ARIZONA COURT OF APPEALS

DIVISION ONE

MARKHAM CONTRACTING CO., INC., Plaintiff/Appellant, v. CAHAVA SPRINGS PHASE I, INC. et al., Defendants/Appellees.	Court of Appeals Division One No. 1 CA-CV 22-0746 Maricopa County Superior Court No. CV2021-054458

APPELLANT'S OPENING BRIEF AND APPENDIX

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes & Rules

Other Authorities

INTRODUCTION

This is a case about a group of property owners who enriched themselves by stiffing a contractor. These landowners formed a "revitalization district" to coordinate infrastructure improvements on their properties. The landowners agreed that the infrastructure would benefit their properties and they signed a contract that caused the district to hire a contractor to do the work. The landowners also agreed that they would pay for the work indirectly by having the district fund the improvements by issuing bonds and then making the bond payments via assessments on their land.

The contractor did the work and then everyone refused to pay. The contractor obtained a $6 million judgment against the district, but the district has no money. The district has no money because the district did not collect the required assessments from the landowners. The district did not collect because it does not actually operate independently of the landowners. All the landowners and the district are controlled by one person. The landowners therefore enriched themselves by causing all this work to be done, and then decided not to vote to collect the bills from themselves (via assessments on their own land) to pay for the work.

Arizona law does not condone this behavior. The doctrine of unjust enrichment allows a plaintiff to recover when the defendant was enriched at the plaintiff's expense without legal justification. Relying on inapplicable law, the superior court dismissed the complaint and denied leave to file an amended complaint. Under settled law, however, both complaints state a claim. This Court should reverse.

STATEMENT OF FACTS AND CASE

I. Seeking to increase the value of their property, landowners banded together to arrange for infrastructure improvements via a special taxing district.

Because this appeal arises from a dismissal under Rule 12(b)(6), the Court "must assume the truth of all well-pleaded factual allegations and indulge all reasonable inferences from those facts," and may consider both the pleading and the "complaint's exhibits." *Coleman v. City of Mesa*, 230 Ariz. 352, 356, ¶ 9 (2012).

This case involves property owned by the four primary Defendants/Appellees: (1) Cahava Springs Phase I, Inc.; (2) Cahava Springs Development Corporation; (3) Morningstar Road Properties, Inc.; and (4) Cahava Springs Community Association (the "Landowners"). [IR-27 at 2, ¶¶ 2-5 (APP132); *see also* IR-27, Ex. 1 at 1 (APP143) ("the Landowners hold

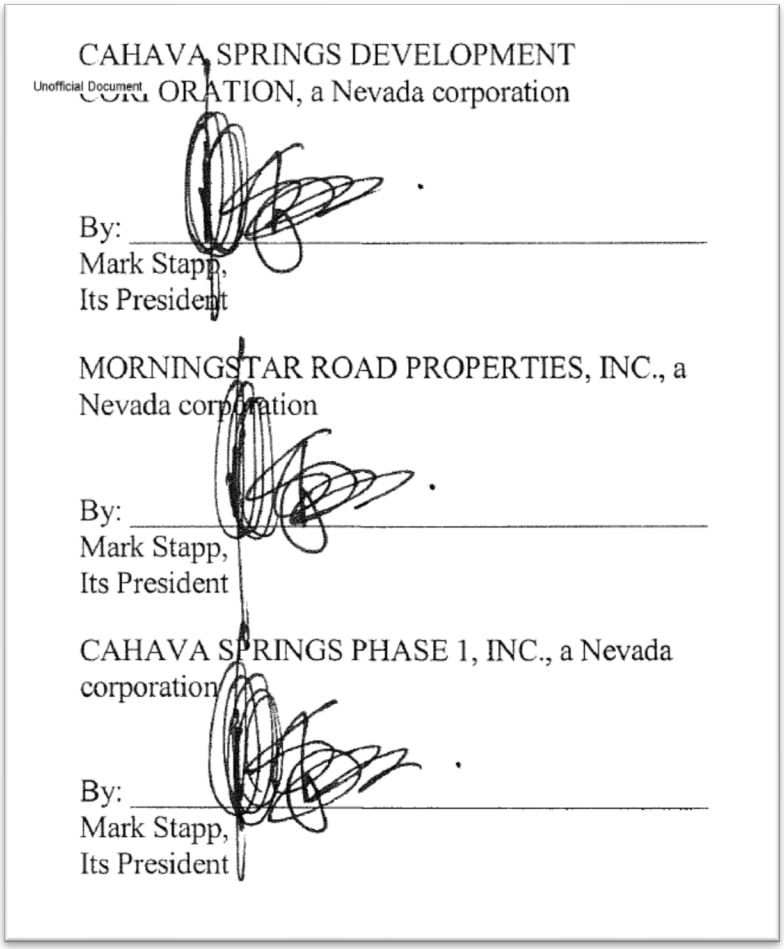
title to all of the real property . . . comprising the District").] Although these are four separate entities, they are not actually independent from each other or from the District. One person—Mark Stapp—serves as the President and Director of each of them. [IR-27 at 3, ¶ 6 (APP133).]

The Landowners own essentially vacant lots in Cahava Springs, a master planned residential community in Cave Creek. The Landowners (read: Mark Stapp, President and Director of each one) planned to make infrastructure improvements to their properties, such as a road and water line. This development would increase the Landowners' property values.

To fund this development, the Landowners (again, President/Director Stapp) took advantage of an Arizona law authorizing tax-levying special improvement districts known as "revitalization districts." The law allows landowners to form revitalization districts to do things that benefit the land. *See* A.R.S. § 48-6801 et seq. This includes constructing, maintaining, and improving infrastructure "that will result in a beneficial use principally to land within the geographical limits of the district." A.R.S. § 48-6801(8). To complete these projects, a district may "[e]nter into contracts and spend monies for any infrastructure purpose with respect to the district." A.R.S. § 48-6808(A)(1).

Here, the Landowners (i.e., President/Director Stapp) formed the Cahava Springs Revitalization District principally to complete infrastructure improvements (e.g., roadway, water line) to enable development of the otherwise vacant land. [IR-27, Ex. 1, Ex. B thereto (APP163) (Description of 2017 Improvements).] To perform this work, the District and the Landowners entered into a District Development and Waiver Agreement (the "Development Agreement") on February 15, 2017. [IR-27, Ex. 1 (APP141).]

Although revitalization districts typically involve independent and unrelated property owners, the Development Agreement for Cahava Springs shows that this District was not actually independent. The same person (Mark Stapp) signed on behalf of each of the Landowners:



CAHAVA SPRINGS DEVELOPMENT
CORPORATION, a Nevada corporation

By: _____
Mark Stapp,
Its President

MORNINGSTAR ROAD PROPERTIES, INC., a Nevada corporation

By: _____
Mark Stapp,
Its President

CAHAVA SPRINGS PHASE 1, INC., a Nevada corporation

By: _____
Mark Stapp,
Its President

[IR-27, Ex. 1 at 18 (APP160).]

The Landowners also exercised full control over the District. The Landowners' Representatives were Mark Stapp, Dennis Mathisen, and John Fischer. [IR-27, Ex. 1 at 15 (APP157).] The District Board consisted of those same people: Mark Stapp, Dennis Mathisen, and John Fischer. [IR-27, Ex. 1 at 14 (APP156).] Mark Stapp—the President and Director of each of the Landowners—also served as Chairman for the District. [IR-27 at 3, ¶ 6 (APP133).] The District even retained one of the Landowners

(Defendant/Appellee Cahava Springs Development Corporation) as the "Development Manager," which acted "as the agent of the District" to manage the improvements. [IR-27, Ex. 1 at 3 (APP145).]

II. The Landowners agreed to pay for the improvements via assessments levied on their properties located within the District.

In the Development Agreement, the Landowners (i.e., President/Director Stapp) agreed that these improvements would benefit their property: each Landowner specifically "consents or acknowledges" "that the proposed 2017 improvements are of more than local or ordinary public benefit, and that the Property receives a benefit from the 2017 Improvements commensurate with the Assessments." [IR-27, Ex. 1 at 13 (APP155); *accord* IR-27, Ex. 1 at 4 (APP146) ("The Landowners . . . acknowledge that the Assessed Property . . . will benefit from the 2017 Improvements in an amount not less than the Assessments.").]

Because infrastructure improvements in a revitalization district increase the value of the land, the landowners within that district must pay for them. By statute, the infrastructure projects for a revitalization district can be paid for via "[p]roceeds received from the sale of bonds of the district," or "[s]pecial assessments" of the property, among other sources.

A.R.S. § 48-6812. By law, a district "shall prescribe fees and charges, and shall revise them when necessary, to generate revenue sufficient, together with any monies from the sources described in § 48-6812, to pay when due the principal and interest of all revenue bonds for the payment of which revenue has been pledged." A.R.S. § 48-6814(E). A district "may levy by resolution an assessment of the costs of any infrastructure purpose, any operation and maintenance of infrastructure or any enhanced municipal services on any land in the district based on the benefit determined by the district board to be received by the land." A.R.S. § 48-6815. To put it simply, Arizona statutes allow districts to issue bonds to pay for the work up front, to secure those bonds with assessments on the benefited properties, and then to collect on those assessments to fund the improvements and allow the landowners to make the bond payments over time.

The Landowners and the District used this structure for Cahava Springs. The Development Agreement—signed by Stapp on behalf of the Landowners—specified that the improvements would be funded by bonds, which were issued specifically "to pay [] the total cost of the District Improvements and the Developer Improvements." [IR-27, Ex. 1 at 4 (APP146).] The bonds in turn would be secured by assessments made "on

the lots in the District." [*Id.* (APP146).] The District promised to "collect when due all Assessments" for the bonds. [IR-28, Ex. 2 at 52, § 9.2(a) (APP223).] The District arranged for over $21 million of bonds. [IR-28 (APP168) (Indenture of Trust for $16,680,000 in Series A and $5,000,000 in Series B bonds); *see also* IR-27, Ex. 1 at 5 (APP147) (discussing bonds of the same amounts).] The Landowners also agreed—and represented to the bondholders—that additional debt could be placed on the assessed lots to cover any cost overruns needed to complete the infrastructure improvements. [IR-27 at 6-7, ¶ 28 (APP136-37).]

In other words, the deal worked like this. The Landowners (President/Director Stapp) wanted to improve the value of their land by doing infrastructure improvement work. They formed the District to do so, specifically agreed on what work would be done, and expressly acknowledged that this work would benefit their land. The Landowners would pay for the work over time by having the District issue bonds which the Landowners would repay (along with any cost overruns) via assessments levied on the their land and collected from the Landowners.

Two weeks after the Landowners and the District signed the Development Agreement, the District hired Markham to perform much of

the improvement work. [IR-27 at 5, ¶ 20 (APP135); IR-30 (APP263) (construction agreement).] Mark Stapp signed the contract with Markham on behalf of the District. [IR-30 at 21 (APP283).] The Landowners consented to hiring a contractor like Markham. The Development Agreement, which the Landowners signed, specifically "consents or acknowledges" "the execution of the construction contracts for the 2017 Improvements . . . ." [IR-27, Ex. 1 at 13-14 (APP155-56).]

Markham then performed the work, which was substantially complete by December 2018. [IR-27 at 5, ¶ 21 (APP135).]

III. The District did not pay Markham, defaulted on its bond payments, and took no steps to collect the assessments intended to fund the improvements and pay the bonds.

The District failed to fully pay Markham for its work. In January 2022, after Markham and the District arbitrated their dispute, Markham obtained a judgment against the District for nearly $6.5 million, including about $4 million in principal for the unpaid work. [IR-32 at 2 (order confirming arbitration award) (APP286).] The District has not paid this judgment. [IR-27 at 8, ¶ 35 (APP138).]

With over $21 million in bonds and the power to levy assessments on the property, paying Markham should have been easy. But there was one

major problem. The District never actually collected on the assessments. [IR-27 at 5, ¶ 16 (APP135); IR-29, Attachment A at 2 (APP260) ("[T]he District has ***never*** . . . enforced the collection of delinquent Assessments").]

The assessments were the key to the entire thing. That's where the money was supposed to come from. The District would collect the assessments from the Landowners and use that money to fund the infrastructure project and make bond payments. Because the District did not collect the assessments, despite having promised to do so, there was no money to pay the bonds—much less to pay for any costs that might have exceeded the value of the bonds. The District defaulted on repayment of the bonds, and Markham did not get paid.

The Landowners' (or really, Stapp's) complete control over the District effectively short-circuited its proper operation as a revitalization district. The District is responsible for billing and collecting on the assessments levied on the Landowners' properties. Those same Landowners agreed to pay off those assessments as part of their decision to take advantage of the "build now, pay later" benefit of using a revitalization district to complete the infrastructure work on their properties. [IR-27 at 4, ¶ 15 (APP134); IR-28, Ex. 2 at 52, § 9.2(a) (APP223).]

Again, the Landowners control the District. Mark Stapp serves as President and Director of each of the Landowners and also serves as Chairman for the District. [IR-27 at 3, ¶ 6 (APP133).] That means that the Landowners, through the District, are responsible for billing and collecting the assessment payments *from themselves*. All they had to do was collect the money. They chose not to do so.

The Landowners' refusal to collect their own money from themselves means that Markham and the bondholders did not get paid. But Markham had already done the work, so the Landowners got the benefit of the work without paying for it.

IV. The lawsuit.

Markham sued the Landowners, Mark Stapp, and others, for one count of unjust enrichment. [IR-1.] Before any defendant had been served and before any defendant had appeared or responded, Markham amended its complaint as of right. [IR-13 (APP074).]

The defendants then moved to dismiss, principally arguing that Markham had not stated a claim for unjust enrichment. [IR-24; *see also* IR-34 (response); IR-35 (reply).] Before the superior court ruled on the motion to dismiss, Markham filed a motion for leave to amend its complaint [IR-26

(APP126)], and attached its proposed second amended complaint [IR-27 (APP131)].

The superior court granted the motion to dismiss, relying primarily on *Wang Elec., Inc. v. Smoke Tree Resort, LLC*, 230 Ariz. 314 (App. 2012). [IR-41 at 3 (APP069).] In *Wang*, this Court held that a plaintiff making an unjust enrichment claim filed against an owner for improvements made by its tenant must show that the owner engaged in "improper conduct." 230 Ariz. at 320, ¶ 17.

At the same time, the superior court denied Markham's motion for leave to amend, ruling that "the proposed amendment is futile," because the Second Amended Complaint purportedly did not allege improper conduct by the Landowners. [IR-41 at 5 (APP071).]

The superior court entered final judgment. [IR-45 (APP072).] Markham timely appealed. [IR-46.] This Court has jurisdiction under A.R.S. § 12-2101(A)(1).

STATEMENT OF THE ISSUES

1. In certain circumstances, the law allows recovery in unjust enrichment from a defendant who benefited from the plaintiff's performance under a contract with a third party. Here, the First Amended Complaint alleges that the Landowners benefited from Markham's performance under its contract with the District in a manner consistent with the considerations applicable to this type of case. Did the superior court err by dismissing the complaint?

2. A proposed amended complaint cannot be denied as futile if the underlying facts or circumstances relied upon may be a proper subject of relief. Here, the allegations in the Second Amended Complaint state a claim for unjust enrichment based on the Landowners' enrichment from Markham's performance under its contract with the District. Did the superior court err by denying leave to amend as futile?

STANDARD OF REVIEW

"Dismissal of a complaint under Rule 12(b)(6) is reviewed de novo." *Coleman*, 230 Ariz. at 355, ¶ 7. Because "Arizona follows a notice pleading standard," the Court "must assume the truth of all well-pleaded factual allegations and indulge all reasonable inferences from those facts." *Id.* at

356, ¶ 9. In addition to the complaint's allegations, the Court may also consider the "complaint's exhibits, or public records regarding matters referenced in [the] complaint." *Id.*

This Court "review[s] a trial court's denial of a motion to amend for an abuse of discretion." *Timmons v. Ross Dress for Less, Inc.*, 234 Ariz. 569, 572, ¶ 17 (App. 2014). Leave to amend, however, "must be freely given when justice requires," Ariz. R. Civ. P. 15(a)(2), and, indeed, "should be granted unless the court finds specific cause, such as futility, to deny the amendment," *Timmons*, 234 Ariz. at 572, ¶ 17. As with the review of an order dismissing a complaint, the Court's futility assessment must "presume that the facts alleged in the [Second Amended Complaint] are true." *Id.*

"While leave to amend may be denied when the proposed amendment is futile, it should be granted if the underlying facts or circumstances relied upon may be a proper subject of relief." *Yes on Prop 200 v. Napolitano*, 215 Ariz. 458, 471, ¶ 40 (App. 2007) (citations, quotation marks, and alterations omitted). In other words, to determine whether the superior court abused its discretion in denying leave to file the Second Amended Complaint as futile under Rule 15(a)(2), the Court first must determine whether the Second Amended Complaint would have survived Rule 12(b)(6), for which the

Court's review would have been de novo. *Coleman*, 230 Ariz. at 355, ¶ 7. It follows that if it would have been error to dismiss the Second Amended Complaint, then the superior court abused its discretion by denying Markham's request for leave to amend. Consequently, although the denial of leave to amend generally is reviewed for abuse of discretion, the particular question here—whether the proposed amendment states a claim—warrants de novo review.

ARGUMENT SUMMARY

The First and Second Amended Complaints stated a valid claim for unjust enrichment against the Landowners. (Argument § I.) Both pleadings alleged the essential elements of an unjust enrichment claim under Arizona law. (Argument § I.A.) Both pleadings satisfied the Restatement's special conditions for unjust enrichment claims against a non-party beneficiary to a breached contract. (Argument § I.B.) And by alleging that the Landowners have not paid anyone for the benefits of Markham's work, both pleadings fell squarely within a group of cases that Arizona courts have long understood to allow for restitution. (Argument § I.C.)

The superior court erred by ending this case at the pleading stage. (Argument § II.) The superior court erred as a matter of law by concluding

that this Court's decision in *Wang*, which applies only to unjust enrichment claims against landlords for tenant-contracted improvements to leasehold interests, required Markham to show that the Landowners engaged in improper conduct. (Argument § II.A.) Even if *Wang* did apply, the superior court still erred because the Second Amended Complaint's allegations and exhibits support an inference of improper conduct by the Landowners. (Argument § II.B.) Affirming the superior court's ruling would invite abuse of Arizona's revitalization district program. (Argument § II.D.)

ARGUMENT

I. Markham alleged an unjust enrichment claim against the Landowners.

Both the First and Second Amended Complaints properly pled unjust enrichment claims. The Third Restatement—which specifically addresses Markham's situation—confirms this is so, as does existing Arizona law.

A. Markham's pleadings met Arizona's requirements for pleading unjust enrichment.

To state a claim for unjust enrichment, a plaintiff must allege "(1) an enrichment, (2) an impoverishment, (3) a connection between the two, (4) the absence of justification for the enrichment and impoverishment and (5) the absence of any remedy at law." *Mousa v. Saba*, 222 Ariz. 581, 588, ¶ 29 (App.

2009). In interpreting these elements, Arizona courts have looked to the Restatement for guidance. *See, e.g.*, *Com. Cornice & Millwork, Inc. v. Camel Constr. Servs. Corp.*, 154 Ariz. 34, 39-40 (App. 1987) (citing Restatement (First) of Restitution ("First Restatement") § 1 (1937)); *Span v. Maricopa Cnty. Treasurer*, 246 Ariz. 222, 227, ¶ 19 (App. 2019) (citing Restatement (Third) of Restitution and Unjust Enrichment ("Third Restatement") § 62 (2011)); *cf. Cramer v. Starr*, 240 Ariz. 4, 10, ¶ 21 (2016) ("In Arizona, if there is no statute or case law on a particular subject, we have traditionally followed the Restatement of Laws and generally will embrace the Restatement if it prescribes a sound and sensible rule." (citations omitted)).

Unjust enrichment and the related "remedy of restitution [are] not confined to any particular circumstance or set of facts." *Com. Cornice*, 154 Ariz. at 38. Rather, restitution is "a flexible, equitable remedy available whenever the court finds that the defendant, *upon the circumstances of the case*, is obliged by the ties of natural justice and equity to make compensation for benefits received." *Murdock-Bryant Constr., Inc. v. Pearson*, 146 Ariz. 48, 53 (1985) (citation omitted, emphasis added).

"[A]ssum[ing] the truth of all of the complaint's material allegations" and "accord[ing Markham] the benefit of all inferences which the complaint

can reasonably support," both the First Amended Complaint and the Second Amended Complaint stated a claim for unjust enrichment. *Luchanski v. Congrove*, 193 Ariz. 176, 179, ¶ 17 (App. 1998).

1. Enrichment.

The First Amended Complaint alleges the requisite "enrichment" — that Markham's infrastructure work benefited the Landowners' property in an amount not less than the amount of the assessments required to pay for the infrastructure work. *Mousa*, 222 Ariz. at 588, ¶ 29. [IR-13 at 5-6, ¶¶ 19, 23, 25, 29 (APP078-79).]

The Second Amended Complaint likewise alleges that Markham's infrastructure work enriched the Landowners by providing the Landowners with valuable services for which they ultimately did not pay. [IR-27 at 5-6, ¶¶ 20-23, 27 (APP135-36).] Markham's work for the District "benefit[ed] the surrounding property owned by" the Landowners by constructing that infrastructure and allowing that land to realize its developmental potential. [IR-27 at 6, ¶ 23 (APP136).]

The Landowners expressly acknowledged these benefits by agreeing that their property "will benefit from" the infrastructure improvements "in an amount not less than" the value of the assessments required to finance

those improvements. [IR-27, Ex. 1 at 4 (§ 2.2(c)) (APP146), *accord id.* at 13 (Art. VIII, subsec. (a)) (APP155).]

2. Impoverishment.

The pleadings also allege "impoverishment." Both complaints allege that Markham has not been paid for its work and that Markham's performance of the infrastructure work cost Markham millions of dollars in labor and materials. [IR-13 at 6, ¶¶ 27, 29 (APP079); IR-27 at 8, ¶¶ 35, 37 (APP138); *see also* IR-32 (APP285) (judgment and arbitration award).] Markham correspondingly has not been fully paid for this work, to the tune of millions of dollars. [IR-27 at 5-8, ¶¶ 16-19, 29-33, 37 (APP135-38).]

3. Connection.

To show a connection between the Landowners' enrichment and its impoverishment, Markham need only allege that the Landowners were enriched "at the expense of" Markham. Third Restatement § 1. Markham has done so here by alleging in both complaints that the Landowners' enrichment—i.e., the undisputed benefit to their property values from the infrastructure work that Markham performed—came at Markham's expense. [*See* IR-13 at 5-6, ¶¶ 23-24 (APP078-79); IR-27 at 3, 6-8, ¶¶ 6-7, 28-34 (APP133, APP136-38).]

4. Absence of justification.

"Unjustified enrichment is enrichment that lacks an adequate legal basis; it results from a transaction that the law treats as ineffective to work a conclusive alteration in ownership rights. Broadly speaking, an ineffective transaction for these purposes is one that is *nonconsensual*." Third Restatement § 1 cmt. b.

Both complaints allege that the Landowners' enrichment at Markham's expense lacks legal justification. They allege that the Landowners "have not paid anyone" for the benefits to their properties from Markham's infrastructure work and that "[i]t would be unjust to allow [the Landowners] to retain such benefit without paying for it." [IR-13 at 6, ¶¶ 25-26, 29 (APP079); IR-27 at 7-8, ¶¶ 30-37 (APP137-38).]

Moreover, under the Development Agreement, the Landowners granted the District authority to enter agreements with contractors to complete the various infrastructure improvements for which the District was created. [IR-27, Ex. 1 at 13-14 (APP155-56).] The District exercised that authority when it entered the construction contract with Markham. [IR-13 at 4, ¶ 17 (APP077); IR-27 at 5, ¶ 20 (APP135).] Under the construction contract, Markham agreed to complete virtually all the infrastructure

improvements detailed in the Development Agreement. [IR-27 at 5, ¶ 20 (APP135); IR-30 at 2 (APP264).] The District promised to "collect when due all Assessments," but the Landowners used their authority over the District's decisionmaking to avoid paying the assessments that had been levied on their properties to compensate Markham in accordance with the construction contract, while still retaining the benefit of the infrastructure work to their properties. [IR-27 at 7-8, ¶¶ 30-34 (APP137-38); IR-28, Ex. 2 at 52, § 9.2(a) (APP223).]

Allowing the Landowners to retain the benefits of Markham's work without paying anyone would make "an ineffective transaction" out of the construction contract by impeding the District's ability to pay Markham. Third Restatement § 1 cmt. b. The parties did not understand or agree that Markham would perform infrastructure improvements for free. Nor did they understand or agree that the Landowners would receive the benefits of those improvements for free. Because Markham did not consent to such an arrangement, the Landowners' enrichment lacks a legal justification.

5. Remedy at law.

To bar relief for unjust enrichment, "[t]he legal remedy . . . must be against the same person from whom relief in equity is sought." *Loiselle v.*

Cosas Mgmt. Grp., LLC, 224 Ariz. 207, 211, ¶ 14 (App. 2010). This inquiry "is not controlled by whether the party has an 'adequate' remedy at law—in the sense of providing all the relief the party desires—but by whether there is a contract which governs the relationship between the parties." *Trustmark Ins. Co. v. Bank One, Ariz., NA*, 202 Ariz. 535, 541, ¶ 32 n.5 (App. 2002).

Here, the absence of a contractual relationship between the parties apparent in both complaints demonstrates "the absence of any remedy at law" by which Markham might otherwise recover *from the Landowners* the balance owed for its completed infrastructure work. *Mousa*, 222 Ariz. at 588, ¶ 29. Although the Landowners and the District have a contractual relationship (the Development Agreement), as do Markham and the District (the construction contract), Markham and the Landowners do not. [IR-13 at 3-4, ¶¶ 12, 17 (APP076-77); IR-14, Ex. 1 (APP082) (Development Agreement); IR-14, Ex. 2 (APP105) (construction agreement); IR-27 at 4-5, ¶¶ 12, 20 (APP134-35); IR-27, Ex. 1 (APP141) (Development Agreement); IR-30 (APP263) (construction agreement).] Thus, Markham's only legal remedy against *the Landowners* is for unjust enrichment. Markham's pleadings therefore properly pled unjust enrichment.

B. The Restatement confirms Markham's case should be permitted to advance beyond the pleading stage.

The First Restatement instructed that a claimant who performs a contract cannot collect restitution from a benefited non-party "*merely* because of the failure of performance by" the claimant's contractual counterpart. First Restatement § 110 (emphasis added). Arizona courts have relied upon this rule. *See, e.g.*, *Wang*, 230 Ariz. at 320, ¶ 15 ("Arizona courts follow Restatement § 110."). However, the First Restatement offered little explanation for when a claim should or should not be successful.

Helpfully, the Third Restatement has now clarified the contours of First Restatement § 110. Third Restatement § 25 now explains when a claimant should have a valid claim against a benefited non-party: "If the claimant renders to a third person a contractual performance for which the claimant does not receive the promised compensation, and the effect of the claimant's uncompensated performance is to confer a benefit on the defendant, the claimant is entitled to restitution from the defendant as necessary to prevent unjust enrichment." Third Restatement § 25.

Under this rule, a claimant may pursue an unjust enrichment claim by meeting three conditions:

> (a) Liability in restitution may not subject the defendant to a forced exchange (§ 2(4)).
>
> . . .
>
> (b) Absent liability in restitution, the claimant will not be compensated for the performance in question, and the defendant will retain the benefit of the claimant's performance free of any liability to pay for it.
>
> (c) Liability in restitution will not subject the defendant to an obligation from which it was understood by the parties that the defendant would be free.

Third Restatement § 25(2). Markham's claim against the Landowners satisfies these three conditions and therefore should be allowed to proceed.

1. Requiring the Landowners to pay restitution would not subject them to a forced exchange.

Under Third Restatement § 25(2)(a), a forced exchange does not occur "if the benefit realized by the defendant

> (i) is one for which the defendant has expressed a willingness to pay,
>
> (ii) saves the defendant an otherwise necessary expense, *or*
>
> (iii) is realized by the defendant in money."

Third Restatement § 25(2)(a) (emphasis added). Accordingly, a plaintiff can refute the occurrence of a forced exchange by meeting any *one* of the subfactors set out in § 25(2)(a). Here, Markham has alleged all three.

The Landowners "expressed a willingness to pay" for Markham's infrastructure work. Third Restatement § 25(2)(a)(i). Specifically, they created the District to entice Markham to develop their properties, and in that process, agreed to bear ultimate responsibility for paying for those improvements through assessments levied on their properties. [IR-13 at 3-5, ¶¶ 11-18, 23 (APP076-78); IR-27 at 3-7, ¶¶ 11-20, 27-28 (APP133-37).]

The benefit of Markham's infrastructure work has also "save[d] the [Landowners] an otherwise necessary expense." Third Restatement § 25(2)(a)(ii). That necessary expense was created by the Development Agreement, under which the Landowners agreed to pay the District to coordinate the completion of certain infrastructure improvements—the same improvements that Markham completed pursuant to the construction agreement between it and the District. [IR-27 at 5, ¶ 20 (APP135); IR-27, Ex. 1 at 4 (APP146); IR-30 (APP263) (construction agreement).] Markham's performance of its obligations under the construction agreement *without pay* in turn "save[d] the [Landowners] an otherwise necessary expense" that

they had agreed to pay under the Development Agreement. Third Restatement § 25(2)(a)(ii).

Finally, the benefits of Markham's infrastructure work have been "realized by the [Landowners] in money" (as that term is used in the Restatement). *Id.* § 25(2)(a)(iii). More precisely, "the benefit conferred on the [Landowners] has been directly or indirectly reduced to a money equivalent." *Id.* § 25 cmt. c. The Landowners agreed that their property "will benefit from" the infrastructure improvements "in an amount not less than" the value of the assessments required to finance those improvements. [IR-27, Ex. 1 at 4, 13 (APP146, 155).] Based on the face value of the bonds issued, the value of those assessments was for more than $21 million. [IR-28 (APP168).] The judgment confirming Markham's $6.5 million arbitration award included approximately $4 million for the unpaid balance owed to Markham for its infrastructure work. [IR-32 at 2 (APP286).] Thus, under the Restatement, the Landowners have realized a nearly $4 million benefit from Markham's unpaid work.

One subfactor under Third Restatement § 25(2)(a) will do, and Markham has alleged facts supporting all three. Requiring the Landowners to pay restitution would not subject them to a forced exchange.

2. Markham lacks a viable alternative means of compensation for its infrastructure work.

"Absent liability in restitution, [Markham] will not be compensated for the performance in question, and the [Landowners] will retain the benefit of the [Markham's] performance free of any liability to pay for it." Third Restatement § 25(2)(b). The Landowners' principal officers control the District's power to bill and collect on the assessments needed to compensate Markham, yet they have refused to exercise that authority. [IR-13 at 6, ¶ 24 (APP079); IR-27 at 3, 6-7, ¶¶ 6-7, 24-25, 28-31 (APP133, APP136-37).] In other words, the Landowners gave themselves the power to collect on the assessments levied on their properties and agreed to collect the assessments from themselves, but when the time came to pay, they refused.

The Landowners have no reason to reconsider their current position. So unless this case proceeds, Markham will not be compensated, and the Landowners "will retain the benefit of the claimant's performance free of any liability to pay for it." Third Restatement § 25(2)(b). Put another way, the Landowners "stand to obtain a valuable benefit at [Markham's] expense without paying *anyone* for it." *Id.* § 25 cmt. b (emphasis added).

Markham's existing judgment against the District does not alter the analysis. Markham's unjust enrichment claim is not an "attempt to recover from [the Landowners] *instead of* pursuing a claim against [the District]." Third Restatement § 25 cmt. b, illus. 3 (emphasis added). It is currently Markham's only opportunity for recovery due to the unique circumstances this case presents: the District cannot satisfy the judgment because the Landowners failed to pay the assessments. Put another way, the Landowners' refusal to collect from themselves assures that "[a]bsent liability in restitution, [Markham] will not be compensated for [its infrastructure work]." Third Restatement § 25(2)(b).

Nor, relatedly, does Markham's claim pose a risk of double recovery. "A theory of unjust enrichment is unavailable only to a plaintiff if that plaintiff has already *received* the benefit of her contractual bargain." *Adelman v. Christy*, 90 F. Supp. 2d 1034, 1045 (D. Ariz. 2000) (citing *USLife Title Co. of Ariz. v. Gutkin*, 152 Ariz. 349, 355 (App. 1986)). Markham has not received the benefit of its bargain with the District under the construction contract. Unless the Landowners suddenly decide to collect on the assessments, Markham will never realize that benefit.

The liability created by the assessments on the Landowners' properties also fails to rebut Markham's satisfaction of this condition. The Landowners' enrichment at Markham's expense was not a "foreseeable and accepted consequence" of the construction agreement that governed the deal between Markham and the District. Third Restatement § 25 cmt. f, illus. 19. Exactly the opposite. The Landowners "initiate[d]" the District's creation and used their control of the District to "encourage[]" it to enter the construction agreement with Markham "with the purpose and effect of enhancing the value of [the Landowners' properties]." *Id.*, illus. 20. Thus, the Landowners' enrichment at Markham's expense was not merely the unfortunate realization of a known risk of doing business with the District, but the direct result of the Landowners' actions to avoid the obligation they accepted as a condition of the District's creation—namely, making assessment payments.

3. It was never understood that the Landowners would not pay for Markham's work.

Finally, it was never "understood by the parties" that the Landowners would "be free" of any responsibility to pay for Markham's infrastructure work. Third Restatement § 25(2)(c). This kind of understanding exists (i) if the defendant's liability is "contractually limited" or (ii) if a "fair

interpretation of the parties' agreements" evinces such an arrangement. *Id.* § 25 cmt. b. The Landowners' obligation to pay for Markham's infrastructure work was not "contractually limited" under the Development Agreement, the construction contract, or any other agreement. *Id.* § 25 cmt. b. Nor does a "fair interpretation of the parties' agreements" suggest that anyone ever had that understanding. *Id.*

Rather, the Landowners bore ultimate responsibility for funding Markham's work. The Landowners also understood and agreed that additional debt could be placed on their properties to the extent necessary to cover any cost overruns. [IR-27 at 6-7, ¶ 28 (APP136-37).] Thus, the Landowners could not reasonably have understood that they would be free of any obligation to pay for the cost of Markham's work. Third Restatement § 25 accordingly confirms that Markham's pleadings properly pled unjust enrichment.

C. Arizona law allows for restitution against an enriched contractual non-party who fails to pay anyone for the benefit received.

Existing Arizona law reinforces the conclusion that Markham has pled a valid unjust enrichment claim against the Landowners. Consistent with Third Restatement § 25, Arizona courts have long observed that restitution

may be warranted when a defendant is enriched by a plaintiff's performance of a contract with another party who fails to perform.

For example, in *Flooring Systems, Inc. v. Radisson Group, Inc.*, 160 Ariz. 224, 227 (1989), the Supreme Court reversed the dismissal of a subcontractor's unjust enrichment claim against an owner that had deliberately failed to pay either the contractor or the subcontractor the balance owed for the subcontractor's completed work. The Court held that "to permit [the owner] to retain the full benefit of [the subcontractor's] work at [the subcontractor's] expense may be unjust." *Id.* "[A] court need not find that the defendant intended to compensate the plaintiff for the services rendered or that the plaintiff intended that the defendant be the party to make compensation." *Id.* Instead, the plaintiff need only show "that it was not intended or expected that the services be rendered or the benefit conferred gratuitously, and that the benefit was not 'conferred officiously.'" *Id.*

As this Court later explained, *Flooring Systems* demystified what had been seen as inconsistent authority regarding restitution claims against enriched contractual non-parties. It did so by defining "two types" of cases. *Williamson v. PVOrbit, Inc.*, 228 Ariz. 69, 74, ¶ 27 (App. 2011) (citation

omitted). "The plaintiff prevails only in the first group of cases" where, as Markham has alleged here, "the defendant paid no one for the benefits received." *Id.*; *accord Murdock-Bryant*, 146 Ariz. at 54 (affirming judgment for subcontractor on unjust enrichment where subcontractor's services were necessary to enriched non-party's separate contractual obligations); *Com. Cornice*, 154 Ariz. at 39 (reversing dismissal of unjust enrichment claim where owner only paid for part of amount due to subcontractor); *Constanzo v. Stewart*, 9 Ariz. App. 430, 432 (1969) (affirming judgment for subcontractor for unjust enrichment where owner paid no one for work performed).

The defendant prevails only in the second group of cases, where the contractual non-party has "paid in full, but paid someone to whom he was contractually liable for payment rather than the plaintiff, who actually provided the materials or services." *Williamson*, 228 Ariz. at 74, ¶ 27. In those cases, the defendant has already paid for the benefits received and bears no blame for the breaching party's failure to pay the plaintiff. *Id.*; *accord A M Leasing Ltd. v. Baker*, 163 Ariz. 194, 198-99 (App. 1989) (no unjust enrichment where owner "gave consideration by fully performing its obligations"); *Stratton v. Inspirational Consol. Copper Co.*, 140 Ariz. 528, 530-31 (App. 1984) (owner who paid contractor in full not unjustly enriched by

subcontractor's uncompensated work); *Advance Leasing & Crane Co. v. Del E. Webb Corp.*, 117 Ariz. 451, 453 (App. 1977) (no unjust enrichment where defendant "paid . . . the contractual price").

Yet as the Third Restatement points out, even the second group of cases "carr[ies] the reasonable implication, even if they do not state directly, that the plaintiff's restitution claim would be viable if the benefits in question had not been paid for." Third Restatement § 25 reporter's note b. Indeed, a decision denying restitution when the defendant has retained the benefit without paying anyone, just as the Landowners have done here, "is today a distinct rarity." *Id.* Arizona is not one of those rare jurisdictions. Arizona instead numbers among those jurisdictions which, consistent with Third Restatement § 25, generally "allow furnishers of labor and materials to recover from property owners not in privity of contract with them." *Mike Glynn & Co. v. Hy-Brasil Rests., Inc.*, 914 N.E.2d 103, 109 n.13 (Mass. App. Ct. 2009) (collecting cases).

* * *

In sum, Markham stated a valid unjust enrichment claim against the Landowners. The Third Restatement confirms Markham's case should be allowed to proceed, as does other Arizona law. This Court should reverse.

II. The superior court erred by ending this case at the pleading stage.

Because Markham stated a valid unjust enrichment claim against the Landowners, the superior court erred by ending Markham's case at the pleading stage.

The superior court may dismiss for failure to state a claim "only if as a matter of law plaintiffs would not be entitled to relief under any interpretation of the facts susceptible to proof." *Coleman*, 230 Ariz. at 356, ¶ 8 (internal quotation marks and brackets omitted). Here, the superior court concluded that Markham could not obtain any relief because (1) *Wang Elec., Inc. v. Smoke Tree Resort, LLC*, 230 Ariz. 314 (App. 2012), required Markham to allege that the Landowners "engaged in improper conduct," and (2) Markham failed to do so. [IR-41 at 3 (APP069).] But Wang's improper-conduct standard does not apply to this case, meaning both the First and Second Amended Complaints stated claims for unjust enrichment. Moreover, even if Wang's improper-conduct standard applies, the superior court erred by denying Markham's Motion for Leave to Amend because the Second Amended Complaint satisfied this standard.

A. *Wang*'s improper-conduct requirement applies only to unjust enrichment claims against landlords for tenant-contracted improvements to leasehold interests.

1. *Wang* expressly limited its holding to the landlord/tenant context, as later authority and the authority it relied upon confirms.

Wang addressed a narrow issue: "the viability of an unjust enrichment claim against an owner for improvements made *by its tenant*." 230 Ariz. 319, ¶ 12 (emphasis added). In that context, and only in that context, this Court held that "a contractor *hired by a tenant* to make improvements to leasehold premises, or subcontractors retained by that contractor, can recover unpaid monies for making tenant improvements from the property owner only when that owner has engaged in improper conduct." *Id.* at 320, ¶ 17 (emphasis added). Indeed, this Court has since clarified that *Wang* merely "articulated a limitation upon the reach of unjust enrichment claims *in situations involving subcontractors, tenants, and property owners*." *Beauchamp Law Office PC v. Gust Rosenfeld PLC*, No. 1 CA–CV 17–0250, 2018 WL 1868033, at *3, ¶ 18 (Ariz. App. Apr. 19, 2018) (mem.) (emphasis added).

Wang's express reliance on out-of-state authority, *DCB Construction Co. v. Central City Development Co.*, 965 P.2d 115 (Colo. 1998), confirms this context-based limitation of *Wang*'s "improper conduct" rule. *See Wang*, 230

Ariz. at 320, ¶ 15 ("We agree with and adopt the holding in *DCB Construction* [adopting the improper conduct standard]."). *DCB* emphasized that its holding applied exclusively to the landlord-tenant context: "[W]e hold that injustice *in this context* requires some type of improper, deceitful, or misleading conduct by the landlord." 965 P.2d at 122 (emphasis added)). The Colorado Supreme Court later confirmed this limitation by explaining that *DCB*'s "requirement of malfeasance is specific to a contractor's claim that the landlord was unjustly enriched and *did not extend to all unjust enrichment circumstances*." *Lewis v. Lewis*, 189 P.3d 1134, 1142 (Colo. 2008) (emphasis added). The court expressly called it an "exception," *id.*, which "applies only in situations where a landlord receives a benefit from a failed contract between a tenant and a party working at the tenant's behest," *id.* at 1143 n.5. Therefore, *Wang* could not have intended to invent a new "improper conduct" standard applicable to apply to every situation, merely by agreeing with *DCB*'s limited holding.

By its own terms, then, *Wang*'s improper-conduct requirement does not apply here. The District is not the Landowners' tenant. The District did not contract with Markham "to make improvements to leasehold premises." *Wang*, 230 Ariz. at 320, ¶ 17. And the District did not enlist Markham's

services of its own volition and for its own benefit. Instead, the District contracted with Markham for the Landowners' benefit, and the Landowners contractually agreed that they would benefit from the work. Unlike in *Wang*, the Landowners' "rights of choice" are not implicated by the possibility of being held liable here, and the Landowners are not being held liable "merely because [they] owned the property." *Id.* at 319, ¶ 14. Accordingly, "the holding in *Wang* regarding improper conduct does not apply." *Beauchamp*, 2018 WL 1868033, at *3, ¶ 18.

2. The rationale for *Wang*'s rule also does not apply to Markham's unjust enrichment claim.

Requiring Markham to plead additional facts about improper conduct before permitting its case to proceed would also fail to serve the purpose for which this Court adopted *DCB*'s holding in *Wang*. *Wang*'s improper-conduct standard aims to avoid making landlords "unwitting guarantors of their tenants' contracts for improvements." 230 Ariz. at 320, ¶ 18; *accord* *DCB*, 965 P.2d at 122 (refusing to "adopt a rule that essentially makes the landlord an insurer of the risk assumed by contractors in extending credit to tenants"). In other words, the landlord-tenant context raises unique considerations, which justifies creating "this exception because tenants

frequently contract for improvements to leased property, and therefore the law must be sufficiently predictable so that the appropriate parties can adequately calculate and make adjustments for the risks they face." *Lewis*, 189 P.3d at 1142 (cleaned up).

But here, Markham's claim does not try to impose unsolicited expenses upon the Landowners. Rather, Markham's claim, like the improper-conduct rule itself, "comports with the Arizona-adopted principle that unjust enrichment should not be used to saddle entities with expenses they chose not to incur." *Wang*, 230 Ariz. at 320. To the contrary, the Landowners—the same ones who created, agreed to fund, and ultimately control the District—are the ones who directed the District to enter the construction agreement with Markham for their own benefit, and with the *expectation* that they would ultimately pay for Markham's work. Because Markham's claim does not make the Landowners the unwitting insurers of an independently interested party's contractual arrangement, the rationale for *Wang*'s improper-conduct requirement does not apply.

Tellingly, the Third Restatement would bar the subcontractor's claim in *Wang* because it involved a "forced exchange," Third Restatement § 25(2)(a), and would "subject the defendant to an obligation from which it

was understood by the parties that the defendant would be free," *id.* § 25(2)(c). But as noted above, the Third Restatement would permit Markham's case to continue. Neither *DCB* nor apparently *Wang* had the benefit of Third Restatement because it came too late for those cases—more than a decade later in after *DCB* and the same year as *Wang* was being briefed. Although both courts relied on First Restatement § 110, that provision—with its use of the word "merely"—fails to provide the same clarity as the Third Restatement. *Cf.* First Restatement § 110 ("A person who has conferred a benefit upon another as the performance of a contract with a third person is not entitled to restitution from the other *merely* because of the failure of performance by the third person." (emphasis added)). The Third Restatement, which "superseded the First Restatement in 2011," *KnightBrook Ins. Co. v. Payless Car Rental Sys. Inc.*, 243 Ariz. 422, 426, ¶ 19 (2018), uses First Restatement § 110 "as a starting point" by confirming that the other contracting party's non-performance "does not *necessarily* mean that [the non-party] has been enriched at [the claimant's] expense" or that "any enrichment of [the non-party] is *necessarily* unjust." Third Restatement § 25 cmt. b (emphasis added). But even in those cases, "the claimant is

entitled to restitution from the defendant as necessary to prevent unjust enrichment." *Id.* § 25(1).

For these reasons, *Wang*'s improper-conduct requirement does not apply to this case and the superior court erred in dismissing on that basis.

B. Even if *Wang* applies, this case should not be ended at the pleading stage.

Even if *Wang*'s improper-conduct requirement applies, the superior court erred by denying Markham leave to amend its complaint before allowing it to conduct discovery.

1. Improper conduct is a context-driven, fact-specific inquiry that only requires allegations supporting an inference of some type of wrongdoing by the defendant.

Improper conduct does not present a high bar. Although more blatant forms of misconduct such as fraud or coercion will clear it, deliberately deceitful or misleading conduct is not necessary. A complaint need only include allegations that support an inference of "*some form* of improper conduct." *Wang*, 230 Ariz. at 319, ¶ 14 (emphasis added); *accord DCB*, 965 P.2d at 122 ("*some type* of improper, deceitful, *or* misleading conduct" (emphasis added)).

Moreover, the occurrence of improper conduct, like the existence of quasi-contracts themselves, is inherently fact- and context-specific. For

example, in *DCB*, upon which *Wang* relied, the improper conduct depended upon whether the landlord's actions "improperly created the impression that either [it] or [its tenant] would pay for the work being done." *DCB*, 965 P.2d at 123. Colorado courts applying the "'particularized analysis' of *DCB*" have since explained that "the inquiry will depend to a large extent on the facts of the specific case." *Redd Iron, Inc. v. Int'l Sales & Servs. Corp.*, 200 P.3d 1133, 1138 (Colo. App. 2008). And they, like *DCB* and *Wang*, have answered that inquiry *after the pleading stage* by examining the evidence and determining what inferences a factfinder might reasonably draw from that evidence. *See, e.g.*, *Walshe v. Zabors*, 178 F. Supp. 3d 1071, 1087-88 (D. Colo. 2016) (denying summary judgment even though "Plaintiff's alleged claim in the Complaint does not identify improper conduct" because plaintiff "provided evidence raising factual issues" regarding improper conduct). Thus, so long as there is "some set of facts" from which improper conduct might be inferred, whether the Landowners acted improperly, like the existence of bad faith, should be left to a factfinder rather than resolved on the pleadings. *Shepherd v. Costco Wholesale Corp.*, 250 Ariz. 511, 514, ¶ 16 (2021) (reversing dismissal where "complaint contains allegations from

which [plaintiff] may be able to prove some set of facts showing [defendant] did not act in good faith" (citation omitted)).

Simply put, if *Wang* applies, all that matters at this stage is whether the Second Amended Complaint's allegations and exhibits reasonably support an inference that the Landowners engaged in improper conduct by causing the District not to pay for the infrastructure work that Markham completed. They do.

2. The Second Amended Complaint's allegations and exhibits support an inference of improper conduct by the Landowners.

The Second Amended Complaint alleged facts that support an inference of improper conduct by the Landowners.

Specifically, two actions together permit an inference of improper conduct. First, the Landowners caused the improvements to be made by signing the Development Agreement and agreeing to equally apportion the costs of the work. [IR-27 at 4-5, ¶¶ 12, 17, 19 (APP134-35).] Second, the Landowners, who control the District's Board, have caused the District to refuse to collect the assessments from themselves, which predictably caused the District to stick Markham with an unpaid bill for nearly $4 million. [*Id.* at 5, 7, ¶¶ 16, 29-32 (APP135, 137).] This improper conduct allowed the

Landowners to enrich themselves at Markham's expense, which is the very core of unjust enrichment.

The Landowners set the train in motion and then caused it to run off the rails. They are not innocent third parties or unwitting insurers. Unlike in *Wang*, therefore, the Landowners would be liable not "*merely* because [they] owned the property and the contractor was treated unjustly by the tenant." *Wang*, 230 Ariz. at 319, ¶ 14 (emphasis added). They would be liable because their own conduct caused the District not to pay Markham.

Moreover, obliging the Landowners to pay restitution for their role in the District's breach of the construction contract with Markham would not threaten the Landowners' "rights of choice" or "effectively force [the Landowners] into a legal relationship with [Markham]." *Wang*, 230 Ariz. at 319, ¶ 14. It would not make the Landowners liable "merely" due to the District's failure to pay Markham. *Id.*; *accord* First Restatement § 110 (same). Nor would it "cast [the Landowners] in the role as an insurer" of every contract for improvements to properties located within the District. *Wang*, 230 Ariz. at 319, ¶ 14. Exactly the opposite: it would properly credit the Landowners' free choice to form and fund the District by holding them

responsible for their active role in rendering the District incapable of fulfilling its contractual obligations to Markham.

Contrary to the superior court's conclusion, the Second Amended Complaint alleged facts that, together with its exhibits, support an inference of improper conduct by the Landowners. Thus, even if *Wang* applies, the Second Amended Complaint stated a claim for unjust enrichment against the Landowners. The superior court abused its discretion by denying Markham's request for leave to file it.

C. The Landowners' other arguments made below fail to provide a valid reason for affirming the superior court's ruling.

In arguing for dismissal and against granting leave to amend below, the Landowners raised three other arguments in addition to their argument that Markham failed to satisfy *Wang*'s improper-conduct requirement. Each of them fails.

First, the Landowners contended that the mere levying of assessments on their properties meant that they have not been unjustly enriched. [IR-24 at 5-6; IR-35 at 3-5; IR-38 at 4-5.] But even though the assessments have been levied, they have not been *paid*. [IR-27 at 5, ¶ 16 (APP135); IR-29, Attachment A at 2 (APP260) ("[T]he District has ***never*** . . . enforced the collection of

delinquent Assessments"); *see also* IR-13 at 6, ¶ 29 (APP079) ("[N]o one has paid for any of the infrastructure improvements performed by Markham"); IR-27 at 8, ¶ 37 (APP138) (same); IR-13 at 6, ¶¶ 25 (APP079) ("they have not paid anyone"); IR-27 at 8, ¶ 33 (APP138) (same).]

As explained above (Argument § I.C), Arizona distinguishes between cases of "two types: one in which the defendant paid no one for the benefits received; the other in which the defendant paid in full, but paid someone to whom he was contractually liable for payment rather than the plaintiff, who actually provided the materials or services." *Williamson*, 228 Ariz. at 74, ¶ 27 (citation omitted).

Here, regardless of whether assessments have been *levied* on their properties, Markham has alleged that the Landowners have not *paid* them. This fact places this case squarely in the first category, in which "[t]he plaintiff prevails." *Id.* (citation omitted).

Below, the Landowners relied on *Advance Leasing & Crane Co. v. Del E. Webb Corp.*, 117 Ariz. 451 (App. 1977). [IR-24 at 5-6.] But as explained above (Argument § I.C), in *Advance Leasing* the defendant had actually "paid . . . the contractual price." 117 Ariz. at 453. That places *Advance Leasing* in the second category of cases, in which the defendant paid *someone* in full.

Although the defendant should prevail in that category, Markham should prevail when, as here, the defendants have paid no one.

Second, the Landowners suggested that the construction agreement, which governs the relationship between Markham *and the District*, bars Markham's unjust enrichment claim *against the Landowners*. [IR-24 at 9-10; IR-35 at 7; IR-38 at 5.] Not so. The construction agreement does not "govern[] the relationship of the parties" here—namely, Markham and the Landowners—but the relationship between Markham and the District. *Brooks v. Valley Nat'l Bank*, 113 Ariz. 169, 174 (1976). As explained above (Argument § I.B.2), and consistent with the Third Restatement, Markham's unjust enrichment claim is not an "attempt [] to recover from [the Landowners] *instead of* pursuing a viable contract claim against [the District]." Third Restatement § 25 cmt b., illus. 3 (emphasis added). Markham simply seeks to hold the Landowners responsible for using their control of the District to enrich themselves at Markham's expense by thwarting Markham's contractual remedies against the District. Thus, the construction agreement between Markham and the District does not bar Markham's unjust enrichment claim against the Landowners.

Third, the Landowners insisted that Markham's claim is barred by the statute of limitations and doctrine of laches. [IR-24 at 10-12; IR-35 at 8-10; IR-38 at 5-6.] The superior court rightly refused to reach these "factually intense arguments." [IR-41 at 4 (APP070).] As Markham explained to the superior court, both defenses depend upon the resolution of yet-to-be-resolved factual issues regarding the date that Markham's claim against the Landowners started to accrue and, relatedly, how long Markham actually waited to bring it. [IR-34 at 9-10.] Therefore, those arguments, like the others, fail to provide a valid alternative basis for ending Markham's case at the pleading stage.

D. Affirming the superior court's ruling would invite mischief.

Big picture, the superior court's ruling isn't just wrong for this case: its overly technical approach to the equitable doctrine of unjust enrichment is an open invitation to abuse Arizona's revitalization district program. As shown above (Argument § I), a property owner cannot use a third-party intermediary to avoid paying for work done at that owner's behest, and for that owner's benefit. Arizona law does not condone an arrangement where an owner arranges and agrees to pay for work, including work that ultimately gets completed by a third party, but then refuses to pay anyone

after the work is done. The law rejects this arrangement. This is true even when an intermediary sits between the owner and the worker, and the owner's refusal to pay the intermediary causes the intermediary to breach its contract with the worker. In that case, when the worker lacks a direct contract with the owner, the worker has a claim for unjust enrichment against the owner.

That is exactly what happened here. Here, the Landowners planned for and requested the infrastructure improvements. They made it look like they would pay for them via assessments levied on their land that were supposed to be billed by and paid to the District. They then used their control of the District to avoid collecting on the assessments. Under these facts, Markham may pursue a claim for unjust enrichment against the Landowners.

This rule applies when the intermediary is independent, such as a general contractor who sits between an owner and a subcontractor. An owner cannot stiff its contractor and then throw up its hands if, after the contractor fails to pay, the subcontractor seeks restitution from the owner. This rule should apply with particular force in a case like this, where the intermediary is not independent. Here, the Landowners control the District.

One man—Mark Stapp—is the Chairman of the District. He is also the President and Director of each of the Landowners. [IR-27 at 3, ¶ 6 (APP133).] The District Board consists solely of the Landowners' Representatives. [IR-27, Ex. 1 at 4-5 (APP146-47).] Mark Stapp signed the Development Agreement on behalf of the Landowners, and then two weeks later turned around and signed the construction agreement with Markham on behalf of the District. [IR-27, Ex. 1 at 18 (APP160) (Development Agreement signed by Stapp on behalf of Landowners); IR-30 at 21 (APP283) (construction agreement signed by Stapp on behalf of District).] This reasonably suggests that the only reason Markham has not been paid is because the Landowners refuse to collect money from themselves to pay for the work.

Allowing the Landowners to retain the undisputed benefits of Markham's work without paying anyone would not just grant them a windfall. It would invite mischief by incentivizing people to use contractual intermediaries to avoid paying for work that they requested and were supposed to pay for.

This case highlights just one of the dangers of such a cynical rule. The Landowners used Arizona law to create the District and put themselves in charge of it. They obtained financing by causing the District to issue bonds

secured by assessments on their own properties. They committed to spending the bond money on infrastructure to benefit their own land. But they then used their control of the District to avoid collecting on those assessments when the time came to pay for the improvements. By allowing the Landowners to escape liability, the superior court's ruling invites other developers to similarly exploit this system for their own advantage.

* * *

In sum, the superior court erred by finding that Markham had to plead that the Landowners engaged in improper conduct to state a claim for unjust enrichment. Arizona law does not generally require proof of improper conduct to prevail on an unjust enrichment claim, let alone require such detailed allegations in a complaint. *Wang*'s improper-conduct requirement applies solely to unjust enrichment claims against owners for tenant-contracted improvements to leasehold property. To end this case at the pleading stage fails to recognize the narrowness of *Wang*'s holding, the caselaw upon which it is based, and longstanding Arizona authority holding otherwise. It would also undermine the fundamentally equitable purpose of providing restitution for unjust enrichment. The Court should reverse.

REQUEST FOR ATTORNEYS' FEES

Markham requests its attorneys' fees under ARCAP 21 and A.R.S. § 12-341.01.

CONCLUSION

The Court should vacate the judgment, reverse the denial of leave to amend, reverse the dismissal, and remand for further proceedings.

RESPECTFULLY SUBMITTED this 20th day of March, 2023.

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APPENDIX
TABLE OF CONTENTS*

* The appendix page number matches the electronic PDF page number. Counsel has added emphasis to selected pages in this Appendix using yellow highlighting to assist the Court with its review of the record. Some record items included in the Appendix contain only a limited excerpt. This Appendix complies with the bookmarking requirements of ARCAP 13.1(d)(3).

MARKHAM CONTRACTING CO INC VS CAHAVA SPRINGS PHASE

Electronic Index of Record
MAR Case # CV2021-054458

No.	Document Name	Filed Date
1.	[PART 1 OF 3] COMPLAINT	Dec. 22, 2021
2.	[PART 2 OF 3] COMPLAINT	Dec. 22, 2021
3.	[PART 3 OF 3] COMPLAINT	Dec. 22, 2021
4.	CERTIFICATE OF COMPULSORY ARBITRATION	Dec. 22, 2021
5.	CIVIL COVERSHEET	Dec. 22, 2021
6.	SUMMONS	Dec. 22, 2021
7.	SUMMONS	Dec. 22, 2021
8.	SUMMONS	Dec. 22, 2021
9.	SUMMONS	Dec. 22, 2021
10.	SUMMONS	Dec. 22, 2021
11.	SUMMONS	Dec. 22, 2021
12.	SUMMONS	Dec. 22, 2021
13.	[PART 1 OF 3] FIRST AMENDED COMPLAINT	Feb. 3, 2022
14.	[PART 2 OF 3] FIRST AMENDED COMPLAINT	Feb. 3, 2022
15.	[PART 3 OF 3] FIRST AMENDED COMPLAINT	Feb. 3, 2022
16.	AFFIDAVIT OF SERVICE	Mar. 8, 2022
17.	AFFIDAVIT OF SERVICE	Mar. 8, 2022
18.	AFFIDAVIT OF SERVICE	Mar. 8, 2022
19.	AFFIDAVIT OF SERVICE	Mar. 8, 2022
20.	ACCEPTANCE OF SERVICE	Mar. 21, 2022
21.	DEFENDANTS' MOTION TO DISMISS AMENDED COMPLAINT	Apr. 6, 2022
22.	NOTICE OF ERRATA	Apr. 7, 2022
23.	DEFENDANTS' RULES 7.1(H) AND 12(J) CERTIFICATE OF GOOD FAITH CONSULTATION REGARDING MOTION TO DISMISS	Apr. 19, 2022

MARKHAM CONTRACTING CO INC VS CAHAVA SPRINGS PHASE

Electronic Index of Record
MAR Case # CV2021-054458

No.	Document Name	Filed Date
24.	[PART 1 OF 2] DEFENDANTS' MOTION TO DISMISS AMENDED COMPLAINT	Apr. 22, 2022
25.	[PART 2 OF 2] DEFENDANTS' MOTION TO DISMISS AMENDED COMPLAINT	Apr. 22, 2022
26.	[PART 1 OF 8] PLAINTIFF'S MOTION FOR LEAVE TO AMEND FIRST AMENDED COMPLAINT	May. 11, 2022
27.	[PART 2 OF 8] PLAINTIFF'S MOTION FOR LEAVE TO AMEND FIRST AMENDED COMPLAINT	May. 11, 2022
28.	[PART 3 OF 8] PLAINTIFF'S MOTION FOR LEAVE TO AMEND FIRST AMENDED COMPLAINT	May. 11, 2022
29.	[PART 4 OF 8] PLAINTIFF'S MOTION FOR LEAVE TO AMEND FIRST AMENDED COMPLAINT	May. 11, 2022
30.	[PART 5 OF 8] PLAINTIFF'S MOTION FOR LEAVE TO AMEND FIRST AMENDED COMPLAINT	May. 11, 2022
31.	[PART 6 OF 8] PLAINTIFF'S MOTION FOR LEAVE TO AMEND FIRST AMENDED COMPLAINT	May. 11, 2022
32.	[PART 7 OF 8] PLAINTIFF'S MOTION FOR LEAVE TO AMEND FIRST AMENDED COMPLAINT	May. 11, 2022
33.	[PART 8 OF 8] PLAINTIFF'S MOTION FOR LEAVE TO AMEND FIRST AMENDED COMPLAINT	May. 11, 2022
34.	PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS	May. 11, 2022
35.	[PART 1 OF 2] DEFENDANTS' REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS AMENDED COMPLAINT	May. 23, 2022
36.	[PART 2 OF 2] DEFENDANTS' REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS AMENDED COMPLAINT	May. 23, 2022
37.	NOTICE OF ERRATA TO DEFENDANTS' MOTION TO DISMISS AMENDED COMPLAINT (FILED APRIL 22, 2022) AND DEFENDANTS' REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS AMENDED COMPLAINT (FILED MAY 23, 2022)	May. 31, 2022
38.	DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR LEAVE TO AMEND FIRST AMENDED COMPLAINT	May. 31, 2022
39.	PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR LEAVE TO AMEND COMPLAINT	Jun. 13, 2022

MARKHAM CONTRACTING CO INC VS CAHAVA SPRINGS PHASE

Electronic Index of Record
MAR Case # CV2021-054458

No.	Document Name	Filed Date
40.	**ME: ORAL ARGUMENT SET [06/16/2022]**	**Jun. 21, 2022**
41.	**ME: UNDER ADVISEMENT RULING [08/26/2022]**	**Sep. 1, 2022**
42.	[PART 1 OF 2] NOTICE OF LODGING OF PROPOSED FORM OF JUDGMENT	Sep. 6, 2022
43.	[PART 2 OF 2] NOTICE OF LODGING OF PROPOSED FORM OF JUDGMENT	Sep. 6, 2022
44.	NOTICE OF FIRST EXTENSION TO FILE OBJECTION TO FORM OF JUDGMENT	Sep. 12, 2022
45.	FINAL JUDGMENT	Oct. 24, 2022
46.	[PART 1 OF 2] NOTICE OF APPEAL	Nov. 18, 2022
47.	[PART 2 OF 2] NOTICE OF APPEAL	Nov. 18, 2022

APPEAL COUNT: 1

RE: CASE: UNKNOWN

DUE DATE: 12/16/2022

CAPTION: MARKHAM CONTRACTING CO INC VS CAHAVA SPRINGS PHASE

EXHIBIT(S): NONE

LOCATION ONLY: NONE

SEALED DOCUMENT: NONE

DEPOSITION(S): NONE

TRANSCRIPT(S): NONE

Electronic Index of Record
MAR Case # CV2021-054458

COMPILED BY: victoria.uko on December 8, 2022; [2.5-17026.63]
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CERTIFICATION: I, JEFF FINE, Clerk of the Superior Court of Maricopa County, State of Arizona, do hereby certify that the above listed Index of Record, corresponding electronic documents, and items denoted to be transmitted manually constitute the record on appeal in the above-entitled action.

The bracketed [date] following the minute entry title is the date of the minute entry.

CONTACT INFO: Clerk of the Superior Court, Maricopa County, Appeals Unit, 175 W Madison Ave, Phoenix, AZ 85003; 602-372-5375

Clerk of the Superior Court
*** Electronically Filed ***
09/01/2022 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2021-054458 08/26/2022

HONORABLE SARA J. AGNE

CLERK OF THE COURT
J. Holguin
Deputy

MARKHAM CONTRACTING CO INC — KAREN A PALECEK

v.

CAHAVA SPRINGS PHASE I INC, et al. — J CHRISTOPHER GOOCH

JUDGE AGNE

UNDER ADVISEMENT RULING

***See* Orders set in LATER**

Courtroom 912 – East Court Building

2:30 p.m. This is the time set for an Oral Argument on Plaintiff's First Amended Complaint, filed February 3, 2022, Defendants' Motion to Dismiss Amended Complaint filed April 22, 2022, and Plaintiff's Motion for Leave to Amend First Amended Complaint filed May 11, 2022 via Court Connect. Plaintiff Markham Contracting Co., Inc. is represented by counsel, Karen A. Palecek. Defendants Cahava Springs Phase I, Inc., Cahava Springs Development Corporation, Morningstar Road Properties, Inc., Cahava Springs Community Association, Mark Stapp, Annie Mathisen and Peter Mathisen are represented by counsel, J. Christopher Gooch.

A record of the proceedings is made digitally in lieu of a court reporter.

Discussion is held regarding the status of the case.

The Court has received and reviewed Plaintiff's First Amended Complaint, filed February 3, 2022, Defendants' Motion to Dismiss Amended Complaint filed April 22, 2022, and

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2021-054458 08/26/2022

Plaintiff's Motion for Leave to Amend First Amended Complaint filed May 11, 2022 and subsequent filings related thereto..

Oral Argument commences.

IT IS ORDERED taking these matter under advisement.

3:11 p.m. Matter concludes.

LATER:

The Court received and reviewed Plaintiff's First Amended Complaint, filed February 3, 2022 ("FAC"); Defendants' Motion to Dismiss Amended Complaint filed April 22, 2022 ("Motion to Dismiss"); Plaintiff's Motion for Leave to Amend First Amended Complaint filed May 11, 2022 ("Motion for Leave to Amend"); as well as subsequent filings related thereto. The Court has considered the filings and arguments of the Parties, the relevant authorities and applicable law, as well as the entire record of the case. The Court hereby finds as follows.

On February 27, 2017, Plaintiff entered into a construction agreement with Cahava Springs Revitalization District ("CSRD") for construction of infrastructure improvements. (FAC ¶17.) CSRD had previously entered into a District Development and Waiver Agreement with Defendant Cahava Springs Development Corporation, Defendant Cahava Springs Phase 1, Inc., Defendant Morningstar Road Properties, Inc., and their respective successors in title. (FAC ¶12.) (Defendant Cahava Springs Community Association ("CSCA") was later created and now owns real property in CSRD.) (*See* FAC ¶12.) Cahava Springs Phase I, Inc., Cahava Springs Development Corporation, Morningstar Road Properties, Inc., and Cahava Springs Community Association (collectively, "Property Owner Defendants") each own certain parcels in CSRD. *See id.*

After construction of the infrastructure, a dispute arose between Plaintiff and CSRD. (FAC ¶20.) Plaintiff obtained an Arbitration Award against CSRD that was later confirmed in CV2020-017067 which is in collection proceedings. (FAC ¶21.) As the Parties noted at oral argument, UMB Bank N.A. also has a matter pending, CV2022-006277, against the Property Owner Defendants, as well as CS DEVCO, LLC, and Cahava Springs Investments, Inc., involving bonds issued by CSRD.

On December 22, 2021, Plaintiff filed this action asserting an unjust enrichment claim against Property Owner Defendants. (FAC ¶¶23-31.) Plaintiff also named Mark Stapp (President and Director of CSCA) and Annie and Peter Mathisen (officers of CSCA)

(collectively, "Individual Defendants") in the FAC. (FAC ¶¶6-7.) None of the Defendants were parties to the construction agreement. (Resp. to Mot. to Dismiss, at 9.)

Although the Individual Defendants are named in the FAC, Plaintiff did not allege any specific allegations against them and in fact proposes to dismiss them in a proposed Second Amended Complaint. (*See* Mot. for Lv. to Amend, at its Exh. A, at 3.) Defendants assert that the Individual Defendants should be dismissed on those grounds. The Court agrees with the Parties. *See Yes on Prop 200 v. Napolitano*, 215 Ariz. 458, 464, 468 (App. 2007) (complaint that contains no allegations against a defendant fails to state a claim against that defendant). **THE COURT FINDS** dismissal of the Individual Defendants is appropriate.

As for the Property Owner Defendants, Defendants assert that Plaintiff's unjust enrichment claim fails because (1) Plaintiff failed to allege that Defendants were unjustly enriched; (2) the construction agreement governs; (3) the statute of limitations bars the claim; and (4) laches bars the claim. (Mot. to Dismiss, at 4.)

Arizona law disfavors motions to dismiss for failure to state a claim upon which relief can be granted. *State ex rel. Corbin v. Pickrell*, 136 Ariz. 589, 594 (1983). Moreover, such motions are not to be used as a vehicle to resolve disputes about the facts or merits of the case. *Coleman v. City of Mesa*, 230 Ariz. 352, 363 ¶46 (2012). Instead, the narrow question presented by the Motion to Dismiss, pursuant to Rule 12(b)(6), Ariz. R. Civ. P., is whether the facts alleged by Plaintiff are sufficient "to warrant allowing [Plaintiff] to attempt to prove [its] case." *Id.*

Defendants contend that Plaintiff failed to allege sufficient facts to support its unjust enrichment claim. Defendants rely on *Wang Elec., Inc. v. Smoke Tree Resort, LLC*, 230 Ariz. 314 (App. 2012). In *Wang Elec.*, the Court analyzed an unjust enrichment claim asserted against a property owner by a contractor and subcontractors who had been engaged by a tenant to do work on the property. *Id.* at 316–17, ¶¶2-8.

The Court held that the contractor must show that the owner engaged in improper conduct in order to hold the owner liable under an unjust enrichment claim. *Id*. at 319-20, ¶¶14-15, 17. The Court relied on Restatement of Restitution § 110 (1937): "A person who has conferred a benefit upon another as the performance of a contract with a third person is not entitled to restitution from the other merely because of the failure of performance by the third person." *See id*. at 319, ¶14.

Here, Plaintiff entered into a construction contract with CSRD. (FAC ¶17.) Property Owner Defendants are all owners of certain parcels in CSRD. (*See* FAC ¶12.) Based on the analysis in *Wang Elec.*, Plaintiff must show that Property Owner Defendants engaged in improper conduct in order to hold Defendants liable for unjust enrichment. 230 Ariz. at 320.

Plaintiff did not include any allegations of misconduct *by* Property Owner Defendants in its FAC, nor in its proposed Second Amended Complaint for that matter. **THE COURT FINDS** that Defendants have failed to state a claim for unjust enrichment against Property Owner Defendants. *See Wang Elec.*, 230 Ariz. at 320–21.

Defendants' arguments regarding the statute of limitations and laches are factually intense arguments that the Court need not address in detail given its findings above on the legal arguments. Therefore, given the foregoing discussion,

IT IS ORDERED granting Defendants' Motion to Dismiss Amended Complaint based on Plaintiff's failure to allege sufficient facts to support its unjust enrichment claim.

In the Court's discretion, the Court considered Defendants' request for attorney's fees in view of the factors set forth by the Arizona Supreme Court as those that may be considered to determine the amount, if any, of a fee award of the type sought by Defendants under A.R.S. § 12-341.01. *See Tucson Estates Prop. Owners Ass'n, Inc. v. McGovern*, 239 Ariz. 52, 56 (App. 2016) (*citing Associated Indem. Corp. v. Warner*, 143 Ariz. 567, 571 (1985), factors as including the merits of the claim, attempts to avoid or settle litigation, hardship caused by a fee award, how much the prevailing party actually prevailed, novelty of the legal questions at issue, and potential chilling effects of fee awards in the area of law at issue); *see also Fulton Homes Corp. v. BBP Concrete*, 214 Ariz. 566, 569 (App. 2007) (same).

In its discretion, the Court does not find the novelty and merits of Plaintiff's claim to be so negligible as to outweigh the fact that Defendants are prevailing early in this litigation in the posture of a motion to dismiss. The potential chilling effect of a fee award in this stance is heightened by the fact that Plaintiff has a judgment against CSRD—in which all Defendants alleged in the proposed Second Amended Complaint are property owners—that Plaintiff remains in collection proceedings on (*see* CV2020-017067). Awarding fees to Defendants in this posture has the potential to encourage non-payment of judgments. Therefore,

IT IS FURTHER ORDERED denying Defendants' request for attorney's fees made on page 13 of the Motion to Dismiss, filed April 22, 2022.

Turning now to Plaintiff's Motion for Leave to Amend, Plaintiff seeks leave to file its proposed Second Amended Complaint ("SAC") to cure any defects and add detail to its unjust enrichment claim. "Leave to amend must be freely given when justice requires." Ariz. R. Civ. P. 15(a)(2). The proposed SAC removes the Individual Defendants and adds allegations against the Property Owner Defendants in support of its unjust enrichment claim, though, as noted above, it does not add any allegations of misconduct.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2021-054458 08/26/2022

Defendants contend that leave to amend should be denied due to futility. Given the Court's findings above, the proposed SAC would need to include allegations that the Property Owner Defendants engaged in some improper conduct in order to overcome the futility argument. However, the allegations added in the SAC are related to CSRD's alleged failure to invoice the Property Owner Defendants—not any improper conduct by the Property Owner Defendants themselves. *See* Motion for Leave to Amend, Ex. A, SAC ¶¶30-32; *see also Yes on Prop 200*, 215 Ariz. at 464, 468. **THE COURT FINDS** that the proposed amendment is futile. *See ELM Ret. Ctr., L.P. v. Callaway*, 226 Ariz. 287, 292 (App. 2010). Therefore,

IT IS FURTHER ORDERED denying Plaintiff's Motion for Leave to Amend First Amended Complaint.

IT IS FURTHER ORDERED that not later than twenty (20) calendar days after the entry of this order, Defendants must submit a proposed form of judgment. That form of judgment may incorporate by reference from this minute entry ruling but otherwise should be confined to Rule 54(c), Ariz. R. Civ. P., language. Ariz. R. Civ. P. 58(a)(2)(B) governs objection and reply times regarding the proposed form of judgment. The Court will rule thereafter.

CLERK OF THE SUPERIOR COURT
FILED
OCT 24 2022 5:00 p.m.
J. Holguin, Deputy

FENNEMORE CRAIG, P.C.
J. Christopher Gooch (No. 019101)
Tyler D. Carlton (No. 035275)
2394 E. Camelback Road, Suite 600
Phoenix, Arizona 85016
Telephone: (602) 916-5000
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Email: tcarlton@fennemorelaw.com
Attorneys for Defendants

SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

MARKHAM CONTRACTING CO., INC., an Arizona corporation,

Plaintiff,

v.

CAHAVA SPRINGS PHASE I, INC., a Nevada corporation; CAHAVA SPRINGS DEVELOPMENT CORPORATION, a Nevada corporation; MORNINGSTAR ROAD PROPERTIES, INC., a Nevada corporation; CAHAVA SPRINGS COMMUNITY ASSOCIATION, an Arizona non-profit corporation; MARK STAPP, an individual as President of an administratively dissolved corporation; ANNIE MATHISEN and PETER MATHISEN, husband and wife, as Secretary and Vice-President/Treasurer of an administratively dissolved corporation,

Defendants.

No. CV2021-054458

[redacted] **FINAL JUDGMENT**

(Assigned to Hon. Sara Agne)

This matter came before the Court pursuant to Defendants' Motion to Dismiss and Plaintiff's Motion for Leave to Amend. The Court—having reviewed the First Amended Complaint and all related filings on both motions in their entirety and having heard oral argument thereon—made its ruling pursuant to the Under Advisement Ruling dated August 26, 2022 (and filed September 1, 2022).

Based upon the foregoing, and good cause appearing therefore:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. Judgment is entered in favor of Defendants and against Plaintiff. Plaintiff to take nothing, and the First Amended Complaint and action are dismissed with prejudice.

2. Each party shall bear its own attorney's fees and costs.

3. The Court finds that there are no further matters that remain pending before this Court and judgment is entered pursuant to Arizona Rule of Civil Procedure 54(c).

DATED this 24th day of ~~September~~ October, 2022.

Hon. Sara Agne
Maricopa County Superior Court

Clerk of the Superior Court
*** Electronically Filed ***
M. De La Cruz, Deputy
2/3/2022 10:03:09 AM
Filing ID 13895726

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Attorneys for Markham Contracting Co., Inc.

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

MARKHAM CONTRACTING CO., INC., an Arizona corporation,

Plaintiff,

v.

CAHAVA SPRINGS PHASE I, INC., a Nevada corporation; CAHAVA SPRINGS DEVELOPMENT CORPORATION, a Nevada corporation; MORNINGSTAR ROAD PROPERTIES, INC., a Nevada corporation; CAHAVA SPRINGS COMMUNITY ASSOCIATION, an Arizona non-profit corporation; MARK STAPP, an individual as President of an administratively dissolved corporation; ANNIE MATHISEN and PETER MATHISEN, husband and wife, as Secretary and Vice-President/Treasurer of an administratively dissolved corporation; DOES 1-100; BLACK CORPORATIONS 1-100; WHITE PARTNERSHIPS 1-100; BLUE LLCS 1-100,

Defendant.

CASE NO. CV2021-054458

FIRST AMENDED COMPLAINT
(Unjust Enrichment)

(Eligible for Commercial Court)

Markham Contracting Co., Inc. ("Markham"), by and through undersigned counsel, for its First Amended Complaint against the above-named defendant, states as follows:

PARTIES, JURISDICTION & VENUE

1. Markham is an Arizona corporation, with its principal place of business in Phoenix, Arizona. Markham is a duly licensed contractor under license numbers 144801, 046809, and 072454 and authorized to do and is doing business in Arizona.

2. Defendant Cahava Springs Phase I, Inc. ("CS Phase I"), is a Nevada corporation holding itself out as authorized to do business in the State of Arizona. Defendant CS Phase I is an Owner of certain lots / parcels of land located in the Cahava Springs Revitalization District ("District").

3. Defendant Cahava Springs Development Corporation ("CSDC") is a Nevada corporation holding itself out as authorized to do business in the State of Arizona. Defendant CSDC is an Owner of certain lots / parcels of land located in the Cahava Springs Revitalization District.

4. Defendant Morningstar Road Properties, Inc. ("Morningstar"), is a Nevada corporation holding itself out as authorized to do business in the State of Arizona. Defendant Morningstar is an Owner of certain lots / parcels of land located in the Cahava Springs Revitalization District.

5. Defendant Cahava Springs Community Association ("CSCA") is an Arizona corporation holding itself out as authorized to do business in the State of Arizona. Defendant CSCA is an Owner of certain lots / parcels of land located in the Cahava Springs Revitalization District. CSCA is listed as "Inactive" with the Arizona Corporation Commissions and was administratively dissolved on August 24, 2021, for its failure to file an

Annual Report for three consecutive years.

6. Defendant Mark Stapp ("Stapp') is the President and Director of Defendant CSCA. If Defendant Stapp is married, then Jane Doe Stapp will be added when the same is ascertained as Stapp would have been acting for the benefit of the marital community.

7. Defendant Annie Mathisen and Defendant Peter Mathisen ("Mathisen") are husband and wife and at all times acted on behalf of the marital community. Annie Mathisen is Secretary of Defendant CSCA and Peter Mathisen is the Vice-President and Treasurer of Defendant CSCA.

8. Defendant JOHN DOES 1-100, JANE DOES 1-100, BLACK CORPORATIONS 1-100, and WHITE PARTNERSHIPS 1-100, whether singular or plural are fictitious names, designating an individual or individuals, masculine or feminine, and are legal entities unknown to Plaintiff whose true name or names Plaintiff prays may be added when discovered as if correctly named originally.

9. All events subject to this dispute took place in Maricopa County, Arizona and the property subject to this dispute is located in Maricopa County, Arizona.

10. Jurisdiction and venue are proper in this Court.

BACKGROUND

11. Cahava Springs Revitalization District ("CSRD") is a special purpose tax-levying public improvement district which was formed on February 15, 2017, for the purposes of the Constitution and the laws of the State of Arizona and a municipal corporation for certain purposes of the laws of the State of Arizona.

12. CSRD entered into a District Development and Waiver Agreement with the real property owners and Defendants set forth herein. Specifically, CSDC, the developer, CS

Phase I, Morningstar, and their successors in title ('Landowners"), all having an interest in the real property within the District. Defendant CSCA also owns real property within the District but was not an entity at the time of the District Development and Waiver Agreement. The transfer of property occurred on December 11, 2018. A copy of the District Waiver and Development Agreement is attached hereto as Exhibit 1 and incorporated herein by reference.

13. The Landowners are identified and considered the assessed property and are assessed the respective amounts as shown on Exhibit A to the Exhibit 1 District Development and Waiver Agreement.

14. The Exhibit 1 Agreement specifies the conditions and terms for development, acquisition, construction, and financing of the infrastructure.

15. The Exhibit 1 Agreement also outlines the repayment of the costs for the infrastructure over a period of time and specifically identifies the dollar value of the special assessment lien bonds of the District that could be issued and were issued to provide monies for certain infrastructure purposes.

16. It is clear from the District Development and Waiver Agreement that the infrastructure costs are to be equally apportioned to the various lots in the subdivisions described on Exhibit B of Exhibit 1.

17. On or about February 27, 2017, Markham and Cahava Springs Revitalization District ("CSRD") entered into a written construction agreement related to the construction of the infrastructure improvements referenced in the District Development and Waiver Agreement for Cahava Springs, located in Cave Creek, Arizona. A copy of the written agreement is attached hereto as Exhibit 2 and incorporated herein by reference.

18. Markham constructed the infrastructure for the development at the request of Cahava Springs Revitalization District.

19. The infrastructure project benefits the surrounding property owned by the above-named Defendants.

20. A dispute arose between Markham and Cahava Springs Revitalization District which proceeded to an Arbitration hearing and subsequent Arbitration Award in Markham's favor.

21. The Arbitration Award has been confirmed with the Maricopa County Superior Court in Case No. CV2020-017067. A copy of the Order Confirming Arbitration Award and Final Judgment is attached hereto as Exhibit 3 and incorporated herein by reference.

COUNT ONE
(Unjust Enrichment)

22. Plaintiff Markham reasserts Paragraphs 1 through 21 of its Complaint as if fully set forth herein.

23. On February 22, 2017, the Board of Directors of CSRD adopted an Assessment Resolution, identified as the Original Assessment Resolution. Wherein the Board levied assessments on properties within the District benefitted by the acquisition and construction of certain public infrastructure improvements. Thus, the Board of CSRD recognized the benefit of the construction work performed by Markham and revised the Assessment Roll to reflect the revised plat of the reallocation of the assessment area and the various parcel numbers. A copy of the Amendment to the Assessment Resolution is attached hereto as Exhibit 4 and incorporated herein by reference.

24. Upon information and belief, Defendants CS Phase I, CSDC, Morningstar, and CSAC, the Owners of the Real Property, have not paid for labor and materials supplied by Plaintiff Markham and CSRD likely has not collected the assessments to pay for the infrastructure work performed. However, CSRD continue the levy of assessments against the parcels within the District in the amounts set forth on the Amended Assessment Roll from June 2018. See Exhibit 4, Section 2.

25. Defendants CS Phase I, CSDC, Morningstar, and CSAC have received a benefit for which they have not paid anyone and, specifically, not Markham.

26. It would be unjust to allow Defendants to retain such benefit without paying for it.

27. Markham is owed the principal amount of $6,427,060.18 pursuant to the Exhibit 3 Order Confirming Arbitration Award and Final Judgment.

28. Given the equal apportionment of the lots for the infrastructure costs, Markham's Judgment should be equally apportioned to the lots as set forth in the Exhibit F attached to Exhibit 1.

29. The entities have received the benefit as set forth in the Award that is attached as Exhibit 2 to the Exhibit 3 Order Confirming Arbitration Award and Final Judgment. No one has paid for any of the infrastructure improvements performed by Markham and Markham is entitled to Judgment as set forth herein.

30. Plaintiff Markham is entitled to recover its reasonable attorneys' fees and costs for this quasi-contract action pursuant to A.R.S. §12-341.01.

31. If this action is determined by Default Judgment, Plaintiff Markham requests reasonable attorneys' fees in the amount of no less than $20,000, plus after-accruing fees and costs.

WHEREFORE, Plaintiff Markham prays for Judgment against all Defendants on this First Claim for Relief for Unjust Enrichment as follows:

A. Principal Damages in the amount of at least $6,427,060.18;

B. Interest at the rate of 10% per annum;

C. Costs;

D. Attorneys' fees pursuant to A.R.S. § 12-341.01;

E. For such other and further relief as the Court deems just and proper.

DATED this 3rd date of February, 2022.

PALECEK & PALECEK, P.L.L.C.

By: /s/ Karen A. Palecek
Karen A. Palecek
6263 N. Scottsdale Road, Suite 144
Scottsdale, AZ 85250
Attorneys for Plaintiff Markham

PALECEK & PALECEK PLLC
ATTORNEYS AT LAW

EXHIBIT 1

When Recorded Return To:

Ballard Spahr LLP
1 East Washington Street, Suite 2300
Phoenix, Arizona 85004
Attention: Tyler Cobb

20 14 mo

DISTRICT DEVELOPMENT AND WAIVER AGREEMENT
(CAHAVA SPRINGS REVITALIZATION DISTRICT)

As of February 15, 2017

TABLE OF CONTENTS

DISTRICT DEVELOPMENT AND WAIVER AGREEMENT

(CAHAVA SPRINGS REVITALIZATION DISTRICT)

THIS DISTRICT DEVELOPMENT AND WAIVER AGREEMENT (CAHAVA SPRINGS REVITALIZATION DISTRICT), dated as of February 15, 2017 (this "*Agreement*"), is entered into by and among Cahava Springs Revitalization District, a special purpose, tax-levying public improvement district for the purposes of the Constitution and laws of the State of Arizona (the "*State*") and a municipal corporation for certain purposes of the laws of the State (together with its successors in interest, the "*District*"), Cahava Springs Development Corporation, a Nevada corporation (the "*Developer*"), Cahava Springs Phase 1, Inc., a Nevada corporation ("*Phase 1*") and Morningstar Road Properties, Inc., a Nevada corporation ("*Morningstar*" and together with the Developer, Phase 1 and their respective successors in title, the "*Landowners*"), having an interest in real property in the District.

WHEREAS, the Landowners hold title to all of the real property (the "*Assessed Property*") comprising the District in the respective amounts shown on Exhibit "A" hereto; and

WHEREAS, pursuant to Title 48, Chapter 39 of the Arizona Revised Statutes (the "*Act*"), and Section 9-500.05 of the Arizona Revised Statutes the District and the Landowners may enter into "development agreements" to specify, among other things, conditions, terms, restrictions and requirements for development, acquisition, construction and financing of "infrastructure" (as such term is defined in the Act) and subsequent reimbursement or repayment of the costs thereof over a period of time; and

WHEREAS, with regard to the Property, the District and the Landowners wish to enter into a development agreement for the purpose of specifying certain matters relating particularly to the District's acquisition and construction of certain infrastructure and the Landowners' waiver of rights, actions and requirements, all pursuant to the Act; and

WHEREAS, this Agreement is a "development agreement" which is consistent with the "general plan" (as defined in Section 9-461 of the Arizona Revised Statutes) for the Town of Cave Creek, Arizona (the "*Municipality*"), and the "general plan" (as defined in the Act) (the "*General Plan*") for the District filed with the Clerk of the Municipality, on April 16, 2015, and as in effect on the date of this Agreement; and

WHEREAS, special assessment lien bonds of the District may be issued by the District (pursuant to the Act) to provide moneys to finance certain "infrastructure purposes" (as such term is defined in the Act) described in the General Plan; and

WHEREAS, the board of directors of the District (the "*District Board*"), as nearly as practicable pursuant to the procedures prescribed by Sections 48-576 through 48-589, Arizona Revised Statutes, or such other procedures as the District Board provides, may levy assessments of the costs of any infrastructure or infrastructure purpose on any land in the District based on the benefit determined by the District Board to be received by the land, and issue and sell bonds payable from amounts to be collected from the special assessments pursuant to the terms of this Agreement; and

WHEREAS, the District held an election on February 2, 2016 (the "*Election*"), at which the persons who were then qualified to vote pursuant to the Act authorized the District Board to (i) levy special assessments against all taxable property in the District in a maximum amount of $105,000 per lot and issue and sell special assessment bonds, payable from amounts collected from the special assessments, in order to provide moneys to acquire and construct certain "infrastructure" (as such term is defined in the Act), generally described in Exhibit "B" attached hereto (the "*District Improvements*") and to acquire from the Landowners certain existing work, including plans and specifications for the development of the District (the "*Developer Improvements*"), consistent with the General Plan and (ii) levy an annual ad valorem tax on the taxable real and personal property in the District, at a rate not to exceed thirty cents ($.30) per one hundred dollars of assessed valuation, to be used for the operation and maintenance expenses of the District; and

WHEREAS, pursuant to resolutions adopted by the District Board on October 31, 2016 (the "*Authorizing Resolution*"), the District assessed the lots in the District, authorized the issuance and sale of not to exceed $16,680,000 in aggregate original principal amount of Cahava Springs Revitalization District (Town of Cave Creek, Arizona) Special Assessment Bonds, Series 2017A (the "*Series 2017A Bonds*") and not to exceed $5,000,000 in aggregate original principal amount of Cahava Springs Revitalization District (Town of Cave Creek, Arizona) Subordinated Special Assessment Bonds, Series 2017B (the "*Series 2017B Bonds*" and, together with the Series 2017A Bonds, the "*Series 2017 Bonds*"), and approved the execution and delivery of an Indenture of Trust, dated as of March 1, 2017 (the "*Indenture*") with Zions Bank, a division of ZB, National Association, as trustee (the "*Trustee*"), providing for the issuance, sale, registration, transfer and payment of, and security for the Series 2017 Bonds; and

WHEREAS, pursuant to Pre-Development and Annexation Agreement, dated April 25, 2005, between the Municipality and the Developer's predecessors in interest with respect to the Property, the Developer's predecessors in interest agreed with the Municipality to dedicate to the Municipality the District Improvements upon completion thereof; and

WHEREAS, pursuant to the Act, the District may enter into this Agreement with the Landowners as a "development agreement" providing for the purchase by the District from the Landowners of certain existing infrastructure, the disbursement and investment of proceeds of the Series 2017 Bonds to acquire and construct additional infrastructure and for the agreement and waiver by the Landowners as to certain matters, rights, actions and requirements; and

NOW, THEREFORE, in the joint and mutual exercise of their powers, and in consideration of the above premises and of the mutual covenants herein contained and for other valuable consideration and subject to the conditions set forth herein, the parties hereto agree that:

ARTICLE I

ACQUISITION AND CONSTRUCTION

Deposit of Bond Proceeds and Developer Funds. The District will deposit the proceeds from the sale of the Series 2017A Bonds with the Trustee. A portion of the proceeds of the Series 2017A Bonds will be used to finance the District Improvements generally described on Exhibit "B" attached hereto. The Series 2017B Bonds will be issued and delivered to the Developer on each July 1st, representing the aggregate Series B Assessments (as defined in the Indenture) on lots in the District sold subsequent to the preceding July 1st, in consideration of the Landowners' sale and assignment to the District of the Developer Improvements generally described on Exhibit "B" attached hereto. Concurrently with the issuance of the Series 2017A Bonds, the Landowners will deposit the Developer Funds (as defined in the Indenture) with the Trustee, which will be used to finance the Phase 1 Improvements generally described on Exhibit "B" attached hereto (the "*Phase 1 Improvements*" and, together with the District Improvements and the Developer Improvements, the "*2017 Improvements*").

District Acquisition or Construction of Public Infrastructure. To the extent permitted by law, the District may acquire or construct infrastructure in or related to and specifically supporting the District, as provided herein, including the 2017 Improvements.

(a) **Procurement of Improvements**. The parties agree that the construction of the District Improvements and the Phase 1 Improvements has been bid, and the District Improvements and the Phase 1 Improvements will be constructed, in accordance with the General Plan, the requirements for construction projects in the Municipality and the requirements for bidding and constructing projects pursuant to Title 34, Chapter 2, Article 1, Arizona Revised Statutes ("*Title 34*"). In particular, the District has advertised for and procured the construction of the 2017 Improvements based on plans, specifications, bidding and contract documents prepared by or at the direction of the Developer, and that contracts for the construction of the 2017 Improvements have been awarded to the lowest responsible bidder as determined by the District in consultation with the Developer, all in conformity with Title 34.

Development Manager. In order to manage the installation of the 2017 Improvements and to coordinate the efficiency of all construction activity, the District may retain the Developer as the agent of the District ("*Development Manager*"). To the extent that the Development Manager does not perform the construction management function, the construction manager selected by the Developer shall be mutually agreeable to both parties. The District agrees that the Development Manager shall not be required to post any payment or performance or improvement security or performance bonds for infrastructure improvements directly funded with the Series 2017 Bonds.

Dedication of Improvements. Upon the District Engineer's (as defined in the Indenture) certification that the District Improvements have been fully completed to applicable standards and specifications of the Municipality, Maricopa County, the State and the United States of America, as applicable, the District will dedicate the 2017 Improvements, together with all necessary property and easements, to the Municipality.

ARTICLE II

FINANCING OF ACQUISITION AND CONSTRUCTION

Issuance and Sale of Series 2017 Bonds. The District Board may take all such action as may be necessary for the District to issue and sell, pursuant to the provisions of the Act, the Series 2017 Bonds, in one or several series, in amounts sufficient to pay (i) the total cost of the District Improvements and the Developer Improvements, (ii) all relevant issuance costs related to the applicable series of Bonds, (iii) capitalized interest for a period not in excess of that permitted by the Act and the Code (as hereinafter defined), and (iv) to the extent permitted by law, the costs of funding a debt service reserve fund in an amount not in excess of that permitted by the Act and the Code.

Section 2.2 Levy of Assessments; Acceptance.

(a) The Series 2017A Bonds will be special assessment lien bonds payable from amounts collected from, among other sources, a special assessment of $72,521.74 per lot (the "*Series A Assessment*") on the lots in the District. The Series 2017B Bonds will be special assessment lien bonds payable from amounts collected from, among other sources, a separate special assessment of $21,739.13 per lot (the "*Series B Assessment*" and, together with the Series A Assessment, the "*Assessments*") on the lots in the District.

(b) The Assessments have been levied as nearly as practicable in accordance with the procedures prescribed by Sections 48-576 through 48-589 of the Arizona Revised Statutes upon the lots in the District based on the benefits to be received by each lot, as determined by the District Board based upon the report of the District Engineer.

(i) So long as a particular lot is subject to the Deed of Trust (as defined in the Indenture), the Assessment relating to such lot will be billed to the respective Landowners of such lot by the District annually on or before October 1 of each year. Not less than one-half of such Assessment shall be due and payable on or before November 1 of such year and any balance shall be due and payable on or before May 1 of the following year. Assessments will be deemed delinquent if one-half of an Assessment then due is not paid prior to November 1 of the year in which due or any balance is not paid prior to May 1 of the succeeding year.

(ii) Once a particular lot is released from the Deed of Trust pursuant to Section 2.9 of the Indenture, Assessments with respect to such lot may be billed and collected by the Maricopa County Treasurer pursuant to an assessment collection agreement in substantially the form attached hereto as Exhibit "C" (an "*Assessment Agreement*") and in accordance with the procedures prescribed by Sections 48-599 and 48-600 of the Arizona Revised Statutes.

(c) The Landowners hereby agree to accept the Assessments, which are in an amount not more than permitted pursuant to State law and acknowledge that the Assessed Property (as defined in the Indenture) will benefit from the 2017 Improvements in an amount not less than the Assessments. The District has recorded the Assessments in the Office of the County Recorder of Maricopa County, Arizona in accordance with State law.

(d) The District Board may modify the Assessments after the Assessments have been legally assessed to correspond to subsequent changes in the development of the Assessed Property but in no case shall the Assessments be reduced below the total amount necessary to provide for debt service for the corresponding Series 2017 Bonds or increased above the amount authorized in the Election without the approval of the Landowners and successors/landowners, as provided by Section 48-6818 of the Arizona Revised Statutes. The parties (i) acknowledge that all or a portion of the District may be replatted and (ii) consent and agree to any reallocation of the Assessments as a result thereof, provided that the reallocation of the Assessments is consistent with the provisions of the Indenture. The Assessments will be binding upon the Landowners whether or not the 2017 Improvements are completed in substantial compliance with the final plans and specifications.

(e) The Landowners hereby acknowledge that lenders and other parties involved in financing future improvements on the Assessed Property (including mortgages for single-family residences) may require that liens associated with the Assessments (or applicable portions thereof) be paid and released prior to making a loan and/or accepting a lien with respect to any such financing.

Section 2.3 Series 2017A Bonds.

(a) The aggregate principal amount of the Series 2017A Bonds which may be authenticated, delivered and outstanding pursuant to the Indenture is limited to $16,680,000. The Series 2017A Bonds will be issued concurrently with the execution and delivery of the Indenture.

(b) Series A Assessments may be prepaid, in whole and not in part, by paying the following amount, in cash, to the District: (i) the whole amount of the unpaid principal of the Series A Assessment to be prepaid, plus (ii) interest accruing to the date of the next installment plus (iii) any administrative or other fees charged by the District or the Trustee with respect thereto and less (iv) the pro-rata share of the reserve fund allocable to the Series A Assessment to be prepaid.

Section 2.4 Series 2017B Bonds.

(a) The Series 2017B Bonds are being issued to the Developer in exchange for the Developer Improvements previously acquired or constructed by the Developer, and may be issued only upon satisfaction of the requirements hereof. The aggregate principal amount of the Series 2017B Bonds which may be authenticated, delivered and Outstanding pursuant to the Indenture is limited to $5,000,000. The Series 2017B Bonds shall be issued, in installments, on July 1 of each year in principal amounts equal to the aggregate Series B Assessments on the lots in the District which have been sold to Persons (as defined in the Indenture) not affiliated with the Landowners subsequent to the preceding July 1 and which Series B Assessments have not been prepaid as of such July 1. If any such Series B Assessments are prepaid prior to July 1 such that a corresponding principal amount of Series 2017B Bonds will not be issued, the District will transfer to the Landowners, or their order, all such proceeds received from the prepayment of such Series B Assessments immediately upon receipt. Notwithstanding any provisions hereof,

repayment of the Series 2017B Bonds shall be subordinate to repayment of the Series 2017A Bonds, as provided in the Indenture.

(b) The Landowners will cause the District to be notified of the initial transfers of title to each lot within the District. On July 1 of each year, the District shall cause to be prepared, executed and delivered to the Trustee Series 2017B Bonds in a principal amount equal to the aggregate Series B Assessments levied on lots in the District that have been sold subsequent to the preceding July 1 and that remain unpaid, and the Trustee shall thereupon authenticate, register and deliver such Series 2017B Bonds to the Developer pursuant to the Indenture and this Agreement. Concurrently therewith, the District shall also provide appropriate notice of such Series B Assessments to the Maricopa County Treasurer if such Series B Assessments will be collectible pursuant to an Assessment Agreement, as provided in Section 2.2(b) hereof.

(c) After Series 2017B Bonds have been issued, Series B Assessments corresponding thereto may be prepaid, in whole and not in part, by paying the following amount, in cash, to the District: (i) the whole amount of the unpaid principal of the Series B Assessment to be prepaid, plus (ii) interest accruing to the date of the next installment plus (iii) any administrative or other fees charged by the District or the Trustee with respect thereto. Upon prepayment of any Series 2017B Bonds, the Developer will immediately surrender to the Trustee for cancellation the Series 2017B Bonds so prepaid and redeemed.

Section 2.5 Nonpayment of Assessment and General Property Taxes.

(a) Nonpayment of any Assessment for Assessed Property subject to the Deed of Trust and collectible by the District pursuant to Section 2.2(b)(i) hereof will constitute an Event of Default hereunder and under the Deed of Trust with respect to all Assessed Property subject to the Deed of Trust, entitling the Trustee to exercise its rights and remedies pursuant to the Deed of Trust to recover the entire unpaid Assessments, including the delinquent installment(s), for all Assessed Property subject to the Deed of Trust.

(b) Nonpayment of general property taxes for Assessed Property subject to the Deed of Trust will constitute an Event of Default hereunder and under the Deed of Trust with respect to all Assessed Property subject to the Deed of Trust, entitling the Trustee to exercise its rights and remedies pursuant to the Deed of Trust to recover and pay delinquent general property taxes, including any other delinquent taxes, for all Assessed Property subject to the Deed of Trust.

(c) In the event of nonpayment of any Assessment collectible pursuant to an Assessment Agreement, the District will comply as nearly as practicable with the procedures prescribed by Sections 48-601 through 48-607 of the Arizona Revised Statutes, for the collection of delinquent Assessments, the sale of delinquent property and the issuance and effect of the deed, provided that, in no event will the District or the Municipality be required to purchase any Assessed Property at any such delinquency sale if there is no other purchaser. Each lot for which there is a delinquent Assessment collectible pursuant to an Assessment Agreement will be offered for sale separately. Proceeds from the sale of such delinquent property in an amount equal to the entire unpaid Assessment, including the delinquent installment(s), will be paid to the

Maricopa County Treasurer, who will deposit such proceeds with the Trustee for deposit, in turn, to the Assessment Fund created pursuant to the Indenture.

Section 2.6 Nature of Agreement. This Agreement as it relates to the Landowners shall be a covenant and agreement running with the Assessed Property and shall be recorded in the records of the Maricopa County (Arizona) Recorder, as a lien and encumbrance against the Assessed Property. Upon the sale, transfer or other conveyance by the Landowners of their right, title and interest in and to the Assessed Property, or any part thereof, unless released from the Deed of Trust in accordance with the release provisions set forth therein and in the Indenture, the Assessed Property, or such part thereof, shall continue to be bound by all of the terms, conditions and provisions hereof; any purchaser, transferee or subsequent owner shall take such Property subject to all of the terms, conditions and provisions hereof, and any purchaser, transferee or subsequent owner shall be entitled to all of the rights, benefits and protections afforded the predecessor in interest thereof by the terms hereof. To the extent that the Assessments remain unpaid, the Assessments shall constitute liens against the Assessed Property in the amounts indicated in the Assessment diagram, as provided by, and pursuant to, this Agreement and the Act and shall be enforceable and collectable with the same force and effect originally provided to them.

Section 2.7 Additional Districts. The parties acknowledge that the District may be divided into additional improvement districts or assessment districts from time to time for the purpose of constructing or acquiring specific improvements and levying special assessments related to the same.

ARTICLE III

GENERAL REQUIREMENTS.

Section 3.1 Limited Offering of Bonds; Transfer Restrictions. The District intends to issue tax-exempt bonds to finance the cost of eligible infrastructure and related costs as provided in the Act If Series 2017 Bonds are issued by the District on a non-rated basis, the Series 2017 Bonds shall be sold only to Qualified Institutional Buyers (as defined in Rule 144A promulgated pursuant to the Securities Act of 1933, as amended (the "*Securities Act*")) or Accredited Investors (as defined in Rule 501(a)(1)-(3) of Regulation D promulgated pursuant to the Securities Act). No secondary market transfer restrictions shall apply provided such secondary market transfers are made to Qualified Institutional Buyers or Accredited Investors, the status of which shall be verified through the broker/dealer network. Notwithstanding the foregoing, the Developer will not transfer the Series 2017B Bonds, except to an affiliate of the Developer, without the prior written consent of the District and receipt by the District of an opinion of counsel reasonably acceptable to the District and the Trustee substantially to the effect that such transfer will not violate the securities registration laws of the United States or of the State.

Section 3.2 Disclosure of Limited Liability. Any disclosure document prepared in connection with the offer or sale of Series 2017 Bonds must clearly indicate that neither the Municipality nor the State or any political subdivision of either shall be liable for the

payment or repayment of the Series 2017 Bonds, and neither the credit nor the taxing power of the Municipality, the State, or any political subdivision of either shall be pledged therefore.

Section 3.3 Disclosure to Purchasers. One or more disclosure documents must be provided by the Developer or its successors to each potential purchaser of Assessed Property disclosing the existence and amount of the Assessments or tax, if effective (assuming such Assessment or tax remains unpaid at the time of sale to the potential purchaser). In the event that a particular lot has not already been sold to a Person not affiliated with the Landowners, the disclosure documents must disclose that installments on the Series B Assessment will become payable with respect to that particular lot on the next July 1 if such Series B Assessment is not prepaid prior thereto. Each potential purchaser must acknowledge in writing that the purchaser has received and understood such disclosure documents. The District shall maintain records of the written acknowledgments. To provide evidence satisfactory to the District Board that any prospective purchaser of land within the boundaries of the District has been notified that such land is within the boundaries of the District and that the Series 2017 Bonds may be then or in the future outstanding, a disclosure pamphlet substantially in the form of Exhibit "E" hereto (the "*Pamphlet*") shall be produced and delivered to each purchaser; provided, however, that the Pamphlet may be modified from the form set forth as Exhibit "E" hereto in the future as necessary to adequately describe the District, the Series 2017 Bonds and sources of payment thereof as agreed by the District Board and the Developer.

Section 3.4 Continuing Disclosure Undertaking. So long as the aggregate unpaid Series A Assessments levied on lots owned by the Landowners or any future owner of the Assessed Property are equal to at least twenty percent (20%) of the total principal amount of the Series 2017A Bonds then outstanding, the Developer and/or such owner, as applicable, solely with respect to its Assessed Property, will provide any and all information needed, as reasonably requested by the District, to comply with the information reporting requirements contemplated by Section 240.15c2-12 of the General Rules and Regulations promulgated pursuant to the Securities Exchange Act of 1934, as amended.

ARTICLE IV

MAINTENANCE AND OPERATION

O&M Tax Levy. The parties acknowledge that the voters of the District have approved a special operation and maintenance tax levy (the "*O&M Tax Levy*") at a rate up to thirty cents ($.30) per one hundred dollars of assessed valuation per annum, as determined by the District Board, with respect to all taxable real and personal property in the District. Proceeds of any O&M Tax Levy may be used by the District for any lawful maintenance, operational or administrative purpose of the District, as provided in the Act.

ARTICLE V

INDEMNIFICATION; INSURANCE

Section 5.1 Landowners' Indemnification.

(a) Except as otherwise provided in subsection (c) of this Section 5.1, the Landowners (i) agree to indemnify and hold harmless the District and each director, trustee, partner, member, officer, official, independent contractor or employee thereof and each person, if any, who controls the District within the meaning of the Securities Act (any such person being herein sometimes called an "*Indemnified Party*"), for, from and against any and all losses, claims, damages or liabilities, joint or several (A) to which any such Indemnified Party may become subject, under any statute or regulation, at law or in equity or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact set forth in any offering statement or memoranda relating to the Series 2017A Bonds, or any amendment or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or which is necessary to make the statements therein, in light of the circumstances in which they were made, not misleading in any material respect, but solely to the extent that such untrue statements, alleged untrue statement, omission or alleged omission contained in any offering statement was made in reliance upon and in conformity with information provided by any Owner or an affiliate of any Owner for inclusion in such offering statement, and (B) to the extent of the aggregate amount paid in any settlement of any litigation commenced or threatened arising from a claim based upon any such untrue statement or alleged untrue statement or omission or alleged omvided by any Owner or an affiliate of any Owner if such settlement is effected with the written consent of the Landowners (which consent shall not be unreasonably withheld) and (ii) shall reimburse any legal or other expenses reasonably incurred by any such Indemnified Party in connection with investigating or defending any such loss, claim, damage, liability or action.

(b) An Indemnified Party shall, promptly after the receipt of notice of a written threat to commence, or the commencement of, any action against such Indemnified Party in respect of which indemnification may be sought against the Landowners, notify the Landowners in writing of the threat or commencement thereof. Failure or delay of the Indemnified Party to give such notice shall reduce the liability of the Landowners by the amount of damages attributable to the failure or delay of the Indemnified Party to give such notice to the Landowners, but the failure or delay in notifying the Landowners of any such action shall not relieve the Landowners from any separate liability that each may have to such Indemnified Party otherwise than pursuant to this section. In case any such action is brought against an Indemnified Party and such Indemnified Party shall notify the Landowners of the commencement thereof, the Landowners may, or if so requested by such Indemnified Party shall, participate therein or defend the Indemnified Party therein, with counsel satisfactory to such Indemnified Party and the Landowners (it being understood that, except as hereinafter provided, the Landowners shall not be liable for the expenses of more than one counsel representing the Indemnified Parties in such action), and after notice from the Landowners to such Indemnified Party of an election so to assume the defense thereof, the Landowners shall not be liable to such Indemnified Party pursuant to this section for any legal or other expenses subsequently incurred

by such Indemnified Party in connection with the defense thereof other than reasonable costs of investigation; provided, however, that unless and until the Landowners defend any such action at the request of such Indemnified Party, the Landowners shall have the right to participate at their own expense in the defense of any such action. If the Landowners have not employed counsel to defend any such action or if an Indemnified Party has reasonably concluded that there may be defenses available to it and/or other Indemnified Parties that are different from or additional to those available to the Landowners (in which case the Landowners shall not have the right to direct the defense of such action on behalf of such Indemnified Party) or to other Indemnified Parties, the legal and other expenses, including the expense of separate counsel, incurred by such Indemnified Party shall be borne by the Landowners; provided, however, the Indemnified Party shall first notify the Landowners whether it is pursuing such different or additional defenses before hiring separate counsel.

(c) In order to provide for just and equitable contribution in circumstances in which the indemnification provided for in this section is applicable but for any reason is held to be unavailable to any Indemnified Party from the Landowners, the Landowners (to the extent permitted by law) and the Indemnified Parties (to the extent permitted by law) shall contribute to the aggregate losses, claims, damages and liabilities (including the cost of any investigation, legal and other expenses incurred in connection with, and any claims asserted) to which the Landowners and the Indemnified Parties may be subject in such proportion as is appropriate to reflect the relative fault of the Indemnified Parties on the one hand and the Landowners on the other in connection with the statement or omission which resulted in such losses, claims, damages or liabilities (or actions in respect thereof) as well as other equitable considerations. The relative faults shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or the alleged omission to state a material fact relates to information supplied by the Landowners, on the one hand, or the Indemnified Parties, on the other hand, and the parties' relative intent, knowledge, access to information and opportunity to correct such statement or omission. No person guilty of fraudulent misrepresentation shall be entitled to contribution from any person who is not guilty of such fraudulent misrepresentation. For purposes of this subsection (c), each person, if any, who controls an Indemnified Party within the meaning of the Securities Act (a *"Controlling Person"*) shall have the same rights to and obligations for contribution as the Indemnified Party; provided, however, that a Controlling Person shall have all defenses available to it under the Securities Act and the Securities Exchange Act of 1934, as amended, or otherwise, at law or in equity, in determining its obligations hereunder. Any party entitled to contribution shall, promptly after receipt of notice of the threat or the commencement of any action, suit or proceeding against such party in respect of which a claim for contribution may be made against another party or parties pursuant to this subsection, notify such party or parties from whom contribution may be sought, but the failure or delay in so notifying such party from whom such contribution may be sought shall not relieve the party or parties from whom contribution may be sought from any separate obligation it or they may have hereunder or otherwise than under this section. No party shall be liable for contribution with respect to any action or claim settled without its consent.

Section 5.2 District Indemnification.

(a) To the extent permitted by law, the District agrees to indemnify, defend, and hold harmless each director, trustee, member, officer, official or employee of the District ("*District Indemnified Parties*") from and against any and all liabilities, claims or demands for injury or death to persons or damage to property arising from in connection with, or relating to its performance of this Agreement. Notwithstanding the foregoing, the District shall not, however, be obligated to indemnify any District Indemnified Party with respect to damages caused by the negligence or willful misconduct of such District Indemnified Party.

(b) At any time the District is constructing public infrastructure, or the District owns public infrastructure, the District shall maintain in effect general liability insurance on an occurrence policy form including, contractual, personal injury, and property damages liability coverages with a combined single limit of not less than five million dollars ($5,000,000) per occurrence for bodily injury, death, personal injury and property damage. At all other times, the District shall maintain such coverage in an amount of one million dollars ($1,000,000). The District may provide up to the first one hundred thousand dollars ($100,000) of the required limit of liability as a deductible or pursuant to a program of self-insurance. The general liability insurance shall name the Municipality as an additional insured, be underwritten by an insurance company having an A.M. Best rating of at least B+7, or equivalent if not rated by A.M. Best, and shall provide thirty (30) days advance notice to the District and the Municipality prior to cancellation, material change or non-renewal. The District shall deliver to the Municipality a copy of the insurance policy, a certificate of insurance or other evidence satisfactory to the Municipality of the existence and amount of the required insurance and renewals thereof.

(c) The Landowners agree to pay the costs of such insurance coverage to the extent such costs are not paid from bond proceeds, or by the District or to the extent payment of such costs, together with other costs of the District, would result in a tax levy in excess of that described in Section 4.1 hereof. The Municipality shall have no obligation to pay the costs of such insurance.

(d) The District shall, promptly after the receipt of notice of any action to obtain insurance proceeds with respect to the insurance coverages required by this Section, notify the Landowners thereof in writing. The District shall have such rights in any such action, and the Landowners shall have such rights to notice and participation in any such action, as are described in Section 5.1(b) hereof.

Section 5.3 Officers and Directors' Liability Insurance.

(a) The District shall maintain such directors and officers liability insurance coverage for the District as shall be reasonably satisfactory to the District Board. The insurance shall have a limit of $1,000,000, naming the Municipality as an additional insured and shall be placed with insurers maintaining an A.M. Best rating of at least B+7, or of equivalent quality if not rated by A.M. Best.

(b) The Landowners agree to pay the costs of such insurance coverage to the extent such costs are not paid from bond proceeds or payment of such costs, together with other

costs of the District, would exceed the tax levy described in Section 4.1 hereof, provided that payment of such costs shall be made solely from moneys otherwise payable to the Landowners. The Municipality shall have no obligation to pay the costs of such insurance.

(c) The District shall, promptly upon the receipt of notice of any action to recover insurance proceeds pursuant to the insurance requirements set forth in this Section, notify the Landowners thereof in writing. The District shall have such rights in any such action, and the Landowners shall have such rights to notice and participation in any such action, as are described in Section 5.1(b) hereof.

ARTICLE VI

REPRESENTATIONS, WARRANTIES AND AGREEMENTS OF OWNER

The Landowners represent and warrant to the District the following:

Organization and Existence of Landowners. Each of the Landowners is duly organized and validly existing as a corporation pursuant to the laws of the State of Nevada.

No Breach or Conflict. The performance of this Agreement by the Landowners and fulfillment of its terms do not and will not, at the time of execution of this Agreement, to the actual knowledge of the officers and directors of the Landowners, conflict with or result in any breach, default or violation of any regulation, order or decree of any court or governmental department, commission, board, bureau or agency binding upon any Owner, or of any indenture, contract, agreement or other instrument to which any of the Landowners is a party or to which any of the Property is subject.

No Violation or Default. The Landowners have made a reasonable and diligent investigation and, to their actual knowledge, the Landowners are not, at the time of execution of this Agreement, in material violation of or in material default with respect to any applicable law or any applicable rule, regulation or order of any court or any governmental department, commission, board, bureau, agency or instrumentality which would prevent or limit the Landowners from entering into or carrying out their obligations hereunder.

Pending or Threatened Litigation. To the actual knowledge of the officers and directors of the Landowners, there is no action, suit, proceeding, inquiry or investigation, at law in equity, before or by any court, governmental agency, public board or body, pending or, to the best of their knowledge, overtly threatened, against or affecting the Landowners, and to their actual knowledge there is no basis therefor, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by this Agreement.

Debt Service Reserve Fund. The Landowners agree that a debt service reserve fund in an amount equal to the Reserve Fund Requirement (as defined in the Indenture) will be capitalized from bond proceeds. Any moneys remaining in such reserve fund at the final maturity or prior redemption of the Series 2017A Bonds will be applied to pay principal and interest on the Series 2017A Bonds at such time and any monies thereafter remaining in such reserve fund shall, at the written direction of the District, be remitted to the then-current owners of Assessed Property *pro rata* according to their payments with respect to the original

Assessments. As additional security for the payment of debt service on the Series 2017 Bonds, the Developer will deposit the Developer Funds with the Trustee, as described in Section 1.2 of this Agreement. Upon completion of the Phase 1 Improvements and payment of all costs and expenses incident thereto, any remaining Developer Funds will be transferred or disbursed as provided in the Indenture.

ARTICLE VII

REPRESENTATIONS AND WARRANTIES OF DISTRICT

The District represents and warrants to the Landowners as follows:.

Organization and Existence. The District is a revitalization district duly organized, validly existing and in good standing pursuant to the laws of the State, and has all requisite power to enter into this Agreement and to carry out and perform the District's obligations hereunder.

Validity and Enforceability of Agreement. This Agreement constitutes a duly authorized, valid and binding obligation of the District and is, and shall be, enforceable against the District in accordance with its terms. The execution, delivery and performance of this Agreement have been duly authorized by the District Board according to law and, to the best of the District's knowledge, do not and will not conflict with or result in any breach, default or violation of any term, condition or provision of any applicable law or rule, regulation, order, writ or decree of any court or any governmental department, commission, board, bureau, agency or instrumentality binding upon the District or of any bonds, indentures, contracts or agreements to which the District is a party or by which the District or its property is bound.

No Litigation. To the actual knowledge of the officers and directors of the District, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, public board or body, pending or, to the best of their knowledge, overtly threatened against or affecting the District, and, to their actual knowledge there is no basis therefor, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by this Agreement.

ARTICLE VIII

CONSENT AND WAIVER

Landowners' Consents. Each of the Landowners, with full knowledge of the provisions of applicable law, and its rights pursuant thereto, hereby consents or acknowledges, as applicable:

(a) that the proposed 2017 Improvements are of more than local or ordinary public benefit, and that the Property receives a benefit from the 2017 Improvements commensurate with the Assessments;

(b) the adoption by the District of the plans and specifications and the Assessment diagram;

(c) to the execution of the construction contracts for the 2017 Improvements without publication of the Notice of Contract Award;

(d) to the Assessments against the Property, in the amounts set forth on Exhibit "C" hereto;

(e) that failure to pay, when due and prior to delinquency, any Assessment for Assessed Property subject to the Deed of Trust will constitute nonpayment of all Assessments for all Assessed Property subject to the Deed of Trust; and

(f) to the recordation of the Assessments.

Landowners' Waivers. Each of the Landowners, with full knowledge of the provisions of applicable law, and its rights pursuant thereto, hereby expressly waives:

(a) any and all defects, irregularities, illegalities and deficiencies in the proceedings for the formation of the District;

(b) any and all defects, irregularities, illegalities or deficiencies in the proceedings establishing the Assessed Property;

(c) any and all defects, irregularities, illegalities or deficiencies in the District election held on February 2, 2016 authorizing the imposition of the Assessments, the issuance of the Series 2017 Bonds and the O&M Tax Levy;

(d) any and all defects, irregularities, illegalities or deficiencies in the District election held on July 14, 2016 at which Mark Stapp, Dennis Mathisen and John Fischer were re-elected to the District Board;

(e) any and all notices and time periods related to the matters described in the preceding subsections (a) through (d) provided by applicable law, including, but not limited, to mailing, posting and publication, as applicable, of any notice required in connection with the adoption of the resolutions with respect to any of the 2017 Improvements, the procurement and award of contracts with respect to the acquisition and construction of the 2017 Improvements, the imposition of the Assessments and any other procedural steps and related proceedings necessary in connection with the 2017 Improvements and the issuance and delivery of the Series 2017 Bonds;

(f) any and all objections to the adoption and approval by the District of the plans and specifications, the Engineer's estimate of the costs of the District Improvements, the Developer Improvements and the Assessment diagram;

(g) any and all protests with respect to the 2017 Improvements and objections to the extent of the Assessed Property (all of which is to be assessed) and including any right to file a written protest or objection for such purpose and any right to any hearing on such matters;

(h) any and all protest rights against the 2017 Improvements and objections to the awarding of one or more acquisition or construction contracts for the 2017 Improvements;

(i) any and all defects, irregularities, illegalities or deficiencies in, or in the adoption by the District Board of, the Assessed Property (all of which is to be assessed), the plans and specifications, and the Assessment diagram, all of which provide for and effectuate the 2017 Improvements;

(j) any and all defects, irregularities, illegalities or deficiencies in, or in the awarding of, any contracts for or with respect to, the 2017 Improvements, including, but not limited to, any right to claim that any of the acts or proceedings relating to the 2017 Improvements are irregular, illegal or faulty pursuant to applicable law, any right to file a notice specifying in which respect the acts and proceedings are irregular, illegal or faulty, and any right to any hearing in connection therewith;

(k) any and all actions and defenses against the Assessments or any of the Series 2017 Bonds, including, but not limited to, judicial review, as to whether the Property (all of which is to be assessed) is benefited by the 2017 Improvements;

(l) any right to object to the legality of any of the Assessments or to any of the previous proceedings connected therewith or to claim that the 2017 Improvements have not been constructed according to any applicable contract or the plans and specifications, in each case as permitted pursuant to applicable law and including any right to file a written notice specifying the grounds of such objection and any right to any hearing in connection therewith;

(m) any and all claims or defenses, known or unknown, they may now or subsequently have against the Assessments or the Series 2017 Bonds;

(n) all demands for cash payment of the Assessments;

(o) any and all provisions of any collateral security instruments relating to the Assessed Property (all of which is to be assessed) which prohibit the establishment of the Assessed Property, designation of the boundaries of the Assessed Property (all of which is to be assessed), completion of the 2017 Improvements and imposition of the Assessments; and

(p) any and all rights to redemption pursuant to Section 48-605 of the Arizona Revised Statutes.

ARTICLE IX

MISCELLANEOUS

Landowners' Representatives. Mark Stapp, Dennis Mathisen and John Fischer shall each be an authorized representative of the Landowners to provide all consents, approvals, make protests and objections, receive all notices, and act for the Landowners in carrying out the purposes of this Agreement.

Amendment. This Agreement may be amended only by an agreement in writing executed by the District and the Landowners, or their respective successors and assigns, which is approved by the then-owners of fee simple title to not less than a majority of the Property and recorded in the Office of the Maricopa County (Arizona) Recorder.

Notices. Any notices and other communications required or permitted hereby shall be validly given, made or served, if in writing and delivered personally or sent by registered or certified mail, postage prepaid, to:

District: Cahava Springs Revitalization District
c/o Ballard Spahr LLP
1 East Washington Street, Suite 2300
Phoenix, AZ 85004

Landowners: Cahava Springs Development Corporation
c/o Tim Martens, Esq.
Gammage & Burnham, PLC
2 North Central Avenue, Suite 1500
Phoenix, AZ 85004

or to such other person or such other address as any party may designate in writing. Notice given by mail, as set out above, shall be deemed delivered three business days following the date the same is postmarked.

Severability. If any one or more sections, subsections, clauses, sentences or parts of this Agreement shall be adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall not affect, impair or invalidate the remaining provisions hereof, but shall be confined to the specific sections, subsections, clauses, sentences and parts so determined.

Benefit and Binding Effect. The provisions of this Agreement shall inure to the benefit of and shall be binding upon the respective heirs, successors and assigns of the respective parties.

Additional Documents and Agreements. Each party agrees to execute and deliver such further or additional documents, instruments or agreements as may be reasonably necessary or appropriate in good faith to fully implement and carry out the intents and purpose of this Agreement.

Applicable Law and Venue. This Agreement shall be governed by and construed in accordance with State law. Venue for any suit or other proceedings relative to this Agreement shall be in the Maricopa County (Arizona) Superior Court.

Headings. The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of any term or provision of this Agreement.

Counterparts. This Agreement may be executed in counterparts, each of which shall be an original but which shall constitute one and the same instrument.

Entire Agreement. This Agreement constitutes the entire agreement among the parties hereto and no party shall be liable or bound to any other party hereto in any manner by any warranties, representations or guaranties except as specifically and expressly set forth herein.

Recordation. The District will cause this Agreement and any amendment or cancellation hereof to be recorded in the official records of Maricopa County, Arizona, within the period required by Section 9-500.05 of the Arizona Revised Statutes.

Notice of ARS §38-511. Notice is hereby given that this Agreement is subject to cancellation by the District pursuant to the provisions of Section §38-511 of the Arizona Revised Statutes.

Third-Party Beneficiaries. The only parties to this Agreement are the District and the Landowners. Except as expressly provided herein, this Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person whatsoever.

Preservation of Tax-Exemption. Neither the District nor the Landowners shall take, or cause to be taken, any action which would cause interest on any Series 2017 Bond to be includable in the gross income of the holder thereof for Federal income tax purposes pursuant to the Internal Revenue Code of 1986, as amended (the "*Code*").

Term. The term of this Agreement shall commence as of the date of the execution and delivery hereof by each of the parties hereto and shall expire upon the earlier of (i) the agreement of the District and the Landowners to terminate this Agreement or (ii) when no Series 2017 Bonds are outstanding.

Survival of Representations, Etc. Unless otherwise expressly provided, the representations, covenants, indemnities and other agreements contained herein shall be deemed to be material and continuing, shall not be merged and shall survive any conveyance or transfer provided herein.

Section 9.17 Future Owner Consent. The undersigned Landowners agree that upon the sale of any portion of the Property, the Landowners will require the execution and delivery of an Owner Consent, Waiver and Agreement, as set forth in Exhibit D hereto, by each purchaser of Property, and upon request by the District, the undersigned Landowners will execute and deliver such Owner Consent, Waiver and Agreement to the District.

No Personal Liability of Landowners. Notwithstanding anything to the contrary contained in this Agreement or any other document signed by the Landowners or by which the Landowners have or will become bound in connection with the actions or proceedings giving rise to this Agreement, none of the Landowners, or the directors or officers of the Landowners, shall have any personal liability, nor shall any of their assets be subject to any personal liability, for any obligation set forth herein, and the sole recourse against the Landowners hereunder shall be limited to the assets of the Landowners, whether now owned or hereafter acquired.

[Signatures on following page]

IN WITNESS WHEREOF, the authorized representatives of the District and the Landowners have duly executed and attested this Agreement as of the date first written above.

CAHAVA SPRINGS REVITALIZATION DISTRICT, an Arizona revitalization district

By: _____
(Vice) Chairman

ATTEST:

_____
District Clerk

APPROVED AS TO FORM:
Ballard Spahr LLP
by William A. Hicks III

Ballard Spahr LLP,
Special Counsel to the District

CAHAVA SPRINGS DEVELOPMENT CORPORATION, a Nevada corporation

By: _____
Mark Stapp,
Its President

MORNINGSTAR ROAD PROPERTIES, INC., a Nevada corporation

By: _____
Mark Stapp,
Its President

CAHAVA SPRINGS PHASE 1, INC., a Nevada corporation

By: _____
Mark Stapp,
Its President

[SIGNATURE PAGE TO DISTRICT DEVELOPMENT AND WAIVER AGREEMENT]

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 15th day of February, 2017, by Dennis Mathisen, as Chairman of the District Board of Cahava Springs Revitalization District, an Arizona revitalization district.

Notary Public

My commission expires:

CARA SEGUI
Notary Public - Arizona
Maricopa County
My Comm. Expires May 26, 2019

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 15th day of February, 2017, by Mark Stapp, the President of Cahava Springs Development Corporation, a Nevada corporation.

Notary Public

My commission expires:

CARA SEGUI
Notary Public - Arizona
Maricopa County
My Comm. Expires May 26, 2019

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 15th day of February, 2017, by Mark Stapp, the President of Morningstar Road Properties, Inc., a Nevada corporation.

Notary Public

My commission expires:

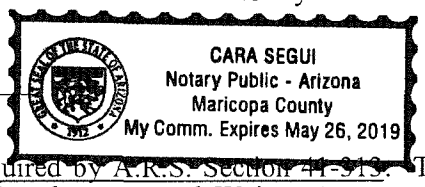
CARA SEGUI
Notary Public - Arizona
Maricopa County
My Comm. Expires May 26, 2019

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 15th day of February, 2017, by Mark Stapp, the President of Cahava Springs Phase 1, Inc., a Nevada corporation.

Notary Public

My commission expires:



Notice required by A.R.S. Section 44-519. The foregoing notarial certificate(s) relate(s) to the District Development and Waiver Agreement, dated as of February 15, 2017, executed by Cahava Springs Revitalization District, an Arizona revitalization district, Cahava Springs Development Corporation, a Nevada corporation, Morningstar Road Properties, Inc., a Nevada corporation and Cahava Springs Phase 1, Inc., a Nevada corporation (the "Notarized Document"). The Notarized Document contains a total of 50 pages.

[NOTARY PAGE TO DISTRICT DEVELOPMENT AND WAIVER AGREEMENT]

PALECEK & PALECEK PLLC
ATTORNEYS AT LAW

EXHIBIT 2

Agreement between Owner and Contractor

AGREEMENT made as of the 27 day of February in the year 2017.

BETWEEN the Owner, the Cahava Springs Revitalization District, a special purpose, tax-levying public improvement district for the purposes of the Constitution of the State of Arizona (the "State") and a municipal corporation for the purposes of the State law

("Owner")
Cahava Springs Revitalization District
c/o Ballard Spahr LLP
1 East Washington Street, Suite 2300
Phoenix, AZ 85004-2555

And the Contractor ("Contractor"):

Markham Contracting, Co. Inc.
22820 North 19th Avenue
Phoenix, Arizona 85027-1312

The Project is:

Off-site Work performed for Cahava Springs, a 942 acre, 230 lot master planned residential community located in Cave Creek Arizona ("Project"). The Project is located in a part of Section 13, Township 6 North, Range 3 East of the Gila and Salt River Meridian, Maricopa County, Arizona.

The Work to be performed by Contractor includes the extension of underground waterlines, two booster pump stations, a 300,000 gallon water reservoir, underground electric utilities, storm water drainage facilities including culverts and erosion protection, retaining walls, concrete work, grading, paving, miscellaneous demolition and construction, landscape and irrigation and is more fully described on plans and specifications referred to herein ("Contract Documents", "Work", and/or "Scope of Work") as described in paragraph 6.1.1.

With regard to the Scope of Work the Owner and Contractor agree as follows:

EXHIBIT 1
Martin
6.17.2020
Doreen Sutton, CR 50076

1. **ARTICLE 1 THE WORK OF THIS CONTRACT**

1.1. The Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others or as follows:
1.1.1. Tree and cactus salvage within the right of way

2. **ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

2.1. The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

2.1.1. Date of Commencement will be fixed in a Notice to Proceed.

2.2. The Contract Time shall be measured from the date of commencement.

2.3. The Contractor shall achieve Completion of the Work in accordance with the plans and specifications within five hundred fifteen (515) calendar days from the date of commencement ("Contract Time") subject to adjustments of this Contract Time as provided in any changes to the Contract Documents or delays due to inclement weather. Schedule is provided in **Exhibit A ("Project Schedule")**

3. **ARTICLE 3 CONTRACT SUM**

3.1. The Owner shall pay the Contractor in current funds for the Contractor's performance of the Contract. The Maximum Contract Sum is Ten million Eight hundred Seventy Three thousand Four hundred Sixty Five and twenty seven cents ($10,873,465.27) Dollars and shall be subject to additions and deletions as provided in the Contract Documents ("Contract Sum").

The Contract Sum is a guaranteed maximum price amount based on the schedule of values included as **Exhibit B ("Schedule of Values")**. The total Contract Sum is not subject to any changes.

4. **ARTICLE 4 PAYMENTS**

4.1. PAYMENTS TO CONTRACTOR

4.1.1. **NOTICE OF EXTENDED PAYMENT PROVISION.** This contract allows the OWNER to make payment within 21 days after certification and approval of billings and estimates as provided for and limited to certain loan documents and draw procedures ("Loan Documents").

4.1.2. PARTIAL PAYMENT: By 25th of each month, but not more often than once a month, the Contractor will submit to the Owner or Owner's Representative a partial payment estimate filled out and signed by the Contractor on AIA Document G702 and G703 ("Application for Payment and Application and Certificate for Payment Continuation Sheet") covering the Work performed during the period covered by the partial payment estimate and supported by such data as the Owner may reasonably require ("Partial Payment"). If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at or near the site, the partial payment estimate shall also be accompanied by such supporting data, satisfactory to the Owner, as will establish the Owner's title to the material and equipment and protect his interest therein, including applicable insurance. The Owners Construction Representative (as defined herein below in Article 9) will, immediately after receipt of each partial payment estimate, either indicate his approval of payment and present the partial payment estimate to the Owner, or return the partial payment estimate to the Contractor indicating in writing his reasons for refusing to approve payment. In the latter case, the Contractor may make the necessary corrections and resubmit the partial payment estimate. If the partial payment estimate is acceptable to both the Owner and Contractor, and is agreed upon before the final working day of the month, the Owner will, within twenty-one (21) days of acceptance of a partial payment estimate, pay the Contractor a progress payment based on the approved partial payment estimate.

The Owner shall retain ten percent (10%) of the amount of each payment until final completion and acceptance of all work covered by the Contract Documents ("Retained Percentages"). Contractor hereby acknowledges that Owner must submit Contractors pay request to 3rd party trustee ("Trustee") for processing. In such case, Owner shall use best commercial efforts to have Trustee process requested payment for Contractor and Contractor shall endeavor to assist Owner in its work with Trustee to answer questions, supply additional information in an effort to diligently approve payment of Contractors Application for Payment and Application and Certificate for Payment Continuation Sheet.

4.1.3. The request for Partial Payment may also include an allowance for the cost of such major materials and equipment, which is suitably stored either at or near the site per the requirements herein however, any stored materials and equipment are the sole Ownership of the Contractor until used to as part of the Scope of Work.

4.1.4. All Work covered by Partial Payment made shall there upon become the sole property of the Owner, but this provision shall not be construed as relieving the Contractor of the sole responsibility for the care and protection of the Work upon which payments have been made or the restoration of any damaged Work, or as a waiver of the right of the Owner to require the fulfillment of all terms of the Contract Documents or for material paid for by Partial Payment and stored for future Work.

4.1.5. Upon completion and acceptance of the Work, the Engineer or Owner's Construction Representative shall issue a certificate attached to the final payment request that the Work has been accepted by him under the conditions of the Contract Documents. The entire balance found to be due the Contractor, including the Retained Percentages, but except such sums as maybe lawfully retained by the Owner, shall be paid to the Contractor within forty (40) days of completion and acceptance of the Work ("Final Payment").

4.1.6. The Contractor will indemnify, defend, and save the Owner or the Owner's agents, employees, Members and Trustee harmless from and against any and all claims, suits, actions, damages, liabilities, penalties, costs, expenses, fees (including reasonable attorney's fees), arising out of or related to: (a) any negligent act, error, or omission of Contractor or other performance of the Work by Contractor to the comparative extent of contractor's negligence; and/or (b) demands of Subcontractors, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, tools, and all supplies incurred in the furtherance of the performance of the Work provided contractor has been paid for such demands by Owner. The Contractor shall, at the OWNER'S and/or Trustees request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived. If the Contractor fails to do so, the Owner may, after having notified the Contractor, either pay unpaid bills or withhold from the Contractor's unpaid compensation a sum of money deemed reasonably, sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the Contractor, subject to approval by Trustee, shall be resumed, in accordance with the terms of the Contract Documents, but in no event shall the provisions of this sentence be construed to impose any obligations upon the Owner to either the Contractor, his Surety, or any third party. In paying any unpaid bills of the Contractor, any payment so made by the Owner shall be considered as a Partial Payment made under the this Agreement and in accordance with the Contract Documents by the Owner to the Contractor and the Owner shall not be liable to the Contractor for any such payments made in good faith.

4.1.7. If the Owner fails to make a partial payment to the Contractor on or prior to the last working day of month thirty-five (35) days after the Owner approves and the Trustee accepts the partial payment request , in addition to other remedies available to the Contractor, there shall be added to each such payment interest at a rate of 1% over the prime interest rate established by Wells Fargo, Arizona commencing on the first day after said payment is due and continuing until the payment is received by the Contractor.

4.1.8. As a condition precedent to any Partial Payment and Final Payment as more fully described below, Contractor shall provide original, fully executed lien waivers on behalf of itself and all Subcontractors and Suppliers whose work is included in the Application for Payment. Lien waivers shall be in the form required by A.R.S. § 33-1008 and submitted as follows: (a) with the first Application for Payment, CONTRACTOR shall submit fully executed Conditional Waivers of Lien on Progress Payment for such

Application from itself and each Subcontractor and first-tier Suppliers included in the Application; (b) on the second and all subsequent Applications for Payment, Contractor shall submit fully executed Conditional Waivers of Lien on Progress Payment for such Application from itself and each Subcontractor and first-tier Suppliers included in the Application and Unconditional Waivers of Lien for all prior Applications from itself and each Subcontractor and first-tier Suppliers included in the prior Applications.

4.1.9. The Contractor agrees to comply with and to require all of his Subcontractors to comply with all the provisions of applicable State Sales Excise Tax Law and Compensation Use Tax Law and all Amendments to same. The Contractor further agrees to indemnify, defend, and hold harmless the OWNER from any and all claims, demands, costs, expenses, penalties, damages, liabilities, and fees (including reasonable attorney fees) made against him by virtue of the failure of the Contractor or any Subcontractor to comply with the provisions of any and all Laws and Amendments.

4.1.10. The acceptance by the Contractor of Final Payment shall be and shall operate as a release to the Owner of all claims and all liability to the Contractor other than claims in stated amounts as may be specifically accepted by the Contractor for all things done or furnished in connection with this Work. Any Partial Payment, however, or Final Payment, shall not release the Contractor or his sureties from any obligations under the Contract Documents or the Performance Bond and Payment Bond.

4.2. **FINAL PAYMENT**

4.2.1. Final Payment, as defined above shall constitute the entire unpaid balance of the Contract Sum and shall be made by the Owner to the Contractor when the Contractor has fully performed the Scope of Work except for the Contractors' responsibility to correct Work as provided in paragraph 17.2, and to satisfy other requirements, if any, which extend beyond final payment.

4.2.2. The Owner's Final payment to the Contractor shall be made no later than seven (7) business days after the acceptance of the final Application for Payment unless Owner responds with a Deficiency Statement, or as follows in accordance with applicable State law.

5. ARTICLE 5 ENUMERATION OF CONTRACT DOCUMENTS

5.1. The Contract Documents are listed in Article 6 and, except for Modifications issued after execution of this Agreement, are enumerated as follows:

5.1.1. The Agreement is this executed Agreement between Owner and Contractor.

5.2. The Drawings are as follows, and are dated unless a different date is shown in "Exhibit C – Contract Document Drawings"

5.3. Other documents, if any, forming part of the Contract Documents are as follows:

5.3.1. Geotechnical Report Prepared By Construction Testing & Inspection Dated:01/26/2001

5.4. The Contractor further acknowledges the following specifications are incorporated by reference:

5.4.1. OSHA Guidelines and Regulations

5.4.2. Town of Cave Creek amendments to the Maricopa County Association of Government Specifications and Details for Public Works Construction, if any.

5.4.3. Maricopa County Association of Government Specifications and Details for Public Works Construction

GENERAL CONDITIONS

6. ARTICLE 6 GENERAL PROVISIONS

6.1. THE CONTRACT DOCUMENTS

6.1.1. The Contract Documents consist of this Agreement, the Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, and other documents listed in this Agreement and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Owner. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

6.2. THE CONTRACT

6.2.1. The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Owner and a Subcontractor or sub-subcontractor, or (2) between any persons or entities other than the Owner and Contractor.

6.3. THE WORK

6.3.1. The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

6.4. EXECUTION OF THE CONTRACT

6.4.1. Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed, studied the Contract Documents and correlated personal observations with requirements of the Contract Documents.

6.5. OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

6.5.1. The Contract Documents and any changes, addenda or supplements thereto includings Drawings, Specifications and other documents, including those in electronic form, prepared by the Owner or Owners agents and the Owner's consultants are what are herein termed "Instruments of Service" through which the Work to be executed by the Contractor is described and performed. The Contractor may retain one record set. Neither the Contractor nor any Subcontractor, sub -subcontractor or material or equipment supplier shall own or claim a copyright in the Instruments of Service, and unless otherwise indicated the Owner and the Owner's consultants shall be deemed the authors of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights. All copies of them, except the Contractor's record set, shall be returned or suitably accounted for to the Owner, on request, upon completion of the Work. The Instruments of Service and the Owner's consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, and the Owner's consultants. The Contractor, Subcontractors, sub- subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Instruments of Service and other documents prepared by the Owner and the Owner's consultants appropriate to and for use in the execution of the Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Instruments of Service prepared by the Owner and the Owner's consultants. Submittal or distribution

to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's or Owner's consultants' copyrights or other reserved rights.

7. ARTICLE 7 OWNER

7.1. INFORMATION AND SERVICES REQUIRED OF THE OWNER

7.1.1. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions related to the safe performance of the Work.

7.1.2. Except for permits and fees which are the responsibility of the Contractor under the Contract Documents, and reimbursable by the Owner, the Owner shall secure and pay for the permits and other necessary approvals, easements, assessments and charges not covered by the Schedule of Values identified in Exhibit A, required for the construction, use or occupancy of permanent structures or permanent changes in existing facilities.

7.2. OWNER'S RIGHT TO STOP THE WORK

7.2.1. If the Contractor fails to comply with the terms of this Agreement and/or correct Work which is not in accordance with the requirements of the Contract Documents, or persistently fails to carry out the Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity. If Contractor fails to correct any action identified by Owner in Owners written notice within 30 days of receipt of such notice then Contractor shall be deemed in default ("Default").

7.3. OWNER'S RIGHT TO CARRY OUT THE WORK

7.3.1. If the Contractor is in Default or persistently fails or neglects to carry out the Work in accordance with the Contract Documents, or fails to perform a provision of the Contract, the Owner, after ten (10) days' written notice to the Contractor and without prejudice to any other remedy the Owner may have, may make good such deficiencies and may deduct the reasonable cost thereof, including Owner's expenses and compensation for the Owner's services made necessary thereby, and shall have the right to subtract such sums from Contractors Partial and/or Final Payment from the payment then or thereafter due the Contractor.

8. ARTICLE 8 CONTRACTOR

8.1. REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

8.1.1. Contractor hereby acknowledges that it is familiar with the Scope of Work, the Project and the Site but since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Subparagraph 7.1.1, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors or omissions or inconsistencies in the Contract Documents; however, any errors, omissions or inconsistencies discovered by the Contractor shall be reported promptly to the Owner as a request for information in such as form as the Owner may require.

8.1.2. Any design errors or omissions in the Instruments of Service noted by the Contractor during this review shall be reported promptly to the Owner, but it is recognized that the Contractor's review is made in the Contractor's capacity as a Contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents.

8.2. SUPERVISION AND CONSTRUCTION PROCEDURES

8.2.1. The Contractor shall be solely responsible for supervision and direction of the Work, using the Contractors best professional skill and attention and conventional methods normally applied to in the Phoenix marketplace for this type of work. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract ("Construction Methods"), so long as such Construction Methods are not in conflict with the Instruments of Service and unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures then the Contractor shall fully comply with those ("Defined Methods). The Contractor shall be fully and solely responsible for the jobsite safety thereof unless the Contractor gives timely written notice to the Owner that Defined Methods may not be safe.

8.2.2. The Contractor shall be fully responsible to the Owner and shall indemnify the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

8.3. LABOR AND MATERIALS

8.3.1. Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work in conformance with the Scope of Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

8.3.2. The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

8.3.3. The Contractor shall deliver, handle, store and install materials in accordance with manufacturers' instructions.

8.3.4. The Contractor may make substitutions only with the written consent of the Owner, after evaluation by the Owner and in accordance with a normal Change Order.

8.4. WARRANTY

8.4.1. The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear and normal usage.

8.5. TAXES

8.5.1. The Contractor shall pay sales, consumer, use and other similar taxes which are legally enacted when bids are received or negotiations concluded. All taxes paid by the Contractor shall be reimbursed by the Owner at the time of monthly payment. Taxes are included in the Contract Sum.

8.6. PERMITS, FEES AND NOTICES

8.6.1. Unless otherwise provided in the Contract Documents or as required by the governing jurisdiction, the Owner shall secure and pay for the building permit and other Permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work. In the event the Contractor is

required to pay for any permit, governmental fee, license, or inspection, the Owner shall reimburse Contractor for actual costs of such fees not included in the Contract Sum.

8.6.2. The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work. The Contractor shall promptly notify the Owner if the Contract Documents are observed by the Contractor to be at variance therewith. If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

8.7. SUBMITTALS

8.7.1. The Contractor shall review for compliance with the Contract Documents, approve in writing and submit to the Owner, Shop Drawings, product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness. The Work shall be in accordance with approved submittals.

8.7.2. Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

8.8. USE OF SITE

8.8.1. The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

8.9. CUTTING AND PATCHING

8.9.1. The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

8.10. CLEANING UP

8.10.1. The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus material.

8.11. ROYALTIES, PATENTS AND COPYRIGHTS

8.11.1. The Contractor shall pay all royalties and license fees; shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Owner's Agents harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers Is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner, unless the Contractor has encountered and has reason to believe that there is an infringement of patent or copyright and fails to promptly furnish such information to the Owner.

8.12. ACCESS TO WORK

8.12.1. The Contractor shall provide the Owner access to the Work in preparation and progress wherever located.

8.13. INDEMNIFICATION

8.13.1. The contractor, subcontractor, and sub-subcontractors shall comply with the following indemnification provisions:

8.13.1.1. To the fullest extent permitted by law, the Contractor and subcontractors shall indemnify and hold harmless the Owner and their agents, employees and Trustee from and against any claims, damages, losses, expenses, attorneys' fees, and delays arising out of or resulting from contractor's performance of the Work, provide that such claim, damage, loss, expense, attorneys' fees, and delays arising out of or resulting from contractor's performance of the Work is caused by the CONTRACTOR or by anyone under contract to or in agreement with the Contractor or subcontractor,

provided, however, that the Owner shall not be indemnified for its own relative negligence. The extent of the Contractor's liability shall be limited to the extent of its negligence.

8.13.1.2. In claims against any person or entity indemnified by this Agreement by an employee of the contractor, subcontractor or another subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation shall not be limited in amount or type of damages, compensation of benefits payable by or for the Contractor under Workers' Compensation Acts, Disability Benefit Acts or other Employee Benefit Acts.

8.13.1.3. Except as provided in this Agreement, the obligations of the Contractor or subcontractor shall not extend to the liability of the Owner's consultants and/or their agents or employees arising out of; 1) preparation or approval of maps, drawings, opinions, reports, surveys, change orders, design or specifications, or; 2) the giving of or failure to give directions or instructions by the Owner's consultant, their agents and/or employees providing reliance upon or failure to give direction is the primary cause of the injury or damage.

8.13.1.4. The Contractor and subcontractors agree that the Work will be performed in a workmanlike manner and assumes liability for the contractor, subcontractor or Owner's negligent failure to discover problems or dangerous conditions caused by the Contractor or subcontractor. The Contractor and/or subcontractor agree that all direct or indirect employees of the Contractor or subcontractor will perform their portion of the Work in compliance with Local, State, and Federal laws including but not limited to, Building Codes, OSHA, and any other rules and regulations.

9. ARTICLE 9 OWNER'S ADMINISTRATION OF THE CONTRACT

9.1. The Owner will provide administration of the Contract (1) during construction, (2) until final payment is due and (3) throughout the term for correction of Work or warranty described in Paragraph 17.2.

9.2. The Owner may designate a single person as direct contact with Contractor ("Owner's Construction Rep"). The Owner will maintain personnel to (1) become generally familiar with progress and quality of the portion of the Work completed, (2) endeavor to guard against defects and deficiencies in the Work, and (3) determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Owner will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Owner will neither have control over or charge of, nor be responsible for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Subparagraph 8.2.1. Notwithstanding, if Owner's Construction Rep, in Owner's Construction Rep's sole and unfettered opinion, believes there is a public safety concern, that Contractor will cause damage to surrounding property and adjacent to the Project Limits of Construction, disturb adjacent land Owners unnecessarily, violate any law and/or ordinance or cause a deviation from the Contract documents ("Construction Issues the Owner's Construction Rep shall have the right to immediately take corrective action, including stopping work, until such Construction issues can be properly addressed by Owner's Construction Rep and Contractor and the Construction Issue resolved.

9.3. The Owner will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Owner will not have control over or charge of and will not be responsible for Construction Issues or acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work. However, the Owners Rep shall when deemed necessary apprise Contractor of such Construction Issues or acts or omission.

9.4. Based on the Owner's evaluations of the Work and of the Contractor's Applications for Payment, the Owner will review the amounts due the Contractor and will issue Certificates for Payment in such amounts to Trustee as described in Article 4.

9.5. The Owner will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, for the purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

9.6. The Owner's decisions on matters relating to aesthetic effect will be Owners sole and unfettered discretion and shall be final if consistent with the intent expressed in the Contract Documents.

9.7. **CLAIMS AND DISPUTES**

9.7.1. If a claim, dispute or other matter in question relates to or is the subject of a mechanic's lien, the party asserting such matter may proceed in accordance with applicable law to comply with the lien notice or Filing deadlines prior to resolution of the matter by mediation or by arbitration.

9.7.2. The parties shall endeavor to resolve their disputes by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

9.7.3. Claims, disputes and other matters in question arising out of or relating to the Contract that are not resolved by first by negotiation which shall take no longer then one (1) week from the notice of dispute, then if not then resolved by mediation in accordance with the rules of Mediation of the American Arbitration Association, except matters relating to aesthetic effect and except those waived as provided for in Paragraph 9.11 and Subparagraphs 14-5.3 and 14-5.4, If not resolved by Mediation within 30 days then the remaining unresolved disputes shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association and shall be made within a *not more than 30 days* after the dispute has arisen. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Except by written consent of the person or entity sought to be joined, no arbitration arising out of or relating to the Contract Documents shall include, by consolidation, joinder or in any other manner, any person or entity not a party to the Agreement under which such arbitration arises, unless it is shown at the time the demand for arbitration is filed that (1) such person or entity is substantially involved in a common question of fact or law, (2) the presence of such person or entity is required if complete relief is to be accorded in the arbitration, (3) the interest or responsibility of such person or entity in the matter is not insubstantial, and (4) such person or entity is not the OWNER or any of the OWNER's employees or consultants. The agreement herein among the parties to the Agreement and any other written agreement to arbitrate referred to herein shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

10. ARTICLE 10 SUBCONTRACTORS

10.1. A Subcontractor is a person or entity that has a direct contract with the Contractor to perform a portion of the Work at the site and in regards to this agreement is the same as the Contractor.

10.2. Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner the names of the Subcontractors for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor to whom the Owner has made reasonable and timely objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the

difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

10.3. Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner and Owner, and (2) allow the Subcontractor the benefit of all rights, remedies and redress afforded to the Contractor by these Contract Documents.

11. ARTICLE 11 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

11.1. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under conditions of the contract identical or substantially similar to these, including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such claim as provided by Paragraph 9.7.3.

11.2. The Contractor shall afford the Owner and separate contractor's reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's activities with theirs as required by the Contract Documents.

11.3. The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate Contractor because of delays, improperly timed activities or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, and damage to the Work or defective construction of a separate contractor.

12. ARTICLE 12 CHANGES IN THE WORK

12.1. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly ("Change Orders"). Such Change Orders in the Work shall be authorized by written Change Order form signed by the Owner and Contractor, or by written Construction Change Directive signed by the Owner.

12.2. The cost or credit to the Owner from a Change Order in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive, shall include reasonable and applicable Contractor's cost of labor, material, equipment, and reasonable overhead and profit.

12.3. The Owner will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

12.4. If concealed or unknown physical conditions are encountered at the site that differ substantially and materially from those indicated in the Contract Documents or from those previously observed by the Contractor with its familiarity with the Project and from those indicated in studies provided by Owner or prepared by Contractor, the Contract Sum and Contract Time shall be adjusted based upon agreement with Owners Rep and Contractor.

12.5. A Change Order is a written instrument prepared by the Owner and signed by the Contractor stating their agreement upon all of the following:

12.5.1. change in the Work;

12.5.2. the amount of the adjustment, if any, in the Contract Sum; and
12.5.3. the extent of the adjustment, if any, in the Contract Time.

13. ARTICLE 13 TIME

13.1. Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

13.2. The date of Substantial Completion is the date in accordance with Subparagraph 14.4.2.

13.3. If the Contractor is delayed at any time in the commencement or progress of the Work by changes ordered in the Work, by labor disputes, fire, unusual delay in deliveries, adverse weather conditions, unavoidable casualties or any causes beyond the Contractor's control, or by other causes which the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine, subject to the provisions of Paragraph 9.10.

14. ARTICLE 14 PAYMENTS AND COMPLETION

14.1. APPLICATIONS FOR PAYMENT

14.1.1. Payments shall be made as provided in Article 4 of this Agreement. Applications for Payment shall be in a form satisfactory to the Owner and the Trustee.

14.1.2. The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests and as such will indemnify and defend Owner against any claim arising after such payment..

14.2. APPLICATIONS FOR PAYMENT

14.2.1. The Contractor shall submit to the Owner an itemized Application for Payment for operations completed in accordance with the approved schedule of values on AIA Applications 702 and 703. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for in the Contract Documents.

14.2.2. The application may include requests for payment on account of changes in the Work which have been properly authorized by Change Order.

14.2.3. Such applications may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

14.2.4. The Owner and/or the Trustee who will notify Owner to do so, will, within seven (7) days after receipt of the Contractor's Application for Payment, issue a notice in writing of the Owner's reasons if for any reason there is discrepancy in the application and payment for the Work will not be paid in whole or in part.

14.2.5. The issuance of the Application for Payment will constitute a representation, based on the Contractor's evaluations of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Contractor's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents

prior to completion and to specific qualifications expressed by the Owner. The issuance of an Application for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Payment will not be a representation that the Owner has (1) made exhaustive on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

14.2.6. The Owner may withhold a Payment in whole or in part, to the extent reasonably necessary if, in the Owner's opinion, the representations to the Owner required by Subparagraph 14.2.5 cannot be made, or as otherwise permitted by law. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Contractor in writing as provided in Subparagraph 14.2.4. The Owner may also withhold an Application for Payment or, because of subsequently discovered evidence, may nullify the whole or part of an Application for Payment previously issued, but only to such extent as may be necessary in the Owner's reasonable opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Subparagraph 8.2.2, because of-

14.2.6.1. defective Work not remedied;
14.2.6.2. third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
14.2.6.3. failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
14.2.6.4. reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
14.2.6.5. damage to the Owner or another contractor;
14.2.6.6. reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
14.2.6.7. persistent failure to carry out the Work in accordance with the Contract Documents.

14.2.7. When the reasons enumerated in 14.2.6 for withholding certification are cured, payment will be made for amounts previously withheld.

14.3. PAYMENTS TO THE CONTRACTOR

14.3.1. The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub- subcontractors in similar manner. Failure to do so by the Contractor shall constitute a default under this Agreement. Unless reasons are given to Owner by Contractor for failure to make such payments, and such reasons are in deemed in the best interest of the Owner, then Owner shall have the right to pay Sub-contractor directly and deduct same from amount owed Contractor.

14.3.2. The Owner shall not have any obligation to pay or see to the payment of money to a Subcontractor except as may otherwise be required by law and as stated in 14.3.1.

14.3.3. A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the OWNER shall not constitute acceptance of Work in accordance with the Contract Documents.

14.4. SUBSTANTIAL COMPLETION

14.4.1. Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

14.4.2. When the Owner determines that the Work or designated portion thereof is substantially complete, the Owner will issue a Certificate of Substantial Completion which shall establish the date of Substantial Completion, establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. Upon the issuance of the Certificate of Substantial Completion, the Owner will submit it to the Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Contractor hereby agrees to furnish, sign or comply with any and all documents, forms or letters reasonably requested by Owner required by any jurisdictional entity or the Trustee to prove such substantial completion and to release any bonds then outstanding for the Contractors work.

14.5. FINAL COMPLETION

14.5.1. Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will make such inspection within five (5) days and when the Owner finds the Work acceptable under the Contract Documents and the Contract fully performed, the Owner will within seven (7) days issue payment stating that the Work has been completed in accordance with the terms and conditions of the Contract Documents and the entire balance found to be due the Contractor and noted in the Application for Payment is due and payable.

14.5.2. Final payment shall not become due until the Contractor has delivered to the Owner a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including costs and reasonable attorneys' fees.

14.5.3. The making of final payment shall constitute a waiver of claims by the Owner except those arising from:

14.5.3.1. liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
14.5.3.2. failure of the Work to comply with the requirements of the Contract Documents; or
14.5.3.3. terms of special warranties required by the Contract Documents.

14.5.4. Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

15. ARTICLE 15 PROTECTION OF PERSONS AND PROPERTY

15.1. SAFETY PRECAUTIONS AND PROGRAMS

15.1.1. The CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

15.1.1.1. employees on the Work and other persons who may be affected thereby;
15.1.1.2. the Work and materials and equipment to be incorporated therein; and
15.1.1.3. other property at the site or adjacent thereto.

15.1.2. The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Subparagraphs 15-1.2 and 15-1.3, except for damage or loss attributable to acts or omissions of the Owner or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 8.13.

15.2. HAZARDOUS MATERIALS

15.2.1. Reasonable and customary precautions in conformance with all Federal, State and local laws and ordinances will be taken to avoid and mitigate any environmental contamination and Contractor shall take will be responsible to prevent violation of such laws and ordinances and to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Owner's Construction Rep in writing. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay and start-up, which adjustments shall be accomplished as provided in Article 12 of this Agreement.

15.2.2. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to reasonable attorneys' fees and expenses, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Subparagraph 15.2.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to Injury to or destruction of tangible property (other than the Work itself), and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity.

15.2.3. If, without negligence on the part of the Contractor, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

16. ARTICLE 16 INSURANCE

16.1. The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located insurance for protection from claims under workers' compensation acts and other employee benefit acts which are applicable, claims for damages because of bodily injury, including death, and claims for damages, other than to the Work itself, to property which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by the Contractor or by a Subcontractor or anyone directly or indirectly employed by any of them. This insurance shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater, and shall include contractual liability insurance applicable to the Contractor's obligations. Certificates of Insurance acceptable to the Owner and naming Owner, and if required, Town of Cave Creek as additional insured, and additional loss payees shall be filed with the Owner prior to commencement of the Work. Each policy shall contain a provision that the policy will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner.

16.2. OWNER'S LIABILITY INSURANCE

16.2.1. The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

16.3. **PROPERTY INSURANCE**

16.3.1. Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance on an "all-risk" policy form, including builder's risk, in the amount of the initial Contract Sum, plus the value of subsequent modifications and cost of materials supplied and installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Paragraph 14.5 or until no person or entity other than the Owner has an insurable interest in the property required by this Paragraph 16.4 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and sub -subcontractors in the Project.

16.3.2. The Owner shall file a copy of each policy with the Contractor before an exposure to loss may occur. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days prior written notice has been given to the Contractor.

16.4. **WAIVERS OF SUBROGATION**

16.4.1. The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Owner's consultants, separate contractors described in Article 11, if any, and any of their subcontractors, sub- subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to Paragraph 16.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The policies shall provide such waivers of subrogation by endorsement or other-wise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

16.4.2. A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their sub-subcontractors in similar manner.

17. **ARTICLE 17 CORRECTION OF WORK**

17.1. The Contractor shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected work, including additional testing and inspections and compensation for the Owner's services and expenses made necessary thereby, shall be at the Contractor's expense.

In addition to the Contractor's obligations under Paragraph 8.4, if, within one year (or two years if required by the Town of Cave Creek) after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Subparagraph 14.4.2, or by terms of an applicable special warranty required by the Contract Documents and/or the Town of Cave Creek, any of the Work is found by the Town of Cave Creek or the Owner to not be in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the CONTRACTOR a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period, or two year period if required by the Town of Cave Creek for correction of Work, if the Owner or the Town of Cave Creek

fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty

17.2. If the Contractor fails to correct non-conforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 7.3.

17.3. The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

17.4. The one year, or two year period, if required by the Town of Cave Creek, for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Article 17.

18. ARTICLE 18 MISCELLANEOUS PROVISIONS

18.1. ASSIGNMENT OF CONTRACT

18.1.1. Neither party to the Contract shall assign the Contract without written consent of the other except in the event of default by Owner under the terms and conditions of a Note and Deed of Trust or some other Loan Agreement whereby the Trustee shall take Ownership of the Project and the Property.

18.2. GOVERNING LAW

18.2.1. The Contract shall be governed by the law of the State of Arizona the place where the project is located.

18.3. TESTS AND INSPECTIONS

18.3.1. Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

18.4. NOTICES:

18.4.1. All notices requests, demands, and other communications required under the Agreement shall be in writing and shall be deemed duly given and received (i) if personally delivered, on the date of delivery, (ii) if mailed, three (3) days after deposit in the United States mail, registered or certified, return receipt requested, postage prepaid, or (iii) if by a courier delivery service providing overnight or next-day delivery, on the next business day after deposit with such service, addressed to the person and at the address specified in the Order. Any party may change its address by giving the other party written notice of such change in the manner set forth herein.

19. ARTICLE 19 TERMINATION OR SUSPENSION OF THE CONTRACT

19.1. TERMINATION BY THE CONTRACTOR

19.1.1. The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or Subcontractor, sub-Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

19.1.1.1. issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped; or

19.1.1.2. an act of government, such as a declaration of national emergency which requires all Work to be stopped.

19.1.2. Contractor may also terminate the contract for reason of non-payment by OWNER of no fault of contractor.

19.2. TERMINATION BY THE OWNER

19.2.1. The Owner may, after seven days written notice, terminate the Contract if the Contractor:

19.2.1.1. persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials,;

19.2.1.2. fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

19.2.1.3. persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or otherwise is guilty of substantial breach of a provision of the Contract Documents; and

19.2.1.4. otherwise is guilty of substantial breach of a provision of the Contract Documents.

19.2.2. When any of the above reasons exists, the Owner, may, without prejudice to any other remedy, the Owner may have and after giving the Contractor seven days' written notice, terminate the Contract and take possession of the site and of all materials, thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in Finishing the Work.

19.2.3. When the Owner terminates the Contract for one of the reasons stated in Subparagraph 19.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

19.2.4. If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Owner's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, upon application, and this obligation for payment shall survive termination of the Contract.

19.3. TERMINATION BY THE OWNER FOR CONVENIENCE

19.3.1. The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

19.3.2. Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

19.3.2.1. cease operations as directed by the Owner in the notice;

19.3.2.2. take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

19.3.2.3. except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

19.3.3. In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for only Work executed, and costs incurred by reason of such termination plus a reasonable overhead and profit for all completed work and costs incurred for such termination.

19.4. SUSPENSION BY THE OWNER FOR CONVENIENCE

19.4.1. The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

19.4.2. Upon receipt of the notice of suspension of the specified Work, or any portion of thereof, the Contractor shall within ten (10) days designate to the Owner the amount and the type of Work, labor, and materials previously committed to the provision of Work for the period or periods of suspension.

19.4.3. Any claim on the part of the Contractor for costs, charges, or expenses resulting from suspension of performance of the Work or any portion thereof shall be negotiated reasonably with the OWNER and shall be submitted within thirty (30) days from the date of notice of suspension to be considered valid.

19.4.4. Upon the date specified in the notice given to suspend all or a portion of the services, or given in subsequent notice, the Contractor shall immediately resume performance of suspended services to the extent required in such notice.

19.4.5. Upon resumption of the suspended services the Owner and the Contractor shall agree on a revision if any, to the schedule for all services not completed as of the date of the suspension of performance. The Owner may not, at his discretion, grant an extension of time if suspension results from the Contractor's sole noncompliance with any of the terms and conditions of this agreement.

19.4.6. Owner shall pay Contractor for reasonable costs related to demobilization and remobilization resulting from suspended work including reasonable escalation of material, equipment, and labor costs resulting from suspension by Owner. The Owner shall not be required to pay Contractor for cost of demobilization and remobilization resulting from suspended work when suspension results from the Contractor's sole noncompliance with any of the terms and conditions of this agreement.

20. ARTICLE 20 OTHER CONDITIONS OR PROVISIONS

20.1. The Contractor shall keep clean and dispose of all debris and trash in accordance with federal, state, county and local codes and ordinances, within the Project Area.

20.2. The Contractor and subcontractors shall comply with the following insurance provisions:

20.2.1. Insurance policies shall name as the insured, Cahava Springs Revitalization District for any work performed under this agreement. It is understood and agreed that Contractor's coverage is to be primary in response to any claim, injury to persons or property and that Owner's coverage will respond in excess. OWNER's coverage is considered noncontributory. Subcontractors primary and noncontributory insurance as it relates to the Owner, shall be exclusive to the specific negligence of the Contractor and does not indemnify the Owner for Owners negligence, or the negligence of anybody associated, affiliated, or contractually obligated to Owner under separate contract.

20.2.2. All insurance shall be maintained in the form and with a company satisfactory to the Owner no later than five (5) days prior to commencement of the Work.

20.2.3. The Contractor agrees to furnish a valid and acceptable certificate of insurance specifying adequate limits of insurance covering this Agreement. Owner reserves the right to determine adequacy of Coverage in connection with the scope or degrees of hazard involved in the Contract. The Certificate of Insurance shall be submitted to Owner no later than five (5) days prior to commencement of the Work.

20.2.4. The Contractor and subcontractor assumes responsibility in connection with their work for any claim, damage or injury to persons or property and will institute an ongoing safety program to promote safety at the jobsite including the supply and required use of personal safety equipment and taking reasonable

precautions to avoid dangerous situations to other parties or to Work performed or to be performed by others or property of others in connection therewith.

20.2.5. The Contractor and subcontractors agree to leave no trash either personal and/or construction related on the site and leave the site free of debris at the end of each work day and from dangerous conditions or hazards. The Contractor assumes all liability for generation, disposal, transportation or use of any toxic substance in connection with their work. Subcontractor agrees to be liable for any penalty, fines, fees, costs to contain or dispose of any hazardous substance or pollutant in connection with their Work.

20.2.6. The Contractor and subcontractors agree that responsibility and assumption of liability under this agreement may be beyond the scope of the contractor's insurance policies. In addition the Owner agrees that its responsibility and assumption of liability under this Agreement may be beyond the scope of the Owners insurance policies.

20.2.7. The contractor's or subcontractor's certificate of insurance shall require that the Owner be notified in writing within thirty (30) days prior to cancellation or modification of any insurance policy listed in the certificate. The cancellation clause for all certificates of insurance on this project shall read as follows:

20.2.8. ***"Shall any of the above described policies be canceled before the expiration date thereof, the issuing company will mail thirty (30) days written notice to the certificate holder named to the left."***

20.2.9. The Contractor shall provide minimum coverage and acceptable limits as follows:

	OCCURRENCE	EA. AGGREGATE
GENERAL LIABILITY	$2,000,000	$5,000,000
Comprehensive Form	2,000,000	$5,000,000
Premises/Operations	2,000,000	$5,000,000
Underground Explosion & Collapse Hazard	2,000,000	$5,000,000
Operations	2,000,000	$5,000,000
Contractual	2,000,000	$5,000,000
Individual Contractors	2,000,000	$5,000,000
Broad Form Property Damage	2,000,000	$5,000,000
Bodily Injury (per person)	2,000,000	$5,000,000
Property Damage	2,000,000	$5,000,000
PERSONAL INJURY	2,000,000	$5,000,000
AUTOMOBILE LIABILITY		
Any auto or		
All owned autos (private passenger)		
All owned autos (other than private passenger)		
Hired autos		
Non-owned autos		
Bodily injury (per person)	$2,000,000	
Bodily injury (per accident)	$2,000,000	
Property damage	$2,000,000	
WORKMEN'S COMPENSATION	$100,000	Each accident
AND		
STATUTORY	$500,000	Disease Policy limit
EMPLOYERS LIABILITY	$100,000	Disease Ea. employee

OTHER: Additional Insured

20.2.10. Comprehensive General Liability Insurance may be arranged under a single policy for the full limits or by a combination of underlying policies with the balance provided by an excess or umbrella policy.

20.2.11. Excess and Umbrella policies must not provide less coverage than that provided by primary policies for named or additional insured.

20.3. The Contractor shall comply with, and will require all of his subcontractors and sub-subcontractors to comply with, all provisions of the Act of Congress approved August 14, 1935 know and cited as the "Social Security Act", also, the provisions of the Act of the State Legislature approved and known as the "State Unemployment Compensation Law"; and, all other laws and regulations pertaining to labor and workmen and all amendments to such data; and Contractor and Subcontractors shall indemnify and save harmless the Owner of and from any and all claims and demands made against it by virtue of the failure of the contractor, subcontractor or sub-subcontractors to comply with the provisions of any or all of said Acts or Amendments.

20.4. The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's information a construction schedule for the Work. The schedule shall not exceed the time limits current under the Contract Documents, shall be revised on a monthly basis, and submitted with the Application for Payment.

20.5. In the event the Contractor encounters Desert Tortoise, any cultural artifacts, bodies or human remains or endangered species of any kind, the Contractor shall cease all work in the immediate area and notify the Owner.

20.6. Under no circumstances shall the Contractor cross outside areas delineated as the limits of clearing. If the limits of clearing are not defined or in question, the Contractor is required to contact the Owner immediately for clarification. If the Contractor crosses into protected areas, such as Natural Area Open Space or jurisdictional washes, or other areas outside the limits of clearing, the Contractor shall:

20.6.1. .1 to the Owner's satisfaction, re-vegetate the area disturbed immediately and maintain said vegetation until established; and,

20.6.2. .2 pay any fines imposed by governmental agencies, including but not limited to the Arizona Department of Environmental Quality or the US Army Corps of Engineers, as a result of said violation.

This Agreement entered into as of the day and year first written above.

OWNER

By: MARK STAPP
Its: VICE CHAIRMAN

By:
Its:

CONTRACTOR *(Signature)*

Michael Markham Jr. / Vice President-COO
(Printed name and title)

Clerk of the Superior Court
*** Electronically Filed ***
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Attorneys for Markham Contracting Co., Inc.

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

MARKHAM CONTRACTING CO., INC., an Arizona corporation,

Plaintiff,

v.

CAHAVA SPRINGS PHASE I, INC., a Nevada corporation; CAHAVA SPRINGS DEVELOPMENT CORPORATION, a Nevada corporation; MORNINGSTAR ROAD PROPERTIES, INC., a Nevada corporation; CAHAVA SPRINGS COMMUNITY ASSOCIATION, an Arizona non-profit corporation; MARK STAPP, an individual as President of an administratively dissolved corporation; ANNIE MATHISEN and PETER MATHISEN, husband and wife, as Secretary and Vice-President/Treasurer of an administratively dissolved corporation; DOES 1-100; BLACK CORPORATIONS 1-100; WHITE PARTNERSHIPS 1-100; BLUE LLCS 1-100,

Defendant.

CASE NO. CV2021-054458

PLAINTIFF'S MOTION FOR LEAVE TO AMEND FIRST AMENDED COMPLAINT

Assigned to the Honorable Danielle Viola

(Oral Argument Requested)

Markham Contracting Co., Inc. ("Markham"), by and through undersigned counsel and pursuant to Rule 15(a), Ariz.R.Civ.P., hereby requests leave of Court to file its Second Amended Complaint in the above-captioned matter. This motion is more fully supported by the following Memorandum of Points and Authorities and the entire file in this matter. A copy of Plaintiff's proposed Second Amended Complaint is attached hereto as Exhibit A.

MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND FOR AMENDMENT

Plaintiff Markham filed its Complaint against Defendants on December 22, 2021. Exhibit 3 to Plaintiff's initial complaint included the Court's Minute Entry / Under Advisement Ruling granting Markham's Motion to Confirm the Arbitration Award. Markham chose to hold off on service as it was awaiting the finalized Order Confirming the Arbitration Award and signed Judgment from the Court. Upon receipt of the executed Order, Markham filed its First Amended Complaint on February 3, 2022, replacing only the Exhibit 3 with the executed Order, and effected service upon the Defendants. No additional allegations or claims for relief were added at that time.

On or about April 1, 2022, Plaintiff's counsel and Defendants' counsel met and conferred regarding Defendants' intention to file a motion to dismiss Plaintiff's Complaint. Plaintiff granted Defendants an extension to answer in order to further discuss the issues raised in the initial call. On April 6, 2022, Defendants filed a Certificate of Good Faith Consultation re: Motion to Dismiss indicating the extension. Counsel again had a call on April 18, 2022, wherein an additional 3-week extension for Defendants to file a responsive pleading was granted to allow the parties additional time to work through the issues raised by Defendants. Plaintiff's counsel also indicated that Plaintiff intended to amend its Complaint.

This extension was set forth in the certificate filed by Defendants on April 19, 2022. Three days later, on April 22, 2022, Defendants filed their Motion to Dismiss. The filing of Defendants' motion is inconsistent with the statements made in the Certificate filed on April 19, 2022.

While Plaintiff Markham disagrees with Defendants' position, it wishes to amend its complaint to clarify and include additional allegations to cure any perceived defect in its complaint and outline in greater detail the unjust enrichment to the landowner Defendants that have benefitted from infrastructure work that the District, CSRD, not only refuses to pay but refuses to invoice and collect the assessments for the work performed by Markham.

II. LEGAL ANALYSIS

Under Arizona law, amendments should be freely granted when justice requires. Pursuant to Rule 15(a)(1), Arizona Rules of Civil Procedure, provides:

> A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within twenty days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party. Leave to amend shall be freely given when justice requires.

Ariz. R. Civ. P. 15(a) (Emphasis added).

The Arizona Supreme Court has stated that "the amendments of pleadings should be allowed with great liberality to the end that every cause of action shall be decided on its merits whenever possible without prejudice to the other party." *Harbel Oil Co. v. Steele*, 1 Ariz. App. 315, 318, 402 P.2d 436, 439 (1965) (quoting *Frank v. Solomon*, 94 Ariz. 55, 57, 381 P.2d 591,

592 (1963)).

Courts generally allow pleadings to be amended "unless the court finds undue delay in the request, bad faith, undue prejudice or futility in the amendment….Absent these circumstances, leave to amend a pleading…should be granted 'if the underlying facts or circumstanced relied upon…may be a proper subject of relief." *MacCollum v. Perkinson*, 185 Ariz. 179, 185, 913 P.2d 1097, 1103 (App. 1966).

In this case, there is no undue delay, prejudice, bad faith, or futility in the proposed Amendment. Markham disagrees that improper conduct is required to be shown in an unjust enrichment claim but it is evident and irrefutable that CSRD has never billed nor collected for the assessments as required by the Development Agreement, the Limited Offering Memorandum, and the Assessment Collection Agreement. Although not anticipated, additional debt could be placed on the assessed lots to fund completion of the District Improvements.

IV. CONCLUSION

Based on the foregoing, Plaintiff Markham respectfully requests leave to file its Second Amended Complaint in the form attached hereto as Exhibit A.

DATED this 11th date of May, 2022.

PALECEK & PALECEK, P.L.L.C.

By: /s/ Karen A. Palecek
Karen A. Palecek
6263 N. Scottsdale Road, Suite 144
Scottsdale, AZ 85250
Attorneys for Plaintiff Markham

ORIGINAL of the foregoing e-filed
this 11th date of May, 2022 with:

Maricopa County Superior Court
Honorable Danielle Viola

COPY of the foregoing mailed/emailed
this 11th date of May, 2022 to:

J. Christopher Gooch (cgooch@fennemorelaw.com)
Tyler D. Carlton (tcarlton@fennemorelaw.com)
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/s/ Sara Mills
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Attorneys for Markham Contracting Co., Inc.

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

MARKHAM CONTRACTING CO., INC., an Arizona corporation,

Plaintiff,

v.

CAHAVA SPRINGS PHASE I, INC., a Nevada corporation; CAHAVA SPRINGS DEVELOPMENT CORPORATION, a Nevada corporation; MORNINGSTAR ROAD PROPERTIES, INC., a Nevada corporation; CAHAVA SPRINGS COMMUNITY ASSOCIATION, an Arizona non-profit corporation; ~~MARK STAPP, an individual as President of an administratively dissolved corporation; ANNIE MATHISEN and PETER MATHISEN, husband and wife, as Secretary and Vice-President/Treasurer of an administratively dissolved corporation;~~ DOES 1-100; BLACK CORPORATIONS 1-100; WHITE PARTNERSHIPS 1-100; BLUE LLCS 1-100,

Defendant.

CASE NO. CV2021-054458

~~FIRST~~ SECOND AMENDED COMPLAINT
(Unjust Enrichment)

(Eligible for Commercial Court)

Markham Contracting Co., Inc. ("Markham"), by and through undersigned counsel, for its ~~First~~ Second Amended Complaint against the above-named defendant, states as follows:

PARTIES, JURISDICTION & VENUE

1. Markham is an Arizona corporation, with its principal place of business in Phoenix, Arizona. Markham is a duly licensed contractor under license numbers 144801, 046809, and 072454 and authorized to do and is doing business in Arizona.

2. Defendant Cahava Springs Phase I, Inc. ("CS Phase I"), is a Nevada corporation holding itself out as authorized to do business in the State of Arizona. Defendant CS Phase I is an Owner of certain lots / parcels of land located in the Cahava Springs Revitalization District ("District").

3. Defendant Cahava Springs Development Corporation ("CSDC") is a Nevada corporation holding itself out as authorized to do business in the State of Arizona. Defendant CSDC is an Owner of certain lots / parcels of land located in the Cahava Springs Revitalization District.

4. Defendant Morningstar Road Properties, Inc. ("Morningstar"), is a Nevada corporation holding itself out as authorized to do business in the State of Arizona. Defendant Morningstar is an Owner of certain lots / parcels of land located in the Cahava Springs Revitalization District.

5. Defendant Cahava Springs Community Association ("CSCA") is an Arizona corporation holding itself out as authorized to do business in the State of Arizona. Defendant CSCA is an Owner of certain lots / parcels of land located in the Cahava Springs Revitalization District. CSCA is listed as "Inactive" with the Arizona Corporation

Commissions and was administratively dissolved on August 24, 2021, for its failure to file an Annual Report for three consecutive years.

6. ~~Defendant~~ Mark Stapp ("Stapp") is the President and Director of Defendants CSCA, CS Phase I, CSDC, and Morningstar. Stapp is also the Chairman of Cahava Springs Revitalization District ("CSRD" or the "District"). ~~If Defendant Stapp is married, then Jane Doe Stapp will be added when the same is ascertained as Stapp would have been acting for the benefit of the marital community.~~

7. ~~Defendant Annie Mathisen and Defendant Peter Mathisen ("Mathisen") are husband and wife and at all times acted on behalf of the marital community.~~ Annie Mathisen ("A. Mathisen") is Secretary of Defendant CSCA and is a Board Member and District Clerk of CSRD. She is also Vice President and Director of Morningstar. ~~and~~ Peter Mathisen ("P. Mathisen") is the Vice-President and Treasurer of Defendant CSCA and was also the Community Management Director for CSDC.

8. Defendant JOHN DOES 1-100, JANE DOES 1-100, BLACK CORPORATIONS 1-100, and WHITE PARTNERSHIPS 1-100, whether singular or plural are fictitious names, designating an individual or individuals, masculine or feminine, and are legal entities unknown to Plaintiff whose true name or names Plaintiff prays may be added when discovered as if correctly named originally.

9. All events subject to this dispute took place in Maricopa County, Arizona and the property subject to this dispute is located in Maricopa County, Arizona.

10. Jurisdiction and venue are proper in this Court.

BACKGROUND

11. ~~Cahava Springs Revitalization District ("~~CSRD~~")~~ is a special purpose tax-

levying public improvement district which was formed on February 15, 2017, for the purposes of the Constitution and the laws of the State of Arizona and a municipal corporation for certain purposes of the laws of the State of Arizona.

12. CSRD entered into a District Development and Waiver Agreement with the real property owners and Defendants set forth herein. Specifically, CSDC, the developer, CS Phase I, Morningstar, and their successors in title ("Landowners"), all having an interest in the real property within the District. Defendant CSCA also owns real property within the District but was not an entity at the time of the District Development and Waiver Agreement. The transfer of property occurred on December 11, 2018. A copy of the District Waiver and Development Agreement is attached hereto as Exhibit 1 and incorporated herein by reference.

13. The Landowners are identified and considered the assessed property and are assessed the respective amounts as shown on Exhibit A to the Exhibit 1 District Development and Waiver Agreement.

14. In order to obtain the Special Assessment Bonds to fund the Project, CSRD entered into an Indenture of Trust with the bond issuer, Zions Bank. A true and accurate copy of the Indenture of Trust is attached hereto as Exhibit 2 and incorporated herein by reference.

15. Levying assessments is a requirement under the Indenture of Trust, including the billing and collection of the annual assessments. The assessments are to be billed to the landowners directly by the District annually on or before October 1st of each year. One half of the payment is due by November 1st and the balance is due by May 1st. See Exhibit 2, Section 9.2(a).

~~13.~~16. CSRD has not invoiced to collect any of the assessments beginning with the year 2017. See a copy of the Default Notice attached hereto as Exhibit 3 and incorporated herein by reference. The Default Notice clearly sets forth the fact that, as of October 1, 2019, "the District has ***never*** billed…much less enforced the collection of delinquent assessments".

~~14.~~17. The Exhibit 1 Agreement specifies the conditions and terms for development, acquisition, construction, and financing of the infrastructure.

~~15.~~18. The Exhibit 1 Agreement also outlines the repayment of the costs for the infrastructure over a period of time and specifically identifies the dollar value of the special assessment lien bonds of the District that could be issued and were issued to provide monies for certain infrastructure purposes.

~~16.~~19. It is clear from the District Development and Waiver Agreement that the infrastructure costs are to be equally apportioned to the various lots in the subdivisions described on Exhibit B of Exhibit 1.

~~17.~~20. On or about February 27, 2017, Markham and Cahava Springs Revitalization District ("CSRD") entered into a written construction agreement related to the construction of the infrastructure improvements referenced in the District Development and Waiver Agreement for Cahava Springs, located in Cave Creek, Arizona. A copy of the written agreement is attached hereto as Exhibit ~~42~~ and incorporated herein by reference.

21. Markham constructed the infrastructure for the development at the request of ~~Cahava Springs Revitalization District~~CSRD. Markham's infrastructure work was substantially complete on December 27, 2018.

~~18.~~22. CSRD also requested Markham to perform work after substantial completion including additional Change Order work and Punchlist work. See Punch List from June 24,

2019 Field Review attached hereto as Exhibit 5 and incorporated herein by reference.

~~19.~~23. The infrastructure project benefits the surrounding property owned by the above-named Defendants.

~~20.~~24. A dispute arose between Markham and Cahava Springs Revitalization District which proceeded to an Arbitration hearing and subsequent Arbitration Award in Markham's favor.

~~21.~~25. The Arbitration Award has been confirmed with the Maricopa County Superior Court in Case No. CV2020-017067. A copy of the Order Confirming Arbitration Award and Final Judgment is attached hereto as Exhibit ~~3~~6 and incorporated herein by reference.

COUNT ONE
(Unjust Enrichment)

~~22.~~26. Plaintiff Markham reasserts Paragraphs 1 through 2~~5~~1 of its Complaint as if fully set forth herein.

27. On February 22, 2017, the Board of Directors of CSRD adopted an Assessment Resolution, identified as the Original Assessment Resolution. Wherein the Board levied assessments on properties within the District benefitted by the acquisition and construction of certain public infrastructure improvements. Thus, the Board of CSRD recognized the benefit of the construction work performed by Markham and revised the Assessment Roll to reflect the revised plat of the reallocation of the assessment area and the various parcel numbers. A copy of the Amendment to the Assessment Resolution is attached hereto as Exhibit 7 ~~4~~ and incorporated herein by reference.

~~23.~~28. It was disclosed to the Bondholders in the disclosure document ("Limited

Offering Memorandum") that although not anticipated, additional debt could be placed on the assessed lots to fund completion of the District improvements if there were cost overruns.

29. Upon information and belief, Defendants CS Phase I, CSDC, Morningstar, and CSAC, the Owners of the Real Property, have not paid for labor and materials supplied by Plaintiff Markham and CSRD ~~likely~~ has not collected, nor billed for, the assessments to pay for the infrastructure work performed.

30. Mark Stapp and Annie Mathisen refuse to invoice the corporate entities to collect the assessments to pay for the infrastructure work as well as the additional change order work and work ordered after substantial completion as they claim that CSRD does not have the funds to pay Markham and they refuse to pay for the assessments for the infrastructure work that was never paid for by CSRD as outlined in the Judgment. ~~However, CSRD continue the levy of assessments against the parcels within the District in the amounts set forth on the Amended Assessment Roll from June 2018. See Exhibit 4, Section 2.~~

31. CSRD has levied the parcels in the amounts set forth on the Assessment Roll for June 2018. See Exhibit 7, Section 2. However, CSRD has failed to invoice and collect for assessments from Defendants because the Board Members of CSRD would essentially invoicing their own companies to pay for the assessments and making additional assessments for the work not yet assessed but included in the Judgment.

~~24.~~32. It is improper to refuse to invoice and collect so that the landowners do not have pay for the improvements that have been confirmed in the Exhibit 6 Judgment.

~~25.~~33. Defendants CS Phase I, CSDC, Morningstar, and CSAC have received a

benefit for which they have not paid anyone ~~and~~, specifically~~, not~~ Markham, to obtain infrastructure work for free.

~~26.~~34. It would be unjust to allow Defendants to retain such benefit without paying ~~for it~~Markham for the amount set forth in the Judgment.

~~27.~~35. Markham is owed the principal amount of $6,427,060.18 pursuant to the Exhibit ~~6~~3 Order Confirming Arbitration Award and Final Judgment.

~~28.~~36. Given the equal apportionment of the lots for the infrastructure costs, Markham's Judgment should be equally apportioned to the lots as set forth in the Exhibit F attached to Exhibit 1.

~~29.~~37. The entities have received the benefit as set forth in the Award that is attached as Exhibit 2 to the Exhibit ~~3~~6 Order Confirming Arbitration Award and Final Judgment. No one has paid for any of the infrastructure improvements performed by Markham and Markham is entitled to Judgment as set forth herein.

~~30.~~38. Plaintiff Markham is entitled to recover its reasonable attorneys' fees and costs for this quasi-contract action pursuant to A.R.S. §12-341.01.

~~31.~~39. If this action is determined by Default Judgment, Plaintiff Markham requests reasonable attorneys' fees in the amount of no less than $20,000, plus after-accruing fees and costs.

WHEREFORE, Plaintiff Markham prays for Judgment against all Defendants on this First Claim for Relief for Unjust Enrichment as follows:

A. Principal Damages in the amount of at least $6,427,060.18;

B. Interest at the rate of 10% per annum;

C. Costs;

D. Attorneys' fees pursuant to A.R.S. § 12-341.01;

E. For such other and further relief as the Court deems just and proper.

DATED this _____ date of May, 2022.

PALECEK & PALECEK, P.L.L.C.

By: /s/ Karen A. Palecek
Karen A. Palecek
6263 N. Scottsdale Road, Suite 144
Scottsdale, AZ 85250
Attorneys for Plaintiff Markham

PALECEK & PALECEK PLLC
ATTORNEYS AT LAW

EXHIBIT 1

When Recorded Return To:

Ballard Spahr LLP
1 East Washington Street, Suite 2300
Phoenix, Arizona 85004
Attention: Tyler Cobb

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DISTRICT DEVELOPMENT AND WAIVER AGREEMENT
(CAHAVA SPRINGS REVITALIZATION DISTRICT)

As of February 15, 2017

TABLE OF CONTENTS

DISTRICT DEVELOPMENT AND WAIVER AGREEMENT

(CAHAVA SPRINGS REVITALIZATION DISTRICT)

THIS DISTRICT DEVELOPMENT AND WAIVER AGREEMENT (CAHAVA SPRINGS REVITALIZATION DISTRICT), dated as of February 15, 2017 (this "*Agreement*"), is entered into by and among Cahava Springs Revitalization District, a special purpose, tax-levying public improvement district for the purposes of the Constitution and laws of the State of Arizona (the "*State*") and a municipal corporation for certain purposes of the laws of the State (together with its successors in interest, the "*District*"), Cahava Springs Development Corporation, a Nevada corporation (the "*Developer*"), Cahava Springs Phase 1, Inc., a Nevada corporation ("*Phase 1*") and Morningstar Road Properties, Inc., a Nevada corporation ("*Morningstar*" and together with the Developer, Phase 1 and their respective successors in title, the "*Landowners*"), having an interest in real property in the District.

WHEREAS, the Landowners hold title to all of the real property (the "*Assessed Property*") comprising the District in the respective amounts shown on Exhibit "A" hereto; and

WHEREAS, pursuant to Title 48, Chapter 39 of the Arizona Revised Statutes (the "*Act*"), and Section 9-500.05 of the Arizona Revised Statutes the District and the Landowners may enter into "development agreements" to specify, among other things, conditions, terms, restrictions and requirements for development, acquisition, construction and financing of "infrastructure" (as such term is defined in the Act) and subsequent reimbursement or repayment of the costs thereof over a period of time; and

WHEREAS, with regard to the Property, the District and the Landowners wish to enter into a development agreement for the purpose of specifying certain matters relating particularly to the District's acquisition and construction of certain infrastructure and the Landowners' waiver of rights, actions and requirements, all pursuant to the Act; and

WHEREAS, this Agreement is a "development agreement" which is consistent with the "general plan" (as defined in Section 9-461 of the Arizona Revised Statutes) for the Town of Cave Creek, Arizona (the "*Municipality*"), and the "general plan" (as defined in the Act) (the "*General Plan*") for the District filed with the Clerk of the Municipality, on April 16, 2015, and as in effect on the date of this Agreement; and

WHEREAS, special assessment lien bonds of the District may be issued by the District (pursuant to the Act) to provide moneys to finance certain "infrastructure purposes" (as such term is defined in the Act) described in the General Plan; and

WHEREAS, the board of directors of the District (the "*District Board*"), as nearly as practicable pursuant to the procedures prescribed by Sections 48-576 through 48-589, Arizona Revised Statutes, or such other procedures as the District Board provides, may levy assessments of the costs of any infrastructure or infrastructure purpose on any land in the District based on the benefit determined by the District Board to be received by the land, and issue and sell bonds payable from amounts to be collected from the special assessments pursuant to the terms of this Agreement; and

WHEREAS, the District held an election on February 2, 2016 (the "*Election*"), at which the persons who were then qualified to vote pursuant to the Act authorized the District Board to (i) levy special assessments against all taxable property in the District in a maximum amount of $105,000 per lot and issue and sell special assessment bonds, payable from amounts collected from the special assessments, in order to provide moneys to acquire and construct certain "infrastructure" (as such term is defined in the Act), generally described in Exhibit "B" attached hereto (the "*District Improvements*") and to acquire from the Landowners certain existing work, including plans and specifications for the development of the District (the "*Developer Improvements*"), consistent with the General Plan and (ii) levy an annual ad valorem tax on the taxable real and personal property in the District, at a rate not to exceed thirty cents ($.30) per one hundred dollars of assessed valuation, to be used for the operation and maintenance expenses of the District; and

WHEREAS, pursuant to resolutions adopted by the District Board on October 31, 2016 (the "*Authorizing Resolution*"), the District assessed the lots in the District, authorized the issuance and sale of not to exceed $16,680,000 in aggregate original principal amount of Cahava Springs Revitalization District (Town of Cave Creek, Arizona) Special Assessment Bonds, Series 2017A (the "*Series 2017A Bonds*") and not to exceed $5,000,000 in aggregate original principal amount of Cahava Springs Revitalization District (Town of Cave Creek, Arizona) Subordinated Special Assessment Bonds, Series 2017B (the "*Series 2017B Bonds*" and, together with the Series 2017A Bonds, the "*Series 2017 Bonds*"), and approved the execution and delivery of an Indenture of Trust, dated as of March 1, 2017 (the "*Indenture*") with Zions Bank, a division of ZB, National Association, as trustee (the "*Trustee*"), providing for the issuance, sale, registration, transfer and payment of, and security for the Series 2017 Bonds; and

WHEREAS, pursuant to Pre-Development and Annexation Agreement, dated April 25, 2005, between the Municipality and the Developer's predecessors in interest with respect to the Property, the Developer's predecessors in interest agreed with the Municipality to dedicate to the Municipality the District Improvements upon completion thereof; and

WHEREAS, pursuant to the Act, the District may enter into this Agreement with the Landowners as a "development agreement" providing for the purchase by the District from the Landowners of certain existing infrastructure, the disbursement and investment of proceeds of the Series 2017 Bonds to acquire and construct additional infrastructure and for the agreement and waiver by the Landowners as to certain matters, rights, actions and requirements; and

NOW, THEREFORE, in the joint and mutual exercise of their powers, and in consideration of the above premises and of the mutual covenants herein contained and for other valuable consideration and subject to the conditions set forth herein, the parties hereto agree that:

ARTICLE I

ACQUISITION AND CONSTRUCTION

Deposit of Bond Proceeds and Developer Funds. The District will deposit the proceeds from the sale of the Series 2017A Bonds with the Trustee. A portion of the proceeds of the Series 2017A Bonds will be used to finance the District Improvements generally described on Exhibit "B" attached hereto. The Series 2017B Bonds will be issued and delivered to the Developer on each July 1st, representing the aggregate Series B Assessments (as defined in the Indenture) on lots in the District sold subsequent to the preceding July 1st, in consideration of the Landowners' sale and assignment to the District of the Developer Improvements generally described on Exhibit "B" attached hereto. Concurrently with the issuance of the Series 2017A Bonds, the Landowners will deposit the Developer Funds (as defined in the Indenture) with the Trustee, which will be used to finance the Phase 1 Improvements generally described on Exhibit "B" attached hereto (the "*Phase 1 Improvements*" and, together with the District Improvements and the Developer Improvements, the "*2017 Improvements*").

District Acquisition or Construction of Public Infrastructure. To the extent permitted by law, the District may acquire or construct infrastructure in or related to and specifically supporting the District, as provided herein, including the 2017 Improvements.

(a) **Procurement of Improvements**. The parties agree that the construction of the District Improvements and the Phase 1 Improvements has been bid, and the District Improvements and the Phase 1 Improvements will be constructed, in accordance with the General Plan, the requirements for construction projects in the Municipality and the requirements for bidding and constructing projects pursuant to Title 34, Chapter 2, Article 1, Arizona Revised Statutes ("*Title 34*"). In particular, the District has advertised for and procured the construction of the 2017 Improvements based on plans, specifications, bidding and contract documents prepared by or at the direction of the Developer, and that contracts for the construction of the 2017 Improvements have been awarded to the lowest responsible bidder as determined by the District in consultation with the Developer, all in conformity with Title 34.

Development Manager. In order to manage the installation of the 2017 Improvements and to coordinate the efficiency of all construction activity, the District may retain the Developer as the agent of the District ("*Development Manager*"). To the extent that the Development Manager does not perform the construction management function, the construction manager selected by the Developer shall be mutually agreeable to both parties. The District agrees that the Development Manager shall not be required to post any payment or performance or improvement security or performance bonds for infrastructure improvements directly funded with the Series 2017 Bonds.

Dedication of Improvements. Upon the District Engineer's (as defined in the Indenture) certification that the District Improvements have been fully completed to applicable standards and specifications of the Municipality, Maricopa County, the State and the United States of America, as applicable, the District will dedicate the 2017 Improvements, together with all necessary property and easements, to the Municipality.

ARTICLE II

FINANCING OF ACQUISITION AND CONSTRUCTION

Issuance and Sale of Series 2017 Bonds. The District Board may take all such action as may be necessary for the District to issue and sell, pursuant to the provisions of the Act, the Series 2017 Bonds, in one or several series, in amounts sufficient to pay (i) the total cost of the District Improvements and the Developer Improvements, (ii) all relevant issuance costs related to the applicable series of Bonds, (iii) capitalized interest for a period not in excess of that permitted by the Act and the Code (as hereinafter defined), and (iv) to the extent permitted by law, the costs of funding a debt service reserve fund in an amount not in excess of that permitted by the Act and the Code.

Section 2.2 Levy of Assessments; Acceptance.

(a) The Series 2017A Bonds will be special assessment lien bonds payable from amounts collected from, among other sources, a special assessment of $72,521.74 per lot (the "*Series A Assessment*") on the lots in the District. The Series 2017B Bonds will be special assessment lien bonds payable from amounts collected from, among other sources, a separate special assessment of $21,739.13 per lot (the "*Series B Assessment*" and, together with the Series A Assessment, the "*Assessments*") on the lots in the District.

(b) The Assessments have been levied as nearly as practicable in accordance with the procedures prescribed by Sections 48-576 through 48-589 of the Arizona Revised Statutes upon the lots in the District based on the benefits to be received by each lot, as determined by the District Board based upon the report of the District Engineer.

(i) So long as a particular lot is subject to the Deed of Trust (as defined in the Indenture), the Assessment relating to such lot will be billed to the respective Landowners of such lot by the District annually on or before October 1 of each year. Not less than one-half of such Assessment shall be due and payable on or before November 1 of such year and any balance shall be due and payable on or before May 1 of the following year. Assessments will be deemed delinquent if one-half of an Assessment then due is not paid prior to November 1 of the year in which due or any balance is not paid prior to May 1 of the succeeding year.

(ii) Once a particular lot is released from the Deed of Trust pursuant to Section 2.9 of the Indenture, Assessments with respect to such lot may be billed and collected by the Maricopa County Treasurer pursuant to an assessment collection agreement in substantially the form attached hereto as Exhibit "C" (an "*Assessment Agreement*") and in accordance with the procedures prescribed by Sections 48-599 and 48-600 of the Arizona Revised Statutes.

(c) The Landowners hereby agree to accept the Assessments, which are in an amount not more than permitted pursuant to State law and acknowledge that the Assessed Property (as defined in the Indenture) will benefit from the 2017 Improvements in an amount not less than the Assessments. The District has recorded the Assessments in the Office of the County Recorder of Maricopa County, Arizona in accordance with State law.

(d) The District Board may modify the Assessments after the Assessments have been legally assessed to correspond to subsequent changes in the development of the Assessed Property but in no case shall the Assessments be reduced below the total amount necessary to provide for debt service for the corresponding Series 2017 Bonds or increased above the amount authorized in the Election without the approval of the Landowners and successors/landowners, as provided by Section 48-6818 of the Arizona Revised Statutes. The parties (i) acknowledge that all or a portion of the District may be replatted and (ii) consent and agree to any reallocation of the Assessments as a result thereof, provided that the reallocation of the Assessments is consistent with the provisions of the Indenture. The Assessments will be binding upon the Landowners whether or not the 2017 Improvements are completed in substantial compliance with the final plans and specifications.

(e) The Landowners hereby acknowledge that lenders and other parties involved in financing future improvements on the Assessed Property (including mortgages for single-family residences) may require that liens associated with the Assessments (or applicable portions thereof) be paid and released prior to making a loan and/or accepting a lien with respect to any such financing.

Section 2.3 Series 2017A Bonds.

(a) The aggregate principal amount of the Series 2017A Bonds which may be authenticated, delivered and outstanding pursuant to the Indenture is limited to $16,680,000. The Series 2017A Bonds will be issued concurrently with the execution and delivery of the Indenture.

(b) Series A Assessments may be prepaid, in whole and not in part, by paying the following amount, in cash, to the District: (i) the whole amount of the unpaid principal of the Series A Assessment to be prepaid, plus (ii) interest accruing to the date of the next installment plus (iii) any administrative or other fees charged by the District or the Trustee with respect thereto and less (iv) the pro-rata share of the reserve fund allocable to the Series A Assessment to be prepaid.

Section 2.4 Series 2017B Bonds.

(a) The Series 2017B Bonds are being issued to the Developer in exchange for the Developer Improvements previously acquired or constructed by the Developer, and may be issued only upon satisfaction of the requirements hereof. The aggregate principal amount of the Series 2017B Bonds which may be authenticated, delivered and Outstanding pursuant to the Indenture is limited to $5,000,000. The Series 2017B Bonds shall be issued, in installments, on July 1 of each year in principal amounts equal to the aggregate Series B Assessments on the lots in the District which have been sold to Persons (as defined in the Indenture) not affiliated with the Landowners subsequent to the preceding July 1 and which Series B Assessments have not been prepaid as of such July 1. If any such Series B Assessments are prepaid prior to July 1 such that a corresponding principal amount of Series 2017B Bonds will not be issued, the District will transfer to the Landowners, or their order, all such proceeds received from the prepayment of such Series B Assessments immediately upon receipt. Notwithstanding any provisions hereof,

repayment of the Series 2017B Bonds shall be subordinate to repayment of the Series 2017A Bonds, as provided in the Indenture.

(b) The Landowners will cause the District to be notified of the initial transfers of title to each lot within the District. On July 1 of each year, the District shall cause to be prepared, executed and delivered to the Trustee Series 2017B Bonds in a principal amount equal to the aggregate Series B Assessments levied on lots in the District that have been sold subsequent to the preceding July 1 and that remain unpaid, and the Trustee shall thereupon authenticate, register and deliver such Series 2017B Bonds to the Developer pursuant to the Indenture and this Agreement. Concurrently therewith, the District shall also provide appropriate notice of such Series B Assessments to the Maricopa County Treasurer if such Series B Assessments will be collectible pursuant to an Assessment Agreement, as provided in Section 2.2(b) hereof.

(c) After Series 2017B Bonds have been issued, Series B Assessments corresponding thereto may be prepaid, in whole and not in part, by paying the following amount, in cash, to the District: (i) the whole amount of the unpaid principal of the Series B Assessment to be prepaid, plus (ii) interest accruing to the date of the next installment plus (iii) any administrative or other fees charged by the District or the Trustee with respect thereto. Upon prepayment of any Series 2017B Bonds, the Developer will immediately surrender to the Trustee for cancellation the Series 2017B Bonds so prepaid and redeemed.

Section 2.5 Nonpayment of Assessment and General Property Taxes.

(a) Nonpayment of any Assessment for Assessed Property subject to the Deed of Trust and collectible by the District pursuant to Section 2.2(b)(i) hereof will constitute an Event of Default hereunder and under the Deed of Trust with respect to all Assessed Property subject to the Deed of Trust, entitling the Trustee to exercise its rights and remedies pursuant to the Deed of Trust to recover the entire unpaid Assessments, including the delinquent installment(s), for all Assessed Property subject to the Deed of Trust.

(b) Nonpayment of general property taxes for Assessed Property subject to the Deed of Trust will constitute an Event of Default hereunder and under the Deed of Trust with respect to all Assessed Property subject to the Deed of Trust, entitling the Trustee to exercise its rights and remedies pursuant to the Deed of Trust to recover and pay delinquent general property taxes, including any other delinquent taxes, for all Assessed Property subject to the Deed of Trust.

(c) In the event of nonpayment of any Assessment collectible pursuant to an Assessment Agreement, the District will comply as nearly as practicable with the procedures prescribed by Sections 48-601 through 48-607 of the Arizona Revised Statutes, for the collection of delinquent Assessments, the sale of delinquent property and the issuance and effect of the deed, provided that, in no event will the District or the Municipality be required to purchase any Assessed Property at any such delinquency sale if there is no other purchaser. Each lot for which there is a delinquent Assessment collectible pursuant to an Assessment Agreement will be offered for sale separately. Proceeds from the sale of such delinquent property in an amount equal to the entire unpaid Assessment, including the delinquent installment(s), will be paid to the

Maricopa County Treasurer, who will deposit such proceeds with the Trustee for deposit, in turn, to the Assessment Fund created pursuant to the Indenture.

Section 2.6 Nature of Agreement. This Agreement as it relates to the Landowners shall be a covenant and agreement running with the Assessed Property and shall be recorded in the records of the Maricopa County (Arizona) Recorder, as a lien and encumbrance against the Assessed Property. Upon the sale, transfer or other conveyance by the Landowners of their right, title and interest in and to the Assessed Property, or any part thereof, unless released from the Deed of Trust in accordance with the release provisions set forth therein and in the Indenture, the Assessed Property, or such part thereof, shall continue to be bound by all of the terms, conditions and provisions hereof; any purchaser, transferee or subsequent owner shall take such Property subject to all of the terms, conditions and provisions hereof, and any purchaser, transferee or subsequent owner shall be entitled to all of the rights, benefits and protections afforded the predecessor in interest thereof by the terms hereof. To the extent that the Assessments remain unpaid, the Assessments shall constitute liens against the Assessed Property in the amounts indicated in the Assessment diagram, as provided by, and pursuant to, this Agreement and the Act and shall be enforceable and collectable with the same force and effect originally provided to them.

Section 2.7 Additional Districts. The parties acknowledge that the District may be divided into additional improvement districts or assessment districts from time to time for the purpose of constructing or acquiring specific improvements and levying special assessments related to the same.

ARTICLE III

GENERAL REQUIREMENTS.

Section 3.1 Limited Offering of Bonds; Transfer Restrictions. The District intends to issue tax-exempt bonds to finance the cost of eligible infrastructure and related costs as provided in the Act If Series 2017 Bonds are issued by the District on a non-rated basis, the Series 2017 Bonds shall be sold only to Qualified Institutional Buyers (as defined in Rule 144A promulgated pursuant to the Securities Act of 1933, as amended (the "*Securities Act*")) or Accredited Investors (as defined in Rule 501(a)(1)-(3) of Regulation D promulgated pursuant to the Securities Act). No secondary market transfer restrictions shall apply provided such secondary market transfers are made to Qualified Institutional Buyers or Accredited Investors, the status of which shall be verified through the broker/dealer network. Notwithstanding the foregoing, the Developer will not transfer the Series 2017B Bonds, except to an affiliate of the Developer, without the prior written consent of the District and receipt by the District of an opinion of counsel reasonably acceptable to the District and the Trustee substantially to the effect that such transfer will not violate the securities registration laws of the United States or of the State.

Section 3.2 Disclosure of Limited Liability. Any disclosure document prepared in connection with the offer or sale of Series 2017 Bonds must clearly indicate that neither the Municipality nor the State or any political subdivision of either shall be liable for the

payment or repayment of the Series 2017 Bonds, and neither the credit nor the taxing power of the Municipality, the State, or any political subdivision of either shall be pledged therefore.

Section 3.3 Disclosure to Purchasers. One or more disclosure documents must be provided by the Developer or its successors to each potential purchaser of Assessed Property disclosing the existence and amount of the Assessments or tax, if effective (assuming such Assessment or tax remains unpaid at the time of sale to the potential purchaser). In the event that a particular lot has not already been sold to a Person not affiliated with the Landowners, the disclosure documents must disclose that installments on the Series B Assessment will become payable with respect to that particular lot on the next July 1 if such Series B Assessment is not prepaid prior thereto. Each potential purchaser must acknowledge in writing that the purchaser has received and understood such disclosure documents. The District shall maintain records of the written acknowledgments. To provide evidence satisfactory to the District Board that any prospective purchaser of land within the boundaries of the District has been notified that such land is within the boundaries of the District and that the Series 2017 Bonds may be then or in the future outstanding, a disclosure pamphlet substantially in the form of Exhibit "E" hereto (the "*Pamphlet*") shall be produced and delivered to each purchaser; provided, however, that the Pamphlet may be modified from the form set forth as Exhibit "E" hereto in the future as necessary to adequately describe the District, the Series 2017 Bonds and sources of payment thereof as agreed by the District Board and the Developer.

Section 3.4 Continuing Disclosure Undertaking. So long as the aggregate unpaid Series A Assessments levied on lots owned by the Landowners or any future owner of the Assessed Property are equal to at least twenty percent (20%) of the total principal amount of the Series 2017A Bonds then outstanding, the Developer and/or such owner, as applicable, solely with respect to its Assessed Property, will provide any and all information needed, as reasonably requested by the District, to comply with the information reporting requirements contemplated by Section 240.15c2-12 of the General Rules and Regulations promulgated pursuant to the Securities Exchange Act of 1934, as amended.

ARTICLE IV

MAINTENANCE AND OPERATION

O&M Tax Levy. The parties acknowledge that the voters of the District have approved a special operation and maintenance tax levy (the "*O&M Tax Levy*") at a rate up to thirty cents ($.30) per one hundred dollars of assessed valuation per annum, as determined by the District Board, with respect to all taxable real and personal property in the District. Proceeds of any O&M Tax Levy may be used by the District for any lawful maintenance, operational or administrative purpose of the District, as provided in the Act.

ARTICLE V

INDEMNIFICATION; INSURANCE

Section 5.1 Landowners' Indemnification.

(a) Except as otherwise provided in subsection (c) of this Section 5.1, the Landowners (i) agree to indemnify and hold harmless the District and each director, trustee, partner, member, officer, official, independent contractor or employee thereof and each person, if any, who controls the District within the meaning of the Securities Act (any such person being herein sometimes called an "*Indemnified Party*"), for, from and against any and all losses, claims, damages or liabilities, joint or several (A) to which any such Indemnified Party may become subject, under any statute or regulation, at law or in equity or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact set forth in any offering statement or memoranda relating to the Series 2017A Bonds, or any amendment or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or which is necessary to make the statements therein, in light of the circumstances in which they were made, not misleading in any material respect, but solely to the extent that such untrue statements, alleged untrue statement, omission or alleged omission contained in any offering statement was made in reliance upon and in conformity with information provided by any Owner or an affiliate of any Owner for inclusion in such offering statement, and (B) to the extent of the aggregate amount paid in any settlement of any litigation commenced or threatened arising from a claim based upon any such untrue statement or alleged untrue statement or omission or alleged omvided by any Owner or an affiliate of any Owner if such settlement is effected with the written consent of the Landowners (which consent shall not be unreasonably withheld) and (ii) shall reimburse any legal or other expenses reasonably incurred by any such Indemnified Party in connection with investigating or defending any such loss, claim, damage, liability or action.

(b) An Indemnified Party shall, promptly after the receipt of notice of a written threat to commence, or the commencement of, any action against such Indemnified Party in respect of which indemnification may be sought against the Landowners, notify the Landowners in writing of the threat or commencement thereof. Failure or delay of the Indemnified Party to give such notice shall reduce the liability of the Landowners by the amount of damages attributable to the failure or delay of the Indemnified Party to give such notice to the Landowners, but the failure or delay in notifying the Landowners of any such action shall not relieve the Landowners from any separate liability that each may have to such Indemnified Party otherwise than pursuant to this section. In case any such action is brought against an Indemnified Party and such Indemnified Party shall notify the Landowners of the commencement thereof, the Landowners may, or if so requested by such Indemnified Party shall, participate therein or defend the Indemnified Party therein, with counsel satisfactory to such Indemnified Party and the Landowners (it being understood that, except as hereinafter provided, the Landowners shall not be liable for the expenses of more than one counsel representing the Indemnified Parties in such action), and after notice from the Landowners to such Indemnified Party of an election so to assume the defense thereof, the Landowners shall not be liable to such Indemnified Party pursuant to this section for any legal or other expenses subsequently incurred

by such Indemnified Party in connection with the defense thereof other than reasonable costs of investigation; provided, however, that unless and until the Landowners defend any such action at the request of such Indemnified Party, the Landowners shall have the right to participate at their own expense in the defense of any such action. If the Landowners have not employed counsel to defend any such action or if an Indemnified Party has reasonably concluded that there may be defenses available to it and/or other Indemnified Parties that are different from or additional to those available to the Landowners (in which case the Landowners shall not have the right to direct the defense of such action on behalf of such Indemnified Party) or to other Indemnified Parties, the legal and other expenses, including the expense of separate counsel, incurred by such Indemnified Party shall be borne by the Landowners; provided, however, the Indemnified Party shall first notify the Landowners whether it is pursuing such different or additional defenses before hiring separate counsel.

(c) In order to provide for just and equitable contribution in circumstances in which the indemnification provided for in this section is applicable but for any reason is held to be unavailable to any Indemnified Party from the Landowners, the Landowners (to the extent permitted by law) and the Indemnified Parties (to the extent permitted by law) shall contribute to the aggregate losses, claims, damages and liabilities (including the cost of any investigation, legal and other expenses incurred in connection with, and any claims asserted) to which the Landowners and the Indemnified Parties may be subject in such proportion as is appropriate to reflect the relative fault of the Indemnified Parties on the one hand and the Landowners on the other in connection with the statement or omission which resulted in such losses, claims, damages or liabilities (or actions in respect thereof) as well as other equitable considerations. The relative faults shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or the alleged omission to state a material fact relates to information supplied by the Landowners, on the one hand, or the Indemnified Parties, on the other hand, and the parties' relative intent, knowledge, access to information and opportunity to correct such statement or omission. No person guilty of fraudulent misrepresentation shall be entitled to contribution from any person who is not guilty of such fraudulent misrepresentation. For purposes of this subsection (c), each person, if any, who controls an Indemnified Party within the meaning of the Securities Act (a *"Controlling Person"*) shall have the same rights to and obligations for contribution as the Indemnified Party; provided, however, that a Controlling Person shall have all defenses available to it under the Securities Act and the Securities Exchange Act of 1934, as amended, or otherwise, at law or in equity, in determining its obligations hereunder. Any party entitled to contribution shall, promptly after receipt of notice of the threat or the commencement of any action, suit or proceeding against such party in respect of which a claim for contribution may be made against another party or parties pursuant to this subsection, notify such party or parties from whom contribution may be sought, but the failure or delay in so notifying such party from whom such contribution may be sought shall not relieve the party or parties from whom contribution may be sought from any separate obligation it or they may have hereunder or otherwise than under this section. No party shall be liable for contribution with respect to any action or claim settled without its consent.

Section 5.2 District Indemnification.

(a) To the extent permitted by law, the District agrees to indemnify, defend, and hold harmless each director, trustee, member, officer, official or employee of the District ("*District Indemnified Parties*") from and against any and all liabilities, claims or demands for injury or death to persons or damage to property arising from in connection with, or relating to its performance of this Agreement. Notwithstanding the foregoing, the District shall not, however, be obligated to indemnify any District Indemnified Party with respect to damages caused by the negligence or willful misconduct of such District Indemnified Party.

(b) At any time the District is constructing public infrastructure, or the District owns public infrastructure, the District shall maintain in effect general liability insurance on an occurrence policy form including, contractual, personal injury, and property damages liability coverages with a combined single limit of not less than five million dollars ($5,000,000) per occurrence for bodily injury, death, personal injury and property damage. At all other times, the District shall maintain such coverage in an amount of one million dollars ($1,000,000). The District may provide up to the first one hundred thousand dollars ($100,000) of the required limit of liability as a deductible or pursuant to a program of self-insurance. The general liability insurance shall name the Municipality as an additional insured, be underwritten by an insurance company having an A.M. Best rating of at least B+7, or equivalent if not rated by A.M. Best, and shall provide thirty (30) days advance notice to the District and the Municipality prior to cancellation, material change or non-renewal. The District shall deliver to the Municipality a copy of the insurance policy, a certificate of insurance or other evidence satisfactory to the Municipality of the existence and amount of the required insurance and renewals thereof.

(c) The Landowners agree to pay the costs of such insurance coverage to the extent such costs are not paid from bond proceeds, or by the District or to the extent payment of such costs, together with other costs of the District, would result in a tax levy in excess of that described in Section 4.1 hereof. The Municipality shall have no obligation to pay the costs of such insurance.

(d) The District shall, promptly after the receipt of notice of any action to obtain insurance proceeds with respect to the insurance coverages required by this Section, notify the Landowners thereof in writing. The District shall have such rights in any such action, and the Landowners shall have such rights to notice and participation in any such action, as are described in Section 5.1(b) hereof.

Section 5.3 Officers and Directors' Liability Insurance.

(a) The District shall maintain such directors and officers liability insurance coverage for the District as shall be reasonably satisfactory to the District Board. The insurance shall have a limit of $1,000,000, naming the Municipality as an additional insured and shall be placed with insurers maintaining an A.M. Best rating of at least B+7, or of equivalent quality if not rated by A.M. Best.

(b) The Landowners agree to pay the costs of such insurance coverage to the extent such costs are not paid from bond proceeds or payment of such costs, together with other

costs of the District, would exceed the tax levy described in Section 4.1 hereof, provided that payment of such costs shall be made solely from moneys otherwise payable to the Landowners. The Municipality shall have no obligation to pay the costs of such insurance.

(c) The District shall, promptly upon the receipt of notice of any action to recover insurance proceeds pursuant to the insurance requirements set forth in this Section, notify the Landowners thereof in writing. The District shall have such rights in any such action, and the Landowners shall have such rights to notice and participation in any such action, as are described in Section 5.1(b) hereof.

ARTICLE VI

REPRESENTATIONS, WARRANTIES AND AGREEMENTS OF OWNER

The Landowners represent and warrant to the District the following:

Organization and Existence of Landowners. Each of the Landowners is duly organized and validly existing as a corporation pursuant to the laws of the State of Nevada.

No Breach or Conflict. The performance of this Agreement by the Landowners and fulfillment of its terms do not and will not, at the time of execution of this Agreement, to the actual knowledge of the officers and directors of the Landowners, conflict with or result in any breach, default or violation of any regulation, order or decree of any court or governmental department, commission, board, bureau or agency binding upon any Owner, or of any indenture, contract, agreement or other instrument to which any of the Landowners is a party or to which any of the Property is subject.

No Violation or Default. The Landowners have made a reasonable and diligent investigation and, to their actual knowledge, the Landowners are not, at the time of execution of this Agreement, in material violation of or in material default with respect to any applicable law or any applicable rule, regulation or order of any court or any governmental department, commission, board, bureau, agency or instrumentality which would prevent or limit the Landowners from entering into or carrying out their obligations hereunder.

Pending or Threatened Litigation. To the actual knowledge of the officers and directors of the Landowners, there is no action, suit, proceeding, inquiry or investigation, at law in equity, before or by any court, governmental agency, public board or body, pending or, to the best of their knowledge, overtly threatened, against or affecting the Landowners, and to their actual knowledge there is no basis therefor, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by this Agreement.

Debt Service Reserve Fund. The Landowners agree that a debt service reserve fund in an amount equal to the Reserve Fund Requirement (as defined in the Indenture) will be capitalized from bond proceeds. Any moneys remaining in such reserve fund at the final maturity or prior redemption of the Series 2017A Bonds will be applied to pay principal and interest on the Series 2017A Bonds at such time and any monies thereafter remaining in such reserve fund shall, at the written direction of the District, be remitted to the then-current owners of Assessed Property *pro rata* according to their payments with respect to the original

Assessments. As additional security for the payment of debt service on the Series 2017 Bonds, the Developer will deposit the Developer Funds with the Trustee, as described in Section 1.2 of this Agreement. Upon completion of the Phase 1 Improvements and payment of all costs and expenses incident thereto, any remaining Developer Funds will be transferred or disbursed as provided in the Indenture.

ARTICLE VII

REPRESENTATIONS AND WARRANTIES OF DISTRICT

The District represents and warrants to the Landowners as follows:.

Organization and Existence. The District is a revitalization district duly organized, validly existing and in good standing pursuant to the laws of the State, and has all requisite power to enter into this Agreement and to carry out and perform the District's obligations hereunder.

Validity and Enforceability of Agreement. This Agreement constitutes a duly authorized, valid and binding obligation of the District and is, and shall be, enforceable against the District in accordance with its terms. The execution, delivery and performance of this Agreement have been duly authorized by the District Board according to law and, to the best of the District's knowledge, do not and will not conflict with or result in any breach, default or violation of any term, condition or provision of any applicable law or rule, regulation, order, writ or decree of any court or any governmental department, commission, board, bureau, agency or instrumentality binding upon the District or of any bonds, indentures, contracts or agreements to which the District is a party or by which the District or its property is bound.

No Litigation. To the actual knowledge of the officers and directors of the District, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, public board or body, pending or, to the best of their knowledge, overtly threatened against or affecting the District, and, to their actual knowledge there is no basis therefor, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by this Agreement.

ARTICLE VIII

CONSENT AND WAIVER

Landowners' Consents. Each of the Landowners, with full knowledge of the provisions of applicable law, and its rights pursuant thereto, hereby consents or acknowledges, as applicable:

(a) that the proposed 2017 Improvements are of more than local or ordinary public benefit, and that the Property receives a benefit from the 2017 Improvements commensurate with the Assessments;

(b) the adoption by the District of the plans and specifications and the Assessment diagram;

(c) to the execution of the construction contracts for the 2017 Improvements without publication of the Notice of Contract Award;

(d) to the Assessments against the Property, in the amounts set forth on Exhibit "C" hereto;

(e) that failure to pay, when due and prior to delinquency, any Assessment for Assessed Property subject to the Deed of Trust will constitute nonpayment of all Assessments for all Assessed Property subject to the Deed of Trust; and

(f) to the recordation of the Assessments.

Landowners' Waivers. Each of the Landowners, with full knowledge of the provisions of applicable law, and its rights pursuant thereto, hereby expressly waives:

(a) any and all defects, irregularities, illegalities and deficiencies in the proceedings for the formation of the District;

(b) any and all defects, irregularities, illegalities or deficiencies in the proceedings establishing the Assessed Property;

(c) any and all defects, irregularities, illegalities or deficiencies in the District election held on February 2, 2016 authorizing the imposition of the Assessments, the issuance of the Series 2017 Bonds and the O&M Tax Levy;

(d) any and all defects, irregularities, illegalities or deficiencies in the District election held on July 14, 2016 at which Mark Stapp, Dennis Mathisen and John Fischer were re-elected to the District Board;

(e) any and all notices and time periods related to the matters described in the preceding subsections (a) through (d) provided by applicable law, including, but not limited, to mailing, posting and publication, as applicable, of any notice required in connection with the adoption of the resolutions with respect to any of the 2017 Improvements, the procurement and award of contracts with respect to the acquisition and construction of the 2017 Improvements, the imposition of the Assessments and any other procedural steps and related proceedings necessary in connection with the 2017 Improvements and the issuance and delivery of the Series 2017 Bonds;

(f) any and all objections to the adoption and approval by the District of the plans and specifications, the Engineer's estimate of the costs of the District Improvements, the Developer Improvements and the Assessment diagram;

(g) any and all protests with respect to the 2017 Improvements and objections to the extent of the Assessed Property (all of which is to be assessed) and including any right to file a written protest or objection for such purpose and any right to any hearing on such matters;

(h) any and all protest rights against the 2017 Improvements and objections to the awarding of one or more acquisition or construction contracts for the 2017 Improvements;

(i) any and all defects, irregularities, illegalities or deficiencies in, or in the adoption by the District Board of, the Assessed Property (all of which is to be assessed), the plans and specifications, and the Assessment diagram, all of which provide for and effectuate the 2017 Improvements;

(j) any and all defects, irregularities, illegalities or deficiencies in, or in the awarding of, any contracts for or with respect to, the 2017 Improvements, including, but not limited to, any right to claim that any of the acts or proceedings relating to the 2017 Improvements are irregular, illegal or faulty pursuant to applicable law, any right to file a notice specifying in which respect the acts and proceedings are irregular, illegal or faulty, and any right to any hearing in connection therewith;

(k) any and all actions and defenses against the Assessments or any of the Series 2017 Bonds, including, but not limited to, judicial review, as to whether the Property (all of which is to be assessed) is benefited by the 2017 Improvements;

(l) any right to object to the legality of any of the Assessments or to any of the previous proceedings connected therewith or to claim that the 2017 Improvements have not been constructed according to any applicable contract or the plans and specifications, in each case as permitted pursuant to applicable law and including any right to file a written notice specifying the grounds of such objection and any right to any hearing in connection therewith;

(m) any and all claims or defenses, known or unknown, they may now or subsequently have against the Assessments or the Series 2017 Bonds;

(n) all demands for cash payment of the Assessments;

(o) any and all provisions of any collateral security instruments relating to the Assessed Property (all of which is to be assessed) which prohibit the establishment of the Assessed Property, designation of the boundaries of the Assessed Property (all of which is to be assessed), completion of the 2017 Improvements and imposition of the Assessments; and

(p) any and all rights to redemption pursuant to Section 48-605 of the Arizona Revised Statutes.

ARTICLE IX

MISCELLANEOUS

Landowners' Representatives. Mark Stapp, Dennis Mathisen and John Fischer shall each be an authorized representative of the Landowners to provide all consents, approvals, make protests and objections, receive all notices, and act for the Landowners in carrying out the purposes of this Agreement.

Amendment. This Agreement may be amended only by an agreement in writing executed by the District and the Landowners, or their respective successors and assigns, which is approved by the then-owners of fee simple title to not less than a majority of the Property and recorded in the Office of the Maricopa County (Arizona) Recorder.

Notices. Any notices and other communications required or permitted hereby shall be validly given, made or served, if in writing and delivered personally or sent by registered or certified mail, postage prepaid, to:

District: Cahava Springs Revitalization District
c/o Ballard Spahr LLP
1 East Washington Street, Suite 2300
Phoenix, AZ 85004

Landowners: Cahava Springs Development Corporation
c/o Tim Martens, Esq.
Gammage & Burnham, PLC
2 North Central Avenue, Suite 1500
Phoenix, AZ 85004

or to such other person or such other address as any party may designate in writing. Notice given by mail, as set out above, shall be deemed delivered three business days following the date the same is postmarked.

Severability. If any one or more sections, subsections, clauses, sentences or parts of this Agreement shall be adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall not affect, impair or invalidate the remaining provisions hereof, but shall be confined to the specific sections, subsections, clauses, sentences and parts so determined.

Benefit and Binding Effect. The provisions of this Agreement shall inure to the benefit of and shall be binding upon the respective heirs, successors and assigns of the respective parties.

Additional Documents and Agreements. Each party agrees to execute and deliver such further or additional documents, instruments or agreements as may be reasonably necessary or appropriate in good faith to fully implement and carry out the intents and purpose of this Agreement.

Applicable Law and Venue. This Agreement shall be governed by and construed in accordance with State law. Venue for any suit or other proceedings relative to this Agreement shall be in the Maricopa County (Arizona) Superior Court.

Headings. The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of any term or provision of this Agreement.

Counterparts. This Agreement may be executed in counterparts, each of which shall be an original but which shall constitute one and the same instrument.

Entire Agreement. This Agreement constitutes the entire agreement among the parties hereto and no party shall be liable or bound to any other party hereto in any manner by any warranties, representations or guaranties except as specifically and expressly set forth herein.

Recordation. The District will cause this Agreement and any amendment or cancellation hereof to be recorded in the official records of Maricopa County, Arizona, within the period required by Section 9-500.05 of the Arizona Revised Statutes.

Notice of ARS §38-511. Notice is hereby given that this Agreement is subject to cancellation by the District pursuant to the provisions of Section §38-511 of the Arizona Revised Statutes.

Third-Party Beneficiaries. The only parties to this Agreement are the District and the Landowners. Except as expressly provided herein, this Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person whatsoever.

Preservation of Tax-Exemption. Neither the District nor the Landowners shall take, or cause to be taken, any action which would cause interest on any Series 2017 Bond to be includable in the gross income of the holder thereof for Federal income tax purposes pursuant to the Internal Revenue Code of 1986, as amended (the "*Code*").

Term. The term of this Agreement shall commence as of the date of the execution and delivery hereof by each of the parties hereto and shall expire upon the earlier of (i) the agreement of the District and the Landowners to terminate this Agreement or (ii) when no Series 2017 Bonds are outstanding.

Survival of Representations, Etc. Unless otherwise expressly provided, the representations, covenants, indemnities and other agreements contained herein shall be deemed to be material and continuing, shall not be merged and shall survive any conveyance or transfer provided herein.

Section 9.17 Future Owner Consent. The undersigned Landowners agree that upon the sale of any portion of the Property, the Landowners will require the execution and delivery of an Owner Consent, Waiver and Agreement, as set forth in Exhibit D hereto, by each purchaser of Property, and upon request by the District, the undersigned Landowners will execute and deliver such Owner Consent, Waiver and Agreement to the District.

No Personal Liability of Landowners. Notwithstanding anything to the contrary contained in this Agreement or any other document signed by the Landowners or by which the Landowners have or will become bound in connection with the actions or proceedings giving rise to this Agreement, none of the Landowners, or the directors or officers of the Landowners, shall have any personal liability, nor shall any of their assets be subject to any personal liability, for any obligation set forth herein, and the sole recourse against the Landowners hereunder shall be limited to the assets of the Landowners, whether now owned or hereafter acquired.

[Signatures on following page]

IN WITNESS WHEREOF, the authorized representatives of the District and the Landowners have duly executed and attested this Agreement as of the date first written above.

CAHAVA SPRINGS REVITALIZATION DISTRICT, an Arizona revitalization district

By: _____

(Vice) Chairman

ATTEST:

_____
District Clerk

APPROVED AS TO FORM:
Ballard Spahr LLP

By: _____
Ballard Spahr LLP,
Special Counsel to the District

CAHAVA SPRINGS DEVELOPMENT CORPORATION, a Nevada corporation

By: _____
Mark Stapp,
Its President

MORNINGSTAR ROAD PROPERTIES, INC., a Nevada corporation

By: _____
Mark Stapp,
Its President

CAHAVA SPRINGS PHASE 1, INC., a Nevada corporation

By: _____
Mark Stapp,
Its President

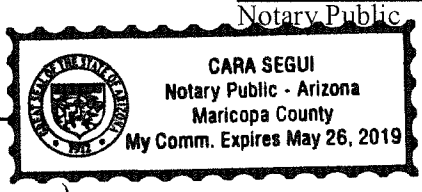
[SIGNATURE PAGE TO DISTRICT DEVELOPMENT AND WAIVER AGREEMENT]

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 15th day of February, 2017, by Dennis Mathisen, as Chairman of the District Board of Cahava Springs Revitalization District, an Arizona revitalization district.

Notary Public

My commission expires:

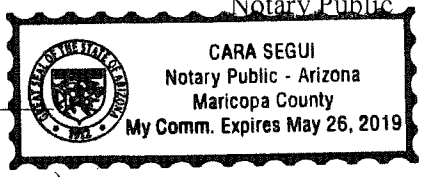


STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 15th day of February, 2017, by Mark Stapp, the President of Cahava Springs Development Corporation, a Nevada corporation.

Notary Public

My commission expires:

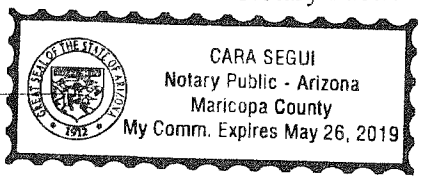


STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 15th day of February, 2017, by Mark Stapp, the President of Morningstar Road Properties, Inc., a Nevada corporation.

Notary Public

My commission expires:

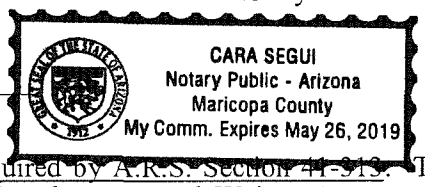


STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 15th day of February, 2017, by Mark Stapp, the President of Cahava Springs Phase 1, Inc., a Nevada corporation.

Notary Public

My commission expires:



Notice required by A.R.S. Section 44-313. The foregoing notarial certificate(s) relate(s) to the District Development and Waiver Agreement, dated as of February 15, 2017, executed by Cahava Springs Revitalization District, an Arizona revitalization district, Cahava Springs Development Corporation, a Nevada corporation, Morningstar Road Properties, Inc., a Nevada corporation and Cahava Springs Phase 1, Inc., a Nevada corporation (the "Notarized Document"). The Notarized Document contains a total of 50 pages.

[NOTARY PAGE TO DISTRICT DEVELOPMENT AND WAIVER AGREEMENT]

EXHIBIT B

DESCRIPTION OF 2017 IMPROVEMENTS

All Improvements will conform to the General Plan for the Cahava Springs Revitalization District, dated April 16, 2015 (the "*General Plan*"), which was filed with the Town Clerk on April 16, 2015, a copy of which is attached hereto. The Landowners also acknowledge that the overall approval of master plans related to specific sites within the District which include any Improvements will be subject to the normal and customary Municipality approval process.

District Improvements

The activation of 2.5 miles of existing water line from 26th Street and Joy Ranch Road to Saddle Mountain Road (approximately 500 feet west of 32nd Street), and (ii) the design, acquisition, installation and construction of a new 12" water line from Saddle Mountain Road (approximately 500 feet west of 32nd Street) to 32nd Street and Honda Bow Road, required booster pumps on Saddle Mountain Road and at 32nd Street and Honda Bow Road, a 32,000-gallon concrete subterranean water storage tank, approximately five miles of electrical conduit to operate the booster pumps, completion of two partially-completed concrete bridges over Apache Spring wash on Saddle Mountain Road and 32nd Street, construction of three drainage structures along Rockaway Hills Road and 32nd Street, completion of roadway improvements from 26th Street and Saddle Mountain Road to 32nd Street and Honda Bow Road, including relocation and undergrounding of existing electrical and telephone lines along Saddle Mountain Road and 32nd Street to Rockaway Hills Road, right-of-way revegetation and landscaping from 26th Street and Saddle Mountain Road to 32nd Street and Honda Bow Road, installation of new underground electrical lines from 26th Street and Joy Ranch Road to 32nd Street and Honda Bow Road and acquisition of additional right-of-way on 32nd Street between Saddle Mountain Road and Rockaway Hills Road.

The costs of the District Improvements are expected to be comprised of the items, and in the estimated amounts, as follows:

Direct Construction	Total
Demolition	$30,365.80
Earthwork	$414,584.05
Storm Drain	$138,493.05
Drainage Structures	$1,352,566.08
Offsite Water	$707,832.30
Paving	$1,207,174.00
Utility Adjustments	$110,043.35
Concrete	$136,171.90
Dry Utility	$1,138,600.80
Landscape + Irrigation	$1,396,403.45
24th Street Waterline Improvements	$112,408.00
Pump Station & Reservior	$2,100,570.00
Offsite Testing & Re-chlorination	$63,211.90
General Conditions (Mob, SWPP, Water, Traffic Control)	$508,261.45
Subtotal	**$9,416,686.13**
General Conditions @ 5.10%	$486,834.90
Payment & Performance Bond	$107,658.07
Subtotal	$10,011,179.10
Sales Tax	$736,642.17
Total Direct Construction	**$10,747,821.27**

Estimated Indirect Costs	Total
APS Line Extension Fee	$760,000.00
Archeology Monitoring & Reporting	$138,425.00
Century Link Line Extension Fee	$303,329.00
Construction Contingency	$281,661.82
Construction Permits & Review	$175,000.00
District Engineer	$16,700.00
Greey Pickett (Landscape)	$5,500.00
Haarer Structural Engineering	$6,200.00
Hoskin Ryan Consultants	$96,775.41
Maricopa County Transportation (Bond)	$31,250.00
MCDOT Permit	$987.50
MCESD, FCD, FEMA	$14,350.00
Printing & Other Reimbursable Expenses	$4,500.00
Project Management	$144,500.00
Water System Engineering	$54,000.00
Total Indirect Costs	**$2,033,178.73**
Total Direct Construction + Indirect Costs	**$12,781,000.00**

Phase 1 Improvements

All expenses directly and indirectly relating to the cost of acquisition and construction of public infrastructure and non-public improvements required to develop the first 44 single-family finished lots (*i.e.*, lots ready for construction of homes) within the District, including roadways, drainage structures, curbing, water distribution system, dry utilities (electric, data and cable television, etc.) and landscaping.

The costs of the Phase 1 Improvements are expected to be comprised of the items, and in the estimated amounts, as follows:

Direct Items	Backbone
Demo & Earthwork	84,639.42
Paving Total	324,698.15
Concrete	145,564.90
Drainage	85,575.40
Storm Drain	34,304.80
Water (& offsite testing)	299,450.00
Pump Station & Reservoir	
Utility Adjustments	
24th Street Improvements	
Dry Utilities	197,400.00
Landscape	362,226.00
General Conditions	167,698.00
Sales Tax	124,979.34
Payment/Performance Bond	18,265.36
Totals	1,844,801.37

Indirect Costs	Amount
Development Management	102,000.00
Contingency	53,198.63
Totals	155,198.63

Combined Total	2,000,000.00

Developer Improvements

The acquisition by the District of right-of-way, design and engineering plans, permits, archeological surveys and recovery reports and other soft costs, underground utilities in connection with approximately 11,200 lineal feet of 12" water line from the northeast corner of Joy Ranch Road and 24th Street along 24th/26th Street to Saddle Mountain Road; trees, cactus and groundcover located within the rights-of-way; roadway grading along Saddle Mountain Road from 26th Street to 32nd Street and along 32nd Street from Saddle Mountain Road to Honda Bow Road; two precast concrete drainage structures on Saddle Mountain and on 32nd Street; and dry utility conduit, manholes and pull boxes along 26th Street and Tonya Road to 1,100 feet east of 32nd Street and Saddle Mountain Road

PALECEK & PALECEK PLLC
ATTORNEYS AT LAW

EXHIBIT 2

INDENTURE OF TRUST,

dated as of March 1, 2017,

from

CAHAVA SPRINGS REVITALIZATION DISTRICT

to

ZIONS BANK, a division of ZB, National Association, as trustee,

Relating to

$16,680,000
CAHAVA SPRINGS REVITALIZATION DISTRICT
(TOWN OF CAVE CREEK, ARIZONA)
SPECIAL ASSESSMENT BONDS, SERIES 2017A

and

$5,000,000
CAHAVA SPRINGS REVITALIZATION DISTRICT
(TOWN OF CAVE CREEK, ARIZONA)
SUBORDINATE SPECIAL ASSESSMENT BONDS, SERIES 2017B

TABLE OF CONTENTS

Page

INDENTURE OF TRUST

THIS INDENTURE OF TRUST, dated as of March 1, 2017 (this "*Indenture*"), from Cahava Springs Revitalization District, a special purpose, tax-levying public improvement district for the purposes of the Constitution of the State of Arizona (the "*State*") and a municipal corporation for the purposes of State law (together with its successors in interest, the "*District*"), to Zions Bank, a division of ZB, National Association, a national banking association with trust powers, as trustee (together with its successors in trust, the "*Trustee*").

W I T N E S S E T H:

WHEREAS, pursuant to Title 48, Chapter 39, Article 1 of the Arizona Revised Statutes (the "*Enabling Act*"), and in response to a petition by Cahava Springs Phase 1, Inc., a Nevada corporation, Morningstar Road Properties, Inc., a Nevada corporation, and Cahava Springs Development Corporation, a Nevada corporation (collectively, the "*Landowners*"), the Mayor and Council of the Town of Cave Creek, Arizona (the "*Town*"), on June 15, 2015 adopted a resolution which formed the District; and

WHEREAS, at a District election held on February 2, 2016 (the "*Election*") in accordance with the Enabling Act, the qualified electors of the District authorized the Board of Directors of the District (the "*Board*") to levy special assessments against all taxable property in the District in a maximum aggregate amount of $105,000 per lot and to issue and sell special assessment bonds, payable from and secured by amounts collected from the special assessments, in order to provide moneys (i) to acquire from the Landowners certain existing work, together with plans and specifications for the development of certain additional public infrastructure in the District (the "*Developer Improvements*"), and (ii) to acquire and construct a main domestic water supply and delivery system, certain roadways and other public infrastructure (collectively, the "*District Improvements*") in the District, consistent with the General Plan for the Cahava Springs Revitalization District, dated April 16, 2015 (the "*General Plan*"), which was filed with the Town Clerk on or about April 16, 2015; and

WHEREAS, on October 31, 2016 and February 22, 2017, the Board adopted resolutions (i) confirming the assessment list for the District Improvements and levying special assessments against properties to be benefited by the District Improvements (the "*Series A Assessment Resolution*") and (ii) confirming the assessment list for the Developer Improvements and levying special assessments against properties benefiting from the Developer Improvements (the "*Series B Assessment Resolution*"); and

WHEREAS, the Enabling Act provides that, after adoption by a district board of a resolution levying a special assessment on property in the district, the district board may issue and sell special assessment bonds payable from and secured by amounts to be collected from unpaid special assessments; and

WHEREAS, the Board now desires to authorize the issuance, sale and delivery of its Special Assessment Bonds, Series 2017A, in the total principal amount of $16,680,000 (the "*Series A Bonds*"), in order to finance the costs of the District Improvements, to fund a Reserve

Fund (as defined herein) and a Capitalized Interest Account (as defined herein), and to pay the costs associated with the issuance of the Series A Bonds; and

WHEREAS, the Board now desires to authorize the issuance, sale and delivery of its Subordinate Special Assessment Bonds, Series 2017B, in the total principal amount of $5,000,000 (the "*Series B Bonds*" and, together with the Series A Bonds, the "*Bonds*") to acquire the Developer Improvements from the Landowners; and

WHEREAS, pursuant to the Enabling Act and Section 9-500.05 of the Arizona Revised Statutes, the District and the Landowners have entered into a District Development and Waiver Agreement (Cahava Springs Revitalization District), dated as of February 15, 2017 (the "*Development Agreement*"), as a "development agreement" to specify, among other things, certain conditions, terms, restrictions and requirements for the development, acquisition, construction, financing, operation and maintenance of the District Improvements and the imposition, collection and payment of the Assessments (as defined herein); and

WHEREAS, pursuant to the Enabling Act and resolutions adopted by the District Board on October 31, 2016 and February 22, 2017 (jointly, the "*Authorizing Resolution*"), the District is authorized to enter into this Indenture to provide for the issuance, sale, registration, transfer and payment of, and security for, the Bonds and the receipt, investment and disbursement of the proceeds thereof; and

WHEREAS, the Bonds shall be payable solely from the Assessments and other moneys pledged therefor in the manner provided in this Indenture, and shall not constitute or give rise to a general obligation or liability of, or constitute a charge against the general credit or taxing powers of, the District, the Town, the State, or any political subdivision thereof; and

WHEREAS, all things have been done which are necessary to make the Bonds, when executed and delivered by the District (or, as to any Bonds issued in exchange therefor or in lieu or upon transfer thereof, authenticated and delivered by the Trustee pursuant hereto), and authenticated by the Trustee, valid obligations of the District, and to constitute this Indenture a valid security agreement, collateral assignment, and contract for the security of the Bonds, in accordance with the terms thereof and of this Indenture,

NOW, THEREFORE, THIS INDENTURE WITNESSETH that, to secure, except as otherwise provided herein, the payment of the principal of and interest on the Outstanding Bonds and the performance of the covenants therein and herein contained and to declare the terms and conditions on which the Outstanding Bonds are secured, and in consideration of the premises and of the purchase and acceptance of the Bonds by the Registered Owners thereof, the District by these presents does hereby grant, bargain, sell, release, convey, collaterally assign, transfer, mortgage, hypothecate, pledge, set over, and confirm to the Trustee, forever, all and singular the following described properties, and grants a security interest therein for the purposes herein expressed, to-wit:

GRANTING CLAUSE FIRST

All money and investments in the funds and accounts established with and held by the Trustee pursuant hereto, excluding any money in the Rebate Fund; and

GRANTING CLAUSE SECOND

The Assessments and the District's interest in any and all property that may, from time to time hereafter, by delivery or by writing of any kind, be subjected to the lien and security interest hereof by the District or by anyone on its behalf (and the Trustee is hereby authorized to receive the same at any time as additional security for the Bonds), which may be made subject to any reservations, limitations, or conditions which shall be set forth in a written instrument executed by the District or the person acting on its behalf, or by the Trustee, respecting the use and disposition of such additional property or the proceeds thereof, including any of the District's rights and interests pursuant to the Deed of Trust and the Collateral Assignment (each as defined herein);

TO HAVE AND TO HOLD all said property of every kind and description, real, personal, or mixed, hereby and hereafter (by supplemental indenture or otherwise) granted, bargained, sold, assigned, released, conveyed, collaterally assigned, transferred, mortgaged, hypothecated, pledged, set over, or confirmed as aforesaid, or intended, agreed, or covenanted so to be, together with all the appurtenances thereto appertaining (said properties together with any cash and securities hereafter deposited or required to be deposited with the Trustee (other than any such cash which is specifically stated herein not to be deemed part of the Trust Estate) being herein collectively referred to as the "*Trust Estate*"), unto the Trustee and its successors and assigns forever;

IN TRUST, NEVERTHELESS, for the equal and proportionate benefit and security of the Registered Owners from time to time of the Outstanding Bonds, without priority, except as otherwise provided herein, of any such Bond over any other such Bond, and to secure the observation and performance of all terms, covenants, conditions, agreements and obligations of the District pursuant hereto, except as herein otherwise expressly provided;

UPON THE CONDITION that, if the District, its successors or assigns shall well and truly pay the principal of and interest on the Bonds according to the true intent and meaning thereof, or there shall be deposited with the Trustee or a Paying Agent such amounts in such form that none of the Bonds remain Outstanding, and shall pay or cause to be paid to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof and the observance or performance of all terms, covenants, conditions, agreements and obligations contained herein, then upon the full and final payment of all such sums and amounts secured hereby, or upon such deposit, this Indenture and the rights, titles, liens, security interests, and assignments herein granted shall cease, determine, and be void and this Indenture shall be released by the Trustee in due form at the expense of the District, except only as herein provided, and otherwise this Indenture to be and remain in full force and effect;

AND IT IS HEREBY COVENANTED AND DECLARED that all the Bonds are to be authenticated and delivered, and the Trust Estate is to be held and applied by the Trustee, subject to the further covenants, conditions, and trusts hereinafter set forth, and the District hereby covenants and agrees to and with the Trustee, for the equal and proportionate benefit of all Registered Owners of Outstanding Bonds, except as herein otherwise expressly provided, as follows:

ARTICLE I
DEFINITIONS AND OTHER PROVISIONS
OF GENERAL APPLICATION

Section 1.1 Definitions. For all purposes hereof, except as otherwise expressly provided or unless the context otherwise requires:

(a) The terms defined in this Article, except when used in the forms set forth on Exhibit A, have the meanings assigned to them in this Article and include the plural as well as the singular.

(b) All references in this instrument to designated "Articles," "Sections," and other subdivisions are to the designated Articles, Sections, and other subdivisions of this instrument as originally executed.

(c) The words "herein," "hereof," and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section, or other subdivision.

"*Acquisition and Construction Fund*" means the fund established pursuant to Section 3.2 hereof, including therein a Public Infrastructure Account and a Phase 1 Account.

"*Assessment Fund*" means the fund established pursuant to Section 3.4 hereof.

"*Assessments*" means those special assessments levied pursuant to the Series A Assessment Resolution and the Series B Assessment Resolution against certain real property in the District.

"*Authorized Denomination*" means, with respect to the Series A Bonds, $100,000 and integral multiples of $10,000 in excess thereof and, with respect to the Series B Bonds, $1.00 and integral multiples thereof.

"*Authorizing Resolution*" means the resolutions adopted by the Board on October 31, 2016 and February 22, 2017, authorizing the issuance, sale and payment of the Bonds.

"*Beneficial Owner*" means the owner of a beneficial interest in any Book-Entry Bond as shown on the records of any Direct or Indirect Participant.

"*Board*" means the Board of Directors of the District as constituted from time to time.

"*Board Resolution*" means any resolution of the Board certified by the District Clerk to be in full force and effect on the date of such certification and delivered to the Trustee.

"*Bond Counsel*" means Ballard Spahr LLP or any other firm of attorneys of national reputation experienced in the field of municipal bonds whose opinions are generally accepted by purchasers of municipal bonds and which is acceptable to the Trustee and the District.

"*Bond Fund*" means the fund of the District established pursuant to Section 3.6 hereof and therein a Series A Account, a Series B Account, a Redemption Account and a Capitalized Interest Account.

"*Bond Purchase Agreement*" means the Bond Purchase Agreement, dated February 15, 2017, between the District and the Underwriter.

"*Bond Register*" means the register for each series of Bonds in which, subject to such reasonable regulations as it may prescribe, the District (or the Trustee on its behalf) shall register the Bonds and transfers thereof as provided herein.

"*Bonds*" means the Series A Bonds and the Series B Bonds.

"*Book-Entry Bonds*" means, initially, all Bonds which are registered pursuant to the Book-Entry-Only System, as further described in Section 2.5(c) hereof.

"*Business Day*" means any day other than a Saturday, a Sunday, or a legal holiday or the equivalent (other than a moratorium) for banking institutions generally in the city where the designated corporate trust office of the Trustee is located or in the Place of Payment.

"*Capitalized Interest Account*" means the account of the District established in the Bond Fund pursuant to Section 3.6 hereof.

"*Closing Date*" means the date of the authentication and delivery of any series or installment of the Bonds to the purchasers or other Persons entitled thereto.

"*Code*" means the Internal Revenue Code of 1986, as amended, and the regulations and rulings promulgated pursuant thereto.

"*Collateral Assignment*" means the Collateral Assignment of Contract Documents, dated as of March 1, 2017, from the Landowners to the Trustee, as the same may be amended from time to time in accordance with the provisions thereof.

"*Costs of Acquisition and Construction*" means all items of expense directly or indirectly relating to the cost of acquiring and/or constructing the District Improvements and the incidental costs and expenses thereof, and infrastructure purposes (as defined in the Enabling Act), related to such District Improvements.

"*Costs of Issuance*" means all items of expense directly or indirectly payable by or reimbursable to the District relating to the execution, sale and delivery of the Bonds and the execution and delivery of this Indenture, including but not limited to, filing and recording costs, settlement costs, printing costs, reproduction and binding costs, initial fees and charges of the Trustee, any Paying Agent or bond registrar, legal fees and charges, bond insurance and other credit enhancement fees and charges, financial and other professional consultant fees, costs of rating agencies for credit ratings, fees for execution, transportation and safekeeping of the Bonds, and charges and fees in connection with the foregoing as well as costs relating to the formation of the District.

"*Costs of Issuance Fund*" means the fund of the District established pursuant to Section 3.8 hereof.

"*Debt Service*" means, with reference to any specified period, (i) the scheduled payments of principal of and interest on the Bonds for such period; (ii) the fees and costs of the Trustee, any Paying Agent, bond registrars or other agents appointed or necessary pursuant to this Indenture to administer the Bonds for such period; (iii) amounts due from the Rebate Fund with regard to Rebate for such period, and (iv) fees and costs incurred in connection with complying with any undertaking to provide continuing secondary market disclosure if entered into by the District or the Landowners, or both, with respect to the Bonds.

"*Deed of Trust*" means the Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing Financing Statement, dated as of March 1, 2017, from the Landowners, as trustors, to Zions Bank, a division of ZB, National Association, as deed of trust trustee, for the benefit of the Trustee, as beneficiary, together with any amendments thereto or modifications thereof.

"*Defaulted Interest*" has the meaning set forth in Section 2.1(e) hereof.

"*Developer*" means Cahava Springs Development Corporation, a Nevada corporation, or its successors in interest, acting on behalf of the Landowners, and their successors in interest.

"*Developer Funds*" means the sum of $2,000,000 delivered by the Developer to the Trustee for deposit in the Phase 1 Account of the Acquisition and Construction Fund simultaneously with the initial delivery of the Series A Bonds to pay certain items of expense directly and indirectly relating to the Phase 1 Improvements.

"*Developer Improvements*" means the waterline improvements and the roadway improvements previously constructed by the Developer, together with the plans, specifications and studies previously prepared or performed by or on behalf of the Developer for the development of the District.

"*Development Agreement*" means that certain District Development and Waiver Agreement (Cahava Springs Revitalization District), dated as of February 15, 2017, among the District and the Landowners.

"*Direct Participant*" or "*DTC Participant*" means any broker-dealer, bank or other financial institution for which the DTC holds Book-Entry Bonds from time to time as a securities depository.

"*Disbursement Request*" means the form of District Disbursement Request described in Section 3.3 hereof (and set forth as Exhibit C hereto) to request disbursements of funds from the Acquisition and Construction Fund to pay for District Improvements and Phase 1 Improvements.

"*District*" means Cahava Springs Revitalization District, a tax-levying revitalization district duly organized and validly existing pursuant to the laws of the State, and its successors.

"*District Clerk*" means the Person duly appointed and acting as the Clerk of the District from time to time.

"*District Engineer*" means Site Consultants, Inc. or any successor selected by the District to act as the district engineer.

"*District Improvements*" means (i) the activation of 2.5 miles of existing water line from 26th Street and Joy Ranch Road to Saddle Mountain Road (approximately 500 feet west of 32nd Street), and (ii) the design, acquisition, installation and construction of a new 12" water line from Saddle Mountain Road (approximately 500 feet west of 32nd Street) to 32nd Street and Honda Bow Road, required booster pumps on Saddle Mountain Road and at 32nd Street and Honda Bow Road, a 320,000-gallon concrete subterranean water storage tank, approximately five miles of electrical conduit to operate the booster pumps, completion of two partially-completed concrete bridges over Apache Spring Wash on Saddle Mountain Road and 32nd Street, construction of three drainage structures along Rockaway Hills Road and 32nd Street, completion of roadway improvements from 26th Street and Saddle Mountain Road to 32nd Street and Honda Bow Road, including relocation and undergrounding of existing electrical and telephone lines along Saddle Mountain Road and 32nd Street to Rockaway Hills Road, right-of-way revegetation and landscaping from 26th Street and Saddle Mountain Road to 32nd Street and Honda Bow Road, installation of new underground electrical lines from 26th Street and Joy Ranch Road to 32nd Street and Honda Bow Road and acquisition of additional right-of-way on 32nd Street between Saddle Mountain Road and Rockaway Hills Road.

"*District Request*" means a written request signed in the name of the District by the District Clerk or a Responsible Officer of the District and delivered to the Trustee.

"*District Treasurer*" means the Person duly appointed and acting as Treasurer of the District from time to time.

"*DTC*" means The Depository Trust Company, as the depository for the Book-Entry Bonds.

"*Enabling Act*" means Title 48, Chapter 39, Article 1 of the Arizona Revised Statutes, as the same may be amended or supplemented.

"*Event of Default*" means the occurrence of any of the events described in Section 6.1 hereof.

"*Final Discharge Date*" means the date on which the last of the Bonds is discharged, if by payment, or the date on which provision is made for payment of the Bonds, as herein provided.

"*Fiscal Year*" means the period beginning on July 1 of any year and ending on June 30 of the next succeeding year.

"*Governmental Obligations*" means (1) direct obligations of, or obligations the timely payment of principal of which is fully and unconditionally guaranteed by, the United States of America or (2) obligations described in Section 103(a) of the Internal Revenue Code of 1954 or

the Code, provision for the payment of the principal of, premium, if any, and interest on which shall have been made by the irrevocable deposit with a bank or trust company acting as a trustee or escrow agent for Registered Owners of such obligations of securities described in clause (1) the maturing principal of and interest on which, when due and payable, will provide sufficient moneys to pay when due the principal of, premium, if any, and interest on such obligations, and which securities described in clause (1) are not available to satisfy any other claim, including any claim of the Trustee or escrow agent, or any claim of one to whom the Trustee or escrow agent may be obligated which, at the time of deposit pursuant to Article V hereof, have been assigned ratings in the highest rating categories of S&P and Moody's, but in the case of both Clause (1) and Clause (2) of this paragraph, for purposes of such Article V, only if such obligations are non-callable prior to the Maturity of the Bonds. Governmental Obligations also includes for purposes other than Article V hereof, a "*no load,*" open-end management investment company or trust (mutual fund) , including those of the Trustee and any affiliate of the Trustee, registered with the Securities and Exchange Commission (SEC), meeting the requirements of Rule 2a-7 of the Investment Company Act of 1940, and which money market fund invests in short term United States Treasury obligations, agencies guaranteed by the United States of America, and repurchase agreements secured' by the same and which money market fund has a rating by S&P of AAAm-G; AAAm; or AAm or better and a rating by Moody's of "*VMIG-I*" or better.

"*Indenture*" means this Indenture of Trust as originally executed or as it may from time to time be supplemented, modified, or amended by one or more indentures or other instruments supplemental hereto entered into pursuant to the applicable provisions hereof.

"*Indirect Participant*" means any financial institution for which a Direct Participant holds an interest in a Book-Entry Bond.

"*Insolvent Taxpayer*" means any Landowner whose property is subject to the Deed of Trust which is the subject of a Proceeding.

"*Interest Payment Date*" means, with respect to the Series A Bonds, each January 1 and July 1, commencing July 1, 2017 and, with respect to the Series B Bonds, each August 1, commencing with August 1 in the Fiscal Year following the Fiscal Year in which Series B Bonds are first authenticated and delivered.

"*Landowners*" means, collectively, Cahava Springs Phase 1, Inc., a Nevada corporation, Morningstar Road Properties, Inc., a Nevada corporation, and Cahava Springs Development Corporation, a Nevada corporation.

"*Maturity*", when used with respect to any Bond, means the date on which the principal of such Bond becomes due and payable as stated therein or as herein provided, whether at the Stated Maturity thereof or by mandatory sinking fund redemption or otherwise.

"*Moody's*" means Moody's Investors Services, Inc. or any entity succeeding to the duties and obligations thereof.

"*Officers' Certificate*" means a certificate signed by a Responsible Officer of the District and delivered to the Trustee.

"*Opinion of Counsel*" means a written opinion of counsel acceptable to the Trustee, who may (except as otherwise expressly provided in this Indenture) be counsel for the District and, when given with respect to the status of interest on any Bond pursuant to the Code, shall be counsel of nationally-recognized standing in the field of municipal bond law and, when given with respect to the status of any matter relating to the laws on bankruptcy, shall be counsel of nationally recognized standing in the field of bankruptcy law.

"*Outstanding*" means, when used with respect to Bonds, as of the date of determination, all Bonds theretofore authenticated and delivered pursuant to this Indenture, except, without duplication:

A. Bonds theretofore canceled by the Trustee or delivered to the Trustee for cancellation;

B. Bonds for the payment or redemption of which money in the necessary amount is on deposit with the Trustee or any Paying Agent for the Registered Owners of such Bonds at the Maturity thereof;

C. Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered pursuant to this Indenture:

D. Bonds alleged to have been destroyed, lost, or stolen and which have been paid in the manner provided in Section 2.4 hereof; and

E. Bonds for the payment of the principal of and interest on which money or Governmental Obligations or both are held by the Trustee or a Paying Agent with the effect specified in Article V hereof.

"*Paying Agent*" means, initially, the Trustee and, thereafter, any other Person authorized by the District to pay the principal of and interest on any Bonds on behalf of the District.

"*Permitted Investments*" means any of the following securities, if and to the extent such securities are legal investments for funds of the District:

A. Government Obligations;

B. obligations of the Government National Mortgage Association (including participation certificates issued by such Association);

C. obligations of the Federal National Mortgage Association (including participation certificates issued by such Association);

D. obligations of Federal Home Loan Banks;

E. deposits, Federal funds or bankers' acceptances (with a term to maturity of 270 days or less) of any bank which has an unsecured, uninsured and unguaranteed obligation rated in one of the two highest ratings categories by both Moody's and S&P;

F. commercial paper rated in the top two rating category by both Moody's and S&P;

G. obligations of any state of the United States or political subdivision thereof or constituted authority thereof the interest on which is exempt from Federal income taxation pursuant to Section 103 of the Code and rated in one of the top two rating categories by both Moody's and S&P;

H. both (A) shares of a diversified open-end management investment company (as defined in the Investment Company Act of 1940) or a regulated investment company (as defined in Section 851(a) of the Code) that is a money market fund rated in the highest rating category by both Moody's and S&P, and (B) shares of money market mutual funds that invest only in Government Obligations and repurchase agreements secured by such obligations, which funds are rated in the highest ratings categories for such funds by both Moody's and S&P;

I. repurchase agreements, which will be collateralized at the onset of the repurchase agreement of at least 103% marked to market daily with Collateral, as hereinafter defined, with a domestic or foreign bank or Corporation (other than life or property casualty insurance company) the long-term debt of which, or, in the case of a mono-line financial guaranty insurance company, claims paying ability, of the guarantor is rated at least "AA" by S&P and "Aa" by Moody's provided that the repurchase agreement shall provide that if during its term the provider's rating by either S&P or Moody's falls below "AA-" or "Aa3," respectively, the provider shall immediately notify the Trustee and the provider shall at its option, within ten days of receipt of publication of such downgrade, either (A) maintain Collateral at levels, sufficient to maintain an "AA" rated investment from S&P and an "Aa" rated investment from Moody's, or (B) repurchase all Collateral and terminate the repurchase agreement. Further, if the provider's rating by either S&P or Moody's falls below "A" or "A3," respectively, the provider must at the direction of the District to the Trustee, within ten (10) calendar days, either (1) maintain Collateral at levels sufficient to maintain an "AA" rated investment from S&P and an "Aa" rated investment from Moody's, or (2) repurchase all Collateral and terminate the repurchase agreement without penalty. In the event the repurchase agreement provider has not satisfied the above conditions within ten (10) days of the date such conditions apply, then the repurchase agreement shall provide that the Trustee shall be entitled to, and in such event, the Trustee shall withdraw the entire amount invested plus accrued interest within two (2) Business Days. For the purposes herein, "*Collateral*" shall mean obligations of the United States of America (the "*U.S.*"), agencies of the U.S., the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation. Obligations of such entities can be in the form of collateralized mortgage obligations ("*CMOs*"). Any repurchase agreement entered into pursuant to this Indenture shall contain the following additional provisions:

(i) Failure to maintain the requisite Collateral percentage will require the District or the Trustee to liquidate the Collateral as provided above;

(ii) The Registered Owner of the Collateral, as hereinafter defined, shall have possession of the Collateral or the Collateral shall have been transferred to the

Registered Owner of the Collateral, in accordance with applicable state and Federal laws (other than by means of entries on the transferor's books);

(iii) The repurchase agreement shall state, and an Opinion of Counsel in form and in substance satisfactory to the Trustee shall be rendered to the effect, that the Registered Owner of the Collateral has a perfected first priority security interest in the collateral, any substituted Collateral and all proceeds thereof (in the case of bearer securities, this means the Registered Owner of the Collateral is in possession);

(iv) The repurchase agreement shall be a "*repurchase agreement*" as defined in the United States Bankruptcy Code and, if the provider is a domestic bank, a "*qualified financial contract*" as defined in the Financial Institutions Reform Recovery and Enforcement Act of 1989 ("*FIRREA*") and such bank is subject to FIRREA;

(v) The repurchase transaction shall be in the form of a written agreement, and such agreement shall require the provider to give written notice to the Trustee of any change in its long-term debt rating;

(vi) The District or its designee shall represent that it has no knowledge of any fraud involved in the repurchase transaction;

(vii) The District and the Trustee shall receive the opinion of counsel (which opinion shall be addressed to the District and the Trustee and shall be in form and substance satisfactory to the Trustee) that such repurchase agreement complies with the terms of this section and is legal, valid, binding and enforceable upon the provider in accordance with its terms;

(viii) The term of the repurchase agreement shall be no longer than one year, or, if payable upon demand, five years;

(ix) The interest with respect to the repurchase transaction shall be payable no less frequently than semi-annually;

(x) The repurchase agreement shall provide that the Trustee may withdraw funds without penalty at any time, or from time to time, for any purpose permitted or required pursuant to this Indenture;

(xi) Any repurchase agreement shall provide that a perfected security interest in such investments is created for the benefit of the Beneficial Owners pursuant to the Uniform Commercial Code of Arizona, or book-entry procedures prescribed at 31 C.F.R. 306.1 et seq. or 31 C.F.R. 350.0 et seq. are established for the benefit of the Beneficial Owners; and

(xii) Collateral delivered or transferred to the District, the Trustee, or a third-party acceptable to, and acting solely as agent for, the Trustee (the "*Registered Owner of the Collateral*") shall be delivered and transferred in compliance with applicable state and Federal laws (other than by means of entries on provider's books) free and clear of any third-party liens or claims pursuant to a custodial agreement subject to the prior written approval of the Trustee. The custodial agreement shall provide that the Trustee must have control over the

Collateral of the repurchase agreement, irrespective of an event of default by the provider of such repurchase agreement.

If such investments are held by a third-party, they shall be held as agent for the benefit of the Trustee as fiduciary for the Beneficial Owners and not as agent for the bank serving as Trustee in its commercial capacity or any other party and shall be segregated from securities owned generally by such third party or bank.

J. Any other investment approved in writing by the Registered Owners of a majority in aggregate principal amount of the Outstanding Bonds; and

K. Bonds, notes and other debt obligations of any corporation organized pursuant to the laws of the United States, any state or organized territory of the United States or the District of Columbia, if such obligations are rated in one of the three highest ratings categories by both Moody's and S&P or in one of the two highest ratings categories by either S&P or Moody's; and

L. Investment agreements with a bank, insurance company or other financial institution, or the subsidiary of a bank, insurance company or other financial institution if the parent guarantees the investment agreement, which bank, insurance company, financial institution or parent has an unsecured, uninsured and unguaranteed obligation (or claims-paying) ability) rated in the highest short-term rating category by Moody's or S&P (if the term of such agreement does not exceed 365 days), or has an unsecured, uninsured and unguaranteed obligation (or claims paying ability) rated by at least 2 national rating agencies with a minimum rating of A2, AA or AA by Moody's, S&P or Fitch, respectively (if the term of such agreement is more than 365 days) or is the lead bank of a parent bank holding company with an uninsured, unsecured and unguaranteed obligation of the aforesaid ratings, provided:

(i) interest is paid at least semiannually at a fixed rate (subject to adjustments for yield restrictions required by the Code) during the entire term of the agreement, consistent with the Interest Payment Dates;

(ii) moneys invested therein may be withdrawn without penalty, premium, or charge upon not more than two days' notice unless otherwise specified in a Supplemental Indenture;

(iii) the same guaranteed interest rate will be paid on any future deposits made to restore the account to its required amount; and

(iv) the Trustee receives an opinion of counsel that such agreement is an enforceable obligation of such insurance company, bank, financial institution or parent;

(v) in the event of a suspension, withdrawal, or downgrade below the minimum rating specified above, within 10 days, the investment agreement provider will either (a) deliver to the Trustee collateral (level and type of collateral to meet published ratings agencies guidelines for an investment grade) or (b) repay the principal of and accrued but unpaid interest on the investment.

M. bonds, notes and other debt obligations of any corporation organized pursuant to the laws of the United States, any state or organized territory of the United States or the District of Columbia, if such obligations are rated in one of the three highest ratings by both Moody's and S&P or in one of the two highest categories by either S&P or Moody's; and

N. the Local Government Investment Pool described in Section 35-326 of the Arizona Revised Statutes or the corresponding provisions of subsequent laws, provided that such fund is rated at least "*AA*" by S&P (without regard to gradation) or at least "*Aa*" by Moody's (without regard to gradation).

Under all circumstances, the Trustee shall be entitled to request and to receive from the District a certificate of an Authorized Officer stating that any investment directed by the District is permitted pursuant to the Indenture.

"*Person*" means any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, or any government or any agency or any political subdivision thereof.

"*Phase*" means all of the lots included in a single phase of the proposed development of the District, as more fully set forth on Exhibit E hereto, as the lots and phases may be modified in connection with any re-platting of the District.

"*Phase 1 Account*" means the account of the District established in the Acquisition and Construction Fund pursuant to Section 3.2 hereof.

"*Phase 1 Improvements*" means those improvements to be funded by the Developer with the Developer's deposit into the Phase 1 Account of the Acquisition and Construction Fund, as required by Section 3.2 hereof, consisting of all items of expense directly and indirectly relating to the cost of construction of certain public and non-public intract improvements with respect to the first 44 single-family lots within the District, comprising the initial Phase of development.

"*Place of Payment*" means the designated corporate trust office of the Paying Agent, which, at the date hereof, is in Phoenix, Arizona.

"*Pledged Revenues*" means, with respect to the Bonds: (i) the Assessments and all proceeds thereof, (ii) the District's interest in all money and investments in the Acquisition and Construction Fund, the Assessment Fund, the Bond Fund, the Costs of Isssuance Fund and the Reserve Fund; and (iv) income and gain with respect to any and all property that may, from time to time hereafter, be delivered by the District or by anyone on its behalf to the Trustee in order to be subjected to the lien and security interest of this Indenture.

"*Predecessor Bonds*" means, with respect to any particular Bond, every previous Bond evidencing all or any portion of the same debt as that evidenced by such particular Bond, and, for purposes of this definition, any Bond authenticated and delivered pursuant to the provisions of Section 2.4 in lieu of a mutilated, lost, destroyed, or stolen Bond shall be deemed to evidence the same debt as the mutilated, lost, destroyed, or stolen Bond.

"*Principal Payment Date*" means the date on which principal of the Bonds is due, either at Stated Maturity or by mandatory sinking fund redemption in advance of the Stated Maturity.

"*Proceeding*" means any case, proceeding or other action pursuant to any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization, assignment for the benefit of credits, or relief of debtors, whether voluntary or involuntary.

"*Public Infrastructure Account*" means the account of the District in the Acquisition and Construction Fund established pursuant to Section 3.2 hereof.

"*Qualified Investor*" means either a Qualified Institutional Buyer, as defined in Rule 144A promulgated pursuant to the Securities Act of 1933, as amended, or an Accredited Investor, as defined in Rule 501(a)(i)-(3) of Regulation D promulgated pursuant to the Securities Act of 1933, as amended.

"*Rating Agency*" means either Moody's or S&P.

"*Rebate Fund*" means the fund of the District established pursuant to Section 3.12 hereof.

"*Record Date*" means the Regular Record Date or any Special Record Date, as applicable.

"*Redemption Account*" means the account of the District established in the Bond Fund pursuant to Section 3.6 hereof.

"*Redemption Date*", when used with respect to any Bond to be redeemed, means the date fixed for such redemption pursuant to the terms thereof and this Indenture.

"*Redemption Price*", when used with respect to any Bond to be redeemed, means the price at which it is to be redeemed pursuant to this Indenture.

"*Registered Owner*" means, when used with respect to any Book-Entry Bond, Cede & Co. (DTC's nominee), or any successor depository, and, when used with respect to any other Bond, the Person in whose name such Bond is registered in the Bond Register.

"*Regular Record Date*" means, with respect to any Interest Payment Date, the fifteenth day of the month immediately preceding such Interest Payment Date.

"*Reimbursed Person*" means a Person described in Section 3.3 hereof.

"*Representation Letter*" means letters to, or agreements with, a depository for Book-Entry Bonds to effectuate a book-entry system with respect to certain Bonds to be registered in the Bond Register in the name of the depository or its nominee.

"*Reserve Fund*" means the fund of the District established pursuant to Section 3.10 hereof.

"*Reserve Fund Requirement*" means, at any applicable time, an amount equal to the least of (i) 10% of the aggregate principal amount of the Series A Bonds then Outstanding, (ii) maximum annual principal and interest requirements for the Series A Bonds then Outstanding or (iii) 125 percent of the average annual principal and interest requirements on the Series A Bonds then Outstanding.

"*Responsible Officer*" means the chairman or vice chairman of the board of directors of the relevant entity, the clerk or assistant clerk of the board of directors, the chairman or vice chairman of the executive committee of said board, the president, any vice president, the secretary, any assistant secretary, the treasurer, any assistant treasurer, the cashier, any assistant cashier, any trust officer or assistant trust officer, the controller, any assistant controller, or any other officer or authorized Person of the relevant entity customarily performing functions similar to those performed by any of the above-designated officers and also means, with respect to a particular corporate trust matter, any other officer of the relevant entity to whom such matter is referred because of his or her knowledge of and familiarity with the particular subject.

"*S&P*" means Standard & Poor's Financial Services LLC, or any entity succeeding to the duties and obligations thereof.

"*Series A Assessment Resolution*" and "*Series B Assessment Resolution*" mean the resolutions adopted by the Board on October 31, 2016 and February 22, 2017, levying the Series A Assessments (as hereinafter defined) against the lots in the District to be benefited by the District Improvements, and levying the Series B Assessments (as hereinafter defined) against the lots in the District benefited by the Developer Improvements , together with any amendments thereof or supplements thereto thereafter adopted by the Board.

"*Series A Assessments*" mean the assessments securing and from which the Series A Bonds are payable.

"*Series A Bonds*" means the $16,680,000 in aggregate original principal amount of Cahava Springs Revitalization District (Town of Cave Creek, Arizona) Special Assessment Bonds, Series 2017A.

"*Series B Assessments*" mean the assessments securing and from which the Series A Bonds and the Series B Bonds are payable, provided that the payment of the principal of and interest on the Series B Bonds will be on a basis subordinate to the payment of principal of and interest on the Series A Bonds, as herein provided.

"*Series B Bonds*" means the $5,000,000 in aggregate original principal amount of Cahava Springs Revitalization District (Town of Cave Creek, Arizona) Subordinate Special Assessment Bonds, Series 2017B.

"*Sinking Fund Installment*" means, with respect to the Series A Bonds, the mandatory sinking fund redemption payments, if any, due on the Bonds pursuant to Section 4.3 hereof.

"*Special Record Date*" means the date fixed by the Trustee for the payment of Defaulted Interest on any Bond, which shall be not more than fifteen (15) nor less than ten (10) days after the receipt by the Trustee of the District's notice of such proposed payment.

"*State*" means the State of Arizona.

"*Stated Maturity*", when used with respect to any Bond, means the date specified in such Bond as the fixed date on which the principal thereof is due and payable.

"*Town*" means the Town of Cave Creek, Arizona, an Arizona municipal corporation, and its successors in interest.

"*Trustee*" means the Person named as the "Trustee" in the first paragraph of this instrument until a successor Trustee has been selected pursuant to the applicable provisions of this Indenture, and thereafter "Trustee" means such successor Trustee.

"*Trust Estate*" has the meaning stated in the habendum to the Granting Clauses.

"*Underwriter*" means Piper Jaffray & Co., as the underwriter of the Bonds (pursuant to the Bond Purchase Agreement).

Section 1.2 Acts of Registered Owners.

(a) Any request, demand, authorization, direction, notice, consent, waiver, or other action provided by this Indenture to be given or taken by Registered Owners may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Registered Owners in person or by an agent duly appointed in writing, and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and conclusive in favor of the District and (subject to Section 7.1 hereof) the Trustee, if made in the manner provided in this Section.

(b) The fact and date of the execution by any Registered Owner of any such instrument or writing may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Whenever such execution is by an officer of a corporation or a member of a partnership on behalf of such corporation or partnership, such certificate or affidavit shall also constitute sufficient proof of his authority. The fact and date of execution of any such instrument or writing and the authority of any Person executing as or on behalf of any Registered Owner may also be proved in any other manner which the Trustee deems sufficient.

(c) The ownership of any Bond of a series of the Bonds shall be proved by the Bond Register for such series of the Bonds.

(d) Any request, demand, authorization, direction, notice, consent, waiver, or other action by the Registered Owner of any Bond shall bind every future Registered Owner of the same Bond and the Registered Owner of every Bond issued upon the transfer thereof or in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Trustee or the District, whether or not notation of such action is made upon such Bond.

Section 1.3 Notices, etc.

(a) Unless otherwise specifically provided herein, any request, demand, authorization, direction, notice, consent, waiver, or Act of Registered Owners or other document provided or permitted by this Indenture by any Registered Owner, the District, or the Trustee to be made upon, given, furnished or delivered to, or filed with:

(i) the Trustee shall be sufficient for every purpose hereof if made, given, furnished, delivered, or filed in writing to or with the Trustee at its principal corporate trust office or, if in writing, mailed, by first-class postage prepaid, to the Trustee addressed to it at 6001 North 24th Street, Phoenix, AZ 85016, Attention: Corporate Trust, or at such other address as may be furnished in writing by the Trustee, or

(ii) the District shall be sufficient for every purpose hereof if in writing and mailed, first-class postage prepaid, to the District addressed to it c/o Ballard Spahr LLP, 1 East Washington Street, Suite 2300, Phoenix, AZ 85004-2555, Attention: William A. Hicks III, Esq., or at such other address as may be furnished in writing by the District.

(b) Where this Indenture provides for notice to Registered Owners of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each Registered Owner affected by such event, at the address of such Registered Owner as it appears in the Bond Register for the Bonds. Neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Registered Owner shall affect the sufficiency of such notice with respect to other Registered Owners.

(c) Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Registered Owners shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Section 1.4 Form and Contents of Documents Delivered to the Trustee.

(a) Whenever several matters are required to be certified by, or, covered by an opinion of, any specified type of Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

(b) Any certificate or opinion of a Responsible Officer of the District may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or in the exercise of reasonable care should know, that such certificate or opinion or representations are erroneous. Any Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, a Responsible Officer or Responsible Officers of the District stating that the information with respect to such factual matters is in the possession of the District unless such counsel knows, or

in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to such matters are erroneous.

(c) Whenever any Person is required to make, give, or execute two or more applications, requests, consents, certificates, statements, opinions, or other instruments pursuant to this Indenture, they may, but need not, be consolidated and form one instrument.

(d) Wherever in this Indenture, in connection with any application or certificate or report to the Trustee, it is provided that the District shall deliver any document as a condition of the granting of such application, or as evidence of compliance by the District with any term hereof, it is intended that the truth and accuracy, at the time of the granting of such application or at the effective date of such certificate or report (as the case may be), of the facts and opinions stated in such document shall in such case be conditions precedent to the right of the District to have such application granted or to the sufficiency of such certificate or report.

Section 1.5 Effect of Headings and Table of Contents. The Article and Section headings herein and in the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 1.6 Successors and Assigns. All covenants and agreements in this Indenture by the District shall bind its successors and assigns, whether so expressed or not.

Section 1.7 Severability Clause. In case any provision in this Indenture or in the Bonds or any application thereof shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions and applications shall not in any way be affected or impaired thereby.

Section 1.8 Benefits of Indenture. Nothing herein or in the Bonds, express or implied, shall give to any Person, other than the parties hereto and their successors, and the Registered Owners of Outstanding Bonds, any benefit or any legal or equitable right, remedy, or claim pursuant hereto.

Section 1.9 Governing Law. This Indenture shall be construed in accordance with and governed by the laws of the State.

Section 1.10 Notice of Section 38-511 of the Arizona Revised Statutes. To the extent applicable by provision of law, the parties acknowledge that this Indenture is subject to cancellation pursuant to Section 38-511 of the Arizona Revised Statutes, the provisions of which are incorporated herein.

ARTICLE II
AUTHORIZATION AND TERMS OF THE BONDS

Section 2.1 Authorization and Terms of Bonds Generally.

(a) For the purposes set forth in the recitals, there are hereby authorized two series of bonds entitled "CAHAVA SPRINGS REVITALIZATION DISTRICT (TOWN OF CAVE CREEK ARIZONA) SPECIAL ASSESSMENT BONDS, SERIES 2017A" (the "*Series A*

Bonds") and "CAHAVA SPRINGS REVITALIZATION DISTRICT (TOWN OF CAVE CREEK ARIZONA) SUBORDINATE SPECIAL ASSESSMENT BONDS, SERIES 2017B" (the "*Series B Bonds*" and, together with the Series A Bonds, the "*Bonds*").

(b) The Bonds shall be dated the date or dates of issuance, issued in Authorized Denominations, shall contain such terms and provisions, and shall be in substantially the forms, including the Certificate of Authentication and the form of Assignment, as set forth on Exhibit A-1 and Exhibit A-2 hereto, with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Indenture, and may have such letters, numbers, or other marks of identification (including identifying CUSIP numbers) and such legends and endorsements (including any reproduction of an Opinion of Counsel) placed thereon (or attached thereto) as may be determined by the officers of the District executing such Bonds, as evidenced by their execution thereof. Any portion of the text of any Bond may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Bond. The definitive Bonds, including any Bonds issued as Book-Entry Bonds, shall be typewritten, printed, lithographed, or engraved, or produced by any combination of these methods, or in any other manner determined by the officers of the District executing such Bonds as evidenced by their execution thereof.

(c) The principal of the Bonds shall be payable upon surrender of the Bonds to the Paying Agent at the Place of Payment when due or upon redemption.

(d) Interest on any Bond which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Bond (or one or more Predecessor Bonds) is registered at the close of business on the Regular Record Date for such interest. Such interest, in the absence of other arrangements by the Registered Owners acceptable to the Paying Agent, acceptable to the Paying Agent, shall be paid by check payable to the order, and mailed on or before the Interest Payment Date to the address, of such Registered Owner as the same appears on the Bond Register as of the Regular Record Date and such payment shall be deemed to be at the Place of Payment. Additionally, payment may also be made by wire transfer to DTC, or to any other Registered Owner of Bonds in an aggregate principal amount of at least $1,000,000, upon two (2) days' prior written request delivered to the Paying Agent specifying a wire transfer address in the continental United States. Any such request for interest payments by wire transfer shall remain in effect until rescinded or changed in a writing delivered by the Registered Owner to the Paying Agent at least five (5) days prior to the next applicable Interest Payment Date. No document of any nature whatsoever need be surrendered as a condition to payment of principal of or interest on Book-Entry Bonds.

(e) Any interest on any Bond which is payable on, but is not punctually paid or duly provided for on, any Interest Payment Date (herein referred to as "*Defaulted Interest*") shall forthwith cease to be payable to the Registered Owner on the relevant Regular Record Date solely by virtue of such Registered Owner having been such Registered Owner. Such Defaulted Interest shall thereafter be paid by the District to the Persons in whose names such Bonds (or their respective Predecessor Bonds) are registered at the close of business on a Special Record Date for the payment of such portion of Defaulted Interest as may then be paid from the sources herein provided. The District shall promptly notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Bond and the date of the proposed payment

(which date shall be such as will enable the Trustee to comply with the next sentence hereof), and at the same time the District shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Registered Owners entitled to such Defaulted Interest as in this Subsection provided and not to be deemed part of the Trust Estate for purposes other than payment of Defaulted Interest on the Outstanding Bonds. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest, which shall be not more than fifteen (15) nor less than ten (10) days prior to the date of the proposed payment by the Trustee. The Trustee shall promptly notify the District of such Special Record Date and, in the name and at the expense of the District, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to each Registered Owner of a Bond of such series at the address as it appears in the Bond Register not less than ten (10) days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid to the Persons in whose names the Bonds (or their respective Predecessor Bonds) are registered on such Special Record Date.

(f) Subject to the foregoing provisions of this Section, each Bond delivered pursuant to this Indenture upon transfer of or in exchange for or in lieu of any other Bond shall carry all the rights to interest accrued and unpaid, and to accrue, which were carried by such Predecessor Bond and each such Bond shall bear interest from such date that neither gain nor loss in interest shall result from such transfer, exchange, or substitution.

Section 2.2 Execution, Authentication, Delivery and Dating.

(a) The Bonds shall be executed on behalf of the District by the Chairman or Vice Chairman of the Board and attested by the District Clerk. The signature of any of these officers on the Bonds may be affixed manually or by facsimile. Bonds bearing the manual or facsimile signatures of individuals who were at the time the proper officers of the District shall be valid and binding on the District, notwithstanding that such individuals or any of them shall cease to hold such offices prior to the authentication and delivery of such Bonds or shall not hold such offices at the date of issuance of such Bonds.

(b) At any time and from time to time after the execution and delivery of this Indenture, the District may deliver Bonds executed by the District to the Trustee for authentication, and the Trustee shall authenticate and deliver such Bonds as directed by the District in accordance with this Indenture.

(c) No Bond shall be entitled to any right or benefit pursuant to this Indenture, or be valid or obligatory for any purpose, unless there appears on such Bond a Certificate of Authentication substantially in the form shown on Exhibit A-1 or Exhibit A-2 hereto, as the case may be, executed by the Trustee by manual signature, and such certificate upon any Bond shall be conclusive evidence, and the only evidence, that such Bond has been duly authenticated and delivered.

(d) All Bonds authenticated and delivered by the Trustee pursuant hereto shall be dated the date of their authentication.

Section 2.3 Registration, Transfer and Exchange.

(a) The District shall cause to be kept at the Place of Payment a register (herein referred to as the "*Bond Register*") for each series of the Bonds in which, subject to such reasonable regulations as it may prescribe, the District shall provide for the registration of the Bonds and registration of transfers of Bonds as herein provided.

(b) Upon surrender for transfer of any Bond to the Trustee, subject to the provisions of subsections (g), (h) and (i) hereof, the District shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new fully-registered Bonds, of any Authorized Denominations, and of a like aggregate principal amount as requested by the transferor.

(c) At the option of the Registered Owner, and subject to subsection (g) hereof, Bonds may be exchanged for other Bonds, of Authorized Denominations, and of like aggregate principal amount, upon surrender of the Bonds to the Trustee. Whenever any Bonds are so surrendered for exchange, the District shall execute, and the Trustee shall authenticate and deliver, the Bonds which the Registered Owner of such Bonds making the exchange is entitled to receive.

(d) All Bonds issued and authenticated upon any transfer or exchange of Bonds shall be the valid obligations of the District, evidencing the same debt, and entitled to the same security and benefits pursuant hereto and pursuant to the Series A Assessment Resolution or the Series B Assessment Resolution, as applicable, as the Predecessor Bonds surrendered in connection with such transfer or exchange.

(e) Every Bond presented or surrendered for transfer or exchange shall be duly endorsed (if so required by the Trustee), or be accompanied by a written instrument of transfer in form satisfactory to the Trustee duly executed by the Registered Owner thereof or his attorney duly authorized in writing.

(f) The Trustee may require payment of a sum sufficient to cover any tax or other charges that may be imposed in connection with any transfer or exchange of Bonds.

(g) Notwithstanding the foregoing, neither the District nor the Trustee shall be required (1) to issue, transfer, or exchange any Bond during the period beginning on the Business Day which is at least fifteen (15) days before the day of the first mailing of a notice of redemption of Bonds pursuant to Section 4.6 hereof and ending at the close of business on the Business Day of such mailing or (2) thereafter to transfer or exchange any Bond to be redeemed in whole or in part pursuant to such notice.

(h) Notwithstanding the foregoing, prior to either (i) the District being informed that the Series A Bonds have received one of the four highest investment grade ratings from any Rating Agency, and written approval of the Board, or (ii) the defeasance of the Series A Bonds pursuant to the terms in Article V hereof, Series A Bonds or beneficial interests therein

may be issued, sold or transferred only in Authorized Denominations to Qualified Investors. Initial purchasers of the Series A Bonds from the Underwriter will be required to execute and deliver to the District an investor letter in substantially the form attached hereto as Exhibit B.

Thereafter, in the event a Beneficial Owner of a Series A Bond breaches any material representation or agreement contained in such investor letter in connection with any requested transfer, or a proposed transferee of a Series A Bond misrepresents any material information in connection with a requested transfer, the Trustee, upon receipt of actual knowledge of any such breach or misrepresentation, will not register such transfer, or be deemed to have registered such transfer, in the Book-Entry system, or, if such transfer has been registered, or deemed registered in the Book-Entry system, such transfer shall be null and void *ab initio* and shall vest no rights whatsoever in the purported transferee (a "*Disqualified Transferee*") and the last preceding Beneficial Owner, as applicable, of such Series A Bond that was not a Disqualified Transferee will be restored, and entitled, to all rights as a Beneficial Owner of such Series A Bond retroactive to the date of such purported transfer.

(i) Notwithstanding the foregoing, Series B Bonds are not transferrable except to an affiliate of the Developer, without the prior written consent of the District, an opinion of counsel acceptable to the District and the Trustee substantially to the effect that such transfer will not violate the securities registration laws of the United States or of the State and receipt by the Trustee on behalf of the District of an executed investor letter from the proposed transferee in substantially the form attached as Exhibit B, with appropriate variations.

Section 2.4 Mutilated, Destroyed, Lost and Stolen Bonds.

(a) If (1) any mutilated Bond is surrendered to the Trustee, or the Trustee receives evidence to its satisfaction of the destruction, loss, or theft of any Bond, and (2) there is delivered to the Trustee such security or indemnity as may be required by it to save each of the District and Trustee harmless, then, in the absence of notice to the District or the Trustee that such Bond has been acquired by a *bona fide* purchaser, the District shall execute and, upon a request of the Chairman or Vice Chairman of the District, the Trustee shall authenticate and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost, or stolen Bond, a new Bond of the same series and of like tenor and aggregate principal amount bearing a number not contemporaneously outstanding, provided, however, in case any such mutilated, destroyed, lost, or stolen Bond has become or is about to become due and payable, the District or the Trustee in its discretion may pay such Bond instead of issuing a new Bond. If, after the delivery of such new Bond or payment, a *bona fide* purchaser of the original Bond in lieu of which such new Bond was issued or payment made presents for payment such original Bond, the District and the Trustee shall be entitled to recover such new Bond or payment from the Person to whom it was delivered or to whom payment was made or any Person taking therefrom, except a *bona fide* purchaser, and shall be entitled to recover upon the security or indemnity provided therefor to the extent of any loss, damage, cost, or expenses incurred by the District or the Trustee in connection therewith.

(b) Upon the issuance and delivery of any new Bond pursuant to this Section, the District or the Trustee may require the payment of a sum sufficient to cover any tax or other charges that may be imposed in relation thereto and any other expenses connected therewith.

(c) Every new Bond issued pursuant to this Indenture in lieu of any mutilated, destroyed, lost, or stolen Bond shall constitute an original additional contractual obligation of the District, whether or not the mutilated, destroyed, lost, or stolen Bond shall be at any time enforceable by anyone, and shall be entitled to all the benefits of the Assessment Resolutions authorizing the Bonds and of this Indenture equally and ratably with all other Outstanding Bonds.

(d) The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement and payment of mutilated, destroyed, lost, or stolen Bonds.

Section 2.5 The Series A Bonds.

(a) The aggregate principal amount of Series A Bonds which may be authenticated, delivered and Outstanding pursuant hereto is limited to $16,680,000, and the Stated Maturity, the principal amount thereof maturing thereon, and the rate of interest per annum borne by the Series A Bonds shall be as follows:

STATED MATURITY (July 1)	PRINCIPAL AMOUNT	INTEREST RATE
2041	$16,680,000	7.00%

(b) The Series A Bonds shall bear interest, calculated on the basis of a 360-day year of twelve 30-day months, from and including the later of the date of issuance or the most recent Interest Payment Date to which interest has been paid or duly provided for, payable on each January 1 and July 1, commencing July 1, 2017 (each an "*Interest Payment Date*").

(c) Book-Entry Bonds. The Series A Bonds shall be initially issued in the form of a single fully-registered Bond for each maturity. Upon initial issuance, authentication, registration and delivery, the ownership of such Bonds shall be registered in the name of Cede & Co., as nominee of DTC, and, except as hereinafter otherwise provided, all of the Outstanding Bonds shall be registered in the name of Cede & Co., as nominee of DTC. Either the Chairman or Vice Chairman of the District is authorized to execute a letter of representation or such other documents as may be necessary for the District to participate in the DTC Program. The letter of representation shall not be deemed to amend, supersede or supplement the terms of this Indenture, which are intended to be complete without reference to the letter of representation. In the event of any conflict between the terms of the letter of representation and the terms of this Indenture, the terms of the Indenture will control. With respect to Series A Bonds registered in the name of Cede & Co., as nominee of DTC, the Trustee shall have no responsibility or obligation to any DTC Participant or to any Beneficial Owner, nor any responsibility or obligation to any DTC Participant, any Beneficial Owner or any other person claiming a beneficial ownership interest in the Series A Bonds under or through DTC or any DTC Participant, or any other person with respect to (i) the accuracy of any records maintained by DTC or any DTC Participant, (ii) the payment by DTC or any DTC Participant of any amount in respect of the Series A Bonds, (iii) the giving of any notice that is permitted or required to be

given to Registered Owners of the Series A Bonds pursuant to this Indenture, or (iv) any consent given or other action taken by DTC as a Registered Owner of the Series A Bonds.

Notwithstanding any other provision of this Indenture to the contrary, the Trustee shall be entitled to treat and consider the person in whose name each Series A Bond is registered in the Bond Register as an absolute owner of such Series A Bond for all purposes whatsoever, including for the purpose of payment, for the purpose of giving notice of redemption with respect to any Series A Bond, and for the purpose of registering transfers with respect to such Series A Bond. The Trustee shall pay all principal of and interest on any Series A Bond only to or upon the order of the respective Registered Owners, as shown in the Bond Register, as provided in this Indenture, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the obligations of the District with respect to payment of principal and interest evidenced by the Series A Bonds to the extent of the sum or sums so paid. Notwithstanding anything herein to the contrary, no document of any nature whatsoever need be surrendered as a condition of payment for Book-Entry Bonds. No person other than a Registered Owner, as shown in the Bond Register, shall receive a Series A Bond evidencing the District's obligation to make payments of principal and interest pursuant to this Indenture.

Notwithstanding any other provision of this Indenture or the Series A Bonds, so long as the Series A Bonds are held in book-entry only form and registered in the name of Cede & Co., as nominee or DTC, or registered in the name of any successor securities depository, or its nominee, presentation of Series A Bonds to the Paying Agent at their scheduled maturity or any earlier redemption dates prior thereto shall be deemed made to the Paying Agent when the right to exercise ownership rights in the Series A Bonds through DTC or a DTC Participant is transferred by DTC on its books.

The Registered Owners have no right to a depository for the Series A Bonds. The District or the Trustee may remove DTC or any successor thereto for any reason at any time. In such event, the District shall (i) appoint a successor securities depository qualified to act as such pursuant to the provisions of Section 17(i) of the Securities Exchange Act of 1934, as amended, notify DTC of the appointment of such successor securities depository and transfer one or more separate Series A Bonds to such successor securities depository, or (ii) notify DTC of the availability through DTC of Series A Bonds and transfer one or more separate Series A Bonds to DTC Participants having Series A Bonds credited to their DTC accounts as directed by DTC. In such event, the Series A Bonds shall no longer be restricted to being registered in the Bond Register in the name of Cede & Co., as nominee of DTC, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names the DTC Participants receiving Series A Bonds shall designate, in accordance with the provisions of this Indenture.

DTC may exercise the rights of a Registered Owner only in accordance with the terms hereof applicable to the exercise of such rights.

(d) Forthwith upon the execution and delivery of this Indenture, the District shall deliver the Series A Bonds, executed by the District, to the Trustee and the Trustee shall

thereupon authenticate and deliver the Series A Bonds to the Underwriter in the principal amounts designated in writing to the Trustee upon receipt by the Trustee of:

(i) the Series A Assessment Resolution levying the Series A Assessments against the lots in the District to be benefitted by the District Improvements; and

(ii) the Authorizing Resolution, duly and validly adopted by the Board, authorizing the execution and delivery of this Indenture and the authentication and delivery of the Series A Bonds; and

(iii) a fully executed counterpart of the Bond Purchase Agreement, together with the purchase price for the Series A Bonds specified therein; and

(iv) an executed copy of the Qualified Investor Letter in substantially the form set forth as Exhibit B hereto from each purchaser of the Series A Bonds.

Section 2.6 The Series B Bonds

(a) The Series B Bonds will be issued to the Developer pursuant to the Development Agreement in exchange for the Developer Improvements previously acquired and constructed by or on behalf of the Developer, and may be issued only upon satisfaction of the requirements set forth in this Section 2.6. Repayment of the Series B Bonds shall be subordinate to repayment of the Series A Bonds, as provided in Section 3.5 hereof.

(b) The aggregate principal amount of the Series B Bonds which may be authenticated, delivered and Outstanding pursuant hereto is limited to $5,000,000. The Series B Bonds shall be issued, in installments, on July 1 of each year, in the respective principal amounts equal to the aggregate Series B assessments levied on lots in the District which have been purchased by Persons not affiliated with the Developer subsequent to the preceding July 1 and that remain unpaid as of such date. Each issue of Series B Bonds will mature over a term of twenty-five (25) years from its date of issuance in twenty-five (25) substantially equal installments of principal and interest, payable on each August 1, commencing on August 1 of the Fiscal Year subsequent to the Fiscal Year in which such installment of Series B Bonds is issued.

(c) The Series B Bonds shall bear interest, calculated on the basis of a 360-day year of twelve 30-day months, from and including the later of the date of issuance or the most recent Interest Payment Date to which interest has been paid or duly provided for, payable on each August 1, commencing on the August 1 of the Fiscal Year subsequent to the Fiscal Year in which such Series B Bonds are issued, at the rate of seven percent (7.00%) per annum. Notwithstanding the foregoing, it shall not be a default or an Event of Default for the purposes of this Indenture if the District lacks sufficient funds to pay interest due on the Series B Bonds on any Interest Payment Date. Interest with respect to Series B Bonds which is not paid when due shall be paid on the first Interest Payment Date for the Series B Bonds on which there are sufficient moneys in the Series B Account of the Bond Fund for such purpose.

(d) On or as of July 1 of each year, provided the none of the Landowners is then in default with respect to the payment of any Assessments or *ad valorem* taxes then due and owing with respect to their property in the District, the District shall cause to be prepared,

executed and delivered to the Trustee Series B Bonds in a principal amount equal to the aggregate Series B assessments levied on lots in the District that have been purchased by Persons unaffiliated with the Landowners subsequent to the preceding July 1, and that remain unpaid as of such date, together with, if not previously delivered to the Trustee, an executed counterpart of the Series B Assessment Resolution levying the Series B Assessments against the lots in the District benefitted by the Developer Improvements, and the Trustee shall thereupon authenticate, register and deliver the Series B Bonds to the Developer pursuant to this Indenture.

Section 2.7 Cancellation. All Bonds purchased or surrendered to the Trustee for payment, redemption, transfer, exchange, replacement, conversion or cancellation shall be promptly canceled and, if surrendered to the District or any Paying Agent, shall be delivered to the Trustee and, if not already canceled, shall be promptly canceled by the Trustee. The District may at any time deliver to the Trustee for cancellation any Bonds previously certificated, authenticated and delivered which the District may have acquired in any manner whatsoever, and all Bonds so delivered shall be promptly canceled by the Trustee. No Bond shall be authenticated in lieu of or in exchange for any Bond canceled as provided in this Section, except as expressly provided by this Indenture.

Section 2.8 Persons Deemed Owners. The District, the Trustee, and their agents may treat the Person in whose name any Bond is registered as the owner of such Bond for the purpose of receiving payment of the principal of and interest on such Bond, as provided herein and for all other purposes whatsoever, whether or not such Bond be overdue, and, to the extent permitted by law, none of the District, the Trustee, and any such agent shall be affected by notice to the contrary.

Section 2.9 Security Instruments.

(a) In connection with the issuance of the Bonds, the Landowners have executed and delivered the Collateral Assignment and the Deed of Trust with respect to all assessed lots in the District.

(b) Lots comprising or within a particular Phase will be released from the Deed of Trust, pursuant to the terms thereof, and the Trustee shall execute such documents and take such steps as may be necessary, without further consideration or direction by the District, to effect the release of such lots from the Deed of Trust, upon the Trustee's receipt of:

(i) a certificate of the District Engineer stating that all in-tract improvements for that particular Phase have been completed in accordance with the plans and specifications thereto, together with satisfactory evidence that the Town has accepted the in-tract improvements in such Phase for maintenance; and

(ii) evidence that such lot(s) has (have) been sold to (A) a *bona fide* homebuyer, (B) a homebuilder listed on Exhibit D hereto or whose shares are publicly traded on any national stock exchange, (C) a purchaser of all of the lots in a single Phase who has deposited with the Trustee, or otherwise, in escrow cash in an amount sufficient to pay the costs of construction of the in-tract improvements for such Phase as certified by the District Engineer, or (D) a purchaser who prepays all Assessments with respect to the lots purchased.

(c) Upon release from the Deed of Trust as described in this Section 2.9(b), such lots will no longer constitute part of the Trust Estate.

ARTICLE III
FUNDS AND ACCOUNTS

Section 3.1 Funds and Accounts. There are hereby established with the Trustee the following funds and accounts:

(a) The Acquisition and Construction Fund, and therein a Public Infrastructure Account and a Phase 1 Account;

(b) The Assessment Fund;

(c) The Bond Fund, and therein a Series A Account, a Series B Account, a Redemption Account and a Capitalized Interest Account;

(d) The Costs of Issuance Fund;

(e) The Reserve Fund; and

(f) The Rebate Fund.

Section 3.2 Acquisition and Construction Fund.

(a) There is hereby established by the District with the Trustee a special fund of the District designated its "District Special Assessment Bonds, Series 2017 Acquisition and Construction Fund" (the "*Acquisition and Construction Fund*"), and therein a Public Infrastructure Account, to be used to finance the District Improvements, and a separate Phase 1 Account, to be used to finance the Phase 1 Improvements. Concurrently with the issuance and delivery of the Series A Bonds, $12,781,000 of the proceeds from the sale of the Series A Bonds shall be deposited in the Public Infrastructure Account of the Acquisition and Construction Fund and $2,000,000, constituting the Developer Funds, shall be deposited in the Phase 1 Account of the Acquisition and Construction Fund. The money deposited to the accounts of the Acquisition and Construction Fund, together with all investments thereof and income and gain therefrom, shall be held in trust by the Trustee and shall be disbursed solely as provided in Section 3.3 hereof.

Section 3.3 Application of Acquisition and Construction Fund.

(a) Moneys in the Public Infrastructure Account and the Phase 1 Account of the Acquisition and Construction Fund shall be disbursed from time to time to pay the Costs of Acquisition and Construction of the District Improvements and the Phase 1 Improvements, as applicable, in the amounts and to the persons set forth in a Disbursement Request signed by the Chairman or Vice Chairman of the Board, stating (a) the name and address of the Person to whom the payment is to be made (who may be the District, the Developer or any other Person, if the District, the Developer or any such other Person is to be reimbursed in accordance with the budget included as part of the Disbursement Request for supplies purchased and stored, advances

previously made or work already done by it and properly chargeable against the applicable account of the Acquisition and Construction Fund) (collectively, the "*Reimbursed Person*"); (b) the amount to be paid; (c) the obligation on account of which the payment is to be made; (d) that the obligation was properly incurred and is a proper charge against the Public Infrastructure Account or Phase 1 Account, as applicable; (e) that the amount requisitioned is due and unpaid or owing to the Reimbursed Person; (f) that with respect to items covered in the requisition, there are no vendors' liens, mechanics' liens, or other liens, bailment leases or conditional sale contracts which must be satisfied or discharged before the payments as requisitioned therein are made, or which will not be discharged by such payment and (g), in the case of a disbursement from the Public Infrastructure Account, that subsequent to such disbursement there are sufficient funds remaining in the Public Infrastructure Account to complete the District Improvements. The Disbursement Request shall be in substantially the form of Exhibit C hereto and, in the case of disbursements from the Public Infrastructure Account, shall be approved by the District Engineer. Absent agreement to the contrary with the District or the Developer, as the case may be, the Trustee shall disburse payments from the Acquisition and Construction Fund within five (5) calendar days following receipt of a properly completed and executed Disbursement Request.

(b) Upon completion of the District Improvements and payment of all costs and expenses incident thereto, any balance remaining in the Public Infrastructure Account of the Acquisition and Construction Fund shall be transferred to the Series A Account of the Bond Fund and applied to the next ensuing payments of interest or the Redemption Price of Series A Bonds.

(c) Upon completion of the Phase 1 Improvements and payment of all costs and expenses incident thereto, and provided that no Event of Default has occurred and is continuing, any balance remaining in the Phase 1 Account of the Acquisition and Construction Fund shall be returned to the Developer or its order upon receipt by the Trustee of a certificate signed by the District Engineer and the Chairman of the Board substantially to the effect that the District Improvements have been completed or that there are sufficient moneys in the Public Infrastructure Account to complete the District Improvements. If an Event of Default has occurred and is continuing or in the absence of such certification, moneys remaining in the Phase 1 Account upon completion of the Phase 1 Improvements shall be transferred to the Public Infrastructure Account in an amount sufficient to cause the Public infrastructure Account to contain sufficient moneys, in the judgment of the District Engineer, to complete the District Improvements.

Section 3.4 Assessment Fund. There is hereby established by the District with the Trustee a special fund of the District designated its "District Special Assessment Bonds, Series 2017 Assessment Fund" (the "*Assessment Fund*"). Money deposited in the Assessment Fund, together with all investments thereof and income and gain therefrom, shall be held in trust by the Trustee and applied solely as provided in Section 3.5 hereof.

Section 3.5 Deposits to and Application of Assessment Fund. Except for prepayments of the Series B Assessments for which Series B Bonds have not been and will not be issued, which prepayments will be paid directly by the District to the Landowners, or their order, all payments of Assessments received and collected by the District pursuant to the Assessment Resolution, including prepayments of Assessments with respect to which Series A Bonds and

Series B Bonds have been issued, and Assessments received from the foreclosure sale of delinquent properties, shall be delivered to the Trustee and deposited upon receipt in the Assessment Fund. Moneys deposited in the Assessment Fund shall thereafter be transferred by the Trustee to the following funds and accounts in the following order of priority:

(a) *First*, all prepayments of Series A Assessments and all prepayments of Series B Assessments for which Series B Bonds have been issued, including applicable prepayment premiums, if any, shall be transferred upon receipt to the Redemption Account of the Bond Fund and used, first, to redeem Series A Bonds and, second, after all Series A Bonds have been paid or provided for, to redeem Series B Bonds, in accordance with the provisions of Section 4.2 hereof.

(b) *Second*, amounts received in respect of Series A Assessments and Series B Assessments from the foreclosure sale of delinquent property shall be transferred upon receipt to the Reserve Fund, in an amount necessary to restore the Reserve Fund to the Reserve Fund Requirement and any remaining amounts from foreclosure sales of delinquent property shall be deposited in the Redemption Account of the Bond Fund and used, first, to redeem Series A Bonds and, after all Series A Bonds have been paid or provided for, to redeem Series B Bonds, in accordance with the provisions of Section 4.2 hereof.

(c) *Third*, on or before each June 20th, commencing June 20, 2018, any amount required to be deposited in the Rebate Fund pursuant to the provisions of Section 3.13 hereof shall be transferred from the Assessment Fund to the Rebate Fund.

(d) *Fourth*, on or before each June 20th, commencing June 20, 2018, moneys in the Assessment Fund shall be used to pay any fees and expenses of the Trustee then due and payable.

(e) *Fifth*, on or before December 20th of each year and June 20th of the succeeding year, commencing December 20, 2017, any amount necessary, in addition to amounts on deposit in the Series A Account of the Bond Fund and any amount to be transferred from the Capitalized Interest Account of the Bond Fund to the Series A Account of the Bond Fund, to pay scheduled interest on the Series A Bonds on the immediately succeeding Interest Payment Date shall be transferred to the Series A Account of the Bond Fund and used to pay such interest when due.

(f) *Sixth*, on or before each June 20th, commencing June 20, 2019, an amount sufficient to pay any scheduled mandatory sinking fund payment due in accordance with Section 4.3 hereof in respect of the Series A Bonds on the immediately succeeding July 1st shall be transferred to the Series A Account of the Bond Fund and used, together with any funds transferred from the Reserve Fund, to make such payment.

(g) *Seventh*, on or before each June 20th, commencing June 20, 2018, any amount needed to cause the Reserve Fund to contain the Reserve Fund Requirement shall be transferred to the Reserve Fund.

(h) *Eighth*, on or before July 20th of each year, commencing on the July 20th of the Fiscal Year next following the Fiscal Year in which any Series B Bonds are issued, an

amount sufficient to pay scheduled interest on all Outstanding Series B Bonds on the immediately succeeding Interest Payment Date with respect to the Series B Bonds shall be transferred to the Series B Account of the Bond Fund and used to pay such interest.

(i) *Ninth*, on or before each July 20th, commencing on the July 20th of the Fiscal Year next following the Fiscal Year in which any Series B Bonds are issued, any balance remaining in the Assessment Fund following the transfers provided above shall be transferred to the Redemption Account of the Bond Fund and used, to the extent possible, to redeem Series B Bonds in accordance with the provisions of Section 4.2 hereof, including the payment of all accrued but unpaid interest.

Section 3.6 Bond Fund. There is hereby established by the District with the Trustee a special fund of the District designated its "District Special Assessment Bonds, Series 2017 Bond Fund" (the "*Bond Fund*"), and therein a Series A Account, a Series B Account, a Capitalized Interest Account and a Redemption Account. The money deposited to the Bond Fund, together with all investments thereof and income and gain therefrom, shall be held in trust by the Trustee and applied solely as provided in Section 3.7 hereof.

Section 3.7 Deposits to and Application of Bond Fund.

(a) $1,556,800 of the proceeds from the sale of the Series A Bonds shall be deposited to the Capitalized Interest Account of the Bond Fund. Moneys shall be transferred from the Capitalized Interest Account of the Bond Fund to the Series A Account of the Bond Fund on each December 20th and June 20th, commencing on June 20, 2017, in an amount sufficient to pay the interest due on the Series A Bonds on the immediately succeeding Interest Payment Date, until the Capitalized Interest Account is depleted.

(b) Moneys shall be deposited in the Series A Account of the Bond Fund from the sources described in Section 3.3, subsection (b), Section 3.5, subsections (f) and (g), Section 3.9, and Section 3.11 hereof and shall be applied solely to pay mandatory sinking fund payments and interest on the Series A Bonds when due on each Interest Payment Date and at maturity or earlier redemption.

(c) Moneys shall be deposited in the Series B Account of the Bond Fund from the source described in subsections (i) of Section 3.5 hereof and shall be applied solely to pay interest on the Series B Bonds when due on each Interest Payment Date and at maturity or earlier redemption.

(d) Moneys shall be deposited to the Redemption Account of the Bond Fund as provided in subsections (a), (b) and (i) of Section 3.5 and subsections (c), (d) and (e) of Section 3.11 hereof and shall be used solely to redeem Series A Bonds and Series B Bonds, as the case may be.

(e) Moneys received by the Trustee accompanied by directions from the Person depositing such moneys that such moneys are to be deposited into one or more accounts of the Bond Fund shall be deposited accordingly.

(f) The District hereby authorizes and directs the Trustee to withdraw sufficient moneys from the appropriate accounts of the Bond Fund to pay principal of and interest on the Bonds as the same become due and payable at maturity or upon earlier redemption and, if a Paying Agent has been appointed, to make said moneys so withdrawn available to the Paying Agent for such purpose.

Section 3.8 Costs of Issuance Fund. There is hereby established by the District with the Trustee a special fund of the District designated its "District Special Assessment Bonds, Series 2017 Costs of Issuance Fund" (the "*Costs of Issuance Fund*"). $462,320 of the proceeds from the sale of the Series A Bonds shall be deposited to the Costs of Issuance Fund. The money deposited to the Costs of Issuance Fund, together with all investments thereof and income and gain therefrom, shall be held in trust by the Trustee and applied solely as provided in Section 3.9 hereof.

Section 3.9 Deposits to and Application of Costs of Issuance Fund. Upon receipt of a Disbursement Request in substantially the form of Exhibit C attached hereto, amounts on deposit in the Costs of Issuance Fund shall be applied to pay Costs of Issuance of the Series A Bonds as identified in the Disbursement Request. On September 1, 2017, the Trustee shall transfer any moneys remaining in the Costs of Issuance Fund, first, to the Rebate Fund to the extent required and directed by the District and, second, to the Series A Account of the Bond Fund to be applied to the next ensuing payment of interest on the Series A Bonds.

Section 3.10 Reserve Fund. There is hereby established by the District with the Trustee a special fund of the District designated its "District Special Assessment Bonds, Series 2017A Debt Service Reserve Fund" (the "*Reserve Fund*"). $1,485,500 of the proceeds from the sale of the Series A Bonds shall be deposited to the Reserve Fund. The money deposited to the Reserve Fund, together with all investments thereof and income and gain therefrom, shall be held in trust by the Trustee and applied solely as provided in Section 3.11 hereof.

Section 3.11 Deposits to and Application of Reserve Fund.

(a) On, or, if either day is not a Business Day, on the Business Day before, December 20th and June 20th of each year, commencing on June 20, 2017, the Trustee shall, to the extent there are insufficient moneys in the Series A Account of the Bond Fund to pay the interest and any mandatory sinking fund payment due on the Series A Bonds on the succeeding January 1st or July 1st, as the case may be, transfer from the Reserve Fund to the Series A Account of the Bond Fund, after any transfer pursuant to Section 3.7(a) hereof, an amount necessary to cause the amount in the Series A Account of the Bond Fund to contain sufficient moneys to pay the interest and any Redemption Price due on the Series A Bonds on the immediately succeeding January 1st or July 1st, as the case may be.

(b) Amounts recovered by exercise of any of the remedies provided in the Series A Assessment Resolution from delinquent Assessments with respect to the Series A Bonds shall be deposited in the Reserve Fund as provided in subsection (b) of Section 3.5 hereof. Moneys otherwise available in the Assessment Fund shall be deposited in the Reserve Fund as provided in subsection (g) of Section 3.5 hereof.

(c) Except to the extent moneys have been drawn on the Reserve Fund pursuant to subsection (a) hereof, the Reserve Fund shall at all times be maintained in an amount not less than the Reserve Fund Requirement. Moneys at any time on deposit in the Reserve Fund in excess of the Reserve Fund Requirement shall, on June 20th of each year, commencing on June 20, 2018, be transferred to the Redemption Account of the Bond Fund and used to redeem Series A Bonds and Series B Bonds in accordance with Section 4.2 hereof.

(d) Notwithstanding anything herein to the contrary, in the event that subsequent to the issuance of the Series A Bonds, the District receives a prepayment of a Series A Assessment in full with respect to a parcel of real property in the District (a "*Prepaid Parcel*"), it shall deliver such prepayment together with written notice thereof to the Trustee and instruct the Trustee to transfer moneys from the Reserve Fund to the Redemption Account of the Bond Fund in an amount equal to that Prepaid Parcel's *pro rata* share of the Reserve Fund Requirement (taking into account any outstanding delinquencies with respect to the Prepaid Parcel). The Series A Assessment prepaid, together with the moneys transferred from the Reserve Fund, shall be used by the Trustee to redeem Series A Bonds as provided in Section 4.2 hereof.

(e) Following final payment or provision for payment of the Outstanding Series A Bonds, moneys remaining in the Reserve Fund shall be transferred to the Redemption Account of the Bond Fund and used, to the extent possible, to redeem Series B Bonds then Outstanding.

Section 3.12 Rebate Fund. There is hereby established by the District with the Trustee a special fund of the District designated its "District Special Assessment Bonds, Series 2017 Rebate Fund" (the "*Rebate Fund*"). The money deposited to the Rebate Fund, together with all investments thereof and income and gain therefrom, shall be held in trust by the Trustee and applied solely as provided in Section 3.13 hereof.

Section 3.13 Deposits to and Application of Rebate Fund. The District may direct the Trustee in writing from time to time to set aside funds (up to the amount the District reasonably anticipates is necessary to make any payments required pursuant to Section 148(f) of the Code) from the Assessment Fund, as provided in subsection (d) of Section 3.5 hereof, for deposit in the Rebate Fund. The District may direct the Trustee in writing to withdraw funds (including directing the Trustee to make payments to the United States of America) from the Rebate Fund at such times and in such amounts as the District may determine from time to time is required to comply with the provisions of Section 148(f) of the Code. After any final payment with respect to any series of the Bonds has been made to the United States of America pursuant to Section 148(f) of the Code, and upon written order of the District, together with a certification of the officer of the District executing such order to the effect that such final payment has been made, any moneys remaining in the Rebate Fund shall, at the written direction of the District, be remitted to the then-current owners of the assessed property *pro rata* according to the amounts paid by each with respect to the original Series A Assessments. Notwithstanding any other provision hereof, moneys in the Rebate Fund shall not constitute part of the Trust Estate.

Section 3.14 Investment of and Security for Funds.

(a) Money held for the credit of the Bond Fund and the Reserve Fund shall, as nearly as practicable, be continuously invested and reinvested by the Trustee in Governmental Obligations.

(b) Money held for the credit of the Acquisition and Construction Fund, the Assessment Fund, the Costs of Issuance Fund and the Rebate Fund shall, as nearly as practicable, be continuously invested and reinvested by the Trustee in Permitted Investments as directed in an Officer's Certificate.

(c) The Trustee shall sell or present for redemption any obligations so purchased as an investment pursuant hereto whenever it shall be necessary to do so in order to provide money to make any payment or transfer of money required hereby. Investments shall mature, or shall be subject to redemption by the owner thereof at the option of such owner without penalty, not later than the respective dates when such money is expected to be required for the purpose intended. Obligations so purchased as an investment of any money credited to any fund established pursuant hereto shall be deemed at all times to be a part of such fund. Other than income and gain credited to the Reserve Fund, which shall be applied pursuant to subsection (c) of Section 3.11 hereof, income accruing on obligations so purchased and any gain realized from such investments shall be credited to such fund and any losses resulting from such investment shall be charged to such fund.

(d) All money held by the Trustee pursuant hereto shall be continuously secured in the manner and to the fullest extent then required by any applicable State or Federal laws and regulations regarding the security for, or granting a preference in the case of, the deposit of trust funds. The Trustee may make any investment permitted by this Indenture through or with its own commercial banking or investment departments. The Trustee shall not be liable for any loss resulting from any such investment excepting only such losses as may have resulted from its own negligence or willful misconduct.

(e) All investments in the funds and accounts established pursuant to this Indenture shall be valued at fair market value by the Trustee.

(f) Except as otherwise expressly provided herein, any amounts remaining in the funds or accounts established hereby after payment in full (or provision for such payment) of the Bonds, the fees and expenses of the Trustee, the annual fees and all other amounts required to be paid pursuant hereto (including payments into the Rebate Fund and to the United States of America) will be paid to or at the direction of the District, and the District shall record a release and satisfaction of any unpaid balances of the Assessments (which are not then delinquent) in the public records of Maricopa County, Arizona.

ARTICLE IV
REDEMPTION OF BONDS

Section 4.1 Optional Redemption. The Series A Bonds are not subject to call for redemption at the option of the District prior to July 1, 2027. Thereafter, Series A Bonds are subject to call for redemption prior to maturity, at the option of the District, on any January 1st or

July 1st, in whole or in part, in Authorized Denominations, by the payment of the principal amount of each Bond called for redemption plus accrued interest to the date fixed for redemption, but without premium. The Series B Bonds are subject to call for redemption (i) in whole at any time at the option of the District in connection with a refunding of the Series B Bonds which results in reduction of the Series B Assessments or (ii) in whole or in part on any Interest Payment Date following payment in full of the Series A Bonds or provision for payment in full of the Series A Bonds in accordance with Section 5.1 hereof, by payment of the principal amount of each Series B Bond called for redemption plus accrued and unpaid interest to the date fixed for redemption, but without premium.

Section 4.2 Extraordinary Mandatory Redemption. The Series A Bonds are subject to extraordinary mandatory redemption, in whole or in part, in Authorized Denominations, on any Interest Payment Date determined by the District, from moneys deposited in the Redemption Account of the Bond Fund pursuant to the provisions of subsections (a) and (b) of Section 3.5 and Section 3.11(c) and (d) hereof by the payment of the principal amount of each such Series A Bond called for redemption plus accrued and unpaid interest to the date of redemption, but without premium. The Series B Bonds are subject to extraordinary mandatory redemption, in whole or in part, in Authorized Denominations, on any Interest Payment Date determined by the District, from moneys deposited in the Redemption Account of the Bond Fund pursuant to the provisions of subsections (a), (b) and (i) of Section 3.5 and subsection (e) of Section 3.11 hereof by the payment of the principal amount of each such Series B Bond called for redemption plus accrued interest to the date of redemption, but without premium.

Section 4.3 Mandatory Redemption from Sinking Fund Installments. The Series A Bonds maturing on July 1, 2041 are subject to mandatory sinking fund redemption at a Redemption Price equal to the principal amount of the Series A Bonds to be redeemed, plus accrued interest to the redemption date, but without premium, on July 1st in each of the years and in the amounts as follows:

Year (July 1)	Principal Amount	Year (July 1)	Principal Amount
2019	$ 310,000	2031	$ 700.000
2020	330,000	2032	750,000
2021	360,000	2033	810,000
2022	380,000	2034	860,000
2023	410,000	2035	920,000
2024	440,000	2036	990,000
2025	470,000	2037	1,060,000
2026	500,000	2038	1,130,000
2027	540,000	2039	1,210,000
2028	570,000	2040	1,290,000

2029	610,000	2041	1,380,000
2030	660,000		

*final maturity

Whenever Series A Bonds subject to mandatory sinking fund redemption are delivered to the Trustee for cancellation, the principal amount of the Series A Bonds of any Stated Maturity so retired shall satisfy and, to the extent practicable, be credited against the mandatory redemption requirements for such Stated Maturity on a pro rata basis, provided, however, that any remaining mandatory redemption requirements with respect to the Series A Bonds shall be in Authorized Denominations.

Section 4.4 Notice to Trustee. The District shall, at least sixty (60) days prior to any Redemption Date pursuant to Sections 4.1 or 4.2 hereof (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee in writing of such Redemption Date and of the principal amount of the Bonds to be redeemed.

Section 4.5 Selection of Bonds to be Redeemed. If less than all the Outstanding Bonds of any series are to be redeemed, the particular Bonds of such series to be redeemed shall be selected not less than forty-five (45) days prior to the Redemption Date by the Trustee, as nearly as practicable, from Bonds of such series in Authorized Denominations of each maturity in the same proportion as the outstanding principal amount of Bonds of that maturity bears to the total outstanding principal amount of all Bonds of all maturities, and by lot within each maturity.

Section 4.6 Notice of Redemption.

(a) Notice of redemption shall be given by first class mail, postage prepaid, by the Trustee in the name and at the expense of the District, not less than thirty (30) nor more than sixty (60) days prior to the Redemption Date, to each Registered Owner of Bonds to be redeemed, at his address appearing in the Bond Register.

(b) All notices of redemption shall include a statement as to:

(i) the Redemption Date,

(ii) the Redemption Price,

(iii) the principal amount of each series of Bonds to be redeemed and, if less than all Outstanding Bonds of a series are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) to be redeemed,

(iv) that on the Redemption Date, the Redemption Price of each of the Bonds to be redeemed will become due and payable and that the interest thereon shall cease to accrue from and after said date, and

(v) that Bonds to be redeemed are to be surrendered to the Paying Agent at the Place of Payment for payment of the Redemption Price plus accrued interest, and the address of such Paying Agent.

(c) If, at the time of mailing of any notice of optional redemption pursuant to Section 4.1 hereof, there shall not be on deposit with the Trustee moneys sufficient to redeem all the Bonds called for redemption, such notice shall state that such redemption is conditioned upon the deposit of the redemption moneys with the Trustee not later than the opening of business on the Redemption Date and that such notice shall be of no effect unless such moneys are so deposited.

(d) Notices of redemption of Series A Bonds shall also be sent pursuant to this Section for receipt no later than the close of business on the second Business Day following the mailing of such notice by (1) registered or certified mail, (2) overnight delivery service, or (3) facsimile transmission, to the Municipal Securities Rulemaking Board through its Electronic Municipal Market Access system not less than thirty (30) days prior to the date fixed for redemption. The failure to mail any such notice or any defect in any such notice so mailed, shall not affect the sufficiency of such notice or the redemption otherwise effected by such notice.

Section 4.7 Deposit of Redemption Price and Interest. On or before the Business Day preceding the mailing of any notice required by Section 4.6 hereof with regard to redemption of any Bonds pursuant to Sections 4.2 or 4.3 hereof, there shall be on deposit with the Trustee an amount of money which, together with any amounts in the Assessment Fund, the Bond Fund and the Reserve Fund available for such purpose, will be sufficient to pay the Redemption Price of the Bonds then to be redeemed and interest, if any, accrued thereon to the Redemption Date. Such money and amounts shall be segregated and shall be held in trust for the benefit of the Registered Owners entitled to such Redemption Price and shall not be deemed to be part of the Trust Estate.

Section 4.8 Bonds Payable on Redemption Date.

(a) Notice of redemption having been given as aforesaid, the Bonds so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified, and from and after such date (unless the District shall default in the payment of the Redemption Price) such Bonds shall cease to bear interest and shall cease to be governed by or receive the benefits of this Indenture. Upon surrender of any such Bond for redemption in accordance with said notice, such Bond shall be paid by the District at the Redemption Price, but solely from the sources herein provided. Installments of interest on Bonds with an Interest Payment Date on or prior to the Redemption Date shall be payable to the Registered Owners of the Bonds registered as such on the relevant Record Dates according to the terms of such Bonds and the provisions of Section 2.1 hereof.

(b) If any Bond called for redemption shall not be so paid upon surrender thereof for redemption, the principal shall, until paid, bear interest from the Redemption Date at the rate prescribed therefor in such Bond.

Section 4.9 Bonds Redeemed in Part. Any Bond which is to be redeemed only in part shall be surrendered at the designated corporate trust office of the Trustee, and the District shall execute, and the Trustee shall authenticate and deliver to the Registered Owner of such Bond, without service charge, a new Bond or Bonds of any Authorized Denomination or Authorized Denominations requested by such Registered Owner in an aggregate principal amount equal to

and in exchange for the unredeemed principal portion of the Bond so surrendered, provided that, if as a result of such redemption, the aggregate principal amount of the Bonds remaining Outstanding is other than an Authorized Denomination, the Trustee shall issue and deliver one Bond representing the portion of the Outstanding Bonds which is not an Authorized Denomination, which shall be the first Bond redeemed in connection with the succeeding redemption of Bonds of that series.

Section 4.10 Reports by Trustee. As soon as possible after January 1st and July 1st of each year, commencing July 1, 2017, the Trustee shall provide to the District the balances as of such date in each fund established pursuant to this Indenture.

ARTICLE V
DISCHARGE OF INDENTURE

Section 5.1 General. If the District shall pay or cause to be paid, or there shall be otherwise paid or provision shall be made for the payment, to or for the Registered Owners, of the principal of and interest due or to become due on all Bonds Outstanding pursuant hereto at the times and in the manner stipulated herein, and shall pay or cause to be paid to the Trustee and the Paying Agent all sums of moneys due or to become due according to the provisions hereof, then these presents and the estate and rights hereby granted shall cease, terminate, and be void, whereupon the Trustee at the request of the District shall cancel and discharge the lien hereof, except moneys or Bonds held by the Trustee for the payment of the principal of and interest on the Bonds.

Any Bond shall be deemed to be paid within the meaning of this Article when payment of the principal of such Bond, plus premium, if any, and interest thereon to the due date thereof (whether such due date be by reason of maturity or upon redemption as provided herein, or otherwise), either (a) shall have been made or caused to have been made in accordance with the terms thereof or (b) shall have been provided by (i) irrevocably depositing, in trust, for the benefit of the Registered Owners, and irrevocably setting aside exclusively for such payment, moneys sufficient to make such payment or Government Obligations, maturing as to principal and interest in such amount and at such times as will insure the availability of sufficient moneys to make such payment, and all necessary and proper fees, compensation and expenses of the Trustee and any paying agent pertaining to the Bonds with respect to which such deposit is made shall have been paid or the payment thereof provided for to the satisfaction of the Trustee and (ii) delivering to the Trustee a certificate from a firm of independent certified public accountants certifying to the sufficiency of such deposit. At such times as a Bond shall be deemed to be paid pursuant hereto, as aforesaid, it shall no longer be secured by or entitled to the benefits hereof, except for the purposes of any such payment from such moneys or Government Obligations.

Notwithstanding the foregoing, in the case of Bonds, which by their terms may be redeemed prior to their stated maturity, no deposit pursuant to the immediately preceding paragraph shall be deemed a payment of such Bonds as aforesaid until the Trustee has received a written verification from a firm of independent certified public accountants concerning the sufficiency thereof and the District shall have given to the Trustee, in form satisfactory to the Trustee, irrevocable instructions:

(a) stating the date when the principal of each such Bond is to be paid, whether at maturity or on a redemption date (which shall be any redemption date permitted hereby);

(b) directing the Trustee to call for redemption pursuant hereto any Bonds to be redeemed prior to maturity pursuant to the provisions of this Indenture; and

(c) instructing the Trustee to mail, as soon as practicable, in the manner prescribed by Section 4.6 hereof, a notice to the Registered Owners of such Bonds which have been selected for payment that the deposit required by this Section has been made and that such Bonds are deemed to have been paid in accordance with this Article and stating the maturity or redemption date upon which moneys are to be available for the payment of the principal or redemption price, if applicable, on said Bonds.

Any moneys so deposited as provided in this Article may at the direction of the District also be invested and reinvested in Government Obligations, maturing in the amounts and times as hereinbefore set forth, and all income from all Government Obligations which is not required for the payment of the Bonds and interest thereon with respect to which such moneys shall have been so deposited, shall be deposited in the appropriate accounts of the Bond Fund as and when realized and collected for use and application as are other moneys deposited in that fund; provided, however, that before any excess moneys shall be deposited in the Bond Fund, the Trustee shall first obtain a written verification from a firm of independent certified public accountants that the moneys remaining on deposit and invested in Government Obligations after such transfer to the Bond Fund shall be sufficient in amount to pay principal and interest on the Bonds when due and payable.

Notwithstanding any provision of any other Article hereof which may be contrary to the provisions of this Article, all moneys or Government Obligations set aside and held in trust pursuant to the provisions of this Article for the payment of Bonds (including interest thereon) shall be applied to and used solely for the payment of the particular Bonds (including interest thereon) with respect to which such moneys or Government Obligations have been so set aside in trust.

Anything herein to the contrary notwithstanding, if moneys or Government Obligations have been deposited or set aside with the Trustee pursuant to this Article for the payment of Bonds and such Bonds shall not have in fact been actually paid in full, no amendment to the provisions of this Article shall be made without the consent of the Registered Owner of each Bond affected thereby.

ARTICLE VI
DEFAULTS AND REMEDIES

Section 6.1 Events of Default. Each of the following is hereby defined as and shall be deemed an "*Event of Default*":

(a) failure to pay the principal of or interest on any of the Bonds when the same becomes due and payable; provided, however, that so long as there is no failure to pay

principal of or interest on any Series A Bond when due, a failure to pay interest on a Series B Bond when due shall not constitute a default or an Event of Default for the purposes hereof; or

(b) default in the performance or observance of any covenant, agreement or obligation of the District (other than as described in subsection (a) above) contained in this Indenture, and failure to cure any such default within thirty (30) days following receipt by the District of written notice of default from the Trustee or the Registered Owners of at least twenty-five percent (25%) in aggregate principal amount of the Outstanding Series A Bonds, provided, with respect to any failure covered by this subsection (b), no Event of Default will be deemed to have occurred so long as a course of action adequate to remedy such failure has been commenced within such 30-day period and shall thereafter be diligently prosecuted to completion and the default cured thereby; or

(c) a default by the Developer or any of the Landowners in the performance of any obligation or covenant contained in the Development Agreement, the Deed of Trust or the Collateral Assignment.

Section 6.2 Suits for Enforcement; Mandamus.

(a) The Trustee in its discretion, subject to the provisions of Section 7.2 hereof, may proceed to protect and enforce its rights and the rights of the Registered Owners pursuant to this Indenture by a suit, action, or proceeding in equity or at law or otherwise, whether for the specific performance of any covenant or agreement contained in this Indenture or in aid of the execution of any power granted in this Indenture or for the enforcement of any other legal, equitable, or other remedy, as the Trustee, being advised by counsel, shall deem most effectual to protect and enforce any of the rights of the Trustee or the Registered Owners.

(b) In addition to all rights and remedies of any Registered Owner of Bonds provided herein, in the event the District defaults in the payment of the principal of or interest on any of the Bonds when due, or defaults in the observance or performance of any of the covenants, conditions, or obligations set forth in the Series A Assessment Resolution, the Series B Assessment Resolution or this Indenture, the Trustee shall be entitled to a writ of mandamus issued by a court of proper jurisdiction compelling and requiring the directors and other officers of the District to observe and perform any covenant, obligation, or condition prescribed in the Series A Assessment Resolution, the Series B Assessment Resolution or this Indenture, as the case may be.

(c) Notwithstanding any provision of this Indenture, no default described herein shall result in an acceleration of the payment of the principal of or interest on the Bonds.

(d) The Trustee will also have the right to exercise any and all rights and remedies available pursuant to the Deed of Trust.

Section 6.3 Covenant to Pay Trustee Amounts Due on Bonds and Right of Trustee to Judgment.

(a) If:

(i) default occurs in the payment of any interest on any Bond when such interest becomes due and payable in accordance with the provisions hereof, or

(ii) default occurs in the payment of the principal of any Bond at its Maturity,

then upon demand of the Trustee, the District shall pay or cause to be paid to the Trustee for the benefit of the Registered Owners of such Bonds but solely from Pledged Revenues the amount so due and payable on the Bonds for principal and interest and, in addition thereto, such further necessary, reasonable and customary amounts as shall be sufficient to cover the costs and expenses of administration and collection, including the reasonable compensation, expenses, disbursements, and advances of the Trustee and its agents and counsel. If the District fails to pay or cause to be paid such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, shall be entitled to sue for and recover judgment against the District for the amount then so due and unpaid, provided, however, such judgment shall be payable solely from Pledged Revenues.

(b) No recovery of any such judgment upon any property of the District shall affect or impair the lien of this Indenture upon the Trust Estate or any rights, powers, or remedies of the Trustee pursuant hereto, or any rights, powers, or remedies of the Registered Owners of the Bonds.

Section 6.4 Application of Money Collected. Any money collected by the Trustee pursuant to this Article together with any other sums then held by the Trustee as part of the Trust Estate, shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal or interest upon presentation of the Bonds and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

(a) First: To the payment of all unpaid amounts due the Trustee pursuant to Section 7.6 hereof;

(b) Second: To the payment of the whole amount then due and unpaid upon the Outstanding Series A Bonds, for principal of and interest on the Series A Bonds and with interest (to the extent that such interest has been collected by the Trustee or a sum sufficient therefor has been so collected and payment thereof is legally enforceable at the respective rate or rates prescribed therefor in the Series A Bonds) on overdue principal, and in case such proceeds shall be insufficient to pay in full the whole amount then due and unpaid upon such Series A Bonds, then to the payment of such principal and interest without any preference or priority, ratably according to the aggregate amount so due; and

(c) Third: To the payment of the whole amount then due and unpaid upon the Outstanding Series B Bonds, for principal of and interest on the Series B Bonds and with interest

(to the extent that such interest has been collected by the Trustee or a sum sufficient therefor has been so collected and payment thereof is legally enforceable at the respective rate or rates prescribed therefor in the Series B Bonds) on overdue principal, and in case such proceeds shall be insufficient to pay in full the whole amount then due and unpaid upon such Series B Bonds, then to the payment of such principal and interest without any preference or priority, ratably according to the aggregate amount so due; and

(d) Fourth: To the payment of the remainder, if any, to the District, or to whosoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

Section 6.5 Trustee May File Proofs of Claim.

(a) In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition, or other judicial proceeding relative to the District, the property of the District, the Landowners, or the property of the Landowners, the Trustee (irrespective of whether the principal of the Bonds shall then be due and payable, as therein expressed or otherwise, and irrespective of whether the Trustee shall have made any demand on the District for the payment of overdue principal or interest) shall be entitled and empowered, by intervention in such proceeding or otherwise,

(i) to file and prove a claim for the whole amount of principal and interest owing and unpaid in respect of the Outstanding Bonds and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements, and advances of the Trustee, its agents and counsel) and of the Registered Owners allowed in such judicial proceeding, and

(ii) to collect and receive any money or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator, or other similar official in any such judicial proceeding is hereby authorized by each Registered Owner to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Registered Owners, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements, and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee pursuant to Section 7.6 hereof.

(b) Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Registered Owner any plan of reorganization, arrangement, adjustment, or composition affecting the Bonds or the rights of any Registered Owner thereof, or to authorize the Trustee to vote in respect of the claim of any Registered Owner in any such proceeding, provided that the Trustee may do so at the direction of the holders of a majority in principal amount of the Series A Bonds then Outstanding.

Section 6.6 Trustee May Enforce Claims Without Possession of Bonds. All rights of action and claims pursuant hereto or with respect to the Bonds may be prosecuted and enforced by the Trustee without the possession of any of the Bonds or the production thereof in any

proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust. Any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements, and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Registered Owners of the Bonds in respect of which such judgment has been recovered.

Section 6.7 Unconditional Right of Registered Owners to Receive Principal and Interest. Notwithstanding any other provision in this Indenture, the Registered Owner of any Bond shall have the right which is absolute and unconditional to receive, after payment of all amounts due to the Trustee pursuant hereto, payment of the principal of and (subject to Section 6.4 hereof) interest on any such Bond on the respective Stated Maturities expressed in such Bond (or, in the case of redemption, on the Redemption Date) solely from Pledged Revenues, and to institute suit for the enforcement of any such payment, and such rights shall not be impaired without the consent of such Registered Owner; provided, however, that no Registered Owner shall be entitled to take any action or institute any such suit to enforce the payment of his Bonds, whether for principal, interest, if and to the extent that the taking of such action or the institution or prosecution of any such suit or the entry of judgment therein would under applicable law result in a surrender, impairment, waiver, or loss of the lien of this Indenture upon the Trust Estate, or any part thereof, as security for Bonds held by any other Registered Owner.

Section 6.8 Rights and Remedies Cumulative. No right or remedy herein conferred upon or reserved to the Trustee or the Registered Owners is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given herein or now or hereafter existing at law or in equity or otherwise. Except as otherwise provided herein with regard to the rights or remedies of Registered Owners, the assertion or employment of any right or remedy pursuant hereto, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 6.9 Delay or Omission Not Waiver. No delay or omission of the Trustee or any Registered Owner of any Bond to exercise any right or remedy accruing upon a default described in this Article shall impair any such right or remedy or constitute a waiver of any such default or acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or the Registered Owners may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Registered Owners, as the case may be.

Section 6.10 Control by Registered Owners.

(a) The Registered Owners of a majority in aggregate principal amount of any series of the Outstanding Bonds affected thereby shall have the right (subject to providing indemnity acceptable to the Trustee)

(i) to require the Trustee to proceed to enforce this Indenture, either by judicial proceedings for the enforcement of the payment of the Bonds of such series and the foreclosure of this Indenture, the sale of the Trust Estate pursuant to the Deed of Trust, or otherwise; and

(ii) to direct the time, method, and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee hereby, provided that:

(A) such direction shall not be in conflict with any rule of law or this Indenture,

(B) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction,

(C) the Trustee shall not determine that the action so directed would be unjustly prejudicial to the Registered Owners not taking part in such direction, and

(D) if the remedy requires the consent of a certain number of the Registered Owners, such consent has been provided.

(b) In the event the Registered Owners of a majority in principal amount of the Outstanding Series A Bonds and the Registered Owners of a majority in principal amount of the Outstanding Series B Bonds have given directions to the Trustee, the Trustee shall accept and act upon the same to the extent not inconsistent or conflicting. In the event and to the extent of any inconsistency or conflict, the Trustee shall accept and act upon the directions of the Registered Owners of a majority in principal amount of the Series A Bonds.

(c) Before taking action pursuant to this Section, the Trustee may require that a satisfactory indemnity bond be furnished to it for the reimbursement of all expenses which it may incur and to protect it against all liability by reason of any action so taken, except liability which is adjudicated to have resulted from its negligence or willful misconduct. The Trustee may take action without that indemnity, and in that case, the District shall reimburse the Trustee for all of the expenses of the Trustee pursuant to Section 7.6 hereof.

Section 6.11 Waiver of Past Defaults.

(a) Before any judgment or decree for payment of money due has been obtained by the Trustee as provided in this Article, the Registered Owners of not less than a majority in aggregate principal amount of any series of the Outstanding Bonds affected thereby may, by Act of such Registered Owners delivered to the Trustee and the District, on behalf of the Registered Owners of all the Bonds of such series, waive any past default with respect to the Indenture or the Bonds and its consequences, except a default in respect of a covenant or provision hereof which pursuant to Section 8.2 of this Indenture cannot be modified or amended without the consent of the Registered Owner of each Outstanding Bond affected.

(b) Upon any such waiver, such default shall cease to exist for every purpose of this Indenture, but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

Section 6.12 Undertaking for Costs. All parties to this Indenture agree, and each Registered Owner of any Bond by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy

pursuant to this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section shall not apply to any suit instituted by or against the Trustee, to any suit instituted by any Registered Owner, or group of Registered Owners of any series of the Bonds affected thereby, holding in the aggregate more than ten percent (10%) in principal amount of the Outstanding Bonds, or to any suit instituted by any Registered Owner for the enforcement of the payment of the principal of or interest on any Bond on or after the Stated Maturity expressed in such Bond (or, in the case of redemption, on or after the Redemption Date).

Section 6.13 Remedies Subject to Applicable Law. All rights, remedies, and powers provided by this Article may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law in the premises, and the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Indenture invalid, unenforceable, or not entitled to be recorded, registered, or filed pursuant to the provisions of any applicable law.

ARTICLE VII
THE TRUSTEE

Section 7.1 Certain Duties and Responsibilities.

(a) The Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee. In the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform on their face to the requirements of this Indenture.

(b) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that

(i) this Subsection shall not be construed to limit the effect of Subsection (a) of this Section:

(ii) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Trustee was negligent;

(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Registered Owners of a majority in principal amount of the Outstanding Bonds of any series or to the time, method,

and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, pursuant to this Indenture; and

(iv) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties pursuant hereto, or in the exercise of any of its rights or powers, unless it is provided indemnity in connection therewith as provided in Section 7.2(e) hereof.

(c) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section.

Section 7.2 Certain Rights of Trustee. Except as otherwise provided in Section 7.1 hereof:

(a) the Trustee may rely and shall be protected in acting or refraining from acting upon:

(i) any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, telex or other paper, document, or communication reasonably believed by it to be genuine and to have been signed or presented by the proper Persons; and

(ii) failure of the Trustee to receive any such paper, document, or communication, if prior receipt thereof is required by this Indenture before the Trustee is to take or refrain from taking any action;

(b) any request or direction of the District mentioned herein shall be sufficiently evidenced by a District Request, and any order or resolution of the Board may be sufficiently evidenced by a Board Resolution:

(c) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering, or omitting any action pursuant hereto, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officers' Certificate;

(d) the Trustee may consult with legal counsel and the written advice of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered, or omitted by the Trustee pursuant hereto in good faith and in reliance thereon;

(e) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Registered Owners pursuant to this Indenture, unless such Registered Owners shall have offered to the Trustee security or indemnity satisfactory to the Trustee against the costs, expenses, and liabilities which might be incurred by it in compliance with such request or direction;

(f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice,

request, direction, consent, order, bond, or other paper document (including particularly, but not by way of limitation) acts, Board Resolutions, District Requests and Officers' Certificates, but the Trustee, in its discretion, may make such further inquiry or investigation, into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records, and premises of the District, personally or by agent or attorney; and

(g) the Trustee may execute any of the trusts or powers pursuant hereto or perform any duties pursuant hereto either directly or by or through agents or attorneys, and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed, with due care by it pursuant hereto.

Section 7.3 Not Responsible for Recitals or Application of Proceeds. The recitals contained herein and in the Bonds, except the certificate of authentication on the Bonds, shall be taken as the statements of the District, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the value or condition of the Trust Estate or any part thereof, or as to the title of the District thereto or as to the security afforded thereby or hereby, or as to the validity or genuineness of any securities at any time pledged and deposited with the Trustee pursuant hereto, or as to the validity or sufficiency of this Indenture or of the Bonds. The Trustee shall not be accountable for the use or application by the District of the Bonds or the proceeds thereof.

Section 7.4 May Hold Bonds. The Trustee, any Paying Agent and any other agent appointed pursuant hereto, in its individual or any other capacity, may become the owner or pledgee of Bonds and may otherwise deal with the District with the same rights it would have if it were not the Trustee, the Paying Agent or such other agent.

Section 7.5 Money Held in Trust. Money held by the Trustee pursuant hereto need not be segregated from other funds except to the extent required by law or the provisions of this Indenture. The Trustee shall have no liability for interest on any money received by it pursuant hereto except as otherwise agreed with the District.

Section 7.6 Compensation and Reimbursement.

(a) The District shall:

(i) pay to the Trustee from time to time reasonable compensation for all services rendered by it pursuant hereto, and

(ii) except as otherwise expressly provided herein, reimburse the Trustee upon its request for all necessary, customary and reasonable expenses, disbursements, and advances incurred or made by the Trustee in direct accordance with any provisions of this Indenture (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement, or advance as may be attributable to the Trustee's negligence or bad faith.

(b) As security for the performance of the obligations of the District pursuant to this Section, the Trustee shall be secured pursuant to this Indenture by a lien and for the

payment of such compensation, expenses, reimbursements, and indemnity the Trustee shall have the right to use and apply any trust funds held by it pursuant hereto after payment of other amounts due pursuant hereto as provided herein.

Section 7.7 Corporate Trustee Required; Eligibility. There shall at all times be a trustee for the purposes of this Indenture which shall be a bank or trust company organized and doing business pursuant to the laws of the United States or of any state, authorized pursuant to such laws to exercise corporate trust powers, having a combined capital and surplus of at least $50,000,000, subject to supervision or examination by Federal or State authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of such supervising or examining authority, then for the purposes of this section the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Section 7.8 Resignation and Removal; Appointment of Successor.

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee pursuant to the provisions of Section 7.9 hereof.

(b) The Trustee may resign at any time by giving written notice thereof to the District. If an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within thirty (30) days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(c) The Trustee may be removed at any time by Act of the Registered Owners of a majority in principal amount of the Outstanding Bonds, delivered to the Trustee and the District.

(d) If at any time:

(i) the Trustee shall cease to be eligible pursuant to the provisions of Section 7.7 hereof or, provided no Event of Default has occurred and is continuing, the District by Board Resolution shall request the resignation of the Trustee for any reason, or

(ii) the Trustee shall become incapable of acting or shall be adjudged insolvent or a receiver of the Trustee or of its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation, or liquidation, then, in any such case, the District by Board Resolution may remove the Trustee.

(e) If the Trustee shall resign, be removed, or become incapable of acting, the District, by Board Resolution, shall promptly appoint a successor Trustee, provided that if an Event of Default has occurred and is continuing, the consent of the holders of a majority ni principal amount of the Outstanding Series A Bonds shall be required. In case all or

substantially all of the Trust Estate shall be in the possession of a receiver or trustee lawfully appointed, such receiver or trustee, by written instrument, may similarly appoint a successor to fill such vacancy until a new Trustee shall be so appointed by the Registered Owners of the Series A Bonds. If, within one year after such resignation, removal, or incapability, or the occurrence of such vacancy, a successor Trustee shall be appointed by the Registered Owners of a majority in principal amount of the Outstanding Series A Bonds and delivered to the District and the retiring Trustee, then the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment, become the successor Trustee and supersede the successor Trustee appointed by the District or by such receiver or trustee. If no successor Trustee shall have been so appointed by the District or the Registered Owners and accepted appointment in the manner hereinafter provided, any Registered Owner who has been a *bona fide* Registered Owner of a Bond for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(f) The District shall give notice of each resignation and each removal of the Trustee and each appointment of a successor Trustee to the Registered Owners of the Bonds. Each notice shall include the name of the successor Trustee and the address of its principal corporate trust office.

Section 7.9 Acceptance of Appointment by Successor.

(a) Every successor Trustee shall at all times be qualified and eligible pursuant to this Article, including compliance with the provisions set forth in Section 7.7 hereof. Every successor trustee appointed pursuant hereto shall execute, acknowledge, and deliver to the District and the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed, or conveyance, shall become vested with all the estates, properties, rights, powers, trusts, and duties of the retiring Trustee; but, on request of the District or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument conveying and transferring to such successor Trustee upon the trusts herein expressed all the estates, properties, rights, powers, and trusts of the retiring Trustee, and shall duly assign, transfer, and deliver to such successor Trustee all property and money held by such retiring Trustee pursuant hereto, subject nevertheless to its lien, if any, provided for in Section 7.6 hereof. Upon request of any such successor Trustee, the District shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such estates, properties, rights, powers, and trusts.

(b) No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible pursuant to this Article.

Section 7.10 Merger, Conversion, Consolidation, or Succession to Business. Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion, or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee pursuant hereto, provided such corporation shall be otherwise qualified and eligible pursuant to this Article, including compliance with the provisions of Section 7.7 of this Indenture, without the execution

or filing of any paper or any further act on the part of any of the parties hereto. In case any Bonds shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion, or consolidation to such authenticating Trustee may adopt such authentication and deliver the Bonds so authenticated with the same effect as if such successor Trustee had itself authenticated such Bonds.

ARTICLE VIII
SUPPLEMENTAL INDENTURES AND AMENDMENTS TO ASSESSMENT RESOLUTION

Section 8.1 Supplemental Indentures or Amendments to Assessment Resolutions Without Consent of Registered Owners. Without the consent of the Registered Owners of any Bonds, the District, when authorized by Board Resolution, and the Trustee may from time to time enter into one or more indentures supplemental hereto in form satisfactory to the Trustee, or the District may amend the Series A Assessment Resolution or the Series B Assessment Resolution for any of the following purposes:

(a) to correct or amplify the description of any property at any time subject to the lien of this Indenture, or better to assure, convey, and confirm unto the Trustee any property subject or required to be subjected to the lien of this Indenture, or to subject to the lien of this Indenture additional property; or

(b) to add to the conditions, limitations, and restrictions on the authorized amount, terms, or purposes of issue, authentication, and delivery of Bonds, as herein set forth, and additional conditions, limitations, and restrictions-thereafter to be observed; or

(c) to evidence the succession of another entity to the District and the assumption by any such successor to the covenants of the District contained herein, in the Series A Assessment Resolution, the Series B Assessment Resolution or in the Bonds; or

(d) to add to the covenants of the District for the benefit of the Registered Owners of all of the Bonds or to surrender any right or power herein or in the Series A Assessment Resolution or the Series B Assessment Resolution conferred upon the District; or

(e) to cure any ambiguity or to correct or supplement any provision herein or in the Series A Assessment Resolution or Series B Assessment Resolution which may be inconsistent with any other provision herein or in the Series A Assessment Resolution or the Series B Assessment Resolution, as applicable, or to make any other provisions, with respect to matters or questions arising pursuant to this Indenture or the applicable Assessment Resolution, including any reallocation of the Assessments upon the assessed property in the event of a replatting or replattings of all or any portions of the District, which shall not be inconsistent with the provisions of this Indenture or the applicable Assessment Resolution, provided such action shall not adversely affect the interests of the Registered Owners of the Bonds; or

(f) to change the Place of Payment where any Bond or the interest on any Bond is payable.

Section 8.2 Supplemental Indentures or Amendments to the Assessment Resolutions With Consent of Registered Owners.

(a) With the consent of the Registered Owners of not less than a majority in aggregate principal amount of the Bonds affected by any such supplemental indenture, by act of such Registered Owners delivered to the District and the Trustee, the District, when authorized by Board Resolution, and the Trustee may enter into an indenture or indentures supplemental hereto, for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture, the Series A Assessment Resolution or the Series B Assessment Resolution or of modifying in any manner the rights of the Registered Owners of the Bonds pursuant to this Indenture or the respective Assessment Resolutions; provided, however, that no such supplemental indenture or amendments to either the Series A Assessment Resolution or the Series B Assessment Resolution shall, without the consent of the Registered Owner of each Outstanding Bond affected thereby:

(i) change the Stated Maturity of the principal of, or any installment of interest on, any Bond, or reduce the principal amount of, or the interest on, any Bond, or change the coin or currency in which any Bond or the interest on any Bond is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof (or, in the case of redemption, on or after the Redemption Date), or reduce the amount or extend the time of any Assessment or any other payment required pursuant hereto or pursuant to the Series A Assessment Resolution or Series B Assessment Resolution, as applicable, to any fund established pursuant hereto; or

(ii) reduce the percentage in principal amount of the Outstanding Bonds the consent of the Registered Owners of which is required for any such supplemental indenture or amendment to the Series A Assessment Resolution or the Series B Assessment Resolution, as applicable, or the consent of Registered Owners of which is required for any waiver provided for in this Indenture of compliance with certain provisions of this Indenture or certain defaults and their consequences; or

(iii) modify or alter the provisions of the proviso to the definition of the term "Outstanding"; or

(iv) modify any of the provisions of this Section, except to increase any percentage provided thereby or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Registered Owner of each Bond affected thereby.

(b) The Trustee may in its discretion determine whether or not any Bonds would be affected by any supplemental indenture or amendment to the Series A Assessment Resolution or the Series B Assessment Resolution, as applicable, and any such determination shall be conclusive upon

(c) every Registered Owner of Bonds, whether theretofore or thereafter authenticated, dated and delivered pursuant hereto. The Trustee shall not be liable for any such determination made in good faith.

(d) For the purposes of this Section, it shall not be necessary for any action of the Registered Owners to approve the particular form of any proposed supplemental indenture or any such amendment to the Series A Assessment Resolution or the Series B Assessment Resolution, as applicable, but it shall be sufficient if such action shall approve the substance thereof.

Section 8.3 Execution of Supplemental Indentures and Amendments to Assessment Resolutions. In executing, or accepting the additional trusts established by, any supplemental indenture or amendment to the Series A Assessment Resolution or the Series B Assessment Resolution permitted by this Article or the modification thereby of the trusts established by this Indenture, the Trustee shall be entitled to receive and, subject to the provisions of Section 7.1 hereof, shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture or adoption of such amendment is authorized or permitted by this Indenture. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture or be governed by any amended Series A Assessment Resolution or Series B Assessment Resolution if such supplemental indenture or amendment affects the Trustee's own rights, duties, or immunities pursuant to this Indenture or otherwise.

Section 8.4 Effect of Supplemental Indentures and Amendments to Assessment Resolutions. Upon the approval and execution of any supplemental indenture pursuant to this Article, this Indenture shall be modified in accordance therewith and such supplemental indenture shall form a part of this Indenture for all purposes, and upon the amendment of the Series A Assessment Resolution or the Series B Assessment Resolution pursuant to this Article, such assessment resolution shall be modified in accordance therewith, and such amendment shall form a part of such assessment resolution for all purposes, and every Registered Owner of Bonds theretofore or thereafter authenticated and delivered pursuant hereto shall be bound thereby.

Section 8.5 Reference in Bonds to Supplemental Indentures or Amendments to Assessment Resolutions. Bonds authenticated and delivered after the execution of any supplemental indenture or amendment to the Series A Assessment Resolution or the Series B Assessment Resolution pursuant to this Article may bear a notation as to any matter provided for in such supplemental indenture or amended assessment resolution. If the District shall so determine, new Bonds so modified as to conform to any such supplemental indenture or amended assessment resolution may be prepared and executed by the District and authenticated and delivered by the Trustee in exchange for Outstanding Bonds.

ARTICLE IX
REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE DISTRICT

Section 9.1 Power to Issue Bonds. The District is duly authorized pursuant to the Enabling Act and all applicable laws of the State to issue the Bonds, to adopt and execute the Indenture and to pledge Pledged Revenues for the benefit of the Bonds. The Bonds and the provisions of the Indenture are and will be valid and legally enforceable obligations of the District in accordance with their respective terms. The District shall, at all times, to the extent permitted by law, defend, preserve and protect the pledge established by the Indenture and all the

rights of the Registered Owners against all claims and demands of all other Persons whomsoever.

Section 9.2 Levy and Collection of Assessments.

(a) So long as a particular lot is subject to the Deed of Trust, the District will receive and collect when due all Assessments thereon with respect to which the Series A Bonds and the Series B Bonds have been issued, the installments thereof, the interest thereon, and the penalties accrued with respect thereto, including without limiting the generality of the foregoing, the whole of the unpaid principal, interest and penalties accrued which become due and payable immediately in the event of a default in the payment of any such installment, whether of principal or interest, when due, and to pay and disburse such payments to the Trustee as herein provided.

(b) Once a particular Phase is released from the Deed of Trust, the District will enter into an assessment collection agreement with the Treasurer of Maricopa County to receive and collect all Assessments with respect to which the Series A Bonds and the Series B Bonds have been issued for the lots in such Phase, the installments thereon, the interest thereon, and the penalties accrued thereon, including without limiting the generality of the foregoing, the whole of the unpaid principal, interest and penalties accrued which become due and payable immediately in the event of a default in the payment of any such installment, whether of principal or interest, when due, and to pay and disburse such payments to the Trustee as herein provided.

Section 9.3 Lien of Assessment. The Assessments, any interest accruing on the Assessments and the penalties and costs of collection of the Assessments shall continue to constitute and are hereby declared to be a lien against the properties upon which the Assessments are levied within the District from and after the date on which the Series A Assessment Resolution or the Series B Assessment Resolution, as applicable, became effective. Said lien shall be superior to the lien of any trust deed, mortgage, mechanic's or materialman's lien, or other encumbrance, and shall be subordinate only to any lien for general property taxes. Said lien shall apply without interruption, change in priority, or alteration in any manner to any reduced obligations and shall continue until the Assessment and any interest, penalties, and costs thereon are paid in full, notwithstanding any sale of the property for or on account of a delinquent general property tax, special tax, other assessment or otherwise, or the issuance of a tax deed, an assignment of interest by the District, or a sheriff's certificate of sale or deed.

Section 9.4 Default in Payment of Assessments. As further described in the Assessment Resolution, in the event a default occurs in the payment of any installment of principal or interest of an Assessment levied pursuant to the Series A Assessment Resolution or the Series B Assessment Resolution, as applicable, when due, the District shall (a) either declare the unpaid amount delinquent and subject to collection or declare the whole of the unpaid Assessment immediately due and payable and subject to collection, (b) provide notice of such default, and (c) following the lapse of any grace period to remedy the default provided in the notice, all as provided in the applicable assessment resolution, the District may immediately initiate and diligently pursue to completion a summary sale pursuant to the Enabling Act, of all delinquent property in the manner provided for actions to foreclose trust deeds.

The remedies provided in this Section for the collection of Assessments and the enforcement of liens shall be deemed and construed to be cumulative and the use of any one method or means of collection or enforcement shall not deprive the District of the use of any other method or means.

Section 9.5 Special Insolvency Provisions.

(a) The provisions of this Section 9.5 shall be applicable both before and after the commencement, whether voluntary or involuntary, of any case, Proceeding or other action by or against any Insolvent Taxpayer. For as long as any Bonds remain Outstanding, in any Proceeding involving the District, any Insolvent Taxpayer, the Bonds or the Assessments, the District shall be obligated to act in accordance with direction from the Trustee with regard to all matters directly or indirectly affecting the Bonds or for as long as any of the Bonds remain Outstanding, in any Proceeding involving the District, any Insolvent Taxpayer, the Bonds, the Assessments or the Trustee. The District agrees that it shall not be a defense to a breach of the foregoing covenant that it has acted upon advice of counsel in not complying with this covenant.

(b) The District acknowledges and agrees that, although the Bonds were issued by the District, the Registered Owners of the Bonds are categorically the party with the ultimate financial stake in the transaction and, consequently, the party with a vested and pecuniary interest in a Proceeding. In the event of any Proceeding involving any Insolvent Taxpayer: (a) the District hereby agrees that it shall follow the direction of the Trustee in making any election, giving any consent, commencing any action or filing any motion, claim, obligation, notice or application or in taking any other action or position in any Proceeding or in any action related to a Proceeding that affects, either directly or indirectly, the Assessments, the Bonds or any rights of the Trustee under the Indenture; (b) the District hereby agrees that it shall not make any election, give any consent, commence any action or file any motion, claim, obligation, notice or application or take any other action or position in any Proceeding or in any action related to a Proceeding that affects, either directly or indirectly, the Assessments, the Bonds or any rights of the Trustee pursuant to the Indenture that is inconsistent with any direction from the Trustee; (c) the Trustee shall have the right, but is not obligated to, (i) vote in any such Proceeding any and all claims of the District, or (ii) file any motion, pleading, plan or objection in any such Proceeding on behalf of the District, including without limitation, motions seeking relief from the automatic stay, dismissal of the Proceeding, valuation of the property belonging to the Insolvent Taxpayer, termination of exclusivity, and objections to disclosure statements, plans of liquidation or reorganization, and motions for use of cash collateral, seeking approval of sales or post-petition financing. If the Trustee chooses to exercise any such rights, the District shall be deemed to have appointed the Trustee as its agent and granted to the Trustee an irrevocable power of attorney coupled with an interest, and its proxy, for the purpose of exercising any and all rights and taking any and all actions available to the District in connection with any Proceeding of any Insolvent Taxpayer, including without limitation, the right to file and/or prosecute any claims, to propose and prosecute a plan, to vote to accept or reject a plan, and to make any election under Section 1111(b) of the Bankruptcy Code and (d) the District shall not challenge the validity or amount of any claim submitted in such Proceeding by the Trustee in good faith or any valuations of the lands owned by any Insolvent Taxpayer submitted by the Trustee in good faith in such Proceeding or take any other action in such Proceeding, which is adverse to Trustee's enforcement of the District claim and rights with respect to the Assessments

or receipt of adequate protection (as that term is defined in the Bankruptcy Code). Without limiting the generality of the foregoing, the District agrees that the Trustee shall have the right (i) to file a proof of claim with respect to the Assessments, (ii) to deliver to the District a copy thereof, together with evidence of the filing with the appropriate court or other authority, and (iii) to defend any objection filed to said proof of claim.

Section 9.6 Limited Obligation of District. Notwithstanding anything contained elsewhere herein to the contrary, the Bonds, or any other obligation pursuant hereto, are not a general obligation of the District but are payable exclusively out of the funds described herein. The District shall not be liable for the payment of the Bonds, except to the extent of the funds established and received from (a) the Assessments, including Assessments collected through foreclosure sales resulting from unpaid Assessments, and (b) moneys on deposit in the Reserve Fund, but the District shall be held responsible for the lawful levy of all Assessments, for the creation and maintenance and replenishment of the Reserve Fund as provided herein, and for the faithful accounting, collection, settlement, and payment of the Assessments.

Section 9.7 Use of Revenues for Authorized Purposes Only. None of the Pledged Revenues shall be used for any purpose other than as provided in this Indenture and no contract or contracts shall be entered into or any action taken by the Trustee which is or will be inconsistent with the provisions of this Indenture.

Section 9.8 Books, Records and Reports. The District shall keep or cause to be kept proper books of record and account in accordance with generally accepted accounting principles (separate from all other records and accounts) in which complete and correct entries shall be made of its transactions relating to the District Improvements, the Developer Improvements and the Phase 1 Improvements and which, together with all other books and records of the District, including, without limitation, any insurance policies relating to such improvements, shall at all times be subject during regular business hours to inspection by the Trustee. The District agrees to maintain such records as are necessary to comply with and thereafter comply with the provisions of the Continuing Disclosure Undertaking, dated March 1, 2017, executed and delivered by the District in connection with the sale of the Bonds.

Section 9.9 Maintenance of Agency. The District shall maintain an agency at the Place of Payment where Bonds of each series may be presented or surrendered for payment, where Bonds of each series entitled to be registered, transferred, exchanged, or converted may be presented or surrendered for registration, transfer, exchange, or conversion in accordance with the provisions hereof, and where notices and demands to or upon the District in respect of the Bonds of each series and this Indenture may be served. The Trustee is hereby appointed as Paying Agent for the purposes of this Indenture. The District shall give prompt written notice to the Trustee of the location, and of any change in the location, of any such agency. If at any time the District shall fail to maintain such an agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices, and demands may be made or served at the principal corporate trust office of the Trustee, and the District hereby appoints the Trustee its agent to receive all such presentations, surrenders, notices, and demands.

Section 9.10 Money for Bond Payments to be Held in Trust; Repayment of Unclaimed Money.

(a) The District shall cause any Paying Agent other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent agrees with the Trustee, subject to the provisions of this Section, that such Paying Agent will:

(i) hold all sums deposited with it for the payment of principal of or interest on the Bonds for the sole benefit of the Registered Owners of such Bonds until such sums shall be paid to the Registered Owners or otherwise disposed of as herein provided; and

(ii) at any time, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Paying Agent.

(b) The District may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, by District Request direct any Paying Agent to pay to the Trustee all money held by such Paying Agent, such money to be held by the Trustee upon the same trusts as those upon which such money was held by such Paying Agent, and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such money.

(c) In the event any check for payment of interest on a Bond is returned to any Paying Agent unendorsed or is not presented for payment within two (2) years from its payment date or any Bond is not presented for payment of principal at Maturity or Redemption Date, if funds sufficient to pay such interest or principal due upon such Bond shall have been made available to such Paying Agent for the benefit of the Registered Owner thereof, it shall be the duty of such Paying Agent to hold such funds or invest the same in Government Obligations, without liability for interest thereon, for the benefit of the Registered Owner of such Bond who shall thereafter be restricted exclusively to such funds for any claim of whatever nature relating to such Bond or amounts due thereunder. Such obligation of the Paying Agent to hold such funds shall continue for two (2) years and six (6) months following the date on which such interest or principal payment became due, whether at Maturity or Stated Maturity, or at the Redemption Date, or otherwise, at which time such Paying Agent shall surrender such unclaimed funds so held to the District, whereupon any claim of whatever nature by the Registered Owner of such Bond arising pursuant to such Bond shall be made upon the District.

Section 9.11 No Loss of Lien on Pledged Revenues. The District shall not do or omit to do, or suffer to be done or omit to be done, any matter or thing whatsoever whereby the lien of the Bonds on the Pledged Revenues, or any part thereof, or the priority thereof, would be lost or impaired; provided, however, that this Section shall not prohibit the Trustee from transferring moneys to the Rebate Fund held by the Trustee.

Section 9.12 Further Assurances; Recording. The District shall do, execute, acknowledge, and deliver all and every such further acts, conveyances, mortgages, financing statements, and assurances as shall be reasonably required for accomplishing the purposes of this Indenture. The District shall cause this instrument and all supplemental indentures and other instruments of further assurance, including all financing statements, to be promptly recorded, registered, and filed, and to be kept recorded, registered, and filed, and, when necessary, to re-record, re-register, and re-file the same, all in such manner and in such places as may be required by law, fully to preserve and protect the rights of the Registered Owners and the Trustee

pursuant hereto to all property comprising the Trust Estate, and the District shall execute any financing statement, continuation statement or other document required for such purposes.

Section 9.13 Corporate Existence. For so long as any Bonds are Outstanding pursuant hereto, unless otherwise provided by the Enabling Act, the District shall maintain its corporate existence for the purposes of the Enabling Act.

Section 9.14 Compliance with Federal Law.

(a) The District recognizes that the purchasers and owners of the Bonds will have accepted them on, and paid therefor a price which reflects, the understanding that interest thereon is excludable from gross income of the owners thereof for Federal income tax purposes pursuant to laws in force at the time the Bonds shall have been delivered. The District agrees that it shall take no action, or fail to take any action, which may render the interest on any of the Bonds to be includable in gross income for Federal income tax purposes. The District agrees that, to the extent possible pursuant to State law, it will comply with the Federal laws now in effect or which shall be adopted in the future which apply to the Bonds and is necessary to prevent interest on the Bonds from becoming included as gross income for purposes of calculating Federal income taxes.

(b) The Chairman of the Board of the District or his designee is hereby authorized to make certain truthful certifications, representations, agreements and elections as required by law and Bond Counsel to assure the purchasers and owners of the Bonds that the proceeds of the Bonds will not be used in a manner which would or might result in the Bonds being "arbitrage bonds" pursuant to the provisions of Section 148 of the Code or the regulations of the United States Treasury Department currently in effect or proposed. The certifications, representations and agreements of the District may be made by executing and delivering certificates and agreements required by Bond Counsel. The certificates and agreements shall constitute an agreement of the District to follow covenants and requirements set forth herein and therein which may require the District to take certain actions (including the payment of certain amounts to the United States Treasury) or which may prohibit certain actions (including the establishment of certain funds) pursuant to certain conditions.

(c) This instrument may be executed in any number of counterparts, each of which as so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed, and to be effective as of the day and year first above written, which date shall be deemed the date hereof for all purposes.

CAHAVA SPRINGS REVITALIZATION DISTRICT

By: _____
Name: Dennis Mathisen
Its: Chairman

ATTEST:

_____
Annie Mathisen
District Clerk

ZIONS BANK, a division of ZB, National Association, as trustee

By: _____
Name: Nancy Eatros
Its: Vice President

[SIGNATURE PAGE TO INDENTURE OF TRUST]

EXHIBIT A-1

FORM OF SERIES 2017A BOND

UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AS DEFINED IN THE INDENTURE OF TRUST) TO THE TRUSTEE FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY BOND ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

NOTICE: INITIAL PURCHASERS OF THIS BOND MUST SUBMIT A QUALIFIED INVESTOR LETTER PURSUANT TO THE INDENTURE.

Number:
R -___

Denomination:
$_____

UNITED STATES OF AMERICA
STATE OF ARIZONA

CAHAVA SPRINGS REVITALIZATION DISTRICT
(TOWN OF CAVE CREEK, ARIZONA)
SPECIAL ASSESSMENT BONDS, SERIES 2017A

INTEREST RATE	MATURITY DATE	ORIGINAL ISSUE DATE	CUSIP NO.:
7.00%	July 1, 2041	March 1, 2017	12773C AA1

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: _____ DOLLARS

Cahava Springs Revitalization District, a special purpose, tax-levying public improvement district for the purposes of the Constitution of the State of Arizona and a municipal corporation for certain purposes of the laws of the State of Arizona (the "*District*"), formed pursuant to Title 48, Chapter 39, Article 1 of the Arizona Revised Statutes (the "*Enabling Act*"), by a resolution adopted by the Mayor and Council of the Town of Cave Creek, Arizona (the "*Town*") on June 17, 2015 in response to a petition by Cahava Springs Development Corporation, a Nevada corporation (the "*Developer*"), for value received, hereby promises to pay to the "*Registered Owner*" specified above or registered assigns (the "*Registered Owner*"), on the "*Maturity Date*" specified above, the "*Principal Amount*" specified above and to pay interest (calculated on the basis. of a 360-day year of twelve 30-day months) on the unpaid portion thereof from the "*Original Issue Date*" specified above, or from the most recent "*Interest*

Payment Date" (as defined herein) to which interest has been paid or duly provided for, until paid or the payment thereof is duly provided for at Maturity (as such term is deemed in the hereinafter described "*Indenture*"), semiannually on each January 1 and July 1, commencing July 1, 2017 (each an "*Interest Payment Date*"), at the "*Interest Rate*" per annum specified above.

Words with initial capitals shall have such meanings set forth in the Assessment Resolution or the Indenture (each as defined herein), unless otherwise defined herein.

As provided in the Indenture of Trust, dated as of March 1, 2017 (the "*Indenture*"), from the District to Zions Bank, a division of ZB, National Association, as trustee (the "*Trustee*"), principal and any Redemption Price (as such term is defined in the Indenture) of this Bond are payable upon presentation and surrender of this Bond at the designated corporate trust office of the Trustee, as Paying Agent, in Phoenix, Arizona (the "*Place for Payment*") and interest payable on any Interest Payment Date shall be payable by check drawn on the Trustee, as Paying Agent, mailed on or before the Interest Payment Date to the Registered Owner in whose name this Bond (or one or more Predecessor Bonds evidencing the same debt) is registered in the Bond Register at the close of business on the "*Regular Record Date*" therefor, which shall be the fifteenth day of the month immediately preceding each Interest Payment Date. Any interest not so punctually paid or duly provided for shall forthwith cease to be payable to the Registered Owner on such Regular Record Date and shall be paid to the Person in whose name this Bond (or one or more such Predecessor Bonds) is registered at the close of business on a "*Special Record Date*" for the payment of such defaulted interest to be fixed by the Trustee (as defined herein) in accordance with the Indenture, notice whereof being given to the Registered Owner hereof not less than 10 days prior to such Special Record Date.

Additionally, payment may also be made by wire transfer to DTC or to any Registered Owner (other that DTC) owning an aggregate principal amount of at least $1,000,000 upon two (2) days' prior written request delivered to the Paying Agent by such Registered Owner specifying a wire transfer address in the continental United States. Any such request for interest payments by wire transfer shall remain in effect until rescinded or changed, in writing delivered by the Registered Owner to the Paying Agent, any such rescission or change must be received by the Paying Agent at least five (5) days prior to the next applicable Interest Payment Date.

No document of any nature need be surrendered as a condition to payment of principal of or interest on Book-Entry Bonds.

If the specified date for any such payment shall not be a Business Day then such payment may be made on the next succeeding day which is a Business Day without additional interest and with the same force and effect as if made on the specified date for such payment, except that in the event of a moratorium for banking institutions generally at the Place of Payment or in the city where the designated corporate trust office of the Paying Agent is located, such payment may be made on such next succeeding day, except that the Bonds on which such payment is due shall continue to accrue interest until such payment is made or duly provided for.

This Bond is one of a duly authorized issue of special assessment lien bonds of the District having the designation specified in its title (the "*Bonds*"), issued pursuant to Title 48, Chapter 39, Article 1 of the Arizona Revised Statutes (the "*Enabling Act*") and the Assessment

Resolution for Cahava Springs Revitalization District adopted by the District on October 31, 2016 (the "*Assessment Resolution*"), in one series, in the aggregate original principal amount of $16,680,000, subject to the limitations described herein, pursuant to the Indenture, to which reference is hereby made for a description of the amounts thereby pledged and assigned, the nature and extent of the lien and security, the respective rights thereunder of the Registered Owners of the Bonds, the Trustee, and the District, and the terms upon which the Bonds are, and are to be, authenticated and delivered and by this reference to the terms of which each Registered Owner of this Bond hereby consents. Contemporaneously with the issuance of the Bonds, the District is issuing its Subordinate Special Assessment Bonds, Series 2017B (the "*Series B Bonds*"). Repayment of the Series B Bonds is subordinate to repayment of the Bonds as provided in the Indenture.

It is hereby certified that a Reserve Fund has been established and the District agrees that at all times during the life of this Bond and until payment thereof in full, said Fund shall be maintained as described in the Indenture. This Bond is not a general obligation of the District, but is a limited obligation of the District, payable exclusively out of the funds described in the Indenture. The District shall not be liable for the payment of the Bonds, except to the extent of the funds established and received from (a) proceeds from the sale of the Bonds, (b) the Assessments levied upon benefitted properties within the District, including Assessments collected through foreclosure sales resulting from unpaid Assessments, and (c) moneys on deposit in the Reserve Fund, but the District shall be held responsible for the lawful levy of all Assessments, for the creation and maintenance and replenishment of the Reserve Fund as provided herein, and for the faithful accounting, collection, settlement, and payment of the Assessments. The District may apply at its sole discretion any other legally available funds or revenues to the payment of the principal and interest on the Bond.

The Assessments made and levied pursuant to the Assessment Resolution, with accruing interest thereon, and the cost of collection of the Assessments constitute a lien upon and against the property upon which such Assessments were made and levied from and after the date upon which the Assessment Resolution, which lien is superior to the lien of any trust deed, mortgage, mechanic's or materialman's lien, or other encumbrance. Said lien is equal to and on a parity with the lien for general property taxes and shall continue until the Assessments and interest thereon are paid, notwithstanding any sale of the property for or on account of a delinquent general property tax, special tax, other assessment, or the issuance of a tax deed, an assignment of interest by the District, or a sheriff's certificate of sale or deed.

Notwithstanding any provision hereof or of the Assessment Resolution, however, the Indenture may be released and the obligation of the District to make money available to pay this Bond may be defeased by the deposit of money and/or certain direct or indirect Governmental Obligations sufficient for such purpose as described in the Indenture.

The Bonds are issuable as fully registered bonds only in the denominations of $100,000 and any $10,000 multiple in excess thereof.

The Bonds are subject to redemption as provided in the Indenture.

The Assessment Resolution and the Indenture permit, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the District and the rights of the Registered Owners of the Bonds pursuant to the Assessment Resolution and the Indenture at any time by the District with the consent of the Registered Owners of a majority in principal amount of the Bonds at the time Outstanding affected by such modification. The Assessment Resolution and Indenture also contain provisions permitting the Registered Owners of specified percentages in aggregate principal amount of the Bonds at the time Outstanding, on behalf of the Registered Owners of all the Bonds, to waive compliance by the District with certain past defaults pursuant to the Assessment Resolution or the Indenture and their consequences. Any such consent or waiver by the Registered Owner of this Bond or any Predecessor Bond evidencing the same debt shall be conclusive and binding upon such Registered Owner and upon all future Registered Owners thereof and of any Bond issued upon the transfer thereof or in exchange therefor or in lieu thereof, whether or not notation of such consent or waiver is made upon this Bond.

As provided in the Indenture and subject to certain limitations therein set forth, this Bond is transferable on the Bond Register of the District, upon surrender of this Bond for transfer to the Paying Agent at the Place of Payment duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the District and the Paying Agent duly executed by, the Registered Owner hereof or his attorney duly authorized in writing, and thereupon one or more new fully registered Bonds of authorized denominations and for the same aggregate principal amount shall be issued to the designated transferee or transferees.

As provided in the Indenture and subject to certain limitations therein set forth, Bonds are exchangeable for a like aggregate principal amount of Bonds in authorized denominations, as requested by the Registered Owner, upon surrender of the Bonds to be exchanged to the Paying Agent at the Place of Payment.

The Paying Agent may require payment of a sum sufficient to cover any tax or other charges payable in connection therewith.

The District, the Trustee, and any agent of either of them may treat the Person in whose name this Bond is registered as the owner hereof for the purpose of receiving payment as herein provided and for all other purposes, whether or not this Bond be overdue, and none of the District, the Trustee, and any such agent shall be affected by notice to the contrary.

Unless the Certificate of Authentication hereon has been executed by the Trustee, by manual signature, this Bond shall not be entitled to any benefit pursuant to the hereinafter described Assessment Resolution or the Indenture or be valid or obligatory for any purpose.

It is hereby certified, covenanted, and represented that all acts, conditions, and things required to be performed, exist, and be done precedent to or in the issuance of this Bond have been performed, exist, and have been done, in regular and due time, form, and manner, as required by law. In case any provision in this Bond or any application thereof shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions and applications shall not in any way be affected or impaired thereby. This Bond shall be construed in accordance with and governed by the laws of the State of Arizona.

IN WITNESS WHEREOF, the District has caused this Bond to be duly executed.

CAHAVA SPRINGS REVITALIZATION DISTRICT

By: _____
(Vice) Chairman

ATTEST:

_____
District Clerk

Dated: _____

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Cahava Springs Revitalization District (Town of Cave Creek, Arizona) Special Assessment Bonds, Series 2017A, described in the within-mentioned Assessment Resolution and Indenture.

DATE OF AUTHENTICATION AND REGISTRATION: _____, 2017

Zions Bank, a division of ZB, National Association, as trustee

By:_____
Name:_____
Its:_____

FORM OF ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

_____

(Please Print or Typewrite Name and Address of Transferee)

the within Bond and all rights pursuant thereto, and hereby irrevocably constitutes and appoints _____ attorney to register the transfer of the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Date: _____

_____

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever.

Signature Guaranteed:

_____

NOTICE: Signature(s) must be guaranteed by a member of the New York Stock Exchange or a commercial bank or trust company

The following abbreviations, when used in the inscription on the face of this bond, will be construed as though they were written out in full according to applicable laws or regulations.

TEN COM	as tenants in common	
TEN ENT	as tenants by the entireties	
JT TEN	as joint tenants with right of survivorship and not as tenants in common	UNIF GIFT/TRANS MIN ACT under Uniform Gifts/ Transfers to Minors Act

_____

Custodian for (Cust) (Minor)

Additional abbreviations may also be used though not listed above.

EXHIBIT A-2

FORM OF SERIES 2017B BOND

Number:
R -___

Denomination:
$_____

UNITED STATES OF AMERICA
STATE OF ARIZONA

CAHAVA SPRINGS REVITALIZATION DISTRICT
(TOWN OF CAVE CREEK, ARIZONA)
SUBORDINATE SPECIAL ASSESSMENT BONDS, SERIES 2017B

INTEREST RATE	MATURITY DATE	ORIGINAL ISSUE DATE
7.00%	August 1, 20___	[_____], 201__

REGISTERED OWNER: _____

PRINCIPAL AMOUNT: _____ DOLLARS

Cahava Springs Revitalization District, a special purpose, tax-levying public improvement district for the purposes of the Constitution of the State of Arizona and a municipal corporation for certain purposes of the laws of the State of Arizona (the "*District*"), formed pursuant to Title 48, Chapter 39, Article 1 of the Arizona Revised Statutes (the "*Enabling Act*"), by a resolution adopted by the Mayor and Council of the Town of Cave Creek, Arizona (the "*Town*") on June 17, 2015 in response to a petition by Cahava Springs Development Corporation, a Nevada corporation (the "*Developer*"), for value received, hereby promises to pay to the "*Registered Owner*" specified above or registered assigns (the "*Registered Owner*"), on the "*Maturity Date*" specified above, the "*Principal Amount*" specified above and to pay interest (calculated on the basis. of a 360-day year of twelve 30-day months) on the unpaid portion thereof from the "*Original Issue Date*" specified above, or from the most recent "*Interest Payment Date*" (as defined herein) to which interest has been paid or duly provided for, until paid or the payment thereof is duly provided for at Maturity (as such term is deemed in the hereinafter described "*Indenture*"), annually on each August 1st (each an "*Interest Payment Date*"), commencing on the August 1st of the Fiscal Year subsequent to the Fiscal Year in which this Bond is issued, at the "*Interest Rate*" per annum specified above.

Words with initial capitals shall have such meanings set forth in the Assessment Resolution or the Indenture (each as defined herein), unless otherwise defined herein.

As provided in the Indenture of Trust, dated as of March 1, 2017 (the "*Indenture*"), from the District to Zions Bank, a division of ZB, National Association, as trustee (the "*Trustee*"), principal and any Redemption Price (as such term is defined in the Indenture) of this Bond are

payable upon presentation and surrender of this Bond at the designated corporate trust office of the Trustee, as Paying Agent, in Phoenix, Arizona (the "*Place for Payment*") and interest payable on any Interest Payment Date shall be payable by check drawn on the Trustee, as Paying Agent, mailed on or before the Interest Payment Date to the Registered Owner in whose name this Bond (or one or more Predecessor Bonds evidencing the same debt) is registered in the Bond Register at the close of business on the "*Regular Record Date*" therefor, which shall be the fifteenth day immediately preceding each Interest Payment Date. Any interest not so punctually paid or duly provided for shall forthwith cease to be payable to the Registered Owner on such Regular Record Date and shall be paid to the Person in whose name this Bond (or one or more such Predecessor Bonds) is registered at the close of business on a "*Special Record Date*" for the payment of such defaulted interest to be fixed by the Trustee in accordance with the Indenture, notice whereof being given to the Registered Owner hereof not less than 10 days prior to such Special Record Date.

Additionally, payment may also be made by wire transfer to any Registered Owner owning an aggregate principal amount of at least $1,000,000 of Bonds of this series upon two (2) days' prior written request delivered to the Paying Agent by such Registered Owner specifying a wire transfer address in the continental United States. Any such request for interest payments by wire transfer shall remain in effect until rescinded or changed, in writing delivered by the Registered Owner to the Paying Agent, any such rescission or change must be received by the Paying Agent at least five (5) days prior to the next applicable Interest Payment Date.

If the specified date for any such payment shall not be a Business Day then such payment may be made on the next succeeding day which is a Business Day without additional interest and with the same force and effect as if made on the specified date for such payment, except that in the event of a moratorium for banking institutions generally at the Place of Payment or in the city where the designated corporate trust office of the Paying Agent is located, such payment may be made on such next succeeding day, except that the Bonds on which such payment is due shall continue to accrue interest until such payment is made or duly provided for.

This Bond is one of a duly authorized issue of special assessment lien bonds of the District having the designation specified in its title (the "*Bonds*"), issued pursuant to the Enabling Act and the Assessment Resolution for Cahava Springs Revitalization District adopted by the District on October 31, 2016 (the "*Assessment Resolution*"), in one series, in the aggregate original principal amount of $5,000,000, subject to the limitations described herein, pursuant to the Indenture, to which reference is hereby made for a description of the amounts thereby pledged and assigned, the nature and extent of the lien and security, the respective rights thereunder of the Registered Owners of the Bonds, the Trustee, and the District, and the terms upon which the Bonds are, and are to be, authenticated and delivered and by this reference to the terms of which each Registered Owner of this Bond hereby consents. Contemporaneously with the issuance of the Bonds, the District is issuing its Special Assessment Bonds, Series 2017A (the "*Series A Bonds*"). Repayment of the Bonds shall be subordinate to repayment of the Series A Bonds as more fully provided in the Indenture.

This Bond is not a general obligation of the District, but is a limited obligation of the District, payable exclusively out of the funds described in the Indenture. The District shall not be liable for the payment of the Bonds, except to the extent of the funds established and received

from (a) proceeds from the sale of the Bonds, (b) the Assessments levied upon benefitted properties within the District, including Assessments collected through foreclosure sales resulting from unpaid Assessments, and (c) moneys on deposit in the Reserve Fund, but the District shall be held responsible for the lawful levy of all Assessments, for the creation and maintenance and replenishment of the Reserve Fund as provided herein, and for the faithful accounting, collection, settlement, and payment of the Assessments. The District may apply at its sole discretion any other legally available funds or revenues to the payment of the principal and interest on the Bond.

The Assessments made and levied pursuant to the Assessment Resolution, with accruing interest thereon, and the cost of collection of the Assessments constitute a lien upon and against the property upon which such Assessments were made and levied from and after the date upon which the Assessment Resolution, which lien is superior to the lien of any trust deed, mortgage, mechanic's or materialman's lien, or other encumbrance. Said lien is equal to and on a parity with the lien for general property taxes and shall continue until the Assessments and interest thereon are paid, notwithstanding any sale of the property for or on account of a delinquent general property tax, special tax, other assessment, or the issuance of a tax deed, an assignment of interest by the District, or a sheriff's certificate of sale or deed.

Notwithstanding any provision hereof or of the Assessment Resolution, however, the Indenture may be released and the obligation of the District to make money available to pay this Bond may be defeased by the deposit of money and/or certain direct or indirect Governmental Obligations sufficient for such purpose as described in the Indenture.

The Bonds are issuable as fully registered bonds only in the denominations of $10,000 and any integral multiple thereof.

The Bonds are subject to redemption as provided in the Indenture.

The Assessment Resolution and the Indenture permit, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the District and the rights of the Registered Owners of the Bonds pursuant to the Assessment Resolution and the Indenture at any time by the District with the consent of the Registered Owners of a majority in principal amount of the Bonds at the time Outstanding affected by such modification. The Assessment Resolution and Indenture also contain provisions permitting the Registered Owners of specified percentages in aggregate principal amount of the Bonds at the time Outstanding, on behalf of the Registered Owners of all the Bonds, to waive compliance by the District with certain past defaults pursuant to the Assessment Resolution or the Indenture and their consequences. Any such consent or waiver by the Registered Owner of this Bond or any Predecessor Bond evidencing the same debt shall be conclusive and binding upon such Registered Owner and upon all future Registered Owners thereof and of any Bond issued upon the transfer thereof or in exchange therefor or in lieu thereof, whether or not notation of such consent or waiver is made upon this Bond.

As provided in the Indenture and subject to certain limitations therein set forth, this Bond is transferable on the Bond Register of the District, upon surrender of this Bond for transfer to the Paying Agent at the Place of Payment duly endorsed by, or accompanied by a written

instrument of transfer in form satisfactory to the District and the Paying Agent duly executed by, the Registered Owner hereof or his attorney duly authorized in writing, and thereupon one or more new fully registered Bonds of authorized denominations and for the same aggregate principal amount shall be issued to the designated transferee or transferees.

As provided in the Indenture and subject to certain limitations therein set forth, Bonds are exchangeable for a like aggregate principal amount of Bonds of the same series in authorized denominations, as requested by the Registered Owner, upon surrender of the Bonds to be exchanged to the Paying Agent at the Place of Payment.

The Paying Agent may require payment of a sum sufficient to cover any tax or other charges payable in connection with any such transfer or exchange.

The District, the Trustee, and any agent of either of them may treat the Person in whose name this Bond is registered as the owner hereof for the purpose of receiving payment as herein provided and for all other purposes, whether or not this Bond be overdue, and none of the District, the Trustee, and any such agent shall be affected by notice to the contrary.

Unless the Certificate of Authentication hereon has been executed by the Trustee, by manual signature, this Bond shall not be entitled to any benefit pursuant to the hereinafter described Assessment Resolution or the Indenture or be valid or obligatory for any purpose.

It is hereby certified, covenanted, and represented that all acts, conditions, and things required to be performed, exist, and be done precedent to or in the issuance of this Bond have been performed, exist, and have been done, in regular and due time, form, and manner, as required by law. In case any provision in this Bond or any application thereof shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions and applications shall not in any way be affected or impaired thereby. This Bond shall be construed in accordance with and governed by the laws of the State of Arizona.

IN WITNESS WHEREOF, the District has caused this Bond to be duly executed.

CAHAVA SPRINGS REVITALIZATION DISTRICT

By: _____
(Vice) Chairman

ATTEST:

_____
District Clerk

Dated: _____

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Cahava Springs Revitalization District (Town of Cave Creek, Arizona) Subordinate Special Assessment Bonds, Series 2017B, described in the within-mentioned Assessment Resolution and Indenture.

DATE OF AUTHENTICATION AND REGISTRATION: _____, 2017

ZIONS BANK, a division of ZB, NATIONAL ASSOCIATION,
as Trustee

By: _____
Name: _____
Its: _____

FORM OF ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

_____

(Please Print or Typewrite Name and Address of Transferee)

the within Bond and all rights pursuant thereto, and hereby irrevocably constitutes and appoints _____ attorney to register the transfer of the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Date: _____

_____

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever.

Signature Guaranteed:

_____

NOTICE: Signature(s) must be guaranteed by a member of the New York Stock Exchange or a commercial bank or trust company

The following abbreviations, when used in the inscription on the face of this bond, will be construed as though they were written out in full according to applicable laws or regulations.

TEN COM	as tenants in common	
TEN ENT	as tenants by the entireties	
JT TEN	as joint tenants with right of survivorship and not as tenants in common	UNIF GIFT/TRANS MIN ACT under Uniform Gifts/ Transfers to Minors Act

_____

Custodian for (Cust) (Minor)

Additional abbreviations may also be used though not listed above.

EXHIBIT B

FORM OF QUALIFIED INVESTOR LETTER

_____, 2017

Cahava Springs Revitalization District
Cave Creek, Arizona

Piper Jaffray & Co.
Phoenix, Arizona

Re: $16,680,000 Cahava Springs Revitalization District (Town of Cave Creek, Arizona) Special Assessment Bonds, Series 2017A/Series 2017B

To the District:

Please be advised that the undersigned is purchasing $_____ in original aggregate principal amount of the captioned bonds (hereinafter referred to as the "*Bonds*"), bearing the CUSIP number 12773C AA1. The undersigned acknowledges that it is a Qualified Investor (as defined herein). Such purchase is for the account of the undersigned, for the purpose of investment and not for distribution or resale. In the event that the undersigned hereafter transfers such Bond or any part thereof, the undersigned will comply with all provisions related to transfer of the Bonds contained in the Indenture of Trust, dated as of March 1, 2017, from the captioned District (hereinafter referred to as the "*District*") to the trustee identified therein (or any successor thereto as provided in such Indenture of Trust, hereinafter referred to as the "*Trustee*"). The undersigned assumes all responsibility for complying with any applicable federal and state securities laws in such regard. The undersigned hereby covenants and agrees that it will not sell, convey, transfer or assign any interest in the Bonds to an entity or natural person that is not a Qualified Investor.

A Qualified Investor is defined as either a Qualified Institutional Buyer, as defined in Rule 144A promulgated pursuant to the Securities Act of 1933, as amended (the "*Act*"), or a Accredited Investor, as defined in Regulation D promulgated pursuant to the Act.

A Qualified Institutional Buyer is defined as any of the following:

(i) Any of the following entities, acting for its own account or the accounts of other qualified institutional buyers, that in the aggregate owns and invests on a discretionary basis at least $100 million in securities of issuers that are not affiliated with the entity;

(A) Any insurance company as defined in section 2(13) of the Act;

(B) Any investment company registered pursuant to the Investment Company Act of 1940 (the "*Investment Company Act*"), or any business development company as defined in section 2(a)(48) of that Act;

(C) Any Small Business Investment Company licensed by the U.S. small Business Administration pursuant to section 301(c) or (d) of the Small Business Investment Act of 1958;

(D) Any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees;

(E) Any employee benefit plan within the meaning of title I of the Employee Retirement Income Security Act of 1974;

(F) Any trust fund whose trustee is a bank or trust company and whose participants are exclusively plans of the types identified in paragraph (i)(D) or (E) of this section, excepts trust funds that include as participants individual retirement accounts or H.R. 10 plans;

(G) Any business development company as defined in section 202(a)(22) of the Investment Advisers Act of 1940;

(H) Any organization described in section 501(c)(3) of the Internal Revenue Code, corporation (other than a bank as defined in section 3(a)(2) of the Act or a savings and loan association or other institution referenced in section 3(a)(5)(A) of the Act or a foreign bank or savings and loan association or equivalent institution), partnership, or Massachusetts or similar business trust; and

(I) Any investment adviser registered pursuant to the Investment Advisers Act.

(ii) Any dealer registered pursuant to section 15 of the Securities Exchange Act of 1934, as amended (the "*Exchange Act*"), acting for its own account or the accounts of other qualified institutional buyers, that in the aggregate owns and invests on a discretionary basis at least $10 million of securities of issuers that are not affiliated with the dealer; provided, that securities constituting the whole or a part of an unsold allotment to or subscription by a dealer as a participant in a public offering shall not be deemed to be owned by such dealer;

(iii) Any dealer registered pursuant to section 15 of the Exchange Act acting in a riskless principal transaction on behalf of a qualified institutional buyer;

(iv) Any investment company registered pursuant to the Investment Company Act, acting for its own account or for the account of other qualified institutional buyers, that is part of a family of investment companies which own in the aggregate at least $100 million in securities of issuers, other than issuers that are affiliated with the investment company or are part of such family of investment companies. "*Family of investment*

companies" means any two or more investment companies registered pursuant to the Investment Company Act, except for a unit investment trust whose assets consist solely of shares of one or more registered investment companies, that have the same investment adviser (or, in the case of unit investment trusts, the same depositor); provided that, for purposes of this section:

(A) Each series of series company (as defined in Rule 18f-2 pursuant to the Investment Company Act shall be deemed to be a separate investment company; and

(B) Investment companies shall be deemed to have the same advisor (or depositor) if their advisors (or depositors) or majority-owned subsidiaries of the same parent, or if one investment company's advisor (or depositor) is a majority-owned subsidiary of the other investment company's advisor (or depositor);

(v) Any entity, all of the equity owners of which are qualified institutional buyers, acting for its own account or the accounts of other qualified institutional buyers; and

(vi) Any bank as defined in section 3(a)(2) of the Act, any savings and loan association or other institution as referenced in section 3(a)(5)(A) of the Act, or any foreign bank or savings and loan association or equivalent institution, acting for its own account or the accounts of other qualified institutional buyers, that in the aggregate owns and invest on a discretionary basis at least $100 million in securities of issuers that are not affiliated with it and that has an audited net worth of at least $25 million as demonstrated in its latest annual financial statements, as of a date not more than 16 months preceding the date of sale pursuant to the Rule in the case of a U.S. bank or savings and loan association, and not more than 18 months preceding such a date of sale for a foreign bank or savings and loan association or equivalent institution.

An Accredited Investor is defined as any of the following:

(i) Any bank as defined in section 3(a)(2) of the Act, or any savings and loan association or other institution as defined in Section 3(a)(5)(A) of the Act whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of Exchange Act; any insurance company as defined in section 2(13) of the Act; any investment company registered pursuant to the Investment Company Act or a business development company as defined in section 2(a)(48) of the Investment Company Act; any Small Business Investment Company licensed by the U.S. Small Business Administration pursuant to section 301(c) or (d) of the Small Business Investment Act of 1958; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivision, for the benefit of its employees, if such plan has total assets in excess of $5,000,000; any employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such act, which is either a bank, savings and loan association, insurance company, or registered

investment advisor, or if the employee benefit plan has total assets in excess of $5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;

(ii) Any private business development company, as defined in section 202(a)(22) of the Investment Advisors Act of 1940;

(iii) Any organization described in section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of $5,000,000;

(iv) Any director, executive officer or general partner of the District, or any director, executive officer or general partner of a general partner of the District;

(v) Any natural person whose individual net worth or joint net worth with that person's spouse, at the time of the purchase exceeds $1,000,000;

(vi) Any natural person who had an individual income in excess of $200,000 in each of the two most recent years or joint income with the person's spouse in excess of $300,000 in each of those years and has a reasonably expectation of reaching the same income level in the current year;

(vii) Any trust, with total assets in excess of $5,000,000, not formed for the specific purpose of acquiring the securities offered, whose purchase in directed by a sophisticated person as described in 17 CFR § 230.506(b)(2)(ii); and

(viii) Any entity in which all of the equity owners are accredited investors.

The undersigned further acknowledges that (i) the undersigned was offered the opportunity to obtain and has obtained all materials and information which the undersigned regarded as necessary to evaluate the merits and risks of investment in the Bonds and (ii) after such evaluation, the undersigned understands and agrees that investment in the Bonds involves certain risks, including, but not limited to, those related to limited security and source for payment of the Bonds, the concentration of ownership of land subject to taxation for payment of the Bonds in a few taxpayers and the possible transfer of such land by such taxpayers, bankruptcy and foreclosure delays and the probable lack of any secondary market for the Bonds.

The undersigned acknowledges warrants and represents that the undersigned is experienced in transactions such as those relating to the Bonds and that the undersigned is knowledgeable and fully capable of independent evaluation of the risks involved in investing in the Bonds.

Name: _____
Name Printed: _____
Title: _____

EXHIBIT C

FORM OF DISBURSEMENT REQUEST

$16,680,000
CAHAVA SPRINGS REVITALIZATION DISTRICT
(TOWN OF CAVE CREEK, ARIZONA)
SPECIAL ASSESSMENT BONDS, SERIES 2017A

This certificate is provided pursuant to the provisions of Section 3.3 of the Indenture of Trust, dated as of March 1, 2017 (the "*Indenture*"), from Cahava Springs Revitalization District (the "*District*") to Zions Bank, a division of ZB, National Association, as trustee (the "*Trustee*"), relating to the above-referenced bonds (the "*Bonds*"). Defined terms used and not defined herein will have the meanings ascribed to them in the Indenture.

You are hereby requested and authorized to disburse from the [Public Infrastructure/Phase 1] Account of the Acquisition and Construction Fund][Costs of Issuance Fund] established pursuant to the Indenture with regard to the above-referenced bonds the following amount(s):

REQUISITION NUMBER: _____

NAME AND ADDRESS OF PAYEE: _____

_____

_____

_____

AMOUNT: $_____

PURPOSE FOR WHICH EXPENSE HAS BEEN INCURRED: _____
_____
_____
_____
_____
_____
_____

Each obligation, item of cost, or expense mentioned herein has been properly incurred, is a proper charge against the [Public Infrastructure/Phase 1] Account of the Acquisition and Construction Fund][Costs of Issuance Fund] and has not been the basis for a previous disbursement. Additionally, there are no vendors' liens, mechanics' liens, or other liens,

bailment leases or condition sale contracts which must be satisfied or discharged before the disbursement requested hereby is made, or which will not be discharged by this disbursement.

[FOR DISBURSEMENT REQUESTS RELATING TO THE PUBLIC INFRASTRUCTURE ACCOUNT OF THE ACQUISITION AND CONSTRUCTION FUND, ADD: This Disbursement Request is based upon itemized claims substantiated in support thereof (as attached hereto). Following disbursement of the amount(s) requested hereby, the moneys and investments contained in the Public Infrastructure Account of the Acquisition and Construction Fund will be sufficient to complete the acquisition and construction of the District Improvements (as defined in the Indenture)]

Dated: [_____], 201__

CAHAVA SPRINGS REVITALIZATION DISTRICT

By_____
Chairman or Vice Chairman

Reviewed and approved:

By _____
District Engineer

EXHIBIT D

LIST OF HOMEBUILDERS

D.R. Horton
Taylor Morrison
Meritage Homes
Pulte Homes
Shea Homes
Lennar Homes
Fulton Homes
Richmond American Homes
Standard Pacific Homes
KB Home
William Lyon Homes
Mattamy Homes
Maracay Homes
K. Hovnanian Homes
AV Homes
Ryland Homes
Ashton Woods
Woodside Homes
Beazer Homes
Blandford Homes
Toll Brothers
LGI Homes
Garrett Walker
Robson Communities
Optima Construction, Inc.

EXHIBIT E

PHASES AND LOT NUMBERS

PHASE 1

Phase	Lot	Name	APN	Owner
1	1	Village of Apache Park	211-18-092	Cahava Springs Phase 1 Inc.
1	2	Village of Apache Park	211-18-093	Cahava Springs Phase 1 Inc.
1	3	Village of Apache Park	211-18-094	Cahava Springs Phase 1 Inc.
1	4	Village of Apache Park	211-18-095	Cahava Springs Phase 1 Inc.
1	5	Village of Apache Park	211-18-096	Cahava Springs Phase 1 Inc.
1	6	Village of Apache Park	211-18-097	Cahava Springs Phase 1 Inc.
1	7	Village of Apache Park	211-18-098	Cahava Springs Phase 1 Inc.
1	8	Village of Apache Park	211-18-099	Cahava Springs Phase 1 Inc.
1	9	Village of Apache Park	211-18-100	Cahava Springs Phase 1 Inc.
1	10	Village of Apache Park	211-18-101	Cahava Springs Phase 1 Inc.
1	11	Village of Apache Park	211-18-102	Cahava Springs Phase 1 Inc.
1	12	Village of Apache Park	211-18-103	Cahava Springs Phase 1 Inc.
1	13	Village of Apache Park	211-18-104	Cahava Springs Phase 1 Inc.
1	14	Village of Apache Park	211-18-105	Cahava Springs Phase 1 Inc.
1	15	Village of Apache Park	211-18-106	Cahava Springs Phase 1 Inc.
1	16	Village of Apache Park	211-18-107	Cahava Springs Phase 1 Inc.
1	17	Village of Apache Park	211-18-108	Cahava Springs Phase 1 Inc.
1	18	Village of Apache Park	211-18-109	Cahava Springs Phase 1 Inc.
1	19	Village of Apache Park	211-18-110	Cahava Springs Phase 1 Inc.
1	20	Village of Apache Park	211-18-111	Cahava Springs Phase 1 Inc.
1	21	Village of Apache Park	211-18-112	Cahava Springs Phase 1 Inc.
1	22	Village of Apache Park	211-18-113	Cahava Springs Phase 1 Inc.
1	23	Village of Apache Park	211-18-114	Cahava Springs Phase 1 Inc.
1	24	Village of Apache Park	211-18-115	Cahava Springs Phase 1 Inc.
1	25	Village of Apache Park	211-18-116	Cahava Springs Phase 1 Inc.
1	26	Village of Apache Park	211-18-117	Cahava Springs Phase 1 Inc.
1	27	Village of Apache Park	211-18-118	Cahava Springs Phase 1 Inc.
1	28	Village of Apache Park	211-18-119	Cahava Springs Phase 1 Inc.
1	29	Village of Apache Park	211-18-120	Cahava Springs Phase 1 Inc.
1	30	Village of Apache Park	211-18-121	Cahava Springs Phase 1 Inc.
1	31	Village of Apache Park	211-18-122	Cahava Springs Phase 1 Inc.
1	32	Village of Apache Park	211-18-123	Cahava Springs Phase 1 Inc.
1	33	Village of Apache Park	211-18-124	Cahava Springs Phase 1 Inc.
1	34	Village of Apache Park	211-18-125	Cahava Springs Phase 1 Inc.
1	35	Village of Apache Park	211-18-126	Cahava Springs Phase 1 Inc.
1	36	Village of Apache Park	211-18-127	Cahava Springs Phase 1 Inc.
1	37	Village of Apache Park	211-18-128	Cahava Springs Phase 1 Inc.

Phase	Lot	Name	APN	Owner
1	38	Village of Apache Park	211-18-129	Cahava Springs Phase 1 Inc.
1	39	Village of Apache Park	211-18-130	Cahava Springs Phase 1 Inc.
1	40	Village of Apache Park	211-18-131	Cahava Springs Phase 1 Inc.
1	41	Village of Apache Park	211-18-132	Cahava Springs Phase 1 Inc.
1	42	Village of Apache Park	211-18-133	Cahava Springs Phase 1 Inc.
1	43	Village of Apache Park	211-18-134	Cahava Springs Phase 1 Inc.
1	44	Village of Apache Park	211-18-135	Cahava Springs Phase 1 Inc.
1	45	Village of Apache Park	211-18-136	Cahava Springs Phase 1 Inc.
1	46	Village of Apache Park	211-18-137	Cahava Springs Phase 1 Inc.
1	47	Village of Apache Park	211-18-138	Cahava Springs Phase 1 Inc.
1	48	Village of Apache Park	211-18-139	Cahava Springs Phase 1 Inc.
1	49	Village of Apache Park	211-18-140	Cahava Springs Phase 1 Inc.
1	50	Village of Apache Park	211-18-141	Cahava Springs Phase 1 Inc.
1	51	Village of Apache Park	211-18-142	Cahava Springs Phase 1 Inc.
1	52	Village of Apache Park	211-18-143	Cahava Springs Phase 1 Inc.

PHASE 2

Phase	Lot	Name	APN	Owner
2	53	Village of Whispering Springs	211-18-152	Cahava Spring Development Corp
2	54	Village of Whispering Springs	211-18-153	Cahava Spring Development Corp
2	55	Village of Whispering Springs	211-18-154	Cahava Spring Development Corp
2	56	Village of Whispering Springs	211-18-155	Cahava Spring Development Corp
2	57	Village of Whispering Springs	211-18-156	Cahava Spring Development Corp
2	58	Village of Whispering Springs	211-18-157	Cahava Spring Development Corp
2	59	Village of Whispering Springs	211-18-158	Cahava Spring Development Corp
2	60	Village of Whispering Springs	211-18-159	Cahava Spring Development Corp
2	61	Village of Whispering Springs	211-18-160	Cahava Spring Development Corp
2	62	Village of Whispering Springs	211-18-161	Cahava Spring Development Corp
2	63	Village of Whispering Springs	211-18-162	Cahava Spring Development Corp
2	64	Village of Whispering Springs	211-18-163	Cahava Spring Development Corp
2	65	Village of Whispering Springs	211-18-164	Cahava Spring Development Corp
2	66	Village of Whispering Springs	211-18-165	Cahava Spring Development Corp
2	67	Village of Whispering Springs	211-18-166	Cahava Spring Development Corp
2	68	Village of Whispering Springs	211-18-167	Cahava Spring Development Corp
2	69	Village of Whispering Springs	211-18-168	Cahava Spring Development Corp
2	70	Village of Whispering Springs	211-18-169	Cahava Spring Development Corp
2	71	Village of Whispering Springs	211-18-170	Cahava Spring Development Corp
2	72	Village of Whispering Springs	211-18-171	Cahava Spring Development Corp
2	73	Village of Whispering Springs	211-18-172	Cahava Spring Development Corp
2	74	Village of Whispering Springs	211-18-173	Cahava Spring Development Corp
2	75	Village of Whispering Springs	211-18-174	Cahava Spring Development Corp
2	76	Village of Whispering Springs	211-18-175	Cahava Spring Development Corp
2	77	Village of Whispering Springs	211-18-176	Cahava Spring Development Corp
2	78	Village of Whispering Springs	211-18-177	Cahava Spring Development Corp
2	79	Village of Whispering Springs	211-18-178	Cahava Spring Development Corp
2	80	Village of Whispering Springs	211-18-179	Cahava Spring Development Corp
2	81	Village of Whispering Springs	211-18-180	Cahava Spring Development Corp
2	82	Village of Whispering Springs	211-18-181	Cahava Spring Development Corp
2	83	Village of Whispering Springs	211-18-182	Cahava Spring Development Corp
2	84	Village of Whispering Springs	211-18-183	Cahava Spring Development Corp
2	85	Village of Whispering Springs	211-18-184	Cahava Spring Development Corp
2	86	Village of Whispering Springs	211-18-185	Cahava Spring Development Corp
2	87	Village of Whispering Springs	211-18-186	Cahava Spring Development Corp
2	88	Village of Whispering Springs	211-18-187	Cahava Spring Development Corp
2	89	Village of Whispering Springs	211-18-188	Cahava Spring Development Corp
2	90	Village of Whispering Springs	211-18-189	Cahava Spring Development Corp
2	91	Village of Whispering Springs	211-18-190	Cahava Spring Development Corp
2	92	Village of Whispering Springs	211-18-191	Cahava Spring Development Corp
2	93	Village of Whispering Springs	211-18-192	Cahava Spring Development Corp

Phase	Lot	Name	APN	Owner
2	94	Village of Whispering Springs	211-18-193	Cahava Spring Development Corp
2	95	Village of Whispering Springs	211-18-194	Cahava Spring Development Corp
2	96	Village of Whispering Springs	211-18-195	Cahava Spring Development Corp
2	97	Village of Whispering Springs	211-18-196	Cahava Spring Development Corp
2	98	Village of Whispering Springs	211-18-197	Cahava Spring Development Corp
2	99	Village of Whispering Springs	211-18-198	Cahava Spring Development Corp
2	100	Village of Whispering Springs	211-18-199	Cahava Spring Development Corp
2	101	Village of Whispering Springs	211-18-200	Cahava Spring Development Corp
2	102	Village of Whispering Springs	211-18-201	Cahava Spring Development Corp
2	103	Village of Whispering Springs	211-18-202	Cahava Spring Development Corp
2	104	Village of Whispering Springs	211-18-203	Cahava Spring Development Corp
2	105	Village of Whispering Springs	211-18-204	Cahava Spring Development Corp
2	106	Village of Whispering Springs	211-18-205	Cahava Spring Development Corp

PHASE 3

Phase	Lot	Name	APN	Owner
3	107	Village of Secluded Summit	211-18-206	Cahava Springs Development Corp
3	108	Village of Secluded Summit	211-18-207	Cahava Springs Development Corp
3	109	Village of Secluded Summit	211-18-208	Cahava Springs Development Corp
3	110	Village of Secluded Summit	211-18-209	Cahava Springs Development Corp
3	111	Village of Secluded Summit	211-18-210	Cahava Springs Development Corp
3	112	Village of Secluded Summit	211-18-211	Cahava Springs Development Corp
3	113	Village of Secluded Summit	211-18-212	Cahava Springs Development Corp
3	114	Village of Secluded Summit	211-18-213 211-18-214	Cahava Springs Development Corp
3	115	Village of Secluded Summit	211-18-215 211-18-216	Cahava Springs Development Corp
3	116	Village of Secluded Summit	211-18-217	Cahava Springs Development Corp
3	117	Village of Secluded Summit	211-18-218	Cahava Springs Development Corp
3	118	Village of Secluded Summit	211-18-219 211-18-220	Cahava Springs Development Corp
3	119	Village of Secluded Summit	211-18-221 211-18-222	Cahava Springs Development Corp
3	120	Village of Secluded Summit	211-18-223	Cahava Springs Development Corp
3	121	Village of Secluded Summit	211-18-224	Cahava Springs Development Corp
3	122	Village of Secluded Summit	211-18-225	Cahava Springs Development Corp
3	123	Village of Secluded Summit	211-18-226	Cahava Springs Development Corp
3	124	Village of Secluded Summit	211-18-227	Cahava Springs Development Corp
3	125	Village of Secluded Summit	211-18-228	Cahava Springs Development Corp
3	126	Village of Secluded Summit	211-18-229	Cahava Springs Development Corp
3	127	Village of Secluded Summit	211-18-230	Cahava Springs Development Corp
3	128	Village of Secluded Summit	211-18-231	Cahava Springs Development Corp
3	129	Village of Secluded Summit	211-18-232	Cahava Springs Development Corp
3	130	Village of Secluded Summit	211-18-233	Cahava Springs Development Corp
3	131	Village of Secluded Summit	211-18-234	Cahava Springs Development Corp
3	132	Village of Secluded Summit	211-18-235	Cahava Springs Development Corp
3	133	Village of Secluded Summit	211-18-236	Cahava Springs Development Corp
3	134	Village of Secluded Summit	211-18-237	Cahava Springs Development Corp
3	135	Village of Secluded Summit	211-18-238 211-18-239	Cahava Springs Development Corp
3	136	Village of Secluded Summit	211-18-240	Cahava Springs Development Corp
3	137	Village of Secluded Summit	211-18-241	Cahava Springs Development Corp
3	138	Village of Secluded Summit	211-18-242	Cahava Springs Development Corp
3	139	Village of Secluded Summit	211-18-243 211-18-244	Cahava Springs Development Corp
3	140	Village of Secluded Summit	211-18-245	Cahava Springs Development Corp

Phase	Lot	Name	APN	Owner
3	141	Village of Secluded Summit	211-18-246	Cahava Springs Development Corp
3	142	Village of Secluded Summit	211-18-247	Cahava Springs Development Corp
3	143	Village of Secluded Summit	211-18-248	Cahava Springs Development Corp
3	144	Village of Secluded Summit	211-18-249	Cahava Springs Development Corp
3	145	Village of Secluded Summit	211-18-250	Cahava Springs Development Corp
3	146	Village of Secluded Summit	211-18-251	Cahava Springs Development Corp
3	147	Village of Secluded Summit	211-18-252	Cahava Springs Development Corp
3	148	Village of Secluded Summit	211-18-253	Cahava Springs Development Corp
3	149	Village of Secluded Summit	211-18-254	Cahava Springs Development Corp
3	150	Village of Secluded Summit	211-18-255 211-18-256	Cahava Springs Development Corp
3	151	Village of Secluded Summit	211-18-257	Cahava Springs Development Corp
3	152	Village of Secluded Summit	211-18-258	Cahava Springs Development Corp
3	153	Village of Secluded Summit	211-18-259	Cahava Springs Development Corp
3	154	Village of Secluded Summit	211-18-260	Cahava Springs Development Corp
3	155	Village of Secluded Summit	211-18-261	Cahava Springs Development Corp
3	156	Village of Secluded Summit	211-18-262	Cahava Springs Development Corp

PHASE 4

Phase	Lot	Name	APN	Owner
4	157	Village of Crest View	211-18-280	Cahava Springs Development Corp
4	158	Village of Crest View	211-18-281	Cahava Springs Development Corp
4	159	Village of Crest View	211-18-282	Cahava Springs Development Corp
4	160	Village of Crest View	211-18-283	Cahava Springs Development Corp
4	161	Village of Crest View	211-18-284	Cahava Springs Development Corp
4	162	Village of Crest View	211-18-285	Cahava Springs Development Corp
4	163	Village of Crest View	211-18-286	Cahava Springs Development Corp
4	164	Village of Crest View	211-18-287	Cahava Springs Development Corp
4	165	Village of Crest View	211-18-288	Cahava Springs Development Corp
4	166	Village of Crest View	211-18-289	Cahava Springs Development Corp
4	167	Village of Crest View	211-18-290	Cahava Springs Development Corp
4	168	Village of Crest View	211-18-291	Cahava Springs Development Corp
4	169	Village of Crest View	211-18-292	Cahava Springs Development Corp
4	170	Village of Crest View	211-18-293	Cahava Springs Development Corp
4	171	Village of Crest View	211-18-294	Cahava Springs Development Corp
4	172	Village of Crest View	211-18-295	Cahava Springs Development Corp
4	173	Village of Crest View	211-18-296	Cahava Springs Development Corp
4	174	Village of Crest View	211-18-297	Cahava Springs Development Corp
4	175	Village of Crest View	211-18-298	Cahava Springs Development Corp
4	176	Village of Crest View	211-18-299	Cahava Springs Development Corp
4	177	Village of Crest View	211-18-300	Cahava Springs Development Corp
4	178	Village of Crest View	211-18-301	Cahava Springs Development Corp
4	179	Village of Crest View	211-18-302	Cahava Springs Development Corp
4	180	Village of Crest View	211-18-303	Cahava Springs Development Corp
4	181	Village of Crest View	211-18-304	Cahava Springs Development Corp
4	182	Village of Crest View	211-18-305	Cahava Springs Development Corp
4	183	Village of Crest View	211-18-306	Cahava Springs Development Corp
4	184	Village of Crest View	211-18-307 211-18-308	Cahava Springs Development Corp
4	185	Village of Crest View	211-18-309 211-18-310	Cahava Springs Development Corp
4	186	Village of Crest View	211-18-311	Cahava Springs Development Corp
4	187	Village of Crest View	211-18-312	Cahava Springs Development Corp
4	188	Village of Crest View	211-18-313	Cahava Springs Development Corp
4	189	Village of Crest View	211-18-314	Cahava Springs Development Corp
4	190	Village of Crest View	211-18-315	Cahava Springs Development Corp
4	191	Village of Crest View	211-18-316	Cahava Springs Development Corp
4	192	Village of Crest View	211-18-317	Cahava Springs Development Corp
4	193	Village of Crest View	211-18-318	Cahava Springs Development Corp
4	194	Village of Crest View	211-18-319	Cahava Springs Development Corp
4	195	Village of Crest View	211-18-320	Cahava Springs Development Corp

Phase	Lot	Name	APN	Owner
4	196	Village of Crest View	211-18-321	Cahava Springs Development Corp
4	197	Village of Crest View	211-18-322	Cahava Springs Development Corp
4	198	Village of Crest View	211-18-323	Cahava Springs Development Corp
4	199	Village of Crest View	211-18-324	Cahava Springs Development Corp
4	200	Village of Crest View	211-18-325	Cahava Springs Development Corp
4	201	Village of Crest View	211-18-326	Cahava Springs Development Corp
4	202	Village of Crest View	211-18-327	Cahava Springs Development Corp
4	203	Village of Crest View	211-18-328	Cahava Springs Development Corp
4	204	Village of Crest View	211-18-329	Cahava Springs Development Corp
4	205	Village of Crest View	211-18-330	Cahava Springs Development Corp
4	206	Village of Crest View	211-18-331	Cahava Springs Development Corp
4	207	Village of Crest View	211-18-332	Cahava Springs Development Corp
4	208	Village of Crest View	211-18-333	Cahava Springs Development Corp
4	209	Village of Crest View	211-18-334	Cahava Springs Development Corp
4	210	Village of Crest View	211-18-335	Cahava Springs Development Corp
4	211	Village of Crest View	211-18-336	Cahava Springs Development Corp
4	212	Village of Crest View	211-18-337	Cahava Springs Development Corp
4	213	Village of Crest View	211-18-338	Cahava Springs Development Corp
4	214	Village of Crest View	211-18-339	Cahava Springs Development Corp
4	215	Village of Crest View	211-18-340	Cahava Springs Development Corp
4	216	Village of Crest View	211-18-341	Cahava Springs Development Corp
4	217	Village of Crest View	211-18-342	Cahava Springs Development Corp
4	218	Village of Crest View	211-18-343	Cahava Springs Development Corp
4	219	Village of Crest View	211-18-344	Cahava Springs Development Corp
4	220	Village of Crest View	211-18-345	Cahava Springs Development Corp

PHASE 5

Phase	Lot	Name	APN	Owner
5	221	Village of Quiet Canyon	211-18-265	Cahava Springs Development Corp
5	222	Village of Quiet Canyon	211-18-266 211-18-267	Cahava Springs Development Corp
5	223	Village of Quiet Canyon	211-18-268	Cahava Springs Development Corp
5	224	Village of Quiet Canyon	211-18-269	Cahava Springs Development Corp
5	225	Village of Quiet Canyon	211-18-270	Cahava Springs Development Corp
5	226	Village of Quiet Canyon	211-18-271	Cahava Springs Development Corp
5	227	Village of Quiet Canyon	211-18-272	Cahava Springs Development Corp
5	228	Village of Quiet Canyon	211-18-273 211-18-274	Cahava Springs Development Corp
5	229	Village of Quiet Canyon	211-18-275 211-18-276	Cahava Springs Development Corp
5	230	Village of Quiet Canyon	211-18-277	Cahava Springs Development Corp

PALECEK & PALECEK PLLC
ATTORNEYS AT LAW

EXHIBIT 3

Hopping Green & Sams

Attorneys and Counselors

December 19, 2019

Via Electronic Mail
and U.S. Mail

Cahava Springs Revitalization District
c/o Ballard Spahr, LLP
1 East Washington Street, Suite 2300
Phoenix, AZ 85004-2555
Attn: William A. Hicks III, Esq.

Re: Notice of Event of Default
Cahava Springs Revitalization District

Mr. Hicks:

This firm represents Zions Bancorporation, National Association, in its capacity as trustee ("*Trustee*") for the Special Assessment Bonds, Series 2017A (the "*Series 2017A Bonds*") and 2017B (together with the Series 2017A Bonds, the "*Bonds*"), issued pursuant to that certain *Indenture of Trust*, dated March 1, 2017 (the "*Indenture*"), by and between the Cahava Springs Revitalization District ("*District*") and the Trustee.

Previously, I transmitted to your attention **Attachment A** hereto in which demands were made per the Indenture including, but not limited to, the payment of Trustee fees and expenses as reflected therein. Payment has not been received and additional fees and expenses, reflected in **Attachment B** hereto, have since been incurred by the Trustee on this matter. The District, therefore, is in default under Section 6.1(b) of the Indenture.

Should you have questions concerning this letter or demands contained herein, please contact me at 850-425-2309 or via e-mail at BrianC@hgslaw.com.

HOPPING GREEN & SAMS, P.A.

Brian A. Crumbaker

ATTACHMENT A

Hopping Green & Sams

Attorneys and Counselors

October 1, 2019

Via Electronic Mail
and U.S. Mail

Cahava Springs Revitalization District
c/o Ballard Spahr, LLP
1 East Washington Street, Suite 2300
Phoenix, AZ 85004-2555
Attn: William A. Hicks III, Esq.

Re: Events of Default
Cahava Springs Revitalization District

Mr. Hicks:

This firm represents Zions Bancorporation, National Association, in its capacity as trustee ("***Trustee***") for the Special Assessment Bonds, Series 2017A (the "***Series 2017A Bonds***") and 2017B (together with the Series 2017A Bonds, the "***Bonds***"), issued pursuant to that certain *Indenture of Trust*, dated March 1, 2017 (the "***Indenture***"), by and between the Cahava Springs Revitalization District ("***District***") and the Trustee. The purpose of my writing is to provide notice of District defaults presently known to the Trustee, and demand the District cure same and remain in strict compliance with the financing documents for the Bonds going forward.

Contemporaneously with the District's issuance of the Bonds, the District made the following covenants and representations to and for the benefit of the Trustee and the owner of the Series 2017A Bonds regarding the levy, collection and enforcement of Assessments:[1]

- "***the District will*** receive and ***collect when due*** [emphasis added] all Assessments [on lots on which the Deed of Trust is recorded] with respect to which the [Bonds] have been issued, the installments thereof, the interest thereon, and the penalties accrued with respect thereto, including without limiting the generality of the foregoing, the whole of the unpaid principal, interest and penalties accrued which become due and payable immediately in the event of a default in the payment of any such installment, whether of principal or interest, when due, and to pay and disburse such payments to the Trustee as herein provided," *Section 9.2(a) of the Indenture*.

- "***the Assessment relating to*** [a lot on which the Deed of Trust is recorded] ***will be billed*** [emphasis added] to the respective owners of such lot (i.e., one of the Landowners) by the District annually on or before October 1 of each year. Not less than one-half of such Assessment shall be due and payable on or before November 1 of such year and any

[1] Capitalized terms not defined herein shall have the meaning set forth in the Indenture.

balance shall be due and payable on or before May 1 of the immediately succeeding year." *Private Placement Memorandum for the Bonds, p. 4, inter alia.*

- "in the event a default occurs in the payment of any installment of principal or interest of an Assessment levied … when due, ***the District shall*** [emphasis added] (a) either declare the unpaid amount delinquent and subject to collection or declare the whole of the unpaid Assessment immediately due and payable and subject to collection, (b) provide notice of such default, and (c) following the lapse of any grace period to remedy the default provided in the notice, all as provided in the applicable assessment resolution, the District may immediately initiate and diligently pursue to completion a summary sale pursuant to the Enabling Act, of all delinquent property in the manner provided for actions to foreclose trust deeds. *Section 9.4 of the Indenture.*

Based upon reasonable inquiry, the District has ***never*** billed, which should have commenced no-later-than October 1, 2018, much less enforced the collection of delinquent Assessments, as required, and the District's breach of such covenants resulted in insufficient revenues on hand to pay Debt Service on the Series 2017A Bonds and bond proceeds being used in place thereof. The District's failure to invoice Landowners for annual Assessments benefits only one party to the Bond transaction – the Landowners – and, therefore, raises concerns for the Trustee and sole holder of the Series 2017A Bonds (the "*Sole Holder*") as to whether the District is operating independently of the Developer and Landowners.

It is in light of the forgoing that I write to demand, pursuant to Section 6.1(b) of the Indenture, the District (i) operate independently of the Developer and Landowners; (ii) fund the Trustee fees and expenses set forth in **Attachment A** hereto; (iii) issue Assessment invoices to Landowners in amounts necessary to fund Debt Service due January 1 and July 1, 2019, and January 1 and July 1, 2020, per the Indenture and *District Development and Waiver Agreement*, dated February 15, 2017 (the "*Development Agreement*"); (iv) invoice and collect an O&M Tax Levy in an amount necessary to fund, *inter alia*, maintenance of public bond funded improvements; and (v) cooperate with the Trustee to identify any defaults on the part of the Developer and Landowners, respectively, under the Development Agreement and Continuing Disclosure Undertaking. For the moment, the District is not being asked to commence enforcement of delinquent Assessments, the hope being an amicable resolution of outstanding defaults by the Developer, Landowners and District can be negotiated; separate direction will be provided by the Trustee in the event such resolution cannot be achieved.

Thank you for your assistance with this matter. Should you have questions concerning this letter or demands contained herein, please contact me at 850-425-2309 or via e-mail at BrianC@hgslaw.com.

Sincerely,

Brian A. Crumbaker
Hopping Green & Sams, P.A.

Hopping Green & Sams

Attorneys and Counselors

119 South Monroe Street, Suite 300
Tallahassee, FL 32301

STATEMENT

October 1, 2019

Zions Bancorporation
c/o Pam Saucer
6001 No. 24th Street, Bldg. B
Phoenix, AZ 85016

Invoice Number 20191001

Zions Bancorporation/Cahava Springs Default
ZIONS/001 BAC

BILLING SUMMARY

Fees and expenses relating to service as counsel on Cahava Springs Default matter through August 2019	$7,609.50

Please remit upon receipt. Thank you

Attachment A

PALECEK & PALECEK PLLC
ATTORNEYS AT LAW

EXHIBIT 4

Agreement between Owner and Contractor

AGREEMENT made as of the 27 day of February in the year 2017.

BETWEEN the Owner, the Cahava Springs Revitalization District, a special purpose, tax-levying public improvement district for the purposes of the Constitution of the State of Arizona (the "State") and a municipal corporation for the purposes of the State law

("Owner")
Cahava Springs Revitalization District
c/o Ballard Spahr LLP
1 East Washington Street, Suite 2300
Phoenix, AZ 85004-2555

And the Contractor ("Contractor"):

Markham Contracting, Co. Inc.
22820 North 19th Avenue
Phoenix, Arizona 85027-1312

The Project is:

Off-site Work performed for Cahava Springs, a 942 acre, 230 lot master planned residential community located in Cave Creek Arizona ("Project"). The Project is located in a part of Section 13, Township 6 North, Range 3 East of the Gila and Salt River Meridian, Maricopa County, Arizona.

The Work to be performed by Contractor includes the extension of underground waterlines, two booster pump stations, a 300,000 gallon water reservoir, underground electric utilities, storm water drainage facilities including culverts and erosion protection, retaining walls, concrete work, grading, paving, miscellaneous demolition and construction, landscape and irrigation and is more fully described on plans and specifications referred to herein ("Contract Documents", "Work", and/or "Scope of Work") as described in paragraph 6.1.1.

With regard to the Scope of Work the Owner and Contractor agree as follows:

EXHIBIT 1
Martin
6.17.2020
Doreen Sutton, CR 50076

1. **ARTICLE 1 THE WORK OF THIS CONTRACT**

1.1. The Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others or as follows:
1.1.1. Tree and cactus salvage within the right of way

2. **ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

2.1. The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

2.1.1. Date of Commencement will be fixed in a Notice to Proceed.

2.2. The Contract Time shall be measured from the date of commencement.

2.3. The Contractor shall achieve Completion of the Work in accordance with the plans and specifications within five hundred fifteen (515) calendar days from the date of commencement ("Contract Time") subject to adjustments of this Contract Time as provided in any changes to the Contract Documents or delays due to inclement weather. Schedule is provided in **Exhibit A ("Project Schedule")**

3. **ARTICLE 3 CONTRACT SUM**

3.1. The Owner shall pay the Contractor in current funds for the Contractor's performance of the Contract. The Maximum Contract Sum is Ten million Eight hundred Seventy Three thousand Four hundred Sixty Five and twenty seven cents ($10,873,465.27) Dollars and shall be subject to additions and deletions as provided in the Contract Documents ("Contract Sum").

The Contract Sum is a guaranteed maximum price amount based on the schedule of values included as **Exhibit B ("Schedule of Values")**. The total Contract Sum is not subject to any changes.

4. **ARTICLE 4 PAYMENTS**

4.1. PAYMENTS TO CONTRACTOR

4.1.1. **NOTICE OF EXTENDED PAYMENT PROVISION.** This contract allows the OWNER to make payment within 21 days after certification and approval of billings and estimates as provided for and limited to certain loan documents and draw procedures ("Loan Documents").

4.1.2. PARTIAL PAYMENT: By 25th of each month, but not more often than once a month, the Contractor will submit to the Owner or Owner's Representative a partial payment estimate filled out and signed by the Contractor on AIA Document G702 and G703 ("Application for Payment and Application and Certificate for Payment Continuation Sheet") covering the Work performed during the period covered by the partial payment estimate and supported by such data as the Owner may reasonably require ("Partial Payment"). If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at or near the site, the partial payment estimate shall also be accompanied by such supporting data, satisfactory to the Owner, as will establish the Owner's title to the material and equipment and protect his interest therein, including applicable insurance. The Owners Construction Representative (as defined herein below in Article 9) will, immediately after receipt of each partial payment estimate, either indicate his approval of payment and present the partial payment estimate to the Owner, or return the partial payment estimate to the Contractor indicating in writing his reasons for refusing to approve payment. In the latter case, the Contractor may make the necessary corrections and resubmit the partial payment estimate. If the partial payment estimate is acceptable to both the Owner and Contractor, and is agreed upon before the final working day of the month, the Owner will, within twenty-one (21) days of acceptance of a partial payment estimate, pay the Contractor a progress payment based on the approved partial payment estimate.

The Owner shall retain ten percent (10%) of the amount of each payment until final completion and acceptance of all work covered by the Contract Documents ("Retained Percentages"). Contractor hereby acknowledges that Owner must submit Contractors pay request to 3rd party trustee ("Trustee") for processing. In such case, Owner shall use best commercial efforts to have Trustee process requested payment for Contractor and Contractor shall endeavor to assist Owner in its work with Trustee to answer questions, supply additional information in an effort to diligently approve payment of Contractors Application for Payment and Application and Certificate for Payment Continuation Sheet.

4.1.3. The request for Partial Payment may also include an allowance for the cost of such major materials and equipment, which is suitably stored either at or near the site per the requirements herein however, any stored materials and equipment are the sole Ownership of the Contractor until used to as part of the Scope of Work.

4.1.4. All Work covered by Partial Payment made shall there upon become the sole property of the Owner, but this provision shall not be construed as relieving the Contractor of the sole responsibility for the care and protection of the Work upon which payments have been made or the restoration of any damaged Work, or as a waiver of the right of the Owner to require the fulfillment of all terms of the Contract Documents or for material paid for by Partial Payment and stored for future Work.

4.1.5. Upon completion and acceptance of the Work, the Engineer or Owner's Construction Representative shall issue a certificate attached to the final payment request that the Work has been accepted by him under the conditions of the Contract Documents. The entire balance found to be due the Contractor, including the Retained Percentages, but except such sums as maybe lawfully retained by the Owner, shall be paid to the Contractor within forty (40) days of completion and acceptance of the Work ("Final Payment").

4.1.6. The Contractor will indemnify, defend, and save the Owner or the Owner's agents, employees, Members and Trustee harmless from and against any and all claims, suits, actions, damages, liabilities, penalties, costs, expenses, fees (including reasonable attorney's fees), arising out of or related to: (a) any negligent act, error, or omission of Contractor or other performance of the Work by Contractor to the comparative extent of contractor's negligence; and/or (b) demands of Subcontractors, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, tools, and all supplies incurred in the furtherance of the performance of the Work provided contractor has been paid for such demands by Owner. The Contractor shall, at the OWNER'S and/or Trustees request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived. If the Contractor fails to do so, the Owner may, after having notified the Contractor, either pay unpaid bills or withhold from the Contractor's unpaid compensation a sum of money deemed reasonably, sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the Contractor, subject to approval by Trustee, shall be resumed, in accordance with the terms of the Contract Documents, but in no event shall the provisions of this sentence be construed to impose any obligations upon the Owner to either the Contractor, his Surety, or any third party. In paying any unpaid bills of the Contractor, any payment so made by the Owner shall be considered as a Partial Payment made under the this Agreement and in accordance with the Contract Documents by the Owner to the Contractor and the Owner shall not be liable to the Contractor for any such payments made in good faith.

4.1.7. If the Owner fails to make a partial payment to the Contractor on or prior to the last working day of month thirty-five (35) days after the Owner approves and the Trustee accepts the partial payment request , in addition to other remedies available to the Contractor, there shall be added to each such payment interest at a rate of 1% over the prime interest rate established by Wells Fargo, Arizona commencing on the first day after said payment is due and continuing until the payment is received by the Contractor.

4.1.8. As a condition precedent to any Partial Payment and Final Payment as more fully described below, Contractor shall provide original, fully executed lien waivers on behalf of itself and all Subcontractors and Suppliers whose work is included in the Application for Payment. Lien waivers shall be in the form required by A.R.S. § 33-1008 and submitted as follows: (a) with the first Application for Payment, CONTRACTOR shall submit fully executed Conditional Waivers of Lien on Progress Payment for such

Application from itself and each Subcontractor and first-tier Suppliers included in the Application; (b) on the second and all subsequent Applications for Payment, Contractor shall submit fully executed Conditional Waivers of Lien on Progress Payment for such Application from itself and each Subcontractor and first-tier Suppliers included in the Application and Unconditional Waivers of Lien for all prior Applications from itself and each Subcontractor and first-tier Suppliers included in the prior Applications.

4.1.9. The Contractor agrees to comply with and to require all of his Subcontractors to comply with all the provisions of applicable State Sales Excise Tax Law and Compensation Use Tax Law and all Amendments to same. The Contractor further agrees to indemnify, defend, and hold harmless the OWNER from any and all claims, demands, costs, expenses, penalties, damages, liabilities, and fees (including reasonable attorney fees) made against him by virtue of the failure of the Contractor or any Subcontractor to comply with the provisions of any and all Laws and Amendments.

4.1.10. The acceptance by the Contractor of Final Payment shall be and shall operate as a release to the Owner of all claims and all liability to the Contractor other than claims in stated amounts as may be specifically accepted by the Contractor for all things done or furnished in connection with this Work. Any Partial Payment, however, or Final Payment, shall not release the Contractor or his sureties from any obligations under the Contract Documents or the Performance Bond and Payment Bond.

4.2. **FINAL PAYMENT**

4.2.1. Final Payment, as defined above shall constitute the entire unpaid balance of the Contract Sum and shall be made by the Owner to the Contractor when the Contractor has fully performed the Scope of Work except for the Contractors' responsibility to correct Work as provided in paragraph 17.2, and to satisfy other requirements, if any, which extend beyond final payment.

4.2.2. The Owner's Final payment to the Contractor shall be made no later than seven (7) business days after the acceptance of the final Application for Payment unless Owner responds with a Deficiency Statement, or as follows in accordance with applicable State law.

5. ARTICLE 5 ENUMERATION OF CONTRACT DOCUMENTS

5.1. The Contract Documents are listed in Article 6 and, except for Modifications issued after execution of this Agreement, are enumerated as follows:

5.1.1. The Agreement is this executed Agreement between Owner and Contractor.

5.2. The Drawings are as follows, and are dated unless a different date is shown in "Exhibit C – Contract Document Drawings"

5.3. Other documents, if any, forming part of the Contract Documents are as follows:

5.3.1. Geotechnical Report Prepared By Construction Testing & Inspection Dated:01/26/2001

5.4. The Contractor further acknowledges the following specifications are incorporated by reference:

5.4.1. OSHA Guidelines and Regulations

5.4.2. Town of Cave Creek amendments to the Maricopa County Association of Government Specifications and Details for Public Works Construction, if any.

5.4.3. Maricopa County Association of Government Specifications and Details for Public Works Construction

GENERAL CONDITIONS

6. ARTICLE 6 GENERAL PROVISIONS

6.1. THE CONTRACT DOCUMENTS

6.1.1. The Contract Documents consist of this Agreement, the Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, and other documents listed in this Agreement and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Owner. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

6.2. THE CONTRACT

6.2.1. The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Owner and a Subcontractor or sub-subcontractor, or (2) between any persons or entities other than the Owner and Contractor.

6.3. THE WORK

6.3.1. The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

6.4. EXECUTION OF THE CONTRACT

6.4.1. Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed, studied the Contract Documents and correlated personal observations with requirements of the Contract Documents.

6.5. OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

6.5.1. The Contract Documents and any changes, addenda or supplements thereto includings Drawings, Specifications and other documents, including those in electronic form, prepared by the Owner or Owners agents and the Owner's consultants are what are herein termed "Instruments of Service" through which the Work to be executed by the Contractor is described and performed. The Contractor may retain one record set. Neither the Contractor nor any Subcontractor, sub -subcontractor or material or equipment supplier shall own or claim a copyright in the Instruments of Service, and unless otherwise indicated the Owner and the Owner's consultants shall be deemed the authors of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights. All copies of them, except the Contractor's record set, shall be returned or suitably accounted for to the Owner, on request, upon completion of the Work. The Instruments of Service and the Owner's consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, and the Owner's consultants. The Contractor, Subcontractors, sub- subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Instruments of Service and other documents prepared by the Owner and the Owner's consultants appropriate to and for use in the execution of the Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Instruments of Service prepared by the Owner and the Owner's consultants. Submittal or distribution

to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's or Owner's consultants' copyrights or other reserved rights.

7. ARTICLE 7 OWNER

7.1. INFORMATION AND SERVICES REQUIRED OF THE OWNER

7.1.1. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions related to the safe performance of the Work.

7.1.2. Except for permits and fees which are the responsibility of the Contractor under the Contract Documents, and reimbursable by the Owner, the Owner shall secure and pay for the permits and other necessary approvals, easements, assessments and charges not covered by the Schedule of Values identified in Exhibit A, required for the construction, use or occupancy of permanent structures or permanent changes in existing facilities.

7.2. OWNER'S RIGHT TO STOP THE WORK

7.2.1. If the Contractor fails to comply with the terms of this Agreement and/or correct Work which is not in accordance with the requirements of the Contract Documents, or persistently fails to carry out the Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity. If Contractor fails to correct any action identified by Owner in Owners written notice within 30 days of receipt of such notice then Contractor shall be deemed in default ("Default").

7.3. OWNER'S RIGHT TO CARRY OUT THE WORK

7.3.1. If the Contractor is in Default or persistently fails or neglects to carry out the Work in accordance with the Contract Documents, or fails to perform a provision of the Contract, the Owner, after ten (10) days' written notice to the Contractor and without prejudice to any other remedy the Owner may have, may make good such deficiencies and may deduct the reasonable cost thereof, including Owner's expenses and compensation for the Owner's services made necessary thereby, and shall have the right to subtract such sums from Contractors Partial and/or Final Payment from the payment then or thereafter due the Contractor.

8. ARTICLE 8 CONTRACTOR

8.1. REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

8.1.1. Contractor hereby acknowledges that it is familiar with the Scope of Work, the Project and the Site but since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Subparagraph 7.1.1, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors or omissions or inconsistencies in the Contract Documents; however, any errors, omissions or inconsistencies discovered by the Contractor shall be reported promptly to the Owner as a request for information in such as form as the Owner may require.

8.1.2. Any design errors or omissions in the Instruments of Service noted by the Contractor during this review shall be reported promptly to the Owner, but it is recognized that the Contractor's review is made in the Contractor's capacity as a Contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents.

8.2. SUPERVISION AND CONSTRUCTION PROCEDURES

8.2.1. The Contractor shall be solely responsible for supervision and direction of the Work, using the Contractors best professional skill and attention and conventional methods normally applied to in the Phoenix marketplace for this type of work. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract ("Construction Methods"), so long as such Construction Methods are not in conflict with the Instruments of Service and unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures then the Contractor shall fully comply with those ("Defined Methods). The Contractor shall be fully and solely responsible for the jobsite safety thereof unless the Contractor gives timely written notice to the Owner that Defined Methods may not be safe.

8.2.2. The Contractor shall be fully responsible to the Owner and shall indemnify the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

8.3. LABOR AND MATERIALS

8.3.1. Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work in conformance with the Scope of Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

8.3.2. The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

8.3.3. The Contractor shall deliver, handle, store and install materials in accordance with manufacturers' instructions.

8.3.4. The Contractor may make substitutions only with the written consent of the Owner, after evaluation by the Owner and in accordance with a normal Change Order.

8.4. WARRANTY

8.4.1. The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear and normal usage.

8.5. TAXES

8.5.1. The Contractor shall pay sales, consumer, use and other similar taxes which are legally enacted when bids are received or negotiations concluded. All taxes paid by the Contractor shall be reimbursed by the Owner at the time of monthly payment. Taxes are included in the Contract Sum.

8.6. PERMITS, FEES AND NOTICES

8.6.1. Unless otherwise provided in the Contract Documents or as required by the governing jurisdiction, the Owner shall secure and pay for the building permit and other Permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work. In the event the Contractor is

required to pay for any permit, governmental fee, license, or inspection, the Owner shall reimburse Contractor for actual costs of such fees not included in the Contract Sum.

8.6.2. The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work. The Contractor shall promptly notify the Owner if the Contract Documents are observed by the Contractor to be at variance therewith. If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

8.7. SUBMITTALS

8.7.1. The Contractor shall review for compliance with the Contract Documents, approve in writing and submit to the Owner, Shop Drawings, product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness. The Work shall be in accordance with approved submittals.

8.7.2. Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

8.8. USE OF SITE

8.8.1. The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

8.9. CUTTING AND PATCHING

8.9.1. The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

8.10. CLEANING UP

8.10.1. The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus material.

8.11. ROYALTIES, PATENTS AND COPYRIGHTS

8.11.1. The Contractor shall pay all royalties and license fees; shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Owner's Agents harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers Is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner, unless the Contractor has encountered and has reason to believe that there is an infringement of patent or copyright and fails to promptly furnish such information to the Owner.

8.12. ACCESS TO WORK

8.12.1. The Contractor shall provide the Owner access to the Work in preparation and progress wherever located.

8.13. INDEMNIFICATION

8.13.1. The contractor, subcontractor, and sub-subcontractors shall comply with the following indemnification provisions:

8.13.1.1. To the fullest extent permitted by law, the Contractor and subcontractors shall indemnify and hold harmless the Owner and their agents, employees and Trustee from and against any claims, damages, losses, expenses, attorneys' fees, and delays arising out of or resulting from contractor's performance of the Work, provide that such claim, damage, loss, expense, attorneys' fees, and delays arising out of or resulting from contractor's performance of the Work is caused by the CONTRACTOR or by anyone under contract to or in agreement with the Contractor or subcontractor,

provided, however, that the Owner shall not be indemnified for its own relative negligence. The extent of the Contractor's liability shall be limited to the extent of its negligence.

8.13.1.2. In claims against any person or entity indemnified by this Agreement by an employee of the contractor, subcontractor or another subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation shall not be limited in amount or type of damages, compensation of benefits payable by or for the Contractor under Workers' Compensation Acts, Disability Benefit Acts or other Employee Benefit Acts.

8.13.1.3. Except as provided in this Agreement, the obligations of the Contractor or subcontractor shall not extend to the liability of the Owner's consultants and/or their agents or employees arising out of; 1) preparation or approval of maps, drawings, opinions, reports, surveys, change orders, design or specifications, or; 2) the giving of or failure to give directions or instructions by the Owner's consultant, their agents and/or employees providing reliance upon or failure to give direction is the primary cause of the injury or damage.

8.13.1.4. The Contractor and subcontractors agree that the Work will be performed in a workmanlike manner and assumes liability for the contractor, subcontractor or Owner's negligent failure to discover problems or dangerous conditions caused by the Contractor or subcontractor. The Contractor and/or subcontractor agree that all direct or indirect employees of the Contractor or subcontractor will perform their portion of the Work in compliance with Local, State, and Federal laws including but not limited to, Building Codes, OSHA, and any other rules and regulations.

9. ARTICLE 9 OWNER'S ADMINISTRATION OF THE CONTRACT

9.1. The Owner will provide administration of the Contract (1) during construction, (2) until final payment is due and (3) throughout the term for correction of Work or warranty described in Paragraph 17.2.

9.2. The Owner may designate a single person as direct contact with Contractor ("Owner's Construction Rep"). The Owner will maintain personnel to (1) become generally familiar with progress and quality of the portion of the Work completed, (2) endeavor to guard against defects and deficiencies in the Work, and (3) determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Owner will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Owner will neither have control over or charge of, nor be responsible for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Subparagraph 8.2.1. Notwithstanding, if Owner's Construction Rep, in Owner's Construction Rep's sole and unfettered opinion, believes there is a public safety concern, that Contractor will cause damage to surrounding property and adjacent to the Project Limits of Construction, disturb adjacent land Owners unnecessarily, violate any law and/or ordinance or cause a deviation from the Contract documents ("Construction Issues the Owner's Construction Rep shall have the right to immediately take corrective action, including stopping work, until such Construction issues can be properly addressed by Owner's Construction Rep and Contractor and the Construction Issue resolved.

9.3. The Owner will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Owner will not have control over or charge of and will not be responsible for Construction Issues or acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work. However, the Owners Rep shall when deemed necessary apprise Contractor of such Construction Issues or acts or omission.

9.4. Based on the Owner's evaluations of the Work and of the Contractor's Applications for Payment, the Owner will review the amounts due the Contractor and will issue Certificates for Payment in such amounts to Trustee as described in Article 4.

9.5. The Owner will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, for the purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

9.6. The Owner's decisions on matters relating to aesthetic effect will be Owners sole and unfettered discretion and shall be final if consistent with the intent expressed in the Contract Documents.

9.7. **CLAIMS AND DISPUTES**

9.7.1. If a claim, dispute or other matter in question relates to or is the subject of a mechanic's lien, the party asserting such matter may proceed in accordance with applicable law to comply with the lien notice or Filing deadlines prior to resolution of the matter by mediation or by arbitration.

9.7.2. The parties shall endeavor to resolve their disputes by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

9.7.3. Claims, disputes and other matters in question arising out of or relating to the Contract that are not resolved by first by negotiation which shall take no longer then one (1) week from the notice of dispute, then if not then resolved by mediation in accordance with the rules of Mediation of the American Arbitration Association, except matters relating to aesthetic effect and except those waived as provided for in Paragraph 9.11 and Subparagraphs 14-5.3 and 14-5.4, If not resolved by Mediation within 30 days then the remaining unresolved disputes shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association and shall be made within a *not more than 30 days* after the dispute has arisen. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Except by written consent of the person or entity sought to be joined, no arbitration arising out of or relating to the Contract Documents shall include, by consolidation, joinder or in any other manner, any person or entity not a party to the Agreement under which such arbitration arises, unless it is shown at the time the demand for arbitration is filed that (1) such person or entity is substantially involved in a common question of fact or law, (2) the presence of such person or entity is required if complete relief is to be accorded in the arbitration, (3) the interest or responsibility of such person or entity in the matter is not insubstantial, and (4) such person or entity is not the OWNER or any of the OWNER's employees or consultants. The agreement herein among the parties to the Agreement and any other written agreement to arbitrate referred to herein shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

10. ARTICLE 10 SUBCONTRACTORS

10.1. A Subcontractor is a person or entity that has a direct contract with the Contractor to perform a portion of the Work at the site and in regards to this agreement is the same as the Contractor.

10.2. Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner the names of the Subcontractors for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor to whom the Owner has made reasonable and timely objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the

difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

10.3. Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner and Owner, and (2) allow the Subcontractor the benefit of all rights, remedies and redress afforded to the Contractor by these Contract Documents.

11. ARTICLE 11 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

11.1. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under conditions of the contract identical or substantially similar to these, including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such claim as provided by Paragraph 9.7.3.

11.2. The Contractor shall afford the Owner and separate contractor's reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's activities with theirs as required by the Contract Documents.

11.3. The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate Contractor because of delays, improperly timed activities or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, and damage to the Work or defective construction of a separate contractor.

12. ARTICLE 12 CHANGES IN THE WORK

12.1. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly ("Change Orders"). Such Change Orders in the Work shall be authorized by written Change Order form signed by the Owner and Contractor, or by written Construction Change Directive signed by the Owner.

12.2. The cost or credit to the Owner from a Change Order in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive, shall include reasonable and applicable Contractor's cost of labor, material, equipment, and reasonable overhead and profit.

12.3. The Owner will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

12.4. If concealed or unknown physical conditions are encountered at the site that differ substantially and materially from those indicated in the Contract Documents or from those previously observed by the Contractor with its familiarity with the Project and from those indicated in studies provided by Owner or prepared by Contractor, the Contract Sum and Contract Time shall be adjusted based upon agreement with Owners Rep and Contractor.

12.5. A Change Order is a written instrument prepared by the Owner and signed by the Contractor stating their agreement upon all of the following:

12.5.1. change in the Work;

12.5.2. the amount of the adjustment, if any, in the Contract Sum; and
12.5.3. the extent of the adjustment, if any, in the Contract Time.

13. ARTICLE 13 TIME

13.1. Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

13.2. The date of Substantial Completion is the date in accordance with Subparagraph 14.4.2.

13.3. If the Contractor is delayed at any time in the commencement or progress of the Work by changes ordered in the Work, by labor disputes, fire, unusual delay in deliveries, adverse weather conditions, unavoidable casualties or any causes beyond the Contractor's control, or by other causes which the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine, subject to the provisions of Paragraph 9.10.

14. ARTICLE 14 PAYMENTS AND COMPLETION

14.1. APPLICATIONS FOR PAYMENT

14.1.1. Payments shall be made as provided in Article 4 of this Agreement. Applications for Payment shall be in a form satisfactory to the Owner and the Trustee.

14.1.2. The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests and as such will indemnify and defend Owner against any claim arising after such payment..

14.2. APPLICATIONS FOR PAYMENT

14.2.1. The Contractor shall submit to the Owner an itemized Application for Payment for operations completed in accordance with the approved schedule of values on AIA Applications 702 and 703. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for in the Contract Documents.

14.2.2. The application may include requests for payment on account of changes in the Work which have been properly authorized by Change Order.

14.2.3. Such applications may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

14.2.4. The Owner and/or the Trustee who will notify Owner to do so, will, within seven (7) days after receipt of the Contractor's Application for Payment, issue a notice in writing of the Owner's reasons if for any reason there is discrepancy in the application and payment for the Work will not be paid in whole or in part.

14.2.5. The issuance of the Application for Payment will constitute a representation, based on the Contractor's evaluations of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Contractor's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents

prior to completion and to specific qualifications expressed by the Owner. The issuance of an Application for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Payment will not be a representation that the Owner has (1) made exhaustive on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

14.2.6. The Owner may withhold a Payment in whole or in part, to the extent reasonably necessary if, in the Owner's opinion, the representations to the Owner required by Subparagraph 14.2.5 cannot be made, or as otherwise permitted by law. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Contractor in writing as provided in Subparagraph 14.2.4. The Owner may also withhold an Application for Payment or, because of subsequently discovered evidence, may nullify the whole or part of an Application for Payment previously issued, but only to such extent as may be necessary in the Owner's reasonable opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Subparagraph 8.2.2, because of-

14.2.6.1. defective Work not remedied;
14.2.6.2. third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
14.2.6.3. failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
14.2.6.4. reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
14.2.6.5. damage to the Owner or another contractor;
14.2.6.6. reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
14.2.6.7. persistent failure to carry out the Work in accordance with the Contract Documents.

14.2.7. When the reasons enumerated in 14.2.6 for withholding certification are cured, payment will be made for amounts previously withheld.

14.3. PAYMENTS TO THE CONTRACTOR

14.3.1. The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub- subcontractors in similar manner. Failure to do so by the Contractor shall constitute a default under this Agreement. Unless reasons are given to Owner by Contractor for failure to make such payments, and such reasons are in deemed in the best interest of the Owner, then Owner shall have the right to pay Sub-contractor directly and deduct same from amount owed Contractor.

14.3.2. The Owner shall not have any obligation to pay or see to the payment of money to a Subcontractor except as may otherwise be required by law and as stated in 14.3.1.

14.3.3. A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the OWNER shall not constitute acceptance of Work in accordance with the Contract Documents.

14.4. SUBSTANTIAL COMPLETION

14.4.1. Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

14.4.2. When the Owner determines that the Work or designated portion thereof is substantially complete, the Owner will issue a Certificate of Substantial Completion which shall establish the date of Substantial Completion, establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. Upon the issuance of the Certificate of Substantial Completion, the Owner will submit it to the Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Contractor hereby agrees to furnish, sign or comply with any and all documents, forms or letters reasonably requested by Owner required by any jurisdictional entity or the Trustee to prove such substantial completion and to release any bonds then outstanding for the Contractors work.

14.5. FINAL COMPLETION

14.5.1. Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will make such inspection within five (5) days and when the Owner finds the Work acceptable under the Contract Documents and the Contract fully performed, the Owner will within seven (7) days issue payment stating that the Work has been completed in accordance with the terms and conditions of the Contract Documents and the entire balance found to be due the Contractor and noted in the Application for Payment is due and payable.

14.5.2. Final payment shall not become due until the Contractor has delivered to the Owner a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including costs and reasonable attorneys' fees.

14.5.3. The making of final payment shall constitute a waiver of claims by the Owner except those arising from:

14.5.3.1. liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
14.5.3.2. failure of the Work to comply with the requirements of the Contract Documents; or
14.5.3.3. terms of special warranties required by the Contract Documents.

14.5.4. Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

15. ARTICLE 15 PROTECTION OF PERSONS AND PROPERTY

15.1. SAFETY PRECAUTIONS AND PROGRAMS

15.1.1. The CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

15.1.1.1. employees on the Work and other persons who may be affected thereby;
15.1.1.2. the Work and materials and equipment to be incorporated therein; and
15.1.1.3. other property at the site or adjacent thereto.

15.1.2. The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Subparagraphs 15-1.2 and 15-1.3, except for damage or loss attributable to acts or omissions of the Owner or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 8.13.

15.2. HAZARDOUS MATERIALS

15.2.1. Reasonable and customary precautions in conformance with all Federal, State and local laws and ordinances will be taken to avoid and mitigate any environmental contamination and Contractor shall take will be responsible to prevent violation of such laws and ordinances and to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Owner's Construction Rep in writing. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay and start-up, which adjustments shall be accomplished as provided in Article 12 of this Agreement.

15.2.2. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to reasonable attorneys' fees and expenses, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Subparagraph 15.2.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to Injury to or destruction of tangible property (other than the Work itself), and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity.

15.2.3. If, without negligence on the part of the Contractor, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

16. ARTICLE 16 INSURANCE

16.1. The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located insurance for protection from claims under workers' compensation acts and other employee benefit acts which are applicable, claims for damages because of bodily injury, including death, and claims for damages, other than to the Work itself, to property which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by the Contractor or by a Subcontractor or anyone directly or indirectly employed by any of them. This insurance shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater, and shall include contractual liability insurance applicable to the Contractor's obligations. Certificates of Insurance acceptable to the Owner and naming Owner, and if required, Town of Cave Creek as additional insured, and additional loss payees shall be filed with the Owner prior to commencement of the Work. Each policy shall contain a provision that the policy will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner.

16.2. OWNER'S LIABILITY INSURANCE

16.2.1. The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

16.3. **PROPERTY INSURANCE**

16.3.1. Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance on an "all-risk" policy form, including builder's risk, in the amount of the initial Contract Sum, plus the value of subsequent modifications and cost of materials supplied and installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Paragraph 14.5 or until no person or entity other than the Owner has an insurable interest in the property required by this Paragraph 16.4 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and sub -subcontractors in the Project.

16.3.2. The Owner shall file a copy of each policy with the Contractor before an exposure to loss may occur. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days prior written notice has been given to the Contractor.

16.4. **WAIVERS OF SUBROGATION**

16.4.1. The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Owner's consultants, separate contractors described in Article 11, if any, and any of their subcontractors, sub- subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to Paragraph 16.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The policies shall provide such waivers of subrogation by endorsement or other-wise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

16.4.2. A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their sub-subcontractors in similar manner.

17. **ARTICLE 17 CORRECTION OF WORK**

17.1. The Contractor shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected work, including additional testing and inspections and compensation for the Owner's services and expenses made necessary thereby, shall be at the Contractor's expense.

In addition to the Contractor's obligations under Paragraph 8.4, if, within one year (or two years if required by the Town of Cave Creek) after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Subparagraph 14.4.2, or by terms of an applicable special warranty required by the Contract Documents and/or the Town of Cave Creek, any of the Work is found by the Town of Cave Creek or the Owner to not be in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the CONTRACTOR a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period, or two year period if required by the Town of Cave Creek for correction of Work, if the Owner or the Town of Cave Creek

fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty

17.2. If the Contractor fails to correct non-conforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 7.3.

17.3. The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

17.4. The one year, or two year period, if required by the Town of Cave Creek, for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Article 17.

18. ARTICLE 18 MISCELLANEOUS PROVISIONS

18.1. ASSIGNMENT OF CONTRACT

18.1.1. Neither party to the Contract shall assign the Contract without written consent of the other except in the event of default by Owner under the terms and conditions of a Note and Deed of Trust or some other Loan Agreement whereby the Trustee shall take Ownership of the Project and the Property.

18.2. GOVERNING LAW

18.2.1. The Contract shall be governed by the law of the State of Arizona the place where the project is located.

18.3. TESTS AND INSPECTIONS

18.3.1. Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

18.4. NOTICES:

18.4.1. All notices requests, demands, and other communications required under the Agreement shall be in writing and shall be deemed duly given and received (i) if personally delivered, on the date of delivery, (ii) if mailed, three (3) days after deposit in the United States mail, registered or certified, return receipt requested, postage prepaid, or (iii) if by a courier delivery service providing overnight or next-day delivery, on the next business day after deposit with such service, addressed to the person and at the address specified in the Order. Any party may change its address by giving the other party written notice of such change in the manner set forth herein.

19. ARTICLE 19 TERMINATION OR SUSPENSION OF THE CONTRACT

19.1. TERMINATION BY THE CONTRACTOR

19.1.1. The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or Subcontractor, sub-Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

19.1.1.1. issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped; or

19.1.1.2. an act of government, such as a declaration of national emergency which requires all Work to be stopped.

19.1.2. Contractor may also terminate the contract for reason of non-payment by OWNER of no fault of contractor.

19.2. TERMINATION BY THE OWNER

19.2.1. The Owner may, after seven days written notice, terminate the Contract if the Contractor:

19.2.1.1. persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials,;

19.2.1.2. fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

19.2.1.3. persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or otherwise is guilty of substantial breach of a provision of the Contract Documents; and

19.2.1.4. otherwise is guilty of substantial breach of a provision of the Contract Documents.

19.2.2. When any of the above reasons exists, the Owner, may, without prejudice to any other remedy, the Owner may have and after giving the Contractor seven days' written notice, terminate the Contract and take possession of the site and of all materials, thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in Finishing the Work.

19.2.3. When the Owner terminates the Contract for one of the reasons stated in Subparagraph 19.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

19.2.4. If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Owner's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, upon application, and this obligation for payment shall survive termination of the Contract.

19.3. TERMINATION BY THE OWNER FOR CONVENIENCE

19.3.1. The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

19.3.2. Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

19.3.2.1. cease operations as directed by the Owner in the notice;

19.3.2.2. take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

19.3.2.3. except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

19.3.3. In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for only Work executed, and costs incurred by reason of such termination plus a reasonable overhead and profit for all completed work and costs incurred for such termination.

19.4. SUSPENSION BY THE OWNER FOR CONVENIENCE

19.4.1. The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

19.4.2. Upon receipt of the notice of suspension of the specified Work, or any portion of thereof, the Contractor shall within ten (10) days designate to the Owner the amount and the type of Work, labor, and materials previously committed to the provision of Work for the period or periods of suspension.

19.4.3. Any claim on the part of the Contractor for costs, charges, or expenses resulting from suspension of performance of the Work or any portion thereof shall be negotiated reasonably with the OWNER and shall be submitted within thirty (30) days from the date of notice of suspension to be considered valid.

19.4.4. Upon the date specified in the notice given to suspend all or a portion of the services, or given in subsequent notice, the Contractor shall immediately resume performance of suspended services to the extent required in such notice.

19.4.5. Upon resumption of the suspended services the Owner and the Contractor shall agree on a revision if any, to the schedule for all services not completed as of the date of the suspension of performance. The Owner may not, at his discretion, grant an extension of time if suspension results from the Contractor's sole noncompliance with any of the terms and conditions of this agreement.

19.4.6. Owner shall pay Contractor for reasonable costs related to demobilization and remobilization resulting from suspended work including reasonable escalation of material, equipment, and labor costs resulting from suspension by Owner. The Owner shall not be required to pay Contractor for cost of demobilization and remobilization resulting from suspended work when suspension results from the Contractor's sole noncompliance with any of the terms and conditions of this agreement.

20. ARTICLE 20 OTHER CONDITIONS OR PROVISIONS

20.1. The Contractor shall keep clean and dispose of all debris and trash in accordance with federal, state, county and local codes and ordinances, within the Project Area.

20.2. The Contractor and subcontractors shall comply with the following insurance provisions:

20.2.1. Insurance policies shall name as the insured, Cahava Springs Revitalization District for any work performed under this agreement. It is understood and agreed that Contractor's coverage is to be primary in response to any claim, injury to persons or property and that Owner's coverage will respond in excess. OWNER's coverage is considered noncontributory. Subcontractors primary and noncontributory insurance as it relates to the Owner, shall be exclusive to the specific negligence of the Contractor and does not indemnify the Owner for Owners negligence, or the negligence of anybody associated, affiliated, or contractually obligated to Owner under separate contract.

20.2.2. All insurance shall be maintained in the form and with a company satisfactory to the Owner no later than five (5) days prior to commencement of the Work.

20.2.3. The Contractor agrees to furnish a valid and acceptable certificate of insurance specifying adequate limits of insurance covering this Agreement. Owner reserves the right to determine adequacy of Coverage in connection with the scope or degrees of hazard involved in the Contract. The Certificate of Insurance shall be submitted to Owner no later than five (5) days prior to commencement of the Work.

20.2.4. The Contractor and subcontractor assumes responsibility in connection with their work for any claim, damage or injury to persons or property and will institute an ongoing safety program to promote safety at the jobsite including the supply and required use of personal safety equipment and taking reasonable

precautions to avoid dangerous situations to other parties or to Work performed or to be performed by others or property of others in connection therewith.

20.2.5. The Contractor and subcontractors agree to leave no trash either personal and/or construction related on the site and leave the site free of debris at the end of each work day and from dangerous conditions or hazards. The Contractor assumes all liability for generation, disposal, transportation or use of any toxic substance in connection with their work. Subcontractor agrees to be liable for any penalty, fines, fees, costs to contain or dispose of any hazardous substance or pollutant in connection with their Work.

20.2.6. The Contractor and subcontractors agree that responsibility and assumption of liability under this agreement may be beyond the scope of the contractor's insurance policies. In addition the Owner agrees that its responsibility and assumption of liability under this Agreement may be beyond the scope of the Owners insurance policies.

20.2.7. The contractor's or subcontractor's certificate of insurance shall require that the Owner be notified in writing within thirty (30) days prior to cancellation or modification of any insurance policy listed in the certificate. The cancellation clause for all certificates of insurance on this project shall read as follows:

20.2.8. "Shall any of the above described policies be canceled before the expiration date thereof, the issuing company will mail thirty (30) days written notice to the certificate holder named to the left."

20.2.9. The Contractor shall provide minimum coverage and acceptable limits as follows:

	OCCURRENCE	EA. AGGREGATE
GENERAL LIABILITY	$2,000,000	$5,000,000
Comprehensive Form	2,000,000	$5,000,000
Premises/Operations	2,000,000	$5,000,000
Underground Explosion & Collapse Hazard	2,000,000	$5,000,000
Operations	2,000,000	$5,000,000
Contractual	2,000,000	$5,000,000
Individual Contractors	2,000,000	$5,000,000
Broad Form Property Damage	2,000,000	$5,000,000
Bodily Injury (per person)	2,000,000	$5,000,000
Property Damage	2,000,000	$5,000,000
PERSONAL INJURY	2,000,000	$5,000,000
AUTOMOBILE LIABILITY		
Any auto or		
All owned autos (private passenger)		
All owned autos (other than private passenger)		
Hired autos		
Non-owned autos		
Bodily injury (per person)	$2,000,000	
Bodily injury (per accident)	$2,000,000	
Property damage	$2,000,000	
WORKMEN'S COMPENSATION	$100,000	Each accident
AND		
STATUTORY	$500,000	Disease Policy limit
EMPLOYERS LIABILITY	$100,000	Disease Ea. employee
OTHER: Additional Insured		

20.2.10. Comprehensive General Liability Insurance may be arranged under a single policy for the full limits or by a combination of underlying policies with the balance provided by an excess or umbrella policy.

20.2.11. Excess and Umbrella policies must not provide less coverage than that provided by primary policies for named or additional insured.

20.3. The Contractor shall comply with, and will require all of his subcontractors and sub-subcontractors to comply with, all provisions of the Act of Congress approved August 14, 1935 know and cited as the "Social Security Act", also, the provisions of the Act of the State Legislature approved and known as the "State Unemployment Compensation Law"; and, all other laws and regulations pertaining to labor and workmen and all amendments to such data; and Contractor and Subcontractors shall indemnify and save harmless the Owner of and from any and all claims and demands made against it by virtue of the failure of the contractor, subcontractor or sub-subcontractors to comply with the provisions of any or all of said Acts or Amendments.

20.4. The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's information a construction schedule for the Work. The schedule shall not exceed the time limits current under the Contract Documents, shall be revised on a monthly basis, and submitted with the Application for Payment.

20.5. In the event the Contractor encounters Desert Tortoise, any cultural artifacts, bodies or human remains or endangered species of any kind, the Contractor shall cease all work in the immediate area and notify the Owner.

20.6. Under no circumstances shall the Contractor cross outside areas delineated as the limits of clearing. If the limits of clearing are not defined or in question, the Contractor is required to contact the Owner immediately for clarification. If the Contractor crosses into protected areas, such as Natural Area Open Space or jurisdictional washes, or other areas outside the limits of clearing, the Contractor shall:

20.6.1. .1 to the Owner's satisfaction, re-vegetate the area disturbed immediately and maintain said vegetation until established; and,

20.6.2. .2 pay any fines imposed by governmental agencies, including but not limited to the Arizona Department of Environmental Quality or the US Army Corps of Engineers, as a result of said violation.

This Agreement entered into as of the day and year first written above.

OWNER

By: MARK STAPP
Its: VICE CHAIRMAN

By:
Its:

CONTRACTOR *(Signature)*

Michael Markham Jr. / Vice President-COO
(Printed name and title)

PALECEK & PALECEK PLLC
ATTORNEYS AT LAW

EXHIBIT 6

Granted as Submitted
See eSignature page

Clerk of the Superior Court
*** Electronically Filed ***
K. Cabral, Deputy
1/6/2022 8:00:00 AM
Filing ID 13785536

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Attorneys for Markham

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

MARKHAM CONTRACTING CO., INC., an Arizona corporation,

Plaintiff,

v.

CAHAVA SPRINGS REVITALIZATION DISTRICT, a special purpose, tax-levying public improvement district;

Defendant.

AND RELATED COUNTERCLAIM

CASE NO. CV2020-017067
CV2021-004584
(Consolidated)

ORDER CONFIRMING ARBITRATION AWARD AND FINAL JUDGMENT

(The Honorable Danielle J. Viola)

Having considered Plaintiff Markham Contracting Co., Inc. ("Markham")'s Application for Confirmation of Arbitration Award and Enter Judgment Thereon, filed December 23, 2020, and Defendant Cahava Springs Revitalization District's Motion to Vacate Arbitration Award filed March 16, 2021, for good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

The Arbitration Award is hereby confirmed, and Plaintiff Markham is granted judgment against Defendant Cahava Springs Revitalization District ("CSRD") as outlined in the Interim Arbitration Award Final Arbitration Award attached hereto as Exhibits 1 and 2, respectively, and incorporated herein by reference as follows:

1. For judgment in the principal amount of $3,950,980.67.

2. For attorneys' fees incurred in the arbitration in the amount of $716,818.75.

3. For costs and expenses in the amount of $317,269.64.

4. For AAA Expenses in the amount of $140,462.13.

5. For prejudgment interest before entry of the Arbitration Award in the amount of $723,385.70 as set forth in the Arbitration Award.

6. For prejudgment interest after entry of the Arbitration Award in the amount of $465,024.10 using the daily rate of $1,298.95 from the date of the Award, December 16, 2020, through December 9, 2021, and additional interest at the daily rate of $1,298.95 until the Judgment is entered by this Court.

7. For attorneys' fees incurred in this Court pursuant to A.R.S. §12-341.01 in the amount of $109,349.81.

8. For costs and expenses after entry of the Arbitration Award pursuant to A.R.S. §12-1514 in the amount of $3,769.38.

9. For post-judgment interest on $6,427,060.18 at the rate of 4.25% pursuant to A.R.S. §44-1201.

10. This judgment is final as to all claims and parties, no further matters remain pending, and this judgment is entered pursuant to Rule 54(c), Ariz.R.Civ.P.

DATED_____

_____
The Honorable Danielle Viola

PALECEK & PALECEK PLLC
ATTORNEYS AT LAW


PALECEK & PALECEK PLLC
ATTORNEYS AT LAW


PALECEK & PALECEK PLLC
ATTORNEYS AT LAW

EXHIBIT 1

American Arbitration Association
Dispute Resolution Services Worldwide

American Arbitration Association
Construction Industry Arbitration Tribunal

In the Matter of the Arbitration Between,	)	Case No. 01-19-0001-6904
MARKHAM CONTRACTING CO., INC., an Arizona corporation,	)	**INTERIM AWARD and ORDER**
Claimant,	)	**Arbitrators:**
v.	)	Scott A. Johnson, P.E. John T. Jozwick, Esq., CFCC Scott C. Ryan, Esq.
CAHAVA SPRINGS REVITILIZATION DISTRICT, a special purpose, tax-levying public improvement district,	)	
Respondent.	)	

INTERIM AWARD

THE UNDERSIGNED ARBITRATORS, having been duly appointed as panel arbitrators by the American Arbitration Association ("AAA") letter dated 16 July 2019, and having heard and reviewed the proofs and allegations in Phoenix, Arizona during an evidentiary hearing from 14 September 2020 through 02 October 2020, along with closing arguments on 07 October 2020, submittal of additional briefing on 16 October 2020, exhibits entered into evidence at the arbitration hearing, and reviewing the pleadings and pre-hearing arbitration statements hereby issue this Interim Award. The discussion below and the amounts awarded reflect a unanimous decision by the Arbitrators.

PROCEDURAL BACKGROUND

Claimant Markham Contracting Co., Inc., ("Claimant" or "Markham" or "MCCI") filed a Demand for Arbitration dated 29 May 2019 ("Claimant Demand") with the AAA (received by AAA on 30 May 2019). We note that the Claimant Demand contained a copy of the contract between Claimant and

1

claimed and that the other party is entitled to no recovery. The following sets forth the Parties' claims. Claimant's claim is:

Markham Claim (From Closing Argument)		
I. Claims for Differing Site Conditions		
1	Getting Construction Water to Site During Construction	$389,973.27
2	Excess Material: Excavating and Hauling Material to Stockpile	$544,575.10
3	Removal of Stockpile	$281,326.21
	Subtotal	**$1,215,874.58**
II. Claims for Work that Direction was Provided after Substantial Completion		
1	Saddle Mountain Bridge Grading/Rip Rap May and June	$57,565.07
2	Saddle Mountain Rip Rap Channel Change May and June	$35,580.70
3	Concrete Spillway May and June	$9,300.56
4	Spaulding Slope Rock May	$2,479.10
5	Re-Grade at 72" Storm Drain Pipe May and June	$5,518.56
6	Construct Siltation Basin June	$18,446.27
7	Storm Damage 11/25 & 11/26/2019	$6,992.49
8	Extended General Conditions Thru May and June	$279,432.92
	Subtotal	**$415,315.67**
III. Claims for Unpaid Base Contract Line Items		
1	Earthwork	$1,109.66
2	Storm Drain	$67,218.00
3	Paving	$59,126.00
4	Utility Adjustment	$53,156.35
5	Landscape	$456,539.68
6	Pump Station and Tank	$407,871.49
7	General Conditions	$14,457.39
8	General Conditions 5.1%	$13,418.12
9	Bond	$10,728.97
10	Sales Tax	$180,091.30
	Subtotal	**$1,263,716.96**
IV. Claims for Approved and Unprocessed Change Orders		
1	VE - Add Ribbon Curb	$32,277.26
2	Pre-Construction	$73,025.00
3	Rip Rap Installed	$53,560.30
4	COR 7 Permit Delay - Shutdown by TOCC	$37,404.84
5	COR 9 Trailer Demo Asbestos	$2,522.53
6	COR 10 Field Directive #2	$6,740.00
7	COR 21 RFI #1	$1,114.49

3

8	Various CO #'s - Survey Changes	$26,015.01
9	COR 20 Rockaway Hill Headwall	$38,964.89
10	Valve Concrete Collars	$3,383.85
	Subtotal	**$275,008.17**
	V. Withheld Retention	
1	Withheld Retention	**$830,578.77**
	VI. Credit	
1	Credit on Excess Material Claim I.2	**($49,513.48)**
	TOTAL	
	Markham Claim before attorney fees, costs, expenses, interest, etc.	**$3,950,980.67**

Respondent's claim for damages is:

CSRD Claim (From Closing Argument)				
			Low LD Calc.	High LD Calc.
1	Water Campus Breach of Contract ($3,111,430.00) and Tortious Interference ($854,404.82 to $1,487,000.00) where the total amount of damages combined will not exceed $3,111,430.00	$3,111,430.00	$3,111,430.00	$3,111,430.00
2	Plant Material	$159,643.62	$159,643.62	$159,643.62
3	Defective Workmanship	$31,463.16	$31,463.16	$31,463.16
4	Liquidated/Delay Damages	$172,660.00 to $1,028,840.00	$172,660.00	$1,028,840.00
5	Excess Material Cost of Removal	$79,514.95	$79,514.95	$79,514.95
	CSRD Claim before attorney fees, costs, interest, etc.		**$3,554,711.73**	**$4,410,891.73**

Additionally, Respondent's pre-hearing arbitration statement had additional "credits" that were sought for work alleged as not performed by Markham. These include:

CSRD Claim for Credits (From Pre-Hearing Arbitration Statement)		
		Amount
1	Failure to Construct Water Campus	$2,100,570.00
2	Failure to Spread Desert Cobble	$115,813.20
3	Hand Watering in lieu of Irrigation	$53,617.70

4

4	24 Inch Box Trees in lieu of 36 Inch Box Trees	$28,200.00
5	Saguaros Bought by CSRD but Installed on CSDC Property	$26,727.00
6	Plant Material Not Acquired or Installed	$176,106.25
7	Failure to Construct Retaining Walls	$71,830.00
8	Failure to Construct Barrier Wall Ends	$46,065.18
	CSRD Claim for Credits	**$2,618,929.33**

DISCUSSION

A. Markham Claims

The following discusses our review of the Markham claims:

I. Claims for Differing Site Conditions

I.1 Getting Construction Water to Site During Construction

Markham claims that it is entitled to a modification to the Contract related to the increased costs in getting the water necessary to the site for construction. Markham asserts that these were costs that spanned the entire Project. These expenses include the costs of renting pumps and temporary pipes, the cost of fuel for those pumps, and a labor burden for running those pumps, as well as hauling water via water trucks for extended, unanticipated distances. Additionally, Markham asserted that CSRD was well aware of the water issues and the associated costs generated throughout the Project. Markham also states that CSRD knew these costs were the responsibility of CSRD and the costs associated with the work should be paid by CSRD. However, Markham stated that CSRD completely reversed its position with regard to the water and has failed and refused to pay Markham for these costs. In the arbitration hearing, Markham referred to the Contract, Exhibit A, Para. I.H. in support of its claim that states:

> Unless noted otherwise, this proposal is based on the assumption that there is an adequate water supply and pressure on the site to satisfy the requirements of our construction and dust control efforts. Any cost related to addressing inadequate construction water supply would be considered an addition to our proposed amount. [See C1/C40].

Markham presented evidence that CSRD acknowledged in status reports by CSRD's owner's representative, Michael Bronska ("Bronska") to Zions Bank (the Trustee of the Bonds for CSRD) and the CSRD District Engineer Gary Stocker ("Stocker") that "…the Town has reduced the volume, quantity, and time of delivery of water necessary for construction related activities. Additional scheduling delays resulting from reduced production will continue to occur until the situation is resolved." According to Markham, Bronska never referenced the water issue being the fault of Markham. [See status reports, C-212 (September 2018)].

Markham stated that on or about 25 July 2017 CSRD confirmed they were continuing to deal with the TOCC regarding the water pressure issues and asked Markham to proceed. Markham sent its claim with costs through July of 2017 identifying costs that would be ongoing to get water to the site. [See C222].

During the arbitration hearing, Markham provided evidence from its construction superintendent Tom Martin ("Martin") of his logbook that identified the field issues related to the water change order and associated costs. [See C10; see also C629/R1073 Daily Water Truck Logs].

According to Markham, they sent additional notices to Bronska and CSRD's Chairman Mark Stapp ("Stapp") with different potential water solutions and the associated costs. Markham's evidence indicated that they were numerous discussions with CSRD about the lack of water and its impact to cost and schedule. [See C222, 361, 363, 365, 54, 504, 512, 431, 404, 367].

Markham calculated the final change order amount for $389,973.27 through 08 January 2019. [See C54]. On 26 April 2019, Stapp rejected the billing, claiming that Markham was aware of the water supply conditions and that CSRD made no promise of any quantity or volume. [See C637].

On the other hand, CSRD disagrees that Markham is entitled to the $389,973.27 in expenses in getting water to the construction site. CSRD disagrees that Contract Exhibit A, Para. I.H is applicable. Instead, CSRD states that Markham's claim "is belied by its representations prior to issuing its bid." [See CSRD Pre-Hearing Statement]. CSRD points out that in Markham's SOQ, Markham stated:

> Access to Water
>
> Issue: Access to construction water on the existing site is limited since most nearby residential water is in wells that lack additional capacity and ability to provide necessary water pressure.
>
> Resolution: Markham is currently working with the Town of Cave Creek to upgrade the water system in order to provide more water pressure to the existing Joy Ranch connection point.
>
> Issue: We are aware that the existing system does not have adequate pressure to the site.
>
> Resolution: Markham intends to install temporary booster pumps to provide adequate water for the development. Doing this work in an early GMP will allow early construction on these utility items and reduce the overall project delivery schedule. [See C39].

Thus, according to CSRD, Markham knew and acknowledged before it executed the Contract that the "connection point" for its water would be at Joy Ranch Road and acknowledged that the existing water system did not have adequate pressure to the site. CSRD stated that Markham was in a unique position to know of the water pressure, having been the contractor that installed the extension of the waterline in 2007. And as stated above in the SOQ, Markham further articulated its plan to use booster pumps to provide adequate water for construction services.

CSRD also cited to the fact that TOCC water guidelines provided that pressures within the system will fluctuate between 40 and 100 p.s.i. And, the Maricopa Association of Governments ("MAG") Standards incorporated into the Contract also required that the "Contractor make arrangements for and provide all necessary water for his construction operation and domestic use at his own expense." [See MAG Standard § 104.1.3].

Finally, CSRD stated that the decision to construct a water pond along the roadway and to transport water there using pumps rather than using Klein tanks at the location of the hydrant from which they were drawing water was a means and method decision for which Markham was responsible for attendant expense. The pond addressed the very issues Markham acknowledged in its SOQ prior to issuing its bid. Moreover, CSRD argued throughout the arbitration hearing that the water pond never ran out of water and that there was always water available for construction activities. As a result, CSRD denies that it is responsible for construction water costs/expenses.

After reviewing the testimony and exhibits relating to this issue, the Arbitrators find in favor of Markham. See the Interim Award herein for the Arbitrators' award.

The panel found the testimony of various MCCI witnesses to be persuasive as to both the technical issues surrounding the construction water issue and the claimed damage amount as was supported by the documentary evidence presented. The panel found the testimony of CSRD's witnesses to be unpersuasive and unsupported by the documentary evidence.

MCCI clearly understood the deficiencies in the TOCC water system serving the site and contractually placed the burden of delivering adequate water quantities and pressure to the site onto CSRD. CSRD accepted this burden both contractually and through their ongoing, and eventually failed, efforts working with the TOCC to provide adequate water to the site for the anticipated construction activities.

Testimony of various MCCI witnesses supported their claimed plan to utilize the Project's water system, as installed in phases, to deliver water for the construction operations as they proceeded from the construction starting point at Saddle Mountain Road up to the Cahava Springs residential sites. The lack of adequate water from the TOCC system made this scheme impossible to implement resulting in the need for the pond and the extensive water hauling operation. Additionally, CSRD's inability to obtain a permit for the water campus work precluded the timely installation of the Saddle Mountain water booster pump station which was integral to MCCI's construction water delivery plans.

I.2 Excess Material: Excavating and Hauling Material to Stockpile

Markham has asserted a claim for costs related to excess earthwork materials generated during grading and excavation. According to Markham, CSRD directed Markham to stockpile excess material at the top of the hill (at the site of the water campus/reservoir and at an on-site area of Whispering Springs). This was different than what the Contract referenced, where all anticipated excess material was to be placed on the Schwartz property under an easement obtained by CSRD. Ultimately the area designated on the Schwartz property could not hold all of the actual excess material generated.

Markham stated that on 09 October 2017, it asked for direction on where to stockpile the unanticipated excess material because the Schwartz property was filling up. [See C6]. On 16 October 2017, according to Markham, CSRD's Bronska said to stockpile the material on the future reservoir site and the Whispering Springs site to minimize bringing in fill material he anticipated would be needed by the future home builders. [See C 267 and C492]. Markham stated that in fact, on 20 October 2017 Bronska attached a sketch of the location and on 25 October 2017, Bronska gave direction to move forward. [See C466, 369, 367]. Markham proceeded with hauling the excess material up the hill.

As would be discussed during the arbitration hearing, the excess material (that material that would not fit on the Schwartz property) came from several sources. [See C278]. These included discrepancies between the topography used for the plans and the actual ground elevations, staking error, and

excavation of additional material caused by blasting swell. The solution was to haul the material to the top of the Project and process the material through crushing and/or screening for aggregate base course ("ABC"), rip rap, and landscape fines. [See C209 Pam Dullum ("Dullum") report for discussion on the excess material.].

At the same time, Markham and CSRD were trying to understand the source of the excess materials. On 05 January 2018, Stocker (who was also in charge of surveying for Markham's subcontractor, Westwood) gave a summary description regarding the Cahava Springs elevation issue and clarified that the Owner's representative, Bronska, was aware of the overall excess cut and elevation issue. [See C94 and R1086]. Markham was directed by CSRD to place the excess material at the Whispering Springs site and Westwood was asked to do a topo of the stockpile for quantity purposes and to assess why there was excess material.

By 08 March 2018, analyses had been completed and the Parties met to discuss the opinions of why there was excess material created during excavation. At a meeting on 08 March 2018, there was a discussion regarding the cause(s) of the excess material. Markham stated that the cost of hauling the 50,000 cy of excess material was approximately $400,000.00. [See C278 and C118].

Finally, Markham discussed during the arbitration that they identified to CSRD that there was excess material beyond what the Schwartz property would hold. Bronska and Stapp directed Markham to a location in the Whispering Springs subdivision to stockpile the material, which was on top of the hill knowing the approximate costs associated with hauling the dirt. The material was of value to CSRD and CSRD wanted the material because they thought it provided value to the future development for the building pads of the subdivision lots. Markham's differing site condition claim for excess materials is $544,575.10.

CSRD has argued and presented testimony that for the first time in Payment Application No. 25 issued in March 2019, Markham claimed it was entitled to $616,491.70 for expenses allegedly incurred in excavating the roadway and hauling the excavated material to two properties – the site of the future reservoir and distribution booster station (the water campus) and Phase II of the Cahava Springs development, known as Whispering Springs owned by the Cahava Springs Development Corporation ("CSDC"). [See C175]. According to CSRD, Markham's sole backup for this charge was a single piece of paper that purported to summarize the expense associated with the hauling of that material, which took place in October through December of 2017.

CSRD disputes the claim for the hauling of material as the majority of which was crushed and used for road base and rip rap for the CSRD project and the CSDC Village of Apache Peak project. CSRD disputes the basis of Markham's claim when Markham relied on Exhibit A to the Contract that states in part:

> Unless noted otherwise, no provisions or allowance have been included in this proposal for additional costs associated with attempting to balance the site (i.e. double handling soils, re-grading, re-staking, re-engineering, etc. MCCI cannot assume liability for final design. [See CI C40, Exhibit A, I.F.].

8

CSRD takes the position that this provision is contradicted by multiple documents, including the SOQ [See C39] upon which CSRD states that it relied on when selecting Markham as the general contractor. In the SOQ, Markham stated:

> Markham has evaluated and determined that we can widen shoulder in fill areas and find locations on site that can be used to balance the project site. Additionally we can assist in the review of the preliminary plans of the future phases of Cahava Springs to help determine if it would be beneficial to stockpile excess material for future use.

In addition, CSRD states that the paving plans upon which Markham based its bid for the roadway contained the following note:

> Prior to bidding the work, the contractor shall thoroughly satisfy himself as to the actual conditions and earthwork quantities, if any. No claim shall be made against the owner/developer or engineer for any excess or deficiency therein, actual or relative. [See C44].

Therefore, CSRD asserts that Markham knew prior to bid that it anticipated approximately 29,500 cubic yards of excess material that it planned to use for the Project.

During construction, CSRD states that once Markham believed that the Schwartz property easement was nearing capacity in October 2017, it approached CSDC about placing some material on CSDC's property on a temporary basis (with no mention of an accompanying charge to CSRD). When CSRD asked how much was anticipated, Markham's project manager replied that it would be 20,000 to 30,000 cubic yards. [See C6]. However, Markham ended up hauling approximately 58,000 cubic yards of excess material to Whispering Springs and 7,000 cubic yards of material to the water campus/reservoir site.

Similar to the discussion above on Markham's analysis, CSRD stated that the cause of the excess material was attributed to several causes, including a staking error by Markham's subcontractor (7,000 cubic yards), and various construction issues. CSRD points out that much of the 58,000 cubic yards of excess material that was placed on the Whispering Springs property was used as rip rap and road base and for the adjoining on-site Apache Peak project for CSDC.

According to CSRD, when the Project was complete, only 26,000 cubic yards of material remained at the stockpile site, meaning that 32,000 cubic yards of material was used. This amount is nearly identical to Markham's estimate of the spoils that would be generated by the initial grading of the Project. As a result, CSRD questions why it should be charged for the hauling of material to a location where it would be crushed to be later used on the Project. CSRD comes to the conclusion that the use of the excess material was contemplated all along as stated in Markham's SOQ.

Finally, we note CSRD's conclusion on this issue in its pre-hearing arbitration statement that:

> The remaining material located at Whispering Springs and the reservoir site at the conclusion of construction only can be attributed to MCCI's construction issues or its failure to excavate per the stakes. Therefore, even if MCCI did not state its intention to balance the site (it did), even if MCCI waived any right to pursue a claim against CSRD

for "excess" material based on the plain language of the paving plans (it did), even if CSRD's payment application for the material was not untimely by more than a year (it was), the facts demonstrate that the site would have balanced in the absence of any survey error and failure by MCCI to build per the plans and stakes.

After reviewing the testimony and exhibits relating to this issue, the Arbitrators find in favor of Markham. See the Interim Award herein for the Arbitrators' award.

The panel found the testimony of various MCCI witnesses to be persuasive as to both the technical issues surrounding the excess materials issue and the claimed damage amount and supported by the documentary evidence presented. The panel found the testimony of CSRD's witnesses to be unpersuasive and unsupported by the documentary evidence.

MCCI admitted that the approximately 7,000 cubic yards of material created by the error of their contracted surveyor Westwood was their responsibility and that is reflected in the claimed amount above. It is also noted that the MCCI claim does not include the additional excess material eventually placed on the Schwartz property over and above the originally planned amount.

The fact that some portion of the excess material was eventually re-purposed for ABC or other uses does not change the fact that the material was excess to the planned amount of material to be placed on the Schwartz property and was hauled up the hill at CSRD's direction.

The balance of the excess material (not attributable to the Westwood survey error) was caused by inadequate/erroneous grading and drainage plans provided by CSRD to MCCI. The plans were based on underlying topography that did not conform accurately to the actual ground elevations underlying the project site. This is not uncommon in aerial topographic surveys and could (and should) have been detected by a field topo check by the design engineer and adjusted for in the plan design. Additionally, the plans were (per the testimony of the design engineer) intended to balance from a cut/fill earthwork perspective within the limits of the material originally planned to be placed on the Schwartz property. They did not, resulting in the balance of the excess material generated.

There was no evidence presented that the grading performed by MCCI (except in the area affected by the Westwood survey bust resulting in the approximate 7,000 cubic yards) was not performed in substantial conformance to the plans or subsequent field direction by the design engineer. The as-built plans support that MCCI constructed in substantial conformance to the plans and subsequent field direction.

MCCI had the right to rely on the project plans, provided to them by CSRD, and assume that the plans were generally accurate, including as to earthwork quantities. The standard plan note referring to the contractor's responsibility to "...satisfy himself as to the actual conditions and earthwork quantities..." does not anticipate that the contractor will be required to field verify plan topographic mapping or to perform earthwork quantity calculations outside of those that can be performed using the project plans.

It is common industry practice for grading and drainage plans to note cut/fill earthwork quantities as calculated by the design engineer. The project plans did not note earthwork quantities. The design engineer believed that the plans would balance utilizing the Schwartz property based on their earthwork calculations and so did MCCI based on the same available information.

I.3 Removal of Stockpile

As discussed above in I.2. Markham states that CSRD (including both Stapp and Bronska) were well aware of the costs that would be related to the excess material. However, at some point in time, CSDC changed its mind and filed an arbitration demand against Markham claiming that Markham had trespassed onto the CSDC property, and that CSDC did not want the material for future building pads.

The arbitrator in her Notice of Draft Award gave Markham the ability to avoid a trespass decision in the CSDC case (to be set forth in the Final Award) and allowed Markham to remove that material. [See R1371 for Draft Award and R1373 for Final Award]. Markham states that it sought consent from Stapp (who testified that he is both Chairman of CSRD, and 20% shareholder of CSDC) to remove the material and consent was provided. Markham removed that material. [See C449].

Markham therefore claims that because CSRD/CSDC wanted the additional material and because CSRD instructed Markham to place the material at the top of the hill in Whispering Springs and at the reservoir site, CSRD is responsible for the costs of the removal of that material. Markham removed all the stockpiled material from Whispering Springs and, therefore, claims that it has an additional claim against CSRD for $281,326.21 for that removal. [See C240].

According to CSRD, following an arbitration between CSDC and Markham in December 2019, the arbitrator ruled in favor of CSDC's trespass claim against Markham stemming from the deposit of excess materials on CSDC's Whispering Springs property. The arbitrator ruled that Markham was obligated to pay CSDC $176,500 in damages resulting from Markham's trespass, or in the alternative, that Markham could remove the excess material at Markham's expense.

CSRD argues that had Markham simply paid CSDC the $176,500, there would be no basis to try to pass that cost along to CSRD because it was Markham and not CSRD that committed the tort of trespass. Further, CSRD argues that Markham removed the material to avoid paying trespass damages to CSDC, in order to make the claim against CSRD.

Additionally, CSRD states that Markham's claim is improper as CSRD was not a party to the CSDC arbitration; nor did Markham assert that CSRD was a non-party at fault in the CSDC arbitration. CSRD claims that Markham's attempt to foist the cost of its tort liability for damage it caused to CSDC onto CSRD under a breach of contract theory is procedurally improper and barred by res judicata and collateral estoppel.

CSRD also states that Markham cannot credibly claim that it was directed by CSRD to place the material at Whispering Springs as CSRD is a public special taxing district, and CSDC is privately owned entity that owns Whispering Springs and the only entity that could provide temporary permission to place some excess material at specific limited locations within Whispering Springs. Therefore, CSRD claims that there is no legitimate legal or factual justification for Markham's attempt to foist its tort liability for trespass to CSDC's property to a wholly different entity CSRD.

After reviewing the testimony and exhibits relating to this issue, the Arbitrators find in favor of Markham. See the Interim Award herein for the Arbitrators' award.

11

The panel found the testimony of various MCCI witnesses to be persuasive as to both the technical issues surrounding the removal of the stockpile issue and the claimed damage amount and supported by the documentary evidence presented. The panel found the testimony of CSRD's witnesses to be unpersuasive and unsupported by the documentary evidence.

While not taking issue with the previous CSDC/MCCI arbitration which determined a trespass, this panel notes that the CSRD and CSDC entities had overlap in personnel and that CSDC personnel (Stapp and its consultant Bronska) directed the placement of the material on CSDC property, anticipating a material benefit (which did not materialize) to CSDC for that material.

The stockpile material eventually removed was generated for the same reasons outlined in I.2 above and was therefore the responsibility of CSRD.

II. Claims for Work that Direction was Provided after Substantial Completion

Markham's claim as listed above asserts that they are entitled to recovery on eight (8) separate items of work performed after substantial completion. To answer whether Markham is entitled to these claim items, we start our discussion on whether there was substantial completion, and whether the items were corrections to Markham's work or additional scope.

We note that the definition of substantial completion is found in the Contract at Article 14.4.1.:

> Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilized the Work for its intended purpose. [See C1/C40].

However, we also note that there is no express Contract definition of what the "intended purpose" was/is. Therefore, we review the arguments of Markham and CSRD, the evidence, and the testimony of the witnesses.

According to Markham, it completed all of the items on the design engineers Hoskin Ryan ("HR") punch list dated 20 December 2018 that were within Markham's control. [See C57, C241]. This was followed by the District Engineer's letter signed and sealed by Stocker stating that Markham was substantially complete on 27 December 2018. [See C16].

Markham also stated that after pushback from CSRD on the completion of the work, the Parties walked the Project in May 2019 including the TOCC wherein the TOCC identified certain punch list items in a letter dated 24 June 2019. [See C9]. Markham completed the items identified by the TOCC under its control yet stated that CSRD still has not completed items requiring CSRD input or design submittals to the TOCC.

Markham's expert Dullum reviewed both the 20 December 2018 HR punch list and the 24 June 2019 TOCC punch list. She concluded that Markham's items had been completed and that the incomplete items were outside of Markham's control.

Finally, Markham asserts not only that it completed its work in a workmanlike manner but also timely completed its work consistent with the time identified in the Contract, which is 515 calendar days.

On the other hand, CSRD argues that Markham was late in completion of the work. According to CSRD, the Project should have been completed within 515 days, or by 04 December 2018. And, CSRD argues that the Stocker certification of substantial completion had nothing to do with completion of the work. As a result, CSRD argues that Markham was not complete by 27 December 2018, and in fact, pursuant to MAG (which have a standard delay damages of $1,780 per day for any contract exceeding $10 million), Markham's delay and potential liquidated damages ("LD's") could range from:

- MCCI completes paving of road. 21 February 2019. 79 days delay. $140,620 in LD's.
- MCCI completes the TOCC punch list. 24 June 2019. 202 days delay. $359,600 in LD's.
- TOCC confirms hardscape is acceptable. 15 June 2020. 559 days delay. $995,020 in LD's.

Another objection of CSRD that relates to the substantial completion and extended work into 2019 relates to Markham's request for extended general conditions. According to CSRD, as of 31 March 2019, Markham had invoiced $994,096.38 in general conditions, representing 100% of the schedule of values ("SOV" or "SOV's") for the entire Contract. [See SOV in C1, C40, and R1028]. CSRD then states that Markham claimed that it was entitled to "extended general conditions" of $248,384.81 through May of 2019, which equals 28% of the total general conditions for the Contract; followed by a pay application seeking $31,048.11 in extended general conditions through June 2019.

CSRD states that all told, Markham claims it is entitled to $279,432.93 ($31,048.11 per month) for the period between October 2018 and June 2019, concluding that Markham's claim is baseless for several reasons:

- First, with the exception of January 2019, Markham billed CSRD for general conditions through March of 2019, therefore billing again represents a double counting to which it is not entitled.
- Second, Markham fails to tie its claim for extended general conditions to its actual expenses; instead, it claims it is entitled to a flat rate of $31,048.11 per month regardless of whether it incurred actual general condition expenses.
- Third, Markham claims it was substantially complete in December 2018; any general conditions allegedly incurred in October, November, and December of 2018 would therefore not be a result of any "extended" work Markham was required to perform.
- Finally, the MAG Standards Section 109.4.6 states plainly that "[a]dditional compensation for other items, including extended overhead and conditions, shall not be considered or allowed."

For these reasons, CSRD argues that Markham's claim for extended general condition expenses should be rejected.

Finally, we note that CSRD has taken the position that the work performed in 2019 was to complete work or correct work to bring the work into compliance with the drawings. CSRD does not agree that the issues listed by Markham are new work that should be compensated. [See C560 as example of discussion on substantial completion.].

After reviewing the testimony and exhibits relating to substantial completion and the work performed between December 2018 and June 2019, the Arbitrators find in favor of Markham. See the Interim Award herein for the Arbitrators' award.

The panel found the testimony of various MCCI witnesses to be persuasive as to this scope being outside of the contract's requirements, the claimed damage amounts and the supporting documentary evidence. The panel found the testimony of CSRD's witnesses to be unpersuasive and unsupported by the documentary evidence. The panel finds that Markham completed all of the items on the design engineers Hoskin Ryan ("HR") punch list dated 20 December 2018 that were within Markham's control. [See C57, C241]. This was followed by the District Engineer's letter signed and sealed by Stocker stating that Markham was substantially complete on 27 December 2018. [See C16]. The panel finds that the Project was substantially complete on 27 December 2018.

The panel also finds that the TOCC punch list of 24 June 2019 may have identified issues that the TOCC wanted corrected, however Markham's contract was with CSRD. Under the Contract, the panel finds that Markham did complete its punch list repair obligations (except for those items not under its control where CSRD had not completed items requiring CSRD input or design submittals to the TOCC).

The panel agrees with Markham's expert Dullum who reviewed both the 20 December 2018 HR punch list and the 24 June 2019 TOCC punch list. She concluded that Markham's items had been completed and that the incomplete items were outside of Markham's control.

As a result, the panel does not agree with CSRD that Markham was late and should be assessed LD's. We also reviewed CSRD's arguments regarding extended general conditions and find that Markham is entitled to the general conditions not paid for (see claim under unpaid base contract line items below) as well as for the extended period of time to perform additional work. Further, the panel disagrees with CSRD's position that the work performed in 2019 was to complete work or correct work to bring the work into compliance with the drawings. The panel finds that the work performed in 2019 was additional scope of work, and not remedial/corrective work.

III. Claims for Unpaid Base Contract Line Items

Markham's claim as listed above asserts entitlement to recovery on ten (10) separate issues. Markham states that it has been unpaid for work performed under the base contract for the items listed. The amount is $1,263,716.96, not including retention. Markham states it performed the work under the base contract in a timely and workmanlike manner, the actual work has been performed to the satisfaction of CSRD (and the TOCC), and Markham is substantially complete.

Two of the larger value claims for landscaping and the booster pump/reservoir site (again also referred to as the water campus) issues are discussed here. According to Markham, its landscaping scope can be broken down into four scheduled value items as set forth in the Contract SOV: (1) the irrigation system, (2) the planting, (3) the spreading of existing desert cobble, and (4) the plant establishment guarantee and maintenance.

Markham's claim begins by stating that the landscape plans contained numerous conflicts and ambiguities. [See C470]. Markham states that it ultimately built the landscaping at the direction of CSRD, not the plan documents. However, CSRD has failed and refused to pay for various landscaping work performed by Markham and its subcontractor Service Direct Landscape ("SDL").

According to Markham, Bronska had a specific vision for the landscaping and opted to flag the trees and saguaros. [See C483]. The locations for trees and saguaros were also reviewed by Luke Kautzman

("Kautzman") (the TOCC's Planning Director, who is in charge of landscaping) of the TOCC and accepted by the TOCC. With regard to the plants and shrubs, Markham states that early on in the Project Martin, SDL, and the landscape architect Russ Greey, met with Bronska and a grid was approved by Bronska for the entire 2 ½ mile landscape portion of the Project. Markham followed the approved grid as Bronska specifically wanted to have less plant density on the Project than shown on the landscape plans. [See C484].

Markham's claim also includes an amount for hand watering instead of installing an irrigation system. According to Markham, Change Order 25 removed the entire irrigation line item value but did not include the reduced cost of hand watering to establish a net cost for the change order. Markham believes that the amount due for hand watering has now been agreed to however it has not been paid for by CSRD.

Another part of Markham's landscape claim is that it states CSRD agreed to revise the spreading of desert cobble due to field conditions. Markham states it provided adequate planting material behind the curb and has not been paid for performing that work. According to Markham, there were multiple options on the plans regarding desert cobble. Markham performed an alternative to the desert cobble as CSRD watched Markham perform the work. Markham screened material and provided soil for the landscape. Markham states that CSRD still has not paid for this work.

The next part of Markham's landscape claim is that planting was done per the direction of CSRD. [See C588]. Delivery tickets were provided and agreed upon. The ultimate plant configuration resulted in some material not being needed. Markham's subcontractor SDL provided a credit of $12,938.75 for the unplanted material. [See C190]. In addition to the unplanted material, CSRD had attempted to move material to CSDC property for planting (although at the arbitration with CSDC it was deemed that the private entity needed to pay for its own material). Markham has provided a credit of $26,727.00 to CSRD for that material. Markham states that it is still awaiting change orders.

CSRD has raised a number of objections to Markham's landscape claim. First, Markham was to salvage the top four inches of soil from areas where it disturbed the ground surface and for that material to be separately stockpiled and spread by SDL at the conclusion of the landscaping. The purpose of such harvesting, stockpiling, and spreading of desert cobble, a/k/a desert pavement, was to preserve native material and seeds that lie within the top layer of soil such that it could be reintroduced and help encourage the growth of native plants and discourage the growth of invasive species. For its performance of this desert cobble work, Markham was to be paid $115,831.20 according to the Contract SOV.

According to CSRD, Markham claims it performed the "reasonably equivalent" alternative of spreading desert cobble. But when asked what that reasonably equivalent alternative was, multiple witnesses confirmed that the material that was spread at the conclusion of landscaping was material that was screened or crushed from the 58,000 cubic yards of excess material that was excavated from the road profile. That material, according to CSRD is not desert cobble and it consisted of, among other things, materials that had to be blasted from the road profile and subsequently crushed. It was not the top 4" of material that contained organic material and seeds, so it provided none of the benefits inherent in spreading actual desert cobble – namely the growth of native species and minimization of invasive species.

In addition to desert cobble, the landscaping aspect of the SOV required Markham to purchase and install certain landscape material in exchange for a payment of $972,775.00. All Parties conceded that the amount of plants required to be purchased by the landscape plans were not purchased or installed by SDL. Markham conceded that CSRD is entitled to a credit for $26,727.00 for saguaro cactuses that were purchased by CSRD but were subsequently planted within CSDC's Village of Apache Peak.

CSRD's objection is that Markham is only offering a credit for $27,501.80 for remaining trees, shrubs, and cacti that did not need to be purchased for the CSRD project, thereby representing a savings to Markham and SDL. CSRD argues that this credit is far less than the savings to Markham and SDL for not having to purchase or install that plant material.

CSRD argues that SDL's own records confirm that it saved $176,106.25 in not purchasing and installing plant materials upon which its bid was based when it did not acquire the bursage, brittlebush, turpentine bush, thornbush, jojoba, goldeneye, claret cup, compass barrel, prickly pear, hanging cholla, or staghorn cholla called for by the plans. Therefore, CSRD claims that it is entitled to a credit for $176,106.25 for plant material that was neither purchased for nor installed on the CSRD project.

The second issue to discuss in the claim category is Markham's claim for the costs associated with the booster pump station and reservoir tank (the water campus). Markham's contract included under the SOV, line items for booster pump station and tank. Markham priced the water campus SOV's at $2,100,570.00 based on CivilTec plans dated 09 January 2015 and based on a water system design report dated 31 March 2016. Markham performed work related to the pump station and tank and was paid $580,647.68 on its pay applications.

According to Markham, in October 2018 while Markham was under contract, CSRD went to find better pricing because of design changes that had been made to the system. CSRD later deleted the entire scope of work from the Contract prior to any agreement on revised pricing.

Markham stated that it acknowledges a credit is due to CSRD for the value of work that was removed from the Contract, and that amount is $1,022,471.32. Markham also acknowledged that a credit is due to CSRD for the returned liner that CSRD paid for in the amount of $109,375.00.

Markham claims that it is due money for two processed change orders, CO 17 for $16,055.05 and CO 18 for $3,740.44, executed on 02 October 2018 related to work done on the booster pump station. [See R1989]. And, Markham claims that it is entitled to be paid pursuant to the agreement, less the work not performed. Markham claims it is due $407,871.49.

In response to Markham's claim, CSRD states that the Contract called for the construction of the water campus, which included two booster pumps and reservoir at a cost of $2,100,570.00. [See C1/C40 SOV]. Based on the SOV, almost 90% of it was to be constructed by Markham's subcontractor.

Prior to actual construction, Markham offered a value engineering ("VE") proposal that would save CSRD a total $190,088.00 by altering the design to include, among other things, a reservoir comprised of pre-cast concrete tanks with a liner that would be buried as opposed to the originally designed above-ground steel tank reservoir.

CSRD states that Markham sought payment for work purportedly performed for the water campus, which included:

- Application 12 on 2/28/18 - $210,057.00 (10% of water campus SOV).
- Application 13 on 3/31/18 - $315,085.50 (15% of water campus SOV).
- Application 15 on 5/31/18 - $35,709.69.
- Application 19 on 9/30/18 - $19,795.49.

These four payment applications totaled $580,648.68, however CSRD claims that Markham's records show less than $140,216.97 in out-of-pocket expenses related to the water campus. More importantly, after repeated efforts to get the TOCC to accept the VE design, it became clear that the TOCC would not accept the design of an underground potable water reservoir being used with lined pre-cast tanks.

According to CSRD, by the time the TOCC rejected the VE option, the approval of the original design (above ground steel tank) had expired, and the water campus was never actually permitted for construction. CSRD also claims that Markham then refused to construct the water campus. For CSRD, this meant that CSRD's previous payments of $580,648.68 provided nothing of value to CSRD. As a result, CSRD claims a credit for the amounts paid to CSRD. CSRD also questions how Markham incurred costs that would approach $580,648.68 when it was only planning on self-performing work at a fraction of that cost.

In conclusion, CSRD claims that the $580,648.68 paid to Markham for the water campus should be returned to CSRD (or at the very least shown as a credit), and that Markham is not entitled to the $517,246.29 included in Pay Application No. 25 for the water campus line item of the SOV as Markham did not perform and, therefore, has not earned that money.

Finally, CSRD claims that due to Markham's failure to construct the water campus, CSRD was forced to engage an engineer to secure design approval and re-bid a replacement water campus. [See Exhibit C17 for replacement water campus solicitation.]. CSRD claims that during the 07 June 2019 pre-bid meeting, Michael Markham Sr. openly stated that Markham was in litigation with CSRD, that Markham was owed money, and that CSRD's ability to pay for a replacement water campus was in question. CSRD claims that Mr. Markham's conduct chilled the bidding process (which was attended by four potential bidders) to the point that CSRD received a single bid at a cost of $3,111,430.00 more than the amount originally bid by Markham to construct the water campus. As a result, CSRD claims it is entitled to recover these additional costs for Markham's failure to perform.

We also note that CSRD made two general arguments to all of Markham's unpaid base contract line items. These arguments include that Markham's invoices for unpaid line items are time barred by statute, pursuant to Arizona's Prompt Payment Act statute at A.R.S. § 34-221 when they were billed for. Therefore, CSRD asserts that to the extent that Markham's claims are attempting to charge CSRD for work done outside of the preceding month, they should be barred. Also, CSRD asserts that based on Conditional Lien Waivers ("CLW's") and Unconditional Lien Waivers ("ULW's"), Markham has released and waived their rights to additional compensation.

After reviewing the testimony and exhibits, the Arbitrators find in favor of Markham. See the Interim Award herein for the Arbitrators' award.

17

The panel found the testimony of various MCCI witnesses to be persuasive as to base contract work being completed. The amounts awarded are supported by documentary evidence. The panel found that MCCI owes CSRD a credit for the unbuilt water campus in the amount of the Jensen Precast proposal. The panel found the testimony of CSRD's witnesses to be unpersuasive and unsupported by the documentary evidence.

Regarding the discussion items above, the panel finds that Markham's credit for the unpurchased plant material was reasonable. Additionally, the panel finds that Markham was reasonable in how it dealt with the desert cobble when there was insufficient organic material to scrape and stockpile for landscaping.

On the issues of the water campus, the panel agrees with Markham's calculation for a credit. The panel does not agree with CSRD's claims that the $580,648.68 paid to Markham for the water campus should be returned to CSRD (or at the very least shown as a credit), and that Markham is not entitled to the $517,246.29 included in Pay Application No. 25 for the water campus line item of the SOV. Similarly, the panel does not agree with CSRD's claim that it is entitled to the amount of $3,111,430.00 (representing the amount in excess of that originally bid by Markham to construct the water campus).

Finally, regarding the other unpaid base contract items within this category, the panel disagrees with CSRD that Markham's invoices for unpaid line items are time barred by statute, pursuant to Arizona's Prompt Payment Act statute at A.R.S. § 34-221 when they were billed for. And, we disagree with CSRD's assertion that based on Conditional Lien Waivers ("CLW's") and Unconditional Lien Waivers ("ULW's"), Markham has released and waived their rights to additional compensation for these items.

IV. Claims for Approved and Unprocessed Change Orders

Markham claims that throughout the Project, CSRD directed changes and modification to Markham's scope of work and then would refuse to process the change orders related to additional costs performed by Markham. According to Markham, CSRD would direct the additional work, Markham would document the additional work, and then CSRD refused to process the change orders, and many times not only refused to process the change orders but then stated that Markham was no longer entitled to be paid for the change order work that it did perform. [See R1225, R1389, R1391, R1392].

Relating to the unprocessed change order claim issues, CSRD states that Markham makes these claims despite evidence that shows it has no right to recover; the issues are not included in the Contract or as part of a change order executed by the Parties. According to CSRD, the Contract and the integrated MAG Standards require executed change orders for the Contract sum to be increased. CSRD also states that these claim issues seek payment for work that allegedly occurred months if not years before the payment application was submitted and were only included in payment applications immediately after a mediation broke down.

CSRD also states that Markham's unprocessed change order claims are time barred by statute, pursuant to Arizona's Prompt Payment Act statute at A.R.S. § 34-221. Therefore, CSRD asserts that to the extent that Markham's claims are attempting to charge CSRD for work done outside of the preceding month, they should be barred. Examples listed by CSRD that represent alleged expenses that were incurred well before the preceding month in which Markham issued a related payment application include, but may not be limited to: $616,491 in alleged expenses incurred hauling material excavated in calendar

year 2017; 389,973.27 for alleged construction water related expenses incurred between September 2017 and January 2019; $73,025.25 for pre-construction that were allegedly incurred before construction began; and, any purported extended general conditions incurred before 01 May 2017.

Regarding Markham's claim that it is entitled to $73,025.25 in pre-construction expenses from CSRD, CSRD argued that the SOV contains no line item for such pre-construction expenses. Moreover, the Contract schedule shows pre-construction, as a line item (demonstrating that Markham knew how to include it in the Contract Documents) and shows that such pre-construction activities were to take place at the outset of the Contract. Yet, CSRD states that Markham did not issue a payment application seeking to recover alleged pre-construction expenses until years later, rendering the charge inconsistent with the mandates required by the Contract and/or the Public Prompt Payment Act.

CSRD states that the $73,025.25 charge that Markham seeks to recover for alleged pre-construction expenses was previously subject to a payment application issued by Markham where that charge was made against the general conditions line item of the SOV (.15 x $486,834.90 general conditions line item = $73,025.25). CSRD also states that following the unsuccessful mediation, Markham claimed that the previously $73,025.25 that was billed to general conditions should have been billed to the nonexistent pre-construction line item of the SOV. According to CSRD, Markham is using this alleged pre-construction expense in a transparent way to increase the general conditions line item of the contract by $73,025.25, which is both improper and unsupported.

We also note that CSRD made two general arguments to all of Markham's unprocessed change orders. These arguments include that Markham's invoices for change orders are time barred by statute, pursuant to Arizona's Prompt Payment Act statute at A.R.S. § 34-221 when they were billed for. Therefore, CSRD asserts that to the extent that Markham's claims are attempting to charge CSRD for work done outside of the preceding month, they should be barred. Also, CSRD asserts that based on Conditional Lien Waivers ("CLW's") and Unconditional Lien Waivers ("ULW's"), Markham has released and waived their rights to additional compensation.

After reviewing the testimony and exhibits, the Arbitrators find in favor of Markham. See the Interim Award herein for the Arbitrators' award.

The panel found the testimony of various MCCI witnesses to be persuasive as to entitlement to change orders for the claimed work. The amounts awarded are supported by documentary evidence. The panel found the testimony of CSRD's witnesses to be unpersuasive and unsupported by the documentary evidence. Furthermore, the panel finds that the entitlement to these change orders is not time barred by statute or otherwise.

The panel disagrees with CSRD that Markham's unprocessed change orders are time barred by statute, pursuant to Arizona's Prompt Payment Act statute at A.R.S. § 34-221 when they were billed for. And, we disagree with CSRD's assertion that based on Conditional Lien Waivers ("CLW's") and Unconditional Lien Waivers ("ULW's"), Markham has released and waived their rights to additional compensation for these items. CSRD's argument that the lien waiver exclusions relate to future change orders (not past pending modifications) is simply incorrect.

V. Withheld Retention

Markham claims that CSRD failed and refused to pay retention earned by Markham for the work they performed on the Project. According to Markham, 50% of the retention was required to be released at 50% complete and 100% of the retention at substantial completion, which Markham states occurred on 27 December 2018 based on the Stocker signed/sealed letter. Markham claims that the retention amount owing is $830,578.77.

CSRD on the other hand claims that it has rightfully withheld the retention due to its claims and credits owing. CSRD states that Markham is not entitled to a release of any retention.

After reviewing the testimony and exhibits, the Arbitrators find that MCCI is entitled to its retention. See the Interim Award herein for the Arbitrators' award.

VI. Credit

During the arbitration hearing, Markham discussed that it needed to make a correction to the excess material claim by reducing the amount $49,513.48 due to correcting the equipment used in hauling the material.

After reviewing the testimony and exhibits, the Arbitrators find that CSRD is entitled to this credit.

B. CSRD Claims

The following discusses our review of the CSRD claims:

1. Water Campus Breach of Contract ($3,111,430.00) and Tortious Interference ($854,404.82 to $1,487,000.00) where the total amount of damages combined will not exceed $3,111,430.00

In addition to the discussion above, the following is provided on the water campus issue. According to CSRD, Markham contracted with CSRD to construct the water campus at a cost of $2,100,570.00, but Markham simultaneously proposed a VE option by altering its design to include, among other things, a buried pre-cast reservoir with a liner. This VE option was suggested despite the fact that an approval to construct (which demonstrated the original water campus design had been subject to preliminary approval by the TOCC) was issued by Maricopa County shortly before the Contract was executed. CSRD states that the proposed VE was supposed to save CSRD both time and $190,088.00 in costs. [See C335 and C536]. However, the modified design was rejected by the TOCC because neither Markham nor its subcontractor (Jensen Precast) could provide the TOCC with an example of a potable water system using the VE design that was proposed.

In the interim, CSRD states that the preliminary/original approval from TOCC and Maricopa County to construct expired. A redesign had to be undertaken by CSRD as Markham expressed that it did not want to construct the water campus. When Markham confirmed it would not construct the water campus, a deductive change order was issued for the amount of the water campus line item in the SOV. [See C299]. However, Markham would not agree to the deductive change order amount. Hence, CSRD issued a constructive change directive ("CCD") removing the work from the Contract. [See R1336]. CSRD then sought to put the water campus out for public bid.

When CSRD put the water campus out for public bid, Markham along with all other potential vendors were offered the opportunity to provide a bid. CSRD states that during the pre-bid meeting, Michael Markham Sr. along with four other general contractors (Garney, Hunter, Schofield, and PCL) attended. According to CSRD, Michael Markham Sr. interrupted the pre-bid meeting by claiming that CSRD was in litigation with Markham, that CSRD did not have money to pay for construction of the water campus, and that CSRD owed money to Markham.

CSRD states that although the four contractors who attended the pre-bid meeting showed interest in bidding the construction of the water campus, only Garney actually submitted a bid. [See C536 and R1363]. CSRD states that a representative of Hunter informed CSRD's construction representative that Markham's influence led to it not offering a bid for the water campus. And, Garney's estimate to construct was $5,212,000.00 causing CSRD's damages in the amount of $3,111,430.00 ($5,212,000.00 - $2,100,570.00).

In response to CSRD's claim, Markham disputes that it refused to build the pump station and tank. Markham states that CSRD has never been ready, willing, or able to have CSRD's original design built because there was insufficient water pressure, and the design was never accepted by either the TOCC or Maricopa County.

Markham states that CSRD interfered with Markham's contract (while Markham was still under contract) to get updated pricing from other contractors. Markham states that in fact, on 16 August 2018 Markham was ready and willing to build the original design for the tank, the booster pump station, and the reservoir system but there was no permit approved by the TOCC to build CSRD's original design.

Additionally, Markham states that on 22 October 2018, CSRD started seeking bids for work already under contract with Markham. [See C553]. Markham notified Stapp and Bronska regarding CSRD's breach for shopping numbers for repricing.

Markham also responds to CSRD's assertion that Markham refused to build the booster pump station and tank. Specifically, Stapp alleges that at a meeting at the Capital Grille restaurant that he was informed by Mike Markham Jr. that Markham would not build the booster pump station and reservoir system. Mike Markham, Jr. denies this statement. Mike Markham, Jr. admitted that he did say at that meeting that he was not excited about doing the work if Bronska was the one in charge.

Markham states that there was no refusal to do the work. Markham states that the booster pump station as designed was not permitted and could not be built as originally designed. Also, Markham would not sign the deductive change order because of the amount deducted but never refused to do the work.

Finally, Markham disputes the counterclaim for tortious interference by comments made at the pre-bid meeting and asserts that in response to a question from Hunter Contracting, Bronska was asked whether there was enough money to pay for the water campus. Bronska claimed that Markham had been paid in full. Mike Markham, Sr. simply stated that Markham alleges that it was owed money and was in arbitration. According to Markham, Hunter did not refuse to provide an additional bid proposal based on any statement made by Mike Markham, Sr. In addition, Mike Markham, Sr. did not call Hunter to get them to withdraw their bid. Markham states this is a false statement, an unsubstantiated claim, and there are no damages.

21

2. Plant Material

In addition to the discussion above, the following is provided on plant material/landscaping. The Contract called for Markham to be paid $972,775 for planting, which included the cost of the plant material and the installation of the plant material. Markham was also paid to maintain that plant material for one year after its installation. Markham asserted that the maintenance period ended on April 1, 2020, but that it continued to water and maintain the plant material until May 1, 2020.

On 06 April and 15 April 2020, Kautzman inspected the landscaping on the sides of the roadway for the CSRD project. His conclusions were:

- There were inadequate shrubs installed along the roadway. Requirement is 35 plants (excluding trees and cacti) every 1,000 linear feet. The planting fell well short of that density.
- Invasive species, including a species that could not be identified by Kautzman despite his extensive experience, were pervasive along the road shoulders.

As a result, CSRD states that it has had to replace the shrubs Markham was obligated to install and maintain per the plans. Using pricing from SDL ($6.50 per one gallon shrub and $15.00 per five gallon shrub) at the ratio in SDL's bid documents (5.219 one gallon shrub for every five gallon shrub), the average price per shrub is $7.87 per shrub. The length of the roadway from Station 9+28 to Station 149+81 is 14,053 feet. Using the minimum shrub density of 35 shrubs per 1,000 linear feet on each side of the roadway at $6.84 per shrub, CSRD's damages are $7,741.80.

Moreover, CSRD claims that once those shrubs are planted, they will need to be maintained for one year. SDL charged $202,535.76 for hand watering plants to get them established. Discounting that maintenance obligation by 25% to account for trees that need not be watered, CSRD's maintenance damages are $151,901.82, bringing the total landscape damages suffered by CSRD to $159,643.62.

All Parties concede that the amount of plants required to be purchased by the landscape plans were not purchased or installed by SDL. Markham concedes that CSRD is entitled to a credit for $26,727.00 for saguaro cactuses that were purchased by CSRD but were subsequently planted within CSDC's Village of Apache Peak. However, CSRD states that Markham is only offering a credit for $27,501.80 for remaining trees, shrubs, and cacti that did not need to be purchased for the CSRD project, thereby representing a savings to Markham and SDL. [See C610 as example of discussion on plant credit.].

CSRD also states that SDL's own records confirm that it saved $176,106.25 in not purchasing and installing plant materials upon which its bid was based when it did not acquire the bursage, brittlebush, turpentine bush, thornbush, jojoba, goldeneye, claret cup, compass barrel, prickly pear, hanging cholla, or staghorn cholla called for by the plans. Therefore, CSRD claims it is entitled to a credit for $176,106.25 for plant material that was neither purchased for nor installed on the CSRD project.

3. Defective Workmanship

CSRD states that it discovered significant construction defects. Specifically, CSRD states that Markham over-excavated the roadway, lowering its profile, while it simultaneously constructed drainage structures at elevations higher than reflected on the plans. These defects have manifested themselves in sediment

washing out of the v-ditch channels along the roadway after even minor rain events, exposing the waterline installed by Markham, and necessitating costly repairs. CSRD asserts that Markham should be compelled to fix the defective work at its own expense by lowering the impacted drainage structures, armoring the v-ditches with rip rap as required by field directive, and correcting the grading so water is carried away from the roadway instead of towards it. Alternatively, Markham should be obligated to pay CSRD damages to repair its defective workmanship.

During November 2019, there was a five-year rain event at the site of the Project. Rather than withstand the rain event with minimal damage, the side of the roadway above station 102 was significantly eroded, resulting in the waterline installed by Markham being exposed and the distribution of soil and rock into the roadway. CSRD claims that the distribution of the material within the roadway itself leads to the inescapable conclusion that the grading was not done per the approved plans.

Following the rain event, CSRD had the site inspected. [See R1382]. The conclusion was that the work performed by Markham was defective. CSRD's retained expert Kenneth Crawford ("Crawford") concluded that the roadway was installed too low relative to the plans, apparently due in part to the survey bust resulting from Markham's staking subcontractor (Westwood) error. This caused drainage structures installed by Markham, including but not limited to certain catch basins, cut ditches and berms to be installed too high relative to the plans and the roadway. This resulted in a significantly reduced drainage capacity when compared to what was intended by the plans.

Accordingly, CSRD believes that Markham should be obligated to correct the defective workmanship by lowering those catch basins and related drainage structures, armoring the cut ditches where the erosion occurred, and grading adjacent to the roadway to direct water away from the roadway at its expense. Pursuant to the Contract, CSRD states that it has the right to insist on this corrective work before any obligation exists to release retention or make any further payments under the Contract.

In response, Markham stated that Crawford identified three alleged construction defects, which are not construction defects. He claims that the waterline is not at the proper elevation, that there was excess material generated, and certain drainage structures are not properly built. Initially, CSRD's expert also claimed that Markham did not complete the items on the 20 December 2018 punch list (although according to Markham, he never verified whether that work was completed or not).

Markham states that the waterline was installed as designed and per plan, with a sufficient amount of cover. Markham states that the excess material is a result of the Owner's design and a wrong original topo that caused excess material. Markham also disputes the drainage structure allegation based on Field Directive 13 and the specific direction of HR's Tom Ryan ("Ryan"). Thus, Markham asserts that there are no damages associated with the defective construction allegations.

4. Liquidated/Delay Damages

CSRD claims that they are entitled to liquidated damages pursuant to the MAG Specifications. Markham denies the claim.

According to Markham, not only did CSRD delay the Project and delay Markham's ability to complete the Project, but they actively hindered Markham's ability to perform its work, causing Markham to have

additional costs and claims as set forth in the extended general condition issue addressed above. And, Markham states that it did perform its work in a timely manner and consistent within the 515 calendar days as outlined in the Contract. In fact, Markham states that despite the CSRD caused delays it achieved substantial completion as of 27 December 2018, completing its work in 493 calendar days.

See also discussion above on Markham's claim for work performed subsequent to substantial completion.

5. Excess Material Cost of Removal

CSRD claims that it will be forced to incur additional expense in constructing the water campus because Markham placed excess material and improperly refused to remove that material from the reservoir site. The expense CSRD will incur in removing this remaining material is $56,084.67 using Markham's expense ratio it purportedly incurred in removing excess material from Whispering Springs.

Markham disputes CSRD's claim. As set forth above, excess material has been removed from the stockpile at Whispering Springs and Markham has made a claim for moving that material in its affirmative claims. In addition to the stockpile on Whispering Springs there is also material placed on the reservoir site. This material was placed at the direction of Bronska. Markham denies that it is responsible for the cost of removing that material.

C. CSRD's Claim for Credits

The following discusses our review of the CSRD credit claims:

1. Failure to Construct Water Campus

In addition to the discussion above regarding the water campus, the following is provided. CSRD is claiming that Markham is responsible for the increased costs related to the booster pump station and reservoir system. Markham claims that it worked in good faith to provide CSRD with VE options regarding the tank design and that Markham was never responsible for the design of the entire water system. Markham also claims, along with Rob Bryant ("Bryant") of Water Works, that the CivilTec plans that were a part of Markham's Contract would never have worked, as well as the fact that the original design of steel tanks above ground was never acceptable to CSRD for aesthetic reasons.

Markham also states that the current design and the changes that have been made since the original CivilTec plans were not part of the original design and the changes are not Markham's responsibility. Markham disputes that CSRD is entitled to any credit as Markham worked on the water campus and is entitled to be paid for the work that it did do on the booster pump station and reservoir system.

Markham also states that it has provided a reasonable credit to CSRD related to the tank liner and the work for the pump station and tank. Markham claims that while the current bids may exceed the line item in Markham's contract of $2,151,000.00, the comparison of costs is apples to oranges. [See C553]. Finally, Markham claims that CSRD has never had a permit to build the entire water system from both the County and the TCCC that would have allowed construction to be performed.

2. Failure to Spread Desert Cobble

As discussed above, CSRD states that Markham's scope of work under the Contract included the obligation to salvage the top four inches of soil from areas where it disturbed the ground surface and for that material to be separately stockpiled and spread by SDL at the conclusion of the landscaping. The purpose, according to CSRD, of such harvesting, stockpiling, and spreading of desert cobble, a/k/a desert pavement, was to preserve native organic material and seeds that lie within the top layer of soil such that it could be reintroduced and help encourage the growth of native plants and discourage the growth of invasive species. For its performance of this desert cobble work, Markham was to be paid $115,831.20 according to the Contract SOV.

CSRD states that Markham openly admitted that it failed to harvest the desert cobble material, and because it was not harvested, it could not be separately stockpiled and spread at the conclusion of the landscaping. Instead, CSRD claims that Markham stated it performed a "reasonably equivalent" alternative of spreading desert cobble. The reasonably equivalent alternative was that the material spread at the conclusion of landscaping was material that was screened or crushed from the 58,000 cubic yards of excess material that was excavated from the road profile. CSRD argues that this material is not desert cobble and it consisted of, among other things, materials that had to be blasted from the road profile and subsequently crushed. It was not the top 4" of material that contained organic material and seeds, so it provided none of the benefits inherent in spreading actual desert cobble – namely the growth of native species and minimization of invasive species.

As a result of the above, CSRD claims that Markham did not perform the desert cobble work, and it is not entitled to be paid the $115,813.20 it seeks to recover from CSRD. Instead, CSRD claims that it is entitled to a credit for that $115,813.20.

3. Hand Watering in lieu of Irrigation

CSRD's claim for a credit stems from its decision to opt for hand watering in lieu of an irrigation system (a value engineering savings of $53,617.700). Also, see discussion above.

4. 24 Inch Box Trees in lieu of 36 Inch Box Trees

CSRD claims it is entitled to a VE related to plants (value engineering savings of $28,200.00).

5. Saguaros Bought by CSRD but Installed on CSDC Property

CSRD claims that they are due a credit for saguaros that CSRD purchased that were installed on the CSDC project ($26,727.00). Also, see discussion above.

6. Plant Material Not Acquired or Installed

As discussed above, CSRD claims a credit is due for plant materials that were never purchased or installed ($176,106.25). Also, see discussion above.

25

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7. Failure to Construct Retaining Walls

CSRD claims that Markham has breached the Contract by not honoring CSRD's requests to build per the plans. For example, CSRD states that Markham refused to construct two retaining walls located along the north end of the roadway. The northern most retaining wall ("north retaining wall") was 160 feet long and located between Stations 119+35 to 120+95. CSRD claims that this wall's unit price as set forth in the Contract SOV is $82.50 per foot for the wall ($15.00 per foot for the excavation, $41.10 per foot for the backfilling, $82.50 per foot for the concrete railing, and $5.50 per linear foot for damp proofing and weep holes). This equates to $36,256.00 in credit that is due to CSRD due to Markham's failure to build the north retaining wall.

The second retaining wall slightly south of the northern most retaining wall ("south retaining wall") was 140 feet long and located between Stations 115+00 and 116+40. It was four feet tall at its minimum. The unit price for a four foot retaining wall in the Contract SOV is $110.00 per foot of the wall ($15.00 per foot for the excavation, $41.10 per foot for the backfilling, $82.50 per foot for the concrete railing, and $5.50 per linear foot for damp proofing and weep holes). This equates to $35,574.00 in credit that CSRD claims is due from Markham. In total, CSRD states that it is entitled to a credit from Markham in the amount of $71,830.00 for not constructing the retaining walls.

In response, Markham disputes CSRD's claim. Markham states that south retaining wall was eliminated in a change order, and the north retaining wall was agreed in the field to not be performed as the original design did not work as drawn (height of slope being higher than the top of the wall). As a result, Markham graded the embankment rather than install the wall. Markham states that HR confirmed the final sloping was acceptable and that the wall was not necessary. Markham offered a credit to CSRD in a proposal to include both the north retaining wall and barrier wall end treatments associated costs and credits, however CSRD did not accept it. [See C456 and R1349].

8. Failure to Construct Barrier Wall Ends

CSRD claims that Markham has breached the Contract by not honoring CSRD's requests to build per the plans including 14 end treatments to the barrier walls. CSRD states that the barrier wall end treatments were to be constructed per the stamped plans that were approved by the TOCC. Markham did not install the end treatments claiming the design presents a safety concern.

CSRD acknowledges that Markham offered a credit, however according to CSRD Markham was only willing to offer a credit of less than $2,500 for not constructing the end treatments per plan. Upon receipt of the proposed credit and after Markham refused to provide detail regarding the credit, CSRD instructed Markham to build those end treatments per the plans. Those plans reflect three-foot blunt end sections that have not been constructed. Using Markham's own pricing contained in the Contract SOV, the cost of constructing the 14 end treatments would cost $46,065.18, for which CSRD claims a credit.

Markham disputes the credit and states that CSRD continues to delay and refuses to provide the information to complete the end treatments and told Markham to "build it per plan." Markham cannot build a knowingly unsafe condition for the traveling public that has been identified and confirmed by HR, as well as the TOCC. According to Markham, TOCC is still waiting for CSRD to provide a revised design that is safe.

D. Findings on CSRD's Claims and Credits

As a result of the panel's findings on the Markham claims above, we deny CSRD's claims for damages and claims for credits (for anything other than what has been included above in Markham's claim issues). In response to some of the individual CSRD claim and credit issues, we provide the following:

- Claim 1 and Credit 1 – Water Campus Breach of Contract, Tortious Interference, and Credit: The panel did not find that Markham breached the Contract or committed a tortious interference regarding the water campus replacement bidding process. Finding that there was no breach of contract is supported by the fact that the original water campus design was never finally approved and permitted, and the final re-designed water campus was a completely different design than the original. We also do not agree that there was a tortious interference caused by Markham. Evidence was lacking to show that there was an actual chilling effect caused by Michael Markham Sr.'s comments at the water campus 07 June 2019 pre-bid meeting. Finally, we also disagree with CSRD that it is entitled to a complete deduction/credit of the entire SOV line item(s) for the original water campus amount in the Contract. Work was performed and time spent on the booster pump and reservoir portions of the water system. A complete line item deduction/credit is not warranted.

- Claim 2 and Credits 2 through 6 – Landscaping Issues: The panel does not agree that CSRD is entitled to the claim for needing additional plant material or for the credits sought for desert cobble, hand watering, box tree sizes, saguaros installed on CSDC property, or plant material not acquired or installed, other than what has been included in Markham's claim credits discussed above. The panel found that the testimony and evidence regarding the landscaping portion of the Project led to the conclusion that CSRD did not want to follow the landscape plans, directed what was to be planted, and directed where to install the plants (whether on CSRD or CSDC property). It wasn't until the TOCC would not approve the number of plants installed on the Project (despite CSRD's desire to lessen the density), and the Parties were into a dispute regarding the landscaping and credits, that these claim and credit issues ripened. The panel finds that Markham followed the direction of CSRD throughout the landscape process, provided documentation of the plants delivered, and offered a credit for the plants not acquired or installed.

- Claim 3 – Defective Workmanship: CSRD's claim for allegations of defective workmanship, including the cost of lowering catch basins and related drainage structures, armoring the cut ditches where the erosion occurred, and grading adjacent to the roadway to direct water away from the roadway is denied. The panel does not agree that the work was defective. The panel finds that Markham's expert Dullum was correct in her testimony that Markham's work was not defective.

- Claim 4 – Liquidated Damages: As a result of the panel's finding that Substantial Completion occurred on 27 December 2018 as memorialized by Stocker's signed and sealed substantial completion letter [See Exhibit C16], we deny CSRD's claim for liquidated damages. The panel does not place any weight on CSRD's argument that the District Engineer's signed and sealed substantial completion letter had nothing to do with actual completion of the work.

- Claim 5 – Excess Material Cost of Removal: The issue of excess material, hauling material, and placement at the reservoir site and/or Whispering Springs has been discussed at length above. The panel finds that CSRD wanted the excess material, and directed placement at the reservoir site and Whispering Springs for future use. We disagree that CSRD is entitled to its claim to now remove the material.

- Credits 7 and 8 – Retaining Wall and Barrier Wall Ends: As discussed above, these two issues were connected as part of negotiations between Markham and CSRD. Markham states that south retaining wall was eliminated in a change order, and the north retaining wall was agreed in the field to not be performed as the original design did not work as drawn (height of slope being higher than the top of the wall). As a result, Markham graded the embankment rather than install the wall. Markham states that HR confirmed the final sloping was acceptable and that the wall was not necessary. Markham offered a credit to CSRD in a proposal to include both the north retaining wall and barrier wall end treatments associated costs and credits, however CSRD did not accept it. [See C456 and R1349]. Now CSRD wants separate credits. The panel does not agree with the credit amounts claimed by CSRD and instead concurs with the credits offered by Markham.

The discussion of the CSRD claims and claims for credits leads the panel to comment on how the Project was managed by CSRD. The panel found that CSRD essentially treated the Project as having one pot of money that could be used and distributed wherever it wanted among SOV line items, or even between CSRD and CSDC projects as long as the net result was no increase in the contract amount. Design plans or landscape plans were not always followed as a result of field directions given by Bronska or HR. This was evident throughout the testimony. However, whenever an issue arose where Markham claimed that a change order was needed to increase the contract sum, the panel found that CSRD resorted to rejection based on claims of not complying with the Contract, the plans, change order processes, billing practices, etc. The above comments are the reasons why the Arbitrators found the testimony of various MCCI witnesses to be persuasive and supported, whereas the testimony of CSRD's witnesses to be unpersuasive and unsupported throughout the arbitration hearing.

INTERIM AWARD

AS A RESULT OF THE ABOVE DISCUSSION, REVIEW OF THE EVIDENCE, REVIEW OF THE TESTIMONY, AND REVIEW OF THE PRESENTATIONS IN THE PRE-HEARING STATEMENTS, CLOSING ARGUMENTS, AND POST-HEARING SUBMISSIONS, THE ARBITRATORS HEREBY MAKE THE FOLLOWING AWARD ON THE CLAIMS:

28

Markham Claim		
		Amount Awarded
	I. Claims for Differing Site Conditions	
1	Getting Construction Water to Site During Construction	$389,973.27
2	Excess Material: Excavating and Hauling Material to Stockpile	$544,575.10
3	Removal of Stockpile	$281,326.21
	Subtotal	**$1,215,874.58**
	II. Claims for Work that Direction was Provided after Substantial Completion	
1	Saddle Mountain Bridge Grading/Rip Rap May and June	$57,565.07
2	Saddle Mountain Rip Rap Channel Change May and June	$35,580.70
3	Concrete Spillway May and June	$9,300.56
4	Spaulding Slope Rock May	$2,479.10
5	Re-Grade at 72" Storm Drain Pipe May and June	$5,518.56
6	Construct Siltation Basin June	$18,446.27
7	Storm Damage 11/25 & 11/26/2019	$6,992.49
8	Extended General Conditions Thru May and June	$279,432.92
	Subtotal	**$415,315.67**
	III. Claims for Unpaid Base Contract Line Items	
1	Earthwork	$1,109.66
2	Storm Drain	$67,218.00
3	Paving	$59,126.00
4	Utility Adjustment	$53,156.35
5	Landscape	$456,539.68
6	Pump Station and Tank	$407,871.49
7	General Conditions	$14,457.39
8	General Conditions 5.1%	$13,418.12
9	Bond	$10,728.97
10	Sales Tax	$180,091.30
	Subtotal	**$1,263,716.96**
	IV. Claims for Approved and Unprocessed Change Orders	
1	VE - Add Ribbon Curb	$32,277.26
2	Pre-Construction	$73,025.00
3	Rip Rap Installed	$53,560.30
4	COR 7 Permit Delay - Shutdown by TOCC	$37,404.84
5	COR 9 Trailer Demo Asbestos	$2,522.53
6	COR 10 Field Directive #2	$6,740.00
7	COR21 RFI #1	$1,114.49
8	Various CO #'s - Survey Changes	$26,015.01

29

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9	COR 20 Rockaway Hill Headwall	$38,964.89
10	Valve Concrete Collars	$3,383.85
	Subtotal	**$275,008.17**
	V. Withheld Retention	
1	Withheld Retention	**$830,578.77**
	VI. Credit	
1	Credit on Excess Material Claim 1.2	**($49,513.48)**
	TOTAL	
	Award before attorney fees, costs, expenses, interest, etc.	**$3,950,980.67**

	CSRD Claim (From Closing Argument)	
		Amount Awarded
1	Water Campus Breach of Contract ($3,111,430.00) and Tortious Interference ($854,404.82 to $1,487,000.00) where the total amount of damages combined will not exceed $3,111,430.00.	$0.00
2	Plant Material	$0.00
3	Defective Workmanship	$0.00
4	Liquidated/Delay Damages	$0.00
5	Excess Material Cost of Removal	$0.00
	Award before attorney fees, costs, interest, etc.	**$0.00**

	CSRD Claim for Credits (From Pre-Hearing Arbitration Statement)	
		Amount Awarded
1	Failure to Construct Water Campus	$0.00
2	Failure to Spread Desert Cobble	$0.00
3	Hand Watering in lieu of Irrigation	$0.00
4	24 Inch Box Trees in lieu of 36 Inch Box Trees	$0.00
5	Saguaros Bought by CSRD but Installed on CSDC Property	$0.00
6	Plant Material Not Acquired or Installed	$0.00
7	Failure to Construct Retaining Walls	$0.00
8	Failure to Construct Barrier Wall Ends	$0.00
	Award for Credits	**$0.00**

ORDER ON PREVAILING PARTY, ATTORNEY FEES, AND COSTS

As a result of the above rulings on the claims, we deem Claimant Markham Contracting Co., Inc., the successful prevailing party in the arbitration, who will be awarded reasonable attorney fees and other reasonable expenses of arbitration, along with reimbursement of the Arbitrators' expenses and fees, together with other expenses in an amount to be determined by the Arbitrators after review of the submission of an itemized and verified request for attorney fees and costs. When looking at the authority to award attorney fees and costs, we provide the following.

Claimant's AAA Demand for Arbitration form identified attorney fees and interest as other relief sought, and attorney fees were requested in the attached pleading to the AAA form (entitled Demand for Arbitration) pursuant to A.R.S. § 12-341.01 (which in arbitration, the arbitrator(s) may award attorney fees pursuant to A.R.S. § 12-3021.B., "An arbitrator may award reasonable attorney fees and other reasonable expenses of arbitration only if that award is authorized by law in a civil action involving the same claim or by the agreement of the Parties to the arbitration proceeding."). Similar to Claimant, Respondent also requested attorney fees pursuant to A.R.S. § 12-341.01, as well as under Article 8.13 of the Contract when it filed Respondent Response and Counterclaims.

Additionally, Claimant's pre-hearing arbitration statement dated 08 September 2020 stated that it was entitled to "attorneys' fees and costs, pursuant to A.R.S. Section 12-341.01." Respondent's pre-hearing arbitration statement dated 08 September 2020 did not include a specific request for attorney fees and costs, however it did not object to a party's recovery of attorney fees. And, both Parties requested attorney fees and costs in their closing arguments and PowerPoint presentations.

Next, we review A.R.S. § 12-341.01, Recovery of attorney fees, which states:

> A. **In any contested action arising out of a contract, express or implied, the court may award the successful party reasonable attorney fees.** If a written settlement offer is rejected and the judgment finally obtained is equal to or more favorable to the offeror than an offer made in writing to settle any contested action arising out of a contract, the offeror is deemed to be the successful party from the date of the offer and the court may award the successful party reasonable attorney fees. This section shall not be construed as altering, prohibiting or restricting present or future contracts or statutes that may provide for attorney fees.
>
> B. The award of reasonable attorney fees pursuant to this section should be made to mitigate the burden of the expense of litigation to establish a just claim or a just defense. It need not equal or relate to the attorney fees actually paid or contracted, but the award may not exceed the amount paid or agreed to be paid.
>
> C. The court and not a jury shall award reasonable attorney fees under this section.

For those matters in arbitration, arbitrators may award attorney fees pursuant to A.R.S. § 12-3021, Remedies; fees and expenses of arbitration proceeding, which states:

A. An arbitrator may award punitive damages or other exemplary relief if such an award is authorized by law in a civil action involving the same claim and the evidence produced at the hearing justifies the award under the legal standards otherwise applicable to the claim.

B. **An arbitrator may award reasonable attorney fees and other reasonable expenses of arbitration only if that award is authorized by law in a civil action involving the same claim or by the agreement of the Parties to the arbitration proceeding.**

C. **As to all remedies other than those authorized by subsections A and B of this section, an arbitrator may order such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that such a remedy could not or would not be granted by the court is not a ground for refusing to confirm an award under section 12-3022 or for vacating an award under section 12-3023.**

D. **An arbitrator's expenses and fees, together with other expenses, must be paid as provided in the award.**

E. If an arbitrator awards punitive damages or other exemplary relief under subsection A of this section, the arbitrator shall specify in the award the basis in fact justifying and the basis in law authorizing the award and state separately the amount of the punitive damages or other exemplary relief. [Emphasis added.].

Therefore, the following documents and statutes request and/or allow attorney fees, costs, expenses, etc.:

- Claimant Demand dated 29 May 2019;
- Respondent Response and Counterclaims dated 14 June 2019;
- Claimant's pre-hearing arbitration statement dated 08 September 2020;
- Claimant's and Respondent's closing arguments and PowerPoint presentations;
- A.R.S. § 12-341.01; and
- A.R.S. § 12-3021.

The above is relied upon as ratification that the Arbitrators have authority to award attorney fees, costs, and expenses.

THEREFORE, IT IS HEREBY ORDERED that Claimant shall submit its verified request for the amounts of attorney fees, costs, and expenses sufficiently itemized to allow a determination of the reasonable amount for the Final Award. Submission shall be made to the Arbitrators and opposing counsel within 21 calendar days following the date of this Order. Respondent shall have 7 calendar days thereafter to file any comments/objections to the request.

In addition to the attorney fees, costs, expenses submission, Claimant shall include a revised calculation for interest. Submission shall be made to the Arbitrators and opposing counsel within 21 calendar days following the date of this Order. Respondent shall have 7 calendar days thereafter to file any comments/objections to the interest calculation.

32

On the issue of interest, the panel has reviewed the briefings on Prompt Pay Act Interest ("PPA") and Contract Interest that were filed by the Parties on 16 October 2020. We have reviewed the arguments, cited authority, and statutes. The panel finds that for the interest re-calculation, only the PPA interest of 12% per annum will apply to this matter. There shall not be a dual application of, or interest calculation of, both PPA and Contract Interest. Additionally, the interest re-calculation shall be based on the following schedule from the PPA and the Contract for review, approval, and payment due date:

- Payment Applications are deemed approved seven (7) days after they are received, but only to the extent they are not disputed by CSRD within that period.
- Once deemed approved, payment is due to Markham twenty-one (21) days thereafter.
- Interest begins to accrue thirty-five (35) days after the Payment Application is deemed approved.

This is an Interim Award (on the principal amounts of the claims only) and Order, and not a Final Award. The undersigned retain jurisdiction over the issues of attorney fees, costs, expenses, and interest until a Final Award is rendered.

Dated: 11 November 2020

Signature: /s/ on behalf of
Scott A. Johnson, P.E.
Arbitrator

Signature:
John T. Jozwick, Esq., CFCC
Arbitrator

Signature: /s/ on behalf of
Scott C. Ryan, Esq.
Arbitrator


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EXHIBIT 2

American Arbitration Association
Dispute Resolution Services Worldwide

American Arbitration Association
Construction Industry Arbitration Tribunal

In the Matter of the Arbitration Between,	)	Case No. 01-19-0001-6904
MARKHAM CONTRACTING CO., INC., an Arizona corporation,	)	**FINAL AWARD**
Claimant,	)	**Arbitrators:**
v.	)	Scott A. Johnson, P.E. John T. Jozwick, Esq., CFCC Scott C. Ryan, Esq.
CAHAVA SPRINGS REVITILIZATION DISTRICT, a special purpose, tax-levying public improvement district,	)	
Respondent.	)	

FINAL AWARD

THE UNDERSIGNED ARBITRATORS, having been duly appointed as the panel arbitrators ("Panel") by the American Arbitration Association ("AAA") letter dated 16 July 2019, and having heard and reviewed the proofs and allegations in Phoenix, Arizona during an evidentiary hearing from 14 September 2020 through 02 October 2020, along with closing arguments on 07 October 2020, submittal of additional briefing on 16 October 2020, exhibits entered into evidence at the arbitration hearing, and reviewing the pleadings and pre-hearing arbitration statements, issued an Interim Award dated 11 November 2020 ("Interim Award") wherein Claimant Markham Contracting Co., Inc. ("Claimant" or "Markham" or "MCCI"), was awarded the principal amount of damages in the amount of $3,950,980.67.

Additionally, as part of the Interim Award, Claimant was deemed the successful prevailing party in the arbitration, who would be awarded reasonable attorney fees and other reasonable expenses of arbitration, along with reimbursement of the Arbitrators' expenses and fees, together with other expenses and interest in an amount to be determined by the Arbitrators after review of the submission of an itemized and verified request for attorney fees, costs, and interest. The Interim Award included an

Order for Claimant to submit its verified request for the amounts of attorney fees, costs, and expenses sufficiently itemized to allow a determination of the reasonable amount for the Final Award. In addition to the attorney fees, costs, expenses submission, Claimant was to include a revised calculation for interest. [See Page 32-33 of Interim Award.]. Respondent would thereafter file any comments/objections to the request.

On 01 December 2020, Claimant filed its: Notice of Submission, Application for Attorneys' Fees, Notice Re: Interest Calculation; and, a form of Arbitration Award ("Application"). On 08 December 2020, Respondent Cahava Springs Revitalization District ("Respondent" or "CSRD") filed its Opposition to Application for Attorneys' Fees and Notice Re: Interest Calculation and Objection to Form of Award ("Opposition"). Claimant and Respondent are collectively referred to as the Parties herein.

Having reviewed and deliberated on Claimant's 01 December 2020 Application, and on Respondent's 08 December 2020 Opposition, along with reviewing cited case law, statutes, and Rules of Civil Procedure for the Superior Courts of Arizona, the undersigned Arbitrators hereby render this Final Award. For discussion and reasoning for the damages previously awarded on the principal amounts of the claims to Claimant in the amount of $3,950,980.67, see Interim Award. The discussion below and the amounts awarded reflect a unanimous decision by the Arbitrators.

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DISCUSSION ON ATTORNEYS' FEES, COSTS, EXPENSES, AND INTEREST

Attorney Fees, Costs, and Expenses

As stated in the Interim Award, Claimant's AAA Demand for Arbitration form dated 29 May 2019 identified attorney fees and interest as other relief sought, and attorney fees and costs were requested in the attached pleading to the AAA Arbitration Demand form (pleading entitled Demand for Arbitration) stating:

- Count I: "For costs and attorneys' fees incurred pursuant to Section 4.1.16 of the Agreement and A.R.S. § 12-341.01"; and, "For such other and further relief as the Court deems just and proper."
- Count II: "Reasonable costs and attorneys' fees and pursuant to A.R.S. § 12-341.01"; and, "For such other and further relief as the Court deems just and proper."
- Counts III: "Costs and reasonable attorneys' fees pursuant to the Contract and A.R.S. § 12-341.01"; and, "For such other and further relief as the Court deems just and proper."
- Count IV: "Costs and reasonable attorneys' fees pursuant to A.R.S. § 12-341.01"; and, "For such other and further relief as the Court deems just and proper."

Respondent's Response to Demand for Arbitration and Counterclaims dated 14 June 2019 also requested attorney fees and costs. Seven (7) separate prayers for relief of the counterclaims sought:

- Counterclaim I – VII: "For costs and attorneys' fees incurred pursuant to Arizona Revised Statute Section 12-341.01 and Section 8.13 of the Contract"; and, "For such other and further relief as the arbitrator concludes is appropriate."

- Counterclaim VIII also requested, "For such other and further relief as the arbitrator concludes is appropriate."

Clearly, the Parties both sought costs and attorney fees pursuant to A.R.S. § 12-341.01 and for such other and further relief as the Court/arbitrator deemed/concluded was just and proper/appropriate. Similar requests for attorney fees, costs, and further relief as the Arbitrators deem appropriate are also found in:

- Claimant's Reply to CSRD's Counterclaims dated 26 June 2019;
- Respondent's Response to Demand for Arbitration and First Amended Counterclaims dated 16 August 2019;
- Claimant's Reply to CSRD's First Amended Counterclaims dated 30 August 2019;
- Respondent's Second Amended Counterclaims dated 10 March 2020; and,
- Claimant's Reply to CSRD's Second Amended Counterclaims dated 03 April 2020.

The Parties have agreed in multiple pleadings and multiple counts and counterclaims that costs, attorney fees, and further relief as deemed appropriate were requested of the Arbitrators.

Next, as discussed in the Interim Award, A.R.S. § 12-341.01.A., Recovery of attorney fees, states:

> A. In any contested action arising out of a contract, express or implied, **the court may award the successful party reasonable attorney fees**. If a written settlement offer is rejected and the judgment finally obtained is equal to or more favorable to the offeror than an offer made in writing to settle any contested action arising out of a contract, the offeror is deemed to be the successful party from the date of the offer and **the court may award the successful party reasonable attorney fees**. This section shall not be construed as altering, prohibiting or restricting present or future contracts or statutes that may provide for attorney fees. [Emphasis added.]

For those matters in arbitration, arbitrators may award attorney fees pursuant to A.R.S. § 12-3021, Remedies; fees and expenses of arbitration proceeding, which states in part:

> A. An arbitrator may award punitive damages or other exemplary relief if such an award is authorized by law in a civil action involving the same claim and the evidence produced at the hearing justifies the award under the legal standards otherwise applicable to the claim.
>
> B. An arbitrator may award reasonable attorney fees **and other reasonable expenses of arbitration** only if that award is authorized by law in a civil action involving the same claim **or by the agreement of the Parties to the arbitration proceeding**.
>
> C. As to all remedies other than those authorized by subsections A and B of this section, **an arbitrator may order such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that**

> **such a remedy could not or would not be granted by the court is not a ground for refusing to confirm an award under section 12-3022 or for vacating an award under section 12-3023.**
>
> D. **An arbitrator's expenses and fees, together with other expenses, must be paid as provided in the award.** [Emphasis added.].

The Panel then reviewed the Offers of Settlement made by Claimant. The first offer noted is by letter dated 06 September 2019 [See Exhibit 2 to Claimant's Application for Attorneys' Fees] wherein Claimant was willing to accept $2,500,000.00 as full settlement of all of its claims. Subsequent Offers of Settlement were made 15 July 2019 ($3,700,000.00), 20 February 2020 ($3,000,000.00), and 05 June 2020 ($2,500,000.00). [See Exhibits 3 and 4 to Claimant's Application for Attorneys' Fees]. The Interim Award of $3,950,980.67 exceeds each of these settlement offers which further justifies the award of reasonable attorney fees "and other reasonable expenses of arbitration" under A.R.S. § 12-341.01.A. quoted above.

We also looked for guidance in Rule 68. Offer of Judgment, Arizona Revised Statutes Annotated, Rules of Civil Procedure for the Superior Courts of Arizona. Effective: September 1, 2019. Under Rule 68(g)(1), a party who rejects an offer, but does not obtain a more favorable judgment, must pay as a sanction: "**the offeror's reasonable expert witness fees** and double the taxable costs, as defined in A.R.S. § 12-332, incurred after the offer date . . ." [Emphasis added.].

Therefore, the Panel finds as follows:

- A.R.S. § 12-341.01.A. provides that the successful party in any contested action arising out of a contract, express or implied may be awarded reasonable attorney fees. Claimant was the successful party.
- A.R.S. § 12-341.01.A. also provides that if a written settlement offer is rejected and the judgment finally obtained is equal to or more favorable to the offeror than an offer made in writing to settle any contested action arising out of a contract, the offeror is deemed to be the successful party from the date of the offer and the court may award the successful party reasonable attorney fees. The Interim Award of $3,950,980.67 exceeds each of these settlement offers which justifies the award of reasonable attorney fees.
- The Parties have agreed in multiple pleadings and in multiple counts and counterclaims that costs, attorney fees, and further relief as deemed appropriate were requested of the Arbitrators. [See A.R.S. § 12-3021.B.].
- A.R.S. § 12-3021.D. provides that an arbitrator's expenses and fees, together with other expenses, must be paid as provided in the award. As discussed below, the administrative fees of the AAA, and the compensation of the Arbitrators shall be borne by Respondent.
- As allowed under Rule 68(g)(1), Claimant may be awarded its reasonable expert witness fees as the Interim Award exceeded each of Claimant's settlement offers that began by letter dated 06 September 2019, prior to the engagement of expert Pam Dullum, Gervasio & Associates, Inc.

A review was then made of Exhibits A and B to Claimant's Application, and after review of Respondent's Opposition, several adjustments were made. See discussion below.

Interest

The Interim Award included an Order for Claimant to provide an interest calculation. After reviewing the calculation of interest for "late" pay application payments, the Arbitrators find that the interest for Pay Application 9 in the amount of $462.45 will be removed as a result of the revisions that occurred to the pay application and that the invoice payment period occurred over a holiday time frame during a period when Claimant and Respondent were not in a significant dispute over the work or pay applications.

For Pay Applications 21 – 38, we have reviewed Respondent's Brief Regarding Prompt Payment Act dated 16 October 2020, and its Exhibit A to confirm the dates of when Respondent stated in Column 6 the invoices would be deemed approved after final application. We also note that for these pay applications, the hearing testimony revealed that the Parties had entered into a contentious relationship that continued from Pay Application 21 through Pay Application 38. Additionally, as stated in the Interim Award the Arbitrators found that:

> . . . . whenever an issue arose where Markham claimed that a change order was needed to increase the contract sum, the panel found that **CSRD resorted to rejection based on claims of not complying with** the Contract, the plans, change order processes, **billing practices**, etc. The above comments are the reasons why the Arbitrators found the testimony of various MCCI witnesses to be persuasive and supported, whereas the testimony of CSRD's witnesses to be unpersuasive and unsupported throughout the arbitration hearing. [Emphasis added.].

The testimony of CSRD's owner's representative, Michael Bronska ("Bronska"), attempting to provide justification for rejecting or denying Pay Applications 21 – 38 lacked any credibility. As a result, the Arbitrators agree with the interest calculation provided by Claimant for these pay applications.

Response to Respondent's Opposition to Application for Attorneys' Fees and Notice Re: Interest Calculation and Objection to Form of Award

Respondent's 08 December 2020 Opposition stated that Claimant's Application and its calculation of interest overreached in a number of respects. The following addresses Respondent's arguments:

- Markham attempts to force non-taxable costs and expenses onto CSRD when such costs and expenses are not recoverable under Arizona law or the statutes cited by the Panel. In response, we find that the costs and expenses awarded herein are justified and supported under: A.R.S. § 12-341.01.A.; A.R.S. § 12-3021.B., A.R.S. § 12-3021.D.; Rule 68(g)(1), by agreement of the Parties through their pleadings and prayers for relief; and/or, as "such other and further relief as the arbitrator concludes is appropriate."
- Markham attempts to recover its attorneys' fees from CSRD for time frames that predate the filing of this arbitration. In response, adjustments have been made to remove fees and costs that predate the arbitration. [Claimant's Application Exhibit A.].
- Markham attempts to recover attorneys' fees for time frames that predate any settlement offer that Markham provided to CSRD. As stated above, adjustments have been made to remove fees and costs that predate the arbitration. Regarding removal of fees for time frames that predate any settlement offer, we disagree with Respondent's interpretation of A.R.S. § 12-341.01.A.

Dated: 16 December 2020

Signature: /s/ on behalf of
Scott A. Johnson, P.E.
Arbitrator

Signature:
John T. Jozwick, Esq., CFCC
Arbitrator

Signature: /s/ on behalf of
Scott C. Ryan, Esq.
Arbitrator

Scott A. Johnson, P.E.
Arbitrator

Signature:
John J. Jozwiak Esq., CFCC
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Signature: s/ on behalf of
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Arbitrator

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eSignature Page 1 of 1

Filing ID: 13785536 Case Number: CV2020-017067
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Granted as Submitted

/S/ Danielle Viola Date: 1/5/2022
Judicial Officer of Superior Court

ENDORSEMENT PAGE

CASE NUMBER: CV2020-017067 SIGNATURE DATE: 1/5/2022

E-FILING ID #: 13785536 FILED DATE: 1/6/2022 8:00:00 AM

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