



ANNEXATION AGREEMENT

ANNEXATION AND INCLUSION AGREEMENT *(Third Creek West)*

THIS ANNEXATION AND INCLUSION AGREEMENT ("Agreement") is made and entered into this October 1, 2019, by and between SMT Investors Limited Partnership, CCT Investors, LLC, SCM-Carrier OKC, LLLP, SCM-Blaylock OKC, LLLP, SCM-Cagle OKC, LLLP, SCM-Donnelly, LLLP, SCM-Friedman OKC, LLLP, SCM-GRP Third Creek, LLLP, SCM-Hess Myers, LLLP, SCM-King, LLLP, SCM-Moore, LLLP, SCM-Morris Withey, LLLP, SCM-Neal, LLLP, SCM-POG, LLLP, SCM-Remondino OKC, LLLP, SCM-Schoenhals OKC, LLLP, SCM-Stephan, LLLP, SCM-Tibbs OKC, LLLP, AZ Third Creek, LLC, DLJ Third Creek, LLC, Far Marel, LLC, Forever 7, LLC, Go West Too Defined Benefit Pension Plan dated January 1, 2001, Harvard C.G. Properties II, LLC, Mt. Olympus Investments, LLC and Neal Management, LLC (collectively, "Owner") and the City of Commerce City, Colorado, a municipal corporation organized and existing under and by virtue of the laws of the state of Colorado ("City"); and Commerce City E-470 Commercial Area General Improvement District, a body corporate ("ECAGID") and Commerce City E-470 Residential Area General Improvement District, a body corporate ("ERAGID") (with ECAGID and ERAGID serving as a party to Articles 2(A-B(3)), 3, 12, 14, and 16 only).

WITNESSETH:

WHEREAS, the Owner is the owner of the property commonly known as Third Creek West and has filed petitions to annex such property into the City in land use cases AN-253 and AN-254.

WHEREAS, the Owner desires, for the future development of the Property, that the City provide municipal services to the Property and that the Property be annexed to the City;

WHEREAS, the City desires that the Property be developed within the City's boundaries and that the City provide municipal services and receive revenues from development occurring on the Property;

WHEREAS, the Owner acknowledges that the need for conveyance and dedication of public rights-of-way and other land as contemplated in this Agreement are directly related to and generated by development intended to occur within the Property and that no taking or damage to the remainder of the Property thereby will occur requiring any compensation;

WHEREAS, the Owner acknowledges that the development of the Property may require the design and construction of, or contribution to the design and construction of certain public improvements, by the Owner related both in nature and extent to the impact of the development of the Property; and

WHEREAS, the Owner and the City are entering into this Agreement in furtherance of the annexation of the Property.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth below.

“Agreement” means this Agreement.

“Concept Plan” means the PUD Zone Document for the Project approved by the Zoning Ordinance, as such plan may be modified during the review and approval process for the Zoning Application.

“ECAGID” means the E-470 Commercial Area General Improvement District.

“Effective Date” means the final date of execution by the City Manager and the Owner. On such date, this Agreement shall become binding upon and enforceable by the parties.

“ERAGID” means the E-470 Residential Area General Improvement District.

“GID” means the ECAGID and the ERAGID.

“Himalaya Parkway” means the realigned arterial of Himalaya Road designated as Himalaya Parkway in the Zoning Application.

“Himalaya Road” means the roadway designed alternately as Himalaya Road and Himalaya Street within the Property, which the City may designate formally as Himalaya Street in accordance with its standard practices.

“Legal Challenge” means any legal proceeding or other action commenced by a third party that directly or indirectly challenges the approval of the annexation of the Property, the Zoning Ordinance, this Agreement or any of the City’s ordinances, resolutions or other approvals approving any of the foregoing or the submission by any third party of a petition for a referendum seeking to reverse or nullify any of such ordinances.

“Phase” means each phase within the Project, to be determined as the Project develops.

“Planning Area” means each planning areas within the Project, as depicted and labeled on the Concept Plan, as such planning areas may be modified during the review and approval process.

“Project” means the proposed development of the Property for mixed uses including various commercial uses such as office and retail, and a variety of residential types and densities, as further defined in the Zoning Application.

“Property” means the real property described and depicted in the annexation ordinances AN-253-19 and AN-154-19.

“Regional Improvements” means specific regional public improvements as generally depicted on Exhibit “A”: (i) sanitary sewer line from Third Creek and along 112th Avenue; (ii) waterlines along 104th Avenue, Himalaya Parkway and 112th Avenue; and (iii) street improvements and median landscaping along 104th Avenue and Himalaya Parkway.

“SACFPD” means South Adams County Fire Protection District.

“SACWSD” means South Adams County Water and Sanitation District.

“Zoning Application” means that certain pending zoning application for the Property that would facilitate the Project in the manner contemplated by the Concept Plan, as such application or plan may be modified during the review and approval process.

“Zoning Ordinance” means the City ordinance Z-946-17-19 approving the Zoning Application.

ARTICLE 2. RIGHTS-OF-WAY, PUBLIC LAND CONVEYANCE AND PUBLIC IMPROVEMENTS

A. Conveyance of rights-of-way, easements, floodplain, and public land. At the request of the City, the Owner will convey from the Property, at no cost to the City, all rights-of-way, easements, floodplain and public land reasonably required by the City or either GID or any combination of those. All such conveyances shall be free and clear of liens and encumbrances, unless otherwise accepted by the receiving entity based on a title report provided at the Owner’s Cost, and in such form as acceptable to the receiving entity. The City or either GID may require dedication of rights-of-way, easements, floodplain and public land at any time construction thereof or thereon is deemed necessary in the public interest even if the Property is not being platted or developed at the time the receiving entity deems dedication of the rights-of-way, easements and/or public land is necessary. Without limitation, the Owner specifically shall dedicate from the Property, upon request or at the time of final plat: (i) the Third Creek floodplain; (ii) right of way for a minor arterial (120’ ROW) to be known as Himalaya Parkway; (iii) right of way for a minor arterial (120’ ROW) to be known as East 112th Avenue; (iv) right of way for the northern half of the principal arterial (the northern half of the 150’ ROW) to be known as East 104th Avenue; (v) right of way for the minor collector (64’ ROW) to be named according to City standards that will be in alignment with the existing county roadway known as East 108th Avenue; (vi) right of way for a minor collector (64’ ROW) between Planning Area F and D to Himalaya Parkway; (vii) right of way for a north-south minor collector (64’ ROW) from E. 108th Avenue to E. 104th Avenue between Planning Areas A & B, C & D, E & F, and G & H; and (viii) right of way for a minor collector (64’ ROW) along existing Himalaya Road commencing approximately 1,000’ south of 112th Avenue to 108th Avenue.

B. Public improvements.

1. *Generally.* The Owner shall be responsible for the design and construction of off-site and on-site public improvements necessary for the development of the Property, including without limitation transportation, water, sanitary sewer, storm sewer, and drainage improvements. Additional transportation improvements and the acquisition of real property may be required of the Owner for the development of the Property, including without limitation, off-site transitions, turn lanes, raised landscape medians, traffic signals, pedestrian crossings and underpasses, intersection improvements, roadway connections, utility easements, trail easements, drainage easements, or any other improvements required by the City for development of the Property. All such public improvements must be built or completed in accordance with the public way permit requirements, City of Commerce City Engineering Construction Standards and Specifications and such other adopted standards, as applicable and as may be amended from time to time.

2. *Construction by Owner.* At the time the Property is developed, Owner will design and fully improve to City standards, or pay for such design and improvements, as required by the City, all public streets or portions of public streets, as applicable, that are adjacent to and abutting the exterior boundaries of the Property, all public streets within the Property, storm drainage facilities, landscaping and other public improvements. The cost of designing and constructing all of the aforementioned public improvements shall be borne by Owner, and the construction thereof shall be at the sole cost, risk and expense of Owner.

3. *Reimbursement for City or GID Construction.* If any of the improvements are constructed by the City or either GID, which improvements the Owner otherwise would have been responsible for in whole or in part, at any time including prior to the development of the Property or the development of the Phase identified in this Agreement, the Owner will reimburse the constructing entity for the actual cost of the design and construction of such improvements brought to present day value at the time of payment (using the Construction Cost Index) and never less than the actual cost of the design and construction. Such reimbursement shall be payable at the time of development of the Property, unless deferred by separate agreement, or within one (1) year of a demand for payment, whichever is earlier. The cost of designing and constructing all of the aforementioned public improvements shall be borne by the Owner, and the construction thereof shall be at the sole cost, risk and expense of the Owner.

4. *Specific Improvements.* The Owner is responsible to construct or contribute the following "Required Public Improvements", as applicable and as noted below, in connection with the development of the Project as currently proposed and based on information currently available. The required Phase of construction or contribution for the Required Public Improvements, as applicable, shall be based on future approvals obtained for the Project in accordance with the Zoning Ordinance, this Agreement and the Municipal Code. The Required Public Improvements will include any additional public improvements required in connection with the development of the Project based on other new or changed conditions or information that was not readily available or known to the City at the time of this Agreement, as well as the following improvements/contributions:

Roads

- Construction of the north half of 104th Avenue including associated ROW landscaping and storm drainage systems from the western property line to Himalaya Parkway;
- Construction of the south half of 112th Avenue including associated ROW landscaping and storm drainage systems from Himalaya Parkway to the eastern boundary of the Property, along the property frontage (provided such obligation shall not be triggered until the annexation and development of the property located to the south and east of Planning Area I);
- Construction of the west half of the minor arterial known as Himalaya Parkway (plus the eastern half of Himalaya Parkway along the frontage of Planning Area J) including associated ROW landscaping and storm drainage systems from 104th Avenue to 112th Avenue and the roadway connection at the intersection of Himalaya Parkway and Himalaya Road;
- Construction of the one-half of the minor collector street section including associated ROW landscaping and storm drainage systems along existing Himalaya Road from its intersection with Himalaya Parkway approximately 1,000' south of 112th Avenue to 108th Avenue (which funds shall be placed into escrow for future construction of such streets);
- Construction of one-half of the minor collector street section for 108th Avenue including associated ROW landscaping and storm drainage systems from its existing western boundary within the Property to Himalaya Road (which funds shall be placed into escrow for future construction of such streets).
- Construction of the full minor collector from 104th Avenue to existing 108th Avenue including associated ROW landscaping and storm drainage systems;
- Construction of a roadway in a capacity and alignment to be determined within the Property connecting with future 108th Avenue to the east of Himalaya Parkway, as contemplated by the Owner's traffic study or future development plans;
- Construction of the full collector street section and associated right of way landscaping and storm drainage systems of the future collector road between Planning Areas F and D as set forth on the Concept Plan; and
- All other internal local and collector streets, including any associated ROW landscaping and storm drainage systems, within the Project as required for each applicable Phase.

Detention

- Construction of all detention, storm water and similar facilities as required for each applicable Phase.

Traffic Signal Contribution

- $\frac{1}{4}$ signal at East 104th Avenue and Himalaya Parkway;
- $\frac{1}{4}$ signal at East 112th Avenue and Himalaya Parkway;
- Full signal at Himalaya Parkway and the collector separating Planning Areas D and F; and
- $\frac{1}{2}$ signal at East 104th Avenue and the collector separating Planning Areas G and H

Sanitary Sewer and Water

- Construction of a 15" sanitary line in Himalaya Parkway from 104th Avenue north to a connection point in Tower Road south of 120th Avenue;
- Construction of a 16" waterline along 104th Avenue from Himalaya Parkway west across E-470 just south of 104th Avenue connecting at the existing waterline east of Tower Road;
- Construction of a 12" waterline along Himalaya Parkway from 104th Avenue to 108th Avenue;
- Construction of a 12" waterline along Himalaya Parkway from 108th Avenue to 112th Avenue;
- Construction of a 16" waterline along 112th Avenue from Himalaya Parkway to the existing line west of E-470;
- Internal water and sanitary lines including non-potable irrigation lines within the Project as required for each applicable Phase.

Parks and Open Space

- All private parks within the Project as required for each applicable Phase.

The Owner shall pay all required contributions for traffic signals in accordance with this Section 2(B)(4) prior to the recordation of the final plat for the adjacent property. Costs shall include, without limitation, signal costs, materials and equipment costs, installation costs, design and permitting costs, construction management costs, quality assurance testing costs, and a fifteen percent (15%) contingency as shown in an engineer's opinion of probable cost submitted by the applicant and approved by the City.

5. Private parks and open space. At least (3%) three percent of all usable land in residential developments shall be set aside as private parks or open space for the use and enjoyment of the inhabitants of such development. If the density increases above 6 dwelling units per acre, then the minimum should be increased to 4%. If the density increases above 8 dwelling units acre, then the minimum should be increased to 5%. For purposes of this section, "usable land" shall mean all land in the subdivision (including private streets and oil and gas sites) except floodplains, public right-of-way dedications, commercial sites, industrial sites, public school sites, public library sites, police station sites, fire station sites, and public parks, trails, and recreation facilities.

6. Maintenance of rights-of-way, easements and dedicated public land in accordance with City ordinances. For the period during which any such rights-of-way, easements and/or public land has been conveyed but has not been improved, the Owner will maintain any such unimproved rights-of-way, easements and/or public land pursuant to maintenance requirements of the City for unimproved land.

7. **Private Streets and Drives.** The Owner may wish to develop private roadways within certain areas of the Project with the written consent of the City Engineer. Such private roadways shall not be dedicated to the City but must meet equivalent City engineering specifications for public streets. However, width, slope, length of cul-de-sacs, and similar technical matters will be determined when sufficient detail is available (e.g., in connection with review and processing of site plan applications for the Project), and shall be finally determined and set forth in the construction plans to be approved by the City Engineer in conjunction with the City's review and approval of future public improvements permits for applicable areas of the Project. The subdivision plats encompassing all or any portion of such private roads shall grant permanent, non-exclusive emergency easements to the City and other municipal service providers. Such private street may be conveyed by the Owner to a District, where allowed under the District's service plan, and may be gated.

8. **Storm Drainage.** Except as specifically set forth in this Agreement, It is expressly understood the Project will utilize certain portions of the Property known as Planning Areas I and J for preliminary detention purposes and the use of such areas for preliminary detention purposes will not mandate any additional public improvements beyond the requirements set forth in the drainage study approved by the City and submitted by the Owner for the contemplated storm drainage improvements.

ARTICLE 3. REIMBURSEMENT AGREEMENTS AND REGIONAL IMPROVEMENTS

The Project, as currently proposed, includes significant public improvements that will serve other properties, not just the Project with such regional infrastructure construction advancing certain objectives of the ERAGID and ERAGID. Without using any City general funds, the GIDs will contribute to the Regional Improvements as follows subject to the terms and conditions of this Agreement:

- The Owner will advance \$6.8 million (the "Advance") to be reimbursed upon completion of the Regional Improvements, or at such earlier timer as the ERAGID determines, by the ERAGID, through a bond issuance, to the District that will design construct the Regional Improvements with an annual interest rate at four percent (4%); and
- The ECAGID will issue bonds with \$7 million in net proceeds (the "Net Bond Proceeds"),

with such Advance and Net Bond Proceeds being provided to the applicable District that will design and construct the Regional Improvements. All issuance of debt by a GID shall be subject to all requirements of law and existing agreements and policies of the GIDs, including without limitation the November 4, 2014, Agreement for Inclusion into the Commerce City E-470 Residential Area General Improvement District and the Commerce City E-470 Commercial Area General Improvement District (the "2013 Inclusion Agreement"). Unless otherwise agreed to by the ECAGID or the ERAGID in the future, neither the City or the GID will be responsible for costs of any Regional Improvements exceeding the amount of the Advance and the Net Bond Proceeds (the "Overages"). This article shall not apply if the Owner, or a District, as defined in Article 5, below, within the Property does not construct the Regional Improvements.

ARTICLE 4. PUBLIC IMPROVEMENT AGREEMENT

At the time the Property is developed, one or more public improvement agreements shall be signed by the Owner defining roadway construction, storm drainage facilities, landscaping requirements and any other dedicated public improvements and establishing security requirements for said improvements. Those streets, storm drainage, landscaping, and other dedicated public improvements constructed by the Owner, by any District, or party under contract with the Owner, shall initially be accepted by the City upon completion of construction in accordance with City standards or other adopted standards, or after correction pursuant to those standards of any defects in said streets, storm drainage, landscaping, or other public improvements, whichever date shall last occur. The Owner shall warrant construction of said streets, storm drainage, landscaping and other public improvements for one year after initial acceptance by the City at which time the

City will commence maintenance of said streets, storm drainage, and other public improvements. The Owner shall maintain all landscaping improvements but can assign such obligation to a District(s), where allowed under the District's service plan.

ARTICLE 5. STATUTORY DISTRICTS

A. Creation of Districts. Subject to the City's rights of review and approval or denial under the laws of the state of Colorado, which approval shall not be unreasonably withheld, the City shall approve the creation of one or more districts including, but not limited to, special districts, general improvements districts and metropolitan districts, authorized pursuant to Title 31 and Title 32 of the Colorado Revised Statutes as the same may be amended from time to time (each a "District", collectively, the "Districts"), as requested by the Owner for purpose of the acquisition, construction, installation, financing and/or maintenance of certain capital improvements and facilities, and for the provision of certain services which may be required to develop the Property. If such approval is not provided by the City within sixty (60) days of the date of final approval the ordinance annexing the Property, the Owner shall have the right to withdraw the annexation petition pursuant to Article 14. Such capital improvements and facilities may include all improvements permitted by said Titles 31 and 32 including, but not limited to: water and sanitary sewer lines; storm drainage and detention improvements; traffic and transportation facilities, including streets, bridges, roads, interchanges, signalization, street lights, safety protection improvements and other transportation facilities; and parks, trails and recreation facilities.

B. Conditions. Any approval of such Districts, when required by the Owner, may include the following conditions, without limitation, unless waived by the City. The City reserves the right to impose additional restrictions or conditions within any service plan or service plan amendment that it deems necessary and appropriate in accordance with Colorado law.

- No District shall levy, charge, or collect a sales or use tax.
- Districts shall obtain all necessary permits and pay all prescribed fees associated with any and all improvements to be made.
- All improvements constructed by a District shall be designed, constructed, and warranted in accordance with the standards and specifications of the City.
- The City shall be the sole provider of municipal services to the Property, including police protection, street maintenance, zoning and code enforcement, and all other services as the City may customarily provide to the residents of the City; provided however, that any District may, at their option, provide supplemental street, median, landscape (including irrigation) and other facility maintenance services.
- Unless the City Council consents, no district shall provide water, sewer, fire protection, or emergency medical services, but shall only be permitted to construct facilities for such services to be conveyed to the appropriate district or the City.
- The City shall not incur any expense in the formation or operation of any District or in the retirement of capital obligations related thereto.
- Any District's initial boundaries, when organized, shall not exceed the boundaries of the Property, nor have its powers altered in any way, without the prior approval of the City. Districts may include additional property outside of the Property boundaries in the future in accordance with Title 32 requirements and the Service Plan.

- A condition in substantially as follows: "A District shall not issue any indebtedness or refinance any outstanding indebtedness without first submitting the proposed financing documents to the City. The City may, in its sole discretion, comment on such proposed issuance or refinancing but its comment shall not be relied on by the District or any third party. Neither this provision nor City's comment, or failure to do so, shall be construed as approval or consent to such issuance or refinancing. The submission shall include the dollar amount of the issue, the interest rate and other financing costs, the type of revenues pledged to repayment, including the amount of the mill levy pledged, and a description of the credit enhancements, together with any preliminary official statement or other prospectus for the debt issue. The submission shall be accompanied by a certification of the District's bond counsel that the proposed issuance or refinance of indebtedness is authorized by and in compliance with the service plan for the District."

C. Maintenance Fee and Charges of District. Except as otherwise provided, nothing in this Agreement shall be construed to prohibit or preclude the Districts from establishing, fixing, levying, charging or collecting any fee, rate, toll or charge, including without limitation any facility fees imposed by the District(s), in addition to the rates, fees and charges to be collected by the City.

ARTICLE 6. IMPACT FEES AND OTHER CITY FEES

The Owner agrees to pay City impact fees and other City fees adopted by the City and as amended by City Council, and uniformly charged for other property located in the general area for transportation, drainage, parks, trails and recreation facilities, water acquisition for public purposes, and other purposes authorized by law.

A. Road Impact Fee. The Owner agrees to pay the City road impact fee in accordance with the requirements of the City, if the Property is located within the road impact fee area.

B. Drainage Impact Fee. The Owner agrees to pay the City drainage impact fee in the amount specified by City ordinance as applicable to the Property.

D. Parks, Trails and Recreation Facilities Impact Fee. The Owner agrees to pay the City impact fee for parks, trails and recreation facilities in accordance with the requirements of the City.

E. Water Impact Fee. The Owner agrees to pay the City impact fee for water in accordance with the requirements of the City.

F. Capital Facility Fee. In accordance with the specifications of the Capital Facility Fee, as established by School District 27J Capital Facilities Fee Foundation, the Owner agrees to pay said fee for purposes of school capital construction. The Owner agrees to execute a Participation Agreement providing for the payment of Capital Facility Fees to be paid at the time of issuance of a building permit for each unit within the Project. As said fees are adopted or amended by School District 27J Capital Facilities Fee Foundation or, as applicable, by the City of Commerce City, the Owner agrees to pay the fee that is consistent with the adopted fee schedule.

G. Fees in Lieu of Land Dedication for Schools. The Owner does not anticipate dedicating any portion of the Property for school purposes. In lieu of land dedication required by City ordinance for school purposes, the City may require Owner to pay the fees in lieu of land dedication for schools according to the City's adopted schedule. As fees in lieu of land dedication for schools are adopted or amended by the City, Owner agrees to pay the fee that is consistent with the adopted fee schedule. Owner acknowledges payment of fees in lieu of land dedication for schools for the Property does not prevent the City or school district from requiring land dedication for schools for any other property owned by Owner in connection with any future annexation of such property.

H. Fees in Lieu of Land for Parks, Trails and Recreation Facilities. It is at the City's discretion to determine if the Owner dedicates land or pays the impact fee for parks, trails, and recreation facilities set forth above in lieu of land dedication for parks, trails, and recreation facilities. If the Owner does not dedicate the amount of land required by the City, the Owner agrees to pay the fee in lieu of dedication of land for public parks, trails and recreation facilities in compliance with the City's adopted fee schedule. As fees in lieu of land for public parks, trails and recreation facilities are adopted or amended by the City, the Owner agrees to pay such fee consistent with the adopted fee schedule.

I. Enforcement. The City may withhold any plat approval or withhold the issuance of any permits for construction or occupancy for failure to pay the fees as provided herein. All fees recited in this Agreement shall be subject to amendment by the City Council by ordinance.

ARTICLE 7. CITY OBLIGATIONS

In fulfillment of its obligations under this Agreement, the City shall provide police and other municipal services to the Property to the same extent as those services are provided by the City elsewhere in the City, pursuant to the City's general and uniformly applied policies. The City has no obligation to construct or finance any public improvements under this Agreement for the benefit of the Property.

ARTICLE 8. WATER AND SEWER

Water and sewer services shall be provided by SACWSD and shall be agreed upon with SACWSD prior to development of the Property as a condition of development. The Applicant must secure adequate water and sewer services and may be required to enter into a Water Resources Agreement with SACWSD at the time of annexation to meet the contemplated requirements of the applicant's development. No annexation shall receive approval from the City until such requirements have been met. Adequacy of water and sewer services shall be determined by the City and SACWSD. Future changes to the proposed development may require an amendment to the Water Resources Agreement in which event, adequate water resources must be secured by Owner prior to City approval of any permits for development. Water and sewer services must be obtained in accordance with the rules and regulations of SACWSD as the same exist at the time application is made to SACWSD for water and sewer services.

ARTICLE 9. URBAN GROWTH BOUNDARY

By allowing annexation of the Property, the City does not guarantee that the Property is located within the Urban Growth Boundary/Area, as defined by the Denver Regional Council of Governments, or other boundaries legislatively determined.

ARTICLE 10. FIRE PROTECTION

The Owner will incorporate the Property into the service area of the SACFPD within one hundred and eighty days (180 days) of the Effective Date. If the Property is included in another fire district (other than the Greater Brighton Fire Protection District), the Owner shall also seek exclusion from such district.

ARTICLE 11. ZONING

Zoning of the Property shall be accomplished in accordance with the City's codes, regulations, and standards and in accordance with Colorado Revised Statutes, as may be amended from time to time. The Owner requested that the Property shall be concurrently zoned with a designation of PUD in accordance with the Zoning Application. The City agrees to consider the request for approval of the Zoning Application in accordance with this Agreement and all applicable ordinances and regulations of the City.

ARTICLE 12. GENERAL IMPROVEMENT DISTRICTS

A. Inclusion. Before the effective date of the annexation of the Property, Owner must join the ERAGID, for areas designated as residential in the Zoning Ordinance, and the ECAGID, for areas designated as commercial or mixed use in the Zoning Ordinance, and pay the joinder fees and taxes associated with joining each such GID, including inclusion fees in an amount equal to the property taxes that would have otherwise been imposed on the property included in a GID if that property had been included in the original petition for such GID. All property classified for property tax purposes as mixed use shall be condominiumized or split into separate ownership at the time of development; the portions of such property classified for property tax purposes as commercial shall remain in or join the ECAGID and the portions of such property classified for property tax purposes as residential shall join the ERAGID.

B. Exclusion. If the conditions precedent to annexation do not occur in accordance with Article 14 and the Owner has withdrawn the annexation petitions pursuant to Article 14, then City, ECAGID and ERAGID agree that Owner may take all steps necessary to exclude from the ERAGID and ECAGID.

C. Owners Committee. Pursuant to the 2013 Inclusion Agreement, as defined above, the ERAGID and the ECAGID have established or will establish a committee constituted of representatives as follows ("Owners Committee") for the purpose of providing recommendations to the ERAGID with regard to prioritizing projects, other ERAGID First Priority Improvements, as defined in the November 4, 2013 Inclusion Agreement, and the funding of projects:

1. One representative of the ERAGID Petitioner, as defined in the 2013 Inclusion Agreement, shall serve on the Owners Committee from the date of the Inclusion Agreement until December 31, 2014, and thereafter, so long as the ERAGID Petitioner owns 50 acres or more of property in aggregate within the ERAGID and the ECAGID.

2. One representative of the ECAGID Petitioner, as defined in the 2013 Inclusion Agreement, shall serve on the Owners Committee from the date of the Inclusion Agreement until December 31, 2014, and thereafter, so long as the ECAGID Petitioner owns 50 acres or more of property in aggregate within the ERAGID and the ECAGID.

3. One representative of any other owner of property equal to or greater than 100 acres in aggregate of property that is zoned for residential development within the ERAGID and/or zoned for commercial development within the ECAGID.

D. Combined Mill Levy Target. In accordance with the 2013 Inclusion Agreement, the Owner agrees that the target mill levy for repayment of administration, operation and maintenance costs (the "Operating Mill Levy"), together with the mill levy imposed for debt service (the "Debt Mill Levy") is not planned to exceed 30 mills for residential property and 27 mills for commercial property (the "Combined Mill Levy Target") and that a Metro District Advance, Developer Advance or a City Advance, as defined in the 2013 Inclusion Agreement, may be reimbursed or a project forward funded by the issuance of debt to be repaid from an unlimited general obligation pledge if the debt is: (i) issued through a public offering or an institutional private placement; and (ii) with an independent feasibility analysis (e.g., bond counsel, City's outside advisor) demonstrating the ability of the ERAGID and/or the ECAGID to fund its operations from an Operating Mill Levy, together with a Debt Mill Levy that is not projected to exceed the Combined Mill Levy Target when imposed upon the assessed valuation in place and estimated for vertical development that may be either partially complete or near completion but that, at the time of issuance, is not yet included in the records of the county assessor because of the assessment cycle. Except as provided in this section, no pledge for a Debt Mill Levy for the repayment of any Metro District Advance, Developer Advance and/or City Advance by either the ERAGID or the ECAGID, together with an Operating Mill Levy, shall exceed the Combined Mill Levy Target.

