

CITY COUNCIL REPORT



Meeting Date: April 14, 2015

General Plan Element: *Economic Vitality*

General Plan Goal: *Utilize redevelopment and revitalization efforts to sustain economic well-being*

ACTION

Authorization to amend the ASU Foundation Ground Lease 2004-119-COS. Adopt Resolution 10090 authorizing contract 2004-119-COS-A5, the fifth amendment to the ground lease with ASU Foundation for the Skysong property.

BACKGROUND

The purpose of this action is to approve the fifth amendment to the Skysong ground lease agreement No. 2004-119-COS (the "Lease") between the City and the ASU Foundation (ASUF). The proposed amendment contains a revised Exhibit B (Center Criteria) reflecting updated zoning district information consistent with the Skysong zoning case 26-ZN-2004#2 scheduled for city council approval this evening. This includes a 90 foot height limitation north of Skysong Boulevard that will be allowed pursuant to the ground lease, if the rezoning case is approved and becomes effective. Additionally, the revised Exhibit B contains updated site areas for ASUF and the City of Scottsdale based on an ALTA/ACSM Land Title Survey dated October 14, 2014. Exhibit D (Residential Map) is also updated for accuracy through amendment text.

ANALYSIS & ASSESSMENT

Recent Staff Activity

Staff had numerous meetings and discussions with the tenant to establish appropriate language to address the issues. This fifth amendment is the result of those meetings.

RESOURCE IMPACTS

No additional resource impacts will result from this action.

OPTIONS & STAFF RECOMMENDATION

Recommended Approach

Adopt Resolution 10090 authorizing the fifth amendment to the ground lease 2004-119-COS with ASU Foundation for the Skysong site.

Proposed Next Steps:

If Council adopts this Resolution the changes to the lease will become effective immediately.

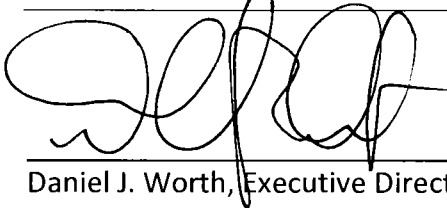
RESPONSIBLE DEPARTMENT(S)

Public Works Division, Capital Project Management

STAFF CONTACTS (S)

Martha West, Sr. Real Estate Manager (480) 312-7042, mwest@scottsdaleAZ.gov

APPROVED BY



Daniel J. Worth, Executive Director, Public Works
(480) 312-5555, dworth@scottsdaleaz.gov

3-31-15

Date

ATTACHMENTS

1. Resolution 10090
2. Contract 2004-119-COS-A5

RESOLUTION NO. 10090

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE,
MARICOPA COUNTY, ARIZONA, AUTHORIZING A FIFTH
AMENDMENT TO GROUND LEASE AGREEMENT**

(ASUF-Skysong-Los Arcos)

WHEREAS:

A. City of Scottsdale, an Arizona municipal corporation ("Landlord"), and ASUF Scottsdale LLC, an Arizona limited liability company ("Tenant") executed that certain Ground Lease Agreement being City of Scottsdale Contract No. 2004-119-COS (the "Original Lease") dated August 9, 2004 and recorded August 9, 2004 at document No. 2004-920528 of the public records of Maricopa County, Arizona whereby, among other things, Landlord granted to Tenant a leasehold (the "Leasehold") for operation of a mixed use project upon certain real property (the "Property"). The Property is located at the southeast corner of Scottsdale Road and McDowell Road in the City of Scottsdale, Maricopa County, Arizona.

B. Landlord and Tenant desire to adjust the limit of height of buildings upon the Property.

C. Landlord and Tenant desire to adjust and clarify the Original Lease's provisions regarding project characteristics and status.

D. The city council has considered the city expenditure, if any, authorized by the proposed amendment and the direct consideration that City will receive and finds that there is a clearly identified public purpose for City's expenditure, and that City will receive direct consideration substantially equal to its expenditure, if any.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Mayor is authorized and directed to execute on behalf of the City of Scottsdale the fifth amendment to the Original Agreement (No. 2004-119-COS-A5) in the form the City Council approved at the meeting in which this resolution is adopted.

PASSED AND ADOPTED by the Council of the City of Scottsdale this ____ day of _____, 20____.

CITY OF SCOTTSDALE, an Arizona
municipal Corporation

W. J. "Jim" Lane, Mayor

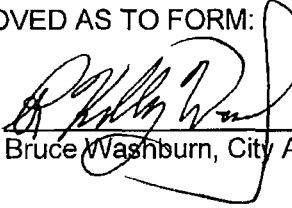
ATTEST:

By: _____
Carolyn Jagger, City Clerk

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APPROVED AS TO FORM:

By:

 R. Kelly Ward
for
Bruce Washburn, City Attorney

WHEN RECORDED RETURN TO:
CITY OF SCOTTSDALE
ONE STOP SHOP/RECORDS
(Martha West)
7447 E. Indian School Road, Suite 100
Scottsdale, AZ 85251

C.O.S. Contract No. 2004-119-COS-A5

(Resolution No. 10090)
(ASUF-Skysong-Los Arcos)

FIFTH AMENDMENT TO GROUND LEASE AGREEMENT

THIS FIFTH AMENDMENT TO GROUND LEASE AGREEMENT (the "Amendment") is made this ____ day of _____, 20____ by City of Scottsdale, an Arizona municipal corporation ("Landlord"), and ASUF Scottsdale LLC, an Arizona limited liability company ("Tenant").

RECITALS

A. Landlord and Tenant executed that certain Ground Lease Agreement being City of Scottsdale Contract No. 2004-119-COS (the "Original Lease") dated August 9, 2004 and recorded August 9, 2004 at document No. 2004-920528 of the public records of Maricopa County, Arizona whereby, among other things, Landlord granted to Tenant a leasehold (the "Leasehold") for operation of a mixed use project upon certain real property (the "Property"). The Property is located at the southeast corner of Scottsdale Road and McDowell Road in the City of Scottsdale, Maricopa County, Arizona, as defined in the Original Lease.

B. The following assignments or partial assignments of the Leasehold (the "Prior Assignments") have occurred:

<u>Transaction</u>	<u>Assignor</u>	<u>Assignee</u>	<u>Date</u>	<u>Recording Data</u>
Sublease	Tenant	Skysong Owners Association, an Arizona nonprofit association ("Association")	January 15, 2009	March 4, 2009 MCR2009-191192
Sublease	Tenant	Skysong 1 LLC, a Delaware limited liability company ("SS1")	June 16, 2006	June 29, 2006 MCR2006-877347

Assignment of Sublease	SS1	Holualoa Scottsdale Office LLC, a Delaware limited liability company ("Holualoa")	August 26, 2013	August 26, 2013 MCR2013-775480
Sublease	Tenant	Skysong 2 LLC, a Delaware limited liability company ("SS2")	June 29, 2007	June 29, 2007 MCR2007-750071
Assignment of Sublease	SS2	Holualoa	August 26, 2013	August 26, 2013 MCR2013-775481
Sublease	Tenant	Skysong Residential 1 LLC, a Delaware limited liability company ("SSR1")	March 11, 2008	March 12, 2008 MCR2008-218161
Deed of Trust	SSR1	LHP Scottsdale Capital LLC, a Delaware limited liability company ("LHP")	March 11, 2008	March 12, 2008 MCR2008-218162
Sublease	Tenant	Skysong Office 3 LLC, a Delaware limited liability company ("SO3")	August 16, 2013	August 16, 2013 MCR2013-749883
Deed of Trust	SO3	Alliance Bank of Arizona, a division of Western Alliance Bank, an Arizona banking corporation ("Alliance")	August 16, 2013	August 16, 2013 MCR2013-749884
Deed of Trust	Holualoa	Citigroup Global Markets Realty Corp, a New York corporation ("Citigroup")	August 26, 2013	September 26, 2013 MCR2013-775482
Assignment of Deed of Trust	Citigroup	U.S. Bank National Association, as trustee, on behalf of the registered holders of Citigroup Commercial Mortgage Securities, Inc., Commercial Mortgage Pass-Through Certificates, Series 2013-GC15 ("U.S. Bank")	October 7, 2013	November 20, 2013 MCR2013-1002715

C. Tenant warrants and represents that the Prior Assignments have occurred. Tenant warrants and represents that no other assignments of any part of the Leasehold have occurred, except that:

13236171v2

1. In the past, Tenant has (or may have) granted additional liens upon the Leasehold, which additional liens are not listed because they have been completely satisfied, released and terminated of record.

2. In the past, Tenant has (or may have) granted subleases of the Leasehold, which additional subleases are not listed because they have been completely satisfied, released and terminated of record.

3. Association may have received additional Leasehold rights from Tenant (e.g. a declaration of covenants and restrictions), all of which are still held by Association.

4. SS1 or Holualoa has entered into sub-subleases of completed office space.

5. SO3 or Holualoa has entered into sub-subleases of completed office space.

6. The subleases granted to SS2, SSR1 and SO3 may have been amended. References in this Amendment to those subleases refer to the subleases as amended.

7. The liens granted to LHP, Citigroup, Alliance and U.S. Bank may include other instruments (such as assignments of rents) and may have been amended. References in this Amendment to those liens also refer to the other lien instruments and to any amendments to the liens.

8. In the past, SS1, SS2, SSR1, SO3 and Holualoa have (or may have) made additional subassignments of their rights under the Leasehold, which are not listed because they have been completely satisfied, released and terminated of record.

D. The following amendments have been made to the Original Lease:

<u>Amendment</u>	<u>Parties</u>	<u>Date</u>	<u>Recording Data</u>
First	Landlord and Tenant	July 10, 2006	September 14, 2006, MCR2006-1225303
Second	Landlord and Tenant	February 7, 2012	February 7, 2012 MCR2012-100586
Third	Landlord and Tenant	February 7, 2012	February 23, 2012 MCR2012-148324
Fourth	Landlord and Tenant	August 19, 2013	August 20, 2013 MCR2013-757229

E. Landlord and Tenant desire to adjust the limit of height of buildings upon the Property.

F. Landlord and Tenant desire to adjust and clarify the Original Lease's provisions regarding project characteristics and status.

G. References to the Original Lease (or any of its paragraphs or subparagraphs) refer to the Original Lease (or such paragraph or subparagraph) as amended by the amendments listed above. Undefined terms capitalized in this Amendment have the meanings assigned in the Original Lease. Unless otherwise specified, exhibit references refer to the exhibits attached to the Original Lease.

NOW THEREFORE, in consideration of the foregoing and the mutual promises contained herein, Tenant and Landlord agree as follows:

1. Changes Related to Project Characteristics. The following changes are made to the Project characteristics provisions of the Original Lease:

1.1 A list of Center Criteria was attached to the Original Agreement as Exhibit "B". Delete the Center Criteria exhibit and replace it with the revised Center Criteria list attached to this Amendment as **Schedule 1**.

1.2 A map was attached to the Original Agreement as Exhibit "D". The following changes are made to that exhibit:

1.2.1 The map has labels worded "RESIDENTIAL OPPORTUNITY" indicating possible locations for residential units after the first phase of residential units. Additional residential units are not confined to those areas. Accordingly, remove such labels from the map.

1.2.2 There is a label on the map below the word "CHURCH" that says "Residential Units". Change the label to instead say "First Phase Residential Units".

2. Landlord's Construction Status. Landlord and Tenant confirm that Landlord has satisfactorily completed all public infrastructure and other construction of every kind that the various provisions of the Original Lease require Landlord to Construct at any time, except that Landlord is still required to install the public art described in paragraph 3.2(c)(viii) of the Original Lease.

3. Notice Addresses. Landlord and Tenant confirm the addresses for giving notices as are stated in the Original Lease, except that:

3.1 Landlord's address is:

Senior Real Estate Manager
City of Scottsdale
One Civic, 2nd Floor, Suite 205
7447 E. Indian School Rd.
Scottsdale AZ 85251

3.2 The address for copies of notices to Landlord is:

Scottsdale City Manager
City of Scottsdale
3939 N. Drinkwater Blvd.
Scottsdale, Arizona 85251

Scottsdale City Attorney
City of Scottsdale
3939 N. Drinkwater Blvd.
Scottsdale AZ 85251

3.3 Tenant's address is:

Don Couvillion
Arizona State University Foundation
Suite 200
1475 N. Scottsdale Road
Scottsdale AZ 85257

3.4 The addresses for copies of notices to Tenant are:

Asset Management (Ground Lease) Mailbox
Loan No. 30-4101083
Wells Fargo Bank, N.A.
Second Floor
1901 Harrison Street
Oakland CA 94612

Gregg Hanks
Fennemore Craig
Suite 600
2394 E. Camelback Road
Phoenix, AZ 85016

4. Miscellaneous Provisions Regarding this Amendment. The parties also agree as follows:

4.1 Effective Date. This Amendment applies as of the date of this Amendment.

4.2 Recording. Within ten (10) days after the date of this Amendment, unless Landlord has already done so, Tenant shall cause this Amendment to be recorded in the office of the Maricopa County recorder.

4.3 No Further Amendment. Except as expressly amended by specific provisions of this Amendment, the Original Lease and the parties' respective rights and obligations related to the Original Lease are not affected by this Amendment.

4.4 Integration. This Amendment constitutes the entire agreement between the parties with respect to amending the Original Lease and supersedes any prior agreement, understanding, negotiation, draft agreements, discussion outlines, correspondence and memoranda or representation regarding amending the Original Lease.

4.5 Tenant's Prior Assignees. The following shall apply regarding certain third parties (collectively "Assignees"):

4.5.1 Assignees are each person other than Landlord and Tenant having or claiming a lien, sublease, easement or other interest in the Leasehold or under the Original Lease, subject to the following:

4.5.1.1 Without limitation, Assignees include the following:

4.5.1.1.1 Association.

4.5.1.1.2 SSR1.

4.5.1.1.3 SO3.

4.5.1.1.4 Holualoa.

4.5.1.1.5 LHP.

4.5.1.1.6 Alliance.

4.5.1.1.7 U.S. Bank.

4.5.1.1.8 The holders of all interests formerly held by each such person or entity.

4.5.1.2 Notwithstanding the foregoing, Assignees exclude sublessees in the ordinary course of SS1's, SS2's, SO3's and Holualoa's business of subleasing office space in completed office buildings at the Property.

4.5.2 Tenant warrants and represents that:

4.5.2.1 Instruments in substantially the form attached to this Amendment as **Schedule 2** ("Assignee Consents") have been executed and acknowledged by each Assignee whereby all Assignees join in this Amendment and subject and subordinate their interests to this Amendment and the Original Lease and all requirements, provisions and conveyances of this Amendment and the Original Lease.

4.5.2.2 Tenant has attached such Assignee Consents to this Amendment and recorded them with this Amendment.

4.6 Third Party Beneficiaries. Except as expressly stated in the Original Lease, if any, there are no third party beneficiaries to this Amendment or the Original Lease.

MADE AS OF the date first given above.

TENANT: ASUF Scottsdale LLC, an Arizona limited liability company

By: _____
Its: _____

By: _____
Its: _____

LANDLORD: CITY OF SCOTTSDALE, an Arizona municipal corporation

By: _____
W. J. "Jim" Lane, Mayor

ATTEST:

Carolyn Jagger, City Clerk

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

By: R. Kelly Ward
Bruce Washburn, City Attorney

Dan Worth, Executive Director Public Works

Martha West, Senior Real Estate Manager

STATE OF _____)
County of _____) ss.

The foregoing instrument was acknowledged before me this _____ day of _____, 20 _____ by _____ of ASUF Scottsdale LLC, an Arizona limited liability company.

Notary Public

My Commission Expires:

STATE OF _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____ by _____, _____ of ASUF Scottsdale LLC, an Arizona limited liability company.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by W. J. "Jim" Lane, Mayor of the City of Scottsdale, an Arizona municipal corporation.

Notary Public

My Commission Expires:

TABLE OF SCHEDULES TO FIFTH AMENDMENT

(ASUF-Skysong-Los Arcos)

<u>Schedule</u>	<u>Paragraph of Amendment</u>	<u>Responsibility to Provide</u>	<u>Description</u>
1	1.1	contract administrator and Tenant	Revised Exhibit "B"
2	4.5.2.1	included	Form of Assignees consent

SkySong
The ASU/Scottsdale Center for Innovation
Revised Center Criteria

Zoning	Planned Community District (PC)with PRC & I-1
Maximum Height Allowed	The maximum height allowed of 60 feet. However, if zoning case 26-ZN-2004#2 is approved, becomes effective and allows certain different maximum height limit set out below (the "Alternative Height Limit"), then the Alternative Height Limit shall be the maximum height allowed. The Alternative Height Limit shall be : (1) For buildings north of Skysong Boulevard, the maximum height allowed shall be 90 feet (exclusive of rooftop appurtenances not to exceed 18 feet). (2) For buildings south of Skysong Boulevard, the maximum height allowed shall be 60 feet (exclusive of rooftop appurtenances not to exceed 18 feet).
Site Area Total Site Area - City of Scottsdale - SkySong (ASUF)	37.381 ac 1.5 ac 35.881 ac
Maximum Building Area Allowed – Commercial ASU/Scottsdale Center for Innovation -Office/Research /Retail ¹ -City of Scottsdale (Excluded Parcel) ² Total Commercial Building Area Allowed	 1,291,566 sf 52,272 sf 1,343,838 sf
Residential Units Allowed - Residential Units constructed as of 1-01-2015 - Maximum residential units remaining ³ as of 1-01-2015	781 units 325 456
Estimated Parking Requirements^{4,5} <ul style="list-style-type: none"> • Commercial Uses • Residential Uses • Total estimated parking requirements 	4,110 1,196 5,306

1. Retail (including restaurant) shall not exceed 135,000 sf and shall be limited to the first floor
2. 1.5 ac Excluded Parcel (Building Area based on 0.8 FAR), estimate only
3. Phasing of residential units, beyond initial 325 units currently constructed, is set forth in Section 3.3(h) & (i)
4. Parking may be surface, underground and/or structured if allowed by the approved Site Plan.
5. Per approved zoning

CONSENT TO FIFTH AMENDMENT TO GROUND LEASE AGREEMENT

(ASUF-Skysong-Los Arcos)
(related to 2004-119-COS-A5)

The undersigned, having or claiming a lien or other interest in the Property or in Tenant's rights under the Original Lease as defined in the Fifth Amendment to Ground Lease Agreement between the City of Scottsdale, an Arizona municipal corporation and ASUF Scottsdale LLC, an Arizona limited liability company, to which this consent is attached hereby joins in said Amendment and the Original Lease, warrants that its interests are correctly described in the Amendment, and agrees that its interests are subject and subordinate to said Amendment and the Original Lease as so amended and their requirements.

The person executing this document on behalf of a legal entity warrants his or her authority to do so.

EXECUTED as of the date of the said Amendment.

By: _____
Its: _____

STATE OF _____)
County of _____) ss.

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ of _____ a _____.

Notary Public

My Commission Expires:
