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**DEVELOPMENT AGREEMENT**

**FOR**

**FAIRWAY PEAKS**

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## EXHIBITS

Exhibit "A"	Legal Description of Property
Exhibit "B"	Concept Plan
Exhibit "C"	USDA Forest Service Decision of No Significant Impact
Exhibit "D"	Reclaimed Wastewater Agreement
Exhibit "E"	Location of Proposed Regional Park
Exhibit "F"	Developer's Affordable Prices
Exhibit "G"	Affordable Housing Reference Schedules
Exhibit "H"	Legal Description of Affordable Property
Exhibit "I"	Avigation Easement Agreement
Exhibit "J"	Conceptual Development Phasing Schedule



## DEVELOPMENT AGREEMENT

~~July~~<sup>September</sup> This Development Agreement (the "Agreement") is made as of the 5<sup>th</sup> day of ~~July~~, 2000, by and between the CITY OF FLAGSTAFF, an Arizona municipal corporation organized and existing under the laws of the State of Arizona, (the "City") and VANDERBILT FARMS, L.L.C., an Arizona limited liability company and/or nominee, (the "Developer"), and SAN FRANCISCO PEAKS ASSOCIATES, LP., an Arizona limited partnership, the owner of that certain portion of the property depicted on **Exhibit H** attached hereto (the "Owner").

### RECITALS

A. The Developer is the owner of certain real property located within the incorporated boundaries of Flagstaff. This real property is depicted and legally described in **Exhibit A**, a copy of which is attached hereto and incorporated herein by reference.

B. Owner is the current owner of certain real property located within the incorporated boundaries of Flagstaff. This real property is depicted and legally described in **Exhibit H**, a copy of which is attached hereto and incorporated herein by reference. The Owner and Developer have entered into an agreement whereby the Developer will purchase the Owner's property. For purposes of this Agreement, the property described in Recitals A and B shall be collectively referred to as the "Property".

C. Developer and Owner agree that Owner will be bound by the terms and conditions of the Development Agreement, the Avigation Easement Agreement (**Exhibit D**), and the Reclaimed Wastewater Agreement (**Exhibit D**), even though Owner is not a signatory to the Avigation Easement Agreement or the Reclaimed Wastewater Agreement, for as long as Owner retains title to that portion of the Property which it currently owns (**Exhibit H**). Once the Owner conveys its portion of the Property (**Exhibit H**) and title is transferred to the Developer, Owner will have no further involvement or obligation, legal or otherwise, pursuant to this Development Agreement, the Avigation Easement Agreement, or the Reclaimed Wastewater Agreement.

D. It is the desire and intention of the Developer to develop the Property subject to the planning and regulation of the City pursuant to all applicable laws, regulations, ordinances and resolutions described herein and pursuant to this Agreement (the "Project").

E. The Developer and the City desire to enter into this Agreement in order to, among other things, facilitate development of the Property by providing for and establishing the community character of the Property, the type of land uses and the location, density, and intensity of such land uses, site and architectural design, and other matters relating to the development of the Property as depicted in the concept plan (the "Concept Plan") for Fairway Peaks as may be approved by the City's Planning and Zoning Commission and the City Council. A copy of the Concept Plan is attached hereto as **Exhibit B**.



F. The Developer and the City acknowledge that the ultimate development of the Property within and as an integral part of the City is a project of significance that the Developer desires assurances from the City of the City's willingness to proceed with a rezoning request for the Property.

G. The City believes that the development of the Property pursuant to this Agreement will be beneficial to the City. The Developer believes that the development of the Property pursuant to this Agreement is beneficial and advantageous to the Developer.

H. The Developer and the City understand and acknowledge that this Agreement is a "Development Agreement" within the meaning of, and entered into pursuant to the terms of Arizona Revised Statutes Sec. 9-500.05 (pertaining to development agreements) to establish the terms, conditions, and requirements for the development of the Property.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual promises and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto state, confirm and agree as follows:

## AGREEMENT

**I. Implementation of Concept Plan through Rezoning.** The Developer will submit an application to rezone the Property in accordance with the Concept Plan as attached per **Exhibit B**. The rezoning is intended to implement and facilitate the development proposal of the Property described in the Concept Plan. The parties hereto acknowledge that certain stipulations (the "Stipulations") are likely to be required in connection with the rezoning. The purpose of the Stipulations is to provide for, among other things, adequate access and circulation, drainage, wastewater and water infrastructure facilities, resource protection, density, affordable housing, active and passive recreation, pedestrian circulation, as well as other factors required by the City's policies, codes and ordinances. In the event a conflict exists between the language set forth in one or more of the Stipulations and the terms of this Agreement, the terms of this Agreement shall govern. The City agrees to process said application to rezone the Property and, subject to the outcome of the rezoning hearings as required by A.R.S. Sec. 9-462.04, will assist the Developer in meeting the necessary requirements to implement the Concept Plan. In the event that the City approves the application to rezone the Property, and upon receipt of site, engineering and building, and safety plans for the Property (the "Plans"), the City agrees to process the Plans in accordance with Arizona law and all City codes and ordinances. In the event the City rezones the Property and the Developer either fails to obtain a site plan, final plat or grading permit within two (2) years from the effective date of the rezoning ordinance or fails to obtain an extension from the two (2) year deadline from the Planning and Zoning Commission, the City Council, after notification by certified mail to the owner and applicant who requested the rezoning, shall schedule a public hearing to take administrative action to extend, remove



or determine compliance with the schedule for development or take legislative action to cause the Property to revert to its former zoning classification. Upon the City Council's approval of the zoning reversion, this Agreement shall automatically become null and void and neither party shall have any further obligation to the other hereunder. Notwithstanding the foregoing, the City and Developer agree that Developer may apply for an extension of such two-year period by providing to the City and the Planning and Zoning Commission a request for extension, along with a progress report and revised schedule of development, within sixty (60) days prior to the expiration of the such two-year period.

2. **Conditions of Development.** In the event the City approves the rezoning contemplated in Section 1 of this Agreement, the City's Community Development Department shall place a notation on the official zoning maps for the Property to reflect the zoning district classification and boundaries approved in the rezoning. These maps may include appropriate indications that said zoning district is conditional and that the district will not be vested on the zoning map until the Stipulations for the development of the Property or portions thereof are satisfied, as provided for herein. The satisfaction of the Stipulations for a portion or portions of the Property shall not entitle the Developer to develop any other portion of the Property for which the requirements of the Stipulations have not been met.

3. **Site Layout and Design Considerations.** The City acknowledges that the Concept Plan inclusive of the provisions contained herein with associated elevations meet the following site layout and design considerations.

(a) The Concept Plan will reflect and be accompanied by a Development Master Plan for the area around the Property which will, among other items, address development potential of parcels around the Property, provisions for access to allow the orderly development of those parcels, and infrastructure master planning for utility service and transportation for the area.

(b) The Concept Plan shall follow all applicable City ordinances, rules, guidelines and official policies, and meet the requirements of this Agreement and the Stipulations;

(c) Site design will be derived from an analysis of existing resources and constraints on the site, including slopes and forested areas. Development on the site shall be designed to work with and minimize disruption to resources, and be considerate of higher quality forest resources;

(d) Street width for private internal streets will be determined based on function and anticipated traffic volumes, but in all cases should be reduced to the greatest extent possible. Street sections should incorporate the concept of "shared" street space for travel, parking, bike lanes, and other transportation purposes insofar as this is consistent with safe operation;



(e) The development of the multi-family dwelling units (condominiums) and affordable housing units shall conform substantially to the individual conceptual site plans and elevations that were reviewed and approved by the City Council, and which are filed within the Community Development Department.

4. **Modifications of Development Standards.** Development of the Property shall be governed by the City's ordinances, rules, guidelines and official policies controlling permitted uses of the Property, the density and intensity of uses, the maximum height and size of the buildings within the Property, as well as the standards for off-site and on-site public improvements in existence as of the effective date of this Agreement; provided, however, that Developer obtains construction permits for one or more components of the Project within three (3) years following the effective date of this Agreement. If Developer fails to obtain final plat approval on the first phase within this three (3) year period, then development of the Project shall be subject to the City's ordinances, rules, guidelines, and official policies in effect at the time Developer applies for construction permits for the Project.

The parties acknowledge that the terms of this Agreement in no way limit the City's authority to apply development impact fees at such later date such impact fees are adopted and applicable. Such future fees will not be due by Developer until three (3) years after the date of this Agreement. The City will credit the Developer's verifiable costs of all infrastructure and capital improvements required by the City to offset impacts to the community against any future impact fees assessed to the Developer for like kind infrastructure and capital improvements. The City also retains the authority to administer design review as may be adopted as a City-wide process in the future if the Developer proposes changes to the building elevations as proposed in this Agreement.

5. **Changes to the Rezoning.** For the term of this Agreement, the City shall not initiate any changes or modifications to the zoning districts that may be approved for the Property pursuant to this Agreement, except at the request of the Developer of that portion of the Property for which such zoning change is sought or as otherwise allowed pursuant to Section 1.

6. **Guiding Principals.** Because of the physical characteristics of the Property, as well as the special circumstances giving rise to this Agreement, the parties acknowledge that development activities for the Property may extend over several years. Conceivably, many of the requirements and procedures provided for in this Agreement (and in the Stipulations) contemplate that use of the Property in the future may be subject to procedures, requirements, regulations and ordinances not presently in effect, as well as actions and decisions by City staff and officials which cannot be provided for with particularity at the time the Agreement was executed. As such, the parties agree that they will act in good faith and with reasonableness in implementing, operating under, and exercising the rights, powers, privileges and benefits conferred or reserved by this Agreement or by law.



7. **Project Description.** The Project contemplated by this Agreement and as illustrated in the Concept Plan shall consist of residential development of no more than 1,170 dwelling units, consisting of 210 multi-family units; a minimum of 125 affordable housing units, 311 estate townhouses, and 524 estate home sites; approximately 23,550 square feet of private club house and recreational facilities; two acres of land dedicated for parking and a staging area for the FUTS; approximately 12,000 square feet in buildings used for maintenance and storage facilities; approximately 220 acres to an 18-hole private golf course with accessory facilities; all located on approximately 660 acres.

8. **Golf Course, Club House, and Practice Area.** An 18-hole golf course is to be constructed. The golf course and practice area will be designed and constructed in areas where there are no trees or where trees have been previously cleared and in some areas that will require tree removal, with homes and other structures to be built in the forested areas surrounding the golf course. Water for both the golf course and practice area will be through the use of reclaimed water, with all reclaimed water to be connected to lakes on the property for onsite storage. The reclaimed water line, more specifically described herein, shall include a pedestrian easement, which pedestrian easement will be obtained through the joint efforts of both the Developer and the City. The club house anticipated to be constructed will contain, at a minimum, a dining room, cocktail lounge, pro shop, equipment rental, office space for administrative personnel, locker rooms, and golf cart storage.

9. **Construction of Public and Other Related Improvements; Dedication of Public Rights-of-way and Easements.** Prior to final plat approval for any component of the Project, Developer shall provide security in a form satisfactory to the City as set forth in the City's Public Improvements Ordinance that public and other related improvements will be constructed in accordance with approved plans. Developer shall at its expense, construct or cause to be constructed all public improvements as required by the City's code or ordinances and in accordance with approved specifications. Following construction of the described public improvements and dedication of same to the City, the City shall assume, at its expense, the maintenance and repairs of all public improvements in accordance with City policies.

Specifically, the scope and nature of the on-site and off-site rights-of-way and other infrastructure improvements to be constructed in connection with the Project are as follows:

(a) **Private Streets.** The Developer will install street improvements for each unit of the Project. All interior private streets and easements will be governed by the homeowners through a Homeowner's Association, which will assume the expense for any and all maintenance and repairs, including snow plowing and ice removal.



(b) **Public Roads.**

(1) Developer will provide a minimum five foot (5') parkway between the sidewalk/FUTS and the back of the curb on all public roads. The sidewalks and FUTS will be placed so that they meander.

(2) The typical section for John Wesley Powell Boulevard (hereinafter "JWP") from Lake Mary Road to the subdivision boundary will be a divided roadway (2-18' back-of-curb to edge of pavement sections) separated by a sixteen foot (16') median/twelve foot (12') turn lane. The north side of the roadway shall include a ten foot (10') paved FUTS. The Developer must also construct right and left turn lanes at intersections.

(3) The typical section of JWP through the Project subdivision must be a divided roadway (2-20' back-of-curb to back-of-curb sections [11' lane and 5' bike lane]) separated by a sixteen foot (16') median/twelve foot (12') turn lane. West of the Old Lone Tree Road the south side of the roadway must have a five foot (5') sidewalk, and the north side must have a ten foot (10') paved FUTS. East of the Old Lone Tree Road, the north side of the roadway must have a five foot (5') sidewalk, and the south side must have a ten foot (10') FUTS. A pedestrian underpass (14' x 9' minimum) must be constructed at the intersection of Lone Tree Road and JWP to connect to the FUTS, if this should be the best alternative determined by staff. The Developer must also construct right and left turn lanes at intersections.

(4) The typical section for the Old Lone Tree Road within the Project subdivision boundary will be a Type IV-A, thirty-seven foot (37') back-of-curb to back-of-curb (2-12.5' lanes with 2-4' bike lanes), five foot (5') sidewalk on the west side and a ten foot (10') paved FUTS on the east side.

(5) The typical section for Old Lone Tree Road outside the Project subdivision boundary will be thirty-two feet (32') wide from edge of pavement to edge of pavement (2-12.5' lanes with 2-4' bike lanes) and a ten foot (10') paved FUTS on the east side.

Landscaping for the medians will consist of small conifers and native greenery that is removed from the development site during construction, and specifically during construction of the proposed golf course. The City will supply water through the reclaimed water system as described herein. An easement across Forest Service land necessary for construction of JWP has been obtained as evidenced by the "Decision of Notice/Finding of no Significant Impact" issued by the Forest Service and attached hereto as **Exhibit C**. If the transplanted landscaping is not successful, the Developer will be required to landscape the medians to a 0.3 opacity, as defined in the Land Development Code.

(c) **Secondary Access.** The Developer will build a secondary access through the development as shown on the Concept Plan. Developer agrees that this



secondary access will be constructed pursuant to City of Flagstaff design specifications for such roadways. Developer agrees that it will not transport combustible materials into the Property until such time that a temporary secondary means of access is established to the Property and meets the following criteria.

(1) The temporary access (roadway) will meet minimum width standards of at least 20 feet.

(2) The temporary access (roadway) will be comprised of the necessary all-weather compaction and material to withstand the weight of a 67,000 pound fire truck.

(3) The temporary accesses will be provided pursuant to the City of Flagstaff Fire Department standards. All temporary accesses will remain temporary until improved as set forth herein.

(d) **Reclaimed Water System.** Developer shall, subject to the Reclaimed Wastewater Agreement with the City, a copy of which is attached to this Agreement as **Exhibit D**, extend a 16" main from the 20" main at the intersection of Woodland Drive and Lone Tree Road, south on Lone Tree Road to the proposed intersection of JWP. From this point a 12" main shall be extended to the main golf course lake and another 12" main shall be extended to the regional park site. The reclaimed water system shall conform to the Reclaimed Water Impact Analysis completed by the City of Flagstaff.

(e) **Water System.** The Developer shall extend a 20" water transmission main within the alignment of JWP from Lake Mary Road to the eastern boundary of Section 27, T21N, R7E. The Developer shall also realign the existing 27" transmission main within the Project subdivision boundary. The realigned segment of this main must be replaced with a 30" pipe running north along the western boundary line of Section 16 to JWP, then northeasterly within JWP to the point where the 27" main crosses the road. The Developer must connect to the 30" and 20" water mains with a 16" waterline, which loops internally through the Project and from which various 10" and 8" water lines branch off. The water system must conform to the Fairway Peaks Golf Course Community Water and Sewer Impact Analysis produced by the City's Utilities Department and bearing an engineering seal and date of January 29, 2000 ("Water Impact Analysis").

(f) **Waste Water Collection System.**

All on-site gravity wastewater system lines shall be constructed in accordance with the City of Flagstaff Engineering Standards. Upon completion of construction and approval by the City, the Developer shall dedicate the on-site gravity wastewater system lines to the City, and the City shall assume, at its expense, the maintenance and repairs thereof. The lift stations and all pressure sewer lines shall be the sole responsibility of the Developer and/or the Homeowners Association. The



wastewater system shall conform to the Wastewater Impact Analysis completed by the City.

(g) **Pneumatic System (Pressure Sewer System).**

The pneumatic system shall comply with the Sewer Impact Analysis.

(h) **FUTS Easement Dedication and Public Park Improvements.**

As part of the development of the Project Property and to facilitate the expansion of the Flagstaff Urban Trail System (referred to herein as "FUTS"), the Developer agrees to dedicate a sixteen foot (16') wide FUTS public pedestrian easement and construct the trail system in the configuration and dimensions as depicted in the Concept Plan prior to completion of Phase IV, the fourth phase of the subdivision. The FUTS easement and trail construction will be in accordance with existing guidelines currently in place. Developer will construct a solid fence and landscaped buffer to screen the FUTS from the maintenance facility. The path within the FUTS easement will be ten feet (10') wide. Furthermore, the Developer shall construct a paved FUTS staging area and parking lot containing a minimum of twelve parking spaces prior to completion of JWP along the frontage of the subject site in the location depicted in the Concept Plan.

(i) **Avigation Easement.** Developer acknowledges that the property is within the Pulliam Airport corridor for airplane flights. As such, Developer will grant an avigation easement over the entire project for use of the Airport for airplane travel in the form set forth in **Exhibit I** attached hereto

(j) **Ingress/Egress.** Ingress and egress to and from the Project must be designed to meet Fire Department standards as previously approved by the Fire Department.

(k) **Regional Park.** The Developer acknowledges that the proposed Regional Park, as shown on the City's master plan, will be affected by this Project. The Developer agrees to contribute the sum of \$285.00 per lot, parcel or dwelling unit (collectively "Lot") to be paid upon the sale of each Lot in the Project development, which sum shall constitute a lien against each respective Lot until paid, for a total of up to \$333,450.00, to the City of Flagstaff Parks and Recreation Division to be used for construction of the Regional Park as described on **Exhibit E**.

City and Developer further agree that as part of this Agreement, the funds paid to City by the Developer for construction of the Regional Park will be deposited into an interest bearing escrow account ("Escrow Account") by the Developer in accordance with established City procedures. The City shall withdraw funds, including principal and interest, from the Escrow Account, from time to time, as may be needed for construction of the Regional Park. The Developer shall bear the cost of any escrow fees with respect to the Escrow Account. Such funds, including all interest, shall be reimbursed to Developer from the Escrow Account if the Regional Park has not been constructed or scheduled for construction in a City 5-year capital improvement program by the City



within ten (10) years from the effective date of this Agreement. If for any reason the Regional Park is not constructed within five (5) years after being included in a City capital improvement program, and provided the ten (10) years as set forth above has expired, then and in that event all funds, including all interest, shall be reimbursed to Developer from the Escrow Account. Those funds will be designated as Developer's fair share contribution towards construction of the Regional Park.

(l) **Public Streets.** The Developer acknowledges that an essential nexus exists between the City's policy requiring development to pay for the costs or to construct improvements directly associated with the impact of the development on the City's street transportation system, and the City's need to maintain an acceptable level of service on its surface streets and at its intersections. Developer further acknowledges that a rough proportionality exists between the City's requirement for certain street and intersection improvements located downstream from the proposed development and the impact said development would have on those certain streets and intersections.

(m) **Lone Tree Interchange.** The Developer agrees to contribute the sum of \$1,855.55 per Lot to the City upon the sale of each Lot in the Project development, which sum shall constitute a lien against each respective Lot until paid, for a total of \$2,171,000.00, to be used for the construction of the Lone Tree/I-40 Interchange (the "Interchange"). The Developer will deposit the funds to be paid to the City by the Developer for construction of the Interchange into the interest bearing Escrow Account referenced above in Section 9(k). These funds will be designated as Developer's fair share contribution towards construction of the Interchange. As with the funds deposited by the Developer into the Escrow Account for the construction of the Regional Park, the City shall withdraw funds, including principal and interest, from the Escrow Account, from time to time, as may be needed for construction of the Interchange, or as the case may be, for construction of other impact mitigations described below in this Section 9(m).

The City and the Developer further agree that if the Interchange has neither been constructed by the Arizona Department of Transportation ("ADOT") nor approved through an ADOT Improvement Plan within fifteen (15) years from the effective date of this Agreement, the Developer shall be required, at its expense, to provide the City with a revised traffic impact analysis ("TIA") which addresses measurable impacts, if any, resulting from the Project development. The Developer's obligations to provide the revised TIA shall be required within six (6) months of the fifteenth (15th) year from the effective date of this Agreement. The above language notwithstanding, if at any time during said fifteen (15) year period the City determines that the Interchange will not likely be constructed, the City may require the Developer, at the Developer's expense, to provide the City with a revised TIA which addresses measurable impacts, if any, resulting from the Project development, other than impacts which would, otherwise, be addressed by construction of the Interchange. The City, in consultation with the Developer, shall determine the scope of the revised TIA and the measurable impacts, if any. Mitigation of all measurable impacts, if any, created by the Project development as a result of the failure of the Interchange to be constructed will be



calculated and be paid from the funds contributed to the City by Developer for construction of the Interchange and deposited by the Developer into the Escrow Account.

The City and the Developer further agree that if the Interchange has neither been constructed by ADOT nor approved through an ADOT Improvement Plan with fifteen (15) years from the effective date of this Agreement, and to the extent that any funds remain after mitigation of any other measurable impacts identified in the TIA, then and in that event, any remaining funds for construction of the Interchange, including interest, shall be reimbursed to the Developer from the Escrow Account.

(n) **Subdivision Trust.** In order to guarantee payment of Developer's fair share of costs to the Parks and Recreation Department for the Regional Park, and Developer's fair share contribution of the Lone Tree/I-40 Interchange, Developer will establish a Subdivision Trust with a title company of its choosing. Upon the sale and close of escrow of each lot within the development, the property will not be transferred to the buyer through the recording of a deed or otherwise until such time as all funds are paid to the appropriate department within the City of Flagstaff representing payment of Developer's fair share costs for the construction and improvements as set forth herein.

(o) **Development Schedule.**

The City and the Developer acknowledge that the Developer may take several years to complete development of the Project. As a result of the possible time frame and in order to provide the City with a conception of the phasing and timeline for development of the Project, the Developer has prepared a Conceptual Development Phasing Schedule ("Development Schedule"), attached hereto as **Exhibit J**. The Development Schedule sets forth a general tentative phasing schedule to be followed by the Developer in construction of the Project beginning with the year 2000 through 2005. The City and the Developer acknowledge that the Developer may wish to modify the Development Schedule in order to substitute certain on-site or off-site improvements from one phase to another, or to obtain extensions as a result of unforeseen events or acts of God, or other factors not under the control of the Developer. Upon the Developer's written request to the City, and review of the request by the City's Planning Director and City Engineer and their collective conclusion that such request will have no impact to the Project or the City's policies, requirements, regulations or ordinances, or to any other applicable local, state or federal law, the City will grant the Developer's request to modify the Development Schedule. However, notwithstanding the foregoing, nothing in this paragraph concerning the Development Schedule is intended to, or shall, modify any other time periods set forth in this Agreement pertaining to any obligation of the Developer.

(p) **Public Improvement Ordinance.** All provisions of the City's public improvements ordinance shall apply.



(q) **Water and Sewer.** Water and sewer mains and services within the Project shall be designed and installed per the City of Flagstaff's Engineering Design and Construction standards and Maricopa Association of Governments standards as modified by the City of Flagstaff. Following construction of the above described public improvements and dedication of same to the City, the City shall assume, at its expense, the maintenance and repairs of all public improvements.

(r) **One Year Warranty.** The Developer shall provide the City with a one year warranty on all public and related improvements after acceptance by the City.

**10. Resource and Floodplain Protection.** The Developer agrees to provide subregional on-site detention for the entire Project subdivision for the two through the one hundred year design storms. The subdivision design must consolidate the detention areas into a limited number of larger facilities. Detention facilities must be incorporated into the golf course design whenever physically possible and designed to preserve and use the natural topography. The design of the golf course will respect the natural features of the land, minimizing the need for earthmoving and reducing the need to mass clear vegetation. In this regard, the golf course has been planned from the initial stages of the Project to be sensitive to the wildlife habitat, wetland features, and natural drainage ways, and to incorporate them into the open space systems of the Project. Through these efforts, a physical framework has been established to protect and enhance existing habitats, and water resources. Through careful attention to grading, and the incorporation of adequate buffer zones, golf course drainage will be controlled and filtered to ensure the water quality of off-site drainage and ground water infiltration. These planning and design efforts in conjunction with proper management and monitoring techniques comprise the essence of Best Management Practices and will be utilized to ensure the long-term viability of the Project. The Developer and City agree that resource protection provisions as set forth in the City's Land Development Code are applicable to the entire Project. The application of said provisions and the resource calculations required to be performed by said provisions shall be applied to each phase of development as it is individually developed as opposed to the application of said provisions to the entire Project upon the development of the initial unit or component of the Project, with the exception of off-site improvements.

Additionally, and pursuant to the "Fuel Management Operational Procedures" dated June 1999, Developer has retained the services of a Professional Forester who is working with the City to perform and submit a forest stewardship plan on the site.

A proposal to address water quality and wildlife habitat issues, as well as the Best Management Practices Manual referenced above, will be submitted to the City for review prior to initial grading on the property.

**11. Affordable Housing.** The Developer is aware of the City of Flagstaff's affordable housing set-aside requirements upon a rezoning request for higher residential density. The project as described herein shall be constructed as a residential subdivision with up to 1,170 dwelling units with all required infrastructure improvements and homes



for sale to owner-occupants, and as such, falls within those affordable housing set-aside procedures. Each unit will be constructed to meet or exceed HUD guidelines. The Developer, desirous to offer Affordable Properties to the City of Flagstaff, agrees as follows:

(a) **Affordable Properties.** Developer agrees to construct or cause to be constructed a minimum of 125 homes (hereinafter referred to as "Affordable Properties"). The Affordable Properties will be constructed in substantial conformance to the Floor Plan and Elevations, with the minimum standards and amenities, as outlined in **Exhibit "F"** attached hereto.

(b) **Affordable Properties Price Schedule.** The Developer agrees to offer the prices ("Developer Prices") for the Affordable Housing Properties as outlined on **Exhibit F** attached hereto. The Developer Prices were negotiated between the City and the Developer based on the need to provide homes affordable to households within the City of Flagstaff meeting City "Target Incomes".

Developer Prices will remain constant, except Developer Prices will be adjusted annually on the anniversary date of the signing of this Agreement based on the then current Construction Cost Index as prepared by the Bureau of Labor Statistics.

(c) **Eligible Buyers.** The Affordable Properties shall be sold only to households having incomes not in excess of those indicated by the City's "Affordable Housing Reference Schedules", attached hereto as **Exhibit G**, referred to as "Eligible Buyer". The City's Affordable Housing Reference Schedules correlates prices to income based on first time homebuyer underwriting standards and the prevailing mortgage interest rate for a thirty (30) year mortgage. The income is represented as a percentage of the United States Department of Housing and Urban Development Area Median Income for Coconino County ("HUD AMI").

(d) **Certification of Eligible Buyers.** The Developer, or agency designated by the Developer, will certify the income of the Eligible Buyers in accordance with the income qualification rules of the Federal HOME program or other similar standards which take into account income, adjustments to family size, and assets. The Developer agrees to allow the City to audit Developer files to verify certifications on all Affordable Properties.

(e) **Affordable Property Location.** The Affordable Properties shall be located on that certain parcel of land as described on **Exhibit H** attached hereto.

(f) **Affordable Housing Restrictive Covenant.** Affordable Properties will be sold initially with a restrictive covenant approved by the City (the "Affordability Covenant"). The Affordability Covenant for Affordable Properties shall consist of a Right of First Refusal and a lien, as more fully set forth in subparagraphs (g) and (h) below.



(g) **Affordability Lien.** Developer will conduct an appraisal on the Affordable Properties at the time of sale. Should an appraised value of an Affordable Property exceed the Developer Price, as listed on **Exhibit F**, the Developer will record a lien on the Affordable Property for an amount equal to the difference between the appraised value and the Developer Price. Such lien will be assumed by the Eligible Buyer of the Affordable Property and will create an obligation to repay the City, or agency designated by the City. Developer agrees to submit any legal instruments related to long-term affordability to the City for review and approval before recording any such instrument.

The lien, described above, will be due and payable in one lump sum with no accrued interest upon sale, lease, refinancing, title change, or other transfer of the Affordable Property by the Eligible Buyer. The City at its sole discretion may release the lien without payment if the Affordable Properties depreciate in value.

Proceeds received by the City from the liens herein will be used solely to subsidize the subsequent purchase of Affordable Properties by Eligible Buyers or to assist other Eligible Buyers in similar housing developments meeting City Target Incomes.

(h) **Right of First Refusal.** Affordable Properties will be sold initially to Eligible Buyers with a Right of First Refusal granted by the Developer to the City, or agency designated by the City. The Right of First Refusal may be used by the City, or agent of the City, to purchase the Affordable Property and re-sell said property to another Eligible Buyer.

The beneficiary of the lien shall in all cases hold the Right of First Refusal on the Affordable Properties enabling the lien to be used both to reduce the purchase price and to help refinance the sales price of the Affordable Properties.

(i) **Enforcement.** The Final Plat shall identify the Affordable Properties by legal description and contain a notice, approved by the City, that title to Affordable Properties is subject to the terms of the Development Agreement. For the Affordable Properties, the notice shall also state: 1) the Development Agreement sets forth price controls on the initial conveyance; and 2) the Eligible Buyers may be subject to a lien obligation. If the Developer does not comply with the Development Agreement with regard to the construction and sales of Affordable Properties, the City reserves the right to withhold building or occupancy permits for any unit(s) in the development.

**12. Indemnity for Environmental Matters.** Developer represents and warrants that upon dedication or conveyance of any real property or real property rights to the City by the Developer pursuant to this Agreement, the condition of the real property or real property rights dedicated or conveyed will not violate any federal, state or local law, ordinance or regulation related to industrial hygiene or environmental conditions on or under the property subject to the dedication or conveyance. The Developer agrees to indemnify, defend and hold the City harmless from and against any



and all costs and expenses of any nature, including attorneys' fees and costs, and all damages or other liability, including, but not limited to, natural resource damages, or requirements to perform, removal or remedial actions under any statute, regulation, ordinance, decree or order of any governmental agency or court, as a result of the condition of any real property or relating to rights dedicated or conveyed to the City by the Developer pursuant to this Agreement. Nothing in this Agreement shall require the City to accept any property which it has reason to believe may be contaminated by any toxin, hazardous material or waste, as those terms are defined in state or federal law. Developer agrees to keep the City informed with regards to environmental matters pertaining to the Project property.

**13. Notices.** Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly delivered upon personal delivery as of the third business day after mailing by United States mail, postage prepaid, by registered or certified mail, return receipt requested, addressed as follows:

**if to the City:** Attention: City Manager  
211 West Aspen Avenue  
Flagstaff, Arizona 86001

**with a copy to:** Attention: City Attorney  
211 West Aspen Avenue  
Flagstaff, Arizona 86001

**if to the Developer:** Attention: John Beerling  
1121 West Warner Road, Suite 109  
Tempe, Arizona 85284

**with a copy to:** Tony S. Cullum Esq.  
Post Office Drawer X  
Flagstaff, Arizona 86002

Notice of change of address may be made by either party by giving notice to the other party in writing of change of address. Such notice shall be deemed to have been effectively given ten (10) days after mailed by the party changing the address.

**14. General Provisions.**

**14.1 Amendment.** This Agreement may be amended at any time by written amendment executed by both parties, which written amendment shall be recorded in the official records of Coconino County, Arizona, within ten (10) days following any such amendment.



**14.2 Assignment.** The rights of Developer under this Agreement may be transferred or assigned, in whole or in part, by written instrument, to any subsequent owner of all or any portion of the Property without further consent from the City.

**14.3 Authorization.** The parties to this Agreement represent and warrant that the persons executing this Agreement on their behalves have full authority to bind the prospective parties.

**14.4 Cancellation.** This Agreement is subject to the cancellation provisions of A.R.S. Sec. 38-511.

**14.5 Captions.** The captions used herein are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

**14.6 Consents and Approvals.** City and Developer shall at all times act reasonably with respect to any and all matters which require either party to review, consent, or approve any act or matter herein.

**14.7 Consistent With General Plan.** This Agreement ensures that all development on the Property shall be consistent with the City's General Plan recommendation for the Property as required by A.R.S. Sec. 9-500.05 B.

**14.8 Construction of Agreement.** This Agreement has been arrived at by negotiation and shall not be construed against either party to it or against the party who prepared the last draft.

**14.9 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages shall be attached to a single instrument so that the signatures of all parties may be physically attached to a single document.

**14.10 Dispute Resolution.**

(a) **Breach of Agreement.** Should either party breach any provision of this Agreement, the party alleging the breach must notify the other party in writing of the nature of the breach and the expected action to cure the deficiency. If the deficiency is not cured within 30 days of transmission of the notice, the party alleging the breach may seek the remedies set forth below, no remedy of which is intended to be mutually exclusive.

(b) **Mediation.** If a dispute arises out of or relates to this Agreement and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to resolve the dispute by mediation before resorting to litigation or some other



dispute resolution procedure. Mediation will be self-administered and conducted under the procedures in use by the Alternative Dispute Resolution Program of the Coconino County Superior Court, unless the parties agree upon other procedures. Each party agrees to bear its own costs in mediation. The parties will not be obligated to mediate if any indispensable party is unwilling to join the mediation. This section does not constitute a waiver of the parties' right to arbitrate or initiate legal action if a dispute is not resolved through good faith negotiation or mediation, or if provisional relief is required under the Arizona Rules of Civil Procedure.

(c) **Litigation.** Except as otherwise agreed by the parties, any litigation brought by either party against the other to enforce the provisions of this Agreement must be filed in the Coconino County Superior Court. In the event any action at law or in equity is instituted between the parties in connection with this Agreement, the prevailing party in this action will be entitled to its costs including reasonable attorneys' fees and court costs from the non-prevailing party.

**14.11 Effective Date of Agreement.** This Agreement shall be effective upon the execution of the parties hereto, recordation in accordance with Section 14.21 herein, and upon expiration of thirty (30) days following the approval of the rezoning contemplated hereby by the City; provided, however, that in the event the rezoning is delayed in its effect by judicial challenge, or by referendum or injunction, the effective date of this Agreement shall be delayed until resolution or termination of such judicial challenge, referendum or injunction. In the event of judicial challenge, referendum, or injunction resulting in delay in the effect of the contemplated rezoning which extends for a period of more than one hundred eighty (180) days following its approval by the City Council, then this Agreement may be terminable by the Developer upon written notice to the City in accordance with this Agreement at any time within an additional one hundred eighty (180) days. Upon termination, this Agreement shall be of no further force or effect and neither party shall have any further obligation hereunder. Any delay relative to the effective date of this Agreement by judicial challenge, referendum, or injunction filed by parties acting independently of and not under the control of the City shall not be deemed a default hereunder by the City.

**14.12 Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations, and understandings of the parties, whether oral or written, are hereby superseded and merged herein. The foregoing sentence shall in no way affect the validity of any instruments executed by the parties in the form of the exhibits attached to this Agreement.

**14.13 Exhibits.** All exhibits attached hereto are incorporated herein by reference as though fully set forth herein.

**14.14 Further Acts.** Each of the parties hereto shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement. Without limiting the generality



of the foregoing, the City shall cooperate in good faith and endeavor to process promptly any request and applications for plat or permit approvals or revisions, and other necessary approval relating to the development of the Property by the Developer and/or its successors.

**14.15 Gender and Number.** In this Agreement (unless the context requires otherwise), the masculine, feminine and neuter genders and the singular and the plural include one another.

**14.16 Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Arizona. This Agreement shall be deemed made and entered into in Coconino County, Arizona.

**14.17 Modification.** No modification of this Agreement shall be deemed effective unless in writing and signed by the parties hereto, and any waiver granted shall not be deemed effective except for the instance and in the circumstances particularly specified therein and unless in writing, executed by the party against whom enforcement of the waiver is sought.

**14.18 Negation of Partnership.** The parties specifically acknowledge that the Project will be developed as private property, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants, and conditions in this Agreement. None of the terms or provisions of this Agreement are intended to create a partnership or other joint enterprise between the parties.

**14.19 No Obligation to Develop Property.** Except as specifically set forth herein, nothing contained herein shall be deemed to obligate the City or the Developer to complete any part or all of the development of the Property.

**14.20 No Third Party Beneficiaries.** The City and Developer acknowledge and agree that the terms, provisions, and conditions hereof are for the sole benefit of, and may be enforceable solely by, the City and Developer, and none of such terms, provisions, conditions, and obligations are for the benefit of or may be enforced by any third party.

**14.21 Recordation of Agreement.** In accordance with A.R.S. Sec. 9-500.05 D, this Agreement shall be recorded in its entirety in the official records of the Coconino County Recorder no later than ten (10) days from the date of its execution by the City.

**14.22 Recitals.** The recitals set forth at the beginning of this Agreement are acknowledged by the parties to be true and correct and are incorporated herein by reference.



**14.23 Rights Run With the Land.** Upon recordation of this Agreement in accordance with Section 14.21 of this Agreement, all rights and obligations shall constitute covenants that run with the land and are binding on all successors-in-interest, except as otherwise provided in Section 14.27 of this Agreement.

**14.24 Severability.** In the event that any phrase, clause, sentence, paragraph, section, article, or other portion of this Agreement shall become illegal, null, or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null, or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permissible by law.

**14.25 Successors and Assigns.** All of the covenants and conditions set forth herein, shall inure to the benefit of and shall be binding upon the successors-in-interest of each of the parties hereto.

**14.26 Term.** The term of this Agreement shall commence on the effective date of this Agreement as defined in Section 14.11 herein, and shall automatically terminate on the tenth (10th) anniversary of such date, unless previously terminated pursuant to Section 1 of this Agreement, or as otherwise agreed by the parties in writing.

**14.27 Termination Upon Sale to Public.** Notwithstanding the provisions set forth in Section 14.23 above, it is the intention of the parties that this Agreement shall automatically terminate without exception or recordation of any further document or instrument as to any lot or parcel which has received site/subdivision approval and individually (and not in "bulk" as defined under Arizona law) leased for a period of one year or longer or sold to the purchaser or user thereof, and with respect to which the Developer's Regional Park contribution in the sum of \$285.00 per lot and the Developer's contribution in the sum of \$1,855.55 per lot for construction of the Lone Tree/I-40 Interchange have been paid to the City as set forth above. Upon the occurrence of the aforementioned events, said lot or lots shall be released from and no longer be subject to or burdened by the provisions of this Agreement.

**14.28 Time of the Essence.** For purposes of enforcing the provisions of this Agreement, time is of the essence.

**14.29 Waiver.** No waiver by either party of a breach of any of the terms, covenants, or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or condition herein contained. Nothing herein or in the Stipulations shall constitute or be deemed to be a waiver by the Developer of its right to request future rezonings or changes in development standards for all or any portion(s) of the Property pursuant to City procedures and requirements existing at the time of the request. Nothing herein contained shall be deemed to be a waiver by the City of the right to act, by approval or denial, on



such rezoning or change, to the extent such action would not otherwise be in breach of this Agreement.

**15. Zuni Heights Access.** Developer is aware of the City's approval of the Zuni Heights Development ("Zuni Heights") located immediately to the north of the proposed Project. Approval of Zuni Heights included the necessity for Zuni Heights to obtain right-of-ways and/or easements for construction of roadways through the property, which roadways will connect with the proposed Project. Developer herein agrees that, as shown on the Concept Plan, access will be provided to Zuni Heights. The cost of such access will be negotiated by Developer and Zuni Heights, and upon the acquisition of those right-of-ways and/or easements by Zuni Heights, the Developer will provide access through the proposed Project.

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IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and on its behalf by its Mayor and its seal to be hereunder duly affixed and attested by its City Clerk, and the Developer has signed the same on or as of the day and year first above written.

**CITY:**

**CITY OF FLAGSTAFF**, an Arizona municipal corporation

By: Joyce M. Qualman  
Mayor

**ATTEST:**

By: Candy Jager  
City Clerk

**APPROVED AS TO FORM:**

By: L. M. Lane  
City Attorney

**DEVELOPER:**

**VANDERBILT FARMS, L.L.C.**,  
an Arizona limited liability company

By: [Signature]  
Title: Hubert J. [Signature]

**SAN FRANCISCO PEAKS ASSOCIATES, L.P.**

By: [Signature]  
Title: General Partner

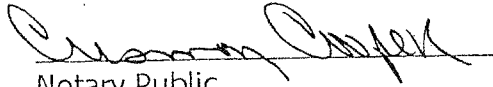


STATE OF ARIZONA )  
 )  
COUNTY OF COCONINO )

SS.

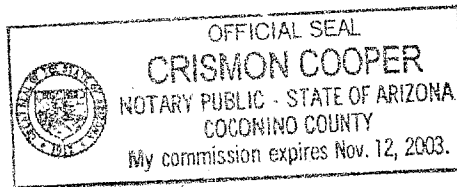
On this 5<sup>th</sup> day of July, 2000, before me the undersigned Notary Public personally appeared JOHN BEERLING known to me as the person whose name is subscribed to the within instrument and acknowledged that he executed the same on behalf of Vanderbilt Farms, L.L.C., an Arizona limited liability company, for the purposes contained therein.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

  
Notary Public

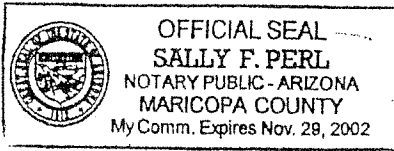
My Commission Expires:

11/12/03



# ACKNOWLEDGMENT

The foregoing Development Agreement was acknowledged before me this 10<sup>th</sup> day of July, 2000 by Eva Sperber-Porter, the Executive Vice-President of Ponderosa Pines Land Corporation, the general partner of San Francisco Peaks Associates Limited Partnership, on behalf of the limited partnership.



*Sally F. Perl*  
Notary Public

My commission expires:

11/29/02



## EXHIBITS TO DEVELOPMENT AGREEMENT

Exhibit "A"	Legal Description of Property
Exhibit "B"	Concept Plan
Exhibit "C"	USDA Forest Service Decision of No Significant Impact
Exhibit "D"	Reclaimed Wastewater Agreement
Exhibit "E"	Location of Proposed Regional Park
Exhibit "F"	Developer's Affordable Prices
Exhibit "G"	Affordable Housing Reference Schedules
Exhibit "H"	Legal Description of Affordable Properties
Exhibit "I"	Avigation Easement Agreement
Exhibit "J"	Conceptual Development Phasing Schedule





EXHIBIT "A"



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## EXHIBIT A

### LEGAL DESCRIPTION FOR FAIRWAY PEAKS (Attachment to Development Agreement)

#### PARCEL 1

All of Section 34 of Township 21 North, Range 7 East, Gila and Salt River Meridian, in the City of Flagstaff, Coconino County, Arizona, EXCEPT the Southwest quarter of the Southwest quarter (SW $\frac{1}{4}$  SW $\frac{1}{4}$ ) thereof.

Containing approximately 606.454 Acres

#### PARCEL 2

A portion of that parcel of land described in Docket 1551, Page 396, Records of Coconino County, Arizona, located in the Southeast quarter of Section 27, Township 21 North, Range 7 East, Gila and Salt River Meridian, within the limits of the City of Flagstaff, Coconino County (R.C.C.), Arizona, more particularly described as follows:

Commencing at the Southeast Corner of said Section 27, from whence the South quarter Corner (S $\frac{1}{4}$  Cor) of said Section 27 bears S 89°58'16" W a distance of 2656.62 feet (Basis of Bearings); Thence S 89°58'16" W, along the South line of the said Southeast quarter, a distance of 1920.91 feet to the TRUE POINT OF BEGINNING;

Thence continue S 89°58'16" W, along the South line of the said Southeast quarter, a distance of 74.88 feet to a non-tangent point of curvature of a curve concave to the Northwest; from whence the radius point bears N 11°06'10" W a distance of 4,360.80 feet;

Thence Northeasterly along the arc of said curve a distance of 491.27 feet, through a central angle of 06°27'17" to a point of tangency;

Thence N 72°26'33" E a distance of 57.43 feet;

Thence N 03°54'07" E a distance of 116.74 feet;

(Continued on Page 2)



Thence N 22°42'39" W a distance of 643.28 feet;

Thence N 52°03'09" E a distance of 1,157.83 feet;

Thence N 77°43'18" E a distance of 172.16 feet;

Thence S 27°25'34" E a distance of 707.70 feet to a non-tangent point of curvature of a curve concave to the Southeast. from whence the radius point bears S 47°22'42" E a distance of 1776.75 feet;

Thence Southwesterly along the arc of said curve a distance of 125.48 feet through a central angle of 04°02'47" to a point of tangency;

Thence S 38°34'31" W a distance of 350.00 feet to a point of curvature of a curve to the right, having a radius of 1140.00 feet;

Thence 673.85 feet along the arc of said curve, through a central angle of 33°52'02" to a point of tangency;

Thence S 72°26'33" W a distance of 387.89 feet to a point of curvature of a curve to the right, having a radius of 4375.80 feet;

Thence 419.47 feet along the arc of said curve, through a central angle of 05°29'33" to the Point of Beginning being a point on the South line of the said SE¼ of Section 27, also being a point on the South boundary of that parcel of land described in said Docket 1551, Page 396, R.C.C.;

Containing approximately 26.644 acres.

### PARCEL 3

A portion of that parcel of land described in Docket 1551, Page 396, Records of Coconino County, Arizona, located in the Southeast quarter of Section 27, Township 21 North, Range 7 East, Gila and Salt River Meridian, within the limits of the City of Flagstaff, Coconino County (R.C.C.), Arizona, more particularly described as follows:

BEGINNING at the Southeast Corner of said Section 27, from whence the South quarter Corner (S¼ Cor) of said Section 27 bears S 89°58'16" W a distance of 2656.62 feet (Basis of Bearings); Thence S 89°58'16" W, along the South line of the said Southeast quarter, a distance of 1,455.78 feet;

Thence N 72°26'33" E a distance of 363.19 feet to a point of curvature of a curve to the left having a radius of 1,260.00 feet;

Thence 744.78 feet along the arc of said curve through a central angel of 33°52'02" to a point of tangency;

(Continued on Page 3)



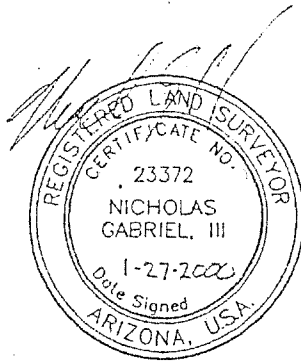
Thence N 38°34'31" E a distance of 350.00 feet to a point of curvature of a curve to the right, having a radius of 1,656.75 feet;

Thence along the arc of said curve a distance of 369.84 feet more or less, through a central angle of 12°47'24" more or less, to a point on the East line of the said SE¼ of Section 27, being also a point on the East boundary of that parcel of land described in said Docket 1551, Page 396, R.C.C.;

Thence S 01°22'39" E along said East line and boundary, a distance of 1,059.51 feet to the Point of Beginning

Containing approximately 13.465 acres.

Containing in aggregate 646.563 acres.



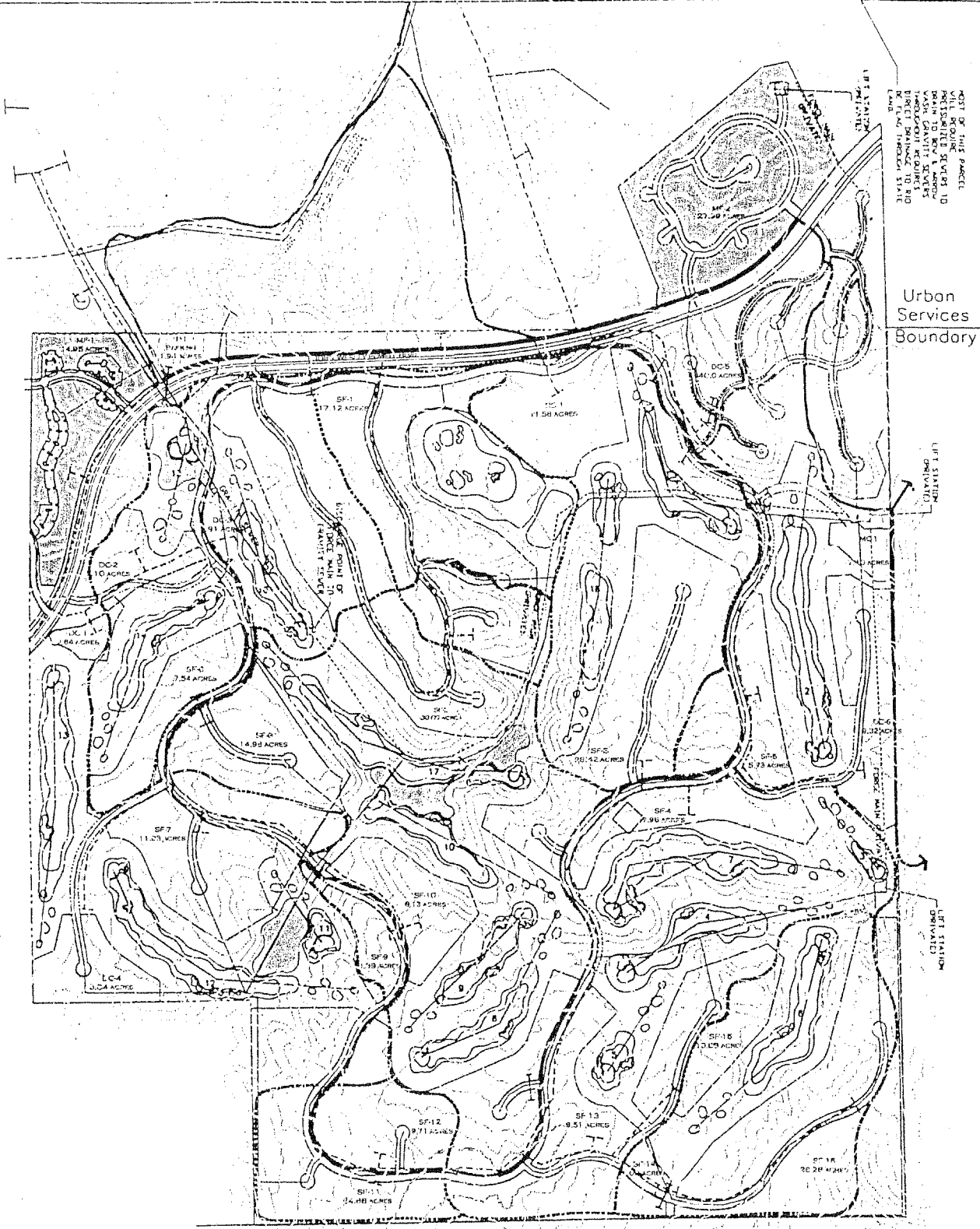
NICHOLAS GABRIEL, III  
R.L.S. 23372



EXHIBIT "B"



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Urban Services Boundary

LIFT STATION (PRIVATE)

LIFT STATION (PRIVATE)

LIFT STATION (PRIVATE)



4/17/2000

Scale: 1"=900'

Legend

- ..... Public Pedestrian Trail
- Public Bicycle Trail
- Public F.U.T.S. Trail
- ..... Sewer - Forced Main
- Sewer - New 8" Sanitary
- Sewer - Existing
- Water - Future
- Water - Effluent Drainage



# Fairway Peaks

Figure 6: Development Master Plan

**FOR LOCATION PURPOSES ONLY**

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LAND USE SUMMARY TABLE FOR FAIRWAY PEAKS

Parcel	Acre	Lots	DU/ Acre
SF-1	17.12	41	2.39
SF-2	30.09	72	2.39
SF-3	28.42	67	2.36
SF-4	7.96	19	2.39
SF-5	5.73	13	2.27
SF-6	7.54	18	2.39
SF-7	11.03	26	2.36
SF-8	14.98	36	2.40
SF-9	3.39	8	2.36
SF-10	8.13	20	2.46
SF-11	24.98	56	2.24
SF-12	19.71	45	2.28
SF-13	6.51	15	2.30
SF-14	1.03	2	1.94
SF-15	10.88	26	2.39
SF-16	27.32	60	2.20
<b>Subtotal</b>	<b>224.82</b>	<b>524</b>	
DC-1	2.57	14	5.45
DC-2	5.00	28	5.60
DC-3	0.91	5	5.49
DC-4	5.84	32	5.48
DC-5	40.00	180	4.50
DC-6	9.32	52	5.58
<b>Subtotal</b>	<b>63.64</b>	<b>311</b>	
MF-1	14.95	210	14.05
MF-2	27.99	125	4.47
<b>Subtotal</b>	<b>42.94</b>	<b>335</b>	
P-1	1.94		
RC-1	11.58		
MC-1	2.10		
Golf & ROW	303.86		
<b>Subtotal</b>	<b>319.48</b>		
<b>Total</b>	<b>650.88</b>	<b>1170</b>	



EXHIBIT "C"



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## Segment of Fourth Street Extension

USDA Forest Service  
Coconino National Forest  
Coconino County, Arizona

An Environmental Assessment (EA) for the construction of the second phase of the Fourth Street Extension across National Forest System land is available for review at the Forest Supervisors Office located at 2323 East Greenlaw Lane, Flagstaff, Arizona. The EA was prepared by SWCA, Inc. and reviewed by a Forest Service Interdisciplinary Team. The proposed construction is consistent with the City of Flagstaff's Master Plan 2000.

There was very little difference between the four alternatives examined by the report. Alternative A was eliminated from consideration in the report because it did not adequately address the purpose and the need of the proposed project.

- Alternative B would require the most cut and fills.
- Alternative C would cost the most to construct.
- Alternative D affects more City of Flagstaff land and less National Forest Land, however the total impacts are very similar to alternatives B & C.
- Alternative E would create the least amount of cuts and fills and would cost the least to construct.
- Alternative F, the no action alternative did not meet the objectives of the assessment.

It is my decision to select Alternative E. An easement for this route will be issued to the City of Flagstaff. A temporary special-use permit for construction may be issued in the interim, pending issuance of the easement.

I did not select the other alternatives because of the higher cost and greater impacts. Alternative B and D would create two separate corridors, one for the road and one for the water and sewer. Alternative C would cost approximately \$100,000 more to construct.

Alternative F is the environmentally preferred alternative because it is the only alternative that does not have some environmental impacts. However, it was not selected because it does not meet the transportation objectives of the City of Flagstaff's Master Plan 2000.

I have determined through the environmental assessment that this is not a major Federal action that would significantly affect the quality of the human environment; therefore, an environmental impact statement is not needed. This determination is based on the following factors:

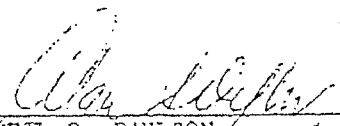




1. There are minimal irreversible resource commitments and irretrievable loss of timber production.
2. There are no significant cumulative effects.
3. The physical and biological effects are limited to the area of planned activity.
4. No known threatened or endangered wildlife or plants are affected.
5. The proposal is within the scope of the Coconino National Forest Plan.

This decision may be implemented immediately.

This decision is subject to administrative review in accordance with the provisions of 36 CFR 211.18. Notice of appeal must be made in writing and submitted to Neil Paulson, Forest Supervisor, 2323 East Greenlaw Lane, Flagstaff, Arizona 86004, within 45 days from the date of this decision. A statement of reasons to support the appeal and any request for oral presentation must be filed within the 45-day period for filing a notice of appeal.

  
NEIL R. PAULSON  
Forest Supervisor

10/31/88  
Date



EXHIBIT "D"



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RECLAIMED WASTEWATER AGREEMENT

This Agreement is made and entered into this 7<sup>th</sup> day of March, 2000, by and between the CITY OF FLAGSTAFF, ARIZONA (hereinafter "City"), a municipal corporation of the State of Arizona, whose address is 211 West Aspen Avenue, Flagstaff, Arizona 86001, and VANDERBILT FARMS, L.L.C., an Arizona limited liability company, and/or nominee, whose address is 1121 West Warner Road, Suite 109, Tempe, Arizona 85284 (hereinafter "Reuser").

WHEREAS, Reuser agrees to purchase from the City treated sewage effluent from the City of Flagstaff Wastewater Treatment Plant(s) to be used for irrigation of a golf course proposed to be constructed at a new housing development located within the City of Flagstaff; and

WHEREAS, City agrees to sell treated wastewater effluent to Reuser subject to the following terms and conditions; and

NOW, THEREFORE, for and in consideration of the mutual promises and obligations of the parties, the parties agree as follows:

AGREEMENT

1. Definitions.

- A. **Effluent:** Wastewater that has completed its passage through a wastewater treatment process.
- B. **Open Access Irrigation Site:** A reclaimed wastewater irrigation site where access by the general public is uncontrolled.
- C. **Point of Delivery:** A location designated by the City for acceptance and measuring of the reclaimed wastewater by the Reuser. The point of delivery may include a vault, pit, meter, valves, and other appurtenances necessary to meter reclaimed water to the Reuser
- D. **Potable Water:** Water that does not contain pollution, contamination, objectionable minerals, or infective agents and is considered satisfactory for domestic consumption.



E. Reclaimed Wastewater: Effluent which meets the standards for the specific reuses contained in the Arizona Administrative Code R18-9-703.

2. Regulation. Reclaimed wastewater as used in this contract shall refer to effluent which meets the standards for specific reuses contained in the Arizona Administrative Code R18-9-703 that is produced at the City of Flagstaff Wastewater Treatment Plant(s). All deliveries of reclaimed wastewater shall be made in accordance with City's ordinances, rules, and regulations. Reuser shall obtain any additional City, State, or Federal permits for the use of reclaimed wastewater for irrigation of open access landscaped areas should such permits become necessary in the future. As a courtesy and not as an obligation, the City will endeavor to advise Reuser of any such permit requirements of which it becomes aware. Reuser shall use such reclaimed wastewater in accordance with the applicable laws of the United States of America (including, but not limited to, the regulations of the Environmental Protection Agency), the State of Arizona, and the Rules and Regulations of the Arizona Department of Environmental Quality; provided, however, that in the event any such laws or regulations shall be amended in the future so as to make it impossible or infeasible for Reuser to use the reclaimed wastewater, Reuser at its option, shall have the right to cancel and terminate this Agreement upon giving thirty (30) days' notice in writing to the City. Reuser shall also abide by the conditions of the City's permit for reuse of reclaimed wastewater (issued by the State of Arizona to the City) and agrees to comply with the following requirements:

A. Hose bibs discharging reclaimed wastewater shall be secured to prevent any use by the public.

B. Irrigation pipe shall be color coded, buried with colored tape, or otherwise suitably marked to indicate nonpotable water.

C. Areas shall be irrigated only at such times as to minimize contact with the public and be reasonably dry and free from standing or ponding water during normal usage.

D. Signs reading "Irrigation with reclaimed wastewater, do not drink" or similar warnings shall be prominently displayed at each reuse site. Signs shall be placed at all logical points of entry to the site, at the entrance to all lakes and ponds, all plumbing outlets, golf score cards and hose bibs providing reclaimed water.



E. Drinking water fountains, potable water hose bibs, and private residences shall not be exposed to the mist from sprinklers.

F. Irrigation of orchards, fruit, or vegetables shall not be allowed with reclaimed wastewater.

3. **Reclaimed Wastewater Quality.** City hereby agrees to provide reclaimed wastewater under this Agreement that meets the quality requirements of the Reclaimed Wastewater Reuse Permit issued by the Arizona Department of Environmental Quality to the City of Flagstaff. City represents it is now and will attempt to remain in compliance with all regulatory and health and water laws, rules, and regulations applicable to wastewater discharge. Reuser acknowledges that the reclaimed wastewater supplied under this Agreement is not intended nor offered for potable use. Reclaimed wastewater delivered under this Agreement shall not be directly or indirectly utilized or transferred for uses other than irrigation of open access landscaped areas owned or controlled by Reuser without the prior written consent of the City. Reuser shall not be obligated to accept delivery of or to pay for inadequately treated wastewater which cannot, as received, be lawfully used for irrigation of open access landscaped areas in accordance with the Rules and Regulations of the Arizona Department of Environmental Quality. Reuser assumes all risks and liabilities in connection with the use of reclaimed wastewater which meets the quality requirements of the City's Reclaimed Wastewater Reuse Permit described above and agrees that its remedies against the City for any breach by the City are limited to refusal to accept delivery except to the extent that any breach by the City is a result of its own negligence.

4. **Responsibility for Damage.** City shall not be liable for any damage to Reuser or its property resulting from curtailment, interruption, or apportionment of supply of reclaimed wastewater occasioned by necessary repairs or maintenance of City's sewerage system, threatened or actual reclaimed wastewater shortage or other causes beyond the City's control.

5. **Contract Term.** The term of this Agreement shall be for a period of five (5) years from the date reclaimed wastewater is made available to the Reuser at the point of delivery. As long as reclaimed water is available to the City of Flagstaff through its reclaimed water system to meet the requirements of this Agreement, this Contract will automatically renew every five (5) years for a total of twenty (20) years, subject to the terms set forth in Paragraphs 3 and 7 of this Agreement. At the end of the twenty-year automatic renewals, Reuser may exercise options to



renew the Agreement for the use of reclaimed wastewater for additional five (5) year extensions as long as reclaimed water is available to the City of Flagstaff through its reclaimed water system to meet the requirements of this Agreement and subject to the terms set forth in Paragraphs 3 and 7 of this Agreement. All options to renew this Agreement shall be exercised in writing forty-five (45) days prior to the expiration of the term of this Agreement and be contingent on City receiving renewal of its permit for reuse of reclaimed water from the Arizona Department of Environmental Quality and the Reuser fulfilling the requirements of this Agreement. The terms of renewal of this Agreement shall be subject to any City, State and Federal regulations in effect at the time of renewal and such renewal shall not be unreasonably withheld. It is expressly understood and agreed by City and Reuser that Reuser has pending with the City an application to rezone the property upon which the reclaimed wastewater will be used. Should such rezoning request be denied by the City Council of the City of Flagstaff, this Agreement shall become null and void.

6. **Reclaimed Wastewater Rate.** Reuser agrees to pay the City for the treatment and delivery of all reclaimed wastewater acquired at the point of delivery. The rate shall be that rate established by the Flagstaff City Council and identified in the City Code of Flagstaff, Arizona. For the term of this Agreement the rate shall not exceed, on a per gallon basis, seventy-five (75%) percent of the then current commodity rate charged by the City for the sale of potable water used on the property. In addition, Reuser agrees to pay any applicable taxes, fees or surcharges that regulatory agencies may impose on reclaimed wastewater. Reuser may recapture the costs directly attributable to converting an existing irrigation system to use reclaimed wastewater or extending public reclaimed wastewater pipelines up to the point of delivery over a period of ten (10) years. Said costs shall be agreed to by the City and Reuser prior to delivery of reclaimed wastewater and may be recovered by the Reuser through an annual rebate of ten (10%) percent of the total agreed to costs of the extension and/or conversion up to the point of delivery. The rebate for the recovery of said costs shall be paid to the Reuser by the City annually starting from the end of the first year of actual use by the Reuser of reclaimed wastewater. Cost recovery after the cessation of use shall not be allowed in the event Reuser ceases to use reclaimed wastewater or by any non-performance of this Agreement which non-performance is not cured within thirty (30) days after written notice thereof is received by Reuser. If City either fails to provide reclaimed wastewater that meets the water quality requirements of this permit, or reclaimed wastewater is not available to the Reuser and the City's performance is not excused pursuant to Paragraph 19, Excusable Non-



Performance, cost recovery shall continue to the Reuser for that period of time reclaimed wastewater is not available. Examples of said costs include installation and materials required for underground piping, meters, vaults, valves, and other appurtenances necessary to convert existing irrigation systems to use reclaimed wastewater.

7. **Default.** Subject to the provisions of Paragraph 23, Dispute Resolution, in the event Reuser fails to make any payment when due or is in default of any other provision of this Agreement, the City may notify Reuser of the default in writing, and if Reuser does not cure the default within thirty (30) days of receipt of the notice, the City may upon written notice thereof to Reuser, cease delivery of reclaimed water to Reuser, and cease making any remaining rebate payments to Reuser until such default is cured. The above, notwithstanding, the City shall have all remedies available at law or in equity, including, but not limited to, specific performance. In the event that the City is in default of any provision of this Agreement, Reuser may notify the City of the default in writing, and if the City does not cure the default within thirty (30) days of receipt of the notice, Reuser shall have all remedies available at law and in equity including, but not limited to, specific performance.

8. **Insurance.** Reuser shall provide the City of Flagstaff with a certificate of insurance that shall be kept in force for the duration of the Agreement to cover any liability arising from the acts and omissions of the Reuser. The certificate of insurance shall be for general liability coverage in the amount of one million (\$1,000,000) dollars and shall name the City as an additional insured and provide no less than ten (10) days notice to the City prior to cancellation.

9. **Use of Reclaimed Wastewater by Others.** Reuser agrees that this Agreement shall not restrict the right of the City to use reclaimed wastewater for City operations or sell reclaimed wastewater to others.

10. **Amount of Effluent.** To the extent that the operation of the City of Flagstaff wastewater treatment plant(s) shall produce any reclaimed wastewater for users of the City and subject to the Paragraph 19, Excusable Non-Performance, the amount of reclaimed wastewater available for delivery to Reuser shall be a minimum of 125,000,000 gallons per year, which the City agrees shall not be an obligation of Reuser to purchase said minimum amount but is provided solely to guarantee that the City will provide a minimum of 125,000,000 gallons per year. If Reuser uses less than 125,000,000 gallons per year, City is not obligated to hold such



amount for Reuser's use and shall use such reclaimed wastewater for any purpose it deems necessary. Further, the amount of reclaimed wastewater may not be restricted up to the maximum flow specified in the water balance section of the City's Reclaimed Wastewater Reuse Permit, providing the requirements of this Agreement are met by Reuser. A copy of the water balance for the uses identified in this Agreement is included as Exhibit "A".

11. **Operation, Maintenance and Replacement Costs.** The operation, maintenance and replacement costs for that portion of the conveyance system for the reclaimed wastewater to the point of delivery (as defined in Paragraph 1 of this Agreement under "Definitions" and specified in Paragraph 12 below) shall be the responsibility of the City. The operation, maintenance and replacement costs of the conveyance system beyond the point of delivery shall be the responsibility of the Reuser.

12. **Point of Delivery.** The vault, pit, meter, valves, and other appurtenances that constitute the point of delivery (as defined in Paragraph 1 of this Agreement under "Definitions"), and as depicted on Exhibit "B" attached hereto and made a part hereof, shall be installed by the Reuser and shall become the property of the City ("Point of Delivery"). The Reuser shall require that its contractor warranty all pipelines, vaults, pits, meters, valves, and other appurtenances installed by the contractor of the Reuser for a period one (1) year from the date of final acceptance by the City. All appurtenances associated with the Point of Delivery shall be constructed and installed in accordance with City engineering standards or shall otherwise be approved by the City. Reuser may recapture costs of installing said metering appurtenances in accordance with Paragraph 6 of this Agreement.

13. **Acceptance and Transmission of Reclaimed Wastewater.** Reuser assumes all costs of and responsibility for transportation of the reclaimed wastewater by means of a conveyance system downstream of the Point of Delivery, which shall be constructed, owned, operated, and maintained by Reuser.

14. **Protection of City Potable Water System.** Reuser agrees to install City approved backflow prevention devices at all potable water service connections to the property served by the point of delivery. Such backflow prevention device(s) shall be installed, tested, and operational prior to the delivery of reclaimed wastewater to the Reuser by the City. Such backflow prevention device(s) shall be tested annually at Reuser's expense, and verification of such testing shall be provided to the City. Backflow prevention testing shall be done by a



certified backflow prevention device tester in accordance with City regulations. The costs to the Reuser for the installation of such devices shall be considered part of the cost of converting the water system to use reclaimed wastewater unless such backflow devices would normally be required in accordance with State of Arizona regulations. The cost to the Reuser for the annual testing of backflow prevention devices shall not be considered part of the cost of converting the water system to use reclaimed water.

If potable water is used for irrigation at the reuse site, a dye test shall be performed on the reuse system that demonstrates to the satisfaction of the Coconino County Health Department that no cross-connections with potable water exist. This test shall be performed by the City prior to the delivery of reclaimed wastewater to the reuse site. This requirement does not apply to reuse facilities specifically designed to use reclaimed wastewater. A color coding system shall be used on all new piping and outlets to prevent any accidental cross-connection between the potable and reuse water supplies. The color code shall conform to the standards set forth by the Coconino County Health Department. Should a County color code not exist, purple shall be used for all reuse plumbing.

15. **Location of Improvements.** Any future Reuser conveyance line and associated easements therefor on City property shall be located so as not to interfere with present or future City operations and the location of all such improvements shall be approved, in advance and in writing, by the City.

16. **Limitations on Use.** Reuser shall use reclaimed wastewater in accordance with the terms of this Agreement and only within its boundaries. Reuser shall not sell reclaimed wastewater within or without its boundaries to other users. Reuser has identified the specific reuse locations subject to this Agreement as the following:

For the golf course located within the proposed development.

The aforesaid location shall be shown on a plot plan, identified as Exhibit "B" and included with this Agreement. The plot plan shall identify the irrigation system, containment structures (10-year, 24-hour storm), storm water flow paths, and protection of the drinking water facilities. Approval for extensions of reclaimed wastewater pipelines and uses for irrigation of areas other than those identified in Exhibit "B" must be requested in writing by the Reuser and incorporated into this Agreement by Amendment along with an additional plot plan.



17. **Disposal of Excess Reclaimed Wastewater.** Excess reclaimed wastewater not used for irrigation by the Reuser shall be disposed of in the City's sanitary sewer system after notification to the City by the Reuser and approval by the City. Reuser shall notify the City Utilities Department Wastewater Treatment Division in writing of a request to discharge reclaimed wastewater into the City sanitary sewer system.

18. **Successors and Assigns.** This Agreement shall be binding upon the successors and assigns of the City and Reuser, but shall not be assigned by Reuser absent written consent of City, which consent shall not be unreasonably withheld, and a legally enforceable contract between Reuser and assignee, filed with the Arizona Department of Environmental Quality, which notifies and obligates the assignee of the requirements of this Agreement.

19. **Excusable Non-Performance.** In the event of an Act of God, natural catastrophe, war, civil insurrection, accidents, acts of governmental or judicial bodies other than the City, the failure of either party to perform its obligation under this Agreement shall be excused so long as the condition interfering with performance continues.

20. **Severability.** In the event any portion of this Agreement shall be determined to be invalid, such invalidity shall not render the remaining portions of this Agreement void unless the deletion of the invalid portion shall materially and substantially alter the rights of the parties under the remaining portions of this Agreement.

21. **Cancellation for Conflict of Interest.** This Agreement may be cancelled by City or by Reuser for conflict of interest in accordance with A.R.S. Sec. 38-511.

22. **Fees.** City agrees to not charge Reuser for building inspection, building permit or other fees in connection with Reuser's construction and installation of any pipes, structures or other appurtenances necessary to accept, distribute and dispose of any reclaimed wastewater under this Agreement.

23. **Dispute Resolution.**

A. **Mediation.** If a dispute arises out of or relates to this Agreement and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to resolve the dispute by mediation before resorting to litigation or some other dispute resolution procedure. Mediation will be self-administered and conducted under



the procedures in use by the Alternative Dispute Resolution Program of the Coconino County Superior Court, unless the parties agree upon other procedures. Each party agrees to bear its own costs in mediation. The parties will not be obligated to mediate if any indispensable party is unwilling to join the mediation. This section does not constitute a waiver of the parties' right to arbitrate or initiate legal action if a dispute is not resolved through good faith negotiation or mediation, or if provisional relief is required under the Arizona Rules of Civil Procedure.

B. **Litigation.** Except as otherwise agreed by the parties, any litigation brought by either party against the other to enforce the provisions of this Agreement must be filed in the Coconino County Superior Court. In the event any action at law or in equity is instituted between the parties in connection with this Agreement, the prevailing party in this action will be entitled to its costs including reasonable attorneys' fees and court costs from the non-prevailing party.

24. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations, and understandings of the parties, whether oral or written, are hereby superseded and merged herein. The foregoing sentence shall in no way affect the validity of any instruments executed by the parties in the form of the exhibits attached to this Agreement.

25. **Modification.** No modification of this Agreement shall be deemed effective unless in writing and signed by the parties hereto, and any waiver granted shall not be deemed effective except for the instance and in the circumstances particularly specified therein and unless in writing, executed by the party against whom enforcement of the waiver is sought.

26. **Severability.** In the event that any phrase, clause, sentence, paragraph, section, article, or other portion of this Agreement shall become illegal, null, or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null, or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permissible by law.

27. **Waiver.** No waiver by either party of a breach of any of the terms, covenants, or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or proceeding breach of the same or any other term, covenant or condition herein contained.



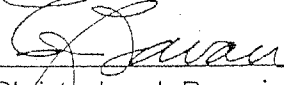
IN WITNESS WHEREOF, the parties hereto have hereunto set their hands the day and year first above written.

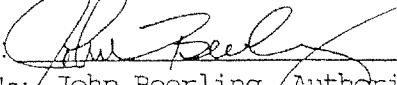
CITY:

REUSER:

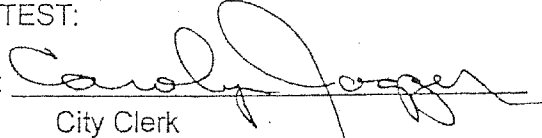
CITY OF FLAGSTAFF, an Arizona  
municipal corporation

VANDERBILT FARMS, L.L.C., an  
Arizona limited liability company

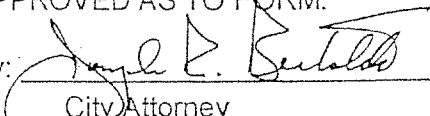
By:   
Christopher J. Bavasi  
Mayor

By:   
Title: John Beerling, Authorized Agent

ATTEST:

By:   
City Clerk

APPROVED AS TO FORM:

By:   
City Attorney



Site name:	FAIRWAY PEAKS
Location:	FLAGSTAFF, ARIZONA
System average daily flow: (MG/D)	0.0830
Yearly evaporation rate: (in/yr):	57.90
Total lake and free water surface area:	6.75
Landscape acreage:	130.00
Summer crop:	Kentucky Blue grass
Winter crop:	Rye grass
Estimated Storage required (gal./mo.):	5,901,771,926
Water balance total/year:	2,537,497,702

A positive value indicates insufficient water usage; a negative value is indicated by (parentheses).

	X Value	% Day time hours	Mean monthly temperature (F)
January	0.65	7.05	28.7
February	0.70	6.59	31.5
March	0.75	6.36	35.3
April	0.75	8.82	42.3
May	0.74	9.52	50.4
June	1.06	9.76	59.8
July	1.17	9.93	66.3
August	1.10	9.37	64.1
September	0.90	8.56	57.3
October	0.80	7.87	47.2
November	0.75	6.98	36.8
December	0.75	6.86	29.6

Basis for calculations: Blaney, H.F., and Criddle, W.D., 1961. Determining Consumptive Use of Water by Major Crops in the Southwestern United States, Conservation Research Report Number 29, May 1962.

References: 1. Arizans State University, Climatology Department. 2. University of Arizona. 3. USDA Consumptive Use of Water by Major Crops in the Southwestern United States, Conservation Research Report Number 29, May 1962.

	Number of trees in project area:	Gallons per day used per tree:	Total consumptive usage per day:
Cottonwood	0	400	0
Fan palm	0	40	0
Oleander	0	10	0
Eucalyptus	0	0	0
Pine	44	50	2200
Olive	0	130	0
Misc.	0	50	0
Desert	0	50	0
Rhys	0	20	0
<b>Totals:</b>	<b>44</b>		<b>2200</b>

Month	Monthly effluent available: gallons	Rainfall inches per month	Rainfall gallons per month	Total evaporation: gallons per month	System leakage and percolation if allowable: gallons per month	Consumptive use of grasses: inches per acre	Consumptive use of grasses: gallons per month	Consumptive use of trees: gallons per month	Total landscape water demand: gallons per month	Total water available: gallons per month	Net water balance: gallons per month
January	124,000,000	1.87	6,943,480	319,416	0	0.00	0	68,200	68,200	130,624,063	130,555,863
February	112,000,000	1.50	5,569,636	454,823	0	0.00	0	61,600	61,600	117,114,813	117,053,213
March	124,000,000	1.87	6,943,480	709,295	0	0.00	0	68,200	68,200	130,234,184	130,165,984
April	120,000,000	1.33	4,938,411	969,179	5,471,209	2.73	9,636,387	5,537,209	9,704,587	123,969,732	118,432,023
May	124,000,000	0.59	2,190,724	1,326,480	1,326,480	4.34	15,319,384	15,385,384	124,864,244	124,864,244	115,159,657
June	120,000,000	0.65	2,413,509	1,456,368	1,456,368	6.21	21,920,133	66,000	120,957,140	120,957,140	109,838,026
July	124,000,000	2.50	9,282,727	1,326,480	1,326,480	7.95	28,062,005	68,200	21,988,333	131,826,358	109,838,026
August	124,000,000	2.81	10,433,785	1,012,475	1,012,475	4.54	16,025,346	68,200	28,130,205	133,107,305	104,977,100
September	120,000,000	1.69	6,275,123	779,652	779,652	2.21	7,809,885	66,000	16,091,346	125,262,648	109,171,301
October	124,000,000	1.11	4,121,531	481,884	481,884	0.00	0	66,000	7,809,085	127,341,879	119,472,795
November	1,240,000,000	1.58	5,866,683	319,416	319,416	0.00	0	66,000	66,000	1,245,384,800	1,245,318,800
December	124,000,000	2.30	8,168,800	10,611,837	10,611,837	0.00	0	68,200	68,200	131,849,383	131,781,183
<b>SUMS:</b>	<b>2,580,000,000</b>	<b>19.70</b>	<b>73,147,887</b>	<b>10,611,837</b>	<b>0</b>	<b>29.53</b>	<b>104,235,348</b>	<b>803,000</b>	<b>105,038,348</b>	<b>2,642,356,050</b>	<b>2,537,497,702</b>

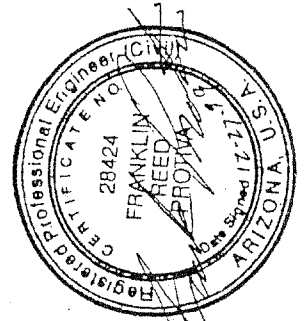


EXHIBIT "E"



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RM



STATE OWNERS SECTION

U.S. OWNERS SECTION

U.S. OWNERS SECTION

U.S.F.S. OWNERSHIP SECTION 3

### Legend

- ..... Sewer - Forced Main
- Sewer - New 8" Sanitary
- ..... Sewer - Existing
- Water - Future
- Water - Effluent
- ..... Drainage



1/28/2000  
Scale: 1"=1200'

# Fairway Peaks

Figure 5: Proposed Land Use Plan



EXHIBIT "F"



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## FAIRWAY PEAKS

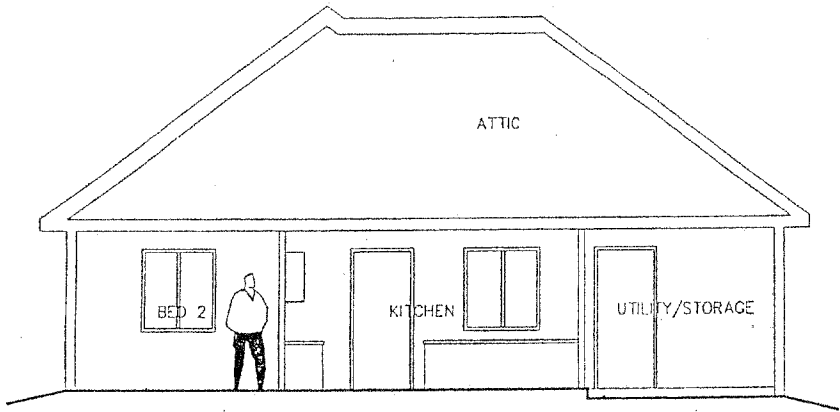
### Affordable Housing Properties

No.	Type	Bedroom/ Bath	Garage	Min. Sq.Ft.	Prices
25	Single Family Homes	1/1	1	900	\$ 92,000
50	Single Family Homes	2/1	1	1,000	\$108,000
50	Single Family Homes	3/2	1	1,250	\$116,000

The City and Developer further agree that as a result of the time period between the date of this Development Agreement and the time the Units will be designed and constructed, many changes may occur within the construction industry as those changes may relate to design, products and materials.

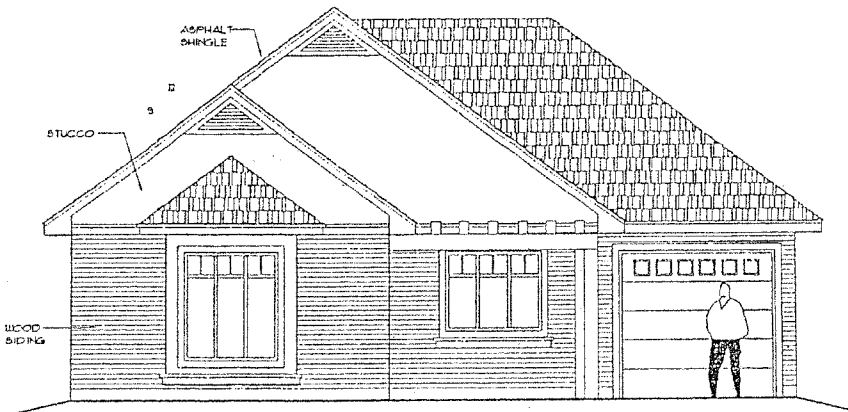
Developer agrees that prior to construction of the Affordable Housing Units, Developer will present to City design and construction site plans, elevations, and specifications. Developer further agrees to meet all minimum standards and specifications as then required by City for design, construction and amenities to be incorporated for all Units. Additionally, Developer will provide City with a comprehensive and complete list of all amenities to be included in each Unit at the time of site plan review and prior to approval by the City. However, as an example of such minimum standards and amenities, Developer will design each Unit based on the most current design standards at that time and as required by the City. Each Unit will be constructed to meet or exceed HUD guidelines, and will be constructed pursuant to the City's policies, requirements, regulations and ordinances, using quality construction materials. Inside amenities, while not yet fully determined, will include kitchen appliances (stove and dishwasher); kitchen cabinetry, storage areas, and dual sink; dual pane windows; bathroom fixtures, including medicine cabinet, vanity mirror and storage areas; quality carpet and pad throughout, with the exception of the kitchen/bath areas; furnace; towel bars in each bath; ceiling lights where such are determined to be appropriate; and wiring for ceiling fans where determined to be appropriate. Other amenities may be added upon design review and City requirements, regulations and ordinances in effect at the time of presentation to the City for final approval.





1-STORY SECTION

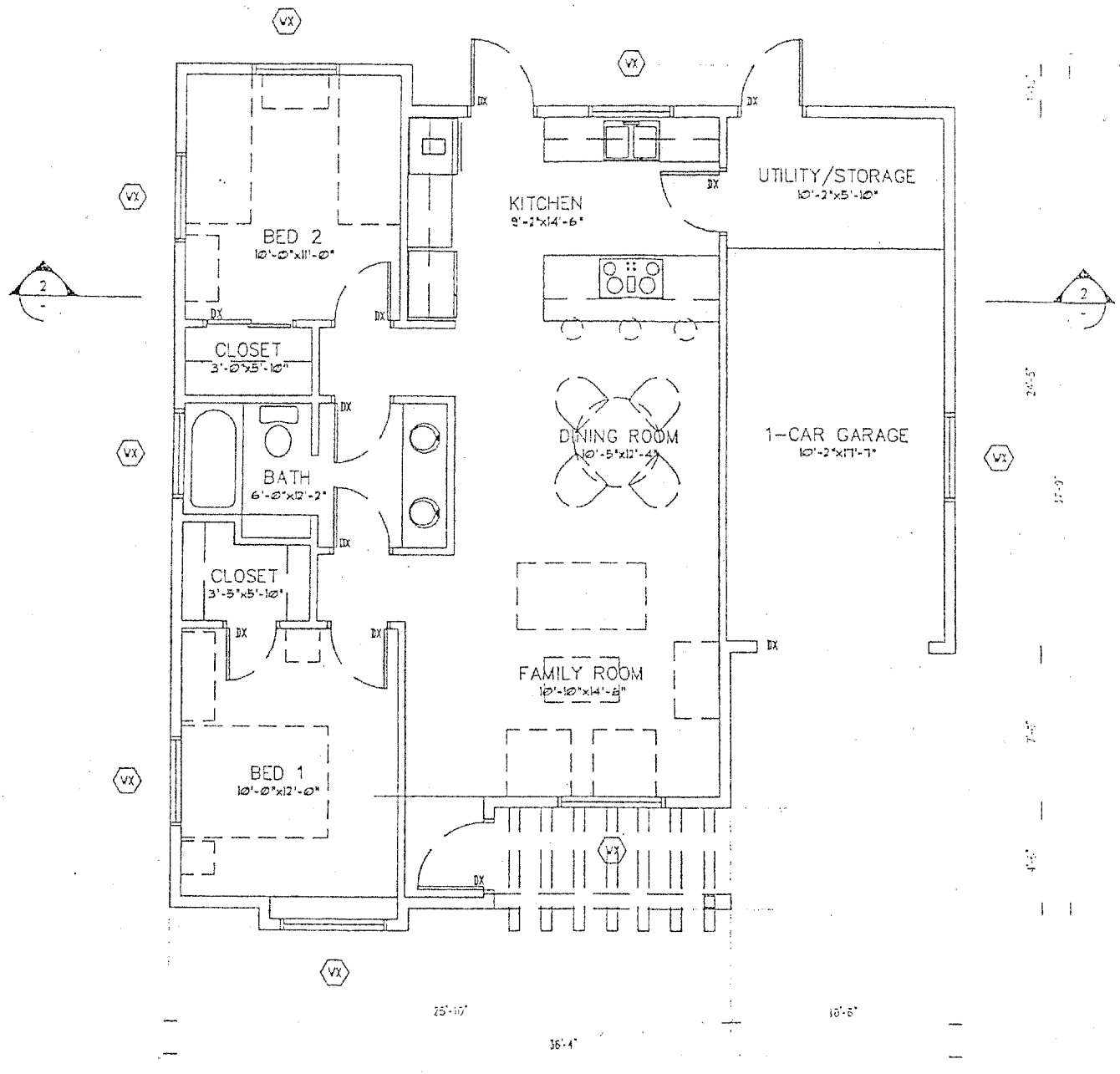
2



1-STORY ELEVATION

3





1-STORY PLAN

902 SQ FT

1



EXHIBIT "G"



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AM

CITY OF FLAGSTAFF PLANNING DIVISION  
AFFORDABLE HOUSING REFERENCE SCHEDULES

Aug-99

INTEREST RATE 7.80%  
 TERM 30  
 % PAYMENT MORT INSUR, FIRE INSUR, TAXES, HOA 20%  
 PAYMENT TO INCOME RATIO 29%  
 HUD AMI \$ 45,500.00

%AMI	PAYMENT	HOME PRICE	INCOME	LOAN AMT
3% DOWN	3% DOWN		3% DOWN	3% DOWN
140%	\$ 1,542	\$ 184,000	\$ 63,798	\$ 178,480
139%	\$ 1,533	\$ 183,000	\$ 63,451	\$ 177,510
139%	\$ 1,525	\$ 182,000	\$ 63,105	\$ 176,540
138%	\$ 1,517	\$ 181,000	\$ 62,758	\$ 175,570
137%	\$ 1,508	\$ 180,000	\$ 62,411	\$ 174,600
136%	\$ 1,500	\$ 179,000	\$ 62,065	\$ 173,630
136%	\$ 1,492	\$ 178,000	\$ 61,718	\$ 172,660
135%	\$ 1,483	\$ 177,000	\$ 61,371	\$ 171,690
134%	\$ 1,475	\$ 176,000	\$ 61,024	\$ 170,720
133%	\$ 1,466	\$ 175,000	\$ 60,678	\$ 169,750
133%	\$ 1,458	\$ 174,000	\$ 60,331	\$ 168,780
132%	\$ 1,450	\$ 173,000	\$ 59,984	\$ 167,810
131%	\$ 1,441	\$ 172,000	\$ 59,637	\$ 166,840
130%	\$ 1,433	\$ 171,000	\$ 59,291	\$ 165,870
130%	\$ 1,424	\$ 170,000	\$ 58,944	\$ 164,900
129%	\$ 1,416	\$ 169,000	\$ 58,597	\$ 163,930
128%	\$ 1,408	\$ 168,000	\$ 58,251	\$ 162,960
127%	\$ 1,399	\$ 167,000	\$ 57,904	\$ 161,990
126%	\$ 1,391	\$ 166,000	\$ 57,557	\$ 161,020
126%	\$ 1,383	\$ 165,000	\$ 57,210	\$ 160,050
125%	\$ 1,374	\$ 164,000	\$ 56,864	\$ 159,080
124%	\$ 1,366	\$ 163,000	\$ 56,517	\$ 158,110
115%	\$ 1,259	\$ 162,000	\$ 52,117	\$ 145,800
123%	\$ 1,349	\$ 161,000	\$ 55,823	\$ 156,170
122%	\$ 1,341	\$ 160,000	\$ 55,477	\$ 155,200
121%	\$ 1,332	\$ 159,000	\$ 55,130	\$ 154,230
120%	\$ 1,324	\$ 158,000	\$ 54,783	\$ 153,260
120%	\$ 1,316	\$ 157,000	\$ 54,437	\$ 152,290
119%	\$ 1,307	\$ 156,000	\$ 54,090	\$ 151,320
118%	\$ 1,299	\$ 155,000	\$ 53,743	\$ 150,350
117%	\$ 1,290	\$ 154,000	\$ 53,396	\$ 149,380
117%	\$ 1,282	\$ 153,000	\$ 53,050	\$ 148,410
116%	\$ 1,274	\$ 152,000	\$ 52,703	\$ 147,440
115%	\$ 1,265	\$ 151,000	\$ 52,356	\$ 146,470
114%	\$ 1,257	\$ 150,000	\$ 52,009	\$ 145,500
114%	\$ 1,249	\$ 149,000	\$ 51,663	\$ 144,530
113%	\$ 1,240	\$ 148,000	\$ 51,316	\$ 143,560
112%	\$ 1,232	\$ 147,000	\$ 50,969	\$ 142,590
111%	\$ 1,223	\$ 146,000	\$ 50,622	\$ 141,620

CITY OF FLAGSTAFF PLANNING DIVISION  
AFFORDABLE HOUSING REFERENCE SCHEDULES

Aug-99

INTEREST RATE 7.80%  
 TERM 30  
 % PAYMENT MORT INSUR, FIRE INSUR, TAXES, HOA 20%  
 PAYMENT TO INCOME RATIO 29%  
 HUD AMI \$ 45,500.00

%AMI	PAYMENT	HOME PRICE	INCOME	LOAN AMT
3% DOWN	3% DOWN		3% DOWN	3% DOWN
110%	\$ 1,215	\$ 145,000	\$ 50,276	\$ 140,650
110%	\$ 1,207	\$ 144,000	\$ 49,929	\$ 139,680
109%	\$ 1,198	\$ 143,000	\$ 49,582	\$ 138,710
108%	\$ 1,190	\$ 142,000	\$ 49,236	\$ 137,740
107%	\$ 1,181	\$ 141,000	\$ 48,889	\$ 136,770
107%	\$ 1,173	\$ 140,000	\$ 48,542	\$ 135,800
106%	\$ 1,165	\$ 139,000	\$ 48,195	\$ 134,830
105%	\$ 1,156	\$ 138,000	\$ 47,849	\$ 133,860
104%	\$ 1,148	\$ 137,000	\$ 47,502	\$ 132,890
104%	\$ 1,140	\$ 136,000	\$ 47,155	\$ 131,920
103%	\$ 1,131	\$ 135,000	\$ 46,808	\$ 130,950
102%	\$ 1,123	\$ 134,000	\$ 46,462	\$ 129,980
101%	\$ 1,114	\$ 133,000	\$ 46,115	\$ 129,010
101%	\$ 1,106	\$ 132,000	\$ 45,768	\$ 128,040
100%	\$ 1,098	\$ 131,000	\$ 45,422	\$ 127,070
99%	\$ 1,089	\$ 130,000	\$ 45,075	\$ 126,100
98%	\$ 1,081	\$ 129,000	\$ 44,728	\$ 125,130
98%	\$ 1,073	\$ 128,000	\$ 44,381	\$ 124,160
97%	\$ 1,064	\$ 127,000	\$ 44,035	\$ 123,190
96%	\$ 1,056	\$ 126,000	\$ 43,688	\$ 122,220
95%	\$ 1,047	\$ 125,000	\$ 43,341	\$ 121,250
94%	\$ 1,039	\$ 124,000	\$ 42,994	\$ 120,280
94%	\$ 1,031	\$ 123,000	\$ 42,648	\$ 119,310
93%	\$ 1,022	\$ 122,000	\$ 42,301	\$ 118,340
92%	\$ 1,014	\$ 121,000	\$ 41,954	\$ 117,370
91%	\$ 1,006	\$ 120,000	\$ 41,608	\$ 116,400
91%	\$ 997	\$ 119,000	\$ 41,261	\$ 115,430
90%	\$ 989	\$ 118,000	\$ 40,914	\$ 114,460
89%	\$ 980	\$ 117,000	\$ 40,567	\$ 113,490
88%	\$ 972	\$ 116,000	\$ 40,221	\$ 112,520
88%	\$ 964	\$ 115,000	\$ 39,874	\$ 111,550
87%	\$ 955	\$ 114,000	\$ 39,527	\$ 110,580
86%	\$ 947	\$ 113,000	\$ 39,180	\$ 109,610
85%	\$ 938	\$ 112,000	\$ 38,834	\$ 108,640
85%	\$ 930	\$ 111,000	\$ 38,487	\$ 107,670
84%	\$ 922	\$ 110,000	\$ 38,140	\$ 106,700
83%	\$ 913	\$ 109,000	\$ 37,793	\$ 105,730
82%	\$ 905	\$ 108,000	\$ 37,447	\$ 104,760



CITY OF FLAGSTAFF PLANNING DIVISION  
AFFORDABLE HOUSING REFERENCE SCHEDULES

Aug-99

INTEREST RATE 7.80%  
 TERM 30  
 % PAYMENT MORT INSUR, FIRE INSUR, TAXES, HOA 20%  
 PAYMENT TO INCOME RATIO 29%  
 HUD AMI \$ 45,500.00

%AMI	PAYMENT	HOME PRICE	INCOME	LOAN AMT
3% DOWN	3% DOWN		3% DOWN	3% DOWN
82%	\$ 897	\$ 107,000	\$ 37,100	\$ 103,790
81%	\$ 888	\$ 106,000	\$ 36,753	\$ 102,820
80%	\$ 880	\$ 105,000	\$ 36,407	\$ 101,850
79%	\$ 871	\$ 104,000	\$ 36,060	\$ 100,880
78%	\$ 863	\$ 103,000	\$ 35,713	\$ 99,910
78%	\$ 855	\$ 102,000	\$ 35,366	\$ 98,940
77%	\$ 846	\$ 101,000	\$ 35,020	\$ 97,970
76%	\$ 838	\$ 100,000	\$ 34,673	\$ 97,000
75%	\$ 830	\$ 99,000	\$ 34,326	\$ 96,030
75%	\$ 821	\$ 98,000	\$ 33,979	\$ 95,060
74%	\$ 813	\$ 97,000	\$ 33,633	\$ 94,090
73%	\$ 804	\$ 96,000	\$ 33,286	\$ 93,120
72%	\$ 796	\$ 95,000	\$ 32,939	\$ 92,150
72%	\$ 788	\$ 94,000	\$ 32,593	\$ 91,180
71%	\$ 779	\$ 93,000	\$ 32,246	\$ 90,210
70%	\$ 771	\$ 92,000	\$ 31,899	\$ 89,240
69%	\$ 763	\$ 91,000	\$ 31,552	\$ 88,270
69%	\$ 754	\$ 90,000	\$ 31,206	\$ 87,300
68%	\$ 746	\$ 89,000	\$ 30,859	\$ 86,330
67%	\$ 737	\$ 88,000	\$ 30,512	\$ 85,360
66%	\$ 729	\$ 87,000	\$ 30,165	\$ 84,390
66%	\$ 721	\$ 86,000	\$ 29,819	\$ 83,420
65%	\$ 712	\$ 85,000	\$ 29,472	\$ 82,450
64%	\$ 704	\$ 84,000	\$ 29,125	\$ 81,480
63%	\$ 695	\$ 83,000	\$ 28,779	\$ 80,510
62%	\$ 687	\$ 82,000	\$ 28,432	\$ 79,540
62%	\$ 679	\$ 81,000	\$ 28,085	\$ 78,570
61%	\$ 670	\$ 80,000	\$ 27,738	\$ 77,600
60%	\$ 662	\$ 79,000	\$ 27,392	\$ 76,630
59%	\$ 654	\$ 78,000	\$ 27,045	\$ 75,660
59%	\$ 645	\$ 77,000	\$ 26,698	\$ 74,690
58%	\$ 637	\$ 76,000	\$ 26,351	\$ 73,720
57%	\$ 628	\$ 75,000	\$ 26,005	\$ 72,750
56%	\$ 620	\$ 74,000	\$ 25,658	\$ 71,780
56%	\$ 612	\$ 73,000	\$ 25,311	\$ 70,810
55%	\$ 603	\$ 72,000	\$ 24,965	\$ 69,840
54%	\$ 595	\$ 71,000	\$ 24,618	\$ 68,870
53%	\$ 587	\$ 70,000	\$ 24,271	\$ 67,900



CITY OF FLAGSTAFF PLANNING DIVISION  
 AFFORDABLE HOUSING REFERENCE SCHEDULES

Aug-99

INTEREST RATE 7.80%  
 TERM 30  
 % PAYMENT MORT INSUR, FIRE INSUR, TAXES, HOA 20%  
 PAYMENT TO INCOME RATIO 29%  
 HUD AMI \$ 45,500.00

%AMI	PAYMENT	HOME PRICE	INCOME	LOAN AMT
3% DOWN	3% DOWN		3% DOWN	3% DOWN
53%	\$ 587	\$ 70,000	\$ 24,271	\$ 67,900
53%	\$ 578	\$ 69,000	\$ 23,924	\$ 66,930
52%	\$ 570	\$ 68,000	\$ 23,578	\$ 65,960
51%	\$ 561	\$ 67,000	\$ 23,231	\$ 64,990
50%	\$ 553	\$ 66,000	\$ 22,884	\$ 64,020
50%	\$ 545	\$ 65,000	\$ 22,537	\$ 63,050
49%	\$ 536	\$ 64,000	\$ 22,191	\$ 62,080
48%	\$ 528	\$ 63,000	\$ 21,844	\$ 61,110
47%	\$ 520	\$ 62,000	\$ 21,497	\$ 60,140
46%	\$ 511	\$ 61,000	\$ 21,150	\$ 59,170
46%	\$ 503	\$ 60,000	\$ 20,804	\$ 58,200
45%	\$ 494	\$ 59,000	\$ 20,457	\$ 57,230
44%	\$ 486	\$ 58,000	\$ 20,110	\$ 56,260
43%	\$ 478	\$ 57,000	\$ 19,764	\$ 55,290
43%	\$ 469	\$ 56,000	\$ 19,417	\$ 54,320
42%	\$ 461	\$ 55,000	\$ 19,070	\$ 53,350
41%	\$ 452	\$ 54,000	\$ 18,723	\$ 52,380
40%	\$ 444	\$ 53,000	\$ 18,377	\$ 51,410
40%	\$ 436	\$ 52,000	\$ 18,030	\$ 50,440
39%	\$ 427	\$ 51,000	\$ 17,683	\$ 49,470
38%	\$ 419	\$ 50,000	\$ 17,336	\$ 48,500
37%	\$ 411	\$ 49,000	\$ 16,990	\$ 47,530
37%	\$ 402	\$ 48,000	\$ 16,643	\$ 46,560
36%	\$ 394	\$ 47,000	\$ 16,296	\$ 45,590
35%	\$ 385	\$ 46,000	\$ 15,950	\$ 44,620
34%	\$ 377	\$ 45,000	\$ 15,603	\$ 43,650
34%	\$ 369	\$ 44,000	\$ 15,256	\$ 42,680
33%	\$ 360	\$ 43,000	\$ 14,909	\$ 41,710
32%	\$ 352	\$ 42,000	\$ 14,563	\$ 40,740
31%	\$ 344	\$ 41,000	\$ 14,216	\$ 39,770
30%	\$ 335	\$ 40,000	\$ 13,869	\$ 38,800
30%	\$ 327	\$ 39,000	\$ 13,522	\$ 37,830
29%	\$ 318	\$ 38,000	\$ 13,176	\$ 36,860
28%	\$ 310	\$ 37,000	\$ 12,829	\$ 35,890
27%	\$ 302	\$ 36,000	\$ 12,482	\$ 34,920
27%	\$ 293	\$ 35,000	\$ 12,136	\$ 33,950
26%	\$ 285	\$ 34,000	\$ 11,789	\$ 32,980
25%	\$ 277	\$ 33,000	\$ 11,442	\$ 32,010
24%	\$ 268	\$ 32,000	\$ 11,095	\$ 31,040



EXHIBIT "H"



3063582  
Page: 63 of 80  
AM

**COCONINO ENGINEERING**

2708 NORTH FOURTH STREET, SUITE A1

FLAGSTAFF, ARIZONA 86004

PHONE: 520.527.1008 FAX: 520.527.1805

Project No. 96901.01

January 19, 2000

**EXHIBIT C**

A portion of that parcel of land described in Docket 1551, Page 396, Records of Coconino County, Arizona, located in the Southeast quarter of Section 27, Township 21 North, Range 7 East, Gila and Salt River Meridian, within the limits of the City of Flagstaff, Coconino County (R.C.C.), Arizona, more particularly described as follows:

Commencing at the Southeast Corner of said Section 27, from whence the South quarter Corner (S¼ Cor) of said Section 27 bears S 89°58'16" W a distance of 2656.62 feet (Basis of Bearings); Thence S 89°58'16" W, along the South line of the said Southeast quarter, a distance of 1920.91 feet to the TRUE POINT OF BEGINNING;

Thence continue S 89°58'16" W, along the South line of the said Southeast quarter, a distance of 74.88 feet to a non-tangent point of curvature of a curve concave to the Northwest, from whence the radius point bears N 11°06'10" W a distance of 4,360.80 feet;

Thence Northeasterly along the arc of said curve a distance of 491.27 feet, through a central angle of 06°27'17" to a point of tangency;

Thence N 72°26'33" E a distance of 57.43 feet;

Thence N 03°54'07" E a distance of 116.74 feet;

Thence N 22°42'39" W a distance of 643.28 feet;

Thence N 52°03'09" E a distance of 1,157.83 feet;

Thence N 77°43'18" E a distance of 172.16 feet;

Thence S 27°25'34" E a distance of 707.70 feet to a non-tangent point of curvature of a curve concave to the Southeast, from whence the radius point bears S 47°22'42" E a distance of 1776.75 feet;

Thence Southwesterly along the arc of said curve a distance of 125.48 feet through a central angle of 04°02'47" to a point of tangency;

(Continued on Page 2)

ACCEPTED  
CITY OF FLAGSTAFF  
ENGINEERING DIV

*P.M.* 4/21/00  
INT DATE



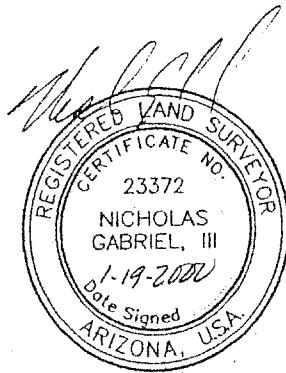
Thence S 38°34'31" W a distance of 350.00 feet to a point of curvature of a curve to the right, having a radius of 1140.00 feet;

Thence 673.85 feet along the arc of said curve, through a central angle of 33°52'02" to a point of tangency;

Thence S 72°26'33" W a distance of 387.89 feet to a point of curvature of a curve to the right, having a radius of 4375.80 feet;

Thence 419.47 feet along the arc of said curve, through a central angle of 05°29'33" to the Point of Beginning being a point on the South line of the said SE¼ of Section 27, also being a point on the South boundary of that parcel of land described in said Docket 1551, Page 396, R.C.C.;

Containing approximately 26.644 acres, all as shown on the attached "Exhibit C-1" made a part hereof by this reference.



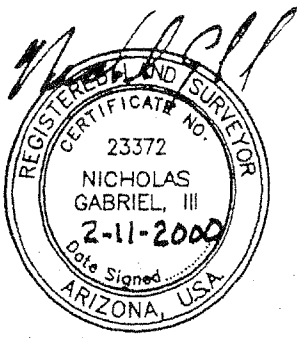
NICHOLAS GABRIEL, III  
R.L.S. 23372

ACCEPTED  
CITY OF FLAGSTAFF  
ENGINEERING DIV  
*J.M.* 4/21/00  
INT DATE

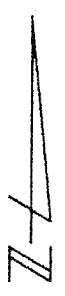
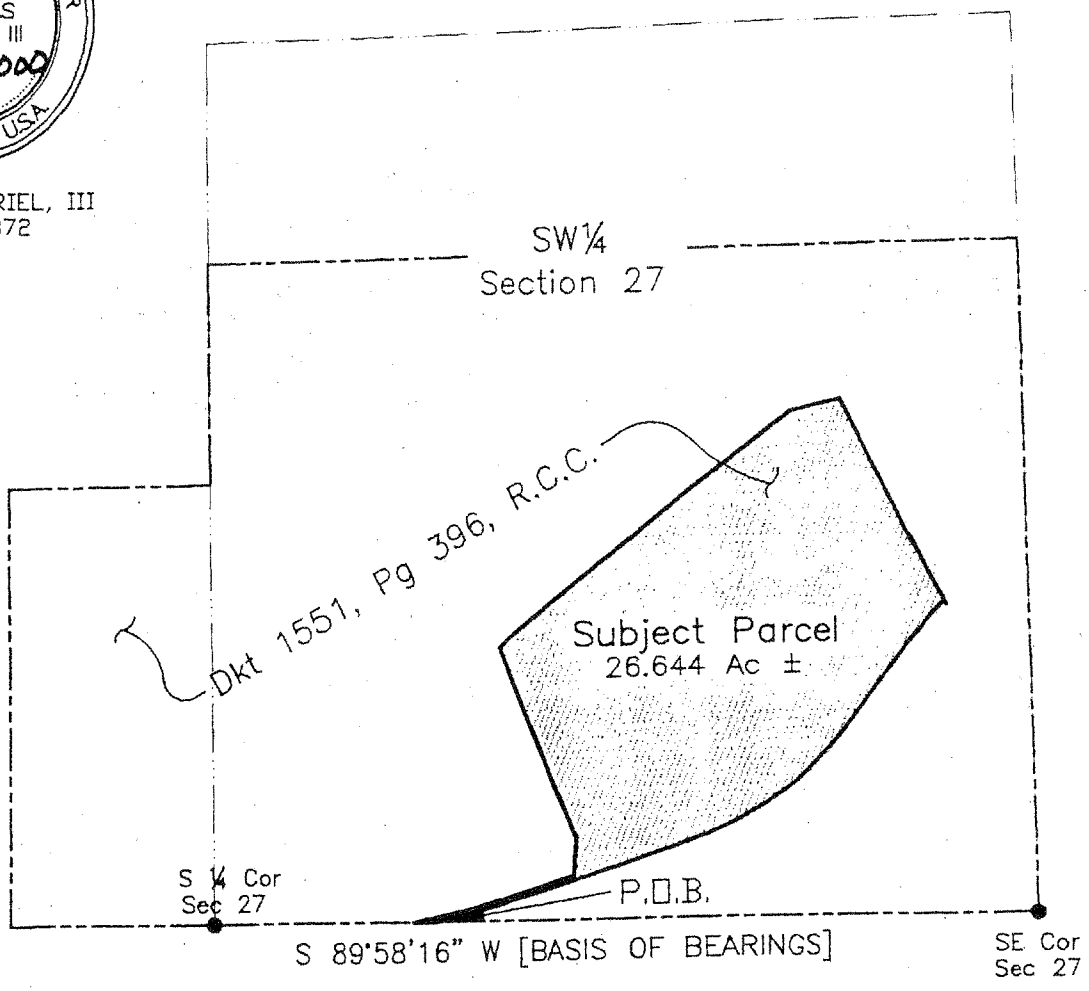
Fairway Peaks c  
Description

City File No. 04-99107

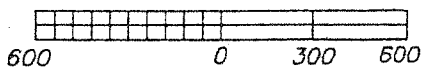




NICHOLAS GABRIEL, III  
R.L.S. 23372



SCALE: 1" = 600'



ACCEPTED  
CITY OF FLAGSTAFF  
ENGINEERING DIV  
*P.M.* 4/21/00  
INT DATE

City File No. 04-99107

SCALE: 1' = ___ ft. Vert 1' = ___ ft. Horiz
DRAWN: N. Gabriel
DESIGN: N. Gabriel
CHECKED: _____
DATED: 19 JAN 2000



# Coconino Engineering

2708 North Fourth Street - Suite A-1  
Flagstaff, Arizona 86004 (520) 527-1008

REVISIONS	
DATE	INIT.
2/10/00	NG
___/___/___	___
___/___/___	___
___/___/___	___

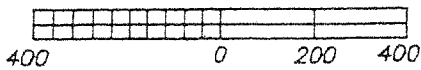
**EXHIBIT C-1**

A parcel of land in the SE 1/4 of Sec 27  
T.21N., R.7E., G & SRM, Coconino County, AZ

SHEET OF 1 2
JOB No.  96901.01



SCALE: 1" = 400'



DETAIL

1" = 200'

S 89°58'16" W  
74.88'

P.O.B.

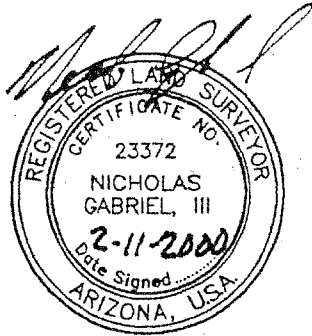
N 03°54'07" E  
116.74'

N 72°26'33" E  
57.43'

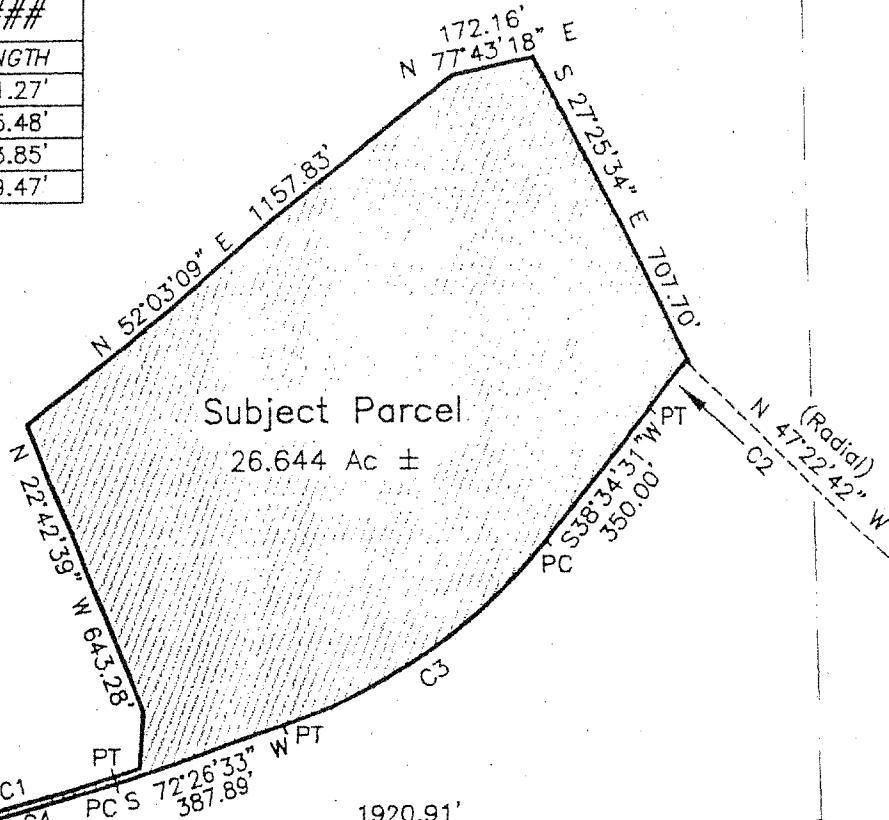
1920.91'

### CURVE TABLE ###

NO.	RADIUS	DELTA	LENGTH
C1	4360.80'	06°27'17"	491.27'
C2	1776.75'	04°02'47"	125.48'
C3	1140.00'	33°52'02"	673.85'
C4	4375.80'	05°29'33"	419.47'



NICHOLAS GABRIEL, III  
R.L.S. 23372



S ¼ Cor  
Sec 27

S 11°06'10" E  
(Radial)

S 89°58'16" W [BASIS OF BEARINGS]

P.O.B.

1920.91'

ACCEPTED  
CITY OF FLAGSTAFF  
ENGINEERING DIV

*P.M.* 4/21/00  
INT DATE

SE Cor  
Sec 27

City File No. 04-99107

SCALE:  
1" = \_\_\_ ft. Vert  
1" = \_\_\_ ft. Horiz

DRAWN:  
N. Gabriel

DESIGN:  
N. Gabriel

CHECKED:

DATED:  
10 FEB 2000



# Coconino Engineering

2708 North Fourth Street - Suite A-1  
Flagstaff, Arizona 86004 (520) 527-1008

REVISIONS  
DATE INIT.


EXHIBIT C-1

A parcel of land in the SE1/4 of Sec 27  
T.21N., R.7E., G & SRM, Coconino County, AZ

SHEET

2 OF 2

JOB No.

96901.01



3063582  
Page: 87 of 80  
AM

EXHIBIT "T"



3063582  
Page: 68 of 80  
AM

## AVIGATION EASEMENT AGREEMENT

This Avigation Easement Agreement (the "Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 2000, between Vanderbilt Farms, L.L.C., an Arizona limited liability company (the "Grantor"), and the City of Flagstaff, a municipal corporation, organized and existing under and by virtue of the laws of the State of Arizona (the "City").

### RECITALS

A. Grantor is the developer and owner of that certain parcel of land situated in the County of Coconino, State of Arizona, more particularly described and set forth in Exhibit "A," attached hereto and incorporated by reference herein (the "Property").

B. Grantor desires to obtain approval for one or more of the following legislative and/or administrative actions respecting Grantor's property: rezoning; subdivision plat, conditional use permit; variance; lot split; comprehensive plan amendment or building permit.

C. Grantor's Property is located within an area over which existing and future flight operations of the Flagstaff Pulliam Airport (the "Airport") will occur.

D. The City has an avigation easement policy with respect to airspace in the vicinity of the Airport.

E. Grantor acknowledges that an essential nexus exists between the City's avigation easement policy and the City's need to protect the public's investment in the Airport improvements, to maintain and enhance flight operations of the Airport for the benefit of the public, and to ensure the compatibility of the Grantor's proposed use with the existing and future operations of the Airport. Grantor recognizes and acknowledges that developing and/or utilizing properties in close proximity to airports may lead to aircraft noise and that a rough proportionality exists between the City's avigation easement policy and the impact that Grantor's use would have on the Airport.

F. The City desires that Grantor grant an avigation easement to the City, and the Grantor desires to make such a grant to the City.

///

///

///



## AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Grantor hereby grants to the City for the benefit of the public a perpetual and exclusive easement to utilize the airspace 350 feet or higher above the Property for aviation purposes (the "Easement"). The Easement shall be used by the City for the passage of aircraft in connection with the existing and future flight operations of the Airport. Grantor specifically acknowledges that the Easement will be utilized for overflights above the Property from a minimum altitude of 350 feet to an infinite height above the surface of the Property (the "Airspace") by all aircraft landing or taking off from, or operated at or on the Airport (the "Airport Operations").

2. Grantor agrees that the Easement further allows aircraft the right to conduct all flight operations that are reasonable and necessary within the Airspace which shall include, but not be limited to, emitting all amounts of light and noise as are typically associated with such flight operations, and discharge of all amounts of dust, exhaust, fuel and lubricant particles as are typically associated with such flight operations. Grantor further acknowledges that the operation of aircraft within the Airspace may also cause noise and vibrations to occur on or near the Property.

3. Grantor further waives, releases, and discharges the City, including the mayor, city council and all employees thereof, from any and all liability for any and all claims of damages of any kind to persons or property that may presently exist or arise in the future in connection with the Airport Operations. Grantor further acknowledges that the frequency of aircraft takeoff and landing operations at the Airport, as well as noise levels related to expansion in the Airport Operations are likely to increase. In this regard, Grantor acknowledges that the rights, obligations and covenants contained herein shall not terminate or vary in the event of changes in the frequency flights and/or levels of noise, traffic patterns, runway lengths or locations, terminal locations or characteristics, or types or category of aircraft using the Airport.

4. This Agreement does not release the owners and operators of aircraft from liability for damages or injury to person or property of any nature, including without limitation those caused by falling aircraft or falling physical objects from aircraft, except as stated herein with respect to the emission of all amounts of light and noise as are typically associated with flight operations from the Airport, and the discharge of all amounts of dust, exhaust, fuel and lubricant particles as are typically associated with such flight operations.

5. The parties acknowledge that for the purposes of this Agreement, the term "aircraft" shall include any device presently known or hereafter invented, used or designated for navigation or flight in the air.





The Grantor hereby executes this Agreement on the date set forth above.

GRANTOR

Vanderbilt Farms, L.L.C., an Arizona limited liability company

By: [Signature]

Its: Authorized Agent

STATE OF ARIZONA )

COUNTY OF Maricopa )

On this 2nd day of June, 2000, before me the undersigned Notary Public personally appeared John Beasling known to me as the person whose name is subscribed to the within instrument and acknowledged that he executed the same on behalf of Vanderbilt Farms, L.L.C., an Arizona limited liability company, for the purposes contained therein.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[Signature]  
Notary Public

My Commission expires:

8-10-2001



KAY S. ETHERIDGE  
Notary Public - Arizona  
MARICOPA COUNTY  
My Commission Expires  
AUGUST 10, 2001



ACCEPTANCE

The City of Flagstaff, Arizona, a municipal corporation, does hereby accept the foregoing grant and easement and the terms and conditions thereof.

IN WITNESS WHEREOF, the City of Flagstaff has caused this acceptance to be executed by its Mayor pursuant to authority granted by its City Council, this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

CITY OF FLAGSTAFF

By \_\_\_\_\_  
MAYOR

ATTEST:

By \_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

By \_\_\_\_\_  
CITY ATTORNEY



Exhibit "A"



3063582  
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AM

## EXHIBIT A

### LEGAL DESCRIPTION FOR FAIRWAY PEAKS (Attachment to Development Agreement)

#### PARCEL 1

All of Section 34 of Township 21 North, Range 7 East, Gila and Salt River Meridian, in the City of Flagstaff, Coconino County, Arizona, EXCEPT the Southwest quarter of the Southwest quarter (SW $\frac{1}{4}$  SW $\frac{1}{4}$ ) thereof.

Containing approximately 606.454 Acres

#### PARCEL 2

A portion of that parcel of land described in Docket 1551, Page 396, Records of Coconino County, Arizona, located in the Southeast quarter of Section 27, Township 21 North, Range 7 East, Gila and Salt River Meridian, within the limits of the City of Flagstaff, Coconino County (R.C.C.), Arizona, more particularly described as follows:

Commencing at the Southeast Corner of said Section 27, from whence the South quarter Corner (S $\frac{1}{4}$  Cor) of said Section 27 bears S 89°58'16" W a distance of 2656.62 feet (Basis of Bearings); Thence S 89°58'16" W, along the South line of the said Southeast quarter, a distance of 1920.91 feet to the TRUE POINT OF BEGINNING;

Thence continue S 89°58'16" W, along the South line of the said Southeast quarter, a distance of 74.88 feet to a non-tangent point of curvature of a curve concave to the Northwest; from whence the radius point bears N 11°06'10" W a distance of 4,360.80 feet;

Thence Northeasterly along the arc of said curve a distance of 491.27 feet, through a central angle of 06°27'17" to a point of tangency;

Thence N 72°26'33" E a distance of 57.43 feet;

Thence N 03°54'07" E a distance of 116.74 feet;

(Continued on Page 2)

Page: 75 of 80  
AM



Thence N 22°42'39" W a distance of 643.28 feet;

Thence N 52°03'09" E a distance of 1,157.83 feet;

Thence N 77°43'18" E a distance of 172.16 feet;

Thence S 27°25'34" E a distance of 707.70 feet to a non-tangent point of curvature of a curve concave to the Southeast, from whence the radius point bears S 47°22'42" E a distance of 1776.75 feet;

Thence Southwesterly along the arc of said curve a distance of 125.48 feet through a central angle of 04°02'47" to a point of tangency;

Thence S 38°34'31" W a distance of 350.00 feet to a point of curvature of a curve to the right, having a radius of 1140.00 feet;

Thence 673.85 feet along the arc of said curve, through a central angle of 33°52'02" to a point of tangency;

Thence S 72°26'33" W a distance of 387.89 feet to a point of curvature of a curve to the right, having a radius of 4375.80 feet;

Thence 419.47 feet along the arc of said curve, through a central angle of 05°29'33" to the Point of Beginning being a point on the South line of the said SE¼ of Section 27, also being a point on the South boundary of that parcel of land described in said Docket 1551, Page 396, R.C.C.;

Containing approximately 26.644 acres.

### PARCEL 3

A portion of that parcel of land described in Docket 1551, Page 396, Records of Coconino County, Arizona, located in the Southeast quarter of Section 27, Township 21 North, Range 7 East, Gila and Salt River Meridian, within the limits of the City of Flagstaff, Coconino County (R.C.C.), Arizona, more particularly described as follows:

BEGINNING at the Southeast Corner of said Section 27, from whence the South quarter Corner (S¼ Cor) of said Section 27 bears S 89°58'16" W a distance of 2656.62 feet (Basis of Bearings); Thence S 89°58'16" W, along the South line of the said Southeast quarter, a distance of 1,455.78 feet;

Thence N 72°26'33" E a distance of 363.19 feet to a point of curvature of a curve to the left having a radius of 1,260.00 feet;

Thence 744.78 feet along the arc of said curve through a central angle of 33°52'02" to a point of tangency;



Thence N 38°34'31" E a distance of 350.00 feet to a point of curvature of a curve to the right, having a radius of 1,656.75 feet;

Thence along the arc of said curve a distance of 369.84 feet more or less, through a central angle of 12°47'24" more or less, to a point on the East line of the said SE¼ of Section 27, being also a point on the East boundary of that parcel of land described in said Docket 1551, Page 396, R.C.C.;

Thence S 01°22'39" E along said East line and boundary, a distance of 1.059.51 feet to the Point of Beginning

Containing approximately 13.465 acres.

Containing in aggregate 646.563 acres.



NICHOLAS GABRIEL, III  
R.L.S. 23372



EXHIBIT "J"



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**FAIRWAY PEAKS**  
**Conceptual Development Phasing Schedule**  
**2000-2005**

2000 - Phase I - Golf Course clearing and grading and temporary FUTS trail.

2001 - Phase II

**Off-Site Construction**

1. Reclaimed wastewater transmission line;
2. 20" water line along west subdivision boundary;
3. Sewer outfall to Bow and Arrow Wash;
4. JWP from Lake Mary Road to first intersection inside west Subdivision boundary (temporary Main Entrance);
5. Temporary unpaved access to Zuni Drive and Lone Tree Road.

**On-Site Construction**

1. Commence Golf Course and regional detention facilities;
2. Single Duplex Lots - 113 Units
3. Duplex Lots - 47 Units  
160 Units

2002 - Phase III

**Off-Site Construction**

1. JWP to permanent entrance (at permanent Clubhouse site), including paved FUTS and 20" waterline;
2. Unpaved FUTS section to east Subdivision boundary;
3. Lone Tree Road connection and permanent FUTS parking area.

**On-Site Construction**

1. Commence construction of clubhouse and recreational facilities;
2. Commence maintenance facility;
3. Single Family Lots - 99 Units
4. Duplex Lots - 50 Units  
149 Units



2003 - Phase IV

**Off-site Construction**

1. Extend JWP and paved FUTS from clubhouse to the Affordable Housing Site, including a 20" waterline.

**On-Site Construction**

1. Complete main Loop Road;
  2. Complete permanent clubhouse and recreational facilities;
  3. Single Family Lots - 98 Units
  4. Duplex Lots - 113 Units
  5. Affordable Housing - 40 Units
- 251 Units

2004 - Phase V

**On-Site Construction**

1. Single Family Lots - 100 Units
  2. Duplex Lots - 50 Units
  3. Affordable Housing - 45 Units
- 195 Units
4. Complete JWP to east subdivision boundary.

2005 - Phase VI

**On-Site Construction**

1. Single Family Lots - 114 Units
  2. Duplex Lots - 51 Units
  3. Condominiums - 210 Units
  4. Affordable Housing - 40 Units
- 415 Units

**NOTE:** The number of units in each phase are estimated.



