

**INTERSECTION CONSTRUCTION, CONTRIBUTION  
AND CREDIT AGREEMENT**

**BETWEEN CITY OF FLORENCE**

**AND**

**APIC FLORENCE HOLDINGS, LLC**

**INTERSECTION CONSTRUCTION, CONTRIBUTION  
AND CREDIT AGREEMENT**

THIS INTERSECTION CONSTRUCTION, CONTRIBUTION AND CREDIT AGREEMENT (“**Agreement**”) between the CITY OF FLORENCE, a municipal corporation organized and existing under the laws of the State of Oregon (“**City**”), and APIC FLORENCE HOLDINGS, LLC, an Oregon limited liability company, its successors and assigns (“**Developer**”), is made and entered into this \_\_\_ day of \_\_\_, 2021 (“**Effective Date**”). The City and Developer are the “Parties” to this Agreement.

**RECITALS**

**A.** Developer is the developer of that certain real property comprising 9.4 acres more or less within the municipal boundaries of the City and legally described on Exhibit A attached hereto (“**Property**”).

**B.** On November 9, 2020, the City Council approved Resolution No. 28 Series 2020, affirming the Planning Commission Approval of Appealed Resolution PC 20 07 PUD 01/Resolution PC 20 08 SUB 01 with amended conditions (“**Approvals**”) authorizing the development of the planned community described therein (“**Master Community**”). The Master Community is a Class I planned community within the meaning of ORS 94.550(3).

**C.** The Master Community contains lots for the development of several different types of residential housing and multi-family buildings for which there is an unmet need in the City. There are 31 “Residential Housing Lots”, 49 “Townhome Lots”, and 2 “Apartment Lots” to accommodate 40 multi-family apartment units, and Common Areas, for a total of 120 dwelling units. The Maser Community may be developed in phases in accordance with the Approvals as finally approved.

**D.** Condition 11 of the Approvals require the Parties to enter into an agreement addressing the "construction of a southbound left-hand turn lane at the intersection of 35th Street and Rhododendron Drive (“**Intersection**”) and its intersection reconstruction (“**Intersection Improvements**”). Improvements would be funded in a combination of proportional SDC funding and/or credits with City participation and developer contribution.

**E.** Developer has submitted a Memorandum dated June 8, 2021 by Kittleson & Associates, Project #24714, which indicates that the Master Community will generate 216 weekday southbound left turns at the Intersection, and recommends a 9.5% proportionate share assessment of Intersection Improvement Costs (as defined in Section 2 below) to the Developer.

WHEREAS, in consideration of the mutual agreements of the Parties set forth herein, as well as other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby covenant and agree as follows:

## AGREEMENTS

1. **BASIS OF AGREEMENT.** This Agreement establishes certain roles and responsibilities with respect to the Intersection Improvements in accordance with Condition 11 of the Approvals.

2. **INTERSECTION IMPROVEMENT CONSTRUCTION.** Subject to available funding and Section 3 below, the City shall design and construct the Intersection Improvements in accordance with applicable laws, including those related to the design, safety and construction, in a prudent and financially responsible fashion, at the City's sole cost and expense ("**Intersection Improvement Costs**"). The Intersection Improvement Costs shall be limited solely to the costs to design and construct the southbound left-hand turn lane at the intersection of 35th Street and Rhododendron Drive ("**Turn Lane**") and any reconstruction of the intersection made necessary by the construction of the Turn Lane. The City certifies that the Intersection Improvements constitute a "capital improvement" within the meaning of ORS 223.299(1)(D).

3. **DEVELOPER CONTRIBUTION.** Provided the City has commenced construction of the Intersection Improvements pursuant to construction contracts and a design finally approved by the City Council, Developer shall pay to the City up to 9.5% of the Intersection Improvement Costs, but in no event to exceed \$40,000 ("**Maximum Amount**") for the entire Master Community ("**Total Developer Contribution**"). The Total Developer Contribution shall be paid in percentage shares, each upon receipt of a permanent Certificate of Occupancy ("**CofO**") for any Phase of the Master Community (as Phase is defined and described in the Final PUD Permit), payable in the percentage equal to the number of units receiving a CofO divided by 120, but in no event to exceed 100% of the Total Developer Contribution. If the City has not then commenced construction of the Intersection Improvements as above provided, then Developer shall not be required to make any Total Developer Contribution, but shall be required to pay System Development Charges in full.

4. **SYSTEM DEVELOPMENT CHARGES & CREDITS.** All of the City's System Development Charges for each Phase of the Master Community as determined in the Final PUD shall be paid upon receipt of a CofO for such Phase; provided, however, the City shall grant developer a credit against such charges ("**SDC Credits**") in an amount equal to the dollar amount of the Total Developer Contribution to be paid at such time in accordance with Section 3 above.

5. **TERM.** The term of this Agreement shall begin on the Effective Date and continue for fifteen (15) years.

6. **GENERAL PROVISIONS.**

a. **Authority; Severability.** The City and Developer each represent and warrant it has the respective power and authority, and is duly authorized to execute, deliver and perform its obligations under this Agreement. The Parties intend this Agreement to be interpreted to the full extent authorized by law as an exercise of the City's authority to enter into such agreements, and this Agreement shall be construed to reserve to the City with respect to the Intersection Improvements only that police power authority which is prohibited by law from being subject to a mutual agreement with consideration. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of Developer and the City. If any provision of this Agreement

is determined to be unenforceable or invalid by a court of law, then (i) this Agreement shall thereafter be modified and/or further authorized to implement the intent of the Parties to the maximum extent allowable under law, (ii) the Parties agree to seek diligently to modify the Agreement consistent with the court decision, and (iii) neither party shall undertake any actions inconsistent with the intent of this Agreement until the modification to this Agreement has been completed.

**b. Amendment; Minor Modifications.** Any amendment to this Agreement must be approved by the City and Developer; provided, however, a designated City official may approve administrative minor modifications hereto, which administrative modifications shall not be deemed amendment to this Agreement. Administrative minor modifications mean those changes that do not materially alter the obligations or benefits of either part hereunder.

**c. Recording; No Third Party Beneficiary.** This Agreement or a memorandum thereof shall be recorded with the Lane County Recorder's Office. This Agreement is made and entered into for the sole protection and benefit of the Parties, their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

**d. Notices.** All communications, notices and demands of any kind which a party under this Agreement requires or desires to give to any other party shall be in writing and either (i) delivered personally (including delivery by professional courier services), (ii) sent by email transmission with an additional copy mailed first class, or (iii) deposited in the U.S. mail, certified mail postage prepaid, return receipt requested, to the addresses set forth with each signature. Notice by hand delivery or email shall be effective upon receipt. If deposited in the mail, notice shall be deemed delivered 48 hours after deposited. Any party at any time by notice to the other party may designate a different address or person to which such notice or communication shall be given.

If to the City:

and to:

If to the Developer:

Ashlee Sorber  
General Counsel  
American Pacific International Capital, Inc.  
5 Thomas Mellon, Suite 305  
San Francisco, CA 94134  
email: asorber@apicincus.com

and to:

Davis Wright Tremaine  
Attn: Stephen Ledoux  
1300 SW 5th Avenue, Suite 2400  
Portland, OR 97201  
email: stephenledoux@dwt.com

**e. Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon. Any action with respect to this Agreement shall be brought in Lane County Circuit Court, Oregon.

**f. Multiple Originals.** This Agreement may be executed in two (2) or more facsimile or .pdf counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument.

**g. Headings; Recitals and Attachments.** The headings in this Agreement are inserted for reference only and shall not be construed to expand, limit or otherwise modify the terms and conditions of this Agreement. The recitals to this Agreement and Exhibits A are incorporated in this Agreement by this reference as if fully set forth.

**h. Dispute Resolution.**

i. If any dispute arises out of any aspect of this Agreement, the Parties must first try in good faith to settle the dispute through mediation. This mediation must commence within 60 days after any party to the Agreement notifies the other party requesting mediation to resolve a dispute.

ii. If the Parties are not able to resolve their dispute through mediation, they agree to submit the matter for resolution through binding arbitration. The arbitrator shall be mutually chosen by both Parties. In no case may a mediator who has mediated a claim serve as the arbitrator on the same claim. If the Parties cannot agree on an arbitrator, either party or the Parties jointly may apply to the presiding judge of the Lane County Circuit Court to appoint an arbitrator. The arbitrator will consult with the Parties and establish the rules and procedures for the arbitration that, in light of the nature of the matter under dispute, will provide an efficient and fair means for each of the Parties to present its case. Among other things, the arbitrator will establish a schedule for completing the arbitration and issuing a decision. The decision of the arbitrator will be final and may be enforced by an action brought in Lane County Circuit Court. In such an action, the prevailing party is entitled to recover all costs and expenses, including all legal fees, incurred in that action.

iii. The Parties will bear the costs of retaining a mediator or an arbitrator equally.

IN WITNESS WHEREOF, this Agreement has been entered into by the City and Developer effective on the last date of signature below.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2021

**CITY OF FLORENCE**

\_\_\_\_\_  
City Manager

Approved as to Form

\_\_\_\_\_  
City Attorney

**APIC FLORENCE HOLDINGS, LLC,**  
an Oregon limited liability company

By: \_\_\_\_\_  
Wilson Chen, Its Manager

**EXHIBIT A**  
**LEGAL DESCRILPTION**