

**AMENDMENT**  
**ADDITIONAL INFRASTRUCTURE DEVELOPMENT AGREEMENT**

**Fain Retail Property**

THIS AMENDMENT, entered into this 8<sup>th</sup> day of December, 2011, by and between the TOWN OF PRESCOTT VALLEY, a municipal corporation of Arizona, ("Town"), and THE FAIN SIGNATURE GROUP, L.L.C., an Arizona limited liability company ("Fain");

**RECITALS**

WHEREAS, the Town and Fain entered into an Additional Infrastructure Development Agreement ("Agreement") on May 24, 2005 (attached hereto) for approximately sixty (60) acres described therein ("Property") to, among other things, provide for construction by Fain on the Property of the Additional Infrastructure Improvements (listed in Exhibit B of the Agreement) needed for commercial development of the Property, and to reimburse Fain for its verified costs (at a specified interest rate) over a period of years from a portion of transaction privilege tax ("TPTax") revenues collected on the Property; and

WHEREAS, the Town Manager issued a letter dated March 30, 2006 ("Letter"), in accordance with Subsection 1.2 of the Agreement, approving Fain's revision to the Additional Infrastructure Improvements listed in Exhibit B (as permitted in said Exhibit) and approving Fain's phasing plan for developing the Property and building the Additional Infrastructure Improvements (attached hereto); and

WHEREAS, on July 27, 2006, the Town Council approved re-zoning for Phase 2 (19.65 acres) of the Property from RCU-70 (Residential; Conditional Use Permits) to C2-PAD (Commercial; General Sales & Services – Planned Area Development) by Ordinance No. 662; and

WHEREAS, on September 28, 2006, the Council approved re-zoning for Phase 1 (16.7 acres) and Phase 3 (14.37 acres) of the Property from RCU-70 (Residential; Conditional Use Permits) to C2-PAD (Commercial; General Sales & Services – Planned Area Development) by Ordinances No. 668 and No. 670 respectively; and

WHEREAS, on January 11, 2007, the Council approved a Final Development Plan (FDP 06-034, site plan attached hereto) for a Kohl's store and other stores in Phase 1 of the Property by Resolution No. 1481; and

WHEREAS, on March 13, 2007, the Town's electors formally approved the Council's previous re-zoning of Phase 2 in a referendum election [5,598 in favor (66%) and 2,893 opposed (34%)]; and

WHEREAS, on June 7, 2007, opponents of the Phase 2 re-zoning filed a complaint in Yavapai County Superior Court against the Town, certain of its officers and employees, and Fain which (among other things) sought to declare the Agreement unconstitutional, illegal and void, and sought to enjoin any action thereunder; and

WHEREAS, by letter dated July 13, 2007 (attached hereto), Fain informed the Town that Fain was waiving its right to build the Additional Infrastructure Improvements in phases as permitted under the Agreement and would build all of the Additional Infrastructure Improvements at once; and

WHEREAS, on October 25, 2007, the Council approved a Final Development Plan (FDP 07-014, site plan attached hereto) for a Wal-Mart Supercenter in Phase 2 of the Property by Resolution No. 1537; and

WHEREAS, on August 27, 2008, the Town and other defendants notified the Superior Court that a settlement agreement had been reached with plaintiffs with regard to the June 7, 2007 Complaint (as amended) that provided for entry of judgment of dismissal in favor of defendants; and

WHEREAS, on December 17, 2009, the Council approved a Final Development Plan (FDP 09-008, site plan attached hereto) for a Maverik store in Phase 3 of the Property by Resolution No. 1684; and

WHEREAS, verified out-of-pocket expenses incurred by Fain for the Additional Infrastructure Improvements were \$2,457,388.07 (July 13, 2007), \$1,105,128.90 (September 18, 2007), \$1,199,359.39 (October 1, 2007), and \$849,100.71 (February 15, 2008), totaling \$5,610,977.07; and

WHEREAS, after application of specified interest and payments from TPTax collections to-date, the balance owed to Fain as of June 30, 2011 was \$6,338,326.89; and

WHEREAS, construction plans for the Wal-Mart Supercenter have only recently been submitted to the Town (with an expected opening in early 2013) due to the referendum election, the subsequent lawsuit, and the world-wide economic recession (resulting in much slower reimbursement of expenses to Fain from TPTax revenues than anticipated); and

WHEREAS, the parties, in fairness, have concluded to amend the Agreement (“Amendment”) to extend the time for reimbursement to Fain from TPTax revenues produced within the Property; and

WHEREAS, the Agreement was adopted prior to revisions to ARS §9-500.11 in 2005 by SB 1274 which added certain requirements for adoption of “retail development tax incentive agreements” (and, those requirements may not now apply to this Amendment); nevertheless, the Council hereby finds that: (a) the extension of the tax incentive in the Agreement by this Amendment is anticipated to raise more revenue than

the amount of the incentive within the duration of the Agreement (as amended), and (b) in the absence of the extended tax incentive the retail business facilities anticipated to locate on the Property would not locate in the Town in the same time, place or manner (as recently verified by an independent third party in a report attached hereto);

NOW, THEREFORE, for and in consideration of the mutual covenants and promises herein, the parties hereto enter into this Amendment as follows:

1. That SECTION 1 “ADDITIONAL INFRASTRUCTURE” of the Agreement be hereby amended to read as follows:

**SECTION 1. ADDITIONAL INFRASTRUCTURE.**

1.1 Identification of Additional Infrastructure Improvements. The Town and Fain agree that the public infrastructure improvements listed on *Exhibit “B”* attached hereto (the “**Additional Infrastructure Improvements**”) ~~are the same as the Additional Infrastructure Improvements referenced in Section 14 of (and described in Exhibits G and H attached to) the Event Center Development Agreement. Fain agrees that the Additional Infrastructure Improvements, as revised by the Letter,~~ will benefit the Fain Retail Property and that it is reasonable to construct the Additional Infrastructure Improvements in phases as part of the development of the Fain Retail Property. However, the Town agrees that the Additional Infrastructure Improvements are also regional improvements that would eventually be required whether or not the Fain Retail Property were developed, and therefore agrees that it is appropriate for the Town to reimburse Fain for the cost of constructing the Additional Infrastructure Improvements out of a portion of the transaction privilege/use tax revenues (or revenues from other excise taxes if a different kind of excise tax is put in place in lieu of the transaction privilege/use tax during the term of this Agreement) generated by new retail developments on the Fain Retail Property (the “**TPTax Revenues**”).

...

1.4 Excise Tax Revenues Reimbursement. For ~~ten-twenty (10-20)~~ years after the opening of the first (1<sup>st</sup>) commercial retail use within the Fain Retail Property [or the time between the date of the opening of the 1st commercial retail use and the end of the term of this Agreement (whichever is shorter)], the Town shall pay Fain, on a quarterly basis, an amount equal to the TPTax Revenues received by the Town from the 1st 1.00% of the ~~two and thirty-three hundredths percent (2.33%)~~ applicable Town transaction privilege/use tax rate applied to specified transactions within the Fain Retail Property (now or hereafter taxable by the Town). Payments under this Section 1.4 shall continue until Fain has been fully repaid Fain Costs or this Agreement has terminated (whichever occurs 1<sup>st</sup>). It is expressly understood by the parties that the Town is entitled to the TPTax Revenues associated with the remaining ~~one and thirty-three hundredths percent (1.33%)~~ applicable tax rate received from taxable transactions within the Fain Retail Property (now or hereafter taxable by the Town), plus all other Town tax, rate, fee, and charge revenues generated within the Fain Retail Property.

1.4.1 The above quarterly payments shall be calculated based on the sum of the appropriate percentages of TPTax Revenues generated and received by the Town from transactions within the Fain Retail Property (expressly excluding any TPTax Revenues generated from the construction of any structures in the Fain Retail Property, leases, utilities, or other transactions which do not constitute retail sales)(the "**Fain Retail Property TPTax Revenues**"). It is expressly understood that all of the TPTax Revenues collected from the thirty-three hundredths percent (0.33%) tax rate of the Town's ~~2.33%~~applicable transaction privilege/use tax rate is excluded by law from any reimbursement to Fain under this Agreement. Payment amounts shall be calculated by the Town as the Fain Retail Property TPTax Revenues are received and such amounts shall be accounted for by the Town in a separate accounting and paid to Fain on a pro-rata basis. Provided, however, that if the Town is unable to obtain from the Arizona Department of Revenue the specific TPTax Revenues information required to account for and make the quarterly payments, Fain shall reasonably cooperate with the Town to provide such information to the extent that each is able. During the term of this Agreement, the Town will keep, or cause to be kept, proper and current books and accounts in which complete and accurate entries shall be made of the amount of Fain Retail Property TPTax Revenues, and such other calculations, allocations and payments required by this Agreement. During the term, the Town shall prepare, within one hundred fifty (150) days after the close of each fiscal year of the Town, a complete financial statement for such year in reasonable detail covering the above information certified by a certified public accountant selected by the Town, and shall furnish a copy of such statement to Fain. All books, records and reports (except those required by applicable law to be kept confidential) in the possession of the Town relating to the Fain Retail Property, and the TPTax Revenues collected and received by the Town from the Fain Retail Property, shall at all reasonable times be open to inspection by such accountants or other agents as Fain may from time to time designate.

...

2. That SECTION 8 "DURATION OF AGREEMENT" of the Agreement be hereby amended to read as follows:

#### **SECTION 8. DURATION OF AGREEMENT.**

The term of this Agreement shall be from the date of execution first-above written to and including ~~fifteen~~twenty-five (~~15~~25) years. Notwithstanding the foregoing, this Agreement shall be null and void and of no further force and effect if Fain has not constructed the Additional Infrastructure Improvements within 5 years after the date of this Agreement. At the conclusion of the term, this Agreement shall terminate without the execution or recordation of any further document or instrument as to any lot or parcel within the Fain Retail Property. Upon termination, such lots or parcels shall be released from and shall no longer be subject to or burdened by the provisions of this Agreement.

3. That this Amendment shall be recorded in the Office of the County Recorder of Yavapai County within ten (10) calendar days of execution, pursuant to ARS §9-500.05(D).

4. That each of the Exhibits attached hereto shall be deemed to have been incorporated herein by this reference, with the same force and effect as if fully set forth in the body hereof.

5. That this Amendment may be canceled without penalty pursuant to ARS §38-511 in the event of a conflict-of-interest as described therein by any person significantly involved in negotiating the Amendment on behalf of the Town.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment by and through their authorized representatives the day and year first-above written.

TOWN OF PRESCOTT VALLEY, a  
municipal corporation of Arizona, "Town"

\_\_\_\_\_  
HARVEY C. SKOOG, Mayor

ATTEST:

\_\_\_\_\_  
Diane Russell, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Ivan Legler, Town Attorney

THE FAIN SIGNATURE GROUP, L.L.C.,  
an Arizona limited liability company, "Fain"

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

## EXHIBITS

When Recorded, Return To  
Town of Prescott Valley  
7501 East Civic Circle  
Prescott Valley, AZ 82314



B-4274 P-30  
Page: 1 of 27  
RESL 3869524

14  
\$8  
\$5  
\$1  
14  
MB

RESOLUTION NO. 1351

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PRESCOTT VALLEY, A MUNICIPAL CORPORATION OF ARIZONA, ADOPTING AN ADDITIONAL INFRASTRUCTURE DEVELOPMENT AGREEMENT BY AND BETWEEN THE FAIN SIGNATURE GROUP, L.L.C. AND THE TOWN WITH REGARD TO THE FAIN RETAIL PROPERTY LOCATED NORTH OF FLORENTINE ROAD, WEST OF GLASSFORD HILL ROAD, AND EAST OF PINE VIEW DRIVE; AUTHORIZING THE MAYOR (OR, IN HIS ABSENCE, THE VICE MAYOR) TO SIGN SAID DEVELOPMENT AGREEMENT AND ANY RELATED DOCUMENTS; AND DECLARING THIS RESOLUTION TO BE AN EMERGENCY MEASURE PURSUANT TO ARS §19-142(B) AND §2-05-060 OF THE PRESCOTT VALLEY TOWN CODE.

WHEREAS, ARS §9-500.05 provides for development agreements between municipalities and others for various purposes, including providing for public infrastructure and other public needs in the development of real property; and

WHEREAS, such development agreements are to be entered into by ordinance or resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PRESCOTT VALLEY, ARIZONA, THAT:

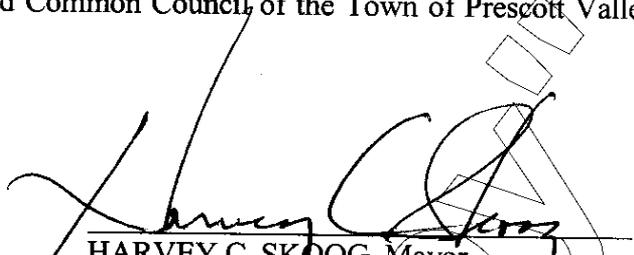
1. That certain Development Agreement dated May 24, 2005, by and between The Fain Signature Group, L.L.C., an Arizona limited liability company ("Fain") and the Town of Prescott Valley, a municipal corporation of Arizona (the "Town"), attached hereto and expressly made a part hereof, be hereby entered into and that the Mayor (or, in his absence, the Vice Mayor) be hereby authorized to sign said Agreement on behalf of the Town.
2. That the Mayor (or, in his absence, the Vice Mayor) be hereby authorized to sign on behalf of the Town all other documents reasonably necessary to further the purposes of this Development Agreement.
3. That, inasmuch as it is necessary for the peace, health and safety of the Town of Prescott Valley that this Resolution be effective upon its passage and approval according to ARS §19-142(B) and Town Code §2-05-060 [due to the need to accommodate the planned private financing of the Additional Infrastructure Improvements in downtown Prescott



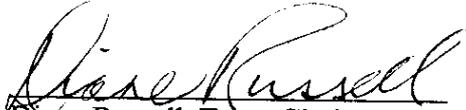
Valley], this Resolution is hereby declared to be an emergency measure and effective upon its passage and approval.

RESOLVED by the Mayor and Common Council of the Town of Prescott Valley, Arizona, this 24<sup>th</sup> day of May, 2005.

