



Resolution

OFFICE OF THE
MAYOR
CITY OF SAN LUIS

NO. 746

A RESOLUTION OF THE CITY OF SAN LUIS, ARIZONA APPROVING
INTERGOVERNMENTAL PLEDGE AGREEMENT WITH THE
INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF SAN LUIS,
ARIZONA

Whereas, the City of San Luis desires to enter into an intergovernmental pledge agreement with Industrial Development Authority of the City of San Luis regarding the financing of the ACT/PRICE Center Project; and

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

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

Section 1: That the Intergovernmental Agreement, 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.

PASSED AND ADOPTED by the Mayor and Council of the City of San Luis, Arizona, this 15th day of August, 2007.

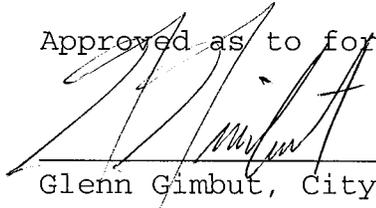

Juan Carlos Escamilla, Mayor

ATTEST:



Sonia Cuello, City Clerk

Approved as to form:



Glenn Gimbut, City Attorney

**AMENDED AND RESTATED
INTERGOVERNMENTAL PLEDGE AGREEMENT**

by

and

between

THE CITY OF SAN LUIS, ARIZONA,
as Pledgor

and

**INDUSTRIAL DEVELOPMENT AUTHORITY
OF THE CITY OF SAN LUIS, ARIZONA,**
as Pledgee

Dated as of August 1, 2007

The Industrial Development Authority
of the City of San Luis, Arizona
Taxable Excise Tax Revenue Bonds
(Advanced Call Center Technologies Project)
Series 2007A&B

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EXHIBIT A – LEGAL DESCRIPTION

**AMENDED AND RESTATED
INTERGOVERNMENTAL PLEDGE AGREEMENT**

THIS AMENDED AND RESTATED INTERGOVERNMENTAL PLEDGE AGREEMENT dated as of August 1, 2007 (this "Pledge Agreement"), by and between **THE CITY OF SAN LUIS, ARIZONA** (the "City") and **THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF SAN LUIS, ARIZONA** (the "Authority"),

R E C I T A L S:

WHEREAS, the City is authorized to pledge excise taxes to support the financing of the Authority's projects; and

WHEREAS, Advanced Call Center Technologies, Inc. (the "Tenant") has requested that the Authority, and the Authority has issued \$5,500,000 principal amount of Industrial Development Authority of the City of San Luis, Arizona, Taxable Excise Tax Revenue Bonds (Advanced Call Center Technologies Project), Series 2007A (the "Series 2007A Bonds") and proposes to issue \$2,000,000 principal amount of Industrial Development Authority of the City of San Luis, Arizona, Taxable Excise Tax Revenue Bonds (Advanced Call Center Technologies Project), Series 2007B (the Series 2007B Bonds and together with the Series 2007A Bonds, the "Bonds") to finance the acquisition, construction, equipping, operation and maintenance of a building, containing approximately 84,000 rentable square feet (the "Building"), situated on the real property described in Exhibit A hereto and located at 580 North San Luis Plaza (the "Premises"), which is to be leased to Tenant for use as a call center pursuant to that certain Lease Agreement between the Authority, as Landlord, and the Tenant, as Tenant (the "Lease Agreement"), and to provide for the payment of the costs relating to the issuance and sale of the Bonds; and

WHEREAS, the Bonds have been and are being sold to Bank of America, N.A. (the "Lender"), pursuant to a Trust Indenture, dated as of March 1, 2007, as supplemented by the Supplemental Indenture of Trust dated as of August 1, 2007 (collectively, the "Indenture"), each between the Authority and the Lender; and

WHEREAS, the Authority's obligations to make payments to the Lender with respect to the Bonds are to be payable from (a) Lease Payments to be made by the Tenant under the Lease Agreement, including, without limitation, Basic Rent and Additional Rent (each as defined in the Lease Agreement) and (b) from amounts paid by the City pursuant to this Pledge Agreement for the payment of which the City is hereby irrevocably pledging its hereinafter-described Excise Taxes on a parity with the pledge of such Excise Taxes for the payment of the 2005 MPC Bonds, but subject to the rights of the 2005 Bond Trustee under the 2005 Deposit Only Account Agreement; and

