Staff Summary Report

Tempe

Council Meeting Date: February 7, 2008 **Agenda Item Number: _____**

SUBJECT: This is the second public hearing of an Ordinance authorizing the Mayor to execute a development and disposition agreement with **CARDINAL CAPITAL MANAGEMENT, INC.,** a special warranty deed and related documents for the sale of real property.

DOCUMENT NAME: 20080207cdls01 **COMMUNITY DEVELOPMENT/REDEVELOPMENT ADM (0403-01)** Ordinance No. 2008.02

SUPPORTING DOCS: Yes

COMMENTS: Request approval of Ordinance No. 2008.02 authorizing the Mayor to execute a Development and Disposition Agreement, authorizing the sale of real property located 2448 E Apache Blvd.

PREPARED BY: Larry Schmalz , Principal Planner (x8924)

REVIEWED BY: Chris Salomone, Community Development Manager (x8294)

LEGAL REVIEW BY: Cynthia McCoy, Assistant City Attorney (x2187)

FISCAL NOTE: The City will sell remnant Light Rail/Federal Transit Administration property with the proceeds ($270,000) returning to the Light Rail Project and FTA.

RECOMMENDATION: Staff recommends that the City Council approve Ordinance No. 2008.02

ADDITIONAL INFO: Cardinal Capital Management has acquired the adjacent property and has submitted plans to develop both properties as a mixed income, mixed use project for the Deaf, Deaf/Blind and hard of Hearing Seniors. The development was awarded Low Income Housing Tax Credits.

ORDINANCE NO. 2008.02

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE A DEVELOPMENT AND DISPOSITION AGREEMENT, SPECIAL WARRANTY DEED AND RELATED DOCUMENTS AND APPROVING THE TRANSFER OF REAL PROPERTY TO CARDINAL CAPITAL MANAGEMENT INC.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

A. WHEREAS the City is the owner of certain real property located on East Apache Boulevard and described in ***Exhibit A*** (the "City Property"), attached hereto and made a part thereof;

B. WHEREAS **CARDINAL CAPITAL MANAGEMENT INC.** ("Developer") owns and proposes to develop the property located at 2428 East Apache Boulevard in Tempe, Arizona, which is located adjacent to the City Property;

C. WHEREAS the Developer desires to purchase the City Property and incorporate the City Property into the adjacent proposed development; and

D. WHEREAS the City has determined that it is in the best interest of the City to sell the City Property to the Developer ; and

E. WHEREAS the City will enter into a Development and Disposition Agreement, in substantially the form attached hereto as ***Exhibit "B"*** (the "Agreement") that provides for the conveyance of the City Property to **CARDINAL CAPITAL MANAGEMENT INC.**

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

Section 1: That the sale of the City Property is hereby approved subject to compliance with the terms of the Development and Disposition Agreement referred to below.

Section 2: That the Mayor is authorized to execute the Development and Disposition Agreement, the Special Warranty Deed and the other documents referenced in the Development and Disposition Agreement, and all other documents reasonably required to effectuate the sale of the City Property, and the other transactions contemplated by the Development and Disposition Agreement, with such minor modifications as may be necessary to carry out the provisions of this Ordinance.

Section 3: Pursuant to City Charter, Section 2.12, this ordinance will be effective thirty (30) days after adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this _____ day of _____, 2008.

_____
MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY

Exhibit "A"
Legal Description Parcel 1

Parcel No. 1:

Lot 15, Block 4, VICTORY TRACT, according to Book 31 of Maps, page 6, records of Maricopa County, Arizona.

EXCEPT the North 10 feet, which was previously conveyed to the City of Tempe in Docket 4289, page 339

Parcel No. 2:

That portion of Lot 1, Block 4, VICTORY TRACT, according to Book 31 of Maps, page 6, records of Maricopa County, Arizona, described as follows:

COMMENCING at the Northwest corner of said Lot 1;

THENCE South along the West line of said Lot1, a distance of 304 feet to a point 10 feet South f the Northeast corner of Lot 15 of said Block 4 and the TRU POINT OF BEGINNING;

THENCE East, along a line 10 feet South of and parallel to the Easterly prolongation of the North line of Lot 15 of said Block 4, to a point on a Easterly line of said Lot 1;

THENCE Southwesterly along the Easterly line of said Lot1 to the most southerly corner of said Lot 1;

THENCE North along the West line of said Lot 1, a distance of 86.02 feet to the TRUE POINT OF BEGINNING.

