

WHEN RECORDED, RETURN TO:

**FOURTH AMENDMENT TO
DEVELOPMENT AGREEMENT**

THIS FOURTH AMENDMENT TO DEVELOPMENT AGREEMENT ("**Fourth Amendment**") is made on March 20, 2018, by and among CAPDEVL060, LLC, an Arizona limited liability company ("**Developer**"), and CITY OF MARICOPA, ARIZONA, an Arizona municipal corporation (the "**City**"). City and Developer may be referred to herein, collectively, as the "**Parties.**"

RECITALS

A. City and Shea Maricopa, LLC, an Arizona limited liability company ("Shea"), entered into that certain Development Agreement dated April 3, 2007, and recorded in the Official Records of the Pinal County Recorder on April 27, 2007 as Fee No. 2007-051053 (the "**Original Development Agreement**"), as amended by that certain First Amendment to the Development Agreement dated July 1, 2008, and recorded in the Official Records of the Pinal County Recorder on February 25, 2010 as Fee No. 2010-017696 and that certain Second Amendment to Development Agreement dated March 2, 2010, and recorded in the Official Records of the Pinal County Recorder on March 11, 2010 as Fee No 2010-023074 and as re-recorded in the Official Records of the Pinal County Recorder on March 19, 2010 as Fee No 2010-025992 (the "**Amendments**").

B. On November 5, 2014, the City and Shea entered into that certain Amendment and Consent to Assignment of Development Agreement with Estoppel dated November 5, 2014, and recorded in the Official Records of the Pinal County Recorder on December 31, 2014 as Fee No. 2014-075061 which amended the Original Development Agreement and Amendments and assigned the Original Development Agreement and Amendments to Developer ("the **Consent**") (such Consent collectively with the Original Development Agreement and the Amendments are referred to herein as the "**Development Agreement**").

C. Because of the recent recession and the current issues with retail development, Developer and City want to extend certain reimbursement periods so Developer has more time to recover the cost of the public infrastructure that Developer built and to encourage Developer to bring additional retail businesses to the City.

D. Therefore, the Developer and City desire to further amend the Development Agreement on the terms set forth in this Fourth Amendment.

AGREEMENTS

NOW, THEREFORE, in consideration of the foregoing recitals and representations and the mutual promises contained in this Fourth Amendment, the Parties agree as follows:

1. Defined Terms. All capitalized terms used herein, unless otherwise specified, shall have the same meaning ascribed to them in the Development Agreement or any amendments thereto.

2. Amendment. The Development Agreement shall be amended as follows:

(a) Effective immediately, Section 1(d) shall be deleted in its entirety and replaced with the following:

“Applicable Interest” shall be zero percent (0%).

(b) Effective April 27, 2024, Section 1(oo) shall be deleted in its entirety and replaced with the following:

“Retail Sales Taxes” means, for the purposes of this Development Agreement, a portion 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.

“Construction Taxes” means, for the purposes of this Development Agreement, all or a portion of the City’s Construction transaction privilege taxes authorized by the Maricopa City Code.

(c) Effective immediately, Section 1 (tt) is hereby deleted in its entirety and replaced with the following:

“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 the Development Agreement extend beyond April 26, 2032. In the event Developer does not construct and have one or more ongoing retail business(es) occupy an additional 84,000 square feet of enclosed gross leasable floor area as required in Section 6.1, as amended herein, in no event shall the Term of the Development Agreement extend beyond April 26, 2027.

(d) Effective immediately, Section 6.2 is hereby deleted in its entirety and replaced with the following:

Total Reimbursement Amount. The “Total Reimbursement Amount” as of March 20, 2018 shall be \$15,619,930.09. If Developer receives the Total Reimbursement Amount, this Development Agreement shall terminate immediately.

(e) Effective April 26, 2024, Section 6.1 shall be deleted in its entirety and replaced with the following:

Retail Sales Tax Reimbursement. In view of the Developer’s construction of the Public Improvements, the construction and occupation of the Minimum Retail Improvements and otherwise performing its obligations under this Development Agreement, the City shall reimburse and pay to Developer transaction privilege taxes (the “Retail Sales Tax Reimbursements”) in the percentages set forth below of the Retail Sales Taxes imposed and actually received by the City for retail sales,

excluding the multifamily housing portion (which shall include, but not be limited to, sale of goods, admissions, exhibitions, amusements, restaurants, bar and hotel activities occurring within the Center (irrespective of whether the Property from which sales are generated are owned by Developer or others, including pad purchasers)) (hereinafter referred to as “**Taxable Activities**”):

- (i) From April 27, 2024 through April 26, 2025: 45% of the Retail Sales Taxes imposed and actually received by the City for Taxable Activities
- (ii) From April 27, 2025 through April 26, 2026: 42% of the Retail Sales Taxes imposed and actually received by the City for Taxable Activities
- (iii) From April 27, 2026 through April 26, 2027: 40% of the Retail Sales Taxes imposed and actually received by the City for Taxable Activities

In the event Developer constructs an additional 84,000 square feet of enclosed gross leasable floor area of improvements which is occupied by one or more ongoing retail business(es) on or before January 1, 2025, the City shall continue to reimburse and pay to Developer Retail Sales Tax Reimbursements equal to 40% of the Retail Sales Taxes imposed and actually received by the City for Taxable Activities from April 27, 2027 through April 26, 2032 from any establishments located on pad sites which were not generating revenue as of the date of this Fourth Amendment. From April 27, 2027 through April 26, 2032, in no event shall “Retail Sale Taxes” include any portion of the City’s Construction transaction privilege taxes or transaction privileges taxes which are imposed on “retail sales” from establishments located on pad sites which were generating revenue as of the date of this Fourth Amendment including, but not limited to, the pad sites occupied by Walmart, McDonald’s, the retail center and Big 5 (pad site 8) as shown on the map attached hereto as Exhibit A.

Construction Sales Tax Reimbursement. In view of the Developer’s construction of the Public Improvements, the construction and occupation of the Minimum Retail Improvements, the recent recession, and otherwise substantially performing its obligations under this Development Agreement, from April 27, 2024 through April 26, 2027, the City shall reimburse and pay to Developer 100% of the Construction Taxes imposed and actually received by the City for construction and related contracting activities by Developer or purchaser of the Pad Sites and their contractors and subcontractors in constructing the Center (excluding the multifamily housing portion) (the “Construction Tax Reimbursements”). In no event shall Developer receive any Construction Tax Reimbursements for any construction or related contracting activities at the Center after April 26, 2027.

All Retail Sales Tax Reimbursements and Construction Tax Reimbursements shall be determined, deposited in the City’s Special Fund, and payable as set forth in this Section 6.1(a). In no event shall City owe Developer any additional Sales Tax Reimbursement or other payment related to the Public Improvements or Minimum Retail Improvements after the expiration of the Term of this Agreement.

3. Full Force and Effect. Except as expressly changed by this Fourth Amendment, the terms and provisions of the Development Agreement, the Amendments and the Consent remain in full force and effect.

IN WITNESS WHEREOF, Developer, and the City have executed this Fourth Amendment or have caused the same to be executed by their respective duly authorized representatives as of the date first set forth above.

DEVELOPER:

CAPDEVL060, an Arizona limited liability company
By: RREF II WELLS, LLC, a Delaware limited liability company, its sole member

By: _____
Name: _____
Title: _____

STATE OF FLORIDA)
) SS.
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by _____ as Senior Officer of RREF II WELLS, LLC, a Delaware limited liability company, as the sole member of CAPDEVL060, LLC, an Arizona limited liability company, on behalf of the company. S/He ____ is personally known to me or ____ has produced a driver's license as identification.

Notary Public
Print Name: _____
Serial No. (if any): _____

THE CITY:

CITY OF MARICOPA, ARIZONA, an Arizona municipal corporation

By: _____
Christian Price, Mayor

ATTEST:

APPROVED AS TO FORM:

By: _____
City Clerk

By: _____
City Attorney