

WHEN RECORDED RETURN TO:



**OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
LAURA DEAN-LYTL**

(34)
R
City Attorney
City of Apache Junction
300 East Superstition Boulevard
Apache Junction, Arizona 85119

DATE/TIME: 08/21/09 1253
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**PRE-ANNEXATION DEVELOPMENT AND
DRAINAGE SETTLEMENT AGREEMENT**

CITY OF APACHE JUNCTION, ARIZONA
an Arizona municipal corporation,

and

FORTUNE TRAVEL, INC.
an Oregon corporation

August 18, 2009

PRE-ANNEXATION DEVELOPMENT AND DRAINAGE SETTLEMENT AGREEMENT

This PRE-ANNEXATION DEVELOPMENT AND DRAINAGE SETTLEMENT AGREEMENT ("Agreement") is entered into by and between the CITY OF APACHE JUNCTION, an Arizona municipal corporation ("City") and FORTUNE TRAVEL, INC., an Oregon corporation ("Developer"). City and Developer are sometimes herein referred to collectively as "Parties", or individually as a "Party".

RECITALS

1. Developer owns approximately one hundred twenty-three (123) acres of unimproved real property, Pinal County Assessor Parcel Nos. 102-19-003A and 102-19-0038, located adjacent to the southeast corner of Meridian Boulevard and Southern Avenue in unincorporated Pinal County, Arizona (the "Property"), the legal description and map of which are attached hereto as Exhibit A and are incorporated herein by reference.

2. The Parties desire that the Property be annexed into the corporate limits of the City; and once annexed, it is the intention of Developer to develop the Property in phases as an active adult manufactured home community consisting of approximately 650 residential units and a clubhouse.

3. The annexation of the Property, the contemplated development and use of the Property pursuant to this agreement are consistent and in harmony with the 1999 Apache Junction General Plan ("General Plan").

4. Developer desires to gain consent from the City for Superstition Mountains Community Facilities District No. 1 ("Sewer District") to provide sewer service to the Property pursuant to A.R.S. § 48-709 (A)(14).

5. Developer has submitted, or will submit, a completed development review application for the Property (which includes, but is not limited to, applications for approval of grading and drainage, traffic, elevations, site plan, landscaping, and signage) for review by City in accordance with City's customary and ordinary zoning, planning and development review processes. The proposed Site Plans for the Property are attached hereto as Exhibits B-1, B-2, B-3 and B-4.

6. It is anticipated that development of the Property pursuant to this Agreement will result in aesthetic, planning, economic and other tangible and intangible public benefits to the City including providing for the construction of the Public Roadway Improvements and Drainage Improvements as more fully described in Exhibit C, providing for planned and orderly development of the Property, adding to the tax base and otherwise increasing tax revenues to the City arising from or relating to the Property, improving or enhancing the economic welfare of the residents or businesses of the City and advancing the goals of the Apache Junction General Plan, and providing for additional tangible and intangible municipal benefits provided for in this Agreement.

7. The Parties understand and acknowledge that this Agreement is a “Development Agreement” within the meaning of, and entered into pursuant to the terms of, A.R.S. §§ 9-500.05 and 9-500.11. In order to facilitate the annexation, this Development Agreement provides for, among other things: (i) conditions, terms, restrictions and requirements for the annexation of the Property by the City; (ii) the permitted uses of the Property; (iii) the density and intensity of such uses; and (iv) other matters related to the development of the Property. The terms of this Agreement shall constitute covenants running with the land as more fully described in this Agreement.

8. This Agreement is also intended to settle any and all fugitive drainage claims, objections, and alleged stormwater drainage damages that currently exist or could be brought by either Party, and fully to release and discharge all claims that either Party may have against the other in connection with such claims and damages.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual promises and covenants set forth herein, and for other consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereto state, confirm and agree as follows:

SECTION 1. ACCURACY OF THE RECITALS

The Parties hereby confirm the accuracy of the Recitals set forth above, which are incorporated herein by this reference.

SECTION 2. TERM

This Agreement shall commence on the date that the conditions in Section 4 are satisfied and this Agreement is recorded (“Effective Date”) with the Pinal County Recorder’s Office and shall continue until May 30, 2030, or until all obligations have been fully performed, which ever date is sooner. Notwithstanding the foregoing, provided City is not in default, all obligations of Developer to indemnify, defend and hold the City harmless shall survive the expiration or earlier termination of this Agreement.

SECTION 3. APPLICABLE LAWS

The development and operation of the Property including, without limitation, the type of use, the maximum height and size of the buildings, building setback requirements, parking requirements, signage, landscaping requirements, provisions for dedication of land for public purposes, will be governed by the following, as they exist on the Effective Date and as amended by the Mayor and City Council from time to time provided the changes are not in conflict with the Development Agreement or Planned Area Development and does not alter including the density, design criteria, lot size, setback and parking requirements established in the Planned Area Development approved by the City Council in the Zoning Application; Arizona Revised Statutes, Federal laws, the City’s General Plan; the Apache Junction City Code, Land Development Code, Zoning

Ordinance, Site Plan, Subdivision Regulations, as applicable, Engineering Policies and Guidelines, Building Codes; stand-alone ordinances and resolutions and all other requirements and policies and practices which apply to the development.

SECTION 4. ANNEXATION AND ZONING

A. Annexation

4.A.1. Developer shall deliver to City a Petition for Annexation of the Property duly executed by all necessary property owners and others holding any interest in the Property (the "Annexation Petition"). Upon receipt of the Annexation Petition, and other petitions from affected property owners, City shall comply with the provisions of A.R.S. §§ 9-471 *et seq.*, and, if annexation of the Property is thereupon determined to be in the best interest of City, City shall adopt the final ordinance annexing the Property into the corporate limits of City (the "Annexation Ordinance"). It is anticipated this Agreement, the Annexation Ordinance and the Rezoning, will all be considered by the Mayor and City Council on the same date.

4.A.2. The effective date of the Annexation Ordinance shall be referred to in this Agreement as the "Annexation Date." Developer shall take all actions and execute all documents reasonably necessary to cause or facilitate the completion of the annexation process. Developer agrees, understands and acknowledges without limiting any other remedy or relief for a subsequent breach of any of the conditions of this Agreement, that once the Property has been annexed into the corporate limits of the City, there presently does not exist any statutory remedy for such breach by the City that would result in the Property being automatically de-annexed from the City and returned to the status of being located in unincorporated Pinal County territory.

B. Zoning

Contemporaneously with the Annexation Ordinance and pursuant to A.R.S. § 9-471 (L), City staff shall recommend to the City Council, a City zoning classification for the Property of General Rural ("GR"), which is the equivalent to the Property's current Pinal County zoning classification. In addition, immediately after the Annexation Ordinance is considered by the Mayor and City Council, staff will recommend to the Mayor and City Council a zoning designation for the Property as Trailer Homesite by Planned Development ("TH-PD"). The enactment of any zoning ordinance with respect to the Property shall be in the sole discretion of the City Council.

C. Conditions Precedent

4.C.1. The annexation of the Property into the City, and the adoption of a TH-PD Zoning classification with conditions of approval mutually acceptable to City and Developer for the Property are conditions precedent to the commencement and effective date of this Agreement. In

the event of a failure of the conditions precedent to be met, Developer upon seven (7) calendar days' written notice to the City, shall elect either to terminate this Agreement or to waive such conditions precedent and thereupon to undertake the Developer's obligations as described in Section 5.

4.C.2. Reconsideration Provision: The City agrees to place the annexation ordinance on the next City Council meeting for reconsideration upon Owner's timely written request for reconsideration if: (a) any person or entity timely files any protest, appeal, referendum, litigation or other petition (including, but not limited to, any petition filed pursuant to A.R.S. Section 9-471 (C)) challenging the validity or approval of the Annexation Ordinance; (b) the City does not, at or before the same City meeting in which the Annexation Ordinance is adopted approve the zoning; (c) any person or entity timely files any protest petition challenging the validity or approval of the Zoning; or (d) any person or entity timely files any protest, appeal, referendum, litigation or other petition challenging the validity or approval of this Agreement. If Owner exercises its rights under this Section 4, the request will be submitted to the City in sufficient time to allow for requisite notice periods under the City's Codes and Ordinances.

4.C.3. Automatic Termination of Agreement. The City and Developer hereby acknowledge and agree that this Agreement shall automatically terminate and be of no force or effect if the City's annexation of the Property does not, for any reason become effective and final pursuant to A.R.S. § 9-471(D) on or before May 10, 2010.

SECTION 5. DEVELOPER'S OBLIGATIONS

Developer's obligations under this Agreement and Section 5 shall only be required if the Developer elects in its sole and absolute discretion to proceed with the development. At that point and only at that point, the Developer shall be obligated to complete the Public Roadway Improvements and Drainage Improvements as set forth and described in Exhibit C. If Developer proceeds, Developer agrees to do all of the following:

- a. Sign an annexation petition as referenced in Section 4 as presented by the City and take any other reasonable action if necessary at no cost or expense to City to accomplish annexation of the Property into the corporate limits of City.
- b. At its sole cost and expense, build and complete the Public Roadway Improvements and Drainage Improvements as set forth and described in Exhibit C to the City Engineer's satisfaction within the time frames established for each phase. City acknowledges that Developer will be reimbursed \$160,000 for Drainage Improvements and shall receive a Development Fee credit for Right of Way dedication value and Public Roadways Improvements in accordance with ARS § 9-463.05(B)(3). City further acknowledges that Developer shall only be responsible for twenty-five percent (25%) of the traffic signalization costs at Southern and Meridian.
- c. Complete construction on a clubhouse which is detailed on the case file renderings which has been submitted to the Development Services Department, Planning Division, no later than thirty (30) months after obtaining all governmental approvals.

SECTION 6. CITY'S OBLIGATIONS

City agrees to do all of the following:

- a. So long as Developer is not in default of this Agreement, upon completion and approval of the Drainage Improvements detailed in Exhibit C, pay Developer an amount of no more than One Hundred Sixty Thousand Dollars (\$160,000.00). Payment shall be made by City within sixty (60) calendar days after receipt by City of written demand from Developer for reimbursement, including copies of receipted invoices (showing payment in full) and lien releases for all work. Developer understands and agrees that City shall not reimburse Developer for interest relating to the Public Roadway Improvement or Drainage Improvement costs or any other sum arising from or relating to the fact that the reimbursements to Developer may be paid over time. This shall be the entire payment from the City to Developer with respect to the Drainage Improvements, notwithstanding any greater cost or expense incurred by Developer.
- b. Reimburse Developer all offsets that are allowable (as determined by the Development Fee Administrator) under Apache Junction City Code, Vol. II, Land Development Code, Chapter 7 Development Fees for roadway improvements to Meridian Drive and Southern Avenue, and any associated traffic signalization as required in Exhibit C. City shall provide Development Fee credits toward the payment of the development fee for the required dedication of public right-of-way for which the development fee is assessed provided by Developer in accordance with A.R.S. § 9-463.05(B)(3).
- c. Completion of construction of the Drainage Improvements by Developer as described in Exhibit C are conditions precedent to the City providing the reimbursements to developer provided in subsections (a) and (b) above.

SECTION 7. CONSTRUCTION

The Public Roadway Improvements shall consist of construction of all adjacent half streets (Southern Avenue and Meridian Drive), curbs, gutters, sidewalks, streetlights, underground utility work, and City-required traffic signals described in Exhibit C to this Agreement.

SECTION 8. DESIGN, BIDDING, CONSTRUCTION AND DEDICATION

The Public Roadway Improvements shall be designed, bid, constructed and dedicated in accordance with Applicable Laws, including without limitation all Applicable Laws concerning City procurement and public bidding procedures such as, but not limited to A.R.S. Title 34 as determined to be applicable by the City Engineer.

SECTION 9. CITY REVIEW AND APPROVAL OF PLANS

Developer recognizes that its development and construction of the Public Roadway Improvements and Drainage Improvements pursuant to this Agreement are subject to City's normal plan submittal, review and approval processes and fees, and day-to-day inspection services.

SECTION 10. DEDICATION, ACCEPTANCE AND MAINTENANCE OF PUBLIC IMPROVEMENTS

When the Public Roadway Improvements as determined by City are considered to be completed, upon written request of City or Developer, Developer shall dedicate and City shall accept such Public Roadway Improvements in accordance with the Applicable Laws set forth above and upon such reasonable and customary conditions as City may impose, including without limitation a two (2) year workmanship and materials contractor's warranty. Upon acceptance by City, the Public Roadway Improvements shall become public facilities and property of City, and City (subject to the warranty described above) shall be solely responsible for all subsequent maintenance, replacement or repairs. With respect to any claims arising prior to acceptance of the Public Roadway Improvements by City, Developer shall bear all risk of, and shall indemnify, defend, pay and hold harmless City and its officials, employees and City Council members, for, from and against any claim arising from any injury (personal, economic or other) or property damage to any person, entity or utility, arising from the condition, loss, damage to or failure of any of the Public Roadway Improvements. Developer shall not dedicate, and City shall not accept ownership of, the Drainage Improvements described in Exhibit C, and Developer shall maintain the Drainage Improvements in perpetuity consistent with conventional drainage maintenance standards. The foregoing covenant of Developer to maintain the Drainage Improvements shall survive the expiration or earlier termination of this Agreement.

SECTION 11. TIMING FOR PAYMENT OF CITY FEES

Developer shall pay all impact, development, and administrative fees currently in effect or as may be adopted in the future (referred to individually as a "City Fee" or collectively as "City Fees") as and when such City Fees are assessed, due or otherwise required to be paid by Developer, except that payment of Permitting Fees and Development Fees assessed for each unit pursuant to Apache Junction City Code, Volume II, Land Development Code, Chapter 7, Development Fees, may be paid on a unit by unit basis.

SECTION 12. CITY REPRESENTATIONS

City represents and warrants to Developer that:

- a. City's execution and approval of this Agreement has been made in compliance with the procedural requirements of the Apache Junction City Code and Arizona Revised Statutes.
- b. City will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement and evidence this Agreement.

- c. As of the date of this Agreement, City knows of no litigation, proceeding, initiative, referendum, or investigation contesting the powers of City or its officials with respect to this Agreement that has not otherwise been disclosed in writing to Developer.
- d. The execution, delivery and performance of this Agreement by City is not prohibited by, and does not conflict with, any other agreements, instruments or judgments or decrees to which City is a party or is otherwise subject.
- e. City has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

SECTION 13. DEVELOPER REPRESENTATIONS

Developer represents and warrants to City that:

- a. Developer has the full right, power and authorization to enter into and perform this Agreement and the obligations and undertakings of Developer under this Agreement, and the execution, delivery and performance of this Agreement by Developer has been duly authorized and agreed to in compliance with the organizational documents of Developer.
- b. All consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.
- c. Developer will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.
- d. As of the date of this Agreement, Developer knows of no litigation, proceeding or investigation pending or threatened against or affecting Developer, which could have a material adverse affect on Developer's performance under this Agreement that has not otherwise been disclosed in writing to City.
- e. This Agreement (and each undertaking of Developer contained herein) constitutes a valid, binding and enforceable obligation of Developer, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity. Developer will defend the validity and enforceability of this Agreement in the event of any proceeding or litigation arising from its terms that names Developer as a party or which challenges the authority of Developer or City to enter into or perform any of its obligations hereunder and will cooperate with City in connection with any other action by a Third Party in which City is a party and the benefits of this Agreement to City are challenged, and Developer shall indemnify, defend, pay and hold City harmless for, from and against all costs, expenses and attorneys' fees incurred by City in connection with any such action to defend enforceability of this Agreement. City and Developer agree to work together to: 1) evaluate the obligation to proceed in defense of this Agreement, or 2) to mutually

terminate this Agreement; and 3) provide for reimbursement by Developer to City for any challenged payments made under this Agreement for Drainage Improvements. In no event shall Developer be obligated to spend more than \$160,000 in defense costs.

- f. The execution, delivery and performance of this Agreement by Developer is not prohibited by, and does not conflict with, any other agreements, instruments, judgments or decrees to which Developer is a party or to which Developer is otherwise subject.
- g. Developer has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement other than normal costs of conducting business and costs of professional services such as the services of architects, engineers and attorneys.
- h. Developer has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

SECTION 14. COOPERATION

City and Developer each shall designate and appoint a representative to act as a liaison between City and its various departments and Developer. City or Developer may change their representatives at any time, but each Party agrees to have a current active representative appointed for such purposes. The initial representative for City (“City Representative”) shall be City Manager George Hoffman (or his successor or designee if notice is provided to Developer); and the initial representative for Developer (“Developer Representative”) shall be Project Manager Todd Lutz (or his successor or designee if notice is provided to Developer). The representatives shall be available at all reasonable times to discuss and review the performance of the parties to this Agreement and the development of the Property pursuant to this Agreement, but the representatives do not have the power or authority to alter or amend any term, condition or provision of this Agreement.

