

CITY COUNCIL REPORT



Meeting Date: August 19, 2013
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 9503 authorizing contract 2004-119-COS-A4, the Fourth amendment to the ground lease with ASU Foundation for the Skysong property.

BACKGROUND

The purpose of this action is to approve the fourth amendment to the Skysong ground lease agreement No. 2004-119-COS (the "Lease") between the City and the ASU Foundation (ASUF). The proposed amendment clarifies and amends the certain portions of the lease language pertaining to tenant and subtenant mortgages and other rights associated with the development of the Skysong Project.

The tenant and its subtenant are in the process of securing financing for a portion of the project. The existing lease language is not clear or is silent with regards to certain events and their potential effect on the parties having a lease-hold or other interest in the property. In order to secure its financing, the tenant has requested an amendment to the lease to provide some clarification and lender assurances should one or all of the following events occur: default, termination, discharge of the lease in bankruptcy. Staff has determined that the requested assurances are a common lender request and the lease language as amended will not diminish the city's position in the property. The amendment additionally provides some basic assurances to the parties with regards to the existing Parking Garage.

ANALYSIS & ASSESSMENT

Recent Staff Activity

Staff had numerous meetings and discussions with the tenant and its lenders to establish appropriate language to address the issues. This fourth 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 9503 authorizing the Fourth Amendment to the ground lease 2004-119-COS-A4 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)

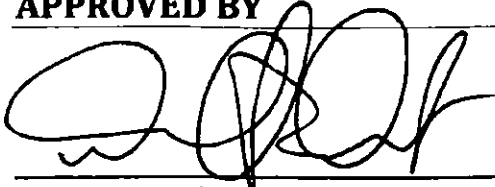
Public Works Division, Capital Project Management

STAFF CONTACTS (S)

Maria Muiser, Asset Management Coordinator

(480) 312-7853, mmuiser@scottsdaleAZ.gov

APPROVED BY



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

8-6-13

Date

ATTACHMENTS

1. Resolution 9503
2. Contract 2004-119-COS-A4

RESOLUTION NO. 9503

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING A FOURTH AMENDMENT TO LEASE AGREEMENT NO. 2004-119-COS WITH ASUF SCOTTSDALE LLC FOR PROPERTY AT THE SOUTHEAST CORNER OF MCDOWELL ROAD AND SCOTTSDALE ROAD

(Los Arcos Skysong)

WHEREAS:

A. The City of Scottsdale ("Lessor") and ASUF Scottsdale LLC ("Lessee") are the original parties to that certain Ground Lease (Contract No. 2004-119-COS) dated August 9, 2004 and recorded August 9, 2004 at document No. 2004-0920528 of the public records of Maricopa County, Arizona (the "Lease").

B. The Lease was subsequently amended by that certain First Amendment to Ground Lease Agreement (the "First Amendment") dated July 10, 2006 between Lessor and Lessee and recorded September 14, 2006 at document No. 2006-1225303 of the public records of Maricopa County, Arizona.

C. The Lease was subsequently further amended by that certain Second Amendment (the "Second Amendment") dated February 7, 2012 between Lessor and Lessee and recorded February 7, 2012 at document No. 2012-0100586 of the public records of Maricopa County, Arizona. The Second Amendment is required and authorized by paragraph 2 of the Lease.

D. The Lease was subsequently further amended by that certain Third Amendment (The "Third Amendment") dated February 7, 2012 between Lessor and Lessee and recorded February 23, 2012 at document No. 2012-0148324 of the public records of Maricopa County, Arizona.

E. Lessee has requested certain adjustments to the Lease relating to Subtenants and to shared garage parking.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Mayor is authorized to execute on behalf of the City of Scottsdale the Fourth Amendment to Ground Lease Agreement No. 2004-119-COS-A4 in the form the city council approved at the meeting in which this resolution is adopted.

2. The city council has considered the city expenditure authorized by this resolution and the direct consideration that the city will receive and finds that there is a clearly identified public purpose for the city's expenditure and that the city will receive direct consideration substantially equal to its expenditure.

PASSED AND ADOPTED by the Council of the City of Scottsdale this _____ day of _____, 2013.

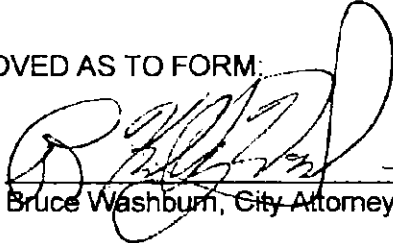
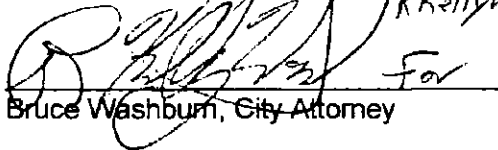
CITY OF SCOTTSDALE, an Arizona
municipal Corporation

W. J. "Jim" Lane, Mayor

ATTEST:

By: _____
Carolyn Jagger, City Clerk

APPROVED AS TO FORM:

By:  R Kelly Ward
 For
Bruce Washburn, City Attorney

WHEN RECORDED RETURN TO:

CITY OF SCOTTSDALE
ONE STOP SHOP/RECORDS
(Maria. Muiser)
7447 E. Indian School Road, Suite
100 Scottsdale, AZ 85251

C.O.S. Contract No. 2004-119-COS-A4
(Resolution No. 9503)
(ASUF-SkySong-LosArcos)

FOURTH AMENDMENT TO GROUND LEASE AGREEMENT

THIS FOURTH AMENDMENT TO GROUND LEASE AGREEMENT (the "**Amendment**") is made this _____ day of _____, 2013 by CITY OF SCOTTSDALE, an Arizona municipal corporation ("**Landlord**") and ASUF SCOTTSDALE, L.L.C., an Arizona limited liability company ("**Tenant**").

RECITALS

A. Landlord and Tenant are the original parties to that certain Ground Lease (Contract No. 2004-119-COS) dated August 9, 2004 and recorded August 9, 2004 at document No. 2004-0920528 of the public records of Maricopa County, Arizona (the "**Original Lease**"), as the same was amended by: (i) that certain First Amendment to Ground Lease Agreement (the "**First Amendment**") dated July 10, 2006 between Landlord and Tenant and recorded September 14, 2006 at document No. 2006-1225303 of the public records of Maricopa County, Arizona; (ii) that certain Second Amendment (the "**Second Amendment**") dated February 7, 2012 between Landlord and Tenant and recorded February 7, 2012 at document No. 20120100586 of the public records of Maricopa County, Arizona and (iii) that certain Third Amendment (the "**Third Amendment**") dated February 7, 2012 between Landlord and Tenant and recorded February 23, 2012 at document No. 20120148324 of the public records of Maricopa County, Arizona. The Original Lease, as amended by the First Amendment, the Second Amendment and the Third Amendment is hereinafter collectively referred to as the "**Lease**".

B. Tenant has requested certain amendments to provisions of the Lease to clarify, among other things, certain ambiguities relating to the nondisturbance of Subtenants and their respective subleasehold mortgagees and Landlord has agreed to amend the Lease as more particularly set forth in this Amendment.

C. Undefined terms capitalized in this Amendment have the meanings assigned in the Lease.

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

1. **Modification of Lease.** The Lease is hereby modified in the following particulars:
 - 1.1 The second sentence of Section 13.1 of the Lease is hereby deleted in its entirety.
 - 1.2 Delete paragraph 17.2(b) of the Lease and replace it with the following:
17.2.(b)

(i) So long as this Lease is in effect, Landlord shall not disturb or interfere with a Subtenant's possession of the portion of the Premises subleased pursuant to a Sublease, nor shall Landlord diminish or interfere with a Subtenant's rights and privileges under its Sublease. Any sublease is, by definition, subject to all of the terms and conditions of the Ground Lease.

(ii) Landlord and Tenant agree that no Sublease first entered into after the date hereof shall contain periods for the cure of defaults and the exercise of remedies by a lender holding a mortgage or deed of trust encumbering the leasehold interest on such Sublease (a "Subleasehold Mortgagee") that exceed the following:

(1) Thirty (30) days for monetary defaults or sixty (60) days for non-monetary defaults; provided, however, that if any non-monetary default cannot reasonably be remedied by Subtenant within such sixty (60) calendar day period, then Subtenant shall have such additional time as shall be reasonably necessary to remedy such failure or breach, provided that during such time Subtenant pursues the cure with diligence;

(2) Thirty (30) days for monetary defaults or sixty (60) days for non-monetary defaults; provided, however, that if any non-monetary default cannot reasonably be remedied by Subleasehold Mortgagee within such sixty (60) calendar day period, then Subleasehold Mortgagee shall have such additional time as shall be reasonably necessary to remedy such failure or breach, provided that during such time Subleasehold Mortgagee pursues the cure with diligence;

(3) Any additional notice and cure period granted to the Subleasehold Mortgagee to cure a default under the Sublease shall not exceed one hundred twenty (120) days; provided, however, such cure period shall be extended and the Sublease shall not be terminated if the Subleasehold Mortgagee, in accordance with the terms of the Sublease, gives notice of its election to proceed with due diligence promptly to acquire possession of the Sublease Premises or to

foreclose the mortgage or deed of trust or otherwise to extinguish Sublessee's interest in the Sublease; and

(4) The deadline for a Subleasehold Mortgagee to request a replacement lease shall not be later than fifteen (15) business days after the date the Sublease terminates.

(iii) If this Lease terminates for any reason whatsoever, including without limitation by reason of any action by Tenant such as a rejection of this Lease in bankruptcy, then the following shall apply:

(1) Each Sublease shall continue in full force and effect notwithstanding such termination, and Landlord automatically shall succeed to the interest of the sublessor under the Sublease. The Subtenant shall be bound to Landlord under all of the terms of the Sublease for the balance of the term thereof remaining with the same force and effect as if Landlord were the original sublessor under the Sublease, and the Subtenant shall attorn to Landlord as its landlord, such attornment to be effective and self-operative, without the execution of any further instrument immediately upon Landlord's succeeding to the interest of the sublessor under the Sublease. Notwithstanding anything herein to the contrary, the Subtenant shall be under no obligation to pay rent to Landlord until the Subtenant receives written notice from Landlord that it has succeeded to the interest of the sublessor under the Sublease.

(2) If at the time this Lease terminates, a Sublease has also terminated for any reason whatsoever, including without limitation a rejection in bankruptcy or a termination for the Subtenant's default, then upon the request of the Subleasehold Mortgagee, Landlord shall enter into a direct lease (a "Direct Lease") with such Subleasehold Mortgagee (or its assignee, designee, or nominee) effective as of the date of the Sublease termination, on the same terms and conditions as the terminated Sublease and for the balance of what would have been the term of the Sublease but for such termination. The Direct Lease shall retain the same lien priority as the Sublease immediately prior to its termination, and shall be free of any and all rights of Sublessee. Each subsublease of space demised within the Sublease Premises shall not be deemed to have been terminated by the termination of the Sublease. Each subsubtenant of space demised within the Sublease Premises whose subsublease of such space was in force and effect immediately prior to the termination of the Sublease and which did not expire of its own terms prior to the delivery of the Direct Lease shall attorn to the Sublessee under the Direct Lease and such subsublease of space shall remain in full force and effect. The deadline for a Subleasehold Mortgagee to request Direct Lease shall not be later than fifteen (15) business days after the date the Sublease terminates.

(iv) A Subleasehold Mortgagee (or its assignee, designee, or nominee) who becomes the holder of the tenant's interest under any Sublease or Direct Lease shall cure all defaults under the Sublease or the Direct Lease to the extent that they are curable by such party. To the extent such a default is not curable by the Subleasehold Mortgagee (or its assignee, designee, or nominee), the default is automatically waived. (For example, if a performance deadline has already passed, then such party shall perform the requirement in a reasonable timeframe.) Subject to the foregoing, if Landlord becomes the landlord under any Sublease or Direct Lease, Landlord may exercise all of the landlord's rights and remedies for any subsequent default thereunder, subject to the rights of Subleasehold Mortgagees as provided therein.

(v) In no event shall Landlord be liable or responsible under any Sublease or Direct Lease for any act or omission of Tenant, be subject to any offsets or defenses that a Subtenant might have against Tenant, be bound by any rent or additional rent that a Subtenant might have paid to Tenant for more than the current month and the last month of a Sublease term, be obligated to perform any initial construction obligations, or be obligated to pay to Subtenant or Subtenant's contractors any construction allowance or other concession or financial inducement that is required to be paid by Tenant pursuant to the terms of the Sublease.

(vi) Prior to executing a Sublease, Tenant shall provide a copy to Landlord.

1.4 Delete paragraph 18.19 of the Lease and replace it with a new paragraph 18.19 as follows:

Coordination with Garage Easement. The following provisions shall govern a certain parking easement (the "Garage Easement") related to the property:

18.19.1 The Garage Easement is the Parking Easement and Cost Sharing Agreement between the sublessee under a certain sublease (the "Skysong 2 Sublease") and the sublessee under a certain sublease Agreement (the "Skysong Residential Sublease") dated as of July 20, 2012, and recorded as document 2012-0678236 of the public records of Maricopa County, Arizona.

18.19.2 The Skysong 2 Sublease is the Amended and Restated Ground Sublease Agreement as described in the Amended and Restated Memorandum of Ground Sublease and Parking Easement dated January 1, 2013 and recorded as document 2013-0039647 of the public records of Maricopa County, Arizona.

18.19.3 The Skysong Residential Sublease is the Amended and Restated Ground Sublease Agreement dated July 20, 2012, as described in the Memorandum of Amendment and Restatement of Ground Sublease Agreement recorded at document 2013-0039651 of the public records of Maricopa County, Arizona.

18.19.4 The rights and obligations of the Garage Easement pertaining to the portion of the Premises covered by the Skysong 2 Sublease shall be treated under the Sublease provisions of this Lease as if they were part of the Skysong Residential Sublease. The rights and obligations of the Garage Easement pertaining to the portion of the Premises covered by the Skysong Residential Sublease shall be treated under the Sublease provisions of this Lease as if they were part of the Skysong 2 Sublease. Accordingly, the provisions of the Garage Easement shall be effective against Landlord in the same circumstances and to the same extent that the respective Sublease would be binding on Landlord in accordance with Section 17.2(b) of this Lease and shall not otherwise be binding on Landlord. Landlord and Tenant agree that under no circumstances shall the Garage Easement be terminated unless the Skysong 2 Sublease parcel has, for the remaining term of the Sublease, replacement on-site parking or a recorded legal right to use replacement off-site parking, in either case in an amount not less than 486 parking spaces.

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

2.1 Recording. Within two (2) Business Days after the date of this Amendment, Tenant shall cause this Amendment to be recorded in the office of the Maricopa County recorder.

2.2 Lease in Full Force and Effect. As modified and amended hereby, all terms, conditions and covenants contained in the Lease shall remain in full force and effect.

2.3 Integration. This Amendment constitutes the entire agreement between the parties with respect to amending the Lease (as previously amended) and supersedes any prior agreement, understanding, negotiation, draft agreements, discussion outlines, correspondence and memoranda or representation regarding amending the Lease.

2.4 Tenant's Prior Assignees. Tenant warrants and represents that this Amendment has been approved by the persons named in the consent forms attached to this Amendment, which fully executed and acknowledged forms shall be attached to and recorded with this Amendment, and that no other person's consent is required in order for this Amendment to be binding and effective on all parties-in-interest with respect to the Premises.

EXECUTED as of the date first given above.

ASUF Scottsdale, L.L.C.,
 an Arizona limited liability company

By: Arizona State University Foundation for a New American University, an Arizona non-profit corporation, its sole member

By: _____
 Name: _____
 Title: _____

By: _____
 Name: _____
 Title: _____

STATE OF ARIZONA)
) ss
 County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2013 by _____, the _____, and _____, the _____ of Arizona State University Foundation for a New American University, an Arizona non-profit corporation, sole member of ASUF Scottsdale, L.L.C., an Arizona limited liability company, on behalf of the limited liability company.

 Notary Public

My Commission Expires:

11342039v1 Type/Title	Fourth Amendment to Ground Lease Agreement C.O.S. Contract No. 2004-119-COS-A4
Date of Document	August __, 2013
Number of Pages	Page 6 of 14
Signers	ASUF SCOTTSDALE, L.L.C., CITY OF SCOTTSDALE, SKYSONG 1, LLC, SKYSONG 2, LLC, SKYSONG RESIDENTIAL 1, LLC, and SKYSONG OWNERS ASSOCIATION

CONSENT TO FOURTH AMENDMENT TO GROUND LEASE

The undersigned, having or claiming a lien or other interest in the Property or Tenant's rights under the Lease as defined in the Fourth Amendment to Ground Lease between the City of Scottsdale, an Arizona municipal corporation and ASUF Scottsdale, L.L.C., an Arizona limited liability company, to which this consent is attached, hereby consents to said Amendment and the Lease and agrees that its interest is subject to such Amendment to the Lease.

EXECUTED as of the date of the said Amendment.

SKYSONG 1, LLC,
a Delaware limited liability company

By: ASUF Scottsdale, L.L.C., an Arizona limited liability company, its member

By: Arizona State University Foundation for a New American University, an Arizona non-profit corporation, its sole member

By: _____
Its: _____

By: _____
Its: _____

By: RHP Scottsdale, L.L.C., a Delaware limited liability company, its member

By: US Real Estate Limited Partnership, a Texas limited partnership, a member

By: USAA Real Estate Company, a Delaware corporation, its general partner

By: _____
Name: _____
Title: _____

11342039v1 Type/Title	Fourth Amendment to Ground Lease Agreement C.O.S. Contract No. 2004-119-COS-A4
Date of Document	August __, 2013
Number of Pages	Page 8 of 14
Signers	ASUF SCOTTSDALE, L.L.C., CITY OF SCOTTSDALE, SKYSONG 1, LLC, SKYSONG 2, LLC, SKYSONG RESIDENTIAL 1, LLC, and SKYSONG OWNERS ASSOCIATION

State of Arizona)
) ss.
County of Maricopa)

This document was acknowledged before me this ____ day of August, 2013, by _____ and _____ of Arizona State University Foundation, an Arizona non-profit corporation, as member of ASUF Scottsdale, L.L.C., an Arizona limited liability company, as member of SKYSONG 1, LLC, a Delaware limited liability company.

Notary Public

My Commission Expires:

State of Arizona)
) ss.
County of Maricopa)

This document was acknowledged before me this ____ day of January, 2012, by _____ of USAA Real Estate Company, a Delaware corporation, general partner of US Real Estate Limited Partnership, a Texas limited partnership, member of RHP Scottsdale, L.L.C., a Delaware limited liability company, member of SKYSONG 1, LLC, a Delaware limited liability company.

Notary Public

My Commission Expires:

11342039v1 Type/Title	Fourth Amendment to Ground Lease Agreement C.O.S. Contract No. 2004-119-COS-A4
Date of Document	August __, 2013
Number of Pages	Page 9 of 14
Signers	ASUF SCOTTSDALE, L.L.C., CITY OF SCOTTSDALE, SKYSONG 1, LLC, SKYSONG 2, LLC, SKYSONG RESIDENTIAL 1, LLC, and SKYSONG OWNERS ASSOCIATION

CONSENT TO FOURTH AMENDMENT TO GROUND LEASE

The undersigned, having or claiming a lien or other interest in the Property or Tenant's rights under the Lease as defined in the Fourth Amendment to Ground Lease between the City of Scottsdale, an Arizona municipal corporation and ASUF Scottsdale, L.L.C., an Arizona limited liability company, to which this consent is attached, hereby consents to said Amendment and the Lease and agrees that its interest is subject to such Amendment to the Lease.

EXECUTED as of the date of the said Amendment.

SKYSONG 2, LLC,
a Delaware limited liability company

By: **ASUF Scottsdale, L.L.C.,** an Arizona limited liability company, its member

By: **Arizona State University Foundation for a New American University,** an Arizona non-profit corporation, its sole member

By: _____
Its: _____

By: _____
Its: _____

By: **RHP Scottsdale, L.L.C.,** a Delaware limited liability company, its member

By: **US Real Estate Limited Partnership,** a Texas limited partnership, a member

By: **USAA Real Estate Company,** a Delaware corporation, its general partner

By: _____
Name: _____
Title: _____

11342039v1 Type/Title	Fourth Amendment to Ground Lease Agreement C.O.S. Contract No. 2004-119-COS-A4
Date of Document	August __, 2013
Number of Pages	Page 10 of 14
Signers	ASUF SCOTTSDALE, L.L.C., CITY OF SCOTTSDALE, SKYSONG 1, LLC, SKYSONG 2, LLC, SKYSONG RESIDENTIAL 1, LLC, and SKYSONG OWNERS ASSOCIATION

State of Arizona)
) ss.
County of Maricopa)

This document was acknowledged before me this ____ day of August, 2013, by _____ and _____ of Arizona State University Foundation, an Arizona non-profit corporation, as member of ASUF Scottsdale, L.L.C., an Arizona limited liability company, as member of SKYSONG 2, LLC, a Delaware limited liability company.

Notary Public

My Commission Expires:

State of Arizona)
) ss.
County of Maricopa)

This document was acknowledged before me this ____ day of January, 2012, by _____ of USAA Real Estate Company, a Delaware corporation, general partner of US Real Estate Limited Partnership, a Texas limited partnership, member of RHP Scottsdale, L.L.C., a Delaware limited liability company, member of SKYSONG 2, LLC, a Delaware limited liability company.

Notary Public

My Commission Expires:

11342039v1 Type/Title	Fourth Amendment to Ground Lease Agreement C.O.S. Contract No. 2004-119-COS-A4
Date of Document	August __, 2013
Number of Pages	Page 11 of 14
Signers	ASUF SCOTTSDALE, L.L.C., CITY OF SCOTTSDALE, SKYSONG 1, LLC, SKYSONG 2, LLC, SKYSONG RESIDENTIAL 1, LLC, and SKYSONG OWNERS ASSOCIATION

CONSENT TO FOURTH AMENDMENT TO GROUND LEASE

The undersigned, having or claiming a lien or other interest in the Property or Tenant's rights under the Lease as defined in the Fourth Amendment to Ground Lease between the City of Scottsdale, an Arizona municipal corporation and ASUF Scottsdale, L.L.C., an Arizona limited liability company, to which this consent is attached, hereby consents to said Amendment and the Lease and agrees that its interest is subject to such Amendment to the Lease.

EXECUTED as of the date of the said Amendment.

SKYSONG RESIDENTIAL 1, LLC
a Delaware limited liability company

By: ASUF Scottsdale, L.L.C., an Arizona limited liability company, its member

By: Arizona State University Foundation, an Arizona nonprofit corporation, Member

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

By: LHP Scottsdale, LLC, a Delaware limited liability company, its member

By: Loadstar, Inc., a Delaware corporation, its sole member

By: _____
Name: _____
Its: _____

11342039v1 Type/Title	Fourth Amendment to Ground Lease Agreement C.O.S. Contract No. 2004-119-COS-A4
Date of Document	August __, 2013
Number of Pages	Page 12 of 14
Signers	ASUF SCOTTSDALE, L.L.C., CITY OF SCOTTSDALE, SKYSONG 1, LLC, SKYSONG 2, LLC, SKYSONG RESIDENTIAL 1, LLC, and SKYSONG OWNERS ASSOCIATION

State of Arizona)
) ss.
County of Maricopa)

This document was acknowledged before me this ____ day of August, 2013, by _____ and _____ of Arizona State University Foundation, an Arizona non-profit corporation, as member of ASUF Scottsdale, L.L.C., an Arizona limited liability company, as member of SKYSONG RESIDENTIAL 1, LLC, a Delaware limited liability company.

Notary Public

My Commission Expires:

State of Arizona)
) ss.
County of Maricopa)

This document was acknowledged before me this ____ day of January, 2012, by _____ of Loadstar, Inc., a Delaware corporation, sole member of LHP Scottsdale, LLC, a Delaware limited liability company, member of SKYSONG RESIDENTIAL 1, LLC, a Delaware limited liability company.

Notary Public

My Commission Expires:

11342039v1 Type/Title	Fourth Amendment to Ground Lease Agreement C.O.S. Contract No. 2004-119-COS-A4
Date of Document	August __, 2013
Number of Pages	Page 13 of 14
Signers	ASUF SCOTTSDALE, L.L.C., CITY OF SCOTTSDALE, SKYSONG 1, LLC, SKYSONG 2, LLC, SKYSONG RESIDENTIAL 1, LLC, and SKYSONG OWNERS ASSOCIATION

CONSENT TO FOURTH AMENDMENT TO GROUND LEASE

The undersigned, having or claiming a lien or other interest in the Property or Tenant's rights under the Lease as defined in the Fourth Amendment to Ground Lease between the City of Scottsdale, an Arizona municipal corporation and ASUF Scottsdale, L.L.C., an Arizona limited liability company, to which this consent is attached, hereby consents to said Amendment and the Lease and agrees that its interest is subject to such Amendment to the Lease.

EXECUTED as of the date of the said Amendment.

SKYSONG OWNERS ASSOCIATION,
an Arizona non-profit corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

State of ARIZONA)
) ss.
County of Maricopa)

This document was acknowledged before me this ____ day of August, 2013 by _____ and _____ of SKYSONG OWNERS ASSOCIATION, an Arizona non-profit corporation.

Notary Public

My Commission Expires:

11342039v1 Type/Title	Fourth Amendment to Ground Lease Agreement C.O.S. Contract No. 2004-119-COS-A4
Date of Document	August __, 2013
Number of Pages	Page 14 of 14
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Stevens, Katie

From: markstuart1001@cox.net
Sent: Monday, August 19, 2013 9:35 AM
To: Jagger, Carolyn; Stevens, Katie
Subject: Agenda Item Comment for 08/19/13 - Item 29

Meeting Date: 08/19/13
Item Number: 29

Contact Information (if blank, user did not provide):

Name: mark Stuart
Address: 8629 E, Cheryl Drive
C/S/Z: Scottsdale, AZ 85258
Phone: 6023160999

Comment for 08/19/13 Item 29:

This item should not be on the consent agenda. It appears that the council is being asking to allow a tenant or subtenant to perpetually default on non-monetary requirements of the lease or sublease. How is this in the best interests of the city? What compensation is being offered to the city in return for this dilution of the lease requirement? Where is the analysis that indicates compliance with Prop. 412. ? The resolution claims that this amendment is in compliance, but you don't provide any evidence of an effort to verify compliance? Who are the parties requesting these favors? These types of changes are not standard , or even existent in most leases . This item should be removed from the consent agenda. A full explanation for the changes should be provided to the public before the council votes on these changes.