

When recorded, return to:

City of Goodyear
190 N. Litchfield Road
Goodyear, Arizona 85339
Attn: City Clerk

THIRD AMENDMENT
TO
DEVELOPMENT AND FIRE SERVICES AGREEMENT

This Third Amendment to Development and Fire Services Agreement (this “**Third Amendment**”) is entered into as of _____, 2021 by and among the City of Goodyear, Arizona, an Arizona municipal corporation (the “**City**”), NNP III – Estrella Mountain Ranch, LLC, a Delaware limited liability company (“**NNP**”), and AV Homes of Arizona, LLC, an Arizona limited liability company (“**AV Homes**”), as successor-in-interest to JCH Estrella LLC, successor-in-interest to TOUSA Homes Inc., a Florida corporation (“**TOUSA**”). NNP and AV Homes are collectively referred to herein as the “**Developer**”. The City, NNP and AV Homes are collectively referred to herein as the “**Parties**”.

RECITALS

WHEREAS, the City, NNP and TOUSA previously entered into that certain Development and Fire Services Agreement dated May 22, 2006 and recorded as Instrument No. 2006-0731018 in the official records of Maricopa County, Arizona (the “**Original Agreement**”) for the purpose of funding the construction and operation of two fire stations (referred to as the 804 Station and the 801 Station) to provide service to areas then being developed by NNP and TOUSA within the master-planned community known as Estrella; and

WHEREAS, the City, NNP and AV Homes subsequently entered into the First Amendment to the Development and Fire Services Agreement dated January 23, 2017 and recorded as Instrument No. 2017-0077329 in the official records of Maricopa County, Arizona (the “**First Amendment**”), and the Second Amendment to the Development and Fire Services Agreement dated May 23, 2018 and recorded as Instrument No. 2018-0395674 in the official records of Maricopa County, Arizona (the “**Second Amendment**”), to modify the Original Agreement (the Original Agreement, as modified by the First Amendment and the Second Amendment, is referred to herein as the “**Agreement**”); and

WHEREAS, the City has collected certain impact fees that were designated for or otherwise required to be used for the design, construction, equipping, and/or installation of the 804 Station; and

WHEREAS, the Parties mutually agree to amend the Agreement as follows:

AGREEMENT

For good and valuable consideration, the receipt and adequacy of which is mutually acknowledged, the Parties agree to modify the **Agreement** as follows:

- I. Section 3 of the **Agreement** is hereby replaced in its entirety as follows (and, for avoidance of doubt, the “effective date of this Third Amendment” referenced below means the effective date of this Third Amendment):

Reimbursement of Funding. Subject to any existing agreements, the City shall require all applicable surcharges, impact fees, exactions and impositions of any kind, now or hereafter imposed by City for the provision of firefighting and emergency medical services (“Fire Impact Fees”), to be paid at the rate prevailing when permits are issued by the City for the development of any property located south of the Gila River (the “Available Fire Impact Fees”). The City shall make payments to Developer which, in the aggregate, equal the amount of the Capital Funding, less the \$177,000.00 referenced in Section 2., A., 1. of this Agreement (such net amount, the “Developer Reimbursement Amount”), as reimbursement to Developer of the portion of the Capital Funding paid by Developer that is eligible for reimbursement pursuant to this Agreement. The Parties acknowledge and agree that the total amount of the Capital Funding is \$5,985,026.11 and, therefore, the Developer Reimbursement Amount is \$5,808,026.11. Prior to July 1, 2021, the City collected Available Fire Impact Fees in the total amount of \$1,243,154.04 that were designated for, or otherwise required to be used for the design, construction, equipping, and/or installation of the 804 Station (the “Previously Collected Available Fire Impact Fees”). Within thirty (30) days following the effective date of this Third Amendment, the City shall pay to Developer the Previously Collected Available Fire Impact Fees. Also within thirty (30) days following the effective date of this Third Amendment, the City shall pay to Developer one-hundred percent (100%) of the total amount of all Available Fire Impact Fees collected by the City during the calendar quarter from July 1, 2021 through September 30, 2021. Thereafter and reoccurring within the first thirty (30) days of each calendar quarter, the City shall pay to Developer one-hundred percent (100%) of the total amount of all Available Fire Impact Fees collected by the City during the previous calendar quarter. Such quarterly payments shall continue until the sum of such quarterly payments, together with the amount of the Previously Collected Available Fire Impact Fees paid to Developer, equals the Developer Reimbursement Amount. The City shall not retain or pay to any other party any portion of the Available Fire Impact Fees collected by the City until after the City pays to Developer the full Developer Reimbursement Amount. The City agrees to adjust the amount of Fire Impact Fees whenever it adjusts its other non-utility development fees, and to the extent permitted by law, the City agrees to collect Available Fire Impact Fees until Developer has been fully reimbursed the Developer Reimbursement Amount. The City shall pay to NNP 64.02% and to AV Homes 35.98% of each payment required to be paid by the City to Developer under this Section 3.

- II. Notices. The address set forth in Section 13 of the **Agreement** for copies of noticed delivered to NNP is hereby deleted and replaced with the following:

Greenberg Traurig, LLP
2375 E. Camelback Rd., Suite 800
Phoenix, Arizona 85016
Attn: Stanton E. Johnson, Esq.

- III. Except as expressly provided herein, the terms and provisions of the **Agreement** are hereby reaffirmed and remain in full force and effect.

[SIGNATURE PAGES FOLLOW.]

NNP III-Estrella Mountain Ranch, LLC,
a Delaware limited liability company

By: _____
William M. Olson, Senior Vice President

STATE OF ARIZONA)
) ss
County of Maricopa)

This instrument was acknowledged before me this ____ day of _____,
2021, by William M. Olson, Senior Vice President of NNP III-Estrella Mountain Ranch,
LLC, a Delaware limited liability company, on behalf of said company.

Notary Public

My Commission Expires:

AV Homes of Arizona, LLC, an Arizona limited liability company

By: _____

Name: _____

Its: _____

STATE OF _____)
County of _____) ss

This instrument was acknowledged before me this ____ day of _____, 2021, by _____, _____ of AV Homes of Arizona, LLC, an Arizona limited liability company, on behalf thereof.

Notary Public

My Commission Expires:

City of Goodyear, Arizona,
an Arizona municipal corporation

By: _____
Julie Karins, City Manager

Date: _____

STATE OF _____)
County of _____) ss

This instrument was acknowledged before me this ____ day of _____, 2021, by Julie Karins, City Manager of the City of Goodyear, Arizona an Arizona municipal corporation, on behalf thereof.

Notary Public

My Commission Expires:

Attest:

By: _____
Darcie McCracken, City Clerk

Date: _____

Approved as to Form:

By: _____
Roric Massey, City Attorney

Date: _____