



BOARD OF SUPERVISORS AGENDA ITEM REPORT

Requested Board Meeting Date: May 15, 2018

Title: A Resolution Approving and Authorizing an Amended and Restated Rocking K Development Agreement

Introduction/Background:

The Rocking K Specific Plan, approved in 1990, authorized the development of 4,500 acres for largely residential uses. The Specific Plan requires Valencia Road to be extended from Houghton Road to Old Spanish Trail before certain development can take place. The County and Rocking K executed a Development Agreement, which has been amended several times. The proposed Second Amended and Restated Development Agreement provides a funding mechanism for the Valencia Road extension. Pima County will issue Certificates of Participation and provide those funds for the construction. The COPs will be repaid from transportation impact fees generated by the development of Rocking K. Rocking K will cover any amount by which those fees fall short of the debt service, and it has provided collateral to secure that obligation, in the form of a deed of trust on much of the Rocking K property, and a letter of credit.

Discussion:

The Development Agreement outlines the scope of work and financing details for the construction of Valencia Road including design, construction, approval and acceptance criteria, eligible costs for reimbursement, development fee collections, timing of the improvements, and debt security.

Conclusion:

This agreement will supersede the previous development agreement and reflects the use of Pima County Certificates of Participation to fund the Valencia Road project and repayment methods and conditions.

Recommendation:

Staff recommends approval of this resolution and the Seconded Amended and Restated Rocking K Development Agreement, provided that the Board also authorizes the sale of Certificates of Participation to fund Valencia Road.

Fiscal Impact:

The Development Agreement identifies the funding made available for the Valencia Road project and the repayment mechanism. The Certificates will be repaid over a 15 year period. To repay the debt, the County will transfer monies from development fees collected from the Rocking K master-planned community. If the development fees are not sufficient to repay the debt, Rocking K Development Co. will repay the debt. To guarantee repayment of the debt, Rocking K Development will provide Pima County with annual letters of credit in the amount of one year's debt service and a first position deed of trust on real property within the Rocking K master-planned community.

Board of Supervisor District:

- 1 2 3 4 5 All

Department: Development Services Department Telephone: 724-9516

Contact: Carla L. Blackwell Telephone: _____

Department Director Signature/Date: C. L. Blackwell 5/2/18

Deputy County Administrator Signature/Date: [Signature] 5/2/18

County Administrator Signature/Date: C. [Signature] 5/2/18

RESOLUTION NO. 2018 - _____

**A RESOLUTION OF THE PIMA COUNTY BOARD OF SUPERVISORS
APPROVING AND AUTHORIZING AN AMENDED AND RESTATED
DEVELOPMENT AGREEMENT FOR ROCKING K**

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

1. Rocking K Development Co., an Arizona corporation (“**Developer**”), is the developer of the master-planned community commonly known as Rocking K (the “**Property**”), which consists of approximately 4,500 acres of real property that is currently built or planned for residential and mixed-use development. The Property is entirely within unincorporated Pima County.
2. The Pima County Board of Supervisors approved the Rocking K Specific Plan, Co23-90-1 by Ordinance No. 1990-129 on December 18, 1990 and the First Amendment to Rocking K Specific Plan, Co23-96-2, by Ordinance 1997-69 on September 16, 1997 (including the previous and all subsequent amendments, the “**Rocking K Specific Plan**”).
3. County and Developer previously entered into that certain *Amended and Restated Rocking K Development Agreement*, which was recorded in the office of the Pima County Recorder on November 21, 2011, Sequence No. 20113251226 (the “**2011 Development Agreement**”).
4. The Rocking K Specific Plan and the 2011 Development Agreement require Developer to construct certain “**Off-Site Roadway Improvements**.”
5. One of the Off-Site Roadway Improvements involves extending Valencia Road to the east approximately 2.6 miles, from Houghton Road to Old Spanish Trail, including the construction of a bridge and related bank-protection improvements over the Pantano Wash, and the improvement of Old Spanish Trail (the “**Project**”).
6. Developer desires to advance construction of the Project, and County desires to assist by providing funds for the Project. The Board is, contemporaneous with its passage of this resolution, also passing a resolution authorizing the issuance of up to \$16,000,000 of tax-exempt certificates of participation (the “**Bonds**”) for the purpose of paying the cost of the Project.
7. The Bonds will be repaid from development fees generated by development of the Property, and additional funds to be provided by Developer.
8. The County currently has a roadway development-fee program under A.R.S. § 11-1102. The Project and the other Off-Site Roadway Improvements are approved projects shown on the Southeast Roadway Development Impact Fee Benefit Area Plan, and are currently eligible for development-fee funding. Developer has acknowledged that the Project and the other Off-Site Roadway Improvements will result in a beneficial use to the Property.
9. The Parties wish to amend and restate the 2011 Development Agreement in order to establish the scope of work, phasing and sequencing of all of the Off-Site Roadway Improvements and provide for financing of the Project.

NOW, THEREFORE, BE IT RESOLVED as follows:

a. Approval of Development Agreement. The Development Agreement is hereby approved in substantially the form submitted to the Board, with such changes, additions, deletions, insertions and omissions, if any, as the Chair of the Board, with the advice of the County Administrator and the County Attorney's Office, shall authorize. The execution and delivery of the Development Agreement will be conclusive evidence of the propriety of such document and the authority of the person or persons executing the same.

b. Execution of Development Agreement. The Chairman of the Board, with the advice of the County Administrator and the County Attorney's Office, is hereby authorized and directed to execute, and the Clerk of the Board to attest, the Development Agreement on behalf of the County.

c. Administration of Agreement. The County Administrator is authorized and directed to act on behalf of the County in providing any approvals or direction that may be required from time to time under the Development Agreement, including execution and acceptance of the deed of trust securing Developer's obligations under the Agreement and any subsequent releases from the deed of trust.

PASSED, ADOPTED AND APPROVED by the Pima County Board of Supervisors this 15th day of May, 2018.

Chairman, Pima County Board of Supervisors

ATTEST:

Clerk of the Board

APPROVED AS TO FORM:



Deputy Pima County Attorney
REGINA NASSEN

Second Amended and Restated Rocking K Development Agreement

This Second Amended and Restated Rocking K Development Agreement (“**Agreement**”), for reference purposes dated May 15, 2018, is entered into by and among Pima County (“**County**”), Rocking K Development Co., an Arizona corporation (“**Developer**”), and Diamond Ventures, Inc., an Arizona corporation (“**DVI**”).

Recitals

- A. Developer is the developer of the master-planned community commonly known as Rocking K (the “**Property**”), which is generally located south of Saguaro National Park and surrounds the Old Spanish Trail in Pima County, Arizona, and is described and depicted on attached **Exhibit A**. The Property consists of approximately 4,500 acres of real property that is currently built or planned for residential and mixed-use development. The Property is entirely within unincorporated Pima County.
- B. Fidelity National Title Agency, Inc., an Arizona corporation, in its capacity as trustee under Trust No. 60380 and not in its corporate capacity (the “**Trust**”) is the owner of the Property and is signing this Agreement solely in that capacity in order to consent to recordation of the Agreement on the Property.
- C. The Pima County Board of Supervisors approved the Rocking K Specific Plan, Co23-90-1 by Ordinance No. 1990-129 on December 18, 1990 and the First Amendment to Rocking K Specific Plan, Co23-96-2, by Ordinance 1997-69 on September 16, 1997 (including the previous and all subsequent amendments, the “**Rocking K Specific Plan**”).
- D. County and Developer previously entered into that certain *Amended and Restated Rocking K Development Agreement*, which was recorded in the office of the Pima County Recorder on November 21, 2011, Sequence No. 20113251226 (the “**2011 Rocking K Development Agreement**”).
- E. The Rocking K Specific Plan and the 2011 Rocking K Development Agreement require Developer to construct certain “**Off-Site Roadway Improvements**.” The Off-Site Roadway Improvements, along with required phasing, sequencing, and dwelling-unit triggers for the construction of the Off-Site Roadway Improvements, are contained in the Off-Site Improvement Analysis for Rocking K prepared by Psomas (Project No. 7ROC100101), dated February 2011 and the Addendum to that study dated February 2, 2018 (together, the “**Traffic Reports**”), which have been approved by County and may be further updated as provided herein. Copies of the Traffic Reports and County approval letters are on file with the Development Services Department. The Off-Site Roadway Improvements are described and depicted on **Exhibit B**.
- F. One of the Off-Site Roadway Improvements involves extending Valencia Road to the east approximately 2.6 miles, from Houghton Road to Old Spanish Trail (the “**Valencia Road Extension**”), including the construction of a bridge and related bank-protection improvements over the Pantano Wash, and the improvement of Old Spanish Trail.

- G. Developer desires to advance construction of the Valencia Road Extension and the related improvements (the “**Project**”), and County desires to assist by advancing funds for the Project, to be repaid from development fees generated by development of the Property, or by Developer.
- H. County has, as of the date of this Agreement, adopted a resolution (the “**Bond Authorization**”) authorizing the issuance of up to \$16,000,000 of tax-exempt certificates of participation (the “**Bonds**”) for the purpose of reimbursing Developer for the cost of the Project. If the Bonds are not issued within 9 months, reauthorization may be required.
- I. Developer has acquired all right-of-way needed for the Valencia Road Extension, as described on **Exhibit F**, at a total cost of \$1,090,964. This includes right-of-way across State land, which is already in the County’s name, and several parcels of real property that are owned by Developer or a related company.
- J. Developer has developed final plans and specifications for the Valencia Road Extension (the “**Plans**”), which have been substantially approved by Pima County.
- K. The County currently has a roadway development-fee program under A.R.S. § 11-1102. The Off-Site Roadway Improvements are approved projects shown on the Southeast Roadway Development Impact Fee Benefit Area Plan, and are currently eligible for development-fee funding. Developer acknowledges that the Project and the other Off-Site Roadway Improvements will result in a beneficial use to the Property.
- L. A.R.S. § 11-1102 was amended in 2016. Under the statute as amended the County’s existing roadway development-fee program will expire as of January 1, 2021. The County has begun the process of studying how a new program could be structured to comply with the amended statutory requirements.
- M. The Parties acknowledge that this Agreement establishes the scope of work, phasing and sequencing of all of the Off-Site Roadway Improvements and provides for financing of the Project. This Agreement does not serve to satisfy all of the requirements of the Specific Plan or address how the Off-Site Roadway Improvements other than the Project will be financed. In the event of any inconsistency between this Agreement and the Specific Plan, the Specific Plan will control.

Agreement

1. **Authority.** The Parties are entering into this Agreement under A.R.S. § 11-1101.
2. **Incorporation of Recitals and Exhibits.** The Recitals stated above and the attached Exhibits are incorporated by this reference into this Agreement.
3. **Amendment/Restatement of Development Agreement.** This Agreement supersedes and replaces in its entirety the 2011 Rocking K Development Agreement. However, if Developer has not commenced construction of the Project on or before December 31, 2020, this Agreement will automatically terminate. If this Agreement is terminated for that or any other reason, the 2011 Rocking K Development Agreement will once again become effective. A

recorded written declaration by the County that this Agreement has terminated will be determinative of that fact.

4. **Developer Responsibility for Off-Site Roadway Improvements.**

4.1. Design, Construction, Approval and Acceptance. Developer will design, engineer, acquire any necessary right-of-way and permits for, and construct the Off-Site Roadway Improvements as shown in the Traffic Reports and depicted on **Exhibit B**.

4.1.1. Developer will design, engineer and construct the Off-Site Roadway Improvements in accordance with County design standards. Before construction of any phase of the Off-Site Roadway Improvements, the Developer will submit the design plans for that phase to the County for review and approval.

4.1.2. The County will inspect the Off-Site Roadway Improvements and, if the County finds that the Off-Site Roadway Improvements were completed in substantial conformance with the approved plans and in compliance with all applicable County standards, the County will approve the Off-Site Roadway Improvements. County will not withhold its approval of the Off-Site Roadway Improvements unreasonably.

4.1.3. Upon completion of the Off-Site Roadway Improvements, the Developer's engineer shall provide to the County as-built drawings and shall certify that the Off-Site Roadway Improvements were constructed in accordance with the approved plans.

4.1.4. The developer shall dedicate any rights-of way necessary for construction of the off-site improvements to Pima County at no cost to the County.

4.1.5. The Developer shall, at the completion of construction, provide the County a warranty from the contractor stating that the Off-Site Roadway Improvements will be free from any material defect for a period of two years from the date the County accepts maintenance of the Off-Site Roadway Improvements completed by the Developer. The warranty shall run to the benefit of the Developer and the County.

4.1.6. Upon County inspection and approval of the Off-Site Roadway Improvements, the County shall accept the Off-Site Roadway Improvements for maintenance and shall maintain the County Off-Site Roadway Improvements at no cost to the Developer.

4.1.7. The Parties agree that, except as set forth in Section 5.3.4 below, under A.R.S. §28-6713(G) et seq., the Developer can, at its own expense, subject only to reimbursement from or credits against the Rocking K Development Fees, perform the County Off-Site Roadway Improvements other than the Project on a negotiated contract basis in lieu of obtaining public bids for the

construction. The Developer will be diligent in negotiating costs for the Off-Site Roadway Improvements that are reasonable and consistent with the cost of work of similar nature within the County. The Developer will provide the County with a copy of the contractor's estimate of total costs for review prior to the notice to proceed to the construction. Notwithstanding the foregoing, the Developer agrees that should a bidding process be desired, the Developer will bid the construction.

4.1.8. The Developer will provide in the contract with the Developer's contractor that the contractor will defend and indemnify the County to the same extent as the Developer, and will also require that the County be named as an additional insured in any insurance policy contract.

4.2. Development Fees. County will collect County development fees from the Property, as and when due, at the rate applicable at the time due (the "**Rocking K Development Fees**"). Reasonable costs incurred to design and construct the Off-Site Roadway Improvements ("**Eligible Costs**") are eligible for reimbursement from the Rocking K Development Fees. Eligible Costs include, but are not necessarily limited to, right-of-way acquisition, design fees, and all costs of construction, such as construction materials, supplies, supervision and labor, and excavation, grading and haul costs.

4.2.1. So long as any Bonds are outstanding, the Rocking K Development Fees will be disbursed pursuant to Section 5 below.

4.2.2. If no Bonds are outstanding, Rocking K Development Fees will be held in the Southeast Region Impact Fee Benefit Area account but will be allocated to the Off-Site Roadway Improvements. If, at any time, there are not sufficient Rocking K Development Fees to reimburse Developer for Eligible Costs as they are incurred, then Developer may, at its election, receive, with respect to those Eligible Costs, either: (i) reimbursement from future Rocking K Development Fees; or (ii) credits against future County roadway development fees owed with respect to the Property pursuant to A.R.S. § 11-1102. Credits will be granted on a first come, first served basis as building permits are requested for development of the Property at the then-current amount of the development fee. The total amount of reimbursement (both immediate and delayed) or credits will not exceed the total Eligible Costs.

4.2.3. Developer acknowledges that the County's current roadway development-fee program will, under A.R.S. § 11-1102 as revised, terminate in 2021, and that there is no assurance that the County will adopt a new program, or if it does, that the new program will include the Off-Site Roadway Improvements as development fee eligible projects. The County, however, has begun the process of studying how a new program could be structured to comply with the amended statutory requirements.

4.3. Timing of Off-Site Roadway Improvements Work. Notwithstanding anything to the contrary in this Agreement, the Developer is required to construct the Off-Site Roadway Improvements in phases, based upon triggers as set forth in the Traffic Reports. The Developer may build any portion of the Off-Site Roadway Improvements at any time after the Parties execute this Agreement but, except as set forth in Section 5, is not required to begin a phase until the triggers set forth in the Traffic Reports. Once the Developer begins construction of a phase of the Off-Site Roadway Improvements as set forth in the Traffic Reports, the Developer will complete construction of that phase within a reasonable amount of time, not to exceed two (2) years. The parties agree that, because the Property will be developed in phases, the triggers set forth in the Traffic Report may be amended from time to time with County approval. In order to facilitate the Developer's construction of the Off-Site Roadway Improvements within the designated timeframe, the County will make all reasonable effort to review and approve the plans for the County Off-Site Roadway Improvements in an expeditious manner consistent with standard County plan review procedure. The Developer and the County acknowledge and agree that the timing for completion of construction of the Off-Site Roadway Improvements could be delayed for reasons beyond the control of the Developer, such as delays caused by utility companies.

5. **Construction and Financing of the Project.** The County has substantially approved the construction plans for the Project.

5.1. **Project Schedule.**

5.1.1. Initial Project Schedule. Developer will, within 30 days after execution of this Agreement, prepare and submit to County a schedule (the "**Project Schedule**") showing the anticipated timing and duration of each stage of procurement and construction of the Project, as well as the anticipated dates and amounts of requests from Developer for reimbursement of Project expenses incurred and paid by Developer ("**Reimbursement Requests**"). Prior to commencing the process of issuing Bonds pursuant to Section 5.2, Developer may, from time to time, amend the Project Schedule and shall submit any such amended Project Schedule to the County in such event.

5.1.2. Delays; Updates. Once Developer has commenced construction of the Project, Developer will modify the Project Schedule periodically as the Project progresses, and will promptly notify County if Developer becomes aware of a potential Project delay that may require amendment of the Project Schedule by 60 days or more. If County incurs arbitrage costs because of a delay of more than 60 days in total, the Developer will immediately reimburse the County for those costs. Further, the County may, in response to an actual delay in the Project after issuance of the Bonds of more than 180 days total, reallocate available funds, suspend payments under this Agreement for some period of time, or terminate this Agreement.

