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DEVELOPMENT AGREEMENT

(Block 57, Salt Lake City, Utah)

between

REDEVELOPMENT AGENCY OF SALT LAKE CITY

and

ARCADE DEVELOPERS, LLC

DK8422PG8725

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## EXHIBITS

- Exhibit A Developer Improvements
- Exhibit B Design Guidelines
- Exhibit C Legal Description of Property
- Exhibit D Schedule of Development
- Exhibit E Site Plan

## DEVELOPMENT AGREEMENT

This Development Agreement (this "Agreement") is made and entered into by and between the REDEVELOPMENT AGENCY OF SALT LAKE CITY, a public agency ("Agency") and ARCADE DEVELOPERS, LLC, a Utah limited liability company ("Developer"), both of whom are collectively referred to herein as the "Parties", and individually as a "Party".

### ARTICLE 1 Subject of Agreement

1.1 Purpose of Agreement. In furtherance of the objectives of the Utah Neighborhood Development Act, Section 17A-2-1201, *et seq.*, Utah Code Ann. 1953 ("Neighborhood Development Act"), Agency has undertaken a program for the clearance and reconstruction of blighted areas in Salt Lake City, Utah and in connection therewith has for several years undertaken a project to redevelop Block 57, Plat "A" Salt Lake City Survey located in the Central Business District, in Salt Lake City, Utah.

1.2 The Redevelopment Plan. Agency has prepared and approved, and City, through its City Council and an ordinance, has adopted a Redevelopment Plan, effective May 1, 1982, known as the "C.B.D. Neighborhood Development Plan", as such Redevelopment Plan has been and may be amended from time to time. The Redevelopment Plan and amendments thereto have been filed in the Office of the Recorder of Salt Lake County and with Agency.

1.3 Defined Terms. As used herein, the following terms shall have the meanings respectively indicated:

1.3.1 "Agency" means the Redevelopment Agency of Salt Lake City, a public agency exercising its functions and powers and organized and existing under the Neighborhood Development Act, and includes any successor public agency designated by Agency or succeeding to Agency.

1.3.2 "Architect" means the architectural firm selected to perform design and architectural services in connection with the Developer Improvements, or such other architect as is selected by Developer and approved by the Agency.

1.3.3 "Block 57" means the total land area within Block 57, Plat "A," Salt Lake City Survey except for the parcel in the northwest corner on which the One Utah Center Building is located.

1.3.4 "Brooks Arcade Building" or "Building" means the existing building which is part of the Property and to which Developer is about to construct as additions and renovations the Developer Improvements.

1.3.5 "Certificate of Completion" has the meaning set forth in Section 3.20 of this Agreement.

1.3.6 "City" means Salt Lake City Corporation, a municipal corporation.

1.3.7 "Contractor" means the contractor hired by the Developer to construct the Developer Improvements.

1.3.8 "Construction Documents" has the meaning set forth in Section 3.5 of this Agreement.

1.3.9 "Covenants" means that certain Declaration of Covenants, Conditions, Restrictions and Easements Pertaining to a Portion of the Surface of Block 57, Salt Lake City, Utah, recorded July 3, 1995, as Entry No. 6113370 in Book 7180 at Page 1501 of the Official Records of Salt Lake County, Utah, as amended by that certain First Amendment of the Declaration of Covenants, Conditions, Restrictions and Easements Pertaining to a Portion of the Surface of Block 57, Salt Lake City, Utah, recorded January 17, 1997, as Entry No. 6551315 in Book 7579 at Page 1911 of the Official Records of Salt Lake County, Utah, and Amendment Declaration of Covenants, Conditions, Restrictions and Easements Pertaining to a Portion of the Surface of Block 57, Salt Lake City, Utah, recorded November 10, 1999, as Entry No. 7509878 in Book 8322 at Page 1631 of the Official Records of Salt Lake County, Utah, of prepared by the Agency and to which all parcels within Block 57 (as that term is defined herein) are subject, providing for creation of an Association of the several owners of parcels within Block 57 and providing for, among other things, certain assessments to which each parcel is subject in order to provide for payment of costs and expenses associated with Block 57.

1.3.10 "Design Control Documents" means this Agreement, the Redevelopment Plan, the Master Plan, the Covenants, the Site Plan, and the Parcel Design Guidelines.

1.3.11 "Developer" means Arcade Developers, LLC, a Utah limited liability company, with its principal offices located at 3760 North Commerce Drive, Tucson, Arizona 85705.

1.3.12 "Developer Improvements" means the development improvements required by Agency to be constructed on the Property by Developer pursuant to this Agreement, and includes the Brooks Arcade Building as so improved, as generally described in Exhibit "A" attached hereto and incorporated by this reference.

1.3.13 "Master Plan" means the Block 57 Master Plan, as revised in June, 1992, and as it may be revised from time to time.

1.3.14 "Parcel Design Guidelines" means those guidelines adopted by the Agency pertaining to the Property, a copy of which are attached hereto as Exhibit "B".

1.3.15 "Property" means the real property located at 270 South State Street, Salt Lake City, Utah, including, without limitation, the existing Brooks Arcade Building, as more particularly described on Exhibit "C" attached hereto and incorporated herein by reference.

1.3.16 "Purchase and Sale Agreement" means the Purchase and Sale Agreement, dated January 4, 2001, between the Parties.

1.3.17 "Redevelopment Plan" means the redevelopment plan described in Section 1.2 of this Agreement.

1.3.18 "Schedule of Development" means the best current estimate of the respective times for completion and submittal of Construction Documents and completion of phases of the construction of the Developer Improvements as described in Exhibit "D" attached hereto and incorporated herein by this reference.

