

OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER

HELEN PURCELL

20061036433 08/03/2006 11:08

ELECTRONIC RECORDING

**WHEN RECORDED, RETURN TO:**

One Stop Shop Records (City Attorney's Office)  
7447 E. Indian School Road Suite 100  
Scottsdale, AZ 85251

15196-39-1-1--  
Gonzalesj

COS # 1989-074-COS-A4

**FOURTH AMENDMENT TO  
DEVELOPMENT AGREEMENT**

This Fourth Amendment to Development Agreement ("Fourth Amendment") is entered into as of the 10<sup>th</sup> day of July, 2006, between DC RANCH L.L.C., an Arizona limited liability company (the "Master Developer"), and the CITY OF SCOTTSDALE, ARIZONA, a municipal corporation (the "City").

**RECITALS**

This Fourth Amendment is predicated upon the following:

- A. Arizona Revised Statutes ("A.R.S.") § 9-500.05, authorizes the City to enter into and amend a development agreement with a landowner or any other person having an interest in real property located in the City.
- B. The City and various property owners entered into an agreement regarding development interests dated March 15, 1990, as recorded in the Official Records of Maricopa County as Document No. 90-133973, which was amended by the First Amended Development Agreement dated July 11, 1995, as recorded in the Official Records of Maricopa County as Document No. 95-0425859.
- C. Lawyers Title of Arizona, Inc., an Arizona corporation as Trustee of Lawyers Title Trust No. 1698, and not personally, DC Livestock Company Limited Partnership, an Arizona limited partnership (collectively "Corrigan-Marley"), the City, and the Master Developer are parties to the Second Amendment to Development Agreement dated October 19, 1998, as recorded in the Official Records of Maricopa County as Document No. 98-0970077 (the "Second Amendment").
- D. City and the Master Developer are parties to the Third Amendment to Development Agreement dated January 7, 2003, as recorded in the Official Records of Maricopa County as Document No. 20030090008 and the Consent To and Ratification of Third Amendment to Development Agreement dated May 9, 2003, as recorded in the Official Records of Maricopa County as Document No. 20030606885 (collectively, the "Third Amendment").
- E. Corrigan-Marley has previously transferred all of its interests and rights in certain real property located within the incorporated boundaries of the City (the "Property"), as more fully set forth in the Second Amendment, to Master Developer.

- F. DMB Property Ventures Limited Partnership ("DMB Property Ventures") is the administrative member of DC Ranch L.L.C., an Arizona limited liability company, formed to purchase the Property from Corrigan-Marley and develop it in phases.
- G. DMB Property Ventures was the master developer of the Property. Pursuant to the Second Amendment, DMB Property Ventures assigned all rights and interests as master developer to Master Developer.
- H. The Second Amendment, as supplemented by the Third Amendment, is the governing document for development of the Property. This Fourth Amendment will supplement the Second Amendment.
- I. This Fourth Amendment is for the purpose of reflecting the (i) evolution in development of the commercial parcels within the Property and the City's agreement that such revision is appropriate and (ii) the fulfillment of obligations by Master Developer in the development of the Property. The modifications set forth herein amend the Second Amendment.

### AGREEMENTS

NOW, THEREFORE, the parties agree as follows:

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

2. Commercial Property.

2.1 The Second Amendment sets forth a comprehensive set of guidelines relative to the governance of development of the Property including the obligation of the Master Developer or its assignees to monitor and enforce development standards.

2.2 The Master Developer plans to develop the commercially zoned areas of Planning Units I and II, and in some cases has developed the commercially zoned areas of Planning Unit II, for commercial uses in the locations set forth at **Exhibit A** (the "Project"). The Project is planned and in some cases will be developed as if it is a single, undivided parcel for purposes of meeting City requirements for public improvements, utilities, access, parking, perimeter setbacks, easements, drainage, open space, NAOS, building code regulations, design and all other City ordinances and regulations (the "City Requirements") regardless of whether portions of the Project (each a "Parcel") are sold, leased, conveyed or otherwise transferred (each a "Transfer") to other owners (each a "Parcel Owner") or developed individually. As such, the City shall consider whether the Project as a whole, and not each individual Parcel, meets the applicable City Requirements. Nothing in this section shall relieve the Master Developer or any Parcel Owner of any health and safety regulations related to the development of the Project, such as separation requirements for fire protection, as determined by the City.

2.3 The Master Developer, and any successors and assigns to whom the rights hereunder are delegated in writing, has created a legally binding agreement requiring (a) all development plans be approved by the Master Developer or its designees, and (b) with each new request for development approval as required by the City Requirements, the Master Developer will provide to the City information sufficient to establish for the benefit of the City that all City Requirements contemplated in this Section 2 are met for the Project as a whole, single, undivided parcel. Except as provided in this Section 2, so long as the Project continues under a development plan approved by the City and the Master Developer is in compliance with said approved development plan, as it may be amended from time to time by the mutual consent of the City and the Master Developer following whatever process is then in effect at the City for amending a development plan, the Project shall be treated as a single, undivided parcel for purposes of meeting City Requirements, including but not limited to (a) all applicable setbacks shall be measured from the Project's perimeter and (b) all permits shall be reviewed by the City for compliance with all applicable codes and regulations as if the Project is a single, undivided parcel located in the City.

2.4 Separate Parcels within the Project may be created to transfer title and control of such Parcels, so long as all other conditions of an approved development plan applicable to such Parcel are satisfied. Development of these Parcels may proceed as if the Project is a single, undivided parcel for purposes of meeting City Requirements.

3. Planning Unit Master Plans. The Planning Unit Master Plans have been completed by Master Developer and approved by the City. In the event of a conflict between the provisions of this Agreement, as amended, including exhibits and schedules, the Planning Unit Master Plans, as may be amended from time to time, shall be controlling.

4. Town Center Mixed Use Facilities. All transit facility requirements for the Town Center Special Study Area have been met by the transit stop shelters provided along Thompson Peak Parkway and Union Hills Drive.

5. Pima Road Scenic Corridor Easement. The Pima Road Scenic Corridor Easement language set forth in Section 4 of Exhibit D to the Second Amendment shall be replaced by the language set forth at **Exhibit B**.

6. Residential Land Use Summary. The Residential Land Use Summary set forth in Schedule D of Exhibit D to the Second Amendment shall be replaced by the Residential Land Use Summary set forth at **Exhibit C**.

7. PNC Development Standards. The two (2) sets of amended development standards for the PNC zoning districts within the Property set forth at Schedule H of Exhibit D to the Second Amendment shall be combined into one (1) set of development standards and amended as set forth at **Exhibit D**.

8. I-1 Development Standards. The development standards for the I-1 zoning district within the Property shall be amended as set forth at **Exhibit E** and included at Schedule H of Exhibit D to the Second Amendment.

9. Additional Property. The approximately 1.75 acre parcel as further described at Exhibit F (the "Additional Property"), subject to its existing zoning, is hereby incorporated into the Property and shall be subject to and shall benefit from all provisions of the Second Amendment as supplement and amended, applicable thereto and any references herein to the Property shall include such Additional Property.

10. Duration. If not sooner terminated in accordance with the provisions hereof, this Fourth Amendment shall automatically terminate and be of no further force or effect on July 31, 2020. If the parties mutually determine that a longer period for the performance of the provisions of this Fourth Amendment is necessary for any reason, the term of this Fourth Amendment may be extended by a written amendment.

11. Previous Agreement. This Fourth Amendment shall be deemed to supersede the Second Amendment and Third Amendment with respect to all terms, provisions, changes and refinements set forth in this Fourth Amendment. To the extent of any conflict between the Second Amendment, Third Amendment and this Fourth Amendment, including all Exhibits, Stipulations and Schedules, the Fourth Amendment shall control. All of the terms, provisions and conditions of the Second Amendment and Third Amendment, or any other agreements to which the parties are or may become parties to, which are not expressly modified, amended, or clarified by this Fourth Amendment shall remain in full force and effect. All capitalized terms contained herein shall be given the meaning set forth for such terms in the Second Amendment.

12. General Provisions.

12.1 Notices.

(a) 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  
7447 E. Indian School Road, Suite 105  
Scottsdale, Arizona 85251  
Attn: Planning and Development General  
Manager

With a copy to:

The City of Scottsdale  
3939 Civic Center Boulevard  
Scottsdale, Arizona 85251  
Attn: City Attorney

If to Master Developer: DC Ranch L.L.C.  
c/o DMB Associates, Inc.  
7600 E. Doubletree Ranch Road  
Suite 300  
Scottsdale, Arizona 85258  
Attn: Karrin Kunasek Taylor, Esq.

With a copy to: Anderson Brody Buchalter Nemer  
4600 East Shea Boulevard, Suite 100  
Phoenix, Arizona 85028  
Attn: Shelly McTee, Esq.

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.

(b) 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.

(c) Delivery Effective. Notices, given by personal delivery, shall be deemed delivered upon receipt.

12.2 Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof and no waiver by the parties of the breach of any provision of this Fourth Amendment shall be construed as a waiver of any preceding or succeeding breach of the same or any other provision of this Fourth Amendment. Nothing herein or in the Stipulations shall constitute or be deemed to be a waiver by Master Developer of its 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 the right to act, by approval or denial, on such rezoning or change, to the extent such action would not otherwise be in breach of this Fourth Amendment. Further, nothing herein or in the Stipulations shall constitute or be deemed to be a waiver or relinquishment by Master Developer of its rights to continue nonconforming uses of all or any portion(s) of the Property which may exist on the date hereof or have existed as of January 7, 2003, the date of the Third Amendment to Development Agreement, subject to legal principles applicable to such non-conforming uses.

12.3 Attorneys' Fees and Costs. If legal action by either party is brought because of a breach of this Fourth Amendment or to enforce a provision of this Fourth Amendment, the prevailing party is entitled to reasonable attorneys' fees and court costs.

12.4 Counterparts. This Fourth Amendment 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.

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

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

12.7 Governing Law. The laws of the State of Arizona shall govern the interpretation and enforcement of this Fourth Amendment. The parties agree that venue for any action commenced in connection with this Fourth Amendment 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.

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

12.9 Default, Remedies. If any party to this Fourth Amendment breaches any provision of this Fourth Amendment, the non-defaulting party shall be entitled to all remedies available at both law and in equity including specific performance.

12.10 Authority. The parties to this Fourth Amendment represent to each other that they have full power and authority to enter into this Fourth Amendment, and that all necessary actions have been taken to give full force and effect to this Fourth Amendment. Master Developer represents and warrants that it is duly formed and validly existing under the laws of Arizona, and that it is duly qualified to do business in the State of Arizona and is in good standing under applicable state laws. The Master Developer and the City warrant to each other that the individuals executing the Fourth Amendment on behalf of their respective parties are authorized and empowered to bind the party on whose behalf each individual is signing. Master Developer represents to the City that by entering into this Fourth Amendment Master Developer has bound the Property and all persons and entities having any legal or equitable interest therein to the terms of the Fourth Amendment.

12.11 Estoppel. Each of the parties hereto covenant and agree 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(ies) are not then in default under any of the obligations pursuant to this Fourth Amendment.

12.12 Conflict of Interest. This Fourth Amendment is subject to the conflict of interest provisions of A.R.S. Sec. 38-511.

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



## CITY

CITY OF SCOTTSDALE, ARIZONA, a municipal corporation

By: Mary Manross  
Mary Manross, Mayor

Attest:

Carolyn Jagger  
Carolyn Jagger, City Clerk

Approved as to form:

Deborah Rdsberson  
City Attorney, Deborah Rdsberson

## MASTER DEVELOPER

DC RANCH L.L.C., an Arizona limited liability company

By: DMB PROPERTY VENTURES LIMITED PARTNERSHIP, a Delaware limited partnership, Administrative Member  
By: DMB GP, INC., an Arizona corporation, General PartnerBy: U.P.  
Its: U.P.STATE OF ARIZONA      ss  
   )ss.  
County of Maricopa      ssSUBSCRIBED AND SWORN to before me this 12<sup>th</sup> day of July, 2006, by Mary Manross, the Mayor of the City of Scottsdale, a municipal corporation, for and on behalf thereof.Carolyn Jagger  
Notary PublicMy Commission Expires:  
\_\_\_\_\_

STATE OF ARIZONA

ss

)ss.

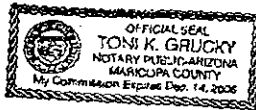
County of Maricopa

ss

SUBSCRIBED AND SWORN to before me this 21<sup>st</sup> day of June, 2006, by Charley Greenika, the vice president of DMB GP, Inc., an Arizona corporation, General Partner of DMB Property Ventures Limited Partnership, a Delaware limited partnership, Administrative Member of DC RANCH L.L.C., an Arizona limited liability company, for and on behalf thereof.

Toni K. Grucky  
Notary Public

My Commission Expires:

12/14/06

BN 809062v5

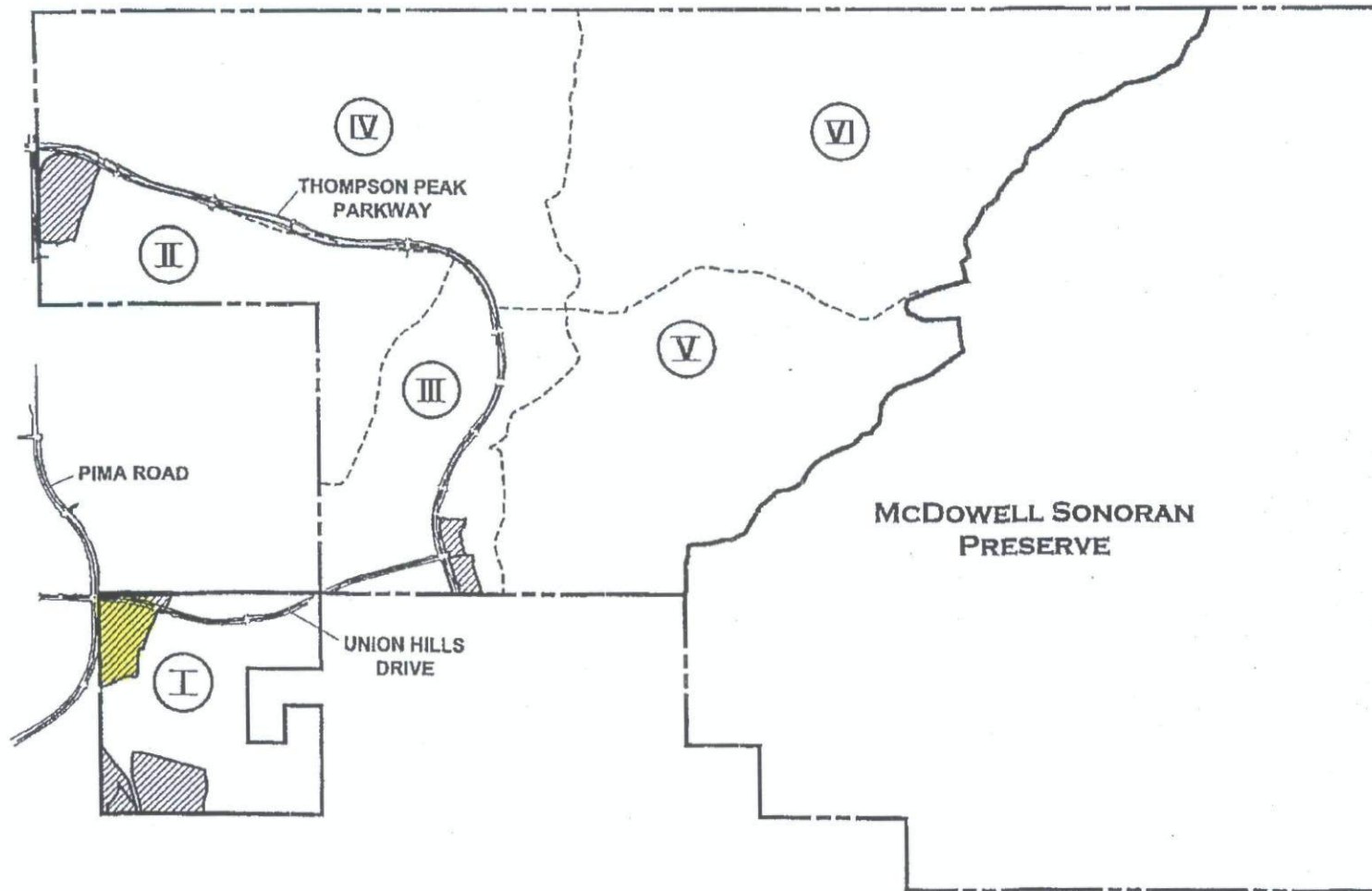


20061036433

**EXHIBIT A**

Commercially Zoned Areas Graphic

DC RANCH COMMERCIAL PARCELS - CASE # 54-ZN-1989#9



20061036433

20061036433

**EXHIBIT B**

**Pima Road Scenic Corridor Easement**

- A. Natural area open space requirements have been satisfied and consolidated grading is permitted; or
  - B. Topographical and other on-site physical conditions permit reasonable on site analysis of site conditions through the use of rectified aerial photographs.
- 4.12 Low Density Residential Construction Limits. All Development Sites that are in zoning categories R1-35 through R1-43 shall provide construction envelopes establishing the limits of construction for each lot or cluster of lots or Hillside Cluster for field review at the time of preliminary plat submittal.
- 4.13 Thompson Peak Parkway Scenic Setback. A scenic setback with an average width of 40 feet and a minimum width of 30 feet shall be required for all buildings, walls, parking lots, signage or other development improvements along Thompson Peak Parkway except as may be modified in connection with approval of Community Environmental Design or applicable Planning Unit Environmental Design Master Plans. This setback is to be left in a natural condition as may be modified in accordance with approved design concepts incorporated in the Planning Unit Environmental Design Plan. The width is to be measured starting at the road right-of-way. The minimum width of the setback may be reduced by the Development Review Board if in it's opinion protection of significant natural features can be better achieved. This Scenic Setback may be eligible for NAOS calculations.
- 4.14 Pima Road Scenic Corridor Easement. A Scenic Corridor easement shall be provided along the east side of Pima Road with an average width of 50 feet and a minimum width of 40 feet adjacent to single-family uses, and an average width of 100 feet and a minimum width of 80 feet adjacent to all other uses. The Scenic Corridor is to be left in a natural condition as may be modified in accordance with approved design concepts incorporated in the Planning Unit Environmental Design Plan. The Scenic Corridor is to be measured starting at the road right-of-way. The minimum width of the Scenic Corridor may be reduced by the Development Review Board if protection of significant natural features can be better achieved. This Scenic Corridor may be eligible for NAOS calculations. In addition to the aforementioned Scenic Corridor easement, an AVERAGE WIDTH OF 150 foot AND A MINIMUM WIDTH OF 125 FOOT landscape buffer setback shall be established NORTH OF UNION HILLS DRIVE between the right-of-way and the edge of adjacent development on the property along Pima Road. This setback may be comprised of a combination of landscape, drainage area and scenic easement, and may have located within it, as approved by the City.
- A. Points of access for the project.
  - B. Project signage and entry features.
  - C. Portions of the perimeter wall, which shall not exceed 5 feet in height, as measured from the Pima Road side, and will meander to reflect topography and avoid a hard visual line.
  - D. Multi-use paths and trails as may be located within the landscape setback area to comply with City requirements.
- 4.15 Residential Design Guidelines. All single family residential lots shall have front yard landscaping of a desert character as established by the Community or Planning Unit Environmental Master plan.
- 4.16.1 Fiber Optics. Provisions for installation of conduit to accommodate future fiber optics service for the property shall be approved in the Community and Planning Unit Environmental Master Plans.