

When Recorded Return To:

City Clerk
City of Maricopa
39700 West Civic Center Plaza
Maricopa, Arizona 85138

DEVELOPMENT INCENTIVE AGREEMENT
(Edison Pointe in the City of Maricopa)

THIS DEVELOPMENT INCENTIVE AGREEMENT ("Agreement") is made and entered into as of the 6th day of December, 2016 (the "Effective Date") by and between the CITY OF MARICOPA, an Arizona municipal corporation ("City"), and VP Edison 15, L.L.C., an Arizona limited liability company ("VP Edison" or "Landowner") (collectively, the "parties").

RECITALS

- A. Landowner is the owner of certain real property in the City of Maricopa, with an area of 14.74 gross acres, and located at the northeast corner of John Wayne Parkway and Edison Road, as legally described in *Exhibit "A"* attached hereto and incorporated herein by this reference (the "Property").
- B. Landowner intends to develop the Property into an approximately 125,250 square foot retail center (the "Project"), known as Edison Pointe. In order for the Property to be developed for such a purpose, the City will require infrastructure improvements on the adjacent, public roadways to make the Property accessible for the retail development (the "Public Infrastructure Improvements").
- C. In order to reimburse Landowner for the cost of construction of the Public Infrastructure Improvements, the City agrees to rebate to Landowner a portion of the transaction privilege taxes generated from the Property.
- D. The City believes that the development of the Property is appropriate, and that such development will generate substantial transaction privilege tax revenues for the City, which revenues would not be generated without such development. The City has also determined that the contemplated development of the Property will generate substantial nonmonetary benefits for the City and its residents, including the creation of jobs and otherwise promoting growth and commercial vitality within the City.
- E. The parties acknowledge that this Agreement constitutes a "Development Agreement" within the meaning of Arizona Revised Statutes ("A.R.S.") § 9-500.05, and that, accordingly, it shall be recorded against the interest of the Landowner in the Property in the Office of the Pinal County Recorder to give notice to all persons of its existence and of the parties' intent that the burdens and benefits contained herein be binding on and

inure to the benefit of the parties and all their successors in interest and assigns.

- F. The actions taken pursuant to this Agreement are for economic development purposes as that term is used in A.R.S. § 9-500.11, will assist in the creation and retention of jobs, and will, in other ways, improve and enhance the economic welfare of the residents of the City. Pursuant to A.R.S. § 9-500.11, the City has adopted a notice of intent to enter into this Agreement and to make the findings required by A.R.S. § 9-500.11(D), and such findings having been verified by an independent third party before the City entered into this Agreement. Such findings are, by this reference incorporated into this Agreement as though set forth in their entirety herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT

1. Recitals.

- 1.1. The recitals set forth above are acknowledged by the parties to be true and correct and are incorporated into this Agreement by this reference.

2. Sales Tax Rebate.

- 2.1. Sales Tax Rebate. Subject to the terms, conditions and limitations set forth in this Agreement, the City hereby acknowledges and agrees that it shall rebate to the Landowner forty-five percent (45%) of all unrestricted transaction privilege (“sales”) taxes imposed by the City (currently in the amount of 2.00%) plus interest after the Rebate Trigger Date, as defined in Section 2.5 of this Agreement and generated from all taxable activity within the Property (herein, the “Sales Tax Rebate”) until the first to occur of the following dates or events:

- a) The Landowner has received aggregate Sales Tax Rebates in an amount equal to the full cost of the Public Infrastructure Improvements, which could be as low as \$700,000 or as high as \$1,200,000, including any interest paid under Section 2.6 of this Agreement; or
- b) The tenth (10) anniversary of the Rebate Trigger Date, as defined in Section 2.5 of this Agreement.

The City’s obligation to pay the Sales Tax Rebate to the Landowner is contingent upon the Landowner having commenced construction of the Project within nine (9) months of the Effective Date. In the event the Landowner fails to commence construction within nine (9) months, the City shall have no obligation to pay the Sales Tax Rebate and this Agreement shall be automatically null and void.

- 2.2. Public Infrastructure Improvement Costs. The Public Infrastructure Improvement costs which qualify for the Sales Tax Rebate include, but are not limited to, costs associated with design, construction, labor and materials spent in connection with the construction of the Edison Road and John Wayne Parkway access points, as described in Development Review Permit case # DRP15-04 and in accordance with the Conditions of Approval in the

corresponding City of Maricopa Staff Report dated December 14, 2015 which is attached hereto as “*Exhibit B*” (the “Project Approval”). Upon completion of the Public Infrastructure Improvements, evidenced by the acceptance and dedication of the Public Infrastructure Improvements to the City or other appropriate government entity, the Landowner will provide the City with a final project budget reflecting the actual costs associated with the allowable Public Infrastructure Improvements, and all applicable unconditional lien waivers. If the City has questions regarding the allowable Public Infrastructure Improvements costs, the Landowner agrees to provide the City with information reasonably supporting the basis for any such costs.

