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December 2, 2014

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2014 DEC -3 AM 9:29
CITY OF TEMPE
CITY CLERK'S OFFICE

VIA U.S. CERTIFIED MAIL &
EMAIL: Judi_Baumann@tempe.gov

Ms. Judith R. Baumann, City Attorney
CITY OF TEMPE
City Attorney's Office, Civil Division
21 East 6th Street, Suite 201
Tempe, Arizona 85281

RE: Jefferson Town Lake Planned Area Development (PAD) Overlay Amendment Application, Case No. PL140234 and PAD14013 ("PAD Overlay Amendment") - Property Located at 909 East Playa del Norte Drive, Lots 3 and 3A of the Final Plat of Playa del Norte, recorded at Book 685 of Maps, Page 32, MCR (the "Final Plat of Playa del Norte)

Dear Judi:

As we discussed over the phone last week, our firm represents the North Shore Condominium Association and the individual North Shore condominium owners with regard to the proposed Jefferson Town Lake multi-family development and PAD Overlay Amendment currently pending before the Major and Council. By way of a brief background, the North Shore and Jefferson Town Lake sites are located within the Playa del Norte PAD Overlay District, which encompasses 22-acres located east of the Scottsdale Road and Playa del Norte Drive intersection between the Loop 202 on the north and Tempe Town Lake on the south. The development of all lots within Playa del Norte is governed by the Restated Development and Disposition Agreement recorded on September 23, 2003 as Instrument No. 2003-1331774, MCR (hereinafter the "**Restated DDA**" attached hereto as **Exhibit "1"**)[1] and the master Planned Area Development for Playa del Norte recorded on October 19, 2004 at Book 709 of Maps, Page 43, MCR (hereinafter the "**Master PAD**" attached hereto as **Exhibit "2"**). North Shore is located on Lots 4 and 4A of the Final Plat of Playa del Norte, totaling approximately 2.6 acres. The proposed Jefferson Town Lake development is located on Lots 3 and 3A, totaling 1.62 acres. Lot 3 is

[1] Note: A First Addendum to the Restated DDA was recorded on June 28, 2004 as Instrument No. 2004-730293, MCR but is immaterial to the matters discussed herein.

currently owned by Jefferson Town Lake Apartments, LLC, a Texas limited liability company, while Lot 3A is owned by the City of Tempe. The Jefferson Town Lake site abuts the North Shore development on the west.

North Shore owners first learned of the Jefferson Town Lake proposal at a neighborhood meeting scheduled on October 13, 2014, which was also the Columbus Day holiday, only 15 days prior to the scheduled Development Review Commission ("DRC") hearing. At the neighborhood meeting, our clients raised serious concerns regarding the destruction of North Shore's view corridors and privacy as a result of the proposed density, building massing, location and scale, and inadequate setbacks between North Shore's 5-story building and the Jefferson Town Lake 6-story building. Additional concerns were raised regarding: (1) increased traffic at an already-congested Playa del Norte and Scottsdale Road intersection as a result of adding 258 dwelling units, (2) inadequate parking spaces and the tandem parking plan initially proposed, and (3) the relocation of a 20-foot fire lane and Maricopa County Flood Control District easement onto North Shore's property without its consent.

Due to the representations made at the neighborhood meeting and the apparent unwillingness of the Jefferson Town Lake's representatives to work with North Shore, in 15 days time, our clients searched for a law firm to represent their interests, hired our firm, and commissioned a detailed letter to be sent to the Community Development Department staff and the DRC members requesting a continuance of the DRC hearing. Our October 24, 2014 letter to staff raised, once again, North Shore's valid concerns with the proposed development next door and requested a continuance in order to provide adequate time to both analyze potential negative impacts on North Shore and the greater 22-acre Playa del Norte development as well as to work with Jefferson Town Lake representatives to reach viable solutions. Prior to the DRC hearing, we also spoke with the Jefferson Town Lake applicant requesting his client's agreement to continue the DRC hearing in order to work on resolving North Shore's outstanding concerns. He would not agree to the continuance. Instead, he submitted new site plans and studies to the City on the day of the DRC hearing without notifying our firm or our clients. We learned of the new site plan and traffic and parking studies upon arrival at the DRC hearing.

Despite North Shore's reasonable request for additional time to review the new materials and staff's admission on the record that they themselves had not had an opportunity to review the new materials and could not make a recommendation to the DRC as a result, North Shore's request for a continuance was denied by the DRC at the October 28th hearing. Instead, the DRC members voted to approve the Jefferson Town Lake Development Plan Review application and recommended approval of the PAD Overlay Amendment application. For several reasons, which we will not address in this

letter, North Shore filed an appeal of the DRC decision on November 10, 2014. North Shore's appeal is scheduled to be heard by the Mayor and Council on December 4, 2014.

At the first public hearing before the City of Tempe Mayor and Council on November 13, 2014, North Shore again cited its concerns with the proposed Jefferson Town Lake development on the record and requested a continuance of the PAD Overlay Amendment application in order to meet with the developer. The Mayor and Council did not address North Shore's continuance request at the November 17th hearing.

Following the November 17th hearing, our firm and members of the North Shore Condominium Association Board met with the Jefferson Town Lake applicant, Charles Huellmantel, and a representative of Jefferson Town Lake Apartments, LLC, Todd Bowden. At this meeting, North Shore provided to the applicant an agenda for the meeting which listed North Shore's concerns and potential solutions. North Shore also provided a table contrasting the development standards of the Jefferson Town Lake development with the existing Grigio and North Shore multi-family developments located within Playa del Norte as well as the former Onyx development proposal for Lots 3 and 3A, which had expired in 2009. At this meeting, the applicant and Mr. Bowden discussed relocating the trash compactor into an enclosed area as part of the parking garage, reducing the density by 5 units, and making minor adjustments to the southeast corner of the Jefferson Town Lake building. After receiving North Shore's list, Mr. Bowden stated that he would meet with his architects to determine whether they could make any changes to the building or the site plan and would get back to us either Wednesday, November 26th or early on during the week of December 1st. Although we attempted to set up a meeting on Monday, December 1st in a follow-up email, the applicant was not available, and we have not heard from Messrs. Bowden or Huellmantel as of yet scheduling another meeting.

Working without the benefit of a continuance, our firm has submitted several public records requests to the City of Tempe pertaining to the City of Tempe's ownership of Lot 3A as well as the development approvals and traffic, parking and drainage studies applicable to Playa del Norte. The information requested is relevant to the Jefferson Town Lake proposal and its impacts on the Playa del Norte development and North Shore's property rights. Despite the cooperation of staff and their diligent attempts to gather information in a compressed timeframe, some of these public records requests remain outstanding.

To summarize, North Shore has not had sufficient time to have meaningful dialogue with the Jefferson Town Lake representatives, City staff and Council members to address and resolve significant concerns regarding diminution of property values, impairment of view corridors, inadequate parking, and deterioration of traffic circulation in and around Playa del Norte resulting from the proposed density and building massing, design and

layout of the Jefferson Town Lake development. North Shore has repeatedly requested additional time to foster such dialogue to no avail. Thus, North Shore has no other choice but to submit this demand letter prior to the Council hearing on December 4th in the event the City Council were to deny our request for a continuance and approve the Jefferson Town Lake PAD Overlay Amendment.

On behalf of North Shore Condominium Association, we hereby demand that the Tempe City Council vote to deny the Jefferson Town Lake PAD Overlay Amendment as currently proposed and uphold the Conceptual Master Plan and density/intensity restrictions set forth in the Restated DDA as well as the Master PAD recorded against the entire 22-acre Playa del Norte development. If approved, the JTL PAD Overlay Amendment would constitute a material breach of the Restated DDA. North Shore Condominium Association is prepared to file a lawsuit against the City of Tempe in Maricopa County Superior Court seeking a declaratory judgment to enforce the Restated DDA. In the alternative, we demand that the Mayor and Council continue taking action on the 2 pending Jefferson Town Lake applications for a minimum of 60 days.

I. OVERVIEW OF RESTATED DEVELOPMENT AND DISPOSITION AGREEMENT AND MASTER PAD FOR PLAYA DEL NORTE

The recordation of the Restated DDA and the Master PAD ensured Playa del Norte would result in a compatible, attractive and harmonious mixed-use development at build-out. As the owners of condominiums located on Lot 4 and successors-in-interest to the Master Developer under the Restated DDA, the North Shore owners may enforce the Restated DDA to preserve their property values and the compatibility, functionality, and continuing viability of the Playa del Norte development as originally agreed between the City of Tempe and Playa del Norte, LLC.

A. Restated Development and Disposition Agreement

The Restated DDA was entered into by and between the City of Tempe and Playa del Norte, LLC, an Arizona limited liability company, as the Master Developer, on August 21, 2003 and was recorded on September 23, 2003. As set forth in Article I, the Restated DDA is "a development agreement within the meaning of A.R.S. § 9-500.05 and shall be construed as such . . . ."

Section 3.1 of the Restated DDA specifically limits the intensity/density of development allowed within Playa del Norte to a range of 600,000 square feet to 1,000,000 square feet.

> **3.1** **Conceptual Master Site Plan.** The Conceptual Master Site Plan herein identified as **Exhibit C** shall set forth the scope of development for the entire Property depicting the types of basic land uses, permissible range of the intensity and density of such uses, and a permissible range in the relative height, bulk and size of buildings and structures on the Property. The intensity and density of the land uses within the project as described in the Conceptual Master Site Plan shall be allowed to be flexible in refinement of the Preliminary PAD and Final PAD within a range of 600,000 sq.ft. to 1,000,000 sq.ft.

A Conceptual Master Site Plan is attached to the Restated DDA as Exhibit "C". The Conceptual Master Site Plan depicts the scope of development for Playa del Norte and is virtually identical to the development depicted in the Master PAD recorded a year later – Lot 3 designated as a restaurant pad, Lot 4 designated as the North Shore condominiums and Lot 5 designated as the Grigio (fka Mondrian) apartments. Section 3.2 of the Restated DDA requires that all properties within Playa del Norte "shall be developed in general conformance with the Conceptual Master Site Plan."

B. Master PAD

Following the recordation of the Restated DDA, the Tempe City Council approved the Playa del Norte Planned Area Development (PAD) Overlay District on January 8, 2004. Five months later, the 22 acres were split into 6 lots[2] by the Final Plat of Playa del Norte.[3] Following the recordation of the Plat, on October 19, 2004, the Master PAD for Playa del Norte was recorded against the 6 lots, which assigned a defined use and specific development standards for each lot.

The Master PAD limited the overall intensity/density of the 22-acre Playa del Norte development to 1,092,197 square feet in general conformance with Section 3.1 of the Restated DDA and Conceptual Master Site Plan attached as Exhibit "C" to the Restated DDA. As part of the 1,092,197 square feet, the Master PAD allowed 655 dwelling units total, which were assigned to Lots 4 and 5. As of today, a total of 657 units have been constructed – 134 condominium units on the North Shore Lot 4 and 523 apartment units on the Grigio Lot 5. Thus, the maximum residential density allowed under the Master PAD has been achieved.

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[2] Excluding Lots 3A and 4A.

[3] Final Plat of Playa Del Norte recorded at Book 685 of Maps, Page 32, Official Records of the Maricopa County Recorder (**"MCR"**).

Lot 3 was identified within the Master PAD as a restaurant pad with a building area of 8,000 s.f. and only 11% lot coverage. The Master PAD shows the restaurant building situated against Tempe Town Lake with surface parking throughout the north half of Lot 3. The height of the Lot 3 restaurant was limited to 1 story and 20 percent landscaping coverage was required. The building orientations and heights of the restaurant, condominiums, and apartments on Lots 3, 4, and 5, respectively, evidence a development scheme in which view preservation onto Tempe Town Lake was a principal factor.

II. THE RESTATED DDA IS ENFORCEABLE UNDER ARIZ.REV.STAT. § 9-500.05

As identified in Article I of the Restated DDA and Ariz.Rev.Stat. § 9-500.05, the Restated DDA is an enforceable development agreement which governs the permitted uses and density and intensity of uses within the 22-acre Playa del Norte development, including Lot 3. Ariz.Rev.Stat. § 9-500.05.H defines a "development agreement" as:

> 1. "Development agreement" means an agreement between a municipality and a community facilities district pursuant to section 48-709, a landowner or any other person having an interest in real property that may specify or otherwise relate to any of the following:
>
> (a) The duration of the development agreement.
>
> (b) The permitted uses of property subject to the development agreement.
>
> (c) The density and intensity of uses and the maximum height and size of proposed buildings within such property.
>
> (d) Provisions for reservation or dedication of land for public purposes and provisions to protect environmentally sensitive lands.
>
> . . .
>
> (f) The phasing or time of construction or development on property subject to the development agreement.
>
> (g) Conditions, terms, restrictions and requirements for public infrastructure and the financing of public infrastructure and subsequent reimbursements over time.
>
> . . .

(j) Conditions, terms, restrictions and requirements relating to the governing body's intent to form a special taxing district pursuant to title 48.

(k) Any other matters relating to the development of the property.

In this case, the Restated DDA provides detailed terms and specifications in accordance with the statutory requirements enumerated above. For instance, the duration of the Restated DDA is perpetual, having been agreed to run with the land with no specified date of termination. The Restated DDA can only be amended or canceled by the mutual consent of the parties to the Restated DDA or by their successors in interest or assigns, as set forth in A.R.S. 9-500.05(C).

Again, with regard to uses and the density and intensity of such uses, Section 3.1 of the Restated DDA limits the density and intensity of the Playa del Norte development to a range of 600,000 sq.ft. to 1,000,000 sq.ft. Section 3.2 requires Playa del Norte to be developed in general conformance with the Conceptual Master Site Plan. Thus far, the owners of the lots within Playa del Norte have developed their properties in general conformance with and reliance upon the Conceptual Master Site Plan and the development ranges required under the Restated DDA and Master PAD.

Necessary public infrastructure improvements were also addressed in the Restated DDA. The uses and density/intensity range contemplated under the Restated DDA were the driving force in designing and approving the infrastructure improvements for the Miller Road/Playa del Norte Drive extension. Section 6.2 of the Restated DDA, titled "Miller Road Extension", states that the "parties acknowledge that the extension of Miller Road is integral to the economic viability, the planned density, and the success of the development of the Property." To ignore the 1,000,000 square-foot density and intensity restriction applicable to Playa del Norte and allow an additional 250,000 square feet of multi-family development on Lot 3 would burden the Miller Road/Playa del Norte Drive connection with Scottsdale Road in excess of the traffic demand associated with the Restated DDA Conceptual Master Site Plan, causing a deterioration in traffic circulation for all property owners within Playa del Norte and thwarting the economic viability and success of the greater Playa del Norte development.

Furthermore, the design and construction of the Miller Road/Playa del Norte extension was financed by an improvement district in accordance with Sections 6.1 and 6.2 of the Restated DDA. All of the owners within Playa del Norte, including the individual North Shore condominium owners, are required to contribute funds toward the Miller Road Improvement District assessments. Inasmuch as the North Shore owners are

paying for the design and construction of the Miller Road/Playa del Norte infrastructure improvements, North Shore has a legitimate interest in enforcing the density restrictions set forth in the Restated DDA and ensuring that Playa del Norte Drive and Miller Road do not become burdened with excess traffic which would be generated by the Jefferson Town Lake apartments.

III. NORTH SHORE AND JEFFERSON TOWN LAKE APARTMENTS, LLC ARE SUCCESSORS-IN-INTEREST TO THE RESTATED DDA

Section 9.5 of the Restated DDA states that the agreement "shall run with the land and all of the covenants and conditions set forth [t]herein shall inure to the benefit of and be binding upon the successors and assigns of the parties [t]hereto." The Restated DDA was entered into by and between the City of Tempe and Playa del Norte, LLC as the Master Developer of Playa del Norte. Pursuant to Section 2.15 and Exhibit "A" of the Restated DDA, the Restated DDA applied to Property owned by the City of Tempe, the Master Developer and other real property owners who agreed to allow the Master Developer or City to acquire their property for development by the Master Developer. The Property depicted on Exhibit "A" to the Restated DDA incorporates Jefferson Town Lake's Lot 3, the City of Tempe's Lot 3A, and North Shore's Lots 4 and 4A, in addition to other property comprising the entire Playa del Norte 22 acres.

As subsequent owners of certain land included within the Property restricted by the Restated DDA, both North Shore and Jefferson Town Lake are successors-in-interest to the Master Developer under the Restated DDA and are thus bound by the density and use restrictions contained therein. As set forth in Ariz.Rev.Stat. § 9-500.05.C, a "development agreement may be amended, or cancelled in whole or in part, by mutual consent of the parties to the development agreement ***or by their successors in interest or assigns***." (Emphasis added) The plain language of the statute supports a finding that the legislature intended the benefits and burdens of development agreements entered into pursuant to Ariz.Rev.Stat. § 9-500.05 to run with the land.

The word "successor" has been defined as "one who takes the place that another has left, and sustains the like part or character." *Home Builders Assoc. of Central Arizona v. City of Maricopa*, 215 Ariz. 146, 151, 158 P.3d 869, 874 (Ariz.Ct.App.Div.2 2007)(citing *Lake Havasu Resort, Inc. v. Commercial Loan Ins. Corp.*, 139 Ariz. 369, 374, 678 P.2d 950, 955 (App. 1983)). A successor in interest is "'[o]ne who follows another in ownership or control of property . . . [who] retains the same rights as the original owner, with no change in substance.'" *Id.* (*quoting Black's Law Dictionary* 1473 (8th ed. 2004)).

A. **Chain of Title for Jefferson Town Lake Lots 3 and 3A**

At the time the Restated DDA was entered into and recorded on September 23, 2003, the area of the Property which would later be designated as Lot 3 was owned by Henderson AG Enterprises, LLLP, an Arizona limited liability partnership. At that time, Lot 3A was owned by the City of Tempe and continues to be owned by the City to this day. After the Final Plat of Playa del Norte and the Master PAD were recorded in 2004, Henderson AG Enterprises, LLLP, in 2005, conveyed Lot 3 to Playa del Norte, LLC, an Arizona limited liability company. If you recall, Playa del Norte, LLC was the Master Developer under the Restated DDA. Playa del Norte, LLC then immediately conveyed Lot 3 to Prestwick Enterprises, LLC, an Arizona limited liability company. Then, in 2006, Lot 3 was conveyed by Prestwick Enterprises, LLC to a Weststone entity controlled by Brian Regehr by the name of Onyx Tower, LP, an Arizona limited partnership. Lot 3 was held by Brian Regehr in the name of Onyx Tower, LP for approximately 8 years. Subsequently, Lot 3 was transferred to another Weststone entity, PDN Group, LLC, an Arizona limited liability company, on July 3, 2014. Lot 3 finally came to rest in the hands of its current owner, Jefferson Town Lake Apartments, LLC, a Texas limited liability company, in October of 2014, after the Jefferson Town Lake PAD Overlay Amendment application had been filed. Brian Regehr of Weststone continues to be a minority member of Jefferson Town Lake Apartments, LLC and contributed Lot 3 to the current entity in order for Lot 3 to be developed by JPI/TDI with multi-family apartments.

B. **Chain of Title for North Shore Lots 4 and 4A**

At the time the Restated DDA was entered into and recorded on September 23, 2003, Henderson AG Enterprises, LLLP, also owned the area of the Property which would later be designated as Lot 4. The area to be designated as Lot 4A was owned by the City of Tempe. In the following year, 2004, Lot 4 was conveyed by special warranty deed from Henderson AG Enterprises, LLLP to Tempe Town Lake Townhomes, LP, an Arizona limited partnership. Also, in 2004, Lot 4A was conveyed by special warranty deed from the City of Tempe to Tempe Town Lake Townhomes, LP. Tempe Town Lake Townhomes, LP was a Weststone entity which developed the North Shore condominiums and was listed as the Grantor in each of the deeds conveying North Shore condominium units to individual owners.

IV. CONCLUSION

Although the Restated DDA and Master PAD are legally enforceable, North Shore is willing to work with the Jefferson Town Lake representatives and the City of Tempe to create compatible development for the benefit of all properties within Playa del Norte. From the outset, North Shore's list of concerns with the Jefferson Town Lake development

has been driven by 2 underlying goals: (1) preserving the quality of life of the North Shore owners and (2) preserving property values and the plan of development they relied upon when purchasing their condominiums. As a legislative body, the Tempe Mayor and Council are charged with protecting the health, safety, and welfare of its citizens. Thus, the goals of North Shore and the duties of Tempe's City Council should be aligned in this matter. In order to be in a position to carefully review and evaluate the issues and objectives of North Shore, a continuance for 60 to 90 days is both reasonable and necessary.

Yours very truly,

Francis J. Slavin

Cc: Charles Huellmantel (via email: charles@huellmantel.com)

Enclosures:

Exhibit "1" – Restated Development and Disposition Agreement recorded on September 23, 2003 as Instrument No. 2003-1331774, MCR.

Exhibit "2" – Planned Area Development for Playa del Norte recorded on October 19, 2004 at Book 709 of Maps, Page 43, MCR.

EXHIBIT 1

Unofficial Document

When recorded, return to:

City of Tempe
31 East Fifth Street
Tempe, Arizona 85281
Attention: City Clerk

RESTATED DEVELOPMENT AND DISPOSITION AGREEMENT
(Rio Salado Boardwalk Development Project)
ORDINANCE NO. 2003.21

C2001-206C

THIS RESTATED DEVELOPMENT AND DISPOSITION AGREEMENT ("Agreement") is made as of the 21st day of August, 2003, by and between the CITY OF TEMPE, an Arizona municipal corporation (the "City"), and PLAYA DEL NORTE, L.L.C., an Arizona limited liability company ("Playa").

RECITALS:

A. WHEREAS Playa has obtained an assignment pursuant to the Agreement and Acknowledgment of Assignment, as amended, of the rights of the original developer, Ciudad Del Lago, L.L.C., ("CDL"), in the certain Development and Disposition Agreement #C69-53 as amended and supplemented (the "CDL DDA").

B. WHEREAS, Playa has advanced $2.1 million to CDL in order to settle litigation on behalf of all parties to the litigation, including the City, and obtained a release of Playa and of the City.

C. WHEREAS, on November 21, 2001, the City entered into an Agreement and Acknowledgment of Assignment consenting to the assignment of the certain rights of CDL in the CDL DDA to Playa, and awarded Playa the exclusive right to negotiate an amendment and restatement of the DDA ("Restated DDA") for that portion of the property known as Rio Salado Boardwalk Development Project (the "Property") lying north of the Salt River and adjacent to the east and west sides of Rural Road in Tempe, Arizona, and more particularly described in **Exhibit A** attached hereto and incorporated herein by reference

D. WHEREAS, on May 2, 2002, the City granted an extension to the exclusive negotiation period with Playa to allow for additional

environmental, geotechnical and financial feasibility studies to be completed.

E. WHEREAS, it is the intent of the City and Playa that this Agreement will be the only development agreement remaining between the parties for the Property.

NOW THEREFORE, in consideration of the above premises, the promises contained in this Agreement and for good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties hereto agree as follows:

AGREEMENT:

ARTICLE I

RESTATEMENT OF MASTER DEVELOPMENT AGREEMENT AND DEVELOPMENT AGREEMENT

This Agreement (a) supercedes and replaces the CDL DDA in its entirety and limits its scope to the Property described on **Exhibit A** attached hereto, and (b) constitutes a development agreement for the Property. Hereafter, unless otherwise amended by the parties, this Agreement shall be the only development agreement between the parties in effect for the Property. This Agreement is [illegible] opment agreement within the meaning of A.R.S. § 9-500.05 and shall be construed as such, and is in accordance with § 9-500.11. Subject to Section 8.7 of this Agreement, the execution of this Agreement will relinquish all rights of Playa to the $2.1 million described in Recital B.

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ARTICLE II

DEFINITIONS

The following terms shall have the meanings set forth below whenever used in this Agreement, except where the context clearly indicates otherwise:

2.1. "Acquisition." The term "Acquisition" shall mean final order of condemnation, purchase, or other control of the Property, such that fee simple and insurable title can be conveyed to Developer.

2.2. "Builder/User." The term "Builder/User" shall mean and refer to the developer of a specific parcel within the Property as identified within the Subdivision Plat.

2.3. "Certificate of Completion." The term "Certificate of Completion" as used in this Agreement, shall mean a final written acceptance of the completed and inspected project issued by the Development Services Department and Public Works Department. A

certificate of completion will not be issued until the entire project is completed in conformance with the Agreement and accepted by the City.

2.4. **"City."** The term "City" shall mean and refer to the City of Tempe, an Arizona municipal corporation, and any successor public body or entity.

2.5. **"City Property."** The term "City Property" shall mean and refer to that portion of the Property which is currently owned or controlled by the City and legally described in **Exhibit B** attached hereto and incorporated herein by this reference.

2.6. **"Conceptual Master Site Plan."** The term "Conceptual Master Site Plan shall mean and refer to the Plan illustrated in **Exhibit C**, attached hereto and incorporated herein by this reference.

2.7. **"Development Parcel Agreement."** The term "Development Parcel Agreement" shall mean separate and subordinate development parcel agreements among the City, Master Developer and Builder/Users.

2.8. **"Final PAD."** The term "Final PAD" shall mean and refer to a Final Planned Area Development which is approved by the City with respect to the development of a single parcel or group of parcels within the Property and which sets forth the specific uses, densities, features and other development matters with respect to such parcel or parcels.

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2.9. **"ID Agreement."** The term "ID Agreement" shall mean and refer to a Development and Waiver Agreement outlining the specific terms and conditions of the Improvement District.

2.10. **"Improvement District."** The term "Improvement District" shall mean and refer to the district created to finance the design and construction of the public road improvements for Miller Road and Rural Road.

2.11. **"Improvements."** The term "Improvements" shall mean and refer to all public and private improvements which may be constructed from time to time on the Property, including, without limitation, all structures, buildings, roads, driveways, parking areas, walls, landscaping and other improvements of any type or kind, or any other alteration of the natural terrain to be built by Playa as the Master Developer or the City, as the case may be, pursuant to the terms of this Agreement.

2.12. **"Master Developer."** The term "Master Developer" shall mean and refer to Playa Del Norte, L.L.C., an Arizona limited liability company, and its successors and assigns.

2.13. **"Master Developer's Property."** The term "Master Developer's Property" shall mean and refer to that portion of the Property which is currently owned or

controlled by the Master Developer and legally described in **Exhibit D** attached hereto and incorporated herein by this reference

2.14. "Preliminary PAD." The term "Preliminary PAD" shall mean and refer to that Preliminary Planned Area Development which is approved by the City with respect to the Property and which sets forth specific uses, densities, features and other development matters with respect to the Property.

2.15. "Property." The term "Property" shall mean and refer to all of the real property which is legally described in **Exhibit A** attached hereto and incorporated herein by this reference and which consists of the City Property and the Master Developer's Property, and any other real property owned by others which the parties mutually agree may be acquired by Master Developer or City and developed by Master Developer.

2.16. "Schedule of Acquisition." The term "Schedule of Acquisition" shall mean and refer to that schedule of acquisition agreed to by the City and the Master Developer as set forth in **Exhibit E** attached hereto and incorporated herein by this reference, which supercedes all previous schedules of acquisition applicable to the Property

2.17. "Schedule of Performance." The term "Schedule of Performance" shall mean and refer to that schedule of performance agreed to by the City and the Master Developer as set forth in **Exhibit F** attached hereto and incorporated herein by this reference, which supercedes all previous schedules of performance applicable to the Property.

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2.18. "Subdivision Plat." The term "Subdivision Plat" shall mean and refer to the reallocation of parcels as developed by the Master Developer and approved by the City. The Subdivision Plat shall be in conformance with the Preliminary PAD.

ARTICLE III

MASTER PLANNING

3.1. Conceptual Master Site Plan. The Conceptual Master Site Plan herein identified as **Exhibit C** shall set forth the scope of development for the entire Property depicting the types of basic land uses, permissible range of the intensity and density of such uses, and a permissible range in the relative height, bulk and size of buildings and structures on the Property. The intensity and density of the land uses within the project as described in the Conceptual Master Site Plan shall be allowed to be flexible in refinement of the Preliminary PAD and Final PAD within a range of 600,000 sq.ft. to 1,000,000 sq.ft.

3.2. Preliminary PAD. The Property shall be developed in general conformance with the Conceptual Master Site Plan. By the date set forth in the Schedule of Performance, the Master Developer shall submit to City the Preliminary PAD for the Property, in accordance with normally applicable City submission requirements for such applications.

3.3. **Signage.** The City and the Master Developer acknowledge and agree that a distinctive characteristic of the Property is its location between the Red Mountain Freeway (State Highway 202) and the Tempe Town Lake. As a result, the City and the Master Developer agree that appropriate signage, subject to City review and approval is an integral part of the development of the Property and may be necessary to attract users and occupants to the Property.

3.4. **Irrevocable License for Offsite Storm Water Retention.** The City and Master Developer acknowledge and agree on the need to maximize the developable land within the Property to offset the development costs associated with development of the Property. As such the City agrees to grant Master Developer an irrevocable license to use a portion of the City Property, identified as the "Offsite Storm Water Retention Area" on **Exhibit G**, for the purpose of meeting the City requirements for on-site water retention for the Master Developer's Property. Concurrent with initial vertical development on the Property, the Master Developer shall grade and install turf with associated irrigation system, within the Offsite Storm Water Retention Area. The Master Developer shall be responsible for perpetual maintenance thereof including payment of the Operations and Maintenance Assessment (as hereinafter defined) for the Offsite Storm Water Retention Area, subject to the provisions of Section 7.4 of this Agreement. For the purposes of calculating the Operations and Maintenance Assessments for the Offsite Storm Water Retention Area, the property described on **Exhibit G** shall be assessed at the 20% rate. Maintenance of the Storm Water Retention Area by the deveUnofficial Documentll mean the "same level of care" as the adjacent public park areas.

ARTICLE IV

ACQUISITION OF PROPERTIES BY MASTER DEVELOPER

4.1. **Acquisition of City Property.** The City shall continue to hold fee title to all of the City Property until such time as the City has approved the Preliminary PAD and Subdivision Plat. At such time as the Master Developer desires to acquire any portion of City Property, and so long as Master Developer is not then in breach under this Agreement the Master Developer shall deliver a written notice to the City, which notice shall indicate: (a) the legal description of the parcel of the City Property to be conveyed to the Master Developer; (b) the attributable purchase price as outlined in Section 4.1.4 below; and (c) the date by which the closing of the conveyance of such parcel is desired by Master Developer. The City and the Master Developer shall thereupon enter into an escrow with a third party escrow agent mutually acceptable to the City and Master Developer ("Escrow Agent"), who shall hold all documents, receive all monies and perform such other acts as are normal and customary for a commercial escrow agent in similar transactions. The acquisition of City Property by the Master Developer is subject to approval, by ordinance, by the City Council.

4.1.1. **Legal Description.** The legal description of the parcel of City Property to be conveyed to Master Developer shall be determined by the

Master Developer and the City in accordance with an ALTA survey (the "Survey") prepared by a registered land surveyor in the State of Arizona and mutually and reasonably acceptable to the City and Master Developer. The cost of the Survey of the parcel shall be paid by Master Developer.

4.1.2. Condition of Property. The City makes no warranty as to the condition of the City Property. All City Property conveyed from City to Master Developer is delivered in an "As Is" condition.

4.1.3. Form of Deed. Fee simple title to any parcel of the City Property conveyed by the City to the Master Developer, or to a Builder/User identified by the Master Developer at its sole discretion, shall be conveyed pursuant to special warranty deed executed by the City, subject to all liens and encumbrances of record.

4.1.4. Purchase Price. The purchase price of the City Property shall be the City's cost of acquiring the City Property, unless otherwise noted, herein described in **Exhibit H.**

4.1.5. Purchase of City Property. So long as Master Developer is not then in breach under this Agreement, the City agrees to credit the purchase of parcels of City Property as depicted on **Exhibit H** up to $2.1 million. Developer shall be required to the City the amount of $1,130,600 million for purchase of the City Property depicted on **Exhibit H**.

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4.1.6 Prorations. All real property taxes and assessments shall be prorated between the City and Master Developer as of the date of closing of the conveyance of any parcel of the City Property to Master Developer, based upon the latest available information.

4.1.7 Escrow Fees. The City and Master Developer shall each pay one-half (1/2) of all escrow fees in connection with the conveyance of any parcel of the City Property. Master Developer shall pay all of the customary escrow fees and recording fees. The City and the Master Developer shall bear their own costs, including attorneys' fees, in connection with the negotiation, due diligence, investigation and conduct of the transaction.

4.2. Boardwalk West Development Option. The Master Developer shall have an eighteen (18) month exclusive negotiation period for an option to purchase additional property on the west side of Rural Road south of the Red Mountain Highway and north of the Tempe Town Lake ("the Boardwalk West Property") as illustrated in **Exhibit I** attached hereto, subject to the following conditions.

4.2.1. Option Conditions. Unless otherwise extended by the City, the City shall have the right to automatically terminate the negotiation

period for the option to purchase referred to in Section 4.2 if a minimum of two (2) Development Parcel Agreements, as provided in Section 5.5 of this Agreement, are not executed that include the City, the Master Developer and Builder/Users as parties on or before twelve (12) months from the effective date of this Agreement. If two (2) Development Parcel Agreements have been timely entered into pursuant to this section, then this option shall automatically expire eighteen (18) months from the date of this Agreement.

4.2.2. **Option Property Terms.** The specific terms of the acquisition of the Boardwalk West Property shall be subject to negotiation and addressed in a separate Development and Disposition Agreement between City and Master Developer. If an acceptable Development and Disposition Agreement cannot be reached during the eighteen (18) month exclusive negotiation period, as may be extended by the City, this option shall automatically expire.

ARTICLE V

MASTER DEVELOPER'S DEVELOPMENT SCHEDULE, PROCESS AND COMPLETION

5.1. **Schedule of Performance**. The City and the Master Developer intend that the planning and development of the PUnofficial Document 'nall be achieved pursuant to the Schedule of Performance attached hereto as **Exhibit F**.

5.2 **Approvals**. The City hereby agrees that, in connection with all requests for approval relating to the development within the Project Property and the construction of any Improvements that no extraordinary plan or review requirements will be imposed on the Master Developer.

5.3. **Appointment of Representative**. In order to help expedite decisions by the City relating to the Property, the City agrees to designate a representative ("City Representative") of the City to act as a liaison between the City and the Master Developer and between the various departments of the City and the Master Developer. The City Representative shall be available at all reasonable times to serve as such liaison, it being the intention of this Section 5.3 to provide the Master Developer with one individual as the City's principal representative with respect to the Project. The Master Developer shall also designate a representative ("Developer Representative") who shall serve as a liaison between the Project and the City. The initial City Representative shall be Chris Anaradian and the initial Developer Representative shall be Roberta Barrett. Representatives may be changed at any time by the parties giving notice as provided in Section 9.3.

5.4. **Delegation of Individual Responsibilities**. The parties acknowledge that the Master Developer may, at its sole discretion, choose to delegate or assign individual elements of its responsibilities and obligations under this Agreement to particular

Builder/Users, subject to a subordinate Development Parcel Agreement. Nothing in this Section shall be construed to allow the Master Developer to make a full and complete assignment of all of its responsibilities and obligations under this Agreement to any entity without the prior written consent of the City, which consent shall not be unreasonably withheld. The City may impose such additional requirements on any new master developer as are reasonable.

5.5. Subordinate Development Parcel Agreements. The Master Developer acknowledges that the Property is within the 65 DNL flight corridor and therefore noise level reduction measures may be required. The City and the Master Developer acknowledge that the development of the Property will be accomplished by Master Developer through a series of sales, leases, joint ventures and/or other agreements and arrangements with other experienced developers. The Builder/User shall be a developer who intends to develop a specific parcel(s) within the Property as identified within the Subdivision Plat, that develops such parcel(s) subject to the requirements of this Agreement, consistent with the Conceptual Master Site Plan and subject to separate agreement among the City, Master Developer and the Builder/User. In connection therewith, it is anticipated and contemplated by the parties that such Builder/Users will negotiate and enter into separate and subordinate development parcel agreements ("Development Parcel Agreements") with the City and the Master Developer that may include, but are not required to include, land uses, time periods for building permit review, parcel specific construction and sales tax rebates, development fee waivers, and other similar matters pursuant to § 9-500.05. In addition, the City may require the Builder/User to adherUnofficial Documentistruction schedule agreed to by the City. The parties hereby agree that any and all Development Parcel Agreements entered into with any such Builder/User are subject to City Council approval and shall be subordinate in all respects to the terms and conditions of this Agreement, including the Schedule of Performance. In the event of any conflict or discrepancy between the provisions of any such Development Parcel Agreements and the terms and conditions of this Agreement, this Agreement shall govern and control. The parties acknowledge that in negotiating any Development Parcel Agreements, the City shall consider, but shall not be required to use, the specific incentives listed in Sections 5.5.1 and 5.5.2 immediately below.

5.5.1 Fee Waiver. The parties acknowledge that the future development of any individual parcel within the Property may be economically feasible only by the commitment of the City to waive fees for all planning and building plan check fees, excavating and grading fees, engineering fees, and building permit fees, including, without limitation, mechanical, electrical and plumbing permit fees for the Builder/User. Sewer and Water Development Fees are exempt from this Fee Waiver. The exact amount and scope of the potential fee waiver is contingent upon a demonstrated need identified in any Development Parcel Agreements as determined on a parcel by parcel basis, and shall be limited to projects for which the City issues a building permit within twenty four (24) months of the effective date of this Agreement. Any such waivers are subject to City Council approval.

5.5.2 Sales Tax Rebate for Public Infrastructure Improvements. The parties acknowledge that the future development of any individual parcel within the Property may be economically feasible only by the commitment of the City to provide the Builder/User with the benefit of a sales tax rebate of the City's share of construction sales taxes ("Construction Sales Taxes") and excise sales taxes ("Excise Sales Taxes") generated by the parcel specific development, and only as necessary to cover the cost of public infrastructure improvements which shall be publicly bid. This rebate may, subject to Council consent, include up to 70% of Construction Sales Taxes, but in no event shall it be greater than 70% of Excise Sales Taxes collected in any fiscal year (July 1st through June 30th) commencing after issuance of a certificate of occupancy for a total consecutive period of time not to exceed ten (10) years. The exact amount and duration of the rebate is contingent upon a demonstrated need identified in any Development Parcel Agreements as determined on a parcel by parcel basis and shall be limited to projects for which the City issues a building permit within twenty-four (24) months of the effective date of this Agreement.

5.6. Certificate of Completion. Promptly after final completion of the construction of any Improvements on a parcel within the Property in accordance with the Final PAD approved by the City with respect to such parcel, the City shall furnish to the Master Developer or Builder/User thereof a Certificate of Completion certifying that the construction of the Improvements has been completed. Upon issuance of the Certificate of Completion, the Master Developer or Builder/User, as the case may be, may record the Certificate of Completion in the Office of the Maricopa County, Arizona Recorder. In the event that the City refuses or fails to provide the Certificate of Completion, the City shall, within five (5) days after written request by the Master Developer or Builder/User, as the case may be, issue a written statement indicating in adequate detail why the Certificate of Completion was not issued by the City and what measures or acts the City requires before the City will issue the Certificate of Completion.

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ARTICLE VI

CITY INFRASTRUCTURE OBLIGATIONS

6.1. Creation of Improvement District. The parties agree to create an improvement district (the "Improvement District") on the Property to finance the design and construction of those improvements contemplated by this Article in accordance with Arizona law and pursuant to and in accordance with the terms and conditions of a Development and Waiver Agreement in a form to be agreed to by the parties (the "ID Agreement"). As more particularly set forth in the ID Agreement, repayment of all bonds issued by the Improvement District for the purpose of paying the costs and expenses of construction of the District Improvements described therein shall be paid by assessments established by the Improvement District and imposed against parcels within the Improvement District. This

Agreement is specifically conditioned upon the creation of the Improvement District. In the event the Improvement District is not created within eighteen (18) months from the date of this Agreement, unless otherwise extended by the parties, this Agreement shall automatically terminate.

6.2. **Miller Road Extension**. The Master Developer shall design and the City shall construct, to the extent allowed by law, an extension of Miller Road from Curry Road northeast of the Property across the Property to Rural Road on the western perimeter of the Property, including a signalized intersection at Rural Road, enhanced entry median, landscaping, sidewalks, bike lanes, sewer, water (domestic and fire loops), storm water collection and lighting improvements in conjunction therewith (collectively, "Miller Road Extension"), herein identified in **Exhibit J**. The Master Developer shall complete the design of the Miller Road Extension within six (6) months of the effective date of this Agreement. The City agrees that the Master Developer shall have the right to review and approve, which approval shall not be unreasonably withheld, the alignment and design of Miller Road Extension. The Master Developer shall submit to the City a statement of its reasonable costs incurred in the design of the Miller Road Extension within forty-five (45) days of its completion of the design of the Miller Road Extension. Pursuant to the ID Agreement, the City shall reimburse Master Developer for said costs within thirty (30) days of the submittal of the Master Developer's statement of costs. Upon completion of the design of Miller Road, the City shall acquire, to the extent allowed by the law, title to all property required for the construction of the Miller Road extension. The City shall take title to all such property within twelve (12) months of the complete design of the Miller Road Extension. The City shall further complete the construction of the Miller Road Extension, to the extent allowed by law, within twelve (12) months from the acquisition of all property required for the construction of the roadway. The parties acknowledge that the extension of Miller Road is integral to the economic viability, the planned density, and the success of the development of the Property. The Master Developer shall have the right to request a name change to the roadway as it traverses the Property, subject to the review and approval of the City, which approval, if allowed by law, shall not be unreasonably withheld. The parties agree that the design and construction of the Miller Road Extension shall be financed by an Improvement District in accordance with and pursuant to the provisions of Section 6.1 above.

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6.3. **Rural Road Widening**. The parties acknowledge that Project ingress and egress from Rural Road may require the widening of Rural Road adjacent to the Property, including the construction of landscaping, sidewalks, bike lanes and lighting improvements in conjunction therewith (collectively, "Rural Road Widening"), herein identified in **Exhibit K**. The parties further acknowledge that the Rural Road widening is integral to the economic viability, the planned density, and the success of the development of the Property. The Master Developer shall complete the design of the Rural Road Widening within six (6) months of the effective date of this Agreement. The City agrees that the Master Developer shall have the right to review and approve, which approval shall not be unreasonably withheld, the alignment and design of the Rural Road Widening. The Master Developer shall submit to the City a statement of its reasonable costs incurred in the design of the Rural Road Widening within forty-five (45) days of its completion of the design of the

Rural Road Widening. Pursuant to the ID Agreement, the City shall reimburse the Master Developer for said costs within thirty (30) days of the submittal of the Master Developer's statement of costs. Upon completion of the design of the Rural Road Widening, the City shall acquire, to the extent allowed by law, title to all property required for construction of the Rural Road Widening. The City shall take title to all such property within twelve (12) months of the completion of the design of the Rural Road Widening. The City shall further complete the construction of the Rural Road Widening, to the extent allowed by law, within twelve (12) months from the acquisition of all property required for the construction of the roadway. The parties agree that the design and construction of the Rural Road Widening, if any, shall be financed by an Improvement District in accordance with and pursuant to the provisions of Section 6.1 above.

ARTICLE VII

PROPERTY TAX ABATEMENT AND ASSESSMENTS

7.1. **Tax Abatement**. The City and Master Developer hereby acknowledge and agree that because of the increased costs of the development of off-site and on-site infrastructure Improvements resulting from physical constraints associated with the development of the Property, the future development of any individual Parcel is economically feasible only by the commitment of the City to provide the Builder/User with the benefit of all statutorily-authorized property tax abatements, including, without limitation, all such abatements currently avUnofficial Document ırsuant to the provisions of A.R.S. §§ 42-6201 through 42-6209. However, Master Developer shall be responsible for a $50,000 annual in-lieu payment to Tempe during the abatement period, until such time as the combined property tax payments for the Property exceed $50,000 annually. In connection therewith, the City hereby agrees to accept, subject to the demonstrated need of such incentives on a parcel by parcel basis and further subject to the terms and provisions contained in Sections 7.1.1 and 7.1.2 of this Agreement, the reconveyances of land and conveyances of Improvements and to lease-back all such land and Improvements to the person or entity making such request upon the terms and conditions set forth in a lease substantially in the form attached hereto as **Exhibit L,** subject to negotiations and Council approval and subject to the following additional conditions.

7.1.1 **Insurance Provisions for Lease.** Any lease entered with the City for the purpose of providing statutorily-authorized property tax abatements shall provide that during the term of the lease, the tenant shall, at tenant's expense, carry and maintain, for the mutual benefit of the City and tenant, general public liability insurance against claims for bodily injury, death or property damage occurring in, upon or about the premises, with limits of not less than $5,000,000 combined single limit per occurrence for bodily injury and property damage, including coverages for contractual liability (including defense expense coverage for additional insureds), personal injury, broad form property damage, products and completed operations. All of tenant's policies of liability insurance shall name the City and all leasehold

mortgagees as additional insureds and shall contain no special limitations on the coverage, scope or protection afforded to the City, its officials, employees or volunteers. The tenant's policy of liability insurance shall be primary as respect to the City and any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City. Certificates with respect to all policies of insurance required to be carried by the tenant shall be delivered to the City in form and with insurers acceptable to the City which shall clearly evidence all insurance required and provide that such insurance shall not be cancelled, allowed to expire or be materially reduced in coverage.

7.1.2 Indemnification Provision for Lease. Any lease entered with the City for the purpose of providing statutorily-authorized property tax abatements shall provide that during the term of the lease, the tenant shall indemnify, protect, defend and hold harmless the City, its Council members, officers, employees, and agents from any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and costs of defense arising, directly or indirectly, in whole or in part, out of the exercise of the lease.

7.2. Reallocation of Rio Salado Enhanced Services Capital Assessments. The City and Master Developer acknowledge that it may be necessary to reallocate the Rio Salado Enhanced Services Capital Assessments ("Capital Assessments") to balance the cost of development of each parcel with the available offsetting incentives. Effective with the approval and recordation of the Subdivision Plat, the Capital Assessments shall be spread evenly over the Property on a per square foot basis. As some types of land uses will have the greater use of incentives, the Master Developer may, subject to City approval, which shall not be unreasonably withheld, re-allocate the Capital Assessments among the individual parcels. This allocation shall be contained on the recorded Subdivision Plat. The current amount, type and allocation of the Capital Assessment is herein identified in **Exhibit M**.

7.3. Reallocation of Rio Salado Enhanced Operations and Maintenance Assessments. The City and Master Developer acknowledge that it may be necessary to reallocate the Rio Salado Enhanced Services Operations and Maintenance Assessment ("Operations and Maintenance Assessment") to balance the cost of development of each parcel with the available offsetting incentives. Effective with the approval and recordation of the Subdivision Plat, the Operations and Maintenance Assessments, shall be spread evenly over the Property on a per square foot basis. As some types of land uses will have the greater use of incentives, the Master Developer may, subject to City approval, which shall not be unreasonably withheld, re-allocate the Operations and Maintenance Assessments among the individual parcels. This allocation shall be contained on the recorded Subdivision Plat. The current amount, type and allocation of the Operations and Maintenance Assessment is herein identified in **Exhibit M**.

7.4. Payment of Operations and Maintenance Assessments on Offsite Storm Water Retention Area. The Master Developer hereby acknowledges and agrees to the payment of all the Operations and Maintenance Assessments for the Offsite Storm Water Retention Area, prorated from the effective date of this Agreement, subject to the provisions of Section 3.4 of this Agreement.

ARTICLE VIII

DEFAULT; REMEDIES; TERMINATION

8.1. Events Constituting Default. A party hereunder shall be deemed to be in default under this Agreement if such party breaches any obligation required to be performed by the respective party hereunder within any time period required for such performance, including, without limitation, any failure to comply with the Schedule of Performance attached hereto as **Exhibit F** and such breach or default continues for a period of ninety (90) days after written notice thereof from the nondefaulting party. Absent written agreement to the contrary, if such default is not cured within the additional ninety (90) day period, this Agreement may be automatically terminated, at the sole and absolute discretion of the non-breaching party and the non-breaching party is entitled, in addition to termination, to all other legal and equitable remedies, including the right to specific performance, and the right to seek and obtain actual damages.

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8.2. Dispute Resolution. In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree that there shall be a forty-five (45) day moratorium on litigation during which time the parties agree to attempt to settle the dispute by nonbinding mediation before commencement of litigation. The mediation shall be held under the commercial mediation rules of the American Arbitration Association. The mediator selected shall have at least five (5) years' experience in mediating or arbitrating disputes relating to commercial property development. The cost of any such mediation shall be divided equally between the City and the Master Developer, or in such other fashion as the mediator may order. The results of the mediation shall be nonbinding on the parties, and any party shall be free to initiate litigation upon the conclusion of mediation.

8.3. Master Developer's Remedies. In the event that the City is in default under this Agreement and fails to cure any such default within the time period required therefore as set forth in Section 8.1 above, then, in that event, in addition to all other legal and equitable remedies which the Master Developer may have, the Master Developer may terminate this Agreement by written notice delivered to the City; provided, however, that any such termination shall not affect, and this Agreement shall continue in full force and effect with respect to, those parcels within the Property that have been acquired by Master Developer and upon which Improvements have been constructed or substantial construction has commenced.

8.4. **No Personal Liability**. No member, official or employee of the City shall be personally liable to the Master Developer, or any successor or assignee, (a) in the event of any default or breach by the City, (b) for any amount which may become due to the Master Developer or its successor or assign, or (c) pursuant to any obligation of the City under the terms of this Agreement.

8.5. **City's Remedies.** In the event that the Master Developer is in breach under this Agreement by failing to develop the Property in accordance with the Schedule of Performance attached hereto as **Exhibit F** and the Master Developer thereafter fails to cure any such breach within the time period described in Section 8.1 above, then the City shall have the right to automatically terminate this Agreement immediately upon written notice to the Master Developer; provided, however, that any such termination shall not affect, and this Agreement shall continue in full force and effect with respect to, those parcels within the Project that have been acquired by the Master Developer and upon which Improvements have been constructed or that are in the process of being constructed.

8.5.1 **Developer's Default; City's Remedies; Right to Repurchase**. In the event that Master Developer is in Default under this Agreement by failing to develop the Property in accordance with the Schedule of Performance attached hereto as **Exhibit F**, then the City shall have the right to terminate this Agreement immediately upon written notice to Developer and, if it so elects, within one hundred eighty (180) days after notice of termination, to repurchase any City Property previously purchased by the Developer so long as the Developer has not yet obtained a financial loan secured by such Property for the purpose of the construction of Improvements. If the City elects to repurchase any such Property as a result of a Default by Developer, the City shall repurchase such Property at the same price (up to $1,130,600) paid by the Developer to the City pursuant to Section 4.1.5 above adjusted to reflect any increases in the Consumer Price - All cities, All items (1982-84=100), between the date of Developer's acquisition of the City Property from the City and the date the City notified the Developer that it intends to repurchase any portion of the City Property from Developer pursuant to the terms of this Section 8.5.1.

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8.6. **Liability and Indemnification**. The Master Developer shall unconditionally indemnify, protect, defend and hold harmless the City, its Council members, officers, employees, and agents from any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and costs of defense arising, directly or indirectly, in whole or in part, out of the exercise of this Agreement by Master Developer or Builder/User.

8.7. **Effect of Event of Termination.** Upon the termination of this Agreement as the result of the default or breach of the Master Developer, the Master

Developer shall have no further rights to develop the Property pursuant to this Agreement; provided, however, that any such termination shall not affect, and this Agreement shall continue in full force and effect with respect to, those parcels within the Project that have been acquired by the Master Developer and/or upon which Improvements have been constructed or that are in the process of being constructed.

ARTICLE IX

GENERAL PROVISIONS

9.1. **Cooperation**. The City and the Master Developer hereby acknowledge and agree that they shall cooperate in good faith with each other and use best efforts to pursue the economic development of the Property as contemplated by this Agreement.

9.2. **Conflict of Interest**. Pursuant to Arizona law, rules and regulations, no member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. This Agreement is subject to A.R.S. § 38-511.

9.3. **Notice**. All Notices which shall or may be given pursuant to this Agreement shall be in writing and transmitted by registered or certified mail, return receipt requested, addressed as follows:

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To Master Developer:	Playa Del Norte L.L.C. 7600 E. Doubletree Ranch Road Suite 150 Scottsdale, Arizona 85258
With a copy to:	Gary A. Drummond, Esq. Sallquist & Drummond, P.C. 2525 E. Arizona Biltmore Cr. Suite 117 Phoenix, Arizona 85016
To the City:	City Manager City of Tempe 31 East Fifth Street Tempe, Arizona 85281
With a copy to:	City Attorney City of Tempe 21 East Sixth Street, Suite 201 Tempe, Arizona 85281

Either party may designate any other address for this purpose by written notice to the other party in the manner described herein.

9.4. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. This Agreement has been made and entered into in Maricopa County, Arizona.

9.5. Successors and Assigns. This Agreement shall run with the land and all of the covenants and conditions set forth herein shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

9.6. Waiver. No waiver by either party of any breach of any of the terms, covenants or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same for any other term, covenant or condition herein contained.

9.7. Attorneys' Fees. In the event of any actual litigation between the parties in connection with this Agreement, the party prevailing in such action shall be entitled to recover from the other party all of its costs and fees, including reasonable attorneys' fees, which shall be determined by the court and not by the jury.

9.8. Severability. In the [illegible] any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permitted by law, provided that the overall intent of the parties is not materially vitiated by such severability.

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9.9. Schedules and Exhibits. All schedules and exhibits attached hereto are incorporated herein by this reference as though fully set forth herein.

9.10. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.

9.11. Recordation of Agreement. This Agreement shall be recorded in the Official Records of Maricopa County, Arizona, within ten (10) days after its approval and execution by the City. However, this Agreement shall not become effective until thirty (30) days after approval by City Council.

9.12. City Manager's Power to Consent. The City authorizes and empowers the City Manager to consent to any and all requests of the Master Developer

requiring the consent of the City hereunder without further action of the City Council, except for any actions requiring City Council approval as a matter of law, including, without limitation, any amendment or modification of this Agreement.

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and behalf by its Mayor and its seal to be hereunto duly affixed and attested to by the City Clerk, and the Developer has executed and sealed the same on or as of the day and year first above written.

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

"CITY"

THE CITY OF TEMPE, an Arizona municipal corporation

By

Neil Giuliano, Mayor

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

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On this 27th day of August, 2003, before me, the undersigned officer, personally appeared Neil Giuliano, who acknowledged himself to be Mayor of THE CITY OF TEMPE, an Arizona municipal corporation, whom I know personally/whose identity was proven to me on the oath of _____, a credible witness by me duly sworn/whose identity was proven to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument/whose identity I verified on the basis of his _____, and he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

NOTARY SEAL:

OFFICIAL SEAL
KAREN M. FILLMORE
Notary Public - State of Arizona
MARICOPA COUNTY
My Comm. Expires Aug. 20, 2004

"MASTER DEVELOPER"
PLAYA DEL NORTE, L.L.C., an Arizona limited liability company.

Name_____
Title MANAGER

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this 3RD day of SEPTEMBER, 2003, before me, the undersigned officer, personally appeared BRADLEY D. WILDE who acknowledged him/herself to be the MANAGER of PLAYA DEL NORTE, L.L.C., an Arizona ~~corporation~~ LIMITED LIABILITY COMPANY, whom I know personally/~~whose identity was proven to me on the oath of _____, a credible witness by me duly sworn/whose identity was~~ proven to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument/whose identity I verified on the basis of his/her _____, and s/he, in such capacity, being authorized so to do, ~~executed the foregoing instrument for the purposes therein contained on behalf of that entity~~.

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IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Rita Spears
Notary Public

NOTARY SEAL:

RITA SPEARS
Notary Public - Arizona
Maricopa County
My Commission Expires
July 9, 2004

LIST OF EXHIBITS

Exhibit A	Property
Exhibit B	City Property
Exhibit C	Conceptual Master Site Plan
Exhibit D	Master Developer's Property
Exhibit E	Schedule of Acquisition
Exhibit F	Schedule of Performance
Exhibit G	Offsite Storm Water Retention Area/Plan
Exhibit H	City Property Purchase Price
Exhibit I	The Boardwalk West Property
Exhibit J	Miller Road Extension Concept Plan
Exhibit K	Rural Road Widening
Exhibit L	Land Lease
Exhibit M	Rio Salado Enhanced Services Assessments

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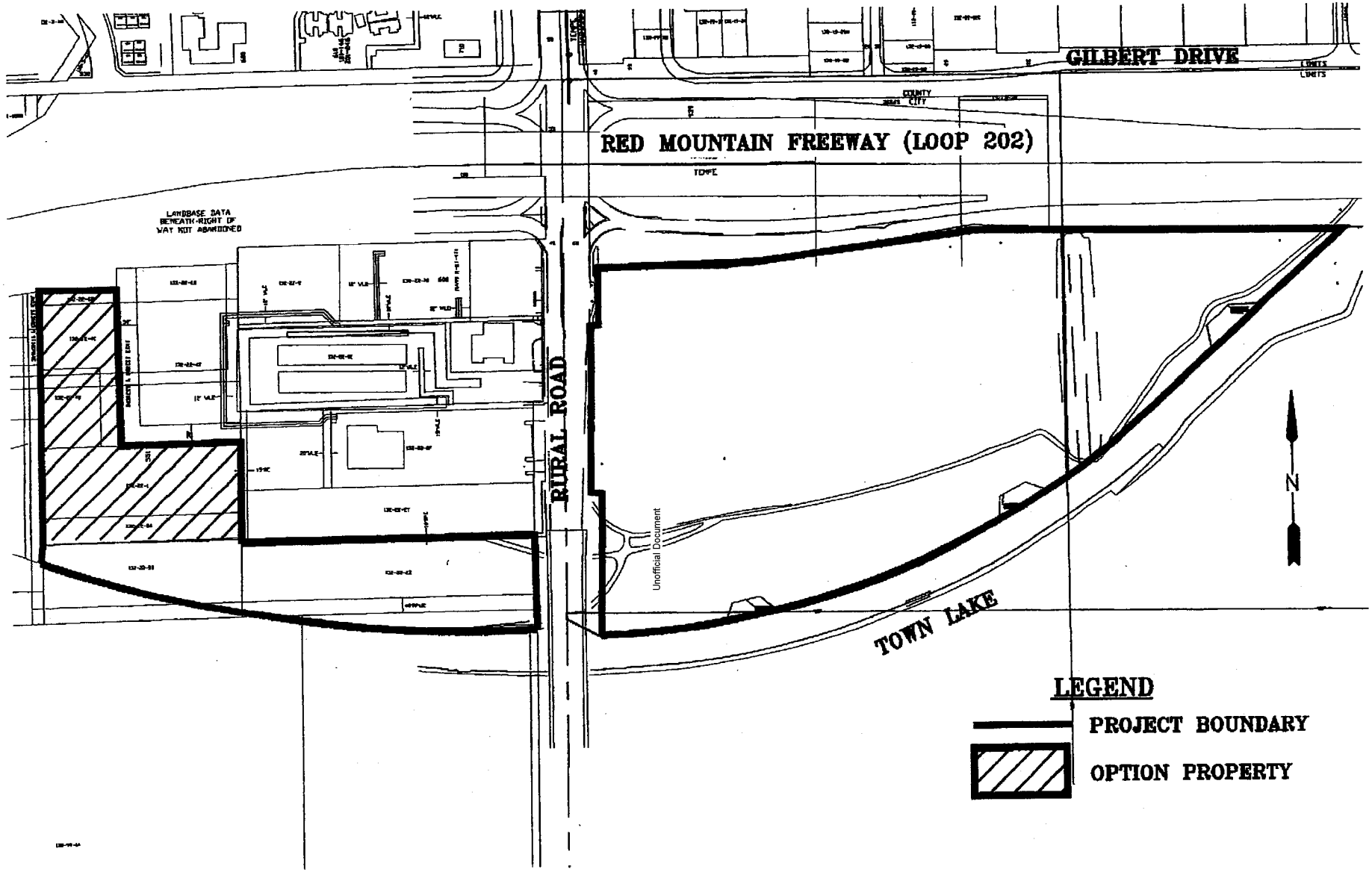

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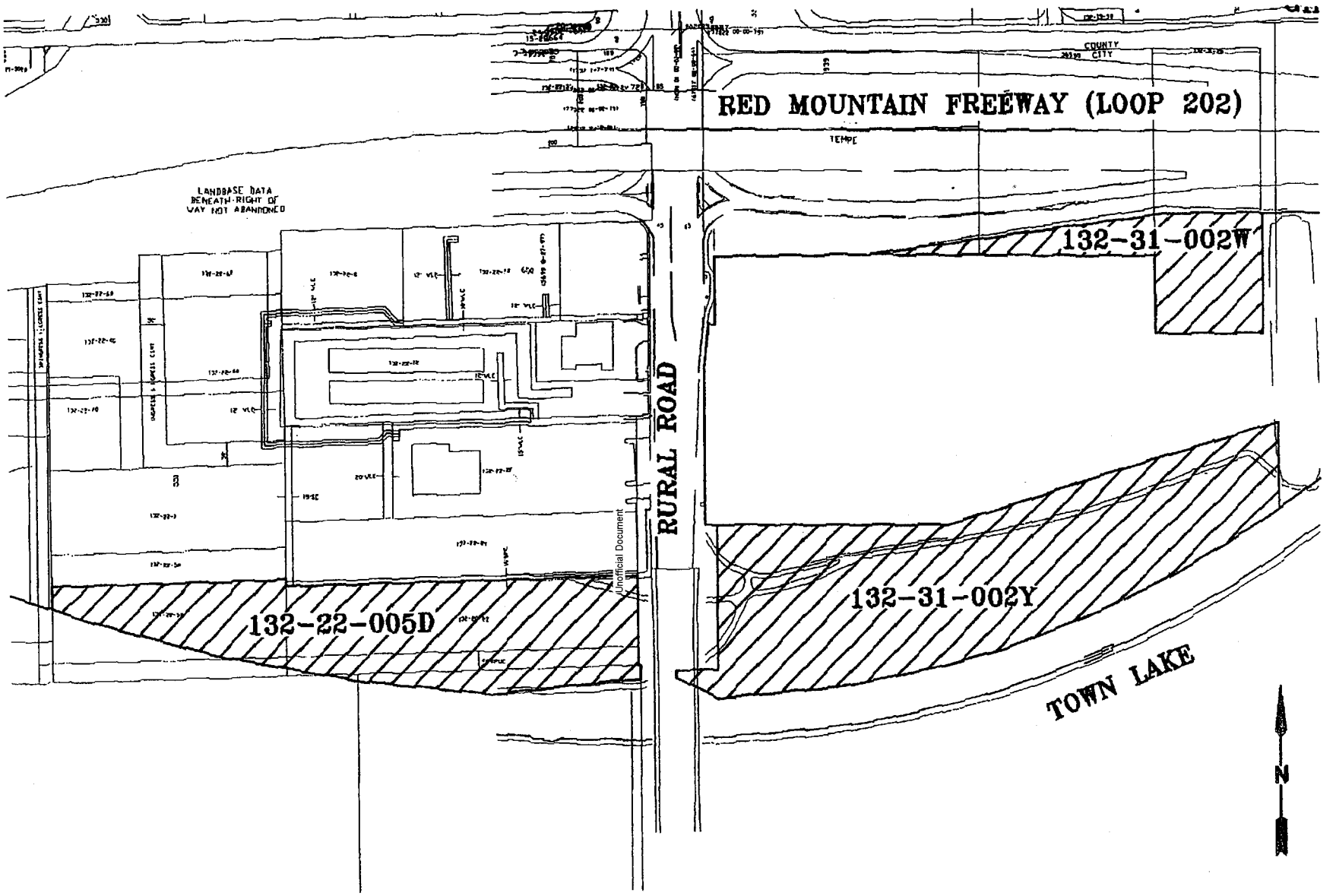
Playa del Norte

EXHIBIT-A

20031331774



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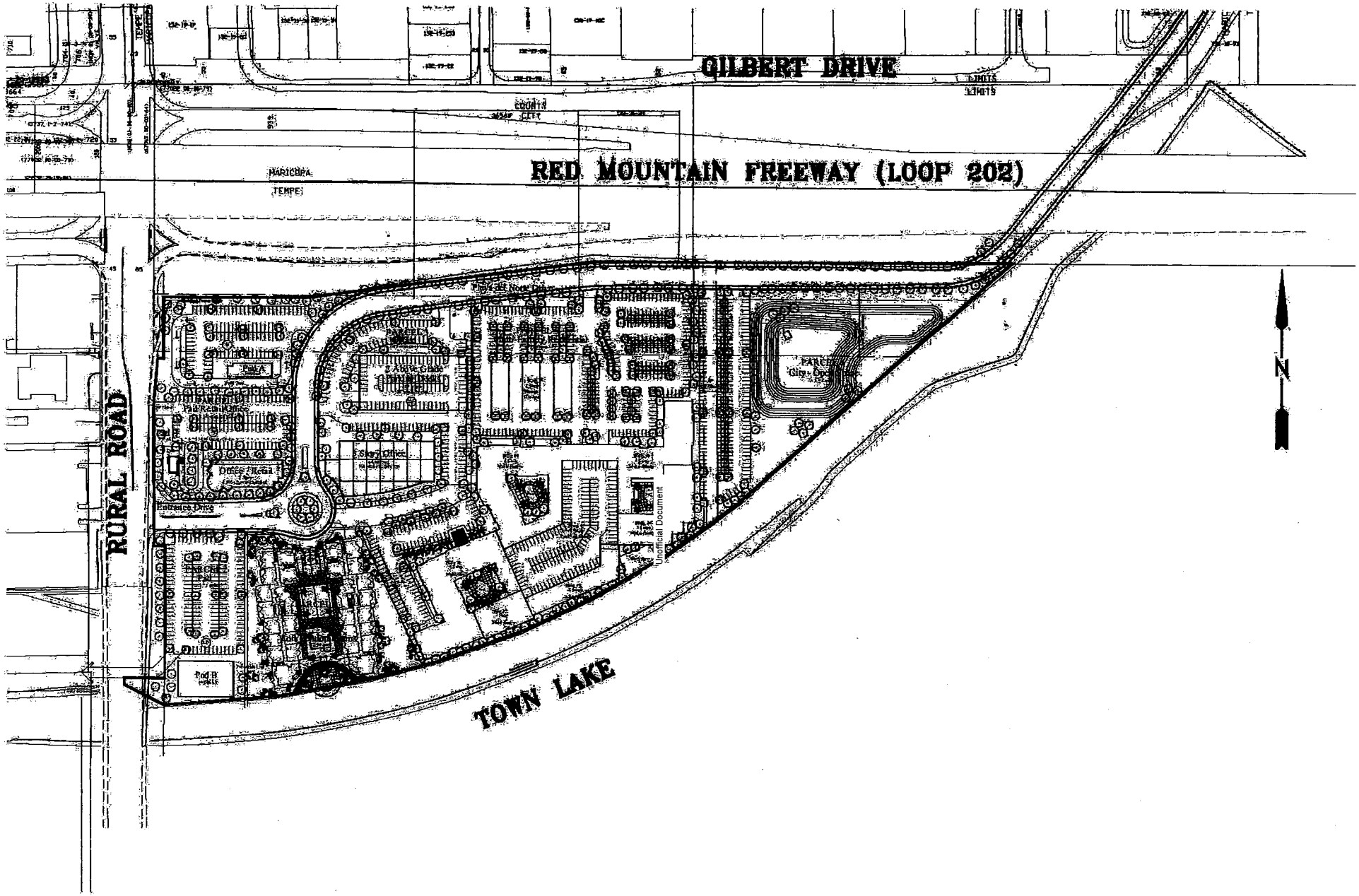
Playa del Norte

EXHIBIT-B
CITY PROPERTY



Playa del Norte

EXHIBIT-C
CONCEPTUAL MASTER PLAN

20031331774

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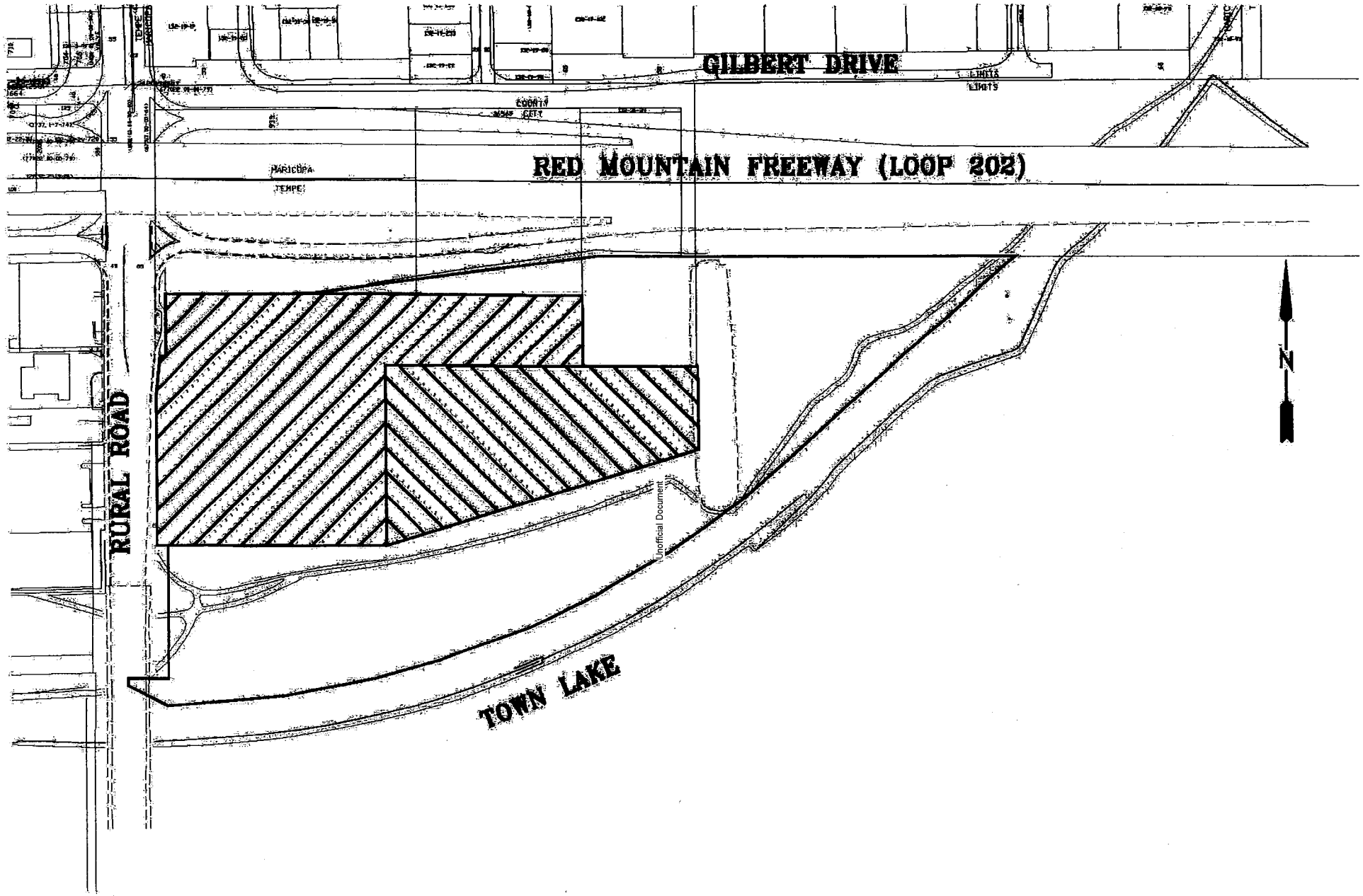

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EXHIBIT-D
MASTER DEVELOPER PROPERTY

EXHIBIT E
SCHEDULE OF ACQUISTION

Master Developer shall complete Acquisition of City Property within 12 months from approval of the preliminary PAD.

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EXHIBIT F
SCHEDULE OF PERFORMANCE

Deadline to Perform Task From Execution of Agreement	Task/Obligation
3 Months	Master Developer shall file the Preliminary PAD for the Property
6 Months	Master Developer shall complete the design of the Miller Road extension
9 Months	Master Developer shall submit for approval of Final Plans of Development for at least twenty-five (25) percent of the net Property area.
15 Months	Subordinate Development Parcel Agreements fully executed for at least twenty-five (25) percent of the net Property area
30 Months	Subordinate Development Parcel Agreements fully executed for at least fifty (50) percent of the net Property area
45 Months	Subordinate Development Parcel Agreements fully executed for at least seventy-five (75) percent of the net Property area.
60 Months	Subordinate Development Parcel Agreements fully executed for one-hundred (100) percent of the net Property area

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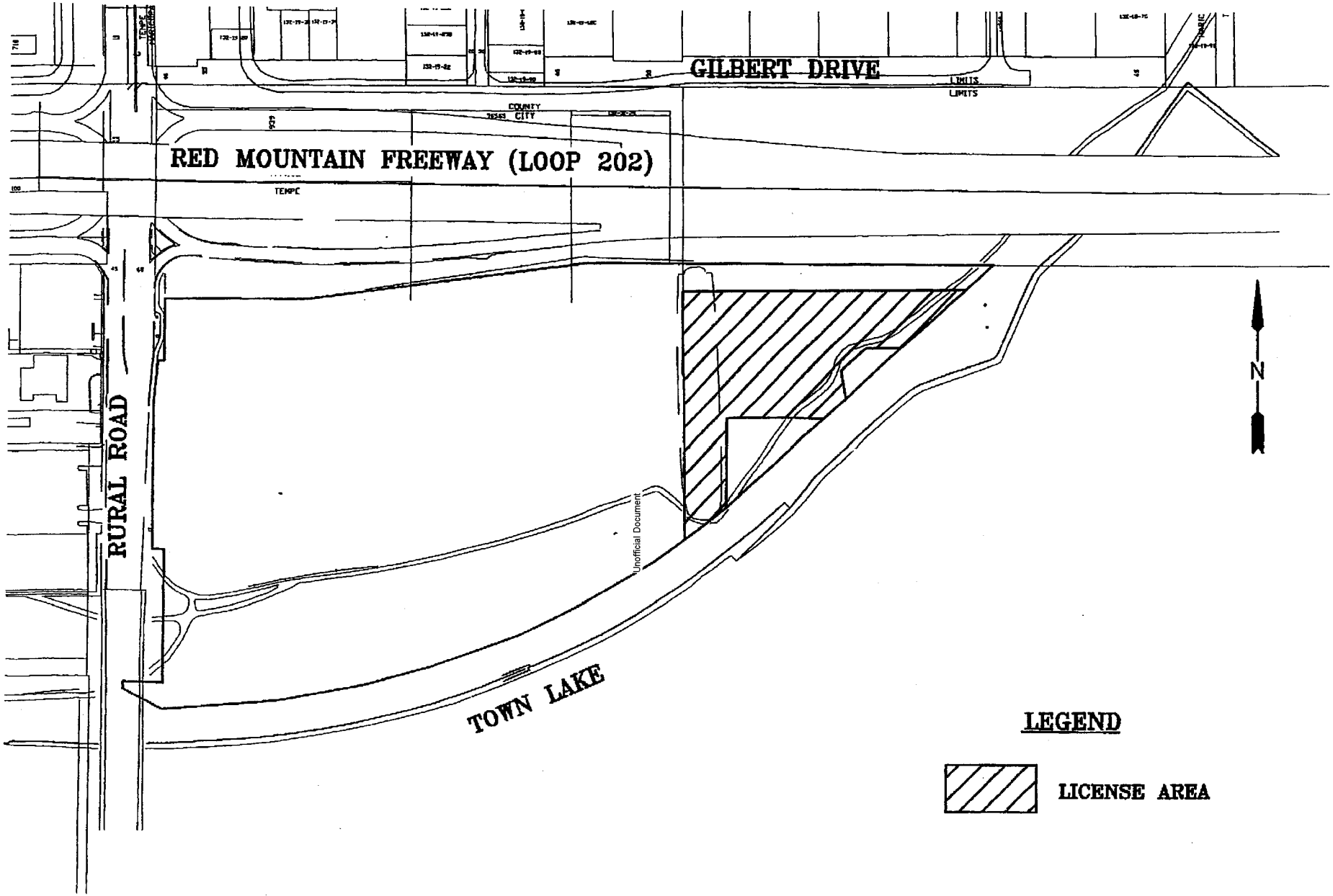

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Playa del Norte

EXHIBIT-G
OFF-SITE STORM WATER RETENTION AREA

EXHIBIT H
City Property Purchase Price

PARCEL	SIZE	CITY COST
132-31-002W	82,785 S.F.	$140,600
132-31-002Y	357,776 S.F.	$1,918,367
132-22-005D	218,510 S.F.	$1,171,633
TOTALS	659,071 S.F.	$3,230,600

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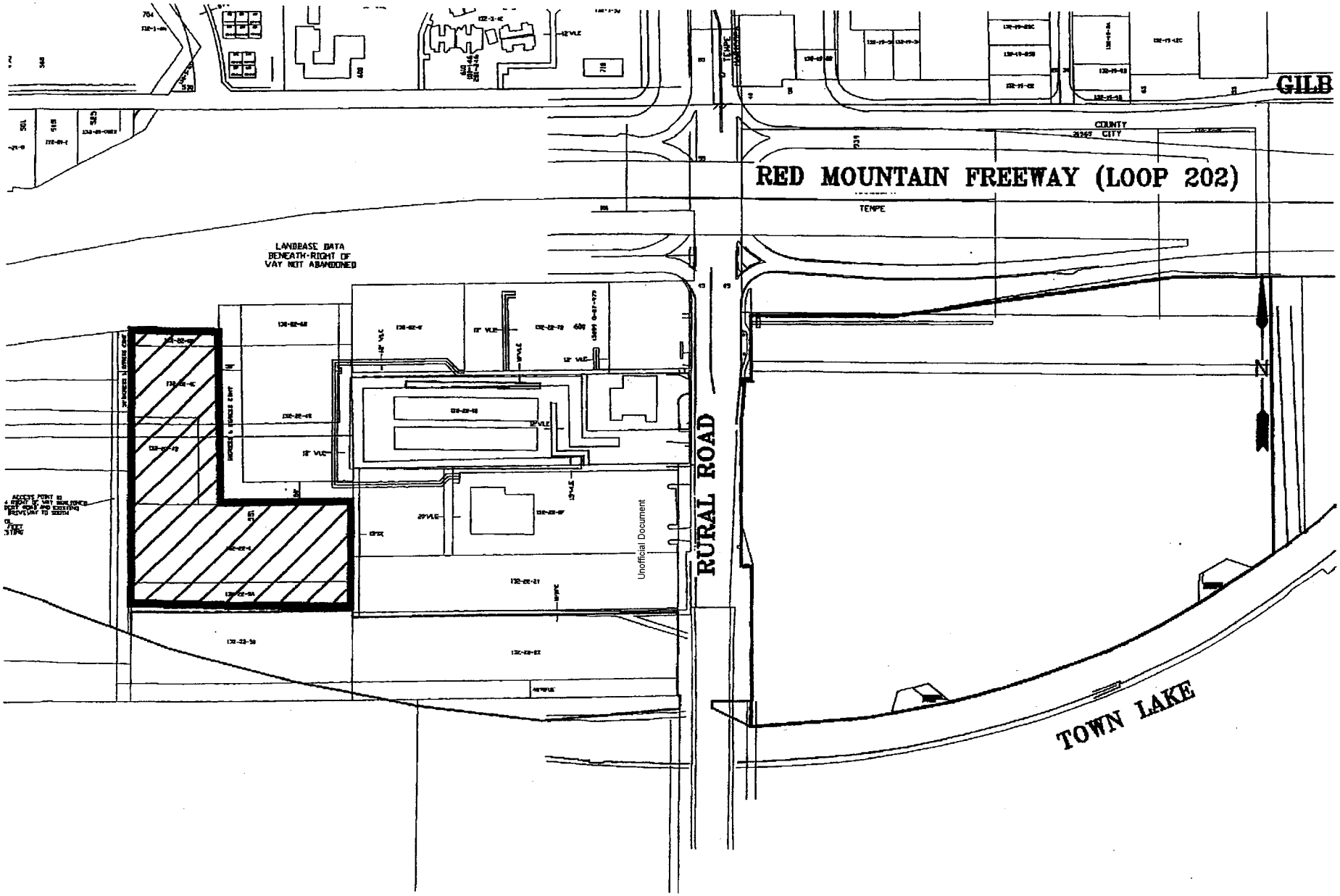
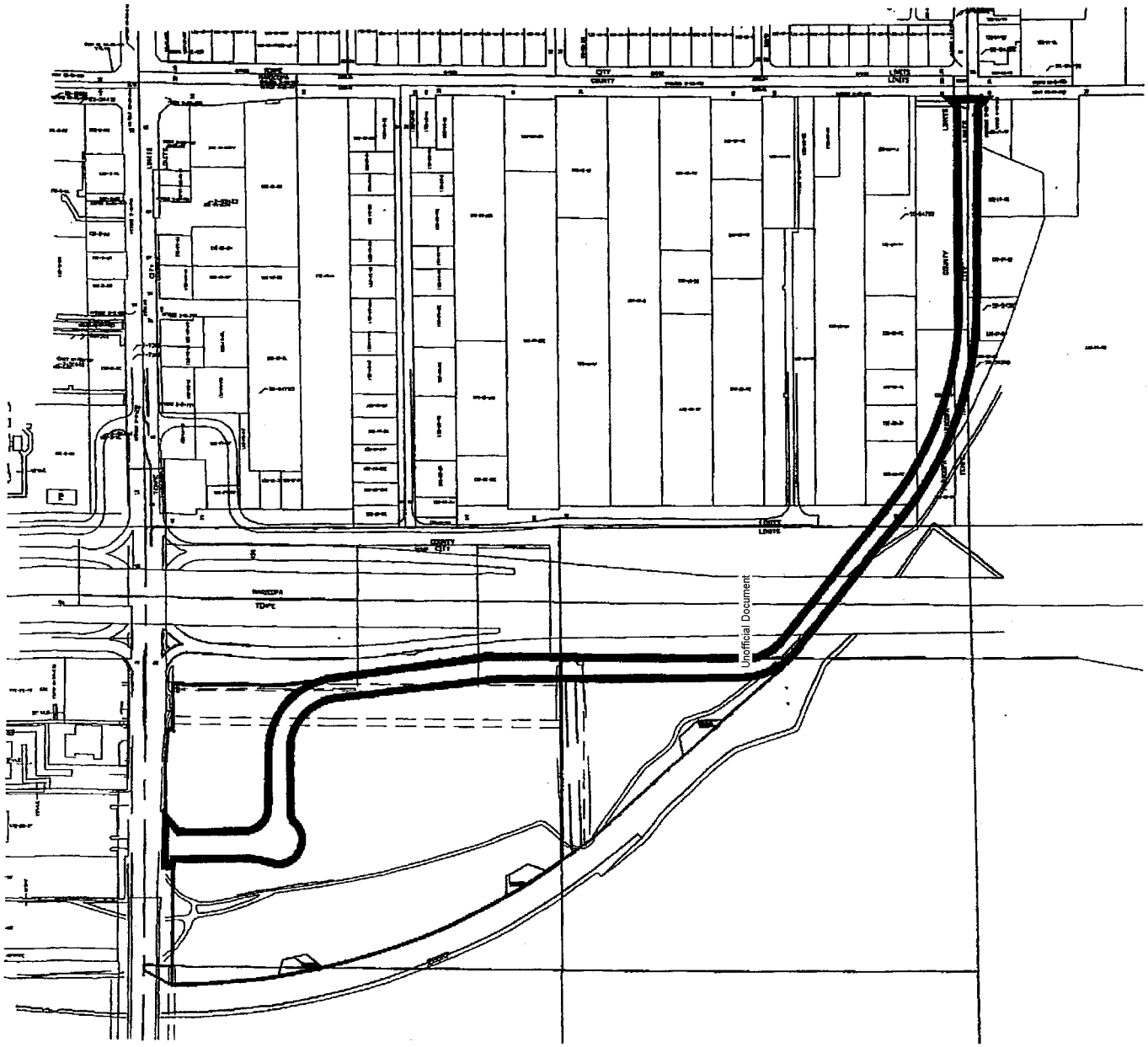


Playa del Norte

EXHIBIT-I
OPTION PROPERTY

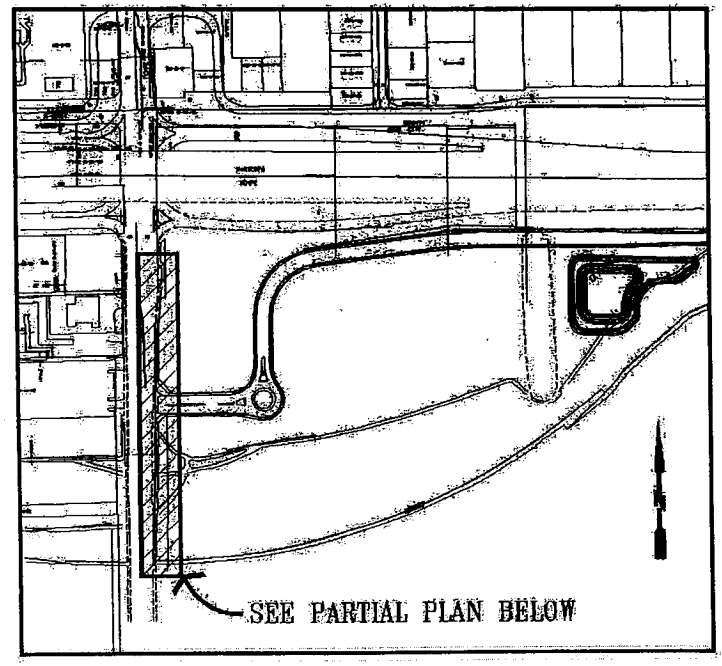
20031331774

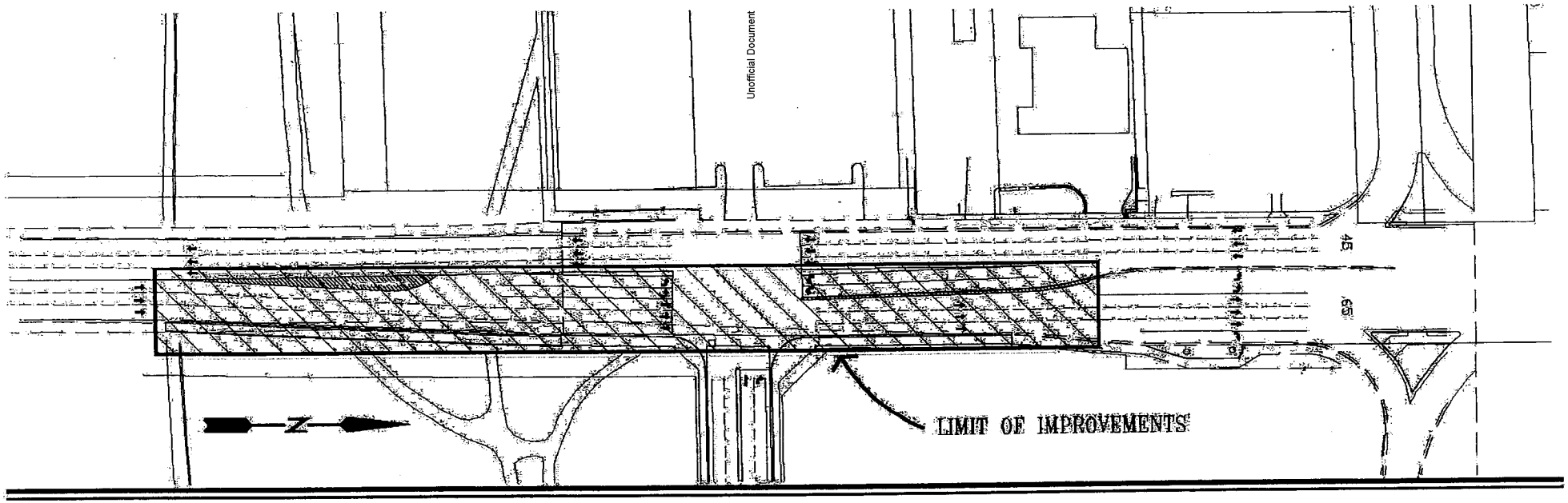


Playa del Norte

EXHIBIT–J
PROPOSED MILLER ROAD ALIGNMENT

20031331774





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Playa del Norte

EXHIBIT–K
RURAL ROAD WIDENING

EXHIBIT L - Land Lease

Terms subject to negotiation and approval of Council

IMPROVEMENTS LEASE

THIS IMPROVEMENTS LEASE ("Lease") is made and entered into as of the _____day of _____, 2003 by and between the **CITY OF TEMPE**, a municipal corporation ("Landlord"), and _____, ("Tenant").

RECITALS

A. Landlord has title of record to the building which comprises the improvements constructed on land described in **Exhibit A** hereto (the "Land"), together with all rights and privileges appurtenant thereto and all future additions thereto or alterations thereof (collectively, the "Premises").

B. The Premises are located in a redevelopment area established pursuant to Title 36, Chapter 12, Article 3 of Arizona Revised Statutes (A.R.S. §§36-1471 et seq.).

C. The Premises will be subject to the Government Property Lease Excise Tax as provided for under ARS §42-1902 (the "Tax"). By Resolution No.____, dated _____, Landlord abated the Tax for the period beginning upon the issuance of the certificate of occupancy for the Premises and ending eight years thereafter, all as provided in A.R.S. §42-1962(A). But for the abatement, Tenant would not have caused the Premises to be constructed.

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AGREEMENT

For and in consideration of the rental and of the covenants and agreements hereinafter set forth to be kept and performed by Tenant, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises for the term, at the rental and subject to and upon all of the terms, covenants and agreements hereinafter set forth.

1. Quiet Enjoyment.

Landlord covenants and agrees with Tenant that conditioned upon Tenant's paying the Total Rent herein provided and performing and fulfilling all the covenants, agreements, conditions and provisions herein to be kept, observed or performed by Tenant, Tenant may at all times during the term hereof peaceably, quietly and exclusively have, hold and enjoy the Premises.

EXHIBIT L - Land Lease

2. **Term.**

The term of this Lease shall be for eight years, commencing on the date of issuance of a final Certificate of Occupancy for the Premises (the "Commencement Date") and ending at midnight on the eighth anniversary of the Commencement Date, subject to earlier termination at Tenant's option, as provided herein.

3. **Rental.**

Tenant covenants to pay to Landlord as rental for the Premises the sum of $_____ per year on the Commencement Date and every anniversary thereof. The consideration for this Lease includes, without limitation: Tenant's payment of the entire cost of construction of the improvements constituting the Premises, Tenant's performance of all of the covenants and obligations under this Lease and under the Ground Lease, and Tenant's contribution toward fulfillment of Landlord's policy and desire to promote development within a redevelopment area, to encourage the creation of jobs within the City of Tempe, and to enhance tax revenues resulting from the operation of businesses on the Premises, including transaction privilege taxes and the government property lease excise tax. Tenant, at its option and without prejudice to its right to terminate this Lease as provided herein, may prepay the rental for the entire lease term, but upon any early termination of this Lease, Landlord shall not be obligated to refund any portion of the prepaid rental.

4. **Leasehold Mortgage of Premises.**

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(a) Subject to the applicable provisions of the Ground Lease, Tenant is hereby given the absolute right without the Landlord's consent to create a security interest in Tenant's leasehold interest under this Lease (and in any subleases and the rents, income and profits therefrom) by mortgage, deed of trust or collateral assignment or otherwise. Any such security interest shall be referred to herein as a "Leasehold Mortgage," and the holder of a Leasehold Mortgage shall be referred to herein as a "Leasehold Mortgagee."

(b) No liability for the performance of Tenant's covenants and agreements hereunder shall attach to or be imposed upon any Leasehold Mortgagee, unless such Leasehold Mortgagee forecloses its interest and becomes the Tenant hereunder, following which the liability shall attach only during the term of ownership of the leasehold estate by said Leasehold Mortgagee.

5. **Taxes; Ground Lease Obligations.**

(a) Payment. Tenant shall pay and discharge all general and special real estate and/or personal property taxes and assessments levied or assessed against or with respect to the Premises during the term hereof and all charges, assessments or other fees payable with respect to or arising out of the Ground Lease and all recorded deed restrictions affecting or relating to the Premises. Any sales, use, excise or transaction privilege tax consequence incurred by Landlord because of this Lease or in relation to the Premises or improvements included therein may be passed on to the Tenant either directly if applicable or as "additional rent."

(b) Protest. Tenant may, at its own cost and expense protest and contest, by legal proceedings or otherwise, the validity or amount of any such tax or assessment herein agreed to be paid by Tenant and shall first pay said tax or assessment under protest if legally required as a condition to such protest and contest, and the Tenant shall not in the event of and during the bona fide prosecution of such protest or proceedings be considered as in default with respect to the payment of such taxes or assessments in accordance with the terms of this Lease.

(c) Procedure. Landlord agrees that any proceedings contesting the amount or validity of taxes or assessments levied against the Premises or against the rentals payable hereunder may be filed or instituted in the name of Landlord or Tenant, as the case may require or permit, and the Landlord does hereby appoint the Tenant as its agent and attorney-in-fact, during the term of this Lease, to execute and deliver in the name of the Landlord any document, instrument or pleading as may be reasonably necessary or required in order to carry on any contest, protest or proceeding contemplated in this Section. Tenant shall hold the Landlord harmless from any liability, damage or expense incurred or suffered in connection with such proceedings.

(d) Allocation. All payments contemplated by this Section 5 shall be prorated for partial years at the Commencement Date and at the end of the Lease term.

6. Use.

Subject to the applicable provisions of the Ground Lease and A.R.S. §42-1901(2), the Premises may be used and occupied by Tenant for any lawful purpose.

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7. Landlord Non-Responsibility.

Landlord shall have no responsibility, obligation or liability under this Lease whatsoever with respect to any of the following:

(a) utilities, including gas, heat, water, light, power, telephone, sewage, and any other utilities supplied to the Premises;

(b) disruption in the supply of services or utilities to the Premises;

(c) maintenance, repair or restoration of the Premises;

(d) any other cost, expense, duty, obligation, service or function related to the Premises.

8. Entry by Landlord.

Landlord and Landlord's agents shall have the right at reasonable times and upon reasonable notice to enter upon the Premises for inspection, except that Landlord shall have no right to enter portions of any building on the Premises without consent of the occupant or as provided by law.

EXHIBIT L - Land Lease

9. **Alterations.**

Subject to the applicable provisions of the Ground Lease, Tenant shall have the right to construct additional improvements and to make subsequent alterations, additions or other changes to any improvements or fixtures existing from time to time, and the Premises shall constitute all such improvements as they exist from time to time. In connection with any action which Tenant may take with respect to Tenant's rights pursuant hereto, Landlord shall not be responsible for and Tenant shall pay all costs, expenses and liabilities arising out of or in any way connected with such improvements, alterations, additions or other changes made by Tenant, including without limitation materialmens' and mechanic's liens. Tenant covenants and agrees that Landlord shall not be called upon or be obligated to make any improvements, alterations or repairs whatsoever in or about the Premises, and Landlord shall not be liable or accountable for any damages to the Premises or any property located thereon. Tenant shall have the right at any time to demolish or substantially demolish improvements located upon the Premises. In making improvements and alterations, Tenant shall not be deemed Landlord's agent and shall hold Landlord harmless from any expense or damage Landlord may incur or suffer. Title to all improvements shall at all times be vested in Landlord.

10. **Easements, Dedications and Other Matters.**

At the request of Tenant, when not in default hereunder, Landlord shall dedicate or initiate a request for dedication to public use of the improvements owned by Landlord within any roads, alleys or easements and convey any portion so dedicated to the appropriate governmental authority, execute (or participate in a request for initiation by the appropriate commission or department of) petitions seeking annexation or change in zoning for all or a portion of the Premises, consent to the making and recording, or either, of any map, plat, condominium documents, or declaration of covenants, conditions and restrictions of or relating to the Premises or any part thereof, join in granting any easements on the Premises, and execute and deliver (in recordable form where appropriate) all other instruments and perform all other acts reasonably necessary or appropriate to the development, construction, razing, redevelopment or reconstruction of the Premises.

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11. **Insurance.**

During the term of this Lease, the Tenant shall, at Tenant's expense, maintain general public liability insurance against claims for personal injury, death or property damage occurring in, upon or about the Premises. The limitation of liability of such insurance during the first five years of the term shall not be less than $5,000,000.00 combined single limit. The minimum policy limits shall be increased as of the fifth anniversary of the Commencement Date to an amount equal to $5,000,000.00 multiplied by a fraction, the numerator of which is the Consumer Price Index--All Items--All Consumers--U.S. Cities Average--(1982 - 1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics (the "CPI") for the month three months prior to such fifth anniversary and the denominator of which is the CPI for _____, 200__. In the event the CPI is discontinued or substantially modified, Tenant shall substitute such alternative price index, published by the United States Government or other

generally accepted source for such information, reconciled to the Commencement Date. All of Tenant's policies of liability insurance shall name Landlord and all Leasehold Mortgagees as additional insureds, and, at the written request of Landlord, certificates with respect to all policies of insurance or copies thereof required to be carried by Tenant under this Section 11 shall be delivered to Landlord. Each policy shall contain an endorsement prohibiting cancellation or non-renewal without at least thirty (30) days prior notice to Landlord (ten (10) days for nonpayment). Tenant may self-insure the coverages required by this Section with the prior approval of Landlord, which will not be unreasonably withheld, and may maintain such reasonable deductibles and retention amounts as Tenant may determine.

12. Liability; Indemnity.

Tenant covenants and agrees that Landlord is to be free from liability and claim for damages by reason of any injury to any person or persons, including Tenant, or property of any kind whatsoever and to whomsoever while in, upon or in any way connected with the Premises during the term of this Lease or any extension hereof, or any occupancy hereunder, Tenant hereby covenanting and agreeing to indemnify and save harmless Landlord from all liability, loss, costs and obligations on account of or arising out of any such injuries or losses, however occurring, unless caused by the sole and gross negligence or willful misconduct of Landlord, its agents, employees, or invitees. Landlord agrees that Tenant shall have the right to contest the validity of any and all such claims and defend, settle and compromise any and all such claims of any kind or character and by whomsoever claimed, in the name of Landlord, as Tenant may deem necessary, provided that the expenses thereof shall be paid by Tenant. The provisions of this Section shall survive the expiration or other termination of this Lease.

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13. Fire and Other Casualty.

In the event that all or any improvements or fixtures within the Premises shall be totally or partially destroyed or damaged by fire or other insurable casualty, this Lease shall continue in full force and effect, and, subject to the applicable provisions of the Ground Lease, Tenant, at Tenant's sole cost and expense, may, but shall not be obligated to, rebuild or repair the same. Landlord and Tenant agree that the provisions of A.R.S. § 33-343 shall not apply to this Lease. In the event that, subject to the applicable provisions of the Ground Lease; Tenant elects to repair or rebuild the improvements, any such repair or rebuilding shall be performed at the sole cost and expense of Tenant. If there are insurance proceeds resulting from such damage or destruction, Tenant shall be entitled to such proceeds, whether or not Tenant rebuilds or repairs the improvements or fixtures, subject to the applicable provisions of the Ground Lease.

14. Condemnation.

(a) Entire or Partial Condemnation. If the whole or any part of the Premises shall be taken or condemned by any competent authority for any public use or purposes during the term of the Lease, this Lease shall terminate with respect to the part of the Premises so taken, and, subject to the applicable provisions of the Ground Lease, Tenant reserves unto itself the right to claim and prosecute its claim in all appropriate courts and agencies for any award or

damages based upon loss, damage or injury to its leasehold interest (as well as relocation and moving costs). In consideration of Tenant's payment for all of the cost of construction of the improvements constituting the Premises, Landlord hereby assigns to Tenant all claims, awards and entitlements relating to the Premises arising from the exercise of the power of condemnation or eminent domain.

(b) Continuation of Lease. In the event of a taking of less than all of the Premises, this Lease shall continue in effect with respect to the portion of the Premises not so taken.

(c) Temporary Taking. If the temporary use of the whole or any part of the Premises or the appurtenances thereto shall be taken, the term of this Lease shall not be reduced or affected in any way. The entire award of such taking (whether paid by way of damages, rent, or otherwise) shall be payable to Tenant, subject to the applicable provisions of the Ground Lease and of any Leasehold Mortgage.

(d) Notice of Condemnation. In the event any action is filed to condemn the Premises or Tenant's leasehold estate or any part thereof by any public or quasi-public authority under the power of eminent domain or in the event that an action is filed to acquire the temporary use of the Premises or Tenant's leasehold estate or any part thereto, or in the event that action is threatened or any public or quasi-public authority communicates to Landlord or Tenant its desire to acquire the temporary use thereof, by a voluntary conveyance or transfer in lieu of condemnation, either Landlord or Tenant shall give prompt notice thereof to the other and to any Leasehold Mortgagee. Landlord, Tenant and each Leasehold Mortgagee shall each have the right, at its own cost and expense, to represent its respective interest in each proceeding, negotiation or settlement with respect to any taking or threatened taking. No agreement, settlement, conveyance or transfer to or with the condemning authority affecting Tenant's leasehold interest shall be made without the consent of Tenant and each Leasehold Mortgagee.

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15. Termination Option.

(a) Grant of Option. In the event changes in applicable law nullify, remove, or vitiate the economic benefit to Tenant provided by this Lease or if any person or entity succeeds to Tenant's interest hereunder by foreclosure sale, trustee's sale, or deed in lieu of foreclosure (collectively, "Foreclosure"), Tenant or Tenant's successor by Foreclosure shall have the option, exercisable by written notice to Landlord, to terminate this Lease effective sixty days after the date of the notice. Upon default under the Leasehold Mortgage, Tenant or Leasehold Mortgagee shall have the option, exercisable by written notice to Landlord, to terminate this Lease effective sixty days after the date of the notice. Simultaneously with, and effective as of such termination, title to the Premises (including all improvements constituting a part thereof) shall automatically vest in Tenant and Landlord shall comply with the obligations under Article 20.

(b) Leasehold Mortgagees and Ground Tenant. If there are any Leasehold Mortgagees as defined in Section 4(a), Tenant may not terminate, modify or waive its Option

under this section without the approval of the Leasehold Mortgagees, and Landlord will not recognize or consent thereto without such approval.

16. Assignment; Subletting.

(a) Transfer by Tenant; Termination of Ground Lease. Tenant shall not assign this Lease and Tenant's leasehold interest or sublease all of any part of the Premises to any person or persons, without the prior consent of Landlord, which shall not be unreasonably withheld or delayed; provided, however, that notwithstanding the foregoing, Tenant shall have the right to assign or transfer this Lease or Tenant's leasehold interest, or to sublease all or any part of the Premises, to any entity without Landlord's consent so long as _____, its subsidiary or affiliate, or its successor by merger or consolidation shall be the principal occupant of the Premises. In the event Tenant seeks Landlord's consent to an assignment of this Lease or sublease of all or any part of the Premises and such consent is denied by Landlord, Tenant shall have the right to terminate this Lease in the manner provided in Article 15(a) above. Additionally, upon any termination of the Ground Lease, without necessity for any further action or consent by Tenant or Landlord hereunder, the then holder of the lessor's interest under the Ground Lease (the "Ground Lessor") thereupon shall be deemed to be the "Tenant" hereunder and the assignee of all of previous Tenant's interests and rights hereunder (but shall be responsible only for those obligations and liabilities hereunder that arise after the date of termination of the Ground Lease), unless Tenant buys the fee interest in the Land, thereby terminating the Ground Lease, in which case this Lease shall continue in effect as between Landlord and Tenant. Upon any termination of the Ground Lease where, pursuant to the foregoing, the Ground Lessor becomes the "Tenant" hereunder, and any provision contained in this Lease to the contrary notwithstanding, the Ground Lessor may, at any time thereafter terminate this Lease by giving written notice to that effect to Landlord (in which event the provisions of Article 20 below shall apply).

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(b) Liability. Each assignee hereby assumes all of the obligations of the Tenant under the Lease (but not for liabilities or obligations arising prior to such assignment becoming effective). Each assignment shall automatically release the assignor from any personal liability in respect of any obligations or liabilities arising under the Lease from and after the date of assignment, and Landlord shall not seek recourse for any such liability against any assignor or its personal assets. Landlord agrees that performance by a subtenant or assignee of Tenant's obligations under this Lease shall satisfy Tenant's obligations hereunder and Landlord shall accept performance by any such subtenant.

17. Default Remedies; Protection of Leasehold Mortgagee and Subtenants.

(a) Default. The failure by Tenant to observe and perform any material provision of this Lease to be observed or performed by Tenant or a failure to pay the Tax when due, where such failure continues for one hundred eighty days after written notice thereof by Landlord to Tenant shall constitute a default and breach of this Lease by Tenant; provided, however, that if the nature of such default is such that the same cannot reasonably be cured within such one hundred eighty day period, Tenant shall not be deemed to be in default if Tenant

shall within such period commence such cure and thereafter diligently prosecute the same to completion.

(b) Remedies. In the event of any such material default or breach by Tenant, Landlord may at any time thereafter, by written notice to Tenant terminate this Lease, in which case Tenant shall immediately surrender possession of the Premises to Landlord. This section constitutes the provision required under A.R.S. §42-1931(2) that failure by the prime lessee to pay the Tax after notice and an opportunity to cure is an event of default that could result in divesting the prime lessee of any interest or right or occupancy of the government property improvement.

(c) Leasehold Mortgagee Default Protections. If any Leasehold Mortgagee shall give written notice to Landlord of its Leasehold Mortgage, together with the name and address of the Leasehold Mortgagee, then, notwithstanding anything to the contrary in this Lease, until the time, if any, that the Leasehold Mortgage shall be satisfied and released of record or the Leasehold Mortgagee shall give to Landlord written notice that said Leasehold Mortgage has been satisfied:

(i) No act or agreement between or on the part of Landlord or Tenant to cancel, terminate, surrender, amend, or modify this Lease or Tenant's right to possession shall be binding upon or effective as against the Leasehold Mortgagee without its prior written consent.

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(ii) If Landlord shall give any notice, demand, election or other communication required hereunder (hereafter collectively "Notices") to Tenant hereunder, Landlord shall concurrently give a copy of each such Notice to the Leasehold Mortgagee at the address designated by the Leasehold Mortgagee. Such copies of Notices shall be sent by registered or certified mail, return receipt requested, and shall be deemed given seventy-two hours after the time such copy is deposited in a United States Post Office with postage charges prepaid, addressed to the Leasehold Mortgagee. No Notice given by Landlord to Tenant shall be binding upon or affect Tenant or the Leasehold Mortgagee unless a copy of the Notice shall be given to the Leasehold Mortgagee pursuant to this subsection. In the case of an assignment of the Leasehold Mortgage or change in address of the Leasehold Mortgagee, the assignee or Leasehold Mortgagee, by written notice to Landlord, may change the address to which such copies of Notices are to be sent.

(iii) The Leasehold Mortgagee shall have the right for a period of sixty days after the expiration of any grace period afforded Tenant to perform any term, covenant, or condition and to remedy any default by Tenant hereunder or such longer period as the Leasehold Mortgagee may reasonably require to affect a cure, and Landlord shall accept such performance with the same force and effect as if furnished by Tenant, and the Leasehold Mortgagee shall thereby and hereby be subrogated to the rights of Landlord. The Leasehold Mortgagee shall have the right to enter upon the Premises to give such performance.

EXHIBIT L - Land Lease

(iv) In case of a default by Tenant in the performance or observance of any nonmonetary term, covenant or condition to be performed by it hereunder, if such default cannot practicably by cured by the Leasehold Mortgagee without taking possession of the Premises, in such Leasehold Mortgagee's reasonable opinion, or if such default is not susceptible of being cured by the Leasehold Mortgagee, then Landlord shall not serve a notice of lease termination pursuant to Section 17((b)), if and so long as:

(1) the Leasehold Mortgagee shall proceed diligently to obtain possession of the Premises as mortgagee (including possession by a receiver), and, upon obtaining such possession, shall proceed diligently to cure such defaults as are reasonably susceptible of cure (subject to any order by a court of competent jurisdiction staying or otherwise precluding such Leasehold Mortgagee from obtaining such possession); or

(2) the Leasehold Mortgagee shall institute foreclosure proceedings and diligently prosecute the same to completion (unless in the meantime it shall acquire Tenant's estate hereunder, either in its own name or through a nominee, by assignment in lieu of foreclosure and subject to any order by a court of competent jurisdiction staying or otherwise precluding such Leasehold Mortgagee from obtaining such possession).

The Leasehold Mortgagee shall not be required to obtain possession or to continue in possession as mortgagee of the Premises pursuant to Clause (1) above, or to continue to prosecute foreclosure proceedings pursuant to Clause (2) above, if and when such default shall be cured. If a Leasehold Mortgagee, its nominee, or a purchaser at a foreclosure sale shall acquire title to Tenant's leasehold estate hereunder, a default that is not reasonably susceptible to cure by the person succeeding to the leasehold interest shall no longer be deemed a default hereunder.

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(v) If any Leasehold Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Tenant, the times specified in subparagraphs (iv) (1) and (2) above, for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition.

(vi) No option of Tenant hereunder may be exercised, and no consent of Tenant allowed or required hereunder shall be effective without the prior written consent of any Leasehold Mortgagee.

(d) Protection of Subtenant. Landlord covenants that notwithstanding any default under or termination of this Lease or of Tenant's possessory rights, Landlord: (i) so long as a subtenant within the Premises complies with the terms and conditions of its sublease, shall not disturb the peaceful possession of the subtenant under its sublease, and in the event of a default by a subtenant, Landlord may only disturb the possession or other rights of the subtenant

as provided in the tenant's sublease, (ii) shall recognize the continued existence of the sublease, (iii) shall accept the subtenant's attornment, as subtenant under the sublease, to Landlord, as landlord under the sublease, and (iv) shall be bound by the provisions of the sublease, including all options. Notwithstanding anything to the contrary in this Lease, no act or agreement between or on the part of Landlord or Tenant to cancel, terminate, surrender or modify this Lease or Tenant's right to possession shall be binding upon or effective as against any subtenant without its prior written consent.

18. New Lease.

(a) Right to Lease. Landlord agrees that, in the event of termination of this Lease for any reason (including but not limited to any default by Tenant), Landlord, if requested by any Leasehold Mortgagee, will enter into a new lease of the Premises with the most senior Leasehold Mortgagee requesting a new lease, which new lease shall commence as of the date of termination of this Lease and shall run for the remainder of the original term of this Lease, at the rent and upon the terms, covenants and conditions herein contained, provided:

(i) Such Leasehold Mortgagee shall make written request upon Landlord for the new lease within sixty days after the date such Leasehold Mortgagee receives written notice from Landlord that the Lease has been terminated;

(ii) Such Leasehold Mortgagee shall pay to Landlord at the time of the execution and delivery of the new lease any and all sums which would, at that time, be due and unpaid pursuant to this Lease but for its termination, and in addition thereto all reasonable expenses, including reasonable attorneys fees, which Landlord shall have incurred by reason of such termination;

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(iii) Such Leasehold Mortgagee shall perform and observe all covenants in this Lease to be performed and observed by Tenant, and shall further remedy any other conditions which Tenant under the Lease was obligated to perform under its terms, to the extent the same are reasonably susceptible of being cured by the Leasehold Mortgagee; and

(iv) The Tenant under the new lease shall have the same right of occupancy to the buildings and improvements on the Premises as Tenant had under the Lease immediately prior to its termination.

Notwithstanding anything to the contrary expressed or implied in this Lease, any new lease made pursuant to this Section 18 shall have the same priority as this Lease with respect to any mortgage, deed of trust, or other lien, charge, or encumbrance on the fee of the Premises, and any sublease under this Lease shall be a sublease under the new Lease and shall not be deemed to have been terminated by their termination of this Lease.

(b) No Obligation. Nothing herein contained shall require any Leasehold Mortgagee to enter into a new lease pursuant to this Section 18 or to cure any default of Tenant referred to above.

EXHIBIT L - Land Lease

(c) Possession. If any Leasehold Mortgagee shall demand a new lease as provided in this Section 18, Landlord agrees, at the request of, on behalf of and at the expense of the Leasehold Mortgagee, upon a guaranty from it reasonably satisfactory to Landlord, to institute and pursue diligently to conclusion the appropriate legal remedy or remedies to oust or remove the original Tenant from the Premises, but not any subtenants actually occupying the Premises or any part thereof.

(d) Grace Period. Unless and until Landlord has received notice from each Leasehold Mortgagee that the Leasehold Mortgagee elects not to demand a new lease as provided in this Section 18, or until the period therefor has expired, Landlord shall not cancel or agree to the termination or surrender of any existing subleases nor enter into any new leases or subleases with respect to the Premises without the prior written consent of each Leasehold Mortgagee.

(e) Effect of Transfer. Neither the foreclosure of any Leasehold Mortgage (whether by judicial proceedings or by virtue of any power of sale contained in the Leasehold Mortgage), nor any conveyance of the leasehold estate created by this Lease by Tenant to any Leasehold Mortgagee or its designee by an assignment or by a deed in lieu of foreclosure or other similar instrument shall require the consent of Landlord under, or constitute a default under, this Lease, and upon such foreclosure, sale or conveyance, Landlord shall recognize the purchaser or other transferee in connection therewith as the Tenant under this Lease.

19. No Merger.

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In no event shall the leasehold interest, estate or rights of Tenant hereunder, or of any Leasehold Mortgagee, merge with any interest, estate or rights of Landlord in or to the premises. Such leasehold interest, estate and rights of Tenant hereunder, and of any Leasehold Mortgagee, shall be deemed to be separate and distinct from Landlord's interest, estate and rights in or to the Premises, notwithstanding that any such interests, estates or rights shall at any time be held by or vested in the same person, corporation or other entity.

20. Surrender, Reconveyance.

(a) Reconveyance Upon Termination or Expiration. On the last day of the term of this Lease or upon any termination of this Lease, whether under Article 15 above or otherwise, title to the Premises (including all improvements constituting a part thereof) shall automatically vest in Tenant.

(b) Reconveyance Documents. Without limiting the foregoing, Landlord upon request shall execute and deliver: (i) a deed or bill of sale reconveying all of Landlord's right title and interest in the improvements to Tenant; (ii) a memorandum in recordable form reflecting the termination of this Lease; (iii) an assignment of Landlord's right, title and interest in and to all licenses, permits, guaranties and warranties relating to the ownership or operation of the Premises to which Landlord is a party and which are assignable by Landlord, and (iv) such other reasonable and customary documents as may be required by Tenant or its title insurer

EXHIBIT L - Land Lease

including, without limitation, FIRPTA and mechanic's lien affidavits, to confirm the termination of this Lease and the revesting of title to the Premises in Tenant.

(c) Title and Warranties. Notwithstanding anything to the contrary in this section, Landlord shall convey the Premises subject only to: (i) matters affecting title as of the date of this Lease, and (ii) matters created by or with the consent of Tenant. The Premises shall be conveyed "AS IS" without representation or warranty whatsoever. Upon any reconveyance, Landlord shall satisfy all liens and monetary encumbrances on the Premises created by Landlord.

(d) Expenses. All costs of title insurance, escrow fees, recording fees and other expenses of the reconveyance, except Landlord's own attorneys' fees and any commissions payable to any broker retained by Landlord, shall be paid by Tenant.

21. Trade Fixtures, Machinery and Equipment.

Landlord agrees that all trade fixtures, machinery, equipment, furniture or other personal property of whatever kind and nature kept or installed on the Premises by Tenant or Tenant's subtenants may be removed by Tenant or Tenant's subtenants, or their agents and employees, in their discretion, at any time and from time to time during the entire term or upon the expiration of this Lease. Tenant agrees that in the event of damage to the Premises due to such removal it will repair or restore the same. Upon request of Tenant or Tenant's assignees or any subtenant, Landlord shall execute and deliver any consent or waiver forms submitted by any vendors, Landlords, chattel mortgagees or holders or owners of any trade fixtures, machinery, equipment, furniture or other personal property of any kind and description kept or installed on the Premises by any subtenant setting forth the fact that Landlord waives, in favor of such vendor, Landlord, chattel mortgagee or any holder or owner, any lien, claim, interest or other right therein superior to that of such vendor, Landlord, chattel mortgagee, owner or holder. Landlord shall further acknowledge that property covered by such consent or waiver forms is personal property and is not to become a part of the realty no matter how affixed thereto and that such property may be removed from the Premises by the vendor, Landlord, chattel mortgagee, owner or holder at any time upon default by the Tenant or the subtenant in the terms of such chattel mortgage or other similar documents, free and clear of any claim or lien of Landlord.

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22. Estoppel Certificate.

(a) Landlord shall at any time and from time to time upon not less then ten (10) days' prior written notice from Tenant or any Leasehold Mortgagee execute, acknowledge and deliver to Tenant or the Leasehold Mortgagee a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the dates to which the rental and other charges are paid in advance, if any; (ii) acknowledging that there are not, to Landlord's knowledge, any uncured defaults on the part of Tenant hereunder, or specifying such defaults if they are claimed; and (iii) certifying such other matters relating to this Lease as Tenant or the Leasehold Mortgagee may reasonably request. Any such statement may

be relied upon by any prospective purchaser or encumbrancer of all or any portion of the leasehold estate and/or the improvements.

(b) Landlord's failure to deliver a statement within the time prescribed shall be conclusive upon Landlord (i) that this Lease is in full force and effect, without modification except as may be represented by Tenant; and (ii) that there are no uncured defaults in Tenant's performance.

23. General Provisions.

(a) Attorneys' Fees. In the event of any suit instituted by either party against the other in any way connected with this Lease or for the recovery of possession of the Premises, the parties respectively agree that the successful party to any such action shall recover from the other party a reasonable sum for its attorneys' fees and costs in connection with said suit, such attorneys' fees and costs to be fixed by the court.

(b) Transfer or Encumbrance of Landlord's Interest. Landlord may not transfer or convey its interest in this Lease or in the Premises during the term of this Lease without the prior written consent of Tenant, which consent may be given or withheld in Tenant's sole and absolute discretion. In the event of permitted sale or conveyance by Landlord of Landlord's interest in the Premises, other than a transfer for security purposes only, Landlord shall be relieved, from and after the date specified in such notice of transfer, of all obligations and liabilities accruing thereafter on the part of the Landlord, provided that any funds in the hands of Landlord at the time of transfer in which Tenant has an interest, shall be delivered to the successor of Landlord. This Lease shall not be affected by any such sale and Tenant agrees to attorn to the purchaser or assignee provided all of Landlord's obligations hereunder are assumed in writing by the transferee. Landlord shall not grant or create mortgages, deeds of trust or other encumbrances of any kind against the Premises or rights of Landlord hereunder, and, without limiting the generality of the foregoing, Landlord shall have no right or power to grant or create mortgages, deeds of trust or other encumbrances superior to this Lease without the consent of Tenant in its sole and absolute discretion. Any mortgage, deed of trust or other encumbrance granted or created by Landlord shall be subject to this Lease, all subleases and all their respective provisions including, without limitations, the options under this Lease and any subleases with respect to the purchase of the Premises.

Unofficial Document

(c) Captions; Attachments; Defined Terms.

(i) The captions of the sections of the Lease are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any section of this Lease.

(ii) Exhibits attached hereto, and addendums and schedules initialed by the parties, are deemed by attachment to constitute part of this Lease and are incorporated herein.

EXHIBIT L - Land Lease

(iii) The words "Landlord" and "Tenant", as used herein, shall include the plural as well as the singular. The obligations contained in this Lease to be performed by Tenant and Landlord shall be binding on Tenant's and Landlord's successors and assigns only during their respective periods of ownership.

(d) Entire Agreement. This Lease along with any addenda, exhibits and attachments hereto constitutes the entire agreement between Landlord and Tenant relative to the Premises and this Lease and the addenda, exhibits and attachments may be altered, amended or revoked only by an instrument in writing signed by the party to be bound thereby. Landlord and Tenant agree hereby that all prior or contemporaneous oral agreements between and among themselves and their agents or representatives relative to the leasing of the Premises are merged in or revoked by this Lease, except as set forth in any addenda hereto.

(e) Severability. If any term or provision of this Lease shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

(f) Binding Effect; Choice of Law. The parties hereto agree that all the provisions hereof are to be construed as both covenants and conditions as though the words importing such covenants and conditions were used in each separate paragraph hereof. All of the provisions hereof shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. This Lease shall be governed by the laws of the State of Arizona.

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(g) Memorandum of Improvements Lease. The parties shall, concurrently with the execution of this Lease, complete, execute, acknowledge and record (at Tenant's expense) a Memorandum of Improvements lease, a form of which is attached hereto as Exhibit B.

(h) Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered or if mailed by United States certified or registered mail, return receipt requested, postage prepaid, as follows:

If to Landlord:

City of Tempe
City Manager' s Office
31 E; 5th Street
Tempe, Arizona 85281

EXHIBIT L - Land Lease

With a copy to:

City of Tempe
City Attorney's Office
31 East 5th Street
Tempe, Arizona 85281

If to Tenant:

_____
_____
_____
_____

With a copy to:

_____
_____
_____
_____

Unofficial Document

or at such other place or to such other persons as any party shall from time to time notify the other in writing as provided herein. The date of service of any communication hereunder shall be the date of personal delivery or seventy-two hours after the postmark on the certified or registered mail, as the case may be.

(i) Waiver. No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver or the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition.

(j) Negation of Partnership. Landlord shall not become or be deemed a partner or a joint venturer with Tenant by reason of the provisions of this Lease.

(k) Hold Over. If Tenant shall continue to occupy the Leased Premises after the expiration of the term hereof without the consent of Landlord, such tenancy shall be from month to month on the same terms and conditions as are set forth herein.

(l) Leasehold Mortgagee Further Assurances. Landlord and Tenant shall cooperate in including in this Lease by suitable amendment from time to time any provision which may be reasonably requested by any proposed Leasehold Mortgagee for the purpose of implementing the mortgagee-protection provisions contained in this Lease, of allowing that Leasehold Mortgagee reasonable means to protect or preserve the lien of its Leasehold Mortgage

EXHIBIT L - Land Lease

upon the occurrence of a default under the terms of this Lease and of confirming the elimination of the ability of Tenant to modify, terminate or waive this Lease or any of its provisions without the prior written approval of the Leasehold Mortgagee. Landlord and Tenant each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effect any such amendment; provided, however, that any such amendment shall not in any way affect the term or rent under this Lease nor otherwise in any material respect adversely affect any rights of Landlord under this Lease.

(m) Ground Lessor Protection. Any provision contained in this Lease to the contrary notwithstanding, upon any expiration or termination of this Lease (including a termination pursuant to Section 17(b) above) where: (i) Tenant has not theretofore acquired fee title to the Premises from the Ground Lessor; and (ii) a new lease is not entered into with a Leasehold Mortgagee pursuant to Section 18 above, and (iii) the Ground Lease has terminated, then Landlord shall, at any time upon request of the Ground Lessor convey title to the Premises (including all improvements constituting a part thereof) to the Ground Lessor for the consideration of Ten Dollars. Such conveyance shall be made in the same manner set forth in Section 20(b)-(d) above except that the term "Tenant" as used in such Section 20(b)-(d) shall be deemed to be a reference to the Ground Lessor. Without the prior written consent of the Ground Lessor (which shall not be unreasonably withheld), this Lease shall not be amended or modified in any manner that will affect the rights or benefits hereunder of the Ground Lessor. Any purported amendment or modification hereof in violation of the foregoing shall be void. The Ground Lessor shall be deemed to be a third party beneficiary of the foregoing provisions and any other provisions hereof that create rights or benefits in favor of the Ground Lessor. Any rights or benefits under this Lease in favor of the Ground Lessor or any Leasehold Mortgagee shall survive any expiration or termination (including a termination pursuant to Section 17(b) above) of this Lease and may be enforced by the Ground Lessor or Leasehold Mortgagee, as the case may be, notwithstanding such expiration or termination.

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24. Nonrecourse

Landlord's sole recourse for collection or enforcement of any judgment as against Tenant shall be solely against the leasehold interest under this Lease and the Buildings and other improvements on the Premises and may not be enforced against or collected out of any other assets of Tenant nor of its beneficiaries, joint venturers, owners, partners, shareholders, members or other related parties.

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the date and year first written above.

ATTEST:

By:_____
City Clerk

LANDLORD:

CITY OF TEMPE, a municipal corporation

By:_____
Name:_____

EXHIBIT L - Land Lease

APPROVED AS TO FORM:

_____
City Attorney

Title:_____

TENANT:

_____

By: _____
Name:_____
Title: _____

Unofficial Document

PLAYA DEL NORTE CFD ASSESSMENTS

Parcel #s	CFD #s	Beginning Capital	Annual Amortization, 25 years, 5%	Total Capital (as of 2003-04)	Annual Amortization, 25 years, 5%	Interim O&M Assessment, 2003-04*	O&M Assessment, 2003-04*	Lake Front Lineal Feet	Developable Acres
132 22 005D	41	$1,595,035.08	$113,171.66	$2,035,713.87	$144,438.90	$10,616.27	$98,231.35	253.16	4.2649
132 31 002Y	46A	$2,824,703.45	$200,419.65	$3,605,116.93	$255,751.91	$18,792.87	$173,961.33	516.03	7.5876
132 31 002F	47	$459,233.79	$32,583.77	$586,111.62	$41,586.06	$3,055.45	$28,282.23	0	4.6999
132 31 002L	48	$455,813.89	$32,341.12	$581,746.86	$41,276.37	$3,033.32	$28,071.62	0	4.6649
132 31 002Q	49	$330,244.98	$23,431.69	$421,485.58	$29,905.44	$2,197.67	$20,338.37	0	3.3798
132 31 002W	50, 51	$51,669.79	$3,666.10	$65,945.20	$4,678.97	$343.82	$3,182.12	0	0.5288
132 31 005A	55		$0.00	$0.00	$0.00	$17,942.34	$89,711.71	782.45	6.5563
TOTAL		$5,716,700.98	$405,613.98	$7,296,120.06	$517,677.65	$70,413.40	$441,778.73	1,551.64	31.6822

Capital/LF	Cap Amort/LF	Interim O&M/LF	O&M/LF
$3,684.30	$261.41	$45.38	$284.72

** Subject to adjustment based on actual size of the License Area

Unofficial Document

200313317 74

Exhibit M
Rio Salado Enhanced Services Assessments

EXHIBIT 2

PRELIMINARY PLANNED AREA DEVELOPMENT FOR PLAYA DEL NORTE

BOOK 709 PAGE 43
OFFICIAL RECORDS OF MARICOPA COUNTY RECORDER HELEN PURCELL
2004 – 1219771
10/18/2004 12:00 PM

A PORTION OF THE NORTHWEST QUARTER, SECTION 14, TOWNSHIP 1 NORTH, RANGE 4 EAST, GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA

CASE NUMBER

SPR03121

PROJECT NAME

PLAYA DEL NORTE

PROJECT ADDRESS

179 N. SCOTTSDALE ROAD
TEMPE, ARIZONA

SUBMITTED BY

GAMMAGE AND BURNHAM, P.L.C.
TWO NORTH CENTRAL AVENUE
EIGHTEENTH FLOOR
PHOENIX, AZ 85004
(602) 256-4422
(602) 256-4475 FAX
CONTACT: STEPHEN ANDERSON, MANJULA VAZ

ZONING

M G (PROPOSED)

STATEMENT OF OWNERS

WE HAVE REVIEWED THIS PLAN AND APPROVED THE DEVELOPMENT AS SHOWN. SIGNED THIS 23 DAY OF Aug., 2004
BY Emmel V Henderson
AS Manager OF
HENDERSON AG ENTERPRISES, LLLP

WE HAVE REVIEWED THIS PLAN AND APPROVED THE DEVELOPMENT AS SHOWN. SIGNED THIS 23 DAY OF Aug., 2004
BY Emmel V Henderson
AS Manager OF
CASA ENCANTA MOBILE HOME PARK, LLC

WE HAVE REVIEWED THIS PLAN AND APPROVED THE DEVELOPMENT AS SHOWN. SIGNED THIS 15th DAY OF Sept., 2004
BY [illegible]
AS Mayor OF
CITY OF TEMPE

SEAL

OWNERS

HENDERSON AG ENTERPRISES, LLLP
AN ARIZONA LIMITED LIABILITY LIMITED PARTNERSHIP
BY: HENDERSON LIVING TRUST, CREATED MAY 3, 1984
BY: Emmel V Henderson
EMMEL V. HENDERSON
TRUSTEE
BY: Dorothy Henderson
DOROTHY HENDERSON
TRUSTEE

CASA ENCANTA MOBILE HOME PARK, LLC AN ARIZONA LIMITED LIABILITY COMPANY
BY Emmel V Henderson
EMMEL V. HENDERSON
MANAGER
BY: Dorothy Henderson
DOROTHY HENDERSON
MANAGER

CITY OF TEMPE
BY: ~~JIM CRISTEA~~
~~TEMPE AND SERVICES DEPARTMENT~~

DEVELOPER

PLAYA DEL NORTE, LLC
502 S. COLLEGE AVE
SUITE 303
TEMPE, AZ 85281
(602) 968-4600
(602) 449-9059 FAX
CONTACT: BRAD WILDE
ROBERTA BARRETT

ARCHITECT

BUTLER DESIGN GROUP
5555 E. VAN BUREN
SUITE 215
PHOENIX, AZ 85008
(602) 957-1800
(602) 957-7722 FAX
CONTACT: RICK BUTLER, TODD LAWRENCE

APPROVALS

APPROVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA ON THIS 8th DAY OF Jan., 2004.

BY: [illegible], DATE: 9/15/04
MAYOR

ATTEST: [illegible], DATE: 9/15/04
CITY CLERK

BY: [illegible], DATE: 9/17/04
CITY ENGINEER

BY: Lisa Galer, DATE: 10/18/04
DEVELOPMENT SERVICES

ACKNOWLEDGEMENT

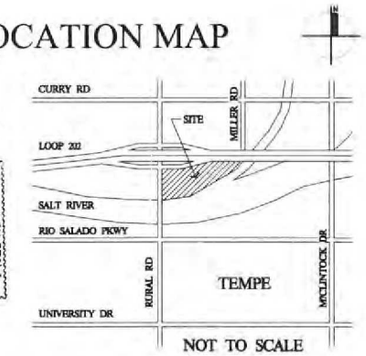
STATE OF ARIZONA, COUNTY OF MARICOPA,
THE FOREGOING INTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS 23rd DAY OF Aug, 2004
BY Emmel V HENDERSON + DOROTHY HENDERSON, AS HENDERSON AG ENTERPRISES
IN WITNESS WHEREOF I HAVE HEREUNTO SET MY HAND AND OFFICIAL SEAL.
NOTARY PUBLIC: Lora J Carter
MY COMMISSION EXPIRES 10-20-13

NOTARY SEAL
LORA J. CARTER
Maricopa County, State of Arizona
My Commission Expires 10/20/2013

STATE OF ARIZONA, COUNTY OF MARICOPA,
THE FOREGOING INTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS 23rd DAY OF Aug, 2004
BY EMMEL V HENDERSON & DOROTHY HENDERSON, AS CASA ENCANTA MOBILE HOME PARK, LLC
IN WITNESS WHEREOF I HAVE HEREUNTO SET MY HAND AND OFFICIAL SEAL.
NOTARY PUBLIC: Lora J Carter
MY COMMISSION EXPIRES 10-20-13

STATE OF ARIZONA, COUNTY OF MARICOPA,
THE FOREGOING INTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS 15th DAY OF Sept., 2004
BY Hugh Hallman, AS Mayor CITY OF TEMPE.
IN WITNESS WHEREOF I HAVE HEREUNTO SET MY HAND AND OFFICIAL SEAL.
NOTARY PUBLIC: Cynthia R Clara
MY COMMISSION EXPIRES

LOCATION MAP



GENERAL NOTES

USE PERMITS
1. ALLOW A RESTAURANT WITH OUTDOOR DINING IN THE MG ZONING DISTRICT.

VARIANCES
~~1. REDUCE THE MINIMUM REQUIRED STREET SIDE YARD BUILDING SETBACK FROM 25 FEET TO 5 FEET FOR LOT 1 ALONG THE SOUTH PROPERTY LINE.~~
~~2. REDUCE THE MINIMUM STREET SIDE YARD BUILDING SETBACK FROM 25 FEET TO 16 FEET FOR LOT 2 ALONG THE SOUTH PROPERTY LINE AND FROM 25 FEET TO 10 FEET ALONG THE EAST PROPERTY LINE.~~
3. WAIVE THE MINIMUM REQUIRED LANDSCAPE STRIP BUFFER OF 6 FEET FOR A COMMERCIAL USE ADJACENT TO A RESIDENTIAL USE ALONG THE EAST PROPERTY LINE OF LOT 4 AND ALONG THE WEST PROPERTY LINE OF LOT 5.
4. REDUCE THE MINIMUM LANDSCAPE REQUIRED FROM 30% TO 11% FOR LOT 4 AND 5.
5. WAIVE THE RECREATION VEHICLE (RV'S) PARKING SPACES REQUIRED FOR LOTS 4 AND 5.
6. REDUCE THE MINIMUM REQUIRED BICYCLE PARKING SPACES FROM 599 TO 65 SPACES FOR LOT 5 AND FROM 112 TO 25 SPACES FOR LOT 4.
7. REDUCE THE REQUIRED NUMBER OF MOTOR VEHICLE PARKING SPACES FROM 248 TO 224 FOR LOT 4 AND FROM 1,089 PARKING SPACES TO 1,054 PARKING SPACES FOR LOT 5.

PROJECT DATA

LOT #	RECORDED PLAT NAME AND #	PROJECT NAME	NET SITE AREA	F.A.R.	LOT COVERAGE	LAND USE	BLDG. AREA / # OF UNITS	HEIGHT (STORIES)	PARKING REQUIRED	PARKING PROVIDED	BICYCLES REQUIRED	BICYCLES PROVIDED	LSCAPE REQUIRED	LSCAPE PROVIDED
LOT 1	-	IN-AND-OUT BURGER	1.628 AC	0.04	4%	RESTAURANT	3,187 SF	1	52	91	10	10	20%	25%
LOT 2	-	OFFICE /RETAIL /PAD	1.611 AC	0.26	14%	OFF. / RETAIL / REST.	18,500 SF (NOT INCL. GARAGE) (35% REST. / 65% RET.)	2	114	114	14	14	20%	20%
LOT 3	-	PAD	1.621 AC	0.11	11%	RESTAURANT	8,000 SF	1	107	109	16	16	20%	20%
LOT 4	-	WESTSTONE	2.616 AC	2.02	51%	CONDOS	230,316 SF (INCL. GARAGE) 112 UNITS (42.26 DU/AC)	4	248	224 (2/UNIT)	112	45	30%	43%
LOT 5	-	MONDRIAN	8.191 AC	2.08	49%	APTS / CONDOS	742,194 SF (INCL. GARAGE/STOR.) 543 UNITS (66.29 DU/AC)	4- 12	1089	1,240 (2.28 / UNIT)	272	120	30%	11%
LOT 6	-	OFFICE	4.438 AC	0.47	15%	OFFICE	90,000 SF	3	360	454 (5:1000)	36	36	20%	20%
ROW			2.670 AC											
TOTAL			22.775 AC											

DS030267 SPD-2003.90 REC04004

DS030267 SPD-2003.90 REC04004

14N

PAD / COVER-02

Architect's Seal

Butler Design Group
Architects & Planners
5555 East Van Buren St.
Suite 215
Phoenix, Arizona 85008
phone 602-957-1800
fax 602-957-7722

PRELIMINARY PLANNED AREA DEVELOPMENT FOR PLAYA DEL NORTE

BOOK 709 PAGE 43
OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
2004 – 1219771
10/18/2004 12:35 PM

A PORTION OF THE NORTHWEST QUARTER, SECTION 14, TOWNSHIP 1 NORTH, RANGE 4 EAST, GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA

CONDITIONS OF APPROVAL: SPD-2003.90

The approval was subject to the following conditions:

1. a. The Public Works Department shall approve all roadway, alley, and utility easement dedications, driveways, storm water retention, and street drainage plans, water and sewer construction drawings, refuse pickup, and off-site improvements.
   b. Off-site improvements to bring roadways to current standards include:
      (1) Water lines and fire hydrants
      (2) Sewer lines
      (3) Storm drains.
      (4) Roadway improvements including street lights, curb, gutter, bikepath, sidewalk, bus shelter, and related amenities.
   c. Fees to be paid with the development of this project include:
      (1) Water and sewer development fees.
      (2) Water and/or sewer participation charges.
      (3) Inspection and testing fees.
2. a. All street dedications shall be made within six (6) months of Redevelopment Review Commission approval.
   b. Public improvements must be installed prior to the issuance of any occupancy permits. Any phasing shall be approved by the Public Works Department.
   c. All new and existing, as well as on-site and off-site, utility lines (other than transmission lines) shall be placed underground prior to the issuance of an occupancy permit for this (re)development in accordance with the Code of the City of Tempe - Section 25.120.
3. The owner(s) shall provide a continuing care condition, covenant and restriction for all of the project's landscaping, required by Ordinance or located in any common area on site. The CC&R's shall be in a form satisfactory to the Development Services Manager and City Attorney.
4. A valid building permit shall be obtained and substantial construction commenced within **on or before January 15, 2005** or the variance(s) and use permit(s) shall be deemed null and void.
5. A building permit shall be obtained and substantial construction commenced **on or before January 15, 2006** or the zoning shall revert to that in place at the time of application, subject to a public hearing.
6. No variances shall be created by future property lines without the prior approval of the City of Tempe.
7. The applicant shall comply with all applicable state and federal laws regarding archeological artifacts on this site.
8. The Preliminary PAD Playa Del Norte mixed use development and the Final PAD for Lots 1, 4, and 5 shall be put into proper engineered format with appropriate signature blanks and recorded with the Maricopa County Recorder's Office through the City of Tempe's Development Services Department **on or before January 15, 2005.**
9. The Preliminary Planned Area Development and Final PAD for Lots 1, 4, and 5 shall be recorded prior to issuance of building permits.
10. For developments adjacent to the Rio Salado Town Lake, no improvements shown on this document shall be in conflict with City of Tempe Ordinance No. 808.9312 relating to flood control access zones unless specifically approved by the Flood Control District of Maricopa County (FCDMC). Nor shall any improvements adversely impact on or adjacent to FCDMC Levee Improvements. Construction activity on or adjacent to FCDMC facilities requires a permit from that agency.
11. The Final Subdivision Plat shall be recorded prior to the issuance of building permits, and shall show cross access to be maintained throughout this site over the driving aisles. No changes or modifications to the driving aisles will be allowed without the prior approval of the Engineering Department
12. Prior to City Council approval, the Final Subdivision Plat shall indicate a public utility easement 20 foot wide adjacent to the eastern boundary of Lot 5.
13. Prior to City Council approval, the applicant will provide to the City all information required to process the Subordinate Development Agreements for the developers of Lots 1, 4, and 5.
14. Prior to the issuance of building permits for Lot 3 and Lot 4, the applicant will provide to the City documentation that the Bureau of Land Management (BLM) patent restriction has been removed from Lot 3 and Lot 4. (The patent restriction prohibits residential on BLM property).
15. Any intensification or expansion of the use shall require the applicant to return to the Redevelopment Review Commission or City Council for further review.
16. Developer shall resolve final details of Flood Control access along the entire south edge of the property, along the top of the levy, prior to issuance of a building permit.
17. Details of fire prevention, fire access, emergency water supply issues, and fire truck loading shall be resolved with the Fire Department prior to issuance of building permits.
18. The applicant shall resolve all lighting and security details with the Planning and Police Department staff prior to the issuance of a building permit.

BENCHMARK

City of Tempe Vertical Datum. Top of Brass Cap located at Rural Road and Rio Salado Intersection Elevation=1162.52 (COT BM#503)

LEGAL DESCRIPTION

A parcel of land, being a portion of the Northwest quarter of Section 14 Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County Arizona, more particularly described as follows:

COMMENCING at a brass cap in a hand hole being the West quarter corner of said Section 14, from which the Northwest corner of said Section 14, being a brass cap in a hand hole at the intersection of Rural Road and Curry Road, bears North 0°07'02" East, basis of bearings, a distance of 2,667.54 feet;

THENCE North 0°07'02" East, along the West line of the Northwest quarter of said Section 14, a distance of 1,277.29 feet;

THENCE South 88°27'52" East, a distance of 88.58 feet to the **POINT OF BEGINNING;**

THENCE North 01°32'08'East, a distance of 58.54 feet to a point 90.00 feet East of the West line of said Northwest quarter;

THENCE North 0°07'02" East, parallel with and 90.00 feet East of said West line, a distance of 300.92 feet;

THENCE North 89°49'39" West, a distance of 25.00 feet to a point 65.00 feet East of the West line of said Northwest quarter;

THENCE North 0°07'02" East, parallel with and 65.00 feet East of said West line, a distance of 329.52 feet;

THENCE North 05°51'27" East, a distance of 71.05 feet;

THENCE North 05°44'48" East, a distance of 18.51 feet;

THENCE South 89°57'14" East, a distance of 13.13 feet, to a found Arizona Department of Transportation, (ADOT) aluminum cap;

THENCE North 00°08'38" East, a distance of 139.96 feet, to a found ADOT aluminum cap, said point being on the South right-of-way line of the Red Mountain Freeway;

THENCE North 89°43'01" East, along said South right-of-way line, a distance of 326.09 feet, to a found ADOT aluminum cap;

THENCE North 82°25'53" East, along said South right-of-way line, a distance of 640.59 feet, to a found ADOT aluminum cap;

THENCE North 89°59'41" East, along said South right-of-way line, a distance of 222.63 feet to a point on the East line of the Northwest quarter of the Northwest quarter of said Section 14;

THENCE South 00°23'06" East, along East line, a distance of 613.81 feet to a point on a non tangent curve, having a radius of 2,051.15 feet, a radial line of said curve through said point bears South 35°41'21" East;

THENCE Southwesterly and Westerly, along the arc of said curve, through a central angle of 22°44'56" for an arc distance of 814.40 feet;

THENCE South 79°27'11" West, a distance of 194.43 feet;

THENCE South 85°15'12" West, a distance of 260.76 feet, to the **POINT OF BEGINNING.**

Containing an area of 992,081 square feet or 22.7750 acres more or less.

BASIS OF BEARING

THE WEST LINE OF THE NORTHWEST QUARTER OF SECTION 14, TOWNSHIP 1 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, AS SHOWN ON THE CITY OF TEMPE SURVEY CONTROL MAP.

SAID BEARING = NORTH 00° 07' 02" EAST

FLOOD ZONE

FLOOD PLAIN CERTIFICATION:

THIS IS TO CERTIFY THAT THE ABOVE SUBJECT PROPERTY LIES WITHIN ZONE "SHADED X" AS DESIGNATED ON THE FIRM FLOOD INSURANCE RATE MAP, MAP NUMBER 04013C 2170 F, DATED JULY 19, 2001. ZONE "SHADED X" IS DESIGNATED AS BEING AREAS OF 500-YEAR FLOOD; AREAS OF 100-YEAR FLOOD WITH AVERAGE DEPTHS OF LESS THAN 1 FOOT OR WITH DRAINAGE AREAS LESS THAN 1 SQUARE MILE; AND AREAS PROTECTED BY LEVEES FROM 100-YEAR FLOOD AS DETERMINED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY UNDER THAT CIRCUMSTANCE.

CERTIFICATION

THIS IS TO CERTIFY THAT THE SURVEY OF THE PREMISES DESCRIBED AND PLATTED HEREON WAS MADE UNDER MY DIRECTION DURING THE MONTH OF JANUARY, 2004, ALSO THAT THE PLAT IS CORRECT AND ACCURATE; AND THAT THE MONUMENTS DESCRIBED HEREON HAVE BEEN LOCATED AS DESCRIBED.

BY: JOSEPH J. BRAHM, REGISTERED LAND SURVEYOR

Surveyor's Seal

14N

DS030267 SPD-2003.90 REC04004

DS030267 SPD-2003.90 REC04004

PAD / COVER-02

Architect's Seal

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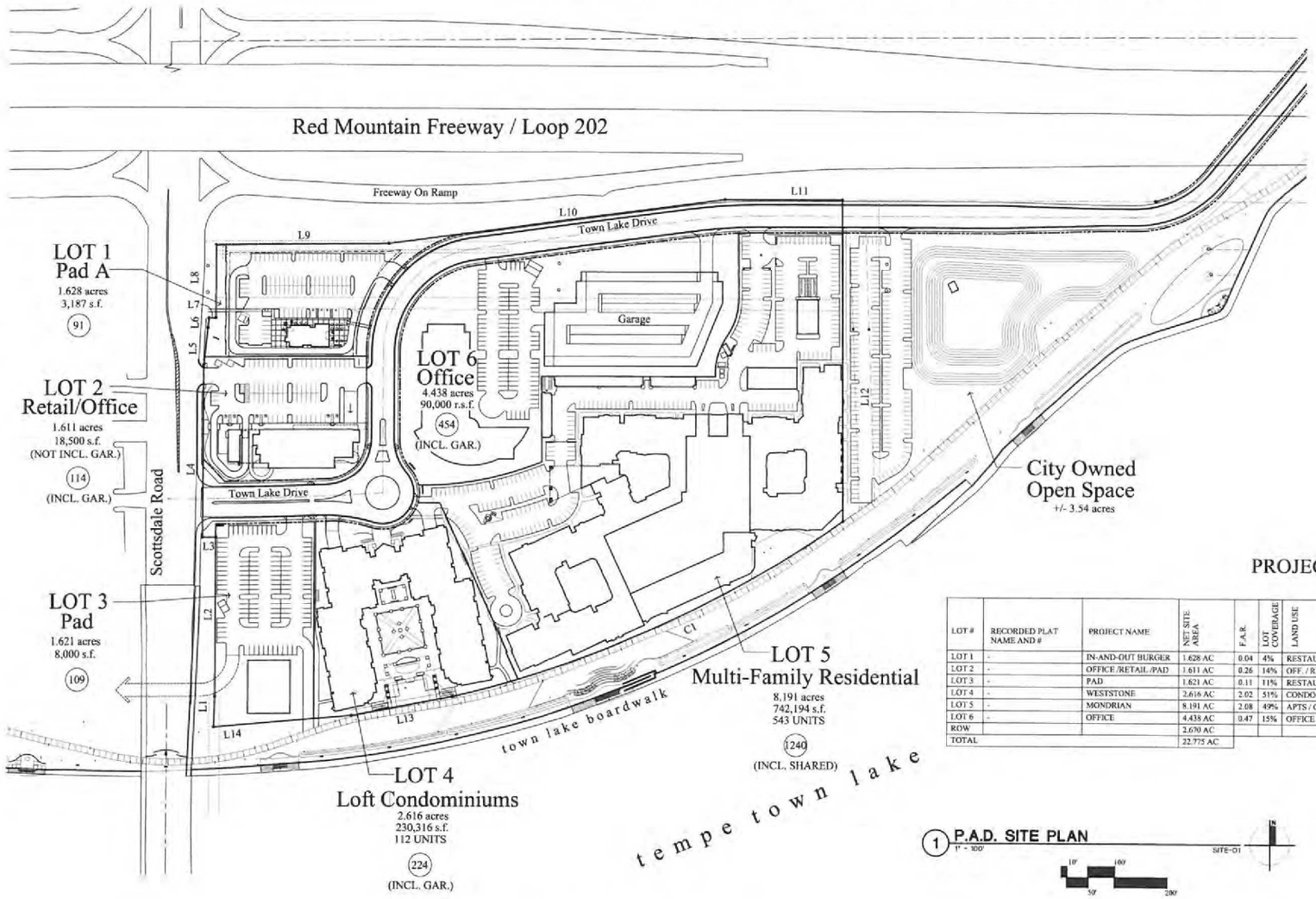
PRELIMINARY PLANNED AREA DEVELOPMENT FOR PLAYA DEL NORTE

BOOK 709 PAGE 43
OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
2004 – 1219771
10/18/2004 12:35 PM

A PORTION OF THE NORTHWEST QUARTER, SECTION 14, TOWNSHIP 1 NORTH, RANGE 4 EAST, GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA



LINE TABLE		
LINE	BEARING	DISTANCE
L1	N 01°32'08" E	58.54'
L2	N 00°07'02" E	300.92'
L3	N 89°49'39" W	25.00'
L4	N 00°07'02" E	329.52'
L5	N 05°51'27" E	71.05'
L6	N 05°44'48" E	18.51'
L7	S 89°57'14" E	13.13'
L8	N 00°08'38" E	139.96'
L9	N 89°43'01" E	326.09'
L10	N 82°25'53" E	640.59'
L11	N 89°59'41" E	222.63'
L12	S 00°23'06" E	613.81'
L13	S 79°27'11" W	194.43'
L14	S 85°15'12" E	260.76'

CURVE TABLE			
CURVE	DELTA	RADIUS	ARC
C1	22°44'56"	2051.15'	814.40'

PROJECT DATA

LOT #	RECORDED PLAT NAME AND #	PROJECT NAME	NET SITE AREA	F.A.R.	LOT COVERAGE	LAND USE	BLDG. AREA / # OF UNITS	HEIGHT (STORIES)	PARKING REQUIRED	PARKING PROVIDED	BICYCLES REQUIRED	BICYCLES PROVIDED	LSCAPE REQUIRED	LSCAPE PROVIDED
LOT 1	-	IN-AND-OUT BURGER	1.628 AC	0.04	4%	RESTAURANT	3,187 SF	1	52	91	10	10	20%	25%
LOT 2	-	OFFICE /RETAIL /PAD	1.611 AC	0.26	14%	OFF. / RETAIL / REST.	18,500 SF (NOT INCL. GARAGE) (10% REF. NOR REF.)	2	114	114	14	14	20%	20%
LOT 3	-	PAD	1.621 AC	0.11	11%	RESTAURANT	8,000 SF	1	107	109	16	16	20%	20%
LOT 4	-	WESTSTONE	2.616 AC	2.02	51%	CONDOS	230,316 SF (INCL. GARAGE) (112 UNITS/44.28 DU/AC)	4	248	224 (2/1UNIT)	112	45	30%	43%
LOT 5	-	MONDRIAN	8.191 AC	2.08	49%	APTS / CONDOS	742,194 SF (INCL. GARAGE/OFFICE) (543 UNITS/66.28 DU/AC)	4- 12	1089	1,240 (2.28 / UNIT)	272	120	30%	11%
LOT 6	-	OFFICE	4.438 AC	0.47	15%	OFFICE	90,000 SF	3	360	454 (5:1000)	36	36	20%	20%
ROW			2.670 AC											
TOTAL			22.775 AC											

1 P.A.D. SITE PLAN
1" = 100'
SITE-01

PAD/SITE-04

14N

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