RESOLUTION NO. 2021-009

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE WATER UTILITIES COMMUNITY FACILITIES DISTRICT (CITY OF APACHE JUNCTION, ARIZONA) AUTHORIZING THE DISTRICT TO ENTER INTO THE SUPERSTITON VISTAS DEVELOPMENT AND WATER SERVICES AGREEMENT WITH D.R. HORTON, INC.

WHEREAS, the Water Utilities Community Facilities District ("WUCFD") is an Arizona Revised Statutes ("A.R.S.") Title 48 special purpose and tax levying improvement district; and

WHEREAS, on November 4, 2020, D.R. Horton, Inc. ("Developer") was the successful bidder at a public auction conducted by the Arizona State Land Department ("ASLD") for approximately 2,800 gross acres of real property (the "Property") located within the roadway alignments of Elliot Avenue, Idaho Road, Ray Avenue, and Meridian Drive, currently under unincorporated Pinal County jurisdiction; and

WHEREAS, as the successful bidder, Developer was thereby entitled to purchase the Property from ASLD with the express condition that the Developer entitle and develop the Property as a mixed-use master planned community, and

WHEREAS, Developer has submitted to the City of Apache Junction, Arizona ("City") applications for annexing and rezoning the Property which will permit development of approximately 10,940 dwelling units on the Property; and

WHEREAS, in conjunction with the application for rezoning, the Developer has identified infrastructure to be constructed and submitted applications for formation of two community facilities districts which will acquire and convey the infrastructure from the Developer to WUCFD pursuant to an intergovernmental agreement; and

WHEREAS, the Development and Water Services Agreement ("Agreement") will facilitate the construction of water infrastructure, payment of fees, and provision of water service for development on the Property pursuant to A.R.S. 48-709(A)(10) and (D)(5).

NOW, THEREFORE, BE IT RESOLVED BY THE CHAIRMAN AND BOARD OF DIRECTORS AS FOLLOWS:

The chairman is authorized to enter into the Superstition Vistas Development and Water Services Agreement between the Water Utilities Community Facilities District and D.R. Horton, Inc., a copy of which is attached.

PASSED AND ADOPTED BY THE WUCFD CHAIRMAN AND BOARD OF DIRECTORS, THIS _____ DAY OF _____, 2021.

SIGNED AND ATTESTED TO THIS _____ DAY OF _____, 2021.

_____
WALTER "CHIP" WILSON
Chairman

ATTEST:

_____
JENNIFER PENA
District Clerk

APPROVED AS TO FORM:

_____
RICHARD J. STERN
District Attorney

EXHIBIT A

When recorded, return to:

City Attorney
City of Apache Junction
300 Superstition Boulevard
Apache Junction, Arizona 85119

DEVELOPMENT AND WATER SERVICE AGREEMENT FOR SUPERSTITION VISTAS

This Development and Water Service Agreement for Superstition Vistas ("**Agreement**") is entered by and between Apache Junction Water Utilities Community Facilities District, a community facilities district formed by the City of Apache Junction, and duly organized and validly existing, pursuant to the laws of the State of Arizona ("**District**") and D.R. Horton, Inc., duly organized and validly existing pursuant to the laws of the State of Delaware ("**Developer**"). The District and the Developer are sometimes referred to herein collectively as the **"Parties"** or individually as a **"Party."**

RECITALS

A. The subject of this Agreement consists of approximately 2,800 gross acres of real property made available to Developer in 2020 by public auction conducted by the Arizona State Land Department ("**ASLD**") located generally within the roadway alignments of Elliot Avenue, Idaho Road, Ray Avenue, and Meridian Drive, adjacent to the City limits in Pinal County, Arizona, legally described in Exhibit A (Legal Description of the Property) and depicted in Exhibit B (Map of the Property), both of which are attached hereto and incorporated herein by reference (the **"Property"**).

B. On November 4, 2020, the Developer was the successful bidder at a public auction conducted by the ASLD and is thereby entitled to purchase the Property from the ASLD pursuant to the terms of Certificate of Purchase No. 53-120190 and subject to the terms of the Participation and Infrastructure Contract Regarding ASLD Sale No., 53-120190, executed on November 12, 2020 between the ASLD and the Developer ("**Participation Contract**") with the express condition that the Developer entitle and develop the Property as a mixed-use master planned community.

C. The Developer has submitted to the City of Apache Junction, Arizona ("**City**") applications for annexing the Property and rezoning the Property to the City's "master planned community" zoning designation ("**Rezoning**"). If approved, the Rezoning will permit development of approximately 10,940 dwelling units on the Property.

D. In conjunction with the application for Rezoning, the Developer submitted to the District the Potable Water Master Infrastructure Plan dated Septtember 8, 2021 prepared by Hilgart Wilson, which has been approved by the District ("**Report**"), and the Non-Potable Water Master Infrastructure Plan dated September 7, 2021 prepared by Wood Patel, which has been approved

by the District ("**Non-Potable Water Report**"). The Report and the Non-Potable Water Report identify certain infrastructure to be constructed by the Developer, which generally is described in Sections 2(a) and 11 below (collectively, "**Infrastructure**").

E. The Developer also has submitted applications for formation of two community facilities districts ("**CFDs**") on the Property, which, if formed, will acquire certain Infrastructure from the Developer and convey the Infrastructure to the District pursuant to the terms of an intergovernmental agreement by and among the District and the CFDs.

F. The Parties understand and acknowledge that this Agreement is a development agreement to facilitate the construction of water infrastructure, payment of certain fees, and provision of water service to development on the Property within the meaning of and entered into pursuant to the terms of A.R.S. 48-709(A)(10) and (D)(5).

NOW THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein by reference, the promises contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties hereto agree as follows:

AGREEMENT

1. Term. This Agreement shall be effective upon the date it is approved by the District Board (the **"Effective Date"**). This Agreement shall remain in full force and effect until December 31, 2046 (the **"Term"**), unless terminated earlier pursuant to the terms of this Agreement, or as extended by mutual written consent of the Parties but no later than December 31, 2056, after which time this Agreement shall automatically terminate without the necessity of any notice, agreement or recording by or between the Parties.

2. Construction, Conveyance and Acceptance of Infrastructure.

a. Infrastructure Construction. The Developer shall construct, in phases and as required for development on the Property, the Infrastructure identified in the Report consisting of the water transmission and distribution systems to and on the Property, water tanks, pump station, and groundwater wells as determined by the Parties for interim use which will be converted for system redundancy upon completion of the new water treatment facility required for the Retained Property (as defined below). All such construction performed by the Developer shall be performed in compliance with the Report and any applicable District rules, regulations, standards, procedures, and administrative policies ("**Rules**"), provided however, that in the event of a conflict between the Report and the Rules, the Report shall control. If subsequent updates of the Report, or other reports submitted at the Development Unit Planning level (pursuant to the Rezoning), demonstrate the need for additional Infrastructure within the relevant Development Unit, adjacent to the Development Unit, or at any point off the Property, beyond those described in the Report or this Agreement, or reduced Infrastructure based on the Parties' analysis as provided in Section 4 below, the Developer shall build such additional Infrastructure, or increase in the size of the planned Infrastructure (provided, however, that any additional Infrastructure shall be the financial responsibility of the Developer only if such additional Infrastructure is necessary to serve the portion of the Property for which the Report has been updated due to changed on-site

circumstances, as opposed to changes in land use or use of Infrastructure off such portion of the Property), or reduce the scope of the Infrastructure. Developer understands and specifically agrees that all work is to be performed meet the specifications and standards of the American Water Works Association Standards, the Arizona Department of Environmental Quality ("**ADEQ**"), the Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction ("**MAG specifications and details**") with District additions and all local regulatory agencies, and all such specifications and standards are included in the Rules. Developer agrees that it will conduct at least one pre-construction meeting with the District in attendance before any work commences.

b. Infrastructure Conveyance and Acceptance. The Parties hereto acknowledge and agree that the Developer shall convey to the District (or convey to the CFDs, which shall in turn convey to the District) certain completed segments or components of the Infrastructure upon completion of construction. The District may, but is not required to, accept segments or components of the Infrastructure that will be located under a public street or roadway before the City accepts the street or roadway.

c. Inspection by District. Developer agrees that District will have the exclusive right to determine, in its sole discretion, whether the work has been performed in accordance with all contract documents, those being this Agreement and all documents relating to the Property on file with District. Developer further agrees to make such corrections to the work as may be directed by District to conform to the Rules, without requirement of change order or any additional charge or cost to District whatsoever. Developer further agrees to make such corrections to the work within the time allowed for completion as long as it does not affect the overall deadline of completion set forth.

d. Cure of Defective Workmanship by District. Developer shall repair, remove and/or replace at Developer's own expense any workmanship or materials which prove to be defective at any time within 365 calendar days from the date of the final acceptance of Developer's work by District. Developer also guarantees that all equipment and machinery will perform the required function in a manner satisfactory to District, and agrees to pay all costs for removing and replacing any part or parts thereof which prove defective within 365 calendar days after being placed in regular operation.

e. Defective Materials in District Easement. Defective materials or work that does not jeopardize service to District's customers may be corrected by Developer's contractor. However, whenever there is any defect in the work, and Developer fails to act in a reasonable time in the judgment of District, then District may take such action deemed necessary to remedy the situation. Any time a failure of the water line extension creates an emergency which threatens service or poses an inconvenience to District's customers, District may perform the work. Work may be performed by District under the above conditions prior to the commencement of the warranty period. Developer shall pay District for the actual cost of all such work. The ending date for the warranty period will be included in District's acceptance letter.