- 2.3. Encroachment Permit. Landowner, its agents, and employees shall have the right, upon receipt from the City of an appropriate encroachment permit, to enter and remain upon and cross over any City easements or rights-of-way to the extent reasonably necessary to facilitate such construction, or to perform necessary maintenance or repairs of such Public Infrastructure Improvements. Owner’s use of such easements and rights-of-way, pursuant to an encroachment permit, shall not impede or adversely affect the City’s use and enjoyment thereof. The Landowner, its agents, and employees shall also have the right, upon receipt from the City of an appropriate encroachment permit, to enter and remain upon and cross over any City easements or rights-of-way to the extent reasonably necessary to install and maintain landscaping material within the portion of the City right-of-way not used for vehicular travel. The City further agrees to work with the Landowner to acquire any necessary permits from ADOT in connection with the construction of Public Infrastructure Improvements in the John Wayne Parkway right-of-way.
- 2.4. Transaction Privilege Taxes Subject to Sales Tax Rebate. The Landowner hereby acknowledges that the transaction privilege taxes which are subject to the Sales Tax Rebate shall be limited to the “unrestricted” transaction privilege taxes which may be imposed by the City. In addition, the transaction privilege taxes imposed by the City and subject to the Sales Tax Rebate shall not include any additional restricted transaction privilege taxes which may be imposed by the City after the date of this Agreement.
- 2.5. Rebate Trigger Date. The Sales Tax Rebate becomes payable to the Landowner upon the completion of both the Public Infrastructure Improvements and 60,000 square feet of retail, as calculated by issuance of certificates of occupancy for the Property (the “Rebate Trigger Date”).
- 2.6. Interest. The Parties agree that interest will accrue at a rate of the lesser of (i) 8.5% or (ii) the prime rate in effect from time to time (as set forth in the Wall Street Journal or Chase Bank if the Wall Street Journal no longer publishes) plus three percent (3%) on any of the money calculated and paid to the Landowner on a quarterly basis during the term of this Agreement, commencing on the Rebate Trigger Date. The Sales Tax Rebates, inclusive of interest payments, will be remitted to the Landowner within 30 days of the end of the applicable quarter.
- 2.7. Assignability. The Sales Tax Rebate provided by the City to the Landowner pursuant to this Agreement may not be assigned by the Landowner to any other party, including any successor owner of the Property or any portion thereof, without the City’s approval of such successor owner (and the manager or operator of the portion of the Project being sold if the successor owner will not manage or operate the portion of the Project being sold), which

approval shall not be unreasonably withheld. The Landowner shall provide the City notice as provided in Section 6.1 of any such proposed assignment and the identity of the successor (and manager or operator, if applicable), together with information regarding the successor, including such successor's experience in developing, leasing, operating and maintaining mixed-use commercial and residential projects. Any successor (and manager or operator) approved or deemed approved by the City shall herein be referred to as a "Qualified Successor." If the right of the Landowner to receive the Sales Tax Rebate will not be assigned by the Landowner to a successor-in-interest, the City's approval of the Landowner's successor (and manager or operator) shall not be required.

3. **Public Infrastructure Improvements.**

- 3.1. Construction of Public Infrastructure Improvements. Landowner at its sole cost shall design, construct or cause to be constructed and dedicate to the applicable government authority the Public Infrastructure Improvements subject to the terms and conditions of this Agreement.
- 3.2. City Review and Approval of Plans. Landowner recognizes that its development and construction of the Public Infrastructure Improvements pursuant to this Agreement are subject to the City's or other appropriate governmental entity's normal plan submittal, review and approval processes, fees and day-to-day inspection services.
- 3.3. Design, Bidding, Construction and Dedication. To the extent required by law, the Public Infrastructure Improvements shall be designed, bid, constructed and dedicated in accordance with the City's or other appropriate governmental entity's codes, ordinances, regulations, rules, guidelines and policies including the procurement and public bidding procedures, in existence as of the Effective Date of this Agreement, except as otherwise agreed to, in writing, by Owner and the City (collectively, the "Applicable Laws").
- 3.4. Acceptance of Public Infrastructure Improvements. When the Public Infrastructure Improvements are completed, then upon written request of the City or other appropriate governmental entity, Landowner shall comply with the infrastructure acceptance requirements of the City or other appropriate governmental entity, including the dedication of the Public Infrastructure Improvements, at no cost to the City or other governmental entity, and City or other governmental entity shall accept such Public Infrastructure Improvements upon such reasonable and customary conditions as the City or other governmental entity may impose.
- 3.5. Warranty Period. Following acceptance of the Public Infrastructure Improvements, Landowner or its assignee shall comply with the infrastructure warranty requirements of the City or other appropriate governmental entity.

