

WHEN RECORDED, RETURN TO:

Chandler City Clerk
P.O. Box 4008
Mail Stop 606
Chandler, Arizona 85244-4008

**DEVELOPMENT AGREEMENT BETWEEN THE CITY OF CHANDLER,
ARIZONA AND CACHET – MCKINLEY GLENN, LLC,
FOR IMPROVEMENTS TO CHANDLER HEIGHTS ROAD**

City of Chandler Contract No. _____

THIS DEVELOPMENT AGREEMENT (“Agreement”) is entered into as of the day of _____, 2022 (**“Effective Date”**), by and between the City of Chandler, Arizona, an Arizona municipal corporation (which, together with any successor, public body, or officer hereafter designated by or pursuant to law, is hereinafter referred to as **“City”**) and Cachet – McKinley Glenn, LLC, an Arizona limited liability company (which, together with any successors and permitted assigns is hereinafter referred to as **“Developer”**). The City and Developer are individually referred to herein as, a **“Party”** and collectively, as the **“Parties”**.

RECITALS

A. On or about August 18, 2022, the Chandler City Council approved Resolution No. 5612 which, among other things, authorizes the City’s Development Services Director to enter into this Agreement.

B. The Parties acknowledge that this Agreement constitutes a “Development Agreement” within the meaning of Arizona Revised Statutes (**“A.R.S.”**), §9-500.05 and that, in accordance therewith, it shall be recorded against the interest of Developer in the Property, as described in Recital C below, in the Office of the Maricopa County Recorder to give notice to all persons of its existence and of the Parties’ intent that the burdens and benefits contained herein be binding on and inure to the benefit of the Parties and all their successors in interest and permitted assigns.

C. Developer owns an approximate 9-acre parcel of land within the boundaries of the City, which is bounded by Chandler Heights Road on the north (the **“Property”**), which Developer intends to develop into a planned area development known as “McKinley Glenn” (the **“Development”**). The Property is legally described in **Exhibit A** attached hereto.

D. Chapters 47 and 48 of the Chandler City Code require Developer at Developer's sole cost to prepare plans and specifications and to construct improvements to Chandler Heights Road (among other improvements) in accordance with Chandler municipal standards and requirements and which arise out of or relate to the Development.

E. On or about August 8, 2022, the City will begin construction of improvements to Chandler Heights Road (the "City Project") which, in part, abut the Development.

F. The design and construction of the Development requires design and construction changes to the City Project (collectively "Development Changes to City Project"). The Development Changes to City Project that arise out of or relate to the Development and for which Developer is responsible are generally described and depicted in **Exhibit "B"** and include: (i) modify a proposed median near the Development to include a left turn lane into the Development and changes to landscaping, landscape irrigation, and hardscape within the median; (ii) coordinate and relocate, if necessary, stormwater infrastructure in the right of way and easements; (iii) modify curb and gutter along Chandler Heights Road for the Development entrance; (iv) coordinate Developer's installation of the landscaping and landscaping irrigation in Chandler Heights Road right of way that abuts the Development; and (v), if necessary, upon Developer's written request, the construction of the utility stubs.

G. Through this Agreement the Parties desire to coordinate Developer's responsibilities for the Development Changes to the City Project so all improvements to Chandler Heights Road may be constructed in a cohesive and cost-effective manner for the Parties.

H. This Agreement solely relates to and describes the Parties' respective obligations to design and construct the Development Changes to City Project for Chandler Heights Road. This Agreement does not apply or relate to Developer's additional obligations to design, construct, and maintain improvements for the Development including but not limited to all required on-site improvements.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual agreements set forth herein, it is understood and agreed by the Parties hereto as follows:

ARTICLE 1 CONDITIONS PRECEDENT

1.1 Property Right of Way Dedication. City has paid just compensation to Developer for the Chandler Heights Road right of way and construction easement(s) required for the City Project. Notwithstanding the City's payment and as part of this

Agreement, Developer agrees (at no cost to the City) to dedicate to the City (or any other applicable Approving Authority): (i) fee title to the right of way located within the boundaries of the Property that is customarily required by the City (or any other applicable Approving Authority) for all off-site improvements (collectively “Improvements”) including but not limited to the right of way for Chandler Heights Road, and (ii) any permanent or temporary access, construction, utility, and drainage and slope easements within the boundaries of the Property that are customarily required by the City (or any other applicable Approving Authority) for the construction, operation, maintenance, repair and replacement of the Improvements (collectively, “**Property ROW**”). All dedications shall be made when customarily required by the City (or other applicable Approving Authority), and by executing a master plat, map of dedication, or other method customarily required by the City (or any other applicable Approving Authority).

