

When recorded, return to:

Chandler City Attorney's Office
City of Chandler
Post Office Box 4008, Mailstop 602
Attn: Kay Bigelow

**DEVELOPMENT AGREEMENT
AND OPTION AGREEMENT**

**CITY OF CHANDLER,
an Arizona municipal corporation**

and

**VPK THE ROW, LLC,
an Arizona limited liability company**

Approved by City Council on November __, 2015

DEVELOPMENT AGREEMENT AND OPTION AGREEMENT

THIS DEVELOPMENT AGREEMENT AND OPTION AGREEMENT (the "Agreement") is made by and between the CITY OF CHANDLER, an Arizona municipal corporation (the "City") and VPK THE ROW LLC, an Arizona limited liability company ("Developer"). The City and Developer shall be referred to in this Agreement, collectively as "Parties," and individually as a "Party."

SECTION 1. EFFECTIVE DATE & TERM

1.1 **Effective Date.** This Agreement shall be effective as of the date that it is executed by the representative of the last Party to sign it and its recordation in the Official Records of Maricopa County, Arizona, in accordance with the requirement of A.R.S. § 9-500.05.

1.2 **Term.** The term of this Agreement ("Term") shall be the later of (i) fifteen (15) years from the Effective Date, (ii) the expiration of the term (including any extensions) of the Lease (as defined below); (iii) expiration of the term of the Purchase Agreement (as defined below); or (iv) as otherwise set forth in this Agreement. Notwithstanding the foregoing, Developer may terminate this Agreement at any time prior to Commencement of Construction by the payment to the City of a termination fee in the amount of Five Thousand and no/100 Dollars (\$5000.00), in which event this Agreement, the Lease, and the Purchase Agreement shall automatically and without further act or Notice required, be terminated, and Developer shall have no further rights under any of the Project Documents as defined in Recital I.

SECTION 2. RECITALS

The Parties recite and state the following, each of which is a material term and provision of this Agreement:

A. The City owns certain unimproved real property in its downtown area (the southwest corner of Arizona Avenue and Chandler Boulevard) that are generally identified as Sites 1, 2, and 3 and which are more particularly described in Exhibit A-1 (as to Site 1), Exhibit A-2 (as to Site 2) and Exhibit A-3 (as to Site 3).

B. Sites 1, 2 and 3 are located in the City's "Chandler Redevelopment Area" established pursuant to Resolution No. 1180, and in the City's Central Business District established pursuant to Resolution No. 4646.

C. Sites 1, 2 and 3 were acquired by the City as part of its plan to redevelop and revitalize the downtown area of the City as described in the Chandler Redevelopment Area Plan.

D. Developer has proposed to build improvements and procure uses on Site 3 that the Parties believe will contribute to the implementation and achievement of the City's goals of redevelopment and revitalization of the City's downtown area. Throughout this Agreement, the proposal accepted by the City will be referred to as the "Proposed Development Plan."

E. The City, therefore, desires to convey Site 3 by lease and sale to Developer, on the terms and conditions set forth in this Agreement, the Lease and the Purchase Agreement.

F. The City and Developer hereby acknowledge and agree that redevelopment of the Project will result in significant direct and indirect benefits accruing to the City and the general public, including, without limitation, increased property value of Site 3, increased tax revenues, facilitation of the expansion of the employment base within the City and incentivizing the redevelopment of the City's downtown.

G. This Agreement is intended to set forth certain obligations of the Parties with respect to the contemplated redevelopment of Site 3, as permitted by Arizona law. The Parties intend for this Agreement to be a "Development Agreement" within the meaning of A.R.S. § 9-500.05, an agreement to promote economic development activities within the meaning of A.R.S. § 9-500.11, and redevelopment of the Chandler Redevelopment Area consistent with A.R.S. § 34-1471 *et seq.*

H. The City has determined that the proposed development of Site 3 in accordance with this Agreement is consistent with the City's General Plan, and the Chandler Redevelopment Area Plan.

I. This Agreement is part of a transaction between the City and Developer in which the Developer intends to develop the Project in accordance with the terms of this Agreement; the Developer shall lease the land upon which the Project is constructed (*i.e.*, Site 3) from the City in accordance with the terms of the Lease; the Developer may ultimately purchase the land upon which the Project is constructed (*i.e.*, Site 3) from the City in accordance with the Purchase Agreement; and the Developer has option rights for the purchase from the City of Site 1 and Site 2 in accordance with this Agreement. Accordingly, the Parties intend that this Agreement, the Lease and the Purchase Agreement (collectively, the "Project Documents") be construed harmoniously in order to give full effect to the intentions of the Parties with respect to the leasing, development and purchase of Site 3 (and Sites 1 and 2, as applicable) as reflected by the Project Documents. In the event of any conflict or ambiguity arising from the Project Documents, the Project Documents shall control in the following order of precedence: first, this Agreement; second, the Lease; and third, the Purchase Agreement.

AGREEMENT

IN CONSIDERATION of the foregoing recitals and representations and the mutual covenants and conditions in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledge, the Parties agree as follows:

SECTION 3. DEFINITIONS. In this Agreement, unless a different meaning clearly appears from the context:

3.1 "**Agreement**" means this Agreement, as amended or supplemented in writing from time to time, and includes all exhibits and schedules attached hereto. References to Sections or Exhibits are to this Agreement unless otherwise qualified.

3.2 **“Applicable Laws”** means the federal, state, county and local laws (statutory and common law), charter provisions, codes, ordinances, rules, regulations, permit requirements, fee schedules and assessments, and other requirements and official policies of the City which apply to the development of all or any part of the Site 3.

3.3 **“Business Day”** means any day of the week when the City Planning and Development Department is open to the public for the conduct of the department's business.

3.4 **“Certificate of Completion”** means a certificate issued by the City certifying that a building shell or other improvement is completed in accordance with approved plans in accordance with Applicable Laws.

3.5 **“City”** means the City of Chandler, an Arizona municipal corporation (and any successor public body or officer hereafter designated by or pursuant to law).

3.6 **“City Code” or “Code”** means the Chandler City Code and regulations of the City.

3.7 **“City Delay”** means as defined in Section 5.4(C).

3.8 **“Commence Construction” or “Commencement of Construction” or “Construction Commencement”** and variations means the occurrence of both of the following: (i) the issuance of a construction permit, and (ii) the commencement of vertical construction of the Minimum Improvements beyond grading of foundation for which a construction permit is issued.

3.9 **“Completion of Construction”** means the issuance of a Certificate of Completion for the Minimum Improvements.

3.10 **“Default”** means as defined in Section 8.1.

3.11 **“Developer”** means VPK The Row, LLC, an Arizona limited liability company (and any successor or assignee).

3.12 **“Drafthouse Cinema”** means a theater (or theaters) in which motion pictures are shown or displayed to the public. Food and alcoholic beverage service will be available for the theater patrons to order and obtain from the internal prep kitchen, and wine and beer will be available at a bar for consumption on the premises, including within the individual theaters. The in-lobby bar will feature a selection of craft beers on tap including locally brewed favorites. Food choices shall be expanded beyond the normal theater fare with a menu that offers a variety of fresh prepared bar staples.

3.13 **“Force Majeure Events”** means any one or more of the following which prohibits or materially interferes with, delays or alters the performance of the applicable duty under this Agreement: strikes or lockouts; shortages of material (excluding those caused by lack of funds) or labor; acts of the public enemy; confiscation or seizure by any government or public authority; injunction, restraining order or other court order or decree, blockades; insurrections; riots; civil disturbances; epidemics; acts of nature; fires; explosions; nuclear reaction or radiation; radioactive contamination; any other similar cause (excluding those caused by lack of funds);

and any other event not within the reasonable control of the applicable Party. As to Developer, the failure or delay by the City in issuing any approvals, permits or certificates required, authorized or contemplated by this Agreement, including a City Delay as defined in Section 5.4(C);

3.14 **“Improvements”** means all privately owned, non-governmental buildings and other structures to be located within Site 3 including the Minimum Improvements.

3.15 **“Initial Purchase Price”** means as defined in Section 4.2.

3.16 **“Lease”** means as described in Section 4.

3.17 **“Minimum Improvements”** means as described in Section 5.1 and as depicted on **Exhibit B** and the Open Space.

3.18 **“Open Space”** means that area and improvements as described in Section 5.1D(a) and depicted on Exhibit B.

3.19 **“Proposed Development Plan”** means the development plan (described in Section 5.1A and depicted on Exhibit B) as proposed by Developer for Site 3 that illustrates and demonstrates the general components of and Improvements included within the Minimum Improvements.

3.20 **“Person”** means and includes natural persons, corporations, limited partnerships, general partnerships, joint stock companies, joint ventures associations, limited liability companies, limited liability partnerships, trusts, land trusts, business trusts or other organizations, whether or not legal entities.

3.21 **“Project”** means the Minimum Improvements plus any additional private land uses constructed on Site 3 by Developer.

3.22 **“Project Documents”** mean as defined in Recital I. The Project Documents include all exhibits to such documents.

3.23 **“Public Infrastructure Improvements”** means as described in Section 6.

3.24 **“Purchase Agreement”** means as described in Section 4.

3.25 **“Site 1”** means the real property described as Maricopa County Assessor Parcel Numbers 303-08-248 and 303-08-265 and specifically identified on Exhibit A-1.

3.26 **“Site 2”** means the real property described as Maricopa County Assessor Parcel Numbers 303-08-247, 303-08-266 and 303-08-246 and specifically identified on Exhibit A-2.

3.27 **“Site 3”** means the real property described as Maricopa County Assessor Parcel Numbers 303-08-243, 303-08-244, 303-08-245, 303-08-241, and 303-08-160 and as specifically identified on Exhibit A-3.

3.28 “**System Development Fee**” means any fee owed by Developer in connection with the development described herein pursuant to Chapter 38 of the Chandler City Code.

3.29 “**Temporary Parking Area**” shall mean those portions of Sites 1 and 2 designated as a public parking area identified on Exhibit B.

3.30 “**Zoning Code**” means Chapter 35 of the Chandler City Code.

SECTION 4. ACQUISITION AND DISPOSITION OF SITE 3.

4.1 Lease and Purchase Agreement. Upon the Effective Date of this Agreement, the City and Developer will enter into, execute and deliver two other agreements as part of the interrelated lease, development and purchase transaction between the Parties, and which agreements shall be in the forms attached hereto as Exhibit C-1 (the “Lease”) and Exhibit C-2 (the “Purchase Agreement”).

4.2 Initial Purchase Price. Developer shall have the right to purchase Site 3 at any time during the Term of the Lease (including any Renewal Term), but not later than forty-five (45) days prior to the expiration of this Agreement or the Lease, whichever is later. The purchase price for Site 3 during the Initial Lease Term is One Million Ten Thousand and no/100 Dollars (\$1,010,000.00) (the “Initial Purchase Price”) and shall apply to the purchase of Site 3 by Developer. The Initial Purchase Price represents an estimate of the fair market value of Site 3, adjusted for public benefits to be provided by Developer under this Agreement, including (but not limited to) the advancement of the goals of the Chandler Redevelopment Area Plan and consistent with the policies underlying A.R.S. § 36-1471 *et seq.* The Initial Purchase Price also assumes that Site 3 is free of soil compaction defects requiring additional soil compaction as a result of the previous removal of an underground storage tank on Site 3. In the event that Developer’s engineers or geotechnical advisors determine that additional soil compaction is required on Site 3, then the Initial Purchase Price shall be reduced by the amount or expense actually spent or incurred by Developer in causing the compaction of the soil necessary to proceed with the Project. Reasonable cost for the remediation of a soil compaction defect shall be mutually agreed upon by the Parties before the City’s issuance of the grading permit to Developer for Site 3; provided, however, in no event shall such reduction exceed \$300,000.00. At the time of Developer’s purchase of Site 3, Developer shall supply copies of invoices, receipts and other evidence of expenditure and payment with respect to such work as may reasonably be required by the City; provided however that the amount of the reduction in the Initial Purchase Price shall not exceed the mutually agreed upon cost or the actual cost, whichever is less.

4.3 Purchase Terms. The purchase of Site 3 by Developer shall be in accordance with the terms and conditions of the Purchase Agreement.

a) At any time after the Effective Date of this Agreement, but not later than forty-five (45) days prior to the expiration of this Agreement or the last Lease Term, whichever is later, and provided Developer is not in breach of this Agreement or the Lease, Developer shall have the right to deliver the fully-executed original Purchase Agreement to the Escrow Holder, as that term is defined in the Purchase Agreement. Developer shall provide Notice to the City of Developer’s delivery of the executed Purchase Agreements to Escrow Holder. Upon

Escrow Holder's receipt of the fully-executed Purchase Agreements, the Parties shall proceed with the purchase and sale of Site 3 in accordance with the terms and conditions set forth in the Purchase Agreement.

b) Concurrently with Developer's delivery of the fully-executed Purchase Agreement to Escrow Holder, Developer will deposit Fifty-Five Thousand and no/100 Dollars (\$55,000.00) as Developer's earnest money deposit ("Deposit") with Escrow Holder, in cash, certified or bank cashier's check or other form of collected funds.

c) Notwithstanding the provisions of Recital I, in the event of a conflict between the terms of this Section 4.3 and the terms of the Purchase Agreement, the terms of the Purchase Agreement shall control and prevail.

4.4 Future Purchase Price. If Developer has failed to exercise the option to purchase Site 3 within forty-five (45) days prior to the expiration of the Initial Lease Term, the City shall cause Site 3 to be appraised by an Arizona-licensed appraiser who also holds an MAI or ASA designation (from the Appraisal Institute or the American Society of Appraisers, as applicable) reasonably acceptable to the Parties, which appraisal shall establish the purchase price for Site 3 (which appraisal shall be for the land value only and shall exclude any value attributable to (i) any Improvements installed by Developer upon Site 3, (ii) this Agreement, (iii) the Lease, and (iv) the Purchase Agreement) for the remainder of the Term of this Agreement and the Lease ("Future Purchase Price").

4.5 Lease Terms. In addition to the terms set forth in the Lease, the following Site 3 annual rent schedule shall be incorporated into the Lease for the times periods set forth below.

a) The Site 3 annual rental rate for the first ten (10) years of the Lease ("Initial Lease Term") shall be Ten and no/100 Dollars (\$10.00) per year, payable upon execution of the Lease.

b) The Site 3 annual rental rate for the five year period commencing on the expiration of the Initial Lease Term ("First Renewal Term") shall be in an amount equal to four percent (4%) of the Future Purchase Price, paid on or before the first day of each Lease Year during the First Renewal Term.

c) The Site 3 annual rental rate for the five year period commencing on the expiration of the First Renewal Term ("Second Renewal Term") shall be in an amount equal to six percent (6%) of the Future Purchase Price, paid on or before the first day of each Lease Year during the Second Renewal Term.

d) The Site 3 annual rental rate for the five year period commencing on the expiration of the Second Renewal Term ("Third Renewal Term") shall be in an amount equal to eight percent (8%) of the Future Purchase Price, paid on or before the first day of each Lease Year, during the Third Renewal Term.

e) The Parties expressly acknowledge that in the event Developer fails to exercise its right or option to Purchase Site 3 granted in this Agreement, the City shall not be obligated to extend, renew or otherwise amend this Agreement, the Lease, or the Purchase Agreement for any

additional terms beyond the Third Renewal Term. In the event this Agreement, the Lease, or the Purchase Agreement are terminated, expired or otherwise cancelled, Developer acknowledges any Improvements installed by Developer on Site 3 shall become the property of the City without further action or instrument of conveyance. Thereafter Developer shall have no right, claim or ownership interest in any Improvement then existing on Site 3.

SECTION 5. DEVELOPMENT OF SITE 3.

5.1 Development of Site 3.

A. Minimum Improvements. The development proposed by Developer is set forth in Exhibit B and is composed of (i) an open space area of approximately 5,000 square feet on the northwest corner of Buffalo and Arizona Avenue (“Open Space”), and (ii) a minimum of 50,000 square feet of “shell” building space proposed for restaurant, retail and entertainment uses in one or more buildings as Developer may elect (“Buildings”) on the south west corner of Arizona Avenue and Chandler Boulevard, one of which Buildings shall be two stories with restaurant and retail uses on the ground floor and with a second story consisting of a minimum of a 30,000 square foot multi-screen Drafthouse Cinema with at least six individual theaters totaling at least 600 seats (the Open Space and the Building shall hereinafter be referred to collectively as the “Minimum Improvements”).” The plan for the Open Space shall be determined during the rezoning process for Site 3 and included in the PDP approved by the City.

B. The construction of the Minimum Improvements as described in this Section 5.1 and as depicted on Exhibit B shall occur in a single phase and in accordance with the deadlines set forth herein. Developer’s compliance with the timing of its provision of the Minimum Improvements and its compliance with the proposed development plans were material considerations for the City’s determination to enter into this Agreement as a method for revitalization and redevelopment of the Chandler Redevelopment Area. Developer’s timely compliance is a material part of the consideration being provided by Developer for the incentives provided in this Agreement, the Lease, and the Purchase Agreement.

C. If Developer has not performed the action by the dates set forth below, subject to Force Majeure Events, the City may proceed to declare a default as set forth in Section 8 as the timely construction of the Minimum Improvements is a material part of the consideration being delivered by Developer for the incentives provided herein by the City.

ACTION	DEADLINE
Developer’s submittal of administratively complete application(s) for P.A.D. rezoning, Preliminary Development Plan (“ <u>PDP</u> ”), midrise overlay, intermittent electronic display signage and any other land use entitlement required for Minimum Improvements	January 2, 2016
Developer’s submittal of completed civil plans for the grading permit	July 1, 2016
Developer’s Commencement of Construction	December 31, 2016

D. Developer's Post-Construction Obligations.

(a) Open Space. Developer shall cause the Completion of Construction of certain improvements in the Open Space (the "Open Space Improvements"), The extent and scope of the Open Space Improvements shall be determined during the PAD process. The City, at its sole cost and expense, shall maintain the Open Space and shall repair, replace and maintain the Open Space Improvements during the Initial Lease Term.

(b) Maintenance of Temporary Parking Area. Upon completion of the Surface Parking Improvements by the City as set forth below in Subsection 5.2(A), and subject to the City's obligation to maintain, repair and replace the parking surface as set forth below in Subsection 5.2D. Developer agrees, at its sole cost and expense, to maintain and keep the Temporary Parking Area free of debris and otherwise maintain the Temporary Parking Area in a clean and orderly condition. Developer shall provide the irrigation water for the landscaping as well as the maintenance, repair and replacement of the landscaping and hardscaping other than the asphaltic surface which is the City's obligation as set forth in Subsection 5.2D).

(c) Downtown Enhanced Municipal Services District Assessment. The Project is within the boundaries of a special taxing district created pursuant to Title 48 of the Arizona Revised Statutes, namely the Downtown Enhanced Municipal Services District ("District") The District was created for, among other things, the provision of enhanced municipal services to property owners within the District. The Parties acknowledge Site 3 is within the boundaries of the District. Upon the execution of this Agreement and the Lease, and regardless of whether Developer has purchased Site 3, Developer will, during the term of the Lease, timely pay the amount that would be assessed on the real property constituting Site 3 if the City were not the title owner of Site 3 ("In Lieu Assessment") as well as any amount assessed for the Improvements owned separately by Developer.

5.2 City's Obligations.

A. Temporary Parking. The City, at its sole cost and expense, shall install an asphaltic layer, parking stall striping for at least 350 parking stalls and landscape and hardscape materials to the Temporary Parking Area, including lighting and applicable signage, in substantial conformance with Exhibit B (collectively, the "Surface Parking Improvements"). The City shall complete construction of the Surface Parking Improvements no later than Developer's Completion of Construction of the Minimum Improvements. The parking spaces included in the Temporary Parking Area will be available for public use without charge, including use by patrons of the Project. In the event that the City has not caused the Completion of Construction of the Surface Parking Improvements by the date that Developer has caused Completion of Construction of the Minimum Improvements, then at Developer's sole election, Developer may complete the Surface Parking Improvements and thereafter recover all of

Developer's reasonable costs and expenses from the City assuming Developer has complied with the Section 10.1.

B. Zoning Code Parking Obligations. The parking spaces in the Temporary Parking Area may be included by Developer toward its Zoning Code obligations for the provision of parking spaces required for the Project and constitute all of the parking spaces required by the City to be provided by Developer in connection with the Project. Upon construction of the Garage (as defined below) by the City, 350 of the parking spaces in the Garage may be included by Developer toward its Zoning Code obligations for the provision of parking spaces within the Project and constitute all of the parking spaces required by the City to be provided by Developer in connection with the Project. During any period that all or any portion of the Temporary Parking Area is not available due to construction of the Garage, the City will temporarily suspend Developer's requirement to provide parking spaces for the Minimum Improvements until the Completion of Construction of the Garage.

C. Temporary Parking Term. The City agrees that during the construction of the Minimum Improvements and through the third (3rd) anniversary date of the issuance of the first Certificate of Completion for the tenant improvements included within the Minimum Improvements ("Temporary Parking Term"), Developer may include the number of parking spaces in the Temporary Parking Area towards its Zoning Code obligations for provision of parking spaces for the Improvements that are in addition to the Minimum Improvements, if any. The Parties agree that during the Temporary Parking Term, the City will temporarily suspend Developer's normally required provision of parking spaces for the Improvements that are greater than the Minimum Improvements.

D. Maintenance of Parking Surface. The City shall be responsible for the reasonable periodic maintenance, repair and replacement of the asphaltic surface of the Temporary Parking Area, but shall otherwise have no maintenance, repair or replacement obligations relating to the Temporary Parking Area.

E. Burial of Electrical Power Lines. The City desires to enhance the appearance of its downtown area and has required or undertaken the burial of overhead electrical power lines within the City's downtown area. Prior to or contemporaneously with Commencement of Construction of Site 3, the City shall, at its sole cost and expense, (i) cause all overhead electrical power lines within the Project to be buried, and (ii) remove (or cause to be removed) any electrical power line pole that, as a result of the burial of the electrical power lines, is no longer necessary for the suspension of any public or private utility, service or facility within the Project.

F. Garage. Not later than ten (10) months prior to the expiration of the Temporary Parking Term ("Temporary Parking Expiration Notice Date"), the City shall determine if it wishes to terminate the Temporary Parking Area at the expiration of the Temporary Parking Term and provide, in lieu of the Temporary Parking Area and at the City's sole cost, a multi-floor parking structure on Site 2 containing at least 350 parking stalls for public use (a "Garage").

(1) Upon such determination, the City shall give Notice to Developer on or before the Temporary Parking Expiration Notice Date of its termination of the Temporary Parking Area at the expiration of the original Temporary Parking Term, and shall thereafter construct a Garage and cause Completion of Construction of the Garage by the tenth month following such Notice to Developer. The determination to terminate the use of the Temporary Parking Area and temporary suspension of Developer's requirements to provide parking spaces for additional development above the Minimum Improvements will be at the sole discretion of the City but will be communicated to Developer no later than the termination of the Temporary Parking Term, or any extension of such Temporary Parking Term. If the City elects not to terminate the Temporary Parking Area at the end of the initial Temporary Parking Term, the Temporary Parking Term shall continue automatically and will not be terminated without at least ten (10) months' Notice to Developer and Completion of Construction of a Garage before the expiration of the Temporary Parking Term, as extended.

(2) Notwithstanding the foregoing, in the event that (i) the City has not constructed the Garage by the expiration of the Temporary Parking Term described in Subsection 5.2(C) above; (ii) Developer is not then in material default of any term of this Agreement, the Lease or the Purchase Agreement; (iii) Developer has the right to develop Site 1, Site 2, or both, pursuant to Section 7.3 of this Agreement; and (iv) Developer has given not less than ten (10) months' Notice to the City that Developer intends to commence construction on Site 1, Site 2, or both, so that the Temporary Parking Area will not be available thereafter, then the City shall promptly design and Commence Construction of the Garage and cause such construction to be completed, and the Garage to be available for public parking, no later than ten (10) months from the date of Developer's Notice given pursuant to Section 5.2(F)(2)(iv).

G. No On-Site Retention. The City confirms that no on-site retention of water is required in connection with the development of Site 3, and that water from Site, as developed, will flow from Site 3 into public drainage facilities.

5.3 Coordination Meetings. From the Effective Date through the completion of the Minimum Improvements, the respective designated representatives of the City and Developer shall meet twice monthly to coordinate the development of the Project and to otherwise facilitate the orderly development of the Project. This Section 5.3 may be waived upon mutual agreement of the Parties.

5.4 Expedited Processing and Phasing of City Approvals.

A. Zoning Entitlements. Upon submittal of administratively complete rezoning application, as defined in Chandler regulations, and Developer's timely responses to the City's reviews of the submittal(s) for amendment of the Planned Area Development (P.A.D.) zoning and Central City District (CCD) zoning on Site 3, the City agrees to expedite the processing of Developer's applications for rezoning of Site 3 in accordance with Applicable Laws in order to assist Developer in achieving its development schedule.

B. Expedited Reviews for Regulatory Permits. Upon submittal of civil plans that are 90% complete and Developer's timely responses to the City's reviews of the submittal(s) for various regulatory permits, the City agrees to expedite the processing of Developer's

applications for regulatory permits in accordance with Applicable Laws in order to assist Developer in achieving its development schedule. Expediting of reviews and processing for regulatory permits for purposes of this Agreement shall mean ten (10) business days for each review submittal.

C. Timing for City Approvals. In recognition of Developer's accelerated time-line for construction in order to spur the City's redevelopment goals for downtown Chandler, the City commits to the following schedule for granting or issuing its approvals or permits (as applicable):

1. If the Developer complies with the deadlines and qualitative standards for submittals as set forth in Subsections 5.1C and 5.4 and diligently and expeditiously responds to City's redline comments on its submittals, the City will approve Developer's PAD, PDP, midrise overlay, intermittent electronic display signage and any other land use matter or entitlement required in connection with Developer's applications, no later than April 1, 2016.

2. If the Developer complies with the deadlines and qualitative standards for submittals as set forth in Subsections 5.1C and 5.4 and diligently and expeditiously responds to City's redline comments on its submittals, the City will approve Developer's site civil drawings and issue all permits for site work within thirty (30) days of Developer's first submission to the City.

3. If the Developer complies with the deadlines and qualitative standards for submittals as set forth in Subsections 5.1C and 5.4 and diligently and expeditiously responds to City's redline comments on its submittals, the City will approve Developer's building civil drawings and issue all permits for construction within sixty (60) days of Developer's first submission to the City.

The failure of the City to timely comply with any of the matters listed in Section 5.4(C) above is a default by the City under this Agreement and shall be a "City Delay."

5.5 Phasing of City Approvals. Although the construction of the Minimum Improvements will be done in one phase, the City agrees that Developer may submit its civil plans and drawings in phases to include separate submittals for i) grading and drainage; and ii) foundation plans; and iii) building plans.

5.6 Payment of Review Fees. The City further agrees that Developer shall be granted the above-referenced expedited reviews without additional cost for the expediting of the reviews. Notwithstanding the foregoing sentence, Developer shall pay the fees associated with such reviews which are not expedited.

5.7 Mutual Cooperation to Obtain CenturyLink Cooperation. Site 3 is encumbered by that certain "Qwest – City of Chandler Development Agreement" dated as of April 22, 2003, and recorded in the records of the Maricopa County, Arizona, Recorder as Instrument no. 2003-0740525 on June 9, 2003, and re-recorded as Instrument no. 2005-0018146 on January 5, 2005; and that certain "Amendment No. 1 to Qwest – City of Chandler Development Agreement dated as of December 30, 2003, and recorded in the records of the Maricopa County, Arizona, Recorder as Instrument no. 2004-0053362 on January 20, 2004; and that certain "Parking

Easement and Temporary Construction Easement” dated as of September 20, 2007, and recorded in the records of the Maricopa County, Arizona, Recorder as Instrument no. 2007-1047310 on September 21, 2007 (collectively, the “Qwest Agreements”). The City represents and warrants to Developer that all of the construction and related obligations of the City as described and set forth in the Qwest Agreements have been fully performed and discharged by the City, and that the only obligation of the City remaining under the Qwest Agreements is the provision of five (5) parking spaces (the “Parking Obligation”). The City shall indemnify, defend, pay and hold harmless Developer, and its successors and assigns, for, from and against any and all claims of any party claiming under the Qwest Agreements other than the Parking Obligation. The Parties agree to mutually work in good faith to move the five (5) parking spaces for the CenturyLink building on property adjoining Site 3 to the Temporary Parking Area during the Temporary Parking Term and thereafter into the Garage provided by the City in accordance with Subsection 5.2F).

SECTION 6. PUBLIC INFRASTRUCTURE IMPROVEMENTS. The street and traffic signal improvements within the public right-of-way as well as water and wastewater public infrastructure sufficient to serve the Minimum Improvements have been previously installed to the property line of Site 3. Developer shall have no further obligation to design, construct or install such infrastructure to Site 3 prior to its Commencement of Construction of the Minimum Improvements, but Developer will construct all private infrastructure on Site 3. Nothing contained herein shall limit Developer’s obligation to provide additional street and traffic signal improvements or public water and wastewater infrastructure should Developer obtain approvals to construct Improvements on Site 3 that are of a greater or intensity or density than the Minimum Improvements .

SECTION 7. OTHER DEVELOPMENT MATTERS; OPTION.

7.1 System Development Fees. The City shall pay any system development fees assessed pursuant to Chapter 38 of the Chandler City Code (“System Development Fees”) for Developer’s development of Site 3 with the Minimum Improvements. Notwithstanding the foregoing, any existing credits for System Development Fees that would be available to a developer of Site 3 shall be first applied as an offset to any System Development Fees owed by the City in connection with the development of the Minimum Improvements.

7.2 Intermittent Electronic Display Signage. As part of the approvals of the P.A.D. rezoning for the Project, the City will approve intermittent (that is, rotating images) electronic display signage on Site 3 through the P.A.D. rezoning process, with such signage to include not fewer than three (3) intermittent electronic display advertising signs, each having an effective sign area of not less than 672 square feet, for site-specific as well as third-party advertising and public service announcements. During the P.A.D. process, the Parties shall reasonably agree on the amount of public service announcement time during peak display hours the City will receive on such electronic display signage.

7.3 Option to Purchase Site 1 and Site 2. The City hereby grants Developer an option to purchase Site 1 and Site 2 (the “Option”), exercisable upon the following conditions:

A. Developer shall have caused Completion of Construction of the Minimum Improvements in accordance with this Agreement; and

B. Developer shall not be in default of this Agreement, the Lease or the Purchase Agreement; and

C. Developer shall have provided Notice of Developer's exercise of the Option, specifying whether Developer is exercising the Option with respect to Site 1, Site 2, or both Site 1 and Site 2, no later than three (3) years from the issuance of a Certificate of Completion for the Minimum Improvements (the "Site 1 and Site 2 Option Deadline"). In the event that Developer has not timely provided Notice of Developer's exercise of the Option for both Site 1 and Site 2 by the Site 1 and Site 2 Option Deadline, then the Option shall automatically terminate as to the Sites 1 and 2 or any one of Site 1 or Site 2 remaining unsold; and

D. City and Developer have mutually agreed to, by means of a Development Agreement substantially similar to this Agreement, a proposed site plan and architectural renderings for the development of Site 1 or Site 2 (as applicable), or both, that does not include multi-family residential uses below the third floor of the proposed development.

E. Developer may exercise the Option and purchase Site 1, Site 2, or both Site 1 and Site 2, prior to Developer's electing to purchase Site 3.

F. Site 1 and Site 2 shall be conveyed subject only to (i) those permitted title exceptions set forth in Exhibit D-1 (as to Site 1) and Exhibit D-2 (as to Site 2), (ii), such additional matters that have been expressly approved in writing by Developer, and (iii) matters of record caused by or on behalf of Developer (including this Agreement).

7.4 Purchase Price for Site 1 and Site 2. The purchase price for Site 1 shall be \$11.00 per net square foot, and the purchase price for Site 2 shall be \$9.00 per net square foot, both of which values have been determined by appraisal. The purchase of Site 1 and Site 2 (as applicable) shall be by a purchase agreement materially in the form of Exhibit C-2, reasonably adapted to reflect the terms of this Section 7.3; and the development of Site 1 and Site 2 (as applicable) shall be subject to a development agreement materially in the form of this Agreement, reasonably adapted to reflect the terms of Developer's proposed development plan and development timeline for Site 1 and Site 2 (as applicable).

SECTION 8. DEFAULTS.

8.1 Events of Default. It shall be a default hereunder ("Default") if either Party fails to perform any of its obligations hereunder or under either the Lease or the Purchase Agreement, and such failure continues for a period of fifteen (15) days after Notice from the non-defaulting Party specifying in reasonable detail the nature of the failure in the case of a monetary default, or sixty (60) days after Notice from the non-defaulting Party specifying in reasonable detail the nature of the failure in the case of a non-monetary default; provided, however, that no non-monetary Default shall be deemed to exist if a cure within sixty (60) days is not practicable and the defaulting Party commences a cure within that sixty-day period and diligently and

expeditiously pursues such cure to completion within ninety (90) days after Notice from the non-defaulting Party.

8.2 Remedy of City. In the event of a default by Developer and Developer's failure to timely cure the default as provided in Section 8.1, the City's sole remedy shall be as follows:

A. The City shall provide notice of the Default to Developer and Developer's Lender (as defined in the Lease) and to provide the Lender such time to cure Developer's Default as permitted by or granted to Lender by the Non-Disturbance and Recognition Agreement ("NDRA" as defined in the Lease), but in no event more than one hundred and fifty (150) days from such Notice to Lender; and

B. In the event that the Lender fails or refuses to cure Developer's default within the time permitted by or granted to Lender by the NDRA (or one hundred and fifty (150) days from Notice to Lender, whichever is less), then the City shall subsequently give Notice to Developer demanding that Developer purchase Site 3 in accordance with the terms of the Purchase Agreement, but with Closing (as defined in the Purchase Agreement) to occur not earlier than ninety (90) days following Developer's receipt of the Notice required by this Section 8.2(B). Upon Closing, all of Developer's rights under the Option and Development Agreement shall remain in full force and effect. Developer's right to purchase Site 3 under this Section 8.2(B) is in addition to Developer's right to purchase Site 3 during the Term of the Lease or otherwise as permitted under the Purchase Agreement; and

C. In the event that Lender does not exercise its rights under the NDRA and Developer fails to purchase Site 3 within the time period set forth in Section 8.2(B) above, then the City may terminate this Agreement, the Lease, and/or Purchase Agreement.

8.3 Remedy of Developer. In the event of a Default by the City and failure by the City to timely cure the Default as provided in Subsection 8.1, the Developer, or any successor-in-interest or assignee, may institute a legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, to terminate this Agreement, the Lease, and/or Purchase Agreement, or to enjoin any threatened or attempted violation, including suits for declaratory relief, specific performance, and relief in the nature of mandamus.

8.4 Waiver of Claims for Damages. The Parties hereby waive any right to seek actual, consequential, punitive, multiple, exemplary or any other damages for a breach of this Agreement by the defaulting Party.

8.5 Special Provisions Regarding City Delay. Notwithstanding the foregoing, solely in the event of a City Delay, Developer in its sole election may elect to (i) treat the City Delay as a Force Majeure Event with each day of the City Delay extending the dates of any required performance by Developer by the same number of days; or (ii) give the City Notice and an opportunity to cure its Default in accordance with Section 8.1; or (iii) by written Notice to the City, immediately terminate this Agreement, the Lease and the Purchase Agreement.

8.6 Delays; Waivers. Except as otherwise expressly provided in this Agreement, any delay by any Party in asserting any right or remedy under this Agreement shall not operate as a waiver of any such rights or limit such rights in any way; and any waiver in fact made by such

Party with respect to any default by the other Party shall not be considered as a waiver of rights with respect to any other default by the non-defaulting Party or with respect to the particular default except to the extent specifically waived in writing.

8.7 Rights and Remedies Cumulative. Subject to the limitations of Section 8.2 and Section 8.3, the rights and remedies of the Parties are cumulative, and the exercise by either Party of any one or more of such rights shall not preclude the exercise by it, at the same or different times, of any other right or remedy for any other default by the other Party.

8.6 Good Faith Efforts to Achieve Deadlines. Each Party agrees that it shall act in good faith with respect to its efforts timely to make all submissions and comply with all deadlines in order to allow the timely and successful performance of the other Party.

SECTION 9. REPRESENTATIONS.

9.1 City Representations. The City represents and warrants to Developer that:

A. The City is duly formed and validly existing under Arizona law and that the individual(s) executing this Agreement on behalf of the City is authorized and empowered to bind the City.

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

C. All consents and approvals necessary to the execution, delivery and performance of this Agreement, the Lease and the Purchase Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance; provided, however, the Parties hereby acknowledge and agree that pursuant to Chandler's City Charter, additional documents may require approval from Chandler City Council.

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

9.2 Developer Representations. Developer represents and warrants to the City that:

A. Developer is duly formed and validly existing under Arizona law and that the individual(s) executing this Agreement on behalf of Developer is authorized and empowered to bind Developer.

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

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

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

SECTION 10. GENERAL PROVISIONS.

10.1 Public Bid. If Developer seeks reimbursement for any work defined as Public Works in Title 34, Chapter 2 of Arizona Revised Statutes, Developer must comply with the competitive and open procurement processes set forth in A.R.S. § 34-101 *et seq.* The City will process the request for bids for such work through its process up through and including selection by the City Council.

10.2 Force Majeure. If either Party is delayed or prevented from the performance of any duty or obligation under this Agreement by reason of a Force Majeure Event, then the performance of such duty or obligation shall be excused for the period of the delay, and the period for the performance by such Party of any such duty or obligation shall be extended for a period equivalent to the period of such delay. The Party subject to any Force Majeure Event shall provide Notice to the other Party as soon as reasonably practicable.

10.3 Notices. Except as otherwise required by law, any notice, demand or other communication required to be given by this Agreement (each, a “Notice”) shall be in writing and shall be given by (i) personal delivery; (ii) by certified or registered U.S. Mail, return receipt requested; or (iii) or by any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), with all postage and other delivery charges prepaid and addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this paragraph:

To Developer: VPK The Row, LLC
Attention: David C. Scholl
2502 East Camelback Road, Suite 214
Phoenix, AZ 85016

With a copy to: Dickinson Wright PLLC
Attention: Gary L. Birnbaum
1850 North Central Avenue, Suite 1400
Phoenix, AZ 85004

To the City: City of Chandler
Economic Development Office (MS 416)
P. O. Box 4008
Chandler, AZ 85244-4008
Attention: Kim Moyers
Downtown Redevelopment Manager

Phone: 480-782-3045
Facsimile: 480-782-2209

With a copy to: City of Chandler
City Attorney's Office
P. O. Box 4008
Chandler, AZ 84244-4008
Attention: Kay Bigelow
Phone: 480-782-4642
Facsimile: 480-782-4652

10.4 Effective Date of Notices. Any Notice will (i) if delivered personally or delivered through a same day delivery/courier service be deemed effective upon delivery or refusal to accept delivery by the addressee; and (ii) if delivered by U.S. mail in the manner described above be deemed effective upon the earlier of receipt or three (3) business days after deposit in a post office operated by the United States or with a United States postal officer; and (iii) if sent by a recognized national overnight delivery service be deemed effective one (1) business day after deposit with such service. Notwithstanding the foregoing, no payment shall be deemed to be made until actually received in good and available funds by the intended payee. The Parties hereby acknowledge and agree that any Notice transmitted solely by facsimile or by electronic mail shall be deemed ineffective.

10.5 Waiver of Right to Trial by Jury. The Parties expressly covenant and agree that in the event of a dispute arising from this Agreement, each Party waives any right to a trial by jury. In the event of litigation, the Parties agree to submit to a trial before the court.

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

10.7 Recordation. The City will cause this Agreement to be recorded in its entirety in the Official Records of Maricopa County, Arizona, not later than ten (10) days after execution of the Agreement by the Parties, and shall thereafter promptly provide a recorded copy of this Agreement to Developer.

10.8 Governing Law. This Agreement shall be governed by and construed under the internal, substantive laws of the State of Arizona, without reference to the principles of conflict of laws.

10.9 Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect. If any applicable law or court of competent jurisdiction prohibits or excuses the City from undertaking any contractual commitment to perform under any provision of this

Agreement, the remaining portions of this Agreement shall remain in full force and effect, and the Parties will negotiate diligently in good faith for such amendments of this Agreement as may be necessary to achieve the original intent of this Agreement, notwithstanding such invalidity or unenforceability.

10.10 Amendment. No change or addition is to be made to this Agreement except by written amendment executed by the City and Developer. Within ten (10) days after any amendment to this Agreement, the City will cause such amendment to be recorded in the Official Records of Maricopa County, Arizona, and shall thereafter promptly provide a recorded copy of such amendment to Developer.

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

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

10.13 Section Headings. The Section headings contained in this Agreement are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement. References to sections or exhibits are to Sections or Exhibits of this Agreement unless otherwise qualified.

10.14 No Partnerships; Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between Developer and the City. No term or provision of this Agreement is intended to, or shall, be for the benefit of any Person not a party hereto, and no such other Person shall have any right or cause of action hereunder, except for permitted transferees or assignees to the extent that they assume or succeed to the rights and/or obligations of Developer under this Agreement.

10.15 Recitals, Exhibits. The Recitals set forth in Article 2 of this Agreement are incorporated herein by reference and form a part of this Agreement. The Parties agree that all references to this Agreement include all Exhibits designated in and attached to this Agreement, such Exhibits being incorporated into and made an integral part of this Agreement for all purposes. In the event of a conflict between any Maricopa County Assessor Parcel reference in Sections 3.25, 3.26 and 3.27, and Exhibits A-1, A-2 and A-3, the Exhibits shall control. Parties acknowledge, however, that the Maricopa County Recorder refuses to record graphical exhibits; and accordingly some of the incorporated exhibits are not contained in the recorded copy of this Agreement but are deemed attached and incorporated herein nonetheless. Exhibits that are not included in the recorded copy of this Agreement are attached to the copy of this Agreement in the office of the Chandler City Clerk.

10.16 Entire Agreement. This Agreement, the Lease, and the Purchase Agreement and all exhibits thereto attached and incorporated constitute the entire agreement between the Parties pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations, and understandings of the Parties, oral or written, are hereby superseded and merged herein.

10.17 Additional Provisions. Developer agrees to and does knowingly waive any and all rights to compensation for diminution in value pursuant to A.R.S. § 12-1134 that may now or in the future exist as a result of the approval or performance of, and all conditions, terms and agreements contained in this Agreement.

10.18 Conflict of Interest. This Agreement is subject to the cancellation provisions for conflicts of interest pursuant to A.R.S. §38-511.

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

Signatures of the Parties are on the following two pages.

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and behalf by its Mayor, and Developer has signed the same, on or as of the day and year first above written.

CITY:

CITY OF CHANDLER,
an Arizona municipal corporation

By: _____

Mayor Jay Tibshraeny

Date: _____, 2015

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CHANDLER CITY ATTORNEY *kb*

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing Agreement was acknowledged before me this ____ day of _____, 2015, by _____, Mayor of City of Chandler, an Arizona municipal corporation, on behalf of the municipal corporation.

Notary Public

My Commission Expires:

EXHIBIT A-1

Site 1 - Legal Description

EXHIBIT A-2

Site 2 - Legal Description

EXHIBIT A-3

Site 3 - Legal Description

EXHIBIT B

Minimum Improvements

EXHIBIT C-1

Lease

EXHIBIT C-2

Purchase Agreement

EXHIBIT D-1

Permitted Exceptions – Site 1

EXHIBIT D-2

Permitted Exceptions – Site 2

EXHIBIT A-1
Site 1 Legal Description

Parcel 8, and Tract AA, of San Marcos Commons, according to the plat of record in the Office of the County Recorder of Maricopa County, Arizona, recorded in Book 865 of Map, Page 18, and Affidavit of Chandler recorded 2006-1307017 of Official Records.

EXHIBIT A-2
Site 2 Legal Description

Parcels 6 and 7, and Tract BB, of San Marcos Commons, according to the plat of record in the Office of the County Recorder of Maricopa County, Arizona, recorded in Book 865 of Map, Page 18, and Affidavit of Chandler recorded 2006-1307017 of Official Records.

