



BOARD OF SUPERVISORS AGENDA ITEM REPORT
CONTRACTS / AWARDS / GRANTS

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: 10/04/22

* = Mandatory, information must be provided

or Procurement Director Award ☐

***Contractor/Vendor Name/Grantor (DBA):**

Knott Development Inc

***Project Title/Description:**

Master Development Partnership and Development Agreement, Kino South Sports and Entertainment Complex

***Purpose:**

Amendment: Contract No. CT-PW-21-364, Amendment No. Two (2). This amendment and restatement of the Development Agreement creates three (3) distinct phases of development and construction, extends the submittal dates for the Predevelopment Phase Work for Phase One, and extends substantial and final completion dates for each phase. Administering Department - Capital Program Office.

***Procurement Method:**

Pursuant to SFQ-PO-2000017, the Board of Supervisors awarded a contract for this project in the amount of \$1,825,000.00 on 04/20/21.

Amendment No. One (1) incorporated the Master Development Partnership and Development Agreement (MDPA) by amending and restating the Original Agreement - Predevelopment Services Agreement (PDSA).

Attachments: Amendment No. Two (2)

***Program Goals/Predicted Outcomes:**

The goal for this Agreement is to develop and operate a new sports and entertainment center and support elements such as hotels, restaurants, retail shops, and outdoor public plazas.

***Public Benefit:**

The benefits will include the integration of healthy community principles that support active recreation, pedestrian, and bicycle enhancements, opportunities for low income youth sport recreation and skills training, creation of the premier sports and entertainment complex, ability to attract regional and national sporting events, sustainability goals, as well as spurring redevelopment, stimulate economic development and expand employment opportunities.

***Metrics Available to Measure Performance:**

The performance will be measured using the procurement evaluation forms pursuant to BOS Policy D29.1.

***Retroactive:**

No.

TO: COB 9-21-22 (1)
Vers.: 4
pgs.: 153

Contract / Award Information

Document Type: _____ Department Code: _____ Contract Number (i.e., 15-123): _____
 Commencement Date: _____ Termination Date: _____ Prior Contract Number (Synergen/CMS): _____
☐ Expense Amount: \$* _____ ☐ Revenue Amount: \$ _____

***Funding Source(s) required:**

Funding from General Fund? ☐ Yes ☐ No If Yes \$ _____ % _____

Contract is fully or partially funded with Federal Funds? ☐ Yes ☐ No

If Yes, is the Contract to a vendor or subrecipient?

Were insurance or indemnity clauses modified? ☐ Yes ☐ No

If Yes, attach Risk's approval.

Vendor is using a Social Security Number? ☐ Yes ☐ No

If Yes, attach the required form per Administrative Procedure 22-10.

Amendment / Revised Award Information

Document Type: CT Department Code: PW Contract Number (i.e., 15-123): 21-364
 Amendment No.: 2 AMS Version No.: 4
 Commencement Date: 10/04/22 New Termination Date: _____
 Prior Contract No. (Synergen/CMS): _____
☒ Expense or ☐ Revenue ☐ Increase ☐ Decrease Amount This Amendment: \$ 0.00

Is there revenue included? ☐ Yes ☒ No If Yes \$ 0.00

***Funding Source(s) required:** General Fund

Funding from General Fund? ☐ Yes ☒ No If Yes \$ 0.00 % 0.00

Grant/Amendment Information (for grants acceptance and awards) ☐ Award ☐ Amendment

Document Type: _____ Department Code: _____ Grant Number (i.e., 15-123): _____
 Commencement Date: _____ Termination Date: _____ Amendment Number: _____
☐ Match Amount: \$ _____ ☐ Revenue Amount: \$ _____


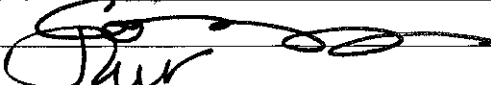
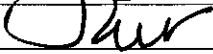
***All Funding Source(s) required:**

*Match funding from General Fund? ☐ Yes ☐ No If Yes \$ _____ % _____

*Match funding from other sources? ☐ Yes ☐ No If Yes \$ _____ % _____

***Funding Source:**

***If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)?**

Contact: Scott Loomis, CPPB Scott Loomis Digitally signed by Scott Loomis
Date: 2022.09.13 12:55:38 -0700 Dawn Dargan Digitally signed by Dawn Dargan
DN: cn=Dawn Dargan, o=Pima County, ou=Procurement,
email=dawn.dargan@pima.gov, c=US
Date: 2022.09.13 13:10:45 -0700
 Department: Procurement Terri Spencer Digitally signed by Terri Spencer
Date: 2022.09.13 13:21:21 -0700 Telephone: 724-8272
 Department Director Signature/Date:  Digitally signed by Terri Spencer
DN: cn=Terri Spencer, o=Pima County, ou=Capital Program Office,
email=terri.spencer@pima.gov, c=US
Date: 2022.09.13 13:21:21 -0700 Nancy Cole 9/13/22
 Deputy County Administrator Signature/Date:  9/19/2022
 County Administrator Signature/Date:  9/19/2022
 (Required for Board Agenda/Addendum Items)



AMENDED AND RESTATED
MASTER DEVELOPER PARTNERSHIP AND DEVELOPMENT AGREEMENT
“MASTER DEVELOPMENT AGREEMENT”

BY AND BETWEEN

KNOTT DEVELOPMENT INC
An Arizona Close Corporation

AND

PIMA COUNTY, ARIZONA

REGARDING

KINO SOUTH SPORTS AND ENTERTAINMENT COMPLEX
PIMA COUNTY, ARIZONA

CT-PW-21-364

October 4, 2022

TABLE OF CONTENTS

ARTICLE I. AMENDMENT AND RESTATEMENT

Section 1.01	Amendment and Restatement of the Development Agreement.	3
Section 1.02	Incorporation and Ratification of the Original Agreement's Reimbursement Provisions.	3
Section 1.03	Name of Agreement.	3

ARTICLE II. EXCLUSIVITY, GROUND LEASE AND OWNER SUBLEASES

Section 2.01	Exclusive Right to Develop.	4
Section 2.02	Consideration for Exclusive Rights.	4
Section 2.03	Recording of Agreement Memorandum.	4
Section 2.04	Ground Lease and Subleases.	4

ARTICLE III. PROJECT

Section 3.01	Project Description.	4
Section 3.02	Building Improvements.	5
Section 3.03	Program Requirements.	5
Section 3.04	Utility Services, Back-Up Facilities and Redundancy.	5

ARTICLE IV. PREDEVELOPMENT WORK – GENERAL

Section 4.01	Professional Team and Contractor Selection.	5
Section 4.02	Project Planning and Design.	5
Section 4.03	Approved Master Project Schedule.	5
Section 4.04	Approved Plans and Specifications.	6
Section 4.05	Building Construction Costs.	6
Section 4.06	Total Project Costs.	6
Section 4.07	Approved Total Project Budget.	6
Section 4.08	Financial Planning.	7
Section 4.09	Project Financing.	7
Section 4.10	Notice to Proceed.	7
Section 4.11	Owner Changes in Design During Predevelopment Period.	7
Section 4.12	Minor Variations.	8
Section 4.13	Government Approvals.	8
Section 4.14	Design of Building Improvements.	8
Section 4.15	Product Selection and Procurement.	8
Section 4.16	Utilities, Back-Up Facilities and Redundancy.	9
Section 4.17	Schedule for Design Plan Preparation and Approvals.	9
Section 4.18	Project Schedule Planning.	9
Section 4.19	Condemnation Services.	9
Section 4.20	Right of Entry.	9
Section 4.21	Easements.	9

Section 4.22	Predevelopment Service Firm Insurance.....	10
Section 4.23	Right to Post Signage.	10
Section 4.24	Record of Predevelopment Work Costs.	10

ARTICLE V. PREDEVELOPMENT WORK – PREDEVELOPMENT PHASE

Section 5.01	Project Program.....	11
Section 5.02	Project Summary.....	11
Section 5.03	Facility Agreement Summary.	12
Section 5.04	Refined Plans and Specifications.	12
Section 5.05	Government Approvals.	12
Section 5.06	Refined Building Construction Costs.....	13
Section 5.07	Refined Predevelopment Costs.	13
Section 5.08	Refined Total Project Costs.....	13
Section 5.09	Refined Financing Costs.	15
Section 5.10	Refined Property Tax Costs.	15
Section 5.11	Refined Cash Flow Projections.	15
Section 5.12	Refined Second Level Lease Costs.	15
Section 5.13	Refined First Level Lease Costs.....	15
Section 5.14	Refined Ground Lease Costs.....	15
Section 5.15	Refined Sublease Costs.	15
Section 5.16	Refined Debt Service Reserves.	15
Section 5.17	Refined Sublease Documents.....	16
Section 5.18	Refined First Level Lease Documents.	16
Section 5.19	Refined Second Level Lease Documents.	16
Section 5.20	Amendment of Business Plan.....	16
Section 5.21	Environmental Assessment Services.....	16
Section 5.22	Premises Surveying Services.....	16
Section 5.23	Community Relations and Stakeholder Discussions.....	17
Section 5.24	Rating Review Package.....	17

ARTICLE VI. PREDEVELOPMENT WORK – DETERMINATION PHASE

Section 6.01	Review of Documents.	18
Section 6.02	Financial Review and Analysis.	18
Section 6.03	Credit Rating Agency Review.....	18
Section 6.04	Lease Participation Contingency.....	19
Section 6.05	Development Phasing.....	19
Section 6.06	Closing of Development Loan.	20
Section 6.07	Phasing Delay Due to Pandemic.	21
Section 6.08	Failure of Lease Participation Contingency.	21
Section 6.09	Owner Nonparticipation Election.....	22
Section 6.10	Effect on Developer from Nonparticipation Election.	23

ARTICLE VII. PROJECT GOVERNANCE

Section 7.01	Establishment of Governance Committees.	24
Section 7.02	Development Committee.....	24

Section 7.03	OAC Group.	25
Section 7.04	Operations Committee.	25
Section 7.05	Capex Committee.	26
Section 7.06	Economic Development Committee.	26
Section 7.07	Community Engagement Committee.	27
Section 7.08	Annual Report from Developer.	28

ARTICLE VIII. DEVELOPMENT MANAGEMENT

Section 8.01	Close-Out of Project.	28
Section 8.02	Scheduling/Expediting Services.	28
Section 8.03	Project Management and Coordination.	28
Section 8.04	Construction and Construction Management.	29
Section 8.05	Punch List Work.	29
Section 8.06	Warranty Work.	29
Section 8.07	Latent Defects.	29
Section 8.08	Training.	29

ARTICLE IX. PROJECT PERSONNEL

Section 9.01	Authorized Representative of Owner.	30
Section 9.02	Authorized Representative of Developer.	30
Section 9.03	Design Builder.	30
Section 9.04	Architect.	30

ARTICLE X. DESIGN BUILD CONTRACT

Section 10.01	Design Build Contract.	31
Section 10.02	Competitive Bidding Requirements.	31
Section 10.03	Subcontractor Approval.	31
Section 10.04	Change Orders.	31
Section 10.05	Construction Meetings and Communications.	32

ARTICLE XI. DEVELOPMENT AND CONSTRUCTION

Section 11.01	Schedule for Construction.	32
Section 11.02	Substantial Completion.	33
Section 11.03	Construction Inspection and Punch List Work.	33
Section 11.04	Commissioning.	33
Section 11.05	Final Completion.	33
Section 11.06	As-Built Plans.	34
Section 11.07	Development Loan Proceeds.	34
Section 11.08	Open Books.	34
Section 11.09	Liens.	35
Section 11.10	Mutual Cooperation and Commercially Reasonable Efforts.	35
Section 11.11	Force Majeure.	35
Section 11.12	Developer to Pay Project Costs.	36

Section 11.13	Prohibition on Owner's Authority to Enter into Contracts and Subcontracts.	36
Section 11.14	Inspection Rights.	36

ARTICLE XII. INSURANCE

Section 12.01	Builder's Risk Insurance.	36
Section 12.02	Design Builder Liability and Workers' Compensation Insurance.	36
Section 12.03	Insurance Policy Requirements.	37
Section 12.04	Evidence of Insurance.	37
Section 12.05	Subcontractor Insurance.	37

ARTICLE XIII. LIMITATIONS ON DEVELOPER'S LIABILITY

Section 13.01	Construction of Project.	37
---------------	-------------------------------	----

ARTICLE XIV. CASUALTY DAMAGE

Section 14.01	Building Improvements.	38
Section 14.02	Repair and Proceeds.	38
Section 14.03	Deficiency.	38

ARTICLE XV. OWNER'S REPRESENTATIONS AND WARRANTIES

Section 15.01	Organization.	38
Section 15.02	Authorization.	38
Section 15.03	Governmental Approvals.	39
Section 15.04	Title to the Premises.	39
Section 15.05	No Third Party Interest in the Premises.	39
Section 15.06	Environmental Matters.	39

ARTICLE XVI. DEVELOPER'S REPRESENTATIONS AND WARRANTIES

Section 16.01	Organization.	40
Section 16.02	Authorization.	41
Section 16.03	Governmental Approvals.	41

ARTICLE XVII. TERMINATION AND REMEDIES

Section 17.01	Termination.	41
Section 17.02	Default.	41
Section 17.03	Remedies.	42
Section 17.04	Waiver of Consequential Damages.	42
Section 17.05	Prevailing Party's Expenses.	42

ARTICLE XVIII. GENERAL PROVISIONS

Section 18.01	Governing Law.....	43
Section 18.02	Jurisdiction, Venue and Process.....	43
Section 18.03	Waiver of Trial by Jury.....	43
Section 18.04	Entire Agreement.....	43
Section 18.05	Non-Waiver.....	43
Section 18.06	Notices.....	44
Section 18.07	No Third Party Beneficiary.....	44
Section 18.08	Cooperation and Additional Instruments.....	44
Section 18.09	Severability.....	44
Section 18.10	Time is of the Essence.....	45
Section 18.11	No Partnership or Joint Venture.....	45
Section 18.12	Captions.....	45
Section 18.13	Language Construction.....	45
Section 18.14	Effective Date.....	45
Section 18.15	Approvals and Consents.....	45
Section 18.16	Estoppel Certificates.....	45
Section 18.17	Successors and Assigns.....	46
Section 18.18	Owner's Brokers.....	46
Section 18.19	Counterparts.....	46
Section 18.20	Exhibits.....	46
Section 18.21	Incorporation of Recitals.....	46
Section 18.22	Americans With Disabilities Act.....	46
Section 18.23	Non-Discrimination.....	46
Section 18.24	Cancellation for Conflict of Interest.....	47
Section 18.25	Ethics.....	47
Section 18.26	Non-Appropriation.....	47
Section 18.27	Public Records - Disclosure.....	48
Section 18.28	Public Records – Records marked Confidential; Notice and Protective Order.....	48
Section 18.29	Compliance with Immigration Laws.....	48
Section 18.30	Israel Boycott Certification.....	48

ARTICLE XIX. DEFINITIONS

Section 19.01	Affiliate.....	49
Section 19.02	Aggregate Debt Service Cash Flow.....	49
Section 19.03	Aggregate Debt Service Reserves.....	49
Section 19.04	Agreement.....	49
Section 19.05	Alternate Components.....	49
Section 19.06	Alternate Facilities.....	49
Section 19.07	Alternate Financing.....	49
Section 19.08	Alternate Finance Termination.....	49
Section 19.09	Amended Business Plan.....	49
Section 19.10	Anchor Elements.....	50
Section 19.11	Applicable Credit Rating Agencies.....	50
Section 19.12	Approved Master Project Schedule.....	50
Section 19.13	Approved Master Project Schedule Letter.....	50
Section 19.14	Approved Plans and Specifications.....	50
Section 19.15	Approved Plans and Specifications Letter.....	50

Section 19.16	Architect.	50
Section 19.17	As-Built Plans.	50
Section 19.18	Builders Risk Insurance.	50
Section 19.19	Building Construction Costs.	50
Section 19.20	Building Improvements.	50
Section 19.21	Business Day.	50
Section 19.22	Business Plan.	50
Section 19.23	Capex Committee.	50
Section 19.24	Casualty.	51
Section 19.25	Certificate of Participation.	51
Section 19.26	Certifying Party.	51
Section 19.27	Change Order.	51
Section 19.28	Clean Air Act.	51
Section 19.29	Common Area.	51
Section 19.30	Community Engagement Committee.	51
Section 19.31	Comprehensive Environmental Response, Compensation and Liability Act.	51
Section 19.32	Construction Budget.	51
Section 19.33	Construction Milestones.	51
Section 19.34	Construction Punch List.	51
Section 19.35	Construction Punch List Work.	51
Section 19.36	Construction Schedule.	51
Section 19.37	Control.	51
Section 19.38	Current Payment Date.	52
Section 19.39	Current Payment Period.	52
Section 19.40	Deadlines.	52
Section 19.41	Design Build Contract.	52
Section 19.42	Design Builder.	52
Section 19.43	Design Builder General Liability Insurance.	52
Section 19.44	Design Builder Indemnity.	52
Section 19.45	Design Builder Insurance.	52
Section 19.46	Design Builder Workers Compensation Insurance.	52
Section 19.47	Determination Phase.	52
Section 19.48	Determination Phase Work.	52
Section 19.49	Developer.	53
Section 19.50	Developer Default.	53
Section 19.51	Developer Nonparticipation Fee.	53
Section 19.52	Developer's Authorized Representative.	53
Section 19.53	Development Affiliate.	53
Section 19.54	Development Agreement.	53
Section 19.55	Development Committee.	53
Section 19.56	Development Loan.	53
Section 19.57	Development Overview.	53
Section 19.58	Development Phase.	53
Section 19.59	Development Phase Completion Dates.	53
Section 19.60	Development Phase One.	53
Section 19.61	Development Phase One Completion Dates.	53
Section 19.62	Development Phase Two.	54
Section 19.63	Development Phase Two Completion Dates.	54
Section 19.64	Development Phase Three.	54
Section 19.65	Development Phase Three Completion Dates.	54

Section 19.66	Economic Development Committee.	54
Section 19.67	Effective Date.	54
Section 19.68	Entertainment Center.	54
Section 19.69	Environmental Laws.	54
Section 19.70	Exclusive Rights.	54
Section 19.71	Existing Kino Complex.	54
Section 19.72	Facility Agreement.	54
Section 19.73	Facility Agreement Summary.	54
Section 19.74	Field House.	54
Section 19.75	Final Business Plan.	54
Section 19.76	Final Completion.	55
Section 19.77	Financing Costs.	55
Section 19.78	First Level Lease.	55
Section 19.79	First Mortgage.	55
Section 19.80	Governance Committees.	55
Section 19.81	Government Approvals.	55
Section 19.82	Government Approvals Schedule.	55
Section 19.83	Government Approvals Schedule Letter.	55
Section 19.84	Government Approvals Work.	55
Section 19.85	Governmental Authority.	55
Section 19.86	Ground Lease.	55
Section 19.87	Hazardous Materials.	55
Section 19.88	Hazardous Materials Transportation Act.	56
Section 19.89	Hotel A.	56
Section 19.90	Hotel B.	56
Section 19.91	Hotel C.	56
Section 19.92	Iceplex.	56
Section 19.93	Iceplex Retail Components.	56
Section 19.94	Insurance Deficiency.	56
Section 19.95	Insurance Excess.	56
Section 19.96	Kino Complex Underpass.	56
Section 19.97	Lease Participation Contingency.	57
Section 19.98	Lease Participation Contingency Extension.	57
Section 19.99	Lease and Management Documents.	57
Section 19.100	Legal Requirements.	57
Section 19.101	Lender.	57
Section 19.102	Memorandum.	57
Section 19.103	Milestone.	57
Section 19.104	Minor Variations.	57
Section 19.105	Monthly Predevelopment Expense Report.	57
Section 19.106	Mosaic Quarter Development.	57
Section 19.107	Nonparticipation Election.	57
Section 19.108	Notice.	57
Section 19.109	Notice to Proceed.	57
Section 19.110	OAC Group.	58
Section 19.111	OAC Meetings.	58
Section 19.112	Operating Affiliate.	58
Section 19.113	Operations Committee.	58
Section 19.114	Original Agreement.	58
Section 19.115	Original Agreement Reimbursement Provisions.	58

Section 19.116	Owner.	58
Section 19.117	Owner's Authorized Representative.	58
Section 19.118	Owner Default.	58
Section 19.119	Owner Predevelopment Change.	58
Section 19.120	Owner Program Requirements.	58
Section 19.121	Owner Reimbursement.	58
Section 19.122	Pandemic Regulations.	58
Section 19.123	Pandemic Development Funds.	58
Section 19.124	Pandemic Reserve Funds.	59
Section 19.125	Parking Garage.	59
Section 19.126	Pavilion.	59
Section 19.127	Permitted Exceptions.	59
Section 19.128	Person.	59
Section 19.129	Phase.	59
Section 19.130	Phase One Predevelopment Phase.	59
Section 19.131	Phase Two Predevelopment Phase.	59
Section 19.132	Phase Three Predevelopment Phase.	59
Section 19.133	Phases.	59
Section 19.134	Planned Development Site Plan.	59
Section 19.135	Predevelopment Cost Invoice.	60
Section 19.136	Predevelopment Period.	60
Section 19.137	Predevelopment Phase.	60
Section 19.138	Predevelopment Phase Reports.	60
Section 19.139	Predevelopment Phase Work.	60
Section 19.140	Predevelopment Service Firms.	60
Section 19.141	Predevelopment Work.	60
Section 19.142	Premises.	60
Section 19.143	Premises Requirements.	60
Section 19.144	Prior Payment Date.	60
Section 19.145	Program Requirements.	60
Section 19.146	Project.	60
Section 19.147	Project Program.	60
Section 19.148	Project Program Approval Letter.	60
Section 19.149	Project Summary.	61
Section 19.150	Project Summary Approval Letter.	61
Section 19.151	Projected Date of Substantial Completion.	61
Section 19.152	Projected Date of Substantial Completion.	61
Section 19.153	Rating Confirmation.	61
Section 19.154	Rating Review Package.	61
Section 19.155	Rating Review Package.	61
Section 19.156	Records.	61
Section 19.157	Refined Building Construction Costs.	61
Section 19.158	Refined Cash Flow Projections.	61
Section 19.159	Refined Debt Service Reserves.	61
Section 19.160	Refined Financing Costs.	61
Section 19.161	Refined First Level Leases.	61
Section 19.162	Refined First Level Lease Costs.	61
Section 19.163	Refined Ground Lease Costs.	62
Section 19.164	Refined Plans and Specifications.	62
Section 19.165	Refined Predevelopment Costs.	62

Section 19.166	Refined Property Tax Costs.	62
Section 19.167	Refined Second Level Leases.....	62
Section 19.168	Refined Second Level Lease Cost.....	62
Section 19.169	Refined Subleases.....	62
Section 19.170	Refined Sublease Costs.	62
Section 19.171	Refined Total Project Costs.....	62
Section 19.172	Regional Stakeholder Meetings.....	62
Section 19.173	Requesting Party.....	62
Section 19.174	Resource Conservation and Recovery Act.....	62
Section 19.175	Second Level Lease.....	62
Section 19.176	SPE.....	62
Section 19.177	Stadium.....	62
Section 19.178	State and Federal Immigration Laws.....	63
Section 19.179	Sublease.....	63
Section 19.180	Substantial Completion.	63
Section 19.181	Support Elements.	63
Section 19.182	Termination Memorandum.....	63
Section 19.183	Total Predevelopment Costs.....	63
Section 19.184	Total Project Budget.....	63
Section 19.185	Total Project Budget Letter.	63
Section 19.186	Total Project Costs.	63
Section 19.187	Total Project Costs Letter.....	63
Section 19.188	Toxic Substance Control Act.	63
Section 19.189	Warranty Period.	63
Section 19.190	Water Pollution Control Act.....	63

MASTER DEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED MASTER DEVELOPER PARTNERSHIP AND DEVELOPMENT AGREEMENT (this "Agreement") is made as of October 4, 2022 (the "Effective Date") by and between PIMA COUNTY, ARIZONA, a political subdivision of the State of Arizona (the "Owner") and KNOTT DEVELOPMENT INC, an Arizona close corporation (the "Developer"). All terms used in this Agreement having an initial capital letter shall have the meanings ascribed to such terms in Article XIX.

RECITALS

- A. Pursuant to that certain Predevelopment Services Agreement dated as of April 20, 2021 between the Developer and the Owner, (the "Original Agreement"), the Developer agreed to perform certain Original Agreement Predevelopment Work and the Owner agreed to compensate, subject to reimbursement, the Developer for the provision of such Original Agreement Predevelopment Work. Pursuant to the Original Agreement, the Owner has paid the Developer the total sum of One Million Eight Hundred Twenty-Five Thousand Dollars (\$1,825,000) and which sum has been reimbursed by Developer to Owner.
- B. Pursuant to the Original Agreement's intent that the Owner and Developer enter into further agreements related to the Original Agreement Predevelopment Work, the Owner and the Developer entered into that certain Master Developer Partnership and Development Agreement on July 6, 2021 via an amendment and restatement of the Original Agreement (the "Development Agreement"), a copy of which is attached to this Agreement as Exhibit A.
- C. Pursuant to the Development Agreement, the Owner and the Developer contemplated a single period of Predevelopment Work to complete the Predevelopment Phase and the Determination Phase for the entire Project. The Owner and the Developer desire to execute and deliver this Agreement in order to amend and restate the Development Agreement in its entirety to create, and reflect, three (3) distinct phases of development and construction for the Project – Development Phase One, Development Phase Two and Development Phase Three – with each such Development Phase requiring the same work and deliverables requirements as were originally contemplated pursuant to the Development Agreement.
- D. The amendment and restatement of the Development Agreement is likewise intended to provide the Developer with an expanded period within which to complete Predevelopment Work associated with Development Phase One.
- E. For each Development Phase, the Developer will be required to engage in self-funded Predevelopment Work consisting of the same requirements originally contemplated by the Development Agreement and will subject the Developer to a Development Phase Lease Participation Contingency which is identical to the Lease Participation Contingency originally contemplated by the Development Agreement.
- F. For each Development Phase, the Developer will be required to engage in self-funded Determination Phase Work consisting of the same Determination Phase Work originally contemplated by the Development Agreement. Each Development Phase Determination Period will require the Developer and the Owner to obtain a Rating Confirmation and provides the Owner with the opportunity to issue a Nonparticipation Election with respect to each Development Phase in the same manner as did the Development Agreement.
- G. The Owner is the owner of certain unimproved real property consisting of ninety (90) acres, more or less, known as the Kino South Sports and Entertainment Complex which is located approximately as shown on the Planned Development Site Plan that was attached to the Development Agreement as Exhibit B (the "Premises")

- H. The Premises is subject to that certain City of Tucson PAD 18: Kino Health Campus and its Minor Amendments (as the same may be amended from time to time, the "Premises Requirements"), a copy of which was attached to the Development Agreement as Exhibit C.
- I. The Owner has agreed to provide the Developer with exclusive rights, as set forth in this Agreement, to develop and construct Building Improvements, physical infrastructure and utilities services on the Premises in the following phases (each, a "Phase," and collectively, the "Phases") consisting of (i) the Iceplex, (ii) the Field House, (iii) the Sportsplex, (iv) the Stadium, (v) the Parking Garage, (vi) the Alternate Facilities (referred to individually or collectively with the Iceplex, Field House, Sportsplex, Stadium and the Parking Garage, as the "Anchor Elements"), (vi) the Iceplex Retail Components, (vii) the Pavilion Components, (viii) the Entertainment Center, (ix) the Stadium Retail Components, (x) Hotel A, (xi) Hotel B, (xii) Hotel C, (xiii) the Alternate Components (referred to individually or collectively with the Iceplex Retail Components, the Pavilion Components, the Entertainment Center, the Stadium Retail Components, Hotel A, Hotel B, Hotel C, as the "Support Elements"), with such Building Improvements being constructed in accordance with the phasing plan for Development Phase One, Development Phase Two and Development Phase Three set forth in Article VI of this Agreement, and, if the Owner does not make a Nonparticipation Election, with the Owner receiving fifty-five percent (55%) of the net cash flow generated by each Anchor Element, all as provided in this Agreement.
- J. The Developer has previously developed a preliminary business plan for the development, construction, financing and operation of the Building Improvements, to be amended pursuant to each Predevelopment Phase and its associated Determination Phase set forth in this Agreement (the "Business Plan"), a copy of the current version of which was attached to the Development Agreement as Exhibit D.
- K. The Developer has agreed to perform the predevelopment work associated with the development of the Anchor Elements at the Developer's sole cost and expense, subject only to the conditional Owner Reimbursement provisions set forth in this Agreement.
- L. The Developer will enter into a ground lease with the Owner on the key terms generally outlined in Exhibit E attached to the Development Agreement and in form and substance otherwise reasonably satisfactory to the Owner and the Developer (the "Ground Lease"), pursuant to which the Owner will lease the Premises to the Developer, and the Developer will lease the Premises from the Owner for a period of forty (40) years, in addition to an initial period that will constitute the time necessary for the Developer to develop and construct the Building Improvements in each Phase as contemplated by this Agreement.
- M. Subject to the Predevelopment Work conducted by the Developer during each Predevelopment Phase, the results of each associated Determination Phase, the Developer's satisfaction of each associated Lease Participation Contingency and the Owner not making an associated Nonparticipation Election, with respect to Anchor Elements: (i) the Developer may enter into a sub-ground lease relative to the development of each such Phase and construction of the Anchor Elements for each such Phase (each, a "Sublease") with a single purpose entity ("SPE") development Affiliate of the Developer (each, a "Development Affiliate") or may construct any of the Anchor Elements for a Development Phase on its own accord without a Sublease, (ii) each such Development Affiliate (or the Developer, if the Developer does not utilize a Development Affiliate to develop and construct the Anchor Elements) will enter into a first level operating lease (each a "First Level Lease") of each such Anchor Element with the Owner; (iii) the Owner will, simultaneously with the execution and delivery of the First Level Lease for each such Phase, enter into a second level operating lease of each such Anchor Element (each, a "Second Level Lease") either the Developer or with an SPE operating Affiliate of the Developer (an "Operating Affiliate"); (iv) each such Operating Affiliate (or the Developer, as the case may be) will enter into either facility management agreements or triple net leases with respect to each such Anchor Element with facility management for each such Anchor Element

selected by the Developer; and (v) the Operating Affiliates (or the Developer, as the case may be) may further sublease non-facility space in each such Anchor Element to triple net lessees (such subleases and management agreements, together with the Ground Lease and any and all ancillary documents relating thereto, are herein collectively referred to as the "Lease and Management Documents").

- N. Subject to the Owner's and Developer's decision to adopt the Development Phases defined in this Agreement, the Developer will develop and construct the Building Improvements constituting Support Elements in accordance with the Development Phasing Plan of its own accord, with Affiliates, via third-party sub-ground leases or a combination thereof, but in no circumstance shall the development and construction of the Support Elements include the Owner as a participant in the ownership, leasehold or other aspects of the applicable development and financing plan for Support Elements, provided, however, that if the Owner makes a Nonparticipation Election and the Developer procures the Alternate Financing, the Developer shall adopt a development and construction phasing plan for the Support Elements in accordance with Section 6.08(c) and Section 6.10(a) of this Agreement.
- O. The Developer has agreed to develop the Premises, demolish any improvements located thereon, and build the Building Improvements on the Premises in substantial accordance with and subject to applicable provisions of the Business Plan (as amended pursuant to the Predevelopment Phase and the Determination Phase), the Premises Requirements and this Agreement (the "Project").
- P. The Developer and the Owner have agreed to enter into this Agreement to evidence their agreement with the amendment and restatement of the Development Agreement and with respect to the design, financing, development, construction and completion of the Project.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Owner and the Developer hereby agree as follows:

ARTICLE I. AMENDMENT AND RESTATEMENT

Section 1.01 Amendment and Restatement of the Development Agreement.

The Owner and the Developer do hereby amend and restate the Development Agreement with and pursuant to this Agreement, which shall supersede and replace the Development Agreement in its entirety.

Section 1.02 Incorporation and Ratification of the Original Agreement's Reimbursement Provisions.

Notwithstanding the provisions of Section 1.01 of this Agreement, the Developer and the Owner do hereby incorporate in this Agreement by this reference the provisions of Section 2.02, Section 2.03, Section 2.04 and Section 2.05 of the Original Agreement (the "Original Agreement Reimbursement Provisions") with the same force and effect as though the Original Agreement Reimbursement Provisions were fully set forth herein. The execution and delivery of this Agreement shall not render ineffective nor obviate either Party's respective rights and obligations under the Original Agreement Reimbursement Provisions, which rights and obligations shall remain in full force and effect.

Section 1.03 Name of Agreement.

Upon execution and delivery of this Agreement, this Agreement shall be referred to as the "Master Development Agreement."

ARTICLE II. EXCLUSIVITY, GROUND LEASE AND OWNER SUBLEASES

The Owner and the Developer hereby agree to the following exclusivity provisions.

Section 2.01 Exclusive Right to Develop.

Until this Agreement is terminated, the Developer shall have the exclusive right to (a) serve as the developer for the Project, (b) enter into a development agreement for the Premises and the development of the Project and the design and construction of the Building Improvements, (c) enter into the Ground Lease with the Owner for the Premises and the other leases and agreements included in the Lease and Management Documents, (d) develop the Project on the Premises and (e) construct the Building Improvements (the "Exclusive Rights"). The Owner hereby agrees not to initiate, solicit, encourage or knowingly facilitate or induce the submission of any inquiries, proposals or offers that constitute or may be reasonably expected to lead to the appointment of another Person as the developer for the Project or the consummation of any agreement of any form or type, whether written or oral, that would provide any Person other than the Developer with any of the Exclusive Rights.

Section 2.02 Consideration for Exclusive Rights.

The Owner hereby acknowledges and agrees that the Developer's agreement to conduct the Predevelopment Work and the Developer's agreement to be financially responsible for the Predevelopment Work and the Project are, individually and/or collectively, adequate consideration for the Exclusive Rights and represent a substantial time, effort and financial commitment on the part of the Developer and that without the grant of the Exclusive Rights the Developer would be unwilling to conduct the Predevelopment Work and be financially responsible for the Predevelopment Work and the Project.

Section 2.03 Recording of Agreement Memorandum.

Upon the execution and delivery of this Agreement, the Developer and the Owner shall execute, acknowledge and deliver and cause to be recorded in the real estate records of Pima County, Arizona a memorandum of this Agreement, substantially in the form attached to the Development Agreement as Exhibit F (the "Memorandum"). The Developer shall be responsible for recording the Memorandum, including all costs and expenses associated therewith. If this Agreement is terminated for any reason, the Developer and the Owner shall execute and deliver a memorandum noting the termination of this Agreement, substantially in the form attached to the Development Agreement as Exhibit G (the "Termination Memorandum") Notwithstanding the foregoing, to the extent that an Owner Reimbursement is due pursuant to the provisions of Section 6.09 of this Agreement, the Owner Reimbursement shall be paid prior to the execution, delivery and filing of the Termination Memorandum.

Section 2.04 Ground Lease and Subleases.

The Developer and the Owner shall use good faith, reasonable efforts to negotiate and enter into the Ground Lease, each First Level Lease and each Second Level Lease substantially as provided in the Business Plan, but subject to each Predevelopment Phase and its associated Determination Phase. The First Level Leases and the Second Level Leases are expected to be straight pass-throughs of rights and obligations under the Ground Lease with respect to the particular Phases that are the subjects thereof, although rents payable thereunder will be as structured as a result of the Predevelopment Phase and the Determination Phase.

ARTICLE III. PROJECT

Section 3.01 Project Description.

The Project is described in the Business Plan (as the same will be amended pursuant to each Predevelopment Phase and its associated Determination Phase), and will be further developed and described more fully in a Project program description which shall be prepared by the Developer pursuant to the provisions of Section 5.01 of this Agreement

(the "Project Program"). The Project Program will be specifically detailed in a Project summary to be prepared by the Developer pursuant to the provisions of Section 5.02 of this Agreement (the "Project Summary").

Section 3.02 Building Improvements.

The Developer shall be responsible for the development, design, financing, construction and operational turnover of the Building Improvements in each Phase, all in accordance with the Project Program.

Section 3.03 Program Requirements.

The Project Program and the Project Summary, together with the Approved Plans and Specifications, will establish the project requirements for each Development Phase, including the Building Improvements included therein (the "Program Requirements"). The Developer shall cause the development, design, financing and construction of the Project and the Building Improvements to be completed in accordance with the Approved Master Project Schedule and to facilitate the overall goal of completing the Project.

Section 3.04 Utility Services, Back-Up Facilities and Redundancy.

The Developer shall cause the Design Builder to contract with applicable utility companies for the Building Improvements to be serviced by the utility services, back-up facilities and redundancy requirements as required to satisfy the Project Program.

ARTICLE IV. PREDEVELOPMENT WORK – GENERAL

In consideration of the Owner's grant of the Exclusive Rights, the Developer shall perform the following predevelopment work for each Development Phase at its own cost, subject to reimbursement by the Owner in accordance with Section 6.09 of this Agreement, relative to the design, planning, financing and development of the Project and the construction of the Building Improvements in each Development Phase (the "Predevelopment Work"). The time period for the Developer to engage in Predevelopment Work shall commence upon the Effective Date and for each Development Phase shall conclude with the closing of each respective Development Loan.

Section 4.01 Professional Team and Contractor Selection.

The Developer shall select and engage a professional team which shall include, without limitation, (a) an Architect for each Phase, (b) the Design Builder, (c) a civil engineering firm, (d) a geotechnical engineering firm, (e) an environmental engineering and testing firm and (f) any other engineering, service or consulting firms deemed necessary by the Developer, to assist the Developer in performing the Predevelopment Work, obtaining the Development Loan, and developing the Lease and Management Documents (sometimes individually or collectively referred to as "Predevelopment Service Firms").

Section 4.02 Project Planning and Design.

The Developer shall (a) manage the development of design criteria for the Project and the Building Improvements, (b) work with the Architect for each Phase to provide architectural design services based on the design criteria of the Project and the Building Improvements and to produce architectural plans and specifications for the Building Improvements and (c) work with the Design Builder to provide cost estimating, construction scheduling and other services related to the development of the plans and specifications for the Building Improvements.

Section 4.03 Approved Master Project Schedule.

Pursuant to the completion of the Predevelopment Work, the Predevelopment Phase Work and the Determination Phase Work associated with each Development Phase, but prior to the closing of each Development Loan, the Developer and the Design Builder shall agree on a master Project schedule for each Development Phase which incorporates the Government Approvals Schedule and the Construction Schedule, sets forth the dates for starting and the completion of the various critical stages of construction of each Phase within such Development Phase, the

Construction Milestones, the Deadlines, the Projected Date of Substantial Completion and the Projected Date of Final Completion for each Phase within a Development Phase, as they may be amended from time to time pursuant to this Agreement (the "Approved Master Project Schedule"). The Owner shall have the right to review and approve each Approved Master Project Schedule, such approval limited to, and based solely on, approval of the duration and deadlines within the Approved master Project Schedule as those relate to (a) compliance of the Approved Master Project Schedule with the Premises Requirements and (b) conflicts between the Approved Master Project Schedule and the Owner's operations surrounding, and in the immediate vicinity of, the Premises. The Owner shall not have the right to approve the Construction Schedule, the Construction Milestones or construction means or methods. In order to evidence the acceptance of each Approved Master Project Schedule, each of the Owner, the Developer and the Design Builder shall execute and deliver the Approved Master Project Schedule Letter, substantially in the form attached to the Development Agreement as Exhibit H.

Section 4.04 Approved Plans and Specifications.

Pursuant to the completion of the Predevelopment Work, the Predevelopment Phase Work and the Determination Phase Work associated with each Development Phase, but prior to the closing of each Development Loan, the Developer and the Design Builder shall agree on the final plans and specifications for the Anchor Elements within each Development Phase as prepared by the Design Builder and the Architect, as the same may be modified from time to time in accordance with the terms of this Agreement (the "Approved Plans and Specifications"). The Owner shall have the right to approve each set of Approved Plans and Specifications, such review to be limited to, and based solely on, the compliance of the Approved Plans and Specifications with the Premises Requirements. In order to evidence the acceptance of each set of Approved Plans and Specifications, the Owner, the Developer, the Architect and the Design Builder shall execute and deliver the Approved Plans and Specifications Letter, substantially in the form attached to the Development Agreement as Exhibit I.

Section 4.05 Building Construction Costs.

Pursuant to the completion of the Predevelopment Work, the Predevelopment Phase Work and the Determination Phase Work associated with each Development Phase, but prior to the closing of each Development Loan, the Developer and the Design Builder shall agree on the final costs and expenses of constructing the Building Improvements for each Phase, commonly known as "hard costs," including, without limitation, the costs and fees payable to the Design Builder pursuant to the Design Build Contract, but not in excess of the Construction Budget absent compliance with other provisions of this Agreement applicable to increases in the Construction Budget (the "Building Construction Costs").

Section 4.06 Total Project Costs.

Pursuant to the completion of the Predevelopment Work, the Predevelopment Phase Work and the Determination Phase Work associated with each Development Phase, but prior to the closing of each Development Loan, the Developer and the Design Builder shall agree on all of the direct and indirect costs associated with the development, design, financing, construction and turn-over of each applicable Anchor Element within a Development Phase, including, without limitation, the Total Predevelopment Costs, the Financing Costs and the Building Construction Costs of each Anchor Element (the "Total Project Costs"). The Total Project Costs shall not include (a) except to the extent specifically included in the definition of Building Construction Costs, the cost of any off-site improvements other than those referenced in the Business Plan and the Amended Business Plan, or (b) the fees to be paid to or other costs and expenses payable to the Owner's Authorized Representative or any other consultants or professionals hired by the Owner to assist it with the evaluation of the Project and entering into documentation with respect thereto. In order to evidence the acceptance of each set of Total Project Costs, each of the Developer and the Design Builder shall execute and deliver the Total Project Costs Letter, substantially in the form attached to the Development Agreement as Exhibit J.

Section 4.07 Approved Total Project Budget.

Pursuant to the completion of the Predevelopment Work, the Predevelopment Phase Work and the Determination

Phase Work associated with each Development Phase, but prior to the closing of each Development Loan, the Developer and the Design Builder shall agree on the line-item budget supporting the Total Project Costs for each Anchor Element within a Development Phase, as the same may be modified from time to time (the "Total Project Budget"). To evidence the acceptance of each total Project Budget, each of the Developer and the Design Builder shall execute and deliver the Total Project Budget Letter, substantially in the form attached to the Development Agreement as Exhibit K. The Developer shall provide the Owner with a copy of each fully-executed Total Project Budget Letter.

Section 4.08 Financial Planning.

The Developer shall (a) prepare and evaluate budgets and perform economic analyses incorporating basic cost assumptions and other relevant considerations, (b) provide advice on costs in relation to the site considerations, including the availability of utilities, soil conditions and the like, (c) prepare construction cost estimates and schematics, design development and the bid set working drawing stages for each Anchor Element within a Development Phase of Project, (d) prepare value engineering alternatives for each Anchor Element, and (e) prepare and overall cash flow projection for each Development Phase of the Project.

Section 4.09 Project Financing.

The Developer shall obtain a Development Loan for each Development Phase for the development, design, construction and operation of each Development Phase within the Project in an amount satisfactory to the Developer in all respects and under which the Developer, and not the Owner, shall be responsible for all debt service. The Development Loan shall be secured by an encumbrance on the Developer's interest in the Ground Lease and the Lease and Management Documents for each such Development Phase, but shall not under any circumstances encumber the Owner's interest in the Premises or the Ground Lease. The Owner shall cooperate with the Developer and the Lender in connection with the Developer obtaining each Development Loan and shall provide all information reasonably required by the Lender necessary for the Lender to evaluate the collateral for each Development Loan. The Owner shall provide any consents and estoppels with respect to the Ground Lease, the Lease and Management Documents and this Agreement in form and content reasonably required by the Lender in connection with the documentation and evidencing of a Development Loan. In connection with the closing of a Development Loan, the Owner shall cooperate with the Developer to the extent reasonably required to facilitate the closing of the Development Loan.

Section 4.10 Notice to Proceed.

In due course following the closing of a Development Loan, the Developer shall issue a Notice to Proceed for the associated Development Phase in the form attached to the Development Agreement as Exhibit L. The Developer shall provide the Owner with a copy of each executed Notice to Proceed.

Section 4.11 Owner Changes in Design During Predevelopment Period.

To the extent that any modifications to the Anchor Element designs requested by the Owner (pursuant only to its right to review and approve each Development Phase of the Project with respect to the Premises Requirements as set forth in this Agreement) prior to the Developer's issuance of a Notice to Proceed for any Development Phase will result in a material change to the then-anticipated Total Project Costs or a material delay in the then-anticipated Projected Date of Substantial Completion or a material change in the Project Program or Project Summary (each an "Owner Predevelopment Change"), the Developer shall promptly notify the Owner in writing together with the probable cost and estimated delay associated with an Owner Predevelopment Change. If there is more than one (1) practical alternative for the performance of an Owner Predevelopment Change, the Developer shall consult in good faith with the Owner regarding a mutually acceptable means of implementing the desired Owner Predevelopment Change. The Owner agrees to implement any reasonable alternative solution proposed by the Developer for an Owner Predevelopment Change, to the extent that such alternative will not increase the then-anticipated Total Project Costs or result in a delay of the then-anticipated Projected Date of Substantial Completion or adversely impact the structure or systems serving the Project. If an Owner Predevelopment Change materially increases the

then-anticipated Total Project Costs and/or would cause a delay in the then-anticipated Projected Date of Substantial Completion, provided the Owner consents in writing to such Owner Predevelopment Change, the addition to the Total Project Costs represented by the Owner Predevelopment Change and/or the delay in the Projected Date of Substantial Completion represented by the Owner Predevelopment Change, the Owner Predevelopment Change (or an alternative to an Owner Predevelopment Change accepted by the Owner) shall be implemented by the Developer and the (a) Owner Predevelopment Change shall be incorporated into the plans and specifications to be approved by the Owner, (b) costs associated with the Owner Predevelopment Change shall be added to the Total Project Costs and (c) time delay associated with the implementation of the Owner Predevelopment Change shall be added to and extend the Projected Date of Substantial Completion.

Section 4.12 Minor Variations.

The Developer may approve Minor Variations in the size, design, engineering, configuration and siting of the Anchor Elements within each Development Phase, with prior written notice to the Owner, but without obtaining the Owner's prior written consent.

Section 4.13 Government Approvals.

- (a) The Developer shall provide all services in connection with securing required governmental approvals for the development, design and construction of each Development Phase ("Government Approvals"), including, without limitation, (i) obtaining favorable zoning and land use approvals, (ii) conducting informal and formal discussions with Governmental Authorities and neighborhood groups, (iii) coordinating professional consultants' activities in preparing professional presentations, (iv) making presentations, (v) making any changes required by the Governmental Authorities being requested to grant such approvals, (vi) obtaining permit approvals, (vii) obtaining waivers, special exceptions and variances, and (viii) lobbying for government resources as applicable and necessary.
- (b) In order to ensure timely submission, review and approval of the necessary Government Approvals for the Developer's completion of each Development Phase, the Developer shall prepare and the Owner, as owner of the Premises, shall cooperate in creating a schedule to meet certain dates in the submission, review and approval process (the "Government Approvals Schedule"). To evidence the completion of each Government Approvals Schedule, the Owner, the Developer and the Design Builder shall execute and deliver the Government Approvals Schedule Letter, substantially in the form attached to the Development Agreement as Exhibit M.
- (c) The Owner shall use commercially reasonable efforts to provide the Developer with expedited processing, review and approval of all required Governmental Approvals within the authority of the Owner, including, but not limited to, conducting required plan reviews, issuing required Government Approvals for the Building Improvements and physical infrastructure and utilities and the like.

Section 4.14 Design of Building Improvements.

The Developer shall coordinate the design of the Building Improvements with the Architect for each Phase and the Design Builder in accordance with the Premises Requirements, subject to the Owner's right to review and approve such design, such approval limited to, and solely based on, the design of the Building Improvements being in compliance with the Premises Requirements.

Section 4.15 Product Selection and Procurement.

The Developer, with the assistance of the Design Builder, shall select suitable services, systems, materials, building components for each Development Phase. The Developer, with the assistance of the Design Builder shall (a) make arrangements concerning the procurement of long lead-time items to ensure their delivery in accordance with the

Approved Master Project Schedule, (b) assemble lists of resources of supply for all items for review and approval, including pre-qualification criteria for those sources of supply, contact potential bidders to determine their interest and select suitable sources and supply, and (c) prepare, with the additional assistance of engineers and consultants, life cycle, energy and green building studies and, based on these studies, select suitable systems, materials, building components and equipment for the development of the Project and the construction of the Building Improvements.

Section 4.16 Utilities, Back-Up Facilities and Redundancy.

The Developer shall coordinate with the Design Builder in investigating, analyzing, designing and negotiating all necessary design and procurement for utility services, back-up facilities and utility redundancy for each Development Phase, as specified in this Agreement.

Section 4.17 Schedule for Design Plan Preparation and Approvals.

The Developer shall prepare and distribute schedules for design plan preparation and approvals for the Anchor Elements for the Architect, the Design Builder, design consultants, Governmental Authorities and others and any amendment to the Approved Master Project Schedule.

Section 4.18 Project Schedule Planning.

As described in the Business Plan (to be amended pursuant to each Determination Phase), the Developer and the Design Builder will meet with the Development Committee on behalf of the Owner to obtain advisory input regarding the coordination and planning of the development and operation of each Development Phase and the construction of the Building Improvements.

Section 4.19 Condemnation Services.

Developer shall retain appropriate consultants to obtain evidence sufficient to demonstrate that the Premises (in its existing state and after the construction of the Building Improvements) is not subject to any pending, threatened or contemplated condemnation, eminent domain or similar proceeding by any Governmental Authority, it being understood and agreed that such work may include solely obtaining written verification from the Owner.

Section 4.20 Right of Entry.

The Owner hereby agrees with and consents to the Developer and its Predevelopment Service Firms, under the direction and supervision of the Developer, entering the Premises to perform Predevelopment Work. The Developer shall provide the Development Committee with a schedule of site visits to be made by Predevelopment Service Firms. Predevelopment Work site visits shall be on weekdays during the hours of 7:30AM and 5:30PM and if any site visit by Predevelopment Firms is reasonably expected to consist of activities involving (i) equipment other than commercial service vehicles used by Predevelopment Service Firms, (ii) noise that would exceed normal noise levels at or immediately adjacent to the Premises if the Predevelopment Work was not being conducted, or (iii) disrupting pedestrian or vehicular traffic to, from or surrounding the Premises, the Developer shall coordinate with the Development Committee to manage any such activities to avoid material disruption to the Owner and its normal operational activities in the immediate vicinity of the Premises. Site visits to the Premises outside of the day and time parameters set forth in this Section 4.20 shall be disclosed to the Development Committee by the Developer prior to such a site visit and shall be subject to the review and approval by the Owner's representative to the Development Committee.

Section 4.21 Easements.

During the Predevelopment Period, the Owner hereby grants the Developer and its Predevelopment Service Firms (as well as their employees, subcontractors and agents) easements pursuant to which the Developer and its Predevelopment Service Firms, under the direction of the Developer, shall have the non-exclusive right of vehicular and pedestrian ingress and egress over the roads and walkways leading to and from the Premises. During the provision of Predevelopment Work, the Owner shall maintain and repair (or cause to be maintained and repaired) the roads and walkways so that at all times the roads and walkways shall be in a safe and operable condition adequate

for the purpose of vehicular and pedestrian ingress and egress to and from the Premises. In connection with the construction and operation of the Project, the Owner shall consent to the granting of any reasonable easements required for access, utilities or otherwise relative to the Project, including any Phase, and the construction, use and operation thereof.

Section 4.22 Predevelopment Service Firm Insurance.

Upon the commencement of Predevelopment Work for any Development Phase and continuing until the earlier of (a) the termination of this Agreement for any reason or (b) the execution and delivery of the applicable Lease and Management Documents and the closing of the Development Loan for each Development Phase, the Developer shall cause each Predevelopment Service Firm to carry and maintain (i) commercial general liability insurance (including, without limitation, contractor's liability coverage) written on an occurrences basis with a limits of liability of at least One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate, an additional policy of excess liability insurance of at least Three Million Dollars (\$3,000,000) to be excess over such commercial general liability insurance, naming the Owner and the Developer as additional named insureds on a primary and non-contributory basis, as well as (ii) workers' compensation insurance and employee liability insurance as required by the jurisdiction in which the Premises is located. Developer shall cause any such Predevelopment Services firm to provide proof of all such insurance to the Developer and the Owner prior to making its initial site visit to the Premises.

Section 4.23 Right to Post Signage.

Following the execution and delivery of this Agreement, the Developer shall be permitted to post signage on the Premises customary for development and construction projects of the type and nature of the Project for the purpose of identifying the Developer as the developer of the Project. Following the execution and delivery of the Design Build Contract, the Design Builder shall be permitted to post signage on the Premises customary for construction projects of the type and nature of the Project for the purpose of identifying the Design Builder as the general contractor for the Project. Following the execution and delivery of its agreement with the Developer, the Architect for each Phase shall be permitted to post signage on the Premises customary for development and construction projects of the type and nature of the Project for the purpose of identifying the Architect as the architect for each respective Phase.

Section 4.24 Record of Predevelopment Work Costs.

The Developer shall maintain a record of all Predevelopment Work costs for each Development Phase, including all invoices and receipts evidencing such Predevelopment Work for inspection by the Owner upon reasonable notice and during normal business hours at the Developer's office in Tucson, Arizona. At the end of each calendar month during the Predevelopment Period, the Developer shall deliver to the Owner a detail of all costs incurred for the Predevelopment Work during such immediately preceding calendar month (whether in the Predevelopment Phase or the Determination Phase), including copies of all invoices and receipts therefore (in addition to statements produced by the Developer evidencing the amount of financing utilized, and interest accrued thereon, by the Developer in engaging in the Predevelopment Work) (each a "Monthly Predevelopment Expense Report"). Each Monthly Predevelopment Report shall also set forth the aggregate amount of Predevelopment Work costs incurred and reported by the Developer in each prior Monthly Predevelopment Expense Report and in the current Monthly Predevelopment Expense Report (the "Total Predevelopment Costs").

ARTICLE V. PREDEVELOPMENT WORK – PREDEVELOPMENT PHASE

As a part of the Predevelopment Work for each Development Phase, the Developer agrees to provide the following services and to perform the following work set forth in this Article IV ("Predevelopment Phase Work"). Each Development Phase shall have its own separate Predevelopment Phase, as follows, which shall include all items of Predevelopment Phase Work:

1. Predevelopment Phase Work for Development Phase One commenced on July 6, 2021 and shall conclude no later than April 6, 2023 (the "Phase One Predevelopment Phase").
2. Predevelopment Phase Work for Development Phase Two shall commence the date of written Notice thereof by the Developer to the Owner and shall conclude no later than the date that is eighteen (18) months following such written Notice (the "Phase Two Predevelopment Phase").
3. Predevelopment Phase Work for Development Phase Three shall commence on the date of written Notice thereof by the Developer to the Owner and shall conclude no later than the date that is eighteen (18) months following such written Notice (the "Phase Three Predevelopment Phase" and referred to individually or collectively with Phase One Predevelopment Phase and Phase Two Predevelopment Phase, as a "Predevelopment Phase").

During each Predevelopment Phase, the Developer shall provide the Owner with a report on the progress of the applicable Predevelopment Phase Work as well as any other updates regarding the Project chosen by the Developer ("Predevelopment Phase Reports"). Predevelopment Phase Reports shall be delivered every other calendar month on the sixth (6th) day of each such month until the conclusion of all Predevelopment Phases.

Section 5.01 Project Program.

During each Predevelopment Phase, the Developer shall prepare a Project Program for the respective Development Phase. Each Project Program shall be subject to the Owner's approval, which approval shall be limited to, and based solely on, compliance with the Premises Requirements. Each Project Program shall be delivered by the Developer prior to the commencement of the applicable Determination Phase, provided, however, that the Developer may present draft versions of a Project Program to the Owner via the Development Committee for review and comment by the Development Committee and subsequent revision, if necessary, by the Developer prior to the finalization of the Project Program. Approval of the Project Program for each Development Phase, for Premises Requirements purposes, shall be evidenced by the Owner's execution and delivery of the Project Program Approval Letter, substantially in the form attached to the Development Agreement as Exhibit N. The Owner shall deliver the executed Project Program Approval Letter for each Development Phase within fifteen (15) Business Days from the date a Project Program is delivered by the Developer, provided, however, that if the Owner has an objection to a Project Program based on compliance with the Premises Requirements, the Owner shall provide Notice to the Developer of such objection not less than fifteen (15) Business Days from the date the Project Program is delivered by the Developer, and provided, further, that the Developer and the Owner shall use their good faith efforts to resolve such objection by the end of the applicable Determination Phase with such resolution to be reached by the Developer and the Development Committee on behalf of the Owner.

Section 5.02 Project Summary.

During each Predevelopment Phase, the Developer shall prepare a Project Summary for the respective Development Phase. Each Project Summary shall be subject to the Owner's approval, which approval shall be limited to, and based solely on, compliance with the Premises Requirements. The Project Summary shall be delivered by the Developer prior to the commencement of the applicable Determination Phase, provided, however, that the Developer may present draft versions of a Project Summary to the Owner via the Development Committee for review and comment by the Development Committee and subsequent revision, if necessary, by the Developer prior to the finalization of the Project Summary. Approval of a Project Summary for each Development Phase shall be evidenced by the Owner's execution and delivery of the Project Summary Approval Letter, substantially in the form attached to the Development Agreement as Exhibit O. The Owner shall deliver the executed Project Summary Approval Letter for each Development Phase within fifteen (15) Business Days from the date the Project Summary is delivered by the Developer, provided, however, if the Owner has an objection to a Project Summary based on compliance with the Premises Requirements, the Owner shall provide Notice to the Developer of such objection

not less than fifteen (15) Business Days from the date the Project Summary is delivered by the Developer, and provided, further, that the Developer and the Owner shall use their good faith efforts to resolve such objection by the end of the applicable Determination Phase with such resolution to be reached by the Developer and the Development Committee on behalf of the Owner.

Section 5.03 Facility Agreement Summary.

During each Predevelopment Phase, the Developer shall prepare a summary of the contracts which the Developer (or an Affiliate or a Facility Manager) has obtained in executed form for the occupancy and/or use of the Anchor Elements for the respective Development Phase (the "Facility Agreement Summary"). Each agreement set forth in the Facility Agreement Summary (each such agreement is herein referred to as a "Facility Agreement"), shall be listed, by Anchor Element, with summary details including, at a minimum, the duration of the Facility Agreement, the material terms of the Facility Agreement, the percentage of occupancy and/or use of the respective Anchor Element compared to the total available occupancy and/or use availability of such Anchor Element and a summary of the payment terms under such Facility Agreement. In addition to the foregoing, the Facility Agreement Summary shall include, as exhibits to the Facility Agreement Summary, copies of such executed Facility Agreements. Finally, the Facility Summary shall include a table for each Anchor Element showing a list of all Facility Agreements and the annual revenue to be generated by the respective Anchor Element during the term of the Facility Agreement. During each Predevelopment Phase, the Developer may present the Owner (via the Development Committee) with periodic drafts of, and updates to, the Facility Agreement Summary for review and comment by the Development Committee and subsequent revision, if necessary, by the Developer. The final version of each Facility Agreement Summary shall be provided by the Developer to the Owner at the commencement of the applicable Determination Phase in order to determine the satisfaction of the Lease Participation Contingency for such Development Phase.

Section 5.04 Refined Plans and Specifications.

During each Predevelopment Phase, the Developer and the Design Builder shall refine the plans and specifications for the Building Improvements for the Anchor Elements and Common Area for the respective Development Phase, as prepared by the Design Builder and the Architect (as well as by other of the Developer's Predevelopment Service Firms), in order to determine the Refined Building Costs (the "Refined Plans and Specifications"). The Refined Plans and Specifications shall include work by the Developer, the Architect and the Design Builder (in addition to other of the Developer's Predevelopment Service Firms) to complete the schematic design, development design and construction documents for all Anchor Elements and the Common Area for the applicable Development Phase.

Section 5.05 Government Approvals.

The Developer shall engage its Predevelopment Services Firms, including, without limitation, the Design Builder, the Architect and all applicable engineers and consultants to perform the Predevelopment Phase Work for each Development Phase necessary to enable the Developer to obtain the Government Approvals required by the Developer to receive the civil construction permits for each Development Phase required to commence with the preparation of the Premises at the conclusion of the Determination Phase, including the installation and construction of all physical infrastructure and utilities services as required prior to the issuance of building permits for the Anchor Elements and the other Building Improvements within each respective Development Phase (the "Government Approvals Work"). The Owner shall use commercially reasonable efforts to provide the Developer with expedited processing, review and approval of all required Governmental Approvals within the authority of the Owner, including, but not limited to, conducting required plan reviews, issuing required Government Approvals for the Building Improvements and physical infrastructure and utilities and the like. The Government Approvals Work shall include, without limitation, as determined by the Developer:

- (a) The finalization and approval of the Developer's Concept Permit Package (as such term is defined by the Owner's existing regulations) by any applicable Governmental Authority, and all items included within and related thereto;

- (b) The finalization and approval by any applicable Governmental Authority of the Developer's Native Plant Preservation Plan, Riparian Habitat Mitigation Plan and Landscape Plan as such terms are defined by the Owner's existing regulations and as are required as a part of the Developer's Concept Permit Package;
- (c) As required as a part of the Developer's Concept Permit Package or by any other applicable Governmental Authority, the finalization and approval of all traffic studies, the Project's internal roadway designs, the Project's internal roadway lighting designs and any offsite improvement designs required as a part of the development and construction of the Project;
- (d) The finalization and approval by any applicable Governmental Authority of the Developer's Site Construction Permit (as such term is defined by the Owner's existing regulations), and all items included within and related thereto;
- (e) The finalization and approval by any applicable Governmental Authority of the Developer's grading and drainage design, civil utility design, underground utility design, pedestrian and multimodal bridge design, roadway improvement design as well as all other components of the Project's civil design as such items are required as a part of the Developer's Concept Permit Package;
- (f) Geotechnical analysis and surveys of the Premises;

Section 5.06 Refined Building Construction Costs.

During each Predevelopment Phase, the Developer and the Design Builder shall agree on a refined scope of the costs and expenses of constructing the Anchor Elements and Common Area within the applicable Development Phase, commonly known as "hard costs," including, without limitation, the costs and fees payable to the Design Builder pursuant to the Design Build Contract (the "Refined Building Construction Costs"). The Refined Building Construction Costs shall be based on the Refined Plans and Specifications determined pursuant to Section 5.04 of this Agreement.

Section 5.07 Refined Predevelopment Costs.

During each Predevelopment Phase, the Developer and the Design Builder shall agree on the refined costs and expenses of completing all Predevelopment Work, including, but not limited to, Predevelopment Phase Work and Determination Phase Work from the inception of Predevelopment Work through and including the closing of the Development Loan (the "Refined Predevelopment Costs").

Section 5.08 Refined Total Project Costs.

During each Predevelopment Phase, the Developer and the Design Builder shall agree on all of the refined direct and indirect costs associated with the development, design, financing, construction and turn-over of each of the Anchor Elements and Common Area within the applicable Development Phase, including, but not limited to, the Refined Building Construction Costs and the Refined Predevelopment Costs (the "Refined Total Project Costs"). The Refined Total Project Costs shall be delivered to the Owner by the Developer at the commencement of the applicable Determination Phase. As a part of the Refined Total Project Costs to be delivered by the Developer to the Owner, the Developer shall include the following information with respect to the applicable Development Phase:

- (a) The aggregate number of locally situated firms (and the number of locally situated employees thereof) scheduled to be subcontractors (and locally situated second level contractors and employees thereof to be utilized by such subcontractors) to the Design Builder for the development and construction of the Anchor Elements and the Common Area and included in the Refined Total Project Costs;
- (b) By trade, the number of locally situated firms (and the number of locally situated employees thereof)

scheduled to be subcontractors (including locally situated second level contractors and employees thereof to be utilized by such subcontractors) to the Design Builder for the development and construction of the Anchor Elements and the Common Area and included in the Refined Total Project Costs;

- (c) The aggregate number of non-locally situated firms (and the number of non-locally situated and locally situated employees thereof) scheduled to be subcontractors (including non-locally situated and locally situated second level contractors and employees thereof to be utilized by such subcontractors) to the Design Builder for the development and construction of the Anchor Elements and the Common Area and included in the Refined Total Project Costs;
- (d) By trade, the number of non-locally situated firms (and the number of non-locally situated and locally situated employees thereof) scheduled to be subcontractors (including non-locally situated and locally situated second level contractors and employees thereof to be utilized by such subcontractors) to the Design Builder for the development and construction of the Anchor Elements and the Common Area and included in the Refined Total Project Costs;
- (e) The aggregate number of locally situated firms (and the number of locally situated employees thereof) scheduled to be materials suppliers (including locally situated second level contractors and employees thereof to be utilized by such subcontractors) to the Design Builder for the development and construction of the Anchor Elements and the Common Area and included in the Refined Total Project Costs;
- (f) The aggregate number of non-locally situated firms (and the number of non-locally situated and locally situated employees thereof) scheduled to be materials suppliers (including non-locally situated and locally situated second level contractors and employees thereof utilized by such subcontractors) to the Design Builder for the development and construction of the Anchor Elements and the Common Area and included in the Refined Total Project Costs;
- (g) The aggregate ratio of locally to non-locally situated subcontractors (including their applicable second level contractors) to the Design Builder for the development and construction of the Anchor Elements and the Common Area, plus a narrative explanation by the Developer of such ratio;
- (h) The ratio, by trade, of locally to non-locally situated subcontractors (and their applicable second level contractors) to the Design Builder for the development and construction of the Anchor Elements and the Common Area, plus a narrative explanation by the Developer of such ratio;
- (i) The aggregate ratio of locally to non-locally situated employees scheduled to be employed by subcontractors (and second level contractors, as applicable) to the Design Builder for the development and construction of the Anchor Elements and the Common Area, plus a narrative explanation by the Developer of such ratio;
- (j) The ratio, by trade, of locally to non-locally situated employees scheduled to be employed by subcontractors (and second level contractors, as applicable) to the Design Builder for the development and construction of the Anchor Elements and the Common Area, plus a narrative explanation by the Developer of such ratio; and
- (k) Any other information and compilations of data reasonably available to the Developer, as well as narrative explanations by the Developer related thereto, regarding the composition of subcontractors (and second level contractors, as applicable) to the Design Builder for the development and construction of the Anchor Elements and the Common Area for such Development Phase.

Section 5.09 Refined Financing Costs.

During each Predevelopment Phase, the Developer shall refine and determine the amount of the financing required under the respective Development Loan in order to manage the Refined Total Project Costs, the inclusion of a debt service reserve within the Development Loan and the annual debt service schedule associated with the Development Loan over its term (the "Refined Financing Costs"). Each set of Refined Financing Costs shall be delivered to the Owner by the Developer at the commencement of the applicable Determination Phase.

Section 5.10 Refined Property Tax Costs.

During each Predevelopment Phase, the Developer and the Owner shall mutually determine a refined annual schedule of assumed property taxes for the Anchor Elements and the Support Elements within such Development Phase during the term of the Ground Lease (the "Refined Property Tax Costs") Each set of Refined Property Tax Costs shall be delivered to the Owner by the Developer at the commencement of the applicable Determination Phase.

Section 5.11 Refined Cash Flow Projections.

During each Predevelopment Phase, the Developer shall determine the refined annual net cash flow projected to be generated by each of the Anchor Elements within such Development Phase pursuant to the Facility Agreement Summary and any other sources of net cash flow identified and arranged by the Developer with respect to each such Anchor Element (the "Refined Cash Flow Projections"). Each set of Refined Cash Flow Projections shall be delivered to the Owner by the Developer at the commencement of the applicable Determination Phase.

Section 5.12 Refined Second Level Lease Costs.

During each Predevelopment Phase, the Developer shall determine the annual rent required for each Second Level Lease applicable to each Anchor Element within such Development Phase (the "Refined Second Level Lease Costs"). Each set of Refined Second Level Lease Costs shall be delivered to the Owner by the Developer at the commencement of the applicable Determination Phase.

Section 5.13 Refined First Level Lease Costs.

During each Predevelopment Phase, the Developer shall determine the annual rent required for each First Level Lease applicable to each Anchor Element within such Development Phase (the "Refined First Level Lease Costs"). Each set of Refined First Level Lease Costs shall be delivered to the Owner by the Developer at the commencement of the applicable Determination Phase.

Section 5.14 Refined Ground Lease Costs.

During the Predevelopment Phase associated with Development Phase One, the Developer and the Owner shall mutually determine the annual schedule of ground rent payments due under the Ground Lease by the Developer to the Owner (the "Refined Ground Lease Costs"). The Refined Ground Lease Costs shall be delivered to the Owner by the Developer at the commencement of the Determination Phase associated with Development Phase One.

Section 5.15 Refined Sublease Costs.

During each Predevelopment Phase, the Developer shall determine the annual schedule of Sublease ground rent payments due under the Subleases to be entered into between the Developer and each Development Affiliate (or the Developer, as the case may be) of each Anchor Element within such Development Phase (the "Refined Sublease Costs"). Each set of Refined Sublease Costs shall be delivered to the Owner by the Developer at the commencement of the applicable Determination Phase.

Section 5.16 Refined Debt Service Reserves.

During each Predevelopment Phase, the Developer shall determine, based on the applicable Refined Cash Flow

Projections, the Refined Second Level Lease Costs, the Refined First Level Lease Costs, the Refined Sublease Lease Costs, and the Refined Financing Costs, the amount of net cash flow to be shared by the Owner and the Developer from the Anchor Elements within such Development Phase through the Owner's participation in the First Level Lease and Second Level Lease structure employed by the Developer and the percentage of such net cash flow that each of the Developer and the Owner will contribute to debt service reserves to support the respective Development Loan, and in addition to any debt service reserve included within the applicable Development Loan itself (the "Refined Debt Service Reserves"). Each set of Refined Debt Service Reserves shall be delivered to the Owner by the Developer at the commencement of the applicable Determination Phase.

Section 5.17 Refined Sublease Documents.

During each Predevelopment Phase, the Developer shall prepare the refined Sublease documents to be utilized with each of the Anchor Elements within such Development Phase by the Developer with each applicable Development Affiliate (the "Refined Subleases"). Each set of Refined Subleases shall be delivered to the Owner by the Developer at the commencement of the applicable Determination Phase.

Section 5.18 Refined First Level Lease Documents.

During each Predevelopment Phase, the Developer shall prepare refined versions of the First Level Lease documents to be utilized between a Development Affiliate (or the Developer, as the case may be) and the Owner with respect to each of the Anchor Elements within such Development Phase (the "Refined First Level Leases"). Each set of Refined First Level Leases shall be delivered to the Owner by the Developer at the commencement of the applicable Determination Phase.

Section 5.19 Refined Second Level Lease Documents.

During each Predevelopment Phase, the Developer shall prepare refined versions of the Second Level Lease documents to be utilized between the Owner and an Operating Affiliate (or the Developer, as the case may be) with respect to each Anchor Element within such Development Phase (the "Refined Second Level Leases"). Each set of Refined Second Level Leases shall be delivered to the Owner by the Developer at the commencement of the applicable Determination Phase.

Section 5.20 Amendment of Business Plan.

During each Predevelopment Phase, pursuant to the Predevelopment Work and in preparation for the applicable Development Overview, the Developer shall amend and update the Business Plan for the Owner's review as part of such Development Overview (the "Amended Business Plan").

Section 5.21 Environmental Assessment Services.

During each Predevelopment Phase, the Developer shall retain an environmental engineering consulting and assessment firm to provide the Developer with an environmental assessment of the portion of the Premises inclusive to the applicable Development Phase evidencing, without limitation, the absence of any Hazardous Materials contaminating the Premises and the absence of any violation of Environmental Laws.

Section 5.22 Premises Surveying Services.

During each Predevelopment Phase, the Developer shall retain a licensed and qualified surveying firm to perform a survey of the portion of the Premises inclusive to the applicable Development Phase in accordance with the American Land Title Association specifications, including, without limitation, Premises boundary lines, location of the proposed Building Improvements, location of ancillary improvements on parcels abutting the Premises, identification of all existing easements affecting the Premises.

Section 5.23 Community Relations and Stakeholder Discussions.

During each Predevelopment Phase, the Developer will work with the Owner to meet, and review each Development Phase and the entire Project, with representatives of the City of Tucson, Pima County, City of South Tucson, Rio Nuevo, University of Arizona, Banner Medical Center and other local and regional governmental, private and community stakeholders identified by the Developer and the Owner ("Regional Stakeholder Meetings"). The Developer will utilize Regional Stakeholder Meetings to disclose, review and discuss the Project and, specifically, its Anchor Elements as the Mosaic Quarter Development and/or an Anchor Element relate to the regional stakeholders in which the Developer engages in discussion. Representatives on behalf of the Owner will be present for any Regional Stakeholder Meeting with the City of Tucson, the City of South Tucson, Rio Nuevo, University of Arizona and Banner Medical Center, and may choose whether or not such representatives participate in meetings with other regional stakeholders identified by the Developer or the Owner. The Developer's and the Owner's goal for Regional Stakeholder Meetings is to demonstrate the community and region-wide benefits associated with the Mosaic Quarter Development and to foster working relationships with various levels of stakeholders within the local community and region. The Developer's Authorized Representative will be present within the Tucson metropolitan area at least once per calendar month solely for the purpose of holding Regional Stakeholder Meetings.

Section 5.24 Rating Review Package.

During each Predevelopment Phase, the Developer will work with the Owner to prepare a document review package (the "Rating Review Package") that presents a detailed analysis of the financial and operational aspects of the respective Development Phase, including, without limitation, the applicable Project Program, the Project Summary, the Facility Agreement Summary (including copies of all Facility Agreements), the Refined Plans and Specifications, the Refined Building Construction Costs, the Refined Development Costs, the Refined Predevelopment Costs, the Refined Total Project Costs, the Refined Financing Costs, the Refined Property Tax Costs, the Refined Cash Flow Projections, the Refined Second Level Lease Costs, the Refined First Level Lease Costs, the Refined Ground Lease Costs, the Refined Sublease Costs, the Refined Debt Service Reserves, the Refined Sublease Documents, the Refined First Level Lease Documents, the Refined Second Level Lease Documents, the Amended Business Plan as well as, without limitation:

- (a) Data, and summaries compiled related to, and extrapolated from, the components of the Rating Review Package to present various scenarios under which the financial performance of the respective Development Phase could be subject to material adverse impacts and the remedial structured finance components associated with the overall development, documentation and financial structure employed by the Developer;
- (b) Data, and summaries compiled related thereto, chosen by the Developer (and, at the option of the Developer, with the Lender) to present the various scenarios in which the Refined Debt Service Reserves could and would be used to avoid (i) a default under the applicable Development Loan and (ii) the Owner being required to independently fund any lease payment due under a First Level Lease for such Development Phase;
- (c) Data, and summaries compiled related to, and extrapolated from financial and operational information provided by, and related to, the Owner's overall finances, operations and existing debt obligations and financing capacity;
- (d) Data and informational summaries to present the respective Development Phase's development timeline and the timeline of financial obligations associated with the applicable Development Loan and related Refined Cash Flow Projections and demonstrate the respective Development Phase's ability to self-fund the payment obligations of such Development Loan; and
- (e) Any and all other analyses and data extrapolations from the components of the Rating Review Package

and the Owner's financial and operational information as mutually determined by the Developer and the Owner to be beneficial to obtaining the Rating Confirmations required by this Agreement.

ARTICLE VI. PREDEVELOPMENT WORK – DETERMINATION PHASE

As a part of the Predevelopment Work, the Developer agrees to provide the following services and to perform the following work set forth in this Article VI ("Determination Phase Work"). Each Development Phase shall have its own Determination Phase, as follows, which shall include all items of Determination Phase Work:

1. Determination Phase Work for Development Phase One shall commence upon the conclusion of the Phase One Predevelopment Phase and shall conclude on the date that is not less than two (2) months, but not more than six (6) months, after the completion of the Phase One Predevelopment Phase.
2. Determination Phase Work for Development Phase Two shall commence upon the conclusion of the Phase Two Predevelopment Phase and shall conclude on the date that is not less than two (2) months, but not more than six (6) months, after the completion of the Phase Two Predevelopment Phase.
3. Determination Phase Work for Development Phase Three shall commence upon the conclusion of the Phase Three Predevelopment Phase and shall conclude on the date that is not less than two (2) months, but not more than six (6) months, after the completion of the Phase Three Predevelopment Phase.

Section 6.01 Review of Documents.

At the commencement of each Determination Phase, the Developer will present to, and jointly review with, the Owner each of the Amended Business Plan, the Facility Agreement Summary, the Refined Total Project Costs, the Refined Financing Costs, the Refined Property Tax Costs, the Refined Cash Flow Projections, the Refined Second Level Lease Costs, the Refined First Level Lease Costs, the Refined Ground Lease Costs, the Refined Sublease Costs, the Refined Debt Service Reserves, the Refined Subleases, the Refined First Level Leases, the Refined Second Level Leases and the Rating Review Package for the applicable Development Phase (the "Development Overview Documents").

Section 6.02 Financial Review and Analysis.

During each Determination Phase, the Developer will present an analysis of the financial, legal, documentary and operational aspects of the Anchor Elements within such Development Phase, including the Development Overview Documents (the "Development Overview"). The Development Overview presentation shall be attended by the Developer, the Owner and any of their respective staff and professional advisers as are required by each respective party.

Section 6.03 Credit Rating Agency Review.

Following the Development Overview associated with each Development Phase, the Developer and the Owner will jointly present the Rating Review Package to, and jointly meet with, the credit rating agencies then currently assigning credit ratings (the "Applicable Credit Rating Agencies") to the Owner's various series of then outstanding debt issues for the purpose of reviewing the Rating Review Package with the Applicable Credit Rating Agencies and obtaining written verification from such Applicable Credit Rating Agencies that the Owner's prospective execution of the First Level Leases will not cause either (a) a downgrade of the credit rating then currently assigned to any such debt issue or (b) a withdrawal of a credit rating then currently assigned to any such debt issue, in either case due to the Owner's actual execution and delivery of the First Level Leases (a "Rating Confirmation"). The Owner shall provide the Developer with a copy of each such Rating Confirmation within three (3) Business Days of its receipt. Prior to a meeting or discussion with an Applicable Credit Rating Agency to seek a Rating Confirmation, the Owner agrees not to provide or discuss the Rating Review Package (or any similar compilation

or individual aspect of similar information related to the Project) to any Applicable Credit Rating Agency without the express prior written consent of the Developer.

Section 6.04 Lease Participation Contingency.

The Owner will enter into the applicable Lease and Management Documents associated with a Development Phase if:

- (a) the applicable Development Overview demonstrates that on any Current Payment Date the ratio of (A) Aggregate Debt Service Cash Flow (as derived from the Refined Cash Flow Projections) for the Current Payment Period to (B) the amount to be paid under the applicable Development Loan on the same Current Payment Date, is equal to or greater than one and five one-hundredths (1.05).
- (b) the applicable Development Overview demonstrates that the ratio of (A) aggregate debt service reserves included in the applicable Development Loan, the Refined Debt Service Reserves and any parametric guaranty (or other form of third party insurance or guaranty contract obtained by the Developer (or committed to be obtained by the Developer within the Development Overview Materials)) (the "Aggregate Debt Service Reserves") on any Current Payment Date to (B) the amount to be paid under such Development Loan on the same Current Payment Date, is equal to or greater than three (3.0); and
- (c) Each Applicable Credit Rating Agency issues a Rating Confirmation for such Development Phase (referred to together with the criteria set forth in Section 6.04(a) and Section 6.04(b) of this Agreement, the "Lease Participation Contingency").

Subject only to a Nonparticipation Election for the respective Development Phase, upon the Developer's satisfaction of the Lease Participation Contingency, the Owner and the Developer will work in good faith to finalize the Ground Lease as a part of the Lease and Management Documents for Development Phase One and the applicable Lease and Management Documents for each other Development Phase, in accordance with the results of the respective Predevelopment Phase and its associated Determination Phase.

In conjunction with the preparation of the final, executable versions of the Ground Lease and the Lease and Management Documents, the Developer will prepare a version of the Business Plan that incorporates all of the results of the applicable Predevelopment Phase and the Determination Phase for the subject Development Phase, each of which shall be attached to this Agreement as Exhibit B and shall accompany the Lease and Management Documents to be entered into by the Owner for all required Governmental Approvals related to the Lease and Management Documents (each a "Final Business Plan").

Section 6.05 Development Phasing.

Following the Developer's satisfaction of the Lease Participation Contingency for each Development Phase, but subject to the Owner's right to issue a Nonparticipation Election for each Development Phase, the development and construction of the Building Improvements within the Mosaic Quarter Development will be performed in the following phases:

- (a) Development Phase One - Subject to the Developer's satisfaction of the Lease Participation Contingency for Development Phase One, but subject to the Owner's right to issue a Nonparticipation Election for the Iceplex and Field House components of Development Phase One, development and construction of the applicable Critical Infrastructure Components, development and construction of the Iceplex, development and construction of the Field House, and the development and construction of the Iceplex Retail Components (together, referred to as "Development Phase One"), with such Critical Infrastructure Components, Iceplex, the Field House and the Iceplex Retail Components achieving Substantial

Completion by May 31, 2025 and Final Completion by July 31, 2025 (the "Development Phase One Completion Dates"), provided, however that the Development Phase One Completion Dates shall be subject to adjustment either (i) in the case where the Developer invokes the Lease Participation Contingency Extension with respect to Development Phase One with such adjusted Development Phase One Completion Dates determined mutually by the Developer and the Owner or (ii) upon the mutual agreement of the Developer and the Owner to adjust the Development Phase One Completion Dates to a date that is in the best interests of the management and operation of the Iceplex and the Field House.

- (b) Development Phase Two - Subject to the Developer's satisfaction of the Lease Participation Contingency for Development Phase Two, but subject to the Owner's right to issue a Nonparticipation Election for the Sportsplex and Entertainment Center components of Development Phase Two, development and construction of the Sportsplex, development and construction of the Entertainment Center and the development and construction of the Pavilion (together referred to as "Development Phase Two") with (i) the Pavilion achieving Substantial Completion by December 31, 2025 and Final Completion by January 31, 2026 and (ii) the Sportsplex and the Entertainment Center achieving Substantial Completion by July 31, 2026 and Final Completion by August 31, 2026 (collectively, the "Development Phase Two Completion Dates"), provided, however, that the Development Phase Two Completion Dates shall be subject to adjustment either (i) in the case where the Developer invokes the Lease Participation Contingency Extension with respect to the Sportsplex and the Entertainment Center components of Development Phase Two with such adjusted Development Phase Two Completion Dates determined mutually by the Developer and the Owner or (ii) upon the mutual agreement of the Developer and the Owner to adjust the Development Phase Two Completion Dates with respect to the Sportsplex and the Entertainment Center to a date that is in the best interests of the management and operation of the Sportsplex and the Entertainment Center.
- (c) Development Phase Three - Subject to the Developer's satisfaction of the Lease Participation Contingency for Development Phase Three, but subject to the Owner's right to issue a Nonparticipation Election for the Stadium and Parking Garage components of Development Phase Three, development and construction of the Stadium, development and construction of the Parking Garage, development and construction of the Hotel Assets (together referred to as "Development Phase Three" and sometimes referred to together with Development Phase One and Development Phase Two, as a "Development Phase") (i) the Hotel Assets achieving Substantial Completion by December 31, 2026 and Final Completion by January 31, 2027 and (ii) the Stadium and the parking Garage achieving Substantial Completion by July 31, 2027 and Final Completion by August 31, 2027 (collectively, the "Development Phase Three Completion Dates" and sometimes referred to together with the Development Phase One Completion Dates and the Development Phase Two Completion Dates as the "Development Phase Completion Dates"), provided, however, that the Development Phase Three Completion Dates shall be subject to adjustment either (i) in the case where the Developer invokes the Lease Participation Contingency Extension with respect to the Stadium and Parking Garage components of Development Phase Three with such adjusted Development Phase Three Completion Dates determined mutually by the Developer and the Owner or (ii) upon the mutual agreement of the Developer and the Owner to adjust the Development Phase Three Completion Dates with respect to the Stadium and the Parking Garage to a date that is in the best interests of the management and operation of the Stadium and the Parking Garage.

Section 6.06 Closing of Development Loan.

If the Developer satisfies the Lease Participation Contingency for a Development Phase (but subject to the right of the Owner to make a Nonparticipation Election with respect to the Anchor Elements within such Development Phase), the Developer shall close on the Development Loan for such Development Phase within ninety (90) days of the date of the execution and delivery of the Lease and Management Documents for such Development Phase with funds sufficient to complete such Development Phase.

Section 6.07 Phasing Delay Due to Pandemic.

If the Developer has satisfied the Lease Participation Contingency for a Development Phase (subject to the Owner's right to make a Nonparticipation Election with respect to the Anchor Elements inclusive to such Development Phase), as of the date of satisfaction of the Lease Participation Contingency for such Development Phase, if the State of Arizona, the Owner or the City of Tucson (through their respective Governmental Authorities) have then in effect any emergency declarations and/or orders (i) restricting the gathering of individuals, (ii) establishing mandatory shelter in place orders, (iii) establishing mandatory physical distancing requirements, (iv) imposing restrictions on the operations of business establishments, particularly, retail stores, restaurants and indoor amusement/entertainment focused businesses, (v) restricting the operation of sports venues, arenas and stadiums, or (vi) establish other specific restrictions on the operation of facilities such as the Anchor Elements within such Development Phase, in each case with specific application and respect to the COVID-19 pandemic (the "Pandemic Regulations"), then:

- (a) The Developer and the Owner shall mutually determine an adjustment to (i) the applicable Development Phase Completion Dates, such adjustment to be determined in good faith and on a reasonable basis in conjunction with the duration and scope of the applicable Pandemic Regulations (in either case, the "Extended Completion Dates").
- (b) The Developer shall close the applicable Development Loan pursuant to the provisions of Section 6.06 of this Agreement, but shall include within such Development Loan funds sufficient to address any additional capitalized interest within such Development Loan ("Pandemic Reserve Funds") as well as the Building Construction Costs and the Total Project Costs that are projected by the Developer to be incurred as the result of the Extended Completion Dates (the "Pandemic Development Funds"), provided, however, all such Pandemic Reserve Funds shall be added to the existing debt service reserve included within such Development Loan, provided, further, that to the extent the entirety of the Pandemic Reserve Funds are not used, such remaining Pandemic Reserve Funds shall remain a part of the existing debt service reserve included within such Development Loan. The Developer and the Owner agree that the purpose of the Pandemic Reserve Funds and the Pandemic Development Funds is to permit the Developer to maintain development phasing and design activities so that following the expiration of the Pandemic Regulations, the Developer may efficiently maintain and proceed to the Final Completion of the Anchor Elements of such Development Phase affected by the Pandemic Regulations.

Section 6.08 Failure of Lease Participation Contingency.

If the Developer cannot satisfy the Lease Participation Contingency for a Development Phase upon the completion of the associated Development Overview, the Developer may elect to extend the applicable Determination Phase for an additional six (6) months to satisfy the Lease Participation Contingency for such Development Phase (the "Lease Participation Contingency Extension"). If the Developer so elects for a Development Phase, the time period set forth in the introductory paragraph of this Article VI shall automatically be amended to reflect the Lease Participation Contingency Extension for such Development Phase without any further action required of the Developer or the Owner. Should the Developer satisfy the Lease Participation Contingency during the Lease Participation Contingency Extension period, subject to the Owner's right to make a Nonparticipation Election with respect to the Anchor Elements inclusive to such Development Phase and the application of all provisions of Section 6.09 of this Agreement, the development and construction of all Anchor Elements within such Development Phase shall occur in accordance with the provisions of Section 6.05 of this Agreement as if the Developer never failed the Lease Participation Contingency.

- (a) Notwithstanding the foregoing provisions related to the invocation of the Lease Participation Contingency Extension, the Developer may, instead, provide the Owner with written Notice of the Developer's decision to forego the Owner's participation in the Lease and Management Documents for a Development Phase

where the Lease Participation Contingency was not satisfied, in which event the Developer shall have a period of one (1) calendar year from the date of the completion of the Development Overview for such Development Phase to arrange alternate financing (in addition to or in substitution of the applicable Development Loan from the Lender) to complete such Development Phase (including the Developer's participation in the costs of the Kino Complex Underpass (if such Development Phase is Development Phase Three, subject, however, to Developer's ability to obtain financing for same) (the "Alternate Financing").

- (b) If the Developer foregoes the Owner's participation in the Lease and Management Documents for any Development Phase where the Lease Participation Contingency was not satisfied, this Agreement shall remain in full force and effect with respect to the Developer's right to complete the Project. If the Notice permitted pursuant to Section 6.08(a) of this Agreement is provided by the Developer with respect to Development Phase One the Owner will work with the Developer in good faith to finalize the Ground Lease prior to the closing of the Alternate Financing for Development Phase One. All provisions related to the Owner's participation in the Lease and Management Documents for all Development Phases following the delivery of the Notice permitted by Section 6.08(a) of this Agreement and any provisions related to the Owner's financial participation in any aspect of such subsequent Development Phases (outside of the payment provisions of the Ground Lease) shall be subject to the provisions of this Section 6.08. Notwithstanding the foregoing, if the Owner still desires to manage the Parking Garage, it may enter into a First Level Lease with the Developer Affiliate (or the Developer, as the case may be) responsible for developing and constructing the Parking Garage on terms mutually acceptable to the Developer and the Owner.
- (c) If the Lease Participation Contingency is not satisfied for each Development Phase, and if Developer fails to invoke the Lease Participation Extension for each Development Phase and closes on its Alternate Financing for each Development Phase, the Developer shall implement a phasing plan for the development and construction of all Building Improvements for the Project pursuant to an agreement between the Developer and its provider of Alternate Financing and shall not be subject to the provisions of Section 6.05 of this Agreement.

Section 6.09 Owner Nonparticipation Election.

If the Developer satisfies the Lease Participation Contingency for a Development Phase, then, notwithstanding the provisions of Section 6.04 and Section 6.05 of this Agreement, the Owner may elect not to participate in the applicable Lease and Management Documents for such Development Phase. To so elect, the Owner shall provide the Developer with ten (10) days' written Notice of such election (a "Nonparticipation Election") with such Nonparticipation Election delivered to the Developer within five (5) Business Days of the date that is the later of the completion of the Development Overview for such Development Phase or the last date upon which the Owner receives a Rating Confirmation for such Development Phase from an Applicable Credit Rating Agency. Upon a Nonparticipation Election, the Owner agrees to pay the Developer for services rendered and earned an amount equal to (a) the Total Predevelopment Costs (including a summary of such Total Predevelopment Costs), plus (b) twenty percent (20%) of the Total Predevelopment Costs (the "Developer Nonparticipation Fee" and together with the Total Predevelopment Costs, the "Owner Reimbursement"), provided, however, that (i) the Owner Reimbursement shall not exceed a combined total Ten Million Five Hundred Thousand Dollars (\$10,500,000) for all Development Phases, and (ii) if the sum of the Total Predevelopment Costs and the Developer Nonparticipation Fee exceeds Ten Million Five Hundred Thousand Dollars (\$10,500,000), then the Developer Nonparticipation Fee shall be automatically reduced by an amount necessary in order that the sum of Total Predevelopment Costs and the Developer Nonparticipation Fee does not exceed Ten Million Five Hundred Thousand Dollars (\$10,500,000). To the extent that the Total Predevelopment Costs equal or exceed Ten Million Five Hundred Thousand Dollars (\$10,500,000), then the Owner Reimbursement shall be equal to Ten Million Five Hundred Thousand Dollars (\$10,500,000) and the Developer shall not be eligible to receive any Developer Nonparticipation Fee. The

Developer shall provide the Owner with the final reconciliation of the Total Predevelopment Costs subject to Owner Reimbursement (including the calculation of the Developer Nonparticipation Fee) within ten (10) calendar days following the Developer's receipt of notice of the Nonparticipation Election, including all invoices and receipts substantiating the Total Predevelopment Costs (the "Predevelopment Cost Invoice"). The Owner agrees to make payment in full on the Owner Reimbursement within thirty (30) calendar days of the receipt of the Predevelopment Cost Invoice.

Section 6.10 Effect on Developer from Nonparticipation Election.

Following a Nonparticipation Election by the Owner with respect to any Development Phase, the Developer shall have a period of one (1) year following the payment of the Owner Reimbursement to arrange Alternate Financing to develop and construct such Development Phase and this Agreement shall remain in full force and effect with respect to the Developer's right to complete such Development Phase and the Project and the Owner will work with the Developer in good faith to finalize the Ground Lease prior to the closing of the Alternate Financing (if a Nonparticipation Election is issued with respect to Development Phase One), provided, however, that all provisions related to the Owner's participation in the Lease and Management Documents for Development Phases and any provisions related to the Owner's financial participation in any aspect of Development Phases (outside of the payment provisions of the Ground Lease) shall be of no further force or effect, and provided, further, that the Developer shall have no obligation to participate in the funding of the Kino Complex Underpass or to provide the Owner with the option to manage the Parking Garage.

- (a) Following a Nonparticipation Election with respect to any Development Phase, if Developer closes on its Alternate Financing, the Developer shall implement a phasing plan for the development and construction of all Building Improvements for such Development Phase and, if applicable, the Project pursuant to an agreement between the Developer and its provider of Alternate Financing and shall not be subject to the provisions of Section 6.05 of this Agreement.
- (b) Provided that the Owner has made payment in full of the Owner Reimbursement pursuant to the provisions of Section 6.09 of this Agreement, upon the closing of, and included within, the Alternate Financing, the Developer shall make payment to the Owner in an amount equal to the Total Predevelopment Costs as a reimbursement to the Owner for its payment of the Total Predevelopment Costs within the Owner Reimbursement and in recognition of the Developer's use of the work product represented by the Total Predevelopment Costs to complete the Project.
- (c) To the extent that the Developer does not arrange and close its Alternate Financing pursuant to the time limitations set forth in this Section 6.10, this Agreement shall be subject to termination pursuant to the provisions of Section 17.01 of this Agreement (a "Alternate Finance Termination").
- (d) Upon an Alternate Finance Termination, the Developer shall deliver to the Owner all plans, specifications, designs, drawings, reports and any other deliverables related to the construction of the Anchor Elements provided by Predevelopment Service Firms to the Developer, including, but not limited to the Refined Plans and Specifications and all Government Approvals received and/or obtained by the Developer (the "Predevelopment Materials"). Predevelopment Materials provided to the Owner shall include assignments in favor of the Owner transferring ownership of the Predevelopment Materials to the Owner from the Developer and each applicable Predevelopment Service Firm, provided, however, pursuant to this Agreement (and without any further action required on the part of the Owner), the Developer and the Architect shall have a perpetual license to use the Refined Plans and Specifications and any other drawings and designs for the Building Improvements in the Developer's or the Architect's (as the case may be) print, electronic, web-based or other marketing materials and/or efforts (without identifying the Owner).

ARTICLE VII. PROJECT GOVERNANCE

Section 7.01 Establishment of Governance Committees.

The Developer shall establish the following committees to provide governance and oversight of the Project on an advisory basis (collectively, the "Governance Committees");

- (a) Mosaic Quarter Development and Construction Committee (the "Development Committee");
- (b) Mosaic Quarter Owner Architect Contractor Meeting Group (the "OAC Group");
- (c) Mosaic Quarter Operations Committee (the "Operations Committee");
- (d) Mosaic Quarter Capital Planning Committee (the "Capex Committee");
- (e) Mosaic Quarter Economic Development Committee (the "Economic Development Committee"); and
- (f) Mosaic Quarter Community Engagement Committee (the "Community Engagement Committee")

Section 7.02 Development Committee.

- (a) The Development Committee will focus on the coordination and execution of the development and construction of the Project, including all Building Improvements encompassing both Anchor Elements and Support Elements, as well as ancillary amenities set forth in the Site Plan.
- (b) The Development Committee will be comprised of the following members representing the Owner:
 - (i) Pima County, Kino Stadium Director;
 - (ii) Pima County Project Management, Office Manager; and
 - (iii) Pima County Deputy Administrator for Public Works.
- (c) The Development Committee will be comprised of the following members representing the Developer:
 - (i) The Developer;
 - (ii) The Design Builder;
 - (iii) The Architect;
 - (iv) On an as needed basis as determined by the Developer, management representatives of the Anchor Elements; and
 - (v) On an as needed basis as determined by the Developer, representatives of anchor programming organizations for each Anchor Element.
- (d) The Development Committee will meet on a monthly basis following the execution and delivery of this

Agreement, with the first meeting of the Committee to be held within fifteen (15) days after the Effective Date.

- (e) The scope, function and oversight of the Development Committee shall be as described in the Business Plan, as such Business Plan is subject to amendment and finalization in the form of the Final Business Plan pursuant to the provisions of this Agreement.

Section 7.03 OAC Group.

- (a) The OAC Group will be comprised of a subset of the Owner representatives on the Development Committee. The members of the OAC Group will serve as the Owner's representatives at monthly Owner Architect Contractor Meetings held by the Developer and the Design Builder each month ("OAC Meetings"). OAC Meetings will serve as the monthly venue within which the Developer's entire Project development team provides a detailed review of the progress of constructing Anchor Elements, Support Elements and all other aspects of the Project. In addition to serving as the Owner's representative, the OAC Group represents the Development Committee at OAC Meetings.
- (b) The OAC Group will be comprised of the following members representing the Owner:
 - (i) Pima County Project Management, Project Manager.
- (c) The OAC Group will present reports of each OAC Meeting to the Owner's representatives on the Development Committee.

Section 7.04 Operations Committee.

- (a) The Operations Committee will review the logistics, scheduling, event management and facility performance of each Anchor Element in conjunction with similar aspects of the Existing Kino Complex.
- (b) The Operations Committee will be comprised of the following members representing the Owner:
 - (i) Pima County Kino Stadium Director.
- (c) The Operations Committee will be comprised of the following members representing the Developer:
 - (i) The Developer; and
 - (ii) Management representatives of the Anchor Elements.
 - (iii) On an as needed basis as determined by the Developer, representatives of anchor programming organizations for each Anchor Element.
- (d) The Operations Committee will meet quarterly beginning with the commencement of the construction of the Iceplex. Thereafter, in addition to quarterly meetings, the Operations Committee will hold an additional meeting upon the commencement of construction of each additional Anchor Element.
- (e) The scope, function and oversight of the Operations Committee shall be as described in the Business Plan, as such Business Plan is subject to amendment and finalization in the form of the Final Business Plan

pursuant to the provisions of this Agreement.

Section 7.05 Capex Committee.

- (a) The Capex Committee will oversee and review the long-term capital planning needs of each Anchor Element. In addition to addressing the capital planning aspects of Anchor Elements, the Capex Committee's function includes maintaining Anchor Elements in a manner that promotes the seamless transition of the Anchor Elements to the Owner as of the expiration of the Ground Lease.
- (b) The Capex Committee will be comprised of the following members representing the Owner:
 - (i) Pima County Project Management, Office Manager (or their designee).
- (c) The Capex Committee will be comprised of the following members representing the Developer:
 - (i) The Developer; and
 - (ii) Management representatives of the Anchor Elements.
- (d) The Capex Committee will meet on a biannual basis. The first meeting of the Capex Committee will be held following Final Completion of the Iceplex.
- (e) The scope, function and oversight of the Capex Committee shall be as described in the Business Plan, as such Business Plan is subject to amendment and finalization in the form of the Final Business Plan pursuant to the provisions of this Agreement.

Section 7.06 Economic Development Committee.

- (a) The Economic Development Committee will review, assess and recommend adjustments to the Kino District Development and Existing Kino Complex events contributing toward economic development activity within Pima County, the City of Tucson and the Southern Arizona region.
- (b) The Economic Development Committee will be comprised of the following members representing the Owner:
 - (i) Pima County Project Management, Office Planner;
 - (ii) Pima County Economic Development (representative as designated by the department); and
 - (iii) Pima County Attractions and Tourism (representative as designated by the department).
- (c) The Economic Development Committee will be comprised of the following members representing the Developer:
 - (i) The Developer;
 - (ii) Chicanos Por La Causa, Chief Executive Officer (or his designee);

- (iii) Representative designated by Visit Tucson;
 - (iv) Representative designated by Sun Corridor;
 - (v) Representative designated by Southern Arizona Leadership Council;
 - (vi) City of Tucson, Director of Economic Development; and
 - (vii) On an as needed basis as determined by the Developer, representatives of Anchor Element programming, local business groups and local non-profit organizations.
- (d) The Economic Development Committee will meet on a quarterly basis following the Final Completion of the Iceplex and the Field House.
 - (e) The scope, function and oversight of the Economic Development Committee shall be as described in the Business Plan, as such Business Plan is subject to amendment and finalization in the form of the Final Business Plan pursuant to the provisions of this Agreement.

Section 7.07 Community Engagement Committee.

- (a) The Community Engagement Committee will review and evaluate as well as facilitate the Project's impact on surrounding communities, outreach efforts to other areas of Pima County and the City of Tucson, and programs developed within the Mosaic Quarter Development by the Developer.
- (b) The Community Engagement Committee will be comprised of the following members representing the Owner:
 - (i) Pima County Community & Workforce Development representative;
 - (ii) Pima County Health Department representative; and
 - (iii) Community/neighborhood organization representatives.
- (c) The Community Engagement Committee will be comprised of the following members representing the Developer:
 - (i) The Developer;
 - (ii) Mosaic Foundation;
 - (iii) Chicanos Por La Causa representative; and
 - (iv) Management representatives of the Anchor Elements.
- (d) The Community Engagement Committee will meet on a quarterly basis following the execution and delivery of this Agreement, with the first meeting of the Community Engagement Committee to be held within thirty (30) days after the Effective Date.

- (e) The scope, function and oversight of the Community Engagement Committee shall be as described in the Business Plan, as such Business Plan is subject to amendment and finalization in the form of the Final Business Plan pursuant to the provisions of this Agreement.

Section 7.08 Annual Report from Developer.

By the end of the first calendar quarter of each year during the term of the Ground Lease, and beginning in 2025, the Developer will prepare a report summarizing the operational, financial, economic development and community engagement performance of the Mosaic Quarter Development in accordance with the provisions set forth in the Business Plan, as such Business Plan is subject to amendment and finalization in the form of the Final Business Plan pursuant to the provisions of this Agreement. The Developer's annual report shall be delivered to the Governance Committees and the Owner.

ARTICLE VIII. DEVELOPMENT MANAGEMENT

Following the completion of the Predevelopment Work for each Development Phase and the closing of the applicable Development Loan, the Developer shall perform the following work relating to the development of such Development Phase as well as the construction and turnover of the Building Improvements:

Section 8.01 Close-Out of Project.

The Developer shall be responsible for final close-out, turnover and reporting of each Phase of the Project, to be completed no later than sixty (60) calendar days following Final Completion thereof, including, without limitation, (a) payment of all outstanding applications for payment, invoices, and bills for services or supplies provided in connection with the design and construction of the Building Improvements, (b) resolution of all Change Orders with respect to the Building Improvements, (c) obtaining from the Design Builder their final lien waivers and the final lien waivers from the Architect and all subcontractors and materialmen involved in the construction of the Building Improvements, (d) release of all bonds and sureties with respect to the construction of the Building Improvements, (e) causing the Design Builder to complete all Construction Punch List Work and to satisfy the conditions of any issued permit or inspection, and (f) causing the Design Builder to deliver to the Developer As-Built Plans, operations manuals and assignments of warranties with respect to the Building Improvements as required by the Design Build Contract.

Section 8.02 Scheduling/Expediting Services.

The Developer will cause the Design Builder to prepare, and update at periodic intervals (but not more frequently than once every calendar month), in a format reasonably acceptable to the Developer, critical path schedules for the development process and the construction process. The Developer will cause the Design Builder, as necessary and applicable, to implement and administer expediting procedures to meet the Approved Master Project Schedule.

Section 8.03 Project Management and Coordination.

The Developer shall administer all agreements in connection with the development and construction of the Building Improvements. The Developer, with the assistance of the Design Builder pursuant to the Design Build Contract, shall schedule, coordinate and expedite the activities of all Persons providing goods, work or services for the Project. In conjunction with the Design Builder, the Developer shall develop and continuously refine time schedules for all Phases of the Project (not more frequently than once every calendar month) using commercially reasonable efforts to cause all Persons providing goods, work or services for the Project to comply with such established schedules. The Developer shall use commercially reasonable efforts to ensure that the Project conforms with the Premises Requirements, the Program Requirements and with the Approved Plans and Specifications. In conjunction with the Design Builder, the Developer shall monitor and inspect the progress of the quality of work or services being performed for the Project. The Developer shall take appropriate actions regarding the modification, approval, and/or disapproval of all change requests, payment requests, plans, specifications, drawings, designs, budgets,

schedules, correspondence and communications. The Developer shall cause the Design Builder to implement and administer cost accounting and cost project systems for the Project and the Building Improvements, respectively.

Section 8.04 Construction and Construction Management.

- (a) The Developer shall cause the Design Builder to construct the Building Improvements substantially in accordance with the Approved Plans and Specifications, and in compliance with all applicable Legal Requirements (including, without limitation, American Disabilities Act laws and regulations) and all matters of record affecting the Premises, including, but not limited to, the Premises Requirements. However, construction of the Building Improvements shall be subject to such reasonable modifications as are required (i) to correct architectural or engineering errors or omissions or to comport with good design, engineering and construction practices, (ii) due to field conditions, (iii) to comply with applicable Legal Requirements and costs, and/or to comply with any required permit, and (iv) to comply with any request of the Developer for modifications.
- (b) Except as otherwise provided in, and subject to the conditions of, the Design Build Contract, all materials and equipment incorporated into the Building Improvements shall be new and of first-class quality and in good operating condition. Construction shall be reasonably free from defects not inherent in the quality of the work required or permitted. The Developer shall cause the Design Build Contract to provide that construction not conforming to these requirements, including substitutions not properly approved and authorized, shall be corrected by Design Builder, at no out-of-pocket cost to the Developer, and with such costs not included in the Total Project Costs. The Developer shall be responsible for obtaining all permits, bonds, licenses, tests and inspections, including certificates of occupancy for the construction of the Building Improvements.

Section 8.05 Punch List Work.

The Developer shall be responsible for administering, managing, coordinating and using commercially reasonable efforts to cause all Persons providing goods, work or services for the Project, including, without limitation, the Design Builder, to complete the Punch List Work and comply with such schedules established by the Developer, including, without limitation, the Construction Schedule.

Section 8.06 Warranty Work.

The Developer shall be responsible for administering, managing, coordinating and using commercially reasonable efforts to cause all Persons providing goods, work or services for the Project to complete all warranty work, including the repair and making of all necessary replacements, of all defects in design, materials and workmanship in the Building Improvements of which the Developer receives written notice within the applicable Warranty Period.

Section 8.07 Latent Defects.

The Developer shall be responsible for administering, managing, coordinating and using commercially reasonable efforts to cause all Persons providing goods, work or services for the Project to correct latent defects found in the design, construction, goods or equipment installed in the Building Improvements to comply with such schedules established by the Developer.

Section 8.08 Training.

The Developer shall be responsible for administering, managing, coordinating and using commercially reasonable efforts to cause all Persons providing furniture, fixtures and equipment and systems for the Project to provide commercially reasonable on-site training to the property manager's personnel in all operating and safety procedures necessary to operate the Building Improvements over the range of its operating capability and all maintenance,

troubleshooting and repair procedures necessary or appropriate for maintaining the Project in optimum operating condition in accordance with written manuals and record drawings provided for such purposes.

ARTICLE IX. PROJECT PERSONNEL

Section 9.01 Authorized Representative of Owner.

The Owner hereby designates Capital Program Office (CPO) Manager to be its designated representative for purposes of contact between the Owner and the Developer in connection with the development of the Project and the design and construction of the Building Improvements ("Owner's Authorized Representative"). The Owner shall have the right, by timely written notice given to the Developer, to remove the existing Owner's Authorized Representative and to appoint another individual to act as Owner's Authorized Representative. However, no more than one (1) individual shall act as Owner's Authorized Representative at any time. The Owner agrees that the Owner's Authorized Representative shall have the authority to bind the Owner with respect to all matters for which the consent or approval of the Owner is required or permitted pursuant to this Agreement and that all consents, approvals and waivers given in writing by Owner's Authorized Representative shall bind owner and may be relied upon by the Developer.

Section 9.02 Authorized Representative of Developer.

The Developer hereby designates Francis J. Knott, Jr., to be its designated representative for purposes of contact between the Developer and the Owner in connection with the development of the Project and the design and construction of the Building Improvements ("Developer's Authorized Representative"). The Developer shall have the right, by timely written notice given to the Owner, to remove the existing Developer's Authorized Representative and to appoint another individual to act as Developer's Authorized Representative. However, no more than one (1) individual shall act as Developer's Authorized Representative at any time. The Developer agrees that Developer's Authorized Representative shall have the authority to bind the Developer with respect to all matters for which the consent or approval of the Developer is required or permitted pursuant to this Agreement and that all consents, approvals and waivers given in writing by Developer's Authorized Representative shall bind the Developer and may be relied upon by the Owner.

Section 9.03 Design Builder.

The Developer will enter into the Design Build Contract with Hensel Phelps Construction Co. to construct the Building Improvements for each Phase (the "Design Builder"). The Developer shall cause the Design Builder to identify competent personnel to be the on-site construction management team from the start of the construction of the Building Improvements through Final Completion and the completion of the Construction Punch List Work, for the prior approval of the Developer, who shall be present on-site at the Project during normal working hours to be responsible for supervising all subcontractors and all other Persons providing goods, work and services with respect to the construction of the Building Improvements. The Developer will also enter into an indemnification and guaranty agreement with the Design Builder indemnifying the Developer for any Building Construction Costs in excess of the Construction Budget and the payment of any applicable Design Builder Liquidated Damages (the "Design Builder Indemnity").

Section 9.04 Architect.

The Developer will enter into a design and architecture agreement with (i) JLG Architects to design the Building Improvements and to serve as the architect of record for the Project, and (ii) DFDG Architecture to serve as the architect of record of the Parking Garage and to serve as associate architect on the remaining Anchor Elements (collectively the "Architect"). The Developer shall cause the Architect to identify competent personnel to be the on-site architectural representatives of the Architect from the start of the Project through the Final Completion of the Building Improvements, for the prior approval of the Developer, who shall be present on-site, on an as-needed

basis, at the Project during normal working hours to be responsible for supervising the Design Builder's performance of the construction of the Building Improvements.

ARTICLE X. DESIGN BUILD CONTRACT

Section 10.01 Design Build Contract.

The Building Improvements shall be constructed pursuant to the Design Build Contract and will be subject to a detailed line item construction budget that does not exceed the line item of the Approved Total Project Budget for construction of the Building Improvements, but that also includes a construction contingency to be maintained with respect to the Building Construction Costs (the "Construction Budget"). Developer will include in the Design Build Contract a general contingency with respect to overruns in the line items in accordance with the requirements of this Agreement.

Section 10.02 Competitive Bidding Requirements.

The Developer shall endeavor to include in the Design Build Contract (i) a requirement that all major subcontracts and supply contracts must be competitively bid from an approved list of pre-qualified bidders ("major" for these purposes shall be defined as a contract for goods or services valued at more than One Hundred Thousand Dollars (\$100,000)), (ii) language pursuant to which the Design Builder agrees to use all reasonable efforts to obtain bids from appropriately qualified local subcontractors. Any competitive bid process which includes an Affiliate of the Design Builder shall be by a closed bid process. With the prior approval of the Developer, limited source, single source or negotiated contracts shall be supported by documentation that assures that the pricing is commercially reasonable based on market conditions.

Section 10.03 Subcontractor Approval.

The Developer shall endeavor to include in the Design Build Contract a requirement that the Design Builder submit to the Developer for its prior approval pursuant to an agreed-upon prequalification process prior to bidding, the name, qualifications and other pertinent information for any major subcontractor or material supplier on the Project ("major" for these purposes shall be defined as either with a contract for goods or services valued at more than One Hundred Thousand Dollars (\$100,000), or whose delivery of goods or completion of services is a Construction Milestone on the Approved Construction Schedule and necessary to meet the Projected Date of Substantial Completion set for in the Approved Master Project Schedule), and a requirement that a summary of bids, proposals and contracts shall be furnished to the Developer prior to execution of the related contract.

Section 10.04 Change Orders.

The Developer shall include in the Design Build Contract requirements that, except for minor changes in the work, changes that do not result in any increase in the Construction Budget, the Total Project Costs or cause a delay to the Projected Date of Substantial Completion and change orders required to prevent the risk of imminent injury to individuals or damage to property (each a "Change Order"):

- (a) all Change Orders must be in writing in substantially the same form as the AIA G701 2007 form and must identify any change in the Construction Budget and Total Project Costs and any additional time for the completion of the Building Improvements or the Project which is attributable to Change Order;
- (b) The Design Builder must provide to written notice to the Developer of an asserted Change Order within ten (10) calendar days of the date the issue or condition upon which the asserted Change Order is based becomes known to the Design Builder, which notice shall specifically identify such issue or condition and set forth the probable cost of an asserted Change Order and the estimated delay in the completion of the Building Improvements or the Project associated with an asserted Change Order;

- (c) Any Change Order for delay due to weather shall be submitted to the Developer for approval within five (5) calendar days of the date of the delay;
- (d) No Change Order shall be implemented until the cost and estimated time delay in the completion of the Building Improvements or the Project associated with an asserted Change Order are approved in writing by the Developer and, if required by the Development Loan, the Lender, and if required by this Agreement, the Owner; and
- (e) No Change Order shall be approved or implemented unless the costs of an asserted Change Order are fully payable from the Project contingency reserves maintained by the Developer.

Section 10.05 Construction Meetings and Communications.

The Owner's Authorized Representative and/or the OAC Committee shall be given reasonable prior notice of, and shall be entitled to attend, each meeting held by the Developer, the Architect and the Design Builder regarding the design and any material revisions to the Approved Master Project Schedule for the Project. As such, the Developer, the Architect and the Design Builder shall include Owner's Authorized Representative and/or the OAC Committee on all email communications regarding the design and any material revisions to the Approved Master Project Schedule for the Project and shall timely provide Owner's Authorized Representative with a copy of all other written communications regarding the design and any material revisions to the Approved Master Project Schedule for the Project.

ARTICLE XI. DEVELOPMENT AND CONSTRUCTION

Section 11.01 Schedule for Construction.

The Developer agrees to use commercially reasonable efforts to expedite the performance of all services and obligations required under this Agreement and any other agreements entered into, managed or administered by the Developer, but the Developer does not assume any liability for the failure of any Person, including the Design Builder or any of the other consultants and professionals retained by the Developer, to perform such Person's obligations within the time periods set forth on the Approved Master Project Schedule, provided that the Developer uses commercially reasonable efforts (which shall not require litigation) to enforce the obligations of such Persons under their contracts with the Developer.

- (a) In order to ensure timely completion of the Building Improvements, the Developer shall work with the Design Builder to approve a critical path construction schedule containing certain construction milestone dates in the construction process pursuant to the Design Build Contract and in accordance with the Approved Master Project Schedule which sets forth the dates for starting and completion of various critical stages of construction of the Building Improvements ("Construction Milestones") to ensure Substantial Completion of the Building Improvements by the Proposed Date of Substantial Completion (the "Construction Schedule").
- (b) The Developer shall monitor and use commercially reasonable efforts to cause the Design Builder's compliance with all Construction Milestone dates in the Construction Schedule and Deadlines in the Approved Master Project Schedule.
- (c) The Construction Schedule will be based on normal working hours for all trades between 7AM and 7PM. The Developer shall endeavor to include in the Design Build Contract a provision pursuant to which the Design Builder will, upon the Developer's request, or on its own volition may, allow subcontractors to add additional work hours to meet the Construction Schedule and Construction Milestones, subject to

applicable Legal Requirements.

- (d) Without limitation, the Developer's liability under this Section 11.01 is subject to Section 13.01 of this Agreement.

Section 11.02 Substantial Completion.

The Developer shall use its commercially reasonable efforts to cause the Design Builder to achieve Substantial Completion of the Building Improvements in each Phase by the applicable Projected Date of Substantial Completion. The term "Substantial Completion" shall mean the time at which:

- (a) Construction of such Building Improvements has been sufficiently completed in accordance with the Design Build Contract, the Approved Plans and Specifications, all building permits and other governmental approvals relating to the construction, or required for the use and occupancy of such Building Improvements by the Developer;
- (b) All certificates of occupancy (which may be temporary certificates of occupancy) with respect to such Building Improvements shall have been issued by the applicable Governmental Authority, which certificates of occupancy permit the use and occupancy of all of such Building Improvements and are subject to no conditions which would prevent the Developer from using and occupying such Building Improvements in order to achieve Final Completion thereof; and
- (c) The Developer has approved the Construction Punch List of remaining work to be completed by the Design Builder which will only include items that will not interfere with the beneficial use or occupancy by the Developer to achieve Final Completion of such Building Improvements.

Section 11.03 Construction Inspection and Punch List Work.

Prior to the Substantial Completion Date, the Developer and the Design Builder shall inspect the Building Improvements and shall prepare and sign an inspection form describing the condition of the Building Improvements and a list (the "Construction Punch List") of all items of work to be corrected or yet to be completed (the "Construction Punch List Work"). The Developer shall direct the Design Builder to promptly correct or complete all Construction Punch List Work within sixty (60) calendar days of the finalization of the Construction Punch List or within such longer period of time as the Developer and the Owner agree. The Developer shall coordinate the correction and completion of the Construction Punch List Work with the Design Builder and its subcontractors. The Developer shall invite the Owner's Authorized Representative to accompany the Developer during the inspection required in this Section 11.03.

Section 11.04 Commissioning.

The Developer shall be responsible for administering, managing, coordinating and using commercially reasonable efforts to cause all Persons providing the commissioning services set forth in the various Building Improvement specifications relating to commissioning, including, without limitation, the specific specifications related to retention of a commissioning authority, to complete the commissioning process set forth in the specifications.

Section 11.05 Final Completion.

The Developer shall use its commercially reasonable efforts to cause the Design Builder to achieve Final Completion of the Building Improvements in each Phase by the applicable Projected Date of Final Completion. The term "Final Completion" shall mean the time at which:

- (a) Construction of such Building Improvements has been finally completed for such Phase in accordance with the Design Build Contract including, without limitation, compliance with the Approved Plans and

Specifications;

- (b) All building permits, applicable Legal Requirements and other governmental approvals relating to the construction of such Building Improvements have been received by the Design Builder and the Developer such that the use and occupancy of such Building Improvements are not subject to any conditions that would prevent the intended tenant (as described in the Business Plan) from using and occupying such Building Improvements for the use contemplated under the applicable Lease and Management Documents;
- (c) All Construction Punch List Work, and other obligations required to be performed pursuant to the Design Build Contract have been completed for such Building Improvements unless the Developer agrees to the completion of Construction Punch List Work following, and not affecting the determination of the achievement of, Final Completion;
- (d) all final certificates of occupancy with respect to such Building Improvements shall have been issued by the applicable Governmental Authority and all permits shall have been closed for the applicable Phase;
- (e) all costs of the applicable Phase have been paid, other than any such costs which are to be satisfied from the proceeds of the final draw of the Development Loan for such Phase;
- (f) all warranties, guarantees and start-up and operating manuals for such Building Improvements have been delivered to Developer or its designee for the applicable Phase;
- (g) all keys or electronic access cards to provide access to such Building Improvements have been delivered to Developer or its designee and subsequently delivered to the manager thereof by the Developer;
- (h) Conditional lien waivers from the Design Builder, the Architect and all subcontractors and all material suppliers have been received by Developer, with final lien waivers from the Design Builder, the Architect and all subcontractors and material suppliers to be delivered to the Developer upon the payment of the final costs of the Project pursuant to the final draw of the Development Loan for such Phase.

Section 11.06 As-Built Plans.

The Developer shall endeavor to include in the Design Build Contract a provision that, at the time of Final Completion of the Building Improvements for each Phase, the Design Builder will be required to transfer notations from its records as to concealed items, changes and deviations from the Approved Plans and Specifications onto a set of Mylar transparencies (to be paid for by the Design Builder) (the "As-Built Plans") and provide a complete set of As-Built Plans to the Developer. The Design Builder shall certify by endorsement that each of the revised sheets constituting the As-Built Plans represents a complete and accurate record of the work as executed. The Developer shall deliver a digital set of all such As-Built Plans to the Owner's Authorized Representative.

Section 11.07 Development Loan Proceeds.

The Developer shall pay or submit requisitions to the Lender for disbursements of Development Loan proceeds for payment of all Total Project Costs not paid for directly by the Developer, such requisitions to be in compliance with the Lender's requirements, including, but not limited to, invoices, schedules and other documentation required by the Lender to be delivered to the Lender as a condition to the Lender's duty to disburse the amount described in the requisition.

Section 11.08 Open Books.

- (a) The Developer shall maintain an "open book" policy with respect to the Total Project Costs. The

Developer shall maintain in the Design Builder's Tucson, Arizona office, on a current basis, in accordance with reasonable accounting systems and record management procedures, accurate and complete books and records, a record copy of all contracts, drawings, specifications, addenda, Change Orders and other modifications, applications for payment, invoices, bills, claims, payments, budgets, cash flows, and all other financial documentation and information relating to the Total Project Costs (collectively, the "Records"). The Owner shall have the right, at any time and from time to time, during normal business hours and after reasonable advance notice, to review the Records. The Developer shall cause the Design Builder will maintain copies of all Approved Plans and Specifications, shop drawings, product data, samples and submittals.

- (b) The Developer shall maintain the Records relative to each Phase for a minimum period of five (5) years after the Final Completion of such Phase. The Developer's Authorized Representative shall be available to meet periodically with the Owner's Authorized Representative during normal business hours and after reasonable advance notice to discuss any of the Records, any financial matters, and any other matters pertinent to the Project.

Section 11.09 Liens.

The Developer shall not permit any mechanics' or materialmen's liens or other liens upon the Premises (provided, however, that the First Mortgage shall be permitted as a lien against the Project and the Developer's interest in the Ground Lease and the Lease and Management Documents) and shall ensure that the Design Build Contract, the Architect's agreement, construction contracts and all subcontracts and agreements with material suppliers make it expressly clear that the Developer's interest in the Project is that of a ground lease tenant. The Owner's title to the Premises is and always shall be paramount to the Ground Lease, and nothing in this Agreement shall empower the Developer to do any act that can, shall or may encumber the Premises with a lien. If (a) a dispute arises under the Design Build Contract and a lien is filed against the Premises, (b) in connection with such dispute, the Owner requests the Developer to withhold a payment due to the Design Builder (or the Architect, contractor, subcontractor or material supplier) under the Design Build Contract, and (c) then, in any such event, the Developer shall, within twenty (20) calendar days of notice of the filing of the lien, either discharge or bond over such lien to the satisfaction of the Owner and the Lender. If the Developer shall fail to so discharge or bond over such lien, then, in addition to any other right or remedy of the Owner and without waiving or releasing the Developer's default in not timely discharging the lien, the Owner may, but shall not be obligated to, bond over or discharge the same. Any reasonable amount paid by the Owner for any of the aforesaid purposes, including, without limitation, reasonable attorneys' fees and expenses, shall be paid by the Developer to the Owner on demand. Notice is hereby given that the Owner shall not be liable to any Person for any labor or materials furnished or to be furnished to the Developer on credit, and that no mechanics' or materialmen's or other lien for any such labor or materials shall attach to or affect the reversionary or other estate or interest of the Owner in and to the Premises.

Section 11.10 Mutual Cooperation and Commercially Reasonable Efforts.

The Owner and the Developer agree to mutually cooperate and use their commercially reasonable efforts to accomplish the purposes of this Agreement in a diligent and expeditious manner. Commercially reasonable efforts, as used throughout this Agreement, means all commercially reasonable measures available (except those that are mutually exclusive) with promptness and due diligence, to bring about the desired result. Commercially reasonable efforts do not require a party to amend an existing agreement, take any action contrary to law, outside a party's power or legal authority, contrary to a written agreement in existence on the Effective Date or that would have the effect of restricting such party's rights or remedies under this Agreement.

Section 11.11 Force Majeure.

In the event that the Developer or the Owner shall be delayed or hindered in or prevented from the performance of any act required by this Agreement by reason of strikes, labor troubles, inability to procure labor or materials through normal and customary means, failure of power, the existence of Hazardous Materials, unsuitable soils or

subsurface conditions, riots, terrorism, insurrection, war, acts of God, fire or other casualty, emergency governmental order or decree, epidemic, pandemic or other public health emergency or exigency, or other reasons of a similar nature beyond the reasonable control of the party to this Agreement, then performance shall be excused for the period of the substantiated delay and the period for performance of the work or act shall be extended for a period equivalent to the period of such delay. A party to this Agreement claiming such an extension of time for performance shall promptly give notice in writing to the other party with satisfactory supporting documentation.

Section 11.12 Developer to Pay Project Costs.

All Total Project Costs shall be paid by the Developer and the Owner shall have no right to approve or contest any of the Total Project Costs.

Section 11.13 Prohibition on Owner's Authority to Enter into Contracts and Subcontracts.

The Owner shall not enter into any contracts, subcontracts or agreements, whether with architects, contractors, consultants, subcontractors, materialmen or otherwise, for which the Developer may be liable or which may give rise to a lien on the Project or the Premises or might interfere with the development of the Project or construction of the Building Improvements without the prior written consent of the Developer, which may be withheld in the Developer's sole and absolute discretion. The Owner shall not take any action purporting to bind the Developer or the Design Builder or encumber the Project with respect to the development of the Project or the construction of the Building Improvements or engage in any attempts to interfere with the Developer's efforts to obtain and close the Development Loan, the Alternate Financing or any other financing for the Project. The Owner shall indemnify, save and hold harmless the Developer, the Lender and any of their respective Affiliates from any cost, expense, liability, damage or penalty (including, without limitation, reasonable attorneys' fees and expenses) that either of them (or their Affiliates) may incur as a result of a breach of any of the requirements of this Section 11.13.

Section 11.14 Inspection Rights.

During the development of the Project and the construction of the Building Improvements, the Owner shall have full access to the Project during business hours and upon reasonable prior notice to the Developer. The Owner shall not exercise its access rights under this Section 11.14 in a manner that will interfere with or delay the Developer, the Design Builder, the Architect, any subcontractors or any material suppliers in the performance of its or their duties pursuant to this Agreement, the Design Build Contract or any other applicable document or agreement pertaining to such parties. In exercising its access rights, the Owner, on behalf of itself and its respective agents and designees, hereby agrees not to take photographs or videos of the work being performed (whether exterior or interior work) during the development of the Project and the construction of the Building Improvements without the prior consent of the Developer.

ARTICLE XII. INSURANCE

Section 12.01 Builder's Risk Insurance.

During the period beginning on the date of the issuance of a Notice to Proceed for any given Phase and continuing until Final Completion of such Phase is achieved, the Developer shall cause the Design Builder to carry and maintain "all risk" builder's risk insurance in the amount of the full replacement cost of the Building Improvements (the "Builders Risk Insurance"). Any such Builder's Risk Insurance shall name the Developer and the Lender as an additional loss payees.

Section 12.02 Design Builder Liability and Workers' Compensation Insurance.

Separate from the insurance requirements during the Predevelopment Period, during the period beginning with the date of the issuance of a Notice to Proceed for any given Phase and continuing until Final Completion of such Phase is achieved, the Developer shall cause the Design Builder to carry and maintain, commercial general liability insurance (including, without limitation, contractor's liability coverage), written on an occurrence basis with a

combined single limit of at least Five Million Dollars (\$5,000,000) and an additional policy of excess liability insurance often Million Dollars (\$10,000,000) per occurrence, and naming the Owner, the Developer and the Lender as additional named insureds (the "Design Builder General Liability Insurance"), provided, however, that to the extent that the Development Loan or Alternate Financing requires higher levels of coverage within the Design Builder General Liability Insurance for the Project, such additional Design Builder General Liability Insurance shall be addressed within the Design Build Agreement. In addition, throughout the periods during which the Building Improvements are being constructed, the Developer shall cause the Design Builder to carry and maintain workers' compensation insurance and employers' liability insurance as required by the jurisdiction in which the Premises is located (the "Design Builder Workers Compensation Insurance" and together with the Design Builder General Liability Insurance, the "Design Builder Insurance").

Section 12.03 Insurance Policy Requirements.

The Design Builder Insurance shall be issued by insurance companies of recognized responsibility licensed to do business in the State of Arizona which are rated insurers having a claims-payment rating of "A" or higher by Standard & Poors or a rating of "NAIC-1" by the Securities Valuation Office of the National Association of Insurance Commissioners or which have an equivalent financial rating from a comparable insurance rating organization. All policies of liability insurance required by this Article IX shall be written as primary policy coverage.

Section 12.04 Evidence of Insurance.

Prior to the commencement of construction of the Building Improvements, and prior to the expiration of any certificate previously delivered, the Developer shall obtain a certificate of insurance evidencing the issuance of the Design Builder Insurance policies with such certificates of insurance delivered by the Developer to the Owner.

Section 12.05 Subcontractor Insurance.

Prior to the commencement of construction of the Building Improvements, the Developer shall cause the Design Builder to obtain subcontractor default insurance on each subcontractor that will be providing services, labor and/or materials to and for the Project that compensates the Design Builder and/or the Developer for any subcontractor default, excess costs associated with a subcontractor default, any excess costs associated with the replacement of a subcontractor following a subcontractor default and/or any excess costs associated with the remediation of work performed by a subcontractor following a subcontractor default, provided, however, if in the reasonable determination of the Design Builder (and with the written consent of the Developer) a subcontractor is able to obtain its own completion bond in favor of the Design Builder and the Developer (subject to the Design Builder and the Developer accepting the issuer of such completion bond), such subcontractor shall be excluded from the subcontractor default insurance obtained by the Design Builder and the Design Builder shall accept the completion bond obtainable by such subcontractor.

ARTICLE XIII. LIMITATIONS ON DEVELOPER'S LIABILITY

Section 13.01 Construction of Project.

The Developer's liability for construction of any and all of the Building Improvements is limited to (a) entering into the Design Build Contract and (b) using its commercially reasonable efforts to enforce its rights, as the Developer, under the Design Build Contract. The Developer shall not have any liability in damages or otherwise to the Owner in connection with the construction of any or all of the Building Improvements, including, without limitation, the failure of the Design Builder to perform its obligations under the Design Build Contract, the failure of any of the Building Improvements to reach Substantial Completion by the Projected Date of Substantial Completion applicable thereto, the failure of any of the Building Improvements to reach Final Completion by the Projected Date of Final Completion applicable thereto, or the failure of the development of any Phase or the entire Project to comply with the requirements of the Approved Master Project Schedule or the construction of any or all of the Building

Improvements to comply with the requirements of the Construction Schedule, except to the extent caused by the Developer's willful misconduct or grossly negligent acts or omissions.

ARTICLE XIV. CASUALTY DAMAGE

Section 14.01 Building Improvements.

If at any time between the date of the issuance of a Notice to Proceed with respect to any Phase and the date that Final Completion thereof is achieved, the Building Improvements for such Phase or any part thereof shall be damaged by Casualty, the Developer shall give prompt notice to the Owner of the Casualty occurrence and extent of the damage and shall then proceed promptly and with reasonable diligence, subject to the availability of insurance proceeds and Force Majeure, to repair, or cause to be repaired, the damaged Building Improvements to their condition immediately before the Casualty.

Section 14.02 Repair and Proceeds.

In the event of Casualty damage to the Building Improvements which the Developer is required to repair under this Article XIII, the proceeds payable under the Builder's Risk Insurance shall be deposited in an escrow account with the Lender, or such other Person as may be designated by the Lender, to be held and disbursed to the Developer or the Design Builder for the repair of the damages Building Improvements to their condition immediately before the Casualty. The proceeds shall be disbursed periodically by the Lender to cover the cost of such repair work as such repair work progresses in accordance with the requirements of the Development Loan.

Section 14.03 Deficiency.

If at any time or from time to time after the occurrence of a Casualty to the Building Improvements and before the repair and restoration of the damage caused by the Casualty are completed, the proceeds payable under the Builder's Risk Insurance are not sufficient to pay the costs and expenses incurred by the Developer in repairing and replacing the damage caused by the Casualty (the "Insurance Deficiency"), or if the Lender determines at any time that an Insurance Deficiency exists or will exist, the Developer shall, within fifteen (15) Business Days after receipt of a written demand from the Lender, accompanied by bills, invoices or other evidence substantiating the Lender's demand for payment (or within any shorter or longer period of time required or permitted by the First Mortgage) pay the Insurance Deficiency to the party designated to hold and disburse the proceeds of the Builders Risk Insurance pursuant to Section 11.01 of this Agreement. If, after the repair and replacement of the damages caused by the Casualty to the Building Improvements are completed, the proceeds payable under the Builders Risk Insurance, together with the amounts paid by the Developer pursuant to this Section 14.03 (if any), exceed the costs and expenses incurred by the Developer in repairing the damage to the Building Improvements caused by the Casualty (the "Insurance Excess"), the Developer shall prepare and deliver to the Lender the documentation required by the requirements of the Development Loan as a condition to the disbursement of the Insurance Excess to the Developer.

ARTICLE XV. OWNER'S REPRESENTATIONS AND WARRANTIES

Section 15.01 Organization.

The Owner is a political subdivision of the State of Arizona. The Owner has all requisite legal power and authority to own its property and assets and to carry on its business as now conducted and as proposed to be conducted. The Owner has the legal power and authority to execute, deliver and perform its obligations under this Agreement and each other exhibit, agreement or instrument contemplated hereby or thereby.

Section 15.02 Authorization.

The execution and delivery by the Owner of this Agreement and all other exhibits, agreements and instruments

provided for or contemplated by this Agreement, and the consummation by the Owner of all transactions contemplated hereunder and thereunder have been duly authorized by all requisite legal and political action. This Agreement has been duly executed by the Owner. This Agreement and all other agreements and obligations entered into and undertaken in connection with the transactions contemplated hereby constitute the valid and legally binding obligations of the Owner, enforceable against it in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and other similar laws relating to or affecting creditors' rights generally from time-to-time in effect and to general principles of equity (including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing), regardless of whether considered in a proceeding in equity or at law and the availability of the remedy of specific performance. The execution, delivery and performance by the Owner of this Agreement and all other exhibits, agreements and instruments provided for herein, and the consummation by the Owner of the transactions contemplated hereby and thereby, will not, with or without the giving of notice or the passage of time or both, (a) violate the provisions of any applicable Legal Requirements applicable to the Owner, (b) violate the provisions of the authorizing resolutions of Pima County, Arizona, (c) violate any judgment, decree, order or award of any court, Governmental Authority or arbitrator, or (d) conflict with or result in the breach or termination of any term or provision of, or constitute a default under, or cause any acceleration under, or cause the creation of any lien, charge or encumbrance upon the properties or assets of the Owner pursuant to any indenture, mortgage, deed of trust, bond or other instrument or agreement to which the Owner or its Affiliates are a party or by which the Owner, its Affiliates or any of their properties and assets may be bound.

Section 15.03 Governmental Approvals.

The Owner has all material government authorizations, approvals, consents, permits, licenses, certifications and qualifications, and has complied in all material respects with all applicable Legal Requirements of Pima County and the State of Arizona, to conduct its business as is presently conducted and to own, except to the extent such failure to obtain any such approval or to take any such action is not reasonably expected, either individually or in the aggregate, to have a material adverse effect. No action, consent or approval or registration or filing with or any other action by any Governmental Authority is required in connection with this Agreement, except for such as have been made or obtained and are in full force and effect and, except to the extent that failure to obtain any such approval or take any such action would not be reasonably expected, either individually or in the aggregate, to have a material adverse effect.

Section 15.04 Title to the Premises.

The Owner is the owner in fee simple of the Premises, free of any encumbrance that would impair or interfere with the Developer's rights under this Agreement, and that the Owner has full right and authority to extend the Developer the rights provided under this Agreement, including, without limitation, the Exclusive Rights. There are no options to purchase or lease, rights of first refusal to purchase or lease, or any other agreements applicable to the Premises that would prohibit, limit or otherwise interfere with the Developer's rights under this Agreement, including, without limitation, the Exclusive Rights. There are no agreements that the Owner has entered into that relate to its ownership, financing or operations that prohibit, limit or otherwise interfere with the Owner's right to extend the Developer the rights provided under this Agreement, including, without limitation, the Exclusive Rights.

Section 15.05 No Third Party Interest in the Premises.

There are no liens, encumbrances, leases, mortgages, deeds of trust, fractional interests or other exceptions to the Owner's title to the Premises except for Permitted Exceptions or as disclosed in a review of the title to the Premises obtained by the Developer. There are no leases of the Premises to any Person and no Person has any rights to make any claim that it is entitled to the occupancy of the Premises pursuant to an oral or written lease, license or other type of agreement.

Section 15.06 Environmental Matters.

The Premises complies with all present federal state and local laws, whether common law, statute, rule, regulation

or ordinance, and any judicial or administrative order or judgment thereunder, and judicial or administrative decisions, opinions, orders, policies or guidelines, pertaining to Hazardous Materials or health, industrial hygiene, environmental conditions or the regulation or protection of the environment, any remediation agreement providing for the clean-up of Hazardous Materials at the Premises or continued monitoring of the Premises for Hazardous Materials, and land use restrictions now or hereafter applicable to the Premises, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Toxic Substance Control Act, the Water Pollution Control Act, the Clean Air Act, and The Hazardous Materials Transportation Act, as enacted as of the date hereof or as hereafter amended (collectively, "Environmental Laws"). No notices, complaints or orders of violation or non-compliance with Environmental Laws have been received by the Owner and, to the best of the Owner's actual knowledge, no federal, state or local environmental investigation or proceeding is pending or threatened with regard to the Premises or any use thereof or any alleged violation of Environmental Laws with regard to the Premises. No claim under any Environmental Law is pending not has any outstanding or unresolved penalty arising under any Environmental Law been assessed, against the Owner, the Premises or any person or entity for whose liability for any such claim the Owner is legally or contractually liable, not is any investigation or review pending or threatened by any Governmental Authority, citizens group or other person or entity with respect to the Premises under any Environmental Law. Neither the Premises nor the Owner is subject to any existing, pending or threatened investigation pertaining to any Hazardous Substance in or on the Premises by any Governmental Authority, nor to any remedial obligation or lien with respect to the Premises under or in connection with any Environmental Law. No Hazardous Substance has been generated, treated, stored or disposed of or otherwise deposited in or located on, under or about the Premises in violation of Environmental Laws, including, without limitation, the surface and subsurface waters of the Premises. The Owner is in possession of all environmental, health and safety permits, licenses and other governmental authorizations required in connection with the operation or use of the Premises. There are no Hazardous Materials or environmental conditions in or on the Premises which are likely to support a claim or cause of action against the Owner under any Environmental Law. No underground storage tanks now or previously containing any Hazardous Substance, or underground deposits of any Hazardous Substance, are located on or under the Premises. No friable asbestos is located on the Premises. There have been no environmental investigations, studies, audits, reviews or other written analyses conducted by, or that are in the possession of, Owner in relation to the Premises which have not been made available to Developer. Owner has no actual knowledge or notice of the actual, alleged or threatened presence or release of Hazardous Materials in, on, around or potentially affecting any part of the Premises or the soil, groundwater or soil vapor on or under the Premises, or the migration of any Hazardous Substance, from or to any other property adjacent to or in the vicinity of the Premises in violation of any Environmental Law. Owner has undertaken a satisfactory inquiry into the previous ownership and uses of the Premises consistent with good commercial practice. Owner has no knowledge and it is not expected that Owner's intended future use of the Premises will result in the release of any Hazardous Substance in, on, around or potentially affecting any part of the Premises or in the soil, groundwater or soil vapor on or under the Premises, or the migration of any Hazardous Substance from or to any other property adjacent to or in the vicinity of the Premises.

ARTICLE XVI. DEVELOPER'S REPRESENTATIONS AND WARRANTIES

Section 16.01 Organization.

The Developer is a limited liability company duly organized and validly existing and in good standing under the laws of the jurisdiction of its organization. The Developer has all requisite limited liability company power and authority to own its property and assets and to carry on its business as now conducted and as proposed to be conducted. The Developer has the limited liability company power and authority to execute, deliver and perform its obligations under this Agreement and each other exhibit, agreement or instrument contemplated hereby or thereby.

Section 16.02 Authorization.

The execution and delivery by the Developer of this Agreement and all other exhibits, agreements and instruments provided for or contemplated by this Agreement, and the consummation by the Developer of all transactions contemplated hereunder and thereunder have been duly authorized by all requisite limited liability company action. This Agreement has been duly executed by the Developer. This Agreement and all other agreements and obligations entered into and undertaken in connection with the transactions contemplated hereby constitute the valid and legally binding obligations of the Developer, enforceable against it in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and other similar laws relating to or affecting creditors' rights generally from time-to-time in effect and to general principles of equity (including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing), regardless of whether considered in a proceeding in equity or at law and the availability of the remedy of specific performance. The execution, delivery and performance by the Developer of this Agreement and all other exhibits, agreements and instruments provided for herein, and the consummation by the Developer of the transactions contemplated hereby and thereby, will not, with or without the giving of notice or the passage of time or both, (a) violate the provisions of any applicable Legal Requirements applicable to the Developer, (b) violate the provisions of the Developer's organizational documents, (c) violate any judgment, decree, order or award of any court, Governmental Authority or arbitrator, or (d) conflict with or result in the breach or termination of any term or provision of, or constitute a default under, or cause any acceleration under, or cause the creation of any lien, charge or encumbrance upon the properties or assets of the Developer pursuant to any indenture, mortgage, deed of trust, bond or other instrument or agreement to which the Developer or its Affiliates are a party or by which the Developer, its Affiliates or any of their properties and assets may be bound.

Section 16.03 Governmental Approvals.

The Developer has all material government authorizations, approvals, consents, permits, licenses, certifications and qualifications, and has complied in all material respects with all applicable Legal Requirements of the jurisdiction in which the Developer conducts business or owns property, to conduct its business as is presently conducted and to own, except to the extent such failure to obtain any such approval or to take any such action is not reasonably expected, either individually or in the aggregate, to have a material adverse effect. No action, consent or approval or registration or filing with or any other action by any Governmental Authority is required in connection with this Agreement, except for such as have been made or obtained and are in full force and effect and, except to the extent that failure to obtain any such approval or take any such action would not be reasonably expected, either individually or in the aggregate, to have a material adverse effect.

ARTICLE XVII. TERMINATION AND REMEDIES**Section 17.01 Termination.**

In the event that the Developer shall be unable to secure the financing for the Project (whether the Development Loan or Alternate Financing, as applicable) or any other material impediment to the development of the Project beyond the control of either party to this Agreement occurs, then either the Owner or the Developer shall be entitled to terminate this agreement upon fifteen (15) calendar days written notice to the other party to this Agreement.

Section 17.02 Default.

- (a) Owner Default. An "Owner Default" shall occur if the Owner shall default in performing any duty or obligation to be performed by the Owner under this Agreement and such default shall not be remedied within (a) ten (10) calendar days after written notice of such default shall have been given by the Developer to the Owner describing the default in reasonable detail, or (b) in the case of any such default which is capable of being cured, but which cannot with due diligence and in good faith be cured within ten (10) calendar days, within such additional period as may be reasonably required to cure such default with due

diligence and in good faith, but not in excess of sixty (60) calendar days from the date of such notice provided that the Owner has commenced the cure at the beginning of the ten (10) calendar day cure period.

