

Upon recordation, return to:
Earl & Curley, P.C.
Attn: Taylor C. Earl
3101 N. Central Ave., Suite 1000
Phoenix, AZ 85012

EASEMENT AGREEMENT

This EASEMENT AGREEMENT (“**Agreement**”) is created and executed this ____ day of _____ 202__ by Polk Devco, LLC, an Arizona limited liability company (“Devco”) and DSC3, LLC, an Arizona limited liability company (“**DSC3**”). Hereafter, Devco and DSC3 are referred to collectively as the “**Parties**” and individually as a “**Party.**”

RECITALS

- A. Devco is the owner of the real property legally described in **Exhibit A (“Devco Property”)**.
- B. DSC3 is the owner of the real property legally described in **Exhibit B (“DSC3 Property”)** (the Devco Property and the DSC3 Property are hereafter referred to collectively as the “**Properties**”).
- C. Pursuant to abandonment request _____, the City Council of the City of Scottsdale, a municipal corporation in the state of Arizona (the “**City**”) approved the abandonment of the property legally described in **Exhibit C (“Abandonment Area”)**, which was formerly a section of public right of way known as Polk Street (“**Abandonment Approval**”).
- D. As part of the City process associated with the Abandonment Approval, a portion of the Abandonment Area was conveyed to DSC3 (“**DSC3 Abandonment Portion**”) and the remaining area was conveyed to Devco.
- E. Prior to the recording of this Agreement, DSC3 will have conveyed to Devco the DSC3 Abandonment Portion, making Devco the owner of the entire Abandonment Area.
- F. In conjunction with the execution of this Agreement, to fulfill a condition of the Abandonment Approval, DSC3 has executed and conveyed to the City a non-vehicular

access easement on the entire western boundary of the DSC3 Property to prevent vehicular access directly from Miller Road onto the DSC3 Property.

- G. The DSC3 Property contains a multifamily residential use that has historically accessed the DSC3 Property over the Abandonment Area, when it was held by the City as public right of way.
- H. The Parties desire to execute this Agreement to provide permanent, legal access over a portion of the Abandonment Area to ensure DSC3 and the Occupants of the DSC3 Property (defined hereafter) have permanent legal access to the DSC3 Property.

AGREEMENT

1. Recitals. The Recitals set forth above are hereby incorporated into the terms and provisions of this Agreement by this reference.
2. Access Easement. Devco hereby establishes for the benefit of the DSC3 Property and does hereby convey to the DSC3 Property, a permanent, non-exclusive, and appurtenant access easement over the area legally described and depicted in **Exhibit D** (“**Access Easement Area**”), which shall allow the owners, occupants, lessees, guests, invitees, agents, contractors, permittees of the DSC3 Property and emergency personnel servicing the DSC3 Property (collectively, “**Occupants of DSC3 Property**”) the right to cross over and through the Access Easement Area (“**Access Easement**”). The Access Easement shall not include the right to park vehicles or to otherwise leave equipment or other chattel within the Access Easement Area.
3. Maintenance of the Access Easement Area. Devco shall maintain the Easement Area at its sole cost and expense in a condition reasonably commensurate with the condition of public roadways within the City. Notwithstanding any language to the contrary in this Agreement, Devco shall not be required to conduct the first improvement of the condition of the Easement Area prior to requesting a final certificate of occupancy from the City for development on the Devco Property.
4. Devco Use of Access Easement Area. The owners, occupants, lessees, guests, invitees, agents and permittees of the Devco Property (collectively, “**Occupants of Devco Property**”) retain the right to use the Access Easement Area in any lawful manner not in conflict with the rights granted to DSC3 herein and may obtain written approval for such conflicting use from the owner(s) of the DSC3 Property, which grant shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, Devco reserves the right to conduct driveway construction and driveway maintenance activities (“**Driveway Construction/Maintenance Activities**”) within the Easement Area so long as (a) access to the DSC3 Property over the Easement Area is preserved, with an allowance for such continuing access to be temporarily modified from its normal form during the period in which Driveway Construction/Maintenance Activities are occurring (“**Temporary Access Limitations**”) and (b) written notice of such Driveway Construction/Maintenance Activities and Temporary Access Limitations, along with a

detailed plan of how access to the DSC3 Property will be preserved during the course of Driveway Construction/Maintenance Activities, is provided to DSC3 at least 15 business days in advance of any such Driveway Construction/Maintenance Activities commencing. DSC3 agrees to comply with the access plan of the Temporary Access Limitations during the course of the Driveway Construction/Maintenance Activities and to require such compliance of the tenants of the DSC3 Property and all other Occupants of the DSC3 Property that may be impacted and to be liable for any damages caused by any of the Occupants of the DSC3 Property to any improvements being installed or maintenance efforts occurring as part of the Driveway Construction/Maintenance Activities.

5. Indemnity. The owner(s) of the DSC3 Property shall indemnify, defend, and hold harmless the Occupants of the Devco Property from and against all claims, demands, suits, costs, expenses, liabilities, fines, penalties, losses, damages and injury to person, property or otherwise, court costs and reasonable attorney's fees, arising from or in any respect related to any exercise of or use of the Access Easement Area by the Occupants of the DSC3 Property pursuant to the easement allowances granted in this Agreement, except to the extent such injury, loss, or damage shall have been caused by the gross negligence or willful misconduct of any of the Occupants of the Devco Property.
6. Run with the Land. This Agreement and its provisions, including the rights, covenants, and restrictions established herein, shall run with the Properties for all purposes and shall be binding upon and inure to the benefit and burden (as the case may be) of the Occupants of the DSC3 Property and the Occupants of the Devco Property, as applicable under the terms herein, and any person having an interest in all or a portion of the Properties and their respective successors in interest and assigns.
7. Severability. If any provision of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement and any other application of such provision shall not be affected thereby.
8. Governing Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of Arizona. Venue for any claiming arising out of or in any way related to this Agreement shall be Maricopa County, Arizona.
9. Entire Agreement; Amendment. This Easement Agreement contains the entire agreement between the Parties hereto relating to Parties' use of the Easement Area for the purposes set forth herein. Any oral representations or modifications concerning this instrument shall be of no force or effect. This Agreement may only be amended by an instrument duly executed and acknowledged by the owner(s) of the Devco Property and the owner(s) of the DSC3 Property and recorded in the Official Records of Maricopa County, Arizona. In the event of a conflict between the covenants, terms and/or provisions of this Agreement and any written amendment(s) hereto, the provisions of the latest executed instrument shall take precedence.
10. Division of Ownership. If ownership of any of the Properties has been divided among multiple owners, the owner(s) of the majority of the acreage of the property in question

shall be required to act on behalf of “the owner” of said property for any and all purposes under the terms of this Agreement.

11. Notices. No notice, request, demand, instruction, or other document to be given hereunder to any Party shall be effective for any purpose unless made in writing and (i) personally delivered, (ii) delivered by air courier next-day delivery (*e.g.*, Federal Express), or (iii) delivered by U.S. registered or certified mail, with air courier or U.S. Mail being deemed to have been given on the date of delivery or first attempted delivery as evidenced by the air courier or U.S. mail delivery record. The addresses for the purpose of this Section may be changed by giving written notice of such change by email or U.S. Certified mail, which shall reference the recording information for this Agreement. Unless and until such written notice of change is received, the last address and addressee provided below shall be deemed to continue in effect for all purposes hereunder.

Devco:

Polk Devco, LLC
15721 N. Greenway Hayden Loop
Suite 105
Scottsdale, AZ 85260
dfree003@gmail.com

With a copy to:

Taylor C. Earl, Esq.
Earl & Curley, P.C.
3101 N. Central Ave., Suite 1000
Phoenix, AZ 85012
tearl@earlcurley.com

DSC3:

DSC3, LLC
1523 Gibson Drive
Eureka, CA 95503

12. Effects of Breach. No breach, whether or not material, of the provisions of this Agreement shall entitle any of the Parties to cancel, rescind or otherwise terminate this Agreement, but such limitation shall not affect, in any manner, any other rights or remedies that the Parties may have hereunder by reason of any breach of the provisions of this Agreement.
13. Waiver. No waiver of any of the terms, provisions, conditions, covenants or agreements contained herein shall be effective unless in writing executed by the entity for whose benefit the applicable term, provisions, condition, covenant or agreement is intended. No waiver of any term, provisions, condition, covenant or agreement contained herein under a particular circumstance shall be deemed a waiver of such term, provision, condition, covenant or agreement under a different circumstance.

14. Exhibits. The exhibits attached hereto are incorporated herein.
15. Captions. All captions, titles or headings of all sections of this Agreement are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof. References to a “Section” without further attribution shall be deemed to refer to sections of this Agreement.
16. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument.
17. Due Authority. The Parties each warrant and represent to the other Party that all requisite action has been taken to bind all Parties to this Agreement to the terms and conditions contained herein and that the person signing this Agreement on behalf of such Party has been completely and unconditionally authorized to bind such Party to this Agreement.
18. Term. The term of this Agreement shall be perpetual, unless validly amended to modify such term or terminated pursuant to the terms herein stated.
19. Effective Date. This Agreement shall be effective upon recordation in the office of the Maricopa County Recorder, following a valid execution by the Parties.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Parties to this Agreement have caused this Agreement to be duly executed as of the later of the dates written below.

Polk Devco, LLC, an Arizona limited liability company

Name: _____

Title: _____

Signature: _____

Date: _____

STATE OF ARIZONA)
)
County of Maricopa) ss

The foregoing instrument was acknowledged before me this ____ day of _____, 202__ by _____, the _____ of Polk Devco, LLC, an Arizona limited liability company.

Notary Public

DSC3, LLC, an Arizona Limited Liability Company

Name: _____

Title: _____

Signature: _____

Date: _____

STATE OF ARIZONA)
) ss
County of Pinal)

The foregoing instrument was acknowledged before me this ____ day of _____, 202__
by _____, the _____ of DSC3, LLC, an Arizona limited liability
company.

Notary Public

Exhibit A

Exhibit B

Exhibit C

Exhibit D