REAL ESTATE PURCHASE AGREEMENT

DRAFT

JUNE 29, 2004

between

ASUF SCOTTSDALE, LLC,
an Arizona limited liability company,

as Seller

and

CITY OF SCOTTSDALE, ARIZONA,
an Arizona municipal corporation,

as Buyer

Dated as of July __, 2004

SCHEDULE OF EXHIBITS

Exhibit A Legal Description of Property
Exhibit B Deed
Exhibit C General Assignment
Exhibit D Lease

REAL ESTATE PURCHASE AGREEMENT

THIS REAL ESTATE PURCHASE AGREEMENT is made as of July __, 2004 (the "*Agreement Date*") between ASUF SCOTTSDALE, LLC, an Arizona limited liability company ("*Seller*"), and CITY OF SCOTTSDALE, an Arizona municipal corporation ("*Buyer*"). For good and valuable consideration, the receipt and adequacy of which are forever acknowledged, the Parties agree as follows:

R E C I T A L S

A. ASUF is acquiring certain real property, improvements and related rights from LAD;

B. City desires to acquire from ASUF the property and property rights that ASUF is acquiring from LAD and to enter into a long term lease with ASUF with respect to that property; and

C. As a result of its acquisition of the Property, and the subsequent development of the Property pursuant to the Lease, the City hopes, among other benefits, (i) to facilitate the revitalization of Scottsdale and in the areas around the Property; (ii) to increase the employment base of the City, particularly in skilled, highly paid market sectors; (iii) to increase revenues to the City through transaction privilege taxes, property taxes, bed taxes and similar taxes available directly or indirectly to the City; (iv) to begin to establish the City as a center for research, innovation and technology; and (v) to promote the attractiveness of the City to further businesses and residents that may relocate to the City.

D. Capitalized terms in these Recitals shall have the meanings ascribed to them in Section 1 of this Agreement. These Recitals are deemed part of, and are included within the terms and conditions of this Agreement.

1. Definitions. When used in this Agreement, the following terms shall have the meanings given to them below:

1.1 "*$*" means a sum of United States of America dollars.

1.2 "*Affidavit of Legal Value"* means the certification to be signed by the Parties or their agents and appended to the Deed by Escrow Agent at the time of recording, in the form prescribed by Section 11-1133 of the Arizona Revised Statutes, as amended as of the date of Closing.

1.3 "*Affiliates*" means all other Persons who, directly or indirectly, through one or more intermediaries, control or are controlled by, or are under common control with a Person, where such control is determined by bona fide right to determine the outcome of management policies and decisions by any means.

1.4 "*Agreement*" means this Real Estate Purchase Agreement.

1.5 "*Agreement Date*" has the meaning set forth in the first grammatical paragraph on page 1 of this Agreement.

1.6 "*Approved Closing Statement*" means the pre-audit settlement statement prepared by Escrow Agent no later than 3 Business Days before the Closing Date, signed by the Parties, which shall become the basis upon which funds shall be paid in, credited and disbursed at Closing.

1.7 "*Best of Seller's Knowledge*" means the conscious (not constructive or imputed) collective knowledge of the Executive Committee of the Arizona State University Foundation, as of the Agreement Date and as of the Closing Date, without any further investigation or inquiry.

1.8 ""*Business Day*" means a Day other than a Saturday, Sunday, or holiday observed by the Office of the Recorder of Maricopa County, Arizona.

1.9 *"Buyer"* has the meaning set forth in the first grammatical paragraph on page 1 of this Agreement.

1.10 "*Buyer's Deliveries"* means the actions to be taken by Buyer at the Closing, pursuant to Section 7.4.

1.11 "*CC&R's"* means any declarations or reservations of covenants, conditions and restrictions binding the Property, by deed or separate recorded instrument.

1.12 "*City"* means, collectively, the City of Scottsdale, Arizona, an Arizona municipal corporation, and its political subdivisions (if any) and/or agencies. The terms "City" and "Buyer" are used interchangeably and have the same meaning in this Agreement.

1.13 "*City Approval"* has the meaning set forth in Section 6.4.

1.14 "*City Approval Deadline"* has the meaning set forth in Section 6.4.

1.15 "*City Approval Notice*" has the meaning set forth in Section 6.4.

1.16 "*Closing*" means (a) the completion of Seller's Deliveries and Buyer's Deliveries and (b) recordation of the Deed and all other Conveyance Documents required to be recorded by Escrow Agent, in accordance with its written instructions.

1.17 *"Closing Costs"* has the meaning set forth in Section 7.7.4.

1.18 "*Closing Date*" means no later than 1:00 p.m., local Phoenix, Arizona time, on July 30, 2004.

1.19 "*Conveyance Documents*" means, collectively: (a) the Deed; (b) the General Assignment; (c) the Non-Foreign Affidavit; (d) the Affidavit of Legal Value; (e) Form 1099-S; and (f) any other instruments reasonably required by the Title Company to be executed or furnished by Seller in order to consummate the transaction contemplated under this Agreement, including deeds of release and reconveyance of the Existing Deeds of Trust (the "Releases"), instruments abandoning or terminating the CC&R's, in form and substance acceptable to Buyer and Title Company, releases of Liens, and customary affidavits concerning parties-in-possession and mechanics' liens in form and substance acceptable to Buyer and Title Company.

1.20 "*Day*" means calendar day.

1.21 *"Current Title Report"* means that First Amended Commitment for Title Insurance for the Escrow No. 2408906-41, effective date May 24, 2004, issued by the Title Company.

1.22 "*Deed*" means the special warranty deed to the Land and the Improvements in the form attached to this Agreement as Exhibit B.

1.23 "*Environmental Laws"* means, collectively: (a) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601, *et seq.*; (b) the Toxic Substance Control Act, 15 U.S.C. § 2601, *et seq.*; (c) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801, *et seq.*; (d) the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, *et seq.*; (e) the Clean Water Act, 33 U.S.C. § 1251, *et seq.*; (f) the Safe Drinking Water Act, 42 U.S.C. § 300(f), *et seq.*; (g) the Clean Air Act, 42 U.S.C. § 7401, *et seq.*; (h) Title 49 of the Arizona Revised Statutes; and (i) any other applicable federal, state, or local law (including rules, regulations, consent decrees and administrative orders) relating to or imposing liability or standards of conduct concerning releases into the environment.

1.24 "*Environmental Reports"* means, inter alia, the Phase 1 Environmental Site Assessment, Former Los Arcos Mall, Southeast Corner of Scottsdale & McDowell Roads, Scottsdale, Arizona, dated June 24, 2004, performed by Brown and Caldwell, and any reports described or summarized therein.

1.25 "*Escrow Agent"* means Chicago Title Insurance Company, a Missouri corporation, in its capacity as escrow agent for the Closing.

1.26 "*Existing Deeds of Trust"* means, collectively: (i) the Construction Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing in favor of ELH-Scottsdale, LLC, dated as of November 20, 2001 and recorded on November 26, 2001 in the Official Records of Maricopa County, Arizona as Recording No. 2001-1103186, as amended by that certain Amendment to Construction Deed of Trust With Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of January 13, 2004 and recorded February 4, 2004 in the Official Records of Maricopa County, Arizona as Recording No. 2004-0113085, as further amended by that certain Second Amendment to Construction Deed of Trust With Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of April 30, 2004 and recorded May 7, 2004 in the Official Records of Maricopa County, Arizona as Recording No. 2004-0511773; and (ii) the Construction Deed of Trust and Fixture Filing (with Assignment of Rents and Security Agreement) in favor of Excel Legacy Holdings, Inc., dated as of February 4, 2004 and recorded on February 4, 2004 in the Official Records of Maricopa County, Arizona as Recording No. 2004-0114697, as amended by that certain Amendment to Construction Deed of Trust With Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of April 30, 2004 and recorded May 7, 2004 in the Official Records of Maricopa County, Arizona as Recording No. 2004-0511774.

1.27 "*Exhibit*" means the referenced exhibit which is attached to and made a part of this Agreement.

1.28 "*General Assignment*" means the document conveying all of Seller's right, title and interest in (a) any incidental permits, contracts or other intangible rights associated with the use or operation of the Land and the Improvements that Buyer, in its sole, absolute and unfettered discretion, elects to acquire; and (b) the representations and warranties given to Seller by LAD in connection with Seller's Related Transaction. The General Assignment shall be in the form attached to this Agreement as Exhibit C. All rights of LAD and ASUF in and to the Property not otherwise conveyed or transferred by the Deed, shall be conveyed to City through the General Assignment.

1.29 "*Governmental Authority*" means any governmental or quasi-governmental executive, legislative or judicial body, board, commission, agency or department, including, by way of example only, any improvement district having jurisdiction over the Property.

1.30 "*Hazardous Material*" means any hazardous, toxic or radioactive materials, substances, wastes, contaminants or pollutants as defined in any Environmental Laws.

1.31 "*Heard License*" means the Revocable Parking License dated December 15, 2001 between Seller, as licensor, and Bill Heard Chevrolet, Inc.-Scottsdale, an Arizona corporation, as licensee, as amended.

1.32 "*Immediately Available Funds*" means funds in the form of cash or a cashier's check drawn on the local branch of a national bank doing business in Arizona or wire transfer or a combination of any of the foregoing.

1.33 "Improvements" means any permanent structures and other improvements constructed on or below the Land.

1.34 "LAD" means Los Arcos Development, LLC, a Delaware limited liability company.

1.35 "*Land*" means Seller's fee simple absolute interest in the pertinent parcel described in Exhibit A, together with Seller's right, title and interest, if any, in and to (i) any and all hereditaments and appurtenances, including, if applicable, air, water and mineral rights, (ii) any rights of way, (iii) any strip, gore, street or road adjoining the Land; (iv) all canals, laterals and ditches; (v) any easement and other rights under any recorded grants, declarations, reservations, covenants, conditions, restrictions and/or easements; and (vi) any existing permits, licenses, franchises, variances and approvals in connection with or appurtenant to the foregoing.

1.36 *"Lease"* means the Groundlease (herein so called) between the City of Scottsdale, an Arizona municipal corporation, as Landlord, and Seller, as Tenant, attached hereto as Exhibit D, duly executed by the parties.

1.37 "*Liens*" means, collectively: (a) any other deeds of trust, mortgages, financing statements or other consensual liens recorded against the Property securing any monetary obligations of Seller, (b) any tax liens (other than liens for Real Property Taxes and Assessments not yet due and payable) recorded against the Property, (c) any mechanics' liens recorded against the Property, (d) any judgment liens recorded against the Property; and (e) the existing Deeds of Trust.

1.38 "*Non-Foreign Affidavit*" means Seller's written certification that Seller is not a "foreign person," as such term is defined in Section 1445(f)(3) of the Internal Revenue Code of 1986 and the regulations promulgated thereunder, as amended or superseded.

1.39 "*Notice*" means a notice, consent or waiver given in strict accordance with Section 10.4.

1.40 "*Opening of Escrow*" means the date when all counterparts of this Agreement, bearing the signatures of the Parties, are delivered to Escrow Agent.

1.41 "*Party*" means either Seller or Buyer; and "*Parties*" means both Seller and Buyer.

1.42 "*Person*" means a natural person, corporation, limited liability company, partnership, joint venture, trust or other entity or association, except for any Governmental Authority acting solely in a non-commercial capacity.

1.43 "*Property*" means the Land and the Improvements, any right, title or interest conveyed by the General Assignment, and all right, title, and interest of LAD and ASUF in the Land and Improvements and all rights incident thereto.

1.44 *"Purchase Price*" has the meaning set forth in Section 3.1.

1.45 "*Real Property Taxes and Assessments*" means, collectively: (a) all *ad valorem* real property taxes levied by any Governmental Authority with respect to the Land and the Improvements; and (b) all general or special assessments levied by any Governmental Authority with respect to the Land and the Improvements.

1.46 *"Recitals"* means the recitals in Section A of this Agreement, which provisions are incorporated in the Agreement by reference as and set forth fully herein.

1.47 "*Section*" means the referenced section of this Agreement, except where otherwise indicated by the context.

1.48 "*Seller*" has the meaning set forth in the first grammatical paragraph on page 1 of this Agreement.

1.49 "*Seller's Deliveries*" means the actions to be taken by Seller at the Closing, pursuant to Section 7.3.

1.50 *"Seller's Related Transaction"* means the acquisition of the Property by Seller from LAD, pursuant to an escrow which is scheduled to close immediately prior to the Closing.

1.51 *"Studies"* has the meaning set forth in Section 6.1.

1.52 "*Survey*" means the Los Arcos Redevelopment ALTA Survey, prepared by Kimley-Horn and Associates, dated_____, 2004, Project No. 091501000, and certified to Buyer.

1.53 "*Title Company*" means Chicago Title Insurance Company, a California corporation, in its capacity as the author of the Title Report and issuer of the Title Policy.

1.54 "*Title Exceptions*" means all matters of record relating to the title to the Land.

1.55 "*Title Policy*" means an ALTA Extended Coverage Owner's Policy of title insurance to be issued by Title Company in the amount of the Purchase Price, subject only to the Approved Title Exceptions, if any, the costs of which shall be borne entirely by Buyer pursuant to Section 7.7.3. The Title Policy shall include all endorsements, reinsurance agreements and direct access agreements that Buyer has requested and Title Company has agreed to provide before the expiration of the Study Period. The refusal of the Title Company to issue any endorsements or to make any modifications requested by Buyer shall constitute grounds for Buyer's cancellation, in Buyer's sole, absolute and unfettered discretion, of this Agreement up to and including the Closing Date.

1.56 *"Title Policy Premium"* has the meaning set forth in Section 7.7.3.

1.57 "*Title Report*" means the commitment for the issuance of the Title Policy, including: (a) the preprinted exclusions, exceptions, stipulations and conditions limiting coverage under the Title Policy; (b)

schedules of all Title Exceptions and legible copies of all instruments identified in such schedules; and (c) a list of Escrow Agent's requirements for Closing.

2. **Sale and Purchase**. For valuable consideration, Seller agrees to sell the Property to Buyer, and Buyer agrees to purchase the Property from Seller for the Purchase Price, according to the terms and subject to the conditions of this Agreement.

3. **Purchase Price**.

3.1 *Definition.* According to the terms and subject to the conditions of this Agreement, Buyer shall pay Seller a total of $41,500,000.00 (the "*Purchase Price*") for the Property.

3.2 *Payment of Purchase Price*. At Closing, Buyer shall pay the Purchase Price in Immediately Available Funds, plus or minus any allocations or prorations pursuant to the Approved Closing Statement.

4. **Reserved**.

5. **Representations and Warranties**.

5.1 Representations *and Warranties of Seller*. As of the Agreement Date and again as of the Closing Date, except as otherwise disclosed to Buyer in this Agreement, in the Title Report, in Seller's Information, in the Conveyance Documents or in any other writing received by Buyer on or before Closing, as a material inducement for Buyer to enter into this Agreement, Seller represents and warrants as follows:

5.1.1 *Organization*. Seller is a limited liability company duly organized and validly existing under the laws of the State of Arizona.

5.1.2 *Authority*. Seller has the power to execute, deliver and perform this Agreement and all Exhibits attached hereto in accordance with the terms of this Agreement. The execution, delivery and performance of this Agreement and all Conveyance Documents have been duly authorized by all requisite action on the part of Seller, and all consents required by any Persons have been obtained. When executed and delivered, this Agreement shall be binding upon Seller and enforceable according to its terms and conditions. If requested by Escrow Agent or Buyer, Seller will provide a duly executed resolution. In the event of any Challenge to the validity or enforceability of any provision of this Agreement, Seller, at its own expense, directly or through counsel, as appropriate, shall assist on the defense of such actions if Seller is named as a party in such action. City and ASUF shall cooperate in the defense of any such action. Seller shall not be liable for any cost, damages, or fees in the event a court of competent jurisdiction in a final, nonappealable order, determines that this Agreement, the Lease, or any provision of the Agreement or the Lease, is invalid or unenforceable in whole or in part. When executed and delivered, this Agreement shall be binding upon Seller and enforceable according to its terms and conditions.

5.1.3 *No Conflict with Activities of Seller*. Neither the execution and delivery of this Agreement nor the completion of the transactions contemplated by this Agreement will conflict in any material respect with, or result in a material breach under or violation of any: (a) provision of Seller's articles of organization or operating agreement, if any, (b) agreement or instrument by which Seller is bound, or (c) applicable law, rule, regulation, judgment, order or decree of any Governmental Authority or court having jurisdiction over Seller or the Property.

5.1.4 *Non-Foreign Status*. Seller is not a "foreign person," as such term is defined in Section 1445(f)(3) of the Internal Revenue Code of 1986 and the regulations promulgated thereunder, as amended.

From the Agreement Date until the Closing Date, Seller shall promptly give Notice to Buyer of any fact or circumstance that would reasonably be construed to render any of the foregoing representations and warranties of Seller to be materially untrue, incorrect or misleading. Within five (5) Business Days after receiving such Notice (but no later than the Closing Date), Buyer may elect to terminate this Agreement by giving Notice to Seller and Escrow Agent, if Seller is not willing and able to cure or otherwise remove such fact or circumstance to Buyer's absolute satisfaction.

5.2 *Representations and Warranties of Buyer*. As of the Agreement Date and again as of the Closing Date, as a material inducement to Seller to enter into this Agreement, Buyer represents and warrants as follows:

5.2.1 *Status*. Buyer is a municipal corporation duly organized and validly existing under the laws of the State of Arizona.

5.2.2 *Authority*. Upon the City Approval, Buyer shall have the power to execute, deliver and perform this Agreement; and thereupon the execution, delivery and performance of this Agreement and all conveyance documents shall have been duly authorized by all requisite action on the part of Buyer, and all consents required by any Persons shall have been obtained; provided, however, that subject to the provisions of Section 10.12, in the event of any challenge to the validity or enforceability of this Agreement or the Lease, City’s only obligation shall be to defend such action and to cooperate with ASUF in such defense. City shall not be liable for any cost, damages, or fees in the event a court of competent jurisdiction in a final, nonappealable order, determines that this Agreement, the Lease, or any provision of the Agreement or the Lease, is invalid or unenforceable in whole or in part. When executed and delivered, this Agreement shall be binding upon Buyer and enforceable according to its terms and conditions.

5.2.3 *No Conflict with Activities of Buyer*. Neither the execution and delivery of this Agreement nor the completion of the transactions contemplated by this Agreement will conflict in any material respect with, or result in a material breach under or violation of any: (a) provision of Buyer's charter, (b) agreement or instrument by which Buyer is bound, or (c) applicable law, rule, regulation, judgment, order or decree of any Governmental Authority or court having jurisdiction over Buyer; provided, however, that subject to the provisions of Section 10.12, in the event of any challenge to the validity or enforceability of this Agreement or the Lease, City’s only obligation shall be to defend such action and to cooperate with ASUF in such defense. City shall not be liable for any cost, damages, or fees in the event a court of competent jurisdiction in a final, nonappealable order, determines that this Agreement, the Lease, or any provision of the Agreement or the Lease is invalid or unenforceable in whole or in part.

5.2.4 *As-Is Purchase*. Buyer acknowledges that, except for the express representations and warranties provided in Section 5.1 and in the Conveyance Documents (including but not limited to the General Assignment), the Property will be conveyed "**AS-IS, WHERE-IS**" and with all defects and errors of description; and Seller makes no representations or warranties, express or implied, concerning the Property. By signing this Agreement, Buyer represents and warrants that Buyer's purchase of the Property shall be based upon Buyer's independent due diligence investigation of the Property and, except as set forth herein, not based upon any representations or warranties of Seller or anyone associated or claiming to be associated with Seller. **WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BUYER**

ACKNOWLEDGES THAT THE PROPERTY IS SOLD WITHOUT ANY REPRESENTATIONS OR WARRANTIES RELATING TO: (A) THE VALUE AND THE PHYSICAL DIMENSIONS OR OTHER CHARACTERISTICS OF THE PROPERTY, INCLUDING THE NATURE OR CONDITION OF ANY IMPROVEMENTS; (B) THE HABITABILITY, MERCHANTABILITY, OR FITNESS OF THE PROPERTY FOR BUYER'S PURPOSES; (C) THE INVESTMENT POTENTIAL, INCOME CAPACITY OR THE EXPENSE PROFILE FOR THE PROPERTY; (D) THE TAX CONSEQUENCES OF BUYER'S PURCHASE OF THE PROPERTY; (E) THE AVAILABILITY OR SUFFICIENCY OF UTILITIES TO THE PROPERTY AND THE INTEGRITY OF THE LAND, THE CONDITION OR INTEGRITY OF THE SOIL, WATER OR ANY IMPROVEMENTS, OR THE PRESENCE OF HAZARDOUS MATERIAL THEREON OR THEREIN; OR (F) THE ZONING OF THE PROPERTY AND THE COMPLIANCE OF THE PROPERTY WITH ANY LAWS, INCLUDING WITHOUT LIMITATION THE ENVIRONMENTAL LAWS, AND BUYER EXPRESSLY WAIVES ANY CLAIMS AGAINST SELLER ARISING FROM ANY NON-COMPLIANCE.

6. **Pre-Closing Contingencies and Activities**.

6.1 *Buyer's Approval Contingency*. As a pre-Closing contingency, Buyer shall have satisfied itself as to the suitability of the Property for Buyer's purposes and shall have determined the feasibility of purchasing the Property pursuant to this Agreement, after being given an opportunity to conduct a due diligence investigation of the Property, and Seller shall have determined the suitability of the Property for its purposes pursuant to the Lease. Prior to the Closing, Buyer shall have the right to: (a) review and approve, in its sole, absolute and unfettered discretion, the Title Report, Survey, and Seller's Information (including but not limited to the Environmental Reports); and (b) make inspections, conduct tests and obtain reports and other information deemed necessary or appropriate by Buyer in its sole, absolute and unfettered discretion, for such a due diligence investigation (collectively, the "*Studies*"), and (c) otherwise conduct such analyses or make such inquiries as Buyer may deem necessary or desirable in its sole, absolute and unfettered discretion, to determine the suitability of the Property for Buyer's purposes, subject to the conditions set forth in this Section 6.1, all of which rights may be referred to collectively as "*Buyer's Contingency*." Buyer's Contingency shall extend until the time of Closing.

6.2 *Seller's Information*. Prior to or in conjunction with the Opening of Escrow, Seller shall make available to Buyer for Buyer's review and copying at Seller's office, during normal business hours, at no cost to Buyer, the following documents relating to the Property, if they exist and if they are in Seller's possession or immediate control, except as otherwise specifically required (collectively, "*Seller's Information*") and shall further supplement such delivery of additional documents are discovered, obtained from LAD, or otherwise become available to Seller:

6.2.1 notices of valuation and bills for Real Property Taxes and Assessments for the most recent year;

6.2.2 copy of undated zoning map, referenced as 13-ZN-00;

6.2.3 copies of any studies, reports, tests or analyses of the physical condition of the Land and existing Improvements performed in Seller's possession or reasonably available to Seller;

6.2.4 copies of the Heard License and all contracts and other documents to be terminated by LAD in connection with Seller's Related Transaction;

6.2.5 the Environmental Reports; and

6.2.6 all other documents received by Seller from LAD in connection with Seller's acquisition of the Property immediately prior to its sale to Buyer.

6.3 *Additional Studies*. Seller hereby grants (or shall cause to be granted) as a right of Seller under Seller's Related Transaction to Buyer and Buyer's employees, agents or contractors a license to enter upon the Property during the Study Period to conduct other Studies which do not permanently disrupt the Property or render the Property unsafe. In addition to any other remedies available to Seller under this Agreement, Buyer shall and does hereby agree to defend (using counsel reasonably acceptable to Seller), against any and all claims relating to Buyer's entry on the Property and the conduct of the Studies and to satisfy any liability arising therefrom which results from Buyer's negligence, and not from Seller's negligence. So long as Buyer promptly notifies Seller and takes reasonable steps to minimize imminent loss in response to Buyer's discovery of concealed hazards, Buyer shall have no liability with respect to such conditions. If this Agreement is canceled by Buyer, Buyer agrees to deliver to Seller within 30 Days after the effective date of such cancellation, at no cost to Seller, copies of the Studies which Buyer commissioned pertaining to the physical condition of the Property, without warranty as to the accuracy or content thereof. The obligations imposed upon Buyer under this Section shall survive cancellation of this Agreement or Closing under this Agreement, as the case may be. Buyer, at Buyer's sole cost, shall cause the Property to be restored to substantially the condition which existed prior to the Studies.

6.4 *City Approval Contingency*. As a further pre-Closing contingency, on or before July ___, 2004 ("*City Approval Deadline*") each of the following events shall have occurred or have been waived in writing by City (collectively, the "*City Approval*"), (i) the City shall have voted (by municipal ordinance or other requisite formal action that includes an emergency clause) to approve City funding of an amount equal to the Purchase Price and all other costs associated with Closing (e.g., the Title Policy Premium and the Closing Costs).with such funding to occur on or before the Closing Date and subject to any such other terms and conditions as the City approves in its sole, absolute and unfettered discretion, and (ii) the City shall have taken other appropriate action (as determined by City in its sole, absolute and unfettered discretion) to authorize the execution and delivery of the Lease (including any financial obligations of the City agreed to therein) and subject to any such other terms and conditions as City approves in its sole, absolute and unfettered discretion, and (iii) no rights of referendum or other legal actions, claims, or challenges of any kind (including any suit, action or administrative proceeding) that could impair or preclude the City's funding obligations or the Buyer's use of the Property for Buyer's intended purposes shall then have been initiated or served and no notices shall then have been given of the intent to exercise any such rights or commence any such legal actions, claims or challenges that could affect the actions taken under clauses (i) and (ii) hereof (individually, a *"Challenge"* and collectively, *"Challenges"*). If Seller and Escrow Agent fail to receive Notice from Buyer on or before July ___, 2004, affirmatively stating that City Approval has been obtained and that Buyer has agreed to proceed to consummate the transaction contemplated by this Agreement ("*City Approval Notice*"), then (x) Buyer shall be conclusively deemed to have canceled this Agreement, (y) Buyer shall return all copies of the Title Report, Survey and Seller's Information to Seller within 30 Days and, (z) except as otherwise provided in this Agreement, neither Party shall have any further obligation under this Agreement. However, if the City Approval Notice is timely received, the Closing shall nevertheless be subject to the satisfaction of the Buyer's Contingency described in Section 6.1, including but not limited to the right

of the City to terminate the transaction represented by this Agreement in the event of any Challenge, whether prior or subsequent to the City Approval.

6.5 *Seller's Contingency*. As a contingency to its obligations hereunder, Seller shall have acquired the Property in Seller's Related Transaction in accordance with its terms.

7. **Closing Matters**.

7.1 *Time and Place of Closing*. Closing shall occur on the Closing Date at the offices of Escrow Agent or at such other place as the Parties shall mutually agree upon in writing, but only following, and in conjunction with, the closing of Seller's Related Transaction.

7.2 *Simultaneous Deliveries*. On or before the Closing Date, Seller's Deliveries and Buyer's Deliveries shall take place, all of which shall be deemed to be taken simultaneously at Closing and none of which will be deemed completed until all have been taken.

7.3 *Seller's Deliveries*. At Closing, Seller shall deposit with Escrow Agent the following items: (a) the Conveyance Documents, duly executed and (where required for recording) acknowledged by or on behalf of Seller; and (b) the Lease.

7.4 *Buyer's Deliveries*. At Closing, Buyer shall deposit with Escrow Agent the following items: (a) the Purchase Price together with the Title Policy Premium and the Closing Costs; (b) the Affidavit of Legal Value, duly executed by Buyer or Buyer's agent; and (c) the Lease.

7.5 *Forms of Documents*. All documents to be delivered at Closing shall either be in the form of the Exhibits or, if not attached as Exhibits, in the form reasonably acceptable to the receiving Party.

7.6 *Approved Closing Statement*. Based on the information supplied by the Parties, Escrow Agent shall prepare a pre-audit settlement statement for delivery to the Parties no later than three (3) Business Days before the Closing Date. When signed by the Parties, such pre-audit settlement statement shall become the Approved Closing Statement.

7.7 *Allocations and Prorations*. The Approved Closing Statement shall reflect allocations and prorations of certain items as of the Closing Date, pursuant to this Section. Except as otherwise provided in this Agreement, any proratable expense items shall be prorated on the Closing Date, on the following basis: (a) Buyer shall be credited for any proratable expense items to the extent they are accrued but unpaid before the Day of the Closing (whether or not the same shall be due and payable); and (b) Seller shall be credited for any proratable expense items to the extent they are paid prior to the Closing Date but relate to a period of time on or after the Day of the Closing. After taking all allocations and prorations into account, as set forth below, net credits in favor of Buyer shall be deducted from the balance of the Purchase Price in computing the Additional Funds, and net credits in favor of Seller shall be added to the balance of the Purchase Price in computing the Additional Funds.

7.7.1 *Real Property Taxes*. All Real Property Taxes and Assessments which are not yet due and payable shall be prorated based on most recent available information on the Closing Date, using 30-Day months. Absent manifest arithmetical error, this proration shall be final, and there shall be no post-Closing adjustments. Notwithstanding the foregoing, Seller reserves all rights with respect to any pending appeals,

shall be responsible for all associated legal fees and costs, and shall be entitled to retain all associated refunds with respect to the tax periods before the Closing Date.

7.7.2 *Utilities*. Seller shall recover (or receive a credit for) all utility deposits with the providers of all gas, electric, sewer, refuse and similar services to the Property. Upon two (2) Business Days' Notice to Buyer, Seller shall cause a cutoff of all such services so that Seller shall cease being responsible for actual consumption after the Closing Date. If, for any reason, such cutoff does not occur, the cost of such utilities shall be prorated on the Closing Date.

7.7.3 *Title Policy Premium*. Buyer shall pay Title Company's entire charge for the owner's policy of title insurance and any endorsements thereto ("Title Policy Premium"), and Seller shall have no obligation to execute any indemnifications in connection with such endorsements. Title company has agreed that title insurance shall be charged one time with respect to this transaction and Seller's Related Transaction and that escrow fees shall be computed recognizing the simultaneous closings and reduced costs associated therewith.

7.7.4 *Closing Costs*. Buyer shall pay the entire escrow fee and all recording costs.

7.7.5 *Professional Fees*. Each Party shall pay the costs of its respective legal, accounting and other professional advisors.

7.8 *Internal Revenue Service Reporting*. Escrow Agent accepts responsibility as the "real estate reporting person" designated by the Parties to furnish all information required under Section 6045(e) of the Internal Revenue Code of 1986 and the regulations promulgated thereunder. Seller agrees to execute and deliver to Escrow Agent any documentation reasonably required by Escrow Agent to perform such responsibility. Escrow Agent shall and does hereby agree to defend, indemnify and hold the Parties harmless for, from and against any and all claims, demands, actions, liabilities, judgments, losses and expenses (including attorneys' fees, witness fees and court costs) incurred by the Parties arising out of the alleged non-performance of any such responsibility.

7.9 *Delivery of Possession*. Seller shall deliver possession of the Property to Buyer at Closing, subject to the rights of any Persons pursuant to the Approved Title Exceptions (if any), whereupon all risk of physical loss or damage to the Property from any source shall pass to Buyer.

8. **Obligations to Close**.

8.1 *Seller's Conditions*. Seller's obligation to close the transaction contemplated under this Agreement shall be subject to the fulfillment of each of the following conditions (collectively, "*Seller's Conditions*") on or before the Closing Date:

8.1.1 *Buyer's Deliveries*. Buyer shall have made all of Buyer's Deliveries.

8.1.2 *No Default by Buyer*. Buyer shall have performed all of Buyer's other obligations under this Agreement.

8.1.3 *Title Policy*. Title Company shall be unconditionally and irrevocably committed to issue the Title Policy to Buyer, subject only to the Approved Title Exceptions, the payment of the premiums and the limitations of Section 1.55.

8.2 *Failure of Seller's Conditions*. If Closing does not occur because of a failure of Seller's Conditions while Seller is not in default, Seller's sole and exclusive remedy shall be to cancel this Agreement. Cancellation shall be exercised by Seller by giving Notice to Buyer and Escrow Agent specifying which of Seller's Conditions have not been satisfied. Upon such cancellation and forfeiture, except as otherwise provided in this Agreement, neither Party shall have any further obligation under this Agreement. Seller waives all other rights and remedies which Seller may have against Buyer, if Closing does not occur because of a failure of Seller's Conditions. Seller's Conditions are solely for the benefit of Seller and may be waived only by Notice given by Seller to Buyer.

8.3 *Buyer's Conditions*. Buyer's obligations to close the transaction contemplated under this Agreement shall be subject to the fulfillment of each of the following conditions (collectively, "*Buyer's Conditions*") on or before the Closing Date:

8.3.1 *Seller's Deliveries*. Seller shall have made all of Seller's Deliveries.

8.3.2 *No Default by Seller*. Seller shall have performed all of Seller's other obligations under this Agreement.

8.3.3 *Title Policy*. Title Company shall be unconditionally and irrevocably committed to issue the Title Policy to Buyer, subject only to the Approved Title Exceptions, the payment of the premiums and the limitations of Section 1.55.

8.3.4 *Buyer's Contingency*. Buyer shall have approved, in Buyer's sole and absolute discretion, Buyer's Contingency.

8.4 *Failure of Buyer's Conditions*. If Closing does not occur because of a failure of Buyer's Conditions, and Buyer is prepared to tender the Buyer Deliveries, Buyer's sole and exclusive remedy shall be to cancel this Agreement by giving Notice to Seller and Escrow Agent specifying which of Seller's Conditions have not been satisfied, whereupon Seller shall reimburse Buyer for all out-of-pocket costs incurred in negotiating this Agreement and the Lease, conducting the Studies and seeking the City Approval (not to exceed $200,000 in the aggregate), if (but only if) such expenses are recovered by Seller from LAD which Seller agrees diligently to pursue. Buyer's Conditions are solely for the benefit of Buyer and may be waived only by Notice given by Buyer to Seller.

9. **Public Record**. This Agreement, the Exhibits hereto and all related closing documents are "public records" subject to public records and all other similar laws.

10. **Miscellaneous Provisions**.

10.1 *Entire Agreement*. This Agreement contains the entire agreement of the Parties pertaining to the subject matter and supersedes all prior or contemporaneous understandings in that regard, including any letters of intent and term sheets, whether or not signed by both Parties. This Agreement may not be modified except by a written amendment signed by all Parties. This Agreement shall also constitute the joint instructions of Seller and Buyer to Escrow Agent, which shall act as their independent escrow agent to receive, disburse, file, record and deliver all documents and funds in connection with the sale and purchase of the Property as described herein. If reasonably required to do so by Escrow Agent, the Parties may execute Escrow Agent's standard form of Escrow Instructions, deleting therefrom any provisions relating to any 13-day cancellation provision; lien and offset rights; inconsistent definitions of "Close of Escrow"; Broker's

commissions upon cancellation; deduction of interpleader expenses from deposits; account servicing; and the form of title insurance.

10.2 *Assignment*. Buyer shall be permitted to assign its rights under this Agreement to City of Scottsdale Municipal Property Corporation, an Arizona nonprofit corporation ("MPC"); whereupon MPC intends, immediately upon the Closing and by instruments to be recorded concurrently with the Deed in the records of the Maricopa County, Arizona, Recorder's Office, to convey the Property and all other rights to be transferred pursuant to this Agreement to the City of Scottsdale, an Arizona municipal corporation, which thereupon will be the holder of fee simple title to the Property and shall be the.Landlord in the Lease. At the time of conveyance from MPC to the City of Scottsdale, MPC shall be discharged from all unfulfilled obligations of the Buyer hereunder and under the Lease, and all such unfulfilled obligations of Buyer shall be assumed by the City of Scottsdale. It is the intention and expectation of the Parties that all of the property rights and all of the benefits of this Agreement (including but not limited to the benefit of the Assignment and any representations and warranties that survive the Close of Escrow) shall pass completely and without interruption to the City at the time of conveyance from MPC to the City.

10.3 *Time*. If the last Day for taking any action under this Agreement does not fall on a Business Day, the time for taking such action shall be extended to the next Business Day.

10.4 *Notices.* All notices, consents and waivers required or permitted under this Agreement shall be in writing and shall be deemed to have been given: (a) 2 Business Days after being mailed by certified mail, return receipt requested, postage prepaid, to the recipient's address as set forth below; or (b) 1 Business Day after being sent by overnight courier services such as Federal Express, UPS, or Airborne for next Business Day delivery (but excluding United States Postal Service Express Mail); or (c) upon electronically verified transmission by facsimile during the hours of 8:00 a.m. and 5:00 p.m., local Phoenix, Arizona time (or, if after such hours or on a Day which is not a Business Day, at 8:00 a.m., local Phoenix, Arizona time, on the next Business Day); or (d) upon personal delivery, whichever occurs first. Any recipient may change its address for Notice by giving Notice in that manner.

If to Buyer: City of Scottsdale
3939 North Drinkwater Boulevard
Scottsdale, Arizona 85251
Facsimile Number: (480) 312-2738
[Telephone Number: (480) 312-2422]
Attention: City Manager

with a copy at the same time to:

City of Scottsdale
3939 North Drinkwater Boulevard
Scottsdale, Arizona 85251
Facsimile Number: (480) 312-2548
[Telephone Number: (480) 312-2405]
Attention: City Attorney

with a copy at the same time to:

Gary L. Birnbaum, Esq.
Mariscal, Weeks, McIntyre & Friedlander, P.A.
2901 North Central Avenue, Suite 200
Phoenix, Arizona 85012-2705
Facsimile Number: (602) 285-5100
[Telephone Number: (602) 285-5000]

If to Seller: Arizona State University Foundation
64 East Broadway Road, Suite 230
Tempe, Arizona 85281
Attention: Lonnie L. Ostrom
Facsimile Number: (480) 965-2475
[Telephone Number: (480) 968-4330]

with a copy at the same time to:

John Christian, Esq.
Jennings, Strouss & Salmon, P.L.C.
The Collier Center, 11th Floor
201 East Washington Street
Phoenix, Arizona 85004
Facsimile Number: (602) 495-2609
[Telephone Number: (602) 262-5805]

with a copy at the same time to:

Bruce B. May, Esq.
Jennings, Strouss & Salmon, P.L.C.
The Collier Center, 11th Floor
201 East Washington Street
Phoenix, Arizona 85004
Facsimile Number: (602) 495-2603
[Telephone Number: (602) 262-5923]

with a copy at the same time to:

Steven O. Evans
5825 East Starlight Way
Paradise Valley, Arizona 85253
Facsimile Number: (480) 429-8293
[Telephone Number: (480) 429-8292]

If to Escrow
Agent: Chicago Title Insurance Company
Attn: Rose Norton, Escrow Officer
2415 East Camelback Road, Suite 300
Phoenix, Arizona 85016
Facsimile Number: (602) 667-1082
[Telephone Number: (602) 667-1041]

10.5 *Binding Agreement*. Subject to Section 10.2, this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. However, this Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and assigns, if any.

10.6 *Applicable Law*. This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Arizona pertaining to contracts made and to be performed entirely in the State of Arizona. Any action brought to interpret, enforce or construe any provision of this Agreement shall be commenced and maintained in the Maricopa County Superior Court. The Parties irrevocably consent to jurisdiction and venue in such court for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section.

10.7 *Attorneys' Fees.* Subject to the limitations described in Section 8.2 and 8.4, in any action or suit between Buyer and Seller that arises out of this Agreement, whether or not contested, the prevailing party, as determined by the court, shall recover its reasonable attorneys' fees, witness fees and court costs from the non-prevailing party, in an amount to be determined by the court and included in any judgment or decree.

10.8 *Seller's Brokers.* Seller has not dealt with any broker or finder in connection with the transaction contemplated under this Agreement; and Seller shall and does hereby agree to defend, indemnify and hold Buyer harmless for, from and against any and all claims, demands, actions, liabilities, judgments, losses and expenses (including attorneys' fees, witness fees and court costs) incurred by Buyer in connection with any claims by any Persons alleging that they are entitled to a commission or finder's fee as a result of dealings with Seller. Seller's obligations under this Section shall survive Closing or termination of this Agreement.

10.9 *Buyer's Brokers.* Buyer has not dealt with any broker or finder in connection with the transaction contemplated under this Agreement, and Buyer shall and does hereby agree to defend, indemnify and hold Seller harmless for, from and against any and all claims, demands, actions, liabilities, judgments, losses and expenses (including attorneys' fees, witness fees and court costs) incurred by Seller in connection with any claims by Persons alleging that they are entitled to a commission or finder's fee as a result of dealings through Buyer. Buyer's obligations under this Section shall survive Closing or termination of this Agreement.

10.10 *Counterparts*. This Agreement may be executed in several counterparts, all of which shall constitute a single Agreement. As evidence of this Agreement, it shall be necessary to account for only one such counterpart, and signature pages may be detached from the counterparts and attached to one or more copies of this Agreement to form multiple legally effective documents. Any counterpart of this Agreement

may be executed and transmitted by facsimile and shall be deemed effective immediately upon receipt of such transmission by Escrow Agent. The original executed counterpart shall be sent to Escrow Agent by overnight courier service, as a matter of convenience only.

10.11 *Headings, Gender and Number*. The Section headings are intended for ease of reference only, and they shall not amplify, limit or otherwise define the contents of this Agreement. The masculine, feminine or neuter gender, as well as the singular or plural number, shall be deemed to include the others whenever the context so requires.

10.12 *Severability*. If any provision of this Agreement is held to be illegal, invalid or unenforceable, in whole or in part, under present or future laws effective during the Term, such provisions shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by the severance of such provision from this Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as part of this Agreement, a provision as similar in terms to such illegal, invalid, or unenforceable provisions as may be possible and still be legal, valid and enforceable and this Agreement shall be deemed reformed accordingly.

10.13 *Waiver*. No waiver of any provision of this Agreement or any breach of this Agreement will be effective unless such waiver is in writing and signed by the waiving party and any such waiver will not be deemed a waiver of any other provision of this Agreement or any other or subsequent breach of this Agreement.

10.14 *Time of the Essence*. Time is of the essence of this Agreement and of each term, provision and condition hereof. Any extension of time granted for the performance of any duty under this Agreement shall not be considered an extension of time for the performance of any other duty under this Agreement.

10.15 *No Recordation of Agreement or Memorandum*. Neither this Agreement nor a memorandum thereof shall be recorded, and the attempted recordation thereof by or on behalf of either Party shall constitute a default hereunder.

10.16 *Additional Acts*. The Parties agree to execute such other documents and to perform such other acts as may be reasonably necessary to carry out the purpose and intent of this Agreement.

10.17 *Conflict of Interest Statute*. This Agreement is subject to, and may be terminated by the City in accordance with, the provisions of A.R.S. § 38-511.

10.18 *Benefits to City*. As reflected in Recital C, the City anticipates that it will receive substantial pecuniary and intangible benefits as a consequence of the transactions and conveyances described in this Agreement and the Lease. The parties believe that the total consideration to be received by the City (including all pecuniary, intangible, current and prospective future benefits) under this Agreement and under the Lease, is proportionate to the total obligations assumed and/or incurred by the City under this Agreement and under the Lease.

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the Agreement Date.

SELLER: ASUF SCOTTSDALE, LLC, an Arizona limited liability company

By:_____

Its: _____

BUYER: CITY OF SCOTTSDALE, an Arizona municipal corporation

By _____

Its _____

ESCROW AGENT'S ACCEPTANCE

THE FOREGOING AGREEMENT is accepted by the undersigned as of the Opening of Escrow.

CHICAGO TITLE INSURANCE COMPANY, a Missouri corporation

By: _____

Its: _____

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT B

DEED

When Recorded Return to:

Escrow No. _____

SPECIAL WARRANTY DEED

FOR VALUABLE CONSIDERATION, receipt and sufficiency of which is forever acknowledged, ASUF Scottsdale, LLC, an Arizona limited liability company (Grantor), conveys to the City of Scottsdale, an Arizona municipal corporation (Grantee), the following described real property situated in Maricopa County, Arizona, together with all rights and privileges appurtenant thereto:

See the legal description set forth in Exhibit "1" attached and incorporated by this reference (the Property).

SUBJECT TO all matters of record.

Grantor warrants the title to the Property against all acts of the Grantor and no other, subject to the matters set forth above.

DATED this _____ day of July, 2004.

GRANTOR: ASUF Scottsdale, LLC, an Arizona limited liability company

By:_____

Its _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2004, by
_____, the _____ of ASUF Scottsdale, LLC, an Arizona limited liability company, on behalf of the company.

_____
Notary Public

My Commission expires:

EXHIBIT "1" TO SPECIAL WARRANTY DEED

EXHIBIT C

GENERAL ASSIGNMENT

EXHIBIT D

LEASE