



BOARD OF SUPERVISORS AGENDA ITEM REPORT AWARDS / CONTRACTS / GRANTS

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: August 2, 2022

* = Mandatory, information must be provided

or Procurement Director Award: ☐

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

Envisage Living Communities, LLC, a Colorado Limited Liability Company

***Project Title/Description:**

Exchange Agreement, RPS File No. Acq-1026

***Purpose:**

Living Communities (Envisage) is proposing a development adjacent to the north bank of the Rillito River west of the Chuck Huckelberry Loop ("Loop") Craycroft Parking Lot and Trailhead. Envisage requires legal access from and across existing Pima County Flood Control District (PCFCD) property. The proposed exchange includes the grant of two (2) access easements to Envisage for one (1) fee title parcel being conveyed to PCFCD. The access easements are proposed to be maintained by Envisage. The parcel being conveyed to PCFCD will be made a part of the Loop amenities with new sewer connections to the public restrooms, improved driveway access, increased number of public parking spaces, improved Park and Street signage and an added food/retail element. The Exchange Agreement includes terms to lease a portion of the area dedicated to PCFCD back to Envisage to place and operate a converted "Airstream" for the added food/retail services.

***Procurement Method:**

Exempt per Pima County Code Section 11.04.020

***Program Goals/Predicted Outcomes:**

Convey an 8,520 sq.ft. Exclusive Easement and an 11,145 sq.ft. Non-Exclusive Easement to Envisage with Envisage assuming maintenance of the easement areas in exchange for fee title to a 12,143 sq.ft. parcel of land abutting the existing Loop amenities. A lease back to Envisage of 2670 sq.ft. of the fee land title for a remote food/retail service at the Loop Trailhead is a part of the approvals being sought for this item. The driveway within both the proposed access easements will be maintained by Envisage, relieving the PCFCD from some of its driveway maintenance obligations.

***Public Benefit:**

An improved driveway serving the Loop Trailhead, increased number of parking spaces, a new public sewer connection and a new food/retail service located adjacent to the parking lot on the Loop.

***Metrics Available to Measure Performance:**

The real property rights being conveyed to the PCFCD have a higher value than the easement rights being granted to Envisage. This exchange is being performed with no additional compensation paid, however there are estimated closing costs of approximately \$8,000 that will be paid by the District through a Purchase Request. The proposed lease rate for the food/retail services and Airstream has been estimated at \$1,600 annually with a 3% annual escalator clause. The lease will be effective and payable to the District biannually with lease payments beginning upon the completion of the public facility improvements evidenced by an operational Airstream.

***Retroactive:**

No.

Attachment: Location Map

JUL 20 22 AM 11:22 PM

TO: COB 7-20-2022 Q
Vers.: 1
pgs.: 52

JUL 20 22 AM 08:54 PM

THE APPLICABLE SECTION(S) BELOW MUST BE COMPLETED

Click or tap the boxes to enter text. If not applicable, indicate "N/A". Make sure to complete mandatory (*) fields

Contract / Award Information

Document Type: CTN Department Code: RPS Contract Number (i.e., 15-123): 23*0014
Commencement Date: 8/2/2022 Termination Date: 8/1/2023 Prior Contract Number (Synergen/CMS): _____
☐ Expense Amount \$ _____ * ☒ Revenue Amount: \$ 0.00

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

Amendment No.: _____ AMS Version No.: _____

Commencement Date: _____ New Termination Date: _____

Prior Contract No. (Synergen/CMS): _____

☐ Expense ☐ 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): _____

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: Jim Rossi

Department: Real Property Services

Telephone: 724-6318

Department Director Signature: _____

Date: 7/18/2022

Deputy County Administrator Signature: _____

Date: 7/18/2022

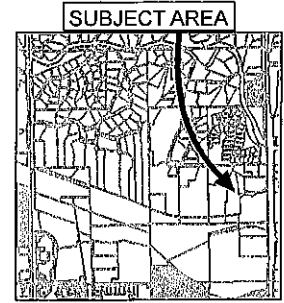
County Administrator Signature: _____

Date: 7/19/2022

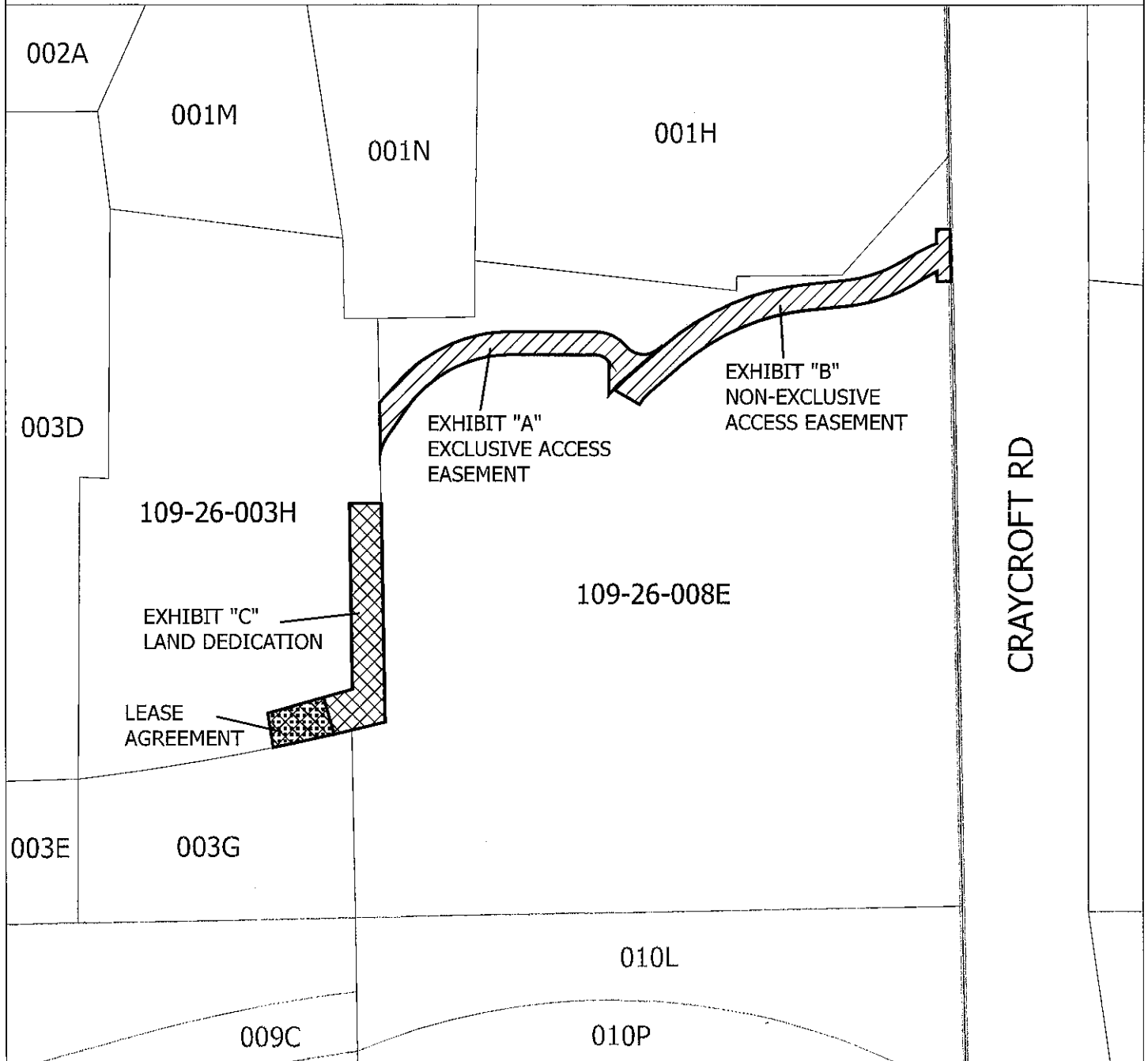
LOCATION MAP

Acquisition #1026

SECTION 26
TOWNSHIP 13 SOUTH
RANGE 14 EAST



SECTION 26 G&SRM
PIMA COUNTY, ARIZONA



22050

PIMA COUNTY DEPARTMENT OF TRANSPORTATION
ENGINEERING INFORMATION MANAGEMENT

DRAWING NOT TO SCALE

DRAWN BY: A GRIFFIN

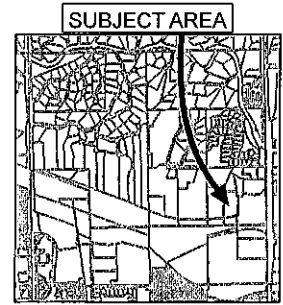
DATE: JUL 2022

LEGEND

- Land Dedication
- Lease Agreement
- Easements

LEASED AREA LOCATION MAP

SECTION 26
TOWNSHIP 13 SOUTH
RANGE 14 EAST



SECTION 26 G&SRM
PIMA COUNTY, ARIZONA

109-26-003H

109-26-008E



22050a



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

DRAWING NOT TO SCALE

DRAWN BY: A GRIFFIN

DATE: JUL 2022

LEGEND

-  Land Dedication
-  Lease Agreement



EXCHANGE AGREEMENT

This Exchange Agreement (the "**Agreement**") is between, Envisage Living Communities, LLC, a Colorado Limited Liability Company, ("**Owner**"), and Pima County Flood Control District, a political taxing authority of the State of Arizona ("**District**").

RECITALS

- A. Owner is purchasing, processing a rezoning to Specific Plan ("**SP**") and will be developing approximately 21 acres of real property near the northwest corner of the Rillito River and Craycroft Road ("**Project Site**"), directly west of the current Chuck Huckelberry Loop entrance, parking lot and public restrooms ("**CHH Loop**"). Owner intends to develop an age-restricted independent living campus (the "**Project**"). As part of the Project, Owner is working with the ("**District**") to expand the existing parking for the CHH Loop, develop a retail/food amenity space ("**Amenity Space**") and connect the existing CHH Loop bathroom facilities to a new sewer system for the Project. The Amenity Space and new parking will be on a portion of the Project Site, and Owner will be dedicating the new parking area and Amenity Space to the District pursuant to this Agreement.
- B. District owns the property east of the Project Site and will be granting access, signage and maintenance easements to Owner as described in this Agreement.

AGREEMENT

1. **Defined Terms.** The following terms will be used as defined terms in this Exchange Agreement ("**Agreement**") and have the meaning set forth below:

1.1. Access Easement: Collectively, the Non-Exclusive Easement and Driveway Easement, and also referred to as the District Property.

- 1.2. Access Improvements: As that term is defined in Section 6.
- 1.3. Amenity Space: As that term is defined in Recital A.
- 1.4. Certificate of Occupancy ("CO"): Final Certificates of Occupancy for various buildings as stated throughout the Agreement, not to include any temporary certificates of occupancy for any buildings.
- 1.5. CHH Loop: As that term is defined in Recital A.
- 1.6. District: Pima County Flood Control District, a political taxing authority of the State of Arizona.
- 1.7. District Address: Director, Pima County Real Property Services, 201 N Stone Ave, 6th Flr, Tucson, AZ 85701-1207; E-mail: jeffrey.teplitsky@pima.gov; and for notice purposes, copy: Pima County Attorney's Office, Civil Division, 32 N Stone Ave, Suite 2100, Tucson, AZ 85701-1412.
- 1.8. District's Maximum Costs: The sum of (i) District's share of Closing Costs, and (ii) District's share of Prorations, which combined shall not exceed Eight Thousand Dollars (\$8,000.00).
- 1.9. District Property: The property legally described on **Exhibits A and A-1** (the "**Driveway Easement**") along with the property legal described on **Exhibits B and B-1** (the "**Non-Exclusive Easement**"), which are also collectively called the Access Easement.
- 1.10. Driveway Easement: The property legal described on **Exhibits A and A-1**.
- 1.11. Easement Rights: The rights granted to Owner over the District Property pursuant to the Access Easement and the Temporary Construction Easement.
- 1.12. Effective Date: As that term is defined in Section 2.

1.13. Escrow Agent: Shaun Tessensohn, Commercial Escrow Officer, Shaun.Tessensohn@ltaz.com

1.14. Loop Improvements. As that term is defined in Section 5.1.

1.15. Non-Exclusive Easement: The property legal described on **Exhibits B and B-1**.

1.16. Owner: Envisage Living Communities, LLC, a Colorado Limited Liability Company.

1.17. Owner's Address: Envisage Living Communities, LLC, Attn: Patrick Beach and Philip Shapiro, 2570 Hoyt Street, Lakewood, Colorado 80215; E-mail: plb@envisageliving.com and phil@envisageliving.com; and for notice purposes, copy: Lazarus & Silvyn, PC, ATTN: Keri Silvyn, Esq. 5983 E. Grant Road, Suite 290, email Ksilvyn@lslawaz.com; and Shumaker, Loop & Kendrick, LLP, ATTN: Reed Hauptman, 1000 Jackson Street, Toledo, Ohio 43604, Email: Rhauptman@shumaker.com.

1.18. Owner Property: The property legally described on **Exhibit C** and depicted on **Exhibit C-1**.

1.19. Project: As that term is defined in Recital A.

1.20. Project Site: As that term is defined in Recital A.

1.21. Right of Way Improvements: Craycroft Road public right of way improvements agreed to be constructed by Owner as a part of the Specific Plan including, but not limited, to a right turn lane from Craycroft Road to the Access Easement, replacing sidewalks along Craycroft Road, an intersection traffic control island to encourage traffic to make only right turn movements while exiting onto Craycroft Road, U-turn improvements at Craycroft Road and Gregory School entrance and all necessary and required directional and street signs.

1.22. Temporary Construction Easement. As that term is defined in Section 6.

1.23. Title Company: Landmark Title Assurance Agency, 2555 E. Camelback Rd., Suite 275, Phoenix AZ 85016

2. **Parties; Effective Date.** This Exchange Agreement (the "Agreement") is between Owner and District, and will become effective on the date all the parties have signed it (the "**Effective Date**"). The District is deemed to have signed the Agreement on the date the Chair of the Board of Directors signed it.

3. **Exchange of Properties.** District and Owner will exchange the Access Easement and the Owner Property pursuant to A.R.S. § 48-3603(C)(2) (the "**Exchange**"). The District shall publish notice thirty days before the Exchange, listing the ownership, description and rights granted with respect to the Owner Property and the District Property.

4. **Value of Property Rights Exchanged - Donation.** Owner acknowledges that the value of the Owner Property exceeds the value of the Access Easement. Since Owner Property is greater than the fair market value (FMV) of the Access Easement, Owner may claim a charitable contribution deduction for federal income tax purposes equal to the difference between the FMV of the Owner Property less the FMV of the Access Easement. This difference in value is Thirty Eight Thousand Six Hundred Dollars (\$38,600.00) as determined by Appraisal. The Owner's decision to donate this difference in value was made without any undue influence or coercive action of any nature, and Owner hereby waives the right to just compensation. District agrees to promptly execute IRS Form 8283, and any other form required of a donee by the Internal Revenue Code of 1986, as amended, or any regulation thereunder. District shall have no liability whatsoever arising out of Owner's charitable contribution. The availability of the contribution shall not be a condition to Closing.

5. **Owner Property.** The parties acknowledge that the Owner Property is currently vacant land that will be improved with the Loop Improvements as described below prior to dedication to the District.

5.1. Construction of Loop Improvements. Owner shall fully fund and construct (i) no less than 30 new parking spaces to be connected to the CHH Loop area to the east of the Project Site, (ii) the Amenity Space, and (iii) the sewer line from the Project to the existing public bathrooms on District-owned property east of the Project and abandon the existing septic system for the public bathrooms (collectively, the "**Loop Improvements**").

5.1.1. Owner shall process improvement plans for the Loop Improvements separate from the improvement plans for the Project.

5.1.2. Owner shall obtain all approvals, permits and final inspections required for the Loop Improvements.

5.1.3. The improvement plans for all Loop Improvements shall be approved by the District prior to the Closing.

5.1.4. The improvement plans shall include all required construction related details and final improvements within the Access Easement and within the Craycroft Road Right-of-Way Improvements defined above.

5.2. Completion of Loop Improvements. Owner must complete the improvements for the new parking spaces and Amenity Space, which shall be completed pursuant to the District-approved improvement plans, prior to the issuance of the CO for the first building for the Project (but expressly excluding the issuance of COs for model units/leasing office).

5.3. Dedication of Owner Property. Owner shall deliver to the Escrow Agent at Closing the Deed for the dedication of the Owner Property to the District (in accordance with Section 11) and shall deliver possession of the Owner Property upon completion of Loop Improvements and acceptance of the Loop Improvements as complete pursuant to all District-approved improvement plans.

5.3.1. At time of dedication, in accordance with A.R.S. § 48-3603, District and Owner will enter into a Lease detailing terms for the operation of an Airstream structure for food and/or retail services within the Amenity Space in general conformance with the form of Ground Lease attached hereto as **Exhibit H** ("*Lease*"). An annual Lease fee will apply however; the Lease fee shall not begin until the Airstream is operational.

5.3.1.1. The Airstream structure is and will remain the personal property of Owner subject to the terms of the Lease and Section 5.3.1.3. All costs associated with the Airstream inclusive of hauling, placement, utility connection, cost to convert the unit for food and/or retail services, and any required construction and operational permits will be the sole expense of the Owner.

5.3.1.2. Owner shall be responsible for any operational and operational grounds keeping maintenance inclusive of utilities, day to day maintenance of the Amenity Space, collection and proper disposal of general and food service waste.

5.3.1.3. At the District's sole discretion, if Owner discontinues operation of the Airstream structure for food and/or retail services, Owner fails to maintain the Amenity Space and Airstream according to the terms of the Lease, or Owner cancels the Lease, Owner shall sign over and surrender title for the Airstream to the District or if notified in writing by District, Owner shall remove the Airstream at the Owner's sole cost and expense.

5.3.2. Upon District's acceptance of the improvements as provided for in Sections 5.3 and 11.2 (except for the Airstream structure and related operational grounds keeping defined above) all maintenance responsibility for the Loop Improvements and the Amenity Space on Owner Property shall be the District's sole responsibility.

5.3.3. Upon District's acceptance of the improvements, as provided in Sections 5.3 and 11.2, and subject to the Lease, pedestrian access to the Loop Improvements and Amenity Space is allowed. Owner shall have no vehicular access or parking rights as Owner's rights are limited to the Access Easement outlined below. Loop Improvement parking spaces shall not be used by anyone associated with the Project and are reserved for the users of the CHH Loop.

6. **District Property.** The parties acknowledge that District Property is a combination of (i) an existing access driveway from Craycroft Road, defined as the Non-Exclusive Easement, and (ii) vacant land that will become a new access driveway to Owner's Development, defined as the Driveway Easement. Collectively, these easements are referred to as the Access Easement and/or District Property, and the improvements on the Access Easement/District Property shall be referred to as the Access Improvements.

6.1. Access Improvements Construction. The cost to construct Access Improvements is the sole responsibility of the Owner. Interim improvements, including subgrade, first course of asphalt, curbing, lighting installation and signage, shall be completed pursuant to the District-approved improvement plans prior to the issuance of the CO for the first building for the Project (but expressly excluding the issuance of COs for model units/leasing office).

6.2. Completion of Access Improvements. Final asphalt surface improvements shall be completed by Owner prior to final inspection of the completed Project.

6.3. Temporary Construction Easement. At Closing, District shall grant a temporary construction easement to Owner over the Non-Exclusive Easement area and the existing parking lot access area for the CHH Loop to permit construction of Loop Improvements only ("Temporary Construction Easement"). This Temporary Construction Easement shall not permit Owner access for any of the Project improvements.

6.4. Access Easement. At Closing, District shall grant construction access and permanent access on the District Property for the Project over the Access Easement area. The following terms and conditions shall be incorporated into the Access Easement.

6.4.1. During construction of the Project, District and Owner shall work cooperatively to understand the vehicular traffic of the existing CHH Loop traffic and the needs of the construction for the Project to determine appropriate safety protocols and measures during construction of the Project.

6.4.1.1. Such coordination shall include Owner working with its contractors to require construction trade vehicles and suppliers to arrive and depart at off-peak hour times for the CHH Loop traffic and parking. All heavy-equipment will access at off-peak hours. Owner and its contractors will adhere to governing safety protocols for heavy-equipment ingress and egress.

6.4.1.2. Owner and its contractors shall use the Non-Exclusive Easement in its current condition for the Project construction traffic and initial grading. Owner and its contractors shall clear and design the Driveway Easement for interim construction worker traffic per District approved plans for dust-proofed construction access during Project construction.

6.4.1.3. All Project construction, equipment queuing, staging and storage shall take place on the Project Site and not on any of the District Property or within the CHH Loop area.

6.5. Lighting. As part of the Access Easement, District will permit low-level bollard lighting along the edges of the Driveway Easement area subject to compliance with the Pima County/City of Tucson Outdoor Lighting Code ("OLC").

6.6. Signage. As part of the Access Easement on District Property as noted on the Exhibits, District shall also grant easements for monument signage on Craycroft Road and monument signage within the Driveway Easement areas as shown on Exhibits A and

B, and as permitted within the Endeavor Specific Plan adopted by the Pima County Board of Supervisors.

6.6.1.1. Owner shall work with District on design of the monument signage on Craycroft Road to include main entry signage for the CHH Loop if desired by the District.

6.6.1.2. All signage shall conform to the OLC as required.

6.7. Maintenance of Access Easement. Owner shall maintain the Access Easement.

7. Inspection Rights.

7.1. Due Diligence Access. Upon execution of this Agreement and until Closing, Owner hereby grants permission to District, District's representatives, and District's authorized agents to enter the Owner Property for due diligence, including for land survey, biological and cultural survey, and environmental assessment. Upon execution of this Agreement until Closing, District hereby grants permission to Owner, Owner's representatives, and Owner's authorized agents to enter the District Property for due diligence, including for land survey, biological and cultural survey, and environmental assessment.

7.2. Environmental Inspection. Each party shall permit the other party to conduct such inspections of the others property as deemed necessary to determine the environmental condition of the property. If the investigations reveal the presence of contamination or the need to conduct environmental cleanup, each party shall conduct a cleanup of its property adequate to bring the property into compliance prior to closing or the other party may terminate this Agreement.

8. Escrow and Title.

8.1. Proration and Closing Costs. Owner shall pay all taxes on the Owner Property to the date of Closing. Expenses incidental to transfer of title, including title reports, recording fees, escrow fees, and delivery fees, shall be paid 50% by the District and 50% by Owner. Each party shall be responsible for costs associated with any releases required to transfer title (or with respect to the District Property the Easement Rights

provided for herein) to its property free and clear and any costs associated with the issuance of title insurance for the property and/or Easement Rights it is acquiring.

8.2. Escrow and Title Agent. This Agreement shall be used as escrow instructions in connection with the escrow established at the Title Company with Escrow Agent under this Agreement (the "**Escrow**"). Escrow Agent shall make reasonably suitable arrangements with District, upon District's request, to have District execute all of the documents to be executed by District as provided in this Agreement at the office of Escrow Agent that is located the closest to the office of District.

8.3. Title Commitment.

8.3.1. *Commitment.* Escrow Agent will distribute to District a Commitment for Standard Owner's Title Insurance on the Owner Property (the "**District Commitment**") together with complete and legible copies of all documents which will remain as exceptions to District's policy of title insurance. Escrow Agent will distribute to Owner a Commitment for Standard Owner's Title Insurance covering the Easement Rights on the District Property (the "**Owner Commitment**", and collectively, with the District Commitment, the "**Commitments**") together with complete and legible copies of all documents which will remain as exceptions to Owner's policy of title insurance.

8.3.2. *Permitted Exceptions*

8.3.2.1. The Closing shall be contingent upon Owner being insured pursuant to the Owner Commitment and subject only to the exceptions listed in **Exhibit D** hereto (the "**Permitted Exceptions to District Property**"), and the title policy shall be in the amount of \$ 50,700.00.

8.3.2.2. The Closing shall be contingent upon District being insured pursuant to the District Commitment and subject only to the exceptions listed in **Exhibit E** hereto (the "**Permitted Exceptions to Owner Property**") and the title policy shall be in the amount of \$ 89,300.00.

8.3.2.3. Conveyance of the Owner Property shall be by Special Warranty Deed subject to (a) the liens of real estate taxes that are not yet due and payable; (b) all matters of record including the applicable Permitted Exceptions which were accepted by the District; and (c) all matters a survey or inspection of the Owner Property would reveal, and otherwise in the form attached as **Exhibit F**.

8.3.2.4. Conveyance of the Easement Rights on the District Property shall be by easement agreements incorporating the terms and conditions contained herein and in the forms attached as **Exhibit G-1 (Driveway Easement)** and **Exhibit G-2 (Non-Exclusive Easement)**.

8.3.3. *Amended Commitment.* In the event Title Company should issue an Amended Commitment for Title Insurance to one of the parties which discloses an Exception(s) not previously disclosed, that party shall have 15 days after the receipt of the Amended Commitment and the new Exceptions (the "**Disapproval Period**") within which to notify the other party and the Escrow Agent in writing of its disapproval of any new Exceptions shown thereon (the "**Disapproval Notice**"). In the event of such disapproval, the party receiving the Disapproval Notice shall have 10 days from receipt of the Disapproval Notice in which to notify the disapproving party in writing whether it intends to eliminate each of the disapproved Exceptions prior to the Closing (the "**Notice Period**"). If the party receiving the Disapproval Notice fails to notify the disapproving party of its intent with respect to the disapproved items within that time or if it elects not to cure all disapproved items, the disapproving party may terminate this Agreement and the Escrow shall be canceled. If the Amended Commitment is issued less than 15 days prior to the date of the Closing, then the date of the Closing shall be deemed to be extended until the end of the Disapproval Period and the Notice Period, if applicable; provided however, that Closing must occur as provided in Section 11.1.

9. **Security Interest.** Prior to Closing, each party shall obtain from any lienholders releases and/or approvals of (i) all nonconsensual liens, including but not limited to tax liens, mechanics liens, and judgment liens, and (ii) all consensual liens, including but not limited to mortgages, deeds of trusts, and contracts for sale, as required for (a) the fee transfer of the Owner Property, free and clear of all liens and encumbrances and (b) the granting of the Easement Rights to Owner on the District Property as provided for herein.

10. **Closing Documents.** At Closing, the following documents will be executed:

10.1. District shall execute and deliver to Escrow Agent the Access Easement and Temporary Access Easement incorporating the terms and conditions contained herein and as provided in forms attached hereto as **Exhibit G-1 and Exhibit G-2.**

10.2. Owner shall execute and deliver to Escrow Agent a Special Warranty Deed (the "**Deed**") incorporating the terms and conditions contained herein and conveying title to the Owner Property to District as provided in form attached hereto as **Exhibit F**.

11. **Closing.**

11.1. Closing Date. Owner and District acknowledge and agree that it is the intent of the parties for the closing (the "**Closing**") to take place at the office of Title Company simultaneous with the acquisition of the Project Site by Owner. Notwithstanding the foregoing, either party may terminate this Agreement if the Closing has not occurred within one year after execution by Owner.

11.2. Possession. The Easement Rights on the District Property will be granted to Owner at Closing as provided herein. The executed Deed conveying title to the Owner Property to the District will be delivered by Owner to Escrow Agent at Closing. Escrow Agent shall release the Deed and possession of the Owner Property will be delivered to District upon District's acceptance of the improvements as provided for in Section 5.3. Escrow Agent shall also be authorized to release the Deed to the District in the event Owner defaults under this Agreement. Owner shall be obligated to pay all costs and expenses of Escrow Agent with respect to the escrow of the Deed as provided for herein.

12. **Representations.**

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

12.2. Subject only to the representations of the parties in this Section 12, each party acknowledges that neither party has made any representations or warranties of any nature to the other, and the property interests acquired by each party are acquired "AS IS" and "WHERE IS," with all faults and limitations, and all defects, latent or otherwise. Each party who is the grantee of the interests subject to this Agreement further represents to

the other that is has fully and completely examined the Owner Property or District Property, as applicable, conducted inspections thereof, including environmental assessments to the extent such party has felt necessary or advisable, and releases the other party from any and all liability, obligation or responsibility in any way relating to the condition of the land. This release survives closing.

13. **No Leases.** Each party represents that, to the best of its knowledge, there are no oral or written leases, rental agreements, licenses, permits, or any other agreements permitting a third party to use or occupy all or any portion of the Owner Property or District Property, as applicable.

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

15. **No Sale.** Neither party shall sell or encumber the Owner Property or District Property, as applicable, before closing.

16. **Notices.**

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

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

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

16.4. Notice to Entity. Any notice to an entity shall be deemed to be given on the date specified in this Section 16.4 without regard to when such notice is delivered by the entity to the individual to whose attention it is directed and without regard to the fact that proper delivery may be refused by someone other than the individual to whose attention it is directed. If a notice is received by an entity, the fact that the individual to whose attention it is directed is no longer at such address or associated with such entity shall not affect the effectiveness of such notice.

16.5. Address. District and Owner agree that any notice sent to the address set forth in Sections 1.7 and 1.17 shall serve as notice by District or Owner, as the case may be, to the other.

17. **Conflict of Interest**. This Agreement is subject to cancellation within three years after its execution pursuant to A.R.S. § 38-511 if any person significantly involved in initiating, negotiating, securing, drafting, or creating this Agreement on behalf of District 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.

18. **Survival of Representation and Warranties**. All representations and warranties contained herein survive the closing for ten years.

19. **Entire Agreement**. This signed document constitutes the entire Agreement between the parties, and no modification or amendment to this Agreement will be binding unless in writing and signed by both parties. This Agreement shall be binding on and benefit the successors and assigns of the parties hereto.

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

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

<u>Exhibit A</u>	Legal Description of Driveway Easement
<u>Exhibit A-1</u>	Depiction of Driveway Easement
<u>Exhibit B</u>	Legal Description of Non-Exclusive Easement
<u>Exhibit B-1</u>	Depiction of Non-Exclusive Easement
<u>Exhibit C</u>	Legal Description of Owner Property
<u>Exhibit C-1</u>	Depiction of Owner Property
<u>Exhibit D</u>	Permitted Exceptions to District Property
<u>Exhibit E</u>	Permitted Exceptions to Owner Property
<u>Exhibit F</u>	Form of Special Warranty Deed
<u>Exhibit G-1</u>	Form of Driveway Easement Agreement
<u>Exhibit G-2</u>	Form of Non-Exclusive Easement Agreement
<u>Exhibit H</u>	Form of Ground Lease Agreement

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

Owner: Envisage Living Communities, LLC, a Colorado Limited Liability Company

By: 
Signature

7/11/22
Date

Its: MEMBER-MANAGER

Remainder of Page Intentionally Left Blank
District Signatures Follow

DISTRICT: PIMA COUNTY FLOOD CONTROL DISTRICT, a political taxing authority of the State of Arizona:

Chair, Board of Directors

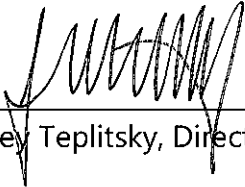
Date

ATTEST:

Melissa Manriquez, Clerk of Board

Date

APPROVED AS TO CONTENT:




Jeffrey Teplitsky, Director, Real Property Services

 7/18/2022

Carmine DeBonis, Deputy County Administrator, Public Works

APPROVED AS TO FORM:

 July 15, 2022

Kathryn Gre, Deputy County Attorney



SITE CONSULTING
SURVEY
SITE ENGINEERING

EXHIBIT A

Job No. 20.012

November 12, 2021

LEGAL DESCRIPTION – EXCLUSIVE ACCESS EASEMENT

An Exclusive Access Easement over a portion of that parcel described in Docket 9547 at Page 1541 and Docket 10828 at Page 4481, Pima County records, located within the Northeast Quarter of the Southeast Quarter of Section 26, Township 13 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona, being more particularly described as follows:

Commencing at the East Quarter Corner of said Section 26, from which the Southeast Corner thereof bears South 01°02'21" East, 2,629.44 feet distant;

Thence South 01°02'21" East, 657.36 feet upon the East line of the Southeast Quarter of said Section 26, also being the West Right-of-Way line of Craycroft Road, per Book 13 at Page 51, Road Maps, Pima County Records;

Thence South 89°11'12" West, 627.22 feet upon the North line of the Southeast Quarter of the Northeast Quarter of the Southeast Quarter of said Section 26 to the Northeast corner of "Parcel 2" of that parcel described in Sequence No.20171990455, Pima County Records, from which the Southeast Corner thereof bears South 01°03'37" East, 436.47 feet distant;

Thence South 01°03'37" East, 91.31 feet upon the East line of said "Parcel 2", also being the Common line to that parcel described in Docket 9547 at Page 1541, Pima County records, to the **Point of Beginning**;

Thence continue upon said Common line, South 01°03'37" East, 54.09 feet to a non-tangent curve having a radius that bears South 77°37'31" East, 49.50 feet distant;

Thence Northeasterly, upon said curve, turning to the right, through a delta of 22°04'48", an arc length of 19.08 feet;

Thence North 34°27'17" East, 34.73 feet to a tangent curve having a radius of 137.50 feet;

Thence Northeasterly, upon said curve, turning to the right, through a delta of 55°32'43", an arc length of 133.30 feet;

Thence South 90°00'00" East, 93.08 feet to a tangent curve having a radius of 17.50 feet;

Thence Southeasterly, upon said curve, turning to the right, through a delta of 58°32'41", an arc length of 17.88 feet;

Thence South 01°08'41" West, 34.63 feet;

Thence North 42°49'47" East, 14.99 feet;

Thence North 49°02'51" East, 62.47 feet;

Thence North 39°40'46" West, 0.50 feet;
1 of 3

EXHIBIT A (continued)

Thence South 50°19'14" West, 5.00 feet to a tangent curve having a radius of 24.50 feet;

Thence Westerly, upon said curve, turning to the right, through a delta of 90°18'42",
an arc length of 38.62 feet to a reverse curve having a radius of 42.50 feet;

Thence Northwesterly, upon said curve, turning to the left, through a delta of 50°37'56",
an arc length of 37.56 feet;

Thence North 90°00'00" West, 93.08 feet to a tangent curve having a radius of 162.50 feet;

Thence Southwesterly, upon said curve, turning to the left, through a delta of 47°44'49",
an arc length of 135.42 feet;

Thence South 42°15'11" West, 31.65 feet to the **Point of Beginning**.

The area of said easement contains 8,520.5 square feet or 0.20 acres, more or less.

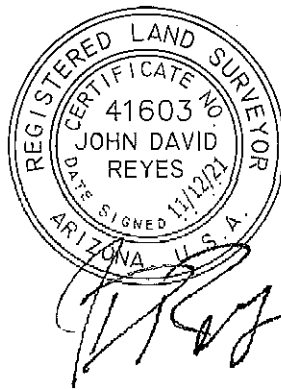


EXHIBIT A-1

NOTE: THIS MAP DOES NOT
REPRESENT A BOUNDARY SURVEY.

POINT OF COMMENCEMENT
E. 1/4 CORNER SECTION 26

A.P.N. 109-26-001H
3537 N. CRAYCROFT RD.

A.P.N. 109-26-001N
3533 N. CRAYCROFT RD.

CRAYCROFT ROAD
BK 13 PG 51, RM
S 01°02'21" E 2629.44'
657.36'

N. LINE OF THE S.E. 1/4 OF THE
N.E. 1/4 OF THE S.E. 1/4 OF SECTION 26

S 89°11'12" W 627.22'

N.E. CORNER, "PARCEL 2"
SEQ. #20171990455

A.P.N. 109-26-003H
3475 N. CRAYCROFT RD.
SEQ. #20171990455

POINT OF
BEGINNING

A.P.N. 109-26-008E
3455 N. CRAYCROFT RD.
DKT 9547 PG 1541
DKT 10828 PG 4481

EXCLUSIVE EASEMENT
8,520.5 S.F.±
0.20 ACRES±

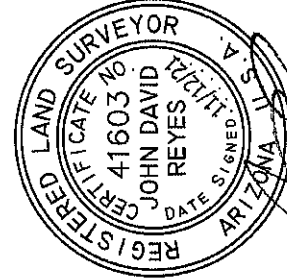
S.E. CORNER
SECTION 26

LINE TABLE

LINE	BEARING	DISTANCE
L1	N 34°27'17" E	34.73'
L2	S 90°00'00" E	93.08'
L3	S 01°08'41" W	34.63'
L4	N 42°49'47" E	14.99'
L5	N 49°02'51" E	62.47'
L6	N 39°40'46" W	0.50'
L7	S 50°19'14" W	5.00'
L8	N 90°00'00" W	93.08'
L9	S 42°15'11" W	31.65'
L10	S 01°03'37" E	54.09'

CURVE TABLE

CURVE	RADIUS	DELTA ANGLE	ARC LENGTH
C1	49.50'	22°04'48"	19.08'
C2	137.50'	55°32'43"	133.30'
C3	17.50'	58°32'41"	17.88'
C4	24.50'	90°18'42"	38.62'
C5	42.50'	50°37'56"	37.56'
C6	162.50'	47°44'49"	135.42'



2030 e speedway blvd
suite #110
tucson, arizona 85719
ph: 520.499.2456
e: info@cypresscivil.com

EXCLUSIVE ACCESS EASEMENT

OVER A PORTION OF THE N.E. 1/4 OF THE S.E. 1/4 OF SECTION 26,
T.13 S., R.14 E., G. & S. R. M., PIMA COUNTY, ARIZONA

PROJECT NO. 20.012 3 OF 3

NOVEMBER 12, 2021



LEGAL DESCRIPTION – NON-EXCLUSIVE ACCESS EASEMENT

A Non-Exclusive Access Easement over a portion that parcel described in Docket 9547 at Page 1541 and Docket 10828 at Page 4481, Pima County records, located within the Northeast Quarter of the Southeast Quarter of Section 26, Township 13 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona, being more particularly described as follows:

Commencing at the East Quarter Corner of said Section 26, from which the Southeast Corner thereof bears South 01°02'21" East, 2,629.44 feet distant;

Thence South 01°02'21" East, 564.06 feet upon the East line of the Southeast Quarter of said Section 26, also being the West Right-of-Way line of Craycroft Road, per Book 13 at Page 51, Road Maps, Pima County Records and being the **Point of Beginning**;

Thence South 88°57'39" West, 15.00 feet;

Thence South 01°02'21" East, 15.00 feet to a non-tangent curve having a radius that bears South 23°32'58" East, 300.00 feet distant;

Thence Southwesterly, turning to the left, through a delta of 7°55'13", an arc length of 41.47 feet to a reverse curve;

Thence Southwesterly, upon said curve, having a radius of 150.00 feet, turning to the right, through a delta of 25°43'54", an arc length of 67.37 feet;

Thence South 84°15'43" West, 40.53 feet to a tangent curve having a radius of 280.00 feet;

Thence Southwesterly, upon said curve, turning to the left, through a delta of 32°12'52", an arc length of 172.09 feet;

Thence South 49°02'51" West, 71.58 feet;

Thence South 60°13'06" East, 32.31 feet to a non-tangent curve having a radius that bears South 59°08'09" East, 50.00 feet distant;

Thence Northeasterly, upon said curve, turning to the right, through a delta of 18°11'00", an arc length of 15.87 feet;

Thence North 49°02'51" East, 45.32 feet to a tangent curve having a radius of 252.00 feet;

Thence Northeasterly, upon said curve, turning to the right, through a delta of 32°12'52", an arc length of 154.88 feet;

Thence North 84°15'43" East, 40.53 feet to a tangent curve having a radius of 178.00 feet;

EXHIBIT B (continued)

Thence Northeasterly, upon said curve, turning to the left, through a delta of $25^{\circ}43'54''$, an arc length of 79.94 feet to a reverse curve;

Thence Northeasterly, upon said curve, having a radius of 272.00 feet, turning to the right, through a delta of $5^{\circ}27'11''$, an arc length of 25.89 feet;

Thence South $01^{\circ}02'21''$ East, 10.76 feet;

Thence North $88^{\circ}57'39''$ East, 15.00 feet to the East line of the Southeast Quarter of said Section 26, also being the West Right-of-Way line of said Craycroft Road;

Thence North $01^{\circ}02'21''$ West, 56.34 feet upon the East line of the Southeast Quarter of said Section 26, and said West Right-of-Way line of Craycroft Road to the **Point of Beginning**.

The area of said easement contains 1,444.5 square feet or 0.26 acres, more or less.

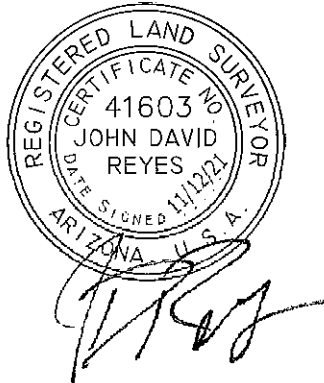


EXHIBIT B-1

CURVE TABLE

CURVE	RADIUS	LENGTH	DELTA
C1	300.00'	41.47'	7°55'13"
C2	150.00'	67.37'	25°43'54"
C3	280.00'	172.09'	35°12'52"
C4	50.00'	15.87'	18°11'00"
C5	252.00'	154.88'	35°12'52"
C6	178.00'	79.94'	25°43'54"
C7	272.00'	25.89'	5°27'11"

LINE TABLE

LINE	BEARING	DISTANCE
L1	S 88°57'39" W	15.00'
L2	S 01°02'21" E	15.00'
L3	S 84°15'43" W	40.53'
L4	S 49°02'51" W	71.58'
L5	S 60°13'06" E	32.31'
L6	N 49°02'51" E	45.32'
L7	N 84°15'43" E	40.53'
L8	S 01°02'21" E	10.76'
L9	N 88°57'39" E	15.00'
L10	N 01°02'21" W	56.34'

CRAYCROFT ROAD

BK 13 PG 51, RM

S 01°02'21" E 2629.44'

POINT OF COMMENCEMENT
E. 1/4 CORNER SECTION 26

POINT OF
BEGINNING

A.P.N. 109-26-001H
3537 N. CRAYCROFT RD.

NON-EXCLUSIVE
EASEMENT
11,444.5 S.F.±
0.26 ACRES±

S 23°32'58" E
RADIAL

N. LINE OF THE
S.E. 1/4 OF THE
N.E. 1/4 OF THE
S.E. 1/4 OF
SECTION 26

S.E. CORNER
SECTION 26

SCALE:
1"=60'

A.P.N. 109-26-008E
3455 N. CRAYCROFT RD.
DKT 9547 PG 1541
DKT 10828 PG 4481

S 59°08'09" E
RADIAL

NOTE: THIS MAP DOES NOT
REPRESENT A BOUNDARY SURVEY.



2030 e speedway blvd
suite #110
tucson, arizona 85719
ph: 520.499.2456
e: info@cypresscivil.com



NON-EXCLUSIVE ACCESS EASEMENT

OVER A PORTION OF THE N.E. 1/4 OF THE S.E. 1/4 OF SECTION 26,
T.13 S., R.14 E., G. & S. R. M., PIMA COUNTY, ARIZONA

PROJECT NO. 20.012 3 OF 3

NOVEMBER 12, 2021

EXHIBIT "C"



SITE CONSULTING
SURVEY
SITE ENGINEERING

Job No. 20.012

November 12, 2021

LEGAL DESCRIPTION – RIGHT-OF-WAY DEDICATION

A Right-of-Way Dedication over a portion that parcel described in Sequence No.20171990455, Pima County Records, located within the Northeast Quarter of the Southeast Quarter of Section 26, Township 13 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona, being more particularly described as follows:

Commencing at the East Quarter Corner of said Section 26, from which the Southeast Corner thereof bears South 01°02'21" East, 2,629.44 feet distant;

Thence South 01°02'21" East, 657.36 feet upon the East line of the Southeast Quarter of said Section 26, also being the West Right-of-Way line of Craycroft Road, per Book 13 at Page 51, Road Maps, Pima County Records;

Thence South 89°11'12" West, 627.22 feet upon the North line of the Southeast Quarter of the Northeast Quarter of the Southeast Quarter of said Section 26 to the Northeast corner of "Parcel 2" of said parcel described in Sequence No.20171990455, Pima County Records;

Thence South 01°03'37" East, 199.52 feet upon the East line of said "Parcel 2" to the **Point of Beginning**;

Thence continue upon the East line of said "Parcel 2", South 01°03'37" East, 236.95 feet to the Southeast Corner thereof to a non-tangent curve having a radius that bears North 18°23'58" West, 636.20 feet distant;

Thence Southwesterly upon the Southerly line of said parcel described in Sequence No.20171990455, Pima County Records, upon said curve, turning to the right, through a delta of 9°06'41", an arc length of 101.17 feet;

Thence continue upon said Southerly line, South 80°42'42" West, 22.95 feet;

Thence North 09°17'18" West, 37.42 feet;

Thence North 74°00'00" East, 95.52 feet;

Thence North 01°03'37" West, parallel to the East line of said parcel described in Sequence No.20171990455, Pima County Records and 34.33 feet distant, 200.94 feet;

Thence North 88°56'23" East, 34.33 feet to the **Point of Beginning**.

The area of said dedication contains 12,143.1 square feet or 0.28 acres, more or less.

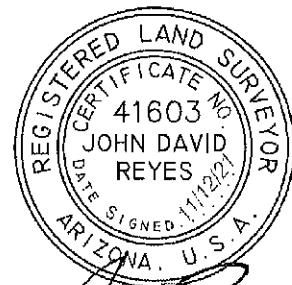


EXHIBIT C-1

NOTE: THIS MAP DOES NOT
REPRESENT A BOUNDARY SURVEY.

POINT OF COMMENCEMENT

E. 1/4 CORNER SECTION 26

N.E. CORNER, "PARCEL 2"
SEQ. #20171990455

LINE TABLE

LINE	BEARING	DISTANCE
L1	S 80°42'42" W	22.95'
L2	N 09°17'18" W	37.42'
L3	N 74°00'00" E	95.52'
L4	N 88°56'23" E	34.33'

CURVE TABLE

CURVE	RADIUS	DELTA ANGLE	ARC LENGTH
C1	636.20'	9°06'41"	101.17'

A.P.N. 109-26-003H
3475 N. CRAYCROFT RD.
SEQ. #20171990455

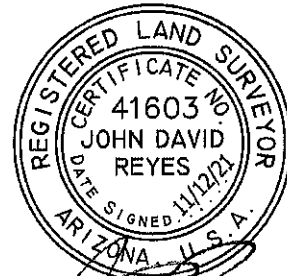
POINT OF
BEGINNING

S.E. CORNER
SECTION 26

A.P.N. 109-26-008E
3455 N. CRAYCROFT RD.

RIGHT-OF-WAY
DEDICATION
12,143.1 S.F.±
0.28 ACRES±

SCALE:
1"=60'



N 18°23'58" W
RADIAL

A.P.N. 109-26-003G



**CYPRESS
CIVIL**

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tucson, arizona 85719
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e: info@cypresscivil.com

RIGHT-OF-WAY DEDICATION
OVER A PORTION OF THE N.E. 1/4 OF THE S.E. 1/4 OF SECTION 26,
T.13 S., R.14 E., G. & S. R. M., PIMA COUNTY, ARIZONA

PROJECT NO. 20.012 2 OF 2

NOVEMBER 12, 2021

Exhibit "D"

1. RESERVATIONS or exceptions in Patents or in Acts authorizing the issuance thereof.
2. TAXES AND ASSESSMENTS collectible by the County Treasurer, a lien not yet due and payable for the following year: 2022
3. WATER RIGHTS, claims or title to water, and agreements, covenants, conditions or rights incident thereto, whether or not shown by the public records.
4. EASEMENT and rights incident thereto, as set forth in instrument:
Recorded in Docket 2518 at page 178; Purpose: electric facilities.
5. EASEMENT and rights incident thereto, as set forth in instrument:
Recorded in Docket 2528 at page 137; Purpose: electric facilities
6. EASEMENT and rights incident thereto, as set forth in instrument:
Recorded in Docket 3027 at page 106; Purpose: ingress and egress
7. EASEMENT and rights incident thereto, as set forth in instrument:
Recorded in Docket 3413 at page 438; Purpose: ingress and egress
8. EASEMENT and rights incident thereto, as set forth in instrument:
Recorded in Docket 4932 at page 520; Purpose: electric facilities
9. EASEMENT and rights incident thereto, as set forth in instrument:
Recorded in Docket 5223 at page 721; Purpose: electric facilities
10. EASEMENT and rights incident thereto, as set forth in instrument:
Recorded in Docket 6944 at page 707; Purpose: drainage facilities
11. EASEMENT and rights incident thereto, as set forth in instrument:
Recorded in Docket 6470 at page 869 as affected by Docket 6472 at page 702;
Purpose: electric facilities
12. EASEMENT and rights incident thereto, as set forth in instrument:
Recorded in Docket 8727 at page 2324; Purpose: electric facilities
13. EASEMENT and rights incident thereto, as set forth in instrument:
Recorded in Docket 8842 at page 2089; Purpose: ingress and egress
14. EASEMENT and rights incident thereto, as set forth in instrument:
Recorded in Docket 9897 at page 890; Purpose: communication facilities

15. 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:
Recorded in Docket 9474 at page 578
16. 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:
Recorded in Docket 9779 at page 747
17. AGREEMENT according to the terms and conditions contained therein:
Purpose Water Facilities
Recorded in Docket 9798 at page 1252
18. EASEMENT and rights incident thereto, as set forth in instrument:
Recorded in Docket 10236 at page 2011
Purpose: bank protection, sewer lines and ingress and egress
19. EASEMENT and rights incident thereto, as set forth in instrument:
Recorded in Docket 13781 at page 2045; Purpose: ingress and egress
20. EASEMENT and rights incident thereto, as set forth in instrument:
Recorded in Docket 13781 at page 2056; Purpose: ingress and egress
21. EASEMENT and rights incident thereto, as set forth in instrument:
Recorded in Docket 13781 at page 2067; Purpose: ingress and egress
22. ADVERSE MATTERS that may be revealed by an inspection of the land.
NOTE: This exception will be amended or deleted upon the submission of the corresponding documents required in Schedule B, Part I.
23. LOCATION OF IMPROVEMENTS, easements, discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other facts which a correct survey would disclose.
NOTE: This exception will be amended or deleted upon the submission of the corresponding documents required in Schedule B, Part I.
24. 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.

Exhibit "E"

1. RESERVATIONS or exceptions in Patents or in Acts authorizing the issuance thereof.
2. TAXES AND ASSESSMENTS collectible by the County Treasurer, a lien not yet due and payable for the following year: 2022
3. WATER RIGHTS, claims or title to water, and agreements, covenants, conditions or rights incident thereto, whether or not shown by the public records.
4. MATTERS contained therein, relating to rights of way for canals recorded in Book 212 of Deeds at page 206.
5. EASEMENT and rights incident thereto, as set forth in instrument:
Recorded in Docket 2518 at page 178; Purpose: electric facilities
6. EASEMENT and rights incident thereto, as set forth in instrument:
Recorded in Docket 2528 at page 137; Purpose: gas line facilities
7. EASEMENT and rights incident thereto, as set forth in instrument:
Recorded in Docket 3027 at page 106; Purpose: sewer line facilities
8. EASEMENT and rights incident thereto, as set forth in instrument:
Recorded in Docket 3413 at page 438; Purpose: water line facilities
9. EASEMENT and rights incident thereto, as set forth in instrument:
Recorded in Docket 3955 at page 398; Purpose: electric facilities
10. EASEMENT and rights incident thereto, as set forth in instrument:
Recorded in Docket 4932 at page 520; Purpose: electric facilities
11. EASEMENT and rights incident thereto, as set forth in instrument:
Recorded in Docket 5223 at page 721; Purpose: electric facilities
12. EASEMENT and rights incident thereto, as set forth in instrument:
Recorded in Docket 6470 at page 869; Purpose: electric facilities
13. EASEMENT and rights incident thereto, as set forth in instrument:
Recorded in Docket 6944 at page 707; Purpose: bank protection and drainage facilities
14. EASEMENT and rights incident thereto, as set forth in instrument:
Recorded in Docket 8727 at page 2324; Purpose: electric facilities

15. EASEMENT and rights incident thereto, as set forth in instrument:
Recorded in Docket 8842 at page 2089; Purpose: ingress and egress and utility
16. EASEMENT and rights incident thereto, as set forth in instrument:
Recorded in Docket 9465 at page 831; Purpose: electric facilities
17. 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: Recorded in Docket 9474 at page 583
18. EASEMENT and rights incident thereto, as set forth in instrument:
Recorded in Docket 9511 at page 665; Purpose: utilities
19. EASEMENT and rights incident thereto, as set forth in instrument:
Recorded in Docket 9805 at page 623; Purpose: electric facilities
20. EASEMENT and rights incident thereto, as set forth in instrument:
Recorded in Docket 9854 at page 705; Purpose: utilities
21. EASEMENT and rights incident thereto, as set forth in instrument:
Recorded in Docket 9897 at page 887; Purpose: communication facilities
22. AGREEMENT according to the terms and conditions contained therein:
Pre-Annexation and Development Agreement Recorded at Sequence No. 20180580709
23. ADVERSE MATTERS that may be revealed by an inspection of the land.
NOTE: This exception will be amended or deleted upon the submission of the corresponding documents required in Schedule B, Part I.
24. LOCATION OF IMPROVEMENTS, easements, discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other facts which a correct survey would disclose.
NOTE: This exception will be amended or deleted upon the submission of the corresponding documents required in Schedule B, Part I.
25. 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.

Exhibit "F"

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

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

Special Warranty Deed

For the consideration of Ten Dollars (\$10.00), and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned, Envisage Living Communities, LLC, a Colorado Limited Liability Company, the "Grantor" herein, does hereby convey to Pima County Flood Control District, a political taxing authority of the State of Arizona, the "Grantee" herein, the following real property (the "Property") situated in Pima County, Arizona, together with all wells, water rights and mineral rights in which Grantor has an interest and appurtenant thereto:

As described in **Exhibit A** attached hereto.

Subject to all matters of record.

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

Envisage Living Communities, LLC, a Colorado Limited Liability Company

By: _____

Its: _____

Page 1 of 2

EXEMPTION: A.R.S. §11-1134.A.3.		Board of Supervisors:	Right of Way [] Parcel []
Agent:	File #:	Activity #:	P [] De [] Do [] E []

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me the ____ day of _____, 20__ by _____ as _____ of Envisage Living Communities, LLC, a Colorado Limited Liability Company.

Notary Public

My Commission Expires: _____

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

EXHIBIT G-1

DRIVEWAY EASEMENT

1. **Defined Terms.** The following terms will be used as defined terms in this Exclusive Easement ("**Easement**"):

Grantor: Pima County Flood Control District, a political taxing authority of the state of Arizona

Grantee: Envisage Living Communities, LLC, a Colorado Limited Liability Company

*Grantee's Property: the real property described on **Exhibit B***

*Easement Area: the real property depicted on **Exhibit A***

2. **Background and Purpose.** Grantee is requesting this easement from Grantor to secure the rights of legal ingress and egress for the benefit of Grantee's property. Grantor has agreed to provide this Easement for the benefit of Grantee.
3. **Grant of Easement.** Grantor hereby conveys to Grantee, for the benefit of Grantee and Grantee's Property, a perpetual, exclusive easement over the Easement Area.
4. **Maintenance of Easement Area.** Grantee shall maintain the Easement Area in a good and safe condition.
5. **Indemnity.** To the extent permitted by law, Grantee shall indemnify, defend, and hold harmless Grantor from any and all present or future claims, demands, causes of action in law or equity caused by the negligent or intentionally wrongful acts of Grantee, its officers, agents and/or employees in connection with the use of the Easement Area.
6. **Restrictions on Use by Grantor.** Grantor shall not erect, place or maintain, nor to permit the erection, placement, or maintenance of any improvements in the Easement Area that would unreasonably interfere with the ability of Grantee to exercise the rights granted herein.
7. **Covenant to Run with Land.** This Easement is a covenant that runs with the land.

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GRANTEE: Envisage Living Communities, LLC, a Colorado Limited Liability Company

By: _____

Date

STATE OF ARIZONA)
) ss
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022,
by _____.

Notary Public

My Commission Expires:

EXHIBIT G-2

NON-EXCLUSIVE EASEMENT

1. **Defined Terms.** The following terms will be used as defined terms in this Non-Exclusive Easement ("**Easement**"):

Grantor: Pima County Flood Control District, a political taxing authority of the state of Arizona

Grantee: Envisage Living Communities, LLC, a Colorado Limited Liability Company

*Grantee's Property: the real property described on **Exhibit B***

*Easement Area: the real property depicted on **Exhibit A***

2. **Background and Purpose.** Grantee is requesting this easement from Grantor to secure the rights of legal ingress and egress for the benefit of Grantee's property. Grantor has agreed to provide this Easement for the benefit of Grantee.
3. **Grant of Easement.** Grantor hereby conveys to Grantee, for the benefit of Grantee and Grantee's Property, a perpetual, non-exclusive easement over the Easement Area.
4. **Maintenance of Easement Area.** Grantee shall maintain the Easement Area in a good and safe condition.
5. **Indemnity.** To the extent permitted by law, Grantee shall indemnify, defend, and hold harmless Grantor from any and all present or future claims, demands, causes of action in law or equity caused by the negligent or intentionally wrongful acts of Grantee, its officers, agents and/or employees in connection with the use of the Easement Area.
6. **Restrictions on Use by Grantor.** Grantor shall not erect, place or maintain, nor to permit the erection, placement, or maintenance of any improvements in the Easement Area that would unreasonably interfere with the ability of Grantee to exercise the rights granted herein.
7. **Covenant to Run with Land.** This Easement is a covenant that runs with the land.

8. **Amendment.** This Easement may only be amended by a written instrument executed by Grantor and Grantee or the then owners of Grantee's Property and the Easement Area.

Grantor and Grantee have executed this Easement on the dates set forth below.

GRANTOR: Pima County Flood Control District, a political taxing authority of the State of Arizona

By: _____

Date: _____

STATE OF ARIZONA)

) §

COUNTY OF PIMA)

This instrument was acknowledged before me this ____ day of _____,
2022, by _____.

Notary Public

My Commission Expires:

[REST OF PAGE LEFT INTENTIONALLY BLANK]

GRANTEE: Envisage Living Communities, LLC, a Colorado Limited Liability Company

By: _____

Date

STATE OF ARIZONA)
) ss
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022,
by _____.

Notary Public

My Commission Expires:

Exhibit "H"

Ground Lease Agreement

1. **PARTIES; EFFECTIVE DATE.** This Ground Lease Agreement ("**Lease**") is made by and between Envisage Living Communities, LLC, a Colorado limited liability company (hereinafter referred to as "**Tenant**") and Pima County Flood Control District, a political taxing authority of the State of Arizona (hereinafter referred to as "**Landlord**" or "**District**"). This Lease shall be effective (the "**Effective Date**") on the date it is signed by the Chairman of the Board of Directors of the District. Tenant shall execute this Lease before it is submitted to the Board of Directors for approval.

2. **BACKGROUND AND PURPOSE.**

2.1. Landlord owns the property legally described and depicted on **Exhibit A** (hereinafter referred to as the "**Land**").

2.2. Tenant desires to design, develop, construct, operate and maintain a food and retail service facility in a converted Airstream (the "**Airstream**") on the Land.

2.3. This Lease is intended to provide the Tenant with the land necessary to operate a food and retail service facility, subject to Tenant obtaining all the proper permits and approvals for construction and operation of a food and retail service facility within the Airstream.

2.4. Landlord has the authority to lease the Land to Tenant. Landlord has provided notice and appraised the Land in accordance with A.R.S. § 48-3603.

2.5. Landlord and Tenant desire to enter into this Lease to allow Tenant to develop the Land as a new amenity for Pima County and the region.

2.6. Landlord desires to lease to Tenant, and Tenant desires to lease from Landlord, the Land together with all improvements now on or hereafter located on the Land (the "**Premises**"), under the terms and conditions set forth in this Lease.

3. **PREMISES.**

3.1. **Lease.** In consideration of Tenant's compliance with all the terms and conditions of this Lease, and timely performance of all its obligations under this Lease, Landlord hereby leases the Premises to Tenant and Tenant hereby leases the Premises from Landlord. Tenant will develop, operate, manage and maintain the Airstream upon the Premises under the terms and conditions set forth herein. Tenant will construct, provide, operate and maintain all real and personal property and all equipment necessary for the establishment and operation of the Airstream.

3.2. **Condition of Land.** Tenant acknowledges that it is fully familiar with the physical and legal condition of the Land and has received the same in good order and condition. LANDLORD MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO THE CONDITION OR STATE OF THE LAND OR ITS FITNESS OR AVAILABILITY FOR ANY PARTICULAR USE, AND LANDLORD IS NOT LIABLE FOR ANY LATENT OR PATENT DEFECT THEREIN. Tenant's use of the Premises is subject to all existing easements, rights-of-way and set-backs existing as of the date of this Lease.

3.3. **Quiet Enjoyment.** Landlord covenants and agrees that upon Tenant paying the Rent and performing and observing all of the Tenant's obligations under this Lease, Tenant may peaceably and quietly have, hold and enjoy the Premises for the Term, without hindrance or molestation by anyone claiming paramount title or claims through Landlord.

3.4. **Entry by Landlord.** Landlord reserves the right to enter the Premises to inspect the same; provided that if such entry is not during normal business hours, Landlord will give Tenant at least 24 hours advance notice. Landlord will make a reasonable effort to not interrupt Tenant's business at the Premises.

4. TERM.

4.1. **Initial Term.** This Lease will extend for a term of five years (the "**Initial Term**").

4.2. **Option Periods.** Provided that Tenant is not then in default of any provision of this Lease, upon expiration of the Initial Term, the term of this Lease may be renewed and extended by Tenant for four additional five year terms (the "**Option Periods**"). If Tenant wishes to renew the Lease, Tenant shall do so by providing written notice to Landlord not more than two years and not less than one year prior to the end of the Initial Term or subsequent Option Periods.

5. RENT.

5.1. **Annual Rent.** Commencing on the date the Airstream becomes operational (the "**Rent Commencement Date**"), Tenant will pay an annual rent ("**Rent**") equal to the One Thousand Six Hundred and 00/100 Dollars (\$1,600.00) (the "**Annual Minimum Rent**").

5.2. **Payment of Rent.** Beginning on the Rent Commencement Date and continuing thereafter on the first day of the sixth month following the Rent Commencement Date (the "**Rent Due Date**") and every six months thereafter, Rent shall become due and payable in semi-annual installments. Each semi-annual installment shall be in the amount of Eight Hundred and 00/100 Dollars (\$800.00) (the "**Minimum Rent Semiannual Payment**"), which equals one-half of the Annual Minimum Rent.

5.3. **Adjustments to Annual Minimum Rent.** Beginning on the first day of the

twelfth (12th) full month following the Rent Commencement Date, and every 12 months thereafter during the Initial Term and any renewal term, the Rent shall be increased by Three Percent (3.0%) annually.

5.4. **Interest on Late Due Amounts.** Tenant must pay interest on any payments of Rent not received by the Rent Commencement Date, the Rent Due Date, the Reconciliation Date, or any other sum due under this Lease, from the date due until paid, at the greater of (i) the rate of ten percent (10%) per annum, or (ii) the statutory rate for interest on judgments in effect when the payment is due.

5.5. **Rental Taxes.** Tenant must pay to Landlord any occupancy tax, rent tax or government property lease excise tax now in effect or hereafter enacted, which Landlord is now or hereafter required to collect from Tenant or to pay with respect to the Premises or this Lease.

5.6. **Other Taxes.** Tenant is responsible for payment of all taxes, whether real property taxes, personal property taxes, income taxes, or any other taxes, if any, that are or may be assessed relating to the Premises, this Lease, or any use of the Premises pursuant to this Lease.

6. CONSTRUCTION AND PLACEMENT OF AIRSTREAM.

6.1. **Construction and placement of Airstream.** Tenant shall, at its sole expense, prepare and construct the Airstream and the related improvements (collectively, the "**Amenity Space**") in accordance with the terms and requirements set forth in that certain Exchange Agreement entered into by Landlord and Tenant effective as of _____, 2022 (the "**Exchange Agreement**").

6.1.1. Scope. Tenant will bring in utilities and sewer, construct a pad and related improvements upon the Land.

6.1.2. Facilities. All costs associated with the Airstream, inclusive of hauling, placement, utility connection, cost to convert the unit for food and/or retail services, and any required construction and operational permits will be the sole expense of Tenant.

6.2. **Off-Site Improvements.** Tenant is solely responsible for construction of any off-site public improvements required as a result of Tenant's construction of the Airstream or use of the Premises (including any sidewalks, roadway, drainage or lighting improvements provided for in the approved plans and specifications).

6.3. **Plans and Specifications.** Landlord and Tenant acknowledge and agree that the plans and specifications for the Amenity Space improvements shall be prepared and submitted in accordance with the terms and requirements of the Exchange Agreement. Landlord and Tenant further acknowledge and agree that pursuant to the terms of the Exchange Agreement the Amenity Space improvements must be completed pursuant to the Landlord approved

improvement plans prior to the Effective Date of this Lease.

7. **ALTERATIONS.** Tenant, after completion of the Airstream, may from time to time during the Term make changes, alterations, additions, substitutions or improvements to the Premises (collectively, "**Alterations**"), at Tenant's sole cost and expense, as set forth below:

- 7.1. **Minor Alterations.** Tenant may make such non-structural Alterations as Tenant may reasonably consider necessary and desirable to adapt or equip the Airstream for Tenant's use and occupancy, except as set forth below.

- 7.2. **Substantial Alterations.** Tenant will make no Alterations that will (i) cost in excess of \$100,000; or (ii) involve structural work or changes; or (iii) involve work or changes to the electrical, plumbing, or HVAC systems (collectively, "**Substantial Alterations**"), unless Tenant first delivers plans and specifications to Landlord and obtains Landlord's written approval which will not be unreasonably withheld or delayed. The requirements applicable to the initial construction of the Airstream, as set forth in Section 6 above, including, but not limited to, insurance and bonding requirements and approval of plans and specifications, will apply to Substantial Alterations.

8. **FIXTURES AND FURNISHINGS.** Tenant will retain ownership of the Airstream and all trade fixtures and business equipment and furnishings (collectively "**Fixtures**") from time to time installed in the Premises by Tenant at its expense. Tenant may remove any such Fixtures at any time during the Term and must remove all Fixtures prior to the expiration of the Term, except those Fixtures that Landlord agrees, in writing, may be left on the Premises. Upon any removal of Fixtures, Tenant must promptly repair any and all resulting damage to the Premises. Any Fixtures not removed at the expiration of the Term will become the property of Landlord without payment to Tenant. Tenant must reimburse Landlord for any costs and expenses incurred by Landlord in removing any Fixtures that are left in place by Tenant without Landlord's prior written permission, and repairing any resulting damage; this covenant will survive expiration or termination of the Lease. Notwithstanding anything to the contrary contained herein, upon the termination or expiration of this Lease and at sole discretion of the Landlord, title to the Airstream then situated on the Land may be granted to Landlord, without payment therefore, and if accepted by Landlord, Tenant will have no further rights therein.

9. **USE OF PREMISES.**

- 9.1. **Permitted Uses.** The Premises may be used by Tenant only for its intended use and uses reasonably related thereto in keeping with the general character

of the surrounding area and permitted by law.

9.2. Operation of Airstream.

- 9.2.1. Conduct of Airstream. Tenant will determine the hours of operation and will conduct its activities, and ensure that its employees, and all permissible users of the Airstream conduct their activities in a professional manner and in compliance with applicable standards of practice for food service facilities and all federal, state and local laws.
- 9.2.2. Right of Public to Access Airstream. Except for designated days, access to the Airstream will be open to the general public. Any utilization of the Airstream by third parties for Special Events will be scheduled and directed by and through Tenant.
- 9.2.3. Fees. Tenant may charge fees for use of the Airstream for Special Events and other uses of the Airstream in amounts approved in advance by Landlord.
- 9.2.4. Alcohol. Tenant may not serve and sell alcoholic beverages.
- 9.2.5. Signs. Tenant may affix and maintain upon the Premises such signs relating to the Airstream as Tenant deems appropriate; provided, however, that all signs utilized by Tenant on or about the Airstream, whether visible from outside the Airstream or not, shall at all times comply with applicable provisions of the Pima County Sign Code and shall be installed and maintained at Tenant's sole cost. Any and all advertising signs placed by Tenant shall be immediately removed by Tenant upon termination of this Lease for any reason. Any damage resulting from such removal shall be repaired immediately by Tenant at its sole cost. Tenant shall not remove any operational or safety signage from the Airstream except to maintain, repair or replace the signage. Tenant shall pay for all costs of construction, erection, installation, maintenance and repair of any sign to be erected or installed or otherwise placed. Notwithstanding anything herein to the contrary, any signs requested by Landlord and not otherwise required to be installed at the Airstream shall be constructed and installed at Landlord's expense.

9.3. **Prohibited Activity.** Tenant may not permit any unlawful activities on the Premises, or any activities that unduly interfere with activities of neighboring property owners/occupants. Tenant shall comply with all local, state and federal laws including but not limited to Pima County Code Chapter 9.30—“Regulation of Excessive, Unnecessary and Annoying Noises”.

9.4. **Activities not Insured or that Affect Insurance.** Tenant shall not conduct any activity or permit any activity to be conducted on the Premises which is not covered by the insurance policies provided pursuant to Section 12 herein without first obtaining the written consent of Landlord and without providing additional insurance covering the activity or event and with coverage limits and carriers acceptable to Landlord. Tenant shall not do or permit anything to be done in or about the Premises nor bring or keep anything therein which will in any way increase the existing rate of or affect any fire or other insurance upon the Premises or any of its contents or cause a cancellation of any insurance policy covering the Premises or any part thereof or any of its contents.

10. ENVIRONMENTAL COMPLIANCE.

10.1. **Hazardous Materials Defined.** As used herein, the term “Hazardous Material” means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of Arizona or the United States Government. The term “Hazardous Material” includes, without limitation, any material or substance that is (i) petroleum or petroleum products; or (ii) defined as a Hazardous Material under A.R.S. 26-301(8).

10.2. **Hazardous Materials Prohibited; Clean Air Act.** Tenant may not cause or permit any Hazardous Material (as hereinafter defined) to be brought upon, kept, or used in or about the Premises by Tenant, its agents, employees, contractors or invitees, without the prior written consent of Landlord, other than such Hazardous Materials as are customarily necessary or useful to the type of operations permitted under this Lease and actually being carried out by Tenant on the Premises which will be used, kept and stored in a manner that complies with all laws regulating any such Hazardous Materials. Tenant's operations on the Premises must comply with applicable provisions of the Clean Air Act, 42 U.S.C. 7401 et seq. and Arizona Revised Statutes, Title 49, Chapter 3 and any other applicable environmental laws or regulations.

10.3. **Indemnity.** If (i) Tenant breaches the obligations stated in the preceding paragraph, (ii) the presence (whether consented to by Landlord or otherwise) of Hazardous Material on the Premises or on or in the soil or ground water under or adjacent to the Premises is caused or permitted by Tenant, its agents, employees, contractors or invitees, (iii) contamination of the

Premises or soil or ground water under or adjacent to the Premises by Hazardous Material otherwise occurs for which Tenant is legally liable, or (iv) contamination occurs elsewhere in connection with the transportation by Tenant of Hazardous Material to or from the Premises, then Tenant will indemnify, protect, defend and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines, costs, expenses, liabilities or losses (including, without limitation, diminution in value of the Premises or any part thereof, damages for the loss or restriction on use of usable space or of any amenity of the Premises or any part thereof, damages arising from any adverse impact on marketing of space with respect to the Premises or any part thereof, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arose or arises during or after the term of this Lease as a result of such contamination. The foregoing obligation of Tenant to indemnify, protect, defend and hold Landlord harmless includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, restoration or other response work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Material present, as a result of any action or inaction on the part of Tenant, its agents, employees, contractors or invitees, in the Premises or the soil or ground water on, under or adjacent to the Premises, or elsewhere in connection with the transportation by Tenant of Hazardous Material to or from the Premises.

10.4. **Clean-up.** Without limiting the foregoing, if the presence of any Hazardous Material on or in the Premises, or the soil or ground water under or adjacent to the Premises caused or permitted by Tenant, or its agents, employees, contractors or invitees results in any suspected contamination of the Premises, the soil or ground water under or adjacent to the Premises, Tenant must promptly notify Landlord in writing and take all actions at its sole expense as are necessary to return the Premises, or such soil or ground water to the condition existing prior to the introduction of any such Hazardous Material to the Premises, or to such soil or ground water; provided that Landlord's approval of such actions is first obtained, which approval may not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Premises.

10.5. **Pre-Existing Contamination.** Landlord agrees that any Hazardous Materials contaminating the Premises prior to possession of the Premises by Tenant will not result in liability for Tenant under this Paragraph except to the extent such contamination is aggravated by the action or inaction of Tenant.

10.6. **Notices Regarding Environmental Conditions.** Tenant must, within ten business days following receipt thereof, provide Landlord with a copy of (i) any notice from any local, state or federal governmental authority of any violation or administrative or judicial order or complaint having been filed or about to be filed against Tenant or the Premises alleging any violation of any

local, state or federal environmental law or regulation or requiring Tenant to take any action with respect to any release on or in the Premises or the soil or ground water under or adjacent to the Premises of Hazardous Material, or (ii) any notices from a federal, state or local governmental agency or private party alleging that Tenant may be liable or responsible for cleanup, remedial, removal, restoration or other response costs in connection with Hazardous Material on or in the Premises or the soil or ground water under or adjacent to the Premises or any damages caused by such release.

- 10.7. **Survival.** Tenant's obligations under this Section will survive the expiration or earlier termination of this Lease and vacation of the Premises.

11. REPAIR, MAINTENANCE AND UTILITIES.

- 11.1. **Maintenance and Repairs.** All improvements on the Premises, both outside and inside, must be put and kept in good order and repair by Tenant at Tenant's sole cost and expense, and Tenant must make all repairs and replacements, ordinary as well as extraordinary, foreseen and unforeseen, structural or otherwise, that may be necessary or required, except as provided in Section 11.2 below. If Tenant fails to make such repairs, restoration or replacements, Landlord may make them, and Tenant must reimburse Landlord for the costs within ten days after Landlord sends Tenant an invoice.

- 11.2. **Damage for Casualty.** If any improvement on the Premises is damaged or destroyed by any cause whatsoever, Tenant must, with reasonable promptness, repair and replace the same at its own expense, to at least the condition existing immediately prior to the damage or destruction, and must do so even though the proceeds of any insurance policies covering the loss are insufficient to reimburse Tenant therefore, and Tenant's obligations under this Lease will not be terminated or suspended; except that, that if the Premises are substantially destroyed by fire or other casualty at any time during the Initial Term, or the Option Period, then Tenant may terminate this Lease by written notice given to Landlord within 60 days after the date of such destruction, and Tenant will be discharged from responsibility to repair the damage, but Tenant must in that event, at Tenant's sole cost and expense, clean and clear the Land of all debris and repair the Land and install landscaping so that the Land blends in reasonably well with the surroundings.

- 11.3. **Utilities** Tenant must, at its sole cost and expense, arrange for the furnishing of all utilities, including electricity, gas, water and sewer, and telecommunication services, fire protection lines and hydrants, that are necessary for its operations on the Premises, and Tenant covenants and agrees to pay all charges for such utilities and services directly to the supplier thereof. Landlord will not be liable in any way to Tenant for any failure or defect in the supply or character of utilities or telecommunications services

furnished to the Premises by reason of any requirement, act or omission of the provider of such service or for any other reason.

12. INSURANCE; INDEMNIFICATION.

- 12.1. **Maintenance of Insurance.** Tenant shall procure and maintain, until all of Tenant's obligations, including any warranty periods under this Lease, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Tenant, its agents, representatives, employees or subcontractors.
- 12.2. **Minimum Requirements.** The insurance requirements herein are minimum requirements for this Lease and in no way limit the indemnity covenants contained in this Lease. Landlord in no way warrants that the minimum limits contained herein are sufficient to protect the Tenant from liabilities that might arise out of the performance of the work under this Lease by the Tenant, its agents, representatives, employees or subcontractors, and Tenant is free to purchase additional insurance.
- 12.3. **Insurance.** From the effective date of this Lease, the following coverage limits apply: Commercial General Liability insurance with coverage at least as broad as ISO form CG 00 01 in an amount not less than Two Million Dollars (\$2,000,000.00) per occurrence and Two Million Dollars (\$2,000,000) aggregate covering the Premises, endorsed to include District as additional insured with coverage at least as broad as ISO form CG 20 10, and covering all activities carried out at the Premises while the Airstream is under construction.
- 12.3.1.1. The policy shall be endorsed to include the following additional insured language: *"Pima County Flood Control District" shall be named as additional insured with respect to liability arising out of the activities performed by or on behalf of the Tenant."*
- 12.3.1.2. Policy shall contain a waiver of subrogation against District for losses arising from work performed by or on behalf of Tenant.
- 12.3.1.3. The policy shall be endorsed to include Liquor Liability coverage if alcohol is being sold at any events. This requirement can be satisfied by a separate Liquor Liability Policy. Additional insured and waiver of subrogation language are still required.
- 12.3.1.4. Liability insurance is to cover all operators, employees, sponsors and promoters.
- 12.3.1.5. Levels of insurance for special events may be higher than those

levels specified herein based upon specific risk assessment by the Pima County Risk Manager. Lessee shall provide at least 60 days' notice of special events to the Pima County Risk Manager and shall obtain and maintain in place any increased insurance coverage prior to the scheduled event.

12.3.2. Business Automobile Liability. Tenant shall provide Auto Liability coverage for Bodily Injury and Property Damage in the amount of \$1,000,000.00 combined single limit for vehicles used in the performance of services under this Lease and any renewals thereof.

12.3.3. Worker's Compensation, Employers' Liability and Participant Accident Coverage .

12.3.3.1. Workers' Compensation coverage: Statutory with Employers' Liability insurance to include: Each Accident \$ 500,000.00; Disease-Each Employee \$ 500,000.00 with a Disease-Policy Limit of \$1,000,000.00.

12.3.3.2. Participant Accident Insurance Coverage with minimum limits to include: Accidental Death \$500,000.00; Medical Reimbursement \$1,000,000.00.

12.3.3.3. Policies shall contain a waiver of subrogation against District.

12.3.4. Property Insurance. Tenant shall obtain and keep in force during the term of this Lease a policy of insurance covering loss or damage to the Premises in the amount of the full replacement value thereof, providing protection against all vandalism, malicious mischief, special extended perils (all risk) and shall deliver to Landlord a Certificate of Property Insurance, with Landlord named as additional insured. Said Certificate must be satisfactory to Landlord. Tenant will provide a copy of Tenant's policy of Property insurance to Landlord annually.

12.4. **Additional Insurance Requirements.** The policies shall include, or be endorsed to include, the following provisions:

12.4.1. Additional insured shall be Pima County, the District and its officers, officials, agents, and employees wherever additional insured status is required. Such additional insured shall be covered to the full limits of liability purchased by Tenant, even if those limits of liability are in excess of those required by this Lease.

12.4.2. Each insurance policy shall contain a severability of interests provision and shall waive subrogation against District.

- 12.4.3. Tenant's liability insurance coverage shall be primary insurance with respect to all other available sources.
- 12.4.4. Coverage provided by Tenant shall not be limited to the liability assumed under the indemnification provisions of this Lease.
- 12.5. **Notice of Cancellation.** Each insurance policy required by the insurance provisions of this Lease shall provide the required coverage and shall not be suspended, voided, canceled, or reduced in coverage or in limits except after 30 days prior written notice has been given to District.
- 12.6. **Acceptability of Insurers.** Insurance is to be placed with duly licensed or approved non-admitted insurers in the state of Arizona with an "A.M. Best" rating of not less than A- VII. Landlord in no way warrants that the above-required minimum insurer rating is sufficient to protect Tenant from potential insurer insolvency.
- 12.7. **Verification of Coverage.**
- 12.7.1. Tenant shall furnish Landlord with certificates of insurance (ACORD form or equivalent approved by Pima County Risk Manager) as required by this Lease. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.
- 12.7.2. All certificates and endorsements are to be received and approved by the Pima County Risk Manager before work commences under this Lease. Each insurance policy required by this Lease must be in effect at or prior to commencement of work under this Lease and remain in effect for the duration of this Lease. Failure of Tenant to maintain the insurance policies as required by this Lease, or to provide evidence of renewal, is a material breach of this Lease.
- 12.7.3. All certificates required by this Lease shall include the Pima County project/contract number and the project number and description shall be noted on the certificates of insurance. Landlord reserves the right to require complete, certified copies of all insurance policies required by this Lease at any time.
- 12.8. **Subcontractors.** Tenant's certificate(s) shall include all subcontractors as insured under its policies or Tenant shall furnish to Landlord separate certificates and endorsements for each subcontractor. All coverage's for subcontractors shall be subject to the minimum requirements identified above.
- 12.9. **Approval.**
- 12.9.1. Any modification or variation from the insurance requirements in this

Lease shall be made by the Landlord's Risk Management Division, whose decision shall be final. Such action will not require a formal amendment to this Lease, but may be made by administrative action.

- 12.9.2. Any construction or renovation projects on the Premises will require additional insurance coverage such as Builder's Risk insurance. Pima County Risk Management will provide the additional insurance requirements required for any construction or renovations.

- 12.10. **Safety.** Tenant will adhere to Federal, State and Local safety standards related to the on-site activities. Compliance is to include relevant OSHA standards as well as the safety standards, codes or rules.

- 12.11. **Indemnification.** Tenant agrees that, to the fullest extent permitted by law, Tenant will indemnify, defend, and hold harmless Landlord, its officers, employees and agents from and against any and all losses, costs, or expenses (including reasonable attorney fees) incurred or suffered by Landlord as a result of any damages to property or injuries to persons (including death), or any suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, arising out of or directly related to Tenant's failure to fully perform its obligations hereunder, or in connection with Tenant's use or occupancy of the Premises under the terms of this Lease. This indemnity will survive the expiration or termination of this Lease.

13. DEFAULT/TERMINATION.

- 13.1. **Tenant Default.** The occurrence of any one or more of the following events will constitute a default and breach of this Lease by Tenant for which Landlord may terminate this Lease:

- 13.1.1. Operation of Premises. The vacating or abandonment of the Premises, or cessation of activities thereon, or any portion thereof, by Tenant, that continues for a period of 10 calendar days after notice of such default is sent by Landlord to Tenant, but expressly excluding periods of casualty, repair and restoration.

- 13.1.2. Monetary Obligations. The failure by Tenant to make any payment required to be made by Tenant under this Lease, as and when due, that continues for a period of 10 calendar days after notice from Landlord that such payment is due.

- 13.1.3. Insurance. The failure by Tenant to maintain insurance policies as set forth above for any period of time, in which event Tenant must immediately cease all operations at the Premises until such insurance is obtained. In the event of such a default, Landlord may, in Landlord's sole discretion, obtain necessary insurance coverage

in which event Tenant must, within five days of demand, reimburse and pay to Landlord the full amount of any costs and premiums expended by Landlord to obtain such coverage.

- 13.1.4. Violation of Law. Violation of any law by Tenant, or the conduct of any unlawful activities on the Premises that are permitted by Tenant, either tacitly or explicitly, or that Tenant has not taken reasonable means to prevent after Tenant becomes or in the exercise of reasonable diligence should have become aware that such activities are being conducted.
- 13.1.5. Health and Safety Violation. Any action or omission by Tenant that, in Landlord's reasonable judgment, causes a threat to the health or safety of the general public or the users of the Premises or neighboring properties.
- 13.1.6. Other Covenants. The failure by Tenant to observe or perform any other of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant that continues for a period of 30 days after written notice thereof by Landlord to Tenant; provided, however, that if the nature of Tenant's default is such that more than 30 days are reasonably required for its cure, then Tenant will not be deemed to be in default if Tenant commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion. The notice and cure periods in this paragraph do not apply to the automatic termination provisions in Section 4.1.

13.2. Landlord Default. Landlord will be deemed to be in default hereunder if Landlord fails to perform any covenant or condition of this Lease to be performed by Landlord and such failure continues for 30 days after written notice and demand from Tenant, unless the failure is of such a character as to require more than 30 days to cure, in which event Landlord will be in default only if it fails to initiate the cure within 30 days, and thereafter diligently pursue the same to completion.

13.3. Remedies.

- 13.3.1. All Remedies Available. Either party may pursue any remedies provided by law and in equity for the breach of this Lease, including termination of the Lease. No right or remedy is intended to be exclusive of any other right or remedy and each will be cumulative and in addition to any other.
- 13.3.2. Cure by Landlord. Should Tenant fail to perform in a timely manner any of the covenants or terms of this Lease on its part to be performed, Landlord may (but is not obligated to) perform the same and charge Tenant for the costs thereof, together with interest

thereon, at the greater of (i) 10% per annum, or (ii) the rate set by statute for interest on judgments, from the date upon which the expense is incurred until paid by Tenant.

14. **NOTICES.** All notices given under this Lease must be in writing and either served personally or sent by certified or registered mail, return receipt requested, to the parties as indicated below or to such other persons, or addressees as either party may designate in writing to the other party:

If to Tenant: Envisage Living Communities, LLC
Attn: Patrick Beach and Philip Shapiro
2570 Hoyt Street
Lakewood, Colorado 80215

If to Landlord: Pima County Flood Control District
Attention: Director
201 N. Stone Ave, 9th floor
Tucson, AZ 85701

15. **ASSIGNMENT/SUBLETTING.** Tenant may not, either voluntarily or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Lease or any interest therein and may not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, or allow any other person (the employees, agents, servants and invitees of Tenant excepted) to occupy or use the Premises, or any portion thereof, without first obtaining the written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the above, Tenant may assign this Lease to any affiliate, subsidiary, parent or related entity without the consent of Landlord; provided, that, Tenant gives prior written notice of such assignment to Landlord.
16. **SURRENDER OF PREMISES/HOLDING OVER.** On the last day or earlier termination of the Term of this Lease, Tenant must quit and surrender the Premises, in good condition and repair (except as provided in Section 11.2 above), normal wear and tear excepted. Any holding over with the consent of Landlord after the expiration of the Term or earlier termination of the Lease will be construed to be a tenancy from month-to-month upon the same terms and conditions as provided in this lease, to the extent applicable. Tenant's obligations under this Section will survive the expiration or earlier termination of the Term of this Lease.
17. **SUSTAINABILITY PLAN.** In accordance with the County's Sustainability Plan, Tenant must use all reasonable efforts to use recycled products for its operation within the Premises, and re-use and recycle materials utilized in the Premises.

18. **CANCELLATION FOR CONFLICT OF INTEREST.** This Lease may be cancelled for conflict of interest pursuant to A.R.S. § 38-511, the provisions of which are incorporated herein by this reference.
19. **TENANT NOT AN AGENT OF LANDLORD.** Tenant is not an agent of Landlord for any purpose under this Lease or otherwise. Tenant will control activities on the Premises, and Landlord will not control those activities. Tenant's employees and servants will not be under the control of Landlord.
20. **NON-DISCRIMINATION.** Tenant agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09 including flow down of all provisions and requirements to any subcontractors. Executive Order 2009-09 supersedes Executive Order 99-4 and amends Executive Order 75-5 and may be viewed and downloaded at the Governor of the State of Arizona's website http://www.azgovernor.gov/dms/upload/EO_2009_09.pdf which is hereby incorporated into this Lease as if set forth in full herein. During the performance of this Lease, Tenant shall not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.
21. **NON-APPROPRIATION.** Notwithstanding any other provision in this Lease, this Lease may be terminated if for any reason, the District's Board of Directors does not appropriate sufficient monies for the purpose of maintaining this Lease. In the event of such termination, District will have no further obligations to Tenant.
22. **COMPLIANCE WITH LAWS.** Tenant agrees to comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders.
23. **CHOICE OF LAW.** The laws of the State of Arizona will apply to any action relating to this Lease and any court action must be brought in a court in Pima County, Arizona.
24. **NON-WAIVER.** The failure of either party to insist in any one or more instances upon the full and complete performance of any of the terms and provisions of this Lease to be performed by the other party, or to take any action permitted as a result thereof, will not be construed as a waiver or relinquishment of the right to insist upon full and complete performance of the same or any other covenant or condition either in the past or in the future. The acceptance by either party of sums less than may be due and owing to it at any time will not be construed as an accord and satisfaction.
25. **INTERPRETATION OF LEASE.** The parties acknowledge that each has had the opportunity to review this Lease with counsel of its or their choice. This Lease will not be construed in favor or against either of the parties but will be interpreted fairly and equitably to effectuate the intent of the parties. All provisions contained in this Lease will bind and inure to the benefit of the parties hereto, their successors and assigns.

26. **ENTIRE AGREEMENT.** This Lease contains the entire agreement between the parties and all previous agreements, negotiations, or understandings are superseded by and merged in this Lease.
27. **AMENDMENT.** This Lease may not be amended except by a written instrument duly executed by both parties. Landlord will not enter into any modification of this Lease without the prior written consent of the holder of the Leasehold Deed of Trust provided that Landlord has notice of such secured party's interest in this Lease.
28. **SEVERABILITY.** Each provision of this Lease stands alone, and any provision of this Lease found to be prohibited by law will be ineffective to the extent of such prohibition without invalidating the remainder of the Lease.
29. **ATTORNEY'S FEES.** In the event any action, suit or proceeding at law or in equity is instituted with respect to this Lease, the prevailing party shall be entitled to reasonable attorneys' fees, expenses and court costs incurred.
30. **RECORDING.** This Lease may be recorded by Landlord or Tenant.
31. **TIME OF THE ESSENCE.** Time is of the essence of this Lease.
32. **AUTHORITY.** The undersigned represent to each other that they have full power and authority to enter into this Lease, and that all necessary actions have been taken to give full force and effect to this Lease. The undersigned further agree to produce all documents reasonably requested by the other party to evidence that the foregoing representation is true and correct, including but not limited to any partnership agreements, trust documents, operating agreements, articles of incorporation, or shareholder agreements.
33. **ATTORNEY'S REVIEW.** The parties acknowledge that they have had an opportunity to consult with legal counsel regarding this Lease, and that the terms of this Lease are not to be construed against any party because that party drafted the Lease, or construed in favor of a party because that party failed to understand the legal effect of the provisions of this Lease. District's Attorney is signing as to form only, and represents solely the interests of District. Each party shall bear the costs of their attorney incurred in connection with the negotiation and drafting of this Lease.

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IN WITNESS WHEREOF, the parties have executed this Lease as of the day, month and year written below.

TENANT: Envisage Living Communities, LLC

Name

Date

Its: _____

LANDLORD: Pima County Flood Control District, a political taxing authority of the State of Arizona

Sharon Bronson, Chair, Board of Directors

Date

ATTEST:

Melissa Manriquez, Clerk of Board

Date

APPROVED AS TO CONTENT:

Suzanne Shields, Director

APPROVED AS TO FORM:

Kathryn Ore, Deputy County Attorney

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