

RESOLUTION NO. 14-15

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF MARICOPA, ARIZONA, APPROVING AND ADOPTING AN AGREEMENT BETWEEN THE CITY OF MARICOPA AND VP JOHN WAYNE PARKWAY 21, LLC FOR THE CONTRIBUTION AND FUTURE REIMBURSEMENT OF UP TO \$600,00 FOR THE DESIGN AND DEVELOPMENT OF CERTAIN PUBLIC INFRASTRUCTURE IMPROVEMENTS TO NORTHBOUND SR 347.

WHEREAS, VP John Wayne Parkway 21, LLC, an Arizona limited liability company (“Landowner”), requested that the City of Maricopa enter into an Agreement for the contribution and future reimbursement of up to \$600,000 for the design and development of certain public infrastructure improvements to northbound SR 347 in the form which is attached to this Resolution and by this reference made a part hereof; and

WHEREAS, the City of Maricopa believes that it is in the best interest of the City to enter into this Agreement in order to facilitate the construction of improvements to northbound SR 347 and the development of the property subject to the Agreement.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Maricopa, Arizona, as follows:

Section 1. The City of Maricopa by the requisite vote of its City Council hereby approves and adopts, and authorizes and instructs its Mayor on behalf of the City of Maricopa to enter into the Agreement with Landowner in the form attached to and made a part of this Resolution.

Section 2. The provisions of this Resolution are not enacted as an emergency measure and shall not be effective for thirty (30) days.

PASSED AND ADOPTED by the Mayor and Council of the City of Maricopa, Arizona, this 15th day of April, 2014.

Christian Price
Mayor

ATTEST:

Vanessa Bueras
City Clerk

APPROVED AS TO FORM:

Denis Fitzgibbons
City Attorney

**AGREEMENT BETWEEN THE CITY OF MARICOPA
AND VP JOHN WAYNE PARKWAY 21, LLC**

THIS AGREEMENT (the "Agreement") is made as of the 15th day of April, 2014, by and between the CITY OF MARICOPA, an Arizona municipal corporation (the "City") and VP JOHN WAYNE PARKWAY 21, LLC, an Arizona limited liability company (the "Landowner"). City and Landowner are sometimes referred to herein collectively as "Parties", or individually as a "Party".

RECITALS

A. The Landowner is the owner of the real property generally depicted/described on Exhibit A attached hereto (the Property), which is generally located on the Northeast corner of State Route 347 and Smith Enke Road.

B. The Landowner desires and intends to develop the Property and construct a multi-tenant retail building on the Property. In connection with the development of the Property, the Landowner agrees to design and construct offsite improvements consisting of a third lane for northbound State Route 347, including curb, gutter and sidewalk in accordance with City and ADOT standards.

C. The City agrees to contribute and pay to the Landowner up to \$600,000 for the offsite improvements to be completed by the Landowner in accordance with this Agreement subject to the Landowner's agreement to reimburse the City for its contribution.

D. The Landowner and the City desire to enter into this Agreement in order to set forth the rights and obligations of the Landowner with respect to the construction of a multi-tenant retail building, the construction of offsite improvements, and the obligations of both the Landowner and the City with respect to the contribution and reimbursement of monies in connection with the construction of such offsite improvements.

E. The City has determined that because the public purpose of this Agreement is to improve streets and neighborhood traffic and the benefit received by the City is not less than the consideration the City is providing to Landowner, the Agreement as set forth herein does not amount to an illegal gift or subsidy.

F. The Parties agree that in making the promises contained in this Agreement that certain benefits and advantages will accrue to the Parties as a result of the performance of this Agreement and therefore this Agreement is being entered into in reliance upon the mutual benefits afforded the Parties upon the terms and conditions as set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual promises and covenants set forth herein, and for other consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

1. Accuracy of the Recitals. The Parties hereby confirm the accuracy of the Recitals set forth above, which are incorporated herein by this reference.

2. **Effective Date.** Upon adoption of a Resolution by the City Council and execution by both Parties, this Agreement shall become effective and shall continue through January 31, 2024, or until all payment, performance and reimbursement obligations of the Parties have been fully performed, whichever date is sooner.

3. **Offsite Improvements**

3.1 **Offsite Improvements.** The Landowner agrees to design and construct a third lane for northbound SR 347, including curb, gutter and sidewalk (“Offsite Improvements”) in accordance with City and Arizona Department of Transportation Roadway Design Guidelines dated May 2012. The scope of the Offsite Improvements is more specifically described in those certain Paving Plans for Maricopa Road (SR347), Maricopa, Arizona, prepared by Atwell, dated 3/3/14, under Job No. 12002171. The Landowner will be responsible for obtaining all necessary permits and for any and all costs associated with such design and construction. The Landowner further agrees that the design and construction of the Offsite Improvements shall be procured in accordance with all applicable laws, Rules and Regulations, including but not limited to, the bidding requirements set forth in Title 34 of the Arizona Revised Statutes.

