

OFFICIAL RECORDS OF  
YUMA COUNTY RECORDER  
SUSAN MARLER

WHEN RECORDED MAIL TO:  
CITY OF SAN LUIS  
P.O. BOX 1170  
SAN LUIS, AZ 85349  
ATTN: CITY CLERK



**FEE #: 2006 - 32122**

08/08/2006 11:10 PAGES: 0003  
FEES: 3.00 8.00 1.00 .00 .00  
REQ BY: CITY OF SAN LUIS  
REC BY: Johnna Erwin

The above area is to be reserved for recording information

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**C A P T I O N   H E A D I N G :**

**Resolution No. 675**

 **RECEIVED**  
Elaylou



attn: Lu Anne

928-368-8528

# *Resolution*

OFFICE OF THE  
MAYOR  
CITY OF SAN LUIS

## **RESOLUTION NO. 675**

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SAN LUIS, ARIZONA APPROVING DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SAN LUIS, ARIZONA AND LPB DURHAM PARTNERS LIMITED PARTNERSHIP.

Whereas, LPB Durham Partners Limited Partnership ("Developer") desires to enter into a development agreement ("Development Agreement") with the City of San Luis, Arizona ("City");

Whereas, A.R.S. §9-500.05 grants power to a municipality to enter into development agreements; and

Whereas, the parties to the Development Agreement desire to enter said agreement;

NOW THEREFORE BE IT RESOLVED, by the Mayor and Council of the City of San Luis, State of Arizona, as follows:

Section 1: That the Development Agreement between the City of San Luis, Arizona and LPB Durham Partners Limited Partnership, as attached hereto as Exhibit "A", is hereby approved.

Section 2: That the appropriate City officials are hereby authorized and directed to enter into said agreement on behalf of the City and take any all actions as may be necessary to effectuate said agreement.

32122

Resolution No. 675

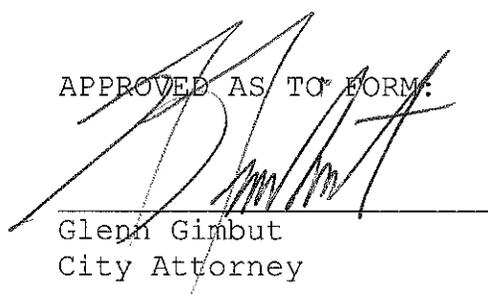
PASSED AND ADOPTED by the Mayor and Common Council of the City of San Luis, Arizona, this 28th day of June, 2006.

  
Juan Carlos Escamilla, Mayor

ATTEST:

  
\_\_\_\_\_  
Sonia Sanchez, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Glenn Gimbut  
City Attorney

32122

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CITY OF SAN LUIS  
P.O. BOX 1170  
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OFFICIAL RECORDS OF  
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SUSAN MARLER



**FEE #: 2006-32123**

08/08/2006 11:10 PAGES: 0013  
FEES: 7.00 8.00 1.00 .00 .00  
REQ BY: CITY OF SAN LUIS  
REC BY: Johnna Erwin

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**C A P T I O N   H E A D I N G :**

**Development Agreement**



## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into this 28<sup>th</sup> day of June, 2006, by and between LPB Durham Partners Limited Partnership, (the "Developer") and the City of San Luis, an Arizona municipal corporation (the "City"). This Agreement is entered into pursuant to City Resolution Number 675.

### RECITALS

A. WHEREAS, A.R.S. § 9-500.05 authorizes the City to enter into development agreements with landowners and persons having an interest in real property that is located in the City; and

B. WHEREAS, Developer is the owner of approximately 15 acres (the "Property") more particularly described as:

THAT PORTION OF THE SOUTHEAST QUARTER OF THE  
NORTHWEST QUARTER OF SECTION 1, TOWNSHIP 11 SOUTH,  
RANGE 25 WEST OF THE GILA AND SALT RIVER BASE AND  
MERIDIAN, YUMA COUNTY, ARIZONA, LYING SOUTH OF THE  
EAST MAIN CANAL

; and

C. WHEREAS, the City's governing body has authorized execution of this Agreement by Resolution No. 675, a draft of which is attached to this Agreement.

NOW, THEREFORE, the parties agree as follows:

### AGREEMENT

#### ARTICLE 1. DEFINITIONS

The following terms shall have the meanings set forth below whenever used in this Agreement, except where the context clearly indicates otherwise:

1.1 "Certificate of Completion" as used in this Agreement, shall mean a final written acceptance of the completed and inspected project issued by the Planning and Zoning Department and the Public Works Department. A certificate of completion will not be issued until the entire project is completed in conformance with the Agreement and accepted by the City.

1.2 "City" shall mean and refer to the City of San Luis, an Arizona municipal corporation, and any successor public body or entity.

1.3. "Developer" shall mean and refer to LPB Durham Partners Limited Partnership, an Arizona limited partnership, or nominee.

1.4 "Final Plat" shall mean and refer to a final subdivision plat which is approved by the City with respect to the development of a group of parcels within the Property and which sets forth the specific uses, densities, features and other development matters with respect to such parcel or parcels.

1.5 "Improvements" shall mean and refer to all public and private improvements which may be constructed from time to time on the Property, including, without limitation, all structures, buildings, roads, driveways, parking areas, walls, landscaping and other improvements of any type or kind, or any other alteration of the natural terrain to be built by the Developer or the City, as the case may be, pursuant to the terms of this Agreement.

1.6 "Preliminary Plat" shall mean and refer to that preliminary subdivision plat which sets forth specific uses, densities, features and other development matters with respect to the Property.

1.7 "Property" as used in this Agreement shall mean and refer to all of the real property which is legally described above.

## ARTICLE 2. DEVELOPMENT PLAN

2.1 Duration of Development Agreement. The term of this Agreement shall continue for a period of twenty (20) years from the effective date of this Agreement, or until the Property is completely developed, whichever first occurs, unless sooner cancelled as provided in this Agreement.

2.2 Approval and Processing of Plans. The City hereby acknowledges and agrees that development of the Property may occur over a span of time and will require the City's ongoing participation in the review and approval of modifications and amendments to any Preliminary Plat, site plans, infrastructure plans, drainage plans, design plans, building plans, grading permits, building permits, archaeological and historic preservation review and disposition and other plans, permit applications and inspections which are a part of the City's current building and development requirements (hereinafter collectively called "Approval Requests"). City approves and supports the concept of the Property being developed either as high density residential development which may be either apartments, condominium development, or as a residential subdivision, or a combination thereof, developed for commercial uses, or developed as a combination of high density residential and commercial development. The City agrees that said Property can be used by Developer for high density residential development, commercial development or a combination of commercial and high density residential development. To accomplish this, the City agrees upon Developer's request to rezone the Property to high density residential zoning, commercial or a combination of high density residential

and commercial. In the event said zoning is inconsistent with the General Plan, the City will take such action, at no cost to the Developer, as may be necessary to amend the General Plan in order to facilitate such use or uses. Developer agrees that all development and zoning processes will be complied with by Developer. City agrees that in connection with all approvals required by the development and zoning processes relating to the development of the Property, no extraordinary plan or review requirements will be imposed on the Developer.

2.3 Review Process. The City acknowledges the necessity for expeditious review and approval by the City of all plans and other materials ("Submitted Materials") submitted by the Developer to the City hereunder or pursuant to any zoning procedure, permit and inspection procedure, or other governmental procedure pertaining to the development of the Property and agrees to use its reasonable efforts accomplish such an expeditious review and approval of the Submitted Materials, zoning procedure and permit and inspection procedure whenever possible.

2.4 City Manager's Power to Consent. The City hereby acknowledges and agrees that any unnecessary delay hereunder would adversely affect the Developer and/or the development of the Property, and hereby authorizes and empowers the City Manager to consent to any and all requests of the Developer requiring the administrative consent of the City hereunder without further legislative action of the City Council, except for any actions requiring City Council approval as a matter of law.

### ARTICLE 3. SPECIAL PROVISIONS

3.1 Right of Way Dedications. Developer agrees that as a condition of rezoning and/or development of the Property to acquire or provide such right of way(s) and/or construct such roadways to provide proper access and egress to and from the Property and provide proper traffic control devices or signage, as may be reasonably needed or necessary for the development of the Property, both onsite and offsite, at no cost to the City. Developer also agrees to dedicate such easements or right of ways as may be needed or necessary for proper utility service. Any easements, rights of way, roadways, improvements or other infrastructure acquired or constructed by Developer upon City property or right of way shall become the property of the City.

3.2 Temporary Easement. Immediately upon the approval by the City of this Development Agreement Developer shall grant to the City a temporary roadway easement as described and depicted in "Exhibit A – Fourth Avenue Right of Way Easement" attached hereto. Upon the City complying fully with the terms and conditions of this Development Agreement, such easement shall become permanent.

