

When recorded return to:

City Clerk
City of Maricopa
39700 W Civic Center Plaza
Maricopa, AZ 85138

**FIRST AMENDMENT TO
PRE-ANNEXATION DEVELOPMENT AGREEMENT
(HOGENES FARMS)**

THIS FIRST AMENDMENT TO PRE-ANNEXATION DEVELOPMENT AGREEMENT (the “First Amendment”) is made as of the ____ day of _____ 2021 (“Effective Date”), by and between CITY OF MARICOPA, ARIZONA, an Arizona municipal corporation (“City”), HOGENES FARMS, an Arizona limited partnership (“Owner”) and TRS 15, LLC, an Arizona limited liability company (“TRS 15”). City and Owner are sometimes referred to herein collectively as the “Parties,” or individually as a “Party.”

RECITALS

A. The City and Abraham and Barbara Hogenes and Hogenes Farms entered into that certain Pre-Annexation Development Agreement dated April 7, 2007, and recorded April 12, 2007, as Fee No. 2007-044578 in the official records of the Pinal County Recorder’s office (the “Development Agreement”), in connection with the annexation and development of the Property, legally described in Exhibit “A,” attached to this First Amendment and incorporated herein by reference (the “Property”).

B. The Owner owns approximately 773 acres of the real property now commonly known as Hogenes Farms, located in the City of Maricopa, County of Pinal, State of Arizona, as depicted in Exhibit “B,” attached to this First Amendment and incorporated herein by reference (“Hogenes Farms Property”).

C. The Owner and TRS 15 now desire and intend to prepare the Hogenes Farms Property for development in general accordance with this First Amendment and any applicable Rules and Regulations not in conflict with the terms of the Development Agreement or this First Amendment.

C. A Traffic Impact Analysis (“TIA”) was performed on the Maricopa Hogenes Farms Property in June of 2020 and, based on this TIA, the City will require an overpass on Green Road after the completion of construction of 800 lots within the area depicted on Exhibit “C” attached to this First Amendment and incorporated herein by reference (the “Development Area”).

D. The Owner and the City desire to enter this First Amendment in order to set forth the rights and obligations of Owner with respect to the use of the Property, the development of the Hogenes Farms Property, and the obligations of Owner, TRS 15 and City with respect to the dedication of right of way necessary for the construction of an identified overpass railroad crossing or Substitute Improvements, as defined herein, and payment related thereto benefitting the Hogenes Farms Property.

E. The City has determined that because the public purpose of this First Amendment is to improve streets and neighborhood traffic, and the benefit received by the City is not less than the consideration the City is providing to Owner, the First Amendment as set forth herein does not amount to an illegal gift or subsidy.

F. The parties have mutual interests in the development of the Hogenes Farms Property and wish to revise the Development Agreement in its entirety by entering into this First Amendment with certain terms and conditions as set forth herein.

G. The Parties now desire to amend and restate the Development Agreement hereto acknowledge that this First Amendment constitutes a "Development Agreement" within the meaning of Arizona Revised Statutes Section 9-500.05.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual promises and covenants set forth herein, and for other consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree to revise the Development Agreement and replace the provisions thereof in their entirety with the following:

1. ACCURACY OF THE RECITALS: The Parties hereby confirm the accuracy of the Recitals set forth above, which are incorporated herein by this reference.

2. HOGENES FARMS: This First Amendment shall pertain to the Property and the Hogenes Farms Property.

3. EFFECTIVE DATE, TERM, AND RECORDING: Upon adoption of a Resolution by the City Council and execution by both parties and recording in the Pinal County Recorder's Office, this First Amendment shall become effective and shall continue until all payment and performance obligations of the parties have been fully performed. No later than ten (10) days after this First Amendment has been executed by the City and Owner, the City shall record the First Amendment in its entirety with the Pinal County Recorder. Upon this First Amendment becoming effective, the Development Agreement shall be of no further force or effect.