SECTION 15. DEFAULT

Failure or unreasonable delay by any Party to perform or otherwise act in accordance with any term or provision of this Agreement for a period of thirty (30) calendar days or such other reasonable amount of time necessary to cure the default, provided the cure has commenced and is being prosecuted diligently, continuously and in good faith, and after written notice thereof from the other Party (the “Cure Period”), shall constitute a default under this Agreement. Said notices shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible. In the event such default is not cured within the Cure Period, the non-defaulting party shall have the remedies set forth below. Said notice shall specify the nature of any alleged default and the manner in which said default may be satisfactorily cured, if possible. In the event such Default is not cured within the Cure Period, the non-defaulting party shall have the remedies set forth as follows:

(1) City’s exclusive remedies for a Default by Developer shall consist of, and shall be limited to the following:

(A) For a breach by Developer of this Agreement, City's exclusive remedy shall be to terminate City's obligations arising under Sections 6(a) of this Agreement by written notice thereof to Developer.

(B) At any time, City may seek special action or other similar relief (whether characterized as mandamus, injunction or otherwise), requiring Developer to undertake and to fully and timely address a public safety concern or to enjoin any construction or activity undertaken by Developer that is not in accordance with the terms of the Agreement.

(C) Nothing in this Agreement shall be deemed to limit City's administrative remedies or City's remedies against Developer with respect to a breach by Developer of its obligations of indemnity.

(2) Developer's exclusive remedies for a Default by City shall consist of, and shall be limited to the following:

(A) Developer's exclusive remedy for a monetary Default by City shall consist of and shall be limited to recovery of damages for unpaid amounts due in accordance with the provisions of this Agreement. Such damages shall be deemed to consist of Developer's actual damages as of the time of entry of judgment (meaning the right to receive payments in accordance with the terms of this Agreement). Developer expressly waives any right to seek consequential, special, punitive, multiple, exemplary or any other damages with respect to a monetary Default.

(B) Nothing in this Agreement shall be deemed to limit the Developer's remedies, as may be provided by law or in equity, for non-monetary Defaults by City.

SECTION 16. ENFORCED DELAYS (FORCE MAJEURE)

Neither City nor Developer, as the case may be, shall be considered not to have performed its obligations under this Agreement in the event of enforced delay (an "Enforced Delay") due to causes beyond its control and without its fault or negligence or failure to comply with Applicable Laws, including, but not restricted to, acts of God, fires, floods, epidemics, pandemics, quarantine, restrictions, embargoes, labor disputes, and unusually severe weather or the delays of subcontractors or materialmen due to such causes, acts of a public enemy, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), nuclear radiation, blockade, insurrection, riot, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain of any governmental body on behalf of any public entity, or a declaration of moratorium or similar hiatus directly affecting the Property (whether permanent or temporary) by any public entity. In no event will Enforced Delay include any delay resulting from unavailability for any reason of particular tenants or purchasers of portions of the Property, labor shortages, or the unavailability for any reason of particular contractors, subcontractors, vendors or investors desired by Developer in connection with the Property. Developer agrees that Developer alone will bear all risks of delay which are not Enforced Delay. In the event of the occurrence of any such Enforced Delay, the time or times

for performance of the obligations of the Party claiming delay shall be extended for a period of the Enforced Delay; provided, however, that the Party seeking the benefit of the provisions of this Section shall, within thirty (30) calendar days after such Party knows or should know of any such Enforced Delay, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Enforced Delay and continue notification every sixty (60) calendar days until cured.

SECTION 17. ATTORNEY FEES AND COSTS; INDEMNITY

In the event of commencement of a legal action in an appropriate forum by a Party to enforce any covenant or any of such Party's rights or remedies under this Agreement, including any action for declaratory or equitable relief, the prevailing Party in any such action shall be entitled to recovery of its reasonable attorneys' fees and court costs and expenses, including, but not limited to, its costs of expert witnesses, transportation, lodging and meal costs of the Parties and witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental expenses associated with such dispute.

SECTION 18. SETTLEMENT OF ALL CLAIMS

The Parties agree that they (and their successors and assigns) will not initiate or cause to be initiated against each other or any of their current, past, or future agents, servants, employees, elected officials, appointed representatives, attorneys, fiduciaries, subsidiaries, affiliates, divisions, successors, assigns, or any person or entity acting or claiming by, through, under or in concert in both their personal and corporate capacities (collectively "Representatives"), any claim, lawsuit, action, appeal, investigation, or proceeding of any kind pertaining or in any way related to any past or present drainage/stormwater/fugitive (or other) water associated with flow or drainage from or onto the Property or loss, damage or injury to persons or property therefrom (collectively the "Water Claims").

Further, the Parties, their heirs, executors, administrators, and assigns, hereby release and forever discharge each other and their respective Representatives referred to above from any and all claims, demands, damages, causes of action, and any liability whatsoever, known or unknown, suspected or unsuspected, relating to the Water Claims.

The Parties warrant that they do not have (and hereby expressly release and disclaim) any claim, charge, or complaint, either formal or informal, pending against each other, their Representatives referred to above, with any court, tribunal, administrative agency, governmental agency, insurance or bonding agent relating to any past or present drainage/stormwater/fugitive water associated with the Water Claims.

The Parties agree that this Agreement may be pleaded as a complete bar to any action or suit before any court or administrative body, with respect to any claim under federal, state or other law, provided that the Party offering this Agreement as a bar to such action or suit is not in default of its obligations arising under this Agreement.

SECTION 19. MISCELLANEOUS PROVISIONS

- A. City Access to Property. Developer agrees to permit access to the Property by the City, its officials, personnel and designees, at reasonable times, subject to reasonable safety requirements as Developer may impose from time to time, to assure compliance with all Applicable Laws, the Planned Development and the terms of this Agreement.
- B. Public Access. Developer will grant to City, as may be necessary, recorded emergency vehicle access and use easements over and through any private roadways as may exist from time to time within the Property.
- C. Restriction on Transfers. During the first three (3) years after execution of this Agreement, Developer may transfer its interest to another entity to perform the construction of the Project as long as Michael and/or Ernie Thesman are listed as Principal and Managing partners of said entity. However, during the same period, Developer may not transfer its interest to another entity if Michael and/or Ernie Thesman are not Principal or Managing partners without prior written consent of City, which consent may not be unreasonably withheld.

During the first three (3) years of this Agreement is in effect, Developer shall provide written notice ("Transfer Notice") to City with respect to any sale or assignment of any interest in Developer which results in Michael or Ernie Thesman not becoming a Principal or Managing Member of the entity. Such Transfer Notice shall be tendered to City at least sixty (60) calendar days before such Transfer takes place.

The transfer prohibition shall not apply if Michael or Ernie Thesman provides documentation satisfactory to City in its reasonable discretion of a permanent and substantial medical illness or disease, disability or death of either Michael or Ernie Thesman.

- D. Development Agreement Approval. Both Parties agree and understand this Agreement is subject to approval by at least a majority of the Council.
- E. Severability. City and Developer each believes that the execution, delivery and performance of this Agreement are in compliance with all Applicable Laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring City to do any act in violation of any Applicable Laws) such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that, if the City Attorney determines that such action is legally permissible, this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required; provided, however, in no event shall such reformation require any general fund expenditure or incurrence of indebtedness by City. The Parties further agree, in such circumstances, to do all acts and to

execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

F. Rights and Remedies are Cumulative. Subject to the provisions and limitations of Section 15, the rights and remedies of the Parties are cumulative, and the exercise by either Party of any one or more of such rights shall not preclude the exercise by it, at the same or different times, of any other right or remedy for any other non-performance by the other Party.

G. Notices and Filings. Except as otherwise required by law, any notice required or permitted under this Agreement shall be in writing and shall be given by personal delivery, or by deposit in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this Section, or by telecopy or telefacsimile machine, or by any nationally recognized express or overnight delivery service (e.g. Federal Express or UPS), with all postage and other delivery charges prepaid:

If to City: City of Apache Junction
Attn: City Manager, George Hoffman
300 E. Superstition Blvd.
Apache Junction, Arizona 85119-2899
Telephone: (480) 474-5066
Facsimile: (480) 474-5110

And to: City of Apache Junction
Attn: City Attorney, Joel Stern
300 E. Superstition Blvd.
Apache Junction, Arizona 85119-2899
Telephone: (480) 474-2604
Facsimile: (480) 982-5883

If to Developer: Michael Thesman
10100 Santa Monica Blvd., Suite 2400
Los Angeles, CA 90067
Telephone: (310) 551-0841
Facsimile: (310) 551-0413

And to: Sean Lake
Pew & Lake, P.C.
1744 South Val Vista Drive
Suite 217
Mesa, Arizona 85204
Facsimile: (480) 461-4676

- H. Effective Date and Notices. All such notices, demands or other communications will (i) if delivered personally or delivered through a same day delivery/courier service be deemed effective upon delivery or refusal to accept delivery by the addressee; (ii) if delivered by U.S. Mail in the manner described above be deemed effective upon the earlier of receipt or three (3) business days after deposit in a United States post office or with a United States postal officer; and (iii) if sent by a recognized national overnight delivery service be deemed effective one (1) business day after deposit with such service. Any payment by the City may be made in the same manner or manners provided in this Section for the provisions of Notices and shall be deemed made at the time provided in this Section for notices, demands and other communications.
- I. Waiver. The Parties agree that neither the failure nor the delay of any Party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver of such right, remedy, power or privilege, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.
- J. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all Parties may be physically attached to a single document.
- K. Headings. The descriptive headings of the Sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.
- L. Exhibits. Any exhibit attached hereto shall be deemed to have been incorporated herein by this reference with the same force and effect as if fully set forth in the body hereof.
- M. Construction. The terms and provisions of this Agreement represent the results of negotiations between the Parties, each of which has been, or has had the opportunity to be, represented by counsel of its own choosing, and none of which has acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings. The Parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Agreement that ambiguous or conflicting terms or provisions contained in this

Agreement (or any other provision of this Agreement) shall be interpreted or construed against the Party who prepared or attorney who prepared the executed Agreement or any earlier draft of the same.

- N. Integration/Entire Agreement. Except as expressly provided herein, this Agreement constitutes the entire agreement between the Parties with respect to the subject matters hereof and supersedes any prior agreement, understanding, negotiation or representation regarding the subject matters covered by this Agreement.
- O. Further Assurances. Each Party agrees to perform such other and further acts and to execute and deliver such additional agreements, documents, affidavits, certifications, acknowledgements and instruments as any other Party may reasonably require to consummate, evidence, confirm or carry out the matters contemplated by this Agreement or to confirm the status of (a) this Agreement as in full force and effect, and (b) the performance of the obligations hereunder at any time during this Term.
- P. Business Days. If the last day of any time period stated in this Agreement or the date on which any obligation to be performed under this Agreement shall fall on a Saturday, Sunday or legal holiday, then the duration of such time period or the date of performance, as applicable, shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday or legal holiday.
- Q. Consents and Approvals. Wherever this Agreement requires or permits the consent or approval of a Party to any act, document, use or other matter, such consent or approval shall be given or denied by such Party in its reasonable discretion, unless this Agreement expressly provides otherwise.
- R. Covenants Running With Land; Inurement. The covenants, conditions, terms and provisions of this Agreement shall run with the Property and shall be binding upon, and shall inure to the benefit of the Parties and their respective permitted successors and assigns with respect to such Property. Wherever the term "Party" or the name of any particular Party is used in this Agreement such term shall include any such Party's permitted successors and assigns.
- S. Recordation. Within ten (10) calendar days after this Agreement has been approved by City and executed by the Parties, City shall cause this Agreement to be recorded in the Official Records of Pinal County, Arizona.
- T. Amendment. No change or addition is to be made to this Agreement except by written amendment executed by City and Developer. Within ten (10) calendar days after any amendment to this Agreement, such amendment shall be recorded in the Official Records of Pinal County, Arizona. Upon amendment of this Agreement as established herein, references to "Agreement" shall mean the Agreement as amended.

- U. Good Faith of Parties. Except where any matter is expressly stated to be in the sole discretion of a Party, in performance of this Agreement or in considering any requested extension of time, the Parties agree that each will act in good faith.
- V. Time of Essence. Time is of the essence in implementing the terms of this Agreement.
- W. No Partnership: Third Parties. Nothing contained in this Agreement shall, create, or be deemed to create, any partnership, joint venture or other similar arrangement between City and Developer. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right to cause of action hereunder; except that the indemnity provisions of this Agreement shall extend to all agents, attorneys, Council members and employees of City acting in the course and scope of their employment or engagement.
- X. Governing Law; Choice of Forum. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Pinal (or, as may be appropriate, in the Justice Courts of Pinal County, Arizona, or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section.
- Y. Survival of Indemnifications. All indemnifications contained in this Agreement shall survive the execution and delivery of this Agreement, the closing of any transaction contemplated herein, and the rescission, cancellation, expiration or termination of this Agreement upon the terms and for the period set forth in each respective Section.
- Z. Status Statements. Any Party (the "Requesting Party") may, at any time, and from time to time, deliver written notice to any other Party requesting such other Party (the "Providing Party") to provide in writing that, to the knowledge of the Providing Party, (a) this Agreement is in full force and effect and a binding obligation of the Parties, (b) this Agreement has not been amended or modified, and if so amended, identifying the amendments, (c) the Requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults, and (d) any other matter reasonably requested (a "Status Statement"). A Party receiving a request hereunder shall execute and return such Status Statement within fifteen (15)

business days following the receipt thereof. City Manager or any Assistant City Manager shall have the right to execute any Status Statement requested by Developer hereunder. City acknowledges that a Status Statement hereunder may be relied upon by transferees and mortgagees; provided, however, City shall have no liability for monetary damages to Developer, any transferee or mortgagee, or any other person in connection with, resulting from or based upon the good faith provision of any Status Statement by City.

- AA. Nonliability of City Officials, Etc., and of Employees, Members and Partners, Etc. of Developer. No City Council member, official, representative, agent, attorney or employee of City shall be personally liable to Developer, or to any successor in interest to Developer in the event of any Non-Performance or breach by City or for any amount which may become due to any of the other Parties or their successors, or with respect to any obligation of City under the terms of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, except in the case of an intentional misrepresentation, the liability of Developer under this Agreement shall be limited solely to the assets of Developer and shall not extend to or be enforceable against: (i) the individual assets of any of the individuals or entities who are shareholders, members, managers, constituent partners, officers or directors of the general partners or members of Developer; (ii) the shareholders, members or managers or constituent partners of Developer; or (iii) officers of Developer.
- BB. Proposition 207 Waiver. Developer agrees, understands and acknowledges that City is entering into this Agreement in good faith and at the specific request of Developer, and further with the understanding that, if City acts consistently with the terms and conditions herein, it will not be subject to a claim for diminished value of the Property from Developer. Developer, on behalf of it and its successors and assigns, intends to encumber the Property with the following agreements and waivers. Developer agrees and consents to all the conditions imposed by this Agreement, the Zoning, the General Plan, Applicable Laws, and all permits and approvals issued or granted by City in furtherance thereof, and by signing this Agreement waives any and all claims, suits, damages, compensation and causes of action Developer may have now or in the future under the provisions of A.R.S. §§ 12-1134 through and including 12-1136 (but specifically excluding any provisions included therein relating to eminent domain) and resulting from the development of the Property consistent with this Agreement, the Zoning, the General Plan, Applicable Laws, and all permits and approvals issued or granted by City in furtherance thereof or from any "land use law" (as such term is defined in the aforementioned statute sections) permitted by this Agreement to be enacted, adopted or applied by City now or hereafter. Developer acknowledges and agrees to the terms and conditions set forth in this Agreement, the Zoning, the General Plan, Applicable Laws, and all permits and approvals issued or granted by City in furtherance thereof cause the fair market value of the Property to equal or exceed the fair market value of the Property in the absence of this Agreement, the Zoning the General Plan, Applicable Laws, and all permits

and approvals issued or granted by City in furtherance thereof, and such “land use laws.”

- CC. Conflict of Interest Statute; Compliance with Financing Requirements. This Agreement is subject to, and may be terminated by City in accordance with, the provisions of A.R.S. § 38-511. This Agreement is subject to all applicable federal, state and local laws relating to the City's budget, annual appropriations, etc. Further, any obligations of the City under this Agreement are subordinate to any existing or future indebtedness or pledge of taxes made by City in connection with any bond indenture, municipal property corporation transaction, lease or other type of financing.
- DD. Risk of Loss. Developer assumes the risk of any and all loss, damage or claims to any portion of the Public Roadway Improvements unless and until title to the Public Roadway Improvements is transferred to City. With respect to any claims arising after acceptance of the Public Roadway Improvements, and subject to the warranties described below, City shall bear all risk of and against any claim arising from any injury (personal or economic or other) or property damage to any person, entity or utility, arising from the operation, effects, condition, loss, damage to or failure of any of the Public Roadway Improvement. Assuming Developer's channel carries at least 761 cfs, Developer shall not assume any risk or liability associated with the design of the roadway or injury that results from any backwater condition or overflow onto Southern Avenue beyond the Developer's channel design capacity of 761 cfs or the exiting water condition at the intersection of Southern and Meridian. At the time title to the Public Roadway Improvements is transferred to City by dedication deed, plat recordation, or otherwise, Developer will, to the extent allowed by law, assign to City all unexpired warranties relating to the design, construction and/or composition of such Public Roadway Improvements. Further, acceptance of the Public Roadway Improvements shall be conditioned on City's receipt of a two (2) year warranty of workmanship, materials and equipment, in form and content reasonably acceptable to City; provided, however, that such warranty or warranties may be provided by Developer's contractor or contractors directly to City and are not required from Developer, and that any such warranties shall extend from the date of completion of any Public Roadway Improvement, any component thereof, or the work of any specific trade or contractor, as applicable.
- EE. Insurance. During the period of any construction involving the Public Infrastructure Improvements, and with respect to any construction activities relating to the Public Roadway Improvements, Developer will obtain and provide City with proof of payment of premiums and certificates of insurance showing that Developer is carrying, or causing its contractor(s) to carry builder's risk insurance, comprehensive general liability and worker's compensation insurance policies in amounts and coverages set forth on Exhibit “D.” Such policies of insurance shall be placed with financially sound and reputable insurers, require the insurer to give at least thirty (30) calendar days' advance written notice of

cancellation to City, and will name City as an additional insured on all such policies.

- FF. Assistance in Third Party Approvals. Upon written request, City shall reasonably (and at no cost to City) assist Developer in the coordination of third party approvals for all drainage issues affecting Federal, State and County agencies, but City shall not be responsible for complying with other agencies' orders, noncompliance declarations or required redesigns.
- GG. Privilege Taxes for Space Rentals. Developer shall collect rental privilege tax for each rented space and shall submit such taxes to the City pursuant to the City Tax Code Section 8A-445.
- HH. Privilege Taxes for Site Preparation, Set Ups, and Building Sales. Developer shall maintain a sales office in the City and shall treat all Developer sales as point of sale in the City and consequently shall pay all applicable privilege taxes associated with the site preparation, moving to the site, set up, and building sale to City pursuant to City Tax Code Section 8A-427.
- II. Business and Privilege Tax License. Developer represents and warrants that any license necessary to perform the work under this Agreement is current and valid or will be obtained or be brought current. Developer understands that the activity described herein constitutes "doing business in the City of Apache Junction" and Developer agrees to obtain a privilege license pursuant to City Tax Code Section 8A-300 and keep such license current during the term of this Agreement. Developer agrees to require any subcontractor hired to perform any task or work within the corporate limits of the City to acquire a privilege license pursuant to City Tax Code Section 8A-300, liability insurance and worker's compensation insurance.
- JJ. New Home and Features. The first sale and initial placement of all homes shall be new, not previously lived in units and not resale units. Developer will offer homes with attached garages as an option. Home exteriors may be vinyl sided with asphalt or architectural shingled roofs.

ATTEST:

By: Kathleen Connelly
Kathy Connelly
City Clerk

APPROVED TO AS FORM:

CITY:

CITY OF APACHE JUNCTION, an Arizona
municipal corporation

By: John Insalaco
John Insalaco
Mayor

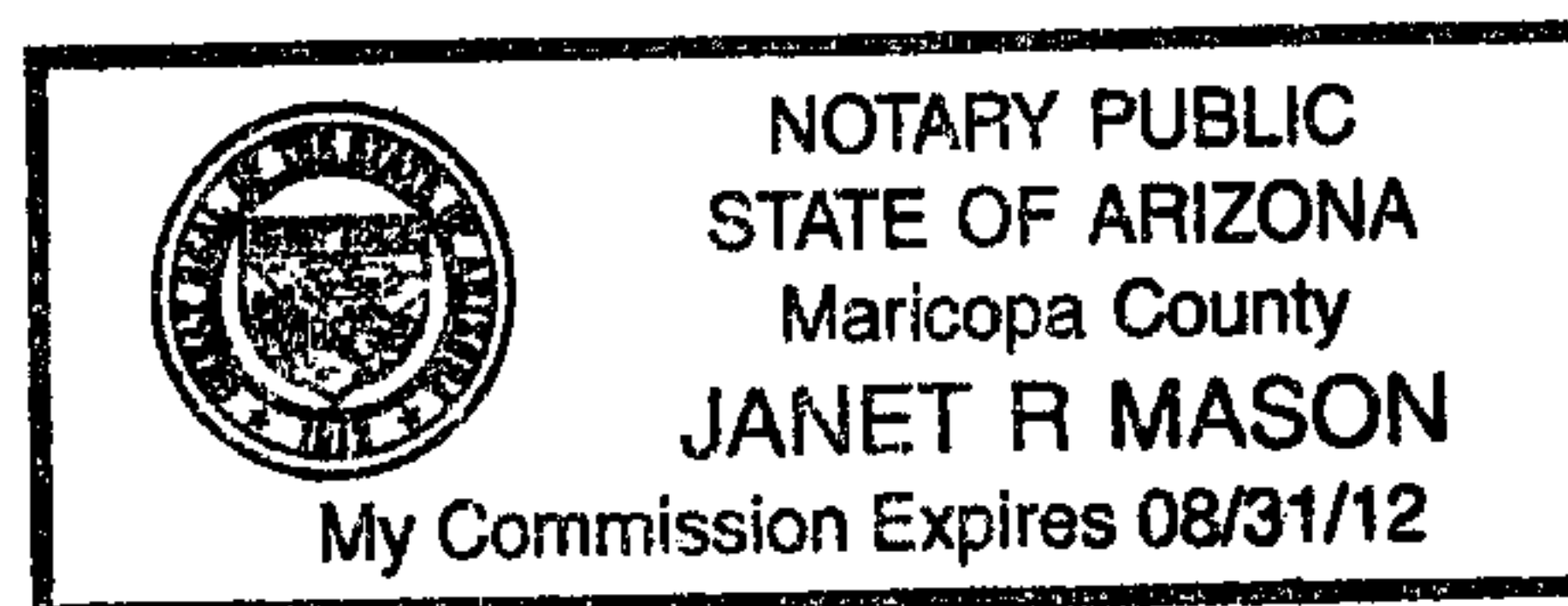
By: 17.15.09
R. Joel Stern, Esq.

STATE OF ARIZONA)
) ss
County of PINAL)

The foregoing instrument was acknowledged before me this 20th day
of August, 2009, by John S. Insalaco, Mayor of the City of
Apache Junction, Arizona, an Arizona municipal corporation, on behalf of the City.

Janet R. Mason
Notary Public

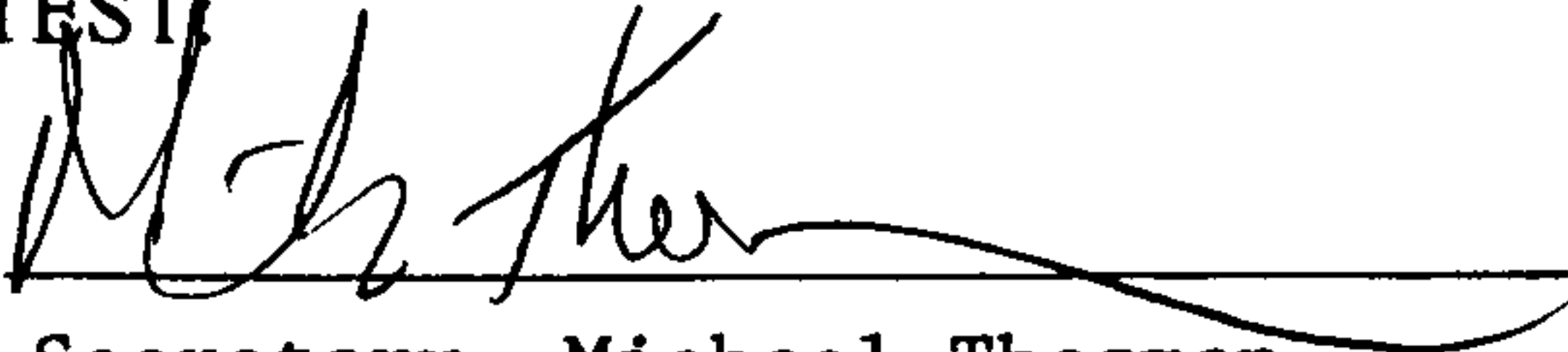
My Commission Expires:
8-31-12



DEVELOPER:

FORTUNE TRAVEL, INC.,
an Oregon corporation

ATTEST,

By: 
Its: Secretary, Michael Thesman

By: 
Its: President, Ernest Thesman

STATE OF OREGON)
) ss
County of _____)

~~The foregoing instrument was acknowledged before me this _____ day
of _____, 2009, by _____, the _____ Fortune
Travel, Inc., on behalf of such company.~~

Notary Public

My Commission Expires: SEE ATTACHED CERTIFICATE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

Los Angeles

On

July 29, 2009

Date

before me,

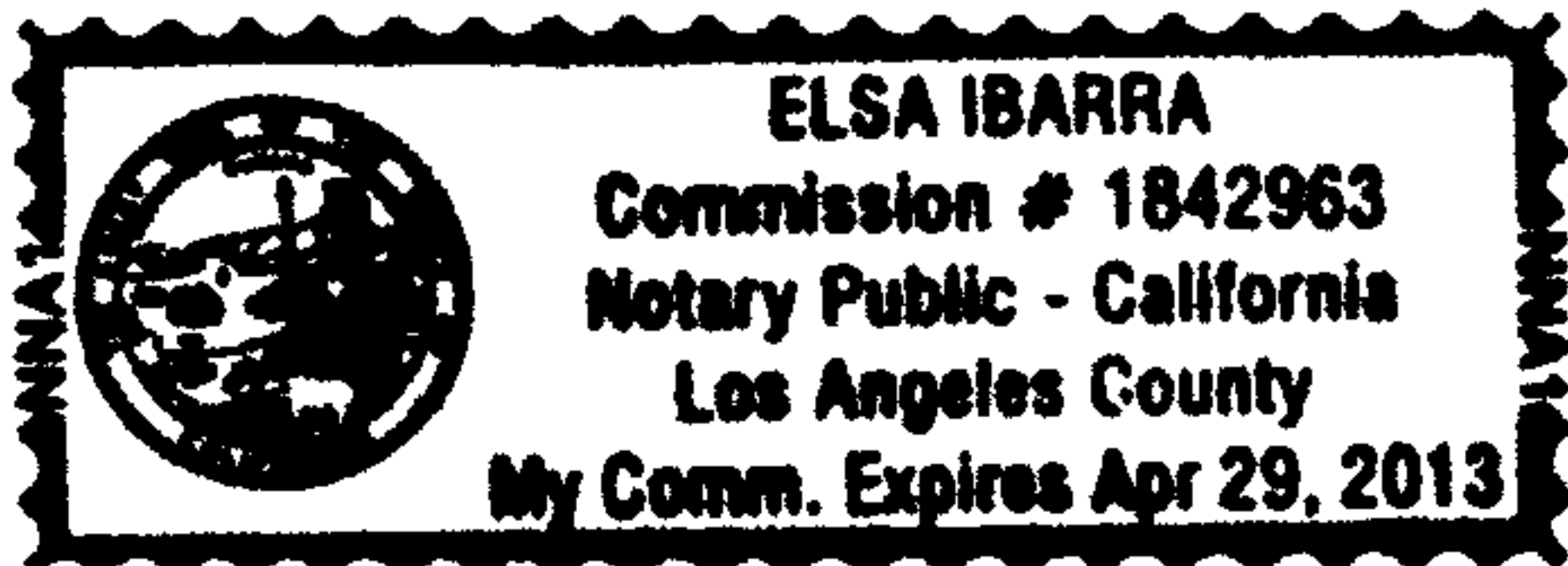
ELSA IBARRA, Notary Public

Here Insert Name and Title of the Officer

personally appeared

ERNEST THESMAN

Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity~~(ies)~~, and that by his/~~her/their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

[Signature]

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
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EXHIBIT A
LEGAL DESCRIPTION

The Northwest Quarter of Section 31, Township 1 North, Range 8 East, Gila and Salt River Base and Meridian, Pinal County, Arizona;

EXCEPT that portion of the South half of the Northwest Quarter which lies South of the following described line;

BEGINNING at a point on the West line of said Section 31, which point bears North 0 degrees 05 minutes 05 seconds East 850.00 feet from the West quarter corner of said Section 31;

THENCE North 89 degrees 54 minutes 55 seconds East 55.00 feet;

THENCE South 5 degrees 37 minutes 47 seconds East 251.08 feet;

THENCE North 89 degrees 57 minutes 52 seconds East 2557.97 feet to the Point of Ending on the East line of said South half of the Northwest Quarter of Section 31; and

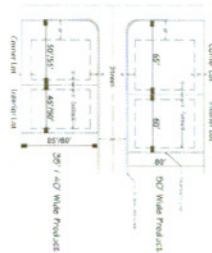
EXCEPTING THEREFROM all coal, oil, gas and other mineral deposits as reserved in the Patent recorded in Book 50 of Deeds, page 27.

Exhibits B1 through
B4 can be viewed
by contacting Developer
Michael Thesman c/o Fortune
Travel.

EXHIBIT B-1 CONCEPTUAL SITE PLAN



Typical setbacks



PROJECT DATA

PROPOSED USE: Manufactured Housing

PROPOSED ZONING: MHPD

TOTAL gross site area: 110.2 acres

TOTAL net site area: 108.8 acres

TOTAL developed area: 28.0 acres

TOTAL LOT: 650

LOT TYPE: 113

LOT TYPE: 213

LOT TYPE: 215

LOT TYPE: 216

LOT TYPE: 217

LOT TYPE: 218

LOT TYPE: 219

LOT TYPE: 220

LOT TYPE: 221

LOT TYPE: 222

LOT TYPE: 223

LOT TYPE: 224

LOT TYPE: 225

LOT TYPE: 226

LOT TYPE: 227

LOT TYPE: 228

LOT TYPE: 229

LOT TYPE: 230

LOT TYPE: 231

LOT TYPE: 232

LOT TYPE: 233

LOT TYPE: 234

LOT TYPE: 235

LOT TYPE: 236

LOT TYPE: 237

LOT TYPE: 238

LOT TYPE: 239

LOT TYPE: 240

LOT TYPE: 241

LOT TYPE: 242

LOT TYPE: 243

LOT TYPE: 244

LOT TYPE: 245

LOT TYPE: 246

Las Palmas del Sol
CONCEPTUAL SITE PLAN



THE KIMBERLY CLARK COMPANY / Developer
PDS&L AND ASSOCIATES / Designer
MITCHELL, POWELL & ASSOCIATES / Engineers
January 14, 2009

EXHIBIT B-2 WALLS AND ENTRY MONUMENT ELEVATIONS



THESMAN RESIDENTIAL Owner / Developer
POSA Land planners / landscape architects
RITCHIE POWELL & Associates engineers

Las Palmas del Sol
WALLS & ENTRY MONUMENT
exhibit A



EXHIBIT B-3 PHASE PLAN



Also see Exhibit D
for RV park interim use
in Phase VIII

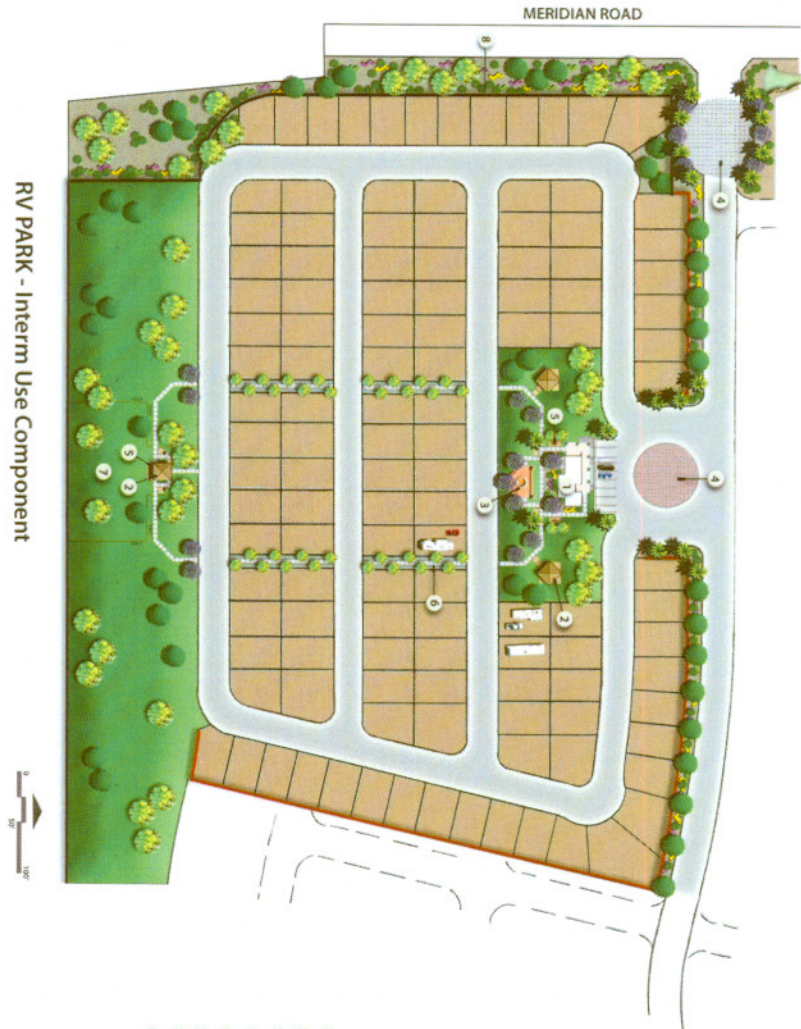


Las Palmas del Sol
PHASE PLAN
exhibit B



THE SUMMIT RESIDENTIAL GROUP / Developer
POSA land planners / landscape architects
RITCHIE POWELL & ASSOCIATES engineers
May 12, 2009

EXHIBIT B-4 RV PARK PLAN



RV PARK - Interm Use Component

KEY	
1	RV Park Office Building
2	Ramada
3	Fire Pit with Gathering Area
4	Specialty Street Paving
5	Sitting Area
6	Walkway
7	Bark Park
8	Theme Wall



RV PARK DATA

Total Spaces - 121
 Typical Space Dimension - 33' x 51'
 Typical Street Width - 32'
 Approximate Site Area - 10 acres

THESMAN RESIDENTIAL Owner / Developer
 POSA Land planners / Landscape architects
 RITCOCH-POWELL & Associates engineers

May 12, 2005

Las Palmas del Sol
 RV PARK
 exhibit D



EXHIBIT C

PUBLIC ROADWAY AND DRAINAGE IMPROVEMENTS

1. SOUTHERN AVENUE IMPROVEMENTS

All half street and such other related improvements, including but not limited to all road, curb, gutter, sidewalk, streetlight, water, sewer, and other public utilities, as determined by the City Engineer, for Southern Avenue, all of which borders Developer's Property, and twenty-five percent (25%) of the traffic signalization at the intersection shall be completed with the first phase of development.

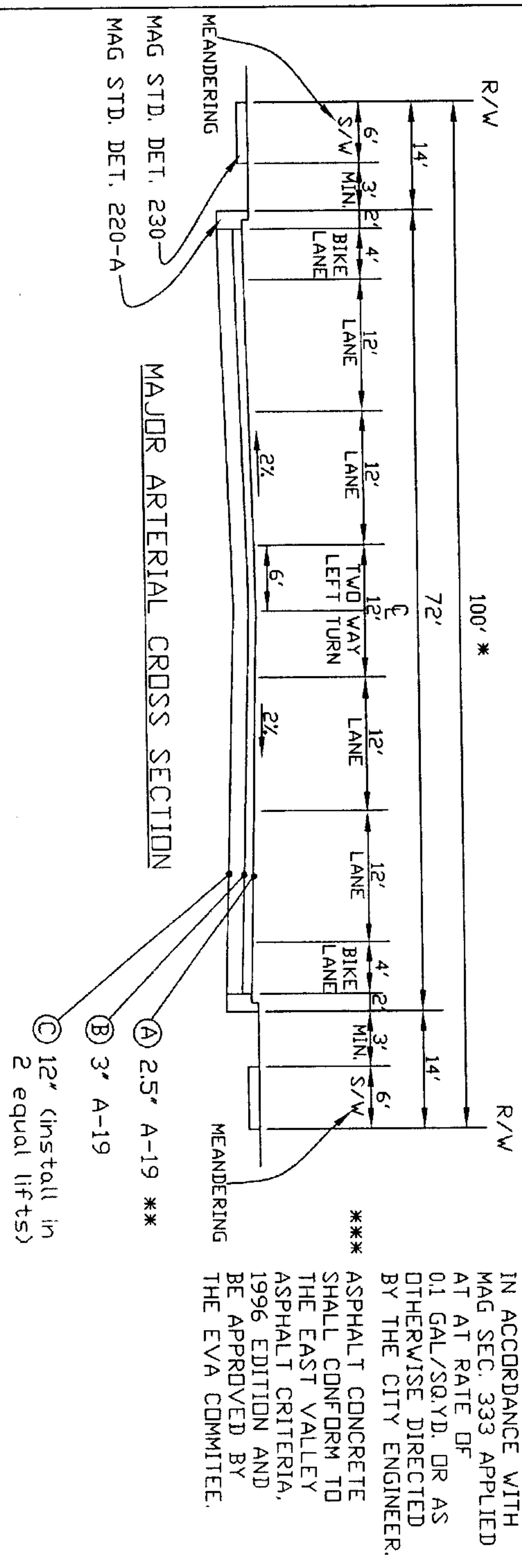
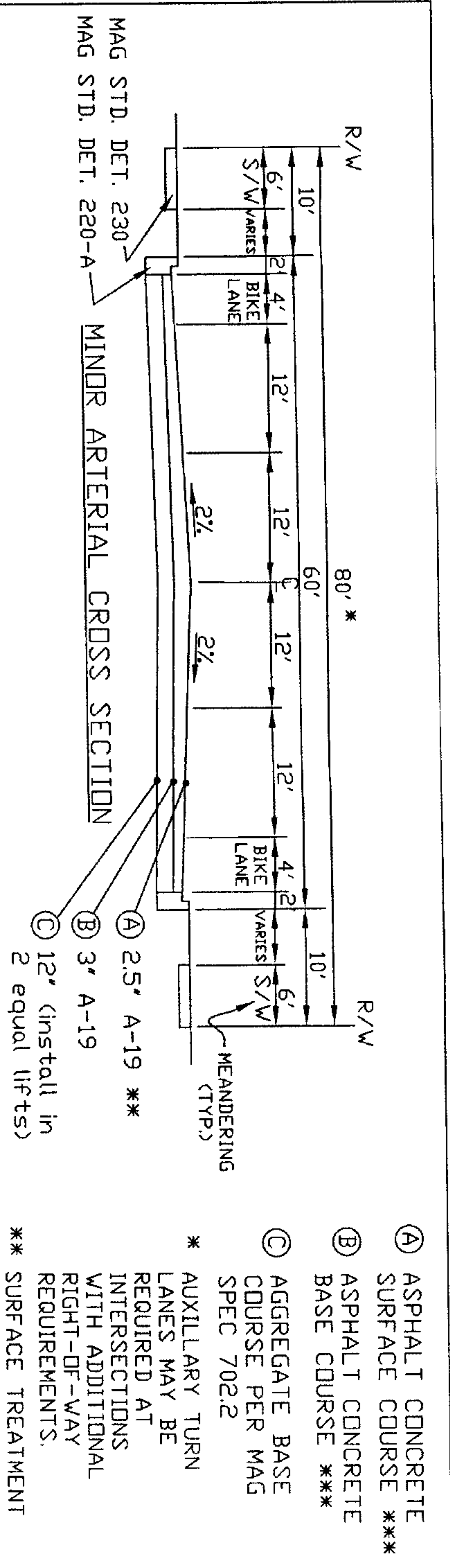
2. MERIDIAN DRIVE IMPROVEMENTS

All half street and such other related improvements, including but not limited to all road, curb, gutter, sidewalk, streetlight, water, sewer, and other public utilities, as determined by the City Engineer, for Meridian Drive, all of which borders Developer's Property shall be completed prior to the City issuing the 325th set permit for a manufactured home within the Property.

3. DRAINAGE IMPROVEMENTS

A storm water channel to be located on Developer's Property that is designed to carry a minimum of 761 cubic feet per second flow from the north side of Southern Avenue onto Developer's Property, which shall meet the City Engineer's specifications shall be completed with the first phase of development but in no event later than thirty (30) months after all governmental approvals have been obtained and the Developer has elected to proceed with the Development. The 100-year flow rate for the Property that shall be used during the design and construction of Drainage Improvements and on-site improvements coming from the North shall be 3,383 cubic feet per second ("cfs").

SOUTHERN RD.OFFSITE STREET IMPROVEMENTS



DETAIL NO. AJ-20.3	ARTERIAL STREET CROSS SECTIONS	CITY OF APACHE JUNCTION STANDARD DETAIL REVISED OCTOBER 2006
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MERIDIAN RD.OFFSITE STREET IMPROVEMENTS

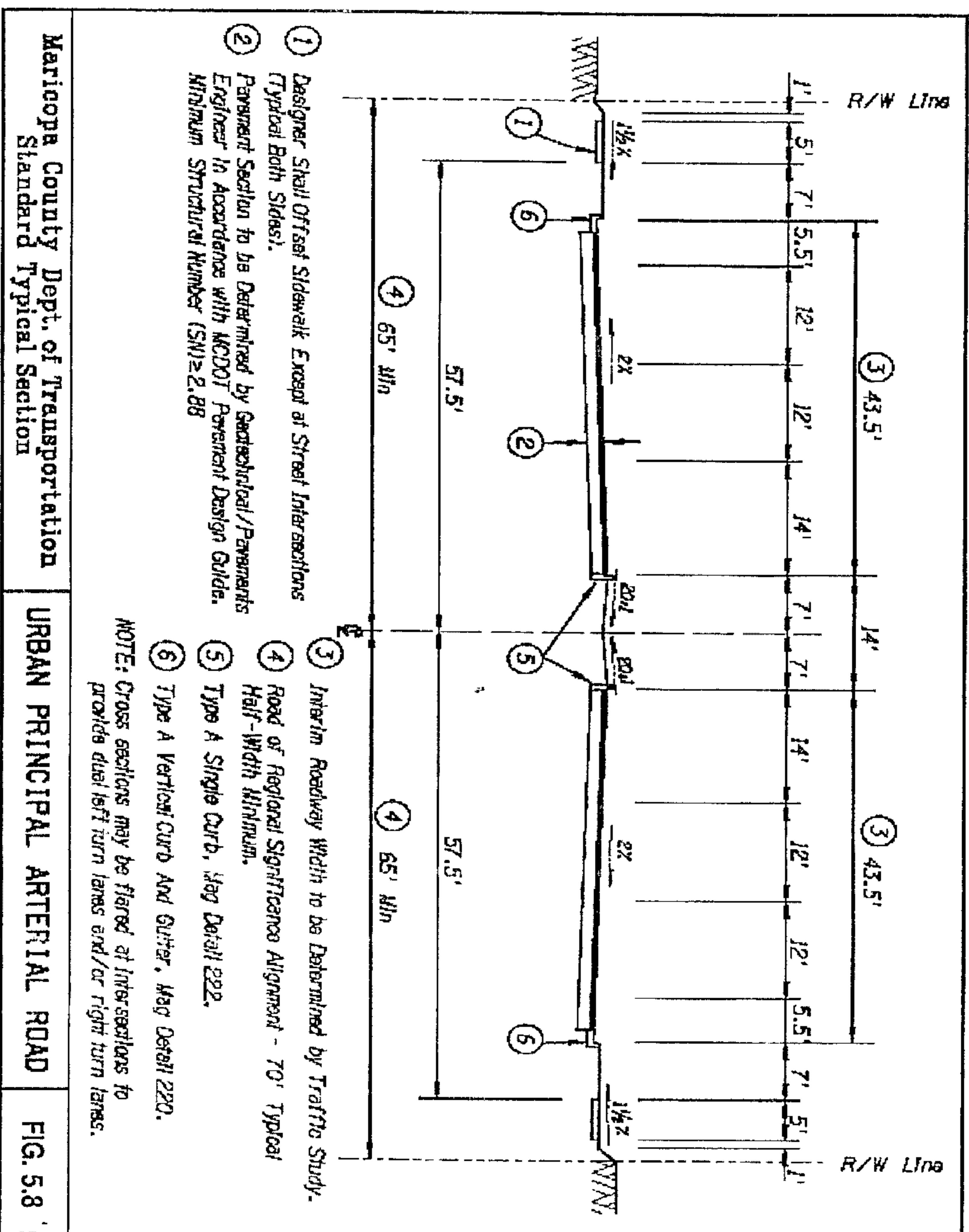


EXHIBIT D

CITY OF APACHE JUNCTION INSURANCE REQUIREMENTS

A. Property. During the period of any construction involving the Public Improvements, builder's risk insurance on an all-risk, replacement cost basis for the Public Improvements.

B. Liability. During the period of any construction involving the Public Improvements, insurance covering the Developer and (as an additional insured) the City against liability imposed by law or assumed in any written contract, and/or arising from personal injury, bodily injury or property damage, with a limit of liability of \$1,000,000.00 per occurrence with a \$1,000,000.00 products/completed operations limit and a \$2,000,000.00 general aggregate limit. Such policy must be primary and written to provide blanket contractual liability, broad form property damage, premises liability and products and completed operations.

C. Contractor. During the period of any construction involving the Public Improvements, each of the general or other contractors with which the Developer contracts for any such construction shall be required to carry liability insurance of the type and providing the minimum limits set forth below:

i) Worker's Compensation insurance and Employer's Liability with limits of \$500,000.00 per accident, \$500,000.00 per disease and \$500,000.00 policy limit disease.

ii) Commercial general liability insurance on a \$1,000,000.00 per occurrence basis providing coverage for:

Products and Completed Operations
Blanket Contractual Liability
Personal Injury Liability
Broad Form Property Damage
X.C.U.

iii) Business automobile liability including all owned, non-owned and hired autos with a limit of liability of not less than \$1,000,000.00 combined single limit for personal injury, including bodily injury or death, and property damage.

D. Architect. In connection with any construction involving the Public Improvements, the Developer's architect shall be required to provide architect's or engineer's professional liability insurance with a limit of \$1,000,000.00 per claim. This policy, or other policies, shall cover claims for a period of not less than three (3) years after the completion of construction involving the Parcels and the Public Improvements.

E. Engineer. In connection with any construction involving the Public Improvements, the Developer's soils engineer or environmental contractor shall be required to provide engineer's professional liability insurance with a limit of \$1,000,000.00 per claim. This policy, or other policies, shall cover claims for a period of not less than three (3) years after the completion of the construction involving the Property and the Public Improvements.

F. CPI Adjustments. The minimum coverage limits set forth above shall be adjusted every five (5) years by rounding each limit up to the million dollar amount which is nearest the percentage of change in the Consumer Price Index (the "CPI") determined in accordance with this paragraph. In determining the percentage of change in the CPI for the adjustment of the

insurance limits for any year, the CPI for the month October in the preceding year, as shown in the column for "All Items" in the table entitled "All Urban Consumers" under the "United States City Averages" as published by the Bureau of Labor Statistics of the United States Department of Labor, shall be compared with the corresponding index number for the month of October one (1) year earlier.

G. Primary Coverage. Developer's insurance coverage shall be primary insurance with respect to the City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, and employees shall be in excess of the coverage provided by Developer and shall not contribute to it.

H. Indemnities. Coverage provided by the Developer shall not be limited to the liability assumed under the indemnification provisions of the Agreement.

I. Waiver of Subrogation. The policies shall contain a waiver of subrogation against the City, its officers, officials, agents, and employees Property.

J. Notice of Cancellation: Each insurance policy shall include provisions to the effect that it shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) calendar days' prior written notice has been given to the City. Such notice shall be sent directly to City Manager, 300 East Superstition Blvd., Apache Junction, AZ 85119, and shall be sent by certified mail, return receipt requested.

K. Acceptability of Insurers: Insurance is to be placed with insurers duly licensed of approved unlicensed companies in the State of Arizona and with an "A.M. Best" rating of not less than A- VII. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect Developer from potential insurer insolvency.

L. Verification of Coverage: Developer shall furnish the City with original certificates of insurance (ACCORD form or equivalent approved by the City) as required herein. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage shall be clearly noted on the certificate of insurance.

All certificates are to be received and approved by the City before the Commencement of Construction. Each insurance policy must be in effect at or prior to the Commencement of Construction and must remain in effect for the duration of the Agreement. Failure to maintain the insurance policies as required by this Agreement or to provide timely evidence of renewal will be considered a material breach of the Agreement.

All certificates required by this Agreement shall be sent directly to City of Apache Junction, Attn: Public Works Department, City Engineer, 300 East Superstition Blvd., Apache Junction, Arizona 85119. The City reserves the right to require complete, certified copies of all insurance policies and endorsements required by this Insurance Exhibit at any time.

M. Approval: Any modification or variation from the insurance requirements in Insurance Exhibit must have prior approval from the City Manager's Office whose decision shall be final.

Such action will not require formal contract amendment, but may be made by administrative action.

N. Miscellaneous. References to Developer herein shall mean Developer and/or its general contractor(s). References herein to the Agreement shall mean the Development Agreement of which this Exhibit is a part. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement. The City in no way warrants that the minimum limits contained herein are sufficient to protect Developer from liabilities that might arise and Developer may purchase such additional insurance as Developer determines necessary.