(372)

OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
LAURA DEAN-LYTLE

DATE/TIME: 05/21/08 1603
FEE: $27.00
PAGES: 37
FEE NUMBER: 2008-048612

When recorded, return to:

Fitzgibbons Law Offices, P.L.C.
P.O. Box 11208
Casa Grande, AZ 85230-1208
(W/C)

PRE-ANNEXATION AND DEVELOPMENT AGREEMENT

RESOLUTION NO. 08-24

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 ABCDW, LLC, IN COMPLIANCE WITH A.R.S. §9-500.05.

WHEREAS, pursuant to A.R.S. §9-500.05, ABCDW, LLC, an Arizona limited liability company (collectively "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 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 annexation and the proper development of the property subject to the Development Agreement.

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 14th day of May, 2008.

APPROVED:

Kelly Anderson, Mayor

ATTEST:

Vanessa Bueras, City Clerk

APPROVED AS TO FORM:

Denis Fitzgibbons, City Attorney

WHEN RECORDED RETURN TO:

City of Maricopa
Attn: City Clerk
P.O. Box 610
Maricopa, Arizona 85239

PRE-ANNEXATION AND DEVELOPMENT AGREEMENT

THIS PRE-ANNEXATION DEVELOPMENT AGREEMENT ("**Agreement**") is entered into by and between the CITY OF MARICOPA (the "City"), an Arizona municipal corporation, and ABCDW,LLC an Arizona limited liability company (the "Owner"). The Owner and the City are individually and collectively referred to as "Party" or "Parties."

RECITALS

A. The Owner owns real property located in Pinal County, Arizona, consisting of approximately 316.69 acres, generally located at the northwest corner of Warren and Farrell Roads, legally described on Exhibit A, attached hereto (the "Property").

B. Except as set forth herein, the Owner and the City desire that the Property be annexed into the corporate limits of the City and be developed as an integral part of the City. The City will file a blank annexation petition with the Pinal County Recorder's Office and will notice and hold the requisite meetings and hearings in accordance with Arizona Revised Statutes ("A.R.S. ") § 9-471 *et seq.*

C. The Owner plans to develop the Property as Master Planned Development in accordance with this Agreement and with the Development Plan, attached hereto as Exhibit B.

D. The Owner desires to enter into this Agreement to (a) eliminate uncertainties for the development of the Property; (b) vest the Owner's the right to develop the Property consistent with this Agreement; and (c) to define the Owner's responsibility for the development of the Property.

E. The City desires to annex the Property into the incorporated limits of the City and, upon the completion of the City's processes for a Major General Plan Amendment and rezoning, intends to rezone the Property to a Master Planned Development with a Planned Area Development ("PAD") overlay (the "Zoning") .

F. The City acknowledges that the Owner has submitted or will submit to the City, as soon as possible after the initial approval of this Agreement, applications for the approval of a Major General Plan Amendment and Zoning for the Property. The City agrees to cooperate with the Owner in the processing of the Zoning of the Property in an expeditious manner, subject to the City's reasonable review and due consideration in conformance with all notice and public hearing procedures required by statute or ordinance necessary for the Zoning.

G. The Parties acknowledge that the ultimate development of the Property within the City is a project of such magnitude that the Owner requires assurances from the City and those assurances are conditions precedent to Owner's decision to develop the Property pursuant to this Agreement and expend substantial efforts and costs in the development of the Property. The Parties further acknowledge that this Agreement is a "Development Agreement" within the

meaning of, and entered into under the terms of Arizona Revised Statutes ("A.R.S.") §9-500.05, in order to facilitate the development of the Property by providing for, among other things: (a) the vested and permitted uses for the Property and the density and intensity of such uses; (b) the phasing over time of construction and development on the Property; (c) the conditions, terms, and requirements for the construction, installation, and financing of infrastructure; and (d) other matters related to the development of the Property.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and agreements set forth herein, the Parties hereby agree as follows:

I. EFFECTIVE DATE. This Agreement will be effective on the date ("Effective Date") on which all of the following has occurred with respect to the Property:

(a) Adoption of this Agreement by the City;

(b) Approval by the City of the Major General Plan Amendment for the Property;

(c) Execution by the duly authorized representatives of the Parties;

(d) Recordation in the office of the Recorder of Pinal County, Arizona; and

(e) Effectiveness of the City ordinance annexing the Property into the Maricopa city limits.

II. TERM AND RENEWAL. The term of this Agreement is ten (10) years from the Effective Date (the "Initial Term"). So long as the Owner complies with the terms and conditions of this Agreement, then the Initial Term may be extended by an additional five (5) year period (the "Additional Term") upon the approval of the City Council, which shall not be unreasonably withheld. The Initial Term and Additional Term shall be hereinafter collectively referred to as the "Term."

III. DEFINITIONS.

Unless otherwise specified, the following words in this Agreement have the meanings provided below.

3.1 "**Agreement**" means this Agreement, as amended and restated or supplemented in writing from time to time, and includes all Exhibits and Schedules hereto.

3.2 **"A.R.S."** means the Arizona Revised Statutes as now or hereafter enacted or amended.

3.3 "**Default**" or "**Event of Default**" means one or more of the events described in Section 18.5 provided, however, that such events shall not give rise to any remedy until effect has been given to all grace periods, cure periods provided for in this Agreement.

3.4 **"Community Facilities District" or "CFD"** means as defined in Section 13.

3.5 "**Design Guidelines**" means as set forth in Section 9.

3.6 "**Infrastructure Plan**" shall mean the exhibit attached hereto as Exhibit D.

3.7 "**Public Infrastructure Improvements**" means as described in Exhibit D.

3.8 "**Public Infrastructure Improvement Costs**" means all costs, expenses, fees (including, but not limited to, Development Fees) and charges actually incurred and paid to contractors, architects, engineers, surveyors, governmental agencies and other third parties for materials, labor, design, engineering, surveying, site excavation and preparation, governmental permits, payment and performance bonds, property acquisition costs and all other costs and expenses reasonably necessary for the construction, installation, or provision of the Public Infrastructure Improvements as described in Exhibit D.

IV. ANNEXATION.

4.1 Owner to Submit Signed Annexation Petition; Annexation. Prior to the Council's consideration of the annexation of the Property, the Owner will deliver to the City the appropriate Petitions for Annexation duly executed by the Owner (the "Annexation Petition") and satisfying the applicable statutory requirements.

4.2 City Will Annex the Property. The City, after complying with all statutory requirements, will duly consider and determine if annexation of the Property into the City is in the best interest of the City in compliance with the provisions of A.R.S. § 9-471 et seq. Shortly after the approval of this Agreement, the City, if shown to be in its best interest, will adopt an ordinance annexing the Property into the corporate limits of the City (the "Annexation Ordinance"). Notwithstanding the foregoing, the Owner acknowledges that the City's approval of the Major General Plan Amendment and Zoning in accordance with this Agreement will occur after the adoption of the Annexation Ordinance.

4.3 Rescission Provision in Annexation Ordinance. The Annexation Ordinance shall contain a provision requiring, upon the Owner's timely written request, the immediate rescission and termination of the Annexation Ordinance by the City if: (a) any person or entity timely files any protest, appeal, referendum, litigation or other petition (including, but not limited to, any petition filed pursuant to A.R.S. § 9-471(C)) challenging the validity or approval of the Annexation Ordinance; or (b) any person or entity timely files any protest, appeal, referendum, litigation or other petition challenging the validity or approval of this Agreement. If Owner exercises its rights under this Subsection 4.3, the request will be submitted to the City in sufficient time to allow for requisite notice periods under the City's Rules and Regulations.

4.4 Automatic Termination of Agreement. The City and the Owner hereby acknowledge and agree that this Agreement shall automatically terminate and be of no force or effect if the City's annexation of the Property does not, for any reason (including, but not limited to, the application of the recession and termination provisions set forth above) become effective and final pursuant to A.R.S. § 9-471(D) on or before July 15, 2008. If the City does not approve the general plan amendment and zoning by December 31, 2008, unless the zoning process is extended by Owner, to the extent allowed by law, the City will take reasonable action to deannex the property.

V. DEVELOPMENT OF THE PROPERTY.

5.1 General Plan and Zoning. The Parties agree that the development of the Property as described on the Development Plan , the Zoning, and this Agreement will require a Major General Plan Amendment, that pursuant to ARS §9-500.05(B) must be approved by the City prior to the execution of this Agreement by the parties. .

5.2 General Plan and Zoning Application. The City acknowledges that the Owner has submitted or will submit to the City, as soon as possible after the initial approval of this Agreement, applications for the approval of a Major General Plan Amendment and Zoning for

the Property in furtherance of this Agreement. The City agrees that any Zoning application submitted for the Property is not required to show the lotting for the Property. The City, having exercised its discretion in approving the Agreement, agrees to cooperate with the Owner in the processing of the Zoning of the Property in an expeditious manner, subject to the City's reasonable review and due consideration in conformance with all notice and public hearing procedures required by statute or ordinance necessary for the Zoning.

5.3 Vested Rights.

(a) The Development Plan approved in the rezoning of the Property to Master Planned Development with a PAD overlay Zoning shall establish vested rights only with respect to those matters set forth on Exhibit B hereto (collectively, such matters on Exhibit B shall be referred to as the "Vested Rights").The City agrees that, for the term of this Agreement, Owner shall have a vested right to develop the Property in accordance with this Agreement and the Vested Rights set forth in this Agreement. Further, subject to the Rules and Regulations and any permitted changes to the Rules and Regulations as permitted by Section VI of this Agreement, Owner may develop the Property in accordance with the Development Plan and the Master Planned Development with a PAD overlay Zoning. The determinations of the City memorialized in this Agreement, together with the assurances provided to Owner in this Agreement are provided pursuant to and as contemplated by A.R.S. Section 9-500.05.

(b) The City shall grant and issue all approvals necessary to allow the Owner to implement the Zoning and develop the Property in accordance with the Zoning and this Agreement, subject to the City's reasonable and customary review and approvals of plats, site plans and specifications, permits and other similar items in accordance with the Rules and Regulations, provided that the Owner pays all applicable permit and application fees. Nothing herein shall prevent the City from exercising its reasonable discretion in reviewing and approving plats and plans for the Property and related improvement plans; provided, however, that the exercise of such discretion by the City shall be reasonable and shall not be used to reduce the densities otherwise permitted under this Agreement.

(c) Until the first permits are pulled for the development of the Property, the City shall allow the existing agricultural operation to continue and not be impeded by the forthcoming zoning change.

5.4 Anti-Moratorium. The parties hereby acknowledge and agree that for the Term of this Agreement as defined in Section II above, no moratorium shall be imposed except as permitted by A.R.S. Section 9-463.06, as of the date of this Agreement and attached hereto as Exhibit E. The Parties agree that if a subsequent law changes or repeals the standards or language of A.R.S. § 9-463.06, which is set forth on Exhibit E, attached hereto, such standards shall continue to apply to the Property.

VI. APPLICABLE LAW AND REGULATIONS. With respect to the development of the Property as contemplated by this Agreement, the code, ordinances, rules, regulations, permit requirements, exactions, fees, development fees (as defined in A.R.S. Section 9-463.05) other requirements and/or official policies of the City ("Rules and Regulations") which apply to the development of the Property, shall mean those Rules and Regulations in existence from time to time. Except as otherwise expressly provided in this Agreement, the City shall not impose or enact any additional conditions, zoning exactions, permit requirements, dedications, rules or regulations applicable to or governing the development of the Property. Any change in the Rules and Regulations in existence on the date of this Agreement or any Rules and Regulations enacted after the date of this Agreement shall not be enforced against any development of the Property if such enforcement would materially and adversely limit or change the development of the Property consistent with the Vested Rights described in this Agreement except for the following which shall be allowable additions to the Rules and Regulations and shall be binding on the development of the property:

(a) Provisions or stipulations that the Owner, in its sole discretion, may agree in writing to apply to the development of the Property;

(b) Rules and Regulations of the City enacted as reasonably necessary to comply with requirements imposed on the City by the State, County or Federal government, provided, that in the event such requirement prevents or precludes compliance with this Agreement, such effective provisions of this Agreement shall be modified, if legally possible, as may be necessary to achieve the minimum permissible compliance with such requirements;

(c) Rules and Regulations enacted by the City that are reasonably necessary to alleviate threats to public health and safety, in which event any such remedial or corrective enactments shall be rationally related to the alleviation of such threats and may be imposed only after allowing for public comment at an open meeting and shall not, in any event, be imposed unreasonably or arbitrarily; and

(d) Future updates of, and amendments to existing building, construction, plumbing, mechanical, electrical, drainage and similar construction and safety related codes, such as the recognized construction, safety organization or by the county, state or federal government or by the Central Arizona Association of Governments, provided that such building or safety code updates and amendments have been duly adopted by the appropriate publishing agency and are reasonably applied and, unless mandated by superior legal authority, shall not apply to any structures for which a permit has already been issued.

VII. PUBLIC IMPROVEMENTS. The public improvements conceptually set forth in the Infrastructure Description and as modified by the City Engineer's approval of the phased and more detailed Infrastructure Plans, shall hereinafter be referred to as the "Public Infrastructure." All Public Infrastructure improvements contained in the Infrastructure Description for the Property may be phased and shall be constructed pursuant to and in accordance with the Infrastructure Plan, attached as Exhibit D to this Agreement.

VIII. MUNICIPAL SERVICES. The City hereby agrees to include the Property in any and all City service areas and to provide the Property with police and fire protection services and all other services provided by the City, in a manner reasonably comparable to those services provided to other similarly situated land owners and occupants of the City, subject to the construction of the Public Infrastructure necessary to provide such services, which Public

Infrastructure shall be subject to the provisions for Reimbursements set forth herein if constructed by Owner. The City and the Owner acknowledge and agree that the Property is within the sewer service area and water service area certificated to a private utility company. To the extent that the Property remains within a private utility company's certificated area, the Owner shall contract with that utility for the terms and provisions of such service to the Property. Owner shall not be liable to pay any City water and/or sewer related Development Fee unless the City becomes the water and/or sewer service provider for the Property.

IX. DEVELOPMENT STANDARDS. The development of the commercial projects on the Property will comply with the City's Rules and Regulations in place on the Effective Date of this Agreement, as amended pursuant to this Agreement, and the Zoning. The City's Residential Design Standards in the form attached hereto as Exhibit F, shall govern residential development of the Property and shall be in accordance with the Zoning except for the deviations from those standards set forth in Sections 9.1 through 9.3 below (collectively, the "Deviations").

9.1 Maximum Density; Transfer. The maximum overall single family residential density for the each phase of development as shown in the Development Plan, in accordance with the City's General Plan, shall be 2.0 to 6.0 single family dwelling units per acre within the medium density range and 6.0 or more dwelling units per acre within the high density range. The City will permit movement of specific land uses within any phase of development in each Development Plan and as designated on any Council-approved land plans for the Property so long as (i) the overall density/intensity does not increase for the Property within the Development Plan, (ii) such density transfer does not exceed one step (e.g., Low Density Residential to Medium Density Residential) as depicted in the Land Use Element of the City of Maricopa General Plan, and (iii) the density transfer is ten percent (10%) or less between units. For purposes of this Agreement, "phases" do not indicate sequence of development.

9.2 Open Space. City and Owner agree that any given phase within the residential portion of the Property may develop with less than 20% open space, if approved by the City's Development Services Director, provided that the overall Open Space within the residential portion of the Property is not less than 20%. The Parties acknowledge that there shall be no open space requirement in connection with the non-residential portion of the Property.

9.3 Permitted Uses. Owner shall permit only the uses listed in Exhibit C on the Property, unless hereafter specifically approved by Council.

X. SUCCESSORS & ASSIGNEES.

10.1 Binding on Successors and Assigns. All of the provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the Parties hereto pursuant to A.R.S. §9-500.05(D), provided, however, the Owner's rights and obligations hereunder may only be assigned to a person or entity that has acquired the Property or a portion thereof.

10.2 Release of Owners' Obligations. Upon Owner's transfer of the Property or any portion thereof, the transferee(s) shall automatically become the Owner hereunder and the City shall release all prior Owner(s) from the obligations of this Agreement which are to be performed in that portion of the Property that has been transferred once an Assumption and Assignment of Liability has been executed by the transferee(s) in a form acceptable to the City.

10.3 Termination on Sale of Subdivided Lots. This Agreement shall not impose any obligations upon and shall terminate without the execution or recordation of any further document or instrument as to any residential lot, or commercial lot or pad sold to the end user. "End user" with respect to a residential lot is defined as a person or entity which has purchased a single residential lot or condominium improved by the construction of a dwelling unit thereon. An "end user" with respect to a commercial lot, or commercial pad is defined as a person or entity which has purchased a single commercial lot, or commercial pad to be improved by the construction of a commercial building thereon which may be occupied pursuant to a certificate of occupancy issued by the City. An apartment building shall be deemed a commercial use under this application. An end user meeting any of the definitions of such contained herein shall be released from and no longer be subject to or burdened by the provisions of this Agreement.

XI. NO OWNER REPRESENTATIONS. If the Owner does not intend to develop the Property, nothing contained herein shall be deemed to obligate the Owner to complete any part or all of the development of the Property in accordance with this Agreement or any other plan. If, however, the Owner begins development of the Property, they shall have the right and obligation, at any time after the Effective Date, to construct or cause to be constructed and installed any and all portions of the Infrastructure Description that relate to the segments of the Property so developed by the Owner.

XII. DEVELOPMENT FEES. The Owner shall pay all prevailing Development Fees (defined as the per dwelling unit amount calculated in accordance with an officially sanctioned impact fee study (the "Fee Study") for the purpose of ameliorating the impact of development on the City, as approved by the Council pursuant to resolution, and imposed pursuant to the City's Development Fee Program as specified in the Rules and Regulations) at building permit issuance; subject, however, to the provisions of this Agreement including, but not limited to, the provisions of this Agreement providing for the reimbursement of certain fees and contributions. To the extent permitted by the City's Development Fee Program as specified in the Rules and Regulations and the Fee Study, the Owner shall be entitled to a reimbursement against the category of Development Fees that are assessed (or that are to be assessed) against the Property (or any portion thereof) for any land, improvements or other contributions provided by the Owner to the City for any land or capital facility improvement required to provide public services, provided that such improvements are included as a general component of the impact fee assessed pursuant to the Fee Study, and are related to the Development Fees for which such credit is sought in accordance with Exhibit G attached hereto. Notwithstanding the foregoing, the Owner shall provide the improvements necessary to develop the Property including, but not limited to, Right of Ways and Public Utility Easements. The Development Fees that are assessed (or that are to be assessed) against the Property (or any portion thereof) shall be assessed against all other commercial developments of similar size in the City that occur on or after the Effective Date of this Agreement on a no more favorable basis than that on which such Development Fees are assessed against the Property (or any portion thereof).

XIII. COMMUNITY FACILITIES DISTRICT. The City acknowledges and agrees that the services/infrastructure required to serve development on the Property as indicated in the Development Plan or as otherwise allowed by Arizona law may be constructed, upon the Owner's request, through the CFD mechanism pursuant to ARS § 48-701 et seq.; provided that no CFD may be less than 640 acres and that Owner agrees to work with the City to obtain the support of the surrounding land owners in the formation of a CFD in order to minimize the number of special districts in the area. The City agrees to cooperate and pursue

intergovernmental agreements with other public bodies, as applicable, to secure the ownership, operation and maintenance of completed Public Infrastructure acquired or constructed with CFD funds that are typically not owned, operated and maintained by the City. The Owner may request that the City and any CFD establish a means of collecting reimbursements from the Owner or other real property owners for the CFD's and/or Owner's costs of financing, designing and installing public facilities that are of the size, length or capacity greater than that needed to serve or mitigate the impacts of development of the Property and which will serve other property in the City in accordance with this Agreement.

XIV. HOMEOWNER'S ASSOCIATION. Prior to the submittal of the first application for a residential building permit to the City and pursuant to a declaration of Covenants, Conditions, and Restrictions ("CC&Rs") by the Owner, the Owner shall form a master homeowner's association ("HOA") that governs the single family residential portion of the Property. The CC&Rs shall incorporate the requirements of this Agreement, the CFD Agreement, and further provide that either the HOA, a sub-association, or the Owner (until such time as Owner, as "Declarant," relinquishes control of the HOA to the property owners, as provided in the CC&Rs) shall maintain the trails, drainage facilities, landscaping along rights-of-way, and private open spaces and private common areas within the single-family residential portion of the Property.

XV. PROPERTY OWNERS ASSOCIATION. Prior to the submittal of the first application for a commercial building permit to the City and pursuant to CC&Rs by the Owner, the Owner shall form a property owners association ("POA") that governs the non-residential portion of the Property. The CC&Rs shall incorporate the requirements of this Agreement, the CFD Agreement, and further provide that either the POA, a sub-association, or the Owner (until such time as Owner, as "Declarant," relinquishes control of the POA to the property owners, as provided in the CC&Rs) shall maintain the landscaping along rights-of-way and common areas within the industrial portion of the Property.

XVI. APPOINTMENT OF REPRESENTATIVES. To further the commitment of the Parties to cooperate in the implementation of this Agreement, the City and the Owner each shall designate and appoint a representative to act as a liaison between the City and its various departments and the Owner. The Council or the Owner may change their representative at any time, but each Party agrees to have a current active representative appointed for discussion and review as further detailed in this Agreement. The initial representative for the City (the "City Representative") shall be the City Manager, and the initial representative for the Owner (the "Owners' Representative") shall be its project manager, as identified by the Owner from time to time. 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 pursuant to this Agreement.

XVII. EXPEDITED CITY DECISIONS; USE OF OUTSIDE CONSULTANTS. The implementation of this Agreement shall be in accordance with the development review process of the City. The City and the Owner agree that the Owner must be able to proceed rapidly with the development of the Property and that, accordingly, an expedited City review, land development, and construction inspection process is necessary. Accordingly, the City agrees that if at any time the Owner believes that an impasse has been reached with the City Staff on any issue affecting any of the Property, the Owner shall have the right to immediately appeal to the City Representative for an expedited decision pursuant to this Section 17. The Owner agrees to pay the costs incurred by the City for private, independent consultants and advisors which may

be retained by the City, as necessary, to assist the City in the expedited review and/or inspection process (each an "Outside Consultant"); provided, however, that such consultants shall take instructions from, be controlled by, and be responsible to, the City and not the Owner. If the issue on which an impasse has been reached is an issue where the City Staff/Outside Consultant could reach a final decision without Council action, the City Representative/Outside Consultant shall give the Owner a final decision within fifteen (15) days after the request for an expedited decision. If the issue on which an impasse has been reached is one where a final decision requires action by the Council or the Planning and Zoning Commission, the City Representative/Outside Consultant shall be responsible for scheduling a public hearing on the issue by the appropriate City body to be held within five weeks after the Owner's request for an expedited decision. Both Parties agree to continue to use reasonable good faith efforts to resolve any impasse pending any such expedited decision.

XVIII. GENERAL.

18.1 Compliance with Ordinances, Resolutions, and Covenants. The City hereby represents and warrants that this Agreement is not inconsistent with or prohibited by any City ordinances, resolutions, and/or covenants, including without limitation all covenants in revenue bonds issued by the City. The City hereby represents and warrants that it has not received nor is it aware of any action which would result in a notice from any Federal, State, or County agency, that in any way would impair the City's ability to fulfill its obligations under this Agreement.

18.2 Waiver. No delay in exercising any right or remedy by either the City or the Owner shall constitute a waiver thereof. Any waiver of the provisions of this Agreement must be in writing and signed by the appropriate officials or officers of the City or the Owner. The failure of any Party to enforce the provisions of the Agreement or require performance of any of the 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 preceding or subsequent breach of the same or any other covenant or condition of this Agreement

18.3 Attorney Fees. In the event it becomes necessary for a party to this Agreement to employ legal counsel or to bring an action at law or other proceedings to enforce any of the terms, covenants or conditions of this Agreement, the non-prevailing party will pay the other party's reasonable expenses, including, but not limited to, expert witness fees, and reasonable attorney fees incurred because of the breach.

18.4 Notices. All notices, filings, consents, approvals and other communications provided for herein or given in connection herewith shall be validly given, filed, made, delivered or served if in writing and delivered personally, sent by facsimile (with copy by mail), by private overnight mail or sent by United States Mail, postage prepaid, if to:

If to the City:
City of Maricopa
Attn: City Manager
44624 West Garvey Road
Maricopa, Arizona 85239
Telephone: (520) 568-9098

With copies to:
City of Maricopa
Attn: Denis Fitzgibbons, City Attorney
Fitzgibbons Law Offices PLC

711 East Cottonwood, Suite E
P.O. Box 11208
Casa Grande, AZ 85230-1208
Telephone: (520) 426-3824
Facsimile: (520) 426-9355

If to Owner:

ABCDW, LLC
Seth Keeler
1121 W. Warner Road, Suite 109
Tempe, Arizona 85282
Telephone: (480) 831-2000
Facsimile: (480) 893-1604

With a copy to:

Chandler & Udall, LLP
Larry Rollin
4801 E. Broadway Blvd., Suite 400
Tucson, AZ 85711-3609
Telephone: (520) 623-4353
Facsimile: (520) 792-3426

or to such other addresses as either Party hereto may from time to time designate in writing and deliver in a like manner. Notices, filings, consents, approvals, and communication given by mail shall be deemed delivered three (3) days following deposit in the U.S. mail, postage prepaid and addressed as set forth above. Notice sent by personal delivery or overnight delivery service shall be effective upon delivery, notice by facsimile shall be effective upon confirmed transmission.

18.5 Default. Failure or unreasonable delay by either Party to perform or otherwise act in accordance with any term or provision of this Agreement for a period of thirty (30) days after written notice thereof from the other Party ("Cure Period"), shall constitute a default under this Agreement; provided, however, that if the failure or delay is such that more than thirty (30) days would reasonably be required to perform such action or comply with any term or provision hereof, then such Party shall have such additional time as may be necessary to perform or comply so long as such party commences performance or compliance within said thirty (30) day period and diligently proceeds to complete such performance or fulfill such obligation. Said notice shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible. In the event such default is not cured within the Cure Period, the non-defaulting Party shall have all rights and remedies provided by law or equity.

18.6 Mediation. If a dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be settled through negotiations, the Parties agree first to try to settle the dispute through mediation before resorting to arbitration, litigation or some other dispute procedure. In the event that the Parties cannot agree upon the selection of a mediator within seven (7) days, either Party may request the Presiding Judge of the Pinal County Superior Court to assign a mediator from a list of mediators maintained by the Arizona Municipal Risk Retention Pool.

18.7 Arbitration. If the mediation procedure set forth in Paragraph 18.6 above does not resolve a dispute, either party may submit, by demand letter, correspondence or notice, to the

other party, such dispute to arbitration pursuant to this Paragraph 18.7. In such event, the dispute shall be subject to and decided by arbitration in accordance with the Rules for Non-Administered Arbitration of Business Disputes (the "Rules") of the Center for Public Resources (the "CPR") currently in effect, except as provided herein and except where modified by the provisions hereof.

(a) Any arbitration arising out of this Agreement may include, by consolidation or joinder, or in any other manner, at the discretion of either the Owner or the City, any other entities or persons whom the Owner of 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.

(b) The parties agree that the remedies available for the award by the arbitrator(s) under this Paragraph 18.7 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 Sub-paragraphs 18.7(f) and 18.7(i), and provided, however, that the arbitrator(s) may award the payment of an amount owed or may enjoin the withholding of amounts due under this Agreement.

(c) Demand for arbitration shall be filed with the other party in accordance with the Rules and the notice provisions of the Agreement. A demand for arbitration shall be made within a reasonable time after the claim, dispute, or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based upon such claim, dispute or other matter in question could be barred by the applicable statute of limitations.

(d) In the event the amount in controversy is less than $500,000, a sole arbitrator shall be appointed in accordance with the Rules. In the event the amount in controversy is $500,000 or more, the demanding party shall appoint one party-appointed arbitrator in its notice demand for arbitration. The responding party may within ten (10) days, appoint a second party-appointed arbitrator. The party-arbitrators shall appoint a third arbitrator in accordance with the Rules. If the party-arbitrators fail to appoint a third arbitrator, the third arbitrator shall be appointed in accordance with the Rules. If the responding party fails to appoint a second party-arbitrator within the time so provided, selection of the second arbitrator shall be in accordance with the Rules.

(e) The Arizona Rules of Civil Procedure Article V (Depositions and Discovery) Rules 26 through 37 inclusive shall apply except as limited herein:

i. No more than one (1) four (4) -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; and

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.

(f) The decision of the arbitrator(s) shall be in accordance with the laws of the State of Arizona and the United States. The arbitrator(s) shall prepare written findings of fact and conclusions of law upon which the decision and award shall be based. The arbitrator(s) may award compensatory damages pursuant to Paragraph 18.7(i) and reasonable attorneys' fees and reasonable costs to the prevailing party.

(g) The arbitration shall occur within the municipal limits of the City unless the parties agree otherwise in writing.

(h) This agreement to arbitrate shall be specifically enforceable by either party under the prevailing laws of the State of Arizona and the United States. Any award rendered by the arbitrator(s) 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 arbitrator(s) decision shall be final and conclusive as to the facts. 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 arbitrator(s) award within fifteen (15) days after demand, then the other party may either utilize the arbitration process set forth in this Paragraph 20 (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 arbitrator(s) award and/or the underlying dispute that was the subject of the arbitration.

(i) Notwithstanding anything in this Agreement to the contrary, if either party believes the other party is exercising the rights under this Agreement in bad faith, the aggrieved party must notify the other party of the facts forming the basis of the aggrieved party's assertion of bad faith. If the other party fails to cure the facts forming the basis of the aggrieved party's assertion of bad faith within fifteen (15) days after notice thereof, then such dispute shall be submitted to arbitration. If the arbitrator finds that a party has acted in bad faith, then the aggrieved party may request, and the arbitrator may award, any remedy available to the aggrieved party, at law or in equity, including without limitation, monetary damages.

(j) Unless otherwise agreed in writing, and notwithstanding any other rights or obligations of either party under the Agreement, the Owner and the City shall carry on 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, as the case may be.

(k) The dispute resolution process set forth in this Paragraph 18.7 shall not apply to an action by the City to condemn or acquire by inverse condemnation all or any portion of the Property or to claims for injunctive relief or mandamus by either party. The failure by either party to perform or otherwise act in accordance with any term or provision of this Agreement for a period of thirty (30) days (the "Cure Period") after written notice thereof from the other party shall constitute a default. In the event such default is not cured within the Cure Period, the non-defaulting party shall have the right to seek injunctive relief or mandamus in a court of competent jurisdiction.

18.8 Construction; Time Periods. The descriptive headings of the Sections, Subsections and Paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof. 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.

18.9 Exhibits and Recitals. Any Recital and any Exhibit attached hereto shall be deemed to have been incorporated herein by this reference with the same force and effect as if fully set forth in the body hereof.

18.10 Further Acts. Each of the Parties hereto shall promptly and expeditiously execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

18.11 Time of Essence. Time is of the essence in implementing the terms of this Agreement.

18.12 No Partnership: Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between the Owner and the City. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization, or corporation not a Party hereto, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder.

18.13 Entire Agreement. This Agreement and all Exhibits thereto constitute the entire agreement between the Parties hereto pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, are hereby superseded and merged herein. In the event of a conflict between the text of this Agreement and the attached or incorporated Exhibits, the text of this Agreement shall control. A conflict among the other attached or incorporated Exhibits shall be resolved by the more specific Exhibit over the more general Exhibit, unless the context explicitly requires otherwise.

18.14 Amendment.

(a) Major Amendments. The following changes shall be considered major amendments to the Zoning for the Property and shall require Planning and Zoning and Council approval for the changed use: (i) any change involving an increase or decrease in the total number of acres devoted to any use if the acreage devoted to the use changes more than ten (10) acres; (ii) any change to a higher residential classification if such change results in an increase of more than one classification; (iii) any increase in the total number of residential units to be developed (as set forth in the Zoning); and (iv) the reallocation of residential dwelling units within planning units from one planning unit to another in a manner that results in any of the following, as measured against the original land use density set forth in the Zoning: (i) an increase in the number of residential dwelling units for any one particular planning unit of greater than ten percent (10%) of the total number allocated to such planning unit in the Zoning; or (ii) a reduction in the number of residential dwelling units for any one particular planning unit by an amount greater than ten percent (10%) of the total number allocated to such planning unit in the Zoning.

(b) Minor Amendments. Unless required specifically by law, minor modifications and amendments to the Zoning do not necessitate approval by the Council, and may be approved by the City Development Services Director and recorded in the official records of the Pinal County Recorder. Any increase or decrease in the total number of acres devoted to any use if the acreage devoted to that use does not rise or fall below five (5) acres within the Property shall be considered minor modifications and amendments to the Zoning.

(c) No change or addition is to be made to this Agreement except by written amendment executed by the Owner and by either the Council approved signatory or the City Planning Director as dictated by Subsections 18.14(a) and (b).

(d) The City shall record in the Official Records of Pinal County, any amendment to this Agreement within ten (10) days following execution by the Parties.

(e) Upon amendment of this Agreement as established herein, references to "Agreement" or "Development Agreement" shall mean the Agreement as amended by any subsequent, duly processed amendment.

(f) The effective date of any duly processed amendment shall be the date on which the last representative for the Parties executes the Agreement.

(g) If, after the effective date of any amendment(s), the Parties find it necessary to refer to this Agreement in its original, unamended form, they shall refer to it as the "Original Development Agreement." When the Parties mean to refer to any specific amendment to the Agreement which amendment is unmodified by any subsequent amendments, the Parties shall refer to it by the number of the amendment as well as its effective date.

18.15 Names and Plans. The Owner shall be the sole owner of all names, titles, plans, drawings, specifications, ideas, programs, designs and work products of every nature at any time developed, formulated or prepared by or at the instance of the Owner in connection with the Property, provided, however, that in connection with any conveyance of portions of the Property to the City such rights pertaining to the portions of the Property so conveyed shall be assigned, to the extent that such rights are assignable, to the City. Notwithstanding the foregoing, the Owner shall be entitled to utilize all such materials described herein to the extent required for the Owner to construct, operate, or maintain improvements relating to the Property.

18.16 Good Standing; Authority. Each of the Parties represents and warrants to the other (1) that it is duly formed and validly existing under the laws of Arizona, with respect to the Owner, or a municipal corporation within the state of Arizona, with respect to the City, (2) that it is an Arizona corporation or municipal corporation duly qualified to do business in the State of Arizona and is in good standing under applicable State laws, and (3) that the individual(s) executing this Agreement on behalf of the respective parties are authorized and empowered to bind the Party on whose behalf each such individual is signing.

18.17 Governing Law. This Agreement is entered into in Arizona and shall be construed and interpreted under the laws of Arizona. Any action at law or in equity brought by either party for the purpose of enforcing a right or rights provided for in this Agreement shall be tried in a court of competent jurisdiction in Pinal County, State of Arizona. The parties hereby

waive all provisions of law providing for a change of venue in such proceeding to any other county. In the event either party shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition in this Agreement, it is mutually agreed that the prevailing party in such action shall recover all costs including: all litigation and appeal expenses, collection expenses, reasonable attorneys' fees, necessary witness fees and court costs to be determined by the court in such action.

18.18 Recordation. The City shall record this Agreement in its entirety in the Official Records of Pinal County, Arizona not later than ten (10) days after execution by the last party.

18.19 Challenges to this Agreement. In the event that this Agreement or any approvals given by the City related to this Agreement are ever challenged, the Owner reserves the right to intervene in such action at the Owner's sole cost and expense.

18.20 Indemnifications, Warranties, and Representations Survive. All representations and warranties contained in this Agreement (and in any instrument delivered by or on behalf of any Party pursuant hereto or in connection with the transactions contemplated hereby) are true on and as of the date so made, will be true in all material respects during the Term of this Agreement. In the event that any representation or warranty by a Party is untrue, the other Party shall have all rights and remedies available at law, in equity, or as provided in this Agreement. The provisions of this Agreement wherein a Party has explicitly indemnified the other Party shall survive the expiration or earlier termination of this Agreement.

18.21 Force Majeure Notwithstanding any other term, condition or provision hereof to the contrary, in the event any Party hereto is precluded from satisfying or fulfilling any duty or obligation imposed upon such Party by the terms hereof due to labor strikes, material shortages, war, civil disturbances, weather conditions, natural disasters, acts of god, or other events beyond the control of such party, the time period provided herein for the performance by such Party of such duty or obligations shall be extended for a period equal to the delay occasioned by such events.

18.22 Cancellation for Conflict of Interest. This Agreement is subject to the cancellation provisions for conflicts of interest pursuant to A.R.S. § 38-511.

18.23 Limited Severability. The City and the Owner each believe that the execution, delivery, and performance of this Agreement are in compliance with all Rules and Regulations. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring the City to do any act in violation of any Rules and Regulations, constitutional provision, law, regulation, City Code or City Charter), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. The Parties further agree, in such circumstances, to do all acts and to execute all amendments, instruments, and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

18.24 Certificate of Estoppel. The Owner may request that the City, and the City shall, within twenty-one (21) calendar days after such request, deliver to the Owner a written estoppel certificate containing the following: (a) a certification that this Agreement and the Zoning are unmodified and remain in full force and effect, or if there have been any modifications or amendments, then the certification shall state that this Agreement and the Zoning are in full force

and effect, as modified, and shall specify the nature and date of such modification; (b) a certification that there are no existing defaults under the Zoning or this Agreement, or if there are existing defaults under the Zoning or this Agreement, then the certification shall set forth the scope and nature of such default; and (c) a certification as to any other matters that may reasonably be requested in connection with the development of the Property or any material aspect of the Development Plan. In the event the Owner has not received an estoppel certificate within twenty-one (21) calendar days from the date of the request, then in such event, the Owner shall be entitled to prepare an estoppel certificate and deliver same to the City for execution by the City.

18.25 Limitation of Damages on Taxpayer Initiatives. Only to the extent that the City is enacting a land use law as defined in A.R.S. § 12-1136(3) by its adoption of this Agreement, the Owner waives its rights (as well as its successors' rights) to claim just compensation [as defined by A.R.S. § 12-1136(2)] for any diminution of value pursuant to A.R.S. §12-1134 (Proposition 207).

18.26 Counterparts. This Agreement may be executed in counterparts.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the 14TH day of MAY.

CITY

CITY OF MARICOPA, ARIZONA, an Arizona municipal corporation

By: _____
Name: Kelly O. Anderson
Its: Mayor

ATTEST:

By: _____
VANESSA BUERAS, City Clerk

APPROVED AS TO FORM:

By: _____
Denis Fitzgibbons, City Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF PINAL)

The foregoing instrument was acknowledged before me this 14TH day of MAY 2008, by Kelly O. Anderson and N/A, Mayor and ~~City Clerk~~, respectively, of the City of Maricopa, Arizona, an Arizona municipal corporation, who acknowledged that they signed the foregoing instrument on behalf of the City.

_____
Notary Public

My commission expires:
12/29/08

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

OWNER

By: _____
Name: Brandon D. Wolfswinkel
Title: Manager

STATE OF ARIZONA)
) ss.
COUNTY OF Maricopa)

The foregoing instrument was acknowledged before me this 16th day of May, 2008, by Brandon D. Wolfswinkel the Manager of ABCDW LLC, who acknowledged that he/she signed the foregoing instrument on behalf of ABCDW LLC.

_____
Notary Public

My commission expires:
September 30, 2009

Amy J. Johnson
Notary Public - Arizona
Maricopa County
My Commission Expires
September 30, 2009

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

PARCEL NO. 1:

THE EAST HALF OF SECTION 34, TOWNSHIP 4 SOUTH, RANGE 2 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, PINAL COUNTY, ARIZONA.

PARCEL NO. 2:

THAT PORTION OF THE WEST HALF OF SECTION 34, TOWNSHIP 4 SOUTH, RANGE 2 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, PINAL COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE WEST HALF OF SAID SECTION 34;

THENCE NORTH 02 DEGREES 31 MINUTES 09 SECONDS WEST ALONG THE EAST LINE OF THE WEST HALF OF SAID SECTION 34, A DISTANCE OF 378.00 FEET TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 89 DEGREES 30 MINUTES 52 SECONDS WEST PARALLEL TO THE SOUTH LINE OF THE WEST HALF OF SAID SECTION 34, A DISTANCE OF 88.32 FEET;

THENCE NORTH 01 DEGREES 26 MINUTES 37 SECONDS WEST, A DISTANCE OF 4743.64 FEET TO THE NORTHEAST CORNER OF THE WEST HALF OF SAID SECTION 34;

THENCE SOUTH 02 DEGREES 31 MINUTES 09 SECONDS EAST, A DISTANCE OF 4747.54 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 3:

THAT PORTION OF THE WEST HALF OF SECTION 34, TOWNSHIP 4 SOUTH, RANGE 2 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, PINAL COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE WEST HALF OF SAID SECTION 34;

THENCE NORTH 02 DEGREES 15 MINUTES 07 SECONDS WEST ALONG THE EAST LINE OF THE WEST HALF OF SAID SECTION 34, DISTANCE OF 378.00 FEET;

THENCE NORTH 89 DEGREES 14 MINUTES 11 SECONDS WEST. 81.73 FEET;

TEHNCE SOUTH 01 DEGREES 25 MINUTES 00 SECONDS EAST, 377.75 FEET TO THE SOUTH LINE OF THE WEST HALF OF SAID SECTION 34;

THENCE SOUTH 89 DEGREES 14 MINUTES 11 SECONDS EAST, ALONG SAID SOUTH LINE, A DISTANCE OF 87.24 FEET TO THE POINT OF BEGINNING.

EXHIBIT B

Development Plan

Medium Density

The medium density land use designation will have up to 4 units to the acre for single family detached conventional housing and non-conventional housing (defined as single family detached and attached product including but not limited to attached housing, z lots, motor court, cluster homes, rear loaded homes). The minimum single family detached lot width will be 48'. The total minimum acreage for this category will be 227 acres. Total density for medium density designation will be 908 units. The zoning designation will be defined in the zoning application.

High Density

The high density land use designation in the general plan will have up to 25 units to the acre. The minimum amount of acreage will be 60 acres. The maximum density will be 1,500 units. The zoning designation will be defined in the zoning application.

The high density product will have the following building standards; minimum distance between buildings- 10', maximum building height- 40', minimum site perimeter setback- 20'.

Commercial

The commercial land use designation in the general plan will have a minimum of 30 acres. The zoning designation and setbacks will be defined in the zoning application.

Open Space

City and Owner agree that any given phase within the residential portion of the Property may develop with less than 20% open space, if approved by the City's Development Services Director, provided that the overall Open Space within the residential portion of the Property is not less than 20%. The Parties acknowledge that there shall be no open space requirement in connection with the non-residential portion of the Property.

EXHIBIT C

PERMITTED USES

Sec. 1101

a. One-family dwelling, conventional construction.
b. Public park, public or parochial school.
c. Church, provided the minimum off-street parking requirements, as set forth in Article 21, Section 2102-e, are met.
d. A travel trailer or recreational vehicle (RV) for not more than 90 days during construction of a residence on the same premises, which period may be extended for an additional period of 90 days upon application to the Zoning Inspector.
e. Horticulture, flower and vegetable gardening, nursery or greenhouse used only for propagation and culture and not for retail sales.
f. Home occupation.
g. Accessory building or use.

Sec. 1201

a. Any use permitted in the CR-3 zone.
b. Duplex dwelling.
c. Multiple dwelling for not more than 4 families.
d. Dwelling group consisting of permitted dwelling types in this zone.

Sec. 1301

a. Any use permitted in the CR-3, CR-4 zone.
b. Multiple dwelling for any number of families.
c. Boarding or rooming house for any number of guests, but not primarily for transients.

Sec. 1401

a. Any use permitted in the CR-3, CR-4, and CR-5 zone.
b. Tourist court or hotel, together with the following accessory uses located on the premises and having no exterior entrance closer than 100 feet to a public street:
    Retail Shops
    Personal Services
    Recreational Facilities
    Restaurant
    Beverage Service
c. Professional or semi-professional office.
d. Private club or lodge (non-profit).
e. Club, college, community service agency, governmental structure, library, museum, playground or athletic field, private school.
f. Community storage garage.
g. Guest ranch in accordance with Article 19, Guest Ranch Regulations.

h. Hospital, clinic, dispensary, or sanitarium.
i. Office, real estate.

Sec. 1601

a. Any use permitted in the Section 1401-b thru Section 1401-j (TR Transitional zone) and in Section 1501 (CB-1 Local Business Zone).
b. Advertising sign or structure, subject to Article 22: Amusement or recreational enterprise (within a completely enclosed structure) including billiard or pool hall, bowling alley, dance hall, gymnasium, penny arcade, shooting gallery, skating rink, sports arena Amusement or recreational enterprise (outdoor) including archery range, miniature golf or practice driving or putting range, games of skill or science, pony riding ring without stables, swimming pool or commercial beach or bathhouse, tennis court

Auction, public (no animals)
Auditorium or assembly hall
Auto rental garage
Auto repair, mechanical or steam wash racks, battery service (no body or fender
Work, painting or upholstery, except as incidental)
Bar, cocktail lounge, night club, tavern
Baths (Turkish, Swedish, steam, etc.)
Blueprinting, photostating
Boats, storage or rental
Burglar alarm service
Carpenter shop
Cigar manufacturing (custom hand-rolled)
Cleaning establishment: if only 2 clothes cleaning units of not more than 40 pounds rated capacity, and using cleaning fluid which is non-flammable, and non-explosive at temperatures below 138.5 degrees Fahrenheit
Club: Athletic, private, social, sport or recreational (operated for profit) except sports stadium or field
Engraving, photo-engraving, lithographing
Fortune telling
Garage, public (for commercial use)
Juke box or coin machine business (limited to assembly, repair and servicing)
Laundry, steam or wet-wash
Lumber yard, retail (provided no machinery is used other than a rip saw and cut-off saw)
Locksmith, tool or cutlery sharpening, lawnmower repairing, fix-it or handyman shop
Massage establishment, reducing salon or gymnasium
Mattress shop for repairing only (no renovating)
Merchandise broker's display, wholesale
Motorcycle or motor scooter repair or storage
Mortuary or embalming establishment or school
Newspaper office
Oxygen equipment, rental or distribution

Pawn shop
Piano repairing
Plumbing, retail custom
Printing or publishing
Record recording studio or sound score production (no manufacturing or treatment of records)
Refrigeration installation or service
School or college (operated as a commercial enterprise for dancing or musical instruction; industrial or trade school teaching operations or occupation permitted in this zone)
Sheet metal or tinsmith shop
Sign painting shop
Storage building
Trade show, industrial show or exhibition
Transfer or express service
Upholstery shop
Wallpaper sales, paper hanging

c. Sale, rental or display of:
Airplanes or parts
Automobiles, recreational vehicles, travel trailers, motor homes, and trailers
Barber's supplies or beauty shop equipment
Butcher's supplies
Clothing or accessories (wholesale)
Contractor's equipment or supplies
Drugs or medical, dental, or veterinary supplies (wholesale)
Farm equipment or machinery
Feed (wholesale)
Garage equipment
Hardware (retail or wholesale)
Hotel equipment or supplies
Household appliances, sewing machines, etc. (wholesale)
Machinery, commercial and industrial
Monuments or tombstones (no wholesale)
Office equipment (safes, business machines, etc.) (wholesale)
Orthopedic appliances (trusses, wheelchairs, etc.)
Painting equipment or supplies (paint, varnish, etc.)
Pet (no boarding or hospital)
Plastic or plastic products (wholesale)
Plumbing, heating and ventilating fixtures or supplies
Restaurant or soda fountain equipment or supplies
Second-hand goods: Personal, furniture, books, magazines, automobiles, but not
second-hand auto parts
Tents or awnings
Trunks or luggage (wholesale)
Upholsterer's supplies
Venetian blinds

Window shades

d. Light manufacturing or assembling incidental to retail sales from the premises, provided that not more than 25% of the floor is occupied by businesses engaged in manufacturing, processing, assembling, treatment, installation and repair of products.
e. Wholesaling of products permitted in Section 1601-c unless specifically prohibited, with storage space not exceeding 1,500 square feet of floor area.
f. Cemetery or crematory, provided that cemeteries for human remains shall be located on a site of not less than 5 acres and for animal pets not less than one acre, and that no crematory be erected closer than 500 feet from any boundary of said site adjoining property in a rural or residential zone.
g. Drive-in theater, provided that the face of any projection screen be not visible from any public street which is within 500 feet of said screen; provided further that the site for said theater shall consist of not less than 10 acres of land and be a single tract or parcel not intersected or divided by any street, alley or by property belonging to any other owners; that any lights used to illuminate the theater site shall be so arranged as to reflect the light away from adjoining property and streets; that the plans for said theater shall have been approved by the City Engineer, indicating no undue traffic congestion, due to the location and arrangement of the theater, including the car rows and aisles and minimizing the danger of fire and panic; that acceleration and deceleration lanes shall be provided along the public thoroughfare adjacent to the entrance and exit of the theater, that parking space or storage lanes for patrons awaiting admission shall be provided on the site in an amount equal to not less than 30% of the vehicular capacity of the theater; that vehicular circulation shall be so designed and constructed as to permit only one-way traffic within the boundaries of the tract on which the theater is located; that emergency exits shall be provided; that sanitary facilities and the method of food handling shall be approved by the County Health Department; that definite plans for shrubbery and landscaping shall be presented to the Zoning Inspector and made a part of the permit; that the nearest point of the theater property, including driveways and parking areas shall be a least 750 feet from the boundary of a district zoned for residential use; and, provided further, that all other conditions of the zone are fully observed.
h. Racetrack or sports stadium, subject to the conditions set forth in Subsection 601.0 of this Ordinance, except the requirements for the filing of the consent of owners of adjacent property.
i. Radio or television tower or booster station, provided such tower is no closer to any boundary of said site than the height thereof.
j. Veterinary hospital or kennels provided no such building or structure be within 100 feet of any boundary of said site abutting property in a rural or residential zone.
k. One family dwelling unit, conventional construction, mobile home, or manufactured home in conjunction with an established, permitted use.

EXHIBIT D

PUBLIC PROJECT INFRASTRUCTURE DESCRIPTION

I. Public Infrastructure Improvements. The improvements to publicly owned facilities and Ancillary Activities (as defined below) are examples of what the Parties to this Agreement intend to constitute Public Infrastructure Improvements. This list (including both public and private improvements) is intended by the Parties to be illustrative, but not exhaustive. An Infrastructure Plan will be developed in the platting, TIA and engineering design process ("Infrastructure Plan"). By its execution of this Agreement, the Owner does not undertake to provide all of the following improvements; but to the extent the Owner provides any of the following improvements, such improvements shall be deemed, for the purposes of this Agreement, to constitute Public Infrastructure Improvements.

1. Off-Site Public Infrastructure Improvements.
   a. Off-site rough grading
   b. Off-site right-of-way acquisition
   c. Off-site water mains, lines and tap fees (if paid)
   d. Off-site sewer construction (including collection, transport, storage, treatment, dispersal, effluent use and discharge)
   e. Off-site roadway improvements such as highways, streets, roadways and parking facilities (including all areas for vehicular use for travel, ingress, egress and parking)
   f. Traffic control systems and devices (including signals, controls, markings and signage)
   g. Off-site transit system
   h. Off-site storm drainage and flood control systems (including collection, transport, diversion, storage, detention, retention, dispersal, use and discharge)
   i. Off-site utility relocation
   j. Pedestrian malls, parks, recreational facilities other than stadiums, and open space areas for the use of members of the public for entertainment, assembly and recreation
   k. Off-site landscaping (including earthworks, structures, lakes and other water features, plants, trees and related water delivery systems)
   l. Equipment, vehicles, furnishings and other personalty related to the foregoing
   m. All architectural, design, planning, planning, engineering (including environmental assessments and remediation) (collectively the "Ancillary Activities").

2. On-Site Public Infrastructure Improvements.
   a. On-site rough grading
   b. On-site water mains, lines and tap fees (if paid)
   c. On-site sanitary sewer (including collection, transport, storage, treatment, dispersal, effluent use, and discharge) and tap fees, if paid.
   d. On-site storm drainage and flood control systems (including collection, transport, diversion, storage, detention, retention, dispersal, use and discharge)
   e. On-site right-of-way acquisition
   f. On-site roadway improvements (including all areas for vehicular use for travel, ingress, egress and parking)

g. Traffic control systems and devices (including signals, controls, markings and signage)
h. Pedestrian malls, parks, recreational facilities other than stadiums, and open space areas for the use of members of the public for entertainment, assembly and recreation
i. On-site landscaping (including earthworks, structures, lakes and other water features, plants, trees and related water delivery systems)
j. On-site utility relocation
k. On-site utility trenching
l. On-site utilities (including gas and electric utilities)
m. Equipment, vehicles, furnishings and other personalty related to the foregoing
n. All Ancillary Activities in connection with the foregoing.

II. Phasing. The Parties hereto acknowledge and agree that, to the extent the Owner develops the Property, it shall have the right and obligation at any time after the Effective Date to construct or cause to be constructed, and installed all portions of the Infrastructure Plan related to the developing segments of the Property.

III. Construction Requirements. The installation and construction of the Public Infrastructure shall be according to specifications, standards and engineering practices regularly applied by the City to such improvements within the City pursuant to the Rules and Regulations. The Owner shall construct and install the Public Infrastructure in a good and workmanlike manner in substantial conformity with the Rules and Regulations. The plans and specifications for the installation and construction of the Public Infrastructure shall be prepared and submitted by the Owner for approval by the City with the final plat(s) for the Property, each phase, or subphase as applicable.

IV. Encroachment Permits. The Owner, its agents, and employees, shall have the additional right, upon receipt from the City of an appropriate encroachment permit, to enter and remain upon and cross over any City easements or rights-of-way to the extent reasonably necessary to facilitate such construction, or to perform necessary maintenance or repairs of such Public Infrastructure. The Owner's use of such easements and rights-of-way, pursuant to the encroachment permit, shall not impede or adversely affect the City's use and enjoyment thereof.

V. Restoration of Property. The Owner shall restore such City easements and rights-of-way, used pursuant to the encroachment permit, to their condition prior to the Owner's entry upon completion of such construction, repairs, or maintenance. The Owner, its agents, and employees, also shall have the right, upon receipt from the City of an appropriate encroachment permit, to enter and remain upon and cross over any City easements or rights-of-way to the extent reasonably necessary to install and maintain landscaping material within the portion of the City right-of-way not used for vehicular travel.

VI. Dedication of Public Infrastructure. Upon completion of the installation and construction of the Public Infrastructure or a portion thereof, the Owner shall convey the completed Public Infrastructure to the City lien and debt free. The procedure for dedication and acceptance of Public Infrastructure by the City shall be as follows:

(a) The Owner shall give the City written notice ("Notice to Confirm") promptly following completion of Public Infrastructure or any portion thereof so long as

any portion of completed Public Infrastructure is a discrete portion and its suitability for its purpose can be adequately determined;

(b) Within thirty (30) business days after its receipt of the Notice, the City shall inspect the Public Infrastructure identified therein as to whether it has been constructed in accordance with the City-approved plans and specifications therefore. Upon completion of the inspection, the City shall deliver written notice to the Owner either (1) approving construction and agreeing to accept conveyance of such Public Infrastructure; or (2) identifying the specific items that are not in accordance with the City-approved plans and specifications and that are to be corrected by the Owner;

(c) Upon acceptance of each component of Public Infrastructure, the City shall release the infrastructure assurance(s) provided by the Owner for such accepted Public Infrastructure in accordance with the City's Rules and Regulations, unless that financial assurance is in an amount securing a larger portion of Public Infrastructure. If the financial assurance is in an amount securing a larger portion of Public Infrastructure, the City will only release the infrastructure assurances for the aggregate if the Owner provides another acceptable assurance in an amount agreed upon by the Parties.

VII. City Acceptance of Public Infrastructure. The City shall own, operate, and maintain all dedicated Public Infrastructure following City's acceptance thereof, subject to the Owner's warranty obligations as set forth in the City's Rules and Regulations.

VIII. Necessary Easements, Rights of Entry, or Other Use. It shall be a condition precedent to the obligation of the Owner to construct the Public Infrastructure (to be defined in the platting, TIA and engineering design process) or otherwise required to service the Property, that the Owner shall have obtained any and all easements, rights of entry, and/or other use rights on or about all real property other than the Property upon, through or under which will be installed all or any portion of said Public Infrastructure, as useful or necessary for the Owner to enter and to properly perform all activities incident to the Owner's construction obligations hereunder (collectively, the "Easements").

IX. Infrastructure Assurance. The Parties acknowledge and agree that the City, prior to final plat recording for the Property, may require the Owner to provide assurances that are appropriate and necessary to ensure that the installation of Public Infrastructure directly related to the Property will be completed. In such case, the Owner shall comply with the applicable provisions of the City's subdivision ordinance in force under the Rules and Regulations, and at the Owner's sole discretion, the Owner will either give the City a performance bond, letter of credit, or cash deposit, in such form and substance normally acceptable to the City.

X. Private Streets. The Owner will have the right to retain or acquire ownership to all interior local streets and other rights-of-way located within the Property, but excluding arterial rights-of-way ("Private Rights-of-Way"). Some or all of the Private Rights-of-Way may be conveyed to one or more homeowner associations created by the Owner for this and other purposes. The Owner shall have the right to install manned and/or unmanned access control structures within the medians of the Private Rights-of-Way at any portions of the Property. The Owner shall grant to the City an easement for police, fire, ambulance, garbage collection, wastewater, storm drain line installation and repair, and other similar public purposes, over the Private Rights-of-Way, and shall permit reasonable access to the City through any access control structures for purposes of police, fire, ambulance, garbage collection, water or wastewater, storm drain line installation

and repair, and other similar public purposes. The Owner shall have the right to name Private Rights-of-Way in accordance with SNAP. The Owner shall, before naming Private Rights-of-Way, register the name with the City's Building Official and check for conflicts with official City streets. All costs associated with Private Rights-of-Way, including, e.g., landscape, maintenance, and repair, will be the responsibility of the owner of each Private Right-of-Way, with no reimbursement due from the City. Private Rights-of-way shall be built in accordance with City Standards.

EXHIBIT E

ANTI-MORATORIUM

A.R.S. 9-463.06. Standards for enactment of moratorium; land development; limitations; definitions

A. A city or town shall not adopt a moratorium on construction or land development unless it first:

1. Provides notice to the public published once in a newspaper of general circulation in the community at least thirty days before a final public hearing to be held to consider the adoption of the moratorium.

2. Makes written findings justifying the need for the moratorium in the manner provided for in this section.

3. Holds a public hearing on the adoption of the moratorium and the findings that support the moratorium.

B. For urban or urbanizable land, a moratorium may be justified by demonstration of a need to prevent a shortage of essential public facilities that would otherwise occur during the effective period of the moratorium. This demonstration shall be based on reasonably available information and shall include at least the following findings:

1. A showing of the extent of need beyond the estimated capacity of existing essential public facilities expected to result from new land development, including identification of any essential public facilities currently operating beyond capacity and the portion of this capacity already committed to development, or in the case of water resources, a showing that, in an active management area, an assured water supply cannot be provided or, outside an active management area, a sufficient water supply cannot be provided, to the new land development, including identification of current water resources and the portion already committed to development.

2. That the moratorium is reasonably limited to those areas of the city or town where a shortage of essential public facilities would otherwise occur and on property that has not received development approvals based upon the sufficiency of existing essential public facilities.

3. That the housing and economic development needs of the area affected have been accommodated as much as possible in any program for allocating any remaining essential public facility capacity.

C. A moratorium not based on a shortage of essential public facilities under subsection B of this section may be justified only by a demonstration of compelling need for other public facilities, including police and fire facilities. This demonstration shall be based on reasonably available information and shall include at least the following findings:

1. For urban or urbanizable land:

(a) That application of existing development ordinances or regulations and other applicable law is inadequate to prevent irrevocable public harm from development in affected geographical areas.

(b) That the moratorium is sufficiently limited to ensure that a needed supply of affected housing types and the supply of commercial and industrial facilities within or in proximity to the city or town are not unreasonably restricted by the adoption of the moratorium.

(c) Stating the reasons that alternative methods of achieving the objectives of the moratorium are unsatisfactory.

(d) That the city or town has determined that the public harm that would be caused by failure to impose a moratorium outweighs the adverse effects on other affected local governments, including shifts in demand for housing or economic development, public facilities and services and buildable lands and the overall impact of the moratorium on population distribution.

(e) That the city or town proposing the moratorium has developed a work plan and time schedule for achieving the objectives of the moratorium.

2. For rural land:

(a) That application of existing development ordinances or regulations and other applicable law is inadequate to prevent irrevocable public harm from development in affected geographical areas.

(b) Stating the reasons that alternative methods of achieving the objectives of the moratorium are unsatisfactory.

(c) That the moratorium is sufficiently limited to ensure that lots or parcels outside the affected geographical areas are not unreasonably restricted by the adoption of the moratorium.

(d) That the city or town proposing the moratorium has developed a work plan and time schedule for achieving the objectives of the moratorium.

D. Any moratorium adopted pursuant to this section does not affect any express provision in a development agreement entered into pursuant to section 9-500.05 or as defined in section 11-1101 governing the rate, timing and sequencing of development, nor does it affect rights acquired pursuant to a protected development right granted according to chapter 11 of this title or title 11, chapter 9. Any moratorium adopted pursuant to this section shall provide a procedure pursuant to which an individual landowner may apply for a waiver of the moratorium's applicability to its property by claiming rights obtained pursuant to a development agreement, a protected development right or any vested right or by providing the public facilities that are the subject of the moratorium at the landowner's cost.

E. A moratorium adopted under subsection C, paragraph 1 of this section shall not remain in effect for more than one hundred twenty days, but such a moratorium may be extended for additional periods of time of up to one hundred twenty days if the city or town adopting the moratorium holds a public hearing on the proposed extension and adopts written findings that:

1. Verify the problem requiring the need for the moratorium to be extended.

2. Demonstrate that reasonable progress is being made to alleviate the problem resulting in the moratorium.

3. Set a specific duration for the renewal of the moratorium.

F. A city or town considering an extension of a moratorium shall provide notice to the general public published once in a newspaper of general circulation in the community at least thirty days before a final hearing is held to consider an extension of a moratorium.

G. Nothing in this section shall prevent a city or town from complying with any state or federal law, regulation or order issued in writing by a legally authorized governmental entity.

H. A landowner aggrieved by a municipality's adoption of a moratorium pursuant to this section may file, at any time within thirty days after the moratorium has been adopted, a complaint for a trial de novo in the superior court on the facts and the law regarding the moratorium. All matters presented to the superior court pursuant to this section have preference on the court calendar on the same basis as condemnation matters and the court shall further have the authority to award reasonable attorney fees incurred in the appeal and trial pursuant to this section to the prevailing party.

I. In this section:

1. "Compelling need" means a clear and imminent danger to the health and safety of the public.

2. "Essential public facilities" means water, sewer and street improvements to the extent that these improvements and water resources are provided by the city, town or private utility.

3. "Moratorium on construction or land development" means engaging in a pattern or practice of delaying or stopping issuance of permits, authorizations or approvals necessary for the subdivision and partitioning of, or construction on, any land. It does not include denial or delay of permits or authorizations because they are inconsistent with applicable statutes, rules, zoning or other ordinances.

4. "Rural land" means all property in the unincorporated area of a county or in the incorporated area of the city or town with a population of two thousand nine hundred or less persons according to the most recent United States decennial census.

5. "Urban or urbanizable land" means all property in the incorporated area of a city or town with a population of more than two thousand nine hundred persons according to the most recent United States decennial census.

6. "Vested right" means a right to develop property established by the expenditure of substantial sums of money pursuant to a permit or approval granted by the city, town or county.

EXHIBIT F

RESIDENTIAL DESIGN STANDARDS

The development of the Property shall comply with the City of Maricopa's Subdivision Ordinance in place on the Effective Date of this Agreement, as amended pursuant to this Agreement and the PAD zoning.

Owner shall submit architectural design guidelines for staff review and approval prior to any permit being issued for the development of the Property.

EXHIBIT G

DEVELOPMENT FEE REIMBURSEMENTS

I. Infrastructure Improvement Credit. The Owner agrees that, to the extent that it develops the Property, it will be responsible to cause the construction and installation of all of the Public Infrastructure which is necessary to serve the Property. To the extent specifically permitted by the City's Development Fee Program as specified in the Rules and Regulations and the Fee Study, the Owner shall be entitled to a reimbursement against any Development Fees for any infrastructure improvements that shall be required of the Owner, or its successors in interest, against the category of Development Fees that are assessed (or that are to be assessed) against the Property (or any portion thereof) for any land, improvements or other contributions provided by the Owner to the City for any land or capital facility improvement required to provide public services, provided that such improvements are included as a general component of the impact fee assessed pursuant to the Fee Study, and are related to the Development Fees for which such credit is sought in accordance with this Agreement and this Exhibit G. To the extent the City requires the Owner to plan, design, engineer, construct, acquire, install, or otherwise provide Public Infrastructure Improvements that exceed the capacity required to serve the development within the Property, the City and the Owner shall enter into a Development Fee reimbursement or Payment Agreement or other similar mechanism prior to the design or construction of the oversized infrastructure, whereby the Owner and/or a CFD(s) will be repaid additional cost incurred directly related to the over-sizing plan, design, engineer, construct, acquire, install or otherwise provide such infrastructure.

II. Oversizing. Where a specific size is not stated in this Agreement with respect to any improvements or other facilities to be provided by Owner hereunder, the size shall comply with the City's standard roadway or infrastructure extension requirements consistent with the City's overall transportation system. Subject to the provisions of this Section, the City may require the Owner to "oversize" (i.e., larger than the City's standard requirements) any improvements or other facilities to be provided by the Owner hereunder. The City agrees not to impose said obligation on Owner in such a manner that will impede or delay the Owner's ability to complete the development of its Property on the schedule or in the manner originally planned by Owner prior to the City's imposition of such a requirement. The Owner shall be reimbursed the cost of oversizing any such improvements or facilities that are "oversized." Such reimbursement shall occur through Payback Agreements. The amount of oversizing payment will be the incremental difference between the cost of materials and labor for the construction/installation of the City's standard requirements (including design and engineering costs) and the actual materials and labor cost of the oversized component (including design and engineering costs) of the Public Infrastructure (the "Oversizing Cost"). The City agrees it will not require the Owner to pay for an increase in the size of infrastructure beyond those required for the Project that provide a significant financial burden on the Owner to the extent that the Project becomes unfeasible. If the City should require such increase in the improvements, then the City must pay for the cost of such increase.

III. Payback Agreements. The Oversizing Cost, shall be borne through Payback Agreements with the owners of the Benefited Non-Party Land/Developments (the "Payback Fee"). At the time of payment of the Payback Fee by the Benefited Non-Property Land/Development, the Payback Fee shall be adjusted by an amount equal to the amount of the CPI increase (consumer

price index for all urban consumers, all cities—all items, 1982-1984). Any Payback Agreement for a Payback Improvement shall be required by the City as a condition of the affected property owner's written request for annexation, zoning, or plat approval, whichever occurs first after acceptance of the Payback Improvement by the relevant governmental entity, for any Benefited Non-Property Land/Developments.

IV. Benefited Non-Property Land. The Benefited Non-Property Land/Developments shall reimburse the Owner on a per-front foot basis for roadway improvements and on a per-acre basis for sanitary sewer and/or water improvements. The Parties shall agree on the reimbursement basis for Benefited Non-Property Land/Developments for types of Public Infrastructure other than roadways and sewers during the review of the preliminary plan phase, but in any case the basis for reimbursement of each Benefited Non-Property land/Development's proportional share of the incremental Oversizing Cost of the Payback Improvement to which it connects shall be the relative area of the beneficial property to the entire assessable area served by the Payback Improvement to which it connects. The boundary of the "entire assessable area" will be determined by the City at the time that the oversizing is required of the Owner. The Payback Fees shall be collected from the Benefited Non-Property Land/Development as follows:

In the event that: (i) Benefited Non-Property Land/Development can be shown to the satisfaction of the City engineer to benefit directly from improvements financed by the CFD formed pursuant to Section 14 of this Agreement and/or the Owner; (ii) property which was previously owned by a public entity or quasi public entity at the time the CFD was formed is subsequently converted to privately-owned land and can be shown to the satisfaction of the CFD's engineer to benefit directly from the CFD and/or the Owner financed improvements; and/or (iii) property that specially or directly benefits from the CFD and/or the Owner financed improvements to the satisfaction of the City's engineer and is not included within the CFD, the City will require each such property falling within clauses (i) though (iii) to contribute its proportionate fair share of the aforementioned improvement costs (including Financing Costs) through participation in a proportionate benefit reimbursement mechanism ("Payback Mechanism").

It is anticipated that the City and/or CFD would cause each reimbursement obligation imposed pursuant to the Payback Mechanism to be paid at in full at the earlier of: (i) final map recordation; or (ii) the issuance of the first building permit. Proceeds from the Payback Mechanism shall be applied as follows:

(a) to the CFD, to the extent that the CFD funded the Public Infrastructure;

(b) to the Owner, to the extent that the Owner funded the Public Infrastructure.

V. Maximum Payback Fees. The Owner and/or the CFD shall only receive Payback Fees up to a maximum of the original cost of the Payback Improvement, including financing costs, adjusted by the inflation cost index set forth in the Section 3 of this **Exhibit G** or twenty-five (25) years from the acceptance of each Payback Improvement by the City, whichever occurs first.

VI. Legal Action and Payback Fees. In the event that legal action results from the City's attempt to collect these fees, the City shall notify the Owner so that the Owner can participate in the litigation.

VII. Survival of Term. Notwithstanding anything contained in this Agreement to the contrary, this provision and the obligation of the City to require the Benefited Non-Property Land/Developments to pay Payback Fees shall survive the Term of this Agreement.

VIII. Forbearance. The Parties expressly agree that the Owner may apply, in accordance with A.R.S. §9-463.05(B)(4), for forbearance on the amount of Development Fees the City may charge based on the development of the Property and the contribution of the Owner or its successors and assigns make or will make in the future in cash or by taxes, fees or assessments toward the capital costs of the necessary public services.