

INFRASTRUCTURE COST SHARING AGREEMENT

WHEREAS, Continental 562 Fund LLC (“Continental”) is the contract purchaser of property described on Exhibit A hereto, and known as 10020 West Glendale Avenue, Glendale, AZ 85307 (the “Property”); and

WHEREAS, Continental is proposing to construct a 292-unit multifamily apartment development on the Property (“the Project”) and has submitted to the City of Glendale (“City”) a development plan for the Project, which the City approved; and

WHEREAS, as a condition of such approval, the City is requiring that Continental provide a payment-in-lieu for improvements to be made to Glendale Avenue, including construction of median improvements as shown on Exhibit B hereto and signalized intersection at 101st Avenue and Glendale Avenue (collectively, the “Road Improvements”), which Road Improvements shall be constructed by or on behalf of the City.

NOW THEREFORE the **CITY OF GLENDALE** and **CONTINENTAL 562 FUND LLC** hereby, in consideration of the mutual agreements of the parties as set forth herein, enter into this agreement (“Agreement”) for the design and construction of the Road Improvements and payment thereof.

I. Continental's Responsibility

Subject to the terms and conditions set forth herein, prior to Continental receiving Certificate of Occupancy for any buildings, Continental shall deposit with the City the amount of Two Hundred Nineteen Thousand Six Hundred Fifty and 46/100 Dollars (\$219,650.46) (the “Funds”), which represents the payment of the total contribution by Continental for the design and construction of the Road Improvements (One Hundred Fifty Thousand Dollars (\$150,000.00) for the intersection improvements and Sixty Nine Thousand Six Hundred Fifty and 46/100 Dollars (\$69,650.46) for the median improvements). Such deposit of the Funds may be made by Continental by certified check or by wiring the Funds to the City’s account. At such time when Continental has the deposited the Funds with the City, Continental will be deemed to have met and satisfied the requirement to pay for the Road Improvements, it being agreed between the parties that Continental is depositing such Funds with the City in lieu of Continental constructing and paying for any portion of the Road Improvements.

II. City's Responsibility

City shall, at its sole cost and expense, contract for the design and construction of the Road Improvements. City shall apply the Funds towards the cost of the design and construction of the Road Improvements. City will complete the design and construction of the Road Improvements within ten (10) years of the Effective Date of this Agreement.

If City fails to complete the design and construction of all or a portion of the Road Improvements within ten (10) years of the Effective Date of this Agreement, then: (i) City shall refund and pay the applicable portion of the Funds to Continental within thirty (30) days of receipt of a written request from Continental to refund the Funds to Continental; and (ii) Continental shall thereafter have no obligation to construct or pay for at any time the Road Improvements or any portion thereof.

III. Miscellaneous Provisions

A. Governing Law. This Agreement shall be governed by the applicable law of the State of Arizona and due performance by each Party or any action arising under this Agreement shall lie in Maricopa County, Arizona. Jurisdiction and venue shall be in Maricopa County, Arizona, and each of the Parties submit to personal jurisdiction in the state district courts in such county.

B. No Waiver. Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to any of the Parties nor to create any legal rights or claim on behalf of any third party. No Party waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Arizona of the United States.

C. Entire Agreement. This Agreement and any Exhibits hereto embody the entire agreement and understanding of the Parties hereto and supersede any and all prior agreements, arrangements and understandings relating to the matters expressly provided for herein. No amendment, waiver of compliance with any provision or condition hereof or consent pursuant to this Agreement shall be effective unless evidenced by an instrument in writing signed by both Continental and the City and authorized by their respective governing bodies.

D. Partial Invalidity. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire Agreement will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the parties shall be construed and enforced in accordance therewith. The parties acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is their desire and intention that such provision be reformed and construed on such a manner that it will, to the maximum extent practicable, be deemed to be validated and enforceable.

E. Survival and Binding Terms. Any provision of this Agreement that by its terms expressly survives the termination of this Agreement shall bind the parties' successors and assigns as set forth herein. City and Continental mutually recognize and agree that the obligations under this Agreement are personal to Continental and shall not run with the plat or with the land comprising the Project and this Agreement shall not be recorded by either the City or Continental.

F. Assignment. This Agreement shall not be assignable by either party without the prior written consent of the other party nor in contravention of any other provisions contained herein.

G. Benefits. This Agreement shall not be construed as creating any rights in any third party or any duty to any third party.

H. Notice. Any notices, requests or demands to be given hereunder by either party to the other shall be deemed to have been duly given if in writing and if affected by personal delivery to the office of the individual designated below, or by certified mail, return receipt requested or via a recognized overnight national courier such as Federal Express to the address set forth below:

CITY:

City of Glendale
Attention: City Manager
5850 West Glendale Avenue
Glendale, Arizona 85301

With copy to:

City of Glendale
Attention: City Attorney
5850 West Glendale Avenue
Glendale, Arizona 85301

CONTINENTAL:

Continental 562 Fund LLC
W134 N8675 Executive Parkway
Menomonee Falls, Wisconsin 53051

- I. Article and Section Headings.** The Article and Section headings contained herein are for convenience and reference and are not intended to define or limit the scope of any provision of this contract.
- J. Gender and Number.** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.
- K. Misspelled Words:** Misspelling of one or more words in this contract shall not void this contract. Such misspelled words shall be read so as to have the meaning apparently intended by the parties.
- L. Multiple Copies.** This Agreement may be simultaneously executed in two counterparts, each of which shall be an original and all of which shall be considered fully executed as of the date when all Parties have executed an identical counterpart, notwithstanding that all signatures may not appear on the same counterpart.
- M. Effective Date.** The Effective Date of this Agreement shall be _____, 2023.

[Signatures on next page]

IN WITNESS HEREOF, the Parties have caused this Agreement to be duly executed as follows:

CITY OF GLENDALE, ARIZONA
an Arizona municipal corporation,

Kevin R. Phelps
City Manager

ATTEST:

Julie Bower, City Clerk (SEAL)

APPROVED AS TO FORM:

Michael Bailey, City Attorney

CONTINENTAL 562 FUND LLC

BY: CONTINENTAL PROPERTIES COMPANY,
INC., ITS MANAGER

By: *[Signature]*

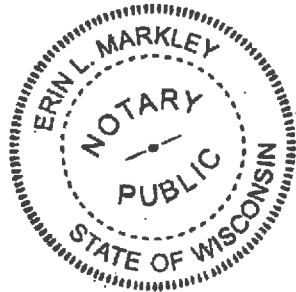
Name: DANIEL MINAHAN

Title: PRESIDENT

State of Wisconsin)

County of Waukesha)

This instrument was acknowledged before me on this 6th day of April, 2023, by DANIEL J. MINAHAN. In witness whereof I hereunto set my hand and official seal.



[Signature]

Notary Public ERIN L. MARKLEY

My commission expires: 7-7-2024

Exhibit A

Legal Description of Property

PARCEL 2, OF MINOR LAND DIVISION LOT SPLIT FOR MANGAT INVESTMENTS II, LLC, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 1628 OF MAPS, PAGE 48.

EXCEPTING THEREFROM THAT PORTION OF THE LAND DEDICATED AS PUBLIC RIGHT OF WAY FOR ROADWAY PURPOSES TO THE CITY OF GLENDALE, DESCRIBED IN WARRANTY DEED RECORDED APRIL 07, 2022 AS 2022-0310466 OF OFFICIAL RECORDS.

Future Median and Landscape Opinion of Probable Cost

Project Name: **Springs at Westgate**
 Bowman Consulting Project No. **050896-01-001**
 Date: **April 14, 2022**

SPRINGS AT WESTGATE (MEDIAN ONLY)

Paving Improvements	Quantity	Unit	Unit Price	Cost
Vertical Curb & Gutter, MAG 220-1, Type A	762	LF	\$20.30	\$15,468.60
Sawcut	1183	LF	\$5.00	\$5,915.00
AC Removal	523	SY	\$45.00	\$23,535.00
SUBTOTAL				\$44,918.60

Signing and Striping Improvements	Quantity	Unit	Unit Price	Cost
Striping		LF	\$3.00	\$0.00
Signing	1	EA	\$1,000.00	\$1,000.00
SUBTOTAL				\$1,200.00

Landscape Improvments	Quantity	Unit	Unit Price	Cost
Landscape (Lump Sum)	1	EA	\$8,950.00	\$8,950.00
Irrigation (Lump Sum)	1	EA	3250	\$3,250.00
SUBTOTAL				\$12,200.00

Traffic	Quantity	Unit	Unit Price	Cost
Traffic Control	1	EA	\$5,000.00	\$5,000.00
SUBTOTAL				\$5,000.00

SUBTOTAL	\$63,318.60
10% CONTINGENCY	\$6,331.86
GRAND TOTAL	\$69,650.46

33135
 JOSEPH E.
 CABLE
 04/14/2022