1.3.20 "Site Plan" means the site plan as amended from time to time with the approval of the Parties which generally depicts the Property and the configuration of the improvements to be made to the Property (including the Developer Improvements); the currently approved version is attached hereto as Exhibit "E" and incorporated herein by this reference.

## ARTICLE 2 Agreement to Develop Property

Developer agrees to cause the Property to be developed in accordance with the terms and provisions set forth in this Agreement, the Redevelopment Plan, and the Covenants. Although the Developer will restore the Building's façade, the remainder of the Building will be demolished to accommodate an entirely new four-story structure. Developer shall have no obligation to restore or maintain anything other than the façade. Developer would not have entered into this Agreement unless Developer could construct the Developer Improvements substantially as set forth on the attached Exhibit "A".

## ARTICLE 3 Developer Improvements and Construction Obligations

3.1 Scope of Agency Review. The scope of the Agency's review and approval as provided herein (the "Agency's Review and Approval") shall be limited to the determination as to whether the submissions required to be made by Developer to the Agency as provided herein are in conformity with the Design Control Documents. In conducting Agency's Review and Approval, the Design Review Committee will advise and make recommendations to the Agency. The Agency's Review and Approval as set forth in this Agreement shall constitute acceptance by the Agency of all submissions made by Developer for the Developer Improvements for all purposes in this Agreement and the Covenants. Notwithstanding any other provision of this Article 3, the Agency shall only review and approve plans, drawings and other construction documents for the exterior of the Developer Improvements (including the exterior pedestrian

environment) and not for the interior of the Developer Improvements. Developer may (but is not obligated to), at its option, develop underground parking as part of the Developer Improvements. Such underground parking may extend to the North line of Gallivan Avenue (provided that the Gallivan Avenue property is conveyed to Developer), to the West line of State Street, to the North line of 300 South Street and to the West boundary line of the Property. Further, Agency hereby waives the following limitations or requirements set forth in the Master Plan: 60 foot maximum height limitation; 60,000 square foot maximum space limitation; and 30 foot wide minimum pedestrian easement requirement. Agency shall work with Developer reasonably and in good faith to resolve any other Building design elements that may conflict with the Master Plan.

3.2 Basic Concept Drawings. Unless otherwise agreed in writing by the Parties, by the time set forth in the Schedule of Development, Developer shall exercise its best reasonable efforts to prepare and submit to Agency for Agency's review and approval basic concept drawings (schematic drawings) and related documents containing the overall plan for the exterior (only) of the Developer Improvements. Basic concept drawings shall include plans and elevations of the exterior (only) of the Developer Improvements as they are to be constructed on the Property, with an obligation to restore the building's historic façade in a permanent manner. The submittal by Developer shall conform to all applicable requirements of law and the Design Control Documents.

3.3 Preliminary Construction Documents. Unless otherwise agreed in writing by the Parties, by the time set forth in the Schedule of Development, Developer shall exercise its best reasonable efforts to prepare and submit to Agency for Agency's review and approval preliminary construction documents for the exterior (only) of the Developer Improvements. Such preliminary construction documents shall be consistent with the approved basic concept drawings, and shall include plans, drawings and related documents for all exterior improvements, including landscaping and grading, any revisions in the Schedule of Development and shall conform to all applicable requirements of law, and the Design Control Documents.

3.4 Final Construction and Condominium Documents. Unless otherwise agreed in writing by the Parties, by the time set forth in the Schedule of Development, as it may have been revised and approved from time to time Developer shall exercise its best reasonable efforts to prepare and submit to Agency for its approval the final construction documents for the exterior (only) of the Developer Improvements in compliance with the Design Control Documents which shall include all drawings, specifications, a final Schedule of Development and related documents necessary for construction and completion of the exterior (only) of the Developer Improvements in accordance with the requirements of this Agreement and in sufficient detail to obtain a building permit. The final construction documents shall be based upon and conform to the preliminary construction documents and shall contain such modifications and changes, if any, specified by Agency as a condition to approval of the preliminary construction documents. Developer may also prepare for the City's review and approval condominium documents creating a condominium of the Property.



3.5 Agency Review. Agency shall have the right to review and approve or disapprove all plans and submissions for the exterior (only) of the Developer Improvements including any changes therein. Provided that the submissions by Developer are made timely and are complete, Agency shall approve or disapprove the documents referred to in Sections 3.1, 3.2, 3.3 and 3.4 of this Agreement (the foregoing drawings and documents are sometimes collectively referred to as "Construction Documents") within seven (7) business days after submittal. During the preparation of all Construction Documents, Agency and Developer shall hold progress meetings as needed to coordinate the preparation of, submission to, and review of the Construction Documents by Agency. The staff of Agency and Developer shall communicate and consult informally as frequently as is necessary to ensure that the formal submittal of any documents to Agency can receive prompt consideration; the Agency agrees that it will promptly review materials submitted to it by Developer. Failure by Agency to either approve or disapprove within seven (7) business days after submittal shall be deemed approval. Any formal disapproval of Agency shall provide in writing the specific reasons for disapproval. Developer, upon receipt of a disapproval, shall revise such plans and submissions and resubmit them to Agency as soon as possible after receipt of the notice of disapproval.

3.6 Developer's Responsibilities. Developer shall be solely responsible for errors and omissions in the Construction Documents, change orders thereto, and shop drawings and other submittals interpreting them and for their accuracy, suitability, technical adequacy and compliance with applicable laws, codes, ordinances, and regulations. Agency's reviews and approvals of all or any portion of the Construction Documents and/or the delivery of the Certificate of Completion are solely for the purpose of determining the general conformance of the Developer Improvements with the original design concept or intent, and shall not constitute an opinion or agreement by Agency that the Developer Improvements are structurally or otherwise sufficient or that the Construction Documents are accurate or in compliance with applicable laws; nor shall such approval impose any present or future liability on Agency or waive any of Agency's rights hereunder. Developer shall be solely responsible for structural and other defects in the Developer Improvements and compliance with all building codes and other laws and requirements of governmental authorities.

3.7 Cost of Construction of Developer Improvements. Developer shall be responsible for the cost of developing and constructing the Developer Improvements and all other costs related to the development of the Property pursuant to this Agreement; provided, Agency shall provide to Developer the Grant and the Agency Loan (as defined in the Purchase and Sale Agreement).

3.8 Construction Schedule; Change Orders. Developer shall promptly begin and thereafter diligently prosecute to completion the construction of the Developer Improvements in accordance with the Construction Documents. Unless otherwise agreed in writing by the Parties, Developer shall exercise its best reasonable efforts to begin and complete the construction and development of all the Developer Improvements within the time specified in the Schedule of Development. Developer shall obtain Agency's prior written approval to any change order that

changes the original design concept or intent for the exterior of the Developer Improvements as set forth in the Construction Documents which costs more than \$50,000.

3.9 Contract Documents. Unless otherwise first approved in writing by Agency, one contract for all work shall be let by Developer. Such contract shall be fully executed prior to the date set forth in the Schedule. The foregoing construction contract is sometimes referred to as the "Contract Documents." The Contract Documents shall include supplemental general conditions protective of Agency, including, but not limited to, provisions that (a) Agency is named as an indemnified party, and (b) Agency is named as an additional named insured on the general liability insurance policy of the Contractor.

3.10 Bonds: Financial Assurance. Either (a) the Contract Documents shall include provisions requiring a bond of the Contractor covering completion, performance and payment for labor materials with respect to the work to be performed, which bond shall name the Contractor as principal and the Parties, jointly and severally, as obligees, with a corporate surety or sureties approved by the Parties and rated A- or better by Moody's or Best's rating agencies, or (b) Alphagraphics, Inc. shall provide a guaranty in favor of Agency, in form and substance reasonably satisfactory to Agency and Developer, guarantying completion of the work to be performed. Work shall not commence until either such bond has been placed in the full amount of the contract price (which bond shall be increased, if necessary, to reflect increased costs resulting from such change orders approved in writing by the Parties), or such guaranty has been delivered.

3.11 Indemnity. Developer shall indemnify, defend and hold Agency, its officers, directors and employees harmless from, all liability, loss, damage, costs or expenses, (including attorneys' fees and court costs) arising from or as a result of the death of a person or any bodily injury to any person, or the loss or damage to the Property, the Developer Improvements or the property of any person which shall occur on or adjacent to the Property arising in connection with the construction of Developer Improvements to the extent directly or indirectly caused by the acts, errors, negligence or omissions of Developer or its agents, employees, servants or Contractor, subcontractors, sub-subcontractors or Architect and whether such damage shall accrue or be discovered before or after termination of this Agreement but excluding any liability, loss, damage, costs or expenses arising from the willful misconduct of the Agency or its officers, directors or employees. Developer will provide in its contracts with the Contractor and the Architect that they will name Agency as an indemnified party. This section shall survive termination of this Development Agreement.

3.12 Contractor's Insurance. Prior to commencing any construction activities at the Property, Developer shall cause the Contractor to maintain insurance from companies authorized to do business in the State of Utah and rated B+ or better by A.M. Best Company at the time of the issuance of such policies, with at least the following minimum insurance coverages:

(i) Workers compensation insurance in the amount of the statutory limit;

(ii) Employers liability insurance in an amount not less than One Million Dollars (\$1,000,000);

(iii) Comprehensive Automobile Liability Insurance, including coverages of owned, non-owned and hired vehicles, shall be written with combined single limits (including personal injury liability, bodily injury liability and property damage liability) of not less than \$1,000,000 per each occurrence during the policy year; and

(iv) Comprehensive General Liability Insurance shall be written on a Commercial General Liability coverage form, which coverages shall include Independent Contractor's Liability coverage, Blanket Contractual Liability Endorsement, premise and operation coverage, Broad Form Property Damages Endorsement, explosion, collapse and underground hazard coverage, fire legal liability coverage, Product-Completed Operations coverage (which shall be kept in effect for 2 years after the completion of the Developer Improvements) and Personal Advertising Injury Coverage. The coverage limits shall be not less than the following:

- A. Each Occurrence limit - \$1,000,000
- B. General Aggregate - \$2,000,000
- C. Product/Completed Operations Aggregate - \$2,000,000
- D. Personal and Advertising Injury Limit - \$1,000,000

Contractor shall also carry Excess Liability Coverage for Comprehensive General Liability in the amount of \$10,000,000 each occurrence and \$10,000,000 annual aggregate. Developer and Agency shall be additional named insureds on the Contractor's General Liability Insurance and Comprehensive Automobile Liability Insurance. The Contractor's General Liability Insurance and Comprehensive Automobile Liability Insurance shall be provided on an "occurrence" form and not on a "claims made" form.

3.13 Architect's Insurance. Developer shall cause the Architect to continuously maintain during the course of its performance of professional services, insurance from companies authorized to do business in the State of Utah and rated A- or better by A. M. Best Company at the time of the issuance of such policies, as follows:

(i) General Liability Insurance written on an occurrence basis with per claim and aggregate annual limits of liability of not less than One Million Dollars (\$1,000,000) and with a deductible or self-insured retention of not greater than Twenty-Five Thousand Dollars (\$25,000); and

(ii) Professional liability insurance with per claim and aggregate annual limits of liability of not less than One Million Dollars (\$1,000,000) and with a deductible or self-insured retention of not greater than Fifty Thousand Dollars (\$50,000).