5.2. **Bond Issuance; Project Commencement.**

- 5.2.1. Bonds. The Bonds will be issued in an amount that is the lesser of (i) the Final Cost Estimate (as defined below) plus issuance costs, and (ii) the amount of the Bond Authorization. The Bonds may be issued as one series, or as several series, or as parts of one or more larger series. “**Debt Service Payments**” means semi-annual payments of principal and interest on the Bonds. Debt Service Payments will be amortized over a 15-year repayment period, with interest-only payments for the first three years.
- 5.2.2. Reimbursement Amounts. The actual amount of Bond proceeds received by the County after payment of all issuance costs is the “**Not-to-Exceed Amount**” for purposes of reimbursement under Section 5.4 below. Notwithstanding anything to the contrary in this Agreement, “**Eligible Project Costs**” as used in this Section 5 do not include Project design costs that have already been incurred by Developer, but they do include Developer’s cost of acquiring the right-of-way for the Project, as described in Recital I and Exhibit F. Developer will convey or cause to be conveyed to County all right-of-way for the Project that is not already titled in the County. The parties will set up a mutually satisfactory time and process for closing on the conveyance, at which time County will reimburse Developer for the acquisition costs as described in Recital I. Conveyance will be of marketable title, by special warranty deed, free and clear of any monetary liens or encumbrances, and Developer will furnish County with a standard policy of title insurance.
- 5.2.3. Conditions Precedent for Beginning Bond Issuance Process. County will begin the process of issuing and selling the Bonds after Developer delivers to County (a) the Deed of Trust, Lender’s Policy, and Letter of Credit (all as defined in Section 5.6. below), (b) proof that Developer has entered into a contract for construction of the Project and is prepared to issue a notice to proceed, and (c) a financial summary showing the total estimated Eligible Project Costs (the “**Final Cost Estimate**”), *provided that* at that time (i) the Bond Authorization is still satisfactory to County’s Bond Counsel and no re-authorization is required, and (ii) the County has sufficient bonding capacity.
- 5.2.4. Timeline for Bond Issuance. Developer acknowledges that the process of issuing and selling the Bonds will take 4 to 5 months to complete once it is begun. County will not reimburse Developer for any Eligible Project Costs unless and until the Bonds are issued and sold and the proceeds are available for disbursement.
- 5.2.5. Lapse of Bond Authorization. If, after Developer satisfies the conditions precedent under Section 5.2.3 above, County’s Bond Counsel requests re-authorization of the Bonds because it has been more than 9 months since the Bond Authorization was passed, the County Finance Director will cause a resolution re-authorizing issuance of the Bonds to be submitted to the Board of Supervisors at its next regularly-scheduled meeting. If the Board of

Supervisors does not approve the resolution, or if the County does not at that time have sufficient bonding capacity to issue the Bonds, this Agreement will terminate and the previous Rocking K Development Agreement will become effective.

5.2.6. Federal Treasury Regulations. Developer acknowledges that Pima County manages the expenditures of bond proceeds in order to qualify for a spending exception to the arbitrage rebate requirements of Sections 148 through 150 of the Internal Revenue Code of 1986 and the related regulations found in 26 CFR Part 1, §§1.148 through 1.150 as may be modified from time to time (such statutes and regulations hereinafter referred to as the "**Tax Exempt Bond Rules**"). Developer acknowledges that arbitrage rebate is affected by both the use of bond proceeds and by the timing of bond related expenditures. Notwithstanding any other provision of this Agreement, County may, in County's sole discretion, reallocate all or a portion of the Bond proceeds to other projects if, in County's sole determination, such reallocation is necessary or advantageous to the County under the Tax Exempt Bond Rules either (a) to qualify for a spending exception to the arbitrage rebate requirements, or (b) to reduce the amount of any potential arbitrage rebate or penalty.

5.3. **Construction.**

5.3.1. Construction. Once Developer issues the notice to proceed, and County's Finance Director confirms—after re-authorization if necessary—that the County is prepared to begin the process of issuing the Bonds, Developer will cause its contractor to construct the Project in a diligent fashion and in accordance with all of the requirements of Section 4 above.

5.3.2. Quality Control and Inspection. County may inspect the Project periodically as it progresses. Developer will conduct all quality control, testing, and inspections for the Project. Before commencing construction, Developer will submit, for County review and approval, a quality-control plan. The quality-control plan shall include, but not be limited to, the testing frequencies and oversight of required submittals for materials and processes contained within the specifications. This quality-control plan shall be overseen and administered by a registered engineer.

5.3.3. Project Manager and Representatives. Developer will designate a project manager for the Project (the "**Project Manager**") and County will designate a representative (the "**County Liaison**") to be a liaison with the Project Manager during construction of the Project.

5.3.4. Construction Contracts for the Project; Title 34. Notwithstanding anything to the contrary in Section 4.1.7 above, Developer will award and administer construction contracts for the Project in compliance with Title 34, all applicable law, and the Project Schedule. Developer may use any project-delivery method compliant with Title 34. Developer will certify to County its

compliance with Title 34 and will provide backup documentation showing such compliance on County's request.

5.4. **Reimbursement of Eligible Project Costs.** All Eligible Project Costs, up to a maximum of the Not-to-Exceed Amount, will be reimbursed from the Bond proceeds—and only from the Bond proceeds—under the terms and conditions of this Agreement.

5.4.1. Reimbursement Requests. Within 10 days after the end of each month, starting after the Bonds are sold, Developer will submit to County a request for reimbursement of Eligible Project Costs paid by Developer to date, less previous reimbursements, together with supporting documentation, in accordance with the Project Schedule (a "**Reimbursement Request**"). Developer's Project Manager is responsible for verifying the accuracy of all invoices submitted by contractors, and will, as part of Developer's Reimbursement Requests, certify that Developer has paid said invoices (less any retention held by Developer) prior to requesting reimbursement from County.

5.4.2. Review and Approval of Reimbursement Requests. County will review each Reimbursement Request and, if County does not approve the request, County will, within 10 business days after receipt of the Reimbursement Request, provide a written notice of objection to Developer. Developer and County will then meet to confer in good faith to address and attempt to resolve such disapproval. If the parties have not resolved all objections within five (5) Business Days of the notice of objection, the approved Project engineer shall resolve the dispute.

5.4.3. Payment of Reimbursement Requests. Once County approves a Reimbursement Request, County will pay the Reimbursement Request within 14 calendar days after approval (except as set forth below with respect to the final accounting and payment).

5.4.4. Monthly Progress Reports. Developer will also submit a monthly progress report (the "**Progress Report**") in a format approved by County, after commencement of construction. The Progress Report will include any suggested revisions to the Project Schedule. Developer will submit a Progress Report for each month of the Project even if Developer is not seeking reimbursement for the preceding month.

5.4.5. Submittal. Developer will submit all Reimbursement Requests and Progress Reports to:

Pima County Department of Transportation
1313 S Mission Road
Tucson, AZ 85713
Attn: Paul Bennett

5.4.6. Final Report & Accounting. Within 90 days after substantial completion of the Project, Developer will submit to County a detailed final accounting statement

of the Eligible Project Costs expended on the Project, along with a final Reimbursement Request if needed. Once County approves the final Reimbursement Request, it will pay the request within 45 days of receipt. Any objections will be dealt with as set forth in Section 5.4.2 above.

5.5. Debt Service.

- 5.5.1. Valencia Road Fund. County will collect Rocking K Development Fees from the Property, as and when due, at the rate applicable at the time due. So long as any Bonds are outstanding, the Rocking K Development Fees will be deposited in a special, segregated, revenue subfund (the “**Valencia Road Fund**”) within the Southeast Region Impact Fee Benefit Area Fund.
- 5.5.2. Reimbursement of County from Fund. As each Debt-Service Payment is made, County will transfer an equal amount from the Valencia Road Fund to whatever other County fund the County chooses, to reimburse the County for the Debt-Service Payment.
- 5.5.3. Prepayment of Bonds. If the balance of the Valencia Road Fund is built up to the point that it exceeds one year’s Debt Service Payments, County, with Developer approval, may use the additional funds to pay down the principal on the Bonds at the next earliest call date. In addition, if at any time after the fourth year of Bond Issuance (or such other date as may be provided for in the Bonds), the Developer desires to pre-pay the Bonds, the Developer may do so provided that it pays any applicable prepayment premium incurred by the County in connection with such prepayment.
- 5.5.4. Shortfalls. “**Debt Service Shortfall**” means the amount by which a semi-annual Debt-Service Payment exceeds the amount of funds available in the Valencia Road Fund at the time of the payment.
 - 5.5.4.1. Estimated Payments. Developer will, after sale of the Bonds, pay to County, on a quarterly basis, half the amount of the estimated Debt Service Shortfall for the next semi-annual Debt-Service Payment. The second and fourth payments must be made 30 days before the County’s Debt-Service Payment is due.
 - 5.5.4.2. Reconciliation. If, when the transfer from the Valencia Road Fund to the County is made under Section 5.5.2 above, the actual Debt Service Shortfall exceeds the payments made under Section 5.5.4.1 based on estimates, Developer will immediately pay to County the difference. If the actual Debt Service Shortfall is less than the estimated payments, County will retain the excess funds and Developer will receive a credit in that amount against the next estimated payment.

