(43)

OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
LAURA DEAN-LYTLE

WHEN RECORDED RETURN TO:

City of Maricopa
Attn: City Clerk
P.O. Box 610
Maricopa, Arizona 85239

DATE/TIME: 05/26/06 1500
FEE: $30.00
PAGES: 43
FEE NUMBER: 2006-076047

# PRE-ANNEXATION DEVELOPMENT AGREEMENT

CITY OF MARICOPA, ARIZONA,
an Arizona municipal corporation

AND

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

May 17, 2006

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Exhibits

# DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made as of the 17th day of May, 2006, 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 owns or has the right to acquire that certain unimproved real property located near the City but presently outside the city limits of the City, such real property consisting of approximately __160___ 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 retail and commercial center, including but not limited to shopping areas, restaurants, hotels and motels, theatres, hospitals and medical care facilities, and any uses related, appurtenant or ancillary thereto (the "**Center**"), and thereafter (subject to common area and other ownership interests to be retained by Developer) lease or sell to others. Subject to the specific requirements of this Agreement, the City recognizes that the nature, size, location and configuration of the improvements to be constructed on the Property may change, at any time, and from time to time, due to economic and other factors.

B. The Parties desire that the Property be annexed into the corporate limits of the City and be developed as a part of the City. The City has filed a blank annexation petition with Pinal County, and all requisite meetings and hearings have been, or will be, held in accordance with A.R.S. §9-471 *et seq*. Upon execution of this Agreement, property owner agrees to sign the Annexation Petition within 15 business days of the execution date of the Agreement.

C. Developer acknowledges that the development of the Property as a Center may generate substantial economic benefits for Developer, and that the Center is a project of such significance that the City requires certain assurances concerning the time schedule for the completion of certain improvements, the design and development of the Center in a consistent manner and with certain common architectural, aesthetic and thematic features, and other assurances. In furtherance of these goals, Developer will submit a Site Plan ("Site Plans") for each phase of development of the Center for review and approval by the City in accordance with the City's customary and ordinary plan and development review process (the "Approved Plan"), consistent with the terms of this Agreement.

D. The City acknowledges that the development of the Property as a Center 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 or which revenues will exceed those that would be generated by alternative uses of the Property. The City also believes that the development of the Property in conformity with the Approved Plan will generate substantial non-monetary benefits for the City, including, without limitation, the creation of new jobs and facilitate, the establishment of the City as a retail shopping destination for City residents, other residents of Pinal County, for shoppers and travelers from the metropolitan areas of nearby Phoenix and Tucson, and for tourists who are visiting the City of Maricopa from elsewhere in the country as well as from other countries.

E. The City desires to annex the Property into the city limits of the City and intends to rezone the Property to CB-2 (subject to certain conditions, including without limitation that this Agreement as approved by the City Council shall have been executed by the Parties) ("**Zoning**") and to encourage and facilitate development of the Center. The Parties intend that the uses contemplated by this Agreement are consistent with the City's proposed General Plan (the "**General Plan**") designating the property as Commercial. As part of the Center, the Developer will incorporate an anchor store of at least 100,000 square feet including garden area **if part of the anchor store**.

F. The City also acknowledges its intention and ability to provide the undertakings described herein, as well as the City's willingness to approve the development of the Property in accordance with the **[PAD-05.15]** to be approved by the City (the "**MPD**"), and the Property is contemplated for development principally as (i) a retail and commercial center, including but not limited to shopping areas, restaurants, and theatres (the "**Retail Area**"); but may also include (ii) hospital and related medical facilities (the "**Hospital Area**"); (iii) offices (the "**Office Area**") and (iv) hotels and motels (the "**Hotel Area**"). The City acknowledges that the Approved Plan may change from time-to-time (but always in a manner that is consistent with the Design Guidelines, Zoning, proposed General Plan and the minimum retail and construction requirements set forth herein). Therefore, 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.

G. 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 Exhibit C, including without limitation the 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 advance or otherwise cause to be provided all funds required for, and otherwise to finance the construction and completion of, the Public Improvements, subject to and in accordance with the terms of this Agreement.

H. The City also has determined that the development of the Property as a Center pursuant to this Agreement will result in significant planning, economic and other public benefits to the City and its residents by, among other things: (i) providing for the construction of the Public Improvements; (ii) providing for planned and orderly development of the Property consistent with the City's proposed General Plan and the Zoning; (iii) increasing tax revenues to the City arising from or relating to the improvements to be constructed on the Property; (iv) creating a substantial number of new jobs and otherwise enhancing the economic welfare of the inhabitants of the City.

I. The Parties understand and acknowledge that this Agreement is a "Development Agreement" within the meaning of, and entered into pursuant to the terms of, A.R.S. § 9-500.05.

J. 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. Also, pursuant to A.R.S. § 9-500.11, as amended effective August 12, 2005, the City on May 2, 2006, adopted a notice of intent to enter into this Agreement required by A.R.S. § 9-500.11.K and made the findings required by A.R.S. § 9-500.11.D, such findings having been verified by an independent third party before the City entered into this Agreement and such findings by this reference being incorporated into this Agreement as though set forth in their entirety herein.

K. The City is entering into this Agreement as an administrative act to implement the aforementioned Zoning for the Property legislatively enacted by the City and to facilitate development of the Center consistent with the proposed General Plan and such Zoning.

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. **Definitions**.

In this Agreement, unless a different meaning clearly appears from the context:

(a) "**Affiliate**", as applied to any person, means any person directly or indirectly controlling, controlled by, or under common control with, that person or a blood relative or spouse of such person, if such person is a natural person. For the purposes of this definition, (i) "**control**" (including with correlative meaning, the terms "controlling," "controlled by" and "under common control"), as applied to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that person, whether through the ownership of voting securities, by contract or otherwise, and (ii) "**person**" means and includes natural persons, corporations, limited partnerships, general partnerships, joint stock companies, joint ventures associations, limited liability companies, limited liability partnerships, trusts, land trusts, business trusts or other organizations, whether or not legal entities.

(b) "**Agreement**" means this Agreement, as amended and restated or supplemented in writing from time to time, and includes all exhibits and schedules hereto. References to Sections or Exhibits are to this Agreement unless otherwise qualified. The Recitals set forth in Paragraphs A through K, inclusive, are incorporated herein by reference and form a part of this Agreement but are not intended to expand the scope, number or nature of Developer's obligations beyond those expressly set forth in the numbered sections of this Agreement

(c) "**Anchor Store**" means a retail user containing at least 100,000 square feet of floor area.

(d) "**Applicable Interest**" shall be the lesser of interest (cumulative annually) at (i) nine and three quarters percent (9.75%) per annum 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%).

(e) "**Applicable Laws**" means as defined in Section 3.1(a).

(f) "**A.R.S.**" means the Arizona Revised Statutes as now or hereafter enacted or amended.

(g) **"Big Box User"** means a retail user containing at least 100,000 square feet of floor area.

(h) "**Center**" means as defined in Recital A.

(i) "**City**" means the Party designated as City on the first page of this Agreement.

(j) "**City Code**" means the Code of the City of Maricopa, Arizona, as amended from time to time.

(k) "**City Council**" means the City Council of the City.

(l) "**City Development Fee**" or "**City Development Fees**" means as defined in Section 3.3.

(m) "**City Representative**" means as defined in Section 11.1.

(n) **"Conditions Precedent to Reimbursement"** means the requirements as set forth in Section 6.2(b), which must be completed prior to the City making any Reimbursement Payments.

(o) "**Commencement of Construction**" means both (i) the obtaining of a building, excavation, grading or similar permit by Developer for the construction of the Minimum Retail Improvements, and (ii) the actual commencement of physical construction operations on the Property in a manner necessary to achieve Completion of Construction of the Minimum Retail Improvements.

(p) "**Completion of Construction**" means the date on which (i) for the Minimum Retail Improvements, that final inspection approvals have been issued by the City for the Minimum Retail Improvements, and (ii) for the 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 Public Improvements required by the City for the issuance of final inspection approval for the Minimum Project.

(q) "**Dedicated Property**" means as defined in Section 5.5.

(r) "**Default**" or "**Event of Default**" means one or more of the events described in Sections 10.1 and 10.2; provided, however, that such events shall not give rise to any remedy until effect has been given to all grace periods, cure periods and/or periods of Enforced

Delay provided for in this Agreement and that in any event the available remedies shall be limited to those set forth in Section 11.

(s) "**Denial**" means as defined in Section 10.6.

(t) "**Design Guidelines**" means as defined in Section 3.1(a).

(u) "**Designated Lenders**" means as set forth in Section 12.21.

(v) "**Developer**" means the Party designated as Developer on the first page of this Agreement, and its successors and assigns that conform with the requirements of this Agreement.

(w) "**Developer Representative**" means as defined in Section 11.1.

(x) "**Effective Date**" means the date on which all of the following has occurred: this Agreement has been adopted and approved by the City Council, executed by duly authorized representatives of the City and Developer, recorded in the office of the Recorder of Pinal County, Arizona, and the date on which the ordinance of the City annexing the Property into the city limits of the City is effective.

(y) "**Enforced Delay**" means as defined in Section 10.6.

(z) "**Enhanced Features**" means as defined in Section 5.7.

(aa) "**Enhanced Features Cost**" means as defined in Section 5.7.

(bb) **Reserved**

(cc) "**General Plan**" means as defined in Recital E.

(dd) "**Grand Opening**" means the date publicly announced by Developer for the grand opening of the Retail Area for retail business to the public, which date may be on or before the Completion of Construction. The Grand Opening may occur before the Minimum Retail Improvements have opened for retail sales operations. The City and Developer shall confirm in writing the date of the Grand Opening when the same becomes known.

(ee) "**Hotel Area**" means as defined in Recital F.

(ff) "**Lender**" or "**Lenders**" means as defined in Section 12.21.

(ff) "**Minimum Retail Improvements**" means not less than 250,000 square feet of enclosed gross leasable floor area of improvements including garden centers in the Retail Area (including retail and mall areas, restaurants and movie theatres).

(gg) "**Monthly ADR Tax Report**" means as defined in Section 6.1(a).

(hh) Reserved

(ii) "**Party**" or "**Parties**" means as designated on the first page of this Agreement.

(jj) "**Property**" means as defined in Recital A and as described in Exhibit A.

(kk) "**Public Improvements**" means as defined in Recital G and as described in Exhibit C.

(ll) "**Public Improvement Costs**" means all costs, expenses, fees and charges actually incurred and paid by or on behalf of Developer to contractors, architects, engineers, surveyors, governmental agencies and other Third Parties for materials, labor, design, engineering, surveying, site excavation and preparation, governmental permits, payment and performance bonds, right of way costs, plus the acquisition cost of all Dedicated Property plus the Developer Credit Shortfall per Section 3.3(c) and all other costs and expenses reasonably necessary for the construction, installation, or provision of the Public Improvements. "**Public Improvement Costs**" shall not include any profit to or mark-up by Developer or any Affiliate of Developer, any losses to the extent covered by insurance proceeds, expenses resulting from Developer's failure to perform any of its obligations under this Agreement, or any other costs or expenses not reasonably necessary for the construction, installation, or provision of the Public Improvements, but shall include Developer's overhead, facility and personnel costs, not to exceed ten percent (10%) of the Public Improvement Costs before such inclusion, to the extent reasonably allocable to the construction, installation or provision of the Public Improvements.

(mm) "**Retail Area**" means as defined in Recital F.

(nn) "**Sales Taxes**" means, for the purposes of this Agreement, that (i) portion of the City's Construction transaction privilege taxes authorized by Section 8-415 of the Maricopa City Code and (ii) in the event that the Construction Sales Tax and cash payment made by the City do not fully pay the Total Reimbursement Amount due under this Agreement, fifty percent (50%) of the transaction privilege taxes which are imposed on "retail sales" (including, without limitation, taxes imposed on amusements, admissions, restaurants, hotels and related hospitality activities) under the Tax Code of the City of Maricopa, as the same may change from time-to-time; provided that, for the purposes of this Agreement, the rates of such Sales Taxes shall never be less than the Sales Tax rates imposed and in effect as of the Effective Date.

(oo) "**Sales Tax Rebates**" means as defined in Section 6.1.

(pp) **"Site Plan"** means the final site plan approved by the City of Maricopa City Council for the Site.

(qq) "**Special Fund**" means as defined in Section 6.1(a).

(rr) "**Taxable Activities**" means as defined in Section 6.1.

(ss) "**Term**" means the period commencing on the Effective Date and terminating on the date on which the Parties have performed all of their obligations hereunder; provided, however, that, except as provided in Section 10.6, if applicable, in no event shall the Term of this Agreement extend beyond the fifteenth ($15^{th}$) anniversary of the Effective Date.

(tt) "**Third Party**" means any person (as defined in Section 1(b) above) other than a Party, or an Affiliate of any Party.

(uu) "**Total Reimbursement Amount**" means as defined in Section 6.6.

(vv) "**Zoning**" means as defined in Recital E.

2. **Conditions Precedent**. As conditions precedent to the obligations of Developer under the terms of this Agreement, the Parties agree as follows:

2.1 Pre-Annexation Provisions. The City, having complied with all statutory requirements, has, concurrently with its approval of this Agreement, duly considered and determined that annexation of the Property into the City and the Zoning specified in Recital E and Section 2.2 are in the best interest of the City in compliance with the provisions of A.R.S. §9-471 et seq. Sometime after approval of this Agreement, the City will adopt an ordinance annexing the Property into the corporate limits of the City.

2.2 Zoning Provisions.

(a) The City acknowledges that the Developer has submitted to the City an application for the approval of the **[P.A.D. (PAD-05.15)]** and Zoning in furtherance and implementation of this Agreement.

(b) The Parties intend that the P.A.D. and Zoning be consistent with the City's proposed General Plan.

(c) The City and Developer shall mutually cooperate in the processing of the P.A.D. and Zoning in a reasonable manner, subject to the City's review and due consideration in conformance with all notice and public hearing procedures required by statute or ordinance necessary for the Zoning. The Parties intend that the City's CB-2 Zoning classification and Commercial designation on the proposed General Plan shall provide the flexibility necessary to implement the development of the Property in accordance with this Agreement. The Parties additionally intend that there are no features of the Agreement, including, without limitation, the intensity of development, range of land uses, and roadways proposed herein, that cannot be accommodated within the scope of the P.A.D. and Zoning or proposed General Plan. Upon approval of the P.A.D. and Zoning for the Property, the Parties intend that the Developer shall have a vested right to develop this Property pursuant to the P.A.D. and Zoning and proposed General Plan, subject to this Agreement.

2.3 Approvals. The Parties intend that the City will approve this Agreement as soon as feasible, and sometime after this agreement is approved, the City will approve the annexation of the Property and **[PAD-05.15]** referenced in Section 2.1.

3. **Scope and Regulation of Development**.

3.1 Design Guidelines; Development Plans.

(a) Design Guidelines. Prior to the Commencement of Construction of the Minimum Retail Improvements, Developer and the City shall cooperate in good faith to agree upon the criteria and procedures for the approval of the Center's design elements, including without limitation building materials, colors, architectural plans, landscaping, enhanced paving plans, irrigation, lighting, pedestrian linkages, signage and the character of the Center (the "**Design Guidelines**). The Design Guidelines shall include the approval process set forth in this Section 3.1. After construction of a building or site development within the Center, any subsequent substantial and material alterations or changes to the exterior of any building or to the site development shall be reviewed and approved in accordance with the Design Guidelines then in effect. The City and Developer acknowledge that amendments to the Design Guidelines may be necessary from time to time to reflect changes in market conditions and/or to satisfy new requirements of one or more users of any part of the Property, and the Parties shall cooperate in good faith to agree upon any such amendments to the Design Guidelines. Any disputes between the City and Developer concerning the terms and provisions of the Design Guidelines or amendments thereto shall be resolved pursuant to Section 11.

(b) Approved Plan. Development of the Property shall be in accordance with the Approved Plan prepared and submitted by Developer (as the same may be amended from time-to-time) and which shall comply with the proposed General Plan, the Zoning, the Design Guidelines, and shall set forth the basic land uses, phasing of Public Improvements and private improvements, densities and intensities for development of the Property (or portion of the Property) as such may be amended from time to time in accordance with Section 3.1(e) below. Review and approval of any Site Plans shall be undertaken by the City in accordance with its regular and customary procedures.

(c) Approval Process. The process for the submittal, review and approval of (i) the Conceptual Master Plan, (ii) the Site Plans, and (iii) the Center's design elements, including without limitation building materials, colors, architectural plans, landscaping, enhanced paving plans, irrigation, lighting, exterior cooling, pedestrian linkages, signage and the character of the Center, shall be set forth in the Design Guidelines. Absent specific Design Guidelines, the City's ordinary submittal, review and approval processes then in effect shall apply. Subject to Section 3.1(b) and to Applicable Laws, the City and Developer will cooperate reasonably in processing the approval or issuance of any permits, plans, specifications, plats or other development approvals requested by Developer in connection with development of the Center.

(d) Cooperation in the Implementation of the Approved Plan. Developer and the City shall work together using reasonable best efforts throughout the pre-development and development stages to resolve any City comments regarding implementation of the Approved Plan. If Developer reaches an impasse regarding development approval with the City's staff, the dispute shall be resolved as provided in Section 11.

(e) Amendments. The City and Developer acknowledge that amendments to the Approved Plan may be necessary from time to time to reflect changes in market conditions and development financing and/or to meet the new requirements of one or more of the potential users of any part of the Property. If and when the Parties find that changes or adjustments are necessary or appropriate, they shall, unless otherwise required by Applicable

Laws as described in Section 3.2 of this Agreement, effectuate minor changes or adjustments through administrative amendments approved by the City Representative (as designated in Section 11.1) and thereafter attached to the Approved Plan as an addendum and become part thereof, and which may be further changed and amended from time to time as necessary, with the approval of the City and Developer. Unless otherwise required by law, no such minor amendment shall require notice or hearing. All major changes or amendments shall be subject to review and approval by the City Council. The following are examples of changes which constitute major amendments and require City Council approval: (i) a ten (10%) or greater increase or decrease in the amount of square footage on commercial sites proposed in the Approved Plan, or (ii) a fifteen (15) foot or greater deviation in height from that proposed in the Approved Plan.

3.2 Development Regulation.

(a) Applicable Laws. For the purposes of this Agreement, the term "**Applicable Laws**" means the federal, state, county, administrative policies, and local laws (statutory and common law) ordinances, rules, regulations, permit requirements, and other requirements and official policies of the City which apply to the development of the Property. The Parties acknowledge and agree that the anticipated development of the Property, if any, beyond the Minimum Retail Improvements will likely occur over a period of years. Until the fifteenth ($15^{th}$) anniversary of the Effective Date with respect to any area of the Property, or the fifth (5th) anniversary of the Commencement of Construction with respect to the Retail Area, the Office Area, and the Hospital Area, or the seventh ($7^{th}$) anniversary of the Commencement of Construction with respect to the Hotel Area, whichever shall first occur with respect to the Property (each an "**Applicable Restricted Period**"), no City moratorium (as the term is defined in A.R.S. §9-463.06), or future ordinance, resolution or other land use rule or regulation imposing a limitation to the rate, timing or sequencing of the development of the Property and affecting the Property or any portion thereof shall apply to or govern the development of the Property, whether such ordinance, rule or regulation affects subdivision plats, building permits, occupancy permits, or other entitlements to use the Property issued or granted by the City, it being further agreed that during the Applicable Restricted Period:

(1) the development of the Property will be subject to the 2000 International Building Code with such modifications and updates as may be adopted by the City but which will not materially impair Developer's ability to develop the Applicable Property Area as contemplated by this Agreement, nor materially and adversely affect Developer's economic benefits as contemplated by this Agreement, which would have been realized without such modifications, and

(2) the building permit fees for the development of the Applicable Property Area shall be the same schedule as those charged at the time of permit issuance.

(b) Permissible Exceptions. Notwithstanding the provisions of Section 3.2 (a), the City may, at any time, and from time-to-time, enact the following Applicable Laws, and take the following actions, which shall be applicable to and binding on the development of the Applicable Property Area:

(1) Future land use ordinances, rules, regulations, permit requirements, and other requirements and official policies of the City which are consistent with the express provisions of this Agreement and not contrary to the existing land use regulations described in the first sentence of Section 3.1(a); provided that such future land use ordinances, rules, regulations, permit requirements and other requirements and official policies shall not materially impair Developer's ability to develop the Applicable Property Area as contemplated in this Agreement;

(2) Other future land use ordinances, rules, regulations, permit requirements, and other requirements and official policies of the City which Developer may agree in writing apply to the development of an Applicable Property Area;

(3) Future land use, safety and construction ordinances, rules, regulations, permit requirements and other requirements and official policies of the City enacted as necessary to comply with mandatory requirements imposed on the City by county, state or federal laws and regulations, court decisions, and other similar superior external authorities beyond the control of the City;

(4) Future updates of, and amendments to, existing building, plumbing, mechanical, electrical, dangerous buildings, drainage, and similar construction and safety related codes, such as the International Building Code, which updates and amendments are generated by a nationally recognized construction/safety organization, such as the International Code Council, or by the county, state or federal governments; provided that such updates and amendments shall not materially impair Developer's ability to develop the Applicable Property Area as contemplated in this Agreement;

(5) 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 amendments shall not materially impair Developer's ability to develop the Applicable Property Area as contemplated in this Agreement;

(6) Future imposition of taxes (as defined in A.R.S. § 9-463.05) so long as such taxes or financing mechanisms are uniformly imposed or charged by the City to all similarly situated persons or entities; and

(7) Future subdivision zoning rules adopted by the City so long as such zoning subdivision rules are uniformly imposed on all similarly situated persons or entities provided that such subdivision rules shall not materially impair Developer's ability to develop the Property.

(c) No Use Permit for "Big Box" User Required. The City agrees that there shall be no requirement for this Property to obtain a Use Permit or the like for what might be classified as a "Big Box Retail Center," "Big Box User," and/or "Large User". Any future requirement adopted by the City to obtain a use permit for a "Big Box Retail Center," "Big Box User," "Large User" will not apply to this Property for the term of this Agreement.

3.3 City Development Fees.

(a) 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**"). 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 Public Improvements that are components of any particular City Development Fee payable by Developer for or in connection with development on the Property. The Developer may receive a credit for the purchase price of any real property necessary for the location of the Public Improvements (but only if such value is included as a component of that particular City Development Fee). 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 development on the Property.

(b) The Parties expressly agree to be in compliance with A.R.S. §9-463.05(B)(4). Credits against City Development Fees or the City's forbearance of charging City Development Fees in reliance on the state law shall not affect the Total Reimbursement Amount except as set forth in Section 3.3(c) below.

(c) In no event shall developer receive in development fee credits more than the actual Public Improvement costs paid by developer. For example, if the 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.

4. **Private Improvements**.

4.1 Minimum Retail Improvements. The Minimum Retail Improvements shall be developed within the Retail Area as a partially enclosed mall, a village center, a lifestyle center, a "big box" retail center, or any other configuration (or combination thereof) deemed by Developer to be best suited for the commercial opportunities presented by the Retail Area at the time of planning such Minimum Retail Improvements. The Parties agree that Developer shall have no obligation to develop any more of the Center than the Minimum Retail Improvements. 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 Applicable Laws, City approval of the size, form, nature, occupants or configuration of the Minimum Retail Improvements is not required.

4.2 Commencement of Construction. Developer agrees that commencement of construction of the Minimum Retail Improvements ("**Commencement of Construction**") shall occur, subject to Enforced Delay, on or before the date which is eighteen (18) months after the City certifies to Developer (in good faith based on such information as is available to the City) that at least one hundred thousand (100,000) residents reside within the trade area set forth on Exhibit B hereto.

4.3 Completion of Construction. Completion of Construction of the Minimum Retail Improvements shall be deemed to occur at the time of final inspection approval

for the Minimum Retail Improvements. The City and Developer shall mutually confirm in writing the date of the Completion of Construction when the same becomes known.

4.4 Changes in Plans. Any site plans or similar land use plans for improvements other than the Minimum Retail Improvements prepared by or on behalf of Developer are aspirational and based upon Developer's current plans, themes and programs, any or all of which may change or be varied depending upon the circumstances and the plans and methods used by Developer to develop commercial centers. The City acknowledges that those plans, themes and programs may change at any time, and from time to time, and that, in order to receive the benefits of this Agreement and to comply with the provisions hereof, Developer is obligated only for the Completion of Construction of the Minimum Retail Improvements on the Property and the construction of the Public Improvements in accordance with the Design Guidelines, Applicable Laws and the other requirements imposed by this Agreement.

4.5 Conditions to Reimbursement. The Completion of Construction of the Minimum Retail Improvements by Developer as described in this Agreement is a condition precedent to the obligation of the City to reimburse Developer as provided in this Agreement.

5. **Public Improvements**. Pursuant to A.R.S. § 34-201.L, as a condition of development of the Property imposed by the City and as authorized by A.R.S. § 9-463.01 or § 11-806.01, Developer at its sole cost shall design, construct or cause to be constructed and dedicate to the applicable government authority the Public Improvements subject to the terms and conditions of this Agreement.

5.1 Construction and Phasing. The Public Improvements shall be constructed and may be phased in accordance with the Approved Plan. In the absence of a schedule, Developer shall cause the Public Improvements to be constructed in conjunction with Developer's construction of the Center, as Developer and the City mutually agree is appropriate. In light of such phasing, the City acknowledges that the Public Improvement Costs shall increase as additional Public Improvements are completed for additional approved phases of the Center. The City shall not be obligated to reimburse the Developer for Public Improvements until the Public Improvements have been completed, approved, and accepted; provided that any reimbursement is paid only as allowed in this Agreement.

5.2 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..

5.3 City Review and Approval of Plans. Developer recognizes that its development and construction of the Public Improvements pursuant to this Agreement 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, subject to the terms of Section 6 of this Agreement. Any disputes over delay in the review and approval processes will be resolved as provided in Section 11.

5.4 Payment of Public Improvement Costs. Developer shall pay all Public Improvement Costs as the same become due, subject to the reimbursement provisions of this Agreement, including but not limited to Section 6 *et seq.*

5.5 City Acquisition of Necessary Property. The City to the extent then permissible under Applicable Laws, and to the extent required in the judgment of the City, after consultation with Developer, may purchase or use its power of eminent domain to acquire any necessary right-of-way and other property or property rights required for construction or maintenance of the Public Improvements at the City's expense (including without limitation the cost of the land and the City's costs related to the acquisition) or at the Developer's expense only if Developer gives consent thereto.

Upon not less than ninety (90) days advance request by the City, or upon completion of any portion, segment or phase of the Public Improvements offered for dedication by Developer and accepted by the City, Developer will dedicate and grant to the City any real property or real property interests owned by Developer which (i) constitute a part of the Property; (ii) are reasonably necessary for right-of-way purposes or otherwise required for the construction, maintenance, or operation of the Public Improvements on or within the Property; and (iii) do not materially interfere with the development of the Center as planned (the "**Dedicated Property**"). Developer shall make such dedications without the payment of any additional consideration by City; provided, however, that the acquisition cost of the Dedicated Property shall constitute a Public Improvement Cost subject to reimbursement in accordance with the terms of this Agreement.

5.6 Dedication, Acceptance and Maintenance of Public Improvements. When the Public Improvements or a discrete 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), then upon written request of the City or Developer, Developer shall dedicate and the City shall accept such 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 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.

5.7 Character, Theme, Design and Architectural Features; Enhanced Features. Developer shall cause the Property to incorporate the character, theme, design and architectural features and improvements described in the Approved Plan. In the event that subsequent to the Approved Plan being approved through the development approval process (including design review), the City requests and the Developer agrees to utilize design features and material and other features beyond those required by the Approved Plan (the "**Enhanced**

**Features**"), the total cost of such Enhanced Features (the "**Enhanced Features Costs**") shall be added to the Total Reimbursement Amount and shall be reimbursed in accordance with Section 6.

5.8 Access. Developer shall permit access to the Center by the City, its officials, personnel and designees, at reasonable times, subject to reasonable safety requirements as Developer may impose from time to time, to assure compliance with all Applicable Laws and with the terms of this Agreement.

5.9 Radio Coverage. Developer shall cause all improvements to be constructed in such a manner that reasonably facilitates adequate radio coverage for City emergency service workers.

5.10 Public Access. Developer will grant to the City emergency vehicle access and use easements over and through the main entrance to the Center and other private roadways as may exist from time to time within the Center, including without limitation those (if any) shown on the Conceptual Master Plan Center (the Parties anticipating, however, that the streets serving the Center will all be public streets and rights-of-way).

5.11 Parking Ratio. Notwithstanding any higher ratios set forth in the Applicable Laws, Developer shall provide (and the City hereby approves) a minimum of one (1) vehicular parking space per three hundred (300) square feet of floor area in the Retail Area, such floor area to be determined by the City in accordance with Exhibit D, and such parking spaces to be standard sized (i.e., not less than nine (9) feet wide or such lesser width as may then be required by the City or by the City Code in effect at the time or times the parking spaces are constructed). There shall be no maximum number of parking spaces for the Center or any phase thereof.

6. **Public Improvements and Enhanced Features**. The City is of the opinion that the development of the Center (i) will substantially 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 these Reimbursements; 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 these Reimbursements. This development agreement does not contemplate tax incentives. Rather, its primary function is to be a fiscal vehicle to finance public improvements in a timely and orderly matter, that are mutually beneficial for the City and the Developer. Accordingly, the City shall reimburse Developer for the Total Reimbursement Amount, plus **Applicable Interest** through construction sales tax rebates, and, if necessary, through voluntary direct payment and, if necessary, through Sales Tax Rebates.

6.1 Sales Tax Rebates. In view of Developer's construction of the Public Improvements and otherwise performing its obligations under this Agreement, the City shall rebate and pay to Developer transaction privilege taxes (the "**Sales Tax Rebates**") equal to (i) one hundred percent (100%) of the Sales Taxes imposed and actually received by the City for construction and related contracting activities by Developer or purchasers of the Pad Sites and

their contractors and subcontractors in constructing the Center and the Public Improvements pursuant to Section 4, and, (ii) in the event that Developer has not been repaid the Total Reimbursement Amount by means of Construction Tax Rebates and voluntary monetary payment from the City, fifty percent (50%) of the Sales Taxes imposed and actually received by the City for retail sales (which shall include, but not limited to, sale of goods, admissions, exhibitions, amusements, restaurants, bar and hotel activities occurring within the Center (irrespective of whether the Property from which such sales are generated are owned by Developer or others, including pad purchasers), from and after the expiration of six (6) months from the Grand Opening (collectively, the construction and retail sales taxes shall be referred to as "**Taxable Activities**"). The Sales Tax Rebates shall be determined, deposited in the City's Special Fund, and payable as set forth in this Section 6.1.

(a) Special Fund. The City shall deposit the 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 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 Taxable Activities until the Total Reimbursement Amount plus Applicable Interest has been paid to Developer, or until the expiration of the Economic Reimbursement Period (as defined below), whichever first occurs. 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 shall be deposited by the City in an interest bearing account, with the interest accrued thereon to be added to and become part of the Sales Tax Rebates, but in no event shall such interest be deemed to accrue for the benefit of Developer until the Completion of Construction occurs. The City shall pay the quarterly Sales Tax Rebates described in Section 6.2(c) to Developer from the Special Fund.

(b) 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 the Completion of Construction; provided, that prior to the Completion of Construction, Sales Tax Rebates shall accumulate in the Special Fund for the benefit of, and after the Completion of Construction for subsequent disbursement to, Developer. 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, if the Completion of Construction of the Minimum Retail Improvements has not occurred for any reason other than that specified in Section 10.6 within the time period set forth in Sections 4.2 and 4.3 above, or if this Agreement is terminated by the City by reason of an Event of Default pursuant to Section 10.

(c) Monthly/Quarterly Rebate Payments.

(1) The first payment of Sales Tax Rebates (which shall include accumulated Sales Tax Rebates and interest accrued thereon held in the Special Fund, all

of which shall be applied to the payment of Total Reimbursement Amount) 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 the Completion of Construction occurs.

(2) Subsequent payments of Sales Tax Rebates will be made on a quarterly basis following the City's receipt of subsequent Monthly ADR Tax Reports which includes Sales Taxes actually received by the City from any of the Taxable Activities until the Total Reimbursement Amount plus Applicable Interest due under this Agreement has been paid in full, or until the expiration of the Economic Reimbursement Period. For purposes of this Agreement, the Economic Reimbursement Period shall be fifteen (15) years from the Effective Date of this Agreement.

6.2 Determination of Amount of Allocated Revenues Received by the City. The City Manager (or his designee) shall determine the amount of Sales Tax Rebates for each month (or partial month if applicable) with respect to the Center.

6.3 City's Prepayment Right. The City shall have the right to prepay all or any part of the reimbursement at any time, including unpaid Applicable Interest accrued to the date of such prepayment.

6.4 Applicable Interest. From and after the commencement of construction of the Public Infrastructure Improvements, interest shall accrue on any unreimbursed portion of the Total Reimbursement Amount at the Applicable Interest rate.

6.5 Multiple Business, Contractor and Subcontractor Locations. Since some businesses with multiple locations in the City (a "**Multiple Location Taxpayer**") report their Sales Taxes on the basis of revenues for all their locations in the City, rather than separately for each location, Developer shall request each such Multiple Location Taxpayer located in the Center to separately report its Sales Taxes to or furnish the City with a certified break out worksheet showing its Sales Taxes for that location within the Center, along with the Multiple Location Taxpayer's name and City privilege tax identification number. To the extent such separate reporting is not received by the City for a Multiple Location Taxpayer, the Sales Taxes for its location within the Center shall be equal to the total Sales Taxes reported for all of its locations in the City multiplied by a fraction, the numerator of which shall be one (1) and the denominator of which shall be the total number of locations of that Multiple Location Taxpayer in the City. Similarly, since some contractors and subcontractors with multiple projects or jobs in the City (also, a "**Multiple Location Taxpayer**") report their Sales Taxes on the basis of revenues for all their projects or jobs in the City, rather than separately for each project or job, Developer shall request each contractor and subcontractor having Taxable Activities in constructing the Center to separately report its Sales Taxes or furnish the City with a certified break out worksheet showing its Sales Taxes for those Taxable Activities within the Center, along with the contractor's or subcontractor's name and City transaction privilege tax identification number. If such separate reporting or break out worksheet is not received by the City for a contractor or subcontractor having multiple projects or jobs in the City, Developer shall provide the City with Developer's certified statement of the contracting revenues paid with respect to the Center and that data shall be utilized to compute the Sales Taxes paid and the Sales Tax Rebate. If the taxpayer's name and City privilege tax identification number is not received

by the City for a Multiple Location Taxpayer, the City shall request such information from Developer which shall require such information from the Multiple Location Taxpayer in connection with any sale, lease, sublease, contracting or other Taxable Activities involving any property located within the Center. If any information contemplated by this section is not received by the City, the City shall calculate the Tax Rebates as best it can based on all of the information available to it.

6.6 Total Reimbursement Amount. The "**Total Reimbursement Amount**" shall equal the sum of (a) the Public Improvement Costs, (b) the Enhanced Features Cost (if any), and (c) the total amount of transportation related development impact fees (and all City sewer and water development fees if ever any exist), not-to-exceed a total amount of such fees charged for the first 699,600 square feet.

7. **Indemnity; Risk of Loss.**

7.1 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 7.1, 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.

7.2 Indemnity by the City. The City shall pay, defend, indemnify and hold harmless Developer and its Affiliates 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 7.2, however, shall not apply to loss or damage or claims therefore which are attributable to acts or omissions of Developer and/or its Affiliates, 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.

7.3 Risk of Loss. Developer assumes the risk of any and all loss, damage or claims to any portion of the Public Improvements unless and until title to the Public Improvements is transferred to the City. At the time title to the 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 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 Public Improvement, any component thereof, or the work of any specific trade or contractor, as applicable.

7.4 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.

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

8.1 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.

8.2 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.

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

8.4 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.

8.5 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 12.3 shall apply in the event of any successful challenge to this Agreement.

8.6 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.

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

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

9.1 Developer has the full right, power and authorization to enter into and perform this Agreement and of 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.

9.2 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.

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

9.4 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.

9.5 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 12.3 shall apply in the event of any successful challenge to this Agreement.

9.6 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.

9.7 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.

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

10. **Events of Default; Remedies.**

10.1 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 in substantially the same form as Exhibit J, 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 12.2;

(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.

10.2 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 6 of this Agreement, the City fails to make Economic Reimbursement 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.

10.3 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 (or twenty (20) days in the event of a monetary default or ninety (90) days if the Default relates to the date for Completion of Construction) after receipt of such notice, or, if such Default is of a nature is not capable of being cured within thirty (30) days (or ninety (90) days if the Default relates to the date for Completion of Construction) shall be commenced within such period and diligently pursued to completion. The foregoing cure periods are subject to the specific provisions of Section 10.4(a)(i) which grant a cure period of one hundred eighty (180) days for the consequences specified in Section 10.4(a)(i).

10.4 Remedies on Default. Whenever any Event of Default occurs and is not cured (or cure undertaken) in accordance with Section 10.3 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 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 and Sales Tax Rebates into the Special Fund pursuant to Section 6.1(a), 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 and 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, particularly Section 6. Such damages shall

consist of Developer's actual damages as of the time of entry of judgment (meaning the right to receive payments from the Special Fund to be applied to the Total Reimbursement Amount plus interest in accordance with and limited by this Agreement). 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.

10.5 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.

10.6 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 expiration of the Economic Reimbursement Period, and 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 10.3 and 10.4). 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 its best 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 Center, nor from the unavailability for any reason of particular contractors, subcontractors, vendors, investors or lenders desired by Developer in connection with the Center, 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 11.6 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.

10.7 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.

## 11. Cooperation and Alternative Dispute Resolution.

11.1 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 its Director of Community Development 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.

11.2 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.

11.3 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 11.2, 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.

## 12. Miscellaneous Provisions.

12.1 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 12.1.

12.2 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 Sales Tax Rebates described in Section 6 above 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. Notwithstanding the fact that this Agreement is being recorded in the Official Records of Pinal County, it is intended that this Agreement shall not be an encumbrance upon the title to the Property, that the terms and conditions of this Agreement are not covenants running with the land, and that no person is bound by (or entitled to) the burdens and benefits of this Agreement unless such burdens were expressly assumed or such benefits were expressly assigned to such party. 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.

12.3 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.

12.4 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.

12.5 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
44624 West Garvey Road
Maricopa, Arizona 85239
Telephone: (520) 568-9098

With copies to:
City of Maricopa
Attn: Denis Fitzgibbons, City Attorney
Fitzgibbons Law Offices PLC
711 East Cottonwood, Suite E
P.O. Box 11208
Casa Grande, AZ 85230-1208
Telephone: (520) 426-3824
Facsimile: (520) 426-9355

If to Developer:
Vestar Arizona XLIX, L.L.C.
Attn: David Larcher
2425 E. Camelback Rd., #750
Phoenix, AZ 85016
Telephone: (602) 866-0900
Facsimile: (602-955-2298

With a copy to:
Rose Law Group p.c.
Attn: Jordan R. Rose
7272 E. Indian School, Suite 360
Scottsdale, Arizona 85251
Telephone: (480) 505-3932
Facsimile: (480) 505-3925

(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. Notwithstanding the foregoing, no payment shall be deemed to be made until actually received in good and available funds by the intended payee. 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 by the intended recipient.

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

12.7 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.

12.8 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.

12.9 Waiver. Without limiting the provisions of Section 10.5 of this Agreement, 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.

12.10 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 12.2 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 7.1 and 7.2 (or elsewhere in this Agreement) shall be third party beneficiaries of such indemnification provisions.

12.11 Exhibits. Without limiting the provisions of Section 1 of this Agreement, 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.

12.12 Integration. Except as expressly provided herein, 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.

12.13 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.

12.14 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.

12.15 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.

12.16 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.

12.17 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.

12.18 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. Upon amendment of this Agreement as established herein, references to "Agreement" or "Development Agreement" shall mean the Agreement as amended by any subsequent, duly processed minor or major amendment, as defined in Subsection 3.1(d). The effective date of any duly processed minor or major amendment shall be the date on which the last representative for the Parties executes the Agreement. If, after the effective date of any amendment(s), the parties find it necessary to refer to this Agreement in its original, unamended form, they shall refer to it as the "Original Development Agreement." When the Parties mean to refer to any specific amendment to the Agreement which amendment is unmodified by any

subsequent amendments, the Parties shall refer to it by the number of the amendment as well as its effective date.

12.19 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.

12.20 Survival. All indemnifications contained in Sections 7.1 and 7.2 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.

12.21 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 12.5. 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, consistent with the provisions of this Section 12.21.

12.22 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.

12.23 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.

12.24 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.

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: Peter G. Thomas
Title: Manager

**CITY**

CITY OF MARICOPA, ARIZONA, an Arizona municipal corporation

By: _____
Its: Mayor

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

STATE OF ARIZONA )
) ss.
COUNTY OF PINAL )

The foregoing instrument was acknowledged before me this 25 day of May 2006, by Kelly Anderson, City Mayor of the City of Maricopa, Arizona, an Arizona municipal corporation, who acknowledged that he/she signed the foregoing instrument on behalf of the City.

Laura L Conner
Notary Public

My commission expires:
6-6-08

LAURA L. CONNER
Notary Public - Arizona
Pinal County
My Commission Expires
June 6, 2008

STATE OF ARIZONA )
) ss.
COUNTY OF Maricopa )

The foregoing instrument was acknowledged before me this 19th day of May, 2006, by Peter Thomas, the Manager of Vistar Arizona XLIX, L.L.C., an Arizona limited liability company.

Notary Public

My commission expires:
5/31/07

DIANE ENGEBRETSON
NOTARY PUBLIC - ARIZONA
MARICOPA COUNTY
My Commission Expires
May 31, 2007

## EXHIBIT A
## LEGAL DESCRIPTION OF THE PROPERTY

A PORTION OF THE WEST HALF OF SECTION 3, TOWNSHIP 5 SOUTH, RANGE 3 EAST OF THE GILA AND SALT RIVER MERIDIAN, PINAL COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 3, FROM WHICH THE WEST QUARTER CORNER OF SAID SECTION BEARS SOUTH 00°38'08" WEST, A DISTANCE OF 2611.61 FEET;

THENCE SOUTH 89°51'30" EAST ALONG THE NORTH LINE OF SAID SECTION, A DISTANCE OF 149.97 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 89°51'30" EAST ALONG SAID NORTH LINE, A DISTANCE OF 1836.84 FEET;

THENCE DEPARTING SAID NORTH LINE, SOUTH 00°06'49" WEST, A DISTANCE OF 220.00 FEET;

THENCE SOUTH 89°51'30" EAST, PARALLEL WITH AND 220.00 FEET SOUTH OF SAID NORTH LINE, A DISTANCE OF 264.00 FEET;

THENCE DEPARTING SAID PARALLEL LINE, NORTH 00°06'49" EAST, A DISTANCE OF 220.00 FEET TO SAID NORTH LINE;

THENCE SOUTH 89°51'30" EAST ALONG SAID NORTH LINE, A DISTANCE OF 162.00 FEET;

THENCE DEPARTING SAID NORTH LINE, SOUTH 00°06'49" WEST, A DISTANCE OF 210.00 FEET;

THENCE SOUTH 89°51'30" EAST, PARALLEL WITH AND 210.00 FEET SOUTH OF SAID NORTH LINE, A DISTANCE OF 131.00 FEET;

THENCE DEPARTING SAID PARALLEL LINE, SOUTH 00°06'49" WEST, A DISTANCE OF 2833.73 FEET;

THENCE SOUTH 67°48'02" WEST, A DISTANCE OF 175.49 FEET TO THE BEGINNING OF A 5000.00 FOOT RADIUS CURVE, CONCAVE NORTHERLY;

THENCE SOUTHWESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 22°48'30", AN ARC LENGTH OF 1990.40 FEET;

THENCE NORTH 89°23'28" WEST, A DISTANCE OF 321.67 FEET;

THENCE NORTH 00°31'22" EAST, A DISTANCE OF 878.48 FEET;

THENCE NORTH 00°40'25" EAST, A DISTANCE OF 2604.62 FEET TO THE POINT OF BEGINNING;

EXCEPT FOR THE EASTERNMOST 350 FEET ALONG THE ENTIRE EASTERN BORDER OF THE ABOVE-DESCRIBED PROPERTY.

**EXHIBIT B**
**TRADE AREA**

**AVAILABLE FROM THE CITY OF MARICOPA UPON REQUEST**

## EXHIBIT C
## PUBLIC IMPROVEMENTS

The improvements are examples of what the Parties to this Agreement intend to constitute Public Improvements. This list is intended by the Parties to be illustrative, but not exhaustive. By its execution of this Agreement, Developer does not undertake to provide all of the following improvements; but to the extent Developer provides any of the following improvements, such improvements shall be deemed, for the purposes of this Agreement, to constitute Public Improvements.

1. Public Improvements.
   a. SR347: Half Street Improvements (Principal Arterial 1) on the project frontage, including curbs, gutters, utilities, and sidewalks

   b. Farrell Road: Half Street Improvements (Principal Arterial 2) on the project frontage, including curbs, gutters, utilities, and sidewalks.

   c. Traffic control signal[s] once MUTCD signal warrants are met.

   d. Once the access are settled with ADOT and the Ak-Chin Indian Community, new traffic signal[s] should be installed and/or existing signal modified as approved.

   e. All other improvements in the public right of way required by the City or necessary for the installation of required Public Infrastructure, including streets, water mains, lines, public sewer construction (including collection, transport, storage, treatment, dispersal, affluent use, and discharge), traffic control systems and devices, utility relocation, and landscaping.

## EXHIBIT D
## FLOOR AREA CALCULATION

The following provisions of Section 612.A.1 of the City Zoning Code, as the same may hereafter be amended, shall apply:

> The term "floor area," for the purpose of calculating the number of off-street parking spaces required, shall be determined on the basis of the exterior-area dimensions of the building, structure or use multiplied by the number of floors, minus 10 percent, except as may hereafter be provided or modified but shall include garden centers.

## EXHIBIT E
## CITY OF MARICOPA INSURANCE REQUIREMENTS

A. Property. Builder's risk insurance on an all-risk, replacement cost basis for the Public Improvements.

B. Liability. Insurance covering the Developer and (as an additional insured) the City against liability imposed by law or assumed in any written contract, and/or arising from personal injury, bodily injury or property damage, with a limit of liability of $5,000,000.00 per occurrence with a $5,000,000.00 products/completed operations limit and a $10,000,000.00 general aggregate limit. Such policy must be primary and written to provide blanket contractual liability, broad form property damage, premises liability and products and completed operations.

C. Contractor. During the period of any construction involving the Public Improvements, each of the general or other contractors with which the Developer contracts for any such construction shall be required to carry liability insurance of the type and providing the minimum limits set forth below:

i) Workman's Compensation insurance and Employer's Liability with limits of $1,000,000.00 per accident, $1,000,000.00 per disease and $1,000,000.00 policy limit disease.

ii) Commercial general liability insurance on a $5,000,000.00 per occurrence basis providing coverage for:

Products and Completed Operations
Blanket Contractual Liability
Personal Injury Liability
Broad Form Property Damage
X.C.U.

iii) Business automobile liability including all owned, non-owned and hired autos with a limit of liability of not less than $1,000,000.00 combined single limit for personal injury, including bodily injury or death, and property damage.

D. Architect. In connection with any construction involving the Public Improvements, the Developer's architect shall be required to provide architect's or engineer's professional liability insurance with a limit of $1,000,000.00 per claim. This policy, or other policies, shall cover claims for a period of not less than three (3) years after the completion of construction involving the Public Improvements.

E. Engineer. In connection with any construction involving the Public Improvements, the Developer's soils engineer or environmental contractor shall be required to provide engineer's professional liability insurance with a limit of $1,000,000.00 per claim. This policy, or other policies, shall cover claims for a period of not less than three (3) years after the completion of the construction involving the Public Improvements.

F. CPI Adjustments. The minimum coverage limits set forth above shall be adjusted as of

the commencement of any construction involving the Public Improvements, and every five (5) years thereafter during the period of any construction involving the Public Improvements by rounding each limit up to the million dollar amount which is nearest the percentage of change in the Consumer Price Index (the "CPI") determined in accordance with this paragraph. In determining the percentage of change in the CPI for the adjustment of the insurance limits, the CPI for the month of October in the year preceding the adjustment year, as shown in the column for "All Items" in the table entitled "All Urban Consumers" under the "United States City Averages" as published by the Bureau of Labor Statistics of the United States Department of Labor, shall be compared with the corresponding index number for the month of October in the year during which the Effective Date of the Development Agreement of which this Exhibit G is a part occurs.

G. Miscellaneous. All policies of insurance shall comply with the requirements of Section 9.4 of the Development Agreement of which this Exhibit is a part and, in addition, shall provide that no such policy may be amended, cancelled, terminated or permitted to expire without at least 30 days advance written notice to the City. References herein to the Agreement shall mean the capitalized terms not otherwise defined herein shall have the meanings set forth in the Development Agreement of which this Exhibit G is a part.

H. Acceptability of Insurers: Insurance is to be placed with insurers duly licensed and approved in the State of Arizona and with an "A.M. Best" rating of not less than A-VII. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect Developer from potential insurer insolvency.

I. Waiver of Subrogation. The policies shall contain a waiver of subrogation against the City, its officers, officials, agents and employees.

J. Primary Coverage. Developer's insurance coverage shall be primary insurance with respect to the City, its officers, officials, agents and employees. Any insurance maintained by the City its officers, officials, agents and employees shall be in excess of the coverage provided by Developer and shall not contribute to it.

K. Approval. Any modification or variation from the insurance requirements in the Insurance Exhibit must have prior approval from the City Manager's Office whose decision shall be final. Such action will not require formal contract amendment, but may be made by administrative action.

L. Notice of Cancellation. Each insurance policy shall include provisions to the effect that it shall not be suspended, voided, cancelled, reduced in coverage except after thirty (30) days prior written notice has been given to the City. Such notice shall be sent directly to the City Manager's office and shall be sent by certified mail, return receipt requested.

M. Verification of Coverage. Developer shall furnish the City with original certificates of insurance signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage shall be clearly noted on the certificate of insurance. All certificates of insurance are to be received and approved by the City before the Commencement of Construction. Each insurance policy must be in effect at or prior to the

Commencement of Construction and must remain in effect for the duration of the Agreement. Failure to maintain the insurance policies as required by this Agreement or to provide timely evidence of renewal will be considered a material breach of this Agreement. All certificates of insurance shall be sent directly to the City Manager's Office. The City reserves the right to require complete, certified copies of all insurance policies and endorsements required by this Insurance Exhibit at any time.

**OWNER CONSENT**

**DEVELOPMENT AGREEMENT FOR MARICOPA TOWNE CENTER**

The undersigned are the owners of fee simple title to all of the property as described in the foregoing Development Agreement. The undersigned hereby consent to the foregoing Development Agreement, and agree that such Development Agreement may be recorded as to the property.

OWNER:

SM INVESTMENT, INC., an Arizona corporation

By: _____
Name: Petra Schadeberg
Title: Vice President

PANTANO II LLC, an Arizona limited liability company

By: SM Investment, Inc., its authorized Member

By: _____
Name: Petra Schadeberg
Title: Vice President

May 24, 2006

**Notice of Intent to Enter into a Retail Development Tax Incentive Agreement**

Notice is hereby given, pursuant to Arizona Revised Statutes § 9-500.11, as amended, that the CITY OF MARICOPA, ARIZONA, an Arizona municipal corporation ("City") intends to enter into a retail development tax incentive agreement (entitled the "Development Agreement") with VESTAR ARIZONA LIII, LLC, an Arizona limited liability company, on a date which is more than fourteen days after the adoption of this Notice by the City.

PASSED AND ADOPTED by the Mayor and the City Council of the City of Maricopa, Arizona, this 2nd day of May, 2006.

CITY OF MARICOPA, ARIZONA, an Arizona municipal corporation

By: _____
Mayor

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

Lenore Stevenson
13031 W. Black Hill Rd
Peoria, AZ 85383

December 1, 2007

Pinal County Zoning & Planning
31 N. Pinal St, Bldg F
Florence, Az 85232

Re: Desert Gardens PZ-PD-025-07

Dear County Commissioner,

Please accept this letter as my full support for the Desert Gardens project located at the northeast corner of Warren and Miller Roads. As a property owner in the area, (I own a 10 acre parcel on the southeast side of Warren and Miller Roads) I am thrilled to see the possibility of improved infrastructure, roads and the enhanced greenbelt effect adjacent to the Santa Rosa Canal that this type of development will provide for. This could be the beginning of many new projects in the area and would only be a benefit for all.

Quality planned communities such as this will preserve the natural beauty of Pinal County while allowing for continued growth, expansion and improvements. This project is also compatible with the future growth plans of this area with many nearby Master Planned communities. The organized development will certainly add value to the area.

Thank you for your time and consideration.

Sincerely,

Lenore Stevenson

Lenore Stevenson

GLOBAL WATER

November 26, 2007

NF26 Land, LLC
Attn: Jeff Nielson
3040 N 44th Street, Ste. 3
Phoenix, AZ 85018

RE: Will Serve Letter for proposed development
40 acres – NEC Warren and Miller
Maricopa, Pinal County, AZ

Dear Jeff:

Global Water - Santa Cruz Water Company and Global Water - Palo Verde Utilities Company, (collectively, the "Utilities") are private water and wastewater companies that have been authorized by the Arizona Corporation Commission ("ACC") to furnish water and wastewater utility service within portions of Pinal County.

The Utilities will need to submit an application to the ACC to expand their service area to include your development as shown on Exhibit A attached hereto. Prior to the submission of the application to the ACC, the landowner will need to execute an infrastructure agreement. Upon approval from the ACC, execution of water and wastewater line extension agreements and other various concurrent regulatory approvals including CAAG 208, the Utilities will be able to serve the development.

Please feel free to contact me if you have any questions or require any additional information. We look forward to serving your development.

Sincerely,
GLOBAL WATER - SANTA CRUZ WATER COMPANY
GLOBAL WATER - PALO VERDE UTILITIES COMPANY

Cindy M. Liles
Senior Vice-President and CFO

21410 North 19th Avenue, Suite 201, Phoenix, Arizona 85027
Phn 623.580.9600
Fax 623.580.9659
gwresources.com

GLOBAL WATER

November 26, 2007

NF26 Land, LLC
Attn: Jeff Nielson
3040 N 44th Street, Ste. 3
Phoenix, AZ 85018

RE: Will Serve Letter for proposed development
165 acres – NEC Warren and Miller
Maricopa, Pinal County, AZ

Dear Jeff:

Global Water - Santa Cruz Water Company and Global Water - Palo Verde Utilities Company, (collectively, the "Utilities") are private water and wastewater companies that have been authorized by the Arizona Corporation Commission ("ACC") to furnish water and wastewater utility service within portions of Pinal County.

The Utilities have submitted an application to the ACC to expand their service area to include the above referenced development. Upon approval from the ACC, execution of water and wastewater line extension agreements and other various concurrent regulatory approvals including CAAG 208, the Utilities will be able to serve the development.

Please feel free to contact me if you have any questions or require any additional information. We look forward to serving your development.

Sincerely,
GLOBAL WATER - SANTA CRUZ WATER COMPANY
GLOBAL WATER - PALO VERDE UTILITIES COMPANY

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Redfield Financial, Inc.
Real Estate Investments

Date: November 7, 2007

To: City of Maricopa

Re: Minor Amendment to General Plan GPA -07.02

From:

Bennett Brown
Redfield Financial Inc
P.O. Box 14946
Scottsdale AZ 85267

480-217-8781

I own 80 acres directly across Warren Road from the above project and am in favor of their request for change to the General Plan.

80 Acres owned by Redfield Financial:
510-67-004 A
510-67-004 B
510-67-005

Please feel free to contact me with any questions.

Sincerely,

Bennett Brown, President
Redfield Financial Inc.

P.O. Box 14946
Scottsdale, AZ 85267
480-217-8781 Office / 602-532-7451 Fax
brown@redfieldfinancial.com