



TO: HONORABLE BOARD OF SUPERVISORS

FROM: Arlan M. Colton, Planning Director *AMC*

DATE: January 5, 2015

SUBJECT: DEVELOPMENT AGREEMENT BETWEEN PIMA COUNTY, ARIZONA AND FARMERS INVESTMENT COMPANY REGARDING THE CONTINENTAL FARMS SPECIFIC PLAN

The above referenced Development Agreement is scheduled for the Board of Supervisors' **TUESDAY, JANUARY 20, 2015** hearing.

January 5, 2015

Development Agreement between Pima County, Arizona and Farmers Investment Company regarding the Continental Farms Specific Plan

Background

On March 11, 2014, the Board of Supervisors approved the Continental Farms Specific Plan (Co23-13-01) (rezoning) subject to standard and special conditions. A rezoning condition from the case (Regional Flood Control District condition #13E) requires that a development agreement between Pima County and Farmers Investment Company (FICO) be adopted for on-site development improvements along the Santa Cruz River, to address financing and maintenance of channel improvements; phasing of construction; and potential cost sharing for projects that have additional public benefit.

The Continental Farms Specific Plan rezoned approximately 1,095 acres located along the Santa Cruz River corridor, east of Interstate 19, southwest of Whitehouse Canyon Road, and spanning both sides of Continental Road. The specific plan site was rezoned from RH (Rural Homestead) and RH (BZ) (Rural Homestead) (Buffer Overlay Zone) to SP (Specific Plan, Continental Farms Specific Plan) and SP (BZ) (Specific Plan) (Buffer Overlay Zone). The specific plan proposes new zones for mixed use (equivalent to CB-2 zoning, 150 acres), local commercial / office (equivalent to CB-1 zoning, 15 acres), mixed residential (equivalent to CR-5 zoning, 180 acres), and rural residential and resort use (430 acres), with river open space (320 acres) along the Santa Cruz corridor.

The proposed FICO Development Agreement will address the various aspects of on-site improvements to the Santa Cruz River detailed in the specific plan's River Master Plan (e.g., land acquisition and dedication; engineering plans; governmental approvals and permits; funding; and operation, management and maintenance responsibilities).

The development agreement also requires FICO to dedicate easements to Pima County for the Juan Bautista de Anza National Historic Trail and Adamson-Catino Trail. Finally, the development agreement grants FICO a protected development right of 10 years, with the possibility of requesting an additional 10-year extension, and acknowledges that Supplemental Development Agreements may be requested by other developers, but that these shall be subordinate to this development agreement.

The term of the proposed FICO Development Agreement is 50 years from the date that the agreement is executed.

Recommendation

Staff recommends that the Board of Supervisors approve the FICO Development Agreement as presented.

Sincerely,

Arlan M. Colton
Planning Director

AMC/MH/ar

Attachments

cc: C.H. Huckelberry, County Administrator
John Bernal, Deputy County Administrator for Public Works
Carmine DeBonis, Jr., Director, Development Services
Andrew Flagg, Deputy County Attorney

RESOLUTION 2015-_____

**A RESOLUTION OF THE BOARD OF SUPERVISORS OF PIMA COUNTY,
ARIZONA; APPROVING AND AUTHORIZING THE EXECUTION OF A
DEVELOPMENT AGREEMENT BETWEEN PIMA COUNTY AND FARMERS
INVESTMENT COMPANY.**

The Board of Supervisors of Pima County, Arizona finds that:

- A. Pima County (the "County") may, pursuant to A.R.S. § 11-1101, enter into development agreements relating to property located in unincorporated Pima County.
- B. The Pima County Board of Supervisors approved the specific plan (rezoning) request Co23-13-01 Continental Farms Specific Plan on March 11, 2014 which includes a rezoning condition requiring the adoption of a development agreement (the "Development Agreement") to address, at a minimum, provision of on-site river bank protection, earthwork, trails and associated facilities along the Santa Cruz River.
- C. The County and Farmers Investment Company ("FICO") desire to enter into a Development Agreement to address future on-site Santa Cruz River development improvements detailed in the specific plan's River Master Plan.
- D. The Board of Supervisors has concluded that the development of the subject property, under the terms set forth in the proposed FICO Development Agreement and Co23-13-01 specific plan and rezoning conditions, will be a benefit for the residents of Pima County.

NOW, THEREFORE, IT IS RESOLVED:

1. The FICO Development Agreement between the County and FICO, in the form presented to the Board of Supervisors, is approved.
2. The Chair of the Board of Supervisors is authorized and directed to sign the Development Agreement on behalf of the County.
3. The various officers and employees of the County are authorized and directed to perform all acts necessary and desirable to give effect to this Resolution and the Development Agreement.

Passed and adopted, this _____ day of _____, 2015.

Chair, Pima County Board of Supervisors

ATTEST:

Clerk of the Board

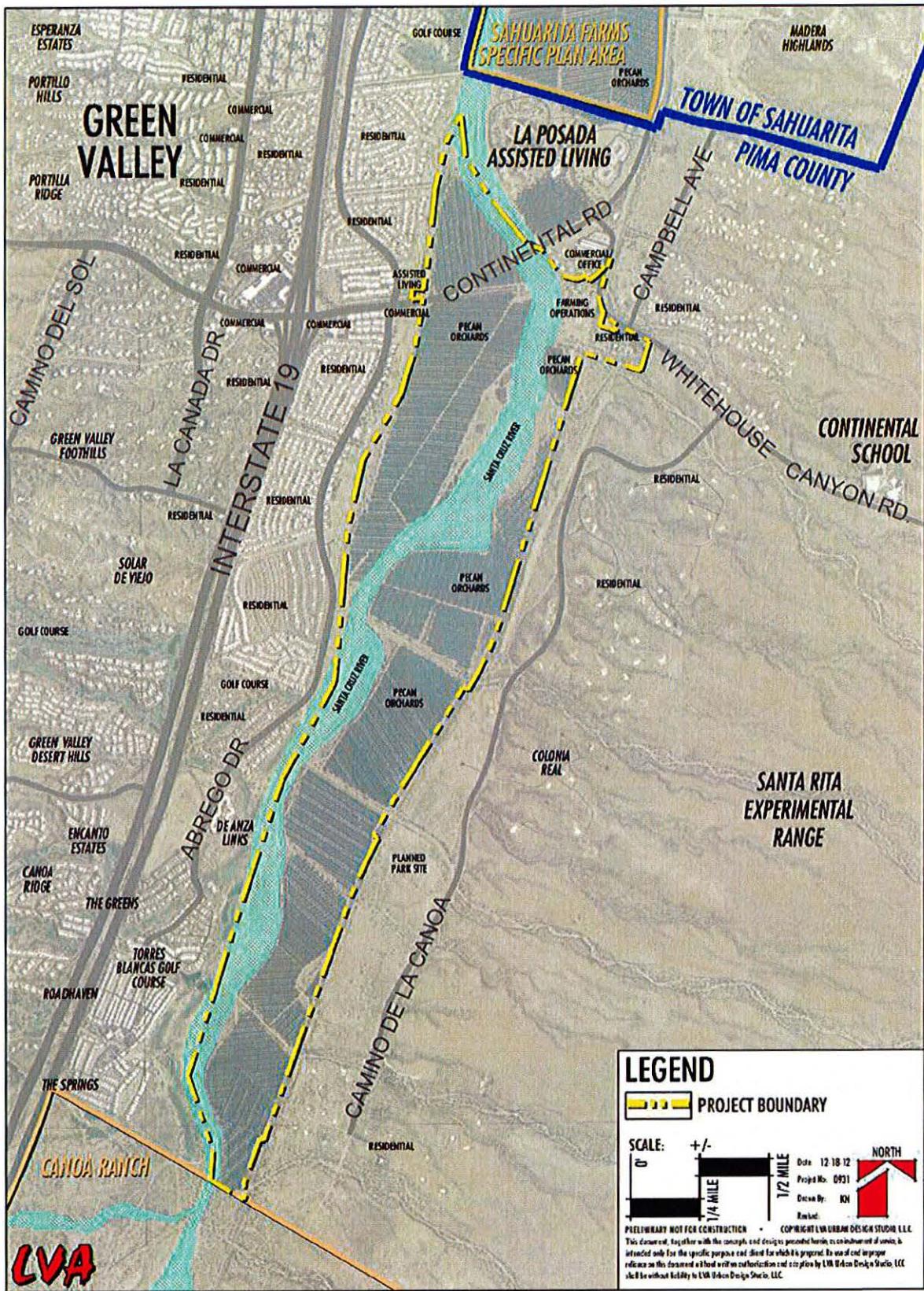
APPROVED AS TO FORM:

Deputy County Attorney
ANDREW FLAGG

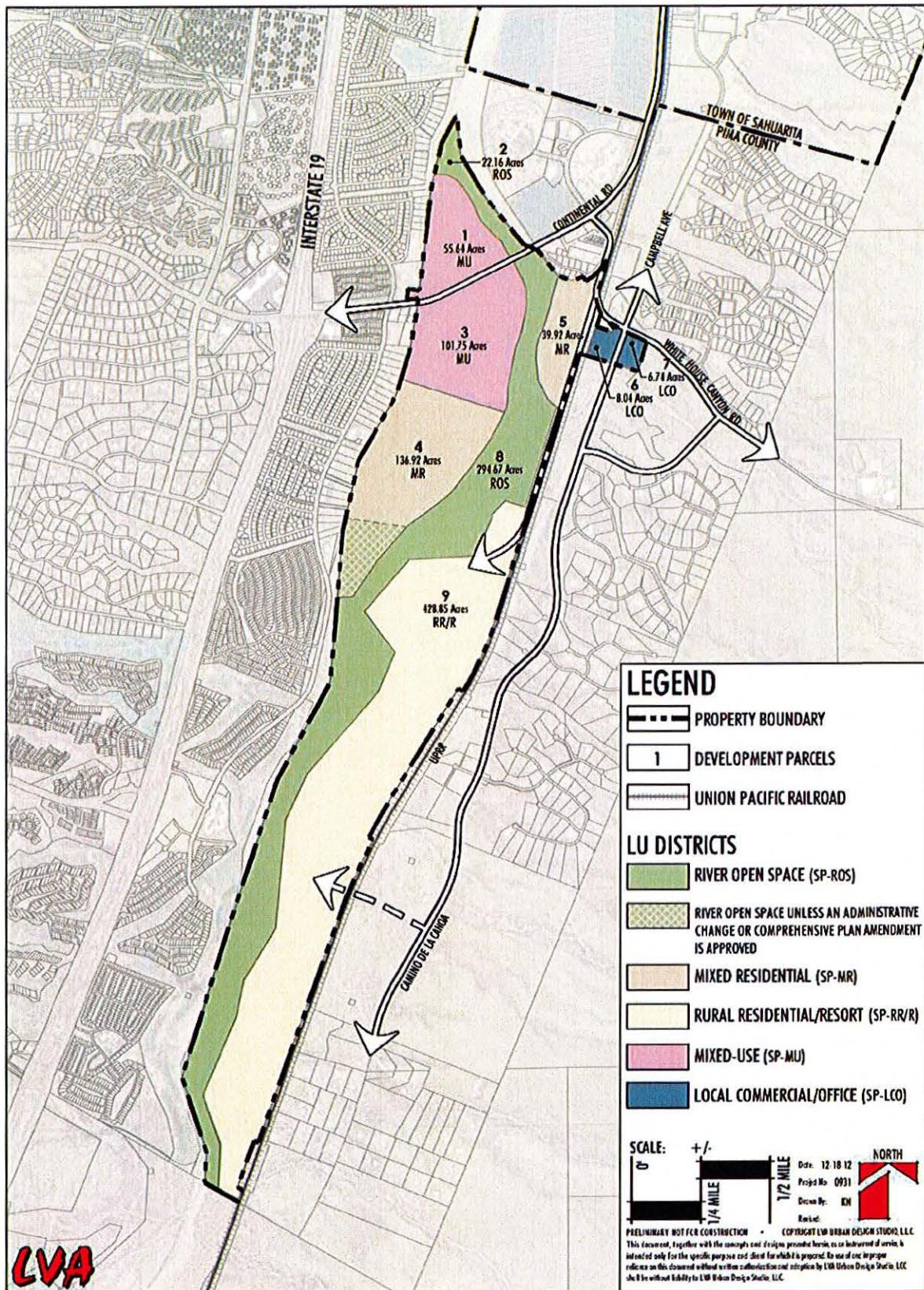
APPROVED:


Executive Secretary
Planning and Zoning Commission

Continental Farms Specific Plan (Co23-13-01) Location Map



**Continental Farms Specific Plan (Co23-13-01)
Development Plan Land Use Districts**



F. ANN RODRIGUEZ, RECORDER
Recorded By: CML
DEPUTY RECORDER
1951

P0230
PIMA CO CLERK OF THE BOARD
PICKUP



SEQUENCE: 20142370704
NO. PAGES: 3
ORDIN 08/25/2014
18:00
PICK UP
AMOUNT PAID: \$0.00

ORDINANCE 2014- 39

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA; RELATING TO ZONING; REZONING APPROXIMATELY 1,095 ACRES OF PROPERTY (TAX PARCEL NUMBERS 304-18-097B, 304-18-097M, 304-18-098A, 304-18-9740, 304-24-696B, 304-18-109A, 304-18-109C) IN CASE Co23-13-01 CONTINENTAL FARMS SPECIFIC PLAN (REZONING) FROM RH (RURAL HOMESTEAD) AND RH (BZ) (RURAL HOMESTEAD) (BUFFER OVERLAY ZONE) TO SP (SPECIFIC PLAN, CONTINENTAL FARMS SPECIFIC PLAN) AND SP (BZ) (SPECIFIC PLAN) (BUFFER OVERLAY ZONE), LOCATED EAST OF INTERSTATE 19, SOUTHWEST OF WHITEHOUSE CANYON ROAD, SPANNING BOTH SIDES OF CONTINENTAL ROAD, AMENDING PIMA COUNTY ZONING MAP NOS. 771, 886, 887, 1010, 1141 AND EPC.

IT IS ORDAINED BY THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA:

Section 1. The approximately 1,095 acres located east of Interstate 19, southwest of Whitehouse Canyon Road, spanning both sides of Continental Rd, illustrated by the shaded area on the attached rezoning ordinance map (Exhibit A), which amends Pima County Zoning Map Nos. 771, 886, 887, 1010, 1141, and EPC, are rezoned from RH (Rural Homestead) and RH (BZ) (Rural Homestead) (Buffer Overlay Zone) to SP (Specific Plan, Continental Farms Specific Plan) and SP (BZ) (Specific Plan) (Buffer Overlay Zone) subject to the conditions identified in, and incorporated by reference into, Section 3 of this Ordinance.

Section 2. Specific Plan Adoption. The Continental Farms Specific Plan, attached as Exhibit B is adopted (Exhibit B has not been recorded by may be viewed at the office of the Pima County Development Services – Planning Division).

Section 3. Rezoning Conditions. Conditions 1 through 22, as stated in Part V of Exhibit B, the Continental Farms Specific Plan (pages 156-164), are adopted as the conditions of this rezoning and incorporated into this Ordinance by this reference.

Section 4. Amendments. The rezoning conditions adopted in Section 3 may be amended or waived by resolution of the Board of Supervisors in accordance with Pima County Zoning Code, Chapter 18.90.

Section 5. The effective date of this Ordinance is 30 days after adoption by the Board of Supervisors.

Passed and adopted by the Board of Supervisors of Pima County, Arizona, on this
August 18th 2014.

Sharon Brunsun
Chair of the Board of Supervisors

ATTEST:

Robert Briggade
Clerk, Board of Supervisors

Approved As To Form

Deputy County Attorney

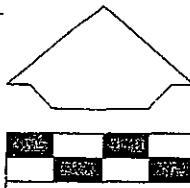
ANDREW FLAGG

Approved:

Q. M. Miller
Executive Secretary,
Planning and Zoning Commission

EXHIBIT A

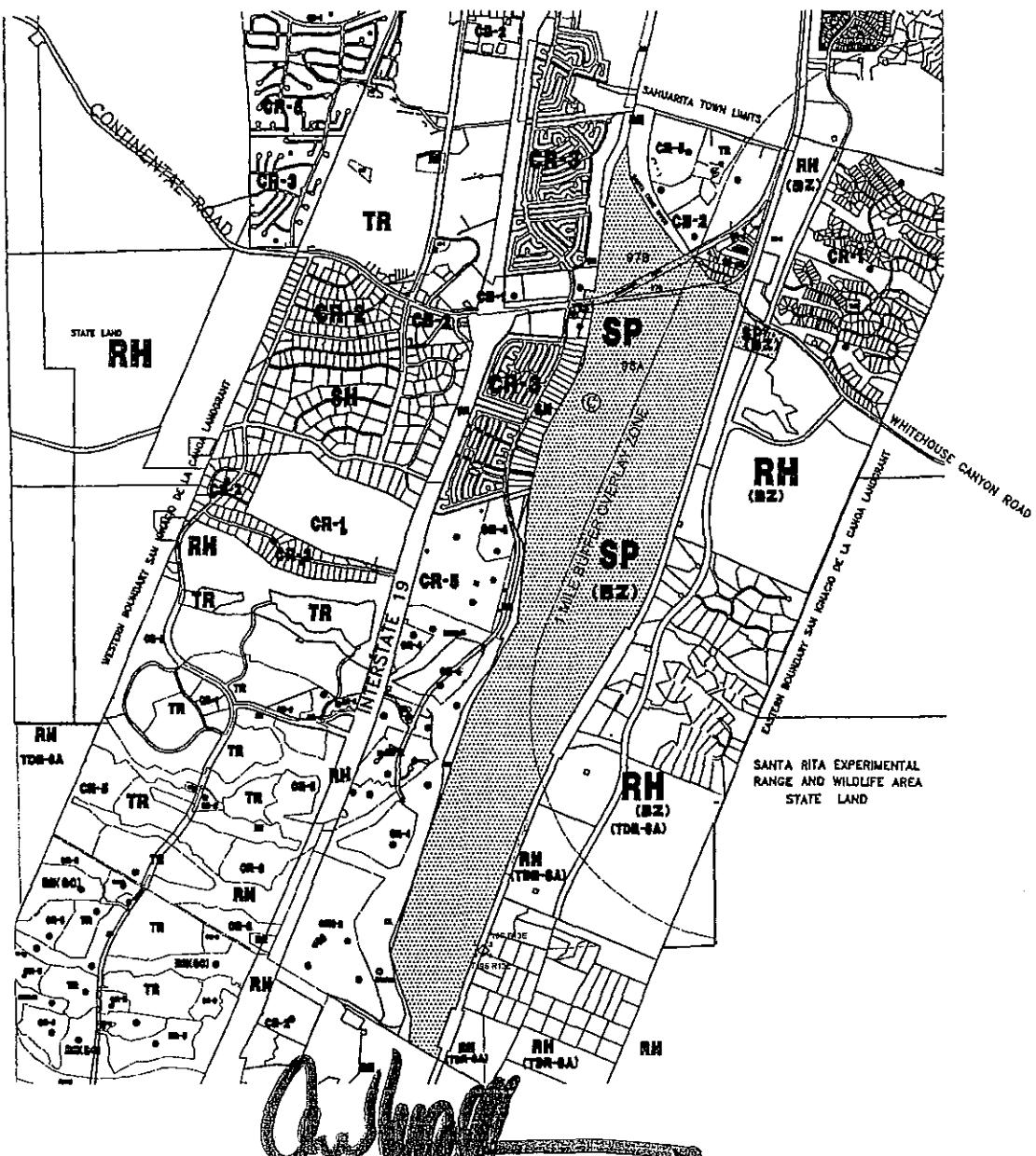
AMENDMENT NOS.12, 14, 25, 40, 16, 135 BY ORDINANCE NO. 2014-39
TO PIMA COUNTY ZONING MAP NOS. 771, 886, 887, 1010, 1141, EPC
TUCSON, AZ. PARCELS 97B, 97M, 98A, 109A, 109C, 9740, 696B
BEING A PART OF THE CONTINENTAL SECTION OF THE
SAN IGNACIO DE LA CANOA LAND GRANT.



ADOPTED August 18, 2014 EFFECTIVE August 18, 2014

0

4000'



EXECUTIVE SECRETARY PIMA COUNTY PLANNING AND ZONING COMMISSION

© NO BUILDING PERMITS WITHOUT CERTIFICATE OF COMPLIANCE
FROM RH & RH(BZ) 1095.0 ac±
as-JUNE 23, 2014

CD23-13-01
PARCELS 30418097B,
097M, 098A, 109A, 109C,
9740 & 30424696B.

When recorded, return to:

Pima County
130 West Congress Street
10th Floor
Tucson, Arizona 85701
Attn: County Administrator

**DEVELOPMENT AGREEMENT
(CONTINENTAL FARMS)**

**PIMA COUNTY, ARIZONA,
a political subdivision of the State of Arizona**

and –

FARMERS INVESTMENT CO., an Arizona corporation

Dated: _____, 2015

DEVELOPMENT AGREEMENT (CONTINENTAL FARMS)

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into by and between PIMA COUNTY, a political subdivision of the State of Arizona (the "County"), and FARMERS INVESTMENT CO., an Arizona corporation ("FICO").

R E C I T A L S

A. FICO is the current owner of approximately 1,098 acres of land located in Pima County and legally described on *Exhibit "A"* attached hereto and incorporated herein by this reference (the "Property").

B. FICO currently uses the Property for agricultural operations and other purposes. However, the parties acknowledge that, at some point in the future, the Property may be appropriate for development as a mixed-use project, including residential, commercial, recreation and other uses.

C. The County has approved a rezoning of the Property pursuant to Ordinance 2014-39 adopted by the County Board of Supervisors on August 18, 2014 (herein, the "Specific Plan"), which applies to future development of the Property.

D. The Specific Plan contemplates the future development of improvements to the Santa Cruz River as it traverses through the Property, which improvements (the "River Improvements") include river bank protection, earthwork, trails and trail facilities, all of which are described in the River Master Plan which is part of the Specific Plan (the "River Master Plan").

E. FICO has requested assurances from the County that future developers of the Property (hereinafter referred to as "Developers") will have the right to complete development of the Property pursuant to the Specific Plan and this Agreement. The County acknowledges that development of the Property in accordance with this Agreement and the Specific Plan will, among other things, result in the design, construction and installation of public improvements in and around the Property, including, without limitation, the River Improvements, that will also serve the needs of the County and its citizens.

F. Under the Specific Plan, FICO is required to dedicate real property for various purposes by Master Subdivision Block Plat, unless otherwise specified in a development agreement. County desires to obtain easements for the Anza Trail in advance of FICO's submission of a Master Subdivision Block Plat.

G. This Agreement is intended to be a Development Agreement pursuant to the provisions of A.R.S. § 11-1101.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto state, confirm and agree as follows:

A G R E E M E N T

1. **INCORPORATION OF RECITALS.** The parties hereto acknowledge the truth and accuracy of the foregoing recitals and hereby agree to incorporate them herein by this reference.
2. **DEVELOPMENT PLANS.**

2.1. Continental Farms Specific Plan.

- 2.1.1. General. FICO and the County agree that all future development of the Property shall be in accordance with the Specific Plan. Accordingly, so long as Developers of the Property follow and implement the Specific Plan, the Property may be developed by Developers in accordance with the Specific Plan. The County further agrees to cooperate reasonably with Developers and to process expeditiously any and all approvals, permits, plans, plats or otherwise as may be necessary to allow the Property to be developed in conformance with the Specific Plan. This Agreement cannot, and is not intended to, in any way alter any provision of the Specific Plan, which has the force of law and will prevail over any conflicting provision in this Agreement.
- 2.1.2. Specific Plan Amendments. To the extent FICO or any Developer of the Property or any portion thereof determines that amendments to any or all of the respective components of the Specific Plan are necessary or desirable from time to time to reflect changes in market conditions, development financing and/or to meet the requirements of one or more potential users or builders of any portion of the Property, then such requests for amendments shall be processed in accordance with the terms and conditions set forth in the Specific Plan. The County, FICO and all Developers shall cooperate in good faith, and use reasonable best efforts, to process any such requests for amendments to the Specific Plan and agree that any amendment that is approved shall be incorporated by this reference into this Agreement with the same force and effect as if originally set forth herein and shall not require a corresponding amendment to this Agreement.
- 2.1.3. Density; Land Uses. The County acknowledges that the Specific Plan provides overall densities for the Property and general land use categories within designated "Development Parcels." The County acknowledges and agrees that Developers shall have the right, in their discretion, to allocate within each Development Parcel the specific land uses and densities designated for such Development Parcel, and to reallocate among the various Development Parcels, land uses and densities, subject to the limitations thereon as set forth in the Specific Plan.
- 2.1.4. Master Block Plat; Phased Development. The County acknowledges that the Specific Plan provides that a single master block plat for the Property (the "**Master Block Plat**") will be recorded with respect to the entirety of the Property which will include those portions of the Property which are described in the Specific Plan as "**Master Block Plat Exception Parcels**," and that the future development of the Property will be in accordance with the Master Block Plat; provided, however, that the Master Block Plat Exception Parcels may be developed prior to the recordation of the Master Block Plat as contemplated pursuant to the Specific Plan. The Master Block Plat shall comply with all requirements of the Specific Plan, which include identifying all necessary infrastructure improvements and providing a design and construction phasing plan, but will allow for flexibility in connection with the construction of all such infrastructure in order to adjust to changing market conditions during the development of the Property. The development of the Property is intended to be carried out over a number of years and in multiple development phases that may

be noncontiguous until all of the Property is developed. As used herein, the term "Phase" shall mean each of the development and/or construction phases undertaken by a Developer or a group of Developers, which may include the entirety of a Development Parcel or portions therein. Developers shall have the right to make the determination as to which portions of the Property will be developed and the order in which the Property or any Development Parcel or Phase therein will be developed, subject to the requirement that Developers identify phased infrastructure improvements and, through Supplemental Development Agreements (as hereinafter described) or specific notes on block plats, assure the construction of phased infrastructure prior to or concurrent with development. The County also acknowledges and agrees that Developers shall have the right to process separate subdivision plats for that portion or those portions of the Property then being developed. However, nothing in this Agreement or the Specific Plan is intended to require the development or construction of any portion or all of the Property.

2.2. **Protected Development Right.** As authorized by A.R.S. § 11-1202, the Specific Plan is hereby designated a "protected development right plan", as defined in A.R.S. § 11-1201. The County and FICO acknowledge that granting a protected development right ("PDR") to undertake and complete the development of the Property as shown on the Specific Plan and permitted under current zoning regulations will promote reasonable certainty, stability, and fairness in the land use planning and regulatory process. The protected development rights granted by this paragraph are governed by the following:

- 2.2.1. **Term.** As authorized by A.R.S. § 11-1203(A), the PDR, as described in this Section, terminates ten (10) years after execution and recording of this Agreement. The County hereby agrees, however, that upon the timely request of FICO or any Developer, the County will, in good faith, consider a request to extend the term of the PDR for an additional 10-year period as authorized by A.R.S. §11-1203(B).
- 2.2.2. **Governing Rules.** The development of the Property shall be governed by the Specific Plan as it may be subsequently modified pursuant to the terms of the Specific Plan and this Agreement, and by applicable provisions of the Pima County Zoning Code in effect on the date of this Agreement to the extent not inconsistent with the Specific Plan, subject to the following:
 - (a) The exceptions set forth in A.R.S. § 11-1204.
 - (b) Ordinances or regulations, and amendments thereto, that are general in nature and that are applicable to all property subject to regulation by the County, such as building, fire, plumbing, electrical, drainage and mechanical codes.
 - (c) Future nondiscriminatory increases of existing permit, impact or review fees or sanitary sewer connection fees and future imposition of additional permit, impact or review fees or sanitary sewer connection fees, enacted in full compliance with the provisions of applicable law.
- 2.2.3. **No Effect on Common-law Vested Rights.** Nothing in this Agreement shall affect the claims or defenses of the Parties, if any, regarding the vesting of rights in any

Developer to develop all or a portion of the Property according to the Specific Plan, or any plat, plan, or permit based on the Specific Plan, as a matter of common law, either during the term of or following termination of this Agreement.

3. **RIVER MASTER PLAN.** The County and FICO acknowledge and agree that the River Master Plan is a material component of the Specific Plan and, as a result thereof, the County, FICO and all future Developers of the Property will cooperate with each other in good faith and shall work together to implement all aspects of the River Master Plan, which efforts shall include, without limitation, the following:

- 3.1. **Land Acquisition and Dedication.** The process pursuant to which all land required to be dedicated for the construction of the River Improvements and implementation of the River Master Plan will be dedicated to the County or the Pima County Flood Control District.
- 3.2. **Engineering Plans.** The preparation, review and approval of all engineering plans and specifications in connection with the River Improvements.
- 3.3. **Governmental Approvals.** The pursuit of all required governmental approvals and permits in connection with the planning and construction of the River Improvements and the implementation of the River Master Plan, such as CLOMRs, approvals from the Federal Emergency Management Agency (“FEMA”), and the like.
- 3.4. **Funding Sources.** The identification of sources of funding of the costs and expenses to be incurred in connection with the design, engineering and construction of all River Improvements, including, without limitation, such sources as the County typically identifies and/or pursues in connection with similar river improvements which, among other things, are intended to provide public flood and erosion control benefits, including for example, the Pima County Flood Control District, the U.S. Army Corps of Engineers, the Federal Bureau of Reclamation and other funding sources. Nothing in this Agreement, however, either requires or precludes the County or the Pima County Flood Control District to fund or construct any portion of the River Improvements.
- 3.5. **Operation, Management and Maintenance.** The coordination and implementation of the operation and management of the River Improvements following the completion of the construction thereof. It is currently intended that the River Improvements will be operated, managed and maintained by the Pima County Flood Control District.

The respective agreements and responsibilities of the County, FICO and/or future Developers of the Property with respect to the implementation of the River Master Plan and the design, construction and funding of the River Improvements may be incorporated into one or more Supplemental Development Agreements (as defined below) to be entered into by and between the County, FICO and/or future Developers. Such Supplemental Development Agreements may contemplate the phasing of the construction of the River Improvements in accordance with the Specific Plan. In addition, the implementation of the River Master Plan, and the operation, management and maintenance of all River Improvements constructed as part of the River Master Plan, may require the execution of one or more intergovernmental agreements by and among the County, the U.S. Army Corps of Engineers, the Pima County Flood Control District and the Federal Bureau of Reclamation, among others, and the parties agree to cooperate in good faith in connection with the negotiation and execution of any such intergovernmental agreements.

4. **PUBLIC TRAILS.** The Specific Plan and the River Master Plan contemplate the development and use by the members of the general public of public, non-motorized, recreational trails, including, without limitation, the Juan Bautista de Anza Trail as it is currently planned along the western embankment of the Santa Cruz River (the “Anza Trail”). The Specific Plan requires FICO to dedicate to the County an easement for the Anza Trail by Master Subdivision Block Plat, if the Anza Trail is proposed to be located within the Property. As a material part of the consideration to the County for its execution of this Agreement, FICO hereby covenants and agrees that it shall, in advance of submitted a Master Subdivision Block Plat, dedicate to the County, for use by the general public, the following easements in connection with the development of the Anza Trail:

- 4.1. **Anza Trail Easement.** A perpetual public, non-exclusive, non-motorized, recreational (i.e., intended for use by “recreational users” pursuant to A.R.S. § 33-1551, et seq.) trail easement for the Anza Trail in the location depicted on ***Exhibit “B”*** attached hereto and incorporated herein by this reference (the “Anza Trail Easement”), which Anza Trail Easement shall permit the Anza Trail to be a continuous and uninterrupted trailway through the Property; and
- 4.2. **Adamson – Catino Trail Easement.** A perpetual public, non-exclusive, non-motorized, recreational (i.e., intended for use by “recreational users” pursuant to A.R.S. § 33-1551, et seq.) trail easement providing access between the Abrego Trailhead (which will in turn provide public access to the Anza Trail) through the Property to the Union Pacific Railroad property near the Canoa Preserve Community Park (the “Adamson – Catino Trail Easement”), in the location depicted on ***Exhibit “C”*** attached hereto and incorporated herein by this reference.

The Anza Trail Easement and the Adamson – Catino Trail Easement shall be granted and conveyed to the County pursuant to easement agreements relating thereto, in the forms attached as ***Exhibit “D”*** and ***Exhibit “E,”*** respectively, to be executed by and between the County and FICO within one (1) year after the date of this Agreement, or at such other time as may be agreed to by the County.

5. **SUPPLEMENTAL DEVELOPMENT AGREEMENTS.** The County hereby acknowledges and agrees that, because the development of the Property pursuant to the Specific Plan will occur over a number of years by multiple Developers, such Developers may request the County to enter into supplemental development agreements which will supplement the terms and conditions of this Agreement but shall in all respects be subordinate to this Agreement (herein, a “**Supplemental Development Agreement**”). Such Supplemental Development Agreements may include, without limitation, provisions addressing the following:

- 5.1. **Amendments to Specific Plan.** Any amendments to the Specific Plan that are approved with respect to a Development Parcel, or a particular Phase or Phases within a Development Parcel or the Property to be developed by a Developer.
- 5.2. **River Improvements.** Terms and conditions relating to the design, construction, operation and maintenance of River Improvements, as provided in Section 3 above.
- 5.3. **Infrastructure Improvements - Construction.** Terms and conditions relating to the regional and local infrastructure improvements which may be required in connection with the development of a Development Parcel, or a particular Phase or Phases within a

Development Parcel or the Property, including, without limitation, street improvements, water and sewer improvements, drainage retention and the like.

- 5.4. **Infrastructure Improvements - Financing.** Terms and conditions relating to the financing of any public infrastructure improvements which are part of the development of a Development Parcel, or a particular Phase or Phases within a Development Parcel or the Property, although nothing in this Agreement either requires or precludes the County or the Pima County Flood Control District to fund or construct any public infrastructure on the Property; and
- 5.5. **Other Terms and Conditions.** Other terms and conditions which may be deemed mutually necessary or desirable by a Developer and County in connection with the development of a Development Parcel, or a particular Phase or Phases therein, such as provisions relating to economic incentives, the implementation of an expedited development review process, and other provisions which may be required to address specific development issues relating to a particular Development Parcel or Phases therein.

The County and each Developer acquiring any portion of the Property (and FICO, if and to the extent necessary) agree to cooperate with each other in good faith in connection with the preparation, negotiation and execution of any and all Supplemental Development Agreements, but nothing in this Agreement requires either party to approve or execute such an agreement. No Supplemental Development Agreement shall apply to any portion of the Property unless the underlying owner of such portion of the Property with respect to which the Supplemental Development Agreement applies has executed the Supplemental Development Agreement or otherwise joins in such Supplemental Development Agreement in writing, which Supplemental Development Agreement is recorded against the portion of the Property which is the subject thereof.

6. **EXISTING USES.** The County acknowledges that the Property, or portions thereof, are currently being used for residential, commercial and farming and agricultural purposes and that such uses may continue for a significant period of time. Nothing in this Agreement shall be deemed to affect the continuation of those existing uses as allowed under applicable law, including the Specific Plan, or otherwise limit or restrict the operation of such existing uses.

7. **COOPERATION AND ALTERNATIVE DISPUTE RESOLUTION.**

- 7.1. **Appointment of Representatives.** To further the cooperation of the parties in implementing this Agreement, the County and FICO each shall designate and appoint a representative to act as a liaison between the County and its various departments and FICO. The initial representative for the County (the "**County Representative**") shall be the County Administrator and the initial representative for FICO shall be identified by FICO from time to time (the "**FICO Representative**"). At such time as a Developer acquires any portion of the Property for development, such Developer shall also appoint a representative to act as a liaison with the County (a "**Developer Representative**"). The representatives shall be available at all reasonable times to discuss and review the performance of the parties to this Agreement and any matters relating to the Property which are the subject of this Agreement or any Supplemental Development Agreement.
- 7.2. **Default.** Failure or unreasonable delay by either party to perform or otherwise act in accordance with any term or provision hereof shall constitute a breach of this Agreement and, if the breach is not cured within thirty (30) days after written notice thereof from the

other party (the "Cure Period"), shall constitute a default under this Agreement; provided, however, that if the failure is such that more than thirty (30) days would reasonably be required to perform such action or comply with any term or provision hereof, then the party shall have such additional time as may be necessary to perform or comply so long as the party commences performance or compliance within said thirty (30) day period and diligently proceeds to complete such performance or fulfill such obligation within ninety (90) days from its receipt of written notice from the other party. Any notice of a breach shall specify the nature of the alleged breach and the manner in which said breach may be satisfactorily cured, if possible. In the event a breach is not cured within the Cure Period, the nondefaulting party shall have all rights and remedies which may be available under law or equity, including without limitation the right to specifically enforce any term or provision of this Agreement and/or the right to institute an action for damages. This does not in any way restrict or condition the County's right to enforce any provision of the Specific Plan or any other law or regulation applicable to the Property.

- 7.3. **Arbitration.** Any dispute, claim or cause of action arising out of or relating to this Agreement may be submitted by mutual agreement of the the parties to mediation or binding arbitration in accordance with the rules of the American Arbitration Association and the Arizona Uniform Arbitration Act, A.R.S. §12-1501, et seq. The judgment rendered by the arbitrator(s) shall be final, conclusive and binding upon the parties and may be entered in any court of competent jurisdiction.
- 7.4. **Non-Liability of County Officials and Employees.** No member, official, or employee of the County shall be personally liable to FICO, any Developer, or any successor in interest or successor owner of any portion of the Property, for any obligation of the County under this Agreement or any default or breach of such an obligation by the County, or for any amount that may become due to FICO, any Developer, or successor under this Agreement. This does not preclude FICO, any Developer, or a successor from obtaining injunctive relief against the County or a County official, acting in an official capacity, through a mandamus or other special action.

8. **NOTICES AND FILINGS.**

- 8.1. **Manner of Serving.** All notices, consents, approvals and other communications provided for herein shall be made in writing and delivered personally or sent by certified United States mail, postage pre-paid, return receipt requested, to:

County: Pima County
130 West Congress Street
Tucson, Arizona 85701
Attn: County Administrator

With a copy to: Pima County Attorney's Office
Civil Division
32 N. Stone Ave., Suite 2100
Tucson, Arizona 85701
Attn: Chief Civil Deputy County Attorney

FICO:

Farmers Investment Co.
1525 East Sahuarita Road
P.O. Box 7
Sahuarita, Arizona 85629
Attn: Richard S. Walden

With copy to:

Gammage & Burnham, PLC
Two North Central Avenue, 15th Floor
Phoenix, Arizona 85004
Attn: Jeffrey J. Miller, Esq.

or to such other addresses as either party hereto may from time to time designate in writing and delivery in a like manner.

8.2. **Mailing Effective.** Any notice or other communication given under this Agreement shall become effective upon the date of delivery or the date that such delivery is refused, as applicable.

9. GENERAL.

9.1. **Waiver.** No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the County or FICO or any Developer of the breach of any covenant or condition of this Agreement 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.

9.2. **Headings, Counterparts.** The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of any provision of this Agreement. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.

9.3. **Further Acts.** Each party agrees 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.

9.4. **Time of Essence and Successors.** 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 day of the period so completed shall be included unless it is a Saturday, Sunday or legal holiday (which includes the day after Thanksgiving if that day is observed by the County as a 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. (Tucson time) on the last day of the applicable time period provided herein.

9.5. **Term.** The term of this Agreement shall commence on the Effective Date (as hereinafter defined) and shall automatically terminate on the fiftieth (50th) anniversary thereof. The "Effective Date" shall mean the date on which this Agreement has been executed by both parties and recorded.

- 9.6. **Termination Upon Sale to Public.** This Agreement shall terminate without the execution or recordation of any further instrument or document as to any residential lot which has been legally subdivided pursuant to a recorded subdivision plat and sold to an end user or purchaser.
- 9.7. **Successor and Assigns.** All of the provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto pursuant to A.R.S. § 11-1101(E); provided, however, that the rights and obligations of FICO hereunder may be assigned, as to any portion of the Property, only to the persons or entities (including, without limitation, Developers) that have acquired that portion of the Property from FICO or a Developer and only by a written instrument, recorded in the official records of Pima County, Arizona, in which the successor expressly acknowledges that it is assuming FICO's rights and obligations with respect to the property acquired.
 - (a) FICO and Developers shall provide the County with written notice of any assignment of their respective rights and obligations within a reasonable period of time following such assignment. Nothing in this Agreement shall operate to restrict FICO's or any Developer's ability to assign less than all of its rights and obligations under this Agreement to those entities that acquire any portion of the Property. The County need not, however, recognize any retention of rights by FICO or a Developer unless the rights retained are particularly described in the written notice to the County and in the recorded assignment and assumption agreement.
 - (b) Notwithstanding any other provisions of this Agreement, any Developer may assign all or part of its rights under this Agreement to any financial institution from which such Developer has borrowed funds for developing the Property, in connection with such Developer's grant to such lender of a security interest in the Property or portion thereof.
- 9.8. **No Partnership; Third Parties.** It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other agreement between FICO and the County. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person or entity not a party hereto, and no such other person or entity shall have any right or cause of action hereunder.
- 9.9. **Entire Agreement.** This Agreement, together with all exhibits attached hereto (which are incorporated herein by this reference), constitutes the entire agreement between the parties pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are superseded by and merged in this Agreement.
- 9.10. **Construction.** This Agreement represents the results of negotiations between County and FICO, each of which has been represented by counsel, and neither of which has acted under any duress or compulsion, whether legal, economic, or otherwise. Consequently, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings, and no party shall be deemed to have drafted this Agreement for purposes of construing any portion of this Agreement for or against any party.

- 9.11. **Amendment.** No change to this Agreement is binding unless it is made by a written amendment executed by the parties hereto. No addition to this Agreement may be made except pursuant to a Supplemental Development Agreement executed by the County and the owners of those portions of the Property that are subject to such Supplemental Development Agreement. Within ten (10) days after the full execution of any amendment to this Agreement, or Supplemental Development Agreement, as applicable, such amendment, or Supplemental Development Agreement, as the case may be, shall be recorded by County in the Official Records of Pima County.
- 9.12. **Names and Plans.** FICO and the Developers of the Property shall be the sole owners of all names, titles, plans, drawings, specifications, ideas, programs, designs and work products of every nature at any time developed, formulated or prepared by or at the instance of FICO and/or any such Developers in connection with the Property. Notwithstanding the foregoing, the County shall be entitled to utilize all such materials described herein to the extent required by the County to construct, operate or maintain improvements relating to the Property.
- 9.13. **Good Standing; Authority.** Each of the parties represents and warrants to the others that (a) it is duly formed and validly existing under the laws of the State of Arizona, with respect to FICO, or a political subdivision of the State of Arizona, with respect to the County, and (b) the person(s) executing this Agreement on behalf of the respective parties are authorized and empowered to bind the party on whose behalf each such individual is signing.
- 9.14. **Severability.** If any provision of this Agreement is declared void or unenforceable by a court of competent jurisdiction, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect if the remaining provisions permit the parties to achieve the practical benefits of the arrangements contemplated by this Agreement. If any applicable law or court of competent jurisdiction prohibits or excuses the County, FICO or any Developer, as applicable, from undertaking any contractual commitment to perform any act hereunder, this Agreement shall remain in full force and effect, but the provisions requiring such action shall be deemed to permit the County, FICO or any Developer, as applicable, to take such action at its discretion, if such a construction is permitted by law.
- 9.15. **Governing Law.** This Agreement shall be interpreted and governed according to laws of the State of Arizona. The venue for any dispute hereunder shall be Pima County, Arizona, and the parties hereby irrevocably waive any right to object to such venue.
- 9.16. **Conflict of Interest.** This Agreement is subject to the provisions of A.R.S. § 38-511, which are incorporated into this Agreement by this reference.
- 9.17. **Recordation; Re-recordation Following Receipt of Replacement Legal Description of Property.** The County will record this Agreement in its entirety in the Official Records of Pima County, Arizona, not later than 10 days after its full execution. The parties acknowledge that FICO is in the process of having the Property surveyed in its entirety and that, as part of such survey, an updated metes and bounds legal description of the Property will be prepared (the "Updated Legal Description"). Upon receipt of such Updated Legal Description, FICO shall provide a copy thereof to the County's Development Services Department and, upon approval of the Development Services Department of the Updated Legal Description of the Property, this Agreement shall be re-

recorded for the sole purpose of replacing *Exhibit "A"* to this Agreement with the Updated Legal Description of the Property.

- 9.18. **No Development Representations.** Nothing contained herein or in the Specific Plan shall be deemed to obligate FICO or any Developer to commence or complete any part of the development of the Property; provided, however, that except with respect to the existing uses within the Property, any development of the Property undertaken by any Developer shall be done in accordance with the Specific Plan, as may be amended from time to time.
- 9.19. **Exhibits.** Any exhibit attached hereto (the "Exhibits") shall be deemed to have been incorporated into this Agreement by this reference with the same force and effect as if fully set forth in the body hereof. In the event of any conflict between the Exhibits and the body hereof, the Exhibits shall control and any changes to the Exhibits necessary to correct a scrivener's error, or to replace *Exhibit "A"* with the Updated Legal Description of the Property as contemplated pursuant to *Section 9.17* above, shall not require an amendment to this Agreement or the Specific Plan unless otherwise specified herein.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties have executed this Continental Farms Development Agreement to be effective on the date that this Agreement is approved and recorded by the Pima County.

"COUNTY"

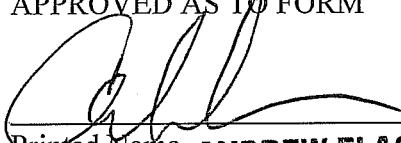
ATTEST:

PIMA COUNTY, a political subdivision of the State of Arizona

Robin Brigode, Clerk of the Board

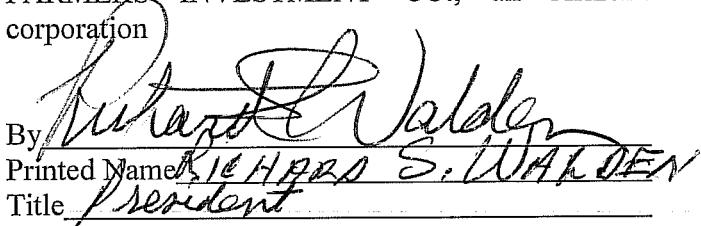
By _____
Sharon Bronson
Chair, Pima County Board of Supervisors

APPROVED AS TO FORM


Printed Name ANDREW FLAGG
Title: Deputy County Attorney

"FICO"

FARMERS INVESTMENT CO., an Arizona corporation


By _____
Printed Name RICHARD S. WARDEN
Title President

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

On this _____ day of _____, 2015, before me, the undersigned officer, personally appeared _____, who acknowledged her/himself to be _____ of PIMA COUNTY, a political subdivision of the State of Arizona:

_____ whom I know personally;
_____ whose identity was proven to me on the oath of _____, a credible witness by me duly sworn;
_____ whose identity I verified on the basis of her/his _____,

and s/he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL: _____

Notary Public

Description of document this notarial certificate is being attached to:	
Type/Title	Development Agreement (Continental Farms)
Date of Document	
Number of Pages	
Add'l Signers (other than those named in this notarial certificate)	

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

On this 6th day of January, 2015, before me, the undersigned officer, personally appeared 1525 E Sahuarita Rd, Sahuarita, AZ 85629, who acknowledged her/himself to be RICHARD S Walden of FARMERS INVESTMENT CO., an Arizona corporation:

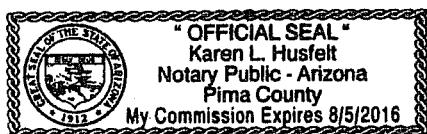
whom I know personally;
 whose identity was proven to me on the oath of _____, a credible witness by me duly sworn;
 whose identity I verified on the basis of her/his _____,

and s/he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

Karen L. Husfelt
Notary Public



Description of document this notarial certificate is being attached to:	
Type/Title	Development Agreement (Continental Farms)
Date of Document	<u>January 6, 2015</u>
Number of Pages	<u>15</u>
Addt'l Signers (other than those named in this notarial certificate)	<u>N/A</u>

EXHIBIT "A"

Parcel 21:

That portion of the North half of the San Ignacio de la Canoa Private Land Grant, Pima County, Arizona, according to the survey of said land grant made by the United States Surveyor General on March 10, 1901, which said survey is now on file in the United States Surveyor General's office at Phoenix in the State of Arizona, said portion lying West of the West right-of-way line of Nogales Branch of the Southern Pacific Railroad as now established;

COMMENCING at the Southeast corner of said North half of the San Ignacio de la Canoa Private Land Grant as shown in Roadhaven Resort, Inc., Lots 1 through 425 and Common Areas A & B, a subdivision as recorded in Book 37 of Maps and Plats at Page 4, records of Pima County, Arizona;

THENCE North 59°12'41" West, along the South line of said North half, a distance of 3790.40 feet to a point on the Westerly right-of-way line of the Southern Pacific Railroad, said point being the POINT OF BEGINNING;

THENCE continue North 59°12'41" West, along the South line of said North half, a distance of 705.00 feet;

THENCE departing said South line, North 04°31'51" East, a distance of 550.00 feet;

THENCE North 17°44'48" West, a distance of 1522.12 feet;

THENCE North 18°26'38" East, a distance of 5812.36 feet;

THENCE North 21°39'23" East, a distance of 112.00 feet;

THENCE North 28°41'19" East, a distance of 2033.45 feet;

THENCE North 05°48'33" East, a distance of 2869.19 feet;

THENCE North 12°48'58" East, a distance of 1366.80 feet;

THENCE North 30°59'55" East, a distance of 1796.96 feet;

THENCE North 09°45'08" East, a distance of 1443.96 feet;

THENCE North 82°55'44" East, a distance of 220.00 feet;

THENCE North 07°04'15" East, a distance of 250.00 feet;

THENCE South 82°55'44" East, a distance of 220.00 feet;

THENCE North 07°04'16" East, along the projected East line of the Green Valley Desert Meadows, a subdivision as recorded in Book 22 of Maps and Plats at Page 65, a distance of 1944.11 feet to the Northeast corner of said subdivision, said corner also being the Southeast corner of the Green Valley Fairways #3 as recorded in Book 18 of Maps and Plats at Page 51, records of Pima County;

THENCE North 13°14'25" East, along the East boundary line of said Green Valley Fairway #3, a distance of 867.97 feet;

THENCE North 28°23'31" East, along said boundary line, a distance of 592.14 feet;

THENCE North 11°58'29" East, a distance of 729.46 feet to the Southeast corner of the Tucson Green Valley Unit No. 1, a subdivision as recorded in Book 16 of Maps and Plats at Page 76, records of Pima County, Arizona, said point hereinafter referred to as Point A;

THENCE North 10°30'00" East, along the East boundary line of said subdivision, a distance of 467.35 feet;

THENCE North 15°10'27" East, along said boundary line, a distance of 852.31 feet;

THENCE North 13°22'39" East, along said line, a distance of 1002.51 feet;

THENCE North 10°22'19" East, along said line, a distance of 377.99 feet;

THENCE North 19°43'59" East, a distance of 365.40 feet;

THENCE North 36°51'49" East, a distance of 508.85 feet;

THENCE North 36°33'39" East, a distance of 80.77 feet to the Southeast corner of the Tucson Green Valley Unit No. 1 recorded in Book 16 of Maps and Plats at Page 76, records of Pima County, Arizona, said point hereinafter referred to as Point A;

THENCE North 36°33'39" East, along the East line, a distance of 499.00 feet;

THENCE North 00°34'46" East, along said East line, a distance of 656.10 feet;

THENCE North 05°33'44" East, along said East line, a distance of 596.54 feet;

THENCE North 10°12'43" East, along said East line, a distance of 675.61 feet;

THENCE North 10°36'01" East, along said East line, a distance of 502.77 feet;

THENCE North 37°24'33" East, along said East line, a distance of 697.42 feet;

THENCE North 04°09'06" West, along said East line, a distance of 450.06 feet;

THENCE North $17^{\circ}14'13''$ East, along said East line, a distance of 706.82 feet;

THENCE North $22^{\circ}59'37''$ East, along said East line, a distance of 633.96 feet;

THENCE North $07^{\circ}52'58''$ West, along said East line, a distance of 620.62 feet to a point on the North boundary line of said San Ignacio de la Canoa Private Land Grant;

THENCE South $59^{\circ}19'09''$ East, along said boundary line, a distance of 2401.52 feet to a point on the West right-of-way line of the Tucson-Nogales U.S. Highway 89 as dedicated in Book 7 of Road Dedications at Page 268, Pima County;

THENCE South $16^{\circ}21'30''$ West, along said right-of-way line, a distance of 726.44 feet to a point of tangent curve to the left having a radius of 3894.72 feet;

THENCE Southerly along the arc of said curved right-of-way line through a central angle of $11^{\circ}52'48''$, a distance of 807.55 feet;

THENCE South $85^{\circ}31'18''$ East, a distance of 30.00 feet;

THENCE South $04^{\circ}28'42''$ West, along said right-of-way line, a distance of 6427.29 feet to a point of tangent curve to the left having a radius of 2743.82 feet;

THENCE Southerly along the curve to the right, a distance of 638.37 feet and an interior angle of $13^{\circ}19'49''$ to the point of tangent;

THENCE South $17^{\circ}48'31''$ West, a distance of 2786.32 feet;

THENCE South $72^{\circ}11'29''$ East, a distance of 71.00 feet to a point on the West right-of-way line of the Southern Pacific Railroad;

THENCE South $17^{\circ}48'31''$ West, along said Westerly right-of-way line, a distance of 7309.23 feet to a point of tangent curve with a radius of 5679.65 feet;

THENCE Southerly along the arc of said curve to the right through a central angle of $14^{\circ}33'33''$, a distance of 1443.23 feet to the point of tangent;

THENCE South $32^{\circ}22'04''$ West, a distance of 45.01 feet;

THENCE North $57^{\circ}37'56''$ West, a distance of 100.00 feet;

THENCE South $32^{\circ}22'04''$ West, a distance of 2535.54 feet to the point of tangent curve with a radius of 11,609.19 feet;

THENCE Southerly along the arc of said curve to the left through a central angle of $03^{\circ}04'08''$, a distance of 743.39 feet to a point of non-tangent;

THENCE South 61°18'04" East, a distance of 100.00 feet to a point of a non-tangent curve with a radius of 11509.19 feet and a radial line that bears South 61°18'04" East;

THENCE Southerly along the arc of said curve to the left through a central angle of 08°20'51", a distance of 1676.79 feet to a point of tangent;

THENCE South 20°21'05" West, a distance of 4430.47 feet;

THENCE North 69°38'55" West, a distance of 100.00 feet;

THENCE South 20°21'05" West, a distance of 1000.00 feet;

THENCE South 69°38'55" East, a distance of 100.00 feet;

THENCE South 20°21'05" West, a distance of 194.08 feet to the POINT OF BEGINNING;

EXCEPT any portion lying within the property described Docket 3903 at Page 468, Docket 4038 at Page 721, and Docket 7858 at Page 1363;

EXCEPT any portion lying within the Park Centre Subdivision, Lots 1 through 180 and Common Area A, a subdivision recorded in Book 41 of Maps and Plats at Page 19 thereof, records of Pima County, Arizona;

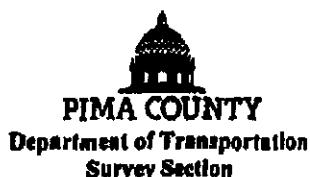
EXCEPT any portion lying within the property conveyed to Pima County as described in Docket 8195 at page 1483;

EXCEPT the parcel conveyed to Farmers Water Co., an Arizona corporation in Docket 11409 at Page 1418; and

EXCEPT the parcel conveyed to the Town of Sahuarita in Docket 11481 at Page 3594;

BUT TOGETHER WITH those portions of abandoned Continental Road/Tucson Nogales Highway described in the Deed from Pima County recorded in Docket 8270, Page 1106, which was rerecorded in Docket 10095, Page 645.

EXHIBIT B



10 December 2014

EXHIBIT "A"
LEGAL DESCRIPTION

All that portion of the San Ignacio De La Canoa Land Grant, Township 18 South, Range 13 East, Gila & Salt River Meridian, Pima County, Arizona, more particularly described as a 60.00 foot wide strip lying 30.00 feet on each side of the following described centerline:

COMMENCING at the centerline intersection of Abrego Drive and Continental Road, as shown on the subdivision plat for Green Valley Desert Meadows Townhouses, Lots 1 through 81, recorded in Book 27 of Maps and Plats at Page 91 in the County Recorder's Office, Pima County, Arizona;

THENCE along the centerline of said Continental Road North 83° 58' 58" East, basis of bearings, a distance of 442.91 feet to the beginning of a tangent curve, concave to the north, having a radius of 1600.00 feet, and a central angle of 03° 57' 45";

THENCE along the arc of said curve to the left, a distance of 110.65 feet;

THENCE North 09° 59' 01" West, a distance of 75.00 feet to the north right-of-way of said Continental Road and the **POINT OF BEGINNING**;

THENCE North 26° 25' 23" East, a distance of 170.06 feet;

THENCE North 07° 04' 21" East, a distance of 594.95 feet;

THENCE South 84° 29' 24" West, a distance of 32.78 feet to the west line of Green Valley Desert Meadows No. 1, Lots 1 thru 198, recorded in Book 22 of Maps and Plats at Page 65 in the County Recorder's Office, and the **POINT OF TERMINUS**.

The sidelines of said centerline to be lengthened or shortened to intersect on the north with the east line of Green Valley Desert Meadows No. 1, Lots 1 Thru 198, recorded in Book 22 of Maps and Plats at Page 65, and on the south with the north right-of-way line of Continental Road.

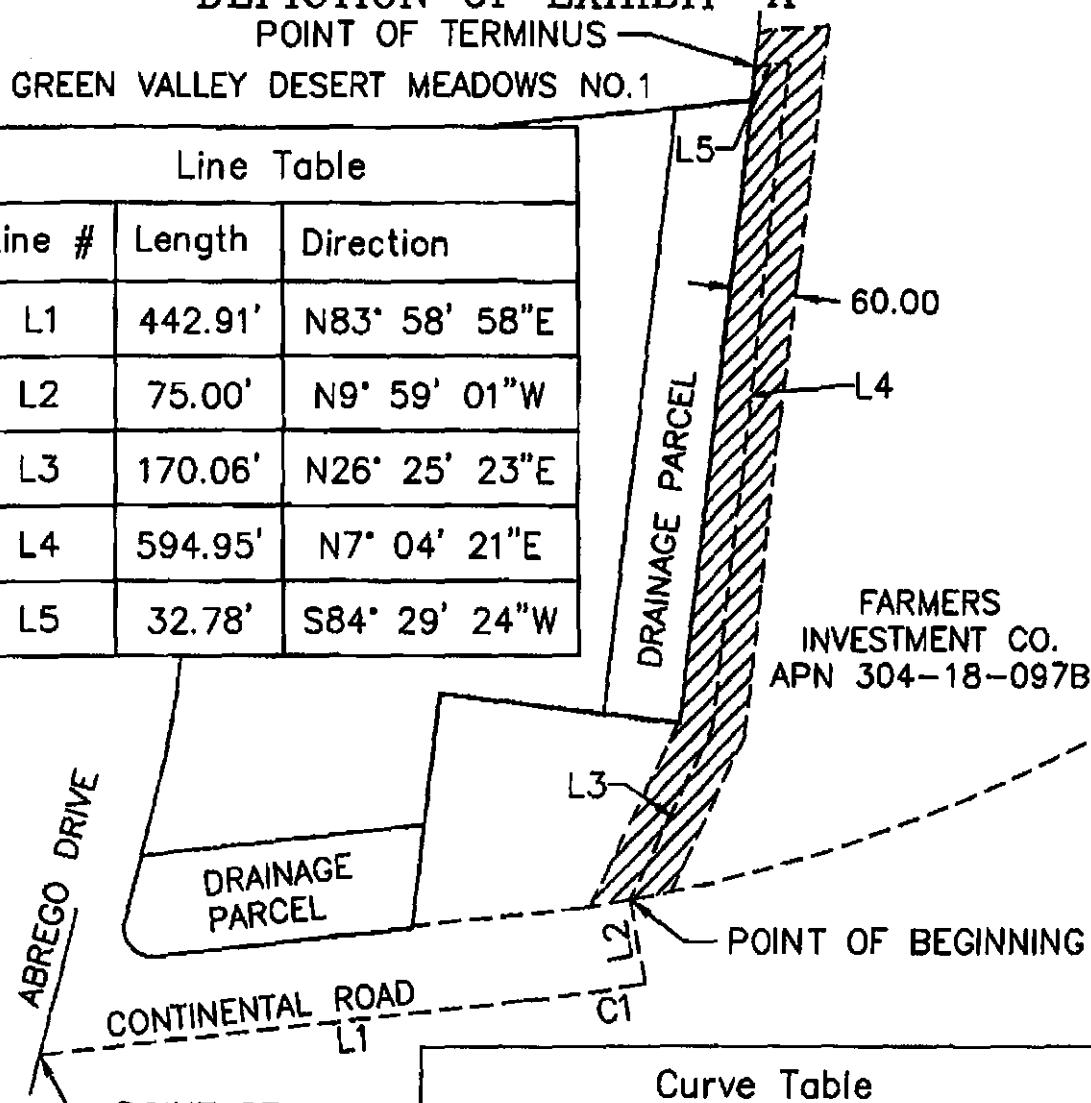
The west line of said 60.00 foot wide strip is to be coincident with the east line of that parcel described in Docket 10884 at Page 668.



Expires 31 March 2015

DEPICTION OF EXHIBIT "A"
POINT OF TERMINUS
GREEN VALLEY DESERT MEADOWS NO.1

Line Table		
Line #	Length	Direction
L1	442.91'	N83° 58' 58"E
L2	75.00'	N9° 59' 01"W
L3	170.06'	N26° 25' 23"E
L4	594.95'	N7° 04' 21"E
L5	32.78'	S84° 29' 24"W



Curve Table			
Curve #	Length	Radius	Delta
C1	110.65	1600.00	3°57'45"



= EASEMENT AREA 1.098 ACRES



PIMA COUNTY SURVEY

A PORTION OF THE SAN IGNACIO DE LA CANOA LAND GRANT,
 TOWNSHIP 18 SOUTH, RANGE 13 EAST,
 GILA AND SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA

EXHIBIT C

NOTE RE "EXHIBIT A"

The subject Easement will not be recorded until construction of the Adamson-Catino trail is complete.

The legal description and depiction to be attached to the subject Easement will be produced by survey based on the "as-built" plans of the Adamson-Catino Trail, as constructed.

The final legal description and depiction map will be attached as "Exhibit C" to the subject Easement prior to its recordation.

EXHIBIT A

EXHIBIT D

When recorded, return to:

Pima County Real Property Services
Attn.: Michael D. Stofko, Esq.
201 N. Stone Avenue, 6th Floor
Tucson, AZ 85701-1215

**NON-EXCLUSIVE, NON-MOTORIZED RECREATIONAL TRAIL EASEMENT
(Juan Bautista de Anza National Historic Trail)**

Exempt—No Affidavit Necessary—A.R.S. Section 11-1134(A)(3).

1. Easement to County. FARMERS INVESTMENT CO., an Arizona corporation ("Grantor"), does hereby grant to PIMA COUNTY, a political subdivision of the State of Arizona, ("County"), a perpetual non-exclusive, non-motorized recreational trail easement (the "Easement") over and across the real property legally described on the attached **Exhibit A** (the "Easement Property"), for the following uses (the "County Permitted Uses"):

- 1.1. ingress and egress for non-motorized, recreational public trail purposes;
- 1.2. the preservation of natural open space purposes within the Easement Property;
- 1.3. the erection of signs as compatible with conservation and trail purposes;
- 1.4. the alteration of the grade and gradient of the Easement Property, including the dislocation and removal of soil and other materials, or the addition of fill materials as may be required in connection with the County's construction and maintenance of trail improvements within the Easement Property, so long as the alterations do not impede storm water flows or affect the grading of the Grantor's property adjacent to the Easement Property; and
- 1.5. the installation, maintenance and replacement of any improvements, structures, landscaping, or stabilizing systems related to the trail improvements.

Exclusive use of the Easement is not hereby granted, and Grantor hereby expressly reserves the right to use the Easement Property for other uses which do not unreasonably interfere with the County Permitted Uses, including without limitation, the maintenance, repair and replacement of roads, underground irrigation lines and other utility lines and conduits serving Grantor's property.

2. Access to Property. County and/or the general public may enter on the Easement Property at all reasonable times consistent with the County Permitted Uses; provided, however, that the access to and use of the Easement Property by the general public shall be limited to the County Permitted Uses described in **Section 1.1** above and for no other purpose. In no event shall any person use the Easement Property for camping, overnight accommodations or any other purpose inconsistent with trail use. It is the intention of the Grantor and the County that all members of the general public using the Easement shall be deemed to be "recreational users" pursuant to the terms and conditions of A.R.S. § 33-1551(C)(5) and that no person shall have any greater rights to the Easement or the Easement Property other than as set forth in A.R.S. § 33-1551(C)(5), subject to the express limitations and conditions of this Easement. Notwithstanding anything to the foregoing or elsewhere in this Easement to the contrary, the Easement and the Easement Property may, following consultations with and agreement by County, be periodically closed to the public by Grantor in connection with any future development of the Grantor's Property (including the Easement Property), unless an emergency requires temporary closure. In the event of temporary closure Grantor shall place visible signs and markers indicating to the public that the Trail is temporarily closed, and shall make every effort to provide a temporary detour for trail users. In the event of such periodic closure of the Easement Property by Grantor, Grantor shall use its best efforts to minimize both the temporal duration and the physical extent of such closure.

3. Maintenance of Trail Improvements. The County hereby acknowledges and agrees that, at all times during the term of this Easement, the County shall maintain and repair the following trail improvements, which have been constructed by the County within the Easement Property (the "Trail Improvements") at the sole cost and expense of the County:

- 3.1. Maintain all signage in the locations originally agreed to by Grantor and County, as well as any fencing which may have been installed by the County at the request of Grantor in order to minimize trespassing on Grantor's property by recreational users;
- 3.2. Maintain and repair the Easement Property in a good and safe condition such that it remains free of obstacles or other conditions which may pose a danger to recreational users of the Easement, the Easement Property or Grantor's property;
- 3.3. Maintain all "Stop" signs, in both English and Spanish, at any locations where the Easement Property crosses any roads serving the Grantor's property; and
- 3.4. Maintain not less than four (4) "No Trespassing" signs, in both English and Spanish, which have been installed in locations mutually agreed to by the County and Grantor warning recreational users of the Easement Property to stay within the marked trail and not to trespass on Grantor's property.

4. Relocation of Easement. Notwithstanding anything contained in this Easement to the contrary, Grantor hereby expressly reserves the right, for itself and its successors and assigns, to relocate the Easement granted hereby in the event that any such relocation may be necessary in order to permit the ongoing farming operations of the Grantor on Grantor's property or in connection with the future development of Grantor's property; provided, however, that (a) any such relocation of the Easement shall not result in a material change in the general course of the Easement from south to north through the Grantor's property, (b) the relocated Easement shall be of a minimum width of at least sixty feet (60'), and (c) Grantor and the County shall cause to be executed and recorded an amendment or modification to this Easement evidencing the relocated Easement which shall include a legal description of the relocated Easement Property. In the event any such relocation of the Easement is required by Grantor in order to permit ongoing farming operations within Grantor's property, the County shall be responsible for all costs and expenses in connection with the preparation and recordation of an amendment to this Easement and the construction and installation of new Trail Improvements therein consistent with the Trail Improvements described in **Section 3** above. In the event of any relocation of the Easement required by Grantor or Grantor's successor(s) in interest in connection with the future development of Grantor's Property, the County and Grantor or Grantor's successor(s) in interest shall equally share in the costs and expenses of the preparation and recordation of the amendment to this Easement and the construction of new Trail Improvements therein consistent with the Trail Improvements described in **Section 3** above.

5. Regulation of Easement Property. County shall have the right to establish and enforce rules and regulations concerning use of the Easement Property consistent with the terms of this Easement and the provisions of A.R.S. § 33-1551.

6. Use of Easement Property by Grantor. Grantor may use the Easement Property for any purpose associated with existing and historical agricultural activities, as well as any use permitted by the zoning applicable to the Easement Property, which may change from time to time. The use of the Easement Property by Grantor shall not preclude the County Permitted Uses through activities that cause substantial interference to the County Permitted Uses. Grantor shall repair and restore any disturbance to the Trail Improvements caused by Grantor and will, other than as expressly set forth herein, keep the Easement Property open and free from any obstruction or at-grade encroachments at all times.

7. Runs With the Land. The Easement is a covenant that runs with the land. All grants, covenants and conditions of these easements shall inure to the benefit of and be binding upon the successors in interest to the County and Grantor.

8. Remedies. In the event of any violation by County of any of the terms, covenants and conditions of this Easement, including without limitation, the obligation of the County to maintain and repair the Trail Improvements or properly police the Easement Property to ensure that recreational users are not trespassing onto Grantor's property, Grantor shall have all rights and remedies available under law or in equity including but not limited to the right to enforce County's obligations under the Easement by specific performance and/or injunctive relief.

9. Indemnity. To the extent permitted by law, County shall indemnify, defend and hold harmless Grantor for, from and against any and all present or future claims, demands, damages and causes of action in law or equity caused by the negligent or intentionally wrongful acts of County, its officers, contractors, agents, employees and/or volunteers in connection with the use of this Easement.

10. Dedication of Easement Property. Notwithstanding anything contained in this Easement to the contrary, Grantor hereby reserves the right for itself and its successors and assigns to the Easement Property or any portion thereof to dedicate fee simple title to the Easement Property or such portion of the Easement Property as may then be owned by Grantor or its successor-in-interest, to the County, whereupon the County shall accept such dedication and the Easement shall merge with the fee title to the Easement Property in the name of the County.

THIS EASEMENT is granted this _____ day of _____, 2014.

GRANTOR:
FARMERS INVESTMENT CO.,
an Arizona Corporation

Richard S. Walden, President

_____ Date

STATE OF ARIZONA)
) ss.
COUNTY OF Pima)

This instrument was acknowledged before me this _____ day of _____, 2014
by Richard S. Walden.

Notary Public

My Commission Expires:

GRANTEE:

PIMA COUNTY, a political subdivision of the State of Arizona

Sharon Bronson, Chair, Board of Supervisors

Date

ATTEST:

Robin Brigode, Clerk of Board

Date

APPROVED AS TO CONTENT:

Chris Cawein, Director
Pima County Natural Resources Parks
and Recreation Department

Date

APPROVED AS TO FORM:

Tobin Rosen, Deputy County Attorney,
Civil Division

Date

EXHIBIT E

When recorded, return to:

Pima County Real Property Services
Attn.: Michael D. Stofko, Esq.
201 N. Stone Avenue, 6th Floor
Tucson, AZ 85701-1215

**NON-EXCLUSIVE, NON-MOTORIZED RECREATIONAL TRAIL EASEMENT
(Adamson-Catino Trail)**

Exempt—No Affidavit Necessary—A.R.S. Section 11-1134(A) (3).

1. **Easement to County.** FARMERS INVESTMENT CO., an Arizona corporation ("Grantor"), does hereby grant to PIMA COUNTY, a political subdivision of the State of Arizona, ("County"), a perpetual non-exclusive, non-motorized recreational trail easement (the "Easement") over and across the real property legally described on the attached **Exhibit A** (the "Easement Property"), for the following uses (the "County Permitted Uses"):

- 1.1. ingress and egress for non-motorized, recreational public trail purposes;
- 1.2. the preservation of natural, open space purposes within the Easement Property;
- 1.3. the erection of signs as compatible with conservation and trail purposes;
- 1.4. the alteration of the grade and gradient of the Easement Property, including the dislocation and removal of soil and other materials, or the addition of fill materials as may be required in connection with the County's construction and maintenance of trail improvements within the Easement Property, so long as the alterations do not impede storm water flows or affect the grading of the Grantor's property adjacent to the Easement Property; and
- 1.5. the installation, maintenance and replacement of any improvements, structures, landscaping, or stabilizing systems related to the trail improvements.

Exclusive use of the Easement is not hereby granted, and Grantor hereby expressly reserves the right to use the Easement Property for other uses which do not unreasonably interfere with the County Permitted Uses, including without limitation, the maintenance, repair and replacement of roads, underground irrigation lines and other utility lines and conduits serving Grantor's property.

EXHIBIT A

2. Access to Property. County and/or the general public may enter on and utilize the Easement Property at all reasonable times consistent with the County Permitted Uses; provided, however, that the access to and use of the Easement Property by the general public shall be limited to the County Permitted Uses described in **Section 1.1** above and for no other purpose. In no event shall any person use the Easement Property for camping, overnight accommodations or any other purpose inconsistent with trail use. It is the intention of the Grantor and the County that all members of the general public using the Easement shall be deemed to be "recreational users" pursuant to the terms and conditions of A.R.S. § 33-1551(C) (5) and that no person shall have any greater rights to the Easement or the Easement Property other than as set forth in A.R.S. § 33-1551(C) (5), subject to the express limitations and conditions of this Easement. Notwithstanding anything to the foregoing or elsewhere in this Easement to the contrary, the Easement Property may be periodically closed to the public by Grantor for harvesting/farming activities, as well as any activities related to the future development of the Grantor's property (including the Easement Property) in which event Grantor will place visible signs and markers indicating to the public that the trail is temporarily closed. In the event of such periodic closure of the Easement Property by Grantor, Grantor shall use its best efforts to minimize both the temporal duration and the physical extent of such closure.

3. Maintenance of Trail Improvements. County acknowledges that the Easement Property currently crosses two (2) existing farm roads and is in close proximity to and, in certain areas, passes through active pecan orchards owned and maintained by Grantor. In order to provide maximum safety for persons utilizing the Easement Property, and in order to provide adequate protection to Grantor's active pecan orchards, the County shall maintain and repair the following trail improvements which have been constructed by the County within the Easement Property (the "Trail Improvements") at the sole cost and expense of the County:

- 3.1.** Maintain all signage in the locations originally agreed to by Grantor and County, as well as any fencing which may have been installed by the County at the request of Grantor in order to minimize trespassing on Grantor's property by recreational users. If the fencing requires other than routine maintenance, Grantor and County shall meet to discuss a mutually agreeable solution;
- 3.2.** Maintain the Easement Property in a good and safe condition such that it remains free of obstacles or other conditions which may pose a danger to recreational users of the Easement, the Easement Property or Grantor's property;
- 3.3.** Maintain four (4) "Stop" signs at each of the two (2) above-referenced farm road crossings, two (2) of which shall be installed on the roads facing traffic, and two (2) of which shall be installed on the trail facing pedestrians, which signs shall be in both English and Spanish; and
- 3.4.** Maintain not less than twenty (20) "No Trespassing" signs, in both English and Spanish, which have been installed in locations mutually agreed to by

County and Grantor, warning recreational users to stay on the marked trail and not to trespass on Grantor's property.

4. Relocation of Easement. Notwithstanding anything contained in this Easement to the contrary, Grantor hereby expressly reserves the right, for itself and its successors and assigns, to relocate the Easement granted hereby in the event that any such relocation may be necessary in order to permit the ongoing farming operations of the Grantor on Grantor's property or in connection with the future development of Grantor's property; provided, however, that (a) any such relocation of the Easement shall not result in a material change in the purpose of the Easement which is to provide a trail connection between the Abrego Trail at the Canoa Preserve Community Park through the Grantor's property, (b) the relocated Easement shall not be less than a minimum width of at least twenty feet (20'), and (c) Grantor and County shall cause to be executed and recorded an amendment or modification to this Easement evidencing the relocated Easement, which shall include the legal description of the relocated Easement Property. In the event of any relocation of the Easement required by Grantor for any reason, Grantor and County shall meet and arrive at a mutually agreeable arrangement for payment of any expenses related to such relocation of the Easement.

5. Regulation of Easement Property. County shall have the right to establish and enforce rules and regulations concerning use of the Easement Property consistent with the terms of this Easement and the provisions of A.R.S. § 33-1551.

6. Use of Easement Property by Grantor. Grantor may use the Easement Property for any purpose associated with existing and historical agricultural activities, as well as any use permitted by the zoning applicable to the Easement Property, which may change from time to time. The use of the Easement Property by Grantor shall not preclude the County Permitted Uses through activities that cause substantial interference to the County Permitted Uses. Grantor shall repair and restore any disturbance to the Trail Improvements caused by Grantor and will, other than as expressly set forth herein, keep the Easement Property open and free from any obstruction or at-grade encroachments at all times.

7. Runs With the Land. The Easement is a covenant that runs with the land. All grants, covenants and conditions of these easements shall inure to the benefit of and be binding upon the successors in interest to the County and Grantor.

8. Remedies. In the event of any violation by County of any of the terms, covenants and conditions of this Easement, including without limitation, the obligation of the County to maintain and repair the Trail Improvements or properly police the Easement Property to ensure that recreational users are not trespassing onto Grantor's property, Grantor shall have all rights and remedies available under law or in equity, including but not limited to (a) the right to enforce the County's obligations under the Easement by specific performance and/or injunctive relief, and (b) in the event that Grantor is then conducting farming operations on Grantor's property the right to terminate this Easement in accordance with the following: prior to exercising such termination right, Grantor must first provide written notice to the County that Grantor is experiencing continued and repeated incidences of trespassing by members of the general public on

Grantor's property. As soon as reasonably possible following receipt of such notice from Grantor, the County shall, at its expense, install three (3) or four (4) wire smooth strand range fencing on those portions of the Easement Property where such trespassing is occurring; provided that the County shall not be required to expend more than \$9,500.00 in connection with the installation of such fencing. If, notwithstanding the installation of such fencing, Grantor reasonably believes that there continues to be repeated incidents of trespassing by members of the general public from the Easement onto Grantor's property, then Grantor shall have the right to terminate this Easement by providing a thirty (30) day written notice of termination to the County and reimbursing the County for the costs and expenses incurred by the County in connection with the installation of such fencing up to an amount not to exceed \$9,500.00. Upon any termination of this Easement as set forth in the foregoing or otherwise, the County shall execute and deliver to Grantor such instruments as may be necessary to effectuate such termination, including without limitation, a quit claim deed, abandonment or termination agreement in recordable form.

9. Indemnity. To the extent permitted by law, the County shall indemnify, defend and hold harmless Grantor for, from and against any and all present or future claims, demands, damages and causes of action in law or equity caused by the negligent or intentionally wrongful acts of the County, its officers, contractors, agents, employees and/or volunteers in connection with the use of this Easement.

10. Dedication of Easement Property. Notwithstanding anything contained in this Easement to the contrary, Grantor hereby reserves the right for itself and its successors and assigns to the Easement Property or any portion thereof to dedicate fee simple title to the Easement Property or such portion of the Easement Property as may then be owned by Grantor or its successor-in-interest, to the County, whereupon the County shall accept such dedication and the Easement shall merge with the fee title to the Easement Property in the name of the County.

REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK

GRANTOR:
FARMERS INVESTMENT CO.,
an Arizona Corporation

Richard S. Walden, President

Date

STATE OF ARIZONA)
) ss
COUNTY OF Pima)

This instrument was acknowledged before me this _____ day of _____, 2015
by Richard S. Walden.

Notary Public

My Commission Expires:

Exhibit Only
Not for Execution

GRANTEE:

PIMA COUNTY, a political subdivision of the State of Arizona

Sharon Bronson, Chair, Board of Supervisors

Date

ATTEST:

Robin Brigode, Clerk of Board

Date

APPROVED AS TO CONTENT:

Chris Cawein, Director
Pima County Natural Resources Parks
And Recreation Department

Date

APPROVED AS TO FORM:

Tobin Rosen, Deputy County Attorney,
Civil Division

Date