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MUNGER CHADWICK, P.L.C.

ADMITTED TO PRACTICE IN:  
ARIZONA, COLORADO, MONTANA,  
NEVADA, TEXAS, WYOMING,  
DISTRICT OF COLUMBIA

June 10, 2011

Docket Control  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

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2011 JUN 13 A 9:33  
AZ CORP COMMISSION  
DOCKET CONTROL

Re: Red Rock Utilities, L.L.C.  
Docket No. WS-04245A-07-0363

To Whom It May Concern:

Enclosed for filing in the above-referenced proceeding are the original and thirteen (13) copies of a Motion For Further Extension Of Compliance Filing Date Deadline ("Motion") on behalf of Red Rock Utilities, L.L.C.

Also enclosed are two (2) additional copies of the Motion. I would appreciate it if you would "filed" stamp the same and return them to me in the enclosed stamped and addressed envelope.

Thank you for your assistance. Please advise me if you have any questions.

Sincerely,

Angela R. Trujillo  
Assistant to  
Lawrence V. Robertson, Jr.

Arizona Corporation Commission  
DOCKETED

JUN 13 2011

DOCKETED BY

BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION  
DOCKET CONTROL

COMMISSIONERS

GARY PIERCE, Chairman  
BOB STUMP  
SANDRA D. KENNEDY  
PAUL NEWMAN  
BRENDA BURNS

IN THE MATTER OF THE APPLICATION OF ) DOCKET NO. WS-04245A-07-0363  
RED ROCK UTILITIES, L.L.C. FOR A )  
CERTIFICATE OF CONVENIENCE AND ) MOTION FOR FURTHER  
NECESSITY TO PROVIDE WATER SERVICE ) EXTENSION OF COMPLIANCE  
IN PIMA COUNTY, ARIZONA. ) FILING DATE DEADLINE

I.

**MOTION FOR FURTHER EXTENSION OF COMPLIANCE FILING DATE**

**DEADLINE**

Pursuant to A.A.C. Rule R14-3-106(K), Red Rock Utilities, L.L.C. ("Red Rock") hereby requests that the Commission enter an appropriate form of order or decision further extending from December 4, 2011 to December 4, 2013 the deadline by which Red Rock is required to file an Approval To Construct ("ATC") from the Arizona Department of Environmental Quality ("ADEQ") for the water system facilities needed to serve Phase I of the Verano Master-Planned Community ("Verano") in Pima County, Arizona. The circumstances surrounding the instant Motion are as follows.

II.

**CIRCUMSTANCES SURROUNDING MOTION**

On December 4, 2007 the Commission issued Decision No. 70030 in which it granted Red Rock a Certificate of Convenience and Necessity ("CC&N") to provide water service to and within Verano. Included within Decision No. 70030 was a condition requiring Red Rock to file a copy of ADEQ's ATC for the water system facilities necessary to serve Phase 1 of Verano. The deadline for filing a copy of the ATC with the Commission was December 4, 2009.

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1 On May 8, 2009 Red Rock filed a Motion for Extension of Compliance Filing Date  
2 Deadline with the Commission requesting an extension of the deadline for filing the ATC to  
3 December 4, 2011. That motion was occasioned by the impact that the national and local  
4 economic recession(s) had had upon the timeline for development of Verano. On June 18, 2009  
5 the Commission's Utilities Division Staff filed a Memorandum in this docket recommending  
6 approval of Red Rock's request. On August 6, 2009 the Commission issued Decision No. 71226  
7 extending the deadline for filing the ATC from December 4, 2009 to December 4, 2011.

8 The recessionary effects which occasioned Red Rock's May 8, 2009 motion persisted  
9 thereafter. As a result, the developer of Verano, South Wilmot Land Investors ("SWLI"),  
10 concluded that (i) Verano could not be developed as quickly as originally anticipated, and (ii) the  
11 timing and phasing of the project would remain uncertain until the economy became more  
12 stabilized. In addition, SWLI had an opportunity to sell 122 acres of land within the boundaries  
13 of the original Verano acreage for a use not contemplated in the original development plan for  
14 Verano, which previously had been approved by the Pima County Board of Supervisors.

15 As a consequence of the foregoing, SWLI entered into negotiations with Pima County to  
16 modify the Swan Southlands Specific Plan Development Agreement ("Original Agreement"),  
17 which had been entered into between Pima County and SWLI in 2005. The result of those  
18 negotiations is the Amended and Restated Swan Southlands Specific Plan Development  
19 Agreement ("Amended Agreement"), which was recorded in Pima County on December 8, 2010.  
20 A copy of the Amended Agreement is attached to this Motion as Appendix "A" and is  
21 incorporated herein by this reference.

22 The following excerpt from Section 3.1 of the Amended Agreement succinctly  
23 summarizes the intent of the parties underlying the Amended Agreement:

24 "It is the intent of the parties to permit Developer [i.e. SWLI]  
25 somewhat more flexibility with respect to the timing and phasing  
26 of the Property's development, but still to provide for the orderly  
27 development of the Property and the concurrent development of  
28 on-site and off-site infrastructure needed for the area."

1 In that regard, as noted in Recital "H" of the Amended Agreement, SWLI already had submitted  
2 and Pima County had conditionally approved the following plans related to development of  
3 Verano: (i) Transportation and Financing Plan, prepared by Psomas and dated June 2009; (ii)  
4 Master Watershed and Master Drainage Report, prepared by Stantec and dated June 2008; and  
5 (iii) Off-Site and On-Site Basin Study Proposal, prepared by WestLand Resources, Inc. and  
6 dated August 2009.

7 In addition, Red Rock has made preparations to (i) drill two wells, (ii) construct 4,400  
8 feet of 8 inch transmission main between the wells, and (iii) construct 1,300 feet of 12 inch  
9 transmission main, in order to provide potable water service to the aforementioned 122 acres.  
10 That parcel was sold by SWLI to Corrections Corporation of America ("CCA") in December  
11 2010. CCA intends to construct and operate a correctional facility on the 122-acre site. Red  
12 Rock will provide water service to the boundary of that site by means of the aforesaid wells and  
13 transmission mains; and, CCA will construct and operate its own on-site water system  
14 infrastructure. In addition, as Verano further develops, Red Rock will use the aforementioned  
15 wells and water lines to serve a portion of that development. Additional wells and additional off-  
16 site and on-site water system infrastructure will be constructed as development continues  
17 thereafter in Verano.

18 It is evident from the foregoing that both SWLI and Red Rock have expended substantial  
19 time and money to facilitate the development of Verano.<sup>1</sup> It is also evident that Pima County has  
20 been cooperative and supportive in that regard. However, none of these entities is in a position  
21 to influence when the economy will allow the development of Verano to proceed in accordance  
22 with the Amended Agreement. As a consequence, Red Rock is not in a position at this time to  
23 obtain an ATC from ADEQ and file the same with the Commission by December 4, 2011.<sup>2</sup>

24  
25 <sup>1</sup> Attached hereto as Appendix "B" and incorporated herein by this reference is a copy of a May 31, 2013 letter from  
26 SWLI indicating its continued desire that Red Rock be the authorized water provided for potable water service to  
and within Verano.

27 <sup>2</sup> As the Commission is aware, ATCs contain language requiring commencement of construction of the facilities  
28 which are the subject of the ATC within one (1) year of issuance of the ATC by ADEQ. Given the current  
uncertainty as to when the economic recovery will allow the development of Verano to commence, the reality is that  
Red Rock is not in a position to commit to commence construction of the facilities for Phase I of Verano by  
December 4, 2012, or one (1) year following the current December 4, 2011 compliance filing deadline date.

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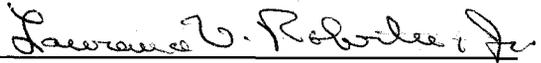
III.

REQUEST FOR RELIEF

Accordingly, by means of this Motion, Red Rock is requesting that the Commission issue an appropriate order or decision extending the deadline date for filing an ATC from ADEQ for the water system facilities needed to serve Phase I of Verano from December 4, 2011 to December 4, 2013, for the reasons discussed in Section II above.

Dated this 8<sup>th</sup> day of June 2011.

Respectfully submitted,



Lawrence V. Robertson, Jr.  
Attorney for Red Rock Utilities, L.L.C.

The original and thirteen (13) copies of the foregoing Motion are being mailed the 9<sup>th</sup> day of June 2011 for filing with:

Docket Control  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

A copy of the foregoing Motion will be emailed/mailed that same date to:

Steve Olea, Director  
Utilities Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Janice Alward, Chief Counsel  
Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

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Lyn A. Farmer  
Chief Administrative Law Judge  
Hearing Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Kim Battista, Director  
Utilities Division Compliance Section  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Mark Weinberg, Manager  
Red Rock Utilities, L.L.C.  
2200 East River Road, Suite 115  
Tucson, Arizona 85718



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# **APPENDIX “A”**

(Amended and Restated Swan  
Southlands Specific Plan  
Development Agreement)

Red Rock Utilities, L.L.C.  
Docket No. WS-04245A-07-0363

F. ANN RODRIGUEZ, RECORDER  
RECORDED BY: JSH  
DEPUTY RECORDER  
0497 PE-2



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PAGE: 555  
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TUCSON, AZ 85701-1317

When recorded return to:  
Pima County  
c/o Lori Godoshian  
Clerk of the Board  
130 W. Congress  
Tucson, Arizona 85701

COPY

**AMENDED AND RESTATED  
SWAN SOUTHLANDS SPECIFIC PLAN DEVELOPMENT AGREEMENT**

This Agreement, known as the Amended and Restated Swan Southlands Specific Plan Development Agreement (the "Agreement"), is entered into by South Wilmot Land Investors, L.L.C., an Arizona limited liability company ("Developer") and Pima County, a body politic and political subdivision of the State of Arizona (the "County").

**RECITALS**

A. The Parties hereto are the parties to that certain Swan Southlands Specific Plan Development Agreement by and between Developer and the County recorded on July 19, 2005 in Document No. 20051380080, Official Records of Pima County, Arizona (the "Original Agreement").

B. The Original Agreement concerns approximately 3,083 acres of land located in Sections 10, 12, 13, 14 and 15 of Township 16 South, Range 14 East, in unincorporated Pima County south of the City of Tucson, of which Developer is the master developer.

C. On December 7, 2004 the Pima County Board of Supervisors approved a rezoning (Co23-04-01) of that land, subject to standard and special conditions.

D. On January 4, 2005 the Board adopted Ordinance 2005-2, recorded in Docket 12469 at Page 2439, incorporating the specific plan and the standard and special conditions (the "Specific Plan"). The Specific Plan governs development of the land and requires, among other things, that the Developer provide on-site and off-site infrastructure necessary to support the phased development of the land as a residential and mixed use development, and that the Developer and County enter into a development

agreement to provide for the phasing of that development and construction of the associated infrastructure.

E. Developer and County entered into the Original Agreement to satisfy the above condition. The Original Agreement required the preparation and/or modification of certain plans and studies regarding development of the land, but it also contained relatively detailed information regarding how the development of the land would be phased and precisely what on-site and off-site infrastructure the Developer was required to build in connection with that development.

F. Due to changes in the economy since the Original Agreement was executed, Developer and County both realize that the land will not be developed as quickly as originally anticipated and that the timing and phasing of such development is uncertain at this time.

G. In addition, Developer has agreed to sell 122 acres of the land, shown on Exhibit B as Parcel D5 ("CCA Parcel"), to an entity that plans to use it to build a private prison facility, a use not permitted in the Specific Plan. In order to accommodate this new use, the Developer requested a modification of the Specific Plan with respect to 391 acres of the Property (Parcels D3, D4 and D5), including the CCA Parcel. On June 15, 2010 the Pima County Board of Supervisors approved the request for a modification (substantial change) of the Specific Plan subject to additional and modified standard and special conditions (the "Modified Specific Plan"), and concurrently with the approval of this Amended and Restated Agreement, the County is entering into a development agreement with respect to the CCA Parcel with the proposed purchaser/developer of that parcel (the "CCA Parcel Development Agreement").

H. Developer has also, since the execution of the Original Agreement, submitted and County has conditionally approved the following plans related to development of the land:

a. Transportation and Financing Plan prepared by Psomas (Job No. 7DIA057103) dated June 2009 (the "Traffic Impact Analysis");

b. Master Watershed and Master Drainage Report prepared by Stantec ( File No. 185621272) dated June 2008 (the "Master Drainage Plan");

c. Off-Site and On-Site Basin Study proposal by Westland Resources (File No. 498.25 B 8000) dated August 2009 (the "Overall Watershed Master Plan"); Conceptual Design Report prepared by PERC (File No. 9015-E) dated August 2009; and Effluent Management Plan prepared by Westland Resources dated March 2009, subject to conditions of the November 12, 2009 Development Services Department letter to the Developer (together, the "Wastewater Plan") (note that Figure 1 in the on-site basin study conditional acceptance, attached to the November 12 letter, should be dated August 5, 2009 rather than August 6, 2009)



6. Design and Construction of Transportation Improvements. The Traffic Impact Analysis identifies the transportation improvements, including off-site transportation infrastructure, inclusive of paved pedestrian paths integral to the transportation corridors, reasonably required to address the impacts of the development of the Property, and includes an infrastructure phasing schedule that is tied to the phased development of the Property. Developer shall update the Traffic Impact Analysis each time it submits a master block plat. The updated Traffic Impact Analysis shall also be subject to review and approval by the Pima County Department of Transportation and shall address the impact of development and phasing of construction within the Identity District, Sub-District or Parcel addressed in each master block plat. The updated Traffic Impact Analysis shall be consistent with elements of the County's updated Major Streets and Scenic Routes Plan and the Pima Association of Governments Southeast Area Arterial Study. Notwithstanding the requirements of this Section 6, nothing in this Agreement shall require the Developer to address increased traffic impacts caused by development of land other than the Property.
- 6.1. Design, Construction and Sequencing of Transportation Improvements. At its sole cost and expense, Developer shall design, construct and sequence, or shall arrange for the design, construction and sequencing of the transportation improvements required by the approved Traffic Impact Analysis and updates thereto (the "Transportation Improvements"). Prior to construction, Developer shall submit the design plans for the necessary Transportation Improvements to the department of transportation of the jurisdiction in which the improvements are located (the "Transportation Department"), for review and approval. Plans shall be submitted at 30%, 75%, 90% and 100% completion or as agreed upon by the Transportation Department. Unless otherwise agreed to by the parties in writing, the phasing and the required construction of the Transportation Improvements shall be as set forth in the Traffic Impact Analysis, as it may be updated from time to time.
- 6.2. As-Built Drawings. Upon completion of the Transportation Improvements, or separate and identifiable portions, of the minimum necessary Transportation Improvement described above, Developer shall provide to the County as-built drawings certified by a registered civil engineer that the transportation improvements or such portion, thereof, were constructed in accordance with approved plans.
- 6.3. Inspection and Approval. The Transportation Department shall inspect the Transportation Improvements, or portion thereof as described in Paragraph 6.1 above, and if it determines in its reasonable discretion that the Transportation Improvements were completed in accordance with the approved plans and in compliance with all applicable standards, the Transportation Department shall approve and the jurisdiction shall accept the same.
- 6.4. Dedication of One-Half Right-of-Way. At the time of recordation of, and pursuant to, the Final Block Plat for that portion of the Property that includes

Section 14, Developer shall dedicate to Pima County one-half of the right-of-way for Swan Road within Section 14 of the Property. At the time of recordation of, and pursuant to, the Final Block Plat for that portion of the Property that includes Section 15, Developer shall dedicate to Pima County one-half of the right-of-way for Swan Road within Section 15 of the Property.

- 6.5. Developer's Warranty. Developer shall, at the time of completion of the Transportation Improvements, or such portions thereof, and acceptance thereof by the jurisdiction in which the Transportation Improvements are located, warrant to such jurisdiction that such Transportation Improvements and related drainage improvements will be free from any material defects for a period of two (2) years from the date the jurisdiction accepts the Transportation Improvements.
- 6.6. Funding of Acquisition Expenses. The Parties acknowledge that the County shall be the applicant to acquire necessary rights-of-way from the State of Arizona. To the extent required by law, and with the consent of the incorporated jurisdiction, the County shall also be responsible for the acquisition of private holdings within the boundaries of an incorporated city or town. If Developer is unsuccessful in acquiring necessary rights-of-way from other third party landowners outside the Property, then the County shall, by negotiated acquisition or through its exercise of its powers of eminent domain, acquire all land required for the off-site Transportation Improvements as well as the off-site Wastewater Improvements and Drainage Improvements described below. Developer shall be responsible for all costs of acquisition. If such costs, inclusive of the payment for the land, exceed 120% of the appraised value for such property, County and Developer shall determine the best method of proceeding with the acquisition. In this regard, Developer shall enter into an agreement with the County to provide funding for the required acquisitions in a timely manner. To the extent required by law, Developer shall be entitled to a credit against the transportation related development impact fees levied pursuant to Chapter 19 of the Pima County Code for such acquisition expenses that it has paid to the County.
7. Drainage and Flood Control. The Master Drainage Plan contains a written evaluation of upstream watershed conditions and a determination of the necessary off-site and on-site upstream flood control improvements that are required for development of the Property (the "Drainage Improvements"). No building permits shall be issued for an Identity District, Sub-district or Parcel of the Property until Developer updates the Master Drainage Plan to more specifically identify the phasing and financing of the Drainage Improvements, particularly with respect to any Drainage Improvements that impact or are necessitated by more than one Identity District, Sub-district or Parcel, or are off-site.
- 7.1. Updates to the Master Drainage Plan. The Master Drainage Plan shall thereafter be updated by Developer with the submittal of each master block plat to reflect

the specific Drainage Improvements required because of the development of the Identity District, Sub-district, or Parcel covered by the master block plat. Any conditions or requirements indicated in the conditional approval of the Master Drainage Plan must be addressed to the satisfaction of the County.

7.2. Construction of Drainage Improvements. No final plat shall be recorded for any portion of the Property unless and until the Pima County Flood Control District adopts that portion of the Master Drainage Plan that impacts the portion of the Property that is the subject of the plat, and unless and until Developer posts development assurances pursuant to Chapter 18.69 of the Pima County Code for the construction of Drainage Improvements required by the Master Drainage Plan to address the development of the platted area. Such improvements shall be designed and constructed in accordance with Pima County Flood Control District Standards and pursuant to plans approved by the Flood Control District, and any approved development plans. Developer shall submit as-built drawings and shall have its engineer certify that Drainage Improvements were constructed in accordance with the approved plans and Flood Control District personnel shall have the right to inspect the completed Drainage Improvements prior to acceptance, consistent with the procedure utilized for the Transportation Improvements as described in Paragraph 6.3 above.

8. Design and Construction of Wastewater Improvements. The Wastewater Plan identifies the wastewater collection and treatment improvements and the effluent distribution system required to serve the Property and includes an infrastructure phasing schedule that is tied to the phased development of the Property (the "Wastewater Improvements"). Developer is required, at its own expense (subject to certain connection credits and/or reimbursements, as described below), to design and build on-site and off-site gravity-conveyance lines and treatment facilities to collect, transport and treat all sewer flows generated by the Property and use/discharge all resulting treated effluent, in compliance with all applicable state, local and federal laws and regulations (the "Wastewater Improvements"), and to provide for oversizing of certain sewer lines for flow-through capacity. The precise phasing of the construction of the Wastewater Improvements will be governed by the Wastewater Plan, which Developer shall update each time it submits a master block plat. The revised Wastewater Plan will be subject to review and approval by the Pima County Regional Wastewater Reclamation Department ("RWRD") and shall address the impact of development and phasing of construction within the Identity District, Sub-District or Parcel addressed in each master block plat and provide for any required flow-through lines. Notwithstanding the requirements of this Section 8, nothing in this Agreement shall require the Developer to address increased wastewater collection and treatment capacity or effluent distribution needs caused by development of land other than the Property, except that certain lines will be oversized to accommodate flow-through capacity.