ARTICLE 2

DEVELOPER’S RESPONSIBILITIES FOR THE DEVELOPMENT CHANGES TO CITY PROJECT AND IMPROVEMENTS

2.1 Design and Construct Development Utility Stubs. Developer must design and construct the utility stubs for the Development in accordance with City standards and requirements at Developer’s sole cost before concrete and asphalt paving work for the City Project. Developer and City will coordinate the schedule and timing of the Development utility stubs construction. If Developer is unable to timely complete the utility stubs construction, upon written request and agreement by Developer and the City, the City may construct the utility stubs as part of the City Project at Developer’s sole cost.

2.2 Coordination with City for Development Changes to City Project. Developer, at Developer’s sole cost and through Developer’s designer, must work with and coordinate with the City Project designer to design and prepare construction documents for the Development Changes to City Project. Based on the coordinated construction documents for the Development Changes to City Project, the City Project designer will prepare an itemized summary of the changes and additional work and materials for the Development Changes to the City Project (collectively “Development Changes Scope of Work”). Based on the Development Changes Scope of Work, the City Project contractor will prepare a change order to the City Project that deducts the costs included in the City Project for the above referenced median, stormwater retention and infrastructure, and curb and gutter at the Development entrance and adds the construction costs calculated by applying contractor’s unit prices in the City Project construction agreement to the Development Changes Scope of Work (collectively “Development Changes Change Order”). Developer, at Developer’s sole cost, will coordinate with the City Project to install landscaping and landscaping irrigation in the Chandler Heights Road right of way that abuts the Development as approved by the City.

2.3 Payment for Development Changes to City Project; Deposit Account Agreement. Developer acknowledges and agrees to the “prompt payment” statutes and requirements that apply to the City Project. Accordingly, within 30 days of the Effective Date, Developer agrees to enter into the deposit account agreement attached as **Exhibit “C”** (“Deposit Account Agreement”) and must deposit the following amounts in the deposit account for the following costs and amounts within 30 days of the City’s written request: (i) \$10,000 plus 10% for increase to project costs for the City Project designer’s fees and costs to design and prepare the Development Changes to City Project construction documents and Development Changes Scope of Work and any changes to environmental clearances; (ii) \$15,000 plus 10% for increase to project costs for the City Project designer’s fees and costs for construction management and administration of the Development Changes to City Project; (iii) the Development Changes Change Order amount, including any extended general conditions plus 10% for increase to project costs; and (iv) \$5,000 plus 10% for increase to project costs for the City’s additional reasonable costs and fees incurred as a result of, or arise out of, or relate to the Development Changes to City Project. Developer acknowledges, understands, and agrees that the deposit amounts referenced above are estimates for the costs related to the Development Changes to City Project. Developer agrees to deposit additional funds to complete the Development Changes to City Project within 30 days of the City’s written request and Developer’s review and approval of the additional costs, which approval the Developer will not unreasonably withhold. Within 30 days of Final Acceptance of City Project, the City will return to Developer the remaining funds, if any, plus accrued interest in the deposit account.

2.4 System Development Fees. In addition to the payments under this Agreement, Developer must pay all outstanding system development fees as required by the City.

2.5 Issuance of Temporary Certificates of Occupancy (“TCO”) and Certificates of Occupancy (“CO”). When the City Project is substantially complete in the right of way that abuts the Development, the City may, in its reasonable discretion, coordinate with Developer to issue TCO’s to Developer for Development model homes. Consistent with City’s existing practices, procedures, and regulations, when the Certificate of Substantial Completion for the City Project is issued and Developer has fully and completely satisfied Developer’s obligations under this Agreement, the City may, in its reasonable discretion, coordinate with Developer to issue CO’s for the Development.