5.5.4.3. No Assignment. Developer may not assign to any other party its obligation to make these Debt-Service Shortfall payments (the “**Shortfall Obligation**”) without County’s express, written consent, which consent will not be unreasonably withheld, provided that Developer furnishes reasonable proof that the proposed assignee is at least as financially strong as Developer.

5.6. **Security for Developer’s Obligation to pay the Debt Service Shortfall.**

5.6.1. Deed of Trust. To secure Developer’s LOC Obligation as defined below, and its Shortfall Obligation, Developer will provide the County with a first-position deed of trust (the “**Deed of Trust**”), in the form attached as **Exhibit C**, on the property described on **Exhibit D** (the “**Deed-of-Trust Property**”). County acknowledges that, as of the effective date of this Agreement, the Deed-of-Trust Property has a fair market value in excess of \$19,200,000 (120% of the Bond Authorization). Developer will demonstrate to the satisfaction of County that the Trust holds title to the Deed-of-Trust Property and will consent to recordation of the Deed of Trust and will obtain, at its cost, a lender’s policy of title insurance in the amount of \$19,200,000, naming County as the insured (the “**Lender’s Policy**”).

5.6.2. Release of Deed of Trust Property.

5.6.2.1. Upon Completion of the Project and Property Spine Infrastructure. Upon completion of the Project and the spine infrastructure benefitting the Deed-of-Trust Property described on **Exhibit E** (the “**Property Spine Infrastructure**”), the County will obtain an appraisal of the Deed of Trust Property from a certified independent appraiser selected by County utilizing appraisal assumptions to be mutually agreed upon by County and Developer at that time. Developer will pay the cost of the appraisal and the cost of that appraisal will not be an Eligible Project Cost. Upon County’s receipt and approval of the appraisal, Developer may request a release of specified portions of the Deed of Trust Property. County will release the parcels requested, provided that the remaining portions of the Deed of Trust Property subject to the Deed of Trust have a value of at least \$19,200,000 (120% of the Bond Authorization).

5.6.2.2. Upon Principal Reduction. After the initial release described above, County will from time to time, if requested by Developer, as the outstanding principal balance of the Bonds is reduced, release portions of the Deed-of-Trust Property from the Deed of Trust, but only if the value of the remaining Deed-of-Trust Property is, in the County’s reasonable judgment, no less than 120% of the then-outstanding principal balance of the Bonds. In order to verify the value of the remaining Deed-of-Trust property, at any point at which a partial release is requested, County may obtain an appraisal from a

certified independent appraiser selected by County utilizing appraisal assumptions to be mutually agreed upon by County and Developer at that time. Developer will pay the cost of the appraisal and the cost of that appraisal will not be an Eligible Project Cost.

5.6.2.3. Full Release. County will release the remaining Deed-of-Trust Property upon full repayment of the Bonds, or at such earlier time as the monies in the Valencia Road Fund are sufficient to cover all remaining Debt Service Payments as they come due, assuming the monies are invested at the rates projected for the Arizona State Treasurer's Local Government Investment Pool 5.

5.6.3. Letter of Credit.

5.6.3.1. Developer will deliver to County a clean, unconditional, irrevocable, transferable standby letter of credit in the amount of one year's Debt Service payments (the "**Letter of Credit**"), in form and issued by a financial institution (the "**Issuer**") satisfactory to County in its reasonable discretion. The Issuer must be a solvent, nationally-recognized bank with a long-term rating of BBB or higher, or a national banking association, and the Letter of Credit must be payable at an office of the Issuer in Pima County.

5.6.3.2. County may draw on the Letter of Credit if Rocking K fails to make a Debt Service Shortfall payment when due. The Letter of Credit must permit partial draws, and provide that draws will be honored on receipt by Issuer of the original or a certified copy of the Letter of Credit accompanied by a written statement signed by the Pima County Administrator certifying that County is entitled to draw on the Letter of Credit under this Agreement.

5.6.3.3. The Letter of Credit must automatically renew annually without at least 30 days' advance written notice from the Issuer to County of nonrenewal, and remain in place until the Bonds have been fully paid, or until such earlier time as the monies in the Valencia Road Fund are sufficient to cover all remaining Debt Service Payments as they come due, assuming the monies are invested at the rates projected for the Arizona State Treasurer's Local Government Investment Pool 5.

5.6.3.4. Notwithstanding anything to the contrary in this Section 5.6.3, Developer may at any time, in lieu of providing the Letter of Credit, substitute cash in the same amount as the Letter of Credit. Developer's obligation to provide and timely renew the Letter of Credit is referred to in this Agreement as the "**LOC Obligation.**"

5.6.4. Enforcement. If Developer fails to comply with the Shortfall Obligation or the LOC Obligation, and does not cure that failure within five (5) days after it receives written notice from the County of the failure the County may foreclose on the Deed of Trust and/or exercise any right with respect to any other security provided for the Shortfall Obligation or LOC Obligation. County, however, specifically agrees that no other circumstance, including any breach or alleged breach of any other obligation under this Agreement will entitle the County to foreclose on the Deed of Trust or any other security provided under this Section 5.6.

5.6.5. Annexation. Developer may not, so long as any of the Bonds are outstanding, consent to annexation into City of any of the Property that is not presently incorporated unless at that time the property to be annexed has been fully developed and all County development fees with respect to that development have been paid. If annexation nevertheless occurs, it will not affect Developer's obligation to pay Debt Service Shortfalls.

5.6.6. DVI Guarantee.

5.6.6.1. Guarantee. DVI absolutely, unconditionally and irrevocably guarantees, as primary obligor and not merely as surety, the full and punctual payment and performance of Developer's LOC Renewal and Shortfall Requirements, plus all costs, expenses and fees (including the reasonable fees and expenses of County's counsel) in any way relating to the enforcement or protection of County's rights relating thereto (collectively, the "**Obligations**"). Notwithstanding the foregoing, the parties agree that: (i) DVI is only guaranteeing the performance of the Obligations, and not any other obligation, liability, covenant or agreement of Developer under this Agreement; and (ii) the total liability of DVI under this Guaranty is limited to the Not-to-Exceed Amount plus the foregoing expenses and costs of enforcing this Guaranty.

5.6.6.2. Guarantee Absolute and Unconditional. DVI agrees that its Obligations under this Guaranty are irrevocable, continuing, absolute and unconditional and will not be discharged or impaired or otherwise affected by, and DVI hereby irrevocably waives any defenses to enforcement it may have (now or in the future) by reason of:

- A. Any illegality, invalidity or unenforceability of any Obligation or this Agreement or any related agreement or instrument, or any law, regulation, decree or order of any jurisdiction or any other event affecting any term of the Obligations.
- B. Any change in the time, place or manner of payment or performance of, or in any other term of the Obligations, or any

rescission, waiver, release, assignment, amendment or other modification of this Agreement.

- C. Any taking, exchange, substitution, release, impairment, amendment, waiver, modification or non-perfection of any collateral or any other guaranty for the Obligations, or any manner of sale, disposition or application of proceeds of any collateral or other assets to all or part of the Obligations.
- D. Any default, failure or delay, willful or otherwise, in the performance of the Obligations.
- E. Any change, restructuring or termination of the corporate structure, ownership or existence of DVI or Developer or any insolvency, bankruptcy, reorganization or other similar proceeding affecting Developer or its assets or any resulting restructuring, release or discharge of any Obligations.
- F. Any failure of County to disclose to DVI any information relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of Developer now or hereafter known to County, DVI waiving any duty of County to disclose such information.
- G. The failure of any other guarantor or third party to execute or deliver this Guaranty or any other guaranty or agreement, or the release or reduction of liability of DVI or any other guarantor or surety with respect to the Obligations.
- H. The failure of County to assert any claim or demand or to exercise or enforce any right or remedy under the provisions of this Agreement.
- I. The existence of any claim, set-off, counterclaim, recoupment or other rights that DVI or Developer may have against County (other than a defense of payment or performance).
- J. Any other circumstance (including, without limitation, any statute of limitations), act, omission or manner of administering this Agreement or any existence of or reliance on any representation by County that might vary the risk of DVI or otherwise operate as a defense available to, or a legal or equitable discharge of, DVI.

5.6.6.3. Waivers.

- A. DVI hereby unconditionally and irrevocably waives any right to revoke this Guaranty and acknowledges that this Guaranty is

continuing in nature and applies to all of the Obligations, until the complete, irrevocable and infeasible payment and satisfaction in full of the Obligations.

- B. This Guaranty is a guaranty of payment and performance and not of collection. County will not be obligated to enforce or exhaust its remedies against Developer or under this Agreement before proceeding to enforce this Guaranty.
- C. This Guaranty is a direct guaranty and independent of the obligations of Developer under this Agreement. County may resort to DVI for payment and performance of the Obligations whether or not County has resorted to any collateral therefor or has proceeded against Developer or any other guarantors with respect to the Obligations. County may, at County's option, proceed against DVI and Developer, jointly and severally, or against DVI only without having obtained a judgment against Developer.
- D. DVI hereby unconditionally and irrevocably waives promptness, diligence, notice of acceptance, presentment, demand for performance, notice of non-performance, default, acceleration, protest or dishonor and any other notice, other than any notice required under this Agreement, with respect to any of the Obligations and this Guaranty and any requirement that County protect, secure, perfect or insure any lien or any property subject thereto.
- E. DVI waives and will not exercise any rights that it may acquire by way of subrogation, contribution, reimbursement or indemnification for payments made under this Guaranty until all Obligations have been infeasibly paid and discharged in full.

5.6.6.4. Assignment. This Guaranty is binding upon and inures to the benefit of the parties hereto and their respective successors and assigns; provided, however, that DVI may not, without the prior written consent of County, assign any of its rights, powers or obligations under this Section 5.6.6 without County's express, written consent, which consent will not be unreasonably withheld, provided that Developer furnishes reasonable proof that the proposed assignee is at least as financially strong as Developer. County may assign this Guaranty and its rights hereunder without the consent of DVI. Any attempted assignment in violation of this paragraph will be null and void.

5.6.7. Substitute Collateral. Upon County's approval, which approval will not be unreasonably withheld, Developer may obtain a release of the lien of the Deed

of Trust at such time as Developer provides County with either: (i) a deed of trust in the same form on substitute real property with a value, in County's reasonable judgment, equal to at least 120% of the then outstanding principal balance of the Bonds; or (ii) cash or a Letter of Credit (which Letter of Credit would need to be issued for the remaining term of the Bonds) in an amount equal to the remaining outstanding principal balance of the Bonds ("**Substitute Collateral**"). In the case of real property Substitute Collateral, County may, in order to verify the property's value, obtain an appraisal from a certified independent appraiser selected by County utilizing appraisal assumptions to be mutually agreed upon by County and Developer at that time. Developer will pay the cost of the appraisal and the cost of that appraisal will not be an Eligible Project Cost. Developer will also furnish to County, at Developer's sole cost and expense, a current survey, title insurance and such other materials and information respecting the proposed substitute real property collateral as may be reasonably requested. Developer will pay for a Lender's Policy for the County, as provided in Section 5.6.1.

6. **Protected Development Rights.** 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. No future moratorium or ordinance, resolution or other land use rule, regulation or limitation on development of the Property, or any portion thereof, shall apply to the development of the Property for a period of ten years after the Effective Date of this Agreement except as provided in § 11-1204. Nothing in this Agreement shall be interpreted to restrict any development rights obtained by Rocking K pursuant to common law based on investment in the Property.
7. **Appointment of Representatives.** County and Developer will each designate a representative to act as a liaison with the other party, and may change representatives from time to time with written notice to the other Party. The initial representative for the County is the County Liaison designated for the Project, and the initial representative for Developer is its Project Manager designated by Developer for the Project. The representatives will be available at all reasonable times to discuss and review the performance of the parties to this Agreement and the development of the Property pursuant to the Specific Plan.
8. **Effective Date; Term; Recording.** The effective date of this Agreement is the date the Agreement is approved by the Board of Supervisors. The term of this Agreement is twenty (20) years from the effective date, or until the date that the Agreement is earlier terminated in accordance with its terms. County will record this Agreement in the Office of the Pima County Recorder within 10 days after the effective date.
9. **Binding Effect.** All of the provisions of this Agreement will inure to the benefit of and be binding upon the Parties, their successors and assigns, and successor owners of all or any part of the Property or the Deed of Trust Property. The City will not be deemed to be a successor to the County's rights under this Agreement if the Property is annexed.
10. **Assignment.** Except where County approval is required in this Agreement, Developer may assign its rights and obligations under this Agreement to any person or entity that has

acquired the Property or any portion of the Property and expressly agrees, in a written instrument signed by Developer and the other party, to assume such Developer's obligations, in which event Developer will be released from any such obligations assumed. Developer will notify County prior to the effective date of any assignment.

11. **Termination Upon Sale to End Purchaser or User.** This Agreement is not intended to and will not create conditions or exceptions to title or covenants running with the Property as to Public Lots as defined below. Therefore, to alleviate any concern as to the effect of this Agreement on the status of title to any of the Property, notwithstanding anything contained herein to the contrary, this Agreement will terminate without the execution or recordation of any further document or instrument as to any lot which has been finally subdivided and individually (and not in "bulk") leased (for a period of longer than one year) or sold to the end purchaser or user thereof (a "Public Lot") and thereupon such Public Lot will be released from and no longer be subject to or burdened by the provisions of this Agreement.
12. **Waiver.** No delay in exercising any right or remedy constitutes a waiver of that right or remedy, and no waiver by County or Developer of the breach of any provision in this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other provision in this Agreement.
13. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from the counterparts and the signature pages all attached to a single instrument so that the signatures of all parties may be physically attached to a single document.
14. **Notices.** Any notice to be given or served (and any election to be made or delivered) upon any party to this Agreement in connection with this Agreement must be in writing and either hand delivered or sent by certified mail, return receipt requested, to the parties at the following addresses:

Developer or DVI: Diamond Ventures, Inc.
2200 E. River Road, Suite 115
Tucson, AZ 85718
Attn: David Goldstein

With a copy to: Diamond Ventures, Inc.
2200 E. River Road, Suite 115
Tucson, AZ 85718
Attn: Chad Kolodisner

County: Pima County Department of Transportation
201 N. Stone Ave., 4th Floor
Tucson, AZ 85701
Attn: Director, Pima County Department of Transportation

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

Any written notice is deemed delivered and received on either (a) the date of delivery, if delivered by hand; or (b) three business days after mailing by certified mail, return receipt requested.

A party may change the address at which the party receives notice, or the person to whom a notice is to be addressed, by giving written notice of the new address or new person to whom the notice is to be addressed in the same manner as any other notice is given under this Section.

15. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter in it. All prior and contemporaneous agreements, representations, and understandings of the Parties, written or oral, are by this Agreement superseded and merged in this Agreement.
16. **Governing Law.** This Agreement shall be construed and interpreted under the laws of Arizona, and this Agreement is subject to A.R.S. § 38-511.
17. **No Partnership; Third Parties.** The Parties do not intend by this Agreement to create, and nothing in this Agreement shall create, any partnership, joint venture, or other arrangement among the Parties. Except as expressly provided in this Agreement, this Agreement is not intended to, and does not, benefit any person, firm, organization, or corporation that is not a party to this Agreement.
18. **Default.** In the event of any default or other non-performance of any term or provision of this Agreement, the non-defaulting party shall be entitled to all remedies at law or in equity, including the right to enforce this Agreement by action for specific performance or to file an action for damages, which rights and remedies shall be cumulative and not exclusive.
19. **Attorney Fees.** If any party defaults under this Agreement, the defaulting party shall pay the other party's reasonable attorney fees, expert-witness fees, deposition and trial-transcript costs, and costs of court or other similar costs or fees paid or incurred by the other party by reason of or in connection with the default (whether or not legal or other proceedings are instituted). In the event any party to this Agreement finds it necessary to bring an action at law or other proceeding against any other party to enforce any of the terms, covenants, or conditions of this Agreement or any instrument executed pursuant to this Agreement or by reason of any breach of this Agreement, the prevailing party in the action or proceeding shall be paid all reasonable costs and reasonable attorney fees by the other party (to be determined by the court and not a jury), and in the event any judgment is secured by the prevailing party, all costs and fees recoverable under this Section shall be included in the judgment.

20. **Further Assurance.** Each party agrees, at the reasonable request of any other party, to execute any further documents, instruments, or other writing and to perform any acts reasonably necessary in order to fully effectuate the purpose of this Agreement.
21. **Construction.** The terms and provisions of this Agreement represent the results of negotiations between County, Developer, and DVI, each of which has been represented by independent counsel, and none 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 a party.
22. **Severability.** If any provision, other than the financing provisions, of this Agreement is declared void or unenforceable, that declaration shall have no effect on those portions of this Agreement that are not declared void. If the financing provisions of this Agreement are declared void or unenforceable, this Agreement shall terminate.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date(s) set forth below.

[REMAINDER OF PAGE INTENTIONALLY BLANK; SIGNATURE PAGES FOLLOW]

PIMA COUNTY

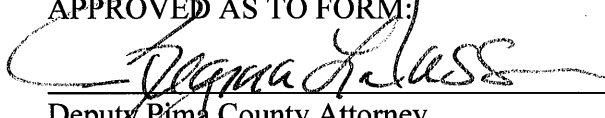
Richard Elias
Chairman, Board of Supervisors

Date: _____

ATTEST:

Julie Castaneda
Clerk of the Board of Supervisors

APPROVED AS TO FORM:



Deputy Pima County Attorney

REGINA NASSEN

STATE OF ARIZONA)
)ss.
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by Richard Elias, Chairman of the Board of Supervisors of Pima County, a political subdivision of the State of Arizona, on behalf of the County.

My commission expires:

Notary Public

ROCKING K DEVELOPMENT COMPANY, INC.,
an Arizona corporation, on behalf of itself and all
beneficiaries of the Trust

By: 
David Goldstein, President

STATE OF ARIZONA)
)ss.
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this 2nd day of
May, 2018, by David Goldstein, President of Rocking K Development Company,
Inc., an Arizona corporation, on behalf of the corporation.

My commission expires:
June 23, 2021




Notary Public

**CONSENT TO DISTRICT SECOND AMENDED AND RESTATED ROCKING K
DEVELOPMENT AGREEMENT**

Fidelity National Title Agency, Inc., an Arizona corporation, in its capacity as trustee under Trust No. 60380 and not in its corporate capacity (the "Trust"), hereby signs this Agreement solely to consent to its recordation on the real property in the District.

FIDELITY NATIONAL TITLE AGENCY, INC., an
Arizona corporation, as trustee of Trust No. 60380
and not in its corporate capacity

By: *Martha L. Hill*
Martha L. Hill, Trust Officer

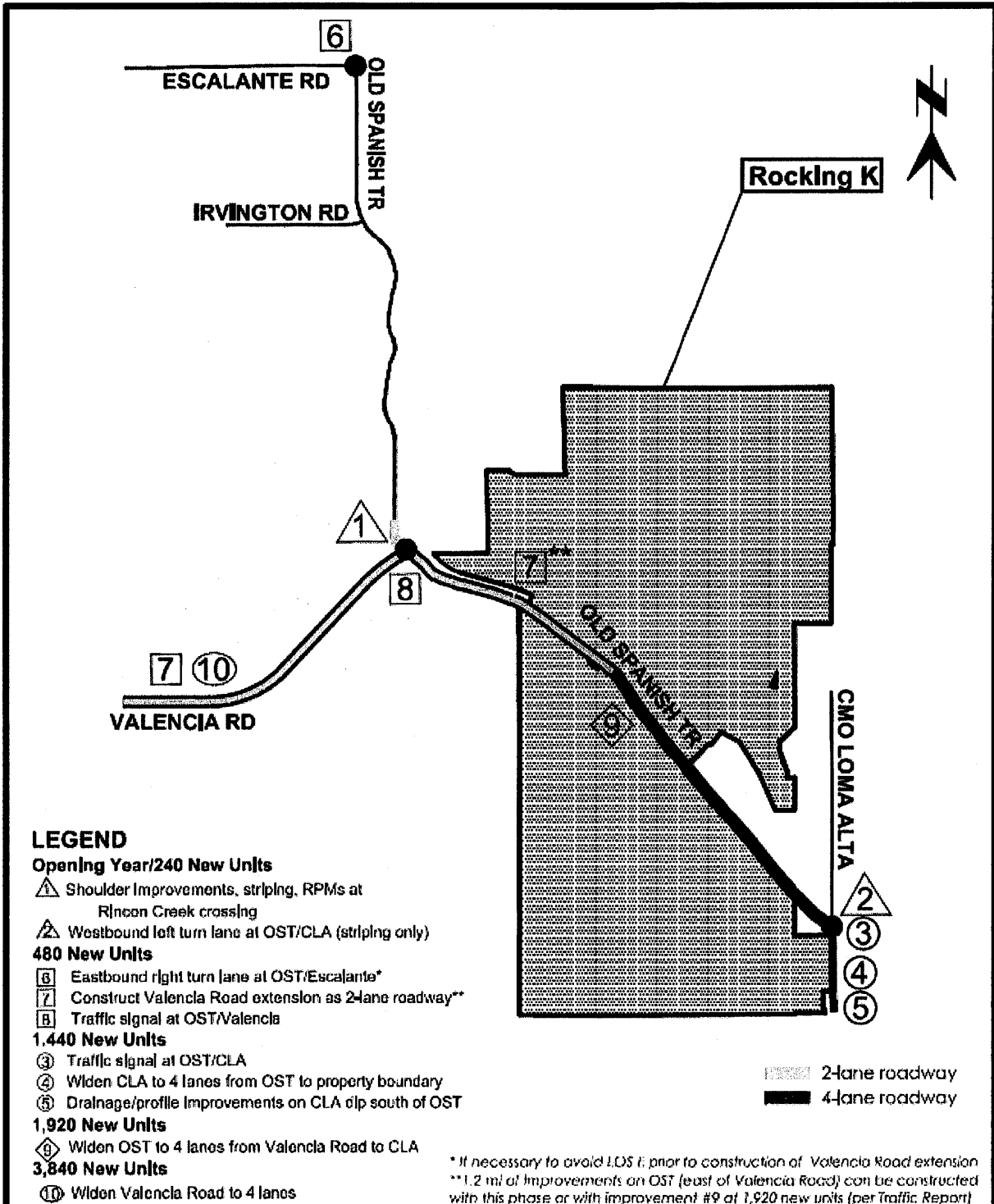
STATE OF ARIZONA)
)ss.
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this 2nd day of MAY, 2018, by Martha L. Hill, Trust Officer of Fidelity National Title Agency, Inc., an Arizona corporation.

My commission expires: *Rita L. Kippes*
Notary Public



Exhibit B “Off-Site Roadway Improvements”



ROCKING K DEVELOPMENT AGREEMENT	EXHIBIT B - ALTERNATIVE 2 OFF-SITE ROADWAY IMPROVEMENTS	PSOMAS NOVEMBER 2017
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Exhibit C
Form of Deed of Trust

When Recorded, Return To:

DEED OF TRUST

DATE: _____, 20__

TRUSTOR: Fidelity National Title Agency, Inc., as Trustee under Trust No. 60,380, and not in its corporate capacity

TRUSTOR'S ADDRESS: Fidelity National Title Agency, Inc.
Trust Department Manager/AVP
6245 E. Broadway, Suite 180
Tucson, Arizona 85711

BENEFICIARY: Pima County

BENEFICIARY'S ADDRESS: Pima County
130 W. Congress St., 10th Floor
Tucson, AZ 85701
Attn: _____

TRUSTEE: _____

TRUSTEE'S ADDRESS: _____

PROPERTY: Located in Pima County, State of Arizona, described as:
See Exhibit "A" attached hereto and made part hereof

THIS DEED OF TRUST is made between Trustor, Trustee and Beneficiary named above. Trustor irrevocably grants and conveys to Trustee in trust, with power of sale, the above-

described real property, and all buildings, improvements and fixtures located thereon or hereinafter erected thereon (hereinafter referred to as the “**Trust Property**”), which Trustor now owns or may hereafter acquire, together with the leases, rents, issues, profits, or income thereof; SUBJECT, HOWEVER, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such property income; AND SUBJECT TO covenants, conditions, restrictions, rights-of-way, and easements of record.

THIS DEED OF TRUST IS MADE FOR THE PURPOSE OF SECURING:

(A) Securing Trustor’s compliance with the LOC Obligation and Shortfall Obligation under Section 5.6 of that certain Second Amended and Restated Development Agreement dated _____ executed by Trustor and Beneficiary and any modifications thereof (the “**Development Agreement**”), a copy of which is recorded in the Office of the Pima County Recorder, Sequence No. _____; and (B) Payment of additional sums and interest thereon which may hereafter be incurred or advanced on behalf of Trustor, or its successors or assigns, in accordance with this Deed of Trust. Capitalized terms not defined in this Deed of Trust shall have the meanings given to them in the Development Agreement.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:

1. To keep the Trust Property in good condition and repair; to comply with all laws affecting the Trust Property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon the Trust Property in violation of law.

2. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee and to pay all costs and expenses of Beneficiary and Trustee, including cost of evidence of title and attorneys’ fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear or be named and in any suit brought by Beneficiary to foreclose this Deed of Trust.

3. To pay: (a) before delinquent, all taxes and assessments affecting the Trust Property; (b) when due, all encumbrances, charges and liens, with interest, on said property or any part thereof which appear to be prior or superior hereto; and (c) all costs, fees and expenses of this Deed of Trust, including, without limiting the generality of the foregoing, the fees of Trustee for issuance of any Deed of Partial Release and Partial Reconveyance or Deed of Release and Full Reconveyance; and all lawful charges, costs and expenses in the event of reinstatement of, following default under, this Deed of Trust or the obligations secured, hereby. Should Trustor fail to make any payment or to do any act as herein provided after expiration of the applicable grace period described in Paragraph 8.1 hereof, then Beneficiary or Trustee, without obligation to do so and without additional notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem reasonably necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon the Trust Property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any

such powers, pay reasonably necessary expenses, employ counsel, and pay counsel's reasonable fees.

4. To pay within ten (10) business days after receipt of written demand all sums expended by Beneficiary or Trustee pursuant to the provisions hereof, together with interest from the date of expenditure at the rate of twelve percent (12%) (the "**Default Rate**") if not paid within ten (10) business days of Beneficiary's receipt of written demand. Any amounts so paid by Beneficiary or Trustee plus interest shall become part of the debt secured by this Deed of Trust and a lien on the Trust Property or shall become immediately due and payable at option of Beneficiary or Trustee.

IT IS MUTUALLY AGREED:

5. That time is of the essence of this Deed of Trust, and that by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for failure to timely pay all other sums so secured following notice and opportunity to cure as provided for in this Deed of Trust.

6. That at any time or from time to time, and without notice, upon written request of Beneficiary, without liability therefor, without affecting the security hereof for the full amount secured hereby on all property remaining subject hereto and without the necessity that any sum representing the value or any portion thereof of the property affected by the Trustee's action be credited on the indebtedness, the Trustee may: (a) release and reconvey all of the Trust Property; (b) release and reconvey any portion of the Trust Property; (c) consent to the making and recording, or either of any map of dedication or subdivision plat for all or any of the Trust Property; (d) join in granting any easement thereon; and (e) join in or consent to any extension agreement or any agreement subordinating the lien, encumbrance or charge hereof.

7. That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust to Trustee, and upon payment of its fees, Trustee shall release and reconvey, without covenant or warranty, express or implied, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "**the person or persons legally entitled thereto.**"

8. That upon default by Trustor in the payment or performance of any indebtedness or obligation secured hereby, or any of its covenants or agreements hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written notice thereof, setting forth the nature thereof, and of election to cause to be sold the Trust Property under this Deed of Trust. Beneficiary also shall deposit with Trustee this Deed of Trust, and all documents evidencing expenditures secured hereby.

8.1 Trustor shall not be in default under this Deed of Trust unless Trustor is in default of the Development Agreement for failure to comply with the LOC Obligation or the Shortfall Obligation, including the expiration of any cure period provided thereunder, or (b) fails to perform any non-monetary obligation pertaining to the obligations of Trustor under this Deed

of Trust, within thirty (30) days following Trustor's receipt of notice of such failure, provided that if a failure to perform a non-monetary obligation is susceptible to cure within a reasonable period of time but is not reasonably capable of being cured with such thirty (30) day period and Trustor commences such cure within such thirty (30) day period and thereafter diligently prosecutes same until completion within such reasonable period of time, Trustor shall not be in default so long as Trustor commences such cure within such thirty (30) day period and thereafter diligently prosecutes same until completion within such reasonable period of time, subject, however, to the right of Beneficiary to seek provisional or other extraordinary relief immediately if the continuance of any such non-monetary default presents an imminent risk of loss or injury to Beneficiary, or if the continuance of any such non-monetary default is a violation of applicable laws.

8.2 If Trustor is in default, Beneficiary may direct Trustee to enforce any default remedy hereunder or in connection herewith, including foreclosure by Trustee's sale.

8.3 As and when requested by Beneficiary, following Trustor's default, Trustee shall record and give notice of Trustee's sale and shall sell the Trust Property at public auction to the highest bidder, all in the manner required by law. Any persons, including Trustor, Trustee or Beneficiary, may purchase at such sale. Trustee shall deliver to said purchaser its Deed conveying the Trust Property so sold, but without any covenant or warranty, express or implied. Trustor requests that a copy of any notice of Trustee's sale hereunder be mailed to Trustor at his address hereinbefore set forth.

8.4 After deducting all costs, fees and expenses of Trustee and of this Deed of Trust, including cost of evidence of title in connection with sale and reasonable attorneys' fees, Trustee shall apply the proceeds of sale in the manner provided by law.

8.5 In lieu of foreclosure by trustee's sale, pursuant to the power of sale conferred hereby, this Deed of Trust may be foreclosed in the same manner provided by law for the foreclosure of mortgages on real property, and in such event, the election to declare the unpaid balance immediately due and payable may be made in the foreclosure complaint. In such judicial proceedings, Beneficiary shall also have all other rights and remedies available to it hereunder and at law or in equity. All rights and remedies shall be cumulative. That upon default by Trustor in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder, in any such instance upon expiration of the applicable grace period provided herein, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written notice thereof, setting forth the nature thereof, and of election to cause to be sold said property under this Deed of Trust. Beneficiary also shall deposit with Trustee this Deed of Trust, and all documents evidencing expenditures secured hereby.

9. That Trustee may resign by mailing or delivering notice thereof to Beneficiary and Trustor. Beneficiary may appoint a successor Trustee in the manner prescribed by law. A successor Trustee herein shall, without conveyance from the predecessor Trustee, succeed to all the predecessor's title, estate, rights, powers and duties.

10. The term Beneficiary shall mean the owner of the indebtedness secured hereby, whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so

requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural.

11. That Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of a pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

12. That the trust relationship created by this Deed of Trust is limited solely to the creation and enforcement of a security interest in real property. All of Trustee's duties, whether fiduciary or otherwise, are strictly limited to those duties imposed by this instrument and A.R.S. § 33-801 et seq., inclusive, and no additional duties, burdens or responsibilities are or shall be placed on Trustee.

13. Trustor shall have the right to rezone, subdivide and re-subdivide, improve and develop the Trust Property. All expenses incurred in connection with any such rezoning, subdividing and improving of the Trust Property, including, but not limited to, installing streets, water lines, sewers or other utilities, shall be at the sole cost and expense of the Trustor. Beneficiary shall release from the lien of this Deed of Trust, without payment of any release price or any further consideration from Trustor, all portions of the Trust Property which are depicted on such approved final plat or map of dedication as roadways, easements, rights of way, areas to be dedicated to the public, or as common areas to be conveyed to a property owner's association. Beneficiary shall also consent to, without payment of any further consideration from Trustor, the granting of necessary easements for the installation, maintenance and repair of lines, pipes, poles and other equipment for electricity, water, sewer, gas, telephone and any other utilities which are to service the Trust Property or land in the vicinity thereof (collectively, the "Utilities") and to the subordination of the lien of this Deed of Trust to such Utility easements. As long as such action does not diminish the value of the Beneficiary's security interest in the Trust Property, in the Beneficiary's reasonable discretion, Beneficiary also agrees to consent to any and all other reasonable actions and to execute any and all other documents reasonably necessary in connection with Trustor's rezoning, subdivision, improvement and development of the Property. In that regard, but without limitation on the generality of the foregoing, Beneficiary shall consent to: applications to rezone the Property; the recordation and the dedication shown on plats and maps of dedication; the recordation of covenants, conditions and restrictions and documents of the like effect; the filing of applications with governmental bodies and public utilities relating in any manner to the development of the Trust Property; and to the construction of all improvements in connection with Trustor's development of the Trust Property.

14. Notwithstanding anything to the contrary contained herein, while there shall exist no uncured event of default hereunder, Trustor shall be entitled to obtain the release of all or portions of the Trust Property from any further right, title, interest, claim or demand of Beneficiary and Trustee (and Trustee shall release and reconvey any such portions of the Trust Property in accordance with Trustor's directions) under the terms and conditions set forth in Section 5.6.2 of the Development Agreement.

15. That this Deed of Trust shall be governed by the terms of Arizona law.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the date first set forth above.

TRUSTOR:

FIDELITY NATIONAL TITLE AGENCY, INC., an
Arizona corporation, as trustee of Trust No. 60380
and not in its corporate capacity

By: _____
Martha L. Hill, Trust Officer

STATE OF ARIZONA)
)ss.
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by Martha L. Hill, Trust Officer of Fidelity National Title Agency, Inc., an Arizona corporation.

My commission expires:

Notary Public

Exhibit D
“Deed of Trust Property”

Blocks 2, 6, 8-10, 12, and a portion of Block 1, of Rocking K South, Blocks 1-14, a subdivision of Pima County, as shown on the plat recorded in Book 64 of Maps and Plats, at Page 85, in the Office of the Pima County Recorder. A final legal description of the Deed of Trust Property will be prepared by Developer prior to conveyance of the Deed of Trust.

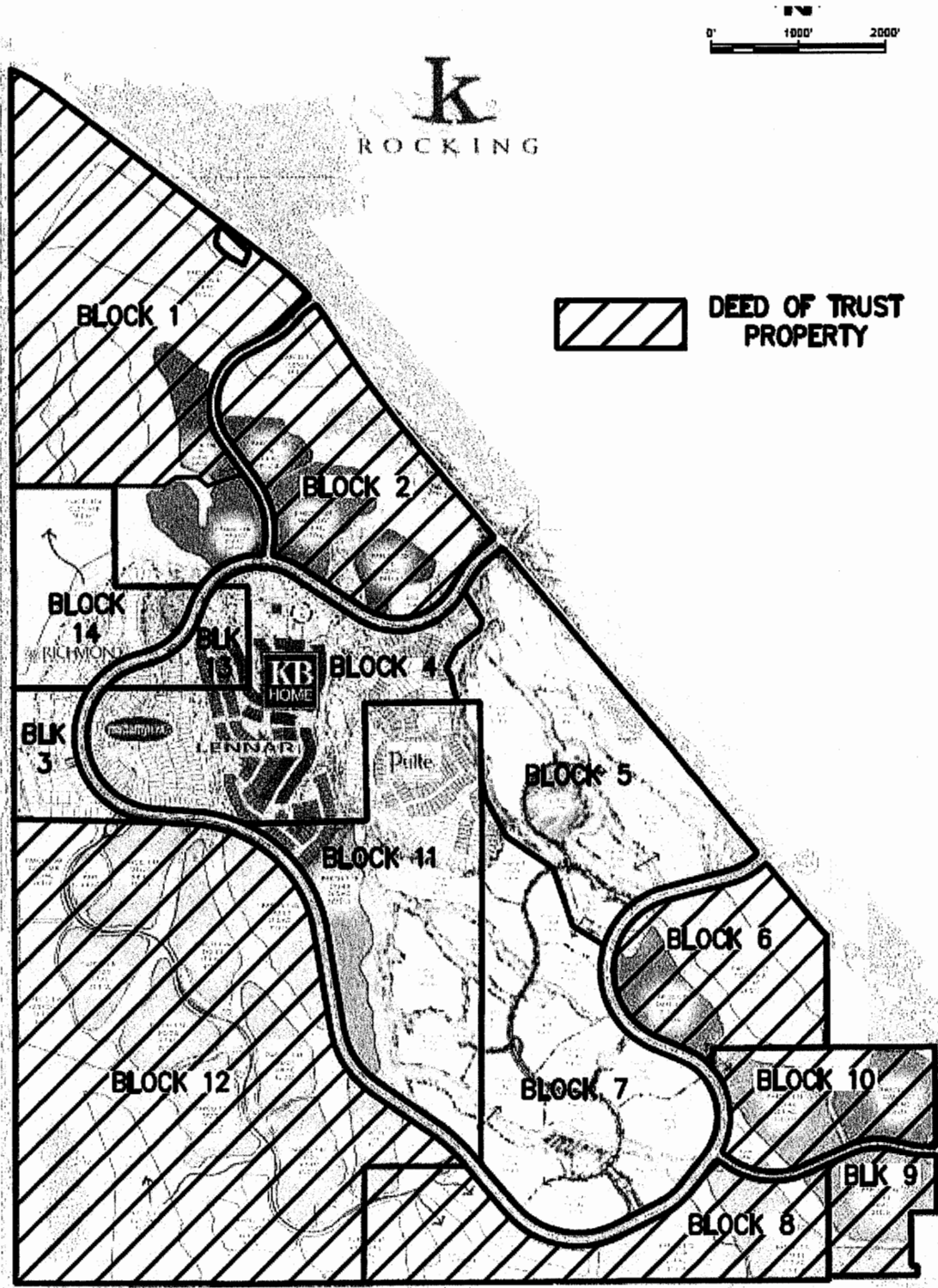


Exhibit E

DESCRIPTION OF PROPERTY SPINE INFRASTRUCTURE

The Property Spine Infrastructure shall be defined as:

1. Site Construction Permit Public Paving Plan for Rocking K South (Rocking K Ranch Loop, Monument View Way & Pump House Road (Phase 1 improvements only), sheets 1-168, approved by Pima County on 3/10/17.
2. Public Sewer Improvement Plan for Rocking K South, Phase 1 (Rocking K Ranch Loop & Monument View Way), sheets 1-17, approved by Pima County on 2/10/17.
3. Water Distribution Plan for Rocking K South, Phase 1 (Rocking K Ranch Loop & Pump House Road), sheets 1–28, approved by Spanish Trail Water Company on 6/8/17.
4. Spanish Trail Water Company, Los Reales Well Site No. 1, sheets 1-14, approved by Spanish Trail Water Company on 5/18/17.
5. Spanish Trail Water Company, 700,000 Gallon H-Zone Reservoir Plans, sheets 1-8, approved by Spanish Trail Water Company on 5/18/17.
6. Tucson Electric Power Company, Southwest Gas, Cox Communications and CenturyLink infrastructure improvements for Rocking K South, Phase 1 (no construction drawings available at this time).
7. Rocking K South Neighborhood 1 Community Park (no construction drawings available at this time).

EXHIBIT F

RIGHT-OF-WAY FOR PROJECT

Right-of-Way #16-110139 from the State of Arizona, dated January 13, 2006, including easements for the roadway and related slope easements. This Right-of-Way was originally acquired in the name of the City of Tucson, and subsequently assigned to Pima County by that Assignment of Right-of-Way dated March 10, 2016, and recorded in the Pima County Recorder's Office at Sequence No. 20160820128. It was thereafter amended by instrument dated October 31, 2016, which added an easement for drainage improvements and flowage rights and a temporary construction easement.

Tax Parcels 205-81-007L, 205-71-002F, 205-71-004C, and 205-81-005L.

Portions of tax parcels 205-67-006C, 205-81-007G, 205-81-007F, 205-71-002C, and 205-71-002D. Developer will obtain legal descriptions of the portions to be conveyed to Pima County.

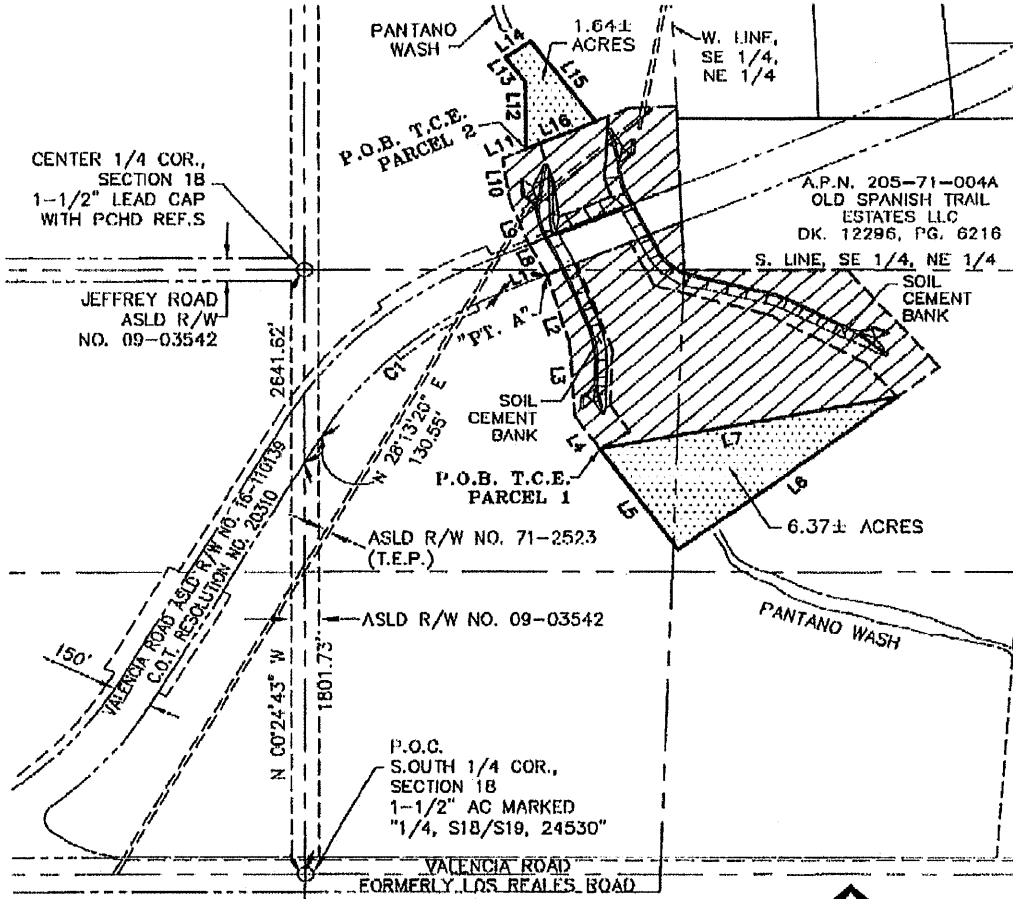
AMENDMENT ADDITIONAL CONDITIONS


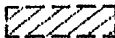
16-110139-00-002

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EXHIBIT B

LEGAL DESCRIPTION AND/OR VISUAL DEPICTION OF
TEMPORARY CONSTRUCTION EASEMENT



-  = TEMPORARY CONSTRUCTION EASEMENT
-  = PROPOSED DRAINAGE EASEMENT

SEE EXHIBIT C FOR LINE AND CURVE TABLES

