

When recorded return to:



OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
LAURA DEAN-LYTLE

Richard Joel Stern, Esq.
Apache Junction City Attorney
300 East Superstition Blvd.
Apache Junction, AZ 85219

DATE/TIME: 02/24/09 1423
FEE: \$16.50
PAGES: 16
FEE NUMBER: 2009-018381

**ECONOMIC DEVELOPMENT AGREEMENT BETWEEN CITY OF
APACHE JUNCTION AND MEHMOOD MOHIUDDIN**

This Economic Development Agreement is entered into as of February 18, 2009, by and between CITY OF APACHE JUNCTION, an Arizona municipal corporation (hereinafter the "City") and MEHMOOD MOHIUDDIN, as owner of Dash In Gas & Mini Mart (hereinafter the "Developer") (both collectively referred to herein as the "Parties").

RECITALS

1. Developer owns 0.67 acres of land, Pinal County Assessor Parcel Nos. 100-25-04205 and 100-25-04304, located at 2341 N. Apache Trail, Apache Junction, AZ (the "Property"), and more fully described and depicted in Exhibit A.
2. Developer desires to renovate a portion of the Property (Pinal County Assessor Parcel No. 100-25-04304) zoned Local Business ("CB-2") and convert the warehouse and storage use to a 2,800 square foot pizza restaurant and pub to be named the "Hitching Post" (the "Project").
3. In December 2008, Developer contacted the City's Development Services Department to inquire about the feasibility of the Project.
4. On January 8, 2009, Developer met with City staff at a Preliminary Design Review meeting, at which time Developer was informed the City-imposed development fees for the Project would be \$52,948.00.
5. On January 12, 2009, Developer's representative requested a waiver of these fees, and on January 12, 2009, the Development Fee Administrator denied the request.
6. On January 12, 2009, Developer appealed the Development Fee Administrator's decision and requested a hearing before the Mayor and City Council, as allowable under Apache Junction City Code, Volume II, Land Development Code, Chapter 7, Development Fees, § 7-1-1(M).

7. At a Public Hearing on January 20, 2009, the Mayor and City Council directed staff to negotiate a development agreement with Developer since there was a general feeling City's commercial development fees for renovations of different uses within the same zoning category are generally too high compared to other municipalities and in view of the current recession.

8. City and Developer are also desirous of addressing public safety concerns relating to traffic movements entering and exiting Developer's property from adjacent arterials.

9. Arizona Revised Statutes Annotated (hereinafter "A.R.S.") § 9-500.05 authorizes City to enter into a development agreement with a landowner or any other person having an interest in real property located within City to facilitate development of the property by providing for, among other things, the conditions, terms, restrictions and requirements for public infrastructure and the financing of public infrastructure.

AGREEMENT

NOW THEREFORE, in consideration of the terms and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Accuracy of the Recitals: The Parties hereby acknowledge the accuracy of the Recitals set forth above, which are incorporated herein by this reference.

2. Term: This Agreement shall commence on the date it is recorded with the Pinal County Recorder's Office (the "Effective Date") and continue in perpetuity, or until all obligations have been fully performed, whichever date is sooner. Notwithstanding the foregoing, Developer's obligation to indemnify, defend and hold City harmless shall survive the expiration or earlier termination of this Agreement.

3. Developer's Obligations: Developer agrees to each of the following obligations:

A) Development Fees. At the time of issuance of the building permit, Developer shall pay City the Police and General Government Development Fees for the Project in the amount of Six Thousand Four Hundred Sixty Dollars and Zero Cents (\$6,460.00).

B) Compliance with Site Plan. Developer shall build the Project and improve the Property in accordance with the Site Plan set forth in Exhibit B and Building Plans as set forth in Exhibit C, to include all depicted landscaping, parking stalls (shown with a 10% administrative reduction), building improvements and delineated driveway entrances.

These improvements to the Property shall be completed before a Certificate of Occupancy is granted for the Project.

While the depicted landscaping illustrated in Exhibit B generally complies with or exceeds the zoning standard for required number of plants, the plan does not comply with the zoning standards regarding landscape buffer setback or installation of a perimeter masonry wall. Accordingly, the development agreement serves to waive these non-complying landscape elements.

C) Registered Architect/Engineer Stamped Plans. Pursuant to A.R.S. § 32-144(A)(4), the construction plans shall be stamped by a registered architect or engineer and all drawings shall meet all applicable construction codes prior to the issuance of a building permit.

D) Fire Sprinklers. If required under Applicable Laws described in subsection (F) below, or by the Fire Marshal or Building Official, Developer shall install interior fire sprinklers.

E) Business and Privilege Tax License. Developer represents and warrants that any license necessary to perform the work under this Agreement is current and valid. Developer understands that the activity described herein constitutes “doing business in the City of Apache Junction” and Developer agrees to obtain a business license pursuant to Article 8-5 of the Apache Junction City Code, obtain any transaction privilege tax pursuant to Apache Junction Tax Code Article 8A, keep such licenses current during the term of this Agreement, and pay all tax arrears currently owed to City. Any activity by contractors and subcontractors within the corporate city limits will invoke the same business tax regulations on said contractors and subcontractors, and Developer ensures its contractors and subcontractors will obtain any required business and transaction privilege tax licenses.

F) Applicable Laws. For the purposes of this Agreement, the term “Applicable Laws” means the federal, state, county and local laws (statutory and common law) ordinances, rules, regulations, permit requirements, and other requirements and official policies of the City which apply to the development of the Property as of the Execution Date.

G) On-Site Waste Disposal System/Septic System. Developer shall comply with the Applicable Laws in regard to the on-site waste disposal systems/septic system. Developer shall also provide proof to City of County approval of the on-site waste disposal system/septic system prior to the issuance of a building permit.

