



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

Award Contract Grant

Requested Board Meeting Date: May 1, 2018

* = Mandatory, information must be provided

or Procurement Director Award

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

Meritage Homes of Arizona, Inc., an Arizona corporation ("Meritage")

***Project Title/Description:**

Conveyance to County of 15.427 acres of restricted natural open space in Pima County (the "Property"). Acq-0690.

***Purpose:**

Staff recommends that County enter into a Donation Agreement with Meritage for the donation of the Property to County. Meritage was granted a rezoning (P16RZ00012; Ordinance No. 2018-3) for property it wishes to develop upon the condition that it conserve natural open space of similar habitat value at another location to mitigate impacts its development will have on lands located in the Conservation Lands System. This donation, together with the donation of an additional 36.74 acres in Pinal County, approval of which is being considered by this Board contemporaneously herewith, will fully satisfy these natural open space requirements. The Property is located along Cochise Canyon Wash, adjacent to County-owned conservation land. Meritage does not wish to retain ownership of the Property and wishes to donate the Property to County.

***Procurement Method:**

Exempt pursuant to Pima County Code 11.04.020

***Program Goals/Predicted Outcomes:**

CLS mitigation required by Ordinance No. 2018-3 will be partially fulfilled. The County's acceptance of this 15.427-acre natural open space donation will conserve important riparian and ironwood habitat within the Conservation Lands System and expand an existing conservation area. County will accept the Property subject to Deed restrictions permanently protecting the Property as natural open space. The Property, once acquired, will be managed by Pima County Natural Resources Parks and Recreation as part of the County's Parks system.

***Public Benefit:**

County's acceptance of this 15.427 acre open space donation will conserve important riparian and ironwood habitat within the Conservation Lands System and expand an existing conservation area.

***Metrics Available to Measure Performance:**

The Property will be conveyed at no cost to County.

***Retroactive:**

No.

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Contract / Award Information

Document Type: CTN Department Code: PW Contract Number (i.e., 15-123): 18*148

Effective Date: 05/01/2018 Termination Date: 04/30/2020 Prior Contract Number (Synergen/CMS): _____

Expense Amount: \$* _____ 7-31-18 HL Revenue Amount: \$ 2,550.00

*Funding Source(s) required: PR-Conservation Lands System Mitigation

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

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

*Is the Contract to a vendor or subrecipient? _____

Were insurance or indemnity clauses modified? Yes No

If Yes, attach Risk's approval

Vendor is using a Social Security Number? Yes No

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

Amendment / Revised Award Information

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

Amendment No.: _____ AMS Version No.: _____

Effective Date: _____ New Termination Date: _____

Prior Contract No. (Synergen/CMS): _____

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

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

*Funding Source(s) required: _____

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

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

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

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

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

*All Funding Source(s) required: _____

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

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

*Funding Source: _____

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

Contact: Michael D. Stofko

Department: Real Property

Telephone: 520-724-6667

Department Director Signature/Date: [Signature] 4/9/18

Deputy County Administrator Signature/Date: [Signature] 4/10/18

County Administrator Signature/Date: [Signature] 4/11/18
(Required for Board Agenda/Addendum Items)

RESOLUTION AND ORDER NO. 2018 - _____

**RESOLUTION OF THE PIMA COUNTY BOARD OF
SUPERVISORS ACCEPTING A DONATION OF A 15 ACRE
PARCEL OF UNDEVELOPED REAL PROPERTY FROM
MERITAGE HOMES OF ARIZONA, INC., AND
DESIGNATING THE DONATION PARCEL AS PART OF
THE COUNTY PARKS SYSTEM**

The Board of Supervisors of Pima County, Arizona finds:

1. Meritage Homes of Arizona, Inc., an Arizona Corporation (“Donor”) owns a fifteen (15) acre parcel of land along the Cochie Canyon Wash, adjacent to County-owned conservation land in Pima County (the “Donation Parcel”);
2. Donor is desirous of conveying to the County, by donation, the entirety of the Donation Parcel in fee;
3. County is desirous of accepting the donation of the Donation Parcel from Donor;
4. County and Donor have agreed upon the terms of a Donation Agreement to effectuate the conveyance of the Donation Parcel to the County;
5. County has the authority under A.R.S. Section 11-932 to acquire lands and dedicate the same as Parks; and
6. The Donation Parcel is being acquired for open space and conservation values and will be administered by the Pima County Department of Natural Resources, Parks and Recreation;

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Donation Agreement is hereby approved.

2. The Chairman is hereby authorized and directed to sign the Donation Agreement and the Deed to the Donation Parcel on behalf of the Pima County Board of Supervisors accepting title to the Donation Parcel.

3. The Chairman is also hereby authorized to sign any and all additional documents related to the acquisition of the Donation Parcel for the Pima County Board of Supervisors.

4. The Pima County Board of Supervisors hereby designates the Donation Parcel, as and when the Deed is recorded, as part of the Pima County Parks System.

5. The various officers and employees of Pima County are hereby authorized and directed to perform all acts necessary and desirable to give effect to this Resolution.

PASSED, ADOPTED AND APPROVED this _____ day of May, 2018.


PIMA COUNTY BOARD OF SUPERVISORS:

Richard Elias, Chairman

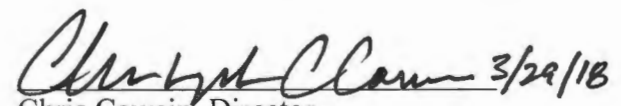
Date: _____

ATTEST:

Julie Castaneda
Clerk of the Board of Supervisors

APPROVED AS TO FORM:
 3/29/18

Tobin Rosen
Deputy County Attorney

APPROVED AS TO CONTENT:
 3/29/18

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

PIMA COUNTY DEPARTMENT OF: REAL PROPERTY SERVICES PROJECT: Accept Donation of Real Property Consisting of Approximately 15.427 Fee Acres DONOR: Meritage Homes of Arizona, Inc., an Arizona Corporation REVENUE: \$2,550.00	CONTRACT
	NO. <u>CTN-PW-18-148</u> AMENDMENT NO. _____ <small>This number must appear on all invoices, correspondence and documents pertaining to this contract.</small>

AGREEMENT TO DONATE REAL PROPERTY

1. **Parties; Effective Date.** This agreement ("**Agreement**") is entered into by and between Meritage Homes of Arizona, Inc., an Arizona corporation ("**Donor**"), and Pima County, a political subdivision of the State of Arizona ("**Donee**"). Donor and Donee are hereinafter referred to collectively as the "**Parties**". This Agreement is effective on the date Donor and Donee have executed this Agreement (the "**Effective Date**"). The date Donee signs is the date the Chairman of the Pima County Board of Supervisors signs this Agreement.

2. **Background & Purpose.**

2.1. Donor has the option to purchase certain real property in Pima County, Arizona, consisting of approximately 15.427 acres, legally described and depicted, collectively, on **Exhibit A** attached hereto, and commonly known as a portion of Assessor's Tax Parcel 218-10-005U, including all structures and improvements situated thereon, if any (the "**Property**");

2.2. Donor desires to donate the Property to Donee, subject to those terms and conditions as set forth with specificity in this Agreement; and

2.3. Donee desires to accept the Property, subject to the express terms and conditions of this Agreement.

3. **Donation.**

3.1. Donee hereby acknowledges that Donor does not currently own the Property, and all obligations of Donor hereunder in connection with any conveyance of the Property to Donee are in all cases subject to Donor's acquisition of the Property. In

the event the agreement pursuant to which Donor has the option to acquire the Property terminates for any reason, Donor shall provide notice of such termination to Donee and this Agreement shall automatically terminate and be of no further force or effect except for any terms and conditions that specifically survive such termination.

3.2. Subject to the terms and conditions set forth herein, including, without limitation, Donor's acquisition of the Property, Donor agrees to donate to Donee the Property, including all wells, water rights and mineral rights appurtenant to the Property, if any and to the extent, if any, that Donor has an interest therein, free and clear of all liens and encumbrances, except those set forth on **Exhibit B** attached hereto.

3.3. At the Closing (as hereinafter defined), Donor will convey the Property to Donee pursuant to a Special Warranty Deed (the "**Deed**") in the form of **Exhibit C** attached hereto.

3.4. Donor acknowledges and agrees that the decision to donate the Property 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.

3.5. Donee agrees to cooperate with Donor by signing such tax or other forms as may be reasonably required to be included with Donor's federal and state income tax returns in connection with the tax treatment of the donation; provided, however, Donee makes no representation or warranty to Donor regarding the tax treatment of the donation.

4. **Inspection and Access.**

4.1. Inspection Period. For a period of forty-five (45) days commencing on the Effective Date (the "**Inspection Period**"), Donee (and its respective employees, agents, representatives and contractors) will have the right to enter upon the Property at reasonable times and from time to time, upon forty-eight (48) hours notice by telephone to Donor, for the purpose of viewing, inspecting, testing, appraising, surveying and studying the Property ("**Inspection**"). Donee will, promptly following any Inspection, return the Property to the condition it was in immediately prior to such Inspection. Donee agrees, to the extent permitted by law, to indemnify, defend, and hold Donor and the owner of the Property (if not Donor) harmless from, all claims, damages, expenses, and actions arising from any Inspection, and this indemnity shall survive the Closing or the cancellation of this Agreement.

4.2. Reports. Within ten (10) days after the Effective Date, Donor will provide copies to Donee of the following, to the extent such exist and are in Donor's possession or control: use agreements regarding the Property; service, management and other agreements regarding the Property whose terms do not expire prior to the date of the Closing; permits, certificates, plans or specifications regarding the Property; soils reports, property inspections, hazardous/toxic material or environmental reports regarding the Property; surveys of the Property; and registrations, test results and studies regarding any wells located on the Property (all of which are hereinafter referred to as the "**Donor Documents**"). If this Agreement is terminated for any reason, Donee will return all of the Donor Documents and any copies made by Donee of the Donor Documents to Donor. During the term of this Agreement, Donee will deliver to Donor copies of all non-proprietary third party reports, studies, surveys, plats, engineering data or work product or other work product pertaining to the Property as the same are prepared. The delivery by Donor or Donee to the other Party of any such third party reports, studies, surveys, plats, engineering data or work product or other work product is without any representation or warranty.

4.3. Environmental Inspection. If an environmental inspection recommends further testing or inspection, Donee may elect, by giving written notice to Donor, to extend the Inspection Period for an additional twenty (20) days to conduct further investigations. If the Inspection Period is extended, the term "**Inspection Period**" will then include the additional period.

4.4. Objection Notice. Donee will provide written notice to Donor, prior to expiration of the Inspection Period, of any items that Donee disapproves as a result of any Inspection (including environmental conditions) (the "**Objection Notice**"). If Donee sends the Objection Notice, Donor may, within ten (10) business days of receipt of the Objection Notice, notify Donee if Donor is willing to cure any of the items to which Donee objected (the "**Cure Notice**"). If Donor elects not to send Donee a Cure Notice or if Donor's Cure Notice is not acceptable to Donee, then Donee may elect to terminate this Agreement, in which case the Agreement will be terminated and of no further force and effect. If Donee fails to give the Objection Notice to Donor on or before the expiration of the Inspection Period, Donee will have waived the right to give the Objection Notice.

4.5. Closing Before Inspection Period Expires. Nothing in this Agreement precludes Donee from electing to proceed with Closing prior to the expiration of the Inspection Period, subject to the mutual agreement of Donor and Donee.

5. **Donor's Covenants.**

5.1. No Salvage. Donor will not salvage or remove any fixtures, improvements, or vegetation from the Property, but this does not prohibit Donor from removing personal property prior to the Closing. In addition, prior to Closing, Donor will not materially degrade the Property or otherwise change it in any material aspect.

5.2. Use of Property by Donor. Donor will, during the term of this Agreement, use the Property on a basis substantially comparable to Donor's historical use thereof. Donor will make no use of the Property other than the use being made of the Property as of the date the Parties sign this Agreement.

5.3. No Encumbrances. Donor will not encumber the Property with any lien that Donor will be unable to cause to be released before Closing. Donor covenants and agrees that from and after that Agreement Date through the Closing, Donor will not enter into, execute or record any covenant, deed restriction, or any other encumbrance against the Property, provided that nothing herein will prevent Donor from taking any necessary steps to obtain unencumbered fee title to the Property.

6. **No Personal Property.** The Parties acknowledge that no personal property is being transferred pursuant to this Agreement, and Donor represents that there is now, or, as of Closing, will be, no personal property located on Property.

7. **Closing.**

7.1. Closing. Subject to the terms and conditions set forth herein, including, without limitation, Donor's acquisition of the Property, the "**Closing**" will take place at Title Security Agency, 1 South Church Ave, Suite 1610, Tucson, AZ 85701, Bobbi Raymond, Escrow Agent, bobbi.raymond@titlesecurity.com, after completion of the Inspection Period, but no later than July 31, 2018, unless the Parties otherwise agree.

7.2. Prorations. The date of Closing will be used for proration of rents, property taxes and other similar costs. Donor will pay assessments due for improvement districts in full prior to Closing. Property taxes will be prorated based upon the date of Closing.

7.3. Deliveries by Donor at Closing. At Closing, Donor will deliver to Donee the following:

7.3.1. The Deed conveying fee simple title to the Property subject only to the permitted exceptions expressly set forth therein;

7.3.2. one or more assignments of all the water rights and well registrations, certificated or claimed, in which Donor has an interest and appurtenant to the Property, if any, and all certificated or claimed Type 2 water rights related to the Property which Donor owns, if any; and

7.3.3. possession of the Property.

7.4. Closing Deliveries. Each of Donor and Donee agree to deliver to Escrow Agent for the Closing such other documents as may be necessary or appropriate to consummate this transaction in accordance with the terms of this Agreement.

7.5. Closing Costs. Donor will pay all closing costs, including but not limited to title insurance premiums, escrow fees and recording fees.

8. **Endowment.**

8.1. Donor acknowledges that Donee will incur certain ongoing expenses in connection with the ownership and maintenance of the Property, and agrees to defray those expenses by payment to Donee of an annual endowment (the "**Endowment Amount**") as set forth in this Section 8.

8.2. Donor will pay to Donee, contemporaneously with the Closing conveying the Property to Donee, the sum of one-hundred fifty four dollars (\$154.00) representing the Endowment Amount for the first year.

8.3. On the first anniversary of the Closing, and on each anniversary date thereafter for as long as Donee owns the Property, Donor will pay to Donee an increased Endowment Amount. The Endowment Amount will increase each year based upon the increase of the Consumer Price Index-Urban for the Tucson metropolitan region during the prior year, which will be added to the prior year's increased Endowment Amount.

8.4. Donor may assign its obligation to pay the increased Endowment Amount to Donee each year to a homeowners' association, or to any other qualified entity that agrees in writing to pay the increased Endowment Amount to Donee, only upon the prior written consent of Donee, which consent shall not be unreasonably withheld, conditioned or delayed.

8.5. Notwithstanding any such assignment under Section 8.4 above, Donor remains liable to Donee as the primary obligor with regard to payment of the increased Endowment Amount to Donee each year. Notwithstanding anything to the contrary contained herein, Donor will be fully released from the obligation set forth in Section 8.3 above upon payment of two-thousand five-hundred fifty dollars (\$2,550.00) to Donee at Closing (the "**Release Amount**"), which Release Amount will be deposited in the Special Revenue Fund referenced in Section 8.6 below.

8.6. Donee will deposit the Endowment Amount payments in a Special Revenue Fund to be established by the Pima County Natural Resources Parks and Recreation Department, the managing department, in order to fund future expenses Donee may incur in connection with ownership and maintenance of the Property.

9. **Remedies.**

9.1. If, prior to Closing, Donee fails to perform when due any act required by this Agreement and such breach is not cured within 10 days after written notice, then Donor's sole and exclusive remedy shall be to cancel this Agreement and the escrow, without further liability hereunder (except Donor may enforce provisions which are to survive termination), such cancellation to be effective immediately upon Donor giving written notice of cancellation to Donee and Escrow Agent.

9.2. If, prior to Closing, Donor fails to perform when due any act required by this Agreement to be performed and such breach is not cured within 10 days after written notice, then, as its sole remedies Donee may either (i) cancel this Agreement and the escrow, without further liability hereunder (except Donee may enforce provisions which are to survive termination), such cancellation to be effective immediately upon Donee giving written notice of cancellation to Donor and Escrow Agent, or (ii) enforce this Agreement through an action for specific performance.

9.3. With respect to the breach of any agreements, covenants or warranties which this Agreement specifically provides are to survive the Closing, the parties shall have the right to pursue any remedies available at law or in equity, but not consequential, incidental, or punitive damages.

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

11. **Governing Law.** This Agreement is governed by the laws of the State of Arizona.

12. **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.

13. **Further Documentation.** Each party agrees in good faith to execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

14. **AS IS.** DONEE HEREBY ACKNOWLEDGES AND AGREES AS FOLLOWS: (A) DONEE IS FAMILIAR WITH THIS TYPE OF PROPERTY; (B) EXCEPT AS MAY BE SPECIFICALLY SET FORTH IN THIS AGREEMENT, THE DEED, AND/OR ANY OTHER DOCUMENT OR INSTRUMENT DELIVERED BY DONOR AT CLOSING (THE "EXPRESS REPRESENTATIONS"), NEITHER DONOR NOR ANY OF ITS AGENTS, REPRESENTATIVES, BROKERS, OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, OR EMPLOYEES HAS MADE OR WILL MAKE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY; AND (C) THE PROPERTY IS BEING DONATED TO DONEE IN ITS PRESENT "AS IS" "WHERE IS" AND "WITH ALL FAULTS" CONDITION SUBJECT ONLY TO THE EXPRESS REPRESENTATIONS. SUBJECT TO THE EXPRESS REPRESENTATIONS AND THE TERMS HEREOF, DONEE WILL BE AFFORDED THE OPPORTUNITY TO MAKE ANY AND ALL INSPECTIONS OF THE PROPERTY AND SUCH RELATED MATTERS AS DONEE MAY REASONABLY DESIRE AND, ACCORDINGLY, SUBJECT TO THE EXPRESS REPRESENTATIONS, DONEE WILL RELY SOLELY ON ITS OWN DUE DILIGENCE AND INSPECTIONS IN ACQUIRING THE PROPERTY.

15. **Waivers.** No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver be a continuing waiver. Except as expressly provided in this Agreement, no waiver shall be binding unless executed in writing by the party making the waiver. Either party may waive any provision of this Agreement intended for its benefit; provided, however, such waiver shall in no way excuse the other party from the performance of any of its other obligations under this Agreement.

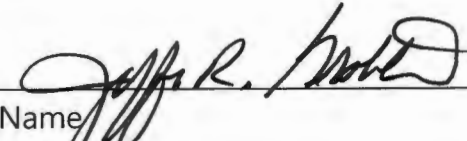
16. **Attorneys' Fees.** If any action is brought by either party in respect to its rights under this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and court costs as determined by the court.

17. **WAIVER OF JURY TRIAL.** AS A MATERIAL PART OF THE CONSIDERATION UNDER THIS AGREEMENT, THE PARTIES HERETO EACH WAIVE ALL RIGHTS TO A TRIAL BY JURY IF ANY LITIGATION ARISES IN CONNECTION WITH THIS AGREEMENT.

[signatures appear on the following page]

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

Donor: Meritage Homes of Arizona, Inc., an Arizona Corporation

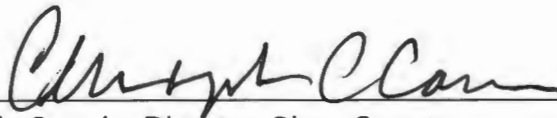
By:  Date: 3/29/18
Name
Its: President - Tucson

Donee: Pima County, a political subdivision of the State of Arizona:

Richard Elias, Chairman,
Board of Supervisors
Date

APPROVED AS TO CONTENT:

 4/6/18
Neil J. Konigsberg, Manager,
Real Property Services Department
Date

 3/29/18
Chris Cawein, Director, Pima County
Natural Resources Parks and Recreation
Date

APPROVED AS TO FORM:

 3/29/18
Tobin Rosen, Deputy County Attorney, Civil Division

TAX PARCEL NUMBER: A portion of Pima County APN 218-10-005U

Revised February 13, 2018
18004-1b



EXHIBIT " A "

Legal Description

All that portion of the Northeast Quarter of the Northwest Quarter of Section 10, Township 11 South, Range 12 East, Gila and Salt River Meridian, Pima County, Arizona and also being a portion of Parcel 1 as described in Sequence # 20151670312, recorded in the Pima County Recorder's Office and being more particularly described as follows:

Commencing at the northwest corner of the Northeast Quarter of the Northwest Quarter of said Section 10 which is monumented by a ½" iron pin " RLS 11373 ", thence North 89° 41' 42" East (basis of bearing) along the north line of said Northeast Quarter of the Northwest Quarter 547.91 feet measured (547.83 feet record) to a found ½" iron pin " RLS 35111;

Thence leaving said north line, South 00° 06' 17" East, 363.97 feet to a set ½" iron pin " RLS 12537 " and the True Point of Beginning;

Thence North 89° 41' 42" East, 725.03 feet to a set ½" iron pin " RLS 12537 ";

Thence North 00° 05' 13" West, 164.32 feet to a set ½" iron pin " RLS 12537 ";

Thence North 89° 45' 10" East, 50.00 feet to a found ½" iron pin " RLS 7599 " on the east line of the Northwest Quarter of said Section 10;

Thence South 00° 05' 13" East along said east line, 1117.83 feet measured (1117.67 feet record) to a found ACP (alum. capped pin) " RLS 7599 ";

Thence South 89° 45' 04" West, 661.24 feet measured (661.21 feet record) along the south line of the Northeast Quarter of the Northwest Quarter to the southwest corner of the Southeast Quarter of the Northeast Quarter of the Northwest Quarter of said Section 10 to an ACP " RLS 7599 ";

Thence North 00° 04' 02" West , 658.27 feet measured and record along the west line thereof to an ACP " RLS 7599 "monumenting the southeast corner of the Northwest Quarter of the Northeast Quarter of the Northwest Quarter of said Section 10;

Thence South 89° 43' 33" West along the south line thereof, 113.93 feet measured (113.84 feet record) to a found ½" iron pin " RLS 35111 ";

Thence North 00° 06' 17" West, 294.57 feet to the True Point of Beginning.

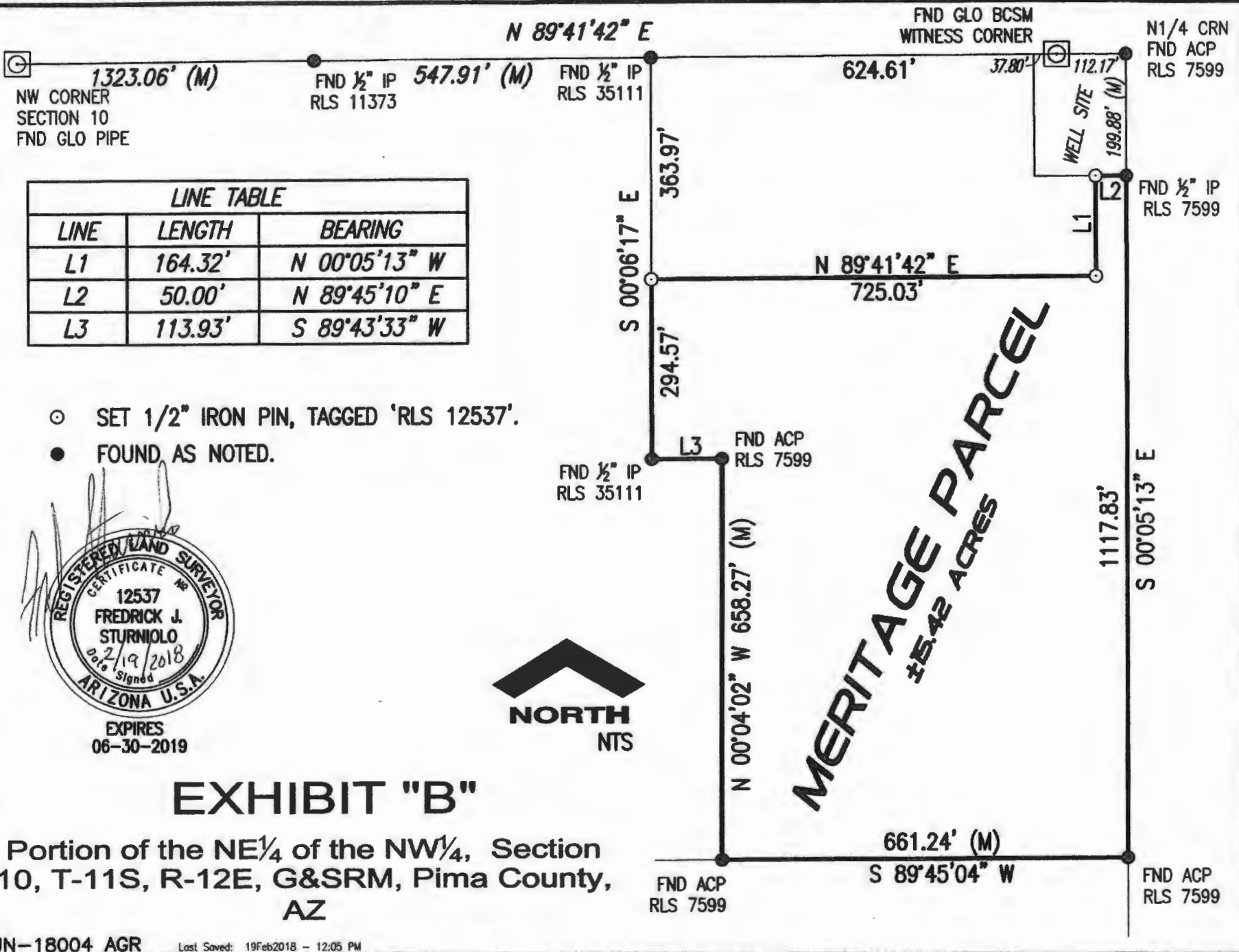
Containing 15.42 acres of land more or less.
Subject to all easements of record.



EXPIRES: 6/30/2019

8219 East 22nd Street • Tucson, Arizona 85710 • (520) 298-3200

AN EQUAL OPPORTUNITY EMPLOYER



LINE TABLE		
LINE	LENGTH	BEARING
L1	164.32'	N 00°05'13" W
L2	50.00'	N 89°45'10" E
L3	113.93'	S 89°43'33" W

- SET 1/2" IRON PIN, TAGGED 'RLS 12537'.
- FOUND AS NOTED.



EXHIBIT "B"

Portion of the NE¹/₄ of the NW¹/₄, Section 10, T-11S, R-12E, G&SRM, Pima County, AZ



First American Title™

Commitment for Title Insurance

BY

First American Title Insurance Company

Schedule BII

Order No.: 60015730-001-B13-BW

EXCEPTIONS

The policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

1. RESERVATIONS contained in the Patent from the United States of America, recorded in Book 254 of Deeds at page 103, reading as follows:

RESERVED from the lands hereby granted a right of way thereon for ditches or canals constructed by the authority of the United States of America. Excepting and reserving, however, to the United States all the coal and other minerals in the lands so entered and patented, together with the right to prospect for, mine, and remove the same pursuant to the provisions and limitations of the Act of December 29, 1916 (39 Stat., 862).

2. TAXES AND ASSESSMENTS collectible by the County Treasurer, a lien payable but not yet due for the following year:

Second half of 2017

3. WATER RIGHTS, claims or title to water, and agreements, covenants, conditions or rights incident thereto, whether or not shown by the public records.
This exception is not limited by reason of the disclosure of any matter relating to Water Rights as may be set forth elsewhere in Schedule B.

4. RESTRICTIONS, CONDITIONS, COVENANTS, RESERVATIONS, including but not limited to any recitals creating easements, liabilities, obligations or party walls, omitting, if any, from the above, any restrictions based on race, color, religion sex, handicap, familial status or national origin contained in instrument:

<u>Recorded in Docket</u>	<u>6260</u>
<u>Page</u>	<u>454</u>

5. EASEMENT and rights incident thereto, as set forth in instrument:

<u>Recorded in Docket</u>	<u>6657</u>
<u>Page</u>	<u>564</u>
Purpose	electric facilities

6. EASEMENT and rights incident thereto, as set forth in instrument:

<u>Recorded in Docket</u>	<u>8538</u>
<u>Page</u>	<u>1812</u>
And in Docket 9856 at page 2100	
Purpose	ingress and egress and utilities

7. EASEMENT and rights incident thereto, as set forth in instrument:

<u>Recorded in Docket</u>	<u>10266</u>
<u>Page</u>	<u>7</u>
Purpose	ingress and egress



First American Title™

Commitment for Title Insurance

BY

First American Title Insurance Company

Schedule BII (Continued)

Order No.: 60015730-001-B13-BW

8. EASEMENT and rights incident thereto, as set forth in instrument:

Recorded in Docket 10266

Page 11

Purpose ingress and egress and utilities

9. EASEMENT and rights incident thereto, as set forth in instrument:

Recorded in Docket 10657

Page 237

Purpose ingress and egress and utilities

10. EASEMENT and rights incident thereto, as set forth in instrument:

Recorded in Docket 12532

Page 1648

Purpose ingress and egress

11. INTENTIONALLY OMITTED

12. MATTERS disclosed in Affidavit of Disclosure recorded at Sequence No. 20151670311

13. **THE LACK of a legal right of access recorded in insurable form to and from said land to a public street. Notwithstanding the affirmative assurance of Paragraph 4, the Company is unwilling to insure access.**

14. RIGHTS OF PARTIES in possession.

NOTE: This exception will be amended or deleted upon the submission of the corresponding documents required in Schedule B, Part I.

END OF SCHEDULE BII

When Recorded Return to:
Pima County Real Property Services
201 N. Stone Avenue, 6th Floor
Tucson, AZ 85701-1215

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

**Special Warranty Deed
With Restrictions**

Meritage Homes of Arizona, Inc., an Arizona Corporation, the "Grantor" herein, does hereby convey to PIMA COUNTY, a political subdivision of the State of Arizona, the "Grantee" herein, the following real property (the "Property") situated in Pima County, Arizona, together with all rights and privileges appurtenant thereto:

As described in Exhibit "A" and depicted in Exhibit "A-1" attached hereto.

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

Subject, further, to an express restriction upon any development, subdivision or splitting of the Property into smaller parcels (the "Deed Restriction"), except as set forth below. The Deed Restriction may only be amended in a writing signed by Grantor and Grantee. The Deed Restriction shall run with the land in perpetuity and be binding upon the Grantee, its successors and assigns. The Deed Restriction is intended for the express benefit of the citizens of Pima County, Arizona and shall be enforceable by Grantor and any third party expressly designated by Grantor in writing to enforce the Deed Restriction contained herein. Any party who may enforce the Deed Restriction may maintain an action in equity to enforce said restriction, including the granting of injunctive relief and if successful will be entitled to an award of attorney fees and costs incurred in such enforcement action. Any conveyance of the Property in violation of the Deed Restriction shall be null and void.

The Deed Restriction is not intended to and will not operate to restrict Grantee's use of the structures or improvements situated on the Property at the time of the recording of this Deed in any manner, or the maintenance, repair and replacement of such existing improvements on the Property. The following activities are not in violation of the Deed Restriction and shall be considered permitted activities for purposes of the Deed Restriction:

Vegetation removal and/or alteration as reasonable and necessary for habitat improvements, to promote the recovery or reestablishment of native species, and/or for fencing, maintaining utility easements or livestock developments, and residential needs;

EXHIBIT C

2/06/2018

Use of surface or subsurface water from water developments or natural sources for on-site domestic use, habitat improvements, livestock watering, wildlife waters, fire-fighting, or dust control;

Prescribed fire for areas of 10 acres or less;

Replacement of existing wells, pumps, pipelines, windmills, septic systems, and storage tanks as necessary for permitted operations on the Property, along with maintenance and repair of existing water developments;

Construction of new roads, permanent or temporary, but only where reasonable and necessary to provide access to adjacent public lands, or livestock-related activities;

Construction of trails for non-motorized recreation including hiking, wildlife-watching, mountain biking, hunting access to adjoining public lands, and horseback riding; and/or

Wildlife management activities carried out in cooperation with the Arizona Game and Fish Department.

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

EXHIBIT ONLY --- NOT FOR EXECUTION

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Meritage Homes of Arizona, Inc., an Arizona Corporation

By: _____ DATE _____
Its: _____

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by _____, as _____ of Meritage Homes of Arizona, Inc., an Arizona corporation, on behalf of the company.

Notary Public

My commission Expires:

EXHIBIT ONLY --- NOT FOR EXECUTION

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ACCEPTED AND AGREED:

GRANTEE: PIMA COUNTY, a Political
Subdivision of the State of Arizona

By _____
Neil J. Konigsberg, Manager
Pima County Real Property Services

Date

APPROVED AS TO CONTENT:

Chris Cawein, Director, Natural
Resources Parks & Recreation Department

APPROVED AS TO FORM:

Tobin Rosen, Deputy Pima County
Attorney, Civil Division

Date

EXHIBIT ONLY --- NOT FOR EXECUTION