2.6 Developer to Coordinate and Install Landscaping. Developer, at Developer’s sole cost, acknowledges, accepts, and agrees that Developer will coordinate with the City Project contractor to install all landscaping and landscaping irrigation located in the right of way that abuts the Development.

2.7 Construction Easements. In addition to existing construction easements for the City Project (for which the City has paid just compensation), with this Agreement,

Developer and its successors and assigns grants to City temporary construction easement to permit the City and its authorized agents, employees, and contractors access to and use of the portion of the Property as necessary for the design, construction, maintenance, and operation of the Development Changes to the City Project.

ARTICLE 3 CITY'S RESPONSIBILITIES

3.1 City to Design and Construct Development Changes to City Project. The City, through its designer and contractor, will design and construct the Development Changes to City Project at Developer's sole cost.

3.2 Irrigation and Utility Infrastructure in Chandler Heights Road. As part of the City Project, the City will install and place underground the irrigation canal that runs parallel to the Development and the water and sewer utilities located in Chandler Heights Road right of way.

ARTICLE 4 PARTY REPRESENTATIONS

4.1 City's Representations. The City represents and warrants to Developer that:

- 4.1.1** The City is duly formed and validly existing under Arizona law and that the individual(s) executing this Agreement on behalf of the City is authorized and empowered to bind the City.
- 4.1.2** The City has the full right, power, and authorization to enter and perform this Agreement and each of the City's obligations and undertakings under this Agreement, and the City's execution, delivery and performance of this Agreement have been duly authorized and agreed to in compliance with the requirements of its Charter and Arizona law.
- 4.1.3** All consents and approvals necessary to the execution and delivery of this Agreement have been obtained, and no further action needs to be taken in connection with such execution and delivery.
- 4.1.4** The City will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

4.2 Developer's Representations. Developer represents and warrants to the City that:

- 4.2.1 Developer is duly formed and validly existing under Arizona law and that the individual(s) executing this Agreement on behalf of Developer is authorized and empowered to bind Developer.
- 4.2.2 Developer is the owner in fee of the Property and has the full right, power, and authorization to enter and perform this Agreement and of the obligations and undertakings of Developer under this Agreement, and the execution, delivery and performance of this Agreement has been duly authorized and agreed to in compliance with its organizational documents.
- 4.2.3 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.
- 4.2.4 Developer will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

ARTICLE 5 INSURANCE AND INDEMNIFICATION

5.1 Insurance Responsibility. During the entire term of this Agreement, Developer must insure its property and activities and must provide insurance and indemnification as follows: Developer must procure and maintain, and must cause its contractors to procure and maintain as provided in Section 5.2 below, until all their respective obligations have been discharged, insurance against claims for injury to persons or damage to property that may arise from or in connection with Developer's obligations under this Agreement and Developer's activities including, but not limited to, the installation, construction, relocation, removal, repair, operation, and maintenance of the Development Changes to City Project and landscaping by Developer, its agents, representatives, employees, contractors, successors, or assigns. The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The City in no way warrants that the minimum limits contained herein are sufficient to protect Developer from liabilities that might arise out of this Agreement by Developer, its agents, representatives, employees, contractors, successors, or assigns and Developer is free to purchase such additional insurance as may be determined necessary.

5.2 Minimum Scope and Limits of Insurance. Developer must provide coverage with limits of liability not less than those stated below.

5.2.1 Commercial General Liability – Occurrence Form:

Said insurance must also include coverage for products completed operations, independent contractors, personal injury, property damage, and advertising injury.

Products – Completed Operations Aggregate	\$3,000,000
Each Occurrence	\$2,000,000

The policy must be endorsed to include the following additional insured language: "The City of Chandler, its agents, representatives, officers, directors, officials, employees, and volunteers must be named as an additional insured with respect to liability arising out of the activities performed by Licensee." This endorsement may not contain an exclusion or limitation of completed operations coverage as regards the additional insured except with respect to the stated aggregate limits of liability. The policy may not exclude the explosion/collapse/underground ("xcu") hazard.

5.2.2 Automobile Liability – Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of work under this Agreement:

Combined Single Limit (CSL)	\$1,000,000
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The policy must contain an "MCS-90" endorsement providing for clean-up of pollution conditions arising from transported product, if the work performed under the Agreement requires the transportation of any Hazardous Substances by motor vehicle. The policy must also be endorsed to include the following additional insured language: "The City of Chandler its agents, representatives, officers, directors, officials, employees, and volunteers must be named as an additional insured with respect to liability arising out of the activities performed by Developer, including automobiles owned, leased, hired, or borrowed by Developer ".

5.2.3 Worker's Compensation and Employers' Liability:

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$1,000,000
Disease – Each Employee	\$1,000,000
Disease – Policy Limit	\$1,000,000

Policy must contain a waiver of subrogation against the City of Chandler.

5.3 Additional Insurance Requirements. The policies must be, contain, or be endorsed to contain, the following provisions: Developer's insurance coverage must be primary insurance and non-contributory with respect to the obligations that Developer has undertaken under this Agreement. The policies must contain a severability of interest clause and waiver of subrogation against the City, its officers, officials, agents, volunteers, and employees, for losses arising from work performed by the Developer under this Agreement.

5.4 Notice of Cancellation. Each insurance policy required by the insurance provisions of this Agreement must provide the required coverage and must not be canceled or materially changed except after thirty (30) days prior written notice has been given to the City. Such notice must be sent directly to the addresses listed below and must be sent by certified mail, return receipt requested:

City of Chandler
Attention: Development Services Department
215 East Buffalo Street
P.O. Box 4008, Mail Stop 405
Chandler, Arizona 85244-4008

With a copy to: Office of the City Attorney
Attention: Risk Management
175 South Arizona Avenue
P.O. Box 4008 Mail Stop 602
Chandler, Arizona 85244-4008
Email: legal.notices@chandleraz.gov

5.5 Acceptability of Insurers. Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the State of Arizona and with an "A.M. Best" rating of not less than A- VII. City in no way warrants that the above-required minimum insurer rating is sufficient to protect Developer from potential insurer insolvency.

5.6 Verification of Coverage. Developer must furnish City with certificates of insurance (ACORD form or equivalent approved by City) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by City within 30 calendar days of the Effective Date of this Agreement. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the Agreement. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of this Agreement. All certificates required by this Agreement must be sent directly to the City of Chandler Development Services Department with a copy to Risk Management as the addresses listed in Section 4.4. The Agreement number and description are to be noted on the

certificate of insurance. At City's request, Developer must make certified copies of all insurance policies required by this Agreement available for City's review through a representative and at a location within Maricopa County, Arizona designated by Developer.

5.7 Contractors. Developer's certificate(s) must include those contractors engaged by Developer to construct the utility stubs under Section 2.1 and any right of way landscaping under Sections 2.2 and 2.6 as additional insureds under its policies or contractors must maintain separate insurance as determined by Developer. In this event, such contractors must name City of Chandler as an additional insured. Provided, however, any contractor's limits of liability must not be less than \$1,000,000 per occurrence, \$2,000,000 aggregate.

5.8 Approval. Any modification or variation from the insurance requirements in this Agreement must have prior approval from the Office of the City Attorney, whose decision will be final. Such action will not require a formal contract amendment but may be made by administrative action.

5.9 Indemnity. In addition to all other indemnities and other obligations hereunder, to the fullest extent permitted by law, throughout the term of this Agreement or any and all permits and until all obligations and performances under or related to this Agreement are satisfied and all matters described in this paragraph are completely resolved, Developer and its officers, agents, employees, contractors, representatives, successors, and assigns (if they or their subcontractor, employee, or other person or entity hired or directed by them participated in any way in causing the claim in question) must jointly and severally indemnify, defend, and hold harmless City for, from, and against any and all claims or harm related to Developer's use and maintenance of the Public Rights-of-Way or other City-owned property or the rights granted to Developer with respect to the Public Rights-of-Way or City-owned property or Developer's exercise of its rights under this Agreement (the "Indemnity"). Without limitation, the Indemnity must include and apply to any and all allegations, demands, judgments, assessments, taxes, impositions, expenses, proceedings, liabilities, obligations, suits, actions, claims (including without limitation claims of personal injury, bodily injury, sickness, disease, death, property damage, destruction, loss of use, financial harm, or other impairment), damages, losses, expenses, penalties, fines, or other matters (together with all reasonable attorney fees, court costs, and the cost of appellate proceedings and all other costs and expenses of litigation or resolving the claim) that may arise in any manner out of Developer's use of the Public Rights-of-Way or other City-owned property pursuant to this Agreement or any and all Permits, or any actions, acts, errors, mistakes or omissions relating to work or services in the performance of or related to this Agreement by Developer, including without limitation any injury or damages or cause of action claimed or caused by any employees, contractors, subcontractors, tenants, subtenants, agents, or other persons upon or using the Public Rights-of-Way or other City-owned property or surrounding areas related to Developer's exercise of its rights under this

Agreement, except to the extent caused by City or any other Additional Insured or anyone for whose mistakes, errors, omissions, or negligence City may be liable. Notwithstanding the foregoing, the Indemnity does not apply to: (i) Claims arising from the sole negligence or intentionally wrongful acts of City; or (ii) Claims that the law prohibits from being imposed upon the indemnitor.

5.10 Risk of Loss. Developer assumes the risk of any and all loss, damage or claims related to Developer's use of the Public Rights-of-Way or other City-owned property, Developer or third parties throughout the term of this Agreement and the term(s) of any and all permits. Developer must be responsible for any and all damage to its property and equipment related to this Agreement unless caused by the negligence of the City or its agents or contractors.

5.11 Insurance to be Provided by Others. Developer must cause its contractors or other persons occupying, working on or about the Public Rights-of-Way or City-owned property under this Agreement to be covered by their own or Developer's insurance as required by this Agreement. The required policy limits for commercial general liability insurance provided by such persons must be \$1,000,000 for each occurrence, \$1,000,000 for products and completed operations annual aggregate, and \$2,000,000 general aggregate limit per policy year. This paragraph does not apply to persons who do not actually perform physical labor in the Public Rights-of-Way or on other City-owned property (such as Developer's contractors).

ARTICLE 6 GENERAL CONDITIONS

6.1 Notices. Except as otherwise required by law, any notice, demand or other communication required to be given by this Agreement (each, a "Notice") shall be in writing and shall be given by (i) personal delivery; (ii) by certified or registered U.S. Mail, return receipt requested; or (iii) or by any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), with all postage and other delivery charges prepaid and addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this paragraph:

To Developer: Cachet – McKinley Glenn, LLC
Attn: Matt Cody
10446 North 74th Street, Suite 220
Scottsdale, Arizona 85258

And, Burch & Cracchiolo, P.A.
Attn: M. Brennan Ray
1850 North Central Ave., Suite 1700
Phoenix, Arizona 85004

To City: City of Chandler
Attn: Development Services Department
215 East Buffalo Street
P.O. Box 4008, Mail Stop 405
Chandler, AZ 85244-4008

And, City of Chandler
Attn: City Clerk
175 South Arizona Avenue
P.O. Box 4008, Mail Stop 606
Chandler, AZ 85244-4008

6.2 Effective Date of Notices. Any Notice will (i) if delivered personally or delivered through a same day delivery/courier service be deemed effective upon delivery or refusal to accept delivery by the addressee; and (ii) if delivered by U.S. mail in the manner described above be deemed effective upon the earlier of receipt or three (3) business days after deposit in a post office operated by the United States or with a United States postal officer; and (iii) if sent by a recognized national overnight delivery service be deemed effective one (1) business day after deposit with such service. Notwithstanding the foregoing, no payment shall be deemed to be made until received in good and available funds by the intended payee. The Parties hereby acknowledge and agree that any Notice transmitted solely by facsimile or by electronic mail shall be deemed ineffective.

