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CITY OF GLENDALE, ARIZONA

AGREEMENT C - 5410

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**DEVELOPMENT AGREEMENT
(Agreement No. _____)**

for

ZANJERO

**CITY OF GLENDALE, ARIZONA,
an Arizona municipal corporation**

and

**CITATION LAND COMPANY, LLC, a Nevada limited liability company doing business
in Arizona as ZANJERO BOULEVARD LAND COMPANY, LLC**

July 26, 2005

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DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is made as of the 26th day of July, 2005 (the "Effective Date"), by and between the City of Glendale, Arizona, an Arizona municipal corporation ("City"), and Citation Land Company, LLC, a Nevada limited liability company doing business in Arizona as Zanjero Boulevard Land Company, LLC ("Developer").

RECITALS:

A. Developer is the owner of the real property subject to this Agreement and more particularly described and depicted on **Exhibit A** attached hereto (the "Property").

B. The Property is currently zoned Planned Area Development in Case No. Z-02-19 ("PAD") under City's Zoning Ordinance, which zoning designation allows the uses contemplated by this Agreement. Developer has proposed to City to develop a mixed-use complex on the Property, including general and specialty retail establishments, residential condominiums, residential apartments, offices and employment uses, hotels, and other commercial uses on the Property (the "Project") pursuant to the PAD.

C. Developer's proposal to City requires amendment of the PAD to create greater flexibility of use within the Project and participation by City in the completion of various physical improvements related to the Project.

D. The Project is consistent with City's General Plan. The parties acknowledge that the Project qualifies as a business expansion economic development project; that the Project will assist in the creation and retention of jobs and will otherwise improve and enhance the economic welfare of the residents of City by expanding commercial, employment, and residential uses in City, increasing access to goods and services, increasing City's assessed property valuation, stimulating further economic development in City, increasing and improving City's employment base, redirecting the public's retail expenditures to businesses located within the City limits, and generating additional sales tax revenues; that the business expansion incentives agreed to by City in this Agreement will in fact serve legitimate economic development purposes as authorized by A.R.S. § 9-500.11; and that the incentives authorized by this Agreement are anticipated to raise more revenue than the amount of the incentive within the duration of the Agreement and that in the absence of a tax incentive, the retail business facility or similar retail business facility would not locate in City in the same time, place or manner, and will generally enhance the economic welfare of City's citizens. Furthermore, the parties acknowledge that this Agreement constitutes a "Development Agreement" within the meaning of A.R.S. § 9-500.05, and that, in accordance therewith, it shall be recorded against the interest of Developer in the Property in the Office of the Maricopa County Recorder to give notice to all persons of its existence and of the parties' intent that the burdens and benefits contained herein be binding on and inure to the benefit of the parties and all their successors in interest and assigns.

E. The parties expressly acknowledge and agree that the development of the Property as contemplated in the PAD and this Agreement is consistent with the portions of the Glendale General Plan applicable to the Property on the date hereof and that there are no features of the Project that cannot be accommodated within the scope of the General Plan.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing recitals and representations and the mutual covenants and conditions in this Agreement, the Parties agree as follows:

1. **DEFINITIONS.** In this Agreement, unless a different meaning clearly appears from the context:

1.1 "**A.R.S.**" means the Arizona Revised Statutes as now or hereafter enacted or amended.

1.2 "**Agreement**" means this Agreement, as amended and restated or supplemented in writing from time to time, and includes all exhibits and schedules hereto. References to Sections or Exhibits are to this Agreement unless otherwise qualified. The Recitals set forth in Paragraphs A through E, inclusive, are incorporated herein by reference and form a part of this Agreement.

1.3 "**Applicable Laws**" means the federal, state, county and local laws (statutory and common law) ordinances, rules, regulations, permit requirements, development fees (in accordance with A.R.S. § 9-463.05), and other requirements and official policies of City which apply to the development of all or any part of the Property or any City Improvements.

1.4 "**As-Built**" means as described in Section 3.1.

1.5 "**Assigned Plans and Contracts**" means as described in Section 3.4.

1.6 "**Budget**" means as described in Section 3.1.

1.7 "**Business Day**" means a calendar day other than a Saturday, Sunday or public holiday under the laws of the State of Arizona or observed by City.

1.8 "**City**" means City of Glendale, Arizona, an Arizona municipal corporation (and any successor public body or officer hereafter designated by or pursuant to law).

1.9 "**City Improvement Costs**" means all costs, expenses, fees and charges actually incurred and paid to contractors, architects, engineers, surveyors, governmental agencies, third-party construction managers, and other third parties for materials, labor, design, engineering, surveying, site excavation and preparation, payment and performance bonds, and other costs and expenses reasonably necessary for the construction or installation of the City Improvements. "City Improvement Costs" shall not include any property acquisition costs, profit to or mark-up by City, any losses or expenses resulting from City's failure to perform any of its obligations under this Agreement, and any other costs or expenses not reasonably necessary for the construction or installation of the City Improvements, including without limitation the soft costs described in Section 3.2 hereof and those fees and costs described in Section 3.6 hereof.

1.10 "**City Improvement Costs Cap**" means as described in Section 3.1.

1.11 “City Improvements” means certain public improvements in and around the Property, including, without limitation, those improvements described on **Exhibit B**, and any other improvements required by Developer or City in connection with development of the Project.

1.12 “Completion of Construction” means the date of acceptance by the City Council or an appropriate administrative staff member of City of all of the completed City Improvements in accordance with applicable City policies. Unless otherwise expressly stated, “Completion of Construction” means completion of the City Improvements in accordance with the requirements of this Agreement.