The Professional Liability Insurance shall be maintained without interruption for a period of two (2) years after the date of the Substantial Completion of the Developer Improvements. Developer and Agency shall be additional named insureds on Architect's General Liability Insurance.

3.14 Generally. Developer shall not permit work to be commenced on the Developer Improvements until after all of the insurance required pursuant to Section 3.12 shall have been obtained. Developer shall furnish to Agency certificates of insurance verifying that such insurance has been obtained. Developer shall, and shall obtain the agreement of Contractor and Architect to, permit Agency, upon request, to examine the original insurance policies required hereby along with any endorsements thereto. Developer shall provide in its contracts with the Contractor and Architect that if the Contractor or Architect at any time neglects or refuses to provide the insurance required herein, or should such insurance be canceled, the Developer shall have the right, but not the obligation, to procure the same at the cost and expense of the Contractor and Architect, and the cost thereof may be deducted by Developer from any monies then due or thereafter to become due to the Contractor and the Architect. Developer shall promptly exercise its rights under such contracts. Developer shall bear all costs, expenses and damages incurred by the Agency arising from such failure to purchase and maintain insurance required by this Agreement.

3.15 City and Other Governmental Agency Permits. Before commencement of any construction, development or work upon the Property, Developer shall, at its own expense, secure or cause to be secured any and all permits which may lawfully be required by City or any other governmental agency having jurisdiction over such construction, development or work.

3.16 Local, State and Federal Laws. Developer shall carry out the construction of the Developer Improvements in compliance with all applicable federal, state, county, municipal and other local laws, regulations, codes and ordinances, licenses, permits and orders.

3.17 Antidiscrimination During Construction. Developer, for itself and its successors and assigns, agrees that in the construction of the Developer Improvements provided for in this Agreement, Developer will include in applicable contracts with its Contractor with obligations to flow down to the Contractor's subcontractors, sub-subcontractors, Architect, and its and their agents and employees, provisions that such persons shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, age, sex, marital status, handicap, national origin or ancestry.

3.18 Prohibition Against Transfer of Property, Developer Improvements and Assignment of Agreement. Prior to the issuance of the Certificate of Completion, Developer shall not, without the prior written approval of Agency (which may be withheld in its absolute

discretion) sell, transfer, or convey directly or indirectly, the whole or any part of the Property or the buildings or structures thereon. This prohibition shall not be deemed to prevent the granting of a first position mortgage lien or easements or permits to facilitate the construction of the Developer Improvements or the conversion of the Property into a condominium.

3.19 One Percent for Art. One percent (1%) of the amount provided by Agency to Developer in connection with the Developer Improvements (\$17,000) shall, at the election of Developer, either be (i) donated by Developer to the "Percent for Art Fund" as set forth in Section 2.30 of the Salt Lake City Ordinances or any successor ordinance or policy, or (ii) paid by Developer for the installation of an art feature(s) on the Property in a publicly accessible area(s). In the event Developer elects to install an art feature, Developer shall first obtain Agency's written approval of the art feature and its location, such approval not to be unreasonably withheld. Developer shall complete its donation to the Percent for Art Fund or its installation of an art feature on the Property, as the case may be, prior to or concurrent with its completion of the Developer Improvements.

3.20 Certificate of Completion. After completion of all construction and development of the Developer Improvements, Agency shall furnish to Developer a certificate of completion ("Certificate of Completion") as to the Developer Improvements within fifteen (15) days following written request therefore by Developer or shall, within such fifteen (15) day period, provide Developer with a reasonably detailed written statement of the reasons Agency is refusing to furnish the Certificate of Completion and the actions Developer must take in order to obtain the Certificate of Completion. The Certificate of Completion shall be a determination of satisfactory completion of Developer's obligations required by this Agreement with respect to the Developer Improvements and the Certificate of Completion shall so state. The Certificate of Completion shall be in recordable form and may, at the option of Developer, be recorded in the Recorder's Office of Salt Lake County. As between Agency and Developer, the Certificate of Completion shall evidence completion of Developer's obligations under this Agreement; provided, however, that the Certificate of Completion may not be relied on by the holder or insurer of any mortgage securing money loaned to finance the Developer Improvements as establishing that the Developer Improvements are properly constructed or in compliance with applicable building codes.

3.21 Rights of Access. For the purpose of assuring compliance with this Agreement, so long as they comply with all safety rules of Developer and its Contractor, representatives of Agency shall have the right of access to the Property without charges or fees, during the period of construction for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in constructing the Developer Improvements.

#### ARTICLE 4 Defaults and Remedies

4.1 Default. In the event Developer shall fail to perform any of its duties or obligations hereunder at the time for performance set forth herein or within the cure period set forth in Section 4.2, Agency shall have all remedies at law or in equity, which shall include the

right to restrain by injunction any violation or threatened violation and by decree to compel specific performance of any terms, covenants or conditions of this Agreement, it being agreed that the remedy at law for any breach of any term, covenant or condition of this Agreement is not adequate. Except for the lien as provided in Section 4.2, the failure of Developer to perform its obligations hereunder shall not give rise to a right to rescind or any other right in Agency that would result in a defeasance of any right, title, interest or estate of Developer in the Property.

