When Recorded Return to:
City of Peoria
City Clerk's Office
8401 W. Monroe Street
Peoria, Arizona 85345

FIRST AMENDMENT TO THE TRAILHEAD DEVELOPMENT AGREEMENT AND ADDENDUM NO. 1

THIS FIRST AMENDMENT TO THE TRAILHEAD DEVELOPMENT AGREEMENT AND ADDENDUM NO. 1 (the "**First Amendment**") is entered into as of the ___ day of _________, 2024, by and between 83RD & HAPPY VALLEY, LLC, an Arizona limited liability company ("**Owner**"), and the CITY OF PEORIA, an Arizona municipal corporation (the "**City**"). Owners and City are collectively referred to herein as the "Parties," or individually as the "Party."

RECITALS

A. Pursuant to ARS 9-500.5 the Parties entered into that certain Trailhead Development Agreement dated June 9, 2022, recorded as Instrument No. 2022-0496342, Records of Maricopa County, Arizona and Addendum No. 1 dated July 28, 2022, LCON01822A (collectively the "**Agreement**") to develop the property (the "**Project**").

B. Since executing the Addendum No.1, Granite Peak Property Investments, LP, a California limited partnership, Niki Bella, LLC, a California limited liability company, Mike Akron B, LLC, a California limited liability company, 83RD & Happy Valley, LLC, an Arizona limited liability company, Niki Holdings UH AZ, LLC, a California limited liability company, and Niki Holdings, LP, a California limited partnership, which have been consolidated by Owner into a single entity, 83rd & Happy Valley Road, LLC.

B. Since executing the Agreement, the market has experienced significant cost escalations due to a multitude of reasons including inflation, interest rate hikes, a constrained lending market, supply chain disruptions material shortages, and labor shortages.

C. The Design and Construction Costs associated with the Public Improvements described in Section 4 and Exhibit E of the Agreement have almost doubled from the original estimate of Three Million Eight Hundred and Forty-One Thousand Dollars ($3,841,000), to approximately Six Million Nine Hundred Thousand Dollars ($6,900,000). The Public Improvements will be dedicated to and accepted and controlled upon completion of the Project by the City and no other political subdivision provides such utility.

D. As a result of these changing conditions, Owner has stated the Project will not be developed in Peoria without these tax incentives, in the same time, place or manner.

E. The Parties wish to enter into this First Amendment in order to utilize transaction privilege tax revenues solely generated within the Property, as an additional reimbursement mechanism to help fund the Public Improvements.

F. This First Amendment is part of the Agreement within the meaning of A.R.S. §9-500.11(k). A Notice of Intent to enter into this First Amendment was adopted by the Peoria City Council on December 12, 2023, at which time the Peoria City Council made the statutorily required findings.

AGREEMENT

NOW, THEREFORE, in consideration of the promises above and the mutual covenants and agreements contained herein and, in the Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, covenant and agree, for themselves, and their successors-in-ownership and assigns, as follows:

1. **Amendment to Recital E**. Recital E of the Agreement is hereby deleted in its entirety and replaced by the following:

   The Parties acknowledge that Owner will provide certain off-site improvements identified in Exhibit D ("**Public Improvements**"). The Public Improvements are regional in nature and/or are above and beyond what is typically required for such a project. City will reimburse Owner for certain Design and Construction Costs for the Public Improvements in an amount not to exceed $4,000,000.

2. **Amendment to Section 5**. Section 5 is hereby amended to add the following subsections (f), (g) and (h).

   f. In addition to the Reimbursement Amount, City shall reimburse Owner up to and not to exceed an additional $2,000,000 ("**Additional Reimbursement Amount**") from the City's share of Transaction Privilege Taxes ("**TPT**"), as hereafter defined, paid to the City in connection with the construction, development, or operation occurring within the Property.

      i. Terms: City will pay Owner on a quarterly basis 100% of City's eligible portion of construction related TPT excluding .3% transportation tax (1.5% after the .3% reduction)), 50% of all Retail (1.8%) and Restaurant/Bar TPT (2.8%), and 25% of all Grocery Retail TPT (1.8%) received by the City that the City verifies was generated within the Property. City shall commence reimbursement payments under this Subsection following the issuance of the first vertical construction permit by the City within the Property. The duration of the reimbursement payments under this Subsection shall not exceed the later of (1) 60 months from the date the first certificate of occupancy is issued by the City within the Property, or (2) 72 months from the issuance of the first building permit is issued by the City within the property.

ii. Computation and Report of TPT Revenues. In conjunction with the quarterly payment of TPT rebates, the City will deliver to Owner a summary report of all aggregated TPT from taxable activities within the Project. Such report shall contain the City's good faith estimate made in the City's sole discretion of all TPTs actually collected from taxable activities from the Project and shall identify any offsets, credits, exclusions or other deductions from the TPT generated by or attributable to the Project that have been utilized by the City in computing the TPT rebates for purposes of this First Amendment. Any such report shall be subject to applicable laws that may prohibit or limit the dissemination or use of the foregoing information required for such report. The City shall not provide computation nor aggregate reporting until the property has a minimum of 10 operating businesses. No reimbursement will be due to Owner except that which the City Manager or designee has determined, in their sole reasonable discretion, as having been collected from activities conducted on, at, or from the construction within the Property, and actually received by the City.

iii. Tracking. Since some businesses with multiple locations in the City (a "**Multiple Location Taxpayer**") report their TPT on the basis of revenues for all their locations in the City, rather than separately for each location, Owner shall exercise reasonable efforts to require each Multiple Location Taxpayer within the Project to separately report its TPT. Similarly, since some contractors and subcontractors with multiple projects or jobs in the City (also considered a "**Multiple Location Taxpayer**") report their TPT on the basis of revenues for all their projects or jobs in the City, rather than separately for each project or job, Owner shall exercise reasonable efforts to require each contractor and subcontractor having taxable activities within the Project to separately report its TPT. Furthermore, Owner shall exercise reasonable efforts to obtain from every taxpayer within the Project a Consent to Release of Tax Information in the form set forth on Exhibit F attached hereto and incorporated herein by this reference. If such separate reporting or break out worksheet is not received by the City for a Multiple Location Taxpayer, the City's Director of Finance shall make a reasonable estimate in the Director's sole discretion of the TPT derived from such taxable activities within the Project, including information provided by Owner, and this reasonable estimate shall be considered final and binding upon Owner ("**City Determination**"). The final certification shall be subject to all applicable laws that may prohibit or limit the dissemination or use of the foregoing information. If within any quarterly reimbursement period, the City Determination method is required as a result of there being fewer than 10 operating businesses within the Project and Owner has not provided the requisite Consent to Release of Tax Information for all subject businesses, the City will hold the reimbursable TPT in a separate account for the benefit of Owner until such time as 10 or more businesses are operating within the Project or the City is able to otherwise comply with applicable disclosure laws at which point the City will distribute held funds to Owner subject to the terms of this First Amendment.

g. In no event shall the Reimbursement Amount and Additional Reimbursement Amount exceed the lesser of $4,000,000 or the actual cost to construct the improvements listed in Exhibit E.

h. Owner is only eligible for reimbursement for amounts that the City in its sole discretion determines to be eligible under this First Amendment for reimbursement and in compliance with all local, state and federal laws. Owner acknowledges and agrees that the City will calculate reimbursements pursuant to this First Amendment in its sole discretion and reimburse Owner based on the City's sole and final determination of the actual amount of TPT revenue timely collected by the City and subject to this First Amendment. Owner has no right or claims to reimbursement for any other amount; including without limitation, TPT revenue that the City has determined in its sole discretion is not subject to reimbursement under the terms of this First Amendment, TPT revenue that is not timely collected by the City, TPT revenue paid under protest, TPT revenue that is in jeopardy, TPR revenue received by the City that is determined to be based on any inaccuracy, error, misunderstanding or any similar occurrence, or TPT revenue collected in any other way that is inconsistent with this Frist Amendment. The City is under no obligation to Owner to enforce, prosecute, or collect any TPT revenue. Owner waives any and all claims against the City in regard to the accuracy of the City's calculations related in any way to this First Amendment. If the City determines in its sole discretion during the term of this Agreement that a previous reimbursement to Owner was larger than required by this First Amendment, the City will deduct any overpayment from future reimbursement payments to Owner in the City's sole discretion.

3. **Amendment to Exhibit E**. Exhibit E to the Agreement is hereby deleted in its entirety and replaced with the attached Amended Exhibit E.

4. **Effect of First Amendment; Estoppel**. The Agreement shall continue in full force and effect, as amended hereby. The terms of this First Amendment shall control in the event of any conflict or inconsistency between the terms of this First Amendment and the terms of the Agreement. Owner agrees that, as of the date of this First Amendment, it has received the equal protection of the laws, has received due process of all of its claims and requests, and has not suffered from a compensable regulatory taking (as those terms and their related claims are defined by Arizona state and federal constitutional jurisprudence). This First Amendment's duration is coterminous with the Agreement's.

5. **Time Is of the Essence**. The Parties agree that time is of the essence in this First Amendment and every term or performance hereunder.

6. **<u>Counterparts</u>**. For the convenience of the parties, this First Amendment may be executed in any number of counterparts, each of which may be executed by any one or more of the Parties, but all of which shall constitute one and the same instrument and shall be binding and effective only when all of the Parties have executed at least one counterpart.

7. **<u>Recordation</u>**. The City will record this First Amendment in the Official Records within ten (10) days after the last party signs.

[NO FURTHER TEXT ON THIS PAGE – SIGNATURES FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this First Amendment on the date first above written.

CITY:

CITY OF PEORIA, an Arizona municipal corporation

By:__________________________________
Jason Beck, Mayor

ATTEST:

____
Agnes Goodwine, City Clerk

APPROVED AS TO FORM:

____
Emily Jurmu, City Attorney

STATE OF ARIZONA
County of Maricopa

On this ________ day of ____________________, 2024, before me personally appeared, Jason Beck, the Mayor of the City of Peoria, an Arizona municipal corporation, for and on behalf thereof, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the above/attached document.

[Affix notary seal here] ____
Notary Public

OWNER:

83RD & HAPPY VALLEY, LLC, an Arizona limited liability company
By: PEDERSON GROUP, INC., an Arizona corporation, its Manager

By: ______________________________
Jeffrey Manelis, Member

STATE OF ARIZONA
County of Maricopa

On this ________ day of ____________________, 2024, before me personally appeared Jeffrey Manelis the Member of 83rd & Happy Valley, LLC, an Arizona limited liability company, for and on behalf thereof, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be and acknowledged that he signed the above/attached document.

[Affix notary seal here] ______________________________
Notary Public

AMENDED EXHIBIT E

Estimated Design and Construction Costs for the Public Improvements

[*see following page*]

EXHIBIT F

Form of Consent to Release of Tax Information

CONSENT AGREEMENT

Whereas, pursuant to the Trailhead Development Agreement dated____20__ between the City of Peoria, an Arizona municipal corporation (the **"City")** and _______________ LLC, an Arizona limited liability company ("**Owner**"), the City has agreed to reimburse Owner for a portion of Owner's public improvement costs, based on certain transaction privilege taxes generated from the construction and operation of a high quality, master-planned mixed-use commercial and employment development, in Peoria, Arizona (the "**Project**"); and

Whereas, information concerning the payment of transaction privilege taxes is generally required to be kept confidential by the City's Tax and License Division unless a taxpayer consents to the release of such information.

Therefore, the undersigned taxpayer hereby consents unequivocally to the release of any and all tax information the City has deemed necessary or helpful, in the City's sole discretion, for any purpose related to the Trailhead Development Agreement as amended from time to time for the period from and after the date of this Consent Agreement until expiration or earlier termination of the Trailhead Development Agreement or otherwise as determined by the City.

The consent provided by this Consent Agreement may not be amended or altered unless done so in writing giving 30 days notice delivered to:

City of Peoria
City Attorney's Office
8401 West Monroe Street
Peoria, Arizona 85345
Email: city.attorney@peoriaaz.gov

From:_____to______.

DATED this______day of_____________, 2024

TAXPAYER

By: ___________________________________

Its: ___________________________________

TPT No. ________________________________