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REQ BY: CITY OF SAN LUIS
REC BY: PATTY MAGANA

When recorded, mail to:

Cynthia Salcido
P. O. Box 1170
San Luis, AZ 85349

CITY OF SAN LUIS, ARIZONA

ORDINANCE NO. 173

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SAN LUIS, ARIZONA, ADOPTING A DEVELOPMENT FEE FOR CERTAIN WATER AND SEWER UTILITY LINES; THE ESTABLISHMENT OF A SERVICE AREA FOR THE SAME; ESTABLISHING THE AMOUNT OF FEE AND EFFECTIVE DATE FOR COLLECTION THEREOF; REPEALING ANY CONFLICTING PROVISIONS; AND PROVIDING FOR SEVERABILITY

AND

AGREEMENT ENTERED INTO THE 28TH DAY OF NOVEMBER, 2000 BY AND BETWEEN THE CITY OF SAN LUIS, A MUNICIPAL CORPORATION OF THE STATE OF ARIZONA, AND ROBERT K. BARKLEY AND KATHLEEN C. BARKLEY, HUSBAND AND WIFE, BARKLEY FARMS LIMITED PARTNERSHIP, AN ARIZONA LIMITED PARTNERSHIP, AND THE BARKLEY FAMILY LIQUIDATING TRUST DATED DECEMBER 20, 1980

WHEN RECORDED MAIL TO:

CYNTHIA SALCIDO
P.O. BOX 1170
SAN LUIS, ARIZONA 85349



Ordinance

OFFICE OF THE
MAYOR
CITY OF SAN LUIS

ORDINANCE NO. 173

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SAN LUIS, ARIZONA, ADOPTING A DEVELOPMENT FEE FOR CERTAIN WATER AND SEWER UTILITY LINES; THE ESTABLISHMENT OF A SERVICE AREA FOR THE SAME; ESTABLISHING THE AMOUNT OF FEE AND EFFECTIVE DATE FOR COLLECTION THEREOF; REPEALING ANY CONFLICTING PROVISIONS; AND PROVIDING FOR SEVERABILITY

WHEREAS, A.R.S. §9-463.05 authorizes cities and towns to assess development fees to offset costs associated with providing necessary public services to a development; and,

WHEREAS, the City of San Luis has entered into an agreement with Robert K. Barkley and Kathleen C. Barkley, husband and wife, Barkley Farms Limited Partnership, an Arizona limited partnership, and The Barkley Family Liquidating Trust dated December 20, 1980, (hereinafter referred as "Developer"), who has installed new water mains, sanitary sewer lines, and appurtenant improvements pursuant to the terms of said agreement; and,

WHEREAS, the Mayor and City of Council of the City of San Luis, Arizona, have found that a fee for the provision of said capital improvements in order to reimburse the costs incurred by the developer is not only necessary but will result in a beneficial use to new development.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of San Luis, Arizona, as follows:

Section 1. Purpose. It is the purpose and intent of the City of San Luis to implement a plan by requiring that new development which is benefitted by the improvements to water and sewer utility lines and making the provision of water and sanitary sewer service available to certain areas in the City by Robert K. Barkley and Kathleen C. Barkley, husband and wife, Barkley Farms Limited

Partnership, an Arizona limited partnership, and The Barkley Family Liquidating Trust dated December 20, 1980, (herein referred as "Developer"), be charged with the burden of reimbursing the Developer for a portion of the costs incurred by the provision of additional necessary public services to the citizens of the City of San Luis. By this plan, it is recognized that the Developer has erected certain improvements in areas as described herein which have benefitted the properties as hereinafter set forth. It is the desire of the City Council of the City of San Luis that all properties that are so benefitted by these capital improvements bear their proportionate share of the burden of the costs of those improvements for which their property has benefitted. A report regarding proposed impact fees for water and sewer utility lines and establishment of service areas for same (Barkley Water Utility District Service Area and Barkley Sewer Utility District Service Area) is on file with the Office of the City Clerk of the City of San Luis, Arizona. Said report is hereby incorporated in this Ordinance and forms the basis for the establishment of the districts and imposition of the fees as set forth in this Ordinance.

Section 2. Effective Date. The provisions of this Ordinance shall become effective at 12:01 a.m. on the 26th day of May, 2001.

Section 3. Applicability. Unless expressly exempted or excepted, this Ordinance imposes an additional Water Utility Service Fee for the Barkley Water Utility District Service Area as set forth herein and an additional Sewer Utility Service Fee for the Barkley Sewer Utility District Service Area as described herein. Said fees are in addition to any and all other taxes, special assessments, fees, or other charges as may be imposed by the City of San Luis or other fees or taxes imposed, levied, or collected by any other governmental agency including, but not limited to, the United States of America, the State of Arizona, and other subdivisions of the State of Arizona and/or the County of Yuma.

Section 4. Definitions. When used in this Ordinance the following terms and phrases, and their derivations, shall have the meaning ascribed to them in the section, except where the context clearly indicates a different meaning:

A. **Barkley Water Utility District Service Area** means that geographic area as described by the foregoing Yuma County Assessor parcel numbers:

1. 102-52-007 (15.50 acres)
2. 102-52-008 (40.00 acres)
3. 102-52-009 (37.20 acres)
4. 102-58-009 (00.96 acres)
5. 102-58-013 K (39.00 acres)
6. 102-35-005 (80.00 acres)
7. 102-57-002 (61.13 acres)
8. 102-57-021 B (20.00 acres)
9. 102-57-022 A (09.57 acres)
10. 102-57-027 (20.00 acres)

This area is for a total of 323.36 acres.

B. **Barkley Sewer Utility District Service Area** means that geographic area within the city limits of the City of San Luis as they now exist or as they may be amended by annexation for the following lands as currently described by the foregoing Yuma County Assessor parcel numbers:

1. 102-52-007 (15.50 acres)
2. 102-52-008 (40.00 acres)
3. 102-52-009 (37.20 acres)
4. 102-58-009 (00.96 acres)
5. 102-58-013 K (39.00 acres)

This area is for a total of 132.66 acres.

C. **Water Utility District Service Fee** means that amount of cost per acre as hereinafter set forth to be charged upon all lands within the Barkley Water Utility District Service Area together with a Charge for Interest as defined in subsection 4.E herein.

D. **Sewer Utility District Service Fee** means that amount of cost per acre as hereinafter set forth to be charged upon all lands within the Barkley Sewer Utility District Service Area together with a Charge for Interest as defined in subsection 4.E herein.

E. **Charge for Interest** means interest to be charged as a component of both the Water Utility District Service Fee and the Sewer Utility District Service Fee imposed by this ordinance pursuant to the formula as set in this definition. The formula for the Charge for Interest shall be:

Interest equals the fraction of the number of days from the date of the imposition of the fee by ordinance until payment divided by 365 multiplied by eight-one hundredths of the product of the number of acres multiplied by cost per acre ("cpa"). The formula for calculating interest is as follows:

Interest = $\frac{\# \text{ days from date of imposition of fee until payment}}{365 \text{ days}} \times .08 (\# \text{ acres} \times \text{cpa})$

Section 5. Water Utility District Service Fee. From and after the effective date of this Ordinance the following fee shall be charged and collected at the time of issuance of any building permit and/or as a condition prior to the final approval of any subdivision plat map for lands within the Barkley Water Utility District Service Area as follows:

A fee of \$795.46 per acre of land for each acre or portion thereof for each parcel of land for which a building permit or for which final approval of subdivision plat map is sought, together with a Charge for Interest as defined herein above.

Section 6. Sewer Utility District Service Fee. From and after the effective date of this Ordinance the following Sewer Utility District Fee shall be charged on all lands within the Barkley Sewer Utility Service District Area and shall be charged and collected at the time of issuance of any building permit and/or as a condition prior to final approval of any subdivision plat map for lands within the Barkley Sewer Utility District Service Area as follows:

A fee in the amount of \$1077.12 per acre for each acre or portion thereof for each parcel of land for which a building permit is sought or for which final approval of a subdivision plat map is sought, together with a Charge for Interest as defined herein above.

Section 7. Collection of Fee; Precondition for Approvals. All fees imposed by this Ordinance shall be paid directly to the Developer at Developer's business office located at 20th Street and Pacific Ave., Yuma, Arizona (Office of Barkley Seed). Every applicant for a building permit or applicant for final subdivision plat approval shall present to the City on forms provided by the City a certificate of payment executed by Developer showing payment of the fee to Developer and receipt of the fee by Developer as a pre-condition prior to issuance of any building permit or final approval of any subdivision plat map.

Once the fee has been paid for a particular parcel or for a subdivision, said parcel or any lands within said subdivision shall be credited with having paid the fee for all subsequent governmental approvals and no further certificates of payment will be required as a pre-condition for further governmental approvals.

Section 8. Place of Payment; Notice of Address. At all times Developer shall maintain on file at City the name, address, and telephone number of a person and place where said owners or other affected persons in the Barkley Water Utility Service District Area and the Barkley Sewer Utility Service District Service Area may make payment and obtain a certificate of payment. Developer shall maintain such a place within fifty (50) miles of the municipal limits of the City of San Luis. If an owner of property or other affected person in the Barkley Water Utility Service District Area or the Barkley Sewer Utility Service District Service Area makes a demonstration of good faith efforts to make payment and can show an inability on the part of Developer to either receive payment or issue a certificate of payment, the City of San Luis may forgive this requirement as a condition of municipal approval. The City of San Luis shall owe no special duty to Developer to collect monies from owners of property in the either the Barkley Water Utility Service District Area or the Barkley Sewer Utility Service District Service Area.

Section 9. Offsets and appeals.

A. In determining and assessing the aforementioned Water Utility District Service Fee and Sewer Utility District Service Fee the City shall consider, among other things, the contribution made or to be made in the future in cash or taxes, fees or assessments by the property owner towards the public improvements made by Developer covered by these aforementioned fees. The City shall also consider, among other things, any contributions made by the property owner which will benefit the property or properties of Developer. The City shall also assess and determine whether or not the property is located in a community facilities district which shall provide in whole or in part the necessary public services covered by this fee.

B. Any person who pays the aforementioned Water Utility District Service Fee or Sewer Utility District Service Fee may appeal the fee in writing within thirty (30) days after payment. The appeal shall set forth the reason or reasons for the appeal and shall be filed with the City Clerk. Upon receipt of an appeal the City Clerk shall place the matter on the next available City Council agenda but in no event later than sixty (60) days from the receipt of the appeal. The City Council shall conduct a hearing on the appeal and shall render a written decision accepting, modifying, or rejecting the appeal.

Section 10. Termination of Imposition of Fees.

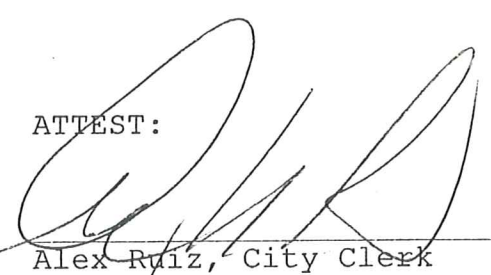
A. The Water Utility District Fee imposed by this ordinance shall terminate upon either the payment of the fee by each of the properties which are the subject of this fee to the Developer or the date twenty five years from the effective date of this Ordinance, whichever first occurs.

B. The Sewer Utility District Fee imposed by this ordinance shall terminate upon either the payment of the fee by each of the properties which are the subject of this fee to the Developer or the date twenty five years from the effective date of this Ordinance, whichever first occurs.

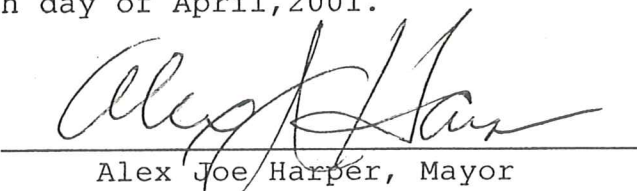
Section 11. Conflict; Severability. In the event of a conflict between the provisions of this Ordinance and any other Ordinance or Resolution establishing or amending fees, the provisions of this Ordinance shall govern. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

PASSED AND ADOPTED by the Mayor and Common Council of the City of San Luis, Arizona, this 25th day of April, 2001.

ATTEST:

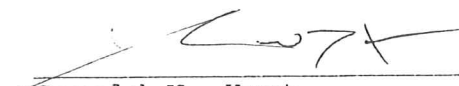


Alex Ruiz, City Clerk



Alex Joe Harper, Mayor

APPROVED AS TO FORM:



Gerald W. Hunt
City Attorney

ORIGINAL

AGREEMENT

This Agreement entered into this 28th day of November 2000, by and between the City of San Luis, a municipal corporation of the State of Arizona, hereinafter referred to as "City," and Robert K. Barkley and Kathleen C. Barkley, husband and wife, Barkley Farms Limited Partnership, an Arizona limited partnership, and The Barkley Family Liquidating Trust dated December 20, 1980, hereinafter collectively referred to as the "Developer."

RECITALS:

WHEREAS, the Developer owns certain real property located in the City; and

WHEREAS, Developer has developed certain water mains, lines, and appurtenant improvements, hereinafter collectively referred to as "Water Utility Lines," and certain sanitary sewer service mains, lines, and appurtenant improvements, hereinafter collectively referred to as "Sewer Utility Lines," necessary to provide water and sanitary sewer service to the lands of Developer; and

WHEREAS, the Water Utility Lines and the Sewer Utility Lines have been installed for such purposes by the Developer as generally depicted on the "Easement Areas" on Exhibit "A" attached hereto; and

WHEREAS, the City is willing and has supplied water service and sewer service to the lands of Developer contingent upon the transfer of the Water Utility Lines and the Sewer Utility Lines by the Developer to the City; and

WHEREAS, the Developer and the City desire to impose a fee as set forth in this Agreement whereby adjacent lands benefitted by the availability of water and sanitary sewer service by the improvements made by Developer will pay back to the Developer their fair share of the costs incurred by Developer;

NOW, THEREFORE, it is mutually covenanted and agreed by and between the parties hereto as follows:

1 **Incorporation of Recitals.** The recitals are hereby incorporated by reference as agreements of the parties.

2 **Acceptance of Improvements.** The City having inspected the Water Utility Lines and the Sewer Utility Lines to the City's full satisfaction hereby acknowledges and agrees that the construction and installation of the Water Utility Lines and the Sewer Utility Lines have been completed in compliance with all applicable City standards and specifications for water main and sanitary sewer line construction and that the Water Utility Lines and the Sewer Utility Lines are hereby approved by the City. Developer hereby represents to the City that the installation of all said water main and sanitary sewer line construction complies with the requirements of the Arizona State Department of Health Services and ADEQ regulations. At all times Developer has been and continues to be responsible for meeting said requirements and obtaining all appropriate approvals from the State of Arizona.

3 **Certification of Costs.** Based upon the Developer's records heretofore submitted to and verified by the City, the City acknowledges and agrees that the engineering, legal, and construction costs necessary to install the Water Utility Lines and the Sewer Utility Lines in a manner that said lines are completed and ready for service have been provided at a total cost of \$739,640.78.

4 **Conveyance of Improvements.** Developer hereby grants and conveys to the City all right and title to the aforementioned Water Utility Lines and the Sewer Utility Lines, and the City hereby accepts and owns the aforementioned Water Utility Lines and the Sewer Utility Lines free and clear of all consensual liens and encumbrances, if any. In addition to the agreement to hold harmless as contained in Section 7 herein, Developer hereby agrees to indemnify and hold harmless City from any and all claims, known or unknown, of whatsoever kind or nature, regarding the construction of said utility lines including but not limited to any and all claims of liens or encumbrances including, but not limited to, mechanics' liens, or consensual liens or encumbrances otherwise attaching the property upon which the utility lines have been constructed. All water and sewer lines, mains, equipment, and appurtenances installed by Developer as referenced in this Agreement, by this dedication, are, shall be, and remain the property of City and Developer shall have no right, title, or interest therein or thereto.

5 **Conveyance of Easements.** Developer shall grant to City perpetual water and sewer easements over the easement areas on respective properties of the Barkleys, Barkley Farms Limited Partnership, and The Barkley Family Liquidating Trust. Developer has delivered to the City fully executed, acknowledged, and recorded utility easements. Developer hereby grants to the City the permanent right and easement to install, pump, operate, and maintain, in place and in lieu such portions of the water or sewer system as may be located in the easement areas.

6 **Method of Determining Fee.** The construction costs of Developer, as referred in subparagraph 3 herein, shall be partially repaid by owners of property benefitting from the improvements made by Developer by the imposition of a fee which fee has been determined on the following basis:

A. \$739,640.78 is the identified dedication or construction costs and engineering fees credit for the property, property rights, facilities, and improvements which are the subject of this Agreement. The Developer's fair share is the amount of \$339,527.07. In calculating Developer's fair share said share was determined on the same pro rata share per acre basis for both Water Utility Lines and Sewer Utility Lines as to be required of owners in the Barkley Water Utility District Service Area and the Barkley Sewer Utility District Service Area as hereinafter set forth. On file in the Office of the Clerk of the City of San Luis is a document entitled "Report Regarding Proposed Impact Fees for Water and Sewer Utility Service lines and Establishment of Service Areas for Same (Barkley Water Utility District Service Area and Barkley Sewer Utility District Service Area)." Said report provides the basis of calculation of fees and charges as well as offsets for determining the pro rata share ("fair share") per acre for both Water Utility Lines and Sewer Utility Lines for both Developer and affected persons in the proposed Barkley Water Utility District Service Area and Barkley Sewer Utility District Service Area which are the subject of this Agreement.

B. In establishing the districts, the Public Works Director has determined that all lands east of the Yuma Valley Levee which are within one-quarter mile of the improvements constructed by Developer as shown on Exhibit "A" attached hereto will benefit equally from the availability of water and sewer service due to the improvements constructed by Developer. As a result it is agreed that a fee will be charged at the time of the issuance of a building permit and/or the approval of a final subdivision plat for lands in the proposed districts to reimburse, proportionate to said benefit, the Developer for the improvements that have been constructed.

(i) The following parcels (using the parcel numbers of the Yuma County Assessor) were found to be east of the Yuma Valley Levee and within one-quarter mile of the aforementioned water utility improvements:

- | | | |
|----|--------------|---------------|
| 1. | 102-58-015 | (32.59 acres) |
| 2. | 102-58-002 B | (29.54 acres) |
| 3. | 102-58-002 A | (20.00 acres) |
| 4. | 102-58-001 | (36.15 acres) |
| 5. | 102-57-007 | (47.58 acres) |
| 6. | 102-57-008 A | (27.61 acres) |
| 7. | 102-57-008 C | (18.80 acres) |
| 8. | 102-52-007 | (15.50 acres) |
| 9. | 102-52-008 | (40.00 acres) |

10.	102-52-009	(37.20 acres)
11.	102-58-009	(00.96 acres)
12.	102-58-013 K	(39.00 acres)
13.	102-35-005	(80.00 acres)
14.	102-57-002	(61.13 acres)
15.	102-57-008 B	(14.40 acres)
16.	102-57-021 B	(20.00 acres)
17.	102-57-022	(09.57 acres)
18.	102-57-027	(20.00 acres)
19.	102-35-001	(40.00 acres)

There is a total of 590.03 acres which have been determined to benefit from the water utility lines and related improvements constructed by Developer.

(ii) The following parcels (using the parcel numbers of the Yuma County Assessor) were found to be east of the Yuma Valley Levee and within one-quarter mile of the aforementioned sewer utility improvements:

1.	102-58-015	(32.59 acres)
2.	102-58-002 B	(29.54 acres)
3.	102-58-002 A	(20.00 acres)
4.	102-58-001	(36.15 acres)
5.	102-52-007	(15.50 acres)
6.	102-52-008	(40.00 acres)
7.	102-52-009	(37.20 acres)
8.	102-58-009	(00.96 acres)
9.	102-58-013 K	(39.00 acres)

There is a total of 250.94 acres which have been determined to benefit from the sewer utility lines and related improvements constructed by Developer.

(iii) By dividing the total cost of water for new water utility service by the number of acres benefitted by the new water utility lines, one arrives at a per acre cost of \$795.46. By dividing the total cost for new sewer utility service by the number of acres benefitted, one arrives at a cost per acre for new sewer utility service of \$1077.12.

(iv) A.R.S. §9-463.05 provides that fees assessed by a municipality shall be assessed in a non-discriminatory manner. By deducting lands owned or controlled by the Developer or for which the Developer has already received reimbursement, the following parcels are designated as not subject to assessment of the proposed fees:

1.	102-58-015	(32.59 acres)
----	------------	---------------

- | | | |
|----|--------------|---------------|
| 2. | 102-52-002 B | (29.54 acres) |
| 3. | 102-58-002 A | (20.00 acres) |
| 4. | 102-58-001 | (36.15 acres) |
| 5. | 102-57-007 | (47.58 acres) |
| 6. | 102-57-008 A | (27.61 acres) |
| 7. | 102-57-008 C | (18.80 acres) |
| 8. | 102-57-008 B | (14.40 acres) |
| 9. | 102-35-001 | (40.00 acres) |

This is a total of 266.67 acres.

(v) Therefore, the parcels of land against which a water utility charge is to be made for reimbursement of costs to the Developer are the following parcels:

- | | | |
|-----|--------------|---------------|
| 1. | 102-52-007 | (15.50 acres) |
| 2. | 102-52-008 | (40.00 acres) |
| 3. | 102-52-009 | (37.20 acres) |
| 4. | 102-58-009 | (00.96 acres) |
| 5. | 102-58-013 K | (39.00 acres) |
| 6. | 102-35-005 | (80.00 acres) |
| 7. | 102-57-002 | (61.13 acres) |
| 8. | 102-57-021 B | (20.00 acres) |
| 9. | 102-57-022 A | (09.57 acres) |
| 10. | 102-57-027 | (20.00 acres) |

This remaining area is to become the Barkley Water Utility Service District Area and is for a total of 323.36 acres.

(vi) The remaining parcels of land against which a sewer utility service charge will be made for reimbursement of costs to the Developer are the following parcels:

- | | | |
|----|--------------|---------------|
| 1. | 102-52-007 | (15.50 acres) |
| 2. | 102-52-008 | (40.00 acres) |
| 3. | 102-52-009 | (37.20 acres) |
| 4. | 102-58-009 | (00.96 acres) |
| 5. | 102-58-013 K | (39.00 acres) |

This remaining area is to become the Barkley Sewer Utility Service District Area and is for a total of 132.66 acres.

(vii) The total amount of funds to be reimbursed pursuant to the Barkley Water Utility Service District is the amount of 323.36 acres times \$795.46 for a

total of \$257,219.95, and the total amount to be reimbursed pursuant to the Barkley Sewer Utility Service District is 132.66 acres times \$1077.12 for a total of \$142,890.74.

C. The manner of calculation as provided in Subsection B above has included the properties of Developer in determining the amount of cost benefit in a non-discriminatory manner, and has assured that the Developer bears his proportionate burden with respect to the costs sought to be reimbursed by the proposed fees. The properties in the Barkley Water Utility Service District Area and the Barkley Sewer Utility Service District Area will benefit equally from the availability of water and sewer service due to the improvements constructed by Developer.

D. A fee will be charged owners of property or other affected persons seeking to develop or build upon lands in the Barkley Water Utility Service District Area and the Barkley Sewer Utility Service District Area as hereinafter set forth. Said fee will be for the purpose of partial reimbursement of costs of Developer as set forth herein. Said fee will include a charge for interest pursuant to the formula as hereinafter set forth.

7. Ordinance Adopting Fee. The City shall adopt an Ordinance establishing the Barkley Water Utility District Service Area and imposing a Water Utility District Service Fee for lands in that area in the amount of \$795.46 per acre. In addition, by said ordinance, the City shall establish a Sewer Utility District Service Area and a Sewer Utility District Service Fee in the amount of \$1077.12 per acre. The fee will include a calculation and charge for interest as hereinafter set forth. Said ordinance shall be substantially in the form of Exhibit "B" attached hereto. The Ordinance will provide that owners of property in the aforementioned service areas shall be required to pay to Developer the aforementioned fees as a pre-condition to the issuance of a building permit and/or approval of final subdivision plat map. Said owners shall be required to file with the City a certificate of payment showing payment as a prerequisite to obtaining building permits or other development-related approvals from the City. Developer agrees to maintain on file at the City the name, address, and telephone number of the person and place where owners in the service district areas may make payment and obtain a certificate of payment. It is understood that if an owner in a service district area makes a demonstration of good faith efforts to make payment and can show an inability on the part of Developer to either receive payment or issue a certificate of payment, the City may forgive this requirement as a condition of municipal approval. The City shall owe no special duty to Developer to collect monies from owners of property in the Water Utility District Service Area or the Sewer Utility District Service Area. Developer hereby agrees to indemnify and hold City harmless from claims based upon the failure of the City to either collect monies from said owners or require certificates of payment prior to the issuance of building permits or as a condition for other approvals by the municipality. Interest will be calculated and included on the payment due (number of acres x costs per acre) at the rate of 8 per cent per annum from the effective date of the imposition of fee by the ordinance referred to herein until payment is made as follows:

Interest equals the fraction of the number of days from the date of the imposition of the fee by ordinance until payment divided by 365 multiplied by the product of eight-one hundredths of the product of the number of acres multiplied by cost per acre ("cpa"). The formula for calculating interest is as follows:

$$\text{Interest} = \frac{\# \text{ days from date of imposition of fee until payment}}{365 \text{ days}} \times .08 (\# \text{ acres} \times \text{cpa})$$

8. **Effective Date of Fee.** It is further understood and agreed that additional charges to owners of property and the payment of monies to the Developer as described herein cannot occur until proper ordinances of the City of San Luis have been adopted, and the provisions, procedures, time limits, of A.R.S. §9-463.05 have been complied with. Developer agrees that the Developer bears the duty to provide any written reports, professional studies, data, and/or other documentation as may be necessary or required by the provisions of A.R.S. §9-463.05 to support the assessment of fees and charges upon owners of property in the service district areas as set forth in this Agreement.

9. **Termination of Fees.**

A. The Water Utility District Fee provided for by this agreement shall terminate upon either the payment of the fees imposed by the ordinance referred to herein by each of the properties which are the subject of the fee to the Developer or the date twenty five years from the effective date of the imposition of the fee pursuant to the ordinance as referred to in Section 7 above, whichever first occurs.

B. The Sewer Utility District Fee provided by this agreement shall terminate upon either the payment of the fees imposed by the ordinance referred to herein by each of the properties which are the subject of the fee to the Developer or the date twenty five years from the effective date of the imposition of the fee pursuant to the ordinance as referred to in Section 7 above, whichever first occurs.

10. **Assignment.** Developer may with prior written consent of City assign, transfer, or sell the right of repayment as contained in this Agreement, if the assignee in writing agrees to perform this Agreement. City shall be provided of an executed copy of such agreement by assignee.

11. **Hold Harmless.** The City represents that all legal procedures for adoption of any fee referred to in this agreement have been or will be followed. Further, Developer shall have the affirmative duty to join with the City to uphold and defend the legality of this Agreement and all of its provisions, including any Ordinance adopted in connection therewith, against any challenge by any person and shall share in the legal costs and attorneys fees incurred by the City. It is agreed that in the event of litigation, the City shall control the choice of defense counsel, the City shall bear the first \$50,000.00 of attorneys

fees and costs of litigation, and that Developer shall indemnify, pay, and hold the City harmless from, all attorneys fees and costs incurred thereafter. The Developer shall indemnify and hold the City harmless from any and all judgments for damages, or judgments calling for or resulting in the refund of any fees or interest paid pursuant to any ordinance adopted pursuant hereto and any interest incurred thereon, of whatsoever kind or nature, arising from any claim by any person regarding the legality of this Agreement, or any ordinance adopted in connection therewith, including but not limited to claims concerning the correctness of the provisions regarding payback, provisions regarding the collection of monies from owners of property in the service district areas, as well as any and all claims of whatsoever kind or nature emanating from the collection of monies from the owners of property in the service district areas. The maximum dollar amount that the City is responsible for under this paragraph, regardless of the number of suits, claims, or challenges of any kind, is fifty thousand dollars (\$50,000.00).

12. General Provisions:

A. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto.

B. This agreement shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this agreement shall not be binding upon either party except to the extent incorporated in this agreement.

C. Any modification of this agreement or additional obligation assumed by either party in connection with this agreement shall be binding only if evidenced in writing signed by each party or authorized representative of each party.

D. This agreement shall be subject to the cancellation provisions of ARS § 38-511.

E. The failure of City to insist upon the performance of any of the terms and conditions of this agreement, or the waiver of any breach of any of the terms and conditions of this agreement, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

F. It is agreed that this agreement shall be governed by, and construed, and enforced in accordance with the laws of the State of Arizona. Jurisdiction and venue for any dispute of any kind or nature arising between the parties of this agreement shall be exclusively in the courts of Yuma County, State of Arizona. Although the provisions of this agreement were the result of mutual negotiations and were drawn by City, this agreement shall not be construed either for or against either party, but this agreement

shall be interpreted in accordance with the general tenor of the language in an effort to reach an equitable result.

G. In the event of an action or proceeding brought by either party, the prevailing party shall be entitled to recover the successful party's reasonable attorney's fees.

H. This agreement may be executed in counterpart.

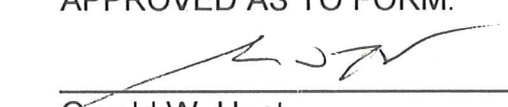
In witness whereof, the parties hereto have hereunto set their hands the day and year first above written.

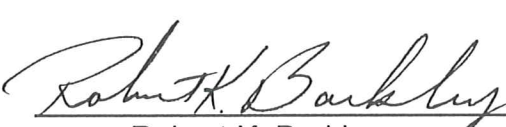
ATTEST:

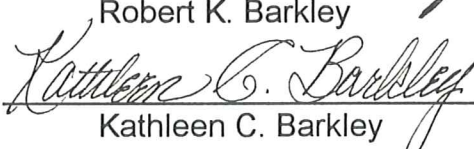

Alex Ruiz, City Clerk


Alex Joe Harper, Mayor

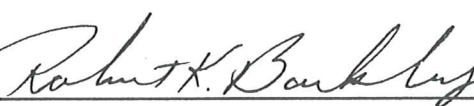
APPROVED AS TO FORM:


Gerald W. Hunt
City Attorney

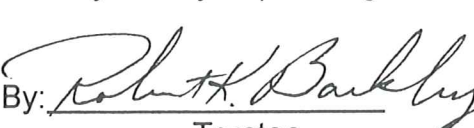

Robert K. Barkley


Kathleen C. Barkley

Barkley Farms Limited Partnership

By: 
Authorized General Partner

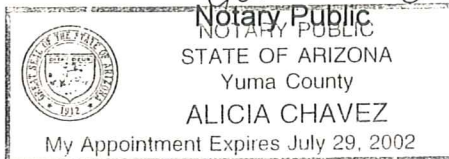
Barkley Family Liquidating Trust

By: 
Trustee

State of Arizona)
)ss.
County of Yuma)

This instrument was acknowledged before me this 28th day of November,
2000 by Robert K. Barkley

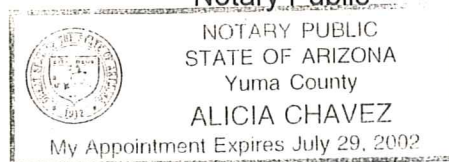
Alicia Chavez



State of Arizona)
)ss.
County of Yuma)

This instrument was acknowledged before me this 28th day of November,
2000 by Kathleen C. Barkley

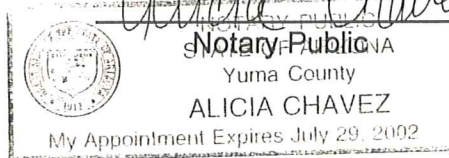
Alicia Chavez



State of Arizona)
)ss.
County of Yuma)

This instrument was acknowledged before me this 28th day of November,
2000 by Robert K. Barkley

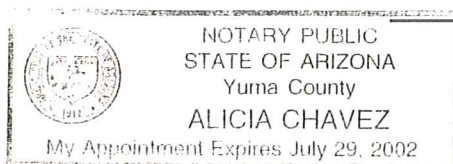
Alicia Chavez



State of Arizona)
)ss.
County of Yuma)

This instrument was acknowledged before me this 28th day of November,
2000 by Robert K. Barkley

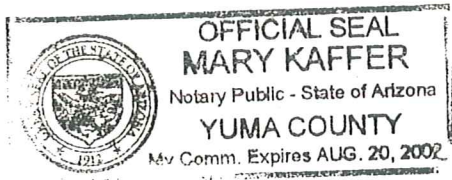
Alicia Chavez



Notary Public

State of Arizona)
)ss.
County of Yuma)

This instrument was acknowledged before me this 28th day of November,
2000 by Alex Joe Harper, Mayor, and Alex Ruiz, City Clerk, City of San Luis.



Mary Kaffer
Notary Public