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City of Tempe Basket

**SECOND AMENDMENT TO ASSUMPTION AND
MODIFICATION AGREEMENT**

C2014-46B

This Second Amendment to Assumption and Modification Agreement (“Second Amendment”) is entered into this 7th day of October, 2016, by and between the City of Tempe, an Arizona municipal corporation (“City”) and Tellurian Development Company, an Arizona corporation (“Tellurian”). The City and Tellurian are sometimes referred to as the “Parties” and individually as a “Party.”

RECITALS

A. City previously entered that certain Development Parcel Agreement (Business Park Parcel) [C2003-174C] dated as of July 2, 2009 and recorded on August 4, 2009 in the Official Records of Maricopa County Recorder of Arizona, as Instrument No. 2009-0722745 (the “Development Parcel Agreement”). The Development Parcel Agreement was entered into pursuant to and in accordance with the City of Tempe Marketplace Redevelopment Agreement (Loop 101 and Loop 202) (c2003-174) dated as of September 25, 2003 as amended and supplemented;

B. Tellurian and City acknowledged the effectiveness of the Development Parcel Agreement with respect to the Tellurian Properties in that certain Assumption and Modification Agreement dated April 24, 2014 and recorded at 2014-0291011 on May 5, 2014, records of Maricopa County, Arizona and that certain First Amendment to Assumption and Modification Agreement dated April 2, 2015, and recorded at 20150278669 on April 23, 2015, records of Maricopa County, Arizona (collectively the “Assumption and Modification Agreement”);

The Development Parcel Agreement stated that “City acknowledges that the increased costs of environmental remediation and of constructing the Improvements makes the development of the Property economically feasible only if City provides Owners with all statutorily-authorized property tax abatements, including, without limitation, all such abatements currently available pursuant to the provisions of A.R.S. sections 42-6201 through 42-6209, inclusive.”

NOW, THEREFORE, in consideration of the mutual agreements set forth herein, the Parties agree as follows:

1. The recitals set forth above are acknowledged by the Parties to be true and correct and are incorporated herein by this reference. Any terms that are capitalized in this Second Amendment shall have the same meaning as set forth in the Development Parcel Agreement as modified by the Assumption and Modification Agreement.

2. Section 5.2.1 of the Development Parcel Agreement is hereby clarified to reflect that the term of each individual lease of each individual parcel of the Tellurian Properties shall be forty (40) years unless a lesser term is requested by the Owner. It is expected that the Owner will enter into separate leases with the City as particular components of the Tellurian Properties are developed and a certificate of occupancy is issued with regard to the Improvements on said developed parcel.

3. The form of lease for the Tellurian Properties (“Exhibit “E” to the Development Parcel Agreement) is hereby amended to reflect that the term of the lease will be forty (40) years unless a lesser term is requested by the Owner. The Commencement Date of each such lease shall be as set forth in section 5.2.1 of the Development Parcel Agreement. The City’s commitment to enter into individual forty (40) year lease terms is contingent upon Tellurian providing documentation confirming that the economic impact of each individual improvement being conveyed is calculated at or above the sum previously provided to the City.

4. Leases with the City pursuant to the Development Parcel Agreement as amended herein shall be entered into on or before July 1, 2019.

5. Section 7.1 of the Development Parcel Agreement is hereby amended to add the following to the last sentence thereof: “Without limiting the foregoing, Tellurian specifically acknowledges and agrees that it shall use its commercial best efforts to work with other owners to include a circulation plan for connectivity to benefit all parcels adjacent to the Tellurian Properties.”

6. **GENERAL**

6.1 **Continued Effectiveness.** Except as amended hereby, the Development Parcel Agreement, as amended by the Assumption and Modification Agreement, shall remain in full force and effect. Nothing in this Second Amendment shall affect the continued effectiveness of the Development Parcel Agreement as to portions of the Property (as defined in the Development Agreement) other than the Tellurian Properties.

6.2 **Arizona Law.** This Second Amendment shall be governed by, and construed in accordance with, the laws of the State of Arizona.

6.3 **Captions.** The descriptive headings of the Articles and the Sections of this Second Amendment are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

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

6.5 **Additional Documents.** City and Tellurian each agree to execute and deliver all documents and take all actions reasonably necessary to implement this Second Amendment.

IN WITNESS WHEREOF, the Parties have executed this Second Amendment to Assumption and Modification Agreement through their representatives duly authorized to execute this document and bind their respective entities to the terms and obligations herein contained on the day and year first written above.

City of Tempe,
an Arizona municipal corporation

By: Mark W. Mitchell
Mark W. Mitchell, Mayor

ATTEST:

Brigitta M. Kuiper
Brigitta M. Kuiper, City Clerk

Approved as to Form:

Judith R. Baumann for
Judith R. Baumann, City Attorney

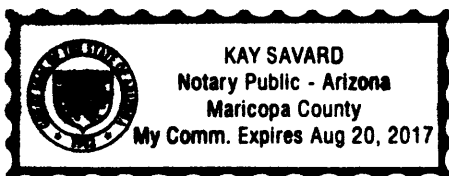
STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this 7th day of October, 2016, before me, personally appeared Mark W. Mitchell, who acknowledged himself to be the Mayor of the **CITY OF TEMPE**, an Arizona municipal corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Kay Savard
Notary Public

NOTARY SEAL:

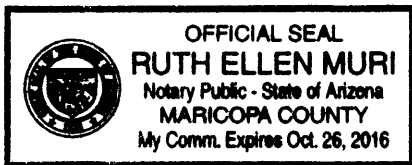


TELLURIAN DEVELOPMENT COMPANY,
an Arizona corporation

By: *Tom LeClair*
Its: PRESIDENT

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 3rd day of October, 2016 by Tom LeClair, as President of Tellurian Development Company, an Arizona corporation, for and on behalf of the corporation.



Ruth Ellen Muri
Notary Public