

#12

FEB 12 2015



Chandler • Arizona
Where Values Make The Difference

MEMORANDUM **Planning Division – CC Memo 15-020**

DATE: FEBRUARY 12, 2015

TO: MAYOR AND COUNCIL

THRU: RICH DLUGAS, CITY MANAGER *RD*
 MARSHA REED, ASSISTANT CITY MANAGER *MR*

FROM: JEFF KURTZ, PLANNING ADMINSTRATOR *JK*

SUBJECT: DEVELOPMENT AGREEMENT FOR CONTINUUM PHASE 2 WITH
 SWVP OCOTILLO LAND LLC

RECOMMENDATION

Staff recommends City Council adopt Resolution No. 4810 authorizing the execution of a Development Agreement with SWVP Ocotillo Land LLC and authorize the Mayor to sign the Development Agreement as approved by the City Attorney.

BACKGROUND/DISCUSSION

Southwest Value Partners is in the process of developing an expansion to the Continuum Science and Technology Park located at the northwest corner of Queen Creek and Dobson roads. The existing portion of Continuum is covered by a companion Development Agreement as part of that project's development entitlements. Since the Continuum project is being expanded, this Development Agreement duplicates a portion of the original project's Development Agreement provisions in order to have the two parcels operate under the same development entitlements.

The Development Agreement has no monetary provisions as a part of the agreement. The City obligations under the Development Agreement include the cooperation, but not an obligation, to possibly help cause the project to be designated as part of the Foreign Trade Zone as a means of attracting businesses to the project. Additionally, the Development Agreement includes a provision for an expedited Plan Review process and not requiring any additional dedications or exactions not otherwise a part of the property's PAD zoning. Lastly, the Development Agreement reinforces the planned good faith mutual work efforts to ensure, if it were to occur, the review of all State of Arizona Enterprise Zone applications related to the property.

FINANCIAL IMPLICATIONS

There are no financial implications affecting the City.

PROPOSED MOTION

Move City Council to adopt Resolution No. 4810 authorizing the execution of a Development Agreement with SWVP Ocotillo Land LLC and authorize the Mayor to sign the Development Agreement as approved by the City Attorney.

Attachments: Resolution No. 4810
Development Agreement

RESOLUTION NO. 4810

A RESOLUTION OF THE CITY OF CHANDLER, ARIZONA, APPROVING THE TERMS AND CONDITIONS OF THE CONTINUUM PHASE 2 DEVELOPMENT AGREEMENT; AUTHORIZING EXECUTION OF THE DEVELOPMENT AGREEMENT BY THE MAYOR OF ALL SUBSEQUENT DOCUMENTATION NECESSARY TO EFFECTUATE THE DEVELOPMENT AGREEMENT.

WHEREAS, the Mayor and Council approved rezoning the real property as described in the legal descriptions for the property incorporated into the Continuum Phase 2 Agreement (the "Development Agreement") as Exhibit A; and

WHEREAS, the developer and owners have agreed to such development obligations and rights as set forth in the Agreement, attached hereto as Exhibit A and incorporated herein by this reference; and Council;

NOW, THEREFORE, BE IT RESOLVED as follows:

SECTION 1. APPROVAL OF DEVELOPMENT AGREEMENT. The Mayor and Council approve the terms and conditions in the Development Agreement and authorize execution of same by Mayor.

PASSED AND ADOPTED by the Mayor and City Council of the City of Chandler, Arizona, this 12th day of February 2015.

ATTEST:

CITY CLERK

MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 4810 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the 12th day of February 2015, and that a quorum was present.

CITYCLERK

APPROVED AS TO FORM:

CITY ATTORNEY *Ksm*

WHEN RECORDED RETURN TO:

City Clerk
City of Chandler

DEVELOPMENT AGREEMENT

CITY OF CHANDLER, ARIZONA,
an Arizona municipal corporation

AND

SWVP OCOTILLO LAND LLC,
an Arizona limited liability corporation

February __, 2015

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "**Agreement**") is made as of the ___ day of February, 2015, by and between the CITY OF CHANDLER, ARIZONA, an Arizona municipal corporation (the "**City**"), and SWVP OCOTILLO LAND, LLC, an Arizona limited liability corporation (the "**Developer**"). The City and the Developer are sometimes referred to in this Agreement collectively as the "**Parties**," or individually as a "**Party**."

RECITALS

A. The Developer owns that certain real property located south of the northwest corner of the intersection of Dobson Road and Queen Creek Road in Chandler, Arizona, which consists of approximately 34 acres and is more particularly described on Exhibit A (the "**Parcel**").

B. The Parcel adjoins that certain real property, commonly known as the "Continuum" project, that is the subject of that certain Development Agreement by and between the City and CCI-B Chandler II, LLC, a Delaware limited liability company, dated the 27th day of May, 2010, and recorded in the Official Records of Maricopa County as Document No. 2010-0526643.

C. It is the desire and current intention of the Developer to develop the Parcel as an extension of the Continuum science and technology office park (the "**Project**").