Exhibit "B"
Development and Disposition Agreement

WHEN RECORDED, RETURN TO:

City of Tempe Basket

DEVELOPMENT AND DISPOSITION AGREEMENT
(Apache ASL Trails)
Ordinance No. _____
C2008-__

THIS DEVELOPMENT AND DISPOSITION AGREEMENT (this "**Agreement**") is made and entered into as of the ____ day of _____, 2008, by and among the CITY OF TEMPE, an Arizona municipal corporation (the "**City**"), Cardinal Capital Management, Inc., an Arizona corporation (the "**Developer**").

RECITALS

A. The City issued a Request for Proposals (the "RFP") for the disposition and development of that certain City-owned real property legally described in ***Exhibit "A"*** attached hereto and depicted on that Parcel Map attached hereto as ***Exhibit "B"***, containing approximately 1.01 gross acres of land area (the "Property").

B. Developer responded to the RFP with a proposal to redevelop the Property as part of the adjacent property owned by Developer, as a mixed-use project, including market-rate and affordable dwelling units, and retail and office components. The City selected Developer pursuant to the RFP for exclusive negotiation rights with respect to the redevelopment of the Property.

C. The City recognizes that the Property has unique development constraints and challenges, including but not limited to the Property's irregular shape; limited access, the adjacent canal right of way and the Evergreen Access Easement that may impact, impede or delay the construction process.

D. City and Developer desire to redevelop the Property and acknowledge that development of the Property will result in significant benefits that will accrue to the City from the development of the Property by Developer, including, without limitation, the creation of new affordable and market rate residential dwellings, office and retail uses, the creation of neighborhood services, the stimulation of further economic development within the City, and other tangible and intangible, direct and indirect, benefits to the City and its citizenry. This Agreement is a development agreement pursuant to the provisions of A.R.S. §9-500.05.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto state, confirm and agree as follows:

AGREEMENT

1. **Definitions**. The following terms shall have the meanings set forth below whenever used in this Agreement, except where the context clearly indicates otherwise.

1.1 **"Business Day"** shall mean and refer to any day other than a Saturday or Sunday or legal holiday in the State of Arizona. Unless specifically referred to as a "business day", all days contemplated by this Agreement shall mean calendar days.

1.2 **"Certificate of Completion"** for the purposes of this Agreement, Certificate of Completion shall mean and refer to a final written acceptance of a completed and inspected building, structure or improvement located within the Project issued by the City Development Services Department and/or the City Public Works Department. The City will issue a separate Certificate of Completion as Developer completes construction of each building, structure or improvement located within the Project, to be further defined or phased in the PAD, in conformance with this Agreement, the Schedule of Performance and inspection by the City.

1.3 "**City**" shall mean and refer to the City of Tempe, Arizona, an Arizona municipal corporation, and any successor public body or entity.

1.4 **"Closing Date"** shall mean and refer to the date or dates set for conveyance of title by the City to Developer and the performance of all conditions (except those conditions expressly required to be performed earlier) relating thereto.

1.5 "**Developer**" shall mean and refer to Cardinal Capital Management, Inc., an Arizona corporation, and its permitted successors and assigns.

1.6 "**Easement Area**" shall mean and refer to an easement granted to the City by Salt River Project Agricultural Improvement and Power District (SRP), located adjacent to the eastern boundary of the Property as described in ***Exhibit C.***

1.7 "**Escrow Agent**" shall mean and refer to Fidelity National Title Insurance Company, Attention: Barbara Teel, (602) 224 - 8500.

1.8 **"Improvements"** shall mean and refer to all public and private improvements that may be constructed from time to time on the Property, including without limitation, all buildings, structures, road improvements, driveways, parking structures, parking facilities or surface parking lots, pedestrian parkways, enhanced streetscapes, walls, landscaping and other improvements of any type or kind, or any alteration of the natural terrain to be made or built by Developer pursuant to the terms of this Agreement.

1.9 **"Issuance Date"** shall mean and refer to the date on which a Certificate of Occupancy or a Certificate of Completion is issued by the City, whichever occurs first, for any building, structure or improvement, or portion or phase thereof, located within the Project.

1.10 "**PAD**" shall mean and refer to a planned area development approved by the City with respect to the development of a single building or structure or a group of buildings or structures within different parcels or phases of development of the Project, that sets forth the specific uses, densities, features or other development matters with respect to the Property, as set forth in ***Section 3*** below. For the purposes of this agreement, an amended PAD which has been approved by the City shall supersede any previously approved PAD.

1.11 "**Parties**" and "**Party**" shall collectively mean and refer to the City and Developer as the parties to this Agreement or each of the parties individually, as the context may require.

1.12 "**Project**" shall mean and refer to the overall development of the Property and adjacent parcel owned by Developer or portions thereof for residential, commercial and public uses together with appurtenant parking.

1.13 **"Property"** shall mean that certain real property referred to herein in Recital A and legally described in ***Exhibit "A"*** and depicted on the Parcel Map attached as ***Exhibit "B."***

1.14 **"Schedule of Performance"** shall mean and refer to that schedule of performance agreed to by the City and the Developer as set forth in ***Exhibit "D"*** attached hereto and incorporated herein by this reference.

2. **Conveyance of Property**. The Parties hereby acknowledge and agree that the following provisions shall apply with respect to the conveyances of the Property by the City to the Developer:

2.1 Escrow. The parties shall open escrow for the conveyance of the Property promptly after execution of this Agreement by providing Escrow Agent with a fully executed copy of this Agreement. Escrow shall be deemed opened on the date Escrow Agent acknowledges in writing its receipt of the fully executed Agreement (the "Opening of Escrow"). This Agreement shall serve as Escrow Instructions and, the parties may execute additional Standard Form Escrow Instructions, to the extent those Standard Form Instructions do not conflict with this Agreement and further provided that the thirteen day cancellation rights and other inapplicable provisions are deleted.

2.2 Consideration. On the Closing Date, Developer shall pay City the sum of $270,000 as the total purchase price for the Property (the "Purchase Price") in cash or other immediately available funds.

2.3 Condition of Title; Survey. The condition of title to the Property shall be subject to the review and approval of the City and Developer. The obligation of Developer to purchase the Property from City is contingent upon Developer's approval (to be exercised in its sole and absolute discretion) of each of the following conditions (the "Investigation Contingencies") within the time periods provided.

2.3.1 Developer's Approval of the Title Report and Survey. Fidelity Title (the "Title Company") shall deliver to Developer within ten (10) days after the Opening of Escrow a new or updated Preliminary Title Report, including legible copies of all Schedule B items reflected therein, showing the current condition of title for each Parcel of the Property prepared by Title Company (each such report, a "Preliminary Title Report") including a legal description of each Parcel of the Property. Within Twenty (20) Business Days after the Opening of Escrow (or as soon thereafter as reasonably possible), Developer (at Developer's expense) shall cause its Surveyor to deliver to City and Title Company a new ALTA/ACSM Land Title Survey of the Property (the "ALTA Survey"). The Title Company shall provide Developer and City with an amended Preliminary Title Report (the "Amended Preliminary Title Report") within five (5) days of receipt of the ALTA Survey for the Property, together with an amended legal description describing only the Property along with legible copies of all instruments of record referred to therein, if available, whether such items are referred to in the "Schedule B" or the "Requirements" sections thereof. The legal description of the Property shall be acceptable to Developer, City and the Title Company and lead to the issuance of an extended coverage owner's ALTA policy of title insurance in the amount of the Purchase Price covering Developer's interest in the Property. The title insurance shall be provided by Title Company. Developer shall have ten (10) Business Days after Developer's receipt of both the Amended Preliminary Title Report and the Survey to give written notice to City reasonably disapproving any material items contained in the Amended Preliminary Title Report or Survey. Failure of Developer to object to any item within the Amended Preliminary Title Report within the ten (10) Business Days shall be deemed acceptance of those items. City shall have no obligation to cure or remove any title matter objected to by Developer. If Developer timely delivers its written objections to City, City shall deliver a written response to Developer and Escrow Agent within five (5) Business Days after receipt of Developer's written objections, in which City shall state any actions which City intends to take and their anticipated effect on the matters to which Developer has objected. If City fails to deliver a response within such five-day period, City shall be deemed to have delivered a response indicating that it will not remove any of the items objected to by Developer. If City does not respond or if City's response does not state an intention to fully remove each item to which Developer has objected, then Developer shall deliver to City and Title Company within five (5) days after Developer receives City's response (or five (5) days after City has failed to respond), a written notice stating Developer's election either to (a) to terminate the Agreement, or (b) to waive Developer's objections and proceed with the transaction. Failure by Developer to make a timely election shall constitute an election to waive Developer's objections and proceed with the transaction. If City elects to cure or remove any title matter objected to by Developer, City shall promptly attempt to cure or remove all items it has agreed in writing to attempt to cure or remove and City's cure or removal of such items will be a condition to Close of Escrow, waivable only by Developer. Developer's obligation to close shall be conditioned on issuance by Escrow Agent of a title policy in an amount equal to the purchase price and containing only those exceptions approved in accordance with this Section.