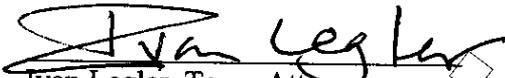
**SEAL**

  
HARVEY C. SKOOG, Mayor

ATTEST:

  
Diane Russell, Town Clerk

APPROVED AS TO FORM:

  
Ivan Legler, Town Attorney

Unofficial Copy



## ADDITIONAL INFRASTRUCTURE DEVELOPMENT AGREEMENT

### Fain Retail Property

THIS AGREEMENT, entered into this 24<sup>th</sup> day of May, 2005, by and between the TOWN OF PRESCOTT VALLEY, a municipal corporation of Arizona, (hereinafter the "Town"), and THE FAIN SIGNATURE GROUP, L.L.C., an Arizona limited liability company (hereinafter "Fain");

### RECITALS

WHEREAS, Fain owns approximately sixty (60) acres of real property located west of Glassford Hill Road, north of Florentine Road, and east of Pine View Drive in Section 14, T14N, R1W, G&SRM, the full legal description of which is attached hereto as *Exhibit "A"* (the "Fain Retail Property"); and

WHEREAS, on August 5, 2004, the Town filed a blank annexation petition in the Office of the Yavapai County Recorder pursuant to ARS §9-471(A)(1) to begin the process of annexing the Fain Retail Property into the Town in accordance with the provisions of this Agreement; and

WHEREAS, the Town and Fain are also parties to that certain Pre-Annexation Development Agreement dated May 12, 2005, by and between Fain, Prescott Valley Signature Entertainment, L.L.C., an Arizona limited liability company, Prescott Valley Events Center, LLC, an Arizona limited liability company, Global Entertainment Corporation, a Nevada corporation, the Town, and the Prescott Valley Water District, a community facilities district of Arizona (the "Event Center Development Agreement") for the development of a multi-purpose event center in the Town Center (the Prescott Valley Convention and Events Center, "PVCEC"); and

WHEREAS, pursuant to Section 14 of the Event Center Development Agreement, Fain and the Town have agreed to enter into a separate agreement to provide for the construction of certain additional public infrastructure improvements needed to permit the proper operation of the PVCEC, but which also benefit the Fain Retail Property and will provide regional transportation benefits to the Town and its residents; and

WHEREAS, Policy ED-A4.1 within Goal ED-A4 of the Town's General Plan 2020 encourages the Town to "promote business, economic growth, formation of capital and the creation and retention of jobs in designated commercial...areas", and Policy ED-A4.4 encourages the Town to "promote retail and other support activities that provide a broader selection of high-quality goods and services for residents, workers, tourists and neighboring communities"; and

WHEREAS, in furtherance of these policies, it is proposed that the Town enter into this Agreement whereby it will provide for financing and construction of public infrastructure improvements needed to continue development of the Town Center as a



prime location for commercial uses that provide retail goods and services for residents, workers, tourists and neighboring communities; and

WHEREAS, ARS §9-500.05 provides for Arizona municipalities to enter into development agreements with developers and others having an interest in real property to, among other things, a) provide for phased development of property, b) provide conditions, terms, restrictions and requirements for needed public infrastructure improvements, c) restrict permitted uses and the density and intensity of uses on property, and d) provide for reservation or dedication of a portion of property for public purposes and to protect environmentally sensitive portions thereof; and

WHEREAS, ARS §9-500.11 authorizes the governing bodies of Arizona cities and towns to appropriate and spend public monies for and in connection with any project, assistance, undertaking, program or study, including acquisition, improvement, leasing or conveyance of real or personal property or other activity, that the governing body has found and determined will assist in the creation or retention of jobs or will otherwise improve or enhance the economic welfare of the inhabitants of the city or town; and

WHEREAS, the Town Council hereby finds that a public purpose is served by this Agreement and that the public benefit to be obtained from financing and construction of public infrastructure improvements needed to serve the Fain Retail Property is not far exceeded by the consideration being paid by the public hereunder and that this Agreement is otherwise consistent with the health, safety and welfare needs of the community; and

WHEREAS, the Town Council expressly finds and determines that providing economic development incentives to Fain (and its successors-in-interest with respect to the Fain Retail Property) will assist in the creation or retention of jobs and will otherwise improve or enhance the economic welfare of the inhabitants of the Town; and

WHEREAS, at its regular special meeting held May 24, 2005, the Town Council considered this Agreement; and

WHEREAS, the Town Council finds that this Agreement is consistent with the Town's General Plan 2020 [ARS §9-500.05(B)]; and

WHEREAS, the Town Council further finds that this Agreement is consistent with the purpose and intent of the Town's zoning, development, subdivision, technical building, wastewater treatment, flood protection, and engineering codes;

NOW, THEREFORE, for and in consideration of the mutual covenants and promises herein, the parties hereto enter into this Agreement as follows:



## SECTION 1. ADDITIONAL INFRASTRUCTURE.

1.1 Identification of Additional Infrastructure Improvements. The Town and Fain agree that the public infrastructure improvements listed on *Exhibit "B"* attached hereto (the "**Additional Infrastructure Improvements**") are the same as the Additional Infrastructure Improvements referenced in Section 14 of (and described in Exhibits G and H attached to) the Event Center Development Agreement. Fain agrees that the Additional Infrastructure Improvements will benefit the Fain Retail Property and that it is reasonable to construct the Additional Infrastructure Improvements in phases as part of the development of the Fain Retail Property. However, the Town agrees that the Additional Infrastructure Improvements are also regional improvements that would eventually be required whether or not the Fain Retail Property were developed, and therefore agrees that it is appropriate for the Town to reimburse Fain for the cost of constructing the Additional Infrastructure Improvements out of a portion of the transaction privilege/use tax revenues (or revenues from other excise taxes if a different kind of excise tax is put in place in lieu of the transaction privilege/use tax during the term of this Agreement) generated by new retail developments on the Fain Retail Property (the "**TPTax Revenues**").

1.2 Construction and Dedication of Infrastructure Improvements. Fain agrees to construct and dedicate to the Town the Additional Infrastructure Improvements together or in phases corresponding to the phases of development of the Fain Retail Property. Each phase of the Additional Infrastructure Improvements shall be completed before a final certificate of occupancy may be issued for any new development within any phase on the Fain Retail Property. If Fain elects to construct the Additional Infrastructure Improvements in phases, Fain shall propose a phasing plan to the Town, providing for a phasing of the Fain Retail Property development and allocating the obligation to construct the Additional Infrastructure Improvements to those phases, subject to Town approval (which approval shall not be unreasonably withheld). However, nothing herein shall preclude Fain from adjusting said phases and the Additional Infrastructure Improvements needed for each phase, subject to Town approval (which approval shall not be unreasonably withheld). If the Additional Infrastructure Improvements are divided into phases in accordance with this Section, then when the Additional Infrastructure Improvements applicable to a phase of the Fain Retail Property are completed, that phase shall have no obligation with respect to the remaining Additional Infrastructure Improvements and the Town shall execute and deliver to Fain (or its assignee) an estoppel certificate (or similar agreement) confirming that the portion of the Additional Infrastructure Improvements relating to the applicable phase of the Fain Retail Property are completed.

1.3 Right to Reimbursement. Fain shall be entitled to be reimbursed for all verified out-of-pocket expenses incurred by Fain in constructing the Additional Infrastructure Improvements (including the cost of designing and constructing such improvements and interest on such expenditures at a simple annual rate equal to Wells Fargo Bank, N.A.'s prime rate of interest plus one percent (1.00%) from the date of the



expenditure until repaid)(the “**Fain Costs**”) out of the TPTax Revenues generated from businesses on the Fain Retail Property in accordance with the following Section 1.4.

1.3.1 Fain (working through Prescott Valley Event Center, L.L.C., “**PVEC**”) shall also be entitled to be reimbursed as set forth in Section 1.3 above for all verified out-of-pocket expenses PVEC incurs to construct any new parking spaces and Minimum Infrastructure Improvements north of Florentine Road in accordance with the Event Center Development Agreement as part of Fain Costs.

1.4 Excise Tax Revenues Reimbursement. For ten (10) years after the opening of the first (1<sup>st</sup>) commercial retail use within the Fain Retail Property [or the time between the date of the opening of the 1st commercial retail use and the end of the term of this Agreement (whichever is shorter)], the Town shall pay Fain, on a quarterly basis, an amount equal to the TPTax Revenues received by the Town from the 1st 1.00% of the two and thirty-three hundredths percent (2.33%) Town transaction privilege/use tax rate applied to specified transactions within the Fain Retail Property (now or hereafter taxable by the Town). Payments under this Section 1.4 shall continue until Fain has been fully repaid Fain Costs or this Agreement has terminated (whichever occurs 1<sup>st</sup>). It is expressly understood by the parties that the Town is entitled to the TPTax Revenues associated with the remaining one and thirty-three hundredths percent (1.33%) tax rate received from taxable transactions within the Fain Retail Property (now or hereafter taxable by the Town), plus all other Town tax, rate, fee, and charge revenues generated within the Fain Retail Property.

1.4.1 The above quarterly payments shall be calculated based on the sum of the appropriate percentages of TPTax Revenues generated and received by the Town from transactions within the Fain Retail Property (expressly excluding any TPTax Revenues generated from the construction of any structures in the Fain Retail Property, leases, utilities, or other transactions which do not constitute retail sales)(the “**Fain Retail Property TPTax Revenues**”). It is expressly understood that all of the TPTax Revenues collected from the thirty-three hundredths percent (0.33%) tax rate of the Town’s 2.33% transaction privilege/use tax rate is excluded by law from any reimbursement to Fain under this Agreement. Payment amounts shall be calculated by the Town as the Fain Retail Property TPTax Revenues are received and such amounts shall be accounted for by the Town in a separate accounting and paid to Fain on a pro-rata basis. Provided, however, that if the Town is unable to obtain from the Arizona Department of Revenue the specific TPTax Revenues information required to account for and make the quarterly payments, Fain shall reasonably cooperate with the Town to provide such information to the extent that each is able. During the term of this Agreement, the Town will keep, or cause to be kept, proper and current books and accounts in which complete and accurate entries shall be made of the amount of Fain Retail Property TPTax Revenues, and such other calculations, allocations and payments required by this Agreement. During the term, the Town shall prepare, within one hundred fifty (150) days after the close of each fiscal year of the Town, a complete financial statement for such year in reasonable detail covering the above information certified by a certified public accountant selected by the Town, and shall furnish a copy of such statement to Fain. All books, records and reports



(except those required by applicable law to be kept confidential) in the possession of the Town relating to the Fain Retail Property, and the TPTax Revenues collected and received by the Town from the Fain Retail Property, shall at all reasonable times be open to inspection by such accountants or other agents as Fain may from time to time designate.

1.5 Further Compensation. As further incentive for Fain to construct the Additional Infrastructure Improvements (and thereby facilitate the PVCEC, encourage new commercial development on the Fain Retail Property, and provide regional transportation benefits to the entire community), the Town hereby agrees to arrange funding for and construct during the 10 year period after the opening of the 1<sup>st</sup> commercial retail use within the Fain Retail Property such street, water, wastewater, and/or drainage improvements within the Town Center (as proposed by Fain and approved by the Town, which Town approval shall not be unreasonably withheld) whose direct cost for design and construction is equal to two million three hundred thousand dollars (\$2,300,000.00). It is the intent of the parties to accomplish construction of these improvements in an expeditious manner to encourage development in the Town Center.

**SECTION 2. DEVELOPMENT FEES AND UTILITY SERVICE AND CHARGES.**

2.1 Development Fees. In accordance with Resolution No. 1183 (May 8, 2003), assessment of the Circulation System Fee, the Public Safety Fee, and the Civic Fee to Retail, Commercial/Office, Industrial, and School development has been suspended from August 6, 2003 through August 5, 2006 (or until such date as the Town Council may designate by vote of a majority of those members present, whichever is sooner). In the event these Development Fees are assessed to Retail, Commercial/Office, Industrial, and School development during the term of this Agreement, they shall be as follows:

**Circulation System Fee:**

Retail	\$ 3.92 per square foot
Commercial/Office	\$ 1.85 per square foot
Industrial	\$ 1.22 per square foot
School	\$ 2.22 per square foot

**Public Safety Fee:**

Retail	\$ 0.21 per square foot
Commercial/Office	\$ 0.21 per square foot
Industrial	\$ 0.21 per square foot
School	\$ 0.21 per square foot

**Civic Fee:**



Retail	\$ 0.03 per square foot
Commercial/Office	\$ 0.03 per square foot
Industrial	\$ 0.03 per square foot
School	\$ 0.03 per square foot

It is expressly agreed that these Development Fees shall not increase with respect to the Fain Retail Property for five (5) years after the opening of the 1<sup>st</sup> commercial retail use within the Fain Retail Property. Moreover, during the 5 year period after the date of this Agreement, any Circulation System Fees collected within the Fain Retail Property shall be reimbursed to the person or entity paying said Circulation System Fees within sixty (60) days after such payment.

2.1.1 In the event Fain expends funds for infrastructure improvements included in the Town's capital improvement plan (from which the Development Fees were developed) and for which Fain has not received a reimbursement from TPTax Revenues, Fain is entitled to credits for amounts expended in accordance with ARS §9-463.05 and Town Code Article 7-11. In addition, if Fain is required to dedicate right-of-way for any street which is to be funded out of the Circulation System Fee, or if Fain is required to dedicate additional right-of-way in an amount that is greater than that right-of-way required by the Development Master Plan, such land dedications are entitled to credits against the Circulation System Fee in accordance with Town Code Article 7-11.

2.2 Utility Connection Charges: Utility Connection Charges applicable to the Fain Retail Property shall be as follows:

**Prescott Valley Water District Meter Charges**

<u>Meter Size (Inches)</u>	<u>Charge</u>
5/8 and ¾	cost of meter
1	cost of meter
1 ½	cost of meter
2	cost of meter
all others	[cost of meter, plus 15%, but not less than \$1,600.00]

**Prescott Valley Water District System Capacity Charge**

	<u>Charge</u>
*Commercial/Industrial/Institutional Facilities	\$66.00/fixture per unit

\*Water system capacity charges for commercial/industrial/institutional facilities that do not have identifiable fixtures per unit (e.g., private park or school irrigation, gravel or mining operations, etc.) shall be based upon the size of the water meter in accordance with AWWA water meter standards.



**Prescott Valley Water District Water Resource Charge**

Charge

**\*\*Commercial/Industrial/Institutional Facilities**

\$61.04/fixture  
per unit

\*\*Water resource charges for commercial/industrial/institutional facilities that do not have identifiable fixtures per unit (e.g., private park or school irrigation, gravel or mining operations, etc.) shall be based upon the size of the water meter in accordance with AWWA water meter standards.

**Town Wastewater System Capacity Charge**

Charge

**\*\*\*Commercial/Industrial/Institutional Facilities**

\$70.20/fixture  
per unit

\*\*\*Wastewater system capacity charges for commercial/industrial/institutional facilities that do not have identifiable fixtures per unit (e.g. private park or school irrigation, gravel or mining operations, etc.) shall be based upon the size of the water meter in accordance with AWWA water meter standards.

It is expressly agreed that the above Utility Connection Charges will be fixed for 5 years after the opening of the 1<sup>st</sup> commercial retail use within the Fain Retail Property.

2.2.1 The Town Wastewater System Capacity Charge set forth above provides a contribution to the cost of constructing new capacity in the Town's wastewater treatment facility. Accordingly, no credits will be available against these charges for on-site wastewater facilities. In addition to this charge, Fain will be required to install on-site sewer facilities necessary to serve the projected development of the Fain Retail Property. Except for the Additional Infrastructure Improvements, Fain will not be required to construct any other off-site facilities or pay any other fees (other than normal service charges) to obtain wastewater service for the Fain Retail Property.

2.2.2 Fain shall be entitled to a dollar-for-dollar credit against the Prescott Valley Water District Water System Capacity Charge for all amounts expended by Fain in connection with the design and installation of any off-site improvements to the water system beyond the installation of on-site water lines. These include, but are not limited to, arterial water lines, storage tanks, oversized transmission lines that serve additional properties, or any other enhancement to the water plant and delivery system. These credits are applied at the date the building permits are purchased.

2.3 Prior to Fain expending any funds with regard to infrastructure improvements, Fain and the Town shall agree on the work to be completed (including additional land dedications) and the amount of credit to be applied to Fain in accordance with the Town Code and the Town and Prescott Valley Water District utility regulations.