3.3 Water and Wastewater Improvements. Developer agrees to construct such water and wastewater lines and improvements as may be needed and necessary for the development of the Property, including lift stations and other infrastructure, to provide proper water and wastewater service to the Property and acquire such easements as may be necessary to provide such service to the Property, both onsite and offsite, at no cost to the City. All

improvements or other infrastructure constructed by Developer upon City property or right of way shall become the property of the City.

3.4 Payback Agreements. City agrees to cooperate in good faith with Developer in negotiating any appropriate payback agreements for improvements and infrastructure built by Developer which benefits other properties. City agrees as a condition to any rezoning, subdivision plat approval or building permit issuance to require any other property owner who benefits from the improvements or infrastructure built by Developer to enter into a payback agreement with either the City or Developer to reimburse Developer for such property owner's fair share of the cost of such improvements or infrastructure.

3.5 Access and Egress. The City agrees that Developer shall have the right of access and egress to Fourth Avenue in no less than two locations so as to permit and facilitate the development of the Property for the use or uses as stated above. In addition, in the event that First Avenue is improved, then the City agrees that Developer shall have the right of access and egress to First Avenue.

#### ARTICLE 4. INDEMNIFICATION

4.1 Developer agrees to defend, indemnify and hold harmless City, its officers, officials and employees ("Indemnified Group") for liability from and against claims, damages, losses and expenses of any nature whatsoever (including but not limited to reasonable attorney expense), relating to, arising out of, resulting from or alleged to have resulted from the Developer's acts, errors, mistakes or omissions relating to any action or inaction of the Developer under this Agreement, including but not limited to work or services in the performance this Agreement by any subcontractor or anyone directly or indirectly employed by or contracting with the Developer or a subcontractor or anyone for whose acts any of the foregoing may be liable. In no event shall Developer be responsible to defend, indemnify and hold harmless the Indemnified Group from their own negligence or willful or intentional acts.

4.2 If any claim, action or proceeding is brought against the Indemnified Group, by reason of any event that is the subject of this Agreement, Developer (at its sole cost and expense) shall pay, resist or defend such claim or action on behalf of the Indemnified Group by the attorney of the Developer, or if covered by insurance, Developer's insurer, all of which must be approved by City, which approval will not be unreasonably withheld or delayed. The City shall cooperate with all reasonable efforts in the handling and defense of such claim. Notwithstanding the foregoing, the City may engage its own attorney to defend or assist in its defense, and the Developer shall pay the reasonable costs and expenses thereof.

4.3 Any settlement of claims must fully release and discharge the Indemnified Group from any liability for such claims. The release and discharge shall be in writing and shall be subject to approval by the City, which approval shall not be unreasonably withheld or delayed. If Developer neglects or refuses to defend any of the Indemnified Group for

claim covered by this Agreement, any recovery or judgment against the Indemnified Group for a claim covered by this Agreement shall conclusively establish Developer's liability to the Indemnified Group in connection with such recovery or judgment. If the City desires to settle such dispute, the City shall be entitled to settle such dispute in good faith and Developer shall be liable for the amount of such settlement, and all expenses in connection with such settlement.

4.4 Insurance provisions set forth in this Agreement are separate independent from the indemnity provisions of this Agreement and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions of this Agreement. The indemnity provisions of this Agreement shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions of this Agreement.

4.5 The indemnity provisions of this Agreement shall survive the termination of this Agreement.

4.6 City agrees to defend, indemnify and hold harmless Developer for liability from and against claims, damages, losses and expenses of any nature whatsoever (including but not limited to reasonable attorney expense), relating to, arising out of, resulting from or alleged to have resulted from the construction and development of Fourth Avenue currently being conducted for the development of Rio Seco manufactured and mobile home park as it abuts the Property of Developer. This agreement of indemnification includes, but is not limited to acts, errors, mistakes or omissions relating to any action or inaction of and contractor or subcontractor working on the development, construction, and paving of Fourth Avenue as it abuts the Property of Developer connected with the current construction of said manufactured and mobile home park, including but not limited to work or services by any subcontractor or anyone directly or indirectly employed by or contracting with the contractor or a subcontractor or anyone for whose acts any of the foregoing may be liable.

4.7 If any claim, action or proceeding is brought against the Developer, by reason of any event that is the subject of the pledge of indemnification by the City, City (at its sole cost and expense) shall pay, resist or defend such claim or action on behalf of the Developer by the attorney of the City, or if covered by insurance, City's insurer, all of which must be approved by Developer, which approval will not be unreasonably withheld or delayed. The Developer shall cooperate with all reasonable efforts in the handling and defense of such claim.

4.8 Any settlement of claims arising out of the pledge of indemnification for the development of Fourth Avenue must fully release and discharge the Developer from any liability for such claims. The release and discharge shall be in writing and shall be subject to approval by the Developer, which approval shall not be unreasonably withheld or delayed. If City neglects or refuses to defend Developer for a claim covered by this Agreement, any recovery or judgment against the Developer for a claim covered by this Agreement shall conclusively establish City's liability to the Developer in connection with such recovery or judgment. If the Developer desires to settle such dispute, the

Developer shall be entitled to settle such dispute in good faith and City shall be liable for the amount of such settlement, and all expenses in connection with such settlement.

## ARTICLE 5. SUBAGREEMENTS

5.1 Subordinate Development Agreements. The City and Developer hereby acknowledge that the development of the Property may be accomplished by 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 City and/or 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 City and/or 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.

## ARTICLE 6. MEDIATION AND DEFAULT

6.1 Representatives. To further the cooperation of the parties in implementing this Agreement, the City and Developer each shall designate and appoint a representative to act as a liaison between the City and its various departments and the Developer. The initial representative for the City (the "City Representative") shall be the City Manager 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.

6.2 Mediation. In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree that there shall be a forty-five (45) day moratorium on litigation during which time the parties agree to attempt to settle the dispute by nonbinding mediation before commencement of litigation. The mediation shall be held under the commercial mediation rules of the American Arbitration Association. The matter in dispute shall be submitted to a mediator mutually selected by Developer and the City. In the event that the parties cannot agree upon the selection of a mediator within seven (7) days, then within three (3) days thereafter, the City and the Developer shall request the presiding judge of the Superior Court in and for the County of Yuma, State of Arizona, to appoint a mediator from a list of mediators maintained by the Arizona Municipal Risk Retention Pool. The cost of any such mediation shall be divided equally between the City and Developer. The results of the mediation shall be nonbinding on the parties, and any party shall be free to initiate litigation subsequent to the moratorium

6.3 Default. Failure or unreasonable delay by any party to perform any term or provision of this Agreement for a period of ten (10) 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 ten (10) 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, termination, specific performance, and/or 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.

#### ARTICLE 7. TERMINATION

7.1 Development Rights in the Event of Termination. Upon termination of this Agreement as provided herein, the Developer shall have no further rights to develop the Property pursuant to this Agreement.

#### ARTICLE 8. CONFLICT OF INTEREST; REPRESENTATIVES NOT INDIVIDUALLY LIABLE.

8.1 Conflict of Interest. Pursuant to Arizona law, rules and regulations, no member, official or employee of the City shall have any personal interest, direct or indirect in this Agreement, nor shall any such member, official or employee participate in any decision relating this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested.

8.2 No Personal Liability. Except for any willful or intentional act, no member, official or employee of the City shall be personally liable to Developer, or any successor or assignee, (a) in the event of any default or breach by the City, (b) for any amount which may become due to the Developer or its successor or assign, or (c) pursuant to any obligation of the City under the terms of this Agreement.

#### ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1 Notices. All notices and communications provided for herein, or given in connection herewith, shall be validly made if in writing and delivered personally or sent by registered or certified United States Postal Service mail, return receipt requested, postage prepaid to:

If to the City: City Administrator  
P.O. Box 1170

767 N. First Ave.  
San Luis, AZ 85349

If to the Developer: LPB Durham Partners, L.P.  
18 Turnberry Drive  
Newport Beach, CA 92660

or such other addresses as either party may from time to time designate in writing and deliver in a like manner. Any such change of address notice shall be given at least ten (10) days before the date on which the change is to become effective. Notices given by mail shall be deemed delivered 72 hours following deposit in the United States Postal Service in the manner set forth above.

9.2 Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the parties of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or of any other provision of this Agreement.

9.3 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 the Agreement.

9.4 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 City 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 City 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 the Agreement.

9.5 Successors and Assigns. The parties agree that this Development Agreement shall be recorded. The terms and conditions of this Development Agreement shall be a covenant upon the Property. The terms and conditions of this Development Agreement shall extend to any successor or assignee of the Developer without limitation.

9.6 Entire Agreement. This Agreement, including the following exhibits, constitutes the entire agreement between the parties. This provision applies only to the entirety of this Agreement only; additional and separate zoning stipulations and agreements with the City may apply to the Property, and this provision has no effect on them.

9.7 Amendment of the Agreement. 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 successor in interest or assigns. The City shall record the amendment or cancellation in the official records of the Yuma County Recorder.

9.8 Severability. If any other provision of the Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect.

9.9 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 Yuma County, Arizona, and the parties hereby waive any right to object to such venue.

9.10 Recordation of Agreement and Subsequent Amendment; Cancellation. This Agreement, and any amendment or cancellation of it shall be recorded in the official records of the Yuma County Recorder no later than ten (10) days after the City and the Developer execute such agreement amendment or cancellation, as required by A.R.S. § 9-500.05.

9.11 Attorney's Fees and Costs. If either 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 attorney's fees and court costs.

9.12 Notice of Conveyance or Assignment. The Developer shall give notice to the City of any sale of the entire Property at least ten (10) days prior to the effective date of the sale.

9.13 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement, and no person or entity not a party hereto shall have any right or cause of action hereunder.

9.14 No Agency Created. Nothing contained in this Agreement shall create any partnership, joint venture, or agency relationship between the parties.

9.15 Non-Liability of City Officials and Employees. Except for mandamus, special actions or a willful or intentional act, no member, official or employee of the City shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by the City or for any amount that may become due to the Developer or successor, or under any obligation under the terms of this Agreement.

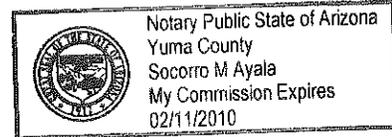
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The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of June, 2006, by Juan Carlos Escamilla, Mayor of the City of San Luis, Arizona a municipal corporation.

Socorro M. Ayala  
Notary Public

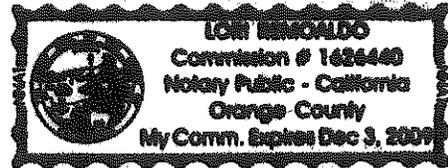
My Commission Expires: 02/11/2010



Cam Bernalia  
STATE OF ~~ARIZONA~~ )  
Orange ) ss.  
County of Yuma )

The foregoing instrument was acknowledged before me this 3 day of August, 2006, by Lori Remoaldo  
Lori Remoaldo  
Notary Public

My Commission Expires: DEC 3, 2009





WHEN RECORDED MAIL TO:  
CITY OF SAN LUIS  
P.O. BOX 1170  
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**C A P T I O N   H E A D I N G :**

**Resolution No. 675**



# *Resolution*

OFFICE OF THE  
MAYOR  
CITY OF SAN LUIS

## **RESOLUTION NO. 675**

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SAN LUIS, ARIZONA APPROVING DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SAN LUIS, ARIZONA AND LPB DURHAM PARTNERS LIMITED PARTNERSHIP.

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Resolution No. 675

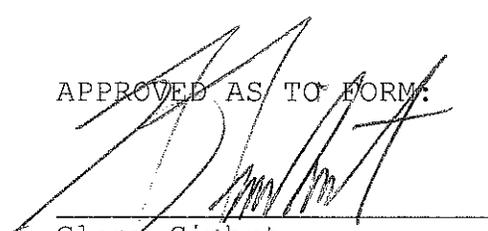
PASSED AND ADOPTED by the Mayor and Common Council of the City of San Luis, Arizona, this 28th day of June, 2006.

  
Juan Carlos Escamilla, Mayor

ATTEST:

  
\_\_\_\_\_  
Sonia Sanchez, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Glenn Gimbut  
City Attorney

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**Development Agreement**

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2.2 Approval and Processing of Plans. The City hereby acknowledges and agrees that development of the Property may occur over a span of time and will require the City’s ongoing participation in the review and approval of modifications and amendments to any Preliminary Plat, site plans, infrastructure plans, drainage plans, design plans, building plans, grading permits, building permits, archaeological and historic preservation review and disposition and other plans, permit applications and inspections which are a part of the City’s current building and development requirements (hereinafter collectively called “Approval Requests”). City approves and supports the concept of the Property being developed either as high density residential development which may be either apartments, condominium development, or as a residential subdivision, or a combination thereof, developed for commercial uses, or developed as a combination of high density residential and commercial development. The City agrees that said Property can be used by Developer for high density residential development, commercial development or a combination of commercial and high density residential development. To accomplish this, the City agrees upon Developer’s request to rezone the Property to high density residential zoning, commercial or a combination of high density residential

and commercial. In the event said zoning is inconsistent with the General Plan, the City will take such action, at no cost to the Developer, as may be necessary to amend the General Plan in order to facilitate such use or uses. Developer agrees that all development and zoning processes will be complied with by Developer. City agrees that in connection with all approvals required by the development and zoning processes relating to the development of the Property, no extraordinary plan or review requirements will be imposed on the Developer.

2.3 Review Process. The City acknowledges the necessity for expeditious review and approval by the City of all plans and other materials (“Submitted Materials”) submitted by the Developer to the City hereunder or pursuant to any zoning procedure, permit and inspection procedure, or other governmental procedure pertaining to the development of the Property and agrees to use its reasonable efforts accomplish such an expeditious review and approval of the Submitted Materials, zoning procedure and permit and inspection procedure whenever possible.

2.4 City Manager’s Power to Consent. The City hereby acknowledges and agrees that any unnecessary delay hereunder would adversely affect the Developer and/or the development of the Property, and hereby authorizes and empowers the City Manager to consent to any and all requests of the Developer requiring the administrative consent of the City hereunder without further legislative action of the City Council, except for any actions requiring City Council approval as a matter of law.

### ARTICLE 3. SPECIAL PROVISIONS

3.1 Right of Way Dedications. Developer agrees that as a condition of rezoning and/or development of the Property to acquire or provide such right of way(s) and/or construct such roadways to provide proper access and egress to and from the Property and provide proper traffic control devices or signage, as may be reasonably needed or necessary for the development of the Property, both onsite and offsite, at no cost to the City. Developer also agrees to dedicate such easements or right of ways as may be needed or necessary for proper utility service. Any easements, rights of way, roadways, improvements or other infrastructure acquired or constructed by Developer upon City property or right of way shall become the property of the City.

3.2 Temporary Easement. Immediately upon the approval by the City of this Development Agreement Developer shall grant to the City a temporary roadway easement as described and depicted in “Exhibit A – Fourth Avenue Right of Way Easement” attached hereto. Upon the City complying fully with the terms and conditions of this Development Agreement, such easement shall become permanent.

3.3 Water and Wastewater Improvements. Developer agrees to construct such water and wastewater lines and improvements as may be needed and necessary for the development of the Property, including lift stations and other infrastructure, to provide proper water and wastewater service to the Property and acquire such easements as may be necessary to provide such service to the Property, both onsite and offsite, at no cost to the City. All

improvements or other infrastructure constructed by Developer upon City property or right of way shall become the property of the City.

3.4 Payback Agreements. City agrees to cooperate in good faith with Developer in negotiating any appropriate payback agreements for improvements and infrastructure built by Developer which benefits other properties. City agrees as a condition to any rezoning, subdivision plat approval or building permit issuance to require any other property owner who benefits from the improvements or infrastructure built by Developer to enter into a payback agreement with either the City or Developer to reimburse Developer for such property owner's fair share of the cost of such improvements or infrastructure.

3.5 Access and Egress. The City agrees that Developer shall have the right of access and egress to Fourth Avenue in no less than two locations so as to permit and facilitate the development of the Property for the use or uses as stated above. In addition, in the event that First Avenue is improved, then the City agrees that Developer shall have the right of access and egress to First Avenue.

#### ARTICLE 4. INDEMNIFICATION

4.1 Developer agrees to defend, indemnify and hold harmless City, its officers, officials and employees ("Indemnified Group") for liability from and against claims, damages, losses and expenses of any nature whatsoever (including but not limited to reasonable attorney expense), relating to, arising out of, resulting from or alleged to have resulted from the Developer's acts, errors, mistakes or omissions relating to any action or inaction of the Developer under this Agreement, including but not limited to work or services in the performance this Agreement by any subcontractor or anyone directly or indirectly employed by or contracting with the Developer or a subcontractor or anyone for whose acts any of the foregoing may be liable. In no event shall Developer be responsible to defend, indemnify and hold harmless the Indemnified Group from their own negligence or willful or intentional acts.

4.2 If any claim, action or proceeding is brought against the Indemnified Group, by reason of any event that is the subject of this Agreement, Developer (at its sole cost and expense) shall pay, resist or defend such claim or action on behalf of the Indemnified Group by the attorney of the Developer, or if covered by insurance, Developer's insurer, all of which must be approved by City, which approval will not be unreasonably withheld or delayed. The City shall cooperate with all reasonable efforts in the handling and defense of such claim. Notwithstanding the foregoing, the City may engage its own attorney to defend or assist in its defense, and the Developer shall pay the reasonable costs and expenses thereof.

4.3 Any settlement of claims must fully release and discharge the Indemnified Group from any liability for such claims. The release and discharge shall be in writing and shall be subject to approval by the City, which approval shall not be unreasonably withheld or delayed. If Developer neglects or refuses to defend any of the Indemnified Group for

claim covered by this Agreement, any recovery or judgment against the Indemnified Group for a claim covered by this Agreement shall conclusively establish Developer's liability to the Indemnified Group in connection with such recovery or judgment. If the City desires to settle such dispute, the City shall be entitled to settle such dispute in good faith and Developer shall be liable for the amount of such settlement, and all expenses in connection with such settlement.

4.4 Insurance provisions set forth in this Agreement are separate independent from the indemnity provisions of this Agreement and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions of this Agreement. The indemnity provisions of this Agreement shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions of this Agreement.

4.5 The indemnity provisions of this Agreement shall survive the termination of this Agreement.

4.6 City agrees to defend, indemnify and hold harmless Developer for liability from and against claims, damages, losses and expenses of any nature whatsoever (including but not limited to reasonable attorney expense), relating to, arising out of, resulting from or alleged to have resulted from the construction and development of Fourth Avenue currently being conducted for the development of Rio Seco manufactured and mobile home park as it abuts the Property of Developer. This agreement of indemnification includes, but is not limited to acts, errors, mistakes or omissions relating to any action or inaction of and contractor or subcontractor working on the development, construction, and paving of Fourth Avenue as it abuts the Property of Developer connected with the current construction of said manufactured and mobile home park, including but not limited to work or services by any subcontractor or anyone directly or indirectly employed by or contracting with the contractor or a subcontractor or anyone for whose acts any of the foregoing may be liable.

4.7 If any claim, action or proceeding is brought against the Developer, by reason of any event that is the subject of the pledge of indemnification by the City, City (at its sole cost and expense) shall pay, resist or defend such claim or action on behalf of the Developer by the attorney of the City, or if covered by insurance, City's insurer, all of which must be approved by Developer, which approval will not be unreasonably withheld or delayed. The Developer shall cooperate with all reasonable efforts in the handling and defense of such claim.

4.8 Any settlement of claims arising out of the pledge of indemnification for the development of Fourth Avenue must fully release and discharge the Developer from any liability for such claims. The release and discharge shall be in writing and shall be subject to approval by the Developer, which approval shall not be unreasonably withheld or delayed. If City neglects or refuses to defend Developer for a claim covered by this Agreement, any recovery or judgment against the Developer for a claim covered by this Agreement shall conclusively establish City's liability to the Developer in connection with such recovery or judgment. If the Developer desires to settle such dispute, the

Developer shall be entitled to settle such dispute in good faith and City shall be liable for the amount of such settlement, and all expenses in connection with such settlement.

## ARTICLE 5. SUBAGREEMENTS

5.1 Subordinate Development Agreements. The City and Developer hereby acknowledge that the development of the Property may be accomplished by 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 City and/or 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 City and/or 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.

## ARTICLE 6. MEDIATION AND DEFAULT

6.1 Representatives. To further the cooperation of the parties in implementing this Agreement, the City and Developer each shall designate and appoint a representative to act as a liaison between the City and its various departments and the Developer. The initial representative for the City (the "City Representative") shall be the City Manager 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.

6.2 Mediation. In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree that there shall be a forty-five (45) day moratorium on litigation during which time the parties agree to attempt to settle the dispute by nonbinding mediation before commencement of litigation. The mediation shall be held under the commercial mediation rules of the American Arbitration Association. The matter in dispute shall be submitted to a mediator mutually selected by Developer and the City. In the event that the parties cannot agree upon the selection of a mediator within seven (7) days, then within three (3) days thereafter, the City and the Developer shall request the presiding judge of the Superior Court in and for the County of Yuma, State of Arizona, to appoint a mediator from a list of mediators maintained by the Arizona Municipal Risk Retention Pool. The cost of any such mediation shall be divided equally between the City and Developer. The results of the mediation shall be nonbinding on the parties, and any party shall be free to initiate litigation subsequent to the moratorium

6.3 Default. Failure or unreasonable delay by any party to perform any term or provision of this Agreement for a period of ten (10) 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 ten (10) 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, termination, specific performance, and/or 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.

