



Resolution

OFFICE OF THE
MAYOR
CITY OF SAN LUIS

No. 2222

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SAN LUIS, ARIZONA, APPROVING THE ENTERING INTO A PLEDGEHOLD AGREEMENT WITH RIEDEL HOLDINGS, LLC TO POST LAND FOR ASSURANCES TO CONSTRUCT A WASTEWATER LIFT STATION AND OTHER COMMITMENTS RELATED TO LOS MEZQUITES SUBDIVISION.

BE IT RESOLVED by the Mayor and City Council of the City of San Luis, Arizona:

Section 1: The attached Pledgehold Agreement and its Exhibit are hereby approved.

Section 2: City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to the Pledgehold Agreement.

Section 3: If a conflict arises between the provisions of this resolution and any other ordinance, resolution, regulation, or policy of the City of San Luis, the conflicting provisions are amended, superseded, and replaced, and this resolution shall govern.

Section 4: If any section, subsection, sentence, clause phrase, or a portion of this resolution is held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this resolution.

PASSED, ADOPTED, and APPROVED by the Mayor and City Council of the City of San Luis, Yuma County, Arizona, this ____ day of June 2022.

Gerardo Sanchez, Mayor

ATTEST:

Sonia Cornelio, City Clerk

APPROVED AS TO FORM:

Kay Marion Macuil, City Attorney

PLEDGEHOLD AGREEMENT

This PLEDGEHOLD AGREEMENT ("Agreement") is entered into on this ___ day of June 2022, by and between RIEDEL HOLDINGS, L.L.C. ("Pledgor"), and the CITY OF SAN LUIS, Arizona ("Pledgee" or "City"); and CHICAGO TITLE INSURANCE COMPANY, Inc., an Arizona corporation ("Pledgeholder"). Pledgor, Pledgee or City, and Pledgeholder may be referred to collectively as the "Parties" and individually as the "Party."

WITNESSETH:

WHEREAS, Pledgor, as Guarantor, to induce Pledgee to allow for the continued construction of the Los Mezquites Units 2, 3 and 4 by RIEDEL HOLDINGS, L.L.C. ("RIEDEL HOLDINGS") under that certain Development Agreement dated December 21, 2021, and recorded with the Yuma County Recorder's Office at Fee #2021-47097, desires to pledge certain Collateral, as defined, to Pledgee to secure the construction of a lift station known as the Los Mezquites/Von Verde Lift Station ("Lift Station") located on Avenue D between County 23½ Street and County 24th Street in San Luis, Arizona, as well as pledge said Collateral to secure construction of Improvements for the subdivision known as Los Mezquites II and secure the performance of construction of signalization at County 24th Street and Ave. E and County 23 ½ and Ave. E in San Luis, Arizona;

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged by Pledgor, the Parties hereby agree as follows:

Section 1. Definitions. The terms defined in this Section shall have such defined meanings for all purposes of this Agreement unless the context otherwise requires:

(a) "Borrower" shall mean RIEDEL HOLDINGS, L.L.C.

(b) "Collateral" shall mean all of Pledgor's interest in the following real property:

See Exhibit A attached hereto.

(Collectively referred to as the "Property" or "Collateral").

(c) "Event of Default" shall have the meaning(s) ascribed to such term in this Agreement.

(d) "Development Agreement" shall mean that certain Development Agreement between the Pledgor and Pledgee dated December 21, 2021, and recorded with the Yuma County Recorder's Office at Fee #2021-47097.

(e) "Improvements" means the Los Mezquites/Von Verde Lift Station ("Lift Station") and related infrastructure located on Avenue D between County 23½ Street and County 24th Street in San Luis, Arizona. "Improvements" shall also include all streets, roads, sidewalks, easements, drainage, utility mains and lines, and all other infrastructure of every nature, kind, or description, whatsoever, known or unknown, for the subdivision known as Los Mezquites II. "Improvements" shall additionally include any and all design, development and construction of signalization at the intersections of County 24th and Ave. E and County 23 ½ and Ave. E to the Public Works Standards of the City and the Standards of the Arizona Department of Transportation, hereinafter referred to as "Signalization Projects".

(f) "Obligations" shall mean all promises, duties, and/or responsibilities arising from the Development Agreement, and in specific the construction of the Los Mezquites/Von Verde Lift Station located on Avenue D between County 23½ Street and County 24th Street in San Luis, Arizona, the construction of Los Mezquites II Subdivision, and the design, development, and construction of the Signalization Projects.