H) Shared Parking/Cross Access Easements. Developer shall record in the Pinal County Recorder's Office a cross access/parking easement in perpetuity and provide proof thereof to City no later than the date the Certificate of Occupancy is issued.

I) Dumpster Screening. Notwithstanding subsection (B) above, the sides and rear of the garbage dumpster storage area located on Pinal County Assessor Parcel No. 100-25-04205 shall be screened no later than one (1) year after the date the Certificate of Occupancy is issued.

4. City's Obligations: City agrees to each of the following obligations:

A) Road Development Fees. City shall exempt any required Road Development Fees for the Project.

B) Certificate of Occupancy. City shall issue a Certificate of Occupancy provided that Developer has met the obligations as noted above in Section 3, subject to the time constraints listed above.

C) Building Plan Review. City shall review and provide all redline changes to and approvals of the submitted plans in a timely fashion.

5. Developer's Representations: Developer represents that Developer's representations are true in all material respects as of the date of this Agreement. The transactions contemplated by this Agreement, the execution of this Agreement and Developer's performance hereunder have been duly authorized by all requisite action of Developer or its agents and no other approval or consent is required for this Agreement to be binding upon Developer. 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.

6. City Representations: City acknowledges that Developer is expending a sum to renovate the structures located on the Property in reliance of this Agreement. City further represents the Property is located within the municipal limits of City, and City is a duly organized, validly existing municipal corporation in the State of Arizona, and the individuals executing this Agreement have all necessary authority to enter into this Agreement and to bind City.

7. Notices and Filings:

(a) Manner of Serving. All notices, filings, consents, approvals and other communications provided for herein or given in connection herewith shall be validly given, filed, made, delivered or served if in writing and delivered

personally or sent by express or overnight mail or by registered or certified first class United States Mail, postage prepaid, as follows:

If to City, to: City Manager
 300 E. Superstition Blvd.
 Apache Junction, Arizona 85219

And to: City Attorney
 300 E. Superstition Blvd.
 Apache Junction, Arizona 85219

If to Developer, to: Mehmood Mohiuddin
 c/o Dash In & Mini Mart
 2345 N. Apache Trail
 Apache Junction, Arizona 85219

The Parties may from time to time designate in writing and deliver in a like manner any other such address which they deem necessary without modifying this Agreement.

8. Delivered Status: Notices, filings, consents, approvals and communication given by mail shall be deemed delivered upon receipt or refusal.

9. General Provisions:

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

(b) Attorney Fees. In any quasi-judicial, judicial, or administrative proceedings or any other action in any court of competent jurisdiction, brought by either party to enforce any covenant or any of such Party's rights or remedies under this Agreement, including any action or declaratory or equitable relief, each party shall bear their own attorney fees and all costs, expenses and disbursements in connection with such action, unless such action is determined by a court to be brought in bad faith, in such case the court may order attorney fees and costs accordingly.

(c) Indemnification. Developer shall defend, indemnify and hold harmless City, its agents, officers, officials and employees from and against all tortious claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings) relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of Developer, their agents, employees, invitees, guests, or patrons in the performance of this Agreement or from any accident or

other event occurring on the Property post-construction. Developer's duty to defend, hold harmless and indemnify City, its agents, officers, officials and employees shall arise in connection with any tortious claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused by an Developer's acts, errors, mistakes, omissions, work or services.

(d) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall 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 signature of all parties may be physically attached to a single document.

(e) Headings. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

(f) 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.

(g) Further Acts. Each of the parties hereto shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

(h) Time of the Essence and Successors/Assignment and Transfer.

(i) Time is of the essence in this Agreement. All of the provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the parties hereof.

(ii) Neither party may assign any of its rights or obligations hereunder, except as mutually agreed upon in writing by Developer and City.

(i) No Partnership and Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other similar arrangement between Developer and City. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

(j) Assignments/Transfers. The Parties' rights and obligations under this Agreement shall be non-assignable and non-transferable, without the

prior express written consent of the other party, which consent may be given or withheld in reasonable discretion.

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

(l) Amendment. No change or additions to be made to this Agreement except by a written amendment executed by the parties hereto. Within ten (10) calendar days after any amendment to this Agreement, such amendment shall be recorded, at City's expense, in the Official Records of Pinal County, Arizona.

(m) Recordation and Effective Date. No later than ten (10) calendar days after this Agreement has been executed by City and Developer, it shall be recorded in its entirety, by City at City's expense in the Official Records of Pinal County, Arizona. This Agreement shall become effective and shall be binding upon and enforceable by all parties hereto, their successors and assignees, immediately upon recordation in the office of the Pinal County Recorder.

(n) Unexcused Delays (Force Majeure). Neither City nor Developer shall be in default under this Agreement in the event of enforced delay due to causes: (a) beyond its control and without fault or negligence, including but not limited to acts of God, acts of the Federal or State government, acts of the other party, acts of third parties, of terrorists or insurgents or other public enemies, litigation concerning the validity or enforceability of this Agreement or relating to transactions contemplated, including the effect of petitions for referendum, or initiative, fires, floods, epidemics, quarantine, restrictions, strikes, embargoes, unusually severe weather or the delays of subcontractors or materialmen due to such causes; (b) bankruptcy, insolvency or similar action, or any foreclosure or other exercise of remedies of any lender; and (c) without limiting the foregoing, any action or inaction of City, its officers, agents, departments, committees, Council, Boardmembers, Commissioners, which delays, directly or indirectly, Developer's ability to comply with any construction schedule. In the event of the occurrences 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 that the party seeking the benefit of the provisions of this section shall within ten (10) calendar days after such party knows of 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; provided however that either party's failure to notify the other of an event constituting an enforced delay shall not alter, detract from or negate its character as an enforced delay was not known or reasonably discovered by such party.

