

RESOLUTION NO. 07-25

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF MARICOPA, ARIZONA, APPROVING AND ADOPTING THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MARICOPA AND MA MARICOPA, LLC, IN COMPLIANCE WITH A.R.S. §9-500.05.

WHEREAS, pursuant to A.R.S. §9-500.05, MA Maricopa, LLC, an Arizona limited liability company ("Owner"), requested that the City of Maricopa enter into a Development Agreement in the form which is attached to this Resolution and by this reference made a part hereof; and

WHEREAS, the Maricopa City Council has previously identified education as a specific pillar to assist the City with economic development; and

WHEREAS, the Legacy School needs to develop as quickly as possible to be open by September 2007 and the City is willing to assist the school but wants to ensure that the remaining portion of the property is developed pursuant to the Maricopa City Code; and

WHEREAS, the City of Maricopa believes that it is in the best interest of the City to enter into this Development Agreement in order to facilitate the proper development of the property subject to the Development Agreement while assisting the school development.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Maricopa, Arizona, as follows:

Section 1. The City of Maricopa by the requisite vote of its City Council hereby approves and adopts, and authorizes and instructs its Mayor on behalf of the City of Maricopa to enter into the Development Agreement with the Owner in the form attached to and made a part of this Resolution.

Section 2. Pursuant to A.R.S. §9-500.05(G), the provisions of this Resolution are not enacted as an emergency measure and shall not be effective for thirty (30) days.

PASSED AND ADOPTED by the Mayor and City Council of the City of Maricopa, Arizona, this 1st day of May, 2007.

APPROVED



Mayor



OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
LAURA DEAN-LYTLER

When recorded mail to:

MARICOPA CITY

(K)

DATE/TIME: 05/09/07 1551
FEE: \$16.00
PAGES: 15
FEE NUMBER: 2007-055891

(The above space reserved for recording information)

LEGACY DEVELOPMENT AGREEMENT

DOCUMENT TITLE

DO NOT DISCARD THIS PAGE. THIS COVER PAGE IS RECORDED AS PART OF YOUR DOCUMENT. THE CERTIFICATE OF RECORDATION WITH THE FEE NUMBER IN THE UPPER RIGHT CORNER IS THE PERMANENT REFERENCE NUMBER OF THIS DOCUMENT IN THE PINAL COUNTY RECORDER'S OFFICE.

LEGACY DEVELOPMENT AGREEMENT

THIS LEGACY DEVELOPMENT AGREEMENT (the "**Agreement**") is entered into this 1st day of May, 2007 ("**Effective Date**"), by and between MA Maricopa LLC, an Arizona limited liability company ("**Company**") and the City of Maricopa, an Arizona municipal corporation (the "**City**").

RECITALS

A. WHEREAS, A.R.S. § 9-500.05 authorizes the City to enter into development agreements with landowners and persons having an interest in real property that is located in the City; and

B. WHEREAS, Company is the owner of certain real property located within the City and located generally on Honeycutt Road, between Porter Road and White and Parker Road (the "**Property**"); and

C. WHEREAS, Company intends to construct and operate Legacy Traditional School, a charter school ("**School**") on a portion of the Property; and

D. WHEREAS, the Maricopa City Council has previously identified education as a specific pillar to assist the City with economic development; and

E. WHEREAS, the construction and operation of the School and the use of the Property by Company is subject to the City of Maricopa Lot Split #07-01, and future Site Plan and permitting applications (collectively, the "**Stipulations**"); and

F. WHEREAS, the School needs to develop as quickly as possible to be open by September 2007 and the City is willing to assist the school but wants to ensure that the remaining portion of the Property is developed pursuant to the Maricopa City Code, specifically, but not limited to, the Maricopa Subdivision Ordinance (Ordinance 06-18; Article 14-1); and

G. WHEREAS, City and Company desire to establish certain terms, conditions and covenants concerning the development of the Property as set forth herein.

NOW, THEREFORE, the parties agree as follows:

AGREEMENT

ARTICLE 1. SCHOOL OPENING

1.1. School Opening. The City and the Company shall use it best efforts to open the School by September 2007 so that the residents of the City will have the benefit of this educational institution.

ARTICLE 2. DEVELOPMENT OF PROPERTY

2.1. Minor Land Division. To assist with the development of the School, the City and Company hereby agree that the requirements of a minor land division will be applicable to the Property. A parcel map of the Property is set forth in Exhibit "1" attached hereto and incorporated herein by reference. The Parties further agree that the minor land division will only apply to the development of the School on the Property and all other portions of the Property shall be developed consistent with Paragraph 2.2 of this Agreement.

2.2. Application of Subdivision Ordinance. Except for the portion of the Property where the School will be located, the City and Company hereby agree that the Property will be developed as a subdivision, in compliance with the Maricopa City Code, including, but not limited to, the Maricopa Subdivision Ordinance (Ordinance 06-18; Article 14-1).

2.3. Street Dedication. To assist with the School's scheduled opening in September 2007, the Parties agree that the road identified on Exhibit "1" as an easement shall provide temporary access to the School. Although this road represents a temporary access, the Company agrees that this road shall be built in accordance with the City standards for roads and that the Company shall pay all normal public improvement costs for the road. In addition, if the Maricopa Fire District requires a temporary turn around, the Company shall construct the temporary turn around. The Company agrees that the School shall have two access points and that the temporary road shall eventually be dedicated to the City as a public street at no cost.

2.4. Waiver. The Company on behalf of itself and all other Parties having an interest in the Property intends to encumber the Property with the following agreements and waivers. Owner agrees and consents to all the conditions imposed by this Agreement, and by signing this Agreement waives any and all claims, suits, damages, compensation and causes of action for diminution in value of the Property the owner of the Property may have now or in the future under the provisions of A.R.S. Sections 12-1134 through and including 12-1136 resulting from this Agreement, or from any "land use law" (as such term is defined in the aforementioned statute sections) permitted by this Agreement to be enacted, adopted or applied by the City now or hereafter. Owner acknowledges and agrees the terms and conditions set forth in this Agreement cause an increase in the fair market value of the Property and such increase exceeds any possible reduction in the fair market value of the Property caused by any future land use laws, rules, ordinances, resolutions or actions permitted by this Agreement and adopted or applied by the City to the Property.

ARTICLE 3. COST OF CONSTRUCTION

3.1 Fees. The Company shall remain liable for all fees and charges required by the City Code, Ordinance, Resolution or regulation to develop the property including, but not limited to, planning fees, permit fees and impact fees.

ARTICLE 4. CONSTRUCTION SCHEDULE OF PERFORMANCE

4.1. Schedule of Performance. The City and Company intend that the planning and development of the Property shall be achieved pursuant to the "Schedule of Performance" attached hereto as Exhibit "2".

4.2. Failure of Timely Performance. In the event that either party hereto fails to perform any of its obligations which are set forth in or contemplated by this Agreement or in the Schedule of Performance in a timely manner, and should such failure not otherwise be excused by agreement of the parties, such failure shall be considered to be a breach of this Agreement and the nonbreaching party shall have their respective remedies set forth in Article 4 of this Agreement.

4.3. Additional City Resources. Pursuant to A.R.S. § 15-189.01, the City shall use its best efforts to ensure that hearings and administrative reviews involving the School are scheduled and conducted on an expedited basis. If the City is not able to respond to requests for City approvals in a timely manner pursuant to the Schedule of Performance, the City shall notify Company. In such event, in order to allow the City to respond in a timely manner, Company shall have the opportunity to pay for the additional costs of retaining additional City resources to enable the City to respond in a timely manner, if such resources are available

4.4. Property Reviews. The City and its personnel and representatives shall have the right to conduct reviews of the Property periodically during the course of construction of the Property.

ARTICLE 5. MEDIATION AND DEFAULT

5.1. Representatives. To further the cooperation of the parties in implementing this Agreement, the City and Company each shall designate and appoint a representative to act as a liaison between the City and its various departments and Company. The initial representative for the City (the "**City Representative**") shall be the City Manager and the initial representative for Company shall be Richard Dressel (the "**Company Representative**"). The representatives shall be available at all reasonable times to discuss and review the performance of the parties to this Agreement and the development of the Property. Either party may designate a new representative by notifying the other party in writing of such designation.

5.2. Mediation. In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree that there shall be a forty-five (45) day moratorium on litigation during which time the parties agree to attempt to settle the dispute by nonbinding mediation before commencement of litigation. The mediation shall be held under the commercial mediation rules of the American Arbitration Association. The matter in dispute shall be submitted to a mediator mutually selected by Company and the City. In the event that the parties cannot agree upon the selection of a mediator within seven (7) days, then within three (3) days thereafter, the City and Company shall request the presiding judge of the Superior Court in and for the County of Pinal, State of Arizona, to appoint an independent mediator. The cost of any such mediation shall be divided equally between the City and Company. The results of the

mediation shall be nonbinding on the parties, and any party shall be free to initiate litigation subsequent to the moratorium.

5.3. Default. Subject to Section 4.2 of this Agreement, failure or unreasonable delay by any party to perform any term or provision of this Agreement for a period of ten (10) days after written notice thereof from the other party shall constitute a default under this Agreement. If the default is of a nature which is not capable of being cured within ten (10) days, the cure shall be commenced within such period, and diligently pursued to completion. The notice shall specify the nature of the alleged default and the manner in which the default may be satisfactorily cured. In the event of a default hereunder by any party, the non-defaulting party shall be entitled to all remedies at both law and in equity, including, without limitation, specific performance and the right to perform the obligation(s) of which the defaulting party is in default and to immediately seek reimbursement from the defaulting party of all sums expended in order to cure such default, together with interest on all such sums from the date said sums are expended by the non-defaulting party for the purpose of curing the default to the date such sums are paid in full.

ARTICLE 6. TERM OF AGREEMENT

6.1. Term. The term of this Agreement shall commence on the Effective Date and shall terminate when Company develops the entire Property.

ARTICLE 7. MISCELLANEOUS PROVISIONS

7.1. Notices. All notices and communications provided for herein, or given in connection herewith, shall be validly made if in writing and delivered personally or sent by registered or certified United States Postal Service mail, return receipt requested, postage prepaid to:

If to the City: Rick Buss, City Manager
45145 W. Madison Avenue
Maricopa, Arizona 85239

If to Company: Richard Dressel
MA Maricopa LLC.
PO Box 543
Maricopa, Arizona 85239

or to such other addresses as either party may from time to time designate in writing and deliver in a like manner. Any such change of address notice shall be given at least ten (10) days before the date on which the change is to become effective. Notices given by mail shall be deemed delivered 72 hours following deposit in the United States Postal Service in the manner set forth above.

7.2. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the parties of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or of any other provision of this Agreement.

7.3. Headings. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only, and shall not control or affect the meaning or construction of any of the provisions of the Agreement.

7.4. Authority. The undersigned represent to each other that they have full power and authority to enter into this Agreement, and that all necessary actions have been taken to give full force and effect to this Agreement. Company represents and warrants that it is duly formed and validly existing under the laws of the State of Arizona and that it is duly qualified to do business in the State of Arizona and is in good standing under applicable state laws. Company and the City warrant to each other that the individuals executing this Agreement on behalf of their respective parties are authorized and empowered to bind the party on whose behalf each individual is signing.

7.5. Entire Agreement. This Agreement, including the following exhibits, constitutes the entire agreement between the parties.

- Exhibit 1 Minor Land Division Map
- Exhibit 2 Schedule of Performance

7.6. Amendment of the Agreement. This Agreement may be amended, in whole or in part only with the mutual written consent of the parties to this Agreement or by their successors in interest or assigns. The City shall record the amendment or cancellation in the official records of the Pinal County Recorder.

7.7. Severability. If any other provision of the Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect.

7.8. Governing Law. The laws of the State of Arizona shall govern the interpretation and enforcement of this Agreement. The parties agree that venue for any mediation or action commenced in connection with this Agreement shall be proper only in Pinal County, Arizona, and the parties hereby waive any right to object to such venue.

7.9. Recordation of Agreement and Subsequent Amendment; Cancellation. This Agreement, and any amendment or cancellation of it shall be recorded in the official records of the Pinal County Recorder no later than ten (10) days after the City and Company execute such agreement, amendment, or cancellation, as required by A.R.S. § 9-500.05.

7.10. Attorneys' Fees and Costs. If either party brings a legal action either because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees and court costs.

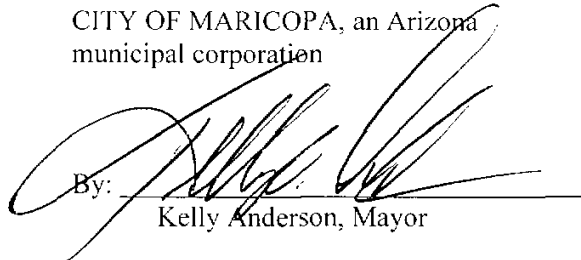
7.11. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement, and no person or entity not a party hereto shall have any right or cause of action hereunder.

7.12. No Agency Created. Nothing contained in this Agreement shall create any partnership, joint venture, or agency relationship between the parties.

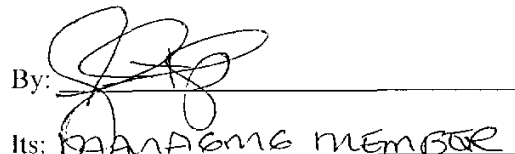
7.13. Non-Liability of City Officials and Employees. Except for mandamus and other special actions, no member, official or employee of the City shall be personally liable to Company, or any successor in interest, in the event of any default or breach by the City or for any amount that may become due to Company or successor, or under any obligation under the terms of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

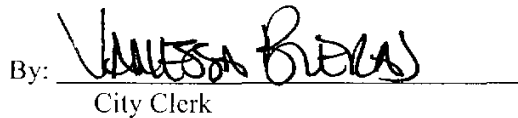
CITY OF MARICOPA, an Arizona
municipal corporation

By: 
Kelly Anderson, Mayor


MA MARICOPA, LLC, an Arizona limited
liability company

By: 
Its: MANAGING MEMBER

ATTEST:

By: 
City Clerk

APPROVED AS TO FORM:


City Attorney

STATE OF ARIZONA)
) ss.
County of PINAL)

The foregoing instrument was acknowledged before me this 3RD day of MAY, 2007, by Kelly Anderson, Mayor of the City of Maricopa, Arizona, a municipal corporation.

VANESSA BUERAS
Notary Public

My Commission Expires: 12/29/08



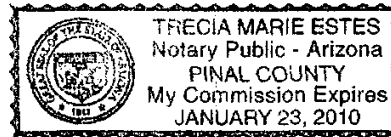
VANESSA BUERAS
Notary Public - Arizona
Pinal County
My Commission Expires
December 29, 2008

STATE OF ARIZONA)
) ss.
County of Pinal)

The foregoing instrument was acknowledged before me this 7th day of May, 2007, by Steven Northrup, on behalf of MA Maricopa, LLC, an limited liability company.

Trecia Marie Estes
Notary-Public

My Commission Expires: January 23, 2010



TRECIA MARIE ESTES
Notary Public - Arizona
PINAL COUNTY
My Commission Expires
JANUARY 23, 2010

EXHIBIT "1"

EXHIBIT 1
PARCEL MAP

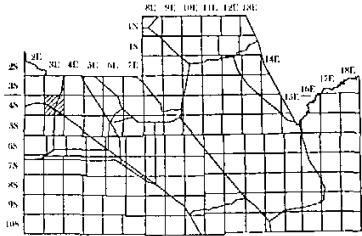
11
12
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1
1

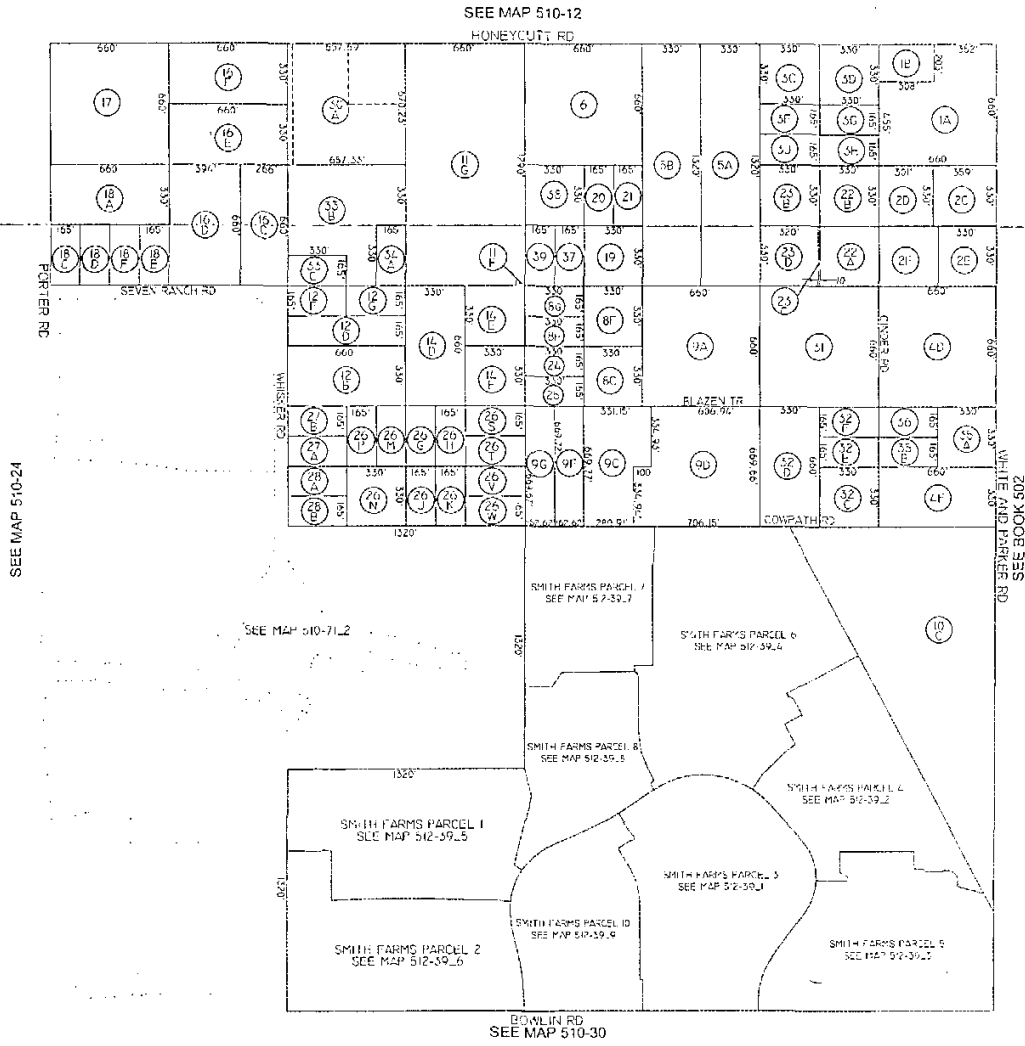
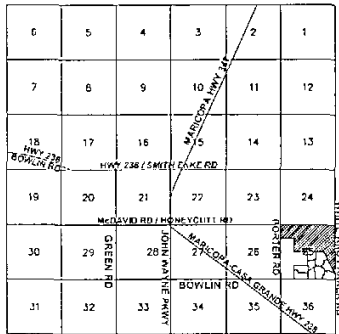
SEC. 25 TN.4S RG.3E

510-71_1

LOCATION MAP



VICINITY MAP



AREA CODE
2042

SPECIAL DISTRICTS
00000

THIS MAP IS FOR TAX PURPOSES ONLY.
THIS OFFICE WILL NOT ASSUME LIABILITY FOR
REPRESENTATION, MEASUREMENTS OR ACREAGE



SCALE: 1" = 600'

12-12-2005

PINAL COUNTY
ASSESSORS MAP

HONEYCUTT RD

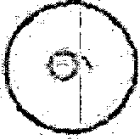
660'

660'

530'

540'

550'



660'



1290'

530'

165'

165'



520'



520'



530'

165'



165'



550'



530'



520'



520'



530'

165'

165'

330'



530'



320'



H

230'

EXHIBIT "2"

EXHIBIT 2


SCHEDULE OF PERFORMANCE

SCHEDULE OF PERFORMANCE

School will be completed by end of 2007

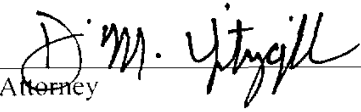
Remainder of Subdivision will be completed within 3 years

ATTEST:



City Clerk

APPROVED AS TO FORM:



City Attorney