3. Developer Obligations. Developer agrees to do all of the following:

a. Construction Plans. Developer shall employ a professional engineer (the "**Developer's Engineer**"), licensed in Arizona, to prepare detailed construction plans and specifications of the proposed line extension. The plans shall comply with District's design standards for line extensions. Developer's Engineer shall submit the plans to District for its review and approval and Developer's Engineer may be required by District to revise the plans prior to District issuing its written approval. When the plans are approved by the District, an AutoCad file shall be delivered to District for its use. Upon completion of the line extension, the Developer's Engineer shall produce as-built drawings of the line extension in the Property. Developer's Engineer shall submit the as-built drawings to District for its review and approval and Developer's Engineer may be required by the District to revise the plans prior to District issuing its written approval. When the as-built plans are approved by the District, an AutoCad as-built file shall be delivered to District within 30 calendar days from date of approval for its use at no charge to the District. The AutoCad file with the as-builts shall become the property of the District.

b. ADEQ Approval. After approval by the District, Developer shall obtain an Approval to Construct ("**ATC**") from the ADEQ before any work is performed on line extension. Developer shall provide a copy of ADEQ's ATC to the District within thirty (30) calendar days of receipt from ADEQ. Upon completion of the work and acceptance by the District, Developer shall obtain an Approval of Construction ("**AOC**") from ADEQ. The District will not establish service to the Property until the Developer has provided the AOC from ADEQ to the District.

c. Required Easements, Leases, or Right of Way. Developer will obtain all required access, both on and off the Developer's property. District's standard easement form must be executed by the property owners of the Property involved to allow access to the proposed water lines. An encroachment permit or letter of authorization must be obtained from the City if proposed Infrastructure encroaches into existing public rights-of-way. Developer is responsible for restoring or repairing any rights-of-way for the required work. Developer will obtain all required ASLD leases to install and maintain Infrastructure.

d. Developer's Contractor. Developer shall construct all water lines and appurtenances in accordance with the Report and Rules. Developer's construction contractor shall be experienced in the type of work to be performed and shall be approved in writing by District's Engineer before Developer enters into an agreement with the contractor. Developer shall be responsible to direct the contractor and shall authorize and direct all work to be performed per the construction schedule provided by the Developer as approved by District's Engineer at a pre-construction meeting between Developer, the contractor and District's Engineer. If the contractor does not perform the work in a continuous orderly manner, Developer shall notify the contractor to discontinue work until such time as the work can be completed in a continuous orderly manner. District's Engineer shall have authority to direct the contractor to cease work until Developer, the contractor and District's Engineer agree on a construction schedule.

e. Future Work. Developer shall ensure that water lines are constructed initially with consideration for future grade work. "**Future Adjustments**" means any adjustments to the Infrastructure, fire hydrants, and appurtenances that are required as a result of grade work to the area in which the Infrastructure is located or as a result of changes to the original

development plan for the Property. If any Future Adjustments are required before the Infrastructure is accepted by District, Developer shall reimburse District for expenses incurred by the District to make such Future Adjustments. District may estimate the cost of Future Adjustments in advance and Developer will pay an advance cash deposit to District after receipt of written notice of the amount. District shall refund any unused deposit amounts to Developer after completion of the Future Adjustments.

f. Inspections. Developer's contractor shall provide an estimate of the construction period and based on such estimate, District will estimate the cost of its services. Before any water line construction begins, Developer shall deliver a cash deposit to District in the amount equal to its estimated costs. If the construction period approaches the time estimated and/or the deposit for services is nearly depleted, all construction work shall cease until Developer makes an additional cash deposit to District to cover an additional estimate of the work to be performed by District. Developer shall employ a contractor who shall schedule the work so that District's inspection services are not required on Saturdays and Sundays or any holiday observed by District.

g. Final Inspection and Acceptance of Facilities. Developer shall provide District all water facility invoices with a summary of all construction costs ("**Construction Cost Summary**"). Developer and the contractor shall each provide a release of liens to District indicating that all costs related to the water line extension have been paid. Upon completion of construction of the water line extension and acceptance by District, Developer shall relinquish any and all control over the Infrastructure covered under this Agreement and the Infrastructure constructed in accordance with this Agreement shall become the property of District.

h. Warranty. Developer or its assignee shall give the District one-year warranties for all Infrastructure, which warranties shall begin on the respective date that the District accepts such Infrastructure as provided in this Section. Any material deficiencies in the material or workmanship identified by District staff during the one-year warranty period shall be brought to the attention of the Developer or its assignee who provided the warranty, who shall promptly remedy or cause to be remedied such deficiencies to the reasonable satisfaction of the District Engineer. Continuing material deficiencies in a particular portion of the Infrastructure shall be sufficient grounds for the District to require the proper repair of, or the removal and reinstallation of, that portion of the Infrastructure that is subject to such continuing deficiencies and an extension of the warranty for an additional one-year period for such repairs. Nothing herein shall prevent the District or the Developer from seeking recourse against any third party for damage to the Infrastructure caused by such third party.

i. Acceptance, Operation, and Maintenance. So long as such Infrastructure is constructed in accordance with the plans approved pursuant to the Report and the Rules, as verified by the inspection of the completed improvements by the District Engineer, all punch list items have been completed to the District's reasonable satisfaction, and the Infrastructure is free of any liens and encumbrances, the Developer shall convey title to the District and the District shall accept such conveyance. Acceptance of any Infrastructure is expressly conditioned upon the Developer providing a warranty for the Infrastructure as set forth above. The Developer, at no cost to the District, shall dedicate, convey or obtain, as applicable, all rights-of-way, rights of entry, easements and/or other use rights, wherever located, as useful or necessary for the operation and maintenance of the Infrastructure dedicated to and accepted by the District. Upon acceptance, and

except as otherwise provided in this Agreement, the District, at its own cost and expense, shall maintain, repair, and operate such Infrastructure.

j. CFDs. The District acknowledges and agrees that whenever the Developer is obligated to construct or arrange for the construction of Infrastructure, and notwithstanding anything in this Agreement to the contrary, a CFD may construct, arrange for the construction, and/or finance any such Infrastructure. Developer shall dedicate such Infrastructure pursuant to this Agreement and the IGA entered into between the District, Superstition Mountains Community Facilities District No. 1 ("**SMCFD No. 1**") and the CFDs.

4. District's Obligations. District agrees to do all of the following:

a. At-Risk Construction of Infrastructure. Because development of the Property requires significant Infrastructure, at the Developer's request, the District agrees to issue an at-risk permit to the Developer after first submittal of the water Plans to the District and any required ADEQ approval. For the avoidance of doubt, issuance of an at-risk Infrastructure improvement plan permit does not constitute final plan approval by the District, and any work, services or materials accomplished or acquired by the Developer pursuant to any at-risk permit is done at the financial risk of the Developer.

b. Inspections. District shall perform construction inspection, with Developer reimbursing District for actual costs involved with engineering and inspection, including work required for as-built drawings, and all other costs incurred by District related to the extension.

c. Final Inspection and Acceptance of Facilities. Connection of the water line extension to the existing water system does not constitute acceptance of the Infrastructure by District. When Developer's contractor requests it, District will perform a final inspection of the extension. A list of any items not conforming to the approved plans and standard specifications will be provided to Developer. When all items on this list are performed, the construction will be considered complete. When the construction is complete, releases of liens and the Construction Cost Summary shall be delivered as described above and any amounts due to District shall be paid by Developer. District shall then notify Developer in writing of its acceptance of the extension. District will not provide service to any customers on the water line extension until District acceptance is received in writing as authorized by District Engineer.

d. Right to Extend. District is specifically granted the right to make extensions to any water lines which are the subject of this Agreement, at no expense to Developer, and without any reimbursement to Developer for any connections made on said extensions constructed by District. Final authority relative to additions, extensions, taps, and/or uses of the subject water mains and appurtenances shall rest solely with District Engineer, limits to access to infrastructure are described in Section 5.

5. Access to Infrastructure. The Participation Contract requires the Developer to construct certain Infrastructure, which is included in the Report. In exchange for the Developer's agreement to construct such Infrastructure, ASLD agreed that no purchaser of all or any part of property owned by ASLD and located adjacent to the Property as depicted on the attached Exhibit C (**"Retained Property**") may connect to or utilize any Infrastructure for a period beginning on the date of this Agreement and ending on November 12, 2028 ("**Access Period**"). The District agrees that it shall not permit any owner of ASLD Retained Property to connect to or utilize any

Infrastructure constructed by the Developer during the Access Period, unless approved by Developer and District.

