

# CITY COUNCIL REPORT



Meeting Date: APRIL 14, 2015  
 General Plan Element: *Growth Areas*  
 General Plan Goal: *Coordinate infrastructure funding and financial planning with development activity*

## ACTION

Presentation, discussion and possible direction to staff on the terms of Development Agreement No. 2014-188-COS, which sets forth the manner in which gross floor area and building height bonuses can be achieved in exchange for \$868,836.60 to be used by the City for the construction of special public improvements, related to the Bahia Work/Live/Play Project Zoning District Map Amendment approved under case 14-ZN-2014.

## BACKGROUND

On December 2, 2014, the City Council approved a Zoning District Map Amendment (14-ZN-2014) for the Bahia Work/Live/Play project, located at 16576 N. 92<sup>nd</sup> Street. The project site was rezoned from Industrial Park, Planned Community District (I-1 PCD) to Planned Airpark Core District, Airpark Mixed-Use- Residential, Planned Community District (PCP AMU-R PCD).

As part of the zoning request, the applicant requested amendments to the PCP site development standards; specifically, an increase in Floor Area Ratio (FAR) and additional building height. Pursuant to Section 5.4008.F of the Zoning Ordinance, an applicant may request bonus FAR and building height in exchange for "Special Improvements" that achieve a public benefit. In this case, the applicant was required to provide \$868,836.60 for specified special public improvements, based on formulas provided in the PCP zoning district. The allocation of funds approved in the Development Agreement and as part of the Zoning District Map Amendment at the 12/2/14 City Council hearing is as follows:

Special Public Improvement (as identified in the PCP district)	Balance (total required: \$868,836)
Westworld north hall facility improvements	\$289,612
Westworld site improvements and landscaping	\$239,612
94 <sup>th</sup> Street improvements at Westworld (sidewalk and lighting along east side of 94 <sup>th</sup> St.)	\$339,612
<b>Total</b>	<b>\$868,836</b>

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13190739v1

Action Taken \_\_\_\_\_

After the item was voted on, there was a request from one of the Councilmembers to explore alternatives, other than the Westworld campus, for the allocation of funds. Since that time, the applicant has received Development Review Board approval for the project, and is ready to submit construction plans for plan review and eventual building permit; however, the discussion of where the funds could alternatively be allocated has not occurred.

Staff has identified the following projects that could serve as alternatives for the expenditure of funds:

<b>Project</b>	<b>Title</b>	<b>Cost</b>	<b>In Airpark?</b>	<b>In CIP?</b>
YB29A	Pavement overlay	860,000	In Airpark	Yes
TEMP1610	98th St N of McDowell Mtn Rd ½ street improvements	1,000,000	Adjacent (0.5 mi)	No
TEMP1632	Fire Station 605 renovation	750,000	Adjacent (1.5 mi)	No
SB02A	124th & 128th St intersestion, path improvements	750,000	Not in Airpark	Yes
PB02A	Ballfield Light replacement, phase I	883,000	Not in Airpark	Yes
TA01A	Hayden Chaparral intersection improvements	850,000	Not in Airpark	Yes
TEMP1613	McDowell Road bike lanes	880,000	Not in Airpark	No, Council strategic priority

Because the special public improvement funds are allocated in the stipulations of the Bahia case and the associated development agreement, a decision to alter how those funds would be spent requires a rezoning action to amend the stipulations and the development agreement.

If the Council determines that the allocation of funds should be changed, the process of rezoning and amendment to the Development Agreement could delay finalization of the entitlements for up to 3 months, and affect the applicant's ability to obtain financing for the next phases of the development process.

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## RECOMMENDATION

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Staff recommends that City Council allow the allocation of special public improvement funds in the amount of \$868,836.60 to occur as set forth in Development Agreement 2014-188-COS, pursuant to the stipulations of case 14-ZN-2014.

## OPTION

Change the allocation of special public improvement funds as described above and provide direction to staff on how the funds should be allocated. Subsequently, the applicant would process a rezoning application to amend Development Agreement No. 2014-188-COS and the stipulations in case 14-ZN-2014.

