

WHEN RECORDED RETURN TO:

City of Peoria  
City Clerk  
8401 West Monroe Street  
Peoria, Arizona 85345

### **DEVELOPMENT AND WAIVER AGREEMENT**

This Development and Waiver Agreement (the "Agreement") is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, between the current property owners (the "Owners") of the real property subject to this Agreement, and the City of Peoria, Arizona, an Arizona municipal corporation (the "City"). The Owners and the City are collectively referred to as the "Parties."

#### **RECITALS**

This Agreement is predicated upon the following:

1. Arizona Revised Statutes, § 9-500.05 (G)(1)(j) specifically, authorizes the City to enter into a development agreement with a landowner to address conditions, terms, restrictions and requirements relating to municipalities forming a special taxing district.
2. The Owners are the owners of the real property located within the incorporated boundaries of the City. This real property is described and shown on Exhibit "A" attached hereto and hereinafter referred to as the "Property."
3. The City is allowing the Owners to develop their Property and the Owners have requested and are willing to participate in an improvement district.
4. The Owners having requested the City to form an improvement and assessment district comprised of the Property and certain other real property shown on Exhibit "B" (the "Improvement District") for the installation and construction of certain improvements that will benefit the Property.

The proposed improvements and incidental costs and expenses shall consist of:

- (a) Construction and installation of the improvements described on Exhibit "B" attached hereto;

(b) All engineering, legal, financial and incidental costs and expenses incurred in completing the construction and improvements described in paragraph (a) above and issuing Improvement District bonds therefore; and

(c) Capitalized interest on the City's Improvement District bonds for a period not to exceed the aggregate time for completion of all construction and improvements listed above, plus six months thereafter.

5. Collectively, the construction, improvements, costs and expenses described in paragraphs (a) through (c) shall hereinafter be referred to as the "Work"; and

6. The City intends to pay for the construction and installation of the Work with the proceeds from the sale of Improvement District bonds, and such bonds to be paid by the collection of assessments levied against the Property of Owner and all other property within the Improvement District.

NOW, THEREFORE, the parties hereto agree as follows:

1. This Agreement does not create a binding commitment on the part of the City to form an Improvement District, sell or deliver Improvement District bonds, construct or install any or all of the Work, or if it does construct or install any of the Work, to construct or install it pursuant to any existing proposals. However, the City, in going forward with the Improvement District and the proposed Work, is doing so in reliance upon this Agreement by the Owners to have the Property included within the Improvement District and assessed for the costs thereof.

2. This Agreement shall constitute the express consent by the Owners that: (i) the City may form the Improvement District in accordance with the provisions hereof; (ii) the City may incur costs and expenses necessary to complete the Work; and (iii) the City may levy and collect an assessment on the Property sufficient to pay all costs and expenses of such Work to the extent it benefits the Property (including Work benefiting the proposed Improvement District performed prior to the execution of this Agreement) and the costs of issuance of the bonds, but not in excess of the estimate contained in Exhibit "C". In the event that the City determines that an amount in excess of the Estimate contained in Exhibit "C" should be imposed, the City shall provide ten (10) days written notice to Owners and this Agreement shall be deemed revoked.

3. The Owners, with full knowledge of their rights being waived hereunder, hereby expressly waive:

(a) Their right to protest the adoption of the Resolution of Intention and the Resolution Ordering the Work for the Improvement District;

(b) Any and all irregularities, illegalities or deficiencies which may exist in the acts or proceedings resulting in the adoption of the Resolution of Intention and the Resolution Ordering the Work;

(c) Any necessity for publication and posting of the Resolution of Intention and the Notice of Proposed Improvement pursuant to A.R.S. § 48-578;

(d) All protest rights whatsoever under A.R.S. § 48-578 (A) and (B), which provide for protests against the Work;

(e) Their objections to the extent of the district to be assessed, provided the Improvement District includes the Property, and their rights to a hearing on said objections;

(f) Their rights to file objections to the awarding of one or more construction contracts under A.R.S. § 48-584 (E);

(g) Any necessity for publication of the Notice of Award of Contract pursuant to A.R.S. § 48-584 (D);

(h) If applicable, the 15-day delay period of A.R.S. § 48-584 and any right to file a written requirement, on the condition that the City award the alternates as approved by the Owners as hereafter described; if the resolution of intention provides for alternate plans, the Owners or a representative thereof, shall be present at the opening of the construction bids to review the bids and to designate by majority vote which alternates should be awarded; and

(i) Their right to file a certificate of a searcher of records and request that no bonds be issued against the Property or any part thereof pursuant to A.R.S. § 48-597, and any and all defenses based on procedural defects it may now or subsequently have against the bonds and the assessments.

4. The Owners acknowledge that the proposed Work is of more than local or ordinary public benefit, and that the Property receives a benefit from the Work.

5. The Owners consent to and waive all objections to the adoption by the City of the plans and specifications, the Engineer's Estimate and the assessment diagram, all of which provides for and effectuates the completion of the Work.

6. The Owners consent to the adoption by the governing body of the City, pursuant to A.R.S. § 48-581, of the Resolution Ordering the Work contemplated by the Resolution of Intention, at the same time as the adoption of the Resolution of Intention.

7. The Owners acknowledge that the public bidding requirements set forth in A.R.S. § 48-581 will be complied with by the City.

8. The Owners agree that the City may immediately award the construction contract to the lowest and best bid of the responsible bidders, provided, the cost of constructing the Work contained in the winning bid does not exceed the aggregate amount of the construction costs set forth in the Engineer's Estimate.

9. The Owners consent to the execution of the construction contract without publication of the Notice of Award of Contract.

10. The Owners agree to accept an assessment, in an amount as provided in Exhibit "C" against all of the Property pursuant to A.R.S. § 48-589.

11. The Owners consent to: (a) the recordation of an assessment, in an amount as provided in Exhibit "C", against all of the Property located in the Improvement District pursuant to A.R.S. § 48-589 (H).

12. The provisions, terms and restrictions of this Agreement shall run with and bind the real property comprising the Improvement District as equitable servitude and also as covenants running with the land.

13. The Owners agree that the assessments levied by the Improvement District against the Property shall include the engineering, design and construction costs incurred to install the Work.

14. This Agreement is not intended to amend or otherwise affect the validity of any other Development Agreement entered into by the City and the Owners or any amendment thereto (the "Development Agreement"). However, if there are any inconsistencies between the terms of this Agreement and the terms of the Development Agreement with respect to the formation of the Improvement District and the issuance of the bonds, the terms of this Agreement shall govern.

15. This Agreement shall be recorded in the office of the County Recorder of Maricopa County, Arizona, no later than ten (10) days after the City executes this Agreement.

16. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their future grantees, respective heirs, successors and assigns.

17. The Owners' objections to the manner, in which the Work was performed, pursuant to A.R.S. § 48-590 (G), shall be preserved.

18. The Owners individually warrant, with respect to their own status only, that they have the requisite authority to bind the entity on whose behalf they are signing and, to the best of their knowledge, no other consents are required.

19. This Agreement shall terminate automatically if the Improvement District is not formed and the Resolution Ordering the Work is not adopted on or before \_\_\_\_\_ (date fifteen years from the date of this Agreement). This Agreement shall terminate on \_\_\_\_\_ (date fifteen years from the date of this Agreement).

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first written above.

CITY:  
CITY OF PEORIA, an Arizona municipal corporation

By \_\_\_\_\_  
City Engineer/Engineer Director

STATE OF ARIZONA     )  
  )ss.  
County of Maricopa     )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by \_\_\_\_\_ being authorized to do so, executed the foregoing instrument for the purpose herein stated.

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

My Commission Expires:  
\_\_\_\_\_

ATTEST:  
\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:  
\_\_\_\_\_  
City Attorney

OWNERS:  
The Owners of the real property subject to this Agreement

Print Name \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE

By \_\_\_\_\_

Its \_\_\_\_\_

STATE OF ARIZONA     )  
  )ss.  
County of Maricopa     )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by

\_\_\_\_\_ being authorized to do so, executed the foregoing instrument for the purpose herein stated.

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

My Commission Expires:

\_\_\_\_\_  
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February 24, 2005 s/c dag

EXHIBIT "A"  
MAP AND DESCRIPTION OF OWNERS PROPERTY

EXHIBIT "B"  
MAP OF THE IMPROVEMENT DISTRICT  
TO BE PROVIDED  
CONSTRUCTION & INSTALLATION OF THE  
IMPROVEMENTS

EXHIBIT "C"  
PROPOSED IMPROVEMENT DISTRICT

Estimated Construction Costs are set forth below:  
Costs of Issuance are set forth below:

Net Construction Costs	\$
Legal Fees	\$
Printing & Publication	\$
Financial Advisor Fees	\$
Capitalized Interest	\$
Contingency	\$
 Total	 \$

Assuming the following, the estimated assessment amount per acre may be computed.

Issue Size	\$
Maturity Term (12 yrs) (1/1/2005)	
Interest Rate (7.0%)	
 Estimated Assessment per acre	 \$
Estimated Annual cost per acre	\$
Estimated Annual cost per lot (5 lots per acre)	\$