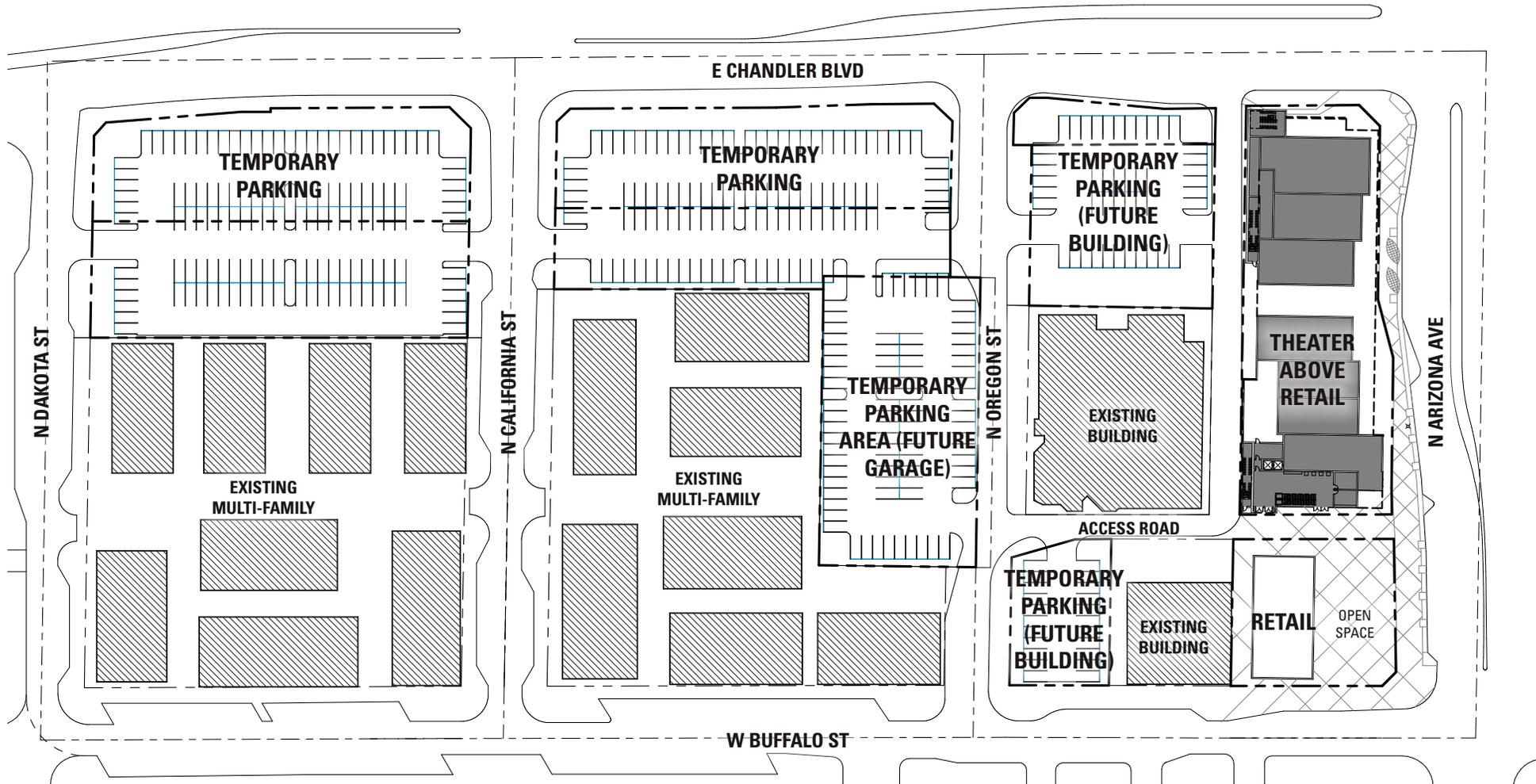
EXHIBIT A-3
Site 3 Legal Description

Parcels 1, 3, 4, and 5 of San Marcos Commons, according to the plat of record in the Office of the County Recorder of Maricopa County, Arizona, recorded in Book 865 of Map, Page 18, and Affidavit of Chandler recorded 2006-1307017 of Official Records.

And

Lot 1, of Qwest Chandler Main, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded as Book 694 of Maps, Page 15, and Affidavit or Correction recorded as 2005-558553 of Official Records and Affidavit of Correction recorded as 2005-708932 of Official Records.

Exhibit B
SITE PLAN



- MINIMUM IMPROVEMENTS
- EXISTING BUILDINGS

20' 40' 100'

Exhibit C-1
LEASE

GROUND LEASE

THIS GROUND LEASE (the "Lease") is made this _____ day of _____, 2015 ("Effective Date"), by and between the CITY OF CHANDLER, an Arizona municipal corporation, as lessor (the "City"), and VPK THE ROW, LLC, an Arizona limited liability company, and any successor or assign, as lessee ("Lessee"), on the terms and conditions set forth below. Each of the City and Lessee may be referred to in this Lease as a "Party," or collectively as the "Parties."

RECITALS

A. City owns certain unimproved real property in its downtown area located at the southwest corner of Arizona Avenue and Chandler Boulevard, of which one parcel is generally identified or referred to as "Site 3."

B. Lessee has proposed to build certain improvements and procure certain uses on Site 3 ("Project") that the Parties believe will implement the City's goals of redevelopment and revitalization of the City's downtown area.

C. The City desires to convey Site 3 by lease and sale to the Lessee based on the terms and conditions set forth in (i) this Lease, (ii) the Development Agreement and Option Agreement between the City and Lessee dated _____, 2015 ("Development Agreement"), and (iii) the Purchase and Sale Agreement between the City and Lessee dated _____, 2015 ("Purchase Agreement").

D. This Lease is part of a transaction between the City and Lessee in which the Lessee intends to develop the Project in accordance with the terms of the Development Agreement; the Lessee shall lease the land upon which the Project is constructed (*i.e.*, Site 3) from the City in accordance with the terms of this Lease; and + the Lessee may ultimately purchase the land upon which the Project is constructed (*i.e.*, Site 3) from the City in accordance with the Purchase Agreement. Accordingly, the Parties intend that this Lease, the Development Agreement and the Purchase Agreement (collectively, the "Project Documents") be construed harmoniously in order to give full effect to the intentions of the Parties with respect to the leasing, development and purchase of Site 3 (and Sites 1 and 2, as applicable) as reflected by the Project Documents. In the event of any conflict or ambiguity arising from the Project Documents, the Project Documents shall control in the following order of precedence: first, the Development Agreement; second, this Lease; and third, the Purchase Agreement.

AGREEMENT

The parties agree as follows.

1. LESSEE

Name: VPK The Row, LLC, an Arizona limited liability company
Address:
City, State, Zip Code: Chandler, AZ 85224
Phone Number:

2. SITE 3.

The premises leased to Lessee by this Lease is that parcel of real property located in Maricopa County, Arizona, specifically described in attached Exhibit "A", which consists of approximately 80,000 square feet. The Improvements are more particularly discussed in Section 8 below.

3. LEASE TERM.

The lease term ("Term") shall be ten (10) years, subject to three (3) successive five-year renewal terms (each, a "Renewal Term"). The Lease is effective and binds the Parties as of the Effective Date", until 11:59 p.m. on the last day of the then existing Term or applicable Renewal Term, or as otherwise earlier terminated pursuant to the terms and conditions of this Lease.

4. RENT.

A. The Rent to be paid by Lessee is in addition to, and not in lieu of, any requirement to pay any charges or fees that may be established by virtue of the inclusion of Site 3 within the Downtown Enhanced Municipal Services District ("District"), or any subsequent amendment thereto, or any other relevant laws and regulations, and any applicable license or permit fee required pursuant to the Chandler City Code.

B. Lessee agrees to pay as rent ("Rent") for the use and occupancy of Site 3 during the Term of this Lease, without deduction or offset, the amounts specified in this Section 4(B), which, except for during the Initial Lease Term, shall be payable monthly to the City in advance on or before the first day of each and every month thereafter during the Term (as the same may be extended), and payable to the City at such place as the City may designate in writing.

1. Initial Lease Term. The Rent for the first ten (10) years of the Term ("Initial Lease Term") shall be Ten and no/100 Dollars (\$10.00) per year, which amount shall be paid in full by Lessee as of the Effective Date.

2. Renewal Terms. Renewals of the Term shall be automatic, with no further act or Notice from Lessee required. In the event that Lessee, in its sole and absolute discretion, elects not to renew this Lease, Lessee shall provide Notice to the City of its intent not to renew no later than six (6) months prior to the end of the Term or applicable Renewal Term.

a. First Renewal Term. The Rent for the five (5) year period commencing on the expiration of the Initial Term (“First Renewal Term”) shall be in an amount equal to four percent (4%) of the Future Purchase Price, and paid in equal monthly installments on or before the first day of each month in the First Renewal Term.

b. Second Renewal Term. The Rent for the five (5) year period commencing on the expiration of the First Renewal Term (“Second Renewal Term”) shall be in an amount equal to six percent (6%) of the Future Purchase Price, and paid in equal monthly installments on or before the first day of each month in the Second Renewal Term.

c. Third Renewal Term. The Rent for the five (5) year period commencing on the expiration of the Second Renewal Term (“Third Renewal Term”) shall be in an amount equal to eight percent (8%) of the Future Purchase Price, and paid in equal monthly installments on or before the first day of each month in the Third Renewal Term.

d. Future Purchase Price. The Future Purchase Price is established in Section 4.4 of the Development Agreement as follows:

“If Developer has failed to exercise the option to purchase Site 3 within forty-five (45) days prior to the expiration of the Initial Lease Term, the City shall cause Site 3 to be appraised by an Arizona-licensed appraiser who also holds an MAI or ASA designation (from the Appraisal Institute or the American Society of Appraisers, as applicable) reasonably acceptable to the Parties, which appraisal shall establish the purchase price for Site 3 (which appraisal shall be for the land value only and shall exclude any value attributable to (i) any Improvements installed by Developer upon Site 3, (ii) this Agreement, (iii) the Lease, and (iv) the Purchase Agreement) for the remainder of the Term of this Agreement and the Lease (“Future Purchase Price”).”

C. Net Lease. It is the intention of the parties that the Rent shall be net to the City in each year during the term of this Lease. Accordingly, all costs, expenses and obligations of every kind relating to Site 3 (except as otherwise, specifically provided in the Lease) which may arise or become due during the term of this Lease shall be solely the responsibility of, and be paid by, Lessee.

D. Late Charges. If City does not receive any payment of Rent when due (subject in all events to the provisions of Section 21), then in addition to the overdue Rent, Lessee shall pay interest on the payment of Rent then due at the rate of ten percent (10%) per annum. Interest commences on the date the payment of Rent is due and accrues until the payment of Rent has been made. The imposition of interest does not prevent the City from exercising any other rights and remedies under this Lease, including the termination of this Lease.

E. Application of Rent Payments. All payments of Rent that are received by the City from Lessee shall be applied first toward any accrued late payment interest, then to any other charges or fees stated in this Lease that are due and owing, then to any back Rent due and not yet paid, and then to the current Rent.

F. No Obligation to Extend. The Parties expressly acknowledge that in the event Lessee fails to purchase Site 3 pursuant to the terms of the Development Agreement and Purchase Agreement, the City shall not be obligated to extend, renew or otherwise amend this Lease, the Development Agreement, or the Purchase Agreement for any additional terms beyond the Renewal Terms set forth in Section 4(B)(2). In the event the Lease, Development Agreement, or the Purchase Agreement are terminated, expired or otherwise cancelled, Lessee acknowledges any Improvements installed by Lessee upon, over and under the Lease Premises shall become the property of the City without further action or instrument of conveyance. Thereafter Lessee shall have no right, claim or ownership interest in any Improvement then existing on Site 3.

G. Prepayment of Rent. Lessee may prepay Rent owing under this Lease (without penalty or discount); and in the event of each such prepayment, upon request from Lessee, the City shall provide a written statement to Lessee showing the date through which such Rent has been prepaid

5. ACCEPTANCE OF PREMISES.

A. Physical Condition. Lessee has examined Site 3 and accepts it upon signing this Lease in its physical condition at that point in time, normal wear and tear excepted. There are no warranties expressed or implied as to any condition apparent or unknown except as otherwise stated in this Lease, the Development Agreement and the Purchase Agreement. Lessee agrees to make reasonable changes to Site 3 necessary to conform to any federal, state or local law applicable to the Lessee's use of Site 3, and the City warrants that the conditions of Site 3 and all improvements now existing on Site 3, if any, conform to all applicable federal, state and local laws.

B. Condition of Title. Lessee approves the condition of title of Site 3 as of the Effective Date, and the Parties agree and acknowledge that the title exceptions listed in Exhibit ___ to this Lease constitute the only exceptions to the clear and marketable title of Site 3 existing of the Effective Date (the "Exceptions"). The City agrees that it shall not place or permit any additional liens, claims, encumbrances, easements or other exceptions to be placed or recorded against Site 3 during the Term without the express prior written consent of Lessee, which consent may be granted, withheld or conditioned in Lessee's sole, absolute and unfettered discretion; provided, however, that Lessee may place or permit additional liens, claims, encumbrances, easements and other exceptions to be placed or recorded against the Lessee's leasehold interest in Site 3 during the Term ("New Exceptions") without the consent of the City, provided that, at the end of the Term, Lessee, at its sole cost and expense, causes the full release and discharge of all such New Exceptions.

C. Qwest Agreements. Site 3 is encumbered by that certain "Qwest – City of Chandler Development Agreement" dated as of April 22, 2003, and recorded in the records of the Maricopa County, Arizona, Recorder as Instrument no. 2003-0740525 on June 9, 2003, and re-recorded as Instrument no. 2005-0018146 on January 5, 2005; and that certain "Amendment No. 1 to Qwest – City of Chandler Development Agreement dated as of December 30, 2003, and recorded in the records of the Maricopa County, Arizona, Recorder as Instrument no. 2004-0053362 on January 20, 2004; and that certain "Parking Easement and Temporary Construction

Easement” dated as of September 20, 2007, and recorded in the records of the Maricopa County, Arizona, Recorder as Instrument no. 2007-1047310 on September 21, 2007 (collectively, the “Qwest Agreements”). The City represents and warrants to Lessee that all of the construction and related obligations of the City as described and set forth in the Qwest Agreements have been fully performed and discharged by the City, and that the only obligation of the City remaining under the Qwest Agreements is the provision of five (5) parking spaces (the “Parking Obligation”). The City shall indemnify, defend, pay and hold harmless Lessee, and its successors and assigns, for, from and against any and all claims of any party claiming under the Qwest Agreements other than the Parking Obligation.

6. POSSESSION.

The City agrees to deliver possession of Site 3 to Lessee upon request of Lessee by Notice, but in no event later than the Effective Date. If the City shall be unable for any reason to deliver possession of Site 3, or any portion thereof, by the Effective Date, Lessee may, at its election (i) allow the delay in delivery of possession to extend, on a day-for-day basis, all dates for payment and performance set forth in this Lease (including an extension of the Term); (ii) exercise its remedies for default set forth in Section 21 of this Lease; or (iii) terminate this Lease by giving at least thirty (30) days written Notice of such termination to the City, and this Lease shall then terminate without further act by Lessee unless the City shall deliver possession of Site 3 before the effective date of termination specified in the Lessee’s Notice. If Lessee, with the City’s consent, shall have taken possession of all or any part of Site 3 prior to the Lease Start Date, all of the terms and conditions of this Lease shall immediately become applicable.

7. USE OF PREMISES.

Site 3 shall be used only for lawful purposes and as set forth in the Development Agreement between the Parties and only in accordance with all applicable building and zoning codes and regulations. Lessee agrees that it will not disturb the City or any other lessee of the City by making or permitting any unreasonable disturbance, noise, vibration or other condition on or in the premises; provided, however, that the City agrees and acknowledges that Site 3, as improved by Lessee, is intended to accommodate a multi-screen cinema, restaurants, bars and other entertainment venues and facilities, the operation of which during hours customary for such uses shall not be deemed to be a violation of this Section 7.

8. REQUIREMENTS AS TO IMPROVEMENTS.

A. Minimum Improvements. Lessee shall construct those Minimum Improvements as defined in the Development Agreement (“Minimum Improvements”) upon Site 3 and in accordance with the Development Agreement. The construction of the Minimum Improvements shall be deemed completed in accordance with the terms and conditions of the Development Agreement.

B. Survey and Plat.

1. The Lessee, at its expense, shall provide a survey of Site 3 which shall contain a depiction and a narrative legal description of the parcel of real property that is intended to be Site 3, and which shall state the surveyor's determination of the total square footage for Site 3 (the "Survey"). The Survey shall be prepared by a registered land surveyor.

2. In conjunction with the issuance of any building permits required for construction of the Minimum Improvements, Lessee, at its expense, shall submit for development approval, and subsequent recording, a plat of Site 3. In addition to any other requirements for the plat, the plat shall be sufficient to satisfy all requirements under Arizona law for the establishment of a commercial subdivision.

9. RIGHTS-OF-WAY.

The City agrees to grant such rights-of-way or easements across the property of the City reasonably available therefor to permit (1) installation and maintenance of necessary and adequate public utilities and related ancillary services to Site 3; (2) construction of the Project contemplated by the Development Agreement; and (3) full use, possession, and quiet enjoyment of Site 3 in favor of Lessee.

10. RESERVATION OF RIGHTS-OF-WAY.

From and after the Effective Date, and with the prior written consent of Lessee, with such consent not to be unreasonably withheld, conditioned or delayed, the City may grant from Site 3 (at the sole cost and expense of the City) rights-of-way upon, over, across, onto or beneath unimproved areas of the above-described lands for underground pole and wire lines, gas, water and sewage pipes and mains, conduits or any other utilities of all kinds to be constructed and maintained by the City, either in addition to or in the substitution for those now existing, from any point or points and in any direction, and also reasonable rights of entry upon Site 3 for the construction, repair, inspection and maintenance of utilities.

11. UTILITIES AND SERVICES.

Lessee shall pay throughout the Term all charges for all utility services furnished to Site 3, if any, including, but not limited to, light, heat, gas, garbage disposal, electricity, water, and sewer, including any connection fees, and any fire protection, police protection, or emergency health services as furnished by local public safety or utility providers and as may be the subject of a contract between the City and such local public safety or utility providers or as imposed by ordinance or statute. The City and Lessee acknowledge that no utility services will be furnished to Site 3 on a consolidated or joint basis.

12. INSURANCE REQUIREMENT.

In addition to the requirements of Section 13 and Section 20 below, Lessee shall carry comprehensive general liability coverage in the amount of at least \$2,000,000 per occurrence and \$4,000,000 in the annual aggregate.

13. INDEMNIFICATION/LIABILITY INSURANCE.

A. The City, its employees and agents shall not be liable for any injury (including death) to any persons or for damage to any property, regardless of how such injury or damage is caused, sustained or alleged to have been sustained by Lessee or by others (including, but not limited to all persons directly or indirectly employed by Lessee, and any agents, contractors, subcontractors, suppliers, customers or invitees of Lessee) as a result of any condition (including existing or future defects in Site 3), or occurrence (including failure or interruption of utility service) whatsoever related in any way to Site 3 or related in any way to Lessee's use or occupancy of Site 3, so long as such claim does not result from any negligence or willful misconduct of the City, its employees or its agents. In no event shall Lessee be responsible for loss, damage, liability or expense resulting from injuries to third parties caused by the negligence or willful misconduct of the City, its employees or agents.. Where such items of actual or alleged liability, damages, costs or expenses arise from the concurrent negligence of Lessee and the City, it is expressly agreed that Lessee's indemnity obligation under this paragraph shall be effective only to the extent of Lessee's negligence.

B. Lessee shall, at its own expense, maintain proper liability insurance with a reputable insurance company or companies holding a certificate to write insurance business in Arizona in the minimum policy limits set forth in Section 12. The City shall be named as an additional insured on the policies and shall be furnished with a certificate of insurance. This insurance may not be canceled without the insurance company first having given the City thirty (30) days advance written notice of such intent to cancel. Lessee may submit certificates evidencing compliance with this paragraph. Lessee shall furnish the City with evidence of renewal of such policies no less than thirty (30) days before their expiration.

14. WAIVER OF SUBROGATION.

To the extent available under any applicable policy or policies of insurance, the City and Lessee hereby waive all subrogation rights against each other for any loss from perils insured against under their respective insurance contracts, including any extended coverage endorsements thereto, provided, that this Section 14 shall be inapplicable if it would have the effect of invalidating any insurance coverage of the City or Lessee. Each party agrees to cause their respective insurance carriers to include in its policies a waiver of subrogation clause or endorsement.

15. TAXES.

Lessee shall pay, throughout the Term, all license fees and taxes covering or relating to Site 3 and its use, including, without limitation, (a) all taxes assessed and levied against the Minimum Improvements; (b) all amounts due and payable for general or special assessments against Site 3 during the term of this Lease (if assessed during the term of this Lease); and (c) all personal property taxes upon Lessee's fixtures, furnishings, equipment and stock in trade, Lessee's leasehold interest under this Lease or upon any other non-City-owned personal property situated in or upon Site 3. If any governmental authority, other than the City,

at any time levies a tax on rentals payable under this Lease or a tax in any form against the City because of or measured by income derived from the leasing or rental of Site 3, such tax shall be paid by Lessee. Lessee, at Lessee's sole cost and expense, shall have the right to contest any ad valorem or other taxes assessed against any portion of Site 3 or the Improvements.

16. MAINTENANCE AND REPAIR.

A. Lessee shall, at its own expense, keep Site 3 and the Improvements thereon maintained in a neat, clean, safe and sanitary condition. Lessee shall, at its own expense, maintain the landscape and undeveloped areas of Site 3 in a clean, sanitary, orderly and neat condition, and free from rubbish and debris. Lessee shall also, at its own expense, at all times keep Site 3 and the Improvements thereon free from infestation of pests and conditions which might result in harborage for, or infestation of, pests. (Pests shall include, without limitation, rodents, insects and birds in numbers to the extent that a nuisance is created.) Lessee shall keep the glass of all windows and doors on the Improvements clean and presentable, shall maintain and keep Site 3 in a good state of repair, shall commit no waste of any kind, and, without limiting the generality of the foregoing, shall replace all cracked or broken glass in the Improvements, shall keep the electrical system and all drains clean and in a good state of repair, shall protect all sprinkler systems and all pipes and drains so that they will not freeze or become clogged. Lessee shall replace any of the Improvements, or any fixtures or equipment related to the use of the Improvements, which become worn out, deteriorated, unsafe or unusable and shall replace such Improvements, fixtures and equipment with at least as good a quality as was originally constructed and installed. It is an Event of Default if, after the City's written notice of default and a period of thirty (30) days after Lessee receives written notice of default (or such longer period as may be reasonable, if Lessee diligently prosecutes the work and the work requires more than thirty (30) days to complete), Lessee fails to properly maintain, repair and replace Site 3 or any of the Improvements thereon. If Lessee fails to comply with Lessee's responsibilities under this paragraph, the City shall be entitled, but shall not be obligated, to enter Site 3 and perform the work necessary to maintain, repair or replace Site 3 and the Improvements to the conditions set forth herein. The cost of such repairs shall be billed to Lessee by the City and shall be payable upon receipt and subject to the same penalties for late payment as if such payment was additional rent.

B. Lessee shall keep the fee title of Site 3 free and clear of any liens and encumbrances arising out of or otherwise related to the use and occupancy of Site 3 or Improvements by Lessee. Lessee shall also keep Site 3 and Improvements free and clear of all mechanics' liens incurred by or resulting from acts of Lessee. At the City's request, Lessee shall furnish the City with written proof of payment of any item that would or might constitute the basis for such a lien on Site 3 or Improvements if not paid. If any mechanics' lien is filed, Lessee at its sole cost and expense shall institute an action to cause the removal or discharge of such lien or other procedures to ensure the prompt removal thereof, after the City first orders the lienor to release the lien under Arizona law providing that public property is not subject to mechanics' liens.

