

When recorded, Interoffice Mail to:
Maricopa County
Real Estate Department

EXEMPT ARS 11-1134, A3

Resolution No. FCD 2010R003

Project No. 201.01.31

Project Name: White Tanks FRS #4 Outlet Facility

Item No. F00371

**UNDERGROUND DRAINAGE EASEMENT
FOR FLOOD CONTROL PURPOSES**

Subject to the terms and conditions set forth herein, and for the consideration of Ten Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City of Goodyear, an Arizona municipal corporation ("GRANTOR") does hereby grant and convey to the Flood Control District of Maricopa County, a political subdivision of the State of Arizona, ("GRANTEE"), its successors and assigns, a permanent, non-exclusive easement ("Easement") under the real property described in Exhibit A and depicted in Exhibit B, attached hereto and made a part hereof (hereinafter referred to as the "EASEMENT PROPERTY"), for the following purposes: the construction, maintenance, repair, replacement and operation of underground flood control improvements per the Flood Control District of Maricopa County plans for the construction of White Tanks FRS #4 Outlet Facility which extends along Van Buren Street from west of Jackrabbit Trail to west of Cotton Lane, Design Contract No. FCD 2010C029, Construction Contract No. FCD 2018C002, approved by the City of Goodyear on February 28, 2019 as may be amended and approved by the City of Goodyear City Engineer or his/her designee ("GRANTEE'S FACILITIES") and the right of ingress, egress, and use of the surface estate as needed for the construction, maintenance, repair, replacement and/or operation of GRANTEE'S FACILITIES.

The EASEMENT PROPERTY is or will be used by GRANTOR as and for existing and future public roadways and/or utilities. GRANTOR shall continue to have full rights in the EASEMENT PROPERTY for such uses and its use of the EASEMENT PROPERTY for such uses, existing and future, shall be considered a superior land use to the GRANTEE'S use of the EASEMENT PROPERTY. GRANTEE'S use of the EASEMENT PROPERTY for flood control purposes shall not unreasonably interfere with the GRANTOR'S use of the EASEMENT PROPERTY as and for existing public roadways and/or utilities. When the installation of GRANTEE'S FACILITIES is complete, GRANTEE shall provide As-builts of GRANTEE'S FACILITIES to GRANTOR and will provide the As-builts to Blue Stake. In the event GRANTEE'S use of the EASEMENT PROPERTY conflicts with the City's existing or future use of the EASEMENT PROPERTY, GRANTOR and GRANTEE shall mutually agree upon a method to cure the conflict as set forth below:

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- 1) In the case of a conflict with GRANTOR'S public roadway and/or utility use of the EASEMENT PROPERTY existing at the time of the installation of the GRANTEE'S FACILITIES, GRANTEE shall, at its sole cost and expense, work with the GRANTOR to resolve the issue to the satisfaction of both parties.
- 2) In the case of a conflict with GRANTOR'S future public roadway and/or utility use of the EASEMENT PROPERTY, GRANTOR and GRANTEE shall coordinate during the design and installation phase(s) of the future public roadways and/or utilities project in an effort to cure the conflict and continue the shared use of the EASEMENT PROPERTY.
- 3) If, due to the location of the GRANTEE'S FACILITIES within the EASEMENT PROPERTY, the GRANTOR determines it may need to acquire right of way and/or incur additional costs to install GRANTOR'S future public roadway or utilities, then GRANTOR shall notify GRANTEE of the need to incur additional costs as soon as possible so that GRANTOR and GRANTEE can collaborate in an attempt to avoid or mitigate the costs. If additional costs cannot be avoided, GRANTEE shall reimburse GRANTOR for the difference between what the right of way purchase and/or installation would have cost if GRANTEE'S FACILITIES were not located in the EASEMENT PROPERTY based on the following:
 - a) Documentation of the installation conflict, alternatives researched, and final recommendation that resulted in increased costs for right of way acquisition and/or facility installation; and
 - b) An analysis of the difference in cost caused by the location of the GRANTEE'S FACILITIES in the EASEMENT PROPERTY; and
 - c) A request for reimbursement with itemized actual costs.

