Repl. #21
March 28, 2013

Chandler • Arizona
Where Values Make The Difference

DATE: March 27, 2013

TO: Mayor and Council

FROM: Marla Paddock, City Clerk

SUBJECT: Item #21 – Resolution No. 4662, Development Agreement with AZGL, LLC.

I received a phone call from the applicant, Mike Withey with Withey Morris, PLC, suggesting that the City Council continue item #21 to the April 25, 2013, City Council Meeting.

#21

MAR 28 2013

Chandler + Arizona
Where Values Make The Difference

MEMORANDUM

DATE: March 20, 2013

TO: Mayor & City Council

THRU: Mary Wade, City Attorney

FROM: Kay Bigelow, Assistant City Attorney KB

SUBJECT: Resolution No. 4662, authorizing and approving a development agreement with AZGL, LLC for property south of the southwest corner of Germann Road and Price Road.

RECOMMENDATION: Staff presents Resolution No. 4662 if Council is prepared to grant rezoning for the subject property that allows for single user enterprise data center use.

BACKGROUND/DISCUSSION: Rezoning of the subject property is pending. If the property is rezoned to allow for single user enterprise data center use, then this development agreement would be appropriate to address issues arising as a consequence of such use on the site. In particular, it addresses the infrastructure needs that such a use would have on the City. It also allows the City to initiate a rezoning to eliminate the single user enterprise data center use in the event that the owner and developer of the property is unable to secure an acceptable entity as the data center user. In addition, the City will receive up to $1 million from the owner and/or developer if the Property is used as a single user enterprise data center.

FINANCIAL IMPLICATIONS: Not applicable.

PROPOSED MOTION: Move to adopt Resolution No. 4662 approving a development agreement with AZGL, LLC in substantially the form attached as Exhibit "A" to the Resolution, and authorizing the Mayor to execute the Resolution for the City upon approval as to form by the City Attorney.

Attachments: Resolution 4662
Exhibit A to Resolution (Development Agreement)

RESOLUTION NO. 4662

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, APPROVING A DEVELOPMENT AGREEMENT WITH AZGL, LLC FOR PROPERTY LOCATED SOUTH OF THE SOUTHWEST CORNER OF GERMANN ROAD AND PRICE ROAD.

WHEREAS, AZGL, LLC is the owner of approximately 37 acres of real property located south of the southwest corner of Germann Road and Price Road, and which is legally described in attached Exhibit "A" to the Development Agreement referred to herein (the "Property"); and

WHEREAS, the Property is currently being considered for rezoning from Agricultural use to Planned Area Development (PAD) along with a Preliminary Development Plan for a business park; and

WHEREAS, if the aforementioned rezoning is approved to allow for a Single User Enterprise Data Center on the Property, such use will create on-site development, off-site development, off-site utility infrastructure, and service demands that AZGL, LLC and the City of Chandler believe can best be addressed through a development agreement; and

WHEREAS, the City and AZGL, LLC desire to enter into such a development agreement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Chandler, Arizona, that the City of Chandler is authorized to enter into a Development Agreement with AZGL, LLC for the Property in substantially the form attached hereto as Exhibit "A" to this Resolution (the "Development Agreement"), and the Mayor of the City of Chandler, or his designee, is hereby authorized to execute the Development Agreement on behalf of the City upon the document being approved as to form by the Chandler City Attorney.

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona, this ____ day of _____, 2013.

ATTEST:

_____ _____

CITY CLERK MAYOR

APPROVED AS TO FORM:

_____

CITY ATTORNEY(*kl*)

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 4662 was duly passed and approved by the City Council of the City of Chandler, Arizona, at a regular meeting held on the _____ day of _____, 2013, and that a quorum was present thereat.

_____
CITY CLERK

When recorded, return to:
City of Chandler
Post Office Box 4008, Mailstop 606
Chandler, AZ 85225
Attn: City Clerk

DEVELOPMENT AGREEMENT
between

CITY OF CHANDLER, ARIZONA,
an Arizona municipal corporation

and

AZGL, LLC, a Delaware limited liability company

as Developer/Owner

Approved by City Council
_____, 2013

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Exhibit A Legal Description of the Property
Exhibit B Development Plan for Approved Alternative Use Owner

DEVELOPMENT AGREEMENT

ARTICLE 1. INTRODUCTION

THIS DEVELOPMENT AGREEMENT (the "**Agreement**") is made by and between the CITY OF CHANDLER, ARIZONA, an Arizona municipal corporation ("**Chandler**") and AZGL, LLC an Arizona limited liability company ("**Developer/Owner**"). Chandler and Developer/Owner are referred to in this Agreement, collectively as "**Parties**," and individually as "**Party**."

IN CONSIDERATION of the foregoing recitals and representations and the mutual covenants and conditions in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 2. EFFECTIVE DATE & TERM

2.1 Effective Date.

The "**Effective Date**" is the date on which the last of the following events has occurred:

2.1.1 The Chandler ordinance approving the "**PAD Zoning Designation**," as defined in Subsection 3.2, for the "**Property**," as defined in Subsection 3.1, is effective, final and not referendable;

2.1.2 Authorized representatives of all Parties have executed this Agreement; and

2.1.3 This Agreement has been recorded on the Property at the office of the Maricopa County Recorder.

2.2 **Term**.

The term of this Agreement ("**Term**") shall be eleven (11) years from the Effective Date. If one or more of the events detailed in Section 2.1 does not occur on or before the first anniversary of City Council's approval of this Agreement with Resolution No. 4662, this Agreement shall be null and void without further action of the Parties.

ARTICLE 3. RECITALS

3.1 **Developer/Owner**.

Developer/Owner is the developer and owner of approximately thirty-eight (38) acres of land, legally described on **Exhibit A** (the "**Property**"). The Property is located within the corporate limits of Chandler.

3.2 Concurrent Zoning Request.

In addition to consideration of this Agreement, Chandler considered the Developer/Owner's request for approval of Planned Area Development zoning designation ("**PAD Zoning Designation**"), under Chandler case number DVR 12-0006, for the Property along with a Preliminary Development Plan (the "**PDP**"). Chandler approved the PAD Zoning Designation by Ordinance No. 4392 and it approved the PDP by motion.

3.3 Statutory Authority.

This Agreement is intended to be a "Development Agreement" within the meaning of A.R.S. § 9-500.05 and to set forth certain obligations of the Parties with respect to the contemplated development of the Property, if Chandler approves the PAD Zoning Designation, as permitted by Arizona law.

3.4 Consistent with Chandler General Plan.

By its approval of this Agreement, Chandler has determined that the "**Alternative Use**" (as hereinafter defined) proposed by this Agreement is consistent with Chandler's General Plan.

ARTICLE 4. AGREEMENT

4.1 Definitions.

In this Agreement, unless a different meaning clearly appears from the context:

4.1.1 "**Agreement**" means this Agreement, as amended or supplemented in writing from time to time as set forth in Section 7.17. The Exhibits attached hereto are, by this reference, incorporated into and made a part of this Agreement with the same force and effect as if fully set forth in the body of the Agreement.

4.1.2 Affiliates.

4.1.2.1. "**Affiliate,**" as applied to the "**Approved Alternative Use Owner**" (as hereinafter defined in Sections 4.4 through 4.10), means any "**Person**" (as hereinafter defined) directly or indirectly controlling, controlled by, or under common control with the Approved Alternative Use Owner.

4.1.2.2. "**Affiliate,**" as applied to the Developer/Owner in Section 7.9, means any Person directly or indirectly controlling, controlled by, or under common control with the Developer/Owner.

4.1.2.3. For the purposes of these definitions in Subsections 4.1.2.1 and 4.1.2.2, "control" (including with correlative meaning, the terms "controlling," "controlled by" and "under common control with"), as applied to any Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities, by contract or otherwise.

4.1.3 "**Alternative Use**" means as described in Section 4.4.

4.1.4 "**Alternative Use Deadline**" means as described in Section 4.5.2.

4.1.5 "**Applicable Laws**" means the federal, state, county and local laws (statutory and common law), charter provisions, codes, ordinances, rules, regulations, permit requirements, fee schedules and assessments, and other requirements and official policies of Chandler which apply to the development of all or any part of the Property.

4.1.6 "**Approved Alternative Use Owner**" means as described in Section 4.3.

4.1.7 "**A.R.S.**" means the Arizona Revised Statutes. When this Agreement refers to specific statute(s), it means the specific statute as it exists on the Effective Date as well as hereafter amended.

4.1.8 "**Business Day**" means a day other than Saturday, Sunday, or a legal holiday as declared by the City of Chandler.

4.1.9 "**Certificate of Occupancy**" means a certificate issued by Chandler certifying that a building or other improvement is fit for occupancy in accordance with Applicable Laws.

4.1.10 "**Chandler**" means the City of Chandler, an Arizona municipal corporation (and any successor public body hereafter designated by or pursuant to law).

4.1.11 "**Chandler City Code**" means the Code and Ordinances of the City of Chandler, Arizona.

4.1.12 **"Commence Construction"** means the occurrence of both of the following: (i) the issuance of a building permit, and (ii) the commencement of construction above the foundation of the building for which the building permit is issued.

4.1.13 "**Cure Plan**" means as described in Section 7.3.2.2.

4.1.14 "**Default**" means as described in Section 7.3 of this Agreement.

4.1.15 "**Developer/Owner**" means AZGL, LLC, a Delaware limited liability company duly authorized to do business in Arizona, as well as any subsequent owner or developer of the whole or a portion of the Property.

4.1.16 "**Effective Date**" means the date defined in Section 2.1.

4.1.17 "**Grace Period**" means as described in Section 7.3.

4.1.18 "**Notice of Default**" means as described in Section 7.3.1.

4.1.19 "**PAD Zoning Designation**" means as described in Section 3.2.

4.1.20 "**Party**" and "**Parties**" mean as described in the introductory paragraph.

4.1.21 "**PDP**" means as described in Section 3.2.

4.1.22 "**Person**" means and includes natural persons, corporations, limited partnerships, general partnerships, joint stock companies, joint ventures, associations, limited liability companies, limited liability partnerships, trusts, land trusts, business trusts or other organizations, whether or not legal entities.

4.1.23 "**Property**" means as described in Section 3.1 of the Recitals and as set forth in Exhibit A.

4.1.24 "**Public Infrastructure Improvements**" means as described in Section 5.2.

4.1.25 "**Resource Payment**" means as described in Section 4.5.3.

4.1.26 "**Single User Enterprise Data Center**" means a data center utilized only for a single user's electronic data storage purposes and that does not lease out any data storage to any other Person.

4.1.27 "**TSYS** Parcel" means as described in Section 4.6.2.

4.2 Purpose of Development Agreement.

This Agreement adds an alternative land use to the PAD Zoning Designation and the PDP as well as establishes conditions precedent and requirements for Developer/Owner's and/or the Approved Alternative Use Owner's right to implement the Alternative Use. This Agreement does not impact any conditions or approvals for the land uses or PDP approved by the PAD Zoning Designation for uses authorized therein except when, and if, the Single User Enterprise Data Center comes into existence by the satisfaction of the conditions precedent in Section 4.5.

4.3 Phasing of Development.

Developer/Owner reserves the right to develop the Property in phases as described and depicted in **Exhibit B**. Developer/Owner may elect to develop each phase of the Property in any order, with such phase being developed individually or concurrently with one or more phases. Developer/Owner may make such election through the exercise of its sole discretion.

4.4 Alternative Use as a Single User Enterprise Data Center.

As set forth in this Agreement and based on the Developer/Owner's fulfillment of the conditions precedent detailed in Section 4.5 as well as the Approved Alternative Use Owner's compliance with the provisions in these Sections 4.4 through 4.10, the PAD Zoning Designation shall allow any portion of the Property to be used for a Single User Enterprise Data Center of up to 1,250,000 square feet in size (the "**Alternative Use**") solely by EBay, Inc., a Delaware

corporation, or its Affiliate(s) ("**Approved Alternative Use Owner**"). The Conceptual Preliminary Development Plan for the Alternative Use is attached as Exhibit B. The Parties agree that the Approved Alternative Use Owner is the only subsequent owner of any portion of the Property that may own, operate and use the Property for the Single User Enterprise Data Center. This Agreement and the PAD Zoning Designation do not allow any other users or subsequent owners or developers of the Property to use any portion of the Property for a data center of any kind or size.

4.5 <u>Conditions Precedent to Alternative Use</u>.

4.5.1 Compliance with Conditions Precedent The Developer/Owner shall satisfy or perform the acts necessary to satisfy all of the provisions in this Section 4.5 prior to the Alternative Use for a Single User Enterprise Data Center being permitted on any portion of the Property. Notwithstanding the Term set forth in Section 2.2, this Agreement shall terminate without further action or documentation if the Developer/Owner does not satisfy all the conditions precedent set forth in this Section 4.5.

4.5.2 Alternative Use Deadline Within 365 days after the Effective Date ("**Alternative Use Deadline**"), the Developer/Owner shall have conveyed the Property, or any portion large enough for Phase 1 of the Single User Enterprise Data Center in accordance with Exhibit B, to the Approved Alternative Use Owner. If Developer/Owner has not made such conveyance on or before the Alternative Use Deadline, the Alternative Use shall no longer be permitted on any portion of the Property.

4.5.3 Developer/Owner Payment. . Developer/Owner will pay Chandler a sum of $1,000,000 ("**Resource Payment**") within five (5) Business Days of its conveyance of any portion of the Property to the Approved Alternative Use Owner. The Resource Payment is for the purpose of public infrastructure including acquisition of water rights and resources and infrastructure. The Resource Payment is in addition to any other costs, fees (including development impact fees in accordance with A.R.S. § 9-463.05), or exactions that Chandler normally imposes in accordance with the Applicable Laws for the approval of development or the mitigation of the impact of development on Chandler's infrastructure and resources or costs as set forth in Article 5.

4.6 <u>Requirements for Use as Single User Enterprise Data Center</u>.

4.6.1 Development Plans Development of a Single User Enterprise Data Center shall be in accordance with the Applicable Laws, the PAD Zoning Designation, Article 5, and Exhibit B.

4.6.2 TSYS Parcel It is the intent and understanding of the Parties that the Single User Enterprise Data Center may require more than the acreage within the Property and that the approximately fifteen (15) acres of real property owned by Price-Queen Creek, LLC and generally described as Maricopa County assessor parcel number 303-36-007G ("**TSYS Parcel**") will also be used as part of the Single User Enterprise Data Center. The Parties recognize that the TSYS Parcel currently has a PAD Zoning Designation that allows the owners of the TSYS Parcel to use it for a data center. Developer/Owner recognizes and agrees it is a

material element of Chandler's approval of the Single User Enterprise Data Center that it straddles the property line shared by the Property and TSYS Parcel as illustrated on Exhibit B; and thus, makes use of the data center designation permitted on the TSYS Parcel.

4.7 **Failure to Initiate Alternative Use**.If the Alternative Use is never, or ceases to be operated and/or used by the Approved Alternative Use Owner in accordance with the time allowances set forth in Section 2.2 and elsewhere herein, then use as a Single User Enterprise Data Center on the Property or portion of the Property unused by an existing Single User Enterprise Data Center is no longer available. For purposes of this Subsection 4.7, failure to initiate the Single User Enterprise Data Center includes non-completion of at least Phase 1 of the Single User Enterprise Data Center, as evidenced by a Certificate of Occupancy, before the third (3rd) anniversary of the date on which the Approved Alternative Use Owner and Developer/Owner closed escrow (Phase 1 Construction Deadline).

4.8 **Duration of Alternative Use**. Wherever in this Agreement, the Alternative Use of Single User Enterprise Data Center either does not come into existence because of the non-satisfaction of the conditions precedent in Section 4.5 or the Approved Alternative Use Owner's has failed to initiate its rights to use the Property, or any portion thereof, for a Single User Enterprise Data Center during the Term of this Agreement, the Alternative Use shall not be permitted thereafter. This loss of the Approved Alternative Use occurs without any further action of the Parties. Additionally by its signature to this Agreement, Developer/Owner agrees, on behalf of itself, as well as all successive owners (including the Approved Alternative Use Owner), to removal of the Single User Enterprise Data Center use through a Chandler-initiated rezoning or PAD amendment as well as a modification to the approved PDP and Development Guide.

4.8.1 Vesting of Single User Enterprise Data Center Use. To the extent that the Developer/Owner and the Approved Alternative Use Owner comply with the requirements in Sections 4.4 through 4.10 and continue to own and operate the Single User Enterprise Data Center, or a portion thereof, the right to continue operation of the Single User Enterprise Data Center shall be vested for that portion of the Property and that portion of the Single User Enterprise Data Center in operation by the Approved Alternative Use Owner at that time. Upon termination of this Agreement pursuant to Section 2.2, only the Approved Alternative Use Owner shall continue to have a vested right under common law to operate and own the Single User Enterprise Data Center or portion thereof that has come into existence by that time.

4.8.2 PAD Zoning Designation & PDP. Reconsideration of Multi-Tenant Uses.

If Chandler's approvals of the PAD Zoning Designation and PDP do not include multi-tenant uses and Chandler changes its General Plan policy limiting users in the South Price Road Corridor to single large users, Chandler will waive application fees and reasonably expedite its re-consideration of the portion of Developer/Owner's current application (DVR 12-006) for multi-tenant uses on the Property.

4.8.2.2. Vesting.

As of the Effective Date, Chandler agrees that the Property may be developed in accordance with the PAD and PDP, subject to Developer/Owner's compliance with the terms of this Agreement and all Applicable Laws. Chandler agrees that, for the term of this Agreement, Developer and successor owners of the Property each shall have a right to undertake and complete the development and use of their respective portions of the Property in accordance with this Agreement, without being subject to a subsequent amendment to the Zoning Ordinance or any other provision of the Chandler City Code. For purposes of this Agreement, the PAD Zoning shall be vested for the Term of this Agreement. Nothing herein affects the vesting of the PAD Zoning for the Property as a matter of common law following termination of this Agreement. During the Term of this Agreement, the development of each portion of the Property shall be governed by the PAD Zoning and the provisions of this Agreement unless mutually agreed otherwise in writing by Chandler and the then owner of such portion of the Property. Other than as provided in Subsection 4.7 and Subsection 4.8, Chandler shall not initiate any changes or modifications to the PAD Zoning or any other provision of the Chandler City Code for any portion of the Property, except at the written request of the then owner of such portion of the Property.**Waiver**.

Developer/Owner waives all rights to claims, inverse condemnation, or other type of liability of Chandler, including rights to obtain damages for diminution of value as set forth in Private Property Rights Protection Act in Article 2.1, Chapter 8 of A.R.S. Title 12, because of the loss of the Single User Enterprise Data Center as an permitted use in accordance with the provisions of this Agreement. This waiver runs with the ownership of the Property or portion thereof.

4.10 Indemnification for Approved Alternative Use.

Developer/Owner indemnifies Chandler against any claims or liability claimed by its successor owners or developers of the Property for Developer/Owner's waiver or consents to Chandler's future actions to remove the Single User Enterprise Data Center use as set forth in this Agreement. Developer/Owner's indemnification survives beyond the Developer/Owner's conveyance of the Property and is not assignable without consent of Chandler, which may be granted or withheld at Chandler's absolute and sole discretion.

4.11 Processing of Development Plans.

Subject to Applicable Laws, Chandler and Developer/Owner will cooperate reasonably in processing the approval or issuance of any permits, site plans, subdivision plats or other development approvals requested in connection with development of the Single User Enterprise Data Center. Chandler further agrees to process all submissions for such permits, site plan, subdivision plats, or other development approvals on an expedited basis within ten (10) Business Days after such submission is filed with Chandler. Such expedited processing shall not be at additional cost to Developer/Owner over and above the normal processing fees charged to all similarly situated applicants. Chandler further agrees that no unusual or extraordinary review or inspection requirements will be imposed by Chandler and that Chandler shall conduct all required inspections as expeditiously as reasonably possible, at no additional cost to Developer/Owner. Notwithstanding the foregoing sentence, Chandler may charge its additional inspection fees set forth in Resolution 4535 (Subsections 6.5.3(a) and 8.14(ss)), or their

subsequent versions, for engineering inspections that need to be conducted in non-regular Chandler work hours.

ARTICLE 5. INFRASTRUCTURE FOR DEVELOPMENT OF PROPERTYUse of Reclaimed Water.

The Approved Alternative Use Owner shall use reclaimed water (other than when the Applicable Laws require potable water) for its Single User Enterprise Data Center. Approved Alternative Use Owner shall construct or install, or cause such construction and installation of, all of the improvements required by the provider of the reclaimed water to provide reclaimed water services to the Property. Approved Alternative Use Owner shall additionally obtain, at it sole cost, any and all easements, rights-of-way, and/or other property rights (on-Property or off-Property) for any infrastructure improvements required by the provider of reclaimed water. The Approved Alternative Use Owner shall not use more than an aggregate amount of 900,000 gallons per day ("gpd") of reclaimed water for all reclaimed water uses on both the Property and the TSYS Parcel ("Maximum Reclaimed Water") for the full build out of the Single User Enterprise Data Center as permitted in Section 4.4. If the Single User Enterprise Data Center does not reach the full build out of 1,250,000 square feet, then the Maximum Reclaimed Water shall be decreased in proportion to the square footage built divided by the permitted built in accordance with Section 4.4.

5.2 Public InfrastructurePublic Improvements The Parties agree that this Agreement does not change the requirements for public infrastructure improvements that will be required by the Applicable Laws (**"Public Infrastructure Improvements"**) for any land use approved in this Agreement or the PAD Zoning Designation. The Developer/Owner agrees that it will be responsible to cause and pay for the construction and installation of all of the Public Infrastructure Improvements required by the Applicable Laws and which are necessary to provide all public services to the Property. Developer/Owner is additionally responsible for any and all easements, rights-of-way, and/or other property rights located on or off the Property needed to enter and to properly construct Public Infrastructure Improvements.

5.2.2 Discharge Wastewater Neither the Developer/Owner nor the Approved Alternative Use Owner will discharge wastewater, into the Chandler wastewater system, wastewater with a concentration of Total Dissolved Solids ("TDS") greater than 1450 mg/liter.

Neither the Developer/Owner nor the Approved Alternative Use Owner may use greater than 61,778 gpd of potable water for the Property or greater than 23,784 gpd of potable water for the TSYS Parcel ("Maximum Potable Water") at full build-out in accordance with this Agreement or the PAD Zoning Designation. **REPRESENTATIONS.**

6.1 Chandler Representations.

Chandler represents and warrants to Developer/Owner that:

6.1.1 Chandler is duly formed and validly existing under Arizona law and that the individual(s) executing this Agreement on behalf of Chandler is authorized and empowered to bind Chandler.

6.1.2 Chandler has the full right, power and authorization to enter into and perform this Agreement and each of Chandler's obligations and undertakings under this Agreement, and Chandler's execution, delivery and performance of this Agreement have been duly authorized and agreed to in compliance with the requirements of its Charter and Arizona law.

6.1.3 All consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.

6.1.4 Chandler will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

6.2 Developer/Owner Representations.

Developer/Owner represents and warrants to Chandler that:

6.2.1 Developer/Owner is duly formed and validly existing under Arizona law and that the individuals executing this Agreement on behalf of the Developer/Owner are authorized and empowered to bind Developer/Owner.

6.2.2 Developer/Owner has the full right, power and authorization to enter into and perform this Agreement and each of the obligations and undertakings of Developer/Owner under this Agreement, and the execution, delivery and performance of this Agreement have been duly authorized and agreed to in compliance with its organizational documents and Arizona law.

6.2.3 All consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.

6.2.4 Developer/Owner will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

ARTICLE 7. GENERAL PROVISIONS.

7.1 Delays or Waivers.

Except as otherwise expressly provided in this Agreement, any delay by any Party in asserting any right or remedy under this Agreement shall not operate as a waiver of any such rights or limit such rights in any way; and any waiver in fact made by such Party with respect to any default by the other Party shall not be considered as a waiver of rights with respect to any other default by the other Party or with respect to the particular default except to the extent specifically waived in writing. It is the intent of the Parties that this provision will enable each Party to avoid the risk of being limited in the exercise of any right or remedy provided in this

Agreement by waiver, laches or otherwise at a time when it may still hope to resolve the problems created by the default involved.

7.2 **Force Majeure**.

Neither Party shall be liable for delay or failure in performance resulting from acts beyond the control of such Party including, but not limited to, acts of God, acts of war or of the public enemy, riots, fire, flood, or other natural disaster, acts of government, strike, walkout, communication line or power failure. Any Party being affected by an event of force majeure shall send a written notice to the other Party as soon as possible after the commencement of the event of force majeure but in no case more than five (5) calendar days after the end of any event of force majeure. Any applicable time period or deadline shall be extended by a period of time equal to the time lost because of any event of force majeure as long as it is documented within ten (10) days after the end of the event of force majeure.

7.3 **Notice of Default & Grace Periods**.

7.3.1 After the occurrence of an event of Default for which the non-defaulting Party wants to avail itself of the remedies in Section 7.4, the non-defaulting Party shall not exercise any such remedies until and unless it has sent a written notice citing the Default and demanding that the Default be cured ("**Notice of Default**"), The non-defaulting Party shall not, thereafter, pursue any remedies outlined in Subsection 7.4 unless and until the Grace Period described in this Section 7.3 has expired and the Default remains uncured at such time.

7.3.2 Upon the receipt of the Notice of Default, the defaulting Party shall diligently and expeditiously cure the Default within the relevant Grace Periods set forth below in Subsections 7.3.2.1 and 7.3.2.2.

7.3.2.1. The defaulting Party shall have a Grace Period of up to ten (10) days after receipt of the Notice of Default to cure monetary Defaults.

7.3.2.2. The defaulting Party shall have a Grace Period of up to thirty (30) days after receipt of the Notice of Default to cure non-monetary Defaults. If, however, a non-monetary Default is of a nature that is not capable of being cured within the thirty (30) day Grace Period, the defaulting Party shall within five (5) days of its receipt of the Notice of Default, notify the non-defaulting Party of its specific plan to cure the Default with a schedule showing interim tasks and the timing for their completion as well as the full curing of the Default ("**Cure Plan**"). The non-defaulting Party shall, within five (5) days of its receipt of the Cure Plan, determine, in its reasonable discretion, its acceptance or rejection of the Cure Plan as well as notify the defaulting Party of its decision to allow the non-monetary Grace Period to be extended beyond the 30 days in accordance with the Cure Plan. If the non-defaulting Party agrees to the Cure Plan and the defaulting Party fails or breaches any obligation or its timing for completing the interim tasks or completion of the Default within the Cure Plan, the non-defaulting Party may notify the defaulting Party of its breach and intent to exercise its remedies for such breach in accordance with Subsection 7.4 before the end of the extended Grace Period and without delay of any additional Grace Period.

7.4 Remedies.

In the event of a Default hereunder and failure by the defaulting Party to timely cure the Default as provided in Section 7.3, the non-defaulting Party shall have all remedies available to it at law or in equity. The rights and remedies of the Parties are cumulative, and the exercise by either Party of any one or more of such rights shall not preclude the exercise by it, at the same or different times, of any other right or remedy for any other Default by the other Party.

7.5 Time of the Essence.

Time shall be of the essence in and of this Agreement and every part hereof. Any extension, waiver or variation of any provision of this Agreement, shall not be deemed to affect this provision and there shall be no implied waiver of this provision.

7.6 Headings & Construction.

The descriptive headings preceding Articles and their subparts are inserted solely for convenience of reference and are not intended as complete or accurate descriptions of the content of such subparts of this Agreement. The division of this Agreement into subparts shall not affect the interpretation of this Agreement. When used herein, the terms "include" or "including" shall mean without limitation by reason of the enumeration. If this Agreement uses the term "day," it shall mean calendar day unless otherwise specified or modified. The use of words in the singular or plural, or referring to a particular gender, shall not limit the scope or exclude the application of any provision of this Agreement to such persons or circumstances as the context otherwise permits. If the last day of any time period stated herein should fall on a Saturday, Sunday, or legal holiday as declared by the City of Chandler, then the duration of such time period shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday, or legal holiday as declared by the City of Chandler. If a cross-reference within any Agreement provision cites a particular article, section or subsection number of this Agreement, it shall be a reference to the specifically referred article, section or subsection and its subparts only.

7.7 Interpretation Among Parts of Agreement.

In the event of any conflict or inconsistency between the terms and conditions in the main body of this Agreement and the terms and conditions in any specifically incorporated materials, the main body of the Agreement will take precedence over the specifically incorporated materials. A conflict among other specifically incorporated materials shall be resolved by the more specific incorporated material on that particular subject over the more general incorporated material, which may mention the particular subject unless the context explicitly requires otherwise.

7.8 Cancellation for Conflict of Interest.

In accordance with A.R.S. § 38-511, Chandler may cancel any contract or agreement, without penalty or obligation, if any person on behalf of Chandler with a financial interest in Developer/Owner or Approved Alternative Use Owner is significantly involved in initiating, negotiating, securing, drafting or creating this Agreement. The cancellation shall be effective in accordance with Section 7.13 unless the notice specifies a later time.

7.9 **Assignment**.

Except as set forth in Sections 4.4 through 4.10, Developer/Owner may assign all or any portion of its rights hereunder to any one or more Persons as provided in this Section 7.9. Except as set forth in Sections 4.4 through 4.10, the Developer/Owner may convey all or any portion of its rights hereunder if, and only if, (i) the corresponding obligations of the Developer/Owner are completely assumed by the assignee of Developer/Owner's rights, the assignee accepts such obligations and has the financial ability and experience, as reasonably determined by Chandler, to perform them, and the obligations are specifically included in the assignment signed by the assignee, or (ii) Developer/Owner assigns to an Affiliate of Developer/Owner, or (iii) Chandler provides its prior written consent to the assignment, which shall not be unreasonably withheld or delayed. Notice of any such assignment and assumption of Developer/Owner's obligations and Chandler's approval shall be reflected in a document that shall be executed by Chandler and Developer/Owner and recorded by Developer/Owner in the land records of Maricopa County, Arizona. Upon the recordation of such document and the assignee's written agreement to assume the obligations under this Agreement corresponding to such assignment, Developer/Owner will be released from the obligations assumed by the assignee. Subject to the provisions of this Section 7.9, the burdens of this Agreement bind and the benefits of this Agreement inure to the Parties hereto and their successors in interest and assigns as provided in A.R.S. § 9-500.05.D, except to the extent an assignment is not authorized in this Section 7.9 and Sections 4.4 through 4.10.

7.10 **Entire Agreement**.

This Agreement and all exhibits, or otherwise specifically incorporated materials, shall constitute the entire agreement between the Parties hereto with respect to the matters covered herein. No other agreements, representations, warranties or other matters, oral or written, purportedly agreed to or represented by or on behalf of Parties by any of their employees or agents, or contained in any sales materials or brochures, shall be deemed to bind the Parties hereto with respect to the subject matter hereof. Each Party acknowledges that it is entering into this Agreement solely based on the representations contained herein.

7.11 **Governing Law**.

This Agreement shall be governed by the laws of the State of Arizona and any disputes between the Parties as to enforcement or performance shall be adjudicated in the State of Arizona.

7.12 **Limited Severability**.

7.12.1 Chandler and Developer/Owner each believes that the execution, delivery, and performance of this Agreement comply with all Applicable Laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring Chandler to do any act in violation of any Applicable Laws, such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a

manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. The Parties further agree, in such circumstances, to do all acts and to execute all amendments, instruments, and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

7.12.2 If the Agreement cannot be retroactively reformed in such a way that it provides essentially the same rights and benefits to the Parties then either Party may terminate the Agreement without further rights or liabilities to the other Party other than those that expressly survive termination.

7.13 **Notices**.

Except as otherwise required by law, any notice, demand or other communication given hereunder, shall be in writing and shall be given by personal delivery or be sent by certified or registered U.S. Mail, return receipt requested, addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this paragraph, or by electronic mail, facsimile machine or by any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), with all postage and other delivery charges prepaid:

To Developer/Owner:	AZGL, LLC c/o Merit Partners, Inc. 6720 N. Scottsdale Road, Suite 210 Scottsdale, AZ 85253 Attn: Kevin Czerwinski Phone: 480-483-0360 Facsimile: 602-381-6830 E-mail: kczerwinski@meritpartnersinc.com
With a copy to:	Withey Morris, PLC 2525 E. Arizona Biltmore Cir, A-212 Phoenix, Arizona 85016 Attn: Michael Withey, Esq. Phone: 602-230-0600 Facsimile: 602-212-1787 E-mail: m@witheymorris.com
To Chandler:	City of Chandler City Manager Office (MS 605) P. O. Box 4008 Chandler, AZ 85244-4008 Attn: Chandler City Manager Phone: 480-782-2210 Facsimile: 480-782-2209 E-mail: Rich.Dlugas@chandleraz.gov

With a copy to: Chandler City Attorney's Office
P. O. Box 4008
Chandler, AZ 84244-4008
Attn: Kay Bigelow
Phone: 480-782-4645
Facsimile: 480-782-4652
E-mail: Kay.Bigelow@chandleraz.gov

All such notices, demands or other communications will (i) if delivered personally or delivered through a same day delivery/courier service be deemed effective upon delivery or refusal to accept delivery by the addressee, and (ii) if delivered by U.S. mail in the manner described above be deemed effective upon the earlier of receipt or three (3) business days after deposit in a post office operated by the United States or with a United States postal officer (in each case regardless of whether such notice, demand or other communication is received by any other person to whom a copy of such notice, demand or other communication is to be delivered pursuant to this paragraph). Any notice sent by a recognized national overnight delivery service shall be deemed effective one (1) Business Day after deposit with such service. Any notice sent by email or facsimile machine shall be deemed effective upon confirmation of the successful transmission by the sender's electronic mail system or facsimile machine. Notwithstanding the foregoing, no payment shall be deemed to be made until actually received in good and available funds by the intended payee.

7.14 Waiver of Right to Trial by Jury.

The Parties expressly covenant and agree that in the event of a dispute arising from this Agreement, each Party waives any right to a trial by jury. In the event of litigation, the Parties agree to submit to a trial before the court.

7.15 Attorneys' Fees.

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

7.16 Recordation.

This Agreement shall be recorded in its entirety in the Official Records of Maricopa County, Arizona within ten (10) days after its Effective Date.

7.17 Amendment.

7.17.1 No change or addition is to be made to this Agreement except by written amendment executed by Chandler and Developer/Owner. Within ten (10) days

after any amendment to this Agreement, such amendment shall be recorded in the Official Records of Maricopa County, Arizona.

7.17.2 If there ever is an amendment to this Agreement, references to "Agreement" or "Development Agreement" shall mean this Agreement as amended by any subsequent, duly processed amendment.

7.17.3 The effective date of any duly processed amendment shall be the date on which the last representative for the Parties executes the Agreement.

7.17.4 If, after the effective date of any amendment(s), the Parties find it necessary to refer to this Agreement in its original, unamended form, they shall refer to it as the "Original Development Agreement." When the Parties mean to refer to any specific amendment to this Agreement which amendment is unmodified by any subsequent amendments, the Parties shall refer to it by the number of the amendment as well as its effective date.

7.18 Further Assurances.

Each Party agrees to perform such other and further acts and to execute and deliver such additional agreements, documents, affidavits, certifications, acknowledgments and instruments as any other Party may reasonably require to consummate, evidence, confirm or carry out the matters contemplated by this Agreement or confirm the status of (i) this Agreement as in full force and effect, and (ii) the performance of the obligations hereunder at any time.

7.19 No Partnerships, 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 Developer/Owner and Chandler. No term or provision of this Agreement is intended to, or shall, be for the benefit of any Person not a party hereto, and no such other Person shall have any right or cause of action hereunder, except for permitted transferees or assignees to the extent that they assume or succeed to the rights and/or obligations of Developer/Owner under this Agreement.

7.20 Individual Nonliability of Chandler Representatives.

No Chandler Council member, Chandler official, representative, agent, attorney or employee shall be personally liable to Developer/Owner or to any successor in interest Developer/Owner, in the event of any default or breach by Chandler or for any amount which may become due to Developer/Owner or its successor, or with respect to any obligation of Chandler under the terms of this Agreement.

7.21 Individual Liability of Developer/Owner Entities.

Notwithstanding anything contained in this Agreement to the contrary, the liability of Developer/Owner under this Agreement shall be limited solely to the assets of Developer/Owner 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, partners, officers or directors

of the general partners or members of Developer/Owner; (ii) the shareholders, members or managers or partners of Developer/Owner; or (iii) officers of Developer/Owner.

7.22 Additional Provisions.

Developer/Owner agrees to and does knowingly waive any and all rights to compensation for diminution in value pursuant to A.R.S. § 12-1134 that may now or in the future exist as a result of the approval or performance of, and all conditions, terms and agreements contained in this Agreement.

7.23 Indemnifications, Representations and Warranties Survive.

All representations and warranties contained in this Agreement (and in any instrument delivered by or on behalf of any Party pursuant hereto or in connection with the transactions contemplated hereby) are true on and as of the date so made, will be true in all material respects during the term of this Agreement. In the event that any representation or warranty by a Party is untrue, the other Party shall have all rights and remedies available at law, in equity, or as provided in this Agreement. The provisions of this Agreement wherein a Party has explicitly indemnified the other Party shall survive the expiration or earlier termination of this Agreement.

7.24 Mortgagee Protection.

The Parties agree that this Agreement shall not prevent or limit Developer/Owner, in any manner, at Developer/Owner's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property and Chandler acknowledges that the lender(s) providing such financing may require certain Agreement interpretations and modifications and agrees, from time to time, to meet with Developer/Owner and representatives of such lender(s) to negotiate in good faith any such request for interpretation or modification. Chandler will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. Any mortgagee of a mortgage or a beneficiary of a deed of trust ("Mortgagee") of the Property shall be entitled to the following rights and privileges:

7.24.1 Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any mortgage or deed of trust on the Property made in good faith and for value.

7.24.2 If Chandler timely receives a request from a Mortgagee requesting a copy of any notice of default given to Developer/Owner under the terms of this Agreement, Chandler shall provide a copy of that notice to the Mortgagee within ten days of sending the notice of default to Developer/Owner. The Mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed such party under this Agreement.

7.24.3 Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property, or part thereof, subject to the terms of this

Agreement; provided, however, in no event shall such Mortgagee be liable for any defaults or monetary obligations of Developer/Owner arising prior to acquisition of title to the Property by such Mortgagee, except that any such Mortgagee or its successors or assigns shall not be entitled to a building permit or occupancy certificate until all delinquent and current fees and other monetary obligations due under this Agreement for the Property, or portion thereof, acquired by such Mortgagee have been paid to Chandler.

IN WITNESS WHEREOF, Chandler has caused this Agreement to be duly executed in its name and behalf by its Mayor and Developer/Owner has signed the same, on or as of the day

and year first above written.

CHANDLER:

CITY OF CHANDLER, ARIZONA
an Arizona municipal corporation

By:_____
Jay Tibshraeny, Mayor

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY

STATE OF ARIZONA)
) ss ACKNOWLEDGEMENT
COUNTY of Maricopa)

The foregoing Agreement was acknowledged before me this ____ day of _____, 2013, by _____, Mayor of City of Chandler, Arizona, an Arizona municipal corporation, on behalf of the corporation.

_____
Notary Public

My Commission Expires:_____

DEVELOPER/OWNER:

AZGL, LLC, a Delaware limited liability company

By:_____

Name:_____

Its:_____

STATE OF ARIZONA)
) ss ACKNOWLEDGEMENT
COUNTY of Maricopa)

The foregoing Agreement was acknowledged before me this ____ day of _____, 2013, by _____ (name), _____ (manager/member) on behalf of AZGL, LLC, a Delaware limited liability company.

_____
Notary Public

My Commission Expires: _____

Exhibit A – Legal Description

LOT 2, SECTION 7, TOWNSHIP 2 SOUTH, RANGE 5 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA; EXCEPT THE EAST 50.00 FEET THEREOF, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A BRASS CAP MARKING THE WEST QUARTER CORNER OF SAID SECTION 7, FROM WHICH A CITY OF CHANDLER BRASS CAP FLUSH MARKING THE NORTHWEST CORNER OF SAID SECTION 7 BEARS NORTH 00°41'47" WEST, A DISTANCE OF 2634.93 FEET; THENCE NORTH 00°41'47" WEST, ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 7, A DISTANCE OF 1317.47 FEET TO THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 7, SAID POINT BEING THE NORTHWEST CORNER OF LOT 2;

THENCE NORTH 88°48'20" EAST, ALONG THE NORTH LINE OF SAID LOT 2, A DISTANCE OF 1278.23 FEET TO A POINT 50 FEET WEST OF A CITY OF CHANDLER BRASS CAP FLUSH MARKING THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 7, SAID POINT BEING THE NORTHEAST CORNER OF SAID LOT 2, SAID BRASS CAP FLUSH BEING FOUND ON THE EAST LINE OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 7;

THENCE SOUTH 00°41'46" EAST, PARALLEL WITH AND 50 FEET WEST OF SAID EAST LINE, A DISTANCE OF 1317.60 FEET, TO A POINT ON THE SOUTH LINE OF SAID LOT 2, SAID POINT BEING 50 FEET WEST OF A CITY OF CHANDLER BRASS CAP FLUSH MARKING THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 7, SAID POINT BEING THE SOUTHEAST CORNER OF SAID LOT 2;

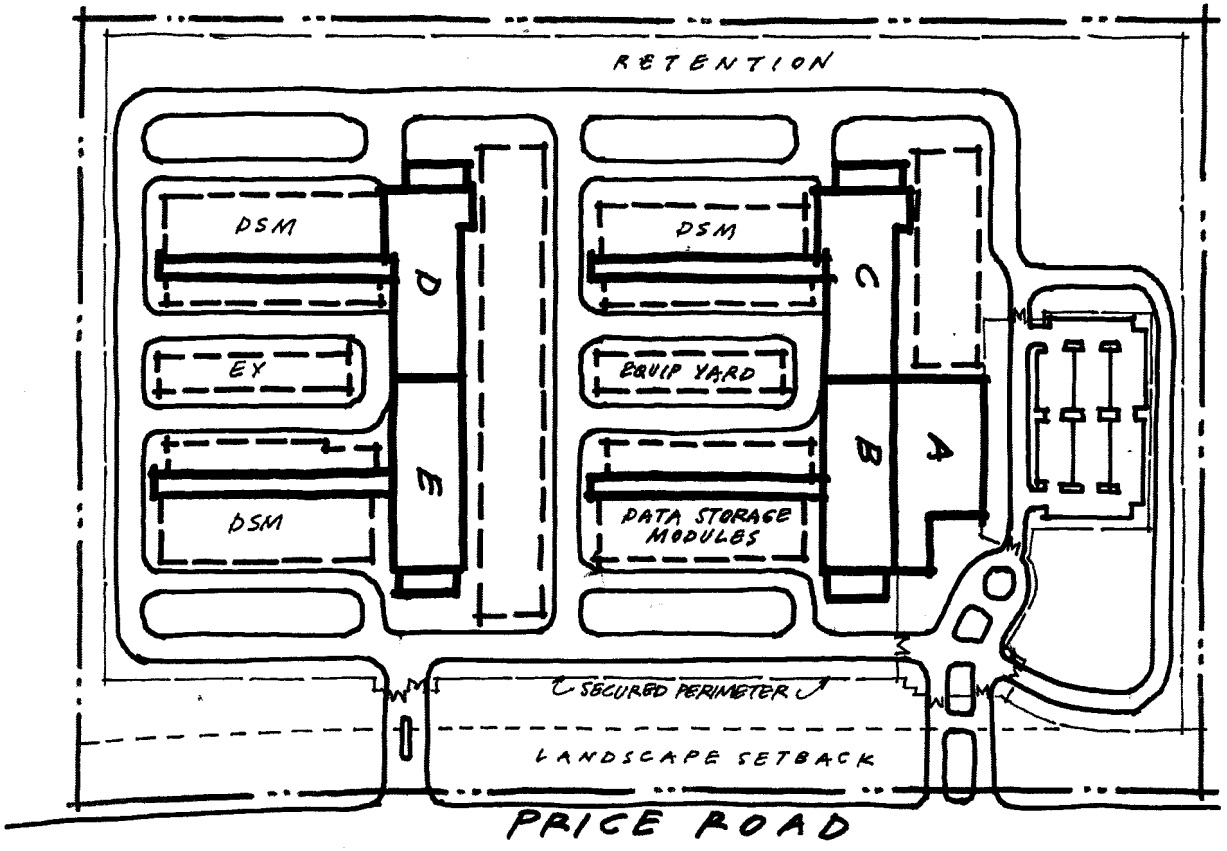
THENCE SOUTH 88°48'41" WEST, ALONG THE SOUTH LINE OF SAID LOT 2, A DISTANCE OF 1278.22 FEET, TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINING 1,684,045 SQ. FT., OR 38.660 ACRES, MORE OR LESS.

Also known as Maricopa County Assessor parcel 303-36-003A

Exhibit B

Conceptual Preliminary Development Plan
for Approved Alternative Use/Phases of Development


RETENTION
DSM
D
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C
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A
DSM
DATA STORAGE MODULES
SECURED PERIMETER
LANDSCAPE SETBACK
PRICE ROAD

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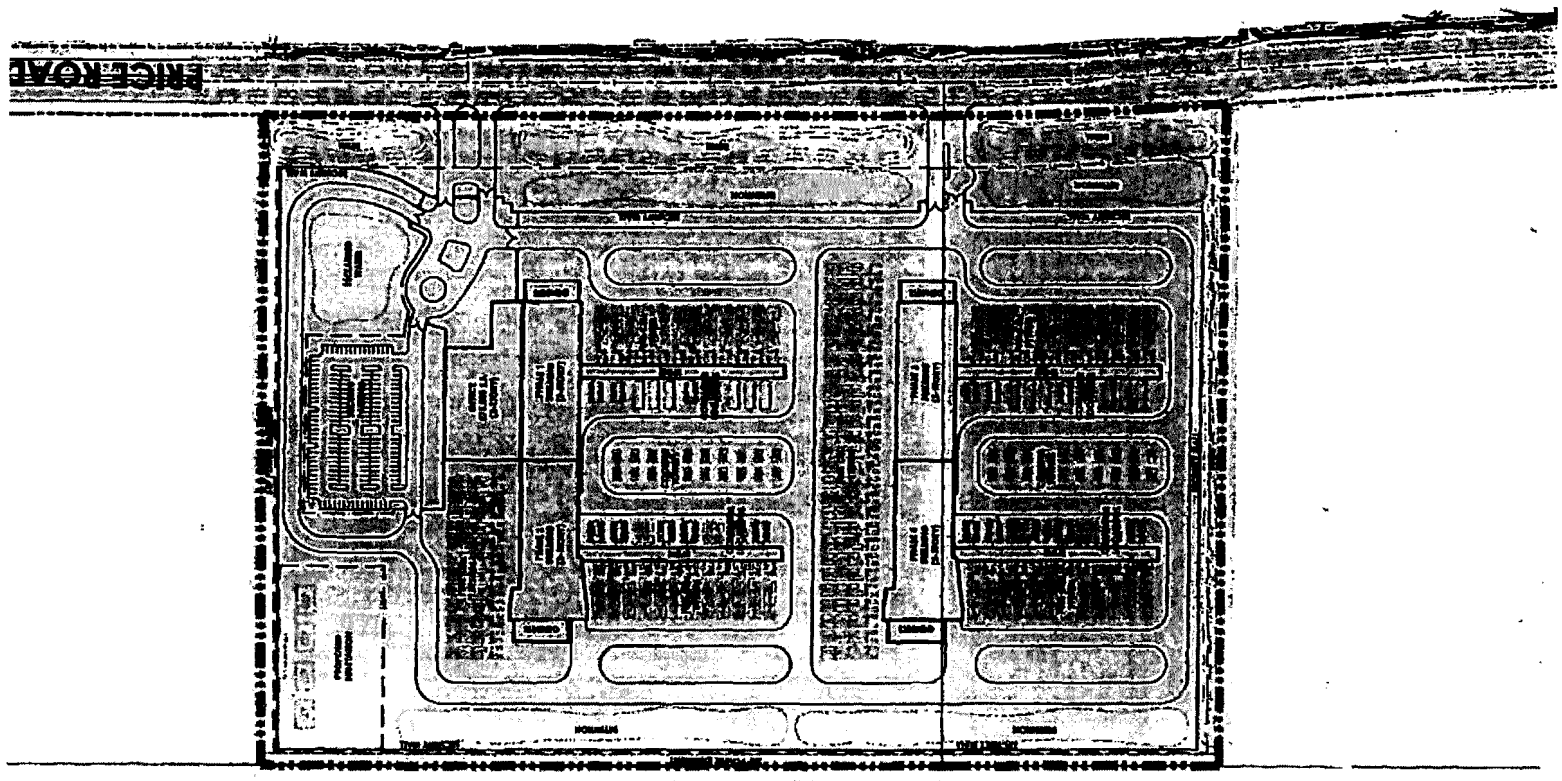

APN: 303-36-003A

APN: 303-36-007G