

WHEN RECORDED RETURN TO:

Sherman & Howard L.L.C.
Attn: Zachary D. Sakas
7033 East Greenway Parkway, Suite 250
Scottsdale, Arizona 85254-2080

**CADENCE COMMUNITY FACILITIES DISTRICT
(CITY OF MESA, ARIZONA)
HOMEBUYER CONFIRMATORY WAIVER AND
DEVELOPMENT AGREEMENT PERTAINING TO
ASSESSMENT DISTRICT NO. 1**

This Cadence Community Facilities District (City of Mesa, Arizona) Homebuyer Confirmatory Waiver and Development Agreement Pertaining to Assessment District No. 1, effective as of September 24, 2018, and dated as of June 10, 2019 (this “*Agreement*”), for purposes of Title 9, Chapter 4, Article 8 of the Arizona Revised Statutes, as amended (“A.R.S.”), is entered into by and among the Cadence Community Facilities District (City of Mesa, Arizona) (the “*District*”) and the undersigned owners (the “*Homebuyers*”, and collectively with any other homebuyers, owners and holders of any interest in any portion of the Property (as defined herein), the “*Interested Parties*”) of the residential lot or lots described in Exhibit A attached hereto and located within the District (each a “*Lot*” and, collectively, the “*Lots*”).

WHEREAS, the City of Mesa, Arizona, an Arizona municipal corporation, and entities related to PPGN Holdings, LLLP, a Delaware limited liability partnership (the “*Developer*”) are parties to that certain Pre-Annexation Development Agreement recorded October 2, 2012 as Instrument No. 2012-0894682 in the Official Records of Maricopa County, Arizona, as the same may be further amended from time to time (the “*Development Agreement*”) in connection with the planned community development project on the land subject thereto known as “Cadence” (the “*Project*”); and

WHEREAS, pursuant to the Development, Financing Participation, Waiver and Intergovernmental Agreement for Cadence Community Facilities District (City of Mesa, Arizona), dated November 19, 2015, and recorded November 23, 2015 as Instrument No. 2015-0833434 in the Official Records of Maricopa County, Arizona (the “*District Agreement*”), the Developer requested the District to form assessment district number 1 (the “*Assessment District No. 1*”) comprised of the Property, which includes the Lots, in order to provide for certain public infrastructure improvements plus all costs connected with the public infrastructure purposes related thereto (as defined in Title 48, Chapter 4, Article 6, Arizona Revised Statutes, as amended (the “*Act*”)), such public infrastructure improvements to be located on or off the Property; and

WHEREAS, the Interested Parties, including the Homebuyers, previously executed that certain Property Owner Consent, Waiver and Agreement, attached to and part of the Cadence Community Facilities District (City of Mesa, Arizona) Waiver and Development Agreement Pertaining to the To Be Formed Assessment District No. 1, dated as of April 18, 2018 and recorded May 4, 2018 as Instrument No. 2018-0341875, as thereafter amended pursuant to the First Amendment to Cadence Community Facilities District (City of Mesa, Arizona) Waiver and Development Agreement Pertaining to the To Be Formed Assessment District No. 1, dated as of September 24, 2018 and recorded October 25, 2018 as Instrument No. 2018-0799735 (collectively the “*Assessment District No. 1 Waiver*”), and the Homebuyers are bound by the terms, waivers and agreements set forth in the Assessment District No. 1 Waiver; and

WHEREAS, the Assessment District No. 1 Waiver set forth the boundaries of Assessment District No. 1 and included a legal description of the real property comprising Assessment District No. 1 (the “*Property*”); and

WHEREAS, the Homebuyers shall be bound by the terms, waivers and agreements as set forth, and to the extent provided, in this Agreement and shall be bound by the Assessments (as defined herein) recorded against the Lot or Lots owned by the Homebuyers, which are a part of the Property; and

WHEREAS, subject to the terms of the District Agreement and the Assessment District No. 1 Waiver, the proposed public infrastructure purposes to be provided by the Assessment District No. 1 shall consist of:

A. Acquisition, installation and/or construction of all or a portion of the public infrastructure (as such term is defined in the Act) described in the Assessment District No. 1 Waiver and all incidental improvements related thereto;

B. All engineering, legal, financial and incidental costs and expenses incurred in completing the acquisition, installation and/or construction of the public infrastructure described in paragraph A above and the costs and expenses incurred in connection with the levy of the Assessments and the issuance and sale of the Assessment District No. 1 bonds;

C. Capitalized interest on such Assessment District No. 1 bonds, if any, for a period not to exceed the aggregate time for completion of all construction of and acquisition of the public infrastructure described herein, plus six (6) months thereafter; and

D. A debt service reserve fund created for such Assessment District No. 1 bonds.

Collectively, the public infrastructure improvements and public infrastructure purposes described in paragraphs A through D above and the costs and expenses thereof shall hereinafter be referred to as the “*Work*”; and

NOW, THEREFORE, the Interested Parties and all future owners or holders of any interest in any portion of the Property hereby agree as follows:

1. **Development Agreement and Agreement Allocating Assessments.**

This Agreement is a “development agreement” within the meaning of Arizona Revised Statutes § 9-500.05 and the written agreement allocating the Assessments is authorized pursuant to A.R.S. § 48-721, as amended.

2. **Reliance on Agreement.** This Agreement does not create a binding commitment on the part of the District or Assessment District No. 1 to sell or deliver the Assessment District No. 1 bonds or construct, install or acquire any or all of the Work, or if it does construct, install or acquire any of the Work, to construct, install or acquire it pursuant to any existing proposals. However, the District and Assessment District No. 1, in going forward with the Work, are doing so in reliance upon this Agreement to have the Property, including the Lots, included within Assessment District No. 1 and assessed for the costs thereof.

3. **Review and Approval of the Boundaries and Scope of Work; Acknowledgement of Assessment.**

a. The Interested Parties, including the Homebuyers, have reviewed or have had the opportunity and right to review the boundaries of Assessment District No. 1, the preliminary plans and specifications detailing the Work and the current estimate of the costs of the Work. The parties agree the costs of the Work shall be spread among the parcels (residential lots) comprising the Property, including the Lots, within Assessment District No. 1 utilizing a methodology determined by the District Engineer (the “*Engineer*”) based on the expected benefit to the residential lots to be developed on the Property, provided the Engineer’s estimate of the costs of Work (the “*Engineer’s Estimate*”) will not exceed \$2,012,500.00 and such Assessment is allocated and levied to each developable parcel (residential lot) within the Assessment District No. 1 in an amount not to exceed \$3,500.00 per parcel (residential lot).

b. This Agreement shall be construed to be an express consent by the Interested Parties, including the Homebuyers, and all future owners or holders of any interest in any portion of the Lots that: (i) the District may take all required actions as necessary to form the Assessment District No. 1 in accordance with the provisions of the District Agreement and the Act; and (ii) the District and Assessment District No. 1, may incur costs and expenses necessary to complete or acquire the Work.

c. The Interested Parties, including the Homebuyers, acknowledge that the District or Assessment District No. 1, shall levy and collect an assessment on the Property, including the Lots, sufficient to pay all costs and expenses of the Work (including Work benefitting the Property in Assessment District No. 1, which Work may be constructed, installed or performed prior to or after the execution hereof) and the costs of levying the assessment and the issuance of the Assessment District No. 1 bonds, but not in excess of the Engineer’s Estimate prepared in accordance with the applicable requirements of the District and the Act (the “*Assessments*”).

4. **No Protest, Objection or Request for Hearings.** The Interested Parties, including the Homebuyers, shall not protest the prior formation of Assessment District No. 1, acknowledges that Assessment District No. 1 has taken all steps necessary to levy, confirm and record Assessments against the Property, including the Lots, and acknowledges the District's authority to issue such Assessment District No. 1 bonds supported by the Assessments. The Interested Parties, including the Homebuyers, acknowledge and agree, to the fullest extent permitted by applicable law, that pursuant to A.R.S. § 9-500.05, the provisions of A.R.S. § 32-2181 do not apply and that pursuant to this Agreement the parties waive their right to appear before the Board of Directors of the District (the "*District Board*") on any hearing required at or prior to the confirmation of the Assessments and waive their right to: (a) protest and object to the extent of the Assessment District No. 1 pursuant to A.R.S. §§ 48-579 and 48-580; (b) protest the award of contract pursuant to A.R.S. § 48-584; and (c) object to the Assessments on procedural grounds, or as to the legality of the Assessments, pursuant to A.R.S. § 48-590.

5. **Waiver of Procedural Deficiencies and Irregularities.** The Interested Parties, including the Homebuyers, with full knowledge of the provisions of Title 48, Chapter 4, Articles 2 and 6, Arizona Revised Statutes, as amended, and their rights thereunder (or having obtained counsel to advise them of the provisions and their rights), expressly waive any and all irregularities, illegalities or deficiencies which may now or hereafter exist in the acts or proceedings resulting in the formation of the District, the formation of the Assessment District No. 1, the adoption of the resolution of intention and ordering the Work, the adoption of the resolution approving the Assessments and assessment diagram, the levying of the Assessments against the Property, including the Lots, and the issuance of Assessment District No. 1 bonds secured by the Assessments levied against the Property, including the Lots.

6. **Waiver.** The Interested Parties, including the Homebuyers, with full knowledge of the provisions and their rights under the provisions of law hereafter referenced, expressly waive the following:

a. any defect in the proceedings establishing the District, as required by A.R.S. § 48-702 through § 48-708, inclusive, and agree that, to the extent of any defect, this Agreement shall constitute the petitions required by law to form and establish the District without conducting an election;

b. the providing of any and all notices and response time periods related to such notices provided by A.R.S. § 48-576 *et seq.*, as amended, including but not limited to the following:

i. mailing, posting and publication, as applicable, of any notice required in connection with: (A) the adoption of the resolution of intention and ordering the Work, (B) the notice of proposed improvements, (C) the adoption of the resolution approving the Assessments and the assessment diagram, (D) notice of passage of the resolution ordering the Work, (E) notice of award of contract and (F) any other steps necessary in connection with the Assessment District No. 1 or the Work; and

ii. any and all notices pertaining to the levying of the Assessments, including notice of any hearing on the Assessments;

c. any and all objections and protests to the extent of the Assessment District No. 1;

d. any and all objections to the adoption and approval by the District or the Assessment District No. 1 of the plans and specifications, the Engineer's Estimate and the assessment diagram, all of which provide for and effectuate the completion of the Work;

e. any and all protest rights against the Work and objections to the awarding of one or more acquisition or construction contracts for the Work;

f. any and all claims or defenses, known or unknown, they may now or subsequently have against the Assessments or the Assessment District No. 1 bonds; and

g. all demands for cash payment of the Assessments.

Nothing contained in this Agreement shall be construed as a waiver by any party to this Agreement of any notice required by A.R.S. §§ 48-600 or 48-601 of delinquent assessment installments.

7. **Work as More Than Local and Ordinary Benefit.** The Interested Parties, including the Homebuyers, agree with the District's determination that the Work is of more than local or ordinary public benefit and that the Work constitutes a public infrastructure purpose and that the Property, including the Lots, which is subject to the Assessments receives the primary benefit from the Work in an amount not less than the Engineer's Estimate of the costs thereof, and not less than the portion of the Assessment levied against each Lot and the other parcels or residential lots comprising the Property.

8. **Public Bidding.** The public bidding requirements set forth in A.R.S. §§ 48-581 and 48-584 have been or will be complied with by the District with respect to each contract comprising the Work.

9. **Acquisition of the Work.** The District or the Assessment District No. 1 may, immediately upon issuance of such Assessment District No. 1 bonds, acquire all or part of the Work.

10. **Acknowledgement of Assessment.** The Interested Parties, including the Homebuyers, and all future owners or holders of any interest in any portion of the Lots, acknowledge the District has levied the Assessments in an amount not greater than the Engineer's Estimate against all developable parcels (residential lots, of which the Lot or Lots are a part) located within the boundaries of Assessment District No. 1, as provided in Section 3.a, not in excess of \$3,500.00 per developable parcel (residential lot); and that such Assessments shall be collected and foreclosed in accordance with A.R.S. § 48-601 *et seq.*, as

amended, and in accordance with any other documents executed and delivered in connection with the delivery of the Assessment District No. 1 bonds.

11. **Recording and Validity of Assessments.** The Interested Parties, including the Homebuyers, and all future owners or holders of any interest in any portion of the Property, acknowledge the District recorded the Assessments against the Property (including the Lot or Lots) and acknowledge such recording of the Assessments constitutes valid and enforceable first liens against the respective parcels comprising the Property (including the Lot or Lots) as shown and the amounts set forth in the Assessments, subject only to the lien for ad valorem taxes and prior special assessments.

12. **Assessments to Go to Bond.** The Assessments are already recorded and the Interested Parties, including the Homebuyers, waive the ability to pay the Assessments in cash. With respect to Assessments not paid in cash, a certified list of unpaid Assessments has been filed and recorded in the offices of the District superintendent of streets and the Interested Parties, including the Homebuyers, acknowledge that Assessment District No. 1 bonds amortizing the payment of the Assessments over not to exceed twenty-five (25) years shall be issued and sold at the sole and absolute discretion of the District.

13. **No Reduction of Interested Party Obligation.** The inability of the District or Assessment District No. 1 to assess all or any portion of the costs of the Work shall not reduce the obligation of an Interested Party, including the Homebuyers, and all future owners or holders of any interest in any portion of the Property, such as the Lot or Lots, so long as the Interested Parties, including the Homebuyers, or future owner or holder of any interest in any portion of the Property owns all or part of any parcel comprising the Property, such as a Lot or the Lots, to pay the Assessment levied against such portion of the Property, such as a Lot, and provided that the aggregate costs of the Work are not reduced.

14. **Waiver of Collateral Document Provisions.** The Interested Parties, including the Homebuyers, and all future owners or holders of any interest in any portion of the Property, including the Lot or Lots, expressly waive any and all provisions of any collateral security instruments relating to the Property, including the Lot or Lots, which prohibit the formation of the Assessment District No. 1, completion of the Work and levying and recording of the Assessments against the Property, including the Lot or Lots.

15. **Encumbrance of the Property.** The provisions, terms and restrictions of this Agreement shall run with and bind the Property, including the Lot or Lots, as equitable servitudes and also as covenants running with the land.

16. **Recording.** This Agreement may be recorded in the office of the County Recorder of Maricopa County, Arizona.

17. **Successors and Assigns.** This Agreement, when executed by each such party, shall inure to the benefit of and (except as otherwise expressly provided herein) be binding upon the Interested Parties, including the Homebuyers, and their future grantees, successors and assigns, and any future owner or holder of any interest in any portion of the

Property, including the Lot or Lots. There shall be no third-party beneficiaries of this Agreement.

18. **Authority.** The Interested Parties, including the Homebuyers, individually warrant, with respect to their own status only, that they have the requisite authority to enter into this Agreement and bind themselves, or the entity on whose behalf they are signing, and, to the best of their knowledge, no other consents are required.

19. **Counterparts.** For convenience, this Agreement may be executed in one or more counterparts and each executed counterpart shall for all purposes be deemed an original and shall have the same force and effect as an original, but all of which together shall constitute in the aggregate but one and the same instrument. This Agreement will constitute the entire agreement between the parties, and supersedes all previous written or oral agreements or understandings regarding the subject matter of this Agreement.

20. **Failure to Sell Bonds.** In the event the District fails or is otherwise unable to sell and/or deliver Assessment District No. 1 bonds in an amount sufficient to allow the District to pay the amounts needed to pay the costs of the Work, or if the final hearing regarding the levy of the Assessments does not occur on or before March 31, 2019, then, upon written request of the Developer acting on behalf of the owner or owners of the real property within the Assessment District No. 1, including the Interested Parties, the District agrees to adopt proceedings that dissolve and terminate Assessment District No. 1 or any Assessments (including termination of this Agreement), established by the District, encumbering the Property, including the Lot or Lots.

21. **Opportunity to Engage Counsel.** The Interested Parties, including the Homebuyers, acknowledge they have had the opportunity to engage and consult their own legal counsel and financial advisors in connection with the execution and delivery of this Agreement.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the undersigned have duly affixed their signatures,
all as of the day and year first written above.

CADENCE COMMUNITY FACILITIES
DISTRICT (CITY OF MESA, ARIZONA), an
Arizona political subdivision and municipal
corporation

By: _____
District Chairman

ATTEST:

District Clerk

APPROVED AS TO FORM:

Sherman & Howard L.L.C., Special District Counsel

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this ____ day of June,
2019, by John Giles, Chairman of the Cadence Community Facilities District (City of Mesa,
Arizona), an Arizona political subdivision and municipal corporation.

(Seal and Expiration Date)

Notary Public in and for the State of Arizona

Signature Page to Homebuyer Confirmatory Waiver and Development Agreement dated as of the date first written above:

HOMEBUYERS:

New Home Address: _____

By: _____
(signature)

Printed Name: _____

Date: _____

By: _____
(signature)

Printed Name: _____

Date: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, whose identity was proven to me on the basis of satisfactory evidence to be the person who he or she claims to be, and acknowledges that he/she signed the above/attached document.

(Affix Notary Seal Here)

Notary Public

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, whose identity was proven to me on the basis of satisfactory evidence to be the person who he or she claims to be, and acknowledges that he/she signed the above/attached document.

(Affix Notary Seal Here)

Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF LOTS

PARCEL A:

LOTS 6, 10 THROUGH 14, INCLUSIVE, 16, 20 THROUGH 29, INCLUSIVE, AND 31 THROUGH 43, INCLUSIVE, OF FINAL PLAT PARCEL A AT PPGN, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 1315 OF MAPS, PAGE 30; AND THEREAFTER AFFIDAVIT OF CORRECTION RECORDED JULY 24, 2017 AS 2017-0537866 OF OFFICIAL RECORDS.

PARCEL B:

LOTS 77, 78, 80, 81 THROUGH 87, INCLUSIVE, 96 THROUGH 99, INCLUSIVE, 100, 102 AND 105 OF FINAL PLAT PARCEL B AT PPGN, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 1315 OF MAPS, PAGE 32; AND THEREAFTER AFFIDAVIT OF CORRECTION RECORDED JULY 21, 2017 AS 2017-0534782 OF OFFICIAL RECORDS.

PARCEL C:

LOTS 140 AND 143 THROUGH 151, INCLUSIVE, AND 161 OF FINAL PLAT PARCEL C AT PPGN, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 1315 OF MAPS, PAGE 26; AND THEREAFTER AFFIDAVIT OF CORRECTION RECORDED JULY 21, 2017 AS 2017-0534785 OF OFFICIAL RECORDS.

PARCEL D:

LOTS 167 THROUGH 176, INCLUSIVE, 201, AND 202 OF FINAL PLAT PARCEL D AT PPGN, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 1315 OF MAPS, PAGE 31.

PARCEL E:

LOT 270 OF FINAL PLAT PARCEL E AT PPGN, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 1315 OF MAPS, PAGE 33.

PARCEL G:

LOTS 378 THROUGH 380, INCLUSIVE, 382, 384 THROUGH 386, INCLUSIVE, AND 395 OF FINAL PLAT PARCEL G AT PPGN, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 1315 OF MAPS, PAGE 29; AND THEREAFTER AFFIDAVIT OF CORRECTION RECORDED JULY 21, 2017 AS 2017-0534786 OF OFFICIAL RECORDS.

PARCEL H:

LOTS 451, 454 THROUGH 456, INCLUSIVE, 477 THROUGH 481, INCLUSIVE, 483 THROUGH 485, INCLUSIVE, 487, 489, 491, 493, AND 495 OF FINAL PLAT PARCEL H AT PPGN, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY

RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 1315 OF MAPS, PAGE 24; AND THEREAFTER AFFIDAVIT OF CORRECTION RECORDED JULY 21, 2017 AS 2017-0534787 OF OFFICIAL RECORDS.

PARCEL I:

LOTS 510 THROUGH 512, INCLUSIVE, 514 THROUGH 518, INCLUSIVE, AND 521 THROUGH 524, INCLUSIVE, OF FINAL PLAT PARCEL I AT PPGN, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 1315 OF MAPS, PAGE 23; AND THEREAFTER AFFIDAVIT OF CORRECTION RECORDED JULY 24, 2017 AS 2017-0534788 OF OFFICIAL RECORDS.