## RESPONSIBLE DEPARTMENTS

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### Planning and Development Services

Current Planning Services

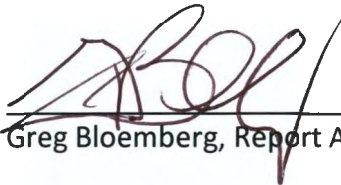
## STAFF CONTACT

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Greg Bloemberg  
Senior Planner  
480-312-4306  
E-mail: gbloemberg@scottsdaleaz.gov

## APPROVED BY

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Greg Bloemberg, Report Author

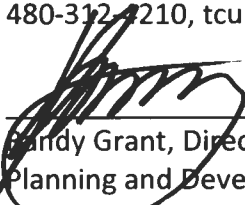
3-19-15  
Date



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Tim Curtis, AICP, Current Planning Director  
480-312-4210, tcurtis@scottsdaleaz.gov

3/19/2015  
Date



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Randy Grant, Director  
Planning and Development Services  
480-312-2664, rgrant@scottsdaleaz.gov

3/19/15  
Date

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13190739v1

**ATTACHMENT**

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1. Development Agreement No. 2014-188-COS

13192418v1

13190739v1

**When Recorded Return to:**

City of Scottsdale  
Current Planning Services  
7447 E. Indian School Rd., Suite 105  
Scottsdale, AZ 85251

Agreement No. 2014-188-COS

**DEVELOPMENT AGREEMENT**

This Agreement (the "Agreement") is entered into this 2<sup>nd</sup> day of December, 2014, by Bahia Live/Work Lofts and Townhomes, LLC, an Arizona limited liability company ("Developer"), and the City of Scottsdale, Arizona, an Arizona municipal corporation ("City"), collectively referred to as "the Parties".

**RECITALS**

A. Arizona Revised Statutes § 9-500.05 authorizes the City to enter into a Development Agreement related to real property located inside the incorporated area of the City with a person having an interest in the real property.

B. The property that is the subject of this Agreement consists of approximately 5.1 gross acres located at 16597 North 92<sup>nd</sup> Street, Scottsdale, Arizona (the "Property"). The Property is situated within the incorporated boundaries of the City and is more particularly described on **Exhibit "A"** attached hereto and incorporated herein by reference.

C. The Property is owned by Spensa Arizona VI, LLC, a foreign limited liability corporation.

D. Developer has entered into an agreement with Spensa Arizona VI, LLC, to purchase the Property and the transaction is currently in escrow which is anticipated to close within 90 days of approval by the Scottsdale City Council of Developer's Application for two (2) Non-Major General Plan Amendments in case number 6-GP-2014 and Zoning District Map Amendment in case number 14-ZN-2014.

E. Developer plans to develop the Property by building a multiuse project on the Property called Bahia Live Work Play which will consist of approximately 78 residential units, 10,000 square feet of retail/restaurant space and 89,900 square feet of office/studio space ("The Development").

F. Developer desires to utilize an available bonus provision under Scottsdale City Ordinance Section 5.4008. Bonus Development Standards to increase the gross floor area of The Development by 72,956.6 sf ("FAR Increase") and obtain an additional 11 feet of Building Height making monetary contributions totaling Eight Hundred Sixty Eight Thousand Eight Hundred Thirty Six Dollars and sixty cents (\$868,836.60) to the City to be used for the construction of special improvements in the Greater Airpark Character Area that achieve public benefits.

G. In order to complete The Development, Developer has made application to the City for two (2) non-major general plan amendments, case number 6-GP-2014 and a zoning district map amendment case number 14-ZN-2014.

H. The Parties understand that following the conclusion of the required public hearings the Scottsdale City Council may vote to deny or approve the Developer's request for the non-major general plan amendments and application for zoning district map amendment. This Agreement does not require the City Council to vote in any particular way.

I. Developer and City acknowledge and agree that the development of the Bahia Live Work Play project on the Property and the monetary contributions to the City for the construction of special improvements will benefit the City's residents and the Property.

J. This Agreement is consistent with the portions of the City's general plan applicable to the Property on the date of this Agreement.

K. The City's governing body has authorized execution of this Agreement by Resolution No. 9969.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing Recitals and representations and the mutual covenants and conditions in this Agreement, The Parties agree as follows:

1. Recitals. The recitals set forth above are hereby incorporated into this Agreement by this reference.

2. Effective Date and Term. The "Effective Date" of this Agreement shall be the date both of the following conditions have been fully satisfied":

a. The successful closing of escrow and purchase of the Property, by the Developer and the recording of all necessary deeds to transfer ownership of the Property to the Developer; and

b. The date that the approval by the Scottsdale City Council of the developer's application for two Non-Major General Plan Amendments in case number

6-GP-20124 and developer's rezoning request in Ordinance number 4184 and resolution number 9958 all become effective.

When these two conditions have been met, the Agreement will be effective and binding upon the parties hereto and will only terminate pursuant to Paragraph 6 below.

3. Interest of Developer. Developer warrants that it has the Property under contract to purchase and will close escrow within ninety (90) days after approval by the Scottsdale City Council of Developer's Application for two (2) Non-Major General Plan Amendments in case number 6-GP-2014 and Zoning District Map Amendment in case number 14-ZN-2014, and that the Property is located within the incorporated boundaries of the City and subject to the zoning and development requirements of the City.

3.1 Bonus Development Standards. The property is currently zoned I-1 and is part of the Horseman's Park Planned Community District (PCD). Developer is applying for two separate zoning actions: 1.) to amend the Horseman's park Planned Community District (PCD) which currently restricts Floor Area Ratio (FAR) on the site to 0.3 for commercial parcels, and building height to 42 feet inclusive of mechanical screening, and 2.) rezoning the Property from I-1 PCD to PCP AMU-R PCD. The PCP District allows Developer to request Bonus FAR and building height. Developer is requesting a FAR of 1.2 and a max building height of 65 feet inclusive of rooftop appurtenances. Developer agrees that the Bonus FAR and height allowed under the PCP cannot be obtained without also amending the PCD.

4. Special Improvements.

4.1 WestWorld Site Improvements. As a public benefit, Developer shall pay to the City Two Hundred Thirty Nine Thousand Six Hundred Twelve Dollars and twenty cents (\$239,612.20) toward the cost of constructing site improvements and landscaping for WestWorld. The improvements shall be constructed and installed as described on **Exhibit "B"** attached hereto and incorporated herein by reference. The Improvements shall be maintained by the City at the City's expense.

4.2 94<sup>th</sup> Street Improvements. As a public benefit, Developer shall pay to the City Three Hundred Thirty Nine Thousand Six Hundred Twelve Dollars and twenty cents (\$339,612.20) toward the cost of constructing streetlights, curbs, gutters and sidewalks along the east side of 94<sup>th</sup> Street from Westworld Drive to Bahia Drive. The street improvements shall be constructed and installed as described on **Exhibit "C"** attached hereto and incorporated herein by reference. The Improvements shall be maintained by the City at the City's expense.

4.3 North Hall Improvements. As a public benefit, Developer shall pay to the City Two Hundred Eighty Nine Thousand Six Hundred Twelve Dollars and twenty cents (\$289,612.20) toward the cost of installing sound absorption material in the North Hall Building of the Westworld Facility. The sound absorption material shall be constructed and installed as described in **Exhibit "D"** attached hereto and incorporated

herein by reference. The Improvements shall be maintained by the City at the City's expense.

5. Schedule of Payments for Special Improvements. Developer shall pay to the City the Special Improvements amounts on the following :

a. Two Hundred Eighty Nine Thousand Six Hundred Twelve Dollars and twenty cents (\$289,612.20) for the Westworld sound absorption material improvements not later than the issuance of any building permit for any work to be done on the Property; however, all amounts are due by December 31, 2017, whichever comes first, any unpaid amount is subject to increase as set forth in paragraph 5.1.

b. Two Hundred Thirty Nine Thousand Six Hundred Twelve Dollars and twenty cents (\$239,612.20) for Wesworld site and landscape Improvements not later than the issuance of any building permit for any work to be done on the Property; however, all amounts are due by December 31, 2017, whichever comes first, any unpaid amount is subject to increase as set forth in paragraph 5.1;

c. Three Hundred Thirty Nine Thousand Six Hundred Twelve Dollars and twenty cents (\$339,612.20) for the 94<sup>th</sup> street improvements to be paid not later than the issuance of any building permit for any work to be done on the Property; however, all amounts are due by December 31, 2017, whichever comes first, any unpaid amount is subject to increase as set forth in paragraph 5.1 ;

5.1 Increases in Payment Amounts. Any amounts that remain outstanding starting on January 1, 2016, shall increase by an escalator factor of 3.5% beginning on January 1, 2016, and the first day of each year thereafter and compounded in accordance with the following formula:

$$A = P(1 + 0.035)^{CY-2015}$$

Where:

A = Dollar amount to be paid

P= Dollar amount to be paid specified in paragraph 4 of this Agreement

CY = Current year

5.2 Failure to Pay. All amounts set forth in the Schedule of Payments in paragraph 5 of this Agreement shall be paid no later than 12:00 noon on December 31, 2017. If Developer has not made full payment of all amounts, the City shall issue a written notice by regular U.S. Mail to Developer containing a calculation of all outstanding amounts due, including any increases as a result of escalation and Developer shall pay in full the outstanding amounts to the City by cashier check no later than thirty (30) days from the date of the letter. If this payment has not been received by the City in accordance with the demand for payment set forth in the letter, Developer will be notified that a public hearing will be scheduled to take action in the form of a



rezoning of the Property to cause the Development Plan to be amended.