8.1. Initial Planning and Dedications. Developer must, prior to approval of the first master block plat:

- 8.1.1. Update the Wastewater Plan to address, to the satisfaction of the County, and in a manner consistent with the requirements of this Section, the conditions set forth in the November 12, 2009 letter from County Development Services. Unless otherwise agreed to in writing by RWRD, the updated Wastewater Plan must:
- 8.1.1.1. Include a phasing plan for the construction and use of interim wastewater treatment facilities to be owned and operated by Developer (such as vault-and-haul and/or package plants) and then a permanent wastewater treatment facility to serve the build-out of the Property (currently estimated to be approximately 1.4 MGD to 1.7 MGD), beginning with a 300,000 GPD permanent treatment facility to be built by Developer in the northwest corner of the Property as shown on Exhibit C, to be thereafter owned and operated by the County, which can be further expanded as necessary as the Property is built out (the "Treatment Facility"). The Treatment Facility, and any expansions, thereto, must be so designed as to generate Class A+ effluent and shall meet the ADEQ standards for Best Available Demonstrated Control Technology ("BADCT").
  - 8.1.1.2. Include a plan for construction and maintenance of a reclaimed water system and sufficient recharge basins such that all effluent from the Property can be reused or disposed of on a continuous basis without discharge to washes except as agreed to by RWRD.
  - 8.1.1.3. Provide for conveyance to the County of sewer easements through the interior of the Property generally as shown on Exhibit C, as the Property is platted and infrastructure is built. The sewer easements need not be precisely as shown on Exhibit C, but must create a regional gravity-flow system for bringing sewage generated on the Property to the Treatment Facility, and for accommodating off-site flow-through.
- 8.1.2. Convey to the County a parcel of land, in the location shown on Exhibit C, approximately 42 acres in size, sufficient for the construction of the Treatment Facility (assuming possible expansion up to 10-million-gallons-per-day capacity), including required buffer areas.
- 8.1.3. Owner will convey to the County a 40-foot wide easement for the construction, installation, repair and replacement of sewer lines and related sewer conveyance facilities along the north and west sides of the Property, generally as shown on Exhibit C, and will dedicate to the public an adjacent 20-foot wide public utility easement.

- 8.1.4. Demonstrate to the County that Developer has obtained from the Tucson Airport Authority an option to purchase a 40-foot wide utility easement through TAA-owned property in Section 2 connecting the two sections of the utility easement on the North side of the Property, to form a continuous east-west easement corridor. Developer will be required to purchase and convey this easement to the County, at no cost, before any building permit will be issued for the Property. If Developer is unsuccessful in acquiring the easement, then the County shall, by negotiated acquisition or through its exercise of its powers of eminent domain, acquire the easement and Developer shall be responsible for all costs of acquisition. If such costs, inclusive of the payment for the land, exceed 120% of the appraised value for such property, County and Developer shall determine the best method of proceeding with the acquisition.
- 8.1.5. Notwithstanding the foregoing or anything else to the contrary in this Section 8, the parties acknowledge that RWRD has agreed to consider, in lieu of a Treatment Facility, a proposed connection to the County's existing regional public system (Old Nogales line) as an alternative method of sewer disposal for the Property. In the event that RWRD approves such an alternative, the requirements herein relating to the Treatment Facility shall no longer be applicable and the Developer shall prepare, for RWRD's review and approval, a revised Wastewater Plan identifying the applicable Wastewater Improvements necessary for the development of the Property based upon such a connection.
- 8.2. Sewer Service Agreement. Developer shall negotiate a separate Master Sewer Service Agreement with the County at the time of the first master block plat, which Master Sewer Service Agreement shall be consistent with this Agreement and shall more specifically identify the design, bid, construction, acceptance, administration, operation, and maintenance requirements for the Wastewater Improvements.
- 8.3. Connection Fees. The Master Sewer Service Agreement shall provide that the County shall charge to each residential or commercial unit on the Property, the then-current connection fee rate for wastewater service, as such fee is established in Pima County Code Chapters 13.20 and as such fee may be adjusted from time to time. Developer shall be entitled to reimbursement from the County by means of credits or reimbursements from such connection fees in an amount equal to the actual costs of the Treatment Facility. Developer shall further be entitled to connection fee credits for the costs of over-sizing gravity sewer lines required by the County for flow-through capacity, to the extent that over-sizing costs exceed the base costs of installing conveyance capacity sufficient to serve development within the Property. The timing and amount of such connection fee reimbursements and credits shall be identified in the Master Sewer Service Agreement.

- 8.3.1. Improvements eligible for credits/reimbursements as set forth above ("Qualifying Improvements at the Treatment Facility") may be constructed through design-bid-build, design-build, or construction manager at risk – type agreements. Developer shall solicit and receive bids for construction of all Qualifying Improvements at the Treatment Facility from at least two qualified, licensed and bonded contractors, three if available, and make such bids available to RWRD for RWRD's recommendation and for Developer's award of contracts or rejection of bids. Developer shall accept the lowest qualified bid. The County shall expeditiously review information submitted by Developer relating to project costs, designs and engineering, and shall not unreasonably object to same. After the bid award, any change orders submitted by the contractor shall be pursuant to established procurement procedures of the County.
- 8.3.2. Upon completion of any Qualifying Improvements at the Treatment Facility, developer shall certify to the County the actual cost and expense incurred in connection with the Qualifying Improvements at the Treatment Facility, including the cost of all engineering, materials, labor, oversight, safety, permitting, bonds or security, inspections, change orders, insurance, and all other reasonable costs (collectively, the "Costs").
- 8.3.3. Upon receipt of ADEQ's "Approval of Construction," regarding a Qualifying Improvement at the Treatment Facility, the County shall reimburse developer on a quarterly basis for the Costs incurred, as provided in this subsection, until such Costs have been fully reimbursed. Such reimbursements shall be payable solely from available revenues derived from County's sewer system, after application of monies required under County's debt instruments. Each quarterly reimbursement shall be due within forty-five (45) days following the close of each calendar quarter and in an amount equal to ninety percent (90%) of the sewer connection fees received by County during the preceding calendar quarter from any land served by the Treatment Facility as expanded. Such reimbursements will bear no interest and neither Developer nor any other party shall have any claim or lien on the County's sewer system revenues, except as provided in the County debt instruments. Nothing in this Agreement shall be construed in a manner that would violate any bond covenants of County's debt instruments. The Developer shall have the right to convey wastewater credits to homebuilders tributary to the Treatment Facility, with appropriate notice to County.
- 8.3.4. The parties acknowledge that the CCA Parcel Development Agreement requires the CCA Parcel owner to pay applicable wastewater connection fees to the County and also requires the CCA Parcel Owner to connect to

the public sewerage system in the Southlands Service Area at such time as such a system is available. The parties agree that nothing in this Agreement or the CCA Parcel Development Agreement shall obligate Developer to construct any capacity or other infrastructure necessary to make such a connection except where flow-through sewers are required to provide sewer access to development outside of the Property.

8.4. Use of Effluent. Developer and County shall make every reasonable effort to put to immediate beneficial use all effluent generated within the Property ("Reclaimed Water"). Beneficial uses shall include among other things using the Reclaimed Water to irrigate the Recreational Improvements and Riparian Areas required under Section 9, schools discussed under Section 11, and other public landscaping and shall include riparian corridors, public parks and schools. Developer shall prepare a detailed plan defining how it will put the Reclaimed Water to immediate beneficial use (the "Water Conservation Plan") prior to the initiation of the design for the Treatment Facility. If the County is the sewer service provider and subject to the terms of County/City of Tucson Intergovernmental Agreement Relating to Effluent entered into in 1979 (and any amendments or addendums thereto), the Sewer Service Agreement shall include a provision granting Developer the first right to use all effluent generated on the Property.

9. Recreation Improvements. Unless otherwise agreed to by the Parties, Developer shall complete the following studies and shall design and construct the following on-site and off-site recreation improvements reasonably required to serve the development of the Property.

9.1. Recreation Plan and Updates. Developer shall, prior to submittal of any subdivision or block plat on the Property, prepare a detailed recreation area plan (the "Recreation Plan") based upon and consistent with the Swan Southlands Recreation Area Plan that the County approved as part of the Specific Plan. The basis for the Recreation Area Plan shall be 871 square feet of developed recreation area and recreation amenities per single-family residential dwelling. The Recreation Plan shall be subject to the review and approval of the Pima County Natural Resources, Parks and Recreation Department ("NRPR"). The Recreation Plan shall include an infrastructure phasing schedule coordinated with the phased development of the Property. Developer shall update the Recreation Plan as necessary each time it submits a subsequent master block plat, to address the construction of recreational facilities to serve the area being platted, as well as the portion of any recreation facilities serving a larger area (such as trails) that fall within the platted area. The updated Recreation Plan shall also be subject to review and approval by the NRPR.

9.2. Design and Construction of the Recreational Improvements. Subject to the review and approval of NRPR, Developer shall design and construct at its sole

expense or shall cause the design and construction of all public and private recreation related improvements and trails within the Property required by the approved Recreation Plan to serve the residents of the Property (the "Recreation Improvements") on a phased basis. Prior to construction, Developer shall submit the design plans for the required Recreation Improvements to the NRPR for review and approval. Plans shall be submitted at 30%, 75% and 100% completion or as required by NRPR. Generally, the Recreation Improvements shall include on-site public and private trails, on-site private neighborhood parks and recreational amenities, and on-site public community parks and recreational amenities. Developer shall also construct reclaimed water distribution lines as called for in the Water Conservation Plan described in Paragraph 8.4 above to serve these recreational areas. Unless otherwise agreed to by the parties in writing, the phasing and the required construction of the Recreation Improvements shall be as set forth in the Recreation Plan, as may be updated from time to time.

- 9.3. Additional Amenities. Additional private trails and sidewalks shall be constructed within each development block to link elements within blocks to the overall trail system. Developer shall also construct private neighborhood parks generally ranging in size from one to four acres each (unless such other sizes are approved by the County as part of the updated Recreation Plan) in various development blocks which shall be linked to the trail system. The exact locations of these neighborhood parks shall be determined by the updated Recreation Plan and in consultation with NRPRD. Any additional amenities required by this Paragraph shall be included within the 871 square foot set-aside per residential unit requirement of Paragraph 9.1.
- 9.4. As-Built Drawings. Upon completion of the Recreation Improvements, or separate and identifiable portions thereof, Developer shall provide to the County as-built drawings of the Recreation Improvements and shall certify that the Recreation Improvements or such portions thereof were constructed in accordance with the approved plans.
- 9.5. Inspection and Acceptance of Recreation Improvements. NRPRD shall inspect the Recreation Improvements to determine if they have been completed in accordance with approved plans and applicable NRPRD standards. NRPRD shall accept into its maintenance systems those approved Recreation Improvements which it desires to be open to the public. Developer shall maintain all other Recreation Improvements not accepted into NRPRD's maintenance system, or shall cause the same to be maintained by private Homeowners Associations or other legal entities which shall have the ability to enter onto private property to maintain such Recreation Improvements.
- 9.6. Natural Open Space Set-Aside and Restoration of Riparian Areas. Unless otherwise agreed to by the Parties, Developer shall set aside Natural Open Space, complete the following studies and shall undertake the restoration of

certain riparian areas on the Property and shall design and construct the following Riparian Area Improvements on the Property.

