

Pursuant to A.R.S. §38-431.02, notice is hereby given that the Board of Directors of the Villages at Vigneto Community Facilities District #3 will hold the following meeting which will be open to the public:

**NOTICE AND AGENDA
FOR MEETING
OF THE BOARD OF DIRECTORS OF
THE VILLAGES AT VIGNETO COMMUNITY FACILITIES DISTRICT #3**

Thursday, November 15, 2018

On or about 7:00 p.m. MST

at

**The City of Benson Community Center
705 W. Union Street
Benson, Arizona 85602**

Vicki L. Vivian, CMC, District Clerk

Agenda

The Board will consider and may act on any or all of the following items:

1. Call to order
2. Selection of Officers (Chair and Vice Chair) of the Board of Directors
3. Authorization to enter into the Development Agreement with the City of Benson
4. Discussion about a budget for Fiscal Year 2019-2020, and possible direction to the District Treasurer (currently, the City Finance Director) to prepare said budget in accordance
5. Confirmation that the general plan (part of the formation application) is on file with the Clerk, and action to ratify an intent to conduct District activities consistent therewith
6. Adjournment

POSTED this 13th day of November, 2018

Executive Sessions – Upon a vote of the majority of the Board of Directors, the Board may enter into Executive Sessions pursuant to Arizona Revised Statutes §38-431.03 (A)(3) to obtain legal advice on matters listed on the Agenda.

When recorded, please return to:

City of Benson
120 W. 6th Street
Benson, Arizona 85602
Attention: City Clerk

DEVELOPMENT
AND INTERGOVERNMENTAL AGREEMENT
FOR
THE VILLAGES AT VIGNETO COMMUNITY FACILITIES DISTRICT NUMBER 3
(BENSON, ARIZONA)
by and among
CITY OF BENSON, ARIZONA,
THE VILLAGES AT VIGNETO COMMUNITY FACILITIES DISTRICT NUMBER 3
(BENSON, ARIZONA)
and
EL DORADO BENSON LLC

THIS DISTRICT DEVELOPMENT, AND INTERGOVERNMENTAL AGREEMENT (VILLAGES AT VIGNETO COMMUNITY FACILITIES DISTRICT NUMBER 3) (“Agreement”), is entered into, effective as of _____, 2017 (the “Effective Date”) by and among the City of Benson, Arizona, a political subdivision of the State of Arizona (“City”), The Villages at Vigneto Community Facilities District Number 3, a municipal corporation and political subdivision of the State of Arizona (“District”), and El Dorado Benson LLC, an Arizona limited liability company (“EDB”) (each a “Party” and collectively the “Parties”).

1. Background and Purpose.

- 1.1. The City Council, on _____, 2017, (the “Formation Date”), pursuant to a petition signed by all of the landowners, formed the District under A.R.S. §§ 46-701 through 48-728 (the CFD Act”).
- 1.2. The District is comprised of the real property described and depicted in the attached **Exhibit A** (the “Property”).
- 1.3. The Board of Directors of the District (the “District Board”) intends to call an election to authorize the District Board to:
 - A. Issue general obligation bonds of the District (“GO Bonds”) as described in Section 8.1.
 - B. Annually levy, assess and collect an ad valorem property tax against all taxable property in the District at a rate sufficient to pay debt service on any issued and outstanding Bonds (the “Debt Service Tax”).
 - C. Annually levy, assess and collect an ad valorem property tax at a rate of up to \$0.30 per \$100.00 of net assessed value against all taxable property in the District to pay the operational expenses of the District (the “O/M Tax”).
- 1.4. This Agreement is a “development agreement” under the CFD Act and A.R.S. § 9-500.05 and, as between the District and the City, an “intergovernmental agreement” under A.R.S. §§ 11-951 through 11-955.
- 1.5. This Agreement, among other things, establishes EDB’s obligations to pay for certain costs of the District and provide certain indemnities to the District and the City.
- 1.6. This Agreement also sets forth some parameters and conditions pertaining to the use of the proceeds of any GO Bonds, assessment bonds as described in Section 9 (“Assessment Bonds”), and revenue bonds as described in Section 10 (“Revenue Bonds”) (collectively, “District Bonds”) for public infrastructure and public infrastructure purposes, as described in the CFD Act (each, a “Project”) and amounts which will be collected with respect to the O/M Tax in the future.
- 1.7. Further, the City and the District may contract for services and enter into agreements with one another for joint or cooperative action pursuant to A.R.S. § 11-951 through 11-954 and 41-2631 through 41-2634.

1.8. This Agreement is consistent with the City's General Plan, as applicable to the Property on the Effective Date.

2. District Expenses.

2.1. Definition. "District Expenses" means the costs associated with (i) the repair and maintenance of public infrastructure constructed or financed by the District and not conveyed to the City; (ii) staff; and (iii) supplies and services, including, but not limited to, independent financial advisors, attorneys, bond counsel, underwriters, and engineers. District Expenses may be incurred by the District or by the City on behalf of the District, in the sole discretion of the District Board or District Manager or his designees, as appropriate. District Expenses expressly include the annual or semi-annual premium costs and expenses incurred in obtaining a policy or policies of insurance in the form and coverage amounts determined by the District Manager exercising his sole and absolute discretion, providing for comprehensive liability coverage for, from and against the City and the District, its directors, officers, agents and employees against any losses, claims, damages or liabilities, directly or indirectly, arising from or related to activities or administration of the District, including but not limited to, any losses, claims, damages or liabilities related to the offer and sale of District Bonds.

2.2. Payment of District Expenses. The District will, to the extent of available funds, on an annual or other administratively convenient basis, pay for District Expenses from the proceeds of the O/M Tax and the District Shortfall payments made by EDB under paragraph 2.3.

2.3. Shortfalls. For each fiscal year, EDB will pay to the District any amount by which that year's District Expenses exceed the amount of O/M Tax receipts (a "District Shortfall"), provided that the District has levied or will levy for that entire fiscal year the O/M Tax at the maximum authorized rate.

