

#20
DEC 13 2007

MEMO TO: Mayor and City Council
THRU: Michael D. House, Chandler City Attorney *M.D.H.*
FROM: Glenn A. Brockman, Assistant City Attorney *G.A.B.*
SUBJECT: Resolution No. 4148, Procedural Pre-Annexation Agreement
DATE: December 3, 2007

RECOMMENDATION: Staff recommends approval of Resolution No. 4148 authorizing a Procedural Pre-Annexation Agreement between the City of Chandler, Ward Real Estate & Development, LLC, and Sabic Innovative Plastics US LLC.

BACKGROUND/DISCUSSION: The owner and the prospective developer of approximately 34.37 net acres of real property located at southwest corner of Riggs Road and 116th Street wish enter into an agreement with the City of Chandler in order to facilitate annexation of the property for future development within the City's municipal boundaries. The developer's interest in the property is contingent on the developer receiving its desired zoning for the property. The owner of the property does not want the annexation to become effective if the zoning desired by the developer does not occur. Resolution No. 4148 authorizes a Procedural Pre-Annexation Agreement whereby the parties agree that if the desired zoning is not approved, the landowner may request a reconsideration of the annexation ordinance at a council meeting to be held within thirty (30) days after the adoption of the annexation ordinance, at which meeting the City would repeal the annexation ordinance.

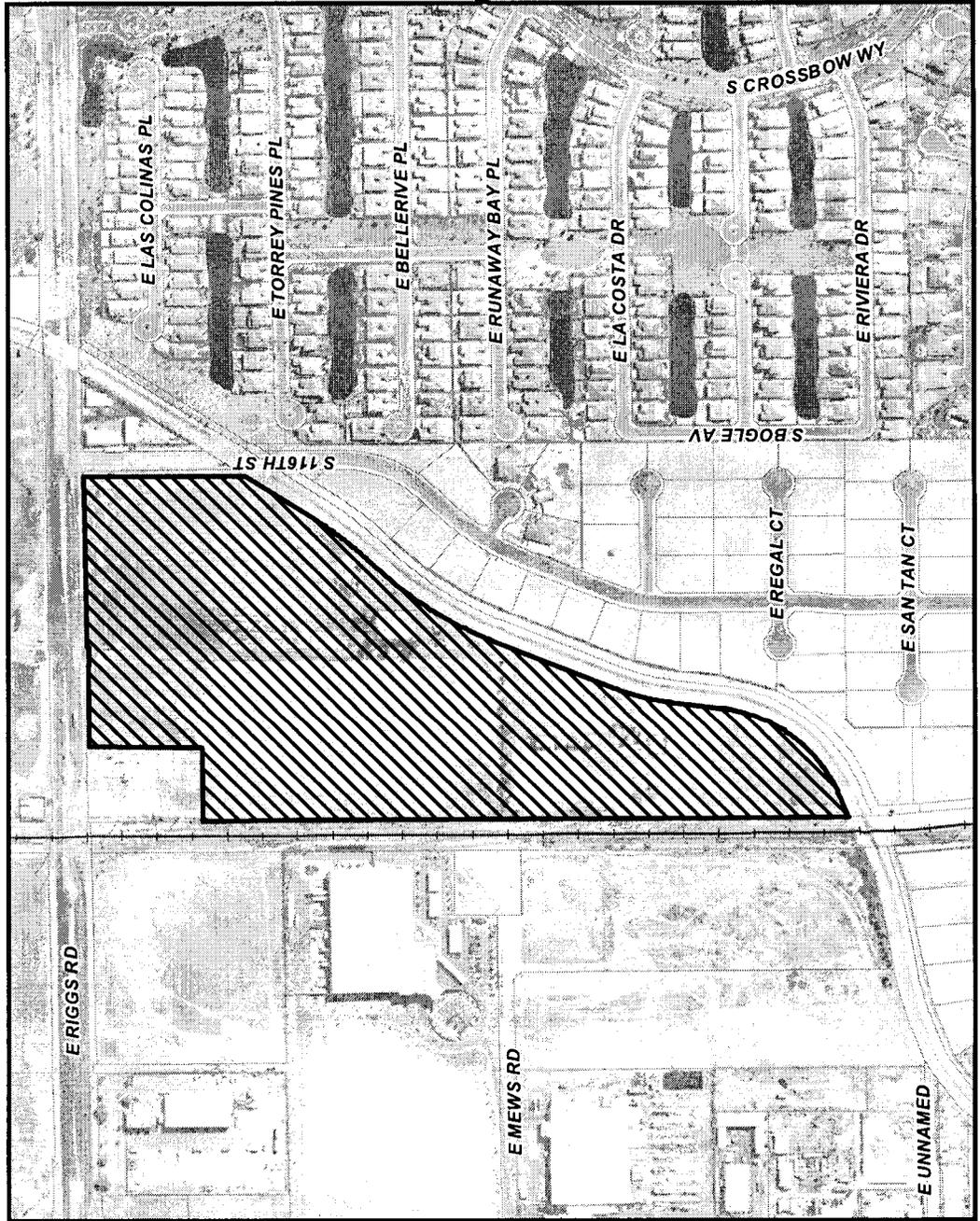
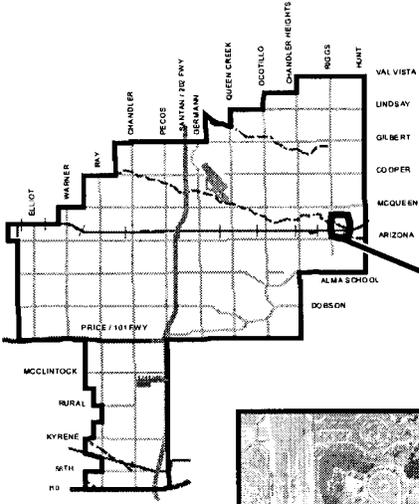
PROPOSED MOTION: Move to approve Resolution No. 4148 authorizing a Procedural Pre-Annexation Agreement between the City of Chandler, Ward Real Estate & Development, LLC, and Sabic Innovative Plastics US LLC, and authorize the Mayor to sign any necessary documents.