- (b) **Developer Default.** A "Developer Default" shall occur if the Developer shall default in performing any duty or obligation to be performed by the Developer under this Agreement and such default shall not be remedied within (a) thirty (30) calendar days after written notice of such default shall have been given by the Owner to the Developer describing the default in reasonable detail, or (b) in the case of any such default which is capable of being cured, but which cannot with due diligence and in good faith be cured within thirty (30) calendar days, within such additional period as may be reasonably required to cure such default with due diligence and in good faith, provided that the Developer has commenced such cure within such thirty (30) calendar day cure period.

Section 17.03 Remedies.

In the event of an Owner Default or a Developer Default, either party may pursue all of its remedies at law or in equity, subject to the limitations set forth in this Agreement.

Section 17.04 Waiver of Consequential Damages.

Notwithstanding anything to the contrary in this Agreement:

- (a) THE OWNER HEREBY WAIVES AND RELEASES ALL RIGHTS OF RECOVERY AGAINST THE DEVELOPER AND THE DEVELOPER'S AND THE DEVELOPER'S AFFILIATES' MEMBERS, MANAGERS, MANAGING MEMBERS, OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FOR CONSEQUENTIAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES, INCLUDING LOSS OF INCOME OR PROFITS AND DAMAGE TO GOODWILL OR GOING CONCERN VALUE, ARISING OUT OF LOSS OR DAMAGE TO PROPERTY OR BUSINESS OF THE OWNER RELATING TO THIS AGREEMENT, EXCEPT TO THE EXTENT THAT SUCH LOSS OR DAMAGE IS CAUSED BY THE WILLFUL MISCONDUCT OR GROSSLY NEGLIGENT ACTS OR OMISSIONS OF THE DEVELOPER, OR ITS AGENTS OR EMPLOYEES.
- (b) THE DEVELOPER HEREBY WAIVES AND RELEASES ALL RIGHTS OF RECOVERY AGAINST THE OWNER AND THE OWNER'S AFFILIATES' MEMBERS, MANAGERS, MANAGING MEMBERS, OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FOR CONSEQUENTIAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES, INCLUDING LOSS OF INCOME OR PROFITS AND DAMAGE TO GOODWILL OR GOING CONCERN VALUE, ARISING OUT OF LOSS OR DAMAGE TO PROPERTY OR BUSINESS OF THE DEVELOPER RELATING TO THIS AGREEMENT, EXCEPT TO THE EXTENT THAT SUCH LOSS OR DAMAGE IS CAUSED BY THE WILLFUL MISCONDUCT OR GROSSLY NEGLIGENT ACTS OR OMISSIONS OF THE OWNER, OR ITS AGENTS OR EMPLOYEES.

Section 17.05 Prevailing Party's Expenses.

In the event that litigation or other legal action is instituted between the Developer and the Owner to enforce this Agreement, the prevailing party in such litigation or other legal action by final judgment or settlement shall be entitled to reimbursement from the non-prevailing party in such litigation or other legal action by final judgment or settlement of all reasonable fees, costs and expenses (including, without limitation, court costs and reasonable attorneys' fees and expenses) incurred by the prevailing party in connection therewith.

ARTICLE XVIII. GENERAL PROVISIONS

Section 18.01 Governing Law.

OWNER AND DEVELOPER HEREBY AGREE THAT THIS AGREEMENT AND ALL MATTERS, SUITS (WHETHER IN EQUITY OR AT LAW), CAUSES OF ACTION, CLAIMS, CROSS-CLAIMS, COUNTERCLAIMS, DEMANDS, OBLIGATIONS, ACTIONS, SURVIVAL CLAIMS, RIGHTS TO DAMAGES, COSTS, ATTORNEYS' FEES OR EXPENSES OF ANY KIND OR IN ANY WAY RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT SHALL BE GOVERNED, INTERPRETED, CONSTRUED AND ENFORCED IN ALL RESPECTS BY THE INTERNAL LAWS, AND NOT THE LAW OF CONFLICTS, OF THE STATE OF ARIZONA.

Section 18.02 Jurisdiction, Venue and Process.

EACH OF THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS LOCATED IN THE STATE OF ARIZONA (AND ANY APPELLATE COURT FROM ANY SUCH COURT) IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH SUIT, ACTION OR PROCEEDING SHALL BE BROUGHT IN AND MAY BE HEARD AND DETERMINED IN SUCH FEDERAL OR STATE COURTS LOCATED IN THE STATE OF ARIZONA. EACH OF THE PARTIES HEREBY AGREES THAT A FINAL JUDGMENT IN ANY SUIT, ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. EACH OF THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO (a) ANY OBJECTION THAT IT MAY NOT OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT IN ANY STATE OR FEDERAL COURT LOCATED IN THE STATE OF ARIZONA AND (b) THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH SUIT, ACTION OR PROCEEDING IN ANY SUCH COURT.

Section 18.03 Waiver of Trial by Jury.

EACH OF THE PARTIES HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM FILED BY THE OTHER PARTY, WHETHER IN CONTRACT, TORT OR OTHERWISE, WHICH RIGHT OR CLAIM RELATES DIRECTLY OR INDIRECTLY TO THIS AGREEMENT, ANY DOCUMENTATION RELATED THERETO, OR ANY ACTS OR OMISSIONS IN CONNECTION WITH THIS AGREEMENT. THIS WAIVER HAS BEEN AGREED TO AFTER CONSULTATION WITH LEGAL COUNSEL SELECTED INDEPENDENTLY BY THE OWNER AND THE DEVELOPER.

Section 18.04 Entire Agreement.

This Agreement and any exhibits attached to this Agreement constitute the sole, entire and only agreement between the Owner and the Developer with regard to the subject matter hereof. This Agreement supersedes all prior discussions and agreements (whether written or oral) between the Owner and the Developer with respect to the subject matter hereof.

Section 18.05 Non-Waiver.

No waiver of any covenant, condition or provision of this Agreement shall be deemed, or construed, to have been made unless expressed in writing and signed by the party against whom such waiver has been charged. The failure of any party to insist in any one or more cases upon the performance of any of the provisions, covenants or conditions of this Agreement or to exercise any option or right set forth in this Agreement shall not be deemed, or construed, as a waiver or relinquishment for the future of any such provisions, covenants or conditions. The

acceptance of performance of anything required by this Agreement to be performed with knowledge of the breach or failure of a covenant, condition or provision hereof shall not be deemed or construed to be a waiver of such breach or failure. No waiver by any party of one breach by another party shall be construed or deemed to be a waiver with respect to any other subsequent breach. Failure of a party to declare any default immediately upon its occurrence, or delay in taking any action in connection with a default shall not constitute a waiver of such default, nor shall it constitute an estoppel against such party, but such party shall have the right to declare the default at any time and take such action as is lawful or authorized under this Agreement.

Section 18.06 Notices.

Any notices, demands, requests or other communications required or permitted to be given hereunder shall be given in writing and shall be delivered in person, by a commercial overnight air or ground courier that guarantees next day delivery and provides a receipt or by e-mail transmission, followed by hard copy delivered in accordance with the immediately preceding provisions (each a "Notice"), and such Notices shall be addressed as noted below. Either party may, at any time, change its Notice address by giving the other party Notice stating the change and setting forth the new address. Any of the aforementioned Parties may change its address for the receipt of Notices, demands, consents, requests and other communications by giving written Notice to the others in the manner provided for above. Any Notice shall be effective only upon receipt unless such Notice is refused by the Party to which it is to be delivered or because such Notice cannot be delivered because of failure to provide written Notice to the other Party of a change of address, in which event Notice shall be deemed to be given on the date of such refusal in the case of a refusal to accept delivery of Notice or the date of the attempted delivery in the case of a change of address, provided, however, Notices sent by e-mail after 5PM local time at the location to which the same is sent shall be deemed received on the next succeeding Business Day. Notices given by an attorney named below on behalf of its client and sent to the other Party in the manner set forth in this Section 18.06 shall have the same effect as if given by a Party.

- (a) Notice to Owner: Capital Program Office Manager, Pima County Arizona, 201 North Stone Avenue, 2nd Floor, Tucson, Arizona 85701.
- (b) Notice to Developer: Francis J. Knott, Jr., Chief Executive Officer, Knott Development Inc., 1860 E. River Road, Suite 325-003, Tucson, Arizona 85718, Email fjk@knottdevelopment.com.

With a copy to: Goulston & Storrs PC, 1999 K Street, NW, Suite 500, Washington, D.C. 20006, Attn. Paul A. Tummonds, Jr., Email ptummonds@goulstonstorrs.com.

Section 18.07 No Third Party Beneficiary.

This Agreement is entered into solely for the benefit of the Parties to this Agreement and their assigns permitted under Section 18.17 of this Agreement. No Party (other than assigns permitted under Section 18.17 of this Agreement) shall be deemed a third party beneficiary of this Agreement.

Section 18.08 Cooperation and Additional Instruments.

Each Party to this Agreement agrees to promptly sign or join in the signing of all applications, requisitions, certifications and other documents reasonably necessary and proper to give effect and enable the purposes of this Agreement to be performed. Each Party agrees to render such assistance as the other Party may reasonably request in connection with the foregoing.

Section 18.09 Severability.

If any provision of this Agreement would be held in any jurisdiction to be invalid, prohibited or unenforceable for any reason, such provision, as to such jurisdiction, shall be ineffective, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be invalid, prohibited

or unenforceable in such jurisdiction, it shall, as to such jurisdiction, be so narrowly drawn, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 18.10 Time is of the Essence.

Time is of the essence of this Agreement, and of each provision thereof of which time is an element, except as otherwise expressly provided in this Agreement.

Section 18.11 No Partnership or Joint Venture.

Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture of or between the Owner and the Developer.

Section 18.12 Captions.

The headings and titles to the paragraphs of this Agreement are for convenience only and shall have no effect upon the construction or interpretation of any part of this Agreement.

Section 18.13 Language Construction.

This Agreement represents the result negotiations between the Owner and the Developer, each of which has been (or has had opportunity to be) represented by counsel of its own selection, and neither of which has acted under duress or compulsion, whether legal, economic or otherwise. Consequently, the Owner and the Developer agree that the language in all parts of the Agreement shall in all cases be construed as a whole according to its fair meaning and neither strictly for nor against the Owner or the Developer.

Section 18.14 Effective Date.

This Agreement shall commence and be effective on the Effective Date.

Section 18.15 Approvals and Consents.

Wherever this Agreement requires any Party to approve or consent to any document or other matter, such approval or consent shall not be unreasonably withheld, delayed or conditioned, except as otherwise expressly provided in this Agreement.

Section 18.16 Estoppel Certificates.

The Owner and the Developer (each a "Certifying Party") agree, at any time and from time to time during the development of the Project, upon not less than fifteen (15) calendar days prior written notice from the other Party (the "Requesting Party"), to execute, acknowledge and deliver to the Requesting Party a statement certifying to substantially the following provisions (recognizing that any of such statement may be modified by the Certifying Party to reflect the then state of facts), with any such statement delivered pursuant hereto, being able to be relied upon by the Requesting Party or its successors or permitted assigns and the Lender:

- (a) A statement that this Agreement is unmodified and in full force and effect (or if there have been modifications, that this Agreement is in full force and effect as modified and stating the modifications)
- (b) A statement of whether or not, to the knowledge of the Certifying Party, the Requesting Party is in default in performing any of its material obligations under this Agreement, and if so, describing each such default of which the Certifying Party may have knowledge in reasonable detail
- (c) A statement of the address to which notices to the Certifying Party should be sent; and

- (d) Such other statement or statements as the Requesting Party may reasonably request or that the Lender shall require pursuant to the Development Loan.

Section 18.17 Successors and Assigns.

This Agreement shall be binding upon and shall inure to the benefit of the Parties to this Agreement, their successors and permitted assigns. The Owner shall not have the right to assign this Agreement without the prior written consent of the Developer. Developer shall not have the right to assign its obligations under this Agreement without the prior written consent of Owner, provided, however, that the Developer may assign this Agreement pursuant to a collateral assignment to the Lender and, provided, further, that the Developer may assign this Agreement to Mosaic Quarter Development LLC or another special purpose entity Affiliate of the Developer formed to perform the Predevelopment Work, close the Development Loan and/or develop the Project or any Phase thereof.

Section 18.18 Owner's Brokers.

The Owner represents and warrants to the Developer that it has not dealt with any broker in this transaction and each agrees to defend, indemnify, save and hold the Developer harmless from and against any and all fees, commissions, other liabilities, damages, costs or expenses (including, without limitation, reasonable attorneys' fees and disbursements) suffered by the Developer as a result of acts of the Owner or any of its agents that would constitute a breach of its representation and warranty in this Section 18.18. The provisions of this Section 18.18 shall survive the termination or expiration of this Agreement.

Section 18.19 Counterparts.

This Agreement may be executed and delivered in one or more counterparts (and by different Parties on different counterparts), each of which shall constitute an original and together which shall constitute one and the same instrument. To facilitate execution of this agreement, the Parties may execute and exchange by electronic (e-mail) delivery different counterparts of the signature pages, which shall be as effective as originals for all purposes.

Section 18.20 Exhibits.

It is understood and agreed that any documents or exhibits referred to in this Agreement and/or attached hereto form an integral part of this Agreement and are hereby incorporated by reference.

Section 18.21 Incorporation of Recitals.

The recitals set forth in the forepart of this Agreement are incorporated into this Agreement as if fully set forth in this Agreement.

Section 18.22 Americans With Disabilities Act.

Developer will comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. If Developer is carrying out government programs or services on behalf of Owner, then Developer will maintain accessibility to the program to the same extent and degree that would be required of the Owner under 28 CFR Sections 35.130, 35.133, 35.149 through 35.151, 35.160, 35.161 and 35.163. Failure to do so could result in the termination of this Agreement.

Section 18.23 Non-Discrimination.

Developer will comply with all provisions and requirements of Arizona Executive Order 2009-09, which is hereby incorporated into this Agreement, including flow-down of all provisions and requirements to any subcontractors. During performance of this Agreement, Developer will not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

Section 18.24 Cancellation for Conflict of Interest.

Notwithstanding anything to the contrary set forth in this Agreement, this Agreement is subject to cancellation for conflict of interest pursuant to A.R.S. Section 38-511, the pertinent provisions of which are incorporated into this Agreement by reference.

Section 18.25 Ethics.

During the course of pursuing contracts with Owner and while performing contract work in accordance with this Agreement, Developer agrees to maintain business ethics standards aimed at avoiding any impropriety or conflict of interest which could be construed to have an adverse impact on Owner's best interests.

- (a) Developer will take reasonable steps to prevent any actions or conditions which could result in a conflict with Owner's best interests. These obligations apply to the activities of Developer employees, agents, subcontractors, subcontractor employees and consultants to Developer.
- (b) Developer employees, agents, subcontractors, material suppliers (or their representatives) should not make or cause to be made any cash payments, commissions, employment gifts, entertainment, free travel, loans, free work, substantially discounted work, or any other considerations to Owner's representatives, employees or their relatives.
- (c) Developer employees, agents or subcontractors (or their relatives) should not receive any payments, commissions, employment gifts, entertainment, free travel, loans, free work, or substantially discounted work or any other considerations from representatives of subcontractors, or material suppliers or any other individuals, organizations, or businesses receiving funds in connection with the Project.
- (d) Developer will notify a designated Owner representative within forty-eight (48) hours of any instance where the Developer becomes aware of a failure to comply or possible failure to comply with the provisions of this Article.
- (e) Upon request by Owner, Developer agrees to provide a certified Management Representation Letter executed by selected Developer representatives in a form agreeable to Owner stating that they are not aware of any situations violating the business ethics expectations outlined in this Agreement or any similar potential conflict of interest situations.
- (f) Developer will include this clause in all contracts with subcontractors and material suppliers receiving more than Twenty-Five Thousand Dollars (\$25,000) in funds in connection with the Project.
- (g) Developer will permit interviews of employees, reviews and audits of accounting or other records by Owner representatives to evaluate compliance with the business ethics standards. Such reviews and audits will encompass all dealings and activities of Developer's employees, agents, representatives, vendors, subcontractors, and other third parties paid by Developer in their relations with Owner's current or former employees or employee relatives.
- (h) Developer will implement a program requiring its employees to sign acknowledgements that they have read and understand Owner's Business Ethics Expectations and the related obligations outlined in this Agreement.

Section 18.26 Non-Appropriation.

Notwithstanding any other provision in this Agreement, Owner may terminate this Agreement if for any reason there are not sufficient appropriated and available monies for the purpose of maintaining Owner or other public

entity obligations under this Agreement. In the event of such termination, Owner will have no further obligation to Developer, other than to pay for services rendered prior to termination.

Section 18.27 Public Records - Disclosure.

Pursuant to A.R.S. Section 39-121 et seq., and A.R.S. Section 34-603(H) in the case of construction or Architectural and Engineering services procured under A.R.S. Title 34, Chapter 6, all documents submitted in response to the solicitation resulting in this award of this Agreement, including, but not limited to, pricing schedules, product specifications, work plans, and any supporting documents, are public records. As such, these documents are subject to release and/or review the general public upon request, including competitors.

Section 18.28 Public Records – Records marked Confidential; Notice and Protective Order.

If Developer reasonably believes that some of the records subject to disclosure pursuant to Section 15.27 of this Agreement contain proprietary, trade secret or otherwise confidential information, Developer must prominently mark those records "CONFIDENTIAL." In the event a public records request is submitted to Owner for records marked CONFIDENTIAL, Owner will notify Developer of the request as soon as reasonably possible. Owner will release the records ten (10) business days after the date of that notice, unless Developer has, within that period, secured an appropriate order from a court of competent jurisdiction, enjoining the release of the records. Owner will not, under any circumstances, be responsible for securing such an order, nor will Owner be in any way financially responsible for any costs associated with securing such an order.

Section 18.29 Compliance with Immigration Laws.

Developer hereby warrants that it will at all times during the term of this Agreement comply with all federal immigration laws applicable to its employment of its employees, and with the requirements of A.R.S. Section 23-214(A) (together the "State and Federal Immigration Laws"). Developer will further ensure that each subcontractor who performs any work for Developer under this Agreement likewise complies with the State and Federal Immigration Laws. Owner has the right at any time to inspect the books and records of Developer and any subcontractor to verify such party's compliance with the State and Federal Immigration Laws. Any breach of Developer's warranty or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, is a material breach of this Agreement subjecting Developer to penalties up to and including suspension or termination of this Agreement. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Developer will be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, as soon as possible so as not to delay project completion. Any additional costs attributable directly or indirectly to such remedial action are the responsibility of Developer. Developer will advise each such subcontractor of Owner's rights, and the subcontractor's obligations, under this Section 18.29 by including in each subcontract substantially the following form: "Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor's employees, and with the requirements of A.R.S. Section 23-214(a). Subcontractor further agrees that Owner may inspect the Subcontractor's books and records to ensure that Subcontractor is in compliance with the requirements. Any breach of this paragraph by Subcontractor is a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract."

Section 18.30 Israel Boycott Certification.

Pursuant to A.R.S. Section 35-393.01, if contractor engages in for-profit activity and has 10 or more employees, and if this contract has a value of One Hundred Thousand Dollars (\$100,000) or more, Developer certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. Section 4842 or a regulation issued pursuant to 50 U.S.C. Section 4842.

ARTICLE XIX. DEFINITIONS

Section 19.01 Affiliate.

The term "Affiliate" shall mean as to any Person, any other Person that directly or indirectly:

- (a) has an ownership interest in the specified Person;
- (b) Controls, is Controlled by or is under common Control with such Person;
- (c) Is a director or officer of such Person;
- (d) Is the spouse, issue or parent of such Person; or
- (e) Is any Person that would constitute an Affiliate of any such Person described in Section 1.02(a), Section 2.02(b), Section 2.02(c) or Section 2.02(d) of this Agreement.

Section 19.02 Aggregate Debt Service Cash Flow.

The term "Aggregate Debt Service Cash Flow" means the aggregate amount received by the County during a Current Payment Period under the applicable Second Level Lease for each of the Iceplex, Field House, Arena, Stadium and Parking Garage.

Section 19.03 Aggregate Debt Service Reserves.

The term "Aggregate Debt Service Reserves" shall have the meaning ascribed to it in Section 6.04 of this Agreement.

Section 19.04 Agreement.

The term "Agreement" shall have the meaning ascribed to it in the forepart of this Agreement.

Section 19.05 Alternate Components.

The term "Alternate Components" means alternate and/or additional Support Elements determined to be viable for the Project during the Predevelopment Phase by the Developer and included in the Amended Business Plan and the Development Overview Documents.

Section 19.06 Alternate Facilities.

The term "Alternate Facilities" means alternate and/or additional major facilities determined to be viable for the Project during the Predevelopment Phase by the Developer and included in the Amended Business Plan and the Development Overview Documents.

Section 19.07 Alternate Financing.

The term "Alternate Financing" shall have the meaning ascribed to it in Section 6.08(a) of this Agreement.

Section 19.08 Alternate Finance Termination.

The term "Alternate Finance Termination" shall have the meaning ascribed to it in Section 6.10(b) of this Agreement.

Section 19.09 Amended Business Plan.

The term "Amended Business Plan" shall have the meaning ascribed to it in Section 5.20 of this Agreement.

Section 19.10 Anchor Elements.

The term "Anchor Elements" shall have the meaning ascribed to it in Recital I to this Agreement.

Section 19.11 Applicable Credit Rating Agencies.

The term "Applicable Credit Rating Agencies" shall have the meaning ascribed to it in Section 6.03 of this Agreement.

Section 19.12 Approved Master Project Schedule.

The term "Approved Master Project Schedule" shall have the meaning ascribed to it in Section 4.03 of this Agreement.

Section 19.13 Approved Master Project Schedule Letter.

The term "Approved Master Project Schedule Letter" means the form of letter attached to the Development Agreement as Exhibit H.

Section 19.14 Approved Plans and Specifications.

The term "Approved Plans and Specifications" shall have the meaning ascribed to it in Section 4.04 of this Agreement.

Section 19.15 Approved Plans and Specifications Letter.

The term "Approved Plans and Specifications Letter" means the form of letter attached to the Development Agreement as Exhibit I.

Section 19.16 Architect.

The term "Architect" shall have the meaning ascribed to it in Section 9.04 of this Agreement.

Section 19.17 As-Built Plans.

The term "As-Built Plans" shall have the meaning ascribed to it in Section 11.06 of this Agreement.

Section 19.18 Builders Risk Insurance.

The term "Builders Risk Insurance" shall have the meaning ascribed to it in Section 12.01 of this Agreement.

Section 19.19 Building Construction Costs.

The term "Building Construction Costs" shall have the meaning ascribed to it in Section 4.05 of this Agreement.

Section 19.20 Building Improvements.

The term "Building Improvements" means, as the context may require, improvements as to any given Phase, and collectively, as to more than one or all Phases.

Section 19.21 Business Day.

The term "Business Day" means any a calendar day other than a Saturday, Sunday or legal holiday observed by the State of Arizona.

Section 19.22 Business Plan.

The term "Business Plan" shall have the meaning ascribed to it in Recital F to this Agreement.

Section 19.23 Capex Committee.

The term "Capex Committee" shall have the meaning ascribed to it in Section 7.01 of this Agreement.

Section 19.24 Casualty.

The term "Casualty" means a fire, wind or any other casualty damaging and/or affecting the Project and the Building Improvements.

Section 19.25 Certificate of Participation.

The term "Certificate of Participation" shall have the meaning ascribed to it in Section 6.03 of this Agreement.

Section 19.26 Certifying Party.

The term "Certifying Party" shall have the meaning ascribed to it in Section 18.16 of this Agreement.

Section 19.27 Change Order.

The term "Change Order" shall have the meaning ascribed to it in Section 10.04 of this Agreement.

Section 19.28 Clean Air Act.

The term "Clean Air Act" means the Clean Air Act, 42 U.S.C. §§7401 et seq.

Section 19.29 Common Area.

The term "Common Area" means those areas of the Premises to be developed by the Developer that are exclusive of the areas of the Premises on which the Anchor Elements and the Support Elements will be developed and constructed.

Section 19.30 Community Engagement Committee.

The term "Community Engagement Committee" shall have the meaning ascribed to it in Section 7.01 of this Agreement.

Section 19.31 Comprehensive Environmental Response, Compensation and Liability Act.

The term "Comprehensive Environmental Response, Compensation and Liability Act" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Liability Act, 42 U.S.C. §§ 9601 et seq.

Section 19.32 Construction Budget.

The term "Construction Budget" shall have the meaning ascribed to it in Section 10.01 of this Agreement.

Section 19.33 Construction Milestones.

The term "Construction Milestones" shall have the meaning ascribed to it in Section 11.01(a) of this Agreement.

Section 19.34 Construction Punch List.

The term "Construction Punch List" shall have the meaning ascribed to it in Section 11.03 of this Agreement.

Section 19.35 Construction Punch List Work.

The term "Construction Punch List Work" shall have the meaning ascribed to it in Section 11.03 of this Agreement.

Section 19.36 Construction Schedule.

The term "Construction Schedule" shall have the meaning ascribed to it in Section 11.01(a) of this Agreement.

Section 19.37 Control.

The term "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the

day-to-day management or operation of an entity, whether through the ownership of voting securities, by contract, or by virtue of being, inter alia, the officer, director, manager, managing member, general partner, managing partner, managing joint venturer or trustee. For purposes of this Agreement, the term "Control" (including the terms "Controlling", "Controlled by" and "under Common Control with") of a Person means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting interests, by contract or otherwise.

Section 19.38 Current Payment Date.

The term "Current Payment Date" means any Business Day on which a payment on the Development Loan is due and payable pursuant to the terms of the Development Loan, provided, however, such term excludes any and all Prior Payment Dates.

Section 19.39 Current Payment Period.

The term "Current Payment Period" means the time period that commences on the most recent Prior Payment Date and ends on the immediately succeeding Current Payment Date.

Section 19.40 Deadlines.

The term "Deadlines" means the dates for starting and completion of the various stages of development of a Development Phase which are set forth in an Approved Master Project Schedule.

Section 19.41 Design Build Contract.

The term "Design Build Contract" means the contract between the Developer and the Design Builder, generally in the form of AIA Contract A141-2004 and General Conditions A201-2007 with owner-oriented revisions, which provides for the construction of the Building Improvements within a Development Phase on the basis of the cost of the work plus a fee payable to the Design Builder, but not to exceed a specified guaranteed maximum cost.

Section 19.42 Design Builder.

The term "Design Builder" shall have the meaning ascribed to it in Section 9.03 of this Agreement.

Section 19.43 Design Builder General Liability Insurance.

The term "Design Builder General Liability Insurance" shall have the meaning ascribed to it in Section 12.02 of this Agreement.

Section 19.44 Design Builder Indemnity.

The term "Design Builder Indemnity" shall have the meaning ascribed to it in Section 9.03 of this Agreement.

Section 19.45 Design Builder Insurance.

The term "Design Builder Insurance" shall have the meaning ascribed to it in Section 12.02 of this Agreement.

Section 19.46 Design Builder Workers Compensation Insurance.

The term "Design Builder Workers Compensation Insurance" shall have the meaning ascribed to it in Section 12.02 of this Agreement.

Section 19.47 Determination Phase.

The term "Determination Phase" shall have the meaning ascribed to it in the forepart to Article VI of this Agreement.

Section 19.48 Determination Phase Work.

The term "Determination Phase Work" shall have the meaning ascribed to it in the forepart of Article VI of this Agreement.

Section 19.49 Developer.

The term "Developer" shall have the meaning ascribed to it in the forepart of this Agreement.

Section 19.50 Developer Default.

The term "Developer" shall have the meaning ascribed to it in Section 17.02 of this Agreement.

Section 19.51 Developer Nonparticipation Fee.

The term "Developer Nonparticipation Fee" shall have the meaning ascribed to it in Section 6.09 of this Agreement.

Section 19.52 Developer's Authorized Representative.

The term "Developer's Authorized Representative" shall have the meaning ascribed to it in Section 9.02 of this Agreement.

Section 19.53 Development Affiliate.

The term "Development Affiliate" shall have the meaning ascribed to it in Recital I to this Agreement.

Section 19.54 Development Agreement.

The term "Development Agreement" shall have the meaning ascribed to it in Recital B to this Agreement.

Section 19.55 Development Committee.

The term "Development Committee" shall have the meaning ascribed to it in Section 7.01 of this Agreement.

Section 19.56 Development Loan.

The term "Development Loan" means that certain First Mortgage loan made by the Lender to the Developer to finance the construction of the Building Improvements within a Development Phase, as the same may be modified, amended or extended, provided, however, if the Developer, pursuant to Section 6.05 or Section 6.08 of this Agreement, obtains Alternate Financing any reference to Development Loan within this Agreement shall apply with equal force and effect to such Alternate Financing.

Section 19.57 Development Overview.

The term "Development Overview" shall have the meaning ascribed to it in Section 6.02 of this Agreement.

Section 19.58 Development Phase.

The term "Development Phase" shall have the meaning ascribed to it in Section 6.05(c) of this Agreement.

Section 19.59 Development Phase Completion Dates.

The term "Development Phase Completion Dates" shall have the meaning ascribed to it in Section 6.05(c) of this Agreement.

Section 19.60 Development Phase One.

The term "Development Phase One" shall have the meaning ascribed to it in Section 6.05(a) of this Agreement.

Section 19.61 Development Phase One Completion Dates.

The term "Development Phase One Completion Dates" shall have the meaning ascribed to it in Section 6.05(a) of this Agreement.

Section 19.62 Development Phase Two.

The term "Development Phase Two" shall have the meaning ascribed to it in Section 6.05(b) of this Agreement.

Section 19.63 Development Phase Two Completion Dates.

The term "Development Phase Two Completion Dates" shall have the meaning ascribed to it in Section 6.05(b) of this Agreement.

Section 19.64 Development Phase Three.

The term "Development Phase Three" shall have the meaning ascribed to it in Section 6.05(c) of this Agreement.

Section 19.65 Development Phase Three Completion Dates.

The term "Development Phase Three Completion Dates" shall have the meaning ascribed to it in Section 6.05(c) of this Agreement.

Section 19.66 Economic Development Committee.

The term "Economic Development Committee" shall have the meaning ascribed to it in Section 7.01 of this Agreement.

Section 19.67 Effective Date.

The term "Effective Date" shall have the meaning ascribed to it in the forepart of this Agreement.

Section 19.68 Entertainment Center.

The term "Entertainment Center" means that certain Building Improvement listed on the Site Plan as No. 19 and as more fully described in the Support Elements section of the Business Plan.

Section 19.69 Environmental Laws.

The term "Environmental Laws" shall have the meaning ascribed to it in Section 15.06 of this Agreement.

Section 19.70 Exclusive Rights.

The term "Exclusive Rights" shall have the meaning ascribed to it in Section 2.01 of this Agreement.

Section 19.71 Existing Kino Complex.

The term "Existing Kino Complex" means, individually or collectively, the existing north and south portions of the Kino Sports and Entertainment Complex as owned and developed by the Owner.

Section 19.72 Facility Agreement.

The term "Facility Agreement" shall have the meaning ascribed to it in Section 5.03 of this Agreement.

Section 19.73 Facility Agreement Summary.

The term "Facility Agreement Summary" shall have the meaning ascribed to it in Section 5.03 of this Agreement.

Section 19.74 Field House.

The term "Field House" means that certain Building Improvement listed on the Site Plan as No. 4 and as more fully described in the Kino District Field House section of the Business Plan.

Section 19.75 Final Business Plan.

The term "Final Business Plan" shall have the meaning ascribed to it in Section 6.04 of this Agreement.

Section 19.76 Final Completion.

The term "Final Completion" shall have the meaning ascribed to it in Section 11.05 of this Agreement.

Section 19.77 Financing Costs.

The term "Financing Costs" means all Developer authorized costs and expenses partially or completely relating to obtaining, documenting, negotiating, closing and servicing the Development Loan and paying all interest and fees payable under the Development Loan.

Section 19.78 First Level Lease.

The term "First Level Lease" shall have the meaning ascribed to it in Recital I to this Agreement.

Section 19.79 First Mortgage.

The term "First Mortgage" means the Deed of Trust, Security Agreement, Assignment of Revenue and Financing Statement (or such other substantially similar instruments) encumbering the Project granted by Developer to the Lender, as security for the payment of the principal of and interest on a Development Loan and the other amounts payable by Developer to the Lender pursuant to a Development Loan.

Section 19.80 Governance Committees.

The term "Governance Committees" shall have the meaning ascribed to it in Section 7.01 of this Agreement.

Section 19.81 Government Approvals.

The term "Government Approvals" shall have the meaning ascribed to it in Section 4.13(a) of this Agreement.

Section 19.82 Government Approvals Schedule.

The term "Government Approvals Schedule" shall have the meaning ascribed to it in Section 4.13(b) of this Agreement.

Section 19.83 Government Approvals Schedule Letter.

The term "Governmental Approvals Schedule Letter" means the form of letter attached to the Development Agreement as Exhibit M.

Section 19.84 Government Approvals Work.

The term "Governmental Approvals Work" shall have the meaning ascribed to it in Section 5.05 of this Agreement.

Section 19.85 Governmental Authority.

The term "Governmental Authority" means any governmental agency, authority or board or other party having authority over the development of the Project, including pursuant to any intergovernmental agreement or otherwise, relative to the issuance and granting of any Governmental Approvals required for the Project.

Section 19.86 Ground Lease.

The term "Ground Lease" shall have the meaning ascribed to it in Recital H to this Agreement.

Section 19.87 Hazardous Materials.

The term "Hazardous Materials" means all of the following: (a) any substances, materials or wastes that are or may become regulated by Environmental Laws, (b) any substance, material or waste that is included within the definitions of "hazardous substances," "hazardous materials," "hazardous waste," "toxic substances," "toxic materials," "toxic waste" or words of similar import in any Environmental Law, (c) those substances listed as hazardous substances by the United States Department of Transportation (or any successor agency) (49 C.F.R. 172.101 and amendments thereto), or by the United States Environmental Protection Agency (or any successor

agency) (40 C.F.R. Part 302 and amendments thereto), (d) any substance, material or waste that is petroleum, petroleum-related or a petroleum by-product, asbestos or asbestos-containing material, polychlorinated biphenyls, flammable, explosive, radioactive, freon gas, radon or a pesticide, herbicide or any other agricultural chemical, (e) asbestos, (f) hydrocarbons (including naturally occurring or man-made petroleum and hydrocarbons), flammable explosives, urea formaldehyde insulation, radioactive materials, biological substances and any other kind and/or type of pollutants or contaminants (including, without limitation, asbestos and raw materials which include hazardous constituents), sewage sludge, industrial slag, solvents and/or any other similar substances, or materials which are included under or regulated by any Environmental Laws, and (g) such other toxic or hazardous substances, materials or wastes that are or may become regulated under any other applicable municipal, county, state or federal law, rule, ordinance, direction or regulation.

Section 19.88 Hazardous Materials Transportation Act.

The term "Hazardous Materials Transportation Act" means the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 et seq.

Section 19.89 Hotel A.

The term "Hotel A" means that certain Building Improvement originally listed on the Site Plan (attached to the Development Agreement) as No. 23 and as more recently updated pursuant to Development Reports previously issued by the Developer.

Section 19.90 Hotel B.

The term "Hotel B" means that certain Building Improvement originally listed on the Site Plan (attached to the Development Agreement) as No. 21 and as more recently updated pursuant to Development Reports previously issued by the Developer.

Section 19.91 Hotel C.

The term "Hotel C" means that certain Building Improvement listed on the Site Plan as No. 36 and as more recently updated pursuant to Development Reports previously issued by the Developer.

Section 19.92 Iceplex.

The term "Iceplex" means that certain Building Improvement listed on the Site Plan as No. 3 and as more fully described in the Kino District Iceplex section of the Business Plan.

Section 19.93 Iceplex Retail Components.

The term "Iceplex Retail Components" means those certain Building Improvements listed on the Site Plan as Nos. 7, 8, 9, 10 and 11 and as more fully described in the Support Elements section of the Business Plan.

Section 19.94 Insurance Deficiency.

The term "Insurance Deficiency" shall have the meaning ascribed to it in Section 14.03 of this Agreement.

Section 19.95 Insurance Excess.

The term "Insurance Excess" shall have the meaning ascribed to it in Section 14.03 of this Agreement.

Section 19.96 Kino Complex Underpass.

The term "Kino Complex Underpass" means that certain underpass planned by the Owner to be developed and constructed underneath Interstate 10 for the purposes of connecting the north and south portions of the Existing Kino Complex and for which the Developer has pledged to contribute funds towards the cost thereof in conjunction with the Developer's development and construction of the Parking Garage.

Section 19.97 Lease Participation Contingency.

The term "Lease Participation Contingency" shall have the meaning ascribed to it in Section 6.04(c) of this Agreement.

Section 19.98 Lease Participation Contingency Extension.

The term "Lease Participation Contingency Extension" shall have the meaning ascribed to it in Section 6.08 of this Agreement.

Section 19.99 Lease and Management Documents.

The term "Lease and Management Documents" shall have the meaning ascribed it in Recital I of this Agreement.

Section 19.100 Legal Requirements.

The term "Legal Requirements" means any and all laws, ordinances, rules, regulations, statutes, by-laws, building codes, court decisions, orders and requirements of all public authorities, including the Governmental Approvals.

Section 19.101 Lender.

The term "Lender" means CTL Capital Group LLC.

Section 19.102 Memorandum.

The term "Memorandum" shall have the meaning ascribed to it in Section 2.03 of this Agreement.

Section 19.103 Milestone.

The term "Milestone" means a Construction Milestone.

Section 19.104 Minor Variations.

The term "Minor Variations" shall mean any modifications to any of the Building Improvements which will not have a materially adverse impact on the design of any of the Building Improvements and are consistent with the Premises Requirements, or to the extent such modifications are required (a) to correct architectural or engineering errors or omissions, or to comport with good design, engineering and construction practices, or (b) to comply with applicable Legal Requirements, regulations and codes in effect after the completion of the Approved Plans and Specifications.

Section 19.105 Monthly Predevelopment Expense Report.

The term "Monthly Predevelopment Expense Report" shall have the meaning ascribed to it in Section 4.24 of this Agreement.

Section 19.106 Mosaic Quarter Development.

The term "Mosaic Quarter Development" means the Project, including all of the Building Improvements to be constructed within each Development Phase and with respect to each Anchor Element and Support Element.

Section 19.107 Nonparticipation Election.

The term "Nonparticipation Election" shall have the meaning ascribed to it in Section 6.09 of this Agreement.

Section 19.108 Notice.

The term "Notice" shall have the meaning ascribed to it in Section 18.06 of this Agreement.

Section 19.109 Notice to Proceed.

The term "Notice to Proceed" means the written authorization in the form attached to the Development Agreement as Exhibit L provided by the Developer to the Design Builder authorizing the Design Builder to proceed with the

development of the Project and the construction of the Building Improvements.

Section 19.110 OAC Group.

The term "OAC Group" shall have the meaning ascribed to it in Section 7.01 of this Agreement.

Section 19.111 OAC Meetings.

The term "OAC Meetings" shall have the meaning ascribed to it in Section 7.03 of this Agreement.

Section 19.112 Operating Affiliate.

The term "Operating Affiliate" shall have the meaning ascribed to it in Recital I to this Agreement.

Section 19.113 Operations Committee.

The term "Operations Committee" shall have the meaning ascribed to it in Section 7.01 of this Agreement.

Section 19.114 Original Agreement.

The term "Original Agreement" shall have the meaning ascribed to it in Recital A to this Agreement.

Section 19.115 Original Agreement Reimbursement Provisions.

The term "Original Agreement Reimbursement Provisions" shall have the meaning ascribed to it in Section 1.02 of this Agreement.

Section 19.116 Owner.

The term "Owner" shall have the meaning ascribed to it in the forepart of this Agreement.

Section 19.117 Owner's Authorized Representative.

The term "Owner's Authorized Representative" shall have the meaning ascribed to it in Section 9.01 of this Agreement.

Section 19.118 Owner Default.

The term "Owner Default" shall have the meaning ascribed to it in Section 17.02 of this Agreement.

Section 19.119 Owner Predevelopment Change.

The term "Owner Predevelopment Change" shall have the meaning ascribed to it in Section 4.11 of this Agreement.

Section 19.120 Owner Program Requirements.

The term "Owner Program Requirements" shall have the meaning ascribed to Program Requirements in Section 3.03 of this Agreement.

Section 19.121 Owner Reimbursement.

The term "Owner Reimbursement" shall have the meaning ascribed to it in Section 6.09 of this Agreement.

Section 19.122 Pandemic Regulations.

The term "Pandemic Regulations" shall have the meaning ascribed to it in Section 6.07 of this Agreement.

Section 19.123 Pandemic Development Funds.

The term "Pandemic Development Funds" shall have the meaning ascribed to it in Section 6.07(b) of this Agreement.

Section 19.124 Pandemic Reserve Funds.

The term "Pandemic Reserve Funds" shall have the meaning ascribed to it in Section 6.07(b) of this Agreement.

Section 19.125 Parking Garage.

The term "Parking Garage" means that certain Building Improvement listed on the Site Plan as No. 34 and as described more fully in the Kino District Parking Garage section of the Business Plan, including the provision of funding for the Kino Complex Underpass to be provided by the Developer.

Section 19.126 Pavilion.

The term "Pavilion" means Mosaic Quarter Pavilion, as located and described in the Developer's Predevelopment Phase Reports.

Section 19.127 Permitted Exceptions.

The term "Permitted Exceptions" shall mean (a) provisions of existing building and zoning laws, (b) such taxes and assessments for the then current year as are not due and payable as of the date of execution and delivery of the Ground Lease, and (c) any easements, restrictions and reservations of record, so long as the same do not prohibit, interfere with or adversely affect the development of the Premises as contemplated by this Agreement. For the avoidance of doubt, "Permitted Exceptions" shall not include, and Owner shall be obligated to discharge, by payment, bonding or otherwise, any attachment, lien or encumbrance that constitutes a lien on all or any portion of the Premises securing the payment of money, unless caused by any act or omission of the Developer or any agent, employee or contractor of the Developer or anyone claiming by, through or under any of them.

Section 19.128 Person.

The term "Person" means a natural person, an estate, a trust, a partnership, a limited liability company, a corporation and any other form of business or legal association or entity.

Section 19.129 Phase.

The term "Phase" shall have the meaning ascribed to it in Recital E of this Agreement.

Section 19.130 Phase One Predevelopment Phase.

The term "Phase One Predevelopment Phase" shall have the meaning ascribed to it in the forepart to Article V of this Agreement.

Section 19.131 Phase Two Predevelopment Phase.

The term "Phase Two Predevelopment Phase" shall have the meaning ascribed to it in the forepart to Article V of this Agreement.

Section 19.132 Phase Three Predevelopment Phase.

The term "Phase Three Predevelopment Phase" shall have the meaning ascribed to it in the forepart to Article V of this Agreement.

Section 19.133 Phases.

The term "Phases" shall have the meaning ascribed to it in Recital E of this Agreement.

Section 19.134 Planned Development Site Plan.

The term "Planned Development Site Plan" means the site plan for the Premises attached to the Development Agreement as Exhibit B.

Section 19.135 Predevelopment Cost Invoice.

The term "Predevelopment Cost Invoice" shall have the meaning ascribed to it in Section 6.09 of this Agreement.

Section 19.136 Predevelopment Period.

The term "Predevelopment Period" means the period of time commencing with the Effective Date and continuing until the closing of the Development Loan and the issuance of a Notice to Proceed.

Section 19.137 Predevelopment Phase.

The term "Predevelopment Phase" shall have the meaning ascribed to it in the forepart to Article V of this Agreement.

Section 19.138 Predevelopment Phase Reports.

The term "Predevelopment Phase Reports" shall have the meaning ascribed to it in the forepart to Article V of this Agreement.

Section 19.139 Predevelopment Phase Work.

The term "Predevelopment Phase Work" shall have the meaning ascribed to it in the forepart to Article V of this Agreement.

Section 19.140 Predevelopment Service Firms.

The term "Predevelopment Service Firms" shall have the meaning ascribed to it in Section 4.01 of this Agreement.

Section 19.141 Predevelopment Work.

The term "Predevelopment Work" shall have the meaning ascribed to it in the forepart to Article IV of this Agreement.

Section 19.142 Premises.

The term "Premises" shall have the meaning ascribed to it in Recital C of this Agreement.

Section 19.143 Premises Requirements.

The term "Premises Requirements" shall have the meaning ascribed to it in Recital D of this Agreement.

Section 19.144 Prior Payment Date.

The term "Prior Payment Date" means the Business Day on which a payment was made on the Development Loan.

Section 19.145 Program Requirements.

The term "Program Requirements" shall have the meaning ascribed to it in Section 3.03 of this Agreement.

Section 19.146 Project.

The term "Project" shall have the meaning ascribed to it in Recital K of this Agreement.

Section 19.147 Project Program.

The term "Project Program" shall have the meaning ascribed to it in Section 3.01 of this Agreement.

Section 19.148 Project Program Approval Letter.

The term "Project Program Approval Letter" means the form of letter attached to the Development Agreement as Exhibit N.

Section 19.149 Project Summary.

The term "Project Summary" shall have the meaning ascribed to it in Section 3.01 of this Agreement.

Section 19.150 Project Summary Approval Letter.

The term "Project Summary Approval Letter" means the form of letter attached to the Development Agreement as Exhibit O.

Section 19.151 Projected Date of Substantial Completion.

The term "Projected Date of Substantial Completion" means the proposed date that Substantial Completion will occur pursuant to the Approved Master Project Schedule.

Section 19.152 Projected Date of Substantial Completion.

The term "Projected Date of Final Completion" means the proposed date that Final Completion of any Phase will occur pursuant to the Approved Master Project Schedule.

Section 19.153 Rating Confirmation.

The term "Rating Confirmation" shall have the meaning ascribed to it in Section 6.03 of this Agreement.

Section 19.154 Rating Review Package.

The term "Rating Review Package" shall have the meaning ascribed to it in Section 5.24 of this Agreement.

Section 19.155 Rating Review Package.

The term "Rating Review Package" shall have the meaning ascribed to it in Section 5.24 of this Agreement.

Section 19.156 Records.

The term "Records" shall have the meaning ascribed to it in Section 11.08 of this Agreement.

Section 19.157 Refined Building Construction Costs.

The term "Refined Building Construction Costs" shall have the meaning ascribed to it in Section 5.05 of this Agreement.

Section 19.158 Refined Cash Flow Projections.

The term "Refined Cash Flow Projections" shall have the meaning ascribed to it in Section 5.10 of this Agreement.

Section 19.159 Refined Debt Service Reserves.

The term "Refined Debt Service Reserves" shall have the meaning ascribed to it in Section 5.15 of this Agreement.

Section 19.160 Refined Financing Costs.

The term "Refined Financing Costs" shall have the meaning ascribed to it in Section 5.08 of this Agreement.

Section 19.161 Refined First Level Leases.

The term "Refined First Level Leases" shall have the meaning ascribed to it in Section 5.17 of this Agreement.

Section 19.162 Refined First Level Lease Costs.

The term "Refined First Level Lease Costs" shall have the meaning ascribed to it in Section 5.12 of this Agreement.

Section 19.163 Refined Ground Lease Costs.

The term "Refined Ground Lease Costs" shall have the meaning ascribed to it in Section 5.13 of this Agreement.

Section 19.164 Refined Plans and Specifications.

The term "Refined Plans and Specifications" shall have the meaning ascribed to it in Section 5.04 of this Agreement.

Section 19.165 Refined Predevelopment Costs.

The term "Refined Predevelopment Costs" shall have the meaning ascribed to it in Section 5.06 of this Agreement.

Section 19.166 Refined Property Tax Costs.

The term "Refined Property Tax Costs" shall have the meaning ascribed to it in Section 5.09 of this Agreement.

Section 19.167 Refined Second Level Leases.

The term "Refined Second Level Leases" shall have the meaning ascribed to it in Section 5.18 of this Agreement.

Section 19.168 Refined Second Level Lease Cost.

The term "Refined Second Level Lease" shall have the meaning ascribed to it in Section 5.11 of this Agreement.

Section 19.169 Refined Subleases.

The term "Refined Subleases" shall have the meaning ascribed to it in Section 5.16 of this Agreement.

Section 19.170 Refined Sublease Costs.

The term "Refined Sublease Costs" shall have the meaning ascribed to it in Section 5.14 of this Agreement.

Section 19.171 Refined Total Project Costs.

The term "Refined Total Project Costs" shall have the meaning ascribed to it in Section 5.07 of this Agreement.

Section 19.172 Regional Stakeholder Meetings.

The term "Regional Stakeholder Meetings" shall have the meaning ascribed in Section 5.23 of this Agreement.

Section 19.173 Requesting Party.

The term "Requesting Party" shall have the meaning ascribed to it in Section 18.16 of this Agreement.

Section 19.174 Resource Conservation and Recovery Act.

The term "Resource Conservation and Recovery Act" means the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901 et seq.

Section 19.175 Second Level Lease.

The term "Second Level Lease" shall have the meaning ascribed to it in Recital I of this Agreement.

Section 19.176 SPE.

The term "SPE" shall have the meaning ascribed it in Recital I of this Agreement.

Section 19.177 Stadium.

The term "Stadium" means that certain Building Improvement listed on the Site Plan as No. 1 and as described more fully in the Kino District Stadium section of the Business Plan.

Section 19.178 State and Federal Immigration Laws.

The term "State and Federal Immigration Laws" shall have the meaning ascribed to it in Section 18.29 of this Agreement.

Section 19.179 Sublease.

The term "Sublease" shall have the meaning ascribed it in Recital I of this Agreement.

Section 19.180 Substantial Completion.

The term "Substantial Completion" shall have the meaning ascribed to it in Section 11.02 of this Agreement.

Section 19.181 Support Elements.

The term "Support Elements" shall have the meaning ascribed to it Recital E of this Agreement.

Section 19.182 Termination Memorandum.

The term "Termination Memorandum" shall have the meaning ascribed to it in Section 2.03 of this Agreement.

Section 19.183 Total Predevelopment Costs.

The term "Total Predevelopment Costs" shall have the meaning ascribed to it in Section 4.24 of this Agreement.

Section 19.184 Total Project Budget.

The term "Total Project Budget" shall have the meaning ascribed to it in Section 4.07 of this Agreement.

Section 19.185 Total Project Budget Letter.

The term "Total Project Budget Letter" means the form of letter attached to the Development Agreement as Exhibit K.

Section 19.186 Total Project Costs.

The term "Total Project Costs" shall have the meaning ascribed to it in Section 4.06 of this Agreement.

Section 19.187 Total Project Costs Letter.

The term "Total Project Costs Letter" means the form of letter attached to the Development Agreement as Exhibit J.

Section 19.188 Toxic Substance Control Act.

The term "Toxic Substance Control Act" means the Toxic Substance Control Act, 15 U.S.C. §§ 2601 et seq.

Section 19.189 Warranty Period.

The term "Warranty Period" means the warranty period to be set forth in the Design Build Contract.

Section 19.190 Water Pollution Control Act.

The term "Water Pollution Control Act" means the Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq. and is also commonly referred to as the "Clean Water Act."

IN WITNESS WHEREOF, Owner and Developer have executed this Agreement under seal as of the Effective Date.

[HERE ENDS THIS PAGE – SIGNATURES APPEAR ON FOLLOWING PAGES]

[Developer Signature Page of Development Agreement]

KNOTT DEVELOPMENT INC
An Arizona Close Corporation

By: 

Name: Francis J. Knott, Jr.

Title: Chief Executive Officer

Date: September 7, 2022

[Owner Signature Page of Development Agreement]

PIMA COUNTY, ARIZONA

By: _____
Sharon Bronson
Chair, Board of Supervisors
Date: _____

ATTEST:

By: _____
Name: _____
Clerk of the Board of Supervisors

APPROVED AS TO FORM:



By: _____
Name: Bobby H. Yu
Deputy County Attorney
Date: 7/29/2022

SCHEDULE OF EXHIBITS

EXHIBIT A – DEVELOPMENT AGREEMENT

EXHIBIT B – FINAL BUSINESS PLAN

EXHIBIT A

DEVELOPMENT AGREEMENT

(76 pages)



AMENDED AND RESTATED PREDEVELOPMENT SERVICES AGREEMENT
"MASTER DEVELOPER PARTNERSHIP AND DEVELOPMENT AGREEMENT"

BY AND BETWEEN

KNOTT DEVELOPMENT INC

AND

PIMA COUNTY, ARIZONA

REGARDING

KINO SOUTH SPORTS AND ENTERTAINMENT COMPLEX
PIMA COUNTY, ARIZONA

CT-PW-21-364

July 6, 2021

TABLE OF CONTENTS

ARTICLE I. AMENDMENT AND RESTATEMENT

Section 1.01	Amendment and Restatement of the Original Agreement.	3
Section 1.02	Incorporation and Ratification of the Original Agreement's Reimbursement Provisions.	3
Section 1.03	Name of Agreement.	3

ARTICLE II. EXCLUSIVITY, GROUND LEASE AND OWNER SUBLEASES

Section 2.01	Exclusive Right to Develop.	3
Section 2.02	Consideration for Exclusive Rights.	3
Section 2.03	Recording of Agreement Memorandum.	3
Section 2.04	Ground Lease and Subleases.	4

ARTICLE III. PROJECT

Section 3.01	Project Description.	4
Section 3.02	Building Improvements.	4
Section 3.03	Program Requirements.	4
Section 3.04	Utility Services, Back-Up Facilities and Redundancy.	4

ARTICLE IV. PREDEVELOPMENT WORK – GENERAL

Section 4.01	Professional Team and Contractor Selection.	5
Section 4.02	Project Planning and Design.	5
Section 4.03	Approved Master Project Schedule.	5
Section 4.04	Approved Plans and Specifications.	5
Section 4.05	Building Construction Costs.	5
Section 4.06	Total Project Costs.	6
Section 4.07	Approved Total Project Budget.	6
Section 4.08	Financial Planning.	6
Section 4.09	Project Financing.	6
Section 4.10	Notice to Proceed.	6
Section 4.11	Owner Changes in Design During Predevelopment Period.	7
Section 4.12	Minor Variations.	7
Section 4.13	Government Approvals.	7
Section 4.14	Design of Building Improvements.	8
Section 4.15	Product Selection and Procurement.	8
Section 4.16	Utilities, Back-Up Facilities and Redundancy.	8
Section 4.17	Schedule for Design Plan Preparation and Approvals.	8
Section 4.18	Project Schedule Planning.	8
Section 4.19	Condemnation Services.	8
Section 4.20	Right of Entry.	8
Section 4.21	Easements.	9

Section 4.22	Predevelopment Service Firm Insurance.....	9
Section 4.23	Right to Post Signage.....	9
Section 4.24	Record of Predevelopment Work Costs.....	9

ARTICLE V. PREDEVELOPMENT WORK – PREDEVELOPMENT PHASE

Section 5.01	Project Program.....	10
Section 5.02	Project Summary.....	10
Section 5.03	Facility Agreement Summary.....	11
Section 5.04	Refined Plans and Specifications.....	11
Section 5.05	Government Approvals.....	11
Section 5.06	Refined Building Construction Costs.....	12
Section 5.07	Refined Predevelopment Costs.....	12
Section 5.08	Refined Total Project Costs.....	12
Section 5.09	Refined Financing Costs.....	14
Section 5.10	Refined Property Tax Costs.....	14
Section 5.11	Refined Cash Flow Projections.....	14
Section 5.12	Refined Second Level Lease Costs.....	14
Section 5.13	Refined First Level Lease Costs.....	14
Section 5.14	Refined Ground Lease Costs.....	14
Section 5.15	Refined Sublease Costs.....	14
Section 5.16	Refined Debt Service Reserves.....	14
Section 5.17	Refined Sublease Documents.....	15
Section 5.18	Refined First Level Lease Documents.....	15
Section 5.19	Refined Second Level Lease Documents.....	15
Section 5.20	Amendment of Business Plan.....	15
Section 5.21	Environmental Assessment Services.....	15
Section 5.22	Premises Surveying Services.....	15
Section 5.23	Community Relations and Stakeholder Discussions.....	15
Section 5.24	Rating Review Package.....	16

ARTICLE VI. PREDEVELOPMENT WORK – DETERMINATION PHASE

Section 6.01	Review of Documents.....	17
Section 6.02	Financial Review and Analysis.....	17
Section 6.03	Credit Rating Agency Review.....	17
Section 6.04	Lease Participation Contingency.....	17
Section 6.05	Development Phasing Determination.....	18
Section 6.06	Closing of Development Loan.....	19
Section 6.07	Phasing Delay Due to Pandemic.....	19
Section 6.08	Failure of Lease Participation Contingency.....	20
Section 6.09	Owner Nonparticipation Election.....	21
Section 6.10	Effect on Developer from Nonparticipation Election.....	21

ARTICLE VII. PROJECT GOVERNANCE

Section 7.01	Establishment of Governance Committees.....	22
Section 7.02	Development Committee.....	23

Section 7.03	OAC Group.....	23
Section 7.04	Operations Committee.....	24
Section 7.05	Capex Committee.....	24
Section 7.06	Economic Development Committee.....	25
Section 7.07	Community Engagement Committee.....	26
Section 7.08	Annual Report from Developer.....	26

ARTICLE VIII. DEVELOPMENT MANAGEMENT

Section 8.01	Close-Out of Project.....	27
Section 8.02	Scheduling/Expediting Services.....	27
Section 8.03	Project Management and Coordination.....	27
Section 8.04	Construction and Construction Management.....	27
Section 8.05	Punch List Work.....	28
Section 8.06	Warranty Work.....	28
Section 8.07	Latent Defects.....	28
Section 8.08	Training.....	28

ARTICLE IX. PROJECT PERSONNEL

Section 9.01	Authorized Representative of Owner.....	28
Section 9.02	Authorized Representative of Developer.....	29
Section 9.03	Design Builder.....	29
Section 9.04	Architect.....	29

ARTICLE X. DESIGN BUILD CONTRACT

Section 10.01	Design Build Contract.....	29
Section 10.02	Competitive Bidding Requirements.....	30
Section 10.03	Subcontractor Approval.....	30
Section 10.04	Change Orders.....	30
Section 10.05	Construction Meetings and Communications.....	31

ARTICLE XI. DEVELOPMENT AND CONSTRUCTION

Section 11.01	Schedule for Construction.....	31
Section 11.02	Substantial Completion.....	31
Section 11.03	Construction Inspection and Punch List Work.....	32
Section 11.04	Commissioning.....	32
Section 11.05	Final Completion.....	32
Section 11.06	As-Built Plans.....	33
Section 11.07	Development Loan Proceeds.....	33
Section 11.08	Open Books.....	33
Section 11.09	Liens.....	34
Section 11.10	Mutual Cooperation and Commercially Reasonable Efforts.....	34
Section 11.11	Force Majeure.....	34
Section 11.12	Developer to Pay Project Costs.....	35

Section 11.13	Prohibition on Owner's Authority to Enter into Contracts and Subcontracts.....	35
Section 11.14	Inspection Rights.....	35

ARTICLE XII. INSURANCE

Section 12.01	Builder's Risk Insurance.....	35
Section 12.02	Design Builder Liability and Workers' Compensation Insurance.....	35
Section 12.03	Insurance Policy Requirements.....	36
Section 12.04	Evidence of Insurance.....	36
Section 12.05	Subcontractor Insurance.....	36

ARTICLE XIII. LIMITATIONS ON DEVELOPER'S LIABILITY

Section 13.01	Construction of Project.....	36
---------------	------------------------------	----

ARTICLE XIV. CASUALTY DAMAGE

Section 14.01	Building Improvements.....	37
Section 14.02	Repair and Proceeds.....	37
Section 14.03	Deficiency.....	37

ARTICLE XV. OWNER'S REPRESENTATIONS AND WARRANTIES

Section 15.01	Organization.....	37
Section 15.02	Authorization.....	37
Section 15.03	Governmental Approvals.....	38
Section 15.04	Title to the Premises.....	38
Section 15.05	No Third Party Interest in the Premises.....	38
Section 15.06	Environmental Matters.....	38

ARTICLE XVI. DEVELOPER'S REPRESENTATIONS AND WARRANTIES

Section 16.01	Organization.....	39
Section 16.02	Authorization.....	39
Section 16.03	Governmental Approvals.....	40

ARTICLE XVII. TERMINATION AND REMEDIES

Section 17.01	Termination.....	40
Section 17.02	Default.....	40
Section 17.03	Remedies.....	41
Section 17.04	Waiver of Consequential Damages.....	41
Section 17.05	Prevailing Party's Expenses.....	41

ARTICLE XVIII. GENERAL PROVISIONS

Section 18.01	Governing Law.....	41
Section 18.02	Jurisdiction, Venue and Process.....	42
Section 18.03	Waiver of Trial by Jury.....	42
Section 18.04	Entire Agreement.....	42
Section 18.05	Non-Waiver.....	42
Section 18.06	Notices.....	43
Section 18.07	No Third Party Beneficiary.....	43
Section 18.08	Cooperation and Additional Instruments.....	43
Section 18.09	Severability.....	43
Section 18.10	Time is of the Essence.....	43
Section 18.11	No Partnership or Joint Venture.....	44
Section 18.12	Captions.....	44
Section 18.13	Language Construction.....	44
Section 18.14	Effective Date.....	44
Section 18.15	Approvals and Consents.....	44
Section 18.16	Estoppel Certificates.....	44
Section 18.17	Successors and Assigns.....	44
Section 18.18	Owner's Brokers.....	45
Section 18.19	Counterparts.....	45
Section 18.20	Exhibits.....	45
Section 18.21	Incorporation of Recitals.....	45
Section 18.22	Americans With Disabilities Act.....	45
Section 18.23	Non-Discrimination.....	45
Section 18.24	Cancellation for Conflict of Interest.....	45
Section 18.25	Ethics.....	45
Section 18.26	Non-Appropriation.....	46
Section 18.27	Public Records - Disclosure.....	46
Section 18.28	Public Records – Records marked Confidential; Notice and Protective Order.....	47
Section 18.29	Compliance with Immigration Laws.....	47
Section 18.30	Israel Boycott Certification.....	47

ARTICLE XIX. DEFINITIONS

Section 19.01	Affiliate.....	47
Section 19.02	Aggregate Debt Service Cash Flow.....	48
Section 19.03	Aggregate Debt Service Reserves.....	48
Section 19.04	Agreement.....	48
Section 19.05	Alternate Components.....	48
Section 19.06	Alternate Facilities.....	48
Section 19.07	Alternate Financing.....	48
Section 19.08	Alternate Finance Termination.....	48
Section 19.09	Amended Business Plan.....	48
Section 19.10	Anchor Elements.....	48
Section 19.11	Applicable Credit Rating Agencies.....	48
Section 19.12	Approved Master Project Schedule.....	49
Section 19.13	Approved Master Project Schedule Letter.....	49
Section 19.14	Approved Plans and Specifications.....	49
Section 19.15	Approved Plans and Specifications Letter.....	49

Section 19.16	Architect.....	49
Section 19.17	Arena.....	49
Section 19.18	Arena Retail Components.....	49
Section 19.19	As-Built Plans.....	49
Section 19.20	Builders Risk Insurance.....	49
Section 19.21	Building Construction Costs.....	49
Section 19.22	Building Improvements.....	49
Section 19.23	Business Day.....	49
Section 19.24	Business Plan.....	49
Section 19.25	Capex Committee.....	50
Section 19.26	Casualty.....	50
Section 19.27	Certificate of Participation.....	50
Section 19.28	Certifying Party.....	50
Section 19.29	Change Order.....	50
Section 19.30	Clean Air Act.....	50
Section 19.31	Common Area.....	50
Section 19.32	Community Engagement Committee.....	50
Section 19.33	Comprehensive Environmental Response, Compensation and Liability Act.....	50
Section 19.34	Construction Budget.....	50
Section 19.35	Construction Milestones.....	50
Section 19.36	Construction Punch List.....	50
Section 19.37	Construction Punch List Work.....	50
Section 19.38	Construction Schedule.....	50
Section 19.39	Control.....	51
Section 19.40	Current Payment Date.....	51
Section 19.41	Current Payment Period.....	51
Section 19.42	Deadlines.....	51
Section 19.43	Design Build Contract.....	51
Section 19.44	Design Builder.....	51
Section 19.45	Design Builder General Liability Insurance.....	51
Section 19.46	Design Builder Indemnity.....	51
Section 19.47	Design Builder Insurance.....	51
Section 19.48	Design Builder Workers Compensation Insurance.....	51
Section 19.49	Determination Phase.....	51
Section 19.50	Determination Phase Work.....	52
Section 19.51	Developer.....	52
Section 19.52	Developer Default.....	52
Section 19.53	Developer Nonparticipation Fee.....	52
Section 19.54	Developer's Authorized Representative.....	52
Section 19.55	Development Affiliate.....	52
Section 19.56	Development Committee.....	52
Section 19.57	Development Loan.....	52
Section 19.58	Development Overview.....	52
Section 19.59	Development Phasing Determination.....	52
Section 19.60	Economic Development Committee.....	52
Section 19.61	Effective Date.....	52
Section 19.62	Entertainment Center.....	52
Section 19.63	Environmental Laws.....	53
Section 19.64	Existing Development Phasing Plan.....	53
Section 19.65	Existing Phase Final Completion Dates.....	53

Section 19.66	Extended Final Completion Dates.....	53
Section 19.67	Exclusive Rights.....	53
Section 19.68	Existing Kino Complex.....	53
Section 19.69	Facility Agreement.....	53
Section 19.70	Facility Agreement Summary.....	53
Section 19.71	Field House.....	53
Section 19.72	Final Business Plan.....	53
Section 19.57	Final Completion.....	53
Section 19.58	Financing Costs.....	53
Section 19.59	First Level Lease.....	53
Section 19.60	First Mortgage.....	54
Section 19.61	Governance Committees.....	54
Section 19.62	Government Approvals.....	54
Section 19.63	Government Approvals Schedule.....	54
Section 19.64	Governmental Approvals Schedule Letter.....	54
Section 19.65	Government Approvals Work.....	54
Section 19.66	Governmental Authority.....	54
Section 19.67	Ground Lease.....	54
Section 19.68	Hazardous Materials.....	54
Section 19.69	Hazardous Materials Transportation Act.....	55
Section 19.70	Iceplex.....	55
Section 19.71	Iceplex Retail Components.....	55
Section 19.72	Initial Alternate Phase.....	55
Section 19.73	Initial Phase Final Completion Dates.....	55
Section 19.74	Insurance Deficiency.....	55
Section 19.75	Insurance Excess.....	55
Section 19.76	Interior Hotel A.....	55
Section 19.77	Interior Hotel B.....	55
Section 19.78	Kino Complex Underpass.....	55
Section 19.79	Kino District Development.....	55
Section 19.80	Lease Participation Contingency.....	55
Section 19.81	Lease Participation Contingency Extension.....	56
Section 19.82	Leasing and Management Documents.....	56
Section 19.83	Legal Requirements.....	56
Section 19.84	Lender.....	56
Section 19.85	Medical Office Building.....	56
Section 19.86	Memorandum.....	56
Section 19.87	Milestone.....	56
Section 19.88	Minor Variations.....	56
Section 19.89	Monthly Predevelopment Expense Report.....	56
Section 19.90	Multifamily Complex.....	56
Section 19.91	Nonparticipation Election.....	56
Section 19.92	Notice.....	56
Section 19.93	Notice to Proceed.....	57
Section 19.94	OAC Group.....	57
Section 19.95	OAC Meetings.....	57
Section 19.96	Operating Affiliate.....	57
Section 19.97	Operations Committee.....	57
Section 19.98	Original Agreement.....	57
Section 19.99	Original Agreement Reimbursement Provisions.....	57

Section 19.100	Owner.....	57
Section 19.101	Owner's Authorized Representative.....	57
Section 19.102	Owner Default.....	57
Section 19.103	Owner Predevelopment Change.....	57
Section 19.104	Owner Program Requirements.....	57
Section 19.105	Owner Reimbursement.....	57
Section 19.106	Pandemic Regulations.....	57
Section 19.107	Pandemic Development Funds.....	58
Section 19.108	Pandemic Reserve Funds.....	58
Section 19.109	Parking Garage.....	58
Section 19.110	Periphery Hotel.....	58
Section 19.111	Permitted Exceptions.....	58
Section 19.112	Person.....	58
Section 19.113	Phase.....	58
Section 19.114	Phases.....	58
Section 19.115	Planned Development Site Plan.....	58
Section 19.116	Predevelopment Cost Invoice.....	58
Section 19.117	Predevelopment Period.....	58
Section 19.118	Predevelopment Phase.....	59
Section 19.119	Predevelopment Phase Work.....	59
Section 19.120	Predevelopment Service Firms.....	59
Section 19.121	Predevelopment Work.....	59
Section 19.122	Premises.....	59
Section 19.123	Premises Requirements.....	59
Section 19.124	Prior Payment Date.....	59
Section 19.125	Program Requirements.....	59
Section 19.126	Project.....	59
Section 19.127	Project Program.....	59
Section 19.128	Project Program Approval Letter.....	59
Section 19.129	Project Summary.....	59
Section 19.130	Project Summary Approval Letter.....	59
Section 19.131	Projected Date of Substantial Completion.....	59
Section 19.132	Projected Date of Final Completion.....	60
Section 19.133	Rating Confirmation.....	60
Section 19.134	Rating Review Package.....	60
Section 19.135	Rating Review Package.....	60
Section 19.136	Records.....	60
Section 19.137	Refined Building Construction Costs.....	60
Section 19.138	Refined Cash Flow Projections.....	60
Section 19.139	Refined Debt Service Reserves.....	60
Section 19.140	Refined Financing Costs.....	60
Section 19.141	Refined First Level Leases.....	60
Section 19.142	Refined First Level Lease Costs.....	60
Section 19.143	Refined Ground Lease Costs.....	60
Section 19.144	Refined Plans and Specifications.....	60
Section 19.145	Refined Predevelopment Costs.....	60
Section 19.146	Refined Property Tax Costs.....	60
Section 19.147	Refined Second Level Leases.....	61
Section 19.148	Refined Second Level Lease Cost.....	61
Section 19.149	Refined Subleases.....	61

Section 19.150	Refined Sublease Costs.....	61
Section 19.151	Refined Total Project Costs.....	61
Section 19.152	Regional Stakeholder Meetings.....	61
Section 19.153	Requesting Party.....	61
Section 19.154	Resource Conservation and Recovery Act.....	61
Section 19.155	Second Alternate Phase.....	61
Section 19.156	Second Level Lease.....	61
Section 19.157	SPE.....	61
Section 19.158	Second Phase Final Completion Date.....	61
Section 19.159	Stadium.....	61
Section 19.160	Stadium Retail Components.....	61
Section 19.161	Staggered Development Phasing Plan.....	62
Section 19.162	State and Federal Immigration Laws.....	62
Section 19.163	Sublease.....	62
Section 19.164	Substantial Completion.....	62
Section 19.165	Support Elements.....	62
Section 19.166	Termination Memorandum.....	62
Section 19.167	Third Alternate Phase.....	62
Section 19.168	Third Phase Final Completion Date.....	62
Section 19.169	Total Predevelopment Costs.....	62
Section 19.170	Total Project Budget.....	62
Section 19.171	Total Project Budget Letter.....	62
Section 19.172	Total Project Costs.....	62
Section 19.173	Total Project Costs Letter.....	62
Section 19.174	Toxic Substance Control Act.....	62
Section 19.175	Warranty Period.....	62
Section 19.176	Water Pollution Control Act.....	63

MASTER DEVELOPER PARTNERSHIP AND DEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED PREDEVELOPMENT SERVICES AGREEMENT (this "Agreement") is made as of July 6, 2021 (the "Effective Date") by and between PIMA COUNTY, ARIZONA, a political subdivision of the State of Arizona (the "Owner") and KNOTT DEVELOPMENT INC, a Maryland corporation (the "Developer"). All terms used in this Agreement having an initial capital letter shall have the meanings ascribed to such terms in Article XIX.

RECITALS

- A. Pursuant to that certain Predevelopment Services Agreement dated as of April 20, 2021 between the Developer and the Owner, (the "Original Agreement") and a copy of which is attached to this Agreement as Exhibit A), the Developer agreed to perform certain Original Agreement Predevelopment Work and the Owner agreed to compensate, subject to reimbursement, the Developer for the provision of such Original Agreement Predevelopment Work. Pursuant to the Original Agreement, the Owner has paid the Developer the total sum of One Million Eight Hundred Twenty-Five Thousand Dollars (\$1,825,000).
- B. Pursuant to the Original Agreement's intent that the Owner and Developer enter into further agreements related to the Original Agreement Predevelopment Work, the Owner and the Developer desire to execute and deliver this Agreement in order to amend and restate the Original Agreement in its entirety.
- C. The Owner is the owner of certain unimproved real property consisting of ninety (90) acres, more or less, known as the Kino South Sports and Entertainment Complex which is located approximately as shown on the Planned Development Site Plan attached to this Agreement as Exhibit B (the "Premises")
- D. The Premises is subject to that certain City of Tucson PAD 18: Kino Health Campus and its Minor Amendments (as the same may be amended from time to time, the "Premises Requirements"), a copy of which is attached to this Agreement as Exhibit C.
- E. The Owner has agreed to provide the Developer with exclusive rights, as set forth in this Agreement, to develop and construct Building Improvements, physical infrastructure and utilities services on the Premises in the following phases (each, a "Phase," and collectively, the "Phases") consisting of (i) the Iceplex, (ii) the Field House, (iii) the Arena, (iv) the Stadium, (v) the Parking Garage, (vi) the Alternate Facilities (together with the Iceplex, Field House, Arena, Stadium and the Parking Garage, the "Anchor Elements"), (vi) the Iceplex Retail Components, (vii) the Arena Retail Components, (viii) the Entertainment Center, (ix) the Stadium Retail Components, (x) Interior Hotel A, (xi) Interior Hotel B, (xii) the Periphery Hotel, (xiii) the Multifamily Complex, (xiv) the Medical Office Building and (xv) the Alternate Components (together with the Iceplex Retail Components, the Arena Retail Components, the Entertainment Center, the Stadium Retail Components, Interior Hotel A, Interior Hotel B, the Periphery Hotel and the Multifamily Complex and the Medical Office Building, the "Support Elements"), with such Building Improvements being constructed in accordance with the phasing plan set forth in Article VI of this Agreement, and, if the Owner does not make a Nonparticipation Election, with the Owner receiving a portion of the net cash flow generated by each Phase, all as provided in this Agreement.
- F. The Developer has developed a preliminary business plan for the development, construction, financing and operation of the Building Improvements, to be amended pursuant to the Predevelopment Phase and the Determination Phase set forth in this Agreement (the "Business Plan"), a copy of the current version of which is attached to this Agreement as Exhibit D.

- G. The Developer has agreed to perform the predevelopment work associated with the development of the Anchor Elements at the Developer's sole cost and expense, subject only to the conditional Owner Reimbursement provisions set forth in this Agreement.
- H. The Developer will enter into a ground lease with the Owner on the key terms generally outlined in Exhibit E attached hereto and in form and substance otherwise reasonably satisfactory to the Owner and the Developer (the "Ground Lease"), pursuant to which the Owner will lease the Premises to the Developer, and the Developer will lease the Premises from the Owner for a period of forty (40) years, in addition to an initial period that will constitute the time necessary for the Developer to develop and construct the Building Improvements in each Phase as contemplated by this Agreement.
- I. Subject to the Predevelopment Work conducted by the Developer during the Predevelopment Phase, the results of the Determination Phase, the Developer's satisfaction of the Lease Participation Contingency and the Owner not making a Nonparticipation Election, with respect to Anchor Elements: (i) the Developer will enter into a sub-ground lease relative to the development of each such Phase and construction of the Building Improvements for each such Phase (each, a "Sublease") with a single purpose entity ("SPE") development Affiliate of the Developer (each, a "Development Affiliate"); (ii) each such Development Affiliate will enter into a first level operating lease (each a "First Level Lease") of each such Phase with the Owner; (iii) the Owner will, simultaneously with the execution and delivery of the First Level Lease for each such Phase, enter into a second level operating lease of each such Phase (each, a "Second Level Lease") with an SPE operating Affiliate of the Developer (an "Operating Affiliate"); (iv) each such Operating Affiliate will enter into either facility management agreements or triple net leases with respect to each such Phase with facility management for each such Phase selected by the Developer; and (v) the Operating Affiliates may further sublease non-facility space in each such Phase to triple net lessees (such subleases and management agreements, together with the Ground Lease and any and all ancillary documents relating thereto, are herein collectively referred to as the "Leasing and Management Documents").
- J. Subject to the Owner's and the Developer's decision to adopt, as applicable, the Existing Development Phasing Plan or the Staggered Development Phasing Plan, the Developer will develop and construct the Building Improvements constituting Support Elements in accordance with the Existing Development Phasing Plan or the Staggered Phasing Plan of its own accord, with Affiliates, via third-party sub-ground leases or a combination thereof, but in no circumstance shall the development and construction of the Support Elements include the Owner as a participant in the ownership, leasehold or other aspects of the applicable development and financing plan for Support Elements, provided, however, that if the Owner makes a Nonparticipation Election and the Developer procures the Alternate Financing, the Developer shall adopt a development and construction phasing plan for the Support Elements in accordance with Section 6.08(c) and Section 6.10(a) of this Agreement.
- K. The Developer has agreed to develop the Premises, demolish any improvements located thereon, and build the Building Improvements on the Premises in substantial accordance with and subject to applicable provisions of the Business Plan (as amended pursuant to the Predevelopment Phase and the Determination Phase), the Premises Requirements and this Agreement (the "Project").
- L. The Developer and the Owner have agreed to enter into this Agreement to evidence their agreement with respect to the design, financing, development, construction and completion of the Project.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Owner and the Developer hereby agree as follows:

ARTICLE I. AMENDMENT AND RESTATEMENT

Section 1.01 Amendment and Restatement of the Original Agreement.

The Owner and the Developer do hereby amend and restate the Original Agreement with and pursuant to this Agreement, which shall supersede and replace the Original Agreement in its entirety.

Section 1.02 Incorporation and Ratification of the Original Agreement's Reimbursement Provisions.

Notwithstanding the provisions of Section 1.01 of this Agreement, the Developer and the Owner do hereby incorporate in this Agreement by this reference the provisions of Section 2.02, Section 2.03, Section 2.04 and Section 2.05 of the Original Agreement (the "Original Agreement Reimbursement Provisions") with the same force and effect as though the Original Agreement Reimbursement Provisions were fully set forth herein. The execution and delivery of this Agreement shall not render ineffective nor obviate either Party's respective rights and obligations under the Original Agreement Reimbursement Provisions, which rights and obligations shall remain in full force and effect.

Section 1.03 Name of Agreement.

Upon execution and delivery of this Agreement, this Agreement shall be referred to as the "Master Developer Partnership and Development Agreement."

ARTICLE II. EXCLUSIVITY, GROUND LEASE AND OWNER SUBLEASES

The Owner and the Developer hereby agree to the following exclusivity provisions.

Section 2.01 Exclusive Right to Develop.

Until this Agreement is terminated, the Developer shall have the exclusive right to (a) serve as the developer for the Project, (b) enter into a development agreement for the Premises and the development of the Project and the design and construction of the Building Improvements, (c) enter into the Ground Lease with the Owner for the Premises and the other leases and agreements included in the Leasing and Management Documents, (d) develop the Project on the Premises and (e) construct the Building Improvements (the "Exclusive Rights"). The Owner hereby agrees not to initiate, solicit, encourage or knowingly facilitate or induce the submission of any inquiries, proposals or offers that constitute or may be reasonably expected to lead to the appointment of another Person as the developer for the Project or the consummation of any agreement of any form or type, whether written or oral, that would provide any Person other than the Developer with any of the Exclusive Rights.

Section 2.02 Consideration for Exclusive Rights.

The Owner hereby acknowledges and agrees that the Developer's agreement to conduct the Predevelopment Work and the Developer's agreement to be financially responsible for the Predevelopment Work and the Project are, individually and/or collectively, adequate consideration for the Exclusive Rights and represent a substantial time, effort and financial commitment on the part of the Developer and that without the grant of the Exclusive Rights the Developer would be unwilling to conduct the Predevelopment Work and be financially responsible for the Predevelopment Work and the Project.

Section 2.03 Recording of Agreement Memorandum.

Upon the execution and delivery of this Agreement, the Developer and the Owner shall execute, acknowledge and deliver and cause to be recorded in the real estate records of Pima County, Arizona a memorandum of this Agreement, substantially in the form attached to this Agreement as Exhibit F (the "Memorandum"). The Developer shall be responsible for recording the Memorandum, including all costs and expenses associated therewith. If this

Agreement is terminated for any reason, the Developer and the Owner shall execute and deliver a memorandum noting the termination of this Agreement, substantially in the form attached to this Agreement as Exhibit G (the "Termination Memorandum") Notwithstanding the foregoing, to the extent that an Owner Reimbursement is due pursuant to the provisions of Section 6.09 of this Agreement, the Owner Reimbursement shall be paid prior to the execution, delivery and filing of the Termination Memorandum.

Section 2.04 Ground Lease and Subleases.

The Developer and the Owner shall use good faith, reasonable efforts to negotiate and enter into the Ground Lease, each First Level Lease and each Second Level Lease substantially as provided in the Business Plan, but subject to the Predevelopment Phase and the Determination Phase. The First Level Leases and the Second Level Leases are expected to be straight pass-throughs of rights and obligations under the Ground Lease with respect to the particular Phases that are the subjects thereof, although rents payable thereunder will be as structured as a result of the Predevelopment Phase and the Determination Phase.

ARTICLE III. PROJECT

Section 3.01 Project Description.

The Project is described in the Business Plan (as the same will be amended pursuant to the Predevelopment Phase and the Determination Phase), and will be further developed and described more fully in a Project program description which shall be prepared by the Developer pursuant to the provisions of Section 5.01 of this Agreement (the "Project Program"). The Project Program will be specifically detailed in a Project summary to be prepared by the Developer pursuant to the provisions of Section 5.02 of this Agreement (the "Project Summary").

Section 3.02 Building Improvements.

The Developer shall be responsible for the development, design, financing, construction and operational turnover of the Building Improvements in each Phase, all in accordance with the Project Program.

Section 3.03 Program Requirements.

The Project Program and the Project Summary, together with the Approved Plans and Specifications, will establish the project requirements for each Phase, including the Building Improvements included therein (the "Program Requirements"). The Developer shall cause the development, design, financing and construction of the Project and the Building Improvements to be completed in accordance with the Approved Master Project Schedule and to facilitate the overall goal of completing the Project.

Section 3.04 Utility Services, Back-Up Facilities and Redundancy.

The Developer shall cause the Design Builder to contract with applicable utility companies for the Building Improvements to be serviced by the utility services, back-up facilities and redundancy requirements as required to satisfy the Project Program.

ARTICLE IV. PREDEVELOPMENT WORK - GENERAL

In consideration of the Owner's grant of the Exclusive Rights, the Developer shall perform the following predevelopment work at its own cost, subject to reimbursement by the Owner in accordance with Section 6.09 of this Agreement, relative to the design, planning, financing and development of the Project and the construction of the Building Improvements in each Phase (the "Predevelopment Work"). The time period for the Developer to engage in Predevelopment Work shall commence upon the Effective Date and shall conclude with the closing of the Development Loan.

Section 4.01 Professional Team and Contractor Selection.

The Developer shall select and engage a professional team which shall include, without limitation, (a) an Architect for each Phase, (b) the Design Builder, (c) a civil engineering firm, (d) a geotechnical engineering firm, (e) an environmental engineering and testing firm and (f) any other engineering, service or consulting firms deemed necessary by the Developer, to assist the Developer in performing the Predevelopment Work, obtaining the Development Loan, and developing the Leasing and Management Documents (sometimes individually or collectively referred to as "Predevelopment Service Firms").

Section 4.02 Project Planning and Design.

The Developer shall (a) manage the development of design criteria for the Project and the Building Improvements, (b) work with the Architect for each Phase to provide architectural design services based on the design criteria of the Project and the Building Improvements and to produce architectural plans and specifications for the Building Improvements and (c) work with the Design Builder to provide cost estimating, construction scheduling and other services related to the development of the plans and specifications for the Building Improvements.

Section 4.03 Approved Master Project Schedule.

Pursuant to the completion of the Predevelopment Work, the Predevelopment Phase Work and the Determination Phase Work, but prior to the closing of the Development Loan, the Developer and the Design Builder shall agree on a master Project schedule which incorporates the Government Approvals Schedule and the Construction Schedule, sets forth the dates for starting and the completion of the various critical stages of construction of each Phase, the Construction Milestones, the Deadlines, the Projected Date of Substantial Completion and the Projected Date of Final Completion for each Phase, as they may be amended from time to time pursuant to this Agreement (the "Approved Master Project Schedule"). The Owner shall have the right to review and approve the Approved Master Project Schedule, such approval limited to, and based solely on, approval of the duration and deadlines within the Approved master Project Schedule as those relate to (a) compliance of the Approved Master Project Schedule with the Premises Requirements and (b) conflicts between the Approved Master Project Schedule and the Owner's operations surrounding, and in the immediate vicinity of, the Premises. The Owner shall not have the right to approve the Construction Schedule, the Construction Milestones or construction means or methods. In order to evidence the acceptance of the Approved Master Project Schedule, each of the Owner, the Developer and the Design Builder shall execute and deliver the Approved Master Project Schedule Letter, substantially in the form attached to this Agreement as Exhibit H.

Section 4.04 Approved Plans and Specifications.

Pursuant to the completion of the Predevelopment Work, the Predevelopment Phase Work and the Determination Phase Work, but prior to the closing of the Development Loan, the Developer and the Design Builder shall agree on the final plans and specifications for the Building Improvements for each Phase as prepared by the Design Builder and the Architect, as the same may be modified from time to time in accordance with the terms of this Agreement (the "Approved Plans and Specifications"). The Owner shall have the right to approve the Approved Plans and Specifications, such review to be limited to, and based solely on, the compliance of the Approved Plans and Specifications with the Premises Requirements. In order to evidence the acceptance of the Approved Plans and Specifications, the Owner, the Developer, the Architect and the Design Builder shall execute and deliver the Approved Plans and Specifications Letter, substantially in the form attached to this Agreement as Exhibit I.

Section 4.05 Building Construction Costs.

Pursuant to the completion of the Predevelopment Work, the Predevelopment Phase Work and the Determination Phase Work, but prior to the closing of the Development Loan, the Developer and the Design Builder shall agree on the final costs and expenses of constructing the Building Improvements for each Phase, commonly known as "hard costs," including, without limitation, the costs and fees payable to the Design Builder pursuant to the Design Build Contract, but not in excess of the Construction Budget absent compliance with other provisions of this Agreement applicable to increases in the Construction Budget (the "Building Construction Costs").

Section 4.06 Total Project Costs.

Pursuant to the completion of the Predevelopment Work, the Predevelopment Phase Work and the Determination Phase Work, but prior to the closing of the Development Loan, the Developer and the Design Builder shall agree on all of the direct and indirect costs associated with the development, design, financing, construction and turn-over of each applicable Phase, including, without limitation, the Total Predevelopment Costs, the Financing Costs and the Building Construction Costs of each Phase (the "Total Project Costs"). The Total Project Costs shall not include (a) except to the extent specifically included in the definition of Building Construction Costs, the cost of any off-site improvements other than those referenced in the Business Plan and the Amended Business Plan, or (b) the fees to be paid to or other costs and expenses payable to the Owner's Authorized Representative or any other consultants or professionals hired by the Owner to assist it with the evaluation of the Project and entering into documentation with respect thereto. In order to evidence the acceptance of the Total Project Costs, each of the Developer and the Design Builder shall execute and deliver the Total Project Costs Letter, substantially in the form attached to this Agreement as Exhibit J.

Section 4.07 Approved Total Project Budget.

Pursuant to the completion of the Predevelopment Work, the Predevelopment Phase Work and the Determination Phase Work, but prior to the closing of the Development Loan, the Developer and the Design Builder shall agree on the line-item budget supporting the Total Project Costs for each Phase, as the same may be modified from time to time (the "Total Project Budget"). To evidence the acceptance of the total Project Budget, each of the Developer and the Design Builder shall execute and deliver the Total Project Budget Letter, substantially in the form attached to this Agreement as Exhibit K. The Developer shall provide the Owner with a copy of the fully-executed Total Project Budget Letter.

Section 4.08 Financial Planning.

The Developer shall (a) prepare and evaluate budgets and perform economic analyses incorporating basic cost assumptions and other relevant considerations, (b) provide advice on costs in relation to the site considerations, including the availability of utilities, soil conditions and the like, (c) prepare construction cost estimates and schematics, design development and the bid set working drawing stages for each Phase of the development of the Project, (d) prepare value engineering alternatives for the Building Improvements, and (e) prepare and overall cash flow projection for the Project.

Section 4.09 Project Financing.

The Developer shall obtain the Development Loan for the development, design, construction and operation of the Project in an amount satisfactory to the Developer in all respects and under which the Developer, and not the Owner, shall be responsible for all debt service. The Development Loan shall be secured by an encumbrance on the Developer's interest in the Ground Lease and the Leasing and Management Documents, but shall not under any circumstances encumber the Owner's interest in the Premises or the Ground Lease. The Owner shall cooperate with the Developer and the Lender in connection with the Developer obtaining the Development Loan and shall provide all information reasonably required by the Lender necessary for the Lender to evaluate the collateral for the Development Loan. The Owner shall provide any consents and estoppels with respect to the Ground Lease, the Leasing and Management Documents and this Agreement in form and content reasonably required by the Lender in connection with the documentation and evidencing of the Development Loan. In connection with the closing of the Development Loan, the Owner cooperate with the Developer to the extent reasonably required to facilitate the closing of the Development Loan.

Section 4.10 Notice to Proceed.

In due course following the closing of the Development Loan, the Developer shall issue a Notice to Proceed in the form attached to this Agreement as Exhibit L. The Developer shall provide the Owner with a copy of the executed Notice to Proceed.

Section 4.11 Owner Changes in Design During Predevelopment Period.

To the extent that any modifications to the Project designs requested by the Owner (pursuant only to its right to review and approve the Project with respect to the Premises Requirements as set forth in this Agreement) prior to the Developer's issuance of a Notice to Proceed will result in a material change to the then-anticipated Total Project Costs or a material delay in the then-anticipated Projected Date of Substantial Completion or a material change in the Project Program or Project Summary (each an "Owner Predevelopment Change"), the Developer shall promptly notify the Owner in writing together with the probable cost and estimated delay associated with an Owner Predevelopment Change. If there is more than one (1) practical alternative for the performance of an Owner Predevelopment Change, the Developer shall consult in good faith with the Owner regarding a mutually acceptable means of implementing the desired Owner Predevelopment Change. The Owner agrees to implement any reasonable alternative solution proposed by the Developer for an Owner Predevelopment Change, to the extent that such alternative will not increase the then-anticipated Total Project Costs or result in a delay of the then-anticipated Projected Date of Substantial Completion or adversely impact the structure or systems serving the Project. If an Owner Predevelopment Change materially increases the then-anticipated Total Project Costs and/or would cause a delay in the then-anticipated Projected Date of Substantial Completion, provided the Owner consents in writing to such Owner Predevelopment Change, the addition to the Total Project Costs represented by the Owner Predevelopment Change and/or the delay in the Projected Date of Substantial Completion represented by the Owner Predevelopment Change, the Owner Predevelopment Change (or an alternative to an Owner Predevelopment Change accepted by the Owner) shall be implemented by the Developer and the (a) Owner Predevelopment Change shall be incorporated into the plans and specifications to be approved by the Owner, (b) costs associated with the Owner Predevelopment Change shall be added to the Total Project Costs and (c) time delay associated with the implementation of the Owner Predevelopment Change shall be added to and extend the Projected Date of Substantial Completion.

Section 4.12 Minor Variations.

The Developer may approve Minor Variations in the size, design, engineering, configuration and siting of the Building Improvements, with prior written notice to the Owner, but without obtaining the Owner's prior written consent.

Section 4.13 Government Approvals.

- (a) The Developer shall provide all services in connection with securing required governmental approvals for the development, design and construction of the Project ("Government Approvals"), including, without limitation, (i) obtaining favorable zoning and land use approvals for the Project, (ii) conducting informal and formal discussions with Governmental Authorities and neighborhood groups, (iii) coordinating professional consultants' activities in preparing professional presentations, (iv) making presentations, (v) making any changes required by the Governmental Authorities being requested to grant such approvals, (vi) obtaining permit approvals, (vii) obtaining waivers, special exceptions and variances, and (viii) lobbying for government resources as applicable and necessary.
- (b) In order to ensure timely submission, review and approval of the necessary Government Approvals for the Developer's completion of the Project, the Developer shall prepare and the Owner, as owner of the Premises, shall cooperate in creating a schedule to meet certain dates in the submission, review and approval process (the "Government Approvals Schedule"). To evidence the completion of the Government Approvals Schedule, the Owner, the Developer and the Design Builder shall execute and deliver the Government Approvals Schedule Letter, substantially in the form attached to this Agreement as Exhibit M.

- (c) The Owner shall use commercially reasonable efforts to provide the Developer with expedited processing, review and approval of all required Governmental Approvals within the authority of the Owner, including, but not limited to, conducting required plan reviews, issuing required Government Approvals for the Building Improvements and physical infrastructure and utilities and the like.

Section 4.14 Design of Building Improvements.

The Developer shall coordinate the design of the Building Improvements with the Architect for each Phase and the Design Builder in accordance with the Premises Requirements, subject to the Owner's right to review and approve such design, such approval limited to, and solely based on, the design of the Building Improvements being in compliance with the Premises Requirements.

Section 4.15 Product Selection and Procurement.

The Developer, with the assistance of the Design Builder, shall select suitable services, systems, materials, building components. The Developer, with the assistance of the Design Builder shall (a) make arrangements concerning the procurement of long lead-time items to ensure their delivery in accordance with the Approved Master Project Schedule, (b) assemble lists of resources of supply for all items for review and approval, including pre-qualification criteria for those sources of supply, contact potential bidders to determine their interest and select suitable sources and supply, and (c) prepare, with the additional assistance of engineers and consultants, life cycle, energy and green building studies and, based on these studies, select suitable systems, materials, building components and equipment for the development of the Project and the construction of the Building Improvements.

Section 4.16 Utilities, Back-Up Facilities and Redundancy.

The Developer shall coordinate with the Design Builder in investigating, analyzing, designing and negotiating all necessary design and procurement for utility services, back-up facilities and utility redundancy for the Project, as specified in this Agreement.

Section 4.17 Schedule for Design Plan Preparation and Approvals.

The Developer shall prepare and distribute schedules for design plan preparation and approvals for the Building Improvements for the Architect, the Design Builder, design consultants, Governmental Authorities and others and any amendment to the Approved Master Project Schedule.

Section 4.18 Project Schedule Planning.

As described in the Business Plan (to be amended pursuant to the Determination Phase), the Developer and the Design Builder will meet with the Development Committee on behalf of the Owner to obtain advisory input regarding the coordination and planning of the development and operation of the Project and the construction of the Building Improvements.

Section 4.19 Condemnation Services.

Developer shall retain appropriate consultants to obtain evidence sufficient to demonstrate that the Premises (in its existing state and after the construction of the Building Improvements) is not subject to any pending, threatened or contemplated condemnation, eminent domain or similar proceeding by any Governmental Authority, it being understood and agreed that such work may include solely obtaining written verification from the Owner.

Section 4.20 Right of Entry.

The Owner hereby agrees with and consents to the Developer and its Predevelopment Service Firms, under the direction and supervision of the Developer, entering the Premises to perform Predevelopment Work. The Developer shall provide the Development Committee with a schedule of site visits to be made by Predevelopment Service Firms. Predevelopment Work site visits shall be on weekdays during the hours of 7:30AM and 5:30PM and if any site visit by Predevelopment Firms is reasonably expected to consist of activities involving (i) equipment other than

commercial service vehicles used by Predevelopment Service Firms, (ii) noise that would exceed normal noise levels at or immediately adjacent to the Premises if the Predevelopment Work was not being conducted, or (iii) disrupting pedestrian or vehicular traffic to, from or surrounding the Premises, the Developer shall coordinate with the Development Committee to manage any such activities to avoid material disruption to the Owner and its normal operational activities in the immediate vicinity of the Premises. Site visits to the Premises outside of the day and time parameters set forth in this Section 4.20 shall be disclosed to the Development Committee by the Developer prior to such a site visit and shall be subject to the review and approval by the Owner's representative to the Development Committee.

Section 4.21 Easements.

During the Predevelopment Period, the Owner hereby grants the Developer and its Predevelopment Service Firms (as well as their employees, subcontractors and agents) easements pursuant to which the Developer and its Predevelopment Service Firms, under the direction of the Developer, shall have the non-exclusive right of vehicular and pedestrian ingress and egress over the roads and walkways leading to and from the Premises. During the provision of Predevelopment Work, the Owner shall maintain and repair (or cause to be maintained and repaired) the roads and walkways so that at all times the roads and walkways shall be in a safe and operable condition adequate for the purpose of vehicular and pedestrian ingress and egress to and from the Premises. In connection with the construction and operation of the Project, the Owner shall consent to the granting of any reasonable easements required for access, utilities or otherwise relative to the Project, including any Phase, and the construction, use and operation thereof.

Section 4.22 Predevelopment Service Firm Insurance.

Upon the commencement of Predevelopment Work and continuing until the earlier of (a) the termination of this Agreement for any reason or (b) the execution and delivery of the applicable Leasing and Management Documents and the closing of the Development Loan, the Developer shall cause each Predevelopment Service Firm to carry and maintain (i) commercial general liability insurance (including, without limitation, contractor's liability coverage) written on an occurrences basis with a limits of liability of at least One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate, an additional policy of excess liability insurance of at least Three Million Dollars (\$3,000,000) to be excess over such commercial general liability insurance, naming the Owner and the Developer as additional named insureds on a primary and non-contributory basis, as well as (ii) workers' compensation insurance and employee liability insurance as required by the jurisdiction in which the Premises is located. Developer shall cause any such Predevelopment Services firm to provide proof of all such insurance to the Developer and the Owner prior to making its initial site visit to the Premises.

Section 4.23 Right to Post Signage.

Following the execution and delivery of this Agreement, the Developer shall be permitted to post signage on the Premises customary for development and construction projects of the type and nature of the Project for the purpose of identifying the Developer as the developer of the Project. Following the execution and delivery of the Design Build Contract, the Design Builder shall be permitted to post signage on the Premises customary for construction projects of the type and nature of the Project for the purpose of identifying the Design Builder as the general contractor for the Project. Following the execution and delivery of its agreement with the Developer, the Architect for each Phase shall be permitted to post signage on the Premises customary for development and construction projects of the type and nature of the Project for the purpose of identifying the Architect as the architect for each respective Phase.

Section 4.24 Record of Predevelopment Work Costs.

The Developer shall maintain a record of all Predevelopment Work costs, including all invoices and receipts evidencing such Predevelopment Work for inspection by the Owner upon reasonable notice and during normal business hours at the Design Builder's office in Tucson, Arizona. At the end of each calendar month during the Predevelopment Period, the Developer shall deliver to the Owner a detail of all costs incurred for the

Predevelopment Work during such immediately preceding calendar month (whether in the Predevelopment Phase or the Determination Phase), including copies of all invoices and receipts therefore (in addition to statements produced by the Developer evidencing the amount of financing utilized, and interest accrued thereon, by the Developer in engaging in the Predevelopment Work) (each a "Monthly Predevelopment Expense Report"). Each Monthly Predevelopment Report shall also set forth the aggregate amount of Predevelopment Work costs incurred and reported by the Developer in each prior Monthly Predevelopment Expense Report and in the current Monthly Predevelopment Expense Report (the "Total Predevelopment Costs").

ARTICLE V. PREDEVELOPMENT WORK – PREDEVELOPMENT PHASE

As a part of the Predevelopment Work, the Developer agrees to provide the following services and to perform the following work set forth in this Article IV ("Predevelopment Phase Work"). The time period for the Developer to engage in Predevelopment Phase Work shall commence upon the Effective Date and shall conclude on the date that is not less than ten (10) months, but not more than twelve (12) months, following the Effective Date (the "Predevelopment Phase"). During the Predevelopment Phase, the Developer shall provide the Owner with a report on the progress of the Predevelopment Phase Work as well as any other updates regarding the Project chosen by the Developer ("Predevelopment Phase Reports"). Predevelopment Phase Reports shall be delivered by the Developer to the Owner on September 6, 2021, November 6, 2021, January 6, 2022, March 6, 2022 and May 6, 2022.

Section 5.01 Project Program.

During the Predevelopment Phase, the Developer shall prepare the Project Program. The Project Program shall be subject to the Owner's approval, which approval shall be limited to, and based solely on, compliance with the Premises Requirements. The Project Program shall be delivered by the Developer prior to the commencement of the Determination Phase, provided, however, that the Developer may present draft versions of the Project Program to the Owner via the Development Committee for review and comment by the Development Committee and subsequent revision, if necessary, by the Developer prior to the finalization of the Project Program. Approval of the Project Program, for Premises Requirements purposes, shall be evidenced by the Owner's execution and delivery of the Project Program Approval Letter, substantially in the form attached to this Agreement as Exhibit N. The Owner shall deliver the executed Project Program Approval Letter within fifteen (15) Business Days from the date the Project Program is delivered by the Developer, provided, however, that if the Owner has an objection to the Project Program based on compliance with the Premises Requirements, the Owner shall provide Notice to the Developer of such objection not less than fifteen (15) Business Days from the date the Project Program is delivered by the Developer, and provided, further, that the Developer and the Owner shall use their good faith efforts to resolve such objection by the end of the Determination Phase with such resolution to be reached by the Developer and the Development Committee on behalf of the Owner.

Section 5.02 Project Summary.

During the Predevelopment Phase, the Developer shall prepare the Project Summary. The Project Summary shall be subject to the Owner's approval, which approval shall be limited to, and based solely on, compliance with the Premises Requirements. The Project Summary shall be delivered by the Developer prior to the commencement of the Determination Phase, provided, however, that the Developer may present draft versions of the Project Summary to the Owner via the Development Committee for review and comment by the Development Committee and subsequent revision, if necessary, by the Developer prior to the finalization of the Project Summary. Approval of the Project Summary shall be evidenced by the Owner's execution and delivery of the Project Summary Approval Letter, substantially in the form attached to this Agreement as Exhibit O. The Owner shall deliver the executed Project Summary Approval Letter within fifteen (15) Business Days from the date the Project Summary is delivered by the Developer, provided, however, if the Owner has an objection to the Project Summary based on compliance with the Premises Requirements, the Owner shall provide Notice to the Developer of such objection not less than

fifteen (15) Business Days from the date the Project Summary is delivered by the Developer, and provided, further, that the Developer and the Owner shall use their good faith efforts to resolve such objection by the end of the Determination Phase with such resolution to be reached by the Developer and the Development Committee on behalf of the Owner.

Section 5.03 Facility Agreement Summary.

During the Predevelopment Phase, the Developer shall prepare a summary of the contracts which the Developer (or an Affiliate or a Facility Manager) has obtained in executed form for the occupancy and/or use of the Anchor Elements (the "Facility Agreement Summary"). Each agreement set forth in the Facility Agreement Summary (each such agreement is herein referred to as a "Facility Agreement"), shall be listed, by Anchor Element, with summary details including, at a minimum, the duration of the Facility Agreement, the material terms of the Facility Agreement, the percentage of occupancy and/or use of the respective Anchor Element compared to the total available occupancy and/or use availability of such Anchor Element and a summary of the payment terms under such Facility Agreement. In addition to the foregoing, the Facility Agreement Summary shall include, as exhibits to the Facility Agreement Summary, copies of such executed Facility Agreements. Finally, the Facility Summary shall include a table for each Anchor Element showing a list of all Facility Agreements and the annual revenue to be generated by the respective Anchor Element during the term of the Facility Agreement. During the Predevelopment Phase, the Developer may present the Owner (via the Development Committee) with periodic drafts of, and updates to, the Facility Agreement Summary for review and comment by the Development Committee and subsequent revision, if necessary, by the Developer. The final version of the Facility Agreement Summary shall be provided by the Developer to the Owner at the commencement of the Determination Phase in order to determine the Lease Participation Decision.

Section 5.04 Refined Plans and Specifications.

During the Predevelopment Phase, the Developer and the Design Builder shall refine the plans and specifications for the Building Improvements for the Anchor Elements and Common Area, as prepared by the Design Builder and the Architect (as well as by other of the Developer's Predevelopment Service Firms), in order to determine the Refined Building Costs (the "Refined Plans and Specifications"). The Refined Plans and Specifications shall include work by the Developer, the Architect and the Design Builder (in addition to other of the Developer's Predevelopment Service Firms) to complete the schematic design, development design and construction documents for all Anchor Elements and the Common Area.

Section 5.05 Government Approvals.

The Developer shall engage its Predevelopment Services Firms, including, without limitation, the Design Builder, the Architect and all applicable engineers and consultants to perform the Predevelopment Phase Work necessary to enable the Developer to obtain the Government Approvals required by the Developer to receive the civil construction permits required to commence with the preparation of the Premises at the conclusion of the Determination Phase, including the installation and construction of all physical infrastructure and utilities services as required prior to the issuance of building permits for the Anchor Elements and the other Building Improvements within the Project (the "Government Approvals Work"). The Owner shall use commercially reasonable efforts to provide the Developer with expedited processing, review and approval of all required Governmental Approvals within the authority of the Owner, including, but not limited to, conducting required plan reviews, issuing required Government Approvals for the Building Improvements and physical infrastructure and utilities and the like. The Government Approvals Work shall include, without limitation, as determined by the Developer:

- (a) The finalization and approval of the Developer's Concept Permit Package (as such term is defined by the Owner's existing regulations) by any applicable Governmental Authority, and all items included within and related thereto;

- (b) The finalization and approval by any applicable Governmental Authority of the Developer's Native Plant Preservation Plan, Riparian Habitat Mitigation Plan and Landscape Plan as such terms are defined by the Owner's existing regulations and as are required as a part of the Developer's Concept Permit Package;
- (c) As required as a part of the Developer's Concept Permit Package or by any other applicable Governmental Authority, the finalization and approval of all traffic studies, the Project's internal roadway designs, the Project's internal roadway lighting designs and any offsite improvement designs required as a part of the development and construction of the Project;
- (d) The finalization and approval by any applicable Governmental Authority of the Developer's Site Construction Permit (as such term is defined by the Owner's existing regulations), and all items included within and related thereto;
- (e) The finalization and approval by any applicable Governmental Authority of the Developer's grading and drainage design, civil utility design, underground utility design, pedestrian and multimodal bridge design, roadway improvement design as well as all other components of the Project's civil design as such items are required as a part of the Developer's Concept Permit Package;
- (f) Geotechnical analysis and surveys of the Premises;

Section 5.06 Refined Building Construction Costs.

During the Predevelopment Phase, the Developer and the Design Builder shall agree on a refined scope of the costs and expenses of constructing the Anchor Elements and Common Area, commonly known as "hard costs," including, without limitation, the costs and fees payable to the Design Builder pursuant to the Design Build Contract (the "Refined Building Construction Costs"). The Refined Building Construction Costs shall be based on the Refined Plans and Specifications determined pursuant to Section 5.04 of this Agreement.

Section 5.07 Refined Predevelopment Costs.

During the Predevelopment Phase, the Developer and the Design Builder shall agree on the refined costs and expenses of completing all Predevelopment Work, including, but not limited to, Predevelopment Phase Work and Determination Phase Work from the inception of Predevelopment Work through and including the closing of the Development Loan (the "Refined Predevelopment Costs").

Section 5.08 Refined Total Project Costs.

During the Predevelopment Phase, the Developer and the Design Builder shall agree on all of the refined direct and indirect costs associated with the development, design, financing, construction and turn-over of each of the Anchor Elements and Common Area, including, but not limited to, the Refined Building Construction Costs and the Refined Predevelopment Costs (the "Refined Total Project Costs"). The Refined Total Project Costs shall be delivered to the Owner by the Developer at the commencement of the Determination Phase. As a part of the Refined Total Project Costs to be delivered by the Developer to the Owner, the Developer shall include the following information:

- (a) The aggregate number of locally situated firms (and the number of locally situated employees thereof) scheduled to be subcontractors (and locally situated second level contractors and employees thereof to be utilized by such subcontractors) to the Design Builder for the development and construction of the Anchor Elements and the Common Area and included in the Refined Total Project Costs;

- (b) By trade, the number of locally situated firms (and the number of locally situated employees thereof) scheduled to be subcontractors (including locally situated second level contractors and employees thereof to be utilized by such subcontractors) to the Design Builder for the development and construction of the Anchor Elements and the Common Area and included in the Refined Total Project Costs;
- (c) The aggregate number of non-locally situated firms (and the number of non-locally situated and locally situated employees thereof) scheduled to be subcontractors (including non-locally situated and locally situated second level contractors and employees thereof to be utilized by such subcontractors) to the Design Builder for the development and construction of the Anchor Elements and the Common Area and included in the Refined Total Project Costs;
- (d) By trade, the number of non-locally situated firms (and the number of non-locally situated and locally situated employees thereof) scheduled to be subcontractors (including non-locally situated and locally situated second level contractors and employees thereof to be utilized by such subcontractors) to the Design Builder for the development and construction of the Anchor Elements and the Common Area and included in the Refined Total Project Costs;
- (e) The aggregate number of locally situated firms (and the number of locally situated employees thereof) scheduled to be materials suppliers (including locally situated second level contractors and employees thereof to be utilized by such subcontractors) to the Design Builder for the development and construction of the Anchor Elements and the Common Area and included in the Refined Total Project Costs;
- (f) The aggregate number of non-locally situated firms (and the number of non-locally situated and locally situated employees thereof) scheduled to be materials suppliers (including non-locally situated and locally situated second level contractors and employees thereof utilized by such subcontractors) to the Design Builder for the development and construction of the Anchor Elements and the Common Area and included in the Refined Total Project Costs;
- (g) The aggregate ratio of locally to non-locally situated subcontractors (including their applicable second level contractors) to the Design Builder for the development and construction of the Anchor Elements and the Common Area, plus a narrative explanation by the Developer of such ratio;
- (h) The ratio, by trade, of locally to non-locally situated subcontractors (and their applicable second level contractors) to the Design Builder for the development and construction of the Anchor Elements and the Common Area, plus a narrative explanation by the Developer of such ratio;
- (i) The aggregate ratio of locally to non-locally situated employees scheduled to be employed by subcontractors (and second level contractors, as applicable) to the Design Builder for the development and construction of the Anchor Elements and the Common Area, plus a narrative explanation by the Developer of such ratio;
- (j) The ratio, by trade, of locally to non-locally situated employees scheduled to be employed by subcontractors (and second level contractors, as applicable) to the Design Builder for the development and construction of the Anchor Elements and the Common Area, plus a narrative explanation by the Developer of such ratio; and
- (k) Any other information and compilations of data reasonably available to the Developer, as well as narrative explanations by the Developer related thereto, regarding the composition of subcontractors (and second level contractors, as applicable) to the Design Builder for the development and construction of the Anchor

Elements and the Common Area.

Section 5.09 Refined Financing Costs.

During the Predevelopment Phase, the Developer shall refine and determine the amount of the financing required under the Development Loan in order to manage the Refined Total Project Costs, the inclusion of a debt service reserve within the Development Loan and the annual debt service schedule associated with the Development Loan over its term (the "Refined Financing Costs"). The Refined Financing Costs shall be delivered to the Owner by the Developer at the commencement of the Determination Phase.

Section 5.10 Refined Property Tax Costs.

During the Predevelopment Phase, the Developer and the Owner shall mutually determine a refined annual schedule of assumed property taxes for the Anchor Elements and the Support Elements during the term of the Ground Lease (the "Refined Property Tax Costs"). The Refined Property Tax Costs shall be delivered to the Owner by the Developer at the commencement of the Determination Phase.

Section 5.11 Refined Cash Flow Projections.

During the Predevelopment Phase, the Developer shall determine the refined annual net cash flow projected to be generated by each of the Anchor Elements pursuant to the Facility Agreement Summary and any other sources of net cash flow identified and arranged by the Developer with respect to each such Building Improvement (the "Refined Cash Flow Projections"). The Refined Cash Flow Projections shall be delivered to the Owner by the Developer at the commencement of the Determination Phase.

Section 5.12 Refined Second Level Lease Costs.

During the Predevelopment Phase, the Developer shall determine the annual rent required for each Second Level Lease applicable to each Anchor Element (the "Refined Second Level Lease Costs"). The Refined Second Level Lease Costs shall be delivered to the Owner by the Developer at the commencement of the Determination Phase.

Section 5.13 Refined First Level Lease Costs.

During the Predevelopment Phase, the Developer shall determine the annual rent required for each First Level Lease applicable to each Anchor Elements (the "Refined First Level Lease Costs"). The Refined First Level Lease Costs shall be delivered to the Owner by the Developer at the commencement of the Determination Phase.

Section 5.14 Refined Ground Lease Costs.

During the Predevelopment Phase, the Developer and the Owner shall mutually determine the annual schedule of ground rent payments due under the Ground Lease by the Developer to the Owner (the "Refined Ground Lease Costs"). The Refined Ground Lease Costs shall be delivered to the Owner by the Developer at the commencement of the Determination Phase.

Section 5.15 Refined Sublease Costs.

During the Predevelopment Phase, the Developer shall determine the annual schedule of Sublease ground rent payments due under the Subleases to be entered into between the Developer and each Development Affiliate of each Anchor Element (the "Refined Sublease Costs"). The Refined Sublease Costs shall be delivered to the Owner by the Developer at the commencement of the Determination Phase.

Section 5.16 Refined Debt Service Reserves.

During the Predevelopment Phase, the Developer shall determine, based on the Refined Cash Flow Projections, the Refined Second Level Lease Costs, the Refined First Level Lease Costs, the Refined Sublease Lease Costs, and the Refined Financing Costs, the amount of net cash flow to be shared by the Owner and the Developer through the Owner's participation in the First Level Lease and Second Level Lease structure employed by the Developer and

the percentage of such net cash flow that each of the Developer and the Owner will contribute to debt service reserves to support the Development Loan, and in addition to any debt service reserve included within the Development Loan itself (the "Refined Debt Service Reserves"). The Refined Debt Service Reserves shall be delivered to the Owner by the Developer at the commencement of the Determination Phase.

Section 5.17 Refined Sublease Documents.

During the Predevelopment Phase, the Developer shall prepare the refined Sublease documents to be utilized with each of the Anchor Elements by the Developer with each applicable Development Affiliate (the "Refined Subleases"). The Refined Subleases shall be delivered to the Owner by the Developer at the commencement of the Determination Phase.

Section 5.18 Refined First Level Lease Documents.

During the Predevelopment Phase, the Developer shall prepare refined versions of the First Level Lease documents to be utilized between a Development Affiliate and the Owner with respect to each of the Anchor Elements (the "Refined First Level Leases"). The Refined First Level Leases shall be delivered to the Owner by the Developer at the commencement of the Determination Phase.

Section 5.19 Refined Second Level Lease Documents.

During the Predevelopment Phase, the Developer shall prepare refined versions of the Second Level Lease documents to be utilized between the Owner and an Operating Affiliate with respect to each Anchor Element (the "Refined Second Level Leases"). The Refined Second Level Leases shall be delivered to the Owner by the Developer at the commencement of the Determination Phase.

Section 5.20 Amendment of Business Plan.

During the Predevelopment Phase, pursuant to the Predevelopment Work and in preparation for the Development Overview, the Developer shall amend and update the Business Plan for the Owner's review as part of the Development Overview (the "Amended Business Plan").

Section 5.21 Environmental Assessment Services.

During the Predevelopment Phase, the Developer shall retain an environmental engineering consulting and assessment firm to provide the Developer with an environmental assessment of the Premises evidencing, without limitation, the absence of any Hazardous Materials contaminating the Premises and the absence of any violation of Environmental Laws.

Section 5.22 Premises Surveying Services.

During the Predevelopment Phase, the Developer shall retain a licensed and qualified surveying firm to perform a survey of the Premises in accordance with the American Land Title Association specifications, including, without limitation, Premises boundary lines, location of the proposed Building Improvements, location of ancillary improvements on parcels abutting the Premises, identification of all existing easements affecting the Premises.

Section 5.23 Community Relations and Stakeholder Discussions.

During the Predevelopment Phase, the Developer will work with the Owner to meet, and review the Project, with representatives of the City of Tucson, Pima County, City of South Tucson, Rio Nuevo, University of Arizona, Banner Medical Center and other local and regional governmental, private and community stakeholders identified by the Developer and the Owner ("Regional Stakeholder Meetings"). The Developer will utilize Regional Stakeholder Meetings to disclose, review and discuss the Project and, specifically, its Anchor Elements as the Kino District Development and/or an Anchor Element relate to the regional stakeholders in which the Developer engages in discussion. Representatives on behalf of the Owner will be present for any Regional Stakeholder Meeting with the City of Tucson, the City of South Tucson, Rio Nuevo, University of Arizona and Banner Medical Center, and

may choose whether or not such representatives participate in meetings with other regional stakeholders identified by the Developer or the Owner. The Developer's and the Owner's goal for Regional Stakeholder Meetings is to demonstrate the community and region-wide benefits associated with the Kino District Development and to foster working relationships with various levels of stakeholders within the local community and region. The Developer's Authorized Representative will be present within the Tucson metropolitan area at least once per calendar month solely for the purpose of holding Regional Stakeholder Meetings.

Section 5.24 Rating Review Package.

During the Predevelopment Phase, the Developer will work with the Owner to prepare a document review package (the "Rating Review Package") that presents a detailed analysis of the financial and operational aspects of the Project, including, without limitation, the Project Program, the Project Summary, the Facility Agreement Summary (including copies of all Facility Agreements), the Refined Plans and Specifications, the Refined Building Construction Costs, the Refined Development Costs, the Refined Predevelopment Costs, the Refined Total Project Costs, the Refined Financing Costs, the Refined Property Tax Costs, the Refined Cash Flow Projections, the Refined Second Level Lease Costs, the Refined First Level Lease Costs, the Refined Ground Lease Costs, the Refined Sublease Costs, the Refined Debt Service Reserves, the Refined Sublease Documents, the Refined First Level Lease Documents, the Refined Second Level Lease Documents, the Amended Business Plan as well as, without limitation:

- (a) Data, and summaries compiled related to, and extrapolated from, the components of the Rating Review Package to present various scenarios under which the financial performance of the Project could be subject to material adverse impacts and the remedial structured finance components associated with the overall development, documentation and financial structure employed by the Developer;
- (b) Data, and summaries compiled related thereto, chosen by the Developer (and, at the option of the Developer, with the Lender) to present the various scenarios in which the Refined Debt Service Reserves could and would be used to avoid (i) a default under the Development Loan and (ii) the Owner being required to independently fund any lease payment due under a First Level Lease;
- (c) Data, and summaries compiled related to, and extrapolated from financial and operational information provided by, and related to, the Owner's overall finances, operations and existing debt obligations and financing capacity;
- (d) Data and informational summaries to present the Project's development timeline and the timeline of financial obligations associated with the Development Loan and related Refined Cash Flow Projections and demonstrate the Project's ability to self-fund the payment obligations of the Development Loan; and
- (e) Any and all other analyses and data extrapolations from the components of the Rating Review Package and the Owner's financial and operational information as mutually determined by the Developer and the Owner to be beneficial to obtaining the Rating Confirmations required by this Agreement.

ARTICLE VI. PREDEVELOPMENT WORK – DETERMINATION PHASE

As a part of the Predevelopment Work, the Developer agrees to provide the following services and to perform the following work set forth in this Article VI ("Determination Phase Work"). The time period for the Developer to engage in Determination Phase Work shall commence upon the conclusion of the Predevelopment Phase and shall conclude on the date that is not less than two (2) months, but not more than four (4) months, after the completion of the Predevelopment Phase (the "Determination Phase").

Section 6.01 Review of Documents.

At the commencement of the Determination Phase, the Developer will present to, and jointly review with, the Owner each of the Amended Business Plan, the Facility Agreement Summary, the Refined Total Project Costs, the Refined Financing Costs, the Refined Property Tax Costs, the Refined Cash Flow Projections, the Refined Second Level Lease Costs, the Refined First Level Lease Costs, the Refined Ground Lease Costs, the Refined Sublease Costs, the Refined Debt Service Reserves, the Refined Subleases, the Refined First Level Leases, the Refined Second Level Leases and the Rating Review Package (the "Development Overview Documents").

Section 6.02 Financial Review and Analysis.

During the Determination Phase, the Developer will present an analysis of the financial, legal, documentary and operational aspects of the Anchor Elements, including the Development Overview Documents (the "Development Overview"). The Development Overview presentation shall be attended by the Developer, the Owner and any of their respective staff and professional advisers as are required by each respective party.

Section 6.03 Credit Rating Agency Review.

Following the Development Overview, the Developer and the Owner will jointly present the Rating Review Package to, and jointly meet with, the credit rating agencies then currently assigning credit ratings (the "Applicable Credit Rating Agencies") to the Owner's various series of then outstanding debt issues for the purpose of reviewing the Rating Review Package with the Applicable Credit Rating Agencies and obtaining written verification from such Applicable Credit Rating Agencies that the Owner's prospective execution of the First Level Leases will not cause either (a) a downgrade of the credit rating then currently assigned to any such debt issue or (b) a withdrawal of a credit rating then currently assigned to any such debt issue, in either case due to the Owner's actual execution and delivery of the First Level Leases (a "Rating Confirmation"). The Owner shall provide the Developer with a copy of each such Rating Confirmation within three (3) Business Days of its receipt. Prior to a meeting or discussion with an Applicable Credit Rating Agency to seek a Rating Confirmation, the Owner agrees not to provide or discuss the Rating Review Package (or any similar compilation or individual aspect of similar information related to the Project) to any Applicable Credit Rating Agency without the express prior written consent of the Developer.

Section 6.04 Lease Participation Contingency.

The Owner will enter into the applicable Lease and Management Documents if:

- (a) the Development Overview demonstrates that on any Current Payment Date the ratio of (A) Aggregate Debt Service Cash Flow (as derived from the Refined Cash Flow Projections) for the Current Payment Period to (B) the amount to be paid under the Development Loan on the same Current Payment Date, is equal to or greater than one and five one-hundredths (1.05).
- (b) the Development Overview demonstrates that the ratio of (A) aggregate debt service reserves included in the Development Loan, the Refined Debt Service Reserves and any parametric guaranty (or other form of third party insurance or guaranty contract obtained by the Developer (or committed to be obtained by the Developer within the Development Overview Materials)) (the "Aggregate Debt Service Reserves") on any Current Payment Date to (B) the amount to be paid under the Development Loan on the same Current Payment Date, is equal to or greater than three (3.0); and
- (c) Each Applicable Credit Rating Agency issues a Rating Confirmation (referred to together with the criteria set forth in Section 6.04(a) and Section 6.04(b) of this Agreement, the "Lease Participation Contingency").

Subject only to a Nonparticipation Election, upon the Developer's satisfaction of the Lease Participation Contingency, the Owner and the Developer will work in good faith to finalize the Ground Lease and the Lease and Management Documents in accordance with the results of the Predevelopment Phase and the Determination Phase.

In conjunction with the preparation of the final, executable versions of the Ground Lease and the Lease and Management Documents, the Developer will prepare a final version of the Business Plan that incorporates all of the results of the Predevelopment Phase and the Determination Phase (including the determination of the Owner and the Developer to adopt the Existing Development Phasing Plan or the Staggered Development Phasing Plan) which shall be attached to this Agreement as Exhibit P and shall accompany the Lease and Management Documents to be entered into by the Owner for all required Governmental Approvals related to the Lease and Management Documents (the "Final Business Plan").

Section 6.05 Development Phasing Determination.

Following the Developer's satisfaction of the Lease Participation Contingency, but subject to the Owner's right to issue a Nonparticipation Election, the Developer and the Owner will mutually determine the development phasing of the Building Improvements within the Kino District Development by choosing one of the following phasing options (the "Development Phasing Determination"):

- (a) The Existing Phasing Plan: The development phasing plan currently anticipated by the Developer consists of the sequenced development and construction of all of the Building Improvements (both Anchor Elements and Support Elements) in accordance with the phasing structure set forth in the Business Plan (subject to adjustment pursuant to the provisions of Section 5.20 of this Agreement and within the Development Overview Materials) (the "Existing Development Phasing Plan") with (i) the Iceplex achieving Final Completion on August 1, 2023, (ii) the Field House achieving Final Completion on September 1, 2023, (iii) the Arena achieving Final Completion on March 1, 2025, and (iv) the Stadium and the Parking Garage achieving Final Completion on May 1, 2025 (all such dates collectively referred to as the "Existing Phase Final Completion Dates"), provided, however, that the Existing Phase Final Completion Dates shall be subject to extension in the case where the Developer invokes the Lease Participation Contingency Extension with such extended Existing Phase Final Completion Dates to be determined mutually by the Developer and the Owner; or
- (b) Staggered Phasing Plan: As an alternative, the Owner and the Developer may amend the Existing Development Phasing Plan to reflect the following staggered development phasing (the "Staggered Development Phasing Plan"):
 - (i) First, development and construction of all infrastructure components of the Project (or at the election of the Developer, the infrastructure components necessary to develop and construct the Initial Alternate Phase), development and construction of the Iceplex, development and construction of the Iceplex Retail Components, development and construction of the Field House, and, at the option of the Developer, the development and construction of any or all of any Alternate Facilities, any Alternate Components, the Multifamily Complex, Interior Hotel A, Interior Hotel B, the Periphery Hotel and/or the Medical Office Building (all such development and construction are herein referred to as the "Initial Alternate Phase"), provided, however, that the Iceplex and the Field House will be developed and constructed in order to achieve Final Completion on August 1, 2023 and September 1, 2023, respectively (the "Initial Phase Final Completion Dates"), provided, further, that the Initial Phase Final Completion Dates shall be subject to extension in the case where the Developer invokes the Lease Participation Contingency Extension with such extended Initial Phase Final Completion Dates to be determined mutually by the Developer and the Owner in the best interests of the development and operation of the Iceplex, the Field House and the Project;

(ii) Second, the development and construction of all infrastructure components necessary for the Second Alternate Phase (if the Developer limits the development and construction of infrastructure components within the Initial Alternate Phase) and the development and construction of the Arena, the Arena Retail Components, the Entertainment Center, any Alternate Facilities not developed and constructed during the Initial Alternate Phase, any Alternate Components not developed and constructed during the Initial Alternate Phase and, at the option of the Developer, the development and construction of any or all of the remaining Building Improvements (excluding the Stadium and the Parking Garage) not developed and constructed during the Initial Alternate Phase (the "Second Alternate Phase"), provided, however, that the Arena will be developed and constructed in order to achieve Final Completion on May 1, 2026 (the "Second Phase Final Completion Date"), provided, further, that the Second Phase Final Completion Date shall be subject to extension with such extended Second Phase Final Completion Date to be determined based on (i) the agreement of the Developer and the principal Arena tenant and (ii) the mutual agreement of the Owner and the Developer, in both cases in the best interest of the development and operation of the Arena and the Project; and

(iii) Third, the development and construction of all infrastructure components necessary for the Third Alternate Phase (if the Developer limits the development and construction of infrastructure components within the Initial Alternate Phase) and the development and construction of the Stadium, the Stadium Retail Components, the Parking Garage, any Alternate Facilities not developed and constructed during the Initial Alternate Phase or the Second Alternate Phase, any Alternate Components not developed and constructed during the Initial Alternate Phase or the Second Alternate Phase and, at the option of the Developer, the development and construction of any or all of the remaining Building Improvements not developed and constructed during the Initial Alternate Phase or the Second Alternate Phase (all such development and construction are herein referred to as the "Third Alternate Phase"), provided, however, that the date of Final Completion for each of the Stadium and the Parking Garage shall be determined by the Developer and the Owner if, and at the time, the Staggered Development Phasing Plan is selected during the Development Phasing Determination (the "Third Phase Final Completion Date"), provided, further, that the Third Phase Final Completion Dates shall be subject to extension with such extended Third Phase Final Completion Dates to be determined mutually by the Developer and the Owner in the best interests of the development and operation of the Stadium, the Parking Garage and the Project.

Section 6.06 Closing of Development Loan.

- (a) If the Developer satisfies the Lease Participation Contingency and the Existing Development Phasing Plan has been adopted pursuant to the Development Phasing Determination (but subject to the right of the Owner to make a Nonparticipation Election), the Developer shall close the Development Loan within ninety (90) days of the date of the Development Phasing Determination with funds sufficient to complete the Existing Development Phasing Plan; or
- (b) If the Developer satisfies the Lease Participation Contingency and the Staggered Development Phasing Plan has been adopted pursuant to the Development Phasing Determination (but subject to the right of the Owner to make a Nonparticipation Election), the Developer shall close the Development Loan within ninety (90) days of the date of the Development Phasing Determination, provided, however, that the Development Loan shall be funded in two (2) tranches with (i) the first funding comprised of the funds necessary to complete the Initial Alternate Phase and the Secondary Alternate Phase and (ii) the second funding comprised of the funds necessary to complete the Third Alternate Phase.

Section 6.07 Phasing Delay Due to Pandemic.

If the Developer has satisfied the Lease Participation Contingency (subject to the Owner's right to make a Nonparticipation Election), as of the date of the Development Phasing Determination, if the State of Arizona, the

Owner or the City of Tucson (through their respective Governmental Authorities) have then in effect any emergency declarations and/or orders (i) restricting the gathering of individuals, (ii) establishing mandatory shelter in place orders, (iii) establishing mandatory physical distancing requirements, (iv) imposing restrictions on the operations of business establishments, particularly, retail stores, restaurants and indoor amusement/entertainment focused businesses, (v) restricting the operation of sports venues, arenas and stadiums, or (vi) establish other specific restrictions on the operation of facilities such as the Iceplex, the Field House, the Arena and the Stadium, in each case with specific application and respect to the COVID-19 pandemic (the "Pandemic Regulations"), then:

- (a) The Developer and the Owner shall mutually determine an extension to (i) the Existing Phase Final Completion Dates in the case of the Existing Development Phasing Plan or (ii) the Initial Phase Final Completion Date, the Second Phase Final Completion Date and the Third Phase Final Completion Date in the case of the Staggered Development Phasing Plan, such extension to be determined in good faith and on a reasonable basis in conjunction with the duration and scope of the applicable Pandemic Regulations (in either case, the "Extended Final Completion Dates").
- (b) The Developer shall close the Development Loan pursuant to the provisions of Section 6.06 of this Agreement, but shall include within the Development Loan funds sufficient to address any additional capitalized interest within the Development Loan ("Pandemic Reserve Funds") as well as the Building Construction Costs and the Total Project Costs that are projected by the Developer to be incurred as the result of the Extended Final Completion Dates (the "Pandemic Development Funds"), provided, however, all such Pandemic Reserve Funds shall be added to the existing debt service reserve included within the Development Loan, provided, further, that to the extent the entirety of the Pandemic Reserve Funds are not used, such remaining Pandemic Reserve Funds shall remain a part of the existing debt service reserve included within the Development Loan. The Developer and the Owner agree that the purpose of the Pandemic Reserve Funds and the Pandemic Development Funds is to permit the Developer to maintain development phasing and design activities so that following the expiration of the Pandemic Regulations, the Developer may efficiently maintain and proceed to the Final Completion of the Anchor Elements in accordance with the Existing Development Phasing Plan or the Staggered Development Phasing Plan, as applicable.

Section 6.08 Failure of Lease Participation Contingency.

If the Developer cannot satisfy the Lease Participation Contingency upon the completion of the Development Overview, the Developer may elect to extend the Determination Phase for an additional six (6) months to satisfy the Lease Participation Contingency (the "Lease Participation Contingency Extension"). If the Developer so elects, the time period set forth in the introductory paragraph of this Article V shall automatically be amended to reflect the Lease Participation Contingency Extension without any further action required of the Developer or the Owner. Should the Developer satisfy the Lease Participation Contingency pursuant during the Lease Participation Contingency Extension, subject to the Owner's right to make a Nonparticipation Election and the application of all provisions of Section 6.09 of this Agreement, the development and construction of all Anchor Elements shall occur in accordance with the provisions of Section 6.04 of this Agreement with a Development Phasing Determination made pursuant to Section 6.05 of this Agreement (and subject to the Extended Final Completion Date provisions of Section 5.07 of this Agreement) as if the Developer never failed the Lease Participation Contingency.

- (a) Notwithstanding the foregoing provisions related to the invocation of the Lease Participation Contingency Extension, the Developer may, instead, provide the Owner with written Notice of the Developer's decision to forego the Owner's participation in the Lease and Management Documents, in which event the Developer shall have a period of one (1) calendar year from the date of the completion of the Development Overview to arrange alternate financing (in addition to or in substitution of the Development Loan from the Lender) to complete the Project (including the Developer's participation in the costs of the Kino Complex Underpass, subject, however, to Developer's ability to obtain financing for same) (the "Alternate

Financing”).

- (b) If the Developer foregoes the Owner's participation in the Lease and Management Documents, this Agreement shall remain in full force and effect with respect to the Developer's right to complete the Project and the Owner will work with the Developer in good faith to finalize the Ground Lease prior to the closing of the Alternate Financing, provided, however, that all provisions related to the Owner's participation in the Lease and Management Documents and any provisions related to the Owner's financial participation in any aspect of the Project (outside of the payment provisions of the Ground Lease) shall be of no further force or effect. Notwithstanding the foregoing, if the Owner still desires to manage the Parking Garage, it may enter into a First Level Lease with the Developer Affiliate responsible for developing and constructing the Parking Garage on terms mutually acceptable to the Developer and the Owner.
- (c) If the Developer fails to invoke the Lease Participation Extension and closes on its Alternate Financing, the Developer shall implement a phasing plan for the development and construction of all Building Improvements for the Project pursuant to an agreement between the Developer and its provider of Alternate Financing and shall not be subject to the provisions of Section 6.05 of this Agreement or Section 6.06 of this Agreement.

Section 6.09 Owner Nonparticipation Election.

If the Developer satisfies the Lease Participation Contingency, then, notwithstanding the provisions of Section 6.04 and Section 6.05 of this Agreement, the Owner may elect not to participate in the applicable Lease and Management Documents. To so elect, the Owner shall provide the Developer with ten (10) days' written Notice of such election (a "Nonparticipation Election") with such Nonparticipation Election delivered to the Developer within five (5) Business Days of the date that is the later of the completion of the Development Overview or the last date upon which the Owner receives a Rating Confirmation from an Applicable Credit Rating Agency. Upon a Nonparticipation Election, the Owner agrees to pay the Developer for services rendered and earned an amount equal to (a) the Total Predevelopment Costs (including a summary of such Total Predevelopment Costs), plus (b) twenty percent (20%) of the Total Predevelopment Costs (the "Developer Nonparticipation Fee" and together with the Total Predevelopment Costs, the "Owner Reimbursement"), provided, however, that (i) the Owner Reimbursement shall not exceed Ten Million Five Hundred Thousand Dollars (\$10,500,000), and (ii) if the sum of the Total Predevelopment Costs and the Developer Nonparticipation Fee exceeds Ten Million Five Hundred Thousand Dollars (\$10,500,000), then the Developer Nonparticipation Fee shall be automatically reduced by an amount necessary in order that the sum of Total Predevelopment Costs and the Developer Nonparticipation Fee does not exceed Ten Million Five Hundred Thousand Dollars (\$10,500,000). To the extent that the Total Predevelopment Costs equal or exceed Ten Million Five Hundred Thousand Dollars (\$10,500,000), then the Owner Reimbursement shall be equal to Ten Million Five Hundred Thousand Dollars (\$10,500,000) and the Developer shall not be eligible to receive any Developer Nonparticipation Fee. The Developer shall provide the Owner with the final reconciliation of the Total Predevelopment Costs subject to Owner Reimbursement (including the calculation of the Developer Nonparticipation Fee) within ten (10) calendar days following the Developer's receipt of notice of the Nonparticipation Election, including all invoices and receipts substantiating the Total Predevelopment Costs (the "Predevelopment Cost Invoice"). The Owner agrees to make payment in full on the Owner Reimbursement within thirty (30) calendar days of the receipt of the Predevelopment Cost Invoice.

Section 6.10 Effect on Developer from Nonparticipation Election.

Following a Nonparticipation Election by the Owner, the Developer shall have a period of one (1) year following the payment of the Owner Reimbursement to arrange Alternate Financing to develop and construct the Project and this Agreement shall remain in full force and effect with respect to the Developer's right to complete the Project and the Owner will work with the Developer in good faith to finalize the Ground Lease prior to the closing of the Alternate Financing, provided, however, that all provisions related to the Owner's participation in the Lease and Management Documents and any provisions related to the Owner's financial participation in any aspect of the

Project (outside of the payment provisions of the Ground Lease) shall be of no further force or effect, and provided, further, that the Developer shall have no obligation to participate in the funding of the Kino Complex Underpass or to provide the Owner with the option to manage the Parking Garage

- (a) Following a Nonparticipation Election, if Developer closes on its Alternate Financing, the Developer shall implement a phasing plan for the development and construction of all Building Improvements for the Project pursuant to an agreement between the Developer and its provider of Alternate Financing and shall not be subject to the provisions of Section 6.05 of this Agreement or Section 6.06 of this Agreement.
- (b) Provided that the Owner has made payment in full of the Owner Reimbursement pursuant to the provisions of Section 6.08 of this Agreement, upon the closing of, and included within, the Alternate Financing, the Developer shall make payment to the Owner in an amount equal to the Total Predevelopment Costs as a reimbursement to the Owner for its payment of the Total Predevelopment Costs within the Owner Reimbursement and in recognition of the Developer's use of the work product represented by the Total Predevelopment Costs to complete the Project.
- (c) To the extent that the Developer does not arrange and close its Alternate Financing pursuant to the time limitations set forth in Section 6.09 above, this Agreement shall be subject to termination pursuant to the provisions of Section 17.01 of this Agreement (a "Alternate Finance Termination").
- (d) Upon an Alternate Finance Termination, the Developer shall deliver to the Owner all plans, specifications, designs, drawings, reports and any other deliverables related to the construction of the Anchor Elements provided by Predevelopment Service Firms to the Developer, including, but not limited to the Refined Plans and Specifications and all Government Approvals received and/or obtained by the Developer (the "Predevelopment Materials"). Predevelopment Materials provided to the Owner shall include assignments in favor of the Owner transferring ownership of the Predevelopment Materials to the Owner from the Developer and each applicable Predevelopment Service Firm, provided, however, pursuant to this Agreement (and without any further action required on the part of the Owner), the Developer and the Architect shall have a perpetual license to use the Refined Plans and Specifications and any other drawings and designs for the Building Improvements in the Developer's or the Architect's (as the case may be) print, electronic, web-based or other marketing materials and/or efforts (without identifying the Owner).

ARTICLE VII. PROJECT GOVERNANCE

Section 7.01 Establishment of Governance Committees.

The Developer shall establish the following committees to provide governance and oversight of the Project on an advisory basis (collectively, the "Governance Committees");

- (a) Kino District Development and Construction Committee (the "Development Committee");
- (b) Kino District Owner Architect Contractor Meeting Group (the "OAC Group");
- (c) Kino District Operations Committee (the "Operations Committee");
- (d) Kino District Capital Planning Committee (the "Capex Committee");
- (e) Kino District Economic Development Committee (the "Economic Development Committee"); and

- (f) Kino District Community Engagement Committee (the "Community Engagement Committee")

Section 7.02 Development Committee.

- (a) The Development Committee will focus on the coordination and execution of the development and construction of the Project, including all Building Improvements encompassing both Anchor Elements and Support Elements, as well as ancillary amenities set forth in the Site Plan.
- (b) The Development Committee will be comprised of the following members representing the Owner:
- (i) Pima County, Kino Stadium Director;
 - (ii) Pima County Project Management, Office Manager; and
 - (iii) Pima County Deputy Administrator for Public Works.
- (c) The Development Committee will be comprised of the following members representing the Developer:
- (i) The Developer;
 - (ii) The Design Builder;
 - (iii) The Architect;
 - (iv) On an as needed basis as determined by the Developer, management representatives of the Anchor Elements; and
 - (v) On an as needed basis as determined by the Developer, representatives of anchor programming organizations for each Anchor Element.
- (d) The Development Committee will meet on a monthly basis following the execution and delivery of this Agreement, with the first meeting of the Committee to be held within fifteen (15) days after the Effective Date.
- (e) The scope, function and oversight of the Development Committee shall be as described in the Business Plan, as such Business Plan is subject to amendment and finalization in the form of the Final Business Plan pursuant to the provisions of this Agreement.

Section 7.03 OAC Group.

- (a) The OAC Group will be comprised of a subset of the Owner representatives on the Development Committee. The members of the OAC Group will serve as the Owner's representatives at monthly Owner Architect Contractor Meetings held by the Developer and the Design Builder each month ("OAC Meetings"). OAC Meetings will serve as the monthly venue within which the Developer's entire Project development team provides a detailed review of the progress of constructing Anchor Elements, Support Elements and all other aspects of the Project. In addition to serving as the Owner's representative, the OAC Group represents the Development Committee at OAC Meetings.

- (b) The OAC Group will be comprised of the following members representing the Owner:
 - (i) Pima County Project Management, Project Manager.
- (c) The OAC Group will present reports of each OAC Meeting to the Owner's representatives on the Development Committee.

Section 7.04 Operations Committee.

- (a) The Operations Committee will review the logistics, scheduling, event management and facility performance of each Anchor Element in conjunction with similar aspects of the Existing Kino Complex.
- (b) The Operations Committee will be comprised of the following members representing the Owner:
 - (i) Pima County Kino Stadium Director.
- (c) The Operations Committee will be comprised of the following members representing the Developer:
 - (i) The Developer; and
 - (ii) Management representatives of the Anchor Elements.
 - (iii) On an as needed basis as determined by the Developer, representatives of anchor programming organizations for each Anchor Element.
- (d) The Operations Committee will meet quarterly beginning with the commencement of the construction of the Iceplex. Thereafter, in addition to quarterly meetings, the Operations Committee will hold an additional meeting upon the commencement of construction of each additional Anchor Element.
- (e) The scope, function and oversight of the Operations Committee shall be as described in the Business Plan, as such Business Plan is subject to amendment and finalization in the form of the Final Business Plan pursuant to the provisions of this Agreement.

Section 7.05 Capex Committee.

- (a) The Capex Committee will oversee and review the long-term capital planning needs of each Anchor Element. In addition to addressing the capital planning aspects of Anchor Elements, the Capex Committee's function includes maintaining Anchor Elements in a manner that promotes the seamless transition of the Anchor Elements to the Owner as of the expiration of the Ground Lease.
- (b) The Capex Committee will be comprised of the following members representing the Owner:
 - (i) Pima County Project Management, Office Manager (or their designee).
- (c) The Capex Committee will be comprised of the following members representing the Developer:

- (i) The Developer; and
- (ii) Management representatives of the Anchor Elements.
- (d) The Capex Committee will meet on a biannual basis. The first meeting of the Capex Committee will be held following Final Completion of the Iceplex.
- (e) The scope, function and oversight of the Capex Committee shall be as described in the Business Plan, as such Business Plan is subject to amendment and finalization in the form of the Final Business Plan pursuant to the provisions of this Agreement.

Section 7.06 Economic Development Committee.

- (a) The Economic Development Committee will review, assess and recommend adjustments to the Kino District Development and Existing Kino Complex events contributing toward economic development activity within Pima County, the City of Tucson and the Southern Arizona region.
- (b) The Economic Development Committee will be comprised of the following members representing the Owner:
 - (i) Pima County Project Management, Office Planner;
 - (ii) Pima County Economic Development (representative as designated by the department); and
 - (iii) Pima County Attractions and Tourism (representative as designated by the department).
- (c) The Economic Development Committee will be comprised of the following members representing the Developer:
 - (i) The Developer;
 - (ii) Chicanos Por La Causa, Chief Executive Officer (or his designee);
 - (iii) Representative designated by Visit Tucson;
 - (iv) Representative designated by Sun Corridor;
 - (v) Representative designated by Southern Arizona Leadership Council;
 - (vi) City of Tucson, Director of Economic Development; and
 - (vii) On an as needed basis as determined by the Developer, representatives of Anchor Element programming, local business groups and local non-profit organizations.
- (d) The Economic Development Committee will meet on a quarterly basis following the Final Completion of the Iceplex and the Field House.

- (e) The scope, function and oversight of the Economic Development Committee shall be as described in the Business Plan, as such Business Plan is subject to amendment and finalization in the form of the Final Business Plan pursuant to the provisions of this Agreement.

Section 7.07 Community Engagement Committee.

- (a) The Community Engagement Committee will review and evaluate as well as facilitate the Project's impact on surrounding communities, outreach efforts to other areas of Pima County and the City of Tucson, and programs developed within the Kino District Development by the Developer.
- (b) The Community Engagement Committee will be comprised of the following members representing the Owner:
 - (i) Pima County Community & Workforce Development representative;
 - (ii) Pima County Health Department representative; and
 - (iii) Community/neighborhood organization representatives.
- (c) The Community Engagement Committee will be comprised of the following members representing the Developer:
 - (i) The Developer;
 - (ii) Athletics Inclusion Foundation;
 - (iii) Chicanos Por La Causa representative; and
 - (iv) Management representatives of the Anchor Elements.
- (d) The Community Engagement Committee will meet on a quarterly basis following the execution and delivery of this Agreement, with the first meeting of the Community Engagement Committee to be held within thirty (30) days after the Effective Date.
- (e) The scope, function and oversight of the Community Engagement Committee shall be as described in the Business Plan, as such Business Plan is subject to amendment and finalization in the form of the Final Business Plan pursuant to the provisions of this Agreement.

Section 7.08 Annual Report from Developer.

By the end of the first calendar quarter of each year during the term of the Ground Lease, and beginning in 2024, the Developer will prepare a report summarizing the operational, financial, economic development and community engagement performance of the Kino District Development in accordance with the provisions set forth in the Business Plan, as such Business Plan is subject to amendment and finalization in the form of the Final Business Plan pursuant to the provisions of this Agreement. The Developer's annual report shall be delivered to the Governance Committees and the Owner.

ARTICLE VIII. DEVELOPMENT MANAGEMENT

Following the completion of the Predevelopment Work and the closing of the Development Loan, the Developer shall perform the following work relating to the development of the Project as well as the construction and turnover of the Building Improvements:

Section 8.01 Close-Out of Project.

The Developer shall be responsible for final close-out, turnover and reporting of each Phase of the Project, to be completed no later than sixty (60) calendar days following Final Completion thereof, including, without limitation, (a) payment of all outstanding applications for payment, invoices, and bills for services or supplies provided in connection with the design and construction of the Building Improvements, (b) resolution of all Change Orders with respect to the Building Improvements, (c) obtaining from the Design Builder their final lien waivers and the final lien waivers from the Architect and all subcontractors and materialmen involved in the construction of the Building Improvements, (d) release of all bonds and sureties with respect to the construction of the Building Improvements, (e) causing the Design Builder to complete all Construction Punch List Work and to satisfy the conditions of any issued permit or inspection, and (f) causing the Design Builder to deliver to the Developer As-Built Plans, operations manuals and assignments of warranties with respect to the Building Improvements as required by the Design Build Contract.

Section 8.02 Scheduling/Expediting Services.

The Developer will cause the Design Builder to prepare, and update at periodic intervals (but not more frequently than once every calendar month), in a format reasonably acceptable to the Developer, critical path schedules for the development process and the construction process. The Developer will cause the Design Builder, as necessary and applicable, to implement and administer expediting procedures to meet the Approved Master Project Schedule.

Section 8.03 Project Management and Coordination.

The Developer shall administer all agreements in connection with the development and construction of the Building Improvements. The Developer, with the assistance of the Design Builder pursuant to the Design Build Contract, shall schedule, coordinate and expedite the activities of all Persons providing goods, work or services for the Project. In conjunction with the Design Builder, the Developer shall develop and continuously refine time schedules for all Phases of the Project (not more frequently than once every calendar month) using commercially reasonable efforts to cause all Persons providing goods, work or services for the Project to comply with such established schedules. The Developer shall use commercially reasonable efforts to ensure that the Project conforms with the Premises Requirements, the Program Requirements and with the Approved Plans and Specifications. In conjunction with the Design Builder, the Developer shall monitor and inspect the progress of the quality of work or services being performed for the Project. The Developer shall take appropriate actions regarding the modification, approval, and/or disapproval of all change requests, payment requests, plans, specifications, drawings, designs, budgets, schedules, correspondence and communications. The Developer shall cause the Design Builder to implement and administer cost accounting and cost project systems for the Project and the Building Improvements, respectively.

Section 8.04 Construction and Construction Management.

- (a) The Developer shall cause the Design Builder to construct the Building Improvements substantially in accordance with the Approved Plans and Specifications, and in compliance with all applicable Legal Requirements (including, without limitation, American Disabilities Act laws and regulations) and all matters of record affecting the Premises, including, but not limited to, the Premises Requirements. However, construction of the Building Improvements shall be subject to such reasonable modifications as are required (i) to correct architectural or engineering errors or omissions or to comport with good design, engineering and construction practices, (ii) due to field conditions, (iii) to comply with applicable Legal

Requirements and costs, and/or to comply with any required permit, and (iv) to comply with any request of the Developer for modifications.

- (b) Except as otherwise provided in, and subject to the conditions of, the Design Build Contract, all materials and equipment incorporated into the Building Improvements shall be new and of first-class quality and in good operating condition. Construction shall be reasonably free from defects not inherent in the quality of the work required or permitted. The Developer shall cause the Design Build Contract to provide that construction not conforming to these requirements, including substitutions not properly approved and authorized, shall be corrected by Design Builder, at no out-of-pocket cost to the Developer, and with such costs not included in the Total Project Costs. The Developer shall be responsible for obtaining all permits, bonds, licenses, tests and inspections, including certificates of occupancy for the construction of the Building Improvements.

Section 8.05 Punch List Work.

The Developer shall be responsible for administering, managing, coordinating and using commercially reasonable efforts to cause all Persons providing goods, work or services for the Project, including, without limitation, the Design Builder, to complete the Punch List Work and comply with such schedules established by the Developer, including, without limitation, the Construction Schedule.

Section 8.06 Warranty Work.

The Developer shall be responsible for administering, managing, coordinating and using commercially reasonable efforts to cause all Persons providing goods, work or services for the Project to complete all warranty work, including the repair and making of all necessary replacements, of all defects in design, materials and workmanship in the Building Improvements of which the Developer receives written notice within the applicable Warranty Period.

Section 8.07 Latent Defects.

The Developer shall be responsible for administering, managing, coordinating and using commercially reasonable efforts to cause all Persons providing goods, work or services for the Project to correct latent defects found in the design, construction, goods or equipment installed in the Building Improvements to comply with such schedules established by the Developer.

Section 8.08 Training.

The Developer shall be responsible for administering, managing, coordinating and using commercially reasonable efforts to cause all Persons providing furniture, fixtures and equipment and systems for the Project to provide commercially reasonable on-site training to the property manager's personnel in all operating and safety procedures necessary to operate the Building Improvements over the range of its operating capability and all maintenance, troubleshooting and repair procedures necessary or appropriate for maintaining the Project in optimum operating condition in accordance with written manuals and record drawings provided for such purposes.

ARTICLE IX. PROJECT PERSONNEL

Section 9.01 Authorized Representative of Owner.

The Owner hereby designates Capital Program Office (CPO) Manager to be its designated representative for purposes of contact between the Owner and the Developer in connection with the development of the Project and the design and construction of the Building Improvements ("Owner's Authorized Representative"). The Owner shall have the right, by timely written notice given to the Developer, to remove the existing Owner's Authorized Representative and to appoint another individual to act as Owner's Authorized Representative. However, no more than one (1) individual shall act as Owner's Authorized Representative at any time. The Owner agrees that the

Owner's Authorized Representative shall have the authority to bind the Owner with respect to all matters for which the consent or approval of the Owner is required or permitted pursuant to this Agreement and that all consents, approvals and waivers given in writing by Owner's Authorized Representative shall bind owner and may be relied upon by the Developer.

Section 9.02 Authorized Representative of Developer.

The Developer hereby designates Francis J. Knott, Jr., to be its designated representative for purposes of contact between the Developer and the Owner in connection with the development of the Project and the design and construction of the Building Improvements ("Developer's Authorized Representative"). The Developer shall have the right, by timely written notice given to the Owner, to remove the existing Developer's Authorized Representative and to appoint another individual to act as Developer's Authorized Representative. However, no more than one (1) individual shall act as Developer's Authorized Representative at any time. The Developer agrees that Developer's Authorized Representative shall have the authority to bind the Developer with respect to all matters for which the consent or approval of the Developer is required or permitted pursuant to this Agreement and that all consents, approvals and waivers given in writing by Developer's Authorized Representative shall bind the Developer and may be relied upon by the Owner.

Section 9.03 Design Builder.

The Developer will enter into the Design Build Contract with Hensel Phelps Construction Co. to construct the Building Improvements for each Phase (the "Design Builder"). The Developer shall cause the Design Builder to identify competent personnel to be the on-site construction management team from the start of the construction of the Building Improvements through Final Completion and the completion of the Construction Punch List Work, for the prior approval of the Developer, who shall be present on-site at the Project during normal working hours to be responsible for supervising all subcontractors and all other Persons providing goods, work and services with respect to the construction of the Building Improvements. The Developer will also enter into an indemnification and guaranty agreement with the Design Builder indemnifying the Developer for any Building Construction Costs in excess of the Construction Budget and the payment of any applicable Design Builder Liquidated Damages (the "Design Builder Indemnity").

Section 9.04 Architect.

The Developer will enter into a design and architecture agreement with (i) JLG Architects to design the Building Improvements and to serve as the architect of record for the Project, and (ii) DFDG Architecture to serve as the architect of record of the Parking Garage and to serve as associate architect on the remaining Anchor Elements (collectively the "Architect"). The Developer shall cause the Architect to identify competent personnel to be the on-site architectural representatives of the Architect from the start of the Project through the Final Completion of the Building Improvements, for the prior approval of the Developer, who shall be present on-site, on an as-needed basis, at the Project during normal working hours to be responsible for supervising the Design Builder's performance of the construction of the Building Improvements.

ARTICLE X. DESIGN BUILD CONTRACT

Section 10.01 Design Build Contract.

The Building Improvements shall be constructed pursuant to the Design Build Contract and will be subject to a detailed line item construction budget that does not exceed the line item of the Approved Total Project Budget for construction of the Building Improvements, but that also includes a construction contingency to be maintained with respect to the Building Construction Costs (the "Construction Budget"). Developer will include in the Design Build Contract a general contingency with respect to overruns in the line items in accordance with the requirements of this Agreement.

Section 10.02 Competitive Bidding Requirements.

The Developer shall endeavor to include in the Design Build Contract (i) a requirement that all major subcontracts and supply contracts must be competitively bid from an approved list of pre-qualified bidders ("major" for these purposes shall be defined as a contract for goods or services valued at more than One Hundred Thousand Dollars (\$100,000)), (ii) language pursuant to which the Design Builder agrees to use all reasonable efforts to obtain bids from appropriately qualified local subcontractors. Any competitive bid process which includes an Affiliate of the Design Builder shall be by a closed bid process. With the prior approval of the Developer, limited source, single source or negotiated contracts shall be supported by documentation that assures that the pricing is commercially reasonable based on market conditions.

Section 10.03 Subcontractor Approval.

The Developer shall endeavor to include in the Design Build Contract a requirement that the Design Builder submit to the Developer for its prior approval pursuant to an agreed-upon prequalification process prior to bidding, the name, qualifications and other pertinent information for any major subcontractor or material supplier on the Project ("major" for these purposes shall be defined as either with a contract for goods or services valued at more than One Hundred Thousand Dollars (\$100,000), or whose delivery of goods or completion of services is a Construction Milestone on the Approved Construction Schedule and necessary to meet the Projected Date of Substantial Completion set for in the Approved Master Project Schedule), and a requirement that a summary of bids, proposals and contracts shall be furnished to the Developer prior to execution of the related contract.

Section 10.04 Change Orders.

The Developer shall include in the Design Build Contract requirements that, except for minor changes in the work, changes that do not result in any increase in the Construction Budget, the Total Project Costs or cause a delay to the Projected Date of Substantial Completion and change orders required to prevent the risk of imminent injury to individuals or damage to property (each a "Change Order"):

- (a) all Change Orders must be in writing in substantially the same form as the AIA G701 2007 form and must identify any change in the Construction Budget and Total Project Costs and any additional time for the completion of the Building Improvements or the Project which is attributable to Change Order;
- (b) The Design Builder must provide to written notice to the Developer of an asserted Change Order within ten (10) calendar days of the date the issue or condition upon which the asserted Change Order is based becomes known to the Design Builder, which notice shall specifically identify such issue or condition and set forth the probable cost of an asserted Change Order and the estimated delay in the completion of the Building Improvements or the Project associated with an asserted Change Order;
- (c) Any Change Order for delay due to weather shall be submitted to the Developer for approval within five (5) calendar days of the date of the delay;
- (d) No Change Order shall be implemented until the cost and estimated time delay in the completion of the Building Improvements or the Project associated with an asserted Change Order are approved in writing by the Developer and, if required by the Development Loan, the Lender, and if required by this Agreement, the Owner; and
- (e) No Change Order shall be approved or implemented unless the costs of an asserted Change Order are fully payable from the Project contingency reserves maintained by the Developer.

Section 10.05 Construction Meetings and Communications.

The Owner's Authorized Representative and/or the OAC Committee shall be given reasonable prior notice of, and shall be entitled to attend, each meeting held by the Developer, the Architect and the Design Builder regarding the design and any material revisions to the Approved Master Project Schedule for the Project. As such, the Developer, the Architect and the Design Builder shall include Owner's Authorized Representative and/or the OAC Committee on all email communications regarding the design and any material revisions to the Approved Master Project Schedule for the Project and shall timely provide Owner's Authorized Representative with a copy of all other written communications regarding the design and any material revisions to the Approved Master Project Schedule for the Project.

ARTICLE XI. DEVELOPMENT AND CONSTRUCTION

Section 11.01 Schedule for Construction.

The Developer agrees to use commercially reasonable efforts to expedite the performance of all services and obligations required under this Agreement and any other agreements entered into, managed or administered by the Developer, but the Developer does not assume any liability for the failure of any Person, including the Design Builder or any of the other consultants and professionals retained by the Developer, to perform such Person's obligations within the time periods set forth on the Approved Master Project Schedule, provided that the Developer uses commercially reasonable efforts (which shall not require litigation) to enforce the obligations of such Persons under their contracts with the Developer.

- (a) In order to ensure timely completion of the Building Improvements, the Developer shall work with the Design Builder to approve a critical path construction schedule containing certain construction milestone dates in the construction process pursuant to the Design Build Contract and in accordance with the Approved Master Project Schedule which sets forth the dates for starting and completion of various critical stages of construction of the Building Improvements ("Construction Milestones") to ensure Substantial Completion of the Building Improvements by the Proposed Date of Substantial Completion (the "Construction Schedule").
- (b) The Developer shall monitor and use commercially reasonable efforts to cause the Design Builder's compliance with all Construction Milestone dates in the Construction Schedule and Deadlines in the Approved Master Project Schedule.
- (c) The Construction Schedule will be based on normal working hours for all trades between 7AM and 7PM. The Developer shall endeavor to include in the Design Build Contract a provision pursuant to which the Design Builder will, upon the Developer's request, or on its own volition may, allow subcontractors to add additional work hours to meet the Construction Schedule and Construction Milestones, subject to applicable Legal Requirements.
- (d) Without limitation, the Developer's liability under this Section 11.01 is subject to Section 13.01 of this Agreement.

Section 11.02 Substantial Completion.

The Developer shall use its commercially reasonable efforts to cause the Design Builder to achieve Substantial Completion of the Building Improvements in each Phase by the applicable Projected Date of Substantial Completion. The term "Substantial Completion" shall mean the time at which:

- (a) Construction of such Building Improvements has been sufficiently completed in accordance with the Design Build Contract, the Approved Plans and Specifications, all building permits and other governmental approvals relating to the construction, or required for the use and occupancy of such Building Improvements by the Developer;
- (b) All certificates of occupancy (which may be temporary certificates of occupancy) with respect to such Building Improvements shall have been issued by the applicable Governmental Authority, which certificates of occupancy permit the use and occupancy of all of such Building Improvements and are subject to no conditions which would prevent the Developer from using and occupying such Building Improvements in order to achieve Final Completion thereof; and
- (c) The Developer has approved the Construction Punch List of remaining work to be completed by the Design Builder which will only include items that will not interfere with the beneficial use or occupancy by the Developer to achieve Final Completion of such Building Improvements.

Section 11.03 Construction Inspection and Punch List Work.

Prior to the Substantial Completion Date, the Developer and the Design Builder shall inspect the Building Improvements and shall prepare and sign an inspection form describing the condition of the Building Improvements and a list (the "Construction Punch List") of all items of work to be corrected or yet to be completed (the "Construction Punch List Work"). The Developer shall direct the Design Builder to promptly correct or complete all Construction Punch List Work within sixty (60) calendar days of the finalization of the Construction Punch List or within such longer period of time as the Developer and the Owner agree. The Developer shall coordinate the correction and completion of the Construction Punch List Work with the Design Builder and its subcontractors. The Developer shall invite the Owner's Authorized Representative to accompany the Developer during the inspection required in this Section 11.03.

Section 11.04 Commissioning.

The Developer shall be responsible for administering, managing, coordinating and using commercially reasonable efforts to cause all Persons providing the commissioning services set forth in the various Building Improvement specifications relating to commissioning, including, without limitation, the specific specifications related to retention of a commissioning authority, to complete the commissioning process set forth in the specifications.

Section 11.05 Final Completion.

The Developer shall use its commercially reasonable efforts to cause the Design Builder to achieve Final Completion of the Building Improvements in each Phase by the applicable Projected Date of Final Completion. The term "Final Completion" shall mean the time at which:

- (a) Construction of such Building Improvements has been finally completed for such Phase in accordance with the Design Build Contract including, without limitation, compliance with the Approved Plans and Specifications;
- (b) All building permits, applicable Legal Requirements and other governmental approvals relating to the construction of such Building Improvements have been received by the Design Builder and the Developer such that the use and occupancy of such Building Improvements are not subject to any conditions that would prevent the intended tenant (as described in the Business Plan) from using and occupying such Building Improvements for the use contemplated under the applicable Leasing and Management Documents;

- (c) All Construction Punch List Work, and other obligations required to be performed pursuant to the Design Build Contract have been completed for such Building Improvements unless the Developer agrees to the completion of Construction Punch List Work following, and not affecting the determination of the achievement of, Final Completion;
- (d) all final certificates of occupancy with respect to such Building Improvements shall have been issued by the applicable Governmental Authority and all permits shall have been closed for the applicable Phase;
- (e) all costs of the applicable Phase have been paid, other than any such costs which are to be satisfied from the proceeds of the final draw of the Development Loan for such Phase;
- (f) all warranties, guarantees and start-up and operating manuals for such Building Improvements have been delivered to Developer or its designee for the applicable Phase;
- (g) all keys or electronic access cards to provide access to such Building Improvements have been delivered to Developer or its designee and subsequently delivered to the manager thereof by the Developer;
- (h) Conditional lien waivers from the Design Builder, the Architect and all subcontractors and all material suppliers have been received by Developer, with final lien waivers from the Design Builder, the Architect and all subcontractors and material suppliers to be delivered to the Developer upon the payment of the final costs of the Project pursuant to the final draw of the Development Loan for such Phase.

Section 11.06 As-Built Plans.

The Developer shall endeavor to include in the Design Build Contract a provision that, at the time of Final Completion of the Building Improvements for each Phase, the Design Builder will be required to transfer notations from its records as to concealed items, changes and deviations from the Approved Plans and Specifications onto a set of Mylar transparencies (to be paid for by the Design Builder) (the "As-Built Plans") and provide a complete set of As-Built Plans to the Developer. The Design Builder shall certify by endorsement that each of the revised sheets constituting the As-Built Plans represents a complete and accurate record of the work as executed. The Developer shall deliver a digital set of all such As-Built Plans to the Owner's Authorized Representative.

Section 11.07 Development Loan Proceeds.

The Developer shall pay or submit requisitions to the Lender for disbursements of Development Loan proceeds for payment of all Total Project Costs not paid for directly by the Developer, such requisitions to be in compliance with the Lender's requirements, including, but not limited to, invoices, schedules and other documentation required by the Lender to be delivered to the Lender as a condition to the Lender's duty to disburse the amount described in the requisition.

Section 11.08 Open Books.

- (a) The Developer shall maintain an "open book" policy with respect to the Total Project Costs. The Developer shall maintain in the Design Builder's Tucson, Arizona office, on a current basis, in accordance with reasonable accounting systems and record management procedures, accurate and complete books and records, a record copy of all contracts, drawings, specifications, addenda, Change Orders and other modifications, applications for payment, invoices, bills, claims, payments, budgets, cash flows, and all other financial documentation and information relating to the Total Project Costs (collectively, the "Records"). The Owner shall have the right, at any time and from time to time, during normal business hours and after reasonable advance notice, to review the Records. The Developer shall cause the Design Builder will maintain copies of all Approved Plans and Specifications, shop drawings, product data, samples and submittals.

- (b) The Developer shall maintain the Records relative to each Phase for a minimum period of five (5) years after the Final Completion of such Phase. The Developer's Authorized Representative shall be available to meet periodically with the Owner's Authorized Representative during normal business hours and after reasonable advance notice to discuss any of the Records, any financial matters, and any other matters pertinent to the Project.

Section 11.09 Liens.

The Developer shall not permit any mechanics' or materialmen's liens or other liens upon the Premises (provided, however, that the First Mortgage shall be permitted as a lien against the Project and the Developer's interest in the Ground Lease and the Lease and Management Documents) and shall ensure that the Design Build Contract, the Architect's agreement, construction contracts and all subcontracts and agreements with material suppliers make it expressly clear that the Developer's interest in the Project is that of a ground lease tenant. The Owner's title to the Premises is and always shall be paramount to the Ground Lease, and nothing in this Agreement shall empower the Developer to do any act that can, shall or may encumber the Premises with a lien. If (a) a dispute arises under the Design Build Contract and a lien is filed against the Premises, (b) in connection with such dispute, the Owner requests the Developer to withhold a payment due to the Design Builder (or the Architect, contractor, subcontractor or material supplier) under the Design Build Contract, and (c) then, in any such event, the Developer shall, within twenty (20) calendar days of notice of the filing of the lien, either discharge or bond over such lien to the satisfaction of the Owner and the Lender. If the Developer shall fail to so discharge or bond over such lien, then, in addition to any other right or remedy of the Owner and without waiving or releasing the Developer's default in not timely discharging the lien, the Owner may, but shall not be obligated to, bond over or discharge the same. Any reasonable amount paid by the Owner for any of the aforesaid purposes, including, without limitation, reasonable attorneys' fees and expenses, shall be paid by the Developer to the Owner on demand. Notice is hereby given that the Owner shall not be liable to any Person for any labor or materials furnished or to be furnished to the Developer on credit, and that no mechanics' or materialmen's or other lien for any such labor or materials shall attach to or affect the reversionary or other estate or interest of the Owner in and to the Premises.

Section 11.10 Mutual Cooperation and Commercially Reasonable Efforts.

The Owner and the Developer agree to mutually cooperate and use their commercially reasonable efforts to accomplish the purposes of this Agreement in a diligent and expeditious manner. Commercially reasonable efforts, as used throughout this Agreement, means all commercially reasonable measures available (except those that are mutually exclusive) with promptness and due diligence, to bring about the desired result. Commercially reasonable efforts do not require a party to amend an existing agreement, take any action contrary to law, outside a party's power or legal authority, contrary to a written agreement in existence on the Effective Date or that would have the effect of restricting such party's rights or remedies under this Agreement.

Section 11.11 Force Majeure.

In the event that the Developer or the Owner shall be delayed or hindered in or prevented from the performance of any act required by this Agreement by reason of strikes, labor troubles, inability to procure labor or materials through normal and customary means, failure of power, the existence of Hazardous Materials, unsuitable soils or subsurface conditions, riots, terrorism, insurrection, war, acts of God, fire or other casualty, emergency governmental order or decree, epidemic, pandemic or other public health emergency or exigency, or other reasons of a similar nature beyond the reasonable control of the party to this Agreement, then performance shall be excused for the period of the substantiated delay and the period for performance of the work or act shall be extended for a period equivalent to the period of such delay. A party to this Agreement claiming such an extension of time for performance shall promptly give notice in writing to the other party with satisfactory supporting documentation.

Section 11.12 Developer to Pay Project Costs.

All Total Project Costs shall be paid by the Developer and the Owner shall have no right to approve or contest any of the Total Project Costs.

Section 11.13 Prohibition on Owner's Authority to Enter into Contracts and Subcontracts.

The Owner shall not enter into any contracts, subcontracts or agreements, whether with architects, contractors, consultants, subcontractors, materialmen or otherwise, for which the Developer may be liable or which may give rise to a lien on the Project or the Premises or might interfere with the development of the Project or construction of the Building Improvements without the prior written consent of the Developer, which may be withheld in the Developer's sole and absolute discretion. The Owner shall not take any action purporting to bind the Developer or the Design Builder or encumber the Project with respect to the development of the Project or the construction of the Building Improvements or engage in any attempts to interfere with the Developer's efforts to obtain and close the Development Loan, the Alternate Financing or any other financing for the Project. The Owner shall indemnify, save and hold harmless the Developer, the Lender and any of their respective Affiliates from any cost, expense, liability, damage or penalty (including, without limitation, reasonable attorneys' fees and expenses) that either of them (or their Affiliates) may incur as a result of a breach of any of the requirements of this Section 11.13.

Section 11.14 Inspection Rights.

During the development of the Project and the construction of the Building Improvements, the Owner shall have full access to the Project during business hours and upon reasonable prior notice to the Developer. The Owner shall not exercise its access rights under this Section 11.14 in a manner that will interfere with or delay the Developer, the Design Builder, the Architect, any subcontractors or any material suppliers in the performance of its or their duties pursuant to this Agreement, the Design Build Contract or any other applicable document or agreement pertaining to such parties. In exercising its access rights, the Owner, on behalf of itself and its respective agents and designees, hereby agrees not to take photographs or videos of the work being performed (whether exterior or interior work) during the development of the Project and the construction of the Building Improvements without the prior consent of the Developer.

ARTICLE XII. INSURANCE

Section 12.01 Builder's Risk Insurance.

During the period beginning on the date of the issuance of a Notice to Proceed for any given Phase and continuing until Final Completion of such Phase is achieved, the Developer shall cause the Design Builder to carry and maintain "all risk" builder's risk insurance in the amount of the full replacement cost of the Building Improvements (the "Builders Risk Insurance"). Any such Builder's Risk Insurance shall name the Developer and the Lender as an additional loss payees.

Section 12.02 Design Builder Liability and Workers' Compensation Insurance.

Separate from the insurance requirements during the Predevelopment Period, during the period beginning with the date of the issuance of a Notice to Proceed for any given Phase and continuing until Final Completion of such Phase is achieved, the Developer shall cause the Design Builder to carry and maintain, commercial general liability insurance (including, without limitation, contractor's liability coverage), written on an occurrence basis with a combined single limit of at least Five Million Dollars (\$5,000,000) and an additional policy of excess liability insurance often Million Dollars (\$10,000,000) per occurrence, and naming the Owner, the Developer and the Lender as additional named insureds (the "Design Builder General Liability Insurance"), provided, however, that to the extent that the Development Loan or Alternate Financing requires higher levels of coverage within the Design Builder General Liability Insurance for the Project, such additional Design Builder General Liability Insurance shall be addressed within the Design Build Agreement. In addition, throughout the periods during which the Building Improvements are being constructed, the Developer shall cause the Design Builder to carry and maintain workers'

compensation insurance and employers' liability insurance as required by the jurisdiction in which the Premises is located (the "Design Builder Workers Compensation Insurance" and together with the Design Builder General Liability Insurance, the "Design Builder Insurance").

Section 12.03 Insurance Policy Requirements.

The Design Builder Insurance shall be issued by insurance companies of recognized responsibility licensed to do business in the State of Arizona which are rated insurers having a claims-payment rating of "A" or higher by Standard & Poors or a rating of "NAIC-1" by the Securities Valuation Office of the National Association of Insurance Commissioners or which have an equivalent financial rating from a comparable insurance rating organization. All policies of liability insurance required by this Article IX shall be written as primary policy coverage.

Section 12.04 Evidence of Insurance.

Prior to the commencement of construction of the Building Improvements, and prior to the expiration of any certificate previously delivered, the Developer shall obtain a certificate of insurance evidencing the issuance of the Design Builder Insurance policies with such certificates of insurance delivered by the Developer to the Owner.

Section 12.05 Subcontractor Insurance.

Prior to the commencement of construction of the Building Improvements, the Developer shall cause the Design Builder to obtain subcontractor default insurance on each subcontractor that will be providing services, labor and/or materials to and for the Project that compensates the Design Builder and/or the Developer for any subcontractor default, excess costs associated with a subcontractor default, any excess costs associated with the replacement of a subcontractor following a subcontractor default and/or any excess costs associated with the remediation of work performed by a subcontractor following a subcontractor default, provided, however, if in the reasonable determination of the Design Builder (and with the written consent of the Developer) a subcontractor is able to obtain its own completion bond in favor of the Design Builder and the Developer (subject to the Design Builder and the Developer accepting the issuer of such completion bond), such subcontractor shall be excluded from the subcontractor default insurance obtained by the Design Builder and the Design Builder shall accept the completion bond obtainable by such subcontractor.

ARTICLE XIII. LIMITATIONS ON DEVELOPER'S LIABILITY

Section 13.01 Construction of Project.

The Developer's liability for construction of any and all of the Building Improvements is limited to (a) entering into the Design Build Contract and (b) using its commercially reasonable efforts to enforce its rights, as the Developer, under the Design Build Contract. The Developer shall not have any liability in damages or otherwise to the Owner in connection with the construction of any or all of the Building Improvements, including, without limitation, the failure of the Design Builder to perform its obligations under the Design Build Contract, the failure of any of the Building Improvements to reach Substantial Completion by the Projected Date of Substantial Completion applicable thereto, the failure of any of the Building Improvements to reach Final Completion by the Projected Date of Final Completion applicable thereto, or the failure of the development of any Phase or the entire Project to comply with the requirements of the Approved Master Project Schedule or the construction of any or all of the Building Improvements to comply with the requirements of the Construction Schedule, except to the extent caused by the Developer's willful misconduct or grossly negligent acts or omissions.

ARTICLE XIV. CASUALTY DAMAGE

Section 14.01 Building Improvements.

If at any time between the date of the issuance of a Notice to Proceed with respect to any Phase and the date that Final Completion thereof is achieved, the Building Improvements for such Phase or any part thereof shall be damaged by Casualty, the Developer shall give prompt notice to the Owner of the Casualty occurrence and extent of the damage and shall then proceed promptly and with reasonable diligence, subject to the availability of insurance proceeds and Force Majeure, to repair, or cause to be repaired, the damaged Building Improvements to their condition immediately before the Casualty.

Section 14.02 Repair and Proceeds.

In the event of Casualty damage to the Building Improvements which the Developer is required to repair under this Article XIII, the proceeds payable under the Builder's Risk Insurance shall be deposited in an escrow account with the Lender, or such other Person as may be designated by the Lender, to be held and disbursed to the Developer or the Design Builder for the repair of the damages Building Improvements to their condition immediately before the Casualty. The proceeds shall be disbursed periodically by the Lender to cover the cost of such repair work as such repair work progresses in accordance with the requirements of the Development Loan.

Section 14.03 Deficiency.

If at any time or from time to time after the occurrence of a Casualty to the Building Improvements and before the repair and restoration of the damage caused by the Casualty are completed, the proceeds payable under the Builder's Risk Insurance are not sufficient to pay the costs and expenses incurred by the Developer in repairing and replacing the damage caused by the Casualty (the "Insurance Deficiency"), or if the Lender determines at any time that an Insurance Deficiency exists or will exist, the Developer shall, within fifteen (15) Business Days after receipt of a written demand from the Lender, accompanied by bills, invoices or other evidence substantiating the Lender's demand for payment (or within any shorter or longer period of time required or permitted by the First Mortgage) pay the Insurance Deficiency to the party designated to hold and disburse the proceeds of the Builders Risk Insurance pursuant to Section 11.01 of this Agreement. If, after the repair and replacement of the damages caused by the Casualty to the Building Improvements are completed, the proceeds payable under the Builders Risk Insurance, together with the amounts paid by the Developer pursuant to this Section 14.03 (if any), exceed the costs and expenses incurred by the Developer in repairing the damage to the Building Improvements caused by the Casualty (the "Insurance Excess"), the Developer shall prepare and deliver to the Lender the documentation required by the requirements of the Development Loan as a condition to the disbursement of the Insurance Excess to the Developer.

ARTICLE XV. OWNER'S REPRESENTATIONS AND WARRANTIES

Section 15.01 Organization.

The Owner is a political subdivision of the State of Arizona. The Owner has all requisite legal power and authority to own its property and assets and to carry on its business as now conducted and as proposed to be conducted. The Owner has the legal power and authority to execute, deliver and perform its obligations under this Agreement and each other exhibit, agreement or instrument contemplated hereby or thereby.

Section 15.02 Authorization.

The execution and delivery by the Owner of this Agreement and all other exhibits, agreements and instruments provided for or contemplated by this Agreement, and the consummation by the Owner of all transactions contemplated hereunder and thereunder have been duly authorized by all requisite legal and political action. This Agreement has been duly executed by the Owner. This Agreement and all other agreements and obligations entered into and undertaken in connection with the transactions contemplated hereby constitute the valid and legally binding

obligations of the Owner, enforceable against it in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and other similar laws relating to or affecting creditors' rights generally from time-to-time in effect and to general principles of equity (including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing), regardless of whether considered in a proceeding in equity or at law and the availability of the remedy of specific performance. The execution, delivery and performance by the Owner of this Agreement and all other exhibits, agreements and instruments provided for herein, and the consummation by the Owner of the transactions contemplated hereby and thereby, will not, with or without the giving of notice or the passage of time or both, (a) violate the provisions of any applicable Legal Requirements applicable to the Owner, (b) violate the provisions of the authorizing resolutions of Pima County, Arizona, (c) violate any judgment, decree, order or award of any court, Governmental Authority or arbitrator, or (d) conflict with or result in the breach or termination of any term or provision of, or constitute a default under, or cause any acceleration under, or cause the creation of any lien, charge or encumbrance upon the properties or assets of the Owner pursuant to any indenture, mortgage, deed of trust, bond or other instrument or agreement to which the Owner or its Affiliates are a party or by which the Owner, its Affiliates or any of their properties and assets may be bound.

Section 15.03 Governmental Approvals.

The Owner has all material government authorizations, approvals, consents, permits, licenses, certifications and qualifications, and has complied in all material respects with all applicable Legal Requirements of Pima County and the State of Arizona, to conduct its business as is presently conducted and to own, except to the extent such failure to obtain any such approval or to take any such action is not reasonably expected, either individually or in the aggregate, to have a material adverse effect. No action, consent or approval or registration or filing with or any other action by any Governmental Authority is required in connection with this Agreement, except for such as have been made or obtained and are in full force and effect and, except to the extent that failure to obtain any such approval or take any such action would not be reasonably expected, either individually or in the aggregate, to have a material adverse effect.

Section 15.04 Title to the Premises.

The Owner is the owner in fee simple of the Premises, free of any encumbrance that would impair or interfere with the Developer's rights under this Agreement, and that the Owner has full right and authority to extend the Developer the rights provided under this Agreement, including, without limitation, the Exclusive Rights. There are no options to purchase or lease, rights of first refusal to purchase or lease, or any other agreements applicable to the Premises that would prohibit, limit or otherwise interfere with the Developer's rights under this Agreement, including, without limitation, the Exclusive Rights. There are no agreements that the Owner has entered into that relate to its ownership, financing or operations that prohibit, limit or otherwise interfere with the Owner's right to extend the Developer the rights provided under this Agreement, including, without limitation, the Exclusive Rights.

Section 15.05 No Third Party Interest in the Premises.

There are no liens, encumbrances, leases, mortgages, deeds of trust, fractional interests or other exceptions to the Owner's title to the Premises except for Permitted Exceptions or as disclosed in a review of the title to the Premises obtained by the Developer. There are no leases of the Premises to any Person and no Person has any rights to make any claim that it is entitled to the occupancy of the Premises pursuant to an oral or written lease, license or other type of agreement.

Section 15.06 Environmental Matters.

The Premises complies with all present federal state and local laws, whether common law, statute, rule, regulation or ordinance, and any judicial or administrative order or judgment thereunder, and judicial or administrative decisions, opinions, orders, policies or guidelines, pertaining to Hazardous Materials or health, industrial hygiene, environmental conditions or the regulation or protection of the environment, any remediation agreement providing for the clean-up of Hazardous Materials at the Premises or continued monitoring of the Premises for Hazardous

Materials, and land use restrictions now or hereafter applicable to the Premises, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Toxic Substance Control Act, the Water Pollution Control Act, the Clean Air Act, and The Hazardous Materials Transportation Act, as enacted as of the date hereof or as hereafter amended (collectively, "Environmental Laws"). No notices, complaints or orders of violation or non-compliance with Environmental Laws have been received by the Owner and, to the best of the Owner's actual knowledge, no federal, state or local environmental investigation or proceeding is pending or threatened with regard to the Premises or any use thereof or any alleged violation of Environmental Laws with regard to the Premises. No claim under any Environmental Law is pending not has any outstanding or unresolved penalty arising under any Environmental Law been assessed, against the Owner, the Premises or any person or entity for whose liability for any such claim the Owner is legally or contractually liable, not is any investigation or review pending or threatened by any Governmental Authority, citizens group or other person or entity with respect to the Premises under any Environmental Law. Neither the Premises nor the Owner is subject to any existing, pending or threatened investigation pertaining to any Hazardous Substance in or on the Premises by any Governmental Authority, nor to any remedial obligation or lien with respect to the Premises under or in connection with any Environmental Law. No Hazardous Substance has been generated, treated, stored or disposed of or otherwise deposited in or located on, under or about the Premises in violation of Environmental Laws, including, without limitation, the surface and subsurface waters of the Premises. The Owner is in possession of all environmental, health and safety permits, licenses and other governmental authorizations required in connection with the operation or use of the Premises. There are no Hazardous Materials or environmental conditions in or on the Premises which are likely to support a claim or cause of action against the Owner under any Environmental Law. No underground storage tanks now or previously containing any Hazardous Substance, or underground deposits of any Hazardous Substance, are located on or under the Premises. No friable asbestos is located on the Premises. There have been no environmental investigations, studies, audits, reviews or other written analyses conducted by, or that are in the possession of, Owner in relation to the Premises which have not been made available to Developer. Owner has no actual knowledge or notice of the actual, alleged or threatened presence or release of Hazardous Materials in, on, around or potentially affecting any part of the Premises or the soil, groundwater or soil vapor on or under the Premises, or the migration of any Hazardous Substance, from or to any other property adjacent to or in the vicinity of the Premises in violation of any Environmental Law. Owner has undertaken a satisfactory inquiry into the previous ownership and uses of the Premises consistent with good commercial practice. Owner has no knowledge and it is not expected that Owner's intended future use of the Premises will result in the release of any Hazardous Substance in, on, around or potentially affecting any part of the Premises or in the soil, groundwater or soil vapor on or under the Premises, or the migration of any Hazardous Substance from or to any other property adjacent to or in the vicinity of the Premises.

ARTICLE XVI. DEVELOPER'S REPRESENTATIONS AND WARRANTIES

Section 16.01 Organization.

The Developer is a limited liability company duly organized and validly existing and in good standing under the laws of the jurisdiction of its organization. The Developer has all requisite limited liability company power and authority to own its property and assets and to carry on its business as now conducted and as proposed to be conducted. The Developer has the limited liability company power and authority to execute, deliver and perform its obligations under this Agreement and each other exhibit, agreement or instrument contemplated hereby or thereby.

Section 16.02 Authorization.

The execution and delivery by the Developer of this Agreement and all other exhibits, agreements and instruments provided for or contemplated by this Agreement, and the consummation by the Developer of all transactions contemplated hereunder and thereunder have been duly authorized by all requisite limited liability company action. This Agreement has been duly executed by the Developer. This Agreement and all other agreements and obligations

entered into and undertaken in connection with the transactions contemplated hereby constitute the valid and legally binding obligations of the Developer, enforceable against it in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and other similar laws relating to or affecting creditors' rights generally from time-to-time in effect and to general principles of equity (including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing), regardless of whether considered in a proceeding in equity or at law and the availability of the remedy of specific performance. The execution, delivery and performance by the Developer of this Agreement and all other exhibits, agreements and instruments provided for herein, and the consummation by the Developer of the transactions contemplated hereby and thereby, will not, with or without the giving of notice or the passage of time or both, (a) violate the provisions of any applicable Legal Requirements applicable to the Developer, (b) violate the provisions of the Developer's organizational documents, (c) violate any judgment, decree, order or award of any court, Governmental Authority or arbitrator, or (d) conflict with or result in the breach or termination of any term or provision of, or constitute a default under, or cause any acceleration under, or cause the creation of any lien, charge or encumbrance upon the properties or assets of the Developer pursuant to any indenture, mortgage, deed of trust, bond or other instrument or agreement to which the Developer or its Affiliates are a party or by which the Developer, its Affiliates or any of their properties and assets may be bound.

Section 16.03 Governmental Approvals.

The Developer has all material government authorizations, approvals, consents, permits, licenses, certifications and qualifications, and has complied in all material respects with all applicable Legal Requirements of the jurisdiction in which the Developer conducts business or owns property, to conduct its business as is presently conducted and to own, except to the extent such failure to obtain any such approval or to take any such action is not reasonably expected, either individually or in the aggregate, to have a material adverse effect. No action, consent or approval or registration or filing with or any other action by any Governmental Authority is required in connection with this Agreement, except for such as have been made or obtained and are in full force and effect and, except to the extent that failure to obtain any such approval or take any such action would not be reasonably expected, either individually or in the aggregate, to have a material adverse effect.

ARTICLE XVII. TERMINATION AND REMEDIES

Section 17.01 Termination.

In the event that the Developer shall be unable to secure the financing for the Project (whether the Development Loan or Alternate Financing, as applicable) or any other material impediment to the development of the Project beyond the control of either party to this Agreement occurs, then either the Owner or the Developer shall be entitled to terminate this agreement upon fifteen (15) calendar days written notice to the other party to this Agreement.

Section 17.02 Default.

- (a) **Owner Default.** An "Owner Default" shall occur if the Owner shall default in performing any duty or obligation to be performed by the Owner under this Agreement and such default shall not be remedied within (a) ten (10) calendar days after written notice of such default shall have been given by the Developer to the Owner describing the default in reasonable detail, or (b) in the case of any such default which is capable of being cured, but which cannot with due diligence and in good faith be cured within ten (10) calendar days, within such additional period as may be reasonably required to cure such default with due diligence and in good faith, but not in excess of sixty (60) calendar days from the date of such notice provided that the Owner has commenced the cure at the beginning of the ten (10) calendar day cure period.
- (b) **Developer Default.** A "Developer Default" shall occur if the Developer shall default in performing any duty or obligation to be performed by the Developer under this Agreement and such default shall not be remedied within (a) thirty (30) calendar days after written notice of such default shall have been given by

the Owner to the Developer describing the default in reasonable detail, or (b) in the case of any such default which is capable of being cured, but which cannot with due diligence and in good faith be cured within thirty (30) calendar days, within such additional period as may be reasonably required to cure such default with due diligence and in good faith, provided that the Developer has commenced such cure within such thirty (30) calendar day cure period.

Section 17.03 Remedies.

In the event of an Owner Default or a Developer Default, either party may pursue all of its remedies at law or in equity, subject to the limitations set forth in this Agreement.

Section 17.04 Waiver of Consequential Damages.

Notwithstanding anything to the contrary in this Agreement:

- (a) THE OWNER HEREBY WAIVES AND RELEASES ALL RIGHTS OF RECOVERY AGAINST THE DEVELOPER AND THE DEVELOPER'S AND THE DEVELOPER'S AFFILIATES' MEMBERS, MANAGERS, MANAGING MEMBERS, OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FOR CONSEQUENTIAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES, INCLUDING LOSS OF INCOME OR PROFITS AND DAMAGE TO GOODWILL OR GOING CONCERN VALUE, ARISING OUT OF LOSS OR DAMAGE TO PROPERTY OR BUSINESS OF THE OWNER RELATING TO THIS AGREEMENT, EXCEPT TO THE EXTENT THAT SUCH LOSS OR DAMAGE IS CAUSED BY THE WILLFUL MISCONDUCT OR GROSSLY NEGLIGENT ACTS OR OMISSIONS OF THE DEVELOPER, OR ITS AGENTS OR EMPLOYEES.
- (b) THE DEVELOPER HEREBY WAIVES AND RELEASES ALL RIGHTS OF RECOVERY AGAINST THE OWNER AND THE OWNER'S AFFILIATES' MEMBERS, MANAGERS, MANAGING MEMBERS, OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FOR CONSEQUENTIAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES, INCLUDING LOSS OF INCOME OR PROFITS AND DAMAGE TO GOODWILL OR GOING CONCERN VALUE, ARISING OUT OF LOSS OR DAMAGE TO PROPERTY OR BUSINESS OF THE DEVELOPER RELATING TO THIS AGREEMENT, EXCEPT TO THE EXTENT THAT SUCH LOSS OR DAMAGE IS CAUSED BY THE WILLFUL MISCONDUCT OR GROSSLY NEGLIGENT ACTS OR OMISSIONS OF THE OWNER, OR ITS AGENTS OR EMPLOYEES.

Section 17.05 Prevailing Party's Expenses.

In the event that litigation or other legal action is instituted between the Developer and the Owner to enforce this Agreement, the prevailing party in such litigation or other legal action by final judgment or settlement shall be entitled to reimbursement from the non-prevailing party in such litigation or other legal action by final judgment or settlement of all reasonable fees, costs and expenses (including, without limitation, court costs and reasonable attorneys' fees and expenses) incurred by the prevailing party in connection therewith.

ARTICLE XVIII. GENERAL PROVISIONS

Section 18.01 Governing Law.

OWNER AND DEVELOPER HEREBY AGREE THAT THIS AGREEMENT AND ALL MATTERS, SUITS (WHETHER IN EQUITY OR AT LAW), CAUSES OF ACTION, CLAIMS, CROSS-CLAIMS, COUNTERCLAIMS, DEMANDS, OBLIGATIONS, ACTIONS, SURVIVAL CLAIMS, RIGHTS TO DAMAGES, COSTS, ATTORNEYS' FEES OR EXPENSES OF ANY KIND OR IN ANY WAY RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT SHALL BE GOVERNED, INTERPRETED, CONSTRUED

AND ENFORCED IN ALL RESPECTS BY THE INTERNAL LAWS, AND NOT THE LAW OF CONFLICTS, OF THE STATE OF ARIZONA.

Section 18.02 Jurisdiction, Venue and Process.

EACH OF THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS LOCATED IN THE STATE OF ARIZONA (AND ANY APPELLATE COURT FROM ANY SUCH COURT) IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH SUIT, ACTION OR PROCEEDING SHALL BE BROUGHT IN AND MAY BE HEARD AND DETERMINED IN SUCH FEDERAL OR STATE COURTS LOCATED IN THE STATE OF ARIZONA. EACH OF THE PARTIES HEREBY AGREES THAT A FINAL JUDGMENT IN ANY SUIT, ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. EACH OF THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO (a) ANY OBJECTION THAT IT MAY NOT OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT IN ANY STATE OR FEDERAL COURT LOCATED IN THE STATE OF ARIZONA AND (b) THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH SUIT, ACTION OR PROCEEDING IN ANY SUCH COURT.

