

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the “**Agreement**”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between Barkley Farms Limited Partnership, an Arizona limited partnership, and Ranch 800 LLC, an Arizona limited liability company (collectively, “**Owners**”), and the City of San Luis, an Arizona municipal corporation (the “**City**”). This Agreement is entered into pursuant to City Resolution Number \_\_\_\_\_.

### RECITALS

A. WHEREAS, A.R.S. § 9-500.05 authorizes the City to enter into development agreements with landowners and persons having an interest in real property located within the City; and

B. WHEREAS, Owners own the land described in Exhibit “A” attached hereto and incorporated herein by this reference (the “**Property**”); and

C. WHEREAS, the City desires to construct infrastructure improvements on said Property, and Owners desire said improvements to be constructed; and

E. WHEREAS, the City’s governing body has authorized execution of this Agreement by Resolution No. \_\_\_\_\_, a draft of which is attached hereto as Exhibit “B” and incorporated herein by this reference.

NOW, THEREFORE, the parties agree as follows:

### AGREEMENT

#### ARTICLE 1. DEFINITIONS

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

1.1. City shall mean and refer to the City of San Luis, an Arizona municipal corporation, and any successor public body or entity.

1.2. Owners shall mean and refer to Barkley Farms Limited Partnership, an Arizona limited partnership, and Ranch 800 LLC, an Arizona limited liability company.

1.3. Improvements shall mean and refer to all public and private improvements which may be constructed from time to time on the Property, including, without limitation, all improvements of any type or kind or any other alteration of the natural terrain to be built by the City, as the case may be, pursuant to the terms of this Agreement, including as described in Section 2.3 below. In addition, Improvements shall refer to the following phases of construction:

### Phase I

Repaving Merrill Avenue 48' wide road with miscellaneous curb, sidewalk ramps, and cross gutter replacement on Merrill Avenue west side and new VC&G and 5' sidewalk on east side from Los Oros to Nancy Street. Sewer Main repairs and storm drain pipe from retention basin to YCWUA Merrill Lateral and existing retention basin regrading. Michael Lateral pipeline removal and Barkley Farm Ditch removal and replacement..

### Phase II

Repaving Merrill Avenue 48' wide road with miscellaneous curb, sidewalk ramps, and cross gutter replacement on Merrill Avenue west side and new VC&G and 5' sidewalk on east side from Nancy Street to County 22<sup>nd</sup> Street. Michael Lateral pipeline R&R. Repair existing sewer manholes. Storm drain pipe from retention basin to Nancy Street. County 22<sup>nd</sup> Street turn lane and Barkley Lateral pipeline extension.

1.4 Property as used in this Agreement shall mean and refer to all of the real property which is legally described in Exhibit "A".

## **ARTICLE 2. DEVELOPMENT PLAN**

2.1 Timing of Agreement. City has applied for funding of improvements through a Community Development Block Grant, and the construction of the improvements by City as described in this agreement is conditioned upon the application for funding being approved by the Arizona Department of Housing. Construction of such improvements will not begin until funds from said grant application become available for such use by City. Owner is not obligated to make dedications or construct improvements until or unless the City becomes obligated to construct the improvements described in Section 2.4.

2.2. Duration of Development Agreement. The term of this Agreement shall continue and exist from the effective date of this Agreement until the Improvements described herein are constructed or for three (3) years from the date of execution of this Agreement, whichever first occurs.

2.3. Owners Dedication of Right of Way. In consideration of the construction of the Improvements described in Section 2.3 below, Owners will dedicate to the City, by limited warranty deed, the Property described in Exhibit "A."

Owners will be solely responsible for any improvements on their property that may be needed to irrigate their entire property from the existing Barkley Canal Lateral turnout located about 1/8 mile east of Merrill Avenue. Owners and City agree to coordinate any and all irrigation improvements with road work.

2.4. City Development of Improvements. City will develop Improvements on Merrill Avenue between Los Oros Street and County 22<sup>nd</sup> Street in the City of San Luis. The City agrees to construct Merrill Avenue to its full width as shown on the plans titled "Merrill Avenue

Improvements – County 22<sup>nd</sup> Street to Los Oros Steet” at the expense of the City. City intends to construct Improvements to allow transitions to the existing street sections and a left turn lane on County 22<sup>nd</sup> Street. To do so, the City will work with the YCWUA for the abandonment of the current Michael Canal Lateral pipeline and right of way. The City will also pipeline the Barkley Canal Lateral along County 22<sup>nd</sup> Street as needed for construction of Improvements to the intersection of Merrill Avenue and County 22<sup>nd</sup> Street. The City agrees to make the Improvements as provided for in the following construction phases:

Phase I: Repaving Merrill Avenue 48’ wide road with miscellaneous curb, sidewalk ramps, and cross gutter replacement on Merrill Avenue west side and new VC&G and 5’ sidewalk on east side from Los Oros to Nancy Street. Sewer Main repairs and storm drain pipe from retention basin to YCWUA Merrill Lateral and existing retention basin regrading. Michael Lateral pipeline removal and Barkley Farm Ditch removal and replacement.

Phase II: Repaving Merrill Avenue 48’ wide road with miscellaneous curb, sidewalk ramps, and cross gutter replacement on Merrill Avenue west side and new VC&G and 5’ sidewalk on east side from Nancy Street to County 22<sup>nd</sup> Street. Michael Lateral pipeline R&R. Repair existing sewer manholes. Storm drain pipe from retention basin to Nancy Street. County 22<sup>nd</sup> Street turn lane and Barkley Lateral pipeline extension.

**ARTICLE 3. CONFLICT OF INTEREST; REPRESENTATIVES NOT INDIVIDUALLY LIABLE**

3.1. 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.

3.2. No Personal Liability. No member, official, or employee of the City shall be personally liable to Owners, or any successor or assignee, (a) in the event of any default or breach by the City, (b) for any amount which may become due to Owners or their successors or assigns, or (c) pursuant to any obligation of the City under the terms of this Agreement.

**ARTICLE 4. MISCELLANOUS PROVISIONS**

4.1. Notices. All notices and communications provided for herein, or given in connection herewith, shall be validly made if in writing and delivered personally or sent by registered or certified United States Postal Service mail, return receipt requested, postage prepaid to:

If to the City:                      City Manager  
   City of San Luis  
   P.O. Box 1170  
   San Luis, AZ 85349

If to the Owners:                    Ranch 800, LLC  
   Attn: Robert K. Barkley, Manager

1818 S. Letvin Avenue  
Yuma, Arizona 85365

Barkley Farms Limited Partnership  
Attn: Robert K. Barkley, as Manager of Western Arizona  
Development Company, LLC its General Partner  
1818 S. Letvin Avenue  
Yuma, Arizona 85365

With a Copy To:

John S. Garcia, Esq., General Counsel  
Garcia, Kinsey & Villarreal, P.L.C.  
2620 W. 24<sup>th</sup> St.  
Yuma, Arizona 85364

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

or to such other addresses as either party may from time to time designate in writing and deliver in a like manner. Any such change of address notice shall be given at least ten (10) days before the date on which the change is to become effective. Notices given by mail shall be deemed delivered 72 hours following deposit in the United States Postal Service in the manner set forth above.

4.2. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the parties of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or of any other provision of this Agreement.

4.3. 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 of the Agreement.

4.4. Authority. The undersigned represent to each other that they have full power and authority to enter into this Agreement and that all necessary actions have been taken to give full force and effect to this Agreement. Owners represent and warrant that they are duly formed and validly existing under the laws of the State of Arizona and that they are duly qualified to do business in the State of Arizona and in good standing under applicable state laws. Owners and the City warrant to each other that the individuals executing this Agreement on behalf of their respective parties are authorized and empowered to bind the party on whose behalf each individual is signing. Owners represent to the City that by entering into this Agreement, Owners have bound

the Property and all persons and entities having any legal or equitable interest therein to the terms of the Agreement.

4.5. Entire Agreement. This Agreement, including the following exhibits, constitutes the entire agreement between the parties.

4.6. Amendment of the Agreement. This Agreement may be amended, in whole or in part, and with respect to all or any portion of the Property, only with the mutual written consent of the parties to this Agreement or by their successors in interest or assigns. The City shall record the amendment or cancellation in the official records of the Yuma County Recorder.

4.7. Severability. If any other provision of the Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect.

4.8. Governing Law. The laws of the State of Arizona shall govern the interpretation and enforcement of this Agreement. The parties agree that venue for any action commenced in connection with this Agreement shall be proper only in a court of competent jurisdiction located in Yuma County, Arizona, and the parties hereby waive any right to object to such venue.

4.9. Recordation of Agreement and Subsequent Amendment; Cancellation. This Agreement, and any amendment or cancellation of it, shall be recorded in the official records of the Yuma County Recorder no later than ten (10) days after the City and Owners execute such agreement, amendment, or cancellation, as required by A.R.S. § 9-500.05.

4.10. Attorneys' Fees and Costs. If either party brings a legal action either because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees and court costs.

4.11. Notice of Conveyance or Assignment. Owners shall give notice to the City of any sale of the entire Property at least ten (10) days prior to the effective date of the sale.

4.12. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement, and no person or entity not a party hereto shall have any right or cause of action hereunder.

4.13. No Agency Created. Nothing contained in this Agreement shall create any partnership, joint venture, or agency relationship between the parties.

4.14. Non-Liability of City Officials and Employees. Except for mandamus and other special actions, no member, official, or employee of the City shall be personally liable to Owners, or any successor in interest, in the event of any default or breach by the City or for any amount that may become due to Owners or successor, or under any obligation under the terms of this Agreement.

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

THE CITY:

The City of San Luis, an Arizona municipal corporation

By: \_\_\_\_\_  
Mayor

ATTEST:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney


OWNERS:

Barkley Farms Limited Partnership, an Arizona limited partnership

By: Western Arizona Development Company, LLC  
Its: General Partner

  
By: Robert K. Barkley  
Its: Manager

Ranch 800 LLC, an Arizona limited liability company

  
By: Robert K. Barkley  
Its: Manager

STATE OF ARIZONA        )  
  ) ss.  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, Mayor of the City of San Luis, Arizona, an Arizona municipal corporation.

\_\_\_\_\_  
Notary Public

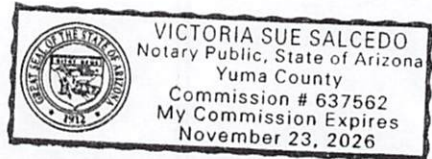
My Commission Expires: \_\_\_\_\_

STATE OF ARIZONA        )  
  ) ss.  
County of Yuma            )

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of June, 2023, by Robert K. Barkley, as Manager of Western Arizona Development Company, LLC, the General Partner of Barkley Farms Limited Partnership, an Arizona limited partnership.

VSAH  
\_\_\_\_\_  
Notary Public

My Commission Expires: 11.23.24



STATE OF ARIZONA        )  
  ) ss.  
County of Yuma            )

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of June, 2023, by Robert K. Barkley, the Manager of Ranch 800 LLC, an Arizona limited liability company.

VSAH  
\_\_\_\_\_  
Notary Public

My Commission Expires: 11.23.24