D. The City acknowledges that the development of the Parcel is appropriate and that such development will generate employment opportunities within the City which would not be generated within the same time frame without such development. The City also believes that the development of the Parcel in conformity with the Planned Area Development Plan (the "**PAD**") and a Preliminary Development Plan for the Project (the "**PDP**") approved by the City will generate non-monetary benefits for the City. Therefore, the City wishes to facilitate and encourage the development of the Parcel by the Developer by, among other things, providing the City undertakings described in this Agreement, subject to the terms and conditions of this Agreement.

E. The Parties understand and acknowledge that this Agreement is a "Development Agreement" within the meaning of, and entered into pursuant to the terms of, A.R.S. § 9-500.05, and that the terms of this Agreement shall constitute covenants running with the Parcel as more fully described in this Agreement.

AGREEMENTS

Now, therefore, in consideration of the foregoing recitals and representations and the mutual promises contained in this Agreement, the Parties agree as follows:

1. **Definitions.**

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

"**Affiliate**", as applied to any person, means any person directly or indirectly controlling, controlled by, or under common control with, that person or a blood relative or spouse of such person, if such person is a natural person. For the purposes of this definition: (i) "**control**" (including with correlative meaning, the terms "controlling," "controlled by" and "under common control"), 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; and (ii) "**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.

"**Agreement**" means this Agreement, as amended and restated or supplemented in writing from time to time, and includes all attached exhibits and schedules. References to Sections or Exhibits are to this Agreement unless otherwise qualified. The Recitals set forth in Paragraphs A through E, inclusive, are incorporated by reference and form a part of this Agreement but are not intended to expand the scope, number or nature of the City's or Developer's obligations beyond those expressly set forth in the numbered Sections of this Agreement.

"**Applicable Laws**" means as defined in Section 2.2.1.

"**A.R.S.**" means the Arizona Revised Statutes as now or later enacted or amended.

"**City**" means the Party designated as City on the first page of this Agreement.

"**City Representative**" means as defined in Section 8.1.

"**Default**" or "**Event of Default**" means one or more of the events described in Section 7.1 or 7.2; provided, however, that such events shall not give rise to any remedy until effect has been given to all grace periods, cure periods and/or periods of Force Majeure provided for in this Agreement and that in any event the available remedies shall be limited to those set forth in Section 7.4.

"**Developer**" means the Party designated as the Developer on the first page of this Agreement, and its successors and assigns that conform with the requirements of this Agreement.

"**Developer Representative**" means as defined in Section 8.1.

"**Effective Date**" means the date first set forth above as of which this Agreement has been adopted and approved by the City Council and executed by duly authorized representatives of the City and the Developer.

"**Force Majeure**" means as defined in Section 7.6.

"**Lender**" or "**Lenders**" means as defined in Section 9.22.

"**Parcel**" means as defined in Recital A.

"**Party**" or "**Parties**" means as designated on the first page of this Agreement.

"**PAD**" means as defined in Recital D.

"**PDP**" means as defined in Recital D.

"**Project**" means as defined in Recital C.

"**Restricted Period**" means as defined in Section 2.2.2.

"**Term**" means the period commencing on the Effective Date and terminating on the twentieth (20th) anniversary of the Effective Date.

"**Third Party**" means any person other than a Party or an Affiliate of any Party.

2. **Scope and Regulation of Development.**

2.1 **Development Plan.**

2.1.1 **PAD and PDP.** Development of the Parcel shall be in accordance with the PAD and PDP, which shall set forth the basic land uses, densities and intensities for development of the Parcel, as such may be amended from time to time in accordance with Section 2.1.4. Development of the Parcel shall be deemed "vested" in accordance with the approved PAD and PDP, which shall set forth the basic land uses, heights, densities and intensities for development of the Parcel, as such may be amended from time to time. City shall not initiate any amendments to the approved PAD and PDP during the Term of this Agreement, except as permitted pursuant to Section 2.2.3 below.

2.1.2 **No Further City Action Required.** The City agrees that upon the ordinance approving the PAD and PDP becoming final no further legislative action by the City shall be required for the Developer and/or its successors and assigns to develop the Project in accordance with the PAD and the PDP.

2.1.3 **Cooperation in the Implementation of the PAD and PDP.** The Developer and the City shall work together using reasonable efforts throughout the development stages to resolve any City comments regarding implementation of the PAD and PDP. Subject to Applicable Laws, the City and the Developer will cooperate reasonably in processing the approval or issuance of any permits, plans, specifications, plats or other development approvals requested by the Developer in connection with development of the Project. All decisions by the City regarding Developer's compliance with this Development Agreement and the PAD and PDP shall be made by the City Representative (as designated in Section 8.1), provided that the Developer shall have the right to appeal any such decision to the City Council.

2.1.4 Amendments. The City and the Developer acknowledge that amendments to the PAD and PDP may be necessary from time to time to reflect changes in market conditions and development financing and/or to meet the new requirements of one or more of the potential users of any part of the Parcel. If and when the City and the Developer find that changes or adjustments are necessary or appropriate, they shall, unless otherwise required by Applicable Laws as described in Section 2.2, effectuate minor changes or adjustments through administrative amendments approved by the City's Zoning Administrator which, after execution, shall be attached as an addendum to and become part of the PAD and PDP, and which may be further changed and amended from time to time, with the approval of the City and the Developer. Unless otherwise required by Applicable Laws, no such minor amendment shall require notice or hearing. All major changes or amendments shall be subject to review and approval by the City Council. A material increase in the density or intensity of use of the Parcel is an example of a major change. The determination of the City's Zoning Administrator as to whether an amendment is major or minor and as to whether Applicable Laws permit such amendment to be processed administratively shall be final and binding upon the Parties. The Parties shall cooperate in good faith to agree upon, and use reasonable best efforts to process, any minor or major amendments to the PAD and PDP.

2.2 Development Regulation.

2.2.1 Applicable Laws. Subject to the provisions of Section 2.2.3 below, the City agrees that, in order to allow Developer and its successors and assigns to rely upon the continued validity of the provisions of the City's land use and development ordinances ("the **Applicable Laws**") in effect upon the date of this Agreement regulating the development of the Parcel, Developer has the right to develop the Parcel in accordance with the approved PAD and PDP during the Term of this Agreement.

2.2.2 Restricted Period. The Parties acknowledge and agree that the anticipated development of the Parcel will likely occur over a period of years. Until the twentieth (20th) anniversary of the Effective Date (the "**Restricted Period**"), no City moratorium, or future ordinance, resolution or other land use rule or regulation imposing a limitation to the rate, timing or sequencing of the development of the Parcel and affecting all or any portion of the Parcel shall apply to or govern the development of the Parcel.

2.2.3 Permissible Exceptions. Notwithstanding the provisions of Section 2.2.1), the City may at any time enact the following Applicable Laws, and take the following actions, which shall be applicable to and binding on the development of the Parcel:

(a) Future land use ordinances, rules, regulations, permit requirements, and other requirements and official policies of the City which are consistent with the express provisions of the Development Agreement and not contrary to the PAD and PDP; provided that such future land use ordinances, rules, regulations, permit requirements and other requirements and official policies shall not materially impair Developer's ability to develop the Project as contemplated in the PAD and PDP and are uniformly applied throughout the City;

(b) Other future land use ordinances, rules, regulations, permit requirements, and other requirements and official policies of the City which Developer may agree in writing apply to the development of the Project;

(c) Future land use, safety and construction ordinances, rules, regulations, permit requirements and other requirements and official policies of the City enacted as necessary to comply with mandatory requirements imposed on the City by county, state or federal laws and regulations, court decisions, and other similar superior external authorities beyond the control of the City;

(d) Future updates of, and amendments to, existing building, plumbing, mechanical, electrical, dangerous buildings, drainage, and similar construction and safety related codes, such as the International Building Code, which updates and amendments are generated by a nationally recognized construction/safety organization, such as the International Code Council, or by the county, state or federal governments, and local amendments to such codes;

(e) Amendments to such construction and safety codes generated by the City for the purposes of conforming such codes to the conditions generally existing in the City; and

(f) Future imposition of taxes or City Development Fees (as defined in A.R.S. § 9-463.05), so long as such fees or financing mechanisms are uniformly imposed or charged by the City to all similarly situated persons and entities.

3. **City Obligations.**

3.1 **Cooperation with Foreign Trade Zone.** The City agrees to cooperate with the Developer in causing all or part of the Project to be designated a Foreign Trade Zone as a means of attracting businesses to the Project. The City shall not be responsible for individual company Foreign Trade Zone application fees, participation, maintenance or any other costs that may be required or incurred in connection with such designation or qualification. The designation of the Project as a Foreign Trade Zone is not a condition to Developer's obligations under the Development Agreement and is not a covenant or obligation of either City or Developer.

3.2 **Expedited Plan Review for Project** The City agrees that it will review plans for private development within the Parcel, including new and renovated buildings, within two (2) weeks of submission by Developer of complete plans, but approval of such plans shall be granted or withheld on the basis of the most current standards and requirements.

3.3 **No Other Dedications or Exactions.** Except as expressly set forth herein (or on final PAD and PDP documents), the City shall not require any other dedications or exactions in connection with the development of the Project in accordance with the PAD and PDP. Without limiting the generality of the foregoing, the Project shall not be included in any special improvement district or community facilities district, or similar special taxing district without the Developer's consent. Notwithstanding the foregoing, the Developer and/or its

successors shall be obligated to pay the City's regular development fees, impact fees and similar items so long as such fees are applied consistently to all developments within the City.

3.4 Enterprise Zone. The City recognizes that the Project is currently located in an approved State of Arizona Enterprise Zone and will provide good faith efforts to work with the Arizona Commerce Authority, or its successor entity, to ensure timely review of all Enterprise Zone applications. Although the Project is currently located in an approved Enterprise Zone, the City does not guarantee the program or future approvals of Zone applications, and such approvals are not a condition of the obligations of the Parties under the Development Agreement.

4. **Indemnity; Risk of Loss.**

4.1 Indemnity by the Developer. The Developer shall pay, defend, indemnify and hold harmless the City and its City Council members, officers and employees for, from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including attorneys fees, experts' fees and court costs associated) which arise from or relate in any way to any act or omission by the Developer, or its employees, contractors, subcontractors, agents or representatives, undertaken in fulfillment of the Developer's obligations under this Agreement; provided however, that the provisions of this Section 4.1 shall not apply to loss or damage or claims which are attributable solely to acts or omissions of the City, its agents, employees, contractors, subcontractors or representatives, and the Developer shall have no defense obligation in any instance in which a claim is asserted based solely upon an act or omissions of the City, its employees, contractors, subcontractors, agents or representatives. The foregoing indemnity obligations of the Developer shall survive the expiration or termination of this Agreement for a period equal to the applicable statute of limitations period.

4.2 Indemnity by the City. The City shall pay, defend, indemnify and hold harmless the Developer and its officers, members and employees for, from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including attorneys fees, experts' fees and court costs associated) which arise from or relate in any way to any act or omission by the City, or its employees, contractors, subcontractors, agents or representatives, undertaken in fulfillment of the City's obligations under this Agreement; provided however, that the provisions of this Section 4.2 shall not apply to loss or damage or claims which are attributable solely to acts or omissions of the Developer, its agents, employees, contractors, subcontractors or representatives, and the Developer shall have no defense obligation in any instance in which a claim is asserted based solely upon an act or omissions of the Developer, its employees, contractors, subcontractors, agents or representatives. The foregoing indemnity obligations of the City shall survive the expiration or termination of this Agreement for a period equal to the applicable statute of limitations period.

5. **City Representations.** The City represents and warrants to the Developer that:

5.1 The City's execution and delivery of this Agreement have been duly authorized and agreed to in compliance with the requirements of the Chandler City Code.

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

5.3 The City will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to evidence and implement this Agreement.

5.4 The execution and delivery of this Agreement by the City is not prohibited by, and does not conflict with, any other agreements, instruments or judgments or decrees to which the City is a party or is otherwise subject.

5.5 The City has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

6. **Developer Representations.** The Developer represents and warrants to the City that:

6.1 The Developer has the full right, power and authorization to enter into this Agreement and to perform its obligations and undertakings under this Agreement, and the execution, delivery and performance of this Agreement by the Developer has been duly authorized and agreed to in compliance with the organizational documents of Developer.

6.2 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.

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

6.4 As of the Effective Date, the Developer knows of no litigation, proceeding or investigation pending or threatened against or affecting the Developer, which could have a material adverse affect on the Developer's performance under this Agreement that has not been disclosed in writing to the City.

6.5 This Agreement (and each undertaking of the Developer contained herein) constitutes a valid, binding and enforceable obligation of the Developer, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity. The Developer will, at its sole cost and expense, defend the validity and enforceability of this Agreement and each of its terms in the event of any proceeding or litigation which challenges the validity or enforceability of any provision of this Agreement or the authority of the Developer or the City to enter into or perform any provision under this Agreement and shall indemnify the City against any cost, expense, liability or judgment (including attorneys fees, court costs and expert witnesses) incurred by the City in connection with any such litigation or proceeding. The severability and reformation provisions of Section 9.2 shall apply in the event of any successful challenge to this Agreement.

6.6 The execution, delivery and performance of this Agreement by the Developer is not prohibited by, and does not conflict with, any other agreements, instruments, judgments or decrees to which the Developer is a party or to which the Developer is otherwise subject.

6.7 The Developer has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement other than normal costs of conducting business and costs of professional services such as the services of architects, engineers and attorneys.

6.8 The Developer has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

7. **Events of Default; Remedies.**

7.1 Events of Default by the Developer. Default or an Event of Default by the Developer under this Agreement shall mean one or more of the following:

(a) Any representation or warranty made in this Agreement by the Developer was materially inaccurate when made or shall prove to be materially inaccurate during the Term;

(b) The Developer fails to observe or perform any other material covenant, obligation or agreement required of it under this Agreement.

7.2 Events of Default by the City. Default or an Event of Default by the City under this Agreement shall mean one or more of the following:

(a) Any representation or warranty made in this Agreement by the City was materially inaccurate when made or shall prove to be materially inaccurate during the Term;

(b) The City fails to observe or perform any other material covenant, obligation or agreement required of it under this Agreement.

7.3 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 (or twenty (20) days in the event of a monetary default) after receipt of such notice, or, if such Default is of a nature that is not capable of being cured within thirty (30) days shall be commenced within such period and diligently pursued to completion.

7.4 Remedies on Default. Whenever any Event of Default occurs and is not cured (or cure undertaken) in accordance with Section 7.3 of this Agreement, the non-defaulting Party has all remedies available at law or equity.

7.5 Delays; 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 non-defaulting 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.

7.6 Force Majeure. Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, or earthquakes.

7.6 Rights and Remedies Cumulative. 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.

8. Cooperation and Alternative Dispute Resolution.

8.1 Representatives. To further the cooperation of the Parties in implementing this Agreement, the City and the Developer each shall designate and appoint a representative to act as a liaison between the City and its various departments and the Developer. The initial representative for the City shall be its Director of Economic Development as designated by the City Manager from time to time (the "**City Representative**") and the initial representative for the Developer shall be its Project Manager, as identified by the Developer from time to time (the "**Developer Representative**"). The City and the Developer Representatives shall be available at all reasonable times to discuss and review the performance of the Parties and the development of the Parcel.

8.2 Impasse. If at any time the Developer believes an impasse has been reached with the City staff on any issue affecting the Parcel which is not an Event of Default, the Developer shall have the right to immediately appeal to the City Representative for an expedited decision pursuant to this Section 8.2. If the issue on which an impasse is reached is an issue where a final decision can be reached by the City staff, the City Representative shall give the Developer a final administrative decision within seven (7) days after the Developer's request for an expedited decision. If the issue on which an impasse has been reached is one where a final decision requires action by the City Council, the City Representative shall request a City Council hearing on the issue to take place within sixty (60) days after the Developer's request for an expedited decision; provided, however, that if the issue is appropriate for review by the City's Planning and Zoning Commission, the matter shall be submitted to the Planning and Zoning Commission within thirty (30) days, and then to the City Council at its first meeting following the Planning and Zoning Commission hearing and the applicable public notice period. Both the City and the Developer agree to continue to use reasonable good faith efforts to resolve any impasse pending such expedited decision.

9. **Miscellaneous Provisions.**

9.1 **Governing Law; Choice of Forum.** This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa (or, as may be appropriate, in the Justice Courts of Maricopa County, Arizona, or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section 9.1.

9.2 **Limited Severability.** In the event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring the City to do any act in violation of any Applicable Laws, constitutional provision, law, regulation or City code), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect.

9.3 **Construction.** The terms and provisions of this Agreement represent the results of negotiations between the Parties, each of which has been or has had the opportunity to be represented by counsel of its own choosing, and none of which has acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings, and each Party hereby waives the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Agreement that ambiguous or conflicting terms or provisions contained in this Agreement shall be interpreted or construed against the Party who prepared or whose attorney prepared the executed Agreement or any earlier draft of the same.

9.4 **Notices.**

9.4.1 **Addresses.** Except as otherwise required by law, any notice required or permitted under this Agreement shall be in writing and shall be given by personal delivery, or by deposit in the United States mail, certified or registered, return receipt requested, postage prepaid, 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 9.4.1, or by telecopy facsimile machine, or by any nationally recognized express or overnight delivery service (e.g. Federal Express or UPS), delivery charges prepaid:

If to the City:	City of Chandler Economic Development Department 175 South Arizona Avenue Chandler, AZ 85225 Attention: Economic Development Director Telephone: (480) 782-3035 Facsimile: (480) 782-3040
-----------------	---

With a copy to: City of Chandler
City Attorney
P. O. Box 4008, MS 602
Chandler, Arizona 85244-4008
Attention: Kay Bigelow
Telephone: (480) 782-4640
Facsimile: (480) 782-4652

If to the Developer: SWVP OCOTILLO LAND, LLC
7600 E. Doubletree Ranch Rd, Ste 130
Scottsdale, AZ 85258
Attention: Justin Merritt
Telephone: (480) 766-6763
Facsimile: (858) 480-2900

With a copy to: Withey & Morris
2525 E. Arizona Biltmore Circle
Suite A-212
Phoenix, AZ 85016-2133
Attn: Mike Withey
Telephone: (602) 230-0600
Facsimile: (602) 212-1787

9.4.2 Effective Date of Notices. Any notice sent by United States Postal Service certified or registered mail shall be deemed to be effective the earlier of the actual delivery, or three (3) business days after deposit in a post office operated by the United States Postal Service. 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 personally delivered or delivered through a same-day delivery/courier service shall be deemed effective upon its receipt or refusal to accept receipt by the addressee. Any notice sent by telecopy facsimile machine shall be deemed effective upon confirmation of the successful transmission by the sender's telecopy facsimile machine. Any Party may designate a different person or entity or change the place to which any notice shall be given as provided in this Section 9.4.

9.5 Development Rights. Subject to Section 2.2, the City agrees that, for a period of twenty (20) years from the effective date of this Agreement, the Developer and its successors and assigns shall be deemed to have the right to develop the Property in accordance with the PAD and PDP.

9.6 Time of Essence. Time is of the essence of this Agreement and each of its provisions.

9.7 Section Headings. The Section headings contained in this Agreement are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement.

9.8 Attorneys' Fees and Costs. In the event of a breach by any Party and commencement of a subsequent legal action in an appropriate forum, the prevailing Party in any such dispute shall be entitled to reimbursement of its reasonable attorney's fees and court costs, including, but not limited to, its costs of expert witnesses, transportation, lodging and meal costs of the parties and witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental costs of such dispute.

9.9 Waiver. Without limiting the provisions of Section 7.5, the Parties agree that neither the failure nor the delay of any Party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver of such right, remedy, power or privilege, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

9.10 Third Party Beneficiaries. No person or entity shall be a third party beneficiary to this Agreement, except for permitted transferees, assignees, or Lenders under Section 9.22 to the extent that they assume or succeed to the rights and/or obligations of the Developer under this Agreement, and except that the indemnified persons referred to in the indemnification provisions of this Agreement shall be third party beneficiaries of such indemnification provisions.

9.11 Exhibits. Without limiting the provisions of Section 1, the Parties agree that all references to this Agreement include all Exhibits designated in and attached to this Agreement, such Exhibits being incorporated into and made an integral part of this Agreement for all purposes.

9.12 Integration. Except as expressly provided herein, this Agreement constitutes the entire agreement between the Parties with respect to the subject matters hereof and supersedes any prior agreement, understanding, negotiation or representation regarding the subject matters covered by this Agreement.

9.13 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: (a) this Agreement as in full force and effect; and (b) the performance of the obligations under this Agreement at any time during its Term.

9.14 Business Days. If the last day of any time period stated in this Agreement or the date on which any obligation to be performed under this Agreement shall fall on a Saturday, Sunday or legal holiday, then the duration of such time period or the date of performance, as applicable, shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday or legal holiday.

9.15 Consents and Approvals. Wherever this Agreement requires or permits the consent or approval of a Party to any act, document, use or other matter, such consent or approval shall be given or denied by such Party in its reasonable discretion, unless this Agreement expressly provides otherwise.

9.16 Covenants Running With Land; Inurement; Assignment. The covenants, conditions, terms and provisions of this Agreement relating to use of the Parcel shall run with the Parcel and shall be binding upon, and shall inure to the benefit of the Parties and their respective permitted successors and assigns with respect to the Parcel. Wherever the term "Party" or the name of any particular Party is used in this Agreement such term shall include any such Party's permitted successors and assigns. Developer may assign all of its rights, obligations and benefits under this Agreement to another party pursuant to written agreement with assignee; provided, that Developer shall provide the City written notice of such assignment.

9.17 Recordation. Within ten (10) days after this Agreement has been approved by the City and executed by the Parties, the City shall cause this Agreement or a Memorandum of this Agreement to be recorded in the Official Records of Maricopa County, Arizona.

9.18 Amendment. No change or addition is to be made to this Agreement except by written amendment executed by the City and the Developer. Within ten (10) days after any amendment to this Agreement, such amendment shall be recorded in the Official Records of Maricopa County, Arizona.

9.19 Good Faith of Parties. Except where any matter is expressly stated to be in the sole discretion of a Party, in performance of this Agreement or in considering any requested extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily or capriciously and will not unreasonably withhold, delay or condition any requested approval, acknowledgment or consent.

9.20 Survival. The indemnifications provisions of this Agreement shall survive the execution and delivery of this Agreement, the closing of any transaction contemplated herein, and the rescission, cancellation, expiration or termination of this Agreement upon the terms and for the period set forth in each respective Section.

9.21 Rights of Lenders. The City is aware that financing for improvements to be constructed on the Parcel may be provided, in whole or in part, from time to time, by one or more Third Parties (individually a "**Lender**", and collectively the "**Lenders**"). In the event of an Event of Default by the Developer, Developer may provide notices to its Lenders. Upon request by a Lender, the City will enter into a separate nondisturbance agreement with Lenders, consistent with the provisions of this Section 9.22. If a Lender is permitted, under the terms of its nondisturbance agreement with the City to cure the Event of Default and/or to assume the Developer's position with respect to this Agreement, the City agrees to recognize such rights of the Lender and to otherwise permit the Lender to assume all of the benefits, rights and obligations of the Developer under this Agreement. The City shall, at any time upon reasonable request by the Developer, provide to any Lender an estoppel certificate or other document evidencing that this Agreement is in full force and effect and that no Event of Default by the

Developer exists (or, if appropriate, specifying the nature and duration of any existing Event of Default).

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

9.23 Conflict of Interest Statute. This Agreement is subject to, and may be terminated by the City in accordance with, the provisions of A.R.S. §38-511.

[Signatures on Following Pages]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

DEVELOPER

SWVP OCOTILLO LAND LLC, an Arizona limited liability company

By: _____
Name: _____
Title: _____

STATE OF _____)
County of _____) ss.

The foregoing instrument was acknowledged before me this _____ day of February, 2015, by _____, as _____ of SWVP OCOTILLO LAND LLC, an Arizona limited liability company, on behalf of the Company.

Notary Public

My Commission Expires:

CITY

CITY OF CHANDLER, an Arizona municipal corporation

By: _____
Jay Tibshraeny, Mayor

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney *KSM*

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of February, 2015, by Jay Tibshraeny, the Mayor of the City of Chandler, an Arizona municipal corporation.

Notary Public

My Commission Expires:

EXHIBIT A

Legal Description of Parcel

N.W.C. OF DOBSON ROAD & QUEEN CREEK ROAD

LEGAL DESCRIPTION

PARCEL NO. 1:

THAT PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 7, TOWNSHIP 2 SOUTH, RANGE 5 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 7;

THENCE NORTH 89 DEGREES 49 MINUTES 32 SECONDS WEST ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 7, A DISTANCE OF 294.76 FEET (RECORD) 294.15 FEET (MEASURED);

THENCE DEPARTING SAID SOUTH LINE, NORTH 00 DEGREES 10 MINUTES 28 SECONDS WEST 66.95 FEET (RECORD) 66.99 FEET (MEASURED) TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF QUEEN CREEK ROAD, ACCORDING TO BOOK 385 OF MAPS, PAGE 25, RECORDS OF MARICOPA COUNTY, ARIZONA;

THENCE SOUTH 52 DEGREES 10 MINUTES 28 SECONDS WEST ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 3.16 FEET (RECORD) 3.23 FEET (MEASURED) TO THE **POINT OF BEGINNING**;

THENCE CONTINUING ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, NORTH 89 DEGREES 49 MINUTES 32 SECONDS WEST 535.75 FEET;

THENCE DEPARTING SAID NORTHERLY RIGHT-OF-WAY LINE, NORTH 00 DEGREES 10 MINUTES 28 SECONDS WEST 710.00 FEET (RECORD) 710.01 FEET (MEASURED);

THENCE SOUTH 89 DEGREES 49 MINUTES 32 SECONDS EAST, PARALLEL WITH AND 775.00 FEET NORTH OF THE SOUTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 7, A DISTANCE OF 748.11 FEET (RECORD) 752.40 FEET (MEASURED) TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF DOBSON ROAD, ACCORDING TO BOOK 402 OF MAPS, PAGE 50, RECORDS OF MARICOPA COUNTY, ARIZONA;

THENCE SOUTH 14 DEGREES 10 MINUTES 28 SECONDS WEST ALONG SAID WESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 348.73 FEET;

THENCE CONTINUING ALONG SAID WESTERLY RIGHT-OF-WAY LINE, SOUTH 25 DEGREES 29 MINUTES 03 SECONDS WEST, A DISTANCE OF 50.99 FEET;

THENCE CONTINUING ALONG SAID WESTERLY RIGHT-OF-WAY LINE, SOUTH 14 DEGREES 10 MINUTES 28 SECONDS WEST, A DISTANCE OF 300.20 FEET;

THENCE SOUTH 52 DEGREES 10 MINUTES 28 SECONDS WEST, A DISTANCE OF 39.40 FEET (RECORD) 39.39 FEET (MEASURED);

THENCE SOUTH 00 DEGREES 10 MINUTES 28 SECONDS WEST, A DISTANCE OF 8.05 FEET (RECORD) 8.01 FEET (MEASURED) TO THE **POINT OF BEGINNING**.

PARCEL NO. 2:

THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 7, TOWNSHIP 2 SOUTH, RANGE 5 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA;

EXCEPT THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER;

THENCE NORTH 89 DEGREES 49 MINUTES 32 SECONDS WEST, 294.76 FEET (RECORD) 294.15 FEET (MEASURED) ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER;

THENCE NORTH 00 DEGREES 10 MINUTES 28 SECONDS EAST, 75.00 FEET;

THENCE NORTH 52 DEGREES 10 MINUTES 28 SECONDS EAST, 39.40 FEET (RECORD) 39.39 FEET (MEASURED);

THENCE NORTH 14 DEGREES 10 MINUTES 28 SECONDS EAST, 300.20 FEET;

THENCE NORTH 25 DEGREES 29 MINUTES 03 SECONDS EAST, 50.99 FEET;

THENCE NORTH 14 DEGREES 10 MINUTES 28 SECONDS EAST 589.89 FEET (RECORD) 589.90 FEET (MEASURED) TO THE BEGINNING OF A TANGENT CURVE CONCAVE WEST, HAVING A RADIUS OF 1135.00 FEET;

THENCE NORTH ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 13 DEGREES 40 MINUTES 21 SECONDS (RECORD) 13 DEGREES 40 MINUTES 28 SECONDS (MEASURED), A DISTANCE OF 270.84 FEET (RECORD) 270.88 FEET

(MEASURED) TO A PORTION OF THE EAST LINE OF SAID SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER;

THENCE SOUTH 00 DEGREES 29 MINUTES 38 SECONDS WEST 1277.11 FEET (RECORD) SOUTH 00 DEGREES 30 MINUTES 00 SECONDS WEST 1277.16 FEET (MEASURED) ALONG SAID EAST LINE TO THE **POINT OF BEGINNING**; AND

EXCEPT COMMENCING AT THE SOUTHEAST CORNER OF SAID SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER;

THENCE NORTH 89 DEGREES 49 MINUTES 32 SECONDS WEST 294.76 FEET (RECORD) 294.15 FEET (MEASURED) ALONG THE SOUTH LINE OF SAID SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER TO THE **POINT OF BEGINNING**;

THENCE CONTINUING ALONG SAID SOUTH LINE NORTH 89 DEGREES 49 MINUTES 32 SECONDS WEST 1109.99 FEET (RECORD) 1026.86 FEET (MEASURED) TO THE SOUTHWEST CORNER OF SAID SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER;

THENCE NORTH 00 DEGREES 32 MINUTES 10 SECONDS EAST (RECORD) NORTH 00 DEGREES 32 MINUTES 23 SECONDS EAST (MEASURED) 65.00 FEET ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER;

THENCE SOUTH 89 DEGREES 49 MINUTES 32 SECONDS EAST PARALLEL WITH AND 65.00 FEET NORTH OF THE SOUTH LINE OF SAID SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER A DISTANCE OF 1023.50 FEET (RECORD) 1023.49 FEET (MEASURED);

THENCE NORTH 52 DEGREES 10 MINUTES 28 SECONDS EAST, 3.16 FEET (RECORD) 3.23 FEET (MEASURED);

THENCE SOUTH 00 DEGREES 10 MINUTES 28 SECONDS WEST 66.95 FEET (RECORD) 66.99 FEET (MEASURED) TO THE **POINT OF BEGINNING**; AND

EXCEPT COMMENCING AT THE SOUTHEAST CORNER OF SAID SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER;

THENCE NORTH 89 DEGREES 49 MINUTES 32 SECONDS WEST ALONG THE SOUTH LINE OF SAID SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER A DISTANCE OF 294.76 FEET (RECORD) 294.15 FEET (MEASURED);

THENCE DEPARTING SAID SOUTH LINE NORTH 00 DEGREES 10 MINUTES 28 SECONDS WEST A DISTANCE OF 66.95 FEET (RECORD) 66.99 FEET (MEASURED) TO THE NORTHERLY RIGHT OF WAY LINE OF QUEEN CREEK

ROAD AS SHOWN UPON THE MAP OF DEDICATION FOR CLEMENTE RANCH-QUEEN CREEK ROAD ACCORDING TO BOOK 385 OF MAPS, PAGE 25, RECORDS OF MARICOPA COUNTY, ARIZONA, TO THE **POINT OF BEGINNING**;

THENCE SOUTH 52 DEGREES 10 MINUTES 28 SECONDS WEST ALONG SAID NORTHERLY RIGHT OF WAY A DISTANCE OF 3.16 FEET (RECORD) 3.23 FEET (MEASURED);

THENCE CONTINUING ALONG SAID NORTHERLY RIGHT OF WAY NORTH 89 DEGREES 49 MINUTES 32 SECONDS WEST A DISTANCE OF 535.75 FEET;

THENCE DEPARTING SAID NORTHERLY RIGHT OF WAY NORTH 00 DEGREES 10 MINUTES 28 SECONDS WEST A DISTANCE OF 710.00 FEET (RECORD) 710.01 FEET (MEASURED);

THENCE SOUTH 89 DEGREES 49 MINUTES 32 SECONDS EAST, PARALLEL WITH AND 775.00 FEET NORTH OF SAID SOUTH LINE, A DISTANCE OF 748.11 FEET (RECORD) 752.40 FEET (MEASURED) TO THE WESTERLY RIGHT OF WAY LINE OF DOBSON ROAD ACCORDING TO BOOK 402 OF MAPS, PAGE 50, RECORDS OF MARICOPA COUNTY, ARIZONA;

THENCE SOUTH 14 DEGREES 10 MINUTES 28 SECONDS WEST ALONG SAID WESTERLY RIGHT OF WAY A DISTANCE OF 348.73 FEET;

THENCE CONTINUING ALONG SAID WESTERLY RIGHT OF WAY SOUTH 25 DEGREES 29 MINUTES 03 SECONDS WEST A DISTANCE OF 50.99 FEET;

THENCE CONTINUING ALONG SAID WESTERLY RIGHT OF WAY SOUTH 14 DEGREES 10 MINUTES 28 SECONDS WEST A DISTANCE OF 300.20 FEET;

THENCE CONTINUING ALONG SAID WESTERLY RIGHT OF WAY SOUTH 52 DEGREES 10 MINUTES 28 SECONDS WEST A DISTANCE OF 39.40 FEET (RECORD) 39.39 FEET (MEASURED);

THENCE CONTINUING ALONG SAID WESTERLY RIGHT OF WAY SOUTH 00 DEGREES 10 MINUTES 28 SECONDS WEST A DISTANCE OF 8.05 FEET (RECORD) 8.01 FEET (MEASURED) TO THE **POINT OF BEGINNING**; AND

EXCEPT THE NORTH 25.00 FEET.

ALSO EXCEPT THAT PORTION CONVEYED TO THE SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT BY QUIT CLAIM DEED RECORDED JUNE 22, 2007 AS 2007-719432 OF OFFICIAL RECORDS.

This description shown hereon is not to be used to violate subdivision regulation of the state, county and/or municipality or any other land division restrictions.

The above described parcel contains 1,473,033 Square Feet (33.8162 acres) more or less.