leased by one or more Land and Improvements Leases) shall be determined as follows:

**4.3.5.1 Hotel and Conference Center Component.** The annual lease rate for the Hotel and Conference Center Component shall be zero dollars (\$0) for the first thirty-five (35) years of the term of the First Phase Lease. After the initial thirty-five (35) years of such First Phase Lease term, the annual lease rate for the Hotel and Conference Center Component for the remaining term of the First Phase Lease shall be equal to three percent (3%) of the Hotel room revenue for each preceding year.

**4.3.5.2 [Intentionally Deleted]**

**4.3.5.3 Commercial/Residential Apartments Component.** The annual lease rate for the Commercial/Residential Apartments Component shall be twenty cents (\$.20) per square foot of Transfer Land for the Commercial/Residential Apartments Component, subject to an annual CPI adjustment beginning on the tenth (10<sup>th</sup>) anniversary of the Land and Improvements Lease for the Commercial/Residential Apartments Component and continuing each year thereafter for the remaining term of such Land and Improvements Lease.