



Resolution

OFFICE OF THE
MAYOR
CITY OF SAN LUIS

RESOLUTION NO. 933

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SAN LUIS, ARIZONA APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SAN LUIS, ARIZONA AND SAN LUIS PORT, L.L.C.

Whereas, San Luis Port, L.L.C., an Arizona Limited Liability Company, desires to enter into a development agreement ("Development Agreement") with the City of San Luis, Arizona ("City") to provide for the development of certain property located in the City of San Luis; and

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 into 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 San Luis Port, L.L.C. 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 Common Council of the City of San Luis, Arizona, this 13th day of April, 2011.


Juan Carlos Escamilla, Mayor

ATTEST:



Sonia Cuello, City Clerk

APPROVED AS TO FORM:



Glenn Gimbut, City Attorney

RESOLUTION 933
EXHIBIT A

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into this 13th day of April, 2011, by and between San Luis Port, L.L.C., (the "Developer") and the City of San Luis, an Arizona municipal corporation (the "City"). This Agreement is entered into pursuant to City Resolution Number 933.

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;
- B. WHEREAS, Developer is the owner of property located in the municipal limits of the City;
- C. WHEREAS, Developer desires residential zoning in an area surrounded on three sides by industrial zoning, and City desires to limit the types of residential uses in order to ensure compatibility of uses;
- D. WHEREAS, the City's governing body has authorized execution of this Agreement by Resolution No.933, 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 or projects issued by the Planning and Zoning Department and the Public Works Department as a result of the development of the Property which is the subject of this agreement. A certificate of completion will not be issued until the entire Property is developed 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 San Luis Port, L.L.C., an Arizona Limited Liability Company, successor(s), assign(s), 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 “Property” as used in this Agreement shall mean and refer to all of the real property which is legally described on Exhibits A and B. “Parcel One” shall refer to the property described on Exhibit A and “Parcel Two” shall refer to the property described on Exhibit B.

ARTICLE 2. DURATION; AMENDMENT OF EXISTING DEVELOPMENT AGREEMENT

2.1 Duration of Development Agreement. The term of this Agreement shall continue and exist from the effective date of this agreement until a “Certificate of Completion” is issued by the City for the development of the Property, unless sooner cancelled as provided in this Agreement.

2.2 Amendment of Existing Agreement. The Property is currently the subject of an existing Development Agreement as approved by Resolution No. 421 of the City of San Luis. This agreement is intended to amend and modify said existing Development Agreement such that in the event of any conflict, the provisions of this agreement shall supersede and control.

ARTICLE 3. RESIDENTIAL DEVELOPMENT RESTRICTIONS; LANDSCAPING

3.1 Development of Residential Uses; Rezoning Restrictions. The Property at present time is zoned as Rural Area – 10 Acres minimum (RA-10). Developer desires to have the Property rezoned to residential uses, Parcel One to Intermediate Density Residential (R-2) and Parcel Two to High Density Residential (R-3). In addition to these rezonings, Developer has rezoned land on three adjoining sides of the Property to Light Industrial.

As a result, the City desires to ensure compatibility of uses between residential uses and industrial use and development. To this end, Developer and City agree as follows:

- a) At such time as the Property develops, a solid block wall at least 8 feet in height will be placed on all sides adjoining industrial or commercially zoned property and the County 23 ½ alignment. It is understood that at the time of development, other restrictions may be placed as part of subdivision plat approval to ensure either sight or sound attenuation from commercial vehicular traffic; traffic controls or roadway design to ensure no conflicts between commercial vehicular traffic and residential traffic; street lighting and other safety controls, design, or development to ensure safe residential use from commercial vehicular traffic.
- b) Development of Parcel One and Parcel Two shall be limited to the multi-family uses of either apartment, townhouse, or condominium development. In the event that it is desired to develop the property to single family homes, Developer agrees that such development will be limited to large lot development of lots no less in size than 8,000 square feet and homes of not less than 1750 square feet, exclusive of garage or carport. It is understood that development of such large single family lots may need an amendment to the General Plan of the City and/or a further rezoning before such use could be developed.
- c) Proposition 207 Waiver. Developer agrees to execute a Proposition 207 Waiver in the form attached as Exhibit C attached hereto as a condition of any rezoning of the Property.
- d) Developer has offered to make available to City for landscaping on Avenue E, on public right of way, up to 100 medjool date palm trees. Cost of installation shall be borne by City. This offer of Developer may be accepted by City up until _____, 20____.
- e) Developer agrees that with respect to the Property subject to this agreement and the Development Agreement dated January 12, 2000, that said lands shall be developed in accordance with such ordinances, rules, and/or regulations then in effect at the time of development.

ARTICLE 4. MEDIATION AND DEFAULT

4.1 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 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.

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

4.3 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 5. CONFLICT OF INTEREST; REPRESENTATIVES NOT INDIVIDUALLY LIABLE.

5.1 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. This agreement is subject to the provisions of A.R.S. §38-511.

5.2 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 6. MISCELLANEOUS PROVISIONS

6.1 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 Manager P.O. Box 1170 1090 East Union Street San Luis, AZ 85349
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If to the Developer	Stephen P. Shadle 833 E. Plaza Circle Suite 200 Yuma AZ 85365
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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.

6.2 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.

6.3 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.

6.4 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.

6.5 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.

6.6 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.

6.7 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.

6.8 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.

6.9 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.

6.10 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.

6.11 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.

6.12 **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.

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

6.14 **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.

6.15 **Sudan/Iran Investments and Business Operations.** By entering into this agreement, Developer certifies that it does not have scrutinized business operations in Iran or Sudan as those terms are defined in A.R.S. §35-391 et seq. and §35-393 et seq.

6.16 **Employment Eligibility.** Developer hereby warrants, and shall require its contractors and subcontractors to warrant, that it is in compliance with all federal immigration laws and regulations that relate to its employees and with A.R.S. §23-214 relating to verification of employment eligibility. A breach of this warranty shall be deemed a material breach of the agreement and is subject to penalties up to and including termination of this agreement. City retains the legal right to inspect the papers of Developer and any contractor or subcontractor employee of Developer to ensure that Developer and any of its contractors or subcontractors are compliant with this warranty

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

THE CITY OF SAN LUIS, an Arizona
Municipal Corporation

THE DEVELOPER, San Luis Port L.L.C.,
an Arizona Limited Liability Company

By: 
Mayor

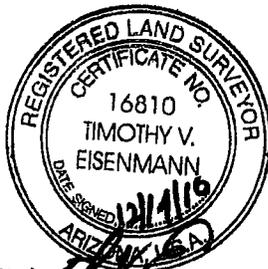
By: _____
Its: Manager

**R-2 RESIDENTIAL DISTRICT ZONING
LEGAL DESCRIPTION**

That portion of the Southwest quarter (SW¼) of Section 11, Township 11 South, Range 24 West, Gila and Salt River Base and Meridian, Yuma County, Arizona more particularly described as follows;

BEGINNING at the Southwest corner of said SW¼ Section 11;
Thence N00°25'06"E along the West line of said SW¼ Section 11 a distance of 2640.49 feet to the Northwest corner of said SW¼ Section 11;
Thence S89°28'51"E along the North line of said SW¼ Section 11 a distance of 1411.19 feet to the TRUE POINT OF BEGINNING;
Thence continuing S89°28'51"E along said North line SW¼ Section 11 a distance of 1228.95 feet to the Northeast corner of said SW¼ Section 11;
Thence S00°26'29"W along the East line of said SW¼ Section 11 a distance of 573.79 feet;
Thence N89°28'51"W a distance of 488.41 feet;
Thence N00°31'09"E a distance of 420.00 feet;
Thence N89°28'51"W a distance of 125.44 feet;
Thence S00°31'09"W a distance of 420.00 feet;
Thence N89°28'51"W a distance of 485.44 feet;
Thence N00°31'09"E a distance of 420.00 feet;
Thence N89°28'51"W a distance of 130.44 feet;
Thence N00°31'09"E a distance of 153.79 feet to the TRUE POINT OF BEGINNING;

SAID Parcel contains 13.7262 acres more or less.



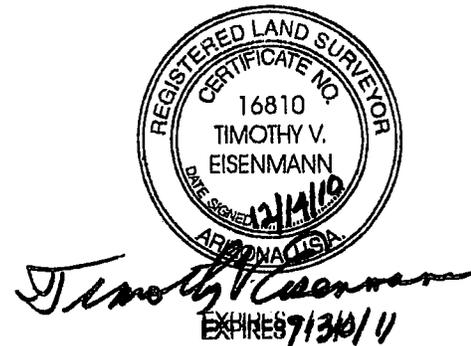
Timothy Eisenmann
EXPIRES 7/31/11

**R-3 RESIDENTIAL DISTRICT ZONING
LEGAL DESCRIPTION**

That portion of the Southwest quarter (SW¼) of Section 11, Township 11 South, Range 24 West, Gila and Salt River Base and Meridian, Yuma County, Arizona more particularly described as follows:

BEGINNING at the Southwest corner of said SW¼ Section 11;
 Thence N00°25'06"E along the West line of said SW¼ Section 11 a distance of 2640.49 feet to the Northwest corner of said SW¼ Section 11;
 Thence S89°28'51"E along the North line of said SW¼ Section 11 a distance of 1411.19 feet;
 Thence S00°31'09"W a distance of 153.79 feet to the TRUE POINT OF BEGINNING;
 Thence S89°28'51"E a distance of 130.44 feet;
 Thence S00°31'09"W a distance of 420.00 feet;
 Thence S89°28'51"E a distance of 485.44 feet;
 Thence N00°31'09"E a distance of 420.00 feet;
 Thence S89°28'51"E a distance of 125.44 feet;
 Thence S00°31'09"W a distance of 420.00 feet;
 Thence S89°28'51"E a distance of 488.41 feet to a point on said East line SW¼ Section 11;
 Thence S00°26'29"W along said East line SW¼ Section 11 a distance of 215.00 feet;
 Thence N89°28'51"W a distance of 1230.03 feet;
 Thence N00°31'09"E a distance of 635.00 feet to the TRUE POINT OF BEGINNING.

SAID Parcel contains 8.5375 acres more or less.



City of San Luis, Arizona
Office of the City Clerk
Box 1170
1090 East Union Street
San Luis, Arizona 85349

Agreement Regarding Acceptance of Land Use Conditions and Wavier of Rights and Remedies under Proposition 207: For use with a General Plan Amendment, Zoning Change (including Major or Minor Amendment to PCD or PAD), Zoning Text Amendment Request, Annexation, Site Plan Approval, or Design Review Approval

This Agreement regarding Acceptance of Land Use Conditions and Wavier of Rights and Remedies under Proposition 207 ("Agreement") is made by and between Applicant: _____ who is the applicant or the authorized representative of the applicant (the "Applicant") in City of San Luis Land Use Case No. _____ (the "Application"), and the City of San Luis, Arizona, a municipal corporation (the "City").

Whereas, Applicant has submitted the Application to the City wherein it has requested that the City approve a General Plan Amendment, Zoning Change (including Major or Minor Amendment to a PCD or a PAD), Annexation, Site Plan Approval, or Design Review Approval for certain real property owned or controlled by the Applicant located with in the City or to be annexed by the City more particularly described in the Exhibit "A" (legal description of the "Property");

Whereas, the City has reviewed the Application for conformance and consistency with the City's General Plan, Zoning Ordinance , any applicable Specific Plans, and any other applicable Ordinances, which may include Desert Conservation, Open Space, Hillside, Grading and Drainage, Stormwater Management, and Sensitive Lands (collectively, "Land Use Ordinances");

Whereas, the Property is subject to the provisions of Proposition 207, as adopted by the voters of the State of Arizona during the November 7, 2006, general election, which is codified at A.R.S. §12-1131, et seq. ("Proposition 207"); and

Whereas, the City and the Applicant desire to resolve the applicability of Proposition 207 to the Application and determine all other conditions that the City will impose subject to approval of the Application.

Now therefore, the Applicant and the City agree as follows:

1. **Conditions.** The Applicant and the City agree that the conditions set forth in Exhibit "B" (Conditions of Agreement), together with all other conditions, if any, that are imposed by the Planning and Zoning Commission or the City Council, or both, shall be included as part of any approval of the Application by the City; except that, if the Applicant objects to such other conditions during each and every public hearing, if any, related to the Application, then such other conditions are not covered by this Agreement. Except as provided in this §1, the Applicant covenants that it is lawfully empowered to accept and hereby does accept such conditions on behalf of all parties with an interest in the Property. Except as provided in this §1, the Applicant and the City agree that compliance with the conditions set forth in Exhibit "B" and the other conditions described in this §1, as determined by the City, is a requirement for approval of the Application. The Applicant acknowledges that these conditions may be subject to reasonable interpretation and application by the City in future land use applications pertaining to this Property, and the Applicant agrees that such action by the City will not provide a claim under Proposition 207; however

the City agrees that the Applicant does not hereby waive the right to protest such action under any other law.

2. Run with the Land. The Applicant and the City agree that this Agreement shall run with the Property and be binding upon all subsequent owners. The Applicant hereby consents to the City recording this Agreement and any other necessary related documents with the Yuma County Recorder's Office in which the Property is located.

3. Waiver.
 - a. The Applicant acknowledges that the Applicant and the City are empowered to agree to a waiver of the terms and requirements of Proposition 207, in particular those items codified at A.R.S. §12-1134, pursuant to A.R.S. §12-1134 (I).
 - b. The City agrees that the Application conforms with and is consistent with the City's General Plan, and the Applicant on behalf of itself and all other parties having an interest in the Property knowingly and intelligently waives the provisions of Proposition 207, in the particular A.R.S. §12-1134, resulting from the City's actions with respect to the Application, as follows:
 - 3.2.1. Any actual or claimed reduction of any existing rights to use, divide, sell, or possess the Property resulting from the City's actions with respect to the Application.
 - 3.2.2. Any actual or claimed reduction in the fair market value of the Property resulting from the City's actions with respect to the Applicant.
 - 3.2.3. Any actual or claimed reduction of any existing rights to use, divide, sell or possess any private real property adjacent to the Property or of the fair market value of any private real property adjacent to the Property resulting from the City's actions with respect to the Application.
 - 3.2.4. Any actual or claimed right of the Applicant and/or the owner of the Property to file a lawsuit against the City seeking just compensation for an actual or claimed regulatory taking in a court in the county in which the Property is located resulting from the City's actions with respect to the Application.
 - 3.2.5. Any actual or claimed right to the Applicant and/or the owner of the Property to secure a binding waiver of enforcement of particular San Luis, Arizona land use law against the Property resulting from the City's actions with respect to the Application.

4. City's Agreement. City agrees that by virtue of the Applicant's execution of this Agreement and acceptance of all of the conditions imposed by the City regarding the Application, that the Application and this Agreement shall be submitted with a staff recommendation for approval to the San Luis City Council or other decision-making body or person, as appropriate, for consideration and possible approval. However, the Applicant's failure to execute this Agreement will not prevent processing of the Application or submittal of the Application for consideration and possible approval.

5. Legislative Acts. This Agreement in no way acquiesces to or obligates to City to perform any legislative act.
6. Estoppel. The Applicant represents that, to its knowledge with regard to the Application and the Property as of the effective date of this Agreement, it has received the equal protection of the laws, has received due process of all of its claims and requests, and has not suffered any compensable regulatory taking (as those terms and their related claims are defined by Arizona state and federal constitutional jurisprudence, including Proposition 207) that would be or the Applicant claims or believes would be compensable under Proposition 207 or any other federal or Arizona state law, regulation, or constitutional provision.
7. Indemnification and Termination Upon Sale of Public Lots. The Applicant agrees to protect, indemnify, and hold the City, its agents, representatives, officers, directors, elected and appointed officials, and employees harmless from and against all liabilities, obligations, claims, suits, damages, penalties, causes of action, costs and expenses (including without limitation, reasonable attorneys' fees and litigation related expenses) imposed upon or asserted by any claimant pursuant to Proposition 207 against the City, its agents, representatives, officers, directors, elected or appointed officials, and employees, by reason of or arising out of this Agreement or the City's approval of the Application. In order to assert any right to indemnification pursuant to this provision, the City shall notify and issue a tender of defense to the Applicant in writing within thirty (30) days of initial notice to the City of an underlying claim against the City pursuant to A.R.S. §12-1134 and this Application. Upon notice and tender of defense by the City to the Applicant of an indemnification claim pursuant to this provision, the Applicant shall affirmatively accept the City's tender of defense in writing within ten (10) days of receipt of said tender from the City, and may thereafter assert control of the management and disposition of said underlying claim, including but not limited to the choice of counsel, and the City shall reasonable cooperate in this Applicant's management and disposition of the underlying claim. This obligation to indemnify shall terminate without the execution or recordation of any further of instrument as to any lot ("Public Lot") which has been finally subdivided, has been improved with a fully completed dwelling or commercial building, has been individually (and not in "bulk") leased (for a period of longer than one year) or sold to an end purchaser or user thereof, and thereupon such Public Lot shall be released from and no longer shall be subject to or burdened by the provisions of this §7.
8. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the application of Proposition 207 to the Property. All prior and contemporaneous agreements, representations, and understandings of the parties, oral or written, with respect to the application of Proposition 207 to the Property other than specifically incorporated herein by reference, are superseded by this Agreement. All prior and contemporaneous agreements, representations, and understandings of the City with any other parties, oral or written, with respect to the application of Proposition 207 to the Property other than specifically incorporated herein by reference, regarding any portion of or all the Property, are superseded by this Agreement. Nothing in this section is intended to void or invalidate other agreements affecting the Property to which both the Applicant and the City are parties, such as development

agreements, easements, repayment agreements, or others: however, the provisions of this Agreement shall supersede and take precedence over any conflicting provisions in any such other agreements.

9. Severability. If any provision of this Agreement is declared void or unenforceable, the provisions will be severed from this Agreement and the remainder of the Agreement will otherwise remain in full force and effect, provided that the overall intent of the parties is not materially vitiated by such severability.
10. Governing Law. This Agreement is entered into in Arizona and will be construed and interpreted under the laws of the State of Arizona.
11. Effective Date and Recordation. This Agreement shall become effective upon approval by the City of the Application as evidenced by all necessary signatures upon any written approval, ordinance or resolution approved by the San Luis City Council or approved minutes evidencing the action taken by the City Council or other appropriate decision-maker in accordance with applicable law. No later than ten (10) days after the application has been approved as provided herein, the City will cause this Agreement to be recorded in its entirety in the official records of the Yuma County Recorder's Office in which the Property is located.
12. Term. This Agreement shall be effective for a period of ten (10) years from the date the City approves the Application, unless within three (3) years of the date execution of the Agreement, the City advises the Applicant that a court of competent jurisdiction of the legislature had determined that a Proposition 207 claim may be stated based on a land use law at a time later than the term of this Waiver; in such case, the term will be automatically extended without further action of the parties to such time, unless the Applicant protests the City's interpretation of such court or legislative decision with ten (10) days. Such protest must be heard by the City's Independent Hearing Officer within thirty (30) days, and the decision of the Independent Hearing Officer will be final with respect to the correct interpretation for the purpose of this §12.
13. Authority. The Applicant represents and warrants to the City: (a) that it is duly formed and validly existing under the laws of the State of Arizona and is authorized to do business in Arizona; and (b) that the individual(s) executing this Agreement on behalf of the Applicant are authorized and empowered to bind the Applicant. The City represents and warrants to the Applicant: (y) that it is a duly formed municipal corporation with the State of Arizona; and (z) that the individual(s) executing this Agreement on behalf of the City are authorized and empowered to bind the City.
14. Conflict of Interest. The parties acknowledge that this Agreement is subject to cancellation by the City pursuant to the provisions of A.R.S. §38-511.

Dated this 14th day of April, 2011

APPLICANT

CITY OF SAN LUIS

Jaime Uey
City Manager

By: _____

Its: _____

ATTEST:

[Signature]
City Clerk

APPROVED AS TO FORM:

[Signature]
City Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF YUMA)

SUBSCRIBED AND SWORN to be before me this _____ day of _____, 20____,
By _____ of the City of San Luis, an Arizona municipal corporation,
on behalf of the corporation.

My Commissions Expires:

Notary Public

STATE OF ARIZONA)
) ss.
COUNTY OF YUMA)

SUBSCRIBED AND SWORN to be before me this _____ day of _____, 20____,
By _____ of the _____, an Arizona
corporation, on behalf of the corporation.

My Commissions Expires:

Notary Public

**Exhibit A
Legal Description**

Exhibit B
Conditions of Agreement