

When recorded, return to:

DEVELOPMENT AGREEMENT
(Anderson Farms)

THIS PRE-ZONING DEVELOPMENT AGREEMENT ("Agreement") is entered into as of the ____ day of June, 2019 by and between the CITY OF MARICOPA, an Arizona municipal corporation ("City"), and ANDERSON PALMISANO FARMS, an Arizona general partnership ("Owner") (City and Owner are collectively called the "Parties").

RECITALS

A. The Owner owns approximately 637 acres of land ("Property") located within the legal limits of City. The Property is legally described and depicted on Exhibit "A" attached hereto.

B. City and Owner desire to plan for the proper development of the Property. City understands that Owner is unable to bring forward a Planned Area Development (PAD) rezoning application for the entire Property at this time due to the high financial cost associated with such a project, but City desires to outline the development of the Property to confirm City standards will be met when the entire Property is developed.

C. Owner agrees to conform each subsequent zoning application(s) in a manner that conforms to this Agreement, all applicable City rules and regulations and the Plan.

D. The Parties agree that in making the promises contained in this Agreement that certain benefits and advantages will accrue to the Parties as a result of the performance of this Agreement and therefore this Agreement is being entered into in reliance upon the mutual benefits afforded the Parties upon the terms and conditions as set forth herein.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing premises and agreements herein, the Parties hereto state, confirm, and agree as follows:

1. Incorporation of Recitals and Exhibits. The foregoing recitals and all exhibits attached to this Agreement are hereby incorporated into this Agreement as though fully restated herein.

2. Development Plan. The Owner agrees to comply with the Development Plan for the Property ("Plan") attached hereto as Exhibit "B". The Owner hereby agrees that all zoning applications submitted to the City for the Property shall conform to the terms of this Agreement,

the City's applicable rules and regulations and to the Plan. The Owner agrees that the Plan includes the entire Property and that no piece of the Property will be omitted from subsequent zoning applications.

3. Plan Amendments. The Owner agrees that the Plan is a conceptual guide for the development of the Property which may be amended by the City from time to time. Any such Plan amendment will require an administrative review and approval by the City.

4. Contiguous. The Owner agrees that each zoning submittal for the Property shall be contiguous in nature to the previous submittal. For purposes of this Agreement, contiguous means that each subsequent application must contain a common boundary or connection with the prior submittal. Any submittal that is not deemed contiguous by the City shall be denied regardless of any desired zoning designation.

5. Uniform Treatment and Benefits. The City covenants and agrees that it will apply the same benefits and treatment to the Property as applied to other similar property in the same general area and that no additional obligations or requirements shall be imposed in connection with any aspect of the zoning, platting, improvement or other development or use of the Property that are not imposed on other similar property in the same general area unless specifically set forth herein.

6. Successors and Assigns. The burdens and benefits of this Agreement will run with the land and be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. However, any successor or assign of Owner shall be allowed to submit an alternative Development Plan for the remainder of the Property for review and approval by the City, in its sole and absolute discretion.

7. Amendment or Cancellation of Agreement. This Agreement may be amended or cancelled, in whole or in part and with respect to all or any portion of the Property, only with the mutual written consent of the Parties hereto. Within ten (10) days after any such amendment or cancellation of this Agreement, the City will record such amendment or cancellation in the Official Records of Pinal County, Arizona.

8. Notice.

8.1 Manner of Service. All notices, filings, consents, approvals and other communications provided for herein or given in connection herewith ("Notices") will 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 City:

City of Maricopa
Attn: City Manager
39700 West Civic Center Plaza
Maricopa, Arizona 85139
Telephone: (520) 316-6811

With a copy to: Fitzgibbons Law Offices, P.L.C.
Attn: City Attorney
P.O. Box 11208
Casa Grande, Arizona 85130
Telephone: (520) 426-3824

If to the Owner: Anderson Palmisano Farms
Attn: Kelly Anderson
35840 West Farrell Road
Maricopa, Arizona 85138

With a copy to: Marbella Homes, Inc.
Attn: Brian Hegardt
18835 North Thompson Peak Parkway
Suite 215
Scottsdale, Arizona 85255
Telephone: (602) 570-3957

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 will be given at least ten (10) days before the date on which the change is to become effective.

8.2 Mailing Effective. Notices given by mail must be certified and will be deemed delivered seventy-two (72) hours following deposit in the U.S. Postal Service, in the manner set forth above, or the next business day if sent by overnight delivery or courier.

9. General Provisions.

9.1 Waiver. No delay in exercising any right or remedy will constitute a waiver thereof and no waiver by the Parties of the breach of any provision of this Agreement will be construed as a waiver of any preceding or succeeding breach of the same or any other provision of this Agreement.

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

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

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

9.5 Entire Agreement. This Agreement constitutes the entire agreement between the Parties and will not be changed or added to except in the manner provided in Section 6 above. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written with regard to the subject matter of this Agreement, other than specifically incorporated herein by reference, are superseded by this Agreement.

9.6 Governing Law; Venue. This Agreement is entered into in Arizona and will be construed and interpreted under the laws of the State of Arizona. Any action at law or in equity brought by either party for the purpose of enforcing a right or rights provided for in this Agreement shall be tried in a court of competent jurisdiction in Pinal County, Arizona. The parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county.

9.7 Recordation. No later than ten (10) days after the City and the Owner have executed this Agreement, the City shall cause it to be recorded in its entirety in the Official Records of Pinal County, Arizona.

9.8 Default. Failure or unreasonable delay by either party to perform or otherwise act in accordance with any term or provision of this Agreement for a period of thirty (30) days after written notice thereof from the other party ("Cure Period"), shall constitute a default under this Agreement; provided, however, that if the failure or delay is such that more than thirty (30) days would reasonably be required to perform such action or comply with any term or provision hereof, then such party shall have such additional time as may be necessary to perform or comply so long as such party commences performance or compliance within said thirty (30) day period and diligently proceeds to complete such performance or fulfill such obligation. Said notice shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible. In the event such default is not cured within the Cure Period, the non-defaulting party shall have all rights and remedies legally and equitably available to it.

9.9 Authority. The Owner represents and warrants to the City: (1) that it is duly formed and validly existing under the laws of the State of Arizona; and (2) that the individual executing this Agreement on behalf of the Owner is authorized and empowered to bind the Owner. The City represents and warrants to the Owner: (1) that it is a duly formed municipal corporation with the State of Arizona; and (2) that the individual executing this Agreement on behalf of the City is authorized and empowered to bind the City.

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

9.11 Estoppel. The Parties hereto covenant and agree with each other to provide within twenty-one (21) 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.

9.12 Term. This Agreement shall be effective upon its recordation and shall automatically terminate upon the approval of zoning for the entire Property or upon mutual agreement of the Parties.

9.13 No Owner Representations. Nothing contained herein shall be deemed to obligate the Owner to commence or complete any part or all of the development of the Property or any planning in connection with such development.

9.14 Time of Essence. Time is of the essence of this Agreement and each provision hereof.

9.15 Amendment. No change or addition is to be made to this Agreement except by written amendment executed by City and Owner. Within ten (10) calendar days after any amendment to this Agreement is fully executed, but in no event prior to the date that the Agreement is recorded, such amendment shall be recorded in the Official Records of Pinal County, Arizona. Upon amendment of this Agreement as established herein, references to "Agreement" shall mean the Agreement as amended.

9.16 Further Assurances. Each Party agrees to perform such other and further acts and to execute and deliver such additional agreements, documents, affidavits, certifications, acknowledgments and instruments as any other Party may reasonably require to consummate, evidence, confirm or carry out the matters contemplated by this Agreement or confirm the status of: (a) this Agreement as in full force and effect; and (b) the performance of the obligations hereunder at any time during its Term.

9.17 Dispute Resolution. The parties hereby agree to make a good faith effort to resolve any controversy or claim through informal negotiations. Any claim of controversy must first be presented in writing, with supporting documentation, to the agent of the other party. The recipient shall have seven (7) days to prepare and deliver a response. Thereafter, in the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree to attempt to settle the dispute by nonbinding arbitration before commencement of litigation. The arbitration shall be held under the rules of the American Arbitration Association. The matter in dispute shall be submitted to an arbitrator mutually selected by Owner and the City. In the event that the parties cannot agree upon the selection of an arbitrator within seven (7) days, then within three (3) days thereafter, the City and Owner shall request the presiding judge of the Superior Court in and for the County of Pinal, State of Arizona, to appoint an independent arbitrator. The cost of any such arbitration shall be divided equally between the City and Owner. The results of the arbitration shall be nonbinding on the parties, and any party shall be free to initiate litigation subsequent to the final decision of the arbitrator.

9.18 Force Majeure. The time period for performance (including any deadline) and/or performance of any Party and the duration of this Agreement shall be extended by any causes that are beyond the reasonable 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.

9.19 Boycott of Israel. In signing this Agreement, Owner certifies pursuant to ARS §35-393.01 that it does not participate in, and agrees not to participate in during the term of this Agreement a boycott of Israel.

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as provided herein.

CITY:

CITY OF MARICOPA, an Arizona municipal corporation

By: _____
Christian Price, Mayor

Date: _____

Approved as to Form:

By: _____
City Attorney

Date: _____

Attested by:

By: _____
City Clerk

Date: _____

STATE OF ARIZONA)
) ss.
County of Pinal)

Subscribed and sworn to before me this ____ day of _____,
2019, by _____, the Mayor of CITY OF MARICOPA, an Arizona municipal corporation.

Notary Public

My Commission Expires

OWNER:

ANDERSON PALMISANO FARMS

By: _____

Name: _____

Title: _____

Date: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

Subscribed and sworn to before me this ____ day of _____,
2019, by _____, the _____ of ANDERSON PALMISANO
FARMS.

Notary Public

My Commission Expires

EXHIBIT "A"

Legal Description

EXHIBIT "B"

Development Plan