

When Recorded Return to:

City of Maricopa
City Clerk
39700 West Civic Center Plaza
Maricopa, Arizona 85138

PRE-ANNEXATION DEVELOPMENT AGREEMENT

This pre-annexation development agreement (“**Agreement**”) is entered into this ____ day of _____, 2022 (“**Effective Date**”), by and between the City of Maricopa, an Arizona Municipal Corporation (“**City**”) and Brookfield Holdings (Amarillo) LLC, a Delaware limited liability company (“**Brookfield**”), Ashton Woods Arizona, L.L.C., a Nevada limited liability company (“**Ashton**”), and Starlight Homes Arizona L.L.C., a Delaware limited liability company (collectively referred to herein as “**Owner**”). The Owner and City are collectively referred to herein as “**Parties**” and individually as “**Party**.”

RECITALS

A. Owner, collectively, owns that certain real property located in Pinal County, Arizona, consisting of approximately 116 acres and generally located at the southeast corner of W. Peters and Nall Road and N. Amarillo Valley Road and known as Amarillo Creek Unit 1, Parcels 1 through 5 (the “**Property**”). The Property is legally described on Exhibit A, attached hereto.

B. The Property is zoned CR-3 Single Residence with a Planned Area Development Overlay (“**CR-3 PAD**”) pursuant to the Amarillo Creek PAD (Pinal County Case No. PZ-016-03 and PZ-PD-016-03 as recorded in the Official Records of Pinal County Recorder on September 11, 2003 at Fee No. 2003-063658 and 2003-063659) (see Exhibit B), and as amended pursuant to the Amarillo Creek Administrative PAD Amendment for Unit 1 Parcels 1 through 5 approved on March 31, 2021 (see Exhibit C) (collectively, the “**Amarillo Creek PAD**”). The Pinal County Zoning Ordinance, including applicable development standards and design guidelines, the Pinal County Engineering Design Standards and Pinal County Subdivision Ordinance that are in place on the effective date of this Agreement further govern the development of the Property (“**Pinal County Land Use Regulations**”). Final plats for the Property, totaling 600 residential lots, have been approved and recorded in the Official Records of Pinal County Recorder as: “Amarillo Creek Unit 1, Parcel 1” with 102 lots recorded on August 31, 2006 at Fee No. 2006-122697; Amarillo Creek Unit 1, Parcel 2” with 98 lots recorded on August 31, 2006 at Fee No. 2006-122698; Amarillo Creek Unit 1, Parcel 3” with 104 lots recorded on August 31, 2006 at Fee No. 2006-122699; Amarillo Creek Unit 1, Parcel 4” with 136 lots recorded on August 31, 2006 at Fee No. 2006-122700; and “Amarillo Creek Unit 1, Parcel 5” with 160 lots recorded on August 31, 2006 at Fee No. 2006-122701 (see Exhibit D) (collectively, the “**Unit 1 Final Plats**”), (together, the Amarillo Creek PAD, the Pinal County Land Use Regulations, and the Unit 1 Final Plats are the “**Property Entitlements**”). The Property Entitlements further include: 1) any Improvement Plans (defined in Section 6.1 below), 2) approved modifications to the Unit 1 Final Plats, 3) approved amendments to the Amarillo Creek PAD, and 4) building or construction permits and any other

land use or development approvals or permits issued for the Property prior to annexation into the City.

C. Brookfield has granted Ashton an option to acquire the portions of the Property owned by Brookfield pursuant to that certain Option Agreement dated as of June 29, 2021 (the “**Option Agreement**”), as evidenced by that certain Memorandum of Option Agreement recorded in the Official Records of Pinal County, Arizona as Fee No. 2021-081482 and has agreed to convey portions of the Property to Starlight upon Ashton’s request pursuant to, and in accordance with the terms and conditions, of the Option Agreement.

D. Ashton has started construction on the Property pursuant to the Property Entitlements and anticipates that the first home closings to retail homebuyers will occur in 2023 and prior to Annexation of the Property into the City.

