AMENDED AND RESTATED
DEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT (the "Agreement") is made as of the 17th day of May, 2022 (the "**Effective Date**"), by and between the CITY OF MARICOPA, ARIZONA, an Arizona municipal corporation (the "**City**"); and VESTAR ARIZONA XLIX, L.L.C., an Arizona limited liability company ("**Developer**"). The City and Developer are sometimes referred to herein collectively as the "**Parties**," or individually as a "**Party**."

RECITALS

A. Developer and City originally entered into that certain Pre-Annexation Development Agreement, which was recorded on May 26, 2006 in the Pinal County Recorder's Office at Fee Number 2006-076047 (the "**Original PADA**"). The intent of this Parties is for this this Agreement to amend, restate and replace in its entirety the Original PADA.

B. Developer owns or has the right to acquire that certain unimproved real property located in the City, such real property consisting of approximately 184 acres, the legal description of which is attached as Exhibit A hereto (the "**Property**"). It is the desire and current intention of Developer to develop the Property as a mixed-use development, potentially including single family units, multi-family units and commercial sites (the "**Development**"), and thereafter (subject to common area and other ownership interests to be retained by Developer) lease or sell to others.

C. The Parties are entering into this Agreement pursuant to the provisions of Arizona Revised Statutes ("***A.R.S.***") §9-500.05 in order to facilitate the proper municipal zoning and development of the Property.

D. The Parties also understand and acknowledge that this Agreement is authorized by and entered into accordance with the terms of A.R.S. §9-500.11. The actions taken by the City pursuant to this Agreement are for economic development activities as that term is used in A.R.S. §9-500.11, will assist in the creation and retention of jobs, and will in numerous other ways improve and enhance the economic welfare of the residents of the City.

E. The City is of the opinion that the Development (i) will enhance the economic health of the City; (ii) will result in a net increase or retention of jobs in the City, (iii) will add to the tax base, (iv) will otherwise improve or enhance the economic welfare of the residents or businesses of the City; (v) would not otherwise occur in the City without this Agreement; and (vi) demonstrates the potential to generate revenues and other benefits to the City, which outweigh or are not disproportionate to the costs associated with the incentives provided pursuant hereto.

F. The Parties acknowledge and agree that the Development may require both a general plan amendment and a rezoning, which shall be initiated by the Developer in accordance with the City's standard rules and regulations. The City agrees to cooperate with Developer in the processing of these matters in an expeditious manner, subject to the City's reasonable review

and due consideration in conformation with all notice and public hearing procedures required by applicable statutes or ordinances.

G. The City also acknowledges its willingness to support the development of the Property in accordance with this Agreement and any future general plan amendment and rezoning, to be approved by the City. The City wishes to facilitate and encourage the development of the Property by Developer by, among other things, providing the City undertakings described in this Agreement, subject to the terms and conditions of this Agreement.

H. As a condition of, and concurrent with, development of the Property, and subject to other terms and conditions of this Agreement, Developer shall construct certain public improvements in and around the Property as generally described in Section 7.1(a) below, including without limitation the donation of and construction of and widening and improvement of certain public roadways (the public improvements and dedicated rights of way being referred to herein collectively the "**Public Improvements**"). Developer has agreed, in reliance on the City's commitments as described in this Agreement, to cause the construction and completion of, the Public Improvements as required for each phase of the Development, subject to and in accordance with the terms of this Agreement.

AGREEMENTS

Now, therefore, in consideration of the foregoing recitals and representations and the mutual promises contained in this Agreement, the Parties agree as follows:

1. **Incorporation of Recitals**. The forgoing Recitals are hereby incorporated into this Agreement by references as though fully restated.

2. **Term**. The term of this Agreement shall commence on the Effective Date and terminate on the date on which the Parties have performed all of their obligations hereunder; provided, however, that, except as provided in Section 13.6, if applicable, in no event shall the Term of this Agreement extend beyond July 1, 2037 (the "**Term**"). Notwithstanding the foregoing, the Agreement may be terminated by the City upon providing not less than sixty (60) days' prior written notice to Developer in the event the following milestones are not timely met and Developer fails to cure such milestone prior to the expiration of the sixty (60) day notice period:

2.1 Developer has caused not less than 25 acres of the Property to be developed prior to July 1, 2027; or

2.2 Developer has caused not less than 75 total acres of the property, which may include the 25 acres (or more, as applicable) developed pursuant to Section 2.1, to be developed prior to July 1, 2033.

3. **General Plan and Zoning Amendments and Land Uses**.

3.1 The City and Developer shall mutually cooperate in the processing of any necessary general plan amendment in a reasonable manner, subject to the City's review and due consideration in conformance with all notice and public hearing procedures required by

applicable statutes or ordinances.

3.2 Developer shall have six (6) months from the Effective Date to submit a rezoning request and the City and Developer agree to follow the prescribed procedures under State statutes and City ordinances to rezone the Property as follows:

(a) a PAD amendment for the Property to (i) include six (6) residential units per acre designation for the Property zoned RM; (ii) include twenty-four (24) units per acre designation for the Property zoned MU-G; (iii) include the Minimum Retail Improvements; and (iv) include and permit, Developer to transfer density designations between each MU-G parcel; *provided*, however, that the transfer between each MU-G parcel shall not exceed the total permitted density of the collective MU-G parcels.

The approved rezoning shall establish vested rights only with respect to the land uses and densities as described in the rezoning and as set forth in this Section 3.2 (collectively, such land uses and densities shall be referred to as the "**Vested Rights**"). Developer and City hereby acknowledge and agree that the parties may agree to amend the zoning set forth in this Agreement as part of the City's standard zoning process and subject to all Applicable Laws.

3.3 The Property, and any development related thereto, shall be subject to and bound by all of the City's Rules as set forth and permitted by Section 4 of this Agreement. The Parties agree the only rights vested by this Agreement and the rezoning referenced in Section 3.2 of this Agreement are the Vested Rights, all other rights, standards and requirements pertaining to the development of the Property are not vested by this Agreement and are subject to the changes caused by any changes to the Rules or enactment of Rules permitted pursuant to Section 4 of this Agreement; the zoning of the Property shall control as to any issues not addressed by the Rules. The Developer on behalf of itself and all other Parties having an interest in the Property intends to encumber the Property with the following agreements and waivers. Developer agrees and consents to all the conditions imposed by this Agreement, and by signing this Agreement waives any and all claims, suits, damages, compensation and causes of action for diminution in value of the Property the owner of the Property may have now or in the future under the provisions of A.R.S. Sections 12-1134 through and including 12-1136 resulting from this Agreement or from any "land use law" (as such term is defined in the aforementioned statute sections) permitted by this Agreement to be enacted, adopted or applied by the City now or hereafter. Developer acknowledges and agrees the terms and conditions set forth in this Agreement cause an increase in the fair market value of the Property and such increase exceeds any possible reduction in the fair market value of the Property caused by any future land use laws, rules, ordinances, resolutions or actions permitted by this Agreement and adopted or applied by the City to the Property. This Agreement shall control as to any inconsistency between any approved zoning and this Agreement.

3.4 The City acknowledges and agrees (i) that the Property is adversely impacted by the Smith Wash, which has historically caused flooding on the Property after heavy storms, (ii) that Pinal County has initiated a hydrology study regarding Smith Wash's flooding issues, and (iii) that there are various interest groups, including AK-Chin, Pinal County, the City and certain property owners, that would need to be coordinated in order to adopt a regional solution for the flooding issues with Smith Wash. In this regard, the City agrees to cooperate with the various

interest groups to address a solution for the Smith Wash flooding in order to facilitate the development of the Property hereunder. Notwithstanding anything to the contrary set forth herein, the City shall not be financially obligated to contribute to the Smith Wash regional solution.

4. **Regulation of Development**.

4.1 The Applicable Rules. With respect to the development of the Property as contemplated by this Agreement, the code, ordinances, rules, regulations, permit requirements, exactions, fees, development fees (as defined in A.R.S. Section 9-463.05) other requirements, and/or official policies of the City (collectively, the "**Rules**" or "**Applicable Laws**") which apply to the development of the Property, shall mean those Rules in existence from time to time. The City reserves, exercising its sole and absolute discretion, the right to amend existing or to adopt new Rules and such Rules as amended or adopted shall be applicable to and binding on the Property. Notwithstanding the foregoing, any change in the Rules in existence on the date of this Agreement or any Rules enacted after the date of this Agreement shall not be enforced against any development of the Property if such enforcement would materially and adversely limit or change the development of the Property consistent with the Vested Rights described in this Agreement.

4.2 The Permissible Additions to the Rules Impacting Vested Rights. Notwithstanding the provisions of Section 4.1, the City may change, enact and enforce Rules against the Property and development thereof which have an adverse impact on the Vested Rights upon the occurrence of any one of the following provisions:

(a) Rules which the Developer may agree in writing apply to the development of the Property;

(b) In the event that a federal grant, subsidy or other financial award or form of financial assistance would become available to the City (whether directly from a federal agency or department or indirectly from a federal agency or department through the State of Arizona or Pinal County), and if such award or form of assistance is only available if the City were to adopt certain land use ordinances, rules, regulations and permit requirements, the City may request that the Developer approve such adoption, which approval shall not be unreasonably withheld;

(c) Rules of the City enacted as necessary to comply with mandatory requirements imposed on the City by the state or federal governments, including court decisions, and other similar superior external authorities beyond the control of the City, provided that in the event any such mandatory requirement prevents or precludes compliance with this Agreement, if permitted by law, such affected provisions of this Agreement shall be modified as may be necessary to achieve the minimum permissible compliance with such mandatory requirement;

(d) Rules of the City reasonably necessary to alleviate threats to public health and safety, provided such Rules shall be applied uniformly and not arbitrarily to all areas that are subject to the similar threat;

(e) Future updates of, and amendments to, existing building, construction, plumbing, mechanical, electrical, drainage, dangerous building, and similar construction and safety related codes, such as the Uniform Building Code, which updates and amendments are generated by a nationally recognized construction/safety organization, or by the county, state or federal governments or by the Central Arizona Association of Governments, provided, such code updates and amendments shall be applied uniformly and not arbitrarily; or

(f) Amendments to such construction and safety codes generated by the City for the purposes of conforming such codes to the conditions generally existing in the City, provided that such code amendments shall be applied uniformly and not arbitrarily.

5. **Vested Rights.** The City agrees that, for the term of this Agreement, Developer shall have a vested right to develop the Property in accordance with this Agreement and the Vested Rights set forth in Section 3.2 of this Agreement. Further, subject to the Rules and any permitted changes to the Rules as permitted by Section 4 of this Agreement, Developer may develop the Property in accordance with City approved zoning. The determinations of the City memorialized in this Agreement, together with the assurances provided to Developer in this Agreement are provided pursuant to and as contemplated by A.R.S. § 9-500.05.

6. **Private Improvements**.

6.1 Minimum Retail Improvements. Developer shall develop not less than 100,000 square feet of enclosed gross leasable floor area of improvements for a retail use, unless another amount is mutually agreed to in writing by the Parties, on the Property (the "**Minimum Retail Improvements**"). For purposes of the foregoing, retail use shall be defined as leasing at least 85% of the gross square footage of the Minimum Retail Improvements to tenants whose primary business is the sale of goods which generates retail tax for the City. Developer will keep the City advised of Developer's specific development plans and provide the City with opportunities for the City's input; provided, however, that except as provided in this Agreement or by the Rules, City approval of the size, form, nature, occupants or configuration of the Minimum Retail Improvements is not required.

6.2 *Intentionally omitted.*

6.3 Completion of Construction. Developer agrees that completion of construction of the Minimum Retail Improvements shall occur, subject to Enforced Delay, prior to July 1, 2027. The City and Developer shall mutually confirm in writing the date of the Completion of Construction when the same becomes known. "**Completion of Construction**" means the date on which (i) for the Minimum Retail Improvements, shall be deemed to occur at the time the Minimum Retail Improvements have been issued a certificate of occupancy, and (ii) for the Developer's Portion of Public Improvements, acceptance by the City Council or appropriate administrative staff member of the City, or the State of Arizona where appropriate, of the completed Public Improvements for maintenance in accordance with the policies, standards and specifications contained in applicable City ordinances or Arizona law, which acceptance shall not be unreasonably withheld, conditioned or delayed. Unless otherwise expressly stated, "**Completion of Construction**" means Completion of Construction of both the

Minimum Retail Improvements and the Developer's Portion of the Public Improvements necessary for the Minimum Retail Improvements in accordance with City rules and regulations.

6.4 Conditions to Reimbursement. The (i) Completion of Construction of the Minimum Retail Improvements by Developer as described in this Agreement and (ii) the Minimum Retail Improvements being occupied and open for business following Completion of Construction are the conditions precedent to the obligation of the City to provide Developer with the Construction Sales Tax Rebates as provided in this Agreement.

7. **Public Improvements**. In conjunction with Developer's development of the Property, (i) Developer at its sole cost shall design, construct or cause to be constructed Developer's Portion of the Public Improvements and dedicate to the applicable government authority the Public Improvements set forth below in Section 7.1(a) as may be required by during the phasing of its development activities subject to the terms and conditions of this Agreement and (ii) City at its sole cost shall design, construct or cause to be constructed the City's Portion of Public Improvements set forth below in Section 7.1(b) subject to the terms and conditions of this Agreement.

7.1 Design and Construction.

(a) Subject to the terms of this Agreement, Developer shall design and construct, at its sole cost and expense, as may be required during the phasing of its development, the following Public Improvements (**"Developer's Portion of the Public Improvement"**):

(i) Final improvements to complete Farrell Road as a modified local street as more specifically described and depicted on Exhibit B, attached hereto and incorporated herein.

(ii) Traffic Control Signals, as warranted, on the East West Parkway, and as otherwise required pursuant to Applicable Laws, except as set forth in Section 7.1(b)(i) below.

(iii) Any necessary improvements to the new southern road adjacent to the Property not required to be completed by the City as set forth in Section 7.1(b)(ii) below. Such improvements may include, but are not limited to, utilities and sidewalks.

(iv) Any necessary improvements to the East-West Parkway not required to be completed by the City as set forth in Section 7.1(b) below. Such improvements may include, but are not limited to, utilities, sidewalks, landscaping, traffic control signals and deceleration lane on State Route 347, except as set forth in Section 7.1(b)(i).

(b) City shall design and construct, at its sole cost and expense, without assessment to the Developer, the following Public Improvements (**"City's Portion of Public Improvements"**):

(i) Improvements for the East-West Parkway as more specifically described and depicted on Exhibit C, attached hereto and incorporated herein. Notwithstanding anything to the contrary set forth herein, these improvements shall include the

installation of the traffic signal and related improvements at the intersection of the East West Corridor and State Route 347 and the underground connections for future signals as depicted on Exhibit C.

(ii) Half street improvements of the new southern road adjacent to the Property including curbs and gutters.

7.2 Dedication. Within thirty (30) days of the Effective Date, Developer hereby agrees to quitclaim or cause to be quitclaimed to the City 9.6067 acres of property for dedication as the East-West Parkway, in the location described and depicted on Exhibit D, attached hereto and incorporated herein (the "**E/W ROW Property**"). In addition, within thirty (30) days of the Effective Date, Developer hereby agrees to grant or cause to be granted to the City the following: (i) a 6,731 square foot permanent drainage easement; (ii) a 103,317 square foot temporary drainage easement; and (iii) a 315,869 square foot temporary construction easement, all of which are described and depicted on Exhibit D (the "**E/W Easements**"). The E/W ROW Property and E/W Easements shall be jointly referred to herein as the "**Dedicated E/W Property**." Developer and City hereby acknowledge and agree that the City will pay Developer One Million Five Thousand Six Hundred Twenty-One and 00/100 Dollars ($1,005,621.00) for the Dedicated E/W Property. Developer hereby acknowledges and agrees this is the fair market value for the Dedicated E/W Property and, therefore, such dedication will not be deemed a Public Improvements Costs paid by Developer and is not eligible for any further payment, credit or reimbursement.

7.3 Temporary Easements. Developer shall cooperate with City to grant to City temporary easements as may be necessary for the construction of the East-West Parkway, as described and depicted on Exhibit C, at no cost to the City. Such easements shall expire at the completion of the construction of the East-West Parkway adjacent to the Property and City shall cooperate in releasing such easements as requested by Developer.

7.4 Construction and Phasing. Developer shall cause the Developer's Portion of Public Improvements to be constructed in conjunction with Developer's construction of the Development, as Developer and the City mutually agree is appropriate.

7.5 Design, Bidding, Construction and Dedication. The Public Improvements shall be designed, bid, constructed and dedicated in accordance with Applicable Laws, regulations, and standards, including without limitation all Applicable Laws concerning City procurement and public bidding procedures, financial assurances, acceptance and warranties.

7.6 City Review and Approval of Plans. Developer recognizes that its Development and construction of the Developer's Portion of Public Improvements are subject to the City's normal plan submittal, review and approval processes, and day-to-day inspection services. The City will use its best efforts to expedite its regulatory processes, including but not limited to use permit, variance, design review and building permit processes. Any disputes over delay in the review and approval processes will be resolved as provided in Section 14.

7.7 Payment of Public Improvement Costs. Developer shall pay all costs for Developer's Portion of Public Improvements as the same become due, subject to the provisions

of this Agreement regarding credits for such improvements, including but not limited to Section 8. "**Public Improvement Costs**" means all costs, expenses, fees and charges actually incurred by Developer to contractors, architects, engineers, surveyors, governmental agencies and other third parties for materials, labor, design, engineering, surveying, site excavation and preparation, governmental permits, right of way costs, plus the fair value of all dedicated property, and all other costs and expenses reasonably necessary for the construction, installation, or provision of the Public Improvements. Developer hereby acknowledges and agrees that Public Improvement Costs shall not include any costs, expenses, fees or charged incurred by Developer for legal fees, overhead costs of Developer, insurance or financial assurances.

7.8 Dedication, Acceptance and Maintenance of Public Improvements. When the Developer's Portion of the Public Improvements or a portion thereof are completed (e.g., all of the paving, curbs and gutters for a particular street on the Property or designated section or phase of the Property is completed in accordance with Applicable Laws), then upon written request of the Developer, Developer shall dedicate and the City shall accept such Developer's Portion of the Public Improvements in accordance with the Applicable Laws and upon such reasonable and customary conditions as the City may impose, including without limitation a one (1) year workmanship and materials contractor's warranty. Upon acceptance by the City, the Public Improvements shall become public facilities and property of the City; the City shall be solely responsible for all subsequent maintenance, replacement or repairs. With respect to any claims arising prior to acceptance of the Developer's Portion of the Public Improvements by the City, Developer shall bear all risk of, and shall indemnify the City and its officials, employees and City Council members, against any claim arising prior to the City's acceptance of the Public Improvements from any injury (personal, economic or other) or property damage to any person, party or utility, arising from the condition, loss, damage to or failure of any of the Public Improvements, except to the extent caused by the negligence or willful acts or omissions of the City and its officials, employees and City Council members, agents or representatives.

8.0 **Development Fees and Credits**.

8.1 Subject to the provisions of this Agreement, Developer agrees to pay all current and future enacted City Development Fees provided such development or impact fee is consistent with the provisions of A.R.S. §9-463.05. The Parties expressly agree to be in compliance with A.R.S. §9-463.05 and any Applicable Laws or Rules.

8.2 Some of the Public Improvements that the Developer has agreed to install or otherwise provide pursuant to this Agreement are or may be included within the infrastructure improvements to be funded by various City impact, development, resource fees, or exactions, currently in effect or as may be adopted in the future (referred to individually as a "**City Development Fee**" or collectively as "**City Development Fees**"). In accordance with Applicable Laws, the City expressly agrees that the Developer is entitled to receive a credit against such City Development Fees for the cost of acquisition and construction of such Developer's Portion of Public Improvements that are components of any particular City Development Fee payable by Developer for or in connection with development on the Property. In no event may the credits in each category of City Development Fees exceed the actual City Development Fees paid or to be paid by Developer for or in connection with the development on the Property.

8.3 In no event shall Developer receive in development fee credits more than the actual Public Improvement Costs paid by Developer. For example, if the Developer's Portion of Public Improvement Costs are $2,000,0000, and the actual development fees are $3,000,000, Developer would only be entitled to a development fee credit of $2,000,000.

9.0 **Construction Sales Tax Rebates.**

9.1 In view of Developer's Completion of Construction of the Minimum Retail Improvements, construction of the Developer's portion of Public Improvements and otherwise performing its obligations under this Agreement, the City shall rebate and pay to Developer all transaction privilege taxes (the "**Construction Sales Tax Rebates**") equal to one hundred percent (100%) of the Sales Taxes imposed and actually received by the City for construction and related contracting activities of any hotel on the Property or any use on the Property that dedicates a majority of their gross leasable floor area to the sale of goods and merchandise which generates retail tax for the City by Developer or successors and assigns and their contractors and subcontractors (the "**Construction Taxable Activities**"). The Parties acknowledge and agree that the City will not rebate or pay to Developer any sales taxes imposed or actually received by the City for the construction of any improvements on the Property until (i) Completion of Construction of the Minimum Retail Improvements and (ii) the Minimum Retail Improvements being occupied and open for business. The Parties also acknowledge and agree that the City will not rebate or pay to Developer any sales taxes imposed or actually received by the City for the construction of any improvements on the Property other than for any hotel or any use that dedicates a majority of their gross leasable floor area to the sale of goods and merchandise which generates retail tax for the City. The Construction Sales Tax Rebates shall be determined, deposited in the City's Special Fund, and payable as set forth in this Section 9.

9.2 Special Fund. The City shall deposit the Construction Sales Tax Rebates in an account separate from the City's general fund (the "**Special Fund**"). The first deposit into the Special Fund shall be made after the Effective Date and within sixty (60) days following the City's receipt of its first monthly transaction privilege tax report from the Arizona Department of Revenue (the "**Monthly ADR Tax Report**") which includes sales taxes actually received by the City from any of the Construction Taxable Activities, and subsequent deposits shall be made within sixty (60) days of the receipt by the City of each subsequent Monthly ADR Tax Report which includes sales taxes actually received by the City from any of the Construction Taxable Activities. The Special Fund shall be segregated from other City funds and held in constructive trust for the benefit of Developer up to the amount of the reimbursement provided in this Agreement. The Special Fund may be deposited by the City in an interest-bearing account, with the interest accrued thereon to be for the benefit of the City. The City shall pay the Construction Sales Tax Rebates described in Section 9.1 to Developer from the Special Fund in accordance with Section 9.4.

9.3 Conditions Precedent. Notwithstanding the accumulation of funds in the Special Fund, Developer shall have no rights in the Special Fund, and no payment of Construction Sales Tax Rebates shall be made to Developer from the Special Fund or otherwise, until (i) Completion of Construction of the Minimum Retail Improvements by Developer as described in this Agreement and (ii) the Minimum Retail Improvements being occupied and

open for business following Completion of Construction; provided, that prior to the (i) Completion of Construction of the Minimum Retail Improvements by Developer as described in this Agreement and (ii) the Minimum Retail Improvements being occupied and open for business following Completion of Construction, Construction Sales Tax Rebates shall accumulate in the Special Fund for the benefit of, and after (i) Completion of Construction of the Minimum Retail Improvements by Developer as described in this Agreement and (ii) the Minimum Retail Improvements being occupied and open for business following Completion of Construction for subsequent disbursement pursuant to Section 9.4 to, Developer. Once the (i) Completion of Construction of the Minimum Retail Improvements by Developer as described in this Agreement and (ii) the Minimum Retail Improvements being occupied and open for business following Completion of Construction has occurred, Developer's rights in the Special Fund shall vest and Developer shall be paid such amounts in accordance with Section 9.4. If the Completion of Construction of the Minimum Retail Improvements by Developer as described in this Agreement has not occurred for any reason, subject to Forced Delay, within the time period set forth in Section 6.3, or if this Agreement is terminated by the City by reason of an Event of Default pursuant to Section 13 or in accordance with Sections 2.1 or 2.2, then all funds and interest accrued thereon in the Special Fund shall be forfeited by Developer and returned to the City free of any claims by Developer, and the Special Fund shall thereupon terminate.

9.4 Quarterly Rebate Payments. The first payment of Construction Sales Tax Rebates shall be made by the City to Developer within ninety (90) days after the City's receipt of its first Monthly ADR Tax Report after (i) Completion of Construction of the Minimum Retail Improvements by Developer as described in this Agreement and (ii) the Minimum Retail Improvements being occupied and open for business following Completion of Construction occurs. Subsequent payments of Construction Sales Tax Rebates will be made on a quarterly basis following the City's receipt of subsequent Monthly ADR Tax Reports which includes Construction Sales Taxes actually received by the City from any of the Construction Taxable Activities until all Construction Sales Taxes received from any of the Construction Taxable Activities during the term of this Agreement has been paid in full. Upon expiration of the Term of this Agreement or the termination of this Agreement as provided herein, the City shall have no further obligation to make payments to Developer.

9.5 Determination of Amount of Allocated Revenues Received by the City. The City Manager (or his designee) shall determine the amount of Construction Sales Tax Rebates for each month (or partial month if applicable) based on the Monthly ADR Tax Reports.

9.6 City's Prepayment Right. The City shall have the right to prepay all or any part of the Construction Sales Tax Rebates at any time.

10. **Indemnity; Risk of Loss**.

10.1 Indemnity by Developer. Developer shall pay, defend, indemnify and hold harmless the 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 attorneys fees, experts' fees and court costs associated) which arise from or relate in any way to any act or omission by Developer, or its employees, contractors, subcontractors, agents or representatives, undertaken in fulfillment of Developer's

obligations under this Agreement. The provisions of this Section 10.1, however, shall not apply to loss or damage or claims therefore which are attributable to acts or omissions of the City, its agents, employees, contractors, subcontractors or representatives. Developer shall have no defense obligation in any instance in which a claim is asserted based, in whole or in part, upon an act or omissions of the City, its employees, contractors, subcontractors, agents or representatives. The foregoing indemnity obligations of Developer shall survive the expiration or termination of this Agreement for a period equal to the applicable statute of limitations period.

10.2 Indemnity by the City. The City shall pay, defend, indemnify and hold harmless Developer and their respective partners, shareholders, officers, managers, members, agents and representatives (and their respective partners, shareholders, officers, managers, members, agents or representatives) from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities and suits (including attorneys' and experts' fees and court costs associated) which arise from or which relate in any way to any act or omission on the part of the City, its employees, contractors, subcontractors, agents or representatives, undertaken in fulfillment of the City's obligations under this Agreement The provisions of this Section 10.2, however, shall not apply to loss or damage or claims therefore which are attributable to acts or omissions of Developer, or the respective agents, employees, contractors, subcontractors or representatives. The City shall have no defense obligation in any instance in which a claim is asserted based, in whole or in part, upon an act or omissions of Developer, its employees, contractors, subcontractors, agents or representatives. The foregoing indemnity obligations of the City shall survive the expiration or termination of this Agreement for a period equal to the applicable statute of limitations period.

10.3 Risk of Loss. Developer assumes the risk of any and all loss, damage or claims to any portion of Developer's Portion of Public Improvements unless and until title to the Public Improvements is transferred to the City. At the time title to the Developer's Portion of Public Improvements is transferred to the City by dedication deed, plat recordation, or otherwise, Developer will, to the extent allowed by law, assign to the City any unexpired warranties relating to the design, construction and/or composition of such Public Improvements. Acceptance of the Developer's Portion of Public Improvements shall be conditioned on the City's receipt of a one (1) year warranty of workmanship, materials and equipment, in form and content reasonably acceptable to the City, provided however that such warranty or warranties may be provided by Developer's contractor or contractors directly to the City and are not required from Developer, and that any such warranties shall extend from the date of completion of any of Developer's Portion of Public Improvement, any component thereof, or the work of any specific trade or contractor, as applicable.

10.4 Insurance. During the period of any construction involving the Public Improvements, Developer will obtain and provide the City with proof of payment of premiums and certificates of insurance showing that Developer is carrying, or causing its contractor(s) to carry, builder's risk insurance, comprehensive general liability and worker's compensation insurance policies in amounts and coverages set forth on Exhibit E. Such policies of insurance shall be placed with financially sound and reputable insurers, require the insurer to give at least thirty (30) days advance written notice of cancellation to the City, and will name the City as an additional insured on such policies.

11. **City Representations**. The City represents and warrants to Developer that:

11.1 The City has the full right, power and authorization to enter into and perform this Agreement and each of City's obligations and undertakings under this Agreement, and the City's execution, delivery and performance of this Agreement have been duly authorized and agreed to in compliance with the requirements of the City Code.

11.2 All consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.

11.3 The City will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

11.4 The City knows of no litigation, proceeding, initiative, referendum, investigation or threat of any of the same contesting the powers of the City or its officials with respect to this Agreement that has not been disclosed in writing to Developer.

11.5 This Agreement (and each undertaking of the City contained herein), constitutes a valid, binding and enforceable obligation of the City, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity. The City will defend the validity and enforceability of this Agreement in the event of any proceeding or litigation arising from its terms that names the City as a party or which challenges the authority of the City to enter into or perform any of its obligations hereunder and will cooperate with Developer in connection with any other action by a third party in which Developer is a party and the benefits of this Agreement to Developer are challenged. The severability and reformation provisions of Section 15.3 shall apply in the event of any successful challenge to this Agreement.

11.6 The execution, delivery and performance of this Agreement by the City is not prohibited by, and does not conflict with, any other agreements, instruments or judgments or decrees to which the City is a party or is otherwise subject.

11.7 The City has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

12. **Developer Representations**. Developer represents and warrants to the City that:

12.1 Developer has the full right, power and authorization to enter into and perform this Agreement and the obligations and undertakings of Developer under this Agreement, and the execution, delivery and performance of this Agreement by Developer has been duly authorized and agreed to in compliance with the organizational documents of Developer.

12.2 All consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.

12.3 Developer will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

12.4 As of the date of this Agreement, Developer knows of no litigation, proceeding or investigation pending or threatened against or affecting Developer, which could have a material adverse affect on Developer's performance under this Agreement that has not been disclosed in writing to the City.

12.5 This Agreement (and each undertaking of Developer contained herein) constitutes a valid, binding and enforceable obligation of Developer, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity. Developer will defend the validity and enforceability of this Agreement in the event of any proceeding or litigation arising from its terms that names Developer as a party or which challenges the authority of Developer to enter into or perform any of its obligations hereunder and will cooperate with the City in connection with any other action by a third party in which the City is a party and the benefits of this Agreement to the City are challenged. The severability and reformation provisions of Section 15.3 shall apply in the event of any successful challenge to this Agreement.

12.6 The execution, delivery and performance of this Agreement by Developer is not prohibited by, and does not conflict with, any other agreements, instruments, judgments or decrees to which Developer is a party or to which Developer is otherwise subject.

12.7 Developer has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement other than normal costs of conducting business and costs of professional services such as the services of architects, engineers and attorneys.

12.8 Developer has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

13. **Events of Default; Remedies**.

13.1 Events of Default by Developer. "**Default**" or an "**Event of Default**" by Developer under this Agreement shall mean one or more of the following:

(a) Any representation or warranty made in this Agreement by Developer was materially inaccurate when made or shall prove to be materially inaccurate during the Term;

(b) Foreclosure (or deed in lieu of foreclosure) upon any mechanic's, materialmen's or other lien on the Property prior to Completion of Construction or upon any

improvements on such Property, excluding liens imposed in connection with Developer's financing or refinancing by Lenders which have entered into nondisturbance agreements with the City, but such lien shall not constitute a Default if Developer deposits in escrow sufficient funds to discharge the lien or otherwise bonds over such liens in a customary fashion;

(c) Developer transfers or attempts to transfer or assign this Agreement in violation of Section 15.2;

(d) Developer fails to observe or perform any other material covenant, obligation or agreement required of it under this Agreement; or

(e) Developer fails to comply with the dates established in this Agreement for the Commencement of Construction or the Completion of Construction, for any reason other than an Enforced Delay.

13.2 Events of Default by the City. Default or an Event of Default by the City under this Agreement shall mean one or more of the following:

(a) Any representation or warranty made in this Agreement by the City was materially inaccurate when made or shall prove to be materially inaccurate during the Term;

(b) Subject to the terms of Section 9 of this Agreement, the City fails to make Construction Sales Tax Rebate payments to Developer as provided in this Agreement; or

(c) The City fails to observe or perform any other material covenant, obligation or agreement required of it under this Agreement.

13.3 Grace Periods; Notice and Cure. Upon the occurrence of an Event of Default by any Party, such Party shall, upon written notice from a non-defaulting Party, proceed immediately to cure or remedy such Default and, in any event, such Default shall be cured within thirty (30) days after receipt of such notice, or, if such Default is of a nature is not capable of being cured within thirty (30) days shall be commenced within such period and diligently pursued to completion. The foregoing cure periods are subject to the specific provisions of Section 13.4(a)(i) which grant a cure period of one hundred eighty (180) days for the consequences specified in Section 13.4(a)(i).

13.4 Remedies on Default. Whenever any Event of Default occurs and is not cured (or cure undertaken) in accordance with Section 13.3 of this Agreement, the non-defaulting Party may take any of one or more of the following actions:

(a) Remedies of the City. The City's exclusive remedies for an Event of Default by Developer shall consist of, and shall be limited to the following:

(i) If an Event of Default by Developer occurs prior to Completion of Construction and with respect to Developer's failure to construct or develop the Minimum Retail Improvements and/or the Developer’s Portion of Public Improvements in accordance with the terms of this Agreement, the City may suspend any of its obligations under

this Agreement, other than the deposit of the Construction Sales Tax Rebates into the Special Fund pursuant to Section 9, during the period of the Default. If the Default is not cured within one hundred eighty (180) days after written notice by the City to Developer of such Default, the City may terminate this Agreement by written notice thereof to Developer, in which event the Special Fund also shall terminate and all Construction Sales Tax Rebates plus interest earned thereon shall be returned to the City free of any claims by Developer.

(ii) If an Event of Default by Developer occurs at any time, whether prior to or after Completion of Construction, the City may seek special action or other similar relief (whether characterized as mandamus, injunction or otherwise), requiring Developer to undertake and to fully and timely perform its obligations under this Agreement.

(iii) At any time, the City may seek special action or other similar relief (whether characterized as mandamus, injunction or otherwise), requiring Developer to undertake and to fully and timely address a public safety concern or to enjoin any construction or activity undertaken by Developer which is not in accordance with the terms of this Agreement.

(b) Remedies of Developer. Developer's exclusive remedies for an Event of Default by the City shall consist of and shall be limited to the following:

(i) Recovery of damages for unpaid amounts due in accordance with the provisions of this Agreement. Such damages shall consist of Developer's actual damages as of the time of entry of judgment, specifically limited to the right to receive payments from the Special Fund). Developer waives any right to seek consequential, punitive, multiple, exemplary or any other damages.

(ii) If an Event of Default by the City occurs at any time, whether prior to or after Completion of Construction, Developer may seek special action or other similar relief (whether characterized as mandamus, injunction or otherwise), requiring the City to undertake and to fully and timely perform its obligations under this Agreement, including, but not limited to, the collection, deposit, allocation, and disbursement of Construction Sales Tax Rebates to Developer in accordance with the terms of this Agreement.

13.5 Delays; Waivers. Except as otherwise expressly provided in this Agreement, any delay by any Party in asserting any right or remedy under this Agreement shall not operate as a waiver of any such rights or limit such rights in any way; and any waiver in fact made by such Party with respect to any Default by the other Party shall not be considered as a waiver of rights with respect to any other Default by the non-defaulting Party or with respect to the particular Default except to the extent specifically waived in writing. It is the intent of the Parties that this provision will enable each Party to avoid the risk of being limited in the exercise of any right or remedy provided in this Agreement by waiver, laches or otherwise at a time when it may still hope to resolve the problems created by the Default involved.

13.6 Enforced Delay in Performance for Causes Beyond Control of Party. Whether stated or not, all periods of time in this Agreement are subject to this Section (except for the due dates for the Construction Sales Tax Rebates payable by the City to Developer, and the

grace and cure periods in Sections 13.3 and 13.4). Neither the City nor Developer, as the case may be, shall be considered in Default of its obligations under this Agreement in the event of enforced delay (an "**Enforced Delay**") due to (1) causes beyond its control and without its fault, negligence or failure to comply with Applicable Laws, including, but not restricted to, acts of God, acts of public enemy, acts of the Federal, state or local government, acts of the other Party, acts of a third party, litigation concerning the validity and enforceability of this Agreement or relating to transactions contemplated hereby (including the effect of petitions for initiative or referendum), fires, floods, epidemics, quarantine, restrictions, strikes, embargoes, labor disputes, and unusually severe weather or the delays of subcontractors or materialmen due to such causes, act of a public enemy, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), nuclear radiation, declaration of national emergency or national alert, Office of Homeland Security (or equivalent) Advisory alert higher than grade "yellow," blockade, insurrection, riot, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain, condemnation, or other taking by the action of any governmental body on behalf of any public, quasi-public, or private entity, or declaration of moratorium or similar hiatus directly affecting the Property (whether permanent or temporary) by any public, quasi-public or private entity; (2) the order, judgment, action, or determination of any court, administrative agency, governmental authority or other governmental body other than the City or the Council or one of its departments, divisions, agencies, commissions or boards (collectively, an "**Order**") which delays the completion of the work or other obligation of the Party claiming the delay; or the suspension, termination, interruption, denial, or failure of renewal (collectively, a "**Failure**") of issuance of any permit, license, consent, authorization, or approval necessary to Developer's undertakings pursuant to this Agreement, unless it is shown that such Order or Failure is the result of the fault, negligence or failure to comply with Applicable Laws by the Party claiming the delay; provided, however, that the contesting in good faith of any such Order or Failure shall not constitute or be construed or deemed as a waiver by a Party of Enforced Delay; (3) the denial of an application, failure to issue, or suspension, termination, delay or interruption other than by or from the City or the Council or one of its departments, divisions, agencies, commissions or boards (collectively, a "**Denial**") in the issuance or renewal of any permit, approval or consent required or necessary in connection with Developer's undertakings pursuant to this Agreement, if such Denial is not also the result of fault, negligence or failure to comply with Applicable Laws by the Party claiming the delay; provided that the contesting in good faith or the failure in good faith to contest any such Denial shall not constitute or be construed or deemed as a waiver by a Party of Enforced Delay; and (4) the failure of any contractor, subcontractor or supplier to furnish services, materials or equipment in connection with Developer's undertakings pursuant to this Agreement, if such failure is caused by Enforced Delay as defined herein, if and to the extent, and only so long as the Party claiming the delay is not reasonably able, after using commercially reasonable efforts, to obtain substitute services, materials or equipment of comparable quality and cost. In no event will Enforced Delay include any delay resulting from general economic or market conditions, unavailability for any reason of particular tenants or purchasers of portions of the Development, nor from the unavailability for any reason of particular contractors, subcontractors, vendors, investors or lenders desired by Developer in connection with the Development, it being agreed that Developer will bear all risks of delay which are not Enforced Delay. In the event of the occurrence of any such Enforced Delay, the time or times for performance of the obligations of the Party claiming delay shall be extended for a period of the Enforced Delay; provided that the

Party seeking the benefit of the provisions of this Section 13.6 shall, within thirty (30) days after such Party knows of any such Enforced Delay, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Enforced Delay; provided, however, that either Party's failure to notify the other of an event constituting an Enforced Delay shall not alter, detract from or negate its character as an Enforced Delay if such event of Enforced Delay were not known or reasonably discoverable by such Party.

13.7 Rights and Remedies Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by either Party of any one or more of such rights shall not preclude the exercise by it, at the same or different times, of any other right or remedy for any other Default by the other Party.

14. Cooperation and Alternative Dispute Resolution.

14.1 Representatives. To further the cooperation of the Parties in implementing this Agreement, the City and Developer each shall designate and appoint a representative to act as a liaison between the City and its various departments and Developer. The initial representative for the City shall be as designated by the City Manager from time to time (the "**City Representative**") and the initial representative for Developer shall be its Project Manager, as identified by Developer from time to time (the "**Developer Representative**"). The City's and Developer's Representatives shall be available at all reasonable times to discuss and review the performance of the Parties to this Agreement and the development of the Property.

14.2 Impasse. The City acknowledges and agrees that it is desirable for Developer to proceed rapidly with the implementation of this Agreement and the development of the Property. Accordingly, the Parties agree that if at any time Developer believes an impasse has been reached with the City staff on any issue affecting the Property, Developer shall have the right to immediately appeal to the City Representative for an expedited decision pursuant to this Section. If the issue on which an impasse is reached is an issue where a final decision can be reached by the City staff, the City Representative shall give Developer a final administrative decision within seven (7) days after Developer's request for an expedited decision. If the issue on which an impasse has been reached is one where a final decision requires action by the City Council, the City Representative shall request a City Council hearing on the issue to take place within thirty (30) days after Developer's request for an expedited decision; provided, however, that if the issue is appropriate for review by the City's Planning and Zoning Commission, the matter shall be submitted to the Planning and Zoning Commission within thirty (30) days, and then to the City Council at its first meeting following the Planning and Zoning Commission hearing and the applicable public notice period. Both the City and Developer agree to continue to use reasonable good faith efforts to resolve any impasse pending such expedited decision.

14.3 Mediation. If there is a dispute hereunder which is not an Event of Default and which the Parties cannot resolve between themselves in the time frame set forth in Section 14.2, 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 non-binding mediation before commencement of litigation. The mediation shall be held under the Commercial Mediation Rules of the American Arbitration Association but shall not be under the administration of the AAA unless agreed to by the Parties in writing, in which case all

administrative fees shall be divided evenly between the City and Developer. The matter in dispute shall be submitted to a mediator mutually selected by Developer and the City. If the Parties cannot agree upon the selection of a mediator within ten (10) days, then within five (5) days thereafter, the City and Developer shall request that the Presiding Judge of the Superior Court in and for the County of Pinal, State of Arizona, appoint the mediator. The mediator selected shall have at least ten (10) years experience in mediating or arbitrating disputes relating to commercial property. The cost of any such mediation shall be divided equally between the City and Developer. The results of the mediation shall be nonbinding with any Party free to initiate litigation upon the conclusion of the latter of the mediation or of the ninety (90) day moratorium on litigation. The mediation shall be completed in one day (or less) and shall be confidential, private, and otherwise governed by the provisions of A.R.S. § 12-2238.

15. Miscellaneous Provisions.

15.1 Governing Law; Choice of Forum. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). 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 action commenced in accordance with the terms of this Section 15.1.

15.2 Assignment. The Developer shall not assign all or any part of this Agreement without the prior written approval of the City, which approval shall not be unreasonably withheld, conditioned, or delayed; provided, however, that no consent shall be required for assignment to an entity under the common control with Developer or an entity in which Developer (or any entity under common control with Developer) is a managing member or manager. No transfer of the Property, or any portion thereof, shall result in any transfer or assignment of any rights of Developer to receive the Construction Sales Tax Rebates described in Section 9 unless there is an express assignment of such rights in writing executed by the Developer or a collateral assignment of rights to a Lender or Lenders. City shall, at any time upon ten (10) days notice by Developer, provide to a prospective purchaser of any portion of the Property an estoppel certificate or other document evidencing that (i) this Agreement is in full force and effect; (ii) that no default by Developer exists hereunder (or, if appropriate, specifying the nature and duration of any existing default); and (iii) such other matters as such purchaser or developer may reasonably request.

15.3 Limited Severability. The City and Developer each believes that the execution, delivery and performance of this Agreement are in compliance with all Applicable Laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring the City to do any act in violation of any Applicable Laws, constitutional provision, law, regulation, or City Code), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably

possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. The Parties further agree, in such circumstances, to do all acts and to execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

15.4 Construction. The terms and provisions of this Agreement represent the results of negotiations between the Parties, each of which has been or has had the opportunity to be represented by counsel of its own choosing, and none of which has acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings, and the Parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Agreement that ambiguous or conflicting terms or provisions contained in this Agreement shall be interpreted or construed against the Party who prepared or whose attorney prepared the executed Agreement or any earlier draft of the same.

15.5 Notices.

(a) Addresses. Except as otherwise required by law, any notice required or permitted under this Agreement shall be in writing and shall be given by personal delivery, or by deposit in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this Section, or by telecopy facsimile machine, or by any nationally recognized express or overnight delivery service (e.g. Federal Express or UPS), delivery charges prepaid:

If to the City:
City of Maricopa
Attn: City Manager
39700 West Civic Center Plaza
Maricopa, Arizona 85138
Telephone: (520) 316-6811
Email: Rick.Horst@maricopa-az.gov

With copies to:
City of Maricopa
Attn: Denis Fitzgibbons, City Attorney
Fitzgibbons Law Offices PLC
1115 East Cottonwood, Suite 150
Casa Grande, AZ 85122
Telephone: (520) 426-3824
Email: denis@fitzgibbonslaw.com

If to Developer:
Vestar Arizona XLIX, L.L.C.
Attn: David Larcher
2415 E. Camelback Rd., #100
Phoenix, AZ 85016
Telephone: (602) 866-0900
Email: dlarcher@vestar.com

With a copy to: Rose Law Group p.c.
Attn: Jordan R. Rose
7144 E. Stetson Dr., Suite 300
Scottsdale, Arizona 85251
Telephone: (480) 505-3936
Email: jrose@roselawgroup.com

(b) Effective Date of Notices. Any notice sent by United States Postal Service certified or registered mail shall be deemed to be effective the earlier of the actual delivery, or three (3) business days after deposit in a post office operated by the United States Postal Service. Any notice sent by a recognized national overnight delivery service shall be deemed effective one (1) business day after deposit with such service. Any notice personally delivered or delivered through a same-day delivery/courier service shall be deemed effective upon its receipt or refusal to accept receipt by the addressee. Any notice sent by telecopy facsimile machine shall be deemed effective upon confirmation of the successful transmission by the sender's telecopy facsimile machine. Any Party may designate a different person or entity or change the place to which any notice shall be given as herein provided.

(c) Payments. Payments shall be made and delivered in the same manner as Notices; provided, however, that payments shall be deemed made only upon actual receipt in good and available funds by the intended recipient.

15.6 Time of Essence. Time is of the essence of this Agreement and each provision hereof.

15.7 Section Headings. The Section headings contained in this Agreement are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement.

15.8 Attorneys' Fees and Costs. In the event of a dispute under this Agreement which results in litigation, the prevailing Party in any such dispute shall be entitled to reimbursement of its reasonable attorney's fees and court costs, including, but not limited to, its costs of expert witnesses, transportation, lodging and meal costs of the parties and witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental costs of such dispute.

15.9 Waiver. Without limiting the provisions of Section 13.5, the Parties agree that neither the failure nor the delay of any Party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver of such right, remedy, power or privilege, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

15.10 Third Party Beneficiaries. No person or entity shall be a third-party beneficiary to this Agreement, except for permitted transferees, assignees, or lenders under Section 15.2 to the extent that they assume or succeed to the rights and/or obligations of Developer under this Agreement, and except that the indemnified Parties referred to in the indemnification provisions of Sections 10.1 and 10.2 (or elsewhere in this Agreement) shall be third party beneficiaries of such indemnification provisions.

15.11 Exhibits. The Parties agree that all references to this Agreement include all Exhibits designated in and attached to this Agreement, such Exhibits being incorporated into and made an integral part of this Agreement for all purposes.

15.12 Integration. This Agreement constitutes the entire agreement between the Parties with respect to the subject matters hereof and supersedes any prior agreement, understanding, negotiation or representation regarding the subject matters covered by this Agreement.

15.13 Further Assurances. Each Party agrees to perform such other and further acts and to execute and deliver such additional agreements, documents, affidavits, certifications, acknowledgments and instruments as any other Party may reasonably require to consummate, evidence, confirm or carry out the matters contemplated by this Agreement or confirm the status of (a) this Agreement as in full force and effect and (b) the performance of the obligations hereunder at any time during its Term.

15.14 Business Days. If the last day of any time period stated in this Agreement or the date on which any obligation to be performed under this Agreement shall fall on a Saturday, Sunday or legal holiday, then the duration of such time period or the date of performance, as applicable, shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday or legal holiday.

15.15 Consents and Approvals. Wherever this Agreement requires or permits the consent or approval of a Party to any act, document, use or other matter, such consent or approval shall be given or denied by such Party in its reasonable discretion, unless this Agreement expressly provides otherwise.

15.16 Inurement. The provisions of this Agreement shall be binding upon, and shall inure to the benefit of the Parties and their respective permitted successors and assigns. Wherever the term "Party" or the name of any particular Party is used in this Agreement such term shall include any such Party's permitted successors and assigns.

15.17 Recordation. Within ten (10) days after this Agreement has been approved by the City and executed by the Parties (together with the execution of the Landowners' Consents hereto), the City shall cause this Agreement to be recorded in the Official Records of Pinal County, Arizona.

15.18 Amendment. No change or addition is to be made to this Agreement except by written amendment executed by the City and Developer. Within ten (10) days after any amendment to this Agreement, such amendment shall be recorded in the Official Records of Pinal County, Arizona.

15.19 Good Faith of Parties. Except where any matter is expressly stated to be in the sole discretion of a Party, in performance of this Agreement or in considering any requested extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily or capriciously and will not unreasonably withhold, delay or condition any requested approval, acknowledgment or consent.

15.20 Survival. All indemnifications contained in Sections 10.1 and 10.2 of this Agreement shall survive the execution and delivery of this Agreement, the closing of any transaction contemplated herein, and the rescission, cancellation, expiration or termination of this Agreement upon the terms and for the period set forth in each respective Section.

15.21 Rights of Lenders Collateral Assignments. The City is aware that Developer may obtain financing or refinancing including construction and permanent financing for acquisition, development operations and/or construction of the real property and/or improvements to be constructed on the Property, in whole or in part, from time to time, by one or more third parties (individually a "**Lender**", and collectively the "**Lenders**"). Accordingly, the City acknowledges that Developer may collaterally assign this Agreement to a lender as security for such loan without further consent on the part of the City. In the event of an Event of Default by Developer, the City shall provide notice of such Event of Default, at the same time notice is provided to Developer, to such Lenders as previously designated by Developer to receive such notice (the "**Designated Lenders**") whose names and addresses were provided by written notice to the City in accordance with Section 15.5. The City shall give Developer copies of any such notice provided to such Designated Lenders and, unless Developer notifies the City that the Designated Lenders names or addresses are incorrect (and provides the City with the correct information) within three (3) business days after Developer receives its copies of such notice from the City, the City will be deemed to have given such notice to the Designated Lenders even if their names or addresses are incorrect. Developer may provide notices to other Lenders. If a Lender is permitted, under the terms of its nondisturbance agreement with the City to cure the Event of Default and/or to assume Developer's position with respect to this Agreement, the City agrees to recognize such rights of the Lender and to otherwise permit the Lender to assume all of the rights and obligations of Developer under this Agreement. The City shall, at any time upon reasonable request by Developer, provide to any Lender an estoppel certificate or other document evidencing (i) that this Agreement is in full force and effect; (ii) that no default by Developer exists hereunder (or, if appropriate, specifying the nature and duration of any existing default); and (iii) such other matters as Lender or Developer may reasonably request. Upon request by a Lender, the City will enter into a separate nondisturbance agreement with such Lender as may reasonably be requested by Lender, in a form agreeable to the City and Lender, consistent with the provisions of this Section 15.21.

15.22 Nonliability of City Officials, Etc., and of Employees, Members and Partners, Etc. of Developer. No City Council member, official, representative, agent, attorney or employee of the City shall be personally liable to any of the other Parties hereto, or to any successor in interest to any of the other Parties, in the event of any Default or breach by the City or for any amount which may become due to any of the other Parties or their successors, or with respect to any obligation of the City under the terms of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the liability of Developer under this Agreement shall be limited solely to the assets of Developer and shall not extend to or be

enforceable against: (i) the individual assets of any of the individuals or entities who are shareholders, members, managers constituent partners, officers or directors of the general partners or members of Developer; (ii) the shareholders, members or managers or constituent partners of Developer; or (iii) officers of Developer.

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

15.24 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 other consideration for obtaining this Agreement, other than the normal costs of conducting business and costs of professional services such as architects, consultants, engineers, and attorneys.

[SIGNAUTRES SET FORTH ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

DEVELOPER

VESTAR ARIZONA XLIX, L.L.C.
an Arizona limited liability company

By:_____
Name: _____
Title: _____

CITY

CITY OF MARICOPA, ARIZONA, an Arizona municipal corporation

By:_____
Christian Price, Mayor

ATTEST:

By: _____
Vanessa Bueras, MMC

City Clerk

APPROVED AS TO FORM:

By: _____
Denis M. Fitzgibbons
City Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF PINAL)

The foregoing instrument was acknowledged before me this _____ day of _____ 2022, by _____, City _____ of the City of Maricopa, Arizona, an Arizona municipal corporation, who acknowledged that he/she signed the foregoing instrument on behalf of the City.

_____
Notary Public

My commission expires:
_____

STATE OF ARIZONA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by _____, the _____ of _____, an Arizona limited liability company.

_____
Notary Public

My commission expires:
_____

EXHIBIT A – Property
– Commercial Property
– Transitional Property
EXHIBIT B – Farrell Road
EXHIBIT C – East West Parkway
EXHIBIT D – Dedication
EXHIBIT E - Insurance