

MARANA ORDINANCE NO. 2015.016

RELATING TO DEVELOPMENT; APPROVING A REZONING OF APPROXIMATELY 508 ACRES OF LAND GENERALLY LOCATED ONE MILE NORTH OF THE NORTH TERMINUS OF THORNYDALE ROAD FROM 'RD-180' RURAL DEVELOPMENT TO 'F' SPECIFIC PLAN FOR THE PURPOSE OF ESTABLISHING THE SAGUARO RANCH SPECIFIC PLAN; APPROVING A MINOR AMENDMENT TO THE MARANA GENERAL PLAN; AND APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE THE AMENDED AND RESTATED SAGUARO RANCH PRE-ANNEXATION AND DEVELOPMENT AGREEMENT

WHEREAS Northlight Trust I, a Delaware statutory trust (the "Property Owner"), owns approximately 508 acres of property located one mile north of the north terminus of Thornydale Road within Sections 17 and 20, Township 11 South, Range 13 East, (referred to in this ordinance as the Rezoning Area), legally described on Exhibit A and depicted on Exhibit A-1 attached to and incorporated in this ordinance by this reference (the "Rezoning Area"); and

WHEREAS the Property Owner has authorized The Planning Center to submit applications to rezone the Rezoning Area from 'RD-180' Rural Development to 'F' Specific Plan ("this Rezoning"), amend the Marana General Plan from Rural Density Residential (RDR) to Master Planning Area (MPA), and to process an amended and restated pre-annexation and development agreement for the Rezoning Area; and

WHEREAS the Marana Planning Commission held a public hearing on June 24, 2015 and voted 7-0 to recommend that the Town Council approve this Rezoning and its associated General Plan Amendment, and to recommend that the Town Council approve the Amended and Restated Saguaro Ranch Pre-Annexation and Development Agreement subject to the recommended conditions; and

WHEREAS The Marana Town Council held a public hearing on August 4, 2015 and determined that the Amended and Restated Saguaro Ranch Pre-Annexation and Development Agreement, attached as Exhibit B to and incorporated in this ordinance by this reference, is consistent with the Marana General Plan with the proposed amendment, applicable specific plans, and relevant Town policies; and

WHEREAS the Marana Town Council, at the August 4, 2015 public hearing, determined that this Rezoning, its associated General Plan Amendment, and the Amended and Restated Saguaro Ranch Pre-Annexation and Development Agreement are in the best interest of the Town and its citizens and should be approved.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Town of Marana, Arizona, as follows:

Section 1. The zoning of the Rezoning Area is hereby changed from ‘RD-180’ Rural Development to ‘F’ Specific Pan, creating the Saguaro Ranch Specific Plan, attached to and incorporated in this ordinance by this reference.

Section 2. A minor amendment to the General Plan is hereby approved, changing the General Plan designation of the Rezoning Area from Rural Density Residential (RDR) to Master Planning Area (MPA).

Section 3. The Amended and Restated Saguaro Ranch Pre-Annexation and Development Agreement is hereby approved in the form attached to and incorporated by this reference in this ordinance as Exhibit B, and the Mayor is hereby authorized and directed to execute it for and on behalf of the Town of Marana.

Section 4. This Rezoning is subject to the following conditions, the violation of which shall be treated in same manner as a violation of the Town of Marana Land Development Code (but which shall not cause a reversion of this Rezoning), and which shall be binding on the Property Owner and its successors in interest (all of whom are collectively included in the term “Property Owner” in this ordinance):

1. Compliance with all applicable provisions of the Town’s codes and ordinances current at the time of any subsequent development including, but not limited to, requirements for public improvements and payment of application fees and applicable development impact fees.
2. Any preliminary plat or development plan for any portion of the Rezoning Area shall be in general conformance with the tentative development plan presented to and approved by the Town Council as part of this Rezoning.
3. A master drainage study must be submitted by the Property Owner and accepted by the Town Engineer prior to Town approval of a preliminary plat or development plan for any portion of the Rezoning Area.
4. A water infrastructure and phasing plan (WIP) must be submitted by the Property Owner and accepted by Tucson Water (the “water provider”) prior to approval of a preliminary plat for any portion of the Rezoning Area. The WIP shall identify all on-site and off-site water facilities needed to serve the proposed development. The WIP shall include all information required by the water provider, such as (but not limited to) analysis of water use and fire flow requirements, and well source, reservoir, and booster station infrastructure needed to serve the proposed development. If the water provider requires a water service agreement as a condition of service to the proposed development, the Property Owner must enter into a water service agreement with the water provider consistent with the accepted WIP.
5. A master sewer plan must be submitted by the Property Owner and accepted by the Pima County Regional Wastewater Reclamation Department (the “wastewater utility”) prior to the approval of any final plat or development plan for the Rezoning Area. The master sewer plan shall identify all on-site and off-site wastewater facilities needed to serve the proposed development, and shall include all information required by the wastewater utility. If the wastewater utility requires a sewer service agreement as a condition of

service to the proposed development, the Property Owner must enter into a sewer service agreement with the wastewater utility consistent with the accepted master sewer plan.

