



Trinity at Havasu Foothills Estates, Tract 2391 Project No. 23-01400001

#### RECITALS

- A. Developer owns real property located in Lake Havasu City, Arizona, legally described on the attached Exhibit A (the "*Property*").
- B. Developer has submitted a request for Final Subdivision Plat (the "Final Plat") of 13.01 acres at the Property into 23 residential lots in the residential estates/planned development (RE-PD) district, Project No. 23-01400001 (the "Project," as more particularly set forth, illustrated, and described in the Final Plat and the attached Exhibit A), and City has provided comments to Developer in the form of a Notice of Subdivision Action RL1 dated March 7, 2023 (the "Action").
- C. The Action requires, among other things, a development agreement between City and Developer for the sewer Lift Station and force main (the "Lift Station") at the Project since said Lift Station will not to be maintained by City but will require Developer access to the public right of way and connection to a City-owned and -maintained gravity sewer near the Project.
- D. City and Developer are entering this Agreement in accordance with the Action and Arizona Revised Statutes § 9-500.05 to facilitate the development of the Project as to said Lift Station.
- E. The Existing Documents, and any amendments or supplements thereto, are for the general development of the Havasu Foothills Estates, while the purpose of this Agreement, for avoidance of doubt, is to facilitate the development of the Lift Station only.

## **AGREEMENT**

Now, therefore, in consideration of the foregoing recitals and the mutual promises and agreements set forth herein, the Parties agree as follows:

## 1. Lift Station.

While the intention of the Parties is that the streets, water, and sewer within the Project will be public infrastructure and Developer will allow City access to them across the Public Utility

Easement ("PUE") described, illustrated, and set forth in the Final Plat submission documents and the attached Exhibit B, the Lift Station itself will be privately owned and maintained by Developer and its successor(s)-in-interest. Developer and its successor(s)-in-interest will be authorized to use the PUE as necessary for the maintenance and operation of the Lift Station.

- 1.2 Developer shall install the water, wastewater, and sewer infrastructure to service the Project in accordance with all City specifications and requirements. Once completed to City's satisfaction and upon successful integrity testing, Developer agrees to dedicate to City said water, wastewater, and sewer infrastructure. Thereafter, City shall be responsible for all maintenance, repairs, and replacement, of the water, wastewater, and sewer infrastructure serving the Property in accordance with its existing policies and procedures.
- as Exhibit B. Namely, an 8-inch sewer line constructed in the right-of-way of Corte Barraso and Corte Tularoasa and a 6-inch sewer line constructed in the Corte Dia right-of-way shall tie into a lift station at the cul-de-sac bulb of Corte Barroso. Said Lift Station design shall accommodate the current final plat and future plat lots. From that point, sewage will be pumped through a two-inch HDPE force main. No future Lift Stations for this tract will be allowed. Developer has agreed to construct the Lift Station in accordance with ADEQ Certifications and other applicable City specifications and requirements. Lift Station will include at a minimum, dual and alternating pumps, high water light and sound alarm and notification contact information clearly posted for 24 hour service, accommodations for odor control and a spill prevention and overflow pathway for emergency flood conditions. Once constructed, Developer will continue to own, and Developer and its successor(s)-in-interest will be solely responsible to maintain, the Lift Station. Should the City be required to assume maintenance and operation responsibility, Developer agrees to compensate the City for upgrade or make improvements to said lift station as may be required by the City's Wastewater department, including amendment to this agreement.

## 2. Access to Existing Right of Way.

2.1 City agrees to provide Developer with reasonable access to the existing Corte Barraso right of way to access the eight-inch sewer line in order to construction the Lift Station and related connections to existing City infrastructure. Such access may include, without limitation, all of the following: \_\_\_\_\_\_\_.

## 3. **Developer Representations.** Developer represents and warrants to City that:

- 3.1 Developer has the full right, power and authorization to enter into this Agreement and to perform its obligations and undertakings under this Agreement, and the execution, delivery and performance of this Agreement by Developer has been duly authorized and agreed to in compliance with the organizational documents of Developer.
- 3.2 All consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.
- 3.3 Developer will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.
- 3.4 As of the Effective Date, Developer knows of no litigation, proceeding or investigation pending or threatened against or affecting Developer, which could have a material adverse effect on Developer's performance under this Agreement that has not been disclosed in writing to City.

- 3.5 This Agreement (and each undertaking of Developer contained herein) constitutes a valid, binding and enforceable obligation of Developer, enforceable according to its terms.
- 3.6 The execution, delivery and performance of this Agreement by Developer is not prohibited by, and does not conflict with, any other agreements, instruments, judgments or decrees to which Developer is a party or to which Developer is otherwise subject.
- 3.7 Developer has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement other than normal costs of conducting business and costs of professional services such as the services of attorneys.
- 3.8 Developer has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

## 4. Events of Default; Remedies.

- 4.1 <u>Events of Default by Developer</u>. Default or an Event of Default by Developer under this Agreement shall mean one or more of the following:
- 4.1.1 Any representation or warranty made in this Agreement by Developer was materially inaccurate when made or shall prove to be materially inaccurate during the Term; or
- 4.1.2 Developer fails to observe or perform the payment obligations required of it under this Agreement.
  - 4.1.3 Determination by the City that the developer fails to properly operate and maintain said Sewer Lift Station
- 4.2 <u>Events of Default by City.</u> Default or an Event of Default by City under this Agreement shall mean one or more of the following:
- 4.2.1. Any representation or warranty made in this Agreement by City was materially inaccurate when made or shall prove to be materially inaccurate during the Term; or
- 4.2.2. City fails to observe or perform any other material covenant, obligation or agreement required of it under this Agreement.
- 4.3 <u>Grace Periods; Notice and Cure</u>. Upon the occurrence of an Event of Default by any Party, such Party shall, upon written notice from a non-defaulting Party, proceed immediately to cure or remedy such Default and, in any event, such Default shall be cured within thirty (30) days after receipt of such notice, or, if such Default is of a nature that is not capable of being cured within thirty (30) days shall be commenced within such period and diligently pursued to completion.
- 4.4 <u>Remedies on Default.</u> Whenever any Event of Default occurs and is not cured (or cure undertaken) in accordance with this Agreement, the non-defaulting Party may take any of one or more of the following actions:
- 4.4.1. <u>Remedies of City</u>. City's remedies shall consist of, and shall be limited to collection of all amounts past due and owing herein and such other rights and remedies allowed pursuant to Arizona law.
- 4.4.2. <u>Remedies of Developer</u>. Developer's remedies upon Default by City shall consist of seeking special action or other similar relief (whether characterized as mandamus, injunction or otherwise), requiring City to undertake and to fully and timely perform its obligations under this Agreement,

and such other rights and remedies allowed pursuant to Arizona law.

#### 5. Miscellaneous Provisions.

- 5.1 Governing Law; Choice of Forum. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Mohave or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action. The parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced.
- 5.2 <u>Limited Severability</u>. In the event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring City to do any act in violation of any Applicable Laws, constitutional provision, law, regulation or City code), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect.
- 5.3 <u>Construction</u>. The terms and provisions of this Agreement represent the results of negotiations between the Parties, each of which has been or has had the opportunity to be represented by counsel of its own choosing, and none of which has acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings, and each Party hereby waives the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Agreement that ambiguous or conflicting terms or provisions contained in this Agreement shall be interpreted or construed against the Party who prepared or whose attorney prepared the executed Agreement or any earlier draft of the same.

## 5.4 Notices.

5.4.1 <u>Addresses</u>. Except as otherwise required by law, any notice required or permitted under this Agreement shall be in writing and shall be given by personal delivery, or by deposit in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing, or by telecopy facsimile machine, or by any nationally recognized express or overnight delivery service (e.g. Federal Express or UPS), delivery charges prepaid:

If to City: City Manager

Lake Havasu City

2330 McCulloch Blvd N. Lake Havasu City, AZ 86403 Telephone: 928-453-4141

With a copy to: City Attorney

Lake Havasu City

2330 McCulloch Blvd N. Lake Havasu City, AZ 86403 Telephone: 928-453-4144

If to Developer: MDCAB, LLC

2036 McCulloch Blvd

Lake Havasu City, AZ 86403 Telephone: 928-216-0073

- 5.4.2 <u>Effective Date of Notices</u>. Any notice sent by United States Postal Service certified or registered mail shall be deemed to be effective the earlier of the actual delivery, or three (3) business days after deposit in a post office operated by the United States Postal Service. Any notice sent by a recognized national overnight delivery service shall be deemed effective one (1) business day after deposit with such service. Any notice personally delivered or delivered through a same-day delivery/courier service shall be deemed effective upon its receipt or refusal to accept receipt by the addressee. Any notice sent by telecopy facsimile machine shall be deemed effective upon confirmation of the successful transmission by the sender's telecopy facsimile machine. Any Party may designate a different person or entity or change the place to which any notice shall be given.
- 5.5 <u>Time of Essence</u>. Time is of the essence of this Agreement and each of its provisions.
- 5.6 <u>Section Headings</u>. The Section headings contained in this Agreement are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement.
- 5.7 <u>Attorneys' Fees and Costs.</u> In the event of a breach by any Party and commencement of a subsequent legal action in an appropriate forum, the prevailing Party in any such dispute shall be entitled to reimbursement of its reasonable attorney's fees and court costs, including, but not limited to, its costs of expert witnesses, transportation, lodging and meal costs of the parties and witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental costs of such dispute.
- 5.8 Waiver. The Parties agree that neither the failure nor the delay of any Party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver of such right, remedy, power or privilege, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.
- 5.9 <u>Third Party Beneficiaries</u>. No person or entity shall be a third party beneficiary to this Agreement, except for permitted transferees, assignees, or Lenders to the extent that they assume or succeed to the rights and/or obligations of Participant under this Agreement, and except that the indemnified persons referred to in the indemnification provisions of this Agreement shall be third party beneficiaries of such indemnification provisions.
- 5.10 Exhibits. Without limiting the provisions of Section 1, the Parties agree that all references to this Agreement include all Exhibits designated in and attached to this Agreement, such Exhibits being incorporated into and made an integral part of this Agreement for all purposes.
- 5.11 <u>Integration</u>. Except (a) for the Existing Documents, with respect to which this Agreement is supplemental and not superseding; and (b) as expressly provided herein, this Agreement constitutes the entire agreement between the Parties with respect to the subject matters, hereof and supersedes any prior agreement, understanding, negotiation or representation regarding the subject matters covered by this Agreement, but not the Existing Documents.
- 5.12 <u>Further Assurances</u>. Each Party agrees to perform such other and further acts and to execute and deliver such additional agreements, documents, affidavits, certifications, acknowledgments and instruments as any other party may reasonably require to consummate, evidence, confirm or carry out the matters contemplated by this Agreement or confirm the status of: (a) this Agreement as in full force and effect; and (b) the performance of the obligations under this Agreement at any time during its Term.

- 5.13 <u>Business Days</u>. If the last day of any time period stated in this Agreement or the date on which any obligation to be performed under this Agreement shall fall on a Saturday, Sunday or legal holiday, then the duration of such time period or the date of performance, as applicable, shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday or legal holiday.
- 5.14 <u>Counterparts</u>. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all so executed shall constitute one agreement, binding on the Parties.
- 5.15 <u>Non-liability of City Officials</u>. No City Council member, official, representative, agent, attorney or employee of City shall be personally liable to Developer, or to any successor in interest to Developer, in the event of any Default or breach by City or for any amount which may become due to Developer or its successors, or with respect to any obligation of City under the terms of this Agreement.
- 5.16 <u>Conflict of Interest.</u> This Agreement may be cancelled under Arizona Revised Statutes § 38-511.
- 5.17 <u>Binding Effect</u>. This Agreement is binding upon and inures to the benefit of the successors and assigns of the parties and the rights and obligations hereby created are assignable in whole or in part by the Developer. This Agreement shall run with the land, and any future owner of the Property shall be bound to the provisions of this Agreement applicable to Developer. Any party taking title to the Property shall be deemed to assume the obligations of the Developer hereunder, and the Developer shall be released from all of said obligations at such time the Developer holds no further interest in the Property.

[Signature and Acknowledgment Pages Follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

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MDCAB, LLC

an Arizona limited liability company

By:

APX West Investments, LLC an Arizona limited liability company

Manager

STATE OF ARIZON

COUNTY OF MOH

The foregoing instrument was acknowledged before me on this day of August 2023, by Brittin Wolf, who represented to me that he executed the same in his authorized capacity.

Olivia Erin Wilks NOTARY PUBLIC STATE OF NEVADA Appt. No. 21-3240-01 My Appt. Expires: May 15, 2025

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Lake Havasu City an Arizona municipal corporation

	By: Williams
A HAVASU CITY. TARIS	Cal Sheehy, Mayor  Attest:  By:
THEORPORATED 1918	By: City Clerk  Approved as to form:
PORATED	By: Velly Gam
	Gity Attorney
STATE OF ARIZONA ) :ss	
COUNTY OF MOHAVE )	and a
by Cal Sheeling instrument was acknowled to the sheeling of th	edged before me this 23 day of August, 2023,  Notary Public

