

When recorded, return to:

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

FIRST AMENDMENT
TO
DEVELOPMENT AND FIRE SERVICES AGREEMENT

This First Amendment to Development and Fire Services Agreement (this "Amendment") is entered into as of January __, 2017 (the "Effective Date") 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 Instrument No. 2006-0731018 in the official records of Maricopa County, Arizona (the "Agreement") for the purpose of funding the construction and operation of a fire station to provide service to areas then being developed by NNP and TOUSA within the master-planned community known as Estrella; and

WHEREAS, the Agreement contemplates two new fire stations to be constructed within Estrella; one is referred to in the Agreement as the "801 Station", and the other is referred to in the Agreement as the "804 Station";

WHEREAS, it was understood at the time the Agreement was entered into and recorded, that the 804 Station would be designed and constructed prior to the 801 Station;

WHEREAS, under the terms of the Agreement, NNP and TOUSA are required to provide limited funding for the design and construction of the 804 Station and to make quarterly payments to the City for operation and maintenance costs of the 804 Station for a period of five (5) years; and

WHEREAS, TOUSA and NNP paid to the City the amount of \$841,826.11 toward the design and construction costs of the 804 Station; and

WHEREAS, the City contracted for the design of the 804 Station and expended \$177,000.00 for such design work; and

WHEREAS, NNP conveyed to the City a parcel of real property containing 4.051 acres to be used for the location of the 804 Station (the "804 Site"); and

WHEREAS, contemporaneous with the initial station design, the national economic downturn began, and the 804 Station design work was put on hold and the 804 Station was subsequently deferred due to economic conditions; and

WHEREAS, due to changes in building codes and other factors, it is unclear whether any of the 804 Station design work remains useable; and

WHEREAS, AV Homes has acquired the land previously owned by TOUSA and is the successor in interest to TOUSA for all rights and responsibilities of TOUSA under the Agreement; and

WHEREAS, the City has determined that the location for the next fire station to be constructed in Estrella, considering the existing and projected development within Estrella and the surrounding areas, will be the 801 Site (as defined below); and

WHEREAS, it is the Parties' intent that Developer shall be required to provide funding for only one (1) fire station, which shall be the 801 Station; and

WHEREAS, the Parties wish to amend the original Agreement as set forth in this Amendment.

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. Definitions. Section 1 of the Agreement is hereby amended as follows:

Subsection A of Section 1 is hereby deleted. All remaining references in the Agreement to the Additional Site are hereby amended to refer to the 801 Site.

Subsection B of Section 1 is replaced in its entirety as follows:

B. "Capital Funding" means the contribution made by Developer toward the acquisition of a site for the 801 Station and

for the design, construction, equipping (including fire truck acquisition) and installation of the 801 Station.

Subsection C of Section 1 is replaced in its entirety as follows:

C. "O & M Funding" means the quarterly payments made by Developer to the City for operating and maintenance expenses of the 801 Station.

Subsection E of Section 1 is replaced in its entirety as follows:

E. "804 Station" means the Station to be constructed on the 804 Site.

Subsection F of Section 1 is replaced in its entirety as follows:

F. "801 Station" means the Station to be constructed on the 801 Site.

The following is hereby added as Subsection G of Section 1:

G. "Station" means a fully equipped fire station providing Services.

The following is hereby added as Subsection H of Section 1:

H. "801 Site" means the parcel of land intended for the location of the 801 Station. The size and location of the 801 Site have not yet been determined; however, the size of the 801 Site shall not exceed three (3) acres, and the location of the 801 Site shall be within Village 8 (now Village 14) as shown on the Estrella Mountain Ranch conceptual master plan, in the vicinity of Estrella Parkway and the Willis Road alignment, or near the entrance to Village 7, as mutually agreed upon by the Parties.

The following is hereby added as Subsection I of Section 1:

I. "804 Site" means the parcel of land containing approximately 4.051 acres and described on Exhibit "E" attached hereto, which NNP previously conveyed to the City for the location of the 804 Station.

II. Section 2 of the Agreement is replaced in its entirety as follows:

Consideration. As consideration for this Agreement, Developer and the City agree as follows:

A. Developer has contributed Capital Funding in an amount equal to value of the 804 Site (\$80,000 per acre) and Developer shall contribute additional Capital Funding in an amount equal to (i) the value of the 801 Site (\$80,000 per acre), plus (ii) the lesser of (X) \$5,870,000 based upon the cost estimate attached hereto as Exhibit "C" or (Y) actual costs to design, construct and equip (including fire truck acquisition) the 801 Station. All additional costs to design, construct and equip the 801 Station shall be the sole responsibility of the City.

Notwithstanding the foregoing, the total amount of Capital Funding required to be contributed by Developer shall be reduced by the amount of all impact fees collected by the City that are designated for or otherwise required to be used for the design, construction and/or operation of any Station in the Estrella community. The Capital Funding shall be payable by Developer as follows:

- (1) The Parties mutually recognize that Developer has previously made a payment to the City in the amount of \$841,826.11 (the "Initial Payment"), of which the City spent approximately \$177,000.00 on the initial design work for the 804 Station. Since the preparation of such initial design work, applicable building codes have changed, which may render such initial design work unusable. The City shall consult with such design and engineering professionals as necessary to determine whether it would be possible and economically feasible to modify the existing design work to comply with current code and other applicable requirements, in order to use such design work for the 801 Station. If the Parties agree that it is impossible or not economically feasible to modify and use the existing design work, then Developer waives any claim to the expended funds. The Parties agree that the City currently has Initial Payment funds of \$664,826.11 to be applied to the Capital Funding, which may be used for the design work for the 801 Station. The City, in its sole discretion, shall make the decision on when to begin the design and construction of the 801 Station, and shall give Developer written notice by one hundred and eighty (180) days prior to the commencement of the design of the 801 Station.
- (2) The balance of the monetary portion of the Capital Funding shall be payable on the following schedule: 1) the cost of the fire truck shall be payable to the City within forty-five (45) days of the City placing the order for the fire truck and providing Developer notice of the order (and the City hereby agrees that it shall not order the fire truck earlier than reasonably necessary for the delivery of the truck to coincide with the completion of construction of the 801 Station); 2) One-half (1/2) of the remaining Capital Funding shall be payable within forty-five (45) days of the City issuing a Notice to Proceed on construction of the 801 Station; 3) all remaining Capital Funding shall be payable to the City at the fifty percent (50%) completion point of the 801 Station and within forty-five (45) days of the notice by the City to Developer of meeting the fifty percent (50%) completion milestone.
- (3) If Developer fails to pay amounts due pursuant to a payment request within forty-five (45) days, City may draw funds from the Initial Payment in an amount equal to the payment request. Any remaining balance of the Initial Payment shall be applied toward the final payment request provided to Developer.
- (4) Developer has previously conveyed the 804 Site to the City for the 804 Station; however, based on development growth patterns within the Project,

and based on an independent study obtained by the City which corroborates such growth patterns, the Parties acknowledge that the Project will be better served if the 801 Station is the next Station constructed within the Project. Accordingly, the Parties agree that the 801 Station shall be the next Station constructed within the Project. The Parties shall work together in good faith to agree upon the location of the 801 Station and the legal description of the 801 Site.

- (5) Based on development growth patterns within the Project, and based on an independent study obtained by the City which corroborates such growth patterns, the City agrees to reconvey to NNP by special warranty deed the 804 Site and, in lieu of the 804 Station, to construct a different Station (the "804 Replacement Station") to serve future development within Project. The 804 Replacement Station will be constructed after the 801 Station. The Parties shall work together in good faith to identify a mutually agreeable location for the 804 Replacement Station (the "804 Replacement Site"), which may be in the vicinity of the Estrella Parkway alignment, in a location appropriate to serve primarily the growth path within the Project, without consideration of possible service to areas outside the Project. When the Parties agree upon the location and legal description of the 804 Replacement Site, Developer agrees to convey to the City by special warranty deed such 804 Replacement Site. The delivery and recordation of the deed for the 804 Replacement Site shall take place concurrently with the delivery and recordation of the deed for the reconveyance of the 804 Site to NNP. When NNP conveys the 804 Replacement Site to the City, Developer shall receive credit toward its Capital Funding obligation based on the 804 Replacement Site, valued at \$80,000.00 per acre.

- B. On the first business day of the first calendar quarter following the issuance of the building permit for the 801 Station, and thereafter on the first (1st) day of each calendar quarter for the next nineteen (19) successive calendar quarters, Developer shall pay O & M Funding payments, which shall be used by City solely to operate and maintain the 801 Station.

(1) Each quarterly O & M Funding payment shall be equal to \$452,000.00, subject to adjustment as set forth below.

(2) The Parties agree that the initial amount of O & M Funding payments has been determined based upon the City's current costs for operating and maintaining a Station comparable to the 801 Station (as shown in Exhibit C). Prior to the execution of this Amendment, City has previously provided Developer with reasonable documentation supporting the current costs to operate and maintain a station comparable to the 801 Station and Developer acknowledges the adequacy of that documentation. From time to time, upon reasonable request of Developer, City will provide current operating cost information for the 801 Station. Notwithstanding any

updated operating cost information provided, the Parties agree that the initial amount of the quarterly O & M Funding payments shall not exceed the initial amount set forth herein.

- (3) For the purposes of this Agreement, the Parties have mutually agreed that the initial annual O & M Funding payments will be \$1,808,000.00 (to be paid in quarterly installments). The O & M Funding payments automatically shall be adjusted on July 1, 2019 and again upon July 1 of each year thereafter to reflect the positive change, if any, in the Consumer Price Index for All Urban Consumers-Phoenix published by the United States Bureau of Labor Statistics for the prior twelve (12) month period. For example, if on July 1, 2019, the CPI for the prior 12 month period is 3%, the annual O & M Funding amount would be increased to \$1,862,240.00 (\$1,808,000.00 x 103%) for the period of July 1, 2019 through June 30, 2020. The annual CPI adjustment will be based upon the prior year's O & M Funding amount and in no case shall be adjusted downward due to a negative annual CPI. The quarterly O & M Funding payments shall be adjusted in accordance to the annual O & M Funding adjustment pursuant to this Subparagraph.

- C. Beyond the Project, the City has not identified any other parties or property that will be served by the 801 Station. The City shall prepare a detailed map identifying the benefited area of the 801 Station. Should new residential development occur within the service area of the 801 Station constructed under this Agreement other than the Project during the term of this Agreement or during the time which quarterly O & M Funding payments are being made by Developer to the City, or until such time as Developer has been fully reimbursed for its Capital Funding under this Agreement, the City agrees to utilize its best efforts to secure a proportionate contribution by those third parties to reimburse Developer for its initial Capital Funding payment (including, without limitation, the value attributed to the 801 Site and Replacement 804 Site) and towards the quarterly O & M Funding payments then being made by Developer to the extent that quarterly O & M Funding payments are still owed to the City under this Agreement. Such third party contributions shall not restrict Developer's or City's ability to pursue Community Facilities District funding for reimbursement of Capital Funding not fully recoverable from third parties.

- III. Section 3 of the Agreement is replaced in its entirety as follows:

Reimbursement of Funding. Subject to any existing agreements concerning the payment of surcharges, impact fees, exactions and impositions of any kind ("Impact Fees"), Developer shall be required to pay all applicable Impact Fees at the rate prevailing when the permits are issued for the development of the subject property. The City shall provide credits equal to the Capital Funding to Developer against any Impact Fees that are now or hereafter imposed by City for the provision of firefighting and emergency medical services ("Fire Impact Fees")

in connection with the development of the Property. The Fire Impact Fee credits shall apply only to the Property. In addition, any funds received by the City pursuant to any cost recovery program (including, without limitation, as described in Section 2(C) of this Agreement) implemented by the City directly related to funding of the 801 Station shall either be applied to reduce any of Developer's unpaid Capital Funding contributions or shall be paid by the City to Developer in partial reimbursement of Developer's Capital Funding contributions which have been paid, in which case Developer's unapplied Fire Impact Fee credits shall be reduced by such amounts paid to Developer. Developer shall be reimbursed from Fire Impact Fees collected in any cost recovery program in proportion to the percentage of the Capital Funding to the actual total cost of the 801 Station. For example, if the Capital Funding pays for only eighty percent (80%) of the actual final cost of the 801 Station, with the City responsible for the other twenty percent (20%), then Developer shall be entitled to reimbursement/credits at a rate of eighty percent (80%) of actual Fire Impact Fees collected or credits accruing at a rate of eighty percent (80%) of the then prevailing rate. In other words, if the City is required to pay any amount toward the design and construction of the 801 Station because the Capital Funding is insufficient to cover all such costs, then the City will be entitled to collect and retain a proportionate amount of all Fire Impact Fees, whereas if the Capital Funding covers the entire cost of the design and construction of the 801 Station, then the City will not be entitled to collect and retain any Fire Impact Fees until Developer has fully recovered the Capital Funding through reimbursement and/or application of Fire Impact Fee credits. 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 such Fire Impact Fees until Developer has been fully reimbursed for its Capital Funding payments for the 801 Station.

IV. Section 4 of the Agreement is replaced in its entirety as follows:

801 Site. Within 90 days after the Parties have agreed upon the legal description of the 801 Site, Developer shall convey to the City by deed the 801 Site for the location of the 801 Station. The value of such site shall be \$80,000 per acre. Such value shall be credited to the total Capital Funding obligations of Developer hereunder, and such credit shall be in addition to the Capital Funding credit for the 804 Site or the 804 Replacement Site. The City shall reimburse Developer for the value of the 801 Site by providing Developer Fire Impact Fee credits in connection with the development of the Property and/or reimbursement pursuant to any cost recovery program or other contributions from third parties.

I. Section 5 is replaced in its entirety as follows:

The Parties mutually recognize that Developer has certain stipulations in its zoning and platting for the Property that require that the 804 Station be open and operational prior to the 500th building permit being issued south of the Ray Road alignment. The Parties agree that the approval and execution of the Agreement

and any amendments thereto shall satisfy Developer's obligations under the stipulations so long as Developer is not in default of the Agreement, as the same may be amended from time to time. Once the Agreement is executed, no building permits will be withheld pursuant to the plat and zoning stipulation regarding the 804 Station as long as Developer is not in default of its obligations under the Agreement. Should Developer default on its obligations under the Agreement, in addition to other remedies under law, the City shall have the right withhold further building permits from Developer until such time as Developer cures its default.

V. Subsection A of Section 6 is replaced in its entirety as follows:

- A. Subject to the terms of this Agreement, the City shall design the 801 Station to have the standard specifications with costs not to exceed the cost estimate subject to ENR escalations¹ attached hereto as Exhibit "C", shall construct the 801 Station in accordance with such standard specifications, and shall equip and operate the 801 Station with the equipment and personnel customarily used to provide fire, emergency medical and police service on a basis consistent with the documentation which the City has provided to Developer in support of the City's requirement for Developer's contribution of O & M Funding (i.e., the current costs to operate and maintain a Station comparable to other similarly-designed Stations within the City). The City shall have the right to utilize alternative methods of fire/rescue/emergency medical service delivery which may impact staffing, equipping and other deployment issues, as determined by the City; however, if the City elects to utilize alternative methods that increase operation and maintenance costs, or if the City includes enhancements to the design above the cost estimates in Exhibit "C", it shall have the right to do so, but shall be solely responsible for the resulting cost increases. The 801 Station shall be designed, constructed and landscaped in a manner that is architecturally compatible with the architectural and landscaping themes of the Estrella development. The City, in its sole discretion, shall determine the actual construction schedule for the 801 Station, but shall use its best efforts to complete such station within twelve (12) months after the issuance of the initial building permit for any structure within the Property.

VI. Subsection C of Section 6 is hereby replaced in its entirety as follows:

- C. If the City fails to construct the Replacement 804 Station within such time to allow Developer to develop the Property when Developer determines, in its sole discretion, then Developer shall have the right, but not the obligation, to pay to the City all or any portion of the capital costs to build and equip the

¹ ENR escalations shall be calculated annually as follows: The Capital Funding in this Agreement shall be subject to annual adjustment on January 1 of each year beginning January 1, 2018. Thereafter, each year on January 1st, and ending at such time as Developer completes its Capital Funding obligations, the Capital Funding will be adjusted based upon changes in the then most recent Engineering News Record Index from the Engineering News Record Index that existed on the preceding January 1.

Replacement 804 Station and to providing funding for the operation and maintenance costs of the Replacement 804 Station, such payments to be made on a similar basis as the Capital Funding and the O & M Funding are made in connection with the 801 Station. If Developer provides such funding, the City shall utilize its best efforts to construct the Replacement 804 Station in a time frame that does not delay Developer's ability to develop the property within the Replacement 804 Station service area. In the event that Developer shall pay such capital costs and operating and maintenance costs, the City shall reimburse Developer 100% of such capital costs and operations and maintenance costs on the following terms: (a) the amounts paid by Developer shall bear interest at the same rate of interest that Developer pays for the funds advanced; and (b) the City shall pay all advances and interest in full no later than sixty (60) months after the first advance by Developer.

- VII. Section 10 is hereby amended to provide that the Agreement shall terminate ten (10) years from the Effective Date of this Amendment, or upon the last quarterly payment of O & M Funding from Developer to the City, whichever is later, provided that any obligation to reimburse Developer shall be limited only by the applicable statute of limitations.

- VIII. Section 13 is replaced in its entirety as follows:

Notice. Any notice or payment to be given or made hereunder shall be considered to have been given or made if hand-delivered to an officer of City or Developer, or if deposited in the United States mail, certified or registered, postage pre-paid to the following:

If to City: City of Goodyear
190 N. Litchfield Road
P.O. Box 5100
Goodyear, AZ 85338
Attn: City Manager

With Copy to: City of Goodyear
190 N. Litchfield Road
P.O. Box 5100
Goodyear, AZ 85338
Attn: City Attorney

If to NNP: NNP III-Estrella Mountain Ranch, LLC
5090 N. 40th Street, Suite 210
Phoenix, Arizona 85018
Attn: Senior Vice President

With a copy to: Quarles & Brady LLP
One Renaissance Square
Two North Central Avenue
Phoenix, Arizona 85004

Attn: Stanton E. Johnson, Esq.


If to AV Homes: AV Homes of Arizona, LLC
350 W. Washington St., Suite 201
Tempe, Arizona 85281
Attn: Chris Haines, Division President

With Copy to: AV Homes of Arizona, LLC
350 W. Washington St., Suite 201
Tempe, Arizona 85281
Attn: Brian Konderik, Vice President, Land
Acquisition & Development

- IX. Exhibit "C" attached to the Agreement is hereby replaced with Exhibit "C" attached to this Amendment. Exhibit "E" attached to this Agreement is hereby added to the Agreement as Exhibit "E" thereto.
- X. Except as expressly provided herein, the terms and provisions of the Agreement are hereby reaffirmed and remain in full force and effect.

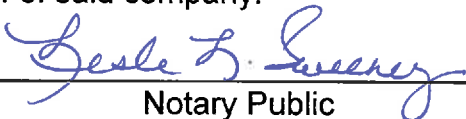
[SIGNATURE PAGES FOLLOW.]

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 11th day of January,
2017, 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:

11-13-2017



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

By: [Signature]
Name: CHRIS HAINES
Its: DIV. PRES.

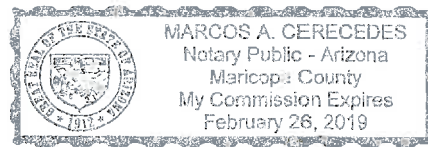
STATE OF Arizona)
County of Maricopa) ss

This instrument was acknowledged before me this 13 day of January,
2017, by Chris Haines, Division President of AV Homes of Arizona,
LLC, an Arizona limited liability company, on behalf thereof.

[Signature]
Notary Public

My Commission Expires:

February 26, 2019



City of Goodyear, Arizona

By _____

Its _____

Date

APPROVED AS TO FORM:

ATTEST:
