

When recorded mail to:

City Clerk
City of Flagstaff
211 W. Aspen Avenue
Flagstaff, Arizona 86001

FIRST AMENDMENT TO
DEVELOPMENT INCENTIVE AGREEMENT
(Aspen Place at the Sawmill)

This FIRST AMENDMENT TO DEVELOPMENT INCENTIVE AGREEMENT ("First Amendment") is made and entered into effective as of the 22 day of February, 2010 (to be effective as of the date set forth in *paragraph 11* below), by and between ASPEN PLACE NORTH, L.L.C., an Arizona limited liability company ("Aspen North"), and ASPEN PLACE SOUTH, L.L.C., an Arizona limited liability company ("Aspen South") (Aspen North and Aspen South are hereinafter collectively referred to as "Landowner"), and the CITY OF FLAGSTAFF, an Arizona municipal corporation ("City").

RECITALS

A. The City and Landowner's predecessor-in-interest, Butler & Lone Tree, L.L.C., an Arizona limited liability company, entered into (i) that Development Incentive Agreement (Aspen Place at the Sawmill) dated as of June 1, 2007, and recorded on June 20, 2007 at Instrument No. 3444059, Official Records of Coconino County, Arizona (the "Development Incentive Agreement"), and (ii) that Improvement District Development and Waiver Agreement dated as of June 1, 2007, and recorded on June 21, 2007 at Instrument No. 3444565, Official Records of Coconino County, Arizona (the "Waiver Agreement").

B. Pursuant to the terms and conditions of the Development Incentive Agreement and the Waiver Agreement, among other things, the Landowner agreed that the Property (except for the Contribution Parcel described in the Development Incentive Agreement) would be subject to the payment of assessments to repay special assessment bonds issued by the City pursuant to the terms of the Waiver Agreement (the "ID Bonds") in connection with the payment of a portion of the cost of construction of certain Public Infrastructure Improvements described in the Development Incentive Agreement.

C. As part of the Landowner's obligations under the Development Incentive Agreement, and as additional security for the payment of the assessments required to be paid in connection with the ID Bonds (the "ID Bond Assessments"), the Landowner provided to the City a standby letter of credit (the "ID LOC") in an amount equal to ten percent (10%) of the original principal amount of the ID Bonds. Under the terms of the Development Incentive Agreement, if the City draws on the ID LOC to pay any ID Bond Assessments otherwise payable with respect to the Property, the Landowner is required to provide a replacement ID LOC within thirty (30) days after receipt of notice from the City that the

proceeds received by the City's draw on the ID LOC for payment of ID Bond Assessments will be exhausted within said thirty (30) day period.

D. The City drew the entire amount of the ID LOC for payment of the ID Bond Assessments which were due and payable with respect to the Property on December 1, 2009. From the proceeds of such draw, the City has paid the ID Bond Assessments which were required to be paid on December 1, 2009 and is holding the balance of such proceeds for application against subsequent ID Bond Assessments payable with respect to the Property.

E. As a further part of the Landowner's obligations under the Development Incentive Agreement, the Landowner agreed that in the event that the cost of construction of the Public Infrastructure Improvements described in the Development Incentive Agreement exceeded the Available Bond Proceeds and the Funded Construction Shortfall (as described in the Development Incentive Agreement), the Landowner would pay the additional cost of construction thereof. The cost of construction of the Public Infrastructure Improvements exceeded the Available Bond Proceeds and the Funded Construction Shortfall by an amount equal to Five Hundred Three Thousand Four Hundred Sixty and No/100 Dollars (\$503,460.00) (the "Construction Cost Shortfall"). The City and Landowner acknowledge that the Public Infrastructure Improvements have been completed and the Construction Cost Shortfall is the sole remaining obligation of the Landowner with respect to the costs thereof.