#### ARTICLE 7. TERMINATION

7.1 Development Rights in the Event of Termination. Upon termination of this Agreement as provided herein, the Developer shall have no further rights to develop the Property pursuant to this Agreement.

#### ARTICLE 8. CONFLICT OF INTEREST; REPRESENTATIVES NOT INDIVIDUALLY LIABLE.

8.1 Conflict of Interest. Pursuant to Arizona law, rules and regulations, no member, official or employee of the City shall have any personal interest, direct or indirect in this Agreement, nor shall any such member, official or employee participate in any decision relating this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested.

8.2 No Personal Liability. Except for any willful or intentional act, no member, official or employee of the City shall be personally liable to Developer, or any successor or assignee, (a) in the event of any default or breach by the City, (b) for any amount which may become due to the Developer or its successor or assign, or (c) pursuant to any obligation of the City under the terms of this Agreement.

#### ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1 Notices. All notices and communications provided for herein, or given in connection herewith, shall be validly made if in writing and delivered personally or sent by registered or certified United States Postal Service mail, return receipt requested, postage prepaid to:

If to the City: City Administrator  
P.O. Box 1170

767 N. First Ave.  
San Luis, AZ 85349

If to the Developer: LPB Durham Partners, L.P.  
18 Turnberry Drive  
Newport Beach, CA 92660

or such other addresses as either party may from time to time designate in writing and deliver in a like manner. Any such change of address notice shall be given at least ten (10) days before the date on which the change is to become effective. Notices given by mail shall be deemed delivered 72 hours following deposit in the United States Postal Service in the manner set forth above.

9.2 Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the parties of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or of any other provision of this Agreement.

9.3 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 the Agreement.

9.4 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 City 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 City 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 the Agreement.

9.5 Successors and Assigns. The parties agree that this Development Agreement shall be recorded. The terms and conditions of this Development Agreement shall be a covenant upon the Property. The terms and conditions of this Development Agreement shall extend to any successor or assignee of the Developer without limitation.

9.6 Entire Agreement. This Agreement, including the following exhibits, constitutes the entire agreement between the parties. This provision applies only to the entirety of this Agreement only; additional and separate zoning stipulations and agreements with the City may apply to the Property, and this provision has no effect on them.

9.7 Amendment of the Agreement. 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 successor in interest or assigns. The City shall record the amendment or cancellation in the official records of the Yuma County Recorder.

9.8 Severability. If any other provision of the Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect.

9.9 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 Yuma County, Arizona, and the parties hereby waive any right to object to such venue.

9.10 Recordation of Agreement and Subsequent Amendment; Cancellation. This Agreement, and any amendment or cancellation of it shall be recorded in the official records of the Yuma County Recorder no later than ten (10) days after the City and the Developer execute such agreement amendment or cancellation, as required by A.R.S. § 9-500.05.

9.11 Attorney's Fees and Costs. If either 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 attorney's fees and court costs.

9.12 Notice of Conveyance or Assignment. The Developer shall give notice to the City of any sale of the entire Property at least ten (10) days prior to the effective date of the sale.

9.13 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement, and no person or entity not a party hereto shall have any right or cause of action hereunder.

9.14 No Agency Created. Nothing contained in this Agreement shall create any partnership, joint venture, or agency relationship between the parties.

9.15 Non-Liability of City Officials and Employees. Except for mandamus, special actions or a willful or intentional act, no member, official or employee of the City shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by the City or for any amount that may become due to the Developer or successor, or under any obligation under the terms of this Agreement.

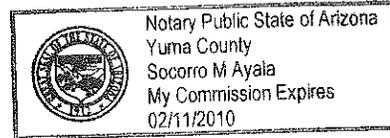
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The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of June, 2006, by Juan Carlos Escamilla Mayor of the City of San Luis, Arizona a municipal corporation.

Socorro M. Ayala  
Notary Public

My Commission Expires: 02/11/2010



STATE OF <sup>California</sup> ARIZONA )  
County of <sup>Orange</sup> Yuma ) ss.

The foregoing instrument was acknowledged before me this 3 day of August, 2006, by Lori Remoaldo

Lori Remoaldo  
Notary Public

My Commission Expires: DEC 3, 2009