IN WITNESS WHEREOF, the Part	ties have executed this Agreement as of the date first set forth
above.	
Developer:	MDCAB, LLC an Arizona limited liability company
	By: APX West Investments, LLC an Arizona limited liability company Manager  By:
STATE OF ARIZONA ) :SS	Brittin Wolf, Manager
COUNTY OF MOHAVE ).	
The foregoing instrument was acknown 2023, by Brittin Wolf, who represented to m	owledged before me on thisday of, ne that he executed the same in his authorized capacity.
	Notary Public

# Exhibit A – The Project

## OWNER / DEVELOPER MIDCAB, LLC 2036 MCCULLOCH SLVD N LAKE HAWASU GTY, AZ 36403 65 記記 額 TRACT 2391, TRINITY AT HAVASU FOOTHILLS ESTATES IN THE W1/2 SECTION 55, TI4N, R19W, G&SRM, LAKE HAVASU CITY, MOHAVE COUNTY, ARIZONA STOLE TOTAL STREET 調の Gebowing it is not the more terminal course of lot 1.1 Text 2004, from all Seables Seables Seables The court 1975 579 We district with the court of 1970 566 and court of 1970 567 and court of 1970 577 and court of 1970 5 DESCRIPTION DESCRIPTION WITCHEST 138, TIAN, \$15W, GS 59M, Alphane County, Arbans, bingin a portion of the time: A reserving the Warray Openic reported at elementary to 2012/05881 inguither with the remarkable of the WHAPA Action 28 and the description of the description of the 2012/05899 and 2012/075493, Tract 2019, and Theat 2019, and the description of the description. TOSETHER WITH a 10-foot-wide public-first two courses described herein... 100 100150 100 弱線 語 NOT TO LOAD PLAT OF 調整 TOT G 野野 智能 1010 City Clark Lake Havasu City CENTRICATE OF CITY BIGINEER This plan has been checked for conformations and any peed of conditions thereby, and to the result enumber of the hashest Conformation and any other applicable regulations and requirements of this title. viayor .eke Havæsı Gity CERTIFICATE DIF RAAYOR CHARLES OF THE DIF RAAYOR SERVICE OF THE DIFFERENCE OF THE PROPERTY AND THE PROPERTY OF CENTRICATE OF CITY OLERK CENTRICATE OF CITY OLERK CONTRICATE OLERK CONTRICATE OLERK CONTRICATE OLERK CONTRICATE OLERK CONTRICATE OLERK CONTRICATE CONTRICA E LOT BE CERTIFICATE OF DEVELOPMENT SERVICES DIRECTOR WILD DIVIDED OF LINE WASHINGTON THE STATE OF THE S 15 CURVE TABLE POUND LINAMAKED REMAR, AFFIXED TAG MARKED THE SERVICE OF OR NAIL W/ EXTERNAM PASTIC OF OR NAIL W/ WATER WASHINGTON THE SERT Y SE CAMP REMAY W/ FLASTIC OF MARKED AS MOTED. ECUND RESAR W/ ALUMINUM CAP MARKED 'S NOTED SET 5/8" RBBAR W/ ALUMINUM CAP MARKED 'RLS 46473" PUBLIC UTILITY SUBMENT PUBLIC DRAINAGE EASIMENT RECORDS OF THE MOVANE COUNTY RECORDS REFERENCE POINT, NOTHING SET, ALLINONIUM GAP POINT OF BEGINNING Notary Public for the State of Residing at My commission expires Menager Menager DEDICATION DEDICA ODB), before the person described in the within indurance, and who extrowed by appeared Durtin Rampond trauwn to me to be the person described in the within indurance, and who extrowed aged to me that he executed the same. COUNTY OF STATE OF Deted this MDCAB, ILC MDCAB, LLC Street rights-of-way, public utility assements, and sewer facilities easumant are hereby dedicated to the public n witness whereof: Filed for record at the request of MOCAB, ILC on 2023, Records of MichayeCounty, Adizona. CERTIFICATE OF COUNTY RECORDER SURVEYOR'S NOTES 1. The purpose of this survey is to divide the part on described in the warmty detect moorded as Rec. No. 2021045880, records of Mohere County. All dimensions are measured or calculated and are within 0.25 ± 10 ppm of record dimensions unless otherwise noted. This samely was conducted withdrawards in a 45% commitment. Externance and other encumbrances may exist which are not shown. REFERENCED DOCUMENTS According information According information PRELIMINARY 4/4/23

# Exhibit B – Final Improvement Plans





