



OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
LAURA DEAN-LYTLE

When recorded return to:

City Clerk
City of Eloy
628 N. Main Street
Eloy, Arizona 85231
Attn: Mary Ridgell, CMC

DATE/TIME: 03/06/07 1006
FEE: \$24.50
PAGES: 32
FEE NUMBER: 2007-028003

DEVELOPMENT AGREEMENT (STIRLING)

THIS DEVELOPMENT AGREEMENT (this "Agreement") is entered into this 26th day of February, 2007 by and between the **CITY OF ELOY**, an Arizona municipal corporation (the "City") and **BRALU, L.L.C.**, an Arizona limited liability company ("Owner"). The City and Owner may be referred to herein as the "Parties".

RECITALS

A. Owner owns the real property legal described and depicted on Exhibit A, which is attached hereto and incorporated herein by this reference (the "Property"). The Property is located within the corporate limits of the City.

B. The City is currently deliberating on a proposal to rezone the Property to the classifications of "I-1" and "C-2" under the City's zoning code. Owner's conceptual site plan for its rezoning is attached as Exhibit B hereto (the "Plan").

C. This Agreement shall constitute a Development Agreement pursuant to A.R.S. § 9-500.05, and this Agreement shall be approved by Ordinance and recorded in the Office of the Pinal County Recorder.

D. Owner and the City are entering into this Agreement to facilitate the proper municipal zoning designation and development of the Property by providing for, among other things: (i) conditions, terms, restrictions and requirements for the construction and installation of public services/infrastructure improvements; (ii) the permitted uses for the Property; (iii) the density and intensity of such uses; and (iv) other matters related directly or indirectly to the development of the Property.

E. Owner and the City acknowledge that the ultimate development of the Property within the City is a project of such importance that Owner requires assurances from the City that Owner has the right to complete the development of the Property pursuant to, amongst other things, the Plan before it will expend substantial efforts and costs in the development of the Property, and the City requires assurances from Owner that development of the Property will be in accordance with the Plan and the terms and conditions of this Agreement.

F. Without limiting the foregoing, the City and Owner acknowledge that the development of the Property pursuant to this Agreement will result in significant planning and economic benefits to the City by: (i) encouraging investment in and commitment to comprehensive planning, which will result in efficient utilization of municipal and other public resources; (ii) requiring development of the Property to be consistent with the City's General Plan and the approved Plan; (iii) providing for the planning, design, engineering, construction, acquisition, and/or installation of public infrastructure in order to support anticipated development of the Property and the larger land area that includes the Property; (iv) increasing tax and other revenues to the City based on improvements to be constructed on the Property; and (v) creating employment through development of the Property consistent with this Agreement.

G. The City and Owner acknowledge that the development of the Property pursuant to this Agreement will result in significant benefits to Owner, including present and future assurances to Owner that it will have the ability to develop the Property in accordance with this Agreement and the Plan.

H. Among other things, development of the Property in accordance with this Agreement and the Plan will result in the planning, design, engineering, construction, acquisition, installation, and/or provision of public services/infrastructure improvements that will support development of the Property.

I. The public services/infrastructure improvements to be provided by Owner while necessary to serve development within the Property, may also be needed in certain instances to facilitate and support the ultimate development of a larger land area than the subject Property.

J. The City acknowledges that portions of such public services/infrastructure improvements may be provided as part of the early phases of development of the Property, prior to the time when such public services/infrastructure improvements would otherwise be required to serve completed phases of the development within the Property, and therefore prior to the time Owner might otherwise be required to provide or contribute to the cost of same and prior to the time that the expense of such public services/infrastructure improvements otherwise would be justified by the phasing of development of the Property. Owner is willing to provide such public services/infrastructure improvements earlier than otherwise required for its private development of the Property only with the assurances that it will be able to complete development of the Property as provided in this Agreement. In this respect, the public services/infrastructure improvements and dedications provided for herein, together with the development contemplated by this Agreement, are interdependent and together comprise an indivisible project.

K. The Parties acknowledge that substantial benefits are expected to accrue to the City as a result of the development of the Property, the construction of the aforementioned improvements thereon, and the planned dedications and transfers associated therewith. Furthermore, the City acknowledges that Owner will incur considerable expenses in connection with such development, construction, dedications, and transfers. In consideration of such benefits, the City may permit Owner to recoup a portion of expenses incurred by Owner in the construction and installation of improvements on the Property and possibly other property.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and agreements set forth herein, the parties hereto state, confirm and agree as follows:

ARTICLE 1 LAND USE FOR BRALU PROPERTY

1.1 Development of Property. Owner currently plans to develop the property consistent with the City of Eloy Zoning Ordinance (the "Zoning Ordinance") pursuant to the land use classifications "I-1" and "C-2".

1.2 Consistency with General Plan. The City's Planning and Zoning Department ("Staff") has thoroughly reviewed the City of Eloy General Plan (the "General Plan"), and the proposed rezoning of an area that includes the entire Property to "I-1" and "C-2" designations are consistent with the General Plan and does not require any change or amendment to the General Plan. The Planning and Zoning Commission has recommended approval of the planned rezoning of the Property to I-1 and C-2 as shown on the Plan without any restrictions or conditions imposed, other than those set forth in the Staff Report, a copy of which is attached hereto as Exhibit C.

1.3 Review of Plans and Rezoning Submittals. In acknowledgement of the necessity for expeditious review by the City of all plans and other materials ("Submitted Materials") submitted by Owner to the City hereunder or pursuant to any zoning procedure, permit procedure, or other governmental procedure pertaining to the development of the Property, the City agrees to use its best efforts to accomplish such an expeditious review of the Submitted Materials. The City represents that such submissions will be diligently processed with the goal of a maximum thirty (30) day response time by the City to all submittals and applications made. Accordingly, the Parties agree that if at any time the Owner believes that an impasse has been reached with the City Staff on any issue affecting the Property, the Owner shall have the right to immediately appeal to the City Manager for an expedited decision pursuant to this Paragraph. If the issue on which an impasse has been reached is an issue where a final decision can be reached by the City Staff, the City Manager shall give the Owner a final decision within ten (10) days after Owner's request for an expedited decision. If the issue on which an impasse has been reached is one where a final decision requires action by the City Council, the City Manager shall be responsible for scheduling a City Council hearing on the issue within four (4) weeks after Owner's request for an expedited decision. Both parties agree to continue to use reasonable good faith efforts to resolve any impasse pending any such expedited decision. Notwithstanding anything contained herein to the contrary, in the event the City does not have a sufficient number of personnel to implement the expedited development review process or the expedited land development and construction inspection services, the Owner may elect to pay the costs incurred by the City for such private, independent consultants and advisors which may be retained by the City, as necessary, to assist the City in the review and/or inspection process; provided however, that such consultants shall take instructions from, be controlled by, and be responsible to, the City and not the Owner.

1.4 Consistency of Use. The proposed rezoning of the Property to "I-1" and "C-2" is consistent with the policies of the City and with sound principles of land planning and management, particularly in light of surrounding uses and the proximity of the Property to the

interstate highway I-10 and existing railways. Staff has thoroughly reviewed the rezoning proposal, this Agreement and the Plan. In addition, the Planning and Zoning Commission, on December 13, 2006, recommended approval of the Plan and that the rezoning proposal be adopted by the Council of the City of Eloy to accommodate the uses and development planned by Owner as of the date of this Agreement. Staff and the City acknowledge that the Council of the City of Eloy shall make the conclusive determinations on zoning matters, and nothing herein shall be construed to be illegal contract zoning

1.5 Waiver of Preliminary Plat. The City, to the fullest extent permitted by law under A.R.S. § 9-463.01(M), hereby waives the requirement to prepare, submit and receive approval of a preliminary plat as a condition precedent to submitting a final plat and hereby also waives otherwise applicable infrastructure standards and requirements. This provision shall not be deemed a waiver of any final platting requirements as required by the City either for the whole or any portion of the Property that may be the subject of the City's platting requirements.

ARTICLE 2 STREETS / ROADS

2.1 Construction Standards. Should Owner construct access roads other than the Main Access Road, also known as Date Street, which is to be constructed by National Gypsum Company pursuant to a separate agreement with the City, such roads to be built by Owner shall be built to the City's standards in place at time of approval of final plat or map of dedication for the Property or phase thereof.

2.2 Dedication. All public access roads constructed by Owner shall be dedicated to the City for public use. Upon dedication to the City, all maintenance and repair of the public roads shall become the obligation of the City. Any such dedication shall include any easements granted to Owner in connection with its construction or use of the public roads. Owner shall provide City a one (1) year warranty on public access roads constructed on the Property. Prior to such dedication, Owner shall be permitted to file for and secure the issuance and confirmation by ADWR of any and all water rights, including Type 1 Non-Irrigation Rights, associated with the land area upon which the public roads are to be constructed.

2.3 Payment of Construction Sales Tax. The prime contractors or general contractors constructing improvements upon the Property will charge to Owner such transaction privilege taxes on construction activity or revenues as are chargeable by applicable ordinance of the City, which transaction privilege tax currently equals four and one-half percent (4.5%).

2.4 Economic Incentives. In view of the benefits that are expected to accrue to the City as a result of the development of the Property, the City hereby agrees to consider proposals from future end users of all or a portion of the Property and discuss economic incentives such as the rebate of construction sales tax and other economic incentives such as assistance with infrastructure, including, but not limited to, water, sewer and streets, to the fullest extent permitted by law. The City will provide such incentives if they are given to similarly situated developers and based on the typical timing of such incentives in the process of development.

ARTICLE 3

CITY SERVICES TO THE BRALU PROPERTY

3.1 City Services, Generally. The City shall provide domestic water service and sewer service for the Property at the City's standard rates for service. In addition, the City shall provide all City services to the Property, including but not limited to, trash collection and police protection and all other services typically provided by the City to its businesses to the same extent and upon the same terms and conditions as those services are being provided to other similar properties throughout the City. Owner understands that fire service is not provided by the City due to the Property's inclusion in the Eloy Fire District.

3.2 Water and Sewer Services, Specifically. To the extent that Owner has the right, to connect to the water or sewer system to be constructed by National Gypsum Company in Date Street without additional fees to be paid to National Gypsum Company, the City will honor such agreement. In addition, and to the extent Owner exercises its right to connect to the water and/or sewer system to be constructed by National Gypsum Company in Date Street, Owner shall prove to the satisfaction of the City Engineer that there is sufficient capacity in such water and sewer system to adequately serve the Property. If there is not sufficient capacity in the water system constructed by National Gypsum Company to serve all or a portion of the Property, Owner is not obligated to connect to such line.

ARTICLE 4

WATER RIGHTS AND WELLS

4.1 Service Area. The City believes that its service area does not extend into or encircle the Property and, in fact, is more than fifteen hundred feet (1500') from any portion of the Property, but shall make application to extend the City's service area so that the Property is included therein.

4.2 Development Plan Approval. The City acknowledges that Owner has filed an application for and received approval of a Development Plan with ADWR under which irrigation rights associated with the Property are to be retired. Such approval shall hereinafter be referred to as "Development Plan Approval." The City will support and not oppose Owner in the issuance by ADWR of such permits or approvals as may be necessary under the Development Plan Approval.

4.3 Non-potable Water Service. The City acknowledges that the Owner shall be entitled to use the grandfathered groundwater rights appurtenant to the Property in connection with farming and agricultural operations on the Property for so long as the Owner desires. However, at such time as a final plat for a portion of the Property is recorded or, as soon as the Owner begins construction activities, and provided that the City holds a designation of assured water supply sufficient to cover the Property or portion thereof, the Owner shall apply to the Arizona Department of Water Resources ("ADWR") and take any other action reasonably necessary for extinguishment of the grandfathered water rights appurtenant to that portion of the Property and to request from ADWR that any assured water supply credits issued by ADWR as a result of such extinguishment be credited to the City. To the extent that Owner needs to transfer the water rights to the City to assure that the City's designation of assured water supply will be

sufficient to cover the Property, or portion thereof, the Parties will work cooperatively to accomplish such transfer as quickly as possible.

4.4 Existing Wells. The Owner agrees to locate and identify all wells, if any, on the Property regardless of whether such wells are registered or unregistered with the Arizona Department of Water Resources ("ADWR"), and to disclose the existence, location and identification of any such wells to the City by means of an addendum to this Agreement. At such time that a well is no longer being used for agricultural purposes on the Property, Owner shall discontinue its use and cap such well in accordance with ADWR guidelines, if any.

ARTICLE 5

CONSTRUCTION AND OPERATION OF WATER DELIVERY SYSTEM

5.1 Manner of Work; Compliance with Laws. If necessitated by the development of the Property, Owner shall construct a water delivery system for the Property (the "Water Delivery System"), which shall be a loop system, and if possible, tie into the water delivery system to be constructed by National Gypsum Company in Date Street. The Water Delivery System shall be constructed and completed by Owner in a good and workmanlike manner and in compliance with all applicable laws, rules, ordinance, regulations, codes and other requirements promulgated by any governmental authority or agency having jurisdiction over the same.

5.2 Offsite Augmentation. The Parties acknowledge that there may be offsite augmentation of the City's water system dependent upon the actual development of the Property. If, however, the water system, which is to be constructed by National Gypsum Company through a separate agreement with the City, is sufficient to serve all or a portion of the Property, Owner may utilize such system or any other appropriate and existing water system that is available to the Property. To the extent offsite augmentation is necessary, the City agrees to discuss economic incentives in accordance with Section 2.4, above.

5.3 Acceptance and Approval of Water Delivery System. Upon completion of the Water Delivery System in accordance with this Agreement, the Parties shall cooperate in good faith and with due diligence in obtaining or causing to be issued (as the case may be), all necessary governmental approvals, certifications, permits and the like, for the operation of the Water Delivery System.

5.4 Assumption and Assignment. Upon completion of the Water Delivery System, and only after Owner has received Development Plan Approval as defined below and a determination that Owner can retire for non-irrigation use the irrigation rights referenced in Section 4.2, Owner shall promptly assign to the City, and the City shall accept assignment of, all of the rights, title and interest of Owner in the Water Delivery System, it being understood that the City intends to and shall operate the Water Delivery System as a component of the City's existing public water system. Any such assignment shall include any easements granted to Owner in connection with its construction or use of the Water Delivery System. Owner shall provide City a one (1) year warranty on the Water Delivery System.

ARTICLE 6

CONSTRUCTION AND OPERATION OF SEWER SYSTEM

6.1 Manner of Work; Compliance with Laws. If necessitated by the development of the Property, a Sewer System shall be constructed and completed by Owner in a good and workmanlike manner to serve the Property. If possible, the Sewer System shall tie into the sewer system to be constructed by National Gypsum Company in the Main Access Road, also known as Date Street. Such Sewer System constructed by Owner shall be constructed in compliance with all applicable laws, rules, ordinance, regulations, codes and other requirements promulgated by any governmental authority or agency having jurisdiction over the same.

6.2 Offsite Augmentation. The Parties acknowledge that there may be offsite augmentation of the City's sewer system dependent upon the actual development of the Property. If, however, the sewer system, which is to be constructed by National Gypsum Company through a separate agreement with the City, is sufficient to serve all or a portion of the Property, Owner may utilize such system or any other appropriate and existing sewer system that is available to the Property. To the extent offsite augmentation is necessary, the City agrees to discuss economic incentives in accordance with Section 2.4, above.

6.3 Acceptance and Approval of Sewer System. Upon completion of the Sewer System in accordance with this Agreement, the Parties shall cooperate in good faith and with due diligence in obtaining or causing to be issued (as the case may be), all necessary ADEQ or other governmental approvals, certifications, permits and the like, for the operation of the Sewer System (collectively, the "Sewer Approvals"), it being acknowledged that neither Party has control over the approval process therefor, once applications and the like are submitted to the ADEQ or other governmental entity.

6.4 Assumption and Assignment. Upon completion of the Sewer System, Owner shall promptly assign to the City, and the City shall accept assignment of, all of the rights, title and interest of Owner in the Sewer System, it being understood that the City intends to and shall operate the Sewer System as a component of the City's existing public sewer system. Owner shall provide City a one (1) year warranty on the Sewer System.

ARTICLE 7

RECOVERY OF WATER DELIVERY SYSTEM COSTS

7.1 Costs Recoverable by Owner. The City acknowledges that Owner may request of the City the ability to recoup all costs associated with the construction of such portions of the Water Delivery System which may be built as improvements to the public water system and which may be dedicated to the City, other than such costs as City and Owner agree are appropriately allocable solely to Owner (such allowed costs being the "Recoverable Water Costs"). If such Recoverable Water Costs are approved by the City, Owner and the City shall execute one or more protected main agreements to accomplish such reimbursement (the "Water Delivery Protected Main Agreement"). The Water Delivery Protected Main Agreement shall, among other things, set forth the portion of the costs of the Water Delivery System properly allocable to Owner and the charges to be applied, and reimbursed to Owner, upon a third party's application to the City for connection to the Water Delivery System. Owner and City shall

cooperate to comply with any contracting and public bidding laws or regulations applicable to the construction of the Water Delivery System. Recoverable Water Costs which Owner shall be entitled to receive under the Water Delivery Protected Main Agreement shall be only those which remain unreimbursed to Owner after and to the extent Owner has received and applied any of the economic incentives discussed above in Section 2.4, above, to its costs of constructing the Water Delivery System.

ARTICLE 8

RECOVERY OF SEWER CONSTRUCTION / CONNECTION COSTS

8.1 Costs Recoverable by Owner. The City acknowledges that Owner may request of the City the ability to recoup all costs associated with the construction of such portions of the Sewer System which may be built as improvements to the public sewer system and which may be dedicated to the City, other than such costs as City and Owner agree are appropriately allocable solely to Owner (such allowed costs being the "Recoverable Sewer Costs"). If such Recoverable Sewer Costs are approved by the City, Owner and the City shall execute one or more protected main agreements to accomplish such reimbursement (the "Sewer System Protected Main Agreement"). The Sewer System Protected Main Agreement shall, among other things, set forth the portion of the costs of the Sewer System properly allocable to Owner and the charges to be applied, and reimbursed to Owner, upon a third party's application to the City for connection to the Sewer System. Owner and City shall cooperate to comply with any contracting and public bidding laws or regulations applicable to the construction of the Sewer System. Recoverable Sewer Costs which Owner shall be entitled to receive under the Sewer System Protected Main Agreement shall be only those which remain unreimbursed to Owner after and to the extent Owner has received and applied any of the economic incentives discussed above in Section 2.4, above, to its costs of constructing the Sewer System.

8.2 Connection Fees Paid by Others. City acknowledges that Owner may be a successor in interest to Dulin Land and Cattle Company under that certain Agreement Relating to Extension of Sewer Collection Facilities, dated January 24th, 2000, and recorded at fee number 2000-005303 in the Official Records of the Pinal County Records Office (the "Dulin Agreement"). To the extent Owner is a successor to the Dulin Agreement, City will work with Owner to properly facilitate and implement the Parties' obligations there under.

ARTICLE 9

SPECIAL TAXING DISTRICT

9.1 City and Owner recognize that due to special conditions relating to the Property, including but limited to, its proximity to Interstate I-10 and the rail line, there may be the need for a special taxing district such as a community facilities district or improvement district to fund necessary improvements that be beneficial to a larger area than just the Property. To the extent, the City determines that a special taxing district is a feasible approach to fund such improvements, the City will support the creation of a special taxing district by the Owner and possibly other adjacent land owners. To the extent a special taxing district is formed, and to the fullest extent permitted by law, such taxing district shall have the same or similar rights of Owner set forth in this Agreement.

ARTICLE 10
NOTICE

All notices or other communication herein required or permitted shall be in writing and given by personal delivery or sent by (i) registered or certified mail return receipt requested, postage prepaid, (ii) nationally recognized overnight courier service, or (iii) facsimile transmission, at the addresses first set forth herein below (unless changed in accordance herewith). Notice shall be deemed received on the earlier of (i) actual receipt, (ii) three (3) business days after deposit in the U.S. Mail, (iii) the first business day after deposit with an overnight courier, or (iv) if by facsimile transmittal, upon receipt of proof of transmission. Any notice or communication not received because of a change of address or facsimile number, without notice to the other Party thereof, or refusal to accept delivery, shall be deemed received, notwithstanding the same, as set forth above.

To City of Eloy:

CITY OF ELOY
628 North Main Street, Eloy, Arizona 85231
Attention: City Manager
Telephone: (520) 466-7570
Facsimile: (520) 466-3161

With a copy to:

CITY ATTORNEY
628 North Main Street, Eloy, Arizona 85231
Attention: Stephen Cooper, City Attorney
Telephone: (520) 466-7570
Facsimile: (520) 466-3161

To BRALU, LLC:

BRALU, LLC
6632 N. 66th Place, Paradise Valley, Arizona 85253
Attention: Mr. William S. Lund,
Telephone: (480) 607-3443
Facsimile: (480) 604-0945

With a Copies to:

RUNFAST, LLC
1187 Coast Village Road, Unite 217, Montecito, California 93108
Attention: Mr. Frank Walsh, III
Telephone: (480) 325-7833
Facsimile: (480) 325-7834

PEW & LAKE, PLC
1930 E. Brown Road, Suite 101, Mesa, Arizona 85203
Attention: W. Ralph Pew
Telephone: (480) 461-4670
Facsimile: (480) 461-4676

ARTICLE 11 REPRESENTATIONS AND WARRANTIES

11.1 Of Owner. Owner represents and warrants to the City that:

11.1.1 Owner is an Arizona limited liability company, duly organized, validly existing and in good standing under the laws of the State of Arizona;

11.1.2 Owner has the full and complete right, power and authority to enter into this Agreement and to perform the duties and obligations of Owner under this Agreement in accordance with the terms and conditions hereof; and

11.1.3 the individual executing this Agreement on behalf of Owner is duly authorized and empowered to do so and by such execution, binds Owner under this Agreement.

11.2 Of the City. The City represents and warrants to Owner that:

11.2.1 The City has the full and complete right, power and authority to enter into this Agreement and to perform the duties and obligations of the City under this Agreement in accordance with the terms and conditions hereof.

11.2.2 The individual(s) executing this Agreement on behalf of the City is/are duly authorized and empowered to do so and by such execution, binds the City under this Agreement.

ARTICLE 12 DEFAULT AND REMEDIES

12.1 Default. Except as otherwise provided in this Agreement, if either Party breaches any provision of this Agreement and fails to remedy such breach within twenty (20) days of notice thereof (unless such cure is not reasonably possible within such 20-day period and the breaching Party has commenced and is pursuing with reasonable diligence such cure), the non-breaching Party may proceed against the defaulting Party as outlined below.

12.1.1 Representatives. To further the cooperation of the parties in implementing this Agreement, the City and the Owner each shall designate and appoint a representative to act as a liaison between the City and its various departments and the Owner. The initial representative for the City ("**City Representative**") shall be the City Manager and the initial representative for the Owner shall be its project manager, as identified by the Owner from time to time ("**Owner Representative**"). The

representatives shall be available at all reasonable times to discuss and review the performance of the parties to this Agreement and the development of the Property.

12.1.2 Mediation. If a dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be settled through the Parties Representatives, then, unless the Parties otherwise agree, the Parties shall try to settle the dispute through mediation before resorting to arbitration provisions set forth in this Agreement. In the event that the Parties cannot agree upon the selection of a mediator within seven (7) days after a Party makes a written request for mediation to the other Party, either Party may request the presiding judge of the Superior Court of Pinal County to assign a mediator from a list of mediators maintained by the Arizona Municipal Risk Retention Pool. The costs of the mediator shall be shared equally between the Parties. The mediator's findings shall be non-binding unless otherwise stipulated by the Parties.