Section 18.03 Waiver of Trial by Jury.

EACH OF THE PARTIES HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM FILED BY THE OTHER PARTY, WHETHER IN CONTRACT, TORT OR OTHERWISE, WHICH RIGHT OR CLAIM RELATES DIRECTLY OR INDIRECTLY TO THIS AGREEMENT, ANY DOCUMENTATION RELATED THERETO, OR ANY ACTS OR OMISSIONS IN CONNECTION WITH THIS AGREEMENT. THIS WAIVER HAS BEEN AGREED TO AFTER CONSULTATION WITH LEGAL COUNSEL SELECTED INDEPENDENTLY BY THE OWNER AND THE DEVELOPER.

Section 18.04 Entire Agreement.

This Agreement and any exhibits attached to this Agreement constitute the sole, entire and only agreement between the Owner and the Developer with regard to the subject matter hereof. This Agreement supersedes all prior discussions and agreements (whether written or oral) between the Owner and the Developer with respect to the subject matter hereof.

Section 18.05 Non-Waiver.

No waiver of any covenant, condition or provision of this Agreement shall be deemed, or construed, to have been made unless expressed in writing and signed by the party against whom such waiver has been charged. The failure of any party to insist in any one or more cases upon the performance of any of the provisions, covenants or conditions of this Agreement or to exercise any option or right set forth in this Agreement shall not be deemed, or construed, as a waiver or relinquishment for the future of any such provisions, covenants or conditions. The acceptance of performance of anything required by this Agreement to be performed with knowledge of the breach or failure of a covenant, condition or provision hereof shall not be deemed or construed to be a waiver of such breach or failure. No waiver by any party of one breach by another party shall be construed or deemed to be a waiver with respect to any other subsequent breach. Failure of a party to declare any default immediately upon its occurrence, or delay in taking any action in connection with a default shall not constitute a waiver of such default, nor shall it constitute an estoppel against such party, but such party shall have the right to declare the default at any time and take such action as is lawful or authorized under this Agreement.

Section 18.06 Notices.

Any notices, demands, requests or other communications required or permitted to be given hereunder shall be given in writing and shall be delivered in person, by a commercial overnight air or ground courier that guarantees next day delivery and provides a receipt or by e-mail transmission, followed by hard copy delivered in accordance with the immediately preceding provisions (each a "Notice"), and such Notices shall be addressed as noted below. Either party may, at any time, change its Notice address by giving the other party Notice stating the change and setting forth the new address. Any of the aforementioned Parties may change its address for the receipt of Notices, demands, consents, requests and other communications by giving written Notice to the others in the manner provided for above. Any Notice shall be effective only upon receipt unless such Notice is refused by the Party to which it is to be delivered or because such Notice cannot be delivered because of failure to provide written Notice to the other Party of a change of address, in which event Notice shall be deemed to be given on the date of such refusal in the case of a refusal to accept delivery of Notice or the date of the attempted delivery in the case of a change of address, provided, however, Notices sent by e-mail after 5PM local time at the location to which the same is sent shall be deemed received on the next succeeding Business Day. Notices given by an attorney named below on behalf of its client and sent to the other Party in the manner set forth in this Section 18.06 shall have the same effect as if given by a Party.

- (a) Notice to Owner: Capital Program Office Manager, Pima County Arizona, 201 North Stone Avenue, 2nd Floor, Tucson, Arizona 85701.
- (b) Notice to Developer: Francis J. Knott, Jr., President, Knott Development Inc., MacArthur Building, 6106 MacArthur Boulevard, Bethesda, Maryland 20816, Email fjk@knottdevelopment.com.

With a copy to: Goulston & Storrs PC, 1999 K Street, NW, Suite 500, Washington, D.C. 20006, Attn. Paul A. Tummonds, Jr., Email ptummonds@goulstonstorrs.com.

Section 18.07 No Third Party Beneficiary.

This Agreement is entered into solely for the benefit of the Parties to this Agreement and their assigns permitted under Section 18.17 of this Agreement. No Party (other than assigns permitted under Section 18.17 of this Agreement) shall be deemed a third party beneficiary of this Agreement.

Section 18.08 Cooperation and Additional Instruments.

Each Party to this Agreement agrees to promptly sign or join in the signing of all applications, requisitions, certifications and other documents reasonably necessary and proper to give effect and enable the purposes of this Agreement to be performed. Each Party agrees to render such assistance as the other Party may reasonably request in connection with the foregoing.

Section 18.09 Severability.

If any provision of this Agreement would be held in any jurisdiction to be invalid, prohibited or unenforceable for any reason, such provision, as to such jurisdiction, shall be ineffective, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be invalid, prohibited or unenforceable in such jurisdiction, it shall, as to such jurisdiction, be so narrowly drawn, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 18.10 Time is of the Essence.

Time is of the essence of this Agreement, and of each provision thereof of which time is an element, except as otherwise expressly provided in this Agreement.

Section 18.11 No Partnership or Joint Venture.

Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture of or between the Owner and the Developer.

Section 18.12 Captions.

The headings and titles to the paragraphs of this Agreement are for convenience only and shall have no effect upon the construction or interpretation of any part of this Agreement.

Section 18.13 Language Construction.

This Agreement represents the result negotiations between the Owner and the Developer, each of which has been (or has had opportunity to be) represented by counsel of its own selection, and neither of which has acted under duress or compulsion, whether legal, economic or otherwise. Consequently, the Owner and the Developer agree that the language in all parts of the Agreement shall in all cases be construed as a whole according to its fair meaning and neither strictly for nor against the Owner or the Developer.

Section 18.14 Effective Date.

This Agreement shall commence and be effective on the Effective Date.

Section 18.15 Approvals and Consents.

Wherever this Agreement requires any Party to approve or consent to any document or other matter, such approval or consent shall not be unreasonably withheld, delayed or conditioned, except as otherwise expressly provided in this Agreement.

Section 18.16 Estoppel Certificates.

The Owner and the Developer (each a "Certifying Party") agree, at any time and from time to time during the development of the Project, upon not less than fifteen (15) calendar days prior written notice from the other Party (the "Requesting Party"), to execute, acknowledge and deliver to the Requesting Party a statement certifying to substantially the following provisions (recognizing that any of such statement may be modified by the Certifying Party to reflect the then state of facts), with any such statement delivered pursuant hereto, being able to be relied upon by the Requesting Party or its successors or permitted assigns and the Lender:

- (a) A statement that this Agreement is unmodified and in full force and effect (or if there have been modifications, that this Agreement is in full force and effect as modified and stating the modifications)
- (b) A statement of whether or not, to the knowledge of the Certifying Party, the Requesting Party is in default in performing any of its material obligations under this Agreement, and if so, describing each such default of which the Certifying Party may have knowledge in reasonable detail
- (c) A statement of the address to which notices to the Certifying Party should be sent; and
- (d) Such other statement or statements as the Requesting Party may reasonably request or that the Lender shall require pursuant to the Development Loan.

Section 18.17 Successors and Assigns.

This Agreement shall be binding upon and shall inure to the benefit of the Parties to this Agreement, their successors and permitted assigns. The Owner shall not have the right to assign this Agreement without the prior written consent of the Developer. Developer shall not have the right to assign its obligations under this Agreement without the prior written consent of Owner, provided, however, that the Developer may assign this Agreement pursuant to a

collateral assignment to the Lender and, provided, further, that the Developer may assign this Agreement to KDEV Kino District Development LLC or another special purpose entity Affiliate of the Developer formed to perform the Predevelopment Work, close the Development Loan and/or develop the Project or any Phase thereof.

Section 18.18 Owner's Brokers.

The Owner represents and warrants to the Developer that it has not dealt with any broker in this transaction and each agrees to defend, indemnify, save and hold the Developer harmless from and against any and all fees, commissions, other liabilities, damages, costs or expenses (including, without limitation, reasonable attorneys' fees and disbursements) suffered by the Developer as a result of acts of the Owner or any of its agents that would constitute a breach of its representation and warranty in this Section 18.18. The provisions of this Section 18.18 shall survive the termination or expiration of this Agreement.

Section 18.19 Counterparts.

This Agreement may be executed and delivered in one or more counterparts (and by different Parties on different counterparts), each of which shall constitute an original and together which shall constitute one and the same instrument. To facilitate execution of this agreement, the Parties may execute and exchange by electronic (e-mail) delivery different counterparts of the signature pages, which shall be as effective as originals for all purposes.

Section 18.20 Exhibits.

It is understood and agreed that any documents or exhibits referred to in this Agreement and/or attached hereto form an integral part of this Agreement and are hereby incorporated by reference.

Section 18.21 Incorporation of Recitals.

The recitals set forth in the forepart of this Agreement are incorporated into this Agreement as if fully set forth in this Agreement.

Section 18.22 Americans With Disabilities Act.

Developer will comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. If Developer is carrying out government programs or services on behalf of Owner, then Developer will maintain accessibility to the program to the same extent and degree that would be required of the Owner under 28 CFR Sections 35.130, 35.133, 35.149 through 35.151, 35.160, 35.161 and 35.163. Failure to do so could result in the termination of this Agreement.

Section 18.23 Non-Discrimination.

Developer will comply with all provisions and requirements of Arizona Executive Order 2009-09, which is hereby incorporated into this Agreement, including flow-down of all provisions and requirements to any subcontractors. During performance of this Agreement, Developer will not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

Section 18.24 Cancellation for Conflict of Interest.

Notwithstanding anything to the contrary set forth in this Agreement, this Agreement is subject to cancellation for conflict of interest pursuant to A.R.S. Section 38-511, the pertinent provisions of which are incorporated into this Agreement by reference.

Section 18.25 Ethics.

During the course of pursuing contracts with Owner and while performing contract work in accordance with this Agreement, Developer agrees to maintain business ethics standards aimed at avoiding any impropriety or conflict of interest which could be construed to have an adverse impact on Owner's best interests.

- (a) Developer will take reasonable steps to prevent any actions or conditions which could result in a conflict with Owner's best interests. These obligations apply to the activities of Developer employees, agents, subcontractors, subcontractor employees and consultants to Developer.
- (b) Developer employees, agents, subcontractors, material suppliers (or their representatives) should not make or cause to be made any cash payments, commissions, employment gifts, entertainment, free travel, loans, free work, substantially discounted work, or any other considerations to Owner's representatives, employees or their relatives.
- (c) Developer employees, agents or subcontractors (or their relatives) should not receive any payments, commissions, employment gifts, entertainment, free travel, loans, free work, or substantially discounted work or any other considerations from representatives of subcontractors, or material suppliers or any other individuals, organizations, or businesses receiving funds in connection with the Project.
- (d) Developer will notify a designated Owner representative within forty-eight (48) hours of any instance where the Developer becomes aware of a failure to comply or possible failure to comply with the provisions of this Article.
- (e) Upon request by Owner, Developer agrees to provide a certified Management Representation Letter executed by selected Developer representatives in a form agreeable to Owner stating that they are not aware of any situations violating the business ethics expectations outlined in this Agreement or any similar potential conflict of interest situations.
- (f) Developer will include this clause in all contracts with subcontractors and material suppliers receiving more than Twenty-Five Thousand Dollars (\$25,000) in funds in connection with the Project.
- (g) Developer will permit interviews of employees, reviews and audits of accounting or other records by Owner representatives to evaluate compliance with the business ethics standards. Such reviews and audits will encompass all dealings and activities of Developer's employees, agents, representatives, vendors, subcontractors, and other third parties paid by Developer in their relations with Owner's current or former employees or employee relatives.
- (h) Developer will implement a program requiring its employees to sign acknowledgements that they have read and understand Owner's Business Ethics Expectations and the related obligations outlined in this Agreement.

Section 18.26 Non-Appropriation.

Notwithstanding any other provision in this Agreement, Owner may terminate this Agreement if for any reason there are not sufficient appropriated and available monies for the purpose of maintaining Owner or other public entity obligations under this Agreement. In the event of such termination, Owner will have no further obligation to Developer, other than to pay for services rendered prior to termination.

Section 18.27 Public Records - Disclosure.

Pursuant to A.R.S. Section 39-121 et seq., and A.R.S. Section 34-603(H) in the case of construction or Architectural and Engineering services procured under A.R.S. Title 34, Chapter 6, all documents submitted in response to the solicitation resulting in this award of this Agreement, including, but not limited to, pricing schedules, product specifications, work plans, and any supporting documents, are public records. As such, these documents are subject to release and/or review the general public upon request, including competitors.

Section 18.28 Public Records – Records marked Confidential; Notice and Protective Order.

If Developer reasonably believes that some of the records subject to disclosure pursuant to Section 15.27 of this Agreement contain proprietary, trade secret or otherwise confidential information, Developer must prominently mark those records "CONFIDENTIAL." In the event a public records request is submitted to Owner for records marked CONFIDENTIAL, Owner will notify Developer of the request as soon as reasonably possible. Owner will release the records ten (10) business days after the date of that notice, unless Developer has, within that period, secured an appropriate order from a court of competent jurisdiction, enjoining the release of the records. Owner will not, under any circumstances, be responsible for securing such an order, nor will Owner be in any way financially responsible for any costs associated with securing such an order.

Section 18.29 Compliance with Immigration Laws.

Developer hereby warrants that it will at all times during the term of this Agreement comply with all federal immigration laws applicable to its employment of its employees, and with the requirements of A.R.S. Section 23-214(A) (together the "State and Federal Immigration Laws"). Developer will further ensure that each subcontractor who performs any work for Developer under this Agreement likewise complies with the State and Federal Immigration Laws. Owner has the right at any time to inspect the books and records of Developer and any subcontractor to verify such party's compliance with the State and Federal Immigration Laws. Any breach of Developer's warranty or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, is a material breach of this Agreement subjecting Developer to penalties up to and including suspension or termination of this Agreement. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Developer will be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, as soon as possible so as not to delay project completion. Any additional costs attributable directly or indirectly to such remedial action are the responsibility of Developer. Developer will advise each such subcontractor of Owner's rights, and the subcontractor's obligations, under this Section 18.29 by including in each subcontract substantially the following form: "Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor's employees, and with the requirements of A.R.S. Section 23-214(a). Subcontractor further agrees that Owner may inspect the Subcontractor's books and records to ensure that Subcontractor is in compliance with the requirements. Any breach of this paragraph by Subcontractor is a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract."

Section 18.30 Israel Boycott Certification.

Pursuant to A.R.S. Section 35-393.01, if contractor engages in for-profit activity and has 10 or more employees, and if this contract has a value of One Hundred Thousand Dollars (\$100,000) or more, Developer certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. Section 4842 or a regulation issued pursuant to 50 U.S.C. Section 4842.

ARTICLE XIX. DEFINITIONS

Section 19.01 Affiliate.

The term "Affiliate" shall mean as to any Person, any other Person that directly or indirectly:

- (a) has an ownership interest in the specified Person;
- (b) Controls, is Controlled by or is under common Control with such Person;

- (c) Is a director or officer of such Person;
- (d) Is the spouse, issue or parent of such Person; or
- (e) Is any Person that would constitute an Affiliate of any such Person described in Section 1.02(a), Section 2.02(b), Section 2.02(c) or Section 2.02(d) of this Agreement.

Section 19.02 Aggregate Debt Service Cash Flow.

The term "Aggregate Debt Service Cash Flow" means the aggregate amount received by the County during a Current Payment Period under the applicable Second Level Lease for each of the Iceplex, Field House, Arena, Stadium and Parking Garage.

Section 19.03 Aggregate Debt Service Reserves.

The term "Aggregate Debt Service Reserves" shall have the meaning ascribed to it in Section 6.04 of this Agreement.

Section 19.04 Agreement.

The term "Agreement" shall have the meaning ascribed to it in the forepart of this Agreement.

Section 19.05 Alternate Components.

The term "Alternate Components" means alternate and/or additional Support Elements determined to be viable for the Project during the Predevelopment Phase by the Developer and included in the Amended Business Plan and the Development Overview Documents.

Section 19.06 Alternate Facilities.

The term "Alternate Facilities" means alternate and/or additional major facilities determined to be viable for the Project during the Predevelopment Phase by the Developer and included in the Amended Business Plan and the Development Overview Documents.

Section 19.07 Alternate Financing.

The term "Alternate Financing" shall have the meaning ascribed to it in Section 6.08(a) of this Agreement.

Section 19.08 Alternate Finance Termination.

The term "Alternate Finance Termination" shall have the meaning ascribed to it in Section 6.10(b) of this Agreement.

Section 19.09 Amended Business Plan.

The term "Amended Business Plan" shall have the meaning ascribed to it in Section 5.20 of this Agreement.

Section 19.10 Anchor Elements.

The term "Anchor Elements" shall have the meaning ascribed to it in Recital E to this Agreement.

Section 19.11 Applicable Credit Rating Agencies.

The term "Applicable Credit Rating Agencies" shall have the meaning ascribed to it in Section 6.03 of this Agreement.

Section 19.12 Approved Master Project Schedule.

The term "Approved Master Project Schedule" shall have the meaning ascribed to it in Section 4.03 of this Agreement.

Section 19.13 Approved Master Project Schedule Letter.

The term "Approved Master Project Schedule Letter" means the form of letter attached to this Agreement as Exhibit H.

Section 19.14 Approved Plans and Specifications.

The term "Approved Plans and Specifications" shall have the meaning ascribed to it in Section 4.04 of this Agreement.

Section 19.15 Approved Plans and Specifications Letter.

The term "Approved Plans and Specifications Letter" means the form of letter attached to this Agreement as Exhibit I.

Section 19.16 Architect.

The term "Architect" shall have the meaning ascribed to it in Section 9.04 of this Agreement.

Section 19.17 Arena.

The term "Arena" means that certain Building Improvement listed on the Site Plan as No. 2 and as more fully described in the Kino District Arena section of the Business Plan.

Section 19.18 Arena Retail Components.

The term "Arena Retail Components" means those certain Building Improvements listed on the Site Plan as Nos. 17 and 18 and as more fully described in the Support Elements section of the Business Plan.

Section 19.19 As-Built Plans.

The term "As-Built Plans" shall have the meaning ascribed to it in Section 11.06 of this Agreement.

Section 19.20 Builders Risk Insurance.

The term "Builders Risk Insurance" shall have the meaning ascribed to it in Section 12.01 of this Agreement.

Section 19.21 Building Construction Costs.

The term "Building Construction Costs" shall have the meaning ascribed to it in Section 4.05 of this Agreement.

Section 19.22 Building Improvements.

The term "Building Improvements" means, as the context may require, improvements as to any given Phase, and collectively, as to more than one or all Phases.

Section 19.23 Business Day.

The term "Business Day" means any a calendar day other than a Saturday, Sunday or legal holiday observed by the State of Arizona.

Section 19.24 Business Plan.

The term "Business Plan" shall have the meaning ascribed to it in Recital F to this Agreement.

Section 19.25 Capex Committee.

The term "Capex Committee" shall have the meaning ascribed to it in Section 7.01 of this Agreement.

Section 19.26 Casualty.

The term "Casualty" means a fire, wind or any other casualty damaging and/or affecting the Project and the Building Improvements.

Section 19.27 Certificate of Participation.

The term "Certificate of Participation" shall have the meaning ascribed to it in Section 6.03 of this Agreement.

Section 19.28 Certifying Party.

The term "Certifying Party" shall have the meaning ascribed to it in Section 18.16 of this Agreement.

Section 19.29 Change Order.

The term "Change Order" shall have the meaning ascribed to it in Section 10.04 of this Agreement.

Section 19.30 Clean Air Act.

The term "Clean Air Act" means the Clean Air Act, 42 U.S.C. §§7401 et seq.

Section 19.31 Common Area.

The term "Common Area" means those areas of the Premises to be developed by the Developer that are exclusive of the areas of the Premises on which the Anchor Elements and the Support Elements will be developed and constructed.

Section 19.32 Community Engagement Committee.

The term "Community Engagement Committee" shall have the meaning ascribed to it in Section 7.01 of this Agreement.

Section 19.33 Comprehensive Environmental Response, Compensation and Liability Act.

The term "Comprehensive Environmental Response, Compensation and Liability Act" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Liability Act, 42 U.S.C. §§ 9601 et seq.

Section 19.34 Construction Budget.

The term "Construction Budget" shall have the meaning ascribed to it in Section 10.01 of this Agreement.

Section 19.35 Construction Milestones.

The term "Construction Milestones" shall have the meaning ascribed to it in Section 11.01(a) of this Agreement.

Section 19.36 Construction Punch List.

The term "Construction Punch List" shall have the meaning ascribed to it in Section 11.03 of this Agreement.

Section 19.37 Construction Punch List Work.

The term "Construction Punch List Work" shall have the meaning ascribed to it in Section 11.03 of this Agreement.

Section 19.38 Construction Schedule.

The term "Construction Schedule" shall have the meaning ascribed to it in Section 11.01(a) of this Agreement.

Section 19.39 Control.

The term "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the day-to-day management or operation of an entity, whether through the ownership of voting securities, by contract, or by virtue of being, inter alia, the officer, director, manager, managing member, general partner, managing partner, managing joint venturer or trustee. For purposes of this Agreement, the term "Control" (including the terms "Controlling", "Controlled by" and "under Common Control with") of a Person means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting interests, by contract or otherwise.

Section 19.40 Current Payment Date.

The term "Current Payment Date" means any Business Day on which a payment on the Development Loan is due and payable pursuant to the terms of the Development Loan, provided, however, such term excludes any and all Prior Payment Dates.

Section 19.41 Current Payment Period.

The term "Current Payment Period" means the time period that commences on the most recent Prior Payment Date and ends on the immediately succeeding Current Payment Date.

Section 19.42 Deadlines.

The term "Deadlines" means the dates for starting and completion of the various stages of development of the Project which are set forth in the Approved Master Project Schedule.

Section 19.43 Design Build Contract.

The term "Design Build Contract" means the contract between the Developer and the Design Builder, generally in the form of AIA Contract A141-2004 and General Conditions A201-2007 with owner-oriented revisions, which provides for the construction of the Building Improvements on the basis of the cost of the work plus a fee payable to the Design Builder, but not to exceed a specified guaranteed maximum cost.

Section 19.44 Design Builder.

The term "Design Builder" shall have the meaning ascribed to it in Section 9.03 of this Agreement.

Section 19.45 Design Builder General Liability Insurance.

The term "Design Builder General Liability Insurance" shall have the meaning ascribed to it in Section 12.02 of this Agreement.

Section 19.46 Design Builder Indemnity.

The term "Design Builder Indemnity" shall have the meaning ascribed to it in Section 9.03 of this Agreement.

Section 19.47 Design Builder Insurance.

The term "Design Builder Insurance" shall have the meaning ascribed to it in Section 12.02 of this Agreement.

Section 19.48 Design Builder Workers Compensation Insurance.

The term "Design Builder Workers Compensation Insurance" shall have the meaning ascribed to it in Section 12.02 of this Agreement.

Section 19.49 Determination Phase.

The term "Determination Phase" shall have the meaning ascribed to it in the forepart to Article VI of this Agreement.

Section 19.50 Determination Phase Work.

The term "Determination Phase Work" shall have the meaning ascribed to it in the forepart of Article VI of this Agreement.

Section 19.51 Developer.

The term "Developer" shall have the meaning ascribed to it in the forepart of this Agreement.

Section 19.52 Developer Default.

The term "Developer" shall have the meaning ascribed to it in Section 17.02 of this Agreement.

Section 19.53 Developer Nonparticipation Fee.

The term "Developer Nonparticipation Fee" shall have the meaning ascribed to it in Section 6.09 of this Agreement.

Section 19.54 Developer's Authorized Representative.

The term "Developer's Authorized Representative" shall have the meaning ascribed to it in Section 9.02 of this Agreement.

Section 19.55 Development Affiliate.

The term "Development Affiliate" shall have the meaning ascribed to it in Recital I to this Agreement.

Section 19.56 Development Committee.

The term "Development Committee" shall have the meaning ascribed to it in Section 7.01 of this Agreement.

Section 19.57 Development Loan.

The term "Development Loan" means that certain First Mortgage loan made by the Lender to the Developer to finance the construction of the Building Improvements and the development of any or all Phases, as the same may be modified, amended or extended, provided, however, if the Developer, pursuant to Section 6.05 or Section 6.08 of this Agreement, obtains Alternate Financing any reference to Development Loan within this Agreement shall apply with equal force and effect to such Alternate Financing.

Section 19.58 Development Overview.

The term "Development Overview" shall have the meaning ascribed to it in Section 6.02 of this Agreement.

Section 19.59 Development Phasing Determination.

The term "Development Phasing Determination" shall have the meaning ascribed to it in Section 6.05 of this Agreement.

Section 19.60 Economic Development Committee.

The term "Economic Development Committee" shall have the meaning ascribed to it in Section 7.01 of this Agreement.

Section 19.61 Effective Date.

The term "Effective Date" shall have the meaning ascribed to it in the forepart of this Agreement.

Section 19.62 Entertainment Center.

The term "Entertainment Center" means that certain Building Improvement listed on the Site Plan as No. 19 and as more fully described in the Support Elements section of the Business Plan.

Section 19.63 Environmental Laws.

The term "Environmental Laws" shall have the meaning ascribed to it in Section 15.06 of this Agreement.

Section 19.64 Existing Development Phasing Plan.

The term "Existing Development Phasing Plan" shall have the meaning ascribed to it in Section 6.05(a) of this Agreement.

Section 19.65 Existing Phase Final Completion Dates.

The term "Existing Phase Final Completion Dates" shall have the meaning ascribed to it in Section 6.05(a) of this Agreement.

Section 19.66 Extended Final Completion Dates.

The term "Extended Final Completion Dates" shall have the meaning ascribed to it in Section 6.07(a) of this Agreement.

Section 19.67 Exclusive Rights.

The term "Exclusive Rights" shall have the meaning ascribed to it in Section 2.01 of this Agreement.

Section 19.68 Existing Kino Complex.

The term "Existing Kino Complex" means, individually or collectively, the existing north and south portions of the Kino Sports and Entertainment Complex as owned and developed by the Owner.

Section 19.69 Facility Agreement.

The term "Facility Agreement" shall have the meaning ascribed to it in Section 5.03 of this Agreement.

Section 19.70 Facility Agreement Summary.

The term "Facility Agreement Summary" shall have the meaning ascribed to it in Section 5.03 of this Agreement.

Section 19.71 Field House.

The term "Field House" means that certain Building Improvement listed on the Site Plan as No. 4 and as more fully described in the Kino District Field House section of the Business Plan.

Section 19.72 Final Business Plan.

The term "Final Business Plan" shall have the meaning ascribed to it in Section 6.04 of this Agreement.

Section 19.57 Final Completion.

The term "Final Completion" shall have the meaning ascribed to it in Section 11.05 of this Agreement.

Section 19.58 Financing Costs.

The term "Financing Costs" means all Developer authorized costs and expenses partially or completely relating to obtaining, documenting, negotiating, closing and servicing the Development Loan and paying all interest and fees payable under the Development Loan.

Section 19.59 First Level Lease.

The term "First Level Lease" shall have the meaning ascribed to it in Recital I to this Agreement.

Section 19.60 First Mortgage.

The term "First Mortgage" means the Deed of Trust, Security Agreement, Assignment of Revenue and Financing Statement (or such other substantially similar instruments) encumbering the Project granted by Developer to the Lender, as security for the payment of the principal of and interest on the Development Loan and the other amounts payable by Developer to the Lender pursuant to the Development Loan.

Section 19.61 Governance Committees.

The term "Governance Committees" shall have the meaning ascribed to it in Section 7.01 of this Agreement.

Section 19.62 Government Approvals.

The term "Government Approvals" shall have the meaning ascribed to it in Section 4.13(a) of this Agreement.

Section 19.63 Government Approvals Schedule.

The term "Government Approvals Schedule" shall have the meaning ascribed to it in Section 4.13(b) of this Agreement.

Section 19.64 Governmental Approvals Schedule Letter.

The term "Governmental Approvals Schedule Letter" means the form of letter attached to this Agreement as Exhibit M.

Section 19.65 Government Approvals Work.

The term "Governmental Approvals Work" shall have the meaning ascribed to it in Section 5.05 of this Agreement.

Section 19.66 Governmental Authority.

The term "Governmental Authority" means any governmental agency, authority or board or other party having authority over the development of the Project, including pursuant to any intergovernmental agreement or otherwise, relative to the issuance and granting of any Governmental Approvals required for the Project.

Section 19.67 Ground Lease.

The term "Ground Lease" shall have the meaning ascribed to it in Recital H to this Agreement.

Section 19.68 Hazardous Materials.

The term "Hazardous Materials" means all of the following: (a) any substances, materials or wastes that are or may become regulated by Environmental Laws, (b) any substance, material or waste that is included within the definitions of "hazardous substances," "hazardous materials," "hazardous waste," "toxic substances," "toxic materials," "toxic waste" or words of similar import in any Environmental Law, (c) those substances listed as hazardous substances by the United States Department of Transportation (or any successor agency) (49 C.F.R. 172.101 and amendments thereto), or by the United States Environmental Protection Agency (or any successor agency) (40 C.F.R. Part 302 and amendments thereto), (d) any substance, material or waste that is petroleum, petroleum-related or a petroleum by-product, asbestos or asbestos-containing material, polychlorinated biphenyls, flammable, explosive, radioactive, freon gas, radon or a pesticide, herbicide or any other agricultural chemical, (e) asbestos, (f) hydrocarbons (including naturally occurring or man-made petroleum and hydrocarbons), flammable explosives, urea formaldehyde insulation, radioactive materials, biological substances and any other kind and/or type of pollutants or contaminants (including, without limitation, asbestos and raw materials which include hazardous constituents), sewage sludge, industrial slag, solvents and/or any other similar substances, or materials which are included under or regulated by any Environmental Laws, and (g) such other toxic or hazardous substances, materials or wastes that are or may become regulated under any other applicable municipal, county, state or federal law, rule, ordinance, direction or regulation.

Section 19.69 Hazardous Materials Transportation Act.

The term "Hazardous Materials Transportation Act" means the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 et seq.

Section 19.70 Iceplex.

The term "Iceplex" means that certain Building Improvement listed on the Site Plan as No. 3 and as more fully described in the Kino District Iceplex section of the Business Plan.

Section 19.71 Iceplex Retail Components.

The term "Iceplex Retail Components" means those certain Building Improvements listed on the Site Plan as Nos. 7, 8, 9, 10 and 11 and as more fully described in the Support Elements section of the Business Plan.

Section 19.72 Initial Alternate Phase.

The term "Initial Alternate Phase" shall have the meaning ascribed to it in Section 6.05(b) of this Agreement.

Section 19.73 Initial Phase Final Completion Dates.

The term "Initial Phase Final Completion Dates" shall have the meaning ascribed to it in Section 6.05(b)(i) of this Agreement.

Section 19.74 Insurance Deficiency.

The term "Insurance Deficiency" shall have the meaning ascribed to it in Section 14.03 of this Agreement.

Section 19.75 Insurance Excess.

The term "Insurance Excess" shall have the meaning ascribed to it in Section 14.03 of this Agreement.

Section 19.76 Interior Hotel A.

The term "Interior Hotel A" means that certain Building Improvement listed on the Site Plan as No. 23 and as more fully described in the Support Elements section of the Business Plan.

Section 19.77 Interior Hotel B.

The term "Interior Hotel B" means that certain Building Improvement listed on the Site Plan as No. 21 and as more fully described in the Support Elements section of the Business Plan.

Section 19.78 Kino Complex Underpass.

The term "Kino Complex Underpass" means that certain underpass planned by the Owner to be developed and constructed underneath Interstate 10 for the purposes of connecting the north and south portions of the Existing Kino Complex and for which the Developer has pledged to contribute funds towards the cost thereof in conjunction with the Developer's development and construction of the Parking Garage.

Section 19.79 Kino District Development.

The term "Kino District Development" means the Project, including all of the Building Improvements to be constructed within each Phase and with respect to each Anchor Element and Support Element.

Section 19.80 Lease Participation Contingency.

The term "Lease Participation Contingency" shall have the meaning ascribed to it in Section 6.04(c) of this Agreement.

Section 19.81 Lease Participation Contingency Extension.

The term "Lease Participation Contingency Extension" shall have the meaning ascribed to it in Section 6.08 of this Agreement.

Section 19.82 Leasing and Management Documents.

The term "Leasing and Management Documents" shall have the meaning ascribed it in Recital I of this Agreement.

Section 19.83 Legal Requirements.

The term "Legal Requirements" means any and all laws, ordinances, rules, regulations, statutes, by-laws, building codes, court decisions, orders and requirements of all public authorities, including the Governmental Approvals.

Section 19.84 Lender.

The term "Lender" means CTL Capital Group LLC.

Section 19.85 Medical Office Building.

The term "Medical Office Building" means that certain Building Improvement listed on the Site Plan as No. 20 and as more fully described in the Support Elements section of the Business Plan.

Section 19.86 Memorandum.

The term "Memorandum" shall have the meaning ascribed to it in Section 2.03 of this Agreement.

Section 19.87 Milestone.

The term "Milestone" means a Construction Milestone.

Section 19.88 Minor Variations.

The term "Minor Variations" shall mean any modifications to any of the Building Improvements which will not have a materially adverse impact on the design of any of the Building Improvements and are consistent with the Premises Requirements, or to the extent such modifications are required (a) to correct architectural or engineering errors or omissions, or to comport with good design, engineering and construction practices, or (b) to comply with applicable Legal Requirements, regulations and codes in effect after the completion of the Approved Plans and Specifications.

Section 19.89 Monthly Predevelopment Expense Report.

The term "Monthly Predevelopment Expense Report" shall have the meaning ascribed to it in Section 4.24 of this Agreement.

Section 19.90 Multifamily Complex.

The term "Multifamily Complex" means that certain Building Improvement listed on the Site Plan as No. 12 and as more fully described in the Support Elements section of the Business Plan.

Section 19.91 Nonparticipation Election.

The term "Nonparticipation Election" shall have the meaning ascribed to it in Section 6.09 of this Agreement.

Section 19.92 Notice.

The term "Notice" shall have the meaning ascribed to it in Section 18.06 of this Agreement.

Section 19.93 Notice to Proceed.

The term "Notice to Proceed" means the written authorization in the form attached to this Agreement as Exhibit L provided by the Developer to the Design Builder authorizing the Design Builder to proceed with the development of the Project and the construction of the Building Improvements.

Section 19.94 OAC Group.

The term "OAC Group" shall have the meaning ascribed to it in Section 7.01 of this Agreement.

Section 19.95 OAC Meetings.

The term "OAC Meetings" shall have the meaning ascribed to it in Section 7.03 of this Agreement.

Section 19.96 Operating Affiliate.

The term "Operating Affiliate" shall have the meaning ascribed to it in Recital I to this Agreement.

Section 19.97 Operations Committee.

The term "Operations Committee" shall have the meaning ascribed to it in Section 7.01 of this Agreement.

Section 19.98 Original Agreement.

The term "Original Agreement" shall have the meaning ascribed to it in Recital A to this Agreement.

Section 19.99 Original Agreement Reimbursement Provisions.

The term "Original Agreement Reimbursement Provisions" shall have the meaning ascribed to it in Section 1.02 of this Agreement.

Section 19.100 Owner.

The term "Owner" shall have the meaning ascribed to it in the forepart of this Agreement.

Section 19.101 Owner's Authorized Representative.

The term "Owner's Authorized Representative" shall have the meaning ascribed to it in Section 9.01 of this Agreement.

Section 19.102 Owner Default.

The term "Owner Default" shall have the meaning ascribed to it in Section 17.02 of this Agreement.

Section 19.103 Owner Predevelopment Change.

The term "Owner Predevelopment Change" shall have the meaning ascribed to it in Section 4.11 of this Agreement.

Section 19.104 Owner Program Requirements.

The term "Owner Program Requirements" shall have the meaning ascribed to Program Requirements in Section 3.03 of this Agreement.

Section 19.105 Owner Reimbursement.

The term "Owner Reimbursement" shall have the meaning ascribed to it in Section 6.09 of this Agreement.

Section 19.106 Pandemic Regulations.

The term "Pandemic Regulations" shall have the meaning ascribed to it in Section 6.07 of this Agreement.

Section 19.107 Pandemic Development Funds.

The term "Pandemic Development Funds" shall have the meaning ascribed to it in Section 6.07(b) of this Agreement.

Section 19.108 Pandemic Reserve Funds.

The term "Pandemic Reserve Funds" shall have the meaning ascribed to it in Section 6.07(b) of this Agreement.

Section 19.109 Parking Garage.

The term "Parking Garage" means that certain Building Improvement listed on the Site Plan as No. 34 and as described more fully in the Kino District Parking Garage section of the Business Plan, including the provision of funding for the Kino Complex Underpass to be provided by the Developer.

Section 19.110 Periphery Hotel.

The term "Periphery Hotel" means that certain Building Improvement listed on the Site Plan as No. 36 and as more fully described in the Support Elements section of the Business Plan.

Section 19.111 Permitted Exceptions.

The term "Permitted Exceptions" shall mean (a) provisions of existing building and zoning laws, (b) such taxes and assessments for the then current year as are not due and payable as of the date of execution and delivery of the Ground Lease, and (c) any easements, restrictions and reservations of record, so long as the same do not prohibit, interfere with or adversely affect the development of the Premises as contemplated by this Agreement. For the avoidance of doubt, "Permitted Exceptions" shall not include, and Owner shall be obligated to discharge, by payment, bonding or otherwise, any attachment, lien or encumbrance that constitutes a lien on all or any portion of the Premises securing the payment of money, unless caused by any act or omission of the Developer or any agent, employee or contractor of the Developer or anyone claiming by, through or under any of them.

Section 19.112 Person.

The term "Person" means a natural person, an estate, a trust, a partnership, a limited liability company, a corporation and any other form of business or legal association or entity.

Section 19.113 Phase.

The term "Phase" shall have the meaning ascribed to it in Recital E of this Agreement.

Section 19.114 Phases.

The term "Phases" shall have the meaning ascribed to it in Recital E of this Agreement.

Section 19.115 Planned Development Site Plan.

The term "Planned Development Site Plan" means the site plan for the Premises attached to this Agreement as Exhibit B.

Section 19.116 Predevelopment Cost Invoice.

The term "Predevelopment Cost Invoice" shall have the meaning ascribed to it in Section 6.09 of this Agreement.

Section 19.117 Predevelopment Period.

The term "Predevelopment Period" means the period of time commencing with the Effective Date and continuing until the closing of the Development Loan and the issuance of a Notice to Proceed.

Section 19.118 Predevelopment Phase.

The term "Predevelopment Phase" shall have the meaning ascribed to it in the forepart to Article V of this Agreement.

Section 19.119 Predevelopment Phase Work.

The term "Predevelopment Phase Work" shall have the meaning ascribed to it in the forepart to Article V of this Agreement.

Section 19.120 Predevelopment Service Firms.

The term "Predevelopment Service Firms" shall have the meaning ascribed to it in Section 4.01 of this Agreement.

Section 19.121 Predevelopment Work.

The term "Predevelopment Work" shall have the meaning ascribed to it in the forepart to Article IV of this Agreement.

Section 19.122 Premises.

The term "Premises" shall have the meaning ascribed to it in Recital C of this Agreement.

Section 19.123 Premises Requirements.

The term "Premises Requirements" shall have the meaning ascribed to it in Recital D of this Agreement.

Section 19.124 Prior Payment Date.

The term "Prior Payment Date" means the Business Day on which a payment was made on the Development Loan.

Section 19.125 Program Requirements.

The term "Program Requirements" shall have the meaning ascribed to it in Section 3.03 of this Agreement.

Section 19.126 Project.

The term "Project" shall have the meaning ascribed to it in Recital K of this Agreement.

Section 19.127 Project Program.

The term "Project Program" shall have the meaning ascribed to it in Section 3.01 of this Agreement.

Section 19.128 Project Program Approval Letter.

The term "Project Program Approval Letter" means the form of letter attached to this Agreement as Exhibit N.

Section 19.129 Project Summary.

The term "Project Summary" shall have the meaning ascribed to it in Section 3.01 of this Agreement.

Section 19.130 Project Summary Approval Letter.

The term "Project Summary Approval Letter" means the form of letter attached to this Agreement as Exhibit O.

Section 19.131 Projected Date of Substantial Completion.

The term "Projected Date of Substantial Completion" means the proposed date that Substantial Completion will occur pursuant to the Approved Master Project Schedule.

Section 19.132 Projected Date of Final Completion.

The term "Projected Date of Final Completion" means the proposed date that Final Completion of any Phase will occur pursuant to the Approved Master Project Schedule.

Section 19.133 Rating Confirmation.

The term "Rating Confirmation" shall have the meaning ascribed to it in Section 6.03 of this Agreement.

Section 19.134 Rating Review Package.

The term "Rating Review Package" shall have the meaning ascribed to it in Section 5.24 of this Agreement.

Section 19.135 Rating Review Package.

The term "Rating Review Package" shall have the meaning ascribed to it in Section 5.24 of this Agreement.

Section 19.136 Records.

The term "Records" shall have the meaning ascribed to it in Section 11.08 of this Agreement.

Section 19.137 Refined Building Construction Costs.

The term "Refined Building Construction Costs" shall have the meaning ascribed to it in Section 5.05 of this Agreement.

Section 19.138 Refined Cash Flow Projections.

The term "Refined Cash Flow Projections" shall have the meaning ascribed to it in Section 5.10 of this Agreement.

Section 19.139 Refined Debt Service Reserves.

The term "Refined Debt Service Reserves" shall have the meaning ascribed to it in Section 5.15 of this Agreement.

Section 19.140 Refined Financing Costs.

The term "Refined Financing Costs" shall have the meaning ascribed to it in Section 5.08 of this Agreement.

Section 19.141 Refined First Level Leases.

The term "Refined First Level Leases" shall have the meaning ascribed to it in Section 5.17 of this Agreement.

Section 19.142 Refined First Level Lease Costs.

The term "Refined First Level Lease Costs" shall have the meaning ascribed to it in Section 5.12 of this Agreement.

Section 19.143 Refined Ground Lease Costs.

The term "Refined Ground Lease Costs" shall have the meaning ascribed to it in Section 5.13 of this Agreement.

Section 19.144 Refined Plans and Specifications.

The term "Refined Plans and Specifications" shall have the meaning ascribed to it in Section 5.04 of this Agreement.

Section 19.145 Refined Predevelopment Costs.

The term "Refined Predevelopment Costs" shall have the meaning ascribed to it in Section 5.06 of this Agreement.

Section 19.146 Refined Property Tax Costs.

The term "Refined Property Tax Costs" shall have the meaning ascribed to it in Section 5.09 of this Agreement.

Section 19.147 Refined Second Level Leases.

The term "Refined Second Level Leases" shall have the meaning ascribed to it in Section 5.18 of this Agreement.

Section 19.148 Refined Second Level Lease Cost.

The term "Refined Second Level Lease" shall have the meaning ascribed to it in Section 5.11 of this Agreement.

Section 19.149 Refined Subleases.

The term "Refined Subleases" shall have the meaning ascribed to it in Section 5.16 of this Agreement.

Section 19.150 Refined Sublease Costs.

The term "Refined Sublease Costs" shall have the meaning ascribed to it in Section 5.14 of this Agreement.

Section 19.151 Refined Total Project Costs.

The term "Refined Total Project Costs" shall have the meaning ascribed to it in Section 5.07 of this Agreement.

Section 19.152 Regional Stakeholder Meetings.

The term "Regional Stakeholder Meetings" shall have the meaning ascribed in Section 5.23 of this Agreement.

Section 19.153 Requesting Party.

The term "Requesting Party" shall have the meaning ascribed to it in Section 18.16 of this Agreement.

Section 19.154 Resource Conservation and Recovery Act.

The term "Resource Conservation and Recovery Act" means the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901 et seq.

Section 19.155 Second Alternate Phase.

The term "Second Alternate Phase" shall have the meaning ascribed to it in Section 6.05(b)(ii) of this Agreement.

Section 19.156 Second Level Lease.

The term "Second Level Lease" shall have the meaning ascribed to it in Recital I of this Agreement.

Section 19.157 SPE.

The term "SPE" shall have the meaning ascribed it in Recital I of this Agreement.

Section 19.158 Second Phase Final Completion Date.

The term "Second Phase Final Completion Date" shall have the meaning ascribed to it in Section 6.05(b)(ii) of this Agreement.

Section 19.159 Stadium.

The term "Stadium" means that certain Building Improvement listed on the Site Plan as No. 1 and as described more fully in the Kino District Stadium section of the Business Plan.

Section 19.160 Stadium Retail Components.

The term "Stadium Retail Components" means those certain Building Improvements listed on the Site Plan as Nos. 25, 26, 27 and 28 and as more fully described in the Support Elements section of the Business Plan.

Section 19.161 Staggered Development Phasing Plan.

The term "Staggered Development Phasing Plan" shall have the meaning ascribed to it in Section 6.04(b) of this Agreement.

Section 19.162 State and Federal Immigration Laws.

The term "State and Federal Immigration Laws" shall have the meaning ascribed to it in Section 18.29 of this Agreement.

Section 19.163 Sublease.

The term "Sublease" shall have the meaning ascribed it in Recital I of this Agreement.

Section 19.164 Substantial Completion.

The term "Substantial Completion" shall have the meaning ascribed to it in Section 11.02 of this Agreement.

Section 19.165 Support Elements.

The term "Support Elements" shall have the meaning ascribed to it Recital E of this Agreement.

Section 19.166 Termination Memorandum.

The term "Termination Memorandum" shall have the meaning ascribed to it in Section 2.03 of this Agreement.

Section 19.167 Third Alternate Phase.

The term "Third Alternate Phase" shall have the meaning ascribed to it in Section 6.05(b)(iii) of this Agreement.

Section 19.168 Third Phase Final Completion Date.

The term "Third Phase Final Completion Date" shall have the meaning ascribed to it in Section 6.05(b)(ii) of this Agreement.

Section 19.169 Total Predevelopment Costs.

The term "Total Predevelopment Costs" shall have the meaning ascribed to it in Section 4.24 of this Agreement.

Section 19.170 Total Project Budget.

The term "Total Project Budget" shall have the meaning ascribed to it in Section 4.07 of this Agreement.

Section 19.171 Total Project Budget Letter.

The term "Total Project Budget Letter" means the form of letter attached to this Agreement as Exhibit K.

Section 19.172 Total Project Costs.

The term "Total Project Costs" shall have the meaning ascribed to it in Section 4.06 of this Agreement.

Section 19.173 Total Project Costs Letter.

The term "Total Project Costs Letter" means the form of letter attached to this Agreement as Exhibit J.

Section 19.174 Toxic Substance Control Act.

The term "Toxic Substance Control Act" means the Toxic Substance Control Act, 15 U.S.C. §§ 2601 et seq.

Section 19.175 Warranty Period.

The term "Warranty Period" means the warranty period to be set forth in the Design Build Contract.

Section 19.176 Water Pollution Control Act.

The term "Water Pollution Control Act" means the Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq. and is also commonly referred to as the "Clean Water Act."

IN WITNESS WHEREOF, Owner and Developer have executed this Agreement under seal as of the Effective Date.

[HERE ENDS THIS PAGE – SIGNATURES APPEAR ON FOLLOWING PAGES]

[Owner Signature Page of Development Agreement]

PIMA COUNTY, ARIZONA

By: Sharon Bronson
Sharon Bronson
Chair, Board of Supervisors
Date: JUL 06 2021

ATTEST:

By: Julie Castañeda
Name: Julie Castañeda
Clerk of the Board of Supervisors

APPROVED AS TO FORM:

By: Stacey Roseberry
Name: Stacey Roseberry
Deputy County Attorney
Date: 6/22/2021

[Developer Signature Page of Development Agreement]

KNOTT DEVELOPMENT INC

By: 

Name: Francis J. Knott, Jr.

Title: President

Date: July 6, 2021

EXHIBIT B

FINAL BUSINESS PLAN

[TO BE ATTACHED]