6. Capacity Required by the Property/Water Purification Facility Expansion. The District and the Developer have determined that development on the Property requires water treatment capacity for development of approximately 11,000 dwelling units and approximately 450,000 square feet of non-residential floor area. The District's Water Purification Facility ("**WPF**") currently has 0.4 million gallons per day ("**mgd**") of available capacity. Within ten (10) calendar days after the Effective Date, the District shall commence and diligently pursue to complete the design of and cost estimates for expanding the WPF ("**Expansions**"). Such Expansions shall be completed in 2.0 mgd increments or larger depending on the development. When the WPF reaches 80% of its operating capacity for each Expansion, the District shall notify the Developer of its intent to commence construction of an Expansion and the Developer shall pay the District an amount equal to the cost paid by the District to design the Expansion and the estimated cost to construct the Expansion. Within thirty (30) calendar days of the notification to the Developer that the WPF is at 80%, the Developer shall provide funding for the Expansions. The Expansions will commence according to the Schedule provided by the Developer to additional water demands. Thereafter, the District shall commence and diligently pursue completion of construction of the Expansion. For planning purposes, the Developer's current projected absorption schedule, estimated total dwelling units and estimated square feet of non-residential floor area is attached hereto as Exhibit D. The Developer shall provide annual updates of Exhibit C to the District, but such updates shall not require an amendment to this Agreement. The Developer shall only be responsible for the cost to design and construct Expansions required to support development of the Property ("**WPF Costs**"). In addition, after connection to the WPF of the 500th equivalent dwelling unit ("**EDU**") constructed on the Property, the Parties shall analyze the average flows for one year to determine the actual flows used per EDU and shall use such actual flows plus or minus twenty percent depending on environmental conditions to calculate future capacity in the WPF, Expansions required, and Infrastructure required by the Developer for the Property. At no point should the demands go below 360 gallons per day per EDU.

7. Connection Fees. Developer shall pay the District's Water Resource Acquisition Fee applicable to development served by the District at the time of the final plat approval by the District. Developer shall pay the District's Water System Connection Fee generally applicable to development served by the District ("**Connection Fee**") at the time for connection to the District's water system. The Connection Fee will be paid in increments of 25 or another number agreed upon by both Parties. Notwithstanding the foregoing, the District shall reduce the Connection Fee owed to the District by each development unit on the Property if and to the extent the Connection Fee includes payment for infrastructure of the same type as the Infrastructure, such as water treatment facility upgrades/expansion, water transmission and distribution, and water storage/booster facilities ("**Equivalent Infrastructure**"). In addition, the District shall reduce the Connection Fee owed to the District by each development unit on the Property by an amount equal to such development unit's proportionate share of the WPF Costs. The Connection Fee and any reductions thereto shall be determined by the Parties subsequent to approval of each final plat on the Property; such determination shall be updated subsequent to the City's approval of each subsequent final plat thereafter.

8. Property. Developer shall dedicate property for the tanks, boosters, treatment facilities and wells to the District. The properties will be sized to fit Infrastructure required to

service the Development. Minimum well size is approximately three quarters of an acre. Minimum tank, treatment facility, and booster site is approximately 3.5 acres. The Developer will provide all infrastructure to construct, operate, and maintain future District facilities.

9. Potable Water Service Commitment. The District agrees to provide potable water service to the Property subject to the payment of applicable Water Resource Acquisition Fee, Connection Fee and rates, fees, and charges, and further subject to the District's acceptance of the Infrastructure necessary to serve the portion of the Property for which potable water service is desired, as provided in this Agreement and the Report. The District shall provide "will serve" letters as requested by the Developer for public report filing requirements upon payment of the Water Resource Acquisition Fee for each platted subdivision.

10. Assured Water Supply. The District has a Designation of Assured Water Supply ("**DAWS**") water portfolio with uncommitted water that can be used to support Developer's subdivision plat authorization process. A portion of the District's DAWS water portfolio are long-term storage credits acquired from the SMCFD No. 1 through an IGA between the districts, as it may be amended from time-to-time ("**Effluent IGA**"). The District will use commercially reasonable efforts to plan, maintain, modify, and renew the DAWS as and when needed such that Developer can continue to develop the Property and secure City plat approvals without delay attributable to the status of the DAWS. The District will use commercially reasonable efforts to secure and store or directly reuse increasing quantities of effluent made available to the District by SMCFD No. 1 through the Effluent IGA. If at any time there is a shortage of water resources available to the District for new development or plat authorizations for any reason, such that the District must allocate remaining water resources to competing new development demands, in order for the City to maintain a well-planned service territory, and in recognition of the contribution of significant effluent water supplies from the Property to the District's DAWS. District will provide such remaining available water resources first to Developer for the continued Property development before committing such resources to any other development that has not started substantial construction or that is located outside the District's current water piping distribution system. District will not object to or delay plat approvals for the Property on the basis that such approvals may be requested in advance of planned construction or sales.

a. Alternate Actions. If at any time the DAWS expires, is revoked, or is otherwise not promptly usable or used by the District for plat approvals due to a lack of sufficient water resources, unavailability of replenishment services, or changes in laws or rules or policies, the District will cooperate with Developer to conform the water supply plans for the Property so that Developer is able to continue promptly obtaining plat approvals and develop the Property, including taking such commercially reasonable actions as cooperating with the Arizona Department of Water Resources ("ADWR") or any applicable agency to obtain alternate permits, entering into agreements to enable Developer to provide water to the District to treat and deliver Developer's water to the Property, or similar actions, so long as Developer contributes to the costs of such actions in amounts that reasonably cover the District's additional costs as a result of the alternative action.

11. Effluent Reuse. The Developer shall construct, in phases and as required for development on the Property, the Infrastructure identified in the Non-Potable Water Report. All such construction performed by the Developer shall be performed in compliance with the Non-

Potable Water Report and any applicable rules, regulations, standards, procedures, and administrative policies of the District ("**Non-Potable Rules**"), provided however, that in the event of a conflict between the Non-Potable Water Report and the Non-Potable Rules, the Non-Potable Water Report shall control. The provisions of subsections 2, 3, and 4 of this Agreement shall equally apply to the construction, conveyance, and acceptance of the non-potable water Infrastructure. As soon as practicable after completion of the non-potable storage facility identified in the Non-Potable Water Report and located on SMCFD No. 1 property that SMCFD No. 1 will lease to the District ("**District Storage Facility**"), SMCFD No. 1 shall deliver a minimum of 0.37 million gallons per day of non-potable water ("**Minimum Quantity**") to the District at the District Storage Facility. The District shall deliver the Minimum Quantity to a storage facility located on the Property that Developer has dedicated or conveyed to the City, the District or SMCFD No. 1, which Minimum Quantity will be used by the Developer for construction and/or landscape irrigation use on the Property. Thereafter, as development of the Property progresses, the District commits to deliver to Developer up to 1.31 million gallons per day of non-potable water for landscape purposes and 2 million gallons per day of non-potable water for construction use on the Property for a total of 3.31 million gallons per day ("**Maximum Quantity**"), as reasonably requested by the Developer from time to time. For the first five years following the Effective Date, the rate charged by the District to the Developer for the Maximum Quantity shall not exceed $2.50 per 1,000 gallons of delivered non-potable water. If the District must supplement the non-potable water it receives from SMCFD No. 1 with untreated water from the Central Arizona Project ("**CAP**") in order to deliver the Minimum Quantity, then the rate charged by the District may include a surcharge equal to the amount the District pays for such quantity of CAP water. Thereafter, the rate shall be as established in the Intergovernmental Agreement between the District and SMCFD No. 1 for purchase of effluent.

The District will reasonably cooperate with Developer and SMCFD No. 1 to enable the District to recover water stored underground within the area of hydrologic impact of the water stored in the District's or SMCFD No. 1's recharge facilities, including providing nearby access easements for recovery wells upon reasonable terms consistent with the District's and SMCFD No. 1's purposes.

12. Construction Water. Notwithstanding the foregoing, the Developer may utilize surface water, untreated Central Arizona Project ("CAP") water provided by any other available source, or leased/purchased Type 2 Groundwater Rights from one or more wells drilled on the Property for construction water purposes. The Developer shall bear the responsibility of the infrastructure to get the non-potable water delivered by the District to the Property until Infrastructure is built to support construction water use.

13. Insurance/Payment and Performance Bonds.

a. Insurance Requirements. Developer shall maintain the following insurance coverages:

i) Property. During the period of any construction involving the Infrastructure, builder's risk insurance on an all-risk, replacement cost basis for the Infrastructure.

ii) Liability. During the period of any construction involving the Infrastructure, insurance covering the Developer and (as an additional insured) the District 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 $5,000,000.00 per occurrence with a $5,000,000.00 products/completed operations limit and a $10,000,000.00 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.

iii) Developer. During the period of any construction involving the Infrastructure, 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:

A) Worker's Compensation insurance and Employer's Liability with limits of $1,000,000.00 per accident, $1,000,000.00 per disease and $1,000,000.00 policy limit disease.

