ORDINANCE NO. 2019-12

AN ORDINANCE OF THE COCONINO COUNTY, ARIZONA, BOARD OF SUPERVISORS, APPROVING A CHANGE OF ZONING REGULATIONS AND A MODIFICATION TO THE MASTER DEVELOPMENT PLAN IN THE PC (PLANNED COMMUNITY ZONE) FOR ASSESSOR’S PARCEL NUMBER 203-47-001F AND A 1.02 ACRE PORTION OF ASSESSOR’S PARCEL NUMBER 203-47-001M

WHEREAS, the subject properties include two parcels totaling 8.02 acres located north of Shadow Mountain Drive and east of the Days Inn and Pilot Travel Center in Bellemont, and are identified as Assessor’s Parcel Number 203-47-001F and a 1.02 acre portion of Assessor’s Parcel Number 203-47-001M as described in the Shadow Mountain Village at Bellemont subdivision preliminary plat.

WHEREAS, an application was filed by Flagstaff Meadows, LLC, Queen Creek, Arizona and McCleve LC and DR Revocable Living Trust DTD, Queen Creek, Arizona for a Change of Zoning Regulations and a Modification of the Master Development Plan in the PC (Planned Community) Zone; and

WHEREAS, the Planning and Zoning Commission held a duly noticed public hearing on June 26, 2019 and recommended approval of the Change of Zoning Regulations and Modification of the Master Development Plan with a vote of 8-0; and

WHEREAS, the Board of Supervisors has held a public hearing on August 13, 2019; and

WHEREAS, the Board of Supervisors has determined that the findings for a zone change, as follows, have been met:

1. The proposed Zone Change is in compliance with the goals and policies of the Comprehensive Plan, the Bellemont Area Plan and the Flagstaff Regional Plan as demonstrated in the policies cited below. The Zoning Ordinance provides for the Planned Community (PC) Zone to allow for modified development standards as proposed and appropriate for the proposed development.

2. The change is in the interest of or will further the public health, safety, comfort, convenience and welfare. It allows for development of housing consistent with the local community in an area served by a community water and wastewater system and a fire station located near the site. The proposed development is in a mixed use setting that retains an area for a neighborhood commercial development.

3. The change is consistent with the character of the local community that includes commercial and residential development.
NOW THEREFORE BE IT ORDAINED by the Coconino County Board of Supervisors that the requested Change of Zoning Regulations and Modification of the Master Development Plan are approved subject to the following conditions:

1. The CH-10,000 standards of the PC Zone shall be changed to RM-20/A standards as described in the most current version of the Zoning Ordinance with modifications as outlined in the chart below. These standards shall be applied to APN 203-47-001F and a 1.02-acre portion of APN 203-47-001M as documented on the Preliminary Plat and the Master Development Plan:

   Proposed modified RM-20/A zoning (changes are highlighted):
   
<table>
<thead>
<tr>
<th>Property Development Standards</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Density, maximum dwelling units/acre</td>
<td>14.66</td>
</tr>
<tr>
<td>Lot area, in square feet</td>
<td>1656</td>
</tr>
<tr>
<td>Lot width, in feet</td>
<td>24</td>
</tr>
<tr>
<td>Lot depth, in feet</td>
<td>69</td>
</tr>
<tr>
<td>Front yard, in feet</td>
<td>10</td>
</tr>
<tr>
<td>Side yard-interior, in feet</td>
<td>0</td>
</tr>
<tr>
<td>Side yard-street side, in feet</td>
<td>0</td>
</tr>
<tr>
<td>Rear yard, in feet</td>
<td>9</td>
</tr>
<tr>
<td>Lot coverage, maximum</td>
<td>80%</td>
</tr>
<tr>
<td>Building height, in feet</td>
<td>30</td>
</tr>
<tr>
<td>Covered off-street parking spaces per dwelling</td>
<td>2</td>
</tr>
<tr>
<td>Open, off-street parking, guest parking</td>
<td>Additional 20% of total spaces</td>
</tr>
<tr>
<td>Minimum distance between structures, in feet</td>
<td>16</td>
</tr>
</tbody>
</table>

2. Development of the property shall substantially comply with the approved preliminary plat for the Shadow Mountain Village at Bellemont subdivision (SUB-18-004) and the Master Development Plan including the landscaping, lighting, signage, parks and design elements illustrated in the Master Development Plan and Design Documents and described in the Master Development Plan narrative.

3. The areas identified on the Master Development Plan including APN 203-47-001L and a portion of APN 203-47-001M shall be retained for commercial uses currently proposed as a coffee shop, self-storage units, and additional retail uses. These properties shall retain the existing CH-10,000 zoning standards.

4. The Zone Change is conditioned upon approval and implementation of the Development Agreement attached as Exhibit 1.
PASSED and ADOPTED this 13th day of August, 2019 by the following vote:

AYES: 5
NOES: 0
ABSENT: 0

COCONINO COUNTY BOARD OF SUPERVISORS

(SEAL)

Lena Fowler, Chairman
Coconino County Board of Supervisors

ATTEST:

Lindsay Daley, Clerk of the Board

APPROVED AS TO FORM

By:
Rose Winkeler, Deputy County Attorney
DEVELOPMENT AGREEMENT
Between
Coconino County
And
Lonnie C. and Debbie R McCleve
Revocable Living Trust dtd February 3, 2000
And
Bellemont Interchange 185, LLC

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into this 3rd day of August, 2019, by and between Coconino County, a political subdivision of the State of Arizona ("County"), and Lonnie C. and Debbie R McCleve Revocable Living Trust dtd February 3, 2000, and Bellemont Interchange 185, LLC (collectively "Developers").

RECITALS

A. Ariz. Rev. Stat. § 11-1101 authorizes the County to enter into development agreements with landowners and persons having an interest in real property located within unincorporated areas of Coconino County.

B. Developer Lonnie C. and Debbie R McCleve Revocable Living Trust dtd February 3, 2000 is the owner of real property located on Shadow Mountain Drive in Bellemont, Arizona, commonly known as Assessor’s Parcel Numbers 207-47-001F & 207-47-001M, which is more specifically described in Exhibit "A" (the "Property").

C. Developers are also the owners of real property located on Shadow Mountain Drive in Bellemont, Arizona, commonly known as Assessor’s Parcel Numbers 204-03-003A. Portions of real property located on Assessor’s Parcel Numbers 204-03-003A, 207-47-001F & 207-47-001M are necessary for acquisition in fee and in easements by the County to complete its public right-of-way improvement project known as the "Bellemont Access Safety Project." The portions of real property are more specifically described in Exhibit "C" (collectively the "Bellemont Project Property").

D. The Property is currently zoned PC (Planned Community) with CH-10,000 standards applied, and the Developer is requesting rezoning to PC (Planned Community) with modified RM 20/A standards applied.
E. Developer desires to develop the Property into a multi-family residential townhouse subdivision consisting of no more than 94 units.

F. This Agreement is consistent with the Coconino County Comprehensive Plan in effect on the Effective Date of this Agreement, as set forth below.

G. The County has an interest in ensuring that the development of the Property complies with County standards for development and engineering improvements, and the County believes that development of the Property and expeditious completion of the adjacent Bellemont Access Safety Project pursuant to this Agreement will result in planning, safety, and other benefits to the County and its residents.

H. The Developers acknowledge that the development of the Property pursuant to this Agreement will be beneficial and advantageous to the Developers by providing assurances to the Developers that it will have the ability to develop the Property within the County pursuant to this Agreement, under the zoning described in Recital C above, and in accordance with the Site Plans. The Developers further acknowledges significant traffic, safety and other benefits resulting from the County’s expeditious completion of the Bellemont Access Safety Project adjacent to the proposed Subdivision Project.

I. The County holds certain existing rights within its right-of-way with respect to utility lines located therein pursuant to a Franchise Agreement executed between Coconino County and Utility Source, LLC, dated December 16, 2008 and adopted pursuant to Coconino County Resolution No. 2008-72. Pursuant to this agreement, the County may require, at the expense of the franchisee Utility Source, LLC, the location of utility lines and relocation of such lines, in the event the lines conflict with the required Bellemont Access Safety Project. The County’s right to recover costs of location and relocation of lines from the franchisee is assignable.

J. The County and the Developers acknowledge that this Agreement is a development agreement pursuant to the provisions of A.R.S. § 11-1101.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises and agreements set forth herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and in order to fulfill the foregoing objectives, the parties agree as follows:

1. **INCORPORATION OF RECITALS**

Each of the recitals set forth above is incorporated into this Agreement as though fully set forth herein.
2. DEFINITIONS

The following terms shall have the meanings set forth below whenever used in this Agreement, except where the context clearly indicates otherwise:

2.1 “Bellemont Access Safety Project” shall mean and refer to construction of the Shadow Mountain Drive roundabout, related drainage infrastructure, and widening of the shoulder along Brannigan Park Road.

2.2 “Bellemont Project Property” shall mean and refer to all real property which is legally described in Exhibit “C” which is to be purchased in fee and in easement by the County from the Developers pursuant to Sections 5.4 & 6.3.

2.3 “County” shall mean and refer to Coconino County, a political subdivision of the State of Arizona, and any successor public body or entity.

2.4 “Developer” shall mean and refer to the Lonnie C. and Debbie R McCleve Revocable Living Trust dtd February 3, 2000, and any successor-in-interest or assignee of the Lonnie C. and Debbie R McCleve Revocable Living Trust dtd February 3, 2000, as contemplated pursuant to Section 9.14.

2.5 “Developers” shall mean and refer collectively to the Lonnie C. and Debbie R McCleve Revocable Living Trust dtd February 3, 2000 and Bellemont Interchange 185, LLC, and any successor-in-interest or assignee of the Lonnie C. and Debbie R McCleve Revocable Living Trust dtd February 3, 2000 and Bellemont Interchange 185, LLC, as contemplated pursuant to Section 9.14.

2.6 “Improvements” shall mean and refer to all the improvements which may be constructed as part of the Subdivision Project, including, without limitation, public roads, utilities, driveways, landscaping, and other improvements of any type or kind to be built by Developer.

2.7 “Property” shall mean and refer to all real property which is legally described in Exhibit “A” and proposed for rezoning and townhouse subdivision development.

2.8 “Subdivision Project” shall mean and refer to the development of the Property for the uses, intensities, and densities currently shown in the approved Site Plans.
3. ENTITLEMENTS

3.1 Zoning Map Amendment. Developer hereby agrees to be subject to all of the terms, conditions, and stipulations of the rezoning ordinance, the Site Plan, and preliminary plat approval for case number ZC-18-010 (County Ordinance No. 2019-12) and SUB-18-004 (Res. No. 2019-27).

3.2 Development Standards. The development of the Property, as well as the standards for off-site and on-site public improvements, will be governed by the Coconino County Zoning Ordinance, Coconino County Subdivision Ordinance, the Engineering Design and Construction Manual (EDCM) and all other ordinances, regulations, rules, guidelines, and policies controlling permitted uses of the site, design review guidelines, the density and intensity of uses, and the maximum and minimum height and size of the buildings in existence as of the Effective Date of this Agreement will apply. For any development modifications made after three (3) years from the Effective Date of this Agreement, the current codes, ordinances, regulations, rules, guidelines and standards in effect at the time of submittal shall apply.

4. DEVELOPMENT PLAN

4.1 Scope of Development. The County and the Developer hereby acknowledge that the County staff has reviewed and recommended for approval, subject to conditions, the Site Plan for the Subdivision Project, attached hereto as Exhibit “B” and incorporated herein by this reference (collective the “Site Plan”). The Site Plan sets forth the basic land uses, intensity, and density of such uses, relative height, bulk and size of buildings and structures proposed by Developer and approved by the County for development within the Property.

5. DEVELOPER OBLIGATIONS

5.1 Construction of Improvements. The Developer shall provide security, in a form satisfactory to the County, as set forth in the County’s Subdivision Ordinance, that improvements will be constructed in accordance with approved plans. Except as provided in Section 5.1.1 of this Agreement, Developer shall, at its sole expense, construct or cause to be constructed all improvements as required by County codes, ordinances, and this Agreement, and in accordance with approved specifications.

5.1.1 General Off-site Roadway Improvements. The Developer provided a Traffic Impact Analysis (“TIA”) to determine the necessary traffic mitigation for the Subdivision Project. The parties agree that the Developer’s traffic mitigation will be accomplished by the construction of a left-hand turn lane on Shadow Mountain Drive into the Shadow Mountain Village subdivision. The County will construct the left-hand turn lane during the time it completes construction of the adjacent Bellermont Access Safety Project. Developer shall bear the entire cost of the additional engineering and construction of the left-hand turn lane and shall make a
cash contribution to the County for the costs within 30 days of receiving a request for payment.

5.2 **Utility Line Location & Relocation.** Utility lines location in Shadow Mountain Drive is presently unknown. Utility Source, LLC, pursuant to a December 16, 2008 Franchise Agreement, is obligated to keep and maintain full and complete plans and records showing the exact location of all utility franchise property installed in the public rights-of-way and provide the location of its utility property to the County upon request. Utility Source, LLC has been unable to provide such information, necessitating the County’s action to affirmatively locate the utility lines, and possibly relocate such utility lines, prior to completion of its Bellemont Access Safety Project. Developer recognizes the benefits that the expeditious completion of the Bellemont Access Safety Project provides to the proposed Subdivision Project and therefore shall pay to the County all costs associated with the location of the utility lines, the creation of “as-buils” documenting the location of the lines, and the appropriate marking of the lines to enable future location. If the County, in its sole discretion, determines that the present location of the lines is in conflict with the proposed Bellemont Access Safety Project, and the Utility elects not to abandon the lines, the Developer will also pay to the County all costs to design and construct the relocation of the utility lines within the County right-of-way. The County will assign its rights to the Developer to recover costs from Utility Source, LLC for location and relocation of utility lines upon receipt of payment in full by Developer. Developer shall pay costs within 30 days of receiving a request for payment.

5.3 **Drainage**

5.3.1 **Permanent Drainage Basin.** Developers will convey the necessary permanent drainage easement, pursuant to Section 5.4, to contain the public drainage basin associated with the Bellemont Access Safety Project. Developers desire the opportunity to relocate the drainage basin in the future. The County would consider a request to abandon the drainage easement in the future after Developers construct a new basin, meeting County specifications and approval, provided the Developers will assume perpetual maintenance for the relocated drainage basin and all costs associated with the engineering and construction of the new basin, including permitting costs.

5.3.2 **Development Drainage Culvert beneath County Right-of-Way.** The Developer wishes to convey stormwater through a drainage culvert, to be located beneath Shadow Mountain Drive, within the County Right-of-Way. The County will allow an appropriately sized culvert, which meets County specifications and is approved by the County, and which does not interfere with the Bellemont Access Safety Project. The Developer will pay to the County all costs associated with the placement of the culvert, which may take place during the construction phase of the Bellemont Access Safety Project. Developer shall pay all costs within 30 days of receiving request for payment. Once the Bellemont Access Safety Project paving is completed, no cutting of the payment will be permitted for seven years and thereafter, no cutting will be permitted sooner than three years after pavement preservation activities, such as chip sealing.
5.3.3 Developer Use of Bellemont Access Safety Project Drainage Basin. Developer may desire to convey drainage from the Subdivision Project into the County drainage basin serving the Bellemont Access Safety Project. The drainage basin is presently designed to serve only the County-generated drainage associated with the Bellemont Access Safety Project. The County would consider a request to increase the size of the basin and accept drainage generated by the Subdivision Project, provided the Developer will assume perpetual maintenance for the resized drainage basin and will pay all costs associated with the additional engineering and construction of the resized basin, including permitting costs. Developer shall pay all costs within 30 days of receiving request for payment.

5.3.4 Right-In, Right-Out Turn Lane Not Precluded. County agrees that the construction of the “Bellemont Access Safety Project” defined in Paragraph 2.6 above will not preclude Developer from applying to the County in the future for a permit to construct a right-in/right-out turn lane for access to the Developer’s commercial property south of the Bellemont Access Safety Project. The right-in/right-out turn lane would be designed and constructed in conjunction with the development of the Developer’s commercial property. The application for such right-in/right-out turn lane must include a traffic impact statement or analysis to be reviewed and approved by County Staff. The cost of designing and constructing this right-in/right-out turn lane shall be the responsibility of the Developer.

5.4 Conveyance of Bellemont Project Property. Upon approval of the Entitlements and this Agreement, Developers will promptly convey the Bellemont Project Property necessary for the completion of the Bellemont Access Safety Project, as described in Exhibit “C,” in exchange for the appraised value of $417,486.

5.5 Assurances. Developer shall provide security, in a form satisfactory to the County, to assure fulfillment of its payment obligations to the County as set forth in Sections 5.1, 5.2, and 5.3.

6. COUNTY OBLIGATIONS

6.1 Left-Hand Turn Lane Construction. The County will construct the left-hand turn lane as provided in Section 5.1.1 during the time it completes construction of the adjacent Bellemont Access Safety Project and will accept payment of all costs associated with the additional engineering and construction from Developer.

6.2 Utility Line Location, Relocation & Assignment of Rights. The County will complete the location and possible relocation of utility lines in Shadow Mountain Drive right-of-way as contemplated by Section 5.2 of this Agreement. The County will accept payment of all
costs associated with the location and relocation of the utility lines from the Developer and will assign its rights of cost recovery from Utility Source, LLC to the Developer.

6.3 Payment for Right-of-Way and Easement Conveyance. The County shall pay Developers for the conveyances of the Bellemont Project Property as provided in Sections 5.3.1 and 5.4.

6.4 Future Relocation of Permanent Drainage Basin. The County shall consider in good faith a future request for abandonment of the drainage basin adjacent to the Bellemont Access Safety Project, as provided in Section 5.3.1, upon approval of construction of a new drainage basin.

6.5 The County agrees to meet and confer with the Developer and to consider Developer’s input concerning the cost of the construction by the County as required in Sections 6.1 and 6.2. Developer recognizes and understands that such input is for informational and instructive purposes and that the County’s ability to complete such construction is governed by State and County procurement requirements.

7. DEVELOPMENT PROCESS

7.1 Diligence in Responding to Approval Requests. The County hereby acknowledges and agrees that development of the Property will require the County’s ongoing participation in the review and approval of certain plans, permit applications, and inspections which are part of the County’s current building and development requirements (hereinafter collectively called “Approval Requests”). The County hereby agrees that, in connection with all such Approval Requests relating to the planning or development of this Property or any portion thereof, and the construction of Improvements thereon, it shall cooperate with Developer in good faith to process all such Approval Requests.

8. DEFAULT; REMEDIES

8.1 Events Constituting Default. A party hereunder shall be deemed to be in default under this Agreement if such party breaches any obligation required to be performed by the respective party hereunder within any time period required for such performance and such breach or default continues for a period of thirty (30) days after written notice thereof from the party not in default hereunder.

8.2 Dispute Resolution. In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree that there shall be a forty-five (45) day moratorium on litigation during which time the parties agree to attempt to settle the dispute by non-binding mediation before the commencement of litigation. The mediations shall be held under the commercial mediation rules of the American Arbitration Association. The mediator selected shall have at least five (5) years’ experience in mediating or arbitrating disputes relating to commercial property development. The costs of any such mediation shall be divided equally between the
County and the Developer or in such other fashion as the mediator may order. The results of the mediation shall be nonbinding on the parties and any party shall be free to initiate litigation upon the conclusion of the mediation.

8.3 Developer’s Remedies. In the event that the County is in default under this Agreement and fails to cure any such default within the time period described in Section 8.1 above, then in that event, in addition to all other legal and equitable remedies which the Developer may have, the Developer may terminate this Agreement by written notice delivered to the County.

8.4 County’s Remedies. In the event that the Developer is in default under this Agreement and fails to cure any such default within the time period described in Section 8.1 above, then in that event, in addition to all other legal and equitable remedies which the County may have, the County may terminate this Agreement by written notice delivered to the Developer.

8.5 Development Rights in the Event of Termination. Upon termination of this Agreement as provided herein, the Developer shall have no further rights to develop the Property pursuant to this Agreement.

8.6 No Personal Liability. No current or former member, official, or employee of the County or Developer, when acting within the scope of their official capacity shall be personally liable (a) in the event of any default or breach by the County or Developer, as applicable; (b) for any amount which may become due to the nonbreaching party or its successor or assign; or (c) pursuant to any obligation of the County or Developer, as applicable, under the terms of this Agreement.

8.7 Liability and Indemnification. Developer shall indemnify, protect, defend, and hold harmless the County, its Board of Supervisors members, officers, employees, and agents for, from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, including, without limitation, reasonable attorney’s fees and costs of defense arising, directly or indirectly, in whole or in part, out of the performance of this Agreement by County or Developer, or nonperformance of this Agreement by the Developer.

9. GENERAL PROVISIONS

9.1 Effective Date and Term. This Agreement shall be effective (the “Effective Date”) upon execution by the parties hereto and recordation in accordance with A.R.S. § 11-1101. The term of this Agreement shall extend from the Effective Date of this Agreement and shall automatically terminate thirty years from such date.

9.2 Notices. All notices and communications provided for herein, or given in connection herewith, shall be validly made if in writing and delivered personally or sent by
registered or certified United States Postal Service mail, return receipt requested, postage prepaid to:

To County:
County Manager
Coconino County
219 E. Cherry Avenue
Flagstaff, Arizona 86001

To Developers:
Lonnie C. and Debbie R McCleve
Revocable Living Trust
dtd February 3, 2000
20525 E. Chandler Heights Road
Queen Creek, Arizona 85142

Or to such other addresses as either party may from time to time designate in writing and deliver in a like manner. Any such change of address notice shall be given at least ten (10) days before the date on which the change is to become effective. Notices given by mail shall be deemed delivered 72 hours following deposit in the USPS in the manner set forth above.

9.3 Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the parties of the breach of any provisions of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other provision of this Agreement.

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

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

9.6 Entire Agreement. This Agreement, including the following exhibits which are incorporated in this Agreement by reference, constitutes the entire agreement between the parties and supersedes any prior written or oral understandings or agreements between the parties. This provision applies only to the entirety of this Agreement; additional and separate zoning stipulations and agreements with the County may apply to the Property, and this provision has no effect on them.

Exhibit “A” Legal Description of Property
Exhibit “B” Site Plan
9.7 **Amendment of the Agreement.** This Agreement may be amended, 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 to this Agreement or by their successors in interest or assigns. The County shall record the amendment or cancellation in the official records of the Coconino County Recorder.

9.8 **Severability.** If any other provision of the Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect.

9.9 **Governing Law.** The laws of the State of Arizona shall govern the interpretation and enforcement of this Agreement. This Agreement has been made and entered into in Coconino County, Arizona.

9.10 **Recordation of Agreement & Subsequent Amendment: Cancellation.** The County will record this Agreement, and any amendment or cancellation of it, in the official records of the Coconino County Recorder no later than ten (10) days after the County and the Developer execute the Agreement, amendment, or cancellation, as required by A.R.S. § 11-1101.

9.11 **No Partnership; Third-Party.** It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture, or other arrangement between the Developer and the County. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder.

9.12 **Conflict of Interest.** Pursuant to Arizona law, rules, and regulations, no member, official, or employee of the County shall have a personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. This Agreement is subject to the cancellation provisions of A.R.S. § 38-511.

9.13 **Compliance with All Laws.** Developer will comply with all applicable Federal, State, and County laws, ordinances, regulations, and policies.

9.14 **Successors and Assigns: Restriction on Assignment by Developer.** The provisions of this Agreement shall inure to the benefit and be binding upon the permitted successors and assigns of the parties hereto. Developer shall not transfer or assign any part of its rights and/or obligations arising under this Agreement without the prior written approval of the County, which approval shall not be unreasonably withheld, conditioned or delayed. After completion of construction of the Subdivision Project, Developer may
assign this Agreement to any purchaser or the portion of the Subdivision Project owned by Developer without the County’s consent (provided the County is timely notified of such assignment). Notwithstanding anything contained in the foregoing to the contrary, no assignment of this Agreement or any specific rights, obligation, or duties of Developer under this Agreement shall release Developer, its successors, or assigns, from its obligations hereunder, unless specifically agreed to by the County.

9.15 **Restriction on Assignment by County.** The County shall not transfer or assign all or any part of its rights and obligations under this Agreement without the prior written approval of the Developer, which approval shall not be unreasonably withheld, conditioned, or delayed.

10. **WAIVER OF CLAIM FOR DIMMINUTION IN VALUE**

Developer hereby waives and fully releases any and all financial loss, injury, claims, and causes of action that the Developer may have, now or in the future, for any “diminution in value” and for any “just compensation” under the Private Property Rights Protection Act, codified in A.R.S. §§ 12-1131 through 12-1138 (“the Act”), in connection with the application of the County’s existing land use laws and including Ordinance No. 2019-12 regarding the Property. This waiver constitutes a complete release of any and all claims and causes of action that may arise or may be asserted under the Act with regard to the subject Property. Developer agrees to indemnify, hold harmless, and defend the County, its officers, employees, and agents, from any and all claims, causes of action, demands, losses and expenses, including attorney’s fees and litigation costs, that may be asserted by or may result from any of the present or future owners of any interest in the Property seeking potential compensation, damages, attorney’s fees, or costs under the Act that they may have, as a result of the application of the County’s existing land use laws, including Ordinance No. 2019-12, upon the Property.

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

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Lonnie C. and Debbie R McCleve  
Revocable Living Trust Dated February 3, 2000

Lonnie McCleve, Trustee

Coconino County Board of Supervisors

Lena Fowler, Chair
STATE OF ARIZONA    
COUNTY OF Maricopa

ACKNOWLEDGMENT

On this 19 day of August, 2019, before me, a Notary Public, personally appeared LONNIE MCCLEVE, known to be or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same on behalf of the LONNIE C. AND DEBBIE R MCCLEVE REVOCABLE LIVING TRUST DATED FEBRUARY 3, 2000 and on behalf of Bellemont Interchange 185, LLC, for purposes therein contained.

MARY ANN PARRY
Notary Public - Arizona
Maricopa County
My Comm. Expires Oct 13, 2020

Notary Public
My Commission Expires: 10-13-20
Exhibit A

The South half of the Southeast quarter of the Southwest quarter of Section 36, Township 22 North, Range 5 East of the Gila and Salt River Base and Meridian, Coconino County, Arizona;
EXCEPT the Westerly 400.00 feet thereof;
And
EXCEPT the Easterly 462.00 feet thereof.

And

A portion of the Southwest quarter of Section 36, Township 22 North, Range 5 East of the Gila and Salt River Base and Meridian, Coconino County, Arizona, more particularly described as follows:
COMMENCING at the Southwest corner of said Section 36;
Thence South 89° 56’ 29” East, along the South line of the Southwest quarter of said Section 36, a distance of 1599.17 feet to the POINT OF BEGINNING;
Thence North 00° 19’ 42” West, a distance of 357.34 feet;
Thence North 89° 56’ 24” West, a distance of 273.00 feet;
Thence North 00° 19’ 42” West, a distance of 17.68 feet;
Thence North 70° 38’ 24” East, a distance of 55.29 feet;
Thence North 01° 11’ 41” West, a distance of 268.61 feet;
Thence South 89° 54’ 02” East, a distance of 351.78 feet;
Thence South 00° 19’ 45” East, a distance of 661.71 feet to a point on the South line of said Section 36;
Thence North 89° 56’ 29” West, along the South line of the Southwest quarter of said Section 36, a distance of 127.00 feet to the POINT OF BEGINNING.
Following is a description of a parcel of land which is a portion of the parcel described in Instrument No. 3627606. The parcel is located in the northwest quarter of Section 1, Township 21 North, Range 5 East, Gila and Salt River Base and Meridian, Coconino County, Arizona.

The parcel is more particularly described by metes and bounds as follows:

**COMMENCING** at the northwest corner of Section 1, monumented with a 3" Bureau of Land Management brass cap, dated 2001, from which the north quarter corner of Section 1, monumented with a 3 1/4" aluminum cap, LS 14671, dated 1998, bears North 89°58'38" East, 2649.28 feet, the Basis of Bearings for this description:

**THENCE** North 89°58'38" East along the north line of the northwest quarter of Section 1, 1164.98 feet to the northwest corner of the parcel described in Instrument No. 3627606, the **TRUE POINT OF BEGINNING** of this description;

**THENCE** North 89°58'38" East along the north line of the northwest quarter of Section 1, 658.51 feet to the northeast corner of the parcel described in Instrument No. 3627606 and to the northwest corner of Flagstaff Meadows Unit 3, Phase 1, recorded in Instrument No. 3462670, monumented with a rebar with aluminum cap, LS 40640;

**THENCE** South 00°01'09" West along the east line of the parcel described in instrument No. 3627606 and along the west line of Flagstaff Meadows Unit 3, Phase 1, 62.78 feet to a non-tangent curve;

**THENCE** along a curve to the left having a radius of 839.24 feet, a central angle of 03°59'06" and an arc length of 58.37 feet, (chord bearing of South 75°43'16" West, chord length of 58.36 feet);

**THENCE** South 44°40'42" West, 84.27 feet;

**THENCE** North 90°00'00" West, 146.81 feet;

**THENCE** North 13°57'41" West, 58.18 feet;

**THENCE** North 90°00'00" West, 383.20 feet;

**THENCE** South 73°25'23" West, 56.38 feet to the ADOT right of way as shown on the ADOT plans C-3T-547A;

**THENCE** North 29°52'37" East along the ADOT right of way line, 63.36 feet;

**THENCE** North 29°52'37" East, 47.86 feet to the **TRUE POINT OF BEGINNING** of this description.

The above described parcel of land contains 64854.19 square feet, 1.489 Acres +/-.

Expires 6/30/2021
Legal Description 4 – Exhibit B
A portion of the parcel described in Instrument No.
3627606. Located in the northwest quarter of Section 1,
Township 21 North, Range 5 East, Gila and Salt River
Base and Meridian, Coconino County, Arizona.

ARIZONA SURVEYING
Arizona Surveying, Inc
1843 W. Heavenly Ct
Flagstaff, AZ 86001
Following is a description of a parcel of land which is a portion of the parcel described in Instrument No. 3627606. The parcel is located in the northwest quarter of Section 1, Township 21 North, Range 5 East, Gila and Salt River Base and Meridian, Coconino County, Arizona.

The parcel is more particularly described by metes and bounds as follows:

COMMENCING at the northwest corner of Section 1, monumented with a 3'' Bureau of Land Management brass cap, dated 2001, from which the north quarter corner of Section 1, monumented with a 3 1/4'' aluminum cap, LS 14671, dated 1998, bears North 89°58'38'' East, 2649.28 feet, the Basis of Bearings for this description:

THENCE North 89°58'38'' East along the north line of the northwest quarter of Section 1, 1823.49 feet to the northeast corner of the parcel described in Instrument No. 3627606 and to the northwest corner of Flagstaff Meadows Unit 3, Phase 1, recorded in Instrument No. 3462670, monumented with a rebar with aluminum cap, LS 40640;

THENCE South 00°01'09'' West along the east line of the parcel described in Instrument No. 3627606 and along the west line of Flagstaff Meadows Unit 3, Phase 1, 62.78 feet to a non-tangent curve;

THENCE along a curve to the left having a radius of 839.24 feet, a central angle of 03°59'06'' and an arc length of 58.37 feet, (chord bearing of South 75°43'16'' West, chord length of 58.36 feet);

THENCE South 44°40'42'' West, 84.27 feet to the TRUE POINT OF BEGINNING of this description;

THENCE South 44°40'42'' West, 83.94 feet;

THENCE North 90°00'00'' West, 108.18 feet;

THENCE North 39°58'34'' West, 86.55 feet;

THENCE South 89°58'07'' West, 122.64 feet;

THENCE North 00°00'00'' West, 49.89 feet;

THENCE North 90°00'00'' East, 184.60 feet;

THENCE South 13°57'41'' East, 58.18 feet;

THENCE North 90°00'00'' East, 146.81 feet to the TRUE POINT OF BEGINNING of this description;

The above described parcel contains 19702.48 square feet, 0.452 Acres+/-.
Following is a description of a parcel of land which is a portion of the parcel of land described in Instrument No. 3370478. The parcel is located in the southwest quarter of Section 36, Township 22 North, Range 5 East, Gila and Salt River Base and Meridian, Coconino County, Arizona.

The parcel is more particularly described by metes and bounds as follows:

COMMENCING at the southwest corner of Section 36, monumented with a 3" Bureau of Land Management brass cap, dated 2001, from which the south quarter corner of Section 36, monumented with a 3 1/4" aluminum cap, LS 14671, dated 1998, bears North 89°58'38" East, 2649.28 feet, the Basis of Bearings for this description:

THENCE North 89°58'38" East along the south line of the southwest quarter of Section 36, 1726.69 feet to the southwest corner of the parcel described in Instrument No. 3370478 and to the southeast corner of the parcel of land described as Parcel 2 in Instrument No 3584133, monumented with a rebar with plastic cap, illegible, the TRUE POINT OF BEGINNING of this description:

THENCE North 00°26'39" West along the east line of the parcel described in Instrument No. 3370478 and along the west line of Parcel 2, 65.40 feet to a non-tangent curve;

THENCE along a curve to the left having a radius of 30.00 feet, a central angle of 37°30'24" and an arc length of 19.64 feet, (chord bearing of South 46°43'03" East, chord length of 19.29 feet);

THENCE South 65°28'16" East, 36.27 feet;

THENCE South 19°27'16" East, 13.35 feet;

THENCE North 89°58'38" East, 409.79 feet to the east line of the parcel described in Instrument No. 3370478 and to the west line of the parcel described in Instrument No. 3149756;

THENCE South 00°18'31" West along the east line of the parcel described in Instrument No. 3370478 and along west line of the parcel described in Instrument No. 3149756, 24.51 feet to the south line of southwest quarter of Section 36;

THENCE South 89°58'38" West along the south line of southwest quarter of Section 36, 460.63 feet to the TRUE POINT OF BEGINNING of this description;

The above described parcel contains 12439.21 square feet, 0.286 Acres +/-.
Legal Description 6 - Exhibit B

A portion of the parcel of land described in Instrument No. 3370478. Located in the southwest quarter of Section 36, Township 22 North, Range 5 East, Gila and Salt River Base and Meridian, Coconino County, Arizona.

Parcel 2
Instrument No. 3584133

Point of Commencement Section Corner
3" BLM Brass Cap, Dated 2001

N 06°26'39" W 65.40'

Radius = 30.00'
Length = 19.64'
Delta = 37°30'24"
Chord Bearing = S 46°43'03" E
Chord Length = 19.29'

S 65°28'16" E 36.27'
S 19°27'16" E 13.35'
N 89°58'38" E 409.79'

Area = 124,39,2090 SF
= 0.286 Acres

True Point of Beginning Rebar w/ Plastic Cap, Illegible

Docket 1380, Page 94

Scale 1" = 100'

ARIZONA SURVEYING
Arizona Surveying, Inc
1843 W. Heavenly Ct
Flagstaff, AZ 86001
Following is a description of a parcel of land which is a portion of the parcel of land described as Parcel 2 in Instrument No. 3584133. The parcel is located in the southwest quarter of Section 36, Township 22 North, Range 5 East, Gila and Salt River Base and Meridian, Coconino County, Arizona.

The parcel is more particularly described by metes and bounds as follows:

COMMENCING at the southwest corner of Section 36, monumented with a 3" Bureau of Land Management brass cap, dated 2001, from which the south quarter corner of Section 36, monumented with a 3 1/4" aluminum cap, LS 14671, dated 1998, bears North 69°58'38" East, 2649.28 feet, the Basis of Bearings for this description:

THENCE North 89°58'38" East along the south line of the southwest quarter of Section 36, 1599.66 feet to the southwest corner of the parcel described as Parcel 2 in Instrument No. 3584133, monumented with a rebar with plastic cap, illegible, the TRUE POINT OF BEGINNING of this description:

THENCE North 00°25'15" West along the west line of Parcel 2, 108.23 feet;

THENCE North 24°38'49" East, 55.58 feet;

THENCE North 00°26'40" West, 104.33 feet;

THENCE North 89°33'20" East, 62.00 feet;

THENCE South 00°26'40" East, 71.79 feet;

THENCE South 20°13'06" East, 86.40 feet;

THENCE South 14°29'22" East, 39.92 feet;

THENCE along a curve to the left having a radius of 30.00 feet, a central angle of 13°28'29" and an arc length of 7.06 feet, (chord bearing of South 21°13'37" East, chord length of 7.04 feet), to the east line of Parcel 2 and to the west line of the parcel described in Instrument No. 3370478;

THENCE South 00°26'39" East along the east line of Parcel 2 and along the west line of the parcel described in Instrument No. 3370478, 85.40 feet to the south line of the southwest quarter of Section 36, monumented with a rebar with plastic cap, illegible;

THENCE South 86°58'38" West along the south line of the southwest quarter of Section 36, 127.03 feet to the TRUE POINT OF BEGINNING of this description.

The above described parcel of land contains 24944.58 square feet, 0.5726 Acres +/-.
Legal Description 5 - Exhibit B

A parcel of land which is a portion of the parcel of land described in Instrument No. 3584133. Located in the southwest quarter of Section 36, Township 22 North, Range 5 East, Gila and Salt River Base and Meridian, Coconino County, Arizona.

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<th>CURVE</th>
<th>RADIUS</th>
<th>DELTA ANGLE</th>
<th>ARC LENGTH</th>
<th>CHORD BEARING</th>
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Following is a description of a parcel of land which is a portion of the parcel of land described as Parcel 2 in Instrument No. 3584133. The parcel is located in the southwest quarter of Section 36, Township 22 North, Range 5 East, Gila and Salt River Base and Meridian, Coconino County, Arizona.

The parcel is more particularly described by metes and bounds as follows:

COMMENCING at the southwest corner of Section 36, monumented with a 3" Bureau of Land Management brass cap, dated 2001, from which the south quarter corner of Section 36, monumented with a 3 1/4" aluminum cap, LS 14671, dated 1998, bears North 89°58'38" East, 2649.28 feet, the Basis of Bearings for this description:

THENCE North 89°58'38" East along the south line of the southwest quarter of Section 36, 1599.66 feet to the southwest corner of the parcel described as Parcel 2 in Instrument No. 3584133, monumented with a rebar with plastic cap, illegible;

THENCE North 00°25'15" West along the west line of Parcel 2, 262.88 feet;

THENCE North 89°33'20" East, 45.50 feet to the beginning of a non-tangent curve, and the TRUE POINT OF BEGINNING of this description:

THENCE along a curve to the left having a radius of 291.00 feet, a central angle of 39°38'53" and an arc length of 201.37 feet, (chord bearing of North 20°16'06" West, chord length of 197.38 feet);

THENCE North 40°05'33" West, 147.13 feet;

THENCE along a curve to the left having a radius of 176.00 feet, a central angle of 41°40'00", and an arc length of 127.99 feet, (chord bearing of North 60°55'33" West, chord length of 125.19 feet) to the west line of Parcel 2 and to the east line of the parcel described in Instrument No. 3403166;

THENCE North 01°14'57" West along the west line of Parcel 2 and along the east line of the parcel described in Instrument No. 3403166, 40.24 feet to the northwest corner of Parcel 2;

THENCE South 89°57'52" East along the north line of Parcel 2, 1.80 feet to the beginning of a non-tangent curve;

THENCE along a curve to the right having a radius of 216.00 feet, a central angle of 42°57'18" and an arc length of 161.94 feet, (chord bearing of South 61°34'12" East, chord length of 158.17 feet);

THENCE South 40°05'33" East, 147.13 feet;

THENCE along a curve to the right having a radius of 331.00 feet, a central angle of 39°38'53" and an arc length of 229.05 feet, (chord bearing of South 20°16'06" East, chord length of 224.51 feet);

THENCE South 89°33'20" West, 40.00 feet to the TRUE POINT OF BEGINNING of this description.

The above described parcel of land contains 20328.24 square feet, 0.4667 Acres +/-.
Legal Description 11 – Exhibit B

A parcel of land which is a portion of the parcel of land described in Instrument No. 3584133. Located in the southwest quarter of Section 36, Township 22 North, Range 5 East, Gila and Salt River Base and Meridian, Coconino County, Arizona.

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</table>

Arizona Surveying, Inc
1643 W. Heavenly Ct
Flagstaff, AZ 86001