4.2 Right to Cure. Should Developer fail to timely perform any of the obligations set forth in this Agreement and thereafter fail to diligently commence performing any of such obligations within thirty (30) days of its receipt of Agency's written demand therefor, and diligently and continuously pursue such performance to completion, Agency, its successors and assigns, shall, in addition to any other remedy provided at law or in this Agreement, have the right (but not the obligation) to perform such obligation on behalf of Developer, and Developer shall reimburse Agency, its successors and assigns, for the cost of performing such work within thirty (30) days after receipt of billing therefor and proof of payment thereof. In the event Developer does not reimburse the Agency or its successors and assigns within such thirty (30) days, Agency, its successors or assigns, shall have (i) the right to exercise any and all rights which Agency, its successors or assigns, might have at law to collect the same, and (ii) have a lien on the Property to the extent of the amount paid by Agency, its successors or assigns, but not reimbursed by Developer, which amount shall bear interest at a rate equal to the then published "Prime Rate" of Citibank, N.A., plus two percent (2%) per annum (the "Interest Rate") (the Parties acknowledging that such rate may not be the lowest or "best" rate), or the highest legal rate of interest, whichever is less, from the date of billing until paid. Such lien may be filed for record as a claim against Developer, in the form required by law, in the Salt Lake County Recorder's Office, which lien shall contain at least the following information:

- (a) The name of the lien claimant;
- (b) The name of Developer;
- (c) A description of the work performed on behalf of Developer and a statement itemizing the cost thereof; and
- (d) A description of the Property.

The lien so claimed shall attach from the date of recordation in the amount claimed, and it may be enforced and foreclosed in any manner allowed by law, including, but not limited to, suits to foreclose a mechanic's lien, trust deed or mortgage under applicable law. Such lien, when so established against the real property described in such lien, shall be prior and superior to any right, title, interest, lien or claim which may be or is acquired or attached to such real property after the time of recording the claim of lien.

4.3 Assignment of Contracts. Developer shall provide in its contract with the Contractor and Architect for a contingent assignment to Agency of such contract as well as any

contracts with subcontractors or sub-subcontractors (subject to the rights of sureties therein), to the end that in the event of a material default by Developer of this Agreement, Agency may at its election, assume the rights and obligations of Developer under such contract(s).

4.4 No Limitation of Remedies. The various rights and remedies herein contained, except as otherwise provided in this Agreement, shall not be considered as exclusive of any other right or remedy, but shall be construed as cumulative and shall be in addition to every other remedy now or hereafter existing at law, in equity or by statute. No delay or omission of the right to exercise any power or remedy shall impair any such right, power or remedy or be construed as a waiver of any default or nonperformance or as acquiescence therein. Developer and the successors and assigns of Developer, shall be jointly and severally liable for any default under this Agreement; provided, any action with regard to such default may be instituted against all or any one of them and none of Developer's members shall be personally liable for any of Developer's obligations.

4.5 Force Majeure. If either Party shall fail to punctually perform any obligation hereunder as a result of any of the following events which cause a delay in construction, then such obligation shall be performed as soon as practicable after such event shall abate, and the time period for such performance and other performances dependent thereon shall be extended for the period of such events; (i) strike, lockout or other labor dispute affecting the Property, Block 57 or any portion thereof, (ii) inability to obtain labor or materials or reasonable substitutes therefor, (iii) acts of God, weather, enemy or hostile government action, civil commotion, public demonstrations, court proceedings, insurrection, sabotage or fire or other casualty, (iv) building moratorium imposed by, or delays in approving or refusals to approve permits, condominium documents or other permits and approvals by, governmental agencies with jurisdiction, or (v) any other cause occurring without the fault and beyond the reasonable control of the Party affected thereby.

## **ARTICLE 5**

### Duration of Agreement

This Agreement will commence upon the date hereof and shall terminate automatically without the need for further documentation upon the City's issuance of the Certificate of Completion.

## **ARTICLE 6**

### General Provisions

6.1 Captions. The captions, headings, and arrangements used in this Agreement are for convenience only and do not in any way affect, limit, amplify, or modify the terms and provisions hereof.

6.2 Number and Gender of Words. Whenever herein the singular number is used, the same shall include the plural where appropriate, and words of any gender shall include each other gender where appropriate.

6.3 Attorneys' Fees. In any legal or equitable proceeding for the enforcement of, or to restrain the violation of, or otherwise pertaining to a dispute concerning this Agreement or any provision hereof, by reference or otherwise, the prevailing party shall be entitled to an award of reasonable attorneys' fees in such amount as may be fixed by the court in such proceedings, in addition to costs of suit. If counsel is otherwise employed to enforce this Agreement or any provision hereof, the non-defaulting party, whether or not litigation is commenced, shall be entitled to its reasonable attorneys' fees.

6.4 Notices. All notices, demands, requests and other communications required or permitted hereunder shall be in writing, and shall be deemed to be delivered, whether actually received or not, three (3) days after deposit in a regularly maintained receptacle for the United States mail, registered or certified, or another commercially acceptable means requiring a return receipt, postage prepaid, addressed as follows:

To Agency: REDEVELOPMENT AGENCY OF SALT LAKE CITY  
451 South State Street, Room 418  
Salt Lake City, Utah 84111  
Attn: Lawrence S. Catten  
Facsimile No.: 801-535-7245

with copies to: George D. Melling, Jr.  
Fabian & Clendenin,  
a Professional Corporation  
215 South State Street, Suite 1200  
Salt Lake City, Utah 84111  
Facsimile No.: 801-532-3370

To Buyer: Arcade Developers, LLC  
3760 North Commerce Drive  
Tucson, Arizona 85705  
Attn: Chief Executive Officer and  
Chief Financial Officer  
Facsimile No.: 520-888-8563

with copies to: Victor A. Taylor, Esq.  
Parr Waddoups Brown Gee & Loveless  
185 South State Street, Suite 1300  
Salt Lake City, Utah 84111  
Facsimile No.: 801-532-7750



Such communications may also be given by facsimile transmission, provided any such communication is concurrently given by one of the above methods. Notices shall be deemed effective upon the receipt, or upon attempted delivery thereof if the delivery is refused by the intended recipient or if delivery is impossible because the intended recipient has failed to provide a reasonable means of accomplishing delivery.