3.2 **Contribution by City.** The City agrees to contribute and pay to the Landowner up to the sum of SIX HUNDRED THOUSAND AND NO/100 DOLLARS (\$600,000.00) (“City’s Contribution”) for the construction of the Offsite Improvements. The City will pay the City’s Contribution as follows:

(a) Upon completion of the Offsite Improvements, evidenced by the acceptance and dedication of the Offsite Improvements by the City or other appropriate government entity, the Landowner will provide the City with a final project budget reflecting the actual hard and soft costs associated with the Offsite Improvements, and all applicable unconditional lien waivers. The City will have sixty (60) days to review the documentation provided by the Landowner pursuant to this subparagraph (a) above and pay the City’s Contribution. If the City has questions regarding the Offsite Improvements costs, the Landowner agrees to provide the City with information reasonably supporting the basis for any such costs.

(b) The City’s obligation to pay the City’s Contribution to the Landowner is contingent upon the Landowner having completed the construction of a multi-tenant retail building of no less than 7,500 square feet (“Building”) as verified by a Certificate of Occupancy on or before January 31, 2015 (“Deadline”). Should extenuating circumstances arise prior to the Deadline, Landowner shall provide City with a written request to extend the Deadline for no longer than three (3) months. City’s approval of such request shall not be unreasonably withheld, conditioned or delayed. The parties agree that an extenuating circumstance includes the failure of ADOT to issue all permits and approvals required to commence construction of the Offsite Improvements by August 1, 2014. In the event the Landowner fails to complete the Building by the Deadline or any agreed upon extension thereof, the City shall have no obligation to pay the City’s Contribution to the Landowner.

(c) The City’s obligation to pay the City’s Contribution to the Landowner is also contingent upon the recordation of this Agreement in the Pinal County Recorder’s Office, as more fully described in Paragraph 9.26 below.

3.3 **Reimbursement to City.** The Landowner agrees to reimburse the City the amount of the City’s Contribution from any and all monies received by the Landowner from any entity other than the City as a specific reimbursement or contribution for the costs of the Offsite Improvements, including but not limited to any specific reimbursement or contribution received from Dignity Health. The full amount of any such reimbursement or contribution shall be immediately paid to the City until the City is reimbursed the full amount of the City’s Contribution. Landowner shall reimburse the City the full amount of City’s contribution, or any remaining portion thereof, immediately upon the sale of the Property to any person or entity that is not directly (or indirectly

through another entity) controlled by Landowner or its members or manager. If not sooner paid as provided herein, the Landowner, or any successor entity approved by the City, shall reimburse the City the full amount of the City's Contribution on or before January 31, 2024.

4. Acceptance of Offsite Improvements. When the Offsite Improvements are completed, then upon written request of the City or other appropriate governmental entity, Landowner shall comply with the infrastructure acceptance requirements of the City or other appropriate governmental entity, including the dedication of the Offsite Improvements, at no cost to the City or other governmental entity, and City or other governmental entity shall accept such Offsite Improvements upon such reasonable and customary conditions as the City or other governmental entity may impose.

5. Warranty Period. Following acceptance of the Offsite Improvements, Landowner or its assignee shall comply with the infrastructure warranty requirements of the City or other appropriate governmental entity.

6. Indemnity; Risk of Loss. Landowner shall pay, defend, indemnify and hold harmless City and its City Council members, officers and employees from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including attorney's fees, expert fees and court costs) (collectively, "Claims") which arise from or relate in any way to any act or omission of Landowner, or its employees, contractors, subcontractors, agents or representatives in implementing the terms of or undertaken in the fulfillment of Landowner's obligations under this Agreement, except to the extent any Claim arises from the acts or omissions of the City. The foregoing indemnity obligations of Landowner shall survive the expiration or termination of this Agreement.

7. City Representations. City represents and warrants to Landowner that:

7.1 The City's execution and approval of this Agreement has been made in compliance with the procedural requirements of the Maricopa City Code.

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

7.3 As of the date of this Agreement, the City knows of no litigation, proceeding, initiative, referendum, or investigation contesting the powers of the City or its officials, with respect to this Agreement, that has not been disclosed in writing to Landowner.

7.4 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.

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

8. Landowner Representations. Landowner represents and warrants to City that:

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

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 Landowner has no knowledge of any violations of City, County, State, Federal, building, land use, fire, health, safety, environmental, hazardous materials or other governmental or public agency codes, ordinances, regulations, or orders with respect to the Property.

