

**DONATION AGREEMENT WITH ESCROW INSTRUCTIONS
(BARNEY FARMS I – SCHOOL SITE)**

This Donation Agreement (“**AGREEMENT**”) by and between QUEEN CREEK UNIFIED SCHOOL DISTRICT No. 95 of Maricopa County, Arizona, a political subdivision of the State of Arizona (“**District**”) and BARNEY FARMS I, LLC, an Arizona limited liability company, on behalf of itself, its successors and assigns (“**Owner**”) concerning the development of certain real property in the Town of Queen Creek (the “**Town**”), (District and Owner are sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties**”).

RECITALS

A. Owner owns certain real property in the Town of Queen Creek, in Maricopa County Arizona, and within the boundaries of the District, containing approximately 16.6027 acres, that is reserved for development as a public elementary school site (referred to herein as the “**School Site**”) which is legally described in **Exhibit A**, attached hereto and made a part hereof.

B. The School Site is located within a master planned community being developed by Owner and Fulton Homes Corporation (“**Fulton**”), who acquired a portion of the land located within the Project from Owner, that is commonly known as Barney Farms, with approximately one thousand seven hundred two (1,702) residential lots east of Signal Butte Road and approximately three hundred fifty (350) multi-family units on the west of Signal Butte Road, as more particularly described in **Exhibit B**, attached hereto and made a part hereof (the “**Project**”).

C. Because the availability of sufficient public school facilities to serve the residents of the Project is important to the Owner, the Owner desires to cooperate with the District to partially offset the capital needs of the District by making an elementary school site land contribution to the District (the “**School Site Dedication**”); to cause, in cooperation with Fulton, to be installed certain improvements pursuant to the School & Church Development Covenants Agreement, recorded in the records of Maricopa County at recording no. 2018-0839720 (“**Development Covenant**”), adjacent to, along and on the School Site (the “**Improvements**”); the School Site Dedication may also be referred to as the “**Owner Contributions**”.

D. The District desires to acquire the School Site to construct a public elementary school to accommodate the increasing number of students within the District that is anticipated upon the development of the Project. In exchange for the donation of the School Site, in addition to the covenants and promises contained herein, the District will provide information to the Town in connection with Town approvals concerning the Project regarding the District’s lack of opposition to the project and the District’s willingness to accommodate the students generated from the project.

E. The District agrees and acknowledges that the District and the School Site will benefit from the Improvements and agrees, pursuant to the terms of this Agreement, to use its best efforts to secure adjacent ways funding from the Arizona School Facilities Board (“**SFB**”) or secure

funding from another source to pay the proportionate share of those Improvements identified in the Development Covenant that are adjacent to or on the School Site, and which will benefit the School Site, as described in **Exhibit C**, attached hereto and made a part hereof by this reference, in an amount not to exceed 150% of the estimated budget for the Improvements set forth in **Exhibit C**.

NOW, THEREFORE, in consideration of the mutual promises and agreements, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the District and Owner agree as follows:

1. **No Monetary Donation by Owner.** The District acknowledges that the School Site Dedication, as defined in this Agreement, shall be in lieu of, and in satisfaction of, any and all current or future school fees, rooftop fees, dwelling unit fees or similar fees ("School Fees") associated with the Project and the land within the Project. The District shall not request or demand the payment of School Fees from Owner, Fulton, or their successors-in-interest with respect to the Project.

2. **Use of Donation by District.** The District agrees to use all donations for the purpose of acquiring, constructing, improving, equipping and/or operating school facilities within the District as determined in the sole and absolute discretion of the District.

3. **School Site Reservation.** Owner will reserve for the District the School Site for use as an elementary school. by depositing the Deed, as defined herein below, with Pioneer Title Agency, Inc., attention Michele Lucero ("**Escrow Agent**") at 2152 S. vineyard, Suite 109, Mesa, AZ 85210 (480-464-4495). The School Site shall be transferred in fee simple free of all monetary liens and encumbrances, subject to matters of record approved by the District. Notwithstanding the foregoing, except for to the Development Covenant, the School Site shall not be subject to any covenants, conditions and restrictions in connection with any homeowner's association or any drainage easements or retention easements for the benefit of the Project except drainage or retention necessary for the School Site itself and the adjacent half street retention. Use of the School Site shall be restricted to either use as an elementary school or as a site for the construction of an elementary school in accordance with A.R.S. § 43-1181.

4. **Conveyance of School Site.** Owner shall convey the School Site on or before December 31, 2018 ("**Closing Date**") by executing and delivering to Escrow Agent a Special Warranty Gift Deed ("**Deed**"), in the form attached hereto as **Exhibit D** and incorporated herein by reference, conveying the School Site to the District, at no cost to the District. Concurrently with the Deed, Owner will execute a Partial Release and Amendment of the Development Covenant ("**Release**") in the form attached hereto as **Exhibit E**.

a. Escrow Agent shall obtain a title commitment to provide a standard for title insurance policy to the District ("**Commitment**") and deliver the Commitment to the Parties. Upon Districts approval of the requirements and exceptions under the Commitment and upon the other pre Closing covenants contained in this Agreement being met, the Parties shall notify Escrow Agent of their readiness and approval of the transfer hereunder, upon which the Escrow Agent

shall issue the Title Policy, as defined below and record the Deed. The date of recordation of the Deed by Escrow Agent with the Maricopa County Recorder's office shall be referred to hereinafter as the "Closing." The School Site shall be conveyed "As-Is", without any implied warranties, free of all consensual monetary liens, and subject to existing taxes, assessments, covenants, conditions, restrictions, rights of way, easements of record and other matters as may appear of record; and all matters that would be disclosed by an accurate ALTA/NSPS survey or physical inspection of the School Site.

b. The District shall pay for an ALTA insurance policy and may request an extended title insurance policy with endorsements as necessary ("**Title Policy**"). District shall pay the escrow fees payable to Escrow Agent (defined below) and any recording fees in connection with the Escrow (defined below) ("**Transaction Costs**"). In the event District is unable to procure the funds to pay its proportionate share of the Transaction Costs by the Closing Date, due to the proximity to the end of the year, Owner shall pay all Transaction Costs at Closing, and District shall reimburse owner district's proportionate share of the Transaction Costs, as soon as reasonably practical after Closing. All taxes owed for periods prior to Closing shall be prorated and paid at Closing by Owner. The conveyance of the School Site in accordance with this Agreement shall be consummated through an escrow (the "**Escrow**") established with Escrow Agent.

c. In accordance with A.R.S. § 43-1181, the Deed shall include a deed restriction and protective covenant running with title to the land with a requirement that the School Site shall only be used as an elementary school or as a site for the construction of an elementary school, subject to A.R.S. § 43-1181(I). Acceptable School Site improvements include school buildings, ball fields, play areas, parking areas, equipment buildings and other facilities commonly associated with public elementary schools in Arizona.

5. Closing. "**Closing**" shall occur on the Closing Date, or sooner if agreed to in writing by the Parties, upon the following conditions being fulfilled:

- a. The delivery by Owner to Escrow Agent of fully executed Deed;
- b. The delivery by Owner to Escrow Agent of the fully executed Release;
- c. The issuance of the Title Policy by Escrow Agent;

6. Post-Closing.

a. SFB Approval. As soon as reasonably practical after Closing, the District shall apply for written approval from the Arizona School Facilities Board ("**SFB**") as provided in A.R.S. § 43-1181 of the School Site's suitability for a school as well as for approval of adjacent ways funding for the District to pay for its share of the Improvements described in Exhibit C, if the District chooses to utilize adjacent ways to fund its share of the Improvements. In the event (1) SFB does not approve the School Site as suitable for a school, or (2) SFB does not approve of the use of adjacent ways funding to pay for the Improvements, and/or the District, in its discretion, does not have another funding source available to fund the Improvements, the District shall sell

and Owner shall purchase the School Site for a price equal to the District's Transaction Costs plus one hundred dollars (\$100.00). If adjacent ways funds are approved, or if adjacent ways funds are not approved but the District decides not to sell School Site back to Owner because the District determines there is another funding source to pay for the Improvements, District agrees that it shall be responsible to pay its share of the Improvements as described in **Exhibit C** in an amount not to exceed 150% of the estimated budget.

b. Off-Site Improvements.

- (i) Access. Until the Improvements are completed, Owner will provide access to the School Site from the adjacent arterial street (Signal Butte Road) located immediately west of the school site as depicted on **Exhibit C**.
- (ii) Improvements. Fulton is required to install the Improvements under the Development Covenant. The District agrees its best efforts to secure adjacent ways funding from SFB to reimburse Fulton, or the Owner, if the Owner has paid for the Improvements, the costs not to exceed 150% of the amount depicted in **Exhibit C** for the proportionate share of those Improvements that are on, adjacent to, and which will benefit the School Site as depicted on **Exhibit C** according to the Owner's reimbursement requirements set forth in the Development Covenant. Pursuant to Section 6(a) above, if the District is not able to secure adequate adjacent ways funding from SFB and the District, in its discretion, does not have another funding source available for the Improvements, the District shall sell and Owner shall purchase the School Site for a price equal to the District's Transaction Costs plus one hundred dollars (\$100.00). In the event District determines that it needs the Improvements constructed prior to Fulton's anticipated schedule, Owner shall use its best efforts to assist the District in working with Fulton to have the Improvements installed as soon as is reasonably practical or to facilitate an amendment of the Development Covenant to allow for the District to become the constructing party of the Improvements and to receive reimbursement from the other parties for the proportionate share of the Improvements to be paid by Fulton and the other parties to the Development Covenant.

c. Design Standards. The District shall consult with Owner and Fulton during the design phase of a school on the School Site in order to maximize compatibility of the school design with the general design standards for the Project. Notwithstanding the foregoing, the final decision with respect to design of a school shall be determined in the sole and absolute discretion of the District, subject to the Partial Release and Amendment of the Development Covenant.

7. Donation Cooperation. The donation of the School Site is intended to satisfy the requirements of A.R.S. § 43-1181, which provides for a state income tax credit based on the fair market value of the School Site and to qualify as a charitable contribution pursuant to Section 170 of the Internal Revenue Code. Consequently, to the fullest extent permitted under existing laws, and subject to the terms and conditions of this Agreement, the District agrees to take such actions as may be reasonably requested by Owner to receive such income tax credits, including without

limitation the completion and execution of Internal Revenue Service Form 8283 (Section B, Part IV of such form) governing non-cash charitable contributions. The District acknowledges, effective upon conveyance, the contribution of the School Site and that District has not provided any goods or services in consideration in whole or in part for the donation. The District also agrees to provide to the Owner such additional documentation as may reasonably be requested by Owner to satisfy further the substantiation requirements under Section 170 of the Internal Revenue Code.

8. Notices and Filings. All notices, consents, approvals and other communications provided for herein or given in connection herewith shall be made in writing and delivered personally or sent by registered or certified United States mail, postage prepaid, or by recognized overnight carrier for next business day delivery to:

The District: Queen Creek Unified School District
Attn: Dr. Perry Berry
20217 E. Chandler Heights Rd.
Queen Creek, AZ 85241

The Owner: Barney Farms I, LLC

Attn: Jason Barney
4915 E Baseline Rd., #105
Gilbert, AZ 85234

With a copy to:
Huber Barney PLLC
c/o Aaron Huber
4915 E Baseline Rd., #105
Gilbert, AZ 85234

or to such other addresses as either party hereto may from time to time designate in writing and deliver in a like manner. Notices shall be deemed delivered upon personal delivery, three days after deposit in the U. S. mail, postage prepaid and addressed as set forth above, or the next business day after deposit with a recognized overnight carrier as evidenced by confirmable air bill or similar receipt.

9. Indemnification. Owner and the District shall be responsible for their own acts or omissions. To the extent permissible by Arizona law, and to the extent not covered by insurance, the parties agree to defend, indemnify and save harmless each other, and their elected officials, agents, boards, commissions, employees and representatives for, from and against all suits, including attorneys' fees and costs of litigation, actions, loss, damage, expense, costs or claims of any character or any nature arising out of or in connection with its own acts or omissions, its agents or employees and any of its subcontractors, in the course of performance or non-performance of any work incident to this Agreement. No party shall be deemed an agent of another party. By entering into this Agreement, no party assumes responsibility or liability for any activity occurring

on the other's adjacent property other than incidental to its own use of the other's adjacent property. This provision shall survive the Closing or any termination of this Agreement.

10. Naming of School. The District agrees to use its best efforts to present the name of Katherine Mecham Barney Elementary School or Katherine Barney Elementary School to the selection committee for approval as the name to be used for the elementary school. The District will abide by its policy and procedure for the naming of the school as set forth in Governing Board Policy FF and Regulation FF-R.

11. General.

a. Taxes. Owner shall be responsible for the payment of all real property taxes and general assessments applicable to the School Site prior to Closing. If District's acquisition of the School Site will have the effect of removing the School Site from the real property tax rolls, District shall have no responsibility or liability with respect to real property taxes and/or general assessments applicable to the School Site following such removal. However, if and to the extent real property taxes and/or general assessments will apply to the School Site for any period of time after the Closing, such real property taxes and assessments shall be prorated between District and Owner as of the date of Closing, based upon the most current available information and District's best estimate (confirmed by the Maricopa County Assessor) of when the School Site will be removed from the real property tax rolls.

b. Default. Failure or unreasonable delay by either party to perform any term or provision of this Agreement for a period of ninety (90) days after written notice thereof from the other party shall constitute a default under this Agreement. Said notice shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible.

c. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the District or Owner of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

d. Attorneys' Fees. In the event any party hereto finds it necessary to bring an action at law or other proceeding against the other party to enforce any of the terms, covenants or conditions hereof, or by reason of any breach or default hereunder, the party prevailing in any such action or other proceeding shall be paid all reasonable costs and reasonable attorneys' fees by the other party, and in the event any judgment is secured by said prevailing party, all such costs and attorneys' fees shall be included therein, such fees to be set by the court and not by jury.

e. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all parties may be physically attached to a single document.

f. Headings and Recitals. The descriptive headings of the sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof. The Recitals set forth at the beginning of this Agreement are hereby acknowledged and incorporated herein and the parties hereby confirm the accuracy thereof.

g. Exhibits. Any exhibit attached hereto shall be deemed to have been incorporated herein by this reference with the same force and effect as if fully set forth in the body hereof.

h. Further Acts. Each of the parties, from time to time, shall execute and deliver all such documents and perform all such acts as reasonably necessary to carry out the matters contemplated by this Agreement.

i. Successors and Assigns. All of the provisions of this Agreement shall inure to the benefit of and be binding upon the Owner and the District and their successors-in-ownership and permitted assigns. Upon the conveyance of all or any portion of the Project by Owner or its successors-in-ownership or assigns and the assumption by such transferee of the obligations of the Owner hereunder with respect to the portion of the Project conveyed, Owner, or its successors-in-ownership or assigns, as the case may be, shall be relieved of any future liability or obligations under this Agreement with respect to the portion of the Project conveyed, but shall not be relieved or released from any liabilities or obligations incurred during the period of its ownership of the Project. The rights, privileges, duties, obligations and liabilities under this Agreement shall be enforceable at law and in equity. The liabilities and obligations of Owner and its successors-in-ownership and assigns are several obligations, and not joint and several obligations, and may only be enforced against the Owner of the Project then in default, and, notwithstanding any default by the Owner of a portion of the Project, this Agreement shall remain in full force and effect with respect to the other Owners of the Project.

j. Notice of Assignment. Owner may assign its interest hereunder without the prior written consent of District. Owner shall provide the District written notice of any conveyance and assumption of obligations within thirty (30) days after the conveyance. The Owner shall promptly notify the District of any major changes in the identity of the parties associated with the Owner, in joint ventures or partnerships for the purposes of acquiring and developing the Project or any part thereof, and of conveyances of the Project or any part thereof, except for individual lot conveyances.

k. No Partnership and Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between the Owner and the District. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

l. Entire Agreement. This Agreement constitutes the entire agreement and the reasonable expectations of the parties hereto pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understanding of the parties, oral or written, are

hereby superseded and merged herein.

m. Amendment. No change or addition may be made to this Agreement, except by a written amendment executed by the parties hereto and recorded in the Recorder's Office of Maricopa County, Arizona; provided, however, changes to the addresses of the parties shall not require recordation, but shall be delivered in the manner set forth in this Agreement.

n. Good Standing; Authority. The Owner represents and warrants that it is duly formed and validly existing under the laws of Arizona and is qualified to do business in Arizona. The District represents and warrants that it is a school district, a political subdivision of the State of Arizona. Both parties represent and warrant that the individual(s) executing this Agreement on behalf of the respective parties are authorized and empowered to bind the party on whose behalf each such individual is signing.

o. Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect. If any applicable law or court of competent jurisdiction prohibits or excuses the District from undertaking any contractual commitment to perform any act hereunder, this Agreement shall remain in full force and effect, but the provision requiring such action shall be deemed to permit the District to take such action at its discretion. If, however, the District fails to take the action specified hereunder, the Owner shall be entitled to terminate this Agreement and exercise all remedies available to it.

p. Governing Law. This Agreement is entered into in Arizona and shall be construed and interpreted under the law of Arizona. This Agreement has been negotiated by separate legal counsel for the District and the Owner, and no party shall be deemed to have drafted this Agreement for purposes of construing any portion of this Agreement for or against any party.

q. No Guaranty of Development. Except as specifically set forth herein, nothing contained herein shall be deemed to obligate the District or Owner to complete any part or all of the Development.

r. Remedies for Default. If a party to this Agreement is in material default under any provision of this Agreement that has not been cured (or is not capable of cure), the non-defaulting party shall be entitled, without prejudice to any other right or remedy that it may have under this Agreement, at law or in equity, to terminate this Agreement as if this Agreement had expired in the normal course and to exercise any and all other remedies available to it at law.

s. District Reliance. Owner acknowledges that the District intends to rely upon this Agreement in planning for growth within the District, and Owner acknowledges that such reliance is reasonable, and that the District shall have the right to enforce this Agreement in any manner permitted by applicable law, including, but not limited to, specific performance.

t. Conflicts of Interest. The Owner warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other

than normal costs of conducting business and costs of professionals' services such as architects, realtors, and attorneys. The parties acknowledge and agree that this Agreement subject to cancellation pursuant to A.R.S. 38-511 or any successor statute.

u. Limitation of Damages. Notwithstanding any other provision in this Agreement, neither the District nor the Owner shall in any event be responsible or liable for consequential or punitive damages as a result of any act or omission in connection with this Agreement.

v. Nonliability of District Officials and Employees. Except for mandamus and other special actions, no member, official or employee of the District shall be personally liable to the Owner, or any successor in interest, in the event of any default or breach by the District or for any amount that may become due to the Owner or successor, or under any obligation under the terms of this Agreement.

w. Recording of Agreement. No later than ten (10) days after this Agreement has been executed by the District and Owner, it shall be recorded in its entirety by the District with the Maricopa County Recorder.

x. Effective Date. The Effective Date of this Agreement shall be the date on which this Agreement has been duly executed by the parties hereto and delivered to Escrow Agent.

y. District's Obligation. District's obligation to accept the Land Donation from Owner as provided in this Agreement is subject to the condition set forth in ARS Section 43-1181(I)(1), providing that a school district shall not accept a donation of real property for a school site unless the Arizona School Facilities Board has reviewed the proposed donation and has issued a written determination that the real property is suitable as a school site.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first above written.

DISTRICT:
QUEEN CREEK UNIFIED SCHOOL DISTRICT
SCHOOL DISTRICT No. 95,
a political subdivision of the State of Arizona

ATTEST:

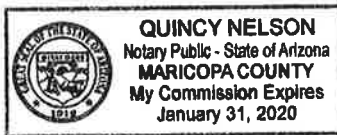
[Signature]
Clerk

By: [Signature]
Governing Board President

Date: December 28, 2018

State of Arizona)
County of Maricopa) ss.

The foregoing document was acknowledged before me the 28th day of December, 2018, by Ken Brague, the Board President of Queen Creek Unified School District No. 95, a political subdivision of the State of Arizona, on behalf of the district.



[Signature]
Notary Public

My Commission Expires: January 31, 2020

This page, containing one (1) notary acknowledgment (the "Certification Page") for the signature of an authorized member or manager of QUEEN CREEK UNIFIED SCHOOL DISTRICT No. 95 of Maricopa County, Arizona, a political subdivision of the State of Arizona, is attached to the document entitled, "Donation Agreement," containing a total of eleven (11) pages, including this Certification Page (but not counting Exhibits A, B, C, D and E).

OWNER:

An Arizona limited liability company

By: _____
an Arizona Corporation
Its Administrative Agent

By: _____

It's _____

Date _____

State of Arizona)
) ss.
County of _____)

The foregoing document was acknowledged before me the _____ day of _____, 2018, by _____, of _____, an Arizona Corporation, for and on behalf of the _____.

Notary Public

My Commission Expires: _____

3272398.2

This page, containing one (1) notary acknowledgment (the "Certification Page") for the signature of an authorized officer of _____, an Arizona corporation, on behalf of _____ is attached to the document entitled, "Donation Agreement," containing a total of eleven (11) pages, including this Certification Page (but not counting Exhibits A, B, C, D and E).

EXHIBIT "A"

LEGAL DESCRIPTION OF SCHOOL SITE

EXHIBIT “B”

DESCRIPTION OF THE PROJECT

FULTON PROJECT (1702 RESIDENTIAL LOTS)
MULTI-FAMILY (350 UNITS)

EXHIBIT “C”

DEPICTION OF THE IMPROVEMENTS

EXHIBIT "D"

SPECIAL WARRANTY GIFT DEED

When recorded return to:
Queen Creek Unified School District
20217 E. Chandler Heights Rd.
Queen Creek, AZ 85241

SPECIAL WARRANTY GIFT DEED

For good and valuable consideration, _____ ("Grantor"), hereby grants, sells and conveys to QUEEN CREEK UNIFIED SCHOOL DISTRICT No. 95 of Maricopa County, Arizona, a political subdivision of the State of Arizona ("Grantee"), all right, title and interest in and to the real property located in the Town of Queen Creek in Maricopa County, Arizona and described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Property").

SUBJECT TO: Existing taxes, assessments, covenants, conditions, restrictions, rights of way, easements of record and other matters as may appear of record; and all matters that would be disclosed by an accurate ALTA/NSPS survey or physical inspection of the Property.

Grantor hereby binds itself and its successors to warrant and defend the title against the acts of the Grantor and no other, subject to the matters set forth above.

PROVIDED, HOWEVER, except as set forth herein, use of the Property shall be forever restricted to either use as an elementary school or as a site for the construction of an elementary school, subject to A.R.S. § 43-1181(I).

The covenants and conditions of this deed shall run with the land and shall inure to the benefit of and binding upon Grantor and Grantee, their successors-in-interest, successors-in-title, and assigns.

Exempt from Affidavit of Property Value pursuant to A.R.S. § 11-1134(A)(3).

DATED this _____ day of _____ 2018.

GRANTOR:

an Arizona limited liability company

By: _____
an Arizona corporation

Its: Administrative Agent

By: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____
2018, by _____ of _____, an Arizona corporation, Administrative
Agent of _____ an Arizona limited liability company, on behalf of the company.

Notary Seal: _____
Notary Public

EXHIBIT “E”

PARTIAL RELEASE AND AMENDMENT OF DEVELOPMENT COVENANT