2.3.2 Subsequent Title Matters. After execution of this Agreement, City shall not convey, lease, sell, assign, offer, pledge, encumber or otherwise transfer any part of the Property.

2.4 Taxes, Assessments and Bonds. All taxes and assessments imposed against each Parcel shall be prorated and apportioned between the City and the Developer as of the Closing Date.

2.5 Escrow Fees. Developer may obtain a policy of title insurance covering the Property at its expense in the amount of the purchase price or in such other amount as Developer may desire. The City and Developer shall each bear their own costs, including attorney's fees in connection with the conveyance, including without limitation negotiation, due diligence, investigation and closing. Developer shall pay all of customary escrow fees and recording fees.

2.6 As-Is - Where-Is; Access Rights. Except as specifically set forth in this Agreement, the Property and all improvements thereon, shall be conveyed in their existing "as is," "where is" condition. In that regard, Developer shall have the right to survey and examine the Property and any improvements thereon, including, but not limited to, the physical condition of the improvements, the availability of access, water, sewer and other utilities and services to the Property and the costs of securing same, the existence of hazardous or toxic substances or pollutants, and the zoning and applicable governmental regulations, statutes and ordinances pertaining to the Property, at any time after the execution of this Agreement, with any persons whom it shall designate, including, without limitation of the foregoing, appraisers, contractors, engineers and soil testing personnel. City shall permit access to the Property to Developer and any persons designated by Developer, and City shall afford them the opportunity to conduct, prepare and perform any surveys, appraisals, and any hydrological, topographical, environmental, traffic, feasibility and other engineering tests, studies, and reports upon the Property that Developer deems necessary or appropriate to assist it in determining whether the Property is appropriate for the purposes contemplated by Developer. If required by City, Developer shall execute a Right of Entry Agreement in form and substance satisfactory to City. Upon completion of all such tests, studies and reports, Developer shall fill all holes produced by it and restore the Property to its condition existing prior to any tests or inspections. Developer shall indemnify, protect, defend and hold City harmless from all claims, costs, fees or liability of any kind arising out of the acts of Developer or Developer's agents pursuant to this Section, except that Developer shall have no liability for discovery of pre-existing conditions (e.g. Developer shall not be responsible for remediating environmental contamination discovered by Developer).

2.4 Close of Escrow. The Closing Date for the Property shall be thirty (30) days after the earlier of (a) the issuance of building permits for the Project or the Improvements to be constructed by Developer on the Property, or (b) such other date as Developer and City may agree; but in no event shall the Closing Date occur later than 24 months after the date of this Agreement. The Closing shall take place at the office of the Escrow Agent, or at such other place or time as the City and Developer mutually agree in writing. At or prior to the Closing, the parties hereto shall execute and deliver such documents and perform such acts as are provided for herein, or as are necessary, to consummate the conveyance of the property, as applicable, to

Developer. On the Closing date the City shall execute and deliver a Special Warranty Deed conveying the Property to Developer, in substantially the form attached hereto as ***Exhibit "E"***.

3. Easement Area. If Developer acquires the Property, the Developer hereby agrees to redesign, improve and landscape the Easement Area, with input from and the prior written approval of the City and SRP (the "Easement Improvements"), in accordance with the Schedule of Performance. The Easement Improvements shall at a minimum, consist of the removal of the existing asphalt and gravel and its replacement with landscaping designed with the ability to adequately provide the access and support the weight requirements of emergency vehicles. Developer shall pay all costs, expenses and fees associated with the construction and maintenance of the Easement Improvements, and shall execute any additional documents evidencing its agreements as City or SRP may reasonably require. This requirement only applies to that portion of the Easement Area that is adjacent to and East of the Property and not that portion located north of the easterly prolongation of the north boundary line of the Property.

4. **Rezoning and Development of the Property**.

4.1 PAD. The City approved the PAD for the Developer's adjacent property; and Developer shall submit a revised PAD for the Project, including the Property in accordance with the Schedule of Performance. The Property shall be developed in accordance with the PAD and the Schedule of Performance.

4.2 City Approvals. The City hereby agrees not to impose any unusual or extraordinary plan or review requirements, conditions or stipulations on the Developer or on any building, structure, phase or Parcel of the Project.

4.3 Certificate of Completion. Promptly after substantial completion of the construction of any Improvements within the Property in accordance with the PAD, City shall furnish to Developer a Certificate of Completion in accordance with City's standard procedures. Upon issuance of the Certificate of Completion, Developer may record the Certificate of Completion in the Office of the Maricopa County Recorder.

4.4 General Cooperation. The City and Developer acknowledge and agree that they shall cooperate in good faith with each other and use their respective good-faith and commercially reasonable efforts to pursue development of the Project as contemplated by this Agreement. City agrees to use its reasonable best efforts to assist Developer with other State, Federal, County governmental agencies and SRP, as appropriate. To further the commitment of the City and Developer to cooperate in the implementation of this Agreement, the City shall designate and appoint a representative to act as liaison between the City and its various departments and the Developer, and the Developer shall designate and appoint a representative to act on its behalf under this Agreement. The initial representative for the City ("City Representative") shall be Larry Schmalz, or his designee, and the initial representative for the Developer ("Developer Representative") shall be Erich Schwenker, or his designee. Both the City Representative and the Developer Representative shall be available at all reasonable times to discuss and review the performance of the City and Developer under this Agreement and the development of the Project.

4.5 Termination. Notwithstanding anything contained herein to the contrary, if this Agreement is terminated, then the City and the Developer shall have no further rights, duties or obligations under the provisions of this ***Section 4*** with respect to the development of the Project, except for completion of the Easement Improvements.

5. **Developer's Indemnification of City**. The Developer shall indemnify, protect, defend and hold harmless the City, its council members, officers, employees and agents, from any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and clean-up actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and costs of defense, arising directly or indirectly, in whole or in part, out of the performance of this Agreement by the Developer, except to the extent resulting from the negligence or intentional misconduct of the City or any of its employees, contractors or agents.

6. **Default; Alternative Dispute Resolution**.

6.1 Default. In the event any party hereto fails to comply with any terms, conditions, provisions and obligations under this Agreement which are applicable to such party within thirty (30) days after receipt of written notice from any other party (an "Event of Default"), such party shall be deemed to be in default under this Agreement; provided, however, that if the nature of the default is not such that it is reasonably capable of cure within the thirty-day notice period, then no default shall be deemed to exist if the party receiving the notice commences the cure of default within the thirty-day period and diligently pursues the same to completion within ninety (90) days after commencement.

6.2 Mediation. After the occurrence of an Event of Default, the parties hereby agree that there shall be a ninety (90) day moratorium on litigation during which time the parties shall attempt to settle the dispute by nonbinding mediation before commencement of litigation. The mediation shall be held under the Commercial Mediation Rules of the American Arbitration Association. The matter in dispute shall be submitted to a mediator mutually selected by the parties involved in the dispute. In the event the parties involved in the dispute cannot agree upon the selection of a mediator within ten (10) days, then, within five (5) days thereafter, such parties shall request the presiding judge of the Superior Court of Maricopa County, Arizona to appoint the mediator. The mediator selected shall have at least ten (10) years experience in mediating or arbitrating disputes relating to commercial property. The cost of any such mediation shall be divided equally between the parties involved in the dispute. The mediator shall not have the right to award punitive damages. The results of the mediation shall be nonbinding and any party involved in the dispute shall have the right to initiate litigation to enforce the terms and conditions of this Agreement upon the latter of the conclusion of the mediation or ninety (90) days after the Event of Default.

6.3 Remedies. If the parties involved in any dispute hereunder are not able to resolve such dispute pursuant to the nonbinding mediation procedures described in ***Section 6.2*** above, then, in that event, such parties to the dispute shall be entitled to pursue any and all legal and equitable remedies which may be available at law or in equity.

6.4 City's Remedies. If the Developer is in default under this Agreement and there exists an Event of Default with respect thereto, and the parties do not resolve the Developer's default pursuant to the nonbinding mediation process, then the City shall have the right to terminate this Agreement immediately upon written notice to Developer and to pursue any other rights or remedies provided hereunder, at law or in equity.

If this Agreement is terminated for any reason, Developer shall assign to City all reports, studies, and tests performed on Developer's behalf with regard to the Property, including without limitation all correspondence, reports, surveys, studies, documents, approvals, drawings, plats, plans, specifications, filings or similar writings pertaining to the Property or the development thereof (the "Reports"), including but not limited to any Reports pertaining to drainage, soil, flood, hazardous or toxic substance or pollutants, archaeological or environmental conditions, or power or transmission lines on or adjacent to the Property, and City shall be entitled to use them without any obligation or liability to Developer. Developer shall execute and deliver to City such documents and instruments, including bills of sale and assignments, as are necessary to fully vest title to the Reports in City.

7. General Provisions.

7.1 Notices. All notices required or permitted to be given hereunder shall be in writing and may be given in person or by United States mail or by courier. Any notice directed to a party shall become effective upon the earliest of the following: (a) actual receipt by that party; (b) hand delivery to such party at its designated notice address; (c) one (1) business day after deposit for delivery with a nationally-recognized overnight courier; (d) telephone facsimile with receipt confirmed; or (e) if given by certified or registered United States mail, forty-eight (48) hours after deposit with the United States Postal Service, postage prepaid, addressed to that party at its designated address. The designated address of a party shall be the address of that party shown below or such other address as that Party, from time to time, may specify by notice to the other Party:

To the City:	City of Tempe 31 East 5th Street Tempe, Arizona 85281
With a copy to:	Tempe City Attorney's Office 21 E. Sixth Street, Suite 201 Tempe, Arizona 85281
To Developer:	Cardinal Capital Management, Inc. 135 South 84th Street, Suite 100 Milwaukee, WI 53214

With copies to:

Any party hereto shall have the right to change its designated notice address by providing to the other parties written notice of such change in the manner described above.

7.2 Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto; provided, however, that prior to the Closing under this Agreement, Developer shall not have the right to assign its rights under this Agreement to any other party that is not an affiliate of Developer without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. For the purpose hereof, an "affiliate" of Developer shall mean and include a person or entity that owns or controls Developer, that is under common ownership or control with Developer, or that Developer owns or controls.

7.3 Captions. The captions used herein are for convenience only and do not in any way limit or amplify the terms or provisions hereof.

7.4 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. This Agreement has been made and entered into in Maricopa County, Arizona.

7.5 Waiver. No waiver by any party of any breach of any of the terms, covenants or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same for any other term, covenant or condition herein contained.

7.6 Attorneys' Fees. In the event of any actual litigation between the parties in connection with this Agreement, the party prevailing in such action shall be entitled to recover from the other party all of its costs and fees, including reasonable attorneys' fees, which shall be determined by the court and not by the jury.

7.7 Severability. In the event that any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permitted by law, unless the material terms of this Agreement are vitiated.

7.8 Schedules and Exhibits. All schedules and exhibits attached hereto are incorporated herein by this reference is if fully set forth herein.

7.9 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.

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

7.11 Recordation. This Agreement shall be recorded in the Official Records of Maricopa County, Arizona within ten (10) days after its approval and execution by the parties hereto.

7.12 Warranty Against Payment of Consideration for Agreement; Conflict of Interest. The Developer warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business, costs of professional services (such as architects, real estate brokers and attorneys). To the best knowledge of Developer, no member, official or employee of City shall have any direct or indirect interest in this Agreement, nor participate in any agreement relating to the Agreement which is prohibited by law. This Agreement is subject to A.R.S. §38-511.

7.13 No Personal Liability. No current or former member, official or employee of any Party shall be personally liable (a) in the event of any default or breach by such party, (b) for any amount which may become due to any nonbreaching party or its successor or assign, or (c) pursuant to any obligation of the breaching party under the terms of this Agreement.

7.14 No Partnership; Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall create any partnership, joint venture or other arrangement between the parties hereto. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

7.15 Authority. Each of the parties hereto represents and warrants to the other that the individual executing this Agreement on behalf of the respective parties are authorized and empowered to bind the party on whose behalf such individual is signing and that this Agreement shall be binding upon such parties.

