

When recorded, return to:
Sonia Cornelio, City Clerk
The City of San Luis
P.O. Box 1170
San Luis, AZ

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“Agreement”) is entered into this ____ day of _____, 2017 by and between the City of San Luis, an Arizona municipal corporation (the “**City**”), and San Luis Commercial Holdings, LLC, an Arizona limited liability company (“**Developer**”). The City and the Developer may be referred to herein as either a “**Party**” or collectively, the “**Parties.**”

RECITALS

A. WHEREAS, the Developer desires to develop a mixed use commercial project located at the northwest corner of the intersection of Highway 95 and 22nd Street within the City’s limits (the “**Project Site**”) as described on Exhibit A

B. WHEREAS, the Parties agree that the current and future development of the Project Site will improve and enhance the economic welfare of the residents of the City, as well as increase the tax revenues to the City, which revenues would not be generated without such development; and

C. WHEREAS, the Parties understand and acknowledge that this Agreement is a “Development Agreement” within the meaning of and entered into pursuant to the terms of A.R.S. § 9-500.05, in order to facilitate the development of the Project Site; and the terms of this Agreement shall constitute covenants running with the Project Site as more fully described in this Agreement; and

D. WHEREAS, the Developer intends to develop the Project Site to include a hotel, a convenience store/gas station, restaurant and possibly other retail or professional/medical space as depicted on the Concept Plan attached as Exhibit B (the “**Project**”). The project consists of approximately 49,000 square feet of commercial space.

E. WHEREAS, the Parties also understand and acknowledge that this Agreement is authorized by and entered into in accordance with the terms of A.R.S § 9-500.11. The actions taken by the City pursuant to this Agreement are for economic development purposes, as that term is used in A.R.S. §9-500.11, will assist in the creation and retention of jobs, and will otherwise improve or enhance the economic welfare of the residents of the City.

NOW THEREFORE, in consideration of the above premises, the promises contained in this Agreement and for good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties hereto agree as follows:

ARTICLE I
PURPOSE AND SCOPE OF AGREEMENT

1.1 Recitals. The parties represent to one another that the recitals set forth above, which are incorporated herein by reference, are true and correct, and acknowledge that the parties may rely thereon.

1.2 Purpose. This Agreement is intended to encourage the development of the Project in the form of retail tax incentives pursuant to Article IV and in the form of public infrastructure assistance pursuant to Article V (collectively, the “**Development Incentives**”). The Parties realize that without the benefits offered to the Developer through this Agreement that the Project would not locate in the City in the same time, place or manner.

1.3 Term. The term of this Agreement shall commence on the Effective Date and terminate fifteen (15) years thereafter unless terminated earlier as permitted by this Agreement.

ARTICLE II
DEFINITIONS

The following terms shall have the meanings set forth below whenever used in this Agreement, except where the context clearly indicates otherwise.

2.1 “Agreement” means this Development Agreement, as amended and restated or supplemented in writing from time to time, and includes all exhibits and schedules hereto. References to Articles, Sections or Exhibits are to this Agreement unless otherwise qualified.

2.2 “City” means the City of San Luis, a municipal corporation.

2.3 “Commencement of Construction” or “Commence Construction” means the obtaining of a building, excavation, grading or similar permit by Developer for the construction of the subject Improvement.

2.4 “Completion of Construction” means the date on which final certificates of occupancy have been issued by the City for any Improvement and the date that the City issues a notice of acceptance upon the completion of Site Infrastructure.

2.5 “Concept Plan” is defined in Recital D.

2.6 “Construction Benchmark” is defined in Section 3.2.1.

- 2.7 **“Convenience Store/Gas Station”** means a small retail business that stocks a range of groceries, snack foods, soft drinks, alcohol, tobacco products, over the counter medications, toiletries, newspapers, magazines and sells gas and related products.
- 2.8 **“Default”** is defined in Section 7.1.
- 2.9 **“Developer”** means San Luis Commercial Holdings, LLC, an Arizona limited liability company.
- 2.10 **“Development Incentives”** is defined in Section 1.2.
- 2.11 **“Economic Incentive Criteria”** is defined in Section 3.2.
- 2.12 **“Effective Date”** means the date on which the last party executes this Agreement, as set forth above, and which shall be no less than thirty (30) days from the date upon which this Agreement has been adopted and approved by ordinance by the City Council.
- 2.12 **“Employee Benchmark”** is defined in Section 3.2.3.
- 2.13 **“Force Majeure Event”** means any event which prohibits or materially interferes with, delays or alters the performance of any act under this Agreement, including, but not limited to the following: delays in any utility providing utilities to the Site; acts by third-parties; strikes or lockouts; shortages of material or labor (excluding those caused by lack of funds); acts of the public enemy; confiscation or seizure by any government or public authority; injunction, restraining order or other court order or decree, initiative or referendum action; wars or war-like action (whether actual and pending or expected, and whether de jure or de facto); blockades; insurrections; riots; civil disturbances; and acts of God; but excluding delays caused by lack of funds.
- 2.14 **“Full Time Employee”** means an employee employed by a tenant of Developer that is operating one of the Improvements that works at least 1,560 hours per year.
- 2.15 **“Hotel”** means a operator of short-term lodging with approximately 75 rooms.
- 2.16 **“Improvement”** means the Site Infrastructure, Hotel, Restaurant, Retail/Medical/Professional Building, and Convenience Store/ Gas Station.
- 2.17 **“Retail/Medical/Professional Building”** means a retail/medical/professional building of approximately 5,000 square feet or more.
- 2.18 **“Project”** is defined in Recital D.

- 2.19 “**Project Site**” is defined in Recital A.
- 2.20 “**Project Site Acquisition Date**” means the date that the Developer acquires the Project Site
- 2.21 “**Project Tenants**” is defined in Section 3.2.4.
- 2.22 “**Quarter**” means the periods from January 1 to March 31 (“Quarter 1”), April 1 to June 30 (“Quarter 2”), July 1 to September 30 (“Quarter 3”), and October 1 to December 31 (“Quarter 4”).
- 2.23 “**Restaurant**” means a “sit down” food establishment of no less than 2,500 square feet.
- 2.22 “**Retention Basin**” means the approximately 1.922 acre parcel depicted on the Concept Plan to be used for storm water retention and for public park purposes.
- 2.23 “**Sales Taxes**” means the unrestricted portion of the four percent (4.0%) general transaction privilege tax imposed under the Tax Code of the City of San Luis.
- 2.24 “**Sales Tax Rebate**” is defined in Section 4.1.
- 2.25 “**Schedule of Performance**” means and refers to that schedule of performance agreed to by the Parties as set forth in Exhibit C attached hereto and incorporated herein by reference.
- 2.26 “**Site Infrastructure**” means the construction and the Developer’s acceptance of the necessary off-site and on-site improvements, pad development and utility “stub-outs” necessary to commence vertical construction or to obtain a building permit for vertical construction.
- 2.27 “**Site Infrastructure Date**” means the date of Developer’s acceptance of the construction of the necessary off-site and on-site improvements, pad development and utility “stub-outs” necessary to commence vertical construction or to obtain a building permit for vertical construction.
- 2.28 “**Term**” is defined in Section 1.3.

ARTICLE III
PROJECT DEVELOPMENT; ZONING AND SUBDIVISION APPROVAL

3.1 Schedule of Performance. The Developer shall develop the Project in accordance with the “**Schedule of Performance**” attached as Exhibit C. The Project is depicted on the “**Concept Plan**” attached as Exhibit B. The failure to Complete Construction of the Hotel on or

before January 1, 2020, as set forth in § 3.2.2 below, shall also constitute a default under this Agreement.

3.2 Economic Incentive Criteria. Developer hereby acknowledges and agrees that in order to be eligible for the Development Incentives, it must meet the following criteria (collectively, the “**Economic Incentive Criteria**”):

3.2.1 Commencement of Construction. The Developer must Commence Construction of the following Improvements on or before the respective dates set forth below; each such date shall be referred to herein as a “**Construction Benchmark**.”

- | | |
|----------------------------------|--|
| a. Site Infrastructure | 180 days from Project Site Acquisition Date. |
| b. Hotel | 180 days from Site Infrastructure Date. |
| c. Restaurant | 180 days from Site Infrastructure Date. |
| d. Convenience Store/Gas Station | 360 days from Site Infrastructure Date. |

Developer in its discretion may elect to swap the start dates for the above listed Improvements, but in no event shall the Site Infrastructure Date be later than 180sixty (60) days after the Project Site Acquisition Date and the Commencement of Construction for all of the Improvements be later than 360 days after the Site Infrastructure Date .

3.2.2 Completion of Construction. The Developer must Complete Construction of the Hotel on or before January 1, 2020.

3.2.3 Employee Benchmark. The parties have relied on the “*Proposed Retail Tax Incentive Agreement with San Luis Commercial Holdings, L.L.C. for Multi-Use Site*,” report dated May 12, 2017 and prepared by Willdan/Economists.com to identify the “**Employee Benchmarks**” as representing the number of employees necessary to operate the respective Improvement when fully operational. The Parties have agreed that the Developer has met the Employee Benchmark when the following are met:

- (1) 34,000 square feet of the Project is operational and actually leased by a tenant; and
- (2) Developer shall require all tenants for the Improvements to disclose the initial employment figures to the Developer upon the tenant’s signing a lease agreement. The Developer shall report the tenants employment disclosures to the City within thirty (30) days of Developer’s receipt of the disclosures; and

3.3 Zoning, Subdivision and Permit Review and Approvals. The City agrees to review and act on any zoning, land division/subdivision and/or permit applications in a timely manner so as not to delay or impair Developer’s development of the Project Site in accordance with the terms and conditions of this Agreement. The City agrees upon the Developer’s request, and to the extent permissible under Arizona law, to expedite the review and approval of any zoning, land division/subdivision and/or permit applications or submissions the Develop submits to the City for review and approval.

ARTICLE IV
ECONOMIC INCENTIVES

4.1 Sales Tax Rebate. The City agrees that it shall rebate and pay to Developer Sales Taxes (the “**Sales Tax Rebates**”) equal to (50%) of the Sales Taxes imposed and actually received by the City for construction and related contracting activities by Developer and Developer’s contractors and subcontractors in constructing the Improvements of the Project; (ii) and fifty percent (50%) of all unrestricted Sales Taxes imposed and actually received by the City for retail sales, admissions, exhibitions, amusements, restaurant, bar, hotel and transient occupancy occurring within the Project until the first to occur of the following dates or events:

- a. Developer has received \$1,822,680.00 in aggregate Sales Tax Rebates; or
- b. The fifteenth (15th) anniversary from the date upon which this Agreement has been adopted and approved by ordinance by the City Council.

The City’s obligation to pay Developer the Sales Tax Rebates from Sales Taxes arising out of the construction and related contracting activities by Developer and Developer’s contractors and subcontractors in constructing the Improvements of the Project is contingent upon Developer’s Commencement of Construction set forth in Section 3.2.1 above. Developer’s failure to meet the Commencement of Construction Benchmarks set forth in 3.2.1 only effects its right to receive the Sales Tax Rebates from Sales Taxes arising out of construction activities. It does not effect its right to receive the Sales Tax Rebates from Sales Taxes received from the sales, admissions, exhibitions, amusements, restaurant, bar, hotel and transient occupancy occurring within the Project.

The City’s obligation to pay Developer the Sales Tax Rebates from Sales Taxes imposed and actually received by the City for retail sales, admissions, exhibitions, amusements, restaurant, bar, hotel and transient occupancy occurring within the Project is contingent upon Developer’s Completion of Construction set forth in Section 3.2.2 and Developer meeting the Employee Benchmarks set forth in Section 3.2.3 above.

ARTICLE V
CITY PUBLIC IMPROVEMENTS, INFRASTRUCTURE AND MARKETING

5.1 Retention Basin. Simultaneous with the Project Site Acquisition Date, the City shall purchase from Developer (or from the ownerowner of the Project Site if the Retention Basin property is not yet owned by the Developer) the Retention Basin at a cost no more than fair market value plus 10%, provided that the thethe entity selling such property has submitted to the City copies of all due diligence materials and title reports concerning the Project Site. The City shall be provided with, at no cost to the City, a standard title insurance policy for the Retention Basin property and the City shall pay for extended owner’s policy if the City so elects.

5.2 Public Infrastructure.

5.2.1 Mandatory. The City must reimburse the Developer for the cost of public Infrastructure described in the Concept Plan in amount not to exceed the difference between FIVE HUNDRED THOUSAND DOLLARS (\$500,000) and the cost of the Retention Basin. The City shall make such payments to Developer within ten (10) days following receipt of an invoice therefore and a description of the procurement process undertaken to procure the invoiced Public Infrastructure. Such payment is conditioned on the Developer's procurement process complying with Title 34 of the Arizona Revised Statutes.

5.2.2 Permissive. At the request of the City, the Developer may undertake offsite public infrastructure in conjunction with the Developer's Public Infrastructure on the Project Site. In such case, the City shall reimburse the Developer by making payments to the Developer within ten (10) days following receipt of an invoice for such offsite public infrastructure and a description of the procurement process undertaken to procure the invoiced Public Infrastructure. Such payment is conditioned on the Developer's procurement process complying with Title 34 of the Arizona Revised Statutes and the City's approval of such offsite public infrastructure.

5.3 Marketing. The City must work with the Developer in the marketing of the Hotel and Restaurant, and other businesses located on the Project Site, including the promotion of the Hotel to governmental agencies and other businesses doing business in City.

ARTICLE VI **INDEMNITY AND REPRESENTATIONS**

6.1 Indemnity by the Developer. ToTo the extent permitted by law, the Developer shall pay, defend, indemnify and hold harmless the City and its City Council members, officers, employees, agents and representatives from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including reasonable attorney's fees, experts' fees and court costs associated) which arise from or relate in any way to any negligent or willful acts or omissions by the Developer, or its employees, contractors, subcontractors, agents or representatives, undertaken pursuant to this Agreement; provided however, that the provisions of this Section 6.1 shall not apply to the extent that any loss or claim is caused by the negligence of intentional misconduct of the City, the City Council members, officers, employees, contractors, subcontractors, agents or representatives. The foregoing indemnity obligations of the Developer shall survive the expiration or termination of this Agreement for a period equal to the applicable statute of limitations period.

6.2 Indemnity by the City. ToTo the extent permitted by law, the City shall pay, defend, indemnify and hold harmless the Developer and its managers, members, agents and representatives from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities and suits (including reasonable attorney's and experts' fees and court costs associated) which arise from or which relate in any way to (1) this Agreement,

including any suit challenging its validity or the validity of any of its provisions; and (2) any negligent or willful act or omission by the City and its City Council members, employees, contractors, subcontractors, agents or representatives, undertaken pursuant to this Agreement; provided however, that the provisions of this Section 6.2 shall not apply to the extent that any loss or claim is caused by the negligence or intentional misconduct of the Developer or its partners, shareholders, officers, managers, members, agents, employees, contractors, subcontractors or representatives. The foregoing indemnity obligations of the City shall survive the expiration or termination of this agreement for a period equal to the applicable statute of limitations period.

6.3 City Representations. The City represents and warrants to the Developer that:

6.3.1 The City has the full right, power and authorization to enter into and perform this Agreement and each of City's obligations and undertakings under this Agreement, and the City's execution, delivery and performance of this Agreement have been duly authorized.

6.3.2 The City will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

6.4 Developer Representations. The Developer represents and warrants to the City that:

6.4.1 The Developer has the full right, power and authorization to enter into and perform this Agreement and of the obligations and undertakings of the Developer this Agreement, and the execution, delivery and performance of this Agreement by the Developer has been duly authorized.

6.4.2 The Developer will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

ARTICLE VII

DEFAULT; REMEDIES; TERMINATION AND ASSIGNMENT

7.1 Default. A Party hereunder shall be deemed to be in default under this Agreement if such Party breaches any obligation required to be performed by the respective Party hereunder within any time period required for such performance, and such breach or default continues for a period of ninety (90) days after written notice thereof from the non-defaulting Party; provided, however, if the breach or default cannot reasonably be cured within such ninety (90) day period, then the Party shall be in default if it fails to commence the cure of such breach within the ninety (90) day period and diligently pursue the same to completion. Absent written agreement to the contrary, if such default is not cured within the additional ninety (90) day period, this Agreement may be terminated, at the sole and absolute discretion of the non-breaching Party.

7.2 Dispute Resolution. In the event that there is a dispute hereunder which the Parties cannot resolve between themselves, the Parties agree that there shall be a sixty (60) day moratorium on litigation during which time the Parties agree to attempt to settle the dispute by nonbinding mediation before commencement of litigation. The mediation shall be held under the commercial mediation rules of the American Arbitration Association. The mediator selected shall have at least five (5) years' experience in mediating or arbitrating disputes relating to commercial property development. The cost of any such mediation shall be divided equally between the City and the Developer, or in such other fashion as the mediator may order. The results of the mediation shall be nonbinding on the Parties, and any Party shall be free to initiate litigation upon the conclusion of mediation.

7.3 No Personal Liability. No manager, member, official, employee, agent or representative of the City or Developer shall be personally liable to the other (a) in the event of any default or breach by the City or Developer, (b) for any amount which may become due to the City or Developer or (c) pursuant to any obligation of the City or Developer under the terms of this Agreement.

7.4 Developer's Remedies. In the event the City is in default under this Agreement and fails to cure any such default within the time period required as set forth in Section 7.1 above, then, in that event, in addition to pursuing any and all other legal and equitable remedies which the Developer may have against the City, the Developer may also elect to terminate this Agreement by written notice delivered to the City.

7.5 City's Remedies. In the event that the Developer is in breach under this Agreement and the Developer thereafter fails to cure any such breach within the time period described in Section 7.1 above, then the City shall have the right to automatically terminate this Agreement immediately upon written notice to the Developer.

7.6 Extension of Time. The Developer's obligations under Section 3.1 shall be extended for each and every Force Majeure Event. Developer shall notify the City of the occurrence of a Force Majeure Event affecting the obligations of the Developer under Section 3, and the time for commencement of the obligations under Section 3.1 shall be extended day for day during the continuance of any Force Majeure Event. Furthermore, other than a Force Majeure Event, if the City's failure to timely approve requests under this Development Agreement is delayed by an amount of time, then the deadlines for the Developer to perform its obligations or other actions under this Development will be extended by that amount of time.

7.7 Assignment. Neither Party may assign its rights of obligations under this Agreement without the prior written consent of the other Party.

ARTICLE VIII **GENERAL PROVISIONS**

8.1 Time of Essence. Time is of the essence of each and every provision of this Agreement.

8.2 Conflict of Interest. Pursuant to Arizona law, rules and regulations, no member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. This Agreement is subject to cancellation pursuant to A.R.S. § 38-511.

8.3 Notices. All notices, approvals, and other communications provided for herein or given in connection herewith shall be validly given, made, delivered or served, and delivered personally or sent by nationally recognized courier (e.g., Federal Express, Airborne, UPS), or by United States mail, certified with return receipt requested, to::

If to the City : Mr. Tadeo A. De La Hoya, City Manager
The City of San Luis
P.O. Box 1170
San Luis, AZ 85349

With a copy to: San Luis City Attorney
The City of San Luis
P.O. Box 1170
San Luis, AZ

If to Developer: San Luis Commercial Holdings, LLC
c/o Ross Wait
4774 East 30th Place, Suite A
Yuma, AZ 85365

With copies to: Barry Olsen, Esq.
Law Offices of Larry W. Suci, PLC
101 East Second Street
Yuma, AZ 85364

Or to such other addresses as any Party hereto may from time to time designate in writing and deliver in a like manner. Notices, approvals and other communications provided for herein shall be deemed delivered upon personal delivery, within twenty-four (24) hours following deposit with a nationally recognized overnight courier, or within forty-eight (48) hours following deposit with the United States mail, certified with return receipt requested, as hereinabove provided, prepaid and addressed as set forth above.

8.4 Governing Laws. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. This Agreement has been made and entered into

in Yuma County, Arizona. Pursuant to the provisions of A.R.S. §41-4401, Developer further agrees to warrant that it and any of its contractors or subcontractors will comply with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. §23-214, subsection A. A breach of this warranty shall be deemed a material breach of this Agreement with City and will be subject to the penalties of A.R.S. §41-4401.A.2. The City shall have the right to random verification of employment records of Developer, its contractors, or subcontractors to ensure compliance with this warranty. The Parties agree that they are not currently engaged in, and agree that for the duration of the Agreement they will not engage in, a boycott of Israel, as that term is defined in A.R.S. §35-393.

8.5 Successors and Assigns. This Agreement shall run with the land and all of the covenants and conditions set forth herein shall inure to the benefit of and be binding upon the permitted successors and assigns of the Parties hereto.

8.6 Waiver. No waiver by either Party of any 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 for any other term, covenant or condition herein contained.

8.7 Attorneys' Fees. In the event of any actual litigation between the parties in connection with this Agreement, the Party prevailing in such action shall be entitled to recover from the other Party all of its costs and fees, including reasonable attorneys' fees, which shall be determined by the court and not by the jury.

8.8 Counterparts. This Agreement may be executed in one or more counterparts and by facsimile or other means of electronic signature, each of which shall be deemed 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 all attached to a single instrument so that the signature of all parties may be physically attached to a single document.

8.9 Limited Severability. The City and the Developer each believes that the execution, delivery and performance of this Agreement is in compliance with all applicable statutes, regulations, ordinances and other laws ("**Applicable Laws**"). However, in the unlikely event that any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement is declared void or unenforceable, or is construed as requiring the City to do any act in violation of any Applicable Laws, such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect.

However, if:

- (1) the City's obligations related to payments of any kind owed to the Developer, or reimbursements owed to the Developer, the Developer's right to Sales Tax Rebates are deemed illegal, in violation of any Applicable Laws, void, voidable, or unenforceable; then

- (2) the Developer will be released from the obligations under this Agreement related to those payments, reimbursements, or Sales Tax Rebates.

But if:

- (1) the Developer has performed the obligations under this Agreement entitling it to payments, reimbursements, or Sales Tax Rebates, and
- (2) the City's obligations to make payments to Developer, reimburse the Developer, or the Developer's right to Sales Tax Rebates are deemed in violation of any Applicable Laws, void, voidable, or unenforceable, then
- (3) the City will explore and negotiate with Developer in good faith other legal options so that Developer may recoup the costs that the parties originally intended under this Agreement.

8.10 Schedules and Exhibits. All schedules and exhibits attached hereto are incorporated herein by this reference as though fully set forth herein.

8.11 Entire Agreement and Amendment. 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 hereto, oral or written, are hereby superseded. This Agreement may not be amended except by a written amendment executed by the Parties.

8.12 Recordation of Agreement. This Agreement shall be recorded in the Official Records of Yuma County, Arizona, within ten (10) days after its approval and execution by the City. However, the Agreement shall not become effective until thirty (30) days from the date after approval by City Council.

8.14 No Third Party Beneficiaries. There are no third party beneficiaries to the Agreement, and no person or entity not a Party will have any right or cause of action.

8.15 No Agency Created. Nothing contained in the Agreement will create any partnership, joint venture, or agency relationship between the Parties.

8.16 Headings. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

8.17 Venue. Any legal action relating to this Agreement or the agreements contemplated herein shall be brought in either the Yuma County Superior Court at the election of the plaintiff in such legal action, provided, however, that nothing in this paragraph will be deemed to have authorized the bringing of any legal action in a court which does not otherwise have jurisdiction to adjudicate the legal action.

8.18 Estoppel Certificate. Any party may request of the other party, and the requested party shall, within fifteen (15) business days, respond and certify by written instrument to the requesting party that (a) this Agreement is unmodified and in full force and effect, (b) the existence of any default under this Agreement and the scope and nature of the default, if applicable, (c) the existence of any counterclaims which the requested party has against the other party, and (d) any other matters that may reasonably be requested in connection with this Agreement and the approval of the Project. In the event a party has not received an estoppel certificate within fifteen (15) business days from the date of the request, then in such event, said party shall be entitled to prepare an estoppel certificate and deliver the certificate to the City and such estoppel certificate shall be binding upon the City.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

DEVELOPER

THE CITY

CITY OF SAN LUIS, an Arizona
municipal corporation

By: _____
Mayor

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

STATE OF ARIZONA)
) ss.
County of Yuma)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____, Mayor of the City of San Luis, who acknowledged that he/she signed the foregoing instrument on behalf of the City.

Notary Public

My commission expires:

STATE OF ARIZONA)
) ss.
County of Yuma)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017 by _____.

Notary Public

My commission expires:
