

AGREEMENT

This Agreement is made and entered into on February 9, 2021 (the "*Effective Date*"), between the Tohono O'odham Nation, a federally recognized Indian tribe (the "*Nation*"), and the City of Glendale, a municipal subdivision of the State of Arizona (the "*City*"). The Nation and the City may be individually referred to in this Agreement as a "*Party*" and collectively as the "*Parties*."

1. Recitals.

As background to this Agreement, the Parties recite, state, and acknowledge the following, each of which recitals is fully incorporated into this Agreement and expressly made a material term and condition of this Agreement. The following recitals constitute joint representations of the Parties, except where a statement is specifically attributed to one Party:

- A. The Nation is a federally recognized Indian tribe, which represents that it has the authority under its Constitution and tribal laws to enter into this Agreement;
- B. The City is an Arizona municipal corporation which provides municipal services, including public safety services;
- C. The Nation anticipates taking title to the undeveloped land generally depicted on **Exhibit A** attached hereto and legally described on **Exhibit B** attached hereto located in an unincorporated area within the exterior boundaries of Maricopa County and within the City's municipal planning area at the southeast corner of the Northern Parkway and the Loop 303 Freeway (the "*Property*");
- D. Title to the Property is currently held by Saguaro Land Properties LLC, a Delaware limited liability company controlled by the Nation ("*Saguaro*"). Saguaro intends to transfer title to the Property to the Nation prior to its development;
- E. Saguaro acquired the Property from Northern Parkway Investors, LLC, an Arizona limited liability company, on July 17, 2020 ("*NPI*");
- F. The City entered into a Pre-Annexation Development Agreement for Loop 303 Phase 1 Utility Group, dated as of October 23, 2012 and recorded on October 31, 2012 in the Official Records of the Maricopa County Recorder (the "*Official Records*") as Reference Number 20120989588, and re-recorded in the Official Records for the purpose of correction on February 1, 2013 as Reference Number 20130104447 (the "*PADA*"), with NPI and each of the other landowners that are parties to the PADA (collectively, the "*Other Owners*");
- G. The PADA does not require the City to annex any property, and includes the acknowledgment by NPI and the Other Owners that annexation of any property covered by the PADA is a legislative process to be considered by the City in its sole discretion acting in its governmental capacity;

- H. Subject to the Compact (as defined below) and any other necessary agreements or approvals, the Nation intends to develop and construct a gaming facility and other commercial facilities on the Property (collectively and as further defined below, the "*Project*"), and in connection therewith the Nation intends that the Property be held in trust by the United States for the benefit of the Nation;
- I. The Parties contemplate that the Project will be similar in nature to the West Valley Resort project located at the southwest corner of 91st Avenue and Northern Avenue, adjacent to Glendale, Arizona (the "*WVR Project*"), that is the subject of an existing settlement agreement dated August 12, 2014 between the Parties (the "*Settlement Agreement*");
- J. The City acknowledges that its policy with respect to the WVR Project has been beneficial to the City and the City desires to continue to implement the same policy it adopted with respect to the WVR Project and the Settlement Agreement;
- K. The Parties acknowledge that the WVR Project was previously subject to disputes and litigation between the Parties, including the disputes and litigation that were the subject of the Settlement Agreement, and the Parties desire to avoid disputes and litigation over the Project;
- L. To facilitate the development, construction, and operation of the Project, the Nation and City desire to enter into this Agreement, among other things as provided herein, to confirm that the Parties desire to resolve in advance any disputes over the development of the Project that might arise between the City and the Nation and that the PADA has not become operative with respect to the Property, and to provide for the release of the Property from the PADA;
- M. The Parties acknowledge their strong, mutually beneficial working relationship, and agree that the support of local government and cooperative intergovernmental relationships are important to the development of the proposed Project;
- N. The Nation recognizes that the approval of the federal trust application with respect to the Project will have economic and other impacts on the City and the local community; and
- O. The Parties agree that (i) the Parties will mutually benefit from this Agreement and (ii) any payment to the City made pursuant to this Agreement is not an assessment, tax, or fee, but is made in consideration of the release of the Property from the PADA and the other rights and obligations set forth herein.

Now therefore, in consideration of the promises, covenants, agreements, and obligations contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties enter into this Agreement and agree as follows.

2. Definitions and References.

In addition to the defined terms contained elsewhere in this Agreement, the following terms shall have the meanings given:

“Gaming Enterprise” means the Tohono O’odham Gaming Enterprise, the enterprise of the Nation that will operate the gaming component of the Project.

“Class III Gaming” means “class III gaming” as defined in the IGRA.

“Compact” means a new or amended tribal-state gaming compact anticipated to be entered into between the State of Arizona and the Nation following any necessary approvals and which will authorize the Nation to conduct Class III Gaming on the Property.

“CPR” means the International Institute for Conflict Prevention & Resolution.

