



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

Award Contract Grant

Requested Board Meeting Date: May 15, 2018

* = Mandatory, information must be provided

or Procurement Director Award

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

Golden Pins, L.L.C., an Arizona limited liability company, owns the property to be acquired.

***Project Title/Description:**

Acquisition Agreement to acquire real property located at 1010 W. Miracle Mile between Interstate 10 and Oracle Road. The agreement allows the Seller to remain in the property and continue to operate it as a bowling alley for a period of up to one year after the closing of the sale. During this one year period the County will have full access to the building to prepare plans to renovate the facility. Real Property File No. Acq-0743

***Purpose:**

The acquisition will provide the ability to co-locate compatible and coordinated services currently operating in leased facilities. The providers include Probation, Public Health and Community Services. The County will renovate the building and then relocate programs and terminate the existing leases.

***Procurement Method:**

EXEMPT PURSUANT TO PIMA COUNTY CODE 11.04.020

***Program Goals/Predicted Outcomes:**

Title to the property will be acquired after due diligence is completed, within 45 days after the contract is signed. Plans for renovating the facility will be prepared during the one year period after Closing, and then renovation will commence.

***Public Benefit:**

The relocation of programs to the acquired property will result in a cost savings with the provision of integrated, easily accessible services to the public.

***Metrics Available to Measure Performance:**

The purchase price is \$2,850,000.00. The property was appraised at \$2,200,000, and the owner recently made improvements, including a commercial kitchen, estimated at approximately \$500,000.00. The annual rent currently paid for leased space that will no longer be needed is approximately \$600,000.

***Retroactive:**

No

To: COB- 5-2-18
Ver. - 1
pgs - 24
(11)

Contract / Award Information

Document Type: CT Department Code: PW Contract Number (i.e., 15-123): 18*0353
Effective Date: 5/15/18 Termination Date: 5/14/2023 Prior Contract Number (Synergen/CMS): _____
 Expense Amount: \$* 2,941,600.00 Revenue Amount: \$ _____

*Funding Source(s) required: General Fund

Funding from General Fund? Yes No If Yes \$ 2,941,600.00 % _____

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

*Is the Contract to a vendor or subrecipient? _____

Were insurance or indemnity clauses modified? Yes No

If Yes, attach Risk's approval

Vendor is using a Social Security Number? Yes No

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

Amendment / Revised Award Information

Document Type: _____ Department Code: _____ Contract Number (i.e., 15-123): _____
Amendment No.: _____ AMS Version No.: _____
Effective Date: _____ New Termination Date: _____
Prior Contract No. (Synergen/CMS): _____

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

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

*Funding Source(s) required: _____

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

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

Document Type: _____ Department Code: _____ Grant Number (i.e., 15-123): _____
Effective Date: _____ Termination Date: _____ Amendment Number: _____
 Match Amount: \$ _____ Revenue Amount: \$ _____

*All Funding Source(s) required: _____

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

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

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

Contact: Neil Konigsberg

Department: Real Property Services

Telephone: 724-6582

Department Director Signature/Date: [Signature] 4/27/18

Deputy County Administrator Signature/Date: [Signature] 5/1/18

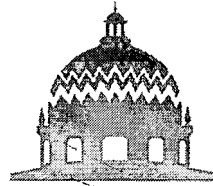
County Administrator Signature/Date: [Signature] 5/1/18
(Required for Board Agenda/Agenda Items)

CONTRACT

NO. CT-PW-18-353

AMENDMENT NO. _____

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



PIMA COUNTY
REAL PROPERTY

PIMA COUNTY REAL PROPERTY SERVICES

SELLER: Golden Pins, L.L.C.

PURCHASE PRICE: \$2,850,000.00

BUYER'S MAXIMUM COSTS: \$91,600.00

TOTAL FUNDING: \$2,941,600.00

FUNDING: Facilities Management General Fund 4702, Non-Bond Projects

ACQUISITION AGREEMENT

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

- 1.1. Seller: Golden Pins, L.L.C., an Arizona limited liability company
- 1.2. Buyer: Pima County, a political subdivision of the State of Arizona
- 1.3. Purchase Price: the sum of Two Million Eight Hundred Fifty Thousand Dollars (\$2,850,000.00)
- 1.4. Buyer's Maximum Costs: the sum of (i) Buyer's share of Closing Costs, and (ii) Buyer's share of Prorations, which combined shall not exceed Ninety-One Thousand Six Hundred Dollars (\$91,600.00)
- 1.5. Title Company: Pioneer Title Agency; Kim Moss Escrow Agent

1.6. Effective Date: the date Seller and Buyer have approved and accepted this Agreement by affixing their signatures. The date Buyer executes this Agreement is the date this Agreement is signed by the Chair of the Pima County Board of Supervisors.

1.7. Property: the real property described in **Exhibit A** and depicted in **Exhibit A-1**, together with all improvements thereon and all water rights associated with the Property, if any.

1.8. Removed Exceptions: items 2 and 7 on **Exhibit B**

1.9. Seller's Address: Don Allan, c/o Duffield Adamson & Helenbolt, P.C., 3430 E. Sunrise Drive, Suite 200, Tucson, AZ 85718

1.10. Buyer's Address: Manager, Pima County Real Property Services, 201 N Stone Ave, 6th Floor, Tucson, AZ 85701-1207; E-mail: neil.konigsberg@pima.gov

2. Parties; Effective Date. This Agreement is entered into between Seller and Buyer, and shall be effective on the Effective Date. Seller and Buyer are collectively referred to herein as the "**Parties**," and individually as a "**Party**."

1. Background and Purpose. The Parties acknowledge that the following statements are true and correct:

3.1. Seller owns the real property in Pima County, Arizona described on **Exhibit A** and depicted on **Exhibit A-1**, consisting of the following parcels (all of which are hereinafter referred to as the "Property"): 107-06-002J and 107-06-005B

3.2. The purpose of this Agreement is to set forth the terms and conditions upon which Seller shall sell the Property to Buyer, including Seller's right to occupy the Property for a period of up to one year after Closing, in accordance with the terms in section nine (9) below (the "**Occupancy Agreement**").

2. Purchase of Property. Buyer agrees to acquire the Property from Seller, and Seller agrees to convey the Property to Buyer, in consideration of the Purchase Price and the Occupancy Agreement, on the terms and conditions in this Agreement.

3. Inspection and Access.

5.1. Inspection Period. For a period of forty-five (45) days commencing on the

Effective Date (the "Inspection Period"), Buyer (and its respective employees, agents, representatives and Sellers) shall have the right to enter upon the Property the "Property" at reasonable times and from time to time, upon 24 hours' notice by telephone to Seller, for the purpose of viewing, inspecting, testing, appraising, surveying and studying the Property ("Inspection"). Buyer shall, promptly following any such Inspection, return the Property to the condition it was in immediately prior to such Inspection. Buyer shall, and does hereby agree, to the extent permitted by law, to indemnify and defend Seller against, and hold Seller harmless from, all claims, damages, expenses, and actions arising from any negligence or wrongful misconduct of Buyer or Buyer's employees or agents, as a result of such Inspection.

5.2. Leases, Reports, Etc. Within ten (10) Days after the Effective Date, Seller shall provide copies to Buyer of leases or other occupancy and use agreements regarding the Property; service, management and other agreements regarding the Property whose terms do not expire prior to the date of the Closing; permits, certificates, plans or specifications regarding the Property; soils reports, property inspections, hazardous/toxic material or environmental reports regarding the Property; and surveys of the Property.

5.3. Environmental Inspection. If environmental inspections do not specifically identify contamination but indicate a potential for contamination and recommend further testing or inspection, Buyer may elect by giving written notice to Seller to extend the Inspection Period for an additional forty-five (45) days, to conduct further investigations. If the Inspection Period is extended, the term "Inspection Period" shall then include the additional period.

5.4. Objection Notice. Buyer shall provide written notice to Seller, prior to expiration of the Inspection Period, of any items disapproved by Buyer as a result of Buyer's inspections (including environmental conditions) (the "Objection Notice"). If Buyer sends an Objection Notice, Seller may, within five (5) business days of receipt of the Objection Notice, notify Buyer if Seller is willing to cure any of the items to which Buyer objected (the "Cure Notice"). If Seller elects not to send Buyer a Cure Notice or if Seller's Cure Notice is not acceptable to Buyer, then Buyer may elect to terminate this Agreement in which case the Agreement shall be terminated and of no further force and effect. If Buyer fails to give the Objection Notice to Seller on or before the expiration of the Inspection Period, Buyer shall be deemed to have waived the right to give the Objection Notice and elected to proceed with Closing.

5.5. Closing Before Inspection Period Expires. Nothing in this Agreement shall preclude Buyer from electing to proceed with Closing prior to the expiration of the Inspection Period.

6. **Closing Costs and Prorations.**

6.1. Closing Costs. The closing costs ("**Closing Costs**") will be paid as follows:

6.1.1. All escrow fees shall be equally divided between Seller and Buyer. Recording fees, if any, be paid by Buyer.

6.1.2. Seller will pay for a Standard Owner's Title Insurance Policy for the Property, in the amount of the Purchase Price. In the event Buyer desires an Extended Owners Title Policy, or any specific endorsements to the Standard Owner's Title Insurance Policy, Seller will pay that portion of the premium allocable to a Standard Owner's Title Insurance Policy, and Buyer will pay that portion of the premium allocable to the additional coverage.

6.1.3. Seller will pay for any necessary Releases.

6.1.4. Buyer will pay other Closing Costs related to the Closing.

6.2. Prorations. Property taxes, rents, and annual payment of assessments with interest, if any (collectively "**Prorations**") will be prorated as of the date of Closing.

6.3. Buyer's Total Costs. Buyer's total costs at Closing shall not exceed Buyer's Maximum Cost, provided, however, that Buyer may unilaterally increase Buyer's Maximum Cost by written notice from Buyer to Seller prior to Closing.

7. **Escrow and Title.**

7.1. Escrow. Title Company will act as escrow agent. This Agreement will constitute escrow instructions in connection with the escrow established with Title Company under this Agreement (the "**Escrow**"). Title Company will make reasonably suitable arrangements with either Party, upon that Party's request, to have the Party execute any of the documents to be executed by that Party as provided in this

Agreement at the office of Title Company that is most convenient for Buyer.

7.2. Title Commitment. Escrow Agent will distribute to the Parties a Commitment for Standard Owner's Title Insurance (the "**Commitment**") together with complete and legible copies of all documents which will remain as exceptions to Buyer's policy of title insurance.

7.3. Amended Commitment. In the event Title Company should issue an Amended Commitment for Title Insurance which discloses an exception(s) not previously disclosed, Buyer shall have fifteen (15) days after the receipt of the Amended Commitment and the new Exceptions (the "**Disapproval Period**") within which to notify Seller and the Escrow Agent in writing of Buyer's disapproval of any new exceptions shown thereon (the "**Disapproval Notice**"). In the event of such disapproval, Seller shall have ten (10) days from receipt of the Disapproval Notice in which to notify Buyer in writing whether Seller intends to eliminate each of the disapproved Exceptions prior to the Closing (the "**Notice Period**"). If Seller fails to notify Buyer of its intent with respect to the disapproved items within that time or if Seller elects not to cure all disapproved items, Buyer may terminate this Agreement and the Escrow will be canceled. If the Amended Commitment is issued less than fifteen (15) days prior to the date of the Closing, then the date of the Closing is extended until the end of the Disapproval Period and the Notice Period, if applicable.

7.4. Title Policy is Condition to Closing. Buyer's obligation to Close is contingent upon Title Company being prepared to issue a Standard Owner's Title Insurance Policy for the Fee Property, in the amount of the Purchase Price, subject only to the exceptions on **Exhibit B** other than the Removed Exceptions, and the standard printed exceptions in the policy; provided, however, that notwithstanding **Exhibit B**, all monetary liens and encumbrances on the Fee Property will be removed before Closing, unless this Agreement expressly provides for the prorating of any such lien or encumbrance.

8. **Closing.**

8.1. Closing Date. The Closing of the sale of the Property to Buyer (the "**Closing**") will take place at the office of Title Company on or before one hundred twenty (120) days after the Effective Date, provided however, that Buyer may extend the Closing until thirty (30) days after receipt of all necessary releases or consents from Lienholders. Notwithstanding the foregoing, this Agreement will terminate if closing has not occurred within five (5) years after execution by Buyer, unless Buyer obtains approval by the Pima County Board of Supervisors to extend the Closing Date beyond said five (5) year period.

8.2. Deliveries by Buyer at Closing. At Closing, Buyer shall deliver to Seller through Escrow the following:

8.2.1. The Purchase Price, which will be paid in full at Closing payable to Title Company by Buyer's check; and

8.2.2. Such additional documents as Seller or Escrow Agent may reasonably require to effectuate the purchase.

8.3. Deliveries by Seller at Closing. At Closing, Seller deliver to Buyer through Escrow the following:

8.3.1. An executed Warranty Deed in the form of **Exhibit C**;

8.3.2. A Standard Owner's Title Insurance Policy for the Property, in the amount of the Purchase Price, subject only to the exceptions on **Exhibit B** other than the Removed Exceptions, and the standard printed exceptions in the policy; provided, however, that notwithstanding **Exhibit B**, all monetary liens and encumbrances on the Property will be removed before Closing, unless this Agreement expressly provides for the prorating of any such lien or encumbrance; and

8.3.3. Such additional documents as Buyer or Escrow Agent may reasonably require to effectuate the Purchase.

8.4. Delivery of Possession. Seller shall deliver keys to the structures on the Property to Buyer at Closing.

8.5. Security Interests. Monies payable under this Agreement may be due holders (the "Lienholders") of certain notes secured by mortgages or deeds of trust, up to and including the total amount of unpaid principal, interest and penalty on the notes, if any, and will, upon demand by the Lienholders, be paid to the Lienholders. Seller shall obtain from the Lienholders releases for any fee transfer.

9. **Occupancy Agreement.** The Parties agree that Seller retains the right, after Closing, to continue to occupy the Property. Seller's continued occupancy of the Property will benefit both parties. Buyer will benefit from Seller providing interim security and protection of the Property until Buyer is able to proceed with repurposing of the Property.

Seller will benefit by receiving extra time in which to vacate the Property. Seller's occupancy of the Property will be on the following terms and conditions:

9.1. Term.

9.1.1. This occupancy period ("**Occupancy Period**") shall commence on the Closing, when the Warranty Deed is recorded (the "Commencement Date"), and shall terminate (the "Vacate Date") upon the earlier of (i) the date Seller elects to permanently vacate the Property or (ii) one year after the Commencement Date, and there shall be no extension of the term stated in this Agreement unless agreed to in writing by Buyer and Seller.

9.1.2. Seller shall vacate the Property by the Vacate Date, and shall leave the Property in a good and clean condition, and shall return the keys to the Property to Buyer by hand delivery to a Buyer representative or at the address below. The Occupancy Period shall terminate upon the earlier of (i) the date of vacation or (ii) the Expiration Date, and there shall be no extension of the term stated in this Agreement.

9.2. No Rent. Seller's agreement to occupy the Property according to the terms and conditions of this Agreement constitutes additional consideration for this Agreement, and no rent shall be due during the Occupancy Period.

9.3. Use of Property. The Property may be used only for a bowling alley and related purposes, and no other purpose, and Seller shall comply with all applicable laws, rules, and regulations affecting its business.

9.4. No Assignment or Sublease. Seller shall not rent, assign, subordinate, or sublease the Property.

9.5. No Liens. Seller shall keep the Property free and clear of any and all liens, claims, and encumbrances of any type whatsoever.

9.6. Utilities. Seller is responsible for all utility costs (including water, electricity, sewer, gas, television cable, and telephone) associated with occupancy of the Property.

9.7. "As Is" Condition. Seller understands, agrees to, and accepts the Property and the fixtures therein in "as is" condition without warranty of any sort or nature. Seller further acknowledges that Buyer is not responsible for the replacement of any appliances included with the Property should any of said appliances fail or require repairs. Buyer

shall not be responsible for structural repairs; roof replacement; electrical work, including the main electrical service box; plumbing, including underground water supply, drain, waste, and ventilation lines; or the replacement of the heating and cooling system equipment.

9.8. Security and Maintenance. Seller shall provide security, repairs, cleaning and maintenance for the Property. Seller shall water vegetation, trim and remove overgrowth/weeds, remove trash and rubbish at Seller's expense, and the Property and environs shall be kept reasonably neat, clean and safe from brushfire. Seller acknowledges that Buyer intends to make major modifications to the Property after the Occupancy Period, and Buyer shall have no obligation to make any repairs to the Property, structural or otherwise, during the Occupancy Period.

9.9. Hazards. Seller shall not permit any unsafe conditions to exist upon the Property. Seller shall refer and report hazards on the Property to Pima County Facilities Management. If there is no danger to Seller, Seller shall take necessary temporary action to insure safety and security; for example, sweep up and dispose of glass, block or provide visible markers or barricades to safety hazards such as holes or erosion.

9.10. Hazardous Materials. Seller shall not dispose of motor oil, anti-freeze, vehicle batteries, or any other contaminant, hazardous, or potentially hazardous substance or material on the Property or environs. Seller shall dispose of such substances or materials in a safe and legal method prior to vacating the Property.

9.11. Access to Property. Buyer, and its contractors and agents, reserve the right to enter the Property at reasonable times as deemed necessary by Buyer. The Parties acknowledge that Buyer intends to develop plans for its use of the Property during the Occupancy Period. Buyer and its contractors and agents shall have access to the Property at all reasonable times during the Occupancy Period to inspect, test and take all other actions necessary to plan for its use of the Property, provided that Buyer shall use its best efforts at all times not to disturb Seller's operations.

9.12. No Monetary Remuneration. Seller will not receive monetary remuneration or employee benefits, nor in any other way will Seller be considered an employee of Pima County.

9.13. Liability. Buyer assumes no liability for bodily or personal injury or property damage resulting from Seller or Seller's guests or invitees using the Property during the term of this Agreement.

9.14. Damage To or Destruction of the Property. In the event the improvements on the Property are damaged or totally destroyed by fire, flood, accident or acts of God, Buyer shall have the option to terminate the Occupancy Period by delivering written notice of immediate termination to Seller.

9.15. Personal Property Insurance. Seller acknowledges that Buyer's hazard insurance on the Property does not cover the Seller against loss of personal property for any reason. It shall be Seller's responsibility to obtain insurance for Seller's personal property at Seller's sole cost and expense. Seller assumes all liability for personal injury, property damage or loss, and insurable risk.

9.16. Indemnification. By signing this Agreement and accepting the benefits thereof, Seller agrees to indemnify and hold harmless Buyer, its officers, departments, agents and employees from and against all suits, actions, legal or administrative proceedings, claims, demands or damages resulting from Seller's use of the Property during the term of this Agreement.

9.17. Remedy. Buyer shall have the right to enforce a breach of this Agreement through a forcible entry and detainer action.

10. **Insurance & Risk of Loss.**

10.1. Scope and Limits of Insurance. Seller shall procure and maintain, until Seller has vacated the Property, coverage with limits of liability not less than those stated below.

10.1.1. *Commercial General Liability (CGL)* – Occurrence Form with limits of \$1,000,000 Each Occurrence and \$2,000,000 General Aggregate. Policy shall include bodily injury, property damage, and broad form contractual liability coverage, and products – completed operations.

10.1.2. *Liquor Liability Policy* - Occurrence Form (coverage may be under CGL Policy or by specialized policy) with policy limits of at least \$3,000,000 million per occurrence and \$3,000,000 General Aggregate.

10.1.3. *Business Automobile Liability* – Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract with a Combined Single Limit (CSL) of \$1,000,000.

10.1.4. *Workers' Compensation and Employers' Liability* - Statutory requirements and benefits. Coverage is compulsory for employers of one or more employees. Employer's Liability - \$500,000.

10.1.5. *Commercial Property Insurance* - The Seller shall maintain Commercial Property Insurance to include special extended perils (all risk) at full replacement cost of the building and its contents until Closing is completed. The Buyer shall insure the building and any Buyer improvements after the Closing.

10.2. Additional Insurance Requirements. The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

10.2.1. *Additional Insured Endorsement:* The General Liability and Business Automobile Liability Policies shall each be endorsed to include Pima County, its departments, districts, boards, commissions, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Seller.

10.2.2. *Subrogation Endorsement:* The General Liability, Business Automobile Liability and Workers' Compensation Policies shall each contain a waiver of subrogation endorsement in favor of Pima County, and its departments, districts, boards, commissions, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Seller.

10.2.3. *Primary Insurance Endorsement:* The Seller's policies shall stipulate that the insurance afforded the Seller shall be primary and that any insurance carried by Pima County, its agents, officials, employees or Pima County shall be excess and not contributory insurance.

10.2.4. Insurance provided by the Seller shall not limit the Seller's liability assumed under the indemnification provisions of this Contract.

10.3. Notice of Cancellation. For each insurance policy required by the insurance provisions of this Contract, the Seller must provide to Pima County, within two (2) business days of receipt of notice, if a policy is suspended, voided, or cancelled for any reason.

Such notice shall be mailed, emailed, hand-delivered or sent by facsimile transmission to the Pima County Contracting Representative. Notice shall include the Pima County project or contract number and project description.

10.4. Verification of Coverage. Seller shall furnish Pima County with certificates of insurance (valid ACORD form or equivalent approved by Pima County) as required by this Contract. An authorized representative of the insurer shall sign the certificates.

10.4.1. All certificates and endorsements, as required by this written agreement, are to be received and approved by Pima County before work commences. Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance coverages or policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

10.4.2. All certificates required by this Contract shall be sent directly to the appropriate County Department. The Certificate of Insurance shall include the Pima County project or contract number and project description on the certificate. Pima County reserves the right to require complete copies of all insurance policies required by this Contract at any time.

10.5. Approval and Modifications. Pima County Risk Management reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

11. **Seller's Covenants.**

11.1. Kitchen and Bar. Seller acknowledges having recently improved the Property with the installation of a commercial kitchen and upgrades to the bar area. The kitchen and bar area shall be kept in their as is condition from and after the date of Closing through the Vacate Date. Seller shall not remove any fixtures, improvements, or personal property, including appliances, from the kitchen and bar areas prior to the Vacate Date, and they shall be transferred in good condition to Buyer on the Vacate Date taking into account reasonable wear and tear. Except as provided in this Section 11.1, Seller may remove personal property from the Property prior to the Vacate Date.

11.2. Bowling Alleys. Prior to the Vacate Date, Seller may at any time remove the bowling alleys and any equipment used exclusively for bowling.

11.3. No Salvage. Except as provided in section 11.2, Seller shall not salvage or remove any fixtures, improvements, or vegetation from the Property prior to the Vacate Date. In addition, prior to the Vacate Date, the Property will not be materially degraded or otherwise materially changed in any aspect by Seller.

11.4. Risk of Loss for Damage to Improvements. Seller bears the risk of loss or damage to the Property, including all improvements thereon, prior to Closing. After Closing, the risk of loss or damage to the Property, including all improvements thereon, rests with Buyer.

11.5. Use of Property by Seller. Seller shall, prior to the Closing, use the Property on a basis substantially comparable to Seller's historical use thereof. Seller shall maintain the Property in substantially the same condition as it is presently in, ordinary wear and tear excepted, and without liens or encumbrances that Seller will be able to cause to be released before the Closing.

11.6. No Encumbrances. Seller shall not encumber the Property with any lien that Seller will be unable to cause to be released before Closing, and Seller shall not be entitled to sell or exchange all or any portion of the Property before. From and after the Effective Date through the Closing, Seller will not enter into, execute or record any covenant, deed restriction, or any other encumbrance against the Property. The recording of any such covenant, deed restriction, or other encumbrance, is a material breach of this Agreement and entitles Buyer to terminate this Agreement.

11.7. Reports. Seller shall make available to Buyer all documents relating to the Property that it has in its possession regarding the Property, including any and all surveys, information regarding wells and water rights, and environmental reports.

12. **Environmental.**

12.1. Environmental Representations. Buyer and Seller agree that neither party is assuming any obligation of the other party relating to any potential liability, if any, arising from the environmental condition of the Property, each party remaining responsible for its obligations as set forth by law. Seller represents and warrants that, to the best of Seller's knowledge, no pollutants, contaminants, toxic or hazardous

substances, wastes or materials have been stored, used or are located on the Property or within any surface or subsurface waters thereof; that no underground tanks have been located on the Property; that the Property is in compliance with all Federal, state and local environmental laws, regulations and ordinances; and that no legal action of any kind has been commenced or threatened with respect to the Property.

12.2. Environmental Inspection Rights.

12.2.1. From and after the Effective Date, Seller shall permit Buyer to conduct such inspections of the Property as the Buyer deems necessary to determine the environmental condition of the Property. If any environmental inspection recommends further testing or inspection, the Parties hereby agree to extend the date of Closing to at least thirty (30) days after the report for such additional testing or inspection is completed on behalf of Buyer, but not later than an additional one hundred eighty (180) day extension.

12.2.2. If any environmental inspection reveals the presence of contamination or the need to conduct an environmental cleanup, Buyer shall provide written notice to Seller, prior to Closing, of any items disapproved by Buyer as a result of Buyer's inspection (the "**Objection Notice**"). If Buyer sends an Objection Notice, Seller may, within five (5) business days of receipt of the Objection Notice, notify Buyer if Seller is willing to cure any of the items to which Buyer objected (the "**Cure Notice**"). If Seller elects not to send Buyer a Cure Notice or if Seller's Cure Notice is not acceptable to Buyer, then Buyer may elect to terminate this Agreement, in which case the Agreement will be terminated and of no further force and effect.

13. **Seller's Warranties**

13.1. Leases. Seller warrants that there are no oral or written leases on all or any portion of the Property, except (i) the lease with GPL Teletrack for the off track betting area, and (ii) a verbal agreement to rent the pro-shop. Seller will provide written leases for both the off track betting and the pro-shop prior to Closing, and both leases will terminate prior to the Vacate Date.

13.2. Wells and Water Rights. Seller warrants that there are no wells on or water rights associated with the Property.

13.3. Underground Improvements. Seller warrants that there are no septic tanks, septic or leach fields, alternative waste disposal systems, private irrigation lines, and/or

other underground improvements on the Property.

14. **Broker's Commission.** No broker or finder has been used by Buyer and Buyer owes no brokerage or finders fees related to this Agreement. Seller has sole responsibility to pay all brokerage or finders fees to any agent employed, including a 2.5% commission to be paid by Seller to Terramar Properties, Inc. at Closing.

15. **Default, Remedies, and Conditions Precedent.** In the event either Party defaults under this Agreement, the other Party shall be entitled to pursue all rights and remedies available at law or in equity, including specific performance. To the extent a Party seeks damages, the recovery is limited to actual damages (including any losses or penalties suffered by Buyer as a result of any violation of federal arbitrage violations caused by a wrongful failure of Seller to perform). Neither Party is entitled to exemplary, punitive, special, indirect or consequential damages.

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

<u>Exhibit A</u>	Description of Property
<u>Exhibit A-1</u>	Depiction Showing Property
<u>Exhibit B</u>	Permitted Exceptions for Property
<u>Exhibit C</u>	Form of Deed for Property

17. **Miscellaneous Provisions.** The following miscellaneous provisions apply to this Agreement:

17.1. Notices.

17.1.1. *Writing.* All notices required or permitted to be given hereunder must be in writing and mailed by first class, registered, certified or overnight mail, return receipt requested, postage prepaid, or transmitted by electronic mail, facsimile, or hand delivered, addressed to Seller's address or Buyer's address.

17.1.2. *Receipt.* If mailed, all such notices, demands, requests, or other communications are deemed received upon the expiration of seventy-two (72) hours after deposit in the U.S. mail as aforesaid. Notice served personally or by electronic mail or

facsimile is deemed served upon delivery thereof to the addressee. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given is deemed to be receipt of the notice, demand or request sent. Any party entitled to notices hereunder may from time to time designate to the other parties, in writing and given in accordance with this Section, a different address for service of notice.

17.2. Governing Law. This Agreement is subject to, and interpreted by and in accordance with, the laws of the State of Arizona. Any action to be brought under this Agreement must be filed and maintained in a court in Pima County, Arizona.

17.3. Entire Agreement. This Agreement is the entire Agreement of the Parties respecting the subject matter hereof. There are no other agreements, representations or warranties, whether oral or written, respecting the subject matter hereof.

17.4. Interpretation. This Agreement, and all the provisions of this Agreement, is deemed drafted by all of the Parties. This Agreement will not be interpreted strictly for or against any Party, but solely in accordance with the fair meaning of the provisions hereof to effectuate the purposes and intent of this Agreement.

17.5. No Representations. Each Party has entered into this Agreement based solely upon the agreements, representations and warranties expressly set forth herein and upon that Party's own knowledge and investigation. Neither Party has relied upon any representation or warranty of any other Party except any such representations or warranties as are expressly set forth herein.

17.6. Signing Authority. Each of the persons signing below on behalf of a Party represents and warrants that the signer has full requisite power and authority to execute and deliver this Agreement on behalf of the Party for whom the signer signs and to bind such Party to the terms and conditions of this Agreement.

17.7. Counterparts. This Agreement may be executed in counterparts, each of which is effective as an original. This Agreement becomes effective only when all of the Parties have executed the original or counterpart hereof. This Agreement may be executed and delivered by a facsimile transmission or email of a counterpart signature page hereof.

17.8. Attorney's Fees and Costs. In any action brought by a Party to enforce the obligations of any other Party, the prevailing Party is entitled to collect from the opposing Party to such action such Party's reasonable litigation costs and attorney's fees and

expenses, including court costs, reasonable fees of accountants and experts, and other expenses incidental to the litigation in addition to all other relief, all of which will be set by a judge and not by a jury, to which the prevailing Party may be entitled.

17.9. Binding Effect. This Agreement is binding upon and inures to the benefit of the Parties and their respective successors and permitted assigns.

17.10. No Third Party Beneficiaries. This is not a third party beneficiary contract. No person or entity other than a Party signing this Agreement has any rights under this Agreement, except as expressly provided in this Agreement.

17.11. Amendment. This Agreement may be amended or modified only in a writing signed by the Parties, which specifically references this Agreement.

17.12. No Partnership. Nothing in this Agreement creates a partnership or joint venture, or authorizes any Party to act as agent for or representative of any other Party.

17.13. No Waiver. The failure of a Party to require full or timely performance of any obligation arising under this Agreement (whether on a single occasion or on multiple occasions) is not a waiver of any such obligation. No such failure gives rise to any claim of estoppel, laches, course of dealing, amendment of this Agreement by course of dealing, or other defense of any nature to any obligation arising hereunder.

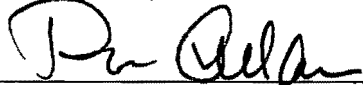
17.14. Time of the Essence. Time is of the essence with respect to each obligation arising under this Agreement.

17.15. Conflict of Interest. This Agreement is subject to cancellation within three (3) years after its execution pursuant to A.R.S. § 38-511 if any person significantly involved in initiating, negotiating, securing, drafting, or creating this Agreement on behalf of Buyer 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.

17.16. Tax Free Exchange. Buyer understands that Seller may effect a tax free exchange of the Property pursuant to Section 1031, Internal Revenue Code of 1986, as amended. Buyer agrees to fully cooperate with Seller in accomplishing the tax free exchange, provided there is no cost to Buyer. Buyer shall not incur any additional expense or liability as a result of any such exchange and Seller agrees to indemnify Buyer from any such expense or liability.

Seller's Approval and Acceptance:

Golden Pins, L.L.C., an Arizona limited liability company

BY: 

Date: April 20, 2018

Don Allan (printed name)

ITS: Managing Member

Buyer's Approval and Acceptance:

COUNTY: PIMA COUNTY, a political subdivision of the State of Arizona:

Richard Elias, Chairman, Board of Supervisors

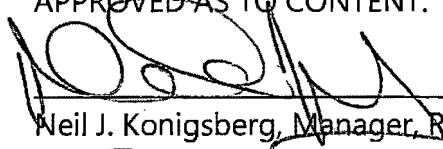
Date

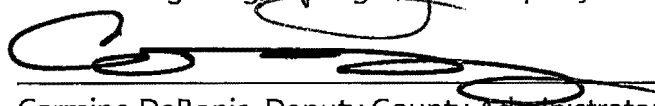
ATTEST:

Julie Castaneda, Clerk of Board

Date

APPROVED AS TO CONTENT:


Neil J. Konigsberg, Manager, Real Property Services

 4/27/18
Carmine DeBonis, Deputy County Administrator, Public Works

APPROVED AS TO FORM:


Tobin Rosen, Deputy County Attorney

EXHIBIT "A"
LEGAL DESCRIPTION

The land referred to herein below is situated in the County of Pima, State of Arizona, and is described as follows:

PARCEL I:

That part of the Northeast quarter of the Northwest quarter of Section 35, Township 13 South, Range 13 East, Gila and Salt River Base and Meridian, Pima County, Arizona, described as follows:

BEGINNING at a point on the West line of the right of way of Fairview Road as it existed on January 3, 1973, said point being the Intersection of the North line of the Tucson-Casa Grande Highway as it existed on January 3, 1973 with the Westerly line of Fairview Road;

THENCE Westerly along said North line of the Tucson-Casa Grande-Highway, 220.7 feet to the TRUE POINT OF BEGINNING;

THENCE Westerly along said North line, 560 feet;

THENCE North at right angles, 270 feet, more or less, to a point on the South line of the Flowing Wells Irrigation District canal as now established;

THENCE Easterly along said South line to a point 220.7 feet West of the West line of said Fairview Road; THENCE South and parallel with said West line to the POINT OF BEGINNING.

PARCEL II:

THE NORTH 150 FEET OF THE FOLLOWING DESCRIBED TRACT:

All that portion of the Northeast quarter of the Northwest quarter of Section 35, Township 13 South, Range 13 East, Gila and Salt River Base and Meridian, Pima County, Arizona, described as follows:

COMMENCING at the Northwest corner of said Northeast quarter of the Northwest quarter;

THENCE South 89 degrees 29 minutes 50 seconds East along the North line of said Northeast quarter of the Northwest quarter, 1314.25 feet to the point of intersection of said North line with the West right of way line of Fairview Road as shown established on the map of record in the Office of the County Recorder, Pima County, Arizona, in Book 2 of Road Maps at page 141;

THENCE South 0 degrees 33 minutes 24 seconds East along said West right of way line, being 30 feet West of and parallel with the East line of said Northeast quarter of the Northwest quarter, 1315.01 feet to a point of intersection with the North boundary line of the Tucson-Casa Grande Highway, said point also being the TRUE POINT OF BEGINNING on this description;

THENCE South 89 degrees 19 minutes 06 seconds West along said North boundary line, 220.70 feet to the point of intersection with the West line of that certain property conveyed to Ned Haggar, et.ux., by Deed recorded in said Recorder's office in Book 1497 at page 38;

THENCE North 0 degrees 33 minutes 24 seconds West, parallel with the West line of said Fairview Road, 300.00 feet;

THENCE North 89 degrees 19 minutes 06 seconds East, 220.70 feet;

THENCE South 0 degrees 33 minutes 24 seconds East, 300.00 feet to the TRUE POINT OF BEGINNING.

PARCEL III:

THE WEST 100 FEET OF THE SOUTH 150 FEET OF THAT CERTAIN PORTION OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER SECTION 35, TOWNSHIP 13 SOUTH, RANGE 13 EAST, GILA AND SALT RIVER AND MERIDIAN, PIMA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING at the Northwest corner of said Northeast quarter of the Northwest quarter of Section 35;

THENCE South 89 degrees 29 minutes 50 seconds East along the North line of said Northeast quarter of the Northwest quarter, a distance of 1314.25 feet to the point of intersection of said North line with the West right of way line of Fairview Road as shown established on the map of record in the Office of the County Recorder, Pima County, Arizona, in Book 2 of Road Maps at page 141;

THENCE South 00 degrees 33 minutes 24 seconds East along said West right of way line of Fairview Road, said right of way line being 30 feet West of and parallel to the East line of said Northeast quarter of the Northwest quarter, a distance of 1315.01 feet to a point of intersection with the North right of way line of the Tucson-Casa Grande Highway, said point also being the POINT OF TRUE BEGINNING for the tract herein described;

THENCE South 89 degrees 19 minutes 06 seconds West along said North right of way line of the Tucson-Casa Grande Highway, a distance of 220.70 feet to the point of intersection with the West line of that certain property conveyed to Ned Haggar et.ux., by Deed recorded in said Recorder's Office, in Book 1497 at page 38 and a point for corner;

THENCE North 00 degrees 33 minutes 24 seconds West, parallel to the West right of way line of Fairview Road, a distance of 300 feet to a point for corner;

THENCE North 89 degrees 19 minutes 06 seconds East, a distance of 220.70 feet to a point on the West right of way line of Fairview Road and a point for corner;

THENCE South 00 degrees 33 minutes 24 seconds East along the West right of way line of Fairview Road, a distance of 300.00 feet to the TRUE POINT OF BEGINNING for the tract herein described.

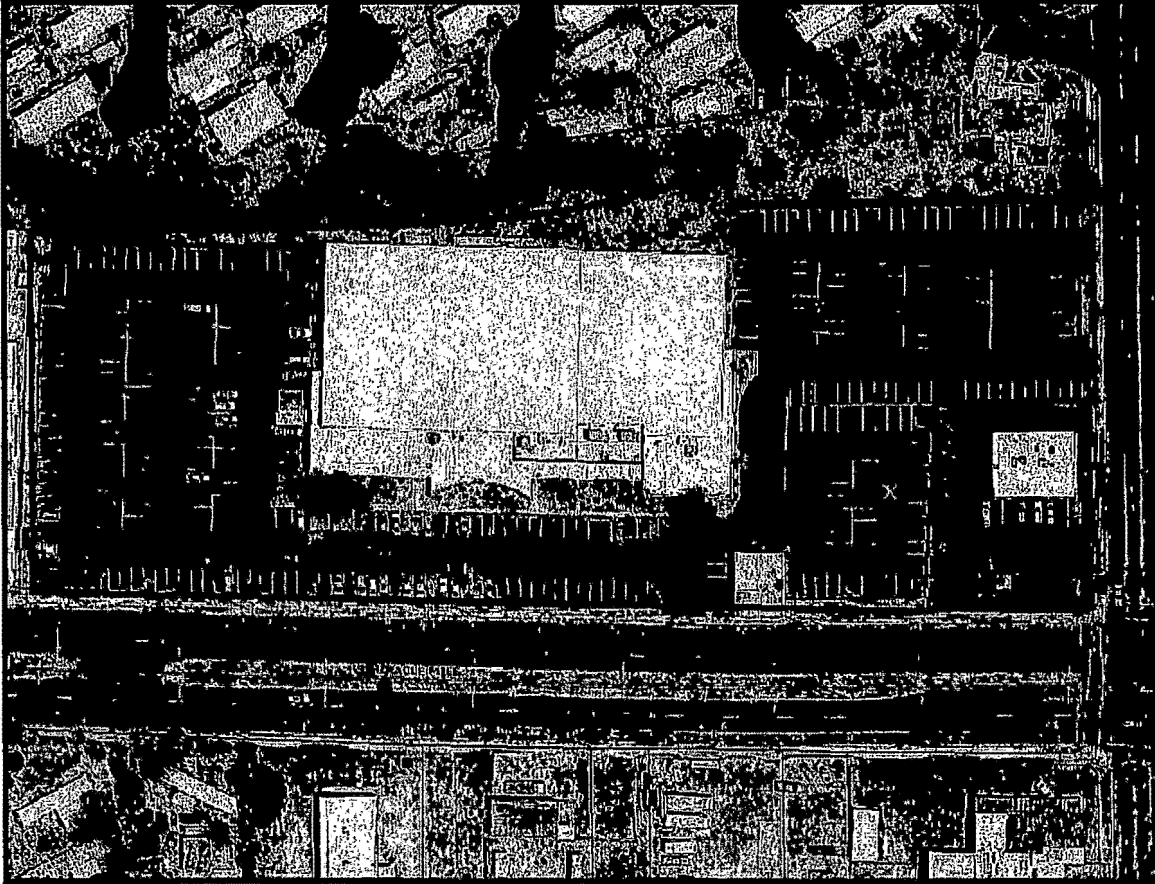
EXHIBIT A - 1



1010 W MIRACLE MILE | TUCSON | AZ
PROPERTY ANALYSIS

The UDC generally requires 1 parking space per 300 square feet (gross floor area) for the Commercial Services Land Use Group, although higher requirements are indicated for restaurants (1/100) and bars (1/50).

Aerial Photo





TITLE EXHIBIT B RESOURCES

COMMITMENT FOR TITLE INSURANCE
Issued by
Pioneer Title Agency, Inc.

Order Number: 205257 KM
Escrow Officer: Kim Moss at (520) 797-2693
Third Amendment

SCHEDULE B, PART II Exceptions

THIS COMMITMENT DOES NOT REPUBLISH ANY COVENANT, CONDITION, RESTRICTION, OR LIMITATION CONTAINED IN ANY DOCUMENT REFERRED TO IN THIS COMMITMENT TO THE EXTENT THAT THE SPECIFIC COVENANT, CONDITION, RESTRICTION, OR LIMITATION VIOLATES STATE OR FEDERAL LAW BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN.

The Policy will not insure against loss or damage resulting from the terms and provisions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

1. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I—Requirements are met.
2. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
3. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
4. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
5. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
6. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.

(Note: The above Exceptions Nos. 2 through 6, inclusive, will be eliminated from any A.L.T.A. Extended Coverage Policy, A.L.T.A. Homeowner's Policy, A.L.T.A. Expanded Coverage Residential Loan Policy and any short form versions thereof. However, the same or similar exception may be made in Schedule B of those policies in conformity with the remaining Exceptions of this Commitment shown below.)

7. TAXES for the full year 2018, a lien, not yet due or payable.

This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by TITLE RESOURCES GUARANTY COMPANY. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; and Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

TRGC Form; Comm06 ALTA Commitment Form Adopted 6-17-2006 Revised 08-01-2016

Page 9

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AMERICAN
LAND TITLE
ASSOCIATION





TITLE RESOURCES

COMMITMENT FOR TITLE INSURANCE

Issued by

Pioneer Title Agency, Inc.

Order Number: 205257 KM

Escrow Officer: Kim Moss at (520) 797-2693

SCHEDULE B, PART II

(Continued)

8. ANY ACTION by the County Assessor and/or Treasurer, altering the current or prior tax assessment, subsequent to the date of the Policy of Title Insurance.

9. Reservations or exceptions in Patents or in Acts authorizing the issuance thereof.

10. Established and/or existing roads, highways, rights-of-way or easements.

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

12. LIABILITIES AND OBLIGATIONS imposed upon said land by its inclusion within any legally formed districts.

13. Easement(s) for the purposes set forth therein and rights incident thereto as set forth in Book 64 of Deeds at pages 472 and 485.

14. Easement(s) for the purposes set forth therein and rights incident thereto as set forth in Book 99 of Deeds at page 44

15. Easement(s) for the purposes set forth therein and rights incident thereto as set forth in Docket 664 at page 460

16. Easement(s) for the purposes set forth therein and rights incident thereto as set forth in Docket 913 at page 448 and in Docket 924 at page 306

17. Easement(s) for the purposes set forth therein and rights incident thereto as set forth in Docket 1674 at page 401.

18. Deed Restrictions recorded in Docket 4585 at page 336

19. RESTRICTIONS, CONDITIONS, COVENANTS, EASEMENTS, RESERVATIONS, LIABILITIES AND OBLIGATIONS, including but not limited to any recitals creating easements or party walls contained in instrument recorded in Docket 5250 at page 633, omitting, if any, from the above, any restrictions based on race, color, religion, sex, sexual orientation, handicap, familial status, marital status, disability, ancestry, source of income or national origin as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law; Together with all matters pertaining the imposition of any transfer or conveyance fee contained within the document(s). The provisions for such fee require it to be paid upon transfer or conveyance of the land.

This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by TITLE RESOURCES GUARANTY COMPANY. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; and Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

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Page 10

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TITLE RESOURCES

COMMITMENT FOR TITLE INSURANCE

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SCHEDULE B, PART II

(Continued)

20. Easement(s) for the purposes set forth therein and rights incident thereto as set forth in Docket 5412 at page 640.
21. Easement(s) for the purposes set forth therein and rights incident thereto as set forth in Docket 5490 at page 655.
22. Easement(s) to Mountain States Telephone and Telegraph Company and rights incident thereto as set forth in Docket 7363 at page 834.
23. Easement(s) to US West Communications and rights incident thereto as set forth in Docket 9456 at page 1764

END OF SCHEDULE B, PART II

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Page 11

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EXHIBIT "C"

WARRANTY DEED

For valuable consideration, I (or we), _____
("Grantors"), do/does hereby convey to Pima County, a political taxing subdivision of the State of
Arizona, the following described property situate in Pima County, Arizona:

SEE ATTACHED EXHIBIT " " FOR LEGAL DESCRIPTION

SUBJECT TO all matters of record.

And I or we do warrant the title against all persons whomsoever, subject only to matters
above set forth.

Dated this _____ day of _____.

Grantor

STATE OF ARIZONA)

COUNTY OF PIMA)

SS

This instrument was acknowledged before me this _____ day of _____, 20____,
by _____.

Notary Public

My Commission Expires:

EXEMPTION: A.R.S. §11-1134.A.3.		Board of Directors:	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"/>