C. Lessee shall also be wholly responsible to maintain and repair the structural integrity (including foundations, bearing columns, bearing walls and exterior walls)

and the roof of any building or other structure that is one of the Improvements, and to maintain and repair utility services and lines, located on Site 3. Lessee shall have no right to claim any monies or charges incurred for maintenance and repair of on-site utilities as a deduction or offset against the rent or other charges Lessee is obligated to pay to the City under the Lease. Lessee acknowledges that Lessee has inspected Site 3 and accepts Site 3 "as is, where is," subject to Section 5 and the Survey.

17. ALTERATIONS AND IMPROVEMENTS.

Following construction of the Minimum Improvements, Lessee may make such alterations or improvements to or upon Site 3 as may be permitted by Applicable Law, including the applicable zoning classification and the City's building codes.

18. DISPOSITION OF IMPROVEMENTS.

Lessee is the sole owner of the Improvements constructed on Site 3 during the Term. Upon the expiration of the Lease term or earlier termination of the Lease, Lessee shall surrender and deliver Site 3 and any Improvements to the City, without delay and where is, as is, excepting only Lessee's, any assignee's or any sublessee's trade fixtures, machinery, equipment and personal property. Lessee shall also deliver to the City all documents in Lessee's custody or control necessary or appropriate for the proper operation, maintenance and management of Site 3 and the Improvements. Title to the Improvements shall automatically pass to the City, free of any right, title, and interest of Lessee therein, or its successors or assigns, without the necessity of executing any further instrument and without any allowance, compensation, or payment by the City. Effective for all purposes only upon and after expiration or termination of this Lease, Lessee, for itself and for any assignee, sublessee or other person claiming to have succeeded to any of Lessee's interest in Site 3, grants and conveys to the City all of Lessee's right, title and interest in and to Site 3 and the Improvements. Notwithstanding the foregoing, Lessee agrees to execute, acknowledge and deliver to the City at or prior to the expiration or termination of the Lease a proper recordable instrument prepared by the City quit claiming and releasing to the City any right, title and interest of Lessee in and to Site 3 and the Improvements thereon. The City shall take all of Lessee's rights, title, and interest in and to Site 3 and the Improvements "where is and as is," subject to all defects known or unknown, and without any warranty, express or implied.

19. INSPECTION.

The City, at any and all times throughout the term of this Lease, upon ten (10) days' Notice to Lessee, may inspect Site 3, provided that it shall not interfere unduly with Lessee's operations or those of its sub-lessees, employees or agents. The right of inspection reserved to the City hereunder shall impose no obligation on the City to make inspections to ascertain the condition of Site 3, and shall impose no liability upon the City for failure to make such inspections.

20. RESTORATION.

A. At all times during the term of this Lease, Lessee shall maintain in effect upon Site 3 and the Minimum Improvements, fire and extended coverage property insurance for physical loss and damage excluding earthquake insurance and flood insurance, written by companies authorized to do business in the State of Arizona. Such policy or policies (i) shall be written in the form of replacement cost insurance in an amount not less than 100% of the full replacement cost of the Improvements, which amount shall be adjusted not less frequently than annually, (ii) shall contain an endorsement waiving any and all rights of subrogation against the City, and (iii) shall provide that notice of cancellation of the policy or any endorsement shall be given to the City and any other party designated by the City at least ten (10) days prior to cancellation. The City and each other party with an insurable interest in the property designated by the City in writing shall be named as additional insureds and loss payees on all such policies. Lessee shall provide the City and any other proper party designated by the City in writing with certificates of insurance evidencing such coverage and shall provide evidence of renewal at least thirty (30) days prior to the expiration of such policy or policies. Lessee shall also take out and maintain policies of insurance to cover the loss, damage or destruction of Lessee's furniture, fixtures, equipment and other items owned by Lessee on Site 3, with limits based on the reasonable value thereof.

B. If the Improvements, or any part of any Improvements, are damaged or destroyed by fire or other casualty during the term of this Lease, Lessee may, at its option and at its own cost and expense, repair or restore the same according to the original plans thereof or according to such modified plans as shall be previously approved in writing by the City, which approval shall not be unreasonably withheld. The repair or restoration work shall be commenced within ninety (90) days after the issuance of all applicable permits for such restoration work and shall be completed with due diligence but not longer than eighteen (18) months after the damage or loss occurred, and the work shall be done in accordance with the requirements of this Lease pertaining to construction of the Improvements upon Site 3. The date for initiating and/or completing any repair or restoration shall be extended as necessary for delays beyond Lessee's reasonable control. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration, or if Lessee elects not to repair or restore, to the cost of removing, demolishing, or clearing off the Improvements to the extent necessary to complete these tasks. If (i) there are no insurance proceeds, or (ii) the available insurance proceeds are insufficient for purposes of repair, restoration or removal of the Improvements, then Lessee shall make up the deficiency out of Lessee's own funds. If Lessee fails, refuses or makes no reasonable effort to make the repair or restoration of the Minimum Improvements, as hereinabove provided, then the failure, lack of reasonable effort, or refusal shall constitute an event of default under the covenants and conditions hereof. If Lessee chooses to remove, demolish or clear off the damaged Minimum Improvements as hereinabove provided, then the Lessee shall purchase Site 3 in accordance with the Development Agreement and Purchase Agreement within six (6) months of the date on which the damage or loss occurred.

C. Notwithstanding anything to the contrary contained in the preceding section, if any building that is one of the Improvements is damaged by fire or other casualty, and if the cost of repairing or restoring the same exceeds the insurance payable for such damage, and if the damage occurs during the term so that the remaining term of this Lease is of insufficient

length to allow Lessee to finance the cost in a commercially reasonable manner, the Lessee shall have the option, to be exercised within thirty (30) days after such event, to repair or restore the Minimum Improvements as herein above provided or to terminate this Lease by written notice to the City.

21. DEFAULTS.

A. In the event of the failure of Lessee to pay the Rent, interest or other charges provided in this Lease at the time and in the manner herein specified, or to keep any of Lessee's covenants or agreements herein, or Lessee's breach of the Development Agreement, the City may elect to terminate this Lease and re-enter and take possession of Site 3 with or without process of law, provided, however, that Lessee shall be given fifteen (15) days' Notice if the default is for the nonpayment of rent or other monetary default, or sixty (60) days' Notice for any other default, stating the nature of the default in order to permit such default to be remedied by Lessee within the applicable time period. If the City issues a Notice of default for the nonpayment of Rent, in order to cure such default, Lessee must pay the overdue Rent, together with interest as set forth in Section 4 above, plus a Fifty Dollar (\$50.00) lease reinstatement fee.

B. If upon such re-entry there remains any personal property of Lessee or of any other person upon Site 3, the City may, but without the obligation to do so, remove said personal property and hold it for the owners thereof or may place the same in a public garage or warehouse, all at the expense and risk of the owners thereof, and Lessee shall reimburse the City for any expense reasonably incurred by the City in connection with such removal and storage. The City shall have the right to sell such stored property, without notice to Lessee, after it has been stored for a period of thirty (30) days or more, the proceeds of such sale to be applied first to the cost of such sale, second to the payment of the charges for storage, and third to the payment of any other amounts which may then be due from Lessee to the City, and the balance, if any shall be paid to Lessee. Notwithstanding any such re-entry, the liability of Lessee for the full rental provided for herein shall not be extinguished for the balance of the term of this Lease, and Lessee shall make good to the City any deficiency arising from a reasonable, good-faith reletting of Site 3 at a lesser rental than that chargeable to Lessee. Lessee shall pay such deficiency each month as the amount thereof is ascertained and invoiced by the City. Payment by Lessee to the City of interest on rents and/or any other charges due and owing under this Lease shall not cure or excuse Lessee's default in connection with rents and/or other charges. All remedies of the City hereunder are cumulative and not alternative.

C. Notwithstanding a default by Lessee, in the event that a subtenant agrees to attorn to the City and thereafter makes timely its payment of rent (and other sums required to be paid to Lessee by the terms of such subtenant's sublease with Lessee) to the City, the City will not disturb the tenancy of such subtenant and shall assume the rights and obligations of Lessee under such subtenant's sublease.

D. If the City materially breaches any of its covenants in this Lease or breaches the City's covenant of quiet enjoyment of Site 3, Lessee shall have any remedy available at law or in equity, including (but not limited to) the right to sue for damages, the right to seek relief in the nature of mandamus, injunction and specific enforcement, and the right to

terminate this Lease. Before filing suit, Lessee shall give the City thirty (30) days' Notice stating the nature of the default or breach in order to permit the City to remedy the default or breach within the thirty (30) days.

E. It is a default of this Lease (i) in the event Lessee has defaulted on any of its obligations with respect to the Development Agreement or the Purchase Agreement and (ii) in the event the City has defaulted on any of its obligations with respect to the Development Agreement or the Purchase Agreement.

F. Notwithstanding anything in this Section 21 to the contrary, in the event of a default by Lessee prior to the issuance of a Certificate of Completion (as defined in the Development Agreement), the City's sole remedy shall be as set forth in Section 8.2 of the Development Agreement.

22. ADVANCES BY CITY FOR LESSEE.

If Lessee shall fail to do anything required to be done by it under the terms of the Lease, except to pay Rent, the City may, at its sole option, do such act or thing on behalf of Lessee, and upon Notice to Lessee of the cost thereof to the City, Lessee shall promptly pay the City the amount of any such cost to the extent it has been reasonably incurred. However, if the City shall pay any monies on Lessee's behalf, Lessee shall repay such monies, together with interest thereon commencing on the date the City paid such monies and calculated at the rate of ten percent (10%) per annum.

23. HOLDING OVER.

If Lessee shall, without the consent of the City, hold over after the expiration or sooner termination of this Lease, the resulting tenancy shall, unless otherwise mutually agreed, be on a month-to-month basis. During such month-to-month tenancy, Lessee shall pay monthly Rent to the City at the rate of ten (10) times the then-current Rent under the terms of the Lease, unless a different rate shall be agreed upon in writing, and the Lessee shall be bound by all of the additional provisions of this Lease.

24. ASSIGNMENT AND SUBLEASING.

The City acknowledges that the Minimum Improvements are going to be subleased to subtenants by Lessee, and that Lessee will not (although is permitted to do so) be occupying the Minimum Improvements. Following Completion of Construction (as defined in the Development Agreement) of the Minimum Improvements, and further provided that Lessee is not in default of any term or condition of this Lease or the other Project Documents, Lessee may assign or transfer (including any assignment or transfer for security purposes) its entire interest in this Lease to any person assuming, in writing, all of Lessee's rights and obligations under this Lease without the consent of the City. The City consents to the assignment of this Lease (or any interest herein) for security purposes to a bona fide lender, and agrees to execute a non-disturbance, recognition and attornment agreement in favor of such lender in a form

materially similar to that attached hereto as Exhibit "B," or such other form requested by lender that is reasonable and customary for such loans.

25. COMPLIANCE WITH CITY REGULATIONS/ALL LAWS.

Lessee agrees to comply with (i) all laws, rules and regulations of the City of general applicability pertaining to the construction, use, occupancy and maintenance of Site 3 and the Improvements now in existence or hereafter promulgated for the general health, welfare, safety and convenience of the City, its various lessees, invitees, licensees and the general public; and (ii) all applicable federal and state laws, ordinances and regulations, including, without limitation, those relating to environmental matters, and Americans with Disabilities Act (collectively, "Applicable Laws"), and to indemnify the City for any liability, damages, costs or fees incurred by the City due to Lessee's failure to comply with the requirements of this section. Costs and fees shall include all reasonable direct and indirect costs and professional fees, including engineering and attorney's fees. Any fees for any federal, state or local inspections and/or certificates required for use and occupancy of Site 3 shall be paid by Lessee.

26. HAZARDOUS SUBSTANCES.

A. Lessor certifies, represents, warrants, covenants and agrees that it knows of no generation, recycling, treatment, use, sale, storage, handling, transport and disposal of any Hazardous Substances (as defined below) by the City or any prior occupant on Site 3.

B. Lessee certifies, represents, warrants, covenants and agrees that, for itself and its contractors, subcontractors and agents, Lessee will comply with all applicable local, state and federal environmental laws, regulations, ordinances and administrative and judicial orders relating to the generation, recycling, treatment, use, sale, storage, handling, transport and disposal of any Hazardous Substances by any person on Site 3. Lessee will not, without the City's prior written consent, keep on or around Site 3, for use, disposal, treatment, generation, storage, or sale, any Hazardous Substances.

C. Lessee shall be responsible for applying for and obtaining all necessary federal, state or local governmental permits or approvals for the use of Site 3; shall not commence any activity on Site 3 until all permits or approvals required for such activity have been issued; and shall conduct all of its activities on Site 3 in full compliance with all applicable permits and approvals.

D. "Hazardous Substances" shall mean those chemicals, compounds and other substances whose use and disposal are regulated by federal or state law and are understood (if improperly used or disposed of) to pose a risk to the environment or to the health of individuals or animals.

27. INSPECTIONS AND NOTICE OF CHANGE.

Upon at least ten (10) business days' Notice to Lessee, the City may inspect Site 3, and the improvements on Site 3, in the event that the City reasonably and in good faith determines that a default exists with respect to the physical condition of the improvements or with the use or occupancy of the improvements. No such inspection shall materially or adversely interfere with the business or operations of any sub-tenant of Lessee.

28. EMINENT DOMAIN.

If Site 3 is taken or condemned for any public purpose to such an extent as to render Site 3 untenable, Lessee shall have the option to terminate this Lease effective as of the date of the taking or condemnation, which shall be the earlier of the date that a final order of condemnation is recorded or the date possession is taken by the condemning authority. If the taking or condemnation does not render Site 3 untenable in whole or in part, this Lease shall continue in effect, and the Lessee shall promptly restore the portion not taken to the extent possible to the condition existing before the taking. If, as a result of such restoration, the area size of Site 3 is reduced, Rent in the three Renewal Terms shall be reduced proportionately. Lessee shall be entitled to any award relating to the value of Lessee's interest in this Lease, as well as all relocation benefits and assistance and to all payments for Lessee's trade fixtures or other personal property. The City and further Lessee acknowledge that Lessee shall be entitled to all portions of an award attributable to any of the Improvements. A voluntary sale or conveyance in lieu of but under the threat of lawful condemnation shall be considered a taking or condemnation for public purpose and shall include the City's use of Site 3 for any public purpose in connection with the operation of the business of the City as a municipal government.

29. INSOLVENCY.

If Lessee shall solicit acceptances of a plan of reorganization to be filed in any subsequent case under the United States Bankruptcy Code, 11 U.S.C. Secs. 101-1330, as hereafter amended or any successor statute thereto (the "Bankruptcy Code"); negotiate with one or more creditors for any workout, including, but not limited to, an extension agreement, composition agreement, standoff, standby, or standstill agreement whereby the creditors agree to forbear in any fashion from their rights to collect a debt of Lessee; cease to pay Lessee's debts as they come due; admit in writing the inability to pay its debts as they come due; make an assignment for the benefit of creditors; become a party to any liquidation or dissolution action or proceeding; have appointed (voluntarily or involuntarily), a trustee, custodian, receiver, conservator, or liquidator for Lessee or for a significant portion of Lessee's assets; have entered against it any order by a district court or bankruptcy court of the United States or any of its territories that dismisses a voluntary petition under the Bankruptcy Code because the bankruptcy petition was filed in bad faith; have entered against it an order, judgment, or decree; have any of its assets levied against by writ of execution, attachment (including pre-judgment attachment), garnishment, recording of a judgment or any similar process whereby a creditor seeks to obtain a legal right to dispose of particular assets of Lessee to satisfy to any extent a debt of the Lessee to the creditor; file a voluntary petition under the Bankruptcy Code or have filed against it an involuntary petition under the Bankruptcy Code creating any automatic stay or other injunctive force protecting the assets of Lessee from the immediate collection actions of a creditor (where

such involuntary petition is not subsequently dismissed within 60 days in response to pleadings filed by the Lessee by entry of an order of any district court or bankruptcy court of the United States or any of its territories); have appointed voluntarily or involuntarily, a trustee, custodian, or examiner with special powers by any district court or bankruptcy court in the United States or any of its territories; admit in answer filed in response to an involuntary petition filed under the Bankruptcy Code that Lessee is insolvent because Lessee's assets are exceeded by Lessee's debts or that Lessee is unable to pay Lessee's debts as they come due; then, in the event any of the foregoing shall occur, the City may, at its option, terminate this Lease.

30. REASONABLE ATTORNEY'S FEES AND COSTS.

If a dispute arises between the parties as to the effect of any provision herein and the dispute is referred to an attorney and legal proceedings are commenced, whether for enforcement in court or for decision under arbitration, the losing party shall pay the prevailing party's actual and reasonably incurred attorneys' fees; costs of court or arbitration, including such fees and costs of any appeal; other reasonable legal expenses; and collection costs, provided that the amount of such fees, costs or expenses taken separately or in the aggregate, shall not be unreasonable. If such dispute arises and is later settled by the parties, such settlement shall include a specific allocation of disposition of attorney's fees on both sides.

31. JOINT AND SEVERAL LIABILITY.

Each and every party who signs this Lease, other than in a representative capacity, as Lessee, shall be jointly and severally liable hereunder.

32. INVALIDITY OF PARTICULAR PROVISIONS.

Except as provided in the last sentence of this Section 32, if any term or provision of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the term or provision may be modified to the minimum extent necessary to delete the invalid or unenforceable language and this Lease shall be deemed reformed accordingly, and the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect. Notwithstanding the foregoing, if any provision of the Lease conferring the right on Lessee to possess Site 3 is declared invalid or unenforceable, and Lessee is dispossessed of Site 3, then no other provision of the Lease will be valid or enforceable, except those provisions that survive termination or expiration of the Lease.

33. FORCE MAJEURE.

If either party is delayed or prevented from the performance of any duty or obligation under this Lease by reason of acts of God, strikes, lockouts, labor troubles, failure or refusal of governmental authorities to timely issue permits or approvals or conduct reviews or inspections, civil disorder, inability to procure materials, restrictive governmental laws or regulations, or other causes beyond the control of the party obligated (financial inability

excepted), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; provided, however, nothing herein shall excuse Lessee from the prompt payment of rent or any other sum or the City from tendering Site 3 upon execution of this Lease.

34. NOTICES.

A. Notices. Except as otherwise required by law, any notice, demand or other communication required to be given by this Agreement (each, a “Notice”) shall be in writing and shall be given by (i) personal delivery; (ii) by certified or registered U.S. Mail, return receipt requested; or (iii) or by any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), with all postage and other delivery charges prepaid and addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this paragraph:

To City: City of Chandler
Economic Development Office (MS 416)
P. O. Box 4008
Chandler, AZ 85244-4008
Attention: Kim Moyers
Downtown Redevelopment Manager
Phone: 480-782-3035
Facsimile: 480-782-3040

With a copy to: City of Chandler
City Attorney’s Office
P. O. Box 4008
Chandler, AZ 84244-4008
Attention: Kay Bigelow
Phone: 480-782-4642
Facsimile: 480-782-4652

To Lessee: VPK The Row, LLC
Attention: David C. Scholl
2502 East Camelback Road, Suite 214
Phoenix, AZ 85016

With a copy to: VPK The Row, LLC
c/o Kitchell Development Company
1707 East Highland, Suite 100
Phoenix, AZ 85016

With a copy to: Dickinson Wright PLLC
Attention: Gary L. Birnbaum
1850 North Central Avenue, Suite 1400
Phoenix, AZ 85004

B. Effective Date of Notices. Any Notice will (i) if delivered personally or delivered through a same day delivery/courier service be deemed effective upon delivery or refusal to accept delivery by the addressee; and (ii) if delivered by U.S. mail in the manner described above be deemed effective upon the earlier of receipt or three (3) business days after deposit in a post office operated by the United States or with a United States postal officer; and (iii) if sent by a recognized national overnight delivery service be deemed effective one (1) business day after deposit with such service. Notwithstanding the foregoing, no payment shall be deemed to be made until actually received in good and available funds by the intended payee. The Parties hereby acknowledge and agree that any Notice transmitted solely by facsimile or by electronic mail shall be deemed ineffective.

35. WAIVER.

The acceptance of Rent by the City for the period or periods after a default by Lessee hereunder shall not be deemed a waiver of such default unless the City shall so indicate in writing. No waiver by the City of any default hereunder by Lessee shall be construed to be or act as a waiver of any subsequent default by Lessee. After any default has been cured by Lessee, it shall not thereafter be used by the City as a ground for the commencement of any action under the provisions of Section 21.

36. MISCELLANEOUS.

A. Arizona Law. This Lease shall be construed in accordance with the laws of the State of Arizona, without reference to principles of conflict of laws.

B. No Partnership or Joint Venture. Nothing contained in this Lease shall be deemed to create any relationship other than that of landlord (the City) and tenant (Lessee).

C. Amendments. No alteration, amendment, change or addition to this Lease shall be binding upon the City or Lessee unless reduced to writing and signed by the party or parties to be charged.

D. Exhibits. Exhibits attached hereto shall by this reference be deemed a part of this Lease as if set forth herein.

E. Captions. The various headings and numbers herein and the grouping of the provisions of this Lease into separate articles and sections are for the purpose of convenience only and shall not control the meaning or construction of any of the provisions.

F. Time. Time is of the essence. If any time period provided for herein expires on a Saturday, Sunday, legal holiday or holiday of the City, such time period shall be extended to the next succeeding day that is not a Saturday, Sunday, legal holiday or holiday of the City.

G. No Third-Party Rights. Except as expressly provided herein for a mortgagee and as to binding effect upon successors and assigns, no term of this Lease is intended to or shall be for the benefit of any person not a party to this Lease, and no such other person shall have any right or cause of action hereunder.

H. Authority to Execute. Any individual executing this Lease on behalf of or as representative for a corporation, limited liability company or other person, partnership or entity, is deemed to have represented and warranted that he or she is duly authorized to execute and deliver this Lease on behalf of such party and that this Lease is binding upon such party in accordance with its terms.

I. Binding on Successors and Assigns. Each of the provisions of this Lease shall be binding, extend to and inure to the benefit of the respective heirs, legal representatives, and successors and assigns of both the City and Lessee, subject to any restrictions on transfers set forth herein.

J. Impartial Interpretation. This Lease is the result of limited negotiations between the City and Lessee, and therefore the language contained in this Lease shall be construed as a whole according to its fair meaning and not strictly for or against either the City or Lessee.

37. EARLY TERMINATION.

This Lease shall automatically terminate upon the full performance of the Purchase Agreement.

LESSOR:
City of Chandler, an Arizona municipal corporation

LESSEE:
VPK The Row, LLC, an Arizona limited liability company

By: _____
Its: Mayor

By: _____
Its: _____

ATTEST:

City Clerk

Approved as to Form:

City Attorney

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing Ground Lease was acknowledged before me this ____ day of _____, 2015, by _____, the Mayor of the City of Chandler, an Arizona municipal corporation, for the municipal corporation, being authorized so to do.

EXHIBIT B

When recorded, return to:

=====

NON-DISTURBANCE AND RECOGNITION AGREEMENT

=====

THIS NON-DISTURBANCE AND RECOGNITION AGREEMENT (this “**NDRA**”) is made as of the ___ day of _____, 20___, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, by and among: (a) VPK THE ROW, LLC, an Arizona limited liability company (“**Developer**”); (b) _____ (“**Lender**”); and (c) City of Chandler, Arizona, an Arizona municipal corporation (“**City**”).

1. Recitals.

1.1 Developer is the present Lessee under a Lease entered into with the City, dated October ___, 2015, and recorded in the Official Records of Maricopa County, Arizona, at _____ (the “**Lease**”), which Lease sets forth certain rights and responsibilities of Developer with respect to certain real property referred to in the Lease as Site 3 and more particularly described in Exhibit “A” attached hereto (the “**Property**”).

1.2 Developer and the City have also entered into a Development Agreement dated October ___, 2015, and recorded in the Official Records of Maricopa County, Arizona, at _____ (the “**Development Agreement**”), which sets forth certain additional rights and responsibilities of Developer with respect to the Property.

1.3 Lender has agreed to lend money to Developer, and Developer will execute certain loan documents (the “**Loan Documents**”) including but not limited to a *Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Financing Statement* for the use and benefit of Lender (the “**Deed of Trust**”) and a *Collateral Assignment of Rights under Development Agreement* (the “**Assignment**”) to secure the loan from Lender to Developer (the “**Loan**”). The Deed of Trust and the Assignment will be recorded in the Official Records of Maricopa County, Arizona, and will encumber the Property.

1.4 Lender has certain rights under the Loan Documents in the event of a Default by Developer of its obligations either under the Loan Documents or the Lease, including but not limited to the right of Lender to be substituted for Developer under the Lease and to assume Developer’s position with respect to the Lease; and the Lease that a Lender may be allowed to

assume Developer's rights and obligations (collectively, "**Developer's Position**") with respect to the Lease.

1.5 Accordingly the parties have executed this NDRA to be effective as of the date set forth above.

2. Subordination. Subject only to the specific provisions of (i) Section 3 hereof regarding the right of Lender to assume Developer's Position with respect to the Lease and (ii) Section 4 hereof regarding non-disturbance and recognition, all rights of Developer and Lender under the Deed of Trust are and shall continue to be junior, inferior, subject and subordinate to the Lease, as it may hereafter be modified, amended, restated or replaced.

3. Notice of Developer Default.

3.1 City shall give Lender written notice of any Event of Default by Developer (the "**Notice**") under the Lease (as the Lease exists as of the date of this NDRA), prior to terminating the Lease or invoking such other remedies as may be available to City under the Lease.

3.2 Lender shall have the option, following Lender's receipt of the Notice, and within the time period set forth herein for curing an Event of Default of Developer, in its sole election either: (a) to cure the Event of Default of Developer, in which event Developer shall retain its position with respect to the Lease; or (b) in addition to any other remedies available to Lender under law, equity or contract (including but not limited to the Deed of Trust and the Assignment) to assume Developer's Position with respect to the Lease (to "**Assume**" or an "**Assumption**"). Lender shall give written notice to City of its intention to Assume on or before the expiration of any applicable cure period available to Lender.

3.3 If Lender agrees to Assume Developer's Position with respect to the Lease, Lender and City shall execute an amendment to the Lease (an "**Amendment**") and shall cause the Amendment to be recorded in the Official Records of Maricopa County, Arizona. The Amendment shall state that Lender has fully assumed Developer's Position with respect to the Lease, and that Lender is thereafter substituted for Developer with respect to all payment and performance rights and responsibilities arising under or in connection with the Lease. The execution or approval by Developer of the Amendment shall not be necessary or required, and upon execution and recordation of the Amendment, City shall (i) look to Lender and/or Developer for performance of the Obligations under the Lease and (ii) make to Lender all payments, and render all performance required to be made by the City, required to be made to Developer under the Lease.

3.4 In connection with (i) any foreclosure by Lender (whether by notice or judicially) of the Deed of Trust, or any other acquisition by Lender of the Property in lieu of such foreclosure (collectively, a "**Foreclosure**") and (ii) the transfer of the Property to a third-party purchaser or purchasers (by way of illustration and not in limitation, a purchaser or purchasers at a trustee's sale conducted pursuant to A.R.S. §33-810) concurrently with such Foreclosure or thereafter (a "**Purchaser**"), the Developer's Position under the Lease shall accompany and be deemed covenants running with the Property, and the Purchaser shall be deemed to have assumed Developer's Position with respect to the Lease. Upon the acquisition of the Property by

a Purchaser, City shall (i) look to Purchaser and/or Developer for performance of the Obligations under the Lease and (ii) make to Purchaser all payments, and render all performance required to be made by the City, required to be made to Developer under the Lease.

3.5 Until an Assumption as defined herein, nothing in this NDRA shall constitute an assumption by Lender of any Obligation. Developer shall continue to be liable for all of the Obligations thereunder and shall perform all such Obligations, shall comply with all terms and conditions of the Lease applicable to Developer, and shall take such steps as may be necessary or appropriate to secure performance by the City under the Lease.

3.6 Whether before or after an Assumption as defined herein, nothing in this NDRA shall constitute a release of Developer of any Obligation.

4. Nondisturbance and Recognition.

4.1 In the event that City institutes any proceedings to enforce the Lease, City agrees that, so long as Lender is not in default (beyond any applicable cure period provided to Lender under this NDRA) under the Lease:

4.1.1 City shall not interfere with or disturb Lender's rights under the Lease and this NDRA; and

4.1.2 Lender shall not be made a party to any proceeding commenced pursuant to the Lease, unless Lender is determined to be a necessary party for purposes of maintaining the action or securing other necessary relief not involving the termination of Lender's interest under the Deed of Trust or the Assignment, provided that nothing herein shall prevent City from giving any required notice to Lender.

4.2 Upon and following an Assumption, Lender shall recognize the City's rights under the Lease for the balance of the Term thereof. The recognition described in this Section 4.2 shall automatically become effective upon an Assumption by Lender.

5. Estoppel

5.1 City and Developer hereby confirm to Lender that as of the date of this NDRA and to the best of their respective actual knowledge:

- a) There is no Event of Default applicable to either City or Developer under the Lease;
- b) The Lease has not been assigned, modified or amended in any way except as set forth in Recital 1.1;
- c) The Lease is in full force and effect; and

6. Miscellaneous.

6.1 This NDRA shall be binding upon and inure to the benefit of City, Developer and Lender and their respective successors and assigns, including, without limitation, any successful bidder at any judicial foreclosure or trustee's sale.

6.2 The Lease shall not be amended without Lender's prior written consent.

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

If to City:

With required copies to:

If to Developer:

With required copies to:

If to Lender:

With Copy to:

Any notice sent by United States Postal Service certified or registered mail shall be deemed to be effective the earlier of the actual delivery, or three (3) business days after deposit in a post office operated by the United States Postal Service. Any notice sent by a recognized national overnight delivery service shall be deemed effective one (1) business day after deposit with such service. Any notice personally delivered or delivered through a same-day delivery/courier service shall be deemed effective upon its receipt or refusal to accept receipt by the addressee. Any party may designate a different person or entity or change the place to which any notice shall be given as herein provided, by giving notice to the other parties as provided in this Section 6.2.

6.4 This NDRA is delivered in and relates to property located in Maricopa County, Arizona, and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws and judicial decisions of the State of Arizona (regardless of Arizona conflict of laws principles or the residence, location, domicile or place of business of the parties and their constituent principals) and applicable federal laws, rules and regulations.

6.5 This NDRA integrates all of the terms and conditions of the parties' agreement regarding the subordination of the Deed of Trust and Lender's interest thereunder to the Lease, and supersedes all prior oral or written agreements with respect to such subordination (only to the extent, however, as would affect the priority between the Lease and the Deed of Trust). This NDRA may not be modified or amended except by a written agreement signed by the parties or their respective successors in interest.

6.6 This NDRA may be executed and acknowledged in one or more counterparts, each of which may be executed by one or more of the signatory parties. Signature and notary pages may be detached from the counterparts and attached to a single copy of this NDRA physically to form one legally effective document.

6.7 This NDRA is subject to, and may be terminated by the City in accordance with, the provisions of A.R.S. §38-511.

6.8 Each party to this NDRA represents and warrants to the others that all necessary company, corporate and/or governmental approvals, consents and authorizations have been obtained prior to the execution of this NDRA by such party, and that the person executing this NDRA on behalf of such party is duly authorized to do so to bind such party.

6.9 Capitalized terms not defined herein shall have the definitions set forth in the Lease.

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY

IN WITNESS WHEREOF, the parties hereto have each caused this NDRA to be executed on or as of the day and year first above written.

“CITY”

CITY OF CHANDLER, an Arizona municipal corporation

By: _____

Its: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

“DEVELOPER”

VPK THE ROW, LLC, an Arizona limited liability company

By: _____

Name: _____

Its: _____

“LENDER”

_____,
a(n) Arizona _____

By: _____

Name: _____

Its: _____

Acknowledgment by City

=====
STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing was acknowledged before me this day of _____, 20____, by _____, the City _____ of the City of Chandler, on behalf of the City.

Notary Public

My Commission Expires: _____

Acknowledgment by Developer

=====
STATE OF ARIZONA)
) ss.
County of _____)

The foregoing was acknowledged before me this day of _____, 20____, by _____, the Manager of VPK The Row, LLC, an Arizona limited liability company, on behalf of the limited liability company.

Notary Public

My Commission Expires: _____

Acknowledgment by Lender

=====
STATE OF ARIZONA)
) ss.
County of _____)

The foregoing was acknowledged before me this day of _____, 2006, by _____, the _____ of _____, a _____, on behalf of the _____.

Notary Public

My Commission Expires: _____

Exhibit C-2
PURCHASE AND SALE AGREEMENT

**REAL ESTATE PURCHASE AND SALE AGREEMENT
AND
JOINT ESCROW INSTRUCTIONS**

This Real Estate Purchase and Sale Agreement and Joint Escrow Instructions (the "Agreement") is made and entered into this ___ day of _____, 20__, ("Effective Date") by and between the CITY OF CHANDLER, an Arizona municipal corporation ("Seller") and VPK THE ROW, LLC, an Arizona limited liability company, or its successor or assign under any of the Project Documents as defined below ("Buyer"). Seller and Buyer shall be referred to in this Agreement, collectively as "Parties," and individually as a "Party."

AGREEMENT

1. RECITAL.

This Agreement is part of a transaction between Seller and Buyer in which Seller (as Lessor) has leased certain real property ("Site 3") to Buyer (as Lessee) pursuant to a Ground Lease (the "Lease") executed and dated concurrently with a Development and Option Agreement (the "Development Agreement"), and upon which Buyer has proposed to construct certain improvements and procure certain uses (the "Project") pursuant to the Development Agreement between Seller (named in such document as the City) and Buyer (named in such document as the Developer). This Agreement, which has been executed as of the Effective Date, will be delivered to the Escrow Holder (with Notice of such delivery to Seller) when Buyer is ready to purchase Site 3 as set forth in Section 4 of the Development Agreement. Accordingly, the Parties intend that this Agreement, the Lease and the Development Agreement (collectively, the "Project Documents") be construed harmoniously in order to give full effect to the intentions of the Parties with respect to the leasing, development and purchase of Site 3 as reflected by the Project Documents. Although this document has been entered into as of the Effective Date to bind the Parties as of the Effective Date, Buyer's ability to purchase Site 3 is subject to certain terms and conditions set forth in the Development Agreement, and the purchase of Site 3 by Buyer is anticipated by the Parties to occur at a future date during the Term (as defined in the Lease) of the Lease. In the event of any conflict or ambiguity arising from the Project Documents, the Project Documents shall control in the following order of precedence: first, the Development Agreement; second, the Lease; and third, this Agreement.

2. PURCHASE AND SALE.

Subject to the terms and conditions of this Agreement and Buyer's compliance with the terms and conditions of the Development Agreement and Lease, Seller agrees to sell, and Buyer agrees to purchase, all of Seller's right, title and interest in and to that certain real property located in Maricopa County, Arizona, referred to in this Agreement as Site 3 and legally described on Exhibit A.

2. PURCHASE PRICE.

The Initial Purchase Price for Site 3 is One Million Ten Thousand and no/100 Dollars (\$1,010,000.00), subject to certain adjustments as set forth in Section 4 of the Development

EXHIBIT C-2

Agreement (the "Purchase Price"), payable in cash, certified or bank cashier's check, or a confirmed wire transfer of funds.

3. PAYMENT OF PURCHASE PRICE. The Purchase Price shall be payable by Buyer as follows:

(A) Fifty Five Thousand Dollars (\$55,000.00), as Earnest Money Deposit (the "Deposit") to be deposited by Buyer with Escrow Holder (defined below), in cash, certified or bank cashier's check, or wired funds, within one (1) business day of delivery to Escrow Holder of a fully executed original Agreement. The Deposit shall be refundable to Buyer, except as otherwise set forth in the Agreement. Escrow Holder is instructed to hold and not to disburse to Seller any part or all of the Deposit until the Close of Escrow occurs, or unless it is otherwise authorized by this Agreement, or by written instruction signed by both the Seller and Buyer. The Deposit shall be applied as a credit in partial payment towards the Purchase Price at Close of Escrow (defined below); and

(B) Unless this Agreement and Escrow related thereto have been properly cancelled pursuant to the terms of this Agreement, Buyer shall deposit with Escrow Holder no later than the Close of Escrow in cash or a certified or bank cashier's check or confirmed wire transfer of funds made payable to Escrow Holder for the benefit of Seller the balance of the Purchase Price, plus Escrow Holder's estimate of all Buyer's costs, charges, and assessments as provided in Section 7(C) of this Agreement.

4. ESCROW.

For purpose of this Agreement, the Escrow shall be deemed opened on the date Escrow Holder shall have received the Deposit provided in Section 3(A) from Buyer and three (3) fully executed duplicates of this Agreement from Buyer and Seller (the "Opening of Escrow"). Escrow Holder shall notify Buyer and Seller, in writing, of the date Escrow is opened. In addition, Buyer and Seller agree to execute, deliver and be bound by any reasonable and customary supplemental escrow instructions of Escrow Holder or other instruments as may be reasonably required by Escrow Holder in order to consummate the transaction contemplated by this Agreement. Any such supplemental instructions shall not conflict with, amend, or supersede any portion of this Agreement. If there is any inconsistency between such supplemental instructions and this Agreement, this Agreement shall control.

For purposes of this Agreement, the Close of Escrow (the "Closing" or "Close of Escrow") shall be defined as the date the Special Warranty Deed, the form of which is attached hereto as Exhibit "A" (the "Deed"), conveying Site 3 to Buyer, is recorded in the Official Records of Maricopa County, Arizona. Unless this Agreement and Escrow related thereto have been properly cancelled pursuant to the terms of this Agreement, the Close of Escrow shall occur on the date which is thirty-five (35) days after the Opening of Escrow (the "Closing Date") or on such date as is mutually agreed upon by the Parties with written notifications to the Escrow Holder specifying the agreed upon date. In the event that Seller cannot cure any Title Defect by the Closing Date, then Buyer may (but is not obligated to) extend the Closing Date for successive thirty (30) day periods to permit Seller to proceed diligently and in good faith to cure such defects.

5. CONDITIONS PRECEDENT.

(A) Condition of Title. It shall be a condition to the Close of Escrow that title to Site 3 be conveyed to Buyer by the Special Warranty Deed (in the form set forth in Exhibit A) subject only to the following condition of title ("Approved Condition of Title"):

- (i) a lien to secure payment of real property taxes not delinquent;
- (ii) Those matters set forth on Exhibit C attached to this Agreement;

and

(iii) any matters of record either caused or placed by or on behalf of Buyer, or which were consented to in writing by Buyer (collectively, the "Permitted Exceptions").

(iv) Notwithstanding the foregoing, Buyer acknowledges that Site 3 is encumbered by that certain "Qwest – City of Chandler Development Agreement" dated as of April 22, 2003, and recorded in the records of the Maricopa County, Arizona, Recorder as Instrument no. 2003-0740525 on June 9, 2003, and re-recorded as Instrument no. 2005-0018146 on January 5, 2005; and that certain "Amendment No. 1 to Qwest – City of Chandler Development Agreement dated as of December 30, 2003, and recorded in the records of the Maricopa County, Arizona, Recorder as Instrument no. 2004-0053362 on January 20, 2004; and that certain "Parking Easement and Temporary Construction Easement" dated as of September 20, 2007, and recorded in the records of the Maricopa County, Arizona, Recorder as Instrument no. 2007-1047310 on September 21, 2007 (collectively, the "Qwest Agreements"). Seller represents and warrants to Buyer that all of the construction and related obligations of Seller as described and set forth in the Qwest Agreements have been fully performed and discharged by Seller, and that the only obligation of Seller remaining under the Qwest Agreements is the provision of five (5) parking spaces (the "Parking Obligation"), for which Buyer agrees to remain responsible. Seller shall indemnify, defend, pay and hold harmless Buyer, and its successors and assigns, for, from and against any and all claims of any party claiming under the Qwest Agreements other than the Parking Obligation. This representation and warranty, and this obligation of indemnity, shall survive the Closing and the recordation of the Deed.

(B) Title Policy. At Close of Escrow, Buyer shall pay for, and Escrow Holder shall furnish Buyer, a standard coverage ALTA owner's policy of title insurance (the "Title Policy") in the amount of the Purchase Price insuring Buyer fee simple title to Site 3, subject to the usual printed exceptions contained in such title insurance policies and the Permitted Exceptions (the "Report", defined below), and which are not objected to or are waived in the manner described as Approved Condition of Title. In the event Buyer desires an ALTA extended coverage policy, Buyer shall pay the difference in cost between an ALTA extended coverage and a standard coverage ALTA owner's policy, together with all costs associated with any inspections or surveys of Site 3 required for such additional coverage.

(C) Conditions to Close of Escrow.

- (a) Conditions to Buyer's Obligations. The Close of Escrow and

EXHIBIT C-2

Buyer's obligation to consummate the transaction contemplated by this Agreement are subject to the satisfaction or waiver of the following conditions for Buyer's benefit on or prior to the date designated below:

(i) Title. Seller shall deliver fee title to Site 3 to Buyer subject only to those exceptions constituting the Approved Condition of Title. Seller, at Seller's sole cost and expense, shall diligently and promptly secure the release of any other matter of record ("Title Defect"). Buyer may, but is not obligated, to accept an endorsement from Escrow Holder, "insuring over" any such exception.

(ii) Seller's Representations. All representations and warranties made by Seller to Buyer in this Agreement shall be true and correct as of the Close of Escrow.

(b) Conditions to Seller's Obligations. For the benefit of Seller, the Close of Escrow shall be conditioned upon the occurrence and/or satisfaction of each of the following conditions:

(i) Buyer's Obligations. Buyer shall have timely performed all of the obligations required by the terms of the Project Documents to be performed by Buyer; and

(ii) Buyer's Representations. All representations and warranties made by Buyer to Seller in this Agreement shall be true and correct as of the Close of Escrow.

6. AS-IS, WHERE IS, WITH ALL FAULTS PURCHASE.

Buyer acknowledges and agrees as follows:

(A) That Site 3 is to be conveyed by Seller to Buyer at the time of Closing in "AS-IS, WHERE-IS, WITH ALL FAULTS"; and

(B) That Buyer represents and warrants to Seller that it will have conducted its own independent inspection, investigation, evaluation and analysis of Site 3 as it deems necessary or appropriate in so acquiring Site 3 from Seller.

7. CLOSING.

(A) Closing Date, Costs and Prorations. Unless Buyer cancels the Agreement and the Escrow related thereto on or before the expiration of the Due Diligence Period, the purchase and sale hereunder shall be closed in the office of the Escrow Holder, thirty five (35) calendar days after the Opening of Escrow. Buyer and Seller shall deposit with Escrow Holder all instruments, documents and monies necessary to complete the sale and purchase in accordance with this Agreement. This Agreement is intended to constitute escrow instruction to Escrow Holder. At Closing, Buyer shall pay all title insurance premiums for an ALTA owner's standard coverage title insurance policy (the "Title Policy") in the amount of the Purchase Price, the closing escrow fee, recording fees, and the excise or other conveyance tax on this conveyance, if any. Seller and Buyer shall each pay their respective attorneys' fees. Real and Personal Property taxes, if any, payable in the year of Closing, shall be prorated between Seller and Buyer as of 12:00 midnight

EXHIBIT C-2

on the day immediately preceding the Closing Date. If any encumbrance is required to be removed prior to Close of Escrow, in whole or in part, Seller shall discharge such encumbrance or defect or part thereof out of the Purchase Price paid by Buyer at Closing.

(B) Seller Closing Documents. At Closing, Seller shall execute and deliver all documents necessary to effect and complete the Closing, including, but not limited to, the following documents:

- i. The Special Warranty Deed, duly executed by Seller, acknowledged as required and in recordable form;
- ii. A Certificate of non-foreign status, within the meaning of the Foreign Investment in Real Property Tax Act, duly executed by Seller in the form attached hereto as Exhibit B;
- iii. A joint Settlement Statement prepared by Escrow Holder for execution by Seller; and
- iv. Such other documents as Buyer or Escrow Holder may reasonably request in connection with this transaction.

(C) Buyer Closing Documents. At the Closing, Buyer shall execute and deliver all documents and perform such actions necessary to effect and complete the Closing, including, but not limited to, the following:

- i. The amounts required under the Purchase Price in Section 3 above in cash, cashier's check, wire transfer or other immediately available funds;
- ii. A joint Settlement Statement prepared by Escrow Holder for execution by Buyer;
- iii. Such other documents as Seller or Escrow Holder may reasonably request in connection with this transaction.

8. REPRESENTATIONS AND WARRANTIES.

(A) Seller's Representations and Warranties. As of the Effective Date and the Closing Date, Seller represents and warrants to Buyer as follows:

(i) Seller is owner and holder of record of fee simple title in and to Site 3 with full right, power and authority to transfer it and to perform all of its obligations under this Agreement.

(ii) All actions on the part of Seller which are required for the execution, delivery and performance by Seller of this Agreement and each of the documents and agreements to be delivered by Seller at the Closing have been duly and effectively taken.

(iii) Seller is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986, as amended.

(iv) Seller has no knowledge of any violation of applicable law, ordinance, rule, regulation or requirement of any governmental agency affecting or relating to Site 3 (the "Violation"), which renders the sale and transfer of Site 3 at Closing as contemplated by this Agreement unenforceable. To the extent such Violation is disclosed by Seller or revealed by the Title Documents, Seller covenants to cause to remove the Violation prior to the Close of Escrow.

(v) Except with respect to the Project Documents and those matters noted in Exhibit C or liens claims encumbrances or right of any third party placed on Site 3 placed on it by the Buyer during the Lease, there is no transfer, lien, claim, encumbrance or right of any third party on or existing with respect to Site 3 or Seller's interest in Site 3; and Seller shall indemnify, defend, pay and hold harmless Buyer for, from and against any and all such transfers, liens, claims, encumbrances or rights.

(B) Buyer's Representations and Warranties. As of the Effective Date and the Closing Date, Buyer represents and warrants to Seller as follows:

(i) Buyer is duly organized, validly existing and in good standing under the laws of the State of its organization, and has full power and authority, and has obtained all required consents, to enter into and to perform its obligations under this Agreement. Each of the persons executing this Agreement on behalf of Buyer has full power and authority and has obtained all required consents to do so, and to perform every act and to execute and deliver every document and instrument necessary or appropriate to consummate the transactions contemplated hereby.

(ii) All entity action on the part of Buyer which is required for the execution, delivery and performance by Buyer of this Agreement and each of the documents and agreements to be delivered by Buyer at the Closing has been (or will be by the Closing) duly and effectively taken.

9. REAL ESTATE COMMISSIONS

Each Party hereby represents and warrants to the other that there are no claims for brokerage commission, finder's or similar fees in connection with the transaction contemplated by this Agreement, and each Party hereby agrees to indemnify and hold harmless the Party from any and all liabilities, claims, expenses, costs and damages arising from the claim of any broker, finder, or other agent claiming to have acted on behalf of the indemnifying Party. Notwithstanding the foregoing, Buyer discloses to Seller that certain individuals holding an interest in Buyer are licensed as real estate brokers and salespersons by the Arizona Department of Real Estate.

10. DEFAULT AND DEFAULT REMEDIES.

(A) Seller's Default. If on or before the Closing Date, Seller materially breaches any of the terms of this Agreement and fails to cure such breach within five (5) calendar days following written notice thereof given by Buyer to Seller, Buyer, in its sole election, shall have the right (i)

to terminate this Agreement by written notice to Seller and Escrow Holder, in which event Escrow Holder shall release to Buyer the Deposit referred to in Section 3(A) above, or (ii) to avail itself of any remedy available to Buyer, at law or in equity, including an action for damages or an action for Seller's specific performance of this Agreement.

(B) Buyer's Default. If on or before the Closing Date, Buyer materially breaches any of the Project Documents and the Close of Escrow fails to occur by reason of such default, then in any such event, Seller shall not hold Buyer in default of this Agreement until all applicable notice requirements and opportunities to cure set forth in the applicable Project Document have expired. In the event of an uncured default of Buyer under either the Development Agreement or the Lease, or a failure of Buyer to cure any default relating to the payment of the Purchase Price within fifteen (15) days after written notice of such default from Seller to Buyer, then Seller may instruct Escrow Holder to cancel the Escrow. Buyer and Seller agree that based upon the circumstances now existing, known and unknown, it would be impractical or extremely difficult to establish Seller's damage by reason of Buyer's default. Accordingly, Buyer and Seller agree that it would be reasonable at such time to provide and to pay Seller as liquidated damages equal to Fifty Five Thousand and 00/100 Dollars (\$55,000.00) of the total of the Deposit held in Escrow by Escrow Holder in the amount of referred to in Section 3(A) of this Agreement.

11. ESCROW HOLDER.

Buyer may select the escrow agent and title insurance underwriter to administer the escrow and issue the title insurance commitment and policy contemplated in this (the "Escrow Holder"). By its subsequent execution of this Agreement Escrow Holder agrees to perform hereunder and to hold and disburse contract payments as herein provided. Escrow Holder shall not be liable for any acts taken in good faith, shall only be liable for its willful default or gross negligence, and may, in its sole discretion, rely upon the written notices, communications, orders or instructions given by Buyer or Seller. In the event of a dispute between Buyer and Seller under this Agreement sufficient in the discretion of Escrow Holder to justify its doing so, Escrow Holder shall be entitled to tender into the registry or custody of the courts described in Section 3(A) all money or property in its hands under the terms of this Agreement, together with such legal proceedings as it deems appropriate, and thereupon to be discharged from all further duties under this Agreement. Any such legal action shall be brought in the court described in Section 18.

12. DAMAGE OR DESTRUCTION; CONDEMNATION.

The Parties acknowledge that Buyer is in possession of Site 3 pursuant to the Lease. In the event of damage, destruction or condemnation of any portion of Site 3, or any improvements on Site 3, the terms of the Lease shall govern. Notwithstanding any such damage, destruction or condemnation, Buyer in its sole election may proceed with the purchase of Site 3 and the Closing.

13. POSSESSION

The Parties acknowledge that Buyer is in possession of Site 3 pursuant to the Lease.

14. NOTICES.

Any notices, requests, claims, demands, or other communications required or permitted under, or otherwise made in connection with, this Agreement, shall be in writing and shall be deemed to have been duly given (a) when delivered in person, (b) three (3) business days after mailing by registered or certified mail, postage prepaid, or (c) on the next business day if transmitted by national overnight courier for next business day delivery (with confirmation of delivery), in each case, addressed as follows (or at such other address for a recipient as shall be specified in a notice given in accordance with this Section):

To Seller: City of Chandler
Economic Development Office (MS 416)
P. O. Box 4008
Chandler, AZ 85244-4008
Attention: Downtown Redevelopment Manager
Phone: 480-782-3035
Facsimile: 480-782-3040

With a copy to: City of Chandler
City Attorney's Office
P. O. Box 4008
Chandler, AZ 84244-4008
Attention: City Attorney
Phone: 480-782-4642
Facsimile: 480-782-4652

If to Buyer: VPK The Row, LLC
c/o Vintage Partners
Attn: David C. Scholl
2502 East Camelback Road, Suite 214
Phoenix, AZ 85016

With a copy to: Dickinson Wright PLLC
Attn: Gary L. Birnbaum/James H. Patterson
1850 N. Central Avenue, Suite 1400
Phoenix, AZ 85004

If to Escrow Holder: At the address provided in Escrow Holder's Acceptance

15. MISCELLANEOUS.

(A) Attorneys' Fees. Should any Party hereto bring any action against any other Party related in any way to this Agreement, its validity, enforceability, scope or subject matter, the prevailing Party shall be awarded its reasonable attorneys' fees and costs incurred for prosecution, defense, consultation or advice in connection with such action.

(B) Survival. Except as otherwise provided in this Agreement, all warranties, representations, and agreements contained herein or arising out of the sale of Site 3 by Seller to Buyer (including, but not limited to, Seller's and Buyer's warranties, representations and agreements) shall survive the delivery and recordation of the Special Warranty Deed, the payment and delivery of the Purchase Price, and the Closing of the purchase and sale of Site 3.

(C) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona without regard to conflicts of laws principles that would require the application of any other law. Each Party hereby consents to the exclusive jurisdiction of any court of competent jurisdiction in Maricopa County, Arizona, in any action related to or arising under this Agreement and agrees that venue is proper in such court.

(D) Integration; Modification; Waiver. This Agreement, exhibits and closing documents pursuant to this Agreement constitute the complete, integrated, and final expression of the Agreement of the Parties relating to Site 3. This Agreement cannot be modified, except by an instrument in writing (referring specifically to this Agreement) executed by the Party against whom enforcement of the modification is sought.

(E) Invalid Provisions. If any one or more of the provisions of this Agreement, or the applicability of any such provision to a specific situation, shall be held invalid or unenforceable, such provision shall be modified to the minimum extent necessary to make it or its application valid and enforceable, the Agreement shall be deemed reformed accordingly, and the validity and enforceability of all other provisions of this Agreement and all other applications of any such provision shall not be affected hereby.

(F) Counterpart Execution. This Agreement may be executed in several counterparts, each of which shall be fully effective as an original, and all of which together shall constitute one and the same instrument.

(G) Time of the Essence. Time is of the essence of this Agreement and of the obligations of the Parties to purchase and sell Site 3, it being acknowledged and agreed by and between the Parties that any delay in effecting a closing pursuant to this Agreement may result in loss or damage to the Party in full compliance with its obligations hereunder. Notwithstanding any period for performance of any Party's obligations contained in any Escrow Instructions, the rights of the Parties hereunder shall be governed by the dates and times set forth in this Agreement.

(H) Binding Effect. This Agreement shall be binding upon and inure to the benefit of Seller and Buyer, and their respective heirs, successors and assigns.

(I) Further Acts. In addition to the acts recited in this Agreement to be performed by Seller and Buyer, Seller and Buyer agree to perform or cause to be performed at the Closing or after the Closing any and all such further acts as may be reasonably necessary to consummate the transactions contemplated hereby and, upon written request from the other Party, to execute, acknowledge and deliver all documents, instruments and affidavits necessary to give effect to this Agreement and the intent of the Parties.

(J) Headings; Construction. The headings which have been used throughout this Agreement have been inserted for convenience of reference only and do not constitute matter to be construed in interpreting this Agreement. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural and vice versa, unless the context requires otherwise. The words “herein”, “hereof”, “hereunder”, and other similar compounds of the word “here” when used in this Agreement shall refer to the entire Agreement and not to any particular provision or section. Seller and Buyer acknowledge that each Party and its counsel have reviewed this Agreement and that the rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any document executed and delivered by either Party in connection with the transactions contemplated by this Agreement.

(K) Business Day. In the event that the day for performance of any covenant or obligation under this Agreement shall fall on a Saturday, Sunday or legal holiday, the date for performance thereof shall be extended to the next Business Day. Similarly, in the event that the date for the performance of any covenant or obligation under this Agreement involving the Escrow Holder shall fall on a Saturday, Sunday or legal holiday on which Escrow Holder is closed for business to the public, the date for performance thereof shall be extended to the next Business Day on which Escrow Holder is open for business to the public. The term “Business Day” shall mean a day that is not a Saturday, Sunday or legal holiday.

IN WITNESS WHEREOF, the Parties have executed the foregoing Agreement as of the date appearing above.

SELLER:

CITY OF CHANDLER,
an Arizona municipal corporation

By: _____
Mayor Jay Tibshraeny

Its: _____

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CHANDLER CITY ATTORNEY

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing Agreement was acknowledged before me this ____ day of _____, 2015, by _____, Mayor of City of Chandler, an Arizona municipal corporation, on behalf of the municipal corporation.

Notary Public

My Commission Expires:

BUYER:

VPK The Row, LLC,
an Arizona limited liability company

By: _____

Name: _____

Title: _____

STATE OF _____)

) ss.

County of _____)

The foregoing Agreement was acknowledged before me this ____ day of _____, 2015, by _____, the _____ of VPK The Row, LLC, an Arizona limited liability company, the manager of, and on behalf of, the limited liability company.

Notary Public

My Commission Expires:

ESCROW HOLDER'S ACCEPTANCE

The undersigned agrees to act as Escrow Holder in connection with the transaction contemplated by this Agreement:

Name of Company: _____

Name of Escrow Officer: _____

Title: _____

Signature: _____

Date: _____

Address for notices in accordance with Section 14:

EXHIBIT A

WHEN RECORDED,
PLEASE RETURN TO:

SPECIAL WARRANTY DEED

City of Chandler, an Arizona municipal corporation ("Grantor"), for the consideration of TEN DOLLARS (\$10.00) and other valuable consideration, does hereby convey to [VPK The Row, LLC, an Arizona limited liability company] ("Grantee"), all its right, title and interest in and to that certain real property located in Maricopa County, Arizona, and described more fully on Exhibit A, attached hereto and incorporated by this reference, together with all improvements, situated thereon and all of Grantor's right, title, and interest in and to all easements, rights-of-way, appurtenances and other rights and benefits, if any, running with such real property (collectively "Property").

Subject to: current taxes; patent reservations; all covenants, conditions, restrictions, reservations, liens, encumbrances, easements, declarations, obligations, liabilities and all other matters of record or to which reference is made in the public record or attached hereto in Exhibit B (Approved Conditions to Title).

Signatures on the following page.

Grantor hereby binds itself and its successors and assigns to warrant and defend the title to the Property against the acts of Grantor and no other.

DATED as of _____, 20__.

GRANTOR:

CITY OF CHANDLER,
an Arizona municipal corporation

By: _____
Name: _____
Its: _____

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing Agreement was acknowledged before me this ____ day of _____, 20__, by _____, Mayor of City of Chandler, an Arizona municipal corporation, on behalf of the municipal corporation.

Notary Public

My Commission Expires:

EXHIBIT B

Certificate of Non-Foreign Status

To inform [VPK The Row, LLC, an Arizona limited liability company] ("Transferee"), that withholding of tax under Section 1445 of the Internal Revenue Code of 1986, as amended ("Code") will not be required by City of Chandler, an Arizona municipal corporation ("Transferor"), who hereby certifies the following:

- 1. Transferor is not a foreign corporation, foreign partnership, foreign trust, foreign estate or foreign person (as those terms are defined in the Code and the Income Tax Regulations promulgated thereunder);
- 2. Transferor's U.S. employer or tax (social security) identification number is _____.
- 3. Transferor's address is _____, _____, Arizona 85_____.
- 4. Transferor is not a disregarded entity as defined in Section 1.1445-2(b)(2)(iii) of the Code.

Transferor understands that this Certification may be disclosed to the Internal Revenue Service by Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalty of perjury we declare that we have examined this Certification and to the best of our knowledge and belief it is true, correct and complete.

TRANSFEROR

By: _____
Its: _____

EXHIBIT C
Approved Condition of Title

Exhibit D-1
Permitted Title Exceptions – Site 1

Exhibit D-2
Permitted Title Exceptions – Site 2

11

OCT 22 2015



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MEMORANDUM Downtown Redevelopment – Council Memo DT16-008

DATE: OCTOBER 22, 2015

TO: MAYOR AND CITY COUNCIL

THRU: MARSHA REED, ACTING CITY MANAGER *MR*

FROM: KIM MOYERS, DOWNTOWN REDEVELOPMENT MANAGER *KM*

SUBJECT: INTRODUCTION AND TENTATIVE ADOPTION OF ORDINANCE NO. 4668 AUTHORIZING THE CITY OF CHANDLER, ARIZONA, ADOPT THE PROVISIONS OF A DEVELOPMENT AND OPTION AGREEMENT BETWEEN VPK THE ROW, LLC, AND THE CITY OF CHANDLER FOR REDEVELOPMENT OF SITE 3 AND OPTION TO PURCHASE SITES 1 AND 2 FOR REDEVELOPMENT

RECOMMENDATION: Staff recommends City Council introduce and tentatively adopt Ordinance No. 4668 approving a development and option agreement between VPK the Row, LLC, and the City of Chandler for redevelopment of Site 3 and option to purchase Sites 1 and 2 for redevelopment.

BACKGROUND/DISCUSSION: On July 21, 2014, the City of Chandler opened a Request for Proposal (RFP) for a mixed-use development project on the 4.6-acre City-owned property located on the southwest corner of Chandler Boulevard and Arizona Avenue, commonly known as Sites 1-2-3. This property acts as the northern gateway to Chandler’s vibrant Downtown and is expected to be a catalyst for future development.

On December 11, 2014, the City Council adopted Resolution No. 4829 authorizing the award of the RFP to Vintage Partners for Sites 1-2-3, and authorizing staff to begin Development Agreement deal terms with Vintage Partners.

The Development Agreement addresses Phase 1 (Site 3), with the option for Vintage Partners to purchase Sites 1 and 2 within 36 months of the completion of Phase 1 with approved site plan.

Phase 1 will consist of a two-story retail/entertainment development, including an approximate 30,000 square foot, 6-screen, Red’s Draffhouse Cinema on the second level,

and approximately 25,000 square feet (sf) of retail/restaurants on the street level. The development will also include approximately 6,000 sf of open space at the northwest corner of Arizona Avenue and Buffalo Street.

As part of the development requirements, the City of Chandler will provide adequate water and sewer infrastructure to the site, which was completed as part of the Downtown Infrastructure Project; the undergrounding of a power line in the alley; and on-street parking on Sites 1 and 2 until a parking garage is warranted. The City of Chandler will also pay the impact fees; lease Site 3 for \$10 per year for a period of 10 years; and allow for digital display boards on Chandler Boulevard and Arizona Avenue.

In addition to the approximately 55,000 sf of retail/entertainment development and public gathering space, Vintage Partners will maintain day-to-day cleanup of the paved parking on Sites 1 and 2; specifically bringing Red's Draffhouse Cinema to the Downtown market; pay into the Enhanced Municipal Services District; will commence construction by December 31, 2016; and receive their Certificate of Occupancy by June 30, 2017.

FINANCIAL IMPLICATIONS:

The financial implications to the City of the proposed development agreement for Site 3 with Vintage Partners includes the estimated costs of providing surface parking on Sites 1 and 2 of \$360,000; undergrounding an overhead Arizona Public Service (APS) line for \$130,000; payment of impact fees on the development of \$420,500; and the waiving of \$32,250 in building, civil, and site development review fees, for a total of \$942,750.

Additionally, Vintage Partners will lease Site 3 for a period of 10 years at \$10 per year, with an option to purchase during such time at \$1,132,710 (89,152 sf at \$13/square foot). Should Vintage Partners continue to lease between years 10-25, the property will be revalued prior to their purchase. Compaction costs of on-site material will be assessed and agreement will be made between both parties as to the construction method for the re-compaction of the site and with the final cost to be taken off of the purchase price.

The FY 2015-16 budget includes carryforward funding for parking and development on the southwest corner of Arizona Avenue and Chandler Boulevard. This capital project is budgeted in the Capital Improvement Program Fund, Non-Department Capital Cost Center (401.1291.6110.6GG623) and would be used to fund this project.

PROPOSED MOTION: Move City Council introduce and tentatively adopt Ordinance No. 4668 approving a development and option agreement between VPK The Row, LLC, and the City of Chandler for redevelopment of Site 3 and option to purchase Sites 1 and 2 for redevelopment.

Attachments: Ordinance No. 4668
Development Agreement
Site Map

ORDINANCE NO. 4668

AN ORDINANCE OF THE CITY OF CHANDLER, ARIZONA, ADOPTING THE PROVISIONS OF A DEVELOPMENT AND OPTION AGREEMENT BETWEEN VPK THE ROW, LLC, AND THE CITY OF CHANDLER FOR REDEVELOPMENT OF SITE 3 AND OPTION TO PURCHASE SITES 1 AND 2 FOR REDEVELOPMENT

WHEREAS, The City owns certain real property in its downtown area (the southwest corner of Arizona Avenue and Chandler Boulevard) that are generally identified as Sites 1, 2, and 3; and depicted on Exhibit A, attached hereto and incorporated herein;

WHEREAS, Sites 1, 2 and 3 are located in the City's "Chandler Redevelopment Area" established pursuant to Resolution No. 1180 and in the City's Central Business District established pursuant to Resolution No. 4646;

WHEREAS, Sites 1, 2 and 3 were acquired by the City as part of its plan to redevelop and revitalize the downtown area of the City as described in the Chandler Redevelopment Area Plan;

WHEREAS, Developer has proposed to build improvements and procure uses on Site 3 ("Project") that the Parties believe will contribute to the implementation and achievement of the City's goals of redevelopment and revitalization of Site 3 and other properties within the City's downtown area.

WHEREAS, The City and Developer hereby acknowledge and agree that redevelopment of the Project will result in significant direct and indirect benefits accruing to the City and the general public, including, without limitation, increased taxable value of Site 3 resulting in increased tax revenues, potential expansion of the employment base within the City, and incentivizing the redevelopment of other properties within the City's downtown.

WHEREAS, this Agreement is intended to set forth certain obligations of the Parties with respect to the contemplated redevelopment of Site 3, as permitted by Arizona law;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Chandler, Arizona, as follows:

1. The Project, as adopted pursuant to the Development and Option Agreement ("Agreement"), is consistent with the City's General Plan, and the Chandler Redevelopment Area Plan;

2. Approval of the terms and conditions of the Agreement providing for the lease and eventual sale of Site 3 to VPK The Row, LLC, for its development in accordance with the Agreement and granting an option for the future purchase of Sites 1 and 2 to VPK The Row, LLC; and

3. Authorize the Mayor to execute and provide necessary documentation needed to implement the Agreement including executing the Purchase Agreement and Lease in accordance therewith.

INTRODUCED AND TENTATIVELY APPROVED by the City Council of the City of Chandler, Arizona, this ____ day of _____, 2015.

ATTEST:

CITY CLERK

MAYOR

PASSED AND ADOPTED by the Mayor and City Council of the City of Chandler, Arizona, this ____ day of _____, 2015.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY(*kb*)

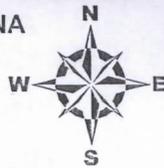
CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Ordinance No. 4668 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the ____ day of _____, 2015, and that a quorum was present thereat.

CITY CLERK



CITY OF CHANDLER ARIZONA



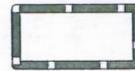
Vicinity Map



Site 1 57,397 sq. ft.*



Site 2 73,667 sq. ft.*



Site 3 89,089 sq. ft.*

* Site square footages are approximate



Chandler Arizona
Where Values Make The Difference

F:\LAW\KB\Downtown Rdvmt\Sites 1, 2 & 3\2014 RFP - Ph 3\DA\101415 COC dft\101415
DA clean.docx

When recorded, return to:

Chandler City Attorney's Office
City of Chandler
Post Office Box 4008, Mailstop 602
Attn: Kay Bigelow

**DEVELOPMENT AGREEMENT
AND OPTION AGREEMENT**

**CITY OF CHANDLER,
an Arizona municipal corporation**

and

**VPK THE ROW, LLC,
an Arizona limited liability company**

Approved by City Council on November __, 2015

DEVELOPMENT AGREEMENT AND OPTION AGREEMENT

THIS DEVELOPMENT AGREEMENT AND OPTION AGREEMENT (the “Agreement”) is made by and between the CITY OF CHANDLER, an Arizona municipal corporation (the “City”) and VPK THE ROW LLC, an Arizona limited liability company (“Developer”). The City and Developer shall be referred to in this Agreement, collectively as “Parties,” and individually as a “Party.”

SECTION 1. EFFECTIVE DATE & TERM

1.1 **Effective Date.** This Agreement shall be effective as of the date that it is executed by the representative of the last Party to sign it and its recordation in the Official Records of Maricopa County, Arizona, in accordance with the requirement of A.R.S. § 9-500.05.