5.3. The City shall not issue permits for any work, including grading or building of any structure to be constructed on the Property, until full payment has been made in accordance with paragraph 5 of this Agreement.

6. Termination or Amendment. This Agreement shall terminate without further action by either party upon the occurrence of the Developer's full payment to the City for the Special Improvements as described in paragraphs 4 and 5 of this Agreement and the issuance of the final Certificate of Occupancy for The Development. Upon termination, the City's Zoning Administrator shall have the authority to record a document to provide notice of termination of this Agreement in the land records of Maricopa County, Arizona. This Agreement may also be terminated or amended by written mutual consent of the Parties. The City's obligation to maintain the Special Improvements shall survive termination of this Agreement.

7. Compliance with all Laws. Developer shall develop the Property in compliance with all Federal, State, County and local laws, ordinances, rules, regulations, permit requirements, or any other requirements of the City, which are in effect at the time of the development of all or any part of the Property.

8. General Provisions.

a. Notices. All notices, filings, consents, approvals, and other communications provided for herein or given in connection herewith ("notices") shall be validly given, filed, made, delivered, or served if in writing and delivered personally or sent by registered or certified United States Postal Service mail, return receipt requested, postage prepaid to:

If to the City: THE CITY OF SCOTTSDALE  
Attention: City Attorney  
3939 North Drinkwater Boulevard  
Scottsdale, Arizona 85251

Copy to: City of Scottsdale  
Attention: Planning Director  
Development Services Department  
7447 E. Indian School Rd., Suite 105  
Scottsdale, AZ 85251

If to Developer: Bahia Live/Work Lofts and Townhomes, LLC  
16621 North 91<sup>st</sup> Street, Suite 101  
Scottsdale, AZ 85260

Copy to: Berry Riddell and Rosensteel LLC  
6750 East Camelback Road, Suite 100

b. Mailing Effective. Notices given by registered or certified mail shall be deemed delivered 72 hours following deposit in the U.S. Postal Service in the manner set forth above.

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

d. Headings. The descriptive headings of the paragraphs of the Agreement are inserted for convenience only, and shall not control or affect the meaning or construction of any of the provisions of the Agreement.

e. Authority. The parties to this Agreement represent to each other that they have full power and authority to enter into this Agreement, and that all necessary actions have been taken to give full force and effect to this Agreement.

f. Entire Agreement. The Agreement, including exhibits, constitutes the entire Agreement between the parties.

g. Severability. If any provision of this Agreement limiting the uses of the Property is declared void or unenforceable, then the entire Agreement shall be void. If any other 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, provided that the fundamental purposes of this Agreement are not defeated by such severability.

h. Governing Law. The laws of the State of Arizona shall govern the interpretation and enforcement of this Agreement. The Parties agree that venue for any action commenced in connection with this Agreement shall be proper only in a court of competent jurisdiction located in Maricopa County, Arizona, and the Parties hereby waive any right to object to such venue.

i. Recordation. This Agreement, and any amendment or cancellation of this Agreement, shall be recorded, in its entirety, in the official records the county recorder's office in Maricopa County, Arizona, no later than ten (10) days after the effective date of this Agreement, amendment, or cancellation, as required by A.R.S. § 9-500.05.

j. Remedies. If any party to this Agreement breaches any provision of the Agreement, the non-defaulting party shall be entitled to all remedies available at both law and in equity, including specific performance.

k. Attorneys' Fees and Costs. If any party brings a legal action either

because of a breach of the Agreement or to enforce a provision of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees and court costs.

l. Binding Effect. The benefits and burdens of this Agreement shall run with the Property and be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors in interest, and assigns. This Agreement shall be incorporated by reference in any instrument purporting to convey an interest in the Property.

m. Third Parties. There are no third party beneficiaries to this Agreement, and no person or entity not a party hereto shall have any right or cause of action hereunder.

n. No Agency Created. Nothing contained in this Agreement shall create any partnership, joint venture, or agency relationship between the parties.


o. Contract Administrator. The City's contract administrator for this Agreement shall be Greg Bloemberg, Senior Planner for the City of Scottsdale, or designee.

