

## **DEVELOPMENT AGREEMENT HAVASU RIVIERA**

THIS DEVELOPMENT AGREEMENT (“**Agreement**”) is made as of the \_\_\_\_ day of \_\_\_\_\_, 2016, by and between Lake Havasu City, an Arizona municipal corporation (“**City**”), and Havasu Riviera, L.L.C., an Arizona limited liability company (“**Developer**”). City and Developer are sometimes referred to in this Agreement collectively as the “**Parties**” or individually as a “**Party**.”

### **RECITALS**

A. Developer owns that certain real property legally described on **Exhibit “A”** attached hereto (“Developer Property”), consisting of approximately 250 acres. The Developer Property is depicted on **Exhibit “B”** attached hereto. The Developer Property is currently vacant land.

B. City has decided to develop Riviera Park Way on property controlled by the City as shown on Exhibit “C” attached hereto (“City Property”). Riviera Park Way includes a four lane roadway, multi-use path, landscaping, water utility lines, wastewater utility lines, wastewater force main, wastewater pump station, electric lines, telecom, drainage, storm water facilities, traffic controls and related items. Riviera Park Way is depicted on **Exhibit “D”** attached hereto (“Park Way”).

C. Developer will benefit from the construction of the roadway and availability of utilities and facilities, and agrees to reimburse City for the Upgrade Costs (as defined below) of the construction of the Park Way in the estimated amount of \$1,525,000 payable over time in accordance with this Agreement.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing recitals and representations and the mutual promises contained in this Agreement, the Parties agree as follows:

1. **Havasu 280**. City agrees to proceed reasonably and diligently in the development and construction of the Park Way.

2. **Agreement**.

2.1 Following completion of the Park Way, Developer shall pay City the Upgrade Costs of the Park Way. “Upgrade Costs” shall mean the increased costs and expenses for oversize water lines, oversized sewer lines, and related increased pump facilities that will be installed and one-half of the costs for the State Route 95 intersection improvements and traffic signal to handle the additional needs of the Developer Property. The final Upgrade Costs shall be approved by the Developer and the City when all plans, specifications and final bids are received for the Park Way. The sum of the final Upgrade Costs divided by twenty (20), shall be paid by Developer to the City over a time period not to exceed twenty (20) years, payable annually within thirty (30) days after each anniversary of the completion by City of the Park Way; but in any event no less than \$75,000 plus interest at until paid in full. Interest shall be calculated annually on the outstanding balance of the Upgrade Costs at the United States Ten-Year Treasury Note Yield Curve Rate, as published by the U.S. Department of the Treasury, as

of the anniversary day of the completion by the City of the Park Way or the next business day, if the anniversary day is on a weekend or holiday.

2.2 Developer agrees to grant to City a lien on a portion of Developer's real property further described in the attached **Exhibit "E"** to be held as security for the repayment of the Upgrade Costs in a form agreed upon by the Parties within three (3) months of the execution of this Agreement.

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

3.1. City's execution and delivery of this Agreement have been duly authorized and agreed to in compliance with the requirements of the Lake Havasu City Code.

3.2. All consents and approvals necessary to the execution and delivery of this Agreement by City have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.

3.3. City will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to evidence and implement this Agreement.

3.4. The execution and delivery of this Agreement by City is not prohibited by, and does not conflict with, any other agreements, instruments or judgments or decrees to which City is a party or is otherwise subject.

3.5. City has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

4. **City Obligations.** City agrees to:

4.1 Publicly advertise for the construction of the roadway and utilities improvements necessary for the Park Way. The first phase will include the grading and drainage improvements for the entire main roadway. The second phase will include all utilities and the construction of the complete road section along with curb and gutter as designed. The second phase will also include the SR95 intersection improvements and traffic signal.

4.2 Construct, install, and maintain the City work (as defined in Exhibit "D") and as depicted and described in the Final Plans.

4.3 Timely submit to the Arizona Department of Environmental Quality ("ADEQ") the Water Plans, Wastewater Plans, and all Final Plans for "Approval to Construct" and "Approval of Construction" of the Park Way as needed to meet the phased approach of the work.

4.4 Timely submit the Traffic Impact Statement and Improvement Plans and/or Final Plans to the Arizona Department of Transportation ("ADOT") for an ADOT right-of-way permit.

4.5 Own, operate, and maintain all the improvements within the Park Way right-of-way.

5. **Developer Representations.** Developer represents and warrants to City that:

5.1. 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.

5.2. 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.

5.3. Developer will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

5.4. 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 affect on Developer's performance under this Agreement that has not been disclosed in writing to City.

5.5. This Agreement (and each undertaking of Developer contained herein) constitutes a valid, binding and enforceable obligation of Developer, enforceable according to its terms.

5.6. 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.

5.7. 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.

5.8. Developer has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

6. **Developer Obligations.** *Developer agrees to:*

6.1 Prepare and provide grading, drainage, paving, and utility plans along with design reports for drainage, water and wastewater improvements within the Park Way to be approved by City and ADEQ as required, which will include ADEQ responses and revisions (the "Wastewater Plans" and "Water Plans"); and obtain ADEQ "401" permit approval for all the improvements.

6.2 Prepare and provide to City "Stormwater Pollution Prevention Plans" for the disturbed construction site in connection with the Park Way; however, Developer shall not be responsible to obtain from ADEQ a "Notice of Intent ("NOI") and Notice of Termination ("NOT"). NOI and NOT will be the responsibility of the selected contractor.

6.3 Obtain an engineer's confirmation of the validity of the current Army Corps of Engineers ("ACOE") Jurisdictional Delineation report for the Park Way.

6.4 Obtain a 404 permit for the Park Way and Final Plans from the ACOE, and pay to the ACOE any mitigation fees in connection with the 404 permit.

6.5 Prepare future landscape plans within the Park Way right-of-way as necessary.

6.6 Prepare and provide to the City an update to the traffic impact analysis for the Park Way in accordance with ADOT requirements.

6.7 Prepare and provide to City and for ADOT approval updated Signal Warrant Analysis, Traffic Signal, Lane improvement and striping plans required by ADOT for State Route 95 intersection as a result of the Road Way (including any underground traffic signal improvements, such as conduit, as required by ADOT).

6.8 Provide to City final construction-ready, sealed plan sets as required for the City work (identified in Exhibit "C") (with identified project phasing) in connection with the Road Way and associated phases ("Final Plans").

6.9 Coordinate with City and local utility providers regarding the Developer-proposed location of future water, wastewater, and electric facilities within the Park Way right-of-way.

6.10 Provide a Temporary Construction Easement ("TCE") for all work to allow access during mass road grading.

7. **Events of Default; Remedies.**

7.1. Events of Default by Developer. Default or an Event of Default by Developer under this Agreement shall mean one or more of the following:

7.1.1. 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

7.1.2. Developer fails to observe or perform the payment obligations required of it under this Agreement.

7.2. Events of Default by City. Default or an Event of Default by City under this Agreement shall mean one or more of the following:

7.2.1. 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

7.2.2. City fails to observe or perform any other material covenant, obligation or agreement required of it under this Agreement.

7.3. Grace Periods; Notice and Cure. 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.

7.4. Remedies on Default. 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:

7.4.1. Remedies of City. 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.

7.4.2. Remedies of Developer. 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.

## 8. Miscellaneous Provisions.

8.1. 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.

8.2. Limited Severability. 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.

8.3. Construction. 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.

### 8.4. Notices.

8.4.1. Addresses. 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: 928-680-5460

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: Havasu Riviera, L.L.C.  
c/o Komick Enterprises, Inc.  
815 Manhattan Ave. #D  
Manhattan Beach, CA 90266  
Telephone: 310-376-8441

With a copy to: Dean J. Formanek  
Warner Angle Hallam Jackson and Formanek  
2555 E. Camelback Road, Suite 800  
Phoenix, AZ 85016  
Telephone: 602-264-7101

8.4.2. Effective Date of Notices. 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.

8.5. Time of Essence. Time is of the essence of this Agreement and each of its provisions.

8.6. Section Headings. 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.

8.7. Attorneys' Fees and Costs. 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.

8.8. 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.

8.9. Third Party Beneficiaries. 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.

8.10. 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.

8.11. Integration. Except 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.

8.12. Further Assurances. 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.

8.13. Business Days. 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.

8.14. Counterparts. 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.

8.15. Non-liability of City Officials. 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.

8.16. Conflict of Interest. This Agreement may be cancelled under Arizona Revised Statutes § 38-511.

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

**DEVELOPER**

Havasu Riviera, L.L.C., an Arizona limited liability company

By: 

Name: James M. Komick

Title: Member

STATE OF ARIZONA       )  
                                      ) ss:  
County of Maricopa       )

On this \_\_\_\_ day of \_\_\_\_\_, 2016, before me personally appeared James M. Komick, Member of Havasu Riviera, L.L.C., an Arizona limited liability company, for and on behalf of the limited liability company, whose identity was proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this document, and who acknowledged that he signed the above document.

*See attached*

\_\_\_\_\_  
Notary Public

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
 County of Los Angeles )  
 On 10/19/2016 before me, Jennifer Colby, Notary Public,  
 Date Here Insert Name and Title of the Officer  
 personally appeared James M. Komick  
 Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Jennifer Colby  
 Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_ Document Date: \_\_\_\_\_  
 Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_  
 Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_  
 Signer Is Representing: \_\_\_\_\_

**CITY**

Lake Havasu City, an Arizona municipal  
corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

STATE OF ARIZONA       )  
                                      ) SS:  
County of Mohave        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_, as \_\_\_\_\_ of Lake Havasu City, an Arizona municipal corporation, for and on behalf of the corporation, whose identity was proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this document, and who acknowledged that he/she signed the above document.

\_\_\_\_\_  
Notary Public