“Existing Compact” means the Tohono O’odham Nation – State of Arizona Gaming Compact dated December 4, 2002, as amended (including the amendment effective on March 25, 2009), that, as of the Effective Date, governs the Nation’s Class III Gaming at the WVR Project.

“IGRA” means the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 et seq., as amended from time to time.

“Lands Replacement Act” means the Gila Bend Indian Reservation Lands Replacement Act, P.L. 99-503.

“Project” means the gaming facility and other commercial development that the Nation intends to develop, construct, and operate on the Property and which is planned to include, among other things, a casino, restaurants, bars, other retail and entertainment facilities, commercial and medical offices, supporting facilities, and parking structures and lots.

3. Term.

The term of this Agreement shall commence on the Effective Date of this Agreement and, unless terminated earlier in accordance with the terms of this Agreement, shall continue until Class III Gaming ceases being conducted on the Property or such earlier date on which the Nation makes the last payment required under Section 8(B) of this Agreement.

4. Termination of PADA; Announcement Regarding the Project; No Opposition; No Annexation; Covenant Not to Sue.

- A. Resolution. As soon as practicable following the adoption by the City of a resolution approving this Agreement, the City will adopt a resolution in the form attached hereto as **Exhibit C** approving and authorizing the execution on behalf of the City and recording of a Memorandum of Agreement and Partial Termination of Prior Agreement releasing the Property from the PADA, in the form attached as **Exhibit 1** to such resolution, which will then be executed on behalf of the City and the Nation and recorded, at the cost and expense of the Nation, in the Official Records (the “*Memorandum of Agreement*”).

B. Press Release. Within ten (10) days after the Effective Date, the City and the Nation will issue a joint press release, approved in substance and form by each of the Parties, stating that:

1. The City and the Nation have entered into a mutually beneficial intergovernmental agreement relating to the Property and the Project;
2. The City supports the United States' acquisition of the entirety of the Property in trust for the benefit of the Nation under the Lands Replacement Act;
3. The City supports the Project (including the Nation's proposed casino gaming operation on the Property);
4. The City wants the Nation to construct and commence operating the Project as expeditiously as possible for the mutual benefit of the City and the Nation; and
5. The City supports the Nation's efforts to enter into a Compact authorizing the Nation's Class III Gaming on the Property.

C. No Opposition.

1. The City will not, directly or indirectly, oppose, challenge, or appeal any decision by the Secretary of the Interior to acquire the Property in trust for the benefit of the Nation under the Lands Replacement Act, including any current or future fee to trust applications concerning the Property.
2. If the Nation asks the National Indian Gaming Commission or the United States Department of the Interior to issue any decisions or opinions relating to whether the Property meets the requirements of 25 U.S.C. § 2719(b)(1)(B), the City will not, directly or indirectly, oppose the request.

D. No Annexation. The City will not, after the Effective Date, annex, or take any action to annex, all or any portion of the Property.

E. Covenant Not to Sue. The City will not commence any future action or make any claims against the Nation or the Gaming Enterprise to hinder the Nation or the Gaming Enterprise in developing the Project, except that the City may seek to enforce the terms of the Settlement Agreement and this Agreement.

5. Infrastructure for the Project.

A. Intent. Since the Property is not and will never be located within the City, the Parties do not intend to enter into a development agreement as defined in A.R.S. § 9-500.05(A) and expressly disclaim any implication that this Agreement constitutes such an agreement.

- B. On-site Infrastructure. The Nation will be responsible for constructing and paying for any on-site infrastructure required on the Property to support the Project.
- C. Off-site Infrastructure. The Nation will be responsible for constructing and paying for any off-site infrastructure required to support the Project. If any such off-site infrastructure is constructed by the City, the Nation will reimburse the City the actual costs the City incurs for constructing the off-site infrastructure improvements that are required by and directly attributable to the Project. The actual costs will be determined in accordance with generally accepted accounting, engineering, and legal principles for real estate development in a non-discriminatory manner. If the City and the Nation are unable to agree upon the Nation's share of the actual costs of any off-site infrastructure improvements, the Nation's share will be determined by mediation and arbitration in accordance with Section 10 of this Agreement.

6. Construction of the Project; Building Codes.

The Nation's design and construction, and any future modification of, the Project shall comply with standards governing health and safety which shall be no less stringent than the standards required by any applicable provisions of the Compact and 18 Tohono O'odham Code Chapter 3 – Building Codes, as each may be amended. The Nation shall allow access to the City's Fire Marshall or an appropriate designee fire inspector, during normal hours of operation on forty-eight (48) hours advance notice, to assess compliance with those standards. The City acknowledges its Fire Marshall will not have jurisdiction over the Project and nothing in this Agreement is intended to confer such jurisdiction.

7. Governmental Services for the Project.

- A. Governmental Services Provided by the Nation. The Nation will be responsible for providing (directly or through agreements with other public or private providers) all necessary and customary governmental services to the Project, including, not limited to, public safety (police and traffic control), fire protection, and emergency medical services.
- B. Cooperation with the City. The Nation and the City will work cooperatively to avoid conflicts or gaps in their provision of public safety, fire protection, and emergency medical services within their respective jurisdictions, may execute mutual aid agreements, and may conduct joint public safety training exercises.
- C. Utility Services. The Nation intends to acquire potable water and wastewater services for the Project from EPCOR Water Arizona Inc. or an affiliate. The City will have no obligation to furnish potable water or wastewater services for the Project.

8. Payments to the City and Other Consideration Provided by the Nation.

- A. Before the Nation Commences Gaming. Within ten (10) days after the resolution provided in Section 4(A) of this Agreement becomes effective and the

Memorandum of Agreement is fully executed and recorded, the Nation will make a one-time payment to the City in the amount of \$400,000.00 to help fund the operations of the City.

- B. After the Nation Commences Gaming. Commencing in the year in which the Nation first offers Class III Gaming to the public on the Property (the “*Base Year*”) and continuing in each subsequent year for a period of twenty (20) years, the Nation will make the payments described below:
1. Commencing in the Base Year, the Nation will make annual payments to the City to help fund its operations. The Nation will commence making payments to the City within six (6) months of the date on which the Nation first offers Class III Gaming to the public on the Property and annually thereafter within sixty (60) days of the anniversary date of the original payment made under this subsection.
 2. The Nation’s payment in the Base Year will be \$1,000,000.00. In each subsequent year of this Agreement, the Nation will make a payment to the City in an amount that is two percent (2%) greater than its payment in the previous year, for the same purposes.
 3. For purposes of Sections 8(B)(2) and (4) of this Agreement, the term “year” will mean fiscal year of the Nation, which runs October 1 through September 30.
 4. If the Nation offers Class III Gaming to the public on the Property for only part of a year, the Nation’s payment for that year will be prorated based on the number of days during the year on which the Nation actually offers Class III Gaming to the public on the Property. For purposes of calculating the two percent (2%) increases required in Section 8(B)(2) of this Agreement, any prorations will be ignored and the calculations will be made as if the Nation had offered Class III Gaming to the public on the Property for the entirety of the previous year.
 5. The City may expend the Nation’s payments as the City determines, provided the City expends the payments to fund government services that benefit the general public (and the City will make an annual, written certification to the Nation that it has done so).

9. Cancellation or Amendment of Agreement.

- A. By Mutual Agreement. The City and the Nation may amend or terminate this Agreement at any time by mutual agreement. Any amendment or termination of this Agreement must be documented in writing and signed by the Parties. No waiver of any term, provision, or condition of this Agreement will be deemed to have occurred unless the waiver is expressed in writing and signed by the Party against whom the waiver is asserted.

- B. After a Breach by the City. The Nation may terminate this Agreement, without penalty and without further obligation to the City under this Agreement, including any obligation to pay a share of any off-site infrastructure costs under Section 5(C) of this Agreement, if:
1. The City fails to timely meet its obligations under Sections 4(A) or (B) of this Agreement;
 2. The City annexes, or takes any step or commences any action to annex, the Property; or
 3. The City passes any resolution or otherwise takes a formal position relating to the Project or the Nation's proposed casino gaming operation on the Property in contravention of its obligations under Section 4 of this Agreement.
- C. Other Nation Termination Rights. The Nation may terminate this Agreement, without penalty or further obligation to the City under this Agreement except to pay for its share of any off-site infrastructure costs under Section 5(C) of this Agreement that the City has expended or committed to expend, and without any right to receive a refund of any sums previously paid under this Agreement:
1. After the issuance of a final decision, not subject to judicial review, that the Property does not satisfy the requirements to be taken into trust under the Lands Replacement Act;
 2. After the issuance of a final decision, not subject to judicial review, that the Property is not eligible for the operation of Class III Gaming;
 3. If the Nation determines, in its sole discretion, that it will not apply to have the Property taken into trust;
 4. If the Nation determines, in its sole discretion, that it will not operate a Class III Gaming facility on the Property;
 5. If the Nation fails or is unable to enter into a Compact; or
 6. After the Nation enters into a Compact, if at any time thereafter the Compact is terminated or if at any time the Nation does not have a valid and effective gaming compact with the State of Arizona.
- D. Reduced Scope of Gaming; Revenue Sharing Changes, Compact Extension or Replacement.
1. In entering into this Agreement, the Parties have an expectation that (1) the Nation will enter into a Compact with revenue sharing obligations that do not exceed the revenue sharing obligations under the Existing Compact and (2) the Nation's revenue sharing obligations under the

Compact will remain consistent for the term of the Compact. To that end, the City will work with the Nation, diligently and in good faith, to support the Nation's efforts to enter into a Compact with revenue sharing obligations no greater than under the Existing Compact.

2. If, for any reason, the Nation is not able to continue to offer Class III Gaming with a scope similar to or more favorable than that permitted under the Compact when entered or the Nation's revenue sharing obligations exceed those under the Compact when entered, then the Parties agree that the payments made under Section 8(B) of this Agreement shall be amended to reflect the changed economics from the reduced scope of permitted Class III Gaming or from the Nation's new revenue sharing obligations (or both) in the following manner:
 - a. If the Nation is not able to continue to offer Class III Gaming with a scope similar to or more favorable than that permitted under the Existing Compact, and the Nation's "Class III Net Win," as defined in the Compact, for the Project declines by more than ten percent (10%) from the Class III Net Win for the Project in the year before the reduction in scope, then the Nation's payments under Section 8(B) of this Agreement will be reduced in proportion to the reduction in the Nation's Class III Net Win for the Project in comparison to the year before the reduction in scope. The amount of any reduction in Class III Net Win for the Project will be determined by a certification of the percentage decline by the auditor preparing the reports and audits required by the Compact.
 - b. If the Nation's revenue sharing obligations under any new or amended gaming compact exceed those under the Compact when entered, then the Nation's payments under Section 8(B) of this Agreement will be reduced by the amount of the increase in the Nation's revenue sharing obligations so that the combination of the Nation's revenue sharing obligations under the new or amended compact and the Nation's payments to the City under Section 8 of this Agreement bear the same ratio to the Nation's Class III Net Win for the Project as they did in the year before the new or amended gaming compact. The amount of any reduction in Class III Net Win for the Project will be determined by a certification of the percentage decline by the auditor preparing the reports and audits required by the Compact.

10. Dispute Resolution.

- A. Notice/Negotiation. In the event of any dispute between the Parties arising out of or relating to this Agreement (including, but not limited to, a dispute about the interpretation of this Agreement, the nature of any Party's obligations under this Agreement, or the alleged failure of a Party to comply with the terms of this

Agreement), then any Party may serve a written notice on the other identifying the dispute and setting forth the factual and legal bases for the dispute. Within ten (10) days following delivery of the written notice of dispute, a senior representative of each of the Parties to the dispute will meet in an effort to voluntarily resolve the dispute through negotiation.

- B. Mediation. If the Parties are unable to resolve by negotiation any dispute arising out of or relating to this Agreement within thirty (30) days after delivery of a written notice of dispute, the Parties will, upon the written request of any Party, endeavor to settle the dispute in an amicable manner through non-binding mediation administered by the CPR under its then current mediation procedures (unless otherwise agreed to by the Parties), as modified by the following:
1. *Selection of Mediator.* If the Parties agree upon a mediator, that person will serve as the mediator. If the Parties are unable to agree on a mediator within ten (10) days of a request for mediation, then the CPR (i) will select an attorney from the CPR Panels of Distinguished Neutrals to be the mediator or (ii) if requested by the Parties, will select the mediator from a list of potential mediators approved by the Parties.
 2. *Costs of Mediation.* The costs of mediation will be borne equally by the Parties, with one-half ($\frac{1}{2}$) of the expenses charged to the Nation and one-half ($\frac{1}{2}$) of the expenses charged to the City.
 3. *Mediation as Condition Precedent to Arbitration.* Claims, disputes or other matters arising out of or related to this Agreement, or breach thereof, shall be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by Parties to this Agreement.
- C. Arbitration. If the Parties are unable to resolve by mediation any dispute arising out of or relating to this Agreement within thirty (30) days after a request for mediation, then, unless otherwise agreed to by the Parties, any dispute arising out of or relating to this Agreement, including the breach, termination, or validity of the Agreement, will be finally resolved by arbitration in accordance with the CPR's Rules for Administered Arbitration (the "*Rules*"), as modified by the following:
1. *Arbitrators.* Unless the Parties agree in writing to the appointment of a single arbitrator, the arbitration will be conducted before a panel of three (3) arbitrators selected by the CPR, each of whom will be a member of the CPR Panels of Distinguished Neutrals (the "*Tribunal*"). One of the arbitrators will be an attorney with extensive knowledge of Arizona municipal law. One of the arbitrators will be an attorney with extensive knowledge of the IGRA, federal Indian law, and jurisdiction within Indian country. One of the arbitrators will be an attorney with extensive knowledge about real estate development. All arbitrators will be independent and impartial.

2. *Service of Process.* Service of process in any arbitration may be by certified mail, return receipt requested, to a notice address under Section 13 of this Agreement, by personal service on the Nation's then current Chairperson or Attorney General for service on the Nation, by personal service on the City's City Manager or City Attorney for service on the City, or as otherwise permitted under the Rules.
 3. *Discovery.* The Parties shall be permitted to conduct discovery consistent with the expedited nature of arbitration and the nature of the dispute. The Parties may exchange written document requests. Except as agreed upon by the Parties or permitted by the Tribunal for good cause, all written discovery shall be completed, including resolving any discovery disputes, at least forty-five (45) days before any fact-finding hearing. Except as agreed by the Parties or permitted by the Tribunal for good cause, the Parties may take depositions of up to five (5) witnesses, each of which shall last no longer than seven (7) hours.
 4. *Arbitration Hearing.* The Tribunal shall provide the Parties with at least thirty (30) days' written notice of the date of the arbitration hearing. There shall be a stenographic record of the hearing, with the costs shared equally by each Party. The transcript shall be the official record of the proceeding.
 5. *Decisions Must Comply with IGRA and Compact.* The Tribunal will issue a written decision setting forth findings of fact, conclusions of law, and a statement regarding the reasons for the disposition of each claim. The Tribunal will resolve the disputes submitted for arbitration in accordance with, and every decision of the Tribunal must comply with, and be consistent with, the IGRA and the Compact, as each may be amended and as each may be interpreted by courts of competent jurisdiction. The Tribunal shall issue its written decision promptly, and unless otherwise agreed to by the Parties or for good cause, no later than thirty (30) days from the date of completion of the arbitration hearing.
 6. *Costs of Arbitration.* The costs of arbitration will be borne equally by the Parties, with one-half ($\frac{1}{2}$) of the expenses charged to the Nation and one-half ($\frac{1}{2}$) of the expenses charged to the City. Each party shall bear their own attorneys' fees. However, an arbitration award may provide for the prevailing Party to recover its reasonable attorneys' fees, litigation costs, and costs of the arbitration.
 7. *Enforcement of Award.* Judgment upon any award rendered by the Tribunal may be entered by any court having jurisdiction. The decision of the majority of the arbitrators will be final, binding, and non-appealable.
- D. Litigation. Notwithstanding the provisions of Section 10(C), the City may commence an action in any court having jurisdiction to enforce the Nation's obligations under this Agreement if the Nation refuses to arbitrate or asserts in an

arbitration proceeding either that this Agreement is void or that the Nation's agreement to arbitrate is unenforceable for any reason. Notwithstanding the provisions of Section 10(C), the City may commence an action in any court having jurisdiction to enforce the obligations of the Nation to make payments under this Agreement, but, in the event of any ancillary disputes, including disputes about whether any payment is owed or disputes about the amount of any payment, those ancillary disputes shall be resolved under Section 10(C) and not in the court action.

11. Immunity from Suit.

In accordance with Resolution No. 21-029 of the Nation's Legislative Council, the Nation waives the sovereign immunity enjoyed by the Nation and consents (1) to the resolution of any disputes arising out of or relating to this Agreement that are subject to arbitration, including the breach, termination, or validity of the Agreement, through binding arbitration before the CPR in conformance with this Agreement, without the need to exhaust any tribal remedies, (2) to the enforcement of any arbitration decisions or awards rendered in conformance with this Agreement in any court having jurisdiction, and (3) to the resolution of any disputes arising out of or relating to this Agreement that are not subject to arbitration or a Party's refusal to submit to arbitration, including suits under Section 10(D), through an action in any court having jurisdiction, without the need to exhaust any tribal remedies or any administrative remedies (and, in the case of a suit under Section 10(D), without the need to first arbitrate the dispute). Nothing in this Agreement will be deemed to waive the immunity of the Nation from suit beyond that set forth in this Section 11 or in Resolution No. 21-029, which apply only to the City.

12. Good Faith and Fair Dealing.

The Parties to this Agreement agree that they have a duty of good faith and fair dealing under this Agreement.

13. Notices.

Any notices regarding this Agreement will be sent by certified mail, return receipt requested, or by a nationally recognized overnight delivery service to:

For the Nation:

Tohono O'odham Nation
Attn: Chairperson
P.O. Box 837
Sells, AZ 85634

For the City:

City of Glendale
City Manager
5850 West Glendale Avenue
Glendale, AZ 85301

With a required copy to:

Tohono O'odham Nation
Office of Attorney General
Attn: Attorney General
P.O. Box 830
Sells, AZ 85634

With a required copy to:

City of Glendale
City Attorney
5850 West Glendale Avenue
Glendale, AZ 85301

14. Entire Agreement.

This Agreement contains the entire agreement of the City and the Nation and there are no other understandings between them, written or verbal, relating to the subject matter of this Agreement.

15. Drafting.

This Agreement was reached through the mutual negotiations of the Parties and no rule of law requiring the Agreement to be construed in favor of or against a party because of drafting will apply.

16. Severability.

If, for any reason, the arbitration Tribunal or any court on appeal determines that any provision of this Agreement is invalid, unenforceable, illegal, or inoperable, the provision will be deemed omitted from this Agreement and its omission will not affect the validity and effect of the other provisions of this Agreement.

17. No Encumbrance of Real Property.

- A. The City expressly disclaims any right under this Agreement to attach a claim, lien, charge, right of entry, or liability to any real property held by the United States in trust for the Nation or any lands owned by the Nation subject to federal restrictions against alienation. This Agreement shall not be construed as giving the City any such right.
- B. The City expressly disclaims any right under this Agreement to have or to exercise any proprietary control over any real property held by the United States in trust for the Nation or any lands owned by the Nation subject to federal restrictions against alienation. This Agreement shall not be construed as giving the City any such right.
- C. The Nation represents to the City that this Agreement does not attach a claim, lien, charge, right of entry, or liability to any real property held by the United States in trust for the Nation or any lands owned by the Nation subject to federal restrictions against alienation. The Nation represents to the City that this Agreement does not give the City any right to have or to exercise any proprietary control over any real property held by the United States in trust for the Nation or any lands owned by the Nation subject to federal restrictions against alienation.

18. Applicable Law.

This Agreement will be interpreted according to Arizona law without giving effect to its conflict of laws principles, unless superseded or preempted by applicable Federal law.

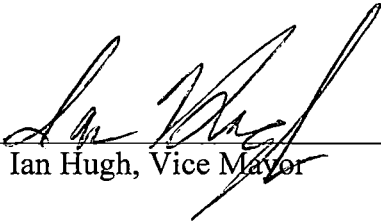
19. Acts by The Nation's Affiliates.

- A. The Parties acknowledge that the Gaming Enterprise, further to agreements and instruments to be entered into between the Nation and the Gaming Enterprise, will operate gaming at the Project, and the Nation may cause one or more other affiliates to operate, manage, and lease other commercial facilities at the Project. Any such operations will not be deemed an assignment of any of the Nation's obligations under this Agreement, and the Nation will cause the Gaming Enterprise or other affiliates to perform their duties and obligations to the Nation consistent with the terms of this Agreement.
- B. Until such time as the Nation has taken title to the Property, the City acknowledges that title to the Property will continue to be held by Saguaro, and the Nation will cause Saguaro to execute and record the Memorandum of Agreement in satisfaction of the Nation's obligations under Section 4(A)(1) of this Agreement.

[signature page follows]

IN WITNESS WHEREOF, this Agreement has been executed and approved by the Parties and persons whose signatures appear below:

City of Glendale

By: 
Ian Hugh, Vice Mayor

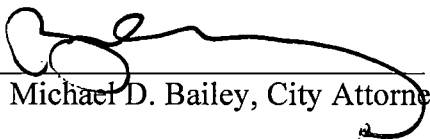
Date: 2/9/2021

Tohono O'odham Nation

By: 
Ned Norris Jr., Chairman

Date: 02/09/2021

Approved as to Form:

By: 
Michael D. Bailey, City Attorney

By: 
Julie K. Bower, City Clerk

Exhibit A to Agreement

Depiction of Property

[attached]



PROJECT MANAGER:	SCALE:
DCR	1"=0.25 MI
CHECKED BY:	DATE:
DCR	03/2020
PROJECT NUMBER:	
44.20.2169	

CLIENT:
SAGUARO LAND INVESTMENTS

PARCEL 501-05-003H
NWC OF SARIVAL AVENUE AND NORTHERN AVENUE
MARICOPA COUNTY, ARIZONA

FIGURE TITLE:
VICINITY MAP

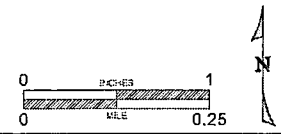


FIGURE NO.:
A-1

Exhibit B to Agreement

Legal Description of Property

A portion of the Southeast Quarter of Section 36, Township 3 North, Range 2 West of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the South Quarter Corner of said Section 36, being marked, as witnessed, by a 3" Arizona Department of Transportation brass cap in handhole, North 89 degrees 48 minutes 26 seconds West, 15.00 feet from the calculated position, from which the Southeast Corner of said Section 36, being marked by a 3" Maricopa County brass cap in handhole, bears South 89 degrees 56 minutes 32 seconds East, 2632.60 feet;

thence along the South line of said Southeast Quarter, South 89 degrees 56 minutes 32 seconds East, 1601.49 feet;

thence North 0 degrees 03 minutes 28 seconds East, 33.00 feet to the **POINT OF BEGINNING**;

thence along the Easterly right-of-way of State Route 303, as dedicated by Document 2014-0611509 of Maricopa County Records, the following courses:

thence North 85 degrees 37 minutes 53 seconds West, 286.30 feet;

thence North 0 degrees 03 minutes 28 seconds East, 75.64 feet;

thence North 89 degrees 56 minutes 32 seconds West, 996.07 feet;

thence North 10 degrees 50 minutes 52 seconds West, 101.01 feet;

thence North 0 degrees 15 minutes 47 seconds East, 504.14 feet;

thence North 5 degrees 21 minutes 18 seconds East, 916.34 feet;

thence North 32 degrees 20 minutes 04 seconds East, 159.39 feet;

thence North 48 degrees 30 minutes 08 seconds East, 493.37 feet;

thence North 63 degrees 51 minutes 13 seconds East, 481.52 feet;

thence South 89 degrees 48 minutes 01 seconds East, 1207.87 feet;

thence along the Southerly right-of-way of West Northern Parkway, as dedicated by Document 2017-0799438 of Maricopa County Records, the following courses:

thence South 0 degrees 15 minutes 32 seconds West, 52.65 feet;

thence South 89 degrees 44 minutes 28 seconds East, 54.46 feet;

thence South 44 degrees 44 minutes 22 seconds East, 35.13 feet;

thence along a line 80.00 feet West of and parallel with the East line of said Southeast Quarter, South 0 degrees 15 minutes 32 seconds West, 275.17 feet;

thence South 89 degrees 44 minutes 28 seconds East, 47.00 feet;

thence departing said Southerly right-of-way, along a line 33.00 feet West of and parallel with said East line, South 0 degrees 15 minutes 32 seconds West, 1931.50 feet;

thence along a line 33.00 feet North of and parallel with said South line, North 89 degrees 56 minutes 32 seconds West, 998.23 feet to the **POINT OF BEGINNING**.

Contains 4,806,640 square feet or 110.3453 acres, more or less.

Exhibit C to Agreement

Form of Resolution

RESOLUTION No. _____

**Resolution of the City of Glendale Authorizing Release of Certain Property
from a Pre-Annexation Development Agreement**

WHEREAS, the City is an Arizona municipal corporation which provides municipal services, including public safety services; and

WHEREAS, the real property described in **Exhibit 1** attached hereto (the "*Property*") is located in unincorporated Maricopa County and the City's municipal planning area; and

WHEREAS, the Property was previously owned by Northern Parkway Investors, LLC ("*NPI*"); and

WHEREAS, the City entered into the Pre-Annexation Development Agreement for Loop 303 Phase 1 Utility Group dated as of October 23, 2012 (the "*PADA*") with NPI, and with each of the other landowners that are parties to the PADA (collectively, the "*Other Owners*") with respect to the potential annexation of the Property; and

WHEREAS, the PADA does not require the City to annex any real property, and includes the acknowledgment by NPI and the Other Owners that annexation of any property covered by the PADA is a legislative process to be considered by the City in its sole discretion acting in its governmental capacity; and

WHEREAS, the City has determined that it is in its best interests of the City to release the Property from the PADA because of, among other things, a unique development opportunity anticipated for the Property;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLENDALE:

The City hereby approves, and the City Manager is hereby authorized to execute in the name and on behalf of the City and thereafter cause to be recorded in the office of the Maricopa County Recorder the Memorandum of Agreement and Partial Termination of Prior Agreement in the form attached hereto as **Exhibit 2**, and to take such other actions as may be required to evidence and implement such release.

PASSED, ADOPTED, AND APPROVED by Mayor and the Council of the City of Glendale,
Maricopa County, Arizona, this ____ day of _____, 20__.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

EXHIBIT 1 TO RESOLUTION NO. _____

Legal Description of Property

A portion of the Southeast Quarter of Section 36, Township 3 North, Range 2 West of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the South Quarter Corner of said Section 36, being marked, as witnessed, by a 3" Arizona Department of Transportation brass cap in handhole, North 89 degrees 48 minutes 26 seconds West, 15.00 feet from the calculated position, from which the Southeast Corner of said Section 36, being marked by a 3" Maricopa County brass cap in handhole, bears South 89 degrees 56 minutes 32 seconds East, 2632.60 feet;

thence along the South line of said Southeast Quarter, South 89 degrees 56 minutes 32 seconds East, 1601.49 feet;

thence North 0 degrees 03 minutes 28 seconds East, 33.00 feet to the **POINT OF BEGINNING**;

thence along the Easterly right-of-way of State Route 303, as dedicated by Document 2014-0611509 of Maricopa County Records, the following courses:

thence North 85 degrees 37 minutes 53 seconds West, 286.30 feet;

thence North 0 degrees 03 minutes 28 seconds East, 75.64 feet;

thence North 89 degrees 56 minutes 32 seconds West, 996.07 feet;

thence North 10 degrees 50 minutes 52 seconds West, 101.01 feet;

thence North 0 degrees 15 minutes 47 seconds East, 504.14 feet;

thence North 5 degrees 21 minutes 18 seconds East, 916.34 feet;

thence North 32 degrees 20 minutes 04 seconds East, 159.39 feet;

thence North 48 degrees 30 minutes 08 seconds East, 493.37 feet;

thence North 63 degrees 51 minutes 13 seconds East, 481.52 feet;

thence South 89 degrees 48 minutes 01 seconds East, 1207.87 feet;

thence along the Southerly right-of-way of West Northern Parkway, as dedicated by Document 2017-0799438 of Maricopa County Records, the following courses:

thence South 0 degrees 15 minutes 32 seconds West, 52.65 feet;

thence South 89 degrees 44 minutes 28 seconds East, 54.46 feet;

thence South 44 degrees 44 minutes 22 seconds East, 35.13 feet;

thence along a line 80.00 feet West of and parallel with the East line of said Southeast Quarter, South 0 degrees 15 minutes 32 seconds West, 275.17 feet;

thence South 89 degrees 44 minutes 28 seconds East, 47.00 feet;

thence departing said Southerly right-of-way, along a line 33.00 feet West of and parallel with said East line, South 0 degrees 15 minutes 32 seconds West, 1931.50 feet;

thence along a line 33.00 feet North of and parallel with said South line, North 89 degrees 56 minutes 32 seconds West, 998.23 feet to the **POINT OF BEGINNING**.

Contains 4,806,640 square feet or 110.3453 acres, more or less.

EXHIBIT 2 TO RESOLUTION NO. _____

Form of Memorandum of Agreement and Partial Termination of Prior Agreement

After recording, return to:

**MEMORANDUM OF AGREEMENT
AND PARTIAL TERMINATION OF PRIOR AGREEMENT**

THIS MEMORANDUM OF AGREEMENT AND PARTIAL TERMINATION OF PRIOR AGREEMENT (this “**Memorandum**”) is executed as of the _____ day of _____, 20__ (the “**Effective Date**”) by the City of Glendale, an Arizona municipal corporation (the “**City**”), and Saguaro Land Properties LLC, a Delaware limited liability company (the “**Owner**”), as the fee owner of the unincorporated real property described in Exhibit A attached hereto (the “**Property**”), with respect to (i) that certain Agreement by and between the City and the Tohono O’odham Nation (the “**Nation**”) dated as of _____, 20__ (the “**New Agreement**”), and (ii) that certain Pre-Annexation Development Agreement for Loop 303 Phase 1 Utility Group dated as of October 23, 2012, recorded on October 31, 2012 in the Official Records of the Maricopa County Recorder (the “**Official Records**”) as Reference Number 20120989588, and re-recorded in the Official Records for the purpose of correction on February 1, 2013 as Reference Number 20130104447 (the “**Prior Agreement**”).

For good and valuable consideration, the City and the Nation have entered into the New Agreement with respect to the development and operation on the Property of the project contemplated by and described in the New Agreement (the “**Project**”), on the conditions set forth in the New Agreement. The term of the New Agreement commenced on the Effective Date and will continue until terminated pursuant to the provisions thereof.

With respect to the New Agreement, this Memorandum is for informational purposes only, and nothing in this Memorandum is intended or shall be deemed to in any way amend, modify, or otherwise affect any of the terms and conditions of the New Agreement. In the event of any inconsistency between the provisions of this Memorandum and the provisions of the New Agreement, the provisions of the New Agreement shall govern.

Pursuant to the provisions of Arizona Revised Statutes § 9-500.05 (the “**Statute**”), the Prior Agreement (i) is a “development agreement” within the meaning of the Statute, (ii) sets forth the terms and conditions pursuant to which the Property could be annexed into the City of Glendale, and (iii) will become operative as applied to the Property if and when the Property is so annexed. The Property has not yet been annexed to the City of Glendale, and the Prior Agreement is

therefore not yet operative with respect to the Property. The New Agreement contemplates that the Property will not be annexed to the City of Glendale, and the City and Owner hereby acknowledge that the Project cannot be developed and operated as contemplated by the New Agreement if the Property is so annexed. Thus, the Prior Agreement is inconsistent with and will frustrate the purposes of the New Agreement.

To facilitate the development and operation of the Property as contemplated by the New Agreement, and to enable each of the City and Owner to obtain the benefits provided to it under the New Agreement, the City and Owner hereby agree that (i) the Prior Agreement shall be and hereby is, without further action required by either the City or Owner, terminated as to the Property, and (ii) the Property is hereby released and discharged from the Prior Agreement and any and all requirements and restrictions set forth therein.

[Signatures follow]

IN WITNESS WHEREOF, the City and Owner have each executed this Memorandum of Agreement and Partial Termination of Prior Agreement as of the Effective Date.

CITY:

City of Glendale, Arizona,
an Arizona municipal corporation

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

By: _____
City Attorney

ATTESTED:

By: _____
City Clerk

OWNER:

Saguaro Land Properties LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

[Insert acknowledgment blocks for City and Owner in execution copy]

**EXHIBIT A TO MEMORANDUM OF AGREEMENT
AND PARTIAL TERMINATION OF PRIOR AGREEMENT**

Legal Description of Property

A portion of the Southeast Quarter of Section 36, Township 3 North, Range 2 West of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the South Quarter Corner of said Section 36, being marked, as witnessed, by a 3" Arizona Department of Transportation brass cap in handhole, North 89 degrees 48 minutes 26 seconds West, 15.00 feet from the calculated position, from which the Southeast Corner of said Section 36, being marked by a 3" Maricopa County brass cap in handhole, bears South 89 degrees 56 minutes 32 seconds East, 2632.60 feet;

thence along the South line of said Southeast Quarter, South 89 degrees 56 minutes 32 seconds East, 1601.49 feet;

thence North 0 degrees 03 minutes 28 seconds East, 33.00 feet to the **POINT OF BEGINNING**;

thence along the Easterly right-of-way of State Route 303, as dedicated by Document 2014-0611509 of Maricopa County Records, the following courses:

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