- 9.7. Natural Open Space Set-Aside. Pursuant to the Modified Specific Plan, Developer shall set aside 771 acres of Specific Plan Natural Open Space. Of this 771 acres, 8 acres shall be Natural Open Space as defined in Pima County Code Section 18.03.020(O)(2). The remaining 763 acres shall be set aside on a phased basis as "NPPO Natural Open Space" in compliance with the requirements of the natural open space set-aside option under the Pima County Native Plant Preservation Ordinance, Chapter 18.72 of the Pima County Code. "NPPO Natural Open Space" is defined, for purposes of this Agreement, as undisturbed areas that will be maintained and managed through established deed restricted common area or conservation easements, but can include areas that: (1) have prior disturbance due to previous land management practices or access roads but are restored to the level of biological resources of undisturbed land adjacent to the disturbed area; (2) existing natural areas that are enhanced or regenerated through perma-culture /containerized or salvage landscape enhancement and restorative management practices, including use of effluent or other source of irrigation, and planting or seeding of native plant species; (3) are included in the calculations necessary for determining the lighting parameters for the commercial development within the Property, provided that such commercial area boundaries include such Natural Open Space; (4) contain water harvesting features and soil stabilization techniques; and (5) provide for a Pima County Pima Pineapple Cacti Propagation and Transplant Study area. Unless otherwise agreed to by the Parties in writing, the Specific Plan Natural Open Space and the NPPO Natural Open Space set-aside shall be phased as shown in Exhibit D.
- 9.8. Riparian Plan. Developer shall prepare and submit to the Pima County Development Services Department ("Development Services") a detailed Riparian Mitigation and Restoration Plan ("Riparian Plan") which shall be based upon and consistent with the Conceptual Riparian Mitigation and Restoration Plan which the County has approved as part of the Modified Specific Plan. The Riparian Plan shall be subject to the review and approval of Development Services and, for compliance with title 16 requirements, the Director of the Pima County Flood Control District. Developer shall update the Riparian Plan as necessary each time it submits a subsequent master block plat. The updated Riparian Plan shall also be subject to review and approval by the Environmental Planning Manager for Development Services and the Pima County Flood Control District. The Riparian Plan and updates thereto shall address the improvements to affected and adjacent riparian areas including erosion control, soil and bank stabilization, trails, planting of native trees, shrubs, and grasses, and dedication of Natural Open Space within the Identity District, Sub-district or Parcel addressed in each subsequent master block plat (the "Riparian Improvements").

9.9. Riparian Improvements. Developer at its own cost and expense shall design, construct or otherwise implement, on a phased basis, the Riparian Improvements called for in the approved Riparian Plan and those set forth in Exhibit D, attached hereto and incorporated herein by this reference. In addition, to the extent the Riparian Plan requires irrigation, Developer shall install reclaimed water distribution lines as called for in the Water Conservation Plan required by Paragraph 8.4.

10. Affordable Housing.

10.1. Contributions to Housing Trust Fund. In lieu of any inclusive zoning requirements, the parties agree that for each residential unit within the Property, Developer shall make a percentage contribution to the Pima County Housing Trust Fund based upon the fair market value of such residential unit. Such percentage contribution shall be as set forth in Exhibit E and shall be payable for each unit at the time the building permit is issued for such unit. As stated on Exhibit E, the maximum contribution per residential unit shall not exceed \$5,000.00, which maximum contribution amount shall be adjusted annually by the Consumer Price Index. Up to 25% of the contributions made pursuant to this Section 10 shall be designated for down-payment assistance to support new home ownership within the Property and will be made available to Developer upon request by Developer at the time of block or subdivision plat.

10.2. Effect of Ordinance, Overlay or Policy. If the County adopts an ordinance, overlay, or policy after the effective date of this Agreement establishing a per dwelling unit payment to the Pima County Housing Trust Fund, then such ordinance, overlay, or policy shall supersede Paragraph 10.1.

10.3. Prepayment of Funds. At Developer's option, Developer may pre-pay the contribution for some or all of the residential dwelling units.

11. Schools. Developer has entered into a memorandum of understanding ("MOU") dated March 9, 2004, with the Sunnyside Unified School District No. 12 ("District") wherein Developer agrees to pay a voluntary cash contribution of twelve hundred dollars (\$1,200) for each non-age restricted unit no later than the issuance of a Building Permit for each residence. The MOU also provides that the District and Developer may negotiate the donation of in-kind goods and services, which would offset Developer's other obligations contained in the MOU. Developer shall enter into an agreement with the District that provides for the implementation of the MOU and the requirements of this Paragraph. Developer also agrees to donate certain school sites within the Property for the District, which sites shall be subject to the approval of the District, which approval shall not be unreasonably withheld. Prior to submittal of the first block plat, Developer shall submit documentary evidence that Developer and the District have entered into an agreement that is consistent with the requirements of this paragraph and the Modified Specific Plan and that supersedes the MOU.

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12. Development Assurances. Prior to, and as a prerequisite to the issuance of final plat approval, Developer shall provide financial assurances which are appropriate and necessary to ensure that installation of both on-site and off-site infrastructure improvements required by this Agreement and the Modified Specific Plan, and which are related to such plats, will be completed ("Infrastructure Assurance"). Developer may elect any one or any combination of the methods for Infrastructure Assurance allowed by Chapter 18.69 of the Pima County Code. Once Developer has provided to County the required Infrastructure Assurances, Developer may, subject to County approval, which approval shall not be unreasonably denied, replace such initial method of Infrastructure Assurance, either in whole or in part, with any of the other methods of Infrastructure Assurance allowed by the Pima County Code. However, such replacement of initial assurances shall be for entire blocks, not portions thereof or noncontiguous lots. Subject to County Approval, which approval shall not be unreasonably denied, Developer may substitute the Infrastructure Assurances provided by it with Infrastructure Assurances provided by the developer of a particular portion of the Property on which the Infrastructure that is the subject of the Infrastructure Assurances will be constructed. Pima County agrees that within fifteen (15) working days from Pima County's approval of the particular completed infrastructure improvements for which Pima County has required and Developer has provided Infrastructure Assurance, Pima County shall release or partially release such Infrastructure Assurance, as may be appropriate under the circumstances. Pima County agrees that releases will be made for completed subdivision improvements, regardless of whether the Infrastructure Assurances for the block plat within which the subdivision is located have been released; provided, however, that Developer has completed to the County's satisfaction those infrastructure improvements, required by the Pima County Code, the Specific Plan, approved block plat and this Agreement, and which are reasonably necessary to serve the development.

13. Phasing of Development

13.1. Phasing in Correspondence with the Specific Plan. The Developer shall develop the Property in a series of phases which shall correspond to the Modified Specific Plan and the Identity Districts established therein. The Property is planned to be phased in the following order of Identity Districts: A-1, A-2, C-1, C-2, C-3, B and D as depicted on Exhibit F. It is anticipated that there will be a series of sub-phases in each Identity District and each phase or sub-phase will include a corresponding infrastructure phasing schedule to be approved by the County as part of the required Plans and master studies required herein.

13.2. Changes to Phasing of Development. Subject to the approval of the County Administrator or his designee, which approval shall not be unreasonably withheld, and notwithstanding the phasing of development and construction of improvements outlined in this Agreement, Developer may modify the timing or sequencing of the development and may develop one or more phases concurrently based on real estate market conditions, industry factors, and

business considerations. However, any such modification shall not occur unless and until the Traffic Impact Analysis, Master Drainage Plan, Wastewater Plan, Recreation Plan, and Riparian Plan have all been updated to reflect and to account for the change in the phasing/sequencing of the development of the Property. Furthermore, Developer shall construct improvements necessary to address the on and off-site impacts of development of a modified phase as required by such Plans. The ultimate size and scope of the improvements necessary for a phase shall be based on the density of the Identity District, Sub-district or Parcel at build-out, and shall consist of those improvements necessary to address the on and off site impacts of the development of the Identity District, Sub-district or Parcel and shall be consistent with the minimum infrastructure improvements set forth in this Agreement.

13.3. Updates to Required Plans. The Transportation Plan, Wastewater Plan, Master Drainage Plan, Recreation Area Plan, Natural Open Space Designation and Riparian Restoration Mitigation Plan, Affordable Housing Plan and any other studies required by the Modified Specific Plan and this Agreement may be updated upon approval of the County and as described in this Agreement, but such updates shall not require a concurrent amendment to this Agreement unless such updates are inconsistent with the text of this Agreement, in which case the parties shall effectuate only those changes as necessary to make the text of this Agreement consistent with such updates.

13.4. Permits for Construction on County Property. Prior to entering onto County Property to construct the improvements required by this Agreement, Developer shall, at its own cost and expense, obtain right-of-way use permits or other access permits which may be conditioned upon Developer's agreement to indemnify, defend and hold the County, its officers, agents and employees harmless from claims arising from Developer's activities on County property or right-of-way, and Developer shall comply with the insurance requirements of said permits.

14. Obligations of the County. The County shall be subject to the following duties, responsibilities and obligations.

14.1. Development Review. The County Agrees that Developer may begin the infrastructure improvements called for in this Agreement (the "Infrastructure Improvements") at any time after this Agreement is executed by the Parties and Recorded in the Office of the Pima County Recorder; provided that Developer has obtained the necessary approvals called for in this Agreement. In order to facilitate Developer's construction of the Infrastructure Improvements, the appropriate department within Pima County shall make all reasonable efforts to review and process the plans for the Infrastructure Improvements and all applications for permits related to the Infrastructure Improvements in an expeditious manner consistent with standard Pima County Plan review procedures. Infrastructure Improvements for the Identity District, Sub-district

or Parcel shall be completed prior to release of assurances for that Identity District, Sub-district or Parcel unless otherwise provided pursuant to Section 12 above. To further expedite County processes, Developer and the County may concur that it is appropriate for the County to retain private, independent consultants to assist Pima County in review and/or inspection processes; provided, however, that such consultants shall take instructions from, be controlled by, and be responsible to, the County and not Developer. Developer shall pay all costs associated with retaining such consultants, and such costs are not eligible for credits or reimbursements of Development Fees.

14.2. Section 404 Permit Application. With respect to the off-site improvements, the County shall be the applicant for the applicable permits required by Section 404 of the Clean Water Act. Developer shall be responsible for preparing the applications for the Section 404 Permits and shall reimburse the County any applicable permit fees.

