

**CITY OF PEORIA, ARIZONA  
COUNCIL COMMUNICATION**

CC: 11R  
Amend No. \_\_\_\_\_

Date Prepared: April 2, 2008

Council Meeting Date: April 15, 2008

**TO:** Terrence L. Ellis, City Manager  
**FROM:** Steve Prokopek, Economic Development Director *SP*  
**SUBJECT:** Parke West LLC Development Agreement Amendment

**RECOMMENDATION:** Authorize City Manager to enter into a first amendment to the first amended and restated development agreement with Parke West LLC (General Growth Partners).

**SUMMARY:**

On 7-5-05, the City Council approved a development agreement with DJN Eagle Mountain, L.L.C (Glimcher Ventures Southwest). The following summarizes the deal points for that agreement as presented to City Council:

- Phase 1 construction of 150,000 square feet, as evidenced by certificates of occupancy, by March 2006.
- Full build out of 360,000 square feet of space by October 2008.
- Creation of an improvement district for 99<sup>th</sup> Avenue, Northern Avenue and spine improvements.
- Creation of an improvement district for a freeway frontage road on Loop 101.
- City will reimburse 50% of the 1% (general retail) and 2% (restaurant/bar) sales tax for not more than a period of ten years. Reimbursements will only be made toward:
  - Improvements that qualify for the improvement district
  - Parking structure
  - Impact fees for the retail and office components
  - Permit fees for the retail and office components
- The cap on reimbursements will be the lesser of \$9,000,000 or the actual costs for eligible items for reimbursement.

This agreement was later amended February 2006 to include:

- A mechanism to increase the \$9,000,000 cap by \$850,000 to account for increasing construction costs.
- Extending the opening date for the initial 150,000 square feet to June 2007.

**CITY CLERK USE ONLY:**

- o Consent Agenda
- o Carry Over to Date: \_\_\_\_\_
- o Approved
- o Unfinished Business (Date heard previous: \_\_\_\_\_)
- o New Business

ORD. # \_\_\_\_\_ RES. # \_\_\_\_\_  
LCON# 01805C LIC. # \_\_\_\_\_  
Action Date: \_\_\_\_\_

- Extending the opening date for the total 360,000 square feet to October 2008.

On October 16, 2006, the project was sold to Parke West, LLC, with General Growth Properties (GGP) as the managing partner. As part of this sale, the development agreement was assigned to the new owner. When assigned, staff administratively amended the performance timeframes to allow the new owner the opportunity to successfully complete the project. Therefore, the 150,000 square foot obligation was moved to November 2007, and the 360,000 square foot obligation was moved to March 2009.

The Park West project did open the first tenant in November 2007 but the minimum construction obligation was not met per the development agreement, which requires certificates of occupancy on 150,000 square feet to have been issued. GGP had 150,000 square feet of shell but only 65,000 square feet of C of O space approved. Because GGP showed good faith efforts to meet its obligation, the City further administratively amended the agreement to extend the date for the initial 150,000 square feet to May 31, 2008. In addition, we do not expect GGP to make the March 2009 date for 360,000 square feet.

As we near the development completion dates, it is anticipated that GGP will need additional time to meet its obligations. Therefore, the staff recommends the following amendments to the development agreement:

- Initial 150,000 square feet to be completed by July 31, 2008.
- Total 360,000 square feet to be completed by March 2010.
- If the 360,000 square feet goes beyond March 2009, the overall reimbursement cap will permanently decrease monthly by the anticipated amount of sales tax owed.
- Allow for amusements to be included in the retail reimbursement. This was always the intent but was not included in the original agreement.
- If GGP is required to build the frontage road, they will need to commence construction by January 31, 2009 and complete the improvements within 10 months.

To date, GGP has about 125,000 square feet of space with certificates of occupancy, and a total of about 160,000 square feet committed. They have constructed over 180,000 square feet of total space.

The City has posted the required 14 day notice of intent.

This project represents a significant investment in the City of Peoria, and will have a substantial economic impact. In total, these benefits include:

- Capital investment of approximately \$100,000,000 in the retail and office component
- Net new sales tax revenues of approximately \$30,000,000 over twenty years
- A twenty-year net revenue return to the City of approximately \$50,000,000.
- Approximately 1,220 jobs created

ATTACHMENT

**Attachment 1 of 2**

When recorded return to:  
City of Peoria, Arizona  
Office of the City Clerk  
8401 West Monroe Street  
Peoria, Arizona 85345

**FIRST AMENDMENT TO  
1<sup>st</sup> AMENDED AND RESTATED DEVELOPMENT AGREEMENT**

This 1<sup>st</sup> Amendment To First Amended and Restated Development Agreement (this "Amendment") is entered into as of April \_\_, 2008 between PARKE WEST, LLC, a Delaware limited liability company ("Developer") and the CITY OF PEORIA, ARIZONA, an Arizona municipal corporation ("City").

**RECITALS:**

- A. Developer is the owner of that certain parcel of real property located in Peoria, Arizona, as more particularly described on Exhibit "A" hereto (the "Property").
- B. Developer, as successor to DJN Eagle Mountain LLC and Florida River Bend Apartments, LLC, and City are parties to that certain 1<sup>st</sup> Amended and Restated Development Agreement dated as of February 23, 2006 (which is hereinafter referred to as the "Original Agreement") relating to certain components of the development of the Park West retail project.
- C. Capitalized terms used in this Amendment and not otherwise defined herein are as defined in the Original Agreement.
- D. The City, at the request of the Developer, previously has administratively extended certain due dates for satisfaction of the Minimum Construction Obligations, and the City recognizes that the Developer has made significant progress in completing the project, but certain circumstances beyond the control of the Developer, such as tenant black out dates, have caused delays. However, Developer expressly acknowledges and agrees that none of these delays were caused by the City or any of its elected officials, officers, employees, or agents
- E.. The parties acknowledge that as of the date of this Amendment no sales taxes have accrued for purposes of the Sales Tax Rebate provided by Section 3.3 of the Original Agreement and that the City's obligation to reimburse certain development costs to the Developer in the form of the Sales Tax Rebate has not commenced. Sales taxes will begin to accrue and the City's obligation to pay the Sales Tax Rebate shall commence upon acceptance by the City of the Required Public Infrastructure pursuant to Section 3.3.4 of the Original Agreement.
- F. It is also expressly acknowledged and understood by the Developer that the City cannot and will not further administratively extend any of the performance due dates

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imposed by the Original Agreement or this Amendment, and that the City will not undertake to extend any due date by action of the City Council unless a delay is caused by an event of Force Majeure as defined in Section 5.19 of the Original Agreement or some other delay event recognized and provided for in the Original Agreement.

G. For these reasons, Developer and City have agreed to (i) amend the requirements for satisfaction of certain of the Minimum Construction Obligations as set forth in the Original Agreement and (ii) modify the structure relating to the payout of the Reimbursement Amount in certain circumstances. In addition, the parties have agreed to expressly include transaction privilege taxes collected for amusements, such as movie theatres, as an additional source for the Sales Tax Rebate provided by Section 3.3.1 of the Original Agreement.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties agree to supplement and amend the Original Agreement as follows:

AGREEMENT:

1. Minimum Construction Obligations. Section 1.1 is hereby amended to provide in its entirety as follows:

"1.1 The 'Minimum Construction Obligation' consists of: (i) Developer commencing construction of the Project by no later than the 31<sup>st</sup> day of March 2006 (the 'Construction Commencement Date'); (ii) Developer completing construction (as evidenced by Certificates of Occupancy issued by the City's Building Department) of one hundred fifty thousand (150,000) square feet of retail business space by the 31<sup>st</sup> day of July, 2008, (iii) subject to Section 3.4, Developer completing construction (as evidenced by Certificates of Occupancy issued by the City's Building Department) of three hundred sixty thousand (360,000) square feet of retail business space (inclusive of the completion of the amount of square feet required by subsection (ii) immediately above) by the 31<sup>st</sup> day of March 2010; (iv) Developer's capital investment of at least forty-five million dollars (\$45,000,000) in the retail improvements of the Property within thirty-six (36) months of the Construction Commencement Date; (v) Developer completing construction and dedication to the City of a ten (10)-foot wide hard surface multi-modal path from the east edge of the Project Land to 99<sup>th</sup> Avenue along the north edge of the SRP Property, together with a parallel equestrian trail having a cross section of a four (4)-foot clear dirt path with four (4)-foot clear zones (i.e., having no trees) on either side of the path, all of which trails must be a minimum of twenty (20)-feet away from the back wall of any private residential property; (vi) Developer dedicating to the City multiple use/utility easements within the SRP Property to allow for the construction by the City at the City's cost therein of the largest water and wastewater lines used by the City, together with other typical uses; (vii) construction of the Required Public Infrastructure; and (viii) construction of the Frontage Road. Any failure to comply with this Section shall be an event of default.

2. Frontage Road. The following is inserted in its entirety as a new Section 2.1.4.6 to the Original Agreement:

"2.1.4.6. Developer (to the extent that the Developer becomes responsible for such construction) agrees to cooperate with the City to develop a schedule for the construction of the Frontage Road and to commence construction by January 31, 2009. Additionally, Developer (to the extent that the Developer becomes responsible for such construction) agrees to complete construction of the Frontage Road within ten (10) months of commencement. Any failure to comply with this Section shall be an event of default.

3. Reimbursement Amount.

(a) Section 3.2 is amended by deleting the first sentence and replacing the same with "Subject to Section 3.4 hereof, City's payment of the following Reimbursement Amount is contingent upon Developer's performance of the Developer's Obligations."

(b) The following is inserted in its entirety as a new Section 3.4 to the Original Agreement:

"Section 3.4 Step Down of Reimbursement Amount. Notwithstanding anything to the contrary contained in this Agreement, in the event Developer has not complied with the Minimum Construction Obligation set forth in Section 1.1(iii) by March 31, 2009, then commencing on April 1, 2009 and continuing on the first of each calendar month thereafter through and including March 1, 2010, the Reimbursement Amount shall be recalculated pursuant to the following formula:

$$\text{Reimbursement Amount} = (((360,000 - \text{ASF}) * 300) * .015) / 12$$

"ASF" shall equal the actual square feet of space for which construction has been completed (as evidenced by Certificates of Occupancy issued by the City's Building Department) as of the date of calculation.

In the event Developer has not complied with the Minimum Construction Obligation set forth in Section 1.1(iii) by March 31, 2010, Developer shall be deemed to be in default with respect to such obligation pursuant to this Agreement."

4. Amusements as Source of Sales Tax Rebate.

(a) Section 3.3.3 is amended by deleting the second sentence and replacing the same with "The sources of the Sales Tax Rebate are the transaction privilege tax for amusements pursuant to Peoria City Code (P.C.C.) § 410, for retail sales pursuant to P.C.C. § 460, and for restaurants and bars pursuant to P.C.C. § 12-455 collected on the Property pursuant to P.C.C. §§ 410, 455, and 460 only, as they existed on the date of the

Original Agreement, after such taxes have been reduced by the Council Reserve Amount (the 'City Sales Tax'), based on revenues realized by the City in the preceding Quarter."

(b) Section 3.3.5 is amended by deleting the third sentence and replacing the same with "Developer acknowledges that it has no right to reimbursement from the sales taxes levied above 50% of 1% (in the case of retail sales) or above 50% of 2% (in the case of restaurants and bars and amusements) (even if the sales tax rate is later increased)."

5. Events of Enforced Delay or Force Majeure.

Section 5.19 is amended by adding at the end of this Section the following sentence: "For purposes of this Agreement and this Section, negative economic events, such as, but not limited to, national or local economic downturns, recessions, or depressions, failure of Developer's tenants to timely execute, honor, or perform under lease agreements, Developer's inability to secure tenants for the Project, or tenants going out of business or not opening for business, are not and shall not be considered events of Enforced Delay or Force Majeure.

6. Full Force and Effect. As modified and amended hereby, Developer and City each ratifies and affirms the terms of the Original Agreement. Except as expressly modified herein, the Original Agreement remains in full force and effect.

7. Binding. This Amendment shall be binding upon and inure to the benefit of the parties hereto, their respective successors in interest and assigns and shall run with the land, both as respects benefits and burdens created herein.

8. Counterparts. This Agreement may be executed in separate counterparts, with signature to one being deemed signature to each such counterpart, each of which shall be deemed to be an original and all of which together shall constitute a single instrument.

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

CITY OF PEORIA, ARIZONA, an  
Arizona Municipal corporation

PARKE WEST, LLC, a Delaware  
limited liability company

\_\_\_\_\_  
The Honorable Bob Barrett, Mayor

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Authorized Officer

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

[Notarizations on following pages]

[Notarization Page for the City of Peoria, Arizona]

State of Arizona            )  
                                  ) ss.  
County of Maricopa        )

The foregoing instrument was acknowledged before me this \_\_\_ day of April 2008, by the Honorable Bob Barrett, the Mayor of the City of Peoria, Arizona, an Arizona municipal corporation, on behalf of the City.

(Seal and Expiration Date) \_\_\_\_\_  
Notary Public

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[Notarization Page for Parke West, LLC]

State of Illinois     )  
                              ) ss.  
County of Cook        )

The foregoing instrument was acknowledged before me this \_\_\_ day of April  
2008, by \_\_\_\_\_, an Authorized Officer of Parke West, LLC, a  
Delaware limited liability company, on behalf of said limited liability company

(Seal and Expiration Date) \_\_\_\_\_  
Notary Public

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**EXHIBIT A**

**Legal Description of the Property**

**Attachment 2 of 2**

When recorded return to:  
City of Peoria, Arizona  
Office of the City Clerk  
8401 West Monroe Street  
Peoria, AZ 85345

20060254907,02/24/2006 02:46,022465-28-1-1--N

ELECTRONIC RECORDING

## 1<sup>ST</sup> AMENDED AND RESTATED DEVELOPMENT AGREEMENT

THIS 1<sup>ST</sup> AMENDED AND RESTATED AGREEMENT ("Agreement") is entered as of the 13<sup>th</sup> day of February 2006 by and between the City of Peoria, Arizona, an Arizona municipal corporation ("City"), and DJN Eagle Mountain LLC, an Arizona limited liability company ("DJN"), and Florida River Bend Apartments, LLC, a Florida limited liability company qualified to do business in the State of Arizona ("River Bend")(collectively, DJN and River Bend are the "Developer") (collectively, City and the Developer are the "Parties").

### RECITALS

A. Developer has acquired that certain parcel of real property located at the NEC of 99<sup>th</sup> Avenue and Northern Avenue within the corporate boundaries of the City, as more particularly described on **Exhibit "A"** hereto (the "Property"). Developer will also be making certain improvements to land north of the Property currently owned by the Salt River Project (and which is under contract to be sold to Developer), as more particularly described on **Exhibit "B"** hereto (the "SRP Property"). The Property will comprise the retail component of the "Parke West" mixed-use project (the "Project"). The legal description of the real property for the entire Project is more particularly described on **Exhibit "C"** hereto (the "Project Land").

B. Developer has undertaken to become the party responsible for the construction of the infrastructure required by this Agreement for the entire Project.

C. As of the 5<sup>th</sup> day of July 2005, DJN and the City entered into that certain Development Agreement, recorded on the 12<sup>th</sup> day of July 2005 in the Maricopa County Recorder's Office as document number 2005-0955640 (the "Original Agreement"), regarding the Project Land.

D. City believes that development of the Project will enhance the economic viability of the City by (i) increasing transaction privilege ("sales") tax revenues to the City by more than the costs to the City arising from the Original Agreement within the term of this Agreement, (ii) increasing real property tax revenues based on the operation of the Project, and (iii) creating additional jobs. City further believes that the development of the Project is consistent with its

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When recorded return to:  
City of Peoria, Arizona  
Office of the City Clerk  
8401 West Monroe Street  
Peoria, AZ 85345

## 1<sup>ST</sup> AMENDED AND RESTATED DEVELOPMENT AGREEMENT

THIS 1<sup>ST</sup> AMENDED AND RESTATED AGREEMENT ("Agreement") is entered as of the 23<sup>rd</sup> day of February 2006 by and between the City of Peoria, Arizona, an Arizona municipal corporation ("City"), and DJN Eagle Mountain LLC, an Arizona limited liability company ("DJN"), and Florida River Bend Apartments, LLC, a Florida limited liability company qualified to do business in the State of Arizona ("River Bend")(collectively, DJN and River Bend are the "Developer") (collectively, City and the Developer are the "Parties").

### RECITALS

A. Developer has acquired that certain parcel of real property located at the NEC of 99<sup>th</sup> Avenue and Northern Avenue within the corporate boundaries of the City, as more particularly described on *Exhibit "A"* hereto (the "Property"). Developer will also be making certain improvements to land north of the Property currently owned by the Salt River Project (and which is under contract to be sold to Developer), as more particularly described on *Exhibit "B"* hereto (the "SRP Property"). The Property will comprise the retail component of the "Parke West" mixed-use project (the "Project"). The legal description of the real property for the entire Project is more particularly described on *Exhibit "C"* hereto (the "Project Land").

