ORDINANCE NO. O22-05

AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE ACCEPTANCE AND EXECUTION OF A DRAINAGE EASEMENT FROM THE FLOOD CONTROL DISTRICT OF MARICOPA COUNTY AND DIRECTING THE CITY CLERK TO RECORD A CERTIFIED COPY OF THE ORDINANCE.

WHEREAS, the Flood Control District of Maricopa County (FCDMC) owns property adjacent to the portion of Ball Park Boulevard located in the City of Phoenix; and

WHEREAS, FCDMC agreed to let the City of Glendale (City) utilize a portion of the property for drainage facilities to support the construction, operation, maintenance, repair, and if necessary, replacement of a roadway; and

WHEREAS, the City has agreed to maintain these facilities on FCDMC property; and

WHEREAS, FCDMC is granting the Drainage Easement to protect the facilities and allow the City access to perform routine maintenance.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

SECTION 1. That the City Council hereby authorizes and instructs the City Manager to execute the Drainage Easement attached hereto as Attachment 1 granting a possessory interest in a portion of FCDMC property as legally described in Exhibit "A".

SECTION 2. That the City Clerk is instructed and authorized to forward a certified copy of this ordinance for recording to the Maricopa County Recorder's Office.

SECTION 3. That the provisions of this ordinance shall become effective thirty (30) days after passage of this ordinance by the Glendale City Council.

(Signatures on the following page)

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this 11th day of January, 2022.

_____
Mayor Jerry P. Weiers

ATTEST:

_____
Julie K. Bower, City Clerk (SEAL)

APPROVED AS TO FORM:

_____
Michael D. Bailey, City Attorney

REVIEWED BY:

_____
Kevin R. Phelps, City Manager

ATTACHMENT 1

When recorded, return to:
Flood Control District of Maricopa County
2801 West Durango Street
Phoenix, AZ 85009 (MDC)

EXEMPT ARS § 11-1134. A2
FCD 1999R016

DRAINAGE EASEMENT

FCD Project: New River Channelization
FCD Parcel No.: R-2-FCD
APN: 102-59-007G ptn.
FCD Permit No.: 2019P172

This Drainage Easement is entered into by and between the following parties as of the last date executed below.

GRANTOR: **FLOOD CONTROL DISTRICT OF MARICOPA COUNTY**, a political subdivision of the State of Arizona

GRANTEE: **CITY OF GLENDALE**, an Arizona municipal corporation, and/or its successors and assigns

In accordance with **GRANTOR'S** Board of Director Resolutions 88-5 and 2018R013, for and in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, **GRANTOR** does hereby grant and convey to **GRANTEE** a non-exclusive Drainage easement ("Easement") in, upon, over, under, across, through and along the premises described in the attached Exhibit "A" ("Easement Property") for the purpose of constructing, operating, repairing and maintaining a Drainage Facility, and appurtenances thereto (collectively, the "Facility"), in accordance with **FCD Right-of-Way Use Permit No.** 2019P172 ("FCD Permit").

Said Easement is SUBJECT TO all governmental restrictions which include, but are not limited to, environmental, archaeological, and cultural regulations, and all land use regulations, covenants, conditions, restrictions, easements, rights-of-way, and other matters of record, or not of record, that could be disclosed by a visual inspection or accurate survey of the real property.

This Easement is, at all times, subject to and subordinate to the rights of **GRANTOR** to use and access the Easement Property for the purpose of operation and maintenance of the flood control project. **GRANTOR** shall endeavor to use its best efforts to operate and maintain the flood control project in a manner which will not unreasonably interfere with the **GRANTEE'S** rights granted by this Easement. **GRANTEE** assumes all risk of damage to its Facility resulting from the property functioning as a flood control project.

In the event the Facility, use of the Easement Property and/or personal property belonging to the **GRANTEE** interferes with **GRANTOR'S** use of the Easement Property or the land within the Easement Property is needed to construct, maintain, or relocate any portion of **GRANTOR'S** flood control project and/or structure, **GRANTEE** shall, at **GRANTOR'S** request and **GRANTEE'S** sole expense, eliminate the interference within thirty (30) days of notice from the **GRANTOR**. Actual construction to remove or relocate such conflicting Facility, and/or personal property, or portion(s) thereof, shall begin within thirty (30) days following **GRANTOR'S** issuance of a right-of-way use permit for such removal/relocation. Upon mutual agreement, the time frame for the start and completion of said work may be extended based on the requirements of a project. If **GRANTEE'S** relocation effort delays construction of a **GRANTOR** project, and causes **GRANTOR** to be liable for delay damages, **GRANTEE** shall reimburse **GRANTOR** for those damages attributable to the delay created by **GRANTEE** within thirty (30) days after **GRANTEE'S** receipt of the **GRANTOR'S** invoice for said delay.

The **GRANTEE** shall also, at its sole cost and expense, maintain the Easement Property, and **GRANTEE**'s Facility located within the Easement Property, in a state of good repair and in a safe condition, including without limitation the removal of trash and debris from the Easement Property. The rights granted to **GRANTEE** herein include the right to cut back, trim and remove vegetation now growing, or that may hereafter grow, on the Easement Property, or that may extend over the Easement Property, so as to protect the same from interfering with the maintenance and operation of **GRANTEE'S** Facility.

After the installation of **GRANTEE'S** Facility in accordance with said FCD Permit, any modification whatsoever to the Easement Property, the Facility, or any appurtenance of

GRANTEE located therein, that is not in compliance with said FCD Permit, will require **GRANTEE** to apply for and obtain a new right-of-way use permit from **GRANTOR**. **GRANTOR** will process any such application in accordance with **GRANTOR'S** right-of-way use permit approval process.

GRANTEE agrees to indemnify **GRANTOR** for any and all damages and costs, including without limitation, reasonable attorney's fees, court costs, and all other expenses relating to the defense of claims or litigation, caused by or arising from the exercise of **GRANTEE'S** rights pursuant to the terms of this Easement, excepting therefrom any such injury, damage or costs caused by or arising solely from the gross negligence, or actions that are purposeful or undertaken without regard to the consequences, by the **GRANTOR**, it officers, employees, agents or contractors.

In the event **GRANTEE** fails to install the Facility within the Easement Property, or in the event **GRANTEE** removes the Facility, or in the event the Facility ceases to function, or in the event of any other event giving evidence to **GRANTOR** that the **GRANTEE** has abandoned the use of this Easement, then and in such event, **GRANTOR** shall notify **GRANTEE,** in writing, that **GRANTOR** considers that the Easement has been abandoned. In such event, **GRANTEE** shall provide confirmation to **GRANTOR** that the Easement has been abandoned, or in the event **GRANTEE** shall fail to reply that there has been no intent to abandon the Easement within thirty (30) days of receipt of the aforesaid notice from the **GRANTOR**, this Easement shall be deemed to be abandoned and **GRANTOR** shall be permitted to record a termination of this Easement in the public records of Maricopa County. Unless and until such termination is recorded by **GRANTOR,** this Easement shall remain in full force and effect.

The rights and privileges granted in this Easement are solely for the benefit of **GRANTEE** to use the Easement Property for the purpose stated herein, and do not include the right to permit and/or grant any other use of the Easement Property to another party.

This Easement shall run with the land and is binding on all parties.

GRANTOR: FLOOD CONTROL DISTRICT OF MARICOPA COUNTY

RECOMMENDED FOR APPROVAL:

9/28/2021

Michael A. Fulton Date
Director

APPROVED:

SIGNED IN COUNTERPART

Jack Sellers Date
Chairman of the Board

ATTEST:

SIGNED IN COUNTERPART

Clerk of the Board Date

STATE OF ARIZONA)
)ss
COUNTY OF MARICOPA)

Before me,_____, Notary Public in and for said County, State of Arizona, on this day personally appeared _____, known to me to be the _____ of the Board of Directors of the Flood Control District of Maricopa County.

Given under my hand and seal of the office this ____ day of _____, 20___.

Notary Public (signature)

REAL ESTATE DEPARTMENT APPROVAL:

SIGNED IN COUNTERPART

Alex Smith Date
Director of Real Estate
Real Estate Department

APPROVED AS TO FORM and within the powers and authority granted under the laws of the State of Arizona.

SIGNED IN COUNTERPART

District General Counsel Date

FCD Project: New River Channelization
FCD Parcel No.: R-2-FCD

APN: 102-59-007G
FCD Permit No.: 2019P172

GRANTOR: FLOOD CONTROL DISTRICT OF MARICOPA COUNTY

RECOMMENDED FOR APPROVAL:

SIGNED IN COUNTERPART

Michael A. Fulton Date
Director

APPROVED:

SIGNED IN COUNTERPART

Jack Sellers Date
Chairman of the Board

ATTEST:

SIGNED IN COUNTERPART

Clerk of the Board Date

STATE OF ARIZONA)
)ss
COUNTY OF MARICOPA)

Before me,_____, Notary Public in and for said County, State of Arizona, on this day personally appeared _____, known to me to be the _____ of the Board of Directors of the Flood Control District of Maricopa County.

Given under my hand and seal of the office this ____ day of _____, 20___.

Notary Public (signature)

REAL ESTATE DEPARTMENT APPROVAL:

Docusigned by:
9/28/2021
F0612B0D565D4CC...

Alex Smith Date
Director of Real Estate
Real Estate Department

APPROVED AS TO FORM and within the powers and authority granted under the laws of the State of Arizona.

District General Counsel Date: September 28, 2021

FCD Project: New River Channelization
FCD Parcel No.: R-2-FCD

APN: 102-59-007G
FCD Permit No.: 2019P172

GRANTEE: CITY OF GLENDALE

ACCEPTANCE:

_____

By: Kevin R. Phelps Date
Its: City Manager

ATTEST:

_____

Julie K. Bower Date
(Seal)

STATE OF ARIZONA)
)ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this _____ day of _____,

2021, by Kevin R. Phelps, City Manager of the City of Glendale, Arizona and/or its successors and assigns

My Commission Expires_____ _____

Notary Public (signature)

APPROVED AS TO FORM:

_____

City Attorney Date

FCD Project: New River Channelization
FCD Parcel No.: R-2-FCD

APN: 102-59-007G
FCD Permit No.: 2019P172

Exhibit "A" - Easement Property
Attached to Non-exclusive Drainage Easement

EXHIBIT A

DRAINAGE EASEMENT

THAT PART OF THE NORTHEAST QUARTER OF SECTION 18, TOWNSHIP 2 NORTH, RANGE 1 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING A PORTION OF THAT PROPERTY CONVEYED IN DEED #1998-0197400, MARICOPA COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 18, FROM WHICH THE NORTH QUARTER CORNER OF SAID SECTION 18 BEARS S87°17'20"W;

THENCE S87°17'20"W, ALONG THE NORTH LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 305.53 FEET;

THENCE S32°15'11"W, A DISTANCE OF 158.63 FEET TO THE SOUTH LINE OF THE NORTH 130' OF SAID NORTHEAST QUARTER, COINCIDENT WITH THE PHOENIX/GLENDALE CITY LIMITS;

THENCE N87°17'20"E, ALONG SAID SOUTH LINE, A DISTANCE OF 145.11 FEET TO THE **POINT OF BEGINNING** OF THE HEREIN DESCRIBED PART;

THENCE CONTINUING N87°17'20"E, A DISTANCE OF 59.56 FEET TO THE BEGINNING OF A CURVE HAVING A RADIUS OF 2070.13 FEET, AND A CHORD THAT BEARS S31°06'58"W;

THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, CONCAVE NORTHWESTERLY, THROUGH A CENTRAL ANGLE OF 23°08'28", A DISTANCE OF 836.10 FEET;

THENCE N47°18'48"W, A DISTANCE OF 55.00 FEET TO THE BEGINNING OF A CURVE HAVING A RADIUS OF 2015.13 FEET, AND A CHORD THAT BEARS N31°26'12"E;

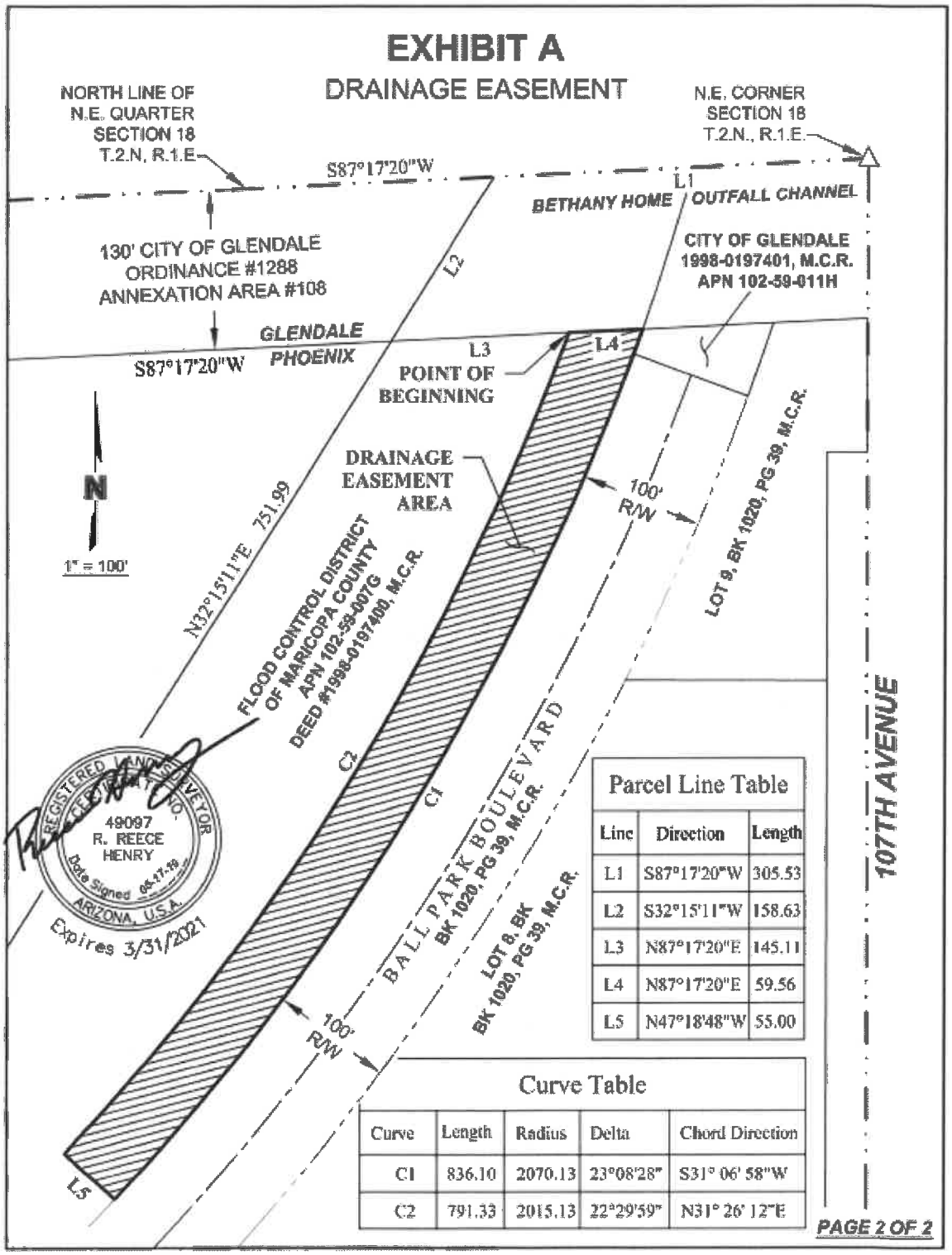
THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, CONCAVE NORTHWESTERLY AND BEING 55.00 FEET PERPENDICULAR TO THE WEST RIGHT-OF-WAY OF BALL PARK BOULEVARD (BK 1020, PG 39, M.C.R.), THROUGH A CENTRAL ANGLE OF 22°29'59", A DISTANCE OF 791.33 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 1.03 ACRES, +/-

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
49097
R. REECE
HENRY
Date Signed 08-17-18
ARIZONA, U.S.A.
Expires 3/31/2021

PAGE 1 OF 2

Exhibit "A" - Easement Property
Attached to Non-exclusive Drainage Easement



Parcel Line Table

Line	Direction	Length
L1	S87°17'20"W	305.53
L2	S32°15'11"W	158.63
L3	N87°17'20"E	145.11
L4	N87°17'20"E	59.56
L5	N47°18'48"W	55.00

Curve Table

Curve	Length	Radius	Delta	Chord Direction
C1	836.10	2070.13	23°08'28"	S31° 06' 58"W
C2	791.33	2015.13	22°29'59"	N31° 26' 12"E