

**RESOLUTION 29-2010**

**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, APPROVING A RESTATED PRE-ANNEXATION DEVELOPMENT AGREEMENT BY AND BETWEEN SAN PEDRO PARTNERS, L.L.C. AN ARIZONA LIMITED LIABILITY COMPANY AND JIMMY HARLAN AND YOKE LIN HARLAN, TRUSTEES AND THE CITY OF BENSON, ARIZONA**

WHEREAS, in consideration of the mutual promises and benefits contained in the Restated Pre-Annexation Development Agreement with San Pedro Partners, L.L.C., an Arizona Limited Liability Company and Jimmy Harlan and Yoke Lin Harlan, Trustees, attached hereto as Exhibit A, and concluding that it is in the best interest of the City to approve same.

NOW, THEREFORE BE IT RESOLVED by the Mayor and Council of the City of Benson, Arizona that the Restated Pre-Annexation Development Agreement with San Pedro Partners, L.L.C., An Arizona Limited Liability Company and Jimmy Harlan and Yoke Lin Harlan, Trustees, is hereby approved and the mayor is authorized to execute same on behalf of the City.

PASSED AND ADOPTED BY THE MAYOR AND COUNCIL OF BENSON, ARIZONA this 12th day of April, 2010.



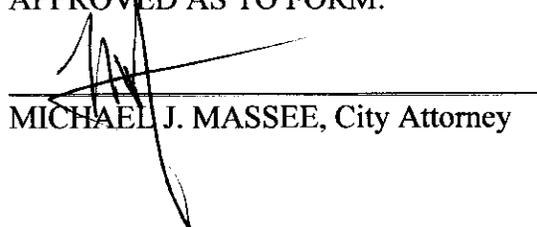
MARK M. FENN, Mayor

ATTEST:



VICKI L. VIVIAN, CMC, City Clerk

APPROVED AS TO FORM:



MICHAEL J. MASSEE, City Attorney

**RESTATED  
PRE-ANNEXATION & DEVELOPMENT AGREEMENT  
BETWEEN  
SAN PEDRO PARTNERS, L.L.C.  
AN ARIZONA LIMITED LIABILITY COMPANY  
AND JIMMY HARLAN AND YOKE LIN HARLAN, TRUSTEES  
AND  
THE CITY OF BENSON, ARIZONA**

## RESTATED PRE-ANNEXATION & DEVELOPMENT AGREEMENT

This Restated Pre-Annexation & Development Agreement (this “restated Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_ 2010, by and between the City of Benson, an Arizona municipal corporation (the “City”), and SAN PEDRO PARTNERS, L.L.C., an Arizona limited liability company (“SPP”) and Jimmy Harlan and Yoke Lin Harlan, Trustees of the Harlan Trust (“Harlan”, and together with San Pedro, the “Owners”) and modifies and restates that certain Pre-Annexation Agreement previously approved by the City on November 23, 2009, but not executed.

### RECITALS

- A. SPP is the owner of that certain Properties located within Cochise County, Arizona, consisting of approximately 53 acres of undeveloped land legally described in Exhibit “A” attached hereto and by this reference incorporated herein (the “SPP Property” and a “Property”). The SPP Property is currently zoned for low density residential development under Cochise County’s Zoning Code. The SPP Property is located adjacent to the City’s boundary and is included in the City’s anticipated growth area. The SPP Property is currently designated in the City’s General Plan for as appropriate for **low** density development, and the parties believe that the SPP Property is, in fact, appropriate for one or more medium-density residential developments, with related commercial and recreational facilities.
- B. Harlan is the owner of that certain Properties located within Cochise County, Arizona, consisting of approximately 62 acres of undeveloped land legally described in Exhibit “B” attached hereto and by this reference incorporated herein (the “Harlan Property” and a “Property” and together with the SPP Property, the “Properties” and the “Annexation Area”). The Harlan Property is currently zoned for low density residential development under Cochise County’s Zoning Code. The Harlan Property is located adjacent to the City’s boundary and is included in the City’s anticipated growth area. Part of the Harlan Property is currently designated in the City’s General Plan for as appropriate for **low** density development and part is currently designated as appropriate for commercial development, and the parties believe that the entire Harlan Property is, in fact, appropriate for commercial development.
- C. By executing this Restated Agreement, Harlan intends to ratify SPP’s negotiation of this Restated Agreement on behalf of Harlan, to bind itself to this Restated Agreement, and to authorize SPP to negotiate with the City any further joint agreements contemplated by this Restated Agreement. To the extent that City requires additional assurance by Harlan, Harlan will provide the same to City.
- D. SPP and Harlan (“Owners”) constitute one-half or more in value of the real and personal Properties within the Annexation Area and that the Owners constitute more than one-half of the persons owning real and personal property that would be subject to taxation by the City in the event of annexation, as shown by the last assessment of the Properties within the Annexation Area.
- E. Owners intend that the City proceed with the process to annex the Annexation Area into the City’s corporate limits.
- F. The City and Owners are entering into this Restated Agreement pursuant to the authority and provisions of Arizona Revised Statutes §9-500.05, as amended from time to time, in order to facilitate the annexation of

the Annexation Area, to set forth the parties' agreements relating to roadway and other infrastructure installation upon the Properties, and to set forth the agreements of the parties relative to the Properties. The City and Owners acknowledge that this Restated Agreement is intended to operate to the benefit of the City, Owners, and the public, and the parties understand and acknowledge that the terms of this Restated Agreement are binding upon Owners and the City and their successors and assigns, in accordance with the terms herein.

G. A separate statement by Owners made pursuant to Chapter 7, Part III of the City of Benson General Development Plan has been previously submitted and is on file with the City, and the parties acknowledge the current effectiveness of the same.

### **TERMS**

In exchange for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and the following mutual promises and agreements, the parties hereby state, confirm, and agree as follows:

1 **ANNEXATION OF THE ANNEXATION AREA.**

1.1 The parties acknowledge that concurrently with or prior to the execution of this Restated Agreement by the City and Owners, the City shall have initiated the annexation process by filing a blank annexation petition with the Cochise County Recorder, as required under and consistent with the requirements of A.R.S. § 9-471, *et seq.*, and all other applicable laws, ordinances, and rules (the "Annexation Laws") to annex the Annexation Area into the City. Thereafter the City shall properly notice and hold the public hearing required under the Annexation Laws in connection with the annexation of the Annexation Area into the City.

1.2 Within thirty (30) days of the date this Restated Agreement is executed by the parties and recorded in the offices of the Cochise County Recorder (the "Effective Date"), the Owners shall provide the City with a single petition (the "Annexation Petition"), executed by the Owners who shall constitute the owners of one-half or more in value of the real and personal property and more than one-half of the persons owning real and personal property that would be subject to taxation by the City in the event of annexation, as shown by the last assessment of all property within the Annexation Area, requesting and authorizing the annexation of the Annexation Area into the corporate limits of the City.

1.3 Upon receipt of the Annexation Petitions, the City agrees to act expeditiously to comply with the remaining requirements of the Annexation Laws and consider adoption of the final ordinance annexing the Annexation Area into the corporate limits of the City (the "Annexation Ordinance"). It is understood by the parties that the City Council retains the discretion to approve or deny the Annexation Ordinance, and in the event the Annexation Ordinance is approved, it shall not increase the density or use of any Properties annexed into the City.

2 **ORIGINAL ZONING.** The land use activities that are lawfully permitted on the Properties under Cochise County's current zoning applicable to the Properties translates to the RT-Rural zone under the Benson Zoning Regulations, and upon adoption of the final Annexation Ordinance, the Properties shall be zoned RT-Rural zone under the Benson Zoning Regulations; provided that City acknowledges that SPP and Harlan may

severally or jointly seek re-zoning of the Properties under the City's Zoning Code, and the initial zoning of the Annexation Area to RT-Rural shall not prejudice the Owners' rights to seek such re-zonings.

3 **PROCESSING OWNER'S REZONING APPLICATION AND DEVELOPMENT PLANS.** The City acknowledges the Owner's desire for expeditious review by the City of all applications, plans, and other materials ("Submitted Materials") submitted by Owners or either of them under or pursuant to Benson's Zoning Regulations, and/or zoning or any related approvals, permits, or other procedures pertaining to the rezoning or development of the Properties. The City agrees to use its best efforts to accomplish an expeditious review of all of Owners' Submitted Materials. In the event the City has insufficient personnel (either in-house staff or outside consultants to the City) to expeditiously review any Submitted Materials, the City and Owners or either of them may agree that Owners or either of them may pay the reasonable costs incurred by the City to retain such additional consultants, staff or other experts as the City may reasonably deem necessary to review such Submitted Materials on behalf of the City. Owners acknowledges that any such consultants' recommendations will be subject to review and revision by the City staff and shall not bind the City unless adopted by the City Council or other person or board having final approval or authority over such Submitted Materials.

4 **REZONING OF THE PROPERTIES.** Owners and the City contemplate that, after the City's adoption of the Annexation Ordinance, SPP intends to apply to re-zone the SPP Property to permit medium density residential development and Harlan intends to apply to re-zone the Harlan Property to permit commercial. The parties also acknowledge that SPP may seek to rezone some or all of the SPP Property in accordance with the terms and conditions of the Community Master Plan option (or its equivalent) pursuant to Section 3 of the City's Zoning Regulations or successor ordinance or code, to permit partial transfer of development rights, densities, and or uses from SPP's property lying west of the Annexation Area, which is currently zoned B-2, to the SPP Property. The Owners acknowledge that rezoning of the Properties will require an amendment to the City of Benson General Plan. City agrees to consider such an amendment and master plan; provided that City shall not be obligated to adopt any such amendment or master plan. The parties acknowledge that the approval of the Owner's rezoning application is within the sole discretion of the City Council, but that if the City does not approve Owners' respective zoning applications, the Owners may de-annex their respective Properties from the City, at the sole cost of the Owner.

5 **RIGHT-OF-WAY PROVISIONS**

5.1 Owner and the City contemplate that the development of the Properties may be affected by the alignment of public and other rights-of-way, roads, and public utilities, including, without limitation, water and sewer connections. The City shall cooperate with Owner, and to the extent reasonable, shall align public roads, trails, and rights-of-way located on or affecting the Properties in such a manner to minimize the impact on the development and use of the Properties; provided that the City shall not be required to use the City's power of condemnation in connection with any such realignment.

5.2 The Owner shall have the right to use utility easements, and other easements on the Properties, for roadway and drainage purposes to the extent not prohibited by the express terms of said easements, reasonable engineering standards, and applicable law.

5.3 The parties acknowledge that the Properties are accessed via Titan Road and that Titan Road is controlled by the Arizona Department of Transportation and not by the City. The Owners acknowledge that City cannot assure access to the Properties from Titan Road, and that Owners must comply with the

requirements of the Arizona Department of Transportation in order to use Titan Road for access to the Properties. The City agrees that, if access to the Properties is granted or assured by the Arizona Department of Transportation, the City shall not prohibit access to the Properties via Titan Road and, subject to reasonable regulation at the discretion of City, including such usual and customary health and safety requirements regarding access as are routinely imposed by the City, the City shall not prohibit development of the Properties based upon the Properties' use of or access via Titan Road.

6 **WASTEWATER PROVISIONS.** The parties acknowledge that the development of the Properties will require a modification of the City's 208 permit relating to wastewater service delivery areas (the "208 Amendment"). The parties agree that the Owner shall be required to apply for and obtain the necessary 208 Amendment, and shall be responsible for the payment of all related costs, whether direct or indirect, allocable to the portion of the 208 Amendment associated with the Properties, including but not limited to the City's administrative cost and the City's cost for outside consultants. If the 208 Amendment benefits any other properties within the City, Owner shall be responsible only for its prorated share of the costs, based on the relative acreage of the various properties included in said 208 Amendment.

7 **WATER SERVICES**

7.1 **City Service.** The City and the Owners acknowledge that the proper development of the Properties will require the installation of certain potable water service infrastructure to serve the Properties. Any parcel of the Annexation Area served by an existing private well retain the right to continue using their private well source or to dedicate the well and piping system to the City of Benson, therefore becoming part of the City of Benson water infrastructure system. Provided that the Properties are properly rezoned and platted in accordance with Sections 2, 3 and 4 hereof, and provided that the Owners dedicate their respective wells and water rights (if any) to the City, the City and Owners shall cooperate in the installation of such infrastructure and the providing of potable water service to the Properties; provided that each of the Owners shall be responsible for the entire cost of the infrastructure that serves that Owner's Property. Subject to the foregoing, City shall serve the Properties and each of them, and each residential, commercial or other user thereof, with potable water in accordance with the terms of this Restated Agreement and upon the payment of the City's applicable rates. In the event that the City fails for any reason to serve the Properties with water, the Owners shall have no obligation to transfer or dedicate their respective water rights or wells to the City.

7.2 **Transfer of Allocation and Water Rights.** In the event that the Parties are hereafter required, under applicable regulations of the Arizona Department of Water Resources, to demonstrate the physical availability of adequate groundwater reserves sufficient to meet the developmental requirements of the Properties, then, and in that event, concurrently with City's approval of a final plat or plats for the Properties, and contingent thereon, Owners shall take all steps necessary to cause Owners' respective groundwater allocations to be transferred to City and Owners shall bear the cost of adding the Properties to the City's 100 year ADWR water supply certification area. It is understood by the parties that the City shall receive all of Owner's rights to the water of the annexed Properties at the time of transfer of allocation, subject to the City's service of the Properties with water in accordance with this Restated Agreement.

7.3 Dedication. If required by the City, each of the Owners shall dedicate by plat to the City a site or sites, satisfactory to the City and of sufficient size for the installation and drilling thereon of one or more water wells and related pump(s), storage tank(s), and necessary water production facilities for the production of potable water; provided that the Owners may satisfy the requirements of this Section 7.3 by cooperating in the dedication of a single Well Site, on or off of the Properties, including other property owned by SPP; further provided that such location shall be reasonably acceptable to City. If the single Well Site is off the Properties, the Owners shall secure adequate right-of-way to transport water from the production site.

7.4 Construction of Well Facilities. If required by the City, the Owners shall pay and advance the cost of installing and drilling on sites dedicated to the City one or more water wells and related pump(s), storage tank(s), and necessary water production facilities (collectively, the “Well”) for the production of potable water, and, upon the completion thereof, shall transfer the same to the City, all at no cost to the City (but subject to reimbursement as hereinafter provided) and pursuant to a development agreement to be entered into by and among City and the Owners or either of them; provided that the Owners may satisfy the requirements of this Section 7.4 by cooperating in the development and installation of a single Well, on or off of the Properties, including other property owned by SPP; further provided that such location shall be reasonably acceptable to City.

7.5 Water Rates. City shall provide potable water service to the Properties and all users located thereon at rates based upon the cost to City to provide such service, including all direct and operating costs, any infrastructure costs borne by City, pumping or lift charges, reasonable overhead, and reasonable replacement reserves. In no event shall such rates exceed those charged to similar users served by the City.

8 **COST REIMBURSEMENT AND PARTICIPATION.** Upon the completion of the infrastructure to be constructed and installed by the Owners pursuant hereto, the Owners shall be entitled to recoup some or all of the costs incurred therein by the Owners, as follows:

8.1 Reimbursement of Well Costs. In the event that Owners or either of them shall pay the costs of installing the Well, then, in order to reimburse the Owner(s) for the costs of drilling and installing the Well and associated tanks, pumps, and related equipment, if any, the City shall, to the extent that the same does not violate the “Gift Clause” of the Arizona Constitution, credit to Owner(s) an amount up to the total amount expended by such Owner(s) in connection with the drilling and installation of such Well and related facilities against any water impact fees chargeable to Owners, or successors or assigns, and solely there-from, as of the date of this Restated Agreement or hereafter. The Owner entitled to such credit shall be responsible for notifying the City of such Owner’s right thereto and the amount thereof and shall demonstrate the same to the City’s reasonable satisfaction, and shall further demonstrate to City that such credit does not violate the “Gift Clause” of the Arizona Constitution. In no case shall the City’s reimbursement exceed the amount of water impact fees received from the annexed Properties.

8.2 Oversize agreement. If an Owner or assignee of an Owner is required to oversize a water or wastewater conveyance system beyond the existing city’s code or the minimum requirement of ADEQ for the benefit of the City or another landowner, the City will pay for the incremental cost of such

oversizing by crediting to the Owner paying the cost thereof some or all of the water or wastewater impact fees chargeable to such Owner and Owners shall not be liable for such incremental cost.

9 **ACQUISITION OF RIGHTS-OF-WAY FOR UTILITIES.** If in connection with the development of the Properties, Owner requires access rights, easements, or similar rights for the alignment and extension of public utilities and water and sewer connections to the Properties over property, rights of way or easements owned or controlled by the City, City shall cooperate with and grant Owner, to the extent reasonable, such easements or other rights; provided that City shall incur no cost or expense therein. The parties acknowledge that such right of the Owners to use property, rights of way or easements owned or controlled by the City is subject to the sole discretion and approval of the City Council.

10 **ROADWAY IMPROVEMENTS.**

10.1 Owners shall dedicate all necessary right-of-way width for each arterial road required to serve the Properties under the TIA (the "Road Dedication"). The Owners' dedication of the arterial and collector roads shall occur prior to the first to occur of (i) any development on the Owner's Properties, or (ii) the need for the right-of-way for the development of the vacant other land to the west of the Properties. The Owners may, at their sole discretion, build the arterial road in phases, in coordination with the development of the Property.

10.2. To the extent that additional arterial road traffic lanes are required in the future due to traffic generated by development of adjacent or other properties or developments, the City or the owner of the adjacent properties or development shall fund and cover the costs of the construction of additional traffic lanes and related improvements.

10.3. In the event that SPP finds it necessary to provide secondary access to the SPP Property across other property owned by SPP, SPP shall, prior to any development of the SPP Property, at no expense to the City, dedicate the necessary right-of-way for such access. In the event that SPP constructs upon such dedicated right of way any roadway improvements, such roadway improvements shall also be dedicated to the public.

11 **OWNER'S OBLIGATION FOR PARK IMPROVEMENTS.** The Owners will either: i) pay to the City \$950 per residential unit for the construction of city parks; or ii) build a park for the benefit of the community of equal or greater value than this amount. If the Owners choose to pay for park improvements in lieu of constructing a park, the money shall be paid on or before issuance of an occupancy with respect to each unit. The Owners acknowledge that the City has the right to prescribe park development standards, and if these standards are adopted prior to the construction of a park, the Owners shall construct the park in conformance with those standards.

12 **CHALLENGE.** In the event any party timely files a verified petition with the City challenging the validity of, or seeking a referendum vote with respect to (i) this Restated Agreement, (ii) the annexation contemplated by this Restated Agreement, (iii) the contemplated future rezoning of the Properties, or (iv) the contemplated future General Plan major amendment regarding the Properties, the parties shall cooperate in

good faith to attempt to resolve such challenge or referendum as soon as is reasonably possible. If any such referendum petition satisfies all legal requirements such that a referendum vote is required, then the City will use good faith efforts to schedule the vote as soon as reasonably possible. This paragraph is not intended to require the City to reject any referendum, nor oppose any litigation or objection filed against it, and the parties agree that the City shall have full authority to take any position it chooses on any referendum, complaint, litigation, or other objection to any occurrence listed above.

13 **NOTICES.** All notices, filings, consents, approvals and other communications provided for in this Restated Agreement or given in connection herewith shall be validly given, filed, made, delivered or served if in writing and delivered personally or by overnight carrier, or sent by United States first class (or registered or certified) mail, postage prepaid, addressed as follows:

If to the City: Glenn Nichols, City Manager  
CITY OF BENSON  
P.O. Box 2223  
Benson, Arizona 85602

with a copy to: Benson City Attorney  
P.O. Box 2223  
Benson, Arizona 85602

If to the Owners: c/o San Pedro Partners, LLC  
3237 East Ft. Lowell Road  
Tucson, Arizona 85716  
(520) 327-7384  
(520) 327-0411

with a copy to: Harlan Trust  
c/o James Harlan, trustee  
3517 Trevino Drive  
Sierra Vista, Arizona 85650

with a copy to: Rob Rauh,  
Hinderaker & Rauh PLC  
2401 East Speedway Boulevard  
Tucson, Arizona 85719

or to such other addresses as either party hereto may from time to time designate in writing and delivery in a like manner. Notices, filings, consents, approvals and communication given by personal delivery, or by overnight carrier, shall be deemed given, received and effective upon delivery, and if given by mail shall be deemed delivered forty-eight (48) hours following deposit in the U.S. mail, postage prepaid and addressed as set forth above.

14 **HIERARCHY OF DOCUMENTS.** In the event of a conflict or inconsistency between this Restated Agreement and ordinances, rules, regulations, permit requirements, development fees, other requirements, and/or official policies of the City in effect upon the date of acceptance, then, to the extent permitted by law, this Restated Agreement shall take precedence over any such rules, regulations, permit requirements, development fees, other requirements, and/or official policies of the City. This paragraph shall not be deemed to impermissibly restrict the ability of the City to enact ordinances, rules, regulations, and permit requirements which are generally applicable to all property within the City's city limits.

15 **COUNTERPARTS.** This Restated Agreement may be executed in two or more counterparts each of which shall be deemed an original, but all of which together constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all parties may be physically attached to a single document.

16 **HEADINGS.** The descriptive headings of the paragraphs of this Restated Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

17 **EXHIBITS AND RECITALS.** 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. The Recitals set forth at the beginning of this Restated Agreement are incorporated herein and the parties hereby confirm the accuracy thereof.

18 **FURTHER ACTS.** Each of the parties hereto shall promptly 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 Restated Agreement. The parties agree that all conditions and contingencies set forth in this Restated Agreement are critical in the development of the Properties.

19 **TIME OF ESSENCE.** Time is of the essence for each of the terms and provisions of this Restated Agreement.

20 **INUREMENT.** This Restated Agreement shall be binding upon and shall inure to the benefit of the parties to this Restated Agreement and their respective successors and assigns.

21 **TERM.** The term of this Restated Agreement shall commence on the date and at the time a resolution approving and adopting this Restated Agreement is approved by the City Council, and shall expire concurrently with the expiration of that certain Pre-Annexation Agreement entered into by and between the City and SPP on October 12, 2005 with regard to a 305 acre parcel owned by SPP and adjacent to the SPP Parcel, unless extended by mutual agreement of the parties. Termination of this Restated Agreement shall not affect the zoning of the Properties.

22 **NO PARTNERSHIPS; THIRD PARTIES.** Nothing contained in this Restated Agreement shall create any partnership, joint venture or other arrangement between Owners and the City. No term or provision of this Restated Agreement is intended to or shall be for the benefit of any person, organization or entity not a party hereto, and no such other person, organization or entity shall have any right to cause of action hereunder.

23 **ENTIRE AGREEMENT.** This Restated Agreement constitutes 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 superseded and merged into this Restated Agreement.

24 **AMENDMENT.** This Restated Agreement may be amended only by a written amendment executed by the City and Owners.

25 **GOOD STANDING, AUTHORITY.** Owners represents and warrants to the City that (a) Owner is duly formed and validly existing under the laws of the State of Arizona and qualified to do business in the State of Arizona; and (b) the individual(s) executing this Restated Agreement on behalf of Owners are authorized to do so. The City represents and warrants to Owners that (i) the City is a municipal corporation duly formed and validly existing under the laws of the State of Arizona, and (ii) the individual(s) executing this Restated Agreement on behalf of the City are authorized to do so.

26 **SEVERABILITY.** If any portion of any provision of this Restated Agreement is declared void or unenforceable, such portion shall be severed from this Restated Agreement and the remainder of the provision and remainder of this Restated Agreement shall remain in full force and effect. The parties acknowledge and agree that, although the parties believe that the terms and conditions contained in this Restated Agreement do not constitute an impermissible restriction of the police power of the City, and that it is their express intention that such terms and conditions be construed and applied as provided herein, to the fullest extent possible, it is their further intention that, to the extent any such term or condition is found to constitute an impermissible restriction of the police power of the City, such term or condition shall be construed and applied in such lesser fashion as may be necessary to reserve to the City all such power and authority that cannot be restricted by contract.

27 **SIGNIFICANCE OF COURT ORDERS.** The parties agree that in the event any court of competent jurisdiction enters a final order relating to the zoning, density, uses, or other provisions of this Restated Agreement, such order shall be binding on the parties, and compliance with such final order will not be a breach of the terms of this Restated Agreement.

28 **STATUS STATEMENTS.** Any party to this Restated Agreement (the “requesting party”) may, at any time, and from time to time, deliver written notice to any other party requesting such other party (the “providing party”) to provide in writing that, to the knowledge of the providing party, (a) this Restated Agreement is in full force and effect and a binding obligation of the parties, (b) this Restated Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments, and (c) the requesting party is not in default in the performance of its obligations under this Restated Agreement, or if in default, to describe therein the nature and amount of any such defaults (a “Status Statement”). A party receiving a request hereunder shall execute and return such Status Statement within twenty (20) days following the receipt thereof. Any of the City Manager, Assistant City Manager, or City Attorney shall have the right to request from Owners or execute, with the consent and approval of the City’s mayor and council with regard to the contents thereof, for the benefit of Owners, any Status Statement. The City shall have no liability for monetary damages to Owners, and transferee or mortgagee, or any other person in connection with, resulting from or based upon the issuance of any Status Statement hereunder.

29 **GOVERNING LAW.** This Restated Agreement shall be governed by and construed in accordance with the laws of the State of Arizona, and the parties consent to jurisdiction and venue in Cochise County, Arizona. In particular, this Restated Agreement is subject to the provisions of A.R.S. § 38-511.

30 **INDEMNITY.** In the event that the City is named as a party defendant in an action by a person not party to this Restated Agreement alleging that the City's execution or performance of any part of this Restated Agreement violates applicable Arizona law, Owners shall reimburse City for its reasonable attorneys fees and costs actually incurred in the defense of that action.

IN WITNESS WHEREOF, the parties have executed this Restated Agreement to be effective on the date and at the time a resolution approving and adopting this Restated Agreement is approved by the City Council of the City of Benson.

Date: \_\_\_\_\_

City of Benson,  
an Arizona municipal corporation

By: \_\_\_\_\_  
Mayor

**APPROVED AS TO FORM AND AUTHORITY**

The foregoing Agreement has been reviewed by the undersigned attorney, who has determined that it is in proper form and within the power and authority granted under the laws of the State of Arizona to the City of Benson.

\_\_\_\_\_  
Michael J. Masee  
Attorney for City of Benson

Attest:

\_\_\_\_\_  
Vicki L. Vivian, C.M.C., City Clerk

San Pedro Partners, L.L.C.  
an Arizona limited liability company

By: \_\_\_\_\_  
Managing Member

Harlan Trust

By: \_\_\_\_\_  
Jimmy Harlan

By: \_\_\_\_\_  
Yoke Lin Harlan

STATE OF ARIZONA     )  
  ) ss  
County of Pima         )

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 2009, by Jerry DeGrazia, a Member of San Pedro Partners, L.L.C. an Arizona limited company, on behalf of said limited liability company.

\_\_\_\_\_  
Notary Public

My Commission Expires:

STATE OF ARIZONA     )  
  ) ss  
County of Cochise     )

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 2009, by Jimmy Harlan and Yoke Lin Harlan, Trustees of the Harlan Trust.

\_\_\_\_\_  
Notary Public

My Commission Expires:

STATE OF ARIZONA        )  
  ) ss  
County of Cochise        )

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by  
\_\_\_\_\_, the \_\_\_\_\_ of the City of Benson.

\_\_\_\_\_  
Notary Public

Exhibit A

SPP Property

Exhibit B

Harlan Property