

When recorded, return to:

Paul Gales, Esq.  
Greenberg Traurig, LLP  
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Phoenix, Arizona 85016

Amends 2020-0890006  
Recorded at 10:52 a.m.  
on September 22, 2020

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FIRST AMENDMENT  
TO  
DISTRICT DEVELOPMENT, FINANCING PARTICIPATION AND  
INTERGOVERNMENTAL AGREEMENT  
(MYSTIC AT LAKE PLEASANT HEIGHTS COMMUNITY FACILITIES DISTRICT)

THIS FIRST AMENDMENT, dated as of \_\_\_\_\_ 1, 2023 (hereinafter referred to as this “*Amendment*”), TO DISTRICT DEVELOPMENT, FINANCING PARTICIPATION AND INTERGOVERNMENTAL AGREEMENT (MYSTIC AT LAKE PLEASANT HEIGHTS COMMUNITY FACILITIES DISTRICT), dated as of August 1, 2020, by and among the City of Peoria, Arizona, a municipality duly incorporated and validly existing pursuant to the laws of the State of Arizona (hereinafter referred to as the “*Municipality*”); Mystic at Lake Pleasant Heights Community Facilities District, a community facilities district formed by the Municipality, and duly organized and validly existing, pursuant to the laws of the State of Arizona (hereinafter referred to as the “*District*”); Avanti Strategic Land Investors VIII, L.L.L.P., a limited liability limited partnership duly formed and validly existing pursuant to the laws of the State of Delaware, which has an interest in certain property in the District and is an investor, guarantor and indemnitor but is not a developer (hereinafter referred to as “*Avanti*”) and Lake Pleasant (Phoenix) ASLI VIII, LLC, a limited liability company duly organized and validly existing pursuant to the laws of the State of Delaware, which has an interest in certain property in the District and is a developer, guarantor and indemnitor (hereinafter referred to as “*Mystic*”);

W I T N E S S E T H:

WHEREAS, pursuant to Title 48, Chapter 4, Article 6, Arizona Revised Statutes (hereinafter referred to as the “*Act*”), and Section 9-500.05, Arizona Revised Statutes, the Municipality, the District, Avanti and Mystic entered into a District Development, Financing Participation and Intergovernmental Agreement (Mystic at Lake Pleasant Heights Community Facilities District, dated as of August 1, 2020 (hereinafter referred to as the “*Agreement*”), as a “development agreement” to specify, among other things, conditions, terms, restrictions and requirements for “public infrastructure” (as such term is defined in the Act) and the financing of public infrastructure and subsequent reimbursements or repayments over time; and

WHEREAS, with regard to the real property described in Exhibit A hereto (hereinafter referred to as the “*Property*”) which makes up the real property included within the District, some of such matters are specified in the Agreement, particularly matters relating to the acquisition of certain public infrastructure by the District, the acceptance thereof and the reimbursement or repayment with respect thereto, all pursuant to the Act, such public infrastructure being necessary to develop the Property prior to the time at which the District can itself pay for the construction or acquisition thereof; and

WHEREAS, the Agreement, including as amended by this Amendment, as a “development agreement” is consistent with the “general plan” of the Municipality (as defined in Section 9-461, Arizona Revised Statutes) applicable to the Property on the date the Agreement and on the date this Amendment was and is, respectively, executed;

NOW, THEREFORE, in the joint and mutual exercise of their powers, in consideration of the above premises and of the mutual covenants herein contained and for other valuable consideration, and subject to the conditions set forth herein, the parties hereto agree that:

Section 1. Exhibit B of the Agreement is replaced with Exhibit B hereto.

Section 2. The provisions of the Agreement are otherwise hereby ratified and confirmed in all respects, in particular the indemnification provided by Article VII thereof being effective in all respects as it relates to this Amendment.

Section 3. This Amendment shall be binding upon and shall inure to the benefit of the parties to this Amendment and their respective legal representatives, successors and assigns; provided, however, that none of the parties hereto shall be entitled to assign its right hereunder or under any document contemplated hereby without the prior written consent of the other parties to this Amendment, which consent shall not be unreasonably withheld.

Section 4. Each party hereto shall, promptly upon the request of any other, have acknowledged and delivered to the other any and all further instruments and assurances reasonably requested or appropriate to evidence or give effect to the provisions of this Amendment.

Section 5. This Amendment sets forth the entire understanding of the parties as to the matters set forth herein as of the date this Amendment is executed and cannot be altered or otherwise amended except pursuant to an instrument in writing signed by each of the parties hereto. This Amendment is intended to reflect the mutual intent of the parties with respect to the subject matter hereof, and no rule of strict construction shall be applied against any party.

Section 6. This Amendment shall be governed by and interpreted in accordance with the laws of the State of Arizona.

Section 7. The waiver by any party hereto of any right granted to it under this Amendment shall not be deemed to be a waiver of any other right granted in this Amendment nor shall the same be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived under or by this Amendment.

Section 8. This Amendment may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original, but all of which taken together shall constitute one of the same instrument.

Section 9. (a) Pursuant to Section 38-511, Arizona Revised Statutes, the Municipality or the District may, within three years after its execution, cancel this Amendment, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Amendment on behalf of the Municipality or the District, as applicable, is, at any time while this Amendment is in effect, an employee or agent of Avanti or Mystic in any capacity or a consultant to any other party of this Amendment with respect to the subject matter of this Amendment and may recoup any fee or commission paid or due any person significantly involved in initiating, negotiating, securing, drafting or creating this Amendment on behalf of the Municipality or the District, as applicable, from Avanti or Mystic arising as the result of this Amendment. Avanti and Mystic have not taken and shall not take any action which would cause any person described in the preceding sentence to be or become an employee or agent of Avanti or Mystic in any capacity or a consultant to any party to this Amendment with respect to the subject matter of this Amendment.

(b) To the extent applicable under Section 41-4401, Arizona Revised Statutes, Avanti and Mystic each shall comply with all federal immigration laws and regulations that relate to their employees and their compliance with the “e-verify” requirements under Section 23-214(A), Arizona Revised Statutes. The breach by either of them of the foregoing shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by the Municipality or the District. The Municipality and the District retain the legal right to randomly inspect the papers and records of Avanti and Mystic to ensure that they are complying with the foregoing. Avanti and Mystic shall keep such papers and records open for random inspections during normal business hours by the Municipality or the District. Avanti and Mystic shall cooperate with the random inspections by the Municipality or the District including

granting the District entry rights onto their property to perform such random inspections and waiving their respective rights to keep such papers and records confidential.

(c) To the extent applicable under Section 35-393 et seq., Arizona Revised Statutes, Avanti and Mystic hereby severally, and not jointly, certify that they are not currently engaged in, and for the duration of this Amendment shall not engage in, a boycott of Israel. The term “boycott” has the meaning set forth in Section 35-393, Arizona Revised Statutes. If the Municipality or the District determines that the above certification of Avanti or Mystic is false or that either has breached such agreement, the Municipality or the District, as applicable, may impose remedies as provided by law.

(d) To the extent applicable under Section 35-394, Arizona Revised Statutes, Avanti and Mystic hereby severally, and not jointly, certify they do not currently, and for the duration of this Amendment shall not use: (i) the forced labor of ethnic Uyghurs in the People’s Republic of China, (ii) any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China, and (iii) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China. The foregoing certification is made to the best knowledge of Avanti and Mystic without any current independent investigation or without any future independent investigation for the duration of this Amendment. If either Avanti or Mystic becomes aware during the duration of this Amendment that it is not in compliance with such certification, Avanti or Mystic, as applicable, shall take such actions as provided by law, including providing the required notice to the Municipality and the District. If the Municipality or the District determines that Avanti or Mystic are not in compliance with the foregoing certification, Avanti or Mystic, as applicable, shall take remedial action to comply with such certification.

Section 10. (a) If any provision of this Amendment shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision thereof.

(b) No later than ten (10) days after this Amendment is executed and delivered by each of the parties hereto, the District shall record a copy of this Amendment with the County Recorder of Maricopa County, Arizona.

(c) Unless otherwise expressly provided, the agreements contained herein shall be deemed to be material and continuing, shall not be merged and shall survive any conveyance or transfer provided herein.

[Signature page follows.]

IN WITNESS WHEREOF, the officers of the Municipality and the District have duly affixed their signatures and attestations, and the officers of Avanti and Mystic their signatures, all as of the day and year first written above.

CITY OF PEORIA, ARIZONA

By.....  
Jason Beck, Mayor

ATTEST:

.....  
Lori Dyckman, City Clerk

Pursuant to A.R.S. Section 11-952(D), this Amendment has been reviewed by the undersigned attorney for the Municipality, who has determined that this Amendment is in proper form and is within the powers and authority granted pursuant to the laws of this State to the Municipality.

.....  
Emily Jurmu, City Attorney

MYSTIC AT LAKE PLEASANT HEIGHTS  
COMMUNITY FACILITIES DISTRICT

By.....  
Jason Beck, Chairman, District Board

ATTEST:

.....  
Lori Dyckman, District Clerk

Pursuant to A.R.S. Section 11-952(D), this Amendment has been reviewed by the undersigned attorney for the District, who has determined that this Amendment is in proper form and is within the powers and authority granted pursuant to the laws of this State to the District.

.....  
Emily Jurmu, District Counsel

AGREED TO AND ACCEPTED BY:

AVANTI STRATEGIC LAND INVESTORS VIII,  
L.L.L.P., a Delaware limited liability limited  
partnership

By: APG ASLI VIII GP, LLC, a Delaware  
limited liability company, its sole General  
partner

By: Avanti Properties Group III, L.L.L.P., a  
Delaware limited liability limited  
partnership, its Managing Member

By: APG III GP, LLC, a Florida limited liability  
company, its sole General Partner

By: Avanti Management Corporation, a Florida  
corporation, its sole Manager

By.....

Name: Andrew J. Dubill

Title: Executive Vice President

LAKE PLEASANT (PHOENIX) ASLI VIII, LLC,  
an Arizona limited liability company

By: Avanti Strategic Land Investors VIII,  
L.L.L.P., a Delaware limited liability limited  
partnership, its sole Member

By: APG ASLI VIII GP, LLC, a Delaware  
limited liability company, its sole General  
partner

By: Avanti Properties Group III, L.L.L.P., a  
Delaware limited liability limited  
partnership, its Managing Member

By: APG III GP, LLC, a Florida limited liability  
company, its sole General Partner

By: Avanti Management Corporation, a Florida  
corporation, its sole Manager

By.....  
Name: Andrew J. Dubill  
Title: Executive Vice President

ATTACHMENTS:

- EXHIBIT A -- Legal Description of the Property
- EXHIBIT B -- Description of the Infrastructure



STATE OF FLORIDA        )  
  ) ss.  
COUNTY OF ORANGE     )

The foregoing instrument was acknowledged before me this ..... day of ..... 2023, by Andrew J. Dubill, the Executive Vice President of Avanti Management Corporation, a Florida corporation, the manager of APG III GP, LLC, a Florida limited liability company, the sole General Partner of Avanti Properties Group III, L.L.L.P., a Delaware limited liability limited partnership, the Managing Member of APG ASLI VIII GP, LLC, a Delaware limited liability company, the sole General Partner of Avanti Strategic Land Investors VIII, L.L.L.P., a Delaware limited liability partnership, on behalf of the partnership.

.....  
Notary Public

My commission expires:

.....

STATE OF FLORIDA        )  
  ) ss.  
COUNTY OF ORANGE     )

The foregoing instrument was acknowledged before me this ..... day of ..... 2023, by Andrew J. Dubill, the Executive Vice President of Avanti Management Corporation, a Florida corporation, the manager of APG III GP, LLC, a Florida limited liability company, the sole General Partner of Avanti Properties Group III, L.L.L.P., a Delaware limited liability limited partnership, the Managing Member of APG ASLI VIII GP, LLC, a Delaware limited liability company, the sole General Partner of Avanti Strategic Land Investors VIII, L.L.L.P., a Delaware limited liability partnership, the sole Member of Lake Pleasant (Phoenix) ASLI VIII, LLC, a Delaware limited liability company, on behalf of the company.

.....  
Notary Public

My commission expires:

.....

Notice required by A.R.S. Section 41-313: The foregoing notarial certificate(s) relate(s) to the First Amendment, dated as of \_\_\_\_\_ 1, 2023, to the District Development, Financing Participation and Intergovernmental Agreement (Mystic at Lake Pleasant Heights Community Facilities District), dated as of August 1, 2020, executed by the City of Peoria, Arizona, an Arizona municipality, Mystic at Lake Pleasant Heights Community Facilities

District, an Arizona community facilities district, Avanti Strategic Land Investors VIII, LLC, a Delaware limited liability company and Lake Pleasant (Phoenix) ASLI VIII, LLC, a Delaware limited liability company (the “Notarized Document”). The Notarized Document contains a total of ..... pages.

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

[TO BE INCLUDED IN RECORDED VERSION]

## EXHIBIT B

### DESCRIPTION OF THE INFRASTRUCTURE

1. That section of El Mirage Road from Lone Mountain Parkway to the Cloud Road alignment (approximately 19,340 lineal feet) including related sewer, water, concrete, storm drain, bridge improvements and landscaping improvements as required by the Municipality.
2. That section of Westland Road from the western property line of Mystic to the eastern property line of Mystic (approximately 6,103 lineal feet) including related sewer, water, concrete and landscaping improvements as required by the Municipality.
3. That section of Gambululo Drive proceeding south from Westland Boulevard serving Mystic Parcels A, B, C and D (approximately 3,420 lineal feet) including related sewer, water, concrete and landscaping improvements as required by the Municipality.
4. That section of collector street proceeding east from Garambullo Drive to El Mirage Road to be known as Forest Pleasant Place (approximately 4,057 lineal feet) serving the multi-use parcels including related sewer, water, concrete and landscaping improvements as required by the Municipality.
5. That section of collector street proceeding east from El Mirage Road serving parcel B-12 (approximately 1,900 lineal feet) including sewer, water, concrete and landscaping improvements as required by the Municipality.