6.3 Cooperation; Further Acts. The Parties agree to cooperate with each other to support the efforts of Developer and City consistent with this Agreement, as reasonably necessary to facilitate the design and construction of the Improvements in accordance with the terms of this Agreement. In furtherance of the foregoing, each of the Parties hereto shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

6.4 Default. Subject to the limitations set forth in this Agreement, in the event of a default by a Party of the terms of this Agreement, the non-defaulting Party shall have all remedies available to it at law or in equity, including, without limitation, specific performance of any obligation created under this Agreement and the issuance of an injunction; provided, however, each Party waives any right to seek recovery of, or recover, any special, consequential, punitive, or other monetary damages of any kind, other than actual damages.

6.5 Venue; Attorney's Fees. Any legal actions instituted pursuant to this Agreement must be filed in the County of Maricopa, State of Arizona, or in the Federal District Court in the District of Arizona. In any legal action, the prevailing party in such action

will be entitled to reimbursement by the other Party for all costs and expenses of such action, including reasonable attorneys' fees as may be fixed by the court.

6.6 Conflict of Interests. No member, official or employee of the City may have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law. All Parties hereto acknowledge that this Agreement is subject to cancellation pursuant to the provisions of Arizona Revised Statutes § 38-511.

6.7 No Partnership; Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any owner-contractor, contractor-contractor, employer-employee, partnership, or joint venture relationship between or among any or all the Parties hereto. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization, or corporation not a party hereto, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder.

6.8 Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations, and understandings of the Parties, oral or written, are hereby superseded, and merged herein. No change or addition is to be made to this Agreement except by written amendment executed by the Parties hereto.

6.9 Governing Law. This Agreement is entered into in Arizona and shall be construed and interpreted under the laws of the State of Arizona.

6.10 Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be valid under applicable law, but if any provision of this Agreement shall be conclusively determined to be invalid or unenforceable to any extent, such provision shall be ineffective to the extent of such invalidation or unenforceability, but such determination shall not invalidate the remainder of such provision or the remaining provisions of this Agreement.

6.11 Calculation of Days. As used herein, the term "business day" shall mean a day that is not a Saturday, Sunday, or legal holiday in the City of Chandler. 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 in the State of Arizona, 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 in the State of Arizona.

6.12 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one

and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all Parties may be physically attached to a single document.

6.13 Exhibits. The Recitals of this Agreement are incorporated herein by reference and form a part of this Agreement. 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.

- Exhibit A: Legal Description of Property
- Exhibit B: General Description and Depiction of Development Changes to City Project
- Exhibit C: Deposit Account Agreement
- Exhibit D: Form Development Agreement Release

6.14 Time of Essence. Time is of the essence of this Agreement and each provision of this Agreement.

6.15 Recordation; Full Release of Property. The City will cause this Agreement to be recorded in its entirety in the Official Records of Maricopa County, Arizona, not later than ten (10) days after execution of the Agreement by the Parties and shall thereafter promptly provide a recorded copy of this Agreement to Developer. Following Final Acceptance of the Improvements, the Parties shall execute, have acknowledged and cause to be recorded an instrument in the form attached as **Exhibit “D”** acknowledging that the Agreement has terminated, and all benefits and burdens contained in the Agreement are released.

6.16 Warranty Against Payment of Consideration for Agreement. Developer warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, consultants, engineers, and attorneys.

6.17 Non-liability of Officials, Partners, and Employees. No member, official or employee of the City will be personally liable to Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to Developer or its successor, or on any obligation under the terms of this Agreement.

6.18 No Waiver. Except as otherwise expressly provided in this Agreement, any failure or delay by any Party in asserting any of its rights or remedies as to any default, will not operate as a waiver of any default, or of any such rights or remedies, or deprive any such

Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies, including but not limited to rights and remedies existing at common law.

6.19 Captions. The captions contained in this Agreement are merely a reference and are not to be used to construe or limit the text.

6.20 No Agency Created. Nothing contained in this Agreement creates any partnership, joint venture, or agency relationship between the City and Developer. No term or provision of this Agreement is intended to be for the benefit of any person, firm, organization, or corporation not a party hereto, and no other person, firm, organization, or corporation may have any right or cause of action hereunder.

6.21 Governing Statutes. References are made in this Agreement to specific sections of the Arizona Revised Statutes. Any such references mean the statute in effect on the date of the execution of this Agreement and any subsequent renumbering or reordering of those provisions.

6.22 No Israel Boycott. By entering into this Agreement, Developer certifies that Developer is not currently engaged in, and agrees for the duration of the Agreement to not engage in, a boycott of Israel.

6.23 Developer's Ownership and Management. Upon request by the City, Developer must furnish information to City that describes all persons or entities having ownership or management rights of Developer, including a description of the ownership percentages and/or decision-making authority of each person or entity, including without limitation a copy of all operating agreements and articles of incorporation, and any other information reasonably requested by City for this purpose, including any amendments to such documents. Developer must provide Notice to City within thirty (30) days if there is any change of ownership or management of Developer through amendment or other agreement of any of the legal documents or agreements governing the business operation of Developer.

Remainder of page left blank intentionally

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

CITY:

CITY OF CHANDLER, ARIZONA, an Arizona municipal corporation

By: _____
DEREK HORN
DEVELOPMENT SERVICES DIRECTOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY *JMB*

DEVELOPER:

CACHET - MCKINLEY GLENN, LLC, an Arizona limited liability company

By: Laurel Lane Management, L.L.C.,
an Arizona limited liability company

By: _____
Matt Cody, its Manager

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing Agreement was acknowledged before me this ____ day of _____, 2022, by _____, the _____ of Cachet - McKinley Glenn, LLC, an Arizona limited liability company.

Notary Public

My Commission Expires:

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

EXHIBIT B
**GENERAL DESCRIPTION AND DEPICTION OF DEVELOPMENT CHANGES
TO CITY PROJECT**

EXHIBIT C
DEPOSIT ACCOUNT AGREEMENT
(Lump Sum)

THIS DEPOSIT ACCOUNT AGREEMENT ("Deposit Agreement") is made this ____ day of _____, 2022, by Cachet - McKinley Glenn, LLC an Arizona limited liability company, whose principal address is 10446 North 74th Street, Suite 220, Scottsdale, Arizona 85258 (the "Depositor") for the benefit of the City of Chandler, Arizona, a municipal corporation (the "City").

I. RECITALS

1.1 Depositor is the Developer as defined under that certain Development Agreement between the City and Developer for improvements to Chandler Heights Road in Chandler, Arizona ("Agreement").

1.2 Pursuant to Section 2.3 of the Agreement, the Depositor must cause to be deposited certain sums as determined in the Agreement ("Deposit") into an account, established by the City, which will be maintained on deposit in accordance with the Agreement and any extension thereof, as security for the faithful performance by Depositor of the provisions of the Agreement (the "Security Fund").

1.3 To satisfy this condition, within thirty (30) days from Depositor's receipt of City's written request, the Depositor will deliver the Deposit Amount to the City to be deposited into a lump sum Deposit Account No.101.0000.2869.0000.000000.0000 (the "Account") and grant the City the right to withdraw amounts from the Account to complete the Development Changes to City Project as set forth in the Agreement. The term "Account" shall include any and all renewals or roll-overs of the Account whether or not such renewals or roll-over accounts bear the initial account number.

1.4 Subject to the terms and conditions set forth above, the Depositor desires to assign the Account to the City pursuant to the Agreement and the City desires to accept such assignment.

II. AGREEMENT

NOW, THEREFORE, in consideration of the premises, the Depositor and the City hereby covenant, agree, and represent as set forth below:

2.1 The Recitals set forth above are true and correct and incorporated herein.

2.2 Within thirty (30) days from written request by the City, the Depositor shall:

- (a) Deliver a cashier's check payable to the City, or wire transfer funds (at Depositor's expense), in the amount of the Deposit to the Derek Horn, Development Services Department Director or his designee (the "Director") for deposit into the Account.
- (b) Provide the Director with the Depositor's tax identification number.

2.3 Pursuant to the terms of the Agreement, the Depositor hereby grants the City full power of withdrawal of funds from the Account including the right to withdraw any or all the monies on deposit in the Account.

2.4 The Depositor has not, and will not assign, transfer, or set over the Account, the monies held therein or any of the Depositor's rights, title, or interests therein to any party other than the City.

2.5 For the period required by the Agreement, the City shall maintain or cause the Account to be maintained at the City or such other depository as the City may reasonably require.

2.6 At all times during the period set forth in Section 2.6 hereof, the Account shall satisfy the following requirements:

- (a) The Account shall be assigned to the City and registered as follows: "Deposit Account assigned to the City of Chandler under the Development Agreement for Improvements to Chandler Heights Road".
- (b) Only authorized representatives of the City shall be signatories on the Account, with the signature of at least two such City employees required for any withdrawals.
- (c) Depositor and the City agree that any interest paid on the Account shall be payable in accordance with the Agreement.

2.7 As set forth in Section 2.6(c) hereof, no withdrawal from the Account shall be permitted by any person or entity other than an authorized representative of the City, provided, however, prior to any such withdrawal the City must deliver to Depositor written notice of the City's intent to withdraw all or a portion of the monies from the Account in accordance with the terms and conditions of the Agreement.

2.8 If any legal action is taken by the City or Depositor to enforce any or all of City's or Depositor's rights, title, and interests under this Deposit Account Agreement, the prevailing party may recover all reasonable legal costs and attorney's fees, whether incurred by in-house, outside counsel, or otherwise.

2.9 No waiver of any of the provisions of this Deposit Account Agreement by the City or Depositor shall constitute a waiver of any other provision, whether similar, nor shall any waiver be a continuing waiver. No waiver by the City or Depositor of any provision hereof shall be binding unless executed in writing by the City or Depositor as appropriate.

2.10 The Depositor and the City agree in good faith to execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this Deposit Account Agreement.

2.11 This Deposit Account Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

2.12 Depositor and the City agree that in the event of a conflict between the terms of this Deposit Account Agreement and the Agreement, the Agreement shall govern and control.

IN WITNESS THEREOF, the parties have executed this Agreement on the date set forth above.

DEPOSITOR:

CACHET – MCKINLEY GLENN, LLC, an
Arizona limited liability company.

By: Laurel Lane Management, L.L.C.,
an Arizona limited liability company

By: _____
Matt Cody, its Manager

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by _____ on behalf of Cachet McKinley Glenn, LLC, an Arizona limited liability company.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires:

CITY OF CHANDLER, Arizona, a
municipal corporation

Derek Horn, Development Services Director

By: _____
Its: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of ____,
2022, by _____, the _____ of the CITY OF
CHANDLER, ARIZONA, a municipal corporation on behalf of the City.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires:

EXHIBIT D
DEVELOPMENT AGREEMENT RELEASE FORM

When Recorded Return To:

[Insert Developer Name]
[Insert Developer Address]
Attn: [Insert Name]

CITY OF CHANDLER RELEASE OF DEVELOPMENT AGREEMENT

The undersigned, as the duly authorized agent for the City of Chandler, hereby:
(a) acknowledges that Cachet – McKinley Glenn, LLC, an Arizona limited liability company or its permitted successors or permitted assigns has satisfied all of its obligations under Section 1 of that certain Development Agreement between the City of Chandler, Arizona, and Cachet – McKinley Glenn, LLC, an Arizona limited liability company for Improvements to Chandler Heights Road, City of Chandler Contract No. [insert] recorded on [insert date] as Document No. [insert number] in the Official Records of Maricopa County, Arizona (the “Development Agreement”); and (b) releases and discharges any interests or claims the City of Chandler may possess in the Property, as set forth and as defined in the Development Agreement.

Dated this [] day of [], 20[].

CITY OF CHANDLER, an Arizona
municipal corporation,

DEREK HORN, Development Services
Department Director

By: _____
[insert Name]
[insert Title]

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney