



Staff Report

Agenda Item: **SECOND AMENDMENT TO THE DEVELOPMENT AGREEMENT FOR THE HIGHLANDS SUBDIVISION BETWEEN THE TOWN OF CLARKDALE AND PTM ENTERPRISES, LLC –**
Discussion and consideration of the Second Amendment to the Development Agreement for the Highlands Subdivision with PTM Enterprises, LLC.

Staff Contact: Sherry Bailey, Community Development Director

Meeting Date: August 31, 2010

Background: On April 27, 2010, the Town Council held a worksession to discuss development issues relating to The Highlands Subdivision, which included several proposals being explored by PTM Enterprises (the current owner of the project) that focused specifically on wastewater service for the project. During the worksession, the Council expressed support for the efforts to move the development forward, but also expressed reservations about looking at wastewater options that included septic systems as part of the wastewater solution. Since that time, Town staff and the representatives of PTM have been working on a proposal for a 2nd Amendment to the Development Agreement that will provide a framework for both an interim wastewater solution as well as a permanent solution that both parties can agree to support.

The proposed 2nd Amendment to the Development Agreement includes the following provisions:

- *Amends a paragraph in Section 8 of the Original Development Agreement with regard to Wastewater Development Impact and Wastewater Connection Fees.*

The amendment states: “The wastewater development impact and wastewater connection fees outlined above will be calculated throughout the development of the project, and will be subject to fee credits or reimbursements to the Developer if the Developer provides funds or constructs wastewater infrastructure that is the subject of the development impact and/or connection fees.”

The original Development Agreement and the 1st Amendment to the Development Agreement anticipated that, in exchange for the developer’s contribution towards wastewater infrastructure, the wastewater development and connection fees for the project would be waived (up to an amount that equaled the developer’s contribution). However, the current developer anticipates that many of the lots in this subdivision will be sold individually, and that custom homes will be built by individual owners. The new language in the proposed amendment will ensure that, as lot owners pay their individual fees, that appropriate amounts are credited to the developer in recognition of the developer’s up-front contribution towards the infrastructure. Were those fees simply waived, as anticipated in previous agreements, there is no way for the developer to recoup his contributions.

- ***Replaces Section 16 (which deals with the Wastewater System) of the original Development Agreement and the 1st Amendment to the Development Agreement in its entirety to reflect existing conditions today and define expectations for moving forward***

Section 16 of the original Development Agreement (which was approved in February, 2005) included provisions that, 1) identified the developer's contribution towards the construction of a new wastewater treatment plant, 2) established fee credits for wastewater development and connection fees, 3) included provisions for the developer to install a on-site, temporary wastewater package plant to handle wastewater flows prior to the construction of the permanent solution (i.e. the new plant); and 4) called for the construction of sewer transmission lines and effluent deliver lines.

The proposed amendment provides specifications to guide the Developer and the Town to work towards adoption of a Permanent Wastewater Treatment Agreement, and establishes an initial 6-month time frame to do so. It also provides more specific provisions for the conditions under which the developer can proceed with construction of an Alternate Plant, if a Permanent Wastewater Treatment Agreement is not reached between the parties. The 2nd Amendment also establishes the uses for the \$1,826,200 of assurance funds that remain from the developer's original \$2,012,520 contribution towards construction of a new wastewater treatment plant.

The 2nd Amendment also calls for the town to allocate 25, 000 gallons per day (gpd) of capacity at the existing wastewater treatment plant to be used for the initial phase of the subdivision. The total wastewater needs for this subdivision are estimated at 90,000 gpd, so the 25, 000 gpd will serve approximately 28% of the subdivision's wastewater treatment needs. The initial phase (Phase 1) would include the commercial property, the existing 46 sold lots and the lots in the lower section, east of Old Jerome Highway. This provision provides the opportunity for the owners of the lots already sold to develop their lots in a timely manner, if they so desire.

The 2nd Amendment also provides more specific requirements relating to the construction of lift stations, flow monitoring equipment and sewer interceptor lines from Mescal Spur to the connection point at Lisa Street.

- ***Replaces Section 17, Construction of Town Facility, in its entirety.***

The original Development Agreement called for the Developer to dedicate land within the development and dedicate and construct a 3,000 square foot municipal building within 24 months of approval of the Final Plat of the subdivision.

The 2nd Amendment requires the Developer, within 48 hours of approval of the 2nd Amendment, to provide the Town with \$300,000 to be used for purchase of facilities or

property, construction, or remodel of existing Town facilities. Such facilities and/or improvements shall be in a location and manner as deemed appropriate solely by the Town. Included in your packets for review are:

- The proposed 2nd Amendment to the Development Agreement, with Exhibits
- The original Development Agreement
- The 1st Amendment to the Development Agreement

The Exhibits for the 2nd Amendment are still being revised. Final versions will be provided to the Council on Monday, August 30th. Most changes are clerical in nature, with the exception of Exhibit #2, which may have more substantive changes.

Market and economic conditions have changed considerably since this development was originally proposed in 2004 and finally approved in 2005. To their credit, the Developer (PTM Enterprises) have worked diligently to try to ensure that this project was not simply turned over to their financing institution (as so many projects across the state have been) as a victim of the economic downturn. Staff believes the proposed 2nd Amendment to the Development Agreement greatly improves the previous version of the Development Agreement, more accurately reflects the current and future needs of the Town, is fair to both the Town and the Developer and provides the best effort by all parties to move this development forward.

Recommendation:

Staff recommends that the Council approve the Second Amendment to the Development Agreement between PTM Enterprises and the Town of Clarkdale.

When recorded, return to:
Town of Clarkdale
ATTN: Town Clerk
P.O. Box 308
Clarkdale, AZ 86324

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

BETWEEN THE TOWN OF CLARKDALE AND PTM ENTERPRISES, LLC

THIS SECOND AMENDMENT TO DEVELOPMENT AGREEMENT (“Amendment”) is entered into on this ___ day of _____, 2010 by and between the TOWN OF CLARKDALE, an Arizona municipal corporation (the “Town”) and PTM ENTERPRISES, LLC, an Arizona limited liability company (the “Developer”). The Town and the Developer may be referred to collectively as the “Parties.”

Recitals

A. The Town and Land Design Group L.L.C., a Nevada limited liability corporation, are parties to that certain Development Agreement dated February 22, 2005 and recorded in the Official Records of the Yavapai County Recorder at Book 4241, Page 316, Fee Number 3830246, as amended by that certain First Amendment to Development Agreement dated March 23, 2006 and recorded in the Official Records of the Yavapai County Recorder at Book 4399, Page 472, Fee Number 4015985 (collectively, the “Agreement”). The property that is the subject of the Agreement is legally described and depicted in the attached **Exhibit 1** (the “Property”).

B. The Property, which has been known in the past as “Cliffrose” and “Verde Highlands,” currently is owned by the Developer. Land Design Group L.L.C. no longer has any right, title, or interest in or to the Property.

C. The Parties by this Amendment desire to document a short-term solution for the provision of wastewater service to the Property and mutually commit to implement a long-term wastewater solution that benefits the Town, its residents, and the Developer.

D. The Parties also desire to resolve issues relating to the construction of a Town facility on the property, as was required in the Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and agreements set forth herein, and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties hereby agree as follows:

Agreement

1. Effect of Amendment. Except as amended by this Amendment, the Agreement shall remain in full force and effect. Any capitalized terms not defined in this Amendment shall have the meaning set forth in the Agreement.

2. Recitals and Exhibits Incorporated. The Recitals set forth at the beginning of this Amendment and all Exhibits to this Amendment are incorporated into this Amendment as though fully restated.

3. Section 8, Wastewater Development Impact and Wastewater Connection Fees. The second paragraph of Section 8 of the Agreement is hereby deleted and replaced in its entirety as follows:

The wastewater development impact and wastewater connection fees outlined above will be calculated throughout the development of the project, and will be subject to fee credits or reimbursements to the Developer if the Developer provides funds or constructs wastewater infrastructure that is the subject of the development impact and/or connection fees.

4. Section 16, Wastewater System. Section 16 of the Agreement is hereby deleted and replaced in its entirety as follows:

16. WASTEWATER SYSTEM.

16.1 **New Plant.** The Developer and the Town shall work in good faith to: (a) identify a mutually acceptable Town-owned site for the location of a new wastewater treatment plant (the "New Plant"); (b) identify funding for the design and construction of the New Plant; (c) agree on the design parameters and treatment capacity of the New Plant; and (d) identify funding and design parameters for disposal of the effluent generated by the New Plant, and if funding permits, for additional treatment and reuse/disposal of effluent generated by the Town's current wastewater treatment plant.

16.1.1 Within thirty (30) days of the date of this Agreement, the Developer shall place into escrow the sum of one hundred thousand dollars (\$100,000), which shall be used by the Developer to pay invoices associated with the design of the New Plant. Escrow instructions for the escrowed funds are set forth in the attached **Exhibit 2**.

16.1.2 The Parties shall use their best good faith efforts to enter into a mutually acceptable Permanent Wastewater Treatment Agreement that includes, at a minimum, the following components:

16.1.2.1 The location of the New Plant.

16.1.2.2 The use of the Remaining Assurance Funds (as defined below) for the construction of the New Plant, the maximum dollar contribution by each of the Town and the Developer toward construction of the New Plant, and the timing of such contribution toward such construction.

16.1.2.3 The treatment capacity of the New Plant and method of reuse/disposal of effluent generated by the New Plant.

16.1.2.4 The commitment by the Developer to fund the design of the New Plant.

16.1.2.5 The timing of construction of the New Plant.

16.1.2.6 The parties shall use their best good faith efforts to enter the Permanent Wastewater Treatment Agreement within six (6) months of the date of this Agreement. At the conclusion of the 6 months, if agreement on the Permanent Wastewater Treatment Agreement has not been reached, either party may notify the other in writing that further efforts to enter a Permanent Wastewater Treatment Agreement have terminated. With notice by either party, then the substance of Section 16.2 shall apply and the Developer may move forward to construct and utilize the Alternate Plant, without further payment to the Town by the Developer for the New Plant or such other permanent wastewater solution as the Town may implement. If no such written notice is provided by either party, then the 6 month time frame shall be deemed to have been extended and both parties shall continue to work in good faith on the Permanent Wastewater Treatment Agreement.

16.2 Alternate Plant. If a Permanent Wastewater Treatment Agreement is not reached between the parties, or if construction of the New Plant has not commenced within the timeframe set forth in the Permanent Wastewater Treatment Agreement, Developer may pursue the construction of a wastewater treatment plant located on the Property (at a capacity of up to approximately ninety thousand (90,000) gallons per day as an alternative to the New Plant (the "Alternate Plant").

16.2.1 The Town agrees that it will be the permit holder for the Alternate Plant and that it will set reasonable rates and fees to cover the costs of operation, maintenance, depreciation and system improvements for the Alternate Plant, provided that the Developer, the Town, and a third party operator enter into an agreement regarding, among other things, permitting, operation, and maintenance of the Alternate Plant, and the costs associated therewith, prior to the commencement of design or construction of the Alternate Plant. When the New Plant (or such other permanent wastewater solution as the Town may implement) is operational and the Town has sufficient capacity to serve the Property at build out, the Developer shall provide for and pay the costs of the timely termination of use and removal of the Alternate Plant from the Property.

16.3 Use of Remaining Assurance Funds. The parties confirm that the Developer posted financial assurances in the amount of two million twelve thousand five

hundred and twenty dollars (\$2,012,520), which funds are to be used to provide sewer treatment and reuse/disposal capacity for development on the Property at a wastewater treatment plant to be owned and operated by the Town. The Town has used \$186,320 of such financial assurances, leaving \$1,826,200 (the "Remaining Assurance Funds"). The Town agrees that it shall not use all or any portion of the Remaining Assurance Funds except as provided for in the Permanent Wastewater Treatment Agreement. In the case that a Permanent Wastewater Treatment Agreement is not reached, the Remaining Assurance Funds will be used to provide sewer treatment and reuse/disposal capacity to serve the development on the Property, either by use of the Alternate Plant (if the Developer provides evidence acceptable to the Town that the Alternate Plant effectively provides a permanent wastewater treatment and disposal solution to development on the Property), or by an off-site wastewater treatment plant constructed by the Town. Notwithstanding the foregoing, the Town and the Developer may mutually agree on alternative uses for the Remaining Assurance Funds.

16.4 Initial Wastewater Treatment and Disposal Options. In order to allow development of portions of the Property to proceed prior to completion of construction of the New Plant (or the Alternate Plant, pursuant to Section 16.2), the Town agrees that, subject to the Developer's agreement to provide technical consulting assistance relating to the Town's existing effluent disposal process and permits, the Town will commit not less than 25,000 gallons per day ("gpd") of wastewater capacity in the Town's existing wastewater treatment plant for the portions of the Property identified as Phase 1 in **Exhibit 3**.

16.4.1 Connection of the lots specified in Phase I may necessitate manually flushing of the wastewater lines until flows increase sufficiently to allow normal operation. On or before September 30, 2011, the Developer and the Town will enter into an agreement that provides for, among other things:

- a) the payment by the Developer and/or homeowners for the costs associated with the manual flushing of the water lines, and
- b) the Town's commitment to provide non-potable water for such flushing at no cost to the Developer.

16.4.2 The 46 lots marked as "Sold Lots" on Exhibit 3 shall have priority access to a portion of the 25,000 gpd of available capacity, as follows: 11,040 gpd of the 25,000 gpd of capacity will be reserved to meet this priority objective.

16.5 Sewer Collection Lines. On or before September 30, 2011, the Developer will arrange for completion of construction of a lift station, flow monitoring equipment and sewer interceptor lines leading to and through the Property to the Town's existing sewer collection line located in Lisa Street, as set forth in the attached **Exhibit 4**. Upon completion of construction, the lift station, flow monitoring equipment and sewer interceptor lines and their dedication to the Town, and the execution of the Agreement referenced in Section 16.4.1 above, the Town will accept the wastewater flows to the Town's existing wastewater treatment plant as provided in Section 16.4.

5. Section 17, Construction of Town Facility. Section 17 of the Agreement is hereby deleted and replaced in its entirety as follows:

17. TOWN FACILITY

17.1 Within 48 hours of the approval of this agreement by the Clarkdale Town Council, Developer shall provide the Town \$300,000 to be used for purchase of facilities or property, construction, or remodel of existing Town facilities. Such facilities and/or improvements shall be in a location and manner as deemed appropriate solely by the Town.

IN WITNESS WHEREOF, the parties have executed this Amendment to be effective on the date written above, and hereby swear and affirm that they are duly authorized in accordance with law to execute this Amendment.

TOWN OF CLARKDALE, an Arizona
municipal corporation

PTM ENTERPRISES, LLC, an Arizona
limited liability company

By: _____
Doug Von Gausig
Its: Mayor
Date: _____, 2010

By: _____
John Tobias
Its: Manager
Date: _____, 2010

Attest:

Kathy Bainbridge, Town Clerk

Approved as to form:

Robert S. Pecharich, Town Attorney
on behalf of
Boyle, Pecharich, Cline, Whittington and
Stallings, PLLC

STATE OF ARIZONA §
 §
County of Yavapai §

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2010, by
_____, the _____ of PTM Enterprises, LLC, an Arizona
limited liability company.

Notary Public

My Commission Expires:

List of Exhibits

- | | |
|-----------|--|
| Exhibit 1 | The Property |
| Exhibit 2 | Escrow Instructions |
| Exhibit 3 | Phasing of Development on the Property |
| Exhibit 4 | Depiction of Off-Site Sewer Line |

Exhibit A

PARCEL 1:

A PORTION OF PARCELS 1 AND 2 AS SHOWN ON THAT MINOR LAND DIVISION MAP RECORDED IN BOOK 41 OF MAPS AND PLATS AT PAGE 31, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SECTION 32, TOWNSHIP 16 NORTH, RANGE 3 EAST, GILA AND SALT RIVER BASE AND MERIDIAN; THENCE S 70°12'45" W 165.57 FEET TO A POINT ON THE WESTERLY LINE OF HIGHWAY 69A; THENCE S 44°19'39" E 466.19 FEET ALONG SAID WESTERLY LINE; THENCE S 45.40'21" W 249.66 FEET TO THE TRUE POINT OF BEGINNING; THENCE N 44°19'39" W 1220.91 FEET ALONG A LINE PARALLEL WITH AND 249.85 FEET WESTERLY FROM SAID WESTERLY LINE OF HIGHWAY 89A; THENCE S 82°16'21" W 538.89 FEET; THENCE S 34°56'31" W 432.80 FEET; THENCE S 34°35'38" E 8.56 FEET ALONG THE EASTERLY LINE OF OLD JEROME HIGHWAY; THENCE S 33°20'40" E 535.01 FEET ALONG SAID LINE; THENCE S 33°18'48" E 241.43 FEET, ALONG SAID LINE; THENCE SOUTHEASTERLY 138.26 FEET ALONG THE ARC OF A TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 595.00 FEET THROUGH AN ANGLE OF 13°18'49", AND WHOSE CHORD BEARS S 28°38'24" E 137.95 FEET ALONG SAID LINE; THENCE N 49°14'11" E 267.96 FEET; THENCE S 40°29'15" E 121.69 FEET; THENCE S 40°46'51" E 721.21 FEET; THENCE S 40°48'19" E 348.30 FEET; THENCE N 46°54'33" E 204.51 FEET; THENCE N 00°52'34" E 918.03 FEET ALONG THE EAST LINE OF SAID SECTION 32 TO THE POINT OF BEGINNING.

EXCEPT ALL COAL AND OTHER MINERALS, AS RESERVED IN INSTRUMENT RECORDED IN BOOK 187, OF DEEDS, PAGES 331-333.

EXCEPTING THEREFROM THE FOLLOWING DESCRIBED "CHURCH PROPERTY", AS DESCRIBED IN BOOK 3781 OF OFFICIAL RECORDS, PAGE 408, RECORDS OF YAVAPAI COUNTY, ARIZONA:

A TRACT OF LAND IN SECTIONS 29 AND 32, TOWNSHIP 16 NORTH, RANGE 3 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, YAVAPAI COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 32, A FOUND 5/8 INCH REBAR WITH ALUMINUM CAP STAMPED "LS 13015", FROM WHICH THE NORTH QUARTER CORNER OF SAID SECTION 32, A FOUND 3 INCH "DR. MORGAN JOHNSON" BRASS CAP STAMPED "1/4" BEARS NORTH 89°46'02" WEST, A DISTANCE OF 2645.43 FEET; THENCE SOUTH 70°12'45" WEST, A DISTANCE OF 165.57 FEET TO A POINT ON THE SOUTHWESTERLY 100 FOOT RIGHT OF WAY LINE OF HIGHWAY 89A; THENCE SOUTH 45°40'41" WEST, A DISTANCE OF 100.00 FEET TO THE

POINT OF CURVATURE OF A TANGENT CURVE, CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 990.46 FEET AND A CENTRAL ANGLE OF 29°57'27"; THENCE SOUTHWEST ALONG SAID CURVE, A DISTANCE OF 617.87 FEET; THENCE SOUTH 75°38'08" WEST, A DISTANCE OF 320.48 FEET TO A SET 5/8 INCH REBAR WITH ALUMINUM CAP STAMPED "CORNERSTONE LS 32224" AND THE POINT OF BEGINNING.

PARCEL 3:

THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 32, A PORTION OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 32, AND A PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 29, ALL IN TOWNSHIP 16 NORTH, RANGE 3 EAST, GILA AND SALT RIVER BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST QUARTER OF SAID SECTION 32; THENCE N 89°46'02" W 2645.43 FEET TO THE NORTH QUARTER CORNER OF SAID SECTION 32, SAID POINT BEING THE TRUE POINT OF BEGINNING;

THENCE N 00°18'49" E 1344.01 FEET ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 29; THENCE N 89°38'56" E 79.37 FEET ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 29 TO A POINT ON THE WESTERLY LINE OF OLD JEROME HIGHWAY AS DESCRIBED IN THAT TOWN OF CLARKDALE RESOLUTION NO 899, RECORDED IN BOOK 3567 AT PAGE 285; THENCE, FROM A TANGENT THAT BEARS S 64°04'33" E, SOUTHEASTERLY 108.55 FEET ALONG THE ARC OF A NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 378.00 FEET, THROUGH AN ANGLE OF 16°35'09" AND WHOSE CHORD BEARS S 45°46'58" E 108.18 FEET ALONG SAID WESTERLY LINE; THENCE S 37°29'24" E 232.48 FEET ALONG SAID WESTERLY LINE; THENCE SOUTHEASTERLY 139.49 FEET ALONG THE ARC OF A TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 425.00 FEET, THROUGH AN ANGLE OF 18°48'17", AND WHOSE CHORD BEARS S 28°05'15" E 138.88 FEET ALONG SAID WESTERLY LINE; THENCE S 18°41'07" E 257.71 FEET ALONG SAID WESTERLY LINE; THENCE SOUTHEASTERLY 461.71 FEET ALONG THE ARC OF A TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 1825.00, THROUGH AN ANGLE OF 14°29'43", AND WHOSE CHORD BEARS S 25°55'59" E 460.48 FEET ALONG SAID WESTERLY LINE; THENCE S 33°10'50" E 383.77 FEET ALONG SAID WESTERLY LINE; THENCE S 34°35'40" E 176.73 FEET ALONG SAID WESTERLY LINE; THENCE S 33°20'40" E 4.37 FEET ALONG SAID WESTERLY LINE TO THE NORTHEAST CORNER OF MINGUS VIEW ESTATES RECORDED IN BOOK 30 OF MAPS AT PAGE 89; THENCE S 46°06'16" W 178.06 FEET ALONG

THE NORTHERLY LINE OF SAID MINGUS VIEW ESTATES; THENCE S 27°42'55" W 148.91 FEET ALONG SAID LINE; THENCE S 10°54'30" W 121.43 FEET ALONG SAID LINE; THENCE S 66°02'56" W 154.34 FEET ALONG SAID LINE; THENCE S 28°28'08" W 181.79 FEET ALONG SAID LINE; THENCE S 71°42'44" W 231.12 FEET ALONG SAID LINE; THENCE N 85°10'53" W 126.92 FEET; THENCE S 81°11'00" W 188.98 FEET ALONG SAID LINE; THENCE S 00°55'49" W 495.00 FEET ALONG THE WESTERLY LINE OF SAID MINGUS VIEW ESTATES; THENCE S 89°51'00" W 227.90 FEET ALONG THE NORTHERLY LINE OF BLACK HILLS ESTATES, UNIT II, RECORDED IN BOOK 22 OF MAPS AT PAGE 44 THENCE N 00°08'00" W 120.00 FEET; THENCE S 89°51'00" W 185.00 FEET; THENCE S 00°09'00" E 120.00 FEET TO THE NORTHWEST CORNER OF SAID BLACK HILLS ESTATES, UNIT II; THENCE S 89°51'17" W 817.00 FEET ALONG THE NORTHERLY LINE OF HASKELL SPRINGS SUBDIVISION, PHASE 3, RECORDED IN BOOK 44 OF MAPS AT PAGE 15, AND ITS WESTERLY PROLONGATION, ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 32; THENCE N 01°03'30" E 1348.18 FEET ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 32 THENCE N 89°47'52" E 1326.91 FEET QUARTER ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION TO THE POINT OF BEGINNING.

EXCEPT ALL COAL AND OTHER MINERALS, AS RESERVED IN INSTRUMENT RECORDED IN BOOK 187, OF DEEDS, PAGES 331-333.

3830246 BK 4241 PG 316
Yavapai County, Arizona
Ana Wayman-Trujillo, Recorder
03/11/2005 10:15A PAGE 1 OF 43
TOWN OF CLARKDALE
RECORDING FEE 22.00
SURCHARGE 0.00
POSTAGE 1.00

WHEN RECORDED, RETURN TO:

Town of Clarkdale
Attn: Town Clerk
P.O. Box 308
Clarkdale, Arizona 86324

DEVELOPMENT AGREEMENT
(Cliffrose)

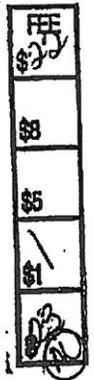


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LIST OF EXHIBITS

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Exhibit B – Ordinance Adopting PAD

Exhibit C – Final Development Plan

Exhibit D – Resolution Adopting Minor Amendment to 2002 General Plan

Exhibit E – Circulation

Exhibit F – Estimated Probable Costs of Wastewater Treatment Facility Expansion

Exhibit G – Trails and Recreation Plan

Exhibit H – Notice of Termination

**TOWN OF CLARKDALE
DEVELOPMENT AGREEMENT
(Cliffrose Village)**

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into pursuant to Arizona Revised Statutes § 9-500.05 as of the 22nd day of February, 2005, by and between LAND DESIGN GROUP L.L.C., a Nevada Limited Liability Corporation ("Developer") and the TOWN OF CLARKDALE, a municipal corporation of the State of Arizona (the "Town").

RECITALS

A. Developer has an interest in certain real property located within the corporate boundaries of the Town of Clarkdale, in Yavapai County, Arizona, consisting of approximately 102 acres at the intersection of U.S. Highway 89A and Scenic Drive, legally described in the attached **Exhibit A** (the "Property"). The owner of record of the Property is: Yavapai Title Co. TR # 190

address: P.O. Box 35 – Jerome, AZ 86331

(Owner"). Owner has consented to this Agreement.

B. Developer and the Town agree that the Property be developed pursuant to this Agreement, the Planned Area Development zoning for the Property, which was approved with stipulations by Town of Clarkdale Ordinance No. 269 and which is attached hereto as **Exhibit B** ("PAD"), and the Final Development Plan, which was approved as part of Ordinance No. 269 which is attached hereto as **Exhibit C** (the "Development Plan"). The PAD and Development Plan are acknowledged by the parties hereto to be consistent with the Town's General Plan, and to operate to the benefit of the Town, Developer and the general public.

C. A development agreement will advance the development of the Property by facilitating the development of the Property and the provision of infrastructure to the Property and region by establishing: (i) the permitted uses for the Property; (ii) the maximum density and intensity of such uses; (iii) conditions and requirements for the design, construction and installation of the infrastructure; and (iv) the Town's assurances to Developer in order to develop the Property.

D. Developer and the Town acknowledge that the development of the Property pursuant to the Development Plan will result in significant benefits to the Town by, among other things: (i) providing for the acquisition, design, construction and installation of infrastructure as part of the development; (ii) increasing tax and other revenue to Town as a result of the improvements constructed on the Property; (iii) providing a process for Developer to participate with the Town in funding the design and construction of a new, upgraded wastewater treatment plant, which will serve the Property and the Town. Developer and the Town acknowledge that the development of the Property by Developer will result in significant benefits to Developer, including (a)

Developer realizing an opportunity to develop the Property in accordance with the PAD, and (b) the availability to the development of a new upgraded wastewater treatment plant, which will then be available to serve the Property.

E. Developer and the Town acknowledge that Developer has incurred significant costs and expenses and will continue to incur substantial expenses in reliance on this Agreement and the approval of the Development Plan including, without limitation, costs to design the project, wastewater lines and facilities, and other infrastructure, professional and consulting fees, application fees, and other costs, fees and expenses. Therefore, Developer requires certain assurances and protection of rights in order that Developer will be allowed to complete the development of the Property in accordance with the Development Plan over the period of years permitted by this Agreement. Likewise, the Town requires assurances from Developer that the development of the Property will comply with the Development Plan and the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions, it is agreed as follows:

AGREEMENT

1. **INCORPORATION OF DOCUMENTS AND RECITALS.** All documents and exhibits referred to in this agreement are hereby incorporated by reference into this agreement, and the recitals stated above are hereby incorporated by reference into this agreement.
2. **GENERAL PLAN CONFORMANCE.** Developer and the Town expressly acknowledge and agree that the development contemplated pursuant to this Agreement further goals and objectives outlined in the Town of Clarkdale 2002 General Plan. It is further acknowledged that the Town Council has adopted a Minor Amendment to the Town's General Plan, which is included as **Exhibit D (Resolution Adopting Minor Amendment to 2002 General Plan)**, and which pertains directly to this PAD.
3. **DEVELOPMENT PLAN APPROVAL.** Developer intends to develop the Property in phases as a residential subdivision in accordance with the Development Plan. The Development Plan is the plan submitted and approved with the PAD and includes a phasing plan and the Common Council's stipulations of approval on the PAD. For the term of this Agreement, Developer and its successors and assigns shall have a vested right to develop the Property in accordance with this Agreement, the PAD, and the Development Plan, in conformity with applicable general law.
4. **RIGHTS RUN WITH THE LAND.** The rights and obligations established under this Agreement and the Development Plan are not personal rights but attach to and run with the Property, pursuant to the provisions set forth below in Paragraph 5 entitled "Termination." Upon the Effective Date of this Agreement as established in Paragraph 21.28, Developer and its successors are entitled to exercise the rights granted pursuant to this Agreement. This Agreement shall be interpreted and construed

so as to preserve any vested and/or estoppel rights respecting either party already existing under applicable law. Upon Developer obtaining in writing from its successor for delivery to the Town the successor's acknowledgment and acceptance of this Agreement and agreement to comply with the obligations contained in this Agreement, Developer shall be released from all future liability except Developer shall be liable for performance of Developer's obligations under this Agreement during the period Developer owns the Property.

5. TERMINATION.

5.1 Upon Completion Date. This Agreement terminates on the Completion Date, subject to the exceptions established in Paragraph 21.28 of this Agreement.

5.2 Upon Sale of Public Lots. It is the intention of the parties that although recorded, this Agreement shall not create conditions or exceptions to title or covenants running with the Property when sold to the end purchaser or user. Therefore, in order to alleviate any concern as to the effect to this Agreement on the status of title to any of the Property, and so long as not prohibited by law, this Agreement shall automatically terminate without the execution or recordation of any further document or instrument as to any lot (a "Public Lot") which has been finally subdivided and individually (and not in "bulk") sold or transferred to the end purchaser or user thereof, including a transfer to the Homeowners' Association for common areas, and thereupon such Public Lot shall be released from and no longer subject to or burdened by the provisions of this Agreement. The term Public Lot shall mean the residential lots, and associated lots as described in the preceding sentence, into which the Property is divided and sold.

6. COMPLIANCE AND MODIFICATIONS. The development of the Property shall be in accordance with the Development Plan and this Agreement, unless otherwise amended pursuant to Paragraph 9, "Applicable Law."

7. IMPLEMENTATION AND COOPERATION/TOWN SERVICES.

Developer is authorized to implement the types and uses, variances, densities and intensities, location of uses, and other standards of design in those phases as now set forth in the Development Plan. The Town agrees to cooperate by (i) processing in a timely manner applications for approval and (ii) issuing in a timely manner approvals for all site plans and specifications which are consistent with the Development Plan, subject only to Developer having first complied with the Rules (as defined below), as well as all ministerial platting, application, and permit requirements. The Town hereby agrees to provide all municipal services to the Property that it provides to other residents of the Town, under the same terms and conditions as provided to other residents of the Town (except as provided in this Agreement).

8. WASTEWATER DEVELOPMENT IMPACT AND WASTEWATER CONNECTION FEES. For a period of five (5) years from the Effective Date, the wastewater development impact fees and wastewater connection fees paid as a condition to issuance of each building permit for development on the Property shall be those wastewater development impact and wastewater connection fees in effect and charged by the Town as of the Effective Date, Beginning five years from the Effective Date, the wastewater development impact and connection fees applicable to development on the Property shall be those in effect and charged by the Town at the time a particular building permit is issued for development on the Property.

The wastewater development impact and wastewater connection fees outlined above will be calculated throughout the development of the project, and will be subject to the Fee Credit agreements described in paragraph – 16.1.3.

8.1 It is acknowledged that the Town may enact other development impact fees during the term of this agreement. The Town agrees that the Developer shall receive a credit towards, or the waiver or reimbursement of the costs of infrastructure, public services or public equipment that has been provided on the property and that relates specifically to any development impact fee that may be adopted by the town during the term of this agreement. Such fee credits, waivers or reimbursements shall be based on the value of the specified improvements. Development impact fees for infrastructure, public services or public equipment that have not been provided on the property shall be required at the time a building permit is issued for development on the Property.

9. APPLICABLE LAW.

9.1 Whenever reference is made in this Agreement to ordinances, rules, regulations, permit requirements, and other requirements and/or official policies of the Town (the "Rules") applicable to and governing the development of the Property, this Paragraph 9 shall define those Rules. Except as otherwise provided in this Agreement, the Rules governing the development of the Property shall be those Rules that are existing and in force for the Town as of the Effective Date of this Agreement ("Applicable Rules").

9.2 Notwithstanding the provisions of Section 9.1 above, the Town may enact the following provisions, and take the following actions, which shall be applicable to and binding on the development of the Property:

9.2.1 Future Rules that are applicable to other properties in the Town and not contrary to the Applicable Rules, provided that such Rules shall not impair Developer's ability to develop the Property in the manner provided in the Plan and this Agreement;

9.2.2 Other Rules that the Developer and the Town may jointly agree in writing apply to the development of the Property;

9.2.3 Future Rules enacted as necessary to comply with mandatory requirements imposed on the Town by county, state or federal laws and regulations, court decisions, and other similar superior external authorities beyond the control of the Town;

9.2.4 Future generally applicable Rules necessary to alleviate threats to public health and safety, in which event any such Rules imposed in an effort to contain or alleviate such a threat to public health and;

9.2.5 Future updates of, and amendments to, existing building, plumbing, mechanical, electrical, dangerous buildings, drainage, and similar construction and safety-related codes, such as the International Code Council, which updates and amendments are generated by a nationally/internationally recognized construction/safety organization, such as the International Conference of Building Officials, or by the county, state or federal governments;

9.2.6 Amendments to such construction and safety codes generated by the Town for the purposes of conforming such codes to the conditions generally existing in the Town; and

9.2.7 Future imposition of filing fees, plan review fees, permit fees, and building fees, or modifications to such existing fees, so long as such fees are imposed or charged by the Town to all similarly situated persons and entities and are directly related to the cost of services performed by Town.

Nothing herein shall be interpreted as relieving Developer of any obligations that it may have with respect to laws and regulations enacted by the Federal government or the State of Arizona that apply to the Property. Nothing in this Agreement shall alter or diminish the Town's authority to exercise its eminent domain powers. In no event shall the Town require Developer to waive a development right as a condition of development approval or issuance of a permit, without the express written consent of Developer.

10. **INFRASTRUCTURE.** Developer will submit for review and approval the plans for infrastructure improvements as necessary and required for the Development Plan and the subdivision platting process of the Town (collectively referred to as "**Infrastructure**").

11. **INFRASTRUCTURE DESIGN CONCEPTS.** The Town design standards, requirements and specifications as contained in the Town subdivision regulations and Maricopa Association of Government standards adopted by the Town ("**Design Standards and Specifications**"), and any exceptions or variances specifically described in the Development Plan or such exceptions and variances as may be granted by the Town or in this Agreement shall be the standard used for infrastructure requirements and design criteria for the Property. These Design Standards and Specifications shall include, but not be limited to, design criteria for the wastewater system, as well as materials specifications for infrastructure improvements currently part

of the Design Standards and Specifications. Developer and the Town acknowledge that amendments to the plans for the Infrastructure and/or the Design Standards and Specifications may be necessary from time to time. If Developer and the Town jointly determine that amendments are necessary to the plans for the Infrastructure or the Design Standards and Specifications, Developer and the Town, to the extent permitted by applicable law, shall effectuate such amendment(s).

12. INFRASTRUCTURE CONSTRUCTION. Construction of the Infrastructure shall be performed in a workmanlike manner in compliance with applicable federal, state and local laws as described in Paragraphs 9 and 11. To the maximum extent practical, the prior dedication of any easements or rights-of-way shall not affect or proscribe Developer's rights to construct the Infrastructure.

12.1 The Town will abandon any unnecessary public rights-of-way or easements currently located on the Property and not otherwise used or required by other members of the public, provided that the Developer advance to and reimburse to the Town all expenses incurred.

12.2 The Town will cooperate in submitting request or filing applications, or entering into appropriate intergovernmental agreements with Yavapai County or other appropriate governmental entities regarding the acquisition or abandonment of public rights-of-way or easements necessary to develop the Property.

13. INFRASTRUCTURE ASSURANCES. Before issuing a particular building permit(s) or permit(s) for construction of the Infrastructure, the Town shall require Developer to provide limited financial assurances to the Town where appropriate and necessary to assure the installation of the Infrastructure directly related to such building permit(s) or permit(s) for construction of the Infrastructure, so long as such assurances do not contradict or supercede the provisions set out in this Agreement. All assurances provided by Developer shall relate to that construction which Developer undertakes. Developer may elect one of the following methods of assurance, subject to the Town's review and approval as to form and substance. The Developer and the Town may enter into a Subdivision Agreement that shall stipulate the timing and sequence of phases of development and stipulate the assurances to be put in place prior to the issuance of permits for any particular phase.

13.1 An irrevocable letter of credit from a recognized financial institution acceptable to the Town, authorized and licensed to do business in the State of Arizona; or

13.2 Cash or certified bank funds to be held by the Town in an escrow account; or

13.3 A performance surety bond executed by a company acceptable to the Town and licensed to do surety business in the State of Arizona; or

13.4 A set aside letter from Developer's construction lender addressed to the Town; or

13.5 Any other method of assurance approved by the Town.

14. DEDICATION OF INFRASTRUCTURE. Upon completion of the installation and construction of the Infrastructure or a portion thereof, Developer shall convey the completed Infrastructure to the Town lien and debt free and shall deliver a mylar copy of the "as built" plans, sealed by the professional engineer of record, as well as an electronic, unsealed copy of the "as built" plans to the Town in a form compatible with the Town's computer system (Autocad.dwg) for such Infrastructure. Developer shall warrant to the Town the construction of all Infrastructure against defective workmanship and/or materials for a period of one (1) year from the date of acceptance of such Infrastructure. The procedure for dedication and acceptance of Infrastructure by the Town shall be as follows:

14.1 Developer shall give the Town written notice promptly following completion of Infrastructure (or any portion thereof) so long as any portion of completed Infrastructure is a discrete portion and its suitability for its purpose can be adequately determined when compared to the whole.

14.2 Within thirty (30) business days after its receipt of such notice, the Town shall inspect the Infrastructure identified within the notice to confirm whether it has been constructed in accordance with the Town-approved plans and specifications. Upon completion of the inspection, the Town shall promptly deliver written notice to Developer either (i) conditionally approving construction and agreeing to schedule formal acceptance by the Town Council to accept conveyance of Infrastructure and assume maintenance responsibility therefore (subject to Developer's warranty obligations), it being understood that separate acceptance notices will be issued for each component of Infrastructure; or (ii) identifying the specific items that are not in accordance with the Town-approved plans and specifications and that are corrected by Developer; and

14.3 The one-year warranty shall commence as to each component of Infrastructure as of the date the Town Council takes action to formally accept the infrastructure.

The Town shall own, operate, and maintain all dedicated Infrastructure following the Town's acceptance thereof, subject to Developer's warranty obligations as provided in this subparagraph. The Town shall give written notice to Developer of any warranty claims within thirty (30) days after the expiration of the applicable one-year warranty period; any claims received after such date shall not be effective and Developer shall have no obligation with respect thereto.

15. CIRCULATION SYSTEM Developer acknowledges and agrees that it shall complete, at its expense, a Traffic Impact Analysis for the Property (such Analysis to include the intersections of roads constructed on the Property and the existing Highway 89A, Scenic Drive, Old Jerome Highway, Mescal Spur, and Mescal Spur

Extension to Highway 89A, and in accordance with a scope of study provided by the Town of Clarkdale) and shall design and construct circulation system improvements on or for the benefit of the Property as set forth in **Exhibit E, (Circulation Plan)**. As part of the Traffic Analysis, Developer shall examine and propose a solution for the problem of residents being stranded during a storm event due to runoff at the low water crossing of Mescal Wash and the North Fork of Mescal Wash.

Beyond the improvements to the intersections that are necessary as a result of this development, Land Design Group L.L.C. shall complete the following road improvements on and in the area of the Cliff Rose project:

- a) Mescal Spur from Highway 89A to the western boundary of the project shall be improved to a private street standard enhanced to include a chip sealed surface to serve as a secondary access.
- b) Old Jerome Highway from the northern boundary of the project where it abuts Foothills Terrace to the southern boundary where it abuts Mingus View Estates shall be improved to a Residential Collector standard, including crossings at Mescal Wash and the North Fork of Mescal Wash designed to provide for handle the flood stage flows, and approved by the Yavapai County Flood Control office.
- c) Scenic Drive from Highway 89A to Old Jerome Highway shall be improved to a Commercial standard.
- d) Alamos Road and the Commercial Loop Road shall be improved to a Commercial standard.

Access to the Commercial property that is a part of this project shall be either via Alamos Drive or the Commercial Loop Road being proposed. No direct access shall be permitted from or to Scenic Drive.

16. WASTEWATER SYSTEM. Developer and the Town acknowledge that the Town's existing wastewater treatment system and any expansions currently planned for, lacks sufficient capacity to accommodate development of the Property and agree to expand that capacity, as follows:

16.1 New Wastewater Treatment Plant. To expand wastewater treatment capacity for the Town, Developer and the Town agree that construction of additional 200,000 gallon/per day capacity at the planned new wastewater treatment plant (the "**New Wastewater Plant**") is necessary. This expansion will bring the plant from a capacity of 400,000 gallons/day planned capacity to 600,000 gallons/day. Developer shall be responsible for the cost for construction of the additional capacity at the New Wastewater Plant by the Town as discussed below.

16.1.2 Costs for Additional Capacity. The projected costs of the additional capacity in the New Wastewater Plant are contained in **Exhibit F ("Estimate of Probable Costs of Wastewater Treatment Facility Expansion")**. The Developer shall be responsible for

payment to the Town of the developer's share of the costs as actually incurred by the Town for the construction of the 600,000 gpd Waste Water Treatment Plant."

Developer shall post an assurance in the amount of \$2,012,520. Such assurance may be posted in any of the methods identified in Paragraph 13 of this agreement, within 20 days of Final Plat approval. As the Town receives invoices for design and construction of the additional capacity at the New Wastewater Plant, the Town shall send copies of such invoices, together with a request for payment by Developer, to Developer. Within twenty (20) days after receipt of such invoices, Developer shall remit to the Town those funds requested by the Town. If Developer fails to make the payments as requested by the Town, then the Town may draw down the funds from the posted assurance as needed to fund the construction of the additional capacity at the New Wastewater Plant.

16.1.3 Fee Credits. In exchange for Developer's contribution to the cost of design and construction of the New Wastewater Plant, and the design and construction of interceptor sewer lines, force mains, and pump stations, the Town agrees that Developer shall receive credits for all sewer connection fees and sewer development fees on the property, up to the amount of the Developer's contribution. Additionally the Town agrees to create a Sewer Overlay District, including all properties that will benefit from the wastewater infrastructure improvements. As additional development occurs in the benefited area, and sewer connections are made, the Developer will be reimbursed a portion of the Connection Fees collected by the Town.

16.1.4 Construction Schedule. Construction of the New Wastewater Plant shall be according to a schedule developed by the Town with input from Developer. Upon the start of construction of the New Wastewater Plant, the Town shall provide to Developer monthly progress reports regarding the construction.

16.2 Temporary Package Plant. Developer and the Town acknowledge that development of the Property cannot be accommodated by the Town's existing Wastewater Treatment Plant before additional capacity at a New Wastewater Plant is available. To provide wastewater service for new development on the Property during this interim period, Developer shall construct a temporary package plant (the "Temporary Plant") on the Property when the need arises, or enter into an agreement to share capacity in a Temporary Plant on the site of another development. The Town agrees to lease the Temporary Plant from Developer at a cost of one dollar and to be the permit holder for and operator of the Temporary Plant. The Town agrees to charge its normal and typical wastewater treatment/service fees for use of the Temporary Plant. The parties understand that such fees may increase throughout the Town, due to the costs of operating the Temporary Plant, which increase shall be payable by all users, including users on the Property. When the New Wastewater Plant is operational and the Town has sufficient capacity to serve the Property at build out, and the Developer has extended sewer mains (including lift stations) necessary to serve the Property and is prepared to provide wastewater treatment service to the Property at the New Wastewater Plant, the Town shall provide for the timely termination of use of the Temporary Plant from the Property, and Developer shall timely remove the Temporary Plant. Developer may sell or otherwise dispose of the Temporary Plant as it sees fit, without payment to Town. The Town hereby agrees that upon establishing municipal wastewater service to the Property, the Town shall have available for service to the

Property a new wastewater treatment plant with sufficient capacity to serve the development on the Property at build out.

16.3 Sewer Transmission Lines. Developer acknowledges and agrees that the sewer interceptor lines leading to and through the Property shall be constructed to accommodate the design flows from off the Property as set forth in the Town's adopted Wastewater Master Plan.

16.4 Effluent Delivery Lines. Developer shall participate financially in the design and construction of an effluent return line, pumps and storage capacity to a location of the Town's choosing. The effluent line shall be designed to handle the full projected volume of the 600,000 gallon per day capacity of the Town's planned new wastewater treatment plant.

17. CONSTRUCTION OF TOWN FACILITY

17.1 At the time of Final Plat approval, Developer will define the location of a 3,000 square foot building centrally located in the development at a location approved by the Town at the time of final subdivision plat approval to the Town of Clarkdale. The facility will be deemed a municipal facility and will be used for public purposes as deemed appropriate by the Town. The design parameters of the Town Facility will be determined by the Town. Within 24 months of Final Plat approval, Developer will design, construct and dedicate the Town Facility.

18. TRAILS/ DRAINAGE AND RECREATIONAL FACILITIES. Developer acknowledges and agrees that it shall provide on the Property the trails and recreational facilities as set forth in **Exhibit G, (The Trails and Recreation Plan)**. Developer shall install landscaping and an irrigation system in accordance with Landscape standards outlined in the Town of Clarkdale's General Plan. Developer shall warranty the landscaping and irrigation system it installs for a period of two years after completion of installation. The Developer shall dedicate two park sites to the Town of Clarkdale, as part of their Final Plat for the project. The parks provided shall include the dedication of a three (3) acre park site on the west side of Old Jerome Highway, north of Mescal Spur, and dedication of an approximately three (3) acre developed park within the project.

18.1 Prior to Town approval of a final plat for the Property, the Developer shall submit an approved AZPDES permit from the Arizona Department of Environmental Quality for the drainage discharge for the Property.

19. SCHOOL SITE. Developer acknowledges and agrees that it shall either reserve a school site within the Property or enter into an agreement with the Cottonwood-Oak Creek School District and the Mingus Union High School District in lieu of such school site reservation. Developer shall provide copies of the signed agreements to the Town prior to final plat approval.

20 BUILDING IN FLOODPLAIN. Developer agrees to deed restrict lots that abut Mescal Wash to prohibit building in the flood plain where delineated as of the date of the signing of this document.

21. GENERAL PROVISIONS.

21.1 Notices.

21.1.1 Manner of Serving. All notices, filings, consents, approvals and other communications provided for herein or given in connection herewith shall be in writing and delivered personally or sent by United States Mail in a postage prepaid envelope to the address provided herein or as may be changed in writing:

To the Town: Town of Clarkdale Community Development
Department
Attn: Community Development Director
P.O. Box 308
Clarkdale, Arizona 86324
Facsimile No. (928) 634-0407

With a copy to: Clarkdale Town Manager
P.O. Box 308
Clarkdale, Arizona 86324
Facsimile No. (928) 634-0407

With a copy to: Boyle, Pecharich, Cline & Whittington, P.L.L.C.
Attn: Robert S. Pecharich, Esq.
P.O. Box 1191
Prescott, Arizona 86302-1191

Town Attorneys

To Developer: Land Design Group, L.L.C.
Attn:
Facsimile No.

With a copy to: Land Design Group, L.L.C.
Attn:
Facsimile No.

With a copy to:
Attn:
Facsimile No.

Or to 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.

21.1.2 Mailing Effective. Notices, given by mail, shall be deemed delivered seventy-two (72) hours following deposit in the U.S. Postal Service, in the manner set forth above.

21.2 Amendment or Cancellation of the Agreement. This Agreement may be amended or canceled, in whole or in part and with respect to all or any portion of the Property, only with the mutual written consent of Developer and the Town. Within thirty (30) calendar days after any such amendment or cancellation of this Agreement, the amendment or cancellation shall be recorded by the Town in the Official Records of Yavapai County, Arizona.

21.3 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 any other provision of this Agreement. Nothing herein shall constitute or be deemed to be a waiver by Developer of its respective rights to request future rezonings or changes in development standards for all or any portion(s) of the Property pursuant to Town procedures and requirements existing at the time of the request. Nothing herein contained shall be deemed to be a waiver by the Town of the right to act, consistent with applicable law, by approval or denial, on such rezoning or change, to the extent such action would not otherwise be in breach of this Agreement.

21.4 Attorneys' Fees and Costs. If legal action by any party is brought because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing party is entitled to reasonable attorneys' fees and court costs.

21.5 Headings. The description 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 this Agreement.

21.6 Entire Agreement. This Agreement constitutes the entire agreement between the parties and shall not be changed or added to except in the manner provided in Paragraph 21.2. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, other than specifically incorporated herein by reference, are superseded by this Agreement.

21.7 Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect, provided that the overall intent of the parties is not materially vitiated by such severability.

21.8 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 Yavapai County, Arizona, and the parties hereby waive any right to object to such venue.

21.9 Recordation. No later than forty-five (45) days after this Agreement has been executed by Developer and the Town, it shall be recorded in its entirety, by the Town, in the Official Records of Yavapai County, Arizona.

21.10 Default; Mediation; Remedies.

21.10.1.1 Representatives. To further the cooperation of the parties in implementing this Agreement, Developer and the Town each shall designate and appoint a representative to act as a liaison between Developer and the Town and its various departments. The initial representative for the Town shall be as designated by the Town Manager; the initial representative of Developer shall be its project manager, as identified by Developer from time to time. 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.

21.10.1.2 Mediation. If a dispute arises out of or relates to this Agreement, or breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to settle the dispute through mediation before resorting to arbitration, litigation or some other dispute resolution procedure. In the event that the parties cannot agree upon the selection of a mediator within ten (10) days, either party may request the presiding judge of the Superior Court of Yavapai County to assign a mediator from a list of real estate experienced mediators maintained by the Arizona Municipal Risk Retention Pool.

21.10.1.3 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 that 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, specific performance and 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 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.

21.11 Authority. The parties to this Agreement 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.

Developer and the Town warrant to each other that the individuals executing the Agreement on behalf of their respective parties are authorized and empowered to bind the party on whose behalf each individual is signing.

21.12 Estoppel. Each of the parties hereto covenants and agrees with the other to provide, within fifteen (15) business days of written request from the other, an estoppel certificate signed by a duly authorized representative of such party, indicating that the other party(ies) are not then in default under any of the obligations pursuant to this Agreement or specifying in reasonable detail any then claimed default.

21.13 Force Majeure. Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, or power failures.

21.14 Interest of Developer. Developer hereby represents and warrants to the Town that, effective on the date Developer acquires the Property from Owner, Developer is the only fee title owner of the Property and that, to the best of its actual knowledge, no other person or entity has any legal or equitable ownership interest in the Property.

21.15 Assignment. The rights of Developer under this Agreement may be transferred or assigned by written instrument to any subsequent owner of a portion of the Property. Developer shall provide to the Town, advance written notice of intent to transfer its rights under this Agreement at least sixty (60) days in advance of the transfer date. Notice of the transfer or assignment in accordance with this Paragraph shall be provided to the Town within ten (10) business days after the effective date of any such transfer or assignment. As provided in A.R.S. § 9-500.05.D, the burdens of this Agreement bind, and the benefits of this Agreement inure to, the parties hereto and their successors in interest and assigns.

21.16 Binding Effect. This Agreement and the Development Plan shall be binding upon Developer and the Town and their respective successors and assigns.

21.17 Exercise of Authority. It is understood and agreed that Developer shall not in any way exercise any portion of the authority or sovereign powers of the Town and shall not make or contract or commit or in any way represent itself as an agent for the Town. Nothing in this Agreement be construed to create a principal agency relationship between the parties.

21.18 Disclaimer. The Town enters into this Agreement and has approved the Development Plan upon the condition that no elected officer, employee or agent of the Town shall be charged personally or held contractually liable by Developer under any term or provision of this Agreement as amended or because of any breach thereof or the execution or purported execution except as may be expressly agreed to in

writing by the Town, except for any such person's failure to act in good faith or in a reasonable manner.

21.19 Conflict of Interest. This Agreement is subject to the provisions of A.R.S. § 38-511, but the parties do not believe that any such reasons for cancellation of this Agreement pursuant to said statute now exist.

21.20 Covenants, Conditions and Restrictions. Developer shall have the right to record one or more declaration(s) of covenants, conditions and restrictions ("CC&Rs") to govern the development of the Property or any portion thereof. Any such CC&Rs shall be consistent with the Development Plan and all applicable laws and regulations. Developer shall submit a copy of any such CC&Rs, together with the articles of incorporation, bylaws and rules pertaining to the establishment of any property owners' association thereunder and any restrictive covenants associated with the development of the Property, for Town staff and Council review and comment prior to final plat approval for the portion of the Property to be subjected thereto.

21.21 Time of the Essence. Time is of the essence in implementing the terms of this Agreement.

21.22 Timely Decisions. The implementation of the Planned Area Development zoning and subsequent preliminary and final site plans shall be in accordance with the Town's development review process. The Town acknowledges the necessity for timely review by the Town of all plans submitted by Developer to the Town hereunder or pursuant to any zoning procedure, permit procedure or other governmental procedure pertaining to the development of the Property and agrees to use its best reasonable efforts to accomplish such a timely review in each instance where Town review is necessary. If Developer desires an expedited review at any time, Developer agrees to pay any additional costs incurred by the Town in carrying out such expedited review.

21.23 Additional Acts and Documents. Each party hereto agrees to do all such things and take all such actions, and to make, execute and deliver such other documents and instruments, as shall be reasonably requested to carry out the provisions, intent and purpose of this Agreement. If any action or approval is required of any party in furtherance of the rights under this Agreement, such approval shall not be unreasonably withheld.

21.24 Relationship of the Parties. It is understood that the contractual relationship between the parties is undertaken pursuant to the authorization contained in A.R.S. § 9-500.05, and nothing contained in this Agreement shall create any partnership, joint venture or agency relationship between Developer and the Town.

21.25 No Third Party Benefits. No person or entity shall be a third party beneficiary to this Agreement or shall have any right or cause of action hereunder. The Town shall have no liability to third parties for any approval of plans, Developer's construction of improvements, Developer's negligence, Developer's failure to comply

with the provisions of this Agreement (including any absence or inadequacy of insurance required to be carried by Developer), or otherwise as a result of the existence of this Agreement.

21.26 No Developer Representations. Nothing in this Agreement or in the Development Plan obligates the Developer to complete development of all or any part of the Property; however, if development is completed, it must be consistent with this Agreement and the Development Plan.

21.27 Counterparts. This Agreement may be executed in two (2) of more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

21.28 Effective Date and Term.

21.28.1 This Agreement shall be executed by Developer and Owner before submission to the Common Council and shall be effective between the parties upon approval of the Agreement and its approving resolution by the Common Council ("**Effective Date**").

21.28.2 The term of this Agreement (the **COMPLETION DATE**) shall be ten (10) years from Effective Date.

21.28.3 The rights of Developer under this Agreement for any uncompleted portion of the phases of the development of the Property for which Developer has not obtained a building permit shall expire on the Completion Date. However, the vested rights for the phases of development of the Property for which Developer has obtained a building permit before the Completion Date are perpetual and shall remain in effect after the termination of the remainder of this Agreement, provided that said building permit does not expire, and further provided that any necessary building inspections for construction on the Property are being requested by Developer to Town.

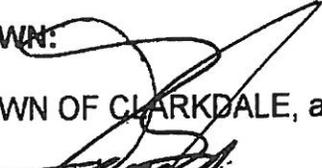
21.28.4 If Developer and the Town mutually determine that a longer period for the performance of the provisions of this Agreement is necessary for any reason, the term of this Agreement may be extended by a written amendment signed by Developer and the Town. Upon termination, Developer and the Town shall execute, acknowledge, and record a release and confirmation of termination of this Agreement in the Official Records of Yavapai County, Arizona.

21.29 **Proof of Ownership.** At the time of execution of this Agreement by Developer and Owner, both shall provide to the Town a status of title report, performed by a licensed title company, showing the record of owner of the Property and all liens, encumbrances, and all other conditions of title, subject to

approval of the Town, which shall not be unreasonably withheld. Prior to recordation of this Agreement, developer and Owner shall provide to the Town updated condition of title report, current as of the date and time of recordation of this Agreement, and the Town shall then provide this Agreement to said title company for recordation in the office of the Yavapai County Recorder.

THE REMAINDER OF THIS PAGE IS LEFT BLANK INTENTIONALLY.

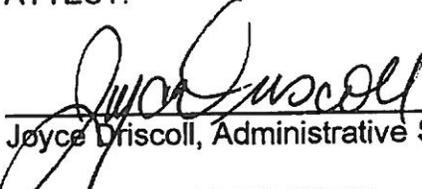
IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

TOWN: 

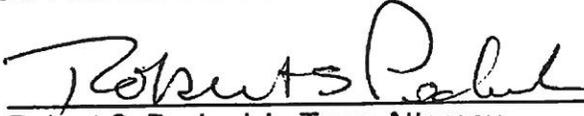
TOWN OF CLARKDALE, an Arizona municipal corporation

By: 
Doug Von Gausig, Mayor

ATTEST:

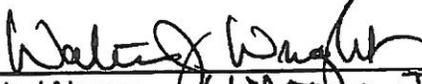

Joyce Driscoll, Administrative Services Director/Town Clerk

APPROVED AS TO FORM:


Robert S. Pecharich, Town Attorney

DEVELOPER:

Land Design Group L.L.C. a Nevada Limited Liability Corporation

By: 
Printed Name: WALTER J WRIGHT
Its: PARTNER

STATE OF ARIZONA)
) ss.
County of Yavapai)

SUBSCRIBED AND SWORN to before me this 8th day of March, 2005,
by Doug Von Gausig, Mayor of the TOWN OF CLARKDALE, ARIZONA, an Arizona
municipal corporation, for and on behalf thereof.

Christine M. Keller
Notary Public

My Commission Expires:
April 25, 2008



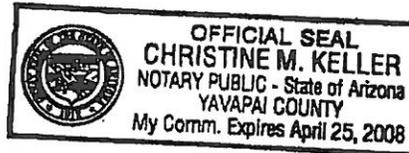
STATE OF ARIZONA)
) ss.
County of Yavapai)

▪ SUBSCRIBED AND SWORN to before me this 2nd day of March,
2005, by Walter J. Wright, the _____ of LAND DESIGN
GROUP, a Nevada Limited Liability Corporation, for and on behalf thereof.

Christine M. Keller
Notary Public

My Commission Expires:

April 25, 2008



OWNER ACKNOWLEDGMENT AND CONSENT

Owner acknowledges and agrees to the recordation of this Agreement on the Property. If Developer does not acquire the Property from Owner pursuant to the purchase agreement between Owner and Developer, then this Agreement shall terminate without any further action by the parties hereto. In such event, the Town and Owner agree to execute a written notice of termination in the form attached hereto as Exhibit H.

By: Yavapai Title Co.
An Arizona Corporation,
As Trustee, Trust No. 190
P.O. Box 35
Jerome, AZ 86331

Jan Sanders
By: Jan Sanders, its Trust Officer

STATE OF ARIZONA)
) ss.
County of Yavapai)

■ SUBSCRIBED AND SWORN to before me this 2nd day of March, 2005, by Jan Sanders, the Trust Officer of, & Yavapai Title, for and on behalf thereof.

Brenda Martinez
Notary Public

My Commission Expires:

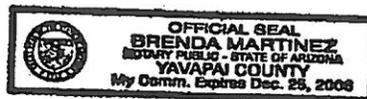


Exhibit A

**"The Property"
(Legal Description)**

EXHIBIT A

RECORDERS MEMO: LEGIBILITY
QUESTIONABLE FOR GOOD REPRODUCTION

PARCEL 1

All of Parcels 1 and 2 as shown on that Minor Land Division Map recorded in Book 41 of Maps and plats at page 31, more particularly described as follows;
Beginning at the northeast corner of Section 32, Township 16 North, Range 3 East, Gila and Salt River Base Meridian; thence S 70°12'45" W 165.57 feet to a point on the westerly line of Highway 89A; thence S 44°19'39" E 1111.98 feet along said westerly line; thence S 45°27'09" W 249.65 feet to the TRUE POINT OF BEGINNING; thence N 44°19'39" W 1867.85 feet along a line parallel with and 249.65 feet westerly from said westerly line of Highway 89A; thence S 82°16'21" W 538.89 feet; thence S 34°56'31" W 432.80 feet; thence S 34°35'38" E 8.56 feet; thence S 33°20'40" E 535.01 feet; thence S 33°18'48" E 241.43 feet; thence southeasterly 138.26 feet along the arc of a tangent curve to the right, having a radius of 695.00 feet, and through an angle of 13°18'49"; thence N 49°14'11" E 267.96 feet; thence S 40°29'15" E 121.69 feet; thence S 40°46'51" E 721.21 feet; thence S 40°40'19" E 348.30 feet; thence N 45°43'23" E 855.91 feet to the point of beginning.

PARCEL 2

The northeast quarter of the northwest quarter of Section 32, Township 16 North, Range 3 East, Gila and Salt River Base Meridian.

PARCEL 3

That portion of the southwest quarter of the southeast quarter of Section 29, Township 16 North, Range 3 East, Gila and Salt River Base Meridian, being west of and including the Old Jerome Highway, more particularly described as follows:
Beginning at the south quarter corner of said Section 29; thence N 00°16'49" E 1344.01 feet along the westerly line of said southwest quarter of the southeast quarter of Section 29; thence N 89°38'56" E 156.21 feet along the northerly line of said southwest quarter of the southeast quarter of Section 29 to a point on the easterly line of the Old Jerome Highway; thence, from a tangent that bears S 45°41'42" E, southeasterly 60.86 feet along the arc of a non-tangent curve to the right, having a radius of 425.00 feet, and through an angle of 08°12'18"; along said easterly line; thence S 37°29'24" E 232.64 feet along said easterly line; thence southeasterly 165.90 feet along the arc of a tangent curve to the right, having a radius of 475.00 feet, and through an angle of 18°48'17"; along said easterly line; thence S 18°41'07" E 257.71 feet along said easterly line; thence southeasterly 449.06 feet along the arc of a tangent curve to the left, having a radius of 1775.00, and through an angle of 14°29'43"; along said easterly line; thence S 33°10'50" E 400.18 feet along said easterly line; thence N 89°46'02" W 916.14 feet along the southerly line of said southwest quarter of the southeast quarter of Section 29 to the point of beginning.

TOTAL AREA = 102.00 acres

Exhibit B

Ordinance Adopting PAD

When recorded, return to:

Joyce Driscoll, Town Clerk
Town of Clarkdale
Post Office Box 308
Clarkdale, AZ 86324-0308

ORDINANCE # 269

AN ORDINANCE OF THE TOWN OF CLARKDALE, YAVAPAI COUNTY, ARIZONA. AMENDING THE ZONING MAP OF THE TOWN OF CLARKDALE, ARIZONA TO REZONE CERTAIN REAL PROPERTY DESCRIBED HEREIN FROM R 1, SINGLE FAMILY RESIDENTIAL TO PLANNED AREA DEVELOPMENT (PAD) AND RESTRICTING THE USE OF THE PROPERTY TO THE DEVELOPMENT OF NO MORE THAN 240 RESIDENTIAL LOTS AND 11.26 ACRES OF COMMERCIAL ON 102 ACRES WHICH SHALL CONFORM TO THE C ZONING DISTRICT WITHIN THE TOWN OF CLARKDALE, AND IMPOSING CONDITIONS.

BE IT ORDAINED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF CLARKDALE, ARIZONA:

Section 1: That the real property described on Exhibit A attached hereto and made a part hereof, and also known as Yavapai County Assessor parcels 406-29-195A, 406-29-070B, and 406-26-012G, located within the Town of Clarkdale, Arizona at the intersection of Scenic Road and State Highway 89A, shall be and is hereby reclassified from R 1 to Planned Area Development and restricting the use of the property to the development of on approximately 102 acres, with no more than 240 Residential Lots and 11.26 acres of Commercial (conforming to the existing C Zoning District in the Town of Clarkdale, and for no other purpose whatsoever).

Section 2: The real property described herein shall be developed for the specific use identified in Section 1, in accordance with the Final Development Plan approved and recorded as a part of this Ordinance, and a Final Plat approved by the Town of Clarkdale for the development of the residential lots within twenty-four (24) months from the date of this Ordinance. If at the expiration of this period, no Final Plat has been approved by the Town of Clarkdale, it shall revert to its former zoning classification without further legislative or council action pursuant to A.R.S. § 9-462.01.

Section 3: That the real property described herein is rezoned to Planned Area Development as described herein upon the following additional conditions:

1. That Applicant agrees to prepare the following to be submitted along with their application for Preliminary Plat:
 - a. Phase II Drainage report
 - b. Traffic Impact Analysis developed in accordance with the Town of Clarkdale Traffic Impact Analysis Preparation Guidelines/Scope of Study.

- c. **Specific Landscaping Plan, for the common areas and parks, which includes a listing of specific species to be used, numbers of each species to be included in the various landscaped areas, size and height at planting and size and height at maturity. The Landscaping Plan shall also include a detailed planting plan that shows the locations of the materials listed and includes detailed specifications of the irrigations system to be use to maintain the landscaping. Materials for the landscaping shall be those included in the Town of Clarkdale General Plan 2002, Xeriscape Plant List. A certified landscape architect, licensed to practice in the state of Arizona, shall design the Landscaping Plan.**
2. **That the Preliminary Plat reflects applicants agreement to improve Scenic Drive to the Commercial Standard for the Town of Clarkdale and the portions of Old Jerome Highway and Mescal Spur included in their development to a Residential Collector Standard. The extension of Mescal Spur from Old Jerome Highway to Hwy 89A, will be designed and constructed to a half width Commercial Collector Standard.**
3. **That prior to the submittal of the Preliminary Plat the applicant shall have entered into a Development Agreement that stipulates their provision of funding to cover the cost of the expansion of the Town's proposed New Sewer Treatment Plant from 400,000 gallons per day to 600,000 gallons per day. The Development Agreement shall stipulate that the applicants will be responsible for the cost of extending an interceptor line (including any force mains and pump stations) from their project to a connection with the existing Town sewer system at a point to be decided by the Town.**

The Development Agreement shall also stipulate that the applicant will also be responsible for the provision of over-sized lines in their project to provide for future connections to the south, west and north. The size of these connections and their locations will be stipulated as well. The Development Agreement shall call for the applicants to supply the Town, prior to the submittal of a Preliminary Plat, with an Irrevocable Letter of Credit or some other form of financial assurance, in a form approved by the Town Attorney, in an amount equal to the estimated cost of the expansion of the treatment plant from 400,000 gallons per day to 600,000 gallons per day (as identified in attached Exhibit B) The Development Agreement will also provide for an Overlay District to be created that will include all properties that are within the service area identified in the Town's 2002 Wastewater Master Plan, for the Interceptor line that serves this project. Future development in the Overlay district will be required to make payments to cover the proportional share of the cost borne by the applicants in the furtherance of this agreement.

The Development Agreement will also contain stipulations pertaining to the applicant's agreement to participate financially in the design and construction of an effluent return line, pumps and storage capacity to a location of the Town's choosing. The effluent line shall be designed to handle the full projected volume of the 600,000 gallon per day capacity of the Town's planned new wastewater treatment plan.

4. That the applicant will have entered into an agreement with the Cottonwood Oak-Creek School District and Mingus Union High School regarding potential school site, or other appropriate compensation, prior to approval of their Final Plat. If the school districts determine that a new school site is required, the applicants shall set aside a site of adequate size for a school site. The site shall be set aside for purchase by the Town of Clarkdale, who will either exercise their option, within one year to purchase the property at the appraised value of the land, or the set aside may be replatted by the applicants.
5. The Commercial area, Town Home area, Parks and Recreation facilities shall be subject to Site Plan Review and Design Review.
6. The applicant shall reimburse the Town of Clarkdale for all expenses incurred by the Town in effecting the change in zoning.
7. The Residential lots developed as a part of the Planned Area Development shall be designed in accordance with the lot sizes, setbacks, and Right-of-Way widths indicated on the Final Development Plan.
8. That applicant will make every effort to use non-potable water during construction if available from Clarkdale or Cottonwood.
9. Prior to approval of the Preliminary Plat applicant will have submitted a detailed trail plan, including location of proposed trails and materials to be used in trails, to be approved by staff.
10. Applicant will meet the Town of Clarkdale lighting ordinance that is in place at the time of development.
11. The area zoned commercial will be developed in accordance with the permitted uses within the Neighborhood Commercial District as represented in the 2002 Town of Clarkdale General Plan update.

PASSED AND ADOPTED by the Mayor and Council of the Town of Clarkdale,
Arizona,
this 22nd day of February, 2005.

Doug Von Gausig, Mayor

ATTEST:

Joyce Driscoll, Town Clerk

Robert S. Pecharich, Town Attorney

EXHIBIT "C"

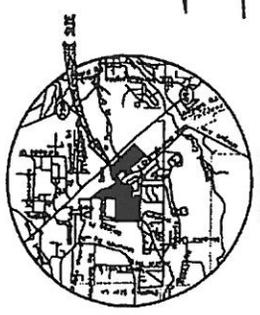
TOTAL SITE AVERAGE =	102 ACRES
TOTAL UNITS =	240
1-50, CUSTOM HOMES (80 x 100) =	58
50-100, VILLAGE HOMES (70 x 100) =	82
101-150, VILLAGE HOMES (70 x 100) =	73
151-187, PANTO HOMES (40 x 65) =	27
188-194, TOWNHOMES (35 x 85) =	27
TOTAL OPENSPACE =	26.92
TOTAL DENSITY =	2.33 UNITS/ACRE

CUSTOM HOMES	
FRONT	10, 22, 25
SIDE	10
REAR	30
VILLAGE HOMES	
FRONT	13, 18, 20
SIDE	8
REAR	50
PANTO HOMES	
FRONT	13, 18, 20
SIDE	5
REAR	20

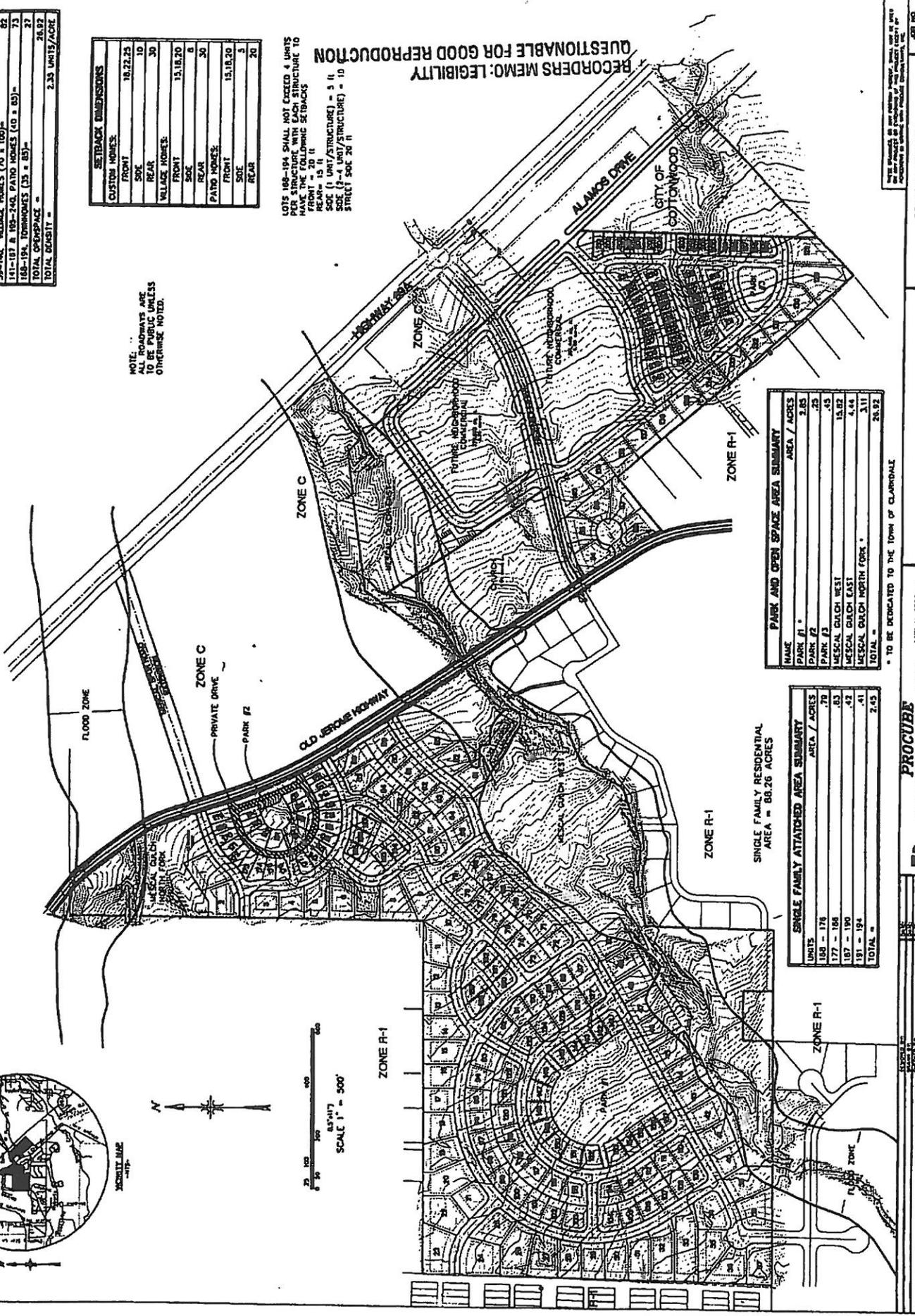
RECORDERS MEMO: LEGIBILITY QUESTIONABLE FOR GOOD REPRODUCTION

LOTS 188-194 SHALL NOT EXCEED 4 UNITS PER STRUCTURE WITH EACH STRUCTURE TO HAVE THE FOLLOWING SETBACKS:
 FRONT = 15 ft
 REAR = 15 ft
 SIDE (1 UNIT/STRUCTURE) = 5 ft
 SIDE (2-4 UNIT/STRUCTURE) = 10 ft
 STREET 500' 30 ft

NOTE: ALL ROADWAYS ARE TO BE PUBLIC UNLESS OTHERWISE NOTED.



SCALE 1" = 500'
 0 50 100 150 200 250
 FEET



NAME	AREA / ACRES
PARK #1	2.85
PARK #2	.25
PARK #3	.45
MESCAL GULCH WEST	13.82
MESCAL GULCH EAST	4.14
MESCAL GULCH NORTH FORK	3.11
TOTAL	26.92

UNITS	AREA / ACRES
188 - 176	.78
177 - 184	.83
187 - 190	.42
191 - 194	.41
TOTAL	2.45

SINGLE FAMILY RESIDENTIAL AREA = 88.26 ACRES

TO BE DEDICATED TO THE TOWN OF CLARKDALE

PROCUBE CONSULTANTS, INC.
 ENGINEERING - LAND PLANNING
 LANDSCAPE ARCHITECTURE - CONSTRUCTION MANAGEMENT

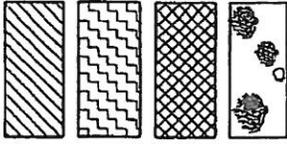
1275 N. 1300 E.
 OREM, UTAH 84037
 (801) 882-8992

CONCEPT OVERALL
 CLARKDALE, ARIZONA

DATE PLOTTED: 08/01/2007 10:00 AM
 PLOT NO: 1-0-0-084-00
 SHEET NO: 1

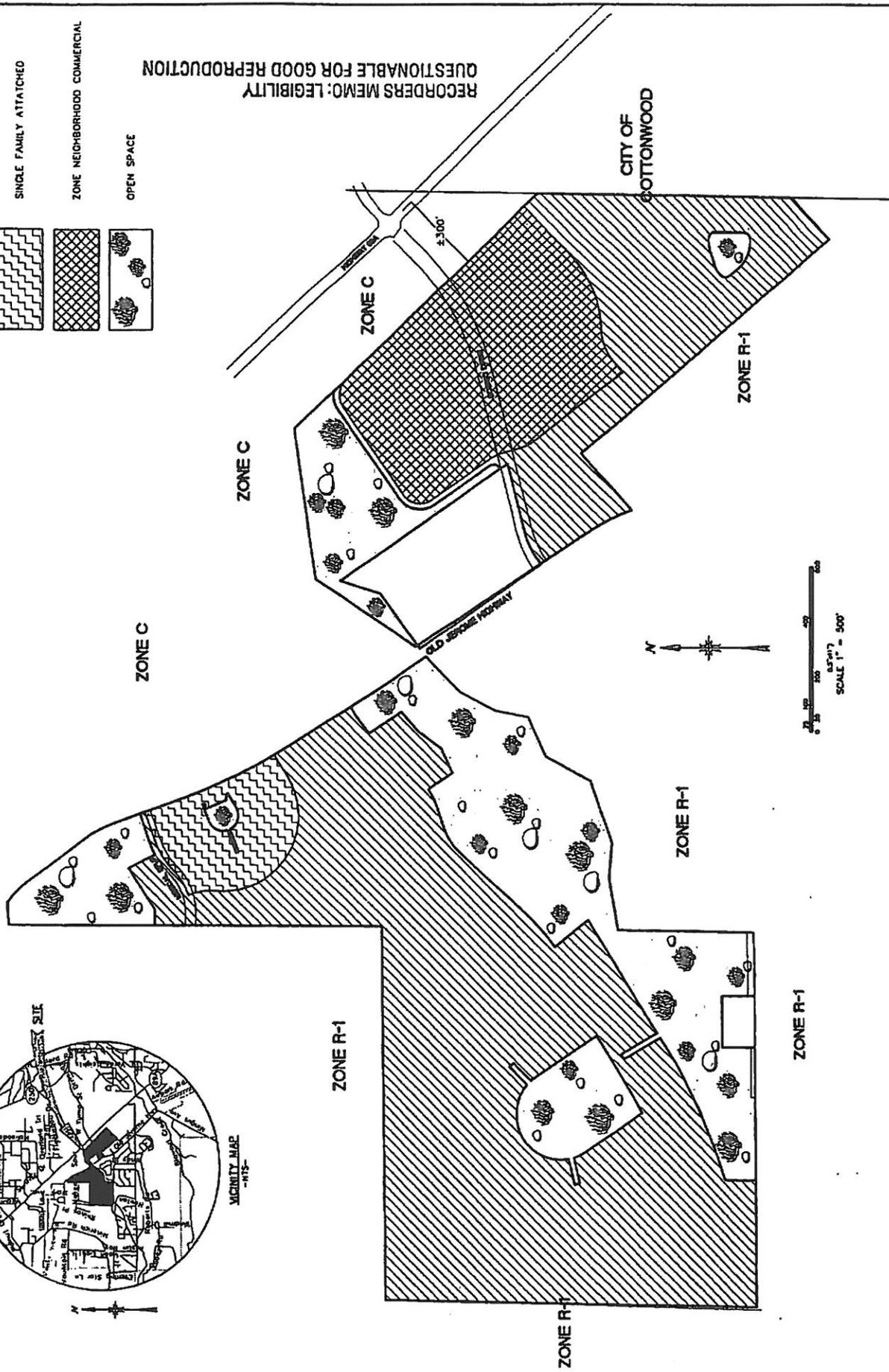


LEGEND



SINGLE FAMILY RESIDENTIAL
 SINGLE FAMILY ATTACHED
 ZONE NEIGHBORHOOD COMMERCIAL
 OPEN SPACE

RECORDERS MEMO: LEGIBILITY
 QUESTIONABLE FOR GOOD REPRODUCTION



ALL RIGHTS RESERVED. NO PART OF THIS PUBLICATION MAY BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM.		ZONING PLAN 3-01-01-00	400 NO. 3-01-01-00
PROGRESS CONSULTANTS, INC. LANDSCAPE ARCHITECTURE - CONSTRUCTION MANAGEMENT		CLIFFROSE VILLAGE	1
1071 N. 1300 W. WEST SUITE 100 COTTONWOOD, AZ 86301		CLARKDALE, ARIZONA	

Exhibit D

**Resolution Adopting
Minor Amendment to
Town of Clarkdale, 2002 General Plan**

RESOLUTION NO: 1127

**A RESOLUTION OF THE COMMON COUNCIL OF TOWN OF CLARKDALE,
ARIZONA, ADOPTING A MINOR AMENDMENT TO THE 2002 TOWN OF
CLARKDALE GENERAL PLAN PROGRAM.**

WHEREAS, the 2002 General Plan Program for the Town of Clarkdale was ratified by the voters of the Town of Clarkdale in November, 2002; and

WHEREAS, the 2002 General Plan Program anticipated the necessity for amendments from time to time; and,

WHEREAS, the Community Development Director as is authorized by the 2002 General Plan Program, has made a determination that proposed amendment constitutes a minor amendment, and Town Council has affirmed that determination; and,

WHEREAS, the process to adopt a Minor Amendment to the General Plan Program requires a Resolution to be adopted by the Common Council; and,

WHEREAS, the Common Council desires to make a minor amendment to the 2002 General Plan Program Land Use Map, and finds that the amendment described below qualifies as a Minor Amendment to the 2002 General Plan Program.

NOW, THEREFORE, BE IT RESOLVED, that the Common Council of the Town of Clarkdale adopts the following changes to the Land Use Designations for property identified as Yavapai County Assessor parcels 406-29-195A, 406-29-070B, and 406-26-012G:

1. Change approximately 40 acres from a designation of Low Residential (LR) to Medium Residential (MR)
2. Change approximately 11.25 acres from a designation of Low Residential (LR) to Neighborhood Commercial

BE IT FURTHER RESOLVED, that an exhibit identifying the amendment adopted herein shall be attached to this Resolution as "Exhibit A".

PASSED AND ADOPTED by the Mayor and Common Council on this 22nd day of February, 2005.

APPROVED:

Doug Von Gausig, Mayor

ATTEST:

Joyce Driscoll, Town Clerk

Exhibit E
Circulation

Exhibit F

**Estimated Probable Costs of
Wastewater Treatment Facility Expansion**

EXHIBIT F

Town of Clarkdale Wastewater Treatment Facility
Preliminary Opinion of Probable Cost for 400,000-GPD Plant

2/3/2005

RECORDERS MEMO: LEGIBILITY
QUESTIONABLE FOR GOOD REPRODUCTION

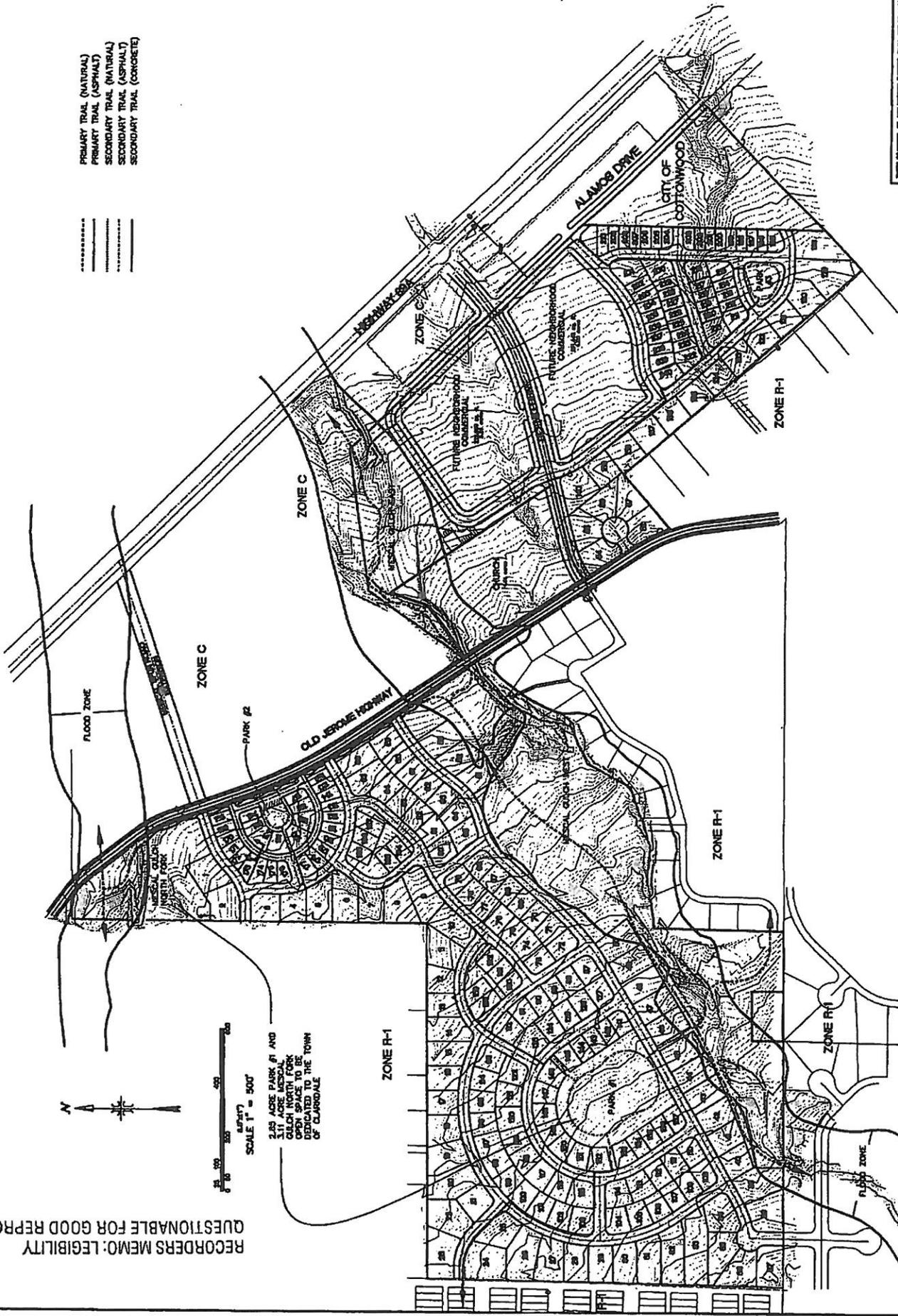
Estimated Probable Costs of Wastewater Treatment Facility Expansion			
Item	Item Description	Cost @ 400K	Cost @ 600K
Preliminary Estimate of Engineering Fees			
1	Design report	\$85,000	\$85,000
2	WWTP design (construction documents)	\$285,000	\$285,000
3	Permitting	\$70,000	\$70,000
4	Construction administration	\$155,000	\$185,000
	Subtotal	\$595,000	\$635,000
Note: Fees based upon year 2004 dollars. These figures do not represent an engineering proposal.			
Existing WWTP Closure and Land Acquisition for New WWTP			
1	Plant closure including design, permitting and construction/demolition	\$175,000	\$175,000
2	Land Acquisition for new 400,000 gpd WWTP	\$350,000	\$350,000
	Subtotal	\$525,000	\$525,000
Construction of 400,000 gpd WWTP			
1	Site grading	\$200,000	\$200,000
2	Yard piping	\$220,000	\$250,000
3	Landscaping	\$100,000	\$100,000
4	Influent pump station	\$110,000	\$150,000
5	Headworks, including influent flow monitoring, influent sampling, screens, grit removal system, and enclosure for odor control	\$360,000	\$470,000
6	Extended aeration BNR process including basins, equipment, recycle pump stations, and odor control covers	\$740,000	\$1,100,000
7	Secondary sedimentation	\$180,000	\$250,000
8	Filtration including coagulation feed system	\$270,000	\$400,000
9	UV disinfection	\$280,000	\$420,000
10	Effluent storage pond with lining	\$80,000	\$140,000
11	Effluent and utility water pump stations	\$110,000	\$110,000
12	Aerobic digester including cover for odor control	\$150,000	\$150,000
13	Solids dewatering and handling including enclosure for odor control	\$225,000	\$300,000
14	Drain pump station	\$40,000	\$50,000
15	Odor control system	\$150,000	\$200,000
16	Modification of existing building for plant control room and laboratory	\$220,000	\$220,000
17	Standby generator set	\$100,000	\$100,000
18	Electrical and controls	\$57,550	\$75,550
	Subtotal	\$4,112,550	\$5,488,050
19	Contingencies @ 25%	\$1,028,138	\$1,364,513
20	Incidentals (Bonding, Permits, Insurance, etc.) @ 15%	\$616,883	\$818,708
21	Mobilization/Demobilization @ 4%	\$164,502	\$218,322
	Subtotal - Construction of 400,000 gpd WWTP	\$7,922,072	\$10,889,592
Note: Item costs based upon year 2004 dollars			
	TOTAL	\$1,007,072	\$1,537,520

Exhibit G

Trails and Recreation

EXHIBIT "G"

RECORDERS MEMO: LEGIBILITY
QUESTIONABLE FOR GOOD REPRODUCTION



- PRIMARY TRAIL (NATURAL)
- PRIMARY TRAIL (ASPHALT)
- SECONDARY TRAIL (NATURAL)
- SECONDARY TRAIL (ASPHALT)
- SECONDARY TRAIL (CONCRETE)



2.85 ACRE PARK #1 AND
3.11 ACRE MEDICAL
OFFICE BUILDING
AND OPEN SPACE TO BE
DEDICATED TO THE TOWN
OF CLARKDALE

<p>THIS DRAWING IS THE PROPERTY OF PROCUBE CONSULTANTS, INC. AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM.</p>	
<p>PROJECT NO. 3-01-004-02</p>	<p>DATE 1-1-02</p>
<p>TRAIL & RECREATION PLAN</p>	<p>CLARKDALE, ARIZONA</p>
<p>CLIFFROSE VILLAGE</p>	<p>1</p>

Exhibit H

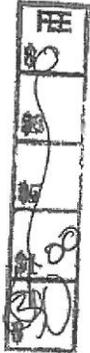
Written Notice of Termination



WHEN RECORDED, RETURN TO:

Town of Clarkdale
Attn: Town Clerk
PO Box 308
Clarkdale, AZ 86324

FIRST AMENDMENT TO DEVELOPEMENT AGREEMENT
(Verde Highlands L.L.C.)





**TOWN OF CLARKDALE
FIRST AMENDMENT TO
DEVELOPMENT AGREEMENT
(The Highlands
formerly Cliffrose)**

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (the "First Amendment") is entered into pursuant to Arizona Revised Statutes §9-500.05 as of the 23rd day of March, 2006 by and between VERDE HIGHLANDS L.L.C., an Arizona limited partnership ("Developer") and the TOWN OF CLARKDALE, a municipal corporation of the State of Arizona. (the "Town"). This First Amendment amends the Development Agreement between the parties dated the 22nd day of February, 2005, and recorded on March 11, 2005, official records of Yavapai County, Arizona, Book 4241, Page 316.

RECITALS

1. Paragraph 16.1.3 of the Development Agreement between the parties provides for **Fee Credits**. Said paragraph is revised to read:

16.1.3 **Fee Credits**. In exchange for Developer's contribution of \$2,012,500 to the cost to design and construct the New Wastewater Plant, and to design and construct interceptor sewer lines, force mains, and pump stations, the Town agrees that all sewer connection fees and sewer development fees, up to \$4250 per lot on all 240 residential lots, and all sewer connection fees and sewer development fees for the commercial property are exempt from those fees, up to the amount of the Developer's contribution. Additionally the Town agrees to create a Sewer Overlay District, to include all properties that will benefit from the wastewater infrastructure improvements, said district to be those properties located west of state Highway 89A in Section 6 of the Town Of Clarkdale Sewer Master Plan. As additional development occurs in the benefited area, and sewer connections are made, the Developer will be reimbursed \$2,200 of the Connection Fees collected by the Town up to the total amount of the Developer's contribution.

2. This First Amendment shall be recorded by the Town in the official records of Yavapai County, Arizona.

3. Except as amended herein, the Development Agreement described herein remains in full force and effect, without change.

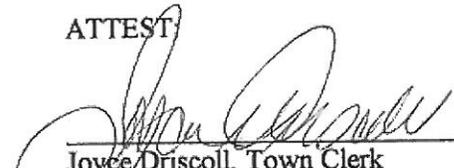
IN WITNESS WHEREOF, the parties have executed this First Amendment on the date first above written.

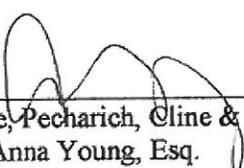
TOWN:

TOWN OF CLARKDALE, an Arizona municipal corporation



By: 
Doug Von Gausig, Mayor

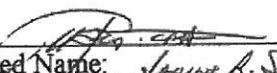
ATTEST

Joyce Driscoll, Town Clerk
APPROVED AS TO FORM:


Boyle, Pecharich, Cline & Whittington, PLLC
By: Anna Young, Esq.
Town Attorneys

DEVELOPER:

VERDE HIGHLANDS L.L.C., an Arizona limited corporation

By: Verde Highlands L.L.C., an Arizona corporation, its General Partner

By: 
Printed Name: James R. Spina
Its: Managing Member

STATE OF ARIZONA)
) ss.
County of Yavapai)

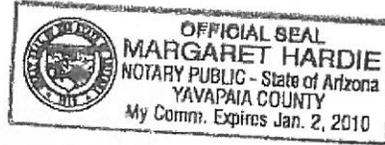
SUBSCRIBED AND SWORN to before me this 23 day of May, 2006, by
Doug Von Gausig, Mayor of the TOWN OF CLARKDALE, ARIZONA, an Arizona
municipal corporation, for and on behalf thereof.



Margaret Hardie
Notary Public

My Commission Expires:

January 2, 2010



STATE OF ARIZONA)
) ss.
County of Yavapai)

SUBSCRIBED AND SWORN to before me this 21st day of April, 2006, by James R. Spear, the managing member of VERDE HIGHLANDS L.L.C., an Arizona limited corporation, for and on behalf thereof.

Marlene A. Davenport
Notary Public

My Commission Expires:

7-7-06