12.1.3 Arbitration. In the event that there is a dispute hereunder which the Parties cannot resolve between themselves, the Parties agree that they shall submit the dispute for resolution in the manner and process set forth in Exhibit D. The parties shall be limited to the remedies and dispute resolution process set forth in this Section 12 and in Exhibit D. Any dispute, controversy, claim, or cause of action arising out of or relating to this Agreement shall be governed by Arizona law. The parties to this Agreement agree that any decision rendered by the arbitrator (as defined in Exhibit D) pursuant to the provisions of Exhibit D shall be binding on such parties, and if any party does not abide by the decision rendered by the arbitrator, the other party may institute an action for money damages on the issues that were the subject of the arbitrator's decision.

ARTICLE 13 REGULATION OF DEVELOPMENT

13.1 The Applicable Rules. Owner agrees to pay all development fees according to the then current rate that is applicable at the time of development of the Property, or portion thereof. The ordinances, rules and regulations of the City and/or official policies of the City applicable to and governing the development of the Property shall be those in place at the time of development of the Property, or portion thereof.

13.2 Equal Treatment of Development Fees. Notwithstanding anything to the contrary in this Agreement, in no event shall any development fee be assessed (or that is to be assessed) against the Property (or any portion thereof) that is less favorable to Owner in any respect whatsoever (including, but not limited to, any exemptions from such fees or portion thereof or the frequency, form or amount of such fees), as reasonably determined by Owner, than any other development fee that is imposed on any other similar development in the City. To the extent Owner reasonably determines that any development fee has been assessed against the Property (or any portion thereof) at rate greater than the rate of any other similar development in the City, Owner shall be entitled to request a reimbursement from the City in an amount equal to the difference between the amount of the development fee assessed against the Property (or any portion thereof) and the amount (if any) of the development fee pertaining to the other development.

13.3 Development Fee Credits and Oversizing.

13.3.1 The City acknowledges and agrees that the services/infrastructure to be provided by Owner will confer a benefit on the Property and, in certain instances, may confer a benefit on land areas outside the Property. In recognition of such benefits outside of the Property, the City acknowledges and agrees that the City shall take into account and credit Owner dollar for dollar against the sum total of all development fees owed by Owner or anticipated builders/residents on the Property. Such credit shall equal the sum of all costs associated with constructing, acquiring, and/or installing the services/infrastructure, including, but not limited to, costs for design, engineering, surveying, permits, taxes, fees, bonds, labor, materials, land, and construction administration. Any credits shall be freely assignable by Owner. Owner and the City shall compute the credits outstanding on a quarterly basis. This Section shall survive the termination of this Agreement.

13.3.2 Wherever this Agreement provides that Owner shall be entitled to a development fee credit against any development fee or impact fee imposed by the City, the development fee credit shall be credited to Owner in increments equal to one hundred percent (100%) of the particular development fee or impact fee otherwise applicable to each building permit issued with respect to a building or structure to be constructed on the Property, up to the maximum total credit provided for in this Agreement.

13.3.3 If and to the extent the City requires Owner to plan, design, engineer, construct, acquire, install, or otherwise provide infrastructure that exceed the capacity required to serve the development within the Property, and such services/infrastructure are not subject to a development fee reimbursement agreement, reimbursement mechanism, or other similar mechanism whereby Owner will be repaid additional cost incurred directly related to the over-sizing to plan, design, engineer, construct, acquire, install or otherwise provide such services/infrastructure, Owner shall be entitled to be reimbursed in whole, and shall be entitled to receive satisfactory financial assurances of payment prior to the commencement of construction of such services/infrastructure, for all costs attributable to such over sizing, including a reasonable allowance for a proportionate share of the cost of any additional land needed to accommodate such oversized services/infrastructure. For purposes of this Section 13, oversizing shall not mean a design of the services/infrastructure that is otherwise required by the applicable regulations. For example, if oversizing is required as a result of design due to elevation or other conditions on the Property, then in such event the Owner shall only be entitled to that portion of the oversizing which was not required as a result of the design.

ARTICLE 14 ANTI-MORATORIUM & VESTED RIGHTS

14.1 Anti-Moratorium. The parties hereby acknowledge and agree that the development of the property may be phased and that for fifteen (15) years from the date of this Agreement, no moratorium, or future ordinance, resolution or other land use rule or regulation imposing a limitation (or prohibition) on the conditioning, rate, timing or sequencing of the development of property within the City and affecting the Property or any portion thereof shall

apply to or govern the development of the Property, whether affecting parcel or subdivision maps, building permits, occupancy permits or other entitlements to use issued or granted by the City, except as otherwise provided in this Agreement. This agreement may be renewed for an additional five (5) years subject to approval by the City, such approval not to be unreasonably withheld.

14.2 Vested Rights. The City agrees that, for the term of this Agreement, Owner shall have an immediate vested right to develop the Property in accordance with this Agreement and the zoning designation and the City's General Plan. The determinations of the City memorialized in this Agreement, together with the assurances provided to Owner in this Agreement are provided pursuant to and as contemplated by A.R.S. § 9-500.05 and other applicable law, bargained for and in consideration for the undertakings of Owner set forth herein and are intended to be and have been relied upon by Owner.

ARTICLE 15 INFRASTRUCTURE AND IMPROVEMENT FINANCING

15.1 Infrastructure and Improvement Financing. The parties acknowledge that one of the purposes of this Agreement is to provide for the coordinated planning, design, engineering, construction and/or provision of the range of public services/infrastructure improvements necessary to serve the Property as indicated in the Development Plan. The City acknowledges and agrees that the services and/or infrastructure required to serve the Property as indicated in the Development Plan or as otherwise allowed by Arizona law may be constructed, upon Owner request, through an Improvement District or Community Facilities District mechanism pursuant to Title 48 of the Arizona Revised Statutes. After consultation with the City, and only if the City has determined that the creation of a community facilities district or improvement district is feasible, the City shall adopt a resolution of intention and conduct such procedures as are necessary to form one or more improvement districts or community facilities districts as agreed to by the Parties. Owner shall provide all necessary information and shall pay all reasonable and customary City costs in connection with the formation of the district. The City agrees to assume responsibility for the ownership, operation and maintenance of completed public infrastructure financed, acquired and/or constructed by the district. Any dedications for public use as may be required by this Agreement shall not preclude the right of Owner, prior to any such dedication, to sell such land, rights-of-way, easements, or other interests to a special taxing district and to have such dedication made by such district. The City agrees to cooperate and pursue intergovernmental agreements with other public bodies, as applicable, to secure the ownership, operation and maintenance of completed public infrastructure acquired or constructed with district funds that are typically not owned, operated and maintained by the City.

15.2 Other Benefited Property. The City and the Owner understand that some of the public improvements funded by special taxing district and/or the Owner may also benefit other surrounding property not contained within the district. In the event the district's engineer determines that any property not contained within the district is benefited by any improvements financed by the district and/or the Owner (the "Other Benefited Property"), the City will require each owner of such Other Benefited Property to contribute its pro rata share of the construction and related costs of the aforementioned improvements (including, but not limited to, financing costs) through participation in a proportionate benefit reimbursement mechanism

("Reimbursement Mechanism"). It is anticipated that the City and/or the district would cause the reimbursement obligation of each owner of Other Benefited Property imposed pursuant to the Reimbursement Mechanism to be paid in full at the earlier of (i) recordation of a final plat or map against the Other Benefited Property (or a portion thereof), or (ii) the issuance of the first building permit with respect to the Other Benefited Property. Any proceeds collected pursuant to the Reimbursement Mechanism shall be disbursed as follows: (A) to the district, to the extent that the district funded the public improvements; and/or (B) to the Owner, to the extent that Owner funded such public improvements. The City and Owner further acknowledge and agree that any repayment or reimbursement obligation of an owner or developer of any Other Benefited Property will be made a condition of any development by such owner or developer and shall be included in a recorded development agreement between the City and such owner or developer. The Owner may also request that the City and/or the district establish a means of collecting reimbursements from the developer(s) and/or owner(s) of any Other Benefited Property for the district's and/or Owner's costs of installing public facilities that are of a scope greater than that needed to serve or mitigate the impacts of the development of the Property and which will serve and/or benefit the Other Benefited Property in accordance with the terms set forth above.

ARTICLE 16

INFRASTRUCTURE ASSURANCE

16.1 Infrastructure Assurance. The Parties hereto acknowledge and agree that the City, prior to the recording of each of final plat for each subdivision within the Property, shall require the Owner and/or its designees, Grantees or Buyers under contract, to provide assurances which are appropriate and necessary to assure that the installation of Infrastructure Improvements within that subdivision or other subdivision improvements directly related to such building permit or permits will be completed ("Infrastructure Assurance"). In such case, the Owner may elect, with the approval of the City, which approval shall not be unreasonably withheld, any one or combination of the following methods of Infrastructure Assurance. All assurances provided by the Owner shall comply with the applicable provisions of the City's Subdivision Ordinance relating to such assurances. The options are as follows:

16.1.1 Owner and/or its assignees, designees, grantees and purchasers under contract is required to file with the City a performance bond; or

16.1.2 Owner and/or its assignees, designees, grantees and purchasers under contract is required to deliver to the City an irrevocable and unconditional declining letter of credit which, if necessary, will be acknowledged by the City in accordance with the appropriate Lender's requirements; or

16.1.3 Any other method approved by the City and Owner consistent with State Statute and City's Subdivision Ordinance.

16.2 Completion of Infrastructure / Release of Assurance. Once the required Infrastructure Assurance is complied with, then the Owner (or, as applicable, the Owner's assignees, designees, grantees and purchasers under contract) shall have the right, with the approval of the City, which approval shall not be unreasonably withheld, to replace such initial

method of Infrastructure Assurance, either in whole or in part, with any of the other above methods of Infrastructure Assurance. The City agrees that within ten (10) working days from the City's approval of the particular completed Infrastructure Improvements for which the City has required and the Owner has provided Infrastructure Assurance, the City shall release such Infrastructure Assurance, in whole or in part as may be appropriate under the circumstances, in the manner provided in the applicable Subdivision Ordinance.

ARTICLE 17 MISCELLANEOUS

17.1 Abandonment of Milligan Road. City will support Owner in its attempt to complete the abandonment of Milligan Road between Sunshine Boulevard and La Palma Road. Any existing utilities in the Milligan Road alignment will be relocated to the new Date Road, relocated to another alignment or abandoned per the affected utility company's preference. All relocated utilities shall be relocated at the sole costs of Owner.

17.2 Nonconforming Uses. All nonconforming uses, including, but not limited to agricultural uses, that currently exist on the Property as of the time of execution of this Agreement, shall be allowed to continue and shall be allowed to expand within the Property.

17.3 No Obligation to Develop all Phases. Nothing in this Agreement is intended to require Owner to develop or construct all of the Phases in the Property. In no event shall any failure of Owner to so proceed with the development or construction of any undeveloped Phase give rise to any liability, claim, damages, or cause of action against Owner or result in any loss or diminution of the development rights established by this Agreement (including, but not limited to, the right to develop any other Phase or Phases as provided in this Agreement).

17.4 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations, and understanding of the parties, oral or written, are hereby superseded and merged herein.

17.5 Amendment. No change or addition is to be made to this Agreement except by a written amendment executed by the Owner and the City. Within ten (10) days after any amendment to this Agreement has been executed, such amendment shall be recorded in the official records of Pinal County, Arizona.

17.6 Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the City or the Owner of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

17.7 Future Effect. Time is of the essence of this Agreement. All of the provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the parties hereof including, without limitation, to third party builders; provided, however, the Owner's rights and obligations hereunder may only be assigned to a person or entity that has acquired the Property or a portion thereof and only by a written instrument, recorded in the Official Records of Pinal County, Arizona, expressly assigning such rights and obligations. Notwithstanding the

foregoing, the City agrees that the ongoing ownership, operation and maintenance obligations provided by this Agreement may be assigned to one or more property owners associations to be established by the Owner. The Owner agrees to provide the City with written notice of any assignment of the Owner's rights or obligations within 15 days after such assignment. In the event of a complete assignment by Owner of all rights and obligations of Owner hereunder, Owner's liability hereunder shall terminate effective upon the assumption by Owner's assignee. Nothing in this Agreement shall operate to restrict the Owner's ability to assign any of its rights and obligations under this Agreement to those entities that acquire any portion of the Property.

17.8 Names and Plans. The Owner shall be the sole owner of all names, plans, drawings, specifications, ideas, programs, designs and work products of every nature at any time developed, formulated or prepared by or at the instance of the Owner in connection with the Property; provided, however, that in connection with any conveyance of portions of the Property to the City such rights pertaining to the portions of the Property so conveyed shall be assigned, to the extent that such rights are assignable to the City.

17.9 No Owner Representations. Nothing contained herein shall be deemed to obligate the Owner to complete any part or all of the development of the Property.

17.10 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. If any applicable law or court of competent jurisdiction prohibits or excuses the City from undertaking any contractual commitment to perform any act hereunder, this Agreement shall remain in full force and effect, but the provision requiring such action shall be deemed to permit the City to take such action at its discretion, if such a construction is permitted by law.

17.11 Governing Law. This Agreement is entered into in Arizona and shall be construed and interpreted under the laws of Arizona.

17.12 Choice of Forum. Notwithstanding A.R.S. § 12-408, any suit or action brought under this Agreement shall be commenced in Superior Court of the State of Arizona in and for the County of Pinal and may be removed therefrom only upon the mutual agreement of the City and Owner.

17.13 Recordation. This Agreement shall be recorded in its entirety in the official records of Pinal County, Arizona, not later than ten (10) days after this Agreement is executed by the City and the Owner.

17.14 Effective Date and Term. This Agreement shall become effective and shall be binding upon and enforceable by all parties hereto, their successors and assigns, immediately upon the approval by the City Council of this document. The term of this Agreement shall be for a period of the earlier of: (i) complete build-out of the Property, (ii) mutual termination by the parties, or (iii) twenty (20) years from the date of recordation of this Agreement.

17.15 Attorneys' Fees. If any legal proceeding is initiated by any party hereto (or their successor(s)) with respect to this Agreement, the prevailing party shall be entitled to recover, in

addition to any other relief to which it is entitled, its costs and expenses incurred in connection with such legal proceeding, including, without limitation, its reasonable attorneys fees.

17.16 Limitation of Damages on Taxpayer Initiatives. Only to the extent that the City is enacting a land use law as defined by A.R.S. § 12-1136(3) by its adoption of this Agreement, the Owner waives its rights (as well as its successors' rights) to claim just compensation, as defined by A.R.S. § 12-1136(2), for any diminution of value pursuant to A.R.S. § 12-1134 (Proposition 207).

17.17 Disclaimer of Additional Utilities Installation. Nothing in this Agreement shall constitute or imply a promise by Owner to install, construct or deliver electrical, fiber optic, cable or other such utilities on or to the Property or any adjacent parcels.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates written below:

[Signatures on Following Page]

IN WITNESS WHEREOF, the City and Owner have executed this Development Agreement to be effective as of the Effective Date first set forth hereinabove.

CITY OF ELOY, a municipal corporation, State of Arizona

By: [Signature]

Name: Byron Jackson

Title: Mayor

City Clerk:

[Signature]

City Attorney:

[Signature]

Approved as to Form

OWNER:

BRALU, LLC, an Arizona limited liability company

By: William S Lund

Name: William S Lund

Title: Manager

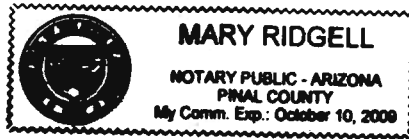
STATE OF ARIZONA)
)
County of Pinal)

The foregoing instrument was acknowledged before me this 26th day of February, 2007, by William S. Land the Owner of BRALU, L.L.C., an Arizona limited liability company, on behalf of the limited liability company.

Mary Ridgell
Notary Public

My Commission Expires:

10/10/09



LIST OF EXHIBITS

Exhibit A – Legal Description of the Property

Exhibit B – Site Plan

Exhibit C – Staff Report

Exhibit D – Arbitration Guidelines

Exhibit A
(Legal Description of the Property)

Subject property is located at the northeast corner of Sunshine Boulevard and Interstate 10 (I-10) (Assessor's Parcel Numbers: 411-10-015A, -015B, -016, -017, -020C, -022G, -023E, -023F, and 411-17-006) in portions of Section 8 and Section 17, T8S, R8E of the G&SRB&M, Pinal County, Arizona.

[INSERT FORMAL LEGAL DESCRIPTION]

**Legal Description
Remainder Parcels
Sunshine Boulevard & I-10**

Job No. 06-031

Revised: January 17, 2007

August 10, 2006

August 9, 2006

July 26, 2006

July 5, 2006

Remainder Parcel 1:

A portion of Section 8 and the Northeast Quarter of Section 17, Township 8 South, Range 8 East, of the Gila and Salt River Meridian, Pinal County, Arizona, being more particularly described as follows:

COMMENCING at a $\frac{3}{4}$ " pipe at the southeast corner of said Section 8, from which a $\frac{3}{4}$ " pipe at the south quarter corner of said Section 8 bears N89°46'45"W (an assumed bearing) at a distance of 2636.32 feet; thence S00°24'55"E, along the east line of the Northeast Quarter of Section 17, for a distance of 80.00 feet to the POINT OF BEGINNING;

Thence continuing S00°24'55"E, along said east line, for a distance of 1,180.19 feet to a point on the northeasterly line of the Interstate 10 right of way; thence N74°33'00"W, along said northeasterly line, for a distance of 2183.69 feet (2184.64 feet record) to a point on a non tangent curve, concave to the northeast, the center of which bears N15°26'50"E at a distance of 17,038.73 feet; thence northwesterly, along said northeasterly line and the arc of said curve, through a central angle of 06°52'22" for a distance of 2043.84 feet; thence N15°30'00"W (N16°18'47"W record), not tangent to said curve, along said northeasterly line, for a distance of 68.57 feet (69.56 feet record); thence N76°16'11"W, along said northeasterly line, for a distance of 162.81 feet; thence N64°07'58"W, along said northeasterly line, for a distance of 175.17 feet to the beginning of a curve, concave to the northeast, the center of which bears N25°52'01"E at a distance of 1177.86 feet; thence northwesterly, along said northeasterly line and the arc of said curve, through a central angle of 26°45'05" for a distance of 549.94 feet to a point of tangency; thence N37°22'54"W, along said northeasterly line, for a distance of 440.46 feet; thence N18°56'27"W, along said northeasterly line, for a distance of 230.92 feet; thence N89°30'00"E, leaving said northeasterly line of the Interstate 10 right of way, for a distance of 753.11 feet; thence N00°30'00"W, along a line parallel with the west line of the Southwest Quarter of said Section 8, for a distance of 1045.21 feet; thence S89°30'00"W for a distance of 858.11 feet to a point on the east line of the west 50.00 feet of the Southwest Quarter of said Section 8; Thence N00°30'00"W, along said east line, for a distance of 514.51 feet to a point on the east-west midsection line of said Section 8; thence N00°29'38"W, along the east line of the west 50.00 feet of the Northwest Quarter of said Section 8, for a distance of 96.11 feet; thence N89°46'44"E for a distance of 350.00 feet; thence N88°05'27"E for a distance of 246.49 feet to the beginning of a curve, concave to the south, the center of which bears S05°46'24"W at a distance of 1,160.00 feet; thence easterly, along the arc of said curve, through a central angle of 30°33'03" for a distance of 618.52 feet to a point of tangency; thence S53°40'34"E for a distance of 2,739.64 feet to a point on a non-tangent curve, concave to the southwest, the center of which bears S36°19'26"W at a distance of 25.00 feet; thence southeasterly, along the arc of said curve, through a central angle of 51°45'12" for a distance of 22.58 feet to the beginning of a reverse curve, concave

to the northeast, the center of which bears N88°04'38"E at a distance of 80.00 feet; thence southeasterly along the arc of said curve, through a central angle of 103°30'24" for a distance of 144.52 feet to the beginning of a reverse curve, concave to the south, the center of which bears S15°25'46"E at a distance of 25.00 feet; thence easterly along the arc of said curve, through a central angle of 51°45'12" for a distance of 22.58 feet to a point of tangency; thence S53°40'34"E for a distance of 1,210.52 feet to the beginning of a curve, concave to the north, the center of which bears N36°19'26"E at a distance of 840.00 feet; thence easterly, along the arc of said curve, through a central angle of 36°06'12" for a distance of 529.30 feet to a point of tangency on the south line of the north 80.00 feet of the Northeast Quarter of said Section 17; thence S89°46'45"E, along said south line, for a distance of 270.29 feet to the POINT OF BEGINNING.

Remainder Parcel 2:

A portion of the North Half of Section 8, Township 8 South, Range 8 East, of the Gila and Salt River Meridian, Pinal County, Arizona, being more particularly described as follows:

COMMENCING at a 3/4" pipe at the southeast corner of said Section 8, from which a 3/4" pipe at the south quarter corner of said Section 8 bears N89°46'45"W (an assumed bearing) at a distance of 2636.32 feet; thence N00°13'36"W, along the east line of the Southeast Quarter of said Section 8, for a distance of 1301.21 feet to a point on the southerly line of the Union Pacific Railroad right of way; thence N53°40'34"W, along said southerly line, for a distance of 2900.00 feet; thence S36°19'26"W, leaving said southerly line, for a distance of 150.00 feet to the POINT OF BEGINNING;

Thence continuing S36°19'26"W for a distance of 1,200.00 feet; thence N53°40'34"W for a distance of 1,107.19 feet to the beginning of a curve, concave to the south, the center of which bears S36°19'26"W at a distance of 1,240.00 feet; thence westerly, along the arc of said curve, through a central angle of 34°24'53" for a distance of 744.81 feet to a point of tangency; thence S88°05'27"W for a distance of 170.70 feet; thence S89°46'44"W for a distance of 33.00 feet to a point on the east line of the west 367.00 feet of the Northwest Quarter of said Section 8; thence N00°29'38"W for a distance of 1,915.16 feet to a point on a line parallel with and 150 feet southwest of the southwesterly line of the Union Pacific Railroad right of way; thence S53°40'34"E, along said southwesterly line, for a distance of 3,123.05 feet to the POINT OF BEGINNING.

The above described parcels contain an area of 12,069,875 square feet or 277.0862 acres, more or less.

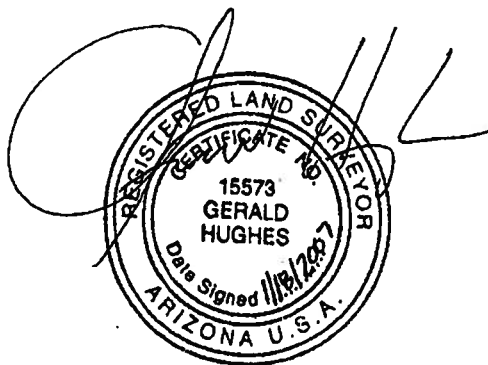


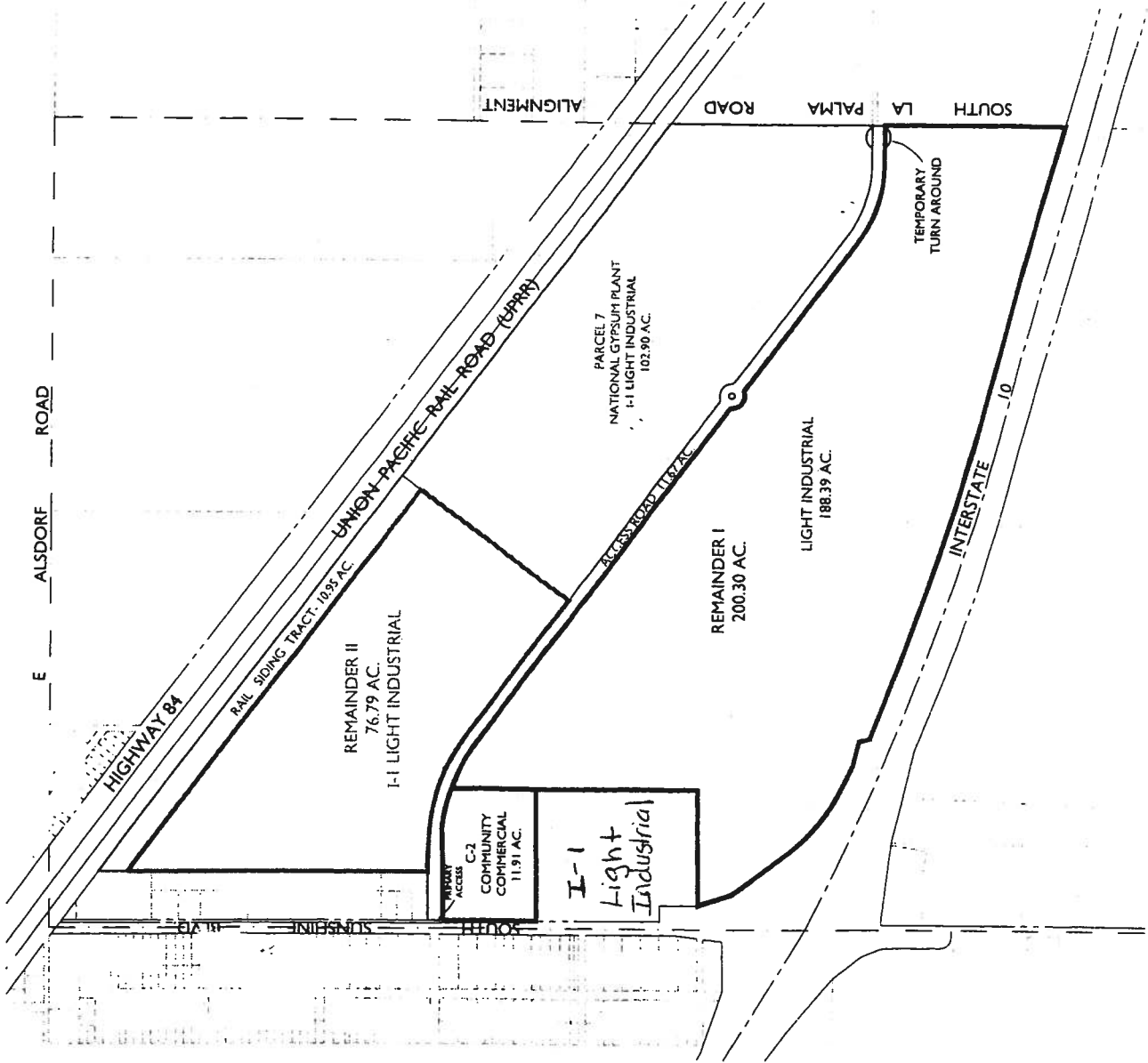
Exhibit B
(Site Plan)

[INSERT COPY OF SITE PLAN]

ZONING EXHIBIT FOR

SUNSHINE BOULEVARD AND INTERSTATE 10

A portion of Section 8 & Section 17, T. 8 S., R. 8 E., of the Gila and Salt River Meridian, Pinal County, Arizona



OWNER
BRALLI LLC
7005 NORTH 48TH PLACE
PARADISE VALLEY, AZ 85353
TEL (480)-607-3443
FAX (480)-607-0945

DEVELOPER
STIRLING LLC
7005 NORTH 48TH PLACE
PARADISE VALLEY, AZ 85353
TEL (480)-607-3443
FAX (480)-607-0945

DEVELOPMENT DATA

EXISTING ZONING	RI-43 (ESTATE DENSITY RESIDENTIAL)
PROPOSED ZONING	I-1 (LIGHT INDUSTRIAL)
	C-2 (COMMUNITY COMMERCIAL)
REMAINDER I	
COMMUNITY COMMERCIAL	11.91 AC
LIGHT INDUSTRIAL	188.39 AC
REMAINDER II	
LIGHT INDUSTRIAL	76.79 AC
TOTAL	277.09 AC



EPS JOB NO. 06-0312
FEBRUARY 21, 2007

Exhibit C
(Staff Report)

REPORT TO THE CITY OF ELOY PLANNING AND ZONING COMMISSION
AND
MAYOR AND CITY COUNCIL

Prepared by the Community Development Department

Joe Blanton, Interim City Manager/Community Development Director

Belinda Cota, Planner I

APPLICATION #: RZ06-95

(Rezoning – Stirling LLC)

Planning & Zoning Commission Hearing Date:

December 13, 2006

City Council Meeting Date:

February 26 2007

REQUEST:

Application by EPS Group, Inc. on behalf of Bralu, LLC to rezone approximately 277.32 acres, known as “Stirling,” from R1-43 (Estate Density Residential) to 12.08 acres of C-2 (Community Commercial) and 265.24 acres of I-1 (Light Industrial).

SITE LOCATION:

Subject property is located at the northeast corner of Sunshine Boulevard and Interstate 10 (I-10) (Assessor’s Parcel Numbers: 411-10-015A, -015B, -016, -017, -020C, -022G, -023E, -023F, and 411-17-006) in portions of Section 8 and Section 17, T8S, R8E of the G&SRB&M, Pinal County, Arizona.

SITE SIZE:

Subject request consists of approximately **277.32 acres**.

CONFORMANCE TO
ADOPTED GENERAL PLAN:

If approved, this rezoning request would be in conformance with the Eloy General Plan, *Land Use Plan*, which designates the area as Community Commercial and Light Industrial.

COMPLETENESS OF APPLICATION:

- Application/Fees
- Narrative
- Traffic Impact Analysis

ADMINISTRATOR RECOMMENDATION:

Approve subject to stipulations listed under "Recommendation."

EXISTING AND SURROUNDING ZONING:

1. ON-SITE: R1-43 (Estate Density Residential)
NORTH: Beyond the Union Pacific Rail Road, R1-6 (Medium Density Residential) and C-1 (Neighborhood Commercial), with a Planned Area Development Overlay ("La Palma Ranch")
- SOUTH: Beyond Interstate 10, C-2 (Community Commercial), R1-43 (Estate Density Residential) and a Planned Area Development ("Rancho Del Sol Brillante")
- EAST: Beyond La Palma Road, unincorporated Pinal County
- WEST: Beyond Sunshine Boulevard, C-1 (Neighborhood Commercial) and I-1 (Light Industrial)

EXISTING AND SURROUNDING LAND USE:

2. ON-SITE: Agricultural and vacant undeveloped desert land
NORTH: Beyond the Union Pacific Rail Road, commercial businesses, single-family residences and undeveloped desert land
- SOUTH: Beyond Interstate 10, commercial (Flying J Travel Plaza), agricultural and vacant undeveloped land
- EAST: Beyond La Palma Road, agriculture
- WEST: Beyond Sunshine Boulevard, commercial businesses and single family residences

ADJACENT ROAD STATUS:

3. **SUNSHINE BOULEVARD:** Currently, Sunshine Boulevard exists as a two-lane paved road (with no curb, gutters or sidewalks) to the west of the subject property. However, this road is designated as an arterial roadway in the Eloy General Plan. The primary purpose of an arterial is to provide a high level of mobility

for traffic moving through and within the community. Arterials are typically spaced at one-mile or greater intervals, have four to six lanes, and a raised or striped median.

4. LA PALMA ROAD:

Currently, La Palma Road exists as an unimproved dirt road along the east side of the subject property. However, it is designated as an arterial road in the Eloy General Plan.

EXISTING UTILITIES:

5. **WATER:** The City of Eloy will be the water provider once the developer constructs the necessary improvements.
6. **SEWER:** The City of Eloy will be the wastewater provider once the developer constructs the necessary improvements. [Note: Property may be subject to an existing "payback agreement;" validity of the agreement and/or obligations of the property owner are being researched by legal counsel].
7. **POLICE:** The City of Eloy police station is currently located at 630 N. Main Street, which is approximately 2 miles from the subject property.
8. **FIRE:** The Eloy Fire District has a fire station located at 500 S. Sunshine Boulevard, which is west of the subject property, at the southwest corner of Sunshine Boulevard and Date Street.

CONFORMANCE TO ADOPTED LAND USE PLANS:

9. The Eloy General Plan Land Use Plan identifies the subject area as Community Commercial and Light Industrial. This request (Application No.: RZ06-95) to rezone from R1-43 to C-2 (Community Commercial) and I-1 (Light Industrial) is in conformance with the Eloy General Plan.

AREA LAND USE ANALYSIS:

10. The site is designated on the Eloy General Plan Land Use Plan as Community Commercial and Light Industrial and it is currently zoned R1-43 and consists of agricultural and vacant undeveloped desert land.
11. The property to the north beyond subject property is designated on the Eloy General Plan Land Use Plan as Light Industrial and is currently zoned R1-43 and consists of vacant undeveloped desert land where the proposed "National Gypsum Company Plant" would be located.
12. The property to the south, beyond Interstate 10, is designated on the Eloy General Plan Land Use Plan as Estate Density Residential, Medium Density Residential, Community Commercial and Parks/Open Space and consists of the Flying J Travel Plaza, agricultural and vacant undeveloped desert land.
13. The property to the east, beyond La Palma Road, is in an unincorporated area of Pinal County and consists of agricultural land.

14. The property to the west, beyond Sunshine Boulevard, is designated on the Eloy General Plan Land Use Plan as Medium Density Residential and Community Commercial and is currently zoned Neighborhood Commercial, Community Commercial and Light Industrial and consists of commercial businesses and single-family homes.

FINDINGS:

15. Notification of the December 13, 2006 public hearing required for this proposed Rezoning has been completed in accordance to the notice requirements set forth in the Eloy Zoning Ordinance.
16. This request (Case No.: RZ06-95) proposes to rezone approximately 277.32 acres located at the northeast corner of Sunshine Boulevard and I-10 from R1-43 (Estate Density Residential) to C-2 (Community Commercial) and I-1 (Light Industrial).
17. Stirling LLC would be the principal developer for this portion of the property, which has been involved in projects around the Phoenix area. Notable projects completed by Stirling include: Spectrum, a 1,400-acre development project within the Town of Gilbert that includes *Main Street Commons*, a mixed-use project with preliminary plans calling for 540,000 square feet of upscale retail along with office, hotel and residential components; *Mercy Gilbert Medical Center*, a 200-bed hospital (the city's first) and 325,000 square feet of adjoining medical office space; *The Santan MotorPlex* (proposed) will house more automobiles than any other dealer site in the Valley and will become one of the largest in the country -- uniquely designed and situated on 130 acres, The Santan MotorPlex will have 15 national automakers; and the Chandler Business Park, which is a 255-acre parcel comprising of two business parks at the southwest corner of Germann and Cooper Roads in Chandler, Arizona.
18. The subject property is within the Eloy Fire District service area.
19. The proposed rezoning will be in conformance with the Eloy General Plan Land Use Plan.
20. The proposed rezoning will not adversely affect the public's health, safety, or welfare.

RECOMMENDATION:

(RZ06-95 -- Stirling LLC)

The subject request is in conformance with the Eloy General Plan Land Use Plan. Approval of this request (RZ06-95) will not have an adverse affect on the neighborhood, area, or community-at-large. The Planning and Zoning Commission **recommends** that this request for a Rezoning from R1-43 to C-2 and I-1 be **approved** subject to the following stipulations:

1. That the developer shall work in good faith with the Arizona Department of Transportation (ADOT) to mitigate traffic impacts to the Sunshine Boulevard and Interstate 10 Traffic Interchange and all affected State highways;
2. That all future development of the sites shall undergo subsequent Site Plan and/or subdivision review and approval;

3. That compliance with the Community Commercial and the Light Industrial Design Guidelines and Standards of the Eloy Zoning Ordinance and/or the Eloy Subdivision Ordinance, as may be amended from time to time, shall be required;
4. That any major changes or modifications to the “Stirling” rezoning request shall be reviewed and processed in accordance with those procedures outlined for rezoning in Chapter 3 of the Eloy Zoning Ordinance. The City Manager, or designee, may administratively approve minor changes and will determine the difference between major and minor changes;
5. That the Traffic Impact Analysis submitted to the city shall be reviewed and approved by the City Engineer prior to any further approvals affecting the subject property; and
6. That the property owner shall extinguish all grandfathered groundwater rights and transfer to the city all assured water supply credits that may be issued by the ADWR pursuant to the Development Agreement by and between the City of Eloy and Bralu, LLC.

Exhibit D
(Arbitration Guidelines)

DISPUTE RESOLUTION/REMEDIES

- A. The dispute resolution process (the "Process") and remedies set forth herein shall not apply to an action by the Town to condemn or acquire by inverse condemnation all or any portion of the Property, and in the event of any such action by the Town, Owner shall have all rights and remedies available to it at law or in equity.
- B. If an event of default is not cured within the 30 days notice, the non-defaulting party may institute the Process, pursuant to Paragraph C below.
- C. Any controversy or claim subject to the Process shall be settled by an arbitration administered by the American Arbitration Association (the "AAA") in accordance with its Commercial Arbitration Rules (the "Rules") (except that the terms of this Agreement and this Exhibit shall control over conflicting rules), and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.
- D. The dispute shall be heard by a single arbitrator from a panel of qualified arbitrators located within the Phoenix metropolitan area.
- E. The place of arbitration shall be Eloy, Arizona unless the parties agree to another location.
- F. The parties agree that the remedies available for the award by the arbitrator shall be limited to specific performance and declaratory relief and that under no circumstances shall the arbitrator issue an award of monetary damages, whether characterized as actual, consequential or otherwise, provided, however, the arbitrator may award the payment of an amount owed, or enjoin the withholding of amounts due pursuant to this Agreement.
- G. The parties have structured this Process with the goal of providing for the prompt and efficient resolution of all disputes falling within the purview of this Process. The hearing of any dispute shall be expedited and will commence as soon as practicable, but no later than forty-five (45) days after selection of the arbitrator. This deadline can be extended only with the consent of both parties to the dispute, or by decision of the arbitrator upon a showing of emergency circumstances.
- H. The arbitrator shall determine the nature and scope of discovery, if any, and the manner of presentation of relevant evidence consistent with the deadlines provided herein, and the parties' objective that the disputes be resolved in a prompt and efficient manner. No discovery may be had of privileged materials or information. The arbitrator, upon proper application, shall issue such orders as may be necessary and permissible under law to protect confidential, proprietary, or sensitive materials or information from public disclosure or other misuse.
- I. In order to effectuate the parties' goals, the hearing, once commenced, will proceed from business day to business day until concluded, absent a showing of good cause.

J. The arbitrator shall, within thirty (30) days from the conclusion of the hearing, issue the award.

K. The arbitrator may determine how the costs and expenses of the arbitration shall be allocated between the parties, and may award attorneys' fees to either party.

L. The award of the arbitrator shall be accompanied by a reasoned opinion.

M. The award of the arbitrator shall be final and binding. Except as otherwise provided in this Agreement, this Exhibit and the Commercial Arbitration Rules of the AAA, the Process shall be subject to the provisions of the Arizona Arbitration Act (A.R.S. § 12-1501-1518). In the event a party seeks confirmation of an award, or if there is a failure to abide by any award, either party may seek any remedy at law or equity for failure to comply with the award, but in no event shall the award be reviewed de novo or consequential monetary damages be ordered by the court.