(g) "Pledged Collateral" shall mean that Warranty Deed delivered to Pledgeholder and endorsed in blank pursuant to the terms and conditions of this Agreement, conveying all Pledgor's interest in the Property, as Collateral in favor of Pledgee.

(h) "Pledgeholder" shall mean Chicago Title Insurance Company or its successors or assigns.

(i) "Related Agreements" shall mean that certain Development Agreement, as defined herein, and any other agreement affecting the Improvements and Obligations as are defined in Section 1 (e) and (f) of whatsoever kind, nature or description..

Section 2. Security Interest in Collateral; Power of Attorney. To secure the construction of the Obligations, Pledgor hereby pledges to Pledgee and grants to Pledgee, and Pledgee agrees to accept the Pledged Collateral. Pledgor hereby represents that it is the owner of the Collateral in fee simple free and clear of all liens or restrictions of any kind, and agrees to sign and execute, alone or with Pledgee, and agrees to the filing of any financing statement(s) or other document or procure any document and pay all necessary costs to perfect (and continuously perfect) the security interest granted hereunder and to protect the security interest against the interest of third persons. Pledgor will pay the costs of filing the same in all public offices wherever filing is deemed by Pledgee to be necessary or desirable. Pledgee is hereby appointed Pledgor's attorney-in-fact to do all acts and things which Pledgee may deem necessary to perfect and/or continue the perfection of the security interest created by this Agreement and to protect the Collateral. Pledgor further agrees to pay all costs and fees for filing any termination statements. Pledgor hereby ratifies all acts that such attorney-in-fact shall lawfully do or cause to be done by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable. The grant of this power of attorney shall not be construed to limit the powers of Pledgee to take actions otherwise permitted by the Agreement, as may be amended from time to time, any other agreement between the Parties hereto, the Uniform Commercial Code, or other law to take actions. Pledgor further agrees to indemnify, defend at his sole cost, and hold Pledgee harmless from any and against any and all claims, demands,

damages, liabilities, and expenses (including attorneys' fees and costs) arising from or in any way related to any act or omission of Pledgee or Pledgor, or the exercise of Pledgee's rights, remedies, or powers under this Section 2 or Related Agreements.

Section 3. Representations. Pledgor represents that the Collateral is and will remain owned by Pledgor free and clear of any adverse claims or interests, liens, security interests, or encumbrances of any other person, except liens hereunder in favor of Pledgee during the term of this Agreement.

Section 4. Delivery of Warranty Deed. Pledgor agrees to deliver a fully executed Warranty Deed to the Collateral to Pledgeholder immediately upon the execution of this Agreement, to be held for the purposes and subject to the terms and conditions set forth in this Agreement.

Section 5. Duties of Pledgeholder. Pledgeholder agrees as follows:

- (a) To take custody of the Pledged Collateral;
- (b) To retain possession of the Pledged Collateral for as long as the Obligations remain outstanding, subject to subsections (c), (d), and (e) hereof;
- (c) To return the Pledged Collateral to Pledgor if, and only if, the Obligations are fully and timely satisfied and Pledgor is not otherwise in default of this Agreement or the Related Agreements, and Pledgeholder receives a signed and written confirmation from Pledgee of such satisfaction and absence of defaults;
- (d) If Pledgor fails to complete the Obligations to Pledgeholder (as account servicing agent for Pledgee) when due and in a timely manner, Pledgor and Pledgee irrevocably instruct Pledgeholder to deliver the Pledged Collateral to Pledgee without further notice to either Party. Upon delivery of the Pledged Collateral to Pledgee (or the proceeds of the sale of such Collateral by Pledgeholder), Pledgee shall complete the Pledgor's Obligations to complete the Los Mezquites/Von Verde Lift Station located on Avenue D between County 23½ Street and County 24th Street in San Luis, Arizona, and/or the Improvements for Los Mesquites II Subdivision, and/or the Signalization Projects; and
- (e) To deliver or otherwise dispose of the Pledged Collateral, as otherwise directed by Pledgee and Pledgor in a signed written instruction to Pledgeholder, or by final, non-appealable court order, judgment, or decree; provided, however, that neither of the events described in subsection (c) or (d) has occurred first.

Section 6. Compensation to Pledgeholder. The fees charged by Pledgeholder for its services hereunder shall be borne solely by Pledgor.

