# City of Benson
## City Council Communication

**Worksession** **May 21, 2016**

To: Mayor and Council Agenda Item # 1

From: William Stephens, City Manager

Subject:

Worksession to discuss the status of the proposed Development Agreement for the Villages at Vigneto project; review the basis for entering into the agreement and the proposed agreement itself

Discussion:

Since receiving Mayor and Council direction, City Staff have negotiated a proposed Development Agreement for the property being developed as the Villages at Vigneto. Development of the property is currently the subject of an existing development agreement dating to when the property was being developed as Whetstone Ranch. Staff recommends that the Mayor and Council essentially terminate the existing development agreement as to all affected property owned by El Dorado Benson and draft a new development agreement. The included draft development agreement is intended to do just that.

The Vigneto project is projected to include a mix of 28,000 homes as well as commercial and recreational development on 12,167 acres. The Property contains property sensitive to the environment, and approximately 3,000 acres of open space has been identified for the Project. The proposed development agreement broadly defines certain uses that may be developed on the property, defines infrastructure that will need to be constructed as the property is constructed in phases, and defines monetary contributions that will need to be paid to the City to hire, train, and supplement the City's staff of and equipment for its first responders until projected revenues from residents can sustain the costs of doing so.

Staff will review with Mayor and Council the substantive statutory requirements for adopting a development agreement, address principal provisions in the agreement, and be prepared to address questions about the proposed agreement.

Representatives of El Dorado Benson will also be present and prepared to address agreement points or answer questions.

Staff Recommendation:

Recommendations and information

WHEN RECORDED RETURN TO: 5/16/16

El Dorado Benson LLC
8501 N. Scottsdale Rd., Suite 120
Scottsdale, Arizona 85253

# THE VILLAGES AT VIGNETO DEVELOPMENT AGREEMENT

THIS VILLAGES AT VIGNETO DEVELOPMENT AGREEMENT (the "Agreement") is entered into by and between the CITY OF BENSON, ARIZONA, an Arizona municipal corporation (the "**City**"), and EL DORADO BENSON LLC, an Arizona limited liability company (the "**Owner**"). Collectively, the City and the Owner are referred to herein as the "**Parties**."

## RECITALS

A. The Owner owns that certain real property located within the municipal boundaries of the City of Benson and consisting of approximately 12,167 acres, legally described and depicted on **Exhibit A** attached hereto (the "**Property**").

B. The City and the Owner are parties to the Annexation and Development Agreement dated November 3, 1993 and recorded November 9, 1993 in the Official Records of the Cochise County Recorder at Instrument Number 9311-30558, as amended by the Amendment to Annexation Development Agreement dated March 28, 2005, and by the Addendum to Whetstone Annexation Development Agreement dated March 21, 2006 and recorded April 5, 2006 in the Official Records of the Cochise County Recorder at Instrument Number 0604-12927, and by the Second Addendum to Whetstone Annexation Development Agreement dated August 27, 2012 and recorded October 15, 2012 in the Official Records of the Cochise County Recorder at Instrument Number 2012-22955, as assigned by the Assignment of Annexation Development Agreement dated May 30, 2014 and recorded May 30, 2014 in the Official Records of the Cochise County Recorder at Instrument Number 2014-09497 (collectively, the "**Whetstone Agreement**").

C. The Whetstone Agreement applies to the Property and to property owned by third parties (the "**Third Party Property**"). The Third Party Property is depicted on **Exhibit B** attached hereto.

D. The Parties intend by this Agreement to terminate the Whetstone Agreement in its entirety as to the Property and replace the Whetstone Agreement with this Agreement. The City intends that the Whetstone Agreement shall remain in full force and effect as to the Third Party Property.

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E. The City's General Development Plan dated February 23, 2015 ("**General Plan**") designates the majority of the Property as "Mixed Use"; the remainder of the Property is designated either as "Open Space," "Wildlife Corridor," "Low Density Residential," "Medium Density Residential," or "Environmentally Sensitive Areas."

F. The City approved the Preliminary Community Master Plan and Development Plan for the Property on April 13, 2015.

G. The Owner has filed a request for approval of a Final Community Master Plan and Development Plan for the Property (the "**Final CMP**"), which is consistent with the approved Preliminary Community Master Plan and Development Plan for the Property and which, once approved, along with the Rules and Regulations (as defined herein) and this Agreement, will establish proper and beneficial land use designations (including categories and permitted uses) and regulations, densities, provisions for public facilities, design regulations, procedures for administration and implementation and other matters related to the development of the Property. The Final CMP is in conformance with and consistent with the goals and objectives of the General Plan. Prior to the Effective Date of this Agreement, the City will hold public hearings and receive public comment and otherwise duly consider the Final CMP.

H. The Owner and the City acknowledge that the ultimate development of the Property within the City is a project of such size, scope, and quality that the Owner requires assurances from the City that the Owner has the right to complete the development of the Property pursuant to the Rules and Regulations before it will expend substantial efforts and costs in the development of the Property, and the City requires assurances from the Owner that development of the Property will be in accordance with this Agreement, the Final CMP and the Rules and Regulations.

I. The parties understand and acknowledge that this Agreement is a "development agreement" within the meaning of, and entered into pursuant to the terms of Arizona Revised Statutes § 9-500.05.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and agreement set forth herein, and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the Parties hereby agree as follows:

## AGREEMENT

1. **Definitions**. In this Agreement, unless a different meaning clearly appears from the context:

   1.1. "Agreement" means this Agreement, as amended, restated, or supplemented in writing from time to time, and includes all exhibits and recitals hereto. References to Sections or Exhibits are to this Agreement unless otherwise qualified.

   1.2. "Additional Property" means as defined in Section 4.4.

   1.3. "ADWR" means the Arizona Department of Water Resources.

1.4. "A.R.S." means Arizona Revised Statutes.

1.5. "City Representative' means as defined in Section 8.3.

1.6. "Community facilities district" or "CFD" means a community facilities district formed pursuant to A.R.S. § 48-701 *et seq.*

1.7. "Cure Period" means as defined in Section 8.4.

1.8. "Development Fees" means as defined in Section 5.1.7.

1.9. "Effective Date" means as defined in Section 3.

1.10. "Final CMP" means the Final Community Master Plan and Development Plan for the Property, as approved by the City Council, together with all stipulations and other provisions contained in the ordinance approving the Final CMP, and any subsequent amendments to the Final CMP.

1.11. "Community Park" means as defined in Section 7 of the Final CMP.

1.12. "District" means as defined in Section 6.1.

1.13. "Infrastructure" means as defined in Section 5.1.1.

1.14. "Master Developer" means as defined in Section 8.1.6.

1.15. "Neighborhood Park" means as defined in Section 7 of the Final CMP.

1.16. "Owner" means El Dorado Benson LLC, an Arizona limited liability company, or its successors and assignees pursuant to Section 8.11.

1.17. "Owner Representative" means as defined in Section 8.3.

1.18. "Parties" means the City and the Owner collectively.

1.19. "Party" means each of the City and the Owner.

1.20. "Planning Unit" means as defined in Section 3 of the Final CMP.

1.21. "Planning Unit Plan" means as defined in Section 3 of the Final CMP.

1.22. "Property" means as defined in Recital A.

1.23. "Regional Park" means as defined in Section 7 of the Final CMP.

1.24. "Regulations" means as defined in Section 4.2.

1.25. "Requirements" means as defined in Section 4.5.

1.26. "Revitalization District" or "RD" means a revitalization district formed pursuant to A.R.S. § 48-6801 *et seq.*

1.27. "Rules" means as defined in Section 4.2.

1.28. "Term" means as defined in Section 3.

1.29. "WWTP" means the wastewater treatment plant referenced in Section 5.5.

2. **Effect of Agreement.** This Agreement terminates the Whetstone Agreement as to the Property. Immediately following recordation of this Agreement, the Parties shall execute and

record the Termination and Release of Whetstone Agreement, a form of which is attached hereto as **Exhibit C**. This Agreement constitutes the entire agreement between and reflects the reasonable expectations of the Parties pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations, negotiations and understandings of the Parties, oral or written, are merged herein and/or expressly declared void and are superseded by this Agreement.

3. **Term and Effective Date.** This Agreement is effective as of the date the Final CMP is approved by the Benson City Council (the "**Effective Date**"). The term of this Agreement shall be forty (40) years from the Effective Date ("**Term**").

4. **Development of Property.**

4.1. Final CMP. Upon the approval of the Final CMP, the Owner shall be authorized to implement the Final CMP, and will be accorded all appropriate approvals necessary to permit the Owner to implement the Final CMP, subject to the City's review of Planning Unit Plans, site plans, subdivision plats and other similar items in accordance with the Regulations. Pursuant to the Rules and the Final CMP, all approvals of Planning Unit Plans, subdivision plats, and site plans are administrative actions (whether or not City Council approval is required). References hereafter to the Final CMP shall mean the Final CMP, as approved by the City Council, together with all stipulations and other provisions contained in the ordinance approving the Final CMP.

4.2. Regulation of Development. The development of the Property shall be in accordance with this Agreement and the Final CMP, if and once approved (collectively, the "**Regulations**"). The Regulations shall control over conflicting City ordinances, codes, rules, regulations, standards, procedures, and administrative polices (collectively, the "**Superceded Regulations**"), and shall be the primary regulations used by the City when reviewing and approving submittals within the Property. With the exception of the Superceded Regulations, all other applicable City ordinances, codes, rules, regulations, standards, procedures, requirements of state law, and administrative polices in effect as of the date of this Agreement shall apply to development of the Property (collectively, the "**Rules**"). If there is a conflict between the Final CMP and this Agreement regarding an issue, then the document that more specifically addresses the issue shall control. Except as expressly provided to the contrary in this Agreement, the City shall not impose any future Rules applicable to or governing development of the Property. Notwithstanding the foregoing, the City may enact the following provisions and take the following actions, which shall be allowable additions to the Rules and shall be binding on the development of the Property:

a. Rules specifically agreed to in writing by the Owner;

b. Future land use Rules enacted as necessary to comply with future state and federal laws and regulations, provided that in the event any such state or federal laws or regulations prevent or preclude compliance with this Agreement, such affected provisions of this Agreement shall be modified as may be necessary in order to comply with such state and federal laws;

c. Future non-discriminatory imposition of taxes;

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

Nothing shall be interpreted as relieving the Owner of any obligations which it may have with respect to regulations enacted by the Federal government or the State of Arizona that apply to the Property. Nothing in this Agreement shall alter or diminish the authority of the City to exercise its eminent domain powers. The City agrees that upon the Effective Date of this Agreement, the Owner and its successors and assigns shall be deemed to have a contractually vested right under this Agreement to develop the Property in accordance with this Agreement, and additionally, once approved by the City, the Final CMP. The City will not initiate any changes or modifications to the Final CMP, except at the request of the Owner. This section shall survive termination or expiration of this Agreement.

4.3. Anti-Moratorium. No moratorium, as that term is defined in A.R.S. § 9-463.06, or other Rule imposing a limitation on the development or on the rate, timing or sequencing of the development of property within the City and affecting the Property or any portion thereof shall apply to or govern the development of the Property during the term hereof whether affecting preliminary or final plats, building permits, occupancy permits or other entitlements to use issued or granted by the City or the provision of municipal services to the Property, except in compliance with the provisions of A.R.S. § 9 463.06 as in force on the Effective Date. 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 D** and incorporated herein by this reference, such standards shall continue to apply to the Property. Notwithstanding the foregoing, the Owner acknowledges that nothing in this Section 4.3 shall prohibit the City from withholding the issuance of Certificates of Occupancy for a structure to be occupied if the water or wastewater Infrastructure as required to serve the applicable portion of the Property on which the structure to be occupied is located will not be in place prior to occupation of such structure.

4.4. Additional Property. Notwithstanding anything herein to the contrary, the City agrees that this Agreement shall be administratively amended by the City Manager from time to time solely at the request of the Owner to incorporate into this Agreement the whole or any portion of additional properties adjacent to or proximate to the Property (the "**Additional Property**") if and when the Owner acquires such Additional Property. The City and the Owner agree that if the Owner elects to incorporate such Additional Property or portions thereof: (i) thereafter, such Additional Property shall be included in the Property and shall be subject to and shall benefit from all provisions of this Agreement applicable thereto and any reference herein to the Property shall include such Additional Property; (2) the City and the Owner shall cooperate in order for the Additional Property to be included in the Final CMP.

4.5. No Dedications or Exactions. Except for the dedications and requirements identified in the Rules and Regulations, the City agrees that it shall not attempt to acquire or require (through Planning Unit Plans, subdivision, subdivision stipulations, site plan approvals or stipulations or otherwise) any requirements, reservations, conditions, or further dedications of portions of the Property or easements or other rights over portions of the Property (collectively, "**Requirements**"), or money or other things of value in lieu of such Requirements, to compensate for development of the Property. The City acknowledges that the impact of development on the Property has been considered and is adequately accounted for by the conditions to development of the Property as set forth in the CMP and this Agreement.

4.6. Phasing. The development planned for the Property, including the infrastructure, is intended by the Owner to be carried out in phases over a significant number of years. Development of the Property is contemplated to progress in phases that may be non-contiguous until all of the Property is developed.

4.7. Grazing. The City agrees not to take any action that would prevent the Owner from using the Property or portions thereof for grazing purposes or that would otherwise materially adversely affect the Owner's grazing operation.

4.8. Mining and Batch Plant Operations. The City hereby acknowledges and agrees that mining, blasting and batch plant operations shall be allowed on-site during construction of the improvements. The location of such operations shall be subject to review and approval by the appropriate City officials and any other agencies that have jurisdiction over such operations.

4.9. Signage. The Owner shall submit a conceptual master sign plan for the Property concurrently with the first Planning Unit Plan. If the master sign plan varies from the Final CMP or the Rules, then the Zoning Administrator may require approval of the conceptual master sign plan by the City's Planning & Zoning Commission and City Council. The Owner and the City acknowledge and agree that if the City updates Section Fifteen of the City Zoning Regulations (Sign Regulations) to comply with federal or state law, then such updates shall be part of the Rules. The City shall not prohibit or unreasonably restrict signs located on the Property for the purposes of advertising or directing prospective builders, developers, home buyers or other visitors to the Property.

4.10. Outdoor Lighting. The Owner shall submit a conceptual outdoor lighting master plan for the Property concurrently with the first Planning Unit Plan. If the conceptual outdoor lighting master plan varies from the Final CMP or the Rules, then the Zoning Administrator may require approval of the conceptual outdoor lighting master plan by the City's Planning & Zoning Commission and City Council. The Owner and the City acknowledge and agree that if the City updates Section Seventeen of the City Zoning Regulations (Outdoor Lighting Regulations) to address technological advances in lighting, then such updates shall be part of the Rules.

4.11. Easements on Lots/Plats. The City acknowledges and agrees that the Owner may locate cross-lot drainage easements, joint benefit and use easements, and cross-lot access easements on platted lots and parcels within the Property.

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5. **Infrastructure/City Services.**

5.1. General.

5.1.1. Construction. All infrastructure improvements required for development of the Property pursuant to the Final CMP and Planning Unit Plans ("**Infrastructure**") may be phased and shall be constructed in a good and workmanlike manner and pursuant to this Agreement, the Planning Unit Plans, the Rules and Regulations, and improvement/construction plans approved by the City. The Owner agrees that it will be responsible to cause the phased construction and installation of all of the infrastructure improvements that are necessary to serve the phase of the Property then being developed. The Parties hereto acknowledge and agree that, to the extent the Owner develops the Property, it shall have the right at any time after the Effective Date to construct or cause to be constructed and installed any and all portions of the Infrastructure related to the phase of the Property then being developed, but shall not be required to construct Infrastructure not necessary to serve the phase of the Property then being developed.

5.1.2. Necessary Rights-of-Way or Easements. The Owner, its agents, and employees shall have the right, upon receipt from the City of an appropriate permit, as required by the Rules and Regulations, to enter and remain upon and cross over any City easements or rights-of-way to the extent necessary to permit construction of Infrastructure, or reasonably necessary to maintain or repair Infrastructure, including privately-owned infrastructure, all as allowed by the permit, provided that the Owner's use of such easements and rights-of-way shall not impede or adversely affect the City's use and enjoyment thereof and provided that the Owner shall restore such easements and rights-of-way to their condition prior to the Owner's entry upon completion of such construction, repairs, or maintenance. Subject to obtaining the required permit from the City, and as allowed by the terms of such permit once obtained, the prior dedication of any easement or rights-of-way shall not affect or proscribe the Owner's right to construct, install, and/or provide Infrastructure thereon or thereover. The City, at no cost to it, shall reasonably cooperate with the Owner to abandon any unnecessary public rights-of-way or easement currently located on the Property and not otherwise used or required by other members of the public and to assist in acquiring necessary off-site public rights-of-way or easements.

5.1.3. Infrastructure Assurance. Prior to recordation of a final plat, the City may require the Owner to provide assurances where appropriate and necessary to assure the construction or installation of infrastructure improvements being undertaken by the Owner and directly related to such final plat(s). The following methods of assurance are acceptable: (i) irrevocable letter of credit from a recognized financial institution acceptable to the City, authorized and licensed to do business in the State of Arizona; (ii) cash, certified bank funds, or escrow account; (iii) a surety bond executed by a company acceptable to the City and licensed to do business in the State of Arizona; (iv) a third party trust agreement substantially in the form attached hereto as **Exhibit E**; and (v) any other method of assurance agreed upon by the City and the Owner, which may include, at the sole discretion of the City, withholding of certificates of occupancy for which the infrastructure improvements directly is required.

5.1.4. Dedication/Acceptance of Infrastructure. Within sixty (60) days following substantial completion of the installation and construction of public Infrastructure or a portion thereof, the Owner shall convey the completed public Infrastructure to the City free of construction liens and debts and deliver "as built" plans to the City for such public Infrastructure. The Owner shall warrant to the City the construction of all such public Infrastructure against

defective workmanship and/or materials for a period of one (1) year from the date of acceptance of such public infrastructure improvements. The procedure for dedication and acceptance of public infrastructure improvements by the City shall be as follows:

a. The Owner shall give the City written notice ("**Notice to Confirm**") following substantial 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 when compared to the whole;

b. Within ten business days after its receipt of the Notice to Confirm, the City shall inspect the public Infrastructure identified therein as to whether they have been constructed in accordance with the City-approved plans and specifications therefor. Upon completion of the inspection, the City shall deliver written notice to the Owner either (i) approving construction, providing a punch-list of minor items to be corrected, and agreeing to accept conveyance of such public Infrastructure; or (ii) 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 immediately shall release the infrastructure assurance(s) provided by the Owner for such accepted Infrastructure (except an amount of the infrastructure assurance necessary to complete the punch-list items, which shall be released upon completion of the punch-list items), unless that infrastructure assurance is in an amount securing a larger portion of Infrastructure. If the infrastructure assurance is in an amount securing a larger portion of Infrastructure, the City will only release the infrastructure assurances for the aggregate if the Owner provides another acceptable assurance in the lower amount. Alternatively, if the Owner shall so request, the City shall issue a reduction certificate in a form reasonably acceptable to the Owner, which shall reduce the funds available under the infrastructure assurances to an amount reasonably necessary to secure public Infrastructure yet to be accepted by the City.

The City shall own, operate, and maintain all dedicated public Infrastructure following City's acceptance thereof, subject to the Owner's warranty obligations as provided in this Section. The one-year warranty shall commence as to each component of public Infrastructure as of the date the City delivers its written notice of acceptance for such component. The City shall give written notice to the Owner of any warranty claims at least thirty (30) days prior to the expiration of the applicable one-year warranty period otherwise any claims received thereafter shall not be effective and the Owner shall have no obligation with respect thereto. Because development of the Property requires significant grading and earth moving, upon the Owner's request, the City agrees to issue an at-risk grading permit to the Owner after receipt by the Owner of the City's or outside plan reviewer's first plan review comments of the mass grading plan.

5.1.5. Capacity Allocation of Public Infrastructure. The City understands and agrees that the Owner has constructed and will construct Infrastructure on or off the Property that is or

will be designed and constructed by the Owner with sufficient capacity to serve development on the Property (and any Additional Property, if capacity is available). Any Infrastructure accepted by the City shall be reserved by the City for the exclusive use by development on the Property (and any Additional Property, if capacity is available) until development of the Property is complete. If the City, on behalf of a third party, requests use of any Infrastructure accepted by the City and the Owner determines that excess capacity in any Infrastructure accepted by the City is available for use by such third party, then upon payment to the City of the third party's proportionate share of the cost of the Infrastructure (as determined on an equivalent dwelling unit basis), the third party may use the Infrastructure for which payment has been made. The City shall remit promptly the third party's payment to the Owner or District, as appropriate, that funded or financed such Infrastructure. If the City, on behalf of a third party, requests capacity in Infrastructure in which capacity is not currently available but in which the Owner intends to increase capacity in a future phase of development of the Property, then the Owner will cooperate reasonably with the City to increase capacity in such Infrastructure to accommodate the City's request; provided, however, that the City shall pay its proportionate share of the costs associated with the design and construction of any future increased capacity in such Infrastructure (as determined on an equivalent dwelling unit basis) in advance of the Owner incurring any costs associated with the design and construction of increased capacity in such Infrastructure. If the City, on behalf of a third party, requests capacity in Infrastructure in which capacity is not currently available but in which the Owner does not intend to increase capacity in a future phase of development of the Property, then the Owner is under no obligation to cooperate with the City to increase the capacity of such Infrastructure.

5.1.6. Expedited Review. If the Owner requests an expedited review for plans, plats, or site plans in a timeframe faster than the timeframes contained in the Final CMP and the City does not have the ability to meet the requested timeframe, then the Owner may request that the City utilize a private, independent consultant to assist the City in completing the City's review processes within the timeframe requested by the Owner. Upon such a request, the City and the Owner shall mutually agree on the selection of the private consultant and the cost of such private consultant's services. In addition, the Owner may elect to utilize alternative expedited review processes and procedures for any of the activities listed in **Exhibit F**; such review processes and procedures may include peer review and self-certified professionals of record, with an appropriate protocol for City audits to occur. The Owner and the City will work cooperatively to establish procedures, forms, checklists, and protocols that will be used by the City and the Owner to implement the alternative expedited review processes and procedures. The alternative expedited review processes and procedures will include generating a City Engineer-approved list of reviewers and the ability of the City Engineer to suspend or terminate use of the alternative expedited review processes and procedures or remove reviewers from the City Engineer-approved list of reviewers upon ninety (90) days' notice, if in his sole discretion, a pattern of material non-compliance with the Planning Unit Plans, Rules, or Regulations is discovered and not promptly remedied. If any expedited review process is utilized, the timeframes for such expedited review process and the fees to be paid by the Owner are hereby established in **Exhibit F**.

5.1.7. Development Fees. The City has evaluated the Final CMP and this Agreement and has considered the contribution made or to be made in the future on account of taxes (including sales taxes), other fees, and assessments paid by the Owner and the anticipated future

residents of the Property. The City has determined that all public Infrastructure and services necessary to serve the anticipated needs of the future residents of the Property are provided for in the Final CMP and this Agreement, together with the Rules, or will be provided for through the payment of such taxes, other fees, and assessments. Without limiting the foregoing, the City acknowledges that such public Infrastructure and services, if and when constructed, will meet or exceed the City's minimum level of service standards, and will offset or account for the burden that would otherwise be imposed upon the City to provide the public Infrastructure and services. Based on the City's evaluation, the City agrees that it will not include the Property in any development fee service area or infrastructure improvement plan analysis without the concurrence of the Owner.

5.1.8. Reimbursement for Utility Infrastructure. The City agrees that the rate for water and/or wastewater service charged to end users may include, at the Owner's request, a fiscally appropriate capital component (the Parties anticipate that such combined capital component will be approximately $50 per month). Once established after the Owner's request, the City shall pay this capital component of the charge monthly to the Owner or a District that funded or financed such water or wastewater Infrastructure as a reimbursement for the cost to construct certain components of these systems. Following reimbursement for the cost to construct the certain components of these systems in full, the City may continue to charge end users any appropriately-adopted capital charge for the continued provision of utility services.

5.2. Streets. As part of the development of the Property, the Owner shall construct or arrange for the construction and conveyance to the City of the on-site streets, including street lighting with underground electric service distribution, and all striping, traffic signals, street sign posts, street name signs, stop signs, speed limit signs, and all other directional/warning/advisory signage in phases as set forth in the Regulations, the Rules, and the Planning Unit Plans.

5.2.1. Asphalt Paving. Subject to the conditions in this Section, the Owner may construct and use certain street and roadway improvements on the Property before the final lift of asphalt has been placed ("**Incomplete Roads**"). The Owner will not seek to construct or use arterial streets on the Property and around the perimeter of the Property as Incomplete Roads. Other streets on the Property may be constructed and used as Incomplete Roads subject the following conditions:

a. The Owner will complete all other required components of the Incomplete Roads, including, without limitation, the subgrade, concrete (*e.g.,* curb and gutter, sidewalks, and driveway entrances) and the first lift of asphalt, except that the final lift of asphalt may be placed up to one (1) year after the underground Infrastructure, subgrade, concrete and the other lifts of asphalt have been constructed. City utility Infrastructure under the roadway shall be accepted before the placement of the final asphalt lift according to the procedures set forth in Section 5.1.4.

b. The one-year warranty period on all asphalt, subgrade, concrete and initial lifts of asphalt associated with each of the Incomplete Roads will commence upon the City's acceptance of the final lift of asphalt. The one-year warranty period on the City's utility Infrastructure may commence earlier, upon the City's acceptance of those improvements.

c. To ensure the completion of all streets and roadway improvements on the Property, the Owner will provide financial security, as specified in Section 5.1.3 (with the exception of withholding Certificates of Occupancy), in connection with each of the Incomplete Roads, or segment thereof, constructed on the Property.

d. The Owner will ensure that Incomplete Roads comply with all Regulations and Rules, including but not limited to compliance with federal laws involving accessibility. With respect to each of the Incomplete Roads, the Owner will also demonstrate, to the satisfaction of the City Engineer, and before the commencement of construction of any Incomplete Road, that storm water on and around the proposed Incomplete Road will be accommodated by existing drainage facilities, and will not pond on the proposed Incomplete Road.

e. Before any Incomplete Roads are used without the final lift of asphalt, the Owner will ensure that the streets or roadways are properly striped. The Owner will also install concrete rings around valve and manhole lids in compliance with the Regulations and Rules before each of the Incomplete Roads is used. Before the final lift of asphalt is placed on each of the Incomplete Roads, concrete rings around valve and manhole lids will be removed and repaired as needed. After the placement of the final lift of asphalt on each of the Incomplete Roads, the Owner will install final striping and concrete rings around valve and manhole lids in compliance with the Regulations and Rules.

f. With respect to each of the Incomplete Roads, the Owner will arrange for City inspections before and after the placement of the final lift of asphalt. The Owner will be responsible for replacing any subgrade, asphalt or concrete on the Incomplete Roads as required by the City.

5.2.2. Phased Arterial Improvements. If traffic counts warrant, the Owner may phase the construction of arterial streets, the first phase of which will consist of two paved lanes, median, and curb, gutter, and landscaping on one side of the street, and the second phase of which will consist of the remaining two paved lanes and curb, gutter and landscaping on the other side of the street. The phasing for construction of the multi-modal pathways adjacent to arterial streets will be determined in the Planning Unit Plans.

5.2.3. Post Road. Upon receipt of all required permits and approvals, which shall be obtained by the City, but in no event prior to the issuance of the 251st certificate of occupancy for a single family residence located on the Property (excluding that portion of the Property known as the Canyons), the Owner shall improve or arrange for the improvement of Post Road with a thirty-foot wide chip-sealed surface centered in the existing location of Post Road from State Route 80 to the eastern edge of the Property. The Owner shall continue the thirty-foot wide chip-sealed surface through the Property for approximately three (3) miles within the alignment depicted in the Final CMP. The portion of Post Road located on the Property will be further improved to the standards and with the timing as set forth in this Agreement, the Final CMP, and

the Traffic Circulation/Transportation Planning Unit Master Plans. The Owner is not responsible for any additional off-site improvements to Post Road.

5.2.4. 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 ("**Private Rights-of-Way**"). Some or all of the Private Rights-of-Way may be conveyed to one or more HOAs created by the Owner for this and other purposes. The Owner shall grant to the City an easement for police, fire, ambulance, garbage collection, storm drain line installation and repair, and other similar public purposes, over the Private Rights-of-Way. 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 meet the same construction standards and configurations as required by the Regulations and Rules unless the parties mutually agree otherwise.

5.2.5. Traffic Calming Measures/Multi-Modal Pathways. The Owner shall have the right to install manned and/or unmanned traffic calming measures within the public rights-of-way and Private Rights-of-Way at any portions of the Property. Neither the locations nor type of any traffic calming measures can be specifically identified at this time, but traffic calming measures may specifically include traffic arms, devices capturing the identity of individual vehicles passing onto collector or neighborhood streets, and street tables/speed bumps. The City hereby grants to the Owner and its successors who maintain an ownership interest in the Property the right to install and maintain traffic calming measures in the public streets and rights-of-way, which right may be perfected by the Owner identifying the location and specific traffic calming measure on a preliminary plat or through other agreements approved by the City Zoning Administrator. Any traffic calming measure shall permit reasonable access for purposes of police, fire, ambulance, garbage collection, storm drain line installation and repair, and other similar public purposes. The Owner also shall have the right to install and maintain multi-modal pathways within the public rights-of-way and Private Rights-of-Way at any portions of the Property, consistent with the Final CMP. The City hereby grants to the Owner and its successors who maintain an ownership interest in the Property the right to install and maintain multi-modal pathways in the public streets and rights-of-way, which right may be perfected by the Owner identifying the location of the multi-modal pathways on a preliminary plat or through other agreements approved by the City Zoning Administrator.

5.2.6. Street Naming. The Owner shall propose names for the public streets and Private Rights-of-Way within the Property, which the City will support and submit to Cochise County as long as the names are not duplicative or confusing as compared to the official City or Cochise County streets.

5.2.7. Reservation and Use of Easement. The Owner may reserve, prior to dedication of the public rights-of way, public access easements, or public use easements (all as described in the Final CMP") to the City, a non-exclusive easement for the installation, operation, and maintenance of any public or private fiber optics, electrical, and/or telecommunications facilities within, across and under any roadway (the "Reserved Easement"). Although the Reserved Easement will be established prior to dedication of the public right-of-way, each party shall be required to restore to substantially original condition any damages to facilities by such party in exercising its rights to use the public rights-of-way. The other private service providers as may be designated by the Owner will provide service to the Property; such provider(s) may utilize streets on the Property for the location of facilities without regulation by the City, and may cross

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public streets as necessary to access the Property upon receipt of an encroachment permit from the City.

5.2.8. Landscape Maintenance. The Owner and the City shall enter into a landscape maintenance agreement that provides for the Owner's maintenance (or contracting for the maintenance) of the landscaping located adjacent to arterial and collector roads and in medians in the public rights-of-way ("Landscaping"). The Owner will maintain the Landscaping to the City's Landscaping standards, and such maintenance costs, if the maintenance services are publicly procured, will be reimbursed to the Owner from the City. The maintenance agreement also shall permit the Owner to maintain, or cause to be maintained, the Landscaping at a level higher than the City's landscaping standards, in which case the Owner shall receive reimbursement from the City only for that portion of the maintenance costs attributable to maintenance at the City's Landscaping standards. The Owner may assign its rights and obligations pursuant to this Section to either one or several HOAs or Districts.

5.3. Drainage. As part of the development of the Property, the Owner shall construct or arrange for the construction of the drainage Infrastructure in phases as set forth in the Regulations, the Rules, and the Planning Unit Plans. Such drainage Infrastructure may include, without limitation, drainage and flood control systems and facilities for collection, diversion, detention, retention, dispersal, use, recharge, and discharge as necessary for development of the Property.

5.4. Water. As part of the development of the Property, the Owner shall construct or arrange for the construction and conveyance to the City of the water Infrastructure in phases as set forth in the Regulations, the Rules, and the Planning Unit Plans. Such water Infrastructure may include, without limitation, on-site and off-site wells, storage reservoirs, booster stations, potential water treatment systems, and transmission and distribution lines. The Owner also will convey to the City an interest in the real property underlying the water Infrastructure. Initially, such interest may be an easement; however, upon the later to occur of (a) completion of development of the Planning Unit in which such water Infrastructure is located and (b) completion of all phases of such water Infrastructure, the Owner will convey the real property underlying the water Infrastructure by special warranty deed.

5.4.1. Existing Water Infrastructure. The Owner has constructed a water production well on the Property, ADWR Well Registration No. 55-596127 (the "**Well**"), to provide the water needed to meet the committed demand of existing homes within the subdivision known as The Canyons and near-term demand for development on the Property. The Owner also has constructed a one million gallon water storage reservoir, which is connected to the Well (the "**Reservoir**"). The Owner also has constructed a monitoring well on the Property, ADWR Well Registration No. 55-593783 (the "**Monitoring Well**"). The Monitoring Well and the Reservoir previously have been dedicated to and accepted by the City. The Owner will convey the Well to the City within thirty (30) days of the Effective Date. The existing unused capacity in the Well, the Monitoring Well, and the Reservoir are reserved for the exclusive use by development on the Property.

5.4.2. City's Designation of Adequate Water Supply. By Decision and Order No. 41-401803.001, which was issued in 2008, ADWR designated the City as having an adequate water supply in the amount of 13,474 acre-feet ("**AF**") per year within its service area (the "**Designation**"). Pursuant to the Whetstone Agreement, the City agreed to allocate 12,000 AF of

the City's adequate water supply to serve what was then known as "Whetstone Ranch," with the option to also serve property known as "Empirita Ranch" and "J-Six Ranch" (the "**Whetstone Allocation**"). In 1999, the then-owners of the equitable title to Whetstone Ranch allocated 3,000 AF/year of the Whetstone Allocation to Neal Simonson for potential use on Empirita Ranch and J-6 Ranch. Pursuant to the Assignment of 3000 Acre Feet Water Allocation dated April 11, 2016 and attached as **Exhibit G**, Neal Simonson assigned 3000 AF of the Whetstone Allocation to the Owner. The Whetstone Allocation has been further allocated as follows:

a. Allocation to Simonson Parcel. The Simonson Parcel consists of approximately 400 acres located on the west side of Arizona Highway 90. Pursuant to the Whetstone Agreement, 234 AF/year of the Whetstone Allocation has been allocated to the Simonson Parcel.

b. Allocation to Davis Parcel. The Davis Parcel is subject to the Declaration of Covenants, Conditions and Restrictions dated November 4, 1999 and recorded on November 10, 1999 in the Official Records of the Cochise County Recorder at Instrument Number 1999-33742, which allocates 144 AF/year of the Whetstone Allocation to the Davis Parcel.

c. Allocation to Cochise Vistas Parcel. The Cochise Vistas Parcel is subject to the Declaration of Covenants, Conditions and Restrictions recorded on June 1, 2000 in the Official Records of the Cochise County Recorder at Instrument Number 0006-15358, which limits the amount of water that may be used on the Cochise Vistas Parcel from wells that are located on Whetstone Ranch, to 84 AF/year.

d. Allocation to State Park Parcel. The State Park Parcel was acquired through condemnation and consists of approximately 160 acres. The State Park Parcel's proportionate share of the Whetstone Allocation is 90 AF/year.

e. Allocation to Dempster Parcel. The Dempster Parcel is part of the Third Party Property and is subject to the Covenant Running with the Land recorded on September 30, 2013 in the Official Records of the Cochise County Recorder at Instrument Number 2013-22381, which restricts the use of the Dempster Parcel to 800 residential units without the written approval by the Owner, and accordingly is allocated 243 AF/year of the Whetstone Allocation.

f. Allocation to Third Party Property. Excluding the Dempster Parcel, the Third Party Property collectively has an allocation of 918 AF/year, which constitutes the Third Party Property's proportionate share of the Whetstone Allocation (based on acreage). The Owner recently has purchased 430 acres of the Third Party Property, and thus controls 258 AF/year of the Third Party Property's allocation.

g. Allocation to J-6 Ranch. Pursuant to the Assignment of 266 Acre Feet Water Allocation dated April 11, 2016 and attached as **Exhibit H**, the Owner allocated 266 acre feet of the Whetstone Allocation to the J-6 Ranch Parcel.

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h. Allocation to the Property. The remainder of the Whetstone Allocation, which is 10,022 AF/year, remains allocated to the Property until development of the Property pursuant to the Final CMP is complete. The Owner shall have the right to allocate the 10,022 AF/year on or off the Property as it may agree by private agreement (a "Suballocation"), and may also allocate the 258 AF/year referenced in Subsection f above. Any Suballocation must be in writing and recorded with the Cochise County Recorder. The Owner shall provide the City with written notice of any Suballocation. The Owner and the City agree to cooperate to ensure that water service to the Property, and any property subject to a Suballocation, stays within the use limits provided for in this Agreement and any Suballocation. The Owner and the City will provide each other with information in their possession or control regarding land and water usage, and each shall take reasonable steps to enforce the use limits provided for in this Agreement and any Suballocation.

5.4.3. Calculation of Projected Water Demand. For each parcel of land that is developed within the Property, the Owner shall submit to City a Calculation of Projected Water Demand ("**CPWD**"). The CPWD shall be based upon the methodology then in use by ADWR to determine committed and projected water demands under the Designation. Upon presentation of any plat to the City for review and approval, or upon request of the Owner that the City provide water service to any unplatted land within the Property, the Owner shall submit the CPWD for the submitted plat or the unplatted land to be served by the City. Upon approval by the City of the plat or the agreement by the City to provide water service to the unplatted land, the amount of water set forth in the CPWD shall be deducted from the then-existing Whetstone Allocation. Upon the exhaustion of the Whetstone Allocation, or any applicable Suballocation, through the approval and recordation of plats or City's commitment to serve water to unplatted lands within the Property, the City shall have no further obligation to provide water service to the Property, or the portion of the Property subject to the applicable Suballocation.

5.4.4. Non-Potable Water. The Owner may drill wells for the purpose of serving non-potable water to the Property, including water for golf courses, landscaping, turf facilities, vineyards, and other non-potable uses, including construction water ("**Non-Potable Wells**"). The Non-Potable Wells will be public Infrastructure, but not used for potable purposes. Water from the Non-Potable Wells may be used only if and to the extent Reclaimed Water supplies are insufficient to meet the non-potable water demand on the Property. Prior to the Owner drilling a Non-Potable Well, the City shall permit the Owner to use the Well for non-potable water supplies. In addition, when the Owner constructs the first redundant well pursuant to the Regulations and Rules, the Owner may use the first redundant well for non-potable purposes. The City shall establish a per-AF rate for delivery of non-potable water that is equal to the cost of operating the Well's pump and/or the first redundant well for the non-potable water used by the Owner from the Well and/or the first redundant well, plus five percent (5%) (the "**Non-Potable Water Rate**"). Finally, the City will make available to the Owner for non-potable purposes any water that is drained from the Reservoir and/or water lines and is otherwise unusable by the City.

5.4.5. Water Service. The City shall provide water service to the Property in a service level comparable to those services provided to all landowners and occupants of the City, subject to the Owner's construction of the public Infrastructure necessary to provide such services.

5.4.6. Water Rates. If the City supplies and/or installs a water meter for any lot or parcel on the Property, the City may charge its standard fee for the water meter and/or its installation. After the City's inventory of water meters is depleted, the Owner may, at its option, purchase the City's standard water meters from third parties and/or install such meters itself, without payment to the City. If the Owner elects to install meters itself, the City may assess a standardized administrative fee when the Owner registers such meters with the City. Prior to the issuance of the 501st Certificate of Occupancy on the Property, the Owner shall provide to the City the information necessary for the City to establish water rates for the provision of water service to the Property, which rates may differ from the City's rates in other portions of the City's service area.

5.5. Wastewater. As part of the development of the Property, the Owner shall construct or arrange for the construction and conveyance to the City of the wastewater Infrastructure in phases as set forth in the Regulations, the Rules, and the Planning Unit Plans. To serve development on the Property, such wastewater Infrastructure may include, without limitation, expansions to the WWTP up to a maximum five million (5,000,000) gallons per day dry weather flow, lift stations, and collection lines. The Owner also will convey to the City an interest in the real property underlying the wastewater Infrastructure. Initially, such interest may be an easement; however, upon the later to occur of (a) completion of development of the Planning Unit in which such wastewater Infrastructure is located and (b) completion of all phases of such wastewater Infrastructure, the Owner will convey the real property underlying the wastewater Infrastructure by special warranty deed. Expansions to the WWTP will be designed to ADEQ standards in economically reasonable phases, and will employ single batch reactor technology or other technology mutually agreeable to the City and the Owner. The Owner will procure expansions to the WWTP, likely using a "design, build, and operate" or similar procurement process (which process will comply with Title 34 if public funds are used to fund or finance the WWTP expansions). The Owner shall require its WWTP expansion contractors to cooperate with the City to integrate the expansions into the WWTP facilities existing at the time of each expansion, including for the contractor's operation of the expansion and potentially the previously constructed portions of the WWTP during its transition to operation; the City acknowledges that such cooperation may require the City's WWTP staff to temporarily take direction from the contractor(s). In the event that the City has contracted with a third party operator to operate the WWTP, then the City will suspend the contract of the third party operator during the contractor's operation of the expansion and potentially the previously constructed portions of the WWTP during its transition to operation. The Parties contemplate that the Owner will be required to operate the WWTP for not longer than approximately four to six months following the completion of any expansion to ensure that the expansion is calibrated and operational. The Parties acknowledge that the duration of operation will depend on the Owner's development schedule.

5.5.1. Bypass Line. At its option, and to postpone design and construction of an expansion to the WWTP, the Owner may elect to construct a sewer line from the existing WWTP to the nearest manhole that allows for gravity flow to the City's wastewater treatment plant (the "Bypass Line") to take advantage of any conveyance and treatment capacity the City

Engineer determines is available in the City's existing wastewater system. If the Owner is using the Bypass Line, the City will notify the Owner when the City's existing wastewater treatment plant reaches eighty percent (80%) of its permitted capacity, at which time the Owner will either make the first phase of the WWTP functional or arrange for the design and subsequent construction of an expansion to the WWTP, as appropriate. Within ninety (90) days after the last use of the Bypass Line, the Owner shall convey the Bypass Line to the City.

5.5.2. Existing Wastewater Infrastructure. The Owner constructed the first phase of the WWTP, which is located in the northeast part of the Property and an initial collection system conveys wastewater generated within the portion of the Property known as The Canyons to the WWTP. The first phase of the WWTP is not operational due to lack of sufficient flow to support the treatment process. The Owner will convey the first phase of the WWTP to the City six months after the date that the first phase of the WWTP is operating to design specifications.

5.5.3. Wastewater Service. The City shall provide wastewater service to the Property in a manner comparable (except as to rate) to those services provided to all landowners and occupants of the City, subject to the Owner's construction of the public Infrastructure necessary to provide such services.

5.5.4. Wastewater Rates. Prior to the City's acceptance of any expansion to the WWTP, the Owner shall provide to the City the information necessary for the City to establish wastewater rates for the provision of wastewater service to the Property, which rates may differ from the City's rates in other portions of the City's service area.

5.6. Reclaimed Water. As part of the development of the Property, the Owner shall construct or arrange for the construction of the reclaimed water Infrastructure in phases as set forth in the Regulations, the Rules, and the Planning Unit Plans. Such reclaimed water Infrastructure may include, without limitation, pipelines, storage, booster stations, an appropriately-sized equalization tank, and recharge facilities. The Owner use or store the Reclaimed Water (as defined below) to the extent it is available to meet the water demand on the Property

5.6.1. Reclaimed Water System Ownership, Operation, and Service. The City shall own all reclaimed water generated by the WWTP (the "**Reclaimed Water**") and all Reclaimed Water Infrastructure between the WWTP and the Owner's acceptance point. Any recharge facilities located on the Property shall be owned by the City and maintained by the City in a manner that is consistent with the maintenance of golf course lakes and adjacent property, and in a manner that does not attract insects, weeds, or otherwise create a nuisance.

5.6.2. Reclaimed Water Rates. The City will establish a per-acre-foot rate for delivery of Reclaimed Water, which rate shall be equal to the electrical costs associated with pumping the reclaimed water from the City's delivery line at the WWTP to the Owner's acceptance point plus five percent (5%) of such electrical costs.

5.6.3. Owner's Right of First Refusal to Receive Reclaimed Water. The Owner shall have a right of first refusal to use or store the Reclaimed Water subject to the terms of this Agreement. Beginning in the calendar year after the first calendar year that the WWTP is operating to design specifications and continuing annually thereafter, the City shall determine the amount of Reclaimed Water production for such calendar year, and shall provide the Owner with a report of the annual Reclaimed Water production within ninety (90) days of the close of each

calendar year. Not later than sixty (60) days after the City provides the report, the Owner may elect to receive an amount of Reclaimed Water equal to the amount the Owner received in the prior calendar year plus all or any portion of the Reclaimed Water generated in excess of the amount of Reclaimed Water generated in the prior calendar year. In addition, to the extent additional supplies of Reclaimed Water are available, the Owner may elect to receive all or part of such additional supplies. The City shall begin delivery of Reclaimed Water to the Owner's acceptance point beginning thirty (30) days following the Owner's election of Reclaimed Water amount. Delivery of Reclaimed Water to the Owner's acceptance point is subject to the physical availability of such Reclaimed Water. Upon one hundred and eighty (180) days written notice to the City Engineer, the Owner may discontinue receipt of any Reclaimed Water it previously elected to receive. Reclaimed Water that is not used or stored by the Owner may be used by the City in any manner consistent with its permitting. Notwithstanding anything in this Section 5.6.3 to the contrary, prior to the City's first report prepared pursuant to this Section, the Owner may elect to receive, and the City shall deliver, all or any portion of the Reclaimed Water.

5.6.4. Use of Long-Term Storage Credits for Recovery of Reclaimed Water. The City will accumulate all long-term storage credits accrued based on storage of the Reclaimed Water processed through the WWTP in its long term storage account. Until development of the Property pursuant to the Final CMP is complete, use of such credits is limited to meeting the water demand on the Property. Such credits shall be retained by the City and not conveyed or otherwise utilized by the City, except as directed by the Owner. The City shall operate all City wells designated for recovery of Reclaimed Water. Upon notice by the Owner and to the extent long-term storage credits maintained by the City on the Owner's behalf are available, the City shall cause the credits to be recovered and delivered through City facilities to the use on the Property designated by the Owner. The City shall consent to any reasonable request by the Owner to drill a new recovery well.

5.6.5. Cost of Reclaimed Water Recovered from Storage. The City will establish a per-AF rate for recovered Reclaimed Water, which rate shall be equal to the Non-Potable Water Rate.

5.6.6. Suballocation of Reclaimed Water. The City agrees that the Owner shall have the right to allocate Reclaimed Water use within the Property as it may agree by private agreement ("Reclaimed Water Suballocation"). Any private agreement regarding Reclaimed Water Suballocation must be reflected in a written documents recorded with the Cochise County Recorder. Absent a recorded agreement, available Reclaimed Water shall be allocated within the Property on a pro rata basis based upon acreage.

5.6.7. Additional Capital Construction. In the event that new treatment facilities are required due to changes in state or federal standards for use of Reclaimed Water in the manner intended by the Owner, the City shall be entitled to make such improvements as are necessary to meet such new requirements and recoup the capital, operation and maintenance costs of such improvements as part of the cost of Reclaimed Water or long term storage credits purchased under this Agreement. However, if the City is required to provide new treatment facilities for the purpose of causing the WWTP to meet changes in state or federal standards not associated with the reuse of Reclaimed Water, then such costs shall be paid by those parties bearing the cost of sewage treatment by the WWTP. If the City elects to incur costs for treating the Reclaimed Water to standards beyond the costs the City would incur to treat the Reclaimed Water to applicable state and federal reuse standards, then the Owner shall not be responsible

for paying such costs if the Owner is willing to accept the Reclaimed Water at applicable state and federal reuse standards.

5.6.8. Modification of the City's Designation Based on Reclaimed Water.

5.6.8.1. Displacement of Groundwater Use by Reclaimed Water. When Reclaimed Water is available for use on the Property, and is being used for non-potable use within the Property for parks, schools, golf courses, recreational facilities or common areas, such direct use will displace the initial use of groundwater for these same areas.

5.6.8.2. Request for Modification Based on Direct Use Reclaimed Water. Upon reasonable request by the Owner and at appropriate intervals of approximately three to five years, the City shall apply for a modification of the Designation to gain additional legal, physical, and continuous availability of water that may be served to the Property based on the use of Reclaimed Water within the Property, including by the availability of groundwater made available through the displacement of Reclaimed Water. The Owner shall pay the cost of such applications and the City shall cooperate to authorize and make such information available as is necessary to complete and file such applications in timely fashion.

5.6.9. Modification of the Designation Based on Additional Groundwater, Other Supplies, or Reduced Demand.

5.6.9.1. Additional Groundwater. The Owner may, from time to time, attempt to prove additional physically available supply of groundwater for the Property, including by commissioning additional hydrologic studies. The City agrees that it will reasonably cooperate with the Owner with respect to any such attempts to prove additional physical supplies of groundwater, and to apply for a modification of the Designation to include such additional groundwater.

5.6.9.2. Other Supplies. To the extent that the Owner can establish other water supplies that are available for use on the Property, including the recovery of stored effluent, Central Arizona Project Water or surface water, and if such water is purchased, contracted for or otherwise obtained by the Owner, the City agrees that it will cooperate with the Owner with respect to any such attempts to prove additional physical supplies of water, and to apply for a modification of the Designation to include such additional supplies as part of the Owner’s portion of the Whetstone Allocation.

5.6.9.3. Reduced Demand. The City and the Owner agree that the CPWD is an estimate, based on ADWR assumptions that may prove to exceed actual consumption within the development. Upon building sufficient records and data to support an application to ADWR to reduce the amount of committed demand in the City's adequate water supply, the Owner and the City agree to cooperate and approach ADWR to both reduce the amount of committed demand assigned to phases of the development not yet constructed, and to quantify the current demand within the existing phases, with the intention of causing the amount of the previously committed demand to be reduced and thus increasing the supply of available water for use within the Property. Any such increases in available water supply shall be added back into the Whetstone Allocation. The Owner shall bear the cost of petitioning ADWR to either alter its future calculation of the CPWD or to increase available supply due to an adjustment in prior calculations of the CPWD. City agrees to provide the Owner with data regarding water usage within the Property, including, but not limited to, information available from any water meters

related to service on the Property. If ADWR approves additional water for use within the Property based upon such presentation, City agrees that it shall make such additional water available as part of the Owner's portion of the Whetstone Allocation until development of the Property pursuant to the Final CMP is complete.

5.6.9.4. Cooperation on Conversion from Adequate to Assured Supply. In the event a subsequent active management area is created that includes the Property, the City and the Owner shall cooperate to attempt to convert any applicable designation of adequate water supply into designation of assured water supply, and shall work together to insure that such determination of assured water supply and long-term storage credits is consistent with the commitments made under this Agreement for development of the Property.

5.7. Electric Service. The City agrees to cooperate with the Owner in assisting the Owner in obtaining electric service to the Property from Sulpher Springs Valley Electric Cooperative or alternative electric service provider.

5.8. Natural Gas. Any natural gas service to the Property will be provided by a non-City-owned utility, and the City agrees to cooperate with the Owner in obtaining gas service to the Property.

5.9. Fire Protection and Emergency Services. The Owner shall assist the City in providing fire protection and emergency services to the Property as set forth below:

5.9.1. Upon commencement of vertical construction on the Property (excluding that portion of the Property known as the Canyons), the Owner shall provide an irrevocable letter of credit from a recognized financial institution acceptable to the City, authorized and licensed to do business in the State of Arizona, cash, certified bank funds, or escrow account in an amount equal to six hundred and ninety thousand dollars ($690,000) and the City shall order a Type 1 fire apparatus. In addition, the Owner shall pay to the City the sum of two hundred sixty thousand dollars ($260,000), in four equal payments, which funds shall be used by the City to hire and train four paid firefighters. The first payment of sixty-five thousand dollars ($65,000) shall be paid upon commencement of vertical construction on the Property (excluding that portion of the Property known as the Canyons). The second, third, and fourth payments of sixty-five thousand dollars ($65,000) shall be made by the Owner to the City three, six, and nine months, respectively, after the date of the first payment made by the Owner.

5.9.2. Commencing on the date that is one year after the first payment of sixty-five thousand dollars ($65,000) as provided in Section 5.9.1 above, and continuing for a period of two years thereafter, the Owner shall pay to the City the sum of one million five hundred sixty thousand dollars ($1,560,000), in eight equal payments, which funds shall be used by the City to hire and train eight additional paid firefighters as well as to employ the four paid firefighters hired pursuant to Section 5.9.1 above. The first payment of one hundred ninety-five thousand dollars ($195,000) shall be paid on the date that is one year after the first payment of sixty-five thousand dollars ($65,000) as provided in Section 5.9.1 above. Each of the remaining seven payments of one hundred ninety-five thousand dollars ($195,000) shall be made by the Owner to the City three months after the date of the prior payment of one hundred ninety-five thousand dollars ($195,000).

5.9.3. Commencing on the date that is two years after the first payment of one hundred ninety-five thousand dollars ($195,000) as provided in Section 5.9.2 above, and continuing for a

period of one year, the Owner shall make four payments to the City, each in the amount of ninety-seven thousand five hundred dollars ($97,500), and which funds will be used by the City to employ the twelve paid firefighters pursuant to Sections 5.9.1 and 5.9.2 above. The first payment of ninety-seven thousand five hundred dollars ($97,500) shall be paid on the date that is two years after the first payment of one hundred ninety-five thousand dollars ($195,000) as provided in Section 5.9.2 above. Each of the remaining three payments of ninety-seven thousand five hundred dollars ($97,500) shall be made by the Owner three months after the date of the prior payment of ninety-seven thousand five hundred dollars ($97,500). Notwithstanding the foregoing, the Owner's obligation to make any of the payments set forth in this Section 5.9.3 terminates on the date of issuance of the certificate of occupancy for the 2500th single family residence located on the Property (excluding that portion of the Property known as the Canyons). By way of example only, if the of issuance of the certificate of occupancy for the 2500th single family residence occurs after the second payment of ninety-seven thousand five hundred dollars ($97,500) is made but before the third payment of ninety-seven thousand five hundred dollars ($97,500) is due, then the Owner is not obligated to make either the third or fourth payment required under this section.

5.9.4. Upon issuance of the first certificate of occupancy for a single family residence located on the Property (excluding that portion of the Property known as the Canyons), the Owner shall provide to the City a temporary fire protection facility, at a location selected by the Owner and acceptable to the City, and consisting of a modular building with a concrete base, enclosure to cover the Type 1 apparatus, and on-site utilities including water and electricity ("**Temporary Facility**"). The Temporary Facility shall include air-conditioned living and sleeping quarters for four (4) firefighters. The City shall move the Type 1 fire apparatus provided by the Owner pursuant to Section 5.9.1 above to the Temporary Facility. The City shall staff the Temporary Facility with four (4) paid firefighters for twenty-four (24 hours each day.

5.9.5. The Owner shall provide two approximately two (2) acre sites for the location of permanent joint fire/police use facilities on the Property ("**Permanent Facilities**"). The Owner and the City anticipate that one Permanent Facility will be located in the northern portion of the Property and the other Permanent Facility will be located in the southern portion of the Property, at sites mutually acceptable to Owner and the City. Each Permanent Facility will contain living quarters for eight (8) firefighters and three (3) bays for fire apparatus, as well as facilities for police patrol unit(s). The Owner will arrange for the design and construction of each Permanent Facility at such time as the City determines that the Permanent Facility is necessary and has sufficient funds to operate the Permanent Facility once constructed. The design of each Permanent Facility will be architecturally consistent with the development theme of the Property, and the Owner and the City mutually will agree on the remaining design elements and maximum cost of construction.

5.9.6. Notwithstanding the foregoing funding requirements, the Owner is not required to make any contribution pursuant to this Section 5.9 until the City Council specifically makes a written request for such contribution. The City Council may further request in writing that the payment time frames in this Section 5.9 be extended to accommodate the observed development on the Property, but in no event may the City Council's request constitute a claim for increased or accelerate payments. If such a request to extend one or more payment time frames is made, then the timeframe for making each subsequent payment shall be delayed in order to observe the

same schedule and sequence of each subsequent payment as provided herein. By way of example only, if the City Council requests delay of the first payment of sixty-five thousand dollars ($65,000) as provided in Section 5.9.1, then the remaining three payments of sixty-five thousand dollars ($65,000) shall be made three, six, and nine months, respectively, after the date of the first payment made by the Owner.

5.10. Police. The Owner shall pay to the City the sum of five hundred thousand dollars ($500,000), in four equal payments, to assist the City in providing police service to the Property. The first payment of one hundred twenty-five thousand dollars ($125,000) shall be paid upon issuance of the first certificate of occupancy for a single family residence located on the Property (excluding that portion of the Property known as the Canyons). The second, third, and fourth payments of one hundred twenty-five thousand dollars ($125,000) shall be made by the Owner to the City three, six, and nine months, respectively, after the date of the first payment made by the Owner. The Owner shall provide, as a shell, dedicated office space adjacent to the sales office or commercial space for use by City police at the time such office space is available on the Property. Notwithstanding the foregoing funding requirements, the Owner is not required to make any contribution pursuant to this Section 5.10 until the City Council specifically makes a written request for such contribution. The City Council may further request in writing that the payment time frames in this Section 5.10 be extended to accommodate the observed development on the Property, but in no event may the City Council's request constitute a claim for increased or accelerate payments. If such a request to extend one or more payment time frames is made, then the timeframe for making each subsequent payment shall be delayed in order to observe the same schedule and sequence of each subsequent payment as provided herein. By way of example only, if the City Council requests delay of the first payment of one hundred twenty-five thousand dollars ($125,000) as provided in this Section 5.10, then the remaining three payments of one hundred twenty-five thousand dollars ($125,000) shall be made three, six, and nine months, respectively, after the date of the first payment made by the Owner.

5.11. Parks. The Owner will provide a minimum of one hundred twenty (120) gross acres of parks on the Property, distributed among Neighborhood Parks, Regional Parks, and a Community Park, as shown on block or final plats (collectively, the "Parks"). The Parks may be owned by the Owner or an HOA or District. The Owner agrees that the Community Park will consist of a minimum of forty (40) acres, which may take the form of a unified forty (40) acre parcel or two closely-situated, smaller parcels totaling at least forty (40) acres and neither having less than ten (10) acres, connected by a trail in a corridor at least twenty (20) feet wide. The Community Park will be developed in phases; a minimum of five (5) acres of the Community Park will be developed on or before issuance by the City of the two thousand five hundredth ($2500^{th}$) Certificate of Occupancy for a residential dwelling unit on the Property. Thereafter, a minimum of two (2) additional acres of the Community Park will be developed concurrently with development of each one thousand (1000) residential dwelling units. Neighborhood Parks and Regional Parks will be developed concurrently with development of the first parcel immediately adjacent to the planned location of such Neighborhood or Regional Park. The Owner will not restrict public access to the Neighborhood Parks, Regional Parks, or the Community Park; however, certain amenities within the Parks, not including play structures and open space, may require advance reservations, payment of use fees, and/or coordination of organized use with the Owner, HOA, or District, as appropriate. The use fee charged to nonresidents of the Property for use of Parks amenities will be generally comparable to what is charged in the region for comparable services. The City currently is developing a master parks

plan. The City acknowledges and agrees that any requirement it adopts in the master parks plan or otherwise regarding the future development of parks within the City shall not apply to development of the Property pursuant to the Final CMP and this Agreement without the Owner's consent.

5.12. Garbage Collection. The City shall provide garbage collection services to all residential lots and municipal-operated spaces within the Property in a manner and at a rate comparable to those services provided to all landowners and occupants of the City.

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6. **Infrastructure Financing.**

6.1. Formation of CFDs/RDs. It is contemplated that three (3) CFDs and seven (7) RDs will be formed within the boundaries of the Property. Upon the filing of a complete application for the formation of the CFDs and RDs, the City shall use good faith efforts to conduct the applicable procedures for formation of each CFD and RD (each, a "District").

6.2. Construction of Public Infrastructure by Districts. The Parties acknowledge that one purpose of this Agreement is to provide for the coordinated planning, design, engineering, construction and/or provision of the range of public services/Infrastructure necessary to serve development on the Property as indicated in this Agreement, the Final CMP, and Planning Unit Plans. The City acknowledges and agrees that whenever the Owner is obligated to construct or arrange for the construction of public Infrastructure, and notwithstanding anything in this Agreement to the contrary, Districts may construct, arrange for the construction, and/or finance any such public Infrastructure. Dedication and acceptance of such public Infrastructure shall be pursuant to Section 5.1.4 of this Agreement.

6.3. Indemnity. The Owner shall indemnify, defend, and hold harmless the City and its agents, consultants, officers and employees for, from and against any and all liabilities, claims, costs and expenses, including attorneys' fees, incurred in any challenge or proceeding to the formation, operation, administration of each District, the offer and sale of each District's bonds, the levying by each District of any tax, assessment or charge, and the operation and maintenance of public Infrastructure by each District.

7. **Notices and Filings.**

7.1. Manner of Service. 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:

The City: City of Benson
120 W. 6th Street
Benson, Arizona 85602
Attention: City Manager
Facsimile: (520) 586-3375

Copy to: City of Benson
120 W. 6th Street
Benson, Arizona 85602
Attention: Public Works Director
Facsimile: (520) 586-3375

The Owner: El Dorado Benson LLC
8501 N. Scottsdale Rd., Suite 120
Scottsdale, Arizona 85253
Facsimile: (602) 955-3543

Copy to: Dana Stagg Belknap
Gallagher & Kennedy
2575 E. Camelback Road
Phoenix, Arizona 85016
Facsimile: (602) 530-8500

or to such other addresses as either party hereto may from time to time designate in writing and deliver in a like manner.

7.2. Notice Effective. 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.

8. **General.**

8.1. Waiver. 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. No delay in exercising any right or remedy shall constitute a waiver thereof and no waiver by the City or the Owner of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

8.2. 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 City 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 or his designee, and the initial representative for the Owner (the "Owner Representative") shall be Mike Reinbold. 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.

8.3. City Decisions. The implementation of the 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 parties agree that if at any time the Owner or the City reasonably believes that an impasse has been reached with the City Staff or the Owner's staff, respectively, on any issue affecting the Property, the Parties shall have the right to immediately appeal to the City Representative or the Owner Representative for an expedited decision pursuant to this Section. If the issue on which an impasse has been reached is an issue where the City staff could reach a final decision without Council action or the Owner Representative could reach a final decision without consultation with Owner, the City Representative or the Owner Representative shall give the Owner or City 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 City Council or the Planning and Zoning Commission, the City Representative shall be responsible for scheduling a public hearing on the issue by the appropriate City body to be held within four (4) 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.

8.4. 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 that are set forth in Section 8.5. A default by any owner of a portion of the Property shall not be deemed a default by the Owner or any other owner of a different portion of the Property, and the City may not withhold or condition its performance under this Agreement as to any owner of a portion of the Property who is not in default of this Agreement. No owner of a portion of the Property may enforce this Agreement as against any other owner of a portion of the Property.

8.5. Dispute Resolution/Remedies. The Parties shall be limited to the remedies and the dispute resolution procedure set forth on **Exhibit I** and in this Section. Any dispute, controversy, claim or cause of action arising out of or relating to this Agreement shall be governed by Arizona law. The Owner and the City agree that any decision rendered by the Panel (as defined in Exhibit _) pursuant to the provisions of Exhibit _ shall be binding on both parties unless and until a court of competent jurisdiction renders its final decision on the disputed issue, and if either Party does not abide by the decision rendered by the Panel during the pendency of an action before the court of competent jurisdiction or otherwise (if no court action), the other party may institute an action for money damages on the issues that were the subject of the Panel's decision and/or any other relief as may be permitted by law.

8.6. Construction and Headings. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof. When used herein, the terms "include" or "including" shall mean without limitation by reason of the enumeration. All grammatical usage herein shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the person or persons may require. The term "person" shall include an individual, corporation, partnership, trust, estate, or any other duly formed entity. If the last day of any time period stated herein should fall on a Saturday, Sunday, or legal holiday in the State of Arizona, then the duration of such time period shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday, or legal holiday in the State of Arizona.

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8.7. 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.

8.8. 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.

8.9. Cooperation. The City hereby agrees to cooperate reasonably with and assist the Owner in implementing the Final CMP by working with applicable county, state, and federal entities regarding drainage, discharge/recharge of Reclaimed Water and public Infrastructure generally, so long as other landowners are not negatively impacted. In addition, the Parties agree to cooperate reasonably to identify economic development opportunities and funding sources, such as grants, to further economic development in the City and on the Property.

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

8.11. Future Effect. All of the provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the Parties pursuant to A.R.S. § 9-500.05(D), except as provided below; 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 and only pursuant to the terms and conditions of this Section.

8.11.1. Assignment to Property Owners' Association or Complete Assignment. Notwithstanding the foregoing, the City and the Owner agree that the ongoing ownership, operation and maintenance obligations provided by this Agreement and the Master Developer's obligations contained in Section 8.14 may only be assigned to one or more property owners' association(s) to be established by the Owner or as part of a complete assignment by the Owner of all rights and obligations of the Owner hereunder. The Owner agrees to provide the City with written notice of any assignment of the Owner's rights or obligations to a property owners' association or a complete assignment by the Owner of all rights and obligations of the Owner hereunder within a reasonable period of time following such assignment, provided however, such assignment to a property owners' association shall be accompanied by conclusive evidence of such property owners' association's irrevocable commitment to perform the Owner's obligations hereunder, and upon the City's receipt of such notice, the Owner's liability hereunder shall terminate as to the obligations assigned.

8.11.2. Partial Assignment to Purchasers. The Owner may assign less than all of its rights and obligations under this Agreement to those entities that acquire any portion of the Property (each, an "**Assignment**"). The Owner will be released from its obligations under this Agreement with respect to Assignment, subject to the following: (i) the Owner has given the City written notice of the Assignment, which shall include the name, address, and facsimile number for notice purposes; (ii) the assignee has agreed in writing to be subject to all of the applicable provisions of this Agreement and such agreement provides for the allocation of responsibilities and obligations between the Owner and the assignee; and (iii) such agreement

has been recorded in the official records of Cochise County on that portion of the Property owned by such Transferee.

8.11.3. Other Assignment. Notwithstanding any other provisions of this Agreement, the Owner may assign all or part of its rights and duties under this Agreement to any financial institution from which the Owner has borrowed funds for use in constructing the Infrastructure Improvements or otherwise developing the Property. Additionally, the Owner may assign its rights and duties under this Agreement to another Owner or owner.

8.12. Termination Upon Sale to the Public. This Agreement shall not impose any obligations upon and shall terminate without the execution or recordation of any further document or instrument as to: (a) any residential or commercial lot which has been finally subdivided and sold or leased for a term of longer than one year with a completed structure thereon for which a certificate of occupancy or equivalent has been issued; and (b) any land that has been conveyed to an HOA, private utility, or governmental authority. Thereafter, such lot or land shall be released from and no longer be subject to or burdened by the provisions of this Agreement.

8.13. 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.

8.14. Amendment. No change or addition is to be made to this Agreement except by a written amendment executed by the City and the Owner. Within ten (10) days after any amendment to this Agreement, such amendment shall be recorded in the Official Records of Cochise County, Arizona. The Owner anticipates conveying one or more parcels of the Property to other owners. After such conveyance, a subsequent owner shall have no right to consent to or approve any future amendment to the Agreement requested by the Owner if such future amendment relates solely to the development or use of the portion of the Property owned by the Owner. "Development or use" includes land use, infrastructure requirements, and all other issues related to the entitlement, development, and use of the portion of the Property owned by each Owner. No subsequent owner shall be considered a third-party beneficiary to any future amendments to the Agreement that relate to the portion of the Property not owned by such owner. Neither the Owner nor any future owner may enforce or request that the City enforce the obligations contained in this Agreement as against each other. If a future amendment proposed by the City or a subsequent owner impacts the development or use of another subsequent owner or the Owner's portion of the Property, then the party seeking the amendment shall submit its proposed amendment in writing to the other parties for review.

8.15. 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 on

a non-exclusive basis, 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.

8.16. Duties of the Master Developer. In addition to the duties and obligations undertaken in the Final CMP and elsewhere in this Agreement, the Owner shall have the specific duties and obligations listed in this section as the "Master Developer" of the Property and shall be the "Master Developer" for purposes of this Section.

8.16.1. Project Governance. The Master Developer will implement a system of private governance to ensure the development, operation, use and maintenance of special community features and infrastructure, and to administer and enforce various governance procedures and design review processes. 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") to be recorded by the Master Developer, the Master Developer shall form one or more Homeowners' Associations (each, an "HOA") that govern the Property or a portion thereof. The CC&Rs are not subject to the review or approval of the City.

8.16.2. Update of Land Use Budget. The Master Developer shall submit an update to the land use budget set forth in the Final CMP concurrently with the submittal of each Planning Unit Plan, site plan, or subdivision plat (or any revisions to such submittals, in the case of redevelopment). The update shall be in chart form and shall identify the allocation of the land use budget to such Planning Unit Plan, site plan, or subdivision plat as well as the remaining unallocated portion of the land use budget.

8.17. 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, (ii) that it is an Arizona corporation, with respect to the Owner, or municipal corporation, with respect to the City, duly qualified to do business in the state of Arizona and is in good standing under applicable State laws, and (iii) 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.

8.18. Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect. If any applicable law or court of competent jurisdiction prohibits or excuses the City from undertaking any contractual commitment to perform any act hereunder, this Agreement shall remain in full force and effect, but the provision requiring such action shall be deemed to permit the City to take such action at its discretion, if such a construction is permitted by law. If, however, the City fails to take the action required hereunder within the applicable Cure Period described in Section 8.4 above, the Owner shall be entitled to terminate this Agreement.

8.19. Governing Law. This Agreement is entered into in Arizona and shall be construed and interpreted under the laws of Arizona. In particular, this Agreement is subject to the provisions of A.R.S. § 38-511.

8.20. Recordation. This Agreement shall be recorded, at Owner's sole cost, in its entirety in the Official Records of Cochise County, Arizona not later than ten (10) days after execution by the last party.

8.21. No Owner Representations. If the Owner does not 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, it 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 improvements that are required for the segments of the Property developed by the Owner.

8.22. 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.

8.23. 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.

8.24. 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 (which events include in the case of the Owner, but not the City, governmental actions), 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.

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective on the Effective Date and hereby swear and affirm that are duly authorized in accordance with law to execute this Agreement.

[signatures to follow on next page]

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THE OWNER:

El Dorado Benson LLC, an Arizona limited liability company

By: El Dorado Holdings, Inc.,
an Arizona corporation

Its: Administrative Agent

By_____
Its_____
Date:_____

STATE OF ARIZONA )
) ss.
COUNTY OF COCHISE )

The foregoing instrument was acknowledged before me this ..... day of ....., 2016, by ....., as Administrative Agent of El Dorado Holdings, Inc., a corporation under the laws of the State of Arizona, on behalf of El Dorado Benson LLC, an Arizona limited liability company.

.....
Notary Public

My commission expires:

.....

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THE CITY:

City of Benson, an Arizona municipal corporation

_____
Mayor
Date:_____

Approved as to form by:

_____
City Attorney
Date:_____

STATE OF ARIZONA )
) ss.
COUNTY OF COCHISE )

The foregoing instrument was acknowledged before me this ..... day of ....., 2016, by ....., as Mayor of the City of Benson, a municipal corporation under the laws of the State of Arizona.

.....
Notary Public

My commission expires:

.....

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## LIST OF EXHIBITS

| | |
|---|---|
| EXHIBIT A | Legal Description and Map of the Property |
| EXHIBIT B | Depiction of Third Party Property |
| EXHIBIT C | Termination and Release of Whetstone Agreement |
| EXHIBIT D | Moratorium Statute |
| EXHIBIT E | Form of Third Party Trust Agreement |
| EXHIBIT F | Expedited Review |
| EXHIBIT G | Assignment of 3000 Acre Feet Water Allocation |
| EXHIBIT H | Assignment of 266 Acre Feet Water Allocation |
| EXHIBIT I | Dispute Resolution Procedure/Remedies |

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# EXHIBIT A

## Legal Description and Map of the Property

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**EXHIBIT B**

**Depiction of Third Party Property**

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**EXHIBIT C**

**Termination and Release of Whetstone Agreement**

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# EXHIBIT D

## Moratorium Statute

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**EXHIBIT D**

**A.R.S. § 9-463.06**

**Moratorium Statute**

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.

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(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.

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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.

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# EXHIBIT E

## Third Party Trust Agreement Form

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**EXHIBIT E**

Third Party Trust Agreement form

**FIRST AMERICAN TITLE**
**TRUST AGREEMENT**

**Trust No. _____**

THIS AGREEMENT, made and entered into this _____ day of , by and between FIRST AMERICAN TITLE INSURANCE COMPANY, a Nebraska corporation, herein called "Trustee", and not personally, and the following "Beneficiary":

the beneficial interest to be vested as set forth above.

**W I T N E S S E T H**

WHEREAS, there is being conveyed to Trustee, without payment of consideration by Trustee, title to the real property, described in that certain Commitment for Title Insurance (or Special Report), a copy of which is attached hereto, said property being subject to the matters shown thereon; which is to be held in Trust by Trustee under the terms of this agreement; and

WHEREAS, Trustee has agreed to accept title to said property, and to hold same in Trust for the uses and purposes and upon the terms, conditions and covenants herein.

WHEREAS, the Beneficiary and their respective successors in interest may hereinafter be referred to jointly as "the Beneficiaries" and this Trust Agreement and the Trust hereby established as "this Trust" or "Trust No (  ) of the First American Title Insurance Company.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein, the parties agree:

SECTION I - PURPOSE OF TRUST

1. This Trust is for the purpose of providing a convenient means of holding legal title to, conserving, selling and conveying the Trust property and the distribution of the proceeds therefrom in due course to and for the benefit of the Beneficiary. Title to the Trust property shall be held by the Trustee for the sole benefit of the Beneficiary; provided, however, that by accepting title to property under the terms of this Trust the Trustee does not assume any personal liability in connection with prior encumbrances of any nature and has no duty to procure the discharge thereof.

2. Beneficiary may convey, deposit or cause to be conveyed to Trustee additional property to be held by Trustee as a part of the Trust Estate upon approval and acceptance of any such conveyance by Trustee. Such additional property shall be deemed to be part of the corpus of this Trust and shall be subjected to all of the terms and provisions hereof.

SECTION II - TRUST ESTATE

The "Trust Estate" shall consist of legal title to the Trust property described in the Commitment for Title Insurance (or Special Report), any additional property conveyed to Trustee, all funds received by Trustee from the lease or sale of said property or any interest in said property (including but not limited to funds received for the granting of licenses, easements or rights, and all rents, in to or upon said property), and all contracts and receivables for the sale of all or any portion of said property.

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SECTION III - INTEREST OF TRUSTEE AND BENEFICIARY

During the entire term of this Trust, legal title to the real property constituting the Trust Estate shall be vested in the Trustee. The interest of Beneficiary in this Trust and in the Trust Estate is personal property only, consisting of the right to enforce the due execution of this Trust, and may be assigned as such. Beneficiary shall not have, at any time, any right, title or interest in or to any of the property comprising the Trust Estate as such, but may only by written direction, instruct Trustee as to the subdividing, selling, leasing and handling thereof. Trustee shall have no personal responsibility or liability and assumes no obligation with respect to the condition of the title of the Trust property in connection with any conveyance or encumbrance thereof or any part hereof, which Trustee may make upon direction of Beneficiary, save and except any liability or responsibility it may assume by reason of the issuance of title insurance policies by it in its capacity as a title insurer.

Whenever it is provided that the Trustee shall do an act upon the request or instruction of the Beneficiary, such request or instruction shall be in writing and in a form with content satisfactory to Trustee in its sole discretion. All documents executed by Trustee shall be subject to approval by Trustee and need not be executed by trustee as trustee except on the conditions herein set forth. Trustee shall have no obligation to take any acts pertaining to the Trust Estate if any monies are owing to Trustee from Beneficiary.

SECTION IV - ENVIRONMENTAL

Beneficiary has no knowledge of any violation of any environmental protection, pollution or land use laws, rules, regulations, orders, or requirements, including solid waste, as defined by the U.S. Environmental Protection Agency regulations at 40 C.F.R., Part 261, or the disposal or existence in or on the property, of any hazardous substance as defined by the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, and the Arizona Environmental Quality Act Title 49, Arizona Revised Statutes, by any other environmental law, or by any regulations promulgated thereunder.

SECTION V - POSSESSION AND SUBDIVISION

In the event the Beneficiary exercises any rights or obligations under the terms and conditions of this Trust to develop and sell the real property as un-subdivided land or unimproved lots or parcels as defined in A.R.S. 32-2101, the Beneficiary shall fully comply with the provisions of A.R.S. 32-2195.04 or 32-2185.01, and if applicable, also shall file for exemption or qualification with all Federal Acts including, but not limited to the Interstate Land Sales Full Disclosure Act of the Department of Housing and Urban Development, provided, however, Trustee shall have no liability or responsibility to determine whether or not the Beneficiary complies with said provisions or act.

SECTION VI - ACCOUNTING RECORDS

The accounting records of the Trustee shall at all reasonable times be open to the inspection by Beneficiary, and the Beneficiary shall be entitled to monthly statements from Trustee showing all receipts, disbursements and charges made in connection with the Trust, provided that any such statement shall supplement, but not duplicate the contents of any preceding statement. All monies coming into the hands of the Trustee hereunder shall be accounted for and paid by the Trustee in the following order to-wit:

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A. To reimburse the Trustee for any funds advanced by it for the protection or preservation of the Trust Estate, together with interest thereon at the highest legal rate from the date of such advances until repayment by Beneficiary, or out of the Trust Estate; provided, however, that Trustee shall have no obligation to make advances of its own funds, but it may at its election do so, if in its opinion such advances are necessary to preserve and protect the Trust Estate and the interest of the Beneficiary hereunder;

B. To the payment of the Trustee's compensation and expenses hereunder;

C. To the payment of any charges, expenses or other expenditures authorized by the Beneficiary;

D. The balance remaining in Trustee's hands, after making the foregoing payments shall be paid by the Trustee to the Beneficiary or Beneficiaries in accordance with each Beneficiary's percentage interest.

No purchaser from the Trustee shall be required to see to the application of any funds paid by the Trustee hereunder, and all properties of the Trust Estate sold and conveyed by the Trustee shall be free of the Trust.

SECTION VII - TRUSTEE'S WARRANTY OF TITLE

Trustee shall not be obligated to warrant title to any property sold or conveyed by it except as against the acts of the Trustee only. Trustee shall convey title pursuant to the provisions of this Trust in the manner and form required by Section 33-404-B of the Arizona Revised Statutes, as amended, specifically providing the full disclosure of the name and address of Beneficiary.

SECTION VIII - TITLE INSURANCE OF TRUST PROPERTY

An applicable policy of title insurance of First American Title Insurance Company, in the regular form then in use shall be issued in connection with each transaction involving trust property, if the nature of the transaction creates an insurable interest, or unless such issuance is specifically waived by Trustee.

SECTION IX - TRUSTEE'S RIGHTS AND LIABILITIES

A. The Trustee shall not be liable for any error of judgment in the execution of this Trust so long as it acts in good faith. It is expressly understood and agreed by the Beneficiary that the Trustee shall have no duties except those which are expressly set forth in this instrument, and that the duties of Trustee hereunder are limited to holding legal title to the property conveyed into the Trust, the conveyance of such title as directed by the Beneficiary, and the accounting of the proceeds of sales made on the direction of the Beneficiary.

B. It is specifically understood and agreed that the Trustee shall not be required to pay or attend to the payment of any claim, lien or encumbrance including but not limited to tax liens or special assessments against the Trust property. The Beneficiary shall notify the County Assessor to direct all tax notices and bills applicable to the Trust Property c/o the Beneficiary at the Beneficiary's address. The Trustee is not to receive any tax notices and bills or assessments as to the Trust Property. Beneficiary may, at Beneficiary's sole cost and expense, procure independent

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of the Trust a tax service contract or other similar service to keep the Beneficiary apprised of the status of the real property taxes and assessments.

C. It is specifically understood and agreed by the Beneficiary that the Trustee shall have no responsibility or liability to comply with Arizona Revised Statute Section 45-632(O) relating to any filing requirements pertaining to Arizona Groundwater Rights and/or Usage thereof, if applicable.

D. Trustee shall not be required, in dealing with the Trust property or in otherwise acting hereunder to:

(1) Enter into any contract or other obligation in its proprietary corporate capacity, nor to (2) make itself individually liable to pay or incur the payment of any damages, attorneys' fees, fines, penalties, forfeitures, costs, charges or other sums of money whatsoever. Trustee shall have no individual liability or obligation whatsoever arising from its ownership, as Trustee hereunder, of the legal title to the Trust property, or with respect to any act done or contract entered into or indebtedness incurred in relation to the Trust property or in otherwise acting hereunder. Trustee reserves the right to incorporate the above limitations of its liability in any instrument or document executed in connection with this Trust. Should Trustee pay or incur any liability to pay any money on account of the Trust or incur any liability to pay any money on account of any litigation as a result of holding title to the Trust property or otherwise in connection with this Trust, whether because of breach of contract, injury to person or property, fines or penalties under any law or otherwise, Beneficiary shall pay on demand to Trustee, with interest thereon at the highest legal rate until paid, all such payments made by Trustee whatsoever, and shall hold Trustee harmless of and from any and all liabilities incurred by it for any reason whatsoever in connection with this Trust. Trustee shall have a lien on Trust property to secure performance of the obligations of the Beneficiary to Trustee under this Trust, which lien shall be senior to the interest of the Beneficiary. Trustee shall not be required to advance or pay any money or to appear in, prosecute, or defend any legal proceedings on account of or involving this Trust or any property or interest hereunder or involving any transaction relating to the Trust. In the event Trustee is instructed or requested to do any act (or refrain from doing any act) performance of which (or nonperformance of which), in Trustee's sole opinion, would subject Trustee to unreasonable risk of liability, expense or litigation, Trustee shall have no obligation to perform such act (or refrain from performing such act) except upon being furnished instructions and/or indemnity adequate, in Trustee's sole, absolute and uncontrolled discretion, to protect Trustee against such risk of liability, expense of litigation, or except in accordance with an adjudication by a court of competent jurisdiction (and the determination of all appeals and expiration of all applicable appeal periods) in any appropriate legal or equitable proceeding including, without limiting the generality of the foregoing, an action for an accounting or to secure approval of an accounting, a suit for a declaratory judgment, an interpleader action, or a suit for instructions to Trustee. In any such action, the Trustee shall be entitled to a judgment against the Beneficiary for any expense or costs, including reasonable attorneys' fees incurred in such action, to the extent that the court may determine.

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E. Trustee shall have no liability to any Beneficiary or his successors or assigns on account of electing to act in accordance with any provision hereof, as reasonably construed by Trustee, regardless of whether or not such provision may subsequently be reformed or declared invalid or unenforceable or otherwise construed in any litigation or proceeding.

SECTION X - INSURANCE

If the Beneficiary includes the property held hereunder in a Comprehensive General Liability Insurance Policy carried by Beneficiary, Beneficiary shall, during the term of this Trust Agreement, continue to maintain at its expense, insurance showing the Trustee as an additional insured thereunder. A copy of said policy or certificate reflecting said coverage shall be delivered to the Trustee only when requested by Trustee.

SECTION XI - TRUSTEE'S SECURITY FOR PAYMENT OF FEES

As compensation for its services under this Trust, the Trustee shall be entitled to receive its usual and customary Trust fees and charges in conformity with the fee schedule of the Trustee then in effect and as may be amended from time to time, without notice. Trustee shall be entitled to receive and retain such compensation from any monies coming into its hands under the Trust or, if it does not have sufficient money in its hands from under the Trust, then the same shall be paid by the Beneficiary.

NOTE: A reasonable charge will be made for extraordinary services rendered.

SECTION XII - DEFINITION OF TRUSTEE

"Trustee" means First American Title Insurance Company, a Nebraska corporation, only in its capacity as Trustee of this Trust and not in its proprietary corporate capacity nor as Trustee of any other Trust.

SECTION XIII - AMENDMENTS

This Trust Agreement may be amended only by a written amendment hereto delivered to Trustee and accepted in writing by Trustee, and no purported amendment hereto not complying herewith shall be effective for any purpose as regards the obligation of Trustee. No assignment or transfer, either absolute or as security, of any interest of any Beneficiary shall be effective (nor shall it confer upon the purported assignee or transferee any rights against Trustee or any other party, or create any interest in this Trust or in the Trust Estate), except an assignment or transfer accomplished by a proper amendment hereto. Trustee shall be entitled to treat any written instrument purporting to constitute an assignment or transfer of any interest of any Beneficiary as such a proper amendment. Amendments to this Trust Agreement not affecting any provision hereof except the identity of the persons having rights with respect to beneficial interest hereunder shall not require the concurrence of parties (other than Trustee), whose rights and obligations are not thereby affected. Trustee shall accept any such amendment presented to it with proof satisfactory to Trustee of its genuineness, unless it shall purport to create obligations or risk of liability on Trustee which Trustee is not willing to assume; and upon such endorsement the amendment shall become a part of the Trust Agreement for all purposes to the same effect as though set forth in full herein.

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SECTION XIV - ADVERTISING

No advertising shall indicate the Trustee is the author thereof, and the Trustee shall not be liable for any statement or representation made therein.

SECTION XV - NOTICE

In the event two or more Beneficiaries hold the beneficial interest, one Beneficiary shall be designated, by separate instructions to receive all notices and billings.

SECTION XVI - ASSIGNMENTS

The Beneficiary may assign their beneficial interest upon written notification to and acceptance by the Trustee along with the payment to the Trustee of all assignment fees and other fees due the Trustee from the interest being assigned. No such assignment shall relieve the Assignor of the obligation created in this Trust Agreement.

SECTION XVII - TRUSTEE'S RESIGNATION

The trustee may resign upon 30 days written notice to Beneficiary. Within 10 days after receipt of such notice from the Trustee, Beneficiary shall appoint a Successor Trustee. If the Beneficiary has not appointed such Successor Trustee within said 10 days the Trustee may commence an action in a court of competent jurisdiction for the appointment of a Successor Trustee or, at Trustee's option, Trustee may deliver the Trust Estate to Beneficiary when its resignation becomes effective as hereinbefore provided. The Beneficiary may cause the Trust Estate to be transferred to a Successor Trustee upon 30 days written notice to the Trustee. Upon the receipt of proper notification from the Beneficiary, the Trustee shall prepare the necessary instruments and within a reasonable time shall transfer all Trust Assets to a Successor Trustee.

SECTION XVIII - TERMINATION OF TRUST

This Trust shall terminate upon conveyance of all of the property by Trustee in accordance with the provisions hereof, and the distribution of all of the funds in the hands of the Trustee to the person or persons entitled thereto in accordance with the terms hereof. But in no event shall this Trust continue for more than 21 years past the date hereof, unless requested by Beneficiary and consented to by Trustee.

SECTION XIX - PROVISIONS BINDING SUCCESSORS

The provisions of this instrument and the terms and conditions hereof and of this Trust shall be binding upon and inure to the benefit of the executors, administrators, legatees, devisees, heirs, successors and assigns of the parties hereto.

**BENEFICIARY**

_____

_____

TAX ID/SS#

_____

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ADDRESS

_____

_____

_____

Phone #:

_____

Fax #: _____

Email: _____

Executed by Trustee this ____ day of _____, _____.

FIRST AMERICAN TITLE INSURANCE COMPANY,
a Nebraska Corporation, as Trustee under Trust No. >, and not personally

BY:

_____

Authorized Signature

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# EXHIBIT F

## Expedited Review

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**EXHIBIT G**

**Assignment of 3000 Acre Feet Water Allocation**

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# EXHIBIT H

## Assignment of 266 Acre Feet Water Allocation

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# EXHIBIT I

## Dispute Resolution Procedure/Remedies

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**EXHIBIT I**

**Dispute Resolution Procedure/Remedies**

A. The dispute resolution process ("Process") and remedies set forth herein shall not apply to an action by the City to condemn or acquire by inverse condemnation all or any portion of the Property, and in the event of any such action by the City, Developer shall have all rights and remedies available to it at law or in equity.

B. If an event of default is not cured within the Cure Period, the non-defaulting party may institute the Process by providing written notice initiating the Process ("Initiation Notice") to the defaulting party.

C. Any dispute arising out of the following sections of the Development Agreement shall be resolved by a panel consisting of three arbitrators:

§§ 4 – 4.6, 5, and 6.

Within fifteen (15) days after delivery of the Initiation Notice, each party shall appoint one person to serve on the arbitration panel (for such disputes, the "Panel"). Within twenty-five (25) days after delivery of the Initiation Notice, the persons appointed to serve on the Panel shall themselves appoint one person to serve as the third member of the Panel. The third person selected shall serve as the Chairman of the Panel.

D. Any dispute arising out of any section of the Development Agreement other than those enumerated in ¶ C, above, shall be resolved by a single arbitrator (for such disputes, the "Panel"). Unless the parties agree within thirty (30) days of the demand for arbitration, either party may apply to the presiding Judge of the Cochise County Superior Court for appointment of an Arbitrator experienced in subdivision development; the Arbitrator need not be an attorney. A duly-appointed single Arbitrator shall have all of the authority of the "Chairman" of the Panel identified herein.

E. The parties agree that the remedies available for award by the Panel shall be limited to specific performance, declaratory relief, and injunctive relief.

F. The parties have structured this Process with the goal of providing for the prompt and efficient resolution of all disputes falling within the purview of this Process. To that end, either party may petition the Panel with cause for an expedited hearing. In any event, the hearing of any dispute not expedited will commence as soon as practicable, but in no event later than forty-five (45) days after the Panel is seated. This deadline can be extended only with the consent of both parties to the dispute, or by decision of the Panel upon a showing of emergency circumstances.

G. The Chairman will conduct the hearing pursuant to the Center For Public Resources' Rules for Non-Administered Arbitration of Business Disputes then in effect. The Chairman shall determine the nature and scope of discovery, if any, and the manner of presentation of relevant

evidence consistent with the deadlines provided herein, and the parties' objective that disputes be resolved in a prompt and efficient manner. No discovery may be had of privileged materials or information. The Chairman upon proper application shall issue such orders as may be necessary and permissible under law to protect confidential, proprietary or sensitive materials or information from public disclosure or other misuse. Any party may make application to the Cochise County Superior Court to have a protective order entered as may be appropriate to confirm such orders of the Chairman.

H. In order to effectuate the parties' goals, the hearing, once commenced, will proceed from business day to business day until concluded, absent a showing of emergency circumstances. Except as otherwise provided herein, the Process shall be governed by the Uniform Arbitration Act as enacted in Arizona at A.R.S. § 12-3001 *et seq.*

I**.** The Panel shall, within fifteen (15) days from the conclusion of any hearing, issue its decision. The decision shall be rendered in accordance with the Agreement and the laws of the State of Arizona.

J. All fees and costs associated with any Process before the Panel, including without limitation the fees of the Panel, other fees, and the prevailing party's attorneys' fees, expert witness fees and costs, will be paid by the non-prevailing party. The determination of prevailing and non-prevailing parties, and the appropriate allocation of fees and costs, will be included in the decision by the Panel.

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| | | | | PRE-CONSTRUCTION | | | | | | | | CONSTRUCTION | | | | | POST-CONSTRUCTION | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Cost | Time | Plan Review | | | | | | | Cost | Inspections and Testing | | | | Cost | Occupancy & Records | | | | | | |
| | | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 1 | 1 | 2 | 3 | 4 | | 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| | | Cost of Review Internal (Note #1) | Review Time Targets (Note #3) | City Review Internally | City Review Externally | City Counter Verification | Self Cert (No Peer Review) | Self Cert (Peer Review) | City Audit Random 10%-20% | City Audit Discretion of City | | City Inspections Internal or External | Self Certified Inspections | City Audit Random 10%-20% | City Audit Discretion of City | | City Final Occupancy Inspection & Permit | City As-Builts Review | City Counter Record Retention | Self Certifed As-Builts | Peer Certified As-Builts | City Audit Random 10%-20% | City Audit Discretion of City |
| **A** | **Residential Homes (Initial Review) for Standard Plans** | | | | | | | | | | | | | | | | | | | | | | |
| 1 | Standard Review | 100% | 45/20 days | X | X | X | - | - | - | - | | | | | | | | | | | | | |
| 2 | Expedited Review | (Note #2) | 20/10 days | X | X | X | - | - | - | - | | | | | | | | | | | | | |
| 3 | Self Certification (As Professional of Record) | 50% | 20/10 days | - | - | X | X | - | - | X | | | | | | | | | | | | | |
| 4 | Self Certification (with Peer Review) | 20% | 10/5 days | - | - | X | - | X | X | - | | | | | | | | | | | | | |
| **B** | **Residential Homes (For permitting of pre-approved Plans)** | | | | | | | | | | | | | | | | | | | | | | |
| 1 | Standard Review | na | na | - | - | - | - | - | - | - | 100% | X | - | - | - | 100% | X | X | X | - | - | - | - |
| 2 | Expedited Review | na | na | - | - | - | - | - | - | - | na | - | - | - | - | See Note 2 | X | - | X | - | - | - | - |
| 3 | Self Certification (As Professional of Record) | 100% | 2 day | - | - | X | X | - | X | - | 20% | - | X | X | - | 50% | - | - | X | X | - | X | - |
| 4 | Self Certification (with Peer Review) | na | na | - | - | - | - | - | - | - | na | - | - | - | - | na | - | - | - | - | - | - | - |
| **C** | **All Non-Residential Structures (Under 25,000 Square Feet)** | | | | | | | | | | | | | | | | | | | | | | |
| 1 | Standard Review | 100% | 45/20 days | X | X | X | - | - | - | - | 100% | X | - | - | - | 100% | X | X | X | - | - | - | - |
| 2 | Expedited Review | (Note #2) | 20/10 days | X | X | X | - | - | - | - | na | - | - | - | - | See Note 2 | X | - | X | - | - | - | - |
| 3 | Self Certification (As Professional of Record) | 50% | 20/10 days | - | - | X | X | - | - | X | 20% | - | X | X | - | 50% | - | - | X | X | - | X | - |
| 4 | Self Certification (with Peer Review) | 20% | 10/5 days | - | - | X | - | X | X | - | na | - | - | - | - | 20% | - | - | X | - | X | X | - |
| **D** | **All Non-Residential Structures (25,000 Square feet and Larger)** | | | | | | | | | | | | | | | | | | | | | | |
| 1 | Standard Review | 100% | 45/20 days | X | X | X | - | - | - | - | 100% | X | - | - | - | 100% | X | X | X | - | - | - | - |
| 2 | Expedited Review | (Note #2) | 20/10 days | X | X | X | - | - | - | - | na | - | - | - | - | See Note 2 | X | - | X | - | - | - | - |
| 3 | Self Certification (As Professional of Record) | 50% | 20/10 days | - | - | X | X | - | - | X | 50% | - | X | - | X | 50% | - | - | X | X | - | - | X |
| 4 | Self Certification (with Peer Review) | 20% | 10/5 days | - | - | X | - | X | - | X | na | - | - | - | - | 20% | - | - | X | - | X | - | X |
| **E** | **Civil Engineering & Landscape - Construction / Plans** | | | | | | | | | | | | | | | | | | | | | | |
| 1 | Standard Review | 100% | 45/20 days | X | X | X | - | - | - | - | 100% | X | - | - | - | 100% | X | X | X | - | - | - | - |
| 2 | Expedited Review | (Note #2) | 20/10 days | X | X | X | - | - | - | - | na | - | - | - | - | See Note 2 | X | X | X | - | - | - | - |
| 3 | Self Certification (As Professional of Record) | 50% | 20/10 days | - | - | X | X | - | - | X | 20% | - | X | X | - | 50% | - | - | X | X | - | - | X |
| 4 | Self Certification (with Peer Review) | 20% | 10/5 days | - | - | X | - | X | X | - | na | - | - | - | - | 20% | - | - | X | - | X | X | - |
| **F** | **Zoning and Planning (Plats, Zoning, Planning, PUMP's)** | | | | | | | | | | | | | | | | | | | | | | |
| 1 | Standard Review | 100% | 45/20 days | X | X | X | - | - | - | - | | | | | | | | | | | | | |
| 2 | Expedited Review | (Note #2) | 20/10 days | X | X | X | - | - | - | - | | | | | | | | | | | | | |
| 3 | Self Certification (As Professional of Record) | na | na | - | - | - | - | - | - | - | | | | | | | | | | | | | |
| 4 | Self Certification (with Peer Review) | na | na | - | - | - | - | - | - | - | | | | | | | | | | | | | |

## Notes

Note #1 Fees expressed in "Cost" column are represented as indexed fees (assuming 100% is base) for each category of review.

Note #2 Expedited review fee by external reviewer is actual cost of 3rd party consultant plus 10% of base review fee, expedited review fee by City internal reviewer is base review fee plus 10% of base review fee.

Note #3 Review times are calander days and are represented as "First review" and "Second Review".

## Definitions

Self Certification (No Peer Review)
Self Certification (Peer Review)
City Audit - Random
City Audit - Discretionary