UNOFFICIAL



2.4 Wastewater Treatment. The Town acknowledges that the Town's publicly owned treatment works has or will have capacity sufficient to serve the Fain Retail Property.

2.5 Water Service; Water Rights.

(a) It is hereby acknowledged that the existing water system of the Prescott Valley Water District in the vicinity of the Fain Retail Property, after completion of the Additional Infrastructure Improvements, has capacity sufficient to serve the Fain Retail Property, and that the Fain Retail Property may connect to said water system as determined by the approved Infrastructure Plans. Neither Fain nor the Fain Retail Property shall have any obligation to construct off-site water improvements (other than lines to connect to the existing water lines in the above-referenced locations) to obtain water service for the uses of the Fain Retail Property outlined in this Agreement.

(b) The Town agrees that Fain shall have no obligation to obtain additional water resources for the development of the Fain Retail Property, other than to pay the Prescott Valley Water District Water Resource Charge. The Town will provide any assured water supply certification that Fain, or any commercial occupant of the Fain Retail Property may require to develop the Fain Retail Property. The Town acknowledges on behalf of the Prescott Valley Water District that all portions of the Fain Retail Property which are developed as commercial, office, or retail development, shall be provided water service from groundwater available for commercial development under the Town's total GPCD program for non-residential uses, to the extent permitted by ADWR rules and regulations (as amended).

2.6 The parties acknowledge that the drainage improvements described on Exhibit "B" attached hereto are based upon the currently-approved regional drainage plan developed by Fain for Section 14 (which includes the Fain Retail Property) and that, upon completion of the drainage improvements described on Exhibit "B", the Fain Retail Property will have no further obligations for off-site drainage and may utilize the said facilities to handle drainage from the Fain Retail Property in accordance with the said approved regional drainage plan. In the event said regional drainage plan is modified by Fain and approved by the Town, additional drainage improvements may be required for phased development on the Fain Retail Property in accordance with the new regional drainage plan.

**SECTION 3. COOPERATION AND DISPUTE RESOLUTION.**

3.1 Appointment of Representatives. To further the commitment of the parties to cooperate in the implementation of this Agreement, the Town and Fain each shall designate and appoint a representative to act as a liaison between the Town and its respective departments, and Fain. The initial representative for the Town shall be the Town Manager and the initial representative for Fain shall be its Project Manager, as identified by Fain from time to time. The representatives shall be available at all reasonable times to discuss and review the performance of the parties to this Agreement



and the development of the Fain Retail Property pursuant to any Preliminary and Final Development Plans approved for the Fain Retail Property.

3.2 Default. Failure or unreasonable delay by either party to perform or otherwise act in accordance with any term or provision of this Agreement for a period of thirty (30) days (the "**Cure Period**") after written notice thereof from the other party, shall constitute a default under this Agreement. Provided, however, that if the failure or delay is such that more than 30 days would reasonably be required to perform such action or comply with any term or provision hereof, then such party shall have such additional time as may be necessary to perform or comply so long as such party commences performance or compliance within said 30-day period and diligently proceeds to complete such performance or fulfill such obligation. Said notice shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible. In the event such default is not cured within the Cure Period, the non-defaulting party shall have all rights and remedies which may be available under law or equity including, without limitation, the right to specifically enforce any term or provision hereof and/or the right to institute an action for damages.

3.3 Governing Law and Permissive Arbitration. Any dispute, controversy, claim or cause of action arising out of or relating to this Agreement shall be governed by Arizona law and shall be deemed made and entered into in Yavapai County. Disputes may be settled by submission of the matter by both parties to binding arbitration in accordance with the rules of the American Arbitration Association and the Arizona Uniform Arbitration Act, ARS §12-1501, et seq., and judgment upon the award rendered by the arbitrator(s) may be entered in any court of competent jurisdiction.

3.4 Mediation. If a dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try to settle the dispute through mediation before resorting to arbitration, litigation or some other dispute resolution procedure. In the event that the parties cannot agree upon the selection of a mediator within seven (7) days, any party may request the presiding judge of the Superior Court of Yavapai County to assign a mediator from a list of mediators maintained by the Arizona Municipal Risk Retention Pool.

**SECTION 4. NOTICES AND FILINGS.**

4.1 Manner of Serving. Unless otherwise specifically provided herein, all notices, filings, demands or other communications relating to this Agreement shall be in writing and shall be deemed to have been duly delivered upon personal delivery, or as of the second business day after mailing by United States mail, postage prepaid, addressed as follows:

Town: Town of Prescott Valley  
7501 East Civic Circle  
Prescott Valley, Arizona 86314  
Attn: Town Manager

UNOFFICIAL



with a copy to: Town of Prescott Valley  
7501 East Civic Circle  
Prescott Valley, Arizona 86314  
Attn: Town Attorney

Fain: c/o The Fain Signature Group, LLC  
3001 Main Street  
Suite 2B  
Prescott Valley, Arizona 86314  
Attn: William Fain

with a copy to: Withey Anderson & Morris, P.L.C.  
Suite A-212  
2525 E. Arizona Biltmore Circle  
Phoenix, AZ 85016  
Attn: Michael B. Withey

or to such other addresses as either party hereto may from time to time designate in writing and deliver in a like manner. These addresses may be changed by either party by giving notice in writing. Such changes shall be deemed to have been effectively noticed 5 calendar days after being mailed to each party by the party changing the address.

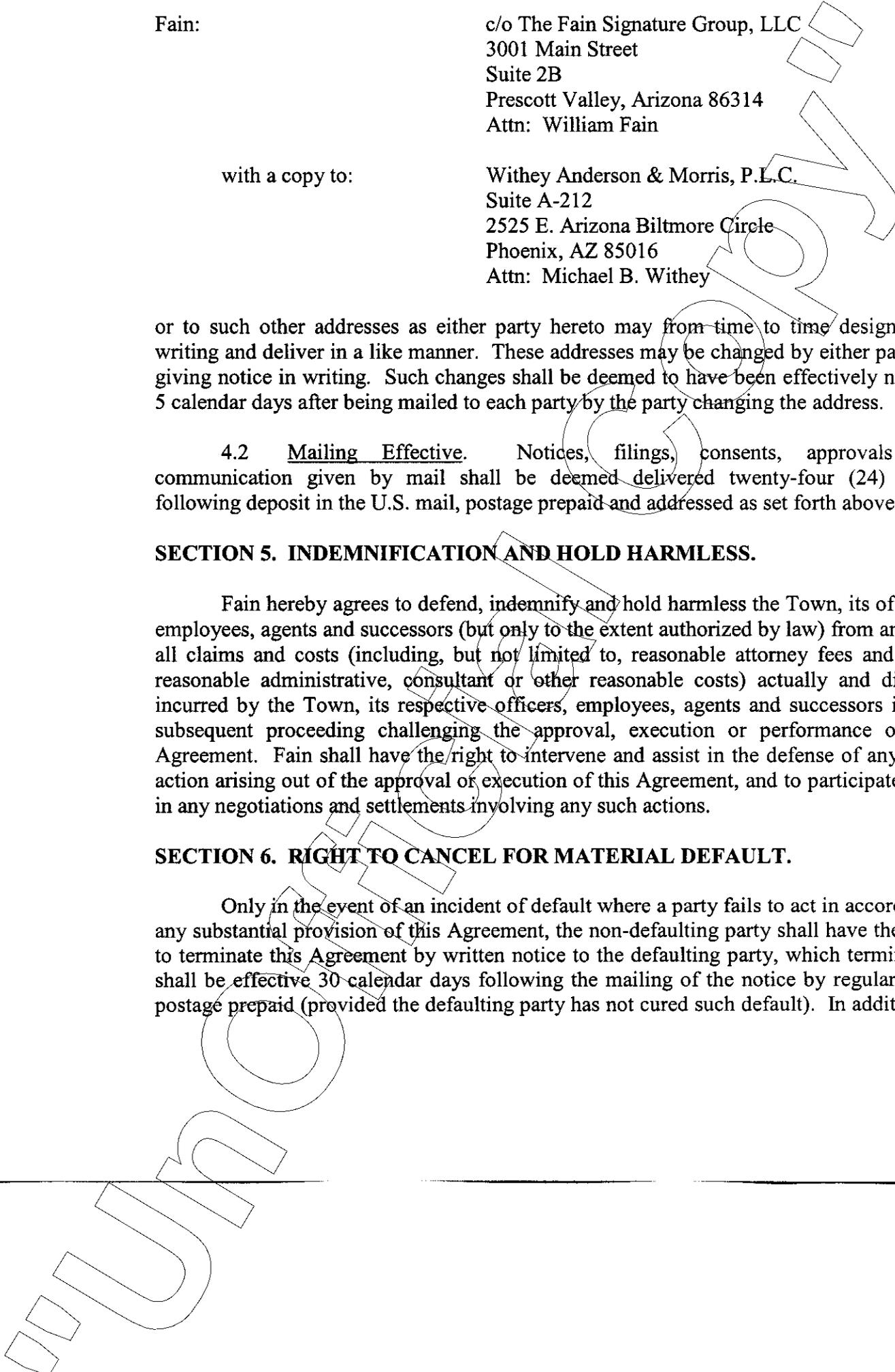
4.2 Mailing Effective. Notices, filings, consents, approvals and communication given by mail shall be deemed delivered twenty-four (24) hours following deposit in the U.S. mail, postage prepaid and addressed as set forth above.

**SECTION 5. INDEMNIFICATION AND HOLD HARMLESS.**

Fain hereby agrees to defend, indemnify and hold harmless the Town, its officers, employees, agents and successors (but only to the extent authorized by law) from any and all claims and costs (including, but not limited to, reasonable attorney fees and other reasonable administrative, consultant or other reasonable costs) actually and directly incurred by the Town, its respective officers, employees, agents and successors in any subsequent proceeding challenging the approval, execution or performance of this Agreement. Fain shall have the right to intervene and assist in the defense of any legal action arising out of the approval or execution of this Agreement, and to participate fully in any negotiations and settlements involving any such actions.

**SECTION 6. RIGHT TO CANCEL FOR MATERIAL DEFAULT.**

Only in the event of an incident of default where a party fails to act in accord with any substantial provision of this Agreement, the non-defaulting party shall have the right to terminate this Agreement by written notice to the defaulting party, which termination shall be effective 30 calendar days following the mailing of the notice by regular mail, postage prepaid (provided the defaulting party has not cured such default). In addition, if





any default is not cured within the Cure Period, the non-defaulting party may exercise all rights and remedies available to it at law or in equity, including without limitation the right to specifically enforce any term or provision hereof and/or the right to institute an action for damages.

#### **SECTION 7. AMENDMENTS.**

This Agreement may be amended only by a written agreement fully executed by the Town and Fain. Any amendment shall be adopted by Town ordinance or resolution and recorded in the Office of the Yavapai County Recorder within 10 calendar days of its execution by authorized representatives of the parties.

#### **SECTION 8. DURATION OF AGREEMENT.**

The term of this Agreement shall be from the date of execution first-above written to and including fifteen (15) years. Notwithstanding the foregoing, this Agreement shall be null and void and of no further force and effect if Fain has not constructed the Additional Infrastructure Improvements within 5 years after the date of this Agreement. At the conclusion of the term, this Agreement shall terminate without the execution or recordation of any further document or instrument as to any lot or parcel within the Fain Retail Property. Upon termination, such lots or parcels shall be released from and shall no longer be subject to or burdened by the provisions of this Agreement.

#### **SECTION 9. BINDING ON SUCCESSORS-IN-INTEREST.**

This Agreement shall inure to the benefit of and shall be binding upon the successors-in-interest of each of the parties hereto, pursuant to ARS §9-500.05(D).

#### **SECTION 10. ASSIGNMENT OF INTERESTS.**

10.1 The Town expressly acknowledges and agrees that Fain (or any successor thereto) may assign all or a portion of its rights and obligations hereunder without the Town's consent so long as such assignment (i) is to a person or entity (A) to whom Fain assigns all or substantially all of its remaining interest in the Fain Retail Property, or (B) who intends to construct and operate a retail facility on the Fain Retail Property containing at least one hundred thousand square feet (100,000 sq. ft.) of retail space, and (ii) such person or entity assumes all (or the applicable portion) of Fain's obligations hereunder and demonstrates its ability to perform them with respect to the portion of the Fain Retail Property which is assigned. Any such assignment of Fain's rights and obligations hereunder shall be reflected in a written instrument expressly assigning such rights and obligations, a copy of which shall be recorded in the Official Records of Yavapai County, Arizona. In the event of an assignment by Fain of its rights and obligations of Fain hereunder, Fain's liability hereunder shall terminate effective upon the recording of the assignment.



10.2 To further enhance the financeability and developability of the Fain Retail Property, the Town agrees, from time to time, at the request of Fain, to execute and deliver to Fain in recordable form certifications from the Town stating which improvements have been completed by Fain hereunder and what remaining obligations Fain has hereunder. The Town expressly agrees that third parties (including lenders, purchasers, lessees and/or any other successors or assigns to any of Fain's rights in the Fain Retail Property) may rely upon the contents of any such certification regarding Fain's obligations hereunder.

**SECTION 11. WAIVER.**

No waiver by any party of a breach of any of the terms, covenants or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or condition herein-contained. Furthermore, no delay in exercising any right or remedy shall constitute a waiver thereof.

**SECTION 12. COSTS AND ATTORNEY FEES.**

In the event any action shall be instituted between any of the parties in connection with this Agreement, the party prevailing in such action shall be entitled to recover from the other party or parties all of its costs, including reasonable attorney fees.

**SECTION 13. SEVERABILITY.**

In the event any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement shall become illegal, null or void or against public policy for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law. If a court prohibits or excuses the Town from completing any act required of it by this Agreement, and the Town fails to voluntarily take such action, Fain may terminate this Agreement by written notice to the Town.

**SECTION 14. FORCE MAJEURE.**

If either party hereto is prevented from performing any of its obligations under this Agreement by reason of natural disasters, wars, insurrections, strikes, acts of government or any other circumstances beyond its control, the particular failure or failures occasioned thereby shall be waived during such period of prevention and shall not be considered breaches of this Agreement.

**SECTION 15. MERGER CLAUSE.**

This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof, and all prior and contemporaneous agreements,



representations, negotiations and understandings of the parties hereto, oral or written, are superseded and merged herein.

**SECTION 16. RECORDATION.**

This Agreement shall be recorded in the Office of the County Recorder of Yavapai County within 10 calendar days of execution, pursuant to ARS §9-500.05(D).

**SECTION 17. FAIN'S GOOD STANDING AND AUTHORITY.**

17.1 Fain represents and warrants that (a) it is duly organized and validly existing under the laws of the State of Arizona, (b) the execution, delivery and performance of this Agreement has been duly authorized by such entity, and (c) it has or will have a sufficient unencumbered interest in portions of the Fain Retail Property to permit it to develop the same and to perform its obligations under this Agreement.

17.2 It is understood that Fain may enter into agreements with future owners of all or portions of the Fain Retail Property to form new or additional entities to carry on this development, and the parties agree to mutually amend this Agreement as reasonably needed to account for such entities.

**SECTION 18. THE TOWN'S PROCEDURE AND AUTHORITY.**

The Town represents and warrants that (a) it is a validly existing and incorporated municipal corporation of the State of Arizona, (b) its execution, delivery and performance of this Agreement has been duly authorized and entered into in compliance with its Town Code and any applicable Arizona statutes, and (c) no further action needs to be taken in connection with such execution and delivery.

**SECTION 19. HEADINGS.**

The descriptive headings of the Sections and Paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

**SECTION 20. EXHIBITS.**

Each of the Exhibits attached hereto shall be deemed to have been incorporated herein by this reference, with the same force and effect as if fully set forth in the body hereof.

**SECTION 21. FURTHER ACTS.**

Each of the parties hereto shall execute and deliver all such documents and perform all such acts as are reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.



**SECTION 22. NO PARTNERSHIP/THIRD PARTY RIGHTS.**

It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between or among Fain and/or the Town. 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.

**SECTION 23. TITLES TO NAMES, PLANS, ETC.**

Except with regard to improvements and infrastructure constructed pursuant to public bidding processes, Fain shall be the owner of all names, titles, plans, drawings, specifications, ideas, programs, designs and work products of every nature developed, formulated or prepared by or at the instance of Fain in connection with the Fain Retail Property. Provided, however, that in connection with any conveyance of portions of said the Fain Retail Property to the Town, such rights pertaining to the portions of property so conveyed shall be assigned (to the extent such rights are assignable) to the Town (as applicable). Furthermore, notwithstanding the foregoing, Fain shall be entitled to utilize all such materials described herein to the extent required for Fain to construct, operate or maintain improvements and infrastructure relating to the Fain Retail Property.

**SECTION 24. CONFLICT-OF-INTEREST.**

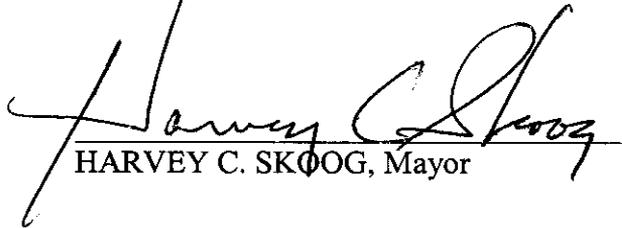
This Agreement may be canceled without penalty pursuant to ARS §38-511 in the event of a conflict-of-interest as described therein by any person significantly involved in negotiating this Agreement on behalf of the Town.

**SECTION 25. NO FAIN REPRESENTATIONS.**

Nothing contained herein or in any related Preliminary and Final Development Plans or infrastructure plans shall be deemed to obligate the Town or Fain to complete any part or all of the development of the Fain Retail Property.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their authorized representatives the day and year first-above written.

TOWN OF PRESCOTT VALLEY, a  
municipal corporation of Arizona, "Town"

  
HARVEY C. SKOOG, Mayor

Unofficial



ATTEST:

*Diane Russell*  
Diane Russell, Town Clerk

APPROVED AS TO FORM:

*Ivan Legler*  
Ivan Legler, Town Attorney

“Fain”

THE FAIN SIGNATURE GROUP,  
L.L.C., an Arizona limited liability  
company

By: \_\_\_\_\_  
Name: *Ram Fain*  
Its: \_\_\_\_\_

“Unofficial Copy”



Exhibit "A"

Legal Description of Fain Retail Property

"Unofficial Copy"



**LEGAL DESCRIPTION  
FLORENTINE/GLASSFORD/PINE VIEW SITE  
ANNEXATION PARCEL**

THAT part of Section 14, T. 14 N., R. 1 W., G.&S.R.M., Yavapai County, AZ, described as follows:

COMMENCING at the Northwest corner of said Section 14;

THENCE S. 01° 37' 04" W. along the West line of said Section 14 a distance of 596.03 feet to a point on the centerline of Glassford Hill Road, said point being the TRUE POINT OF BEGINNING;

THENCE S. 27° 29' 14" E. along said centerline a distance of 1598.33 feet to the P.C. of a curve to the right;

THENCE along said curve to the right and said centerline, having a radius of 15551.40 feet, a central angle of 28° 54' 57", for an arc length of 782.95 feet;

THENCE S. 01° 25' 42" W. along said centerline a distance of 1483.85 feet to a point on the centerline of Florentine Road;

THENCE N. 84° 23' 47" W. along said centerline a distance of 980.62 feet to a point on the said West line of said Section 14 which also is the recorded centerline of Pine View Drive;

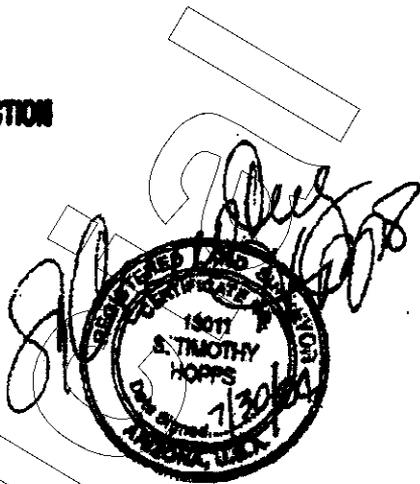
THENCE N. 01° 37' 04" E. along said West line a distance of 2054.45 feet to the Northeast corner of Lynx Lake Estates, said point being on the West line of said Section 14;

THENCE N. 01° 37' 04" E. along said West section line a distance of 707.23 feet to the TRUE POINT OF BEGINNING;

CONTAINING 60.5831 ACRES. MORE OR LESS.

**RECORDERS MEMO: LEGIBILITY  
QUESTIONABLE FOR GOOD REPRODUCTION**

**RECORDERS MEMO: LEGIBILITY  
QUESTIONABLE FOR GOOD REPRODUCTION**

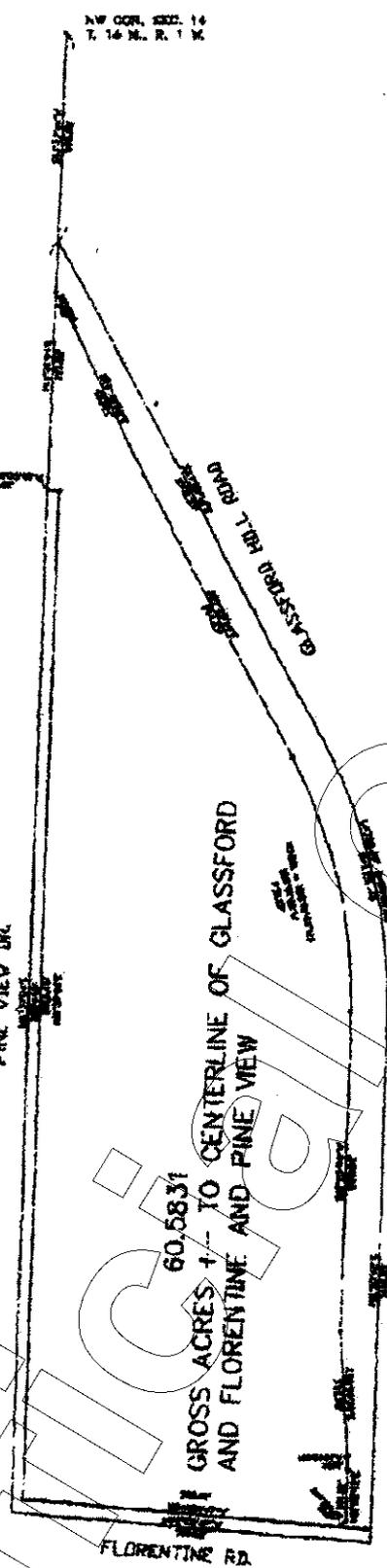


Jul 30 2004 02:26PM P2

FAX NO. : 6029546601

FROM : ERIE AND ASSOCIATES

Unofficial



RECORDERS MEMO: LEGIBILITY  
QUESTIONABLE FOR GOOD REPRODUCTION

Jul 30 2004 02:26PM P3

PRX NO. : 6029546601

FROM : ERIE AND ASSOCIATES



Exhibit "B"

List of Additional Infrastructure Improvements

"Unofficial Copy"



## EXHIBIT B

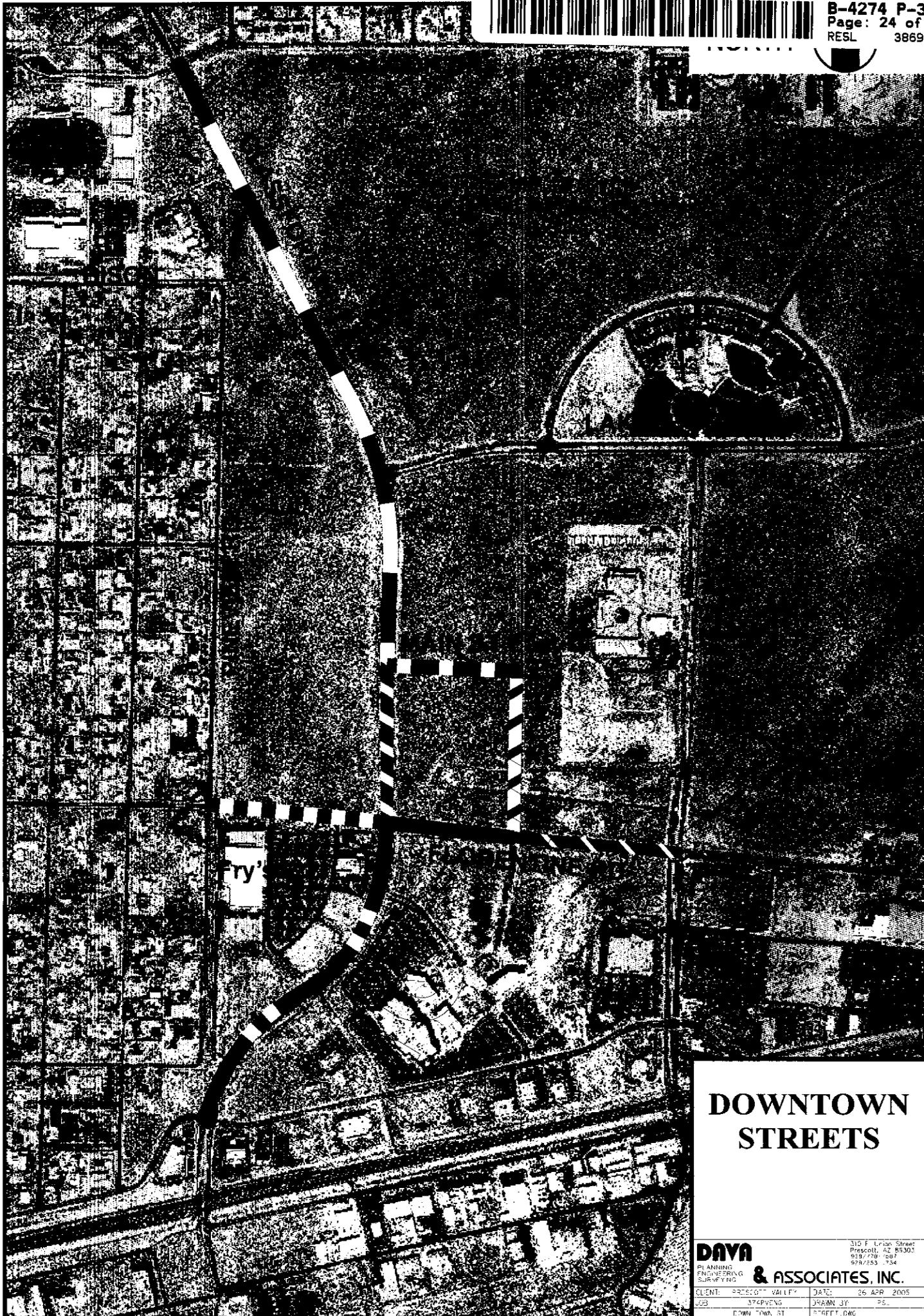
### ADDITIONAL INFRASTRUCTURE IMPROVEMENTS

1. Reconstruct Florentine-Glassford Hill intersection including traffic signal and widening for turn lanes.
2. Widen Glassford Hill from Florentine through Long Look in accordance with the attached cross sections including intersection improvements at Main Street East, Lakeshore Dr., Long Look and one new intersection between Lakeshore Dr. & Long Look and traffic signals (including traffic signal intertie) at Main Street East, Lakeshore Dr., and Long Look (revisions to existing signal at Long Look). Glassford widening includes drainage, street lights and dry utility trench and conduits.
3. Widen and/or reconstruct Florentine from Pine View to Glassford Hill in accordance with the attached cross sections including drainage, street lights and dry utility trench and conduits.
4. Reconstruct Pine View from Florentine to Bison as far to the west as possible including drainage channel, 10 foot path and dry utility trench and conduits.
5. Widen and/or reconstruct Glassford Hill to provide 3 lanes northbound and 3 lanes southbound (without right turn bays at driveways) between Pav Way and Florentine.
6. Construct Drainage Basin A near the intersection of Long Look and Viewpoint Drive per the approved Section 14 Master Drainage Plan dated Jan. 24, 2000.
7. Relocate existing 6" water main between Pine View and Glassford Hill.
8. Construct 12" water main north of Lakeshore Dr. along west side of Glassford Hill when required to serve development area northwest of Glassford Hill and Lakeshore.
9. Construct 12" sewer mains for area west of Glassford Hill (routes to be determined).
  - a. Sewer service for development west of Glassford between Florentine and Main Street East can be routed to Florentine if building verses sewer elevations permit.
  - b. Sewer service for development west of Glassford between Main Street East and Lakeshore is to be routed to either Lakeshore or Bison.
  - c. Sewer service for development west of Glassford and north of Lakeshore is to be routed to Bison.



10. Variations from the improvements listed above and shown on the attached cross sections are to be resolved by mutual agreement between the developer and the Town Engineer.