B. Developer has undertaken to become the party responsible for the construction of the infrastructure required by this Agreement for the entire Project.

C. As of the 5<sup>th</sup> day of July 2005, DJN and the City entered into that certain Development Agreement, recorded on the 12<sup>th</sup> day of July 2005 in the Maricopa County Recorder's Office as document number 2005-0955640 (the "Original Agreement"), regarding the Project Land.

D. City believes that development of the Project will enhance the economic viability of the City by (i) increasing transaction privilege ("sales") tax revenues to the City by more than the costs to the City arising from the Original Agreement within the term of this Agreement, (ii) increasing real property tax revenues based on the operation of the Project, and (iii) creating additional jobs. City further believes that the development of the Project is consistent with its

General Plan and with the Project Land's existing or requested zoning designation.

E. In the absence of the incentives contained in the Original Agreement, Developer would not locate within the City at the same time, place or manner: accordingly, to induce Developer to develop the Project, City is willing to reimburse Developer for the cost of certain infrastructure that will benefit the general public through implementing the City's objectives in the central Peoria area, and for certain municipally levied fees.

F. The Original Agreement required that the Developer construct a Frontage Road (as defined below in § 2) as a condition precedent to receiving sales tax reimbursements.

G. The Parties would like to provide a structure within which a separate improvement district (the Frontage Improvement District, as defined below in § 2) may be formed to construct the Frontage Road; however, whether the Frontage Improvement District is formed or not, the Developer will remain obligated to ensure that such Frontage Road is constructed and it is a cause of liquidated damages if any assessment payment of any obligated party is not timely made for the Frontage Improvement District, subject to the terms of § 2.1.4.3.

H. City believes that revision regarding the Frontage Road will facilitate the cash flow for the Developer to allow for the more timely construction of the Primary Improvements (as defined in § 2 below) and the Minimum Construction Obligation (as defined in § 1 below), the more timely completion of the Frontage Road, which in turn will enhance the economic viability of the City by hastening (i) an increase in sales tax revenues to the City by more than the costs to the City arising from the Agreement within the term of the Agreement, (ii) an increase in real property tax revenues based on the operation of the Project, and (iii) the creation of additional jobs.

**NOW, THEREFORE**, the Parties agree to amend and restate the Original Agreement in its entirety, in accordance with Original Agreement §5.2, as follows:

## **A G R E E M E N T**

### **1. LAND USE.**

1.1 The "Minimum Construction Obligation" consists of: (i) Developer commencing construction of the Project by no later than the 31<sup>st</sup> day of March 2006 (the "Construction Commencement Date"); (ii) Developer completing construction (as evidenced by one or more certificates of occupancy) of one hundred fifty thousand (150,000) square feet of retail business space by the 30<sup>th</sup> day of June 2007; (iii) Developer completing construction (as evidenced by one or more certificates of occupancy) of three hundred sixty thousand (360,000) square feet (inclusive of the completion of the amount of square feet required by subsection (ii) immediately above) of retail business space by the 31<sup>st</sup> day of October 2008; (iv) Developer's capital investment of at least forty five million dollars (\$45,000,000) in the retail improvements of the Property within thirty six

(36) months of the Construction Commencement Date; (v) Developer completing construction and dedication to the City of a ten (10)-foot wide hard surface multi-modal path from the east edge of the Project Land to 99<sup>th</sup> Avenue along the north edge of the SRP Property, together with a parallel equestrian trail having a cross section of a four (4)-foot clear dirt path with four (4)-foot clear zones (*i.e.*, having no trees) on either side of the path, all of which trails must be a minimum of twenty (20)-feet away from the back wall of any private residential property; (vi) Developer dedicating to the City multiple use/utility easements within the SRP Property to allow for the construction by the City at the City's cost therein of the largest water and wastewater lines used by the City, together with other typical uses; (vii) construction of the Required Public Infrastructure; and (viii) construction of the Frontage Road.

1.2 The "Required Public Infrastructure" consists of: (i) construction of such improvements (including, e.g., intersection improvements, landscaping, traffic lanes, traffic signals) of Northern, 99<sup>th</sup>, 95<sup>th</sup>, and 97<sup>th</sup> Avenues as the Engineering Department of the City in its reasonable discretion requires for the area of the City within the vicinity of (and including) the Project; and (ii) construction of public water lines, sewer lines, and reclaimed water infrastructure within the Property, if any is required by the City. The parties agree that the scope of changes that may be required will be limited to those consistent with the existing zoning of the Property (and any rezoning requested by the Developer).

1.2.1. The use of the term "Required Public Infrastructure" is not intended to and does not limit the scope of the infrastructure to be required by the City pursuant to the exercise of its police powers in the zoning, subdivision, permitting processes, or elsewhere: it is a term used herein to describe the infrastructure appropriate to inclusion within the Primary Improvement District (as defined in § 2 below).

## 2. DEVELOPMENT OBLIGATIONS.

### 2.1 Developer's Obligations (the "Developer's Obligations").

2.1.1. Minimum Construction Obligation and Maintenance. Developer agrees to complete the Minimum Construction Obligation within the term of this Agreement.

2.1.1.1. Developer further agrees to maintain or provide for the maintenance of all on-site infrastructure improvements related to the Project in accordance with the City of Peoria codes until the later of: (i) the date that Developer, its affiliates, or successors no longer own, control, or use the Property; (ii) the date the Property is no longer occupied; or (iii) the date that a maintenance improvement district assumes such duties.

2.1.1.2. Construction of the Minimum Construction Obligation, including the Required Public Infrastructure and the Frontage Road, is the sole responsibility of the Developer.

2.1.1.3. Because the principal amount of assessments for an improvement district may not legally exceed the amount indicated in the

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applicable engineer's estimate, there is a possibility that the actual costs of the Required Public Infrastructure or the Frontage Road, as the case may be, may exceed the costs allowed under the improvement districts described in this Agreement, and any excess costs over what is allowed pursuant to the engineer's estimate must be paid by the Developer and will not be reimbursed by the City except by payment of the Reimbursement Amount (as defined in § 3 below).

2.1.1.4. Further, the maximum value of all bonds for the Improvement Districts (in sum) at the time of issuance is in the City Council's sole discretion, and is expected to be twenty five percent (25%) of the appraised value of the Project Land with then existing improvements and with the improvements to be made with the bond proceeds as of the most recent issuance, which may be less than the total cost of the Required Public Infrastructure and the Frontage Road. The duration of the bonds will be in the City Council's sole discretion, exercised at the time of issuance, and is expected to be fifteen (15) years.

2.1.1.5. Developer agrees to prepare all documentation necessary to create the waiver agreements and the improvement districts contemplated by this Agreement, and (if permitted by applicable law and such that bonds issued for any improvement district may be issued on a tax exempt basis) Developer is eligible to receive reimbursement for these costs from the respective improvement districts.

2.1.1.6. Prior to formation of the Primary Improvement District or by the first day of May 2006 (whichever is earlier), Developer agrees to enter into a binding contract, with all conditions precedent satisfied and with no continuing conditions solely within Developer's control, with an engineer certified in Arizona and selected in accordance with Arizona Revised Statutes Title 34 to design the Frontage Road to complete, one hundred percent (100%) design: failure to do so is a material breach of this Agreement, and, in addition to any remedy provided by this Agreement or by law, the City may withhold city approvals (e.g., building permits, certificate of occupancy, inspections) on any Project Land improvement.

2.1.2. Design Review. In addition to all applications and submissions required by legal authorities, Developer hereby agrees to submit all design and façade proposals and changes to buildings on the Property to the City's Manager prior to submission of construction documents, and agrees to accept the City's Manager design and façade changes prior to application by Developer for the site plan and design review approvals required by legal authority.

2.1.3. Primary Improvement District. Subject to § 2.2 hereof, an improvement district is authorized by Developer to be formed pursuant to A.R.S. Title 48 encompassing the Property and the properties of other parties owning Project Land benefiting from and assessable for the Required Public Infrastructure (each, a "Primary Benefited Party") for the design and construction of the Required Public Infrastructure, as well as any ancillary maintenance (collectively, the "Primary Improvement District").

2.1.3.1. To the extent allowable by law, Developer waives its right to object to any procedural defects in the establishment or management of the Primary Improvement District. Developer will include as a term within any contractual agreement between it and any Primary Benefited Party the provisions of this §2.1.3.1 as applying to such Primary Benefited Party. Developer will otherwise use its commercially reasonable efforts to include all of the Primary Benefited Parties within the Primary Improvement District and, to the extent allowable by law, to induce or persuade such Primary Benefited Parties to waive their right to object to any procedural defects in the establishment or management of the Primary Improvement District by executing one or more development and waiver agreements (collectively, the "Primary Waiver Agreements"). The requirements in this § 2.1.3.1 are in addition to any requirements in any later Primary Waiver Agreement, and the more restrictive document will control unless expressly stated otherwise.

2.1.3.2. Developer will bear the costs of forming the Primary Improvement District (including, e.g., attorneys' fees), but such costs may be reimbursed to Developer from the proceeds of the sale of Primary Improvement District bonds to the extent permissible by law (if permitted by applicable law and such that bonds issued for any improvement district may be issued on a tax exempt basis).

2.1.3.3. To the extent permitted by applicable law and such that bonds issued for any improvement district may be issued on a tax exempt basis, the Developer shall be paid its reimbursable costs and expenses as provided in this Agreement as soon as possible after the Primary Improvement District bonds have been sold, but in no event later than five (5) days after the closing of the sale of said bonds.

2.1.4. Frontage Improvement District. The "Frontage Road" is a frontage road extending from Olive Avenue to Northern Avenue, west of and parallel to SR 101 and its appurtenances, having the characteristics required by the Arizona Department of Transportation and the Engineering Department of the City. Subject to § 2.2 hereof, an improvement district is authorized by Developer to be formed pursuant to A.R.S. Title 48 encompassing the Property and the properties of other parties owning Project Land benefiting from and assessable for the Frontage Road (each, a "Frontage Benefited Party") for the design and construction of the Frontage Road, as well as any ancillary maintenance (collectively, the "Frontage Improvement District").

2.1.4.1. To the extent allowable by law, Developer waives its right to object to any procedural defects in the establishment or management of the Frontage Improvement District. Developer will include as a term within any contractual agreement between it and any Frontage Benefited Party the provisions of this §2.1.4.1 as applying to such Frontage Benefited Party. Developer will otherwise use its commercially reasonable efforts to include all of the Frontage Benefited Parties within the Frontage Improvement District and, to the extent allowable by law, to induce or persuade such Frontage Benefited Parties to waive their right to object to any procedural defects in the

establishment or management of the Frontage Improvement District by executing one or more development and waiver agreements (collectively, the "Frontage Waiver Agreements"). The requirements in this § 2.1.4.1 are in addition to any requirements in any later Frontage Waiver Agreement, and the more restrictive document will control unless expressly stated otherwise.

2.1.4.2. Developer will bear the costs of forming the Frontage Improvement District (including, e.g., attorneys' fees, engineering, architecture, and design fees and costs) (collectively, the "Frontage Road Costs"), but such costs may be reimbursed to Developer from the proceeds of the sale of Frontage Improvement District bonds to the extent permitted by applicable law and such that bonds issued for any improvement district may be issued on a tax exempt basis.

2.1.4.3. If the Frontage Improvement District is formed, the Frontage Road will be financed from assessments levied thereby at the soonest time such construction may begin in accordance with Arizona Department of Transportation (ADOT) approval. In the event that the Frontage Improvement District is not formed (for any reason other than City unreasonably failing to participate in its formation), the Developer will become responsible to design, construct, and dedicate to the City (or to ADOT, if the City so requires) the Frontage Road at the soonest time such design and construction may begin in accordance with ADOT approval. In the event that the ADOT determines that the Frontage Road is not feasible or ADOT denies permits for the Frontage Road to be built, then no reimbursement will be due and the Frontage Road will no longer be a part of the Minimum Construction Obligation.

2.1.4.4. The Parties will use their commercially reasonable efforts to assist ADOT or the party that actually constructs the Frontage Road to diligently complete construction within ten (10) months of the later of design approval or the sale of Frontage Improvement District bonds. If the Developer fails to diligently pursue the design and construction (to the extent that the Developer becomes responsible for such construction), such failure will be an event of default.

2.1.4.5. Nothing in this Agreement compels the City to construct the Frontage Road.

2.2 City Obligations. City will pay to the Developer the Reimbursement Amount in accord with the terms of this Agreement. Subject to City Council approval and applicable laws and rules, and after the plans and specifications necessary therefor have been prepared to the standards of the City, the City will use its commercially reasonable efforts to form the Primary Improvement District and the Frontage Improvement District (collectively, the "Improvement Districts") for the issuance and sale of bonds to finance the Required Public Infrastructure and the Frontage Road, respectively (collectively, the "District Improvements"). Such plans and specifications must become the property of the City prior to such formation. The City will not form the Improvement Districts unless all necessary parties have entered into one or more Primary or Frontage Waiver Agreements,

or both as appropriate, containing mutually acceptable terms regarding waivers, the construction and financing of the District Improvements, the parcels to be included in the Improvement Districts and the assessments payable by the necessary private parties for the payments due on any bonds.

2.2.1. The City shall cause the Primary Improvement District to be formed as soon as possible in the exercise of the City's commercially reasonable efforts after the date of this Agreement and cause the issuance of the Primary Improvement District bonds to be issued as soon as possible in the exercise of the City's commercially reasonable efforts thereafter. The City will cause the Frontage Improvement District to be formed as soon as possible in the exercise of the City's commercially reasonable efforts after the date of the Agreement; and as soon as possible in the exercise of the City's commercially reasonable efforts after the formation thereof, the City shall cause the Frontage Improvement District bonds to be issued.

2.2.2. Neither this § 2.2 nor the inclusion of certain infrastructure within the Required Public Infrastructure obligates the City to accept the dedication of infrastructure not meeting the minimum requirements of the City's standards. The City's Community Development Director will be the sole point of contact for the processing of plan review, permit, and inspection applications. The City will exercise reasonable care in the processing of all developmental applications related to Developer's accomplishment of the Minimum Construction Obligation, with the shared goal of facilitating such accomplishment. The City and Developer will mutually agree to a schedule for reviews, permits, inspections, and the formation of the improvement districts.

### 3. REIMBURSEMENT OF DEVELOPMENT COSTS.

3.1 Agreement to Reimburse. City and Developer agree that the Project will have value generally to City and will assist City in meeting certain of its goals relating to economic development. In consideration of the public benefit that will accrue to City from the Project and as inducement for Developer to locate on the Project, City agrees to reimburse Developer from new sales taxes generated on the Property in an amount referred to as the "Reimbursement Amount." Nothing in this Agreement promises or obligates the general revenues of the City's General Fund or any other City revenue source or fund. Further, the Parties agree that none of the terms of this Agreement expand the amount of the Reimbursement Amount.

3.2 Reimbursement Amount. City's payment of the following Reimbursement Amount is contingent upon Developer's performance of the Developer's Obligations. In the event that the Sales Tax Rebate becomes due prior to the completion of the Minimum Construction Obligation, then the Sales Tax Rebate for each year will be limited to the lesser of: (i) the sum of the value of §§ 3.2.1 and 3.2.2(a); or (ii) the sum of the value of §§ 3.2.1 and §3.2.2(b)(i). Developer costs under §§ 3.2.1(b) and 3.2.2(b)(i) include only the hard costs of improvements (including fees and costs for architectural design, engineering, and construction) but do not include the costs of financing (except with respect to

Primary and Frontage Improvement Districts' assessment payments, if any) or interest. The Reimbursement Amount to be provided by the City shall be equal to the **sum** of:

3.2.1. The lesser of:

- (a) eight hundred fifty thousand dollars (\$850,000); or
- (b) the sum of: (i) the Frontage Road Costs; plus (ii) Developer's pro rata share (per the Frontage Improvement District assessment engineer's allocation, or – in the event no Frontage Improvement District is formed – as would be determined by an assessment engineer per applicable law as if the improvement district were to be formed including all of the Project Land) of the amount by which the final cost of the Frontage Road exceeds two million seven hundred thousand dollars (\$2,700,000).

3.2.2. **Plus** the lesser of:

- (a) nine million dollars (\$9,000,000); or
- (b) the greater of:
  - (i) the sum of assessments due under the Primary and Frontage Improvement Districts not included in § 3.2.1 (or, if no improvement districts are formed, the costs that would have qualified for inclusion within the Primary and Frontage Improvement Districts paid by DJN under contracts let by DJN for the construction of the Required Public Infrastructure and the Frontage Road not included in § 3.2.1); plus the cost of the construction of a multi-level parking structure if a multi-screen movie theater is constructed on the Property; plus the cost of construction and paving of the major internal streets (e.g., the main north-south spine road and both the upper, and lower east-west spine roads from 99<sup>th</sup> Avenue to the eastern edge of the Project Land) (including the construction of sidewalks) (excluding the costs of ancillary improvements like, e.g., landscape); plus the cost of engineering, architectural, survey, geotechnical, testing, inspection, title, and legal fees that are not included in the Improvement Districts (excluding Developer personnel; and excluding intergovernmental relations consultants, lobbyists, or similarly employed persons); plus the purchase price of the SRP Property (without interest); plus the cost of light poles, curbs, storm sewers, conduit, and water and sewer lines; plus up to one million five hundred thousand dollars (\$1,500,000) of all fees paid to the municipality for retail and office construction on the Project Land (including permit fees and impact fees, but not including taxes), excluding development fees for water and wastewater; or

- (ii) twenty one and four thousand two hundred eighty six ten-thousandths dollars (\$21.4286) per square foot of improved retail and office space.

### 3.3 Terms of Reimbursement.

3.3.1. Sales Tax Rebate. Subject to the following, the City will rebate to the Developer fifty percent (50%) of the amount of City Sales Tax (as defined below) revenues reported and remitted from the Property from new business within the Property (the "Sales Tax Rebate"). Specifically excluded from the Sales Tax Rebate are any taxes collected from businesses that discontinued operating or significantly reduced operations within a different area of the City in order to relocate to the Property, including, e.g., restaurants, bars, or movie theaters.

3.3.2. Ceiling. The Sales Tax Rebate may not exceed the Reimbursement Amount.

3.3.3. Source. The City Council has allocated to certain uses (unrelated to this Agreement) that portion of all transaction privilege taxes collected in the City equal to one half percent (0.5%) of the income or proceeds on which such tax is levied (the "Council Reserved Amount"). The sources of the Sales Tax Rebate are the transaction privilege tax for retail sales pursuant to Peoria City Code (P.C.C.) § 12-460 and the transaction privilege tax for restaurants and bars pursuant to P.C.C. § 12-455 collected on the Property pursuant to P.C.C. §§ 12-455 and 12-460 only, as they existed on the date of the Original Agreement, after such taxes have been reduced by the Council Reserved Amount (the "City Sales Tax"), based on revenues realized by the City in the preceding Quarter. The Quarters are July 1<sup>st</sup> to September 30<sup>th</sup>, October 1<sup>st</sup> to December 31<sup>st</sup>, January 1<sup>st</sup> to March 31<sup>st</sup>, and April 1<sup>st</sup> to June 30<sup>th</sup>. The amount of each quarterly payment of the Sales Tax Rebate will be equal to one-half (50%) of the City Sales Tax for the preceding Quarter; except that the first quarterly payment of the Sales Tax Rebate will be equal to one-half (50%) of the City Sales Tax collected from the date of the acceptance of the Required Public Infrastructure to the first Quarterly Payment Date, defined below. Under no circumstances may any other taxes, or any increases in any of the taxes cited above, now or in the future levied, including the recently approved 0.3% transportation sales tax, or the Council Reserved Amount, be included within the City Sales Tax.

3.3.4. Duration. The first payment of the Sales Tax Rebate is due on the Quarterly Payment Date following the acceptance of the Required Public Infrastructure. The Sales Tax Rebate will continue to be due on a quarterly basis thereafter as soon as possible after the end of the respective Quarter (but in any case no later than the sixtieth (60<sup>th</sup>) day following the end of the respective Quarter) (each, a "Quarterly Payment Date") until the Reimbursement Amount has been fully paid or until the Agreement terminates; except that, during any period between Quarterly Payment Dates in which the Developer or any other obligated party under the Primary or Frontage Improvement Districts fail to timely make, cure the non-payment, or make current the default of any improvement

district assessment (whether of the Primary Improvement District or the Frontage Improvement District) payment by the date prior to the date on which a Sales Tax Rebate was otherwise due, the Sales Tax Rebate due immediately following will be deemed to have been paid by the City, no Sales Tax Rebate payment will be due for that period between Quarterly Payment Dates, and the Reimbursement Amount will be decreased by the amount of Sales Tax Rebate that would have been due on that payment date. If an uncured event of default exists as of a Quarterly Payment Date, the Sales Tax Rebate then due will be deemed to have been paid by the City, no Sales Tax Rebate payment will be due for that period between Quarterly Payment Dates, and the Reimbursement Amount will be decreased by the amount of Sales Tax Rebate that would have been due on that payment date. The foregoing is partial liquidated damages (and the parties agree that actual damages would be difficult or impossible to calculate) and in no way cures the event of default.

**3.3.5. Limitation of Pecuniary Obligations.** Regardless of whether Developer complies with the terms of this Agreement, no development fee credits of any kind, and no other consideration will be due from the City, except as provided by this section. Developer will accept the Sales Tax Rebate (and the reimbursement of allowable costs from the improvement districts, if any) in full payment of all City pecuniary obligations with respect to the Property and this Agreement. Developer acknowledges that it has no right to reimbursement from the sales taxes levied above 50% of 1% (in the case of retail sales) or 2% (in the case of restaurants and bars) (even if the sales tax rate is later increased). The City will pay no interest on its obligations (including the Reimbursement Amount) except when specifically required by law. No interest may or will be accrued on unpaid amounts (not in default). The Developer must pay all development (i.e., impact) and all other fees listed in the P.C.C. (e.g., in P.C.C. § 2-199(a), Table 2-199, and in P.C.C. § 2-211(a), Table 2-211). Developer further agrees that City shall have no responsibility or obligation to Developer for any improvements (on or off site), except as provided in this Agreement. In the event of a breach of this Agreement by the City, Developer's sole remedy will be specific performance of the provisions relating to payment of the Sales Tax Rebate, plus costs accrued pursuant to **§ 5.11**.

**3.3.6. Public bidding.** All Required Public Infrastructure and all infrastructure comprising **§ 3.2.2(b)** must be designed and constructed using statutory public procurement procedures in accordance with such laws, rules and regulations as are applicable to the Project in the reasonable opinion of the City Attorney as if the Required Public Infrastructure were being constructed by the City (especially and including, among others, A.R.S. Title 34). Infrastructure that is not Required Public Infrastructure or comprising **§ 3.2.2(b)** need not be publicly bid except as otherwise required by law. In the event of a conflict between the provisions of A.R.S. Title 48 and A.R.S. Title 34, the parties agree to accept the determination of the City Attorney to resolve the conflict.

**4. STATEMENT OF PUBLIC PURPOSE.** City acknowledges that it enters into this Agreement in furtherance of various adopted formal and informal plans and

policies of the City including, but not limited to, plans and policies for land use, finance, economic development and public health, welfare, and safety. City acknowledges that the Project will assist in the economic development of City.

## 5. MISCELLANEOUS.

5.1 Performance. City and Developer agree that the execution of this Agreement and the performance by the City or Developer of any obligation under this Agreement shall be subject to any laws or regulations existing at the time of such execution or the performance of such obligation, as the case may be.

5.2 Amendment. No change or additions may be made to this Agreement except by a written amendment executed by the Parties. Within ten (10) days after any amendment to this Agreement, such amendment shall be recorded, at the City's expense, in the Official Records of Maricopa County, Arizona. City staff, with the written consent of the Developer, may administratively adjust the time frames of required Developer performance in City staff's discretion without amending this Agreement, unless such adjustment (or such adjustments in aggregate) grants a delay of greater than 12 months.

5.3 Reformation. Should any term, provision, covenant or condition of this Agreement be held to be void or invalid, the Parties agree to reform the Agreement to conform as closely as possible to the original intent hereof.

5.4 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 the City. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

5.5 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.

5.6 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and any assigns of any part of the fee title of the Project Land; provided, however, that City shall not voluntarily assign any of its rights and obligations hereunder without the prior written consent of Developer. Upon notice and written consent by the City, Developer may assign this Agreement to any person or entity performing the development of the Project, and which is substantially similar in ownership to Developer's corporate entity. In no case may such assignment result in the City paying the Sales Tax Rebate or enforcing the terms of this Agreement to or against more than one entity.

5.7 Recordation. City agrees to record this Agreement with the County Recorder of Maricopa County, Arizona within ten (10) days of the date of the Agreement is executed by all parties thereto.

5.8 Term. The parties agree that the term of this Agreement shall commence on the date of recordation and end on the earlier of: (a) the date the Reimbursement Amount is paid; or (b) the 12<sup>th</sup> day of July 2017. Any waiver contained in this Agreement will survive the termination of this Agreement. The Effective Date of this Agreement is the later of: (a) the date this Agreement is recorded; or (b) the date that the adoption of this Agreement is affirmed by the voters of the City (if the Agreement is referred by the citizens to such a vote). Developer acknowledges that this Agreement may end before the full Reimbursement Amount has been paid, in which case Developer acknowledges that the City has no further obligation to pay the balance of the Reimbursement Amount.

5.9 Notices. Any notice or payment or other communication required or given under this Agreement shall be effective upon personal delivery and receipt or thirty-six (36) hours after deposit in the United States mail, registered or certified mail, postage prepaid, return receipt requested, and addressed to the address set forth below or to any other address that either Party has previously designed in writing to the other Party:

**Developer:** DJN Eagle Mountain LLC  
2944 N. 44<sup>th</sup> St., #220  
Phoenix, AZ 85018  
  
Florida River Bend Apartments, LLC  
777 Arthur Godfrey Rd #400  
Miami Beach, FL 33140

copy to: Mariscal, Weeks, McIntyre & Friedlander  
2901 N Central Ave #200  
Phoenix, AZ 85012

copy to: Frost Brown Todd LLC  
Attn: John I. Cadwallader, Esq.  
Suite 2300  
10 West Broad Street  
Columbus, Ohio 43215-3484

**City:** City of Peoria, Arizona  
City Manager  
8401 West Monroe Room 310  
Peoria, Arizona 85380

copy to: City of Peoria, Arizona  
Peoria City Attorney's Office  
8401 West Monroe Room 340  
Peoria, Arizona 85380

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

5.11 Attorneys' Fees. In the event any action shall be instituted between the Parties in connection with this Agreement, the Party prevailing in such action shall be entitled to recover from the other Party all of its costs, including reasonable attorneys' fees.

5.12 Applicable Law. This Agreement is entered into in Arizona and shall be construed and interpreted under the laws of the State of Arizona. In particular, this Agreement is subject to the provisions of A.R.S. § 38-511. The City cannot and does not warrant that this Agreement complies with the requirements of A.R.S. § 9-500.11 as amended by S.B. 1274, Chapter 200 Arizona Session Laws 2005, nor can the City warrant that the terms of such statute are not retroactive. Further, the City does not and cannot warrant that this Agreement will not be referred by the citizens of the City, in which event this Agreement is null and void until the approval of the Agreement by a majority vote of such citizens. In the event that a court of competent jurisdiction finds that the Agreement does not comply with applicable law, the parties will proceed in good faith to reform the Agreement to so comply, if possible.

5.13 Additional Documents. The Parties agree to execute any and all documents and instruments that may be reasonably necessary to effectuate the intent and realize the benefits of this Agreement.

5.14 Time of the Essence. Time is of the essence of this Agreement and every term or performance hereunder.

5.15 Exhibit and Recitals. The exhibit and recitals attached to this Agreement are hereby incorporated into this Agreement by this reference, as and to the same effect as if recited at length in the body of this Agreement.

5.16 Counterpart. This Agreement may be signed in counterpart, and the fully executed counterparts shall together constitute an original Agreement. In addition, this Agreement may be executed and delivered by facsimile or e-mail and each facsimile or electronically scanned copy will be treated as an original.

5.17 Required Dates. Whenever in this Agreement a covenant or condition requires performance by a date certain, the parties may by mutual agreement extend such dates in writing by administrative action if the cause of the delay is outside of the control of the party required to so perform.

5.18 Grace Periods; Notice and Cure. Upon the occurrence of an event of default by any Party, such Party shall, upon written notice from a non-defaulting Party, proceed immediately to cure or remedy such default and, in any event, such default shall be cured within thirty (30) days after receipt of such notice.

5.19 Enforced Delay in Performance for Causes Beyond Control of Party. Whether stated or not, all periods of time in this Agreement are subject to this Section. Neither the City nor Developer, as the case may be, shall be considered in Default of its obligations under this Agreement in the event of enforced delay (an "Enforced Delay") due to Force Majeure, or the delays of subcontractors or materialmen due to Force Majeure. Collectively, "Force Majeure" means: acts of God; acts of public enemy; acts of the Federal, state or

local government, except in the lawful exercise of its powers in response to a Party's actions; acts of the other Party (except the City when acting in good faith in its capacity as regulator); litigation concerning the validity and enforceability of this Agreement or relating to transactions contemplated hereby (including the effect of petitions for initiative or referendum); fires; floods; epidemics; quarantine; war; terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism); unusual nuclear radiation; declaration of national emergency or national alert, Office of Homeland Security (or equivalent) Advisory alert higher than grade "yellow", but only if the governmental action resulting from such alert directly (and not indirectly by, e.g., higher interest rates or other financial penalties) forces such delay; blockade; insurrection; riot; or declaration of moratorium or similar hiatus directly affecting the Property (whether permanent or temporary) by any public, quasi-public or private entity. 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 that the Party seeking the benefit of the provisions of this section shall, within fifteen (15) days after such Party knows 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; 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 if such event of enforced delay was not known or reasonably discoverable by such Party.

5.20 Merger. As amended by this Agreement, the Original Agreement shall remain in full force and effect.

5.21 Joint and Several Obligation. DJN and River Bend are jointly and severally liable for the obligations of the Developer herein. The City may, without penalty or prior approval, perform all of its duties herein solely at the direction of DJN; and River Bend agrees that the City will have no liability and will not be in breach hereof for so doing. All payments due herein to Developer will be paid solely to DJN (who will be responsible for distributing such payments in accordance with its agreement with River Bend), unless DJN ceases to do business in Arizona while River Bend continues to perform under this Agreement; or if the Developer in writing assigns all such payment and right to direct to River Bend. In no case will the City be required to make payment to more than one party or to require approval or direction from more than one party.

5.22 Effect of Agreement; Estoppel. All other terms and conditions of the Original Agreement remain in full force and effect except as specifically amended hereby. Developer agrees that, as of the date of this Agreement, it has received the equal protection of the laws, has received due process of all of its claims and requests, and has not suffered from a compensable regulatory taking (as those terms and their related claims are defined by Arizona state and federal constitutional jurisprudence). As far as either party knows or should know, neither the Developer nor the City has breached the Original Agreement or has any litigable claim against the other as of the date this Agreement is executed.

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

City of Peoria, Arizona, an Arizona municipal corporation

DJN Eagle Mountain LLC, an Arizona limited liability company

The Honorable John C. Keegan, Mayor

By: David Glimcher, Manager

ATTEST:

*Mandy Kief*  
City Clerk



Florida River Bend Apartments, LLC, a Florida limited liability company qualified to do business in the State of Arizona

APPROVED AS TO FORM:

*Stephen J. Burg for*  
City Attorney

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

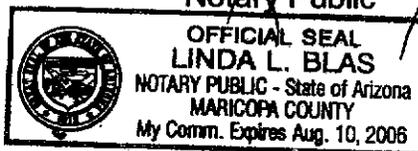
[Notarizations on following page]

State of Arizona )  
 ) ss.  
County of Maricopa )

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of February 2006, by the Honorable John C. Keegan, the Mayor of the City of Peoria, Arizona, an Arizona municipal corporation, on behalf of the City.

(Seal and Expiration Date)

*Linda L. Blas*  
\_\_\_\_\_  
Notary Public



State of Arizona )  
 ) ss.  
County of Maricopa )

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of February 2006, by David J. Glimcher, the Manager of DJN Eagle Mountain LLC, an Arizona limited liability company.

(Seal and Expiration Date)

*Joann Nardozza*  
\_\_\_\_\_  
Notary Public



State of \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_ day of February 2006, by \_\_\_\_\_, the \_\_\_\_\_ of Florida River Bend Apartments, LLC, a Florida limited liability company qualified to do business in the State of Arizona.

(Seal and Expiration Date)

\_\_\_\_\_  
Notary Public

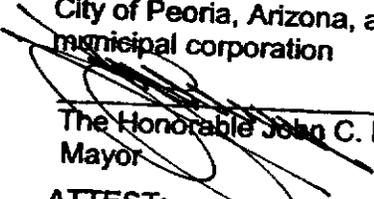
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IN WITNESS WHEREOF, City has caused this Agreement to be duly executed in the name and behalf of its Mayor and attested by its City Clerk, and Developer has signed the same, on or as of the day and year first written above.

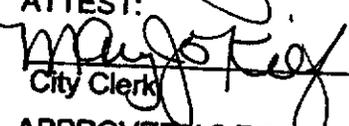
City of Peoria, Arizona, an Arizona municipal corporation

DJN Eagle Mountain LLC, an Arizona limited liability company

  
The Honorable John C. Keegan,  
Mayor

By: \_\_\_\_\_  
David Glimcher, Manager

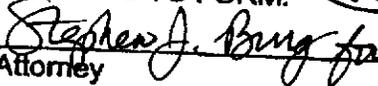
ATTEST:

  
Mary Jo Key  
City Clerk



Florida River Bend Apartments, LLC, a Florida limited liability company qualified to do business in the State of Arizona.

APPROVED AS TO FORM:

  
Stephen J. Bung  
City Attorney

By:   
Name: Robert Dalogh  
Title: Manager

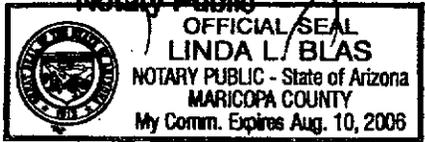
[Notarizations on following page]

State of Arizona )  
 ) ss.  
County of Maricopa )

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of February 2006, by the Honorable John C. Keegan, the Mayor of the City of Peoria, Arizona, an Arizona municipal corporation, on behalf of the City.

(Seal and Expiration Date)

Linda L. Blas  
Notary Public



State of Arizona )  
 ) ss.  
County of Maricopa )

The foregoing instrument was acknowledged before me this \_\_\_ day of February 2006, by David J. Glimcher, the Manager of DJN Eagle Mountain LLC, an Arizona limited liability company.

(Seal and Expiration Date)

\_\_\_\_\_  
Notary Public

State of Florida )  
 ) ss.  
County of Miami Dade )

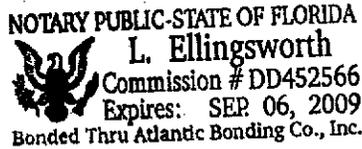
The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of February 2006, by Robert Balogh, the Manager of Florida River Bend Apartments, LLC, a Florida limited liability company qualified to do business in the State of Arizona.

(Seal and Expiration Date)

[Signature]  
Notary Public

\_\_\_\_\_  
Notary Public

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**EXHIBIT A**  
**Legal Description of the Property**  
**[Only Parcel 1]**

**L CON 07805 A**

**LEGAL DESCRIPTION  
PARCEL NO.1  
VILLAGES AT NORTHERN**

June 2, 2005  
Job No. 05018  
Page 1 of 1

A PORTION OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 33,  
TOWNSHIP 3 NORTH, RANGE 1 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN,  
MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A BRASS CAP IN HANDHOLE AT THE SOUTHWEST CORNER OF SAID  
SECTION 33, FROM WHICH A BRASS CAP IN HANDHOLE AT THE SOUTH QUARTER  
CORNER OF SAID SECTION 33 BEARS NORTH 88 DEGREES 40 MINUTES 39 SECONDS  
EAST, A DISTANCE OF 2,661.77 FEET;

THENCE NORTH 00 DEGREES 11 MINUTES 02 SECONDS EAST ALONG THE WEST LINE OF  
SAID SOUTHWEST QUARTER, A DISTANCE OF 1,311.68 FEET TO THE NORTHWEST  
CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID  
SECTION 33;

THENCE NORTH 88 DEGREES 33 MINUTES 01 SECONDS EAST ALONG THE NORTH LINE  
OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 55.02  
FEET TO THE EASTERLY RIGHT OF WAY LINE OF 99TH AVENUE, ALSO BEING THE POINT  
OF BEGINNING OF THE PARCEL HEREIN DESCRIBED;

THENCE CONTINUING NORTH 88 DEGREES 33 MINUTES 01 SECONDS EAST ALONG SAID  
LINE, A DISTANCE OF 1,274.02 FEET TO THE NORTHEAST CORNER OF SAID SOUTHWEST  
QUARTER OF THE SOUTHWEST QUARTER;

THENCE SOUTH 00 DEGREES 06 MINUTES 00 SECONDS WEST ALONG THE EAST LINE OF  
SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 1,259.57  
FEET TO THE NORTHERLY RIGHT OF WAY LINE NORTHERN AVENUE;

THENCE SOUTH 88 DEGREES 40 MINUTES 39 SECONDS WEST ALONG SAID NORTHERLY  
RIGHT OF WAY LINE OF NORTHERN AVENUE, A DISTANCE OF 1,240.79 FEET;

THENCE NORTH 45 DEGREES 34 MINUTES 09 SECONDS WEST, A DISTANCE OF 48.84  
FEET TO SAID EASTERLY RIGHT OF WAY LINE OF 99TH AVENUE;

THENCE NORTH 00 DEGREES 11 MINUTES 02 SECONDS EAST ALONG SAID EASTERLY  
RIGHT OF WAY LINE, A DISTANCE OF 1,221.79 FEET TO THE POINT OF BEGINNING OF THE  
PARCEL HEREIN DESCRIBED.

SAID PARCEL CONTAINS 1,602,673 SQUARE FEET OR 36.797 ACRES, MORE OR LESS.

**EXHIBIT B**  
Legal Description of the SRP Property

L CON 07805 A

## SRP LEGAL DESCRIPTION

Maricopa County Assessor's Parcels 142-55-005B, 010B and a portion of Parcel 001B.

### Parcel 1

The South 330 feet of the Northwest quarter of the Southwest quarter of Section 33, Township 3 North, Range 1 East of the GSRBM, Maricopa County, Arizona.

### Parcel 2

The South 330 feet of the Northeast quarter of the Southwest quarter of Section 33, Township 3 North, Range 1 East of the GSRBM, Maricopa County, Arizona.

### Parcel 3

A portion of the South 330 feet of the Northwest quarter of the Southeast quarter of Section 33, Township 3 North, Range 1 East, of the GSRBM, Maricopa County, Arizona.

**EXHIBIT C**  
**Legal Description of the Project Boundaries**  
**[includes only Exhibits A and B]**

**L CON 07805 A**

**LEGAL DESCRIPTION  
PARCEL NO.1  
VILLAGES AT NORTHERN**

June 2, 2005  
Job No. 05018  
Page 1 of 1

A PORTION OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 33,  
TOWNSHIP 3 NORTH, RANGE 1 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN,  
MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A BRASS CAP IN HANDHOLE AT THE SOUTHWEST CORNER OF SAID  
SECTION 33, FROM WHICH A BRASS CAP IN HANDHOLE AT THE SOUTH QUARTER  
CORNER OF SAID SECTION 33 BEARS NORTH 88 DEGREES 40 MINUTES 39 SECONDS  
EAST, A DISTANCE OF 2,661.77 FEET;

THENCE NORTH 00 DEGREES 11 MINUTES 02 SECONDS EAST ALONG THE WEST LINE OF  
SAID SOUTHWEST QUARTER, A DISTANCE OF 1,311.68 FEET TO THE NORTHWEST  
CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID  
SECTION 33;

THENCE NORTH 88 DEGREES 33 MINUTES 01 SECONDS EAST ALONG THE NORTH LINE  
OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 55.02  
FEET TO THE EASTERLY RIGHT OF WAY LINE OF 99TH AVENUE, ALSO BEING THE POINT  
OF BEGINNING OF THE PARCEL HEREIN DESCRIBED;

THENCE CONTINUING NORTH 88 DEGREES 33 MINUTES 01 SECONDS EAST ALONG SAID  
LINE, A DISTANCE OF 1,274.02 FEET TO THE NORTHEAST CORNER OF SAID SOUTHWEST  
QUARTER OF THE SOUTHWEST QUARTER;

THENCE SOUTH 00 DEGREES 06 MINUTES 00 SECONDS WEST ALONG THE EAST LINE OF  
SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER, A DISTANCE OF 1,259.57  
FEET TO THE NORTHERLY RIGHT OF WAY LINE NORTHERN AVENUE;

THENCE SOUTH 88 DEGREES 40 MINUTES 39 SECONDS WEST ALONG SAID NORTHERLY  
RIGHT OF WAY LINE OF NORTHERN AVENUE, A DISTANCE OF 1,240.79 FEET;

THENCE NORTH 45 DEGREES 34 MINUTES 09 SECONDS WEST, A DISTANCE OF 48.84  
FEET TO SAID EASTERLY RIGHT OF WAY LINE OF 99TH AVENUE;

THENCE NORTH 00 DEGREES 11 MINUTES 02 SECONDS EAST ALONG SAID EASTERLY  
RIGHT OF WAY LINE, A DISTANCE OF 1,221.79 FEET TO THE POINT OF BEGINNING OF THE  
PARCEL HEREIN DESCRIBED.

SAID PARCEL CONTAINS 1,602,673 SQUARE FEET OR 36.797 ACRES, MORE OR LESS.

**LEGAL DESCRIPTION  
PARCEL NO.2  
VILLAGES AT NORTHERN**

June 2, 2005  
Job No. 05018  
Page 1 of 1

A PORTION OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 33,  
TOWNSHIP 3 NORTH, RANGE 1 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN,  
MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A BRASS CAP IN HANDHOLE AT THE SOUTHWEST CORNER OF SAID  
SECTION 33, FROM WHICH A BRASS CAP IN HANDHOLE AT THE SOUTH QUARTER  
CORNER OF SAID SECTION 33 BEARS NORTH 88 DEGREES 40 MINUTES 39 SECONDS  
EAST, A DISTANCE OF 2,661.77 FEET;

THENCE NORTH 00 DEGREES 11 MINUTES 02 SECONDS EAST ALONG THE WEST LINE OF  
SAID SOUTHWEST QUARTER, A DISTANCE OF 1,311.68 FEET TO THE NORTHWEST  
CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID  
SECTION 33;

THENCE NORTH 88 DEGREES 33 MINUTES 01 SECONDS EAST, A DISTANCE OF 1,329.04  
FEET TO THE NORTHEAST CORNER OF SAID SOUTHWEST QUARTER OF THE  
SOUTHWEST QUARTER, ALSO BEING THE POINT OF BEGINNING OF THE PARCEL HEREIN  
DESCRIBED;

THENCE CONTINUING NORTH 88 DEGREES 33 MINUTES 01 SECONDS EAST, A DISTANCE  
OF 364.48 FEET;

THENCE SOUTH 01 DEGREES 55 MINUTES 38 SECONDS EAST, A DISTANCE OF 375.02  
FEET;

THENCE SOUTH 31 DEGREES 37 MINUTES 12 SECONDS EAST, A DISTANCE OF 304.08  
FEET TO THE WESTERLY RIGHT OF WAY LINE OF THE A.D.O.T. LOOP 101 FREEWAY;

THENCE SOUTH 58 DEGREES 52 MINUTES 12 SECONDS WEST, A DISTANCE OF 99.52  
FEET TO A POINT OF CURVE TO THE LEFT HAVING A RADIUS OF 765.02 FEET;

THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL  
ANGLE OF 25 DEGREES 06 MINUTES 57 SECONDS, A DISTANCE OF 335.35 FEET;

THENCE SOUTH 31 DEGREES 45 MINUTES 14 SECONDS WEST, A DISTANCE OF 402.63  
FEET TO THE NORTHERLY RIGHT OF WAY LINE OF NORTHERN AVENUE;

THENCE SOUTH 88 DEGREES 40 MINUTES 39 SECONDS WEST ALONG SAID NORTHERLY  
RIGHT OF WAY LINE, A DISTANCE OF 10.98 FEET TO THE EAST LINE OF SAID SOUTHWEST  
QUARTER OF THE SOUTHWEST QUARTER;

THENCE NORTH 00 DEGREES 06 MINUTES 00 SECONDS EAST ALONG SAID EAST LINE, A  
DISTANCE OF 1,259.57 FEET TO THE POINT OF BEGINNING OF THE PARCEL HEREIN  
DESCRIBED.

SAID PARCEL CONTAINS 399,191 SQUARE FEET OR 9.164 ACRES, MORE OR LESS.

**LEGAL DESCRIPTION  
PARCEL NO.3  
VILLAGES AT NORTHERN**

June 2, 2005  
Job No. 05018  
Page 1 of 1

A PORTION OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 33, TOWNSHIP 3 NORTH, RANGE 1 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A BRASS CAP IN HANDHOLE AT THE SOUTHWEST CORNER OF SAID SECTION 33, FROM WHICH A BRASS CAP IN HANDHOLE AT THE SOUTH QUARTER CORNER OF SAID SECTION 33 BEARS NORTH 88 DEGREES 40 MINUTES 39 SECONDS EAST, A DISTANCE OF 2,661.77 FEET;

THENCE NORTH 00 DEGREES 11 MINUTES 02 SECONDS EAST ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER, A DISTANCE OF 1,311.68 FEET TO THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 33;

THENCE NORTH 88 DEGREES 33 MINUTES 01 SECONDS EAST ALONG THE NORTH LINE OF THE SOUTH HALF OF THE SOUTHWEST QUARTER, A DISTANCE OF 1,693.52 FEET TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED;

THENCE CONTINUING NORTH 88 DEGREES 33 MINUTES 01 SECONDS EAST ALONG SAID LINE, A DISTANCE OF 489.25 FEET;

THENCE SOUTH 01 DEGREES 27 MINUTES 05 SECONDS EAST, A DISTANCE OF 54.61 FEET;

THENCE SOUTH 33 DEGREES 07 MINUTES 48 SECONDS EAST, A DISTANCE OF 152.25 FEET;

THENCE NORTH 58 DEGREES 52 MINUTES 12 SECONDS EAST, A DISTANCE OF 19.50 FEET;

THENCE SOUTH 33 DEGREES 07 MINUTES 48 SECONDS EAST, A DISTANCE OF 169.08 FEET TO THE WESTERLY RIGHT OF WAY LINE OF THE A.D.O.T. LOOP 101 FREEWAY;

THENCE SOUTH 58 DEGREES 52 MINUTES 12 SECONDS WEST ALONG SAID WESTERLY RIGHT OF WAY LINE, A DISTANCE OF 609.47 FEET;

THENCE NORTH 31 DEGREES 37 MINUTES 12 SECONDS WEST DEPARTING SAID WESTERLY RIGHT OF WAY LINE, A DISTANCE OF 304.08 FEET;

THENCE NORTH 01 DEGREES 55 MINUTES 38 SECONDS WEST, A DISTANCE OF 375.02 FEET TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED.

SAID PARCEL CONTAINS 291,475 SQUARE FEET OR 6.691 ACRES, MORE OR LESS.

**LEGAL DESCRIPTION  
PARCEL NO.4  
VILLAGES AT NORTHERN**

June 2, 2005  
Job No. 05018  
Page 1 of 1

A PORTION OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 33, TOWNSHIP 3 NORTH, RANGE 1 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A BRASS CAP IN HANDHOLE AT THE SOUTHWEST CORNER OF SAID SECTION 33, FROM WHICH A BRASS CAP IN HANDHOLE AT THE SOUTH QUARTER CORNER OF SAID SECTION 33 BEARS NORTH 88 DEGREES 40 MINUTES 39 SECONDS EAST, A DISTANCE OF 2,861.77 FEET;

THENCE NORTH 00 DEGREES 11 MINUTES 02 SECONDS EAST ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER, A DISTANCE OF 1,311.88 FEET TO THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 33;

THENCE NORTH 88 DEGREES 33 MINUTES 01 SECONDS EAST ALONG THE NORTH LINE OF THE SOUTH HALF OF THE SOUTHWEST QUARTER, A DISTANCE OF 2,182.77 FEET TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED;

THENCE CONTINUING NORTH 88 DEGREES 33 MINUTES 01 SECONDS EAST ALONG SAID LINE, A DISTANCE OF 442.30 FEET TO THE WEST RIGHT OF WAY LINE OF 95TH AVENUE;

THENCE SOUTH 00 DEGREES 00 MINUTES 58 SECONDS WEST ALONG SAID WEST RIGHT OF WAY LINE, A DISTANCE OF 129.47 FEET TO THE WESTERLY RIGHT OF WAY LINE OF THE A.D.O.T LOOP 101 FREEWAY;

THENCE SOUTH 44 DEGREES 58 MINUTES 28 SECONDS WEST ALONG SAID WESTERLY RIGHT OF WAY LINE, A DISTANCE OF 131.53 FEET;

THENCE SOUTH 58 DEGREES 52 MINUTES 12 SECONDS WEST, A DISTANCE OF 186.07 FEET;

THENCE NORTH 33 DEGREES 07 MINUTES 48 SECONDS WEST DEPARTING SAID WESTERLY RIGHT OF WAY LINE, A DISTANCE OF 169.08 FEET;

THENCE SOUTH 58 DEGREES 52 MINUTES 12 SECONDS WEST, A DISTANCE OF 19.50 FEET;

THENCE NORTH 33 DEGREES 07 MINUTES 48 SECONDS WEST, A DISTANCE OF 152.25 FEET;

THENCE NORTH 01 DEGREES 27 MINUTES 05 SECONDS WEST, A DISTANCE OF 54.61 FEET TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED.

SAID PARCEL CONTAINS 93,805 SQUARE FEET OR 2.153 ACRES, MORE OR LESS.

## SRP LEGAL DESCRIPTION

Maricopa County Assessor's Parcels 142-55-005B, 010B and a portion of Parcel 001B.

### Parcel 1

The South 330 feet of the Northwest quarter of the Southwest quarter of Section 33, Township 3 North, Range 1 East of the GSRBM, Maricopa County, Arizona.

### Parcel 2

The South 330 feet of the Northeast quarter of the Southwest quarter of Section 33, Township 3 North, Range 1 East of the GSRBM, Maricopa County, Arizona.

### Parcel 3

A portion of the South 330 feet of the Northwest quarter of the Southeast quarter of Section 33, Township 3 North, Range 1 East, of the GSRBM, Maricopa County, Arizona.