Section 7. Termination of Duties of Pledgeholder. Pledgeholder's duties hereunder cease upon surrendering possession of the Pledged Collateral, as provided in Section 5(c), (d), or (e).

Section 8. Indemnity and Release Agreement. Pledgor and Pledgee agree to indemnify, release, and hold harmless Pledgeholder and all its respective officers, directors, members, managers, shareholders, partners, employees, agents, contractors, and affiliates (collectively "Indemnified Parties") from and against any and all legal claims or causes of action (including all resulting damages, expenses, costs, and reasonable attorneys' fees) arising from, or related to, the performance of Pledgeholder's duties hereunder, except for any intentional act or omission of Pledgeholder, Pledgeholder's gross negligence, or Pledgeholder's default hereunder.

Section 9. Obligations secured by Pledge. The purpose of this Pledgehold Agreement is to provide financial assurances for the construction of the Los Mezquites/Von Verde Lift Station ("Lift Station") as heretofore referenced in compliance with Section 6.2 of the Subdivision Regulations of the City of San Luis and to secure up to \$250,000.00 of Improvements for the Subdivision known as Los Mezquites II in addition to all other sums, instruments, letters of credit, or other arrangements, whatsoever, for financial assurances posted or pledged to the City for completion of said Improvements. The purpose shall additionally include provision of financial assurances that Pledgor will develop, design, and construct all infrastructure needed for the Signalization Projects. The pledge of \$250,000 for Improvements of Los Mezquites II is the net sum of money as generated after the City takes such actions as may be appropriate, in its sole discretion, to sell or otherwise dispose of the Collateral. This Agreement shall remain in force until: 1) all Improvements for the Lift Station, Los Mezquites II, and Signalization Projects have been satisfactorily completed and accepted by the City; 2) final acceptance of all projects have been made by the City; and 3) the two (2) year warranty period as required by the Subdivision Regulations has been satisfied, or an alternate form of assurance has been provided to and accepted by City, pursuant to the terms as set forth below.

If Improvements are not satisfactorily completed or corrected, City may, without notice, sell the Collateral and use the proceeds from the sale to complete or correct all or part of the required Improvements and Obligations secured hereunder.

After completion of the Lift Station, Los Mezquites II, and the Signalization Projects, the Parties agree to release the Collateral and accept another form of Collateral that is an amount representing not less than ten percent (10%) of any assurance, pursuant to the Subdivision Regulations of City and shall be retained by the Pledgeholder for a period of two (2) years after completion and inspection of all Improvements for all projects to insure that all work and materials are adequate and in satisfactory condition, or an alternate form of assurance has been provided to and accepted by City. If Collateral is pledged, at the end of the two (2) year period, all remaining Collateral shall be returned to Pledgor.

Section 10. Events of Default. A Party shall be in default of this Agreement upon the occurrence of any of the following events:

(a) Failure of a Party to perform as required by this Agreement, or the breach of any other covenant or representation of this Agreement;

(b) The occurrence of an Event of Default under any of the Related Agreements;

(c) If a petition or action is filed or taken by or against either Party under any law dealing with insolvency, bankruptcy, or suspension of payment;

(d) If a Receiver is appointed over the assets or undertaking of either Party (or any part of them);

(e) If either Party enters into a deed or arrangement or makes an assignment for the benefit of creditors; or

(f) If either Party ceases to function as a going concern or an order is made, or a resolution passed to that effect except for the purposes of amalgamation or reorganization; or

(g) Failure to perform any or all of Pledgor's Obligations or failure to complete construction and development of all or part of the Improvements and related infrastructure.

Section 11. General Provisions.

(a) *Use of Collateral.* Pledgor shall be entitled to exercise its dominion, right, and control and other powers, if any, relating to or arising from the Collateral or any purpose consistent with the terms of this Agreement or any other instrument, document, or Agreement executed and delivered by Pledgor to Pledgee, until and unless the Collateral is delivered to Pledgee in accordance with this Agreement or Pledgor commits an Event of Default. Upon the occurrence and during the continuation of an Event of Default, all rights of Pledgor to exercise its dominion, right, and control, and other powers pursuant to the foregoing provisions shall cease.