“Unofficial Copy”



## DOWNTOWN STREETS

**DAYA**

PLANNING  
ENGINEERING  
SURVEYING

**& ASSOCIATES, INC.**

310 F. Liran Street  
 Prescott, AZ 85303  
 928/726-1287  
 928/253-7334

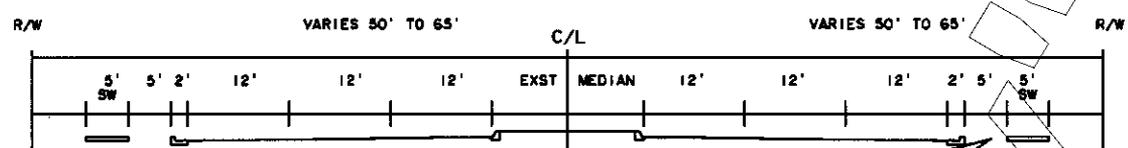
CLIENT: PRESCOTT VALLEY	DATE: 26 APR 2005
JOB: 374PVENG	DRAWN BY: JS.
DOWNTOWN ST.	STREET DAW

UNIVERSITY

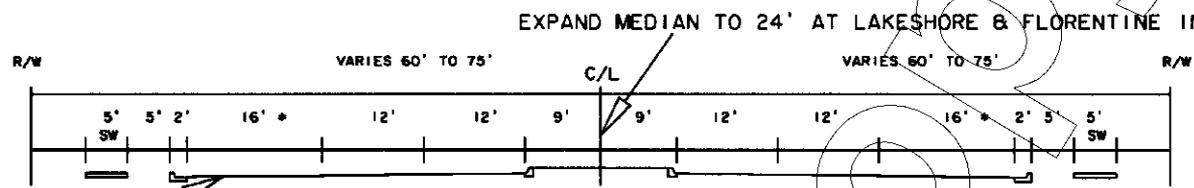


# DOWNTOWN STREETS

ROADWAY CROSS SECTIONS INTENDED AS A VISUAL REPRESENTATION OF THE APPROVED TRAFFIC ENGINEER'S RECOMMENDATIONS

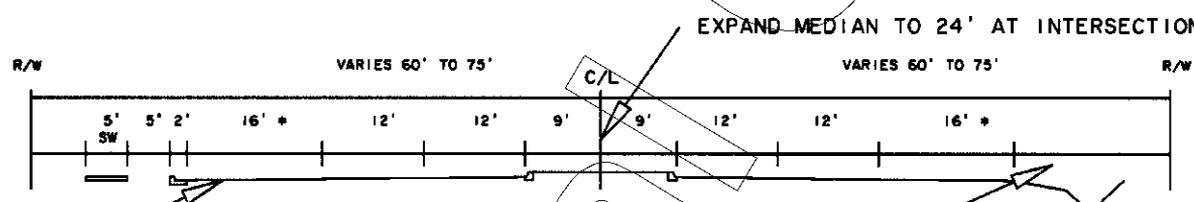


GLASSFORD NORTHBOUND PAV WAY TO FLORENTINE  
 EXST CURB & S/W TO REMAIN



EXPAND MEDIAN TO 24' AT LAKESHORE & FLORENTINE INTERSECTIONS  
 ADD 12' DECEL-RIGHT TURN LANE AT PREDETERMINED LOCATIONS - PROVIDE ADDED R/W AS NEEDED

GLASSFORD NORTHBOUND FLORENTINE TO MAIN ST

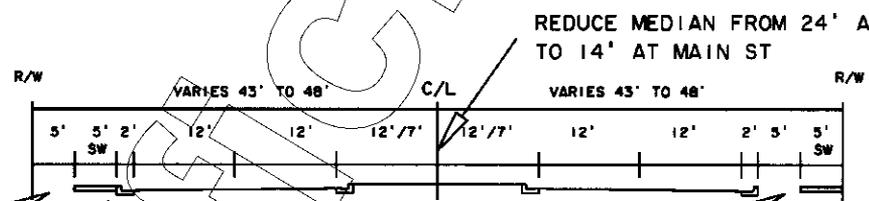


EXPAND MEDIAN TO 24' AT INTERSECTIONS  
 ADD 12' DECEL-RIGHT TURN LANE AT PREDETERMINED LOCATIONS - PROVIDE ADDED R/W AS NEEDED

CURB & S/W ADDED W/ DEVELOPMENT

16' \* TO PROVIDE FOR BIKE LANE

GLASSFORD NORTHBOUND MAIN ST TO LONG LOOK



ADDITIONAL SIDEWALK W/ DEVELOPMENT

REDUCE MEDIAN FROM 24' AT GLASFORD TO 14' AT MAIN ST

EXST CURB & S/W TO REMAIN  
 REMOVE PARKING BUBBLES

FLORENTINE EASTBOUND GLASSFORD TO MAIN

RECORDERS MEMO: LEGIBILITY QUESTIONABLE FOR GOOD REPRODUCTION

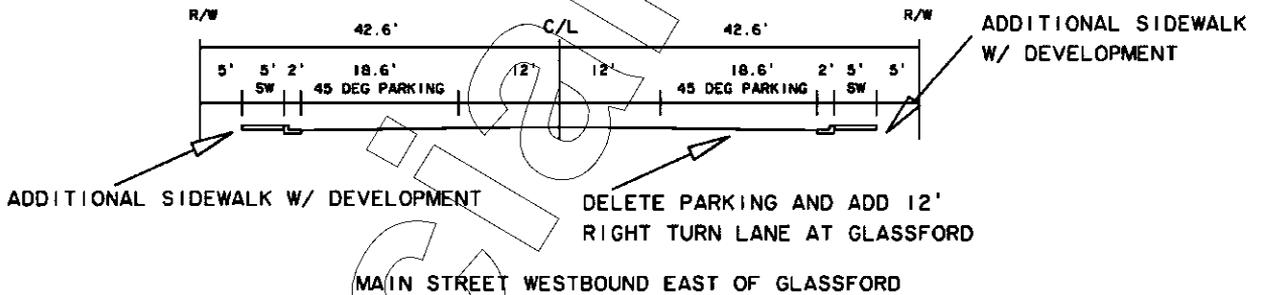
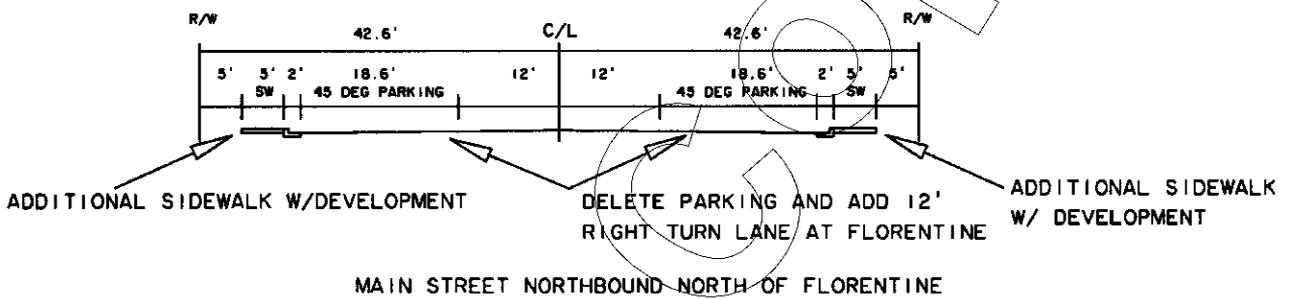
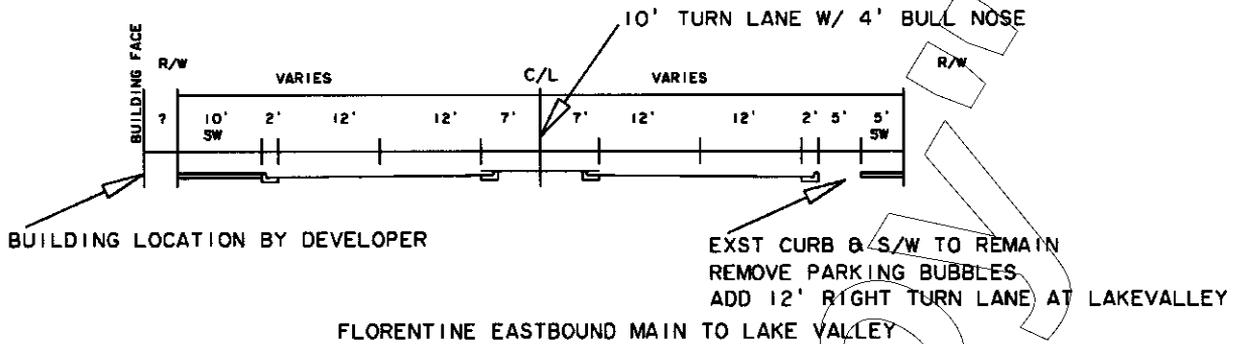
EXHIBIT #1

<b>DAVA</b> PLANNING ENGINEERING SURVEYING		390 E. Union Street Prescott, AZ 86303 908/779-7587 908/933-1754	
<b>&amp; ASSOCIATES, INC.</b>		CLIENT: PRESOTT VALLEY	DATE: 11 MAY 2006
JOB: 574PVDG	DRAWN BY: P&J	STREET.DWG	

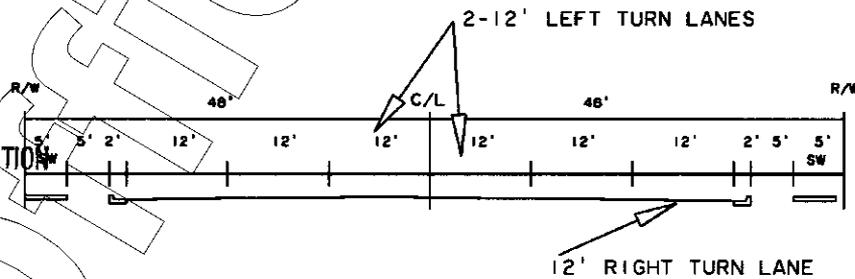


# DOWNTOWN STREETS

ROADWAY CROSS SECTIONS INTENDED AS A VISUAL REPRESENTATION OF THE APPROVED TRAFFIC ENGINEER'S RECOMMENDATIONS



RECORDERS MEMO: LEGIBILITY QUESTIONABLE FOR GOOD REPRODUCTION



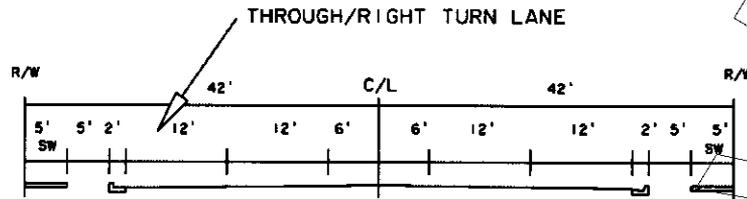
**EXHIBIT #2**

<b>DAVA</b> PLANNING ENGINEERING SURVEYING		300 E. Union Street Prescott, AZ 86303 908/779-7007 908/933-1734	
<b>&amp; ASSOCIATES, INC.</b>		CLIENT: PRESOTT VALLEY	DATE: 11 MAY 2005
JOB: 374PVNS		DRAWN BY: P&J	STREET.DWG

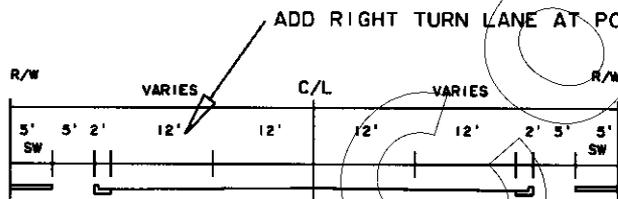


# DOWNTOWN STREETS

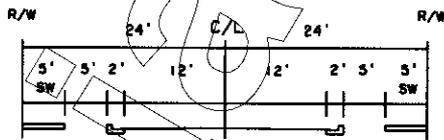
ROADWAY CROSS SECTIONS INTENDED AS A VISUAL REPRESENTATION OF THE APPROVED TRAFFIC ENGINEER'S RECOMMENDATIONS



FLORENTINE EASTBOUND EAST OF POWER CENTER W D/W TO FRY'S MAIN D/W



FLORENTINE EASTBOUND AT WEST POWER CENTER DRIVEWAY



FLORENTINE EASTBOUND TRANSITION - PINEVIEW TO WEST POWER CENTER D/W

RECORDERS MEMO: LEGIBILITY QUESTIONABLE FOR GOOD REPRODUCTION

EXHIBIT #3

<b>DAVA</b>		30 E. Union Street Prescott, AZ 86303 908/778-7887 908/253-1754	
PLANNING ENGINEERING SURVEYING		<b>&amp; ASSOCIATES, INC.</b>	
CLIENT: PRESCOTT VALLEY	DATE: 11 MAY 2005		
JOB: 374P/048	DRAWN BY: PSJ		
DOWN TOWN ST	STREET.DWG		



March 30, 2006

The Fain Signature Group, L.L.C.  
3001 Main Street  
Suite 2B  
Prescott Valley, Arizona 86314  
Attn: Bill Fain

Withey Anderson & Morris, P.L.C.  
Suite A-212  
2525 E. Arizona Biltmore Circle  
Phoenix, AZ 85016  
Attn: Michael B. Withey, Esq.

Re: Development Phasing and Improvements Allocation  
May 24, 2005 Fain Retail Property Development Agreement

Gentlemen:

Under Subsection 1.2 of the Development Agreement (“Agreement”) entered into on May 24, 2005, by and between the Town of Prescott Valley (“Town”) and The Fain Signature Group, L.L.C. (“Fain”), Fain may construct and dedicate to the Town the Additional Infrastructure Improvements listed in Exhibit B of the Agreement (“Improvements”) in phases corresponding to the phases of development of the Fain Retail Property (“Center”). Fain is authorized to propose a phasing plan for the Improvements that allocates the obligation to construct the Improvements to each development phase, subject to Town approval. Fain may later adjust the phasing plan (including the Improvements allocation), subject again to Town approval. Subsection 3.1 of the Agreement designates me as the representative who may approve any phasing plan and Improvements allocation on behalf of the Town. Item 10 on Exhibit B to the Agreement further authorizes Fain and the Town engineer to resolve by mutual agreement variations from the improvements listed in Exhibit B as final plans for the Center are developed.

From the beginning of this development, we have discussed allocating the Improvements to three phases to correspond to the proposed phases for development of the Center. On March 7, 2006, the consulting engineers for Fain (Erie & Associates, Inc.) prepared proposed changes to the Improvements which reflected discussions at that

point relating to the Improvements actually attributable to the impacts of these development phases. Those variations were initially approved by the Town Engineer in accordance with Item 10 on Exhibit B. More recent discussions have further refined the phasing and the variations agreed to per Item 10, and this letter now formally approves the phasing plan and allocation of Improvements to each phase.

**IDENTIFICATION OF PHASES:** Per Subsection 1.2 of the Agreement, we have agreed to divide the Center into three phases for purposes of allocating the obligation to build the Improvements. These Phases are generally shown on the Site Plan of the Center attached hereto as Schedule 1, with the southern-most parcel being referred to as Phase I, the middle parcel being referred to as Phase II and the northern-most parcel being referred to as Phase III.

**ALLOCATION OF IMPROVMENTS BETWEEN PHASES I AND II.** At this point, it is not clear whether Phase I or Phase II of the Center will be developed first, or whether Phase I and Phase II will be developed together. Accordingly, we have reached the following agreements regarding how the Improvements will be handled, depending upon which of Phase I or Phase II is developed first:

1. If Phase I is developed first, then the Improvements listed on Schedule 2A shall be constructed as part of the Phase I development. When Phase II is subsequently developed, the Improvements listed on Schedule 2B shall be constructed as part of the Phase II development.

2. If Phase II is developed first, then the Improvements listed on Schedule 3A shall be constructed as part of the Phase II development. When Phase I is subsequently developed, the Improvements listed on Schedule 3B shall be constructed as part of the Phase I development.

3. If Phase I and Phase II are developed together, then the Improvements lists on Schedules 2A and 2B shall be constructed as part of the combined Phase I and Phase II development, except that the tapering of Glassford Hill Road between the two phases will not be necessary.

**ALLOCATION OF IMPROVEMENTS TO PHASE III.** The portion of the Improvements set forth on Schedule 4 shall be constructed as part of the Phase III development.

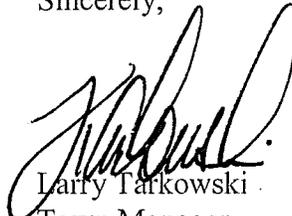
**ALLOCATED IMPROVEMENTS:** The following Improvements are assigned to Phase One and Phase Two of the Center (to be divided between them by later agreement if Phase One and Phase Two are not built together)–

This letter confirms that the list of Improvements set forth on the Schedules attached hereto are now all of the Improvements which you have agreed to build and the Town has agreed to reimburse you for under the Agreement. The Town acknowledges that this results in certain Improvements originally listed in Exhibit B not being built by

you because they have been recognized as not being attributable to the impacts of Center development. You acknowledge that this results in a reduction in the Town's reimbursement obligations under the Agreement.

Please note that Section 1.2 of the Agreement permits further revisions to the phasing schedule for the Improvements with our consent. It is also understood that No. 10 in Exhibit B of the Agreement remains in effect and will continue to provide that variations from the Improvements may be resolved by mutual agreement between Fain and the Town Engineer.

Sincerely,

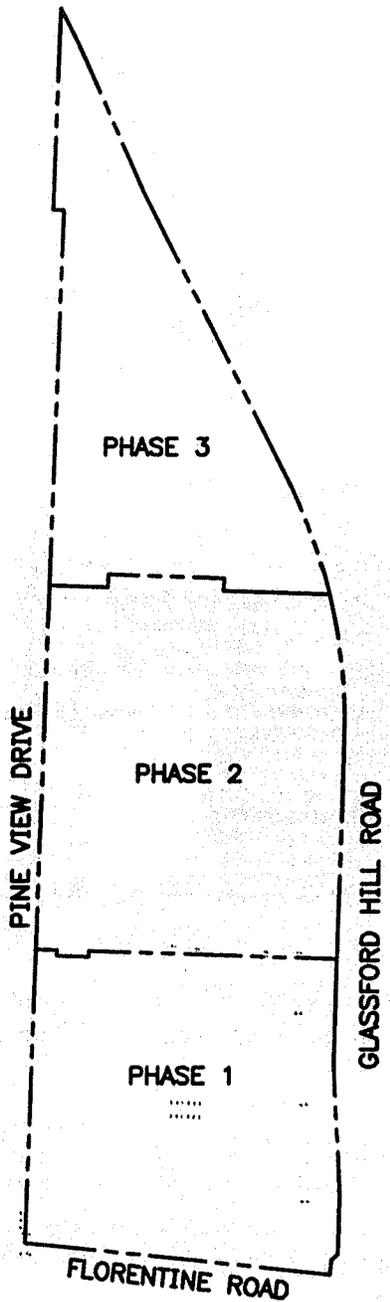
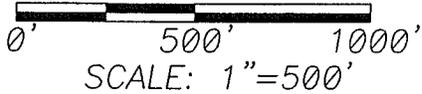


Larry Tarkowski  
Town Manager

LT/

p.c.: Mayor and Council  
Public Works Director  
Community Development Director  
Management Services Director  
Town Attorney

*mailed + distributed  
4-10-06  
VCananea*



LAKE SHORE DRIVE

JOB NO. 1624  
DATE: 04/04/06  
SCALE: 1"=500'



ERIE AND ASSOCIATES, INC.  
3120 N. 24th St.  
PHOENIX, ARIZONA 85016  
PH: (602) 954-6399

FAIN—WEST OF GLASSFORD  
SCHEDULE 1

## Schedule 2A

1. Reconstruct Florentine-Glassford Hill intersection including traffic signal and widening for turn lanes.
2. Widen Glassford Hill from Florentine to 250' north of Main Street East in accordance with the attached cross-sections including intersection improvements at Main Street East, and a traffic signal (including traffic signal intertie) at Main Street East. Glassford widening includes drainage, street lights, and dry utility trench and conduits on the east and west sides of Glassford Hill from Florentine to 250' north of Main Street East.
3. Widen and/or reconstruct Florentine from Pine View to Glassford Hill in accordance with the attached cross-sections including drainage, street lights, and dry utility trench and conduits.
4. Construct Pine View channel from Florentine to the Glassford Hill Road culvert as far to the west as possible including drainage channel.
5. Restripe Glassford Hill to provide 3 lanes northbound and 3 lanes southbound (without right turn bays at driveways) between Pav Way and Florentine.
6. Construct drainage Basin A near the intersection of Long Look and Viewpoint Drive per the approved Section 14 Master Drainage Plan dated January 24, 2000, to accommodate drainage for retail shopping center.
7. Construct 12" water line loop from Lakeshore to Florentine.
8. Construct 12" sewer mains for area west of Glassford Hill (routes to be determined).
  - a. Sewer service for development west of Glassford Hill between Florentine and Main Street East can be routed to Florentine if building verses sewer elevations permit.
  - b. Sewer service for development west of Glassford Hill between Main Street East and Lakeshore is to be routed to either Lakeshore or Bison.
  - c. Sewer service for development west Glassford Hill and north of Lakeshore is to be routed to Bison.

Variations from the improvements listed above and shown on the attached cross-sections are to be resolved by mutual agreement between the developer and the Town Engineer.

## Schedule 2B

1. Widen Glassford Hill from Main Street East to Lakeshore in accordance with the attached cross-sections, including intersection improvements at Lakeshore Dr. traffic signal (including traffic signal intertie) at Lakeshore Dr. Glassford widening includes drainage, street lights, and dry utility trench and conduits on the west side and asphalt only widening on the east side of Glassford hill Rd.
2. Relocate existing 6" water main between Pine View and Glassford Hill.
3. Construct 12" sewer mains for area west of Glassford Hill (routes to be determined).
  - a. Sewer service for development west of Glassford Hill between Florentine and Main Street East can be routed to Florentine if building verses sewer elevations permit.
  - b. Sewer service for development west of Glassford Hill between Main Street East and Lakeshore is to be routed to either Lakeshore or Bison.
  - c. Sewer service for development west Glassford Hill and north of Lakeshore is to be routed to Bison.

Variations from the improvements listed above and shown on the attached cross-sections are to be resolved by mutual agreement between the developer and the Town Engineer.

### Schedule 3A

1. Widen Glassford Hill from Main Street East to Lakeshore in accordance with the attached cross-sections, including intersection improvements at Main Street East, Lakeshore Dr., and traffic signals (including traffic signal intertie) at Main Street East and Lakeshore Dr. Glassford widening includes drainage, street lights, and dry utility trench and conduits on the west and asphalt only on the east.
2. Reconstruct Pine View channel from Florentine to Glassford Hill Rd. culvert.
3. Construct drainage Basin A near the intersection of Long Look and Viewpoint Drive per the approved Section 14 Master Drainage Plan dated January 24, 2000, to accommodate drainage for retail shopping center.
4. Relocate existing 6" water main between Pine View and Glassford Hill.
5. Construct 12" water main loop from Lakeshore Dr. south of Florentine.
6. Construct 12" sewer mains for area west of Glassford Hill (routes to be determined).
  - a. Sewer service for development west of Glassford Hill between Florentine and Main Street East can be routed to Florentine if building verses sewer elevations permit.
  - b. Sewer service for development west of Glassford Hill between Main Street East and Lakeshore is to be routed to either Lakeshore or Bison.
  - c. Sewer service for development west Glassford Hill and north of Lakeshore is to be routed to Bison.

Variations from the improvements listed above and shown on the attached cross-sections are to be resolved by mutual agreement between the developer and the Town Engineer.

### Schedule 3B

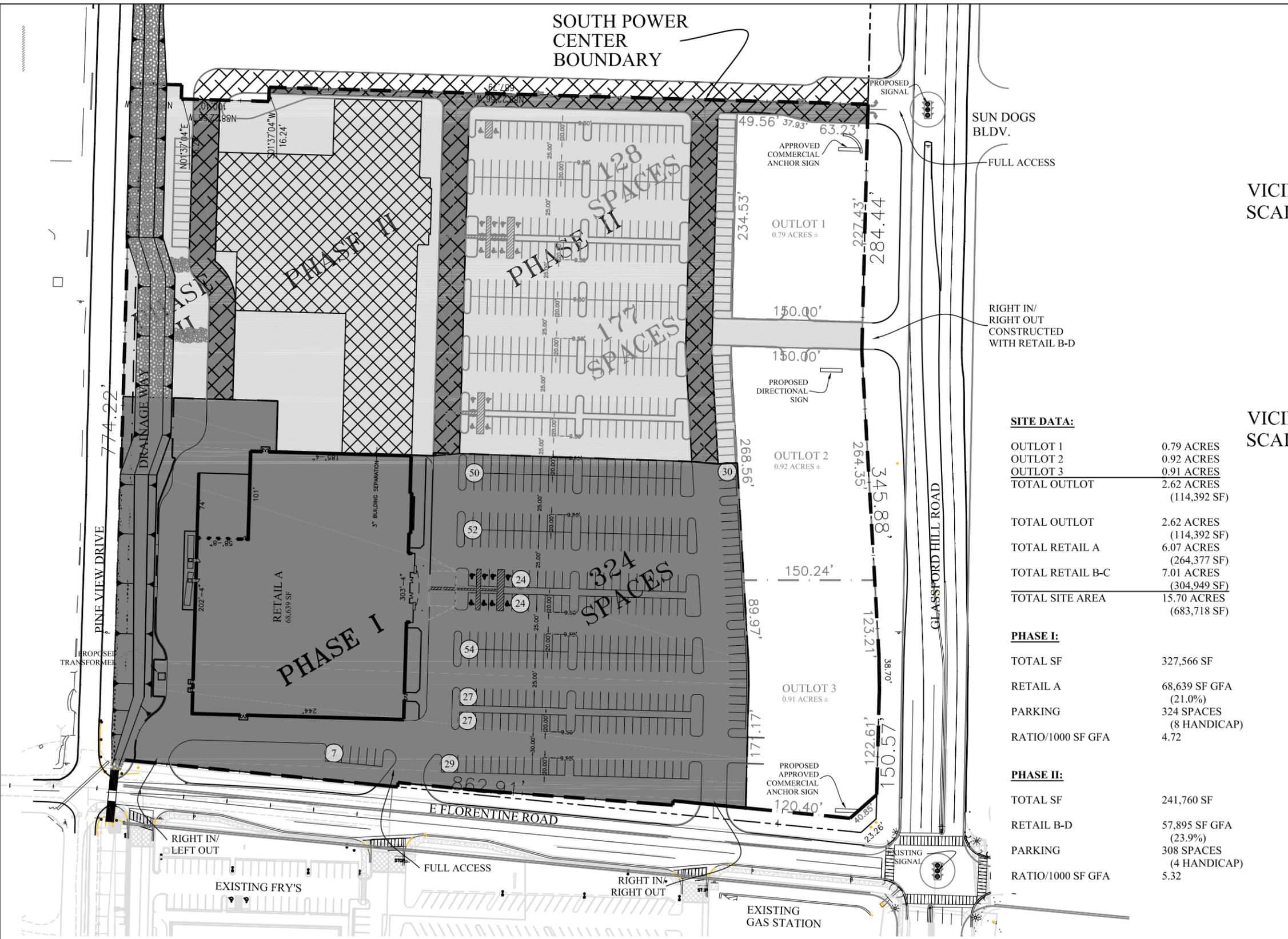
1. Reconstruct Florentine-Glassford Hill intersection including traffic signal and widening for turn lanes.
2. Widen Glassford Hill from Florentine through Main Street East in accordance with the attached cross-sections including intersection improvements. Glassford widening includes drainage, street lights, and dry utility trench and conduits on the east and west sides of Glassford Hill from Main Street East to Florentine.
3. Widen and/or reconstruct Florentine from Pine View to Glassford Hill in accordance with the attached cross-sections including drainage, street lights, and dry utility trench and conduits.
4. Restripe Glassford Hill to provide 3 lanes northbound and 3 lanes southbound (without right turn bays at driveways) between Pav Way and Florentine.
5. Relocate existing 6" water main between Pine Valley and Glassford Hill.
6. Construct 12" sewer mains for area west of Glassford Hill (routes to be determined).
  - a. Sewer service for development west of Glassford Hill between Florentine and Main Street East can be routed to Florentine if building verses sewer elevations permit.
  - b. Sewer service for development west of Glassford Hill between Main Street East and Lakeshore is to be routed to either Lakeshore or Bison.
  - c. Sewer service for development west Glassford Hill and north of Lakeshore is to be routed to Bison.

Variations from the improvements listed above and shown on the attached cross-sections are to be resolved by mutual agreement between the developer and the Town Engineer.

### Schedule 4-(Phase III)

1. Widen Glassford Hill from Lakeshore to Long Look on the east and to the north property line on the west in accordance with the attached cross-sections including intersection improvements at Long Look, and one new intersection between Lakeshore Dr. & Long Look and traffic signal (including traffic signal intertie) at Long Look (revisions to existing signal at Long Look). Glassford widening includes drainage, street lights, and dry utility trench and conduits on the west and asphalt widening on the east.
2. Construct 12" water main north of Lakeshore Dr. along the west side of Glassford Hill when required to serve development area northwest of Glassford Hill and Lakeshore.
3. Construct 12" sewer mains for area west of Glassford Hill (routes to be determined).
  - a. Sewer service for development west of Glassford Hill between Florentine and Main Street East can be routed to Florentine if building verses sewer elevations permit.
  - b. Sewer service for development west of Glassford Hill between Main Street East and Lakeshore is to be routed to either Lakeshore or Bison.
  - c. Sewer service for development west Glassford Hill and north of Lakeshore is to be routed to Bison.

Variations from the improvements listed above and shown on the attached cross-sections are to be resolved by mutual agreement between the developer and the Town Engineer.



VICINITY MAP  
SCALE: NTS



VICINITY MAP  
SCALE: NTS

**SITE DATA:**

OUTLOT 1	0.79 ACRES
OUTLOT 2	0.92 ACRES
OUTLOT 3	0.91 ACRES
TOTAL OUTLOT	2.62 ACRES (114,392 SF)

TOTAL OUTLOT	2.62 ACRES (114,392 SF)
TOTAL RETAIL A	6.07 ACRES (264,377 SF)
TOTAL RETAIL B-C	7.01 ACRES (304,949 SF)
TOTAL SITE AREA	15.70 ACRES (683,718 SF)

**PHASE I:**

TOTAL SF	327,566 SF
RETAIL A	68,639 SF GFA (21.0%)
PARKING	324 SPACES (8 HANDICAP)
RATIO/1000 SF GFA	4.72

**PHASE II:**

TOTAL SF	241,760 SF
RETAIL B-D	57,895 SF GFA (23.9%)
PARKING	308 SPACES (4 HANDICAP)
RATIO/1000 SF GFA	5.32

**LANDSCAPE:**

TOTAL LS AREA:	93,189 SF (16.4%)
RETAIL A LS AREA:	32,085 SF (12.1%)
RETAIL B-D LS AREA:	61,104 SF (20.0%)

**MISCELLANEOUS:**

TOTAL RETAIL SF	126,534 SF GFA (22.0%)
TOTAL PARKING SPACES:	632 SPACES
RATIO/1000 SF GFA:	4.99
PARKING STALLS:	9.5'X20'
DRIVES:	25' (DRIVES) 30' (MAIN ACCESS)
ZONING:	C-2 PAD

**LEGEND**

PHASE 1: (327,566 SF)	
TO BE COMPLETED WITH PHASE 1:	
PHASE 2: (228,113 SF)	



REV	DESCRIPTION	DATE

**CONTINENTAL 205 FUND, LLC**  
An affiliate of

**CONTINENTAL PROPERTIES COMPANY, INC.**  
WI 134 N8675 Executive Parkway  
Menomonee Falls, WI 53052  
Phone: 262-502-5500 Fax: 262-502-5522  
Email: cad\_dwg@cpproperties.com

CITY:	Prescott Valley	STATE:	AZ
DRAWN BY:	JILL KUEHN	INITIAL DATE DRAWN:	12/15/06
DRAWING PATH: E:\ARIZONA\PRESOTT VALLEY\GLASSFORDHILLROAD_FLORENTINEROAD_NWC\DWG\CP_DRAW\EXHIBITS\SITE\PLAN PHASING PLAN\EX-D.DWG			
PLOT DATE: Friday, December 15, 2006 4:11:16 PM			

RECEIVED  
JUL 13 2007  
LEGAL DEPT

July 13, 2007



*Developing  
Commercial  
and Industrial  
Properties*

Mr. Larry Tarkowski, Manager  
Town of Prescott Valley  
7501 E. Civic Cir.  
Prescott Valley, AZ 86314

RE: GLASSFORD HILL MARKETPLACE

Dear Larry:

Attached is our first (partial) payment submittal, with corresponding invoices, for the costs incurred for off-site improvement work in accordance with the Additional Infrastructure Development Agreement dated May 24, 2005, recorded June 10, 2005. Also, attached is an Excel spreadsheet outlining the total projected cost for off-site improvements. Although this first submittal does not request reimbursement for all the costs incurred to date, we believe the total amount as set forth in the spreadsheet represents approximately 90% or more of the total cost of all off-site improvements in place today. Please note that we have elected, at our option, not to phase the construction of off-site improvements, and thus, we will be submitting bills this summer with regard to Phases A, B and C referenced in the Development Agreement.

