

When Recorded Return To:

City Clerk
City of Flagstaff
211 West Aspen Avenue
Flagstaff, AZ 86001

CONTRIBUTION AGREEMENT
(Related to a Stormwater Detention Basin)
Draft August 15, 2019

This Contribution Agreement is entered into this ____ day of _____, 2019 by and between _____, a _____ limited liability corporation (“Wildwood” or “Grantor”) and the City of Flagstaff, Arizona, a municipal property corporation organized under the laws of the state of Arizona (“City” or “Grantee”);

WHEREAS, Wildwood owns and operates a mobile home park located in a natural drainage way subject to flooding;

WHEREAS, the City is incurring considerable expense to help provide for the acquisition of a stormwater detention basin easement on adjacent property to help reduce peak flows entering the mobile home park (see conceptual map attached as Exhibit 1 for reference purposes);

WHEREAS, Wanderland Flagstaff, LLC, an Arizona limited liability company is proposing to construct a stormwater detention basin on the adjacent property, the Woody Mountain Campground, that will include capacity for a recreational pond as well as stormwater detention;

NOW, therefore, the parties agree as follows:

1. Financial Contribution. Grantor will contribute sixty-thousand dollars (\$60,000) towards the costs of construction of a stormwater detention basin as conceptually depicted in the approved site plan for the Woody Mountain Campground dated April 2019 and kept on file with the Flagstaff Community Development Division (“the Stormwater Detention Basin”), subject to conditions set forth below. Grantor shall pay City three (3) equal monthly payments of \$20,000, on or before the first of the month, commencing on the first day of the month after grading and excavation begins for the Stormwater Detention Basin. City will hold these funds in trust for Grantor, and upon final acceptance of the Stormwater Detention Basin, these funds will be remitted to Wanderland Flagstaff, LLC, as a contribution to the costs of construction. Grantor will not receive any ownership rights as to the facilities constructed. The requested completion date for the stormwater detention basin is June-July 1, 2020; however, this date is not guaranteed.

2. Conditions. Grantor's financial contribution is subject to the following conditions:

- a. The completed Stormwater Detention Basin will reduce the peak flow in a 100 year flood event entering into the mobile home park from approximately 191 cubic feet per second ("CFS") to approximately 78 CFS;
- b. All plans for the Stormwater Detention Basin shall be prepared by certified/registered engineers in the state of Arizona;
- c. All grading and construction work for the Stormwater Detention Basin shall be pursuant to approved permits and approvals;
- d. City shall perform inspections of the construction work to determine whether the Stormwater Detention Basin facilities are constructed per approved plans, per standard Community Development review procedures;
- e. The Stormwater Detention Basin is completed.

3. Stormwater Conveyance System through the Mobile Home Park. At this point in time there are no plans for construction of stormwater facilities within the mobile home park. [Grantor may be asked to provide a temporary construction easement for the Stormwater Detention Basin, which will not be unreasonably withheld.](#) The Stormwater Detention Basin will have an outfall structure that allows stormwater to continue to flow into existing stormwater conveyance systems located within the mobile home park, but at reduced peak flow rates.

4. Use Restriction. Grantor hereby grants a use restriction on, across, under and through the property legally described in Exhibit 2 attached hereto ("the Property") for the benefit of the City of Flagstaff, as follows:

Grantor shall operate a mobile home park on the Property until at least September 1, 2030; and, during this time, the Grantor will maintain the mobile home park in good condition, offer mobile home park spaces for lease, and will make good faith efforts to maintain at least an 80% occupancy rate at the mobile home park at all times.

5. Notice. Grantor will include the following notice in any lease or lease renewal for use of the Property in English and in Spanish:

This Property is subject to seasonal flooding. A stormwater detention basin is being constructed and/or maintained immediately west of this Property. The stormwater detention basin may reduce the peak flow in a 100-year storm event by up to 60% (from approximately 191 cubic feet per second ("CFS") to approximately 78 CFS), but does not eliminate natural flooding on this Property. As a condition of your lease, you agree to indemnify and hold harmless the City of Flagstaff, its officers, agents, contractors, and employees (collectively "the City"), from and against any losses, claims, and actions

resulting from personal injury to any person or damages to property, and arising out of the alleged failure to properly design, construct or maintain the stormwater detention basin, except to the extent any such injury or damages is caused by the gross negligence or willful misconduct of the City.

City will obtain a satisfactory Spanish translation and provide it to Grantor.

6. Indemnification. Grantor shall indemnify and hold harmless the City of Flagstaff, its officers, agents, contractors or employees (collectively “the City”), from and against all losses, claims, and actions resulting from personal injury to any person or damages to any property, and arising out of the alleged failure to properly design, construct or maintain the stormwater detention basin, except to the extent any such injury or damages is caused by the gross negligence or willful misconduct of the City.

7. Amendment. This Agreement may be amended at any time by written amendment executed by both Parties; all amendments shall be recorded in the official records of Coconino County, Arizona, within ten (10) days following the execution thereof.

8. Authorization. Each party to this Agreement represents and warrants that the person executing this Agreement on its behalf have full authority to bind the respective party.

9. Cancellation. This Agreement is subject to the cancelation under A.R.S. § 38-511.

10. Compliance with all Laws. The parties will comply with all applicable Federal, State, County and City laws, regulations and policies in performance of this Agreement.

11. Default and Remedies. Failure of a party to perform a material obligation of this Agreement shall constitute a breach by that party of this Agreement and, if the breach is not cured within thirty (30) days after written notice thereof from the other party (the “Cure Period”), shall constitute a default under this Agreement. In the event a breach is not cured within the Cure Period, except as otherwise provided herein, the non-defaulting party shall have all the rights and remedies that may be available under law or equity, including the right to file an action for damages and/or termination for cause.

12. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof and no waiver by the parties of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other provision of this Agreement.

13. Litigation and Attorneys’ Fees. Except as otherwise agreed by the parties, any litigation brought by either party against the other to enforce the provisions of this Agreement must be filed in the Coconino County Superior Court. In the event any action at law or in equity is instituted between the parties in connection with this Agreement, the prevailing party in the action shall be entitled to its costs including reasonable attorneys’ fees and court costs from the non-prevailing party.

20. Successors and Assigns. All of the terms and conditions of this Agreement shall run with the land, and shall be binding upon, and burden and benefit the successors, successors in title and assigns of the parties.

21. Third Parties. Nothing contained in this Agreement shall be deemed to grant or confirm to any other person, other than the parties hereto, the right to assert or exercise a separate or independent right to enforce this Agreement, or a separate or independent right to enjoy any of the benefits or privileges granted, it being understood that such rights are forever expressly held, retained and shall be exercised solely by and through the parties hereto and their successors, successors in title, and assigns.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on or as of the day and year first above written.

DATED this _____ day of _____, 2019.

WILDWOOD/GRANTOR

By: _____

Its: _____

STATE OF)
) ss.
COUNTY OF)

This instrument was acknowledged before me this ____ day of _____, 2019, by _____, being duly authorized in his or her capacity to act on behalf of Grantor.

Notary Public

My commission expires:

DATED this _____ day of _____, 2019.

EXHIBIT 1
CONCEPTUAL MAP

EXHIBIT 2
LEGAL DESCRIPTION OF PROPERTY

S:\Legal\Civil Matters\2016\2016-606 Wildwood Flooding Issues\Contribution Agreement Wildwood Hills 8-15-19.DOCX