



**BOARD OF SUPERVISORS AGENDA ITEM REPORT
CONTRACTS / AWARDS / GRANTS**

Award Contract Grant

Requested Board Meeting Date: April 17, 2018

** = Mandatory, information must be provided*

or Procurement Director Award

***Contractor/Vendor Name/Grantor (DBA):**

5KG Investment Company, LLC, an Arizona Limited Liability Company ("5KG")

***Project Title/Description:**

5KG Exchange Agreement; Acq-0659; Supervisor District No. 3

***Purpose:**

5KG owns real property along the west bank of the Santa Cruz River, a portion of APN 208-12-013D, totaling approximately 5.04 acres (the "5KG Property"). County owns real property, a portion of APN 219-20-9180, consisting of approximately 1.2 acres located near N. 1st Avenue and Tangerine Road (the "County Property"). County desires to obtain a Nonexclusive, Non-motorized Recreational Trail Easement (the "Easement") over and upon the 5KG Property for construction of the Anza Trail. 5KG wants to acquire the County Property to connect a future development parcel, owned by Capri Co., LLC (having common ownership interest with 5KG), just south of the County Property, to Tangerine Road. County shall convey the County Property to 5KG, and 5KG shall grant an Easement to County via an exchange pursuant to ARS Section 11-251(44). The Exchange is contingent upon the Board of Supervisors and the Flood Control District Board of Directors approving the Release of a Restrictive Covenant on the County Property, which is a separate Agenda Item.

***Procurement Method:**

Exempt pursuant to Pima County Code 11.04.020

***Program Goals/Predicted Outcomes:**

County will acquire another significant section of land upon which to construct the Anza Trail.

***Public Benefit:**

The addition of a significant piece of the Anza trail within Pima County expanding recreational and cultural opportunities for the citizens of Pima County.

***Metrics Available to Measure Performance:**

The appraised value of the County Property is \$13,800. In return for the County Property, County will receive (i) the 5KG Property, appraised at \$10,000, plus (ii) \$30,000 to be placed in a special revenue fund to be administered by County Administration and restricted to acquiring conservation land, as a "Replacement Fee" related to the release of the Restrictive Covenant from the County Property, and (iii) an "Administrative Fee" of \$1,000 to defray a portion of County's administrative expenses related to release of the Restrictive Covenant.

***Retroactive:**

No.

*To: COB. 3.29.18
Ver. 1
pgs. 31
(1)*

Contract / Award Information

Document Type: CTN Department Code: PW Contract Number (i.e., 15-123): 18*0136

Effective Date: 4/17/2018 Termination Date: 4/16/2023 Prior Contract Number (Synergen/CMS): _____

Expense Amount: \$* _____ Revenue Amount: \$ 31,000.00

*Funding Source(s) required: CA Conservation Land Acquisition fund

Funding from General Fund? Yes No If Yes \$ _____ % _____

Contract is fully or partially funded with Federal Funds? Yes No

*Is the Contract to a vendor or subrecipient? _____

Were insurance or indemnity clauses modified? Yes No

If Yes, attach Risk's approval

Vendor is using a Social Security Number? Yes No

If Yes, attach the required form per Administrative Procedure 22-73.

Amendment / Revised Award Information

Document Type: _____ Department Code: _____ Contract Number (i.e., 15-123): _____

Amendment No.: _____ AMS Version No.: _____

Effective Date: _____ New Termination Date: _____

Prior Contract No. (Synergen/CMS): _____

Expense or Revenue Increase Decrease Amount This Amendment: \$ _____

Is there revenue included? Yes No If Yes \$ _____

*Funding Source(s) required: _____

Funding from General Fund? Yes No If Yes \$ _____ % _____

Grant/Amendment Information (for grants acceptance and awards) Award Amendment

Document Type: _____ Department Code: _____ Grant Number (i.e., 15-123): _____

Effective Date: _____ Termination Date: _____ Amendment Number: _____

Match Amount: \$ _____ Revenue Amount: \$ _____

*All Funding Source(s) required: _____

*Match funding from General Fund? Yes No If Yes \$ _____ % _____

*Match funding from other sources? Yes No If Yes \$ _____ % _____

*Funding Source: _____

*If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)? _____

Contact: Michael D. Stofko

Department: Real Property

Telephone: 520-724-6667

Department Director Signature/Date: [Signature] 3/23/18

Deputy County Administrator Signature/Date: [Signature] 3/27/18

County Administrator Signature/Date: [Signature] 3/27/18
(Required for Board Agenda/Addendum Items)

PIMA COUNTY DEPARTMENT OF: REAL PROPERTY SERVICES PROJECT: Exchange Agreement PARTIES: 5KG Investment Company, LLC, an Arizona Limited Liability Company REVENUE: \$31,000.00	CONTRACT
	NO. <u>CTN-PW-18-136</u> AMENDMENT NO. _____ <small>This number must appear on all invoices, correspondence and documents pertaining to this contract.</small>

EXCHANGE AGREEMENT

1. **Parties; Effective Date.** This Exchange Agreement (the "**Agreement**") is between 5KG Investment Company, LLC, an Arizona Limited Liability Company ("**5KG**"), and PIMA COUNTY, a political subdivision of the State of Arizona ("**County**"). This Agreement will become effective on the date when all the parties have signed it (the "**Effective Date**"). The County is deemed to have signed the Agreement on the date it is signed by the Chairman of the Pima County Board of Supervisors.

2. **Exchange Properties.**

2.1 County owns the real property, a portion of tax parcel number 219-20-9180, legally described and depicted, collectively, in **Exhibit A** attached hereto and containing a total of approximately 1.2 acres (the "**County Property**").

2.2 The County Property is currently subject to a Master Restrictive Covenant (Pima County MSCP Mitigation Land) pursuant to that certain Site Specific Agreement to Master Restrictive Covenant recorded on August 15, 2017, as Sequence Number 20172270452, Office of the Pima County Recorder (the "**Restrictive Covenant**").

2.3 As a condition precedent to the approval and execution of this Agreement by the Pima County Board of Supervisors (the "**Board**"), the Board must approve a formal release of the Restrictive Covenant as it pertains to the County Property, which release will be heard and considered by the Board contemporaneously with its consideration of this Agreement.

2.4 5KG owns the real property, a portion of tax parcel number 208-12-013D, legally described and depicted, collectively, in **Exhibit B** attached hereto and containing a total of approximately 5.04 acres (the "**Exchange Property**"). County desires a Non-

Exclusive Non-Motorized Recreational Use Easement over and upon the Exchange Property (the "**Easement**").

2.5 County shall convey the County Property to 5KG in fee, and 5KG shall grant the Easement to County, pursuant to A.R.S. § 11-251(44) (the "**Exchange**"). The County shall publish notice thirty (30) days before the Exchange, listing the ownership and description of the Exchange Property and the County Property.

2.6 County and 5KG acknowledge that the appraised value of the County Property exceeds the appraised value of the Exchange Property. At Closing, 5KG will pay to County the additional sum of Thirty-Thousand Dollars (\$30,000.00) to be placed in a Special Revenue Fund to be administered by County Administration and restricted to acquiring conservation land, as a "Replacement Fee" related to the release of the Restrictive Covenant from the County Property. In addition to the Replacement Fee, 5KG will pay to County at Closing the sum of One-Thousand Dollars (\$1,000.00), and will pay to Arizona Land and Water ("ALWT") Trust One-Thousand Five-Hundred Dollars (\$1,500.00) as an "Administrative Fee" to defray a portion of County's and ALWT's respective administrative expenses related to the release of the Restrictive Covenant. The Replacement Fee and Administrative Fee exceed the difference in appraised values.

3. **Vacant Land.** The parties acknowledge that the Exchange Property and the County Property are vacant land and that no personal property is being transferred.

4. **Inspection Rights.**

4.1. Access and Possession. Upon execution of this Agreement and until Closing, 5KG hereby grants permission to County, County's representatives, and County's authorized agents to enter the Exchange Property for due diligence, including for land survey, biological and cultural survey, and environmental assessment. Upon execution of this Agreement until Closing, County hereby grants permission to 5KG, 5KG's representatives, and 5KG's authorized agents to enter the County Property for due diligence, including for land survey, biological and cultural survey, and environmental assessment. Each party shall deliver possession on the date of Closing.

4.2. Inspections. Each party shall permit the other party to conduct such inspections of the other's property as deemed necessary to determine the environmental condition of the property. If the investigations reveal the presence of contamination or the need to conduct environmental cleanup, each party shall conduct a cleanup of its property adequate to bring the property into compliance prior to closing or the other party may terminate this Agreement, which shall be the sole remedy available for failure

to do so.

5. Closing Documents.

5.1. At Closing, County shall execute and deliver to 5KG a special warranty deed conveying title to the County Property to 5KG in the form of **Exhibit C** attached hereto.

5.2. At Closing, 5KG shall execute and deliver to County a Non-Exclusive Non-Motorized Recreational Trail Easement over and upon the Exchange Property in the form of **Exhibit D** attached hereto.

6. Closing Date. The Closing pursuant to this Agreement shall take place at Fidelity National Title Agency, Judy Kaiser, Escrow Agent, not more than sixty (60) days following the Effective Date. The Closing date may be extended only by written agreement signed by 5KG and the County.

7. Representations.

7.2. Each party represents, agrees and warrants that, to the best of its actual knowledge (i) no pollutants, contaminants, toxic or hazardous substances, wastes or materials have been stored, used, or are located on its property or within any surface or subsurface waters; (ii) that no underground tanks have been located on its property; (iii) that its property is in compliance with all federal, state, and local environmental laws, regulations, and ordinances; and (iv) that no legal action of any kind has been commenced or threatened with respect to its property.

7.3. Subject only to the representations, agreements and warranties of the parties set forth in this Agreement, each party acknowledges that neither party has made any representations or warranties of any nature to the other, and the property interests acquired by each party are acquired "AS IS" and "WHERE IS," with all faults and limitations, and all defects, latent or otherwise. Each party who is the grantee of the interests subject to this Agreement further represents to the other that is has fully and completely examined the property, conducted inspections thereof, including environmental assessments to the extent such grantee has felt necessary or advisable, and releases the other party from any and all liability, obligation or responsibility in any way relating to the condition of the land. This release survives closing.

8. No Leases. Each party represents that there are no oral or written leases, rental agreements, licenses, permits, or any other agreements permitting a third party to use or occupy all or any portion of its property.

9. **Broker's Commission.** The parties acknowledge that no broker or finder has been used for this transaction. Each party shall indemnify and hold harmless the other against fees, costs, and expenses of defending against such claims made by anyone claiming to have been employed for this transaction.

10. **No Sale.** Neither party shall sell or encumber its property before closing.

11. **Notices.**

11.2. Writing. All notices required or permitted to be given hereunder shall be in writing and may be given in person or by United States mail, by local or nationwide delivery/courier service or by electronic transmission (for instance, e-mail to the e-mail addresses indicated below).

11.3. Receipt. Such notices and other communications shall be deemed to be given and received as follows: (a) upon actual receipt, if delivered personally; (b) upon actual receipt, if transmitted by e-mail on a business day before 5:00 p.m. (Tucson time); (c) upon the next business day following transmission if transmitted by e-mail on a day which is not a business day or if transmitted after 5:00 p.m. (Tucson time) on a business day; (d) the next business day, if delivered by overnight courier; or (e) three days following deposit in the mail, if delivered by mail postage prepaid, return receipt requested, addressed to that party at his/her/their/its designated address. The designated address of a party shall be the address of that party shown below or such other address within the United States of America that any party from time to time may specify by written notice to the other parties at least 15 days prior to the effective date of such change, but no such notice of change shall be effective unless and until received by the other parties.

11.4. Rejection. Rejection or refusal to accept, or inability to deliver because of changed address or because no notice of changed address is given, shall be deemed to be receipt of any such notice.

11.5. Notice to Entity. Any notice to an entity shall be deemed to be given on the date specified in this section without regard to when such notice is delivered by the entity to the individual to whose attention it is directed and without regard to the fact that proper delivery may be refused by someone other than the individual to whose attention it is directed. If a notice is received by an entity, the fact that the individual to whose attention it is directed is no longer at such address or associated with such entity shall not affect the effectiveness of such notice.

11.6. Address. County and 5KG agree that any notice sent to the address set forth below shall serve as notice by County or 5KG, as the case may be, to the other:

If to County: Neil J. Konigsberg, Manager
Pima County Real Property Services
201 N Stone Ave, 6th Floor
Tucson, AZ 85701-1207
Telephone: 520.740.6313
E-mail: neil.konigsberg@pima.gov

with a copy to:

Tobin Rosen, Deputy County Attorney
Pima County Attorney's Office, Civil Division
32 N Stone Ave, Suite 2100
Tucson, AZ 85701-1412
E-mail: tobin.rosen@pcao.pima.gov

If to 5KG: James M. Kai, Property Manager
Kai Enterprises, Inc.
6088 W. Arizona Pavilions Drive, #2
Tucson, AZ 85743
Telephone: 480-213-8232
E-mail: james.kai@kaienterprises.com

with a copy to: Sidney L. Felker, Esq.
Leonard & Felker, PLC
7440 N. Oracle Road, #2
Tucson, AZ 85704
Telephone: 520-742-0440
E-Mail: slfelker@slfpc.com

12. **Conflict of Interest.** This Agreement is subject to cancellation within three years after its execution pursuant to A.R.S. § 38-511 if any person significantly involved in initiating, negotiating, securing, drafting, or creating this Agreement on behalf of County is, at any time while this Agreement or any extension of the Agreement is in effect, an employee or agent of any other party to the Agreement with respect to the subject matter of the Agreement.

13. **Survival of Representation and Warranties.** Except as otherwise expressly stated herein, all representations and warranties contained herein survive the closing for ten years.

14. **Entire Agreement.** This signed document constitutes the entire Agreement between the parties, and no modification or amendment to this Agreement will be binding unless in writing and signed by both parties.

15. **Remedies.** If either party defaults under this Agreement, the other party may pursue all rights and remedies available at law or in equity.

16. **Exhibits.** The following Exhibits to this Agreement are fully incorporated herein as if set forth at length. To the extent that any Exhibits to this Agreement or to any of the Exhibits hereto are not available at the execution hereof, they shall be added by the Parties prior to Closing and shall be in form and substance reasonably satisfactory to the Parties.

<u>Exhibit A</u>	Legal Description and Depiction of County Property
<u>Exhibit B</u>	Legal Description and Depiction of Exchange Property
<u>Exhibit C</u>	Form of Special Warranty Deed – County Property
<u>Exhibit D</u>	Form of Easement – Exchange Property

Each Party is signing this agreement on the date stated opposite that Party's signature.

**5KG Investment Company, LLC, an
Arizona Limited Liability Company**

By: 
Manager

3.19.18.
Date

COUNTY: PIMA COUNTY, a political subdivision of the State of Arizona:

Richard Elias, Chairman, Board of Supervisors

Date

ATTEST:

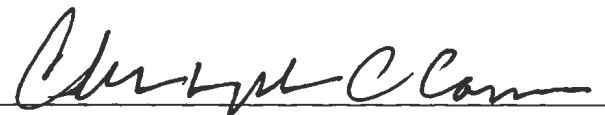
Julie Castaneda, Clerk of Board

Date

APPROVED AS TO CONTENT:



Neil Konigsberg, Manager, Real Property Services

 3/15/18

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

APPROVED AS TO FORM:

 3/15/18

Tobin Rosen, Deputy County Attorney

October 5, 2017

WLB No. 1820523-G-003

W:\LEGALS\182053\Villages at Silver Hawk Western Triangle.doc



**LEGAL DESCRIPTION
THE VILLAGES AT SILVERHAWKE
TANGERINE CONNECTION: WESTERN TRIANGLE**

A portion of that certain parcel as described in Docket 11864, Page 756, Pima County records, lying within Section 31, Township 11 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona, more particularly described as follows:

COMMENCING at the South quarter corner of said section 31 from which the Northwest corner of said Section 31 bears N 89°34'05" W (basis of bearings), a distance of 2583.45 feet;

THENCE N 89°34'05" W, along the South line of the Southwest quarter of said Section 31; a distance of 1698.04 feet to the **POINT OF BEGINNING**;

THENCE continue N 89°34'05" W, continuing along said South line, a distance of 384.71 feet to the Southerly right-of-way line of Tangerine Road;

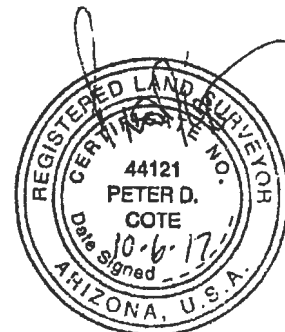
THENCE N 71°57'55" E, along said Southerly right-of-way line, a distance of 405.59 feet;

THENCE leaving said Southerly right-way-line, S 00°25'55" W, a distance of 128.47 feet to the **POINT OF BEGINNING**.

CONTAINING: 24,712 square feet or 0.5673 acres of land, more or less.

Prepared by:
THE WLB GROUP, INC

Peter D. Cote, RLS 44121



EXPIRES 3-31-2018

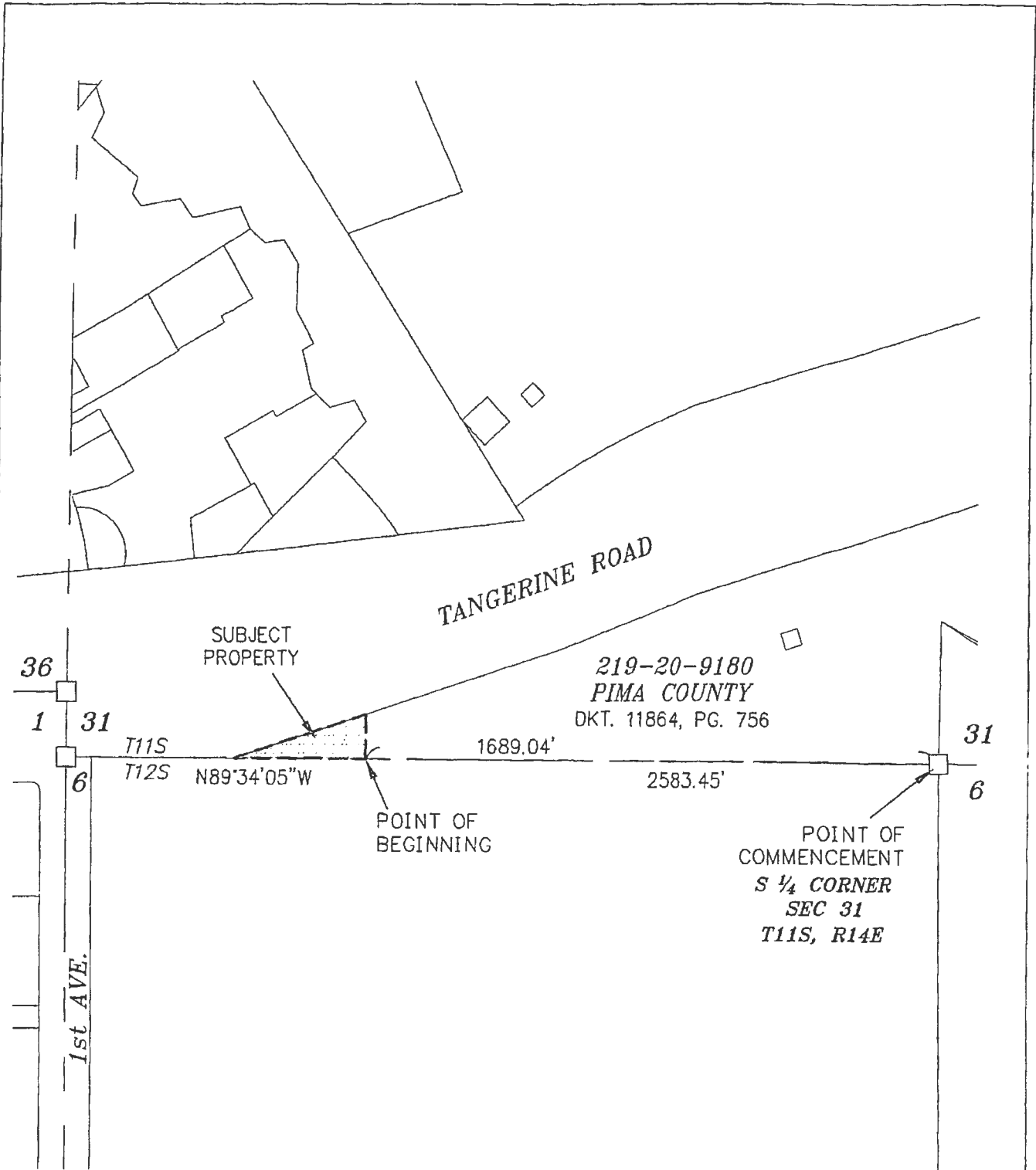
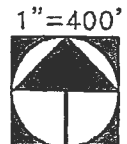


EXHIBIT TO ACCOMPANY DESCRIPTION OF
 TANGERINE CONNECTION
 WESTERN TRIANGLE
 SECTION 31, T-11S, R-14E, G.S.R.M.,
 PIMA COUNTY, ARIZONA





**LEGAL DESCRIPTION
THE VILLAGES AT SILVERHAWKE
TANGERINE CONNECTION: ACCESS PARCEL**

A portion of that certain parcel as described in Docket 11864, Page 756, Pima County records, lying within Section 31, Township 11 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona, more particularly described as follows:

COMMENCING at the South quarter corner of said section 31 from which the Northwest corner of said Section 31 bears N 89°34'05" W (basis of bearings), a distance of 2583.45 feet;

THENCE N 89°34'05" W, along the South line of the Southwest quarter of said Section 31; a distance of 1522.14 feet to the **POINT OF BEGINNING**;

THENCE continue N 89°34'05" W, continuing along said South line, a distance of 175.90 feet to the Southerly right-of-way line of Tangerine Road;

THENCE N 00°25'55" E, a distance of 128.47 feet to the Southerly right-of-way line of Tangerine Road;

THENCE N 71°57'55" E, along said Southerly right-of-way line, a distance of 185.45 feet;

THENCE leaving said Southerly right-way-line, S 00°25'55" W, a distance of 187.21 feet to the **POINT OF BEGINNING**.

CONTAINING: 27,765 square feet or 0.6374 acres of land, more or less.

Prepared by:
THE WLB GROUP, INC

Peter D. Cote, RLS 44121



EXPIRES 3-31-2018

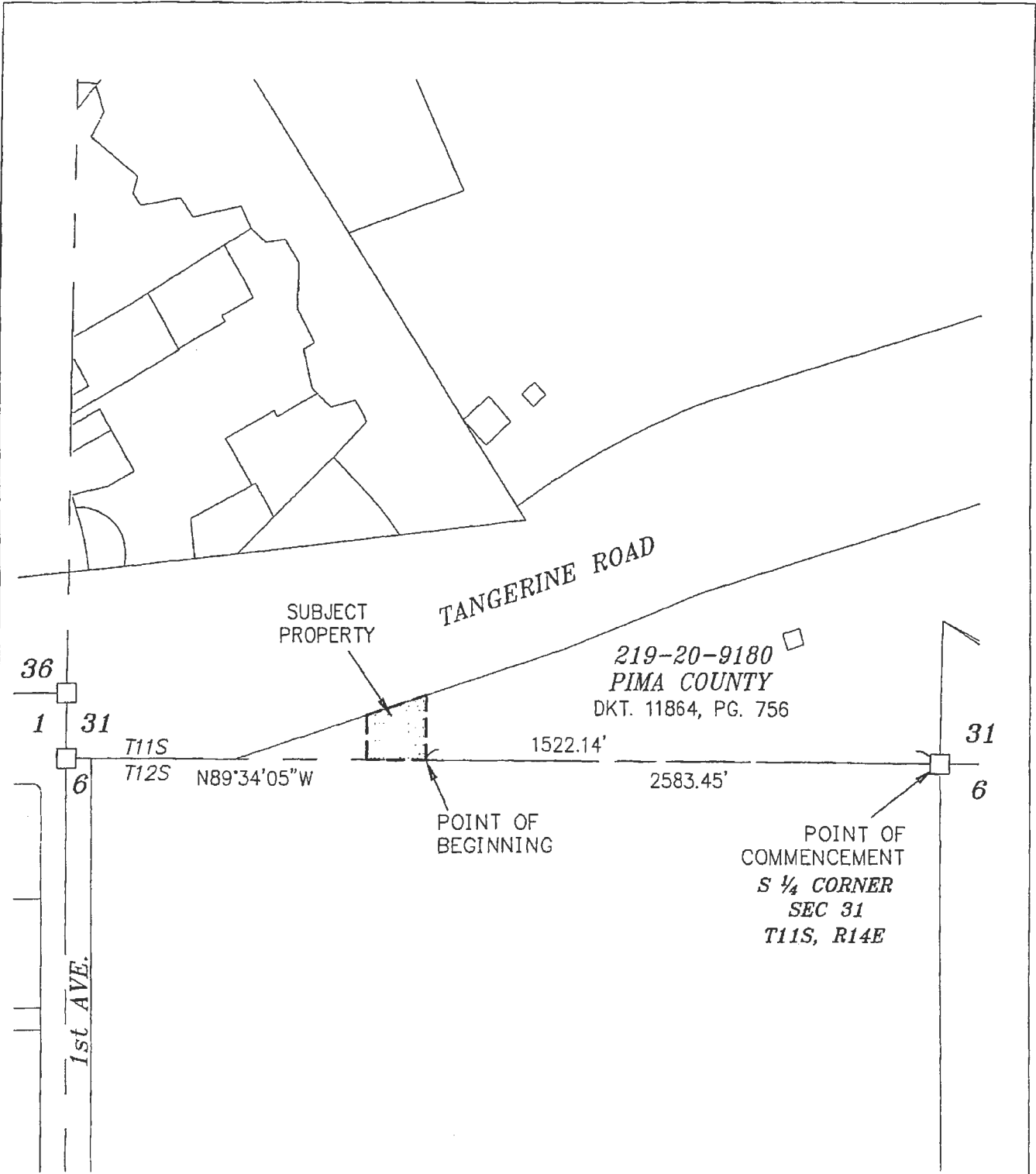


EXHIBIT TO ACCOMPANY DESCRIPTION OF
TANGERINE CONNECTION
ACCESS PARCEL
SECTION 31, T-11S, R-14E, G.S.R.M.,
PIMA COUNTY, ARIZONA





LEGAL DESCRIPTION

All that portion of that parcel as described in Docket 7770 at Page 1177 being a portion of Section 23, Township 11 South, Range 10 East, Gila & Salt River Meridian, Pima County, Arizona, being a strip of land 50 feet wide, 25 feet on each side of the centerline more particularly described as follows:

COMMENCING at the southeast corner of said Section 23, a brass cap survey monument stamped "PCHD, 23,24,25,26, T11S, R10E", to which the southeast corner of the northeast quarter of the southeast quarter of said Section 23, 5/8" rebar, no tag bears North 00°19'49" West a distance of 1321.50 feet;

THENCE along the east line of Section 23, North 00°19'49" West a distance of 2413.21 feet to the **POINT OF BEGINNING**;

THENCE North 69°39'48" West a distance of 28.12 feet;

THENCE North 52°36'18" West a distance of 206.74 feet;

THENCE North 66°05'21" West a distance of 271.97 feet;

THENCE North 79°33'58" West a distance of 153.46 feet;

THENCE North 51°25'33" West a distance of 313.85 feet;

THENCE North 77°20'38" West a distance of 60.34 feet;

THENCE North 38°21'40" West a distance of 113.10 feet;

THENCE North 53°01'58" West a distance of 160.58 feet;

THENCE North 83°45'15" West a distance of 80.36 feet;

THENCE North 49°22'02" West a distance of 238.68 feet;

THENCE North 59°24'20" West a distance of 235.68 feet;

THENCE North 44°58'43" West a distance of 159.03 feet;

THENCE North 24°55'12" West a distance of 441.23 feet;

THENCE North 40°58'46" West a distance of 405.15 feet;

THENCE North 13°05'04" West a distance of 233.72 feet;

THENCE North 31°14'53" West a distance of 154.94 feet;

THENCE North 10°19'05" West a distance of 127.30 feet;

THENCE North 31°06'21" West a distance of 221.77 feet;

THENCE North 27°51'35" West a distance of 236.39 feet;

THENCE North 19°42'47" West a distance of 126.78 feet;

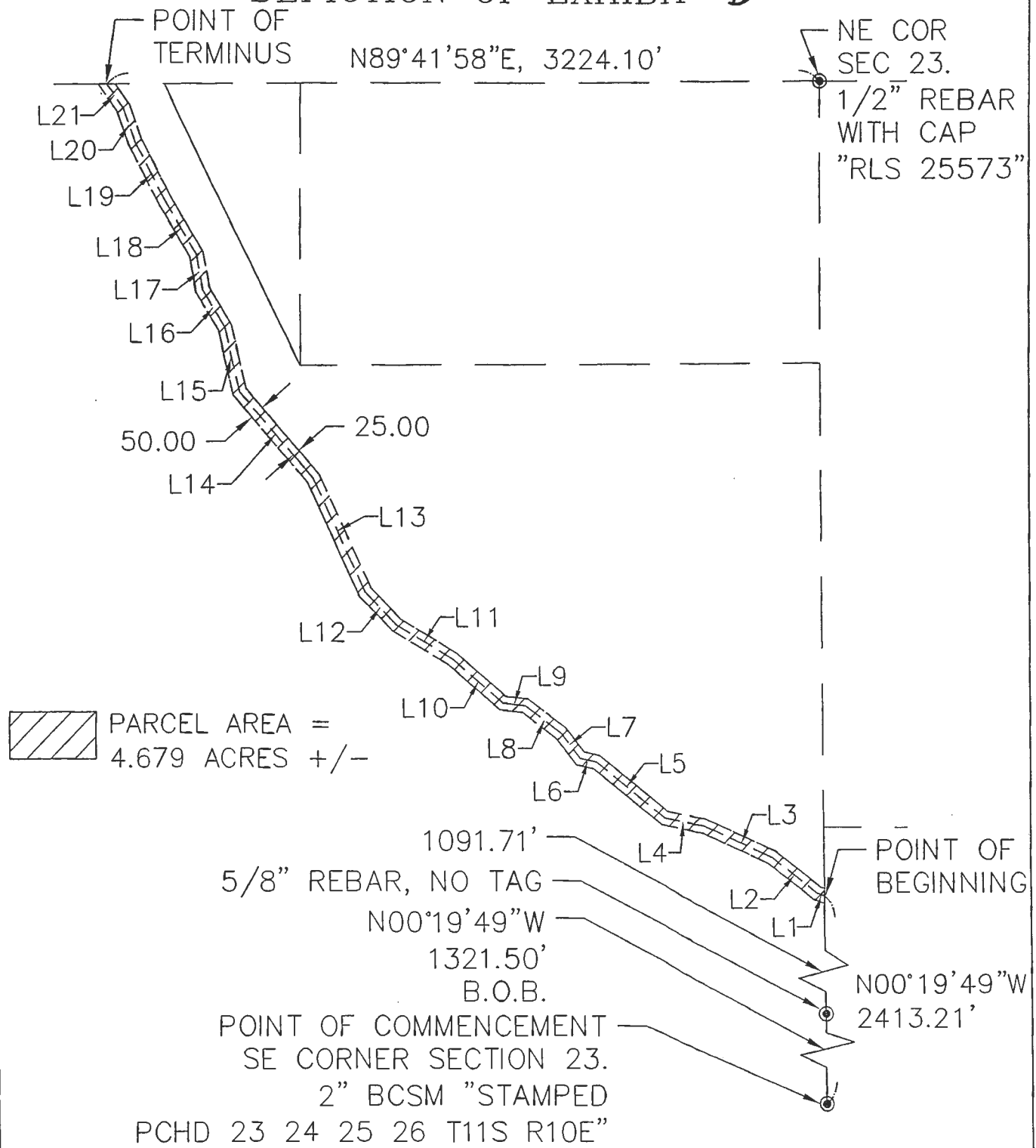
THENCE North 36°06'08" West a distance of 107.17 feet to the **POINT OF TERMINUS** of said centerline on the north line of said Section 23 to which the northeast corner of said section, a found 1/2" rebar with plastic cap marked "RLS 25573" bears North 89°41'58" East a distance of 3224.10 feet.

The sidelines of said strip to be lengthened or shortened to intersect with the east and north lines of said Section 23.



Expires 31 March 2021

DEPICTION OF EXHIBIT "B"



PIMA COUNTY SURVEY

A PORTION OF THAT PARCEL RECORDED IN DOCKET 7770 PAGE 1177
LOCATED IN SECTION 23, TOWNSHIP 11 SOUTH, RANGE 10 EAST,
GILA AND SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA

Scale: 1" = 500'

Date: 21 MARCH 2018

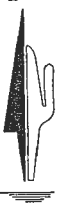
Drawn By: AJI

Sheet 3 of 4

DEPICTION OF EXHIBIT "B"

Parcel Line Table			Parcel Line Table		
Line #	Length	Direction	Line #	Length	Direction
L1	28.12'	N69° 39' 48"W	L12	159.03'	N44° 58' 43"W
L2	206.74'	N52° 36' 18"W	L13	441.23'	N24° 55' 12"W
L3	271.97'	N66° 05' 21"W	L14	405.15'	N40° 58' 46"W
L4	153.46'	N79° 33' 58"W	L15	233.72'	N13° 05' 04"W
L5	313.85'	N51° 25' 33"W	L16	154.94'	N31° 14' 53"W
L6	60.34'	N77° 20' 38"W	L17	127.30'	N10° 19' 05"W
L7	113.10'	N38° 21' 40"W	L18	221.77'	N31° 06' 21"W
L8	160.58'	N53° 01' 58"W	L19	236.39'	N27° 51' 35"W
L9	80.36'	N83° 45' 15"W	L20	126.78'	N19° 42' 47"W
L10	238.68'	N49° 22' 02"W	L21	107.17'	N36° 06' 08"W
L11	235.68'	N59° 24' 20"W			

N



PIMA COUNTY SURVEY

A PORTION OF THAT PARCEL RECORDED IN DOCKET 7770 PAGE 1177
 LOCATED IN SECTION 23, TOWNSHIP 11 SOUTH, RANGE 10 EAST,
 GILA AND SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA

Scale: NA

Date: 21 MARCH 2018

Drawn By: AJI

Sheet 4 of 4

When Recorded, Please Return to:

Pima County Real Property Services
201 North Stone Avenue, 6th Floor
Tucson, AZ 85701-1215

Exempt from Affidavit of Value per A.R.S. § 11-1134(A)(3).

Special Warranty Deed

For the consideration of Ten Dollars (\$10.00), and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned, PIMA COUNTY, a political subdivision of the State of Arizona, the "Grantor" herein, does hereby convey to 5KG Investment Company, LLC, an Arizona Limited Liability Company, the "Grantee" herein, the following real property (the "Property") situated in Pima County, Arizona, together with all wells, water rights and mineral rights in which Grantor has an interest and appurtenant thereto:

As described in Exhibit A attached hereto.

Subject to all taxes and other assessments, reservations in Patents, and all easements, rights of way, encumbrances, liens, covenants, conditions, restrictions, obligations and liabilities as may appear of record and all matters a survey or inspection of the Property would reveal.

Grantor hereby binds itself and its successors to warrant and defend the title as against all acts of Grantor herein and no other, subject to the matters set forth above.

Restrictive Covenant.

Restriction. By accepting the Property, the Grantee, for himself, herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the construction, maintenance, or operation of any facilities or structures whatsoever on the Property, the grantee will not discriminate against any person on the grounds of that person's age, race, creed, color, religion, sex, disability or national origin.

Page 1 of 2

EXEMPTION: A.R.S. §11-1134.A.3.		Board of Supervisors: 4/17/18	Right of Way <input type="checkbox"/> Parcel <input checked="" type="checkbox"/>
Agent: MS	File #: Acq-0659	Activity #: ATLANO	P <input type="checkbox"/> De <input type="checkbox"/> Do <input type="checkbox"/> E <input checked="" type="checkbox"/>

EXHIBIT C

Nature of Restriction. This Restrictive Covenant shall apply in perpetuity and shall run with the Property. The Restriction imposed shall be non-revocable without the written consent of at least 4 of the 5 members of the Pima County Board of Supervisors. The Restriction shall remain in effect notwithstanding any future annexation of any portion of the land by a municipality.

Enforcement of Restriction. Grantor may enforce the terms of this Restrictive Covenant through any available legal or equitable remedy, including but not limited to damages, and injunctive relief requiring the Grantee to cease and desist all activity in violation of this Restrictive Covenant. The failure of Grantor to insist upon the full and complete performance of any of the terms and conditions of this Restrictive Covenant, or to take any action permitted as a result thereof, shall not be construed as a waiver or relinquishment of the right to insist upon full and complete performance of the same, or any other covenant or condition, either in the past or in the future.

Grantor

Date

STATE OF ARIZONA

COUNTY OF PIMA

The foregoing instrument was acknowledged before me the ____ day of _____ 2018 by _____.

Notary Public

My Commission Expires: _____

Page 2 of 2

EXEMPTION: A.R.S. §11-1134.A.3.		Board of Supervisors: 4/17/18	Right of Way <input type="checkbox"/> Parcel <input checked="" type="checkbox"/>
Agent: MS	File #: Acq-0659	Activity #: ATLANO	P <input type="checkbox"/> De <input type="checkbox"/> Do <input type="checkbox"/> E <input checked="" type="checkbox"/>

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 Trail)**

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

1. **Easement to County.** 5KG Investment Company, LLC, an Arizona Limited Liability Company ("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 and depicted 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 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** 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 is in close proximity to farming and grazing lands 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 farming and grazing lands, 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 Carsonite trail markers;
- 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 not less than four (4) "No Trespassing" signs 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 and/or grazing 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 City of Tucson Parcel Number 208-14-

0030 and Pima County Parcel Number 208-12-010D through the Grantor's property, (b) the relocated Easement shall not be less than a minimum width of at least fifty feet (50'), 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 farming and grazing 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 pursuant to the terms of this Easement, Grantor shall have all rights and remedies available under law or in equity, including but not limited to the right to enforce the County's obligations under the Easement by specific performance and/or injunctive relief. Upon any termination of this Easement, 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

GRANTEE:

PIMA COUNTY, a political subdivision of the State of Arizona

Richard Elias, Chairman, Board of Supervisors

Date

ATTEST:

Julie Castaneda, 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 Only - Not for Execution

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 Trail)**

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

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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.

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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 farming and grazing 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.

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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 pursuant to the terms of this Easement, Grantor shall have all rights and remedies available under law or in equity, including but not limited to the right to enforce the County's obligations under the Easement by specific performance and/or injunctive relief. Upon any termination of this Easement, 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.

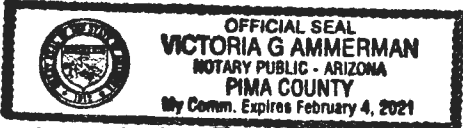
GRANTOR:
5KG INVESTMENT COMPANY, LLC
an Arizona Limited Liability Company

Sidney L. Felker, Managing Member
Sidney L. Felker, Managing Member

3.19.18
Date

STATE OF ARIZONA)
) ss
COUNTY OF Pima)

This instrument was acknowledged before me this 19th day of March, 2018
by Sidney L. Felker.



[Signature]
Notary Public

My Commission Expires:
2-4-2021

GRANTEE:

PIMA COUNTY, a political subdivision of the State of Arizona

Richard Elias, Chairman, Board of Supervisors

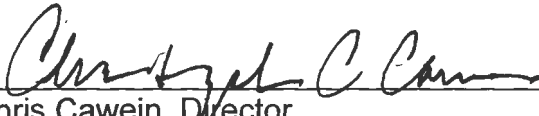
Date

ATTEST:

Julie Castaneda, Clerk of Board

Date

APPROVED AS TO CONTENT:




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

3/15/18

Date

APPROVED AS TO FORM:



Tobin Rosen, Deputy County Attorney,
Civil Division

3/15/18

Date

EXHIBIT "A"
LEGAL DESCRIPTION

All that portion of that parcel as described in Docket 7770 at Page 1177 being a portion of Section 23, Township 11 South, Range 10 East, Gila & Salt River Meridian, Pima County, Arizona, being a strip of land 50 feet wide, 25 feet on each side of the centerline more particularly described as follows:

COMMENCING at the southeast corner of said Section 23, a brass cap survey monument stamped "PCHD, 23,24,25,26, T11S, R10E", to which the southeast corner of the northeast quarter of the southeast quarter of said Section 23, 5/8" rebar, no tag bears North 00°19'49" West a distance of 1321.50 feet;

THENCE along the east line of Section 23, North 00°19'49" West a distance of 2413.21 feet to the **POINT OF BEGINNING**;

THENCE North 69°39'48" West a distance of 28.12 feet;

THENCE North 52°36'18" West a distance of 206.74 feet;

THENCE North 66°05'21" West a distance of 271.97 feet;

THENCE North 79°33'58" West a distance of 153.46 feet;

THENCE North 51°25'33" West a distance of 313.85 feet;

THENCE North 77°20'38" West a distance of 60.34 feet;

THENCE North 38°21'40" West a distance of 113.10 feet;

THENCE North 53°01'58" West a distance of 160.58 feet;

THENCE North 83°45'15" West a distance of 80.36 feet;

THENCE North 49°22'02" West a distance of 238.68 feet;

THENCE North 59°24'20" West a distance of 235.68 feet;

THENCE North 44°58'43" West a distance of 159.03 feet;

THENCE North 24°55'12" West a distance of 441.23 feet;

THENCE North 40°58'46" West a distance of 405.15 feet;

THENCE North 13°05'04" West a distance of 233.72 feet;

THENCE North 31°14'53" West a distance of 154.94 feet;

THENCE North 10°19'05" West a distance of 127.30 feet;

THENCE North 31°06'21" West a distance of 221.77 feet;

THENCE North 27°51'35" West a distance of 236.39 feet;

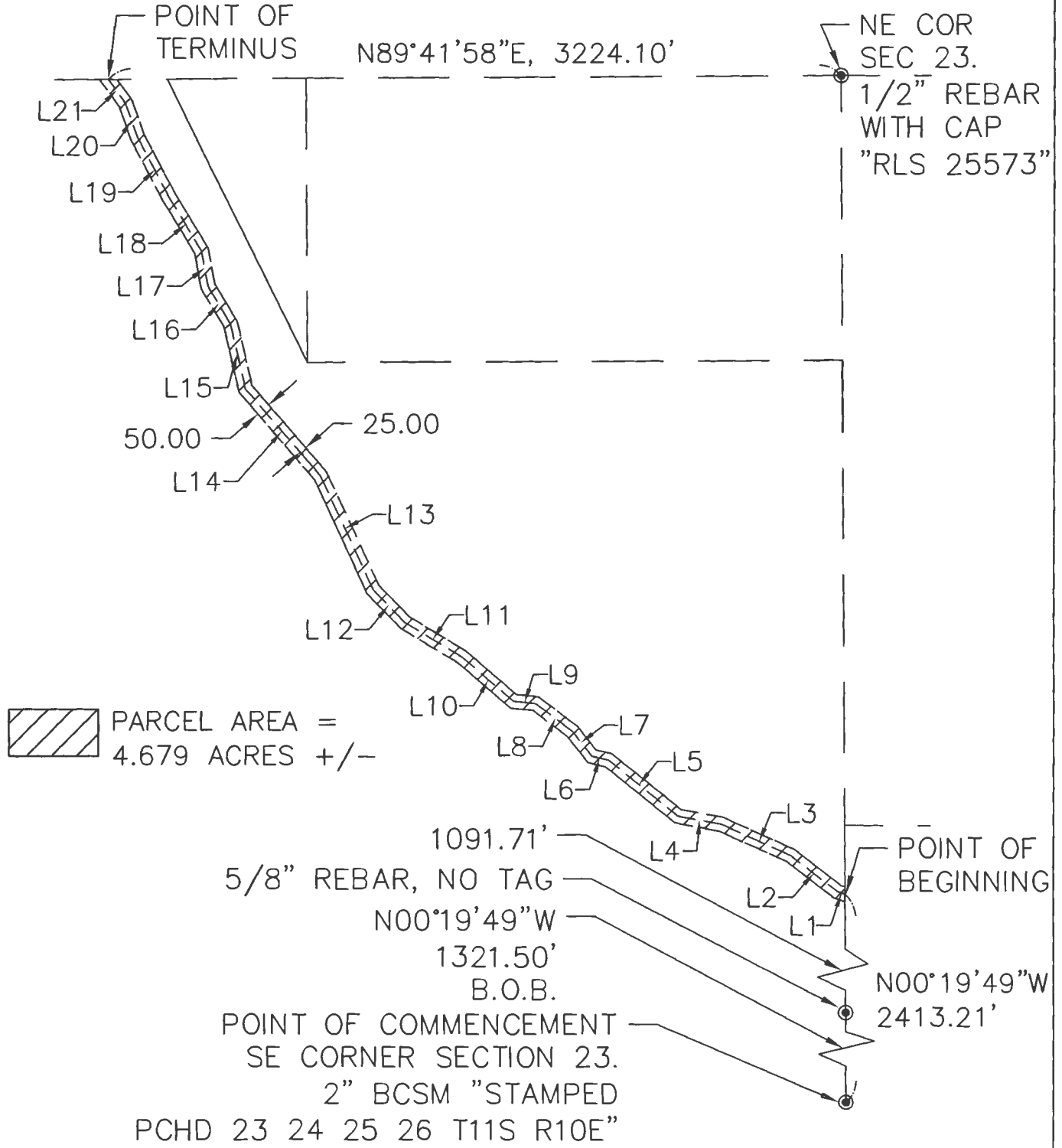
THENCE North 19°42'47" West a distance of 126.78 feet;

THENCE North 36°06'08" West a distance of 107.17 feet to the **POINT OF TERMINUS** of said centerline on the north line of said Section 23 to which the northeast corner of said section, a found 1/2" rebar with plastic cap marked "RLS 25573" bears North 89°41'58" East a distance of 3224.10 feet.

The sidelines of said strip to be lengthened or shortened to intersect with the east and north lines of said Section 23.



DEPICTION OF EXHIBIT "A"



PIMA COUNTY SURVEY

A PORTION OF THAT PARCEL RECORDED IN DOCKET 7770 PAGE 1177
LOCATED IN SECTION 23, TOWNSHIP 11 SOUTH, RANGE 10 EAST,
GILA AND SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA

Scale: 1" = 500'

Date: 21 MARCH 2018

Drawn By: AJI

Sheet 3 of 4

DEPICTION OF EXHIBIT "A"

Parcel Line Table			Parcel Line Table		
Line #	Length	Direction	Line #	Length	Direction
L1	28.12'	N69° 39' 48"W	L12	159.03'	N44° 58' 43"W
L2	206.74'	N52° 36' 18"W	L13	441.23'	N24° 55' 12"W
L3	271.97'	N66° 05' 21"W	L14	405.15'	N40° 58' 46"W
L4	153.46'	N79° 33' 58"W	L15	233.72'	N13° 05' 04"W
L5	313.85'	N51° 25' 33"W	L16	154.94'	N31° 14' 53"W
L6	60.34'	N77° 20' 38"W	L17	127.30'	N10° 19' 05"W
L7	113.10'	N38° 21' 40"W	L18	221.77'	N31° 06' 21"W
L8	160.58'	N53° 01' 58"W	L19	236.39'	N27° 51' 35"W
L9	80.36'	N83° 45' 15"W	L20	126.78'	N19° 42' 47"W
L10	238.68'	N49° 22' 02"W	L21	107.17'	N36° 06' 08"W
L11	235.68'	N59° 24' 20"W			



PIMA COUNTY SURVEY

A PORTION OF THAT PARCEL RECORDED IN DOCKET 7770 PAGE 1177
 LOCATED IN SECTION 23, TOWNSHIP 11 SOUTH, RANGE 10 EAST,
 GILA AND SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA