

**When recorded return to:**

City Clerk  
City of Litchfield Park  
214 W. Wigwam Blvd.  
Litchfield Park, AZ 85340

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**FIRST AMENDMENT TO PROFORMA  
DEVELOPMENT AGREEMENT WITH RIGHT TO REQUIRE AND COMPLY WITH  
RECONVEYANCE OBLIGATIONS**

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT ("First Amendment") is made and entered into this 15th day of May, 2024, by and between the City of Litchfield Park, an Arizona municipal corporation ("Litchfield Park") and LP Heritage Partners, LLC, an Arizona limited liability company ("Developer"). Litchfield Park and Developer are each a "Party" to this First Amendment and may be referred to herein collectively as "Parties."

**RECITALS**

A. **WHEREAS**, Litchfield Park and Developer are parties to that certain Proforma Development Agreement with Right to Require and Comply with Reconveyance Obligations, recorded on August 8, 2022, as instrument 20220628123, in the records of Maricopa County, Arizona (hereinafter the "Development Agreement").

B. **WHEREAS**, in accordance with the terms of the Development Agreement and certain Purchase and Escrow Instructions dated March 30, 2022, Developer purchased Lot 3 of Litchfield Square (the "Property") and will construct a two-story mixed-use building on the Property (the "Project").

C. **WHEREAS**, as part of Developer's parking requirements for the Project, Developer is obligated under the terms of the Development Agreement to construct and install certain Developer Off-Site Improvements, which improvements include, in part, the construction and installation of public parking on Lot 4 of Litchfield Square.

D. **WHEREAS**, Lot 4 of Litchfield Square is designated and shall remain in perpetuity dedicated and used for public parking.

E. **WHEREAS**, to accommodate Developer's Off-Site Improvement obligations for the construction of the parking improvements on Lot 4, the Parties shall enter into a supplemental Purchase Agreement and Escrow Instructions for the purchase of Lot 4 for a purchase price of \$8.60 per sq. ft., which purchase shall be subject to the terms of the Development Agreement and this First Amendment, and may be completed by Developer or one of Developer's partners, members or related entities in connection with a 1031 exchange.

F. **WHEREAS**, the Parties wish to amend the Development Agreement to address the purchase of Lot 4 and to update the Project Schedule and address the timing and payment of Project permits.

**NOW, THEREFORE**, for and in consideration of the foregoing recitals, and the mutual promises and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties intending to be legally bound, for themselves and their successors and assigns, covenant and agree as follows:

### **AGREEMENT**

- 1. Incorporation of Recitals.** The Parties acknowledge that the foregoing Recitals are a material part of this First Amendment and are incorporated herein.
- 2. Definitions.** Except as otherwise defined herein, all capitalized terms used herein shall have the meanings ascribed thereto in the Development Agreement.
- 3. Developer Agreements.** The following amendments are hereby made to the respective provisions of Paragraph 4 of the Development Agreement:

3.1 Section 4 – Developer Agreements is hereby amended to add the following language:

- 4. Developer Agreements.** Developer shall build and construct a two-story mixed-use building on Lot 3, together with public parking infrastructure and related improvements on Lot 4. Lot 4 shall be utilized exclusively for free public parking, containing no less than 106 parking spaces, which use shall remain in perpetuity, regardless of whether or not an easement is recorded for such use. Developer's improvements for Lot 3 and Lot 4 shall be subject to Litchfield Park's normal plan submittal, review and approval process, day-to-day inspection services and Litchfield Park's financial assurance requirements. Developer's Off-Site Improvement obligations for Lot 4 as detailed on Exhibit "E" to the Development Agreement are incorporated herein, and include: (1) the construction of at least 106 parking spaces and a trash enclosure; (2) the inclusion of an extension to Fairway Drive with an entrance-only connection to Fairway Drive, and an extension toward Desert Avenue to connect to a Litchfield Park built driveway, extending north from the Village Parkway /Desert Avenue traffic circle, all in accordance with the preliminary designs prepared by Litchfield Park or as may be amended and agreed to by the Parties; (3) parking lot improvements shall be provided with required pavement and striping to delineate parking spaces and drive aisles, lighting, and landscaping to Litchfield Park's standards; and (4) the installation of a bike rack between the buildings and the parking lot as specified by Litchfield Park. Developer agrees to construct curb, gutter, asphalt, and parking improvements north of the northern boundary of the Lot 4 property line located between northern boundary of Lot 4 and Fairway Drive. Litchfield Park will reimburse Developer for the cost

of the installation of the asphalt inside curb and gutter between northern boundary of Lot 4 and Fairway Drive. All other Developer Off-Site Improvements not included herein for Lot 4 shall remain an obligation under the Development Agreement. Developer shall combine Lot 3 and Lot 4 into one lot within 180 days of closing, however, any such combination shall require the original area of Lot 4 to be utilized exclusively for free public parking in perpetuity. Litchfield Park, if it deems it necessary, shall have the right at any time in the future, and at no cost, to record a public access easement on the area of Lot 3 that is reserved and improved for public parking and access connections to other Litchfield Square rights-of-way.

3.2 Section 4.1 – Developer Off-Site Improvements is hereby amended to add the following language:

4.1 Developer Off-Site Improvements. Exhibit E, which details Developer’s obligations for Developer’s Off-Site Improvements is amended to remove those obligations associated with Lot 4, which are now included as obligations under this First Amendment and Developer’s purchase of Lot 4.

3.3 Section 4.4 – Project Schedule is hereby deleted in its entirety and replaced with the following language:

4.4. Project Schedule. Developer shall comply with the following schedule:

4.4.1 Commencement of Construction of Project, shall be no later than December 1, 2024.

4.4.2 Developer has submitted applications for necessary construction permits prior to the groundbreaking event. Payment of the permit application fees will be made no later than November 1, 2024, and prior to the issuance of the permits.

4.4.3 Completion of Construction of Project shall be eighteen (18) months following Commencement of Construction, subject to extension as provided herein.

4.4.4 The City Council may approve one extension to the Project Schedule for Commencement of Construction and/or Completion of Construction in the event political, economic, or health conditions make developing the Property not commercially feasible, but in no event shall such extension exceed three hundred and sixty (360) days.

4.4.5 In addition to any other remedies provided for in the Development Agreement, failure to comply with the Commencement of Construction date set forth in Paragraph 4.4.1 shall result in the immediate cancelation of all permits and a payment to Litchfield Park of 10% of the total permit fee cost for every month of delay on section 4.4.1 or 4.4.4.

**4. Recordation.** This First Amendment shall be recorded in the Official Records of the Maricopa County, Arizona, Recorder, not later than ten (10) days after this First Amendment has been executed by Litchfield Park and Developer.

**5. Covenants Running With Land; Inurement.** The covenants, conditions, terms and provisions of this First Amendment relating to use of the Property shall run with the land and shall be binding upon and shall inure to the benefit of the Parties and their respective permitted successors and assigns with respect to the Project. Wherever the term "Party" or the name of any particular Party is used in this First Amendment, such term shall include any such Party's permitted successors and assigns.

**6. Amendment.** Except as otherwise amended hereby, all of the terms and provisions of the Development Agreement shall remain in full force and effect.

**7. Severability.** The Parties each believe that the execution, delivery and performance of this First Amendment are in compliance with all Applicable Laws. However, in the unlikely event that any provision of this First Amendment is declared void or unenforceable (or is construed as requiring Litchfield Park to do any act in violation of any Applicable Law, constitutional provision, law, regulation, City Code), such provision shall be deemed severed from this First Amendment and this First Amendment shall otherwise remain in full force and effect. Unless prohibited by any Applicable Law, the Parties further shall perform all acts and execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this First Amendment, as reformed.

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

**[SIGNATURES ON FOLLOWING PAGES.]**

IN WITNESS WHEREOF, the Parties have entered into this First Amendment on or as of the day and year first written above.

**DEVELOPER:**

LP Heritage Partners, LLC,  
an Arizona limited liability company

By:   
Richard Hirth, Manager

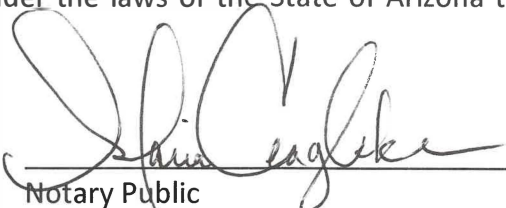
STATE OF ARIZONA

County of Maricopa

On this 8<sup>th</sup> day of May, 2024, before me, a notary public in and for said state, personally appeared Richard Hirth, a Manager of LP Heritage Partners, LLC, an Arizona limited liability company, 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 First Amendment to Pro Forma Development Agreement with Right to Require and Comply with Reconveyance Obligations; on behalf of the Company.

I certify under PENALTY OF PERJURY under the laws of the State of Arizona that the foregoing paragraph is true and correct.

My Commission Expires:

  
Notary Public



**LITCHFIELD PARK:**

CITY OF LITCHFIELD PARK,  
an Arizona municipal corporation

By: \_\_\_\_\_  
Thomas L. Schoaf, Mayor

STATE OF ARIZONA            )  
  ) ss.  
County of Maricopa         )

On this \_\_\_\_ day of May, 2024, before me, a notary public in and for said state, personally appeared Thomas L. Schoaf, the Mayor of the City of Litchfield Park, an Arizona municipal corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the First Amendment to Pro Forma Development Agreement with Right to Require and Comply with Reconveyance Obligations; on behalf of the City of Litchfield Park.

I certify under PENALTY OF PERJURY under the laws of the State of Arizona that the foregoing paragraph is true and correct.

My Commission Expires:

\_\_\_\_\_  
Notary Public

ATTEST:

\_\_\_\_\_  
Terri Roth, MMC, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Pierce Coleman, PLC, City Attorneys  
By: Joseph D. Estes