

When Recorded, Return To:

City of Maricopa
Attn: City Clerk
39700 West Civic Center Plaza
Maricopa, AZ 85138

With a copy to:

Kirton McConkie
Attn: Jessica Rancie
50 East South Temple #400
Salt Lake City, Utah 84111

**SECOND AMENDMENT TO DEVELOPMENT AGREEMENT
FOR THE AVALEA MASTER PLAN DEVELOPMENT**

This SECOND AMENDMENT TO DEVELOPMENT AGREEMENT (this “*Second Amendment*”) is made this 6th day of April, 2021, by and between the CITY OF MARICOPA, an Arizona municipal corporation (the “*City*”), and PROPERTY RESERVE ARIZONA, LLC, an Arizona limited liability company (the “*Owner of the Property*” or “*Owner*”), as successor-in-interest to TRILOGY MARICOPA CONSTRUCTION, LLC, a Delaware limited liability company, FULTON HOMES CORPORATION, an Arizona corporation, and SECURITY TITLE AGENCY, INC., an Arizona corporation, AS TRUSTEE UNDER ITS TRUST NO. TR006-54236. The City and the Owner shall be referred to herein collectively as the “*Parties*” and individually as a “*Party*”.

RECITALS

A. The Parties entered into that certain Development Agreement dated September 25, 2008, and recorded September 26, 2008, as Fee No. 2008-092239 in the official records of the Pinal County recorder’s office (the “*Original Development Agreement*”), and that certain First Amendment to Development Agreement dated September 16, 2014, and recorded October 14, 2014, as Fee No. 2014-059122 in the official records of the Pinal County recorder’s office (the “*First Amendment*”), both in connection with the development of certain real property consisting of approximately 1,996 acres located in the City of Maricopa, County of Pinal, State of Arizona, as more particularly described on Exhibit A attached hereto and incorporated herein by reference (the “*Avalea Property*”). The Original Development Agreement and the First Amendment shall be referred to herein collectively as the “*Development Agreement*”.

B. Section 6.8 of the Development Agreement contemplates that the City would undertake studies to evaluate the location and installation of certain road improvements for an “East-West Corridor” alignment that could impact the Avalea Property (the “*East-West Parkway*”). The Parties agreed to work together in good faith to evaluate any such East-West Parkway proposals and amend the Development Agreement, as necessary.

C. The City has now identified the Farrell Road alignment as its recommended alternative alignment for the East-West Parkway adjacent to the Avalea Property as outlined in the Final Design Concept Report for Pinal County's East-West Corridor Study dated December 20, 2015 (the "*DCR*") as attached hereto as Exhibit B. Additionally, the City desires to shift the alignment further south into the Avalea Property, which requires the dedication of additional right-of-way on the Avalea Property above and beyond its existing right-of-way dedication obligations.

D. The Parties now desire to amend the Development Agreement to address the relocation of the East-West Parkway, and to extend the Initial Term such that the provisions herein related to the East-West Parkway may be accomplished, according to the terms and conditions set forth herein.

AGREEMENT

1. Incorporation of Recitals. The foregoing Recitals are hereby incorporated into this Amendment and made a part hereof.

2. Ratification of Development Agreement. Except as expressly modified by this Second Amendment, the Parties hereby ratify the Development Agreement and agree that the Development Agreement shall remain in full force and effect.

3. Term and Renewal. The first sentence of Section II of the Development Agreement is hereby deleted in its entirety and replaced with the following:

"The term of this Agreement is twenty (20) years from the Effective Date (the "*Initial Term*")."

4. East-West Parkway. In accordance with Section 6.8 of the Development Agreement the parties hereby add this Section 6.9 to the Development Agreement as follows:

"6.9 East-West Parkway. In addition to its existing dedication obligations in the Development Agreement, Owner hereby agrees to quitclaim to the City up to 26.5 acres of property for dedication as the East-West Parkway, in the location described and depicted on Exhibit C, attached hereto and incorporated herein (the "*Additional East West Parkway ROW*") In exchange for Owner's agreement to dedicate the Additional East-West Parkway ROW, the Parties hereby agree as follows:

(a) Upon the earlier of; (i) within sixty (60) calendar days of written request by City, or (ii) upon Owner's recordation of its first final plat or map of dedication for the Avalea Property, provided such plat or map incorporates portions of the Avalea Property located adjacent to the Additional East-West Parkway ROW, Owner shall convey all required right-of-way for the East-West

Parkway, including the Additional East-West Parkway ROW, to City via Quitclaim Deed.

(b) Within thirty (30) calendar days of Owner's conveyance of the Additional East-West Parkway ROW to City, City shall pay to Owner the sum of One Million Sixty Thousand and 00/100 Dollars (\$1,060,000.00) pursuant to the appraised value for the Additional East-West Parkway ROW stated in the Appraisal Report Estimating Market Value of Partial Takings, prepared by Agave Realty Advisors, dated June 9, 2020 (the "*Appraisal Report*").

(c) Within thirty (30) calendar days of Owner's conveyance of the Additional East-West Parkway ROW to City, Owner shall also convey to City the 1.64-acre triangle-shaped parcel located north of the East-West Parkway alignment at the northwest corner of the Avalea Property, as depicted on Exhibit C, attached hereto and incorporated herein by reference (the "*Triangle Parcel*"), via Quitclaim Deed.

(d) At the time of Owner's conveyance of the Triangle Parcel, City shall make available to the Avalea Property a credit against all City Planning & Development, Engineering, and/or Building Safety application and review fees in an amount not to exceed Sixty-Five Thousand Six Hundred and 00/100 Dollars (\$65,600.00), consistent with the appraised value of the Triangle Parcel stated in the Appraisal Report, which credit may be assignable at Owner's discretion.

(e) In addition to the three (3) traditional, arterial street full-motion access points on the East-West Parkway already contemplated to be designed, constructed and paid for by the City at; (i) SR-347, (ii) the Smith Road alignment, and (iii) Porter Road (the "*Original Access Points*"), the City shall also be responsible for designing, constructing, and paying for two (2) additional full-motion access points adjacent to the Avalea Property generally located; (i) ½-mile west of Porter Road, and (ii) ½-mile east of SR-347 (the "*Additional Access Points*"), as depicted in Exhibit D attached hereto and incorporated herein by reference, and which final locations shall be reasonably approved by Owner. As depicted in said Exhibit D, the Additional Access Point located ½-mile east of SR-347 shall be a traditional, arterial street full-motion access point, while the Additional Access Point located ½-mile west of Porter Road shall be an indirect left-turn, or Arizona Parkway full-motion access point. In no event, shall there be less than three (3) full-motion access points along the East-West Parkway into the Avalea Property.

(f) City shall construct, at its sole cost and expense, the Original Access Points and the Additional Access Points with its construction of the East-West Parkway. In the event the East-West Parkway, the Original Access Points, and the Additional Access Points are not constructed by the end of the Initial Term (September 26, 2028), in addition to other remedies available at law or in equity, City shall reconvey the Additional East-West Parkway ROW and the

Triangle Parcel back to Owner. Such right of reconveyance will be recorded against the Property at the time of conveyance. In the event the Additional East-West Parkway ROW and the Triangle Parcel are reconveyed to Owner, Owner shall not be entitled to the payment set forth in Section 6.9(b) or the fee credits set forth in Section 6.9(d) above.

(g) The traffic signal at the Original Access Point located at SR-347 will be installed by the City, at its sole cost and expense, with its construction of the East-West Parkway. Traffic Signals at the Original Access Points located at the Smith Road alignment and Porter Road, as well as at the Additional Access Points, will not be warranted until such time as the Avalea Property is developed. Therefore, these traffic signals will not be installed by the City with its construction of the East-West Parkway, but the City will install the required traffic signal conduits and pull boxes at these four (4) intersections with its construction of the East-West Parkway in order to prepare them for future signalization. The future traffic signals at the Original Access Points located at the Smith Road alignment and Porter Road will be installed by the City, at its sole cost and expense, with the development of the Avalea Property once said traffic signals become warranted. The future traffic signals at the Additional Access Points will be installed by Owner, at its sole cost and expense, with the development of the Avalea Property once said traffic signals become warranted (see Exhibit E attached hereto and incorporated herein by reference).

(h) Owner shall cooperate with City to grant to City temporary construction easements as may be necessary for the construction of the East-West Parkway, at no cost to the City. Such easements shall expire at the completion of the construction of the East-West Parkway adjacent to the Avalea Property.

(i) Owner shall cooperate with City to grant to City temporary drainage easements as may be necessary for retention of off-site stormwater from the East-West Parkway per the City's guidelines, at no cost to the City. Such easements shall expire when the Avalea Property is developed and graded per the City's guidelines to accommodate the off-site stormwater for the East-West Parkway and the adjacent Avalea Property.

(j) Other than the obligations outlined in this Section 6.9, and despite any conflicting provisions elsewhere in the Development Agreement, this Second Amendment, or any exhibit thereto, the Avalea Property shall have no additional financial obligations related to the construction of Farrell Road or the East-West Parkway, nor shall the Avalea Property receive any development impact fee credits for its satisfaction of the obligations related to the East-West Parkway."

5. Traffic Signals. The list of traffic signals identified in Section 6.7 of the Development Agreement is hereby deleted in its entirety and replaced with the following:

“(a) Avalea Boulevard at SR-347

- (b) Peters and Nall Road at Table Top Drive
- (c) Peters and Nall Road at SR-347
- (d) Porter Road at Steen Road
- (e) East-West Parkway and ½-mile west of Porter Road
- (f) East-West Parkway and ½-mile east of SR-347”

All other terms and conditions of Section 6.7 shall remain in full force and effect.

6. Amendment to Development Agreement. To the extent that the terms and conditions of this Second Amendment modify or conflict with any provisions of the Development Agreement, including prior addenda, schedules and exhibits, the terms of this Second Amendment shall control. All other terms of the Development Agreement, including all prior addenda, schedules, and exhibits, not modified by this Amendment shall remain the same.

7. Defined Terms. Capitalized terms used in this Second Amendment which are not otherwise defined herein shall have the same meanings given to such terms in the Development Agreement.

8. Counterparts; Signatures. This Amendment may be signed in multiple counterparts, all of which taken together shall constitute one and the same agreement. Further, copied or electronically or facsimile transmitted signatures of an original signature shall be treated for all purposes as an original signature. After execution and delivery of this Amendment, a copy of the signed Amendment shall be considered for all purposes as an original of the Amendment to the maximum extent permitted by law, and no party to this Amendment shall have any obligation to retain a version of the Amendment that contains original signatures in order to enforce the Amendment, or for any other purpose, except as otherwise required by law.

[Signatures and Acknowledgements to Follow]

IN WITNESS WHEREOF, the parties have executed this Amendment to be effective as of the date and year this Amendment is recorded.

The City: CITY OF MARICOPA,
an Arizona municipal corporation

By: _____
Name (Print): _____
Its: _____

Owner: PROPERTY RESERVE ARIZONA, LLC,
an Arizona limited liability company

By: _____
Name (Print): _____
Its: _____

STATE OF ARIZONA)
 :ss.
COUNTY OF PINAL)

On this _____ day of _____, 2021, personally appeared before me _____, as _____ of the CITY OF MARICOPA, an Arizona municipal corporation, and acknowledged to me that said corporation executed the same.

NOTARY PUBLIC

STATE OF UTAH)
 :ss.
COUNTY OF SALT LAKE)

On this _____ day of _____, 2021, personally appeared before me _____, as _____ of PROPERTY RESERVE ARIZONA, LLC, an Arizona limited liability company, and acknowledged to me that said corporation executed the same

NOTARY PUBLIC

EXHIBIT A

(Description of the Avalea Property)

[See following pages]

EXHIBIT B

(Final Design Concept Report for Pinal County's East-West Corridor Study)

[See following pages]

EXHIBIT C

(Depiction of the Additional East-West Parkway ROW & Triangle Parcel)

[See following pages]

EXHIBIT D

(East-West Parkway Access Points)

[See following pages]

EXHIBIT E

(East-West Parkway Traffic Signals)

[See following pages]