(o) Governing Law and Venue. The terms and conditions of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona. Any action at law or in equity brought by either party for the purpose of enforcing a right or rights provided for in this Agreement, shall be tried in a court of competent jurisdiction in Pinal County, State of Arizona. The parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county or jury trial.

(p) Severability. Every provision of this agreement is, and will be construed to be, a separate and independent covenant. If any provision of this agreement or the application of the same is, to any extent, found to be invalid or unenforceable, then the remainder of this agreement or the application of that provision to circumstances other than those to which it is invalid or unenforceable, will not be affected by that invalidity or unenforceability, and each provision of this agreement will be valid and will be enforced to the extent permitted by the law, and the parties will negotiate in good faith for such amendments of this agreement which may be necessary to achieve its intent, notwithstanding such invalidity or unenforceability.

(q) Conflict of Interest. Pursuant to A.R.S. § 38-511, incorporated herein by reference, the parties understand and agree that this Agreement is subject to cancellation by City or its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of City, or its departments or agency, is at any time, while the Agreement or any extension or modification thereof, is in effect, an employee or agent of any other party to the Agreement with respect to the subject matter of the Agreement.

(r) 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 Properties from Developer. Developer, on behalf of it and its successors and assigns, intends to encumber the Properties 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 Properties 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 Properties to equal or exceed the fair market value of the Properties 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."

IN WITNESS WHEREOF, we have hereunto set our hands and seals on the date and year first above written.

DEVELOPER:


By: Mehmood Mohiuddin
Its: Property Owner

CITY OF APACHE JUNCTION, an
Arizona municipal corporation:


By: John S. Insalaco
Its: Mayor

ATTEST:


Kathleen Connelly, City Clerk

APPROVED AS TO FORM:


Richard J. Stern, City Attorney

STATE OF ARIZONA)
County of Pinal) ss.

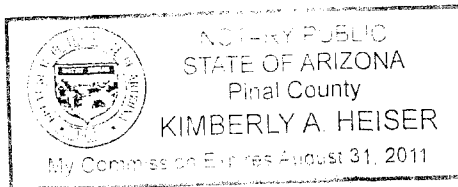
The foregoing was acknowledged before me this 6th day of February, 2009, by Mehmood Mohiuddin as owner of and on behalf of Dash In Gas & Mini Mart.

Kimberly Heiser
Notary Public

My Commission Expires:

August 31, 2011

(seal)



STATE OF ARIZONA)
COUNTY OF PINAL) ss.

The foregoing was acknowledged before me this 16th day of FEBRUARY, 2009, by John S. Insalaco, the mayor of City of Apache Junction, Arizona, an Arizona municipal corporation, who acknowledged that he signed the foregoing instrument on behalf of City.

John S. Insalaco
Notary Public

My Commission Expires:

8-31-12

(seal)

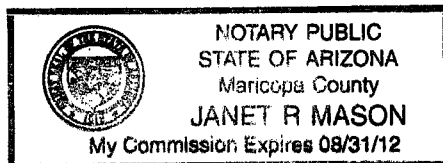
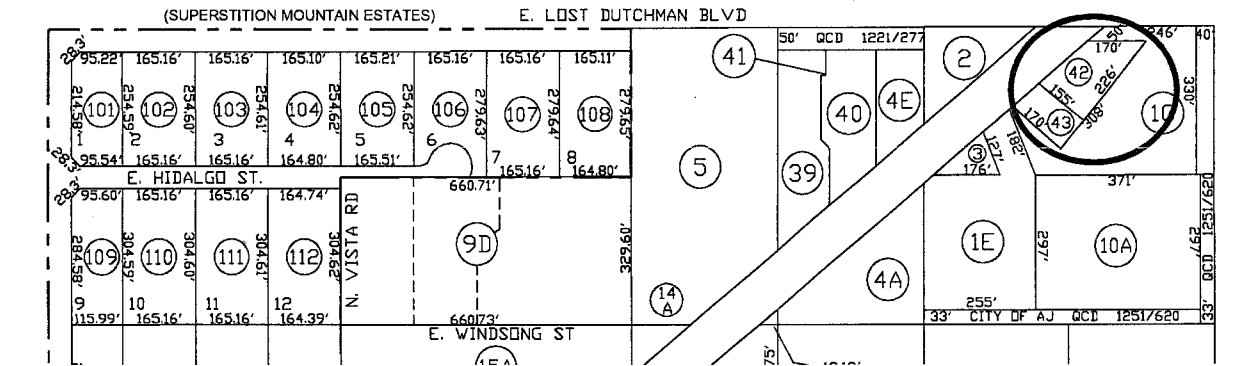


EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY



PARCEL A (PCAP NO. 100-25-04205):

That portion of the North half of the Northeast quarter of the Northeast quarter of the Northwest quarter of Section 15, Township 1 North, Range 8 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona, herein described:

BEGINNING at the North quarter corner of Section 15;

Thence South 89 degrees 53 minutes 50 seconds West along the North line of the Northeast quarter of the Northwest quarter, Section 15, a distance of 286.40 feet to the Southeast right of way line of Apache Trail;

Thence South 49 degrees 19 minutes 35 seconds West along the Southeast right of way line of Apache Trail, a distance of 50.74 feet to the South right of way line of Lost Dutchman Boulevard and the TRUE POINT OF BEGINNING;

Thence continuing South 49 degrees 19 minutes 35 seconds West a distance of 117.21 feet;

Thence South 50 degrees 25 minutes 8 seconds East a distance of 153.51 feet;

Thence North 38 degrees 44 minutes 35 seconds East a distance of 225.37 feet;

Thence South 89 degrees 53 minutes 50 seconds West, a distance of 172.00 feet to the TRUE POINT OF BEGINNING;

PARCEL B (PCAP NO. 100-25-04304):

That portion of the North half of the Northeast quarter of the Northeast quarter of the Northwest quarter of Section 15, Township 1 North, Range 8 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona, herein described:

BEGINNING at the North quarter corner of Section 15;

Thence South 89 degrees 53 minutes 50 seconds West along the North line of the Northeast quarter of the Northwest quarter, Section 15, a distance of 286.40 feet to the Southeast right of way line of Apache Trail;

Thence South 49 degrees 19 minutes 35 seconds West along the Southeast right of way line of Apache Trail, a distance of 167.95 feet to the TRUE POINT OF BEGINNING;

Thence continuing South 49 degrees 19 minutes 35 seconds West a distance of 78.06 feet;

Thence South 49 degrees 40 minutes 25 seconds East a distance of 170.00 feet;

Thence North 38 degrees 44 minutes 35 seconds East a distance of 82.12 feet;

Thence North 50 degrees 25 minutes 8 seconds West, a distance of 155.51 feet to the TRUE POINT OF BEGINNING;

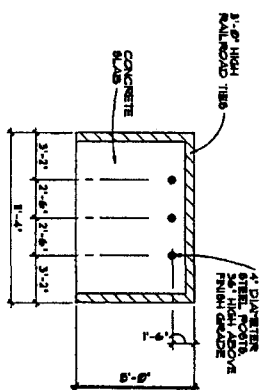
EXHIBIT B

SITE PLAN

Original can be viewed at:

**City of Apache Junction
Development Services Office
300 E. Superstition Blvd.
Apache Junction, AZ 85219**

SITE PLAN



1 TRASH ENCLOSURE

4-10-74

HITCHING POST
PIZZA/PUB

2341 N. APACHE TRAIL
APACHE JUNCTION, ARIZONA

[illegible]

Call for a free sample today!
 1-800-451-4511
 1-800-451-4511
 1-800-451-4511
 1-800-451-4511

DATE 2-16-03

CLAIM

JOB NO.:

A10

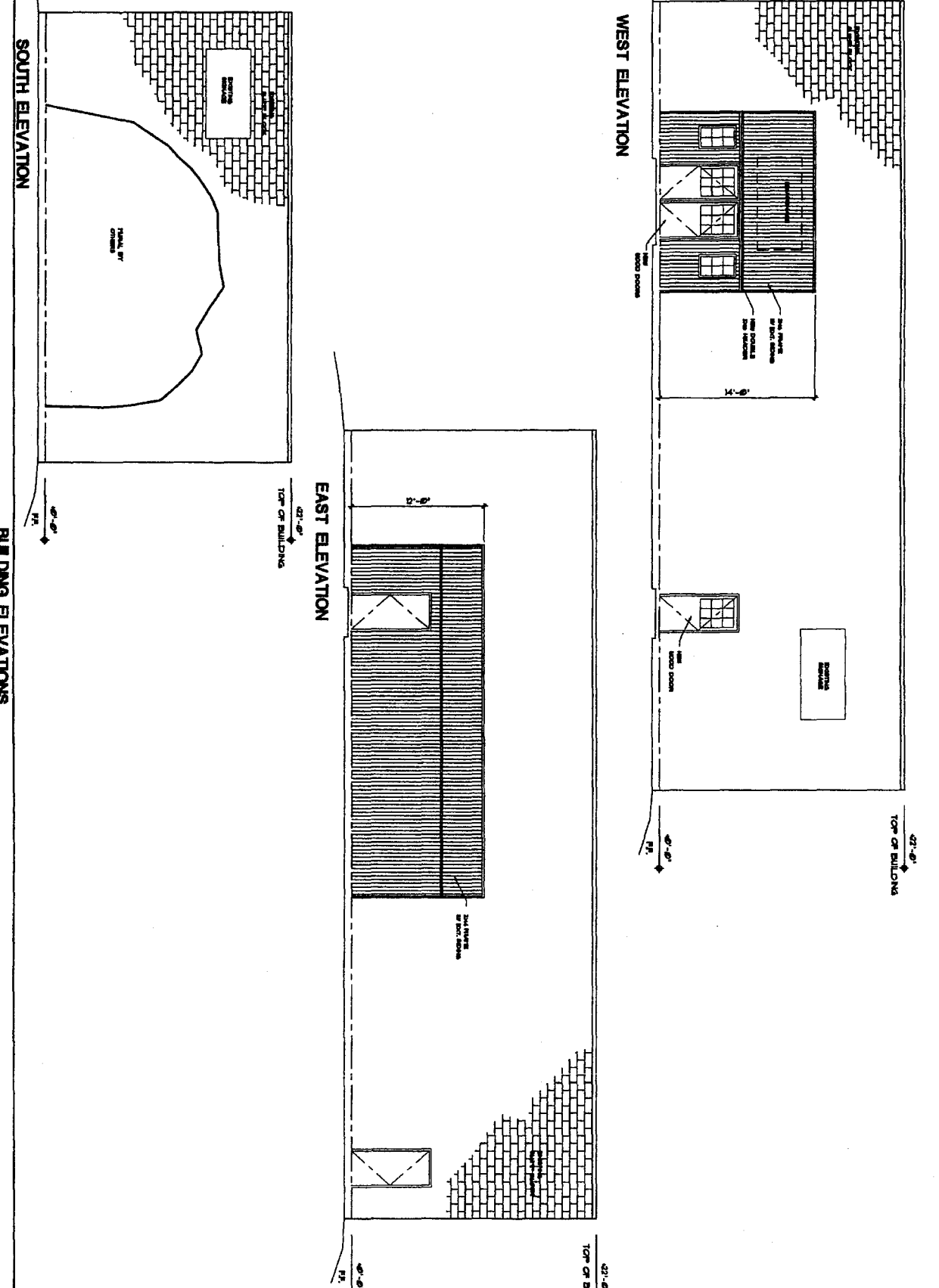
2

EXHIBIT C

BUILDING PLANS

Original can be viewed at:

**City of Apache Junction
Development Services Office
300 E. Superstition Blvd.
Apache Junction, AZ 85219**



When recorded return to:



OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
LAURA DEAN-LYTLE

Richard Joel Stern, Esq.
Apache Junction City Attorney
300 East Superstition Blvd.
Apache Junction, AZ 85219

DATE/TIME: 05/12/09 1611
FEE: \$11.00
PAGES: 4
FEE NUMBER: 2009-047880

**FIRST AMENDMENT TO ECONOMIC DEVELOPMENT AGREEMENT BETWEEN
CITY OF APACHE JUNCTION AND MEHMOOD MOHIUDDIN**

This Amended Agreement is entered into as of May 8, 2009, by and between CITY OF APACHE JUNCTION, an Arizona municipal corporation (hereinafter the "City") and MEHMOOD MOHIUDDIN, as owner of Dash In Gas & Mini Mart (hereinafter the "Developer") (both collectively referred to herein as the "Parties").

RECITALS

WHEREAS, the City and Developer entered into an Economic Development Agreement on February 18, 2009; and

WHEREAS, since such time, Developer has experienced difficult and challenging financing obstacles that prohibit completion of the landscaping features and the driveway delineations pursuant to Section 3(B) of the Agreement; and

WHEREAS, on April 7, 2009, Developer visited staff and also spoke at the Call to the Public portion of the Regular Council Meeting requesting: 1) a suspension of the landscaping requirements; and 2) issuance of a Temporary Certificate of Occupancy not being contingent on completing the landscaping so that the business can start making money to pay for the landscaping features; and

WHEREAS, on April 21, 2009, the Mayor and City Council granted Developer's request to allow Developer a Temporary Certificate of Occupancy without first completing the landscaping, permanent parking delineations and barricade placements, and moved to suspend this requirement until 45 days after the issuance of the Temporary Certificate of Occupancy; and

WHEREAS, the Mayor and City Council desires to enhance Developer's success in his new restaurant business and is willing to accommodate his request by modifying Section 3(B) of the Agreement under the terms and conditions of this Amendment.

AMENDMENT

NOW, WHEREFORE, the parties agree to the amendments set forth below:

A) Section 3(B) of the Agreement executed on February 18, 2009 shall be replaced with the following provision:

3. Developer's Obligations: Developer agrees to each of the following obligations:

.

B) Compliance with Site Plan/Issuance of Temporary and Final Certificate of Occupancy. Developer shall build the Project and improve the Property in accordance with the Site Plan set forth in Exhibit B and Building Plans set forth in Exhibit C, to include all depicted landscaping, parking stalls (shown with a 10% administrative reduction), building improvements and delineated driveway entrances. All improvements to the Property depicted in Exhibit C shall be completed before a Temporary Certificate of Occupancy is granted for the Project. All items in Exhibit B shall be completed except for the landscaping and permanent parking delineations and barricades, which shall be completed within forty-five (45) calendar days from the date a Temporary Certificate of Occupancy is issued. Within ten (10) calendar days after the date the Temporary Certificate of Occupancy is issued, Developer shall have completed temporary striping for parking stalls.

The Building Official will issue a Temporary Certificate of Occupancy only if Developer has requested a final inspection and has demonstrated to the Building Official's satisfaction that all code requirements are complete. The Building Official will only issue a Temporary Certificate of Occupancy if: 1) the restaurant contains all of the required fire protection systems and means of ingress and egress; 2) all Americans with Disabilities Act ("ADA") structures or facilities are complete; 3) all electrical, mechanical, and plumbing systems are complete; and 4) Developer provides proof from both Pinal County Health Department and Apache Junction Fire Department of their approval for a Temporary Certificate of Occupancy.

The Temporary Certificate of Occupancy shall include reference to compliance with Section 309.4 of the Uniform Administrative Code as amended by the City, which the Property Owner/Developer shall comply with.

If Developer does not complete the permanent parking delineations and barricades placements and landscaping requirements by 5:00 p.m. on the 45th day after the Temporary Certificate of Occupancy is

issued, the electrical power to the restaurant will be de-energized at the request of the Building Official, the employees will be ordered to vacate the premises, and Developer shall secure the building from customers.

Upon completion of all of the noted requirements, Developer shall contact the Building Official to schedule a final inspection for a Certificate of Occupancy.

While the depicted landscaping illustrated in Exhibit B generally complies with or exceeds the zoning standard for required number of plants, the plan does not comply with the zoning standards regarding landscape buffer setback or installation of a perimeter masonry wall. Accordingly, the development agreement serves to waive these non-complying landscape elements.

B) All other terms and provisions of the Agreement executed by the parties on February 18, 2009 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed as of the day and year first written above.