7.16 Manager's Power to Consent. The City hereby acknowledges and agrees that any unnecessary delay hereunder would adversely affect the Developer and/or the development of the Property, and hereby authorizes and empowers the City Manager or his designee to (a) consent to any and all requests of the Developer requiring the consent of the City hereunder, and (b) assist Developer in obaining the approval of SRP to the Easement Improvements, without further action of the City Council, except for any actions requiring City Council approval as a matter of law, including, without limitation, any material amendment or modification of this Agreement.

IN WITNESS WHEREOF, the undersigned have caused this Development and Disposition Agreement to be executed as of the day and year first above written.

CITY OF TEMPE,
an Arizona municipal corporation

_____ By_____

City Clerk

Hugh L. Hallman,Mayor

APPROVED AS TO FORM:

_____

City Attorney

CARDINAL CAPITAL MANAGEMENT, INC,

By:_____

Name:_____

Title:_____

List of Exhibits

Exhibit "A"	Legal description of the Property
Exhibit "B"	Map of Property
Exhibit "C"	Description of Easement Area
Exhibit "D"	Schedule of Performance
Exhibit "E"	Form of Special Warranty Deed

Exhibit "A"
Legal Description Parcel 1

Parcel No. 1:

Lot 15, Block 4, VICTORY TRACT, according to Book 31 of Maps, page 6, records of Maricopa County, Arizona.

EXCEPT the North 10 feet, which was previously conveyed to the City of Tempe in Docket 4289, page 339

Parcel No. 2:

That portion of Lot 1, Block 4, VICTORY TRACT, according to Book 31 of Maps, page 6, records of Maricopa County, Arizona, described as follows:

COMMENCING at the Northwest corner of said Lot 1;

THENCE South along the West line of said Lot1, a distance of 304 feet to a point 10 feet South f the Northeast corner of Lot 15 of said Block 4 and the TRU POINT OF BEGINNING;

THENCE East, along a line 10 feet South of and parallel to the Easterly prolongation of the North line of Lot 15 of said Block 4, to a point on a Easterly line of said Lot 1;

THENCE Southwesterly along the Easterly line of said Lot1 to the most southerly corner of said Lot 1;

THENCE North along the West line of said Lot 1, a distance of 86.02 feet to the TRUE POINT OF BEGINNING.

Exhibit "B"
Map of Property

Exhibit "C"
Description of Easement Area

The Northwesterly 20 feet of that portion of the right of way of the Tempe Canal lying within Victory Tract in the Northwest Quarter of Section 19, Township 1 North, Range 5 East of the Gila and Salt River Base and Meridian, as shown on the plat in Book 31 of Maps at page 6, Maricopa County Records.

Exhibit "D"
Schedule of Performance

a. Submit amended PAD-- 90 days after execution of this Agreement

b. Design and submit for approval plans for Easement Improvements--prior to submission for building permits

c. Complete Easement Improvements -- prior to issuance of Certificate of Completion

c. Submit for building permit - 12 months from approval of the PAD.

d. Start Construction of the Project - 90 days from City's issuance of building permit.

Exhibit "E"
Form of Special Warranty Deed

WHEN RECORDED, RETURN TO:

City of Tempe
31 East Fifth Street
Tempe, Arizona 85281
Attention: City Clerk

EXEMPT per ARS 11-1134.A.3

SPECIAL WARRANTY DEED

For consideration of Ten and no/100 Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the undersigned, **CITY OF TEMPE**, an Arizona municipal corporation (**"Grantor"**) does hereby convey to **Cardinal Capital Management, Inc., an Arizona corporation ("Grantee")** that certain real property described on Exhibit A attached hereto, including all improvements thereon and all appurtenances thereto.

Subject to taxes and assessments, reservations and all easements, rights-of-way, covenants, conditions, restrictions, liens and encumbrances of record or that would be shown by an accurate survey and to all possessory interests, Grantor does warrant and agree to defend the title against its acts and none other.

IN WITNESS WHEREOF, Grantor has caused this Special Warranty Deed to be executed on this _____ day of_____, 200__.