14.3. License Agreement. Prior to recordation of the first final plat, Pima County shall grant to Developer or the homeowners association a written license agreement to allow Developer to design and construct improvements on public rights-of-way within the Property, including but not limited to landscaping and irrigation, monument signs and other signs, and other related improvements, which improvements shall be subject to review and approval of the Transportation Department. This Agreement does not extend a right to place any amount of a required buffer yard in public road right-of-way. A homeowners association shall be organized with jurisdiction over the Property to maintain such improvements. All monument signs and other signs shall comply with Pima County ordinances. Developer or the homeowners association(s) shall agree to indemnify, defend and hold harmless Pima County from all claims of damages or injury arising from such improvements and shall obtain liability insurance, and make the County an additional insured on such insurance policies, in amounts to be approved by the Pima County Risk Manager, which amounts of insurance shall be reasonably consistent with the policy limits required for similar activities on County right-of-way. The specific liability insurance and indemnification requirements will be addressed in more detail in conjunction with the subsequent licensing agreements entered into between Developer and the County.

15. Development Fee Credits. Developer shall be entitled to credits against any applicable County development fees assessed by County pursuant to A.R.S. § 11-1102 for that portion of off-site transportation improvements designed and constructed by Developer and located within the County's jurisdiction (or within the jurisdiction of an incorporated city or town, provided that the County and the city or town enter into an intergovernmental agreement pursuant to A.R.S § 11-1103) and all of the other on-site and off-site infrastructure designed and constructed pursuant to this Agreement for which a County development fee is assessed. For purposes of this Agreement, "off-site" shall mean improvements that are not located on or

immediately adjacent to the Property. The amount of credit shall not exceed the amount of development impact fees assessed to and collected from the Property pursuant to A.R.S. § 11-1102 for the particular type of infrastructure improvement or land use for which credits or reimbursements are sought. Nothing in this provision shall obligate the County to reimburse or provide credits to Developer from County development fees that have not been generated from development of the Property or to provide credits in the event that the County has either already provided a credit or reimbursement for the infrastructure structure improvement for which the credit is sought or has separately provided consideration for the infrastructure improvement or if the infrastructure improvement has been constructed by the County.

16. Protected Development Right. Pursuant to A.R.S. § 11-1202(F), the Modified Specific Plan as presented and approved at by the Board of Supervisors at the rezoning public hearing is hereby designated a protected development right plan, as such term is defined by A.R.S. § 11-1201. Pima County and Developer acknowledges that granting a protected development right to undertake and complete the development shown on the Modified Specific Plan and permitted under current zoning regulations and under zoning regulations applicable at the commencement of various phases of development will promote reasonable certainty, stability and fairness in the land use planning and regulatory process and secure the reasonable investment backed expectations of Developer. The protected development rights granted by this paragraph are governed by the following:

16.1. Consistency with the Specific Plan. Only development of the Property which is consistent with and in accordance with the Ordinance 2005-2, the Modified Specific Plan and the terms of this Agreement shall be eligible for protection under this Section. Pima County agrees to process any permit applications and shall timely review Developer's plans, specifications, plats and other items that must be approved prior to development the Property under this Agreement.

16.2. Term. Pursuant to A.R.S. § 11-1203(A), Developer's protected development right for all development within the Modified Specific Plan as described herein shall terminate ten (10) years after execution and recording of this Agreement (the "PDR"). If at the conclusion of the ten-year protected development right, the Developer has obtained a release of assurances for any improvements contained on the first master block plat for the Property, then the PDR shall be extended for an additional ten-year term.

16.3. Governing Rules. Under the PDR, the development of the Modified Specific Plan shall be governed by the applicable provisions of the Pima County Zoning Code in effect on the date of execution of this agreement. Developer's protected development rights, as established by this Agreement, precludes the enforcement against the Property of any other legislative or administrative land use regulation by the County or pursuant to an initiated measure that would change, alter, impair, prevent, diminish, delay or otherwise impact the development or use of the Property. Notwithstanding the foregoing, the County may enact the following provisions, and take the following actions, which shall

be applicable to and binding on the development of the property as set forth in Ordinance 2005-2, the Modified Specific Plan and this Agreement:

- 16.3.1. Provisions adopted with the written consent of the affected landowner.
  - 16.3.2. On findings, by ordinance or resolution and after notice and a public hearing, that natural or man-made hazards on or in the immediate vicinity of the Property, if uncorrected, would pose a serious threat to the public health, safety and welfare if the project were to proceed as approved pursuant to this Agreement and the Modified Specific Plan.
  - 16.3.3. On findings, by ordinance or resolution and after notice and a hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations that made a difference in the County's approval of the Modified Specific Plan or any other plat, plan or permit based on the Modified Specific Plan.
  - 16.3.4. On the enactment of a state or federal law or regulation that precludes development as approved in the Modified Specific Plan and pursuant to this Agreement, in which case the governing body of Pima County, after notice and a hearing, may modify the affected provisions, on a finding that the change in state or federal law has a fundamental effect on the protected development rights.
  - 16.3.5. The PDR granted by this Agreement does not preclude the enforcement of a subsequently-adopted overlay zoning classification that imposes additional requirements and that do not affect the allowable type or density or use, or the infrastructure to serve same, or ordinances or regulations that are general in nature and that are applicable to all property subject to land use regulation by the County, such as building, fire, plumbing, electrical and mechanical codes. The protected development rights do not preclude, change, or impair the authority of the County to adopt and enforce zoning ordinance provisions governing nonconforming property or uses.
  - 16.3.6. Nothing herein shall be construed as diminishing or altering the authority of the County to exercise its eminent domain powers or to adopt or increase development impact fees authorized by A.R.S. Sections 11-1102 and 11-1103 or sanitary sewer user or connection fees authorized by Title 13 of the Pima County Code.
- 16.4. Common Law Vesting. Nothing in this Agreement shall affect the claims of the Parties, if any, regarding the vesting of all or a portion of the Modified Specific Plan as a matter of common law, either during the term of or following termination of this Agreement.

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17. General Provisions.

17.1. Binding Effect and Recording. This Agreement shall run with the Property and is binding upon and shall inure to the benefit of the successors, assigns, heirs and personal representatives of Developer and Pima County; provided, however, Developer's rights and obligations hereunder may only be assigned to a person or entity that has acquired the Property or a portion thereof. Upon transfer of all or a portion of the Property by Developer, the new developer shall automatically become the "Developer" hereunder and the Developer shall be released from this Agreement, but only as to the portion of the Property transferred. Upon execution hereof, this Agreement shall be recorded in the Office of the Pima County Recorder for Pima County, Arizona.

17.2. Amendments. This Agreement may be amended, in whole or in part and with respect to all or any portion of the Property, only with the mutual written consent of the parties to this Agreement or by their successors in interest or assigns. The amendment or cancellation shall be recorded in the Office of the Pima County Recorder.

17.3. Effective Date and Term. The effective date of this Agreement (the "Effective Date") is the date the Agreement is signed by all the Parties and is recorded in the Office of the Pima County Recorder. This Agreement expires twenty-five (25) years from the Effective Date, except that any applicable indemnification and insurance requirements required by this Agreement shall continue in full force and effect.

17.4. Authority. The undersigned represent to each other that they have full power and authority to enter into this Agreement, and that all necessary actions have been taken to give full force and effect to this Agreement. The Developer represents and warrants that it is duly formed and validly existing under the laws of the State of Arizona and that it is duly qualified to do business in the State of Arizona and is in good standing under applicable state laws. The Developer and the County warrant to each other that the individuals executing this Agreement on behalf of their respective parties are authorized and empowered to bind the party on whose behalf each individual is signing. The Developer represents to the County that by entering into this Agreement, the Developer has bound the Property and all persons and entities having any legal or equitable interest therein to the terms of this Agreement

17.5. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the County or the Developer of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

17.6. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall

constitute one and the same instrument. The signature pages all attached to a single instrument so that the signatures of all parties may be physically attached to a single document. The signature pages from one or more counterpart may be removed from such counterpart and attached to a single instrument.

- 17.7. Notices. Any notice to be given or served (and any election to be made or delivered) upon any party hereto in connection with this Agreement must be in writing and shall be deemed to have been given and received (or made and delivered) three (3) days after a Certified or Registered letter containing such notice (or selection), properly addressed, with postage prepaid, is deposited in the United States mail; and if given otherwise than by Registered or Certified mail, it shall be deemed to have been given (or made) when delivered to and received by the party to whom it is addressed. Such notice shall be given to the parties at the following addresses:

**DEVELOPER**

**COUNTY**

South Wilmot Land Investors, LLC  
2200 E. River Rd. #115  
Tucson, AZ 85718  
Attn: David Goldstein

Pima County Administrator  
130 W. Congress  
10<sup>th</sup> Floor  
Tucson, AZ 85701-1207

A party may change the address at which the party shall receive notice pursuant to this Agreement by giving written notice of such new address in the same manner as any other notice shall be given in accordance with this section.

- 17.8. Headings. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only, and shall not control or affect the meaning or construction of any of the provisions of this Agreement.
- 17.9. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are hereby superseded and merged herein. The Parties acknowledge and agree that this Agreement does not replace, supersede or amend the Modified Specific Plan or the conditions of rezoning of the Property.
- 17.10. Exhibits. The exhibits in this Agreement are fully incorporated herein as if set forth at length in the body of this Agreement.
- 17.11. Governing Law. The laws of the State of Arizona shall govern the interpretation and enforcement of this Agreement. The parties agree that venue for any action commenced in connection with this Agreement shall be proper only in a court of competent jurisdiction located in Pima County, Arizona, and the parties hereby waive any right to object to such venue.

AMOUNT PAID

17.12. Conflict of Interest. This Agreement is subject to the provisions of A.R.S. § 38-511.

17.13. No Partnership; Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture, agency or other arrangement between the parties hereto. No term or provision of this Agreement is intended to, or shall be for the benefit of any person, firm, organization or corporation and no such other person, firm, organization or corporation to a party hereto shall have any right or cause of action, except as specifically set forth herein.

17.14. Representatives, Mediation, Default and Non-Liability.

17.14.1. Representatives. To further the cooperation of the parties in implementing this Agreement, the County and the Developer each shall designate and appoint a representative to act as a liaison between the County and its various departments and the Developer. The initial representative for the County (the "County Representative") shall be the County Administrator or his designee 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 representatives shall be available at all reasonable times to discuss and review the performance of the parties to this Agreement and the development of the Property.

17.14.2. Mediation. If a dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try to settle the dispute through mediation before resorting to arbitration, litigation or some other dispute resolution procedure. In the event that the parties cannot agree upon the selection of a mediator within seven (7) calendar days, any of the parties may request the presiding judge of the Superior Court of Pima County to assign a mediator from a list of mediators maintained by the Arizona Municipal Risk Retention Pool.

17.14.3. Default. Failure or unreasonable delay by any party to perform any term or provision of this Agreement for a period of thirty (30) business days after written notice thereof from another party shall constitute a default under this Agreement. If the default is of a nature which is not capable of being cured within thirty (30) days, the cure shall be commenced within such period, and diligently pursued to completion. The notice shall specify the nature of the alleged default and the manner in which the default may be satisfactorily cured. In the event of a default hereunder by any party, the non-defaulting party shall be entitled to all remedies at both law and in equity, including, without limitation, specific performance and the right to perform the obligation(s) of which the defaulting

party is in default and to immediately seek reimbursement from the defaulting party of all sums expended in order to cure such default, together with interest on all such sums from the date said sums are expended by the non-defaulting party for the purpose of curing the default to the date such sums are paid in full.

- 17.15. Non-Liability of County and District Officials and Employees. Except for mandamus and other special actions, no member, official or employee of the County shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the County or for any amount that may become due to the Developer or successor, or under any obligation under the terms of this Agreement.
- 17.16. Attorney's Fees. If any party brings a legal action either because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees and court costs.
- 17.17. Sub-agreements. The County and the Developer hereby acknowledge that the development of the Property may be accomplished by the Developer through a series of sales, leases, joint ventures and/or other agreements and arrangements with other experienced developers, investors and owners of real property. In connection therewith, it is anticipated and contemplated by the parties that such developers, investors or owners may desire to negotiate and enter into separate and subordinate development agreements with the County and/or the Developer with respect to infrastructure improvements, uses, plan approvals and other similar matters which may be the subject of separate agreements between such developers, investors and owners and the County and/or the Developer. The parties hereby agree that any and all development agreements entered into with any such developer, investor or owner of any parcels of the Property shall be subordinate in all respects to the terms and conditions of this Agreement and, in the event of any conflict or discrepancy between the provisions of any such development agreement and the terms and conditions of this Agreement, this Agreement shall govern and control.
- 17.18. Further Assurance. Each party agrees to execute such further documents, instruments and other writings and to perform such acts as either party may reasonably request in order to fully effectuate the purpose of this Agreement.
- 17.19. Construction. The terms and provisions of this Agreement represent the results of negotiations between County and Developer, each of which has been represented by counsel of its own choosing, and none of which have 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 no party shall be deemed to have drafted this Agreement for purposes construing any portion of this Agreement for or against any party.

- 17.20. Severability. If any provision, other than the financing provisions, of this Agreement is declared void or unenforceable, such declaration shall have no effect on those portions of the Agreement not declared void.
- 17.21. Annexation. In the event all or a portion of the Property is annexed by a municipal corporation, Developer's obligations to the County under this Agreement, the Modified Specific Plan and County Ordinances and Codes regarding Wastewater, Transportation, Drainage and Flood Control, Recreation and Riparian Improvements, shall remain in full force and effect. However, Developer's continuing obligation to pay Development Impact Fees authorized under the Pima County Code shall be subject to an agreement between the County, the Developer and the annexing jurisdiction regarding the payment of similar impact fees assessed by the annexing jurisdiction. If such jurisdiction does not assess, or chooses not to assess, a development impact fee for the infrastructure at issue, then, Developer's obligation to pay County Impact Fees under this agreement for such infrastructure improvements shall survive annexation. The remainder of Developer's and County's obligations under this Agreement shall terminate upon annexation.
- 17.22. Termination Upon Sale to End Purchaser or User. This Agreement shall terminate without the execution or recordation of any further document or instrument as to any lot which has been finally subdivided and individually (and not in "bulk") leased (for a period of longer than one year) or sold to the end purchaser or user and thereupon such lot shall be released from and no longer be subject to or burdened by the provisions of this Agreement; provided however, that all of Developer's obligations under this Agreement as they pertain to the lot shall have been satisfied in full.

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

South Wilmot Land Investors, LLC

By: [Signature]

BY: SUE WILMOT INVESTORS, LLC, MANAGER  
BY: DIAMOND VENTURES, INC., MANAGER

Its: VICE PRESIDENT

Pima County

By: [Signature]  
Chair, Pima County Board of Supervisors

Date: NOV 09 2010

Attest:

[Signature]  
Clerk of the Board

Approved as to form:

[Signature]  
Deputy County Attorney  
**REGINA NASSEN**

STATE OF ARIZONA     )  
  ) ss  
County of Pima         )

The foregoing Agreement was acknowledged before me this 23 day of November, 2010, by Chad Kolodisner, the Vice President of South Wilmot Land Investors, LLC, an Arizona limited liability corporation, on behalf of the corporation.

[Signature]  
Notary Public

My Commission Expires:  
Aug. 30, 2012



00-june12 1-110411

# Swan Southlands

## Exhibit A – Legal description of Property

Swan Southlands includes the following parcels situated in Township 16 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona:

### Parcel 1

All of Section 10, EXCEPT the North 325 feet thereof and EXCEPT the East 75 feet thereof.

### Parcel 2

All of Section 12, EXCEPT the South 189.39 feet of the North 489.39 feet of the East 115 feet of the Northeast Quarter of the Northeast Quarter of said Section.

Also EXCEPT that portion of the North Half of said Section, more particularly described as follows:

Beginning at the Northeast corner of said Section 12; thence South  $0^{\circ}11'08''$  East, along the East line of said section, a distance of 300.01 feet; thence South  $89^{\circ}26'24''$  West a distance of 115.00 feet; thence South  $0^{\circ}11'08''$  East, a distance of 189.39 feet; thence North  $89^{\circ}26'24''$  East a distance of 115.00 feet to a point on the East line of said section; thence South  $0^{\circ}11'08''$  East, along the East line of said section, a distance of 1,777.13 feet, to a point on the North line of an easement for electric transmission lines per State Contract 65-000050; thence North  $71^{\circ}45'08''$  West, along said North easement line, a distance of 3,220.39 feet; thence North  $0^{\circ}00'17''$  East a distance of 1,228.32 feet to a point on the North line of said Section 12; thence North  $89^{\circ}26'27''$  East, along said North line, a distance of 408.85 feet to the North Quarter Corner of said Section; thence continuing along said North line, North  $89^{\circ}26'24''$  East a distance of 2642.29 feet to the point of beginning at the Northeast corner of said Section 12 (this excepted parcel contains 122.00 acres, more or less)

All of Section 13

All of Section 14

EXCEPT any portions of said Sections 12 and 13 lying within Wilmot Road, as shown in Book 8 of Road Maps at Page 42.

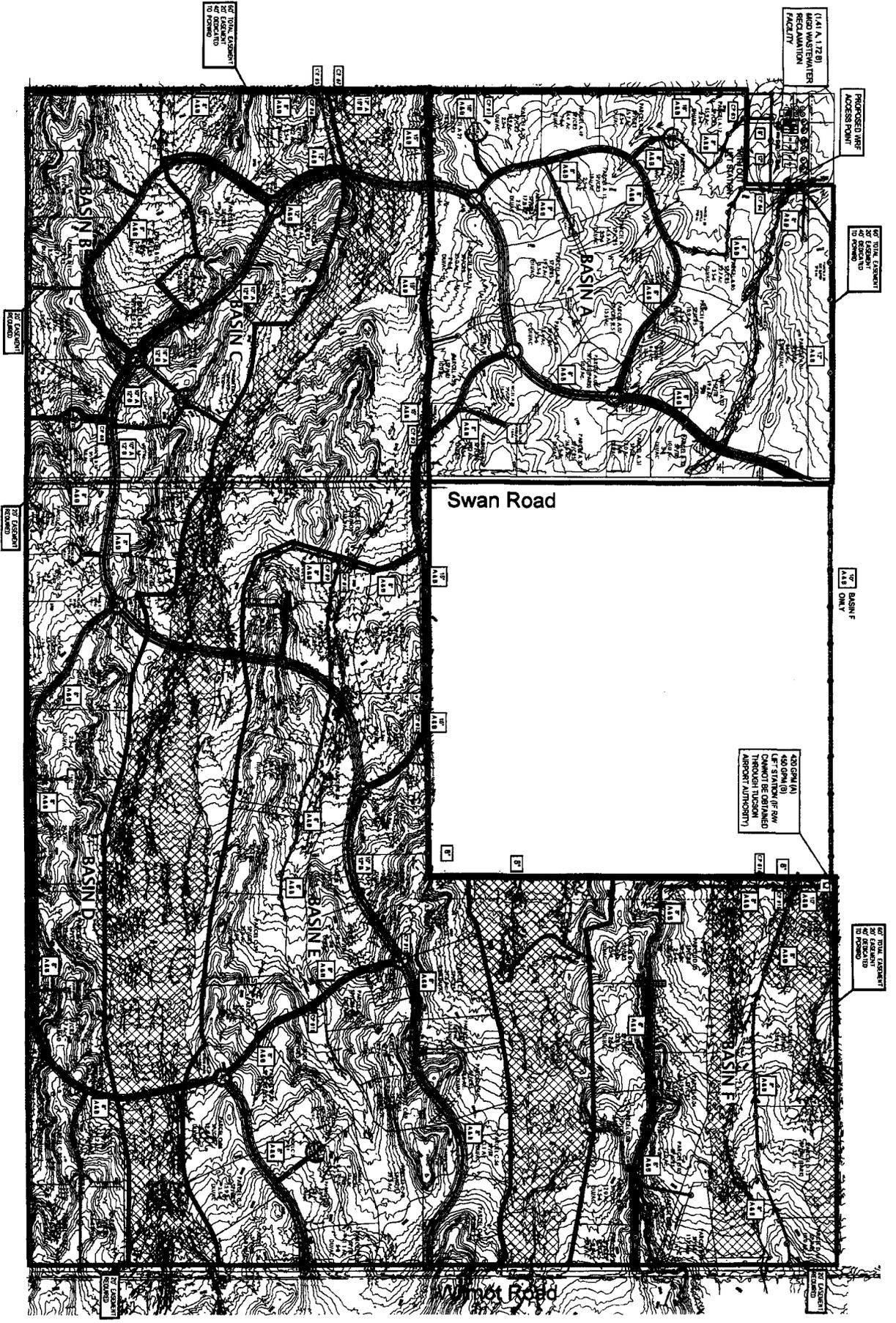
### Parcel 3

All of Section 15.

10-JUN-2012 1:15:04 PM



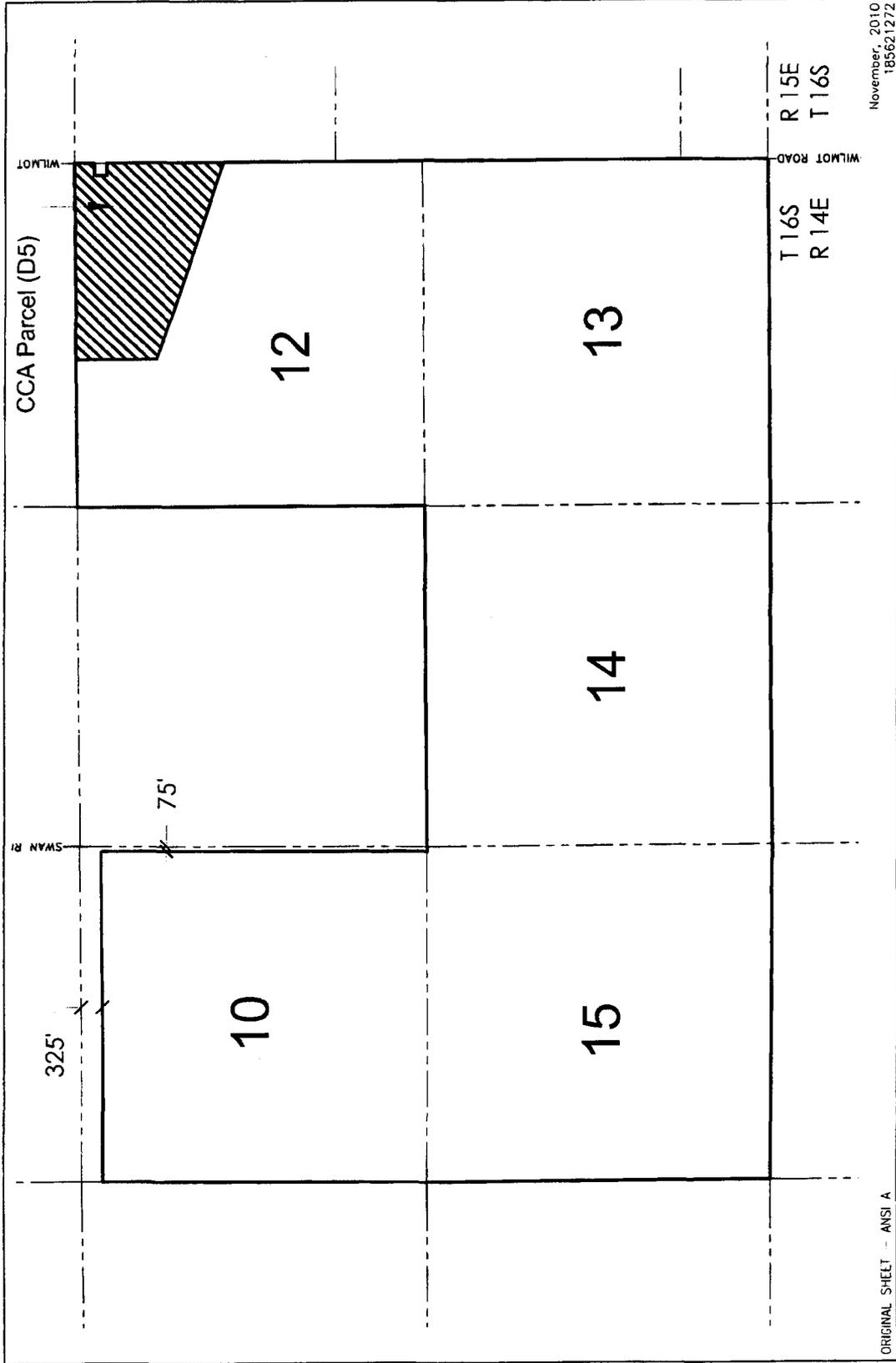
- LEGEND**
- PROPOSED SEWER LINE
  - EXISTING SEWER LINE
  - PROPOSED STORMWATER LINE
  - EXISTING STORMWATER LINE
  - PROPOSED RIGHT-OF-WAY
  - EXISTING RIGHT-OF-WAY
  - PROPOSED EASEMENT
  - EXISTING EASEMENT
  - PROPOSED ACCESSION
  - EXISTING ACCESSION



**SWAN SOUTHLANDS**  
 Proposed Infrastructure Sewer  
 (Prepared From Exhibit 1 of the Approved  
 Onsite Sewer Basin Study)  
 Exhibit C

November 2, 2010

V:\52856\active\18562127\civil\drawing\exh\Development Agreement\Exhibit B\_20101103.dwg  
2010/11/03 8:47 AM By: Wright, James



ORIGINAL SHEET - ANSI A



**Stantec**  
201 N. Bonito Ave.  
Tucson, AZ  
85745  
Tel. 520.750.7474  
Fax. 520.750.7470  
www.stantec.com



SCALE: 1"=2250'

Client/Project

South Wilmot Land Investors, L.L.C.  
Swan Southlands  
Pima County, Arizona

Figure No.

Exhibit B

Title

Map of Property

STANTEC PUNJABI

# Natural Open Space Designation and Riparian Restoration Mitigation Plan

## Exhibit D

### Swan Southlands

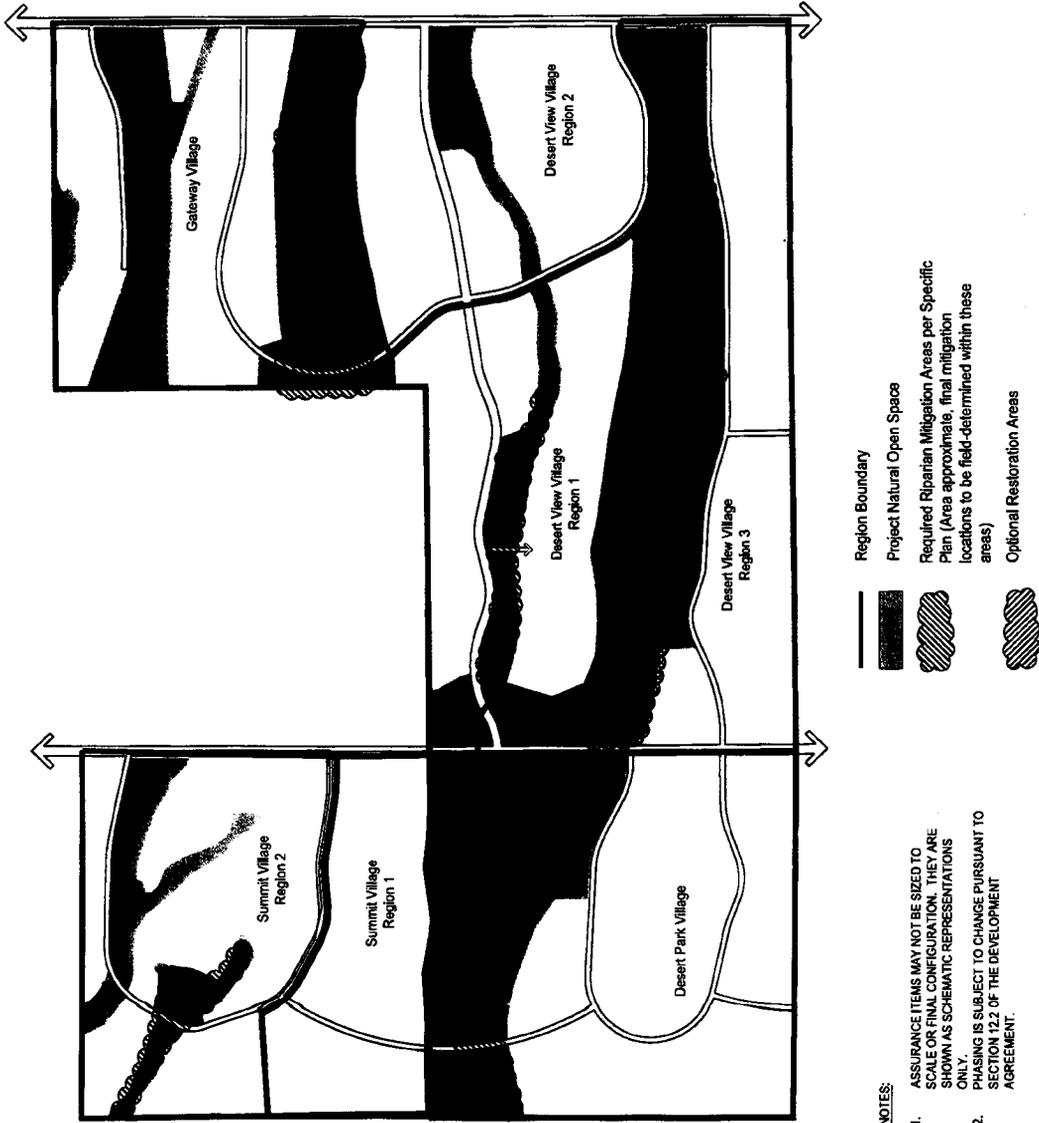
Located in Sections 10, 12, 13, 14 & 15  
Township 16 South, Range 14 East

#### KEYNOTES

Identity District/Region	Approximate Project Natural Open Space Area	Project Natural Open Space Designation and Riparian Mitigation
Summit Village Region 1 (Parcels A14, A15, A16, A17, A18)	0 acre	<ul style="list-style-type: none"> <li>Riparian restoration and mitigation to offset Project Riparian Area impacts in this region will be implemented during the construction of Summit Village Region 2 (see below) to ensure the availability of necessary infrastructure.</li> <li>Natural open space dedication and/or conservation assessment per the Specific Plan.</li> </ul>
Summit Village Region 2 (Parcels A11 through A13)	77.6 acres	<ul style="list-style-type: none"> <li>Existing riparian habitats in the western portions of Area A will be enhanced with plantings of 500 native trees and shrubs. The eastern portion of Area A will be enhanced with 10-acre portion of Area A, adding on average 30 trees per acre.</li> <li>Natural open space dedication and/or conservation assessment per the Specific Plan.</li> </ul>
Desert Park Village (Parcels B1 through B12)	222 acres	<ul style="list-style-type: none"> <li>Existing riparian habitats in the western portions of Area B will be enhanced with plantings of 670 native trees and shrubs. These plantings will occur in an approximately 11-acre portion of Area B, adding on average 50 trees and shrubs per acre.</li> <li>Natural open space dedication and/or conservation assessment per the Specific Plan.</li> </ul>
Desert View Village Region 1 (Parcels C12 through C19, C22, C23)	65.6 acres	<ul style="list-style-type: none"> <li>Approximately 3 acres of riparian habitat will be enhanced with plantings of 670 native trees and shrubs in Area E. E. F. Habitat Enhancement will be implemented in Area G of the western portion of the project. In Area E, 17 acres of Chaparral/Mesquite/Avocado Habitat will be enhanced using 600 native trees and large shrubs. In Area F, approximately 10 acres of Degraded/Desertified Habitats will be enhanced using 600 native trees and large shrubs. 600 trees and shrubs will be planted in Area G to offset Degraded/Desertified Habitats in Area G.</li> <li>Natural open space dedication and/or conservation assessment per the Specific Plan.</li> </ul>
Desert View Village Region 2 (Parcels C26 through C28)	38.3 acres	<ul style="list-style-type: none"> <li>Riparian restoration and mitigation for this region will be implemented as provided for in Desert View Village Region 1 (see above).</li> <li>Natural open space dedication and/or conservation assessment per the Specific Plan.</li> </ul>
Desert View Village Region 3 (Parcels D1 through D11)	319.7 acres	<ul style="list-style-type: none"> <li>Erosion Control BMPs (i.e., erosion control socks, all fencing, haybales, etc.) will be placed at selected locations in Area C to control lateral erosion and desertification. Other restoration options as outlined in the Specific Plan and Schedule, the 2004 may be implemented in Areas C and D.</li> <li>Natural open space dedication and/or conservation assessment per the Specific Plan.</li> </ul>
Gateway Village (Parcels D1 through D11)	245.8 acres	<ul style="list-style-type: none"> <li>Approximately four acres of Degraded/Desertified habitat in Area G will be enhanced using 200 native trees and large shrubs.</li> <li>Natural open space dedication and/or conservation assessment per the Specific Plan.</li> </ul>

\*Alternatively, if infrastructure necessary to support planned restoration and mitigation efforts within an Identity District are not in place, a bond, or some other equivalent guarantee acceptable to Pima County, will be posted for 115 percent of the estimated restoration costs for that Identity District. The adequacy of the bond or equivalent guarantee will be reviewed annually.

\*\* PERFORMANCE CRITERIA - The performance criteria established for mitigation areas will comply with the conditions of the rezoning approval.



- NOTES:
- ASSURANCE ITEMS MAY NOT BE SIZED TO SCALE OR FINAL CONFIGURATION. THEY ARE SHOWN AS SCHEMATIC REPRESENTATIONS ONLY.
  - PHASING IS SUBJECT TO CHANGE PURSUANT TO SECTION 12.2 OF THE DEVELOPMENT AGREEMENT.

**EXHIBIT E**  
**Contribution Schedule:**

<b>Pima County Housing Commission Affordable Housing Fee for New Home Sales Contribution Schedule</b>			
<b>SALES PRICE AT CLOSING</b>	<b>CONTRIBUTION FACTOR</b>	<b>PER ROOFTOP DOLLAR AMOUNT</b>	
		<b>Low</b>	<b>High</b>
<b>\$0 - \$184,999</b>	<b>0.00%</b>	<b>\$0</b>	<b>\$0</b>
<b>\$185,000 - \$249,999</b>	<b>0.25%</b>	<b>\$462.50</b>	<b>\$625</b>
<b>\$250,000 - \$349,999</b>	<b>0.50%</b>	<b>\$1,250</b>	<b>\$1,750</b>
<b>\$350,000 - \$499,999</b>	<b>0.75%</b>	<b>\$2,625</b>	<b>\$3,750</b>
<b>\$500,000 and over</b>	<b>1.00%</b>	<b>\$5,000</b>	<b>\$5,000 Cap</b>

WORLD WIDE

**Swan Southlands**  
Pima County, Arizona

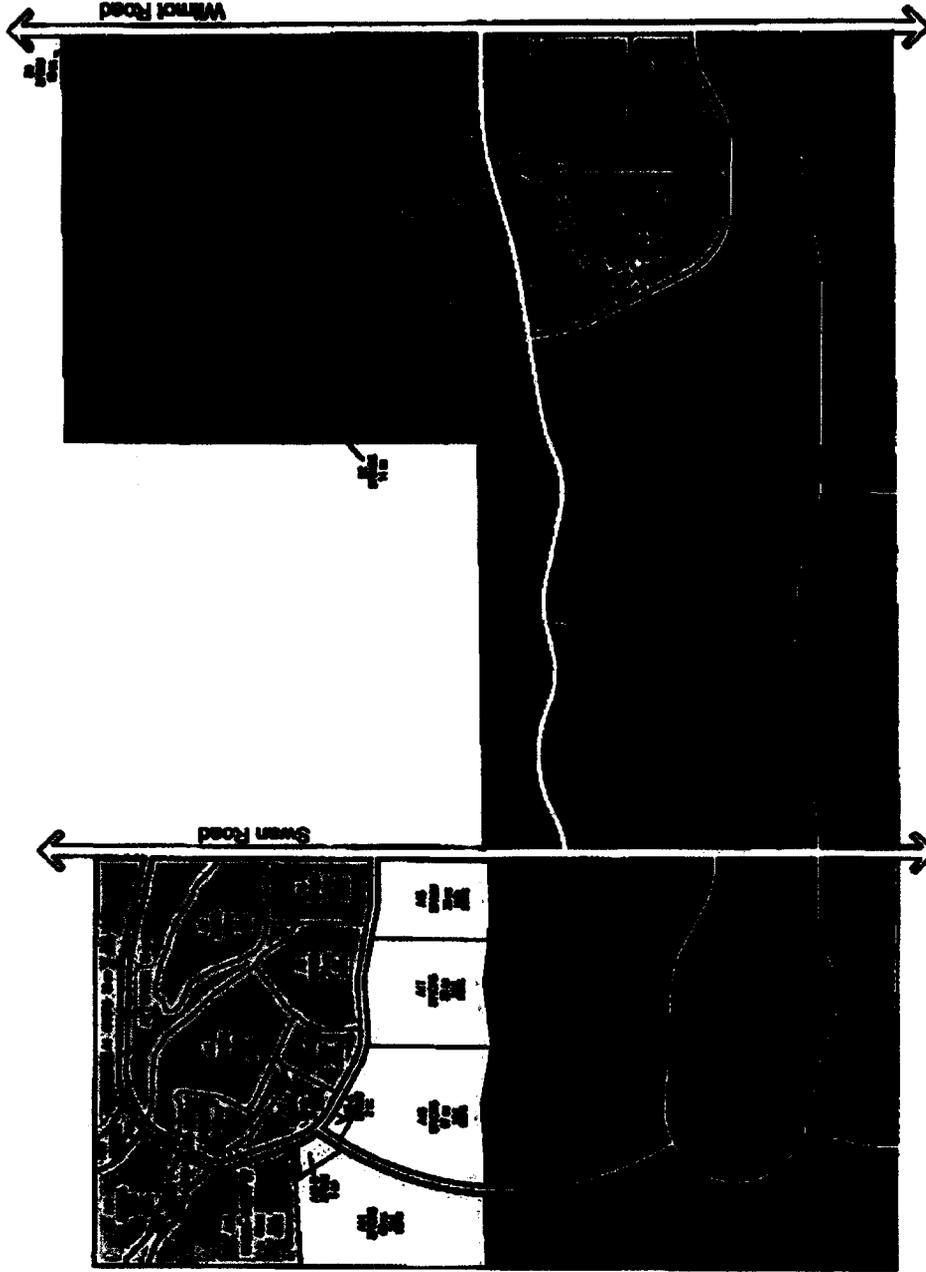
Exhibit F  
Identify Sub-District  
Development Plan

**Legend**

Identify Districts/Sub-Districts

- A1: Summit Village
- A2: Summit Village
- B: Desert Park
- C1: Desert View 1
- C2: Desert View 2
- C3: Desert View 3
- D: Gateway Village

City of Pima  
Planning Department  
Pima County, Arizona



# **APPENDIX “B”**

(South Wilmot Land Investors Letter)

Red Rock Utilities, L.L.C.

Docket No. WS-04245A-07-0363

## ***South Wilmot Land Investors, LLC***

2200 E. River Road, Suite 115  
Tucson, AZ 85718  
(520) 577-0200

June 6, 2011

Lawrence V. Robertson, Jr.  
Attorney-At-Law  
P.O. Box 1448  
Tubac, Arizona 85646

Re: Red Rock Utilities, LLC  
Docket No. WS-04245A-07-0363  
Decision No. 71226

Dear Mr. Robertson:

This letter is written in support of the Motion For Further Extension of Compliance Filing Date Deadline ("Motion") that Red Rock Utilities, LLC ("Red Rock") intends to file in the above-referenced docket by means of which Red Rock will request a two (2)-year extension of the current date for filing in Approval To Construct ("ATC") for Phase I of the Verano Master-Planned Community. The current deadline for filing this ATC with the Arizona Corporation Commission ("ACC") is December 4, 2011.

South Wilmot Land Investors ("SWLI") is the developer of the Verano Master-Planned Community. SWLI has had an opportunity to review the Motion that Red Rock intends to file with the ACC; and, SWLI hereby confirms the correctness and completeness of the Motion's description of those economic circumstances that have affected and delayed SWLI's original timeline for development of the Verano Master-Planned Community. The Motion also accurately describes the negotiations and agreement between Pima County, Arizona and SWLI that provides SWLI with more flexibility in connection with the timing and phasing of development of the Verano Master-Planned Community, consistent with orderly overall development of the property and associated infrastructure.

In addition, by means of this letter in support of the Motion, SWLI also wishes to reiterate its desire that Red Rock be the authorized provider of potable water service to and within the Verano Master-Planned Community. Please let me know if you have any questions regarding the above or would like additional information.

Sincerely,

SOUTH WILMOT LAND INVESTORS, LLC,  
an Arizona limited liability company

By: DVI Wilmot Investors, LLC,  
an Arizona limited liability company

By: Diamond Ventures, Inc.  
Its: Manager

By:   
Name: DAVID GOLDSTEIN  
Its: PRESIDENT