



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

Award Contract Grant

Requested Board Meeting Date: June 23, 2020

* = Mandatory, information must be provided

or Procurement Director Award

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

CREF3 SP Lender Holdings, LLC

***Project Title/Description:**

Starr Pass Resort Hotel Development Agreement

***Purpose:**

Amendment of the Starr Pass Resort Hotel Development Agreement to convey property and easements to Pima County, to release funds to Owner, to acknowledge compliance with Development Agreement, and to resume regular distribution of Fee revenues.

***Procurement Method:**

This Development Agreement is a non-procurement contract and not subject to Procurement rules.

***Program Goals/Predicted Outcomes:**

To comply with the terms of the Development Agreement.

***Public Benefit:**

To permanently conserve wildlife corridors between Tucson Mountain Park and Tumamoc Hill.

***Metrics Available to Measure Performance:**

Acres of property and easements conveyed to Pima County.

***Retroactive:**

No.

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*To: COB. 6-15-20
Ver. - 1
975-13*

Contract / Award Information

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

Commencement Date: _____ Termination Date: _____ Prior Contract Number (Synergen/CMS): _____

Expense Amount: \$* _____ Revenue Amount: \$ _____

***Funding Source(s) required:**

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

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

If Yes, 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 22-10.

Amendment / Revised Award Information

Document Type: CT Department Code: PR Contract Number (i.e., 15-123): 20*384

Amendment No.: 2 AMS Version No.: 1

Commencement Date: 6.23.2020 New Termination Date: 1.17.2025

Prior Contract No. (Synergen/CMS): CTN-PR-CMS125084

Expense or Revenue Increase Decrease Amount This Amendment: \$ 0.00

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

***Funding Source(s) required:** Environmental Enhancement Fee

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): _____

Commencement 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: Nicole Fyffe

Department: County Administrator's Office Telephone: 724-8149

Department Director Signature/Date: _____

Deputy County Administrator Signature/Date: _____

County Administrator Signature/Date: C. R. DeBolt 6/15/20
(Required for Board Agenda/Addendum Items)

Development Agreement Amendment

The parties to this agreement are Pima County, a political subdivision of the State of Arizona (“**County**”), CREF3 SP A Participation LLC, a Delaware limited liability company (“**CREF3**”), and 3800 WSPB Buyer LLC, a Delaware limited liability company (“**WSPB**”).

1. Background and Purpose.

- 1.1. County entered into a development agreement, the *Starr Pass Resort Hotel Development Agreement*, executed by the Chair of the Board of Supervisors on September 1, 1998, and recorded in the records of the Pima County Recorder’s Office, at Docket 10876, Page 534 (the “**Original Development Agreement**”), with Starr Pass Resort, LLC, concerning, *inter alia*, the development of the property commonly known as the Starr Pass Resort (the “**Starr Pass Resort Property**”). “**Starr Pass**,” as used in this Agreement, refers collectively to Starr Pass Resort, LLC and Starr Pass Resort Developments, LLC (“**SPRD**”), successor-in-interest to Starr Pass Resort, LLC. Starr Pass’s rights and obligations under the Development Agreement run with the land and are binding on and inure to the benefit of successor owners of the property subject to the terms of the Development Agreement.
- 1.2. County and Starr Pass also entered into a Collection Agreement and an Allocation and Use Agreement, as provided in the *Amendment to Starr Pass Resort Hotel Development Agreement*, recorded in the records of the Pima County Recorder’s Office, at Docket 11738, Page 1224 (the Original Development Agreement, as amended, being referred to herein as the “**Development Agreement**”). Capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Development Agreement. The Development Agreement was previously identified as County contract No. CTN-PR-CMS125084 but this Amendment is being identified as County contract No. CT-PR-20*384.
- 1.3. Under Section 6 of the Development Agreement, Starr Pass was obligated to convey (or cause to be conveyed) to the County certain parcels of land in fee and to grant (or cause to be granted) to the County conservation easements over certain other parcels of land. Starr Pass and the County hereby acknowledge and agree that, notwithstanding anything in the Development Agreement to the contrary, **Exhibit A** hereto sets forth the parcels of land to be conveyed in fee (the “**Core Parcels**”) to the County under the Development Agreement and **Exhibit B** hereto sets forth the remaining parcels of land over which conservation easements are to be granted to the County under the Development Agreement.
- 1.4. Under the Development Agreement, the Collection Agreement and the Allocation and Use Agreement, Starr Pass charges and the Collection Agent collects an “Environmental Enhancement Fee” in the amount of 2% of the room rent and other charges from the consumption or use of other goods, services or property at the Starr Pass Resort Property and the revenue from such Environmental Enhancement Fee is shared by the County and Starr Pass in accordance with and subject to the terms of such agreements.

- 1.5. Starr Pass failed to comply with certain of its obligations under Section 6 of the Development Agreement. The County, in 2012, stopped distributing to Starr Pass its share of the Environmental Enhancement Fee (the share of the Environmental Enhancement Fee to which the owner of the Starr Pass Resort Property is entitled being referred to herein as the “**Resort Fees**”). The County is still holding the Resort Fees that have accrued since 2012, which currently total \$3,784,397.50.
- 1.6. During the course of extended litigation between U.S. Bank National Association, as Trustee, successor-in-interest to Bank of America, N.A., as Trustee, successor to Wells Fargo Bank, N.A., as Trustee, for the Registered Holders of Credit Suisse First Boston Mortgage Securities Corp. Commercial Mortgage Pass-Through Certificates, Series 200626 TFL2, by and through its Special Servicer, CW Capital Asset Management, LLC (“**U.S. Bank**”), as plaintiff, and SPRD and certain affiliates of SPRD, including Title Security Agency of Arizona, as Trustee under Trust No. 708 (“**Trust 708**”) and StarrPass Master Homeowners’ Association (“**Starr Pass HOA**”), as defendants (the “**Starr Pass Litigation**”), Trust 708 and Starr Pass HOA executed deeds (collectively, the “**Deeds**”) conveying to Pima County the Core Parcels, which are illustrated on **Exhibit A**. The Deeds are being held by the Pima County Superior Court.
- 1.7. The Starr Pass Litigation is now final. CREF3, as successor to U.S. Bank, holds a judgment against SPRD and certain affiliates of SPRD, including Trust 708 and Starr Pass HOA, in the amount of \$192,870,321.33 (the “**Judgment**”). The Judgment has been recorded in the Pima County Recorder’s Office, at Docket 11786, Page 1300 and, as provided in A.R.S. § 33-961, is a lien on all real property owned by the judgment debtors located in Pima County.
- 1.8. WSPB, at a trustee’s sale in 2019, acquired the Starr Pass Resort Property, which is part of the property that is the subject of the Development Agreement. The property owned by WSPB includes the areas shown in green on the attached **Exhibit B** (the “**WSPB Easement Areas**”). With WSPB’s permission, the County is in the process of obtaining legal descriptions of the WSPB Easement Areas, which legal descriptions will be subject to the reasonable approval of WSPB.
- 1.9. Trust 708 is the owner of the areas shown in blue on **Exhibit B** (the “**Trust 708 Easement Areas**”). Starr Pass HOA is the owner of the area shown in red on **Exhibit B** (the “**HOA Easement Area**”).
- 1.10. The parties desire to work together to cause the conveyances required under the Development Agreement to be completed, and the Resort Fees to be released to WSPB as the owner of the Starr Pass Resort Property.
2. **The Deeds**. CREF3 will, within ten days after execution of this Amendment, file a motion with the Pima County Superior Court asking the Court to deliver the Deeds to the County, and CREF3 will take any other actions reasonably required to cause the Deeds to be released to the County. [CREF3 will also request, and will pay the premium for, standard coverage owner’s policies of title insurance insuring the County’s title to the Core Parcels provided the policy premiums for such policies shall not exceed \$5,000 in the aggregate. In connection with the conveyance of the Core Parcels to the County, CREF3 will cause the

lien of the Judgment to be released from the Core Parcels (to the extent not already released).

3. **WSPB Easements.** Within ten days after the later to occur of (1) approval and execution of this Amendment by the Board of Supervisors and (2) approval of WSPB of the legal descriptions of the WSPB Easement Areas, WSPB will execute and deliver to the County a conservation easement, substantially in the form attached as **Exhibit C** hereto, over the WSPB Easement Areas.
4. **Resort Fees.** Within ten days after delivery to the County of the Deeds, title policies to the Core Parcels in accordance with Section 2 above, and a conservation easement over the WSPB Easement Areas in the form of Exhibit C attached hereto, the County shall pay to WSPB the Resort Fees held by the County as of the date such payment is made (the "**Release Date**"). From and after the Release Date, provided that WSPB and CREF3 are complying with their remaining obligations under this Amendment and the Development Agreement, as applicable, the County shall pay WSPB the Resort Fees in accordance with and pursuant to the Development Agreement, the Collection Agreement and the Allocation and Use Agreement, with the understanding that the Resort Fees shall be paid to WSPB notwithstanding the fact that conservation easements over the Trust 708 Easement Areas and the HOA Easement Area may not have yet been granted to the County. The County hereby acknowledges that upon delivery to the County of the Deeds, the title policies, and a conservation easement over the WSPB Easement Areas, the obligations of Developer under Section 6 of the Development Agreement shall be deemed satisfied in full, provided that WSPB and CREF3 comply with the terms of this Amendment.
5. **Additional Easements.** CREF3 will, with reasonable diligence, seek to obtain a writ of execution and satisfaction of the Judgment through a sale of the real property owned by Trust 708 and Starr Pass HOA located in Pima County, specifically including the Trust 708 Easement Areas and the HOA Easement Area, and to obtain title to the 708 Easement Areas and the HOA Easement Area at any such sale of those areas under execution (it being understood that if CREF3 seeks the foregoing with reasonable diligence, then CREF3 shall not be in breach of such covenant in the event that it does not obtain a writ of execution and satisfaction of the Judgment and/or title to the 708 Easement Areas and the HOA Easement Area). If CREF3 obtains title to the Trust 708 Easement Areas and the HOA Easement Area, then CREF3 and the County will enter into a right of entry agreement in form and substance similar to the right of entry agreement entered into by WSPB and the County prior to the date hereof, the County will obtain legal descriptions of the Trust 708 Easement Areas and the HOA Easement Area, which legal descriptions will be subject to the reasonable approval of CREF3, and CREF3 will execute and deliver to the County conservation easements over the Trust 708 Easement Areas and the HOA Easement Area, substantially in the form attached as **Exhibit C**, within ten days after CREF3 approves the legal descriptions of the Trust 708 Easement Areas and the HOA Easement Area.
6. **Recordation.** County will record a memorandum in the records of the Pima County Recorder providing notice of this Amendment.

7. **Notice.** Any notice required or permitted to be given under this Contract must be in writing and be served by personal delivery or by certified mail upon the other party as follows:

Pima County:

Chuck Huckelberry, Pima County
Administrator
130 W. Congress St., 10th Fl
Tucson AZ 85701
(520) 724-8661

CREF3 SP A Participation LLC:

c/o Fortress Investment Group LLC
1345 Avenue of the Americas, 46th Floor
New York, New York 10105
Attention: General Counsel – Credit Funds
Email: gc.credit@fortress.com

3800 WSPB Buyer LLC:

c/o Fortress Investment Group LLC
1345 Avenue of the Americas, 46th Floor
New York, New York 10105
Attention: General Counsel – Credit Funds
Email: gc.credit@fortress.com

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PIMA COUNTY

Chairman, Board of Supervisors

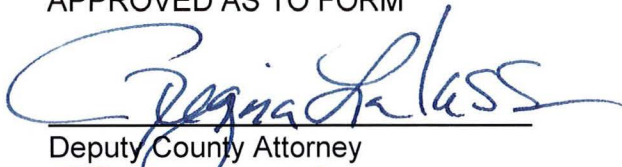
Date

ATTEST

Clerk of the Board

Date

APPROVED AS TO FORM



Deputy County Attorney



Print DCA Name

6-15-2020
Date

CREF3 SP A PARTICIPATION LLC

Authorized Officer Signature



Printed Name and Title

Date

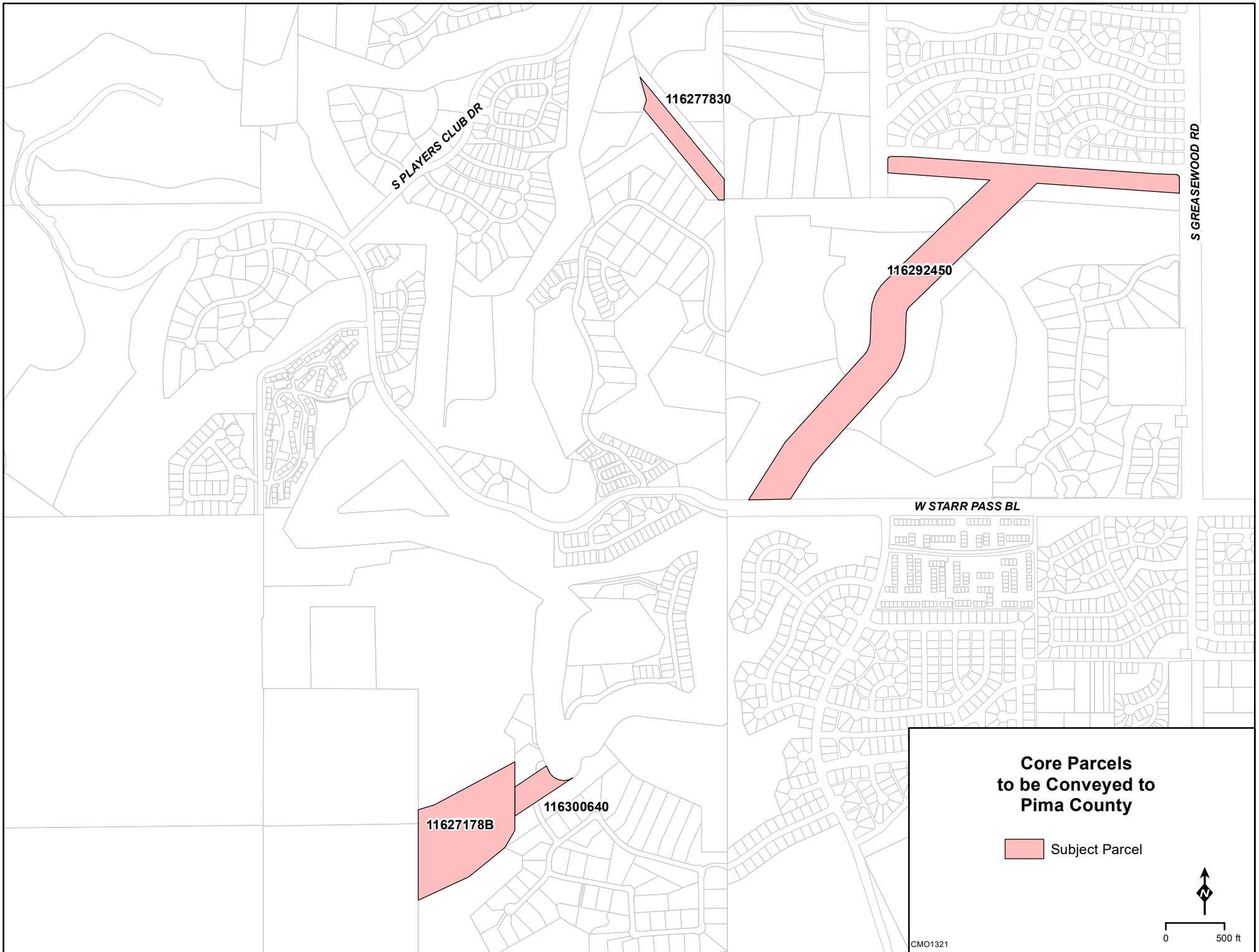
3800 WSPB BUYER LLC

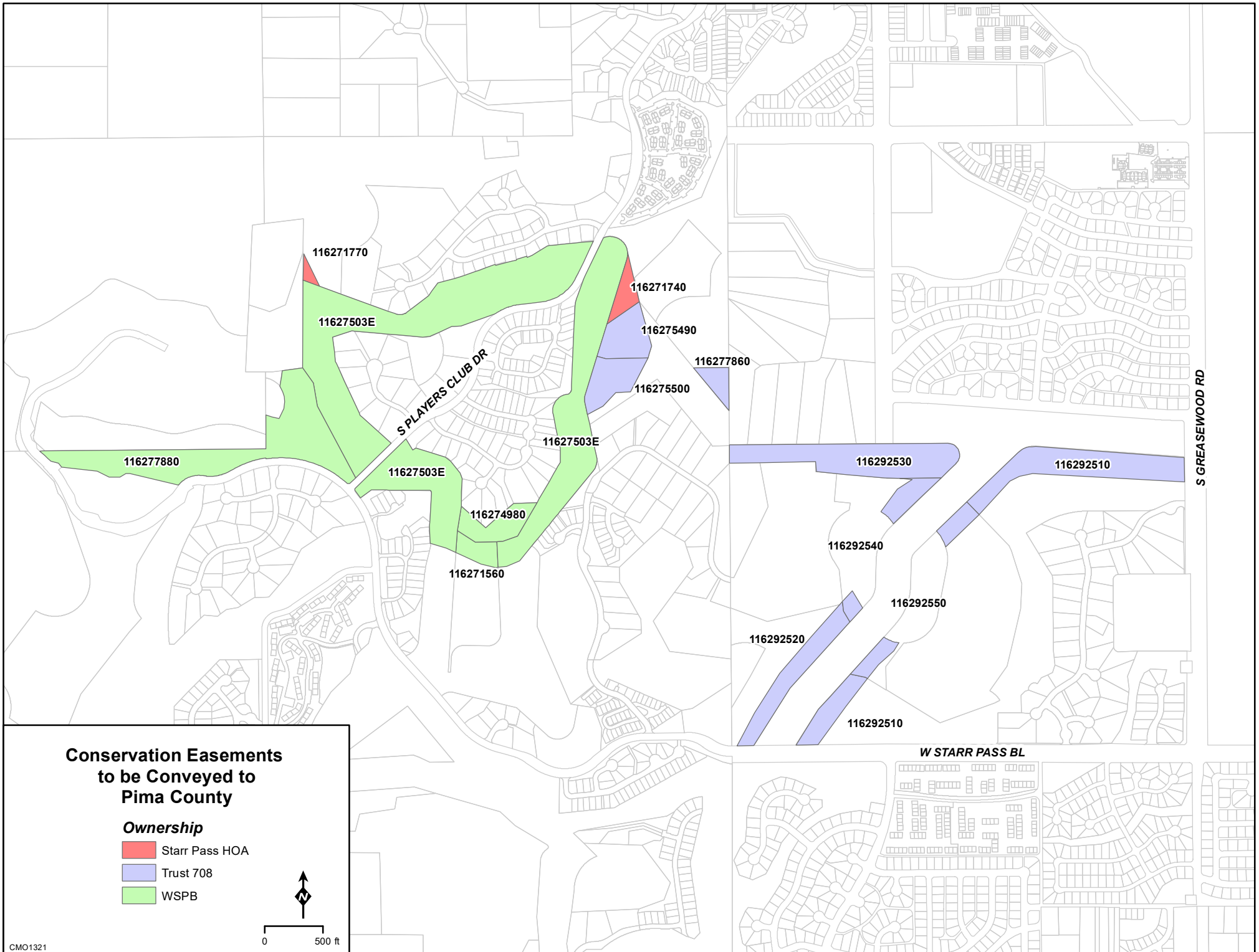


Printed Name and Title

Andrew Osborne
Authorized Signatory




Date





**Conservation Easements
to be Conveyed to
Pima County**

Ownership

-  Starr Pass HOA
-  Trust 708
-  WSPB

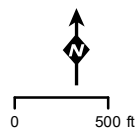


Exhibit C

Recording Requested by, and
When Recorded Mail 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)(2).

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT is made as of this ____ day of _____, 2020, by 3800 WSPB Buyer LLC, a Delaware limited liability company ("Grantor"), in favor of Pima County, a political subdivision of the State of Arizona ("Grantee") (collectively, the "Parties"), pursuant to A.R.S. §33-271 et. seq.

GRANT OF EASEMENT. In consideration of the mutual covenants contained herein, Grantor hereby voluntarily grants and transfers to Grantee a conservation easement (the "Easement"), in gross in perpetuity, over and across the property legally described in **Exhibit A-1** and depicted on **Exhibit A-2** (the "Property"), which Easement shall run with the land and shall bind Grantor and successor owners of all or any portion of the Property in perpetuity, subject to the terms and conditions contained herein.

1. PURPOSE. The Parties agree that it is the purpose of this Easement to: (i) comply with paragraph 6(ii) of that certain Starr Pass Hotel Development Agreement, as recorded in Docket 10876, at Page 534, on September 8, 1998, in the Office of the Pima County Recorder; and (ii) assure that the Property will be preserved forever in its predominantly open, scenic, undeveloped and natural condition (the "Conservation Values"), subject to the terms and conditions contained herein.
2. RIGHTS OF GRANTEE. Grantor hereby grants the following rights to Grantee:
 - 2.1 To identify, preserve, protect and monitor, in perpetuity, the Conservation Values of the Property;
 - 2.2 To prevent Grantor or third parties from conducting any activity on or use of the Property that is prohibited by or inconsistent with the terms, conditions and purpose of this Easement (as described in Section 1 hereof);
 - 2.3 Upon five (5) business days' written notice to Grantor, Grantee may enter upon the Property for administrative purposes, provided that such entry does not

unreasonably interfere with Grantor's use and quiet enjoyment of the Property;

- 2.4 Upon thirty (30) days written notice to Grantor, and subject to Grantor's approval, which approval shall not be unreasonably withheld by Grantor, Grantee or other educational or research agencies and institutions may enter upon the Property to engage in ecological, geological and/or archeological studies, research and special projects, provided that such entry, studies, or projects do not unreasonably interfere with Grantor's use and quiet enjoyment of the Property; and
- 2.5 Upon notice to Grantor, Grantee may enter upon the Property at any time during the term of this Easement during which emergency circumstances prevail, in order to prevent an imminent breach of the terms, conditions and purpose of this Easement or to prevent an imminent violation of the Conservation Values;

provided however, that Grantee shall (i) to the extent permitted by law, indemnify Grantor from and against all liability (including, without limitation, any damage to the Property) arising in connection with Grantee's, its agents' or its invitees' entry upon or use of the Property pursuant to this Section 2 and (ii) maintain liability insurance sufficient to satisfy its indemnity obligation covering the use of the Property as set forth herein. Grantor acknowledges that as a political subdivision of the State of Arizona, Grantee is self-insured. County will supply a letter of self-insurance on request.

3. PERMITTED USES AND PRACTICES. Subject to the terms and conditions of this Easement, Grantor reserves to itself, and its successors, and assigns, all rights accruing from the ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that: (i) are not expressly prohibited by this Easement; (ii) are not inconsistent with the terms, conditions, and purpose of this Easement (as described in Section 1 hereof); and (iii) do not cause immediate or long-term damage, harm, injury, destruction or loss to the Property. Specifically, Grantor shall have the right to operate, utilize and maintain the Property for use as a golf course, but *only* in those areas in use as a golf course as of the date of the recordation of this Easement.
4. PROHIBITED USES AND PRACTICES. Grantor shall keep and maintain the Property in its predominantly open and natural condition, except for its use for golf course purposes, as set forth above, and otherwise subject to the terms and conditions of this Easement. Grantor shall not conduct or permit anyone else to conduct any of the following activities on the Property:
 - 4.1 Development of the Property.
 - 4.2 Exploration for or extraction of oil, gas, hydrocarbons, sand, gravel, rock, minerals, and geothermal energies and pressures on or below the surface of the Property.
 - 4.3 Stocking of non-native fish or wildlife or transfer of fish, amphibians or other organisms to or from the creek, except for any irrigation pond that serves the golf

course portion of the Property, in which non-native fish may be stocked and kept.

- 4.4 Construction or placing of any improvement, buildings or structure, except for improvements, buildings and structures (including, without limitation, restrooms and maintenance structures) on the golf course portion of the Property.
- 4.5 Removal of natural vegetation, planting of non-native vegetation, or use of biocides or chemical fertilizers, except to the extent reasonably necessary to maintain the Property as part of a golf course.
- 4.6 Mobile homes, travel trailers, tent trailers, self-propelled recreational vehicles and like structures or vehicles located or used on the Property, except that golf carts and golf course maintenance vehicles may be used on the golf course portion of the Property.
- 4.7 Dumping of trash or other garbage on the Property, and keeping of junked or wrecked vehicles, or similar items on the Property.
- 4.8 Installation of above ground utilities, except to the extent necessary to maintain the Property as part of a golf course as determined by Grantor in its sole and absolute discretion.
- 4.9 Paving of roads using asphalt or concrete, except to the extent necessary to maintain the Property as part of a golf course as determined by Grantor in its sole and absolute discretion.
- 4.10 Diversion or pumping water from the creek.
- 4.11 Modification of the topography of the Property through the placement thereon of soil, landfills, dredging spoils, or other similar material, except as to the golf course portion of the Property.
- 4.12 Building of new roads or vehicle ways, except to the extent necessary to maintain the Property as part of a golf course as determined by Grantor in its sole and absolute discretion.

5. DEFAULT AND REMEDIES.

- 5.1 If Grantee determines that Grantor is in breach of the terms of this Easement, Grantee shall give written notice to Grantor of such breach and demand corrective action sufficient to cure the breach and, where the breach involves injury to the Property resulting from any activity inconsistent with the terms, conditions or purpose of this Easement (as described in Section 1 hereof), to restore the portion of the Property so injured. If Grantor fails to cure the breach within thirty (30) days after receipt of such notice, or under circumstances where the breach cannot reasonably be cured within a thirty (30) day period, fails to begin curing such

breach within the thirty (30) day period, or fails to continue diligently to cure such breach until finally cured, then Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the breach by temporary or permanent injunction, to recover any damages to which it may be entitled for breach of the terms of this Easement, including damages for any loss thereof, and to require the restoration of the Property to the condition that existed prior to any such injury. If upon receipt of notice from Grantee, Grantor fails to cease the activity which caused the breach, then Grantee may bring immediate action at law to enjoin the breach by temporary or permanent injunction.

5.2 Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, acts of trespassers, fire, flood, storm, drought, pests, earth movement, and major vegetative disease, or from any prudent action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Property resulting from such causes.

6. COSTS, TAXES. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property. Grantor shall determine in its sole and absolute discretion whether and to what extent the Property shall be operated, maintained and repaired, and Grantee shall have no control or authority concerning such matters, except to the extent necessary to otherwise enforce the terms of this Easement. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any activity or use which shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority, and shall furnish Grantee with evidence of payment upon request.

7. GENERAL PROVISIONS.

7.1 **Severability.** If any provision of this Easement is found to be invalid, the remainder of the provisions of this Easement shall not be affected thereby.

7.2 **Entire Agreement.** This instrument sets forth the entire agreement of the Parties with respect to this Easement.

7.3 **Access.** Nothing contained herein shall be construed as affording the public access to any portion of the Property.

7.4 **Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of the Parties and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

- 7.5. **Cancellation.** This Easement is subject to cancellation per A.R.S. §38-511.
- 7.6 **No Subordination.** Upon recordation in the Pima County, Arizona Recorder's Office, this Easement shall be deemed superior to all after acquired property interests in the Property. Grantee shall have no obligation to subordinate its rights and interests in this Easement to any party.

[Remainder of page intentionally left blank.]

GRANTOR:

3800 WSPB Buyer LLC, a Delaware limited liability company

By: _____

Its: _____

STATE OF ARIZONA)
) ss
County of Pima)

This instrument was acknowledged before me the undersigned authority, on this _____ day of _____, 2020, by _____ as _____ of 3800 WSPB Buyer LLC, a Delaware limited liability company.

Notary Public

My Commission Expires:

APPROVED AND ACCEPTED this _____ day of _____, 2020.

PIMA COUNTY

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

APPROVED AS TO FORM:

Regina Nassen, Deputy Pima County Attorney