SIGNATURES ON SEPARATE PAGE

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.


THE CITY OF SCOTTSDALE:  
an Arizona municipal corporation

ATTEST:

By:   
Carolyn Jagger, City Clerk

By:   
W. J. "Jim" Lane, Mayor

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY

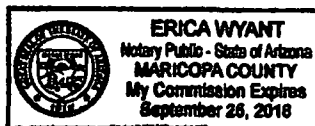
By:   
Bruce Washburn, City Attorney  
By: Joe Padilla, Senior Assistant City Attorney

STATE OF ARIZONA       )  
  ) ss.  
County of Maricopa       )

The foregoing instrument was acknowledged before me this 2nd day of December, 2014, by W. J. "Jim" Lane, Mayor of the City of Scottsdale, Arizona, a municipal corporation.

  
Notary Public

My Commission Expires:  
September 25, 2018



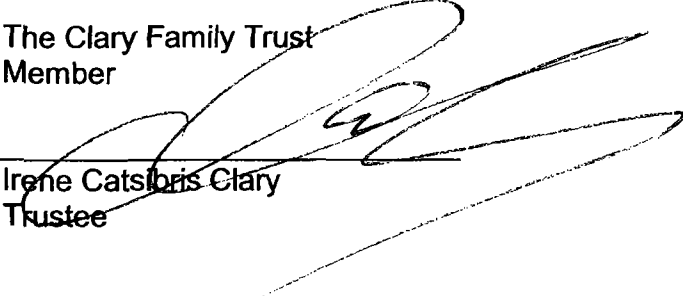
**DEVELOPER:**

Bahia Live/Work Lofts and Townhomes, LLC,  
an Arizona Limited Liability Company

By: Huclar Investments, LLC, an Arizona limited liability company  
Its: Manager


By: Catclar Investments, LLC, an Arizona limited liability company  
Its: Manager

By: The Clary Family Trust  
Its: Member

By:   
Irene Catsibris Clary  
Its: Trustee

STATE OF ARIZONA       )  
                                      ) ss.  
County of Maricopa       )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of November, 2014, by Irene Catsibris Clary, the Trustee of the Clary Family Trust, signing as the Member of Catclar Investments, LLC, who is the Manager of Huclar Investments, LLC, signing as the Manager of Bahia Live/Work Lofts and Townhomes, LLC.

  
Notary Public

My Commission Expires:



## **EXHIBIT A**

### **Legal Description**

Lot 21 (sometimes described as the East of the Northeast quarter of the Southeast quarter of the Northwest quarter) of Section 6, Township 3 North, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

EXCEPT all coal, oil, gas and other mineral deposits and together with all uranium, thorium or any other materials which is or may be determined by law of the United States or of this State, or decisions of courts to be peculiarly essential to the production of fissionable materials, whether or not of commercial value and the exclusive right thereto, on, in or under the above described lands, shall be and remain and are hereby reserved in and retained in Patent recorded June 30, 1954 in Docket 1382, page 441, records of Maricopa County, Arizona.

Exhibit "A"

