DEVELOPMENT AGREEMENT

This Development Agreement (the “Agreement”) is made and entered into as of this day of __________ 2019, by and between the City of Glendale, an Arizona municipal corporation (the “City”), and 59 Butler Land, LLC, an Arizona limited liability company (“59 Butler Land”). 59 Butler Land and the City are sometimes referred to collectively in this Agreement as the “Parties” or individually as a “Party.”

RECITALS

A. 59 Butler Land owns approximately 6.50 acres of unimproved real property located at the southwest corner of 59th Avenue and Butler Drive, Glendale, Arizona, as legally described in Exhibit A (the “Property”).

B. 59 Butler Land intends to develop 96 housing units on the Property (the “Project”), which, since 1973 has been the location of a partially abandoned subdivision and a source of blight and deleterious uses among surrounding neighborhoods.

C. 59 Butler Land will facilitate redevelopment of the Property, including removal of existing electric and telephone infrastructure, existing driveways, walls, curbing and landscaping. 59 Butler Land will also construct and maintain private cul-de-sac street improvements adjacent to the Property, in lieu of a city right-of-way, and all improvements will generally conform to those shown in Exhibit B (the “60th Ave Improvements”).

D. The Property is within a recognized census tract, eligible for federal housing funds, where at least fifty percent of households have an income less than 60 percent of the area median gross income.

E. The Parties wish to enter into this Agreement in order to facilitate the redevelopment of the property and resulting emergence of workforce housing that will appeal to a variety of moderate-income workers while helping to reduce neighborhood blight and calls for police service.

F. This Agreement is effective the date the last Party signs the Agreement (the “Effective Date”).

G. This Agreement is authorized by A.R.S. 9-500.05.
AGREEMENT

NOW THEREFORE, in consideration of the following mutual covenants and agreements, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, it is agreed as follows:

1. Project Improvements. 59 Butler Land will develop 96 housing units on the Property in accordance with current City of Glendale zoning, design, and building standards. 59 Butler Land will construct connections and meters for public utilities that will serve the Project. These improvements are subject to the normal permitting requirements of the city, and the Project will obtain required Certificate(s) of Occupancy as described in the performance schedule attached to this Agreement as Exhibit C (the “Schedule of Performance”).

2. Offsite Improvements; 60th Avenue Improvements. 59 Butler Land will complete all offsite improvements within the period described in the Schedule of Performance. As of the Execution Date, such offsite improvements include removal of the landscaping in and adjacent to the 59th Avenue right of way, removal of two existing curb cuts and driveways perpendicular to 59th Avenue, relocation of a curb cut and driveway at the Butler alignment of 59th Avenue, and construction of a “pork chop” median at Evergreen and 59th Avenue. 59 Butler Land acknowledges that the City may modify the list of required offsite improvements in writing and in the City’s sole and reasonable discretion. The Project will include all the 60th Avenue Improvements as well as the onsite and offsite Project improvements.

3. Community Development Fees. The City will waive the first One Hundred Twenty Five Thousand Dollars ($125,000) of fees related to past or future Plan Review, Permit and Inspection fees. 59 Butler Land or its successors in interest will pay any and all City and Development and Plan Review fees above this amount. The parties acknowledge and agree that this waiver does not apply to development impact fees, and that 59 Butler Land is obligated to pay any such fees.

4. Default. In the event 59 Butler Land fails to obtain Certificate(s) of Occupancy for the Project in accordance with the Schedule of Performance, unless such failure was caused by any Force Majeure Event, then as the City’s sole remedy, this Agreement will automatically expire and have no further effect, other than that 59 Butler becomes responsible for paying all applicable plan review, permit and inspection fees it has not already paid as a condition of obtaining a final Certificate of Occupancy for the Project. “Force Majeure Event” means any delay in the design, plan approval, permitting and/or construction of the Community due to any strike, walk out, actions of labor unions, riot, mob violence, act of war, insurrection, sabotage, act of terrorism, act of violence, explosion, fire, earthquake, flood, unseasonable or intemperate weather, material and/or labor shortage/inability to procure labor, equipment, facilities material or supplies/delay in the delivery of supplies (caused by one of the previously-mentioned reasons), act of God, delay by the City and any other governmental authority to grant necessary approvals or issue necessary permits (provided, however, that reasonable rejections of applications due to incomplete or insufficient information shall not be deemed Force Majeure Events), any moratorium or other extraordinary or unusual delay, condition or requirement imposed by any utility or public agency, any similar act, occurrence or non-occurrence beyond 59 Butler Land, LLC’s reasonable control.

5. Incorporation of Exhibits. All exhibits attached and referred to in this Agreement are incorporated and made a part of this Agreement.
6. Amendment of the Agreement. This Agreement may be amended or canceled, in whole or in part, only by a written agreement or amendment fully executed by the Parties.

7. No Third-Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the Parties. Nothing contained in this Agreement shall be construed to make any non-party to this Agreement a third-party beneficiary of this Agreement.

8. Assignment. 59 Butler Land, LLC may not assign its rights and/or obligations under this Agreement (jointly or severally) without the prior written consent of the City, which consent shall not be unreasonably withheld. Notwithstanding this provision, 59 Butler Land, LLC has the right to assign and/or transfer its rights and obligations under this Agreement to (a) any business entity, company or affiliate that is directly or indirectly owned or controlled by 59 Butler Land, LLC, respectively; or (b) any third-party purchaser acquiring all or any part of the Property. In the event 59 Butler Land, LLC sells to a third party any of the real property associated with this Agreement, 59 Butler Land, LLC will ensure that the obligations of this Agreement are fulfilled, either by 59 Butler Land, LLC itself or the third-party purchaser, if necessary.

9. Notices. Any notices required or permitted to be given pursuant to this Agreement may be delivered in person or mailed, certified mail, return receipt requested to the following addresses:

To City:
City of Glendale
Attention: City Manager
5850 W. Glendale Avenue
Glendale, Arizona 85301

With copy to:
City of Glendale
Attention: City Attorney
5850 W. Glendale Avenue
Glendale, Arizona 85301

To 59 Butler:
59 Butler Land, LLC
9375 E. Shea Blvd, Suite 100
Scottsdale, AZ 85260
Attention: Joel Broder
11. **Governing Law.** This Agreement is governed by the laws of the State of Arizona.

12. **Venue.** Any action arising from this Agreement, which includes by way of example, but not limitation, any action to enforce or interpret any provision of this Agreement, shall be commenced and maintained in a court of competent jurisdiction located within Maricopa County, Arizona, and the Parties irrevocably waive any right to object to such venue.

13. **Conflicts.** 59 Butler acknowledges this Agreement is subject to A.R.S. § 38-511, which allows for cancellation of this Agreement in the event any person who is significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on the City’s behalf is also an employee, agent or consultant of any other Party to this Agreement.

14. **Cooperation and Alternative Dispute Resolution.**

   a. **Representatives.** To further the cooperation of the Parties in implementing this Agreement, each Party will designate and appoint a representative to act as a liaison between the City and its various departments and the other Parties. The representatives of each Party will be available at all reasonable times to discuss and review the performance of the Parties to this Agreement and the development of the Property.

   b. **Impasse.** The City acknowledges and agrees that it is desirable for the Parties to proceed rapidly with the implementation of this Agreement and the development of the Property. Accordingly, the Parties agree that if at any time any Party believes an impasse has been reached with the City staff on any issue, that Party has the right to immediately appeal to the City Manager or functional equivalent (or that person’s designee) (the “City Representative”) for an expedited decision pursuant to this Section. If the issue on which an impasse is reached is an issue where a final decision can be reached by the City Representative, the City Representative shall give the appealing Party a final administrative decision within seven (7) days after the Party’s request for an expedited decision.

   c. **Mediation.** If there is a dispute hereunder which the Parties cannot resolve between, the Parties agree that there shall be a ninety (90) day moratorium on litigation during which time the Parties agree to attempt to settle the dispute by non-binding mediation before commencement of litigation. The mediation shall be held under the Commercial Mediation Rules of the American Arbitration Association (“AAA”) but shall not be under the administration of the AAA unless agreed to by the Parties in writing, in which case all administrative fees shall be divided evenly between the City and the involved Party. The matter in dispute shall be submitted to a mediator mutually selected by the involved Party and the City. If the Parties cannot agree upon the selection of a mediator within ten (10) days, then within five (5) days thereafter, the Parties shall request that the Presiding Judge of the Superior Court in and for
the County of Maricopa, State of Arizona, appoint the mediator. The mediator selected must have at least ten (10) years’ experience in mediating or arbitrating disputes relating to commercial property. The cost of any such mediation shall be divided equally between the City and the involved Party. The results of the mediation shall be nonbinding with any Party free to initiate litigation upon the conclusion of the latter of the mediation or of the ninety (90) day moratorium on litigation. The mediation shall be completed in one day (or less) and shall be confidential, private, and otherwise governed by the provisions of A.R.S. § 12-2238.

15. Miscellaneous. This Agreement shall be interpreted, applied, and enforced according to the fair meaning of its terms and shall not be construed strictly in favor of or against either Party, as both Parties have been involved in the drafting of its provisions. This Agreement constitutes the entire agreement of the Parties concerning the matters contained herein and supersedes all prior negotiations, understandings, and agreements concerning such matters. No provision of this Agreement may be waived or modified except by an amendment signed by the Party against whom such modification or waiver is sought.

16. Severability. In the event that any phrases, clause, sentence, paragraph, section, article or other portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null, void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permissible by law.

17. Cooperation and Further Acts. The Parties shall act reasonably with respect to any and all matters which require either party to review, consent or approve any act or matter herein.

18. Counterparts. This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument.

19. Term. The term of this Agreement shall commence upon the date the last Party signs this Agreement and shall end at the earlier of: (a) December 31, 2025, or, (b) the date the Agreement is terminated in a writing signed by the Parties or by an order of a court of competent jurisdiction.

[SIGNATURES ON FOLLOWING PAGE]
IN WITNESS HEREOF, the Parties have caused this Agreement to be duly executed as follows:

CITY OF GLENDALE, ARIZONA,
an Arizona municipal corporation,

__________________________________________________________
Kevin R. Phelps
City Manager

ATTEST:

__________________________________________________________
Julie K. Bower, City Clerk (SEAL)

APPROVED AS TO FORM:

__________________________________________________________
Michael D. Bailey, City Attorney
59 Butler Land, LLC
By: Visiquest Properties, LLC, Manager

By: Joel Broder
Name: Joel Broder
Its: Manager

State of Arizona  
County of Maricopa

This instrument was acknowledged before me on this 5th day of August, 2019, by Joel Broder. In witness whereof I hereunto set my hand and official seal.

Dylan Thompson
Notary Public
Maricopa County, Arizona
My Comm. Expires 07-02-2022
Commission No. 550488

My commission expires: 07-02-2022
Exhibit A

[Property Legal Description]
EXHIBIT A
59 BUTLER REVISED LEGAL DESCRIPTION

A PARCEL OF LAND LOCATED IN THE EAST HALF OF SECTION 31, TOWNSHIP 3 NORTH RANGE 2 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

LOT 1 OF “AMENDED FINAL PLAT OF LAS CASAS CONTENTAS” ACCORDING TO BOOK 1367 PAGE 5, FILED AT THE OFFICE OF THE MARICOPA COUNTY RECORDERS, MARICOPA COUNTY, ARIZONA.

TOGETHER WITH THE FOLLOWING DESCRIBED PARCEL;

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 1;

THENCE SOUTH 88 DEGREES 58 MINUTES 22 SECONDS WEST, A DISTANCE OF 5.00 FEET;

THENCE NORTH 00 DEGREES 05 MINUTES 52 SECONDS EAST, A DISTANCE OF 161.95 FEET;

THENCE NORTH 89 DEGREES 54 MINUTES 07 SECONDS WEST, A DISTANCE OF 25.00 FEET TO THE MONUMENT LINE OF 60TH AVENUE ACCORDING TO BOOK 153 PAGE 42, FILED AT THE OFFICE OF THE MARICOPA COUNTY RECORDERS, MARICOPA COUNTY, ARIZONA;

THENCE ALONG SAID LINE, NORTH 00 DEGREES 05 MINUTES 52 SECONDS EAST, A DISTANCE OF 0.69 FEET TO THE SOUTH LINE OF THE PARCEL DESCRIBED IN DOCUMENT 2019-0231711, FILED AT THE OFFICE OF THE MARICOPA COUNTY RECORDERS, MARICOPA COUNTY, ARIZONA;

THENCE ALONG SAID LINE, SOUTH 89 DEGREES 01 MINUTES 54 SECONDS WEST, A DISTANCE OF 30.01 FEET TO THE WESTERLY RIGHT OF WAY LINE OF SAID 60TH AVENUE;

THENCE ALONG SAID LINE NORTH 00 DEGREES 05 MINUTES 52 SECONDS EAST, A DISTANCE OF 262.28 FEET TO THE NORTH LINE OF THE PARCEL DESCRIBED IN DOCUMENT 2019-0231711, FILED AT THE OFFICE OF THE MARICOPA COUNTY RECORDERS, MARICOPA COUNTY, ARIZONA;

THENCE ALONG SAID LINE, NORTH 88 DEGREES 52 MINUTES 36 SECONDS EAST, A DISTANCE OF 30.01 FEET TO THE MONUMENT LINE OF SAID 60TH AVENUE;

THENCE ALONG SAID LINE NORTH 00 DEGREES 05 MINUTES 52 SECONDS EAST, A DISTANCE OF 66.01 FEET;

THENCE DEPARTING SAID LINE, NORTH 88 DEGREES 52 MINUTES 36 SECONDS EAST, A DISTANCE OF 30.01 FEET TO THE WESTERLY BOUNDARY LINE OF SAID LOT 1;
EXHIBIT A
59 BUTLER REVISED LEGAL DESCRIPTION

THENCE ALONG SAID LINE, SOUTH 00 DEGREES 05 MINUTES 52 SECONDS WEST, A DISTANCE OF 491.56 FEET TO THE POINT OF BEGINNING.

CONTAINING 256,830.07 SQUARE FEET OR 5.8960 ACRES, MORE OR LESS.
Exhibit C
Schedule of Performance


2. Obtain Final Certificate of Occupancy for last phase(s) of project before December 31, 2023.