

RESOLUTION NO. 2020-2028

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE CITY ATTORNEY TO ENTER INTO QUIET TITLE ACTION(S), AS NECESSARY, TO OBTAIN JUDICIAL DETERMINATION(S) AS TO THE EASEMENT OWNERS' INTERESTS IN THE GOODYEAR SURFACE WATER TREATMENT FACILITY PROPERTY.

WHEREAS, in January 2017 Council approved the CAP/SRP Interconnection Facility Lease and Water Transportation Agreement with Salt River Project by City Council action 17-5965. The city entered into the agreement in February 2017. The agreement provided for the transportation of the city's allotment of Central Arizona Project surface water from their interconnection facility located at the Granite Reef Dam, to a connection point at approximately Avondale Boulevard and Broadway Road. In connection with the agreement, the city plans to construct facilities, including a pipeline, to convey the water from the connection point to a surface water treatment facility; and

WHEREAS, in January 2018 Council approved the purchase of the property for the Goodyear Water Treatment Facility "GWTF". The acquisition of this site was completed in February 2018; and

WHEREAS, there is a Utility Easement (Sewer) recorded as document 2006-0695811 of the Maricopa County Records, attached hereto as Exhibit A and a Temporary Construction Easement Agreement recorded as document 2006-0695812 of the Maricopa County Records, attached hereto as Exhibit B "Easements" located along the southern and easterly portions of the GWTF property. The Easements were created primarily for the city's benefit to accommodate future city sewer facilities; and

WHEREAS, city staff was aware of the Easements at the time of purchase of the GTWF property, but they were considered to be of no impact to the development of the GTWF since the original site plans did not contemplate structures being placed along the boundaries of the property. This subsequently changed and the current site plans have several structures placed along the easterly boundary of the GTWF property within the area impacted by the Easements requiring the extinguishment of the easements; and

WHEREAS, as previously noted, the Easements were created primarily for the city's benefit to accommodate future sewer needs. City staff and our outside eminent domain counsel have reviewed the easement documents and determined the placement of a sewer line in this location is not viable the third parties' easement interests have no purpose and creates an unwarranted cloud on the GWTF property; and

WHEREAS, city staff and the city's outside counsel have contacted Ironline Partners-Goodyear 82, LLC, an Arizona limited liability company and Regency, LLC, a Nevada limited liability company, et al, requesting they abandon any interests they may have in the easement. To date, the Easement Owners have not agreed to abandon their interests; and

WHEREAS, the next step to extinguish the easements is to enter into a quiet title action. This is a lawsuit which would request a court to make a judicial determination concerning the easement owners' interests in the GWTF property; and

WHEREAS, the Mayor and Council of the city of Goodyear, Arizona find that entering into the Quiet Title Action to obtain judicial determination(s) as to the Easement Owners interests the GWTF property are required for the public health, safety and welfare of the citizens of Goodyear;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:

SECTION 1. The City Attorney is hereby authorized to enter into Quiet Title Action(s), as necessary to obtain a judicial determination(s) as to the Easement Owners; interests in the Easements attached hereto as Exhibit A and Exhibit B.

PASSED AND ADOPTED by the Mayor and Council of the city of Goodyear, Maricopa County, Arizona, this _____ day of _____, 20____.

Georgia Lord, Mayor

Date: _____

ATTEST:

APPROVED AS TO FORM:

Darcie McCracken, City Clerk

Roric Massey, City Attorney

CERTIFICATION OF RECORDING OFFICER

STATE OF ARIZONA)
) ss.
County of Maricopa)

I, the undersigned Darcie McCracken, being the duly appointed, qualified City Clerk of the city of Goodyear, Maricopa County, Arizona, certify that the foregoing Resolution No. 2020-2028 is a true, correct and accurate copy of Resolution No. 2020-2028, passed and adopted at a regular meeting of the Council of the city of Goodyear, Maricopa County, Arizona, held on the _____ day of _____, 20____, at which a quorum was present and, by a _____ vote, _____ voted in favor of said resolution.

Given under my hand and sealed this _____ day of _____, 20____.

seal

City Clerk

EXHIBIT 'A'

UTILITY EASEMENT (SEWER)

REITZD

3. Miscellaneous. Arizona law shall govern this Agreement and any action or proceeding arising directly or indirectly of this Agreement shall be resolved in Arizona Superior Court, Maricopa County. The prevailing party in any such lawsuit shall be entitled to an award of its reasonable attorneys' fees and costs of suit. Grantee may assign this Agreement to any third party. Any modification or waiver of any term of this Agreement must be in writing signed by the party or parties against which enforcement of the modification or waiver is sought. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and all prior and contemporaneous representations and understandings, written or oral,

are hereby superseded and merged into this Agreement. No delay or failure by either party to exercise any right under this Agreement and no partial or single exercise of that right shall constitute a waiver of that or any other right, unless otherwise expressly provided herein. Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

4. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which, together, shall constitute one and the same instrument.

5. Indemnity. Grantee covenants and agrees with Grantors, on behalf of itself and its successors and assigns, to indemnify and hold harmless Grantors and Grantors' successors and assigns for, from and against any and all claims, liabilities, expenses, reasonable attorney's fees and court costs which may be claimed or asserted against Grantors or Grantors' successors or assigns, or the Easement Area, including, but not limited to, claims for property damage and bodily injury and any mechanics' or materialmen's liens or claims of lien which may be asserted against Grantors or Grantors' successors or assigns, or the Easement Area, on account of the exercise by Grantee and/or Grantee's successors, assigns, lessees, licensees and agents of the rights, easements and privileges herein granted and conveyed except to the extent such claims, liabilities, expenses, fees and costs are the result of the gross negligence or willful misconduct of Grantors or Grantors' successors or assigns.

6. Disturbance of the Easement Area Surface. If Grantee disturbs the surface of the Easement Area, Grantee hereby agrees to use ~~functional document~~ efforts to (a) minimize the time period of any such disturbance and to (b) at its sole cost and expense, restore the surface of the Easement Area as soon as is reasonably possible.

7. Use of Easement Area. Grantors retain the right to use the Easement Area provided that Grantors' use does not unreasonably interfere with the Easement and rights granted to Grantee hereunder. Grantee shall have the right to keep the Easement Area clear of any obstruction that may unreasonably interfere with Grantee's reasonable use of the Easement Area for the purposes provided herein. Grantee agrees to use diligent efforts to minimize any disturbance to the Easement Area and Grantors' business operations in the exercise of its rights hereunder.

8. Construction. All construction on the Easement Area by Grantee pursuant to the terms of this Agreement shall be promptly completed in a good and workmanlike manner, free from all liens and encumbrances, and in accordance with all applicable ordinances and statutes, including all regulations and building codes of any governmental or municipal agency having jurisdiction over the Easement Area or said Improvements.

9. Notices. All notices under this Agreement shall be in writing and delivered personally, mailed by certified mail, return receipt requested, postage prepaid, or delivered by national overnight courier service, addressed to the parties at their last known addresses.

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

"GRANTORS"


Giora Ben-Horin


Arlene Ben-Horin

"GRANTEE"

MARACAY RIVERSIDE, L.L.C., an Arizona
limited liability company

BY: MARACAY HOMES ARIZONA I, L.L.C.
an Arizona limited liability company
ITS: Manager

BY: _____
ITS: _____

Unofficial Document

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

"GRANTORS"

Giora Ben-Horin

Arlene Ben-Horin



"GRANTEE"

MARACAY RIVERSIDE, L.L.C., an Arizona
limited liability company

BY: MARACAY HOMES ARIZONA I, L.L.C.
an Arizona limited liability company
ITS: Manager

BY:

ITS:

Unofficial Document

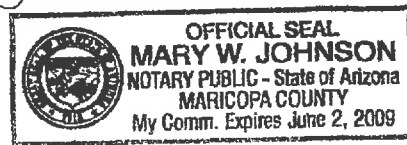
STATE OF ARIZONA)
) ss.
 County of Maricopa)

Subscribed and sworn to before me this 10th day of May, 2006 by Giora Ben-Horin and
 Arlene Ben-Horin, husband and wife.

Mary W. Johnson
 Notary Public

My Commission Expires:

June 2, 2009



STATE OF ARIZONA)
) ss.
 County of Maricopa)

Subscribed and sworn to before me, this ____ day of April, 2006 by
 _____, the _____ of Maracay Riverside,
 L.L.C., an Arizona limited liability company, _____ of the company.

 Notary Public

STATE OF ARIZONA }
 } ss.
 County of Maricopa }

Subscribed and sworn to before me this ____ day of April, 2006 by Giora Ben-Horin and Arlene Ben-Horin, husband and wife.

 Notary Public

My Commission Expires:

STATE OF ARIZONA }
 } ss.
 County of Maricopa }

Subscribed and sworn to before me, this 22 day of ^{May}~~April~~, 2006 by JEFFREY J ANDERSEN, the V.P. AND CONTROLLER of Maracay Riverside, L.L.C., an Arizona limited liability company, ^{Homes Arizona, I} ~~an official document~~ of the company.

Karen K Burlingame
 Notary Public

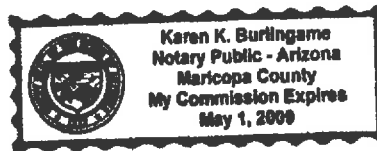


EXHIBIT "A"
LEGAL DESCRIPTION OF EASEMENT AREA

Unofficial Document

EXHIBIT "A"
RIVERSIDE PARK
20' SEWER EASEMENT
LEGAL DESCRIPTION

That portion of the Northwest quarter of Section 30, Township 1 North, Range 1 West of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at a found 1/2" rebar accepted as the North quarter corner of said Section 30 from which a found 1/2" rebar accepted as the center of section thereof bears South 00 degrees 30 minutes 07 seconds West a distance of 2640.87 feet;

Thence along the east line of said Northwest quarter, South 00 degrees 30 minutes 07 seconds West a distance of 1054.87 feet to the **POINT OF BEGINNING**;

Thence continuing along said east line, South 00 degrees 30 minutes 07 seconds West a distance of 20.00 feet;

Thence leaving said east line, North 89 degrees 34 minutes 52 seconds West a distance of 300.00 feet;

Thence South 00 degrees 30 minutes 07 seconds West a distance of 1373.70 feet;

Thence North 80 degrees 03 minutes 38 seconds West a distance of 1063.97 feet;

Unofficial Document

Thence North 86 degrees 15 minutes 15 seconds West a distance of 36.89 feet;

Thence South 83 degrees 44 minutes 38 seconds West a distance of 43.59 feet;

Thence South 62 degrees 42 minutes 08 seconds West a distance of 87.09 feet;

Thence South 42 degrees 32 minutes 06 seconds West a distance of 41.76 feet;

Thence South 29 degrees 54 minutes 44 seconds West a distance of 233.54 feet;

Thence South 60 degrees 12 minutes 15 seconds West a distance of 86.33 feet;

Thence North 89 degrees 30 minutes 07 Seconds West a distance of 879.17 feet to the west line of said Northwest quarter;

Thence along said west line, North 00 degrees 31 minutes 18 seconds East a distance of 50.00 feet;

Thence leaving said west line, South 44 degrees 29 minutes 25 seconds East a distance of 42.42 feet;

Thence South 89 degrees 30 minutes 07 seconds East a distance of 843.74 feet;

Thence North 60 degrees 12 minutes 15 seconds East a distance of 75.51 feet;

Thence North 29 degrees 54 minutes 44 seconds East a distance of 230.34 feet;
Thence North 42 degrees 32 minutes 06 seconds East a distance of 47.53 feet;
Thence North 62 degrees 42 minutes 08 seconds East a distance of 94.36 feet;
Thence North 83 degrees 44 minutes 38 seconds East a distance of 49.05 feet;
Thence South 86 degrees 15 minutes 15 seconds East a distance of 39.72 feet;
Thence South 80 degrees 03 minutes 38 seconds East a distance of 1041.45 feet;
Thence North 00 degrees 30 minutes 07 seconds East a distance of 1370.08 feet;
Thence South 89 degrees 34 minutes 52 seconds East a distance of 320.00 feet to the
POINT OF BEGINNING.

Site area contains 83,328 Square Feet or 1.9129 Acres, more or less.

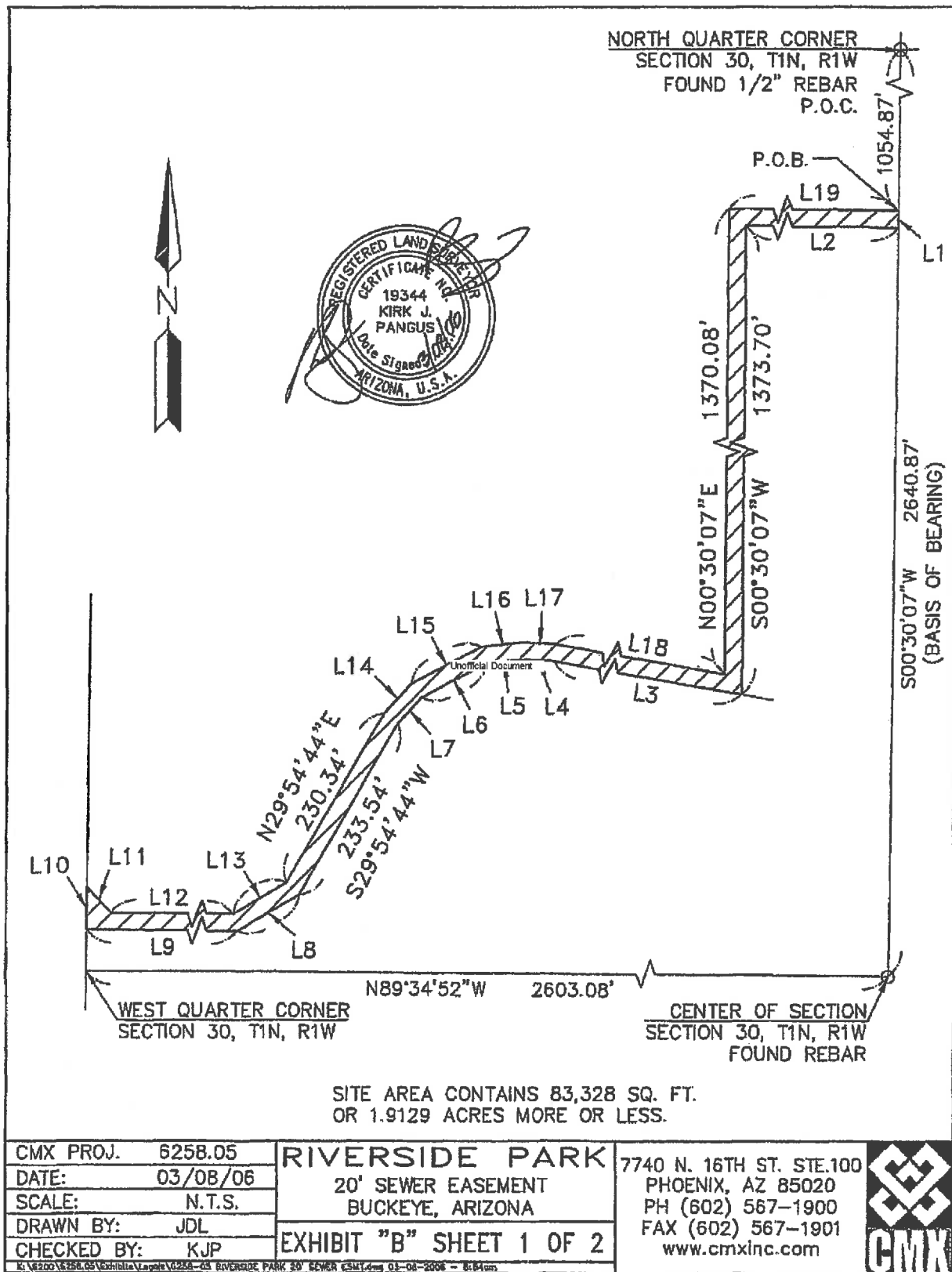
Prepared by: CMX L.L.C.
7740 N. 16th Street, Suite 100
Phoenix, AZ 85020
Project No. 6258.05
March 8, 2006

Unofficial Document

The description shown hereon is not to be used to violate any subdivision regulation of the state/ county and/or municipality or any other land division restrictions.

This legal description is based upon an ALTA/ACSM Land Title Survey prepared by CMX INC. last dated February 22, 2002 with a Job No. of 6258.





LINE TABLE		
LINE	BEARING	DISTANCE
L1	S00°30'07"W	20.00'
L2	N89°34'52"W	300.00'
L3	N80°03'38"W	1063.97'
L4	N86°15'15"W	36.89'
L5	S83°44'38"W	43.59'
L6	S62°42'08"W	87.09'
L7	S42°32'06"W	41.76'
L8	S60°12'15"W	86.33'
L9	N89°30'07"W	879.17'
L10	N00°31'18"E	50.00'
L11	S44°29'25"E	42.42'
L12	S89°30'07" ^{Unofficial Document}	843.74'
L13	N60°12'15"E	75.51'
L14	N42°32'06"E	47.53'
L15	N62°42'08"E	94.36'
L16	N83°44'38"E	49.05'
L17	S86°15'15"E	39.72'
L18	S80°03'38"E	1041.45'
L19	S89°34'52"E	320.00'



CMX PROJ.	6258.05	RIVERSIDE PARK 30' SEWER EASEMENT BUCKEYE, ARIZONA	7740 N. 16TH ST. STE.100 PHOENIX, AZ 85020 PH (602) 567-1900 FAX (602) 567-1901 www.cmxinc.com	
DATE:	03/08/06			
SCALE:	NONE			
DRAWN BY:	JDL			
CHECKED BY:	KJP	EXHIBIT "B" SHEET 2 OF 2		
X:\0200\0256.05\Exhibits\Legal\6258-05 RIVERSIDE PARK 30' SEWER EASEMENT.dwg 03-08-2006 - 8:43am				

EXHIBIT "B"
LEGAL DESCRIPTION OF BENEFITED PROPERTY

Unofficial Document

LOTS 1 AND 2 AND THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 1 NORTH, RANGE 2 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA;

EXCEPT THEREFROM ALL THAT PORTION LYING WITHIN THE RIGHT-OF-WAY OF THE ARIZONA EASTERN RAILROAD, AS SET FORTH IN DOCKET 1701, PAGE 355 AND THEREAFTER CONVEYED TO SOUTHERN PACIFIC COMPANY IN DOCKET 1760, PAGE 312; AND

EXCEPT THAT PORTION OF LOTS 1 AND 2 DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WESTERLY LINE OF THE RIGHT OF WAY FOR PIPE LINE HERETOFORE GRANTED TO EL PASO NATURAL GAS COMPANY BY INSTRUMENT RECORDED IN DOCKET 27, PAGE 271, RECORDS OF MARICOPA COUNTY, ARIZONA, WHICH IS ALSO A POINT ON THE SOUTHERLY BOUNDARY OF THE EASEMENT FOR ROAD PURPOSES HERETOFORE GRANTED TO THE STATE OF ARIZONA BY INSTRUMENT RECORDED IN BOOK 294 OF DEEDS, PAGE 243, RECORDS OF MARICOPA COUNTY, ARIZONA;

THENCE WESTERLY ALONG THE SOUTHERLY BOUNDARY OF SAID EASEMENT FOR ROAD PURPOSES, A DISTANCE OF 75 FEET;

THENCE SOUTHERLY AT RIGHT ANGLES TO THE SOUTHERLY BOUNDARY OF SAID EASEMENT FOR ROAD PURPOSES, A DISTANCE OF 30 FEET;

THENCE EASTERLY AND PARALLEL TO THE SOUTHERLY BOUNDARY OF SAID EASEMENT FOR ROAD PURPOSES TO A POINT ON THE WESTERLY LINE ^{OF THE AFORESAID} RIGHT OF WAY FOR PIPELINE;

THENCE NORTHERLY ALONG THE WESTERLY LINE OF SAID RIGHT OF WAY FOR PIPELINE TO THE POINT OF BEGINNING; AND

EXCEPT THAT PORTION LYING WITHIN THE FOLLOWING DESCRIBED PARCEL:

A STRIP OF LAND LOCATED IN THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 1 NORTH, RANGE 2 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, LYING NORTH OF THE NORTH RIGHT OF WAY LINE OF THE BUCKEYE CANAL AND SOUTH OF THE FOLLOWING DESCRIBED SURVEY LINE:

BEGINNING AT A POINT ON THE SOUTH LINE OF THE WEST HALF OF THE NORTHEAST QUARTER OF SAID SECTION 25, WHICH BEARS NORTH 89 DEGREES 58 MINUTES 54 SECONDS EAST 522.85 FEET FROM THE CENTER OF SAID SECTION 25;

THENCE NORTH 63 DEGREES 00 MINUTES 52 SECONDS WEST 72 FEET;

THENCE NORTH 61 DEGREES 47 MINUTES 02 SECONDS WEST 112 FEET;

THENCE NORTH 66 DEGREES 46 MINUTES 50 SECONDS, 107.14 FEET;

THENCE NORTH 65 DEGREES 55 MINUTES 28 SECONDS WEST, 277.44 FEET;

THENCE NORTH 58 DEGREES 38 MINUTES 11 SECONDS WEST 7 FEET TO A POINT ON THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 25, WHICH BEARS NORTH 0 DEGREES 32 MINUTES 4 SECONDS EAST 244.84 FEET FROM THE CENTER OF SAID SECTION 25; AND

EXCEPT ANY PORTION LYING WITHIN THE DEED RECORDED IN BOOK 122 OF DEEDS, PAGE 167; AND

EXCEPT THAT PORTION OF THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 1 NORTH, RANGE 2 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, LYING BETWEEN THE CENTER LINE OF THE BUCKEYE CANAL AND THE NORTHERLY RIGHT OF WAY LINE OF SAID BUCKEYE CANAL; AND

EXCEPT THAT PART OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 1 NORTH, RANGE 2 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, LYING NORTHWEST OF THE SOUTHERN PACIFIC RAILROAD RIGHT OF WAY AND U.S. HIGHWAY 80 RIGHT OF WAY; AND

EXCEPT THAT PART CONVEYED TO MARICOPA COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF ARIZONA IN SPECIAL WARRANTY DEED RECORDED SEPTEMBER 15, 2004 AS 2004-1076532 OF OFFICIAL RECORDS, DESCRIBED AS FOLLOWS:

THAT PART OF GLO LOTS 1 AND 2 AND THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 1 NORTH, RANGE 2 WEST (T1N-R2W) OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED IN THE FOLLOWING 2 PARCELS:

TRACT NO. 1:

ALL OF SAID GLO LOTS 1 AND 2 AND THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 25, LYING BETWEEN A LINE THAT IS 100 FEET SOUTH OF, AND PARALLEL WITH, THE SOUTH RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD, AND A LINE LYING 200 FEET SOUTH OF, AND PARALLEL WITH, THE SOUTH RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD, EXCEPT THE EAST 33 FEET THEREOF AND EXCEPT THAT PROPERTY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WESTERLY LINE OF THE RIGHT-OF-WAY FOR PIPE LINE HERETOFORE GRANTED TO EL PASO NATURAL GAS COMPANY, BY INSTRUMENT RECORDED IN DOCKET 27, PAGE 271, MARICOPA COUNTY RECORDS WHICH IS ALSO A POINT ON THE SOUTHERLY BOUNDARY OF THE EASEMENT FOR ROAD PURPOSES HERETOFORE GRANTED TO THE STATE OF ARIZONA BY INSTRUMENT RECORDED IN BOOK 294 OF DEEDS, PAGE 243, MARICOPA COUNTY RECORDS;

RUNNING THENCE WESTERLY ALONG THE SOUTHERLY BOUNDARY OF SAID EASEMENT FOR ROAD PURPOSES 75 FEET;

THENCE SOUTHERLY AT RIGHT ANGLES TO THE SOUTHERLY BOUNDARY OF SAID EASEMENT FOR ROAD PURPOSES 30 FEET;

THENCE EASTERLY AND PARALLEL TO THE SOUTHERLY BOUNDARY OF SAID EASEMENT FOR ROAD PURPOSES TO A POINT ON THE WESTERLY LINE OF THE AFORESAID RIGHT-OF-WAY FOR PIPE LINE;

THENCE NORTHERLY ALONG THE WESTERLY LINE OF SAID RIGHT-OF-WAY FOR PIPE LINE TO THE POINT OF BEGINNING.

TRACT NO. 2:

COMMENCING AT THE NORTHEAST CORNER SAID SECTION 25;

THENCE SOUTH 00°13'57" EAST, ALONG THE EAST LINE (RANGE LINE) OF SAID SECTION 25, A DISTANCE OF 72.09 FEET TO THE NORTHWEST CORNER OF SECTION 30, TOWNSHIP 1 NORTH, RANGE 1 WEST;

THENCE SOUTH 00°13'57" WEST ALONG THE EAST LINE (RANGE LINE) OF SAID SECTION 30, A DISTANCE OF 45.65 FEET TO A POINT ON A LINE THAT IS 200 FEET SOUTHEASTERLY OF AND PARALLEL WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD;

THENCE SOUTH 82°03'50" WEST, ALONG SAID PARALLEL LINE, A DISTANCE OF 466.00 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 07°56'10" EAST, PERPENDICULAR TO SAID PARALLEL LINE, A DISTANCE OF 40.00 FEET;

THENCE SOUTH 82°03'50" WEST, A DISTANCE OF 85.00 FEET;

THENCE NORTH 07°56'10" WEST, A DISTANCE OF 40.00 FEET;

THENCE NORTH 82°03'50" EAST, A DISTANCE OF 85.00 FEET TO THE POINT OF BEGINNING.

EXHIBIT 'B'

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT



When Recorded, Return To:

Matthew B. Levine, Esq.
Titus, Brueckner & Berry, P.C.
7373 N. Scottsdale Road, Suite B-252
Scottsdale, Arizona 85253

MA

2006-0695812 05/23/06 10:43 AM
2 OF 2

REIT2D

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

This Temporary Construction Easement Agreement (the "**Agreement**") is effective as of March 20, 2006, by and between Giora and Arlene Ben-Horin, husband and wife (collectively "**Grantors**") and Maracay Riverside, L.L.C., an Arizona limited liability company, ("**Grantee**").

WITNESSETH :

WHEREAS, Grantors are the collective owners of the certain real property in Maricopa County, Arizona identified on Exhibit "A" (the "**Easement Area**");

WHEREAS, Grantee desires to construct an underground sewer line and certain related underground facilities and improvements (collectively, the "**Improvements**") under property immediately south of the Easement Area in accordance with the Utility Easement (Sewer) recorded concurrently herewith for the benefit of adjacent property owned by Grantee and legally described on Exhibit "B" attached hereto (the "**Benefited Property**"); and

WHEREAS, Grantee needs, and Grantors agree to convey, a temporary construction easement over the Easement Area for use in connection with the construction of the Improvements.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements 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. Grantors hereby grant and convey to Grantee a temporary, non-exclusive construction easement over, across, in, under and through the Easement Area for the sole purpose of use in connection with the construction of the Improvements. The easement granted hereunder is appurtenant to the Benefited Property and nothing contained herein shall be deemed to be a gift or dedication of all or any portion of the Easement Area to the general public, for the general public or for any public use or purpose.

2. Covenant Running with the Land. The Easement shall be appurtenant to and shall run with the Benefited Property for the term of the Easement (as defined in Paragraph 4 below). The Easement shall be binding upon the heirs, executors, administrators, successors and assigns to the parties hereto.

3. Use of Easement Area. Grantors retain the right to use the Easement Area provided that Grantors' use does not unreasonably interfere with the easement and rights granted to Grantee hereunder. Grantee shall have the right to keep the Easement Area clear of any

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unreasonable obstruction that may unduly interfere with Grantee's reasonable use of the Easement Area for the purposes provided herein. Grantee agrees to use best efforts to minimize any disturbance to the Easement Area and Grantors' business operations in the exercise of its rights hereunder.

4. Term. The easement granted in Section 1 of this Agreement shall automatically terminate and be of no further force and effect upon the earlier of: (a) the City of Goodyear's final acceptance of the Improvements or (b) six (6) months after Grantors notify Grantee in writing that Grantors intend to begin or have begun construction of infrastructure or other improvements on the Easement Area or real property owned by Grantors adjacent to the Easement Area, but in no event shall the easement granted in Section 1 of this Agreement terminate under this Section 4(b) earlier than July 15, 2007. Notwithstanding the forgoing, in the event Grantors fail to commence construction by seven (7) months after Grantors' notice to Grantee as set forth above, Grantors' notice of termination shall be void and this Agreement shall remain in full force and effect pending Grantors again giving Grantee notice as set forth above. Grantee shall execute such documents and instruments as Grantors shall reasonably request to evidence the termination of this temporary construction easement.

5. Construction. All construction on the Easement Area by Grantee pursuant to the terms of this Agreement shall be promptly completed in a good and workmanlike manner, free from all liens and encumbrances, and in accordance with all applicable ordinances and statutes, including all regulations and building codes of any governmental or municipal agency having jurisdiction over the Easement Area or the improvements thereto.

6. Entire Agreement. ^{Unofficial Document} This Agreement supersedes all agreements previously made between the parties relating to its subject matter. There are no other understandings or agreements between the parties with respect to the subject matter of this Agreement.

7. Notices. All notices under this Agreement shall be in writing and delivered personally, mailed by certified mail, return receipt requested, postage prepaid, or delivered by national overnight courier service, addressed to the parties at their last known addresses.

8. Non-Waiver. No delay or failure by either party to exercise any right under this Agreement and no partial or single exercise of that right shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

9. Headings. Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

10. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Arizona, without regard to its conflict of laws rules. Grantors and Grantee agree that all actions or proceedings arising directly or indirectly out of this Agreement shall be litigated in the Arizona Superior Court, Maricopa County. The prevailing party in any such lawsuit shall be entitled to an award of its reasonable attorneys' fees and costs of suit.

11. Further Assurances. Upon the written request of Grantee or its successors-in-ownership, Grantors shall execute such additional documents and take such additional actions as

are reasonably requested by such persons or entities to confirm, modify, amend, supplement or restate this Agreement or as may be reasonably required to satisfy the requirements of such person or entity and which are not inconsistent with this Agreement.

12. Indemnity. Grantee covenants and agrees with Grantors, on behalf of itself and its successors and assigns, to indemnify and hold harmless Grantors and Grantors' successors and assigns for, from and against any and all claims, liabilities, expenses, reasonable attorney's fees and court costs which may be claimed or asserted against Grantors or Grantors' successors or assigns, or the Easement Area, including, but not limited to, claims for property damage and bodily injury and any mechanics' or materialmen's liens or claims of lien which may be asserted against Grantors or Grantors' successors or assigns, or the Easement Area, on account of the exercise by Grantee and/or Grantee's successors, assigns, lessees, licensees and agents of the rights, easements and privileges herein granted and conveyed except to the extent such claims, liabilities, expenses, fees and costs are the result of the gross negligence or willful misconduct of Grantors or Grantors' successors or assigns.

13. Disturbance of the Easement Area Surface. If Grantee disturbs the surface of the Easement Area, Grantee hereby agrees to use diligent efforts to (a) minimize the time period of any such disturbance and to (b) at its sole cost and expense, restore the surface of the Easement Area as soon as is reasonably possible.

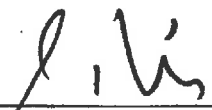
14. Counterparts. This Agreement may be executed in two (2) or more counterparts and each such counterpart, when taken together with all other counterparts, shall be deemed one and the same original instrument.

Unofficial Document

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

"GRANTORS"

"GRANTEE"



Giora Ben-Horin

MARACAY RIVERSIDE, L.L.C., an
Arizona limited liability company



Arlene Ben-Horin

BY: MARACAY HOMES ARIZONA I
L.L.C., an Arizona limited liability company
ITS: Manager

BY: _____
ITS: _____

are reasonably requested by such persons or entities to confirm, modify, amend, supplement or restate this Agreement or as may be reasonably required to satisfy the requirements of such person or entity and which are not inconsistent with this Agreement.

12. Indemnity. Grantee covenants and agrees with Grantors, on behalf of itself and its successors and assigns, to indemnify and hold harmless Grantors and Grantors' successors and assigns for, from and against any and all claims, liabilities, expenses, reasonable attorney's fees and court costs which may be claimed or asserted against Grantors or Grantors' successors or assigns, or the Easement Area, including, but not limited to, claims for property damage and bodily injury and any mechanics' or materialmen's liens or claims of lien which may be asserted against Grantors or Grantors' successors or assigns, or the Easement Area, on account of the exercise by Grantee and/or Grantee's successors, assigns, lessees, licensees and agents of the rights, easements and privileges herein granted and conveyed except to the extent such claims, liabilities, expenses, fees and costs are the result of the gross negligence or willful misconduct of Grantors or Grantors' successors or assigns.

13. Disturbance of the Easement Area Surface. If Grantee disturbs the surface of the Easement Area, Grantee hereby agrees to use diligent efforts to (a) minimize the time period of any such disturbance and to (b) at its sole cost and expense, restore the surface of the Easement Area as soon as is reasonably possible.

14. Counterparts. This Agreement may be executed in two (2) or more counterparts and each such counterpart, when taken together with all other counterparts, shall be deemed one and the same original instrument.

Unofficial Document

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

"GRANTORS"

"GRANTEE"

Giora Ben-Horin

MARACAY RIVERSIDE, L.L.C., an
Arizona limited liability company

Arlene Ben-Horin

BY: MARACAY HOMES ARIZONA I
L.L.C., an Arizona limited liability company
ITS: Manager

BY: *Jeffrey J. Anderson*
ITS: *W.P. Anderson Controller*

STATE OF ARIZONA)
) §§
 County of Maricopa)

Subscribed and sworn to before me, this ____ day of April, 2006 by
 _____, the _____ of Maracay Riverside,
 L.L.C., an Arizona limited liability company, on behalf of the company.

 Notary Public

My Commission Expires:

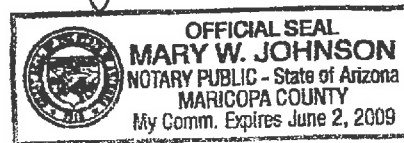
STATE OF ARIZONA }
 } ss.
 County of Maricopa }

Subscribed and sworn to before me this 10th day of May, 2006 by Giora Ben-
 Horin and Arlene Ben-Horin, husband and wife.

Mary W. Johnson
 Notary Public

My Commission Expires:

June 2, 2009

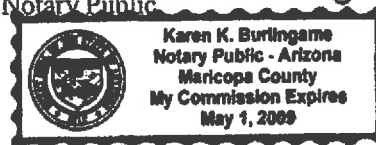


STATE OF ARIZONA)
) §§
 County of Maricopa)

Subscribed and sworn to before me, this 22 day of ^{May}~~April~~, 2006 by
Jeffrey J. Anderson, the VP and Controller of Maracay ~~Riverside~~,
 L.L.C., an Arizona limited liability company, on behalf of the company. Homes Arizona I

Karen K. Burlingame
 Notary Public

My Commission Expires:



STATE OF ARIZONA }
 } ss.
 County of Maricopa }

Subscribed and sworn to before me this ____ day of April, 2006 by Giora Ben-
 Horin and Arlene Ben-Horin, husband and wife.

 Notary Public

My Commission Expires:

EXHIBIT "A"
LEGAL DESCRIPTION OF EASEMENT AREA

Unofficial Document

EXHIBIT "A"
RIVERSIDE PARK
30' TEMPORARY CONSTRUCTION EASEMENT
LEGAL DESCRIPTION

That portion of the Northwest quarter of Section 30, Township 1 North, Range 1 West of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at a found 1/2" rebar accepted as the North quarter corner of said Section 30 from which a found 1/2" rebar accepted as the center of section thereof bears South 00 degrees 30 minutes 07 seconds West a distance of 2640.87';

Thence along the east line of said Northwest quarter, South 00 degrees 30 minutes 07 seconds West a distance of 1024.87 feet to the **POINT OF BEGINNING**;

Thence continuing along said east line, South 00 degrees 30 minutes 07 seconds West a distance of 30.00 feet;

Thence leaving said east line, North 89 degrees 34 minutes 52 seconds West a distance of 320.00 feet;

Thence South 00 degrees 30 minutes 07 seconds West a distance of 1370.08 feet;

Thence North 80 degrees 03 minutes 38 seconds West a distance of 1041.45 feet;

Unofficial Document

Thence North 86 degrees 15 minutes 15 seconds West a distance of 39.72 feet;

Thence South 83 degrees 44 minutes 38 seconds West a distance of 49.05 feet;

Thence South 62 degrees 42 minutes 08 seconds West a distance of 94.36 feet;

Thence South 42 degrees 32 minutes 06 seconds West a distance of 47.53 feet;

Thence South 29 degrees 54 minutes 44 seconds West a distance of 230.34 feet;

Thence South 60 degrees 12 minutes 15 seconds West a distance of 75.51 feet;

Thence North 89 degrees 30 minutes 07 Seconds West a distance of 843.74 feet;

Thence North 44 degrees 29 minutes 25 seconds West a distance of 42.42 feet to a point on the west line of said Northwest quarter;

Thence leaving said west line, South 89 degrees 30 minutes 07 seconds East a distance of 865.61 feet;

Thence North 60 degrees 12 minutes 15 seconds East a distance of 59.26 feet;

Thence North 29 degrees 54 minutes 44 seconds East a distance of 225.54 feet;

Thence North 42 degrees 32 minutes 06 seconds East a distance of 56.18 feet;
Thence North 62 degrees 42 minutes 08 seconds East a distance of 105.27 feet;
Thence North 83 degrees 44 minutes 38 seconds East a distance of 57.25 feet;
Thence South 86 degrees 15 minutes 15 seconds East a distance of 43.97 feet;
Thence South 80 degrees 03 minutes 38 seconds East a distance of 1007.67 feet;
Thence North 00 degrees 30 minutes 07 seconds East a distance of 1364.64 feet;
Thence South 89 degrees 34 minutes 52 seconds East a distance of 350.00 feet to the
POINT OF BEGINNING.

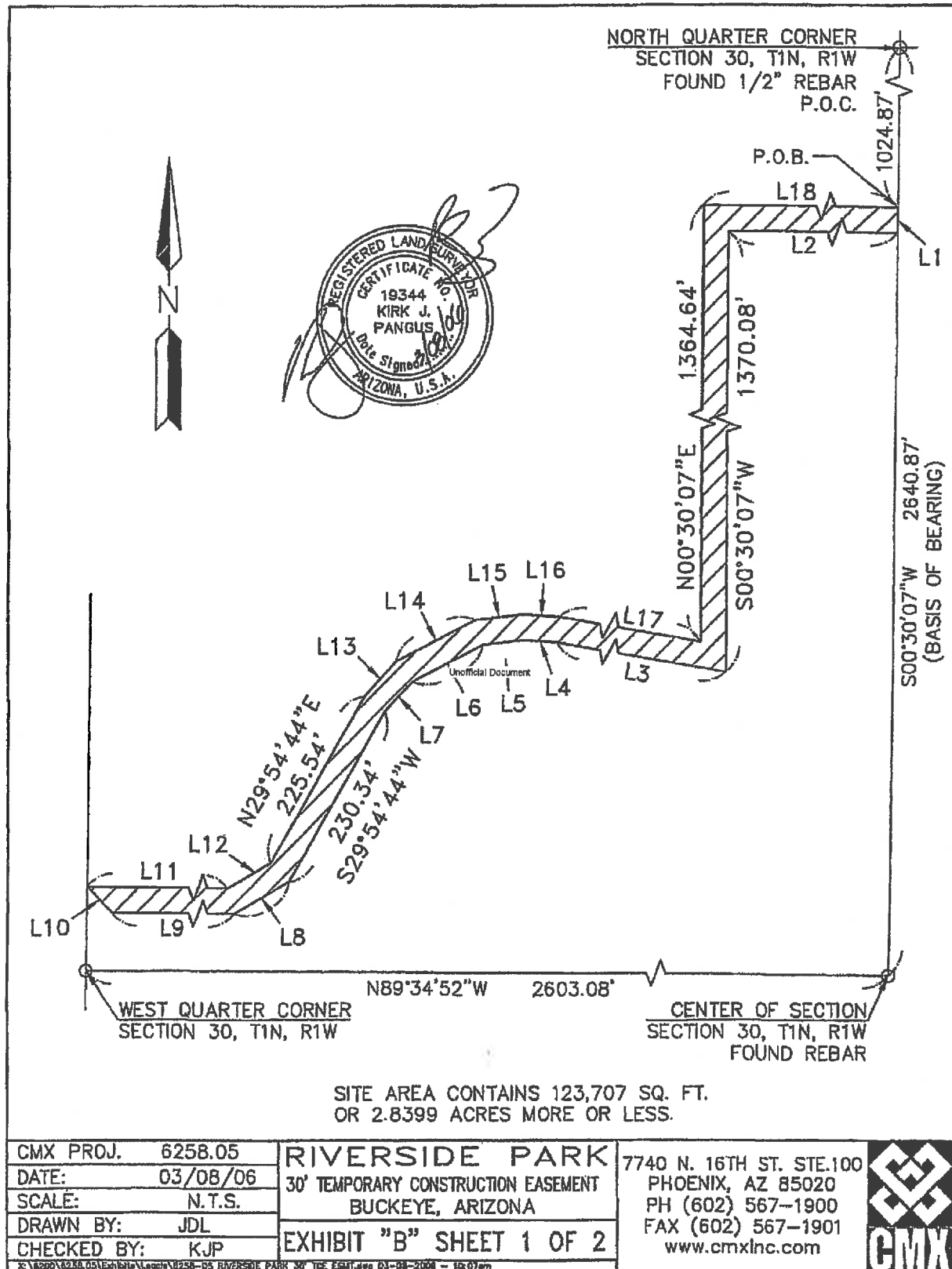
Site area contains 123,707 Square Feet or 2.8399 Acres, more or less.

Prepared by: CMX L.L.C.
7740 N. 16th Street, Suite 100
Phoenix, AZ 85020
Project No. 6258.05
March 8, 2006

The description shown hereon is not to be ^{Unofficial Document} used to violate any subdivision regulation of the state/ county and/or municipality or any other land division restrictions.

This legal description is based upon an ALTA/ACSM Land Title Survey prepared by CMX INC. last dated February 22, 2002 with a Job No. of 6258.





LINE TABLE		
LINE	BEARING	DISTANCE
L1	S00°30'07"W	30.00'
L2	N89°34'52"W	320.00'
L3	N80°03'38"W	1041.45'
L4	N86°15'15"W	39.72'
L5	S83°44'38"W	49.05'
L6	S62°42'08"W	94.36'
L7	S42°32'06"W	47.53'
L8	S60°12'15"W	75.51'
L9	N89°30'07"W	843.74'
L10	N44°29'25"W	42.42'
L11	S89°30'07"E	865.61'
L12	N60°12'15"E	59.26'
L13	N42°32'06"E	56.18'
L14	N62°42'08"E	105.27'
L15	N83°44'38"E	57.25'
L16	S86°15'15"E	43.97'
L17	S80°03'38"E	1007.67'
L18	S89°34'52"E	350.00'



CMX PROJ.	6258.05	RIVERSIDE PARK 30' SEWER EASEMENT BUCKEYE, ARIZONA EXHIBIT "B" SHEET 2 OF 2	7740 N. 16TH ST. STE.100 PHOENIX, AZ 85020 PH (602) 567-1900 FAX (602) 567-1901 www.cmxinc.com	
DATE:	03/08/06			
SCALE:	NONE			
DRAWN BY:	JDL			
CHECKED BY:	KJP			

X:\6200\6258.05\Exhibit\6258-05 RIVERSIDE PARK 30' ICE ESM7.dwg 03-08-2006 - 7:51am

EXHIBIT "B"

LEGAL DESCRIPTION OF BENEFITED PROPERTY

Unofficial Document

LOTS 1 AND 2 AND THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 1 NORTH, RANGE 2 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA;

EXCEPT THEREFROM ALL THAT PORTION LYING WITHIN THE RIGHT-OF-WAY OF THE ARIZONA EASTERN RAILROAD, AS SET FORTH IN DOCKET 1701, PAGE 355 AND THEREAFTER CONVEYED TO SOUTHERN PACIFIC COMPANY IN DOCKET 1760, PAGE 312; AND

EXCEPT THAT PORTION OF LOTS 1 AND 2 DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WESTERLY LINE OF THE RIGHT OF WAY FOR PIPE LINE HERETOFORE GRANTED TO EL PASO NATURAL GAS COMPANY BY INSTRUMENT RECORDED IN DOCKET 27, PAGE 271, RECORDS OF MARICOPA COUNTY, ARIZONA, WHICH IS ALSO A POINT ON THE SOUTHERLY BOUNDARY OF THE EASEMENT FOR ROAD PURPOSES HERETOFORE GRANTED TO THE STATE OF ARIZONA BY INSTRUMENT RECORDED IN BOOK 294 OF DEEDS, PAGE 243, RECORDS OF MARICOPA COUNTY, ARIZONA;

THENCE WESTERLY ALONG THE SOUTHERLY BOUNDARY OF SAID EASEMENT FOR ROAD PURPOSES, A DISTANCE OF 75 FEET;

THENCE SOUTHERLY AT RIGHT ANGLES TO THE SOUTHERLY BOUNDARY OF SAID EASEMENT FOR ROAD PURPOSES, A DISTANCE OF 30 FEET;

THENCE EASTERLY AND PARALLEL TO THE SOUTHERLY BOUNDARY OF SAID EASEMENT FOR ROAD PURPOSES TO A POINT ON THE WESTERLY LINE OF THE AFORESAID RIGHT OF WAY FOR PIPELINE;

THENCE NORTHERLY ALONG THE WESTERLY LINE OF SAID RIGHT OF WAY FOR PIPELINE TO THE POINT OF BEGINNING; AND

EXCEPT THAT PORTION LYING WITHIN THE FOLLOWING DESCRIBED PARCEL:

A STRIP OF LAND LOCATED IN THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 1 NORTH, RANGE 2 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, LYING NORTH OF THE NORTH RIGHT OF WAY LINE OF THE BUCKEYE CANAL AND SOUTH OF THE FOLLOWING DESCRIBED SURVEY LINE:

BEGINNING AT A POINT ON THE SOUTH LINE OF THE WEST HALF OF THE NORTHEAST QUARTER OF SAID SECTION 25, WHICH BEARS NORTH 89 DEGREES 58 MINUTES 54 SECONDS EAST 522.85 FEET FROM THE CENTER OF SAID SECTION 25;

THENCE NORTH 63 DEGREES 00 MINUTES 52 SECONDS WEST 72 FEET;

THENCE NORTH 61 DEGREES 47 MINUTES 02 SECONDS WEST 112 FEET;

THENCE NORTH 66 DEGREES 46 MINUTES 50 SECONDS, 107.14 FEET;

THENCE NORTH 65 DEGREES 55 MINUTES 28 SECONDS WEST, 277.44 FEET;

THENCE NORTH 58 DEGREES 38 MINUTES 11 SECONDS WEST 7 FEET TO A POINT ON THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 25, WHICH BEARS NORTH 0 DEGREES 32 MINUTES 4 SECONDS EAST 244.84 FEET FROM THE CENTER OF SAID SECTION 25; AND

EXCEPT ANY PORTION LYING WITHIN THE DEED RECORDED IN BOOK 122 OF DEEDS, PAGE 167; AND

EXCEPT THAT PORTION OF THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 1 NORTH, RANGE 2 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, LYING BETWEEN THE CENTER LINE OF THE BUCKEYE CANAL AND THE NORTHERLY RIGHT OF WAY LINE OF SAID BUCKEYE CANAL; AND

EXCEPT THAT PART OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 1 NORTH, RANGE 2 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, LYING NORTHWEST OF THE SOUTHERN PACIFIC RAILROAD RIGHT OF WAY AND U.S. HIGHWAY 80 RIGHT OF WAY; AND

EXCEPT THAT PART CONVEYED TO MARICOPA COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF ARIZONA IN SPECIAL WARRANTY DEED RECORDED SEPTEMBER 15, 2004 AS 2004-1076532 OF OFFICIAL RECORDS, DESCRIBED AS FOLLOWS:

THAT PART OF GLO LOTS 1 AND 2 AND THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 1 NORTH, RANGE 2 WEST (T1N-R2W) OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED IN THE FOLLOWING 2 PARCELS:

TRACT NO. 1:

ALL OF SAID GLO LOTS 1 AND 2 AND THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 25, LYING BETWEEN A LINE THAT IS 100 FEET SOUTH OF, AND PARALLEL WITH, THE SOUTH RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD, AND A LINE LYING 200 FEET SOUTH OF, AND PARALLEL WITH, THE SOUTH RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD, EXCEPT THE EAST 33 FEET THEREOF AND EXCEPT THAT PROPERTY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WESTERLY LINE OF THE RIGHT-OF-WAY FOR PIPE LINE HERETOFORE GRANTED TO EL PASO NATURAL GAS COMPANY, BY INSTRUMENT RECORDED IN DOCKET 27, PAGE 271, MARICOPA COUNTY RECORDS WHICH IS ALSO A POINT ON THE SOUTHERLY BOUNDARY OF THE EASEMENT FOR ROAD PURPOSES HERETOFORE (Unofficial Document) THE STATE OF ARIZONA BY INSTRUMENT RECORDED IN BOOK 294 OF DEEDS, PAGE 243, MARICOPA COUNTY RECORDS;

RUNNING THENCE WESTERLY ALONG THE SOUTHERLY BOUNDARY OF SAID EASEMENT FOR ROAD PURPOSES 75 FEET;

THENCE SOUTHERLY AT RIGHT ANGLES TO THE SOUTHERLY BOUNDARY OF SAID EASEMENT FOR ROAD PURPOSES 30 FEET;

THENCE EASTERLY AND PARALLEL TO THE SOUTHERLY BOUNDARY OF SAID EASEMENT FOR ROAD PURPOSES TO A POINT ON THE WESTERLY LINE OF THE AFORESAID RIGHT-OF-WAY FOR PIPE LINE;

THENCE NORTHERLY ALONG THE WESTERLY LINE OF SAID RIGHT-OF-WAY FOR PIPE LINE TO THE POINT OF BEGINNING.

TRACT NO. 2:

COMMENCING AT THE NORTHEAST CORNER SAID SECTION 25;

THENCE SOUTH 00°13'57" EAST, ALONG THE EAST LINE (RANGE LINE) OF SAID SECTION 25, A DISTANCE OF 72.09 FEET TO THE NORTHWEST CORNER OF SECTION 30, TOWNSHIP 1 NORTH, RANGE 1 WEST;

THENCE SOUTH 00°13'57" WEST ALONG THE EAST LINE (RANGE LINE) OF SAID SECTION 30, A DISTANCE OF 45.65 FEET TO A POINT ON A LINE THAT IS 200 FEET SOUTHEASTERLY OF AND PARALLEL WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD;

THENCE SOUTH 82°03'50" WEST, ALONG SAID PARALLEL LINE, A DISTANCE OF 466.00 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH $07^{\circ}56'10''$ EAST, PERPENDICULAR TO SAID PARALLEL LINE, A DISTANCE OF 40.00 FEET;

THENCE SOUTH $82^{\circ}03'50''$ WEST, A DISTANCE OF 85.00 FEET;

THENCE NORTH $07^{\circ}56'10''$ WEST, A DISTANCE OF 40.00 FEET;

THENCE NORTH $82^{\circ}03'50''$ EAST, A DISTANCE OF 85.00 FEET TO THE POINT OF BEGINNING.

Unofficial Document