B) Commercial general liability insurance on a $5,000,000.00 per occurrence basis providing coverage for:

Products and Completed Operations

Blanket Contractual Liability

Personal Injury Liability

Broad Form Property Damage

X.C.U.

C) 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.

iv) Architect. In connection with any construction involving the Infrastructure, 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 on the Property and the Infrastructure.

v) Engineer. In connection with any construction involving the Infrastructure, the Developer's engineer 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 on the Property and the Infrastructure.

vi) 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.

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

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

ix) Waiver of Subrogation. The policies shall contain a waiver of subrogation against the District, its officers, officials, agents, and employees.

x) Notice of Cancellation. Each 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 District. Such notice shall be sent directly to Apache Junction Water District, District Manager, 300 E. Superstition Blvd., Apache Junction, AZ 85119, and shall be sent by certified mail, return receipt requested.

xi) Acceptability of Insurers. Insurance is to be placed with insurers 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 District in no way warrants that the above-required minimum insurer rating is sufficient to protect Developer from potential insurer insolvency.

xii) Verification of Coverage. Developer shall furnish the District with original certificates of insurance (ACCORD form or equivalent approved by the District) 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.

xiii) All certificates are to be received and approved by the District 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.

xiv) All certificates required by this Agreement shall be sent directly to District Attorney, 300 E. Superstition Blvd., Apache Junction, Arizona, 85119. The District reserves the right to require complete, certified copies of all insurance policies and endorsements.

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

b. Payment and Performance Bonds. District shall have a right to require Developer, and Developer shall provide, payment and performance bonds for all work covered under this Agreement, as set forth under District's bonding requirements.

14. Environmental Laws Indemnity.

a. Definitions. The following terms used in this Agreement shall have the meanings set forth below (unless otherwise expressly provided herein):

i) "Environmental Laws" shall mean any and all laws, statutes, regulations and judicial interpretations thereof of the United States, of any state in which the construction site is located, and of any other government or quasi-government authority having jurisdiction, that relate to the prevention, abatement and elimination of pollution and/or protection of the environment, including but not limited to the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. § 6901 et seq., the Clean Water Act ("CWA"), 33 U.S.C. § 1251 et seq., the Clean Air Act ("CAA"), 42 U.S.C. § 7401 et seq., the Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300f et seq., the Endangered Species Act ("ESA"), 16 U.S.C. § 1531 et seq., and the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2601 et seq., together with any state statutes or local ordinances or other requirements serving any similar or related purposes.

ii) "Hazardous Materials" shall mean those materials, substances, wastes, pollutants or contaminants which are deemed to be hazardous, toxic or radioactive and shall include but not be limited to those substances defined as "hazardous substances," "hazardous materials," "hazardous wastes," or other similar designations in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Hazardous Materials Transportation Act 49 U.S.C. § 1801 et seq., and all applicable laws, codes, ordinances, rules, regulations and precautions, or by common law decision, including, without limitation: (a) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents, (b) petroleum products or byproducts, or petroleum, including crude oil or any fraction thereof, or natural gas, natural gas liquids, liquefied natural gas, synthetic gas or mixtures of synthetic gas and natural gas; (c) asbestos; and (d) polychlorinated biphenyls.

iii) "Storm Water Requirements" means all federal, state or local laws, regulations, ordinances, permits or other authorizations, approvals or other requirements relating to storm water discharges or the control of erosion or sediment discharges from construction projects, including but not limited to the

Clean Water Act, 33 U.S.C. § 1251 et seq. and the NPDES General Permit for Stormwater Discharges Associated with Construction Activities.

b. Environmental Indemnity. Developer shall indemnify, protect, defend and hold harmless District and its appointees, officers, employees, agents, consultants, representatives, successors, transferees, volunteers and assigns (collectively, the "District Indemnified Parties") from and against any and all damages arising from, relating to or associated with any actual or alleged (i) actions or omissions of Developer or its employees, agents, representatives, volunteers or general contractor, subcontractors or sub-subcontractors, or any employees, agents, representatives or contractors of any of the foregoing, in connection with the construction of the Infrastructure located within the public right-of-way, including, without limitation, any injury, damage, harm or loss arising from, relating to or in any manner connected with the "release" or "threatened release" of Hazardous Materials, contaminants, oil or radioactive materials from or onto any District premises as a result of or connected with Developer's the construction of the Infrastructure, even if not discovered or alleged until after the termination of this Agreement; and/or (ii) any breach, violation or default by Developer or its employees, agents, representatives, or general contractor, subcontractors or sub- subcontractors, or any employees, agents, representatives or contractors of any of the foregoing, of Developer's obligations under this Agreement, including, without limitation, any violation of any law, statute, ordinance, order, rule or regulation, including, without limitation, any Environmental Law or the Storm Water Requirements.

c. Environmental Compliance. During the design and construction of the Infrastructure, Developer shall comply with any and all applicable laws, rules, regulations, statutes, codes, orders and ordinances, including: (i) all Environmental Laws and (ii) those applicable to the use, generation, storage, handling, discharge, disposal and transport of Hazardous Materials; provided that, notwithstanding the foregoing, Developer shall not cause any Hazardous Material to be used, generated, stored, handled or disposed of on or about any tract without the prior written consent of District, which consent may be withheld in the sole discretion of District. The foregoing provision shall not be construed as limiting the right of Developer to use, store, handle, discharge, dispose of and transport Hazardous Materials in the ordinary course of its business operations on the Property without the consent of District, provided that such operations are in accordance with all applicable laws. Without limiting the foregoing, all chemicals and other products utilized in the performance of the Infrastructure construction must be environmentally acceptable, as determined by District in its sole discretion, and such use must be permitted by and be fully compliant with all applicable laws. Developer hereby covenants and agrees that the application of all chemicals and other products utilized in the course of Infrastructure construction must be performed by a licensed applicator if so required under any applicable law. Developer acknowledges and agrees that it is informed and aware that strict compliance with City Storm Water Requirements is required of the Developer by District as a material condition of this Agreement. Developer does hereby agree, covenant, warrant and represent that it will, at times during the construction of Infrastructure, strictly comply with all Storm Water Requirements. Developer shall also include requirements for such compliance in all contracts relating to the performance and completion of the Infrastructure that is the subject of this Agreement. Developer shall be responsible for applicable taxes arising from or relating to the performance or completion of the Infrastructure, including, without limitation, all federal, state and local unemployment taxes and federal and state income and social

security taxes to be withheld from wages. District is hereby authorized to file, on behalf of Developer, any and all reports, returns or other documents which are required of Developer by any governmental authority and which Developer shall have failed to file in accordance with the provisions of this Agreement. Developer further authorizes and empowers District to pay on behalf of Developer any and all taxes, fees and assessments which Developer shall have failed to pay as required by the provisions of this Agreement, together with all required penalties and interest, and Developer shall promptly reimburse District within ten (10) calendar days after receiving an invoice for such amounts.

15. Safety. Developer and/or its subcontractors shall be solely responsible for job safety at all times in addition to any obligation District may have for inspection of trench excavation as created under Occupational Safety and Health Administration ("OSHA") or other similar laws or regulations.

16. Force Majeure. Neither District 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, quarantines, governor's executive orders, 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 (whether permanent or temporary) by any public entity directly affecting the obligations under this Agreement. In no event will Enforced Delay include any delay resulting from unavailability for any reason of labor shortages, or the unavailability for any reason of particular contractors, subcontractors, vendors or investors desired by Developer or District in connection with the obligations under this Agreement. 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 provided further that in no event shall a period of Enforced Delay exceed ninety (90) calendar days.

17. Indemnification (General). To the fullest extent permitted by law, Developer shall defend, indemnify and hold harmless District, its board and appointed officers, officials, agents, and employees from and against any and all liability including but not limited to demands, claims, actions, fees, costs and expenses, including attorney and expert witness fees, arising from or connected with or alleged to have arisen from or connected with, relating to, arising out of, or alleged to have resulted from the negligent, intentional or reckless acts, errors, mistakes, omissions, work or services of Developer, its agents, employees, or any tier of Developer's subcontractors in the performance of this Agreement. Developer's duty to defend, hold harmless and indemnify District, its board, elected and appointed officers, officials, agents, 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 in the performance of this Agreement including any employee of Developer, any tier of Developer's subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services Developer may be legally liable.