E. The Owner and City acknowledge and agree that the City will provide fire protection services for the Property pursuant to the terms and conditions of the separate Fire Protection Services Agreement by and between the City and the South Maricopa Fire Association dated _____, 2022 (“**Fire Service Agreement**”). The Owner is a party to the Fire Service Agreement.

F. Once the Property is legally eligible for annexation pursuant to the requirements of Arizona Revised Statutes (“**A.R.S.**”) §9-471 *et seq* (“**Annexation Statutes**”), Owner and City desire that the Property be annexed into the corporate limits of the City and be developed as an integral part of the City. The Owner and City will work together cooperatively to comply with the requirements of the Annexation Statutes to annex the Property into the City.

G. In accordance with A.R.S. §9-471(M), the City desires to annex the Property and intends to support a rezone of the Property that will permit development, including densities, uses, development standards, engineering design standards, and design guidelines consistent with and comparable to the Property Entitlements as permitted by Pinal County at the time of annexation. Notwithstanding anything to the contrary set forth herein, to the extent a conflict is found between the terms of this Agreement and any future zoning approval, this Agreement shall control.

H. The Parties understand and acknowledge that this Agreement is a “**Development Agreement**” within the meaning of, and entered into pursuant to the terms of, A.R.S. §9-500.05, in order to facilitate the Property development, and is also a pre-annexation agreement setting forth the terms and agreeing to future annexation of the Property pursuant to the terms of Senate Bill 1594, Fifty-Fifth Legislature, Second Regular Session, as signed by the Governor on May 2, 2022 and effective on the General Effective Date (to be codified as A.R.S. §9-471(T)).

Now, therefore, in consideration of the foregoing premises and the mutual promises and agreements set forth herein, the parties hereto state, confirm and agree as follows:

AGREEMENT

1. **Incorporation of Recitals.** The Parties acknowledge the accuracy of the foregoing Recitals. Each of the foregoing Recitals is hereby incorporated into this Agreement by this reference and is made a part hereof.

2. **Effective Date.** This Agreement will be effective on the date on which all of the following has occurred with respect to the Property (“**Effective Date**”):

2.1. Approval of a resolution by the City of Maricopa City Council authorizing execution of this Agreement by the City,

2.2. Execution of this Agreement by the duly authorized representatives of the Parties,

2.3. Recordation of this Agreement in the Official Records of the Pinal County Recorder.

3. **Term.** This Agreement will remain in effect for ten (10) years following the Effective Date and shall be extended for successive five (5) year term periods by mutual written agreement of City and Owner. This Agreement may also be terminated upon occurrence of one of the following:

- a. City and Owner mutually agree in writing to the termination of this Agreement, or
- b. The Fire Service Agreement by and between the City and the South Maricopa Fire Association is terminated, the Property has not been annexed into the City pursuant to Section 4 below, and the City or Owner thereafter provides thirty (30) days written notice to the other party terminating this Agreement.

4. **Annexation.**

4.1. **Annexation.** Once the Property is legally eligible for annexation pursuant to the Annexation Statutes, the City will create a map and legal description of the territory to be annexed consistent with the legal description and depiction of the Property attached as Exhibit A hereto (“**Annexation Property**”) and provide a copy of the proposed Annexation Property to the Owner for review. Thereafter, the City will initiate the annexation process by filing a blank annexation petition with the Pinal County Recorder and hold a hearing on the blank petition consistent with the requirements of the Annexation Statutes and all other applicable laws, ordinances and rules (the “**Annexation Laws**”), to annex the Annexation Property into the City. The City will timely publish, mail and post the required notices and hold a public hearing, as required under the Annexation Laws in connection with the annexation of the Annexation Property into the City. Prior to the Council’s consideration of the annexation of the Annexation Property, the Owner will deliver to the City any reasonably required documents related to the annexation duly executed by the Owner, for the portion(s) of the Annexation Property then owned by the Owner. City acknowledges that Owner is currently developing the Property and may have sold individual lots within the Property to retail homebuyers (“**Retail Homebuyers**”) by the time of annexation. City and Owner hereby acknowledge and agree that this Agreement shall serve as a pre-annexation agreement to future annexation and that Owner and its successors and assigns, including Retail Homebuyers, are not required to sign an annexation petition in order for the City to effectuate an annexation of the Annexation Property in accordance with Senate Bill 1594, Fifty-

Fifth Legislature, Second Regular Session, as signed by the Governor on May 2, 2022 and effective on the General Effective Date (to be codified as A.R.S. §9-471(T)). The City shall be responsible for all fees associated with the statutory annexation process.