Once we submit a statement for 100% of the costs, we would appreciate a meeting to review all invoices and statements per the terms of the Development Agreement. Thank you for your assistance in this regard, and please do not hesitate to call should there be any questions.

Sincerely,



Brad Fain

SBF:cf

Enc.

cc: Ivan Legler, Town Attorney

# Fain Signature Group, LLC

3001 Main St., Suite 2 B  
 Prescott Valley, AZ 86314  
 (928) 772-8844 Fax (928) 772-8650

Inv#2007-076

## INVOICE

Customer		Date	7/13/2007
Name	Town of Prescott Valley	Acctg Date	
Address	7501 East Civic Circle		
City	Prescott Valley		
State	AZ		
Zip	86314		
Attn:			

ADDITIONAL INFRASTRUCTURE - PAYMENT SUBMITTAL #1

Qty	Description	Unit Price	TOTAL
	<u>OFFSITES</u>		
	Regional Drainage Ditch Florentine and Glassford Hill Road Water, Sewer & Utilities		
	<u>Hard Costs</u>		
1	Asphalt Paving & Supply	\$2,250,156.63	\$2,250,156.63
	<u>Soft Costs</u>		
	Town of Prescott Valley	\$1,985.00	
	Kimley Horn	\$54,524.69	
	Erie & Associates	\$87,924.00	
	Lee Engineering	\$14,940.00	
	BMA	<u>\$47,857.75</u>	
1		\$207,231.44	\$207,231.44

**TOTAL** \$2,457,388.07

*Due per Additional Infrastructure Development Agreement*

**ADDITIONAL INFRASTRUCTRE IMPROVEMENTS****GLASSFORD HILL ROAD  
WEST SIDE FROM FLORENTINE TO 250' NORTH OF SUNDOGS  
ITEM****QUANTITY UNIT**

VCG (Median)	2200	LF
VCG (West Side)	1150	LF
ASPHALT (6" AC/16"ABC)	2560	SY
5' MEANDERING SIDEWALK	5650	SF
TRAFFIC CONTROL	1	
SWPPP	1	
SAWCUT	1130	LF
36" HDPE STORMDRAIN	1900	LF
24" HDPE STORMDRAIN	400	LF
STORMDRAIN MANHOLE	14	EA
CURB OPENING CATCH BASIN	10	EA
MEDIAN AREA DRAIN	6	EA
DRIVEWAY ENTRANCE	2	EA
DRY UTILITY TRENCH	1130	LF
CUT FOR SUBGRADE AND FILL ONSITE	3200	CY
LANDSCAPE MEDIAN	18500	SF
STREETLIGHTS	5	EA
STRIPPING	1130	LF
SIGNAGE	1	EA
LANDSCAPE WEST ROW	33500	SF
INTERSECTION SIGNAL	1	EA
TOTAL THIS ITEM		

**GLASSFORD HILL IMPROVEMENTS  
EAST SIDE FROM FLORENTINE TO 280' NORTH OF SUNDOGS  
ITEM****QUANTITY UNIT**

ASPHALT (6" AC/16"ABC)	2500	SY
TRAFFIC CONTROL	1	
SWPPP	1	
SAWCUT	1130	LF
CUT FOR SUBGRADE AND FILL ONSITE	2300	CY
VCG	1130	LF
STRIPPING	1130	LF
SIGNAGE	1	EA
DRY UTILITY TRENCH	1300	LF
LANDSCAPING	18000	SF
TOTAL THIS ITEM		

**CHANNEL ALONG PINE VIEW DRIVE  
ITEM****QUANTITY UNIT**

BLOCK RETAINING WALL (3' AVE)	1350	LF
BLOCK RETAINING WALL (6' AVE)	70	LF
SWPPP	1	
EXCAVATE CHANNEL/PLACE COMPACT MATERIAL	0	CY
ROCK LINED CHANNEL 12" OF D50=6" ROCK W/ GEOTEXTILE	4000	CY

25' LANDSCAPE BUFFER	112400	SF
10' SIDEWALK	28090	SF
TOTAL THIS ITEM		

**WATER LINE PHASE ONE**

ITEM	QUANTITY	UNIT
12" DIP OR C900 WATER	2735	LF
FIRE HYDRANT	5	EA
12" WATER VALVE	9	EA
SAWCUT/REMOVE/REPLACE	500	SF
WATER TAPS	3	EA
6" DIP OR C900 WATER	430	LF
12"x8" Tee	1	EA
12"x12"x12" Tee	1	EA
TOTAL THIS ITEM		

**SEWER LINE PHASE ONE & TWO**

ITEM	QUANTITY	UNIT
8" SEWER	4250	LF
SEWER MANHOLE	13	EA
TOTAL THIS ITEM		

**GLASSFORD HILL ROAD  
WEST SIDE FROM SUNDOGS TO 280' NORTH OF LAKESHORE**

ITEM	QUANTITY	UNIT
VCG (Median)	2000	LF
VCG (West Side)	1200	LF
ASPHALT (6" AC/16"ABC)	2670	SY
5' MEANDERING SIDEWALK	6000	SF
TRAFFIC CONTROL	1	
SWPPP	1	
SAWCUT	1200	SF
DRIVEWAY ENTRANCE MAG 240	2	EA
DRY UTILITY TRENCH	1200	LF
CUT FOR SUBGRADE AND FILL ONSITE	1630	CY
LANDSCAPE MEDIAN	19200	SF
STREETLIGHTS	7	EA
STRIPPING	1200	LF
SIGNAGE	1	EA
LANDSCAPE WEST ROW	36000	SF
INTERSECTION SIGNAL	1	EA
TOTAL THIS ITEM		

**GLASSFORD HILL IMPROVEMENTS  
EAST SIDE FROM SUNDOGS TO 280' NORTH OF LAKESHORE**

ITEM	QUANTITY	UNIT
ASPHALT (6" AC/16"ABC)	2700	SY
TRAFFIC CONTROL	1	
SWPPP	1	
SAWCUT	1200	LF
CUT FOR SUBGRADE AND FILL ONSITE	1600	CY

STRIPPING		1200	LF
SIGNAGE		1	EA
TOTAL THIS ITEM			

**6" WATER LINE RELOCATION**

ITEM	QUANTITY	UNIT
6" WATER DIP OR C900	1455	LF
ABANDON 6" WATER LEAVE IN PLACE	415	LF
TOTAL THIS ITEM		

**GLASSFORD HILL ROAD  
WEST SIDE FROM 280' NORTH OF LAKESHORE TO PROPERTY LINE**

ITEM	QUANTITY	UNIT
VCG (Median)	4200	LF
VCG (West Side)	1110	LF
ASPHALT (6" AC/16"ABC)	2470	SY
5' MEANDERING SIDEWALK	5500	SF
TRAFFIC CONTROL	1	
SWPPP	1	
SAWCUT	1130	SF
DRIVEWAY ENTRANCE	2	EA
DRY UTILITY TRENCH	1130	LF
CUT FOR SUBGRADE AND FILL ONSITE	1500	CY
LANDSCAPE MEDIAN	17800	SF
STREETLIGHTS	7	EA
STRIPPING	1130	LF
SIGNAGE	1	EA
LANDSCAPE WEST ROW	32180	SF
INTERSECTION SIGNAL	1	EA
TOTAL THIS ITEM		

**GLASSFORD HILL IMPROVEMENTS  
EAST SIDE 280' NORTH OF LAKESHORE TO LONGLOOK**

ITEM	QUANTITY	UNIT
ASPHALT (6" AC/16"ABC)	5100	SY
TRAFFIC CONTROL	1	
SWPPP	1	
SAWCUT	2300	LF
CUT FOR SUBGRADE AND FILL ONSITE	3100	CY
STRIPPING	2300	LF
SIGNAGE	1	EA
TOTAL THIS ITEM		

TOWN DISTRCT SIGNAGE (Not Included at this time)  
ELECTRICAL BACKBONE/TRANSFORMERS

**GRAND TOTAL BID ITEMS**  
**ADD FOR TAXES**  
**ADD FOR SOFT DESIGN/ENGINEERING**  
**TOTAL**

**NOTES:**

**Quantities shown are subject to field adjustments**

UNIT PRICE	TOTAL
\$ 21.00	\$ 46,200
\$ 13.80	\$ 15,870
\$ 35.50	\$ 90,880
\$ 3.75	\$ 21,188
\$ 8,500.00	\$ 8,500
\$ 3,000.00	\$ 3,000
\$ 3.50	\$ 3,955
\$ 59.00	\$ 112,100
\$ 37.00	\$ 14,800
\$ 2,700.00	\$ 37,800
\$ 3,700.00	\$ 37,000
\$ 3,250.00	\$ 19,500
\$ 5,600.00	\$ 11,200
\$ 9.80	\$ 11,074
\$ 5.80	\$ 18,560
\$ 2.58	\$ 47,730
\$ 14,000.00	\$ 70,000
\$ 0.30	\$ 339
\$ 5,000.00	\$ 5,000
\$ 2.58	\$ 86,430
\$ 80,000.00	\$ 80,000
	\$ 741,126

UNIT PRICE	TOTAL
\$ 35.50	\$ 88,750
\$ 4,300.00	\$ 4,300
\$ 2,500.00	\$ 2,500
\$ 3.50	\$ 3,955
\$ 6.00	\$ 13,800
\$ 13.80	\$ 15,594
\$ 0.30	\$ 339
\$ 8,000.00	\$ 8,000
\$ 9.80	\$ 12,740
\$ 2.58	\$ 46,440
	\$ 196,418

UNIT PRICE	TOTAL
\$ 65.00	\$ 87,750
\$ 113.00	\$ 7,910
\$ 3,000.00	\$ 3,000
\$ -	\$ -
\$ 26.50	\$ 106,000

\$	2.58	\$	289,992
\$	3.75	\$	105,338
		\$	599,990

UNIT PRICE	TOTAL
\$ 43.00	\$ 117,605
\$ 3,500.00	\$ 17,500
\$ 2,450.00	\$ 22,050
\$ 8.50	\$ 4,250
\$ 3,850.00	\$ 11,550
\$ 28.00	\$ 12,040
\$ 600.00	\$ 600
\$ 910.00	\$ 910
	\$ 186,505

UNIT PRICE	TOTAL
\$ 27.00	\$ 114,750
\$ 2,650.00	\$ 34,450
	\$ 149,200

UNIT PRICE	TOTAL
\$ 21.00	\$ 42,000
\$ 13.80	\$ 16,560
\$ 35.50	\$ 94,785
\$ 3.75	\$ 22,500
\$ 8,600.00	\$ 8,600
\$ 3,000.00	\$ 3,000
\$ 3.50	\$ 4,200
\$ 5,600.00	\$ 11,200
\$ 9.80	\$ 11,760
\$ 6.00	\$ 9,780
\$ 2.58	\$ 49,536
\$ 14,000.00	\$ 98,000
\$ 0.30	\$ 360
\$ 5,000.00	\$ 5,000
\$ 2.58	\$ 92,880
\$ 250,000.00	\$ 250,000
	\$ 720,161

UNIT PRICE	TOTAL
\$ 35.50	\$ 95,850
\$ 4,300.00	\$ 4,300
\$ 3,000.00	\$ 3,000
\$ 3.50	\$ 4,200
\$ 5.80	\$ 9,280

\$	0.30	\$	360
\$	5,000.00	\$	5,000
		\$	121,990

UNIT PRICE	TOTAL
\$ 23.00	\$ 33,465
\$ 1.00	\$ 415
	\$ 33,880

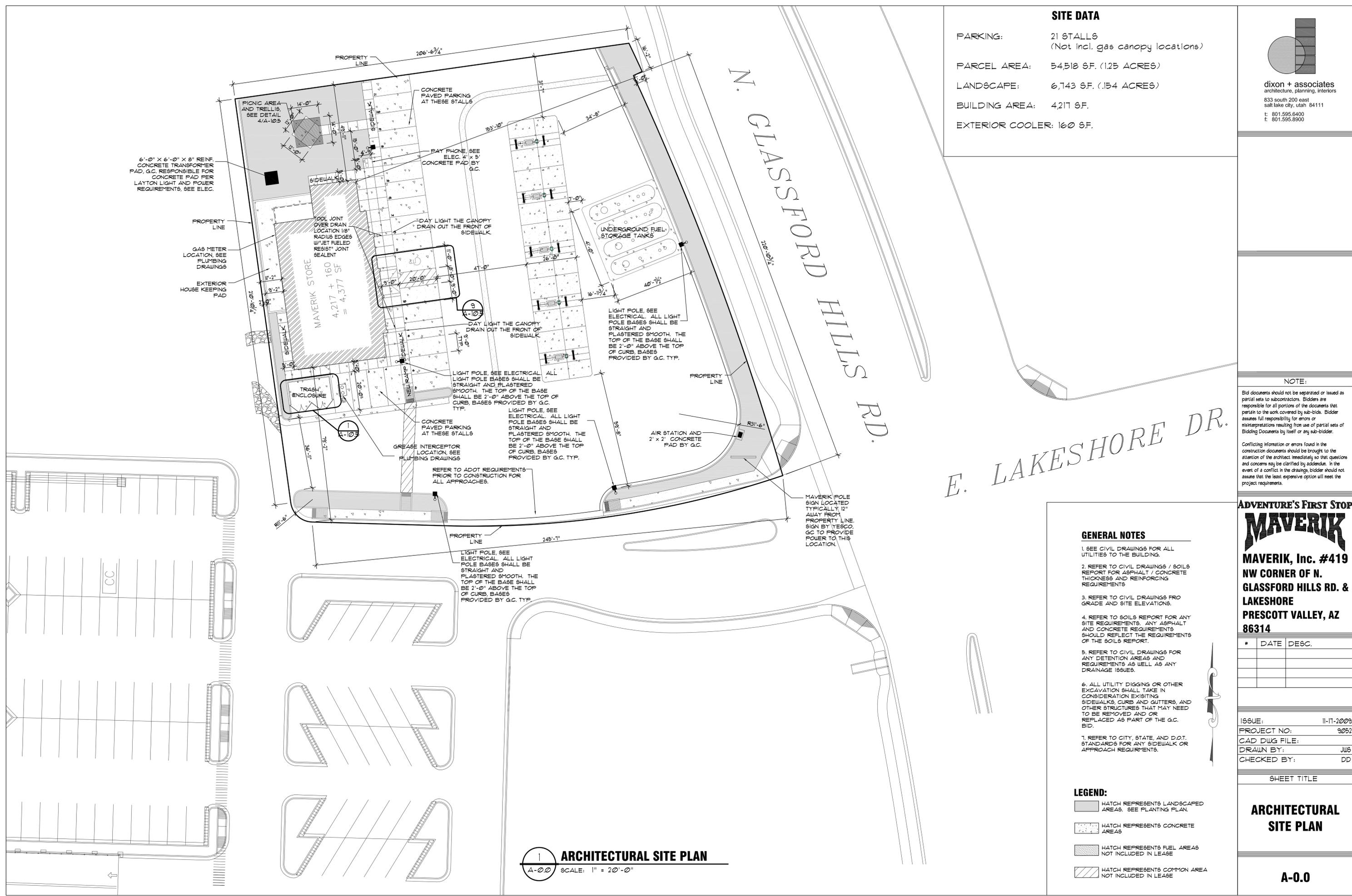
UNIT PRICE	TOTAL
\$ 21.00	\$ 88,200
\$ 13.80	\$ 15,318
\$ 35.50	\$ 87,685
\$ 3.75	\$ 20,625
\$ 8,600.00	\$ 8,600
\$ 3,500.00	\$ 3,500
\$ 3.50	\$ 3,955
\$ 5,600.00	\$ 11,200
\$ 9.80	\$ 11,074
\$ 5.80	\$ 8,700
\$ 2.58	\$ 45,924
\$ 14,000.00	\$ 98,000
\$ 0.30	\$ 339
\$ 5,000.00	\$ 5,000
\$ 2.58	\$ 83,024
250000	\$ 250,000
	\$ 741,144

UNIT PRICE	TOTAL
\$ 35.50	\$ 181,050
\$ 4,300.00	\$ 4,300
\$ 5,700.00	\$ 5,700
\$ 3.50	\$ 8,050
\$ 5.80	\$ 17,980
\$ 0.30	\$ 690
\$ 5,000.00	\$ 5,000
	\$ 222,770

\$ 311,554

\$ 4,024,737  
 \$ 227,076  
 \$ 402,474  
 \$ 4,654,287





**SITE DATA**

PARKING: 21 STALLS  
(Not incl. gas canopy locations)

PARCEL AREA: 54,518 SF. (1.25 ACRES)

LANDSCAPE: 6,743 SF. (.154 ACRES)

BUILDING AREA: 4,217 SF.

EXTERIOR COOLER: 160 SF.

**dixon + associates**  
 architecture, planning, interiors  
 833 south 200 east  
 salt lake city, utah 84111  
 t: 801.595.6400  
 f: 801.595.8900

**NOTE:**

Bid documents should not be separated or issued as partial sets to subcontractors. Bidders are responsible for all portions of the documents that pertain to the work covered by sub-bids. Bidder assumes full responsibility for errors or misinterpretations resulting from use of partial sets of Bidding Documents by itself or any sub-bidder.

Conflicting information or errors found in the construction documents should be brought to the attention of the architect immediately so that questions and concerns may be clarified by addendum. In the event of a conflict in the drawings, bidder should not assume that the least expensive option will meet the project requirements.

*E. LAKESHORE DR.*

**GENERAL NOTES**

1. SEE CIVIL DRAWINGS FOR ALL UTILITIES TO THE BUILDING.
2. REFER TO CIVIL DRAWINGS / SOILS REPORT FOR ASPHALT / CONCRETE THICKNESS AND REINFORCING REQUIREMENTS
3. REFER TO CIVIL DRAWINGS FRO GRADE AND SITE ELEVATIONS.
4. REFER TO SOILS REPORT FOR ANY SITE REQUIREMENTS. ANY ASPHALT AND CONCRETE REQUIREMENTS SHOULD REFLECT THE REQUIREMENTS OF THE SOILS REPORT.
5. REFER TO CIVIL DRAWINGS FOR ANY DETENTION AREAS AND REQUIREMENTS AS WELL AS ANY DRAINAGE ISSUES.
6. ALL UTILITY DIGGING OR OTHER EXCAVATION SHALL TAKE IN CONSIDERATION EXISTING SIDEWALKS, CURB AND GUTTERS, AND OTHER STRUCTURES THAT MAY NEED TO BE REMOVED AND OR REPLACED AS PART OF THE G.C. BID.
7. REFER TO CITY, STATE, AND D.O.T. STANDARDS FOR ANY SIDEWALK OR APPROACH REQUIREMENTS.

**LEGEND:**

- HATCH REPRESENTS LANDSCAPED AREAS. SEE PLANTING PLAN.
- HATCH REPRESENTS CONCRETE AREAS
- HATCH REPRESENTS FUEL AREAS NOT INCLUDED IN LEASE
- HATCH REPRESENTS COMMON AREA NOT INCLUDED IN LEASE

**1 ARCHITECTURAL SITE PLAN**  
 SCALE: 1" = 20'-0"

**ADVENTURE'S FIRST STOP**  
**MAVERIK**  
**MAVERIK, Inc. #419**  
**NW CORNER OF N.**  
**GLASSFORD HILLS RD. &**  
**LAKESHORE**  
**PRESCOTT VALLEY, AZ**  
**86314**

#	DATE	DESC.

ISSUE: 11-17-2009  
 PROJECT NO: 3052  
 CAD DWG FILE:  
 DRAWN BY: JWS  
 CHECKED BY: DD

SHEET TITLE

**ARCHITECTURAL SITE PLAN**

**A-0.0**



November 21, 2011

Mr. Larry Tarkowski  
Town Manager  
Town of Prescott Valley  
7501 E. Civic Circle  
Prescott Valley, AZ 86314

Dear Mr. Tarkowski,

Applied Economics has been contracted by the Town of Prescott Valley to perform an independent third party review of the amendment to the development agreement between the Town and Fain Signature Group, L.L.C. for the 60 acre commercial development located west of Glassford Hill Road, north of Florentine Road and east of Pine View Drive. The terms of the agreement have been adjusted to reflect changes in economic and market conditions that have delayed the project.

This development agreement includes provisions for a sales tax incentive equal to 50 percent of non-designated sales taxes (or 1 percent of the total 2.33 percent) generated by taxable retail sales within the property. The Town would agree to reimburse the developer for actual cost of designing and constructing infrastructure improvements completed by the developer, plus interest. At this point in time, the developer has completed all infrastructure improvements described in the development agreement at a cost of \$5,610,977. The reimbursement would be paid over a period of up to 20 years from the opening of the first commercial retail use.

The project is expected to include up to 318,000 square feet of commercial space. Phase I includes a 62,000 square foot Kohl's store that opened in 2007. A final development plan for Phase II, which will include an 180,000 square foot Wal-Mart Supercenter, was approved in October 2007. The Wal-Mart is expected to open in mid-2013. There are about 76,000 additional square feet in Phase III that will include a Maverik store and other retailers. Phase III is expected to come on line approximately four years after the Wal-Mart in 2017. We have prepared a detailed analysis of the sales tax that would be generated by the project over a 20 year time period (through 2027) and the projected reimbursement schedule.

The project is currently generating approximately \$260,000 in annual sales tax revenues to the Town. Once Phases II and III are developed, this will increase to approximately \$1.8 million per year by about 2017. These results could vary depending on long term sales growth and inflation, but they are based on the best available information at this time.

Per A.R.S. 9-500.11, it is required that any proposed tax incentive is anticipated to raise more revenues than the amount of the incentive within the duration of the agreement. We have



Mr. Larry Tarkowski  
Page 2 of 2

reviewed all relevant assumptions regarding projected taxable activities for this property and prepared an analysis of the future revenue stream to the city over the next 20 years. Based on our review, we believe that the project would generate a significantly greater flow of sales tax revenues than the total amount of the reimbursement paid during that 20 year period.

Depending on future sales levels, development timing and interest rates, we project that it will take until approximately 2025 to repay the cost of the infrastructure improvements. It could also be the case that the flow of tax revenues is not sufficient to cover the reimbursement amount in the allotted 20 year time period; however there would be no penalty to the town for underpayment due to lower than expected taxable sales generated by this property.

The second component of A.R.S. 9-500.11 requires that this development would not have occurred in the same time, place or manner in the absence of a tax incentive. Based on our knowledge of current and projected development in the expected trade area, and conversations with the town, we believe that this type of development would not have occurred in the same time or manner without the incentive. The cost of public infrastructure improvements required to make the site usable for this type of retail center would not have been feasible without reimbursements.

Additionally, A.R.S. 42-6010 requires that sales tax incentives offered to retail businesses be provided as reimbursement for public infrastructure dedicated to and accepted and controlled upon completion of the project by the town. We have reviewed the cost estimates for the additional infrastructure improvements and verified that they are consistent with the reimbursement amount specified in the development agreement. It is important to note that these transportation improvements to reconstruct the Florentine-Glassford Hill intersection and widen the roads leading to that intersection, as well as related water and sewer line extensions, would have been necessary to support future development in the area regardless of whether this particular retail center was developed.

Based on our review, we believe that the agreement meets the requirements of A.R.S. 9-500.11 and A.R.S. 42-6010. Should you have any questions or concerns, please do not hesitate to contact us.

Sincerely,

A handwritten signature in cursive script that reads 'Sarah E. Murley'.

Sarah E. Murley  
Partner

	<b>Sales PSF</b>	2007	2008	2009	2010
<b>Taxable Sales</b>					
Kohls (62,000 sf)	\$207	\$0	\$10,313,901	\$9,865,471	\$10,224,215
WalMart (180,000 sf)	\$250	\$0	\$0	\$0	\$0
Other Mini-Majors (76,000 sf)	\$200	\$0	\$0	\$0	\$0
Total Taxable Sales		\$0	\$10,313,901	\$9,865,471	\$10,224,215
<b>Sales Tax Revenues</b>					
Total (2.33%)		\$0	\$240,314	\$229,865	\$238,224
Prescott Valley Share (1.33%)		\$0	\$137,175	\$131,211	\$135,982
FSG Share (1%)		\$0	\$103,139	\$98,655	\$102,242
Reimbursed Expenditures		\$4,761,876	\$849,101		
Accrued Interest		\$133,887	\$360,988	\$221,718	\$267,342
Prime Rate		6.58%	2.95%	3.25%	3.25%
Payments		\$0	\$75,419	\$95,762	\$110,828
Ending Balance		\$4,895,763	\$5,896,546	\$6,022,502	\$6,179,016
Cumulative Payments - FSG		\$0	\$75,419	\$171,181	\$282,009
Cumulative Earnings - Town		\$0	\$164,895	\$298,998	\$426,395

2011	2012	2013	2014	2015	2016	2017
\$13,923,100	\$14,169,773	\$14,453,168	\$14,742,232	\$15,037,076	\$15,337,818	\$15,644,574
\$0	\$0	\$22,500,000	\$45,900,000	\$46,818,000	\$47,754,360	\$48,709,447
\$0	\$0	\$0	\$0	\$0	\$0	\$15,200,000
\$13,923,100	\$14,169,773	\$36,953,168	\$60,642,232	\$61,855,076	\$63,092,178	\$79,554,022
\$324,408	\$330,156	\$861,009	\$1,412,964	\$1,441,223	\$1,470,048	\$1,853,609
\$185,177	\$188,458	\$491,477	\$806,542	\$822,673	\$839,126	\$1,058,068
\$139,231	\$141,698	\$369,532	\$606,422	\$618,551	\$630,922	\$795,540
\$276,513	\$268,443	\$282,205	\$301,897	\$310,426	\$308,977	\$305,209
3.25%	3.38%	3.75%	4.13%	4.38%	4.63%	4.88%
\$139,231	\$141,698	\$369,532	\$606,422	\$618,551	\$630,922	\$795,540
\$6,316,298	\$6,443,043	\$6,355,717	\$6,051,191	\$5,743,066	\$5,421,122	\$4,930,791
\$421,240	\$562,938	\$932,469	\$1,538,892	\$2,157,442	\$2,788,364	\$3,583,904
\$611,572	\$800,030	\$1,291,507	\$2,098,049	\$2,920,721	\$3,759,847	\$4,817,916

2018	2019	2020	2021	2022	2023	2024
\$15,957,466	\$16,276,615	\$16,602,147	\$16,934,190	\$17,272,874	\$17,618,332	\$17,970,698
\$49,683,636	\$50,677,309	\$51,690,855	\$52,724,672	\$53,779,166	\$54,854,749	\$55,951,844
\$15,504,000	\$15,814,080	\$16,130,362	\$16,452,969	\$16,782,028	\$17,117,669	\$17,460,022
\$81,145,102	\$82,768,004	\$84,423,364	\$86,111,831	\$87,834,068	\$89,590,749	\$91,382,564
\$1,890,681	\$1,928,494	\$1,967,064	\$2,006,406	\$2,046,534	\$2,087,464	\$2,129,214
\$1,079,230	\$1,100,814	\$1,122,831	\$1,145,287	\$1,168,193	\$1,191,557	\$1,215,388
\$811,451	\$827,680	\$844,234	\$861,118	\$878,341	\$895,907	\$913,826
\$289,930	\$270,288	\$245,750	\$215,700	\$179,429	\$136,116	\$84,816
5.13%	5.38%	5.63%	5.88%	6.13%	6.38%	6.63%
\$811,451	\$827,680	\$844,234	\$861,118	\$878,341	\$895,907	\$913,826
\$4,409,270	\$3,851,878	\$3,253,394	\$2,607,976	\$1,909,064	\$1,149,273	\$320,264
\$4,395,356	\$5,223,036	\$6,067,269	\$6,928,388	\$7,806,728	\$8,702,636	\$9,616,461
\$5,897,145	\$6,997,960	\$8,120,791	\$9,266,078	\$10,434,271	\$11,625,828	\$12,841,216

2025	2026	2027	Total
\$18,330,112	\$18,696,715	\$19,070,649	<b>\$308,441,129</b>
\$57,070,881	\$58,212,298	\$59,376,544	<b>\$755,703,761</b>
\$17,809,223	\$18,165,407	\$18,528,715	<b>\$184,964,474</b>
\$93,210,216	\$95,074,420	\$96,975,908	<b>\$1,249,109,365</b>
\$2,171,798	\$2,215,234	\$2,259,539	<b>\$29,104,248</b>
\$1,239,696	\$1,264,490	\$1,289,780	<b>\$16,613,155</b>
\$932,102	\$950,744	\$969,759	<b>\$12,491,094</b>
			<b>\$5,610,977</b>
\$24,436	\$0	\$0	<b>\$4,484,071</b>
6.88%	7.13%	7.38%	<b>na</b>
\$344,700	\$0	\$0	<b>\$9,961,161</b>
\$0	\$0	\$0	<b>na</b>
\$9,961,161	\$9,961,161	\$9,961,161	<b>\$91,137,216</b>
\$14,668,314	\$16,883,548	\$19,143,087	<b>\$133,068,168</b>