

When recorded, return to:

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

SECOND AMENDMENT  
TO  
DEVELOPMENT AND FIRE SERVICES AGREEMENT

This Second Amendment to Development and Fire Services Agreement (this “Amendment”) is entered into as of \_\_\_\_\_, 2018 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”) to modify the Original Agreement (the Original Agreement, as modified by the First Amendment, is referred to herein as the “Agreement”); and

WHEREAS, the Original Agreement contemplates that the 804 Station will be constructed before the 801 Station is constructed; and

WHEREAS, under the First Amendment, the Parties agreed that the 801 Station would be constructed on a site not yet identified, prior to the construction of the 804 Station; and

WHEREAS, also under the First Amendment, the Parties agreed that the site NNP previously conveyed to the City for the location of the 804 Station (the “804 Site”, as defined in the First Amendment) would be replaced with a different site in a location to be determined; and

WHEREAS, also under the First Amendment, funding contributions by Developer toward the operations and maintenance of a fire station would apply to the 801 Station, instead of the 804 Station, and that such funding contributions will commence following the issuance of the building permit for the 801 Station; and

WHEREAS, subsequent to entering into the First Amendment, the City evaluated a number of potential sites for the 801 Station; and

WHEREAS, after such site-evaluation process, the City concluded that, due to location and potential infrastructure requirements related to alternative sites for the 801 Station, the 804 Site, which NNP previously conveyed to the City for the 804 Station, is the preferable site for the next fire station to be located within Estrella; and

WHEREAS, in reliance upon the anticipated commencement of Developer's funding for the next fire station at Estrella no later than July 1, 2018, the City has completed a personnel recruitment for new firefighters and extended conditional employment offers and reserved spots in an upcoming fire academy to train such new firefighters; and

WHEREAS, the City's site-evaluation process delayed the commencement of the construction process for the next fire station and, due to such delay, the building permit for the next fire station (which will now be the 804 Station on the 804 Site) will not be issued as of July 1, 2018; and

WHEREAS, because the building permit for the 804 Station will not be issued as of July 1, 2018, Developer's obligation to provide funding contributions will not have commenced as of July 1, 2018; and

WHEREAS, the Parties mutually recognize the need for the City to proceed without delay to hire and train the additional firefighters, which will require Developer to commence funding contributions on July 1, 2018; and

WHEREAS, the Parties now desire to enter into this Amendment to memorialize their agreements that (i) the 804 Station shall be the next fire station to be constructed in Estrella, (ii) the 804 Station shall be constructed on the 804 Site, (iii) Developer's funding obligations under the Agreement (as modified herein) shall apply only to the 804 Station, and not the 801 Station, and (iv) although the building permit for the 804 Station will not be issued as of July 1, 2018, Developer will commence its funding contributions for the 804 Station on July 1, 2018 in order to allow the City to proceed without delay to hire and train additional firefighters; and

WHEREAS, it remains the Parties' intent that Developer shall be required to provide funding for only one (1) fire station, which shall now be the 804 Station, as contemplated under the Original Agreement; 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. The amended definition of "Capital Funding" set forth in the First Amendment is hereby deleted, and "Capital Funding" shall have the definition given in the Original Agreement.
- II. The amended definition of "O & M Funding" set forth in the First Amendment is hereby deleted, and "O & M Funding" shall have the definition given in the Original Agreement.
- III. Section 2 of the Agreement is hereby amended and restated in its entirety as follows:

2. 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 amount equal to the lesser of (X) \$5,420,000, which is based on the one-time cost estimate attached hereto as Exhibit C net of land value, or (Y) actual costs to design, construct and equip (including fire truck acquisition) the 804 Station. All additional costs to design, construct and equip the 804 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 804 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 804 Station. The City, in its sole discretion, shall make the decision on when to begin the design and construction of the 804 Station, and shall give Developer written notice by one hundred and eighty (180) days prior to the commencement of the design of the 804 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 804 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 804 Station; 3) all remaining Capital Funding shall be payable to the City at the fifty percent (50%) completion point of the 804 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. The 804 Station shall be the next Station constructed within the Project and shall be constructed on the 804 Site.

5. Intentionally omitted.

B. On July 1, 2018, and thereafter on the first (1<sup>st</sup>) 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 hire and train additional fire fighters and to operate and maintain the 804 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 804 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 804 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 804 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 804 Station. The City shall prepare a detailed map identifying the benefited area of the 804 Station. Should new residential development occur within the service area of the 804 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 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.

- IV. Section 4 of the Agreement is hereby amended and restated in its entirety to read as follows:

4. 801 Site. Within 90 days after NNP and the City have agreed upon the location and legal description of the Additional Site, NNP shall convey to the City by special warranty deed the 801 Site for the 801 Station. The value of the 801 Site, for purposes of this Agreement, shall be \$80,000 per acre. The City shall pay NNP the value of the 801 Site by providing NNP development credits against any surcharge, impact fee, exaction or impositions of any kind that is now or hereafter imposed by the City for the provision of firefighting and emergency medical services in connection with the development of the Property.

- V. All references to the 804 Station contained in Subsection A of Section 6 of the Agreement are hereby amended to be references to the 801 Station.

- VI. All references to the Replacement 804 Station contained in Subsection C of Section 6 of the Agreement are hereby amended to be references to the 801 Station.

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

Squire Patton Boggs (US) LLP  
1 E. Washington St., Suite 2700  
Phoenix, Arizona 85004  
Attn: Stanton E. Johnson, Esq.

- VIII. Exhibit "C" attached to the Agreement (as amended by the First Amendment) is hereby replaced with Exhibit "C" attached to this Amendment.

- IX. Developer acknowledges its receipt of the letter dated March 2, 2017 from the City, which was the 180-day notice of the commencement of the design of the 801 Station, as required under Section 2(A)(1) of the Agreement, as amended by the First Amendment. Section 2(A)(1) of the Agreement, as amended and restated by this Amendment, now requires such 180-day notice to be given with respect to the 804 Station, instead of the 801 Station. Accordingly, Developer hereby agrees that the foregoing March 2, 2017 letter is hereby deemed to apply and refer to the 804 Station, and that such letter satisfies the City's obligation under Section 2(A)(1) of the Agreement (as amended and restated by this Amendment) to provide 180 days' notice of the commencement of the design of the 804 Station.

- 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 \_\_\_\_ day of \_\_\_\_\_, 2018, 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 \_\_\_\_\_, 2018, by \_\_\_\_\_, \_\_\_\_\_ of AV Homes of Arizona, LLC, an Arizona limited liability company, on behalf thereof.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

**City of Goodyear, Arizona**

By \_\_\_\_\_

Its \_\_\_\_\_

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_

\_\_\_\_\_

**EXHIBIT "C"**

<b>One-Time Costs</b>	
Land	\$450,000
Design	\$400,000
Permitting	\$200,000
Station, Infrastructure & FFE	\$4,000,000
Pumper & Equipment	\$750,000
<b>Total One-Time Cost</b>	<b>\$5,800,000</b>
<b>On-Going Annual O&amp;M Funding</b>	
Personnel	\$1,570,000
Facilities and Supplies	\$238,000
<b>On-Going Annual O&amp;M Funding</b>	<b>\$1,808,000</b>