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

"CITY"

THE CITY OF TEMPE, an Arizona municipal corporation

By

Hugh L. Hallman, Mayor

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

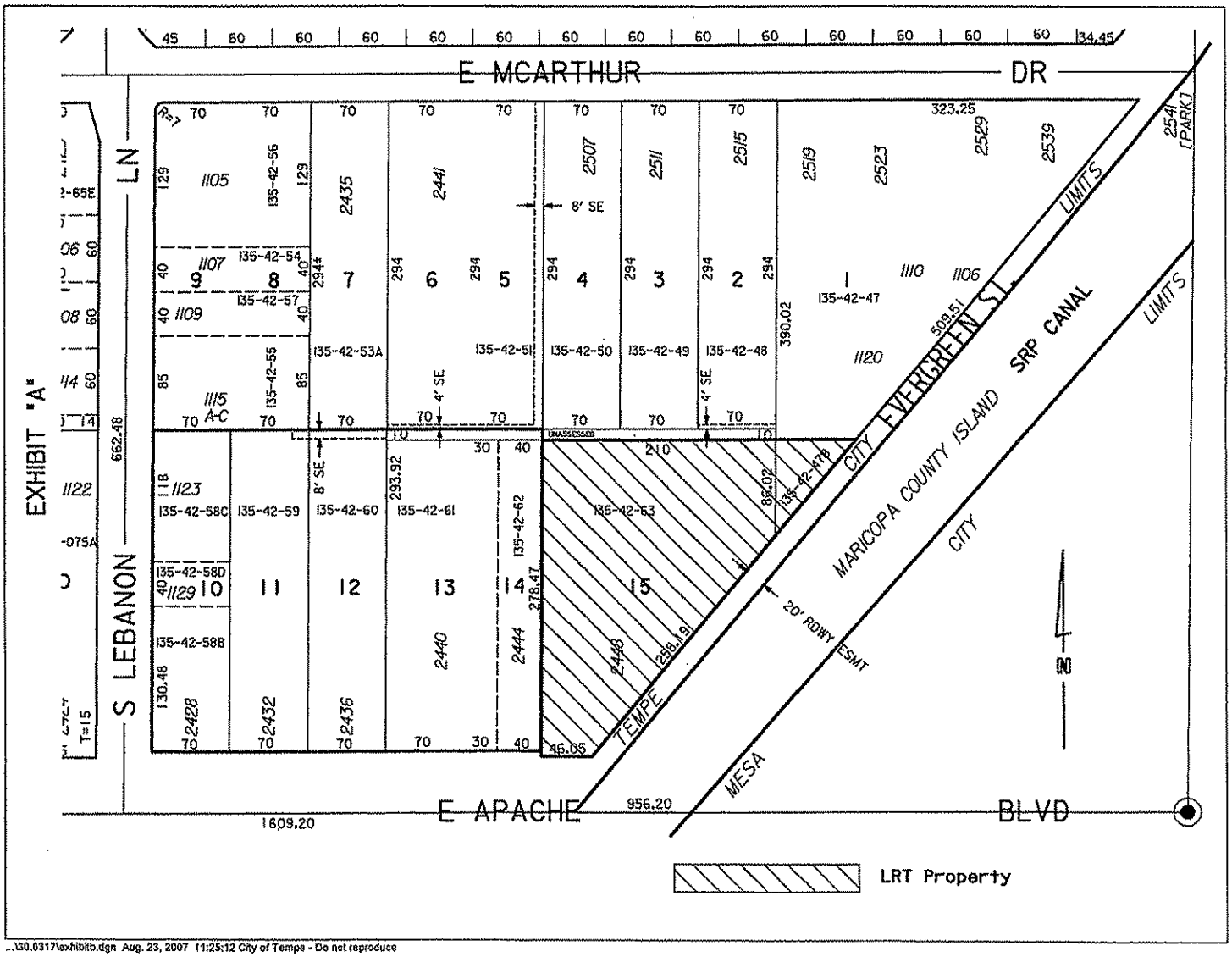
On this _____ day of _____, 200__, before me, the undersigned officer, personally appeared Hugh L. Hallman, who acknowledged himself to be Mayor of THE CITY OF TEMPE, an Arizona municipal corporation, whom I know personally/whose identity was proven to me on the oath of _____, a credible witness by me duly sworn/whose identity was proven to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument/whose identity I verified on the basis of his _____, and he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL: Notary Public

Exhibit A
Legal Description

EXHIBIT "B"



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