DEVELOPER:



By: Mehmoed Moniuddin
Its: Property Owner

CITY OF APACHE JUNCTION, an
Arizona municipal corporation:



By: John S. Insalaco
Its: Mayor

ATTEST:



Kathleen Connelly, City Clerk

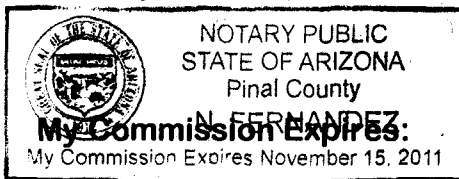
APPROVED AS TO FORM:

5.11.09

Richard J. Stern, City Attorney

STATE OF ARIZONA)
County of Pinal) ss.

The foregoing was acknowledged before me this 8th day of May, 2009, by Mehmood Mohiuddin as owner of and on behalf of Dash In Gas & Mini Mart.



N. Fernandez
Notary Public

(seal)

STATE OF ARIZONA)
COUNTY OF Pinal) ss.

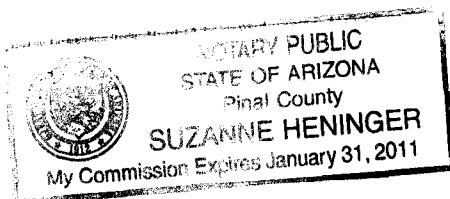
The foregoing was acknowledged before me this 8th day of May, 2009, by John S. Insalaco, the mayor of City of Apache Junction, Arizona, an Arizona municipal corporation, who acknowledged that he signed the foregoing instrument on behalf of City.

Suzanne Heninger
Notary Public

My Commission Expires:

January 31, 2011

(seal)





**OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
VIRGINIA ROSS**

DATE/TIME: 10/08/2013 1537
FEE: \$7.50
PAGES: 6
FEE NUMBER: 2013-080887



①
2
When Recorded Return to:

**City of Apache Junction
City Attorney
300 E Superstition Blvd.
Apache Junction, AZ 85119**

**Second Amendment to Economic Development Agreement Between City of
Apache Junction and Mehmood Mohiuddin**

October 7, 2013

**SECOND AMENDMENT TO ECONOMIC DEVELOPMENT
AGREEMENT BETWEEN CITY OF APACHE JUNCTION AND
MEHMOOD MOHIUDDIN**

THIS AMENDMENT is made and entered into this 1st day of October, 2013, ("the Execution Date") by and between the CITY OF APACHE JUNCTION, an Arizona municipal corporation ("City"), and MEHMOOD MOHIUDDIN, as owner of Dash In Gas & Mini Mart and Hitching Post Restaurant ("Developer"), sometimes both collectively referred to as the "Parties".

RECITALS

A. On February 18, 2009, the City and Developer entered into an Economic Development Agreement (the "Agreement") and on May 8, 2009, the City and Developer executed an amendment (the "First Amendment") to the Economic Development Agreement which collectively included provisions for a restaurant in addition to a convenience market at the southeast corner of Lost Dutchman Boulevard and State Route 88 (the "Property").

B. Developer has since 2009, relocated trash receptacles, removed fuel pumps, the fuel canopy, and the propane storage tank, and has reconfigured the parking area to accommodate all uses on the property.

C. Developer now desires in this amendment (the "Second Amendment") to expand the uses to include a bull riding arena and related facilities on the Property.

AGREEMENT

NOW, THEREFORE, in consideration of mutual promises contained herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree to the following modifications:

A. The Site Plan originally attached to the Agreement and referenced in Section 3(B) as Exhibit B is replaced with a new attachment (incorporated by reference and attached hereto) to include all uses for the Property.

B. Section 3, Developer's Obligations of the Agreement, is amended to include the following additional obligations:

Developer shall build the project and improve the Property in accordance with the Site Plan set forth in Exhibit B, which includes among other things, a bull riding arena, with events occurring only on Thursdays and Saturdays from 8:00 p.m. to 10:00 p.m.

In the event the bull riding arena use is terminated for any reason, except for seasonal closing, Developer agrees that any approved State Liquor Board Extension of Premises Authorization shall be reduced in size to the rear patio areas located directly on the southeast side of the Hitching Post Restaurant and Bar/Dash In Convenience Store.

Use of the outdoor bull riding arena is conditioned upon shared parking agreements for overflow off-site parking on vacant property to the south or across Lost Dutchman Boulevard to the north at the Elks Club. Should both of these shared parking agreements be terminated for any reason by the off-site property owners represented in said parking agreements, all outdoor activities within the extension of premises area, including but not limited to the bull riding arena attraction, must cease until other comparable off-site parking arrangements are secured.

Developer agrees to provide written notice to the City within ten (10) calendar days in the event the Lease Agreement with Zion International, DBA Park N Save Storage or any lease with the Elks is terminated.

C. Section 9(P), Severability, is amended as follows:

City and Developer each believe 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, including any constitutional provision, law, regulation, or City Code), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that 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. Unless prohibited by applicable laws, the Parties further shall perform all acts and execute, acknowledge and/or deliver all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

D. All other terms and provisions set forth in the Agreement and the First Amendment not inconsistent with this Second Agreement remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have caused this Second Amendment to be duly executed as of the day and year first written above.

MEHMOOD MOHIUDDIN, owner of
Dash In Gas and Mini Mart and
Hitching Post Restaurant

By: _____

Its: _____

 OWNER

CITY OF APACHE JUNCTION, an
Arizona municipal corporation


By: John S. Insalaco

Its: Mayor

ATTEST:


Kathleen Connelly
City Clerk

APPROVED AS TO FORM:

 10.1.13
R. Joel Stern
City Attorney

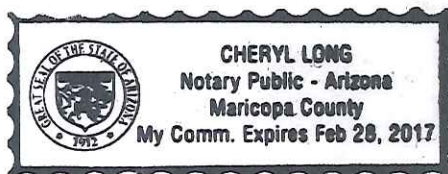
STATE OF Arizona)
County of Pinal) ss.

The foregoing was acknowledged before me this 7th day of October, 2013, by _____ as _____ of Mehmood Mohiuddin, owner of Dash In Gas and Mini Mart and Hitching Post Restaurant.

C. Long
Notary Public

My Commission Expires:

2/28/2017



STATE OF ARIZONA)
COUNTY OF PINAL) ss.

The foregoing was acknowledged before me this 3rd day of October, 2013, by John S. Insalaco, as Mayor of the City of Apache Junction, an Arizona municipal corporation.

John S. Insalaco
Notary Public

My Commission Expires:

8-31-16



E LOST DUTCHMAN

- NOTE:
- ALL PEDESTRIAN EMERGENCY EXIT GATES TO REMAIN UNLOCKED DURING BUSINESS HRS.
 - NEW SCREENING TO BE APPROVED FENCING MATERIAL.
 - ALL PARKING SPACE ARE 9' X 20' WITH MINIMUM 21' BACKUP AREA
 - FOUR (4) PORTABLE LIGHTS WILL BE PLACED AT ALL CORNERS OF ARENA

N APACHE TRAIL / N HIGHWAY 88

A.P.N: 100-25-001A
LOT SIZE: .085 ACRE (17,229 SQ. FT.)
ZONING: GENERAL COMMERCIAL
OWNER: MOHIUDDIN MEHMOOD
USE: GENERAL STORE & RESTAURANT

A.P.N: 100-25-001C
ZONING: GENERAL COMMERCIAL
OWNER: MOHIUDDIN MEHMOOD
USE: PARKING & STORAGE YARD

A.P.N: 100-25-001B
ZONING: GENERAL COMMERCIAL
OWNER: MOHIUDDIN MEHMOOD
USE: PARKING & STORAGE YARD

SITE PLAN



OWNER: MOHIUDDIN MEHMOOD		HITCHING POST RESTAURANT	
SITE LOCATION: 2341 N APACHE TRAIL APACHE JUNCTION, AZ 85119		PROJECT No. 100-25-043A	
NO. DATE		DRAWING NUMBER	SHEET
12/18/12		A1	1 OF 1
ISSUED FOR REVIEW			
REVISIONS			
BY: SH			
CHK: SH			
APP'D: SH			
SCALE: AS SHOWN			
DESIGNED: SH			
DRAWN: SH			



**OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
VIRGINIA ROSS**

DATE/TIME: 06/23/2014 1356
FEE: \$9.00
PAGES: 9
FEE NUMBER: 2014-036116



GR
When Recorded Return to:

**City of Apache Junction
City Attorney
300 E Superstition Blvd.
Apache Junction, AZ 85119**

**Third Amendment to Economic Development Agreement Between City of
Apache Junction and Mehmood Mohiuddin**

June 17, 2014

Fee Number 2009-018381

**THIRD AMENDMENT TO ECONOMIC DEVELOPMENT AGREEMENT
BETWEEN CITY OF APACHE JUNCTION AND MEHMOOD
MOHIUDDIN**

THIS THIRD AMENDMENT is made and entered into this 17th day of June, 2014, ("the Execution Date") by and between the CITY OF APACHE JUNCTION, an Arizona municipal corporation ("City"), and MEHMOOD MOHIUDDIN, as owner of the Hitching Post Restaurant ("Developer"), sometimes both collectively referred to as the "Parties", or individually as a "Party".

RECITALS

A. On February 18, 2009, City and Developer entered into an Economic Development Agreement (the "Agreement") which allowed Developer to operate a new restaurant known as the "Hitching Post" located at 2341 N. Apache Trail, Apache Junction, Arizona (the "Property"), in addition to the continued operation of the Dash In convenience market and gas station.

B. On May 8, 2009, City and Developer executed an amendment (the "First Amendment") to the Agreement which included additional stipulations associated with the operation of the Hitching Post Restaurant.

C. On October 7, 2013, City and Developer executed another amendment (the "Second Amendment") to the Agreement which included a bull riding arena on the Property set forth as the Second Amendment Site Plan.

D. Developer desires in this amendment (the "Third Amendment") to modify the configuration of the previously approved Second Amendment Site Plan with spatial relationship and building safety changes to the proposed arena, lighting, exits, and entrances to the bull riding portion of the Property, and providing additional details concerning necessary improvements, and adding insurance declarations.

AGREEMENT

NOW, THEREFORE, in consideration of mutual promises contained herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree to the following modifications:

A. The Site Plan originally attached to the Second Amendment and referenced in Section B(3) of that Second Amendment, is replaced with a new Site Plan and supporting documentation, as set forth in Exhibit A (incorporated by reference and attached hereto).

B. New § 9 (s): shall be added to the Agreement and shall read as follows:

Insurance. The Parties acknowledge that the bull riding activities on the Property may improve Developer's business profitability and that the parking area is designed to accommodate projected level of customers. However, due to the configuration of the buildings and mix of uses on the Property, (restaurant, bar and bull riding amusement feature), the Developer and City agree that additional assurances that may arise due to accidental incidents involving increased traffic and bull riding activities are necessary. For these reasons, the Parties agree as follows: Developer agrees to obtain and provide City, prior to the time Certificate of Occupancy is issued for the bull riding arena, with proof of payment of insurance premiums and certificates showing that Developer and the Livestock Provider ("LP") are each carrying insurance policies in amounts and coverages set forth below:

(1) Developer: Commercial General Liability, Premises and Casualty

Liability. Insurance covering the Developer, and as an additional insured, the City, against liability imposed by law, and/or arising from personal injury, bodily injury or property damage, with a liability limit of at least \$2,000,000.00 per occurrence with at least \$4,000,000.00 products/completed operations limit and a minimum of \$4,000,000.00 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.