F. Following the Landowner's failure to pay the Construction Cost Shortfall as and when required pursuant to the terms and conditions of the Development Incentive Agreement, and in order to provide an opportunity to the Landowner to restructure the financial and ownership structure of the Property, the City and Landowner entered into that Forbearance Agreement dated as of January 19, 2010 (the "Forbearance Agreement"). As part of the agreements made by the City and Landowner pursuant to the Forbearance Agreement, the City and Landowner agreed to make certain modifications and amendments to the terms and conditions of the Development Incentive Agreement.

G. Pursuant to the terms of the Forbearance Agreement, the City and Landowner have agreed to modify and amend certain terms and conditions of the Development Incentive Agreement in order to, among other things, (i) provide for an alternative form of security for payment of the ID Bond Assessments which will become due and payable after the date hereof, (ii) recognize the effect of the reallocation of the ID Bond Assessments among certain parcels within the Property, (iii) clarify certain provisions of the Development Incentive Agreement with respect to the Sales Tax Rebate, (iv) authorize the City to use a portion of the proceeds of its draw on the ID LOC to pay the Construction Cost Shortfall, and (v) incorporate terms and conditions upon which Aspen South may convey fee simple title to certain portions of the Property hereinafter described to the City or to one or more third parties approved by the City.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby modify and amend the Development Incentive Agreement as follows:

AGREEMENT

1. Definitions. All initial capitalized terms used in this First Amendment shall have the meanings ascribed thereto in the Development Incentive Agreement, unless otherwise specifically defined herein. All references in the Development Incentive Agreement to "this Agreement" shall, from and after the date hereof, be deemed to mean and refer to the Development Incentive Agreement as modified and amended by this First Amendment.

2. Reallocation of ID Bond Assessments. Notwithstanding anything contained in the Development Incentive Agreement to the contrary, including, without limitation, Section 3.2 thereof, the City and Landowner acknowledge that, pursuant to that Petition for Modification of Assessments dated as of February 16, 2010, the ID Bond Assessments against the parcels of the Property owned by Aspen North have been reallocated and are now assessed solely against two assessment parcels which are described in *Exhibit "A"* attached hereto and incorporated herein by this reference (hereinafter referred to as "Assessment Parcel 2.01" and "Assessment Parcel 7.01"). The City hereby acknowledges and agrees that, as a result of the fact that Assessment Parcel 2.01 constitutes multiple parcels of developable real property, in the event that Aspen North conveys fee simple title to any individual parcel within Assessment Parcel 2.01 to any party that is not related to Aspen North (within the meaning of Section 267(b) of the Internal Revenue Code), then the City shall take reasonable and appropriate steps to reallocate to the parcel being conveyed a portion of the ID Bond Assessments allocated to Assessment Parcel 2.01, and each newly-created assessment parcel shall be treated separately for all purposes under the Development Incentive Agreement.

3. Prepayment or Security for Payment of ID Bond Assessments. Notwithstanding anything contained in the Development Incentive Agreement to the contrary, including, without limitation, the provisions of Section 3.4.4(b), each Landowner shall, with respect to each parcel within the Property owned by such Landowner, provide the following to the City on or before June 1 of each calendar year that ID Bond Assessments remain owing with respect to such Landowner's parcel(s), as security for such Landowner's obligation to pay the ID Bond Assessments allocated to such Landowner's parcel(s):

(a) an ID LOC issued by an issuer satisfying the Minimum Rating Requirements and which ID LOC satisfies all other requirements of the Development Incentive Agreement, in an amount equal to the sum of the ID Bond Assessments allocated to such Landowner's parcel(s) and which will become due and payable on December 1 of such calendar year and on June 1 of the immediately subsequent calendar year; or

(b) prepay to the City, in cash, an amount equal to the sum of the ID Bond Assessments allocated to such Landowner's parcel(s) and which will become due and payable on December 1 of such calendar year and on June 1 of the immediately subsequent calendar year; or

(c) an alternative source of security for such Landowner's obligation for payment of the ID Bond Assessments allocated to such Landowner's parcel(s) and which will become due and payable on December 1 of such calendar year and on June 1 of the immediately subsequent calendar year, which alternative source of security is mutually acceptable to the City and such Landowner.