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

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

8.6 This Agreement (and each undertaking of Landowner contained herein) constitutes a valid, binding and enforceable obligation of Landowner, 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. Landowner will defend the validity and enforceability of this Agreement in the event of any proceeding or litigation arising from its terms that names Landowner as a party or which challenges the authority of Landowner to enter into or perform any of its obligations hereunder. Delivery and performance of this Agreement by Landowner is not prohibited by, and does not conflict with, any other agreements, instruments, judgments or decrees to which Landowner is a party or to which Landowner is otherwise subject.

8.7 Landowner 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.

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

9. Miscellaneous Provisions.

9.1 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 court action.

9.2 Interpretation of Conditions and Terms. 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.

9.3 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 or telefacsimile machine, or by any nationally recognized express or overnight delivery service (e.g. Federal Express or UPS), delivery charges prepaid:

If to City: City of Maricopa
Attn: City Manager
P.O. Box 610
Maricopa, Arizona 85139
Telephone: (520) 316-6811
Facsimile: (520) 316-6859

With a copy to: City of Maricopa
Attn: City Attorney
P.O. Box 610
Maricopa, Arizona 85139
Telephone: (520) 426-3824
Facsimile: (520) 426-9355

If to Landowner: VP John Wayne Parkway 21, LLC
Attn: Walter Crutchfield
2400 E. Arizona Biltmore Circle Drive, Suite 1220
Phoenix, Arizona 85016
Telephone: 602-459-9923
Facsimile: 602-955-9333

With a copy to: Brier, Irish, Hubbard & Erhart, PLC
Attn: Jeff Hubbard
2400 East Arizona Biltmore Circle, Suite 1300
Phoenix, Arizona 85016
Telephone: 602-515-0160
Facsimile: 602-522-3945

(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 or telefacsimile machine shall be deemed effective only upon confirmation of the successful transmission by the sender's telecopy or telefacsimile machine, followed by deposit of a "hard copy" for next business-day delivery by a recognized national overnight delivery service.

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

9.5 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.

9.6 Attorneys' Fees and Costs. In the event of commencement of a legal action in an appropriate forum by a Party to enforce any covenant or any of such Party's rights or remedies under this Agreement, including any action for declaratory or equitable relief, the prevailing Party in any such action shall be entitled to recovery of its reasonable attorneys' fees and court costs and expenses, including, but not limited to, its costs of expert witnesses, and witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental expenses associated with such dispute.

9.7 Third Party Beneficiaries. No person or entity shall be a third party beneficiary of this Agreement, except for permitted transferees, assignees, or lenders to the extent that they assume or succeed to the rights and/or obligations of Landowner under this Agreement, and except that the indemnified parties referred to in the indemnification provisions set forth in this Agreement (or elsewhere in this Agreement) shall be third party beneficiaries of such indemnification provisions.

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

9.9 Entire Agreement. 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.

9.10 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.

9.11 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.

9.12 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.

9.13 Amendment. No change or addition is to be made to this Agreement except by written amendment executed by City and Landowner. Within ten (10) calendar days after any amendment to this Agreement is fully executed, but in no event prior to the date that the Agreement is recorded, such amendment shall be recorded in the Official Records of Pinal County, Arizona. Upon amendment of this Agreement as established herein, references to "Agreement" shall mean the Agreement as amended.

9.14 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.

9.15 Survival. All indemnifications contained herein 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 of any applicable statute of limitations.

9.16 Nonliability of City Officials, Etc., and of Employees of Landowner. No City Council member, official, representative, agent, attorney or employee of 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 non-performance by City or for any amount which may become due to any other Party or its successor, or with respect to any obligation of City under the terms of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the liability of Landowner under this Agreement shall be limited solely to the assets of Landowner and shall not extend to or be enforceable against the individual assets of any of the individuals or entities who are members, managers or employees of Landowner. Notwithstanding anything contained in this Agreement to the contrary, the liability of the City under this Agreement shall be limited solely to the assets of the City and shall not extend to or be enforceable against the individual assets of any of the individuals or entities who are council members, officials, or employees of the City.

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

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

9.19 Dispute Resolution. In the event a dispute arises under this Agreement, 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 ("AAA") 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 Landowner. The matter in dispute shall be submitted to a mediator mutually selected by Landowner 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 Landowner 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 of experience in mediating or arbitrating disputes relating to commercial property. The cost of any such mediation shall be divided equally between the City and Landowner. 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, to the extent allowed by the Arizona Open Meetings Law, § 38-431 et. seq.

9.20 Assignment. The Parties shall not assign all or any part of this Agreement without the prior written approval of the other Party, which approval shall not be unreasonably withheld, conditioned, or delayed. The City's review of the suitability of any Assignee shall be limited to an analysis of Assignee's financial ability to construct the Offsite Improvements and to reimburse the City as provided herein. Upon the assignment by Landowner of all or part of its obligations hereunder and the City's approval of such Assignee, Landowner shall be released and relieved of the obligations assumed by such Assignee.

9.21 No Agency Created. Nothing contained in this Agreement creates any partnership, joint venture or agency relationship between City and Landowner. No term or provision of this Agreement is intended to be for the benefit of any person, firm, organization or corporation not a party hereto, and no other person, firm organization or corporation may have any right or cause of action hereunder.

9.22 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all Parties may be physically attached to a single document.

9.23 Waiver. No delay in exercising any right or remedy by the Parties shall constitute a waiver thereof. Waiver of any of the terms of this Agreement shall not be valid unless in writing and signed by all Parties hereto. The failure of any Party to enforce the provisions of the Agreement or require performance of any of its provisions shall not be construed as a waiver of such provisions or affect the right of the Party to enforce all of the provisions of this Agreement. Waiver of any breach of this Agreement shall not be held to be a waiver of any other or subsequent breach thereof.

9.24 Severability of Provisions. Each term and provision of this Agreement shall be considered severable and if any term or provision of this Agreement be declared or be determined to be illegal or invalid, the validity of the remaining terms and provisions shall not be affected thereby, and said illegal or invalid term or provision shall not be deemed a part of this Agreement, notwithstanding any other provision of this Agreement to the contrary.

9.25 Force Majeure. The time period for performance (including the Deadline) and/or performance of any Party and the duration of this Agreement shall be extended by any causes that are beyond the reasonable control of the Party required to perform, such as an act of God, civil or military disturbance, delays resulting from any act or omission of governmental authorities or utilities, labor strike, injunctions in connection with litigation, labor or material shortage, or acts of terrorism.

9.26 Recordation; Right to Terminate of Record. Landowner intends to record a final plat ("Plat") against the Property that subdivides the Property into a single lot. Promptly following the recordation of the Plat, the parties agree: (a) to remove the depiction of the Property attach hereto as Exhibit A and attach the legal description of the Property created by the Plat as Exhibit A, which shall be substantially consistent with the size and configuration of the Property originally depicted on Exhibit A, and (b) to record this Agreement in the Pinal County Recorder's Office. At any time following the recordation of this Agreement, Landowner shall have the right to convert and re-characterize the Landowner's obligations under Section 3.3, from an obligation that runs with the land, to a personal obligation of Landowner that does not run with the land and is not binding upon future owners of the Property, by providing the City with alternative security for the reimbursement obligation in the form of a cash deposit, bond, letter of credit, or other form of security acceptable to the City in its sole and absolute discretion. If Landowner provides such substitute security, the City and the Landowner shall execute and cause to be recorded in the Pinal County Recorder's Office an instrument that confirms that the Landowner's obligations under Section 3.3 no longer run with the land or bind any future owners of the Property.

Notwithstanding the foregoing, the Landowner remains obligated to reimburse the City the full amount of the City's contribution, or any remaining portion thereof, immediately upon the sale of the Property in accordance with Section 3.3.

9.27 Status Statements. Any Party (the "Requesting Party") may, at any time, and from time to time, deliver written notice to any other Party requesting such other Party (the "Providing Party") to provide in writing that, to the knowledge of the Providing Party, (a) this Agreement is in full force and effect and a binding obligation of the Parties, (b) this Agreement has not been amended or modified, and if so amended, identifying the amendments, (c) the Requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults, and (d) any other matter reasonably requested (a "Status Statement"). A Party receiving a request hereunder shall execute and return such Status Statement within fifteen (15) business days following the receipt thereof. The City Manager (or his or her designee) shall have the right to execute any Status Statement requested by Landowner hereunder. The City acknowledges that a Status Statement hereunder may be relied upon by transferees and mortgagees; provided, however, the City shall have no liability for monetary damages to Landowner, or any transferee or mortgagee, or to any other person in connection with, resulting from or based upon the good faith provision of any Status Statement by the City.

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

THE CITY OF MARICOPA, an Arizona municipal corporation

Mayor: Christian Price

Dated: _____

ATTEST:

Clerk/Deputy Clerk,

Approved As To Form

By: _____
City Attorney

VP JOHN WAYNE PARKWAY 21, LLC, an Arizona limited liability company

By: _____

Its: _____

STATE OF ARIZONA)
) ss.
County of _____)

The foregoing was acknowledged before me this ____ day of _____, 2014, by Christian Price, the Mayor of the City of Maricopa, who acknowledged that he signed the foregoing instrument on behalf of the City.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
) ss.
County of _____)

The foregoing was acknowledged before me this ____ day of _____, 2014, by _____, the _____ of VP John Wayne Parkway 21, LLC, an Arizona limited liability company who acknowledged that he signed the foregoing instrument on behalf of VP John Wayne Parkway 21, LLC.

Notary Public

My Commission Expires:

EXHIBIT A

