ORDINANCE 584

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, APPROVING A REQUEST TO REZONE ASSESSOR'S PARCEL NUMBERS 123-07-024A, 123-07-024B, 123-07-024C, 123-07-024D, 123-07-024E, 123-07-024F, 123-07-024G, 123-07-024H, 123-07-007A, 123-07-007B, 123-07-007C, 123-48-003A, 123-48-004R, 123-48-004S, 123-48-004T, 123-26-001F, 123-26-002A, 123-07-025, FROM A ZONING DISTRICT OF HEAVY INDUSTRIAL (I-2) TO A COMBINATION OF SINGLE FAMILY RESIDENTIAL (R-1-43) AND MULTI-FAMILY RESIDENTIAL (R-2)

WHEREAS, the City desires to encourage residential development in the above named area which is currently zoned Heavy Industrial (I-2); and,

WHEREAS, San Pedro Real Estate, L.L.C. and the City of Benson, the owners of the property, more specifically described on Exhibit A, attached hereto and incorporated herein by this reference (the "Property"), have requested that the City change the zoning of the Property from Heavy Industrial (I-2) to a combination of Single Family Residential (R-1-43) and Multi-Family Residential (R-2); and

WHEREAS, rezoning the Property from Heavy Industrial (I-2) to Single Family Residential (R-1-43) and Multi-Family Residential (R-2) is in accordance with the City of Benson General Development Plan as it proposes land uses, densities or intensities within the range of identified uses, densities and intensities of the land use element of the General Development Plan; and

WHEREAS, after providing notice to the public in accordance with A.R.S. § 9-462.03 and A.R.S. § 9-462.04, the Planning and Zoning Commission held a citizen review hearing on the matter on September 27, 2106 and thereafter recommended the rezoning as hereinafter set forth; and

WHEREAS, the City Council has received the written transmittal of recommendation from the Planning and Zoning Commission, has heard from the representative of the owner, City staff and members of the public during a properly-noticed public hearing at the regular City Council meeting held November 14, 2016 and has determined that the rezoning request is in conformance with the General Development Plan and should be approved.

BE IT NOW HEREBY ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, that the Benson Zoning Regulations, Ordinance No. 243, as amended, be hereby further amended to rezone the Property currently zoned Heavy Industrial (I-2) to Single Family Residential (R-1-43) and Multi-Family Residential (R-2), subject to the following conditions:

1. That San Pedro Real Estate, LLC, or any successors, must subject the "remainder" area of the Property to conservation measures for the uses described by the application within 2 years and prior to any physical development of the Property.

2. The applicant must execute a waiver of any and all claims against the City pursuant to Proposition 207, A.R.S. § 12-1131 et seq.

PASSED AND ADOPTED BY THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, this 14th day of November, 2016.

TONEY D. KING, Mayor

ATTEST:

VICKI L. VIVIAN, CMC, City Clerk

APPROVED AS TO FORM:

MESCH CLARK ROTHSCHILD
By GARY J. COHEN
City's Attorney

CERTIFICATION OF MAP
OF AREA TO BE REZONED

I, TONEY D. KING, Mayor of the City of Benson, Arizona, do hereby certify that the foregoing map as shown on Exhibit "A", is a true and correct map of the area to be rezoned by Ordinance 584, as shown on said map.

CERTIFIED this _____ day of _____, 2016.

TONEY D. KING, Mayor

ATTEST:

VICKI L. VIVIAN, CMC, City Clerk

APPROVED AS TO FORM:

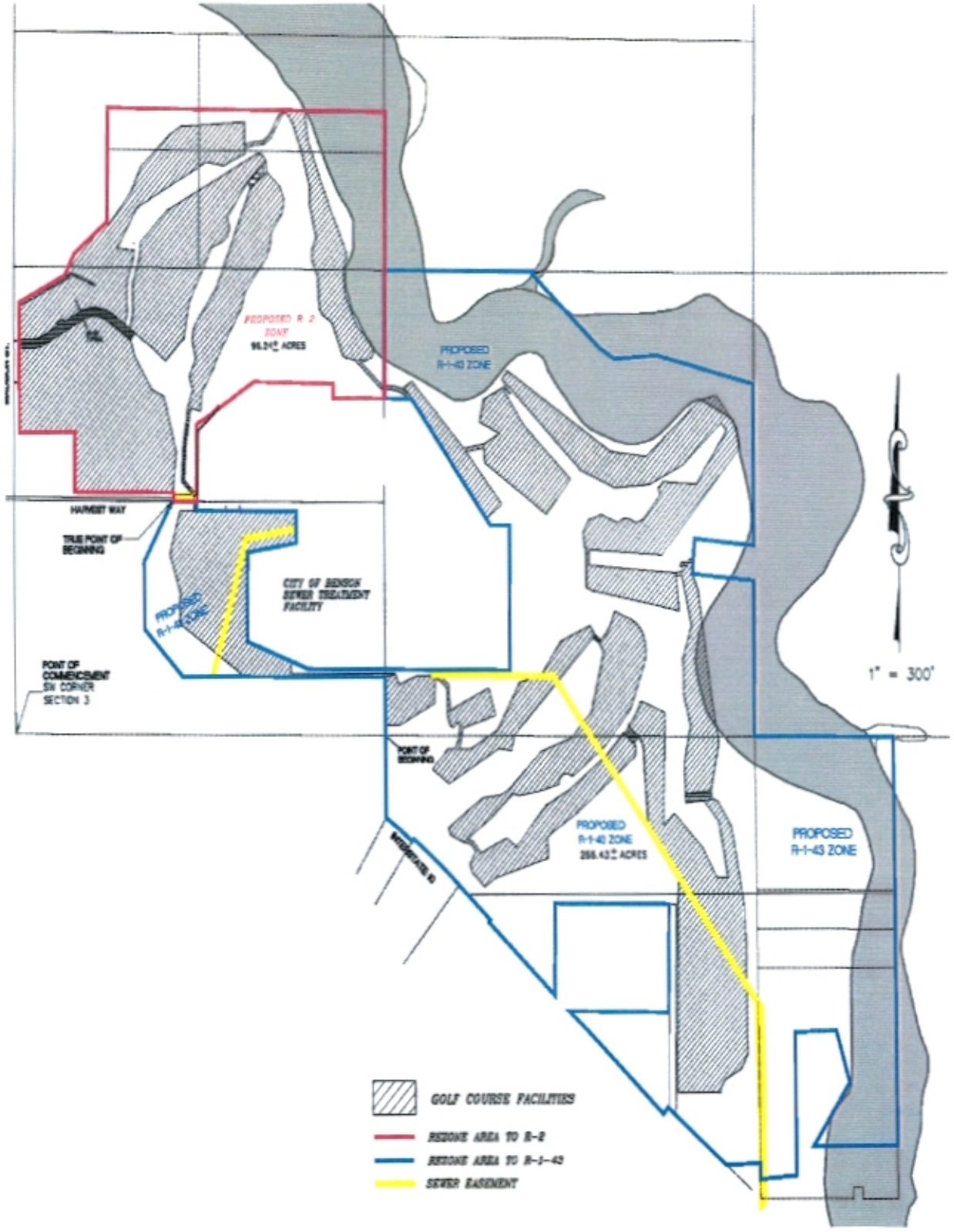
MESCH CLARK ROTHSCHILD
By GARY J. COHEN
City's Attorney

Exhibit A

APN 123-07-024A, 123-07-024B, 123-07-024C, 123-07-024D, 123-07-024E, 123-07-024F, 123-07-024G, 123-07-024H, 123-07-007A, 123-07-007B, 123-07-007C, 123-48-003A, 123-48-004R, 123-48-004S, 123-48-004T, 123-26-001F, 123-26-002A, 123-07-025

See attached final rezone boundary map and legal descriptions

Total Rezone Area Map



LEGAL DESCRIPTION - R-1-43 ZONE

Portions of Sections 3, 10, and 11, Township 17 South, Range 20 East of the Gila and Salt River Meridian, County of Cochise, State of Arizona, more particularly described as follows:

Commencing at the Southwest comer of said Section 3 being a 2" capped pipe; thence along the West line of said Section 3, North 00°06'40 West, 1324.39 feet; thence leaving said line, South 89°38'04" East, 1129.62 feet to the **True Point of Beginning;**

Thence S89°38'04"E for 171.43 feet;
thence S0°22'00"W for 51.30 feet;
thence S89°38'04"E for 708.42 feet;
thence S0°21'56"W for 180.51 feet;
thence S81°23'43"W for 350.00 feet;
thence S0°30'56"W for 507.06 feet;
thence S70°09'59"E for 461.25 feet;
thence S89°38'57"E for 1429.83 feet;
thence N0°18'04"E for 824.45 feet;
thence S89°5l'48"W for 138.11 feet;
thence N37°57'18"W for 907.99 feet;
thence N89°32'25"W for 196.59 feet;
thence N0°00'15"W for 730.97 feet;
thence S89°32'31"E for 1065.40 feet;
thence S24°04'40"W for 19.00 feet;
thence S48°36'20"E for 633.00 feet;
thence S59°19'20"E for 128.00 feet;
thence N86°07'40"E for 300.00 feet;
thence S76°21'20"E for 706.00 feet to a point on the East line of said Section 3;
thence along said line, S0°05'57"W for 913.50 feet;
thence leaving said line, N84°39'35"W for 419.50 feet;
thence S5°20'25"W for 200.00 feet;
thence S84°39'35"E for 437.84 feet to a point on said East line of Section 3;
thence along said line, S0°05'57"W for 882.80 feet to the comer common to Sections 2, 3, 10 and 11;
thence along the North line of said Section 11, S89°46'56"E for 986.91 feet;
thence leaving said line, S0°21'05"E for 2333.97 feet to a point on the boundary line of land according to Record of Survey Map Book 11, page 92;
thence along said boundary, N89°46'06"W for 597.17 feet;
thence N35°29'32"E for 443.80 feet;
thence NI 7°19'14"W for 312.40 feet;
thence S87°42'43"W for 203.96 feet;
thence S89°29'34"W for 86.59 feet;
thence S0°07'23"E for 818.63 feet;

thence S85°29'04"W for 258.55 feet to a point on the East line of said Section 10;
thence along said line, N0°30'26"W for 91.01 feet;
thence leaving said line, S88°09'44"W for 242.55 feet to a point on the Northeasterly right-of-way line of Interstate 10;
thence along said line, N51°21'44"W for 527.61 feet;
thence S41°49'31"W for 50.00 feet;
thence N48°10'29"W for 888.92 feet;
thence leaving said right-of-way, S89°27'0511E for 707.15 feet;
thence N0°32'55"E for 614.00 feet;
thence N89°27'05"W for 810.44 feet;
thence S0°32'55"W for 523.33 feet to a point on said Northeasterly right-of-way line of Interstate 10;
thence along said line, N48°10'29"W for 623.64 feet;
thence N41°49'31"E for 16.00 feet;
thence N48°10'29"W for 300.03 feet to the beginning of a tangent 4753.66 foot radius curve concave Southwesterly;
thence Northwesterly along the arc of said curve through a central angle of 05°00'00", a distance of 414.83 feet; thence on a radial line to said curve, S36°49'31"W, 16.00 feet to the beginning of a tangent 4737.66 foot radius curve concave Southwesterly;
thence Northwesterly along the arc of said curve through a central angle of 02°43'55", a distance of 225.89 feet;
thence leaving said right-of-way line, and non-tangent to said curve, N00°08'13"W, 467.73 feet to an ADOT brass cap monument at the South quarter corner of said Section 3;
thence N0°00'15"W for 330.00 feet;
thence N89°43'37"W for 1436.98 feet;
thence N44°49'06"W for 380.83 feet;
thence N0°00'07"W for 380.00 feet;
thence N30°36'02"E for 398.16 feet;
thence S89°38'04"E for 1.92 feet to the **True Point of Beginning;**

Contains 266.43 acres, more or less.

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
51967
JESSICA J.
NESBITT
DATE SIGNED 8-17-16
ARIZONA U.S.A.
Expires 3/31/2017

LEGAL DESCRIPTION - TOTAL R-2 REZONE

Portions of Sections 3, 10, and 11, Township 17 South, Range 20 East of the Gila and Salt River Meridian, County of Cochise, State of Arizona, more particularly described as follows:

Commencing at the Southwest comer of said Section 3 being a 2" capped pipe; thence along the West line of said Section 3, North 00°06'40 West, 1324.39 feet; thence leaving said line, South 89°38'04" East, 1129.62 feet to the **True Point of Beginning;**

Thence North 00°21'56 East, 50.00 feet; thence North 89°38'04" West, 703.02 feet; thence North 00°06'40" West, 334.01 feet; thence North 89°38'04" West, 394.01 feet to a point lying 33.00 feet Easterly of said West line of Section 3; thence along a line parallel with said West line, 33.00 feet distant therefrom, North 00°06'40" West, 737.30 feet; thence leaving said line, North 64°56'36" East, 357.46 feet; thence North 28°50'02" East, 137.42 feet; thence North 52°28'19" East, 295.85 feet; thence North 00°01'15" West, 642.68 feet; thence South 89°24'37" East, 1974.97 feet; thence South 00°00' I5" East, 1623.08 feet;
thence N89°32'25"W for 368.17 feet;
thence N0°27'35"E for 80.00 feet;
thence N88°58'35"W for 561.65 feet;
thence S59°24'26"W for 285.47 feet;
thence S49°48'29"W for 201.37 feet;
thence S0°22'00"W for 398.40 feet;
thence N89°38'04"W for 171.43 feet to the **True Point of Beginning;**

Contains 96.40 acres, more or less.

REGISTERED LAND SURVEYOR
CERTIFICATE NO. 51967
JESSICA J. NESBITT
DATE SIGNED 8-17-16
ARIZONA U.S.A.
Expires 3/31/17

When Recorded Mail to:
Vicki Vivian, City Clerk
City of Benson
120 W. 6th Street
Benson, Arizona 85602

AGREEMENT TO WAIVE RIGHTS AND REMEDIES UNDER ARIZONA REVISED STATUTES §12-1134

This Agreement to Waive Rights and Remedies under Arizona Revised Statutes § 12-1134 (hereinafter, the "Agreement") is made between San Pedro Real Estate, LLC (hereinafter, the "Owner") and the City of Benson, Arizona, an Arizona municipal corporation (hereinafter, the "City"), regarding the following property located in APN 123-07-024A, 123-07-024B, 123-07-024C, 123-07-024D, 123-07-024E, 123-07-024F, 123-07-024G, 123-07-024H, 123-07-007A, 123-07-007B, 123-07-007C, 123-48-003A, 123-48-004R, 123-48-004S, 123-48-004T, 123-26-001F, 123-26-002A and more fully described by the three legal descriptions, attached as Exhibit "A" (hereinafter, the "Property").

1. The Owner has requested the change of Zoning Classification for several parcels of real property (APN: portion of parcels 123-07-024B, 123-07-007B, 123-26-001F, 123-26-002A, 123-48-003A; the entirety of parcels 123-07-024E, 123-07-024F, 123-07-024G, 123-48-004R, 123-48-004S, 123-48-004T), together which are described in action Ordinance 584. In addition to those parcels, Owner owns additional parcels (APN: portions of parcels 123-07-024B, 123-07-007B, 123-48-003A, 123-26-001F, 123-26-002A; the entirely of parcels 123-07-024A, 123-07-024C, 123-07-007A, 123-07-007C) that lie adjacent to the parcels at issue, which parcels are at issue in action Ordinance 584. Owner agrees and consents to all of the requirements, conditions and stipulations imposed by the City Council regarding the Change of Land Use for the Properties. See Exhibit "B" which is a copy of the Zoning Ordinance or other Council action for the Change of Land Use.

2. Owner acknowledges that Owner's request for the Change of Land Use was voluntary, and that there are uses for the Owner's property which do not require a Change of Land Use. Owner also acknowledges that Owner has had the opportunity to give the City Council the Owner's input on the requested Change of Land Use. Owner shall sign and deliver this Agreement to the City Clerk within thirty (30) days of the Council Action which was taken at the public City Council meeting held on November 14, 2016 (the "Council Action").

3. Owner has the right to withdraw Owner's request for the Change of Land Use for these Properties (See Exhibits "A" and "B," attached) by not signing and delivering this Agreement to the City Clerk within the time period required in paragraph 2, above. Owner further understands that if Owner has not signed and delivered this Agreement to the City Clerk within the time period required in paragraph 2, above, then Owner's request for the Change of Land Use shall be deemed withdrawn by Owner. The Change of Land Use granted by the City Council is conditioned upon the execution and delivery of this Agreement and will not take effect unless and until Owner signs and delivers this Agreement to the City Clerk within the time period set forth in paragraph 2, above. If this Agreement is not signed and delivered to the City Clerk within the time period required in paragraph 2, above, Owner will have to reapply for the Change of Land Use for the Property.

4. **By signing and delivering this Agreement to the City Clerk, Owner acknowledges that Owner waives any right to claim diminution in value or pursue a claim for just compensation for diminution in value under Arizona Revised Statutes § 12-1134 relating to the Change of Land Use for the Properties set forth in Exhibits "A" and "B".**

EXHIBIT "A"
LEGAL DESCRIPTION
of the PROPERTY

EXHIBIT "B"
CITY ORDINANCE OR DESCRIPTION OF COUNCIL ACTION

(To be provided by the City.)