(b) *Remedies Upon Default.*

(i) If an Event of Default shall exist (a) under this Agreement; (b) Pledgee may exercise any rights and remedies available to it, including the right to dispose of the Collateral, and (c) Pledgee shall have the right, for and in the name, place, and stead of Pledgor, to execute endorsements, assignments, and other instruments of conveyance or transfer with respect to all or any of the Collateral. If any notification or intended disposition of any of the Collateral shall be given by Pledgee to Pledgor, such notification shall be deemed reasonably and properly given if mailed or faxed at least ten (10) business days before such disposition, postage prepaid, addressed, or transmitted to Pledgor at its address or number set forth herein, or at such other address or number as Pledgor may specify by notice received by Pledgee. Any proceeds of any disposition of Collateral may be applied by Pledgee to payment of expenses in connection with the Collateral, including, without limitation, reasonable attorneys' fees and legal expenses, and any balance of such proceeds may be applied by

Pledgee toward the completion of such of the Obligations. All rights and remedies of Pledgee expressed hereunder are in addition to all other rights and remedies possessed by it.

(ii) Pledgor agrees that in any sale of any of the Collateral, Pledgee is hereby authorized to comply with any limitation or restriction in connection with such sale as it may be advised by its counsel is necessary in order to avoid any violation of applicable law, or in order to obtain any required approval of the sale or of the purchase by any governmental regulatory authority or official, and Pledgor further agrees that such compliance shall not result in such sale being considered or deemed not to have been made in a commercially reasonable manner, nor shall Pledgee be liable or accountable to Pledgor for any discount allowed by reason of the fact that such Collateral is sold in compliance with any such limitation or restriction.

(c) *Complete Agreement; Amendment.* This Agreement, along with the Related Agreements, contains the entire Agreement between the Parties hereto with respect to the matters covered herein and, except as specifically provided in this Agreement and Related Agreements, supersedes and merges all prior and contemporaneous oral and written agreements, discussions, and understandings between the Parties. No other agreements, representations, warranties, or other matters, oral or written, shall be deemed to bind the Parties hereto with respect to the subject matter hereof. This Agreement may be amended only by a written document signed by the Pledgor and Pledgee.

(d) *Binding Effect.* The provisions of this Agreement shall be binding on and inure to the benefit of each Party and its administrators, representatives, successors, assigns, transferees, grantees, and any other person or entity acting on the Party's behalf, except to the extent modified herein.

(e) *Advice of Counsel.* Each Party agrees that he, she, or it is signing this Agreement of his, her, or its own free will, after consideration with counsel or an opportunity to seek the assistance of counsel such that no presumptions of interpretation shall apply.

(f) *Execution in Counterparts.* This Agreement may be executed in one or more counterparts and by the Parties hereto in separate counterparts, each of which will be deemed to be an original but all of which, taken together, shall constitute one in the same Agreement.

(g) *Notices.* Unless otherwise provided herein, any notice, request, instruction, or other document to be given hereunder by any Party to the other shall be in writing and delivered in person or by courier, telegraphed, telexed, or by facsimile transmission or mailed by registered or certified mail, postage prepaid, as follows:

Pledgor:

Riedel Holdings, L.L.C.
P.O. Box 1649 (U.S. Postal Service)
San Luis, Arizona 85349

Pledgee:

City of San Luis
Attn: City Manager
P.O. Box 1170 (U.S. Postal Service)

Email: nieves@riedelholdings.com
Fax: (928) 627-4750

(Physical Address)

1964 E. Cesar Chavez Blvd., Suite 1
San Luis, Arizona 85336

San Luis, Arizona 85349
Email: lgalaviz@Sanluisaz.gov
Fax: (928) 341-8539

(Physical Address)

1090 East Union Street
San Luis, Arizona 85336

With a copy to:

Arturo I. Villarreal, Esq.
Garcia & Villarreal, P.L.C.
241 S. Main Street
Yuma, Arizona 85364
avillarreal@gkvlaw.com
Fax: (928) 276-4861

With a copy to:

City Attorney:
City of San Luis
P.O. Box 1170
San Luis, Arizona 85349

Pledgeholder:

Martha Ulloa,
Commercial Escrow Officer
Chicago Title Insurance Company, Inc.
963 East B Street
San Luis, Arizona 85349
(928) 304-0594
Fax: (928) 569-3817
Martha.Ulloa@CTT.com

(h) *Severability.* If any one or more of the provisions of this Agreement is found to be illegal or unenforceable, then notwithstanding the same, this Agreement shall remain in full force and effect, and such term or provision shall be deemed severed.

(i) *No Waiver.* Neither Party's right to require performance of the other Party's obligations under this Agreement shall be affected by any previous waiver, forbearance, or course of dealing.

(j) *Relationship of the Parties.* No agency, partnership, joint venture, franchise, other joint relationship, or any business organization of any kind is created by this Agreement, and the agents of neither Party shall have authority of any kind to bind the other Party in any respect whatsoever, except as expressly provided herein to the contrary.

(k) *Attorneys' Fees.* In the event, suit is brought, or an attorney is retained by any Party to this Agreement to seek interpretation or construction of any term or provision of this Agreement, to enforce the terms of this Agreement, to collect any money due, or to obtain any money damages or equitable relief for breach, or to seek recourse in a bankruptcy proceeding, the prevailing Party shall be entitled to recover, in addition to any other available remedy, reimbursement for reasonable attorneys' fees for representation in the court (including, without limitation, bankruptcy court), court costs, costs of investigation, and other related expenses.

(l) *Governing Law; Forum Selection Clause.* This Agreement shall be interpreted and governed by the laws of the State of Arizona. The Parties agree that any action, at law or in equity, arising out of the terms, conditions, performance, termination, default, and/or breach of this Agreement, including, but not limited to, any tortious conduct, shall be instituted and litigated in the courts within Yuma County, State of Arizona, and in no other. In accordance therewith, the Parties irrevocably submit and consent to the jurisdiction and venue of the courts of Yuma County, State of Arizona. This Agreement is subject to the cancellation provisions of A.R.S. § 38-511.

(m) *Assignment Prohibited.* Neither this Agreement nor any interest in or claim under this Agreement shall be assigned or otherwise transferred by Borrower to another person or entity without the prior written consent of the secured Party, which consent may be withheld in the secured Party's sole and absolute discretion.

(n) *No Third-Party Rights.* No term or provision of this Agreement is intended to be, nor shall any such term or provision be construed to be, for the benefit of any person, firm, corporation, or other entity other than the Parties hereto, and no such person, firm, corporation, or other entity shall have any right or cause of action hereunder.

(o) *Identity of Pledgeholder.* Following Pledgor and Pledgee's execution of this Agreement, the Parties agree to amend this Agreement to substitute Pledgeholder should the Pledgeholder designated herein fail or refuse to execute this Agreement; in such event, the effectiveness of this Agreement shall remain unimpaired.

(p) *Time is of the Essence.* Time is of the essence as to each and every provision of this Agreement.

[THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

[SIGNATURE PAGE TO FOLLOW]

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

"PLEDGEE":

THE CITY OF SAN LUIS, ARIZONA

ATTEST:

By: Melissa Lopez, Deputy City Clerk

By: Gerardo Sanchez
Its: Mayor

Approved as to form

By: Kay Marion Macuil, City Attorney

"PLEDGOR":

RIEDEL HOLDINGS, L.L.C.

By: Nieves G. Riedel
Its: Manager and Member

[REMAINDER OF THIS PAGE IS LEFT BLANK INTENTIONALLY]

[SIGNATURE PAGE TO FOLLOW]

“PLEDGEHOLDER”:

Chicago Title Insurance Company, Inc.

By: Martha Ulloa
Its: Commercial Escrow Officer

Exhibit A

**LEGAL DESCRIPTION
LOS MEZQUITES UNIT 4**

A PORTION OF THE SOUTH HALF OF SECTION 11, TOWNSHIP 11 SOUTH, RANGE 24 WEST, GILA AND SALT RIVER BASE AND MERIDIAN, YUMA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE WEST QUARTER CORNER OF SAID SECTION 11;

THENCE: S89°28'41"E, ALONG THE EAST-WEST MID SECTION LINE OF SAID SECTION 11, A DISTANCE OF 2640.29 FEET **TO THE TRUE POINT OF BEGINNING;**

THENCE: S89°28'51"E, CONTINUING ALONG THE EAST-WEST MID SECTION LINE OF SAID SECTION 11, A DISTANCE OF 1888.44 TO A POINT;

THENCE: S00°27'24"W, A DISTANCE OF 1449.58 FEET TO A POINT;

THENCE: N89°28'51"W, A DISTANCE OF 901.55 FEET TO A POINT;

THENCE: S00°27'17"W, A DISTANCE OF 528.22 FEET TO A POINT;

THENCE: N89°31'14"W, A DISTANCE OF 986.38 FEET TO A POINT;

THENCE: N00°26'29"E, A DISTANCE OF 1978.69 FEET **TO THE TRUE POINT OF BEGINNING;;**

CONTAINING 74.8125 ACRES MORE OR LESS