Agreement No. 2014-188-COS

Page 1 of 1

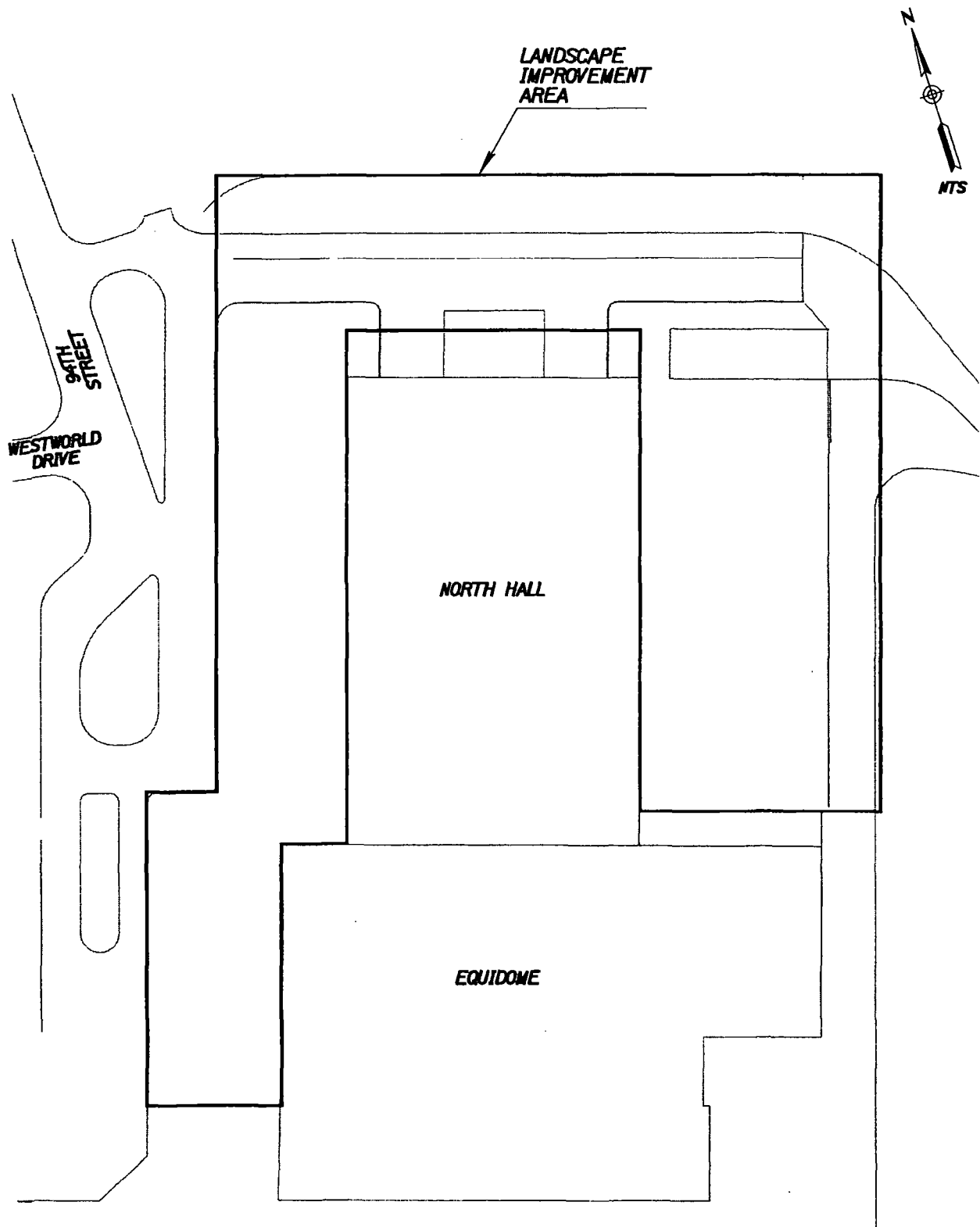
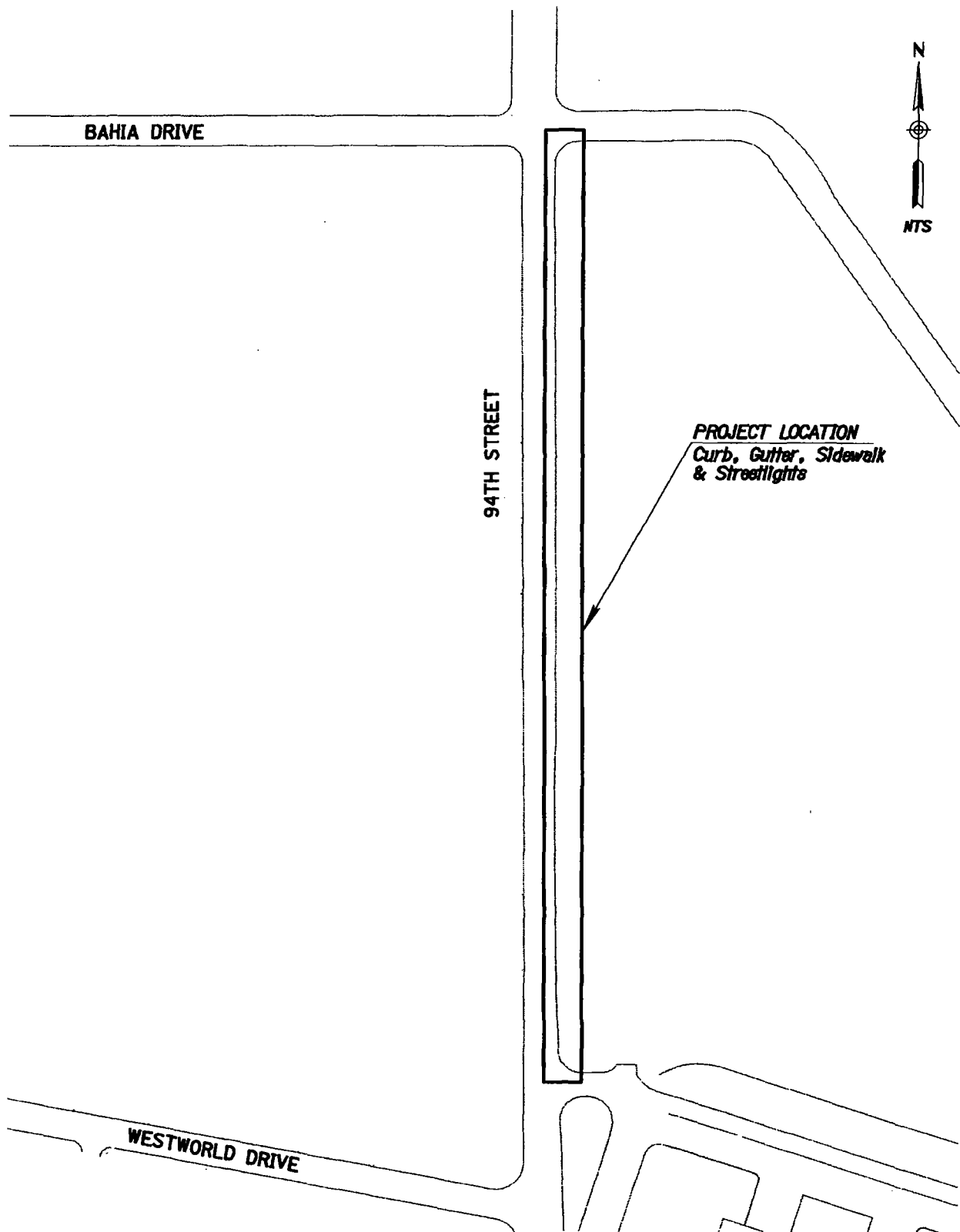
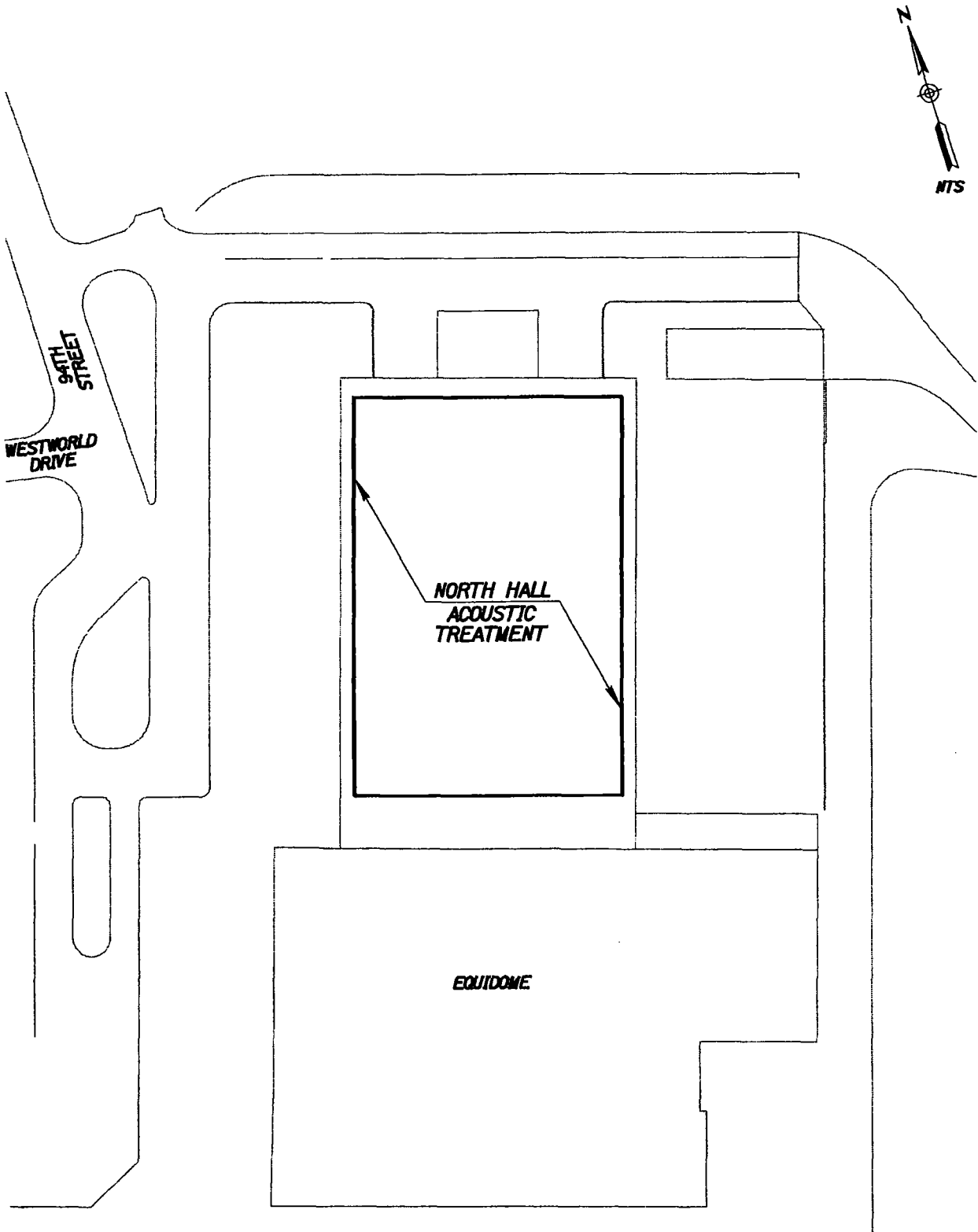


