

## ORDINANCE NO. 2002-10

### DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2002, by and between Cave Creek-Carefree Partners, an Arizona limited partnership, ("Owner") and the Town of Carefree, an Arizona municipal corporation organized and existing under the laws of the State of Arizona ("Town").

#### RECITALS

- A. Arizona Revised Statutes § 9-500.05, authorizes the Town to enter into development agreements with landowners having an interest in real property located in the Town.
- B. Owner holds title to an 8.79 acre parcel located at the northeast corner of Cave Creek Road and Carefree Highway in the Town of Carefree legally described in attached Exhibit "A" (the "Property").
- C. The Property was zoned G-O by Ordinance No. \_\_\_\_\_. Stipulation No. \_\_ of Ordinance No. \_\_\_\_\_ provides for the incorporation of the approved Stipulations into a Development Agreement between the Town and Owner. This Agreement is being entered into in satisfaction of that Stipulation.
- D. This Agreement is consistent with the portions of the Town's General Plan applicable to the Property.
- E. Owner and the Town acknowledge and agree that the development of the Property pursuant to this Agreement will result in planning, aesthetic, environmental and economic benefits to the Town and its residents by requiring the development of the Property to be consistent with the Stipulations in Ordinance No. \_\_\_\_\_.

#### AGREEMENTS

NOW, THEREFORE, in consideration of the foregoing, the parties agree as follows:

##### I.

Recitals. The recitals set forth above are acknowledged to be true and correct and are incorporated herein by this reference.

##### II.

Stipulations of Development. The development of the Property under the approved G-O zoning shall be in accordance with the following stipulations:

1. Upon approval of rezoning case number Z01-03, and prior to receiving a building permit, and prior to any work upon the site, the applicant shall submit and receive approval of a final site plan, narrative report, and working drawings by the Planning and Zoning Commission and Town Council. The final site plan, narrative report, working drawings to be submitted shall be consistent with the approved concept site plan, elevations and narrative report attached hereto. Upon approval of the final site plan, narrative report, and working drawings by the Planning and Zoning Commission and Town Council, all buildings, structures and other improvements upon the project site shall be constructed, erected, installed, maintained and used in accordance therewith, provided minor amendments to the site plan, which do not include an increase in building square footage, increased building height, increased lot coverage or an increase in access driveways may be approved by the Planning and Zoning Commission. All other amendments to the approved site plan must be reviewed and approved by the Planning and Zoning Commission and Town Council.
2. The building area will be limited to a maximum of 75,600 square feet.
3. The Owner and all future owners of the office property shall maintain the 4.87 acres of open space north of the wash in a clean and attractive condition with natural desert landscaping. Such open space shall be deeded to the Town if the Town will accept it, or will be deed restricted as open space in perpetuity.
4. No structure shall exceed a height of twenty (20) feet above natural grade.
5. All areas shown as undisturbed open space shall be fenced with a six-foot chain link fence to protect them during construction and shall be left totally undisturbed except for the removal of dead plant material and the addition of plants all of which shall be detailed on the final site plan, landscape and hardscape plan.
6. The corner monument shall be detailed on the final site plan, landscape and hardscape plan.
7. Lot coverage (area under roof) shall not exceed 60,700 square feet, which is 15.8% of the site.
8. The final site plan shall include a survey and legal description for the area of the major wash and a fifteen foot area on each side of the wash which shall be left undisturbed. No bridges shall be constructed across the wash and no driveways will be allowed to cross the wash. The area shall be fenced with a six-foot chain link fence to protect it during construction and shall be left totally undisturbed except for the removal of dead plant material and the addition of plants all of which shall be detailed on the final site plan, landscape and hardscape plan.
9. The final site plan, narrative report, and working drawings shall be submitted to those jurisdictions that have responsibility for the adjoining roadways and all required roadway improvements shall be completed by the applicant.

10. Agreements for water and sewer service and approval by Maricopa County Department of Environmental Management shall be submitted with the final site plan.
11. Any storage or display shall be within completely enclosed buildings.
12. All trash receptacles shall be completely shielded from view (including properties overlooking the site).
13. All electrical and HVAC equipment shall be ground mounted and completely shielded from view (including from properties overlooking the site).
14. Construction shall commence within seven (7) years of final approval of the zoning change by the Town Council (or citizen vote if a referendum is filed or final judicial action if litigation is filed) and shall be completed within eighteen (18) months thereafter. If construction is not started within seven (7) years, the Town Council shall initiate public hearings to revert the zoning to R1-35.
15. Prior to the approval of a grading or building permit, a performance bond, valued at 105% of the engineers estimated cost of construction of the following improvements, shall be submitted to the Town and shall be released only upon the completion of adjacent roadway improvements, utility line extensions to the site, and landscape improvements within the street rights-of-way and within the site.
16. All signs shall comply with Garden Office zoning requirements.
17. There shall be a minimum 100-foot building setback along the east boundary of the property. A wall shall be constructed ten feet to the west of the east property line, with a height of four and one-half feet.
18. No C-1, C-2 or C-3 uses shall be allowed. No conditional uses listed in Section 1601(1) of the Town of Carefree Zoning Ordinance shall be sought or granted, except for the uses set forth in subsections (k) (libraries, museums, etc.), and (x) (signs), and then only with the discretionary approval of the Town Council. No conditional uses listed in Section 1101-A(7) of the Town of Carefree Zoning Ordinance shall be sought or granted, except for the uses set forth in subsections (a) (bank without drive-through), (e) (municipal uses), or (f) (libraries and museums), and then only with the discretionary approval of the Town Council.
19. The parking lot lighting shall be as unobtrusive as possible. Lighting shall be low level (four foot) bollard type and light standards of a maximum of twenty (20) feet, which shall be shielded and directed downward. Lighting shall be permitted only to the extent necessary for safety and security.
20. Parking areas immediately adjacent to Cave Creek Road and Carefree Highway shall be screened by a low wall or berming using indigenous plants and materials.
21. All parking lot surfaces and roofs shall be finished in earth tone materials.

22. No variations shall be permitted from these stipulations.

### III.

#### Miscellaneous Provisions.

1. Recordation of Agreement. This Agreement and any amendment or cancellation hereof shall be recorded in the official records of Maricopa County by the Town within the period required by A.R.S. § 9-500.05.

2. Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties as to the issues addressed herein and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein, and no testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms of conditions of this Agreement.

3. Exhibits. All Exhibits attached to this Agreement are hereby incorporated into this Agreement by reference.

4. Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with laws of the State of Arizona.

5. Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

6. Singular and Plural. As used herein, the singular of any word includes the plural.

7. Binding Effect. This Agreement is binding upon and inures to the benefit of the successors and assigns of the parties and the rights and obligations hereby created are assignable in whole or in part by Owner. This Development Agreement shall run with the land, and any future owner of the Property shall be bound by the provisions of this Agreement applicable to Owner. Any party taking title to the Property shall be deemed to have assumed the obligations of the Owner hereunder, and the Owner shall be released from all of said obligations at such time as Owner holds no further interest in the Property.

8. Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

9. Attorneys' Fees. In any action or undertaking to enforce the provisions of this Agreement, the prevailing party shall recover its reasonable attorneys' fees and costs incurred.

10. Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent registered or certified mail, postage prepaid and addressed as follows:

If to Owner: Cave Creek Carefree Partners

P.O. Box 4404  
Cave Creek, Arizona 85331  
Attention: Fred Rosenbaum

If to Town: Town of Carefree  
100 Easy Street  
P.O. Box 470  
Carefree, Arizona 85377

Attention: Town Administrator

11. Amendment or Cancellation. Except as otherwise provided herein, this Agreement may be amended or canceled, in whole or in part and with respect to all or any portion of the Property, only with the mutual written consent of the parties. Within ten days after any such amendment or cancellation of this Agreement, the amendment or cancellation shall be recorded by the Town in the official records of Maricopa County, Arizona.

12. Good Standing; Authority. Each of the parties represents and warrants to the other: (i) that it is duly formed and validly existing under the laws of Arizona with respect to Owner or a municipal corporation with the State of Arizona, with respect to Town; (ii) that it is an Arizona general partnership or municipal corporation duly qualified to do business in the State of Arizona and is in good standing under applicable state laws; and (iii) that the individuals executing this Agreement on behalf of their respective parties are authorized and empowered to bind the party on whose behalf each individual is signing.

13. Term. The term of this Agreement shall be seven (7) years from the final approval of the zoning change by the Town Council (or citizen vote if a referendum is filed, or final judicial action if litigation is filed), plus up to an additional eighteen (18) months to the extent necessary to complete any construction commenced within said seven years.

14. Terms and Definitions. References to uses and zoning categories herein shall refer to the uses and zoning categories as they existed under the Town of Carefree Zoning Ordinance in effect as of the date of this Agreement. Subsequent amendments shall not enlarge or restrict the uses permitted and prohibited hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first set forth above.

CAVE CREEK-CAREFREE PARTNERS,  
an Arizona limited partnership  
By:

General Partner  
TOWN OF CAREFREE,  
an Arizona municipal corporation

By:

Mayor

APPROVED AS TO FORM:

Town Attorney

ATTEST:

Town Clerk

STATE OF ARIZONA )

) ss.

County of Maricopa )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2002, by \_\_\_\_\_, a general partner of Cave Creek-Carefree Partners, an Arizona limited partnership.

Notary Public

My Commission expires:

STATE OF ARIZONA )

) ss.

County of Maricopa )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2002, by \_\_\_\_\_, Mayor of Carefree, an Arizona municipal corporation.

Notary Public

My Commission expires:

STATE OF ARIZONA )

) ss.

County of Maricopa )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2002, by \_\_\_\_\_, Town Attorney of Carefree, an Arizona municipal corporation.

Notary Public

My Commission expires:

STATE OF ARIZONA )

) ss.

County of Maricopa )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2002, by \_\_\_\_\_, Town Clerk of Carefree, an Arizona municipal  
corporation.

Notary Public

My Commission expires: