

**AMENDMENT AND CONSENT TO ASSIGNMENT
OF MASTER PLANNING AND MARKETING AGREEMENT
WITH A RELEASE AND ESTOPPEL**

THIS AMENDMENT AND CONSENT TO ASSIGNMENT OF MASTER PLANNING AND MARKETING AGREEMENT WITH A RELEASE AND ESTOPPEL ("**Consent**") is made on September __, 2019, by and among J & J COMMERCIAL PROPERTIES, INC. DBA Commercial Properties Inc (ARIZONA), an Arizona corporation ("**CPI**"), CITY OF MARICOPA, ARIZONA, an Arizona municipal corporation (the "**City**"), COPPER SKY COMMERCIAL SENIOR HOUSING, LLC, an Arizona limited liability company ("**Copper Sky Senior Housing**"), COPPER SKY COMMERCIAL MIXED USE NORTH, LLC, an Arizona limited liability company, ("**Copper Sky Mixed Use North**") and COPPER SKY COMMERCIAL MIXED USE SOUTH, LLC, an Arizona limited liability company ("**Copper Sky Mixed Use South**"), (Copper Sky Senior Housing, Copper Sky Mixed Use North and Copper Sky Mixed Use South are individually referred to as Assignee; collectively referred to as the "**Assignees**"). All of the foregoing entities are referred to herein as the "**Parties**."

RECITALS

- A. City and CPI are parties to that certain Master Planning and Marketing Agreement dated September 4, 2018 (the "**Master Agreement**").
- B. The Master Agreement does not allow CPI to assign its interest therein.
- C. CPI desires to assign its interest in the Master Agreement and has identified the Assignees as three separate qualified entities that are willing to perform the obligations of CPI under the Master Agreement. The Assignees will assume and perform the rights and obligations of CPI under the Master Agreement, including the purchase and development of the properties identified in the site plan attached and incorporated into this Consent as Exhibit A.
- D. City, CPI and the Assignees desire to amend the Master Agreement to allow for such assignment and adequately compensate CPI for the services provided by CPI under the Master Agreement.
- E. CPI and the City desire to resolve any disputes regarding the compensation due to CPI under either the Master Agreement or this Consent and to provide a mutual release of any and all claims related to the Master Agreement, this Consent, or the Copper Sky Commercial Property.

AGREEMENTS

Now, therefore, in consideration of the foregoing recitals and representations and the mutual promises contained in this Consent, the Parties agree as follows:

- 1. Master Agreement Amendment. The Master Agreement shall be amended as follows:
 - (a) All references to "CPI" shall be replaced with "Assignees".
 - (b) The obligation to provide the Master Plan for the Copper Sky Commercial Property and the Building Designs for Phase 1 described in the first sentence of the second paragraph of Section 1 of the Agreement is hereby extended to March 31, 2020, or as further extended by mutual written agreement of City and Assignees (the "**Master**

Plan/Building Design Delivery Date”). The delivery dates for all other delivery obligations in Section 1 of the Master Agreement, such as marketing material, and the CC&R’s, remain subject to the approval of the Building Designs, as identified in Section 1, subject to the new Master Plan/Building Design Delivery Date. The Parties acknowledge that the obligation to provide a proposal for hotel development in the penultimate paragraph of Section 1, and the first paragraph of Section 2, has been satisfied.

(c) Immediately following the execution and delivery of this Consent, City and Assignees shall exercise commercially reasonable efforts to agree upon the terms and conditions of Purchase and Sale Agreements and a related Development Agreement(s) which shall serve as the Disposition and Development Agreement referenced in the Master Agreement (“DDA”). The DDA shall be subject to the Master Agreement and this Consent.

(d) Section 3 shall be deleted in its entirety and replaced with the following:

“The Master Agreement, as modified by this Consent, shall expire on September 3, 2021. In the event City has sold or leased any one Lot (as described in Section 8 below) on or before September 3, 2021, the expiration shall be extended through September 3, 2022. In the event the City has sold or leased any two Lots (as described in Section 8 below) on or before September 3, 2022, the expiration will be extended through September 3, 2023.”

(e) Section 8 shall be deleted in its entirety and replaced with the following:

“The City and Assignee’s rights under the Master Agreement, as modified by this Consent, may be terminated by either the City or Assignee upon thirty (30) days written notice with identifies the cause and opportunity to resolve (“**Defect Notice**”). Identified cause may include (i) refusing or failing to supply enough properly skilled employees or contractors to complete the duties set forth in the Master Agreement, as modified by this Consent; (ii) disregarding laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or (iii) is otherwise guilty of a breach of a provision of the Master Agreement, as modified by this Consent, or the DDA. The defaulting Party shall have up to thirty (30) days after receipt of Defect Notice to cure the defects identified. If Assignee’s rights under this Master Agreement, as modified by this Consent, is terminated, Assignee shall deliver to City all work in any state of completion at the date of effective termination.

In the event that an Assignee fails to perform an obligation under this Master Agreement, as modified by this Consent, or the DDA and the City elects to terminate the Assignees’ rights under the Master Agreement or the DDA, as modified by this Consent, City shall provide written notice of such termination to CPI (the “**Reinstatement Notice**”). Following CPI’s receipt of a Reinstatement Notice, CPI shall have thirty (30) days to inform the City, in writing, of its desire to assume the Assignees’ obligations under the Master Agreement, as modified by this Consent, and the DDA (the “**Assumption Notice**”). If CPI elects to assume Assignees’ obligations, CPI shall have sixty (60) days following the date of the Assumption Notice to perform the obligations described in the Default Notice (the “**Delinquent Assumed Obligations**”), and such additional time as may be reasonably necessary to complete the performance of the Delinquent Assumed Obligations, provided CPI has

commenced and is diligently pursuing cure of the Delinquent Assumed Obligations. CPI's interest described in this paragraph is the "Reversionary Interest."

(f) Section 21 shall be deleted in its entirety and replaced with the following:

"Any party may assign or otherwise transfer all or any portion of its interest in this Agreement with the prior written consent of the City."

2. Consent of the City. The City hereby consents to CPI's assignment to Assignees of the Master Agreement, as amended herein.

3. Assumption by Assignees. Each Assignee hereby assumes and agrees to perform and discharge when due the obligations of CPI under the Master Agreement, as modified by this Consent.

4. Certification. City and CPI hereby certify for the benefit of Assignees as follows:

(a) The Master Agreement, as amended herein, is in full force and effect and has not been previously modified or amended;

(b) The Effective Date of the Master Agreement is September 4, 2018 and the Term of the Master Agreement expires on September 3, 2021, subject to the extensions described above; and

(c) The Master Agreement has not been otherwise assigned or pledged by CPI.

5. Notices. After the date of this Consent, all notices shall be delivered to Assignees at the following addresses:

COPPER SKY COMMERCIAL SENIOR HOUSING LLC
Attention: Bart Shea
2055 S Cottonwood Dr.
Tempe, AZ, 85282

COPPER SKY COMMERCIAL MIXED-USE NORTH, LLC
Attention: Bart Shea
2055 S Cottonwood Dr.
Tempe, AZ, 85282

COPPER SKY COMMERCIAL MIXED-USE SOUTH, LLC
Attention: Bart Shea
2055 S Cottonwood Dr.
Tempe, AZ, 85282

6. Modification of Agreement. No modification of this Consent shall be binding on the parties unless in writing and signed by all parties and acknowledged in writing by Assignees. No modification of this Consent or the Master Agreement shall be effective against any rights or obligations of CPI unless it is signed by CPI.

7. Release. CPI and City hereby irrevocably and unconditionally release and discharge one another, their past, present, and future Mayor, Council Members, officers, employees, representatives, trustees, administrators, fiduciaries, attorneys, insurers, agents, subsidiaries, affiliated entities,

predecessors, successors, heirs, and assigns, jointly and severally ("Released Parties"), from any and all claims, demands, liens, agreements, covenants, actions, suits at law or equity, obligations, debts, damages, judgments, liabilities, attorneys' fees, costs, and expenses of whatever kind, known or unknown, suspected or unsuspected, which they have or had based on any matter or thing occurring prior to the execution of this Consent, including but not limited to claims which were or could have been asserted or claims that arise from or relate to the Master Agreement, any compensation related thereto or any discussions arising between CPI, City or any other entity. These released claims include, but are not limited to, all claims for breach of contract, impairment of economic opportunity, any tort, including but not limited to defamation, invasion of privacy, intentional interference with contract or prospective advantage, or any violation of any constitutional right and any and all claims arising from any alleged violations by or on behalf of any Released Party under every applicable federal, state, or local law, rule, regulation, ordinance, public policy or common law, any due process or other constitutional theory, any Arizona statute, any federal statute, any common law claim including implied or express contract, the covenant of good faith and fair dealing, or any other claim in tort or contract arising under any theory of the law ("Released Claims"). The Released Claims do not include the Parties' obligations under this Consent.

8. Consideration. In consideration of this Consent, the services provided by CPI pursuant to the Master Agreement and the Released Claims, City agrees to compensate CPI as follows (collectively, the "Consideration"):

- (a) Up to a maximum amount of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) for the reasonable costs incurred by CPI in fulfilling its obligations under the Master Agreement from the Effective Date through the date of this Consent, which costs shall be supported by a detailed itemization of all such costs and copies of receipts or billings (collectively, the "Cost Itemization"). CPI shall provide the Cost Itemization to the City within thirty (30) days of executing this Consent and City shall pay within fifteen (15) days following the City's receipt of the Cost Itemization.
- (b) Two Hundred Two Thousand Eight Hundred Fifteen and 00/100 Dollars (\$202,815.00) for commission to be paid as follows:
 - i. Forty-One Thousand Nine Hundred Forty-Two and 14/100 Dollars (\$41,942.14) concurrently upon the City executing a lease or closing on the sale of Lot 1, as set forth in Exhibit B, by Copper Sky Commercial Senior Housing, LLC, or affiliated entity, if closed prior to the expiration of the Master Agreement as modified by this Consent;
 - ii. Seventy-Six Thousand Eight Hundred Twenty-Six and 32/100 Dollars (\$76,826.32) concurrently upon the City executing a lease or closing on the sale of Lot 2, as set forth in Exhibit B, by Copper Sky Commercial Mixed Use North, LLC, or affiliated entity, if closed prior to the expiration of the Master Agreement as modified by this Consent;
 - iii. Eighty-Four Thousand Forty-Six and 54/100 Dollars (\$84,046.54) concurrently upon the City executing a lease or closing on the sale of Lot 3, as set forth in Exhibit B, by Copper Sky Commercial Mixed Use South, LLC, or affiliated entity, if closed prior to the expiration of the Master Agreement as modified by this Consent; and
- (c) Three Hundred Twenty-Two Thousand One Hundred Fifty-Two and 00/100 Dollars (\$322,152.00) in additional compensation to be paid as follows:

- i. Sixty-Six Thousand Six Hundred Twenty-Eight and 00/100 Dollars (\$66,628.00) to be paid as revenues are generated from the project developed on Lot 1, as set forth in Exhibit B, by Copper Sky Commercial Senior Housing, LLC, or affiliated entity. City hereby agrees that CPI shall be entitled to an amount equal to all of the revenues generated from the project until this amount is paid in full to CPI.
- ii. One Hundred Twenty-Two Thousand Forty-Three and 00/100 Dollars (\$122,043.00) to be paid as revenues are generated from the project developed on Lot 2, as set forth in Exhibit B, by Copper Sky Commercial Mixed Use North, LLC, or affiliated entity. City hereby agrees that CPI shall be entitled to an amount equal to all of the revenues generated from the project until this amount is paid in full to CPI.
- iii. One Hundred Thirty Three Thousand Four Hundred Eighty One and 00/100 Dollars (\$133,481.00) to be paid as revenues are generated from the project developed on Lot 3, as set forth in Exhibit B, by Copper Sky Commercial Mixed Use South, LLC, or affiliated entity. City hereby agrees that CPI shall be entitled to an amount equal to all of the revenues generated from the project until this amount is paid in full to CPI.

As used herein, “**affiliated entity**” shall mean any organization that is directly or indirectly controlled by or under common ownership of any of the Assignees, or the members thereof. CPI hereby acknowledges and agrees that CPI shall not be entitled to the compensation set forth above related to any Lots (identified on the Exhibit B) not leased or purchased by Assignees or an affiliated entity prior to the expiration of the Master Agreement, as may be extended by this Consent. CPI hereby further acknowledges and agrees that the payment of any consideration described in this Section 8 and the Reversionary Interest described above is full, fair and adequate consideration for the services provided under the Master Agreement and the covenants and obligations set forth under this Consent, specifically including, but not limited to, the Release under Section 7, even if the consideration described in this Section 8 is not paid in full and the Reversionary Interest is not realized according to the terms set forth therein.

9. Binding. This Consent, and all of its terms, shall inure to the benefit of and bind the heir, personal representatives, successors and assigns of each of the Parties.

10. Venue and Jurisdiction. This Consent shall be construed in accordance with the laws of the State of Arizona, and the Pinal County Superior Court shall be the proper and exclusive venue for any litigation arising out of this Consent.

11. Severability. If any part, term or provision of this Consent shall be held illegal, unenforceable or in conflict with any law, the validity of the remaining portions and provisions hereof shall not be affected.


12. All other terms and conditions of the Master Agreement are to continue in full force and effect as stated and agreed to in the Master Agreement as if fully set forth herein.

[SIGNATURES INCLUDED ON NEXT PAGES]

IN WITNESS WHEREOF, the Parties have executed this Consent or have caused the same to be executed by their respective duly authorized representatives as of the date first set forth above.


CPI (Assignor):

J & J Commercial Properties, Inc. DBA Commercial Properties Inc (ARIZONA), an Arizona corporation

By: 
Name: Brian Ruddle
Title: Partner / General Manager

THE CITY:

CITY OF MARICOPA, ARIZONA, an Arizona municipal corporation

By: 
Name: Ricky A. Horst
Title: City Manager

ATTEST:


By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney


ASSIGNEE:

**Copper Sky Commercial Senior Housing, LLC, an
Arizona limited liability company**

By: 
Name: BART SHEA
Its: Member

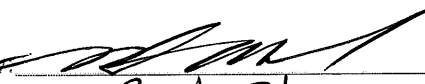
ASSIGNEE:

**Copper Sky Commercial Mixed Use North, LLC, an
Arizona limited liability company**

By: 
Name: Bart Shea
Its: Member

ASSIGNEE:

**Copper Sky Commercial Mixed Use South, LLC, an
Arizona limited liability company**

By: 
Name: Bart Shea
Its: Member

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Exhibit A

Site Plan

COPPER SKY COMMERCIAL SENIOR HOUSING LLC

Parcel No.:

Attention: Bart Shea

2055 S Cottonwood Dr.

Tempe, AZ, 85282

COPPER SKY COMMERCIAL MIXED USE NORTH, LLC

Parcel No.:

Attention: Bart Shea

2055 S Cottonwood Dr.

Tempe, AZ, 85282

COPPER SKY COMMERCIAL MIXED USE SOUTH, LLC

Parcel No.:

Attention: Bart Shea

2055 S Cottonwood Dr.

Tempe, AZ, 85282

Exhibit B