4. REGULATION OF DEVELOPMENT: Whenever reference is made in this First Amendment, either directly or indirectly, to "Rules and Regulations," the same shall mean the City Zoning Code, the PAD and Development Plan for the Hogenes Farms Property, along with all other ordinances, rules, regulations, permit requirements, and other

official policies of the City in existence on the date of this First Amendment, except for those items that may be modified by this First Amendment. The City reserves, exercising its sole and absolute discretion, the right to amend existing or to adopt new non-discriminatory Rules and Regulations and such Rules and Regulations as amended or adopted shall be applicable to and binding on the Property and the Hogenes Farms Property.

Notwithstanding the rights and obligations inuring to the Parties pursuant to this First Amendment, nothing in this First Amendment shall be interpreted as obligating the City to act or refrain from acting in violation of or at variance with, or relieving Owner or TRS 15 of any obligations which it may have with respect to any Rules and Regulations that apply to the Parties, the Hogenes Farms Property or any matter which is the subject of this First Amendment. Nothing in this First Amendment shall alter or diminish the authority of the City to exercise its eminent domain powers.

5. RIGHT OF WAY DEDICATION AND CONSTRUCTION OF GREEN ROAD:

5.1 Except as specifically set forth in Paragraph 6 below, TRS 15 or the developer developing the Hogenes Farms Property shall be responsible for all improvements on Green Road as required by the City Code, which may be amended from time to time. Except as specifically set forth herein, TRS 15 or the developer developing the Hogenes Farms Property shall dedicate and convey or cause to be dedicated and conveyed, lien free and at no cost to the City, the requisite improvements, as required by the City Code, on Green Road as well as the right of way required for a one-half (½) street arterial roadway adjacent to the Hogenes Farms Property and for an overpass or Substitute Improvements at Green Road, up to 116 feet as depicted in Exhibit “D,” attached to this First Amendment and incorporated herein by reference (“Dedicated Property”). Notwithstanding anything to the contrary contained herein, when permits are pulled to commence the construction of the overpass or Substitute Improvements, (a) City shall pay Owner \$65,000 per gross acre for the conveyance and transfer, free and clear of all liens or encumbrances, of the small triangular parcel immediately north of the railroad tracks as shown on Exhibit “D” which is located outside of the dedicated right of way and (b) City shall offer to pay Owner \$450,000 for the approximate 1.0 acres and existing residence as depicted in Exhibit “E”, which offer may be accepted or rejected in the Owner’s sole and absolute discretion (collectively “Owner Compensation”). The Owner Compensation, or any portion thereof, will only be paid if, at the time of payment, the existing Owner still owns the property in question and such property has not been conveyed, transferred, assigned or otherwise provided to a third party or successor in interest. Notwithstanding anything to the contrary contained herein, if Owner refuses the City’s offer of \$450,000 for the approximate 1.0 acres and existing residence as set forth herein, City shall have no further obligation regarding this property or payment to the Owner.

TRS 15 or the developer developing the Hogenes Farms Property shall provide the City with a Phase 1 environmental assessment of the Dedicated Property prior to the City accepting dedication of any right of way. The City shall have no responsibility for environmental contamination or liabilities existing on the Dedicated Property prior to

its dedication and conveyance to City and TRS 15 or the developer developing the Hogenes Farms Property shall indemnify, defend and hold harmless the City, its successors and assigns, for, from and against any and all claims, demands, liabilities, losses, or damages which may be claimed or asserted against the City, its successors or assigns, on account of or arising out of such environmental contamination or liabilities except that TRS 15 or the developer developing the Hogenes Farms Property shall have no obligation to indemnify the City from any claims or demands arising from environmental contamination caused directly by the City or a third party.

5.2 Upon acceptance of the Dedicated Property, as evidenced by a resolution approved by the City Council, City will assume the cost to maintain the Dedicated Property at its sole cost and expense. Owner shall have the right to continue to use the Dedicated Property, including any structures currently located thereon, and shall be responsible for the cost to maintain the Dedicated Property for Owner's continued use until City's acceptance of the Dedicated Property as set forth herein.

5.3 Any further dedication or construction of right of way, for roads other than Green Road, shall be in accordance with the City's standard Rules and Regulations related thereto, which may be amended from time to time.

