



MEMORANDUM

REAL PROPERTY SERVICES

201 N. Stone Avenue, Sixth Floor, Tucson, Arizona 85701-1215

(520) 740-6667 FAX (520) 740-6763

To:	C.H. Huckelberry Administrator, Pima County	From:	Michael D. Stofko Real Property Services
Subject:	Donation Agreement and Acceptance of Recreational Trail Easement over FICO Parcel 304-18-098A (Adamson-Catino Trail)	Date:	December 26, 2014

MEMORANDUM TO COUNTY ADMINISTRATOR PURSUANT TO MEMORANDUM FROM COUNTY ADMINISTRATOR DATED DECEMBER 9, 2014

Mr. Huckelberry:

Active residents of the Green Valley/Sahuarita area would like to be able to travel from the County-owned Abrego Trailhead on the Anza Trail to the County-owned Canoa Preserve Park via a nonmotorized recreational multiuse trail. FICO was approached for a donation of a trail easement over its tax parcel number 304-18-098A and agreed to donate a 20' easement which would run through the referenced FICO parcel. Pursuant to the terms of the Donation Agreement, the County must complete installation of the trail improvements (basically signage) within 24 months of the Effective Date. If the County complies with this timeline, the perpetual Trail Easement will then be recorded. If the County fails to comply, the Trail Easement will not be recorded and the Donation Agreement will become null and void.

The subject trail, however, once it is constructed, will be in close proximity, and in one instance run through a portion of FICO's existing pecan orchards. FICO is, therefore, understandably very concerned with potential damage from negligent and/or malicious trail users. Consequently, FICO has conditioned its donation upon the County agreeing to certain remedies for which County would be responsible in the event that the trail becomes problematic to FICO's

agricultural operations. Specifically, if FICO determines that users of the trail are causing damage to a particular area of its pecan operations and such damage is occurring on a frequent basis, it can require the County to fence that portion of the trail with 3 strand smooth wire at a cost not to exceed \$9,500.00. Additionally, if the problem persists after installation of the fencing by County, FICO may terminate the trail easement upon 30 days' notice to County. If the easement is terminated in this manner, FICO has agreed to reimburse County for the funds expended on the fencing.

This Agreement is beneficial to the County because it is coming via donation rather than purchase, and is beneficial to the public because it further advances the construction of the recreational trail system through the Green Valley and Sahuarita areas.

Thank you.

Michael D. Stofko, Esq.
Special Projects, Real Property Services

A handwritten signature in black ink, appearing to read "Michael D. Stofko", with a stylized flourish extending from the bottom right.



Contract Number: CTN-PW-15X089
Effective Date: 1-20-15
Term Date: 1-20-17
Cost: _____
Revenue: ✓
Total: _____ NTE: _____
Action: _____
Renewal By: 10-1-16
Term: 1-20-17
Reviewed by: NA

BOARD OF DIRECTORS AGENDA ITEM SUMMARY

Requested Board Meeting Date: January 20, 2015 Addendum

ITEM SUMMARY, JUSTIFICATION &/or SPECIAL CONSIDERATIONS:

Pima County ("County") has negotiated an Agreement to Donate Non-Exclusive, Non-Motorized Recreational Trail Easement (the "Agreement") with Farmers Investment Company, an Arizona Corporation ("FICO") pursuant to which FICO will donate to County a Non-Exclusive Non-Motorized Recreational Trail Easement, 20 feet in width, over and upon FICO-owned Tax Parcel 304-18-098A, which parcel is located just south of Continental Road in Green Valley, between I-19 to the West and the Santa Cruz River to the east. The total Easement Area is not calculable at this time since the survey to create the legal description of the Easement Area will be based on "as built" specifications only after the trail is fully constructed (the "Easement"). The County will utilize the Easement specifically as a non-motorized recreational use trail connecting the Abrego Trailhead on the Anza Trail to the County-owned Canoa Preserve Park. Pursuant to the express terms of the Agreement, the County will have 24 months from the Effective Date of the Agreement to construct the trail improvements over and upon the subject donated Easement Area. If the trail improvements are timely constructed, the executed Easement will then be recorded in the Office of the Pima County Recorder. If the improvements have not been constructed by January 20, 2017, the Easement will not be recorded and the Agreement will become null and void. Since the trail will be constructed adjacent to operating pecan groves owned by FICO, the Agreement further provides that in the event of repeated incidents of trespassing by the users of the trail onto FICO's property, FICO shall have the right to require County to install fencing at its sole cost, up to a maximum cost of \$9,500.00. If such trespass to FICO continues to a point where FICO believes it is detrimental to its Property, it may terminate the Easement on 30-day notice to County, in which instance it would reimburse County for any money County may have spent on fencing at FICO's direction.

STAFF RECOMMENDATION(S): *Staff recommends that the BOS approve and execute the Donation Agreement with FICO for the donation of a Trail Easement for a non-motorized recreational use trail over and upon FICO-owned Parcel No. 304-18-098A, and approve and execute the form of Easement submitted herewith.*

*Ver. - 1
Vendor - 1
Pgs - 22*

Page 1 of 2

*To: COB- 1-14-15 By Dept
Addendum (1)*

PIMA COUNTY COST: _____ and/or REVENUE TO PIMA COUNTY: \$ _____-0-

FUNDING SOURCE(S): In-Lieu Fees Special Revenue Funds.
(i.e. General Fund, State Grant Fund, Federal Fund, Stadium D. Fund, etc.)

Advertised Public Hearing:

☐ YES ☒ NO

Board of Supervisors District:

1 ☐ 2 ☐ 3 ☐ 4 ☒ 5 ☐ All ☐

IMPACT:

IF APPROVED: County will have added a multipurpose recreational trail Easement for the purpose of connecting the Abrego Trailhead on the Anza Trail to the County-owned Canoa Preserve Park by donation rather than purchase.

IF DENIED: County will have failed to avail itself of a valuable donation of an Easement necessary for connecting the Abrego Trailhead on the Anza Trail to the County-owned Canoa Preserve Park.

DEPARTMENT NAME: Real Property Services 

CONTACT PERSON: Michael D. Stofko TELEPHONE NO.: 520-724-6667 

**PIMA COUNTY DEPARTMENT OF:
REAL PROPERTY SERVICES**

**PROJECT: Accept Donation of Non-Exclusive
Non-Motorized Multi-Use Recreational Trail
Easement for the Adamson – Catino Trail
Project**

**DONOR: Farmers Investment Co., an
Arizona Corporation**

AMOUNT: Not to Exceed \$-0-

CONTRACT

NO. CTN. PW - 150000000000000089

AMENDMENT NO. _____

This number must appear on all
invoices, correspondence and
documents pertaining to this
contract.

**AGREEMENT TO DONATE NON-EXCLUSIVE NON-MOTORIZED
RECREATIONAL TRAIL EASEMENT
(Adamson – Catino Trail)**

1. **Parties.** This agreement ("**Agreement**") is entered into by and between Farmers Investment Co., an Arizona Corporation ("**Donor**") and Pima County, a political subdivision of the State of Arizona ("**County**" or "**Donee**"). Donor and Donee may hereinafter be referred to collectively as the "**Parties**".

2. **Background & Purpose.**

2.1. Donor is the Owner of that certain real property consisting of approximately 973 acres identified as Pima County Tax Parcel Number 304-18-098A and depicted in **Exhibit A** attached hereto and made a part hereof, in Green Valley, Pima County, Arizona (the "**Property**").

2.2. The County has determined that it has a need to acquire a perpetual Non-Exclusive Non-Motorized Recreational Trail Easement (the "Easement") over portions of the Property for purposes of construction and maintenance of the Adamson – Catino Trail. The Adamson – Catino Trail will connect the County-owned Abrego Trailhead for the Juan Bautista De Anza Trail, located on Abrego Drive in Green Valley, Arizona, just south of Continental Road with property owned by Union Pacific Railroad Company near the County-owned Canoa Preserve Park (the "Park"). The Park is depicted on the attached **Exhibit B**.

2.3. Donor wishes to grant the Easement to County by donation, and County desires to accept the donation of the Easement from Donor, subject to the express terms and conditions as set forth herein.

2.4. The Easement shall be approximately twenty feet (20') in width and shall run generally from west to east through the Property (the "Easement Area"), as legally described and depicted, collectively on **Exhibit C**, attached hereto.

3. **Donation.**

3.1. Donor acknowledges and agrees that the decision to donate the Easement was made without any undue influence or coercive action of any nature and that the right to an appraisal and to just compensation is hereby waived.

3.2. The Easement will be granted pursuant to that Non-Exclusive, Non-Motorized Recreational Trail Easement in the form of **Exhibit D** attached hereto and incorporated herein by this reference (the "Form of Easement Agreement"). The Form of Easement Agreement shall be executed by Donor and the County and recorded promptly following the County's completion of construction of trail improvements to the Easement Area as hereinafter described (the "Trail Improvements"). The County hereby acknowledges and agrees that, as a condition of the grant of the Easement, the County shall, within twenty-four (24) months following the date of this Agreement, construct the following Trail Improvements to and within the Easement Area at the sole cost and expense of the County:

- (a) Place Carsonite trail markers at reasonable distances and in such locations as may be agreed to by Donor and the County;
- (b) Place four (4) "Stop" signs at each of the locations where the Easement Area currently crosses two (2) existing farm roads, 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
- (c) Place not less than twenty (20) "No Trespassing" signs, in both English and Spanish, at reasonable distances and in such locations as may be agreed to by Donor and the County warning recreational users to stay on the marked trail and not to trespass on Donor's property.

Donor hereby grants to the County a temporary construction easement over, upon and

across the Easement Area for the purpose of constructing the Trail Improvements, which temporary construction easement shall terminate upon the completion of construction of the Trail Improvements and recordation of the Form of Easement Agreement. The County hereby acknowledges and agrees that in the event that the Trail Improvements have not been completed by that date that is twenty-four (24) months following the date of this Agreement, then this Agreement shall become null and void and have no further force or effect and the Form of Easement Agreement shall not be recorded. In addition to the Trail Improvements, in the event that there are repeated incidents of trespass by members of the general public utilizing the Trail Improvements onto Donor's Property, then Donor shall have the right to require that County install 3 or 4 wire smooth strand range fencing on those portions of the Easement Area where such trespassing is occurring, whereupon the County shall install such cable wiring and/or fencing in such areas at its cost and as soon as reasonably possible after receipt of such notice from Donor. In the event Donor requires County to install such fencing pursuant to this Paragraph 3.2, County's costs related to acquisition of fencing materials in compliance with such requirement shall be limited to \$9,500.00 as an aggregate maximum.

3.3. The Donor and the County expressly acknowledge and agree that the Form of Easement Agreement contemplates that the location of the Easement Area may be relocated in the future in the discretion of the Donor or its successors-in-interest to any portion of the Property which may be encumbered by the Easement, which relocation shall be subject to and performed in accordance with the terms and conditions set forth in the Form of Easement Agreement.

4. **No Personal Property.** The Parties acknowledge that no personal property is being transferred pursuant to this Agreement.

5. **Risk of Loss.** Donor shall be responsible for the risk of loss for any and all damage to any improvements to the Property prior to the execution of this Agreement and the entry upon the Easement Area by the County for the purposes of the construction of Trail Improvements thereon.

6. **Indemnity.** To the extent permitted by law, County shall indemnify, defend, and hold harmless Donor for, from and against any and all present and 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 the Easement, including without limitation, in connection with the construction, installation and maintenance of the Trail Improvements.

7. **Closing.**

7.1. Donee shall pay all closing costs, if any, including but not limited to title insurance premium, escrow fees, and recording fees. Those costs are expected to be as follows:

\$ <u>-0-</u>	Acquisition Amount
\$ <u>-0-</u>	Estimated County Closing Costs
\$ <u>-0-</u>	TOTAL NOT TO EXCEED AMOUNT

8. **Binding Agreement.** All provisions set forth herein are binding upon the heirs, successors and assigns of the Parties.

9. **Governing Law.** This Agreement shall be construed under the laws of the State of Arizona.

10. **Conflict of Interest.** This Agreement is subject to cancellation within three (3) 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 the 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.


11. **Effective Date.** This Agreement shall be effective (the "Effective Date") on the date it is signed by all of the Parties. This Agreement shall be considered signed by County on the date that it is signed by the Chair of the Pima County Board of Supervisors.

The Parties have signed this Agreement on the dates set forth below.

Donor: Farmers Investment Co., an Arizona Corporation



Richard S. Walden, President

1/5/2015 

Date

Donee: Pima County, a body politic and corporate 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, Natural Resources, Parks & Recreation

APPROVED AS TO FORM:

Tobin Rosen, Deputy County Attorney, Civil Division

TAX PARCEL NUMBER: A portion of 304-18-098A

The Parties have signed this Agreement on the dates set forth below.

Donor: Farmers Investment Co., an Arizona Corporation

Richard S. Walden, President

Date

Donee: Pima County, a body politic and corporate 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, Natural Resources, Parks & Recreation

APPROVED AS TO FORM:



Tobin Rosen, Deputy County Attorney, Civil Division

TAX PARCEL NUMBER: A portion of 304-18-098A

SECTIONS 23, 24, 26, 34, 35
TOWNSHIP 18 SOUTH
RANGE 13 EAST

SECTION 3
TOWNSHIP 19 SOUTH
RANGE 13 EAST

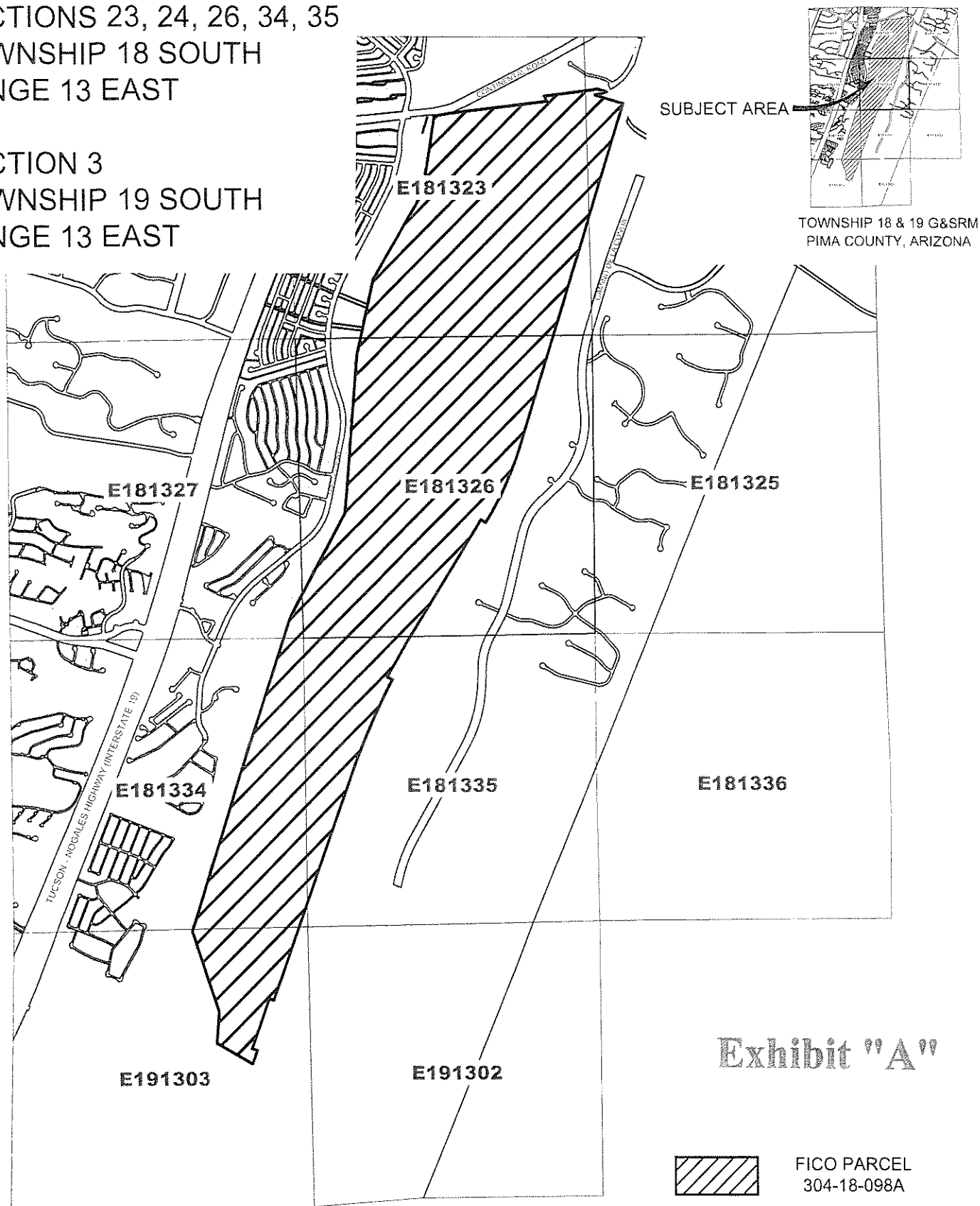


Exhibit "A"



**PIMA COUNTY DEPARTMENT OF TRANSPORTATION
ENGINEERING INFORMATION MANAGEMENT**

SECTION 35
TOWNSHIP 18 SOUTH
RANGE 13 EAST

SUBJECT AREA

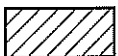


SECTION 35 G&SRM
PIMA COUNTY, ARIZONA

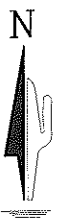
CANOA PRESERVE PARK PROPERTY



PARCEL



304-18-941A



14025

PIMA COUNTY DEPARTMENT OF TRANSPORTATION
ENGINEERING INFORMATION MANAGEMENT

DRAWING NOT TO SCALE

DRAWN BY: BSMITH

DATE: DEC 2014

Exhibit "B"

NOTE RE "EXHIBIT C"

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 A" to the subject Easement prior to its recordation.

EXHIBIT C

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.

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 Carsonite trail markers 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 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, and in the event of repeated trespassing by recreational users on Grantor's property during any period of time that Grantor is then conducting farming operations on Grantor's property, Grantor shall have 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.

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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

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.

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 Carsonite trail markers 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 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, and in the event of repeated trespassing by recreational users on Grantor's property during any period of time that Grantor is then conducting farming operations on Grantor's property, Grantor shall have 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.

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GRANTOR:
FARMERS INVESTMENT CO.,
an Arizona Corporation

Richard S. Walden
Richard S. Walden, President

1/5/2015
Date

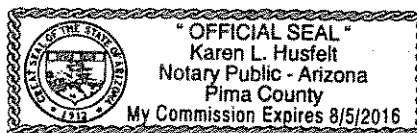
STATE OF ARIZONA)
) ss
COUNTY OF Pima)

This instrument was acknowledged before me this 5th day of January, 2015
by Richard S. Walden.

Karen L. Husfelt
Notary Public

My Commission Expires:

08/05/2016



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:

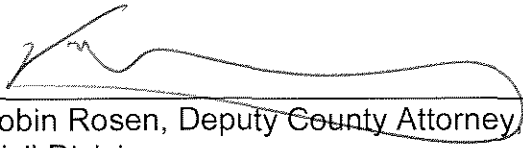


Chris Cawein, Director
Pima County Natural Resources Parks
And Recreation Department

1/5/15

Date

APPROVED AS TO FORM:



Tobin Rosen, Deputy County Attorney
Civil Division

1/5/15

Date

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 A" to the subject Easement prior to its recordation.

EXHIBIT A