

RESOLUTION NO. 07-58

**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 KB HOMES
DESERT PASSAGE, IN COMPLIANCE WITH A.R.S.
§9-500.05**

WHEREAS, pursuant to A.R.S. §9-500.05, KB Homes Desert Passage ("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 thereof; 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 address levee maintenance for flood control purposes until the completion of the North Santa Cruz Wash Regional Solution;

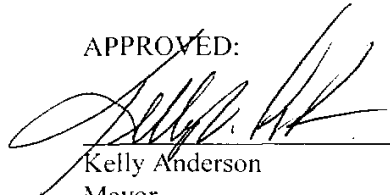
NOW THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Maricopa, Arizona as follows:

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 City Council of the City of Maricopa, Arizona this 6th day of November, 2007.

APPROVED:



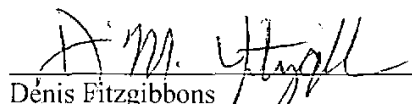
Kelly Anderson
Mayor

ATTEST:



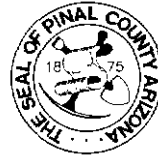
Vanessa Bueras
City Clerk

APPROVED AS TO FORM:



Denis Fitzgibbons
City Attorney

2612



When Recorded Return To:

City Clerk
City of Maricopa
P.O. Box 610
Maricopa, Arizona 85008

DATE/TIME: 11/16/07 1552
FEE: \$21.50
PAGES: 26
FEE NUMBER: 2007-126812

**WASH DEVELOPMENT AGREEMENT
CITY OF MARICOPA, ARIZONA
(Desert Passage)**

THIS DEVELOPMENT AGREEMENT (this "Agreement") is entered into this 6th day of November, 2007, by the City of Maricopa, an Arizona municipal corporation (the "City"); KB Home Phoenix Inc., an Arizona corporation ("KB Home"); and Desert Passage Community Association, an Arizona non-profit corporation ("HOA"). The City, KB Home and HOA are each referred to herein individually as a "Party" and collectively as the "Parties".

RECITALS

A. WHEREAS, KB Home owns or was the developer of the real property legally described on Exhibit A-1 attached hereto (the "Property"). HOA has been formed to serve as the homeowners association for the Property.

B. WHEREAS, that portion of the Property legally described on Exhibit A-2 (the "Affected Lots") was previously affected by the existing floodplain (the "Floodplain") within the North Santa Cruz Wash Regional Flood Control Project.

C. WHEREAS, the City acknowledges that KB Home has designed, engineered and constructed a flood control solution that has received a Conditional Letter of Map Revision ("KB CLOMR") from the Federal Emergency Management Agency ("FEMA") that removes the Affected Lots from the Floodplain (the "KB Solution"). The City acknowledges that the approval and use of the KB Solution on an interim basis prior to the completion of the Wash (as defined below) is in the best interest of the health safety and welfare of the City. For purposes of this Agreement, "Wash" shall mean the channelized wash currently expected to be constructed by certain owners of property located in the Floodplain in accordance with plans approved by FEMA through a Conditional Letter of Map Revision (the "Wash CLOMR").

D. WHEREAS, the City confirms that, prior to the execution of this Agreement, the City has given all required public notice and has held all required public hearings to receive comment, discuss and/or otherwise consider and approve the terms and conditions of this Agreement;

E. WHEREAS, pursuant to the provisions of Arizona Revised Statutes ("A.R.S.") §§ 9-500.05 *et. seq.*, the Parties are authorized to enter into this Agreement and it is consistent with the City's General Plan adopted by the City Council on January 17, 2006 and approved by the City's voters on May 16, 2006.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein, the Parties agree as follows:

1. ACKNOWLEDGEMENT OF KB'S CONSIDERATION PRIOR TO WASH COMPLETION

The City agrees that any stipulations within the land entitlement approvals for the Property, or portions thereof, and the City's duty to protect the general health, safety, and welfare of the public because of the existence of the Floodplain are satisfied through the KB Solution and KB Home's execution of this Agreement, and the City agrees not to impose any stipulations or other requirements relating to the Wash or the removal of the Property from the Floodplain in connection with the entitlements for the Property. Based on such consideration by KB Home, the City will not impede, condition, or otherwise interfere with the issuance of any land use entitlement approvals (including building permits and certificates of occupancy) as a result of the Floodplain or the Wash. In no event will the City withhold, condition, delay or impede building permits or certificates of occupancy for improvements on any lots in the Property as a result of the status of any work to be done to construct the Wash.

2. CITY'S ACCEPTANCE OF LOMR MAINTENANCE PLANS

(a) **KB Structures.** The Parties understand that prior to the Parties coming to agreement on the specifics of this Agreement, KB Home desired to continue toward development on the Property. In order to remove the Affected Lots from the Floodplain prior to construction of the Wash and proceed with development, KB Home secured separate approval of flood mitigation plans (the "KB Structure Plans") by FEMA, which issued a CLOMR on the KB Structure Plans (the "KB CLOMR"). The CLOMR required the construction of certain flood mitigation structure(s) (the "KB Structures") within the boundaries of the Property in order to remove it from the Floodplain.

(b) **City's Acceptance of FEMA Approval of KB Structures.** FEMA has reviewed and approved the construction of the KB Structures and implementation of the KB CLOMR based upon its approval of the KB Structures and the mitigation measures in compliance with the KB CLOMR. By signing this Agreement, the City accepts FEMA approval of the KB Structures, the KB Structure Plans and the KB CLOMR. The City additionally approves of, and agrees to execute the Operation and Maintenance Plan for the KB Structures prepared by Hoskin & Ryan Consultants, Inc., and dated October 16, 2007 (the "O&M Plan"), a copy of which is attached hereto as Exhibit B. The City agrees to take all steps reasonably necessary to cause FEMA to issue the LOMR for the Affected Lots in connection with the KB Structures as soon as reasonably possible, and to include the Property in the Wash LOMR (as defined below) when issued.

(c) **Costs of O&M Plan.** In spite of the City's agreement to be the signor of the O&M Plan, HOA will pay all costs for maintaining the KB Structures until such time as the LOMR has been issued by FEMA in connection with the Wash (the "Wash LOMR") and the City's assumption of repair and maintenance of the Wash pursuant to the Wash LOMR. Thereafter, the City agrees that the operation and maintenance of the KB Structures shall no longer be required hereunder or under the O&M Plan, and HOA and the City shall take reasonable action, at the sole cost of HOA, to have FEMA recognize such status.

(d) **Warranty Bond.** KB Home hereby agrees to obtain and maintain a warranty bond ("O&M Bond") securing the HOA's obligation to operate and maintain the KB Structures as provided under this Agreement. KB Home's obligation to maintain the O&M Bond shall automatically terminate upon the earlier to occur of (i) approval by FEMA of the Wash LOMR, (ii) that date KB Home no longer owns an Affected Lot, and (iii) that date four (4) years from the Effective Date. The amount of the O&M Bond shall be an amount equal to 150% of the cost to operate and maintain the KB Structures for a period of four (4) years

from the Effective Date. The City hereby agrees to promptly release the O&M Bond to KB Home upon the termination of the O&M Bond, as provided in this subsection (d).

(e) **KB Structure Insurance.** HOA hereby agrees to obtain and maintain a general liability property insurance policy covering the KB Structures with policy limits sufficient to insure the total cost to replace the KB Structures in the event of a major flood event causing total or substantial destruction of the KB Structures. The HOA's obligation to obtain and maintain the KB Structures Policy shall continue until such time as FEMA has approved the Wash LOMR.

3. CITY'S RESPONSIBILITY FOR MAINTENANCE AND REPAIR; KB WASH MAINTENANCE FEES.

(a) **FEMA Maintenance.** Upon the completion of the Wash in accordance with the Wash CLOMR, the City shall assume (in perpetuity) the responsibility for repairing and maintaining the Wash in accordance with FEMA standards. Said repairing and maintaining function shall be hereinafter referred to as "Wash Maintenance."

(b) **Funding for Wash Maintenance.** The City intends to fund the Wash Maintenance primarily through collection of *ad valorem* taxes from a community facilities district established in accordance with Arizona Revised Statutes ("A.R.S.") §48-701 *et seq.* ("CFD"); provided, however, the establishment of the CFD shall not delay the obligation of the City to assume the Wash Maintenance. The Parties acknowledge and agree that the Property will not be included in the CFD and that all obligations of the Property to contribute to the costs of Wash Maintenance will be satisfied by payment by HOA of fees for the Property's share of Wash Maintenance costs (the "KB Wash Maintenance Fees"). HOA shall collect assessments from owners of lots within the Property to fund KB Wash Maintenance Fees.

(c) **Standard for Wash Maintenance and KB Wash Maintenance Fee Limit.** The City agrees that it shall charge only such costs as are reasonable to comply with FEMA standards for maintaining proper operation and maintenance within the Wash and comply with the City's standards for maintaining trails and landscaping through the City generally, but in no case shall the City charge KB Wash Maintenance Fees in any year that exceed the lesser of: (i) the actual average annual maintenance costs incurred by KB Home or the HOA for maintaining the KB Structures under the O & M Plan prior to completion of the Wash (as adjusted by an Inflation Index Factor); and (ii) the annual tax levy that would have been assessed against the Property if it was included in the CFD and assessed in the same manner as other property in the CFD. The "Inflation Index Factor" for purposes of this Article 3 shall be defined as the percentage change equal to the amount of the CPI increase (Consumer Price Index For All Urban Consumers, All Cities - All Items, 1982-1984) from January of the first year following completion of the Wash. HOA must give the City notice of any objections to a billing for KB Wash Maintenance Fees within ninety (90) days after receipt of the billing. If HOA and the City cannot resolve an objection within thirty (30) days after the City's receipt of the objection, then either the City or the HOA may submit the objection to the Dispute Resolution Process set forth in Exhibit C.

4. NO JOINT AND SEVERAL LIABILITY. The liabilities and obligations of KB Home, HOA and their respective successors-in-ownership and assigns are several obligations, and not joint and several obligations, and may only be enforced against the owner of the Property, or portion thereof, then in default, and, notwithstanding any default by the owner of a Property, this Agreement shall remain in full force and effect with respect to the other owners of the Property, and the City agrees that it will not deny, delay, condition, or otherwise impede approvals or reviews of entitlements for an owner of a

portion of the Property that is not in default under this Agreement as the result of a breach by another owner of its obligations under this Agreement relating to the Wash or the Floodplain.

5. ASSIGNMENT. Except as herein specifically stated, the rights and obligations created herein run with ownership of the Property and/or portions thereof, and shall inure to the benefit of and be binding upon KB Home, HOA and the City and their successors-in-ownership and assigns. Upon the conveyance of all or any portion of the Property by KB Home or HOA or their successors-in-ownership, KB Home or HOA, as applicable, shall be relieved of any future liability or obligations under this Agreement with respect to the portion of the Property conveyed, but shall not be relieved or released from any liabilities or obligations incurred during the period of its ownership of the Property. Any place in this Agreement wherein the term "KB Home" or "HOA" is used, it shall automatically include successor owner(s) of the Property or portions thereof except as specifically stated in Article 4.

6. GENERAL PROVISIONS

(a) **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 so that the signatures of all Parties may be physically attached to a single document.

(b) **Incorporation of Exhibits & Recitals.** All exhibits referred to herein and the Recitals stated above are hereby incorporated by reference into this Agreement.

(c) **Effective Date.** This Agreement shall become effective upon approval by the City of this Agreement during a public meeting and the full execution of the Agreement by the Parties (the "Effective Date").

(d) **Cooperation.** The Parties agree to diligently and in good faith cooperate to process all applications as expeditiously as reasonably possible to take such other actions as are reasonably necessary to carry out the intent of this Agreement.

(e) **Representatives.** Each Party shall each designate a representative to act as a liaison between City, its various departments, and KB Home and HOA ("Representatives"). The Representatives shall be available at all reasonable times to assist with the performance of the Parties under this Agreement. The applicable Party may change the representative by giving notice to the Parties of the name, title, address, and telephone number of the replacement.

(f) **Notices.** All notices, filings, consents, approvals and other communications provided for herein or given in connection herewith shall be in writing and delivered personally, by facsimile or sent by United States Mail in a postage prepaid envelope addressed to the other to the address provided herein or as may be changed in writing:

"City"

City of Maricopa
Post Office Box 610
Maricopa, Arizona 85239
Attn: Maricopa City Manager
Telephone: (520) 568-9098
Facsimile: (520) 568 - 9120
Email: _____

Copy to:

Maricopa City Attorney
c/o Denis Fitzgibbons
Fitzgibbons Law Offices
711 East Cottonwood Lane, Suite E
Post Office Box 11208
Casa Grande, AZ 85230-1208
Telephone: (520) 426-3824
Facsimile: (520) 426-9355
Email: denis@fitzgibbonslaw.com

“KB Home”

KB HOME Phoenix Inc.
432 North 44th Street, Suite 400
Phoenix, Arizona 85008
Attention: David Fowler,
Vice President Land
Telephone: 602-567-4721
Facsimile: 602-567-4879

Copy to:

KB HOME Phoenix Inc.
250 South Craycroft Road, Suite 300
Tucson, Arizona 85711
Attention: Jennifer D. Murray, Esq.,
Regional Counsel
Telephone: 520-918-6423
Facsimile: 520-615-5153

And to:

Gammage & Burnham, P.L.C.
Attn: Thomas J. McDonald, Esq.
Two North Central Avenue, 18th Floor
Phoenix, AZ 85004
Telephone: (602) 256-4431
Facsimile: (602) 256-4475

“HOA”

Desert Passage Community Association
c/o PDS Management
8765 West Kelton Lane
Building A-1, Suite 200
Peoria, AZ 85382
Telephone: (623) 877-1396
Facsimile: (623) 583-3481

(g) **Estoppel Certificate.** Any Party may request of any other Party, and the requested Party shall, within twenty-one (21) calendar days, respond and certify, to the actual knowledge of the responding party, by written instrument to the requesting Party the existence of any default under this Agreement and the scope and nature of the default.

(h) **Waiver.** No delay in exercising any right or remedy by the Parties shall constitute a waiver thereof. Waiver of any of the terms of this Agreement shall not be valid unless in writing and signed by all Parties hereto. The failure of any Party to enforce the provisions of the Agreement or

require performance of any of its provisions shall not be construed as a waiver of such provisions or affect the right of the Party to enforce all of the provisions of this Agreement. Waiver of any breach of this Agreement shall not be held to be a waiver of any other or subsequent breach thereof.

(i) **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona.

(j) **Choice of Forum.** Any suit or action brought under this Agreement shall be commenced in the state or federal courts located in Pinal County, Arizona.

(k) **Exercise of Authority.** It is understood and agreed that neither KB Home nor HOA shall exercise any of the authority or sovereign powers of the City and shall not represent themselves as an agent(s) for the City. Nor shall anything in this Agreement be construed to create any partnership, joint venture, or principal agency relationship between the Parties.

(l) **Recordation.** The City shall record this Agreement in the official records of the Pinal County Recorder within ten (10) days after the full execution of this Agreement.

(m) **Conflict of Interest.** This Agreement is subject to the provisions of A.R.S. § 38-511.

(n) **Severability of Provisions.** Each term and provision of this Agreement shall be considered severable and if any term or provision of this Agreement be declared or be determined to be illegal or invalid, the validity of the remaining terms and provisions shall not be affected thereby, and said illegal or invalid term or provision shall not be deemed a part of this Agreement, notwithstanding any other provision of this Agreement to the contrary.

(o) **Time of the Essence.** Time is of the essence to this Agreement and with respect to the performance required by each Party hereunder.

(p) **Additional Acts and Documents.** The Parties hereto agree to do all such things and take all such actions, and to make, execute and deliver such other documents and instruments, as shall be reasonably requested to carry out the provisions, intent and purpose of this Agreement, including, but not limited to, granting an easement(s), if needed, to perform maintenance of the Wash. If any action or approval is required of any Party in furtherance of the rights under this Agreement, such approval shall not be unreasonably delayed or withheld.

(q) **Amendments.** No amendment shall be made to this Agreement except by written document executed by all the Parties. Within ten (10) days after the effective date of any amendment, the amendment shall be recorded with the Pinal County Recorder.

(r) **Headings and Construction.** The headings for the Paragraphs and sub-paragraphs of this Agreement are for convenience and reference purposes only and in no way define, limit or describe the scope or intent of said Paragraphs or sub-paragraphs nor in any way affect interpretation of this Agreement. When used herein, the terms "include" or "including" shall mean without limitation because of the enumeration. All grammatical usage herein shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the person or persons may require. The term "person" shall include an individual, corporation, partnership, trust, estate, or any other duly formed entity. If the last day of any time period stated herein should fall on a Saturday, Sunday, or legal holiday in the State of Arizona, then the duration of such time period shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday, or legal holiday in the State of Arizona. If a cross-reference within any provision cites a particular Article, Section, or Subsection number of this Agreement, it shall be a reference to the referred Article, Section, or Subsection and its subparts.

(s) **Attorneys Fees.** In the event it becomes necessary for a Party to this Agreement to bring an action at law or other proceedings to enforce any of the terms or provisions of this Agreement, the

successful Party in any such action or proceeding may apply for attorney fees pursuant to A.R.S. § 12-341.01.

(t) Default.

(a) Failure or unreasonable delay by any Party to perform or otherwise act in accordance with any term or provision hereof shall constitute a breach of this Agreement and, if the breach is not cured within 30 days after written notice thereof from another Party (the "Cure Period"), shall constitute a default under this Agreement; provided, however, that if the failure is such that more than 30 days would reasonably be required to perform such action or comply with any term or provision thereof, then the Party shall have such additional time as may be necessary to perform or comply so long as the Party commences performance or compliance within said 30 day period and diligently proceeds to complete such performance or fulfill such obligation.

(b) If an event of default is not cured within the Cure Period, the non-defaulting Party may institute the Dispute Resolution Process, as defined in Exhibit C by providing written notice initiating the Process ("Initiation Notice") to the defaulting Party.

(u) Good Standing; Authority. Each of the Parties represents and warrants to the other a) that it is duly formed and validly existing; b) that it is an entity qualified to do business in Arizona with respect to KB Home or HOA, or a political subdivision of the state with respect to the City; and c) that the individuals executing this Agreement, on behalf of their respective Parties are authorized and empowered to bind the Party, and the Property with respect to KB Home.

(v) Force Majeure. The time period for performance and/or performance of any Party and the duration of this Agreement shall be extended by any causes that are beyond the control of the Party required to perform, such as an act of God, civil or military disturbance, delays resulting from any act or omission of governmental authorities or utilities, labor strike, injunctions in connection with litigation, labor or material shortage, or acts of terrorism.

(w) Entire Agreement. This Agreement supersedes any and all other agreements with the City pertaining to the KB Solution and the channelization of the North Santa Cruz Wash and/or the Wash, either oral or in writing, between the Parties and contains all of the covenants and promises between the Parties with respect to said matters.

[Signature pages follow]

IN WITNESS WHEREOF, the Parties hereto have set their hands as of the date first written above.

THE CITY

CITY OF MARICOPA, an Arizona municipal corporation

[Signature]
Mayor

Dated: 11-9-07

ATTEST:
[Signature]
Clerk/Deputy Clerk,

Approval As To Form

By: [Signature]
City Attorney

STATE OF ARIZONA)
County of PINAL)ss.
)

MAYOR'S
ACKNOWLEDGMENT

The foregoing Development Agreement was acknowledged before me this 9th day of NOVEMBER, 2007 by KELY ANDERSON, who acknowledged himself as the Mayor of the City of Maricopa, and being authorized to do so, executed the foregoing instrument on behalf of the City for the purposes therein stated.

[Signature]
Notary Public

My Commission Expires:



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

KB HOME

KB HOME PHOENIX INC., an Arizona corporation

By: [Signature]
Name: David Fowler
Its: V.P. Land

Date: November 6, 2007

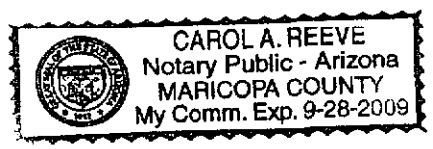
STATE OF ARIZONA)
)ss.
County of Maricopa)

ACKNOWLEDGMENT

On this 6th day of November, 2007, before me personally appeared Dave Fowler as V.P. Land of KB Home Phoenix Inc., an Arizona corporation, being authorized to do so, and acknowledged that he/she signed the above document for the purposes therein contained.

[Signature: Carol A. Reeve]
Notary Public

My Commission Expires: 9-28-09



HOA

DESERT PASSAGE COMMUNITY ASSOCIATION, an Arizona nonprofit corporation

By: [Signature]
Name: Julia Carter
Its: President

Date: November 6, 2007

STATE OF ARIZONA)
)ss.
County of Maricopa)

ACKNOWLEDGMENT

On this 6th day of November, 2007, before me personally appeared Julia Carter as President of Desert Passage Community Association, an Arizona nonprofit corporation, being authorized to do so, and acknowledged that he/she signed the above document for the purposes therein contained.

[Signature]
Notary Public

My Commission Expires: 9-28-09



LIST OF EXHIBITS

EXHIBIT A-1

LEGAL DESCRIPTION OF THE
PROPERTY

EXHIBIT A-2

AFFECTED LOTS

EXHIBIT B

O&M PLAN

EXHIBIT C

DISPUTE RESOLUTION PROCESS

EXHIBIT A-1
Legal Description of the Property



Hoskin • Ryan Consultants, Inc.
creative engineering solutions

October 29, 2007

**LEGAL DESCRIPTION
SMITH FARMS**

That part of the South Half of Section 25, Township 4 South, Range 3 East of the Gila and Salt River Meridian, Pinal County, Arizona, more particularly described as follows:

- Smith Farms Parcel 1, as Shown in Cabinet F, Slide 080, Pinal County Records.
- Smith Farms Parcel 2, as Shown in Cabinet F, Slide 081, Pinal County Records.
- Smith Farms Parcel 3, as Shown in Cabinet E, Slide 153, Pinal County Records.
- Smith Farms Parcel 4, as Shown in Cabinet E, Slide 154, Pinal County Records.
- Smith Farms Parcel 5, as Shown in Cabinet E, Slide 155, Pinal County Records.
- Smith Farms Parcel 6, as Shown in Cabinet E, Slide 156, Pinal County Records.
- Smith Farms Parcel 7, as Shown in Cabinet F, Slide 082, Pinal County Records.
- Smith Farms Parcel 9, as Shown in Cabinet F, Slide 084, Pinal County Records.
- Smith Farms Parcel 10, as Shown in Cabinet F, Slide 123, Pinal County Records.

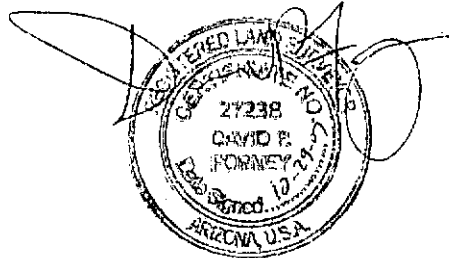


EXHIBIT A-2
Affected Lots



Hoskin • Ryan Consultants, Inc.
creative engineering solutions

October 30, 2007

**LEGAL DESCRIPTION
SMITH FARMS
FEMA FLOODPLAIN**

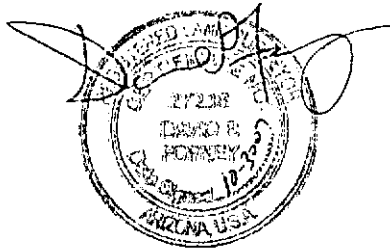
That part of the South Half of Section 25, Township 4 South, Range 3 East of the Gila and Salt River Meridian, Pinal County, Arizona, more particularly described as follows:

Smith Farms Parcel 3, as Shown in Cabinet E, Slide 153, Pinal County Records.
Smith Farms Parcel 4, as Shown in Cabinet E, Slide 154, Pinal County Records.
Smith Farms Parcel 5, as Shown in Cabinet E, Slide 155, Pinal County Records.
Smith Farms Parcel 6, as Shown in Cabinet E, Slide 156, Pinal County Records.

Lots 31, 43, & 44 of Smith Farms Parcel 7, as Shown in Cabinet F, Slide 082, Pinal County Records.

Smith Farms Parcel 9, as Shown in Cabinet F, Slide 084, Pinal County Records.

Lots 13-49, & Lots 53-80 of Smith Farms Parcel 10, as Shown in Cabinet F, Slide 123, Pinal County Records.



Page 1 of 1

G:\Projects\05\05-022 Smith Farm - Earthwork & Levee Construction\Survey\Legals\LG-Smith Farms FEMA.doc

201 West Indian School Road, Phoenix, AZ 85013-3203 | Office: (602) 252-8384 | Fax: (602) 252-8385 | www.hoskinryan.com
Land Planning | Hydrology | Land Development | Civil Infrastructure | Surveying | Construction Services | Graphic Services

EXHIBIT B
O&M Plan

SMITH FARMS

**OPERATIONS AND MAINTENANCE PLAN
FOR LEVEE
WEST OF WHITE-PARKER ROAD
BETWEEN FARRELL ROAD AND COWPATH ROAD**

**CITY OF MARICOPA
PINAL COUNTY, ARIZONA**

OCTOBER 16, 2007

Prepared for:
KB Home Phoenix Inc.
432 N. 44th Street, Suite 400
Phoenix, AZ 85008

SMITH FARMS

OPERATIONS AND MAINTENANCE PLAN FOR LEVEE WEST OF WHITE-PARKER ROAD BETWEEN FARRELL ROAD AND COWPATH ROAD

CITY OF MARICOPA
PINAL COUNTY, ARIZONA

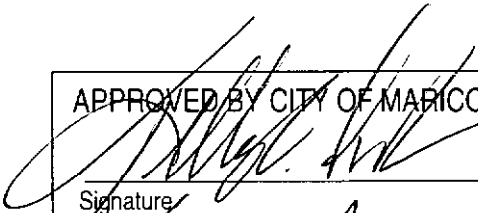
APPROVED BY CITY OF MARICOPA	
	11-9-07
Signature	Date
Kelly O. Anderson	
Print Name	
Mayor	
Title/Position	

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1 INTRODUCTION

1.1 Purpose

The purpose of this document is to serve as a guideline for the inspection and maintenance of the levee adjacent to the Smith Farms development (also known as the San Travasa and Desert Passage communities), located within the City of Maricopa, Pinal County, Arizona, as more particularly described on Attachment 1, attached hereto. The levee extends from approximately 1700 feet north of Farrell Road to approximately 1000 feet south of Cowpath Road, along the west side of White-Parker Road.

This Operations and Maintenance Plan establishes the formal procedures that will ensure the stability, height, and overall integrity of the levee and that its associated structures and systems will be maintained. This plan specifies the maintenance activities to be performed, the frequency of their performance, and the person, by name or title, responsible for their performance. The levee system must be maintained in accordance with this officially-adopted plan.

1.2 FEMA Regulations

In order for the Federal Emergency Management Association (FEMA) to grant a Letter of Map Revision (LOMR) based on construction of a levee, the levee must follow the design, operation, and maintenance guidelines presented in Section 65.10 of the *Code of Federal Regulations* (44CFR65.10) (Ref. 1).

2 OWNERSHIP

The owners of the levee are the "Desert Passage Community Association" (HOA) and San Travasa LLC (collectively, the "Owners"). All maintenance activities will be the responsibility of the Owners. The levee is located within a 55-foot wide drainage easement, which has been granted to the Owners.

The City of Maricopa and Pinal County have ultimate responsibility for public safety, and for the maintenance of public rights-of-way. As a member of the National Flood Insurance Program (NFIP), the City of Maricopa (City) has assumed ultimate responsibility for the maintenance of the levee. The City will have the right to enter the limits of the levee and make repairs, should it be deemed necessary to protect the public or public facilities. Should the Owners default in the maintenance of the levee, as described herein, the City will assume responsibility for maintenance of the levee and shall draw funds from an HOA posted bond.

3 SMITH FARMS LEVEE DESIGN

The construction of the levee is shown in detail on as-built design plans entitled "Paving Plans and Levee Plans for Smith Farms Infrastructure", prepared by Hoskin-Ryan Consultants, Inc., dated July 5, 2007 (Ref. 5).

3.1 Description

The levee extends from Sta 32+38.62 (approximately 1750 feet north of Farrell Road) to Sta 66+93.24 (just south of Bowlin Road), and continues north from Sta 70+28.11 (just north of Bowlin Road) to Sta 85+20.00 (approximately 1010 feet south of Cowpath Road). The structural section of the levee consists of an earthen embankment eight (8) feet wide at the top, with a slope of 3H:1V on the west side, and a slope of 2H:1V on the east side.

A soil overburden has been placed on the east side to allow for landscape plantings. To help prevent root penetration, a geotextile fabric has been placed underneath the soil overburden. The west side of the levee does not have a soil overburden. No landscape materials shall be planted on the west side of the levee so as to prevent the penetration of roots into the structure.

In accordance with FEMA requirements, the levee has been designed to provide a minimum of three (3) feet of freeboard above the computed water surface elevations, with three and one-half (3.5) feet of freeboard at each end of the structure.

Two roads cross the levee, Bowlin Road and the entrance road to the AK-Chin Cotton Gin. Bowlin Road is elevated to meet the top of levee grades, thus maintaining the design freeboard requirements. Similarly, the entrance road to the Ak-Chin Cotton Gin is elevated to meet the three (3) foot minimum freeboard requirements.

3.2 Survey Monuments

Refer to the levee as-built plans entitled "Paving Plans & Levee Plans for Smith Farms Infrastructure," prepared by Hoskin-Ryan Consultants, Inc., dated July 5, 2007 (Ref. 5). An NAVD 88 benchmark has been set at the intersection of Bowlin Road and White Parker Road, and survey monuments have been set at four locations along the top of the levee.

3.3 Soils Investigation

A soils investigation for the levee site prior to construction is documented in the *Geotechnical Subsurface Exploration for Smith Farms Levee, West Side of White Parker Road Near Bowlin Road, Maricopa, Arizona*, prepared by Alpha Geotechnical & Materials, dated March 3, 2004 (Ref. 2).

3.4 Pipelines Crossing Levee

Irrigation pipes cross the levee at five locations along its alignment. Refer to the levee as-built plans entitled *Paving Plans & Levee Plans for Smith Farms Infrastructure* (Ref. 5), and the irrigation ditch relocation plans entitled *Private Irrigation Relocation* (Ref. 6), both prepared by Hoskin Ryan Consultants, Inc., for the location of the pipes. There are five pipes penetrating the levee; one each at stations 35+50, 42+20 and 48+70 and two at station 55+25.

The pipes were installed prior to the placement of the levee embankment, and are necessary as long as the agricultural land within Smith Farms continues to be farmed. An irrigation ditch flows north along the west side of White and Parker Road on the east side of the levee. Slide-type service gates have been installed on the river side of the pipes, to provide a seal against potential cross flow if closed. Since the pipes are open to the east side (flood side) of the levee, there is the potential for floodwaters to cross the levee if the gates are left open. During a significant flood event it will be necessary to check each gate to ensure that they are closed. When not in use to direct irrigation flow toward the farmland to the west, these gates should be kept closed as a safety precaution.

Once the land is developed and field irrigation is no longer needed, the pipes will be permanently sealed and filled with concrete, and the concrete ditch will be demolished and backfilled. This section of the manual will no longer be applicable after that point.

4 MAINTENANCE TOPICS

4.1 Erosion Control and Local Drainage

Three magnitudes of erosion may occur along the embankment:

- a. Rilling, or small channels forming vertically along the levee, is caused by local runoff from the roadway and landscaping, and does not affect the function or integrity of the levee. In areas where the flow is more concentrated, placement of loose rock riprap may help to alleviate this situation.
- b. Areas where the geotextile fabric becomes exposed during smaller rainfall events may be an indication of continued expected erosion. Deposits of loose riprap may help to protect from further erosion. A minimum of 4H:1V sideslope should be maintained along the east side of the levee, and a minimum of 3H:1V sideslope should be maintained on the west side of the levee.
- c. In the event of a large enough flood event, portions of the soil overburden could possibly be eroded, exposing the geotextile fabric. Repairs may take the form of replacement of the fill material, and re-vegetation. If the area is one of frequent damage, placement of large diameter rock riprap may be necessary to protect the fill and vegetation.

4.2 Benchmark and Grade Control

- a. As indicated on the as-built plans for the levee, a benchmark has been set at the intersection of Bowlin Road and White Parker Road, and survey monuments have been set at four locations along the top of the levee.
- b. An elevation survey should be conducted annually by a Registered Land Surveyor, contracted by the HOA. Spot elevations at the monuments located on the top of the levee should be compared to the as-built plan elevations.

- c. The areas of the levee between the monuments should be visually inspected on an annual basis for evidence of settling, and additional elevation survey shots should be taken at any such spots.

4.3 Vegetation Maintenance and Control

The east bank of the levee is covered with soil overburden and planted with landscape vegetation. Growth of the vegetation, including roots into the embankment, should be inhibited by the geotextile fabric. On the west bank of the levee, no vegetation must be allowed. Periodic treatment with a pre-emergent herbicide should be used to control weed growth.

4.4 Rodent and Insect Control

Rodents and insects may affect the integrity or function of the levee. During the visual examination, signs of activity should be looked for. A pest control service should be contacted if necessary.

4.5 Maintenance of Fencing, Gates, and Signs

The levee is not fenced except at maintenance vehicle access points. These gates should remain locked by the HOA to prevent public use, and should be inspected to ensure they are not damaged by large flood events.

4.6 Maintenance of Closure Devices

The manually operated slide-type gates are to be opened and closed by the farmer, as necessary, to irrigate the active farmland. In the event of a significant flooding event (100-year storm or greater), the HOA shall inspect the gates to ensure that they have been manually closed.

5 SUMMARY OF MAINTENANCE RESPONSIBILITIES

Activity to be Performed	Frequency	Responsible Party
Check Gate Closure	End of each Irrigation Cycle	Farmer and checked by HOA
Stability check; visual inspection ⁽¹⁾	Annually	Professional Civil Engineer contracted by HOA
Height check; elevation survey ⁽²⁾	Five-Year Intervals	Professional Civil Engineer contracted by HOA / Registered Land Surveyor contracted by HOA
Overall integrity check; visual inspection	Annually	City of Maricopa Floodplain Administrator
Geotextile fabric exposure check; visual inspection	Annually	City of Maricopa Floodplain Administrator
Geotextile fabric integrity check	Five-Year Intervals ⁽³⁾	Professional Civil Engineer contracted by HOA

(1) Should it be deemed necessary, the Professional Engineer conducting the visual inspection may request soils testing data.

(2) Take spot elevations at the monuments located on the top of the levee and compare with the as-built plans. Visually inspect the areas in-between monuments for any evidence of settling, and take additional shots at any such spots if needed.

(3) Or as recommended by manufacturer. Geotextile fabrics can have a lifespan of several decades, however exposure to UV radiation/sunlight can significantly decrease the expected lifespan. Exposed geotextile fabric should be re-covered with fill material overburden as soon as possible.

6 INSPECTIONS

It is responsibility of the Owners to provide inspections and maintenance. The City of Maricopa and Pinal County have the right to gain access to maintain the storm drain outlets and the levee if needed. If there are any questions arising from these inspections, a registered civil engineer should be consulted for advice. The Owners shall contract with a registered civil engineer for the inspection of the embankment, and a licensed contractor for any repairs. The following inspections shall be conducted:

6.1 Annual Operational Inspections

- a. List any discrepancies.
- b. Review for action required.
- c. Schedule necessary repairs.

6.2 Major Storm Event

- a. Inspect project during or after a major storm event.
- b. Inspect project at first flood warning to ensure gate closures
- c. List any problems.
- d. Review for action required.
- e. Schedule necessary repairs.
- f. Record flood depth.

6.3 Citizen Complaints and Inquiries

- a. Investigate area of complaint.
- b. Respond to citizen within 48 hours.
- c. Take action if the problem lies within the Homeowners' Association responsibility, or refer to proper agency.

7 TERMINATION

This Agreement and all rights and obligations hereunder shall terminate at such time as (i) the Wash LOMR has been issued by FEMA in connection with the regional drainage solution contemplated under that certain North Santa Cruz Wash Development Agreement City of Maricopa, Arizona (Development Agreement), and (ii) the City assumes responsibility for the repair and maintenance of the regional wash pursuant to the Wash LOMR and the Development Agreement.

8 REFERENCES

1. Administrative Committee of the Federal Register, *Code of Federal Regulations: Title 44 Emergency Management and Assistance, Chapter I – Federal Emergency Management Agency, Department of Homeland Security, Part 65 – Identification and Mapping of Special Hazard Areas, Section 65.10 – Mapping of Areas Protected by Levee Systems*, (44CFR65.10), October 1, 2003.
2. Alpha Geotechnical & Materials, Inc., *Geotechnical Subsurface Exploration for Smith Farms Levee, West Side of White Parker Road Near Bowlin Road, Maricopa, Arizona*, March 3, 2004.
3. Federal Emergency Management Agency, *Guidelines and Specifications for Flood Hazard Mapping Partners, Appendix H: Guidance for Evaluating Flood Protection Systems*, February 2002.
4. Hoskin-Ryan Consultants, Inc., *Letter of Map Revision Request for Smith Farms*, August 6, 2007.
5. Hoskin-Ryan Consultants, Inc., *Paving Plans and Levee Plans for Smith Farms Infrastructure*, as-built date July 5, 2007.
6. Hoskin-Ryan Consultants, Inc., *Private Irrigation Relocation*, July 1, 2005.

Attachment 1
Legal Description of Smith Farms
(San Travasa and Desert Passage)

No. 201-1424833

EXHIBIT "A"

PARCEL NO. 1:

The Northeast quarter of the Southeast quarter of the West half of the Southeast quarter and the Southeast quarter of the Southwest quarter of Section 25, Township 4 South, Range 3 East, Gila and Salt River Base and Meridian, Pinal County, Arizona, containing 160 acres, more or less, more particularly described as follows:

BEGINNING at the Southwest corner of the Southeast quarter of the Southwest quarter of Section 25, a point on the South boundary line of Section 25 and the North boundary line of Section 36, Township 4 South, Range 3 East, Gila and Salt River Base and Meridian, Pinal County, Arizona;

thence North 00 degrees 16 minutes 36 seconds East along the West line of the Southeast quarter of the Southwest quarter of Section 25, a distance of 1340.55 feet to the Northwest corner of said Southeast quarter, Southwest quarter;

thence South 89 degrees 31 minutes 27 seconds East along the North line of said Southeast quarter, Southwest quarter, a distance of 1311.00 feet to the Northeast corner of said Southeast quarter; Southwest quarter;

thence North 00 degrees 19 minutes 49 seconds East along the West line of the Southeast quarter of Section 25, a distance of 1340.20 feet to the Northwest corner of the Southeast quarter of said Section 25;

thence South 89 degrees 30 minutes 32 seconds East along the North line of said Southeast quarter, a distance of 2625.00 feet to the Northeast corner of said Southeast quarter of Section 25;

thence South 00 degrees 26 minutes 18 seconds West along the East line of said Southeast quarter, a distance of 2678.99 feet to the Southeast corner of said Section 25 said point also being the Northeast corner of Section 36;

thence West along the South line of Section 25, also the North line of Section 36, an approximate bearing of North 89 degrees 32 minutes 22 seconds West for a distance of approximately 3929.68 feet to the POINT OF BEGINNING.

PARCEL NO. 2:

That portion of Sections 25 and 36, Township 4 South, Range 3 East, Gila and Salt River Base and Meridian, Pinal County, Arizona, more particularly described as follows:

BEGINNING at the Southeast corner of said Section 36;

thence North 89 degrees 23 minutes 12 seconds West along the South line of said Section 36, a distance of 1907.41 feet to a point of intersection with the Northeasterly right of way line of the

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Maricopa Highway;

thence North 53 degrees 17 minutes 57 seconds West along said right of way line, a distance of 900.44 feet to a point in the East line of the Southwest quarter of said Section 36;

thence North 01 degrees 00 minutes 54 seconds East along said East line of Southwest quarter, a distance of 2150.26 feet to the Northeast corner of said Southwest quarter;

thence North 89 degrees 25 minutes 13 seconds West along the North line of said Southwest quarter, a distance of 1314.90 feet to the Southwest corner of the East half of the Northwest quarter of Section 36;

thence North 01 degrees 07 minutes 42 seconds East along the West line of said East half Northwest quarter, a distance of 2674.10 feet to the Northwest corner of said East half of Northwest quarter;

thence North 00 degrees 16 minutes 36 seconds East along the West line of the Southeast quarter of the Southwest quarter of Section 25, a distance of 1340.56 feet to the Northwest corner of said Southeast quarter, Southwest quarter;

thence South 89 degrees 31 minutes 27 seconds East along the North line of said Southeast quarter, Southwest quarter, a distance of 1311.00 feet to the Northeast corner of said Southeast quarter, Southwest quarter;

thence North 00 degrees 19 minutes 49 seconds East along the West line of the Southeast quarter of Section 25, a distance of 1340.20 feet to the Northwest corner of the Southeast quarter of said Section 25;

thence South 89 degrees 30 minutes 32 seconds East along the North line of said Southeast quarter, a distance of 2625.00 feet to the Northeast corner of said Southeast quarter Section 25;

thence South 00 degrees 26 minutes 18 seconds West along the East line of said Southeast quarter, a distance of 2678.99 feet to the Southeast corner of said Section 25 said point also being the Northeast corner of Section 36;

thence South 00 degrees 49 minutes 01 seconds West along the East line of said Section 36, a distance of 1325.65 feet to a point;

thence North 88 degrees 31 minutes 59 seconds West, a distance of 2196.69 feet to a point;

thence South 01 degrees 26 minutes 09 seconds West, a distance of 1263.39 feet to a point;

thence South 89 degrees 06 minutes 31 seconds East, a distance of 1377.63 feet to a point;

thence North 00 degrees 32 minutes 03 seconds West, a distance of 100.00 feet to a point;

thence South 89 degrees 06 minutes 31 seconds East, a distance of 50.00 feet to a point;

thence North 00 degrees 32 minutes 03 seconds West, a distance of 1149.81 feet to a point;

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thence South 88 degrees 31 minutes 59 seconds East, a distance of 811.50 feet to a point on the East line of said Section 36, said point being South 00 degrees 49 minutes 01 seconds West, a distance of 1350.65 feet from the Northeast corner of said Section 36;

thence South 00 degrees 49 minutes 01 seconds West along said East line, a distance of 4,013.63 feet to the POINT OF BEGINNING;

EXCEPT the Northeast quarter of the Southeast quarter of the West half of the Southeast quarter and the Southeast quarter of the Southwest quarter of Section 25, Township 4 South, Range 3 East, Gila and Salt River Base and Meridian, Pinal County, Arizona, containing 160 acres, more or less, more particularly described as follows:

BEGINNING at the Southwest corner of the Southeast quarter of the Southwest quarter of Section 25, a point on the South boundary line of Section 25 and the North boundary line of Section 36, Township 4 South, Range 3 East, Gila and Salt River Base and Meridian, Pinal County, Arizona;

thence North 00 degrees 16 minutes 36 seconds East along the West line of the Southeast quarter of the Southwest quarter of Section 25, a distance of 1340.55 feet to the Northwest corner of said Southeast quarter, Southwest quarter;

thence South 89 degrees 31 minutes 27 seconds East along the North line of said Southeast quarter, Southwest quarter, a distance of 1311.00 feet to the Northeast corner of said Southeast quarter, Southwest quarter;

thence North 00 degrees 19 minutes 49 seconds East along the West line of the Southeast quarter of Section 25, a distance of 1340.20 feet to the Northwest corner of the Southeast quarter of said Section 25;

thence South 89 degrees 30 minutes 32 seconds East along the North line of said Southeast quarter, a distance of 2625.00 feet to the Northeast corner of said Southeast quarter of Section 25;

thence South 00 degrees 26 minutes 18 seconds West along the East line of said Southeast quarter, a distance of 2678.99 feet to the Southeast corner of said Section 25 said point also being the Northeast corner of Section 36;

thence West along the South line of Section 25, also the North line of Section 36, an approximate bearing of North 89 degrees 32 minutes 22 seconds West for a distance of approximately 3929.68 feet to the POINT OF BEGINNING.

EXHIBIT C DISPUTE RESOLUTION PROCESS

1. Mediation. In the event that there is a dispute hereunder which the Parties cannot resolve among themselves (including an uncured event of Default), the Parties agree that there shall be a forty-five (45) day moratorium on the portion of the Dispute Resolution Process, set forth in Paragraph 2, during which time the Parties agree to attempt to settle the dispute by non-binding mediation as the first step in the Dispute Resolution Process. The matter in dispute shall be submitted to a mediator mutually selected by the Parties within seven (7) business days of the delivery of the Initiation Notice. In the event that the Parties cannot agree upon the selection of a mediator within seven (7) business days, then within three (3) business days thereafter, the Parties 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 mediator selected shall have at least five (5) years experience in mediating or arbitrating disputes relating to land and property development. The cost of any such mediator shall be divided equally between the Parties.

2. Arbitration. If the mediation procedure set forth in Paragraph 1 does not resolve a dispute, any Party may submit, by demand letter, correspondence or notice ("Arbitration Notice"), to the other Party, such dispute to arbitration pursuant to this Paragraph 2.

- a. For disputes involving \$100,000.00 or more, within fifteen (15) days after delivery of the Arbitration Notice, each Party shall appoint one person to serve on an arbitration panel ("Panel"). Within twenty-five (25) days after delivery of the Arbitration Notice, the persons appointed to serve on the Panel shall themselves appoint one person to serve as the third member of the Panel. The third person selected shall function as the Chairman of the Panel. For any disputes involving less than \$100,000.00, the Parties will reasonably agree upon a single arbitrator within fifteen (15) days after delivery of the Arbitration Notice; if the Parties cannot agree upon an arbitrator within fifteen (15) days after delivery of the Arbitration Notice, then a single arbitrator shall be selected pursuant to the Rules (as defined below).
- b. In such event, the dispute shall be subject to, and decided by arbitration in accordance with, the Arizona-enacted version of the Uniform Arbitration Act (the "Rules") currently in effect, except as provided in this Agreement and except where modified by the provisions hereof.
- c. Any arbitration arising out of this Agreement may include, by consolidation or joinder, or in any other manner, at the discretion of either KB Home or the City, as the case may be, believes to be substantially involved in a common question of law or fact and who consent to jurisdiction of the arbitrator.
- d. The Parties agree that the remedies available for the award by the arbitrators under this Paragraph 2 in a dispute arising out of or relating to this Agreement or breach thereof shall be limited to specific performance and declaratory relief and the arbitrator may not issue an award of monetary damages, whether characterized as actual, consequential or otherwise, except as provided in this Paragraph 2.d and Paragraphs 2.k and 2.n. Notwithstanding the foregoing sentence, the arbitrators may award the payment of an amount owed or may enjoin the withholding of amounts due under this Agreement.
- e. The Arbitration Notice shall be filed with the other Party in accordance with the Rules and the notice provisions of this Agreement. An Arbitration Notice shall be made within a reasonable time after the claim, dispute, or other matter in question has arisen. In no event shall the Arbitration Notice be made after the date when institution of legal or equitable proceedings based on such claim dispute or other matter in question could be barred by the applicable statute of limitations. Notwithstanding the foregoing, the City

- specifically agrees that during the use of the Dispute Resolution Process, the time limits established in A.R.S. §§12-821 and 12-821.01 shall be tolled during Dispute Resolution Process.
- f. The Arizona Rules of Civil Procedure, Article V (Depositions and Discovery), Rules 26 through 37 inclusive, shall apply except as limited as follows (Presumed Discovery Limitation”):
 - i. No more than one (1) four hour deposition of each Party may be taken;
 - ii. Each Party shall be limited to one (1) expert witness per claim or cause of action;
 - iii. Discovery shall be completed on, and no further discovery shall be permitted after ninety (90) days from the date of the filing of the first demand for arbitration.
 - g. Upon motion of any Party, the Chairman shall determine the nature and scope of discovery and manner of presentation of relevant evidence if one of the Parties can show good cause as to why the Presumed Discovery Limitations should not be applied to the dispute at issue. The Chairman shall make this decision on varying from the Presumed Discovery Limitations based on the objectives that disputes be resolved in a prompt and efficient manner but with relevant and salient facts being submitted for the arbitrators’ consideration.
 - h. In order to effectuate the Parties’ goals, the hearing, once commenced, will proceed from business day to business day until concluded, absent a showing of emergency circumstances
 - i. The Panel shall, within fifteen (15) days from the conclusion of any hearing, issue its decision which shall be in accordance with the laws of the State of Arizona.
 - j. The arbitrators shall prepare written findings of fact and conclusions of law upon which the decision and award shall be based.
 - k. The arbitrators may award compensatory damages pursuant to Paragraphs 2.d, 2.k and 2.n and reasonable attorneys’ fees and reasonable costs to the prevailing Party.
 - l. The arbitration shall occur within the municipal limits of the City unless the Parties agree otherwise in writing.
 - m. This Agreement to arbitrate shall be specifically enforceable by either Party under the prevailing laws of the State of Arizona. Any award rendered by the arbitrators shall be final and enforceable by any Party to the arbitration, and judgment shall be made upon it in accordance with the applicable laws of any court having jurisdiction thereof. The arbitrators’ decisions shall be final and conclusive as to the facts.
 - n. Either Party may appeal manifest errors of law to a court of competent jurisdiction within fifteen (15) days of the award. Notwithstanding anything in this Agreement to the contrary, if either Party fails to take action consistent with the arbitrators’ award within fifteen (15) days after demand, then the other Party may either utilize the Dispute Resolution Process set forth in this Exhibit I (but without limitation on remedy) or pursue in court any remedy available to it at law or in equity, including without limitation, monetary damages, resulting from the failure to take action consistent with the arbitrators’ award and/or the underlying dispute that was the subject of the arbitration.
 - o. Unless otherwise agreed in writing and notwithstanding any other rights or obligations of the Parties under the Agreement, KB Home and the City shall continue with the performance of their respective duties, obligations, and services hereunder during the pendency of any claim, dispute, or other matter in question giving rise to arbitration or mediation.
 - p. The Dispute Resolution Process set forth in this Exhibit C shall not apply to an action by the City to acquire or condemn (except by inverse condemnation) all or a portion of the Property or to claims for injunctive relief of mandamus by either Party.