

RESOLUTION NO. 11-971

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF CHINO VALLEY, YAVAPAI COUNTY, ARIZONA, APPROVING THE RETAIL DEVELOPMENT TAX INCENTIVE AGREEMENT WITH JACK TULS, JR. PURSUANT TO A.R.S. §9-500.11 SUBJECT TO CONDITIONS

WHEREAS, Jack Tuls, Jr. intends to develop commercial projects on the real property located in the Town of Chino Valley; and

WHEREAS, the Mayor and Common Council believe that development of the property for commercial projects will assist in the creation or retention of jobs or will otherwise improve or enhance the economic welfare of the Town's inhabitants; and

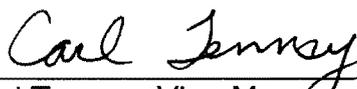
WHEREAS, all the requirements of A.R.S. §9-500.11 have been satisfied, except for receipt of the verification required by A.R.S. §9-500.11.H;

WHEREAS, the Town and Jack Tuls, Jr. have agreed to the terms of the Retail Development Tax Incentive Agreement attached hereto as Exhibit 1 (the "Agreement");

NOW THEREFORE, BE IT RESOLVED by the Common Council of the Town of Chino Valley, Arizona as follows:

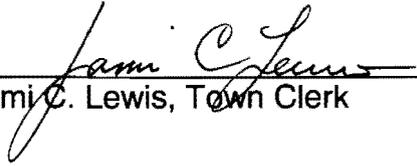
1. The Retail Development Tax Incentive Agreement with Jack Tuls, Jr., attached to this Resolution as Exhibit 1, is hereby approved as to form and content, subject to the receipt of the verification required by A.R.S. § 9-500.11.H.
2. The Town shall enter into and the Mayor is authorized to execute the Agreement on behalf of the Town conditioned upon receipt of the verification required by A.R.S. §9-500.11.H.

PASSED AND ADOPTED by the Mayor and Common Council of the Town of Chino Valley, Arizona this 27th day of September, 2011.



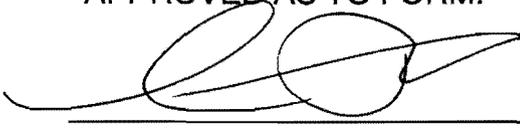
Carl Tenney, Vice-Mayor

ATTEST:



Jami C. Lewis, Town Clerk

APPROVED AS TO FORM:



Musgrove Drutz & Kack, P.C.
Town Attorney

RETAIL DEVELOPMENT TAX INCENTIVE AGREEMENT
&
Wastewater and Water Agreement

THIS RETAIL DEVELOPMENT TAX INCENTIVE AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2011, between the TOWN OF CHINO VALLEY, a municipal corporation (the “Town”), and Jack Tuls, Jr., a single man d/b/a JT Properties (“Developer”). The Town and Developer are hereinafter referred to collectively as the “Parties.” This Agreement is entered into in accordance with the powers set forth in A.R.S. § 9-500.11.

RECITALS

WHEREAS, the Town is a municipal corporation organized and existing under the laws of the State of Arizona, with the jurisdiction, and authority to improve public infrastructure and assess development impact fees in accordance with the Arizona Development Fee Act (ARS § 9-463.05) and to enter into Agreements to reimburse Developers for upsizing or extending utilities pursuant to Chapter 155 of the Town Code; and

WHEREAS, Developer owns certain real property located at State Route 89 & Road 3 ½ North within the Town of Chino Valley, Arizona (AP Nos. 306-14-008H, 306-14-008K and 306-14-008M) that consists of approximately 60 acres as legally described and depicted on Exhibit A (the “Subject Property” or “Subject Properties”) attached hereto and incorporated by this reference; and

WHEREAS, A.R.S. § 9-500.11 authorizes the Town to enter into a retail development tax incentive agreement with a person who is engaged in or planning to engage in retail development activities within the Town; and

WHEREAS, Developer is engaged in retail development activities on the Subject Property, consistent with the Town’s 2003 General Plan and, as regards Parcel 306-14-008K which was rezoned by Town Ordinance 10-730, for development of a KOA or similar campground facility.

WHEREAS, as required by A.R.S. § 9-500.11, prior to entering into this Agreement, the Town Council expressly found that: (i) a Notice of Intent to enter into this Agreement was adopted by the Town Council on September 13, 2011, a copy of which is attached hereto as Exhibit B and incorporated herein by this reference; (ii) the tax incentive to the Developer contemplated by this Agreement is anticipated to raise more revenue than the amount of the incentive during the duration of this Agreement; (iii) that such finding has been verified by an independent third party, such verification being attached hereto as Exhibit C and incorporated herein by this reference; (iv) that Developer did not finance such independent third party verification or have input into the selection of the independent third party verifying the findings; and (v) that in the absence of the tax incentive offered to Developer, neither Developer nor a similar retail business facility would locate in the Town in the same time, place or manner as

contemplated by the Project, which includes but is not limited to the following, Commercial Retail, Overnight Stay RV Park with or without cabins, located on all or part of the approximately 60 acre master parcel.

WHEREAS, the Parties further acknowledge that, notwithstanding the foregoing Recitals related to reimbursement for infrastructure construction costs, participation by the Town in an infrastructure construction cost reimbursement agreement meets the Town's economic needs and the Town's statutory obligations pursuant to A.R.S. § 9-500.11 only upon the operation of certain businesses on the Subject Properties that are Qualified Parties as defined in Section 4.1.

WHEREAS, the Parties acknowledge that, if Developer attracts businesses that are Qualified Parties that conduct operations on the Subject Property, the Project will qualify as a business expansion economic development project; that the Project will assist in the generation of sales tax revenues, the creation of jobs, and will otherwise improve and enhance the economic welfare of the Town's residents by expanding employment and retail uses in the Town, increasing access to goods and services, increasing the Town's assessed property valuation, stimulating further economic development in the Town, and constructing public infrastructure improvements. The business development and expansion incentives agreed to by the Town in this Agreement will, upon the conduct of operations on the Subject Property by Qualified Parties, in fact, serve legitimate economic development purposes as authorized by A.R.S. § 9-500.11. The significant planning and economic benefits to the Town include: (I) encouraging investment in and commitment to comprehensive planning, which will result in efficient utilization of municipal and other public resources; (ii) requiring development of the Subject Properties to be consistent with the Town's General Plan; (iii) providing for the planning, design, engineering, construction, acquisition, and/or installation of public infrastructure in order to support anticipated development of the Subject Properties and the larger land area adjacent to and around the Subject Properties; (iv) increasing tax and other revenues to the Town based on improvements to be constructed on the Subject Properties; and (v) creating employment through development of the Subject Property consistent with this Agreement.

WHEREAS, the Town acknowledges that the public services and public infrastructure improvements to be provided by Developer, while necessary to serve development within the Subject Properties, also are needed in certain instances to facilitate and support the ultimate development of a larger land area that includes the Subject Properties. As such, certain portions of the public infrastructure to be provided by Developer are expected to be over-sized/larger than Developer needs for the subject Properties. Developer may provide public infrastructure as part of the early phases of development of the Subject Properties, prior to the time when such public services and public infrastructure improvements would otherwise be required to serve completed phases of development within the Subject Property and, therefore, prior to the time Developer might otherwise be required to provide or contribute to the cost of same.

WHEREAS, the Town and Developer represent that to their knowledge, information and belief, this Agreement is not inconsistent with or prohibited by any statute, rules or other law in violation of any Town ordinances, resolutions and/or covenants, including, without limitation, all covenants in any revenue bond issued by the Town. Further, Town and Developer represent they believe they can fulfill their obligations under this Agreement.

WHEREAS, the Parties desire to describe and provide for the construction of the Utilities Project (as defined below).

WHEREAS, the Parties desire to provide for the allocation, payment and reimbursement of the Utilities Project Costs.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. DEFINITIONS

1.1 The term “Administrative Fee” shall mean the Town’s retention of five percent (5%) of the Semiannual Payments as defined in Section 4.2.

1.2 The term “Applicable Laws” shall mean the federal, state, county and local laws, statutory and common law, ordinances, rules, regulations, permit requirements, development fees (in accordance with A.R.S. § 9-463.05), and other requirements and official policies of the Town which apply to the development of all or any part of the Utilities Project.

1.3 The term “Utilities Project” refers to the design and construction of public portions of the on-site public infrastructure improvements and off-site public infrastructure improvements described in Exhibit D and incorporated herein by reference.

1.4 The term “Town Financial Obligations” shall mean the providing of reimbursement to Developer pursuant to this Agreement.

1.5 The term “Town’s Public Utilities” shall mean that portion of the public sewer lines and public water lines and related improvements located on site (on the Subject Properties) and offsite which are designated as Town’s Public Utilities in Exhibit E.

1.6 The term “Infrastructure Route” shall mean the offsite portion of the route wherein the water pipelines and waste water pipelines will be installed as described in Exhibit F.

1.7 The term “Developer Reimbursement” shall include and be limited to reimbursement to Developer for the following costs: the cost of “over-sizing” the water and sewer pipelines as set forth in section 3.8 of this Agreement; and the sums paid by Developer to Town for “Acquisition Costs” for obtaining easements which are reimbursable to Developer under Section 3.7(f) of this Agreement.

SECTION 2. DEVELOPMENT PLANS

2.1 Regulation of Development.

(a) The Applicable Rules. Except as otherwise expressly provided in this Agreement, the ordinances, rules, regulations, permit requirements, development fees (as defined in A.R.S. § 9-463.05), other infrastructure fees, however denominated, exactions, other requirements, and/or official policies of the Town applicable to and governing the development of the portion of the Subject Properties which was rezoned under Town Ordinance 10-730 (APN 306-14-008K) and for a period of five years hereafter shall be those ordinances, rules, regulations, permit requirements, development fees, other exactions and requirements, and/or official policies that are existing and in force for the Town as of the execution of this Agreement (the “Existing Regulations”). The Town shall not institute any action challenging, support any action challenging, or give any affirmative defense against rezoned portion of the Subject Properties inclusion in any Growth Boundary. Except as required by law, the Town shall not take any affirmative action or position that would have the effect of subjecting the timing or development of the rezoned portion of the Subject Properties to procedures and limitations that may be a part of any Growth Boundary.

Nothing in this Agreement, however, shall be interpreted as relieving Developer of any obligation that he may have either currently or in the future, to comply with all governmental rules and regulations enacted by the Town which are required and are reasonably necessary to comply with state and federal law or by entities other than the Town, that apply to the portion of the Subject Properties rezoned under Town Ordinance 10-730, provided that, to the extent such compliance involves discretionary determinations by the Town, all such discretionary determinations shall be consistent with the Town’s obligations, commitments, findings and determinations memorialized in this Agreement.

SECTION 3. UTILITIES PROJECT

3.1 Design, Bidding, Construction and Dedication. Developer agrees and represents that the Utilities Project will be designed, constructed, publicly bid and dedicated by Developer in accordance with the provisions of this Section 3, and all Applicable Laws.

3.2 Construction Standards. In all cases in which Developer has undertaken, or has caused to be undertaken, construction or installation of all or any part of the Utilities Project, Developer agrees and represents that such construction or installation has been undertaken: (i) with new materials; (ii) in a good and workmanlike manner and in accordance with customary engineering and construction practices and standards to similar construction in Yavapai County, Arizona; (iii) free and clear of liens and encumbrances; and (iv) substantially in accordance with the approved plans and the requirements of this Agreement. Under no circumstances shall Developer be required to construct or install the Utilities Project to standards that exceed the Applicable Laws or the engineering and construction practices and standards applicable to similar construction in Yavapai County, Arizona.

3.3 Plans and Specifications.

(a) Design and Approval of Utilities Project. The Town of Chino Valley shall review and, if acceptable, will approve the design and construction plans for the Utilities Project within not more than thirty (30) days of submission. The Town shall expeditiously and, in any event within 30 days of submission, provide written notice regarding unacceptable design or construction features. Developer shall submit the Utilities Project construction documents for review and approval by the Arizona Department of Environmental Quality (“ADEQ”). Upon such approvals, the documents for construction will be referred to collectively as the “Construction Documents.” Developer will cause the Utilities Project to be constructed in accordance with the Construction Documents. The Town will inspect the Utilities Project once construction is completed for determination of its compliance with the Construction Documents and the Terms of this Agreement and, if in compliance and subject to developer’s receipt of any approvals required from other Governmental Agencies or bodies, the Town shall accept the portion of those utilities to be dedicated under this Agreement.

3.4 Construction Obligations and Entitlements.

(a) Gravity Sewer. The gravity sewer service as described in the Construction Documents shall be installed along the Road 1 East/Granite Creek Lane alignment. Developer shall complete installation of the offsite portions of such gravity line and related improvements depicted in Exhibit E hereto within six (6) months of award of bid, said bidding process to be commenced within thirty (30) days and completed within one hundred (100) days of the Town’s providing the easements/rights of way sufficient for Developer’s construction of the same. Completion shall mean substantial completion of all activities and improvements necessary for final inspection to proceed and, but for unexpected defects or minor punch-list items, to be approved and accepted by the Town.

(b) Vault and Haul. Should the Town be unable to obtain and/or provide easements or rights of within a reasonable time sufficient for Developer to construct the offsite utilities in the Infrastructure Route then Developer may, at Developer’s discretion and at Developer’s cost, design, install and operate a temporary vault that will store waste water and subsequently be pumped and hauled by Developer to the Town’s waste water treatment facility, The cost incurred and to be paid by Developer for disposal at the Wastewater Treatment Facility shall not exceed the monthly service fees that would otherwise be collected by the Town for the same service that would be charged to a similar user. b. Developer shall be allowed to operate the vault and haul system within six (6) months of award of bid, said bidding process to be commenced within thirty (30) days and completed within one hundred (100) days of the Town’s providing the easements/rights of way sufficient for Developer’s construction of the same. Developer shall utilize such time period for the completion of construction of the sewer lines as provided above.

(c) Connection Fees. Sewer connection/hookup fees that are chargeable to a party for connection to the Town Sewer shall not be impacted by this Agreement. A party, whether the Developer or a successor, seeking a connection to the Town Sewer for a portion of the Subject Properties will be liable to pay the applicable connection/hookup fees for such service connection.

3.5 Water Service

(a) Completion. The Developer shall substantially complete installation of the offsite portions of the water lines and related improvements depicted in Exhibit E within six (6) months of award of bid, said bidding process to be commenced within thirty (30) days and completed within one hundred (100) days of the Town's providing the easements/rights of way sufficient for Developer's construction of the same. Substantial completion shall mean completion of all activities and construction necessary for a final inspection to proceed and, except for previously unknown defects or minor punchlist items, to be approved and accepted by the Town. Upon the completion of the Off-Site Infrastructure as described in Exhibit E and acceptance of dedication as provided in Section 3.3(a) and 3.6(b), Town shall serve the water needs of the property re-zoned under Town Ordinance 10-730 consistent with ordinance 10-730.

(b) Connection Fees. Developer shall pay all connection/hookup fees for the Subject Properties that are then chargeable to a party for connection to the Town's water system.

(c) Water Rights. Water connection/hookup fees that are chargeable to a party for connection to the water system shall not be impacted by this Agreement. A party, whether the Developer or a successor, seeking a connection to the water system for a portion of the Subject Properties will be liable to pay the applicable connection/hookup fee for such service connection.

3.6 Construction of Utilities Project.

(a) Payment and Verification of Utilities Project Costs. Developer shall pay all Utilities Project Costs as the same become due. Developer shall provide all documentation reasonably requested by the Town to substantiate payment of the Utilities Project costs and, in particular, the portion thereof subject to Developer Reimbursement.

(b) Dedication, Acceptance and Maintenance of Utilities Project. Developer agrees and represents that the Contractor(s) that will construct the Utilities Project shall provide a written workmanship and materials warranty for a period of two (2) years beginning on the date of acceptance of the Utilities Project by the Town. The form and content of the warranty shall be reasonably acceptable to the Town and received and approved by the Town prior to commencement of construction of the Utilities Project. Developer agrees to dedicate the Town's Public Utilities to the Town. As of the date of acceptance of the Utilities Project by the Town, the Town's Public Utilities shall become public facilities of the Town and the property of the Town. Notwithstanding the foregoing, the Town shall not be required to approve such Utilities Project and accept the Town's Public Utilities until any construction defect or item of non-conformance with the Construction Documents has been remedied or corrected, and the Town has completed a final inspection of the Utilities Project. Any cost incurred by the Town in inspecting construction under this Agreement shall be paid solely by the Town.

3.7 Easements. The Town shall act reasonably and diligently to facilitate Developers installation of the Offsite Portions of the Utilities Project in conformity with and conditioned upon the following:

(a) Town's Easements. The Town shall provide, at no charge, easements for the construction of the offsite utilities in and along the Infrastructure Route on, under, and across property owned by the Town or properties upon which the Town has easements sufficient and useable for such activities.

(b) Easements on Private Property. Once the Developer has supplied the Town with the right-of-way requirements necessary for the right-of-way acquisition, the Town shall acquire, via condemnation if necessary, easements and/or rights of way over, under, and through private property in and along the Infrastructure Route as are necessary for the construction, installation, and maintenance of the offsite portions of the Utilities Project. The Town shall have acquired, or made a determination as to the need for condemnation, within 120 days of the receipt of right-of-way requirements from the Developer. If condemnation of any piece of property is required, the time necessary to complete the required legal process shall be agreed upon by both parties.

(c) Acquisition Costs. Developer shall pay and/or promptly reimburse Town for all "Acquisition Costs" regarding private property whether acquired by negotiation or condemnation. The Acquisition Costs means the cost of appraisal; costs of survey; costs of title reports and title insurance; recordation costs and sums paid to the private property owner and/or mortgage holders and/or lessees for the actual purchase price/value of property by agreement or condemnation.

(d) Payment to Town. Developer will promptly pay to Town 1/2 of the "Costs of Legal Proceedings" for condemnation up to a maximum of \$50,000.00 being payable by Developer to Town. The following costs are included as Costs of Legal Proceedings: expert witness costs including preparation, reports and testimony; attorney's fees, including Westlaw research, miscellaneous expenses such as postage and copy costs; and taxable costs as provided in A.R.S. §§12-331, 12-332, 12-1128, 12-1129 and 12-1130. The costs Developer is to pay Town under this section shall in no event exceed 1/2 of what is actually paid or to be paid by the Town for Costs of Legal Proceedings. Developer shall reimburse Town within 15 days of receipt of an invoice from the Town. Sums collected by the Town for fees and costs awarded against a property owner shall be credited first against sums paid by Town in costs that are in excess of twice the sums paid to Town by Developer and thereafter any such award shall be split between Town and Developer.

(e) Developer Advances. Developer shall advance "Acquisition Costs" upon receipt of 10 business days notice from the Town of the amount of the same. In event Town is tendering/paying the owner of a condemned property the value of the property and there is a dispute with the owner as to value, Developer shall pay the first sums tendered and, if there is a later settlement or Order calling for further payment, then Developer shall pay such sum and the total will be included in "Acquisition Costs."

(f) Reimbursement to Developer. All sums paid by Developer to Town for “Acquisition Costs” under this Section 3.7 shall be reimbursable to Developer pursuant to the terms and conditions of Section 4 below.

3.8 Over-sizing. Developer shall construct and install certain sewer lines and water lines at a size larger than needed for service to the Subject Properties owned by Developer which includes the portion of the properties rezoned by Ordinance 10-730. The portions of the lines to be oversized and the sizing differential are set forth in Exhibit F hereto. It is understood and agreed that the size needs for the Subject Properties will be estimated in Exhibit F for the reason that the development plans for Parcels 316-14-008H and 316-14-008M have not been finalized. Developer shall have the right to reimbursement under Section 4 of this Agreement for the cost excess for the actual “construction costs” of installing the larger pipe lines, including the costs of piping, fittings, trenching, labor for installation, sales taxes, and increased costs for bonds (but excluding design, overhead, profits) over what it would have expended in “construction costs” to install the smaller lines necessary to service the subject properties.

3.9 Stub Outs. Developer, at Developer’s expense, shall install sewer lines from the sewer main to a location at or near the property line of each of the residences located along the Road 1 East, Granite Lane alignment of the sewer main being installed by Developer (“stub outs”).

SECTION 4. REIMBURSEMENT OF UTILITIES PROJECT COSTS; FINAL ACCOUNTING AND SETTLEMENT

4.1 Qualified Party. Developer agrees that the Town’s Obligation to provide payment to Developer of the Development Reimbursement is contingent upon the operation on the Subject Property of one or more businesses that is (are) a Qualified Party/Parties as defined herein. A “Qualified Party or Parties” shall mean any and all persons or entities that use the Subject Properties for a use allowed by the Town’s Unified Development Ordinance and who have executed a Consent to Release of Privilege Tax Information as provided in Section 4.3.

4.2 Payment/Reimbursement of Privilege Tax. The Town, in consideration of the construction of the Utilities Project, beginning with the first calendar quarter after the Town’s issuance of a Certificate of Occupancy to a Qualified Party, shall, to the extent permitted by law and as supported by the approved annual appropriation by the Town Council, on the dates set forth below, pay to Developer an amount (the “Semiannual Payments”) equal to thirty three and one-third percent (33 1/3 %) of the Town Privilege Tax, as levied and pursuant to § 8A-400 of the Tax Code of the Town and paid to the Town, due to a Qualified Party’s retail sales on the Subject Properties (whether levied and collected by the Town or levied by the Town and collected by the State of Arizona and paid to the Town) less the Town’s Administrative Fee. The Town, to the extent permitted by law, shall make the Semiannual Payments less the Town’s Administrative Fee until an amount equal to the lesser of: (i) the Developer’s Reimbursement or (ii) the total paid to Developer for Developer Reimbursement until the Term of this Agreement as described in Section 4.5 has expired. In no case will Developer receive payment in an amount exceeding the total of the entire Developer’s Reimbursement.. This Agreement does not create any lien, reservation, or pledge of privilege tax funds or other funds that would not be available

for economic development. The Town shall obtain the required information from confidential records provided to the Town by the Arizona Department of Revenue and shall make the Semiannual Payments less the Town's Administrative Fee according to the following schedule:

- (a) Town Privilege Tax received for the tax periods January, February, March, April, May or June shall be tabulated and payment due, if any, shall be made on or before the 90th day following June 30th of each year.
- (b) Town Privilege Tax received for the tax periods July, August, September, October, November, or December shall be tabulated and payment due, if any, shall be made on or before the 90th day following December 31st of each year.

4.3 Consent to Release of Tax Information. Upon execution of a contractual obligation between Developer and a party or parties to develop and operate a business on the Subject Properties who is eligible to be a Qualified Party, Developer agrees to use reasonable efforts to obtain from such party or parties a Consent to Release of Privilege Tax Information in a form satisfactory to the Town.

4.4 No Interest. No interest shall accrue on any reimbursable costs payable to Developer.

4.5 Term. The Town will enforce this Agreement and Developer shall be entitled to the benefits of this Agreement for a period not to exceed twenty (20) years from the date of the approval of this Agreement by the Town Council, at which time all rights and obligations under this Agreement shall automatically terminate. Anything to the contrary herein notwithstanding, all rights and obligations under this Agreement shall automatically terminate upon payment to the Developer of an amount equal to the full amount of the Developer's Reimbursement.

SECTION 5. COOPERATION

5.1 Appointment of Representatives. To further the commitment of the parties to cooperate in the implementation of this Agreement, the Town and Developer each shall designate, appoint and maintain a representative to act as a liaison between the Town and its various departments and Developer. The Town Council or Developer may change their representative at any time, but each party agrees to provide the other party notice of any such change.

5.2 Town Representative. The initial representative for the Town shall be Ron Gritman, Public Works Director/Town Engineer (the "Town Representative").

5.3 Developer's Representative. The initial representative for Developer shall be Charles C. Arnold (the "Developer's Representative").

5.4 Default. Failure or unreasonable delay by either party to perform or otherwise act in accordance with any term or provision of this Agreement for a period of twenty (20) days (the "Cure Period") after written notice thereof from the other party, shall constitute a default under this Agreement; provided, however, that if the failure or delay is such that more than twenty (20)

days would reasonably be required to perform such action or comply with any term or provision hereof, then such party shall have such additional time as may be reasonably necessary to perform or comply so long as such party commences performance or compliance within such twenty (20) day period and proceeds with reasonable diligence to complete such performance or fulfill such obligation. Notice under this section shall specify the nature of the alleged default and the manner in which such default may be satisfactorily cured, if possible. In the event such default is not cured within the Cure Period, the non-defaulting party shall have all rights and remedies available under this Agreement or Arizona law.

5.5 Force Majeure. The time for a party to perform any obligation under this Agreement shall be extended for delays caused by events or actions beyond that party's control but any extension for performance shall be limited to the actual number of days delay caused by the event or action. Cause beyond Developer's control does not include lack of financing, delays in obtaining financing and delays in receiving government approval or permits due to delays in Developer submissions or Developer's failure to submit proper documentation to obtain approvals or permits.

SECTION 6. OTHER PROVISIONS

6.1 This Agreement shall be recorded in the Office of the County Recorder of Yavapai County, Arizona.

6.2 All planning, design and construction work shall be performed under the supervision of an architect, engineer, land surveyor, geologist or other professionals as appropriate, all of whom are registered or Licensed by the State of Arizona in their respective areas of expertise.

6.3 This Agreement is not intended to create any rights on behalf of any third parties.

6.4 This Agreement has been made and entered into in the State of Arizona and shall be governed by the laws of the State of Arizona in all respects, including, without limitation, matters of construction, validity, enforcement, rights, remedies and performance. If any provision of this Agreement is rendered or declared illegal or unenforceable by reasons of any existing or subsequently enacted statute, rule or regulation, or by order of or judgment of a court, all other terms and provisions of this Agreement shall remain in full force and effect as stated and set forth herein.

6.5 Pursuant to A.R.S. §23-214, Developer and/or permitted assigns agrees and understands that before receiving any economic development incentive under this Agreement, Developer and/or assigns shall provide proof to the Town that it is registered with and participating in the federal E-verify program.

6.6 This Agreement may be executed in multiple counterparts, each of which shall serve as an original for all purposes, with all counterparts being construed together and constituting one and the same Agreement.

6.7 The Parties agree that this Agreement shall not be construed for or against a party solely by virtue of all or any portion of the Agreement having been drafted by the party's attorney.

6.8 Developer and the Town further agree that each will do or cause to be done such further acts, and shall execute, acknowledge and deliver such further documents, as may be reasonably required by either of them to fully effectuate the Agreement set forth herein.

6.9 No amendment to this Agreement shall be effective unless in writing and executed by each party hereto.

6.10 This Agreement contains the entire understanding among the parties and supersedes any prior written or oral agreements between them respecting the subject matter of this Agreement. There are no representations, agreements, arrangements or understandings, oral or written, between the parties relating to the subject matter of this Agreement that are not fully set forth herein.

6.11 Any assignment of Developer's rights and duties under this Agreement without the Town's prior written consent, which may be given or withheld in the Town's reasonable discretion, shall be null and void. No assignment of Developer's right may be made unless the Developer's obligations are also assigned to Assignee, except that the right to reimbursement alone may be assigned or transferred by Developer: to a construction lender if pledged as security for construction financing; or to other third party if the Town's Public Utilities have been constructed, dedicated to the Town and accepted by the Town. Developer shall provide 30 days notice to the Town prior to any assignment or other transfer. Developer's right to reimbursement is not appurtenant to the Subject Properties and is not transferred or assigned by a conveyance of all or a portion of the property unless the document(s) effectuating the transfer specifically provides for the same.

6.12 Subject to 6.11 above, this Agreement, and all of the rights and obligations contained herein, shall be binding upon and inure to the benefit of the parties and their permitted assigns, heirs, legal representatives, and successors.

6.13 Time is of the essence in this Agreement.

6.14 Pursuant to A.R.S. §38-511, the Town may cancel this Agreement, without penalty or further obligation, within three (3) years after its execution if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the Town is an employee or agent of any other party to this Agreement in any capacity or a consultant to any other party of this Agreement with respect to the subject matter of this Agreement. In addition to the right to cancel this Agreement, the Town in any such instance may recoup from Developer any fee or commission related to or arising out of this Agreement that is paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the Town.

TOWN:

APPROVED AS TO FORM:

Carl Tenney, Vice-Mayor

MUSGROVE, DRUTZ & KACK, PC
Town Attorney

STATE OF ARIZONA)
) ss.
County of Yavapai)

The foregoing instrument was acknowledged before me, the undersigned Notary Public, this _____ day of _____, 2011, by Carl Tenney, Vice-Mayor, of THE TOWN OF CHINO VALLEY, an Arizona municipal corporation, on behalf of the municipal corporation.

Notary Public

My Commission Expires:

STATE OF _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me, the undersigned Notary Public, this ____ day of _____, 2011, by Jack Tuls, Jr.

Notary Public

My Commission Expires:

Exhibit A

Legal description under the Agreement of the “Subject Property” or “Subject Properties” consisting of 60 acres, Yavapai County Assessor’s Parcel Numbers: 306-14-008H; 306-14-008K and 306-14-008M (approximately 60 acres) - to come. [The legal description to be provided by Developer and is subject to approval by the Town via its Town Engineer.]

Exhibit B

NOTICE OF INTENT TO ENTER INTO A
RETAIL DEVELOPMENT TAX INCENTIVE AGREEMENT
AND SETTING PUBLIC HEARING

Notice is hereby given that the Town of Chino Valley, Arizona, intends to enter into a Retail Development Tax Incentive Agreement, in accordance with the provisions of A.R.S. §9-500.11 with Jack Tuls, a single man d/b/a JT Properties.

A public hearing on the proposed agreement will be held before the Town Council on September 27, 2011, at its regularly scheduled meeting at 6:00 p.m. in the Chino Valley Council Chambers located at 202 Highway 89, Chino Valley, Arizona.

Exhibit C

Verification by Independent Party pursuant to A.R.S. §9-500.11. [This item will be received if and when verification is received from the Independent Third Party.]

Exhibit D

The depiction of the “Utilities Project” as referenced in the Agreement at Section 1.3 – to come. [Subject to approval by the Town via the Town Engineer.]

Exhibit E

The “Town’s Public Utilities” as referenced in the Agreement at Section 1.5 – to come.
[This is to include the portions of public utilities dedicated and accepted by the Town pursuant to the Agreement, the description of which is further subject to approval by Town via the Town Engineer.]

Exhibit F

“Infrastructure Route” as referenced in Agreement at Section 1.6 - to come. [The
“Infrastructure Route” is subject to approval by the Town via the Town Engineer.]