

DEVELOPMENT AGREEMENT FOR RANCHO EL DORADO SOUTH
(East Side)

This Development Agreement ("Agreement") is entered into this 26th day of March, 2003, between TOUSA HOMES, INC., a Florida corporation, doing business as ENGLE HOMES ("Developer") and PINAL COUNTY, a political subdivision of the State of Arizona ("County").

RECITALS

A. Developer, which is a home builder, is the owner or is acquiring certain real property located in Pinal County, Arizona, consisting of more than 640 acres, legally described in the attached Exhibit "A" (the "Property").

B. Developer and County desire to facilitate the development of the Property as part of County's growth and development. In furtherance of this aim, Developer and County have cooperated in the preparation of this Agreement.

C. Developer and County are entering into this Agreement pursuant to A.R.S. § 11-1101, et seq., in order to facilitate the development of the Property through the establishment of, and County's assurances to Developer and Developer's assurances to County concerning, the following: (i) the permitted uses for the Property; (ii) the density and intensity of such uses; (iii) the conditions and requirements for the design, construction and installation of the infrastructure; (iv) the phasing over time of construction and development of the Property; and (v) other matters related to the development of the Property.

D. The Board of Supervisors of Pinal County, Arizona ("Board") approved on the following dates the following matters:

Rezoning of the Property by Zone Change Resolution under Case No. PZ-056-98 on December 16, 1998, Recording Fee No. 1999-000201 and

Planned Area Development Overlay District ("PAD") by Planned Area Development Overlay District Resolution ("PAD Resolution"), under Case No. PZ-PD-056-98 on December 16, 1998, Recording Fee No. 1999-000202 ("PAD Resolution");

The Planning Director of County has approved a Supplemental Planning Document dated March 21, 2002.

Collectively these documents, including the Narrative Report for the planned area development, as approved by the PAD Resolution, are the Development Plan for the Property ("Development Plan"). The Development Plan is marked Exhibit "B" and are attached to the original executed copy of this Agreement on file with County.

E. It is understood and agreed that only the property set forth in attached Exhibit "A" in included in this Agreement.

F. ~~Developer and County acknowledge that the Developer's purchase and development of the Property is a major undertaking for Developer and that the marketing,~~ economic and investment conditions and magnitude of the development require the development to be performed in phases over a period of years. Therefore, Developer requires certain assurances and protection of rights in respect of the Property in order that Developer will be allowed to complete the development of the Property in accordance with the Development Plan over the period of years permitted by this Agreement before Developer will expend substantial efforts and costs in purchasing, planning and developing such Property in accordance with the Development Plan. Likewise, County requires assurances from Developer that development of the Property will comply with the Development Plan and the terms and conditions of this Agreement applicable to the Property.

G. County believes that the development of the Property pursuant to the Development Plan and this Agreement is in the best interest of County and the health, safety and welfare of its residents and will result in significant benefits to County by, among other things, (i) encouraging investment in and commitment to comprehensive planning which will result in the more efficient utilization of County and other public resources; (ii) providing for the acquisition, design, construction and installation of infrastructure facilities and services to support the orderly planned development of the Property, (iii) increasing tax and other revenue to the County as a result of the improvements constructed on the Property; (iv) the possible additional employment through the development of the Property; and (v) creating housing and other uses as part of the planned development for residents of the County.

H. The public infrastructure facilities and services described on Exhibit "C" attached hereto will be provided by Developer in order to serve the planned development of the Property, but will also facilitate and support the ultimate development of the larger land area that includes the Property (the "Regional Infrastructure"). County acknowledges that portions of the Regional Infrastructure will be provided as part of the early phases of development of the Property, prior to the time when such public infrastructure facilities and services would otherwise be required to serve completed phases of the development within the Property and, therefore, prior to the time Developer might otherwise be required to provide or contribute to the cost of same and prior to the time the expense of such public infrastructure facilities and services otherwise would be justified by the phasing of development of the Property. Developer is willing to provide the Regional Infrastructure (as specified on Exhibit "C" attached hereto) earlier than otherwise required for its private development of the Property and to have such Regional Infrastructure utilized to facilitate and support development of the larger land area that includes the Property, only with County's assurances that it will be able to complete development of the Property as provided for in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions, it is agreed as follows:

1. **INCORPORATION OF DOCUMENTS AND RECITALS.** All documents and exhibits referred to in this Agreement and the Recitals stated above are hereby incorporated by this reference into this Agreement.

2. **PLAN AFFIRMATION.** As of the execution date of this Agreement, County, by and through its Board affirms the approval of the Development Plan for the Property.

3. **TERM.** The Board grants to Developer, its successors and assigns, the right to implement in phases the development of the Property for the uses, intensities and densities set forth in the Development Plan under the terms and conditions of the Development Plan and this Agreement for an initial period of ten years, unless terminated sooner as set forth below. At Developer's request, but no earlier than at the end of the seventh year of the initial period, the Board may extend the initial term for one additional term of ten years depending on relevant circumstances as set forth in A.R.S. § 11-1203B. The compilation of the two terms shall not exceed a total of twenty years. This Agreement and the Development Plan shall become effective and the term shall commence upon the execution of this Agreement by the parties hereto and the execution of the acceptance of this Agreement by any other parties holding fee title to any portion of the Property.

4. **RIGHTS RUN WITH THE LAND.** Developer's rights established under this Agreement and the Development Plan are not personal rights but attach to and run with the Property, pursuant to the provisions set forth below in the paragraph entitled "Termination." Upon the effective date of this Agreement, Developer and its successors are entitled to exercise the rights granted pursuant to this Agreement. County agrees that, for the term of this Agreement, Developer and its successors shall have a vested right to develop the Property in accordance with this Agreement and the Development Plan. This Agreement shall be interpreted and construed so as to preserve the vested rights provided for in this Agreement respecting the Property and already existing under applicable law. The assurances provided to Developer in this Agreement are bargained for and in consideration of the undertakings of Developer and its respective successors set forth herein and contemplated by the Development Plan and are intended to be relied upon by Developer in undertaking the obligations of Developer under this Agreement and the Development Plan. Upon Developer obtaining in writing from its successor for delivery to County, such successor's acknowledgment and acceptance of this Agreement and agreement to comply with the obligations contained in this Agreement, Developer shall only be liable for performance of Developer's obligations under this Agreement during the period Developer owns the Property.

5. **TERMINATION.**

a. **End of Applicable Period.** This Agreement terminates at the end of the applicable period established above. However, if a building permit has been issued before the termination date, this Agreement and the right to develop

under this Agreement and all protected development rights established therein remain valid until the building permit expires, but in no event for longer than one year. Upon expiration, only principal structures for which footings or foundations have been completed may be finished under the protected development right.

b. **Upon Sale to the Public.** It is the intention of the parties that, although recorded, this Agreement shall not create conditions or exceptions to title or covenants running with any individual lot into which the Property is subdivided. Any title insurer can rely on this section when issuing any commitment to insure title to any individual lot or when issuing a title insurance policy for any individual lot. The burdens of this Agreement on an individual lot owner shall automatically terminate as to the individual lot (and not in bulk), without the necessity of any notice, agreement or recording by or between the parties, upon conveyance of the lot to a home buyer by a recorded deed. For this section, "lot" shall be any lot that is contained in a recorded subdivision plat that has been approved by the County upon which a home has been constructed.

6. **COMPLIANCE AND MODIFICATIONS.** The development of the Property shall be in accordance with the Development Plan and this Agreement unless otherwise amended pursuant to applicable law. There may be occasions when deviations from the Development Plan, including, but not limited to density, may be appropriate. Any deviation or modification, shall comply with Section 3308 of the Pinal County Zoning Ordinance. Any proposed change in the goals of the Development Plan is decreed a major change and must comply with the procedures authorized in Section 3308 of the Pinal County Zoning Ordinance.

7. **DENSITY.** Developer shall have the right, consistent with and subject to the conditions of the Development Plan, to transfer density up to 10%, as outlined in Section 3308 of the Pinal County Zoning Ordinance, from one residential parcel to another within the Property, as long as the maximum number of dwelling units provided for in the Development Plan within the Property does not increase.

8. **IMPLEMENTATION AND COOPERATION.** Each Developer is authorized to implement the types and uses, variances, densities and intensities, location of uses, minimum size of proposed lots and residences and other standards of design as now set forth in the Development Plan for the Property. County agrees to cooperate by processing in a timely manner applications for approval and issuance of plans, specifications or plats which are consistent with the Development Plan, subject to Developer having first complied with the ordinances and regulations applicable thereto and Developer paying the then current applicable fees.

9. **PHASES.** Developer understands that County is not mandatorily required to extend the initial term of this Agreement. However, it is the Developer's intent to develop the Property in four (4) phases. Each phase is planned for a construction time line comprised of three years. The time frames and physical boundaries for each of the Phases are approximate and contingent upon market conditions and matters beyond the control of Developer. One or more of the phases or a portion of those phases may be undertaken contemporaneously. The physical boundaries of the phases (not the exterior physical boundaries of the Property owned by

Developer as described in Exhibit "A") and development schedules for each Phase may be adjusted by such Developer in its sole discretion, except as otherwise provided by law.

10. **FEES.** Except as specifically provided in this Development Agreement, no ~~surcharge or impact fees or exactions or impositions of any kind whatsoever for water, sewer, utilities, streets or other transportation systems, parks, preserves, storm sewers, flood control, public safety or other public services or any other infrastructure cost or expense shall be chargeable to Developer (or any successor or assign) by the County in any phase of the construction of the Development Plan. However, Developer will be required to pay the then current applicable filing fees, plan review, permit fees and building fees.~~

11. **APPLICABLE LAW.** The ordinances, rules, regulations, permit requirements, or other requirements of the County applicable to the Property and the development of the Property shall be those that are now existing and in force for the County as of the date of the recording of this Agreement. County shall not contravene any protected development right established by the Development Plan and this Agreement by any legislative or administrative land use regulation or pursuant to an initiated measure that would change, alter, impair, prevent, diminish, delay or otherwise impact the development or use of the property as set forth in the Development Plan except as follows:

- a. as specifically agreed to in writing by Developer;
- b. on findings, by ordinance or resolution and after notice and a public hearing, that natural or manmade hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety and welfare if the project were to proceed as approved in the Development Plan and this Agreement;
- c. On the enactment of a state or federal law that precludes development as approved in the Development Plan and this Agreement and after notice and a hearing and a finding by the Board that the change in state or federal law has a fundamental effect on the Development Plan and this Agreement;
- d. for a subsequently adopted overlay zoning classification that imposes additional requirements and that does not affect the allowable type or density of use;
- e. ordinances or regulations that are general in nature and that are applicable to all property subject to land use regulation by County, including but not limited to future changes to the Pinal County Building Code Ordinance; or
- f. adoption and enforcement of zoning ordinance provisions governing nonconforming property or uses.

Nothing shall be interpreted as relieving Developer of any obligations which it may have with respect to laws and regulations enacted by the Federal government or the State of Arizona which apply to the Property.

12. **ANTI-MORATORIUM.** The parties hereby acknowledge and agree that, for the term of this Agreement, no moratorium, or future ordinance, resolution, or other land use rule or

regulation imposing a limitation on the conditioning, rate, timing or sequencing of the development of property within the County and affecting the Property or any portion thereof shall apply to or govern the development of the Property during the term hereof whether affecting parcel or subdivision maps, building permits, occupancy permits or other entitlements to use issued or granted by County, except as otherwise provided in Paragraph 11 above.

13. **INFRASTRUCTURE.** Developer will submit, for review and approval, the infrastructure plans as necessary and required for the Development Plan. The infrastructure plans shall include, but not be limited to, grading, drainage, sewer, water and roadway improvements.

14. **INFRASTRUCTURE DESIGN CONCEPTS.** The now current and existing Pinal County design standards, requirements and specifications and any exceptions or variances specifically described in the Development Plan or such exceptions and variances as may be granted by the County or in this Agreement shall be the standard used for infrastructure requirements and design criteria for the Property. These design standards and specifications shall include, but not be limited to, specifications for infrastructure improvements currently part of the Pinal County Design Standards and Specifications. County and Developer acknowledge that amendments to the Infrastructure Plans and/or the infrastructure design standards and specifications for the Property may be necessary from time to time. If the County and Developer jointly determine that amendments are necessary to the Infrastructure Plans or the infrastructure design standards and specifications for the Property, Developer and County, to the extent permitted by applicable law, shall effectuate such amendment(s).

15. **INFRASTRUCTURE ASSURANCES.** Prior to issuing particular building permit(s) or permits for construction of infrastructures, County may require Developer to provide assurances to County where appropriate and necessary to assure the installation of infrastructure and improvements directly related to such building permit(s) or permits for construction of infrastructures. All assurances provided by Developer shall relate to that construction which Developer undertakes. Developer may elect one of the following methods of assurance:

- a. A corporate surety bond executed by a company acceptable to County and licensed to do business in the State of Arizona;
- b. Cash or certified bank funds to be held by County in an escrow account;
- c. An irrevocable letter of credit from a recognized financial institution acceptable to County, authorized and licensed to do business in the State of Arizona; or
- d. Such other form of security as is generally otherwise allowed in the County or that the County may otherwise find acceptable.

16. **STREETS.** Developer shall construct the exterior streets in the Property in phases as described herein and the interior streets and roadways, in phases according to Development Plan, all in compliance with Pinal County Subdivision Regulations and Requirements and Minimum Standards for Subdivision Street Paving ("Subdivision Regulations") in existence as of the effective date of this Agreement. Determination by Developer of whether interior subdivision streets will be private or gated or whether the streets

will be dedicated to the public will be made no later than at the preliminary subdivision plat stage for each platted subdivision. Naming of the streets and addressing of the properties will be pursuant to Pinal County Rural Addressing Ordinance #72993. At the preliminary plat stage, County may require some realignment of internal streets for the purpose of providing access to existing arterial roads. ~~The specific alignment shall be by mutual agreement between Developer and County.~~ Approval of a plat containing dedication of streets and roadways to the public or approval of a map of dedication shall not constitute or effect acceptance by the County of said streets and roadways in the County's maintenance system. Upon Developer's notification to County of the completion of a defined phase of road construction as shown on a map of dedication or a recorded subdivision plat, the County Engineer for Pinal County (the "County Engineer") shall reasonably determine whether or not repairs are needed. Upon the County Engineer's determination that repairs are needed, Developer shall repair said streets and roads as shown on the map of dedication or the recorded subdivision plat to the standards and specifications of the Subdivision Regulations. Upon the County Engineer's acknowledgment that the streets and roadways as shown on the map of dedication or the recorded subdivision plat are completed to the standards and specifications of the Subdivision Regulations and upon receipt of Developer's payment of the County's resealing fee in the amount of \$2.00 per square yard of paving area, the dedicated streets and roadways shall be accepted into the County maintenance system in accordance with state and local law.

17. SMITH-ENKE ROAD CONSTRUCTION PHASING BY DEVELOPER.

The planned street section for the Smith-Enke Improvements is as shown on Exhibit "D" attached hereto. This street section is as approved in the Planned Area Development (PAD) and consists of 28 feet, back of curb to back of curb (or two lanes at 13.5 feet wide) with a five (5) feet wide meandering sidewalk.

Developer will have one-half (1/2) of the responsibility for constructing the south half of that portion of Smith-Enke Road consisting of an all-weather crossing at the Santa Rosa Wash. Such improvements are referred to as Phase B of the Smith-Enke Improvements and are generally depicted as such on Exhibit "C" attached hereto. Developer will be responsible for constructing the south half of Smith-Enke Road from the east side of the Santa Rosa Wash to the east side of Phase 1 of the Property depicted on Exhibit "C" attached hereto (at approximately the mid-section line of Section 23, Township 4 South, Range 3 East of the Gila and Salt River Base and Meridian). Such improvements are referred to as Phase C of the Smith-Enke Improvements and are generally depicted as such on Exhibit "C" attached hereto. Developer will also be responsible constructing the south half of Smith-Enke Road from the east side of said Phase 1 to the east side of Phase 3 of the Property (which is the eastern boundary of the Property and is approximately 500' west of the intersection of Smith-Enke Road and Porter Road). Such improvements are referred to as Phase D of the Smith-Enke Improvements and are generally depicted as such on Exhibit "C" attached hereto. The "improvement phasing", as applicable to Developer's improvements, may be modified by Developer with the written consent of the County Manager.

The above-described half-street improvements proposed for Smith-Enke Road (the "Smith-Enke Improvements") will be funded by a \$950.00 per unit charge against all

future housing units constructed within the Property. Such fees for the Property will be collected and held in an escrow to be administered by Developer. The \$950.00 per unit charge will be paid into escrow at the time the homebuilder obtains a building permit for each house within the Property. ~~The estimated amount of the fees to be assessed with respect to Phases 1 through 4 in the Property is shown in more detail on the following Table.~~

Paved road access for Smith-Enke Road, from State Route 347 to the Property entrance, (including an all weather access across the Santa Rosa Wash), constructed to County standards, shall be installed prior to the issuance of any certificate of occupancy for any home within the Property, except for model homes. Developer shall construct Phase B and Phase C of the Smith-Enke Improvements to County standards when traffic needs dictate, according to recommendations of a licensed traffic engineer. Phase D of the Smith-Enke Improvements will be constructed during the development of Phase 3 of the Property and will be completed prior to the issuance of any certificate of occupancy for any home within Phase 3 of the Property, except for model homes. Regardless of the source of funding, the Developer shall cause the installation of the Smith-Enke Improvements according to the schedule set forth above.

The following table illustrates the projected number of lots by phase, revenues (based on \$950.00 per lot), and road improvement expenditures.

Road Fee Collection Smith-Enke Road

Parcel Phase	# of Lots	Road Fee @ \$950/Lot	Phase	Estimated Construction Cost
1	591	\$ 561,450		
2	665	\$ 631,750	B	\$ 550,000
3	439	\$ 417,050	C	\$ 614,900
4	388	\$ 368,600	D	\$ 496,650
TOTAL	2,083	\$1,978,850		\$1,661,550

- (B) 50% Santa Rosa Wash Crossing \$ 550,000*
- (C) 2,600 LF @ \$215/LF \$ 614,900*
- (D) 2,100 LF @ \$215/LF \$ 496,650*

*Estimated construction costs include a 10% factor for inflation/contingency

Upon completion of the Smith-Enke Improvements and the payment for same, any remaining funds in the Escrow Account for the Property will be used to pay for, or reimburse for, the cost of the Honeycutt Improvements referred to below.

18. **HONEYCUTT ROAD CONSTRUCTION PHASING BY DEVELOPER.**

The planned street section for Honeycutt Road is as shown on Exhibit "E" attached hereto. A street section for Honeycutt Road was not proposed in the Planned Area Development (PAD); however, this street section shall consist of 28 feet, back of curb to back of curb (or two lanes at 13.5 feet wide) with a five (5) foot wide meandering sidewalk.

Developer will have one-half (1/2) the responsibility of constructing the north half of that portion of Honeycutt Road consisting of a wet crossing at the Santa Rosa Wash. Developer will be responsible for constructing the north half of Honeycutt Road from the east side of the Santa Rosa Wash to the east side of the road within Phase 2 of the Property which intersects Honeycutt Road as depicted on Exhibit "C" attached hereto (at approximately the mid-section line of Section 23, Township 4 South, Range 3 East of the Gila and Salt River Base and Meridian). Such improvements are referred to as Phase C of the Honeycutt Improvements and are generally depicted as such on Exhibit "C" attached hereto. Developer will also be responsible for constructing the north half of Honeycutt Road from the east side of said road to the east side of Phase 2 of the Property (which is the eastern boundary of the Property). Such improvements are referred to as Phase D of the Honeycutt Improvements and are generally depicted as such on Exhibit "C" attached hereto. The "improvement phasing", as applicable to Developer's improvements, may be modified by Developer with the written consent of the County Manager.

Paved road access for Honeycutt Road, from State Route 347 to the Property's south entrance, (including the wet crossing across the Santa Rosa Wash), constructed to County standards, shall be installed prior to the issuance of any certificate of occupancy for any home within Phase 2 of the Property, except for model homes. That portion of Phase D of the Honeycutt Improvements consisting of two (2) lanes (28 foot total width) of pavement, constructed to County standards, will be constructed by Developer prior to the issuance of any certificate of occupancy for Phase 4 of the Property, except for model homes.

19. **ADMINISTRATIVE DISPUTE RESOLUTION PROCESS.** Any dispute between Developer and County arising from the failure of either party to comply with material terms and conditions of the Development Plan after an impasse has been reached, shall be resolved by a review hearing by the Board. Either party requesting a review shall file a written notice to the Board by delivering a copy of such notice to the clerk of the Board along with a copy to the other party. The request for review of dispute shall identify the issues involved, set forth the nature of the alleged breach of the Development Plan rights and identify the relief requested. The other party, within ten (10) days after receipt of the notice and request for review, shall file a response thereto with the Board and serve a copy thereof on the requesting party as provided in the paragraph entitled "Notices." Review by the Board shall be scheduled on the Board's agenda no later than twenty-one (21) calendar days after receipt of written notice of dispute; provided, however, the Board may schedule an emergency agenda if the circumstances warrant and both parties consent in writing. The notice of the review date shall be mailed or delivered by first class mail to the other party or delivered by personal delivery not less than five (5) business days prior to the review hearing. The decision of the Board shall contain findings of fact based upon the record of the proceedings and shall be mailed by first class mail or delivered

by personal delivery by the Clerk of the Board to all parties within ten (10) calendar days of the Board's decision. The Board's decision shall be subject to appeal and judicial review in the Superior Court of the State of Arizona in and for Pinal County pursuant to A.R.S. § 12-901, et seq., as amended. ~~The Board and any judicial tribunal shall take into consideration, the purposes and goals of the Development Plan, the cost and expense incurred by Developer, the need and timeliness of the specific requested action and the fundamental purposes of A.R.S. § 11-1201, et seq.~~ This dispute process is limited to disputes relating to any party's material failure to comply with the terms and conditions of this Agreement and the Development Plan and as they may be amended from time to time.

20. **NOTICES.** All notices, filings, consents, approvals and other communications provided for herein or given in connection herewith shall be in writing and delivered personally or sent by United States Mail in a postage prepaid envelope addressed to the other to the address provided herein or as may changed in writing:

County: Pinal County Manager
31 N. Pinal Street, Building A
P.O. Box 2973, Florence, AZ 85232

copy to: Pinal County Planning and Development Services
Attention: Planning Director
31 N. Pinal Street, Building F
P.O. Box 2973, Florence, AZ 85232

Developer: TOUSA HOMES, INC.
Attention: Mark Upton
3150 South 48th Street, Suite 100
Phoenix, AZ 85040

Copy to: Ronald E. Lowe, Esq.
Brown & Bain, P.A.
2901 North Central Avenue, Suite 2000
Phoenix, AZ 85012

21. **ESTOPPEL CERTIFICATE.** Any party may request of another party by written instrument, and the requested party shall, within twenty-one (21) calendar days, respond and certify by a written instrument to the requesting party, that (a) the Development Plan is unmodified and in full force and effect, or if there have been modifications, that the Development Plan is in full force and effect as modified, stating the nature and date of such modification; (b) the existence of any default under the Development Plan and the scope and nature of the default; (c) the existence of any counterclaims which the requested party has against the other party; and (d) any other matters that may reasonably be requested in connection with the development of the Property or any material aspect of the Development Plan. In the event Developer has not received an estoppel certificate within twenty-one (21) days from the date of the request, then in such event, Developer shall be entitled to prepare an estoppel certificate and deliver the certificate to County and such estoppel certificate shall be binding upon County.

22. **WAIVER.** No delay in exercising any right or remedy by either County or Developer shall constitute a waiver thereof. Waiver of any of the terms of this Agreement or the Development Plan shall not be valid unless in writing and signed by all parties hereto. The failure of any part to enforce the provisions of the Agreement or the Development Plan or require performance of any of the 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 and the Development Plan. Waiver of any breach of this Agreement or the Development Plan shall not be held to be a waiver of any other or subsequent breach thereof.

23. **BINDING EFFECT.** This Agreement and the Development Plan shall be binding upon County and Developer and their respective successors and assigns.

24. **CHOICE OF FORUM/VENUE.** Notwithstanding A.R.S. § 12-408, any suit or action brought under this Agreement shall be commenced and remain in the Superior Court of the State of Arizona in and for the County of Pinal, Florence, Arizona, but only after exhausting all possible administrative remedies, and may be removed from there only upon the mutual agreement of County and Developer. The parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county.

25. **EXERCISE OF AUTHORITY.** It is understood and agreed that Developer shall not in any way exercise any portion of the authority or sovereign powers of County and shall not make or contract or commit or in any way represent itself as an agent for County. Nor shall anything in this Agreement be construed to create a principal-agency relationship between the parties.

26. **RECORDATION.** This Agreement and attached exhibits shall be filed for recording with the Pinal County Recorder, Pinal County, Arizona, not later than ten (10) days after the execution date of this Agreement by all parties hereto and execution of the acceptance of this Agreement by the other property owners.

27. **DISCLAIMER.** Developer by execution of this Agreement expressly waives objections to the reasonableness or legality of any of its provisions or the legal right or authority of Pinal County to impose the same. County enters into this Agreement and has approved the Development Plan upon the condition that no elected officer, employee or agent of the County shall be charged personally or held contractually liable by Developer under any term or provision of this Agreement or because of any breach thereof or the execution or purported execution except as may be expressly agreed to in writing by County, except for any such person's failure to act in good faith or in a reasonable manner.

28. **CONFLICT OF INTEREST.** This Agreement is subject to the provisions of A.R.S. § 38-511, but the parties do not believe that any such reasons for cancellation of this Agreement pursuant to said statute now exist.

29. **SEVERABILITY.** The parts, terms and provisions of this Agreement shall be deemed severable and should any part, term or provision of this Agreement be declared or be determined by a Court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby, and said illegal or invalid part, term or provision shall

not be deemed a part of this Agreement, notwithstanding any other provision of this Agreement to the contrary.

30. **TIME OF THE ESSENCE.** Time is of the essence in implementing the terms of this Agreement.

31. **ATTORNEYS FEES.** In the event it becomes necessary for a party to this Agreement to employ legal counsel or to bring an action at law or other proceedings to enforce any of the terms, covenants or conditions of this Agreement, the successful party in any such action or proceeding may apply for attorneys fees pursuant to A.R.S. § 12-341.01.

32. **HEADINGS.** The headings for the paragraphs/provisions 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/provisions nor in any way affect this Agreement.

33. **AMENDMENTS.** No amendments are to be made to this agreement except by written document executed by County and Developer. Within ten (10) days after the execution of the amendment by all parties hereto, the amendment shall be filed for recording with the Pinal County Recorder, Pinal County, Arizona.

34. **ENTIRE AGREEMENT.** This Agreement, including all documents and exhibits incorporated herein by reference, supersedes any and all other prior or contemporaneous agreements, understandings, inducements and conditions, expressed or implied, either oral or written, except as herein contained and no statement, promise or inducement made by either party or the agent of either party that is not contained in this written Agreement, with respect to the subject matter hereof shall survive.

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

DEVELOPER:

COUNTY:

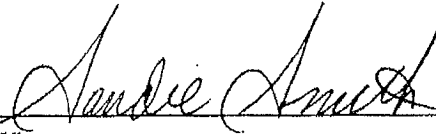
TOUSA HOMES, INC.,
a Florida corporation
doing business as ENGLE HOMES

PINAL COUNTY, a political
subdivision of the State of Arizona



By: MATTHEW LIPTON
Its: EX V.P.

Dated: _____



By: _____
Its: Chairman, Board of Supervisors

Dated: 3/26/03

Attest: Sheri Cluff

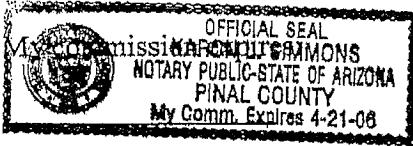
Clerk/Deputy Clerk of the Board

Dated: 3/26/03

STATE OF ARIZONA)
) ss.
County of Maricopa)

~~The foregoing Development Agreement between TOUSA HOMES, INC., a Florida corporation, and Pinal County was acknowledged before me this 26th day of March, 2003, by Sandis Smith and Shirley Cluff, Chairman and Clerk/Deputy Clerk, respectively of the Pinal County Board of Supervisors, for Pinal County, a political subdivision of the State of Arizona, and being authorized to do so, executed the foregoing instrument on behalf of Pinal County for the purposes stated therein.~~

Aaron L. Simons
Notary Public

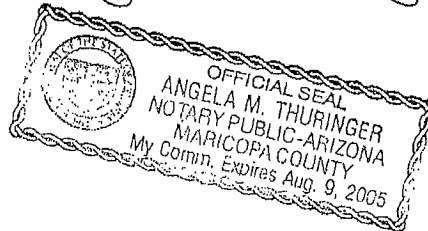


STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing Development Agreement between TOUSA HOMES, INC., a Florida corporation, and Pinal County was acknowledged before me this 1st day of March, 2003, by Mark Upton, the Executive Vice President of TOUSA HOMES, INC., and being authorized to do so, executed the foregoing instrument on behalf of said entity for the purposes stated therein.

Angela M. Thuringer
Notary Public

My commission expires:
8/9/05



ACCEPTANCE OF AGREEMENT AND CONSENT TO AGREEMENT

RUNNING WITH THE LAND

Rio Verde/Munich 640, L.L.C., an Arizona limited liability company, as owner of fee title to a portion of the Property, does hereby consent to the execution of the foregoing Development Agreement by TOUSA HOMES, INC., and to said Agreement immediately attaching to and running with the Property.

Rio Verde/Munich 640, L.L.C.,
an Arizona limited liability company

By: El Dorado Holdings, Inc.
Its: Managing Agent

By: *K.M. Ingram*
K.M. Ingram
Its: President

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing Acceptance and Consent was acknowledged before me this 12th day of March, 2003, by K.M. Ingram, as President of El Dorado Holdings, Inc., Administrative Agent for Rio Verde/Munich 640, L.L.C., and being authorized to do so, executed the foregoing instrument on behalf of said entities for the purposes stated therein.



Notary Public State of Arizona
Maricopa County
Robyn Broyles
Expires September 30, 2004

Robyn Broyles
Notary Public

My commission expires:

September 30, 2004

EXHIBIT "A"

PARCEL NO. 1:

The Northwest quarter of Section 23, Township 4 South, Range 3 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona;

EXCEPT that portion of said Northwest quarter of Section 23, described as follows:

COMMENCING at the center of said Section 23;

thence South 87 degrees 34 minutes 42 seconds West, along the South line of said Northwest quarter, a distance of 722.63 feet to the TRUE POINT OF BEGINNING;

thence continuing South 87 degrees 34 minutes 42 seconds West, along said South line, a distance of 468.00 feet;

thence North 02 degrees 06 minutes 06 seconds West, a distance of 466.70 feet;

thence North 87 degrees 53 minutes 54 seconds East, a distance of 468.00 feet;

thence South 02 degrees 06 minutes 06 seconds East, a distance of 464.08 feet to the TRUE POINT OF BEGINNING.

PARCEL NO. 2:

The Southwest quarter of Section 23, Township 4 South, Range 3 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona.

PARCEL NO. 3:

The Northeast quarter of the Section 23, Township 4 South, Range 3 East, of the Gila and Salt River Base and Meridian, Pinal County, Arizona;

EXCEPT the North 250 feet of the East 500 feet thereof.

PARCEL NO. 4:

The South half of the Southeast quarter of Section 23, Township 4 South, Range 3 East, of the Gila and Salt River Base and Meridian, Pinal County, Arizona;

EXCEPTING all uranium, thorium or other materials which are or may be determined to be peculiarly essential to the production of fissionable materials, as reserved in the Patent recorded as Docket 42, Page 24;

EXCEPT the following described parcel;

BEGINNING at the Southeast corner of said Section 23, thence West, along the South line of Section 23, a distance of 975 feet;

thence North 33 feet to the TRUE POINT OF BEGINNING;

thence West, parallel to South line of Section 23, a distance of 100 feet;

thence North 100 feet;

thence East 100 feet;

thence South 100 feet to the TRUE POINT OF BEGINNING.

PARCEL NO. 5:

The North half of the Southeast quarter, Section 23, Township 4 South, Range 3 East, of the Gila and Salt River Base and Meridian, Pinal County, Arizona;

EXCEPTING all uranium, thorium or other materials which are or may be determined to be peculiarly essential to the production of fissionable materials, as reserved in the Patent recorded as Docket 42, Page 24.

EXHIBIT "B"

~~For recording purposes, the following listed documents were detached from this Agreement.~~
These documents are, however, on file with Pinal County Planning & Development Services at 31 North Pinal Street, Building F, Florence, Arizona.

- A. Pinal County Board of Supervisors Resolution, Case No. PZ-056-98, approved on December 16, 1998, Recording Fee No. 1999-000201, in the Pinal County, Recorder's Office, Pinal County, Arizona;
- B. Pinal County Board of Supervisors Resolution, Case No. PZ-PD-056-98, approved on December 16, 1998, Recording Fee No. 1999-000202, in the Pinal County Recorder's Office, Pinal County, Arizona;
- C. Planned Area Development Narrative Report; and
- D. Supplemental Planning Document dated March 21, 2002.

EXHIBIT "C"

Page 1 of 2

Development and Improvement Phasing Exhibit

Developer's Improvements

South half of Smith-Enke Road from the eastern boundary of the East Property to the western boundary of the East Property

South half of Honeycutt Road from the eastern boundary of the East Property to the western boundary of the East Property

Exhibit "C"

Page 2 of 2

Rancho El Dorado South
East Side

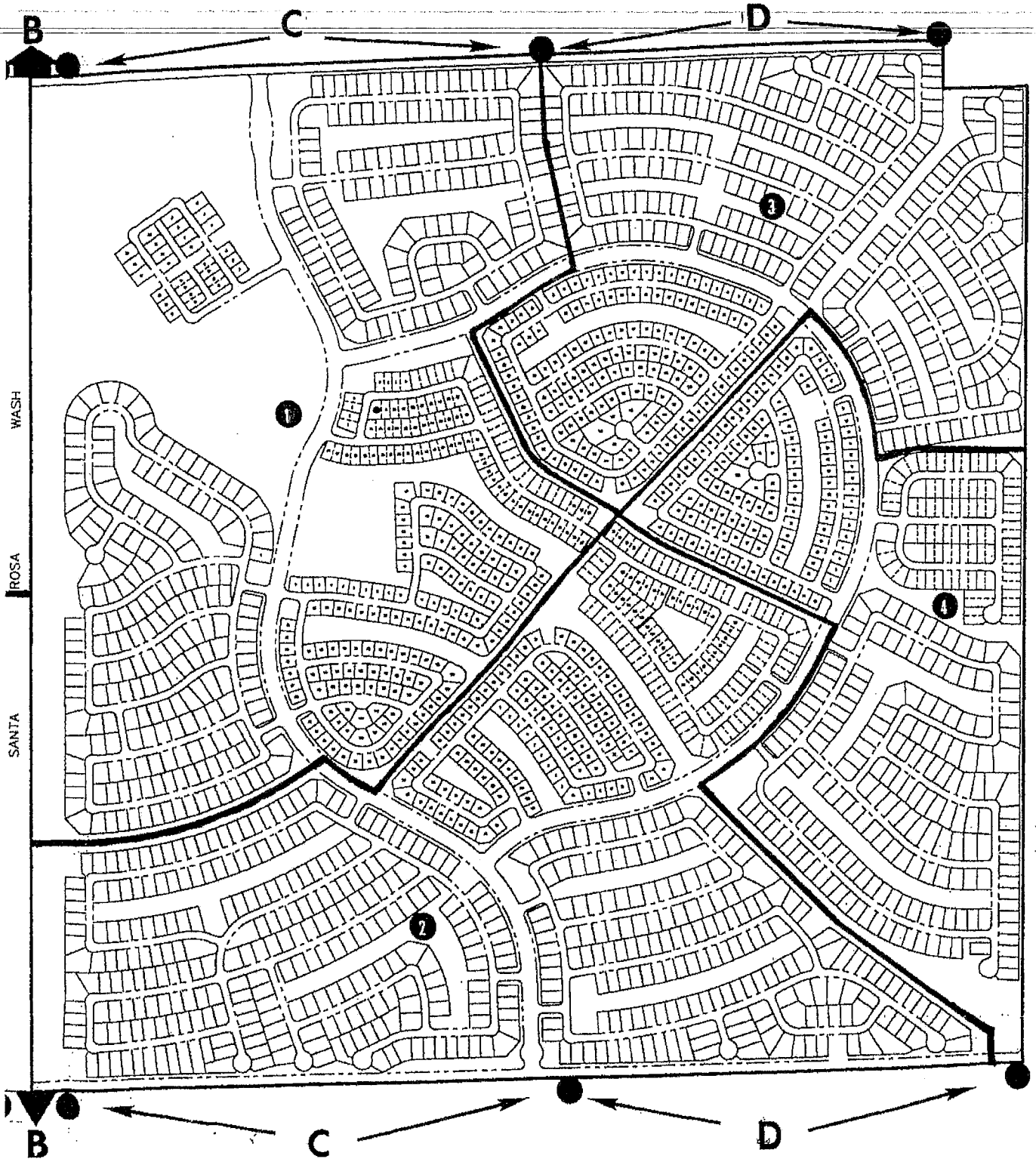


EXHIBIT "D"

Street Section for Smith-Enke Road Improvements

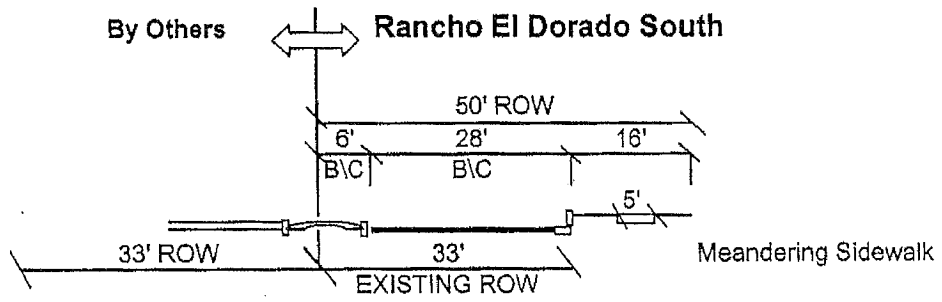
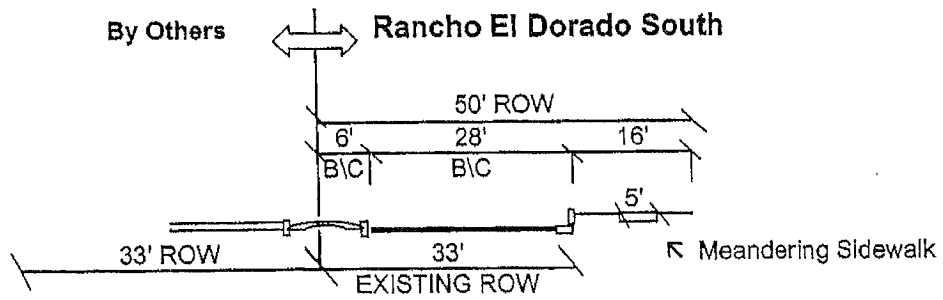


Exhibit "E"

Street Section for Honeycutt Road Improvements



(Honeycutt Road Looking West)