EXHIBIT "B"  
Agreement No. 2014-188-COS  
Page 1 of 1







Bahia Work/Live/Play  
Development Agreement Terms

14-ZN-2014 and 2014-188-COS

# Bahia Work Live Play Project



**CONTEXT AERIAL**

**6-GP-2014 and 14-ZN-2014**

## Allotment approved at 12/2 CC hearing

<u>Special Public Improvement</u>	<u>Allotment amount</u>
Westworld North Hall facility improvements	\$289,612
Westworld site improvements and landscaping	\$239,612
94 <sup>th</sup> Street Improvements for Westworld (new sidewalk and lighting along east side of 94 <sup>th</sup> Street)	\$339,612
TOTAL	\$868,836

## Alternatives for expenditure of funds

<u>Project #</u>	<u>Title</u>	<u>Cost</u>	<u>In CIP?</u>
YB29A	Pavement Overlay	\$860,000	Yes
TEMP1610	98 <sup>th</sup> St. ½ street improvements	\$1,000,000	No
TEMP 1632	Fire Station 605 Renovation	\$750,000	No

# Options

Option 1: No action

Option 2: Initiate Zoning District Map Amendment and amend Development Agreement to change allocation and provide direction to staff on how funds should be allocated



## Item 31

### Bahia Work/Live/Play Development Agreement Terms

14-ZN-2014 and 2014-188-COS

### Bahia Work Live Play Project



CONTEXT AERIAL

6-GP-2014 and 14-ZN-2014

### Allotment approved at 12/2 CC hearing

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## Options

Option 1: No action

Option 2: Initiate Zoning District Map Amendment and amend Development Agreement to change allocation and provide direction to staff on how funds should be allocated

**Wyant, Erica**

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**From:** nicetang@cox.net  
**Sent:** Monday, April 06, 2015 4:46 PM  
**To:** Agenda Item Comment  
**Subject:** Agenda Item Comment for 04/14/15 - Item 31

Meeting Date: 04/14/15

Item Number: 31

Contact Information (if blank, user did not provide):

Name: Michael Mayer

Address: 11157 E Greenway Road

C/S/Z: Scottsdale, Az 85255

Phone:

Comment for 04/14/15 Item 31:

City Council members,

Why would you approve lighting and sound improvements at Westworld for rock concerts and booze events? I dare you to publish the financials of these drinking and rock concert events to taxpayers.

You can't justify the \$50M expansion which was way over budget. Pricing below costs is not a business plan.

My neighbors and I fought to turn off the illegal lights on the North Hall (illegal per city code)last year. Now you want to add more lights.

I propose a theme for consideration at Westworld called the rule of 4. 4 Wheels, 4 legs and 4 Scottsdale citizens.

No booze, no rock concerts...what do those have to do with a western theme?

We all saw how city and Westworld mgmt neglect resulted in a tragic "bikeweek" event caused 2 people their lives.

Westworld has not updated the business plan since 1998..almost 2 decades ago.

Require an updated business plan before you rezone the area, install and operate illegal lighting and start holding rockconcerts?