Repl pgs #40

MAR 26 2015

WHEN RECORDED, RETURN TO:

City of Chandler
Chandler City Clerk
Mail Stop 606
P.O. Box 4008
Chandler, Arizona 85244

THIRD AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AND DISPOSITION AGREEMENT
(Chandler City Center)

THIS THIRD AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AND DISPOSITION AGREEMENT (the "**Third Amendment**") is made and entered as of this ___ day of _____, 2015, by and between the CITY OF CHANDLER, ARIZONA, an Arizona municipal corporation (the "**City**"), and COR Arizona Avenue Company, LLC, an Arizona limited liability company, as successor and assign to Benton-Robb Development Associates, LLP, an Arizona limited liability partnership (the "**Developer**").

RECITALS

A. On or about November 10, 2003, the City and Benton-Robb Development Associates, LLP, an Arizona limited liability partnership, as successor in interest to Camden/Benton-Robb, LLC, a Delaware limited liability company ("**Benton-Robb**"), entered into that certain Amended and Restated Development and Disposition Agreement (Chandler City Center) (the "**DDA**") which was thereafter recorded in the official records of Maricopa County, Arizona, on or about December 4, 2003, as Instrument No. 2003-1652553.

B. Thereafter, the DDA was amended by that certain "First Amendment to the Amended and Restated Development and Disposition Agreement (Chandler City Center)" (the "**First Amendment**") dated as of October 20, 2004, which was thereafter recorded in the official records of Maricopa County, Arizona, on or about December 1, 2004, as Instrument No. 2004-1409890.

C. Thereafter, Developer succeeded to the interest of Benton-Robb under the DDA, as amended, pursuant to the terms of that certain "Assignment and Assumption of Rights Under Amended and Restated Development and Disposition Agreement (Chandler City Center)" (the "**Assignment**") dated as of February 20, 2008, which was thereafter recorded in the official records of Maricopa County, Arizona, on or about February 20, 2008, as Instrument No. 2008-0149689.

D. Thereafter, the DDA was amended by that certain "Second Amendment to the Amended and Restated Development and Disposition Agreement (Chandler City Center)" (the

"**Second Amendment**") dated as of June 10, 2010, which was thereafter recorded in the official records of Maricopa County, Arizona, on or about June 14, 2010, as Instrument No. 2010-0500357.

E. Developer and the City acknowledge that settlement negotiations with Jack-in-the Box ("JIB") to effect a transfer of the Exchange Parcel and for the relocation of the JIB operations to the JIB Parcel have failed and the City will not be acquiring the Exchange Parcel or the JIB Parcel, either through the use of eminent domain proceedings, condemnation or by way of a voluntary transfer.

F. Developer is in the process of revising and submitting to the City for City approval revised development plans for the Project that, among other things, reflect the elimination of the Exchange Parcel and the JIB Parcel from inclusion within the Project.

G. It is the desire of the City and Developer to amend the DDA to, among other things, extend some deadlines to allow for the development of certain parcels within the Property and to allow for the submittal and processing of zoning amendments relating to some or all of the Property.

H. In accordance with A.R.S. § 42-6203(A)(4), the City has found that this amendment furthers the purpose of the DDA.

NOW, THEREFORE, in consideration of the foregoing recitals, representations and the mutual promises contained in this Third Amendment, the parties agree to amend the DDA as follows:

AGREEMENTS

1. Definitions. All initial capitalized terms used in this Third Amendment shall have the same meaning ascribed to them in the DDA, unless otherwise specifically defined herein, except as set forth herein:

A. "Disposition and Development Agreement" or "DDA" shall mean the Amended and Restated Disposition and Development Agreement, as previously amended by any amendments duly adopted by the Parties. Thus, upon execution of this Third Amendment, references to the DDA shall mean the DDA as amended by the First, Second, and Third Amendments.

B. "Third Amendment Effective Date" or that of any other duly processed amendment shall be the date on which the last representative for the Parties executed the amendment.

2. Good Faith Negotiations. City and the Developer affirm to each other that they conducted all negotiations leading to this Third Amendment in good faith and that they are entering into this Third Amendment freely and without duress.

3. **Recitals.** The Recitals set forth in this Third Amendment are material terms and provisions of this Third Amendment.

4. **Amendment**. The DDA is hereby amended as follows:

A. Subsections 1.7 and 1.10 of Section 1 are hereby deleted in their entirety.

B. Subsection 2.2 of Section 2 is hereby deleted in its entirety.

C. Subsection 5.6 of Section 5 is hereby deleted in its entirety.

D. Subsection 6.1 of Section 6 is hereby deleted in its entirety and replaced with the following:

6.1 Schedule of Development. The City and Developer intend that the planning and development of the Project occur in an expeditious manner. Developer shall have caused a building permit be issued for the Commercial Phase I portion of the Project and commenced vertical construction of the Commercial Phase I improvements no later than that date which is twenty-one (21) months from the Third Amendment Effective Date. In the event Developer has not commenced vertical construction of the Commercial Phase I improvements pursuant to a validly issued City building permit, the DDA shall, without further action by either party, be automatically terminated and any rights, duties, obligations and performance arising by virtue of the DDA.

D. Sub-subsection 6 of Subsection 7.1(a) of Section 7 is hereby deleted in its entirety and replaced with the following:

(6) The Leases must be executed in accordance with the following schedule:

A. If the first Lease has not been executed on or before May 24, 2018, then the City shall have no further obligation under this Section 7.1(a).

B. If any additional Leases authorized by this Section 7.1(a) have not been executed on or before May 24, 2023, then the City shall have no further obligation under this Section 7.1(a).

E. Exhibit "B" to the DDA is hereby deleted in its entirety and replaced with the revised **Exhibit "B"** attached hereto and incorporated herein by this reference.

F. Exhibit "C" to the DDA is hereby deleted in its entirety.

F. Exhibit "E" to the DDA is hereby deleted in its entirety.

5. **No Further Modification.** Except as specifically modified and amended in this Third Amendment, the DDA shall remain in full force and effect and is hereby ratified and affirmed by the parties thereto.

IN WITNESS WHEREOF, the Parties hereto have executed this Third Amendment as of the day and year set forth below the Parties' signatures.

CITY

CITY OF CHANDLER, an Arizona municipal corporation

By: _____
Jay Tibshraeny, Mayor

Date: _____,2015

DEVELOPER

COR Arizona Avenue Company, LLC, an Arizona limited liability company

By: _____
(name & title) Steven F. Aiello, Managing Member

Date: March 25 ,2015

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY KSM

STATE OF ARIZONA)
) ss.
County of Maricopa)

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

_____
Notary Public

My Commission Expires:

STATE OF NEW YORK)
) ss.
County of Onondaga)

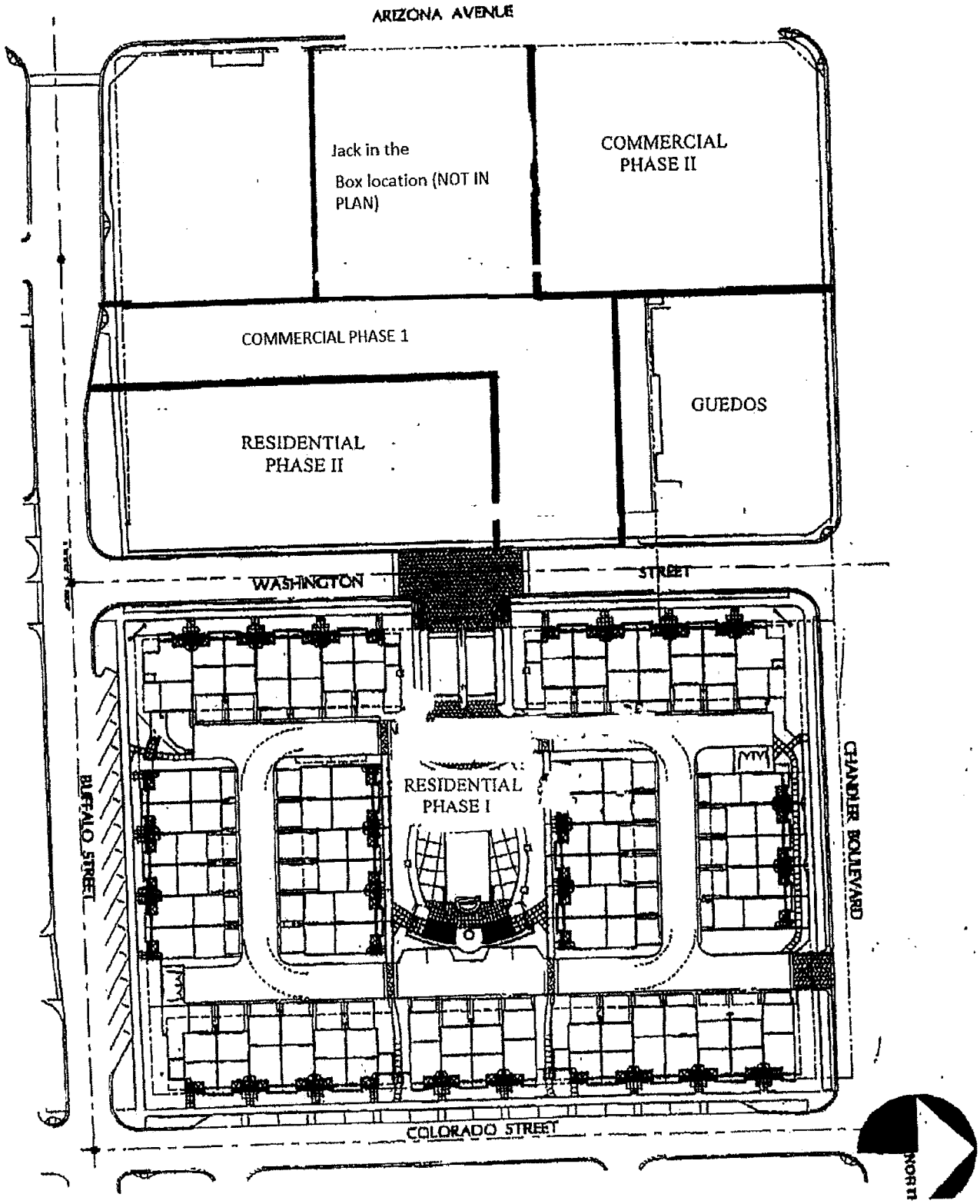
The foregoing instrument was acknowledged before me this ____day of March 2015, by Steven F. Aiello, as Managing Member of COR Arizona Avenue Company, LLC, an Arizona limited liability company, on behalf of the Company.

_____
Notary Public

My Commission Expires:

EXHIBIT 'B' REVISED = Third Amendment

Conceptual Development Plan



#40

MAR 26 2015

Chandler

2010

Chandler • Arizona
Where Values Make The Difference

MEMORANDUM **Law Department - Council Memo**

DATE: March 18, 2015

TO: MAYOR AND COUNCIL

FROM: KAY BIGELOW, CHANDLER CITY ATTORNEY

SUBJECT: Third Amendment to Restated Development and Disposition Agreement/ (Chandler City Center)

RECOMMENDATION: Approval of the Third Amendment to the Restated Development and Disposition Agreement for Site 7 at the NEC of Arizona Avenue & Buffalo Street.

BACKGROUND: In November, 2003, the City and Benton-Robb Development Associates, LLP, entered into the Amended and Restated Development and Disposition Agreement ("DDA") relating to the development of the Chandler City Center (Site 7) which is comprised of slightly less than two (2) square blocks in downtown Chandler. Among other things, the DDA addressed the timing and phasing of development of the site, the acquisition and disposition of, and by, the City of certain privately owned properties contemplated for inclusion into the Site 7 development plan, and details relating to the developers eligibility for participation in a government property lease excise tax ("GPLET").

In 2004 the First Amendment to the DDA was approved by Council. The First Amendment to the DDA addressed development contingencies relating to the relocation of the QWEST Corporations fiberoptic line located on and within the Site 7 site.

In 2008, COR Arizona Avenue Company, LLC succeeded to the interest of Benton-Robb under the DDA and an Assignment and Assumption of Rights Under Amended and Restated Development and Disposition Agreement was approved.

In 2010 the Second Amendment to the DDA was approved by Council. Among other issues, the Second Amendment to the DDA extended the time period for the applicability of the GPLET program, provided for the termination of the GPLET program in the event leases were not timely executed and *otherwise detailed the ownership and lease structure as required by the state laws governing GPLET.*

This Third Amendment to the DDA amends the DDA to extend the deadlines for which developer must enter into the GPLET leases and establishes a revised development schedule that requires vertical construction to commence on Site 7 no later than twenty-one (21) months from

the date the Third Amendment is approved by the City Council. The failure to commence development of the site within the twenty-one (21) month deadline automatically terminates the DDA. Additionally, the Third Amendment to the DDA amends the DDA to eliminate the requirement of the City to acquire the Jack in the Box site and transfer certain parcels to developer once the Jack in the Box site had been acquired.

PROPOSED MOTION: Move to approve Resolution 4856 approving the Third Amendment to the Restated Development and Disposition Agreement.

RESOLUTION NO. 4856

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, AUTHORIZING A THIRD AMENDMENT TO THE AMENDED AND RESTATED DEVELOPMENT AND DISPOSITION AGREEMENT BETWEEN THE CITY OF CHANDLER AND COR ARIZONA AVENUE COMPANY, LLC.

WHEREAS, the City of Chandler and Benton-Robb Development Associates, L.L.P., an Arizona limited liability company, entered into an Amended and Restated Development and Disposition Agreement dated November 10, 2003; and

WHEREAS, the City and Benton-Robb Development Associates, L.L.P. subsequently entered into a First Amendment to the Amended and Restated Development and Disposition Agreement dated October 20, 2004; and

WHEREAS, the City and COR Arizona Avenue Company, LLC, an Arizona limited liability company, as successor and assign to Benton-Robb Development Associates, L.L.P., subsequently entered into a Second Amendment to the Amended and Restated Development and Disposition Agreement dated June 10, 2010; and

WHEREAS, the City and COR Arizona Avenue Company, LLC agree to the Third Amendment to the Amended and Restated Development and Disposition Agreement as presented to Council with this Resolution;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Chandler, Maricopa County, Arizona, as follows:

Section 1. Pursuant to Arizona Revised Statutes §42-6203(A)(4) the City Council finds the Third Amendment to the Amended and Restated Development and Disposition Agreement:

A. Furthers the original purpose of the Development and Disposition Agreement; and

B. Does not increase the land area under the original Development and Disposition Agreement by more than fifty percent; and

C. Does not increase the area of gross building space under the original Development and Disposition Agreement by more than one hundred percent.

Section 2. The Mayor of the City of Chandler is authorized to execute the Third Amendment to the Amended and Restated Development and Disposition Agreement on behalf of the City of Chandler.

Section 3. The various City officers and employees be, and they hereby are, authorized and directed to perform all acts necessary to give effect to this Resolution.

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona, this ____ day of _____, 2015.

ATTEST:

_____ CITY CLERK

_____ MAYOR

APPROVED AS TO FORM:

_____ CITY ATTORNEY (*kb*)

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 4856 was duly passed and approved by the City Council of the City of Chandler, Arizona, at a regular meeting held on the _____ day of _____, 2015, and that a quorum was present thereat.

_____ CITY CLERK

WHEN RECORDED, RETURN TO:

City of Chandler
Chandler City Clerk
Mail Stop 606
P.O. Box 4008
Chandler, Arizona 85244

THIRD AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AND DISPOSITION AGREEMENT
(Chandler City Center)

THIS THIRD AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AND DISPOSITION AGREEMENT (the "**Third Amendment**") is made and entered as of this ___ day of _____, 2015, by and between the CITY OF CHANDLER, ARIZONA, an Arizona municipal corporation (the "**City**"), and COR Arizona Avenue Company, LLC, an Arizona limited liability company, as successor and assign to Benton-Robb Development Associates, LLP, an Arizona limited liability partnership (the "**Developer**").

RECITALS

A. On or about November 10, 2003, the City and Benton-Robb Development Associates, LLP, an Arizona limited liability partnership, as successor in interest to Camden/Benton-Robb, LLC, a Delaware limited liability company ("**Benton-Robb**"), entered into that certain Amended and Restated Development and Disposition Agreement (Chandler City Center) (the "**DDA**") which was thereafter recorded in the official records of Maricopa County, Arizona, on or about December 4, 2003, as Instrument No. 2003-1652553.

B. Thereafter, the DDA was amended by that certain "First Amendment to the Amended and Restated Development and Disposition Agreement (Chandler City Center)" (the "**First Amendment**") dated as of October 20, 2004, which was thereafter recorded in the official records of Maricopa County, Arizona, on or about December 1, 2004, as Instrument No. 2004-1409890.

C. Thereafter, Developer succeeded to the interest of Benton-Robb under the DDA, as amended, pursuant to the terms of that certain "Assignment and Assumption of Rights Under Amended and Restated Development and Disposition Agreement (Chandler City Center)" (the "**Assignment**") dated as of February 20, 2008, which was thereafter recorded in the official records of Maricopa County, Arizona, on or about February 20, 2008, as Instrument No. 2008-0149689.

D. Thereafter, the DDA was amended by that certain "Second Amendment to the Amended and Restated Development and Disposition Agreement (Chandler City Center)" (the

"**Second Amendment**") dated as of June 10, 2010, which was thereafter recorded in the official records of Maricopa County, Arizona, on or about June 14, 2010, as Instrument No. 2010-0500357.

E. Developer and the City acknowledge that settlement negotiations with Jack-in-the Box ("JIB") to effect a transfer of the Exchange Parcel and for the relocation of the JIB operations to the JIB Parcel have failed and the City will not be acquiring the Exchange Parcel or the JIB Parcel, either through the use of eminent domain proceedings, condemnation or by way of a voluntary transfer.

F. Developer is in the process of revising and submitting to the City for City approval revised development plans for the Project that, among other things, reflect the elimination of the Exchange Parcel and the JIB Parcel from inclusion within the Project.

G. It is the desire of the City and Developer to amend the DDA to, among other things, extend some deadlines to allow for the development of certain parcels within the Property and to allow for the submittal and processing of zoning amendments relating to some or all of the Property.

H. In accordance with A.R.S. § 42-6203(A)(4), the City has found that this amendment furthers the purpose of the DDA.

NOW, THEREFORE, in consideration of the foregoing recitals, representations and the mutual promises contained in this Third Amendment, the parties agree to amend the DDA as follows:

AGREEMENTS

1. Definitions. All initial capitalized terms used in this Third Amendment shall have the same meaning ascribed to them in the DDA, unless otherwise specifically defined herein, except as set forth herein:

A. "Disposition and Development Agreement" or "DDA" shall mean the Amended and Restated Disposition and Development Agreement, as previously amended by any amendments duly adopted by the Parties. Thus, upon execution of this Third Amendment, references to the DDA shall mean the DDA as amended by the First, Second, and Third Amendments.

B. "Third Amendment Effective Date" or that of any other duly processed amendment shall be the date on which the last representative for the Parties executed the amendment.

2. Good Faith Negotiations. City and the Developer affirm to each other that they conducted all negotiations leading to this Third Amendment in good faith and that they are entering into this Third Amendment freely and without duress.

3. **Recitals.** The Recitals set forth in this Third Amendment are material terms and provisions of this Third Amendment .

4. **Amendment**. The DDA is hereby amended as follows:

A. Subsections 1.7 and 1.10 of Section 1 are hereby deleted in their entirety.

B. Subsection 2.2 of Section 2 is hereby deleted in its entirety.

C. Subsection 5.6 of Section 5 is hereby deleted in its entirety.

D. Subsection 6.1 of Section 6 is hereby deleted in its entirety and replaced with the following:

6.1 Schedule of Development. The City and Developer intend that the planning and development of the Project occur in an expeditious manner. Developer shall have caused a building permit be issued for the Commercial Phase I portion of the Project and commenced vertical construction of the Commercial Phase I improvements no later than that date which is twenty-one (21) months from the Third Amendment Effective Date. In the event Developer has not commenced vertical construction of the Commercial Phase I improvements pursuant to a validly issued City building permit, the DDA shall, without further action by either party, be automatically terminated and any rights, duties, obligations and performance arising by virtue of the DDA.

D. Sub-subsection 6 of Subsection 7.1(a) of Section 7 is hereby deleted in its entirety and replaced with the following:

(6) The Leases must be executed in accordance with the following schedule:

A. If the first Lease has not been executed on or before May 24, 2018, then the City shall have no further obligation under this Section 7.1(a).

B. If any additional Leases authorized by this Section 7.1(a) have not been executed on or before May 24, 2023, then the City shall have no further obligation under this Section 7.1(a).

E. Exhibit "B" to the DDA is hereby deleted in its entirety and replaced with the revised **Exhibit "B"** attached hereto and incorporated herein by this reference.

F. Exhibit "C" to the DDA is hereby deleted in its entirety.

F. Exhibit "E" to the DDA is hereby deleted in its entirety.

5. **No Further Modification.** Except as specifically modified and amended in this Third Amendment, the DDA shall remain in full force and effect and is hereby ratified and affirmed by the parties thereto.

IN WITNESS WHEREOF, the Parties hereto have executed this Third Amendment as of the day and year set forth below the Parties' signatures.

CITY

CITY OF CHANDLER, an Arizona municipal corporation

By: _____
Jay Tibshraeny, Mayor

Date: _____,2015

DEVELOPER

COR Arizona Avenue Company, LLC, an Arizona limited liability company

By: _____

(name & title) _____

Date: _____,2015

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY

STATE OF ARIZONA)
) ss.
County of Maricopa)

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

_____
Notary Public

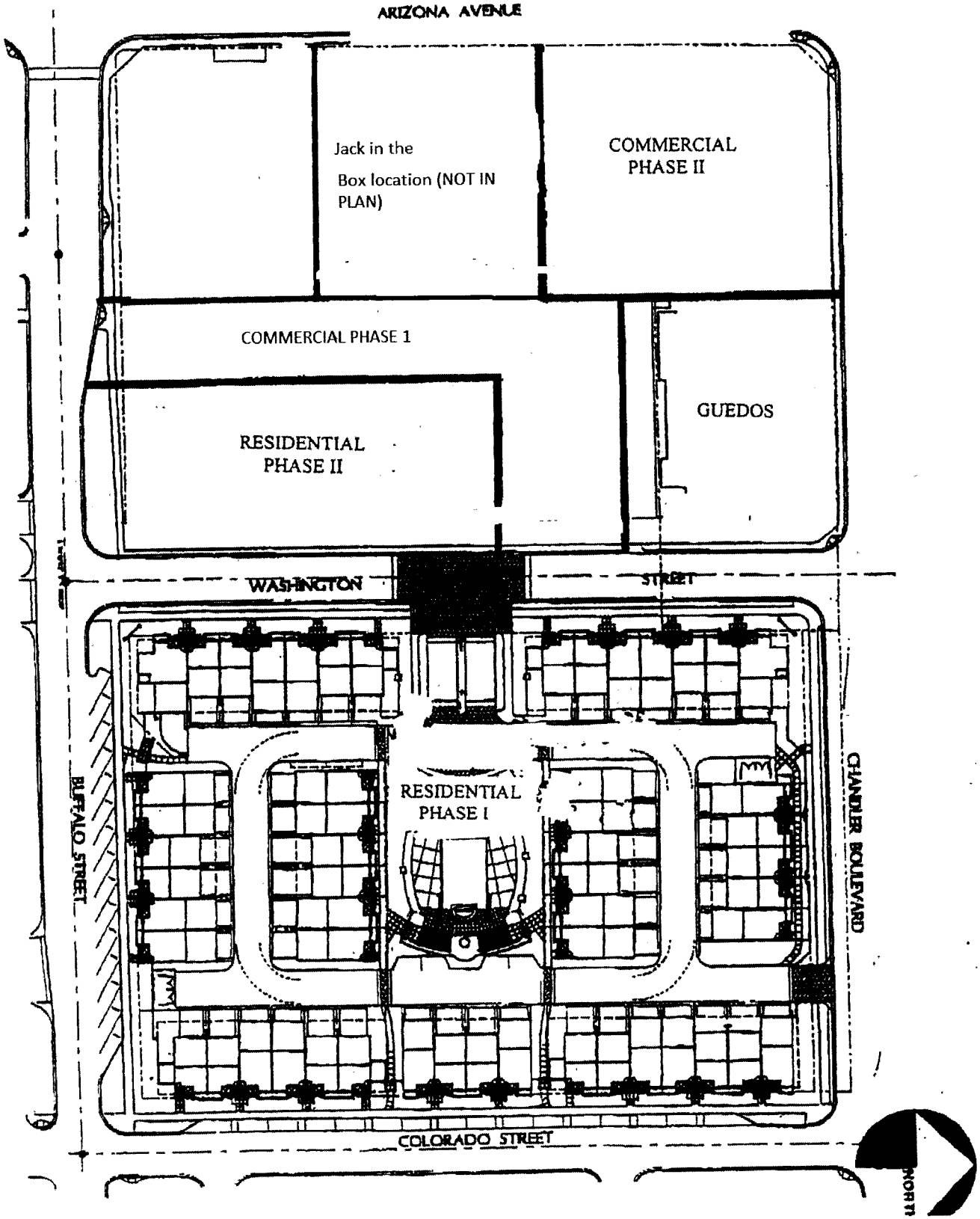
My Commission Expires:

STATE OF _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this __day of _____, 2015, by _____, as _____ of COR Arizona Avenue Company, LLC, an Arizona limited liability company, on behalf of the Company.

_____
Notary Public

My Commission Expires:

EXHIBIT 'B' REVISED = Third Amendment

Conceptual Development Plan