ARTICLE 13. VESTED PROPERTY RIGHTS

A. Site Specific Development Plan. This Agreement, together with the Zoning Ordinance, constitutes an approved “site-specific development plan” as defined in Colorado Revised Statutes §§ 24-68-101, *et seq.* (“Vested Property Rights Statute”). Each final subdivision plat, development plan, and final PUD development permit, and each amendment to any of the foregoing (as used in this Article 13, each is a “Development Application”), that Owner submits to the City subsequent to the Effective Date for the Property shall, if Owner so requests, be processed as a “site specific development plan” as defined in the Vested Property Rights Statute and the City’s Land Development Code. The vested property rights created in connection with such approved Development Application shall be supplemental and in addition to those property rights initially vested through this Agreement as of the Effective Date, and shall be vested pursuant to the Vested Property Rights Statute and Land Development Code.

B. Compliance with General Regulations. The establishment of vested property rights pursuant to this Agreement shall not preclude the application on a uniform and non-discriminatory basis of City regulations of general applicability (including, but not limited to, building/existing building, residential, fire, plumbing, electrical, property maintenance, plumbing and private sewage, fuel gas, energy conservation and mechanical codes, the City Code, and other City rules and regulations) or the application of state or federal regulations, as all of such regulations exist on the Effective Date or may be enacted or amended after the Effective Date. The Owner does not waive its right to oppose the enactment or amendment of any such regulations.

C. Property Rights Vested. Subject to the terms, conditions and limitations of the Vested Property Rights Statute and except as otherwise restricted in this Agreement, the rights identified below shall constitute the only vested property rights under this Agreement:

1. the right to develop, plan, and engage in land uses within the Property in the order, at the rate and at the time as market conditions dictate, in a manner that is substantially consistent with the Project as described in this Agreement and in the Zoning Ordinance, including the types and variety of uses and products, density and intensity of use set forth therein, and as described in any Development Application processed and approved as a site specific development plan pursuant to this Agreement;

2. the right to commence and complete development of the Project with conditions, standards and dedications which are no more onerous than those imposed by the City upon other developers in the City on a uniform and consistent basis, except to the extent such conditions, standards, and dedications conflict with this Agreement, in which event this Agreement shall control; and

3. the right to have all applications for subsequently required Development Application as a site specific development plans, which, if approved, shall establish vested property rights pursuant to the Vested Property Right Statute.

Except as the Vested Property Rights Statute expressly provides otherwise, no initiated or referred action (including zoning, subdivision, land use or other legal or administrative action) which would directly or indirectly have the effect of materially and adversely altering, impairing, preventing, diminishing, imposing a moratorium on development, delaying or otherwise adversely affecting any of the Owner’s rights set forth in Section C of this Article 13 shall apply to or be effective against the Property or the Project.

D. Term. The rights vested pursuant to this Agreement and the Zoning Ordinance shall be vested for a period of five (5) years from the Effective Date, thereafter, the term shall be extended for two successive periods of five (5) years each if, during the preceding five year period, there is commenced the construction of new residential or commercial improvements within the Property; provided, however, that the duration of vesting under this Agreement for the Project

does not exceed fifteen (15) years after the Effective Date. Any Development Application processed as a site-specific development plan shall be vested for a period of five (5) years from the dates of their individual approval. Additional extensions of these periods of vesting for such approval may be granted by the City in its sole discretion, pursuant to the then-existing provisions of the Commerce City Revised Municipal Code, if requested by the Owner.

E. Subsequent Detailed Plan Review. Notwithstanding the foregoing vested rights, Owner acknowledges that the City reserves its customary legal discretion over the subsequent detailed development plan, platting, and construction stages of the Project, subject to application of the City's applicable codes and regulations of general application. The Owner acknowledges that the application of the applicable development codes and regulations, or other site engineering limitations, may not yield the aggregate density/intensity which is vested for the Project for zoning purposes under this Agreement.

ARTICLE 14. CONDITIONS PRECEDENT TO LEGAL EFFECTIVENESS OF ANNEXATION.

The Parties acknowledge and agree that the legal effectiveness of the annexation of the Property pursuant to Section 113(2)(b) of the Annexation Act is subject to the terms of the Article 14. The City shall not file the ordinance annexing the Property or any maps with the Adams County Clerk & Recorder except in accordance with this Article 14. The Owner has the sole, exclusive and unilateral right to withdraw the annexation petition for the Property, and to exclude from the ERAGID and ECAGID as provided in Article 12, by so notifying the Clerk of the City in writing at any point prior to the latest to occur of:

- (i) the date of City Council action finally approving the ordinances annexing the Property;
- (ii) the date of City Council action finally approving the Zoning Ordinance;
- (iii) the date of City Council action finally approving an ordinance ratifying this Agreement;
- (iv) the date of City Council action finally approving the service plan for the Districts; or
- (v) the final, non-appealable resolution of any Legal Challenge submitted within sixty (60) days of the date of City Council action finally approving the ordinances annexing the Property, the Zoning Ordinance, or the ordinance ratifying this Agreement.

Upon satisfaction of all of the above, then the City Clerk may proceed with recordation of the Annexation Ordinance, in accordance with Section 113(2)(b) of the Annexation Act, the Zoning Ordinance and this Agreement. Notwithstanding the conditions subsequent, nothing herein shall be construed so as to delay, suspend or otherwise alter the mandatory statutory periods for any "Legal Challenge" (as defined below) to the Annexation Ordinance, the Zoning Ordinance, or this Agreement. Further, it is expressly understood that this Agreement shall not expire or terminate during the pendency of any Legal Challenge and unless earlier terminated or modified by a written amendment signed by all parties hereto. Further, the City and Owner shall cooperate to cure the legal defect and to pursue annexation and/or zoning of the Property or portion thereof in a manner that most fully implements the intent and purpose of this Agreement.

15. OIL & GAS.

All development on the Property will require a minimum of a 50-foot setback of all structures from any plugged or abandoned wells on the Property. The Project and all development on the Property related to subsurface extraction of hydrocarbons will comply with the City Code, as amended, Colorado law, and all Colorado Oil and Gas Commission (COGCC) rules and regulations, as amended, including those regarding plugged or abandoned wells and operations.

16. MISCELLANEOUS

A. Police Powers; Reservation of Authority. Nothing contained in this Agreement shall constitute or be interpreted as a repeal of existing codes or ordinances or as a waiver or abrogation of the City's legislative, governmental, or police powers to promote and protect the health, safety, and general welfare of the City or its inhabitants or of any powers of either GID. Nothing contained in this Agreement shall prohibit the enactment by the City or either GID of any tax or fee that is of uniform or general application. Except as expressly provided in this Agreement, all conditions of this Agreement are in addition to any and all requirements of the Commerce City Revised Municipal Code, as may be amended, and any and all applicable state statutes and other ordinances of the City or any laws or policies of either GID. The execution of this Agreement by the City and each GID is subject to ratification by the governing bodies of each entity.

B. No Reliance. The Owner acknowledges that the annexation and zoning of the Property and certain acts or obligations of the City or other GID, such as the issuance of bonds or the extension of any loan, are subject to the legislative discretion of the City Council of the City of Commerce City or the governing boards of each GID. No assurances of annexation or zoning, or any development approval, incentive, or other condition, or of the performance of such acts or obligations that are within the legislative discretion of the City Council or other governing body or that are subject to annual appropriation, have been made or relied upon by the Owner. If, in the exercise of legislative discretion, any action with respect to the Property contemplated in this Agreement is not taken, then the sole and exclusive remedy of the Owner shall be the withdrawal of the petition for annexation by the Owner in the manner provided in this Agreement.

C. Non-Appropriation. Notwithstanding any other term or condition of this Agreement, all obligations of the City, ERAGID, and ECAGID under this Agreement, including all or any part of any payment or reimbursement obligations, whether direct or contingent, will only extend to payment of monies duly and lawfully appropriated and encumbered for the purpose of this Agreement through the legally required budgeting, authorization, and appropriation process. Further, neither the City nor either GID, by this Agreement or the annexation or inclusion of the Property, creates a multiple fiscal year obligation or debt either within or without this Agreement. The City and each GID, by this Agreement, do not bind future councils and boards to make such appropriations.

D. Covenants. The provisions of this Agreement shall constitute covenants and servitudes which shall touch, attach to and run with the land comprising the Property, and the burdens and benefits of this Agreement shall bind and inure to the benefit of the Property, the Owner, its heirs, successors and assigns including subsequent owners of the Property.

E. Owner Consent. Where this Agreement allows the Owner to affirmatively waive any condition of this Agreement, consent to any action, or to withdraw the annexation petition, the Owner's waiver, consent, or withdrawal must be indicated in a writing signed by all constituent entities of the Owner or by a person or entity specifically authorized in writing to take such actions on behalf all constituent entities of the Owner. Notwithstanding the foregoing, representations of the attorney representing all constituent entities of the Owner shall be binding on the Owner with respect to such matters.

F. Assignment.

1. Except as provided in the paragraph entitled, "No Third-Party Beneficiary" of this Article 16 and as specifically provided in the following sentence, this Agreement shall be binding upon and shall inure to the benefit of the successors in interest, assigns and the legal representatives of the parties. The Owner shall have the right to assign or transfer all or any portion of its interests, rights or obligations under this Agreement to third parties acquiring an interest or estate in the Property including, but not limited to, purchasers or long-term ground lessees of individual lots, parcels, or of any improvements now or hereafter located upon or within the Property.

2. The Owner reserves the right to assign to any District, upon the acceptance by the District all or any part or its obligations and rights under this Agreement with respect to the funding, construction, maintenance, reimbursement and/or offset of fees, to the extent assignable, and other matters related to the infrastructure required to support development of the Project in accordance with the terms and conditions of this Agreement and applicable law, as approved by the City. Any obligations to dedicate real property shall not be assignable unless the District is the owner of such property and able to dedicate such property in accordance with this Agreement. In such event, the District(s) will provide facilities and services that the City and/or Owner might otherwise have to provide. Accordingly, references to "Owner" in the context of public infrastructure improvement obligations addressed in this Agreement shall be construed to mean by reference the District(s) to the extent such entities subsequently assume the obligations of Owner pursuant to the terms of this Agreement. The Owner will remain jointly and severally liable with the District for the performance of the assigned obligations unless the City Manager releases the Owner from the performance of the assumed obligations in writing.

3. Notwithstanding the foregoing, the duties and obligations of the Owner under this Agreement may be assigned only to a person or entity that is financially responsible to perform such duties or obligations. The financial responsibility of such assignee shall be subject to the prior written approval of the City Manager or his or her designee, which approval shall not be unreasonably withheld, conditioned, or delayed.

G. Incorporation. The exhibits to this Agreement are attached and incorporated in this Agreement by reference.

H. Recordation. This Agreement shall be recorded with the Clerk and Recorder of Adams County upon execution.

I. Costs. The Owner will bear all costs necessary for the annexation, zoning, inclusion in any district, and any development approval in connection with the Property, including without limitation the annexation petition, legal descriptions, maps, publication, notice, presentations, and recordation. Neither the City nor either GID shall, in any event, be liable to the Owner for any costs associated with the annexation or the failure of the annexation.

J. Amendment of Agreement. This Agreement may be amended or terminated only by mutual consent in writing by the City, each GID, and the Owner, its heirs, successors or assigns following the public notice and public hearing procedures required for the original approval and execution of this Agreement.

K. Waiver. The waiver of any breach of a term of this Agreement, including the failure to insist on strict compliance or to enforce any right or remedy, shall not be construed or deemed as a waiver of any subsequent breach of such term; any right to insist on strict compliance with any term; or any right to enforce any right or remedy with respect to that breach or any other prior, contemporaneous, or subsequent breach.

L. Costs & Attorney's Fees. If the Owner breaches this Agreement, the Owner shall pay the City's and each GID's reasonable costs and attorneys' fees incurred in the enforcement of the terms, conditions, and obligations of this Agreement. In the event of a challenge as defined in Article 14 of this Agreement, the Owner shall pay its own and the City's reasonable costs and attorneys' fees incurred in defending the challenge. The City shall have the right to select its counsel.

M. Default & Remedies. In the event of a breach of default in performance of this Agreement, the parties shall have the remedies set forth in this section. In no event shall the City or either GID be deemed to waive any rights existing or accruing to the City or either GID under the Colorado Governmental Immunity Act, nor shall the City or either GID be required to exercise its discretion to annex or zone the Property except as provided by law, or to appropriate any funds.

1. Default by Owner; Remedies. A "breach" or "default" by the Owner under this Agreement shall be defined as the Owner's failure to fulfill or perform any material obligation of the Owner contained in this Agreement. If any default

is not cured in the manner described below, the City and each GID shall have the right to enforce at law or in equity. The City's and each GID's remedies against the Owner for the Owner's breach or uncured default of the obligations of this Agreement include: (i) the refusal to issue any land use approval for the Property, including without limitation grading permits, building permits, and certificates of occupancy; and (ii) any other remedy available at law or in equity. Nothing in this section shall limit the City's right to pursue any enforcement mechanism or available remedy without notice or right to cure for the violation of any applicable law or regulation.

2. Default by City; Remedies. A "breach" or "default" by the City under this Agreement shall be defined as: (i) any zoning, land use or other action or inaction, direct, indirect or pursuant to an initiated measure, taken without Owner's consent, that alters, impairs, prevents, diminishes, imposes a moratorium on development, delays or otherwise materially and adversely affects any property right vested pursuant to Section 13(C) of this Agreement; or (ii) the City's failure to fulfill or perform any non-legislative obligation of the City contained in this Agreement. The Owner further agrees that its sole and exclusive remedy for any uncured breach or default of subsection 2(i) of this paragraph shall be the equitable remedy of specific performance, and Owner specifically waives any other remedies (including damages). The Owner further agrees that its sole and exclusive remedy for any other breach or default by the City shall be equitable relief (excluding any damages) relating to the performance of the non-legislative obligations of the City in this Agreement or the withdrawal of the petition for annexation by the Owner in the manner provided in this Agreement if prior to conditions precedents to annexation have not occurred as provided in Article 14. It is expressly understood that there are no monetary obligations of the City under this Agreement and this Agreement shall not constitute the creation or an indebtedness or authorize borrowing of money by the City within the meaning of any constitutional, home rule charter or statutory limitation or provision.

3. Default by a GID; Remedies. The Owner further agrees that its sole and exclusive remedy for any breach or default by a GID shall be equitable relief (excluding any damages) relating to the performance of the non-legislative obligations of the City in this Agreement or the withdrawal of the petition for inclusion and petition for annexation by the Owner in the manner provided in this Agreement if prior to conditions precedents to annexation have not occurred as provided in Article 14. It is expressly understood that the monetary obligations of either GID under this Agreement shall not constitute the creation or an indebtedness or authorize borrowing of money by either GID within the meaning of any constitutional or statutory limitation or provision. The monetary obligations of each GID hereunder shall be from year to year only and shall not constitute a mandatory payment obligation of either GID in any fiscal year beyond the present fiscal year. The Executive Director of each GID (or any other officer or employee of either GHID charged with formulating budget proposals) is hereby directed to include in all applicable budget proposals submitted to respective GID's governing body, in each year for thirty (30) years, amounts sufficient to meet its obligations hereunder. It being the intent, however, that the decision as to whether to appropriate such amounts shall be at the discretion of each GID's governing body.

4. Cure. Before exercising any remedy under this section, the party that believes the other party to be in breach or default shall give the other party written notice of breach or default and a period of thirty (30) days after receipt of said notice in which to cure any such breach or default. If such breach or default is not reasonably susceptible of cure within thirty (30) days, the party in breach or default shall have a reasonable time to complete the cure if that party commences to cure the breach or default within thirty (30) days and diligently pursues such cure to completion. If the default or breach is not cured as provided in this section, the other party shall have the right to pursue the remedies provided in this section.

N. Titles of Sections. The titles of the several articles and sections of this Agreement are inserted for convenience or reference only and shall be disregarded in construing or interpreting any of its provisions.

O. No Third-Party Beneficiary. Except as expressly provided herein with respect to ECAGID and ERAGID serving as a limited party under this Agreement, no third-party beneficiary rights are created in favor of any person not party to this Agreement. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and

all rights of action relating to such enforcement, shall be strictly reserved to the parties hereto, their heirs, successors and assigns, including successor owners of any lot(s) or any other portion(s) of the Property, and nothing contained in this Agreement shall give rise to or allow any claim or right of action under this Agreement by any other person or party. Notwithstanding the foregoing, it is expressly understood and agreed by the parties that the right of the Owner to receive, and the obligation of the City to pay, any credits or reimbursements hereunder shall accrue exclusively to the original parties to this Agreement and to any statutorily empowered districts created by the Owner pursuant to this Agreement, but to no others.

P. No Obligation to Develop. The Owner shall have no obligation to develop all or any portion of the Project and shall have no liability under this Agreement to the City or to any other party for its failure to develop all or any part of the Project. The Owner and the City contemplate that the Project will be developed in phases. The Owner shall have no obligation to develop all or any portion of any phase, notwithstanding the development or non-development of any other phase, and the Owner shall have no liability under this Agreement to the City or any other party for its failure to develop all or any portion of any phase of the Project. Notwithstanding the foregoing, if the Owner commences development of all or any portion or phase of the Project, the Owner shall be required to construct the public improvements and dedicate all property required to support such development in accordance with the terms and conditions of this Agreement and/or any subdivision improvement agreement(s) not inconsistent with this Agreement which the Owner and the City may execute in connection with any subsequently obtained land use approval. Nothing in this Agreement shall be construed as relieving the Owner of any obligation or liability for completion of any public improvements required by any subdivision improvement agreement(s) executed by the Owner after the Effective Date.

R. Venue. Venue for any action to enforce or interpret the terms of this Agreement shall be in the District Court of Adams County, Colorado.

S. Notice. Any notice given pursuant to this Agreement will be sent by certified mail, return receipt requested, overnight delivery service, or hand delivery. Notice to the Owner shall be given to c/o Cowley Companies, 1242 East Jackson Street, Phoenix, AZ 85034; Attention Rory Blakemore, for all entities comprising the Owner, or to any other address given in writing by an addressee to the other party. Notice to the City shall be given to the City Manager and copied to the City Attorney. Notice to any GID shall be given to the Executive Direction and copied to the General Counsel. Notice, if given by mail, shall be deemed received three (3) days after mailing in accordance with this Section.

T. Applicable Law. The laws of the state of Colorado shall govern the interpretation and enforcement of this Agreement.

U. Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall, unless amended or modified by mutual consent of the parties, continue in full force and effect so long as enforcement of the remaining provisions would not be inequitable to the party against whom they are being enforced under the facts and circumstances then pertaining.

V. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute one and the same instrument.

Signature pages follow

IN WITNESS WHEREOF, the City and the Owner have caused this Agreement, with the ECAGID and ERAGID as limited parties, to be duly executed as of the day first above written.

CITY OF COMMERCE CITY, COLORADO

By:

Brian K. McBroom, City Manager

ATTEST:

Laura J. Bauer, MMC, City Clerk

Approved as to form:

City Attorney

STATE OF COLORADO)
) ss.
COUNTY OF ADAMS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by Brian K. McBroom, as City Manager of the City of Commerce City, Colorado.

Witness my hand and official seal.

Notary Public: _____

Address: _____

(SEAL)

Street Number/Name City State Zip Code

My Commission Expires: _____

**COMMERCE CITY E-470 COMMERCIAL AREA GENERAL IMPROVEMENT
DISTRICT, a body corporate**

By: Brian K. McBroom, Executive Director

ATTEST:

Laura J. Bauer, MMC, Secretary

Approved as to form:

General Counsel

STATE OF COLORADO)
) SS.
 COUNTY OF ADAMS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2019 by Brian K. McBroom, as Executive Director of the Commerce City E-470 Commercial Area General Improvement District, a body corporate.

Witness my hand and official seal. Notary Public:

Address:

(SEAL) Street Number/Name City State
Zip Code

My Commission Expires:

COMMERCE CITY E-470 RESIDENTIAL AREA GENERAL IMPROVEMENT DISTRICT, a body corporate

By:

Brian K. McBroom, Executive Director

ATTEST:

Laura J. Bauer, MMC, Secretary

Approved as to form:

General Counsel

STATE OF COLORADO)
) SS.
COUNTY OF ADAMS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by Brian K. McBroom, as Executive Director of Commerce City E-470 Residential Area General Improvement District, a body corporate.

Witness my hand and official seal.

Notary Public:

Address:

(SEAL)

Street Number/Name City State Zip Code

City

State

Zip Code

My Commission Expires:

OWNER:

**SMT Investors Limited Partnership,
an Arizona limited partnership**

By: CCT Investors, LLC,
an Arizona limited liability company,
its General Partner

By: Cowley Companies, Inc.,
an Arizona corporation, its Manager

By: _____
Michael T. Cowley, President

Address:

1242 E. Jackson Street
Phoenix, AZ 85034

STATE OF ARIZONA)
COUNTY OF MARICOPA) ss.

This instrument was acknowledged before me this ____ day of _____, 2019, by Michael T. Cowley, the President of Cowley Companies, Inc., an Arizona corporation, the Manager of CCT Investors, LLC, an Arizona limited liability company, the General Partner of SMT Investors Limited Partnership, an Arizona limited partnership, on behalf of such entity.

Notary Public
Notary Expiration Date: _____

OWNER:

**SCM – GRP THIRD CREEK, LLLP,
an Arizona limited liability limited partnership**

By: Strategic Capital Management, LLLP,
an Arizona limited liability limited partnership,
its General Partner

By: Strategic Capital Management AZ, L.L.C.,
an Arizona limited liability company,
its General Partner

By: Emerson Investments, LLC,
an Arizona limited liability company, its Member

By: _____
Michael T. Cowley, Member

Address:

1242 E. Jackson Street
Phoenix, AZ 85034

STATE OF ARIZONA)
) ss.

This instrument was acknowledged before me this ____ day of _____, 2019, by Michael T. Cowley, the Member of Emerson Investments, LLC, an Arizona limited liability company, the Member of Strategic Capital Management AZ, L.L.C, an Arizona limited liability company, the General Partner of Strategic Capital Management, LLLP, an Arizona limited liability limited partnership, the General Partner of SCM – GRP Third Creek, LLLP, an Arizona limited liability limited partnership, on behalf of such entity.

Notary Public
Notary Expiration Date:

OWNER:

SCM - POG, LLLP,
an Arizona limited liability limited partnership

By: Strategic Capital Management, LLLP,
an Arizona limited liability limited partnership,
its General Partner

By: Strategic Capital Management AZ, L.L.C.,
an Arizona limited liability company,
its General Partner

By: Emerson Investments, LLC,
an Arizona limited liability company, its Member

By: _____
Michael T. Cowley, Member

Address:

1242 E. Jackson Street
Phoenix, AZ 85034

STATE OF ARIZONA)
COUNTY OF MARICOPA)
ss.

This instrument was acknowledged before me this ____ day of _____, 2019, by Michael T. Cowley, the Member of Emerson Investments, LLC, an Arizona limited liability company, the Member of Strategic Capital Management AZ, L.L.C, an Arizona limited liability company, the General Partner of Strategic Capital Management, LLLP, an Arizona limited liability limited partnership, the General Partner of SCM – POG, LLLP, an Arizona limited liability limited partnership, on behalf of such entity.

Notary Public
Notary Expiration Date: _____

OWNER:

SCM – Hess Myers, LLLP,
an Arizona limited liability limited partnership

By: Strategic Capital Management, LLLP,
an Arizona limited liability limited partnership,
its General Partner

By: Strategic Capital Management AZ, L.L.C.,
an Arizona limited liability company,
its General Partner

By: Emerson Investments, LLC,
an Arizona limited liability company, its Member

By: _____
Michael T. Cowley, Member

Address:
1242 E. Jackson Street
Phoenix, AZ 85034

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me this ____ day of _____, 2019, by Michael T. Cowley,
the Member of Emerson Investments, LLC, an Arizona limited liability company, the Member of Strategic Capital Management
AZ, L.L.C, an Arizona limited liability company, the General Partner of Strategic Capital Management, LLLP, an Arizona limited
liability limited partnership, the General Partner of SCM – Hess Myers, LLLP, an Arizona limited liability limited partnership, on
behalf of such entity.

Notary Public
Notary Expiration Date: _____

OWNER:

CCT Investors, LLC,
an Arizona limited liability company

By: Cowley Companies, Inc.,
an Arizona corporation, its Manager

By: _____
Michael T. Cowley, President

Address:
1242 E. Jackson Street
Phoenix, AZ 85034

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me this _____ day of _____, 2019, by Michael T. Cowley,
the President of Cowley Companies, Inc., an Arizona corporation, the Manager of CCT Investors, LLC, an Arizona limited liability
company, on behalf of such entity.

Notary Public
Notary Expiration Date: _____

OWNER:

Go West Too Defined Benefit Pension Plan, Dated January 1, 2001

By: _____
Nathan Learner, Trustee

STATE OF ARIZONA)
)
COUNTY OF MARICOPA) ss.

This instrument was acknowledged before me this _____ day of _____, 2019, by Nathan Learner,
the Trustee of Go West Too Defined Pension Plan Dated January 1, 2001 on behalf of such entity.

Notary Public
Notary Expiration Date: _____

OWNER:

SCM – Neal, LLLP,
an Arizona limited liability limited partnership

By: Strategic Capital Management, LLLP,
an Arizona limited liability limited partnership,
its General Partner

By: Strategic Capital Management AZ, L.L.C.,
an Arizona limited liability company,
its General Partner

By: Emerson Investments, LLC,
an Arizona limited liability company, its Member

By: _____
Michael T. Cowley, Member

Address:

1242 E. Jackson Street
Phoenix, AZ 85034

STATE OF ARIZONA)
COUNTY OF MARICOPA)
) ss.

This instrument was acknowledged before me this ____ day of _____, 2019, by Michael T. Cowley, the Member of Emerson Investments, LLC, an Arizona limited liability company, the Member of Strategic Capital Management AZ, L.L.C, an Arizona limited liability company, the General Partner of Strategic Capital Management, LLLP, an Arizona limited liability limited partnership, the General Partner of SCM – Neal, LLLP, an Arizona limited liability limited partnership, on behalf of such entity.

Notary Public
Notary Expiration Date: _____

OWNER:

SCM – Cagle OKC, LLLP,
an Arizona limited liability limited partnership

By: Strategic Capital Management, LLLP,
an Arizona limited liability limited partnership,
its General Partner

By: Strategic Capital Management AZ, L.L.C.,
an Arizona limited liability company,
its General Partner

By: Emerson Investments, LLC,
an Arizona limited liability company, its Member

By: _____
Michael T. Cowley, Member

Address:

1242 E. Jackson Street
Phoenix, AZ 85034

STATE OF ARIZONA)
COUNTY OF MARICOPA) ss.

This instrument was acknowledged before me this ____ day of _____, 2019, by Michael T. Cowley, the Member of Emerson Investments, LLC, an Arizona limited liability company, the Member of Strategic Capital Management AZ, L.L.C, an Arizona limited liability company, the General Partner of Strategic Capital Management, LLLP, an Arizona limited liability limited partnership, the General Partner of SCM – Cagle OKC, LLLP, an Arizona limited liability limited partnership, on behalf of such entity.