A. EDB, or, if approved by the District Manager in his sole discretion, in lieu of EDB, a homeowners association or similar association (an "HOA"), will, on or before July 1 each year, pay the District the amount of the District Shortfall projected in the adopted District Budget for the fiscal year beginning on July 1, and add or subtract (as appropriate) any amount by which the actual shortfall in the fiscal year that ended June 30 of the previous calendar year exceeded or was less than the amount actually paid by EDB for that year.

B. The District may set off any overdue District Shortfall payments against funds otherwise owed by the District to EDB.

3. Indemnification.

3.1. Indemnified Parties. As used in this Section, "Indemnified Parties" means the City, the District, all City and District elected officials, officers, and employees, and any outside staff hired by the City who perform what otherwise would be an in-house municipal function with respect to the sale of District Bonds and District operations.

- 3.2. EDB Indemnity. Except as set forth in the next paragraph, EDB will indemnify, defend, and hold each Indemnified Party harmless for, from and against any and all losses, claims, damages or liabilities, joint or several, arising in whole or in part from any alleged action or inaction related to the formation, District elections, activities or administration of the District or the carrying out of the provisions of this Agreement. This includes, but is not limited to, anything related to (i) the levy or collection of the ad valorem property tax against all taxable property in the District at a rate sufficient to pay debt service on any issued and outstanding bonds; (ii) the offer or sale of bonds, including any claim asserting that an untrue statement or alleged untrue statement of a material fact set forth in any offering document relating to the issuance of bonds, or any amendment or supplement thereto, or that arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or which is necessary to make the statements therein (in light of the circumstances in which they were made) not misleading in any material respect; (iii) any alleged violation of state and federal laws that regulate the issuance and sale of securities; and (iv) any contract for public infrastructure or any approved, completed, or accepted public infrastructure, including claims of any contractor, vendor, subcontractor or supplier.
- 3.3. Exclusions. The above indemnity obligation is not applicable to any loss, claim, damage or liability to the extent that it:
- A. Is caused by the gross negligence or willful misconduct of the Indemnified Party seeking indemnification.
 - B. Is covered by insurance (excluding any self-insurance or coverage provided pursuant to any insurance contracts obtained by the City in the course of its normal business and not specifically for District purposes) that names the District as an insured or beneficiary. Notwithstanding the limitation of this paragraph, EDB will indemnify and defend the Indemnified Party to the extent that such coverage is insufficient to fully do so, but that obligation is secondary to and in excess of the primary insurance, risk retention or other indemnification options or remedies of the Indemnified Party.
 - C. Arises from an alleged or actual construction defect in any accepted Project that was not known to EDB and is discovered one (1) year or more following acceptance by the City or District.
 - D. Is caused by a breach of this Agreement by the District, City or other Indemnified Party.
 - E. Arises from any District administrative activity, tax or assessment levy, or offer or sale of Bonds, that is not related to any activity of EDB, to infrastructure that was not constructed by EDB, or to infrastructure that was the subject of an approved Report submitted by EDB.

3.4. Defense; Notification.

- A. An Indemnified Party will promptly notify EDB after receiving any written claim or threat of legal action against the Indemnified Party that is covered by the above indemnity obligation. The notification will be in writing and include a copy of the claim or threat. If an Indemnified Party fails to give the required notice, EDB's liability on its indemnity will be reduced by, and only by, the amount of any damages attributable to that failure.
- B. If a legal action is commenced against an Indemnified Party, EDB may, or if requested by the Indemnified Party will, participate in the action or defend the Indemnified Party with counsel satisfactory to the Indemnified Party and EDB. Except as provided below, EDB will not be liable for the litigation expenses, including attorney fees, if an Indemnified Party retains its own counsel after EDB notifies the Indemnified Party that EDB is electing to assume the party's defense.
- C. EDB will, however, pay litigation expenses, including attorney fees for counsel retained by an Indemnified Party, if EDB does not provide counsel when the Indemnified Party asks it to do so, or if an Indemnified Party reasonably concludes that there may be defenses available to it and/or other Indemnified Parties that are different from or additional to those available to EDB (in which case EDB shall not have the right to direct the defense of such action on behalf of such Indemnified Party).

3.5. District Indemnity. To the extent permitted by applicable law, the District will indemnify, defend and hold harmless the City and each individual Indemnified Party (the "District Indemnified Parties") for, from and against any and all liabilities, claims or demands for injury or death to persons or damage to property arising from, in connection with, or relating to the performance of this Agreement. The District is not, however, obligated to indemnify the District Indemnified Parties with respect to damages caused by the gross negligence or willful misconduct of the District Indemnified Parties. This indemnity obligation is secondary to EDB's obligations under Section 3.2 above.

4. Tax-Exempt Status of Bonds. No Party will knowingly take, or cause to be taken, any action that would cause interest on any Bond to be includable in gross income for federal income tax purposes of the Internal Revenue Code of 1986, as amended.

5. District Notification to City. The District agrees to undertake the following actions:

- 5.1. Provide reasonable access to the City of all financial information of the District upon request of the City;
- 5.2. Notify the City as to any vacancy on the District Board as soon as practicable, but no later than 7 business days after such vacancy occurs;
- 5.3. Provide the City with the names and contact information for the District Manager and the District Attorney and notify the City as to any changes to such personnel;

- 5.4. Notify the City as to any threatened or pending litigation with the potential for liability in excess of \$50,000;
- 5.5. Provide the City with at least 30 days' notice of intent to issue District Bonds, together with the District underwriter's preliminary offering prospectus, so that the City may determine compliance with the terms of this Agreement. The City must raise any concerns about whether the intended issuance of District Bonds complies with the terms of this Agreement within 21 days from receipt of the District's notice of intent.
6. Acquisition Projects. With regard to (i) the first Assessment Bonds issued and subsequent Assessment Bonds issued during a ten-year period after issuance of the first Assessment Bonds in the District and (ii) the first series of GO Bonds and subsequent GO Bonds issued during a ten-year period after issuance of the first GO Bonds in the District (collectively, the "Acquisition Period"), the District may use such Assessment Bonds and GO Bonds, as applicable, only to acquire Projects constructed by EDB and for which EDB intends to preserve the ability to finance with the proceeds of District Bonds. The District may only approve and construct Projects itself from the proceeds of GO Bonds and/or Assessment Bonds issued after expiration of the Acquisition Period.
7. Restriction on District Bond Sales. The District shall not issue Assessment Bonds or any series of the GO or Revenue Bonds in a "public sale" (as such term is used in the CFD Act) unless the Assessment Bonds, GO Bonds, or Revenue Bonds, as applicable, shall receive one of the four highest investment grade ratings by a nationally recognized bond rating agency. In the case of a sale other than a "public sale" (as such term is used in the CFD Act), the Assessment Bonds, GO Bonds, or Revenue Bonds shall be sold to entities, who the District Board determines, in its sole discretion, possess the necessary sophistication to evaluate the risks associated with an investment in the Assessment Bonds, GO Bonds or Revenue Bonds, as applicable, and with restrictions on subsequent transfer thereof under such terms as the District Board shall, in its sole discretion, approve. Further, the District and the City shall coordinate on all issues of Revenue Bonds to be repaid by utility revenues of either the City or the District.
8. GO Bonds.
- 8.1. The total aggregate principal amount of all of the series of the GO Bonds shall not exceed \$325,000,000 during the term of this Agreement, with an interest rate not to exceed 12%. The GO Bond voter authorization shall expire 75 years from the date of the voter authorization.
- 8.2. A series of the GO Bonds shall only be issued if the debt service therefor is reasonably projected to be amortized from amounts generated by a Debt Service Tax of not to exceed \$8.00 per one hundred dollars of assessed valuation of property within the boundaries of the District as indicated on the certified tax roll for the current tax year; provided, however, and notwithstanding the foregoing, GO Bonds may be issued if authorized by the District Board, in its sole discretion, where a tax rate greater than

\$8.00 is projected to be necessary to pay the combined debt service of a proposed and any outstanding GO Bonds if other sources of revenue or security acceptable to the District Board and the City is provided to secure the payment of debt service on the GO Bonds including, but not limited to, a guarantee by EDB or its affiliates, or related entities to provide payments of amounts in the event an \$8.00 Debt Service Tax is insufficient to pay debt service on the GO Bonds in any given year.

- 8.3. For purposes of the foregoing, a delinquency factor for tax collections equal to the greater of five percent (5%) or the historic, average, annual, percentage delinquency factor for the District calculated at or near the time of the issuance of the GO Bonds shall be assumed; all property in the District owned by EDB or any entity owned or controlled (as such term is used in the Securities Act) by EDB shall be assigned the last certified assessed value such property had when categorized as "vacant" for purposes of assessed valuation and the debt service for any outstanding series of the GO Bonds theretofore issued shall be taken into account in determining whether such tax rate will produce adequate debt service tax collections; provided, however, and without limiting the District's sole discretion pertaining to a decision whether to issue Bonds, the District and EDB shall use their best efforts to issue the first series of the GO Bonds no later than necessary to have the debt service tax rate of no more than \$8.00 appear on the first tax bill applicable to any single family residential dwelling unit to be located within the boundaries of the District to be owned by other than EDB or any entity owned or controlled (as such term is used in the Securities Act) by EDB or any homebuilder to whom EDB or any entity owned or controlled (as such term is used in the Securities Act) by EDB sells property within the boundaries of the District.
- 8.4. If requested in the Report and determined to be necessary in the sole discretion of the District Board, the "sale proceeds" of the sale of such series of GO Bonds shall include an amount sufficient to fund a reserve fund, which shall be a reserve to secure payment of debt service on that series of the GO Bonds, in an amount not to exceed the maximum amount permitted by the Internal Revenue Code of 1986, as amended, and the Treasury Regulations applicable thereto.
9. Assessment Bonds. The District Board shall, from time to time and in its sole discretion, take all such reasonable action necessary for the District to levy Assessments and to issue and sell, pursuant to the provisions of the CFD Act and this Agreement, Assessment Bonds. Developer shall submit data and other information pertaining to the expected average full cash value of the improved residential parcel, such as comparable sales prices, per foot construction costs, or independent estimates or appraisals.
 - 9.1. The assessments may be levied pursuant to the procedures prescribed by Section 48-721, Arizona Revised Statutes, as amended, as nearly as practicable and except as otherwise provided by the District Board, upon all of the assessed property in an amount equal to the Financeable Amount based on the benefits to be received by and as allocated to the assessed property and shall be collected pursuant to the procedures prescribed by Sections 48-599 and 48-600, Arizona Revised Statutes, as amended, as nearly as practicable. At the request of EDB, the District shall enter into an intergovernmental

agreement with the Cochise County Treasurer's Office to collect assessment payments as part of the regular Cochise County tax billing process.

- 9.2. EDB and any land owners shall accept the assessments which are in an amount not more than the Financeable Amount against the assessed property and have the assessments allocated and recorded against the assessed property; provided, however, that the District Board may modify the assessments after the assessments have been assessed to correspond to subsequent changes, modifications or subdividing of the assessed property but in no case shall the aggregate total of all assessments be reduced below a total necessary to provide for debt service for the corresponding Assessment Bonds.
- 9.3. In the event of nonpayment of any of the assessments, the procedures for collection thereof and sale of the applicable portion of the assessed property prescribed by Sections 48-601 through 48-607, Arizona Revised Statutes, as amended, shall apply, as nearly as practicable, except that neither the District nor the Municipality is required to purchase any of the assessed property at the sale if there is no other purchaser.
- 9.4. Assessments on single family residential lots may be prepaid at any time and the Assessment Bonds secured by such assessments shall provide for redemption on any interest payment date, without penalty or premium, unless the District approves different prepayment terms, such approval shall be deemed granted if different prepayment terms are set forth in approved bond proceedings. To prepay in whole or in part the applicable portion of any of the assessments, the following shall be paid in cash to the District: (I) the interest on such portion to the next date Assessment Bonds may be redeemed plus (II) the unpaid principal amount of such portion rounded up to the next highest multiple of \$1,000 plus (III) any premium due on such redemption date with respect to such portion plus (IV) any administrative, engineering or other fees charged by the District with respect thereto.
- 9.5. EDB and any land owners hereby acknowledge that lenders and other parties involved in financing future improvements on the assessed property (including mortgages for single family residences) may require that liens associated with the assessments (or applicable portions thereof) be paid and released prior to accepting a lien with respect to any such financing.
- 9.6. The mailing to the governing body of the Municipality of the Estimate and the Plans and Specifications in the form of the Report pursuant to Section 48-715, Arizona Revised Statutes, as amended, shall satisfy the filing requirements of Section 48-577, Arizona Revised Statutes, as amended.
- 9.7. At the time of a sale other than a "public sale" (as such term is used in the CFD Act), of the Assessment Bonds, an appraisal prepared by an MAI appraiser must show that the overall bulk, wholesale value of parcels comprising the assessed property with all of the Infrastructure described in the Report, and to be financed by the Assessment Bonds and/or for which performance bonds have been obtained, in place as of the date of valuation has a value to lien ratio at least three (3) times as much as the principal amount