4.2. Annexation of the Property. The City, after complying with all statutory requirements, will hold the required public hearings and duly consider annexation of the Annexation Property into the City in compliance with the Annexation Laws. The City, if shown to be in its best interest, will adopt an ordinance annexing the Annexation Property into the corporate limits of the City (the “**Annexation Ordinance**”). Notwithstanding the foregoing, the Owner acknowledges that the City’s approval of City zoning of the Annexation Property (“**City Zoning**”) will occur after the adoption of the Annexation Ordinance, provided that City agrees to place the City Zoning on the same agenda as the Annexation Ordinance.

4.3. Recording of Agreement. The Parties acknowledge and agree that this Agreement will be recorded in the Official Records of the Pinal County Recorder as means of providing notice to any of Owner’s successors or assigns including, but not limited to Retail Homebuyers, of the intent to annex the Property into the City and expectation that this Agreement is a pre-annexation agreement to future annexation of the Property in accordance with A.R.S. §9-471(T) as discussed in Section 4.1 above. Owner’s successors or assigns including, but not limited to Retail Homebuyers, will be expected to deliver to the City any reasonably required documents related to the annexation duly executed as requested by the City.

5. Zoning.

5.1. In accordance with A.R.S. §9-471(M), immediately after the adoption of the Annexation Ordinance and on the same City Council agenda, the City will duly consider and adopt City Zoning that will permit development, including densities, uses, development standards, engineering design standards, and design guidelines consistent with and comparable to the Property Entitlements as permitted by Pinal County at the time of annexation. The City shall be responsible for all fees associated with the zoning process required by A.R.S. §9-471(M).

5.2. In the event Owner wants to rezone the Annexation Property after the adoption of the Annexation Ordinance to a zoning classification other than as required by A.R.S. §9-471(M) (“**Future Zoning**”), Owner will submit to the City, as soon as possible after the adoption of the Annexation Ordinance and City Zoning, an application for the approval of the desired zoning for the Annexation Property consistent with the City’s standard processes. The Parties expressly acknowledge and agree that any Future Zoning will be consistent with the portions of the City’s General Plan applicable to the Property. The Owner shall be responsible for all fees associated a zoning process for the Future Zoning other than that process required by A.R.S. §9-471(M).

6. Development of the Property.

6.1. County Approvals. The City acknowledges that the Property has vested property rights pursuant to the Property Entitlements and is under development in Pinal County. The City, in consideration of annexation into its municipal limits, hereby acknowledges Owner’s

vested rights under the Property Entitlements and agrees to acknowledge and accept the Property Entitlements. In the event that any necessary improvement plans, including, but not limited to, roadway improvement, grading, drainage, landscaping and lighting plans (the “**Improvement Plans**”) have not been submitted to the County for review and approval at the time of annexation, Owner shall submit such Improvement Plans to the City for review and approval in accordance with the City’s rules and regulations in effect at the time of submittal provided that such rules and regulations are not in conflict with and do not materially change the Property Entitlements. If, at the time of annexation, Improvement Plans, or any plan review applications or building permit applications have been submitted to the County for review, but are not yet approved by the County (“**In Process Plans**”), then the review and approval of such In Process Plans may be completed in the County and will be accepted by the City so long as Owner diligently proceeds with obtaining such approvals in a timely manner. Upon annexation of the Property into the City, the City agrees that Owner will not be subject to any City design guidelines or home product review processes for the portion(s) of the Property with an approved and recorded Final Plat and that all other portions of the Property will not be subject to any City design guidelines or home product review processes that materially change the Property Entitlements. The City further agrees that the Property Entitlements will govern development of the Property unless and until Owner seeks to modify the Property Entitlements after annexation into the City. To the extent the Property Entitlements do not address or are otherwise silent regarding certain aspects of development, Owner agrees the Property will be subject to the standard City rules and regulations related thereto provided that the City’s standard rules and regulations are not in conflict with and do not materially change the Property Entitlements.

6.2. Development Agreements. The Parties hereby agree that any agreements approved by the County related to the Property, other than the Property Entitlement approvals set forth herein, shall be of no further force or effect and the City shall have no obligations pursuant thereto after the approval of the Annexation Ordinance. The Parties, in their sole and absolute discretion, may enter into an agreement related to the development of the Property after approval of the Annexation Ordinance.

6.3. City Rules and Regulations. The City acknowledges and agrees that Owner is developing the Property in the County pursuant to the Property Entitlements and has a vested right to continue and complete development of the Property under the County approved Property Entitlements. Except as required for health, safety and public welfare, Owner shall be allowed to continue and complete development of the Property consistent with the Property Entitlements and will not be subject to any City rules and regulations that conflict with the Property Entitlements. The City shall be prohibited from requiring any change or alteration to previous County approved building plans or subdivision designs, specifically including lot sizes, building setbacks and/or garage width requirements as are set forth in any County approved zoning, tentative plats or final plats on the Property, even if such building plans or subdivision designs and lot sizes building setbacks and/or garage width requirements are nonconforming to City codes and standards.

6.4. Review of Design and Construction Plans. Prior to approval of the Annexation Ordinance, Owner agrees to submit to the City a courtesy copy of any zoning amendments, preliminary or final plats, improvement plans or other entitlements being submitted to or under review by the County. Subject to Section 6.5 below and notwithstanding anything to

the contrary set forth herein, after approval of the Annexation Ordinance, the City shall have the right and authority to review and approve the Improvement Plans and specifications related thereto prior to any work related to those plans being commenced and, if there are any revisions to those plans and specifications after the work is commenced, to review and approve any revisions to the plans and specifications to ensure such plans and specifications are in accordance with applicable Property Entitlements or City standards. In addition, after approval of the Annexation Ordinance, the City shall have the right and authority to inspect the ongoing construction of improvements to ensure that such construction is performed in accordance with the applicable Property Entitlements or City standards, subject to the terms of Section 6.5 below.

6.5. Construction. This paragraph only applies after adoption of the Annexation Ordinance. Owner has the right, but not the obligation, to construct or cause to be constructed all improvements necessary for the development of the Property at Owner's sole cost and expense. Owner shall construct and install all improvements in a good and workmanlike manner in conformity with the applicable Property Entitlements or City standards, as applicable. After approval of the Annexation Ordinance and upon completion of the installation and construction of any Public Improvements, which may include public water, sewer, drainage or roadway improvements ("**Public Improvements**"), Owner will convey such Public Improvements to the City, lien and debt free, after acceptance of such Public Improvements by the City in accordance with the City's standard practices. City agrees to accept Public Improvements approved, constructed and accepted by the County in accordance with the standards, specifications and warranty periods of the County. For Public Improvements partially constructed in the County at the time of annexation, City agrees to follow the County standards for review, approval and acceptance rights over such Public Improvements, including any applicable County warranty period, and that City will accept such Public Improvements as if construction were completed in the County so long as Owner diligently proceeds with completing such Public Improvements. For the sake of clarity, if a Public Improvement is completed in the County and the warranty period has begun, but is not yet completed prior to Annexation of the Property, the County standards and warranty period will continue to apply but the City will have authority over final acceptance of such improvements at the conclusion of the warranty period. For Public Improvements wherein construction is started and completed in the City after annexation of the Property, Owner agrees to provide a standard and customary warranty related to such improvements as normally required by the City's rules and regulations.

6.6. Fees. The City hereby acknowledges and agrees that Owner will not owe the City any fees already paid by Owner to the County for any Property Entitlements. Owner hereby acknowledges and agrees that, after approval of the Annexation Ordinance, Owner will be subject to any and all applicable fees of the City, including development impact fees, review fees and inspection fees ("**City Fees**") related to plan review, permitting and inspections for the development of the Property to the extent that such processes are initiated in or transferred to the City after annexation of the Property and such fees were not previously paid to the County. City Fees will not be assessed for In Process Plans started in the County but not finalized by the County until after annexation.

6.7 Transaction Privilege Tax. The City agrees that upon approval of the Annexation Ordinance, the following provisions apply with regard to the collection of City

Transaction Privilege Tax for Prime Contracting for the Annexation Property (“**Construction Sales Tax**”):

- a. From the Effective Date of this Agreement through the five-year anniversary of the Effective Date of this Agreement, the City will reimburse to Owner 100% of any Construction Sales Tax that is collected on behalf of the City for any single-family home on a lot that obtains a building permit during this time.
- b. From the five-year anniversary through the six-year anniversary of the Effective Date of this Agreement, the City will reimburse to Owner 75% of any Construction Sales Tax that is collected on behalf of the City for any single-family home on a lot that obtains a building permit during this time.
- c. From the six-year anniversary through the seven-year anniversary of the Effective Date of this Agreement, the City will reimburse to Owner 50% of any Construction Sales Tax that is collected on behalf of the City for any single-family home on a lot that obtains a building permit during this time.
- d. From and after the seven-year anniversary of the Effective Date of this Agreement, the City will not reimburse any portion of the Construction Sales Tax paid by Owner that is collected on behalf of the City for any single-family home on a lot that obtains a building permit.

6.8 Assurances. After approval of the Annexation Ordinance, Owner, or its successors and/or assigns, agrees to transfer any financial assurance provided to the County, or provide to the City equivalent financial assurances, to assure completion of any Public Improvements that are under construction, with such financial assurance in a form, substance and amount consistent with the applicable provisions of the City’s subdivision ordinance provided that the term or amount of any such financial assurances are not extended or increased beyond the requirements of the County. For Public Improvements that are under construction after approval of the Annexation Ordinance, Owner, or its successors and/or assigns, agrees to provide the City financial assurance consistent with the applicable provisions of the City’s subdivision ordinance. Additionally, for Public Improvements that have been completed and accepted by the County prior to approval of the Annexation Ordinance and where any required financial assurances have been returned or terminated by the County, no additional financial assurances will be required for any such Public Improvements upon annexation into the City. For Public Improvements completed and accepted in Pinal County prior to annexation, Pinal’s County’s standard and customary warranty periods shall apply. For Public Improvements completed and accepted in the City after annexation, the City’s standard and customary warranty periods shall apply.

7. **Cooperation and Alternative Dispute Resolution.**

7.1. Appointment of Representatives. To further the cooperation of the parties in implementing this Agreement, the City and Owner shall each designate and appoint a representative to act as a liaison between the City and its various departments and Owner. The initial representative for the City (the “**City Representative**”) shall be the City Manager, Rick Horst and the initial representative for Owner shall be Jeremy Ramsdell (the “**Owner Representative**”). The representatives shall be available at all reasonable times to discuss and review the performance of the parties to this Agreement and the development.

7.2. Default. Failure or unreasonable delay by either party to perform or otherwise act in accordance with any term or provision hereof shall constitute a breach of this Agreement and, if the breach is not cured within thirty (30) days after written notice thereof from the other party (the “**Cure Period**”), shall constitute a default under this Agreement; provided, however, that if the failure is such that more than thirty (30) days would reasonably be required to perform such action or comply with any term or provision hereof, then the party shall have such additional time as may be necessary to perform or comply so long as the party commences performance or compliance within said thirty (30) day period and diligently proceeds to complete such performance or fulfill such obligation. Any notice of a breach shall specify the nature of the alleged breach in the manner in which said breach may be satisfactorily cured, if possible.

7.3 Dispute Resolution. In the event a dispute arises under this Agreement which the Parties cannot resolve between themselves, the Parties agree that there shall be a ninety (90) day moratorium on litigation during which time the Parties agree to attempt to settle the dispute by non-binding mediation before commencement of litigation. The mediation shall be held under the Commercial Mediation Rules of the American Arbitration Association but shall not be under the administration of the AAA unless agreed to by the Parties in writing, in which case all administrative fees shall be divided evenly between the City and Owner. The matter in dispute shall be submitted to a mediator mutually selected by Owner and the City. If the Parties cannot agree upon the selection of a mediator within ten (10) days, then within five (5) days thereafter, the City and Owner shall request that the Presiding Judge of the Superior Court in and for the County of Pinal, State of Arizona, appoint the mediator. The mediator selected shall have at least ten (10) years’ experience in mediating or arbitrating disputes relating to real property. The cost of any such mediation shall be divided equally between the City and Owner. The results of the mediation shall be nonbinding with any Party free to initiate litigation upon the conclusion of the latter of the mediation or of the ninety (90) day moratorium on litigation. The mediation shall be completed in one day (or less) and shall be confidential, private, and otherwise governed by the provisions of A.R.S. §12-2238.

8. Notices and Filings.

8.1 Manner of Serving. Any notice or other communication required or permitted to be given under this agreement shall be in writing and shall be deemed to have been duly given if (i) delivered to the party at the address set forth below, (ii) deposited in the U.S. mail, registered or certified, return receipt requested, to the address set forth below, or (iii) given to a recognized and reputable overnight delivery service, to the address set forth below:

The City: City of Maricopa
 Attn: Rick Horst, City Manager
 39700 West Civic Center Plaza
 Maricopa, Arizona 85138
 Rick.Horst@maricopa-az.gov

City of Maricopa
Attn: Denis Fitzgibbons, City Attorney

1115 E. Cottonwood Lane, Suite 150
Casa Grande, AZ 85122
denis@fitzgibbonslaw.com

Owner: Brookfield Holdings (Amarillo) LLC
Attn: Troy Wahlberg
14646 N. Kierland Blvd., Suite 165
Scottsdale, Arizona 85254
troy.wahlberg@brookfield.com

Copy To: Ashton Woods Arizona, L.L.C.
Attn: Jeremy Ramsdell
8655 East Via de Ventura, Suite F-250
Scottsdale, AZ 85258
jeremy.ramsdell@ashtonwoods.com

And: Gammage & Burnham, PLC
Attn: Susan E. Demmitt
40 N. Central Avenue, 20th Floor
Phoenix, AZ 85004
sdemmitt@gbllaw.com

or to such other addresses as either party hereto may from time to time designate in writing and delivery in a like manner.

8.2 Mailing Effective. Any notice or other communication directed to a party to this Agreement shall become effective upon the earliest of the following: (i) actual receipt by the party; (ii) delivery to the addressed of the party; or (iii) if given by certified or registered U.S. Mail, return receipt requested, 72 hours after deposit with the United States Postal Service, addressed to the party.

9. General.

9.1. Waiver. No delay in exercising any right or remedy shall constitute a waiver. No waiver by the City or Owner of any breach of a covenant or condition of this Agreement shall be construed as a waiver of any proceeding or succeeding breach of the same or any other covenant or condition of this Agreement. No waiver shall be effective unless in writing and signed by the granting party.

9.2. Council Action Requirement. The Parties acknowledge that, notwithstanding any language of this Agreement, no act, requirement, payment, or other agreed upon action to be done or performed by the City which would, under any law require formal action, approval, or concurrence by the City Council, will be required to be done or performed by the City unless and until formal Council action has been taken and completed. This Agreement in no way acquiesces to or obligates the City to perform a legislative act.

9.3 Further Acts. Each party agrees in good faith to execute such further or additional instruments and documents and to take such further acts as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement. However, **the Parties** acknowledge that City is limited in its actions by law and ordinances.