Notary Public
Notary Expiration Date: _____

OWNER:

SCM – Schoenhals OKC, LLLP
an Arizona limited liability limited partnership

By: Strategic Capital Management, LLLP,
an Arizona limited liability limited partnership,
its General Partner

By: Strategic Capital Management AZ, L.L.C.,
an Arizona limited liability company,
its General Partner

By: Emerson Investments, LLC,
an Arizona limited liability company, its Member

By: _____
Michael T. Cowley, Member

Address:
1242 E. Jackson Street
Phoenix, AZ 85034

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me this ____ day of _____, 2019, by Michael T. Cowley,
the Member of Emerson Investments, LLC, an Arizona limited liability company, the Member of Strategic Capital Management
AZ, L.L.C, an Arizona limited liability company, the General Partner of Strategic Capital Management, LLLP, an Arizona limited
liability limited partnership, the General Partner of SCM – Schoenhals OKC, LLLP, an Arizona limited liability limited partnership,
on behalf of such entity.

Notary Public
Notary Expiration Date: _____

OWNER:

SCM – Carrier OKC, LLLP

an Arizona limited liability limited partnership

By: Strategic Capital Management, LLLP,
an Arizona limited liability limited partnership,
its General Partner

By: Strategic Capital Management AZ, L.L.C.,
an Arizona limited liability company,
its General Partner

By: Emerson Investments, LLC,
an Arizona limited liability company, its Member

By: _____
Michael T. Cowley, Member

Address:

1242 E. Jackson Street
Phoenix, AZ 85034

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me this _____ day of _____, 2019, by Michael T. Cowley,
the Member of Emerson Investments, LLC, an Arizona limited liability company, the Member of Strategic Capital Management
AZ, L.L.C, an Arizona limited liability company, the General Partner of Strategic Capital Management, LLLP, an Arizona limited
liability limited partnership, the General Partner of SCM – Carrier OKC, LLLP, an Arizona limited liability limited partnership, on
behalf of such entity.

Notary Public
Notary Expiration Date: _____

OWNER:

SCM – Friedman OKC, LLLP,
an Arizona limited liability limited partnership

By: Strategic Capital Management, LLLP,
an Arizona limited liability limited partnership,
its General Partner

By: Strategic Capital Management AZ, L.L.C.,
an Arizona limited liability company,
its General Partner

By: Emerson Investments, LLC,
an Arizona limited liability company, its Member

By: _____
Michael T. Cowley, Member

Address:
1242 E. Jackson Street
Phoenix, AZ 85034

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me this ____ day of _____, 2019, by Michael T. Cowley,
the Member of Emerson Investments, LLC, an Arizona limited liability company, the Member of Strategic Capital Management
AZ, L.L.C, an Arizona limited liability company, the General Partner of Strategic Capital Management, LLLP, an Arizona limited
liability limited partnership, the General Partner of SCM – Friedman OKC, LLLP, an Arizona limited liability limited partnership,
on behalf of such entity.

Notary Public
Notary Expiration Date: _____

OWNER:

SCM – Blaylock OKC, LLLP

an Arizona limited liability limited partnership

By: Strategic Capital Management, LLLP,
an Arizona limited liability limited partnership,
its General Partner

By: Strategic Capital Management AZ, L.L.C.,
an Arizona limited liability company,
its General Partner

By: Emerson Investments, LLC,
an Arizona limited liability company, its Member

By: _____
Michael T. Cowley, Member

Address:

1242 E. Jackson Street
Phoenix, AZ 85034

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me this ____ day of _____, 2019, by Michael T. Cowley,
the Member of Emerson Investments, LLC, an Arizona limited liability company, the Member of Strategic Capital Management
AZ, L.L.C, an Arizona limited liability company, the General Partner of Strategic Capital Management, LLLP, an Arizona limited
liability limited partnership, the General Partner of SCM – Blaylock OKC, LLLP, an Arizona limited liability limited partnership,
on behalf of such entity.

Notary Public
Notary Expiration Date: _____

OWNER:

SCM – Tibbs OKC, LLLP

an Arizona limited liability limited partnership

By: Strategic Capital Management, LLLP,
an Arizona limited liability limited partnership,
its General Partner

By: Strategic Capital Management AZ, L.L.C.,
an Arizona limited liability company,
its General Partner

By: Emerson Investments, LLC,
an Arizona limited liability company, its Member

By: _____
Michael T. Cowley, Member

Address:

1242 E. Jackson Street
Phoenix, AZ 85034

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me this ____ day of _____, 2019, by Michael T. Cowley,
the Member of Emerson Investments, LLC, an Arizona limited liability company, the Member of Strategic Capital Management
AZ, L.L.C, an Arizona limited liability company, the General Partner of Strategic Capital Management, LLLP, an Arizona limited
liability limited partnership, the General Partner of SCM – Tibbs OKC, LLLP, an Arizona limited liability limited partnership, on
behalf of such entity.

Notary Public
Notary Expiration Date: _____

OWNER:

SCM – Remodino OKC, LLLP,
an Arizona limited liability limited partnership

By: Strategic Capital Management, LLLP,
an Arizona limited liability limited partnership,
its General Partner

By: Strategic Capital Management AZ, L.L.C.,
an Arizona limited liability company,
its General Partner

By: Emerson Investments, LLC,
an Arizona limited liability company, its Member

By: _____
Michael T. Cowley, Member

Address:
1242 E. Jackson Street
Phoenix, AZ 85034

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me this ____ day of _____, 2019, by Michael T. Cowley,
the Member of Emerson Investments, LLC, an Arizona limited liability company, the Member of Strategic Capital Management
AZ, L.L.C, an Arizona limited liability company, the General Partner of Strategic Capital Management, LLLP, an Arizona limited
liability limited partnership, the General Partner of SCM – Remodino OKC, LLLP, an Arizona limited liability limited partnership,
on behalf of such entity.

Notary Public
Notary Expiration Date: _____

OWNER:

SCM – Stephan, LLLP,
an Arizona limited liability limited partnership

By: Strategic Capital Management, LLLP,
an Arizona limited liability limited partnership,
its General Partner

By: Strategic Capital Management AZ, L.L.C.,
an Arizona limited liability company,
its General Partner

By: Emerson Investments, LLC,
an Arizona limited liability company, its Member

By: _____
Michael T. Cowley, Member

Address:
1242 E. Jackson Street
Phoenix, AZ 85034

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me this ____ day of _____, 2019, by Michael T. Cowley,
the Member of Emerson Investments, LLC, an Arizona limited liability company, the Member of Strategic Capital Management
AZ, L.L.C, an Arizona limited liability company, the General Partner of Strategic Capital Management, LLLP, an Arizona limited
liability limited partnership, the General Partner of SCM – Stephan, LLLP, an Arizona limited liability limited partnership, on
behalf of such entity.

Notary Public
Notary Expiration Date: _____

OWNER:

SCM – Morris Withey, LLLP,
an Arizona limited liability limited partnership

By: Strategic Capital Management, LLLP,
an Arizona limited liability limited partnership,
its General Partner

By: Strategic Capital Management AZ, L.L.C.,
an Arizona limited liability company,
its General Partner

By: Emerson Investments, LLC,
an Arizona limited liability company, its Member

By: _____
Michael T. Cowley, Member

Address:
1242 E. Jackson Street
Phoenix, AZ 85034

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me this ____ day of _____, 2019, by Michael T. Cowley,
the Member of Emerson Investments, LLC, an Arizona limited liability company, the Member of Strategic Capital Management
AZ, L.L.C, an Arizona limited liability company, the General Partner of Strategic Capital Management, LLLP, an Arizona limited
liability limited partnership, the General Partner of SCM – Morris Withey, LLLP, an Arizona limited liability limited partnership,
on behalf of such entity.

Notary Public
Notary Expiration Date: _____

OWNER:

SCM – King, LLLP,
an Arizona limited liability limited partnership

By: Strategic Capital Management, LLLP,
an Arizona limited liability limited partnership,
its General Partner

By: Strategic Capital Management AZ, L.L.C.,
an Arizona limited liability company,
its General Partner

By: Emerson Investments, LLC,
an Arizona limited liability company, its Member

By: _____
Michael T. Cowley, Member

Address:

1242 E. Jackson Street
Phoenix, AZ 85034

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me this _____ day of _____, 2019, by Michael T. Cowley,
the Member of Emerson Investments, LLC, an Arizona limited liability company, the Member of Strategic Capital Management
AZ, L.L.C, an Arizona limited liability company, the General Partner of Strategic Capital Management, LLLP, an Arizona limited
liability limited partnership, the General Partner of SCM – King, LLLP, an Arizona limited liability limited partnership, on behalf
of such entity.

Notary Public
Notary Expiration Date: _____

OWNER:

SCM – Donnelly, LLLP

an Arizona limited liability limited partnership

By: Strategic Capital Management, LLLP,
an Arizona limited liability limited partnership,
its General Partner

By: Strategic Capital Management AZ, L.L.C.,
an Arizona limited liability company,
its General Partner

By: Emerson Investments, LLC,
an Arizona limited liability company, its Member

By: _____
Michael T. Cowley, Member

Address:

1242 E. Jackson Street
Phoenix, AZ 85034

STATE OF ARIZONA)

) ss.

COUNTY OF MARICOPA)

This instrument was acknowledged before me this ____ day of _____, 2019, by Michael T. Cowley,
the Member of Emerson Investments, LLC, an Arizona limited liability company, the Member of Strategic Capital Management
AZ, L.L.C, an Arizona limited liability company, the General Partner of Strategic Capital Management, LLLP, an Arizona limited
liability limited partnership, the General Partner of SCM – Donnelly, LLLP, an Arizona limited liability limited partnership, on
behalf of such entity.

Notary Public

Notary Expiration Date: _____

OWNER:

SCM – Moore, LLLP
an Arizona limited liability limited partnership

By: Strategic Capital Management, LLLP,
an Arizona limited liability limited partnership,
its General Partner

By: Strategic Capital Management AZ, L.L.C.,
an Arizona limited liability company,
its General Partner

By: Emerson Investments, LLC,
an Arizona limited liability company, its Member

By: _____
Michael T. Cowley, Member

Address:

1242 E. Jackson Street
Phoenix, AZ 85034

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me this _____ day of _____, 2019, by Michael T. Cowley,
the Member of Emerson Investments, LLC, an Arizona limited liability company, the Member of Strategic Capital Management
AZ, L.L.C, an Arizona limited liability company, the General Partner of Strategic Capital Management, LLLP, an Arizona limited
liability limited partnership, the General Partner of SCM – Moore, LLLP, an Arizona limited liability limited partnership, on
behalf of such entity.

Notary Public
Notary Expiration Date: _____

OWNER:

Harvard C.G. Properties II, L.L.C.,
an Arizona limited liability company

By: Harvard Investments, Inc.,
a Nevada corporation, its Manager

By: _____
Craig L. Krumwiede, President

Address:
17700 N Pacesetter Way, Suite 100
Scottsdale, AZ 85255

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me this _____ day of _____, 2019, by Craig L. Krumwiede,
the President of Harvard Investments, Inc., a Nevada corporation, the Manager of Harvard C.G. Properties II, L.L.C., an Arizona
limited liability company, on behalf of such entity.

Notary Public
Notary Expiration Date: _____

OWNER:

Far Marel, L.L.C.,
an Arizona limited liability company

By: _____
Brent A. Bowden, Manager

Address:
1223 S Clearview Avenue #105
Mesa, AZ 85209

STATE OF ARIZONA)
)
COUNTY OF _____) ss.
)

This instrument was acknowledged before me this _____ day of _____, 2019, by Brent A. Bowden,
the Manager of Far Marel, L.L.C., an Arizona limited liability company, on behalf of such entity.

Notary Public
Notary Expiration Date: _____

OWNER:

Neal Management, L.L.C.,
an Arizona limited liability company

By: _____
David N. Neal, Manager

Address:
8311 S Jentilly Lane
Tempe, AZ 85284

STATE OF ARIZONA)
)
COUNTY OF _____) ss.
)

This instrument was acknowledged before me this ____ day of _____, 2019, by David N. Neal, the Manager of Neal Management, LLC, an Arizona limited liability company, on behalf of such entity.

Notary Public
Notary Expiration Date: _____

OWNER:

Mt. Olympus Investments, L.L.C.,
an Arizona limited liability company

By: _____
Broc C. Hiatt, Manager

Address:
1223 S Clearview Avenue, Suite 103
Mesa, AZ 85209

STATE OF ARIZONA)
)
COUNTY OF _____) ss.
)

This instrument was acknowledged before me this _____ day of _____, 2019, by Broc C. Hiatt, the Manager of Mt. Olympus Investments, L.L.C., an Arizona limited liability company, on behalf of such entity.

Notary Public
Notary Expiration Date: _____

OWNER:

DLJ Third Creek, LLC,
a Colorado limited liability company

By: DLJ Properties, LLC,
an Arizona limited liability company, its Manager

By: _____
David Johnson, Manager

Address:

STATE OF ARIZONA)
)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me this _____ day of _____, 2019, by David Johnson, the Manager of DLJ Properties, LLC, an Arizona limited liability company, the Manager of DLJ Third Creek, LLC, a Colorado limited liability company, on behalf of such entity.

Notary Public
Notary Expiration Date: _____

OWNER:

Forever 7, LLC,
an Arizona limited liability company

By: _____
Christopher W. Zaharis, as Authorized Agent

Address:
1725 S County Club Drive
Mesa, AZ 85210

STATE OF ARIZONA)
)
COUNTY OF _____) ss.
)

This instrument was acknowledged before me this _____ day of _____, 2019, by Christopher W. Zaharis, the Authorized Agent of Forever 7, LLC, an Arizona limited liability company, on behalf of such entity.

Notary Public
Notary Expiration Date: _____

OWNER:

AZ Third Creek LLC,
an Arizona limited liability company

By: G.J. Vogel, Inc., an Arizona corporation,
its, Manager

By: _____
Gregory J. Vogel, President

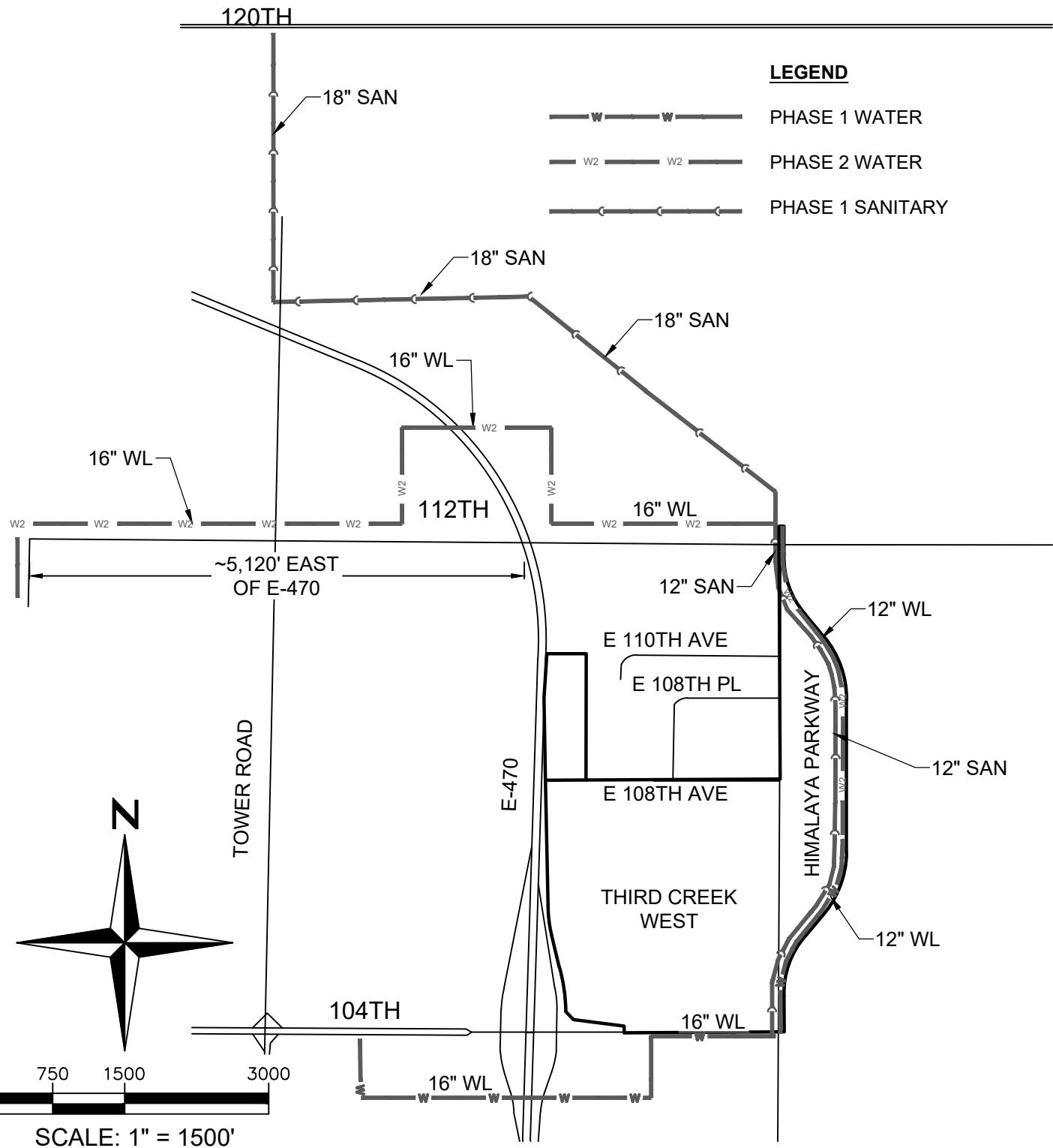
Address:
4900 N Scottsdale Road #3000
Scottsdale, AZ 85251

STATE OF ARIZONA)
)
COUNTY OF MARICOPA)
) ss.

This instrument was acknowledged before me this _____ day of _____, 2019, by Gregory J. Vogel,
President of G.J. Vogel, Inc., an Arizona corporation, Manager of AZ Third Creek LLC, an Arizona limited liability, on behalf of
such entity.

Notary Public
Notary Expiration Date: _____

EXHIBIT A
DESCRIPTION OF "REGIONAL IMPROVEMENTS"



LEGEND



PHASE 1 ROAD WAY IMPROVEMENTS

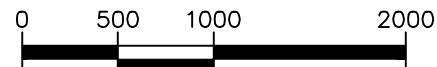
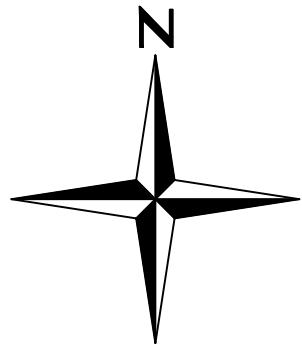


PHASE 2 ROADWAY IMPROVEMENTS



PHASE 3 ROADWAY IMPROVEMENTS
(FUTURE IMPROVEMENTS)

N



SCALE: 1" = 1000'