6. The Property Owner must design and construct any roadway, drainage, water, and wastewater improvements, and dedicate or acquire any property rights associated with those improvements, that the Town requires based on the data and findings of the accepted traffic impact analysis, the accepted master drainage study, the accepted WIP, the accepted master sewer plan, and other studies approved in connection with the approval of a preliminary plat or development plan for any portion of the Rezoning Area.
7. The final design of all streets and circulation facilities, including the gated access and emergency access, must be accepted by the Northwest Fire District prior to Town Council consideration of the final plat for any portion of the Rezoning Area.
8. The maximum number of lots within the Rezoning Area shall not exceed 150.
9. No approval, permit or authorization by the Town of Marana authorizes violation of any Federal or State law or regulation or relieves the applicant or the land owner from responsibility to ensure compliance with all applicable federal and state laws and regulations, including the Endangered Species Act and the Clean Water Act. Appropriate experts should be retained and appropriate federal and state agencies should be consulted to determine any action necessary to assure compliance with applicable laws and regulations.
10. Prior to the issuance of any grading permits, the Property Owner shall submit evidence to the Town that all federal permit requirements have been met through the Corps of Engineers and the State Historic Preservation Office, if federal permits are required for the development of the rezoning area.
11. The Property Owner shall not cause any lot split of any kind without the written consent of the Town of Marana.
12. A 100% clearance survey for the desert tortoise shall be completed by a qualified biologist at the Property Owner's expense and a survey report shall be submitted to the Town and to Arizona Game and Fish Department (AZGFD) prior to issuance of any grading permits. If a desert tortoise is found during the survey or at any time during construction, the Property Owner shall immediately notify the Town and AZGFD, and the tortoise may be moved in accordance with the most current AZGFD Tortoise Handling Guidelines at the Property Owner's expense.
13. The Property Owner shall coordinate with the Town of Marana in the provision of a public trail through portions of the Saguaro Ranch property to provide public access to the Tortolita Mountain Park northeast of the Saguaro Ranch boundary. At such time that appropriate trail easements are secured up to the boundary of Saguaro Ranch, the Property Owner will coordinate with Town staff in determining the appropriate trail alignment and grant the necessary easements to the Town of Marana enabling the Town to construct and maintain a sustainable trail.
14. An annual report shall be submitted within 30 days of the anniversary of the Town Council's approval of the Saguaro Ranch Specific Plan in accordance with the requirements defined in the Land Development Code.

15. Within 60 days after the adoption of this ordinance, the Property Owner shall provide the Planning Department with ten bound copies and three electronic copies on CD in PDF format, which will also include graphics of the tentative development plan in JPEG or other suitable format of the Saguaro Ranch Specific Plan.

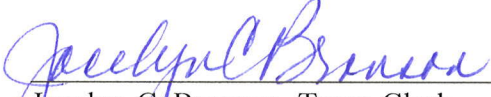
Section 6. All ordinances, resolutions and motions and parts of ordinances, resolutions, and motions of the Marana Town Council in conflict with the provisions of this ordinance are hereby repealed, effective as of the effective date of this ordinance.

Section 7. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof.

PASSED AND ADOPTED by the Mayor and Council of the Town of Marana, Arizona, this 4th day of August, 2015.



ATTEST:

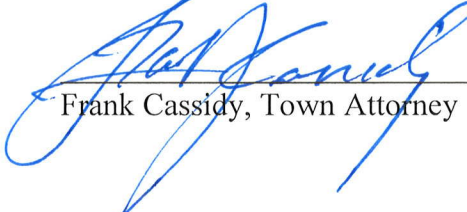


Jocelyn C. Bronson, Town Clerk



Mayor Ed Honea

APPROVED AS TO FORM:



Frank Cassidy, Town Attorney

EXHIBIT "A"

PORTIONS OF SECTIONS 17 AND 20 OF TOWNSHIP 11 SOUTH, RANGE 13 EAST OF THE GILA AND SALT RIVER MERIDIAN, TOWN OF MARANA, PIMA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

PARCEL 1

BLOCK 2 OF SAGUARO RANCH, ACCORDING TO THE PLAT RECORDED IN BOOK 57 OF MAPS AND PLATS AT PAGE 57, RECORDS OF THE PIMA COUNTY RECORDER THEREAFTER, AMENDED BY DECLARATION OF SCRIVENER'S ERROR RECORDED IN DOCKET 12173, PAGE 1647;

EXCEPT ALL URANIUM, THORIUM, OR ANY OTHER MATERIAL WHICH IS OR MAY BE DETERMINED TO BE PECULIARLY ESSENTIAL TO THE PRODUCTION OF FISSIONABLE MATERIALS, WHETHER OR NOT OF COMMERCIAL VALUE, AS RESERVED IN THE PATENT FROM THE UNITED STATES OF AMERICA.

PARCEL 2

LOT 50 OF SAGUARO RANCH II, ACCORDING TO THE PLAT RECORDED IN BOOK 61 OF MAPS AND PLATS AT PAGE 89, SAID RECORDS OF THE PIMA COUNTY RECORDER;

EXCEPT ALL URANIUM, THORIUM, OR ANY OTHER MATERIAL WHICH IS OR MAY BE DETERMINED TO BE PECULIARLY ESSENTIAL TO THE PRODUCTION OF FISSIONABLE MATERIALS, WHETHER OR NOT OF COMMERCIAL VALUE, AS RESERVED IN THE PATENT FROM THE UNITED STATES OF AMERICA.

PARCEL 3

AN EASEMENT FOR INGRESS, EGRESS AND UTILITIES APPURTENANT TO PARCEL 1 UNDER, UPON AND ACROSS THAT PROPERTY AS MORE FULLY DESCRIBED IN INSTRUMENT RECORDED IN DOCKET 5843, PAGE 384; MODIFIED IN DOCKET 12241, PAGE 2366, RE-RECORDED IN DOCKET 12269, PAGE 466.

PARCEL 4

PORTIONS OF THE EAST HALF OF SAID SECTION 17 AND THE NORTHEAST QUARTER OF SAID SECTION 20 DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTH ONE QUARTER CORNER OF SAID SECTION 17 AS MONUMENTED BY A 2 INCH GLO BRASS DISC;

THENCE NORTH 89 DEGREES 43 MINUTES 55 SECONDS EAST 1321.04 FEET UPON THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 17 TO THE EAST LINE OF THE WEST HALF OF SAID NORTHEAST QUARTER;

THENCE SOUTH 00 DEGREES 02 MINUTES 00 SECONDS EAST 2636.99 FEET UPON SAID EAST LINE TO THE NORTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 17;

THENCE NORTH 89 DEGREES 43 MINUTES 30 SECONDS EAST 1323.06 FEET UPON SAID NORTH LINE TO THE EAST ONE QUARTER CORNER OF SAID SECTION 17 AS MONUMENTED BY A 3 INCH GLO BRASS DISC;

THENCE SOUTH 01 DEGREES 13 MINUTES 04 SECONDS EAST 2640.37 FEET UPON THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 17 TO THE SOUTHEAST CORNER OF SAID SECTION 17 AS MONUMENTED BY ANOTHER 3 INCH GLO BRASS DISC;

THENCE SOUTH 01 DEGREES 08 MINUTES 42 SECONDS WEST 466.43 FEET UPON THE EAST LINE OF

SAID NORTHEAST QUARTER OF SECTION 20 TO THE NORTH LINE OF SAGUARO RANCH PHASE III-A, ACCORDING TO THE PLAT RECORDED IN BOOK 63 OF MAPS AND PLATS AT PAGE 33, SAID RECORDS OF THE PIMA COUNTY RECORDER;

THENCE THE FOLLOWING 16 (SIXTEEN) COURSES UPON THE NORTH LINE OF SAID SAGUARO RANCH PHASE III-A:

- 1) NORTH 88 DEGREES 51 MINUTES 18 SECONDS WEST 28.61 FEET;
- 2) NORTH 14 DEGREES 33 MINUTES 23 SECONDS WEST 413.15 FEET;
- 3) SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST 175.99 FEET;
- 4) NORTH 14 DEGREES 51 MINUTES 08 SECONDS WEST 198.51 FEET;
- 5) NORTH 67 DEGREES 51 MINUTES 40 SECONDS WEST 964.84 FEET;
- 6) SOUTH 28 DEGREES 22 MINUTES 24 SECONDS EAST 495.81 FEET TO A TANGENT CURVE CONCAVE NORTHEASTERLY;
- 7) SOUTHEASTERLY UPON THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 300.00 FEET AND A CENTRAL ANGLE OF 41 DEGREES 48 MINUTES 11 SECONDS, FOR AN ARC DISTANCE OF 218.88 FEET TO A POINT OF CUSP WITH A TANGENT LINE;
- 8) NORTH 70 DEGREES 10 MINUTES 35 SECONDS WEST 40.33 FEET TO A TANGENT CURVE CONCAVE SOUTHEASTERLY;
- 9) SOUTHWESTERLY UPON THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 50.00 FEET AND A CENTRAL ANGLE OF 134 DEGREES 54 MINUTES 54 SECONDS, FOR AN ARC DISTANCE OF 117.74 FEET TO A NON-TANGENT LINE;
- 10) NORTH 79 DEGREES 31 MINUTES 35 SECONDS WEST 197.48 FEET;
- 11) SOUTH 46 DEGREES 34 MINUTES 23 SECONDS WEST 645.71 FEET;
- 12) NORTH 87 DEGREES 00 MINUTES 52 SECONDS WEST 629.41 FEET;
- 13) NORTH 22 DEGREES 49 MINUTES 40 SECONDS WEST 158.24 FEET;
- 14) SOUTH 89 DEGREES 59 MINUTES 40 SECONDS WEST 51.51 FEET;
- 15) NORTH 15 DEGREES 30 MINUTES 51 SECONDS WEST 374.09 FEET TO THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SECTION 17;
- 16) SOUTH 89 DEGREES 46 MINUTES 25 SECONDS WEST 233.88 FEET UPON SAID SOUTH LINE TO THE SOUTH ONE QUARTER CORNER OF SAID SECTION 17 AS MONUMENTED BY A HALF INCH REBAR WITH ALUMINUM CAP STAMPED "PE 2903;

THENCE NORTH 00°00'58" EAST 5274.92 FEET UPON THE NORTH-SOUTH MID-SECTION LINE TO THE POINT OF BEGINNING.

THE BASIS OF BEARINGS FOR THE PARCEL 5 LEGAL DESCRIPTION IS THE NORTH LINE OF THE NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 11 SOUTH, RANGE 13 EAST, G&SRM, AS MONUMENTED BY THE 2 INCH GLO BRASS DISC AT THE NORTH ONE QUARTER CORNER OF SECTION 17 AND BY A 3 INCH GLO BRASS DISC AT THE NORTHEAST CORNER OF SAID SECTION 17, THE DISTANCE BETWEEN SAID MONUMENTS BEING 2641.11 FEET AND SAID BEARING BEING: NORTH 89°43'55" EAST.

EXCEPT ALL URANIUM, THORIUM, OR ANY OTHER MATERIAL WHICH IS OR MAY BE DETERMINED TO BE PECULIARLY ESSENTIAL TO THE PRODUCTION OF FISSIONABLE MATERIALS, WHETHER OR NOT OF COMMERCIAL VALUE, AS RESERVED IN THE PATENT FROM THE UNITED STATES OF AMERICA.

PARCEL 5

LOT 45, SAGUARO RANCH PHASE III-A, ACCORDING TO THE PLAT OF RECORD IN BOOK 63 OF MAPS, PAGE 33, PIMA COUNTY, ARIZONA RECORDS;

EXCEPT ALL URANIUM, THORIUM, OR ANY OTHER MATERIAL WHICH IS OR MAY BE DETERMINED TO BE PECULIARLY ESSENTIAL TO THE PRODUCTION OF FISSIONABLE MATERIALS, WHETHER OR NOT OF COMMERCIAL VALUE, AS RESERVED IN THE PATENT FROM THE UNITED STATES OF AMERICA.

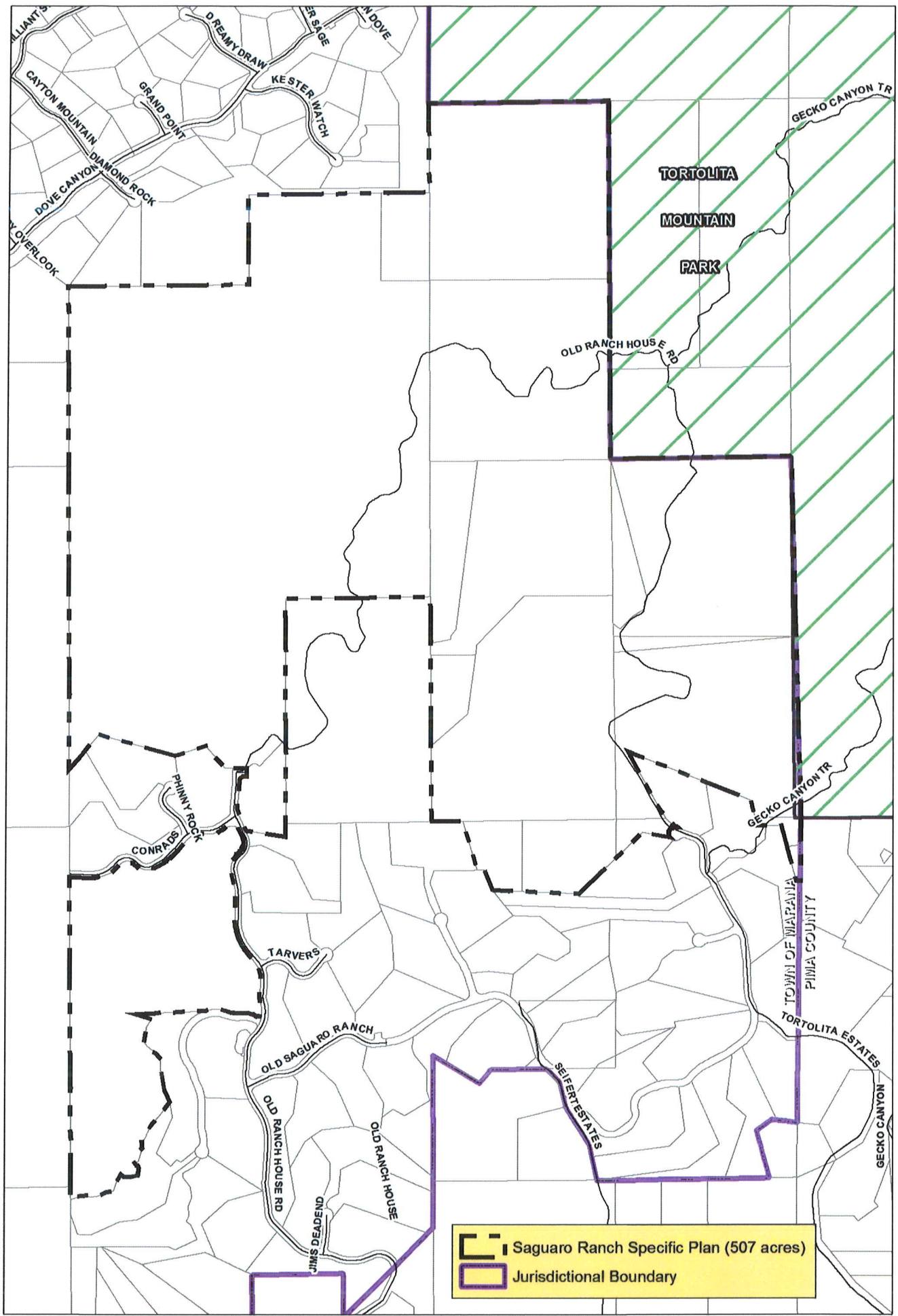


EXHIBIT A-1 TO ORDINANCE
SAGUARO RANCH

0' 300' 600'
 SCALE: 1" = 600'



PROJECT: NCP-01 DATE: 07/24/15
 FILE NAME: NCP-01_Ord_LocationMap.mxd



**AMENDED AND RESTATED SAGUARO RANCH
PRE-ANNEXATION DEVELOPMENT AGREEMENT**

TOWN OF MARANA, ARIZONA

THIS AMENDED AND RESTATED SAGUARO RANCH PRE-ANNEXATION DEVELOPMENT AGREEMENT (this "**Agreement**") is made and entered into by and between the TOWN OF MARANA, an Arizona municipal corporation (the "**Town**"), and NORTHLIGHT TRUST 1, a Delaware statutory trust ("**Northlight**") The Town and Northlight are sometimes collectively referred to as the "**Parties**," either one of which is sometimes individually referred to as a "**Party**."

RECITALS

A. This Agreement governs and addresses that portion of the Saguaro Ranch development project located in Marana, Arizona, referred to as "Northlight's Saguaro Ranch Properties" and more particularly described in paragraph 1(E) below.

B. Northlight is the current master developer of Saguaro Ranch.

C. The Town and the prior developer of Saguaro Ranch entered into the Saguaro Ranch Pre-Annexation Development Agreement, recorded in the office of the Recorder of Pima County, Arizona, on June 27, 2003, at Docket 12081, Page 8329 (Sequence 20031241266) (the "Original Saguaro Ranch PADA").

D. Pursuant to and consistent with the terms of the Original Saguaro Ranch PADA, the Town adopted Marana Ordinance No. 2003.14 and Marana Ordinance No. 2003.15 on July 1, 2003, annexing into the town limits of Marana the lands there and here referred to as the "Saguaro Ranch North Annexation" and the "Saguaro Ranch South Annexation," respectively. Marana Ordinance No. 2003.14 (the Saguaro Ranch North Annexation) was recorded in the Pima County Recorder's office on July 11, 2003, at Docket 12090, Page 5177 (Sequence 20031331315); and Marana Ordinance No. 2003.15 (the Saguaro Ranch South Annexation) was recorded in the Pima County Recorder's office on July 11, 2003, at Docket 12090, Page 5184 (Sequence 20031331317).

E. The Town and the prior developer of Saguaro Ranch entered into the First Amendment to Saguaro Ranch Pre-Annexation Development Agreement, recorded in the office of the Recorder of Pima County, Arizona, on April 12, 2004, at Docket 12278, Page 3161 (Sequence 20040700641) (the "Saguaro Ranch 1st PADA Amendment").

F. Pursuant to and consistent with the terms of the Saguaro Ranch 1st PADA Amendment, the Town adopted Marana Ordinance No. 2004.01 on April 6, 2004, annex-

ing into the town limits of Marana the lands there and here referred to as the "Saguaro Ranch East Annexation." Marana Ordinance No. 2004.01 (the Saguaro Ranch East Annexation) was recorded in the Pima County Recorder's office on April 12, 2004, at Docket 12278, Page 3145 (Sequence 20040700635), and re-recorded in the Pima County Recorder's office on December 1, 2006, at Docket 12942, Page 1778 (Sequence 20062310303) to correct a scrivener's error.

G. The Town and the prior developer of Saguaro Ranch entered into the Second Amendment to Saguaro Ranch Pre-Annexation Development Agreement, recorded in the office of the Recorder of Pima County, Arizona, on August 4, 2004, at Docket 12358, Page 2953 (Sequence 20041500794) (the "Saguaro Ranch 2nd PADA Amendment"), to allow additional time for the developer to make the \$1,000,000 contribution to the Town as required by paragraph 2.35 of the Original Saguaro Ranch PADA.

H. Paragraph 2.31 of the Original Saguaro Ranch PADA required the developer of Saguaro Ranch a \$50,000 per lot contribution to Pima County for the 16th and subsequent lots sold for a maximum contribution of \$1,000,000 to be used for trail construction, open space, community improvements, and transportation needs in the Saguaro Ranch area.

I. Paragraph 2.32 of the Original Saguaro Ranch PADA required the developer of Saguaro Ranch to pay Pima County \$50,000 "once the current trail easement through the Property is abandoned."

J. Pima County has confirmed to Town staff that \$850,000 has been paid to Pima County pursuant to Paragraphs 2.31 and 2.32 of the Original Saguaro Ranch PADA, but Pima County was unable to determine which payments had not yet been made. The Parties believe that all \$850,000 has been paid pursuant to Paragraph 2.31.

K. It is unclear to the Parties whether enough lots have been sold to have caused the entire \$1,000,000 amount in Paragraph 2.31 of the Original Saguaro Ranch PADA to be currently due.

L. The Parties understand that the easement to have been abandoned pursuant to Paragraph 2.32 of the Original Saguaro Ranch PADA is the easement for access to the former Leef property purchased by Pima County, consisting generally of the south half of the southeast quarter of the northeast quarter of Section 17, Township 11 South, Range 13 East. It appears to the Parties that the abandonment condition of Paragraph 2.32 of the Original Saguaro Ranch PADA has not been and is not currently anticipated to be accomplished by Pima County.

M. Northlight is the successor in interest to the developer of Saguaro Ranch.

N. Northlight has purchased land located in the east half of Section 19, Township 11 South, Range 13 East, and referred to in this Agreement as "Northlight's Dove Mountain Holdings."

O. Northlight has submitted an application for rezoning of portions of the Saguaro Ranch North Annexation and the Saguaro Ranch East Annexation to "Saguaro Ranch Specific Plan" designation, and the Town has approved the Saguaro Ranch Specific Plan by the adoption of Marana Ordinance No. 2015.016 on August 4, 2015.

P. The Saguaro Ranch Specific Plan anticipates the construction of either a sewer main extension connecting to the sewer system owned and operated by Pima County Regional Water Reclamation District or a private sewer treatment plant to serve development of Lot 50 of Saguaro Ranch.

Q. The Parties desire to amend and restate the terms of the Original Saguaro Ranch PADA as amended by the Saguaro Ranch 1st PADA Amendment and the Saguaro Ranch 2nd PADA Amendment and to replace them with this Agreement, to clearly set forth the remaining respective rights and obligations of the Parties relating to Northlight's Saguaro Ranch Properties.

R. The Town is authorized by A.R.S. § 9-500.05 to enter into a development agreement with a landowner or other person or entity having an interest in real property located within the Town to facilitate development of the property by providing for, among other things, the conditions, terms, restrictions, and requirements for development and public infrastructure and the financing of public infrastructure.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated into this Agreement as though fully restated here, and the mutual covenants set forth in this Agreement, the Parties hereby agree as follows:

1. *Definitions.* The following definitions apply to this Agreement:

(A) The "**Development Regulations**" collectively means the existing Town-approved zoning for Northlight's Saguaro Ranch Properties (including the Saguaro Ranch Specific Plan, for the portion of Northlight's Saguaro Ranch Properties covered by it), the Existing Saguaro Ranch Plats, and the MDC, which set forth the basic land uses, densities and intensities of land uses currently authorized for and development regulations related to Northlight's Saguaro Ranch Properties.

(B) The "**Existing Saguaro Ranch Plats**" means all of the following:

(i) Saguaro Ranch Lots 9-52, Blocks 1, 2, 3, & 4, Parcel 'A', Common Area 'A', and Common Area 'B', according to the plat recorded in the office of the Recorder of Pima County, Arizona, at Book 57 of Maps and Plats, Page 57 (the "**Original Saguaro Ranch Plat**").

(ii) Saguaro Ranch South Amended Lots 1-31, Parcel "A", Block "A" & Common Areas "A", "B", & "C", according to the plat recorded in the office of the Recorder of Pima County, Arizona, at Book 59 of Maps and Plats, Page 69 (the "**Saguaro Ranch South Amended Plat**").

(iii) Saguario Ranch II Lots 50, 51, & 53-65, Parcel "A" & Common Areas "A" & "B", according to the plat recorded in the office of the Recorder of Pima County, Arizona, at Book 61 of Maps and Plats, Page 89 (the "**Saguario Ranch II Plat**")

(iv) Saguario Ranch Phase III-A Lots 43-45 & 66-96, Common Areas "A" & "B-1"-"B-2", according to the plat recorded in the office of the Recorder of Pima County, Arizona, at Book 63 of Maps and Plats, Page 33 (the "**Saguario Ranch III Plat**")

(C) "**MDC**" means the Marana Land Development Code (including the written rules, regulations, procedures, and other policies relating to development of land, whether adopted by the Mayor and Council or by Town Staff) collectively establishing, among other things, the type of land uses, location, density and intensity of such land uses, and community character of the Property, and providing for, among other things, the development of a variety of housing, commercial and recreation/open space opportunities.

(D) "**Northlight's Dove Mountain Holdings**" is defined in Recital N above.

(E) "**Northlight's Saguario Ranch Properties**" collectively means all of the following:

(i) The entire land area covered by the Saguario Ranch Specific Plan.

(ii) Lots 36, 37, and 39, and Block 2, as depicted on the Original Saguario Ranch Plat.

(iii) Lots 10, 11, and 13, and Block A, as depicted on the Saguario Ranch South Amended Plat.

(iv) Lots 50, 53, and 55 through 64, and Common Areas "A" and "B", as depicted on the Saguario Ranch II Plat. (Lot 50 is also part of the Saguario Ranch Specific Plan.)

(v) Lots 68, 70-76, 78, and 80 through 96, and Common Areas "A", "B-1" and "B-2" as depicted on the Saguario Ranch III Plat.

(F) "**Saguario Ranch**" means the entire land area covered by the Existing Saguario Ranch Plats and the Saguario Ranch Specific Plan.

(G) "**Town Engineer**" means the duly appointed town engineer of the Town of Marana.

2. *Amendment and restatement of obligations under prior agreements.* The Parties acknowledge and agree that the following list sets forth a true and complete summary, amendment, and restatement of the Parties' rights and obligations under the Original Saguario Ranch PADA as amended by the Saguario Ranch 1st PADA Amendment and the Saguario Ranch 2nd PADA Amendment, and as further amended and restated by this Agreement:

(A) *Annexation and original zoning.* The Town has completed the annexation of all lands contemplated for annexation under, and has adopted zoning for the annexed lands in a manner consistent with, the Original Saguario Ranch PADA and the Saguario Ranch 1st PADA Amendment.

(B) *Development review.* Northlight's Saguario Ranch Properties shall be developed in accordance with the Development Regulations. Upon Northlight's compliance with the applicable development review and approval procedures and substantive requirements of the Development Regulations, the Town agrees to issue such permits or approvals for Northlight's Saguario Ranch Properties as may be requested by Northlight.

(C) *Amendments to Agreement.* The Town and Northlight agree to cooperate and in good faith pursue any amendments to this Agreement that are reasonably necessary to accomplish the goals expressed in Development Regulations.

(D) *Archaeological/historic resources.* The development of Northlight's Saguario Ranch Properties shall meet all Town requirements set forth in Title 2 and Title 20 of the MDC related to archeological and historic resources.

(E) *Site built construction only.* All residential dwelling units shall be site built. This subsection shall apply to all land within Northlight's Saguario Ranch Properties, whether sold in bulk or individually, whether subdivided or not, and shall apply to each and every lot and shall run with the land.

(F) *Additional property.* Paragraph 1.6 of the Original Saguario Ranch PADA is deleted.

(G) *Water Utilities.* Northlight has secured potable water service through Tucson Water. As a condition of receiving building permits, Northlight must provide the Town with proof of potable water service to the property that is the subject of the requested building permits.

(H) *Wastewater.* As a condition of receiving building permits, Northlight must provide the Town with proof of wastewater system approval from Pima County Regional Water Reclamation District and/or Pima County Department of Environmental Quality for the property that is the subject of the requested building permits.

(I) *Onsite private recreational facilities.* Paragraph 2.3 of the Original Saguario Ranch PADA is deleted.

(J) *Community improvements and transportation contributions.* The Parties agree to work together to determine whether and to what extent the developer's obligations under Paragraph 2.31 of the Original Saguario Ranch PADA have been satisfied. If the Parties are unable to determine that the obligations have been satisfied beyond the \$850,000 in payments already acknowledged by Pima County, Northlight agrees to pay Pima County \$50,000 per lot for the first three lots sold from Northlight's

Saguaro Ranch Properties, to satisfy the remaining obligations under Paragraph 2.31 of the Original Saguaro Ranch PADA. If so required, such additional payment shall be deemed to have satisfied Northlight's obligations under Paragraph 2.31 of the Original Saguaro Ranch PADA.

(K) *Regional public park/trail system.* Northlight shall dedicate a public trail easement through Northlight's Saguaro Ranch Properties and Northlight's Dove Mountain Holdings to provide public access to the Tortolita Mountain Park northeast of the Saguaro Ranch boundary, as more particularly discussed and described in the Saguaro Ranch Specific Plan. Northlight shall not be responsible to construct or pay for the trail, but nothing in this sentence shall prohibit or preclude the Town from using all available funds, including any park impact fees paid as a result of construction in Saguaro Ranch, to construct the trail. All developer obligations under paragraph 2.32 of the Original Saguaro Ranch PADA will have been fully satisfied upon dedication of the trail in satisfaction of the requirements of this paragraph.

(L) *Park improvement contribution.* Paragraph 2.34 of the Original Saguaro Ranch PADA is replaced by the obligation to pay all applicable Town park development impact fees for any development of Northlight's Saguaro Ranch Properties.

(M) *Regional recreational facility.* The \$1,000,000 payment referenced in paragraph 2.35 of the Original Saguaro Ranch PADA has been fully paid and satisfied.

(N) *Roadway improvements.* Before the Town approves any final plat, Northlight shall work with the Town Engineer to identify and agree on all roadway improvements needed for the development of Northlight's Saguaro Ranch Properties and the portion of Northlight's Saguaro Ranch Properties that is the subject of the final plat.

(O) *Fire protection.* Northlight's Saguaro Ranch Properties are now within the boundaries of Northwest Fire District, so paragraph 2.5 of the Original Saguaro Ranch PADA is no longer needed and is deleted.

(P) *School site.* Northlight shall negotiate a school site contribution agreement with Marana Unified School District, and shall provide a copy of the recorded agreement to the Town. Until the agreement is recorded, \$1,200 shall be paid to the Town upon application for each initial residential building permit on a particular subdivision lot within Northlight's Saguaro Ranch Properties.

(Q) *Wide wireless area network contribution.* Paragraph 2.7 of the Original Saguaro Ranch PADA is deleted.

(R) *Responsibility for financing infrastructure improvements.* Upon request of Northlight, the Town's staff shall process any request for a community facilities district (a "CFD") on all or any portion of Northlight's Saguaro Ranch Properties pursuant to A.R.S. § 48-701 *et seq.* and the Town Guidelines for Establishment of

Community Facilities Districts, and the Town Council shall reasonably consider such request for a CFD.

(S) *Environmental compliance.* Northlight shall comply with the Pima County ordinances relating to the protection of peaks and ridges for any protected peaks or ridges as designated by Pima County on Saguaro Ranch at the time of its annexation into the town limits of the Town. Northlight shall establish a 10-year natural resource management monitoring program to monitor the effect of the development on Saguaro Ranch.

(T) *Protection of open space.* Northlight shall provide construction fencing to protect all natural areas and other areas to be kept in their natural state during construction. Northlight shall not disturb more than 20% of Northlight's Saguaro Ranch Properties, including areas for emergency access, easements, roadways and drainage ways. Northlight shall comply with all Town grading requirements.

(U) *Ownership and control of natural open space.* Enforcement authority over and control of all natural open space areas set aside and maintained as required by this Agreement and permanent ownership of all undisturbed natural areas set aside and maintained as required by this Agreement that are located outside the boundaries of individually-owned residential lots shall be given to one of the following:

(i) One or more homeowners associations established by declarations of restrictive covenants recorded over all or part of Saguaro Ranch.

(ii) A government or conservation entity the Town reasonably determines is willing and able to permanently maintain the undisturbed natural areas as required by this Agreement.

(V) *Lodging uses prohibited; no environmental enhancement contribution.* Lodging uses are prohibited in Northlight's Saguaro Ranch Properties. For purposes of this paragraph, lodging uses include any land use whose revenues are subject to the Town's bed tax (specifically, the tax on hotel uses pursuant to Section 8-444 of the Marana Tax Code). Paragraph 3.4 of the Original Saguaro Ranch PADA is deleted.

(W) Termination upon sale to the public. this Agreement shall terminate without the execution or recordation of any further document or instrument as to any lot that has been finally subdivided and individually (and not in "bulk") leased (for a period of longer than one year) or sold to the end purchaser or user thereof, and thereupon such lot shall be released from and no longer be subject to or burdened by the provisions of this Agreement.

3. *Effect on prior agreements.*

(A) *Northlight's Saguaro Ranch Properties.* For and with respect to Northlight's Saguaro Ranch Properties, the Original Saguaro Ranch PADA as amended by the Saguaro Ranch 1st PADA Amendment and the Saguaro Ranch 2nd PADA Amendment is hereby replaced with this Agreement.

(B) *Other portions of Saguaro Ranch.* Lots leased (for a period of longer than one year) or sold to an end purchaser or user are released from the developer's obligations by operation of Paragraph 8.8.2 of the Original Saguaro Ranch PADA. The Original Saguaro Ranch PADA as amended by the Saguaro Ranch 1st PADA Amendment and the Saguaro Ranch 2nd PADA Amendment remains in full force and effect for and with respect to any portion of Saguaro Ranch (other than Northlight's Saguaro Ranch Properties) that has not been released from the developer's obligations by operation of Paragraph 8.8.2 of the Original Saguaro Ranch PADA.

4. *Term.* This Agreement shall become effective upon the later of its execution by all the Parties and the effective date of the Town Council resolution approving this Agreement (the "Effective Date"). The term of this Agreement shall begin on the Effective Date and, unless sooner terminated by the mutual consent of the Parties, shall automatically terminate and shall thereafter be void for all purposes on the 15th anniversary of the Effective Date.

5. *Cooperation and alternative dispute resolution.*

(A) *Appointment of representatives.* To further the commitment of the Parties to cooperate in the progress of the development of Northlight's Saguaro Ranch Properties, the Town and the Northlight each shall designate and appoint a representative to act as a liaison between the Town and its various departments and the Northlight. The initial representative for the Town (the "Town Representative") shall be the Town Manager, and the initial representative for the Northlight shall be Mike Conlin or a replacement to be selected by the Northlight. The representatives shall be available at all reasonable times to discuss and review the performance of the Parties and the development.

(B) *Non-performance; remedies.* If either Party does not perform under this Agreement (the "Non-Performing Party") with respect to any of that Party's obligations under this Agreement, the other Party (the "Demanding Party") shall be entitled to give written notice in the manner prescribed in paragraph 6 below to the Non-Performing Party, which notice shall state the nature of the non-performance claimed and make demand that such non-performance be corrected. The Non-Performing Party shall then have (i) 15 days from the date of the notice within which to correct the non-performance if it can reasonably be corrected by the payment of money, or (ii) 30 days from the date of the notice to cure the non-performance if action other than the payment of money is reasonably required, or if the non-monetary non-performance cannot reasonably be cured within 30 days, then such longer period as may be reasonably required, provided and so long as the cure is promptly commenced within 30 days and thereafter diligently prosecuted to completion. If any non-performance is not cured within the applicable time period set forth in this paragraph, then the Demanding Party shall be entitled to begin the mediation and arbitration proceedings set forth in this paragraph. The Parties agree

that due to the size, nature and scope of the development, and due to the fact that it may not be practical or possible to restore the property to its condition prior to Northlight's development and improvement work, once implementation of this Agreement has begun, money damages and remedies at law will likely be inadequate and that specific performance will likely be appropriate for the non-performance of a covenant contained in this Agreement. This paragraph shall not limit any contract or other rights, remedies, or causes of action that either Party may have at law or in equity.

(C) *Mediation.* If there is a dispute under this Agreement which the Parties cannot resolve between themselves, the Parties agree that there shall be a 45-day moratorium on arbitration during which time the Parties agree to attempt to settle the dispute by nonbinding mediation before commencement of arbitration. The mediation shall be held under the commercial mediation rules of the American Arbitration Association. The matter in dispute shall be submitted to a mediator mutually selected by the Northlight and the Town. If the Parties cannot agree upon the selection of a mediator within seven days, then within three days thereafter the Town and the Northlight shall request the presiding judge of the Superior Court in and for the County of Pima, State of Arizona, to appoint an independent mediator. The mediator selected shall have at least five years' experience in mediating or arbitrating disputes relating to real estate development. The cost of any such mediation shall be divided equally between the Town and the Northlight. The results of the mediation shall be nonbinding on the Parties, and any Party shall be free to initiate arbitration after the moratorium.

(D) *Arbitration.* After mediation, as provided for in this paragraph 5, any dispute, controversy, claim or cause of action arising out of or relating to this Agreement shall 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, A.R.S. § 12-501 *et seq.*, and judgment upon the award rendered by the arbitrator(s) may be entered in a court having jurisdiction.

6. *Notices.* All notices, requests and other communications under this Agreement shall be given in writing and either (i) personally served on the party to whom it is given, or (ii) mailed by registered or certified mail, postage prepaid, return receipt requested, or (iii) sent by private overnight courier such as Federal Express or Airborne, or (iv) transmitted by facsimile (provided that a confirming copy of the facsimile transmission is mailed on the date of such transmission), addressed as follows:

If to the Town:

TOWN OF MARANA
11555 W. Civic Center Drive, Bldg. A3
Marana, Arizona 85653-7006
Telephone: (520) 382-1900
Fax: (520) 382-1901

If to Northlight:

NORTHLIGHT TRUST 1
ATTN: NORTHLIGHT SPECIAL GPI LLC
1 Grand Central Pl
60 E 42nd St Rm 2800
New York NY 10165-2802
Telephone: _____
Fax: _____

All notices shall be deemed given when delivered or transmitted by facsimile or, if mailed as provided above, on the second day after the day of mailing, and if sent by overnight courier, on the next day after the date of deposit with the courier. Any party may change its address for the receipt of notices at any time by giving written notice thereof to the other parties in accordance with the terms of this section. The inability to deliver notice because of a changed address of which no notice was given, or rejection or other refusal to accept any notice, shall be deemed to be the effective receipt of the notice as of the date of such inability to deliver or rejection or refusal to accept.

7. Miscellaneous.

(A) This Agreement may not be modified except in a writing signed by the Parties.

(B) Time is of the essence of this Agreement.

(C) This Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona, and any lawsuit to enforce any provision of this Agreement or to obtain any remedy with respect to this Agreement shall be brought in the Pima County Superior Court, and for this purpose the Parties expressly and irrevocably consent to the jurisdiction of the Pima County Superior Court. Nothing in the use of the word "lawsuit" in the preceding sentence shall constitute a waiver of paragraph 5(D) above, requiring disputes to be resolved by binding arbitration.

(D) If either Party brings a lawsuit or arbitration proceeding to enforce any of the terms, covenants or conditions of this Agreement, or by reason of any non-performance of this Agreement, the prevailing Party shall be paid all reasonable costs and reasonable attorneys' fees by the other Party, in an amount determined by the court or arbitrator and not by the jury. Nothing in the use of the word "lawsuit" in the preceding sentence shall constitute a waiver of paragraph 5(D) above, requiring disputes to be resolved by binding arbitration.

(E) This Agreement may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original and all of which, taken together, shall constitute one and the same agreement.

(F) This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors in interest and assigns; provided, however, that upon

the conveyance of all of Northlight's Saguario Ranch Properties to a single grantee, the grantor shall automatically be released from any further obligation or liability under this Agreement and this Agreement shall thereafter bind the grantee.

(G) This Agreement is subject to A.R.S. § 38-511, which provides for cancellation of contracts in certain instances involving conflicts of interest.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the last date set forth below their respective signatures.

THE "TOWN":
TOWN OF MARANA, an Arizona municipal corporation

"NORTHLIGHT":
NORTHLIGHT TRUST 1,
a Delaware statutory trust
By: NORTHLIGHT SPECIAL GP I LLC,
a Delaware limited liability company

By: _____
Mayor Ed Honea

By: _____

Date: _____

Its: _____

ATTEST:

Date: _____

Jocelyn Bronson, Town Clerk

APPROVED AS TO FORM:

Frank Cassidy, Town Attorney

State of _____)
ss

County of _____)

The foregoing instrument was acknowledged before me on _____ by _____, the _____ of NORTHLIGHT SPECIAL GP I LLC, a Delaware limited liability company, Manager of NORTHLIGHT TRUST 1, a Delaware statutory trust, on its behalf.

(Seal)

Notary Public