Staff Summary Report

Tempe

Council Meeting Date: 07-17-03 **Agenda Item Number:** 55

SUBJECT: Request approval of Resolution No. 2003.54 approving a Development Agreement with Tait Development, Inc. and Emerald Holdings, L.L.C. for Emerald Center at Warner Road and Interstate 10 in Tempe, Arizona.

DOCUMENT NAME: **20030717edjs01 DEVELOPMENT PROJECT (0406)**

SUPPORTING DOCS: Yes

COMMENTS: For some time the Emerald Center property has been zoned I-1/I-2 where a potential 4,000,000 sq. ft. of office/industrial development could occur along with retail with a use permit. Given the current economy, the downturn in the office market, and the City's need for additional sales tax revenue, the City and Developer/Owner of Emerald Center have worked together to provide options for the future development of this property at Warner and I-10 in Tempe. Those options include establishing a Regional Commercial Center Planned Area Development for a portion of the site (approximately 102 acres) to provide a more business-friendly environment for potential retail development. The Emerald Center Development Agreement will further enhance the opportunity to attract new retail development to the City by providing a performance-based incentive to the Developer and qualified retailer(s).

PREPARED BY: Janice M. Schaefer, Economic Development Manager (Ext. 8036)

REVIEWED BY: Patrick Flynn, Consultant

LEGAL REVIEW BY: Marlene Pontrelli, City Attorney (Ext. 8120)

FISCAL NOTE: This Resolution and attached Emerald Center Development Agreement provide for a performance-based incentive of $6.8 million dollars. However, future development on site could provide as much as $48 million dollars in city revenue over the next 10 years and $134 million dollars over the next 20 years.

RECOMMENDATION: Staff recommends approval of the Emerald Center Development Agreement.

ADDITIONAL INFO:

RESOLUTION NO. 2003.54

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPE AUTHORIZING THE MAYOR TO EXECUTE A DEVELOPMENT AGREEMENT WITH TAIT DEVELOPMENT, INC. FOR THE DEVELOPMENT OF EMERALD CENTER AT WARNER ROAD AND INTERSTATE 10 IN TEMPE, ARIZONA.

WHEREAS, Emerald Holdings, L.L.C. ("Emerald") is the owner and Tait Development, Inc. ("Tait") is the licensee and optionee of approximately 102 acres of real property located at Warner Road and Interstate 10 in Tempe, Arizona referred to as the Emerald Center (the "Property"); and

WHEREAS, Tait desires to develop the Property to accommodate construction and operation of facilities for commercial and employment uses (the "Project"); and

WHEREAS, the City of Tempe desires to obtain those public benefits that will accrue from the development of this Project; and

WHEREAS, the City of Tempe has developed an Economic Development Incentive Policy that permits the City to provide economic incentives for activities meeting at least three of the criteria described in the policy; and

WHEREAS, the Project meets at least three of the criteria;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

That the Mayor is authorized to execute the City of Tempe Emerald Center Development Agreement, a copy of which is on file with the City Clerk's office.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this _____ day of _____, 2003.

_____
Mayor

ATTEST:

_____

City Clerk

APPROVED AS TO FORM:

_____

City Attorney

WHEN RECORDED RETURN TO:

Marlene A. Pontrelli, Esq.
City Attorney
City of Tempe
31 East 5th Street
Tempe, AZ 85281

CITY OF TEMPE
EMERALD CENTER DEVELOPMENT AGREEMENT
(Warner Road and I-10)

Document Number ___

THIS DEVELOPMENT AGREEMENT (the "**Agreement**") is entered into as of the ____ day of _____, 2003, by and between TAIT DEVELOPMENT, INC., an Arizona corporation ("**Developer**") and the CITY OF TEMPE, ARIZONA, a municipal corporation (the "**City**").

RECITALS

A. Arizona Revised Statutes ("**A.R.S.**") § 9-500.05 authorizes the City to enter into a development agreement with a landowner or any other person having an interest in real property located in the City. Additionally, A.R.S. § 9-500.11 authorizes the City to appropriate and spend public monies for and in conjunction with economic development activities.

B. The City has developed an Economic Development Incentive Policy (the "**Policy**") that permits the City to provide economic incentives for activities meeting the criteria set forth in the Policy. According to the Policy, the project must meet at least three of the twelve criteria described in the Policy.

C. Emerald Holdings, L.L.C. is the owner and Developer is the licensee and optionee of approximately one hundred and two (102) acres of real property located within the incorporated boundaries of the City and more particularly described and depicted on the attached **Exhibit A** (the "**Property**"). Developer has commenced development of the Property pursuant to a plan of development, attached hereto as **Exhibit B** (the "**Master Plan**"), providing for a Development Plan A and Development Plan B as part of a preliminary Planned Area Development ("**P.A.D.**") for the construction and operation of facilities for commercial and employment uses (the "**Project**"). The Project may be developed following any combination of Development Plan A or Development Plan B. Developer in its role as Master Developer ("**Master Developer**") will sell or lease individual parcels of the Property to other developers or users.

D. The Project ("**Project**") meets the following five criteria:

1. Project is one of the City's targeted industries which include aerospace, bio-industry, advanced financial and business services, high-tech, software, unique regional and localized retail opportunities and tourism opportunities.

2. Project is either locating headquarters in Tempe and/or has sufficient name recognition such that their location in Tempe will have significant marketing value.

3. Project has infrastructure needs (water, wastewater, etc.) that are consistent with the City's environmental objectives and capacity.

4. Project has an international market base.

5. Project will demonstrate a positive economic impact for the City over a ten-year period after both benefits and costs are calculated.

E. The City desires to obtain those public benefits that will accrue from the development of the Project. Such benefits include the provision of convenient retail uses, the stimulation of further economic development, and the retention of existing business facilities in this portion of the City of Tempe.

F. In addition to the aforementioned benefits and certain other benefits to the City, the City believes that the construction and operation of these facilities will create employment opportunities for City residents and will generate substantial tax revenues for the City. Accordingly, the City has determined that providing economic incentives designed to encourage the construction of the Project located within the City is in furtherance of the best interest of the City and the health, safety, and welfare of the City's residents.

G. Developer intends to use the economic incentives offered by the City in this Agreement to assist and accommodate the sale of a parcel in the Project for the development of a regional commercial center along the Interstate 10 Highway (the "**I-10**") and Warner Road frontages that includes in Phase 1 a major, national retailer or retailers of more than three hundred thousand (300,000) square feet gross floor area (the "**Retailer**") and/or other retailers (collectively referred to as the "**Stores**"), and potentially to attract future users of the type reflected in the Master Plan.

H. The City believes that the development contemplated is compatible with the City's General Plan for the southwest quadrant of the City. The City will take steps to amend the General Plan 2020 (the "**General Plan**") to reflect a land use consistent with the Master Plan for this Project.

I. The City desires to locate the Retailer on the Property to create the aforementioned benefits and has pursued and worked with Developer to develop this Agreement to accomplish this goal. Accordingly, this Agreement is contingent upon and shall be effective only if the Retailer signs a purchase agreement with Developer within ninety (90) days after the approval of this Agreement by the City, and shall automatically

terminate if the Retailer has failed to commence construction within three (3) years of the effective date of this Agreement.

J. The parties hereto acknowledge that the ultimate development of the Property is a project of such magnitude and importance that assurances are required from the City that Developer and/or its successor has the right to complete the development of the Property pursuant to this Agreement before it will expend substantial efforts and costs in the development of the Property, and the City requires assurances that the development of the Property will be in accordance with the terms and conditions of this Agreement and any exhibits and amendments thereto.

AGREEMENTS

NOW, THEREFORE, the parties agree as follows:

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

2. Exhibits. The following documents are referred to in this Agreement and are attached to and made a part of this Agreement by this reference:

Exhibit Designation	Description
A	Legal Description and Map
B	Master Plan (Development Plan A and Development Plan B)
C	Public Benefits/Economic Development

3. General Plan Conformance. The parties expressly acknowledge and agree that the development contemplated pursuant to this Agreement is consistent with the portions of the General Plan for the southwest quadrant of the City, and the City will take steps to amend the General Plan to conform to the land uses contemplated by the Master Plan.

4. Preliminary P.A.D. Concurrent with execution of this Agreement, the City will take all steps necessary to approve the preliminary P.A.D. for the development on Lots 1, 4, and 5 but not for Lot 2 of the Property. The P.A.D. will establish the land uses, maximum building heights, and intensities and shall include any variances necessary for the development of the Property.

5. Development Rights. The City agrees that, for the term of this Agreement, Developer, and successor owners of the Property shall have a right to undertake and complete the development of the Project consistent with the uses, development standards, densities, and intensities, as set forth in the Master Plan and to use of the Property in accordance with the provisions of this Agreement, without being subject to subsequent amendments to the zoning ordinances, rules, or regulations of the City, except as follows: (i) specifically agreed to in writing by Developer or its successor and assigns; or (ii) necessary to alleviate or otherwise

contain a harmful and noxious use of the Property, in which event any ordinance, rule, or regulation to be imposed in an effort to contain or alleviate such harmful and noxious use shall be the most minimal and the least intrusive alternative possible and shall not, in any event, be imposed arbitrarily; or (iii) required or mandated by state, federal, or case law; or (iv) changes to the Tempe Building Code and other similar construction and safety-related codes; or (v) adoption and enforcement of zoning ordinance provisions governing nonconforming property or uses. Nothing shall be interpreted as relieving Developer of any obligations that it may have with respect to laws and regulations enacted by the Federal government or the State of Arizona that apply to the Property. Nothing in this Agreement shall alter or diminish the City's authority to exercise its eminent domain powers. Nothing herein affects any vesting right for the Master Plan and approvals for the Project and the Property as a matter of common law following termination of this Agreement. Upon approval, execution and compliance with Section 11.19.1 and Recital I of this Agreement, the Master Plan will be deemed approved. The City agrees to cooperate with Developer by approving in a timely manner (unless prohibited or prevented by state law), as hereinafter set forth, any applications of plans and specifications for any plats, permits or required approvals that are consistent with the Master Plan and the P.A.D., upon approval by the City, subject to Developer complying with the ordinances and regulations applicable thereto. Any such approval, plat, permit, and development fees shall be paid by Developer or Retailer, as applicable, at the then current applicable rate.

6. Approval Modifications. Pursuant to the terms of this Agreement, unless otherwise required by state or federal regulations, the City shall not initiate any changes or modifications to the Master Plan and/or approvals authorizing the Project to be built, except at the request of Developer (and as authorized in the Master Plan). Any request for change, once a final approval of the preliminary P.A.D. is obtained, will be processed in the manner then set forth in the City's Zoning Ordinance.

7. Development Standards. The City shall modify development standards as necessary to accommodate the Project as set forth in the Master Plan, and provide any necessary approvals that will allow the Retailer in accordance herewith, to develop buildings and facilities that conform and are consistent with a particular user's distinctive building and site marketing identity and attributes.

8. Drainage. The City shall modify development standards, as necessary, and provide any necessary approvals so that Developer and its successors in interest have access to and the right to use the underground culvert under the western forty (40) feet of the Project (the "**Underground Drain**") for the purpose of conveying storm waters off of the Project to a retention basin along I-10 approximately one-quarter mile south of Warner Road. The City shall provide to Developer the right to utilize the above-mentioned retention basin and accordingly the City shall renew or extend its Rental Agreement with the Arizona Department of Transportation dated October 1, 1990 to accommodate such use. That portion of the Project that utilizes the Underground Drain shall not be required to retain or detain storm waters on site. The City shall cooperate in Developer's efforts to gain any approvals necessary from other non-City agencies so that the Project may access and use the Underground Drain, underground culverts, and off-site drainage areas which may be controlled by City, State, or other government or quasi-public agencies. For the balance of the Project, the City shall provide approvals necessary to minimize

on-site surface storm-water retention requirements for future development. The City will approve the right to use underground on-site storm water retention in locations within the Project not utilizing the Underground Drain, including but not limited to the use of underground corrugated metal piping connected to dry wells.

9. Economic Incentives.

9.1. Periodic Payments. In recognition of the benefits to the citizens of Tempe set forth in Recitals D, E and F, and as further described in **Exhibit C,** as an inducement for Developer's commitment to locate the Stores in the Project, the City shall pay Developer semi-annual payments equal to the sum of not less than fifty percent (50%) of all transaction privilege taxes imposed by the City (currently 1.8%) (the "**Sales Taxes**") generated and paid by the Project's users which are received by the City until an amount equal to $5 million dollars has been received by Developer. The City shall pay the Retailer one-third (1/3) of the aforementioned Developer's fifty percent (50%) of the Sales Tax generated by the Project's users, in semi-annual payments until the Retailer receives an amount equal to $1.8 million, which shall be in addition to the aforementioned $5 million. Retailer shall have an independent right to enforce its rights under this Agreement with all remedies available at law or in equity, including specific performance, pursuant to Paragraphs 11.11 and 11.17, below. Nothing in this Paragraph shall be construed to require the City to make any payment until Sales Tax revenue is actually generated and received from the Project.

9.2. Timing of Periodic Payments. The first periodic payment by the City to Developer and/or the Retailer shall be made once six (6) full months have passed from the receipt by the City of any Sales Taxes and shall be made every six (6) months from then on until the limit of $5 million and $1.8 million, respectively, has been reached. The City shall make each periodic payment not later than thirty (30) days after the receipt of the applicable tax returns and tax payments for the period to which the City's payment relates.

9.3. Future Incentive Options. The economic incentives in this section may be extended or increased, if consistent with the City's Policy, as it may be amended from time-to-time, as determined by the City in its sole discretion with the approval of the City and Developer by amendment of this Agreement, as may be necessary to attract other future users of a type reflected in the Master Plan or as may be proposed by the City if acceptable to Developer; provided, however, the City is not obligated by this Agreement to provide extended, additional, or increased incentives to the Project.

10. Expedited Review. The parties acknowledge that development of the Project will require the City to review and approve (unless prevented or prohibited by state law) plans, perform construction inspections, and issue certificates of occupancy. The City agrees to use its best efforts to expedite all such approvals and inspections. The City further agrees that it will review and respond to Developer, the Stores, and/or the Retailer on all requests for plan reviews and permits within ten (10) business days after City has received plans for such review. In doing so, City will use its best efforts to promptly process the applications for approvals and permits. Any other official actions required for development of the Property which may require meetings of boards, commissions, or the City Council shall be placed on the next regularly scheduled agendas. In exceptional circumstances, however, Developer, the Stores, and/or the Retailer may

request, and in such event City shall promptly schedule, special meetings of the City Council, applicable boards, commissions, and/or departments to hear and consider the application. No unusual or extraordinary plan or design review requirements will be imposed by the City.

11. General Provisions.

11.1. Notices.

11.1.1. Manner of Serving. 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:	City of Tempe 31 East 5th Street Tempe, Arizona 85281 Attn: Economic Development Manager
With a copy to:	City of Tempe 21 East 6th Street, Suite 201 Tempe, Arizona 85281 Attn: City Attorney
If to Developer:	Tait Development, Inc. 777 East Thomas Road, Suite 210 Phoenix, Arizona 85014 Attn: Tom Tait
With a copy to:	Gallagher & Kennedy, P.A. 2575 East Camelback Road Phoenix, Arizona 85016-9225 Attn: Steven A. Betts, Esq.

Or to such other addresses as either party may from time to time designate in writing and deliver in a like manner. Any such change of address Notice shall be given at least ten (10) days before the date on which the change is to become effective.

11.1.2. Mailing Effective. Notices, given by mail, shall be deemed delivered seventy-two (72) hours following deposit in the U.S. Postal Service, in the manner set forth above.

11.2. Amendment or Cancellation of the Agreement. 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 City and Developer. Within ten (10) calendar days after any such amendment or cancellation of this Agreement, the amendment or cancellation shall be recorded by the City in the Official Records of Maricopa County, Arizona.

11.3. 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 any other provision of this Agreement. Nothing herein shall constitute or be deemed to be a waiver by Developer of its respective rights to request future rezonings or changes in development standards for all or any portion(s) of the Property pursuant to City procedures and requirements existing at the time of the request. Nothing herein contained shall be deemed to be a waiver by the City of the right to act, consistent with applicable law, by approval or denial of any rezoning, legislative, administrative, or quasi-judicial action related to the Property, which would not otherwise be in breach of this Agreement.

11.4. Attorneys' Fees and Costs. If legal action by any party is brought because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing party is entitled to reasonable attorneys' fees and court costs.

11.5. Headings. The description headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

11.6. Entire Agreement. This Agreement constitutes the entire agreement between the parties and shall not be changed or added to except in the manner provided in Paragraph 11.2. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, other than specifically incorporated herein by reference, are superseded by this Agreement.