1.13 “Construction Contract” means as described in Section 3.1.

1.14 “Design Guidelines” means as described in Section 2.2.

1.15 “Designated Lenders” means as described in Section 6.20.

1.16 “Developer” means Citation Land Company, LLC, a Nevada limited liability company doing business in Arizona as Zanjero Boulevard Land Company, LLC.

1.17 “Effective Date” means the date first set forth above as of which this Agreement has been adopted and approved by the City Council and executed by duly authorized representatives of City and Developer.

1.18 “Existing Regulations” means as described in Section 2.7.

1.19 “Lender” and, collectively, the “Lenders” means as described in Section 6.20.

1.20 “PAD” means as described in paragraph B of Recitals.

1.21 “Parties” mean City and Developer collectively.

1.22 “Party” means City and Developer individually.

1.23 “Phasing Schedule” means as described in Section 3.1.

1.24 “Plans” means as described in Section 3.1.

1.25 “Project” means as described in paragraph B of Recitals.

1.26 “Property” means as described in paragraph A of Recitals.

1.27 “Senior Planner” means as described in Section 2.6.

1.28 “Term” means the period commencing on the Effective Date and terminating on the date on which the Parties have performed all of their obligations hereunder; provided, however, that in no event shall the Term of this Agreement extend beyond the twenty-fifth (25th) anniversary of the Effective Date.

1.29 "Zoning Ordinance" means the Zoning Ordinance of the City of Glendale, Arizona.

2. DEVELOPMENT OF PROPERTY.

2.1 Modifications to Planned Area Development. City agrees that the land use restrictions set forth in the PAD (including without limitation, the designation of specific parcels for specific uses) are hereby amended to provide that Developer may utilize: (a) up to seventy-eight (78%) percent of the gross acreage of the Project for employment, retail, restaurant, service establishment, hotel and similar lodging, and/or high-quality residential condominium uses; (b) up to five and eight one-hundredths percent (5.08%) of the gross acreage of the Project for service, professional, administrative and business office uses; and (c) up to sixteen and ninety-two one-hundredths percent (16.92%) of the gross acreage of the Project for multiple-residence dwelling uses (including residential apartments).

2.2 Design Standards. City hereby agrees that the design guidelines for the Project approved by City (the "Design Guidelines"), as such may be amended and supplemented by Developer from time to time with City's approval, shall supersede and control any and all architectural and/or design guidelines and similar design and aesthetic requirements set forth in the PAD (including without limitation building design standards, building materials requirements, and design material and color palette requirements and prohibitions). Developer shall provide the Development Services Department of City with, and the Development Services Department of City shall maintain in its file for the Project, a current copy of the Design Guidelines.

2.3 No Requirement of Conditional Use Permit. City hereby agrees, and the PAD is hereby amended to provide, that no conditional use permit shall be required as a condition precedent to the development and construction of hotels within the Property and Project.

2.4 No Retail Square Footage Limitation. City agrees, and the PAD is hereby amended to provide, that the construction of a Cabela's sporting goods store containing a gross floor area in excess of one hundred fifty thousand (150,000) square feet, is a permitted use within the Property and Project. Developer and City further agree that not more than two (2) additional retailers may construct stores containing a gross floor area in excess of seventy-five thousand (75,000) square feet without first obtaining a conditional use permit, which will be considered and granted in accordance with the City's Zoning Ordinance; provided, that no discount retailer may construct a store containing a gross floor area in excess of seventy-five thousand (75,000) square feet without first obtaining a conditional use permit as provided in the PAD.

2.5 Height Limitations. City acknowledges that Developer contemplates the construction of one or more mid-rise office buildings and one or more high-rise residential condominiums and/or hotels within the Project. To accommodate the development and construction of such structures, City hereby agrees that the height restrictions applicable to the Project set forth in the PAD are hereby deleted in their entirety and that the height limitation for office buildings, residential condominiums and hotels within the Project shall be two hundred fifty (250) feet. Notwithstanding the foregoing, Developer shall comply with: (i) all height

restrictions applicable to the Property as such may be set forth in the United States Code and/or the United States Code of Federal Regulations (including without limitation, any and all height restrictions promulgated by the Federal Aviation Administration), and (ii) all height restrictions applicable to the Property as such may be set forth in the Arizona Revised Statutes and/or the Arizona Administrative Code with specific reference to the protection or preservation of Luke Air Force Base.

2.6 Processing of Lot Division and Design Review Applications. City agrees to process on a priority basis all lot and parcel division applications and design review applications submitted in connection with the Project. City agrees that all lot and parcel division applications and design review applications submitted with respect to lots or parcels within the Project shall be administratively processed and approved by the Senior Planner of the Development Services Department of City (the "Senior Planner"). City further agrees that all lot and parcel division applications shall be processed by the Senior Planner as minor land divisions, and that such minor land divisions shall not require a replatting of the Property or any portion thereof. Upon approval by the Senior Planner, all such minor land divisions and design review applications shall be deemed final and approved by and on behalf of City. Subject to Applicable Laws, City shall expedite and cooperate reasonably with Developer in processing any and all applications for approval and/or issuance of all permits, site plans, development plans and other development approvals required in connection with development of the Project.

2.7 Applicable Laws and Rules. The zoning laws, rules, regulations, ordinances, and official policies of City applicable to and governing the use and enjoyment of the Property, including without limitation the City Building Code, shall be those zoning laws, rules, regulations, ordinances and official policies that are existing and in force for City as of the date of this Agreement (the "Existing Regulations"), and City shall not impose or enact any additional conditions, zoning exactions, dedications, zoning laws, rules, regulations, ordinances or official policies of City applicable to or governing the development of the Property, except future ordinances, rules, regulations and official policies of City enacted as necessary to comply with mandatory requirements of state and federal laws or regulations whose primary purpose is to alleviate legitimate threats to public health or public safety, provided that in the event any such mandatory requirement prevents or precludes compliance with this Agreement, such affected provision(s) of this Agreement shall be modified as may be necessary to achieve the minimum mandatory requirements of such state or federal laws or regulations.

2.8 City Provision of Effluent Water. City agrees to complete within one hundred twenty (120) days after the recording of this Agreement in the records of the Office of the Maricopa County Recorder, all of those City Improvements described on **Exhibit B** attached hereto that are necessary for the delivery of effluent water to the Project. Once such City Improvements are constructed and upon request by Developer, City shall provide to Developer such quantities of effluent water as Developer may reasonably require for the continuing operation of all of the various water features and amenities located within the Project, including without limitation such quantities of effluent water as may be required to maintain per their design the water levels of the ponds and/or lakes constructed in connection with the Cabela's sporting goods store and the water features comprising part of the entry features within the Project. City shall provide all such effluent water to Developer at a cost not to exceed the then-lowest available rate available to similar effluent water users in the City of Glendale.

2.9 Additional Development Obligation. Developer agrees that no less than four hundred thousand (400,000) square feet of retail space beyond the square footage of the Cabela's sporting goods store referenced in Section 2.4, producing not less than One Million Five Hundred Thousand and 00/100 Dollars (\$1,500,000) in transaction privilege tax per annum, shall be open for business within the Project no later than the date that is three (3) years after the recording of this Agreement in the records of the Office of the Maricopa County Recorder. For purposes of this Section 2.9, hotels developed within the Project shall be deemed to constitute retail uses, and the aggregate gross floor area of all such hotels shall be credited against the foregoing four hundred thousand (400,000) square foot retail development obligation.

2.10 Monument Signage. City agrees, and the PAD is hereby amended to provide, that no secondary monument sign for the Project shall be required at 95th Avenue, and that any signage located within Tract A of the Property shall be constructed and maintained as may be separately agreed by City and the owner of Tract A.

3. CITY IMPROVEMENTS.

3.1 Completion of City Improvements.

A. Completion Date. City agrees to cause, subject to the provisions of Section 3.1(E), Completion of Construction of all of the City Improvements in and around the Property, no later than the date that is two hundred forty (240) days after the recording of this Agreement in the Official Records of Maricopa County, Arizona, to the mutual satisfaction of City and Developer, and in accordance with the "Phasing Schedule" attached hereto as **Exhibit C**. City and Developer shall confirm in writing the date of Completion of Construction of each phase of the City Improvements set forth on **Exhibit C**, and of the date of final Completion of Construction of all City Improvements, when each applicable date becomes known. If at any time City becomes aware of circumstances that may cause a delay in City's ability to comply with the Phasing Schedule or the date of Completion of Construction including, without limitation, delays in the manufacture and/or delivery of materials or equipment, it shall immediately give written notice of such circumstances to Developer.

B. Budget. Prior to commencing construction of the City Improvements, City shall submit to Developer for approval a construction budget (the "Budget"). City shall additionally provide reasonably satisfactory evidence to Developer of its ability to pay all City Improvement Costs anticipated by the Budget. Developer will provide to City reasonably satisfactory evidence of Developer's ability to pay for any amount that exceeds the City Improvement Costs Cap, as defined below.

C. Plans.

(i) Review of Plans. Developer shall submit to the City no fewer than two (2) copies of Developer's Plans for the City Improvements. "Plans" means plans and specifications for all or a part of the City Improvements, prepared in sufficient detail to reasonably demonstrate the City Improvements thereby contemplated. All such Plans shall be prepared by licensed professionals holding licenses in the subject area of the particular Plans.

(ii) Changes to Plans. Any changes in the Plans shall require Developer's prior written approval (not to be unreasonably withheld, delayed or conditioned) if such changes would result in any material change in the appearance of the City Improvements located on Developer's property. City shall submit any such changes to Developer in writing and Developer shall notify City in writing within ten (10) days from the date of Developer's receipt thereof of any objections, specifying in detail Developer's objections thereto, and City shall either modify those items as required by Developer or within ten (10) days following Developer's objection, notify Developer in writing of its unwillingness to make the change, in which event Developer and City shall meet and shall reach a mutually satisfactory agreement concerning the items to which Developer has objected. Developer's failure to timely respond with written objections to changes proposed by City as described in this Section shall be deemed Developer's approval thereof.

(iii) As-Built Plans and Specifications. Upon completion of the City Improvements, City shall provide to Developer, one electronic and one paper copy of As-Built drawings and As-Built specifications. "As-Built" drawings and specifications shall be deemed to mean the Plans marked and/or revised to show any and all subsequent changes thereto and deviations therefrom, so as to reflect the actual construction conditions after the completion of the City Improvements with respect to all particulars, including without limitation, design, materials, method of construction and physical location of facilities. All As-Built drawings and specifications shall be prepared at City's expense, which shall be included within the amount provided for City Improvements, and reviewed by City's engineer.

(iv) No Representation or Warranty. The approval by Developer of the Plans which Developer is required or permitted to approve pursuant to this Agreement shall not be deemed to or imply any representation or warranty as to the sufficiency, adequacy or compliance with Applicable Laws of such Plans.

D. Contracts.

(i) Construction Contract. City shall employ the general contractor which City ultimately selects for construction of the City Improvements pursuant to a "cost of the work with a guaranteed maximum price" construction contract. The construction contract shall contain provisions (i) permitting (but not obligating) Developer to succeed to City's position under such construction contract if a default hereunder by City shall be in existence and (ii) obligating the general contractor to be bound to Developer and to complete the construction work contemplated herein in the same manner and pursuant to the same time, costs, fees and other conditions and warranties as such general contractor is required to perform vis-à-vis City as long as Developer performs all obligations of City under such construction contract. A construction contract satisfying the requirements of this Section is referred to as the "Construction Contract". City shall not alter, amend, or modify the Construction Contract, or waive any rights thereunder, except with the prior written consent of Developer. The Construction Contract shall require that every part of the construction work shall be executed in substantial accordance with the Plans and Applicable Laws, provided that the engineer and/or architect, as applicable, not the contractor, shall be responsible for compliance of the Plans with Applicable Laws. The Construction Contract shall also require the construction work to be completed in a thorough, first-class, sound, workmanlike and substantial manner. The

Construction Contract shall also require the general contractor to secure, pay for, and maintain during the continuance of construction, commercial general liability insurance, builder's risk insurance, and worker's compensation insurance. All such insurance shall be with a company or companies of recognized responsibility, satisfactory to Developer and certificates evidencing such policies and, upon Developer's request, true copies thereof, issued by the respective insurers shall be delivered to Developer prior to commencement of construction with evidence of the payment of the premiums therefor stamped thereon or other evidence of payment satisfactory to Developer. Developer shall be endorsed as an additional insured party under the commercial general liability insurance policy and builder's risk policy. All such policies shall provide that Developer and City shall be given twenty (20) days' prior written notice of any alteration or termination of coverage. Additionally, City shall require its architect to maintain "errors and omissions" professional liability insurance in at least the amount of Five Million and No/100 Dollars (\$5,000,000), containing a deductible amount not to exceed Fifty Thousand and No/100 Dollars (\$50,000).

(ii) Engineer's and Architect's Agreements. If City desires to employ any engineer and/or architect for the purpose of administering the construction work related to the City Improvements and the performance of City's construction obligations pursuant to this Agreement, City shall enter into an agreement with each such engineer and/or architect which shall require the engineer and architect, as applicable, to administer the duties of the general contractor as set forth in the Construction Contract. All such engineering and architectural agreements shall contain provisions (i) permitting (but not obligating) Developer to succeed to City's position under such agreements if a default hereunder by City shall be in existence and (ii) obligating the engineer and architect to be bound to Developer and to complete the engineering and architectural work in the same manner and pursuant to the same time, costs, fees and other conditions and warranties as such engineer or architect is required to perform vis-à-vis City as long as Developer performs all obligations of City under such engineering and/or architectural agreement. City shall not alter, amend, or modify the any of the engineering and architectural agreements, or waive any rights thereunder, except with the written consent of Developer.

(iii) Assignment of Contracts. City shall collaterally assign the Construction Contract and any engineering and architectural agreements to Developer, and City shall cause the general contractor and any architect and/or engineer to acknowledge and agree in writing to such collateral assignment, prior to the commencement of construction of the City Improvements. Such collateral assignment shall be in a form reasonably acceptable to Developer and shall permit Developer to enforce all of City's rights under said contracts against the general contractor, the architect, and the engineer in the event of a default by City of its performance hereunder to the same intent and purpose as though such contracts were originally executed by Developer and said architect, engineer and contractor.

E. City Improvement Costs Cap. In the event the aggregate City Improvement Costs exceed Six Million Seven Hundred Thousand Dollars (\$6,700,000) (the "City Improvement Costs Cap"), City shall not be relieved of its obligation to complete the City Improvements, but Developer shall bear all costs associated with the completion of the City Improvements in excess of such amount. Developer shall pay as and when due all such costs above and beyond the City Improvement Costs Cap within thirty (30) days after its receipt of

City's invoice to Developer therefor, which invoice shall include the following items in support thereof: (i) As-Built plans and specifications pertaining to the City Improvements, certified by the engineer and/or architect who prepared such plans and specifications; (ii) written certification from the engineer of record for the City Improvements confirming that the City Improvements have been completed without material deviation from the plans and specifications pertaining thereto; (iii) a final and unconditional mechanic's lien waiver in statutory form from the general contractor and any other person or entity who performed any of the work or provided any materials pertaining to the installation of the City Improvements and who previously served preliminary 20-day notices pursuant to A.R.S. § 33-992.01 to perfect their mechanics' lien rights, or if any such lien waivers are not available, then such other information, documentation or assurances reasonably satisfactory to Developer as may be appropriate to evidence the termination or non-existence of any such mechanics' lien rights; and (iv) written confirmation from City confirming its approval and acceptance of that portion of the City Improvements required to be accepted and maintained by City. All of the foregoing items shall be delivered to Developer in accordance with Section 6.1 hereof.

3.2 Soft Costs. City and Developer each shall be responsible for its own soft costs in accordance with the following:

A. City Soft Costs. City shall be responsible, at no cost to the Developer, for City's own soft costs associated with the Completion of Construction of the City Improvements and the various agreements of City set forth in this Agreement, including by way of illustration but not limited to, regularly and usually incurred administrative and overhead costs, employee wages or salaries, legal expenses, and accounting expenses, except as otherwise specifically provided in this Agreement. In no event shall any of City's soft costs: (i) be assessed against or included as a portion of the \$6,700,000 amount payable by City in connection with the completion of the City Improvements, or (ii) included in any invoices delivered to Developer in connection with amounts payable by Developer above and beyond the City Improvement Costs Cap pursuant to Section 3.1(B) hereof.

B. Developer Soft Costs. Developer shall be responsible, at no cost to City, for Developer's own soft costs associated with the Completion of Construction of the City Improvements and the various agreements of Developer set forth in this Agreement, including by way of illustration but not limited to, administrative and overhead costs, employee wages or salaries, legal expenses, accounting expenses and any finance and interest costs, except as otherwise specifically provided in this Agreement.

3.3 Design, Bidding, Construction and Dedication. The City Improvements shall be designed, publicly bid, constructed and dedicated in accordance with Applicable Laws, including, without limitation, City's plan submittal, review and approval processes, day-to-day inspection requirements, insurance requirements, and financial assurance requirements. City agrees, however, to expedite its review and approval processes, plan and field inspections, and similar work such that the City Improvements may proceed to completion as expeditiously as reasonably possible. Developer will grant to City all rights, licenses, easements, and rights of entry necessary to permit City to construct the City Improvements.

3.4 Assignment of Plans, Specifications and Contracts. City and Developer acknowledge that the City Improvements must be completed pursuant to plans and specifications approved by City and all applicable provisions of the Glendale City Charter, Glendale City Code and applicable regulations. To the extent permitted by Applicable Laws, Developer will assign all of its rights to the following items to City to assist City in the completion of the City Improvements: (A) any plans and specifications pertaining to the City Improvements that have been prepared on behalf of Developer; and (B) all of Developer's rights under any construction contracts and subcontracts pertaining to the City Improvements (all of such items enumerated in clauses (A) and (B) being referred to herein as the "Assigned Plans and Contracts"). Promptly after execution of this Agreement by the parties hereto, City shall reimburse Developer for actual out-of-pocket costs and expenses paid by Developer to Developer's engineers, architects and similar third parties in connection with the preparation of the Assigned Plans and Contracts. The amount reimbursed to Developer by City shall be reflected in the Budget and shall be deemed to constitute a portion of the City Improvement Costs.

3.5 Maintenance of City Improvements. Except as provided in this Section 3.5, after Completion of Construction, City shall be responsible for maintaining all of the City Improvements located within the portions of the Property dedicated to City or to the public, and City shall pay all utility charges associated therewith. After Completion of Construction, Developer shall be responsible for maintaining: (i) all of the City Improvements located within the portions of the Property owned by Developer, (ii) the Paseo Trail System located within the rights of way dedicated to City, and (iii) landscaping improvements located within the rights of way dedicated to City, and Developer shall pay all utility charges associated therewith.

3.6 Infrastructure Permitting Fees. City agrees that no infrastructure permitting fees shall be charged by City in connection with the City Improvements to be constructed by City and/or Developer pursuant to this Agreement.

4. DEFAULTS.

4.1 Events of Default by City. City shall be deemed to be in default under this Agreement if City breaches any obligations required to be performed by City hereunder.

4.2 Events of Default by Developer. Developer shall be deemed to be in default under this Agreement if Developer breaches any obligations required to be performed by Developer hereunder.

4.3 Remedies. In the event of a default hereunder and failure by the defaulting party to timely cure the default as provided in Section 4.4, the non-defaulting Party shall have all remedies available to it at law or in equity. City or Developer or any successor-in-interest or assignee pursuant to Section 6.6 may institute a legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation, including suits for declaratory relief, specific performance, relief in the nature of mandamus and actions for damages. All of the remedies described above shall be cumulative and not exclusive of one another, and the exercise of any one or more of the remedies shall not constitute a waiver or election with respect to any other available remedy. Claims for damages shall be limited to actual damages as of the time of entry of judgment. The Parties

hereby waive any right to seek consequential, punitive, multiple, exemplary or any other damages.

4.4 Grace Periods; Notice and Cure. Upon the occurrence of an event of default by any Party, such Party shall, upon receipt of written notice from a non-defaulting Party, proceed immediately to cure or remedy such default and, in any event, such default shall be cured within thirty (30) days after receipt of such notice, or, if such default is of a nature that is not capable of being cured within thirty (30) days the cure shall be commenced within such period and diligently pursued to completion in a period not to exceed ninety (90) days. The non-defaulting Party shall not exercise any remedies pursuant to Section 4.3 until and unless the applicable cure period described in this Section 4.4 has expired and the default remains uncured at such time.

4.5 Delays; Waivers. Except as otherwise expressly provided in this Agreement, any delay by any Party in asserting any right or remedy under this Agreement shall not operate as a waiver of any such rights or limit such rights in any way; and any waiver in fact made by such Party with respect to any default by the other Party shall not be considered as a waiver of rights with respect to any other default by the non-defaulting Party or with respect to the particular default except to the extent specifically waived in writing. It is the intent of the Parties that this provision will enable each Party to avoid the risk of being limited in the exercise of any right or remedy provided in this Agreement by waiver, laches or otherwise at a time when it may still hope to resolve the problems created by the default involved.

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

5. REPRESENTATIONS.

5.1 City Representations. City represents and warrants to the Developer that:

A. City has the full right, power and authorization to enter into and perform this Agreement and each of City's obligations and undertakings under this Agreement, and City's execution, delivery and performance of this Agreement have been duly authorized and agreed to in compliance with the requirements of the Glendale City Charter and the Glendale City Code.

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

C. City will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

D. As of the date of this Agreement, City knows of no litigation, proceeding, initiative, referendum, or investigation contesting the powers of City or its officials with respect to this Agreement.

E. This Agreement (and each undertaking of City contained herein), constitutes a valid, binding and enforceable obligation of City, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity.

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

G. City has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

5.2 Developer Representations. Developer represents and warrants to City that:

A. It has the full right, power and authorization to enter into and perform this Agreement and of the obligations and undertakings of the Developer under this Agreement, and the execution, delivery and performance of this Agreement has been duly authorized and agreed to in compliance with its organizational documents.

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

C. It will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

D. As of the date of this Agreement, it knows of no litigation, proceeding or investigation pending or threatened against or affecting it, which could have a material adverse affect on its performance under this Agreement, that has not been disclosed in writing to City. Furthermore, as of the date of this Agreement, Developer is not in default or facing imminent default with any lender of Developer.

E. This Agreement (and each undertaking of the Developer contained herein) constitutes a valid, binding and enforceable obligation of Developer, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity.

F. The execution, delivery and performance of this Agreement by it is not prohibited by, and does not conflict with, any other agreements, instruments, judgments or decrees to which it is a party or to which it is otherwise subject.

G. It has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

6. MISCELLANEOUS.

6.1 Notices. Except as otherwise required by law, any notice, demand or other communication given hereunder, shall be in writing and shall be given by personal delivery or be sent by certified or registered U.S. Mail, return receipt requested, addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this paragraph, or by facsimile machine or by any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), with all postage and other delivery charges prepaid:

To Developer: Citation Land Company, LLC dba
Zanjero Boulevard Land Company, LLC
8273 North Coconino Road
Paradise Valley, Arizona 85253
Attn.: Rick L. Burton
Facsimile: (480) 247-7408:

Copy to: Snell & Wilmer, LLP
One Arizona Center
400 East Van Buren
Phoenix, Arizona 85004-2202
Attn: Joyce Kline Wright, Esq. / John F. Baird, II, Esq.
Facsimile: (602) 382-6070

To City: Economic Development Director
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301
Facsimile: (623) 931-5730

Copy to: City Attorney
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301
Facsimile.: (623) 915-2391

6.2 Effective Date of Notices. All such notices, demands or other communications will (i) if delivered personally or delivered through a same day delivery/courier service be deemed effective upon delivery or refusal to accept delivery by the addressee, and (ii) if delivered by U.S. mail in the manner described above be deemed effective upon the earlier of receipt or three Business Days after deposit in a post office operated by the United States or with a United States postal officer (in each case regardless of whether such notice, demand or other communication is received by any other person to whom a copy of such notice, demand or

other communication is to be delivered pursuant to this paragraph). Any notice sent by a recognized national overnight delivery service shall be deemed effective one (1) Business Day after deposit with such service. Any notice sent by facsimile machine shall be deemed effective upon confirmation of the successful transmission by the sender's facsimile machine. Notwithstanding the foregoing, no payment shall be deemed to be made until actually received in good and available funds by the intended payee.

6.3 Amendment. No change or addition is to be made to this Agreement except by written amendment executed by City and the Developer. Within thirty (30) days after any amendment to this Agreement, such amendment shall be recorded in the Official Records of Maricopa County, Arizona.

6.4 Termination. This Agreement shall terminate without further action on the date that is twenty-five (25) years after the Effective Date. Upon termination, City shall have the right to record a document to provide notice of termination in the land records of Maricopa County.

6.5 Governing Law; Choice of Forum. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa (or, as may be appropriate, in the Justice Courts of Maricopa County, Arizona, or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section 6.5.

6.6 Running of Burdens. As provided in A.R.S. § 9-500.05.D, the burdens of this Agreement bind, and the benefits of this Agreement inure to, the Parties hereto and their successors in interest and assigns.

6.7 Limited Severability. City and the Developer each believes that the execution, delivery and performance of this Agreement are in compliance with all Applicable Laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring City to do any act in violation of any Applicable Laws, constitutional provision, law, regulation, City code or City charter), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. The Parties further agree, in such circumstances, to do all acts and to execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

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

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

6.10 Section Headings. The Section headings contained in this Agreement are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement.

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

6.12 Waiver. Without limiting the provisions of Section 4 of this Agreement, the Parties agree that neither the failure nor the delay of any Party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver of such right, remedy, power or privilege, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

6.13 Third Party Beneficiaries. No person or entity shall be a third party beneficiary to this Agreement, except for transferees or assignees to the extent that they assume or succeed to the rights and/or obligations of the Developer under this Agreement, and except that the indemnified Parties referred to in the indemnification provisions of this Agreement shall be third Party beneficiaries of such indemnification provisions.

6.14 Further Assurances. Each Party agrees to perform such other and further acts and to execute and deliver such additional agreements, documents, affidavits, certifications, acknowledgments and instruments as any other Party may reasonably require to consummate, evidence, confirm or carry out the matters contemplated by this Agreement or confirm the status

of (a) this Agreement as in full force and effect, and (b) the performance of the obligations hereunder at any time during its Term.

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

6.16 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all so executed shall constitute one agreement, binding on the Parties.

6.17 Covenants Running With Land; Inurement. The covenants, conditions, terms and provisions of this Agreement relating to use of the Property shall run with each of the Property and shall be binding upon, and shall inure to the benefit of the Parties and their respective permitted successors and assigns with respect to the Property. Wherever the term "Party" or the name of any particular Party is used in this Agreement, such term shall include any such Party's permitted successors and assigns.

6.18 Recordation. Within ten (10) days after this Agreement has been approved by City and executed by the Parties, City shall cause this Agreement to be recorded in the Official Records of Maricopa County, Arizona.

6.19 Survival. All indemnifications contained in this Agreement shall survive the execution and delivery of this Agreement, the closing of any transaction contemplated herein, and the rescission, cancellation, expiration or termination of this Agreement upon the terms and for the period set forth in each respective Section.

6.20 Rights of Lenders. City is aware that financing or refinancing for acquisition, development and/or construction of the real property and/or improvements to be constructed on the Property may be provided, in whole or in part, from time to time, by one or more third parties (individually a "Lender", and collectively the "Lenders"). In the event of an event of default by the Developer, City shall provide notice of such event of default, at the same time notice is provided to the Developer, to not more than three (3) of such Lenders as previously designated by the Developer to receive such notice (the "Designated Lenders") whose names and addresses were provided by written notice to City in accordance with Sections 6.1 and 6.2. City shall give the Developer copies of any such notice provided to such Designated Lenders and, unless the Developer notifies City that the Designated Lenders names or addresses are incorrect (and provides City with the correct information) within three (3) Business Days after the Developer receives its copies of such notice from City, City will be deemed to have given such notice to the Designated Lenders even if their names or addresses are incorrect. The Developer may provide notices to other Lenders. If a Lender is permitted, under the terms of its nondisturbance agreement with City to cure the event of default and/or to assume the Developer's position with respect to this Agreement, City agrees to recognize such rights of the Lender and to otherwise permit the Lender to assume all of the rights and obligations of the Developer under this Agreement. City shall, at any time upon reasonable request by the

Developer, provide to any Lender an estoppel certificate or other document evidencing that this Agreement is in full force and effect and that no event of default by the Developer exists hereunder (or, if appropriate, specifying the nature and duration of any existing event of default). Upon request by a Lender, City will enter into a separate nondisturbance agreement with such Lender, consistent with the provisions of this Section 6.20.

6.21 City Council Action Requirement. City and Developer acknowledge that, notwithstanding any language of this Agreement or any subsequent additional document, no act, requirement, payment or other agreed upon action to be done or performed by City which would, under any federal, state or city constitution, statute, charter provision, ordinance or regulation, require formal action, approval or concurrence by the City Council, will be required to be done or performed by City unless and until said formal City Council action has been taken and completed. "Completion" under this Section 6.21 means that such City Council action is no longer subject to referendum action. Nothing in this Agreement is intended nor shall be interpreted to bind or inhibit the City Council in its exercise of its legislative authority.

6.22 Development Rights. City agrees that, for the Term of this Agreement, Developer and successor owners of the Property shall have a right to undertake and complete the development and use of the Property in accordance with this Agreement, without being subject to subsequent amendment to the Zoning Ordinance of the City of Glendale. For purposes of this Agreement, the PAD zoning for the Property is deemed vested for the Term of this Agreement. Nothing herein affects the vesting of the PAD zoning for the Property as a matter of common law following termination of this Agreement. During the Term of this Agreement, unless mutually agreed by City and Developer or its designated assignee, development of the Property shall be governed by the Zoning Ordinance and PAD zoning in effect at the time of approval of this Agreement, as such may be herein amended.

6.23 Rezoning and Design Review Amendments. City shall not initiate any changes or modifications to the current PAD zoning for the Property, except at the request of Developer. City shall not initiate any changes or modifications to the design review approval, once such approval is final, except at the request of Developer. Any such request by Developer for a change will be processed in the manner set forth herein. City agrees that the design review process contemplated pursuant to this Agreement is administrative and will not require public hearings by the Planning & Zoning Commission or City Council.

6.24 Warranty Against Payment of Consideration for Agreement. Developer warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, consultants, engineers and attorneys and any licensed real estate broker retained by Developer.

6.25 Nonliability of City Officials, Etc., and of Employees, Members and Partners, Etc. of the Developer. No City Council member, official, representative, agent, attorney or employee of City shall be personally liable to any of the other Parties hereto, or to any successor in interest to any of the other Parties, in the event of any default or breach by City or for any amount which may become due to any of the other Parties or their successors, or with respect to any obligation of the City under the terms of this Agreement. Notwithstanding

anything contained in this Agreement to the contrary, the liability of the Developer under this Agreement shall be limited solely to the assets of the Developer and shall not extend to or be enforceable against: (i) the individual assets of any of the individuals or entities who are shareholders, members, managers constituent partners, officers or directors of the general partners or members of the Developer; (ii) the shareholders, members or managers or constituent partners of the Developer; or (iii) officers of the Developer, unless Developer is found to have acted ultra vires or fails to maintain its separate legal identity.

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

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

6.28 Entire Agreement. Except as expressly provided herein, 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 hereby superseded and merged herein. The foregoing sentence shall in no way affect the validity of any instruments executed by the Parties in the form of the exhibits attached to this Agreement.

[Signatures appear on following page]

IN WITNESS WHEREOF, City has caused this Agreement to be duly executed in its name and behalf by its Mayor, and Developer has signed the same, on or as of the day and year first above written.

DEVELOPER:

CITATION LAND COMPANY, LLC, a Nevada limited liability company doing business in Arizona as ZANJERO BOULEVARD LAND COMPANY, LLC

By: RIGHTPATH LIMITED, a Nevada corporation, its Manager

By: *Rick L. Burton*
Rick L. Burton, President and CEO

STATE OF ARIZONA)
) ss
County of Maricopa)

The foregoing instrument was acknowledged before me this 4th day of August, 2005, by Rick L. Burton, the President and CEO of Rightpath Limited, a Nevada corporation, the Manager of Citation Land Company, LLC, a Nevada limited liability company doing business in Arizona as Zanjero Boulevard Land Company, LLC, on behalf of the limited liability company.


Janet E. Guthrie
Notary Public

My Commission Expires:
9/29/07



CITY:

CITY OF GLENDALE, ARIZONA,
an Arizona municipal corporation




Ed Beasley
City Manager

ATTEST:



City Clerk

APPROVED AS TO FORM:



Craig D. Tindall
City Attorney

LENDER CONSENT

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, as the Beneficiary under that certain Deed of Trust dated December 10, 2004, and recorded on December 10, 2004, as Instrument No. 20041456770, in the Records of Maricopa County, Arizona, Records Office (the "Deed of Trust"), hereby consents to and ratifies the execution and recordation of this Development Agreement. The undersigned further agrees that such Development Agreement shall continue in effect and be binding on the undersigned and on the property which is subject to the Deed of Trust (the "Property") notwithstanding any Trustee's sale, foreclosure or conveyance in lieu thereof of the Property pursuant to or under the Deed of Trust and on any other persons or entities acquiring title to the Property pursuant to any such Trustee's sale, foreclosure or Deed in Lieu thereof.

BY WITNESS WHEREOF, SOF Investments, LP – Private, a Delaware limited partnership, as the beneficiary under that certain Deed of Trust dated December 10, 2004, and recorded on December 10, 2004, as Instrument No. 20041456770, has caused its name to be affixed by the undersigned duly authorized persons and entities, this 23rd day of August, 2005.

SOF Investments, LP. – Private,
a Delaware limited partnership

By: [Signature]

Its: General Counsel \$

STATE OF New York)
) ss
County of New York)

The foregoing instrument was acknowledged before me this 23rd day of August, 2005, by Marc Lisker, the General Counsel of SOF Investments, LP. – Private, a Delaware limited partnership, on behalf of the limited partnership.

[Signature: Michele Vasquez]
Notary Public

My Commission Expires:
05/24/2008

MICHELE VASQUEZ
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01VA6110516
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES 05/24/2008

08

EXHIBIT A

PROPERTY

Lots 1 through 6, inclusive, and Tracts A through F, inclusive, of the subdivision known as "Zanjero", recorded in Book 764 of Maps and Plats at Page 42, in the records of Maricopa County, Arizona.

EXHIBIT B**CITY IMPROVEMENTS**

Roadways	91st Avenue	1/2 street improvements per approved PAD, landscaped raised median, 6-ft. detached concrete sidewalk (west side), vertical curb & gutter (west side) including designed drainage structures, street lights, drainage channel
	95th Avenue	1/2 street pavement, 5-ft concrete sidewalk, vertical curb & gutter (east side) including designed drainage structures, street lights, temporary retention basins
	Zanjero Boulevard	Full street improvements per approved PAD, landscaped raised median (at entrances), 10-ft detached concrete multi-use path (north and west sides), 5-ft. detached concrete sidewalk (south and east sides), vertical curb & gutter (both sides) including designed drainage structures, street lights, temporary retention basins
	Cabela Drive	Full street improvements per approved PAD, landscaped raised median (at entrances), 4-ft. attached concrete sidewalk, vertical curb & gutter (both sides) including designed drainage structures, street lights, temporary retention basins
	Glendale Avenue	Bus Bay (west of 91st Ave.) right turn lane (east of Zanjero Blvd.), right turn lane (at driveway west Zanjero Blvd.), bus bay (west of 95th Ave.)

Utilities	Water	12" water line (95th Ave. alignment & Zanjero Blvd.), 10" water line (Cabela Drive alignment), Fire Hydrants (per plan), Domestic Water and Fireline stubs (parcels 1-6)
	Sanitary Sewer	10" sanitary sewer line (95th Ave. alignment & Zanjero Blvd. alignment), 8" sanitary sewer line (Cabela Drive alignment), (1) 6" stub (parcels 1-6)
	Natural Gas	Per design Southwest Gas
	Electric	Per design Arizona Public Service (APS)
	SRP Irrigation	Relocate existing 30" irrigation that parallels 91st Ave, tile existing SRP irrigation ditch along the northern boundary of site per SRP

		irrigation plans.
	Cable/Fiber	Per design Cox Communications
	Reclaimed Water	Effluent water system to be installed pursuant to the Plans
Roadway Intersections	91st Ave. & Glendale Ave.	Monument sign (per approved PAD), relocate existing traffic signal (as needed), Traffic signal conduit (as needed)
	91st Ave. & Zanjero Blvd.	Monument sign (per approved PAD), traffic signal and associated conduit
	Zanjero Blvd. & Glendale Ave.	Monument sign (per approved PAD), traffic signal and associated conduit, drainage structure to convey stormwater beneath Zanjero Blvd.
	Zanjero Blvd. & Cabela Drive	No items specific to this intersection
	95th Ave. & Glendale Ave.	Monument sign (per approved PAD), relocate existing traffic signal (as needed), Traffic signal conduit (as needed)
	95th Ave. & Cabela Drive	No items specific to this intersection
Amenities		Water Features, Paseo Trail System throughout development (per approved PAD), retaining walls

EXHIBIT C

PHASING SCHEDULE

All City Improvements located within Phase I, as identified on the attached map, shall be completed not later than one hundred twenty (120) days after the recording of this Agreement in the records of the Office of the Maricopa County Recorder, with the exception of paving improvements. All fire hydrants located within Phase I shall be charged at full pressure prior to the expiration of such one hundred twenty (120) day period.

All City Improvements located within Phase II, as identified on the attached map, together with all paving located within Phase I, shall be completed not later than two hundred forty (240) days after the recording of this Agreement in the records of the Office of the Maricopa County Recorder.

[Phasing Map is attached hereto]

ZANJERO PHASE EXHIBIT C