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

Acceptability of Insurers: The Insurers will be "Hanover" and "Allied P & C Ins. Company" or other duly licensed or 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.

Verification of Coverage: Developer shall furnish the City with original certificates of insurance (ACORD form or equivalent approved by the City). Any policy endorsements that restrict or limit coverage shall be clearly noted on the certificate of insurance.

Policy Effective Date: All certificates are to be received and approved by the City before bull riding activities begin or continue. The insurance policy must be

in effect at or prior to the bull riding activities begin or continue and must remain in effect for the duration of this Third Amendment. Failure to maintain the insurance policies as required by this Third Amendment or to provide timely evidence of renewal will be considered a material breach of contract.

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

Approval: Any modification or variation from the insurance requirements must have prior approval from the City Attorney's Office whose decision shall be final. Such action will not require formal contract amendment, but may be made by administrative action.

(2) Livestock Provider: General Commercial Liability for Providing Livestock for Rodeo Events

Liability. Insurance covering the LP, and as additional insureds the Developer and City, against liability imposed by law, and/or arising from personal injury, bodily injury or property damage, with a liability limit of at least \$1,000,000.00 per occurrence and a minimum of \$2,000,000.00 general aggregate limit. Such policy must be primary and written to provide coverage for livestock for rodeo events.

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

Acceptability of Insurers: The Parties acknowledge that insurance coverage for providing livestock for rodeo events is a unique form of coverage with a limited pool of providers. Insurance will be initially placed with "National Fire and Marine Insurance Company" ("National").

Verification of Coverage: Developer shall furnish the City with original certificates of insurance (ACORD form or equivalent approved by the City) as required herein. Any policy endorsements that restrict or limit coverage shall be clearly noted on the certificate of insurance.

Policy Effective Date: All certificates are to be received and approved by the City before bull riding activities begin or continue. The insurance policy must be in effect at or prior to the bull riding activities begin or continue and must remain in effect for the duration of this Third Amendment. Failure to maintain the

insurance policies as required by this Third Amendment or to provide timely evidence of renewal will be considered a material breach of contract.

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

Approval: Any modification or variation from the insurance requirements must have prior approval from the City Attorney's Office whose decision shall be final. Such action will not require formal contract amendment, but may be made by administrative action.

C. New § 9 (t) to the Agreement shall read as follows:

Bull Riding Fence and Area Fence: Developer shall hire a state licensed and bonded contractor who shall install the fence securing the bull riding activities and the area surrounding the patrons in accordance with all manufacturers' guidelines, details, standard installation instructions, and specifications filed with the submittal. Developer shall contract with a reputable supplier who shall provide rough stock Priefert panels or its equivalent, and install pursuant to manufacturing installation instructions and details and guide lines.

D. New § 9 (u) to the Agreement shall read as follows:

Binding Effect/Assignment: The obligations and rights created in this Agreement are binding upon and shall inure to the benefit of the Parties and their successors, assigns and legal representatives. Neither Party may assign their rights under this Agreement without the prior written approval of the other Party. Such successor or assignee shall assume, in writing, all duties and obligations hereunder of the prior Party and shall further agree to be bound by and to fully perform the terms of this Agreement.

E. All other terms and provisions set forth in the Agreement, the First Amendment, and the Second Amendment not inconsistent with this Third Amendment, remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have caused this Third Amendment to be duly executed as of the day and year first written above.

DEVELOPER:

MEHMOOD MOHIUDDIN, owner of
Dash In Gas and Mini Mart and
Hitching Post Restaurant

By: Mehmood Mohiuddin
Its: OWNER

CITY:

CITY OF APACHE JUNCTION, an
Arizona municipal corporation

By: John S. Insalaco
Its: Mayor

ATTEST:

Kathleen Connelly
Kathleen Connelly
City Clerk

APPROVED AS TO FORM:

6.8.14
R. Joel Stern
City Attorney

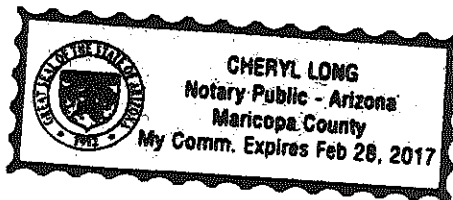
STATE OF Arizona)
County of Maricopa) ss.

The foregoing was acknowledged before me this 21st day of May, 2014, by Mehmood Mohiuddin, owner of Hitching Post Restaurant.

Cheryl Long
Notary Public

My Commission Expires:

2/28/2017



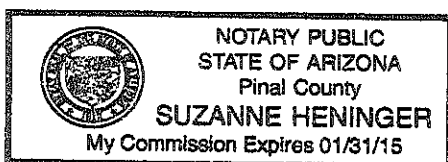
STATE OF ARIZONA)
COUNTY OF Pinal) ss.

The foregoing was acknowledged before me this 18th day of June, 2014, by John S. Insalaco, as Mayor of the City of Apache Junction, an Arizona municipal corporation.

[Signature]
Notary Public

My Commission Expires:

January 31, 2015



**EXHIBIT A
SITE PLAN**

EXHIBIT A

Site Plan, Floor Plan, Lighting Details, Fence Details, Exit Signage, Bull Riding Fence, and Grainger Consulting, Inc. Report of Findings – Exiting – Arena, Patio and Restaurant (1/23/14) on file with the City of Apache Junction, Development Services, Planning and Development Review.