11.7. Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect, provided that the overall intent of the parties is not materially vitiated by such severability.

11.8. 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.

11.9. Recordation. No later than five (5) business days after this Agreement has been executed by the City and Developer, it shall be recorded in its entirety, by the City, in the Official Records of Maricopa County, Arizona.

11.10. Default; Remedies. Failure or unreasonable delay by any party to this Agreement to perform or otherwise act in accordance with any monetary term or provision of this Agreement for a period of five (5) days or with any non-monetary term of provision of this Agreement for a period of thirty (30) days after written notice thereof from the other party shall constitute a default under this Agreement; provided, however, that if the failure or delay is such that more than the specified number of days to cure would be reasonably required to perform such action or to comply with any non-monetary term or provision hereof, then such party shall

have such additional time, up to a total of one hundred eighty (180) days, as may be necessary to perform or comply so long as such party commences performance or compliance within the specified period and diligently proceeds to complete such performance or fulfill such obligation. Said notice shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible. In the event such default is not cured within the specified timeframe, the non-defaulting shall, at the option of the non-defaulting party, be entitled to seek all remedies available both at law and in equity including specific performance.

11.11. 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. Developer and the City warrant to each other that the individuals executing the Agreement on behalf of their respective parties are authorized and empowered to bind the party on whose behalf each individual is signing. Developer represents to the City that by entering into this Agreement, and with the acknowledgement of Emerald Holdings, L.L.C., Developer has bound the Property and all persons and entities having any legal or equitable interest therein to the terms of the Agreement.

11.12. Estoppel. Each of the parties hereto covenants and agrees with the other to provide, within fifteen (15) business days of written request from the other, an estoppel certificate signed by a duly authorized representative of such party, indicating that the other party(ies) are not then in default under any of the obligations pursuant to this Agreement or specifying in reasonable detail any then claimed default.

11.13. Conflict of Interest. This Agreement is subject to the cancellation provisions of A.R.S. § 38-511.

11.14. Force Majeure. Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, or power failures.

11.15. Interest of Developer. Developer hereby represents and warrants to the City that Emerald Holdings, L.L.C. is the sole fee title owner of the Property and that, to the best of its actual knowledge, no other person or entity, except Developer, has any legal or equitable ownership interest in the Property.

11.16. Assignment. The rights of Developer under this Agreement may be transferred or assigned by written instrument to any subsequent owner of a portion of the Property, including but not limited to the Retailer. Notice of any transfer or assignment in accordance with this Paragraph shall be provided to the City at least ten (10) days after the effective date of any such transfer or assignment, with the exception of the transfer or assignment of the whole by the Master Developer as provided herein. As provided in A.R.S. § 9-500.05.D, the burdens of this Agreement bind, and the benefits of this Agreement inure to, the parties hereto and their successors in interest and assigns. The rights of the Master Developer under this Agreement may be transferred in whole upon written consent of the City, which consent shall not be unreasonably withheld. Retailer may from time to time assign its rights hereunder (including, but not limited to, its right to receive the periodic payments set forth in

paragraph 9.1 of this Agreement) without the prior consent of City (i) to any person, firm, organization or corporation that controls, is controlled by or is under common control with, Retailer, or a successor to Retailer by acquisition of a majority of Retailer's stock or of all or substantially all of the assets of Retailer (a "Retailer Affiliate"), or (ii) to a lender making a loan to Retailer or a Retailer Affiliate, which loan is secured in whole or in part by Retailer's rights hereunder, or to a fee owner of Lot 1A under an arrangement in which Retailer or a Retailer Affiliate becomes a lessee in a so-called "Sale and Leaseback" transaction. In the event of any other assignment by Retailer of any of its rights or interests under this Agreement to an independent, unrelated party, in order for the assignee to obtain the benefits of the periodic payments as set for in paragraph 9.1 of this Agreement, such assignee must satisfy the criteria set forth in the City's Policy for economic incentives as determined by the City, which determination shall not be unreasonably applied.

11.17. Relationship of the Parties. It is understood that the contractual relationship between the parties is undertaken pursuant to the authorization contained in A.R.S. § 9-500.05, and nothing contained in this Agreement shall create any partnership, joint venture or agency relationship between the City and Developer. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto other than Retailer, and no person, firm, organization or corporation other than Retailer shall have any right or cause of action hereunder, whether as a third-party beneficiary or otherwise.

11.18. No Developer Representations. Nothing contained herein or in the Master Plan shall be deemed to obligate the Developer to complete any part or all of the development of the Property in accordance with the Master Plan or any other plan, and the Master Plan shall not be deemed a representation or warranty by the Developer of any kind whatsoever.

11.19. Effective Date and Term.

11.19.1. Subject to the conditions stated in Recital I, this Agreement shall be effective ("**Effective Date**") upon the occurrence of all of the following events: (i) execution by the parties hereto; (ii) recordation in accordance with Paragraph 11.9; and (iii) execution of a purchase agreement between Developer and the Retailer within ninety (90) days after the approval of this Agreement by the City, for Retailer's development on Lot 1A consistent with the Master Plan and this Agreement.

11.19.2. The term of this Agreement shall commence on the date and at the time a resolution approving and adopting this Agreement is approved by the City Council, and shall automatically terminate on the twentieth (20th) anniversary of such date. However, if any of the Property still is subject to this Agreement twenty (20) years after the Effective Date, this Agreement shall automatically extend without the necessity of any notice, agreement, or recording by and between the parties an additional ten (10) years, for a total of thirty (30) years, at which time this Agreement shall automatically terminate as to the Property without the necessity of any notice, agreement, or recording by or between the parties, provided, however, that the drainage provisions established in Paragraph 9 and other vested right are perpetual and shall remain in effect after the termination of the remainder of this Agreement. In

addition, this Agreement shall terminate if the Retailer has failed to commence construction within three (3) years of the Effective Date.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

THE REMAINDER OF THIS PAGE IS LEFT BLANK INTENTIONALLY.

CITY:

CITY OF TEMPE, ARIZONA, a municipal corporation

By:_____
Neil Giuliano, Mayor

ATTEST:

_____
Kathy Matz, City Clerk

APPROVED AS TO FORM:

_____
City Attorney

DEVELOPER:

TAIT DEVELOPMENT, INC., an Arizona corporation

By:_____
Its:_____

OWNER ACKNOWLEDGEMENT:

EMERALD HOLDINGS, L.L.C., an Arizona corporation

By:_____
Its:_____

STATE OF ARIZONA)
) ss.
County of Maricopa)

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2003, by Neil Giuliano, Mayor of the CITY OF TEMPE, ARIZONA, a municipal corporation, for and on behalf thereof.

_____
Notary Public

My Commission Expires:

_____

STATE OF ARIZONA)
) ss.
County of Maricopa)

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2002, by _____, the _____ of TAIT DEVELOPMENT, INC., an Arizona corporation, for and on behalf thereof.

_____
Notary Public

My Commission Expires:

_____

STATE OF ARIZONA)
) ss.
County of Maricopa)

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2002, by _____, the _____ of EMERALD HOLDINGS, L.L.C., an Arizona corporation, for and on behalf thereof.

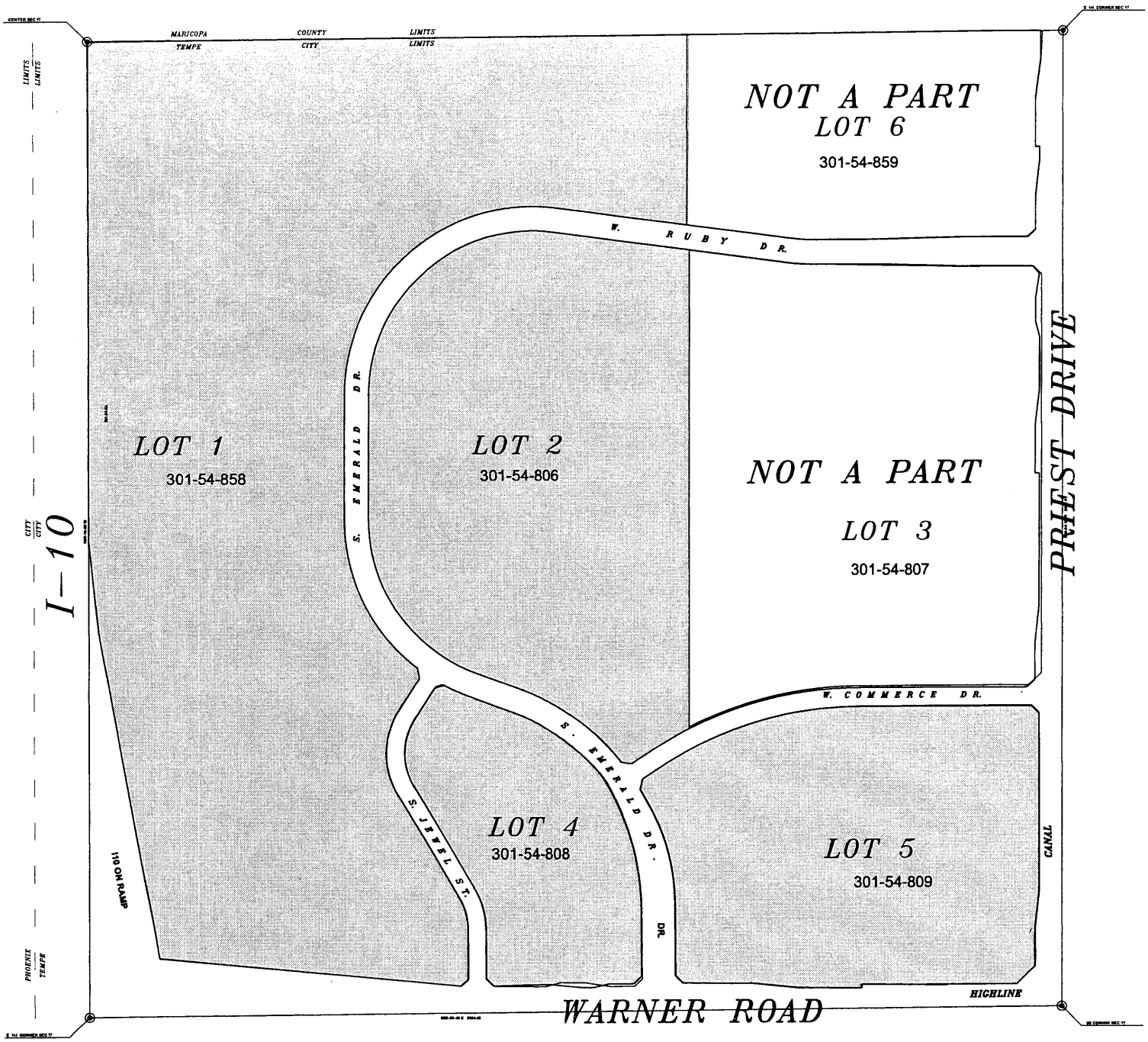
_____
Notary Public

My Commission Expires:

_____

Legal Description:

Lots 1, 2, 4 and 5 of the Final Plat of The Emerald, as recorded on June 23, 2000 in Book 536, Page 24 of the Official Records of the Maricopa County Recorder as Document No. 2000-0476599, and as amended in the Amended Final Plat for The Emerald, A Replat of Lot 1, as recorded on August 23, 2001 in Book 571, Page 05 of the Official Records of the Maricopa County Recorder as Document No. 2001-0776730, and as amended by A Replat of Lot 5 of The Emerald as recorded June 11, 2001 in Book 564, page 47 of the Official Records of the Maricopa County Recorder as Document No. 2001-0501882, a portion of the Southeast Quarter of Section 17, Township 1 South, Range 4 East of the Gila and Salt River Base and Meridian.



EMERALD CENTER
PROPERTY

07.15.03

EXHIBIT A **Page 2 of 2**

NORTH

MASTER PLAN

Uses and Development Standards

Permitted Uses: Permitted development of the Property shall generally conform to the land uses and intensities outlined on the Master Plan map attached hereto, including the building envelope locations and general commercial uses, including but not limited to retail, hotel, and office uses, and/or light industrial uses that are permitted on all the lots comprising the Property with maximum building heights of 160 feet.

Maximum Building Size: A single retail user of up to 400,000 square feet gross floor area shall be permitted on the Property.

Color Palette: Exterior elevations of buildings developed on the Property may be solid primary colors with accents of primary colors.

Landscape Palette: All development of the Property shall incorporate a landscape plant palette for each lot that is reasonably consistent 1) between and among the lots and 2) with the existing streetscape/landscape on the Property.

Signage: Development of the Property shall be allowed maximum signage that includes two (2) highway advertising signs along and beside Interstate Highway 10 (the "**I-10**") up to but not exceeding seventy (70) feet in height each and one thousand three hundred (1,300) square feet of display area each. Signs shall be constructed on the Property in a location as shown on the Master Plan or as otherwise approved by the City but in no event shall such signs interfere with any existing easement use. Such signs shall also be allowed to contain electronic print and picture graphic displays and shall be limited to advertising messages for the benefit of Project businesses or occupants. The City shall assist and cooperate with Developer in obtaining any federal or state agency approvals as may be necessary for such signs. The City shall modify development standards, where necessary, and/or provide any necessary approvals to allow building signage and Project signage (such as marquee signs with tenant names) of a size easily identifiable and readable from a passing vehicle on the I-10 and/or other public right-of-way.

Implementation

Development of the Project on the Property consistent with the Master Plan is possible with the existing I-1 and I-2 zoning and the necessary/appropriate use permits. However, the City would prefer to see development of the Project under the Regional Commercial Center District ("**R.C.C.**") Accordingly, concurrent with approval of this Agreement, the City shall on its own initiative, at no cost to

Developer, process an application to rezone Lots 1, 4, and 5 of the Property, as indicated on the Master Plan, to Regional Commercial Center District ("**R.C.C.**") including the required preliminary Planned Area Development ("**P.A.D.**"), which shall generally conform to the Master Plan. The R.C.C. shall include, in addition to all uses listed in the R.C.C. District, the ability to use the Property for light industrial uses, including but not limited to assembly and high tech manufacturing facilities that are conducted in enclosed buildings, subject to City approval of a use permit, which approval the City shall not unreasonably withhold. The City shall prepare the preliminary P.A.D. request, in cooperation with and with the approval of Developer, that shows general building envelopes for buildings or groups of buildings, garages or parking areas, conceptual driveways and access way locations, and conceptual building elevations, and proposed and allowable land uses that conform to the Master Plan. The Zoning Administrator shall have the ability, upon Developer's request, to modify the P.A.D. request as placement and design of buildings and signage are finalized.

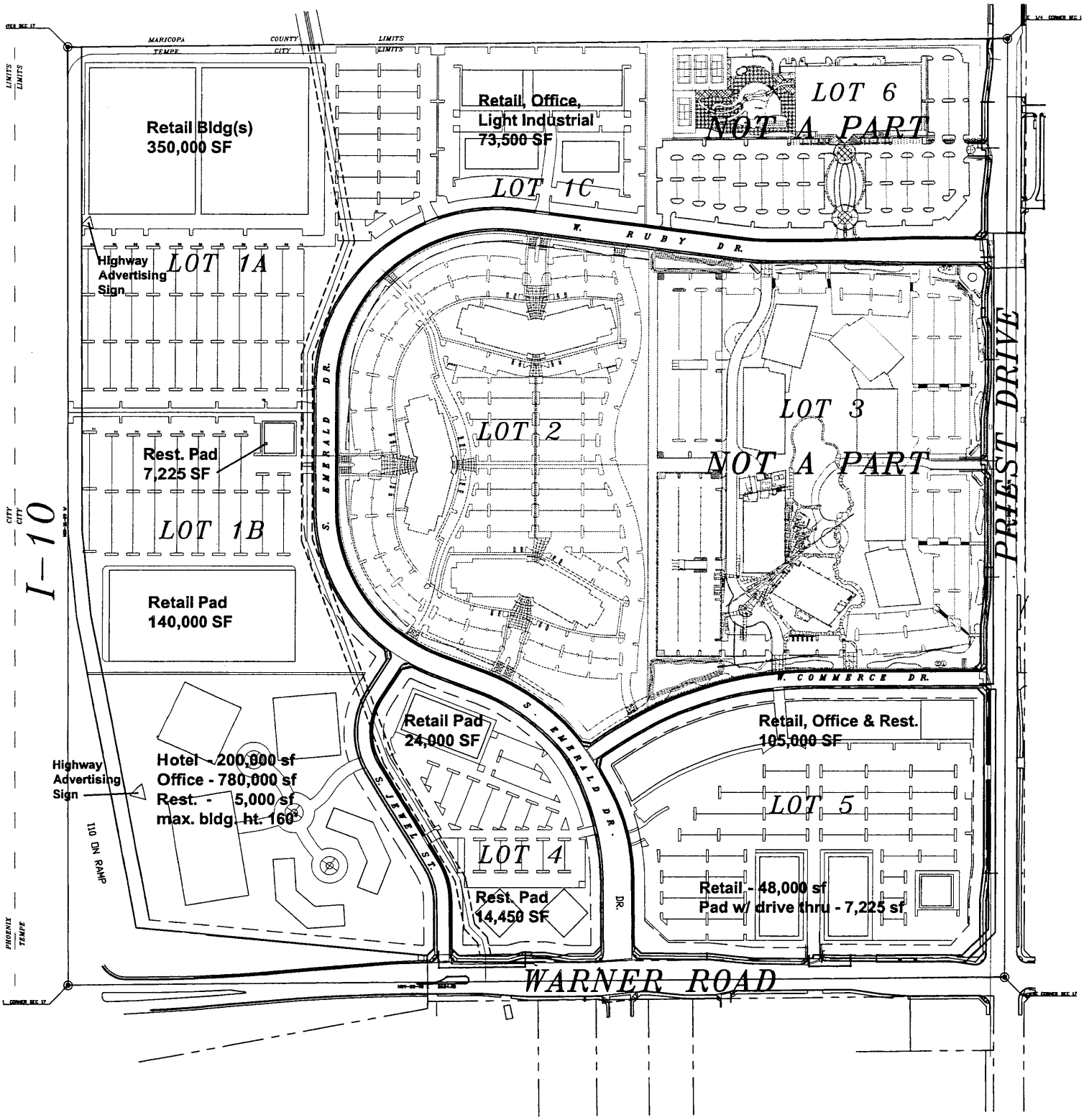
EMERALD CENTER

DEVELOPMENT PLAN A1

NORTH

07.15.03

EXHIBIT B **Page 3 of 6**



EMERALD CENTER

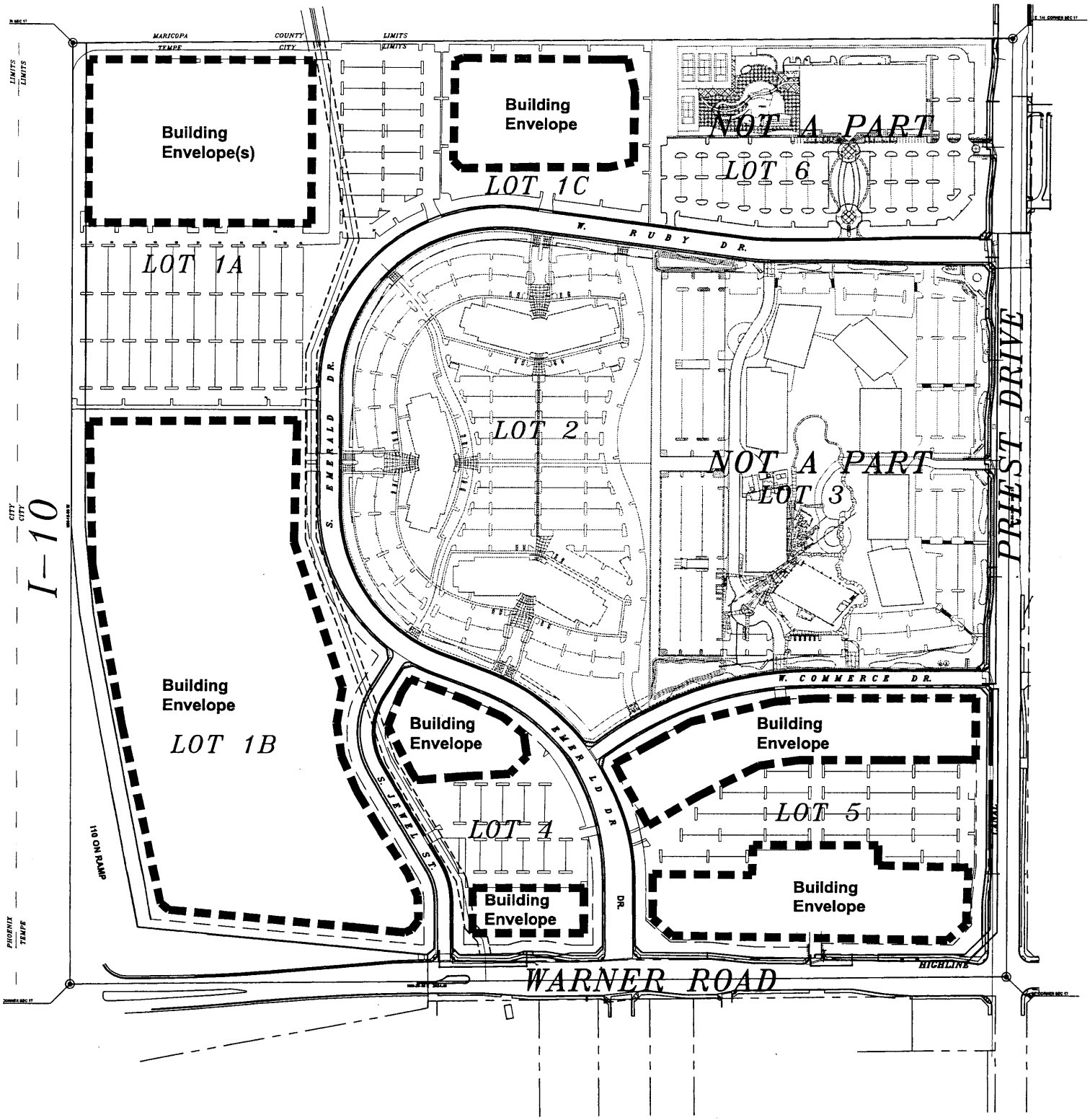
DEVELOPMENT PLAN A2

This Development Plan A2 depicts an example of how projects within the property may be developed, including uses, densities and intensities.

NORTH

07.15.03

EXHIBIT B **Page 4 of 6**

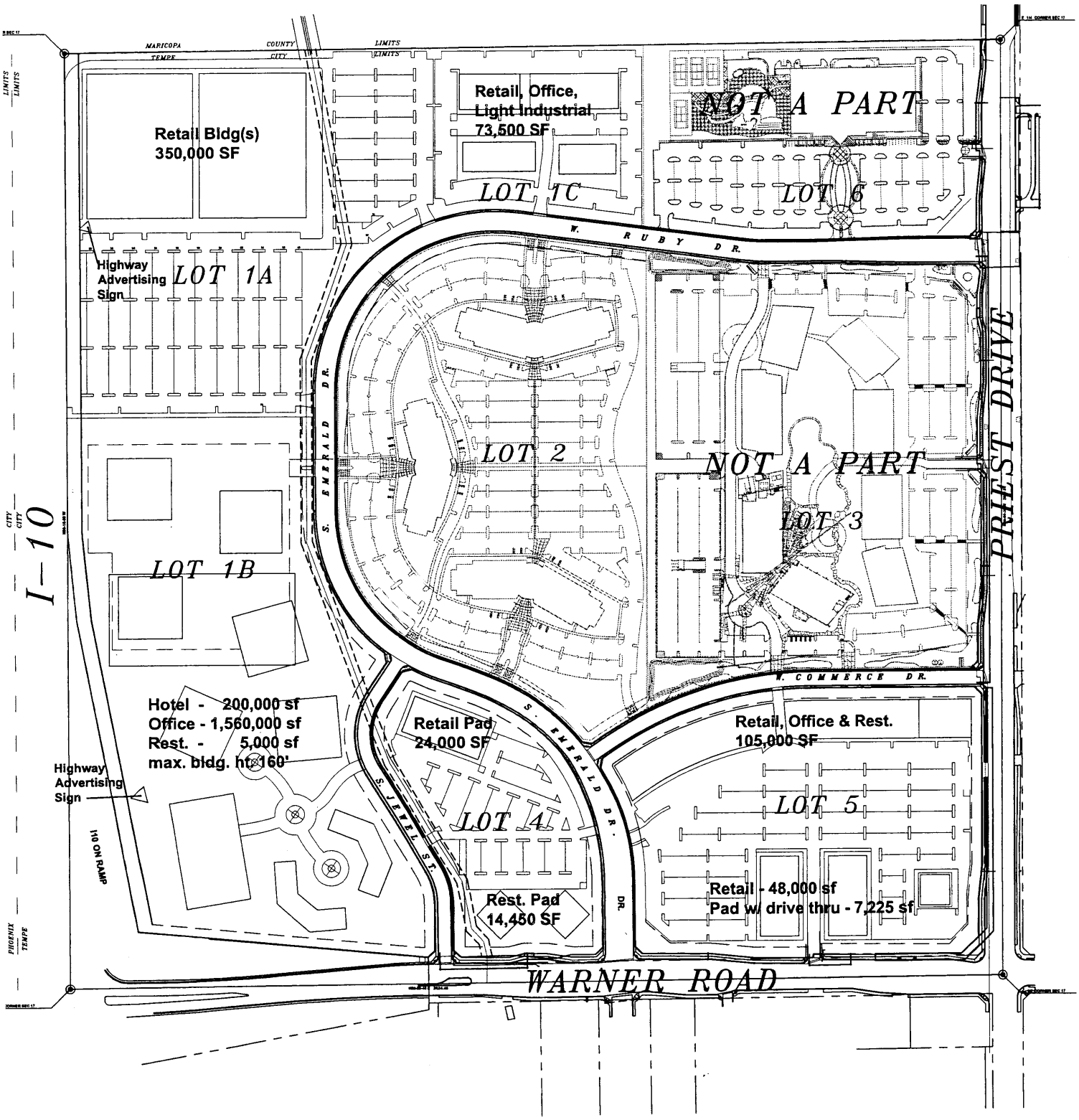


EMERALD CENTER
DEVELOPMENT PLAN B1

07.15.03

EXHIBIT B **Page 5 of 6**

NORTH



EMERALD CENTER

DEVELOPMENT PLAN B2

This Development Plan B2 depicts an example of how projects within the property may be developed, including uses, densities and intensities.

07.15.03

EXHIBIT B **Page 6 of 6**

NORTH

EXHIBIT C

PUBLIC BENEFITS/ECONOMIC DEVELOPMENT

The economic impact of this Project was estimated using the proposed land use identified in Exhibit B, Development Plan A. This economic impact summary is based on a phased retail development scenario that assumes that the total Project would be built in four phases over a period of 12 years. Phase I would include more than 300,000 sq. ft. of retail/restaurant; Phase II would include the proposed hotel and one-third of the remaining square footage to be developed; Phase III and IV would divide the remaining square footage.

Therefore, this Project is estimated to provide revenues to the City of approximately $47.7 million dollars over the next 10 years and approximately $133.9 million dollars over the next 20 years.

By contrast, the City will be contractually obligated to refund to the Project a total of $6.8 million dollars in project assistance to secure the above economic benefits to the community as outlined above.

The Project will also provide new capital investment in Tempe of approximately $500,000,000 and is estimated to create between 2,000-8,000 job.

In addition, the project will stimulate additional economic activities in the general region and contribute to the overall vitality of the community.