GAB/

Attachments: Vicinity Map
Proposed Agreement
Resolution No. 4148



SW CORNER OF RIGGS RD. AND 116TH ST.



RESOLUTION NO. 4148



When recorded, return to:

Glenn Brockman
Assistant City Attorney
City of Chandler
55 N. Arizona Place, Suite 202
Chandler, AZ 85225-5540

PROCEDURAL PRE-ANNEXATION AGREEMENT

This Procedural Pre-Annexation Agreement (“Agreement”) is entered into this ____ day of October 2007, by and between the CITY OF CHANDLER, Arizona, an Arizona municipal corporation (“City”), WARD REAL ESTATE & DEVELOPMENT, LLC (“Developer”), and SABIC INNOVATIVE PLASTICS US LLC (“Owner”) (collectively, the “Parties”).

RECITALS

A. Owner holds fee simple title to approximately 34.37 net acres of land (“Property”), which is located in Maricopa County, Arizona (“County”), legally described in the attached Exhibit A, and depicted in attached Exhibit B. The Property is situated at the southwest corner of Riggs Road and 116th Street. Developer has an interest in and intends to develop the Property.

B. Subject to the terms and conditions of this Agreement, Developer may desire to annex the Property into the City’s municipal limits and process applications in the City requesting Planned Area Development zoning (“PAD”) and Preliminary Development Plan (“PDP”) approvals (collectively, “PAD and PDP”).

C. City may desire to annex the Property in accordance with A.R.S. § 9-471 and is willing to process Developer’s request for annexation and applications for PAD and PDP in accordance with applicable law and the terms and conditions of this Agreement.

D. The Parties have determined it may be in their best mutual interest to annex the Property into City’s municipal limits and, subject to the final and effective adoption of the proposed annexation and PAD and PDP applications, for Developer to process the PAD and PDP and other approvals in the City rather than the County.