6. ENGINEERING SERVICES:

6.1 As consideration for City's agreement concerning the construction requirement of an overpass on Green Road identified in the TIA, TRS 15 agrees to pay EPS Group, Inc. for the preliminary engineering for the design and construction of the overpass or Substitute Improvements at their sole cost and expense. Owner and TRS 15 hereby acknowledge and agree that City shall be responsible for working with EPS Group, Inc. on the scope of work for the preliminary engineering and that the City will have final approval of the preliminary engineering design to confirm such design is consistent with the City's applicable rules and regulations. The Engineering Services Agreement including the scope of work and preliminary engineering and design of the construction of the overpass or Substitute Improvements shall be attached hereto as Exhibit "F." Owner and TRS 15 hereby further acknowledge and agree that the payment for the preliminary engineering for the design and construction of the overpass or Substitute Improvements referenced in this Section 6.1 does not waive or otherwise alter the responsibility to pay any and all applicable fees during the development process including, but not limited to, permit fees and development fees.

6.2 City shall, at such time as may be determined by the City in its sole and absolute discretion, construct the improvements for an overpass at Green Road at a location described in Exhibit "G." Notwithstanding anything to the contrary set forth herein, the City reserves the right to evaluate and construct other improvements that satisfy the requirements of the City's rules and regulations with respect to the Hogenes Farms Property in lieu of constructing an overpass at Green Road ("Substitute Improvements").

Within ninety (90) days of the effective date of this First Amendment, City agrees to initiate the process to analyze the impact of including the overpass or Substitute Improvements in the City's Infrastructure Improvement Plan and Development Impact Fees. The City will include the overpass or Substitute Improvement in the City's Infrastructure Improvement Plan and Development Impact Fees as long as such overpass or Substitute Improvements do not significantly increase the City's Impact Fees in such an amount that would negatively affect new construction in the City, which shall be determined in the sole and absolute discretion of the City.

The City will include the construction of the overpass or Substitute Improvements in a future Capital Improvement Plan after the preliminary engineering is completed and accepted by the City. Notwithstanding anything to the contrary set forth herein, the City does not represent that funding will be available for the construction of the overpass or Substitute Improvement at any certain date.

When determining when to construct the overpass at Green Road or the Substitute Improvements, the City shall not be obligated to consider the number of permits issued or remaining to be issued within the Development Area as set forth in Paragraph 7 below. Notwithstanding anything to the contrary set forth herein, the City's decision as to when to fund the construction of the overpass at Green Road or the Substitute Improvements is completely reserved to the sole and absolute discretion of the City.

6.3 City hereby agrees that any such construction shall include reasonable access to the current homes and dairy operations located on the property, as depicted in Exhibit "H".

6.4. Owner shall have the right to continue to use the property necessary for the construction of the overpass or Substitute Improvements on Green Road, including any structures currently located thereon, and shall be responsible for the cost to maintain such property for Owner's continued use until City commences construction of the overpass or Substitute Improvements. City shall provide Owner with ninety (90) days' notice of when Owner must vacate the property necessary for the construction of the overpass or Substitute Improvements. City shall not be responsible for any costs associated with Owner's use or vacating of this property.

7. RESTRICTIONS ON LOT DEVELOPMENT: The City and the Owner acknowledge that an overpass on Green Road or Substitute Improvements will be required after the completion of construction of 800 lots within the Development Area. The City and the Owner specifically acknowledge and agree that City will not issue any type of permit for construction within the Hogenes Farms Property after 800 homes have been permitted into the Development Area until the overpass on Green Road or the Substitute Improvements are complete. If there is new information that may affect the TIA and allow more than 800 homes to be constructed before an overpass on Green Road or Substitute Improvements are required, Owner may petition the City to request more homes be permitted in the Development Area. Except as provided for in this First Amendment, City

and Owner also agree that Owner shall be released from any obligation contained in the TIA or otherwise, to construct the overpass at Green Road.