18. General.

a. Notices. All notices, certificates or other communications hereunder (including in the Exhibits hereto) shall be sufficiently given and shall be deemed to have been received 48 hours after deposit in the United States mail in registered or certified form with postage fully prepaid addressed as follows:

If to the District:	Apache Junction Water Utilities Community Facilities District Attn: District Manager 300 Superstition Boulevard Apache Junction, Arizona 85119
If to Developer:	D.R. Horton, Inc. 20410 N. 19th Avenue, Suite 100 Phoenix, Arizona 85027 Attention: Legal Department
With a copy to:	Dana Stagg Belknap Gallagher & Kennedy, P.A. 2575 East Camelback Road Phoenix, Arizona 85016 dsb@gknet.com

Any of the foregoing, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent. As a courtesy additional (not primary) form of notice, copies of notices mailed pursuant to this Section may be sent by electronic mail to the addresses listed above.

b. Severability. If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision thereof.

c. Headings. The headings or titles of the several Sections hereof and in the Exhibits hereto, and any table of contents appended to copies hereof and thereof, shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Agreement.

d. Time of Essence and Successors. Time is of the essence in implementing the terms of this Agreement. All of the provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the Parties pursuant to A.R.S. § 9-500.05(D), except as provided below; provided, however, the Developer's rights and obligations hereunder may only be assigned to a person or entity that has acquired an interest in the Property or a portion thereof and only pursuant to the terms and conditions of this Agreement.

e. Assignment.

(i) Partial Assignment to Purchasers. The Developer may assign (each, an "**Assignment**") less than all of its rights and obligations under this Agreement to those entities that acquire any portion of the Property (the "**Transferred Parcel**") for development (each an "**Assignee**"). The Developer will be released from its obligations under this Agreement with respect to the Transferred Parcel provided that: (i) the Developer is not in default; (ii) the Developer has given the District written notice of the Assignment, which shall include the name, address, and facsimile number for notice purposes; (iii) the District has provided its written consent to the Assignment (except that the District's consent shall not be required for an Assignment by the Developer to Brookfield Homes Holdings LLC or its affiliate ("**Brookfield**") pursuant to Section 18(e)(ii) below or to an affiliate of the Developer), which consent will not unreasonably be withheld, delayed, or conditioned; (iv) the Assignee has agreed in writing to be subject to all of the applicable provisions of this Agreement and such Assignment provides for the allocation of responsibilities and obligations between the Developer and the Assignee; and (v) such agreement has been recorded in the official records of Pinal County on that portion of the Property owned by such Transferee.

(ii) Partial Assignment to Brookfield. The District acknowledges that the Developer intends to enter into a purchase agreement to sell Development Unit 2 to Brookfield, with such conveyance to occur on a parcel by parcel basis as partial patents are issued by the ASLD to the Developer ("**Brookfield Purchase Agreement**"). Accordingly, notwithstanding anything in this Agreement to the contrary, the District's consent shall not be required for an Assignment by the Developer to Brookfield with respect to Development Unit 2 upon recordation of a memorandum of the Brookfield Purchase Agreement in the official records of Pinal County, subject to: (i) compliance with the provisions of Section 18(e)(1) (other than the District's consent) and (ii) Brookfield's replacement of Infrastructure Assurances for Development Unit 2. Following any such Assignment to Brookfield, (a) the term "Parties" shall mean the District, Developer, and Brookfield, (b) Brookfield shall have all of the rights and obligations of "Developer" with respect to Development Unit 2, (c) notwithstanding anything in this Agreement to the contrary, amendments to this Agreement that affect only Development Unit 1 shall not require the approval of Brookfield and amendments to this Agreement that affect only Development Unit 2 shall not require the approval of the Developer, and (d) the obligations of Developer and Brookfield shall be several and not joint, and no default by the

Developer shall constitute a default by Brookfield or vice versa. If, however, Brookfield does not purchase all of Development Unit 2 from Developer and the Brookfield Purchase Agreement (and recorded memorandum thereof) is terminated, then Brookfield shall only have the rights and obligations of "Developer" with respect to those portions of Development Unit 2 purchased by Brookfield, and any amendments to this Agreement that affect those portions of Development Unit 2 that have not been purchased by Brookfield shall not require the approval of Brookfield but shall require the approval of the Developer.

f. No Partnership; Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between the Developer and the District. 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 for transferees or assignees to the extent they assume or succeed to the rights and obligations of the Developer as set forth in this Agreement.

g. 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.

h. Amendment. No change or addition is to be made to this Agreement except by a written amendment executed by the Parties.

i. Names and Plans. The Developer shall be the sole owner of all names, titles, plans, drawings, specifications, ideas, programs, designs and work products of every nature at any time that is developed, formulated, or prepared by the Developer in connection with the Property; provided, however, that: (1) in connection with any conveyance of portions of the Property to the District, such rights pertaining to the portions of the Property so conveyed shall be assigned to the full extent that such rights are assignable, to the District; (2) the Developer and the District shall be entitled to utilize all such materials described herein to the extent required for the Developer and/or the District, as applicable, to construct, operate, or maintain improvements relating to the Property; and (3) the District may request a nonexclusive assignment of plans and specifications for the District's use, which request is subject to the reasonable approval of the engineer who prepared such plans and specifications and which will be made available without any representations or warranties whatsoever.

j. Review of Submitted Materials. The Parties shall mutually agree on review times applicable to construction documents. In the event the District does not have a sufficient number of personnel to implement an expedited development review process requested by the Developer, or expedited land development and construction inspection services requested by the Developer, the Developer may elect to pay the costs incurred by the District for such private, independent consultants and advisors that may be retained by the District, as necessary, to assist the District in the review and/or inspection process; provided, however, that such consultants shall take instructions from, be controlled by, and be responsible to, the District and not the Developer.

k. Good Standing; Authority. Each of the Parties represents to the other: (i) that it is duly formed and validly existing under the laws of Delaware, with respect to the Developer or a community facilities district within the State of Arizona, with respect to the District; (ii) that it is a corporation or community facilities district duly qualified to do business in the State of Arizona and is in good standing under applicable state laws; and (iii) that the individual(s) executing this Agreement on behalf of the respective Parties are authorized and empowered to bind the Party on whose behalf each such individual is signing.

l. Governing Law/Conflicts of Interest/Changing 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 the Parties 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. In the event a Party brings suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition in this Agreement, it is mutually agreed that the prevailing party in such action shall recover all costs including: all litigation and appeal expenses, collection expenses, reasonable attorney fees, necessary witness fees (inclusive of professional services/meals/lodging/transportation), court costs, and transcript fees. This Agreement is also subject to the conflict of interest laws set forth in A.R.S. § 38-511 *et seq.*

m. 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 either orally or in writing, and if so amended, identifying the amendments; and (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 (a "**Status Statement**"). A party receiving a request hereunder shall execute and return such Status Statement within thirty (30) calendar days following the receipt thereof. The District Manager or designee shall have the right to execute any Status Statement requested by Developer hereunder. The District acknowledges that a Status Statement hereunder may be relied upon by transferees and mortgagees. The District shall have no liability for monetary damages to Developer, and transferee or mortgagee, or any other person in connection with, resulting from or based upon the issuance of any Status Statement hereunder.

n. Recordation. This Agreement shall be recorded in its entirety by the District at its own cost in the Official Records of Pinal County, Arizona not later than ten (10) calendar days after this Agreement is executed by the Parties. Amendments to this Agreement will follow the same recordation process.

o. Nonliability of District Officials, etc., and of Employees, Members and Partners, etc. of the Developer. No District Board member, official, representative, agent, attorney or employee of the District shall be personally liable to the Developer, or to any successor in interest to any of the Developer, in the event of any Non-Performance or breach by the District or for any amount which may become due to the Developer or its successors, or with respect to any obligation of the District under the terms of this Agreement including any punitive damage claim.

Notwithstanding anything contained in this Agreement to the contrary, the liability of the Developer under this Agreement shall be limited solely to the assets of the 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 the Developer; (ii) the shareholders, members or managers or constituent partners of the Developer; or (iii) officers of the Developer. This Section shall survive termination of the Agreement.

p. 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 shall act in good faith and shall not act unreasonably, arbitrarily or capriciously and shall not unreasonably withhold, delay or condition any requested approval, acknowledgment or consent.

q. Waivers. The waiver by any Party hereto of any right granted to it under this Agreement shall not be deemed to be a waiver of any other right granted in this Agreement nor shall the same be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived under or by this Agreement.

r. Counterpart Executions. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original, but all of which taken together shall constitute one of the same instrument. Each Party hereto shall, promptly upon the request of any other, have acknowledged and delivered to the other any and all further instruments and assurances reasonably requested or appropriate to evidence or give effect to the provisions of this Agreement

19. Provisions Required by Law. Each and every provision of law and any clause required by law to be in this Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of any Party, the Agreement will promptly be physically amended to make such insertion or correction.

20. Default. Failure or unreasonable delay by either Party to perform or otherwise act in accordance with any term or provision of this Agreement for a period of thirty (30) calendar days after written notice thereof from the other Party ("**Cure Period**"), shall constitute a default under this Agreement; provided, however, that if the failure or delay is such that more than thirty (30) calendar days would reasonably be required to perform such action or comply with any term or provision hereof, then such Party shall have such additional time as may be necessary to perform or comply so long as such party commences performance or compliance within said thirty (30) calendar day period and diligently proceeds to complete such performance or fulfill such obligation. Said notice shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible. In the event such default is not cured within the Cure Period, the non-defaulting Party shall have all rights and remedies provided by law or equity. A default by an assignee shall not be deemed a default by Developer or any other assignee different portion of the Property, and the District may not withhold or condition its performance under this Agreement as to any owner of a portion of the Property who is not in default of this Agreement.

No assignee of this Agreement may enforce this Agreement as against any other assignee of this Agreement.

21. Prohibition to Contract with Developer Who Engages in Boycott of the State of Israel. The Parties acknowledge A.R.S. §§ 35-393 through 35-393.03, as amended, which forbids public entities from contracting with Developers who engage in boycotts of the State of Israel. Should the Developer under this Agreement engage in any such boycott against the State of Israel, this Agreement shall be deemed automatically terminated by operation of law. Any such boycott is a material breach of contract.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates written above.

[signatures on following pages]

APACHE JUNCTION WATER UTILITIES COMMUNITY FACILITIES DISTRICT, an Arizona municipal corporation

_____

By: Michael Loggins
Its: Water District Director

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing was subscribed and sworn to before me this _____ day of _____, 2021, by Michael Loggins, the Director of Apache Junction Water Utilities Community Facilities District, an Arizona municipal corporation.

_____
Notary Public

My Commission Expires:

_____

COUNSEL APPROVAL AS TO FORM:

I have read this Agreement and have determined such Agreement is in proper form and is entered into within the powers of and authority granted under the laws of the State of Arizona.

I have read this Agreement and have determined such Agreement is in proper form and is entered into within the powers of and authority granted under the laws of the State of Arizona.

Richard J. Stern, District Attorney	Date

DEVELOPER:

D.R. HORTON, Inc., a Delaware corporation

_____

By: _____

Its: _____

CORPORATE APPROVAL:

D.R. HORTON, Inc., a Delaware corporation

_____

By: _____

Its: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing was subscribed and sworn to before me this _____ day of _____, 2021, by _____, the _____ of D.R. Horton, Inc. a Delaware corporation.

_____
Notary Public

My Commission Expires:

_____

Exhibit A

Legal Description

Wood, Patel & Associates, Inc.
480.834.3300
www.woodpatel.com

LEGAL DESCRIPTION
Superstition Vistas
D.R. Horton Parcel

General Land Office (GLO) Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, a portion of GLO Lot 12 and a portion of the east half of Section 18 and GLO Lots 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, a portion of GLO Lots 1 and 2 and a portion of the east half of Section 19, and a portion of the north half of Section 30, Township 1 South, Range 8 East, of the Gila and Salt River Meridian, Pinal County, Arizona, more particularly described as follows:

BEGINNING at the northeast corner of said Section 18, a 3-inch Pinal County brass cap in handhole, from which the east quarter corner of said Section 18, a 3-inch Pinal County brass cap in handhole, bears South 00°13'51" East (basis of bearing), a distance of 2639.88 feet;
THENCE along the east line of said Section 18, South 00°13'51" East, a distance of 2639.88 feet, to said east quarter corner;
THENCE South 00°17'10" East, a distance of 155.64 feet, to the northerly line of that certain Maricopa County Flood Control District Easement, recorded in Document 2011-062136, Pinal County Records (PCR);
THENCE leaving said east line, along said northerly line, South 53°29'26" West, a distance of 4200.33 feet, to the south line of said Section 18;
THENCE leaving said south line, South 53°29'13" West, a distance of 910.07 feet,
THENCE leaving said northerly line, South 82°28'36" East, a distance of 583.29 feet, to the beginning of a curve;
THENCE easterly along said curve to the left, having a radius of 3000.00 feet, concave northerly, through a central angle of 30°39'58", a distance of 1605.68 feet, to the curves end;
THENCE North 66°51'25" East, a distance of 540.51 feet, to the beginning of a curve;
THENCE easterly along said curve to the right, having a radius of 2500.00 feet, concave southerly, through a central angle of 22°55'06", a distance of 1000.00 feet, to the north line of said Section 19 and the curves end;
THENCE along said north line, North 89°46'31" East, a distance of 500.00 feet, to the northeast corner of said Section 19;
THENCE leaving said north line, along the east line of said Section 19, South 00°17'35" East, a distance of 2641.12 feet, to the east quarter corner of said Section 19;
THENCE South 00°17'01" East, a distance of 2640.28 feet, to the southeast corner of said Section 19;
THENCE leaving said east line, along the south line of said Section 19, South 89°44'56" West, a distance of 702.14 feet, to the beginning of a curve;
THENCE leaving said south line, westerly along said curve to the left, having a radius of 10000.00 feet, concave southerly, through a central angle of 11°16'39", a distance of 1968.29 feet, to the beginning of a reverse curve;

THENCE westerly along said reverse curve to the right, having a radius of 10000.00 feet, concave northerly, through a central angle of 11°56'03", a distance of 2082.89 feet, to the curves end;
THENCE North 89°35'40" West, a distance of 1421.78 feet, to the southeast corner of Section 24, Township 1 South, Range 7 East, of the Gila and Salt River Meridian;
THENCE along the east line of said Section 24, North 00°38'07" West, a distance of 2635.59 feet, to the east quarter corner of said Section 24;
THENCE North 00°37'44" West, a distance of 2633.61 feet, to the southeast corner of Section 13, Township 1 South, Range 7 East, of the Gila and Salt River Meridian;
THENCE leaving said east line, along the east line of said Section 13, North 00°39'46" West, a distance of 2637.45 feet, to the east quarter corner of said Section 13;
THENCE North 00°37'58" West, a distance of 2637.66 feet, to the southeast corner of Section 12, Township 1 South, Range 7 East, of the Gila and Salt River Meridian;
THENCE leaving said east line, along the east line of said Section 12, North 00°39'09" West, a distance of 75.01 feet;
THENCE leaving said east line, South 89°37'08" East, a distance of 1403.26 feet, to a point of intersection with a non-tangent curve;
THENCE southerly along said non-tangent curve to the left, having a radius of 1057.78 feet, concave easterly, whose radius bears South 87°35'14" East, through a central angle of 04°03'48", a distance of 75.02 feet, to a point of intersection with a non-tangent curve;
THENCE easterly along said non-tangent curve to the left, having a radius of 10000.00 feet, concave northerly, whose radius bears North 00°22'43" East, through a central angle of 12°09'59", a distance of 2123.45 feet, to the beginning of a reverse curve;
THENCE easterly along said reverse curve to the right, having a radius of 10000.00 feet, concave southerly, through a central angle of 11°33'02", a distance of 2015.94 feet, to the north line of said Section 18 and the curves end;
THENCE along said north line, North 89°45'45" East, a distance of 703.03 feet, to the **POINT OF BEGINNING**.

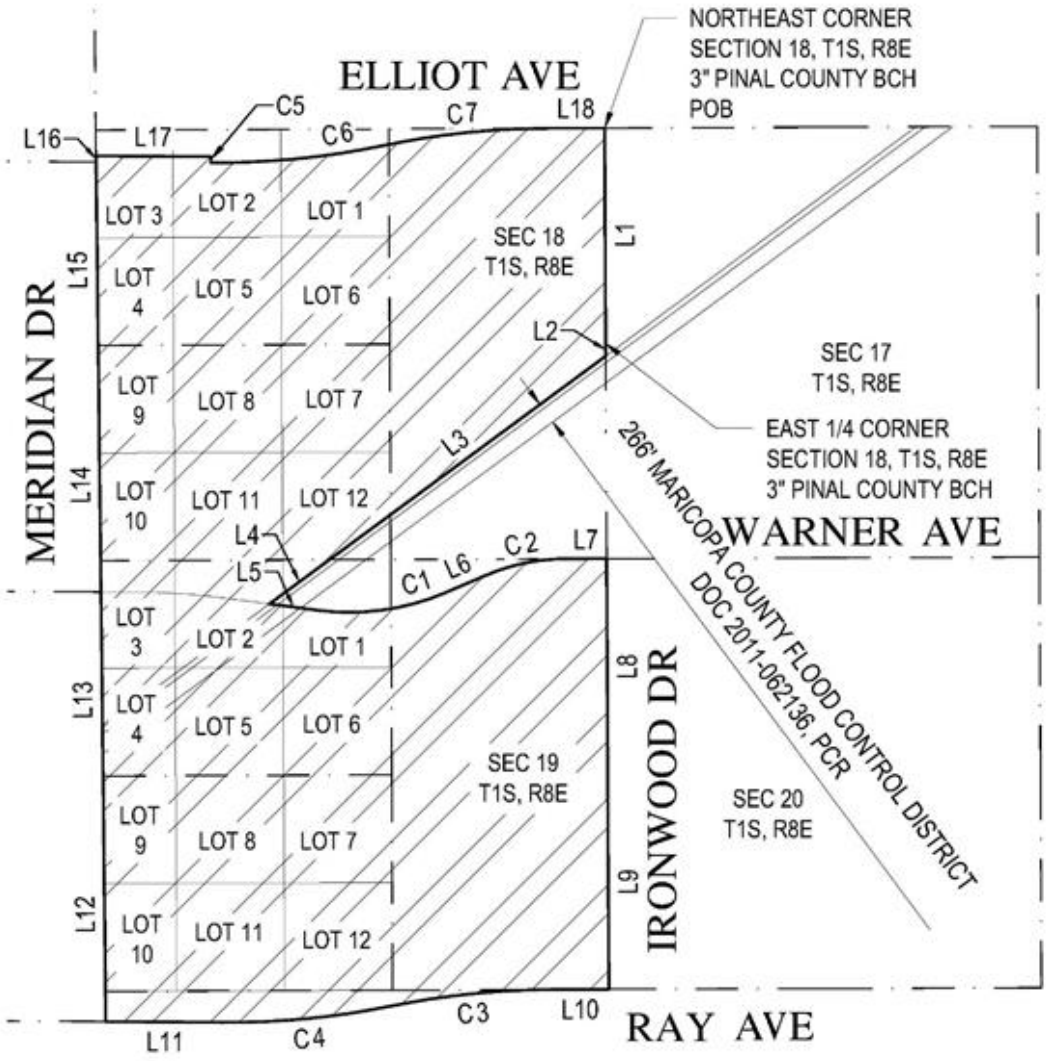
Containing 59,882,032 square feet or 1,374.7023 acres, more or less.

