

When Recorded Return To:

City Clerk
City of Maricopa
P.O. Box 610
Maricopa, Arizona 85008

AGREEMENT

THIS AGREEMENT (“Agreement”) is entered into this _____ day of _____, 2014, by the City of Maricopa, an Arizona municipal corporation (“City”) and Crescent Bay Land Fund 1, L.L.C. an Arizona Limited Liability Company, its successors or assigns (hereinafter “Crescent”). The City and Crescent are each referred to herein individually as a “Party” and collectively as the “Parties”.

RECITALS

- A. Crescent owns the real property legally described on Exhibit A attached hereto (the “Property”).
- B. The Property is located within a currently-existing floodplain (the “Floodplain”) without the flood control solution referenced in Recital C below.
- C. Crescent has designed and engineered a flood control solution that has received a Conditional Letter of Map Revisions (“Crescent CLOMR”) from the Federal Emergency Management Agency (“FEMA”) the removes the Property from the Floodplain. In order to remove the Property from the Floodplain, Crescent secured approval of flood mitigation plans by FEMA which resulted in the issuance of the Red Valley Ranch CLOMR. The Red Valley Ranch CLOMR requires the construction of certain flood mitigation structures (the “Flood Control Structures”) within the boundaries of the Property. The Flood Control Structures are graphically depicted on Exhibit B attached hereto. .
- D. Pursuant to 44 C.F.R. 65.10(d), in order to qualify for the issuance of a LOMR, Crescent must provide evidence to FEMA that ultimate responsibility for maintenance of the Flood Control Structures is under the jurisdiction of a Federal or State agency, an agency created by Federal or State law, or an agency of a community participating in the National Flood Insurance Program (an “Agency”).
- E. The City qualifies as an Agency under the terms of 44 C.F.R. 65.10(d).
- F. The primary obligation and responsibility for the inspection, maintenance, repair and insurance of the Flood Control Structures has been delegated to Crescent under this Agreement. as required by the applicable provisions of 44 C.F.R. 65.10(d), as amended from time to time.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein, the Parties agree as follows:

1. ACKNOWLEDGEMENT OF CRESCENT'S CONSIDERATION

The City agrees that the Flood Control Structures and Crescent's execution of this Agreement satisfies any stipulations within the land entitlement approvals for the Property, or portions thereof, and the City's duty to protect the general health, safety, and welfare of the public. City agrees not to impose any stipulations or other requirements relating to the Flood Control Structures or the removal of the Property from the Floodplain in connection with the entitlements for the Property, except as may be required by FEMA. The City will not impede, condition, or otherwise interfere with the issuance of any land use entitlement approvals for the Property. Crescent acknowledges that there are a number of approvals and permits that are required as part of the development of the Property (currently referred to as *Red Valley Ranch*) that will eventually allow the issuance of a building permit, which approvals are generally set forth on Exhibit C attached hereto.

2. FLOOD CONTROL STRUCTURES MAINTENANCE PLANS

A. FEMA Approval of Flood Control Structures. FEMA has reviewed and approved the construction of the Flood Control Structures and issued a Condition Letter of Map Revision (the "CLOMR") related thereto. As a qualified Agency under the terms of 44 C.F.R. 65.10(d) and based upon Crescent's assurances that it will be primarily responsible for the required maintenance of the Flood Control Structures as required by the applicable provisions of 44 C.F.R. 65.10(d), as amended from time to time, the City agrees to execute the Operation and Maintenance Plan for the Flood Control Structures ("O&M Plan"), a copy of which is attached hereto as Exhibit D and to take all steps reasonably necessary to cause FEMA to issue the LOMR for the Property in connection with the Flood Control Structures as soon as reasonably possible, and to include the Property in the LOMR when issued.

B. Costs of O&M Plan. Crescent, its successor and assigns, shall pay all costs for maintaining the Flood Control Structures in accordance with the O&M Plan and in compliance with all federal, state and local laws, regulations and ordinances, as amended from time to time. Crescent shall have the primary obligation and responsibility for inspecting, maintaining, repairing and insuring the Flood Control Structures until the FEMA maps depicting the flow of water to the Property no longer show flows that require the Flood Control Structures to protect development on the Property from the 100-year flood and the City will receive notice ("FEMA Notice") from FEMA of such a change; provided, that the FEMA Notice is not required to specifically refer to the Property nor the Flood Control Structures.

C. Performance Bond. Crescent shall obtain and maintain a performance bond in the amount of Twenty Five Thousand and No/100 Dollars (\$25,000.00) ("O&M Bond") securing its obligations under this Agreement. Crescent's obligation to maintain the O&M Bond shall automatically terminate upon the City's receipt of the FEMA Notice. Upon such termination, the City agrees to promptly release the O&M Bond to Crescent. Not later than ninety (90) days prior to its expiration, the O&M Bond will need to be replaced with a bond of similar specifications. If the City draws from the O&M Bond pursuant to Section 2(H), Crescent shall take the steps necessary to maintain the O&M Bond at \$25,000.

D. Insurance. Crescent, its successors and assigns, shall obtain and maintain a general liability insurance policy with limits of at least \$1,000,000 per occurrence, with a least a \$5,000,000 excess insurance policy for bodily injury and property damage issued by a State of Arizona authorized insurance company. The policy term or any renewals thereof shall remain in effect for the term of this Agreement. Crescent shall maintain insurance which covers the Flood Control Structures against flood

damage and such other risks as may be included in the broadest form of extended coverage insurance as may, from time to time, be available in an amount sufficient to insure the fair replacement cost of the Flood Control Structures in the event of a major flood or other event causing total or substantial destruction of the Flood Control Structures. The City shall be named as an additional insured under the policy and proof of insurance shall be supplied to the City on an annual basis. The insurance policy shall provide that the City be given at least thirty (30) days advance written notice of any material changes, cancellation or non-renewal notification of any policy, and in the event of such material change, cancellation or non-renewal notification, Crescent shall immediately replace said policy with another policy to the satisfaction of the City with the receipt of a certificate of insurance for such policy by the City at least ten (10) days prior to the effective date of the material changes, cancellation or non-renewal of any policy. In the event that Crescent fails to maintain the requisite insurance, the City shall have the right to immediately secure a similar insurance policy in its name with the total cost of the premium and all monies that may become due during the term of this Agreement being charged to Crescent. Crescent's obligation to maintain the insurance required under this Section shall automatically terminate upon the City's receipt of the FEMA Notice.

E. Notwithstanding the termination of Crescent's obligations under this Agreement upon the City's receipt of the FEMA Notice, Crescent shall continue to comply with all local rules and regulations regarding drainage requirements and, in the event Crescent desires to remove or modify the Flood Control Structures upon the City's receipt of the FEMA Notice, Crescent shall, at its sole cost and expense, provide the City with written certification from an Arizona licensed engineer stating that the removal or modification of the Flood Control Structures will not cause flooding or drainage issues for the surrounding properties.

F. Indemnity.

(i) Crescent shall indemnify, defend, and hold harmless the City, its officials and employees from any third party claims, demands, liabilities, losses or causes of action of any nature whatsoever arising out of the use, construction or maintenance of the Flood Control Structures or out of Crescent's activities under this Agreement, including all other acts or omissions on the part of Crescent or any person acting for or on behalf of Crescent, and from against any orders, judgments or decrees which may be entered and from and against all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claims or in the investigation thereof.

(ii) The City shall indemnify, defend, and hold harmless Crescent, its officials and employees from any third party claims, demands, liabilities, losses or causes of action of any nature whatsoever arising out of the negligent acts or omissions of City personnel or its agents entering on to, in or around the Property and/or Flood Control Structures in connection with the City's inspection of the Flood Control Structures as provided for under this Agreement, including all other acts or omissions on the part of the City or any person acting for or on behalf of the City, and from against any orders, judgments or decrees which may be entered and from and against all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claims or in the investigation thereof. In no event shall the City have any obligations under this subsection for any claims, demands, liabilities, losses or causes of action arising out of the use, construction or maintenance of the Flood Control Structures.

G. Access Easement. Crescent grants to the City and its employees, consultants and contractors, a non-exclusive easement over, upon and under the portion of the Property containing the Flood Control Structures for any and all purposes necessary for the City to inspect, maintain and restore the Flood Control Structures during the term of this Agreement. The access easement granted herein shall terminate when the FEMA maps depicting the flow of water to the Property no longer show flows that require the Flood Control Structures.

H. In the event Crescent, its successors or assigns, fails to either inspect, maintain or restore the Flood Control Structure, or any part thereof, to a safe condition satisfactory to the City in

conformance with the terms hereof, the City may elect to either perform such duties with personnel from the City or contract third parties to do so, the reasonable and documented costs of which shall be (i) drawn from the O&M Bond; or (ii) if the O&M Bond is insufficient to pay for the costs of such inspection, maintenance or restoration, charged to Crescent, its successors or assigns. Failure of Crescent to pay for such costs within thirty (30) days after receipt of written notice from the City outlining such costs, subject to applicable cure periods as provided in this Agreement, shall be considered a breach of this Agreement. In the event of a breach of this Agreement by Crescent as stated in the prior sentence, Crescent, its successors or assigns, shall pay the City's reasonable outside attorneys' fees and costs of collection arising in any action to recover costs for restoration of the Flood Control Structures or any part thereof.

3. ASSIGNMENT. Except as herein specifically stated, the rights and obligations created herein run with ownership of the Property and/or portions thereof, and shall inure to the benefit of and be binding upon Crescent, the City and their respective successors and assigns. Upon transfer of the Property or a portion thereof by Crescent or subsequent owner, the new owner shall be deemed to have assumed the rights and responsibilities of Crescent hereunder for that portion of the Property that has been transferred and Crescent shall be released from this Agreement for the portion of the Property that has been transferred provided (i) Crescent or subsequent owner has given the City written notice of the assignment, which shall include the name, address and facsimile number, if available, of the new owner for notice purposes; and (ii) the new owner has agreed in writing to be subject to all of the applicable provisions of this Agreement.

4. GENERAL PROVISIONS.

A. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all Parties may be physically attached to a single document.

B. Incorporation of Exhibits and Recitals. All Exhibits referred to herein and the Recitals stated above are hereby incorporated by reference into this Agreement.

C. Effective Date. This Agreement shall become effective upon approval by the City of this Agreement during a public meeting and the full execution of the Agreement by the Parties.

D. Cooperation. The Parties agree to diligently and in good faith cooperate to process all applications as expeditiously as reasonably possible to take such other actions as are reasonably necessary to carry out the intent of this Agreement.

E. Representatives. Each Party shall designate a representative to act as a liaison between City, its various departments, and Crescent ("Representatives"). The Representatives shall be available at all reasonable times to assist with the Parties' performance under this Agreement. Either Party may change the Representative by giving notice to the other Party of the name, title, address, and telephone number of the replacement.

F. Notices. All notices, filings, consents, approvals and other communications provided for herein or given in connection herewith shall be in writing and delivered personally, by facsimile or sent by United States Mail in a postage prepaid envelope via certified mail, return receipt requested, addressed to the other to the address provided herein or as may be changed in writing:

“City”

City of Maricopa
39700 West Civic Center Plaza Maricopa, Arizona
85139
Attn: Maricopa City Manager
Telephone: (520) 568-9098
Facsimile: (520) 568-9120
Email: gregory.rose@maricopa-az.gov

Copy to:

Maricopa City Attorney
c/o Denis Fitzgibbons
Fitzgibbons Law Offices
1115 East Cottonwood Lane P.O. Box 11208
Casa Grande, AZ 85310-0148
Telephone: (520) 426-3824
Facsimile: (520) 426-9355
Email: denis@fitzgibbonslaw.com

“Crescent”

Crescent Bay Land Fund 1, LLC
7144 E. Stetson Drive, Suite 410
Scottsdale, AZ 85251
Attention: Gregg Wolin
Telephone: (480) 406-6000
Facsimile: (480) 406-6031
Email: wolin@crescentbayholdings.com

Copy to:

Greenberg Traurig, LLP
2375 E. Camelback Road, Suite 700
Phoenix, AZ 85016
Attention: David M. Paltzik
Telephone: (602) 445-8263
Facsimile: (602) 445-8609
Email: paltzikd@gtlaw.com

All such notices, demands or other communications will (i) if delivered personally or delivered through a same day delivery/courier service be deemed effective upon confirmed delivery or refusal to accept delivery by the addressee, (ii) if delivered by U.S. Mail in the manner described above be deemed effective upon the earlier of receipt or five (5) business days after deposit in a United States post office or with a United States postal officer, (iii) if delivered by a recognized national overnight delivery service be deemed effective one (1) business day after deposit with such service upon confirmed delivery or refusal to accept delivery by the addressee, and (iv) if delivered by facsimile be deemed effective upon confirmation of successful transmission by the sender’s facsimile machine (in each case regardless of whether such notice, demand or other communication is received by any person to whom a copy of such notice, demand or other communication is to be delivered pursuant to this Section).

G. Waiver. No delay in exercising any right or remedy by the Parties shall constitute a waiver thereof. Waiver of any of the terms of this Agreement shall not be valid unless in writing and signed by all Parties hereto. The failure of any Party to enforce the provisions of the Agreement or require performance of any of its provisions shall not be construed as a waiver of such provisions or affect the right of the Party to enforce all of the provisions of this Agreement. Waiver of any breach of this Agreement shall not be held to be a waiver of any other or subsequent breach thereof.

H. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona.

I. Choice of Forum. Any action brought to interpret, enforce or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Pinal (or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section.

J. Exercise of Authority. It is understood and agreed that Crescent shall not exercise any of the authority or sovereign powers of the City and shall not represent themselves as an agent(s) for the City. Nothing in this Agreement shall be construed to create any partnership, joint venture, or principal agency relationship between the Parties.

K. Recordation. The City shall record this Agreement in the official records of the Pinal County Recorder within ten (10) days after the Effective Date.

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

M. Severability of Provisions. Each term and provision of this Agreement shall be considered severable and if any term or provision of this Agreement be declared or be determined to be illegal or invalid, the validity of the remaining terms and provisions shall not be affected thereby, and said illegal or invalid term or provision shall not be deemed a part of this Agreement, notwithstanding any other provision of this Agreement to the contrary.

N. Time of the Essence. Time is of the essence to this Agreement and with respect to the performance required by each Party hereunder.

O. Further Assurances. The Parties hereto agree to do all such things and take all such actions, and to make, execute and deliver such other documents and instruments, as shall be reasonably requested to carry out the provisions, intent and purpose of this Agreement. If any approval is required of any Party in furtherance of the rights under this Agreement, such approval shall not be unreasonably delayed or withheld.

P. Amendments. No amendment shall be made to this Agreement except by written document executed by all the Parties. Within ten (10) days after the effective date of any amendment, the amendment shall be recorded with the Pinal County Recorder.

Q. Headings and Construction. The headings for the Paragraphs and sub-paragraphs of this Agreement are for convenience and reference purposes only and in no way define, limit or describe the scope or intent of said Paragraphs or sub-paragraphs nor in any way affect interpretation of this Agreement. When used herein, the terms “include” or “including” shall mean without limitation because of the enumeration. All grammatical usage herein shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the person or persons may require. The term “person” shall include an individual, corporation, partnership, trust, estate, or any other duly formed entity. If the last day of any time period stated herein should fall on a Saturday, Sunday, or legal holiday in the State of Arizona, then the duration of such time period shall be extended so that it shall end on the next succeeding

day which is not a Saturday, Sunday, or legal holiday in the State of Arizona. If a cross-reference within any provision cites a particular Article, Section, or Subsection number of this Agreement, it shall be a reference to the referred Article, Section, or Subsection and its subparts.

R. Attorneys' Fees. In the event it becomes necessary for a Party to this Agreement to bring an action at law or other proceedings to enforce any of the terms or provisions of this Agreement, the successful Party in any such action or proceeding may apply for attorney fees pursuant to A.R.S. § 12-341.01.

S. Default. Failure or unreasonable delay by any Party to perform or otherwise act in accordance with any term or provision hereof shall constitute a breach of this Agreement and, if the breach is not cured within thirty (30) days after written notice thereof from another Party (the "Cure Period"), shall constitute a default under this Agreement; provided, however, that if the failure is such that more than thirty (30) days would reasonably be required to perform such action or comply with any term or provision thereof, then the Party shall have such additional time as may be necessary to perform or comply so long as the Party commences performance or compliance within said thirty (30) day period and diligently proceeds to complete such performance or fulfill such obligation.

T. Good Standing; Authority. Each of the Parties represents and warrants to the other (i) that it is duly formed and validly existing; (ii) that it is an entity qualified to do business in Arizona with respect to Crescent, or a political subdivision of the state with respect to the City; and (iii) that the individuals executing this Agreement, on behalf of their respective Parties are authorized and empowered to bind the Party, and the Property with respect to Crescent.

U. Force Majeure. The time period for performance and/or performance of any Party and the duration of this Agreement shall be extended by any causes that are beyond the control of the Party required to perform, such as an act of God, civil or military disturbance, delays resulting from any act or omission of governmental authorities or utilities, labor strike, injunctions in connection with litigation, labor or material shortage, or acts of terrorism.

V. Entire Agreement. This constitutes the entire agreement between the Parties pertaining to its subject matter. All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written (including any term sheets, discussion outlines or similar documents), are hereby superseded and merged into this Agreement.

W. Dispute Resolution. In the event a dispute arises under this Agreement, the initiating Party shall send written notice to the other Party of the commencement of the ninety (90) day moratorium on litigation the Parties have agreed shall be instituted. During the ninety (90) day period, the Parties agree to attempt to settle the dispute through non-binding mediation before commencement of litigation. The mediation shall be held under the Commercial Mediation Rules of the American Arbitration Association ("AAA") but shall not be under the administration of the AAA unless agreed to by the Parties in writing, in which case all administrative fees shall be divided evenly between the City and Crescent. The matter in dispute shall be submitted to a mediator mutually selected by the City and Crescent. If the Parties cannot agree upon the selection of a mediator within ten (10) days, then within five (5) days thereafter, the City and Crescent shall request that the Presiding Judge of the Superior Court in and for the County of Pinal, State of Arizona, appoint the mediator. The mediator selected shall have at least ten (10) years' experience in mediating or arbitrating disputes relating to commercial property. The cost of any such mediation shall be divided equally between the City and Crescent. The results of the mediation shall be nonbinding with any Party free to initiate litigation upon the conclusion of the latter of the mediation or of the ninety (90) day moratorium on litigation. The mediation shall be completed in one day (or less) and shall be confidential, private, and otherwise governed by the provisions of A.R.S. § 12-2238, to the extent allowed by the Arizona Open Meetings Law, § 38-431 et. seq.

[Signature pages follow]

LIST OF EXHIBITS

EXHIBIT A	LEGAL DESCRIPTION
EXHIBIT B	LIMITS OF FLOOD CONTROL STRUCTURES
EXHIBIT C	APPROVALS AND PERMITS REQUIRED
EXHIBIT D	O&M PLAN

EXHIBIT A
Legal Description of the Property

EXHIBIT B
Limits of Flood Control Structures

EXHIBIT C
Approvals and Permits Required

Item	Parties
Development Agreement (for guarantee of maintenance)	City and Crescent
Inter-Governmental Agreement	City of Maricopa, City Council meeting Inter
Governmental Agreement	Pinal County, County Board of Supervisors
Crescent CLOMR	Pinal County & FEMA
Approval of construction documents	City of Maricopa and Pinal County
Floodplain Use Permit	Pinal County
Dust Permit	Pinal County
Grading and Drainage and Utility permits (Construction of flood control solution work would commence)	City of Maricopa
LOMR *	Pinal County and FEMA
Building Permits**	City of Maricopa

*If Crescent was interested in an at risk building permit Pinal County and the City have agreed to review the LOMR paperwork after the construction of the Flood Control Structures is complete, including the HEC-RAS model, and allowing an at risk building permit if deemed appropriate. Crescent would have to apply for a building permit from both Pinal County and the City of Maricopa. The fees for co-permitting the project would be applicable. Since the proposed building structure would technically still be in a floodplain, the applicant would also have to apply for an additional Flood Use Permit for the structure. The certificate of occupancy would be held until the issuance of the LOMR or proof of flood insurance.

**The applicant for any building structure would have to work through a parallel process to obtain any and all necessary approvals and permits such as site plan approval, grading and drainage, utilities, paving, and a building permit. This process can be started immediately, and coordinated with the Crescent engineering plans.

EXHIBIT D
O&M Plan