8. USE OF PROPERTY AND CITY TAXES:

8.1 The City shall exempt from any ordinance, regulation, franchise or emergency measure which regulates or limits, or purports to regulate or limit, in any fashion, the use and operation of the Property by Owner, their heirs and assigns, for any dairy, cultivation and related operations conducted or performed on the Property for so long as the Property is used primarily for agricultural purposes. Owner shall have a right to reasonably increase or decrease the volume of dairy activities on the Property. The rights granted herein are in addition to any rights Owner may enjoy by reason of the grandfathered use of the Property. The parties hereto specifically agree that the current operations on the Property shall not constitute a nuisance or similar violation of any City ordinances, rules or regulations and the City shall not take action to enforce insect or pest control provisions or other provisions concerning manure or other smells related to the dairy, cultivation and related to the dairy, cultivation and related operations conducted or performed on the Property. Notwithstanding the foregoing, Owner shall comply with all applicable Federal, State and County health regulations.

8.2 In accordance with A.R.S. §42-5159(A)(8) and Section 8-465(r) and 8-660 (r) of the Maricopa City Code, and to the extent allowed by law and without creating a financial liability to the City, the City of Maricopa shall exempt Hogenes Farms, with regards to its dairy, cultivation and released operations, from the City of Maricopa transaction privilege and use taxes until April 11, 2032 unless this exemption is extended by mutual agreement of the parties.

9. INDEMNITY; RISK OF LOSS: Owner shall pay, defend, indemnify and hold harmless City and its City Council members, officers and employees from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including attorney's fees, expert fees and court costs) which arise from or relate in any way to any act or omission of Owner, or its employees, contractors, subcontractors, agents or representatives in implementing the terms of or undertaken in the fulfillment of Owner's obligations under this First Amendment. The foregoing indemnity obligations of Owner shall survive the expiration or termination of this First Amendment.

10. CITY REPRESENTATIONS. City represents and warrants to Owner that:

10.1 The City's execution and approval of this First Amendment has been made in compliance with the procedural requirements of the Maricopa City Code.

10.2 The City will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement and evidence this First Amendment.

10.3 As of the date of this First Amendment, the City knows of no litigation, proceeding, initiative, referendum, or investigation contesting the powers of the City or its officials, with respect to this First Amendment, that has not been disclosed in writing to Owner.

10.4 The execution, delivery and performance of this First Amendment by the City is not prohibited by, and does not conflict with, any other agreements, instruments or judgments or decrees to which the City is a party or is otherwise subject.

10.5 The City has been assisted by counsel of its own choosing in connection with the preparation and execution of this First Amendment.

11. OWNER REPRESENTATIONS. Owner represents and warrants to City that:

11.1 Owner has the full right, power and authorization to enter into and perform this First Amendment and of the obligations and undertakings of Owner under this First Amendment, and the execution, delivery and performance of this First Amendment by Owner has been duly authorized and agreed to in compliance with the organizational documents of Owner.

11.2 All consents and approvals necessary to the execution, delivery and performance of this First Amendment have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.

11.3 Owner has no knowledge of any violations of City, County, State, Federal, building, land use, fire, health, safety, environmental, hazardous materials or other governmental or public agency codes, ordinances, regulations, or orders with respect to the Hogenes Farms Property.

11.4 Owner will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this First Amendment.

11.5 As of the date of this First Amendment, Owner knows of no litigation, proceeding or investigation pending or threatened against or affecting Owner, which could have a material adverse effect on Owner's performance under this First Amendment that has not been disclosed in writing to City.

11.6 This First Amendment (and each undertaking of Owner contained herein) constitutes a valid, binding and enforceable obligation of Owner, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity. Owner will defend the validity and enforceability of this First Amendment in the event of any proceeding or litigation arising from its terms that names Owner as a party or which challenges the authority of Owner to enter into or perform

any of its obligations hereunder. Delivery and performance of this First Amendment by Owner is not prohibited by, and does not conflict with, any other agreements, instruments, judgments or decrees to which Owner is a party or to which Owner is otherwise subject.

11.7 Owner has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this First Amendment other than normal costs of conducting business and costs of professional services such as the services of architects, engineers and attorneys.

11.8 Owner has been assisted by counsel of its own choosing in connection with the preparation and execution of this First Amendment.

12. EVENTS OF NON-PERFORMANCE; REMEDIES:

12.1 Enforced Delays. Neither City nor Owner, as the case may be, shall be considered not to have performed its obligations under this First Amendment in the event of enforced delay (an "Enforced Delay") due to causes beyond its control and without its fault or negligence or failure to comply with the Rules and Regulations, including, but not restricted to, acts of God, fires, floods, epidemics, pandemics, quarantine, restrictions, embargoes, labor disputes, and unusually severe weather or the delays of subcontractors or materialmen due to such causes, acts of a public enemy, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), nuclear radiation, blockade, insurrection, riot, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain any governmental body on behalf of any public entity, or a declaration of moratorium or similar hiatus directly affecting the Hogenes Farms Property (whether permanent or temporary) by any public entity. In no event will Enforced Delay include any delay resulting from general economic or market conditions, unavailability for any reason of particular tenants or purchasers of portions of the Hogenes Farms Property, labor shortages, unavailability of financing, or the unavailability for any reason of particular contractors, subcontractors, vendors, investors or lenders desired by Owner in connection with the Hogenes Farms Property. Owner agrees that Owner alone will bear all risks of delay which are not Enforced Delay. In the event of the occurrence of any such Enforced Delay, the time or times for performance of the obligations of the Party claiming delay shall be extended for a period of the Enforced Delay; provided, however, that the Party seeking the benefit of the provisions of this Section shall, within thirty (30) calendar days after such Party knows or should know of any such Enforced Delay, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Enforced Delay; and provided further that in no event shall a period of Enforced Delay exceed ninety (90) days.

12.2 Rights and Remedies Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by either Party of any one or more of such rights shall not preclude the exercise by it, at the same or different times, of any other right or remedy for any other Non-Performance by the other Party.

13. MISCELLANEOUS PROVISIONS:

13.1 Governing Law; Choice of Forum. This First Amendment shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this First Amendment shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Pinal (or, as may be appropriate, in the Justice Courts of Pinal County, Arizona, 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 court action.

13.2 Limited Severability. City and Owner each believes that the execution, delivery and performance of this First Amendment are in compliance with all Rules and Regulations. However, in the unlikely event that any provision of this First Amendment is declared void or unenforceable (or is construed as requiring City to do any act in violation of any Rules and Regulations) such provision shall be deemed severed from this First Amendment and this First Amendment shall otherwise remain in full force and effect; provided that, if the City Attorney determines that such action is legally permissible, this First Amendment shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required; provided, however, in no event shall such reformation require any general fund expenditure or incurrence of indebtedness by City. The Parties further agree, in such circumstances, to do all acts and to execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this First Amendment, as reformed.

13.3 Interpretation of Conditions and Terms. The terms and provisions of this First Amendment represent the results of negotiations between the Parties, each of which has been or has had the opportunity to be represented by counsel of its own choosing, and none of which has acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this First Amendment shall be interpreted and construed in accordance with their usual and customary meanings, and the Parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this First Amendment that ambiguous or conflicting terms or provisions contained in this First Amendment shall be interpreted or construed against the Party who prepared or whose attorney prepared the executed First Amendment or any earlier draft of the same.

13.4 Notices:

(a) Addresses. Except as otherwise required by law, any notice required or permitted under this First Amendment shall be in writing and shall be given by personal delivery, or by deposit in the United States mail, certified or registered,

return receipt requested, postage prepaid, addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this Section, or by telecopy or telefacsimile machine, or by any nationally recognized express or overnight delivery service (e.g. Federal Express or UPS), delivery charges prepaid:

If to City:	City of Maricopa Attn: City Manager 39700 W. Civic Center Plaza Maricopa, Arizona 85138 Telephone: (520) 316-6811
With a copy to:	City of Maricopa Attn: City Attorney 39700 W. Civic Center Plaza Maricopa, Arizona 85138 Telephone: (520) 426-3824
If to Owner:	Hogenes Farms, a limited partnership Attn: Al Hogenes 46512 W. Garvey Ave. Maricopa, AZ 85239 Telephone: (520) 431-8090
If to TRS 15:	TRS 15, LLC Attn: Brian Hegardt 10196 E. Phantom Way Scottsdale, AZ 85255 Telephone: (602) 570-3957

(b) Effective Date of Notices. Any notice sent by United States Postal Service certified or registered mail shall be deemed to be effective the earlier of the actual delivery, or three (3) business days after deposit in a post office operated by the United States Postal Service. Any notice sent by a recognized national overnight delivery service shall be deemed effective one (1) business day after deposit with such service. Any notice personally delivered or delivered through a same-day delivery/courier service shall be deemed effective upon its receipt (or refusal to accept receipt) by the addressee. Any notice sent by telecopy or telefacsimile machine shall be deemed effective only upon confirmation of the successful transmission by the sender's telecopy or telefacsimile machine, followed by deposit of a "hard copy" for next business-day delivery by a recognized national overnight delivery service.

13.5 Time of Essence. Time is of the essence of this First Amendment and each provision hereof.

13.6 Section Headings. The Section headings contained in this

First Amendment are for convenience in reference only and are not intended to define or limit the scope of any provision of this First Amendment.

13.7 Attorneys' Fees and Costs. In the event of commencement of a legal action in an appropriate forum by a Party to enforce any covenant or any of such Party's rights or remedies under this First Amendment, including any action for declaratory or equitable relief, the prevailing Party in any such action shall be entitled to recovery of its reasonable attorneys' fees and court costs and expenses, including, but not limited to, its costs of expert witnesses, and witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental expenses associated with such dispute.

13.8 Waiver. Without limiting the provisions of this First Amendment, the Parties agree that neither the failure nor the delay of any Party to exercise any right, remedy, power or privilege under this First Amendment shall operate as a waiver of such right, remedy, power or privilege, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

13.9 Third Party Beneficiaries. No person or entity shall be a third party beneficiary of this First Amendment, except for permitted transferees, assignees, or lenders to the extent that they assume or succeed to the rights and/or obligations of Owner under this First Amendment, and except that the indemnified parties referred to in the indemnification provisions set forth in this First Amendment (or elsewhere in this First Amendment) shall be third party beneficiaries of such indemnification provisions.

13.10 Exhibits. The Parties agree that all references to this First Amendment include all Exhibits designated in and attached to this First Amendment, such Exhibits being incorporated into and made an integral part of this First Amendment for all purposes.

13.11 Integration. Except as expressly provided herein, this First Amendment constitutes the entire agreement between the Parties with respect to the subject matters hereof and supersedes any prior agreement, understanding, negotiation or representation regarding the subject matters covered by this First Amendment.

13.12 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 First Amendment or confirm the status of: (a) this First Amendment as in full force and effect; and (b) the performance of the obligations hereunder at any time during its Term.

13.13 Business Days. If the last day of any time period stated in this

First Amendment or the date on which any obligation to be performed under this First Amendment shall fall on a Saturday, Sunday or legal holiday, then the duration of such time period or the date of performance, as applicable, shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday or legal holiday.

13.14 Consents and Approvals. Wherever this First Amendment requires or permits the consent or approval of a Party to any act, document, use or other matter, such consent or approval shall be given or denied by such Party in its reasonable discretion, unless this First Amendment expressly provides otherwise.

13.15 Covenants Running With Land; Inurement. The covenants, conditions, terms and provisions of this First Amendment shall run with the Property and Hogenes Farms Property and shall be binding upon, and shall inure to the benefit of the Parties and their respective permitted successors and assigns with respect to such Property and Hogenes Farms Property. Wherever the term “Party” or the name of any particular Party is used in this First Amendment such term shall include any such Party's permitted successors and assigns.

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

13.17 Good Faith of Parties. Except where any matter is expressly stated to be in the sole discretion of a Party, in performance of this First Amendment or in considering any requested extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily or capriciously and will not unreasonably withhold, delay or condition any requested approval, acknowledgment or consent.

13.18 Survival. All indemnifications contained herein shall survive the execution and delivery of this First Amendment, the closing of any transaction contemplated herein, and the rescission, cancellation, expiration or termination of this First Amendment upon the terms and for the period of any applicable statute of limitations.

13.19 Nonliability of City Officials, Etc., and of Employees of Owner. No City Council member, official, representative, agent, attorney or employee of City shall be personally liable to any of the other Parties hereto, or to any successor in interest to any of the other Parties, in the event of any Non-Performance by City or for any amount which may become due to any other Party or its successor, or with respect to any obligation of City under the terms of this First Amendment. Notwithstanding anything contained in this First Amendment to the contrary, the liability of Owner under this First Amendment shall be limited solely to the assets of Owner and shall not extend to or be enforceable against the individual assets of any of the individuals or entities who are members, managers or employees of Owner. Notwithstanding anything contained in this First Amendment to the

contrary, the liability of the City under this First Amendment shall be limited solely to the assets of the City and shall not extend to or be enforceable against the individual assets of any of the individuals or entities who are council members, officials, or employees of the City.

13.20 Proposition 207 Waiver. By executing this First Amendment, Owner, on behalf of itself and any successors-in-interest to all or any portion of the Hogenes Farms Property hereby waives any right to claim diminution in value or claim for just compensation for diminution in value under A.R.S. § 12-1134, et seq. arising out of any action which may be properly taken by the City pursuant to this First Amendment. This waiver constitutes a complete release of any and all claims and causes of action that may arise or may be asserted under A.R.S. § 12-1134, et seq. as it exists or may be enacted in the future or that may be amended from time to time with regard to the Hogenes Farms Property with regard to City actions permitted by this First Amendment. In connection therewith, upon the request of the City, Owner shall promptly execute and deliver to the City, any and all such reasonable waivers of rights under Proposition 207 which may be reasonably requested by the City in order to more fully evidence the waiver set forth herein. Owner agrees to indemnify, hold harmless and defend City, its officers, employees and agents, from any and all claims, causes of actions, demands, losses and expenses, including attorney's fees and litigation costs, that may be asserted by or may result from Owner seeking potential compensation, damages, attorney's fees or costs under A.R.S. § 12-1134, et seq. that they may have, as a result of this First Amendment, now or in the future.

13.21 Conflict of Interest Statute. This First Amendment is subject to, and may be terminated by City in accordance with, the provisions of A.R.S. § 38-511.

13.22 Dispute Resolution. In the event a dispute arises under this First Amendment, the Parties agree that there shall be a ninety (90) day moratorium on litigation during which time the Parties agree to attempt to settle the dispute by 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 Owner. The matter in dispute shall be submitted to a mediator mutually selected by Owner and the City. If the Parties cannot agree upon the selection of a mediator within ten (10) days, then within five (5) days thereafter, the City and Owner 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 of experience in mediating or arbitrating disputes relating to commercial property. The cost of any such mediation shall be divided equally between the City and Owner. 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.

13.23 Assignment. The Parties shall not assign all or any part of this

First Amendment without the prior written approval of the other Party, which approval shall not be unreasonably withheld, conditioned, or delayed. The City acknowledges and agrees that some or all of the improvements on the Hogenes Farms Property will be constructed by one or more other entities (“Buyers”) acquiring portions of the Hogenes Farms Property from Owner, and that Owner shall be permitted to assign all or any part of this First Amendment to such an Assignee with the written consent of City, such consent not to be unreasonably withheld, provided that the Assignee agrees in writing to abide by and be bound to the terms of this First Amendment.

13.24 No Agency Created. Nothing contained in this First Amendment creates any partnership, joint venture or agency relationship between City and Owner. No term or provision of this First Amendment is intended to be for the benefit of any person, firm, organization or corporation not a party hereto, and no other person, firm organization or corporation may have any right or cause of action hereunder.

13.25 Termination; Successors and Assigns.

(a) End of Term. The First Amendment terminates at the end of the Term pursuant to Section 3 above.

(b) Upon Sale of Subdivided Lots. It is the intention of the parties that although recorded, this First Amendment shall not create conditions or exceptions to title or covenants running with the lots within the Hogenes Farms Property when sold to the end purchaser (“Subdivided Lot”). Therefore, in order to alleviate any concern as to the effect of this First Amendment on the status of title to any Subdivided Lot, so long as not prohibited by law, this First Amendment shall automatically terminate without the execution or recordation of any further document or instrument as to any Subdivided Lot which has been finally subdivided and sold and upon which a completed home has been constructed and for which a certificate of occupancy or equivalent has been issued and thereupon such Subdivided Lot shall be released from and no longer subject to or burdened by the provisions of this First Amendment.

13.26 Waiver of Conflict. Owner understands and is aware that this First Amendment was prepared by Fitzgibbons Law Offices, PLC, who represents the City, and who has given no advice pertaining to such document to Owner, except to advise Owner that they are entitled to and should retain independent legal counsel to advise Owner in all respects. The undersigned parties understand and agree that Fitzgibbons Law Offices, PLC will represent City, exclusively, in matters concerning this First Amendment. Because of previous and ongoing representations of Owner by Fitzgibbons Law Offices, PLC, Fitzgibbons Law Offices, PLC has a conflict of interest in representing City according to Rule 42, Rules of The Arizona Supreme Court. Owner has been advised that the representation of City in this matter by Fitzgibbons Law Offices, PLC is paramount. The undersigned parties further understand and agree that Fitzgibbons Law Offices, PLC will continue to represent City in this matter. Owner and City wish to waive any continuing conflict of interest in this matter, and by their respective signatures below, waive this potential conflict of interest.

IN WITNESS WHEREOF, the Parties have executed this First Amendment as of the date first set forth above.

HOGENES FARMS, an Arizona limited partnership

By: _____
Name: Abraham Hogenes
Its: _____

STATE OF ARIZONA)
) ss.
COUNTY OF PINAL)

The foregoing was acknowledged before me this _____ day of _____, 2021, by _____, the _____ of HOGENES FARMS, an Arizona limited partnership.

Notary Public

My Commission Expires:

(seal)

IN WITNESS WHEREOF, the Parties have executed this First Amendment as of the date first set forth above.

TRS 15, LLC, an Arizona limited liability company

By: Hegardt Investments, LLC
Its: Manager

By: _____
Brian Hegardt, Manager

STATE OF ARIZONA)
) ss.
COUNTY OF PINAL)

The foregoing was acknowledged before me this _____ day of _____, 2021, by _____, the _____ of TRS 15, LLC, an Arizona limited partnership.

Notary Public

My Commission Expires:

(seal)

IN WITNESS WHEREOF, the Parties have executed this First Amendment as of the date first set forth above.

CITY OF MARICOPA, ARIZONA, an Arizona
municipal corporation

By: Christian Price
Its: Mayor

ATTEST:

By: _____
Vanessa Bueras, MMC
City Clerk

STATE OF ARIZONA)
) ss.
COUNTY OF PINAL)

The foregoing was acknowledged before me this _____ day of _____, 2021, by Christian Price, the Mayor of City of Maricopa, Arizona, an Arizona municipal corporation, who acknowledged that he signed the foregoing instrument on behalf of City.

Notary Public

My Commission Expires:

(seal)

COUNSEL APPROVAL AS TO FORM:

I have read this First Amendment and have determined such First Amendment is in proper form and is entered into within the powers of and authority granted under the laws of the State of Arizona.

_____, Owner Attorney

Date

I have read this First Amendment and have determined such First Amendment is in proper form and is entered into within the powers of and authority granted under the laws of the State of Arizona.

Denis Fitzgibbons, City Attorney

Date

EXHIBIT A

MAP AND LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT B

MAP AND LEGAL DESCRIPTION OF THE HOGENES FARMS PROPERTY

EXHIBIT C

MAP OF DEVELOPMENT AREA

EXHIBIT D

DEDICATED PROPERTY

EXHIBIT E

RESIDENTIAL PROPERTY

EXHIBIT F

ENGINEERING SERVICES AGREEMENT

EXHIBIT G

GREEN ROAD OVERPASS

EXHIBIT H

CURRENT HOMES AND DIARY