



# *Resolution*

OFFICE OF THE  
MAYOR  
CITY OF SAN LUIS

## **RESOLUTION NO. 682**

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 ENRIQUE AND MATILDE FLETES

Whereas, Enrique and Matilde Fletes, husband and wife, ("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;

Whereas, the City Council of the City of San Luis believes that proposed development agreement is in the best interests of the community; 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 Enrique and Matilde Fletes, husband and wife, 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.

Resolution No. 682

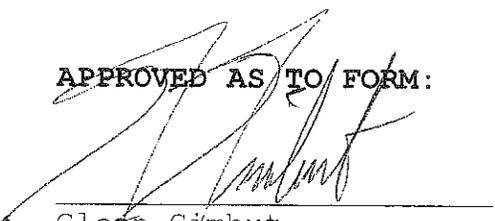
PASSED AND ADOPTED by the Mayor and Common Council of the City of San Luis, Arizona, this 9th day of August, 2006.

  
\_\_\_\_\_  
Juan Carlos Escamilla, Mayor

**ATTEST:**

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

**APPROVED AS TO FORM:**

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

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into this 9<sup>th</sup> day of August, 2006, by and between Enrique R. Fletes and Matilde T. Fletes, husband and wife, as joint tenants with rights of survivorship (the "Developer"), and the City of San Luis, an Arizona municipal corporation (the "City"). This Agreement is entered into pursuant to City Resolution Number 682.

### 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 Lot 16, Block 92, San Luis Town Site (the "Property"), more particularly described as:

The West Twelve (12) Feet of Lot 6, Block 16, San Luis Townsite Addition 1, recorded 24 January 1950, in Book 4 of Plats, Page 97, records of the Yuma County Recorder, State of Arizona;

and

C. WHEREAS, the City's governing body has authorized execution of this Agreement by Resolution No. 682, 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 Enrique R. Fletes and Matilde T. Fletes, or nominee.

1.4 Final Plat, if used herein, 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 improvements which are contemplated by this Agreement to be constructed on the Property, including, without limitation, curbs, gutters, and sidewalks, and all roads, driveways, parking areas, and other improvements of any type or kind, or any other alteration of the natural terrain to be built by the City, as the case may be, pursuant to the terms of this Agreement.

1.6 Preliminary Plat, if used herein, 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 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 one (1) year 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 construction of the improvements to the Property may occur over a span of time and that the Developer seeks to use the Property as commercial rental property. Developer agrees to comply with all applicable development and zoning processes. 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 by the City of all plans and other materials ("Submitted Materials"), if any, submitted by the Developer to the City hereunder or pursuant to any zoning procedure, permit procedure, or other governmental procedure pertaining to the development of the Property and agrees to use its reasonable efforts accomplish such an expeditious review of the Submitted Materials whenever possible.

2.4 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 consent of the City hereunder without further action of the City Council, except for any actions requiring City Council approval as a matter of law.

### ARTICLE 3. SPECIAL PROVISIONS

3.1 Dedication of Right of Way. Developer agrees to dedicate to the city by way of warranty deed, free and clear of all liens and encumbrances, right of way of twelve (12) feet in width along the entire western side of the property. Developer shall be entitled to encroach upon this right of way until such time as it is needed for public purposes. Developer understands and agrees that the City maintains the right, in its sole discretion, to take possession and control of this right of way at any time, without notice, and to displace developer from any occupancy of the same, without further compensation of any kind. Developer understands that any improvements placed in this area are subject to the encroachment regulations of the City, and are subject to removal at any time by the City, without notice and without compensation. The permission to encroach is not a grant of a right of occupancy, nor does it create a right of tenancy of any kind.

3.2 Construction of Improvements. City agrees to construct any currently City required street and sidewalk improvements for this property that would be required to allow commercial occupancy of said property as compensation for the right of way as stated above.

3.3 Additional Right of Way Dedications. Developer agrees that as a condition of development of the property to acquire or provide such additional right of way(s) and/or construct other improvements to provide proper access and egress to and from the property and provide proper traffic control devices or signage, as may be needed or necessary, both onsite and offsite, in the discretion of the Public Works Director of the City of San Luis, 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 shall become the property of the City.

3.4 Water and Wastewater Improvements. Developer agrees to construct such water and wastewater lines and improvements as may be needed and necessary, 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, both onsite and offsite, in the discretion of the Public Works Director of the City of San Luis, at no cost to the City. All improvements or other infrastructure constructed by Developer shall become the property of the City.

3.5 Payback Agreements. If applicable, City agrees to cooperate in good faith with Developer in negotiating any appropriate payback agreements for infrastructure built by Developer which benefits other properties.

#### 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.

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 and 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.

## ARTICLE 5. MEDIATION AND DEFAULT

5.1 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, or his designee within City Administration, and the representative for the Developer shall be Enrique R. Fletes (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.

5.2 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 nonbonding 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 nonbonding on the parties, and any party shall be free to initiate litigation subsequent to the moratorium.

5.3 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 6. TERMINATION

6.1 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 7. CONFLICT OF INTEREST; REPRESENTATIVES NOT INDIVIDUALLY LIABLE.

7.1 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.

7.2 No Personal Liability. 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 8. MISCELLANEOUS PROVISIONS

8.1 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 North First Avenue  
San Luis, AZ 85349

If to the Developer: Enrique Fletes  
P.O. Box 143  
San Luis, AZ 85349

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.

8.2 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.

8.3 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.

8.4 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 owns marketable title to the Property and that the Property is not encumbered except as may be shown by effective constructive notice as a matter of law under applicable state laws. The Developer and the City warrant to each other that an individual executing this Agreement on behalf of another party or entity is authorized and empowered to bind the party on whose behalf that individual is signing, if applicable. 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.

8.5 Entire Agreement. This Agreement, including the following exhibits, constitutes the entire agreement between the parties. This provision applies 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.

8.6 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.

8.7 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.

8.8 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.

8.9 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.

8.10 Attorney's Fees and Costs. If either party brings a legal action either due to 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.

8.11 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.

8.12 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.

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

8.14 Non-Liability of City Officials and Employees. Except for mandamus and other special actions, 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.

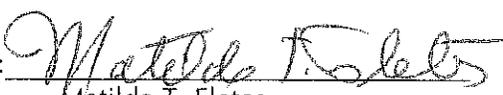
IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

**CITY OF SAN LUIS,**  
an Arizona municipal corporation,

**DEVELOPER**

By:   
\_\_\_\_\_  
Mayor

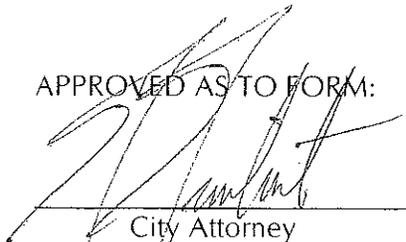
By:   
\_\_\_\_\_  
Enrique R. Fletes

By:   
\_\_\_\_\_  
Matilde T. Fletes

ATTEST:

By:   
\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

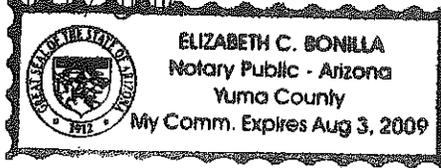
  
\_\_\_\_\_  
City Attorney

STATE OF ARIZONA )  
 ) ss.  
County of Yuma )

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of August, 2006 by Juan Carlos Escamilla, Mayor of the City of San Luis, an Arizona municipal corporation.

Elizabeth Bonilla  
Notary Public

My commission expires:  
Aug. 3, 2009



STATE OF ARIZONA )  
 ) ss.  
County of Yuma )

SUBSCRIBED AND SWORN to before me this 2<sup>nd</sup> day of AUGUST, 2006 by Enrique R. Fletes and Matilde T. Fletes.

Socorro M. Ayala  
Notary Public

My commission expires:  
02/11/2010

