

WHEN RECORDED RETURN TO:

City of Mesa (Beth Hughes-Ornelas)
55 North Center Street
Mesa, AZ 85201

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is entered into _____, 2015, by and between Judith M. Gaede, a single woman ("Owner") and the CITY OF MESA, an Arizona municipal corporation (the "City"). Owner and City are collectively referred to herein as the "Parties," or individually as the "Party."

RECITALS:

A. Owner owns the property located at 6350 East Main Street and legally described in Exhibit A and depicted in Exhibit B (the "Property") within the City of Mesa, AZ.

B. The Owner desires that the Property be rezoned from Limited Commercial to an Infill Development District-1 ("ID-1") with a base zoning of General Commercial (GC) to expand the base of possible users for the Property, facilitate redevelopment and maximize the Property's viability in consideration of its location.

C. The ID-1 is a special zoning district that promotes and facilitates the redevelopment of underutilized and by-passed properties by permitting relief from City development standards through the adoption of an Infill Incentive Plan ("IIP").

D. The Property is located in an older area that was developed more than forty (40) years ago with no considerable growth or redevelopment. The City considers the Property to be a by-passed parcel and designated the Property as an Infill Incentive District-1 because the area has 1) a large number of vacant older buildings, 2) a large number of vacant and underused parcels of property, and 3) there is an absence of development and investment activity compared to other areas in the City. For these reasons, the requirements of A.R.S. § 9-499.10 have been satisfied.

E. The City adopted an IIP with relief from development standards to encourage redevelopment and growth.

F. The Parties desire to enter into this Agreement for the purpose of

establishing certain use restrictions, use modifications, and a modification to the required off-site improvements on the Property in connection with a rezoning of the Property, intending this document to be a "Development Agreement" within the meaning of A. R. S. § 9-500.05.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, and the mutual promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties state, confirm and agree as follows:

1. Owner's Duties and Obligations. Owner, its successors and assigns agree that the obligations set forth in this Agreement are covenants running with the land that are binding and enforceable upon Owner, its successors and assigns.

1.1 Use Restrictions. The uses listed below shall be prohibited on the Property. To the extent there is a disagreement between the Parties as to whether a use is allowed or permitted, such determination shall be submitted to the City's Zoning Administrator, who shall determine whether a proposed use is a prohibited use under this section of the Agreement.

- 1.1.1 Single Attached Residence,
- 1.1.2 Correctional Transitional Housing Facility,
- 1.1.3 Group Housing,
- 1.1.4 Home Occupation,
- 1.1.5 Transportation Passenger Terminals,
- 1.1.6 Heliports.

1.2 Use Modifications. The uses listed below shall be permitted without a permit. To the extent there is a disagreement between the Parties as to whether a use is permitted without a permit, such determination shall be submitted to the City's Zoning Administrator, who shall determine whether a proposed use is permitted without a permit under this section of the Agreement.

- 1.2.1 Multiple Residence permitted without a Council Use Permit (CUP),
- 1.2.2 Private Schools permitted without a Council Use Permit (CUP),
- 1.2.3 Automobile/Vehicle Washing permitted with a Special Use Permit (SUP),
- 1.2.4 Farmer's Market permitted without a Temporary Use Permit (TUP) or Special Use Permit (SUP),
- 1.2.5 Non-chartered Financial Institutions permitted without a Council Use Permit,

- 1.2.6 Wholesale Warehouse and Storage permitted without a Council Use Permit (CUP),
- 1.2.7 Outdoor entertainment or activities as an accessory use permitted without a Special Use Permit (SUP),
- 1.2.8 Outdoor Display as an accessory use permitted without a Special Use Permit (SUP).

1.3 Off-Site Improvements. Title 9 Chapter 8 of the City Code identifies the off-site improvements the City requires as part of the development of a property. The Code authorizes the City to evaluate a proposed development and reduce the required Improvements. The City has evaluated the Property and agreed to reduce the Improvements the Owner is required to install as outlined in this Section and its Subsections. The City has agreed to allow the Owner to install the off-site improvements in two phases identified as Phase I and Phase II.

1.3.1 Phase I. Phase I commences when the Council approves the Owner's request to rezone the Property to ID-1. During Phase I the Owner shall make the following off-site improvements:

- 1.3.1.1 Install a 5 foot sidewalk along the property's south property line frontage;
- 1.3.1.2 Modify the driveway(s) so it is compliant with the accessibility requirements in the Americans with Disabilities Act ("ADA") and any amendments thereto, and all regulations promulgated pursuant thereto; and
- 1.3.1.3 Install an ADA ramp at the corner of 64th Street and the frontage road to connect future east-west sidewalk across 64th Street.

The Owner shall comply with all City standards when installing the off-site improvements listed in this Section. The Phase I off-site improvements shall be completed by the Owner and approved by the City no later than May 29, 2016 (which is within one hundred-eighty days of Council approval of the rezoning to ID-1). Until all Phase I off-site and on-site improvements are completed by the Owner and approved by the City, the City will not issue a Certificate of Occupancy for the existing 1,800 square foot building and the City will not approve any plans, including but not limited to site plans, landscape plans, or building elevations, for the development of Phase II or any other future development on the Property.

1.3.2 Phase II. Phase II commences when the footprint of the existing eighteen-hundred (1,800) square foot building located on the Property expands either vertically or horizontally; or any site plan for Phase II development is submitted to the City. During Phase II, the Owner shall make the following off-site improvements:

- 1.3.2.1 Relocate all overhead utilities underground;
- 1.3.2.2 Remove all 90 degree pull in parking adjacent to North 64th Street;
- 1.3.2.3 Install a five (5) foot sidewalk along the

Property's N. 64th Street frontage;

1.3.2.4 Install street lighting along the Property's N.

64th Street frontage; and

1.3.2.4 Install street lighting along the Property's south

Property line.

The Owner shall comply with all City standards when installing the Improvements listed in this Section. Until the Phase II Improvements are completed by the Owner and approved by the City, the City will not issue a Certificate of Occupancy for Phase II.

1.4 On-Site Improvements.

Phase I. During Phase I, as defined above, in addition to the on-site improvements listed in the IIP and depicted on the conceptual site plan, the Owner shall install on-site parking lot lighting using Crime Prevention Through Environmental Design Principals (CPTED). The on-site improvements shall be completed by the Owner and approved by the City no later than May 29, 2016. Until all Phase I on-site and off-site improvements are completed by the Owner and approved by the City, the City will not approve any plans, including but not limited to site plans, landscape plans, or building elevations, for the development of Phase II or any other future development on the Property.

2. Term/Termination. This Agreement shall become effective on the date this Agreement is recorded and shall continue in full force and shall automatically terminate upon the earlier of: (i) a Council vote that does not approve the Zoning requested by the Owner in case Z15-030 and contemplated by this Agreement, (ii) termination by the mutual consent of the Owner and City pursuant to this Agreement, or (iii) fifty (50) years from the approval date of this Agreement.

3. General Provisions.

3.1 Recordation. This Agreement shall be recorded in its entirety in the Official Records of Maricopa County, Arizona, not later than ten days after its full execution by the Parties.

3.2 Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (C) given to a recognized and reputable overnight delivery service, to the address set forth below:

The City: City of Mesa
20 East Main Street, Suite 750
Mesa, Arizona 85211
Facsimile: 480-644-2175

Attn: City Manager

With copy to: Mesa City Attorney's Office
20 East Main Street, Suite 850
Mesa, Arizona 85211
Facsimile: 480-644-2498
Attn: James Smith, Esq.

Owner: Judith M. Gaede
505 West Sunset Circle
Mesa, AZ 85201

With copy to: Gammage and Burnham, PLC
2 North Central Ave.
15th Floor
Phoenix, Arizona 85004
Attn: Lindsay C. Schube, Esq.

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this Section. Notices shall be deemed received (A) when delivered to the party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

3.3 Choice of Law, Venue and Attorneys' Fees. The laws of the State of Arizona shall govern any dispute, controversy, claim or cause of action arising out of or related to this Agreement. The venue for any such dispute shall be Maricopa County, Arizona, and each Party waives the right to object to venue in Maricopa County for any reason. Neither Party shall be entitled to recover any of its attorneys' fees or other costs from the other Party incurred in any such dispute, controversy, claim, or cause of action, but each Party shall bear its own attorneys' fees and costs, whether the same is resolved through arbitration, litigation in a court, or otherwise.

3.4 Default. In the event a Party fails to perform or fails to otherwise act in accordance with any term or provision hereof (the "Defaulting Party") then the other Party (the "Non-Defaulting Party") may provide written notice to perform to the Defaulting Party (the "Notice of Default"). The Defaulting Party shall have 30 days from receipt of the Notice of Default to cure the default. In the event the failure is such that more than 30 days would reasonably be required to cure the default or otherwise

comply with any term or provision herein, then the Defaulting Party shall notify the City of such and the timeframe needed to cure such default, so long as the Defaulting Party commences performance or compliance or gives notice of additional time needed to cure within said 30-day period and diligently proceeds to complete such performance or fulfill such obligation; provided further, however, that no such cure period shall exceed 90 days. Any written notice shall specify the nature of the default and the manner in which the default may be satisfactorily cured, if possible.

3.5 Good Standing; Authority. Each Party represents and warrants that it is a duly formed and legally valid existing entity under the laws of the State of Arizona with respect to Owner, or a municipal corporation within Arizona with respect to the City and that the individuals executing this Agreement on behalf of their respective Party are authorized and empowered to bind the Party on whose behalf each such individual is signing.

3.6 Assignment. The provisions of this Agreement are binding upon and shall inure to the benefit and burden of the Parties, and all of their successors in interest and assigns.

3.7 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 Parties. No term or provision of this Agreement is intended to, or shall be for the benefit of any person, firm or entity not a party hereto, and no such other person, firm, or entity shall have any right or cause of action hereunder.

3.8 Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver of any breach shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant, or condition of this Agreement. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

3.9 Further Documentation. The Parties agree in good faith to execute such further or additional instruments and documents and to take such further acts as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

3.10 Fair Interpretation. The Parties have been represented by counsel in the negotiation and drafting of this Agreement and this Agreement shall be construed according to the fair meaning of its language. The rule of construction that ambiguities shall be resolved against the Party who drafted a provision shall not be employed in interpreting this Agreement.

3.11 Computation of Time. In computing any period of time under this Agreement, the date of the act or event from which the designated period of time begins to run shall not be included. The last date of the period so completed shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until

the end of the next day which is not a Saturday, Sunday or legal holiday. The time for performance of any obligation or taking any action under this Agreement shall be deemed to expire at 5:00 p.m. (Phoenix, Arizona time) on the last day of the applicable time period provided herein.

3.12 Conflict of Interest. Pursuant to A.R.S. § 38-503 and § 38-511, no member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. This Agreement is subject to cancellation pursuant to the terms of A.R.S. § 38-511.

3.13 Entire Agreement. This Agreement, together with the following Exhibits attached hereto (which are incorporated herein by this reference) constitute the entire agreement between the Parties:

Exhibit A: Legal Description of the Property
Exhibit B: Depiction of the Property
Exhibit C: Permitted Uses

All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, are superseded by and merged in this Agreement.

3.14 Time of the Essence. Time is of the essence in this Agreement and with respect to the performance required by each Party hereunder.

3.15 Severability. If any provisions of this Agreement is declared void or unenforceable, such provisions shall be severed from this Agreement, which shall otherwise remain in full force and effect.

3.16 Proposition 207 Waiver. Developer hereby waives and releases the City from any and all claims under A.R.S. § 12-1134 et seq., including any right to compensation for reduction to the fair market value of the Property, as a result of the City's approval of this Agreement. The terms of this waiver shall run with the land and shall be binding upon all subsequent landowners and shall survive the expiration or earlier termination of this Agreement.

3.17 E-Verify. To the extent applicable under A.R.S. § 41-4401 and 23-214, Owner represents and warrants compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements of A.R.S. § 23-214(A). Breach of the above-mentioned warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by City. The City retains the legal right to randomly inspect the papers and records of any employee who works under this Agreement to ensure compliance with the above-mentioned laws.

governmental agency which relies upon the appropriation of funds by its governing body to satisfy its obligations. City represents that it intends to pay all monies due under this Agreement if such funds have been legally appropriated. City agrees to actively request funding for future fiscal periods in order to satisfy the terms of this Agreement. However, in the event that an appropriation is not granted and operating funds are not otherwise legally available to pay the monies due or to become due under this Agreement, City shall have the right to terminate the Agreement without penalty on the last day of the fiscal period for which funds were legally available. In the event of such termination, City agrees to provide a minimum of thirty (30) calendar days' advance written notice of its intent to terminate.

[SIGNATURES OF THE PARTIES APPEAR ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first set forth above:

"City"

CITY OF MESA, an Arizona municipal corporation

By: _____
Christopher J. Brady, City Manager

ATTEST:

Dee Ann Mickelson, City Clerk

APPROVED AS TO FORM

James Smith, City Attorney

STATE OF ARIZONA)

County of Maricopa)ss.
)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by Christopher J. Brady, the City Manager for the CITY OF MESA, an Arizona municipal corporation.

Notary Public

My Commission Expires:

"Owner"

Judith M. Gaede,
A Single Woman

By:_____

Name:_____

Title:_____

STATE OF ARIZONA)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by Judith M. Gaede, a single woman.

Notary Public

My commission expires:

**EXHIBIT A
TO DEVELOPMENT AGREEMENT**

[Legal Description of the Property]

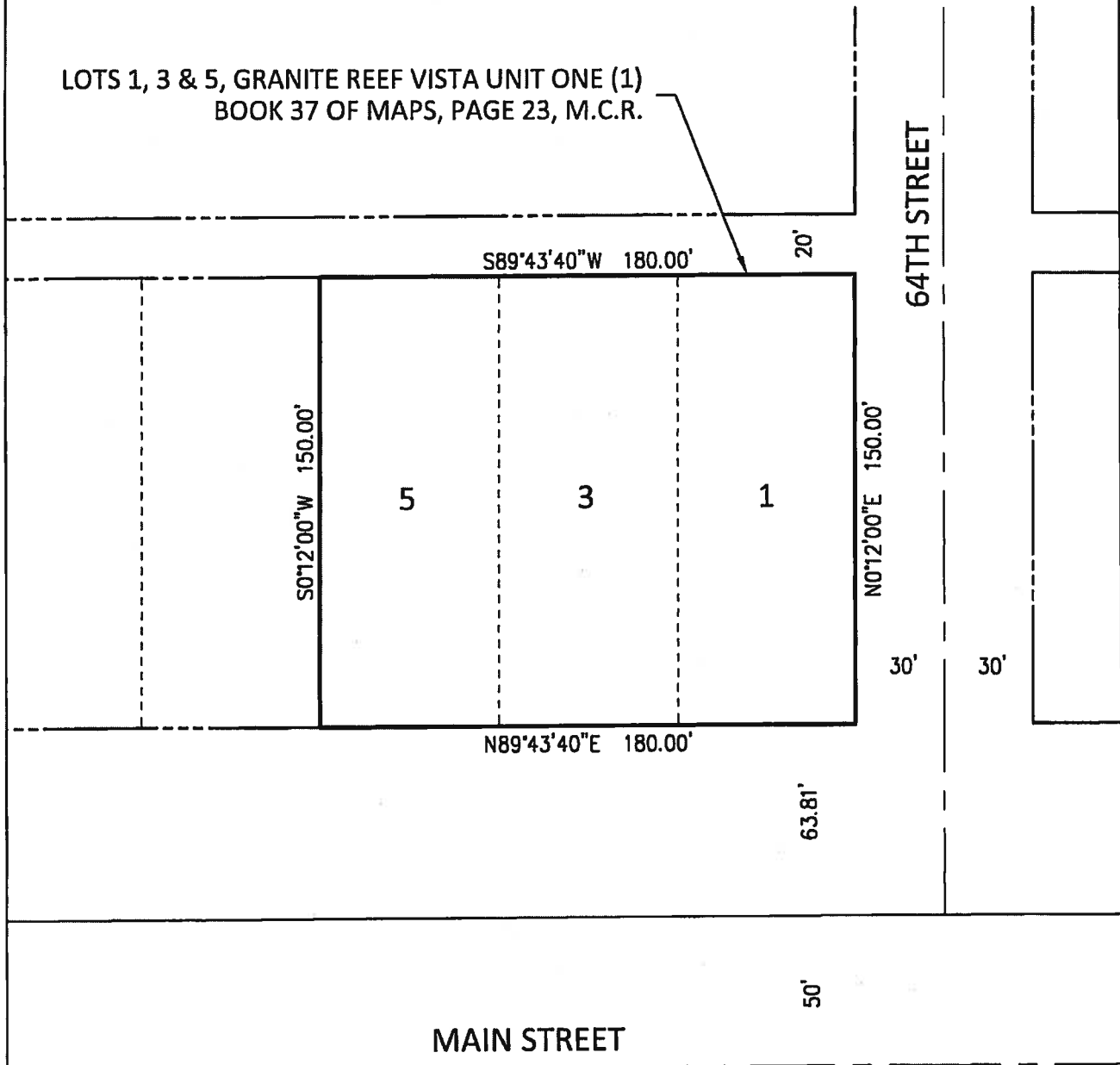
See following pages

LEGAL DESCRIPTION

Lots 1, 3 & 5, GRANITE REEF VISTA UNIT ONE (1), according to the plat of record in the office of the Maricopa County Recorder in Book 37 of Maps, Page 23.

EXHIBIT B
TO DEVELOPMENT AGREEMENT
DEPICTION OF THE PROPERTY

LOTS 1, 3 & 5, GRANITE REEF VISTA UNIT ONE (1)
BOOK 37 OF MAPS, PAGE 23, M.C.R.



LOCATED IN THE NORTHEAST QUARTER OF SECTION 24,
TOWNSHIP 1 NORTH, RANGE 6 EAST, G&SRM
MARICOPA COUNTY, MESA, ARIZONA.



SHEET 1 OF 1
DATE:
5/1/14

EXHIBIT 'A'			
GRANITE REEF VISTA			
BY: DT	CHK: DT	QC: DT	
BCG PROJECT NO:		TASK:	
CLIENT REF NO:			

Bowman
CONSULTING

1295 W Washington St, #108
Tempe, AZ 85281
Phone: (480) 629-8830
Fax: (480) 629-8841
www.bowmanconsulting.com

EXHIBIT C Permitted Uses

The land use regulations for the proposed ID-1 zoning district are established by letter designations as follows:

- "P"** designates use classifications permitted as a matter of right.
- "SUP"** designates use classifications permitted on approval of a Special Use Permit.
- "CUP"** designates use classifications permitted on approval of a Council Use Permit.
- "--"** designates a prohibited use.
- "*"** designates a use that is prohibited in the Proposed zoning district that would otherwise be permitted by right or require a Conditional Use Permit (TUP, SUP, CUP) in the General Commercial (GC) zoning district.
- "**"** designates a use that is permitted by right in the Proposed zoning district that would otherwise require a Conditional Use Permit (TUP, SUP, CUP) in the General Commercial (GC) zoning district.

LAND USE	PROPOSED	GC
<i>Residential Use Classifications</i>		
Single Residence – Attached*	--	CUP
Multiple Residence**	P	CUP/P
Correctional Transitional Housing Facility*	--	CUP
Group Housing*	--	P
Home Occupations*	--	P
<i>Public and Semi-Public Use Classifications</i>		
Clubs and Lodges	P	P
<i>Colleges and Trade Schools, Public or Private</i>		
Colleges and Universities	P	P

LAND USE	PROPOSED	GC
Commercial Trade Schools	P	P
Community Center	P	P
Industrial Trade Schools	P	p
Community Gardens	P	P
Cultural Institutions	P	P
Day Care Center	P	P
Government Offices	P	P
Hospitals and Clinics		
Clinics	P	P
Hospitals	P	P
Nursing and Convalescent Homes	P	P
Parks and Recreation Facilities	P	P
Places of Worship	P	P
Public Safety Facilities	P	P
Schools, Public	P	P
Schools, Private**	P	CUP
Social Service Facilities	CUP	CUP
Commercial Use Classifications		
Animal Sales and Services		
Small Animal Day Care	P	P
Kennels	P	P
Pet Stores	P	P
Veterinary Services	P	P
Artists' Studios	P	P
Automobile/Vehicle Sales and Services		
Accessory Automobile Rentals	P	P

LAND USE	PROPOSED	GC
<i>Automobile Rentals</i>	P	P
<i>Automobile/Vehicles Sales and Leasing</i>	P	P
<i>Automobile/Vehicles Repair, Major</i>	P	P
<i>Automobile/Vehicle Services and Repair, Minor</i>	P	P
<i>Automobile/Vehicle Washing**</i>	P	SUP
<i>Large Vehicle and Equipment Sales, Services, and Rental</i>	P	P
<i>Service Stations</i>	SUP	SUP
<i>Banks and Financial Institutions</i>	P	P
<i>With Drive-Thru Facilities</i>	P	P
<i>Banquet and Conference Center</i>	P	P
<i>Building Materials and Services</i>	P	P
<i>Business Services</i>	P	P
<i>Commercial Entertainment</i>	P	P
Commercial Recreation		
<i>Small-Scale</i>	P	P
<i>Large-Scale</i>	P	P
Eating and Drinking Establishments		
<i>Bars/Clubs/Lounges</i>	P	P
<i>Coffee Shops/Cafes</i>	P	P
<i>Restaurants, Bar and Grill</i>	P	P
<i>Restaurants, Full-Services</i>	P	P
<i>Restaurants, Limited Service</i>	P	P
<i>With Drive-Thru Facilities</i>	P	P

LAND USE	PROPOSED	GC
<i>With Outdoor Seating Areas</i>	P	P
<i>With Live Entertainment</i>	P	P
<i>With Off-Track Betting</i>	P	P
<i>Farmer's Market**</i>	P	TUP/SUP
Food and Beverage Sales		
<i>Convenience market</i>	P/SUP	P/SUP
<i>General Market</i>	P	P
<i>Funeral Parlors and Mortuaries</i>	P	P
<i>Accessory Crematorium</i>	P	P
<i>Hotels and Motels</i>	P	P
<i>Light Fleet-Based Services</i>	P	P
<i>Live-Work Units</i>	SUP	SUP
<i>Maintenance and Repair Services</i>	P	P
<i>Non-chartered Financial Institutions**</i>	P	CUP
Offices		
<i>Business and Professional</i>	P	P
<i>Medical and Dental</i>	P	P
<i>Parking, Commercial</i>	P	P
<i>Personal Services</i>	P	P
<i>Plant Nurseries and Garden Centers</i>	P	P
Retails Sales		
<i>General</i>	P	P
<i>Large Format</i>	P	P
<i>Pawn Shops</i>	CUP	CUP
<i>Tattoo and Body Piercing Parlors</i>	P	P
Employment Use Classifications		

LAND USE	PROPOSED	GC
<i>Handicraft/Custom Manufacturing</i>	P	P
<i>Light Assembly/Cabinetry</i>	P	P
<i>Research and Development</i>	P	P
Recycling Facilities		
<i>Reverse Vending Machines</i>	P	P
<i>Small Indoor Collection Facilities</i>	P	P
Warehousing and Storage		
<i>Mini-Storage</i>	P	P
<i>Wholesale**</i>	P	CUP
Transportation, Communication, Utilities Use Classifications		
<i>Antenna and Transmission Towers</i>	See Chapter 35	See Chapter 35
<i>Facilities within Buildings</i>	See Chapter 35	See Chapter 35
<i>Transportation Passenger Terminals*</i>	—	P
<i>Utilities, Minor</i>	P	P
<i>Heliports*</i>	—	CUP
Specific Accessory Uses		
<i>Caretakers' Residences</i>	SUP	SUP
<i>Garden Center</i>	P	P
<i>Outdoor entertainment or activities as an accessory use**</i>	P	SUP
<i>Outdoor Display**</i>	P	SUP