WHEREAS, in order to further secure the repayment of its obligations with respect to the Bonds, the Authority is executing and delivering to the Lender (i) its Amended and Restated Assignment of Rents and Lease Agreement, dated as of the date hereof (the "Assignment of Lease Agreement"), among the Authority, the Lender and the Tenant, pledging and assigning to

the Lender all of the Authority's right, title and interest in and to the Lease Agreement and its rights to receive any payments under the Lease Agreement, including, without limitation, Basic Rent and Additional Rent (each as defined in the Lease Agreement), but all obligations of the Authority, as Landlord under the Lease Agreement shall remain with the Authority, and (ii) its Amended and Restated Assignment of Intergovernmental Pledge Agreement, dated the date hereof (the "Assignment of Intergovernmental Pledge Agreement" and, together with the Assignment of Lease Agreement, the "Assignments"), among the Authority, the City and the Lender, pledging and assigning to the Lender all of the Authority's rights to receive amounts under this Intergovernmental Pledge Agreement; and

WHEREAS, the Authority will use the proceeds of the Bonds to acquire the Premises from the City and to cause the Premises to be improved, expanded and equipped for use by the Tenant pursuant to the Lease Agreement, and to pay costs of issuance of the Bonds; and

WHEREAS, the City Council has approved a pledge of the City's Excise Taxes in support of the issuance of the Bonds; and

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE PREMISES AND THE MUTUAL COVENANTS AND AGREEMENTS HEREINAFTER CONTAINED, THE PARTIES HERETO AGREE EACH WITH THE OTHER, AS FOLLOWS:

ARTICLE I

DEFINITIONS; GENERAL RECITALS, FINDINGS, AND REPRESENTATIONS

Section 1.01. Definitions. Capitalized terms used which are not otherwise defined herein have the meaning given to such terms in the Indenture or Lease Agreement.

"2005 Bond Trustee" means U.S. Bank National Association, or its successor serving as trustee under the 2005 Indenture.

"2005 MPC Bonds" means San Luis Civic Improvement Corporation Municipal Facilities Excise Tax Revenue Bonds, Series 2005, issued in the original aggregate principal amount of \$40,000,000, pursuant to the 2005 Trust Indenture.

"2005 Deposit Only Account Agreement" means the Deposit Only Account Agreement dated as of October 1, 2005, among U.S. Bank National Association, as depository bank, the City and the 2005 Bond Trustee.

"2005 Indenture" means the Trust Indenture, dated as of October 1, 2005, between the Authority and the 2005 Bond Trustee, as supplemented and amended, authorizing the issuance of the 2005 MPC Bonds.

"2005 Leaseback Agreement" means the Leaseback Agreement, dated as of October 1, 2005, between the Authority and the City, as supplemented and amended.

“Agreement” means this Intergovernmental Pledge Agreement.

“Authority” means the Industrial Development Authority of the City of San Luis, Arizona.

“Bond Service Charges” means for any period or time, the principal of and interest on the Bonds for such period or payable at that time, whether due at maturity or upon redemption.

“Bonds” means the Industrial Development Authority of the City of San Luis, Arizona, Taxable Excise Tax Revenue Bonds (Advance Call Center Technologies Project), Series 2007A and the Industrial Development Authority of the City of San Luis, Arizona, Taxable Excise Tax Revenue Bonds (Advance Call Center Technologies Project), Series 2007B issued under the Indenture.

“City” means the City of San Luis, Arizona.

“City Representative” means the City Administrator of the City or any other person duly authorized by the City to act on behalf of the City Administrator of the City under or with respect to this Agreement.

“Debt Service Coverage Ratio” means the ratio of revenues from Excise Taxes to maximum amount of annual principal and interest due on all debt secured by such Excise Taxes, whether existing or proposed, including 2005 MPC Bonds and the Bonds.

“Event of Default” means an event of default under the Indenture, as defined in Article V hereof.

“Excise Tax” means all excise, transaction, franchise, privilege and business taxes, state-shared sales and income taxes, fees for licenses and permits and state revenue sharing, now or hereafter validly imposed by the City or contributed, allocated or paid over to the City and not earmarked by the contributor for a contrary or inconsistent purpose which the City now collects, which it may collect in the future, or which are allocated or apportioned to the City by the State or any political subdivision thereof, or by any other governmental unit or agency, except the City’s share of any excise and franchise taxes which by state law, rule or regulation must be expended for other purposes, such as the motor vehicle fuel tax.

“Indenture” means the Indenture of Trust by and between the Authority and the Bank of America, N.A., as Lender dated as of March 1, 2007, as supplemented by the Supplemental Indenture of Trust dated as of August 1, 2007, as amended or supplemented from time to time.

“Lease Agreement” means the Lease Agreement dated as of March 1, 2007 by and between the Authority and the Tenant.

“Lease Payments” means any payments required to be made by the Tenant under the Lease Agreement, including, without limitation, Basic Rent and Additional Rent, each as defined in the Lease Agreement.

“Lender” means Bank of America, N.A.

“*Outstanding*” means, as of the applicable date, all Bonds which have been authenticated and delivered, or which are being delivered by the Lender under the Indenture, except:

- (a) Bonds or the portion thereof, cancelled upon surrender, exchange or transfer, or cancelled because of payment or redemption on or prior to that date;
- (b) Bonds, or the portion thereof, which are deemed to have been paid and discharged or caused to have been paid and discharged pursuant to the provisions of the Indenture; and
- (c) Bonds in lieu of which others have been authenticated under the Indenture.

“*Owner*” means the Person in whose name a bond is registered.

“*2005 MPC Bonds*” means the San Luis Civic Improvement Corporation, Municipal Facilities Excise Tax Revenue Bonds, Series 2005, issued under that certain Trust Indenture dated as of October 1, 2005 by and between San Luis Improvement Corporation as Issuer and U.S. Bank National Association as Trustee.

“*Person*” means firms, associations, partnerships (including without limitation, general and limited liability partnerships), joint ventures societies, estates, trusts, corporations, public or governmental bodies, other legal entities and natural persons.

“*Tenant*” means Advanced Call Center Technologies, LLC.

Section 1.02. Interpretation. Any reference herein to the Authority or to any member or officer thereof, includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa; the terms “hereof”, “hereby”, “herein”, “hereto”, “hereunder” and similar terms refer to this Agreement; and the term “hereafter” means after, and the term “heretofore” means before, the date of this Agreement. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

Section 1.03. Captions and Headings. The captions and headings in this Agreement are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs or clauses hereof.

ARTICLE II

ADDITIONAL SECURITY FOR THE BONDS; PLEDGE OF EXCISE TAXES

Section 2.01. Additional Security. The Authority’s obligation to pay the principal and interest when due on the Bonds are secured on a primary basis from the Lease Payments. If such Lease Payments received by the Lender are, for any reason, insufficient to pay the principal and interest when due upon maturity, prior redemption or upon acceleration, including, without limitation, due to a failure or default by the Tenant or the Authority, then the City hereby pledges to pay the principal and interest on the Bonds when due from the City’s Excise Taxes. The City

hereby covenants to pay such principal and interest to the Lender immediately upon receipt of notice from the Lender or the Authority of an insufficiency of amounts received for such purpose derived from Lease Payments.

Section 2.02. Pledge for Payments.

(a) As additional security for the Authority's Bonds, the City hereby pledges all Excise Taxes for the payment of all amounts due to Lender under the Indenture. The City intends that this pledge shall be on a parity with the 2005 MPC Bonds, but subject to the rights of the 2005 Bond Trustee under the 2005 Deposit Only Account Agreement. The City agrees and covenants to make payments only from Excise Tax receipts and revenues, except to the extent that it chooses to make such payments from other funds. Excise Taxes, as received, shall be placed in the City Improvement Fund. The City's obligation to make payments due under this Pledge Agreement, including any amounts due after default or termination hereof, is limited to payment from Excise Taxes, and shall in no circumstances constitute a general obligation of, or a pledge of the full faith and credit of the City, the State of Arizona, or any of its political subdivisions, or require the levy of, or be payable from the proceeds of, any ad valorem taxes.

(b) The City shall impose all necessary Excise Taxes and shall collect and receive the proceeds of sufficient Excise Taxes in such amounts and at such times as will be fully sufficient, in conjunction with any other legally available moneys which the City may from time to time lawfully choose to pay to the Lender for deposit into the Revenue Fund, to assure the punctual performance of all duties requiring the payment or expenditure of money by the City under the terms of this Pledge Agreement.

(c) It is understood and agreed to by the City and the Authority that all payments made in accordance herewith shall be secured only from the sources pledged pursuant to this Section 2.02. The City shall first make or provide for all payments due on the Bonds hereunder, if required by this Pledge Agreement, and, thereafter, the City may use the remaining funds for any other lawful purpose. The City's pledge of Excise Taxes shall be for the benefit of the Lender, whose claim to such receipts and revenues shall be on a parity with the claim of the Owners of any Parity Obligations of the City, and any other creditor of the Authority shall have no claim thereto.

(d) The City covenants that the Excise Taxes which is imposes in each fiscal year shall be equal to at least 2.0 times the highest combined interest and principal requirements for the Bonds, the 2005 MPC Bonds and all outstanding or proposed Parity Obligations in any future fiscal year. The City further covenants that if such receipts for any such fiscal year shall not equal 2.0 times such highest combined annual principal and interest requirements, or if at any time it appears that the current fiscal year's receipts will not be sufficient to meet that fiscal year's actual principal and interest requirements, the City shall either impose new Excise Taxes or will increase the rate that such taxes are currently imposed in order that (i) the current fiscal year's receipts will be sufficient to meet that fiscal year's principal and interest requirements and (ii) the next succeeding fiscal year's receipts will be equal to at least 2.0 times the highest combined principal and

interest requirements on the Bonds, the 2005 MPC Bonds and all outstanding or proposed Parity Obligations in any future fiscal year.

Section 2.03. Additional Parity or Junior Lien Obligations. The City reserves the right to incur obligations payable from the Excise Taxes in the future on a parity with or subordinate to its obligation to make payments hereunder, but only if upon the incurring of such future obligations all of the following conditions are met:

(a) The pledged Excise Taxes received by the City during the completed fiscal year immediately preceding the incurring of the proposed parity obligation shall have amounted to greater than 2.85 times the highest combined total of the interest and principal requirements of the Bonds, the 2005 MPC Bonds and all other outstanding on proposed Parity Obligations and subordinate obligations for any succeeding fiscal year.

(b) In computing payments required to be made under Section 4.01 hereof in any given fiscal year and with respect to other obligations under Subsection 2.3(a) above, there shall be included all mandatory sinking fund payments or mandatory prepayments, but there shall be excluded from the year of maturity of such future payment the amount for which such mandatory payments or prepayments shall be required to be made. There may also be excluded from payments with respect to obligations under Subsection 2.03(a) interest on the amount of each mandatory payment or prepayment from the required date of deposit or prepayment to the date of maturity of such future payment at the rate borne by the Bonds or other obligations with respect to which such future payment is to be applied.

There shall be disregarded in the computation required under Section 2.3(a) above any payments with respect to any issue or obligation as to which a Depository is established which contains moneys and investment earnings on such moneys sufficient to pay (in accordance with the defeasance provisions of any applicable security instrument or bond legislation applicable thereto) the principal of, and interest, and applicable premium, if any, on such issue.

As to payments other than under Section 2.03(a) hereof, the amount of each such future annual payment shall be established by written certificate of the City Administrator.

(c) The City shall certify through its City Administrator or other appropriate official that it is not in default in any payment hereunder or with respect to any obligation included within Section 2.03(a) above.

Section 2.04. Debt Service Coverage Ratio. The City will ensure that all debt secured by unrestricted Excise Taxes shall have a Debt Service Coverage Ratio of greater than 2.85.

Section 2.05. Assumptions For Variable Rate Obligations. In determining compliance with the provisions of Section 2.03 hereof, interest on any obligation which bears or is to bear interest at a variable rate shall be assumed to be a fixed interest rate equal to the greater of: (i) 9% or (ii) (a) if any variable rate obligations are outstanding, the highest variable rate actually borne by such obligations over the previous 24 months or (b) if none, the highest rate

borne by variable rate debt over the previous 24 months for which the interest rate is computed by reference to an index, or based on other factors, comparable to that to be utilized for the proposed obligations.

Section 2.06. Obligation to Pay on the Bonds not a Debt. The obligation of the City to pay all amounts due hereunder does not represent or constitute a general obligation of the City and does not constitute an indebtedness of the City, the State of Arizona or any of its political subdivisions within the meaning of any constitutional or statutory debt limitation or restrictions because such obligation is payable solely from the City's Excise Taxes, a special fund.

Section 2.07. Obligations Absolute. The obligations of the City to pay the principal and interest on the Bonds as required under this Pledge Agreement or the laws of the State and to perform and observe the other covenants and agreements on its part contained herein shall be absolute and unconditional in all events except as expressly provided under this Agreement or such laws. During the Term of this Pledge Agreement, the City (i) shall not suspend or discontinue as any payments made pursuant to Section 2.01, (ii) shall perform and observe all of its other agreements contained in this Pledge Agreement, and (iii) except in the case of the redemption of the Bonds, the City will not terminate this Pledge Agreement for any cause including, without limiting the foregoing, any acts or circumstances that may constitute destruction of or damage to the Premise, condemnation, commercial frustration of purpose or any failure of the Authority to perform and observe any agreement whether express or implied, or any duty, liability or obligation arising out of or connected with this Pledge Agreement.

ARTICLE III

REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 3.01. City's Representations and Warranties. The City represents, covenants and warrants to the Authority as follows:

(a) ***Due Organization and Existence.*** The City is a political subdivision duly organized and existing under the laws of the State.

(b) ***Authorization.*** The Constitution and the laws of the State authorize the City to enter into this Pledge Agreement, Amended and Restated Assignment of Pledge Agreement and to enter into the transactions contemplated hereby, and to carry out its obligations under this Pledge Agreement.

(c) ***No Violations.*** Neither the execution and delivery of this Pledge Agreement, Amended and Restated Assignment of Pledge Agreement, nor the fulfillment of or compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the City is now a party or by which the City is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the City except as provided herein.

(d) **Execution and Delivery.** The City has duly authorized and executed this Pledge Agreement and the transactions contemplated hereby and all other documents and agreements required in connection with the transactions contemplated hereby in accordance with the laws of the State.

Section 3.02. Authority's Representations and Warranties. The Authority represents, covenants and warrants to the City as follows:

(a) **Due Organization and Existence.** The Authority is a nonprofit corporation designated a political subdivision of the State of Arizona, organized and in good standing under the laws of the State.

(b) **Authorization.** The laws of the State and the Authority's Articles of Incorporation and Bylaws authorize the Authority to enter into the Indenture, the Lease Agreement, Amended and Restated Assignment of Lease, this Pledge Agreement, Authority Documents and to enter into the agreements and transactions contemplated by and to carry out its obligations under, the aforesaid agreements.

(c) **No Violations.** Neither the execution and delivery of the Indenture, the Lease Agreement, this Pledge Agreement, Amended and Restated Assignment of Lease nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Authority is now a party or by which the Authority is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon the Project, except as provided herein.

(d) **Execution and Delivery.** The Authority has duly authorized and executed this Pledge Agreement, the Lease Agreement, the Indenture, the Amended and Restated Assignment of Lease Agreement, the Amended and Restated Assignment of Intergovernmental Pledge Agreement and all other documents and agreements required in connection with the transactions contemplated thereby, in accordance with the laws of the State.

ARTICLE IV

ASSIGNMENT AND AMENDMENT

Section 4.01. Assignment. The Authority's rights under this Pledge Agreement, including the right to receive and enforce payment of the principal and interest on the Bonds to be made by the City under this Pledge Agreement and to receive and enforce payment of any other amounts payable by the City pursuant to this Pledge Agreement have been assigned to the Lender for the benefit of the Lender and the Owners of the Bonds pursuant to the Indenture, to which assignment the City hereby consents. The City hereby approves all the terms and provisions of the Indenture and agrees to comply with all such terms and provisions which impose obligations on the City.

Section 4.02. Amendment. This Pledge Agreement may not be effectively amended, changed, modified, altered or terminated unless the Lender shall receive an opinion of Bond Counsel, furnished by the City or the Authority, at the City's expense, and addressed to the Authority, the City and the Lender, to the effect that such amendment, change, modification, alteration or termination shall not materially adversely affect the interests of the Lender or the Owners.

ARTICLE V

EVENTS OF DEFAULT AND REMEDIES

Section 5.01. Events of Default. The following shall be "events of default" under this Pledge Agreement and the terms "events of default" and "default" shall mean, whenever they are used in this Agreement, any one or more of the following events of default by the City:

(a) failure by the City to (i) pay any principal and interest on the Bonds within five days of notice by the Lender that the Authority has failed to make a payment of principal and interest when due; or (2) make any other payment required to be made under this Pledge Agreement at the time specified;

(b) failure by the City to observe and perform any covenant, condition or agreement to be observed or performed by it, other than as referred to in clause (a) of this Section, for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Authority or the Lender, provided, however, if the failure stated in the notice can be corrected, but not within the applicable period, the Authority shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the City within the applicable period and diligently pursued until the default is corrected;

(c) the filing by the City of a voluntary petition in bankruptcy, or failure by the City promptly to lift any execution, garnishment or attachment, or adjudication of the City as a bankrupt, or assignment by the City for the benefit of creditors, or the entry by the City into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any proceedings instituted under the provisions of the federal bankruptcy laws;

(d) the occurrence of an event of default under the Indenture; and

(e) the occurrence of an event of default under the 2005 Indenture, the 2005 Leaseback Agreement, the 2005 Deposit Only Account Agreement, or on in the payment of any amount on the 2005 MPC Bonds.

Section 5.02. Remedies. Whenever any event of default referred to in Section 6.1 above has happened and is continuing, it shall be lawful for the Authority and the Lender, or either of them, to enforce this Pledge Agreement by appropriate action to collect amounts due hereunder, or to cause the City to perform its other obligations under this Pledge Agreement, or both.

Section 5.03. Exercise of Remedies. No failure on the part of the Authority to exercise, and no delay in exercising, any right or remedy under this Pledge Agreement shall operate as a waiver thereof; nor shall any single or partial exercise by the Authority of any right or remedy under this Pledge Agreement preclude any other or further exercise of any partially exercised right or remedy or any other right or remedy. The City shall be liable for all expenses and costs which the Authority incurs in connection with the enforcement of any of its remedies in this Pledge Agreement, including reasonable attorneys' fees.

Section 5.04. Default by Authority. The Authority shall in no event be in default in the performance of any of its obligations under this Pledge Agreement unless and until the Authority fails to perform such obligations for 30 days or such additional time as is reasonably required to correct any such default after notice by the City to the Authority properly specifying wherein the Authority has failed to perform any such obligation. No default by the Authority shall relieve the City of its obligations to make the various payments herein required so long as any of the Bonds remain Outstanding; however, the City may exercise any other remedy available at law or in equity to require the Authority to remedy such default so long as such remedy does not interfere with or endanger the payments required by the Authority to be made to the Lender under the Indenture.

ARTICLE VI

GENERAL COVENANTS

Section 6.01. Reporting Obligations. The City shall provide audited financial statements within 180 days of the end of each fiscal year to the Authority during the term of this Pledge Agreement. The City shall also provide to the Authority an annual budget at the beginning of every fiscal year or within 30 days of adoption of such budget.

Section 6.02. Compliance with Debt Service Coverage Ratio. The City shall provide an annual certificate within 180 days of the end of the fiscal year indicating compliance with the debt service coverage ratio described in Section 4.04.

Section 6.03. City's Budget. The City agrees to provide for the payment of principal and interest on the Bonds due in each fiscal year in its annual budget. These provisions may be made in the provisions for contingency expenditures.

Section 6.04. Termination of Agreement. Upon full payment of the Bonds and release of the Indenture, this Pledge Agreement shall terminate.

Section 6.05. Interest of City Not to Be Assigned; Permitted Exceptions. Neither this Pledge Agreement nor any interest of the City herein shall, at any time after the date hereof, without the prior written consent of the Lender, be mortgaged, pledged, assigned or transferred by the City by voluntary act or by operation of law or otherwise. The City shall at all times remain liable for the performance of all the covenants and conditions on its part to be performed hereunder.

Section 6.06. Right of Authority and Lender to Perform City's Obligations Hereunder. In the event that the City should fail for any reason to make any payment or perform any obligation hereunder, and such failure shall continue for a period of 30 days after written notice has been given to the City by the Authority or the Lender specifying such failure and requesting that it be remedied, the Authority, or the Lender on its behalf, may but shall not be required to make any such payment or to perform any such obligation. The amount of such payment and all expenses reasonably incurred by the Authority and the Lender in making such payment and performing such obligation shall be paid by the City immediately upon receipt by the City of invoices sent to the City by the Authority or the Lender with interest at the rate of 9% per annum from the date the payment was made or expenses incurred to the date of payment by the City.

Section 6.07. Indemnification of Lender. The City agrees to indemnify and save the Lender from and against all claims, suits and actions brought against it, or to which it is a party, from all losses and damages suffered by it as a result thereof, where and to the extent such claim, suit or action arises out of the actions of any party to this Pledge Agreement or the Indenture, including but not limited to the financing of the Project. Such indemnification shall not extend to claims, suits and actions brought against the Lender for failure to perform or carry out the duties specifically imposed upon or be performed by it pursuant to the Indenture. In the event the City is required to and does indemnify the Lender as herein provided, the City or the Authority, as appropriate, shall be subrogated to the rights of the Lender to recover such losses or damages from any other person or entity.

ARTICLE VII

DISPUTE RESOLUTION

Section 7.01. Arbitration. Any controversy or claim between or among the parties hereto including but not limited to those arising out of or relating to this Pledge Agreement or any related agreements or instruments, including any claim based on or arising from an alleged tort, shall be determined by binding arbitration in accordance with the Federal Arbitration Act (or if not applicable, the applicable state law) and the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). Judgment upon any arbitration award may be entered in any court having jurisdiction. Any party to this Pledge Agreement may bring an action, including a summary or expedited proceeding, to compel arbitration of any controversy or claim to which this Pledge Agreement applies in any court having jurisdiction over the action.

The arbitration shall be conducted in Yuma, Arizona and presided over by an arbitrator provided at the nearest location of the AAA. All arbitration will be commenced within 120 days of the demand for arbitration and the decision or award rendered within 30 days thereafter; further, the arbitrator shall only, upon showing of cause, be permitted to extend the commencement period for an additional 60 days.

Nothing in this Pledge Agreement shall be deemed to (i) limit the applicability of any otherwise applicable statutes of limitation or repose and any waivers contained in this Agreement; or (ii) limit the right of any party hereto (A) to exercise self help remedies such as (but not limited to) setoff, or (B) to foreclose against any real or personal property collateral, or

(C) to obtain from a court provisional or ancillary remedies such as (but not limited to) injunctive relief or the appointment of a receiver. Any party may exercise such self-help rights, foreclose upon such property, or obtain such provisional or ancillary remedies before, during or after the pendency of any arbitration proceeding brought pursuant to this Pledge Agreement. Neither exercise of self-help remedies nor the institution or maintenance of an action for foreclosure or provisional or ancillary remedies shall constitute a waiver of the right of any party, including the claimant in any such action, to arbitrate the merits of the controversy or claim occasioning resort to such remedies.

Judgment upon any award rendered by an arbitrator may be entered in any court having jurisdiction. Nothing in this Section shall preclude any party from seeking equitable relief from a Court of the State of Arizona to enforce an arbitration award. The statute of limitations, estoppel, waiver, laches, and similar doctrines which would otherwise be applicable in an action brought by a party shall be applicable in any arbitration proceeding, and the commencement of an arbitration proceeding shall be deemed the commencement of an action for these purposes.

ARTICLE VIII

MISCELLANEOUS

Section 8.01. Governing Law. This Pledge Agreement shall be governed by and construed in accordance with the laws of the State of Arizona and shall inure to the benefit of and be binding upon the City, the Authority, and their successors and assigns.

Section 8.02. Severability. Any provision hereof which may be deemed unenforceable or invalid under any law shall be inapplicable and deemed omitted herefrom, but shall not in any way invalidate any other provisions hereof, all of which shall remain in full force and effect.

Section 8.03. Headings. All article and paragraph headings are inserted for reference purposes only and shall not affect the interpretation or meaning of this Pledge Agreement.

Section 8.04. Integration. This instrument constitutes the entire contract between the parties hereto, and no representations shall constitute an amendment hereto unless the requirements of Section 5.2 hereof are met.

Section 8.05. Notice of Adverse Action. The City shall immediately notify the Authority in writing of any claim, demand, action, or dispute that involves the rights of the Authority or the City under this Pledge Agreement, or that involves the interpretation of any of the provisions of this Pledge Agreement that may directly or indirectly affect the tax or other liability or rights of either the Authority or the City; and if any such litigation, suit, or action is begun by or against the City, the Authority shall have the right but not the obligation to intervene in said litigation, suit, or action at its own expense, and assist in the prosecution or defense of same.

Section 8.06. Delivery of Notices. All notices herein required shall be signed by the proper officers of the sender and either (i) delivered to the proper officers of the receiver or (ii) sent by first class mail, postage prepaid, postmarked not later than the date herein required, to the

following addressees or to such other addressees as shall be designated by the Authority or the City:

To the City: City of San Luis
P.O. Box 1170
767 North First Avenue
San Luis, Arizona 85349
Telephone: (928) 627-2027
Attention: City Administrator

To the Authority: Industrial Development Authority
of the City of San Luis
c/o City of San Luis
P.O. Box 1170
767 North First Avenue
San Luis, Arizona 85349
Telephone: (928) 627-2027
Attention: President

To the Lender: Bank of America, N.A.
AZ1-200-22-32
201 East Washington Street
Phoenix, AZ 85004-2343
Telephone: (602) 523-2052
Facsimile: (602) 523-2511
Attention: Arizona Commercial Banking, CPO

Section 8.07. Time of Essence. Time is of the essence for purposes of this Pledge Agreement in each and all of its provisions.

Section 8.08. Notice of A.R.S. Section 38-511 – Cancellation. Notice is hereby given of the provisions of Arizona Revised Statutes Section 38-511. By this reference, the provisions of said statute are incorporated herein to the extent of their applicability to contracts of the nature of this Pledge Agreement under the law of the State.

IN WITNESS WHEREOF, the Authority and the City have caused this Amended and Restated Intergovernmental Pledge Agreement to be executed in their respective names by their duly authorized officers on this 1st day of August, 2007.

PLEDGOR:

CITY OF SAN LUIS, ARIZONA, a municipal corporation

Attest:



City Clerk

By: 

Juan Carlos Escamilla
Mayor of the City of San Luis

PLEDGEE:

INDUSTRIAL DEVELOPMENT
AUTHORITY OF THE CITY OF SAN LUIS, a
nonprofit corporation designated a political
subdivision of the State of Arizona

By: _____
Name: Jose Suarez
Title: _____

[Signature Page to the Intergovernmental Pledge Agreement]

EXHIBIT A

LEGAL DESCRIPTION

Lot 2, according to the Replat of Lots 1 and 2 of SAN LUIS PLAZA, as recorded in Book 13 of Plats, page 46 and Affidavit of Correction recorded in Docket 1909, page 242, records of Yuma County, Arizona.