
DEDICATION AND REIMBURSEMENT AGREEMENT
(Meadows Neighborhood Park Site)

THIS DEDICATION AND REIMBURSEMENT AGREEMENT (“**Agreement**”) is dated as of the ____ day of _____, 2018 and is entered into by and between **CAMINO A LAGO, LLC**, an Arizona limited liability company (“**Camino A Lago**”), and **THE CITY OF PEORIA** (“**City**”). Camino A Lago and the City are collectively referred to as the “**Parties**” or individually as a “**Party**.”

RECITALS

A. Camino A Lago has a Certificate of Purchase (#53-108549) with the Arizona State Land Department (ASLD) to acquire that certain real property located in the City of Peoria, Maricopa County, Arizona, more particularly described in **Exhibit A**, attached hereto.

B. Camino A Lago plans to construct a residential subdivision within “**Parcels 7 & 8**” of the Meadows subdivision, construction plans for which will be submitted to the City for review and approval. Camino A Lago may also elect to convey the development rights and construction obligations pertaining to Parcels 7 & 8, including without limitation the rights and obligations set forth in this Agreement, to one or more successors.

C. Pursuant to Ordinance 2104-16 (“**Ordinance**”), the City Council approved a major amendment to Meadows Planned Community District (PCD) in zoning Case Z07-10A.3. Per the approved stipulations to the herein referenced zoning case, Camino A Lago is required to dedicate an approximately ten (10) acre site for a park site, with certain acreage retained for stormwater drainage and retention use, generally bordering Deer Valley Road to the south, Pinnacle Peak Road to the north, Lake Pleasant Parkway to the west, and 91st Ave to the east, as more particularly described in **Exhibit B**, attached hereto (the “**Park Site**”).

D. The City shall pay Camino A Lago the sum of \$1,274,400 for the dedication the Park Site.

E. The purpose of this ~~agreement~~Agreement is to identify and define the responsibilities of the Parties relating to the conveyance of the Park Site to the City.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in this Agreement, Camino A Lago and the City hereby agree as follows:

1. **Incorporation of Recitals.** The Recitals set forth above are acknowledged by the Parties to be true and correct and are incorporated herein by this reference.

2. **Incorporation of Exhibits.** The following documents are referred to in this Agreement and are attached hereto and made a part of this Agreement by this reference:

Exhibit Description

- A Legal description of Parcels 7 & 8; and
- B Legal description of the Park Site.

3. **Camino A Lago Obligations.**

- a. Camino A Lago will convey fee simple title to Park Site to the City within thirty (30) days following the date the final plat for phase 1 of ~~the project~~ Parcels 7 & 8 is recorded in the real property records of Maricopa County, Arizona. Such conveyance shall be by a commercially reasonable form of special warranty deed, subject to current taxes and assessments, reservations in patents, all easements, rights-of-way, encumbrances, liens, covenants, conditions, restrictions, obligations and liabilities as may appear of record, and all matters which an accurate survey of the Park Site or a physical inspection of the Park Site would disclose.
- b. Prior to or concurrently with such conveyance, Camino A Lago may retain or grant the following easements (collectively, the “**Easements**”): (i) a temporary construction easement in favor of Camino A Lago and its successors and assigns for construction of improvements to the Park Site as required by separate written agreement between Camino A Lago and the City; (ii) a stormwater drainage and retention easement in favor of Parcels 7 & 8, permitting Camino A Lago and its successors and assigns the right to drain and retain stormwater in the areas of the Park Site designated and designed therefor (in such locations as agreed by Camino A Lago and the City); and (iii) a maintenance easement in favor of The Meadows Community Master Association and its successors and assigns, permitting entry upon and maintenance of the retention areas in accordance with the maintenance standards for Parcels 7 & 8.
- c. ~~The conveyance of the Park Site will be accomplished through an escrow (the “Escrow”) established with Fidelity National Title Insurance Company, 2720 E. Camelback Road, Suite 100, Phoenix, Arizona 85016, Attention: Diane Carpenter, Telephone: (602) 416-4690, Facsimile: (602) 926-0415 Email: Diane.Carpenter@fnf.com (“Escrow Agent”).~~
- d. ~~Camino A Lago shall pay one-half (1/2) of the escrow fees payable to Escrow Agent in connection with the conveyance of the Park Site, and any recording~~

~~fees incurred by Escrow Agent in connection with the recording of the deed of the Park Site.~~ If and to the extent Camino A Lago does not retain or grant any or all of the Easements concurrently with the dedication of the Park Site to the City, the City shall grant such Easements following the dedication of the Park Site, each in a form and substance reasonably acceptable to the respective parties to such Easements.

- e. All taxes owed for periods prior to the closing of the conveyance of the Park Site shall be prorated and paid at such closing by Camino A Lago.

4. **City Obligations.**

- a. The City shall pay Camino A Lago the sum of \$1,274,400 (“**Dedication Payment**”) for the dedication the Park Site. The City’s source for payment of the Dedication Payment will be park impact fees collected from the project referred to as “The Meadows”.
- b. The Parties acknowledge that as of the end of fiscal year 2017, the City possesses \$610,095 in park impact fee funds that will be paid to Camino A Lago in partial satisfaction of the City’s obligation to pay to Camino A Lago the Dedication Payment. Prior to Camino A Lago’s acquisition of Parcels 7 & 8 pursuant to Certificate of Purchase #53-108549, the City shall deposit into the ~~Eserow~~escrow established for Camino A Lago’s acquisition of Parcels 7 & 8 the full amount of park impact fee funds then available to the City, in an amount not less than \$610,095. Such sum shall be paid to Camino A Lago upon recordation of the deed conveying the Park Site to the City. The Parties thus anticipate that there will be a shortfall of approximately \$664,305 in the City’s payment of the Dedication Payment at the time of the conveyance of the Park Site to the City (the “**Shortfall**”).
- c. Following the conveyance of the Park Site to the City, the City shall pay the Shortfall to Camino A Lago through monthly payments of park impact fees collected by the City. Not less frequently than every thirty (30) days, the City shall deliver ~~(i) to Camino A Lago and Escrow Agent,~~(i) a written report enumerating the park impact fees collected by the City during the prior thirty (30) day period, and ~~(ii) to Escrow Agent,~~ immediately available funds ~~payable to the account of Escrow Agent~~ in the amount of such park impact fees. ~~—Promptly following Escrow Agent’s receipt of each payment of Shortfall funds, Escrow Agent shall disburse such funds to Camino A Lago.~~ The foregoing process shall continue on a revolving 30-day basis until the full amount of the Shortfall has been paid to Camino A Lago.
- d. The City agrees the current impact fee zone adopted for parks will be extended to capture the likely service area for the neighborhood park identified in this Agreement. As part of the current impact fee update, the

City will take action to amend and update the impact fee Infrastructure Improvement Plan (IIP) to encompass the additional development units and park costs.

- e. ~~If required by Escrow Agent, the Parties agree to sign commercially reasonable escrow instructions among Camino A Lago, the City and Escrow Agent. Escrow Agent's fees for its services under this Agreement with respect to the Shortfall payments and disbursements shall be paid by _____.~~
- f. ~~The City shall pay one half (1/2) of the escrow fees payable to Escrow Agent in connection with the conveyance of the Park Site.~~ The City shall be solely responsible for payment of the cost of any owners policy of title insurance that the City desires to obtain with respect to the Park Site.-
- g. ~~If and to the extent Camino A Lago does not retain or grant any or all of the Easements concurrently with the dedication of the Park Site to the City, the City shall grant such easements following the dedication of the Park Site, each in a form and substance reasonably acceptable to the respective parties to such Easements.—~~

5. **Intentionally Omitted.**

6. **Conflict of Interest.** This Agreement is subject to cancellation for conflict of interest without penalty or further obligation as provided by A.R.S. § 38-511.

7. **Amendment or Cancellation of the Agreement.** This Agreement may be amended or cancelled, in whole or in part only with the mutual written consent of the Parties hereto. This Agreement shall automatically terminate when all Shortfall funds under this Agreement have been paid by the City to Camino A Lago. However, Section 6 of the Agreement shall survive revocation and/or termination of this agreement.

GENERAL PROVISIONS

10. **Successors and Assigns.** The obligations and benefits created by this Agreement shall run with and bind the respective successors and assigns of the parties hereto.

11. **Attorneys' Fees and Costs.** If the City or Camino A Lago defaults in the timely performance of its obligations under this Agreement, the Party not in default shall be entitled to recover court costs and reasonable attorneys' fees, as determined by a court, in any suit or proceeding to enforce its rights under this Agreement. The foregoing shall not in any way limit or restrict any right or remedy at law or equity, which would otherwise be available to such Party in default.

12. **Authority.** Camino A Lago represents and warrants to the City: (1) that it is duly formed and validly existing under the laws of the State of Arizona; and (2) that the individual executing this Agreement on behalf of Camino A Lago is authorized and empowered to bind Camino A Lago. The City represents and warrants to Camino A Lago: (1) that it is a duly formed municipal corporation within the State of Arizona; and (2) that the individuals executing this Agreement on behalf of the City are authorized and empowered to bind the City.

13. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.

14. **Default, Remedies.** If any Party to this Agreement breaches any provision of the Agreement, the non-defaulting Party will be entitled to all remedies available at both law and in equity, including but not limited to specific performance.

15. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties relating to this issue and will not be changed or added to except in the manner provided herein. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, other than specifically incorporated herein by reference, are superseded by this Agreement. All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, other than specifically incorporated herein by reference, regarding the subject of this Agreement, are superseded by this Agreement.

16. **Governing Law.** This Agreement is entered into in Arizona and will be construed and interpreted under the laws of the State of Arizona. Jurisdiction and venue for any action concerning this Agreement shall be solely in Maricopa County, Arizona.

17. **Severability.** If any provision of this Agreement is declared void or unenforceable, the provisions will be severed from this Agreement and the remainder of the Agreement will otherwise remain in full force and effect, provided that the overall intent of the Parties is not materially vitiated by such severability.

18. **Service of Notice.** All notices and demands required or permitted by this Agreement shall be in writing and shall be deemed to have been given properly when (i) sent by certified mail (postage fully prepaid) or delivered personally or by overnight courier, to the respective address below or to such other address as may be furnished in writing by either Party to the other pursuant to this Section 18; or (ii) transmitted by facsimile to the respective facsimile number below or to such other facsimile number as may be furnished in writing by either Party to the other pursuant to this Section 18, and the appropriate confirmation is received.

Notices to Camino A Lago:

CAMINO A LAGO, LLC
Attn: Michelle Yerger

Notices to City:

City of Peoria
Attn: Adina Lund

7001 N. Scottsdale Road, Suite 1015
Scottsdale, Arizona 85253
Facsimile No. 480-315-2699
Telephone No. 480-315-2600

Development and Engineering Director
9875 N. 85th Ave
Peoria, Arizona 85345
Facsimile No. 623-773-7211
Telephone No. 623-773-7215

All notices and demands shall be deemed effective upon delivery, if delivered personally or by overnight courier, or if transmitted by facsimile, or upon receipt of certified mail.

19. **Waiver.** No waiver by either Party of any breach of any of the covenants or conditions of this Agreement which are to be performed by the other Party shall be construed as a waiver of any succeeding breach of the same or any other covenant or condition.

[\[Signatures appear on following pages\]](#)

CAMINO A LAGO, LLC, a Delaware limited liability company

By: Communities Southwest Management, Inc., an Arizona corporation
Its: Manager

By: _____

Its: _____

By: _____

Its: _____

STATE OF ARIZONA)
)ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____ 2018, by _____ as _____ and _____ as _____ of Camino A Lago, LLC, an Arizona limited liability company ~~-,~~ on behalf of the company.

Notary Public

~~My Commission Expires:~~

~~ESCROW AGENT ACCEPTANCE~~

~~The undersigned Escrow Agent hereby accepts the foregoing Dedication and Reimbursement Agreement, agrees to act as Escrow Agent thereunder this Agreement in strict accordance with its terms, and agrees to comply with the applicable provisions of the Internal Revenue Code with respect to the transactions contemplated hereby.~~

**~~FIDELITY NATIONAL TITLE INSURANCE
COMPANY~~**

By: _____

Its: _____

[\[Notary seal\]](#)