6.5 Governing Law. This Agreement is intended to be performed in the State of Utah, and the laws of Utah shall govern the validity, construction, enforcement, and interpretation of this Agreement.

6.6 Amendments. This Agreement may be amended or supplemented only by an instrument in writing executed by both Agency and Developer.

6.7 Invalid Provisions. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable; 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 its severance from this Agreement.

6.8 Further Acts. In addition to the acts and deeds recited herein and contemplated to be performed, executed and delivered by Agency and Developer, Agency and Developer agree to perform, execute and deliver or cause to be performed, executed, and delivered any and all such further acts, deeds and assurances as may be necessary to consummate the transactions contemplated hereby.

6.9 Survival. Except as otherwise provided for herein, all agreements, covenants, representations and warranties contained herein shall survive the expiration or termination of this Agreement and the performance by Developer of its obligations hereunder.

6.10 Warranty Against Payment of Consideration for Agreement. Developer warrants that it has not paid or given, and will not pay or give, any third person any money or consideration for obtaining this Agreement, other than normal costs of professional services such as architects, engineers and attorneys.

6.11 Nonliability of Officials and Employees. No member, official or employee of Agency shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by the Agency or for any amount which may become due to Developer or its successor, or on any obligation under the terms of this Agreement.

6.12 Recordation. At Agency's election, this Agreement or a memorandum of this Agreement shall be recorded in the office of the Salt Lake County Recorder. Upon issuance of the Certificate of Completion, this Agreement shall automatically terminate and shall thereafter have no further force or effect. At Developer's request, the Parties shall promptly execute in

recordable form and record a satisfaction and termination of this Agreement to provide record notice of such termination.

6.13 No Relationship of Principal and Agent. Nothing contained in this Agreement, nor any acts of the Parties shall be deemed or construed to create the relationship of principal and agent or of limited or general partnership or of joint venture or of any other similar association between Agency, its successors or assigns, or Developer, its successors or assigns.

6.14 No Presumption. This Agreement shall be interpreted and construed only by the contents hereof and there shall be no presumption or standard of construction in favor of or against either Party.

6.15 Exhibits. All references to "Exhibits" contained herein are references to exhibits attached hereto, all of which are made part hereof for all purposes.

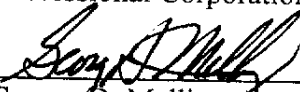
Executed as of the 2<sup>nd</sup> day of February, 2001.

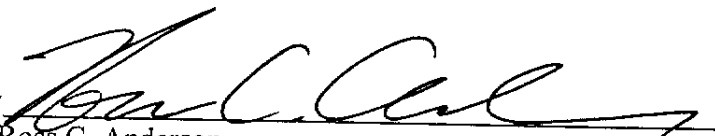
“AGENCY”

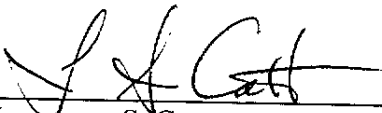
REDEVELOPMENT AGENCY OF SALT LAKE CITY

APPROVED AS TO FORM:

FABIAN & CLENDENIN  
a Professional Corporation

By   
George D. Melling, Jr.

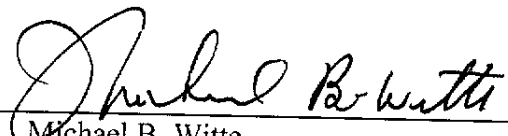
By   
Ross C. Anderson  
Its Chief Administrative Officer

By   
Lawrence S. Catten  
Its Executive Director

“DEVELOPER”

ARCADE DEVELOPERS, LLC,  
by its Manager:

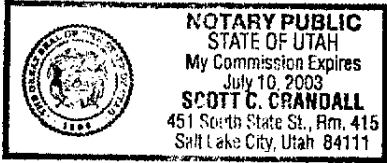
ALPHAGRAPHICS, INC.,  
a Delaware corporation

By   
Michael B. Witte  
Its Chief Executive Officer

STATE OF UTAH )  
 )  
 : ss.  
 )  
COUNTY OF SALT LAKE

On the 2nd day of February, 2001, personally appeared before me Ross C. Anderson, who being by me duly sworn did say he is the Chief Administrative Officer of The Redevelopment Agency of Salt Lake City, and that the within and foregoing instrument was signed on behalf of said Agency.

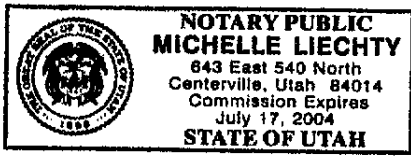
*[Handwritten Signature]*  
\_\_\_\_\_  
NOTARY PUBLIC



STATE OF UTAH )  
 )  
 : ss.  
 )  
COUNTY OF SALT LAKE

On the 1st day of February, 2001, personally appeared before me Lawrence S. Catten, who being by me duly sworn did say he is the Executive Director of The Redevelopment Agency of Salt Lake City, and that the within and foregoing instrument was signed on behalf of said Agency.

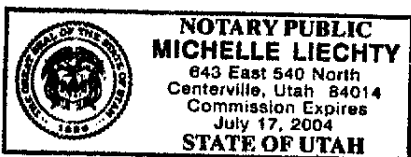
*[Handwritten Signature]*  
\_\_\_\_\_  
NOTARY PUBLIC



STATE OF UTAH )  
 )  
 : ss.  
 )  
COUNTY OF SALT LAKE

On this 1st day of February, 2001, personally appeared before me Michael B. Witte, whose identity is personally known to me (or proved to me on the basis of satisfactory evidence) and who by me duly sworn, did say that he is the Chief Executive Officer of Alphagraphics, Inc., the Manager of Arcade Developers, LLC, and that said document was signed by him in behalf of said corporation by authority of its bylaws, in behalf of said limited liability company by authority of its operating agreement, and he acknowledged to me that said corporation executed the same on behalf of said limited liability company.

*[Handwritten Signature]*  
\_\_\_\_\_  
NOTARY PUBLIC



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EXHIBIT "A"

Developer Improvements

## **Exhibit A Developer Improvements**

The Brooks Arcade project is a synthesis of restoration of the historic three-story street facades and new construction of approximately 96,750 square feet of mixed-use space plus parking for approximately 55-60 cars. The new footprint is approximately 25,000 square feet, extending beyond the original footprint to the north and the west. The project scope is as follows:

Facades      300 South and State Streets Elevations: The historic sandstone façades will be restored per Secretary of the Interior guidelines. Wood windows will be replaced with wood or aluminum units to match the original profiles. Storefronts will be reconstructed with reference to historic photographs. Modern, energy efficient glazing will be used.

Adjacent to the historic facades, the new architecture is a three-story clear glass curtainwall set approximately three feet behind the historical facades. Behind the curtainwall will be a three-story open space and then a secondary wall with arched penetrations that repeat the geometry and rhythm of the historic windows.

Gallivan Avenue and Pedestrian Way Elevations: The north and west elevations incorporate ample clear glass windows and glass-fiber-reinforced-concrete (GFRC) or a similar material that is compatible with the existing sandstone. The service entrance bay on the north side will be designed with high-quality skin materials and upgraded service doors.

Lower Level      Parking (25,850 SF): The developer will construct this element of the project at its sole option after further evaluation and receipt of required approvals. The lower parking level is designed for access through the existing American Stores parking structure to the west via the 300 South Parking Easement. Parking is organized in a double-loaded loop for efficient and convenient circulation. Access to the upper levels will be at the two central building elevators. Storage and mechanical spaces will be located in unusable corner areas. Sprinklers and smoke evacuation will be provided per code.

Level 1      Retail (25,250 SF): The first floor is designated for retail space plus other uses as permitted in the RDA/Developer agreement, as limited by the special warranty deed vesting title. The first floor will have storefronts at the full building perimeter, except at the service dock at the north side, for tenant flexibility and visibility. Entrance to the main building lobby and elevator core is from the original east location, and circulation is open east - west through the building.

Levels 2 & 3      Office (50,500 SF): The second and third floors will be state-of-art office space for AlphaGraphics corporate headquarters. Basic office core functions are organized toward the center of the building and

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accommodate interior braced frames. Offices at the northeast and southwest curtainwall facades have a view through the new arched wall to the three-story open space beyond.

Levels 4 & 5 Condominiums (21,000 SF): Nine or more high-end condominiums are organized at the north and west allowing for rooftop garden space above the original footprint with expansive views to the southeast. The condominiums are two-story units, with interior two-story spaces and balconies.

Site Amenities North Plaza Drive: Sidewalk circulation will be improved to include pedestrian amenities such as seating, landscaping, and upgraded paving. The service dock will be at the center bay of the north elevation.

West Pedestrian Way: The 20-foot pedestrian easement will have appropriate hard surfaces, landscaping, irrigation, and locking gates if deemed appropriate by the developer.

Public Street Frontages: The sidewalks will have generous planting and upgraded paving per Salt Lake City Standards.

Design Review Design review remains to be completed in accordance with the provisions of the Development Agreement.

The developer will repair any damage to adjacent improvements, such as sidewalks, streets, and landscaping.

EXHIBIT "B"

Design Guidelines

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BLOCK 57  
SPECIFIC DESIGN GUIDELINES  
FOR PARCEL B

I. SPECIFIC PARCEL REQUIREMENTS

- A. **Facade Preservation.** The facade of the Brooks Arcade building shall be maintained and restored. Distinctive stylistic features or examples of skilled craftsmanship which characterize the Brooks Arcade building shall be treated with sensitivity. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, sustained by historical, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
- B. **Additions.** Additions to the Brooks shall be compatible with the rhythm of the original building.
- C. **Pedestrian Circulation.** A continuation of the diagonal pedestrian axis from the north plaza to State Street shall be provided. A pedestrian easement of 30' minimum width is desired, connecting 300 South to the nearest curbline of the future Plaza Drive. This may be eliminated or dictated by future development.
- D. **Awnings.** Traditional awnings, if used, should create a sense of building continuity and compatibility. Backlit awnings and awnings which protrude less than two feet are not permitted. Awnings shall be consistent in shape, design, and color.

II. PLAZA AND PLAZA DRIVE AREAS

- A. **Plaza Drive Construction.** The developer of Parcel A shall be responsible for constructing that portion of the plaza and plaza drive which is adjacent to parcel B. The developer of Parcel B shall be responsible to repair and/or replace any improvements along plaza drive which are damaged during the construction of improvements on Parcel B. The developer of Parcel B shall use the plaza and plaza drive design guidelines in developing mid-block pedestrian walkways.
- B. **Emergency Vehicle Access Corridors.** Plaza and plaza drive plans shall show emergency vehicle access corridors, which corridors must be approved by the Salt Lake City Fire Prevention Bureau and the Salt Lake City Police Department.
- C. **Irrigation.** Automatic irrigation systems should be installed for each development site to assure plant materials have adequate water. Water conserving irrigation systems should be used where possible.
- D. **Hard Surface Materials.** The hard surface materials for open space areas must conform to the materials and specifications established in the construction of the plaza. Specifically, all paving and hard surface materials must conform to and be consistent with the specifications for the north plaza. The pattern of the plaza paving and design elements of the plaza must be recognized and responded to in the development of hard surfaced areas abutting or connecting to the north plaza and plaza drive areas. Materials for plaza drive shall be either a continuation of

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the plaza materials or materials specified by Salt Lake City for street beautification within the Salt Lake City Central Business District. The pedestrian and vehicular areas of plaza drive shall be visually and physically separated with a curb, change in pavement treatment, or bollards.

- E. **Plant Materials.** All plant materials should conform to the requirements of the "U.S.A. Standard Nursery Stock" as published by the American Association of Nursery Men and shall be reviewed and approved by the Salt Lake City Urban Forester. Trees shall include species successfully used in the north plaza. A single species of tree shall provide a consistent edge to plaza drive. Plant materials shall be chosen to provide visual interest and to enhance pedestrian safety. Trees planted on grade should have a minimum opening of five feet square or round. Openings may be covered with tree grates or other material which allows air to reach the soil within the five foot area. Wherever possible, grouped plantings are preferred over individual trees in grates.

Minimum plant sizes for all landscaped areas are as follows:

Deciduous trees	2 1/2" caliper
Evergreen trees	6' in height
Deciduous shrubs	5 gallon container
Evergreen shrubs	24"-36" in height or spread
Perennials	1 gallon container
Ground Covers	4" pots

- F. **Lighting.** Pedestrian lighting along walkways, plazas, and other pedestrian areas should be used to indicate routes and to provide safety. Lighting fixtures within plaza areas and along plaza drive shall be similar to those specified for the north plaza. Other forms of lighting may be incorporated into the design, and may include landscape lighting for use in accent areas and to enhance elements of focal interest at night and building facade light to accent special features of the architecture and to supplement light levels on the block. The plaza and plaza drive lighting plan shall be reviewed and recommended by the Salt Lake City Police Department.
- G. **Furniture and Signage.** Furniture and signage within plaza areas and along plaza drive shall be similar to the furniture and signage installed in the north plaza.
- H. **Visibility.** All areas of the plaza should be visible from the adjoining streets and public walkways.
- I. **Focal Features.** Focal features should be incorporated into the design in ways that encourage pedestrians to use the block, to direct and lead pedestrians into and through the block, and to accent views at pedestrian and vehicular entrances. Focal features may be fountains, public art, architecture, landscape, or other attractive elements on the site. Regardless of what is used, it must be in scale with the space in which it is located, low maintenance, and encourage interaction with people.

- J. **Plaza Management Team Review.** Plaza and plaza drive plans shall be reviewed by the Plaza Management Team prior to the 50 percent of construction drawings submittal.

EXHIBIT "C"

Legal Description of Property

The Property referred to in the foregoing instrument is located in Salt Lake County, Utah, and described as follows:

Beginning at the Southeast corner of Block 57, Plat "A", Salt Lake City Survey, and running thence North  $89^{\circ}50'34''$  West along the South line of Block 57 a distance of 145.12 feet to the East line of the American Stores Parcel; thence North  $0^{\circ}08'14''$  East along said East line of the American Store Parcel a distance of 211.56 feet to the South line of Gallivan Avenue; thence South  $89^{\circ}57'13''$  East along said South line of Gallivan Avenue 145.12 feet to the East line of Block 57; thence South  $0^{\circ}08'14''$  West along said East line of Block 57 a distance of 211.84 feet to the point of beginning.

Parcel No. 16-06-152-076-2000 and 16-06-152-076-6001

EXHIBIT "D"

Schedule of Development

Project Schedule			Orig Dur	Early Start	Early Finish	2000 2001 2002 N D J F M A M J J A S O N D J F M A M J J A S O																	
Presentation Interviews and Developer Selection	0	28NOV00	43	01DEC00 *	01FEB01																		
Period of Negotiations	0		0		14DEC00 *																		
Approval of Sale by Board of Directors	0		0		04JAN01 *																		
Execution of Purchase and Sale Agreement	0		0		04JAN01 *																		
Submission of Schematic Plans by Developer	0	19JAN01	5	19JAN01	25JAN01																		
RDA Approval of Schematic Design	0		0		23JAN01																		
Design Review Committee Meeting Schematic Design	0		0		25JAN01																		
Approval of Schematic Plans by Agency	0		0		01FEB01 *																		
Closing / Execution of Development Agreement	0		0		01FEB01 *																		
Construction Begins	0	12FEB01 *	0		12FEB01 *																		
Submittal to Planning and Zoning	0		29	13FEB01	23MAR01																		
Planning and Zoning Review / Approval	0	16MAR01	5	16MAR01	22MAR01																		
Submission of Design Development by Developer	0		0		20MAR01																		
RDA Approval of Design Development	0		0		20MAR01																		
Design Review Committee Meeting - DD Plans	0		0		22MAR01																		
Approval of DD Plans by Agency	0		0		20APR01																		
Approval of 95% Construction Documents by Agency	0		0		20APR01 *																		
Certificate of Occupancy -Second and Third Floor	0		0		30NOV01 *																		

The Parties agree that Developer does not possess sufficient information as of the date of execution of this Agreement to accurately schedule the number, topics and dates of design review meetings by the Design Review Committee and the RDA Board. Developer will submit a revised Project Schedule by February 16, 2001 which provides this detail.

Start date	27NOV00	
Finish date	30NOV01	
Date date	28NOV00	
Run date	31JAN01	
Page number	2A	
© Primavera Systems, Inc.		

**BROOK'S ARCADE BUILDING**

**BIG-D CONSTRUCTION CORP.**

- Early bar
- Progress bar
- Critical bar
- Summary bar
- Start milestone point
- Finish milestone point

EXHIBIT "E"

Site Plan

