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City of Tempe Basket

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ASSUMPTION AND MODIFICATION AGREEMENT

C2014-46

THIS ASSUMPTION AND MODIFICATION AGREEMENT (this "Agreement") is entered into this 24th day of April, 2014, by and between the CITY OF TEMPE, an Arizona municipal corporation ("City") and Tellurian Development Company, an Arizona corporation ("Tellurian").

RECITALS

- A. Tellurian owns the real property described on Exhibit A attached hereto and incorporated herein (the "Tellurian Properties").
- B. 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, Arizona as Instrument No. 20090722745 (the "Development Agreement"). Capitalized terms not otherwise defined in this Agreement shall have the meanings given such terms in the Development Agreement.
- C. The Development Agreement contains certain provisions relating to development of the Property described therein, which includes the Tellurian Properties.
- D. The Development Agreement does not run with the Property, and Tellurian now desires to assume the burdens and benefits of the Development Agreement with respect to the Tellurian Property, in accordance with Section 7.15 of the Development Agreement.
- E. City and Tellurian are entering this Agreement to acknowledge the effectiveness of the Development Agreement with respect to the Tellurian Properties, to allow Tellurian to formally assume its ongoing but separate obligations under the Development Agreement with respect to the Tellurian Properties, and to amend the Development Agreement in certain respects as it relates to the Tellurian Properties.

AGREEMENT

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

1. **Recitals**. The recitals set forth above are acknowledged by the Parties to be true and correct and are incorporated herein by this reference.

2. **Assumption of Obligations**. The parties desire to and hereby ratify and confirm the continued effectiveness of the Development Agreement with respect to the Tellurian Properties. The Development Agreement is hereby ratified and confirmed in all respects, and the parties acknowledge and agree that the Development Agreement shall remain in full force and effect as hereafter amended, and shall be and remain binding on Tellurian and its successors and assigns. Tellurian assumes all right, title and interest in and to, and all obligations arising under, the Development Agreement with respect to the Tellurian Properties only.

3. **Amendment of Development Agreement**. The Development Agreement is hereby amended as follows:

3.1 **Schedule of Performance**. The Schedule of Performance attached as Exhibit C to the Development Agreement is hereby amended in its entirety and replaced with the Schedule of Performance attached hereto as Exhibit B.

3.2 **Conceptual Site Plan**. The Tellurian Properties are not intended to be developed in accordance with the Conceptual Site Plan originally attached as Exhibit B to the Development Agreement. Therefore, Section 3.2 of the Development Agreement is hereby amended in its entirety to read as follows:

3.2 Omitted.

3.3 **PAD**. The Conceptual Site Plan attached to the Development Agreement covered an area larger than the Tellurian Properties, and contemplated submission of a PAD for all of such land. The Tellurian Properties may not be developed as part of the larger surrounding area and may not require submission of a PAD under existing provisions of the City of Tempe Zoning and Development Code. Therefore Section 3.3 of the Development Agreement is hereby amended in its entirety to read as follows:

3.3 Omitted.

3.4 **Representatives**. Pursuant to Section 3.5 of the Development Agreement, Tellurian hereby designates Tom LeClair as its Developer Representative, and City hereby designates Chris Messer as the City Representative.

3.5 **Article IV** of the Development Agreement is hereby amended in its entirety to read as follows:

ARTICLE IV: Omitted

3.6 Waiver of Certain Development Fees. The Tellurian Properties are not intended to be developed in accordance with the Conceptual Development Plan originally attached as Exhibit B to the Development Agreement and Lots 2 and 5 no longer exist and it is not known at this time if residential will be part of the development of the Tellurian Properties. Therefore, Section 5.3 of the Development Agreement is hereby amended in its entirety to read as follows:

Section 5.3: Omitted

4. Notices. Tellurian hereby designates the following addresses for notices required or permitted to be sent pursuant to Section 7.5 of the Development Agreement:

To: Tellurian Development Company
Attn: Tom LeClair
2201 E. Camelback Rd., #620
Phoenix, AZ 85016
Tel. 602-248-8181
Email: tdleclair@msn.com

Required Copy to: Burch & Cracchiolo, PA
Attn: Andrew Abraham
702 E. Osborn Rd., #200
Phoenix, AZ 85014
Tel. 602-234-9917
Fax. 602-343-7917
Email: aabraham@bcattorneys.com

5. GENERAL

5.1 Continued Effectiveness. Except as amended hereby, the Development Agreement shall remain in full force and effect. Nothing in this Agreement shall affect the continued effectiveness of the Development Agreement as to portions of the Property other than the Tellurian Properties.

5.2 Arizona Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Arizona.

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

5.4 No Agency Created. Nothing contained in this Agreement creates any partnership, joint venture, or agency relationship between the City and Tellurian. No term or

provision of this Agreement is intended to be for the benefit of any person, firm, organization, or corporation not a party hereto, and no other person, firm, organization, or corporation may have any right or cause of action hereunder.

5.5 Additional Documents. City and Tellurian each agree to execute and deliver all documents and take all actions reasonably necessary to implement this Agreement.

IN WITNESS WHEREOF, the Parties have executed this 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
Judith R. Baumann, City Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

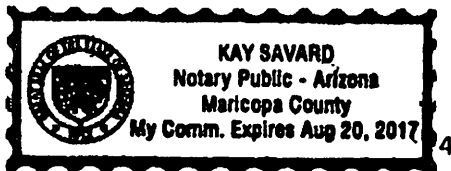
On this 24th day of April, 2014, before me, personally appeared Mark W. Mitchell, who acknowledged himself to be the Mayor of the **CITY OF TEMPE**, an Arizona municipal corporation.

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

Kay Savard
Notary Public

NOTARY SEAL:

C2014-46



Tellurian Development Company

By: [Signature]

Its: president

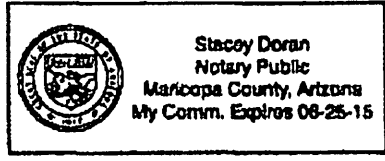
Date: 5/5/2014

STATE OF ARIZONA)
) ss.
County of MARICOPA)

The foregoing instrument was acknowledged before me this 5th day of May, 2014 by Tom LeClair, as President of Tellurian Development Co., a(n) Arizona corporation, for and on behalf of such.

[Signature]
Notary Public

Seal:



**EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY**

A portion of the Northeast quarter of Section 13, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, being more particularly described as follows:

COMMENCING at the City of Tempe brass cap in handhole marking the Center of said Section 13, from which a brass cap in handhole marking the East quarter corner of said Section 13 bears North 89 degrees 52 minutes 03 seconds East 2648.69 feet, said line is the South line of the Northeast quarter of said Section 13 and is the basis of bearings in this description;

THENCE North 02 degrees 30 minutes 48 seconds West 1362.84 feet along the West line of the Northeast quarter of said Section 13 to the Northerly most Northwest corner of Lot 7 TEMPE MARKETPLACE AMENDED, recorded in Book 969, page 20, Maricopa County Records, to the POINT OF BEGINNING;

THENCE continuing North 02 degrees 30 minutes 48 seconds West 681.00 feet to the Southerly right-of-way line of State Route 202L (Red Mountain Freeway), from which point an ADOT aluminum cap flush marking the North quarter corner of said Section 13 bears North 02 degrees 30 minutes 48 seconds West 681.84 feet, said point is also the Northeast corner of Lot 23, TEMPE MARKETPLACE AMENDED, recorded in Book 969, page 20, Maricopa County Records;

THENCE along said Southerly right-of-way line of State Route 202L (Red Mountain Freeway) the following five courses and distances:

THENCE North 84 degrees 16 minutes 18 seconds East 231.76 feet;

THENCE North 84 degrees 44 minutes 58 seconds East 639.52 feet;

THENCE South 84 degrees 23 minutes 37 seconds East 343.33 feet;

THENCE South 69 degrees 17 minutes 19 seconds East 176.74 feet

THENCE South 11 degrees 37 minutes 27 seconds East 62.67 feet to the Northwest corner of Parcel No. 2, described in 2007-1181334, Maricopa County Records;

THENCE along the Easterly line of that property described in said 2007-1181334, the following seven courses and distances:

THENCE South 57 degrees 48 minutes 06 seconds East 330.87 feet;

THENCE South 07 degrees 03 minutes 35 seconds West 8.66 feet;

THENCE South 53 degrees 51 minutes 57 seconds East 12.25 feet;

THENCE North 59 degrees 12 minutes 16 seconds East 9.82 feet;

THENCE South 57 degrees 32 minutes 48 seconds East 18.82 feet;

THENCE South 46 degrees 47 minutes 41 seconds East 206.10 feet;

THENCE South 33 degrees 04 minutes 30 seconds East 305.81 feet to the Northerly boundary of Parcel No. 2 described in 2007-0466715, Maricopa County Records;

THENCE South 86 degrees 26 minutes 39 seconds West 144.46 feet along said Northerly boundary of Parcel No. 2 to a line 825.00 feet West of and parallel with the East line of the Northeast quarter of said Section 13;

THENCE South 01 degree 40 minutes 52 seconds East 1281.93 feet along said parallel line to a line 77.00 feet North of and parallel with the South line of said Northeast quarter;

THENCE South 89 degrees 52 minutes 03 seconds West 165.06 feet along said parallel line to a line 990.00 feet West of and parallel with the East line of said Northeast quarter;

THENCE South 01 degrees 40 minutes 52 seconds East 37.01 feet along said parallel line to a line 40.00 feet North of and parallel with the South line of said Northeast quarter;

THENCE South 89 degrees 52 minutes 03 seconds West 380.06 feet along said parallel line;

THENCE North 00 degrees 15 minutes 16 seconds West 37.00 feet to a line 77.00 feet North of and parallel with the South line of said Northeast quarter;

THENCE South 89 degrees 52 minutes 03 seconds West 428.24 feet along said parallel line to the beginning of a non-tangent curve the center of which bears South 00 degrees 08 minutes 11 seconds East 2919.79 feet;

THENCE Westerly along the arc of said non-tangent curve through a central angle of 02 degrees 40 minutes 39 seconds an arc distance of 136.45 feet;

THENCE South 87 degrees 11 minutes 10 seconds West 219.93 feet to a line 495.00 feet East of and parallel with the West line of said Northeast quarter, and also the East line of Lot 7 of said TEMPE MARKETPLACE AMENDED;

THENCE North 02 degrees 30 minutes 48 seconds West 1298.41 feet along said parallel line to the North line of the Southwest quarter of the Northeast quarter of said Section 13;

THENCE South 89 degrees 58 minutes 02 seconds West 495.46 feet along said North line, and also the North line of said Lot 7 to the POINT OF BEGINNING.

COMPRISING 67.880 acres or 2,956,852 square feet more or less, subject to all easements of record.

Except Parcel No. 1 (APN #132-36-003F) described as follows:

That portion of the Northwest quarter of the Northeast quarter and the Northeast quarter of the Northwest quarter of Section 13, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the Southwest corner of the Northwest quarter of the Northeast quarter of said Section 13, from which the center of Section 13, as monumented by a City of Tempe brass cap bears South 02 degrees 35 minutes 19 seconds East, a distance of 1362.21 feet;

THENCE North 89 degrees 52 minutes 18 seconds East, along the South line of the Northwest quarter of the Northeast quarter of said Section 13, a distance of 539.47 feet;

THENCE North 02 degrees 09 minutes 34 seconds West, parallel with the East line of the Northwest quarter of the Northeast quarter of said Section 13, a distance of 659.81 feet;

THENCE South 89 degrees 52 minutes 18 seconds West, parallel with the South line of the Northwest quarter of the Northeast quarter of said Section 13, a distance of 764.24 feet;

THENCE South 02 degrees 35 minutes 19 seconds East, parallel with the East line of the Northeast quarter of the Northeast quarter of the Northwest quarter of said Section 13, a distance of 661.22 feet to the South line of the Northeast quarter of the Northwest quarter of said Section 13;

THENCE North 89 degrees 33 minutes 18 seconds East, along the said South line, a distance of 219.77 feet to the POINT OF BEGINNING;

EXCEPT any portion lying within the Northeast quarter of the Northwest quarter of Section 13, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

Except Parcel No. 2 (APN #132-36-008D and APN #132-36-002P) described as follows:

That portion of the South half of the Northeast quarter of Section 13, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the East quarter corner of said Section 13 from which the center of said Section bears South 89 degrees 52 minutes 03 seconds West, 2648.69 feet (South 89 degrees 51 minutes 41 seconds West, 2648.62 feet, record);

THENCE South 89 degrees 52 minutes 03 seconds West, 1371.42 feet, along the East-West mid-section line of said Section 13, to its intersection with the East line of that property described in Parcel No. 6 of Document No. 92-0428142, records of Maricopa County, Arizona;

THENCE North 00 degrees 15 minutes 16 seconds West, 679.70 feet along said East line, to the POINT OF BEGINNING;

THENCE continuing North 00 degrees 15 minutes 16 seconds West, 679.66 feet along said East line to the North line of the South half of the Northeast quarter of said Section 13;

THENCE North 89 degrees 58 minutes 02 seconds East, 347.22 feet along said North line to the West line of the East 990.00 feet of the North half of the Southeast quarter of the Northeast quarter of said Section 13;

THENCE South 01 degrees 40 minutes 52 seconds East, 679.62 feet along said West line to the South line of the North half of the Southeast quarter of the Northeast quarter of said Section 13;

THENCE South 89 degrees 55 minutes 03 seconds West, 364.14 feet along said South line of the POINT OF BEGINNING.

Except Parcel No. 3 (APN #132-36-008E), which is comprised of and described as follows:

Parcel A:

The South half of the Southeast quarter of the Northeast quarter of Section 13, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian;

EXCEPT: The East 990 feet and the South 40 feet thereof.

Parcel B:

That portion of the Southwest one quarter of the Northeast one quarter of Section 13, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

Beginning at the Southeast corner of the Southwest one quarter of the Northeast one quarter of said Section 13; thence along the Easterly line of said Southwest one quarter North 2 degrees 43 minutes 55 seconds West, 681.06 feet to the Northeast corner of the South one half of said Southwest one quarter; thence along the Northerly line thereof South 89 degrees 32 minutes 12 seconds West, 25.50 feet; thence leaving said Northerly line South 0 degrees 45 minutes 55 seconds East, 680.55 feet to a point in the Southerly line of said Southwest one quarter; thence along said Southerly line North 89 degrees 31 minutes 00 seconds East, 48.87 feet to the POINT OF BEGINNING.

EXCEPT: The Southerly 40.0 feet,

Except Parcel No. 4 (APN #132-36-003R and APN #132-36-003U) described as follows:

That portion of the North half of the Northeast quarter (N½NE¼) of Section 13, Township 1 North, Range 4 East, Gila and Salt River Meridian, Maricopa County, Arizona, described as follows:

Commencing at a brass cap in hand hole marking the East quarter corner of said Section 13, being North 89°51'41" East 2648.62 feet from a brass cap in hand hole marking the Center of said Section 13;

thence along the East – West mid section line of said Section 13, South 89°51'41" West 1371.11 feet;

thence North 0°15'36" West 77.00 feet;

thence South 89°51'44" West 33.00 feet;

thence North 0°15'38" West 1282.33 feet;

thence North 89°55'21" East 3.25 feet;

thence North 89°57'23" East 104.07 feet to the existing westerly right of way line of State Route 202L (RED MOUNTAIN FREEWAY);

thence along said existing westerly right of way line, North 2°05'40" West 448.18 feet;

thence continuing along said existing westerly right of way line, North 11°37'49" West 159.21 feet to the POINT OF BEGINNING;

thence North 57°48'28" West 28.75 feet;

thence North 74°00'00" West 515.12 feet to said existing westerly right of way line;

thence along said existing westerly right of way line, South 84°24'09" East 343.33 feet;

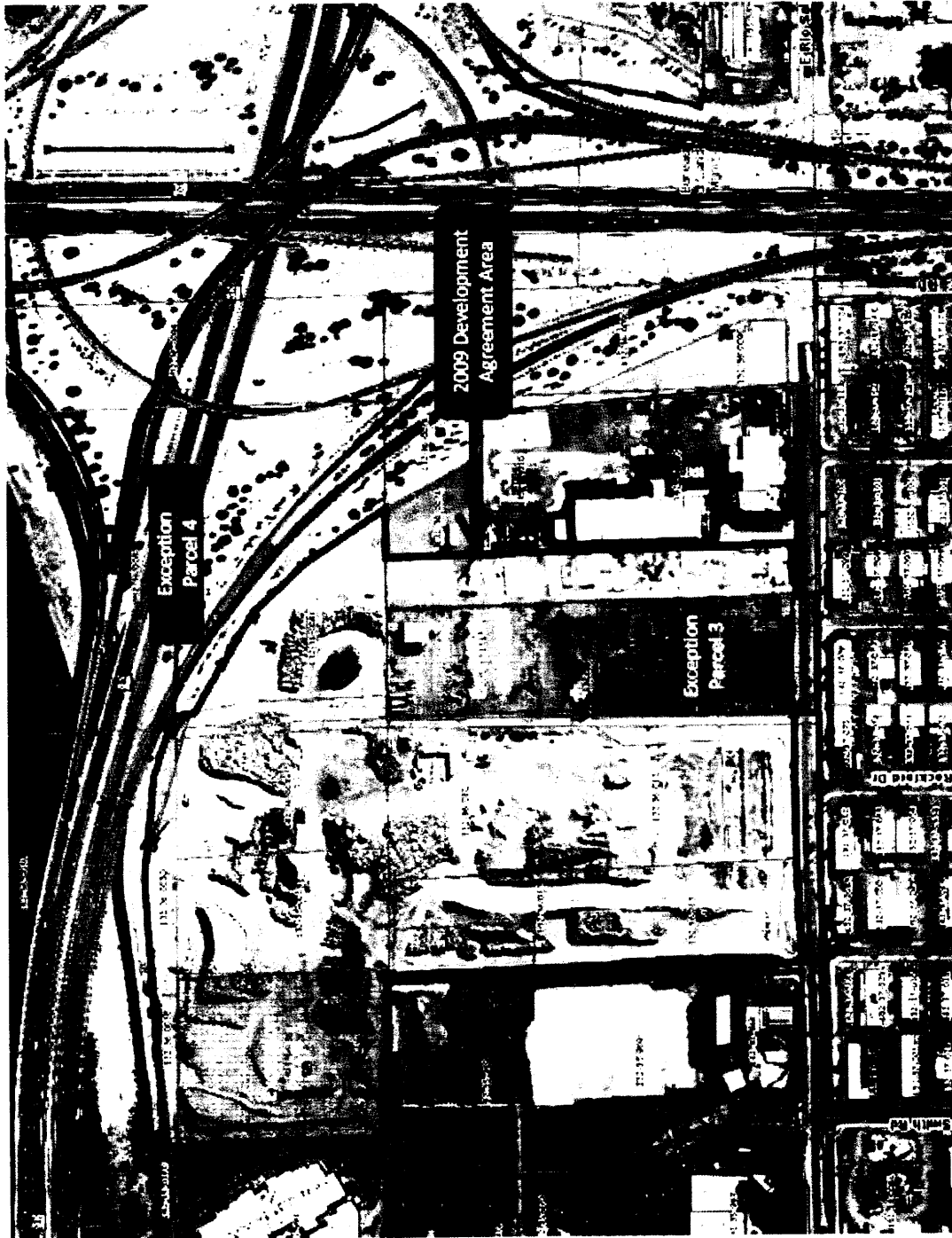
thence continuing along said existing westerly right of way line, South 69°19'07" East 176.53 feet;

thence continuing along said existing westerly right of way line, South 11°37'49" East 62.76 feet to the POINT OF BEGINNING.

20,792 square feet, more or less.

EXHIBIT B

Timeline to Perform Task from Execution of this Agreement	Task/Obligation
July 1, 2014	Commence Environmental Clean-up and Geotechnical Work
July 1, 2018	Obtain Building Permits for any Phase of the Project
May 1, 2019	Substantially complete construction of initial building improvements within any Phase of the Project



City Clerk Note: Exhibit not recorded with the agreement.