4. **Term.**

- 4.1. Term. This Agreement shall commence on the Effective Date and shall continue until the later of (i) the 15th anniversary of the Effective Date or (ii) the date that the Landowner has received aggregate Sales Tax Rebates in an amount equal to the full cost of the Public Infrastructure Improvements, not to exceed \$1,200,000, which includes any interest paid under this Agreement.

5. **Default and Remedies.**

- 5.1. Events Constituting Default. A party hereunder shall be deemed to be in default under this Agreement if such party breaches any obligation required to be performed by the respective party hereunder, and such breach or default continues for a period of twenty (20) days after written notice of the default, in the event of a monetary default, or one hundred twenty (120) days after written notice of the default, in the event of non-monetary default, from the non-defaulting party (or, if a non-monetary default cannot reasonably be cured within one hundred twenty (120) days, then the party shall be in default if it fails to commence the cure of such breach within the 120- day period and diligently pursue the same to completion).
- 5.2. Remedies. In the event that a party is in default under this Agreement and fails to cure such default within the applicable period of cure set forth in Section 2.1 above, the party or parties not in default shall have all rights and remedies available at law or in equity as provided for in this Agreement.

6. **Conflict of Interest; Representatives Not Individually Liable.**

- 6.1. Conflict of Interest. Pursuant to Arizona law, rules and regulations, no member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. This Agreement is subject to, and may be terminated by City in accordance with the provisions of A.R.S. §38-511.
- 6.2. No Personal Liability. No member, official or employee of the City shall be personally liable to the Landowner, or any successor or assignee, (a) in the event of any default or breach by the City, (b) for any amount which may become due to the Landowner or its respective successor or assign, or (c) pursuant to any obligation of the City under the terms of this Agreement. In addition, no member, agent, employee or regent of the Landowner shall be personally liable to the City (i) in the event of any default or breach by the Landowner or the City, (ii) for any amount which may become due to the City, or (iii) pursuant to any obligation of the Landowner or the City.

7. **General Provisions.**

- 7.1. Notices. Any notice, request, approval, consent or document required or permitted in this Agreement (collectively, “**Notices**”, or individually a “**Notice**”) shall be in writing and delivered either personally or by private messenger service (including overnight courier) or by mail addressed as provided below. Any Notice shall be deemed to be given or received on the date received or refused. Any Notice to be given by any party hereto may be given by legal counsel for such party. Counsel for the parties may give simultaneous Notice hereunder to the opposing party and its counsel. Any copy noted below as mandatory shall be sent simultaneously with the Notice to the Party. Each address shall for all purposes be as set forth below unless otherwise changed by Notice to the other party as provided herein:

To VP Edison:

Mark E Ortman Jr.
202 East Camelback Road, Suite 214

Phoenix, Arizona 85016

To City: City of Maricopa
Attn: Gregory Rose, City Manager
39700 West Civic Center Plaza
Maricopa, Arizona 85138

- 7.2. Construction. Time is of the essence with respect to each provision of this Agreement. The language in all parts of this Agreement shall in all cases be construed as a whole and simply according to its plain meaning and not strictly for nor against any of the parties, and the construction of this Agreement and any of its various provisions shall be unaffected by any claims, whether or not justified, that it has been prepared, wholly or in substantial part, by or on behalf of any of the parties. The parties do not intend to become, and nothing contained in this Agreement shall be interpreted to deem that Landowner and the City are partners or joint venturers in any way. The singular includes the plural, and the plural includes the singular. A provision of this Agreement which prohibits a party from performing an action shall be construed so as to prohibit the party from performing the action or from permitting others to perform the action. Except to the extent, if any, to which this Agreement specifies otherwise, each party shall be deemed to be required to perform its obligations under this Agreement at its own expense, and each party shall be permitted to exercise its rights and privileges only at its own expense. "Including" means "including but not limited to." "Include" means "include but not limited to." "Any" means "any and all." Except to the extent context requires otherwise, "may" means "may but shall not be obligated to." "At any time" means "at any time and from time to time." An expense incurred on behalf of a party shall be deemed to have been incurred by the party. An obligation performed on a party's behalf and pursuant to its request or consent shall be deemed to have been performed by the party.
- 7.3. Indemnity; Risk of Loss. Landowner shall protect, defend, indemnify and hold harmless City and its City Council members, officers and employees from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including attorney's fees, expert fees and court costs) (collectively, "Claims") which arise from or relate in any way to any act or omission of Landowner, or its employees, contractors, subcontractors, agents or representatives in implementing the terms of this Agreement or undertaken in the fulfillment of Landowner's obligations under this Agreement, except to the extent any Claim arises from the acts or omissions of the City, its employees, agents, representatives, successors or assigns. The foregoing indemnity obligations of Landowner shall survive the expiration or termination of this Agreement for a period of six (6) years.
- 7.4. No Third Party Rights. Nothing in this Agreement shall be construed to permit anyone other than VP Edison and/or the City and their respective successors and assigns to rely upon the covenants and agreements herein contained nor to give any such third party a cause of action (as a third party beneficiary or otherwise) on account of any nonperformance hereunder.

- 7.5. Cooperation. The parties hereto hereby acknowledge and agree that they shall cooperate in good faith with each other and use best efforts to pursue the economic development of the Property as contemplated by this Agreement.
- 7.6. Dispute Resolution. If there is a dispute hereunder which the parties cannot resolve between themselves after any applicable cure period, the parties agree that there shall be a ninety (90) day moratorium on litigation during which time the parties agree to attempt to settle the dispute by nonbinding mediation before commencement of litigation. The mediation shall be held under the commercial mediation rules of the American Arbitration Association. The matter in dispute shall be submitted to a mediator mutually selected by the parties to the dispute. In the event that the parties cannot agree upon the selection of a mediator within ten (10) days, then within five (5) days thereafter, the parties to the dispute shall request the presiding judge of the Superior Court in and for the County of Pinal, State of Arizona, to appoint an independent mediator. The mediator selected shall have at least five (5) years' experience in mediating or arbitrating disputes relating to commercial property development. The cost of any such mediation shall be divided equally between the parties to the dispute, or in such other fashion as the mediator may order. The results of the mediation shall be nonbinding on the parties, and any party shall be free to initiate litigation or arbitration as set forth herein upon the conclusion of mediation or ninety (90) days after the date the parties first reached an impasse on the subject matter of the dispute, whichever occurs later. Notwithstanding the foregoing, in the case of a good faith dispute and until the resolution thereof, the City and Landowner shall continue paying the Sales Tax Rebates except as to any particular payment if such payment is the subject of the dispute
- 7.7. Captions. The captions used herein are for convenience only and not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.
- 7.8. Laws and Venue. This Agreement shall be governed by and construed in accordance with the Applicable Rules and laws of the State of Arizona without giving effect to conflicts of law principles. This Agreement has been made and entered into in Pinal County, Arizona. Any action brought to interpret, enforce or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Pinal (or, as may be appropriate, in the Justice Courts of Pinal County, Arizona, or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any court action.
- 7.9. Successors and Assigns. This Agreement shall run with the land and all of the covenants and conditions set forth herein shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.
- 7.10. Waiver. No waiver by any party of any breach of any of the terms, covenants or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same for any other term, covenant or condition herein contained
- 7.11. Severability. In the event that any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement shall become illegal, null or void or against public

policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permitted by law.