The failure of any Landowner to provide an ID LOC, prepay its ID Bond Assessments or provide an alternative source of security acceptable to the City on or before June 1 of each calendar year that any ID Bond Assessments remain owing with respect to such Landowner's parcel(s) shall be an immediate event of default by such Landowner under the Development Incentive Agreement and, in addition to all other rights and remedies which may be available to the City as a result of such default, the City shall have the right, by written notice to the defaulting Landowner, to terminate such Landowner's right to receive payment of any further Sales Tax Rebates with respect to those parcel(s) for which the Landowner failed to provide an ID LOC, prepay its ID Bond Assessments or provide an alternative source of security acceptable to the City, and such defaulting Landowner hereby agrees that the City shall have the immediate right to accelerate all ID Bond Assessments allocated to such Landowner's parcel(s) with respect to which such Landowner failed to provide an ID LOC, prepay its ID Bond Assessments or provide an alternative source of security acceptable to the City, and immediately commence to foreclose the assessment lien against such Landowner's parcel(s) pursuant to the provisions of A.R.S. §48-601, *et seq.*

Notwithstanding anything contained in the foregoing to the contrary, the City shall have the right to waive, in writing, the requirements of this *paragraph 3* with respect to any portion of the Property which is conveyed by Aspen South to the City and/or any third party approved by the City pursuant to the provisions of *paragraph 5* of this First Amendment.

4. Sales Tax Rebates. Section 4(ii) of the Development Incentive Agreement is hereby modified and amended to add the following provision thereto:

"Notwithstanding anything contained in this section or elsewhere in this Agreement to the contrary, the City hereby agrees that, for any conveyances or transfers of portions of the Project by any Landowner which occur prior to June 1, 2010, the successor to such Landowner shall be deemed to be a "Qualified Successor" if such successor is an entity in which a majority of the equity interests are owned or controlled by Donald L. Meyers, or is managed by an entity in which a majority of the equity interests are owned or controlled by Donald L. Meyers."

In addition, the following provisions are hereby added to the provisions of Section 4 of the Development Incentive Agreement as subparagraphs (iv), (v) and (vi) thereof:

"(iv) Condition to Receipt of Sales Tax Rebates. Each Landowner hereby acknowledges that its right to receive the Sales Tax Rebate with respect to any parcel of the Property owned by such Landowner shall be subject and conditioned upon such

Landowner having provided to the City with respect to such parcel(s), on or before June 1 of each calendar year that ID Bond Assessments remain owing with respect to the Landowner's parcel(s), an ID LOC, cash prepayment, or alternative source of security acceptable to the City pursuant to the requirements of paragraph 3 of the First Amendment.

(v) Limitation on Right to Receive Sales Tax Rebates. Each Landowner hereby acknowledges and agrees that its right to receive the Sales Tax Rebates is limited to those transaction privilege taxes generated by taxable activities which occur on the parcel or parcels owned by such Landowner and not from taxable activities which occur on any other parcel within the Property that is not owned by such Landowner, and that, at such time as the City has paid Sales Tax Rebates in an aggregate amount equal to \$9,000,000.00 with respect to all parcels within the Property and regardless of which Landowner(s) received such Sales Tax Rebates, then no further Sales Tax Rebates shall be payable by the City to any Landowner.

(vi) Effect of Breach or Default by Unrelated Landowners. Notwithstanding anything contained in the Development Incentive Agreement to the contrary, each Landowner's right to receive the Sales Tax Rebates payable to such Landowner with respect to taxable activities occurring on such Landowner's parcel(s) shall not be affected by any breach or default of any terms or conditions hereunder by any other Landowner of a parcel or parcels within the Property, such that a default by one Landowner under the Development Incentive Agreement shall not affect the rights of any non-defaulting Landowner within the Property."

5. Conveyance of Title to Southern Parcels. Notwithstanding anything contained in the Development Incentive Agreement to the contrary, as a material part of the consideration to the City for its agreement to modify and amend the Development Incentive Agreement pursuant to the terms and conditions of this First Amendment, but subject to the last paragraph of this *paragraph 5*, Aspen South hereby covenants and agrees that it shall convey fee simple title to any one or all of those parcels within the Property which are described in *Exhibit "B"* attached hereto and incorporated herein by this reference (collectively, the "Southern Parcels"), to the City and/or to one or more third parties approved in writing by the City (such approval shall not be unreasonably withheld), subject to the following terms and conditions:

(a) the Southern Parcels to be conveyed by Aspen South shall be identified in a written notice provided to Aspen South not later than June 30, 2010 by the City or by any third party first approved in writing by the City;

(b) such conveyance shall be made without cost or expense to the party acquiring title to any Southern Parcel whether such party is the City or a third party; provided, that the transferee shall either pay, or reimburse Aspen South, for incidental transactional costs and expenses, such as recording fees, escrow charges and title insurance premiums;

(c) such conveyance shall be made pursuant to a special warranty deed in form and substance acceptable to the City or such third party;

(d) each Southern Parcel shall be conveyed free and clear of all liens and encumbrances, except for real property taxes and ID Bond Assessments, the responsibility for which shall be assumed by the party acquiring title to such parcel.

Each Southern Parcel to be conveyed to the City and/or to any third party shall be conveyed within thirty (30) days after Aspen South's receipt of written notice in connection therewith, so long as such notice is received by Aspen South no later than June 30, 2010. The party acquiring title to any Southern Parcel shall have the right to review and approve a preliminary title commitment in connection with such Southern Parcel and, if the title commitment discloses any title matter which did not affect such parcel as of the date of this First Amendment, then the acquiring party shall have the right to object to such matter whereupon Aspen South shall cause such matter to be released of record against such parcel prior to the consummation of the conveyance thereof to the acquiring party.

The parties hereto acknowledge and agree that if, pursuant to the terms of the Forbearance Agreement, Aspen South, or any Purchaser (as described in the Forbearance Agreement), provided to the City (a) on or before February 17, 2010, a notice that it was electing to retain ownership of the Southern Parcels, and (b) on or before February 26, 2010, reasonable evidence satisfactory to the City of the funding by Aspen South or such Purchaser of the amount necessary to prepay the 12/1/10 Bond Assessment and the 6/1/11 Bond Assessment (as described in the Forbearance Agreement) payable with respect to all of the Southern Parcels, then Aspen South (or such Purchaser, as applicable) shall not be obligated to convey any of the Southern Parcels to the City and/or to one or more third parties approved by the City and this *paragraph 5* shall be deemed to be null and void and of no force or effect.

6. Use of Proceeds of ID LOC. The parties hereto hereby acknowledge and agree that, notwithstanding anything to the contrary in the Development Incentive Agreement, the remaining proceeds of the City's draw on the ID LOC shall be used by the City for the following purposes in the following order and priority:

(a) for payment of the Construction Cost Shortfall;

(b) for payment of the ID Bond Assessments which are due and payable on June 1, 2010 with respect to the entirety of the Property; and

(c) the balance, if any, in the City's reasonable discretion for any costs and expenses related to the Property.

7. Cross-Parking Easement. The City and Landowner hereby acknowledge that, on or before the effective date of this First Amendment, the Landowner has caused to be

recorded a cross parking easement, pursuant to which reciprocal rights of parking have been created over Assessment Parcel 2.01 and Assessment Parcel 7.01 as described in *Exhibit "A"* attached to this First Amendment (the "Cross-Parking Easement"). The Landowner hereby acknowledges, covenants and agrees, for itself and its successors and assigns, that the Cross-Parking Easement shall not be modified, amended or terminated in whole or in part at any time without the prior written consent and approval of the City, which approval shall not be unreasonably withheld, delayed or conditioned.

8. Additional Provisions. The following additional provisions are hereby added to the terms and conditions of the Development Incentive Agreement as Sections 28 and 29 thereof:

"28. E-Verify Requirements. Landowner hereby covenants and agrees to comply with A.R.S. §41-4401 and A.R.S. §23-214, subsection (A), and agrees that the City shall have the right to inspect the records of Landowner and any contractors' or subcontractors' employees performing work under the Development Incentive Agreement to verify compliance with A.R.S. §41-4401 and A.R.S. §23-214, subsection (A), and that any failure by Landowner to comply with A.R.S. §41-4401 and/or A.R.S. §23-214, subsection (A), shall be deemed to be a breach of the Development Incentive Agreement and shall be subject to penalties up to and including termination of the Development Incentive Agreement.

29. Scrutinized Business Operations. Pursuant to A.R.S. §§ 35-391.06 and 35-393.06, Landowner certifies that it does not have a scrutinized business operation as defined in A.R.S. §§ 35-391 and 35-393, in either Sudan or Iran."

9. No Further Modifications. Except as specifically modified or amended pursuant to the terms of this First Amendment, the terms and conditions of the Development Incentive Agreement and the Waiver Agreement are hereby ratified and affirmed by the parties thereto and shall remain in full force and effect, unaffected by this First Amendment.

10. Counterparts. This First Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

11. Effective Date of First Amendment; Recording. This First Amendment shall become effective upon the date of the consummation of the Bank Lien Release Transaction as described in the Forbearance Agreement, whereupon this First Amendment shall be recorded in the Official Records of Coconino County, Arizona. In the event the Bank Lien Release Transaction has not been consummated as of March 31, 2010, then this First Amendment shall automatically terminate and become null and void and of no force or effect.

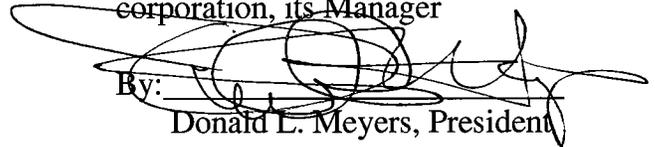
SIGNATURE PAGE FOLLOWS

"LANDOWNER"

ASPEN PLACE NORTH, L.L.C., an Arizona limited liability company

By: AE Property Management, L.L.C., an Arizona limited liability company, its Manager

By: D. L. Meyers, Inc., an Arizona corporation, its Manager

By: 
Donald L. Meyers, President

STATE OF ARIZONA)
) ss
County of Maricopa)

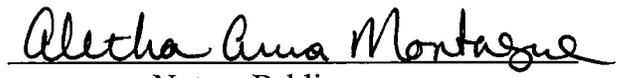
On this 10th day of February, 2010, before me, the undersigned officer, personally appeared Donald L. Meyers, who acknowledged her/himself to be President of D. L. Meyers, Inc., an Arizona corporation, as Manager to AE Property Management, L.L.C., an Arizona limited liability company, as Manager to ASPEN PLACE NORTH, L.L.C., an Arizona limited liability company:

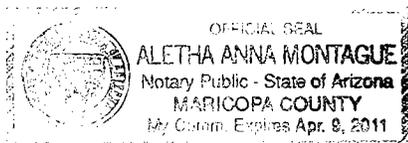
 X whom I know personally;
_____ whose identity was proven to me on the oath of _____
_____, a credible witness by me duly sworn;
_____ whose identity I verified on the basis of his/her _____

and s/he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:


Notary Public



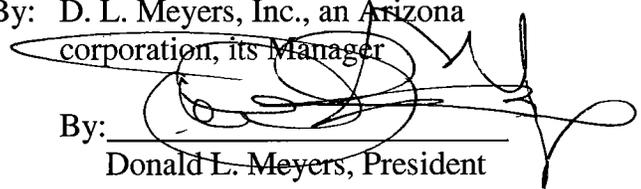
"LANDOWNER"

ASPEN PLACE SOUTH, L.L.C., an Arizona limited liability company

By: AE Property Management, L.L.C., an Arizona limited liability company, its Manager

By: D. L. Meyers, Inc., an Arizona corporation, its Manager

By: _____
Donald L. Meyers, President



STATE OF ARIZONA)
) ss
County of Maricopa)

On this 10th day of February, 2010, before me, the undersigned officer, personally appeared Donald L. Meyers, who acknowledged her/himself to be President of D. L. Meyers, Inc., an Arizona corporation, as Manager to AE Property Management, L.L.C., an Arizona limited liability company, as manager to ASPEN PLACE SOUTH, L.L.C., an Arizona limited liability company:

 X whom I know personally;
_____ whose identity was proven to me on the oath of _____
_____, a credible witness by me duly sworn;
_____ whose identity I verified on the basis of his/her _____
_____.

and s/he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

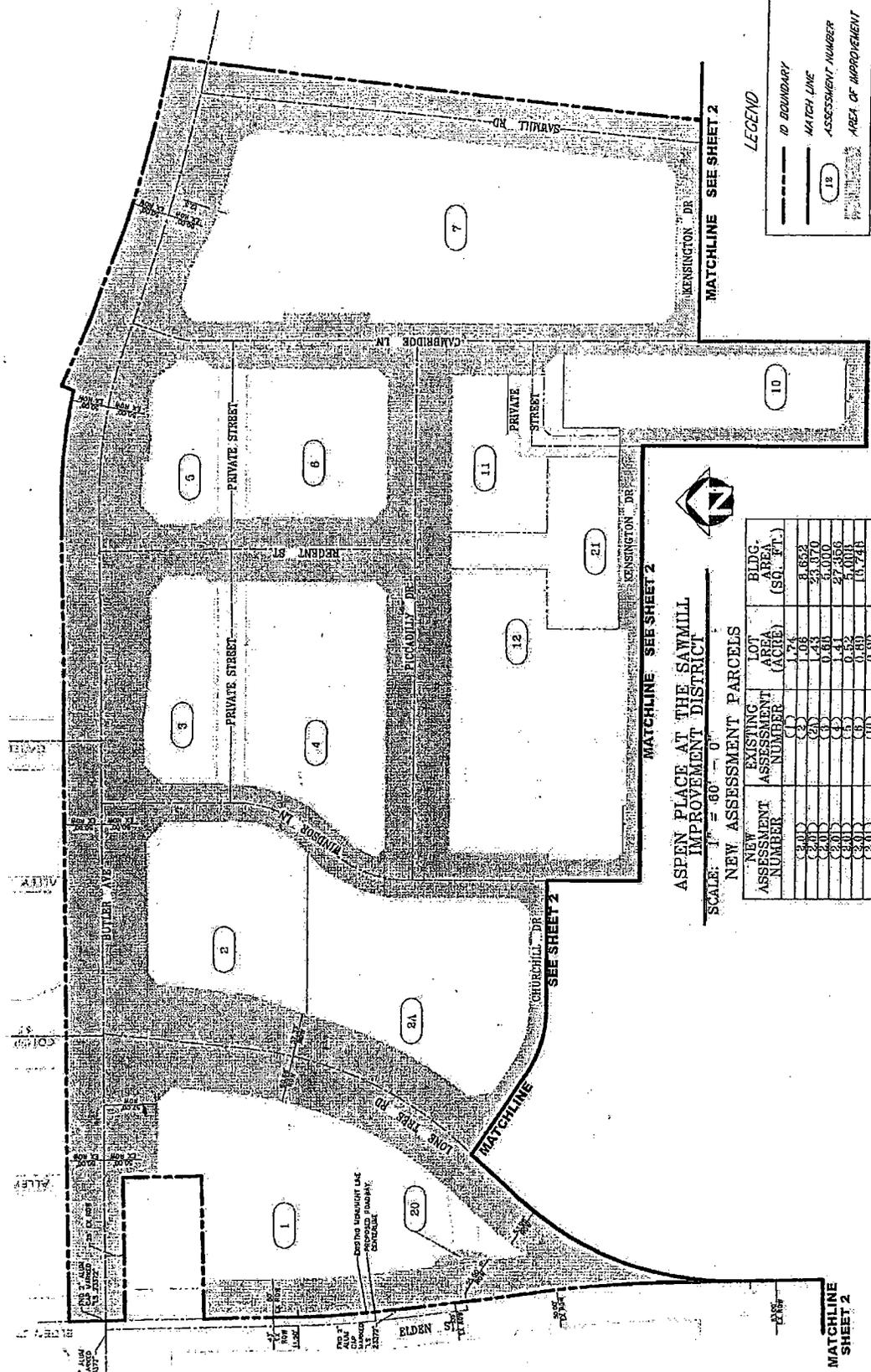
Aletha Anna Montague
Notary Public



List of Exhibits

Exhibit "A" - Description of New Assessment Parcels

Exhibit "B" - Description of Southern Parcels



NEW ASSESSMENT PARCELS

NEW ASSESSMENT NUMBER	EXISTING ASSESSMENT NUMBER	LOT AREA (ACRE)	BLDG. AREA (SQ. FT.)
2100	00	1.74	8,602
2101	00	1.08	5,170
2102	00	1.43	7,010
2103	00	0.40	2,010
2104	00	0.52	2,700
2105	00	0.82	4,000
2106	00	0.80	4,248
2107	00	0.90	4,500
2108	00	0.80	4,131
2109	00	2.06	10,600
2110	00	0.04	200
2111	00	0.04	200
2112	00	0.01	50
2113	00	0.01	50
2114	00	0.17	800
2115	00	0.49	2,500

LEGEND

- ID BOUNDARY
- - - MATCH LINE
- (12) ASSESSMENT NUMBER
- [Hatched Area] AREA OF IMPROVEMENT

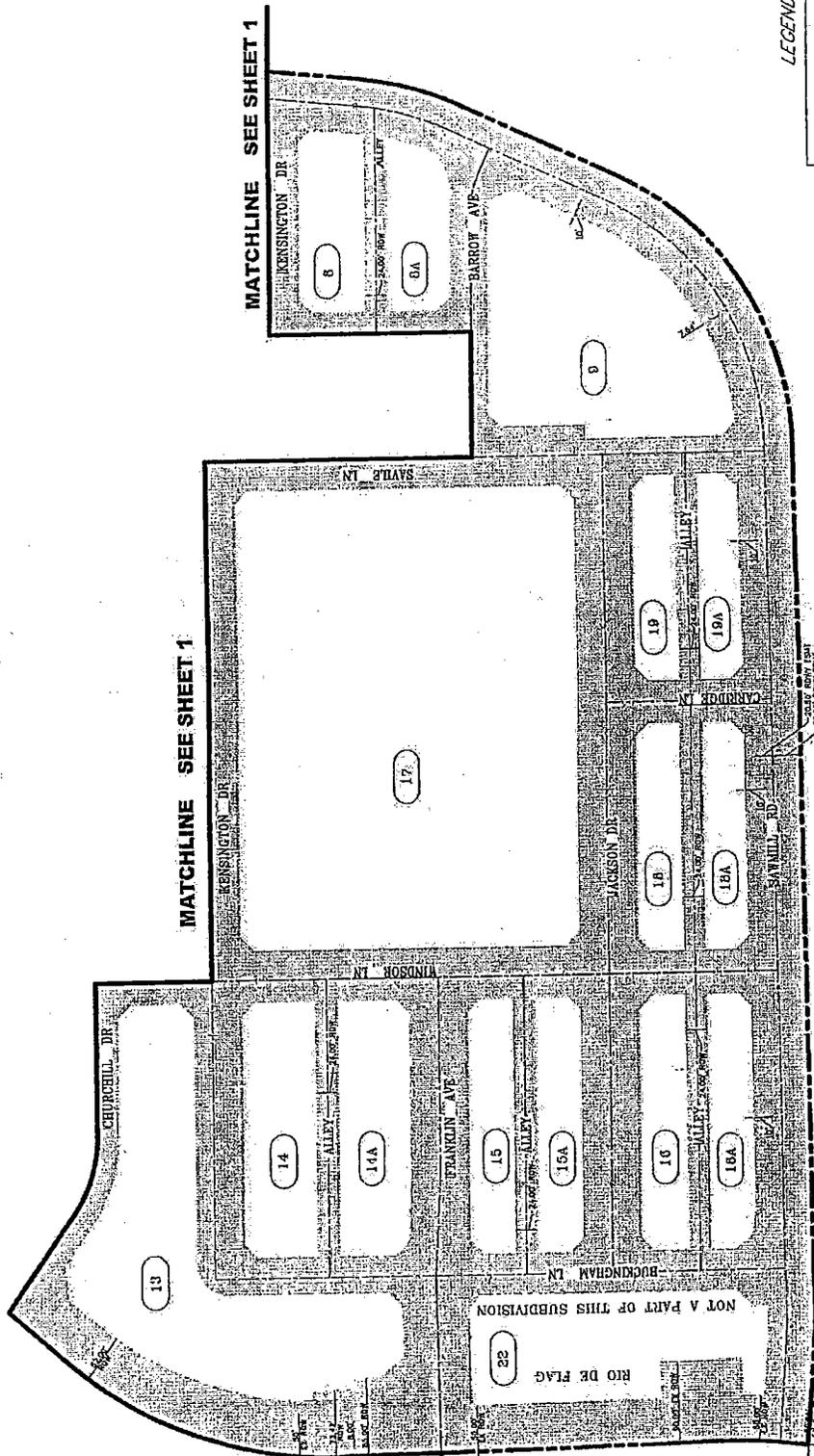
PREPARED BY: **PR**
 PROJECT MANAGER: **PR**
 200 S. MICHIGAN AVE. 104
 PHOENIX, ARIZONA 85004
 PHONE: 602-955-4111

AMENDED DISTRICT DIAGRAM
 ASPEN PLACE AT THE SAWMILL
 IMPROVEMENT DISTRICT
 FLAGSTAFF, ARIZONA

DESIGNED	JRP	12/23/07
DRAWN	JRP	12/23/07
CHECKED	JRP	12/23/07

SCALE: 1" = 60' - 0"
 SHEET 1 OF 2

EXHIBIT A



LEGEND

- ID BOUNDARY
- MATCH LINE
- () ASSESSMENT NUMBER
- [Hatched Area] AREA OF IMPROVEMENT



ASPEN PLACE AT THE SAWMILL
IMPROVEMENT DISTRICT
SCALE: 1" = 60' - 0"

"SOUTHERN PARCELS"

REVISED 12/11/07

PREPARED BY:
PR
PRUDENTIAL INSURANCE
200 S. JACOBSON BLVD. SUITE 104
PHOENIX, AZ 85024
PHONE: (602) 968-3311

AMENDED DISTRICT DIAGRAM
ASPEN PLACE AT THE SAWMILL
IMPROVEMENT DISTRICT
FLAGSTAFF, ARIZONA

BY	DATE	SCALE
DESIGNED JRP	12/25/07	1" = 60' - 0"
DRAWN TLF	12/25/07	
CHECKED JRP	12/25/07	

SHEET 2 OF 2

EXHIBIT B