1.2 **Term.** The term of this Agreement (“Term”) shall be the later of (i) fifteen (15) years from the Effective Date, (ii) the expiration of the term (including any extensions) of the Lease (as defined below); (iii) expiration of the term of the Purchase Agreement (as defined below); or (iv) as otherwise set forth in this Agreement. Notwithstanding the foregoing, Developer may terminate this Agreement at any time prior to Commencement of Construction by the payment to the City of a termination fee in the amount of Five Hundred and no/100 Dollars (\$500.00), in which event this Agreement, the Lease, and the Purchase Agreement shall automatically and without further act or Notice required, be terminated, and Developer shall have no further rights under any of the Project Documents as defined in Recital I.

SECTION 2. RECITALS

The Parties recite and state the following, each of which is a material term and provision of this Agreement:

A. The City owns certain unimproved real property in its downtown area (the southwest corner of Arizona Avenue and Chandler Boulevard) that are generally identified as Sites 1, 2, and 3 and which are more particularly described in Exhibit A-1 (as to Site 1), Exhibit A-2 (as to Site 2) and Exhibit A-3 (as to Site 3).

B. Sites 1, 2 and 3 are located in the City’s “Chandler Redevelopment Area” established pursuant to Resolution No. 1180, and in the City’s Central Business District established pursuant to Resolution No. 4646.

C. Sites 1, 2 and 3 were acquired by the City as part of its plan to redevelop and revitalize the downtown area of the City as described in the Chandler Redevelopment Area Plan.

D. Developer has proposed to build improvements and procure uses on Site 3 that the Parties believe will contribute to the implementation and achievement of the City’s goals of redevelopment and revitalization of the City’s downtown area. Throughout this Agreement, the proposal accepted by the City will be referred to as the “Proposed Development Plan.”

E. The City, therefore, desires to convey Site 3 by lease and sale to Developer, on the terms and conditions set forth in this Agreement, the Lease and the Purchase Agreement.

F. The City and Developer hereby acknowledge and agree that redevelopment of the Project will result in significant direct and indirect benefits accruing to the City and the general public, including, without limitation, increased property value of Site 3, increased tax revenues, facilitation of the expansion of the employment base within the City and incentivizing the redevelopment of the City's downtown.

G. This Agreement is intended to set forth certain obligations of the Parties with respect to the contemplated redevelopment of Site 3, as permitted by Arizona law. The Parties intend for this Agreement to be a "Development Agreement" within the meaning of A.R.S. § 9-500.05 as well as an agreement to promote economic development activities within the meaning of A.R.S. § 9-500.11 and redevelopment of the Chandler Redevelopment Area consistent with A.R.S. § 34-1471 *et seq.*

H. The City has determined that the proposed development of Site 3 in accordance with this Agreement is consistent with the City's General Plan, and the Chandler Redevelopment Area Plan.

I. This Agreement is part of a transaction between the City and Developer in which the Developer intends to develop the Project in accordance with the terms of this Agreement; the Developer shall lease the land upon which the Project is constructed (*i.e.*, Site 3) from the City in accordance with the terms of the Lease; the Developer may ultimately purchase the land upon which the Project is constructed (*i.e.*, Site 3) from the City in accordance with the Purchase Agreement; and the Developer has option rights for the purchase from the City of Site 1 and Site 2 in accordance with this Agreement. Accordingly, the Parties intend that this Agreement, the Lease and the Purchase Agreement (collectively, the "Project Documents") be construed harmoniously in order to give full effect to the intentions of the Parties with respect to the leasing, development and purchase of Site 3 (and Sites 1 and 2, as applicable) as reflected by the Project Documents. In the event of any conflict or ambiguity arising from the Project Documents, the Project Documents shall control in the following order of precedence: first, this Agreement; second, the Lease; and third, the Purchase Agreement.

AGREEMENT

IN CONSIDERATION of the foregoing recitals and representations and the mutual covenants and conditions in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledge, the Parties agree as follows:

SECTION 3. DEFINITIONS. In this Agreement, unless a different meaning clearly appears from the context:

3.1 "**Agreement**" means this Agreement, as amended or supplemented in writing from time to time, and includes all exhibits and schedules attached hereto. References to Sections or Exhibits are to this Agreement unless otherwise qualified.

3.2 **“Applicable Laws”** means the federal, state, county and local laws (statutory and common law), charter provisions, codes, ordinances, rules, regulations, permit requirements, fee schedules and assessments, and other requirements and official policies of the City which apply to the development of all or any part of the Site 3.

3.3 **“Business Day”** means any day of the week when the City Planning and Development Department is open to the public for the conduct of the department's business.

3.4 **“Certificate of Completion”** means a certificate issued by the City certifying that a building shell or other improvement is completed in accordance with approved plans in accordance with Applicable Laws.

3.5 **“City”** means the City of Chandler, an Arizona municipal corporation (and any successor public body or officer hereafter designated by or pursuant to law).

3.6 **“City Code” or “Code”** means the Chandler City Code and regulations of the City.

3.7 **“City Delay”** means as defined in Section 5.4(C).

3.8 **“Commence Construction” or “Commencement of Construction” or “Construction Commencement”** and variations means the occurrence of both of the following: (i) the issuance of a construction permit, and (ii) the commencement of vertical construction of the Minimum Improvements beyond grading of foundation for which a construction permit is issued.

3.9 **“Completion of Construction”** means the issuance of a Certificate of Completion for the Minimum Improvements.

3.10 **“Default”** means as defined in Section 8.1.

3.11 **“Developer”** means VPK The Row, LLC, an Arizona limited liability company (and any successor or assignee).

3.12 **“Drafthouse Cinema”** means a theater (or theaters) in which motion pictures are shown or displayed to the public. Food and alcoholic beverage service will be available for the theater patrons to order and obtain at the internal kitchen and wine and beer bar for consumption on the premises including within the individual theaters. Food quality shall be above normal theater or fast food fare.

3.13 **“Force Majeure Events”** means any one or more of the following which prohibits or materially interferes with, delays or alters the performance of the applicable duty under this Agreement: strikes or lockouts; shortages of material (excluding those caused by lack of funds) or labor; acts of the public enemy; confiscation or seizure by any government or public authority; injunction, restraining order or other court order or decree, blockades; insurrections; riots; civil disturbances; epidemics; acts of nature; fires; explosions; nuclear reaction or radiation; radioactive contamination; as to Developer, the failure or delay by the City in issuing any approvals, permits or certificates required, authorized or contemplated by this Agreement, including a City Delay as defined in Section 5.4(C); any other similar cause (excluding those

caused by lack of funds); and any other event not within the reasonable control of the applicable Party.

3.14 **“Improvements”** means all privately owned, non-governmental buildings and other structures to be located within Site 3 including the Minimum Improvements.

3.15 **“Initial Purchase Price”** means as defined in Section 4.2.

3.16 **“Lease”** means as described in Section 4.

3.17 **“Minimum Improvements”** means as described in Section 5.1 and as depicted on **Exhibit B**.

3.18 **“Open Space”** means that area and improvements as described in Section 5.1D(a) and depicted on Exhibit B.

3.19 **“Proposed Development Plan”** means the development plan (described in Section 5.1A) and depicted on Exhibit B) as proposed by Developer for Site 3 that illustrates and demonstrates the general components of and Improvements included within the Minimum Improvements.

3.20 **“Person”** means and includes natural persons, corporations, limited partnerships, general partnerships, joint stock companies, joint ventures associations, limited liability companies, limited liability partnerships, trusts, land trusts, business trusts or other organizations, whether or not legal entities.

3.21 **“Project”** means the Minimum Improvements plus any additional private land uses constructed on Site 3 by Developer.

3.22 **“Project Documents”** mean as defined in Recital I. The Project Documents include all exhibits to such documents.

3.23 **“Public Infrastructure Improvements”** means as described in Section 6.

3.24 **“Purchase Agreement”** means as described in Section 4.

3.25 **“Site 1”** means the real property described as Maricopa County Assessor Parcel Numbers 303-08-248 and 303-08-265 and specifically identified on Exhibit A-1.

3.26 **“Site 2”** means the real property described as Maricopa County Assessor Parcel Numbers 303-08-247, 303-08-266 and 303-08-246 and specifically identified on Exhibit A-2.

3.27 **“Site 3”** means the real property described as Maricopa County Assessor Parcel Numbers 303-08-243, 303-08-244, 303-08-245, 303-08-241, and 303-08-160 and as specifically identified on Exhibit A-3.

3.28 **“System Development Fee”** means any fee owed by Developer in connection with the development described herein pursuant to Chapter 38 of the Chandler City Code.

3.29 “**Temporary Parking Area**” shall mean those portions of Sites 1 and 2 designated as a public parking area identified on Exhibit D.

3.30 “**Zoning Code**” means Chapter 35 of the Chandler City Code.

SECTION 4. ACQUISITION AND DISPOSITION OF SITE 3.

4.1 Lease and Purchase Agreement. Upon the Effective Date of this Agreement, the City and Developer will enter into, execute and deliver one other agreement as part of the interrelated lease, development and purchase transaction between the Parties, and which agreements shall be in the forms attached hereto as Exhibit C-1 (the “Lease”). .

Initial Purchase Price. Developer shall have the right to purchase Site 3 at any time during the Term of the Lease (including any Renewal Term), but not later than forty-five (45) days prior to the expiration of this Agreement or the Lease, whichever is later. The purchase price for Site 3 during the Initial Lease Term is One Million Ten Thousand and no/100 Dollars (\$1,010,000.00) (the “Initial Purchase Price”) and shall apply to the purchase of Site 3 by Developer. The Initial Purchase Price represents an estimate of the fair market value of Site 3, adjusted for public benefits to be provided by Developer under this Agreement, including (but not limited to) the advancement of the goals of the Chandler Redevelopment Area Plan and consistent with the policies underlying A.R.S. § 36-1471 *et seq.* The Initial Purchase Price also assumes that Site 3 is free of soil compaction defects, including (but not limited to) requiring additional soil compaction as a result of the previous removal of an underground storage tank on Site 3. In the event that Developer’s engineers or geotechnical advisors determine that additional soil compaction is required on Site 3, then the Initial Purchase Price shall be reduced by the amount or expense actually spent or incurred by Developer in causing the compaction of the soil in order to proceed with the Project. Reasonable cost for the remediation of this soil compaction defect shall be mutually agreed upon by the Parties before the City’s issuance of the grading permit to Developer for Site 3; provided, however, in no event shall such reimbursement exceed \$250,000.00. At the time of Developer’s purchase of Site 3, Developer shall supply copies of invoices, receipts and other evidence of expenditure and payment with respect to such work as may reasonably be required by the City; provided however that the amount of the reduction in the Initial Purchase Price shall not exceed the mutually agreed upon costs or the actual cost, whichever is less.

4.2 Purchase Terms. The purchase of Site 3 by Developer shall be in accordance with the terms and conditions of the Purchase Agreement.

a) At any time after the Effective Date of this Agreement, but not later than forty-five (45) days prior to the expiration of this Agreement or the last Lease Term, whichever is later, and provided Developer is not in breach of this Agreement or the Lease, Developer shall have the right to deliver the fully-executed original Purchase Agreement to the Escrow Holder, as that term is defined in the Purchase Agreement. Developer shall provide Notice to the City of Developer’s delivery of the executed Purchase Agreements to Escrow Holder. Upon Escrow Holder’s receipt of the fully-executed Purchase Agreements, the Parties shall proceed with the purchase and sale of Site 3 in accordance with the terms and conditions set forth in the Purchase Agreement.

b) Concurrently with Developer's delivery of the fully-executed Purchase Agreement to Escrow Holder, Developer will deposit Fifty-Five Thousand and no/100 Dollars (\$55,000.00) as Developer's earnest money deposit ("Deposit") with Escrow Holder, in cash, certified or bank cashier's check or other form of collected funds.

4.3 Future Purchase Price. If Developer has failed to exercise the option to purchase Site 3 within forty-five (45) days prior to the expiration of the Initial Lease Term, the City shall cause Site 3 to be appraised by an Arizona-licensed appraiser who also holds an MAI or ASA designation (from the Appraisal Institute or the American Society of Appraisers, as applicable) reasonably acceptable to the Parties, which appraisal shall establish the purchase price for Site 3 (which appraisal shall be for the land value only and shall exclude any value attributable to (i) any Improvements installed by Developer upon Site 3, (ii) this Agreement, (iii) the Lease, and (iv) the Purchase Agreement) for the remainder of the Term of this Agreement and the Lease ("Future Purchase Price").

4.4 Lease Terms. In addition to the terms set forth in the Lease, the following Site 3 annual rent schedule shall be incorporated into the Lease for the times periods set forth below.

a) The Site 3 annual rental rate for the first ten (10) years of the Lease ("Initial Lease Term") shall be Ten and no/100 Dollars (\$10.00) per year, payable upon execution of the Lease.

b) The Site 3 annual rental rate for the five year period commencing on the expiration of the Initial Lease Term ("First Renewal Term") shall be in an amount equal to four percent (4%) of the Future Purchase Price, paid on or before the first day of each Lease Year during the First Renewal Term.

c) The Site 3 annual rental rate for the five year period commencing on the expiration of the First Renewal Term ("Second Renewal Term") shall be in an amount equal to six percent (6%) of the Future Purchase Price, paid on or before the first day of each Lease Year during the Second Renewal Term.

d) The Site 3 annual rental rate for the five year period commencing on the expiration of the Second Renewal Term ("Third Renewal Term") shall be in an amount equal to eight percent (8%) of the Future Purchase Price, paid on or before the first day of each Lease Year, during the Third Renewal Term.

e) The Parties expressly acknowledge that in the event Developer fails to exercise its right or option to Purchase Site 3 granted in this Agreement, the City shall not be obligated to extend, renew or otherwise amend this Agreement, the Lease, or the Purchase Agreement for any additional terms beyond the Third Renewal Term. In the event this Agreement, the Lease, or the Purchase Agreement are terminated, expired or otherwise cancelled, Developer acknowledges any Improvements installed by Developer on Site 3 shall become the property of the City without further action or instrument of conveyance. Thereafter Developer shall have no right, claim or ownership interest in any Improvement then existing on Site 3.

SECTION 5. DEVELOPMENT OF SITE 3.

5.1 Development of Site 3.

A. Minimum Improvements. The development proposed by Developer is set forth in Exhibit B and is composed of an Open Space on the northwest corner of Buffalo and Arizona Avenue as well as one or more buildings (one of which shall be two stories with restaurant and retail uses on the ground floor), consisting of a minimum of 55,000 square feet of “shell” building space proposed for restaurant, retail and entertainment uses; and for which the second floor consists of a minimum of a 30,000 square foot multi-screen Drafthouse Cinema with at least six individual theaters totaling at least 600 seats, The aggregate of the Open Space and the two storied building shall hereinafter be referred to as the “Minimum Improvements”. The plan for the Open Space shall be determined during the rezoning process for Site 3 and included in the PDP approved by the City.

B. The construction of the Minimum Improvements as described in this Section 5.1 and as depicted on Exhibit B shall occur in a single phase and in accordance with the deadlines set forth herein. Developer’s compliance with the timing of its provision of the Minimum Improvements and its compliance with the proposed development plans were material considerations for the City’s determination to enter into this Agreement as a method for revitalization and redevelopment of the Chandler Redevelopment Area. Developer’s timely compliance is a material part of the consideration being provided by Developer for the incentives provided in this Agreement, the Lease and the Purchase Agreement.

C. If Developer has not performed the action by the dates set forth below, subject to Force Majeure Events, the City may proceed to declare a default as set forth in Section 8 as the timely construction of the Minimum Improvements is a material part of the consideration being delivered by Developer for the incentives provided herein by the City.

ACTION	DEADLINE
Developer’s submittal of administratively complete application for P.A.D. rezoning and Preliminary Development Plan (“PDP”) required for Minimum Improvements	January 2, 2016
Developer’s submittal of completed civil plans for the grading permit	July 1, 2016
Developer’s Commencement of Construction	December 31, 2016
Developer’s Completion of Construction	June 30, 2017

D. Developer's Post-Construction Obligations.

(a) Open Space. Developer shall cause the Completion of Construction of certain improvements in the Open Space (the "Open Space Improvements"), The extent and scope of the Open Space Improvements shall be determined during the PAD process. The City, at its sole cost and expense, shall maintain the Open Space and shall repair, replace and maintain the Open Space Improvements during the Initial Lease Term.

(b) Maintenance of Temporary Parking Area. Upon completion of the Surface Parking Improvements by the City as set forth below in Subsection 5.2(A), and subject to the City's obligation to maintain, repair and replace the parking surface as set forth below in Subsection 5.2D. Developer agrees, at its sole cost and expense, to maintain and keep the Temporary Parking Area free of debris and otherwise maintain the Temporary Parking Area in a clean and orderly condition. Developer shall provide the irrigation water for the landscaping as well as the maintenance, repair and replacement of the landscaping and hardscaping other than the asphaltic surface which is the City's obligation as set forth in Subsection 5.2D).

(c) Downtown Enhanced Municipal Services District Assessment. The Project is within the boundaries of a special taxing district created pursuant to Title 48 of the Arizona Revised Statutes, namely the Downtown Enhanced Municipal Services District ("District") The District was created for, among other things, the provision of enhanced municipal services to property owners within the District. The Parties acknowledge Site 3 is within the boundaries of the District. Upon the execution of this Agreement and the Lease, and regardless of whether Developer has purchased Site 3, Developer will, during the term of the Lease, timely pay the amount that would be assessed on the real property constituting Site 3 if the City were not the title owner of Site 3 ("In Lieu Assessment") as well as any amount assessed for the Improvements owned separately by Developer.

5.2 City's Obligations.

A. Temporary Parking. The City, at its sole cost and expense, shall install an asphaltic layer, parking stall striping for at least 350 parking stalls and landscape and hardscape materials to the Temporary Parking Area, including lighting and applicable signage, in substantial conformance with Exhibit F (collectively, the "Surface Parking Improvements"). The City shall complete construction of the Surface Parking Improvements no later than Developer's Completion of Construction of the Minimum Improvements. The parking spaces included in the Temporary Parking Area will be available for public use without charge,, including use by patrons of the Project. In the event that the City has not caused the Completion of Construction of the Surface Parking Improvements by the date that Developer has caused Completion of Construction of the Minimum Improvements, then at Developer's sole election, Developer may complete the Surface Parking Improvements and thereafter recover all of Developer's reasonable costs and expenses from the City assuming Developer has complied with the Section 10.1.

B. Zoning Code Parking Obligations. The parking spaces in the Temporary Parking Area shall be included by Developer toward its Zoning Code obligations for the provision of parking spaces required by the uses included in the Minimum Improvements . Upon

construction of the Garage (as defined below) by the City, the parking spaces in the Garage shall be included by Developer toward its Zoning Code obligations for the provision of parking spaces required by the uses included within the Minimum Improvements. During any period that all or any portion of the Temporary Parking Area is not available due to construction of the Garage, the City will temporarily suspend Developer's requirement to provide parking spaces for the Minimum Improvements until the Completion of Construction of the Garage.

C. Temporary Parking Term. The City agrees that during the construction of the Minimum Improvements and through the third (3rd) anniversary date of the issuance of the first Certificate of Completion for the tenant improvements included within the Minimum Improvements ("Temporary Parking Term"), Developer may include the number of parking spaces in the Temporary Parking Area towards its Zoning Code obligations for provision of parking spaces for the Improvements that are in addition to the Minimum Improvements, if any. The Parties agree that during the Temporary Parking Term, the City will temporarily suspend Developer's normally required provision of parking spaces for the Improvements that are greater than the Minimum Improvements.

D. Maintenance of Parking Surface. The City shall be responsible for the reasonable periodic maintenance, repair and replacement of the asphaltic surface of the Temporary Parking Area, but shall otherwise have no maintenance, repair or replacement obligations relating to the Temporary Parking Area.

E. Burial of Electrical Power Lines. The City desires to enhance the appearance of its downtown area and has required or undertaken the burial of overhead electrical power lines within the City's downtown area. Prior to or contemporaneously with Commencement of Construction of Site 3, the City shall, at its sole cost and expense, (i) cause all overhead electrical power lines within the Project to be buried, and (ii) remove (or cause to be removed) any electrical power line pole that, as a result of the burial of the electrical power lines, is no longer necessary for the suspension of any public or private utility, service or facility within the Project.

F. Garage. Not later than ten (10) months prior to the expiration of the Temporary Parking Term ("Temporary Parking Expiration Notice Date"), the City shall determine if it wishes to terminate the Temporary Parking Area at the expiration of the Temporary Parking Term and provide, in lieu of the Temporary Parking Area and at the City's sole cost, a multi-floor parking structure on Site 2 containing at least 350 parking stalls for public use, that is sufficient to satisfy the Zoning Code parking requirements for the Minimum Improvements (a "Garage").

(1) Upon such determination, the City shall give Notice to Developer on or before the Temporary Parking Expiration Notice Date of its termination of the Temporary Parking Area at the expiration of the original Temporary Parking Term, and shall thereafter construct a Garage and cause Completion of Construction of the Garage by the tenth month following such Notice to Developer. The determination to terminate the use of the Temporary Parking Area and temporary suspension of Developer's requirements to provide parking spaces for additional development above the Minimum Improvements will be at the sole discretion of the City but will be communicated to Developer no later than the termination of the Temporary

Parking Term, or any extension of such Temporary Parking Term. If the City elects not to terminate the Temporary Parking Area at the end of the initial Temporary Parking Term, the Temporary Parking Term shall continue automatically and will not be terminated without at least ten (10) months' Notice to Developer and Completion of Construction of a Garage before the expiration of the Temporary Parking Term, as extended.

(2) Notwithstanding the foregoing, in the event that (i) the City has not constructed the Garage by the expiration of the Temporary Parking Term described in Subsection 5.2(C) above; (ii) Developer is not then in material default of any term of this Agreement, the Lease or the Purchase Agreement; (iii) Developer has the right to develop Site 1, Site 2, or both, pursuant to Section 7.3 of this Agreement; and (iv) Developer has given not less than ten (10) months' Notice to the City that Developer intends to commence construction on Site 1, Site 2, or both, so that the Temporary Parking Area will not be available thereafter, then the City shall promptly design and Commence Construction of the Garage and cause such construction to be completed, and the Garage to be available for public parking, no later than ten (10) months from the date of Developer's Notice given pursuant to Section 5.2(F)(2)(iv).

G. No On-Site Retention. The City confirms that no on-site retention of water is required in connection with the development of Site 3, and that water from Site, as developed, will flow from Site 3 into public drainage facilities.

5.3 Coordination Meetings. From the Effective Date through the completion of the Minimum Improvements, the respective designated representatives of the City and Developer shall meet twice monthly to coordinate the development of the Project and to otherwise facilitate the orderly development of the Project. This Section 5.3 may be waived upon mutual agreement of the Parties.

5.4 Expedited Processing and Phasing of City Approvals.

A. Zoning Entitlements. Upon submittal of administratively complete rezoning application, as defined in Chandler regulations, and Developer's timely responses to the City's reviews of the submittal(s) for amendment of the Planned Area Development (P.A.D.) zoning and Central City District (CCD) zoning on Site 3, the City agrees to expedite the processing of Developer's applications for rezoning of Site 3 in accordance with Applicable Laws in order to assist Developer in achieving its development schedule.

B. Expedited Reviews for Regulatory Permits. Upon submittal of civil plans that are 90% complete and Developer's timely responses to the City's reviews of the submittal(s) for various regulatory permits, the City agrees to expedite the processing of Developer's applications for regulatory permits in accordance with Applicable Laws in order to assist Developer in achieving its development schedule. Expediting of reviews and processing for regulatory permits for purposes of this Agreement shall mean ten (10) business days for each review submittal.

C. Timing for City Approvals. In recognition of Developer's accelerated time-line for construction in order to have the Project available to comply with leasing

commitments to its tenants, the City commits to the following schedule for granting or issuing its approvals or permits (as applicable):

1. The City will approve Developer's PAD, PDP, midrise overlay, intermittent electronic display signage and any other land use matter or entitlement required in connection with Developer's applications, no later than April 1, 2016.

2. The City will approve Developer's site civil drawings and issue all permits for site work within thirty (30) days of Developer's first submission to the City.

3. The City will approve Developer's building civil drawings and issue all permits for construction within sixty (60) days of Developer's first submission to the City.

The failure of the City to timely comply with any of the matters listed in Section 5.4(C) above is a default by the City under this Agreement and shall be a "City Delay."

5.5 Phasing of City Approvals. Although the construction of the Minimum Improvements will be done in one phase, the City agrees that Developer may submit its civil plans and drawings in phases to include separate submittals for i) grading and drainage; and ii) foundation plans; and iii) building plans.

5.6 Payment of Review Fees. The City further agrees that Developer shall be granted the above-referenced expedited reviews without additional cost for the expediting of the reviews. Notwithstanding the foregoing sentence, Developer shall pay the fees associated with such reviews which are not expedited.

5.7 Mutual Cooperation to Obtain CenturyLink Cooperation. The Parties agree to mutually work in good faith to move the five parking spaces for the CenturyLink building on property adjoining Site 3 to the Temporary Parking Area during the Temporary Parking Term and thereafter into the Garage provided by the City in accordance with Subsection 5.2F).

SECTION 6. PUBLIC INFRASTRUCTURE IMPROVEMENTS. The street and traffic signal improvements within the public right-of-way as well as water and wastewater public infrastructure sufficient to serve the Minimum Improvements have been previously installed to the property line of Site 3. Developer shall have no further obligation to design, construct or install such infrastructure to Site 3 prior to its Commencement of Construction of the Minimum Improvements, but Developer will construct all private infrastructure on Site 3. Nothing contained herein shall limit Developer's obligation to provide additional street and traffic signal improvements or public water and wastewater infrastructure should Developer obtain approvals to construct Improvements on Site 3 that are of a greater or intensity or density than the Minimum Improvements .

SECTION 7. OTHER DEVELOPMENT MATTERS; OPTION.

7.1 System Development Fees. The City shall pay any system development fees assessed pursuant to Chapter 38 of the Chandler City Code ("System Development Fees") for Developer's development of Site 3 with the Minimum Improvements. Notwithstanding the

foregoing, any existing credits for System Development Fees that would be available to a developer of Site 3 shall be first applied as an offset to any System Development Fees owed by the City in connection with the development of the Minimum Improvements.

7.2 Intermittent Electronic Display Signage. As part of the approvals of the P.A.D. rezoning for the Project, the City will approve intermittent electronic display signage on Site 3 through the P.A.D. rezoning process, with such signage to include not fewer than three (3) intermittent electronic display advertising signs, each having an effective sign area of not less than 672 square feet, for site-specific as well as third-party advertising and public service announcements. During the P.A.D. process, the Parties shall reasonably agree on the amount of public service announcement time during peak display hours the City will receive on such electronic display signage.

7.3 Option to Purchase Site 1 and Site 2. The City hereby grants Developer an option to purchase Site 1 and Site 2 (the "Option"), exercisable upon the following conditions:

A. Developer shall have caused Completion of Construction of the Minimum Improvements in accordance with this Agreement; and

B. Developer shall not be in default of this Agreement, the Lease or the Purchase Agreement; and

C. Developer shall have provided Notice of Developer's exercise of the Option, specifying whether Developer is exercising the Option with respect to Site 1, Site 2, or both Site 1 and Site 2, no later than three (3) years from the issuance of a Certificate of Completion for the Minimum Improvements (the "Site 1 and Site 2 Option Deadline"). In the event that Developer has not timely provided Notice of Developer's exercise of the Option for both Site 1 and Site 2 by the Site 1 and Site 2 Option Deadline, then the Option shall automatically terminate as to the Sites 1 and 2 or any one of Site 1 or Site 2 remaining unsold; and

D. City and Developer have agreed to, by means of a Development Agreement substantially similar to this Agreement, a proposed development plan and development timeline for the development of Site 1 or Site 2 (as applicable), or both, that does not include multi-family residential uses below the third floor of the proposed development. Developer acknowledges that the City has full and sole discretion to accept or not accept the Developer's development plans and timeline. Additionally, City, by this provision, does not make any representation of incentives or terms other than explicitly set forth herein for Sites 1 and 2.

E. Developer may exercise the Option and purchase Site 1, Site 2, or both Site 1 and Site 2, prior to Developer's electing to purchase Site 3.

7.4 Purchase Price for Site 1 and Site 2. The purchase price for Site 1 shall be \$11.00 per net square foot, and the purchase price for Site 2 shall be \$9.00 per net square foot, both of which values have been determined by appraisal. The purchase of Site 1 and Site 2 (as applicable) shall be by a purchase agreement materially in the form of Exhibit C-2, reasonably adapted to reflect the terms of this Section 7.3; and the development of Site 1 and Site 2 (as

applicable) shall be subject to a development agreement materially in the form of this Agreement, reasonably adapted to reflect the terms of Developer's proposed development plan and development timeline for Site 1 and Site 2 (as applicable).

SECTION 8. DEFAULTS.

8.1 Events of Default. It shall be a default hereunder ("Default") if either Party fails to perform any of its obligations hereunder or under either the Lease or the Purchase Agreement, and such failure continues for a period of fifteen (15) days after Notice from the non-defaulting Party specifying in reasonable detail the nature of the failure in the case of a monetary default, or sixty (60) days after Notice from the non-defaulting Party specifying in reasonable detail the nature of the failure in the case of a non-monetary default; provided, however, that no non-monetary Default shall be deemed to exist if a cure within sixty (60) days is not practicable and the defaulting Party commences a cure within that sixty-day period and diligently and expeditiously pursues such cure to completion within ninety (90) days after Notice from the non-defaulting Party.

8.2 Remedy of City. In the event of a default by Developer and Developer's failure to timely cure the default as provided in Section 8.1, the City's sole remedy shall be as follows:

A. The City shall provide notice of the Default to Developer and Developer's Lender (as defined in the Lease) and to provide the Lender such time to cure Developer's Default as permitted by or granted to Lender by the NDRA (as defined in the Lease), but in no event more than one hundred and twenty (120) days from such Notice to Lender; and

B. In the event that the Lender fails or refuses to cure Developer's default within the time permitted by or granted to Lender by the NDRA (or one hundred and twenty days from Notice to Lender, whichever is greater), then the City shall subsequently give Notice to Developer demanding that Developer purchase Site 3 in accordance with the terms of the Purchase Agreement, but with Closing (as defined in the Purchase Agreement) to occur not earlier than ninety (90) days following Developer's receipt of the Notice required by this Section 8.2(B). Upon Closing, all of Developer's rights under the Option and Development Agreement shall remain in full force and effect. Developer's right to purchase Site 3 under this Section 8.2(B) is in addition to Developer's right to purchase Site 3 during the Term of the Lease or otherwise as permitted under the Purchase Agreement; and

C. In the event that Lender does not exercise its rights under the NDRA and Developer fails to purchase Site 3 within the time period set forth in Section 8.2(B) above, then the City may terminate this Agreement, the Lease, and/or Purchase Agreement.

8.3 Remedy of Developer. In the event of a Default by the one of the Parties and failure by the defaulting Party to timely cure the Default as provided in Subsection 8.1, the non-defaulting Party shall have all remedies available to it at law or in equity. Owner, or any successor-in-interest or assignee, may institute a legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, to terminate this Agreement, the Lease, and/or Purchase Agreement, or to enjoin any threatened or attempted violation, including suits

for declaratory relief, specific performance, relief in the nature of mandamus and actions for damages, provided, however, that claims for damages shall be limited to actual damages. The Parties hereby waives any right to seek consequential, punitive, multiple, exemplary or any other damages other than actual damages for a breach of this Agreement by the defaulting Party.

8.4 Notwithstanding the foregoing, solely in the event of a City Delay, Developer in its sole election may elect to (i) treat the City Delay as a Force Majeure Event with each day of the City Delay extending the dates of any required performance by Developer by the same number of days; or (ii) give the City Notice and an opportunity to cure its Default in accordance with Section 8.1;

8.5 Delays; Waivers. Except as otherwise expressly provided in this Agreement, any delay by any Party in asserting any right or remedy under this Agreement shall not operate as a waiver of any such rights or limit such rights in any way; and any waiver in fact made by such Party with respect to any default by the other Party shall not be considered as a waiver of rights with respect to any other default by the non-defaulting Party or with respect to the particular default except to the extent specifically waived in writing.

8.6 Rights and Remedies Cumulative. Subject to the limitations of Section 8.2 and Section 8.3, the rights and remedies of the Parties are cumulative, and the exercise by either Party of any one or more of such rights shall not preclude the exercise by it, at the same or different times, of any other right or remedy for any other default by the other Party.

8.6 Good Faith Efforts to Achieve Deadlines. Each Party agrees that it shall act in good faith with respect to its efforts timely to make all submissions and comply with all deadlines in order to allow the timely and successful performance of the other Party.

SECTION 9. REPRESENTATIONS.

9.1 City Representations. The City represents and warrants to Developer that:

A. The City is duly formed and validly existing under Arizona law and that the individual(s) executing this Agreement on behalf of the City is authorized and empowered to bind the City.

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

C. All consents and approvals necessary to the execution, delivery and performance of this Agreement, the Lease and the Purchase Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance; provided, however, the Parties hereby acknowledge and agree that pursuant to Chandler's City Charter, additional documents may require approval from Chandler City Council.

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

9.2 Developer Representations. Developer represents and warrants to the City that:

A. Developer is duly formed and validly existing under Arizona law and that the individual(s) executing this Agreement on behalf of Developer is authorized and empowered to bind Developer.

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

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

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

SECTION 10. GENERAL PROVISIONS.

10.1 Public Bid. If Developer seeks reimbursement for any work defined as Public Works in Title 34, Chapter 2 of Arizona Revised Statutes, Developer must comply with the competitive and open procurement processes set forth in A.R.S. § 34-101 *et seq.* The City will process the request for bids for such work through its process up through and including selection by the City Council.

10.2 Force Majeure. If either Party is delayed or prevented from the performance of any duty or obligation under this Agreement by reason of a Force Majeure Event, then the performance of such duty or obligation shall be excused for the period of the delay, and the period for the performance by such Party of any such duty or obligation shall be extended for a period equivalent to the period of such delay. The Party subject to any Force Majeure Event shall provide Notice to the other Party as soon as reasonably practicable.

10.3 Notices. Except as otherwise required by law, any notice, demand or other communication required to be given by this Agreement (each, a “Notice”) shall be in writing and shall be given by (i) personal delivery; (ii) by certified or registered U.S. Mail, return receipt requested; or (iii) or by any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), with all postage and other delivery charges prepaid and addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this paragraph:

To Developer: VPK The Row, LLC
Attention: David C. Scholl

2502 East Camelback Road, Suite 214
Phoenix, AZ 85016

With a copy to: Dickinson Wright PLLC
Attention: Gary L. Birnbaum
1850 North Central Avenue, Suite 1400
Phoenix, AZ 85004

To the City: City of Chandler
Economic Development Office (MS 416)
P. O. Box 4008
Chandler, AZ 85244-4008
Attention: Kim Moyers
Downtown Redevelopment Manager
Phone: 480-782-3045
Facsimile: 480-782-2209

With a copy to: City of Chandler
City Attorney's Office
P. O. Box 4008
Chandler, AZ 84244-4008
Attention: Kay Bigelow
Phone: 480-782-4642
Facsimile: 480-782-4652

10.4 Effective Date of Notices. Any Notice will (i) if delivered personally or delivered through a same day delivery/courier service be deemed effective upon delivery or refusal to accept delivery by the addressee; and (ii) if delivered by U.S. mail in the manner described above be deemed effective upon the earlier of receipt or three (3) business days after deposit in a post office operated by the United States or with a United States postal officer; and (iii) if sent by a recognized national overnight delivery service be deemed effective one (1) business day after deposit with such service. Notwithstanding the foregoing, no payment shall be deemed to be made until actually received in good and available funds by the intended payee. The Parties hereby acknowledge and agree that any Notice transmitted solely by facsimile or by electronic mail shall be deemed ineffective.

10.5 Waiver of Right to Trial by Jury. The Parties expressly covenant and agree that in the event of a dispute arising from this Agreement, each Party waives any right to a trial by jury. In the event of litigation, the Parties agree to submit to a trial before the court.

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

10.7 Recordation. The City will cause this Agreement to be recorded in its entirety in the Official Records of Maricopa County, Arizona, not later than ten (10) days after execution of the Agreement by the Parties, and shall thereafter promptly provide a recorded copy of this Agreement to Developer.

10.8 Governing Law. This Agreement shall be governed by and construed under the internal, substantive laws of the State of Arizona, without reference to the principles of conflict of laws.

10.9 Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect. If any applicable law or court of competent jurisdiction prohibits or excuses the City from undertaking any contractual commitment to perform under any provision of this Agreement, the remaining portions of this Agreement shall remain in full force and effect, and the Parties will negotiate diligently in good faith for such amendments of this Agreement as may be necessary to achieve the original intent of this Agreement, notwithstanding such invalidity or unenforceability.

10.10 Amendment. No change or addition is to be made to this Agreement except by written amendment executed by the City and Developer. Within ten (10) days after any amendment to this Agreement, the City will cause such amendment to be recorded in the Official Records of Maricopa County, Arizona, and shall thereafter promptly provide a recorded copy of such amendment to Developer.

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

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

10.13 Section Headings. The Section headings contained in this Agreement are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement. References to sections or exhibits are to Sections or Exhibits of this Agreement unless otherwise qualified.

10.14 No Partnerships; Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between Developer and the City. No term or provision of this Agreement is intended to, or shall, be for the benefit of any Person not a party hereto, and no such other Person shall have any right

or cause of action hereunder, except for permitted transferees or assignees to the extent that they assume or succeed to the rights and/or obligations of Developer under this Agreement.

10.15 Recitals, Exhibits. The Recitals set forth in Article 2 of this Agreement are incorporated herein by reference and form a part of this Agreement. The Parties agree that all references to this Agreement include all Exhibits designated in and attached to this Agreement, such Exhibits being incorporated into and made an integral part of this Agreement for all purposes. In the event of a conflict between any Maricopa County Assessor Parcel reference in Sections 3.25, 3.26 and 3.27, and Exhibits A-1, A-2 and A-3, the Exhibits shall control. Parties acknowledge, however, that the Maricopa County Recorder refuses to record graphical exhibits; and accordingly some of the incorporated exhibits are not contained in the recorded copy of this Agreement but are deemed attached and incorporated herein nonetheless. Exhibits that are not included in the recorded copy of this Agreement are attached to the copy of this Agreement in the office of the Chandler City Clerk.

10.16 Entire Agreement. This Agreement, the Lease, and the Purchase Agreement and all exhibits thereto attached and incorporated constitute the entire agreement between the Parties pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations, and understandings of the Parties, oral or written, are hereby superseded and merged herein.

10.17 Additional Provisions. Developer agrees to and does knowingly waive any and all rights to compensation for diminution in value pursuant to A.R.S. § 12-1134 that may now or in the future exist as a result of the approval or performance of, and all conditions, terms and agreements contained in this Agreement.

10.18 Conflict of Interest. This Agreement is subject to the cancellation provisions for conflicts of interest pursuant to A.R.S. §38-511.

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

Signatures of the Parties are on the following two pages.

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and behalf by its Mayor, and Developer has signed the same, on or as of the day and year first above written.

CITY:

CITY OF CHANDLER,
an Arizona municipal corporation

By: _____

Mayor Jay Tibshraeny

Date: _____, 2015

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CHANDLER CITY ATTORNEY

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing Agreement was acknowledged before me this ____ day of _____, 2015, by _____, Mayor of City of Chandler, an Arizona municipal corporation, on behalf of the municipal corporation.

Notary Public

My Commission Expires:

EXHIBIT A-1

Site 1 - Legal Description

EXHIBIT A-2

Site 2 - Legal Description

EXHIBIT A-3

Site 3 - Legal Description

EXHIBIT B

Minimum Improvements

EXHIBIT C-1

Lease

EXHIBIT C-2

Purchase Agreement

EXHIBIT D

Temporary Parking Area

EXHIBIT E

[Reserved]

EXHIBIT F

Surface Parking Improvements

EXHIBIT A-1
Site 1 Legal Description

Parcel 8, and Tract AA, of San Marcos Commons, according to the plat of record in the Office of the County Recorder of Maricopa County, Arizona, recorded in Book 865 of Map, Page 18, and Affidavit of Chandler recorded 2006-1307017 of Official Records.

EXHIBIT A-2
Site 2 Legal Description

Parcels 6 and 7, and Tract BB, of San Marcos Commons, according to the plat of record in the Office of the County Recorder of Maricopa County, Arizona, recorded in Book 865 of Map, Page 18, and Affidavit of Chandler recorded 2006-1307017 of Official Records.

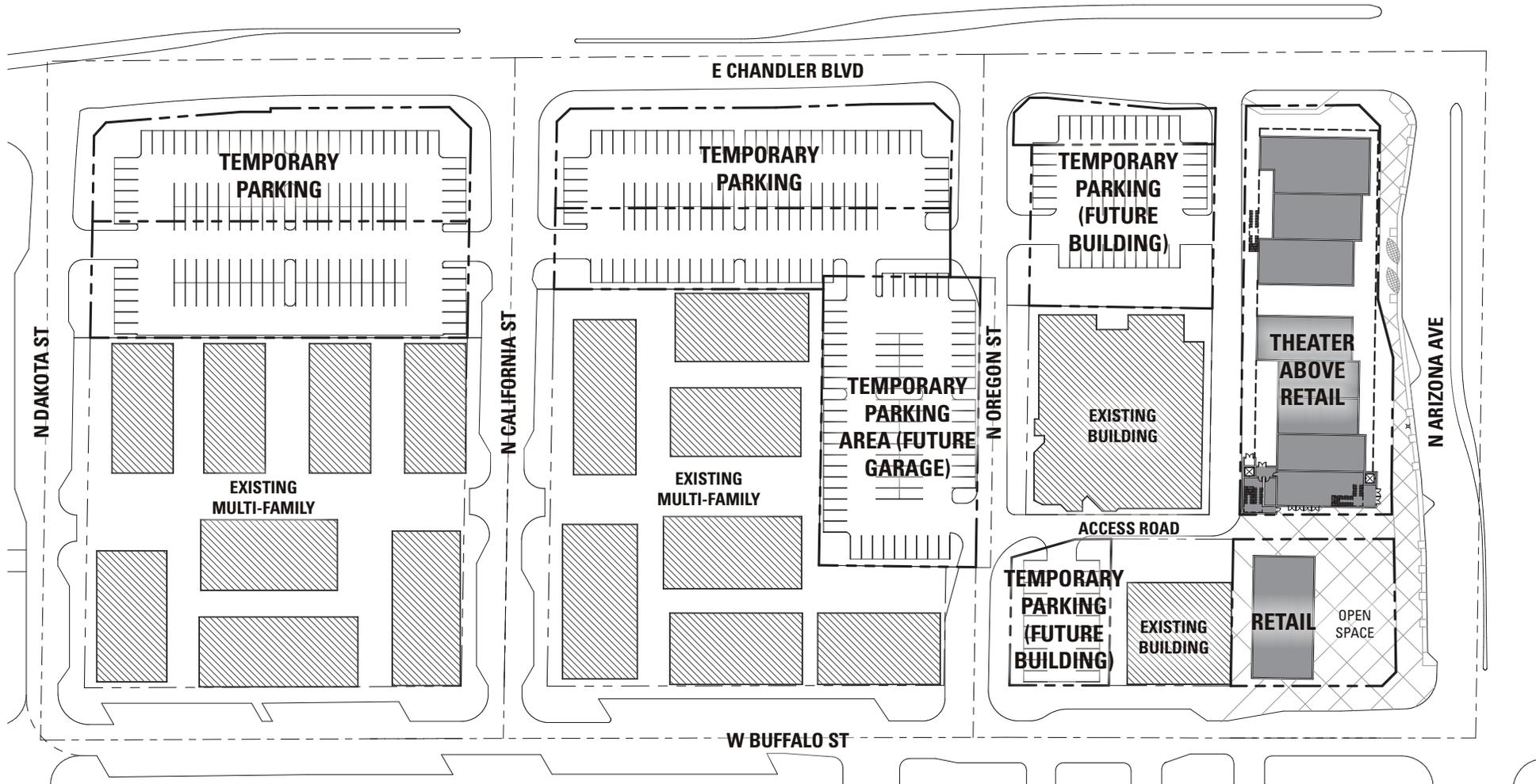
EXHIBIT A-3
Site 3 Legal Description

Parcels 1, 3, 4, and 5 of San Marcos Commons, according to the plat of record in the Office of the County Recorder of Maricopa County, Arizona, recorded in Book 865 of Map, Page 18, and Affidavit of Chandler recorded 2006-1307017 of Official Records.

And

Lot 1, of Qwest Chandler Main, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded as Book 694 of Maps, Page 15, and Affidavit or Correction recorded as 2005-558553 of Official Records and Affidavit of Correction recorded as 2005-708932 of Official Records.

Exhibit B



- MINIMUM IMPROVEMENTS
- EXISTING BUILDINGS

20' 40' 100'

Exhibit C-1

Exhibit C-2

EXHIBIT E
[Reserved]

EXHIBIT F
Surface Parking Improvements