Subject to existing right-of-ways and easements.

This parcel description is based on client provided information and is located within an area surveyed by Wood, Patel & Associates, Inc. during the month of December, 2020. Any monumentation noted in this parcel description is within acceptable tolerance (as defined in Arizona Boundary Survey Minimum Standards dated 02/14/2002) of said positions based on said survey.

Y:\WP\Parcel Descriptions\2020\205166.01 Superstition Vistas DR Horton Parcel L01R01 03-09-21.docx

EXPIRES 09-30-23



WOOD PATEL

N

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
23945
BRIAN J.
DIEHL
Date Signed 3-9-21
ARIZONA, U.S.A.
EXPIRES 09-30-23

EXHIBIT "A"

SUPERSTITION VISTAS
D.R. HORTON PARCEL
03/09/2021
WP #205166.01
PAGE 3 OF 4
NOT TO SCALE
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LINE TABLE		
LINE	BEARING	DISTANCE
L1	S00°13'51"E	2639.88'
L2	S00°17'10"E	155.64'
L3	S53°29'26"W	4200.33'
L4	S53°29'13"W	910.07'
L5	S82°28'36"E	583.29'
L6	N66°51'25"E	540.51'
L7	N89°46'31"E	500.00'
L8	S00°17'35"E	2641.12'
L9	S00°17'01"E	2640.28'
L10	S89°44'56"W	702.14'
L11	N89°35'40"W	1421.78'
L12	N00°38'07"W	2635.59'
L13	N00°37'44"W	2633.61'
L14	N00°39'46"W	2637.45'
L15	N00°37'58"W	2637.66'
L16	N00°39'09"W	75.01'
L17	S89°37'08"E	1403.26'
L18	N89°45'45"E	703.03'

CURVE TABLE			
CURVE	DELTA	RADIUS	ARC
C1	30°39'58"	3000.00'	1605.68'
C2	22°55'06"	2500.00'	1000.00'
C3	11°16'39"	10000.00'	1968.29'
C4	11°56'03"	10000.00'	2082.89'
C5	4°03'48"	1057.78'	75.02'
C6	12°09'59"	10000.00'	2123.45'
C7	11°33'02"	10000.00'	2015.94'

WOOD PATEL

EXPIRES 09-30-23

EXHIBIT "A"

SUPERSTITION VISTAS
D.R. HORTON PARCEL
03/09/2021
WP #205166.01
PAGE 4 OF 4
NOT TO SCALE
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Wood, Patel & Associates, Inc.
480.834.3300
www.woodpatel.com

PARCEL DESCRIPTION
Superstition Vistas
Brookfield Parcel

Sections 17 and 20, a portion of General Land Office (GLO) Lot 12 and a portion of the east half of Section 18, a portion of GLO Lots 1 and 2 and a portion of the east half of Section 19, Township 1 South, Range 8 East, of the Gila and Salt River Meridian, Pinal County, Arizona, more particularly described as follows:

BEGINNING at the northwest corner of said Section 17, a 3-inch Pinal County brass cap in handhole, from which the north quarter corner of said Section 17, a 2 1/2-inch GLO brass cap in concrete, bears North 89°45'04" East (basis of bearing), a distance of 2642.33 feet;
THENCE along the north line of said Section 17, North 89°45'04" East, a distance of 2642.33 feet, to said north quarter corner;
THENCE North 89°47'06" East, a distance of 2643.88 feet, to the northeast corner of said Section 17;
THENCE leaving said north line, along the east line of said Section 17, South 00°17'17" East, a distance of 2641.26 feet, to the east quarter corner of said Section 17;
THENCE South 00°17'39" East, a distance of 2641.38 feet, to the northeast corner of said Section 20;
THENCE leaving said east line, along the east line of said Section 20, South 00°16'25" East, a distance of 2640.88 feet, to the east quarter corner of said Section 20;
THENCE South 00°15'30" East, a distance of 2641.53 feet, to the southeast corner of said Section 20;
THENCE leaving said east line, along the south line of said Section 20, South 89°46'59" West, a distance of 2643.36 feet, to the south quarter corner of said Section 20;
THENCE South 89°48'18" West, a distance of 2643.78 feet, to the southwest corner of said Section 20;
THENCE leaving said south line, along the west line of said Section 20, North 00°17'01" West, a distance of 2640.28 feet, to the west quarter corner of said Section 20;
THENCE North 00°17'35" West, a distance of 2641.12 feet, to the northeast corner of said Section 19;
THENCE leaving said west line, along the north line of said Section 19, South 89°46'31" West, a distance of 500.00 feet, to the beginning of a curve;
THENCE leaving said north line, westerly along said curve to the left, having a radius of 2500.00 feet, concave southerly, through a central angle of 22°55'06", a distance of 1000.00 feet, to the curves end;
THENCE South 66°51'25" West, a distance of 540.51 feet, to the beginning of a curve;
THENCE westerly along said curve to the right, having a radius of 3000.00 feet, concave northerly, through a central angle of 30°39'58", a distance of 1605.68 feet, to the curves end;

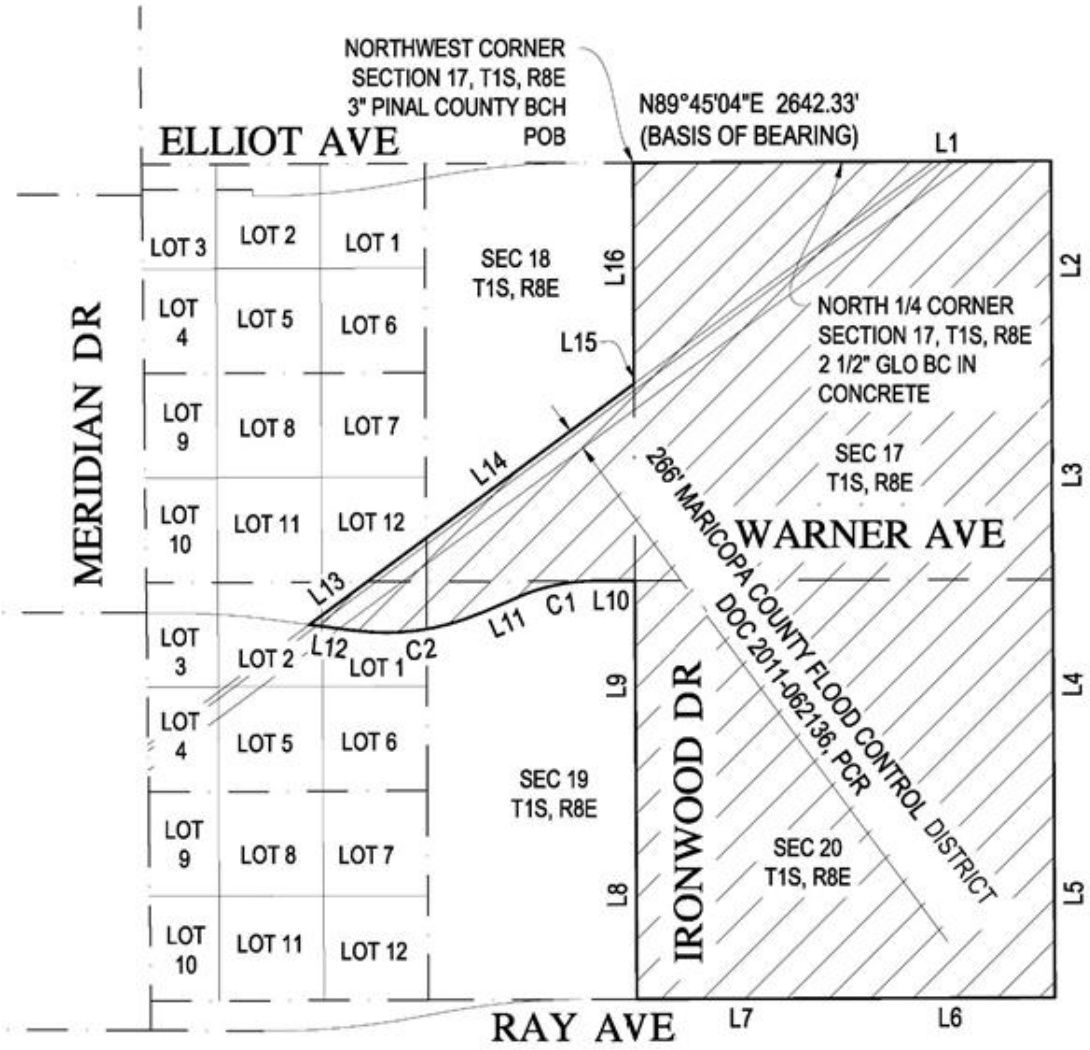
THENCE North 82°28'36" West, a distance of 583.29 feet, to the northerly line of that certain Maricopa County Flood Control District Easement, recorded in Document 2011-0619607, Pinal County Records (PCR);
THENCE along said northerly line, North 53°29'13" East, a distance of 910.07 feet, to said north line of Section 19;
THENCE leaving said north line, North 53°29'26" East, a distance of 4200.33 feet, to the west line of said Section 17;
THENCE leaving said northerly line, along said west line, North 00°17'10" West, a distance of 155.64 feet, to the west quarter corner of said Section 17;
THENCE North 00°13'51" West, a distance of 2639.88 feet, to the **POINT OF BEGINNING**.