GRANTEE shall be solely responsible for the construction, operation, maintenance, replacement and/or repair of GRANTEE'S FACILITIES constructed within the EASEMENT PROPERTY, unless the need for construction, replacement or repair is caused by the action of GRANTOR, its directors, officers, agents, employees, contractors and/or subcontractors.

In no event shall GRANTEE disrupt traffic flow over, or the utilities located within, the EASEMENT PROPERTY during construction, operation, maintenance, modification, and/or replacement of the GRANTEE'S FACILITIES without the prior written approval by the GRANTOR. Notwithstanding the foregoing, in the case of an emergency, GRANTEE shall have the right to disrupt traffic to make necessary repairs to, and/or replacements of, the GRANTEE'S FACILITIES. GRANTEE will make every attempt to contact GRANTOR and inform them of the need to disrupt traffic before commencing the related emergency repair work.

For future work in the EASEMENT PROPERTY, GRANTEE shall obtain all permits required by GRANTOR for work within its right-of-way as provided herein and both GRANTOR and GRANTEE shall obtain Blue Stake facility locates before undertaking construction activity that may affect GRANTOR'S improvements and/or GRANTEE'S FACILITIES in the EASEMENT PROPERTY. GRANTOR agrees that all plans for the design and construction of facilities within the EASEMENT PROPERTY will be reviewed and approved per applicable City ordinances, standards, rules, regulations and guidelines and per MAG standards for design and construction of facilities within right-of-way.

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GRANTOR and GRANTEE shall send any and all notices, filings, approvals, consents or other communications required or permitted by this Easement in writing and personally delivered or sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

To GRANTOR:
City of Goodyear
Attn: City Engineer
14455 West Van Buren Street, Suite D
Goodyear, Arizona 85338

To GRANTEE:
Flood Control District of Maricopa County
Attention: Right of Way Permit Branch
2801 W. Durango Street, Phoenix, AZ 85009

or to any other addresses as either the GRANTOR or GRANTEE hereto may from time to time designate in writing and deliver in a like manner.

In exercising its rights under this Easement, GRANTEE, its directors, officers, managers, members, partners, agents, employees, contractors and subcontractors shall comply with: (1) the terms of this Easement; (2) all federal, state, and local laws and regulation applicable to GRANTEE'S exercise of its rights under this Easement and use of the EASEMENT PROPERTY; and (3) all federal, state, and local laws and regulations applicable to the construction, repair, and/or replacement of GRANTEE'S FACILITIES within the EASEMENT PROPERTY. GRANTEE shall obtain all permits required by the City for work within its right of way. Notwithstanding the foregoing, the City understands and acknowledges there may instances when GRANTEE is required to make repairs that are of an emergency nature. In such cases, GRANTEE will make every attempt to contact GRANTOR and inform them of the need to undertake emergency repairs prior to obtaining required permit(s) and then retroactively apply for permit(s) for repairs that were performed; and if GRANTEE is unable to contact GRANTOR prior to undertaking such emergency repairs, GRANTEE shall notify GRANTOR as soon as practicable and shall retroactively apply for permit(s) within five (5) working days after undertaking such repairs.

Because the EASEMENT PROPERTY contains, or may contain, underground facilities, GRANTOR and GRANTEE, its directors, officers, managers, members, partners, agents, employees, contractors and subcontractors shall verify the location of such existing underground facilities as required by Arizona Revised Statutes, Section 40-360.21 et seq. (Arizona Blue Stake Law) *prior* to any excavation of the EASEMENT PROPERTY.

GRANTEE shall maintain the EASEMENT PROPERTY in a safe and clean manner during its work, and, following the exercise of any of its rights under this Easement, shall return the EASEMENT PROPERTY to a condition as similar to the condition that existed prior to GRANTEE'S exercise of its rights under this Easement as possible.

In consideration of the Easement being granted herein, GRANTEE agrees that GRANTOR may connect to GRANTEE'S FACILITIES for the purpose of draining runoff from rain that falls on the pavement and the adjacent sidewalks of Van Buren Street, via 15 inch diameter connections.

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In addition, the GRANTEE will allow 12-inch diameter connections to the GRANTEE'S FACILITIES for the purpose of the drain-down of retention basins of adjacent developments. Only one 12-inch diameter connection per retention basin will be allowed, and the subject developer would be the permit applicant.

Permits from the GRANTEE for the above 15-inch and 12-inch connections shall be required before such connections are established, but GRANTEE agrees to grant such permits if the plans for the improvements comply with GRANTEE'S standards, policies, and stormwater quality requirements. Both types of such permits shall be subject to the GRANTEE'S normal permit fees and review processes.

GRANTEE shall defend, indemnify and hold harmless GRANTOR, its elected officials, officers, directors, managers, partners, employees, and representatives from, for, and against all allegations, liabilities, obligations, damages, claims, demands, losses, liens, causes of actions, fines, penalties, settlements, awards, judgments, costs and expenses (including but not limited to court costs and attorneys' fees) (collectively CLAIMS) incurred by GRANTOR its officers, directors, managers, partners, employees, and/or representatives caused by or alleged to have been caused by or arising from or alleged to have arisen from the proximate result of the activities of GRANTEE, its officers, employees, agents, or contractors in the exercise of GRANTEE'S rights pursuant to the terms of this Easement. This indemnification provision shall survive the termination of this Easement.

If the installation of GRANTEE'S FACILITIES have not been completed within five (5) years of the date GRANTEE executes this Easement, this Easement shall be deemed to be abandoned and GRANTOR shall be permitted to record a termination and/or revocation of this Easement in the public records of Maricopa County. In the event GRANTOR has reason to believe that GRANTEE has abandoned the use of this Easement, then GRANTOR shall notify GRANTEE in writing that GRANTOR considers that this Easement has been abandoned. In such event, GRANTEE shall provide confirmation to GRANTOR that this Easement has been abandoned, or in the event GRANTEE shall fail to reply that there has been no intent to abandon this Easement within sixty (60) days of the date GRANTOR sent the aforesaid notice to GRANTEE, this Easement shall be deemed to be abandoned and GRANTOR shall be permitted to record a termination and/or revocation of this Easement in the public records of Maricopa County. Unless and until such termination and/or revocation is recorded by GRANTOR, this Easement shall remain in full force and effect.

In the event that a termination and/or revocation is recorded due to GRANTEE'S affirmation of abandonment, GRANTOR shall, at its sole discretion, have the right, but not the obligation, to assume ownership of the GRANTEE'S FACILITIES. If GRANTOR exercises its right to assume ownership of GRANTEE'S FACILITIES, GRANTEE shall, at no cost to GRANTOR, execute all documents reasonably requested by GRANTOR to convey ownership of the GRANTEE'S FACILITIES to GRANTOR. Upon such conveyance, GRANTEE'S indemnification obligation under this Easement shall terminate, except for CLAIMS arising from occurrences, actions, and/or events that occurred prior to the conveyance. If GRANTOR decides not exercise its right to assume ownership of GRANTEE'S FACILITIES, then GRANTEE shall, abandon GRANTEE'S FACILITIES in place, such abandonment shall comply with the applicable requirements in the City of

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Goodyear's Engineering Design Standards and Policies in effect at the time of the abandonment. This provision addressing the requirements for the GRANTEE'S FACILITIES following the termination of this Easement shall survive the termination of this Easement.

This Easement shall run with the land and shall be binding upon the parties and their respective successors and assigns.

GRANTOR:

CITY OF GOODYEAR,
a municipal corporation

By: _____
Julie Arendall
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this ____ day of _____, 2019, before me personally appeared Julie Arendall, as City Manager of THE CITY OF GOODYEAR, an Arizona municipal corporation whose identity was proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this document, and who acknowledged that he signed this document.

Notary Seal:

Notary Public

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RECOMMENDED FOR APPROVAL:

**FLOOD CONTROL DISTRICT
OF MARICOPA COUNTY**

Michael Fulton, Director Date

Michelle Colby, SR/WA Date
Director, Real Estate Department

Approved as to form and within the powers and
authority granted to the Board of Directors.

General Counsel Date

APPROVED AND ACCEPTED:

**BOARD OF DIRECTORS OF
FLOOD CONTROL DISTRICT
OF MARICOPA COUNTY**

Chairman of the Board

ATTEST:

Clerk of the Board

Date: _____

EXHIBIT 'A'

LEGAL DESCRIPTION

THE FOLLOWING DESCRIBED EASEMENT IS BASED ON THE MARICOPA COUNTY FLOOD CONTROL DISTRICT SURVEY CONTROL PLAN "WHITE TANKS FRS #4 OUTLET FACILITY VAN BUREN STREET - JACKRABBIT TRAIL TO COTTON LANE FDC 20018 C002", DATED 04/26/2018, AND THE RIGHT-OF-WAY ANNEXATION OF VAN BUREN STREET DOCUMENT RECORDED AS #2012-0396296, AND THE RIGHT-OF-WAY ANNEXATION OF CITRUS ROAD DOCUMENT RECORDED AS DOCKET 11719, PAGE 486, RECORDS OF MARICOPA COUNTY, ARIZONA.

A STRIP OF LAND 18 FEET WIDE LYING WITHIN THAT PORTION OF THE NORTH HALF OF SECTION 11 AND THE SOUTH HALF OF SECTION 2, OF TOWNSHIP 1 NORTH, RANGE 2 WEST, OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, LYING 9 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 11 FROM WHICH THE NORTH QUARTER CORNER BEARS SOUTH 89°42'38" EAST A DISTANCE OF 2644.35 FEET;

THENCE SOUTH 0°13'50" WEST ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 11 A DISTANCE OF 4.66 FEET TO THE **POINT OF BEGINNING**;

THENCE DEPARTING SAID WEST LINE SOUTH 89°41'53" EAST A DISTANCE OF 44.10 FEET;

THENCE SOUTH 89°41'22" EAST A DISTANCE OF 282.00 FEET;

THENCE SOUTH 89°42'12" EAST A DISTANCE OF 660.00 FEET;

THENCE SOUTH 89°42'38" EAST A DISTANCE OF 660.00 FEET;

THENCE SOUTH 89°42'38" EAST A DISTANCE OF 660.00 FEET;

THENCE SOUTH 89°42'17" EAST A DISTANCE OF 660.00 FEET;

THENCE SOUTH 89°42'09" EAST A DISTANCE OF 660.00 FEET;

THENCE SOUTH 89°16'05" EAST A DISTANCE OF 660.02 FEET;

THENCE SOUTH 89°41'20" EAST A DISTANCE OF 539.00 FEET;

THENCE SOUTH 44°42'06" EAST A DISTANCE OF 55.42 FEET;

THENCE SOUTH 4°39'32" EAST A DISTANCE OF 5.74 FEET TO THE **POINT OF TERMINUS** LYING ON THE SOUTH LINE OF SAID VAN BUREN STREET RIGHT-OF-WAY LINE AS DESCRIBED AND DEPICTED IN DOCUMENT 2012-0396296 AND THE FLOOD CONTROL DISTRICT OF MARICOPA COUNTY PARCEL AS DESCRIBED IN DOCUMENT #2015-0800608, RECORDS OF MARICOPA COUNTY, ARIZONA.

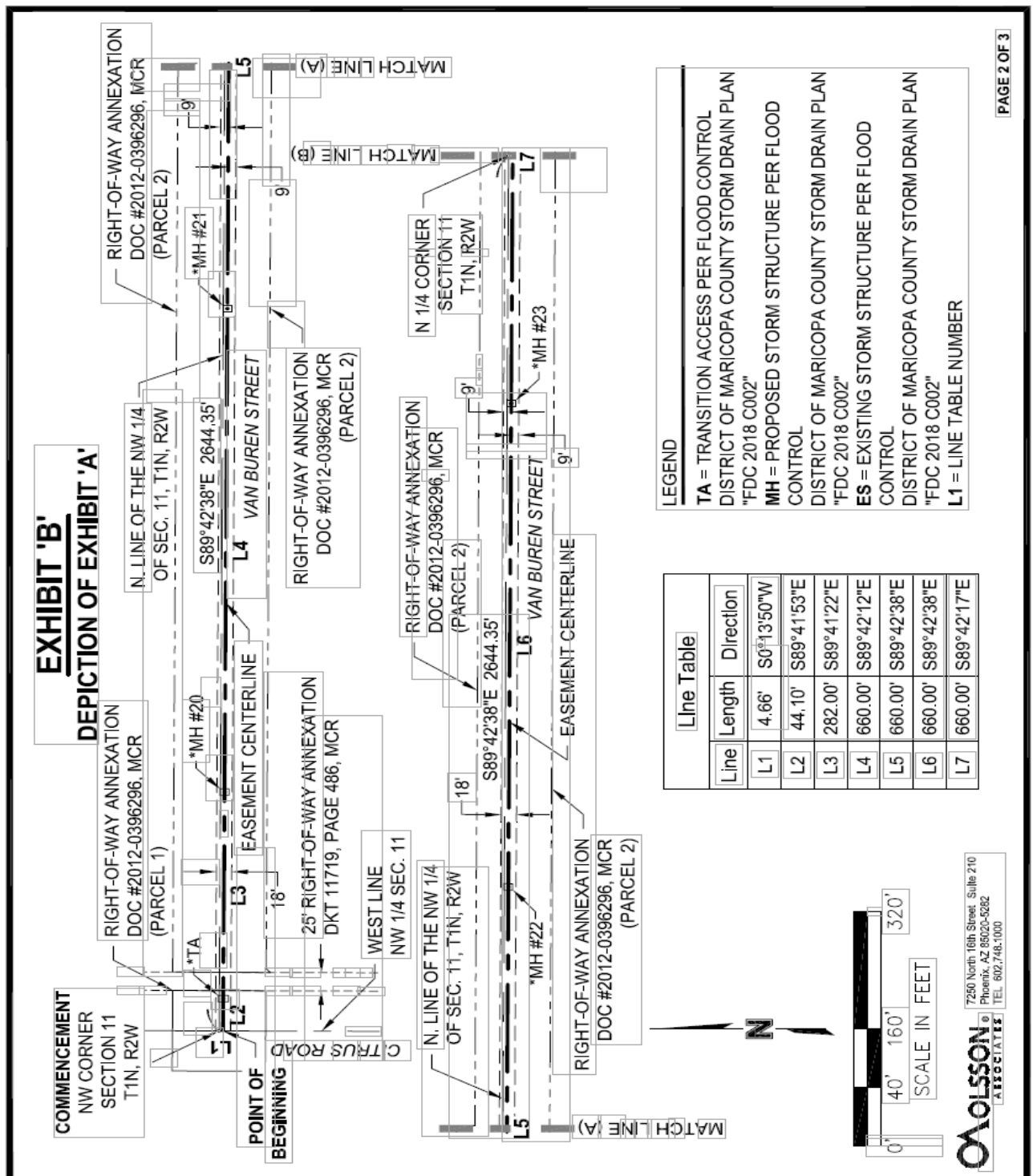
THE SIDELINES OF SAID 18 FOOT WIDE EASEMENT TO BE EXTENDED OR SHORTENED TO MEET AT ANGLE POINT AND TO TERMINATE AT THE SAID SOUTH RIGHT-OF-WAY LINE OF VAN BUREN STREET,



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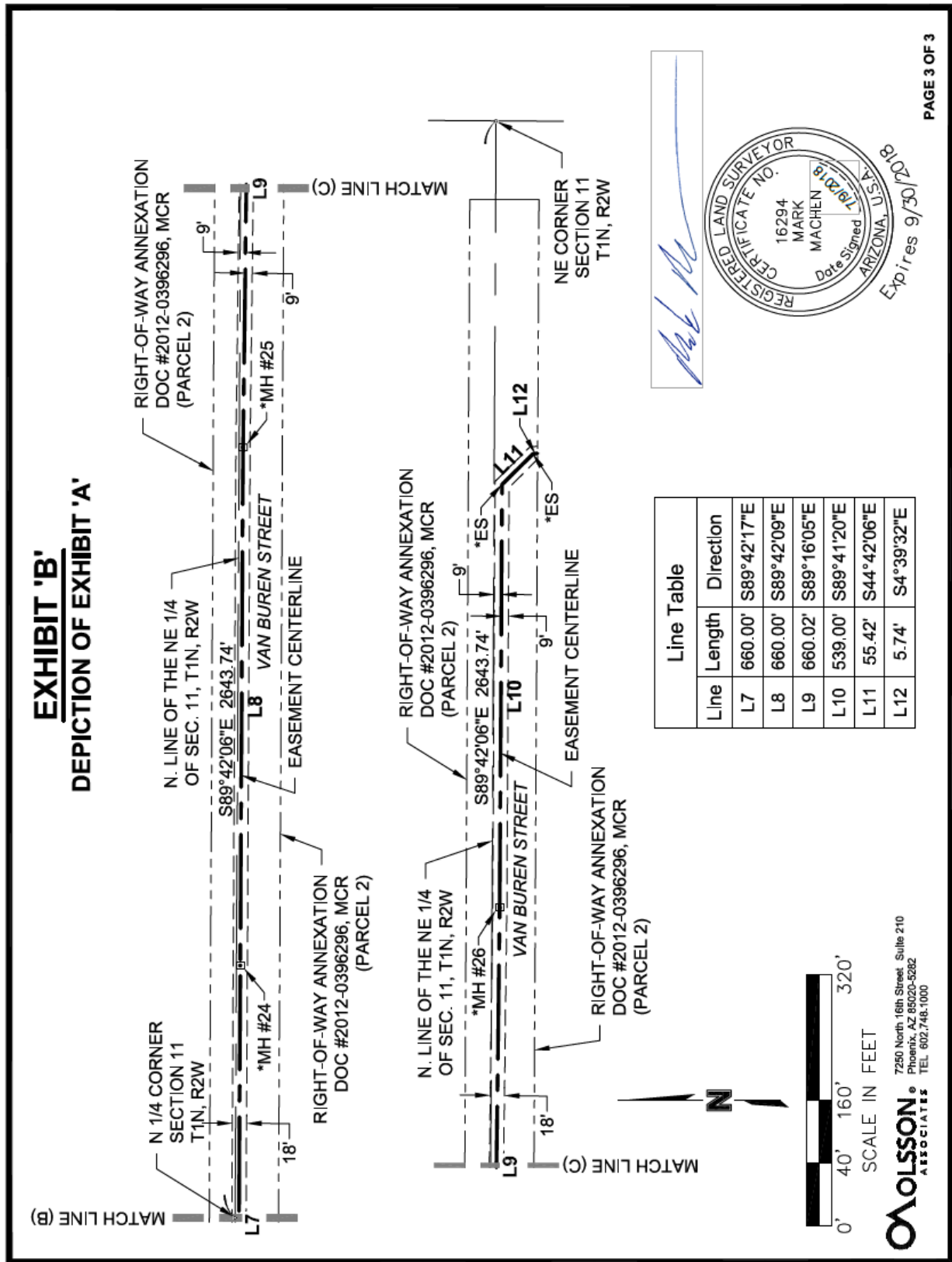


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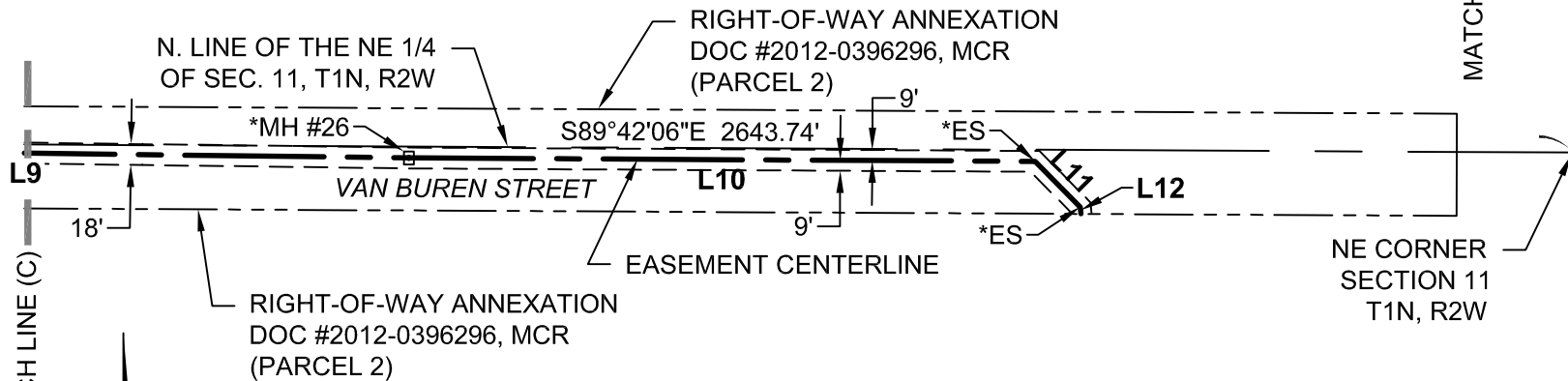
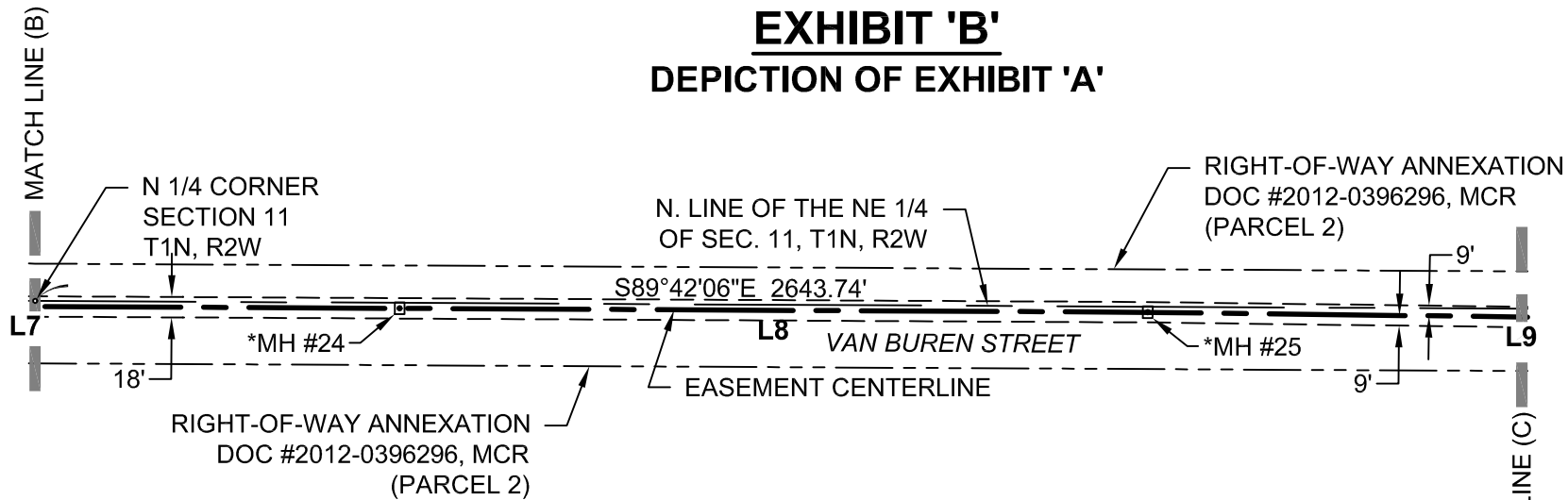
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EXHIBIT 'B'

DEPICTION OF EXHIBIT 'A'



Line Table		
Line	Length	Direction
L7	660.00'	S89°42'17"E
L8	660.00'	S89°42'09"E
L9	660.02'	S89°16'05"E
L10	539.00'	S89°41'20"E
L11	55.42'	S44°42'06"E
L12	5.74'	S4°39'32"E

Mark Machen

