

WHEN RECORDED MAIL TO:

CYNTHIA SALCIDO  
P.O. BOX 1170  
SAN LUIS, ARIZONA 85349

OFFICIAL RECORDS OF  
YUMA COUNTY RECORDER  
SUSAN MARLER



**FEE #: 2002 - 14144**

05/15/2002 12:03 PAGES: 0019  
FEES: 10.00 8.00 .00 .00 .00  
REQ BY: CITY OF SAN LUIS  
REC BY: NORMA VASQUEZ

# *Ordinance*

OFFICE OF THE  
MAYOR  
CITY OF SAN LUIS

ORDINANCE #186

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF SAN LUIS ARIZONA, AMENDING ORDINANCE #13, AS AMENDED, REZONING FIVE (5) ACRES LOCATED AT THE NORTH WEST CORNER OF "A" STREET AND TENTH AVENUE, FROM GENERAL COMMERCIAL (C-2) TO INTERMEDIATE DENSITY RESIDENTIAL (R-2); AMENDING THE ZONING MAP TO CONFORM THERETO AND AUTHORIZING A DEVELOPMENT AGREEMENT, and PURSUANT TO ARS 9-407, THE CITY OF SAN LUIS AND COMITE DE BIENESTAR, INC. ARE HEREBY ACKNOWLEDGING THE EQUAL EXCHANGE OF REAL PROPERTY AND INCENTIVES, SPECIFICALLY THE EXCHANGE OF CITY OF SAN LUIS TRACT B OF BIENESTAR ESTATES #6 (15,000 SQ. FT.) FOR TRACT A1 OF BIENESTAR ESTATES 6A (21,350 SQ. FT.).

Be it ordained by the Mayor and Council of the City of San Luis, Arizona as follows:

**SECTION 1:** That Ordinance #13, as amended, Be further amended in that the real property described as follows:

Tract "D" Bienestar Estates No. 6  
As recorded in Book 16 of Plats  
Pages 1 & 2, Yuma County Arizona

Be rezoned from General Commercial (C-2) to Intermediate Density Residential (R-2) as defined in Ordinance # 13, as amended, that said property, upon this ordinance taking effect, shall be subject to all rules, regulations, and requirements of Ordinance #13, as amended.

**SECTION 2:** That the Zoning Map adopted under said Ordinance No. 13, as amended, is hereby ordered to be changed and amended so as to show that said

PAGE 2  
ORDINANCE #186

real property described in this ordinance is located within the district herein provided.

**SECTION 3:** That certain document known as a Development Agreement between Comite de Bien Estar Inc, and the City of San Luis, Arizona, three copies of which are on file in the office of the City Clerk of the City of San Luis, Arizona, which document is a public record, is hereby referred to, adopted and made a part hereof as if fully set out in this Ordinance.

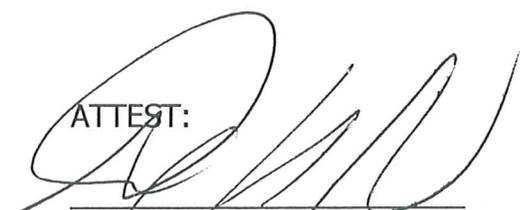
SECTION 4: That said Development Agreement contains language facilitating the exchange of real property of parcels that are substantially equal in value. PURSUANT TO ARS 9-407, THE CITY OF SAN LUIS AND COMITE DE BIENESTAR, INC. ARE HEREBY ACKNOWLEDGING THE EQUAL EXCHANGE OF REAL PROPERTY AND INCENTIVES, SPECIFICALLY THE EXCHANGE OF CITY OF SAN LUIS TRACT B OF BIENESTAR ESTATES #6 (15,000 SQ. FT.) FOR TRACT A1 OF BIENESTAR ESTATES 6A (21,350 SQ. FT.).

PASSED AND ADOPTED by the Mayor and Council of the City of San Luis, Arizona, this 10<sup>th</sup> day of April 2002.

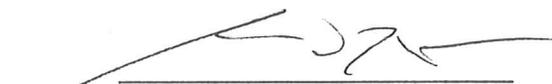
*cs*  
*24<sup>th</sup>*

  
\_\_\_\_\_  
Alex Joe Harper, Mayor

ATTEST:

  
\_\_\_\_\_  
Alex U. Ruiz, City Administrator/Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Gerald W. Hunt, City Attorney

CITY OF SAN LUIS

AND

COMITE DE BIEN ESTAR, INC. AN ARIZONA 501(c)(3)

DEVELOPMENT AGREEMENT

FOR BIENESTAR ESTATES VI A

This Agreement is made and entered into pursuant to A.R.S. § 9-500.05, on the 24<sup>th</sup> day of April, 2002 by and between the Comite de Bien Estar, Inc., an Arizona 501(c)(3) non-profit corporation, hereinafter referred to as “Developer”, and the City of San Luis, Arizona, a municipal corporation, hereinafter referred to as the “City”.

RECITALS:

A. That Developer is developing a tract of land five (5) acres, more or less, to be known as Bienestar Estates VI A, located in Yuma County, Arizona legally described as follows:

Bienestar Estates 6 A, a subdivision of Tracts B, C, & D, of Bienestar Estates 6, as recorded in book 16 of plats, pages 1 & 2, Yuma County, Arizona.

B. That the City has zoned said property R-2 (Bienestar Estates 6A) to allow for residential development and to provide city water and sewer service to serve the same, and the City, under certain conditions and stipulations, as herein set forth.

NOW, THEREFORE, in consideration of the mutual agreements and covenants set forth herein, the parties agree as follows:

Notice of Exchange of Real Property

Pursuant to ARS 9-407, the City of San Luis and Comite de Bien Estar, Inc. are hereby acknowledging the equal exchange of real property and incentives. Specifically, the City of San Luis Tract B of Bienestar Estates #6 (15,000 sq. ft.) in exchange for Tract A1 of Bienestar Estates 6A (21,350 sq. ft.) and the waiver of developer's fees in the amount of \$6,600. Notice of this exchange will occur in accordance with the provisions of ARS 39-204 before the exchange.

SECTION ONE

Purpose

The purpose of this Development Agreement is to set forth terms and conditions for the subdivision of certain territory, within the boundaries of City and to allow, within the limits of legislative and administrative powers of City, the Developer to develop the territory and to provide water and sewer service to the Territory to allow for its development.

SECTION TWO

Development Agreement

This Agreement is a "Development Agreement" within the meaning of Arizona Revised Statutes § 9-500.05.

### SECTION THREE

#### Consistency with General Plan

As required by State law, the City and Developer stipulate that the residential development of the property is consistent with the City of San Luis General Plan, as amended. In the event that it is not presently consistent, to the extent permitted by law, City promises to amend the General Plan so that development, as desired by Developer as hereinafter set forth, will be consistent. In the event that the current General Plan of the City of San Luis is incomplete, the City agrees to incorporate this Agreement into its General Plan when so adopted.

### SECTION FOUR

#### Extension of Water and Sewer Service

Water and Sewer service is available for the above-mentioned territory of Developer, subject to certain terms, limitations, and conditions. All costs for extending or otherwise constructing the water and/or sewer lines and other needed improvements for service to the proposed residential development of territory shall be borne by Developer subject to the following terms, conditions and understandings.

A. Design Standards and Governmental Approvals. The Sewer Extension shall be designed, built and constructed to the City's full satisfaction, and the construction and installation of the Sewer Extension shall be completed in compliance with all applicable City standards and specifications for sanitary sewer line construction and all work in connection therewith shall be subject to the approval of the City by and through the City Engineer. Developer hereby agrees that the installation of all said sanitary sewer line construction must comply with the

requirements of the Arizona State Department of Health Services and A.D. E. Q. regulations. At all times Developer will be responsible for meeting said requirements and obtaining all appropriate approvals from the State of Arizona.

B. Title to Sewer Extension; No Liens. Developer agrees to cause the granting to the City of all right and title to the Sewer Extension, and the City hereby agrees to accept and own the Sewer Extension, subject to the terms and conditions herein, free and clear of all consensual liens and encumbrances, if any. In addition to the Agreement to hold harmless as hereinafter set forth, the Developer hereby agrees to indemnify and hold harmless City from any and all claims, known or unknown, of whatsoever kind or nature, regarding the construction of said Sewer Extension, including but not limited to any and all claims of liens or encumbrances including, but not limited to, mechanics' liens and/or consensual liens or encumbrances otherwise attaching to the property upon which the Sewer Extension may be constructed. All sewer lines, mains, equipment and appurtenances to be installed as referenced in this Agreement shall be, and remain the property of the City, and Developer shall have no right, title or interest therein or thereto.

C. Easements and Rights of Way. Developer shall obtain and grant to City any and all perpetual sewer easements needed or necessary for the construction and maintenance of the Sewer Extension at its sole cost and expense. Developer shall deliver to the City fully executed, acknowledged, and recordable utility easements in a form acceptable to the City. Developer agrees to grant to the City the permanent right and easement to install, operate, maintain, replace and remove such portions of the Sewer Extension as may be located on property owned and/or controlled by Developer. If any part or all of the sewer system is, or is to be, installed on property owned by other than Developer, Developer shall procure from the

owners thereof in the name of City all necessary permanent rights-of-way for the construction, operation, maintenance and replacement of the Sewer Extension on such property, all in form satisfactory to City without cost to it.

E. Extension of Water Service. Extension of water lines shall be done in accordance with the City's standards and specifications. Developer shall obtain and grant to the City any and all perpetual easements needed or necessary for the construction and maintenance of the extensions for water service at its sole cost and expense. Developer shall deliver to the City fully executed, acknowledged, and recordable utility easements in a form acceptable to the City. Developer agrees to grant to the City the permanent right and easement to install, operate, maintain, replace and remove such portions of the Water Extension as may be located on property owned and/or controlled by Developer. If any part or all of the water system is, or is to be, installed on property owned by other than Developer, developer shall procure from the owners thereof in the name of City all necessary permanent rights-of-way for the construction, operation, maintenance and replacement of the Sewer Extension on such other property, all in form satisfactory to City without cost to it.

Developer agrees to cause the granting to the City of all right and title to the Water Extension, and the City hereby agrees to accept and own the Water Extension, subject to the terms and conditions herein, free and clear of all consensual liens and encumbrances, if any. In addition to the agreement to hold harmless as hereinafter set forth, the Developer hereby agrees to indemnify and hold harmless City from any and all claims, known or unknown, of whatsoever kind or nature, regarding the construction of said Water Extension, including but not limited to any and all claims of liens or encumbrances including, but not limited to, mechanics' liens and/or consensual liens or encumbrances otherwise attaching to the property

upon which the Water Extension may be constructed. All water lines, mains, equipment and appurtenances to be installed as referenced in this Agreement shall be, and remain the property of the City, and Developer shall have no right, title or interest therein or thereto.

## SECTION FIVE

### Water/Sewer Fees

The following water & sewer hookup fees shall be paid at the time each building permit is pulled. Those fees are in the amount of \$450.00 for water and \$1,000.00 for sewer for a total of \$1,450.00. It is understood development pursuant to any issued building permit is expected within two years of the date of issuance. For any such permit where the development does not occur within two years of the date of issuance, the then current charges for water and/or sewer hookup will be paid and will be no less than the \$1450.00.

## SECTION SIX

### Bonds or Assurances

Prior to recordation of the final subdivision plat, Developer shall assure its full and faithful performance thereof by either:

A. Constructing the required improvements and repairing the existing streets and other public facilities damaged in the development of the property, or

Filing with the City one of the following:

i. A surety bond executed by a surety company authorized to transact business in the State of Arizona;

ii. An irrevocable letter of credit made by or through a lending institution, insurance or title company regulated by the State of Arizona and made payable to the City of San Luis;

iii. A cash deposit.

Such assurance of full and faithful performance shall be in a form approved by the City and shall be for a sum sufficient to cover the cost of the improvements and related engineering and incidental expenses.

All assurances shall be released upon issuance of the Notice of Project Acceptance from the City of San Luis.

If Developer fails to construct the improvements within two (2) years from the date of this Agreement and the City has non-reimbursed costs or expenses resulting from such failure, the City shall call on the posted assurances for reimbursement. If the amount of the posted assurances exceeds the cost and expense incurred by the City, the City shall release the remainder. If the amount of the posted assurances are less than the cost and expense incurred by the City, Developer shall be liable to the City for the difference. The security shall be in an amount acceptable to the City and in compliance with A.R.S. § 34.222.

## SECTION SEVEN

### Applicability of Existing Law

On selection of any area or development, Developer shall be required to comply with all City ordinances (including subdivision ordinances) codes, policies and standards affecting the development, construction, marketing and sale of the project in effect, as of the date this Agreement is executed, which will govern the development, construction, marketing and sale of the project together with any subsequent amendments to the Development Plan. The development and use of the property shall be subject to all other applicable city, state, or federal rules, laws or regulations.

## SECTION EIGHT

### Retention Basins

Developer further agrees to set aside retention basins or such other amounts of said property for retention basins in accordance with Yuma County Storm Drainage requirements or as the City Engineer can justify as necessary to be used by the City as it in its sole discretion deems necessary or justifiable, and the retention basins will be utilized for park areas.

Furthermore, city agrees to waive fees for establishment and improvement of public retention areas because of the restrictive size of the retention area. Also, the Developer agrees to furnish children's playground equipment for the site in Tract 2.

The maintenance and replacement of equipment is specifically included within the scope of responsibility for this agreement, and shall be the responsibility of the City and not the Developer unless otherwise stated in an amendment or intergovernmental agreement between the City and the Developer.

## SECTION NINE

### Retention Basin Landscaping/Irrigation

Developer shall provide landscaping, initial year-round grass seeding and an appropriate irrigation system to the retention basin within the subdivision and shall include water meter, meter box, and timer, backflow device and all valves, fittings, and appurtenances

and shall provide a plan for said improvements for approval by the City. Specific details on retention basin and landscaping are as follows:

1) Grass

The retention basin should be seeded with winter rye for establishing the turf for the winter season or Bermuda for the spring and summer months. An alternative type of perennial grass may be substituted with approval from the Parks and Recreation Director.

2) Sprinkler System Requirements

- a) Rainbird Timing Clocks
- b) Hunter Commercial sprinklers I-25 Adjustables
- c) Each sprinkler should have an adjustable swing arm
- d) A back flow valve with metal pipes and connections
- e) Schedule 40 PVC pipe and fittings

SECTION TEN

Installations to be provided by Developer

Developer shall install all utilities, including telephone lines, sewer lines, water lines, electrical and all other service lines underground, and conduit for future underground installation of telecommunication lines for the subdivision in a manner acceptable to the City. Developer shall also install street lighting within the subdivision according to APS design approved by the City, and street identification signs, stop signs, and other traffic signs, street striping, monumentation, lot corner staking, water mains and services, fire hydrants, manholes, sewer interceptors and sewer collection lines, sewer side services, streets, curbs and gutters, sidewalks, and retention basins.

The Developer's Contractor shall provide the engineer and the City of San Luis with certified soil compaction, asphalt, and concrete tests as required by Yuma County Standard Specifications.

## SECTION ELEVEN

### Special Conditions

Developer agrees to construct a subdivision wall using 6" concrete masonry units along all subdivision borders as required by the City of San Luis.

All of the foregoing special conditions shall be subject to the requirements and conditions of the San Luis Public Works Director, and the plans shall include such requirements as he/she directs. In addition, any funds that are due shall be due and payable by Developer on receipt of a written statement. Work not paid within thirty (30) days shall accrue interest at ten per cent (10%) from the date of the notice until paid.

## SECTION TWELVE

### Impact Fees

Impact fees for Bienestar Estates 6A will be waived, in consideration of the land contribution described as Tract "A1", Bienestar Estates 6A. The City is allowing two years from the date of this agreement for the completion of construction.

## SECTION THIRTEEN

### Ownership of Systems

The water and sewer systems referred to herein and contemplated hereby as well as conduit for future installation of telecommunication lines as well shall be and remain the sole and exclusive property of the City. Developer and the persons to whom Developer

sells shall have no interest, right, title or ownership therein. City shall have the right to extend, improve, maintain and enlarge the same as it deems necessary, fix the rates applicable thereto, change the same from time to time, and adopt rules and regulations to control, regulate and govern the use of such facilities.

The Developer agrees to extend to the City a warranty period of one year covering all construction, lighting systems, retention basins, and subdivision walls to commence immediately upon subdivision acceptance by the City.

The City reserves the right to request from the Developer materials tests for any items included in the subdivision construction.

#### SECTION FOURTEEN

##### Easements, Permits and Covenants

If any easements, permits, or rights of way are or become necessary within the territory of Developer, except as may be otherwise provided for herein, they shall be furnished by Developer, at Developer's sole expense, to the City, and they shall extend to and be in the name of the City.

The covenants set forth in this Agreement are intended to run with the land.

#### SECTION FIFTEEN

##### Attorney Fees

Developer agrees to pay reasonable attorney fees of the City incident to the preparation of this Agreement and any related documents, as well as any attorney fees incurred in the enforcement of this Agreement or any part thereof or any amendment to this document.

#### SECTION SIXTEEN

### Waiver

The failure of either party to insist upon strict performance of any of the provisions of this Agreement or to exercise any of the rights or remedies provided by the Agreement, or any delay in the exercise of any rights or remedies, shall not release either party from any of the responsibilities or obligations imposed by law or by this Agreement, and shall not be deemed a waiver of any right of either party to insist upon strict performance of this agreement, unless such waiver is in writing signed by party to be charged.

## SECTION SEVENTEEN

### Governing Law

This Agreement shall be interpreted in accordance with the substantive law of the State of Arizona.

## SECTION EIGHTEEN

### Severability

It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement is held to be illegal or in conflict with any law of the State of Arizona, the validity of the remaining portions or provisions shall not be affected, and shall be enforced as if the contract did not contain the particular part, term or provision held to be invalid.

## SECTION NINETEEN

### Default

If either party fails to comply with any of the terms and conditions of this Agreement or defaults in any of its obligations under this Agreement (the "Defaulting Party"),

the non-defaulting party shall give Defaulting Party written notice of such failure or default. The Defaulting Party shall have thirty (30) days from the receipt of such notice to cure said failure or default.

In any case where a cure has not been completed within sixty (60) days after a Defaulting Party's receipt of such notice, the non-defaulting party shall have the right to demand the posting of a performance bond as security for the completion of such cure and the Defaulting Party shall post such bond within twenty (20) days of its receipt of such demand.

If the Defaulting Party fails to cure the failure or default within the time limits provided above, the non-defaulting party shall have the right to terminate this Agreement as well as any other rights or remedies provided by law.

## SECTION TWENTY

### Authority of Developer

Developer specifically warrants and represents that Developer has the capacity to enter into this Agreement and has or will provide the City with the appropriate verifying documentation.

## SECTION TWENTY-ONE

### Entire Agreement

This Agreement contains the entire agreement between the parties and no oral or written statement, promises, or inducements made by either party or agents of either party not contained in this Agreement or specifically referred to herein shall be valid or binding. This Agreement may not be enlarged, modified or altered except in writing signed by the parties and endorsed thereon.

## SECTION TWENTY-TWO

### Interest of City Agents

No member, official or employee of the City (collectively "City Agents") shall have any direct or indirect interest in this Agreement nor participate in any decision relating to the Agreement prohibited by law. If either party reasonably believes that a City Agent will participate in a decision relative to this Agreement prohibited by law, then that party may request an independent person to replace such City Agent in participating in that decision.

### SECTION TWENTY-THREE

#### Arbitration

In the event of any dispute arising between the parties, the parties agree to binding arbitration to be conducted pursuant to the rules of arbitration utilized in Yuma County Superior Court Local Rule X, and if any action is brought by either party to enforce the terms of this Agreement, the prevailing party shall be entitled to all costs incurred in connection with such action, including reasonable attorney fees.

### SECTION TWENTY-FOUR

#### Effective Date of Agreement

The effective date of this Agreement shall be the date of the Ordinance in which this Agreement is incorporated by reference and approved by the City Council of the City of San Luis.

### SECTION TWENTY-FIVE

#### Binding Agreement

This Agreement and the covenants, terms and conditions thereof shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors in interest and the assigns of the parties hereto.

SECTION TWENTY-SIX

Notices

Notices to the City under this Agreement shall be sent to:

City Manager  
City of San Luis  
P.O. Box 1170  
San Luis, AZ 85349

Or at any other place hereafter designated by the City in writing.

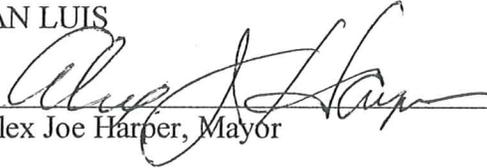
Notices to Developer under this Agreement shall be sent to:

Comite de Bien Estar, Inc.  
PO Box 2844  
San Luis, AZ 85349

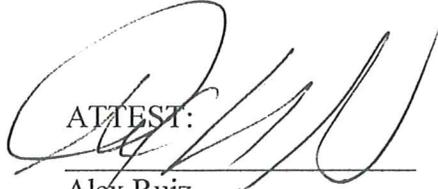
Or any other place hereinafter designated by Developer in writing.

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

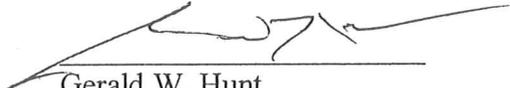
CITY OF SAN LUIS

By   
Alex Joe Harper, Mayor

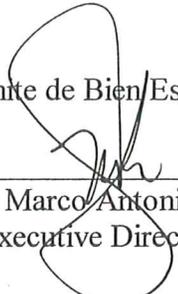
ATTEST:

  
Alex Ruiz  
City Manager

APPROVED AS TO FORM:

  
Gerald W. Hunt  
City Attorney

Comite de Bien/Estas, Inc.

By   
Marco Antonio "Tony" Reyes  
Executive Director

STATE OF ARIZONA )  
 ) ss.  
County of Yuma )

The foregoing acknowledged before me this 24<sup>th</sup> day of April,  
*cs* 2001 by Alex Joe Harper, Mayor of the City of San Luis.

2002



STATE of ARIZONA COUNTY of YUMA  
Signed before me this 24<sup>th</sup> day  
of April, 2002  
Cynthia Salcido  
Cynthia Salcido - Notary Public  
My Commission Expires November 14, 2005

  
Notary Public

My Commission Expires: 11-14-05

STATE OF ARIZONA )  
 ) ss.  
County of Yuma )

The foregoing acknowledged before me this 24<sup>th</sup> day of April,  
*cs* 2001 by Alex Ruiz, City Manager of the City of San Luis.

2002



STATE of ARIZONA COUNTY of YUMA  
Signed before me this 24<sup>th</sup> day  
of April, 2002  
Cynthia Salcido  
Cynthia Salcido - Notary Public  
My Commission Expires November 14, 2005

  
Notary Public

My Commission Expires: 11-14-05

STATE OF ARIZONA )  
 ) ss.  
County of Yuma )

The foregoing acknowledged before me this 24<sup>th</sup> day of April, ~~2001~~<sup>2002</sup> by CS  
Marco Antonio "Tony" Reyes, Executive Director, Comite de Bien Estar, Inc..

Cynthia Salcido  
Notary Public

My Commission Expires: 11-14-05

 STATE of ARIZONA COUNTY of YUMA  
Signed before me this 24<sup>th</sup> day  
of April, 2002  
Cynthia Salcido  
Cynthia Salcido - Notary Public  
My Commission Expires November 14, 2005