Containing 61,348,819 square feet or 1,408.3751 acres, more or less.

Subject to existing right-of-ways and easements.

This parcel description is based on client provided information and is located within an area surveyed by Wood, Patel & Associates, Inc. during the month of December, 2020. Any monumentation noted in this parcel description is within acceptable tolerance (as defined in Arizona Boundary Survey Minimum Standards dated 02/14/2002) of said positions based on said survey.

Y:\WP\Parcel Descriptions\2020\205166.01 Superstition Vistas Brookfield Parcel L02 01-08-21.docx



WOOD PATEL

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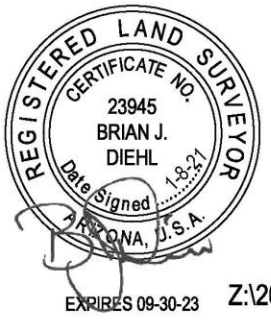
REGISTERED LAND SURVEYOR
CERTIFICATE NO.
23945
BRIAN J.
DIEHL
Date Signed 1-8-21
ARIZONA, U.S.A.
EXPIRES 09-30-23

EXHIBIT "A"
SUPERSTITION VISTAS
BROOKFIELD PARCEL
01/08/2021
WP #205166.01
PAGE 3 OF 4
NOT TO SCALE
Z:\2020\205166\Survey\Legal\5166-L02.dwg

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N89°47'06"E	2643.88'
L2	S00°17'17"E	2641.26'
L3	S00°17'39"E	2641.38'
L4	S00°16'25"E	2640.88'
L5	S00°15'30"E	2641.53'
L6	S89°46'59"W	2643.36'
L7	S89°48'18"W	2643.78'
L8	N00°17'01"W	2640.28'
L9	N00°17'35"W	2641.12'
L10	S89°46'31"W	500.00'
L11	S66°51'25"W	540.51'
L12	N82°28'36"W	583.29'
L13	N53°29'13"E	910.07'
L14	N53°29'26"E	4200.33'
L15	N00°17'10"W	155.64'
L16	N00°13'51"W	2639.88'

CURVE TABLE			
CURVE	DELTA	RADIUS	ARC
C1	22°55'06"	2500.00'	1000.00'
C2	30°39'58"	3000.00'	1605.68'

WOOD PATEL



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BROOKFIELD PARCEL
01/08/2021
WP #205166.01
PAGE 4 OF 4
NOT TO SCALE
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Exhibit B

Auction Property Map

Exhibit C

Retained Property Map

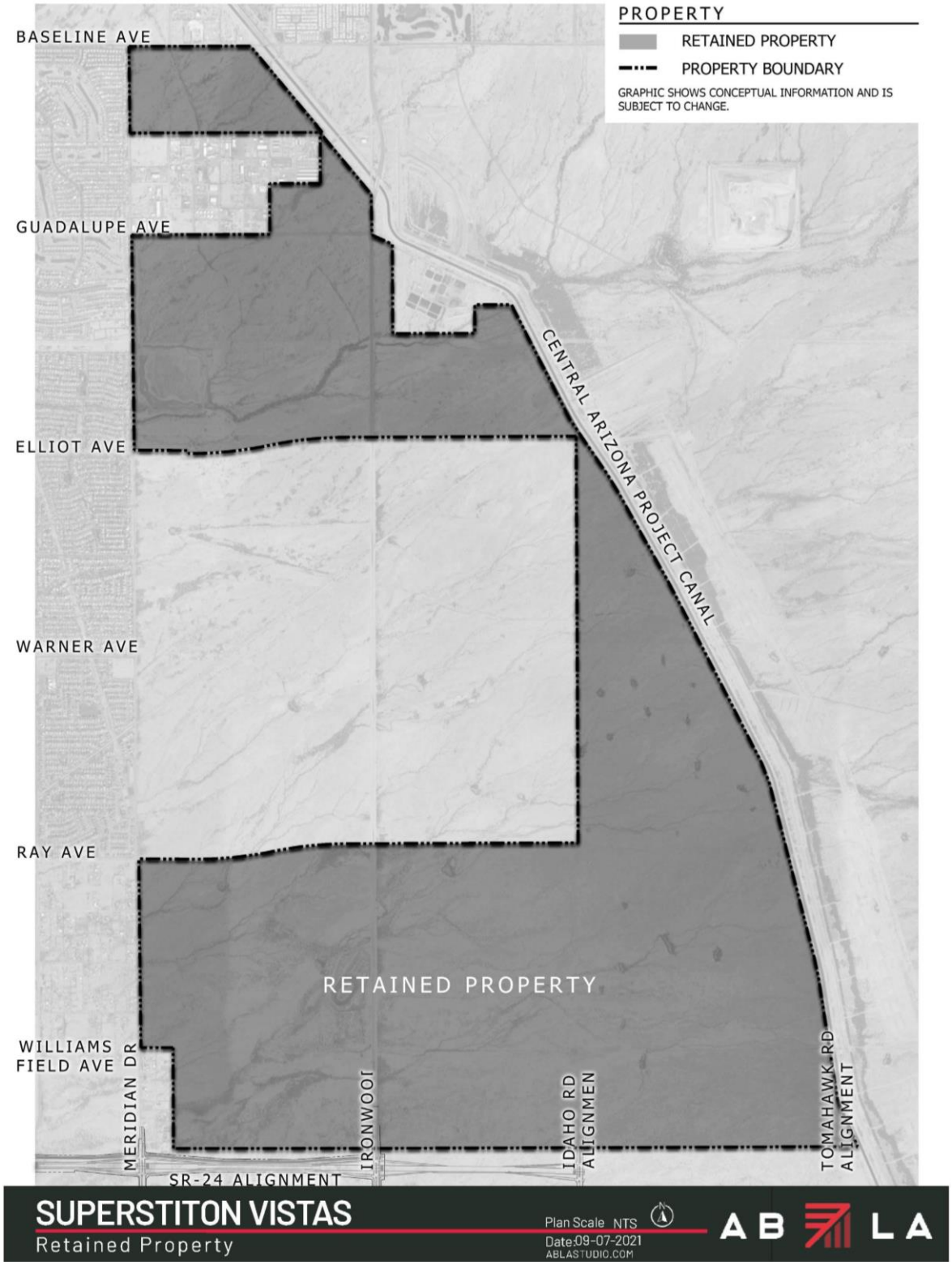

Exhibit D

Absorption Schedule

Exhibit D		
Year	Residential Dwelling Units	Non Residential Floor Area (SF)
2023	600	
2024	1,250	
2025	1,250	
2026	1,250	75,000
2027	1,250	75,000
2028	1,250	75,000
2029	1,250	75,000
2030	1,250	75,000
2031	1,250	75,000
2032	400	
2033		
Total	11,000	450,000
Disclaimer: The schedule is for planning purposes only and does not reflect final entitled unit count or square footage or a requirement on behalf of the Developer to perform to this schedule.		