



BOARD OF SUPERVISORS AGENDA ITEM REPORT CONTRACTS / AWARDS / GRANTS

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: May 19, 2020

* = Mandatory, information must be provided

or Procurement Director Award ☐

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

Alta Vista Communities RP, LLC (Casitas Investor RP, LLC, Brav Holding Company LLC, Indus Holdings LLC, and Karber Holdings LLC) and IT Investments Three, LLC (WC Group LLC and WCLP LLC); Pima County Regional Flood Control District; Town of Marana

***Project Title/Description:**

Canada del Oro Wash North Bank Development Agreement (Amended and Restated)

***Purpose:**

The Pima County Regional Flood Control District (District) is partnering with Alta Vista Communities RP, LLC (Alta Vista) and IT Investments Three, LLC (IT) to build bank protection and a linear park along the north bank of the Canada del Oro Wash (CDO) between I-10 and Thornydale. An outline of the Development Agreement that shows the parties' responsibilities is attached.

***Procurement Method:**

A non-procurement contract not subject to Procurement rules.

***Program Goals/Predicted Outcomes:**

The project limits have been modified to remove construction within the Union Pacific Railroad (UPRR) and the Arizona Department of Transportation (ADOT) rights-of-way. The revised project limits are from Thornydale to the western edge of Alta Vista's Lot 2 (2,400 linear feet). Alta Vista will deed Lot 3 to the District. Construction of future improvements beneath the UPRR and Interstate-10 (I-10) will commence when permitting allows. The CDO North Bank project is located on the north bank of the CDO within the Town of Marana (Town). Bank protection is required in order to address the concern for lateral migration of the CDO. Plans, prepared in 2008, left gaps in the bank protection both upstream west of Thornydale, and downstream around the the UPRR and I-10, which are critical infrastructure. The District has partnered with Alta Vista to construct bank protection over the entire reach. This involves the adjacent property owner IT.

***Public Benefit:**

This proposed bank protection will protect the adjacent properties from flooding and lateral erosion and prevent potential loss of the UPRR line, major sewer lines, Kinder-Morgan Petroleum pipeline, and I-10. In addition, this project will, in its completion, connect to the Chuck Huckelberry Loop. The Developer will fund the river park improvements and Loop extension. The proposed project entails construction of 3,175 linear feet of soil cement bank protection along the north bank of the CDO including an underpass ramp for I-10/UPRR. This development agreement outlines responsibilities for the Developer to provide design services, permits, half of the bank protection costs and 100% of the river park, and dedication of rights-of-way to the District. The District's responsibility includes project management and oversight, funding for the underpass ramp at I-10 and UPRR and half of the bank protection construction costs.

***Metrics Available to Measure Performance:**

The project will be completed in two phases: the construction of bank protection, and a linear park along the alignment via a Job Order Contractor (JOC) for the portion from Thornydale to Alta Vista Lot 2. Construction of the remainder beneath UPRR and ADOT will commence once permitting allows.

***Retroactive:**

No

To: COB- 5.19.20

ver. - 1

425-79 (1)

Addendum

Contract / Award Information

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

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

☐ Expense Amount: \$* _____ ☐ Revenue Amount: \$ _____***Funding Source(s) required:**Funding from General Fund? ☐ Yes ☐ No If Yes \$ _____ % _____Contract is fully or partially funded with Federal Funds? ☐ Yes ☐ No**If Yes, is the Contract to a vendor or subrecipient?** _____Were insurance or indemnity clauses modified? ☐ Yes ☐ No*If Yes, attach Risk's approval.*Vendor is using a Social Security Number? ☐ Yes ☐ No*If Yes, attach the required form per Administrative Procedure 22-10.***Amendment / Revised Award Information**Document Type: CTN Department Code: FC Contract Number (i.e., 15-123): 19*148Amendment No.: 1 AMS Version No.: 2Effective Date: 05/19/2020 New Termination Date: 05/18/2025

Prior Contract No. (Synergen/CMS): _____

☐ Expense or ☐ Revenue ☐ Increase ☐ Decrease Amount This Amendment: \$ 0.00Is there revenue included? ☐ Yes ☒ No If Yes \$ _____***Funding Source(s) required:**Funding from General Fund? ☐ Yes ☒ No If Yes \$ _____ % _____**Grant/Amendment Information** (for grants acceptance and awards) ☐ Award ☐ Amendment

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

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

☐ Match Amount: \$ _____ ☐ Revenue Amount: \$ _____***All Funding Source(s) required:*****Match funding from General Fund?** ☐ Yes ☐ No If Yes \$ _____ % _____***Match funding from other sources?** ☐ Yes ☐ No If Yes \$ _____ % _____***Funding Source:** _____***If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)?** _____Contact: Janice Hughes (Martha Guzman - pickup)Department: Pima County Regional Flood Control District Telephone: 724-4635 (724-4611)Department Director Signature/Date: *Synergen* 5/12/20Deputy County Administrator Signature/Date: *C. Dutcher* 5/12/2020County Administrator Signature/Date: *C. Dutcher* 5/12/20
(Required for Board Agenda/Addendum Items)

DEVELOPMENT AGREEMENT (AMENDED AND RESTATED)
CDO NORTH BANK IMPROVEMENTS, I-10 TO THORNYDALE
PROJECT RESPONSIBILITIES SUMMARY OUTLINE

District

1. Review and approve improvement plan documents.
2. Assist with permitting.
3. Pay for 50% of bank improvement costs adjacent to Alta Vista and IT properties.
4. Advertise, bid, and administer construction contracts.
5. Allow plants to come from the NRPR Native Plant Nursery.
6. Hold construction meetings during construction including Developer coordination.
7. Provide final accounting reconciliation to Developers.

Alta Vista

1. Provide improvement plan documents for bank protection improvements and linear park improvements.
2. Provide 50' right of way to District as measured from the top front face of the bank protection.
3. Provide temporary construction easements.
4. Obtain required permits.
5. Post-construction, obtain a Letter of Map Revision from FEMA based on the completed improvements.
6. Pay for any additional costs that do not directly relate to the bank protection (i.e. culverts that serve the private development behind the bank protection).
7. Pay Developers share of bank improvement costs.
8. Pay for linear park improvement costs.

IT

1. Provide 50' right-of-way to the District as measured from the top front face of the bank protection.
2. Provide temporary construction easements.
3. Pay Alta Vista a fixed sum of \$300,000.
4. Pay for any additional costs that do not directly relate to the bank protection (i.e. culverts that serve the private development behind the bank protection).

Town of Marana

1. Transfer the property within the Cañada del Oro Wash to the District.
2. Allow Developers to account for the linear park as part of their bufferyard and setback calculations for future development of the adjacent parcels.

**AMENDED AND RESTATED DEVELOPMENT AGREEMENT
CDO NORTH BANK IMPROVEMENTS, WEST OF THORNYDALE**

This Amended and Restated Development Agreement (“**Agreement**”) is entered into effective May _____ 2020 (“**Effective Date**”) by and among Pima County Flood Control District (“**RFCD**”), Town of Marana (the “**Town**”), Alta Vista Communities RP LLC, an Arizona limited liability company (“**Alta Vista**”), and I.T. Investments Three, L.L.C., an Arizona limited liability company (“**IT**” and, together with Alta Vista, “**Developers**”) with reference to the following recitals:

1. Background & Purpose.

- 1.1. **Amendment and Restatement of Development Agreement.** The parties previously entered into a Development Agreement dated February 19, 2019 (“**Original Agreement**”). Because the parties have been unable to acquire permits necessary to timely construct the Project as originally designed, the parties are entering into this Amended and Restated Development Agreement (the “**Agreement**”), which supersedes and replaces the Original Agreement in its entirety.
- 1.2. **Property.** The parties own the following real property, which is depicted on **Exhibit A** of this Agreement:
 - 1.2.1. **Alta Vista.** Alta Vista owns three parcels of property adjacent to the north side of the Canada del Oro Wash (“**CDO Wash**”), and identified as Alta Vista Lots 2, 4, and 5 on Exhibit A (the “**Alta Vista Property**”). Pursuant to Section 4.1.1 below, Alta Vista will quit claim to RFCD title to Alta Vista Lot 3 as depicted on Exhibit A.
 - 1.2.2. **IT.** IT owns a parcel of property on the north side of CDO Wash, next to the Alta Vista Property (the “**IT Property**”).
 - 1.2.3. **Town.** The Town owns (a) the north half of the Canada del Oro Drainageway, which is adjacent to the IT Property and Alta Vista Property, as shown on the plat for Thornydale Plaza, recorded in Book 26 of Maps and Plats, at Page 84 (the “**Thornydale Plaza Plat**”); (b) the south half of the Canada del Oro Drainageway, portions of Carmack Wash, and a 40’ alley on the south side of the Drainageway, all as shown on the plat for Orange Grove Industrial Park, recorded in Book 26 of Maps and Plats at Page 73; and (c) an existing 40’ public trail easement on the Alta Vista Property, as shown on the plat for Aerie Riverwalk, recorded at Sequence No. 20131090246 (together, the “**Town Property**”).
- 1.3. **RFCD Authority & Purpose.** RFCD was organized under Arizona Revised Statutes §§ 48-3601 and 48-3602 for flood protection within incorporated and unincorporated areas of Pima County. RFCD provides for flood and erosion control along major watercourses such the CDO Wash to protect public infrastructure including Interstate-10, sewer conveyance systems and other utilities, including through the construction of bank protection and river-park improvements. RFCD has authority under A.R.S. § 48-

3603 to acquire, construct, maintain, and operate, and enter into contracts for acquiring, constructing, maintaining, and operating, flood-control and improvements and incidental improvements.

- 1.4. **Development Limitations; Project.** There are limitations on the development of portions of the Developers' respective properties until bank protection is installed. RFCD is willing to construct the necessary bank protection as part of a larger project (the "**Project**"), with the financial participation and cooperation of Developers as set forth in this Agreement.
- 1.5. **Project Description.** The Project will consist of the construction of bank improvements (the "**Bank Improvements**"), and linear park improvements and amenities, including landscaping, within a 50-foot wide linear park measured from the top front face of the bank protection (the "**Linear Park Improvements**" and, together with the Bank Improvements, sometimes collectively referred to as the "**Improvements**").
 - 1.5.1. **Project Area.** The area within which the Project will be built (the "**Project Area**") is depicted on **Exhibit A**. It includes an area over which Foodtown Development Company II, L.L.C. ("**Foodtown**"), and Clover Real Estate II, L.L.C. ("**Clover**"), previously granted an access easement (the "**Existing Access Easement**") to Alta Vista and Pima County, which benefits Lot 3 of the Alta Vista Property, which is being conveyed to the RFCD pursuant to this Agreement. A copy of the Existing Access Easement, which is recorded in the Pima County Recorder's Office at Sequence No. 20180610427, is attached as **Exhibit B**.
 - 1.5.2. **Bank Improvements.** The Bank Improvements include soil cement bank protection along the entire length of the Project Area (including tying-in the existing bank protection along a portion of the IT Property), a maintenance access ramp, and maintenance access road.
 - 1.5.3. **Linear Park Improvements.** The Linear Park Improvements include landscaping, irrigation, and other amenities consistent with other RFCD linear parks, including a paved multi-use path and barricade rail. Diagrams depicting the cross-section for each segment of the Project are attached as **Exhibit D**.
 - 1.5.4. **Required Permits.** Certain clearances and permits are needed for the Project, including a 404 Permit and a Federal Emergency Management Agency ("**FEMA**") Conditional Letter of Map Revision (collectively, the "**Required Permits**").
 - 1.5.5. **LOMR.** Following completion of the project, the Parties intend to obtain a Letter of Map Revision ("**LOMR**") from FEMA in order to remove the floodplain designations on the Alta Vista Property and IT Property.
- 1.6. **Project Plans.** Developers have retained Cypress Engineering, which has drafted plans and specifications for the Project, as described in **Exhibit C** attached hereto (the "**Project Plans**"), which are being reviewed by RFCD. The Project Plans, when complete, will include all plan, profile, and construction details necessary to bid and construct the

Project as described in this Agreement, supporting engineering and technical documentation as required by RFCD, and construction documents and special provisions.

- 1.7. **Project Costs.** “**Project Costs**” means all costs for the Project, including the Bank Improvement Costs, Bank Improvement Additional Costs, and Linear Park Costs. Project Costs *do not* include the Developer Direct Costs, as defined below, or the internal administrative and staff overhead expenses of RFCD.

1.7.1. “**Bank Improvement Costs**” means the cost of constructing the Bank Improvements, including site clearing; earthwork; soil cement bank protection; construction of maintenance access roads and ramps; utility sleeves; safety rail; stormwater pollution prevention and hydroseeding necessary for the Bank Protection Improvements; remediation of trash or hazardous materials within the Project Area, to the extent necessary to construct the Bank Improvements; and the costs paid to third parties for Project oversight, inspections and testing, including pass-through expenses charged to the Project by Pima County Department of Transportation for materials testing. Bank Improvement Costs include (i) half the cost of the drainage culvert at (Station 163+55), and (ii) the entire cost of extending an existing 58”x 91” horizontal elliptical reinforced concrete storm drain on the IT Property (Station 183+66). Bank Improvement Costs do not include (i) Bank Improvement Additional Costs as defined below, (ii) Linear Park Costs as defined below, (iii) costs of remediation of trash or hazardous materials outside the Project Area, or (iv) other costs expressly excluded from the definition of Project Costs.

1.7.2. “**Bank Improvement Additional Costs**” means the cost of (i) drainage culverts, including headwalls, flapgates, and scuppers, and associated drainage features, except those specifically included as part of Bank Improvement Costs in the preceding paragraph ; (ii) any additional excavation and filling of areas outside the Project Area if the presence of trash or hazardous material is discovered in the Project Area and correction of that condition impacts adjacent property owned by a party; (iv) constructing any betterments or amenities requested by one of the Parties during the construction of the Project. Bank Improvement Additional Costs do not include costs excluded from the definition of Project Costs.

1.7.3. “**Linear Park Costs**” means all costs for constructing the Linear Park Improvements, including paving, striping, landscaping, irrigation, irrigation utilities, stormwater pollution prevention, and hydroseeding as shown on the landscaping plans. Linear Park Costs do not include costs excluded from the definition of Project Costs.

1.7.4. “**Developer Direct Costs**” means all costs for obtaining rights-of-way for the Project, the Required Permits, the LOMR, and the Project Plans.

- 1.8. **Cost-Sharing and Allocations.** The parties agree to allocate Project Costs as follows:
- 1.8.1. **RFCD:** 50% of the Bank Improvement Costs for the Bank Improvements along the IT and Alta Vista Property; and 100% of the Bank Improvement Additional Costs for the Town Property, including but not limited to costs of remediation of trash or hazardous materials on Town Property outside the Project Area.
 - 1.8.2. **IT:** The sum of Three Hundred Thousand Dollars (\$300,000) to be applied as IT's full contribution toward the Bank Improvement Costs and the Linear Park Costs, plus 100% of the Bank Improvement Additional Costs pertaining to the IT Property.
 - 1.8.3. **Alta Vista:** 50% of the remaining Bank Improvement Costs for the Bank Improvements along the Alta Vista Property and IT Property; 100% of the Bank Improvement Additional Costs for the Alta Vista Property; and 100% of the Linear Park Costs and Developer Direct Costs.
- 1.9. **Allocation Methodology:** The Project Plans include an engineer's estimate of probable costs, including a schedule of values (the "**Engineer's Estimate**"), and a spreadsheet allocating the Project Costs among the Developers and RFCD (the "**Cost Allocation Spreadsheet**"). RFCD and each of the Developers have reviewed the allocation methodology and agree that the Cost Allocation Spreadsheet properly allocates the Project Costs according to the above cost shares.
2. **Developers.** "Alta Vista" means Alta Vista, any successor entity, and any successor owner of any portion of the Alta Vista Property other than RFCD. "IT" means IT, any successor entity, and any successor owner of any portion of the IT Property other than RFCD.
- 2.1. **Liability.** Once IT has deposited \$300,000 with the Escrow Agent as described in Section 6.1, IT shall be responsible only for 100% of the Bank Improvement Additional Costs for the IT Property (including but not limited to costs of constructing any drainage structures for the IT Property that are not part of the Improvements), and Alta Vista shall be responsible for all other obligations of the Developers hereunder, even if the Bank Improvement Costs or Linear Park Costs subsequently increase.
 - 2.2. **Refund.** Upon Project Completion and once a Final Accounting of Project Costs has been completed as described in Section 6.4.1, any refund of amounts deposited in Escrow and due to Developers shall be paid and belong to Alta Vista.
3. **Platting and Building Permits.** Alta Vista acknowledges that no building permits will be authorized for the Alta Vista Property, other than for grading, until construction of the Project has been completed and paid for pursuant to the terms hereof ("**Project Completion**"). Until Project Completion, Developers must give RFCD copies of the development and grading plans, and any correspondence and approvals from the Town or associated utilities related to development and grading plans for their properties.
4. **Right of Way.** Within 30 days after this Agreement is approved by the Board of Directors of the District, Alta Vista, IT, and the Town will deliver to the Escrow Agent (as defined in

Section 6 below) fully executed conveyance documents for portions of their property, as described below. Conveyances of additional rights-of-way to RFCD are a condition precedent to RFCD's obligation to bid the Project, as set forth in Section 5.1 below.

4.1. Alta Vista Conveyances. Alta Vista will deliver to the Escrow Agent:

4.1.1. *Fee Conveyance.* A special warranty deed conveying to RFCD fee title to a strip of the Alta Vista Property, as legally described on **Exhibit E**. Title must be conveyed free of any monetary liens or encumbrances, and subject only to (i) those non-monetary title exceptions shown on that certain Commitment for Title Insurance issued by First American Title Insurance through Title Security Agency LLC dated June 21, 2018; (ii) at Alta Vista's option, a prohibition on commercial activities within the deeded area, and retention of a temporary construction easement for construction of a wall on Alta Vista's retained property adjacent to the Linear Park, in a form reasonably acceptable to RFCD, over a portion of the deeded property to enable construction of a wall on Alta Vista's retained property; and (iii) any other exceptions to which RFCD consents (not to be unreasonably withheld, conditioned or delayed). This property is encumbered by a 40' utility and access easement as shown on the Thornydale Plaza Plat. Alta Vista and RFCD will reasonably cooperate to obtain any necessary consents from impacted utilities, if applicable, and to obtain appropriate abandonments of any portions of these existing easements that encumber property retained by Alta Vista. Alta Vista will also deliver to Escrow Agent a Quit Claim Deed quit claiming Lot 3 to RFCD.

4.1.2. *Temporary Construction Easement.* A temporary construction easement, in the form of **Exhibit J**, over the property legally described and depicted in **Exhibit K**.

4.2. IT Conveyances. IT will deliver to the Escrow Agent:

4.2.1. *Fee Conveyance.* A special warranty deed conveying to RFCD fee title to a strip of the IT Property, as legally described in **Exhibit H**. Title must be conveyed free of any monetary liens or encumbrances, and subject only to (i) those non-monetary title exceptions shown on that certain Commitment for Title Insurance issued by First American Title Insurance through Title Security Agency LLC dated June 21, 2018; (ii) at IT's option, a prohibition on commercial activities within the deeded area, and retention of a temporary construction easement for construction of a wall on IT's retained property adjacent to the Linear Park, in a form reasonably acceptable to RFCD, over a portion of the deeded property to enable construction of a wall on IT's retained property; and (iii) any other exceptions to which RFCD consents (not to be unreasonably withheld, conditioned or delayed). This property is encumbered by (among other matters shown on the Commitment) a 40' utility and access easement as shown on the Thornydale Plaza Plat. IT and RFCD will reasonably cooperate to seek any necessary consents from impacted utilities, if applicable, and to seek appropriate abandonments of any portions of these easements that encumber property retained by IT.

4.2.2. *Temporary Construction Easement.* A temporary construction easement, in the form of **Exhibit L**, over the property legally described and depicted in **Exhibit M**.

4.3. **Transfer of Town Property.** The Town of Marana will deliver to the Escrow Agent a quitclaim deed transferring the Town's interest in the Town Property to RFCD.

5. Procurement and Construction.

5.1. **Conditions Precedent for Project Commencement:** RFCD will not bid the Project until the conditions precedent listed below (the "**Conditions Precedent**") have, in RFCD's reasonable judgment, been satisfied. RFCD will cooperate with Developers in good faith, as required herein, and as reasonably necessary to allow Developers to satisfy the Conditions Precedent. If the Conditions Precedent have not been fully satisfied within 120 days of the Effective Date, then RFCD may give written notice of exactly what needs to occur to satisfy the condition and its intent to terminate this Agreement if a specified condition is not satisfied within 30 days (a "**Condition Precedent Notice**"). If the specified Condition Precedent is not satisfied within 30 days of receipt of the Condition Precedent Notice, then RFCD may, from and after that date until all Conditions Precedent have been fully satisfied, terminate this Agreement by written notice to the Developers. Similarly, if a Condition Precedent is not satisfied within one year of the Effective Date, then either Developer may terminate this agreement by written notice to RFCD and the other Developer.

5.1.1. *Plans.* RFCD has approved the Plans.

5.1.2. *Permits.* Developers have obtained, with RFCD's cooperation and in RFCD's name, the Required Permits.

5.1.3. *Right-of-way.* Conveyance documents have been deposited with the Escrow Agent as provided in Section 4 above, and Developers have deposited funds with the Escrow Agent as provided in Section 6.1.

5.1.4. *Utility Clearances.* Cypress Engineering has secured all necessary utility clearances and provided utility relocation plans and utility easements as necessary for the construction and maintenance of the Project, including electrical and water service to the Linear Park area for park maintenance.

5.1.5. *Design Professional Indemnity.* Developers have provided to RFCD indemnity and insurance certificates from Cypress Engineering and ARC Studios, with each entity agreeing to indemnify and defend RFCD from any and all claims based on that entity's design of the Improvements and agreeing to maintain insurance coverage reasonably acceptable to RFCD, and to list RFCD as an additional insured.

5.1.6. *Existing Access Easement.* Alta Vista has obtained an executed amendment to the Existing Access Easement, substantially in the form attached hereto as **Exhibit I**,

and has delivered it to either the Escrow Agent or RFCD, which the parties acknowledge have occurred.

- 5.1.7. *Lienholder Consents.* As a further condition, lienholder consents must be provided for any easement areas that are subject to liens.
- 5.1.8. *Special Conditions.* The completion of Special Conditions (if applicable) specified in the Project Plans as “Special Conditions” to be completed before Project commencement.
- 5.2. **Procurement.** RFCD will, in compliance with Title 34 requirements, issue a delivery order to a job-order contractor for construction of the Bank Protection Improvements (the “**Bank Protection Contract**”) and, at a later time, a separate delivery order for construction and landscaping of the Linear Park (the “**Linear Park Contract**”). The Project will be phased, and bidding of the Linear Park Contract will be timed, so that construction of the Linear Park can begin as the Bank Protection Improvements are being completed.
 - 5.2.1. *Bank Improvement Contract.* After bidding the Bank Protection Contract, but prior to awarding the contract, RFCD will, with the assistance of Cypress Engineering and ARC Studios, recalculate each Party’s share of Project Costs based upon the amount of the bid that RFCD staff intends to accept, the estimated Linear Park Costs, and the Cost Allocation Spreadsheet. For clarity, IT’s cash contribution under Section 1.8.2 toward the Bank Improvement Costs is not subject to increase or decrease

If a Party’s recalculated share of Project Costs (the “Adjusted Share Estimate”) exceeds the Engineer’s Estimate of that share by 15% or more, that Party may, before the delivery order is issued, deliver a written objection to the other Parties. If such an objection is made, RFCD will reject all the bids and the Parties will confer in good faith and attempt to determine if the Project can be re-engineered to reduce costs or otherwise how to proceed.

- 5.2.2. *Linear Park Contract.* After bidding the Linear Park Contract, but prior to issuing the delivery order, RFCD will, with the assistance of Cypress Engineering and ARC Studios, recalculate each Party’s share of Project Costs using the amount of the Linear Park Contract bid that RFCD staff intends to accept, the previously awarded Bank Protection Contract bid, and the Cost Allocation Spreadsheet. For clarity, IT’s cash contribution under Section 1.8.2 toward the Linear Park Costs is not subject to increase or decrease.

If a Party’s recalculated share of Project Costs exceeds that Party’s Adjusted Share Estimate by 20% or more, that Party may, before the delivery order is issued for the Linear Park Contract, deliver a written objection to the other Parties. If such an objection is made, RFCD will reject all the bids and the Parties will confer in good faith and attempt to determine if the Project can be re-engineered to reduce costs or otherwise how to proceed.

5.2.3. *County Nursery.* To ensure the quality of native plant species used for landscaping, RFCD may obtain or require the contractor to obtain trees, shrubs and cacti from the Pima County Native Plant Nursery for the Linear Park Improvements. The cost of these plants, for purposes of calculating Project Costs and allocations, will be the full outside vendor rate.

5.3. **Construction; Meetings.**

5.3.1. After each delivery order is issued, RFCD will cause the selected contractor to construct its portion of the Project, in compliance with the Project Plans, including all Special Conditions, and will oversee and administer the construction.

5.3.2. RFCD will appoint an individual to serve as the Project Manager for the Project, and IT and Alta Vista will each designate a representative to act as a “**Project Liaison**” for the Project. The Project Manager and Project Liaisons will meet on a regular monthly basis during construction (the “**Monthly Meetings**”) to discuss the Project’s progress and change orders regarding scope or cost. Each Developer shall have the right to approve any change order that will increase that Developer’s share of the Project Costs, and in this regard, IT shall only have the right to approve change orders pertaining to (i) Bank Improvement Additional Costs on the IT Property for which IT is responsible, and (ii) changes to Bank Improvements or Linear Park Improvements along the IT Property that are not also being made to the other portions of the Bank Improvements or Linear Park Improvements. Such approval may not be unreasonably withheld, conditioned or delayed.

5.4. **Final Letter of Map Revision.** Following completion of construction, Developers will obtain the LOMR at their cost, with the cooperation of and in the name of RFCD.

5.5. **Release of Liability.** Alta Vista and IT each hereby releases RFCD from any liability for work done by RFCD or its contractors on that Developer’s retained property.

6. **Cost Sharing.** The Parties will provide Escrow Agent a copy of this Agreement with direction to follow the process in this Section 6. As required by the Escrow Agent, the Parties will execute escrow instructions consistent with this Section 6.

6.1. **Payments.**

6.1.1. IT and Alta Vista will each, before RFCD awards the Bank Protection Contract, deposit with Title Security Agency LLC, One S. Church Ave., Suite 1610, Tucson, Arizona attention Bobbi Raymond (the “**Escrow Agent**”) its estimated share of Project Costs based on the Engineer’s Estimate Schedule of Values and the Cost Allocation Spreadsheet.

6.1.2. Each Developer will pay to RFCD additional funds as necessary if, during the course of the Project, that Developer’s estimated share of Project Costs increases (subject to approval under Section 5.3.2) to the extent that it exceeds the amount

previously paid by that Developer (for clarity, in IT's case only with respect to Bank Improvement Additional Costs).

- 6.2. **Disbursals & Deeds.** The Parties will instruct the Escrow Agent to pay the deposited funds to RFCD, and deliver the right-of-way conveyance documents to RFCD, upon receiving from RFCD a copy of the delivery order for the Bank Protection Contract.
- 6.3. **Project Commencement.** Upon receipt of the deposited funds into escrow (the "**Deposit Date**"), RFCD will make reasonable efforts to issue a notice to proceed to the bank-protection contractor, directing the contractor to commence the Project as soon as possible but not more than 120 days after the Deposit Date. If the notice to proceed is delayed more than 60 days beyond the Deposit Date, RFCD will provide Developers a written notice regarding the reason for the delay. If the notice to proceed is delayed an additional 60 days (120 days since the Deposit Date), RFCD and Developers will meet and confer on whether the Project can move forward. Unless the Parties agree that the Project can move forward, RFCD will provide written notice to the Escrow Agent directing the Escrow Agent to return the deposited funds to IT and Alta Vista, and this Agreement will be deemed to be terminated.
- 6.4. **Cost Reconciliation.**
 - 6.4.1. *Final Accounting.* On or before 120 days after substantial completion of the Project, RFCD shall submit to Developers a final accounting and allocation of all Project Costs which is consistent with decisions made by the parties at the Monthly Meetings, including any additional amounts due from the Developers, and any amounts by which the Developers overpaid (the "**Final Accounting**").
 - 6.4.2. *Developer Objections.* Either Developer may, within 30 days after receiving the Final Accounting, notify RFCD, in writing, of any amount by which it believes its share has been miscalculated (an "**Objection**"); provided, however, that the only Objection IT may make is that its share of Bank Improvement Additional Costs has been miscalculated. If no Objections are issued, then within 30 days after the end of the Objection period, RFCD will issue any refunds due to the Developers, subject to retention of a good faith estimate of any future Project Costs associated with obtaining the LOMR, and the Developers will pay to RFCD any additional funds due from them. All refunds shall belong to Alta Vista unless pertaining to the refund of a Bank Improvement Additional Cost paid by IT.
 - 6.4.3. *RFCD Decision.* RFCD will review any Objection(s) and, within 30 days after receipt of the Objection(s), notify Developers, in writing, whether RFCD is modifying the Final Accounting (the "**Decision Notification**"). Any failure by RFCD to provide a Decision Notification within that 30-day period will be deemed a decision not to make any changes. Within 30 days after RFCD issues a Decision Notification, or within 30 days after the end of the 30-day notification period if no Decision Notification is issued, RFCD will issue any refunds due to the Developers, subject to retention of a good faith estimate of any future Project Costs associated with obtaining the LOMR, and the Developers will pay to RFCD

any additional funds due from them. Any dispute regarding the Final Accounting or refunds due to or amounts due by Developers shall be resolved pursuant to Section 9.

7. **Responsibility for Maintenance and Repair of Improvements; Restriction on Use of Lot 3.** After completion of the Project, RFCD will maintain and repair all Improvements, and the Developers will have no further responsibility for the Improvements. RFCD is not responsible for the maintenance of areas outside of property conveyed to RFCD. Not later than 60 days after completion of the Project, RFCD shall record a Restrictive Covenant against the title to Lot 3, enforceable by the Town, and in the form attached hereto as Exhibit O (or in another form reasonably acceptable to the Town Attorney).
8. **Development Calculations and Related Matters.**
 - 8.1. **Areas.** Upon the request of Alta Vista (with respect to the Alta Vista Property) or IT (with respect to the IT Property), in connection with that Developer's development or use of its respective property, and provided that the Linear Park Improvements are constructed substantially as described in Section 1.5 and in the "Landscape Site Plan" section of the Project Plans, the Town will deem such Developer's property to include the property conveyed by the Developer to RFCD pursuant to this Agreement for all applicable purposes including, without limitation, calculating density and lot coverage ratios (such as maximum lot coverage), floor area ratios, and landscaped areas not covered by buildings, and for determining permitted land uses.
 - 8.2. **Bufferyards & Setbacks.** Pursuant to Marana Land Development Code section 17.03.07 as it may be amended and/or recodified, this Agreement constitutes a "landscape buffer agreement" with abutting landowners, allowing the Alta Vista Property and the IT Property to use the areas conveyed by Alta Vista and IT to RFCD under this Agreement to provide some or all of any required landscape buffer. So long as they are constructed and maintained as provided in this Agreement, the total size and plant quantities of the landscaping as described in Section 5.2.3 and depicted in the "Landscape Site Plan" section of the Project Plans (Project No. 5CDONB; Marana Ref ENG1705-010) satisfy the requirements for landscaping in Marana Land Development Code Chapter 17-3 ("Landscape Requirements") and Chapter 8.7.3 ("Commercial Design Standards"), including but not limited to Section A(6)(b)(3)(b) ("Perimeter Landscaping"), as they may be amended and/or recodified.
 - 8.3. **IT Larger Parcel.** For the purpose of this Section 8 only, the IT Property also includes the property commonly known as Pima County Assessor's Parcels 101-05-042J and 101-05-042K, legally described on **Exhibit N**.
9. **Disputes.** Notwithstanding anything in this section or elsewhere in this Agreement, RFCD will at all times be in charge of the Project, and will have no obligation to suspend or delay the Project during the attempted resolution of any dispute.
 - 9.1. If the Project Manager and a Project Liaison disagree on any aspect of the Project, they will submit the dispute to the RFCD Director and Garry Brav, or his designee, on behalf

of Alta Vista and Doron Sears, or his designee, on behalf of IT (collectively, the Developer Designees”) for resolution. If the RFCD Director and the Developer Designees do not reach a resolution within 10 calendar days, they will submit the dispute to the County Administrator and the Developer Designees, who will attempt to reach a mutually agreeable resolution. If the dispute is not resolved within 10 calendar days, either party to the dispute may initiate the process as described in Section 9.2 below by sending the other party written notice (a “**Dispute Notice**”).

- 9.2. All claims, disputes and causes of action, whether arising in contract, tort, or equity, arising from or related to this Agreement shall first be subject to Mediation and then Arbitration. Unless the parties agree within thirty (30) days of any Dispute Notice from one party to the other, the mediator will be chosen by the presiding Judge of the Pima County Superior Court with Mediation to occur in Pima County, Arizona. If the dispute is not resolved by Mediation, either party may initiate an Arbitration process by sending the other party written notice (the “**Arbitration Notice**”). Unless the parties resolve the dispute within thirty (30) days after the Arbitration Notice, the Arbitrator will be chosen by the Presiding Judge of the Pima County Superior Court. Arbitration will be pursuant to A.R.S. § 12-3001 et seq. The prevailing party will be awarded its reasonable attorneys’ fees and costs, costs of mediation, costs of arbitration, fees and costs of expert witnesses. Parties will be entitled to reasonable discovery and a reasoned opinion.

10. Miscellaneous.

- 10.1. **Effective Date.** This Agreement becomes effective on the date it is signed by the last Party to execute it.
- 10.2. **Entire Agreement.** This Agreement constitutes the entire integrated agreement among the Parties and supersedes all prior written and oral matters related to the Project.
- 10.3. **Severability.** If any provision of this Agreement is declared void or unenforceable, the Parties agree promptly to meet to attempt to reach an agreement on a substitute provision. If the parties fail to reach a decision, such provision will be severed from the Agreement, which will otherwise remain in full force and effect, provided such severance does not vitiate the overall intent of the Parties in entering into this Agreement.
- 10.4. **Conflict of Interest.** This Agreement is subject to the provisions of A.R.S. § 38-511.
- 10.5. **Authority.** IT and Alta Vista represent to RFCD that they have full power and authority to enter this Agreement. IT and Alta Vista warrant to RFCD that the individuals executing this Agreement on their respective behalves are authorized and empowered to bind the Party on whose behalf each individual is signing. RFCD represents to IT and Alta Vista that the individuals executing this Agreement on its behalf are authorized and empowered to bind RFCD.
- 10.6. **No Waiver.** No delay in exercising any right or remedy will constitute a waiver of that right or remedy, and no waiver by a Party of the breach of any provision of this

Agreement by another Party will be construed as a waiver of any preceding or succeeding breach of the same or any other provision of this Agreement.

- 10.7. **Governing Law.** The laws of the State of Arizona govern the interpretation and enforcement of this Agreement.
- 10.8. **Recording and Successors.** RFCD may, any time following the awarding of contracts for construction of the Project pursuant to Section 5.2, record a copy of this Agreement with the Pima County Recorder, or a memorandum of agreement, which Developers agree to execute. The burdens of this Agreement are binding on, and the benefits of this Agreement inure to, the Parties and to all their successors in interest and assigns.
- 10.9. **Amendment.** This Agreement may be amended, in whole or in part, only with the mutual written consent of all the Parties, or their successors. The County will record any amendment or cancellation in the official records of the Pima County Recorder.
- 10.10. **No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.
- 10.11. **Force Majeure.** The time for performance by any party to this Agreement of any term, provision or covenant of this Agreement shall be deemed extended by time lost due to delays resulting from acts of God, strikes, terrorism, unavailability of building materials, civil riots, floods, material or labor restrictions by governmental authority, enforcement of governmental regulations or requirements that were not in effect on the effective date, unreasonable delay by governmental authorities of applicable approvals, and any other cause not within the control of a respective party, as the case may be.
- 10.12. **No Agency Created.** Nothing contained in this Agreement shall create any partnership, joint venture, or agency relationship between the Parties.
- 10.13. **Timeline.** Attached as **Exhibit O** is an estimated timeline for the Project, from execution of this Agreement through completion.
- 10.14. **Counterparts.** This Agreement may be executed by facsimile or electronic signature in any number of counterparts, which together constitute one and the same instrument.

REMAINDER OF PAGE INTENTIONALLY BLANK

SIGNATURE PAGES FOLLOW

**Pima County Regional Flood Control District,
a political subdivision of the State of Arizona**

By: _____
Chairman, Board of Directors

Date: _____

ATTEST:

By: _____
Julie Castañeda, Clerk of the Board

Date: _____

APPROVED AS TO CONTENT:

By: 
Suzanne Shields, Chief Engineer & Director of the District

Date: 5/12/2020

APPROVED AS TO FORM:

By: 
Deputy County Attorney

Date: 5/12/2020

**The Town of Marana,
a municipal corporation**

By: _____
Ed Honea, Mayor

Date: _____

ATTEST:

By: _____
Town Clerk

Date: _____

APPROVED AS TO FORM:

By: _____
Frank Cassidy, Town Attorney

Date: _____

Alta Vista Communities RP LLC
an Arizona limited liability company

By Casitas Investor RP, LLC
an Arizona limited liability company, Manager

By Brav Holding Company LLC
an Arizona limited liability company, Co-Manager

By _____
Garry Brav, Manager

By Indus Holdings LLC
an Arizona limited liability company, Co-Manager

By _____
G.S. Jaggi, Manager

By Karber Holdings LLC
an Arizona limited liability company, Co-Manager

By _____
Roger Karber, Member

By _____
Diane Fitzpatrick, Member

I.T. Investments Three, L.L.C.
an Arizona limited liability company

By WC Group LLC
an Arizona limited liability company, Manager

By WCLP LLC
an Arizona limited liability company, Manager

By _____
Alexander H. Sears, Manager

EXHIBITS:

- A Project Diagram
- B Copy of Existing Access Easement
- C Description of Plans
- D Cross-Section Diagrams
- E Legal Description of Property, Fee Title to which is being Conveyed to RFCD by Alta Vista
- F. No Longer Applicable/ Intentionally Omitted
- G No Longer Applicable/ Intentionally Omitted
- H Legal Description of Property, Fee Title to which is being conveyed to RFCD by IT
- I Form of Amendment to Existing Access Easement
- J Form of Alta Vista Temporary Easement
- K Legal Description of Alta Vista Temporary Easement Parcel
- L Form of IT Temporary Easement
- M Legal Description of IT Temporary Easement Parcel
- N Legal Description of IT Larger Parcel
- O Form of Restrictive Covenant
- P Project Timeline

EXHIBIT A
Project Diagram

PROJECT DIAGRAM CDO NORTH BANK PROTECTION

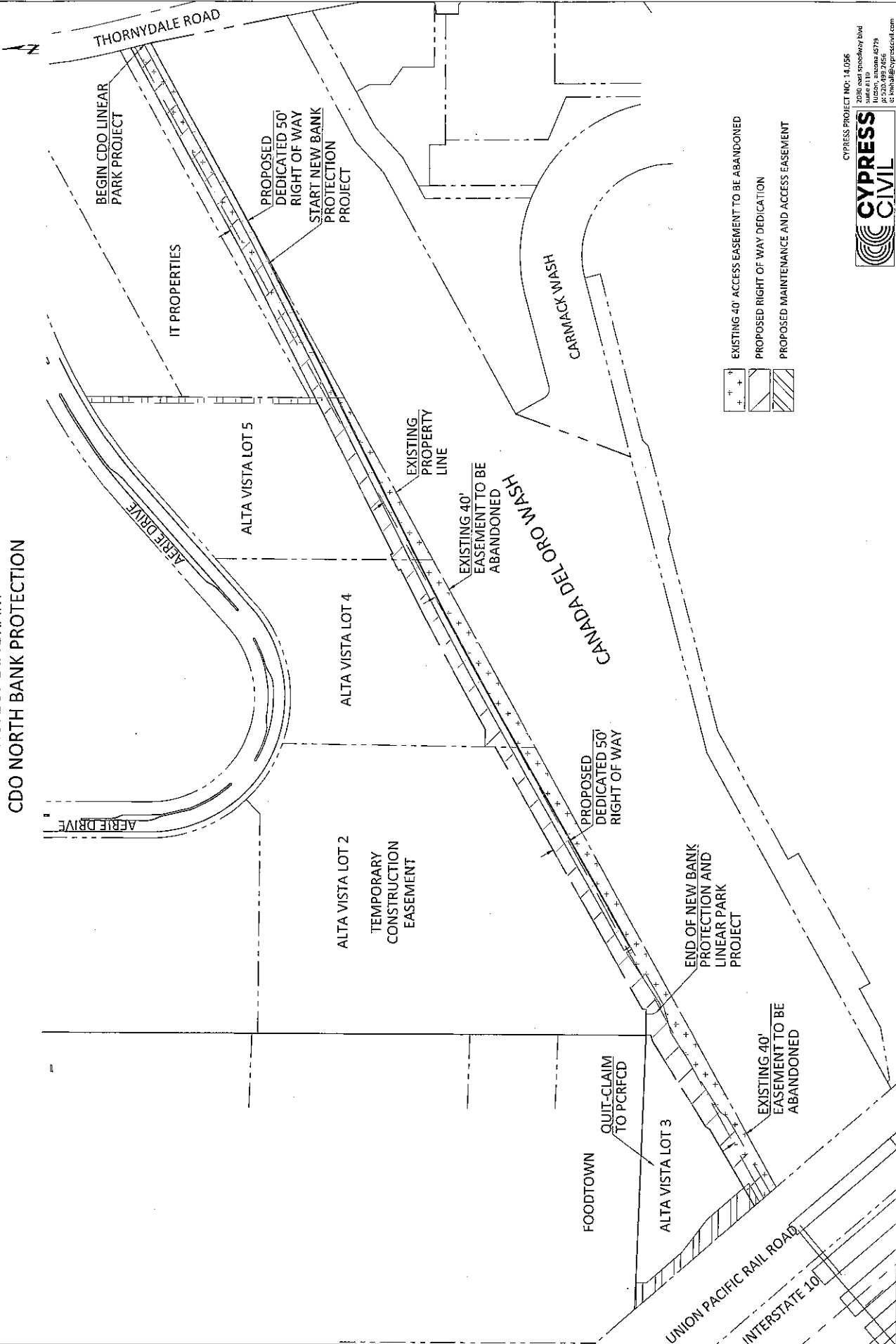




EXHIBIT B TO CDO NORTH BANK DEVELOPMENT AGREEMENT
EXISTING ACCESS EASEMENT
17 PAGES

* E RECORDING * Page 1 of 17	
	
SEQUENCE:	20180610427
No. Pages:	17
3/2/2018	2:57 PM
F. ANN RODRIGUEZ, RECORDER	
Recorded By: HEM(e-recording)	



**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

Kohn Law Firm, PLLC
1200 N. El Dorado Pl., Suite H-810
Tucson, Arizona 85715
Attention: Sidney Y. Kohn, Esq.

ACCESS EASEMENT AGREEMENT

THIS ACCESS EASEMENT AGREEMENT ("Agreement") is made and entered into as of March 1, 2018, by and between FOODTOWN DEVELOPMENT COMPANY II, L.L.C., an Arizona limited liability company, and CLOVER REAL ESTATE II, LLC, an Arizona limited liability company (collectively, the "**Grantor**") and ALTA VISTA COMMUNITIES RP LLC, an Arizona limited liability company ("**Grantee**") with reference to the following facts:

A. Grantor is the owner of certain real property described on Exhibit A attached hereto (the "**Servient Tenement**").

B. Grantee is the owner of certain real property described on Exhibit B attached hereto (the "**Dominant Tenement**"). Grantee will construct or will cause to be constructed certain bank protection improvements within the Dominant Tenement on or adjacent to the wash that runs through or next to the Dominant Tenement (the "**Bank Protection Improvements**").

C. Grantor desires to grant to Grantee an easement over a portion of the Servient Tenement to provide the owner of the Dominant Tenement access to the Dominant Tenement subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Grant of Easement. Grantor hereby grants and conveys to Grantee a perpetual, nonexclusive easement ("**Easement**") in, upon, over, across, through and along that portion of the Servient Tenement depicted on Exhibit C hereto as the "**Easement Area**" for the purposes of ingress to and egress from the Dominant Tenement. Grantee is hereby authorized to permit others to use the Easement Area for the purposes set forth herein. The foregoing grant of Easement is subject to any and all covenants, conditions, restrictions, reservations, easements, rights and other matters which are of record or set forth in this Agreement. The Easement Area shall be used solely for the purposes described in this Section 1 and nothing herein shall be deemed to grant any right to Grantee to construct improvements within or alter the Easement Area, except as expressly set forth herein. The Easement Area shall not be used for access or travel from or to any property other than the Dominant Tenement, and this restriction shall continue to apply notwithstanding any future replat or recombination of the Dominant Tenement with any other real property.

2. Assignment of Rights to County. Grantee hereby grants and assigns, on a nonexclusive basis, its rights to use the Easement to the County of Pima, Arizona (the "County"), subject to the following terms and conditions:

- a. Grantee shall retain all its rights to use the Easement and the Easement Area;
- b. The grant and assignment set forth in this Section 2 shall not operate to increase the scope of the Easement in any way, including size or location of the Easement Area and use; and
- c. The County may use the Easement Area pursuant to this Agreement only for the purposes set forth herein and for the purposes of construction, maintenance and repair of the Bank Protection Improvements or the Easement Area itself.

Grantor consents to the grant and assignment set forth in this Section 2, subject to the terms and conditions set forth in this Agreement, including the provisions set forth in Sections 2.a and 2.b above and the indemnification obligations of Grantee set forth in Section 7 below.

3. Construction of Driveway.

- a. Grantee shall have sole responsibility, at its sole cost and expense, for construction of a paved driveway on the Easement Area, joining the cul-de-sac at the southern end of Camino Martin adjoining the Servient Tenement to the Dominant Tenement. Grantee shall have sole responsibility, at its sole cost and expense, for obtaining any necessary permits and otherwise complying with all applicable law, codes, and regulations. However, Grantor shall cooperate with and assist Grantee, at no cost to Grantor, in connection with obtaining such necessary permits or governmental approvals.
- b. Grantee shall construct the paved driveway on the Easement Area to Grantee's specifications, provided that such driveway (i) shall meet the construction standards for the existing driveway on the Servient Tenement and (ii) shall consist of a minimum 6" aggregate base and minimum 2" asphalt cement.
- c. Grantee shall use diligent efforts to complete the paved driveway to be constructed in the Easement Area. Following completion of initial construction of the paved driveway in the Easement Area, Grantee shall not undertake any further construction on the Servient Tenement, including the Easement Area, subject to Grantor's performance of its maintenance and repair obligations pursuant to Section 5.a or absent prior written consent of Grantor, which consent shall not be unreasonably withheld, conditioned, or delayed.
- d. Grantee shall keep the Easement Area and the Servient Tenement free and clear of any mechanics' liens or materialmen's liens arising from work or materials provided to Grantee or on Grantee's behalf in connection with the construction contemplated under this Section 3.
- e. Grantee shall have the express right and ability to obtain assistance or financial contribution from any third party, including the County, in performing any

obligation or responsibility set forth in this Section 3, notwithstanding that any such obligation or responsibility may be specified as the "sole" obligation or responsibility of Grantee or that such obligation or responsibility is to be performed at Grantee's "sole" cost or expense, provided, however, that Grantee shall remain obligated for the performance and payment of such obligation or responsibility as designated herein.

4. Cleaning and Repair during Construction Periods.

a. During the construction of the paved driveway on the Easement Area or of Bank Protection Improvements (the "Construction Periods"), Grantee shall use reasonable efforts to minimize adverse effects of construction by Grantee or its agents or the County on the tenants and invitees at the Servient Tenement; provided, however, that the foregoing limitation shall not prohibit Grantee or its agents from performing such construction during normal business hours.

b. During the Construction Periods, there shall be a presumption that dust, dirt, sand, rocks, construction debris, or damage found or occurring on the Easement Area or any paved areas on the Servient Tenement that have been traversed by any vehicles or equipment during the Construction Periods were deposited or caused by Grantee, its agents, or the County. Grantee may overcome the foregoing presumption with clear and convincing evidence.

c. Grantee shall at its sole cost and expense (i) immediately clear and clean any dust, dirt, sand, rocks, or construction debris deposited by Grantee, its agents, or the County on the Easement Area or any paved areas on the Servient Tenement during the Construction Periods, and (ii) promptly repair any damage to the Easement Area or any paved areas on the Servient Tenement caused by Grantee, its agents, or the County during the Construction Periods. Grantee shall perform the foregoing obligations without requirement of notice by Grantor or any other action by Grantor. "Cleaning" of paved areas shall mean returning such paved areas to the customarily clean state of the Servient Tenement as evidenced by such photographs as may be provided by Grantor.

d. In the event Grantee shall fail to perform its obligations set forth in Section 4.b above immediately following reasonable notice to Grantor, Grantor may at its sole discretion elect to perform such clearing, cleaning, and/or repair and Grantee shall pay Grantor's documented out-of-pocket costs and internal manual labor charges at a reasonable rate for such work within thirty (30) days following invoice by Grantor. Grantee acknowledges that (i) the presence of dust, dirt, sand, rocks, construction debris, damage and the like may materially and adversely affect Grantor's tenants' access, activities, and presentation to their clients and customers, (ii) "reasonable notice" under such circumstances may be satisfied by telephonic notice to Grantee's designated contacts, and (iii) "immediate" performance may be reasonably deemed to mean same-day commencement and diligent performance.

5. Maintenance; Maintenance Costs.

a. Grantor shall maintain the Easement Area in good condition at all times so Grantee, the County and both of their permitted users shall have unobstructed access to the Easement Area and the Dominant Tenement, SUBJECT TO REASONABLE INTERRUPTION UPON PRIOR NOTICE FOR MAINTENANCE OR REPAIR, PROVIDED THAT GRANTOR SHALL USE REASONABLE BUSINESS EFFORTS TO AVOID AND MINIMIZE SUCH INTERRUPTION.

b. All expenses incurred by Grantor in performing maintenance on the Easement Area ("**Maintenance Expenses**") shall be shared equally by Grantee and Grantor. Maintenance Expenses shall include expenses that are required to be capitalized under GAAP. Maintenance Expenses shall be calculated pro rata based on area of the Easement Area, area of all driveways on the Servient Tenement, and the maintenance costs for all driveways on the Servient Tenement. Grantor and Grantee acknowledge that the Easement Area includes a portion of the driveway used by Grantor and intend that the equal sharing of Maintenance Expenses be performed as set forth above because of such joint usage. The parties intend that the Maintenance Expenses for each calendar year not exceed the amounts stated in a budget of the anticipated Maintenance Expenses for the calendar year (the "**Maintenance Budget**"). On or before December 1, 2018, and December 1 of each year thereafter Grantor shall prepare and deliver to Grantee a proposed Maintenance Budget for the next calendar year, provided that failure by Grantor to meet such deadlines shall not affect the obligations and rights of the parties. If Grantee reasonably objects to the proposed Maintenance Budget for the next calendar year Grantee shall deliver to Grantor written notice thereof within thirty (30) days after receipt of the proposed Maintenance Budget. In the event Grantee timely objects to the proposed Maintenance Budget, the parties shall promptly and in good faith negotiate and finalize the terms of the proposed Maintenance Budget. If Grantee does not object to the proposed Maintenance Budget within thirty (30) days after receipt thereof then Grantee shall be deemed to have accepted and approved of the proposed Maintenance Budget for the next calendar year. If by December 31, of any year the parties cannot agree upon the Maintenance Budget for the next calendar year, the Maintenance Budget shall be the actual Maintenance Expenses incurred during the calendar year ending on said December 31 less any costs for repaving or major repair incurred during such year, plus five percent (5%). Grantee shall not be liable for any Maintenance Expenses in excess of 110% of the amounts stated in the approved Maintenance Budget, nor for any Maintenance Expenses for items not included in the Maintenance Budget, in each case without Grantee's prior written consent. Grantor shall deliver to Grantee periodic statements, either monthly or quarterly, of the maintenance costs for all driveways on the Servient Tenement incurred during the period included in the statement including a calculation of the amount of the Maintenance Expenses attributable to the Easement Area (the "**Maintenance Expenses Statement**").

c. Upon request by Grantee, Grantor shall submit copies of all invoices, bills, statements, and other evidence of the expenditures incurred in connection therewith. Within thirty (30) days after delivery of the Maintenance Expenses Statement to Grantee, Grantee shall pay to Grantor the amount of the Maintenance Expenses incurred by Grantor and shown in the Maintenance Expense Statement. Any undisputed Maintenance Expenses

payable by Grantee and not paid within thirty (30) days after delivery of the Maintenance Expenses Statement shall thereafter accrue interest at the per annum rate of twelve percent (12%) until paid.

d. Amounts not timely paid by Grantor or Grantee under this Section 5 only shall constitute a lien against the Servient Tenement or Dominant Tenement, respectively. Such lien shall attach and take effect upon recordation of a claim of lien in the office of the Pima County Recorder by the party making the claim. The claim of lien shall include (i) the name of the lien claimant; (ii) a statement concerning the basis for the claim of lien; (iii) a statement identifying the owner of the parcel against which the lien is claimed; (iv) a description of the parcel against which the lien is claimed; (v) a description of the work performed or action taken which is giving rise to the claim of lien and a statement itemizing the amount thereof; and (vi) a statement that the lien is claim pursuant to the provisions of this Agreement. The notice shall be duly verified, acknowledged and contain a certificate that a copy thereof has been served upon the owner against whom the lien is claimed by personal service or by mailing and by personal service at or mailing to the address given for the mailing of tax statements in the Pima County assessor's office for the parcel against which the lien is claimed. The lien so claimed shall attach from the date of recordation solely in the amount claimed there by and may be enforced in any manner allowed by law. Notwithstanding the foregoing, any lien arising under this Section 5.d shall be subordinate to any mortgage lien recorded against the Servient Tenement.

6. Repairs. Grantee shall repair any and all damage to the Easement Area or any other portion of the Servient Tenement resulting from its use thereof at its sole cost and expense to the condition of such property prior to the damage and in accordance with all applicable laws and governmental regulations. If such damage to the Easement Area or any other portion of the Servient Tenement is caused by the County or any of its permitted users and Grantee shall be required hereunder to pay for such damage, then Grantee shall have the right to recover any costs incurred in connection with those damages, including attorneys' fees, and Grantor shall cooperate with Grantee to obtain recovery for Grantee's costs. In no event shall Grantor be entitled to any compensation or recovery in connection with its efforts on behalf of or in assistance to Grantee to collect such amounts from the County. If Grantee fails to so repair the damaged property, Grantor may deliver to Grantee a written notice for Grantee to effect such repairs. If Grantee fails to commence such repairs and maintenance within thirty (30) days thereafter and pursue same diligently to completion, then Grantor may thereafter commence such maintenance or repairs at any time prior to the date Grantee commences the same. If Grantor completes such maintenance or repairs, Grantee shall reimburse Grantor for the reasonable costs actually incurred by Grantor with respect to such repairs within thirty (30) days after receipt from Grantor of an itemized statement of the costs and expenses incurred along with invoices. If Grantee disagrees with Grantor's determination, then before Grantee shall be liable for any amount or in breach hereunder, the same must be determined by an arbitrator under Section 13 below. If such damage is caused by Grantor or any of its permitted users, then Grantor shall restore such damage as set forth in this Section 6.

7. Indemnification. Grantee agrees to indemnify, defend and hold Grantor and its successors and assigns harmless from and against any and all claims, demand, liabilities, costs, expenses, obligations, damages and losses, causes of action, compliance orders, fines, penalties

and suits of any nature whatsoever ("Claim") arising out of or related to Grantee's construction of the Easement Area as set forth in Section 3. This indemnification shall expire and be of no further force and effect six (6) months after substantial completion of the construction set forth in Section 3. Notwithstanding the foregoing, in no event shall Grantee be required to indemnify Grantor for any Claim relating to the negligent or intentional acts or omissions of Grantor, its permitted users, agents and employees. In the event Grantee is at any time obligated to Grantor under the foregoing provisions, Grantee (i) assigns to Grantor any payments Grantee may receive from the County under any obligation of County to indemnify, defend and hold Grantee harmless in connection with the Bank Protection Improvements, including any construction, maintenance or repair of the Bank Protection Improvements, and (ii) subrogates to Grantor any right of recovery under any such obligation of County to indemnify, defend and hold Grantee harmless in connection with the Bank Protection Improvements.

8. Insurance. During the construction of the paved driveway described in Section 3, Grantee agrees to maintain general liability insurance, with a single combined liability limit of not less than \$1,000,000.00 for bodily injury, death, property damage and personal injury of one person in any one accident or occurrence, and in the amount of not less than \$2,000,000.00 for injury or death of more than one person in any one accident or occurrence, insuring against injuries, accidents or damages arising or in any way related to the use of the Easement Area. Such policies shall name Grantor as an additional insured. Grantee shall provide promptly on request by Grantor reasonable evidence of compliance with the insurance requirements set forth herein.

9. Releases.

a. Grantee permanently releases and surrenders all rights relating to the 60 foot roadway along the Southwesterly portion as referred to in Deed recorded in Docket 3684 at page 441, Official Records of Pima County, Arizona, also referred to in the Deed recorded in Book 2302 at page 348 (the "**Old ROW**"), including any rights created by reference to such Old ROW in any other instrument, recorded or unrecorded; and

b. Grantee permanently releases and surrenders all rights relating to the 24 foot access easement contemplated under the Marana Ordinance No. 2002.05 recorded in Docket 11762 at page 2444 of the Official Records of Pima County, Arizona, and the Preliminary Plat for Old West Industrial Village, referenced in such Ordinance as the "Development Plan" for the real property described therein.

c. The foregoing releases in this Section 9 shall be effective in perpetuity, notwithstanding any termination of this Agreement.

10. Term. The term of this Agreement shall commence as of the date hereof and shall be perpetual, unless terminated with the mutual written consent of all parties. All of the agreements, easements, and covenants run with the land and are binding on successors-in-interest of the parties that execute or join in this Agreement.

11. Notice. Any notice, communication, request, reply or advice (collectively, "Notice") provided for or permitted by this Agreement to be made or accepted by the Parties must be in writing. Notice may, unless otherwise provided herein, be given or served (i) by depositing

the same in the United States mail, postage paid, certified, and addressed to the party to be notified, with return receipt requested, (ii) by delivering the same to such party, or an agent of such party, in person or by commercial courier, or (iii) by depositing the same into the custody of a nationally recognized overnight delivery service. Notice deposited in the mail in the manner hereinabove described shall be effective on the third (3rd) business day after such deposit. Notice given in any other manner shall be effective only if and when received by the party to be notified between the hours of 8:00 A.M. and 5:00 P.M. of any business day with delivery made after such hours to be deemed received the following business day. For the purposes of notice, the addresses of the Parties, until changed as hereinafter provided, are set forth below. The Parties shall have the right from time to time to change their respective addresses, and each shall have the right to specify as its address any other address within the United States of America by at least five (5) days written notice to the other party.

If to Grantor: Foodtown Development Company II, L.L.C., and
Clover Real Estate II, LLC
Attn: Paul Kraft
6650 N Oracle Road, Suite 111
Tucson, AZ 85704

with a copy to: Sidney Y. Kohn
Kohn Law Firm, PLLC
1200 N. El Dorado Pl., Suite H-810
Tucson, AZ 85715
Email: skohn@kohnlawfirm.net

If to Grantee: Alta Vista Communities RP LLC
700 East Broadway Boulevard
Suite 1200
Tucson, Arizona 85719
Attn: Roger Karber
Email: Roger@AerieDev.com

with a copy to: Matthew A. Thrasher
Thrasher Law Offices PLLC
1785 East Skyline Drive, Suite 131
Tucson, Arizona 85718
Email: matt@thrasherpllc.com

12. Miscellaneous.

a. No Rights for Public. This Agreement shall not be construed as creating any rights in the general public nor as dedicating for public use any portion of the Servient Tenement.

b. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. Any action brought in connection with this Agreement shall be brought and prosecuted in Pima County Superior Court as the court

of exclusive jurisdiction and proper venue and the parties hereby consent to the jurisdiction and venue of said court.

c. No Joint Venture or Partnership. Neither anything contained in this Agreement, nor any act of any person hereunder shall be deemed or construed to create the relationship of principal and agent or of partnership or of joint venture or of any association between or among the parties hereto or any other person.

d. Attorney's Fees. If either party commences an action or proceeding against the other party arising out of or in connection herewith, the prevailing party in such action or proceeding and in any appeal in connection therewith shall be entitled to have and recover from the unsuccessful party attorneys' fees, court costs, expenses and other costs of investigation and preparation. If the prevailing party recovers a judgment in any such action, proceeding or appeal, such attorneys' fees, court costs and expenses shall be included in and as a part of such judgment.

e. Interest on Amounts Owed. If at any time either party owes any amount of money to the other party under this Agreement, interest shall accrue on the amount owed from the date such amount was first incurred or accrued, at the per annum rate of twelve percent (12%) until the amount owed is paid in full.

f. Estoppel. Any party to this Agreement shall deliver an estoppel within twenty (20) business days of written request by any other party hereto, stating whether the Agreement has been amended, whether the Agreement is in full force and effect, and the nature of any default (including amounts owed) by any other party hereto, if any, as well as any other information that may be reasonably requested in connection with the sale or finance of the requesting party's property. In the event the responding party fails to respond by such deadline, the requesting party may execute such an estoppel on behalf of the responding party, which estoppel may be relied on by third parties.

g. Counterparts. This Agreement may be executed in any number of counterparts, which together will constitute the agreement of the Parties.

h. Exhibits. All exhibits hereto are hereby incorporated herein and made a part hereof.

13. Arbitration. In the event a dispute arises between Grantee and Grantor, either party may proceed to elect to resolve the dispute through arbitration, by delivering written notice to the other within five (5) days after the termination of the mediation process. If notice is given in a timely manner, the parties agree to select an arbitrator to arbitrate the dispute who shall, thereafter, conduct a hearing as soon as possible and decide whether or not any party is in default under the terms of this Agreement, or the meaning or interpretation to be given to the terms or provisions hereof, or other matter which is the subject of arbitration. This provision for arbitration is designed to provide a speedy method for determining such matters. The determination of the arbitrators shall be final and binding upon the parties as to the matter arbitrated and shall be enforceable in a court of law. Each of the parties shall bear their respective cost and expense for the arbitration and each party will bear one half (1/2) of the cost of the arbitrator. The arbitration shall be held pursuant to the Arizona Rules of Civil Procedure and the arbitrator may order injunctive relief.

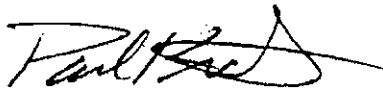
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

"GRANTOR"

FOODTOWN DEVELOPMENT COMPANY II, L.L.C., an
Arizona limited liability company

By: Foodtown Development Company, L.L.C., a
Missouri limited liability company, its sole member

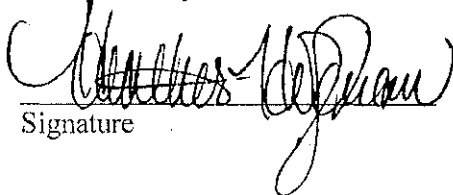
By: Leslie E. Glaze, Shelly M. Silverman, Jody
M. Gross, Scott J. Maizlish, and UMB Trust
Company of South Dakota, Trustees
("Trustees") of the Clover Trust, dated June
30, 1999, its sole member

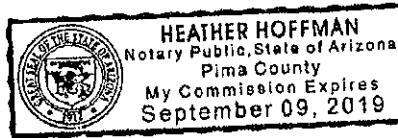
By: 
Name: Paul Kraft
Title: Agent for Trustees under Clover
Trust Agent Agreement

State of Arizona
County of Pima

On February 14, 2018, before me, Heather Hoffman, personally appeared Paul Kraft, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.


Signature



(Seal)

CLOVER REAL ESTATE II, LLC, an Arizona limited liability company

By: Clover Real Estate, L.L.C., a Missouri limited liability company, its sole member

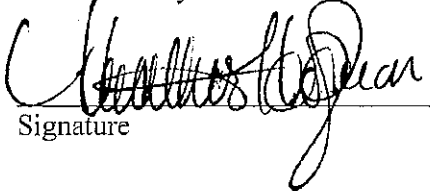
By: Leslie E. Glaze, Shelly M. Silverman, Jody M. Gross, Scott J. Maizlish, and UMB Trust Company of South Dakota, Trustees ("Trustees") of the Clover Trust, dated June 30, 1999, its sole member

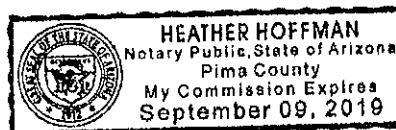
By: 
Name: Paul Kraft
Title: Agent for Trustees under Clover Trust Agent Agreement

State of Arizona
County of Pima

On February 14, 2018, before me, Heather Hoffman, personally appeared Paul Kraft, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.


Signature



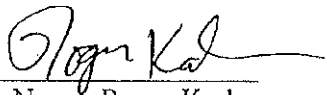
(Seal)

"GRANTEE"

ALTA VISTA COMMUNITIES RP LLC, an
Arizona limited liability company

By CASITAS INVESTOR RP LLC, an
Arizona limited liability company, its
manager

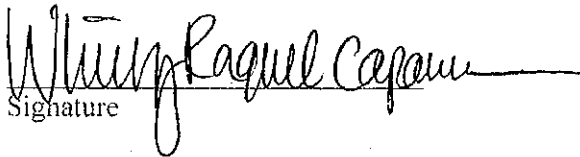
By: KARBER HOLDINGS LLC, an
Arizona limited liability company, a manager

By: 
Name: Roger Karber
Its: Member

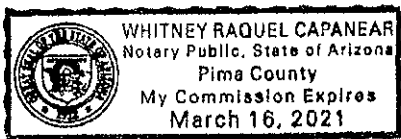
State of Arizona
County of Pima

On 3/1/18, before me, Whitney Capanear, personally appeared
Roger Karber, personally known to me (or proved to me on the basis of
satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument
and acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity
upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.


Signature

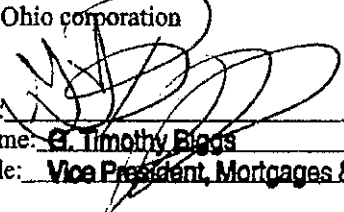
(Seal)



CONSENTED TO BY:

The undersigned, being the beneficiary and lienholder under that certain Deed of Trust, Security Agreement and Fixture filing dated July 22, 2016, by FOODTOWN DEVELOPMENT COMPANY II, L.L.C., an Arizona limited liability company, and CLOVER REAL ESTATE II, LLC, an Arizona limited liability company, collectively, as trustor, for the benefit of the undersigned, recorded on July 22, 2016, as Sequence 20162040543 in the Official Records of Pima County, Arizona, hereby consents to the foregoing Access Easement Agreement effective as of the date first set forth above.

THE OHIO NATIONAL LIFE INSURANCE COMPANY,
an Ohio corporation

By: 
Name: G. Timothy Biggs
Title: Vice President, Mortgages & Real Estate

State of Ohio
County of Hamilton

On March 1, 2018, before me, Virginia L. Elliot, personally appeared G. Timothy Biggs, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Virginia L. Elliot
Signature

(Seal)



Virginia L. Elliot
Notary Public, State of Ohio
My Commission Expires 05-09-2019

EXHIBIT A

LEGAL DESCRIPTION OF SERVIENT TENEMENT

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF PIMA, STATE OF ARIZONA, AND IS DESCRIBED AS FOLLOWS:

The South Half of the following described property:

All that part of the Northwest Quarter of Section 6, Township 13 South, Range 13 East, Gila and Salt River Base and Meridian, Pima County, Arizona, lying Easterly of the Easterly right of way of that certain road dedicated by Deed recorded in the office of the County Recorder of Pima County, Arizona, in Docket 996 at page 161, and Northeasterly of the Southern Pacific Railroad right of way; EXCEPT the North 2185.52 feet thereof.

FURTHER EXCEPT any portion thereof conveyed to the Town of Marana, an Arizona municipal corporation, by Deed of Dedication recorded at Sequence No. 20160530366.

EXHIBIT B

LEGAL DESCRIPTION OF DOMINANT TENEMENT

Lot 3 of AERIE RIVERWALK, Pima County, Arizona, according to the map or plat thereof of record in the office of the County Recorder of Pima County, Arizona, recorded in Sequence No. 20131090246.

EXHIBIT C

LEGAL DESCRIPTION AND DEPICTION OF EASEMENT AREA

Bruce Small Surveys, Inc.

3040 N. Conestoga Ave.
Tucson, AZ 85749-9332
e-mail: bruce.small@cox.net
voice: (520) 444-7186

October 14, 2017

Description of Access Easement.

A part of Section 6, Township 13 South, Range 13 East, Gila and Salt River Meridian, Pima County, Arizona, described as follows:

COMMENCING at the Southwest corner of Parcel A as shown on the Record of Survey filed as Sequence 20160550043;

THENCE S 89°30'59" E along the South line of Parcel A a distance of 17.25 feet to the POINT OF BEGINNING;

THENCE N 32°18'55" W 144.27 feet to the Easterly right-of-way line of Camino Martin as decided in Sequence 20160530366, being a point on the arc of a non-tangent curve concave to the Northwest, a radial line of said curve through said point having a bearing of S 16°02'14" E;

THENCE Northeasterly along said right-of-way line, along the arc of said curve, to the left, having a radius of 50.00 feet, with a chord of N 55°11'06" E 32.19 feet, and a central angle of 37°33'19" for an arc distance of 32.77 feet to a non-tangent line;

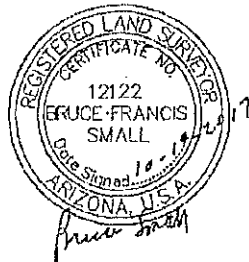
THENCE S 35°41'04" E 173.25 feet to the South line of Parcel A;

THENCE N 89°30'59" W along said South line a distance of 50.37 feet to the POINT OF BEGINNING.

Containing 0.1328 acres or 5,785 square feet, more or less.

Prepared by:

Bruce Small



Expires 06/30/2019

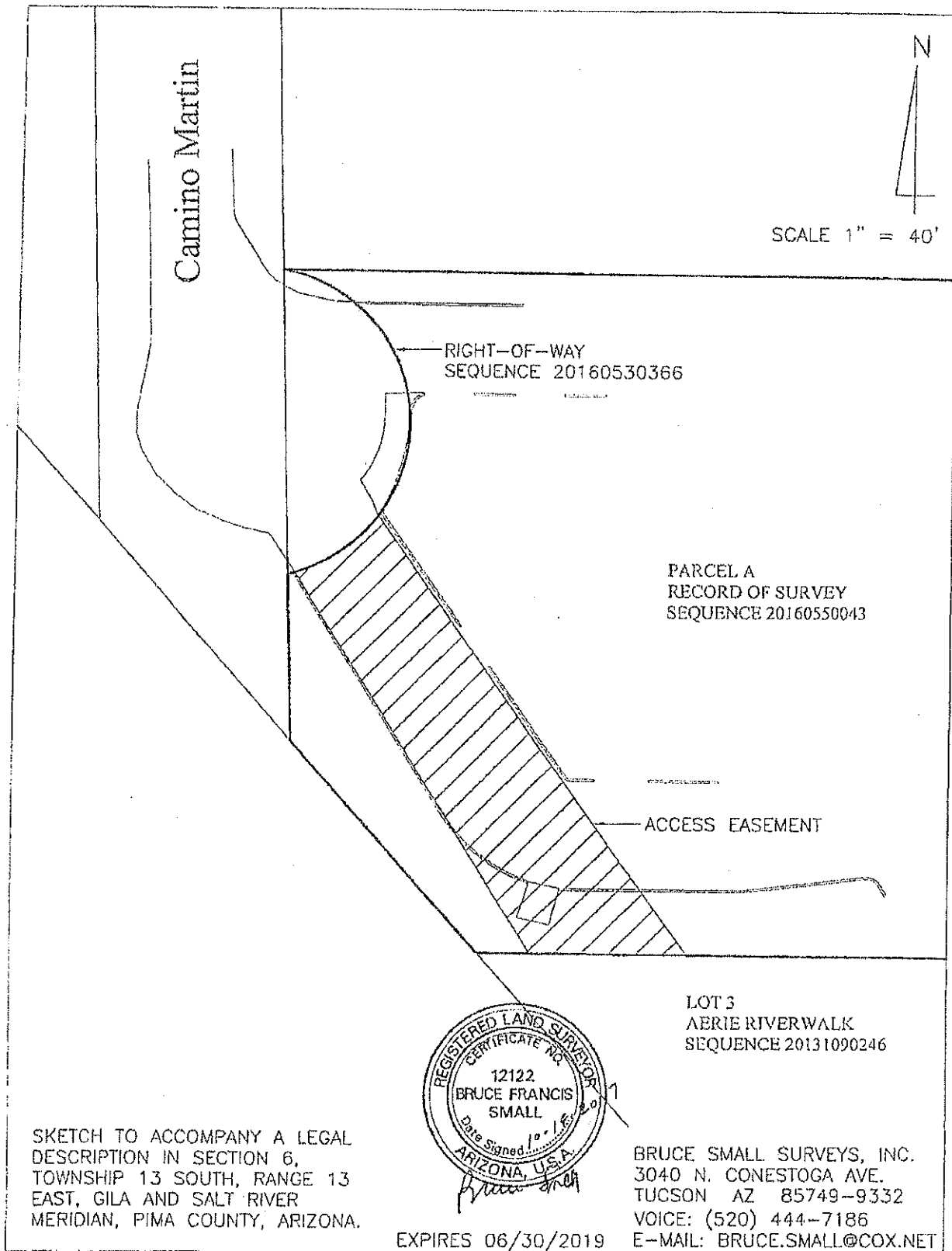


EXHIBIT C

TO CDO NORTH BANK AMENDED AND RESTATED DEVELOPMENT AGREEMENT

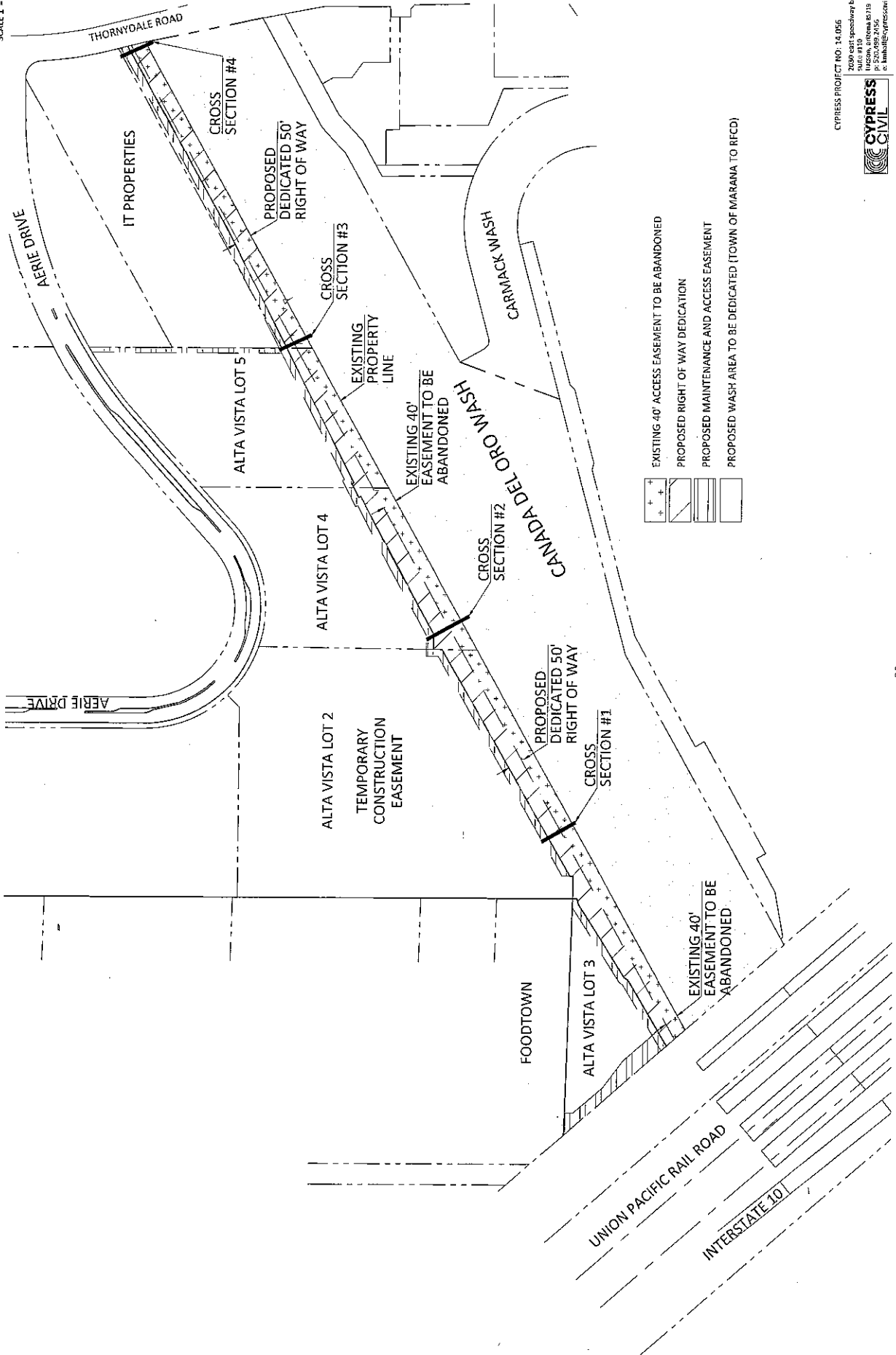
DESCRIPTION OF PROJECT PLANS

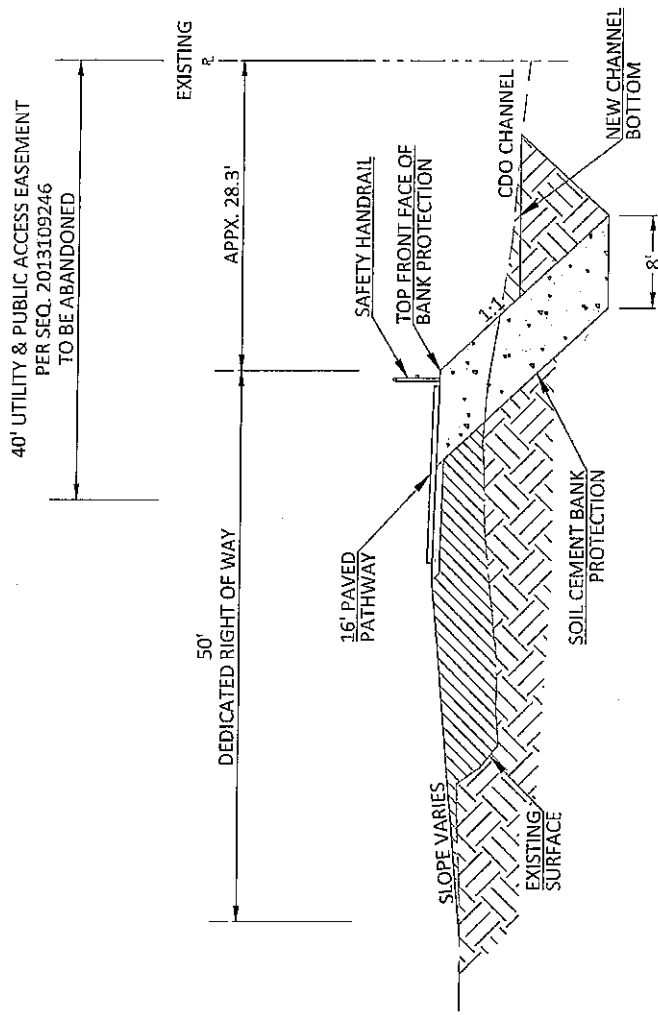
- NATIVE PLANT PRESERVATION SITE PLAN CANADA DEL ORO NORTH BANK, BANK PROTECTION AND LINEAR PARK PAGES 1-17 DATED 20 APRIL, 2020.
- DRAINAGE REPORT AND APPENDIX DATED 25 JANUARY, 2018 FOR CANADA DEL ORO LINEAR PARK (INSTERSTATE 10 TO THORNYDALE ROAD) PREPARED BY CYPRESS CIVIL DEVELOPMENT, LLC)
- CANADA DEL ORO NORTH BANK, BANK PROTECTION AND RIVER PARK I-10 TO THORNYDALE, GENERAL DESCRIPTION, NOTES AND PATH PLAN, PROFILE, AND DETAILS, PAGES 1-20 DATED 22 APRIL, 2020 AND PREPARED BY CYPRESS CIVIL DEVELOPMENT, LLC.

EXHIBIT D
Cross-Section Diagrams

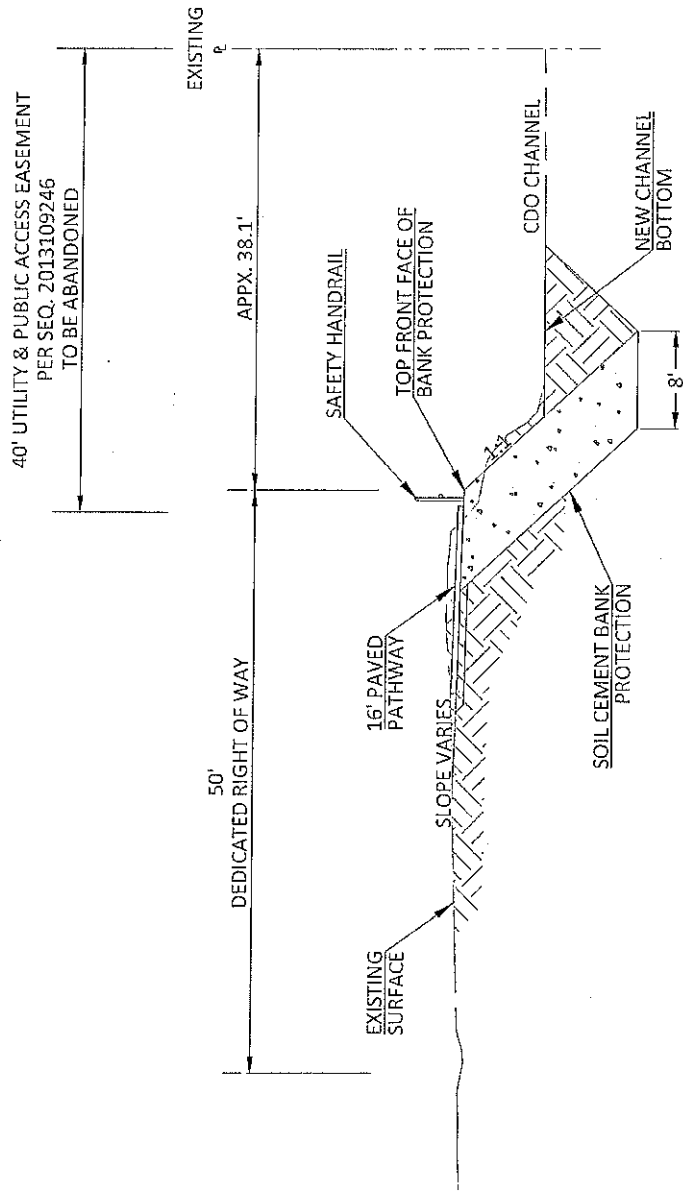
PROJECT DIAGRAM CDO NORTH BANK PROTECTION

SCALE 1"=120'

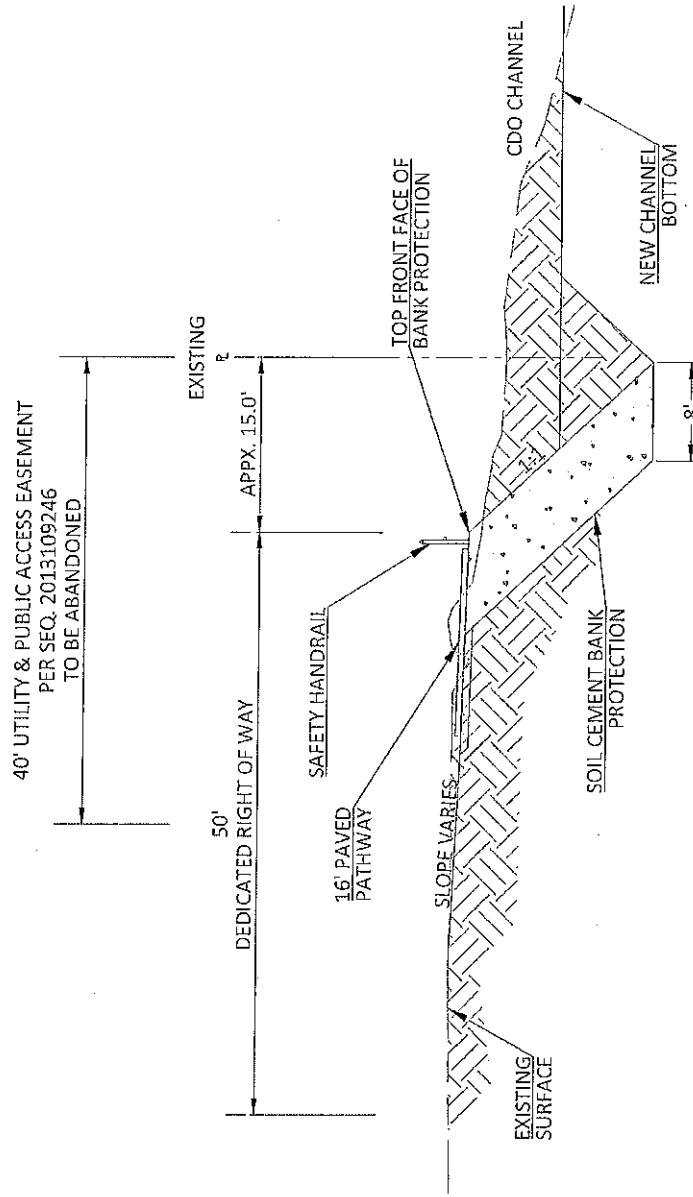




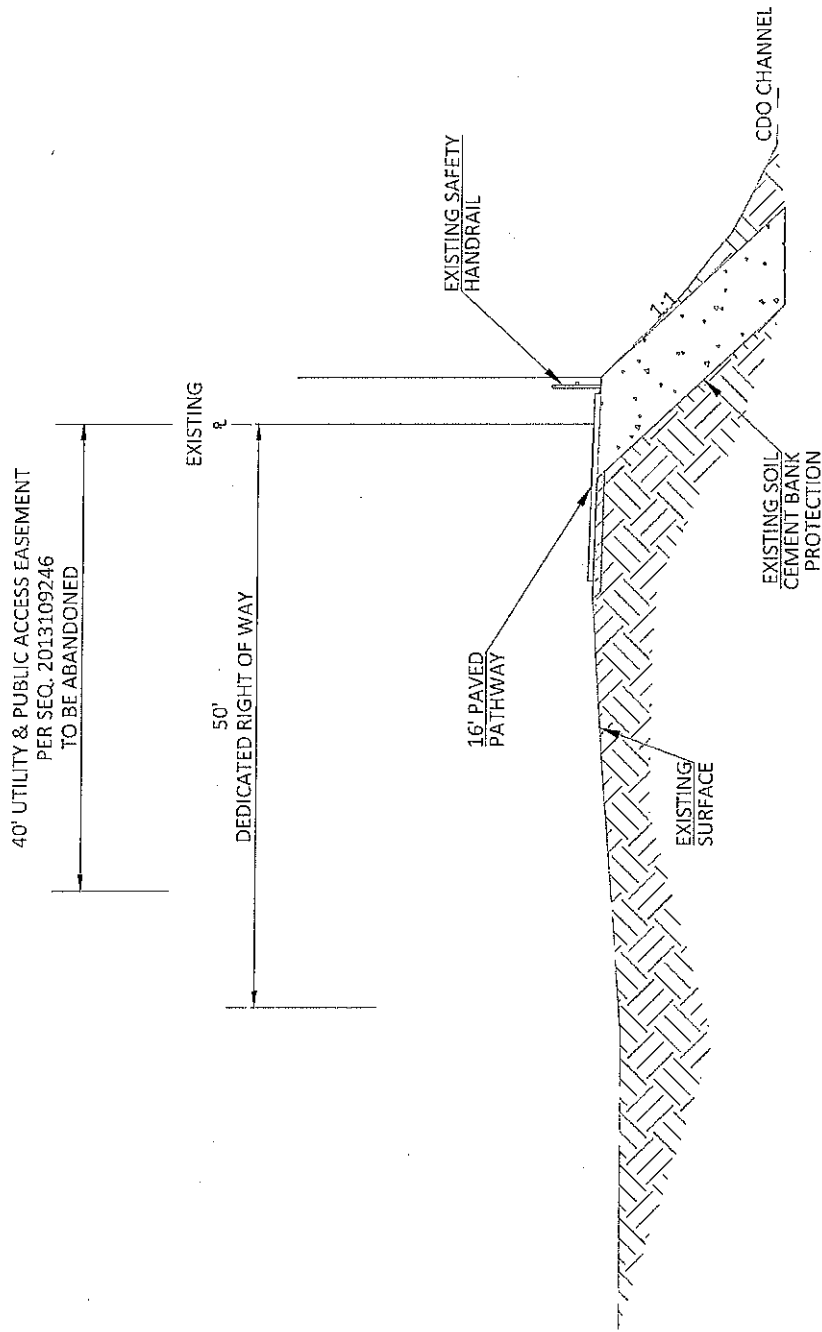
RIGHT OF WAY CROSS SECTION #1
APPROXIMATE SCALE: N.T.S.



RIGHT OF WAY CROSS SECTION #2
APPROXIMATE SCALE: N.T.S.



RIGHT OF WAY CROSS SECTION #3
APPROXIMATE SCALE: N.T.S.



RIGHT OF WAY CROSS SECTION #4
APPROXIMATE SCALE: N.T.S.



EXHIBIT E TO CDO NORTH BANK DEVELOPMENT AGREEMENT ALTA
VISTA RIGHT OF WAY DEDICATION
3 PAGES

2025 W. Ruthrauff Road, Suite 125 · Tucson, Arizona 85705 | Office: 520.398-6651

EXHIBIT "A"
LEGAL DESCRIPTION
DEDICATED RIGHT-OF-WAY

A Dedicated Right-of-Way over a portion of Lots 2, 3, 4, and 5 of "Aerie Riverwalk", as recorded at Sequence No. 20131090246, Pima County Records, located in the Northeast quarter and the South half of Section 6, Township 13 South, Range 13 East, Gila and Salt River Meridian, Pima County, Arizona, being more particularly described as follows:

Beginning at the Southeast corner of said Lot 5 on the Northwest line of Canada del Oro Wash per said "Aerie Riverwalk Final Plat", said point being a ½ inch rebar tagged "RLS 14145";

Thence South 60°56'19" West 2251.66 feet upon the Southeast lines of said Lots 2, 3, 4, and 5, upon the Northwest line of said Canada del Oro Wash, to the Northeast right-of-way line of the Union Pacific Railroad, to the Southernmost corner of said Lot 3;

Thence North 40°49'58" West 70.80 feet upon said Northeast right-of-way, upon the Southwest line of said Lot 3;

Thence North 59°25'34" East 220.47 feet;

Thence North 35°37'50" East 14.11 feet;

Thence North 57°41'20" East 251.86 feet;

Thence North 74°16'10" East 15.74 feet to the East line of said Lot 3, also being the West line of said Lot 2;

Thence North 00°14'25" East 11.95 feet upon said common line to the Northeast corner of said Lot 3;

Thence South 89°45'35" East 65.00 feet;

Thence North 00°14'25" East 8.92 feet;

Thence North 60°14'29" East 752.47 feet to the East line of said Lot 2, also being the West line of said Lot 4;

Thence North 00°53'02" East 26.26 feet upon said common line;

Thence South 89°06'43" East 44.37 feet to a non-tangent curve, concave to the Southeast, from which the radius point bears South 29°38'04" East at 10,045.00 feet distant;

Thence Northeasterly upon said curve, turning to the right, through a delta angle of 2°34'31" and an arc length of 451.48';

Thence North 27°03'33" West 6.43 feet;



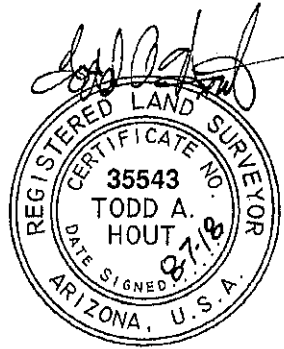
2025 W. Ruthrauff Road, Suite 125 · Tucson, Arizona 85705 | Office: 520.398-6651

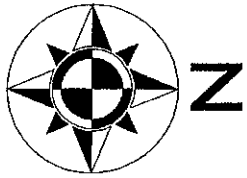
Thence North $63^{\circ}14'47''$ East 44.11 feet;

Thence South $26^{\circ}57'35''$ East 6.26 feet;

Thence North $63^{\circ}03'56''$ East 436.32 feet to the East line of said Lot 5;

Thence South $00^{\circ}12'51''$ West 73.98 feet upon said East line to the **Point of Beginning**.





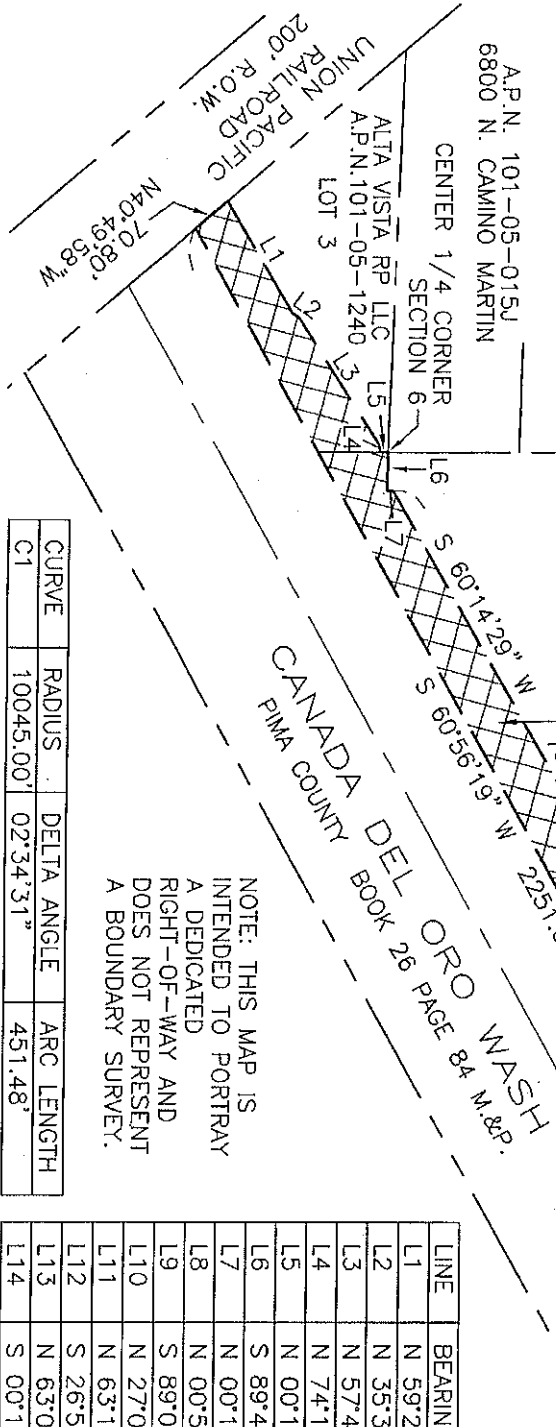
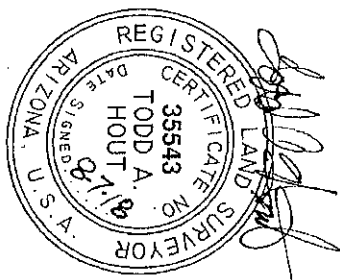
GRAPHIC SCALE: 1 inch = 300 Feet
0 150 300 600

LOT 2
A.P.N. 101-05-1230
4105 W. AERIE DR.

LOT 4
A.P.N. 101-05-1250
4075 W. AERIE DR.

LOT 5
A.P.N. 101-05-1260
4025 W. AERIE DR.
A.P.N. 101-05-0430

DEDICATED
RIGHT-OF-WAY
186,798.3 S.F.
4.29 ACRES



CURVE	RADIUS	DELTA ANGLE	ARC LENGTH
C1	10045.00'	02°34'31"	451.48'

LINE	BEARING	DISTANCE
L1	N 59°25'34" E	220.47'
L2	N 35°37'50" E	14.11'
L3	N 57°41'20" E	251.86'
L4	N 74°16'10" E	15.74'
L5	N 00°14'25" E	11.95'
L6	S 89°45'35" E	65.00'
L7	N 00°14'25" E	8.92'
L8	N 00°53'02" E	26.26'
L9	S 89°06'43" E	44.37'
L10	N 27°03'33" W	6.43'
L11	N 63°14'47" E	44.11'
L12	S 26°57'35" E	6.26'
L13	N 63°03'56" E	436.32'
L14	S 00°12'51" W	73.98'

NOTE: THIS MAP IS
INTENDED TO PORTRAY
A DEDICATED
RIGHT-OF-WAY AND
DOES NOT REPRESENT
A BOUNDARY SURVEY.

ALTA ARIZONA

SURVEY - ENGINEERING - GEOTECH
2025 W. RUTHRAUFF ROAD, SUITE 125
TUCSON, ARIZONA 85705
(520) 398-6651

DEPICTION OF EXHIBIT "A" - DEDICATED RIGHT-OF-WAY OVER A
PORTION OF "AERIE RIVERWALK", SEQ. NO. 20131090246, PIMA
COUNTY RECORDS, IN THE S. 1/2 & THE N.E. 1/4 OF SECTION 6,
T. 13 S., R. 13 E., G. & S. R. M., PIMA COUNTY, ARIZONA

PROJECT NO. 13055

DATE: AUG. 7, 2018

SHEET 2 OF 2

EXHIBIT F

No Longer Applicable/ Intentionally Omitted

EXHIBIT G

No Longer Applicable/ Intentionally Omitted



EXHIBIT H TO CDO NORTH BANK DEVELOPMENT AGREEMENT
IT RIGHT OF WAY DEDICATION

2 PAGES

2025 W. Ruthrauff Road, Suite 125 · Tucson, Arizona 85705 | Office: 520.398-6651

EXHIBIT "A"
LEGAL DESCRIPTION
DEDICATED RIGHT-OF-WAY

A Dedicated Right-of-Way over a portion of the parcel described in Docket 10258 at Page 338, Pima County Records, in the Northeast quarter of Section 6, Township 13 South, Range 13 East, Gila and Salt River Meridian, Pima County, Arizona, being more particularly described as follows:

Beginning at the Southeast corner of Lot 5 of "Aerie Riverwalk", as recorded at Sequence No. 20131090246, Pima County Records, also being the Southernmost corner of said parcel described in Docket 10258 at Page 338, Pima County Records, said point being a ½ inch rebar tagged "RLS 14145";

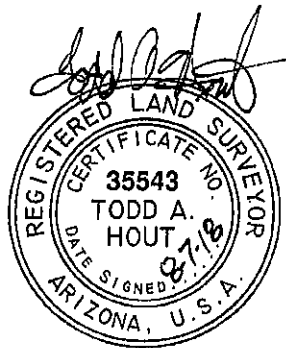
Thence North 60°56'19" East 1,012.31 feet upon the Southwest line of said parcel, upon the Northwest line of the Canada del Oro Wash, to the Westerly right-of-way line of Thornydale Road;

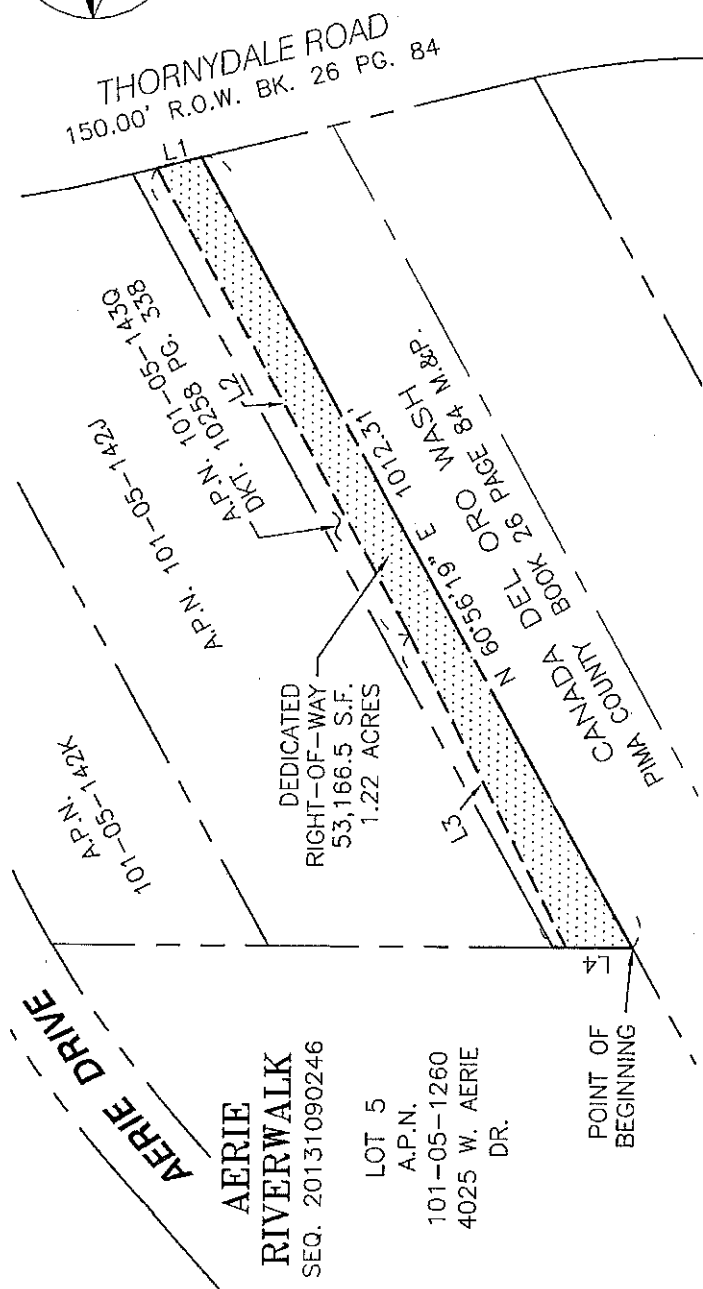
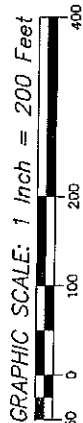
Thence North 13°50'16" West 51.82 feet upon the Easterly line of said parcel, upon the Westerly right-of-way line of said Thornydale Road;

Thence South 60°56'19" West 597.10 feet;

Thence South 63°03'29" West 392.91 feet to the West line of said parcel, also being the East line of Lot 5 of said "Aerie Riverwalk";

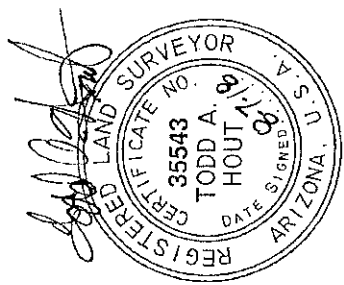
Thence South 00°12'51" West 73.98 feet upon said common line to the **Point of Beginning**.





LINE	BEARING	DISTANCE
L1	N 13°50'16" W	51.82'
L2	S 60°56'19" W	597.10'
L3	S 63°03'29" W	392.91'
L4	S 00°12'51" W	73.98'

NOTE: THIS MAP IS INTENDED
TO PORTRAY A DEDICATED
RIGHT-OF-WAY AND DOES NOT
REPRESENT A BOUNDARY
SURVEY.



ALTA ARIZONA

SURVEY - ENGINEERING - GEOTECH
2025 W. RUTHRAUFF ROAD, SUITE 125
TUCSON, ARIZONA 85705
(520) 398-6651

DEPICTION OF EXHIBIT "A" - A DEDICATED RIGHT-OF-WAY
OVER A PORTION OF THE N.E. 1/4 OF SECTION 6,
T. 13 S., R. 13 E., G. & S.R.M., PIMA COUNTY, ARIZONA

EXHIBIT I
TO CDO NORTH BANK DEVELOPMENT AGREEMENT
FORM OF AMENDMENT TO EXISTING ACCESS AGREEMENT
8 PAGES

When Recorded Mail to:
Hinderaker Rauh & Weisman PLC
2401 E. Speedway Blvd.
Tucson, Arizona 85719

AMENDMENT TO ACCESS EASEMENT AGREEMENT

THIS AMENDMENT TO ACCESS EASEMENT AGREEMENT ("**Amendment**") is made and entered into as of _____, 2018, by and between FOODTOWN DEVELOPMENT COMPANY II, L.L.C., an Arizona limited liability company, and CLOVER REAL ESTATE II, LLC, an Arizona limited liability company (collectively, the "**Grantor**") and ALTA VISTA COMMUNITIES RP LLC, an Arizona limited liability company ("**Grantee**"), and the Pima County Regional Flood Control District, a special taxing district and political subdivision of the State of Arizona ("**District**"), for the purpose of amending the Access Easement Agreement between the parties dated March 1, 2018 and recorded March 2, 2018 at Sequence No. 20180610427 ("**Access Easement Agreement**"), with reference to the following recitals:

Recitals

- A. Grantor is the owner of the Servient Tenement, being the real property legally described in Exhibit A attached hereto (which is also Exhibit A to the Access Easement Agreement).
- B. Grantee is the owner of the Dominant Tenement, as described in Exhibit B to the Access Easement Agreement.
- C. Pursuant to the Access Easement Agreement, Grantor has granted and assigned to Grantee a perpetual, nonexclusive access easement (the "**Easement**") over an Easement Area located on a portion of the Servient Tenement for the "purposes of ingress and egress from the Dominant Tenement." Section 1 of the Access Easement states that the "Easement Area shall not be used for access or travel from or to any property other than the Dominant Tenement..."
- D. Section 2 of the Access Easement Agreement permits the assignment by Grantee to the County of Pima, Arizona ("**County**") of the right to use the Easement and Easement Area for ingress and egress and "for the purposes of construction, maintenance and repair of the Bank

Protection Improvements or the Easement Area itself." It is the District, and not the County, which plans to construct Bank Protection Improvements if certain conditions are met.

E. In addition to the Bank Improvements, the District is constructing a 50 foot linear park adjacent to the CDO Wash, which will include a paved multi-use path, barricade rail, and pedestrian underpass canopy structure for an I-10 underpass (the "Linear Park"). The area on which the Bank Protection Improvements and Linear Park will be constructed is depicted and legally described in Exhibit C attached hereto (the "Project Area").

F. Pursuant to the terms and conditions set forth below the parties desire to amend the Access Easement Agreement to clarify that the District may utilize the Easement and Easement Area for the purpose of constructing, repairing and maintaining the Bank Protection Improvements and Linear Park within the Project Area.

NOW THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The "Dominant Tenement" as defined in Section B on the first page of the Access Easement Agreement, and legally defined in Exhibit B to the Access Easement Agreement, is amended to include the entire Project Area.
2. All references in the Access Easement Agreement to "Pima County" or the "County," will henceforth be references to the District.
3. The Easement is for the purposes of ingress to and egress from the Dominant Tenement to allow the District to construct, repair and maintain the Bank Protection Improvements and Linear Park within the Project Area in the regular course of the District's operations, in a condition similar to other District owned or controlled flood-control improvements and linear parks. The frequency with which the District anticipates using the Easement, and the general type of equipment it anticipates using, is described on Exhibit D to this Amendment. The actual use will, however, change from time to time or over time in response to changed conditions or the need to respond to an emergency or perform any major repairs. The District will be responsible for and will repair any damage it causes to the Easement Area, to the same extent as Grantee is liable under Section 6 of the Access Easement Agreement. The Easement does not allow the general public to access the Project Area or permit access or travel from or to any property other than the Dominant Tenement, except for the District's access to the Project Area for the work described in Exhibit D.
4. In the event of a conflict between the terms of the Access Easement Agreement and the terms of this Amendment, the terms of this Amendment shall control. Where not inconsistent, the terms of the Access Easement Agreement shall remain in full force and effect. This Amendment may be executed in counterpart and by electronic or facsimile signature.

Signatures on following page.

Executed as of the Effective Date stated in the introductory paragraph.

“GRANTOR”

FOODTOWN DEVELOPMENT COMPANY II, L.L.C., an Arizona limited liability company

By: Foodtown Development Company, L.L.C.
a Missouri limited liability company, its sole member

By: Leslie E. Glaze, Shelly M. Silverman, Jody M. Gross, Scott J. Maizlish, and UMB Trust Company of South Dakota, Trustees (“Trustees”) of the Clover Trust, dated June 30, 1999, its sole member

By: _____
Name: Paul Kraft
Title: Agent for Trustees under Clover Trust Agent Agreement

State of Arizona)
)
County of Pima)

On _____, before me, _____, personally appeared Paul Kraft, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

(Seal)

CLOVER REAL ESTATE II, LLC, an Arizona limited liability company

By: Clover Real Estate, L.L.C., a Missouri limited liability company, its sole member

By: Leslie E. Glaze, Shelly M. Silverman, Jody M. Gross, Scott J. Maizlish, and UMB Trust Company of South Dakota, Trustees ("Trustees") of the Clover Trust, dated June 30, 1999, its sole member

By: _____
Name: Paul Kraft
Title: Agent for Trustees under Clover Trust Agent Agreement

State of Arizona
County of Pima

On _____, before me, _____, personally appeared Paul Kraft, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

(Seal)

"GRANTEE"

ALTA VISTA COMMUNITIES RP LLC, an
Arizona limited liability company

By CASITAS INVESTOR RP LLC, an Arizona
limited liability company, its manager

By: KARBER HOLDINGS LLC, an
Arizona limited liability company, a manager

By: _____
Roger Karber, authorized Member

State of Arizona)
)
County of Pima)

On _____, before me, _____, personally appeared Roger Karber,
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s)
whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they
executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the
instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the
instrument.

WITNESS my hand and official seal.

Signature

(Seal)

Pima County Regional Flood Control District
a political subdivision of the State of Arizona

By: _____
Chairman, Board of Directors

State of Arizona)
)
County of Pima)

On _____, before me, _____, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

(Seal)

CONSENTED TO BY:

The undersigned, being the beneficiary and lienholder under that certain Deed of Trust, Security Agreement and Fixture filing dated July 22, 2016, by FOODTOWN DEVELOPMENT COMPANY II, L.L.C., an Arizona limited liability company, and CLOVER REAL ESTATE II, LLC, an Arizona limited liability company, collectively, as trustor, for the benefit of the undersigned, recorded on July 22, 2016, as Sequence 20162040543 in the Official Records of Pima County, Arizona, hereby consents to the foregoing Access Easement Agreement effective as of the date first set forth above.

THE OHIO NATIONAL LIFE INSURANCE COMPANY
an Ohio corporation

By: _____

Name: _____

Title: _____

State of _____

County of _____

On _____, before me, _____, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

(Seal)

Language for Exhibit D:

The access easement will be utilized by Pima County Regional Flood Control District staff, or their contractor, as well as staff from the Pima County Natural Resources Parks and Recreation department.

The access route will be secured with locked gates and will only be able to be accessed by authorized individuals. Maintenance and repair activities would be limited to repair work for the river park pathway, handrail and landscape improvements as well as bank protection and cross drainage structure repairs. This type of work is limited in frequency and duration - typically 4 to 6 times per year and usually for a period of 1 to 3 days. For day to day river-park maintenance activities – sweeping, pruning and emptying trash cans - the access would be from an alternate route either at Thornydale Road or from the pathway under I-10.

The vehicles to be used in all instances will be limited small electric "golf carts" or gators and vehicles not larger than pickup trucks, provided, however, that as to those events that have a material adverse effect, such as failure of bank protection, larger vehicles may be used if reasonably required.

EXHIBIT ONLY - NOT FOR EXECUTION

EXHIBIT J
TO CDO NORTH BANK DEVELOPMENT AGREEMENT
FORM OF ALTA VISTA TEMPORARY CONSTRUCTION EASEMENT
3 PAGES

When Recorded, Please Return to:

Pima County Flood Control District
201 North Stone Avenue, 9th Floor
Tucson, AZ 85701-1215

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

TEMPORARY CONSTRUCTION EASEMENT

1. **Grant of Easement.** Alta Vista Communities RP LLC, an Arizona limited liability company ("Alta Vista"), hereby grants to Pima County Flood Control District ("RFCD"), a non-exclusive temporary construction easement (the "**Easement**") over the property described on Exhibit A (the "**Easement Area**"), for use during the construction of bank-protection and linear-park improvements on adjacent property (the "**Project**"), subject to the terms and conditions in this Temporary Construction Easement agreement ("**TCE Agreement**").
2. **Term.** The Easement will be effective upon recordation of this TCE Agreement in the Office of the Pima County Recorder. It will automatically terminate upon final completion of the Project, but in any event no later than the date that is two years after the recordation date. If requested by Alta Vista, RFCD will, after termination, record a notice acknowledging that the Easement has terminated.
3. **Condition of Property on Termination.** Upon completion of the Project and termination of the Easement, RFCD will remove all material, supplies, and debris, and leave the Easement Area in the same condition existing at commencement of the Easement, except as modified under the Development Agreement.
4. **No Conveyance of Title.** This TCE Agreement does not grant RFCD title to, or any permanent interest in, the Easement Area.
5. **Indemnity.** To the extent permitted by law, RFCD will indemnify, defend and hold Alta Vista harmless from and against any and all claims, demands, and causes of action in law or equity caused by the acts or omissions of the officers, agents and/or employees of RFCD, related to RFCD's or RFCD's contractors' use of the Easement Area.
6. **RFCD Self-Insured.** RFCD is a political subdivision of the State of Arizona and is self-insured as authorized by Law under A.R.S. §§ 11-261 and 11-981. For so long as this Easement shall be in force and effect, RFCD will maintain its self-insurance.

7. Contractor Indemnity & Insurance.

- 7.1. RFCD will require each RFCD contractor or subcontractor using the Easement Area in connection with the Project to agree to indemnify, defend, save and otherwise hold harmless Alta Vista, and its members, managers, directors, officers, and employees, from and against any and all causes of action, liabilities, damages, losses or expenses, including reasonable attorney's fees, arising from or alleged to have arisen in whole or in part from the acts or omissions of the contractor (or any subcontractor of the contractor) or any of their agents or employees related to its use of the Easement Area.
- 7.2. RFCD will require each RFCD contractor or subcontractor using the Easement Area to provide the following insurance coverages during the entire period that the Easement Area is being used by that contractor. RFCD will require that each policy name Alta Vista as an additional insured and contain a waiver of subrogation endorsement in favor of Alta Vista. Certificate(s) of insurance and applicable endorsements will be supplied to Alta Vista before any contractor or subcontractor enters on or uses the Easement Area.
- 7.2.1. Commercial General Liability policy, broad form, including coverage for personal injury up to and including death, property damage, written on an occurrence basis with limits not less than a one (\$1) million per occurrence with a two (\$2) million aggregate.
- 7.2.2. Workers Compensation policy providing coverage required by law.
- 7.2.3. Automobile Liability policy – Combined Single Limit for all hired, owned, non-owned vehicles in an amount no less than 1 million

[REMAINDER OF PAGE INTENTIONALLY BLANK – SIGNATURE PAGE FOLLOWS]

**Alta Vista Communities RP LLC,
an Arizona limited liability company**

By Casitas Investor RP, LLC
an Arizona limited liability company, Manager

By Brav Holding Company LLC
an Arizona limited liability company, Co-Manager

By _____
Garry Brav, Manager

By Indus Holdings LLC
an Arizona limited liability company, Co-Manager

By _____
G.S. Jaggi, Manager

By Karber Holdings LLC
an Arizona limited liability company, Co-Manager

By _____
Roger Karber, Member

By _____
Diane Fitzpatrick, Member

STATE OF ARIZONA)

) ss.

COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by Roger Karber and Diane Fitzpatrick, Members, on behalf of Karber Holdings, LLC, an Arizona limited liability company; by G.S. Jaggi, Manager, on behalf of Indus Holdings, LLC, an Arizona limited liability company; and by Garry Brav, Manager, on behalf of Brav Holding Company, LLC, an Arizona limited liability company.

Notary Public

My Commission Expires: _____



EXHIBIT K TO CDO NORTH BANK DEVELOPMENT AGREEMENT
DESCRIPTION OF ALTA VISTA TEMPORARY EASEMENT AREA
4 PAGES

2025 W. Ruthrauff Road, Suite 125 · Tucson, Arizona 85705 | Office: 520.398-6651

EXHIBIT "A"
LEGAL DESCRIPTION
TEMPORARY CONSTRUCTION EASEMENT

A 20.00 – foot wide Temporary Construction Easement over a portion of Lots 2, 3, 4, and 5 of "Aerie Riverwalk", as recorded at Sequence No. 20131090246, Pima County Records, located in the Northeast quarter and the South half of Section 6, Township 13 South, Range 13 East, Gila and Salt River Meridian, Pima County, Arizona, being more particularly described as follows:

Commencing at the Southernmost corner of said Lot 3;

Thence North 40°49'58" West 70.80 feet upon the Southwest line of said Lot 3, upon the Northeast right-of-way line of the Union Pacific Railroad to the **Point of Beginning**;

Thence North 59°25'34" East 220.47 feet;

Thence North 35°37'50" East 14.11 feet;

Thence North 57°41'20" East 251.86 feet;

Thence North 74°56'43" East 16.34 feet;

Thence North 00°14'24" East 11.97 feet;

Thence North 89°45'35" West 0.63 feet to the Center one-quarter corner of said Section 6, to **Point 'A'**, also being the Northeast corner of said Lot 3;

Thence North 88°01'33" West 25.60 feet upon the North line of said Lot 3;

Thence South 57°41'20" West 256.13 feet;

Thence South 35°37'50" West 13.80 feet;

Thence South 59°25'34" West 219.88 feet to the Southwest line of said Lot 3, to the Northeast right-of-way line of Union Pacific Railroad;

Thence South 40°49'58" East 20.32 feet upon said common line to the **Point of Beginning**;

Together with a 20.00 – foot wide Temporary Construction Easement, the sideline lying 20.00 feet to the left of the following described line:

Beginning at aforementioned **Point 'A'**;

Thence South 89°45'35" East 65.00 feet;

Thence North 00°14'25" East 8.92 feet;



2025 W. Ruthrauff Road, Suite 125 · Tucson, Arizona 85705 | Office: 520.398-6651

Thence North 60°14'29" East 752.47 feet;

Thence North 00°53'17" East 26.26 feet;

Thence South 89°06'43" East 44.37 feet to a non-tangent curve, concave to the Southeast from which the radius point bears South 29°38'04" East at 10,045.00 feet distant;

Thence Northeasterly upon said curve, turning to the right, through a delta angle of 2°34'31" and an arc length of 451.48 feet;

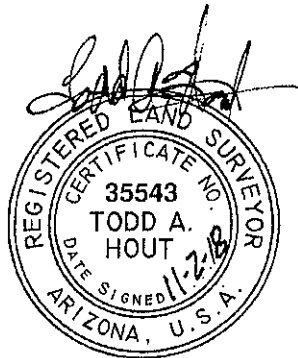
Thence North 27°03'33" West 6.43 feet;

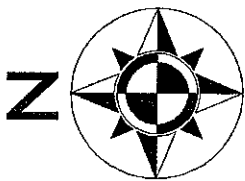
Thence North 63°14'47" East 44.11 feet;

Thence South 26°57'35" East 6.26 feet;

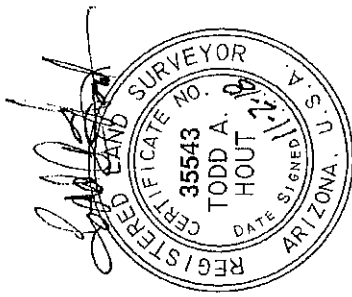
Thence North 63°03'56" East 436.32 feet to the **Point of Terminus**.

The sideline of said easement to be lengthened or shortened as required to terminate on the West line of said Lot 2 and the East line of said Lot 5.

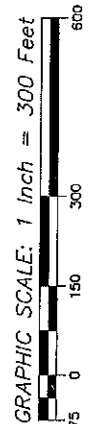




NOTE: THIS MAP IS INTENDED TO PORTRAY A TEMPORARY CONSTRUCTION EASEMENT AND DOES NOT REPRESENT A BOUNDARY SURVEY.



SEE LINE AND CURVE CHARTS SHEET 4

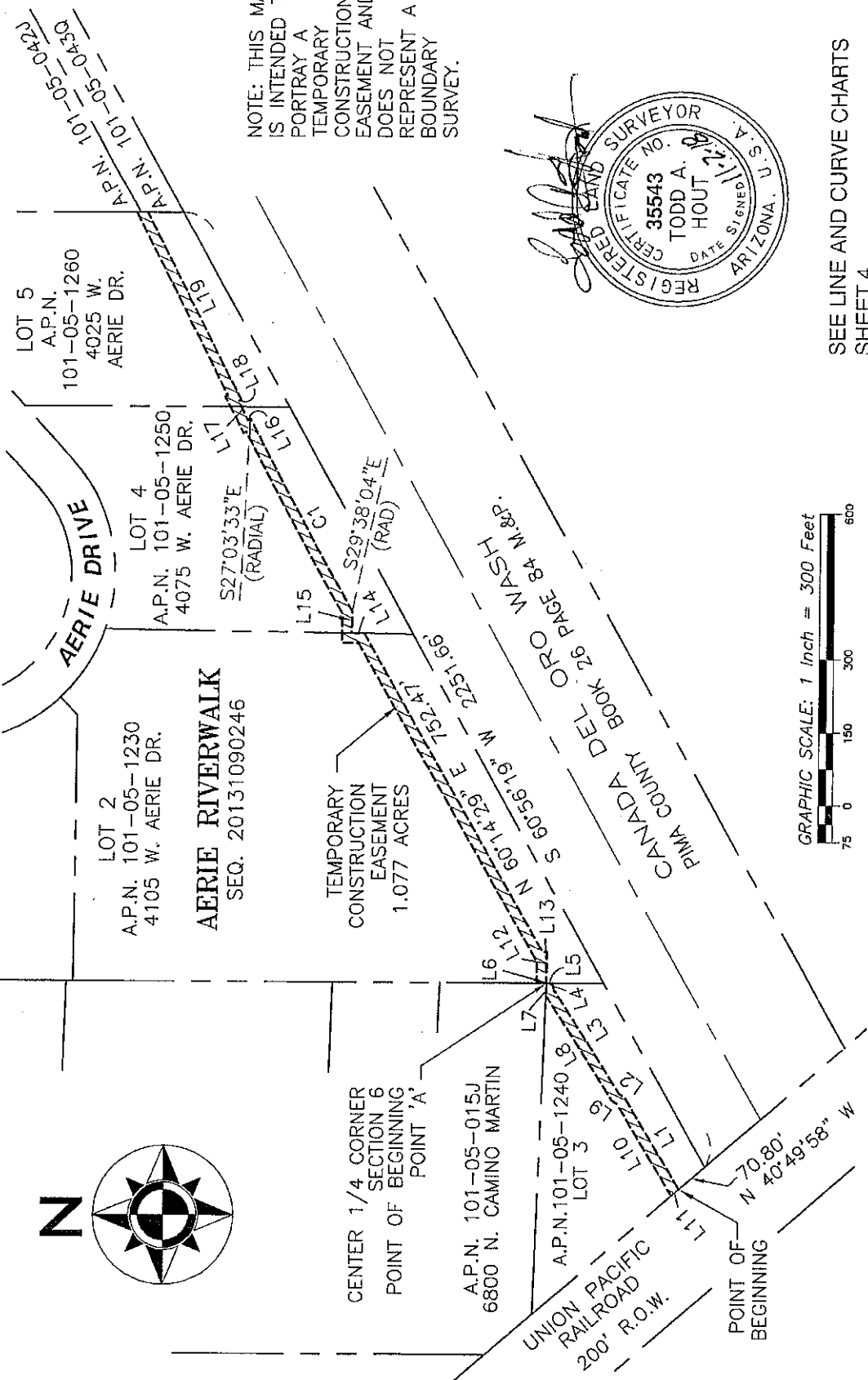


ALTA ARIZONA

SURVEY - ENGINEERING - GEOTECH
2025 W. RUTHRAUFF RD., #125
TUCSON, ARIZONA 85705
(520) 398-6651

DEPICTION OF EXHIBIT "A" - TEMPORARY CONSTRUCTION EASEMENT OVER A PORTION OF "AERIE RIVERWALK", SEQ. NO. 20131090246, PIMA COUNTY RECORDS, IN THE SOUTH 1/2 & THE N.E. 1/4 OF SECTION 6, T. 13 S., R. 13 E., G. & S. R. M., PIMA COUNTY, ARIZONA

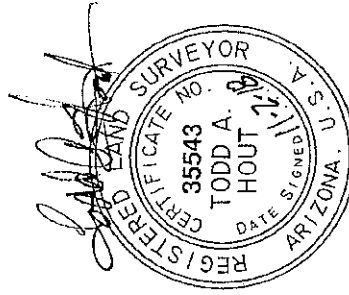
PROJECT NO. 13055 DATE: NOV. 2, 2018 SHEET 3 OF 4



LINE AND CURVE CHARTS

LINE	BEARING	DISTANCE
L1	N 59°25'34" E	220.47'
L2	N 35°37'50" E	14.11'
L3	N 57°41'20" E	251.86'
L4	N 74°56'43" E	16.34'
L5	N 00°14'24" E	11.97'
L6	N 89°45'35" W	0.63'
L7	N 88°01'33" W	25.60'
L8	S 57°41'20" W	256.13'
L9	S 35°37'50" W	13.80'
L10	S 59°25'34" W	219.88'
L11	S 40°49'58" E	20.32'
L12	S 89°45'35" E	65.00'
L13	N 00°14'25" E	8.92'
L14	N 00°53'17" E	26.26'
L15	S 89°06'43" E	44.37'
L16	N 27°03'33" W	6.43'
L17	N 63°14'47" E	44.11'
L18	S 26°57'35" E	6.26'
L19	N 63°03'56" E	436.32'

CURVE	RADIUS	DELTA ANGLE	ARC LENGTH
C1	10045.00'	02°34'31"	451.48'

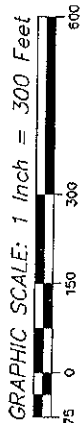


ALTA ARIZONA

SURVEY - ENGINEERING - GEOTECH
 2025 W. RUTHRAUFF RD., #125
 TUCSON, ARIZONA 85705
 (520) 398-6651

DEPICTION OF EXHIBIT "A" - TEMPORARY CONSTRUCTION EASEMENT
 OVER A PORTION OF "AERIE RIVERWALK", SEQ. NO. 20131090246, PIMA
 COUNTY RECORDS, IN THE SOUTH 1/2 & THE N.E. 1/4 OF SECTION 6,
 T. 13 S., R. 13 E., G. & S. R. M., PIMA COUNTY, ARIZONA

PROJECT NO. 13055 DATE: NOV. 2, 2018 SHEET 4 OF 4



NOTE: THIS MAP IS
INTENDED TO PORTRAY
A TEMPORARY
CONSTRUCTION
EASEMENT AND DOES
NOT REPRESENT A
BOUNDARY SURVEY.

**TEMPORARY CONSTRUCTION
EASEMENT**
29.10 ACRES

LOT 1
A.P.N. 101-05-1220
4115 W. AERIE DR.

LOT 2
A.P.N. 101-05-1230
4105 W. AERIE DR.

LOT 4
A.P.N. 101-05-1250
4075 W. AERIE DR.

LOT 5
A.P.N. 101-05-1260
4025 W.
AERIE DR.

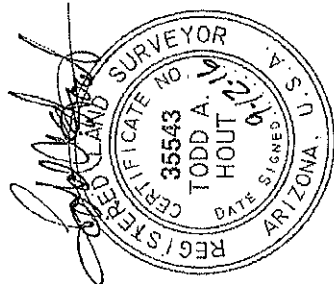
A.P.N. 101-05-042K
A.P.N. 101-05-042J

A.P.N. 101-05-015J
6800 N. CAMINO MARTIN
CENTER 1/4 CORNER
SECTION 6

A.P.N. 101-05-1240
LOT 3

SOUTHERN PACIFIC RAILROAD
200' RIGHT-OF-WAY

CANADA DEL ORO WASH
PIMA COUNTY BOOK 26 PAGE 84 M&P
S 60°56'19" W 2251.66'



EXPIRES 12-31-18

DATE: SEPT. 12, 2016 POLARIS JOB NO. 13055
**DEPICTION OF EXHIBIT "A" - TEMPORARY
CONSTRUCTION EASEMENT - OVER**

**LOTS 2, 3, 4 & 5 OF "AERIE RIVERWALK FINAL PLAT",
SEQ. 20131090246, PIMA COUNTY RECORDS, IN THE
NORTHEAST 1/4 AND THE SOUTH 1/2 OF SECTION 6,
T. 13 S., R. 13 E., G. & S. R. M., PIMA COUNTY, ARIZONA**



**POLARIS
AND
SURVEYING, LLC**

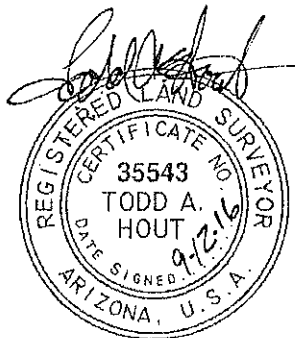
3528 N. FLOWING WELLS RD.
TUCSON, ARIZONA 85705
TEL.: (520) 322-6400
FAX: (520) 322-6401



3528 N FLOWING WELLS RD
TUCSON, ARIZONA 85705
TEL: 520-322-6400
FAX: 520-322-6401
Sept. 12, 2016

EXHIBIT "A"
LEGAL DESCRIPTION
TEMPORARY CONSTRUCTION EASEMENT

A Temporary Construction Easement over Lots 2, 3, 4, and 5 of "Aerie Riverwalk Final Plat", as recorded at Sequence No. 20131090246, Pima County Records, located in the Northeast quarter and the South half of Section 6, Township 13 South, Range 13 East, Gila and Salt River Meridian, Pima County, Arizona.



EXPIRES 12-31-18

EXHIBIT L
TO CDO NORTH BANK DEVELOPMENT AGREEMENT
FORM OF IT TEMPORARY CONSTRUCTION EASEMENT
3 PAGES

When Recorded, Please Return to:

Pima County Flood Control District
201 North Stone Avenue, 9th Floor
Tucson, AZ 85701-1215

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

TEMPORARY CONSTRUCTION EASEMENT

1. **Grant of Easement.** I.T. Investments Three, L.L.C., an Arizona limited liability company ("IT"), hereby grants to Pima County Flood Control District ("RFCD"), a non-exclusive temporary construction easement (the "Easement") over the property described on **Exhibit A** (the "Easement Area"), for use during the construction of bank-protection and linear-park improvements on adjacent property (the "Project"), subject to the terms and conditions in this Temporary Construction Easement agreement ("TCE Agreement").
2. **Term.** The Easement will be effective upon recordation of this TCE Agreement in the Office of the Pima County Recorder. It will automatically terminate upon final completion of the Project, but in any event no later than the date that is two years after the recordation date. If requested by IT, RFCD will, after termination, record a notice acknowledging that the Easement has terminated.
3. **Condition of Property on Termination.** Upon completion of the Project and termination of the Easement, RFCD will remove all material, supplies, and debris, and leave the Easement Area in the same condition existing at commencement of the Easement.
4. **No Conveyance of Title.** This TCE Agreement does not grant RFCD title to, or any permanent interest in, the Easement Area.
5. **Indemnity.** To the extent permitted by law, RFCD will indemnify, defend and hold IT harmless from and against any and all claims, demands, and causes of action in law or equity caused by the acts or omissions of the officers, agents and/or employees of RFCD, related to RFCD's or RFCD's contractors' use of the Easement Area.
6. **RFCD Self-Insured.** RFCD is a political subdivision of the State of Arizona and is self-insured as authorized by Law under A.R.S. §§ 11-261 and 11-981. For so long as this Easement shall be in force and effect, RFCD will maintain its self-insurance.

7. Contractor Indemnity & Insurance.

- 7.1. RFCD will require each RFCD contractor or subcontractor using the Easement Area in connection with the Project to agree to indemnify, defend, save and otherwise hold harmless IT, and its members, managers, directors, officers, and employees, from and against any and all causes of action, liabilities, damages, losses or expenses, including reasonable attorney's fees, arising from or alleged to have arisen in whole or in part from the acts or omissions of the contractor (or any subcontractor of the contractor) or any of their agents or employees related to its use of the Easement Area.
- 7.2. RFCD will require each RFCD contractor or subcontractor using the Easement Area to provide the following insurance coverages during the entire period that the Easement Area is being used by that contractor. RFCD will require that each policy name IT as an additional insured and contain a waiver of subrogation endorsement in favor of IT. Certificate(s) of insurance and applicable endorsements will be supplied to IT before any contractor or subcontractor enters on or uses the Easement Area.
- 7.2.1. Commercial General Liability policy, broad form, including coverage for personal injury up to and including death, property damage, written on an occurrence basis with limits not less than a one (\$1) million per occurrence with a two (\$2) million aggregate.
- 7.2.2. Workers Compensation policy providing coverage required by law.
- 7.2.3. Automobile Liability policy – Combined Single Limit for all hired, owned, non-owned vehicles in an amount no less than 1 million

[REMAINDER OF PAGE INTENTIONALLY BLANK – SIGNATURE PAGE FOLLOWS]

I.T. Investments Three, L.L.C.
an Arizona limited liability company

By WC Group LLC
an Arizona limited liability company, Manager

By WCLP LLC
an Arizona limited liability company, Manager

By _____
Alexander H. Sears, Manager

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by Alexander H. Sears, Manager, on behalf of WCLP LLC, an Arizona limited liability company.

Notary Public

My Commission Expires: _____



EXHIBIT M TO CDO NORTH BANK DEVELOPMENT AGREEMENT
DESCRIPTION OF IT TEMPORARY EASEMENT AREA

2 PAGES

2025 W. Ruthrauff Road, Suite 125 · Tucson, Arizona 85705 | Office: 520.398-6651

EXHIBIT "A"
LEGAL DESCRIPTION
TEMPORARY CONSTRUCTION EASEMENT

A 20.00 – foot wide Temporary Construction Easement over a portion of Lot 5 of "Thornydale Plaza", Book 26 at Page 84 of Maps and Plats, Pima County Records, and the parcels described in Docket 10258 at Page 338, and Docket 10098 at Page 1866, Pima County Records, in the Northeast quarter of Section 6, Township 13 South, Range 13 East, Gila and Salt River Meridian, Pima County, Arizona, the sideline lying 20.00 feet to the left of the following described line:

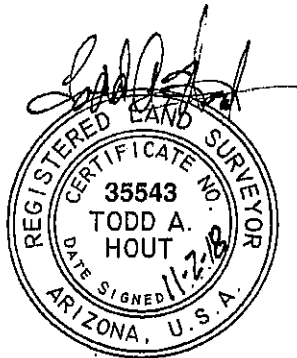
Commencing at the Southeast corner of Lot 5 of "Aerie Riverwalk", as recorded at Sequence No. 20131090246, Pima County Records, also being the Southernmost corner of said parcel described in Docket 10258 at Page 338, Pima County Records, said point being a ½ inch rebar tagged "RLS 14145";

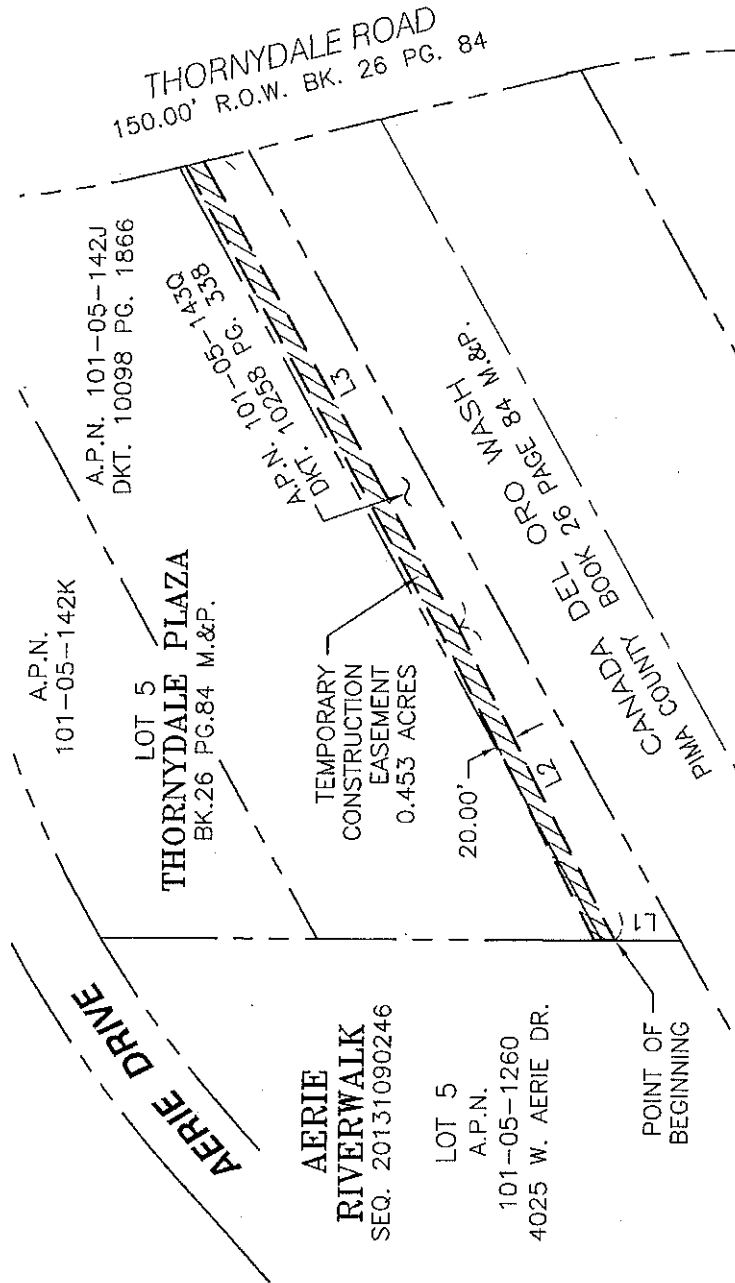
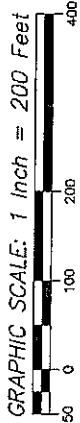
Thence North 00°12'51" East 73.98 feet upon the East line of said Lot 5 of "Aerie Riverwalk" to the **Point of Beginning**;

Thence North 63°03'29" East 392.91 feet;

Thence North 60°56'19" East 597.10 feet to the Westerly right-of-way line of Thornydale Road, to the **Point of Terminus**.

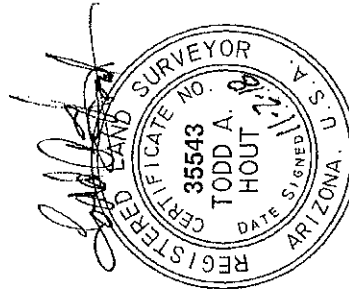
The sideline of said easement to be lengthened or shortened as required to terminate on said Westerly right-of-way and on the East line of said Lot 5 of "Aerie Riverwalk".





LINE	BEARING	DISTANCE
L1	N 00°12'51" E	73.98'
L2	N 63°03'29" E	392.91'
L3	N 60°56'19" E	597.10'

NOTE: THIS MAP IS INTENDED
TO PORTRAY A TEMPORARY
CONSTRUCTION EASEMENT AND
DOES NOT REPRESENT A
BOUNDARY SURVEY.



ALTA ARIZONA

SURVEY - ENGINEERING - GEOTECH
2025 W. RUTHRAUFF RD., #125
TUCSON, ARIZONA 85705
(520) 398-6651

DEPICTION OF EXHIBIT "A" - A TEMPORARY CONSTRUCTION EASEMENT
OVER A PORTION OF LOT 5 OF "THORNYDALE PLAZA", BK. 26, PG. 84,
OF MAPS & PLATS, AND THE PARCELS DESCRIBED IN DKT. 10258, PG.
338, & DKT. 10098, PG. 1866, P.C.R. IN THE N.E. 1/4 OF SECTION 6,
T. 13 S., R. 13 E., G. & S.R.M., PIMA COUNTY, ARIZONA

PROJECT NO. 13055

DATE: NOV. 2, 2018

PAGE 2 OF 2

EXHIBIT N TO CDO NORTH BANK DEVELOPMENT AGREEMENT
DESCRIPTION OF IT PROPERTY

WLB 193045-A-001-1000
May 5, 1993

The
WLB
Group
INC.

THORNYDALE PLAZA

That portion of Section 6, Township 13 South, Range 13 East, G11a and Salt River Meridian, Pima County, Arizona, and that portion of Lot 5, Thornydale Plaza as recorded in Book 26 of Maps and Plats at Page 84, Pima County Recorder's Office, Pima County, Arizona, described as follows:

COMMENCING at the most Northerly corner common to Lots 5 and 6 of Thornydale Plaza;

THENCE S 00°14'25" W, along the West line of the said Lot 5, a distance of 508.30 feet to the POINT OF BEGINNING;

THENCE S 00°14'25" W, along the said West line and its Southerly prolongation, a distance of 649.06 feet to a line 77.00 Feet Southeasterly of and parallel with the Southeasterly line of the said Lot 5;

THENCE N 60°56'45" E, along the said parallel line, a distance of 1012.94 feet to the Westerly right-of-way of Thornydale Road;

THENCE N 13°48'45" W, along the said right-of-way, a distance of 102.62 feet to a point of curvature of a tangent curve concave to the East;

THENCE Northerly along the said right-of-way, along the arc of said curve, to the right, having a radius of 1075.10 feet and a central angle of 010°59'27" for an arc distance of 206.32 feet to a point of reverse curvature of a tangent curve concave to the Southwest;

THENCE Northwesterly along the arc of said curve, to the left, having a radius of 45.00 feet and a central angle of 07°28'05" for an arc distance of 68.70 feet to a point of tangency on the South right-of-way of that easement recorded in Docket 7816 at Page 1861;

THENCE S 89°42'37" W, along the said right-of-way, a distance of 105.78 feet to a point of curvature of a tangent curve concave to the Southeast;

THENCE Southwesterly along the said right-of-way, along the arc of said curve, to the left, having a radius of 1335.99 feet and a central angle of 30°31'09" for an arc distance of 711.63 feet to the POINT OF BEGINNING.

Containing 10.747 Acres, more or less.

Prepared by:

THE WLB GROUP, INC.

Kenneth E. Zismann
Kenneth E. Zismann, R.L.S.

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EXHIBIT O
Form of Restrictive Covenant

DECLARATION OF CONDITIONS, COVENANTS, AND RESTRICTIONS RUNNING WITH THE LAND

These Covenants, Conditions and Restrictions (these "CCRs") are made by PIMA COUNTY FLOOD CONTROL DISTRICT, a political subdivision of the State of Arizona ("Declarant").

1. GENERAL

1.1. Affected Property. Declarant is the owner of the land referred to in these CCRs as the Affected Property, commonly known as Lot 3 of Aerie Riverwalk Final Plat, according to the subdivision plat recorded in the office of the Recorder of Pima County, Arizona, on April 19, 2013, at Sequence 20131090246.

1.2. Purpose. These CCRs are executed to satisfy Declarant's obligations arising from the AMENDED AND RESTATED DEVELOPMENT AGREEMENT, CDO NORTH BANK IMPROVEMENTS, WEST OF THORNYDALE (the "Agreement"), dated May ____, 2020, by and among Declarant, the Town of Marana, Alta Vista Communities RP LLC, and I.T. Investments Three, L.L.C.

1.3. Declaration. Declarant, for itself and future owners of any or all of the Affected Property, hereby declares that all of the Affected Property and each part thereof shall be owned, held, transferred, conveyed, sold, leased, rented, encumbered, used, occupied, maintained, altered and improved subject to the covenants, conditions, restrictions and other provisions set forth in these CCRs for the period these CCRs are in effect.

1.4. Common and General Plan. These CCRs are declared to be part of, pursuant to, and in furtherance of a common and general plan of development, improvement, enhancement and protection of the Affected Property.

1.5. Effect. The provisions of these CCRs are not personal and are intended to and shall run with the land and, until their expiration or termination, shall bind, be a charge upon and inure to the mutual benefit of (a) the owners of all or a portion of the Affected Property, (b) Declarant (as it now exists or as it may be later reorganized, consolidated, enlarged, or reincorporated), and (c) the Town of Marana.

2. RESTRICTIONS

2.1. Linear Park. The "Linear Park" means the Chuck Huckelberry Loop, a system of paved, shared-use paths and short segments of buffered bike lanes connecting the Rillito, Santa Cruz, and Pantano River Parks and other linear parks and greenways, one segment of which is located adjacent to the south boundary of the Affected Property.

2.2. Bank Protection. The "Bank Protection" means the soil cement bank protection constructed pursuant to the Agreement.

2.3. Allowed Uses. Use of the Affected Property shall be limited to the following:

2.3.1. Amenities for the Linear Park, including comfort stations, restrooms and parking.

2.3.2. Access for ordinary maintenance and repair of the Linear Park and/or the Bank Protection, including a storage shed not larger than 250 square feet for equipment.

2.3.3. During an emergency or flood event, the temporary storage of heavy equipment necessary to deal with the emergency.

2.3.4. Such additional uses as may be approved by resolution adopted by the Town of Marana's Mayor and Council.

2.4. Prohibited Uses. All uses other than those set forth in paragraph 2.3 above are prohibited.

3. MISCELLANEOUS

3.1. Effective Date. These CCRs shall be effective on the date they are recorded in the office of the Recorder of Pima County, Arizona.

3.2. Perpetual Duration. Unless amended as provided in paragraph 3.3 below, all provisions, covenants, conditions and restrictions contained in these CCRs shall continue in full force and effect in perpetuity.

3.3. Amendment. These CCRs may be amended only upon the concurrence of the Town of Marana, Declarant (as it now exists or as it may be later reorganized, consolidated, enlarged, or reincorporated), and (if different) the then owners of at least 75% of the land area of the Affected Property.

3.4. Enforcement. These CCRs may be enforced only by the Town of Marana.

IN WITNESS WHEREOF, DECLARANT has caused this DECLARATION OF CONDITIONS, COVENANTS, AND RESTRICTIONS RUNNING WITH THE LAND to be signed by the undersigned duly authorized officer and to be recorded thereafter.

"DECLARANT:"

PIMA COUNTY FLOOD CONTROL DISTRICT, a

political subdivision of the State of Arizona

APPROVED AS TO FORM:

By: _____

By: _____

Deputy Pima County Attorney

Its: _____

STATE OF ARIZONA)
County of Pima)^{ss}

The foregoing instrument was acknowledged before me this ____ day of _____, 202____, by _____, the _____ of PIMA COUNTY FLOOD CONTROL DISTRICT, a political subdivision of the State of Arizona, on its behalf.

(Seal)

Notary Public

EXHIBIT P
Project Timeline

CDONB Sample Schedule JOC