9.4. Runs with the Land; Successors and Assigns. The covenants, terms and provisions of this Agreement run with the Property, and any portion thereof, and is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns. Wherever the term “Owner,” “City,” or “Party” is used in this Agreement, such term includes any such Party’s permitted successors and assigns. Except for assignments to Transferees as permitted in Section 9.9 (for which the City’s consent is not required), this Agreement cannot be assigned by either party without written consent of the other party. Such consent shall not be unreasonably withheld. Owner’s rights and obligations hereunder may only be assigned to a person or entity that has acquired the Property or a portion thereof and only by a written instrument, recorded in the Official Records of Pinal County, Arizona, expressly assigning such rights and obligations, except as otherwise provided. The Parties hereby acknowledge and agree that this Agreement is not intended to and does not create conditions or exceptions to title or covenants running with the individual residential lots once such lot is sold to a Retail Homebuyer, or any tracts of land intended to be dedicated or conveyed to the County, City, any other public or quasi-public entity, any utility provider, any homeowners association or any school district (“**Excepted Successor**”). Therefore, in order to alleviate any concern as to the effect of this Agreement on the status of title to any of the Property, this Agreement shall terminate without the execution or recordation of any further document as to any portion of the Property owned by or conveyed to an Excepted Successor and thereupon such Excepted Successor shall be released from and no longer subject to or burdened by the provisions of this Agreement; provided that the provisions of Section 4 of this Agreement regarding Annexation apply to all portions of the Property, even those conveyed to or owned by an Excepted Successor, until such time as the Annexation Ordinance is approved and the Property is finally annexed into the City.

9.5. No Partnership; Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other agreement between Owner and the City. No term or provision of this Agreement shall be for the benefit of any person or entity not a party hereto and no such other person or entity shall have any right or cause of action hereunder.

9.6. Indemnification. To the fullest extent allowed by law, Owner shall indemnify, protect, defend and hold harmless the City, its Council members, officers, employees, and agents from any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorney’s fees and costs of defense arising, directly or indirectly, in whole or in part, out of the exercise of this Agreement by Owner.

9.7. Entire Agreement. This Agreement and all exhibits thereto constitute the entire agreement between the Parties hereto pertaining to the subject matter hereof. All prior and

contemporaneous agreements, representations and understandings of the Parties, oral or written, are hereby superseded and merged herein.

9.8. Amendment. No change or addition may be made to this Agreement except by written amendment executed by the parties hereto. Within ten (10) days after any amendment to this Agreement is approved and executed, such amendment shall be recorded in the Official Records of Pinal County, Arizona. Owner acknowledges and understands that no modification of this Agreement shall have any force or effect unless approved by the City Council in a public meeting.

9.9. Assignment. The rights and obligations of Owner under this Agreement may be transferred or assigned, in whole or in part, by a written instrument, to any subsequent owner or person (each, a “**Transferee**”) having an interest in all or any portion of the Property (“**Transferred Property**”), pursuant to which the Transferee expressly accepts and assumes the rights and obligations of Owner which are assigned by Owner to such Transferee with respect to such Transferred Property. Upon the conveyance or other disposition (other than in trust pursuant to the granting of a deed of trust related solely to financing of the Property or for securing the completion of improvements in connection with a subdivision assurance agreement) (a “**Transfer**”) of any portion of the Transferred Property, the Transferee shall be deemed to be a party to this Agreement with respect to such Transferred Property, and the prior owner shall have no further obligations under this Agreement regarding the Transferred Property arising from and after the date of Transfer of such Transferred Property. By execution of this Agreement, Ashton and Starlight are hereby deemed to have assumed the rights and obligations of Brookfield hereunder with respect to the portions of the Property previously or hereafter conveyed by Brookfield to Ashton and Starlight, as applicable, and, from and after each such conveyance, Brookfield shall have no further obligations hereunder with respect to the portions of the Property so conveyed. An assignment of rights may be on a non-exclusive basis.

