

When recorded return to:

City of Peoria, Arizona
Office of the City Clerk
8401 West Monroe Street
Peoria, AZ 85345

Agreement Regarding Acceptance of Land Use Conditions and Waiver of Rights and Remedies under Proposition 207: For Use with a General Plan Amendment, Zoning Change (including Major or Minor Amendment to PCD or PAD), Zoning Text Amendment Request, Annexation, Conditional Use Permit, Wall and Fence Waiver Request, Variance Request, or Design Review Approval

This Agreement regarding Acceptance of Land Use Conditions and Waiver of Rights and Remedies under Proposition 207 ("Agreement") is made by and between Applicant:

_____, who is the applicant or the authorized representative of the applicant (the "Applicant") in City of Peoria Land Use Case No. _____ (the "Application"), and the City of Peoria, Arizona, an Arizona municipal corporation (the "City").

Whereas, Applicant has submitted the Application to the City wherein it has requested that the City approve a General Plan Amendment, Zoning Change (including Major or Minor Amendment to a PCD or a PAD), Annexation, Conditional Use Permit, Wall and Fence Waiver Request, Variance Request, or Design Review Approval for certain real property owned or controlled by the Applicant located within the City or to be annexed by the City more particularly described in the attached **Exhibit "A"** (the "Property");

Whereas, the City has reviewed the Application for conformance and consistency with the City's General Plan, Zoning Ordinance, any applicable Specific Plans, and any other applicable Ordinances, which include Desert Conservation, Open Space, Hillside, Grading and Drainage, Stormwater Management, and Sensitive Lands (collectively, "Land Use Ordinances");

Whereas, the Property is subject to the provisions of Proposition 207, as adopted by the voters of the State of Arizona during the November 7, 2006, general election, which is codified at A.R.S. § 12-1131, *et seq.* ("Proposition 207"); and

Whereas, the City and the Applicant desire to resolve the applicability of Proposition 207 to the Application and determine all other conditions that the City will impose subject to approval of the Application.

Now therefore, the Applicant and the City agree as follows:

1. Conditions. The Applicant and the City agree that the conditions set forth in **Exhibit "B"**, together with all other conditions, if any, that are imposed by the Planning and Zoning Commission or the City Council, or both, shall be included as part of any approval of the Application by the City; except that, if the Applicant objects to such other conditions during each and every public hearing, if any, related to the Application, then such other conditions are not covered by this Agreement. Except as provided in this **§ 1**, the Applicant covenants that it is lawfully empowered to accept and hereby does accept such conditions on behalf of all parties with an interest in the Property. Except

as provided in this **§ 1**, the Applicant and the City agree that compliance with the conditions set forth in **Exhibit "B"** and the other conditions described in this **§ 1**, as determined by the City, is a requirement for approval of the Application. The Applicant acknowledges that these conditions may be subject to reasonable interpretation and application by the City in future land use applications pertaining to this Property, and the Applicant agrees that such action by the City will not provide a claim under Proposition 207; however, the City agrees that the Applicant does not hereby waive the right to protest such action under any other law.

2. Run with the Land. The Applicant and the City agree that this Agreement shall run with the Property and be binding upon all subsequent owners. The Applicant hereby consents to the City recording this Agreement and any other necessary related documents with the County Recorder in which the Property is located.

3. Waiver.

3.1. The Applicant acknowledges that the Applicant and the City are empowered to agree to a waiver of the terms and requirements of Proposition 207, in particular those items codified at A.R.S. § 12-1134, pursuant to A.R.S. § 12-1134(I).

3.2. The City agrees that the Application conforms and is consistent (or will become consistent by action on the Application) with the City's General Plan, and the Applicant on behalf of itself and all other parties having an interest in the Property knowingly and intelligently waives the provisions of Proposition 207, in particular A.R.S. § 12-1134, resulting from the City's actions with respect to the Application, as follows:

3.2.1. Any actual or claimed reduction of any existing rights to use, divide, sell, or possess the Property resulting from the City's actions with respect to the Application.

3.2.2. Any actual or claimed reduction in the fair market value of the Property resulting from the City's actions with respect to the Application.

3.2.3. Any actual or claimed reduction of any existing rights to use, divide, sell, or possess any private real property adjacent to the Property or of the fair market value of any private real property adjacent to the Property resulting from the City's actions with respect to the Application.

3.2.4. Any actual or claimed right to file a lawsuit against the City seeking just compensation for an actual or claimed regulatory taking in a court in the county in which the Property is located resulting from the City's actions with respect to the Application.

3.2.5. Any actual or claimed right to secure a binding waiver of enforcement of a particular Peoria land use law against the Property resulting from the City's actions with respect to the Application.

4. City's Agreement. City agrees that by virtue of the Applicant's execution of this Agreement and acceptance of all of the conditions imposed by City regarding the Application, that the Application and this Agreement shall be submitted with a staff recommendation for approval to the Peoria City Council or other decision-making body or person, as appropriate, for consideration and possible approval. However, the Applicant's failure to execute this Agreement will not prevent processing of the Application or submittal of the Application for consideration and possible approval.

5. Legislative Acts. This Agreement in no way acquiesces to or obligates the City to perform any legislative act.

6. Estoppel. The Applicant represents that, to its knowledge with regard to the Application and the Property as of the effective date of this Agreement, it has received the equal protection of the laws, has received due process of all of its claims and requests, and has not suffered any compensable regulatory taking (as those terms and their related claims are defined by Arizona state and federal constitutional jurisprudence, including Proposition 207) that would be or the Applicant claims or believes would be compensable under Proposition 207 or any other federal or Arizona state law, regulation, or constitutional provision.

7. Indemnification and Termination upon Sale of Public Lots. The Applicant agrees to protect, indemnify, and hold the City, its agents, representatives, officers, directors, elected and appointed officials, and employees harmless from and against all liabilities, obligations, claims, suits, damages, penalties, causes of action, costs and expenses (including without limitation, reasonable attorneys' fees and litigation related expenses) imposed upon or asserted by any claimant pursuant to Proposition 207 against the City, its agents, representatives, officers, directors, elected or appointed officials, and employees, by reason of or arising out of this Agreement or the City's approval of the Application. In order to assert any right to indemnification pursuant to this provision, the City shall notify and issue a tender of defense to the Applicant in writing within thirty (30) days of initial notice to the City of an underlying claim against the City pursuant to A.R.S. § 12-1134 and this Application. Upon notice and tender of defense by the City to the Applicant of an indemnification claim pursuant to this provision, the Applicant shall affirmatively accept the City's tender of defense in writing within ten (10) days of receipt of said tender from the City, and may thereafter assert control of the management and disposition of said underlying claim, including but not limited to the choice of counsel, and the City shall reasonably cooperate in this Applicant's management and disposition of the underlying claim. This obligation to indemnify shall terminate without the execution or recordation of any further document or instrument as to any lot ("Public Lot") which has been finally subdivided, has been improved with a fully completed dwelling or commercial building, and has been individually (and not in "bulk") leased (for a period of longer than one year) or sold to an end purchaser or user thereof, and thereupon such Public Lot shall be released from and no longer shall be subject to or burdened by the provisions of this § 7.

8. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the application of Proposition 207 to the Property. All prior and contemporaneous agreements, representations, and understandings of the parties, oral or written, with respect to the application of Proposition 207 to the Property other than specifically incorporated herein by reference, are superseded by this Agreement. All prior and contemporaneous agreements, representations, and understandings of the City with any other parties, oral or written, with respect to the application of Proposition 207 to the Property other than specifically incorporated herein by reference, regarding any portion of or all of the Property, are superseded by this Agreement. Nothing in this section is intended to void or invalidate other agreements affecting the Property to

which both the Applicant and the City are parties, such as development agreements, easements, repayment agreements, or others; however, the provisions of this Agreement shall supersede and take precedence over any conflicting provisions in any such other agreements.

9. Severability. If any provision of this Agreement is declared void or unenforceable, the provisions will be severed from this Agreement and the remainder of the Agreement will otherwise remain in full force and effect, provided that the overall intent of the parties is not materially vitiated by such severability.

10. Governing Law. This Agreement is entered into in Arizona and will be construed and interpreted under the laws of the State of Arizona.

11. Effective Date and Recordation. This Agreement shall become effective upon approval by the City of the Application as evidenced by all necessary signatures upon any written approval, ordinance or resolution approved by the Peoria City Council, or approved minutes evidencing the action taken by the City Council or other appropriate decision-maker in accordance with applicable law. No later than ten (10) days after the Application has been approved as provided herein, the City may cause this Agreement to be recorded in its entirety in the official records of the County Recorder of the county in which the Property is located.

12. Term. This Agreement shall be effective for a period of ten (10) years from the date the City approves the Application, unless within three (3) years of the date of execution of this Agreement, the City advises the Applicant that a court of competent jurisdiction or the legislature has determined that a Proposition 207 claim may be stated based on a land use law at a time later than the term of this Waiver; in such case, the term will be automatically extended without further action of the parties to such time, unless the Applicant protests the City's interpretation of such court or legislative decision within ten (10) days. Such protest must be heard by the City's Independent Hearing Officer within thirty (30) days, and the decision of the Independent Hearing Officer will be final with respect to the correct interpretation for the purpose of this **§ 12**.

13. Authority. The Applicant represents and warrants to the City: (a) that it is duly formed and validly existing under the laws of the State of _____ and is authorized to do business in Arizona; and (b) that the individual(s) executing this Agreement on behalf of the Applicant are authorized and empowered to bind the Applicant. The City represents and warrants to the Applicant: (y) that it is a duly formed municipal corporation with the State of Arizona; and (z) that the individual(s) executing this Agreement on behalf of the City are authorized and empowered to bind the City.

14. Conflict of Interest. The parties acknowledge that this Agreement is subject to cancellation by the City pursuant to the provisions of A.R.S. § 38-511.

[Signatures on following page]

APPLICANT

Notary Public

Notary Public

Exhibit A
Property Description

Exhibit B
Conditions