- 7.12. Exhibits. All exhibits attached hereto are incorporated herein by this reference as though fully set forth herein.
- 7.13. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written are hereby superseded and merged herein.
- 7.14. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original but all of which together shall constitute one and the same instrument. Signature and acknowledgement pages may be removed from one counterpart and inserted into another counterpart to form a single document.
- 7.15. Recordation of Agreement. This Agreement shall be recorded in the Official Records of Pinal County, Arizona, within ten (10) days after its approval and execution by the City.
- 7.16. Consents and Approvals. Except as may be otherwise set forth in this Agreement, the parties hereto shall at all times act reasonably with respect to any and all matters which require any party to review, consent or approve of any act or matter hereunder. The City hereby acknowledges and agrees that any unnecessary delay hereunder would adversely affect the development of the Project, and hereby authorizes and empowers the City Manager to consent to any and all requests of VP Edison, such consent not to be unreasonably withheld, delayed or conditioned, requiring the consent of the City hereunder without further action of the City Council, except for any actions requiring City Council approval as a matter of law, including, without limitation, any further amendment or modification of this Agreement.
- 7.17. City's Representations. The City represents and warrants to the Landowner as follows:
- (a) The City has the power and authority to execute, deliver and perform its obligations under this Agreement and has obtained all necessary consents, authorizations and approvals required as a condition to the execution and delivery thereof.
 - (b) The execution of this Agreement will not violate or constitute a default on the part of the City under any agreement to which the City is a party or by which it is bound.
 - (c) The representatives of the City who have executed this Agreement have the power and the authority to have done so.
- 7.18. VP Edison's Representations. VP Edison represents and warrants to the City as follows:
- (a) VP Edison has the power and authority to execute, deliver and perform its obligations under this Agreement and has obtained all necessary consents, authorizations and approvals required as a condition to the execution and delivery thereof.

- (b) The execution of this Agreement will not violate or constitute a default on the part of VP Edison under any agreement to which VP Edison is a party or by which it is bound.
- (c) The representatives of VP Edison who have executed this Agreement have the power and authority to have done so.

7.19 Proposition 207 Waiver. By executing this Agreement, Landowner, on behalf of itself and any successors-in-interest to all or any portion of the Property hereby waives any right to claim diminution in value or claim for just compensation for diminution in value under A.R.S. § 12-1134, et seq. arising out of any City action permitted to be taken by the City pursuant to this Agreement. This waiver constitutes a complete release of any and all claims and causes of action that may arise or may be asserted under A.R.S. § 12-1134, et seq. as it exists or may be enacted in the future or that may be amended from time to time with regard to the Property with regard to City actions permitted to be taken by the City pursuant to this Agreement. In connection therewith, upon the request of the City, Landowner shall promptly execute and deliver to the City, any and all such reasonable waivers of rights under Proposition 207 which may be reasonably requested by the City consistent with this Agreement in order to more fully evidence the waiver set forth herein. Landowner agrees to indemnify, hold harmless and defend City, its officers, employees and agents, from any and all claims, causes of actions, demands, losses and expenses, including attorney's fees and litigation costs, that may be asserted by or may result from Landowner seeking potential compensation, damages, attorney's fees or costs under A.R.S. § 12-1134, et seq. that they may have, solely as a result of this Agreement, now or in the future.

7.20 Estoppel Certificate. Any party may request of the other party, and the requested party shall, within fifteen (15) business days, respond and certify by written instrument to the requesting party that (a) this Agreement is unmodified and in full force and effect, (b) the existence of any default under this Agreement and the scope and nature of the default, if applicable, (c) the existence of any counterclaims which the requested party has against the other party, and (d) any other matters that may reasonably be requested in connection with this agreement and the Project Approval. In the event a party has not received an estoppel certificate within fifteen(15) business days from the date of the request, then in such event, said party shall be entitled to prepare an estoppel certificate and deliver the certificate to City and such estoppel certificate shall be binding upon City.

SIGNATURE PAGES FOLLOW

IN WITNESS WHEREOF, this Agreement has been executed as of the day and year first above written.

Attest:

"City"

CITY OF MARICOPA, an Arizona municipal corporation

Printed Name _____
Title: City Clerk

Approved as to form:

By _____
Printed Name _____
Title _____

Printed Name _____
Title: City Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF PINAL)

On this _____ day of December, 2016, before me, the undersigned officer, personally appeared _____, who acknowledged her/himself to be _____ of the CITY OF MARICOPA, an Arizona municipal corporation:

- _____ whom I know personally;
- _____ whose identity was proven to me on the oath of _____, a credible witness by me duly sworn;
- _____ whose identity I verified on the basis of her/his _____,

and s/he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

Notary Public

"Edison Pointe"

VP EDISON 15, LLC, an Arizona limited liability company

By: _____, the _____ of
VP EDISON, LLC, an Arizona limited liability company

By _____

STATE OF ARIZONA)
) ss.
COUNTY OF PINAL)

On this _____ day of December, 2016, before me, the undersigned officer, personally appeared _____, who acknowledged her/himself to be _____ of the CITY OF MARICOPA, an Arizona municipal corporation:

- _____ whom I know personally;
- _____ whose identity was proven to me on the oath of _____, a credible witness by me duly sworn;
- _____ whose identity I verified on the basis of her/his _____,

and s/he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL: _____
Notary Public