E. The Parties are entering into this Agreement pursuant to the provisions in A.R.S. § 9-500.05 in order to facilitate annexation of the Property for future development and to provide for a procedure to prevent the proposed annexation from becoming effective if the Developer’s PAD and PDP applications are not approved subject to conditions that are acceptable to the Developer.

F. The Parties neither desire nor intend that this Agreement shall in any way affect, hinder or interfere with the ability of City’s governing body (the “City Council”) (i) to approve

or deny the annexation and/or PAD and PDP applications and/or (ii) to impose conditions of approval in connection with the approval of PAD and PDP applications.

NOW, THEREFORE, in consideration of the foregoing premises and agreements herein, the Parties hereto state, confirm and agree as follows:

AGREEMENT

1. Incorporation of Recitals. The foregoing recitals are hereby incorporated into this Agreement as though fully restated.

2. Initiation of Annexation Processes. Upon Developer's request, City agrees to initiate proceedings to annex the Property into City's municipal limits and to issue an annexation petition to Developer. Concurrent with an annexation ordinance for the Property (the "Annexation Ordinance") being introduced for consideration by the City Council, City will also introduce for consideration by the City Council an ordinance for City's proposed initial zoning classification for the Property (the "Equivalency Zoning Ordinance") (collectively, the "Annexation and Equivalency Ordinances").

3. PAD and PDP Applications and Effectiveness. Developer agrees to apply to City for PAD and PDP. City agrees to process such applications in accordance with applicable law and the terms and conditions of this Agreement. If Developer makes applications for PAD and PDP prior to the Annexation and Equivalency Ordinances being introduced to the City Council for its consideration, then City shall schedule, advertise and conduct hearings before the City's Planning & Zoning Commission and the City Council so that Developer's applications for PAD and PDP are considered by the City Council concurrent with the Annexation and Equivalency Ordinances. If the City Council approves the PAD and PDP applications and finally adopts the PAD Ordinance, then the effective date of the PAD Ordinance shall be established as being after the effective date of the Annexation and Equivalency Ordinances.

4. Annexation and Equivalency Ordinances Adoption and Effectiveness. City agrees that at any time prior to the City Council's adoption of the Annexation Ordinance, Developer and/or Owner may withdraw the annexation petition for the Property. In the event the City Council adopts the Annexation Ordinance and Equivalency Ordinances and such Ordinances are not timely rescinded by the City Council or challenged by referendum, the Annexation and Equivalency Ordinances will become effective thirty (30) calendar days after being adopted by the City Council as outlined in A.R.S § 9-471. In the event (a) the Developer withdraws its PAD and PDP applications, (b) the City Council denies Developer's PAD and PDP applications before the Annexation and Equivalency Ordinances have become final and effective, or (c) the Annexation Ordinance, the Equivalency Zoning Ordinance and/or the PAD Ordinance are challenged by reconsideration or referendum, the City Council shall (by Motion for Reconsideration or other appropriate means) schedule, advertise and conduct a City Council hearing to rescind the Annexation and Equivalency Ordinances prior to the effective date of the Annexation and Equivalency Ordinances. City agrees that at such hearing (for Reconsideration or otherwise), City shall repeal the Annexation Ordinance and the Equivalency Zoning Ordinance.

5. No Affect on PAD and PDP Applications. The Parties agree that nothing in this Agreement shall affect the ability of the City Council to approve or deny the PAD and PDP applications and/or to impose Conditions of Approval on the City's approval of the PAD and PDP.

6. No Requirement to Proceed. The Parties agree that nothing in this Agreement shall require any of the Parties to proceed with the proposed annexation, the proposed PAD and PDP and/or development of the Property.

7. Prop. 207 Waivers. On or before the Annexation and Equivalency Ordinances are placed on the City Council's agenda for introduction and tentative approval, Owner shall provide to City a completed "Proposition 207 Waiver" applicable to the Annexation and Equivalency Ordinances in form acceptable to the City's legal counsel. The Parties acknowledge and agree that City may and most likely will record the waiver form. Owner shall also provide to City a separate completed Proposition 207 Waiver form acceptable to City's legal counsel in connection with the PAD and PDP. The Parties acknowledge and agree that City also may and most likely will record the waiver form. In the event the Annexation and Equivalency Ordinances and/or the PAD Ordinance are not approved, or are rescinded, repealed or otherwise of no effect, the Parties shall take such steps as are required to release or rescind any applicable Proposition 207 Waiver.

8. Miscellaneous.

a. Good Standing; Authority. Each of the Parties represents and warrants to the other that it is duly formed and validly existing under the laws of Arizona and that the individual(s) executing this Agreement on behalf of their respective Party is authorized and empowered to bind the Party on whose behalf each such individual is signing.

b. Default and Remedies. In the event City is in default hereunder, Developer and/or Owner shall have all remedies available at law or in equity (including expedited equitable relief); whether under this Agreement or otherwise.

c. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Arizona. This Agreement shall be deemed made and entered into in Maricopa County, Arizona.

d. Development Agreement. This Agreement is intended to be a "Development Agreement" within the meaning of A.R.S. § 9-500.05.

e. Waiver. No waiver by any Party of a breach of any of the terms or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term or condition contained herein.

f. Severability. In the event that any phrase, clause, sentence, paragraph, or other portion of the Agreement shall be illegal, null or void or against public policy, for any

reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permissible by law and the Parties will negotiate diligently in good faith for such amendments of this Agreement as may be necessary to achieve its intent, notwithstanding such invalidity or unenforceability.

g. Attorneys' Fees. If any judicial proceeding is initiated by any Party hereto with respect to this Agreement, the prevailing Party shall be entitled to recover, in addition to any other relief to which it is entitled, its costs and expenses incurred in connection with such legal proceeding, including, without limitation, its reasonable attorneys' fees.

h. Notices. All notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been fully delivered upon personal delivery or as of the second business day after mailing by United States Mail, postage prepaid, by Certified Mail, return receipt requested, addressed as follows:

To City: City Manager
City of Chandler
55 North Arizona Place, #301
Chandler, AZ 85225-5540

Copy to: City Attorney
City of Chandler
55 North Arizona Place, #202
Chandler, AZ 85225-5540

To Developer: Scott Ward
Ward Real Estate & Development, LLC
565 W. Chandler Blvd., Suite 210
Chandler, Arizona 85225

Copy to: Ed Bull/Brennan Ray
Burch & Cracchiolo, P.A.
702 E. Osborn Rd., Suite 200
Phoenix, AZ 85014

To Owner: Andrew S. Hogeland
SABIC Innovative Plastics US LLC
1 Plastics Ave.
Pittsfield, MA 01201

Notice of address may be changed by any Party by giving notice to the other Parties in writing of a change of address. Such change shall be deemed to have been effectively noticed five days after mailed by the Party changing address.

i. Time of Essence. Time is of the essence of this Agreement.

j. Effective Date. This Agreement is entered into effective as of the date of full execution by the Parties.

k. Recordation. No later than ten (10) days after the effective date, the City will record this Agreement in the Official Records of Maricopa County.

l. Entire Agreement. This Agreement constitutes the entire Agreement between the Parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the Parties hereto, oral or written, are hereby superseded and merged herein.

m. Amendments. This Agreement may be amended only by a written agreement fully executed by the Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates written above.

CITY OF CHANDLER, an Arizona municipal corporation

By: _____
Mayor

Date: _____

ATTESTED TO:

City Clerk

APPROVED BY:

City Attorney *SAB*

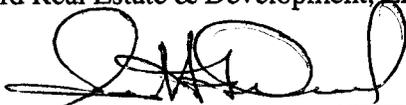
STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2007, by _____, in his capacity as Mayor of the City of Chandler, Arizona.

Notary Public

My Commission Expires:

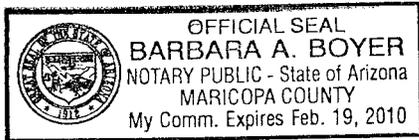
DEVELOPER
Ward Real Estate & Development, LLC

By: 
Scott F. Ward
Member and Manager

Date: 11-7-2007

STATE OF ARIZONA)
) ss.
County of Maricopa)

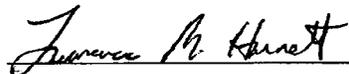
The foregoing instrument was acknowledged before me this 7 day of November, 2007, on behalf of the Ward Real Estate & Development, LLC, by Scott F. Ward, its Member and Manager.




Notary Public

My Commission Expires:

OWNER: SABIC Innovative Plastics US LLC

By: 
Secretary + General Counsel

Its: Secretary + General Counsel

Date: 10/25/07

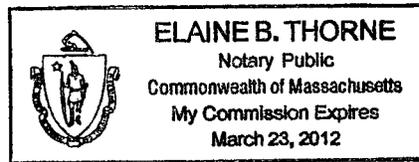
COMMONWEALTH OF MASSACHUSETTS)
) ss.
County of Berkshire)

The foregoing instrument was acknowledged before me this 25 day of October 2007, on behalf of SABIC Innovative Plastics US LLC, by LAWRENCE M. HARNETT, SECRETARY + GENERAL COUNSEL.

Elaine B. Thorne
Notary Public

My Commission Expires:

March 23, 2012



RESOLUTION NO. 4148

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA APPROVING A PROCEDURAL PRE-ANNEXATION AGREEMENT BETWEEN THE CITY OF CHANDLER, WARD REAL ESTATE & DEVELOPMENT, LLC, AND SABIC INNOVATIVE PLASTICS US LLC.

WHEREAS, Sabic Innovative Plastics US LLC (“Owner”) owns approximately 34.37 net acres of real property located at the southwest corner of Riggs Road and 116th Street in Maricopa County, Arizona, which is legally described in Exhibit “A” and depicted in Exhibit “B”, both exhibits being attached hereto and incorporated herein by this reference (the “Property”); and

WHEREAS, Ward Real Estate & Development, LLC (“Developer”), has an interest in and intends to develop the Property; and

WHEREAS, both Owner and Developer desire or may desire to annex the Property into the City of Chandler; and

WHEREAS, Owner, Developer and the City of Chandler wish to enter into an agreement in order to facilitate annexation of the Property for future development within the municipal boundaries of the City of Chandler; and

WHEREAS, A.R.S. § 9-500.05 authorizes development agreements for the purpose of addressing annexation issues;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Chandler, Arizona, hereby approves the Procedural Pre-Annexation Agreement between the City of Chandler, Owner and Developer and authorizes the Mayor to execute the Agreement.

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona, this _____ day of _____, 2007.

ATTEST:

CITY CLERK

MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 4148 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting was held on the _____ day of _____, 2007, and that a quorum was present thereat.

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY *GAF*

LEGAL DESCRIPTION

EAST OF THE SOUTHEAST CORNER OF RIGGS RD & ARIZONA AVE

Parcel 1

That portion of the Northwest quarter of Section 34, Township 2 South, Range 5 East of the Gila and Salt River Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at a aluminum cap, found and accepted as the North quarter corner of said Section 34, from which a brass cap in hand hole, found and accepted as the Northwest corner of said section, bears South 89 degrees 55 minutes 10 seconds West a distance of 2,647.42 feet;

Thence along the north line of said Northwest quarter, South 89 degrees 55 minutes 10 seconds West a distance of 100.01 feet to a point on the northerly projection of the west line of Tract M of "Santan Vista Unit 3, Phase 4 and 5" a subdivision plat recorded in Book 690 of Maps, page 16, Maricopa County Records;

Thence departing said north line and along said west line, South 00 degrees 45 minutes 40 seconds West a distance of 65.01 feet to the southerly right-of-way of Riggs Road, being the **POINT OF BEGINNING**;

Thence continuing along said west line, South 00 degrees 45 minutes 40 seconds West a distance of 504.12 feet to the westerly right-of-way of the Consolidated Canal as shown on the Plat of Survey recorded in Book 181 of Maps, page 9, Maricopa County records;

Thence along said westerly right-of-way of the Consolidated Canal the following eight (8) courses;

(1) South 33 degrees 17 minutes 15 seconds West a distance of 244.76 feet to the beginning of a tangent curve concave northwesterly and having a radius of 1,227.62 feet;

(2) Southwesterly along said curve through a central angle of 11 degrees 26 minutes 15 seconds an arc length of 245.06 feet to the beginning of a tangent reverse curve concave southeasterly and having a radius of 1,172.95 feet;

(3) Southwesterly along said curve through a central angle of 21 degrees 58 minutes 20 seconds an arc length of 449.81 feet;

(4) South 22 degrees 45 minutes 10 seconds West a distance of 399.47 feet to the beginning of a tangent curve concave southeasterly and having a radius of 748.63 feet;

(5) Southwesterly along said curve through a central angle of 15 degrees 07 minutes 40 seconds an arc length of 197.66 feet;

(6) South 07 degrees 37 minutes 30 seconds West a distance of 143.16 feet to the beginning of a tangent curve concave northwesterly and having a radius of 460.49 feet;

(7) Southwesterly along said curve through a central angle of 61 degrees 29 minutes 25 seconds an arc length of 494.20 feet to the beginning of a tangent reverse curve concave southeasterly and having a radius of 1,267.49 feet;

(8) Southwesterly along said curve through a central angle of 03 degrees 02 minutes 38 seconds an arc length of 67.34 feet to a point on the easterly right-of-way of the Southern Pacific Railroad, said point also marking the beginning of a non-tangent curve concave easterly, the center of which bears North 89 degrees 40 minutes 13 seconds East a distance of 4,247.21 feet;

LEGAL DESCRIPTION

East of the Southeast Corner of Riggs Road & Arizona Avenue

Page 2 of 3

Thence along said easterly right-of-way the following five (5) courses;

- (1) Northerly along said curve through a central angle of 00 degrees 29 minutes 16 seconds an arc length of 36.16 feet to the beginning of a tangent compound curve concave easterly and having a radius of 5,679.60 feet;
- (2) Northerly along said curve through a central angle of 00 degrees 18 minutes 00 seconds an arc length of 29.74 feet to the beginning of a tangent compound curve concave easterly and having a radius of 8,544.38 feet;
- (3) Northerly along said curve through a central angle of 00 degrees 12 minutes 00 seconds an arc length of 29.83 feet to the beginning of a tangent compound curve concave easterly and having a radius of 17,138.74 feet;
- (4) Northerly along said curve through a central angle of 00 degrees 06 minutes 00 seconds an arc length of 29.91 feet;
- (5) North 00 degrees 45 minutes 30 seconds East a distance of 1,888.87 feet to a point lying 415.00 feet south of said north line of the Northwest quarter;

Thence departing said right-of-way, parallel with and 415.00 feet south of said north line, North 89 degrees 55 minutes 10 seconds East a distance of 240.00 feet;

Thence North 00 degrees 45 minutes 30 seconds East a distance of 349.99 feet to a point on said southerly right-of-way of Riggs Road lying 65.00 feet south of said north line of the Northwest quarter;

Thence along said southerly right-of-way the following five (5) courses;

- (1) North 89 degrees 55 minutes 10 seconds East a distance of 257.93 feet;
- (2) South 00 degrees 04 minutes 50 seconds East a distance of 5.00 feet;
- (3) North 89 degrees 55 minutes 10 seconds East a distance of 60.00 feet;
- (4) North 00 degrees 04 minutes 50 seconds West a distance of 5.00 feet;
- (5) North 89 degrees 55 minutes 10 seconds East a distance of 534.63 feet to the **POINT OF BEGINNING**.

The above-described parcel contains a computed area of 1,497,324 Sq. Ft. (34.3738 acres) more or less and is subject to any easements, restrictions, or rights of way of record or otherwise.

Parcel 2

A parcel of land being a portion of the North half of Section 34, Township 2 South, Range 5 East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the Northwest corner of said Section 34;

Thence North 88 degrees 52 minutes 24 seconds East a distance of 1694.05 along the North line of said Section 34;

Thence South 01 degrees 07 minutes 36 seconds East a distance of 55.00 feet to the Point of Beginning;

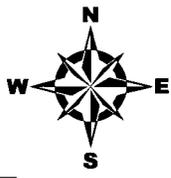
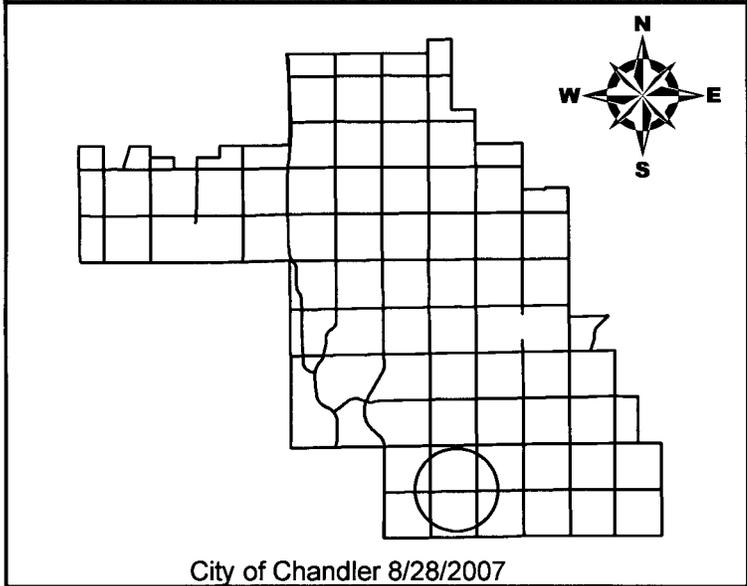
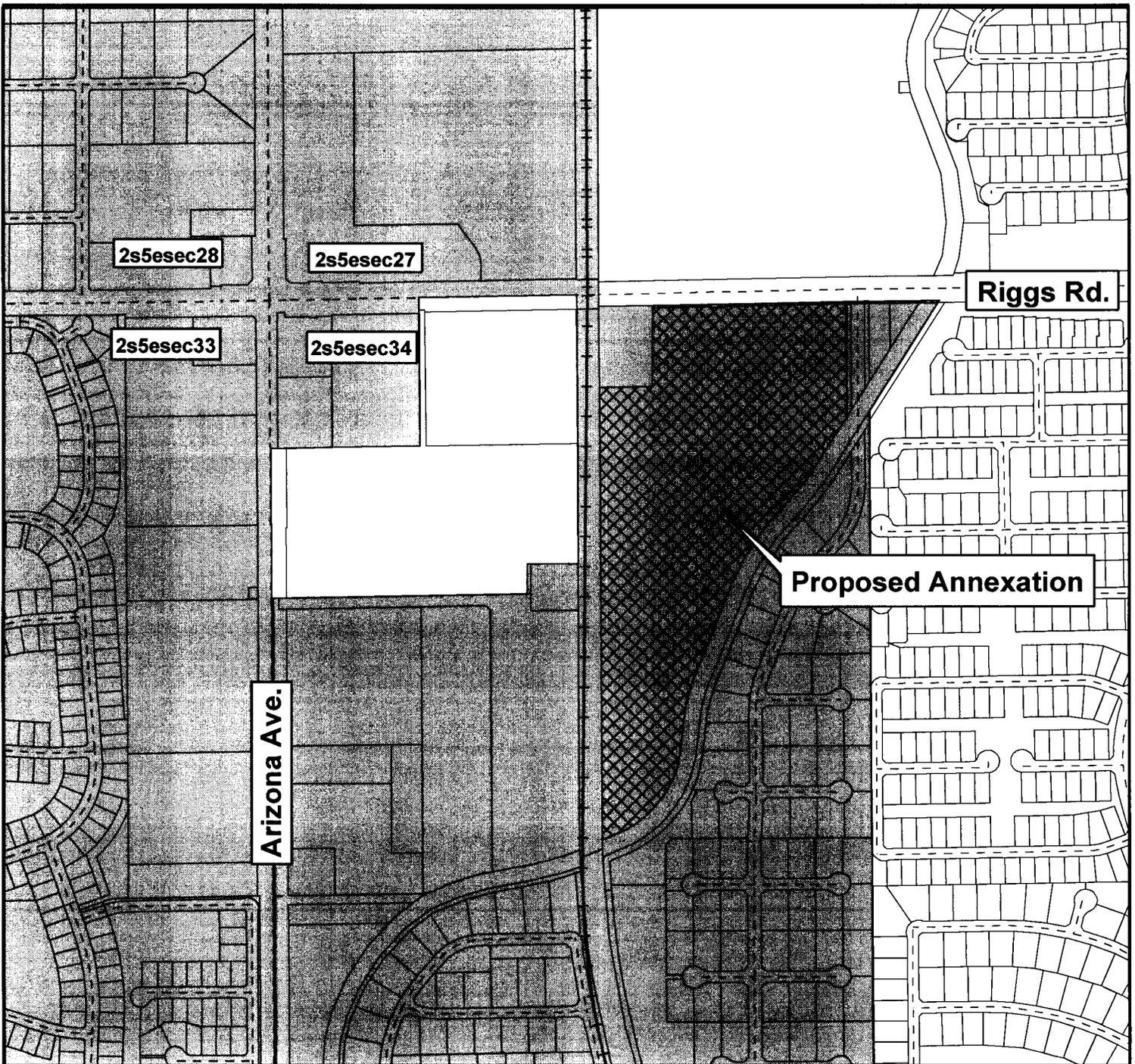
Thence North 88 degrees 52 minutes 24 seconds East a distance of 952.49 feet along a line parallel with the North line of said Section 34 to a point on the East line of the Northwest Quarter of said Section 34;

LEGAL DESCRIPTION

East of the Southeast Corner of Riggs Road & Arizona Avenue

Page 3 of 3

Thence North 89 degrees 18 minutes 34 seconds East a distance of 310.64 feet to a point on the East right-of-way line of the East Branch Consolidated Canal;
Thence South 32 degrees 03 minutes 21 seconds West a distance of 11.89 feet along said East right-of-way to the South right-of-way line of Riggs Road;
Thence South 89 degrees 18 minutes 34 seconds West a distance of 304.28 feet along said right-of-way line to the East line of the Northwest Quarter of said Section 34;
Thence South 88 degrees 52 minutes 24 seconds West a distance of 634.57 along said right-of-way line;
Thence South 01 degrees 07 minutes 36 seconds East a distance of 5.00 feet along said right-of-way line;
Thence South 88 degrees 52 minutes 24 seconds West a distance of 60.00 feet along said right-of-way line;
Thence North 01 degrees 07 minutes 36 seconds West a distance of 5.00 feet along said right-of-way line;
Thence South 88 degrees 52 minutes 24 seconds West a distance of 257.93 feet along said right-of-way line;
Thence North 00 degrees 17 minutes 16 seconds West a distance of 10.00 feet to the Point of Beginning and containing 12,902.20 square feet or 0.30 acres more or less.



Annexation Map

Ordinance No. 3964

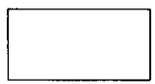
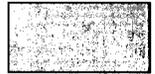
- 
Proposed Annexation
 East of the Southeast Corner of Riggs Road
 and Arizona Avenue
- 
Incorporated Area
- 
Unincorporated Area



Exhibit B