of the Assessment Bonds assessed to such parcel. In the case of a “public sale” (as such term is used in the CFD Act) of Assessment Bonds, an appraisal prepared by an MAI appraiser must show that the overall bulk, wholesale value of parcels comprising the Assessed Property with all of the Infrastructure described in the Report, and to be financed by the Assessment Bonds and/or for which performance bonds have been obtained, in place as of the date of valuation has a value to lien ratio at least four (4) times as much as the principal amount of the assessment bonds assessed to such parcel.

- 9.8. If requested in the feasibility report submitted by EDB and determined to be necessary in the sole discretion of the District Board, the "sale proceeds" of the sale of the Assessment Bonds shall include an amount sufficient to fund a reserve fund, which shall be a reserve to secure payment of debt service on the Assessment Bonds, in an amount not to exceed the maximum amount permitted by the Internal Revenue Code of 1986, as amended, and the Treasury Regulations applicable thereto. Payment from such reserve shall not effect a reduction in the amount of the assessments, and any amount collected with respect to the assessments thereafter shall be deposited to such reserve to the extent the assessments are so paid therefrom.
- 9.9. For purposes of this Section 9, “Financeable Amount” means with regard to any Project, the total of amounts necessary to pay (1) the total of all construction costs paid pursuant to construction contracts for any such Project, plus any increases to such contract amount for approved change orders, less any approved change orders decreasing the contract amount (2) (i) all other amounts related to the cost of the Project (including the cost of plans and specifications) as the District Board deems reasonable, (ii) all relevant issuance costs related to any Assessment Bonds, (iii) capitalized interest for a period not in excess of that permitted by the Act and federal law and (iv), if requested by the Developer and approved by the District Board, in its sole discretion, an amount necessary to fund a debt service reserve fund in an amount not in excess of that permitted by the CFD Act and federal law as described elsewhere herein.
10. Revenue Bonds. At the request of EDB, the District Board will hold a hearing on the question of authorizing the District Board to issue Revenue Bonds to provide monies for any public infrastructure purposes consistent with the general plan. Such District Board approval will not unreasonably be withheld.
 - 10.1. The District Board may pledge to the payment of its Revenue Bonds any revenues of the District or revenues to be collected by the City in trust for the District and returned to the District. The District shall prescribe fees and charges, and shall revise them when necessary, to generate revenue sufficient, together with any monies from the sources described in Section 48-717, Arizona Revised Statutes, to pay when due the principal and interest of all Revenue Bonds for the payment of which revenue has pledged. The establishment or revision of rates, fees and charges will be identified and noticed concurrently with the annual budget process.
 - 10.2. Revenue Bonds will be supported by a minimum debt service coverage ratio of either (a) one hundred ten percent (110%) in 12 of the prior 18 months or (b) one hundred ten

percent (110%) of projected revenues (as confirmed by an external accountant or financial advisor approved by the District and the City) as compared to maximum annual debt service of the proposed Revenue Bonds, and/or other security as deemed appropriate by the District Board. To the extent that the revenues collected by the District in any fiscal year are in excess of that required to meet that fiscal year's outstanding Revenue Bond debt service obligations ("Excess Funds"), the Excess Funds will be paid to EDB to reimburse EDB for unreimbursed eligible public infrastructure costs that are the of the type for which the Revenue Bonds were issued. To the extent that EDB has been fully reimbursed for all applicable eligible public infrastructure costs, the excess funds will be utilized for other lawful purposes as outlined in the bond indenture.

11. District Development Agreement. The District and EDB shall enter into an additional development agreement that addresses, among other things, the public procurement process for Projects, the submittal of feasibility reports by EDB and the processing and consideration thereof by the District, conveyance of Projects to the District and subsequent dedication of such Projects to the City, and any other matters determined by the District Board.
12. Remedies. EDB agrees that the restrictions contained in this agreement are material terms of the City's contemporaneous adoption of a Resolution forming the special taxing district; should the District sell bonds that differ from those contemplated by the parties at the time EDB applied to form the special taxing district at issue or should the District otherwise not require EDB to comply with the terms of this agreement, the City would suffer irreparable harm. EDB further agrees that an award of damages is insufficient to compensate the City for any material non-compliance with the requirements of this agreement. Should the District fail to enforce the terms of this Development Agreement or fail to comply with its obligations to the City hereunder, the City therefore shall have the right to pursue (a) injunctive relief in order to prevent any violation of the requirements of this agreement regarding District operations or the bonds the District may sell or (b) such other relief including, but not limited to, a writ of mandamus to enforce the District's obligations. Nothing in this Agreement shall prevent the City from seeking or obtaining in a court of competent jurisdiction, without the necessity of posting bond therefore any injunction, a provisional remedy or other emergency relief to require compliance with the requirements of this agreement, including any restrictions it contains regarding the types of bonds the District may sell or the value to debt ratios required herein.
13. Successors; Assignments.
 - 13.1. Binding Agreement. Each Party's rights and obligations under this Agreement will inure to the benefit of, and be binding upon, its legal representatives, successors and assigns.
 - 13.2. Right to Assign. No Party may assign its rights or obligations under this Agreement to another without the prior written consent of the other Parties, who may not unreasonably withhold that consent. Notwithstanding the foregoing, EDB may assign its rights and obligations under this Agreement to an affiliated entity without the prior

written consent of the City and the District, but that assignment will not operate as a release of EDB unless the District consents to such a release in writing.

13.3. Sale of Individual Lots. Unless prohibited by law, this Agreement will automatically terminate as to, and will not constitute a title condition or encumbrance on, any individual lot upon conveyance of that lot to an individual purchaser (not as part of a bulk sale). In this Section, “lot” means any lot upon which a home or commercial building has been completely constructed and with respect to which a certificate of occupancy has been issued, that is shown on a recorded subdivision plat that has been approved by the City. Any title insurer may rely on this Section when issuing any commitment or policy of title insurance to the purchaser of any individual lot.

14. Cooperative Purchasing Authorized.

14.1. This Agreement shall cover the procurement of all materials and services which, in the opinion of the City Procurement Director and the District Procurement Director, can be obtained by cooperative procurement and will result in an opportunity for savings to the City and/or the District in the cost of the item to be procured and/or in the procurement effort expended.

14.2. Providing that each participant is identified in a solicitation intended for cooperative use, the City and District may acquire materials and services under such contract upon the determination of their respective procurement directors that the contract was awarded following procurement through competitive procedures reasonably similar to those set forth in the entities’ respective procurement codes.

14.3. Should the respective procurement directors agree to engage in cooperative purchasing, the directors may develop lists of materials and/or services which will be put out to bid by each entity.

14.4. In the discretion of their respective procurement directors, the City and the District may engage in joint evaluation of bids or may mutually agree to accept the independent evaluation of the other.

14.5. City and District shall each determine in its own interests whether to award a bid on any materials or services, and in the event either decides to award a bid it shall award its own bid. Each entity shall be responsible for issuing its own job orders or purchase orders for materials and services against joint bids or contracts.

14.6. This Agreement is not intended to require that any vendor provide services to either entity unless such a term is stated in the solicitation.

14.7. Neither the City nor the District is under an obligation to perform services for one another except as may be provided in the Act or in a separate agreement.

14.8. Each entity acknowledges that it is solely responsible for its own budget and any budgetary responsibility for ordering materials or services against joint bids or contracts,

including any expenses arising from such orders. This Agreement does not authorize the transfer of any funds between the City and District.

- 14.9. The requirements of this Section 14 shall be effective from the date this Agreement is effective through January 15, 2022. Either entity's procurement director may terminate the rights of the other entity to engage in cooperative purchasing by providing the Clerk of the other entity with written notice of termination at any time. Termination will only be effective, however, against future solicitations for materials and services, and either party may continue to order against existing joint bids or contracts in accordance with the terms of its own award and contract with the vendor.
- 14.10. EDB acknowledges that it has no rights under the provisions of this Section. The terms of this section are not intended to and do not supplant State or local procurement requirements. Neither shall the provisions of this Section be construed as to give rise to any claim or claims by persons or entities other than those expressly identified in this Section.
15. Entire Agreement. This Agreement sets forth the entire understanding of the parties as to the matters addressed, as of the date this Agreement is executed. It is intended to reflect the mutual intent of the Parties, and will not be strictly construed against any Party.
16. Amendment. This Agreement cannot be altered or otherwise amended except by an instrument in writing signed by each of the Parties, except that an amendment signed by only EDB and the District will be effective as between them EDB and the District, provided it does not amend any right, benefit or obligation of the City.
17. Applicable Law. This Agreement will be governed by and interpreted in accordance with the laws of the State of Arizona.
18. Waiver. The waiver by any Party hereto of any right granted to it under this Agreement shall not be deemed to be a waiver of any other right granted in this Agreement nor shall the same be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived under or by this Agreement.
19. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original, but all of which taken together shall constitute one of the same instrument.
20. Conflict of Interest. The City and the District each have the right, within three years after its execution, cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City or the District, is, at any time during that three-year period, an employee or agent of EDB in any capacity or a consultant to EDB with respect to the subject matter of this Agreement. In addition, the City and District may each recoup from EDB any fee or commission paid or due any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of that entity. EDB has not taken and will not take any action that would give rise to a right of cancellation under this paragraph.

21. Term. Unless terminated earlier by agreement of the Parties, this Agreement will automatically terminate on December 31, 2093, or on such earlier date as all authorized Bonds have been issued and then paid in full, or such later date as any Bonds outstanding as of December 31, 2093, are paid in full.

22. Notices.

22.1. All notices, certificates or other communications under this Agreement will be sufficiently given and will be deemed to have been received 48 hours after deposit in the United States mail in registered or certified form with postage fully prepaid addressed as follows:

If to City: City of Benson
 120 W. 6th Street
 Benson, Arizona 85602
 Attention: City Manager
 Facsimile: (520) 586-3375

With a copy to: Benson City Manager
 120 W. 6th Street
 Benson, Arizona 85602
 Attention: City Manager

If to District:

With a copy to:

If to EDB: El Dorado Benson LLC
 8501 N. Scottsdale Rd., Suite 120
 Scottsdale, Arizona 85253
 Facsimile: (602) 955-3543

With a copy to: Dana Stagg Belknap, Esq.
 Gallagher & Kennedy
 2575 East Camelback Road
 Phoenix, Arizona 85015
 (602) 530-8500

22.2. Any Party, by notice given in compliance with this Section, may designate different addresses to which subsequent notices, certificates or other communications must be sent.

23. Severability. If a court finds that a provision of this Agreement is invalid or unenforceable, that will not invalidate or render unenforceable any other provision of the Agreement.

24. Other Obligations. This Agreement does not relieve any Party of any obligation or responsibility imposed upon it by law, and the provisions of this Agreement shall not affect the Parties' rights and obligations contained in The Villages at Vigneto Development Agreement, recorded on June 2, 2016 in the Records of the Cochise County Recorder as Document Number 2016-09416.

24.1. This Development Agreement shall not become effective until the Mayor & Council adopt a Resolution forming The Villages at Vigneto Community Facilities District Number 3.

25. Recordation. No later than ten (10) days after this Agreement is executed and delivered by each of the Parties, EDB will on behalf of the City and the District record a copy of this Agreement with the County Recorder of Cochise County, Arizona.

26. Force Majeure. No Party will be in default due to a failure to observe or perform any restriction or obligation under this Agreement if the failure is due to *Force Majeure*, so long as the Party uses its best efforts to remedy with all reasonable dispatch the event or condition causing such inability and such event or condition can be cured within a reasonable amount of time. "*Force Majeure*" means any condition or event not within the control of a party obligated to perform hereunder, including, without limitation, "acts of God"; strikes, lock-outs, or other disturbances of employer/employee relations; acts of public enemies; orders or restraints of any kind of the government of the United States or any state thereof or any of their departments, agencies, or officials, or of any civil or military authority; insurrection; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; subsidence; fires; hurricanes; storms; droughts; floods; arrests; restraints of government and of people; explosion; and partial or entire failure of utilities. Failure of a Party to settle strikes, lock-outs and other disturbances of employer/employee relations or to settle legal or administrative proceedings by acceding to the demands of an opposing party, in either case when such course is in the judgment of the Party unfavorable to the Party, does not constitute failure to use its best efforts to remedy such a condition or event.

27. Legislative Acts. Notwithstanding any provision of this Agreement to the contrary, neither the District nor the City is required to do anything under this Agreement that requires a formal act of that entity's governing board until such formal act is taken. This Agreement in no way acquiesces to or obligates the City or the District Board to perform a legislative act.

28. Default.

28.1. Failure or unreasonable delay by any Party to perform or otherwise act in accordance with any term or provision of this Agreement for a period of thirty (30) days after written notice from any other Party of the failure or delay constitutes a default under this Agreement; provided, however, that if the failure or delay is such that more than thirty (30) days would reasonably be required to perform such action, then the Party will have such additional time as is reasonably necessary to perform or comply so long as the Party commences performance or compliance within the 30-day period and diligently proceeds to complete such performance or fulfill such obligation.

28.2. The default notice must specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible. In the event the default is not timely cured as provided above, any non-defaulting Party may exercise any legal rights or remedies for the default.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGES FOLLOW.]

IN WITNESS WHEREOF, the officers of the City and of the District have duly affixed their signatures and attestations, and the officers of EDB their signature, all as of the day and year first written above.

City

By: _____
Mayor

Date: _____

ATTEST:

City Clerk

Pursuant to A.R.S. Section 11-952(D), this Agreement has been reviewed by the undersigned attorney for the City who has determined that this Agreement is in proper form and is within the powers and authority granted pursuant to the laws of this State to the City.

DISTRICT

By: _____
Chair of the District Board of Directors

STATE OF ARIZONA)
) ss.
COUNTY OF COCHISE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____ as Chair of the Board of Directors of The Villages at Vigneto Community Facilities District Number 3, an Arizona community facilities district.

Notary Public

(Affix Seal Here)

ATTEST:

District Clerk

Pursuant to A.R.S. Section 11-952(D), this Agreement has been reviewed by the undersigned attorney for the District, who has determined that this Agreement is in proper form and is within the powers and authority granted pursuant to the laws of this State to the District.

EDB

El Dorado Benson LLC, an Arizona limited liability company

By: El Dorado Holdings, Inc.,
an Arizona corporation

Its: Administrative Agent

By _____

Its _____

Date: _____

STATE OF ARIZONA)
)ss.
COUNTY OF COCHISE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____, as Administrative Agent of El Dorado Holdings, Inc., a corporation under the laws of the State of Arizona, on behalf of El Dorado Benson LLC, an Arizona limited liability company.

My commission expires:

Notary Public

EXHIBIT A

The Property

DESCRIPTION OF COMMUNITY FACILITIES DISTRICT 3 (CFD-3)

Those portions of Sections 7, 18, and 19, Township 18 South, Range 20 East, Gila and Salt River Meridian and Sections 12, 13 and 24, Township 18 South, Range 19 East, Gila and Salt River Meridian, all in Cochise County, Arizona described as follows:

BEGINNING at the Northwest corner of said Section 7;

Thence South 00 degrees 04 minutes 33 seconds West, 2643.09 feet along the West line of said Section 7 to the Quarter corner common to said Sections 7 and 12;

Thence South 89 degrees 51 minutes 22 seconds West, 1320.01 feet along the East-West Mid-section line of said Section 12;

Thence South 00 degrees 05 minutes 31 seconds West, 233.00 feet;

Thence South 79 degrees 51 minutes 15 seconds West, 1341.69 feet to the intersection with the North-South Mid-section line of said Section 12;

Thence South 00 degrees 06 minutes 47 seconds West, 2176.57 feet along the said North-South Mid-section line of Section 12 to the Quarter corner common to said Section 12 and 13;

Thence South 00 degrees 11 minutes 06 seconds West, 1102.99 feet along the North-South Mid-section line of said Section 13;

Thence North 89 degrees 48 minutes 01 seconds East, 693.77 feet;

Thence South 00 degrees 15 minutes 22 seconds West, 631.48 feet;

Thence South 00 degrees 11 minutes 06 seconds West, 911.84 feet to the East-West Mid-section line of said Section 13;

Thence South 89 degrees 55 minutes 06 seconds West, 692.97 feet along the said East-West Mid-section line of Section 13 to the Center Quarter thereof;

Thence South 00 degrees 12 minutes 23 seconds West, 2645.80 feet along the North-South Mid-section line of said Section 13 to the Quarter corner common to said Sections 13 and 24;

Thence South 00 degrees 00 minutes 47 seconds West, 2648.04 feet along the North-South Mid-section line of said Section 24 to the Center Quarter corner thereof;

Thence North 89 degrees 56 minutes 35 seconds East, 2638.53 feet along the East-West Mid-section line of said Section 24 to the Quarter corner common to said Sections 19 and 24;

Thence South 89 degrees 54 minutes 56 seconds East, 2409.56 feet along the East-West Mid-section line of said Section 19 to a point on the West right-of-way of State Route 90;

Continue along the said West right-of-way of State Route 90 the following courses;

Thence North 00 degrees 12 minutes 05 seconds East, 2654.03 feet to the intersection with the line common to said Sections 18 and 19;

Thence North 00 degrees 02 minutes 48 seconds East, 2641.27 feet to the intersection with the Mid-section line of said Section 18;

Thence North 00 degrees 02 minutes 48 seconds East, 2645.86 feet to the intersection with the line common to said Sections 18 and 7;

Thence North 00 degrees 02 minutes 13 seconds East, 2645.71 feet to the intersection with the Mid-section line of said Section 7;

Thence North 00 degrees 02 minutes 13 seconds East, 2652.61 feet to the intersection with the North line of said Section 7;

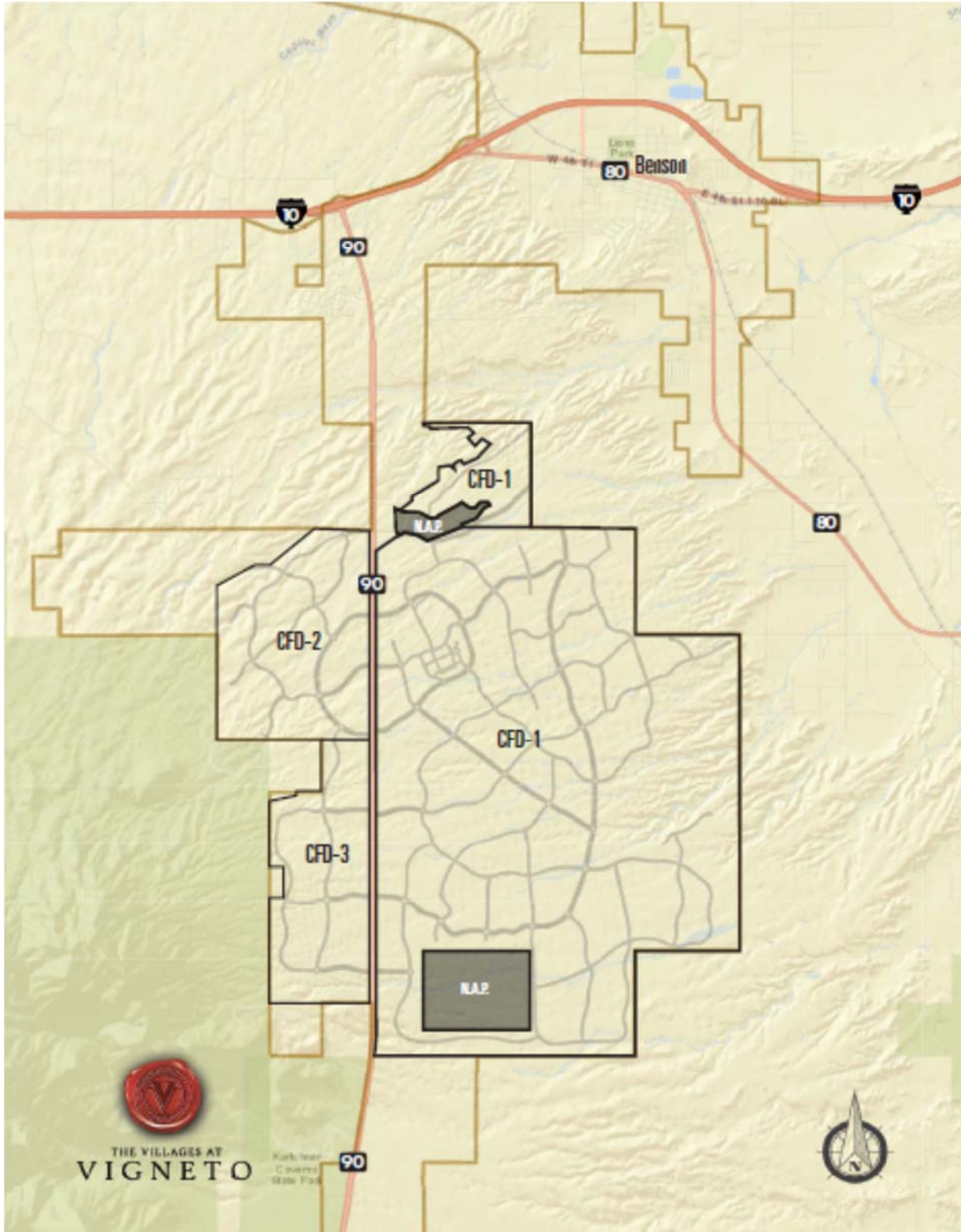
Thence departing said right-of-way South 89 degrees 49 minutes 12 seconds West, 2397.60 feet along said North line to the POINT OF BEGINNING.

Total Area for CFD-3 is 58,254,220 square feet (1,337.333 acres) more or less.



EXPIRES 3/31/2018

**The Villages at Vigneto
Community Facilities Districts
No. 1, No. 2 and No. 3
CFD Boundary Map**



2.3 DESCRIPTION OF PUBLIC INFRASTRUCTURE

A general description of the types of public infrastructure to be financed by the District, including the estimated construction or acquisition costs of the public infrastructure, the annual operation and maintenance costs of public infrastructure such as traffic control, water, or wastewater and the governmental approvals that will be required for the public infrastructure improvements to be constructed and operated.

PUBLIC INFRASTRUCTURE

The purpose of the Districts is to finance, construct, and/or acquire Public Infrastructure pursuant to the terms of the Act and as contemplated by the Agreement. The Agreement describes the Applicant's commitment to traffic control, water, wastewater and other Public Improvements necessary or desirable for the Project and the City's procedures for government approvals for these Public Improvements.

The estimated costs of construction for the Public Infrastructure and Public Infrastructure Purposes (as defined in the Act) are in 2017 current dollars (uninflated) and are expected to increase over time with inflation. A description of and cost estimates for construction of each Public Infrastructure Project are based on the best information available at the time of Application is shown below and are attached as **Exhibit F**.

**The Villages at Vigneto
Community Facilities Districts
No. 1, No. 2 and No. 3
Estimated Construction Costs for Private and Public Infrastructure
and Private and Public Infrastructure Purposes**

Description	CFD 1	CFD 2	CFD 3	Total Costs
Infrastructure	\$ 675,875,489	\$ 115,455,677	\$ 92,166,205	\$ 883,497,372
Lot Costs	\$ 534,585,127	\$ 91,319,908	\$ 72,899,052	\$ 698,804,087
Amenities	\$ 143,800,124	\$ 24,564,496	\$ 19,609,398	\$ 187,974,019
Total	\$ 1,354,260,740	\$ 231,340,081	\$ 184,674,656	\$ 1,770,275,477

Source: Applicant

Note: All costs are in 2017 dollars and are likely to increase over time due to inflation.

The Project's construction costs are anticipated to be financed through GO Bonds, SA Bonds, Revenue Bonds, and Developer Contributions as illustrated on the following page.

**The Villages at Vigneto
Community Facilities Districts
No. 1, No. 2 and No. 3
Anticipated Public Infrastructure Financing Sources**

Description	Total Costs	Sources of Funding			Developer Contributions
		GO Bonds	SA Bonds	Revenue Bonds	
CFD 1	\$ 1,354,260,740	\$ 256,584,843	\$ 348,413,704	\$ 141,534,399	\$ 607,727,794
CFD 2	\$ 231,340,081	\$ 43,830,820	\$ 59,517,383	\$ 24,177,456	\$ 103,814,423
CFD 3	\$ 184,674,656	\$ 34,989,361	\$ 47,511,664	\$ 19,300,431	\$ 82,873,200
Total	\$ 1,770,275,477	\$ 335,405,024	\$ 455,442,750	\$ 185,012,287	\$ 794,415,417

Source: Applicant

Note: Costs, Bond amounts, and Developer Contributions are shown in 2017 dollars and are likely to increase over time due to inflation.

The Public Infrastructure financed through the CFDs will comply with all public procurement requirements applicable to the construction and/or acquisition of eligible Public Infrastructure in accordance with the State of Arizona's Public Procurement Code ARS Title 34.

Anticipated utility and service providers for the Project set forth as follows:

**The Villages at Vigneto
Community Facilities Districts
No. 1, No. 2 and No. 3
Utility Providers**

Utility Description	Provider
Water Service	City of Benson
Sewer Service	City of Benson
Electrical Service	Sulphur Springs Valley Electric Co-Op
Gas Service	Southwest Gas
Cable Service	To Be Determined
Telephone Service	To Be Determined
Police/Fire Service	City of Benson
Trash Service	TBD

Source: Applicant

The Public Infrastructure constructed or acquired by the Districts shall be dedicated to the City or such other political subdivision as shall be determined by the parties in accordance with the terms of the Agreement, City ordinances or State law as applicable. Upon acceptance of the Public Infrastructure by the City or other public or quasi-public governmental entity or agency, the Districts and/or the Applicant shall have no further obligation to repair and/or maintain such Public

Infrastructure unless expressly agreed to herein or by separate agreement by the District or Applicant.

Obligations for maintenance of Public Improvements which do remain the responsibility of the Districts described in the paragraph above, if any, may be financed in accordance with Section 48-723 of the Act and/or as provided in Section 2.6 below.

Operational costs of the recreational amenities may be funded through a combination of amenity fees, HOA dues and daily public usage fees as appropriate. Unless otherwise agreed, the City will have no continuing obligation related to on-going operations of the recreational facilities.

2.4 INFRASTRUCTURE AND DEVELOPMENT SCHEDULE

A proposed project schedule for commencement and completion of (a) the public infrastructure and (b) the private development.

DEVELOPMENT SCHEDULE

The Applicant anticipates that construction of Public Infrastructure will begin in the fourth quarter of 2017 and continue over a twenty (20) year period subject to market conditions.

Estimated annual absorption information relating to the Project and the respective District(s) is set forth in **Exhibit G**.

2.5 FINANCING PLAN

A financing plan for the public infrastructure, including both capital and operating/maintenance costs.

The Finance Plan for the Districts is more particularly described in Section 2.6 below. The Districts will issue GO Bonds, SA Bonds and Revenue Bonds at the Districts' discretion. Bonds will be issued to construct and/or acquire Public Infrastructure within or outside the District boundaries that primarily benefits property contained within the specific CFD's boundaries (e.g. arterial roadways, storm water, recreational facilities, public safety, etc.). SA Bonds and Revenue Bonds may be issued to construct and/or acquire Public Infrastructure inside or outside the District boundaries that benefits parcels of land within the respective CFD's boundaries (collector roadways, water, sewer, in-tract lot improvements, etc.).

Operating and maintenance costs for the Public Infrastructure are addressed in Section 2.6 below.

2.6 FINANCING STUDY

A pro forma financing plan for the entire project (or such phases of the project that are expected to be constructed within the next five (5) years of submission of the Application) covering both the public infrastructure and the private development. The study may be conducted by the Developer and should include:

Exhibit F
The Villages at Vigneto
Community Facilities District
No. 1, No. 2 and No. 3
Estimated Public Infrastructure Costs

Description	CFD 1	CFD 2	CFD 3	Total Costs
Infrastructure	\$ 675,875,489	\$ 115,455,677	\$ 92,166,205	\$ 883,497,372
Lot Costs	\$ 534,585,127	\$ 91,319,908	\$ 72,899,052	\$ 698,804,087
Amenities	\$ 143,800,124	\$ 24,564,496	\$ 19,609,398	\$ 187,974,019
Total	\$ 1,354,260,740	\$ 231,340,081	\$ 184,674,656	\$ 1,770,275,477