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Ed Gawf (Deputy City Manager's Office)
City of Scottsdale
7447 E. Indian School Road Suite 100
Scottsdale, AZ 85251

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Leonardil

2003-164-COS

**DEVELOPMENT AGREEMENT
(Scottsdale Waterfront)**

THIS DEVELOPMENT AGREEMENT (the "**Agreement**") is entered into as of the 7th day of October, 2003, by and between SCOTTSDALE WATERFRONT, L.L.C., an Arizona limited liability company (the "**Owner**") and the CITY OF SCOTTSDALE, ARIZONA, a municipal corporation (the "**City**").

RECITALS

- A. Arizona Revised Statutes ("A.R.S.") § 9-500.05 authorizes the City to enter into a development agreement with a landowner or any other person having an interest in real property located in the City. Additionally, A.R.S. § 9-500.11 authorizes the City to appropriate and spend public monies for and in conjunction with economic development activities.
- B. The Owner owns approximately eleven (11) acres of property located at the southwest corner of Scottsdale Road and Camelback Road, as described and depicted on the attached **Exhibit A** (the "**Property**"). The Owner will develop the Property, in phases, as a first-class high-quality mixed-use development project that consists of retail and office commercial uses, residential uses, and public, semi-public, and private plazas and open space (collectively, the "**Project**"). The Property consists of two smaller parcels, an approximately seven (7) acre parcel (the "**Camelback Parcel**") and an approximately four (4) acre parcel (the "**Goldwater Parcel**") as depicted on **Exhibit A**.
- C. The City desires to obtain those public benefits that will accrue from the development of the Project. Such benefits include convenient retail and office uses, further economic development in the downtown area, public open space and art, new luxury residential dwellings in the downtown area, and public parking.
- D. In addition to the aforementioned benefits and certain other benefits to the City, the City believes that the construction and operation of these facilities will create employment opportunities for City residents and will generate substantial tax revenues for the City. Accordingly, the City has determined that reimbursing the Owner for specified public benefits to encourage the construction of the Project is in furtherance of the objectives of the City's Economic Vitality Strategic Plan and is in the best interest of the City and the health, safety, and welfare of the City's residents. In addition, upon the Owner's granting

to the City an easement for public use of improvements adjacent to the Canal Bank, the City shall abandon certain public plaza easements granted to the City in connection with the PC/PL Redevelopment Agreement.

- E. The Property is currently the subject of that certain PC/PL Redevelopment Agreement, dated October 6, 1996 and recorded as Document Number 96-0714058 in the Official Records of the Maricopa County Recorder's Office. The Owner is the successor in interest to those owners and developers listed in the PC/PL Redevelopment Agreement. Upon the Effective Date as described in Paragraph 22, the PC/PL Redevelopment Agreement shall terminate as to the Property, and the City and the Owner will execute, acknowledge, and record a confirmation of the termination and release of the PC/PL Redevelopment Agreement with respect to the Property.
- F. This Agreement is brought in conjunction with the formation of an infill incentive district on the Property (the "**District**") pursuant to A.R.S. § 36-1471 et seq. This Agreement also is brought in conjunction with an infill incentive plan and the development plan for the Property, Case No. 1-II-2003 ("**Development Plan**"). The Development Plan includes the site plan for the Property ("**Site Plan**"), as well as Amended Development Standards and Design Guidelines and stipulations of approval for Case No. 1-II-2003 ("**Stipulations**"). The Development Plan (inclusive of the Site Plan and the Amended Development Standards and Design Guidelines and Stipulations) is contained in the attached **Exhibit B**.
- G. The parties hereto desire to enter into this Agreement to facilitate development consistent with the City's General Plan ("General Plan").
- H. This Agreement is intended to provide: (i) a framework for the implementation of the Site Plan; and (ii) reimbursement for public benefits as permitted by Arizona law.

AGREEMENTS

NOW, THEREFORE, the parties agree as follows:

1. Termination of PC/PL Redevelopment Agreement and Related Documents. The City and the Owner hereby amend the PC/PL Redevelopment Agreement in its entirety to replace its current terms, requirements, and provisions in their entirety with the terms, requirements, and provisions of this Agreement and of the other documents that this Agreement requires. Upon the Effective Date as described in Paragraph 22, the PC/PL Redevelopment Agreement and its exhibits and related documents shall terminate as to the Property, and the City and the Owner will execute, acknowledge, and record a confirmation of the termination and release of: (i) the PC/PL Redevelopment Agreement and the Memorandum of PC/PL Redevelopment Agreement, recorded as Document Number 96-0714059 in the Official Records of the Maricopa County Recorder's Office; (ii) the PC/PL Garage Lease Agreement and the Memorandum of PC/PL Garage Lease Agreement, recorded as Document Number 96-0714060 as amended in Recording Number 97-178049 in the Official Records of the Maricopa County Recorder's Office; (iii) Conditions, Covenants and Restrictions, recorded as Document Number 96-714065; (iv) the Agreement to Substitute Exhibits recorded as Document Number 97-178049 in the Official

Records of the Maricopa County Recorder's Office; and (v) the Tolling Agreement, recorded as Document Number 2002-694136 in the Official Records of the Maricopa County Recorder's Office.

2. Recitals. The recitals set forth above are acknowledged by the parties to be true and correct and are incorporated herein by this reference.

3. Exhibits. The following documents are referred to in this Agreement and are attached to and made a part of this Agreement by this reference:

<u>Exhibit Designation</u>	<u>Description</u>
A	Legal Description and Map
B	Development Plan
C	Phasing Plan and Schedule
D	Open Space Plan
E	Termination of Easements Form
F	Irrevocable Easement Form
G	Access Area Restrictions
H	Parking Easement and Agreement Form
I	Traffic Improvements
J	Public Benefits

4. Interest of the Owner. The Owner hereby represents and warrants to the City that it is the sole fee title owner of the Property, and that it is the sole successor to all owners, interest holders, and developers listed in the PC/PL Redevelopment Agreement.

5. General Plan Conformance. The parties expressly acknowledge and agree that the development contemplated pursuant to this Agreement is consistent with the portions of the General Plan applicable to the Property on the date hereof and that there are no features of the development, including, without limitation, the intensity of development and range of land uses proposed herein, that cannot be accommodated within the scope of the General Plan.

6. District/Development Plan Processing. Prior to or concurrent with the execution of this Agreement, the City will take all steps necessary to process the District and the Development Plan for the Property, which includes the Site Plan and Amended Development Standards and Design Guidelines and Stipulations, set forth in **Exhibit B**. To the extent the Amended Development Standards limit or expand development otherwise permitted by the Zoning

Ordinance of the City of Scottsdale (the “**Zoning Ordinance**”), the Amended Development Standards shall govern.

7. Approval and Processing of Plans. The City hereby acknowledges and agrees that development of the Property may occur over a span of a number of years and will require the City’s ongoing participation in the review and approval of modifications and amendments to the Development Plan, infrastructure plans, drainage plans, design plans, building plans, grading permits, building permits, and other plans, permit applications, and inspections that are a part of the City’s current building and development requirements. The City has approved the Development Plan for the development of the Property, including Development Review Board approval of the Camelback Parcel, and agrees that the Owner may build such development consistent with the Development Plan and its stipulations of approval and the current zoning on the Property, or new zoning to be obtained by the Owner in accordance with the City’s rules and regulations and ordinances and that it is consistent with the General Plan. The Owner will be entitled to build the heights, densities, and intensity of uses as shown on the Development Plan and its stipulations of approval, provided that all development and zoning processes are complied with by the Owner. The City agrees that in connection with all approvals required by the development and zoning processes related to the development of the Property, no extraordinary plan or review requirements will be imposed on the Owner. In accordance with the terms of A.R.S. §§ 9-1201 et. seq., the Development Plan shall be considered a Protected Development Right Plan for a phased project and shall have all the rights accorded such a plan. Nothing herein affects the vesting of the Development Plan and comparable zoning district for the Property as a matter of common law following termination of this Agreement.

8. Development Phases. Development of the Project will be implemented in five (5) phases. The components of each phase and the time frame for commencing and completing construction of each phase are depicted and listed on the attached **Exhibit C (“Phasing Plan and Schedule”)**. With the exception of Phase 1, the Owner shall be able, at its sole discretion, to adjust the order of construction of the phases of development of the Property so long as construction of a phase is commenced and completed no later than dates established in the Phasing Plan and Schedule. (For example, the Owner could switch the timing for construction of phases four and five.) The Owner shall be able, at its sole discretion, to commence and complete construction earlier than the time frames established in the Phasing Plan and Schedule. The Owner shall work continuously and diligently after commencement of construction to complete construction within the prescribed timeframes. The open space area facing the Arizona Canal between Buildings J and K shall be completed concurrently with completion of construction of the later of Building J or Building K. The Owner will develop the Property, in phases, as a first-class high-quality mixed-use development project pursuant to **Exhibit B**.

9. Open Space. The Project includes the following plaza areas on private property, which are depicted on the attached **Exhibit D (“Open Space Plan”)**: (i) adjacent to the Salt River Project/Arizona Canal right-of-way for public use and to accommodate pedestrian movement and connectivity both within the Project and between the Project, the Arizona Canal, and adjacent property (collectively referred to herein as the “**Canal Frontage**”); (ii) interior to the Camelback Parcel and the Goldwater Parcel for limited public use; and (iii) adjacent to the residential buildings (buildings A, B, C, J and K as shown on the Development Plan) typically ten (10) feet of width for private use of Project residents. The Canal Frontage includes a portion

of the Public Amphitheater, discussed in Paragraph 14.3. The Open Space Plan also depicts the Salt River Project right-of-way along the north side of the Arizona Canal from Scottsdale Road to Goldwater Boulevard (the "Canal Bank"), discussed in Paragraph 15.3.

9.1 The City currently holds two easements within the Property for pedestrian access and assembly, which easements are recorded as Document Numbers 96-0714069 and 96-0714070 in the Official Records of the Maricopa County Recorder ("City Easements"). The easements require the Owner to improve the subject land for public plazas. The Open Space Plan does not correspond with the locations of the City Easements. The City and the Owner agree to replace the City Easements with a new easement for public use of the Canal Frontage. Accordingly, the City shall record the Notice of Termination of Easements for the City Easements on the form attached hereto as **Exhibit E** upon the Owners' grant to the City of an easement for public use and enjoyment of the Canal Frontage in the form attached hereto as **Exhibit F**. The property that is the subject of the easement shall be that area depicted as "private with public access easement" in **Exhibit D**, which is roughly parallel to the Arizona Canal right-of-way and consists of not less than thirty-five thousand (35,000) square feet and shall be controlled by the City generally in accordance with the City's park use restrictions. In addition, the Owner gives to the City public access to that area depicted as "private with public access" as depicted on **Exhibit D**, with such restrictions on use as set forth on **Exhibit G**.

9.2 The Owner shall maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$10,000,000 for each occurrence, \$10,000,000 Products and Completed Operations Annual Aggregate, and a \$10,000,000 General Aggregate Limit. The policy shall cover liability arising from the public's use of and the Owner's maintenance of the Canal Frontage and the Owner's maintenance of the landscape and hardscape improvements (not including pedestrian bridges) to the Canal Bank (collectively, the "Insured Area"). Coverage under the policy will be at least as broad as Insurance Services Office, Inc. policy form CG 00 01 07 98 or equivalent thereof, including but not limited to, separation of insureds clause. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance. The insurance shall name the City as an additional insured. The Owner shall cause coverage for the City to be incorporated into each insurance policy by endorsement. All policies must provide the City with at least thirty (30) days prior to notice of any cancellation, reduction, or other change in coverage. All policies shall require that notices be given to the City in the manner specified for notices to the City under this Agreement. The Owner must clearly show by providing copies of insurance policies, certificates, formal endorsements or other documentation acceptable to City that all insurance coverage required by this Agreement is provided. No deductibles, retentions, or "self insured" amounts shall exceed

mkdn *9.2* One Hundred Thousand Dollars (\$100,000) in the aggregate per year, except that during periods of construction of landscape and hardscape improvements, the deductible may be up to Five Hundred Thousand Dollars (\$500,000) per occurrence (with no aggregate). The Owner shall be solely responsible for any self-insurance amount or deductible. City may require the Owner from time to time to secure payment of such deductible or self-insured retention by a surety bond or irrevocable and unconditional letter of credit. No deductible shall be applicable to coverage provided to City. City shall provide forms of new or

replacement policies for City's review not less than thirty (30) days prior to the effective date of any new or replacement policy.

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9.3 intentionally omitted

9.4 The Owner shall evidence all insurance required by this Agreement by furnishing to City certificates of insurance annually and with each change in insurance coverage. Certificates must evidence that the policy referenced by the certificate is in full force and effect and that the policy satisfies each requirement of this Agreement applicable to the policy. For example, certificates must evidence that City is an additional insured and that insurance proceeds will be paid as required by this Agreement. Certificates must be in a form reasonably acceptable to City. All certificates shall be in addition to the actual policies and endorsements required. The City shall provide updated certificates at City's request.

9.5 All insurance policies required by this Agreement shall be issued by insurers reasonably acceptable to City. At a minimum, all insurers shall be duly licensed (or qualified unlicensed non-admitted insurer) by the State of Arizona, Department of Insurance. At a minimum, all insurers shall have and maintain an A.M. Best, Inc. rating of B++.

9.6 All insurance required by this Agreement shall be primary insurance. Any insurance or self insurance maintained by City shall not contribute to the Owner's insurance.

9.7 City is not required to carry any insurance covering or affecting the Insured Area or use of City's property related to this Agreement. The Owner assumes the risk of any and all loss, damage or claims to the Insured Area or related to the Owner's use of the Insured Area throughout the term hereof. City expressly disclaims any representation that required insurance is adequate to protect any person or property against any risks related to the Insured Area or any activities, uses or improvements related to the Insured Area. The Owner's obligation to provide insurance as set forth in this Agreement is in addition to, and does not limit, any and all other liabilities or obligations of the Owner under or connected with this Agreement. In the event the Owner secures other insurance related to the Insured Area or any improvements, property or uses related thereto, the Owner shall effect an endorsement under such policy waiving any and all insurer's rights of subrogation against City.

9.8 Any sublessees and contractors of the Owner, and all other persons working for or on behalf of the Owner at the Insured Area must also provide for the protection of City all of the liability insurance required from Consultants by this Agreement. The preceding sentence does not require such persons to provide insurance that merely duplicates insurance the Owner provides.

10. Canal Bank/SRP License. The City shall pay all costs and fees associated with the license agreement between the City and the Salt River Project Agricultural Improvement and Power District (the "**License Agreement**"), and shall use reasonable best efforts to keep the license agreement in full force and effect. Due to the Owner's interest in the use of the Canal Bank, future City-initiated amendments and modifications to the License Agreement that would significantly increase the Owner's costs to maintain the Canal Bank shall be subject to the Owner's consent, which consent shall not be unreasonably withheld.

11. Relocation of Water Well. The Owner shall use reasonable efforts to relocate Arcadia Water Company Well No. 9 (the "Well"). Also, City representatives shall participate, if requested by the Owner, in meetings with the Arcadia Water Company to work through any issues the Arcadia Water Company may have concerning the Well relocation. Notwithstanding the foregoing, if the Owner determines on or after January 15, 2004 that such Well relocation is not feasible, then (i) the Owner shall provide the City the Retail Space discussed in Paragraph 12 of this Agreement if such Retail Space is available in an alternative location acceptable to the City; (ii) if such Retail Space is not available, the City shall not reimburse the Owner One Million Five Hundred Thousand and No/100ths Dollars for the retail space, as stated in Paragraph 16.1.1 of this Agreement, and (iii) the Site Plan shall be revised to accommodate the Well in its current location. The City shall pay to the Owner the lesser of seven hundred thousand and No/100ths dollars (\$700,000.00) or the amount of the Owner's cost to move the Well (or, if the Well is not relocated, then the cost to attempt to relocate the Well and the architectural, design and engineering costs to redesign the Project so that the Well remains in its current location). In no event shall the City pay to the Owner an amount in excess of one hundred fifty thousand and No/100ths dollars (\$150,000.00) for the architectural, design and engineering costs to redesign the Project so that the Well remains in its current location. Notwithstanding any other provision of this Agreement, the Owner shall have an additional three months to commence and complete construction of Phase 1 in the event that the Well is not relocated.

12. Retail/Office Space. The Owner shall convey by deed to the City four thousand (4,000) square feet of rentable ground floor retail space at the north end of Building D, as shown on **Exhibit B**, to be used for municipal and/or non-profit activities (the "**Retail Space**"). The Retail Space shall have legal access and parking that satisfies Zoning Ordinance requirements. The City shall be responsible for its pro rata share of Project utility, tax, insurance, and maintenance costs. The Owner shall make available to the Arizona Sports Foundation d/b/a The Fiesta Bowl (the "**Fiesta Bowl**") sixteen thousand (16,000) square feet of second level office space at a discounted price pursuant to the terms and conditions of a sales contract between the Owner and the Fiesta Bowl, but only if the Fiesta Bowl executes the sales contract on or before December 31, 2003, and subsequently closes on the sales contract.

13. Public Parking. Development of Phase 1 includes an L-shaped structured parking garage located along Camelback Road and Marshall Way (the "**Garage**") that will contain approximately six hundred (600) parking spaces on two below-grade levels. Upon completion of construction of the Garage, the Owner shall provide the City with a permanent parking easement, a form of which is attached hereto as **Exhibit H**, for three hundred (300) lower level spaces, which shall be available to the general public from six p.m. until eight a.m. on weekdays and at all times on weekends and official holidays (the "**Public Parking**"). The Public Parking in the Garage shall be free and clear of all monetary liens or encumbrances senior to the City's interests and shall be subject only to such exceptions and other matters as appeared of record on the Effective Date, as shown on the title report prepared by Chicago Title Insurance Company and dated August 28, 2003. The Owner shall operate, maintain, and staff the Garage using standards, including requirements for signage within and outside the Garage, that are set forth in attached **Exhibit H** ("**Parking Agreement**"). The upper level parking spaces in the Garage shall be available to the general public and operated consistent with the City's rules and regulations for public parking, provided the Owner may elect to close such parking spaces between 2:00 a.m. and 6:00 a.m.

14. Other Public Benefits. In addition to any public improvements required of the Owner as part of stipulations placed on the Plan approval, the Owner shall be responsible for providing the following public benefits:

14.1 Marshall Way. The Owner shall design and construct all subsurface improvements in Marshall Way and shall design, construct, and maintain improvements to the area between the back of curb and the Property boundary on the east side of Marshall Way between Camelback Road and the Arizona Canal, as shown on the landscape concept plan contained in **Exhibit B**. In addition, except as inconsistent with the rights and obligations of third-parties, the Owner has the right to maintain the landscaped peninsulas after completion of construction on the west side of Marshall Way between Camelback Road and the Arizona Canal and the north side of Montecito Avenue between Marshall Way and Goldwater Boulevard.

14.2 Camelback Road. The Owner shall design, construct, and maintain improvements to the area between the back of curb and the Property boundary on the south side of Camelback Road between Marshall Way and Scottsdale Road, as shown on the landscape concept plan contained in **Exhibit B**.

14.3 Public Amphitheater. The Owner shall construct the public amphitheater (the "**Public Amphitheater**"), as shown on the landscape concept plan contained in **Exhibit B**, during Phase 1 of development of the Property, as shown on **Exhibit C**. The cost to the Owner of design and construction of the Public Amphitheater shall not exceed the Contracting Taxes received by the City as part of Phase 1 of development of the Property, and the City shall reimburse the Owner for the cost of design and construction of the Public Amphitheater, as discussed in Paragraph 16.1.2 of this Agreement. Prior to construction, the Owner shall submit the design of the Public Amphitheater to the City Manager for approval.

14.4 Public Art. In addition to the amounts that the Owner would be required to pay pursuant to the City's Cultural Improvements Fund, the Owner shall increase its contribution by an additional amount adequate to bring the total amount of its contribution to the City's Cultural Improvement Fund to one million dollars (\$1,000,000.00). The parties shall comply with the procedural approval requirements set forth in the Zoning Ordinance for the use of the Public Art funds.


see insert on page 8-A

15. City Public Improvements. On or before the issuance of Temporary Certificate of Occupancy for the first building constructed in Phase 1, the City and the Owner shall cooperate in the design and planning for, and the City shall design and construct public improvements adjacent to the Property as listed in this Section 15.

15.1 Camelback Road and Marshall Way. The City shall construct necessary improvements to the east-bound lanes of Camelback Road between Marshall Way and Scottsdale Road and left/north turn lanes at Scottsdale Road, as set forth in **Exhibit I** (traffic improvements) to this Agreement, and shall construct curb-to-curb surface improvements for Marshall Way south of Camelback Road to and including the cul de sac adjacent to the Arizona Canal and landscaping on the west side of Marshall Way and within the cul de sac, as set forth in **Exhibit B** (design concept) and **Exhibit I** (traffic improvements) to this Agreement. The Owner, at its cost, shall arrange for the preparation of design and construction documents. The City's obligation to

¶ 14.5 Bridge. Upon issuance of the temporary certificate of occupancy for the first residential tower to be constructed as shown on the Development Plan, the Owner shall contribute to the City \$500,000 for the City to apply to the cost of a pedestrian bridge between the Property and the south side of the Arizona Canal.

¶ 14.6 City Overseer. The Owner shall contribute the sum of \$35,000 per year for the City to oversee the development of the Camelback Parcel. The first annual contribution shall be made on January 15, 2004; subsequent annual contributions shall be made on the anniversary of such date thereafter. The final annual contribution shall be made in the calendar year in which the City issues the temporary certificate of occupancy for the final building in the Camelback Parcel as shown in the Development Plan.

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construct the improvements in this Section 15.1 shall not exceed one million dollars (\$1,000,000.00). If the City's cost to construct the improvements to Camelback Road and Marshall Way is less than one million dollars (\$1,000,000.00), then the City shall use the balance to construct public improvements on or adjacent to the Property.

15.2 Canal Bank. The City shall construct improvements to the Canal Bank from Scottsdale Road to Goldwater Boulevard, including bridges across the Arizona Canal. Upon completion of Phase 1 of the development of the Property, as depicted on **Exhibit C**, the Owner shall assume the responsibility to maintain said Canal Bank improvements, excluding the bridges across the Arizona Canal.

16. Reimbursement for Public Benefits.

16.1 Periodic Payments. In recognition of the benefits to the Citizens of Scottsdale set forth in Recitals C and D, and as further described in **Exhibit J** ("**Public Benefits**"), to reimburse the Owner for provision of the Retail Space and the Public Parking; and to reimburse the Owner for Owner's costs associated with the Public Amphitheater, the City shall pay to the Owner the following periodic payments as an inducement for the Owner's commitment to construct the Project, subject to the time limitation set forth in Paragraph 16.3 below.

16.1.1 Periodic Payments to Reimburse Retail Space and Public Parking. Periodic payments equal to ninety percent (90%) of the general fund portion of all privilege taxes paid by tenants and other businesses located within the Project and received by the City after the Effective Date of this Agreement exclusive of the Contracting Taxes, (such 90% hereinafter called the "**Sales Taxes**"). Subject to the time limitation of Section 16.3 below, the City shall make periodic payments of Sales Taxes to the Owner pursuant to this Section 16.1 until the City has paid to the Owner the sum of Three Million and No/100ths Dollars (\$3,000,000.00), together with interest at an annual rate of seven and one-half percent (7.5%) simple interest (not compounding). Payments by the City to the Owner pursuant to this Section 16.1.1 shall be credited first to interest and then to any remaining unpaid portion of the initial Three Million and No/100ths Dollars (\$3,000,000.00) balance. Payments applied to the unpaid portion of that initial balance shall be split equally to reimburse the Owner the sum of One Million Five Hundred Thousand and No/100ths Dollars (\$1,500,000.00) for the Retail Space and the sum of One Million Five Hundred Thousand and No/100ths Dollars (\$1,500,000.00) for the Public Parking.

16.1.2 Periodic Payments to Reimburse Amphitheater. Periodic payments equal to the sum of ninety percent (90%) of the general fund portion of all privilege taxes received by the City after the Effective Date of this Agreement from all contracting activities relating to the construction of all original improvements to Phase 1 of the Project (including, but not limited to, all construction and tenant improvements) (such 90% hereinafter called the "**Contracting Taxes**"). The City shall make periodic payments to the Owner pursuant to this Section 16.1.2 until the end of the time limitation set forth in Paragraph 16.3 of this Agreement. The Owner shall use these periodic payments of Contracting Taxes to cover its responsibility for the Public Amphitheater.

Notwithstanding anything in this Agreement to the contrary, for purposes of calculating the periodic payments to be made pursuant to this Paragraph 16, neither the Sales Taxes nor the Contracting Taxes shall include the 0.4% of the transaction privilege taxes received by the City which has been previously designated for mountain preserve and transportation purposes. Sales Taxes and Contracting Taxes shall include any future increase or decrease in such general fund taxes.

16.2 Timing of Periodic Payments. The first periodic payment shall include all Contracting Taxes paid for construction of Phase 1 and all Sales Taxes accrued through the end of the calendar quarter in which final certificates of occupancy for ninety (90) percent of Phase 1 are issued by the City (the "**Completion Quarter**"). The City shall make the first periodic payment and each subsequent periodic payment contemplated by this Paragraph 16 within ninety (90) days after the end of the quarter to which such periodic payment pertains.

16.3 Time Limitation. Notwithstanding anything to the contrary in this Agreement, the City's obligation to make periodic payments pursuant to this Paragraph 16 shall terminate without notice after the eightieth (80th) quarterly periodic payment has been made.

16.4 Waiver of Miscellaneous Fees. In addition to the foregoing, the City shall waive all, and the Owner shall not pay, any building permit, inspection, plan check, or other fees related to the Owner's design and construction of, or the issuance of a final certificate of occupancy for, the original construction of each phase of the entire Project, up to a total waiver of five hundred thousand dollars (\$500,000.00). Notwithstanding the foregoing, the Owner shall pay the then-current water, water resources, and sewer development fees, subject to all credits available to the Owner.

16.5 Provision of Tax Information. The Owner agrees from time-to-time to cause sufficient information to be provided to the City to substantiate the Sales Taxes and the Contracting Taxes paid for purposes of determining the amount of each Periodic Payment.

17. City Purchase Right. If the Owner fails to perform its obligations to design and commence substantial vertical construction above or below grade of the Phase 1 improvements for the Project pursuant to the time frame contained in the Phasing Plan and Schedule (**Exhibit C**) and such failure continues for a period of one hundred eighty (180) days after receipt of a written notice thereof from the City, then, in addition to and without limiting its remedies under Paragraph 19.3, the City may elect to purchase the Property by delivering written notice of its intent to purchase the Property within ninety (90) days of the Owner's failure to perform. Such right to purchase shall expire upon the Owner's commencement of substantial vertical construction above or below grade of the Phase 1 improvements. If the City elects to purchase the Property pursuant to this Paragraph, then the purchase price shall be thirteen million, five hundred thousand dollars (\$13,500,000). The Property shall be free and clear of all monetary liens or encumbrances and shall be subject only to such exceptions and other matters as appeared of record on the Effective Date, as shown on the title report prepared by Chicago Title Insurance Company and dated August 28, 2003. The closing of the City's purchase of the Property ("**Closing**") shall occur on a date specified by the City within ninety (90) days after the City's notice of its election to purchase is provided to the Owner. The purchase price shall be paid in cash at the Closing. All closing costs, title insurance fees, and similar expenses shall be

allocated by the Escrow Agent in a reasonable and customary manner. Notwithstanding any other provision of this Agreement, the Owner's failure in Phase 1 to complete construction of the south forty (40) feet of Building F, as shown on the Development Plan (**Exhibit B**), to avoid conflicts with construction of later phases shall not be a breach of this Agreement.

18. Termination of Reimbursement. If the Owner fails to perform its obligations to commence and complete construction of Phase 2 and/or subsequent phases for the Project pursuant to the timeframes contained in the Phasing Plan and Schedule (**Exhibit C**) and such failure continues for a period of one hundred eighty (180) days after receipt of a written notice thereof from the City, then, in addition to and without limiting its remedies under Paragraph 19.3, the City may elect to terminate any unpaid portions of the payments to the Owner that are specified in Paragraph 16.1.1 to reimburse the Owner the sum of One Million Five Hundred Thousand and No/100ths Dollars (\$1,500,000.00) for the Public Parking but may not elect to terminate any unpaid portions of its reimbursements to the Owner that are specified in Paragraph 16.1.1 as reimbursement for the Retail Space. The Owner's failure to commence and complete construction of any phase subsequent to Phase 1 shall not be viewed as default under Paragraph 19.3 of this Agreement, the City may not terminate this Agreement, and the remedy for such failure shall only be the right to terminate reimbursement under this Paragraph 18.

19. Mediation and Default.

19.1 Representatives. To further the cooperation of the parties in implementing this Agreement, the City and the Owner each shall designate and appoint a representative to act as a liaison between the City and its various departments and the Owner. The initial representative for the City (the "**City Representative**") shall be the City Manager or designee and the initial representative for the Owner shall be its project manager, as identified by the Owner from time to time (the "**Owner Representative**"). The representatives shall be available at all reasonable times to discuss and review the performance of the parties to this Agreement and the development of the Property.

19.2 Mediation. In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree that there shall be a forty-five (45) day moratorium on litigation during which time the parties agree to attempt to settle the dispute by nonbinding mediation before commencement of litigation. The matter in dispute shall be submitted to a mediator mutually selected by the City and the Owner. In the event that the parties cannot agree upon the selection of a mediator within seven (7) days, then within three (3) days thereafter, the City and the Owner shall request the presiding judge of the Superior Court in and for the County of Maricopa, State of Arizona, to appoint an independent mediator. The mediator selected shall have at least five (5) years' experience in mediating or arbitrating disputes relating to commercial development. The cost of any such mediation shall be divided equally between the City and the Owner. The results of the mediation shall be nonbinding on the parties, and any party shall be free to initiate litigation subsequent to the moratorium.

19.3 Default. Failure or unreasonable delay by any party to perform any term or provision of this Agreement for a period of ten (10) days after written notice thereof from another party shall constitute a default under this Agreement. If the default is of a nature which is not capable of being cured within ten (10) days, the cure shall be commenced within such

period, and diligently pursued to completion. The notice shall specify the nature of the alleged default and the manner in which the default may be satisfactorily cured. In the event of a default hereunder by any party, the non-defaulting party shall be entitled to all remedies at both law and in equity, including, without limitation, specific performance and the right to perform the obligation(s) of which the defaulting party is in default and to immediately seek reimbursement from the defaulting party of all sums expended in order to cure such default, together with interest on all such sums from the date said sums are expended by the non-defaulting party for the purpose of curing the default to the date such sums are paid in full.

20. Drainage. The City shall indemnify and hold harmless the Owner for all liability, costs, expenses, damages, or other claims that result from any and all acts of the City related to grading, drainage, and flood matters on the Property, which liability, costs, expenses, damages, or other claims result from any decision in the actions captioned *Norwood Sisson v. City of Scottsdale*, Maricopa County Superior Court Cause Nos. CV2002-016073, CV2002-009630 and CV2001-021416, any amendment or appeal thereof.

21. City Review. The City and the Owner agree that the Owner must be able to proceed rapidly with development of the Property. Accordingly, the City will use reasonable best efforts to conduct timely and good faith reviews, permitting, and inspection processes for the development. If the Owner believes the reviews are not timely, the Owner may, at its option and expense, retain outside consultants satisfactory to the City to conduct necessary plan reviews for development of the Property.

22. Effective Date. This Agreement shall be effective ("**Effective Date**") upon satisfaction of the following:

22.1 Execution by the parties hereto and either (i) thirty (30) days after said execution if no referendum is filed regarding this Agreement or the Development Plan; (ii) upon successful defeat of such a referendum by the residents of the City; or (iii) if a referendum filed regarding the Development Plan is successful, upon City approval of the Development Plan through an alternative method; and

22.2 Recordation in accordance with Paragraph 23.11.

23. General Provisions.

23.1 Notices; Manner of Serving. All notices, filings, consents, approvals and other communications provided for herein or given in connection herewith ("Notices") shall be validly given, filed, made, delivered or served if in writing and delivered personally or sent by registered or certified United States Postal Service Mail, return receipt requested, postage prepaid to:

If to the City: The City of Scottsdale
3939 Drinkwater Boulevard
Scottsdale, Arizona 85251
Attn: Economic Vitality General Manager

With a copy to: City of Scottsdale

3939 Drinkwater Boulevard
Scottsdale, Arizona 85251
Attn: City Attorney

If to the Owner: Lee Golub
Scottsdale Waterfront, L.L.C.
C/o Golub & Company
625 North Michigan Avenue, Suite 2000
Chicago, Illinois 60611

With a copy to: Ellis Rinaldi, Esq.
Scottsdale Waterfront, L.L.C.
C/o Starwood Capital Group
591 West Putnam Avenue
Greenwich, Connecticut 06830

Chris Milam
Scottsdale Waterfront, L.L.C.
C/o International Development Management
107 Ranch Road-RR 620 South
PMB 23-F
Austin, Texas 78734

Gallagher & Kennedy, P.A.
2575 East Camelback Road
Phoenix, Arizona 85016-9225
Attn: Dana Stagg Belknap or William F. Allison

Or to such other addresses as either party may from time to time designate in writing and deliver in a like manner. Any such change of address Notice shall be given at least ten (10) days before the date on which the change is to become effective.

23.1.1 Mailing Effective. Notices, given by mail, shall be deemed delivered seventy-two (72) hours following deposit in the U.S. Postal Service, in the manner set forth above.

23.2 Amendment or Cancellation of the Agreement. This Agreement may be amended or canceled, in whole or in part and with respect to all or any portion of the Property, only with the mutual written consent of the City and the Owner. Within ten (10) calendar days after any such amendment or cancellation of this Agreement, the amendment or cancellation shall be recorded by the Owner in the Official Records of Maricopa County, Arizona. Notwithstanding the foregoing, any minor amendments to the Development Plan set forth in **Exhibit B** shall not require a concurrent amendment of this Agreement, but rather shall be incorporated into this Agreement as adopted and approved by the City.

23.3 Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof and no waiver by the parties of the breach of any provision of this Agreement

shall be construed as a waiver of any preceding or succeeding breach of the same or any other provision of this Agreement. Nothing herein or in the Site Plan shall constitute or be deemed to be a waiver by the Owner of its respective rights to request future rezonings or changes in development standards for all or any portion(s) of the Property pursuant to City procedures and requirements existing at the time of the request. Nothing herein contained shall be deemed to be a waiver by the City of any governmental or regulatory power regarding such future rezoning or change.

23.4 Assignment. The rights and obligations of the Owner under this Agreement may be transferred or assigned, in whole or in part, by written instrument, to any subsequent owner of all or any portion of the Property without further consent from the City. Notice of any transfer or assignment in accordance with this Paragraph shall be provided to the City within ten (10) days of such transfer or assignment. As provided in A.R.S. § 9-500.05.D, the burdens of this Agreement bind, and the benefits of this Agreement inure to, the parties hereto and their successors in interest and assigns, and this Agreement runs with the land, upon the Property except as provided below:

23.4.1 The rights and obligations of the Owner hereunder may only be assigned to a person or entity that has acquired the Property or a portion thereof and only by a written instrument, recorded in the official records of Maricopa County, Arizona, expressly assigning such rights and obligations.

23.4.2 All third party owners, and all future owners of any interest in a portion of the Property, shall be deemed a successor-in-interest to the Owner only as respects the Development Plan and approvals resulting from the Development Plan and as to the obligations to the City, including compliance with terms of the Development Plan and this Agreement, relating to the portion of the Property to which such owner holds title, and such owner shall not be deemed a third-party beneficiary respecting this Agreement or the Development Plan and approvals relating to any other portion of the Property owned by the Owner, which Development Plan and approvals may be amended by an action of the City and the Owner as applicable to the portion of the Property for which such a change to the Development Plan is sought in accordance with, and subject to the limitations of, Paragraph 23.2 of this Agreement.

23.5 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

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

23.7 Entire Agreement. This Agreement constitutes the entire agreement between the parties and shall not be changed or added to except in the manner provided in Paragraph 23.2. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, other than specifically incorporated herein by reference, are superseded by this Agreement.

23.8 Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect, provided that the overall intent of the parties is not materially vitiated by such severability.

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

23.10 Recordation. No later than ten (10) days after this Agreement has been executed by the City and the Owner, it shall be recorded in its entirety, by the Owner, in the Official Records of Maricopa County, Arizona.

23.11 Authority. The parties to this Agreement represent to each other that they have full power and authority to enter into this Agreement, and that all necessary actions have been taken to give full force and effect to this Agreement. The Owner and the City warrant to each other that the individuals executing the Agreement on behalf of their respective parties are authorized and empowered to bind the party on whose behalf each individual is signing. The Owner represents to the City that by entering into this Agreement the Owner has bound the Property and all persons and entities having any legal or equitable interest therein to the terms of the Agreement.

23.12 Estoppel. Each of the parties hereto covenants and agrees with the other to provide, within fifteen (15) days of written request from the other, an estoppel certificate signed by a duly authorized representative of such party, indicating that the other party is not then in default under any of the obligations pursuant to this Agreement (but excluding regulatory compliance issues) or specifying in reasonable detail any then claimed default.

23.13 Conflict of Interest. This Agreement is subject to the cancellation provisions of A.R.S. § 38-511.

23.14 Relationship of the Parties. It is understood that the contractual relationship between the parties is undertaken pursuant to the authorization contained in A.R.S. § 9-500.05, and nothing contained in this Agreement shall create any partnership, joint venture or agency relationship between the City and the Owner. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder, whether as a third-party beneficiary or otherwise.

23.15 Force Majeure. Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control, and such delays or failures to perform shall not be a default under Paragraph 19. Such acts shall be riots, acts of war, acts of terror, fire, communication line failures, or power failures or any other act as agreed upon by the City and the Owner or determined as discussed in Paragraph 19.2 to this Agreement.

23.16 Extension. Notwithstanding any other provision of this Agreement, this Agreement and all deadlines for performance contained herein shall be extended automatically (i) during the pendency of any referendum referring this Agreement, the District, the infill plan, or the Development Plan to the approval of the voters of the City and/or (ii) during the pendency of any third-party litigation challenging the validity or enforceability of this Agreement, the District, the infill plan, or the Development Plan, but no extension due to such litigation shall extend more than three (3) years. In addition, notwithstanding anything contained in this Paragraph 23.16, the parties have all rights and obligations to mediate and litigate disputes as set forth in Paragraph 19, including the right to request extensions to the deadlines for performance contained in this Agreement.

23.17 Attorneys' Fees. The Owner shall bear all the costs, attorneys' and witness fees and other litigation costs of both the Owner and the City of defending or prosecuting any claim, action, or suit challenging the validity or enforceability of any provision of this Agreement, each party to be represented by separate counsel of its own choosing, provided, however, that the Owner shall have no obligation to pay for costs, attorneys and witness fees and other litigation costs in any action in which the City takes the position that this Agreement is invalid or unenforceable. In the event any other action or suit or proceeding is brought by either party to enforce compliance with this Agreement or for failure to observe any of the covenants of this Agreement or to vindicate or exercise any rights or remedies hereunder, the prevailing party in such proceeding (as determined by the court (and not a jury) in such proceeding) shall be entitled to recover from the other party such prevailing party's reasonable attorneys' fees and other reasonable litigation costs, provided, however, that (i) the Owner shall, as a condition of such proceeding provide evidence to the City of the rate of payment of the Owner's attorneys' fees to its counsel and (ii) the City shall be entitled to recover payment for attorneys employed by the City (including attorneys who are regular employees of the City) on such proceeding at the same rate of payment if the City is the prevailing party.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

OWNER:

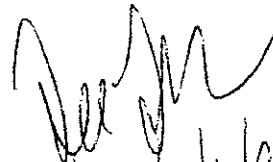
Scottsdale Waterfront, LLC
an Arizona limited liability company

By: Scottsdale Waterfront Partners, LLC
a Delaware limited liability company

By: Golub Waterfront Holdings, LLC
an Illinois limited liability company

By: Golub & Company of Illinois, Inc.
an Illinois corporation

By:
Name:
Title:

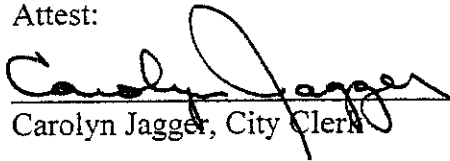

Lee Boluk
Education Vice President

CITY:

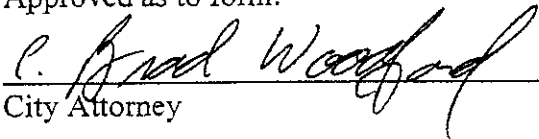
CITY OF SCOTTSDALE, ARIZONA, a
municipal corporation

By: 
Mary Manross, Mayor

Attest:


Carolyn Jagger, City Clerk

Approved as to form:


City Attorney

STATE OF ARIZONA §
 §
County of Maricopa §

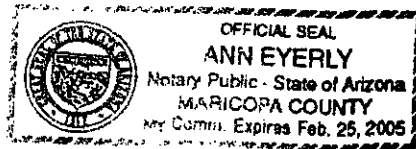
SUBSCRIBED AND SWORN to before me this 7th day of October, 2003, by Mary Manross, Mayor of the CITY OF SCOTTSDALE, ARIZONA, a municipal corporation, for and on behalf thereof.



Notary Public

My Commission Expires:

Feb 25, 2005



STATE OF ARIZONA §
 §
County of Maricopa §

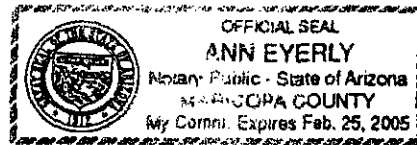
SUBSCRIBED AND SWORN to before me this 7th day of October, 2003, by Lee Golub of SCOTTSDALE WATERFRONT, L.L.C., an Arizona limited liability company, for and on behalf thereof.



Notary Public

My Commission Expires:

Feb. 25, 2005





BROOKS, HERSEY & ASSOCIATES, INC.

ENGINEERS/SURVEYORS
CONSTRUCTION ADMINISTRATORS

**LEGAL DESCRIPTION
SCOTTSDALE WATERFRONT
TIED PARCELS**

A portion of the Northeast Quarter of the Southeast Quarter of Section 22, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, being more particularly described as follows:

COMMENCING at the Northeast corner of said Northeast Quarter of the Southeast Quarter of Section 22;

Thence South $88^{\circ}54'09''$ West, along the North line of said Northeast Quarter of the Southeast Quarter, 93.04 feet;

Thence South $01^{\circ}05'51''$ East, 55.00 feet to a point on the Southerly right-of-way line of Camelback Road, said point also being on the Westerly right-of-way line of Scottsdale Road marking the Point of Beginning;

Thence South $00^{\circ}01'51''$ East, along said Westerly right-of-way line of Scottsdale Road, 98.83 feet to a point on the Northerly right-of-way line of the Arizona Canal;

Thence South $41^{\circ}07'13''$ West, along said Northerly right-of-way line, 788.90 feet to the Southwest corner of Paradise Palms, a subdivision recorded in Book 54 of Maps, Page 13, Maricopa County Records;

Thence continuing along said Northerly right-of-way line South $01^{\circ}07'51''$ East, 42.31 feet to a point on the Northerly right-of-way line of the Arizona Canal;

Thence continuing along said Northerly right-of-way line South $40^{\circ}32'09''$ West, 125.75 feet to the beginning of a curve concave Northwesterly and having a radius of 1941.86 feet;

Thence Southwesterly along said curve through a central angle of $10^{\circ}14'30''$, an arc distance of 347.11 feet;

Thence continuing along said Northerly right-of-way line South $50^{\circ}46'40''$ West, 320.68 feet, to the beginning of a non-tangent curve concave Westerly and having a radius of 626.00 feet, a radial to said beginning bears North $83^{\circ}32'29''$ West;

Thence Northerly along said curve through a central angle of $03^{\circ}01'04''$, an arc distance of 32.97 feet;

Thence South $45^{\circ}03'11''$ East, 7.89 feet;

Thence North $44^{\circ}56'49''$ East, 10.00 feet;

Thence North $45^{\circ}03'11''$ West, 16.93 feet to the beginning of a non-tangent curve concave Westerly and having a radius of 626.00 feet, a radial to said beginning bears North $87^{\circ}49'25''$ West;

Thence Northerly along said curve through a central angle of $02^{\circ}13'41''$, an arc distance of 24.34 feet;
 Thence North $00^{\circ}03'30''$ West, 265.18 feet;
 Thence North $20^{\circ}03'30''$ West, 29.24 feet;
 Thence North $00^{\circ}03'30''$ West, 94.68 feet;
 Thence North $72^{\circ}53'45''$ East, 14.24 feet;
 Thence North $00^{\circ}03'30''$ West, 48.98 feet;
 Thence North $41^{\circ}23'02''$ East, 11.86 feet to the beginning of a non-tangent curve concave Northerly and having a radius of 210.00 feet, a radial to said beginning bears North $05^{\circ}54'59''$ West;
 Thence Easterly along said curve through a central angle of $24^{\circ}17'27''$, an arc distance of 89.03 feet;
 Thence North $59^{\circ}47'34''$ East, 112.30 feet, to the beginning of a curve concave Southerly and having a radius of 150.00 feet;
 Thence Easterly along said curve through a central angle of $29^{\circ}09'31''$, an arc distance of 76.34 feet;
 Thence North $88^{\circ}57'04''$ East, 175.30 feet;
 Thence North $01^{\circ}05'51''$ West, 603.97 feet;
 Thence North $43^{\circ}54'09''$ East, 31.11 feet to the Southerly right-of-way line of Camelback Road;
 Thence North $88^{\circ}54'09''$ East, along said Southerly right-of-way line, 49.50 feet;
 Thence North $01^{\circ}05'51''$ West, along said Southerly right-of-way line, 5.50 feet;
 Thence North $88^{\circ}54'09''$ East, along said Southerly right-of-way line, 18.53 feet;
 Thence North $72^{\circ}05'59''$ East, along said Southerly right-of-way line, 12.21 feet;
 Thence North $01^{\circ}23'06''$ West, along said Southerly right-of-way line, 0.97 feet;
 Thence North $88^{\circ}54'09''$, East, along said Southerly right-of-way line, 562.56 feet to THE TRUE POINT OF BEGINNING.

Parcel contains 492,3278 square feet, 11.30 acres, more or less.

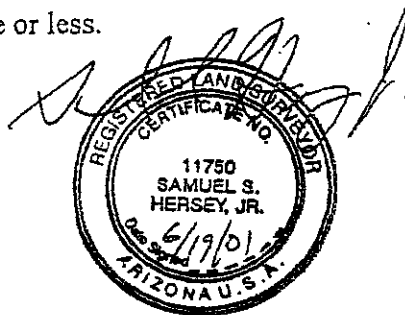
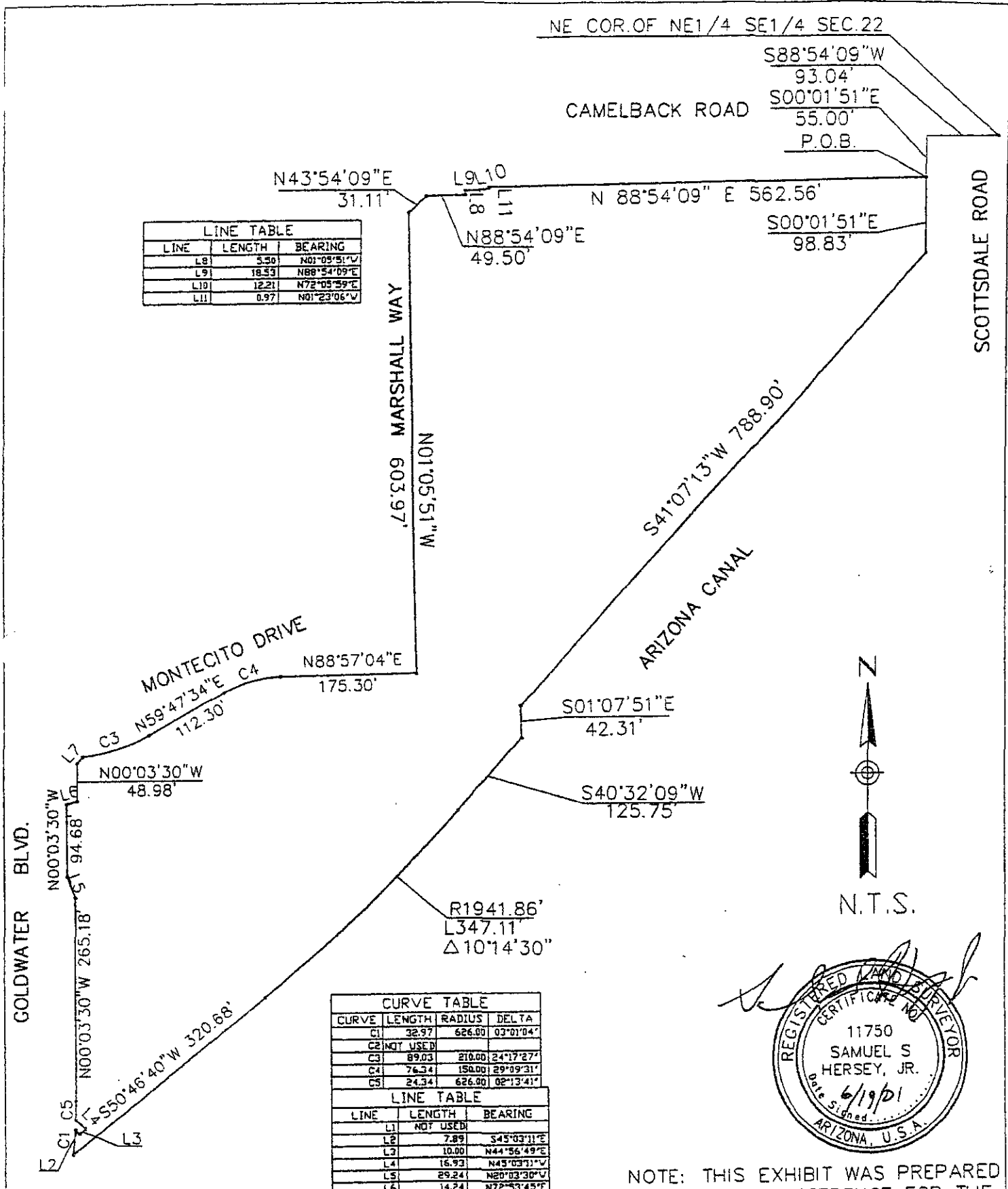


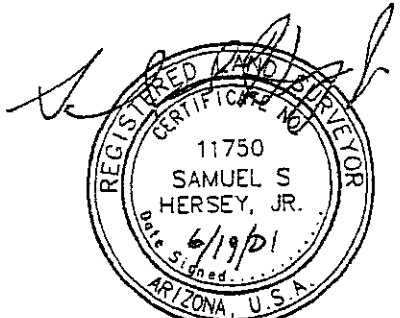
Exhibit " A " 2/3



LINE TABLE		
LINE	LENGTH	BEARING
L8	5.50	N01°05'51"V
L9	18.33	N88°54'09"E
L10	12.21	N72°05'59"E
L11	0.97	N01°23'06"V

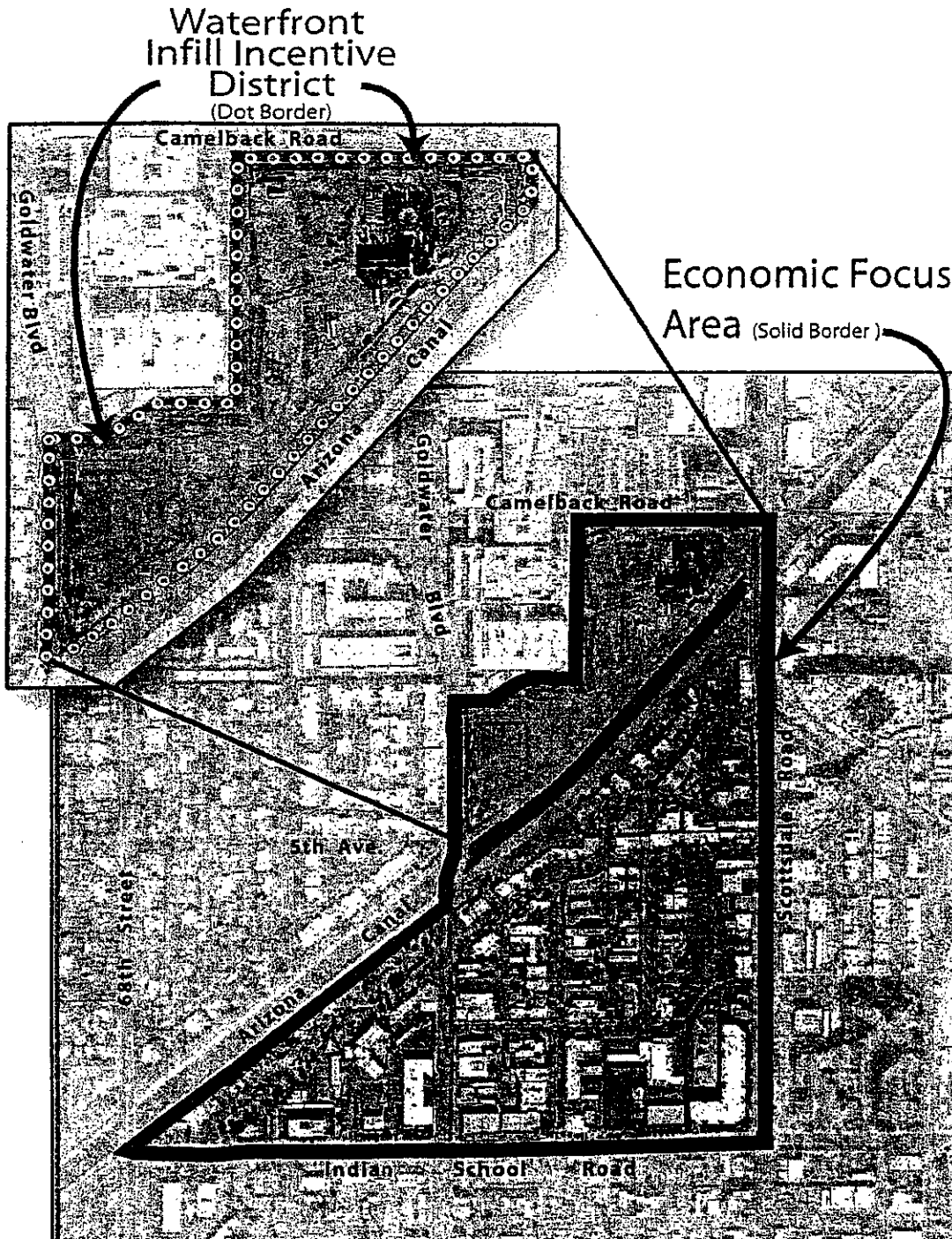
CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	32.97	626.00	03°01'04"
C2	NOT USED		
C3	89.03	210.00	24°17'27"
C4	76.34	150.00	29°09'31"
C5	24.34	626.00	02°13'41"

LINE TABLE		
LINE	LENGTH	BEARING
L1	NOT USED	
L2	7.89	S45°03'11"E
L3	10.00	N44°56'49"E
L4	16.93	N43°03'11"V
L5	29.24	N80°03'30"V
L6	14.24	N72°53'45"E
L7	11.86	N41°23'02"E



NOTE: THIS EXHIBIT WAS PREPARED SOLELY AS A REFERENCE FOR THE LEGAL DESCRIPTION TO WHICH IT IS ATTACHED. IT IS NOT MEANT TO BE A STANDALONE DOCUMENT FOR THE RESULT OF A FIELD SURVEY.

SCOTTSDALE WATERFRONT DEVELOPMENT PLAN



Economic Focus Area Boundary Description:

Beginning at the intersection of Scottsdale Road and Camelback Road, thence southerly along the centerline of Scottsdale Road to the intersection of Scottsdale Road and Indian School Road, thence westerly along the centerline of Indian School Road to the intersection of Indian School Road and the south bank of the Arizona Canal, thence northeasterly along the south bank of the Arizona Canal to its intersection with the centerline of Goldwater Boulevard, thence northerly along the centerline of Goldwater Boulevard to the intersection of Goldwater Boulevard and Montecito Avenue, thence easterly along the centerline of Montecito Avenue to the intersection of Montecito Avenue and Marshall Way, thence northerly along the centerline of Marshall Way to the intersection of Marshall Way and Camelback Road, thence easterly along the centerline of Camelback Road to the Point of Beginning.



BROOKS, HERSEY & ASSOCIATES, INC.

ENGINEERS/SURVEYORS
CONSTRUCTION ADMINISTRATORS

**LEGAL DESCRIPTION
SCOTTSDALE WATERFRONT
TIED PARCELS**

A portion of the Northeast Quarter of the Southeast Quarter of Section 22, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, being more particularly described as follows:

COMMENCING at the Northeast corner of said Northeast Quarter of the Southeast Quarter of Section 22;

Thence South $88^{\circ}54'09''$ West, along the North line of said Northeast Quarter of the Southeast Quarter, 93.04 feet;

Thence South $01^{\circ}05'51''$ East, 55.00 feet to a point on the Southerly right-of-way line of Carnelback Road, said point also being on the Westerly right-of-way line of Scottsdale Road marking the Point of Beginning;

Thence South $00^{\circ}01'51''$ East, along said Westerly right-of-way line of Scottsdale Road, 98.83 feet to a point on the Northerly right-of-way line of the Arizona Canal;

Thence South $41^{\circ}07'13''$ West, along said Northerly right-of-way line, 788.90 feet to the Southwest corner of Paradise Palms, a subdivision recorded in Book 54 of Maps, Page 13, Maricopa County Records;

Thence continuing along said Northerly right-of-way line South $01^{\circ}07'51''$ East, 42.31 feet to a point on the Northerly right-of-way line of the Arizona Canal;

Thence continuing along said Northerly right-of-way line South $40^{\circ}32'09''$ West, 125.75 feet to the beginning of a curve concave Northwesterly and having a radius of 1941.86 feet;

Thence Southwesterly along said curve through a central angle of $10^{\circ}14'30''$, an arc distance of 347.11 feet;

Thence continuing along said Northerly right-of-way line South $50^{\circ}46'40''$ West, 320.68 feet, to the beginning of a non-tangent curve concave Westerly and having a radius of 626.00 feet, a radial to said beginning bears North $83^{\circ}32'29''$ West;

Thence Northerly along said curve through a central angle of $03^{\circ}01'04''$, an arc distance of 32.97 feet;

Thence South $45^{\circ}03'11''$ East, 7.89 feet;

Thence North $44^{\circ}56'49''$ East, 10.00 feet;

Thence North $45^{\circ}03'11''$ West, 16.93 feet to the beginning of a non-tangent curve concave Westerly and having a radius of 626.00 feet, a radial to said beginning bears North $87^{\circ}49'25''$ West;

Thence Northerly along said curve through a central angle of $02^{\circ}13'41''$, an arc distance of 24.34 feet;

Thence North $00^{\circ}03'30''$ West, 265.18 feet;

Thence North $20^{\circ}03'30''$ West, 29.24 feet;

Thence North $00^{\circ}03'30''$ West, 94.68 feet;

Thence North $72^{\circ}53'45''$ East, 14.24 feet;

Thence North $00^{\circ}03'30''$ West, 48.98 feet;

Thence North $41^{\circ}23'02''$ East, 11.86 feet to the beginning of a non-tangent curve concave Northerly and having a radius of 210.00 feet, a radial to said beginning bears North $05^{\circ}54'59''$ West;

Thence Easterly along said curve through a central angle of $24^{\circ}17'27''$, an arc distance of 89.03 feet;

Thence North $59^{\circ}47'34''$ East, 112.30 feet, to the beginning of a curve concave Southerly and having a radius of 150.00 feet;

Thence Easterly along said curve through a central angle of $29^{\circ}09'31''$, an arc distance of 76.34 feet;

Thence North $88^{\circ}57'04''$ East, 175.30 feet;

Thence North $01^{\circ}05'51''$ West, 603.97 feet;

Thence North $43^{\circ}54'09''$ East, 31.11 feet to the Southerly right-of-way line of Camelback Road;

Thence North $88^{\circ}54'09''$ East, along said Southerly right-of-way line, 49.50 feet;

Thence North $01^{\circ}05'51''$ West, along said Southerly right-of-way line, 5.50 feet;

Thence North $88^{\circ}54'09''$ East, along said Southerly right-of-way line, 18.53 feet;

Thence North $72^{\circ}05'59''$ East, along said Southerly right-of-way line, 12.21 feet;

Thence North $01^{\circ}23'06''$ West, along said Southerly right-of-way line, 0.97 feet;

Thence North $88^{\circ}54'09''$, East, along said Southerly right-of-way line, 562.56 feet to THE TRUE POINT OF BEGINNING.

Parcel contains 492,3278 square feet, 11.30 acres, more or less.

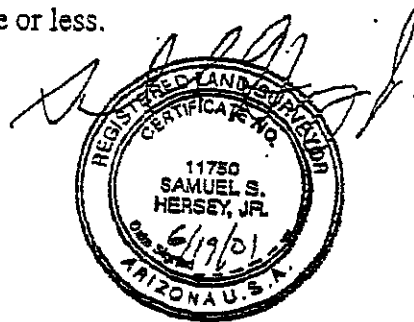
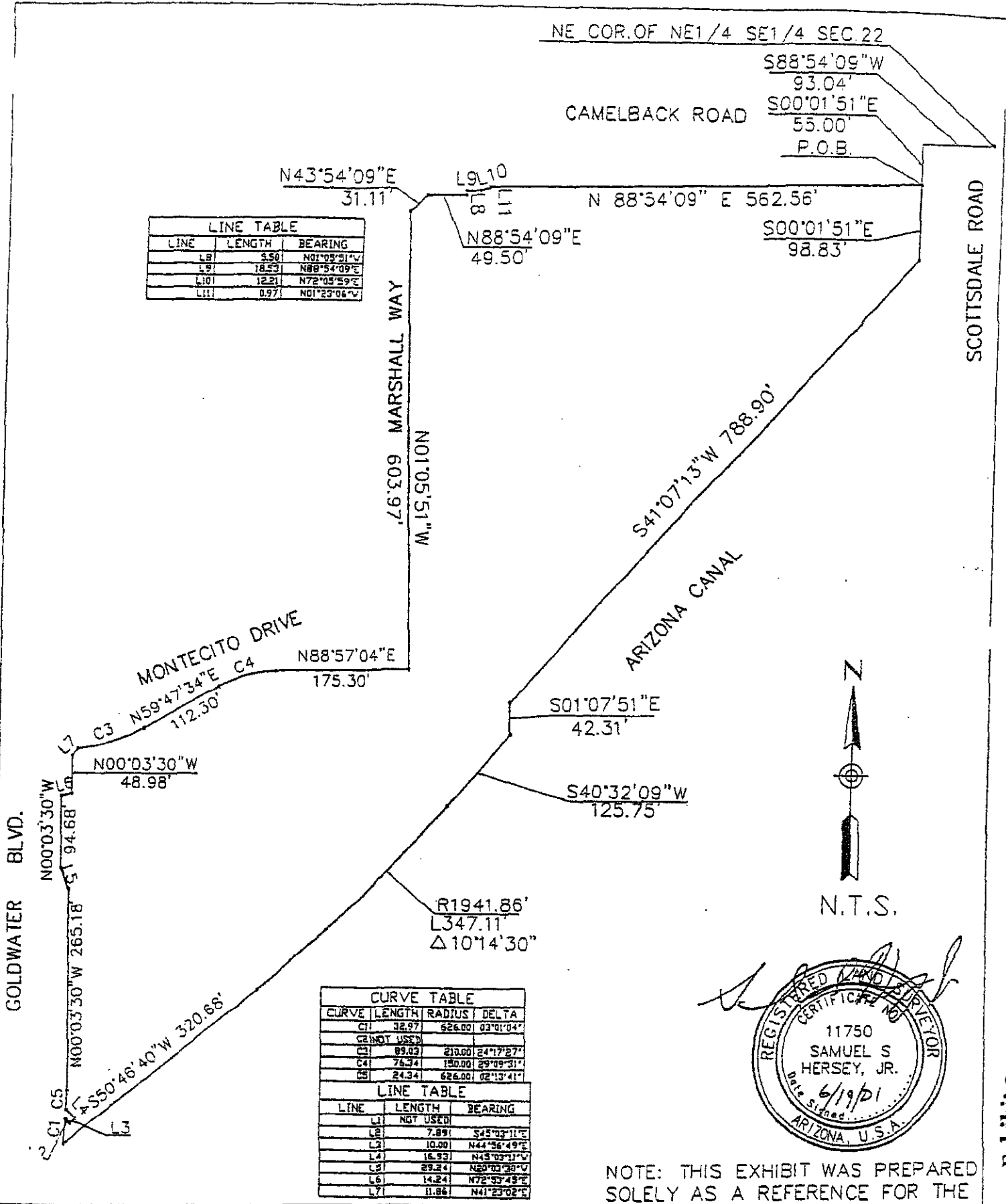


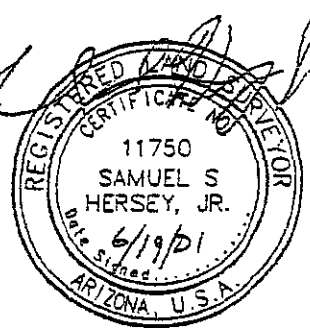
Exhibit 2
Page 2 of 3



LINE TABLE		
LINE	LENGTH	BEARING
L8	4.90	N01°03'31"W
L9	18.53	N88°54'09"E
L10	12.21	N72°05'59"E
L11	0.97	N01°23'06"W

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	32.97	626.00	03°01'04"
C2 NOT USED			
C3	89.93	210.00	24°17'27"
C4	76.34	150.00	29°09'31"
C5	24.34	626.00	02°13'41"

LINE TABLE		
LINE	LENGTH	BEARING
L1	NOT USED	
L2	7.89	S45°03'11"E
L3	10.00	N44°56'49"E
L4	16.93	N45°03'11"W
L5	29.24	N69°03'36"W
L6	14.24	N72°05'49"E
L7	11.86	N41°23'02"E



NOTE: THIS EXHIBIT WAS PREPARED SOLELY AS A REFERENCE FOR THE LEGAL DESCRIPTION TO WHICH IT IS ATTACHED. IT IS NOT MEANT TO BE A STANDALONE DOCUMENT FOR THE RESULT OF A FIELD SURVEY.

Exhibit 2