

# CITY COUNCIL REPORT



Meeting Date: 01/08/2013  
 General Plan Element: *Land Use*  
 General Plan Goal: *Recognize Scottsdale's role as a major economic center*

## ACTION

**Scottsdale Fashion Square LLC Settlement.** The Council is requested to adopt Resolution No. 9303 to:

1. Approve Contract No. 2013-012-COS between the City and Scottsdale Fashion Square LLC (SFS) settling a dispute between the City and Scottsdale Fashion Square LLC regarding the amount owed by the City to pay all rent due under the Scottsdale Fashion Square Partnership (SFSP) Garage Lease Agreement, Exhibit 7 to Redevelopment Agreement No. 960138, amending that Lease Agreement; and
2. Authorize such budget transfer authority as may be necessary to fund such settlement.

## BACKGROUND

In 1996 the City entered into the SFSP Garage Lease Agreement (the "Lease") with the Scottsdale Fashion Square Partnership, whose successor is Scottsdale Fashion Square LLC. The Lease provides for the City to have use of the property generally known as the Nordstrom's Garage (the "Garage"), located north of East Via Soleri Drive and west of Marshall Way. The Lease period begins in 1998 (upon completion of the Garage) and runs for 50 years with four 25 year extensions at the City's option. If the City exercises all four extension options it has the right to purchase the Garage for \$100,000 at the end of the final option.

The total rent is \$31,375,000.00, to be paid in installments over the first 30 years of the Lease, and with interest accruing on the unpaid portion at the rate of 9.14% per annum. The City has the right to pre-pay the rent, and, as authorized by the Council on December 4, 2012, when it approved Resolution No. 9236, the City has exercised this right with the payment being funded through the issuance of Municipal Property Corporation bonds.

After the City gave SFS notice of its intent to exercise its prepayment option it was determined that there was a dispute between the parties as to whether accrued interest was included in the final payment. The parties then negotiated a settlement, subject to Council approval, that provides for

the City to pay \$31,000,000, plus give SFS a credit against development fees of \$1,250,000 that must be used within 5 years, and a credit against development fees of an additional \$1,250,000 that must be used within 10 years. Additionally the City agrees to amend the Lease to waive the purchase option it would have at the end of the fourth extension of the Lease, which would occur in the year 2148.

Contract No. 2013-012-COS contains the terms of the proposed settlement.

## **ANALYSIS & ASSESSMENT**

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### **Recent Staff Action**

Negotiations for settling the dispute were conducted for the City by the Acting City Manager, the City Treasurer, and the City Attorney, assisted by members of their staffs.

### **Policy Implications**

The requested approval involves settlement of a contract dispute and does not have any broader policy implications.

### **Significant Issues to be Addressed**

Whether to approve the proposed settlement of the contract dispute.

### **Community Involvement**

This matter involves settlement of a contract dispute and does not involve public outreach.

## **RESOURCE IMPACTS**

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### **Available funding**

The FY 2012/13 adopted General Fund budget included \$3.1 million in Contracts Payable for the Lease of which \$1.3 million has been spent year-to-date leaving a remaining budget of \$1.8 million available to contribute to the prepayment amount of \$31.0 million. It is proposed the remaining requirement of approximately \$29.2 million be transferred from the Capital Improvement Plan (CIP).

The FY 2012/13 adopted CIP included \$40.0 million of contingency budget authority as a placeholder for a possible Bond 2012 program. Since a Bond 2012 program did not move forward, this budget authority is not required in the CIP and is available to transfer to the General Fund operating budget for the prepayment of the Lease.

Below is a summary calculating the remaining budget authority needed for the prepayment (dollars in millions).

\$	3.1	FY 12/13 Nordstrom Garage Lease Agreement Budget
	(1.3)	Lease Agreement Paid Year-to-Date
<hr/>		
		Remaining Budget Authority Available in the General
\$	1.8	Fund
\$	\$(31.0)	Prepayment Amount, per Negotiated Settlement
\$	\$(29.2)	Remaining Budget Authority Need

The entire \$31.0 million prepayment amount (including the budget authority requested from CIP contingency) is to be funded with MPC bonds authorized by City Council on December 4, 2012.

**Staffing, Workload Impact**

None.

**Maintenance Requirements**

SFS is still obligated to maintain the garage under the Lease.

**Future Budget Implications**

As noted in the December 4, 2012, Council Report for Resolution No. 9236, the reason for pre-paying the rent is because it is anticipated the additional transaction privilege taxes retained by the City will be more than the payments on the MPC bonds. Reducing the amount of the bonds will increase the difference between the bond payments and the amount of taxes retained, although the exact amount of the increase will not be known until the bonds are issued.

**Cost Recovery Options**

None.

**OPTIONS & STAFF RECOMMENDATION**

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**Recommended Approach**

Approve Resolution No. 9303, thereby settling the contract dispute regarding the amount of rent owed by the City to SFS.

**Description of Option B**

Not approve Resolution No. 9303 and have the amount owed by the City to SFS determined either through further negotiations or through litigation.

**Proposed Next Steps**

If the Resolution is approved the parties will finalize the settlement.

**RESPONSIBLE DEPARTMENT(S)**

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City Attorney

Division of Finance and Accounting

**STAFF CONTACTS (S)**

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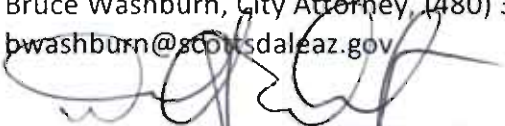
**Staff Contact(s):** Bruce Washburn, City Attorney, 480-312-2405,  
[bwashburn@scottsdaleaz.gov](mailto:bwashburn@scottsdaleaz.gov)

**APPROVED BY**

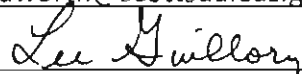
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Bruce Washburn, City Attorney, (480) 312-2405  
[bwashburn@scottsdaleaz.gov](mailto:bwashburn@scottsdaleaz.gov)

1/4/13  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Dan Worth, Acting City Manager, (480) 312-2800  
[dworth@scottsdaleaz.gov](mailto:dworth@scottsdaleaz.gov)

1-4-13  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Lee Guillory, Finance Director, (480) 312-7084  
[lguillory@scottsdaleaz.gov](mailto:lguillory@scottsdaleaz.gov)

1-4-2013  
\_\_\_\_\_  
Date

**ATTACHMENTS**

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1. Resolution No. 9303
2. Contract No. 2013-012-COS

RESOLUTION NO. 9303

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE EXECUTION OF CONTRACT NO. 2013-012-COS FOR SETTLEMENT OF A DISPUTE WITH SCOTTSDALE FASHION SQUARE, LLC, AND AUTHORIZING A BUDGET AUTHORITY TRANSFER IN THE APPROXIMATE AMOUNT OF \$29,200,000 FROM THE CAPITAL IMPROVEMENT PLAN TO THE GENERAL FUND

WHEREAS in 1996 the City entered into a Lease agreement with the predecessor of Scottsdale Fashion Square, LLC; and

WHEREAS the City Council has authorized the City to prepay all amounts of rent due under that Lease; and

WHEREAS a dispute has arisen between the City and Scottsdale Fashion Square, LLC regarding the amount due for prepayment of the Lease; and

WHEREAS it is in the best interest of the City to resolve that dispute on the terms and conditions set forth in Contract No. 2013-012-COS, Exhibit A hereto; and

WHEREAS it is necessary to authorize a budget authority transfer in the approximate amount of \$29,200,000 to the General Fund for payment of the settlement;

NOW, THEREFORE, BE IT RESOLVED by the City of Scottsdale, Maricopa County, Arizona, as follows:

Section 1. That the City Council hereby authorizes and directs the Mayor to execute Contract No. 2013-012-COS.

Section 2. That a budget authority transfer in the approximate amount of \$29,200,000, with the City Treasurer to make the final determination of the exact amount of authority needed to fund the settlement authorized in Section 1, from the Capital Improvement Plan contingency account to the General Fund operating budget, contracts payable account, is hereby approved.

Section 3. That the City Manager is authorized to execute the First Amendment to SFS Garage Lease Agreement in the form that is an exhibit to Contract No. 2013-012-COS.

PASSED AND ADOPTED by the Council of the City of Scottsdale this 8<sup>th</sup> day of January, 2013.


ATTEST:

CITY OF SCOTTSDALE, an Arizona  
municipal corporation

By: \_\_\_\_\_  
Carolyn Jagger, City Clerk

By: \_\_\_\_\_  
W. J. "Jim" Lane, Mayor

APPROVED AS TO FORM AND LEGALITY:  
OFFICE OF THE CITY ATTORNEY

By:  \_\_\_\_\_  
Bruce Washburn, City Attorney

**SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is entered into as of this \_\_\_\_ day of January, 2013 by and between SCOTTSDALE FASHION SQUARE LLC, a Delaware limited liability company, as successor in interest to Scottsdale Fashion Square Partnership, an Arizona general partnership (“SFS”) and the City of Scottsdale, an Arizona municipal corporation (“City”). SFS and the City shall be referred to collectively as the “Parties.”

**RECITALS**

A. SFS and the City are parties to that certain SFSP Garage Lease Agreement dated October 6, 1996 and recorded on October 7, 1996 in the Official Records of Maricopa County, Arizona (the “Official Records”) as Document No. 96-0714053, together with a Memorandum of that Lease of the same date recorded on October 7, 1996 in the Official Records as Document No. 96-0714054 and that certain Memorandum and Addendum to Lease (SFSP Garage Lease) dated October 6, 1998 and recorded on October 14, 1998 in the Official Records as Document No. 98-0916390 (collectively, the “Lease”).

B. The City desires to prepay the entirety of the Initial Rent (as such term is defined in the Lease) and accrued interest to SFS as permitted under Section 3.1.4 of the Lease because the prepayment of such sums is financially advantageous to the City.

C. A dispute has arisen between the Parties concerning the ~~calculation~~ calculation of the remaining portion of the Initial Rent and accrued interest under the Lease for prepayment purposes.

D. The Parties now desire to settle and fully resolve the dispute and provide for the ~~full~~ full prepayment of Initial Rent and interest by the City to SFS under the terms of the Lease, and

to structure the terms of payment so as to promote future improvements and betterments to the Scottsdale Fashion Square project by SFS, upon the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants set forth below, and intending to be legally bound hereby, the Parties agree as follows:

**AGREEMENT**

1. *Amount of Full Initial Rent and Accrued Interest Payment.* The total amount of outstanding Initial Rent and accrued interest sufficient for the City to prepay such amounts under Section 3.1.4 of the Lease as of the date of this Agreement (the "Prepayment Amount") shall be Thirty Three Million Five Hundred Thousand and No/100 Dollars (\$33,500,000.00).

2. *Agreed Manner of Payment.* The City shall satisfy the Prepayment Amount as follows: (1) pay SFS Thirty One Million and No/100 Dollars (\$31,000,000.00) in United States Dollars in the manner lease payments have been made to SFS under the Lease, which sum shall be received by SFS on or before January 15, 2013; and (2) credit SFS with Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00) to be applied by the City for the benefit of SFS or its successors and assigns, at SFS's election, against future City fees associated with the development of the Scottsdale Fashion Square Parcel (as such parcel is described in Exhibits A and C to the Lease and as depicted in Exhibit 1 attached to this Agreement and incorporated by this reference), plus any property acquired in the future by SFS or its affiliates that is contiguous to such property (the "Scottsdale Fashion Square Development Credit"). The eligible fees are any application fee; plan review fee; permit fee; encroachment permit/improvement fee; any applicable in lieu fee for public art; or water, water resources or wastewater development fees calculated according to the applicable fee schedule in place at the time the fee is due.



3. *Term of the Scottsdale Fashion Square Development Credit.* The Scottsdale Fashion Square Development Credit shall have a duration of ten (10) years from the date of this Agreement, or until it is exhausted by application to development-related fees as described in paragraph 2 above, whichever occurs earlier. To the extent one-half of the Scottsdale Fashion Square Development Credit, or One Million Two Hundred Fifty Thousand and No/100 Dollars (\$1,250,000), has not been exhausted on the five year anniversary date of this Agreement, the amount of the difference between the credits applied to that date and \$1,250,000 shall be deemed to have been applied and shall be considered to be exhausted, leaving the balance of \$1,250,000 as the remaining credit balance for years six through ten from the date of this Agreement. Nothing in the foregoing shall prohibit the application of the full amount of the Scottsdale Fashion Square Development Credit sooner than the five or ten year anniversary dates of this Agreement.

4. *Deletion of Purchase Option.* The Lease shall be amended to delete the right granted to the City pursuant to the Lease to purchase the Option Premises (as such term is defined in the Lease) and/or any other portion of the premises that are defined as the leased premises in the Lease by the execution and recording of a First Amendment To SFSP Garage Lease Agreement in the form attached as Exhibit 2 to this Agreement and incorporated by this reference.

5. *City's Acknowledgment of Setoff for In-Lieu Parking Credit Charges.* The City acknowledges that it has fully offset SFS's prior one-time payment of \$2,625,000.00 as in-lieu parking credits against the City's Initial Rent obligations under the Lease in accordance with Section 3.6 of the Lease.

6. *Review of Agreement.* The Parties expressly acknowledge that they have entered this Agreement knowingly and voluntarily and that each party has had the opportunity to receive the advice of counsel with respect to the Agreement and the settlement of this matter.

7. *Arizona Law.* In the event of any dispute arising from the terms of this Settlement Agreement, Arizona law shall apply and govern.

8. *Entire Agreement.* This Agreement constitutes the entire integrated agreement between the Parties as to its terms; however, except as amended as set forth in this Agreement, the Lease shall remain in full force and effect and unchanged.

9. *Cancellation pursuant to A.R.S. § 38-511.* The City may, within three years after its execution, cancel this agreement without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the agreement on behalf of the City either is, at any time while the agreement or any extension of the agreement is in effect, an employee or agent of any other party to the agreement in any capacity or a consultant to any other party to the agreement with respect to the subject matter of the agreement.

10. *Counterparts.* This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

11. *Additional Acts and Documents.* The Parties agree to cooperate fully to execute any and all documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

12. *Attorneys' Fees and Costs.* Each party shall bear its own attorneys' fees and costs in connection with this settlement. In the event a dispute arises between the Parties to enforce

the terms of this Agreement, the successful or prevailing party to such dispute shall be entitled to an award of its reasonable attorneys' fees, costs and expenses incurred in enforcing the Agreement.

IN WITNESS WHEREOF, this Settlement Agreement has been executed by the Parties as of the date set forth above.

SCOTTSDALE FASHION SQUARE LLC,  
a Delaware limited liability company

By: SCOTTSDALE FASHION SQUARE  
PARTNERSHIP, an Arizona general  
partnership, its sole member

By: TWC SCOTTSDALE MEZZANINE,  
L.L.C., an Arizona limited liability  
company, its managing general partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CITY OF SCOTTSDALE, an Arizona  
municipal corporation

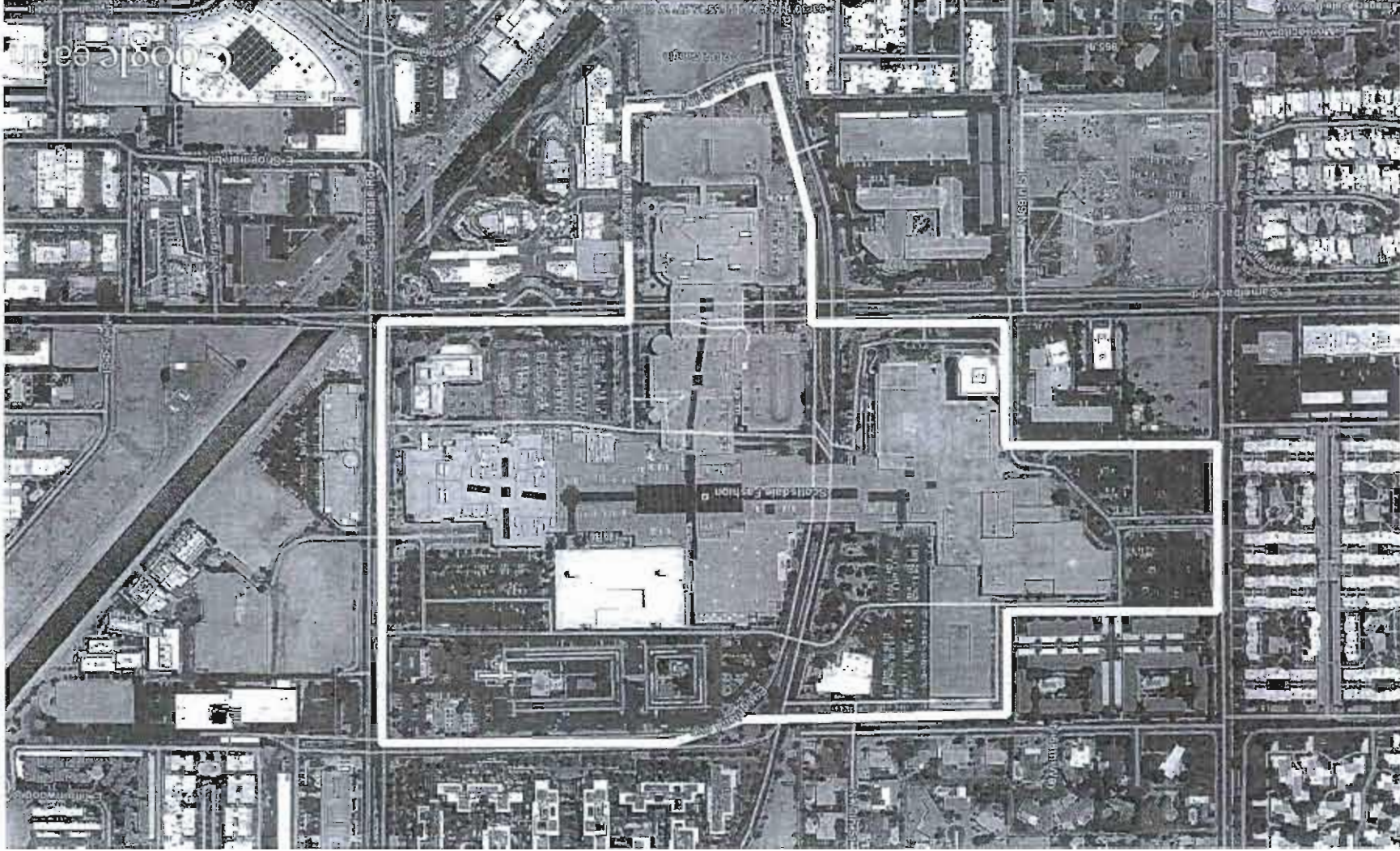
\_\_\_\_\_  
W.J. "Jim" Lane, Mayor

ATTEST:

\_\_\_\_\_  
Carolyn Jagger, City Clerk

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Bruce Washburn, City Attorney



**RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:**

The Macerich Company  
401 Wilshire Blvd., Suite 700  
Santa Monica, CA 90401  
Attention: Steven M. Kraus, Esq.

**Contract No. 2013-012-COS**

**FIRST AMENDMENT TO  
SFSP GARAGE LEASE AGREEMENT**

**THIS FIRST AMENDMENT TO SFSP GARAGE LEASE AGREEMENT** (this "Amendment") is made as of this \_\_\_\_ day of January, 2013 by and between **SCOTTSDALE FASHION SQUARE LLC**, a Delaware limited liability company ("**Landlord**"), and **CITY OF SCOTTSDALE**, an Arizona municipal corporation ("**Tenant**").

**RECITALS**

**WHEREAS**, Landlord, as successor in interest to Scottsdale Fashion Square Partnership, an Arizona general partnership, and Tenant are the current parties in interest to (i) that certain SFSP Garage Lease Agreement dated October 6, 1996 and recorded on October 7, 1996 in the Official Records of Maricopa County, Arizona (the "**Official Records**") as Document No. 96-0714053, (ii) that certain Memorandum of SFSP Garage Lease Agreement dated October 6, 1996 and recorded on October 7, 1996 in the Official Records as Document No. 96-0714054, and (iii) that certain Memorandum and Addendum to Lease (SFSP Garage Lease) dated October 6, 1998 and recorded on October 14, 1998 in the Official Records as Document No. 98-0916390 (collectively, the "**Lease**"), whereby Tenant leases from Landlord certain premises located in Scottsdale, Arizona and more particularly described therein (the "**Leased Premises**"). Capitalized terms used herein shall have the same meanings ascribed to such terms in the Lease, unless otherwise expressly defined herein.

**WHEREAS**, Landlord and Tenant desire by this Amendment to amend the Lease to delete the right granted to Tenant pursuant to the Lease to purchase the Option Premises (as such term is defined in the Lease) and/or any other portion of the Leased Premises, as hereinafter set forth.

**NOW THEREFORE**, in consideration of the foregoing and of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto hereby agree as follows:

**AGREEMENT**

1. The foregoing recitals are hereby incorporated herein and made a part hereof as if fully repeated herein.

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2. Section 19 of the Lease is hereby deleted in its entirety. Tenant shall have no option to purchase the Option Premises and/or any other part of the Leased Premises.

3. Section 20.2 of the Lease is hereby amended in its entirety to read as follows:

"20.2. Buy-Out Period. The Buy-Out Period shall commence on the expiration date of the Initial Term and terminate upon the expiration date of the fourth Renewal Term; provided, however, that the Buy-Out Option is only exercisable as follows: (i) at any time during the Buy-Out Period if Landlord plans to commence redevelopment of the Garage Pad and/or the SFS Garage Pad within six (6) months; or (ii) if Landlord has no plans to commence redevelopment of the Garage Pad and/or the SFS Garage Pad within six (6) months, then at any time within the five (5) years prior to the expiration date of the fourth Renewal Term."

4. Except as amended by this Amendment, the Lease shall remain in full force and effect and unchanged.

5. The provisions of this Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

6. This Amendment may be executed in several counterparts, each of which shall be deemed an original, and all of which together shall constitute but one and the same instrument. The signature of a party to any counterpart may be removed and attached to any other counterpart. Any counterpart to which is attached the signatures of all parties shall constitute an original of this Amendment.

*[Signature page follows.]*

IN WITNESS WHEREOF, this Amendment has been executed by Landlord and Tenant as of the day and year first above written.

**LANDLORD:**

SCOTTSDALE FASHION SQUARE LLC,  
a Delaware limited liability company

By: SCOTTSDALE FASHION SQUARE  
PARTNERSHIP, an Arizona general  
partnership, its sole member

By: TWC SCOTTSDALE MEZZANINE,  
L.L.C., an Arizona limited liability  
company, its managing general partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TENANT:**

CITY OF SCOTTSDALE,  
an Arizona municipal corporation

By: \_\_\_\_\_  
Name: Dan Worth  
Title: Acting City Manager

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Bruce Washburn, City Attorney





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B. The City desires to prepay the entirety of the Initial Rent (as such term is defined in the Lease) and accrued interest to SFS as permitted under Section 3.1.4 of the Lease because the prepayment of such sums is financially advantageous to the City.

C. A dispute has arisen between the Parties concerning the calculation of the remaining portion of the Initial Rent and accrued interest under the Lease for prepayment purposes.

D. The Parties now desire to settle and fully resolve the dispute and provide for the full prepayment of Initial Rent and interest by the City to SFS under the terms of the Lease, and

to structure the terms of payment so as to promote future improvements and betterments to the Scottsdale Fashion Square project by SFS, upon the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants set forth below, and intending to be legally bound hereby, the Parties agree as follows:

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3. *Term of the Scottsdale Fashion Square Development Credit.* The Scottsdale Fashion Square Development Credit shall have a duration of ten (10) years from the date of this Agreement, or until it is exhausted by application to development-related fees as described in paragraph 2 above, whichever occurs earlier. To the extent one-half of the Scottsdale Fashion Square Development Credit, or One Million Two Hundred Fifty Thousand and No/100 Dollars (\$1,250,000), has not been exhausted on the five year anniversary date of this Agreement, the amount of the difference between the credits applied to that date and \$1,250,000 shall be deemed to have been applied and shall be considered to be exhausted, leaving the balance of \$1,250,000 as the remaining credit balance for years six through ten from the date of this Agreement. Nothing in the foregoing shall prohibit the application of the full amount of the Scottsdale Fashion Square Development Credit sooner than the five or ten year anniversary dates of this Agreement.

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6. *Review of Agreement.* The Parties expressly acknowledge that they have entered this Agreement knowingly and voluntarily and that each party has had the opportunity to receive the advice of counsel with respect to the Agreement and the settlement of this matter.

7. *Arizona Law.* In the event of any dispute arising from the terms of this Settlement Agreement, Arizona law shall apply and govern.

8. *Entire Agreement.* This Agreement constitutes the entire integrated agreement between the Parties as to its terms; however, except as amended as set forth in this Agreement, the Lease shall remain in full force and effect and unchanged.

9. *Cancellation pursuant to A.R.S. § 38-511.* The City may, within three years after its execution, cancel this agreement without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the agreement on behalf of the City either is, at any time while the agreement or any extension of the agreement is in effect, an employee or agent of any other party to the agreement in any capacity or a consultant to any other party to the agreement with respect to the subject matter of the agreement.

10. *Counterparts.* This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

11. *Additional Acts and Documents.* The Parties agree to cooperate fully to execute any and all documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

12. *Attorneys' Fees and Costs.* Each party shall bear its own attorneys' fees and costs in connection with this settlement. In the event a dispute arises between the Parties to enforce

the terms of this Agreement, the successful or prevailing party to such dispute shall be entitled to an award of its reasonable attorneys' fees, costs and expenses incurred in enforcing the Agreement.

IN WITNESS WHEREOF, this Settlement Agreement has been executed by the Parties as of the date set forth above.

SCOTTSDALE FASHION SQUARE LLC,  
a Delaware limited liability company

By: SCOTTSDALE FASHION SQUARE  
PARTNERSHIP, an Arizona general  
partnership, its sole member

By: TWC SCOTTSDALE MEZZANINE,  
L.L.C., an Arizona limited liability  
company, its managing general partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CITY OF SCOTTSDALE, an Arizona  
municipal corporation

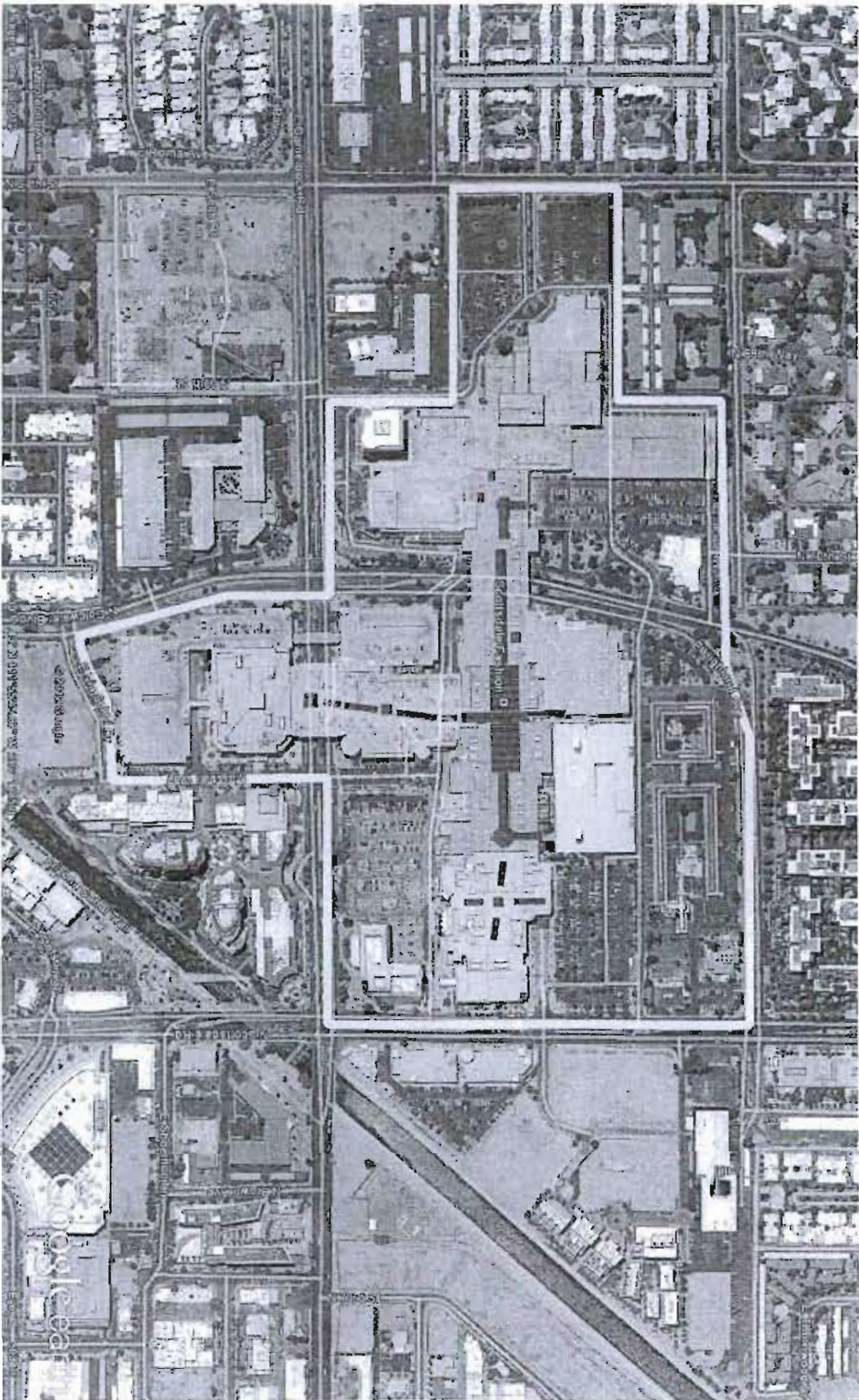
\_\_\_\_\_  
W.J. "Jim" Lane, Mayor

ATTEST:

\_\_\_\_\_  
Carolyn Jagger, City Clerk

APPROVED AS TO FORM AND LEGALITY:

  
\_\_\_\_\_  
Bruce Washburn, City Attorney



**RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:**

The Macerich Company  
401 Wilshire Blvd., Suite 700  
Santa Monica, CA 90401  
Attention: Steven M. Kraus, Esq.

Contract No. 2013-012-COS

**FIRST AMENDMENT TO  
SFSP GARAGE LEASE AGREEMENT**

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**RECITALS**

**WHEREAS**, Landlord, as successor in interest to Scottsdale Fashion Square Partnership, an Arizona general partnership, and Tenant are the current parties in interest to (i) that certain SFSP Garage Lease Agreement dated October 6, 1996 and recorded on October 7, 1996 in the Official Records of Maricopa County, Arizona (the "**Official Records**") as Document No. 96-0714053, (ii) that certain Memorandum of SFSP Garage Lease Agreement dated October 6, 1996 and recorded on October 7, 1996 in the Official Records as Document No. 96-0714054, and (iii) that certain Memorandum and Addendum to Lease (SFSP Garage Lease) dated October 6, 1998 and recorded on October 14, 1998 in the Official Records as Document No. 98-0916390 (collectively, the "**Lease**"), whereby Tenant leases from Landlord certain premises located in Scottsdale, Arizona and more particularly described therein (the "**Leased Premises**"). Capitalized terms used herein shall have the same meanings ascribed to such terms in the Lease, unless otherwise expressly defined herein.

**WHEREAS**, Landlord and Tenant desire by this Amendment to amend the Lease to delete the right granted to Tenant pursuant to the Lease to purchase the Option Premises (as such term is defined in the Lease) and/or any other portion of the Leased Premises, as hereinafter set forth.

**NOW THEREFORE**, in consideration of the foregoing and of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto hereby agree as follows:

**AGREEMENT**

1. The foregoing recitals are hereby incorporated herein and made a part hereof as if fully repeated herein.

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2. Section 19 of the Lease is hereby deleted in its entirety. Tenant shall have no option to purchase the Option Premises and/or any other part of the Leased Premises.

3. Section 20.2 of the Lease is hereby amended in its entirety to read as follows:

"20.2. Buy-Out Period. The Buy-Out Period shall commence on the expiration date of the Initial Term and terminate upon the expiration date of the fourth Renewal Term; provided, however, that the Buy-Out Option is only exercisable as follows: (i) at any time during the Buy-Out Period if Landlord plans to commence redevelopment of the Garage Pad and/or the SFS Garage Pad within six (6) months; or (ii) if Landlord has no plans to commence redevelopment of the Garage Pad and/or the SFS Garage Pad within six (6) months, then at any time within the five (5) years prior to the expiration date of the fourth Renewal Term."

4. Except as amended by this Amendment, the Lease shall remain in full force and effect and unchanged.

5. The provisions of this Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

6. This Amendment may be executed in several counterparts, each of which shall be deemed an original, and all of which together shall constitute but one and the same instrument. The signature of a party to any counterpart may be removed and attached to any other counterpart. Any counterpart to which is attached the signatures of all parties shall constitute an original of this Amendment.

*[Signature page follows.]*



IN WITNESS WHEREOF, this Amendment has been executed by Landlord and Tenant as of the day and year first above written.

**LANDLORD:**

SCOTTSDALE FASHION SQUARE LLC,  
a Delaware limited liability company

By: SCOTTSDALE FASHION SQUARE  
PARTNERSHIP, an Arizona general  
partnership, its sole member

By: TWC SCOTTSDALE MEZZANINE,  
L.L.C., an Arizona limited liability  
company, its managing general partner


By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TENANT:**

CITY OF SCOTTSDALE,  
an Arizona municipal corporation

By: \_\_\_\_\_  
Name: Dan Worth  
Title: Acting City Manager

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Bruce Washburn, City Attorney