9.10. Authority. Each of the parties represents and warrants to the other that the persons executing this Agreement on behalf of the respective parties are authorized and empowered to bind the party on whose behalf each such individual is signing.

9.11. Severability. If a court of competent jurisdiction declares any provision of this Agreement void or unenforceable such provisions shall be severed from this Agreement, which shall otherwise remain in full force and effect.

9.12. Governing Law and Venue. This Agreement shall be interpreted and governed according to the laws of the State of Arizona. The venue for any dispute hereunder shall be Pinal County, Arizona.

9.13. Attorney Fees. In the event it becomes necessary for a party to this Agreement to employ legal counsel or to bring an action at law or other proceedings to enforce any of the terms, covenants or conditions of this Agreement, the non-prevailing party will pay the other party's reasonable expenses, including, but not limited to, expert witness fees, and reasonable attorney fees incurred because of the breach.

9.14 Construction of Agreement. This Agreement has been arrived at by negotiation and shall not be construed against either Party or against the Party who prepared the last draft.

9.15 Recordation. This Agreement shall be recorded in its entirety in the Official Records of Pinal County, Arizona, not later than ten (10) days after its full execution. Either Party, upon the request of the other Party, will record an acknowledgment of the fulfillment of the terms of this Agreement once the requirements of the Agreement have been fulfilled.

9.16 Survival and Expiration. All agreements, representations, indemnities and warranties made in the Agreement shall survive the termination of this Agreement only as expressly set forth in this Agreement. Otherwise, the Agreement shall expire upon completion.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the Effective Date as described above.

[signature pages below]

OWNER:

BROOKFIELD HOLDINGS (AMARILLO) LLC,
a Delaware limited liability company

By: _____

Its: _____

ASHTON WOODS ARIZONA, L.L.C.,
a Nevada limited liability company

By: _____

Its: _____

STARLIGHT HOMES ARIZONA L.L.C.,
a Delaware limited liability company

By: _____

Its: _____

CITY:

CITY OF MARICOPA, an Arizona municipal corporation

By:_____

Nancy Smith, Mayor

ATTEST:

Vanessa Bueras, MMC
City Clerk

APPROVED AS TO FORM:

Denis M. Fitzgibbons
City Attorney

Exhibit A

Legal Description

Parcel 1:

Lots 1 through 102, inclusive, and Tracts A through F, inclusive, of AMARILLO CREEK UNIT 1, Parcel 1, according to the plat of record in the office of the County Recorder of Pinal County, Arizona, in Cabinet G, Slide 75.

Parcel 2:

Lots 1 through 98, inclusive, and Tracts A through F, inclusive, of AMARILLO CREEK UNIT 1, Parcel 2, according to the plat of record in the office of the County Recorder of Pinal County, Arizona, in Cabinet G, Slide 76.

Parcel 3:

Lots 1 through 104, inclusive, and Tracts A through B, inclusive, of AMARILLO CREEK UNIT 1, Parcel 3, according to the plat of record in the office of the County Recorder of Pinal County, Arizona, in Cabinet G, Slide 77.

Parcel 4:

Lots 1 through 136, inclusive, and Tracts A through F, inclusive, of AMARILLO CREEK UNIT 1, Parcel 4, according to the plat of record in the office of the County Recorder of Pinal County, Arizona, in Cabinet G, Slide 78.

Parcel 5:

Lots 1 through 160, inclusive, and Tracts A through D, inclusive, of AMARILLO CREEK UNIT 1, Parcel 5, according to the plat of record in the office of the County Recorder of Pinal County, Arizona, in Cabinet G, Slide 79.

Master Tracts:

Tracts A through O, inclusive, of FINAL BLOCK PLAT OF AMARILLO CREEK UNIT 1, according to the plat of record in the office of the County Recorder of Pinal County, Arizona, in Cabinet G, Slide 37.

Exhibit B
Amarillo Creek PAD

Exhibit C
Amarillo Creek PAD Amendments

Exhibit D
Amarillo Creek Final Plats