



AMENDED NOVEMBER 25, 2020 @ 12:55 p.m.

MARANA TOWN COUNCIL
REGULAR COUNCIL MEETING
NOTICE AND AGENDA

11555 W. Civic Center Drive, Marana, Arizona 85653
Council Chambers, December 1, 2020, at or after 6:00 PM

Ed Honea, Mayor
Jon Post, Vice Mayor
Patti Comerford, Council Member
Jackie Craig, Council Member
Herb Kai, Council Member
John Officer, Council Member
Roxanne Ziegler, Council Member

Pursuant to A.R.S. §38-431.02, notice is hereby given to the members of the Marana Town Council and to the general public that the Town Council will hold a meeting open to the public on December 1, 2020, at or after 6:00 PM located in the Council Chambers of the Marana Municipal Complex, 11555 W. Civic Center Drive, Marana, Arizona.

ACTION MAY BE TAKEN BY THE COUNCIL ON ANY ITEM LISTED ON THIS AGENDA. Revisions to the agenda can occur up to 24 hours prior to the meeting. Revised agenda items appear in *italics*.

As a courtesy to others, please turn off or put in silent mode all electronic devices.

Meeting Times

Welcome to this Marana Town Council meeting. Regular Council meetings are usually held the first and third Tuesday of each month at 6:00 PM at the Marana Municipal Complex, although the date or time may change and additional meetings may be called at other times and/or places. Contact the Town Clerk or watch for posted agendas for other meetings. This agenda may be revised up to 24 hours prior to the meeting. In such a case a new agenda will be posted in place of this agenda.

Speaking at Meetings

If you are interested in speaking to the Council during the Call to the Public or Public Hearings, you must fill out a speaker card (located in the lobby outside the Council Chambers) and deliver it to the Town Clerk prior to the convening of the meeting.

All persons attending the Council meeting, whether speaking to the Council or not, are expected to observe the Council rules, as well as the rules of politeness, propriety, decorum and good conduct. Any person interfering with the meeting in any way, or acting rudely or loudly will be removed from the meeting and will not be allowed to return.

Accessibility

To better serve the citizens of Marana and others attending our meetings, the Council Chambers are wheelchair and handicapped accessible. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Town Clerk at (520) 382-1999. Requests should be made as early as possible to arrange the accommodation.

Agendas

Copies of the agenda are available the day of the meeting in the lobby outside the Council Chambers or online at www.maranaaz.gov under Agendas and Minutes. For questions about the Council meetings, special services or procedures, please contact the Town Clerk, at (520) 382-1999, Monday through Friday from 8:00 AM to 5:00 PM.

This Notice and Agenda Posted no later than 24 hours prior to the meeting, at the Marana Municipal Complex, 11555 W. Civic Center Drive, the Marana Operations Center, 5100 W. Ina Road, and at www.maranaaz.gov under Agendas and Minutes.

REGULAR COUNCIL MEETING

CALL TO ORDER AND ROLL CALL

PLEDGE OF ALLEGIANCE/INVOCATION/MOMENT OF SILENCE

APPROVAL OF AGENDA

CALL TO THE PUBLIC

At this time any member of the public is allowed to address the Town Council on any issue within the jurisdiction of the Town Council, except for items scheduled for a Public Hearing at this meeting. The speaker may have up to three minutes to speak. Any persons wishing to address the Council must complete a speaker card located outside the Council Chambers and deliver it to the Town Clerk prior to the commencement of the meeting. Individuals addressing a meeting at the Call to the Public will not be provided with electronic technology capabilities beyond the existing voice amplification and recording capabilities in the facilities. Pursuant to the Arizona Open Meeting Law, at the conclusion of Call to the Public, individual members of the

Council may respond to criticism made by those who have addressed the Council, and may ask staff to review the matter, or may ask that the matter be placed on a future agenda.

PROCLAMATIONS

MAYOR AND COUNCIL REPORTS: SUMMARY OF CURRENT EVENTS

MANAGER'S REPORT: SUMMARY OF CURRENT EVENTS

PRESENTATIONS

CONSENT AGENDA

The Consent Agenda contains items requiring action by the Council which are generally routine items not requiring Council discussion. A single motion and affirmative vote will approve all items on the Consent Agenda, including any resolutions or ordinances. Prior to a motion to approve the Consent Agenda, any Council member may remove any item from the Consent Agenda and that item will be discussed and voted upon separately.

- C1 Resolution No. 2020-129: Relating to Development; approving a Preliminary Plat for Tortolita Ridge Lots 1-32 and Common Areas "A" through "C" located approximately .75 miles north of Moore Road on the west side of Tortolita Road. (Cynthia Ross)

- C2 Approval of the Regular Council Meeting Summary Minutes of November 17, 2020, and the Council Study Session Meeting Summary Minutes of November 10, 2020, and the Council Study Session Meeting Summary Minutes of October 13, 2020 (Cherry L. Lawson).

LIQUOR LICENSES

BOARDS, COMMISSIONS AND COMMITTEES

COUNCIL ACTION

- A1 Ordinance No. 2020.020: Relating to Utilities; amending Marana Town Code Title 14 (Utilities), Chapter 14-4 (Construction and Financing of Utility Facilities) to modify sections 14-4-3 (Capacity requirements), 14-4-4 (Refund of cost of facilities funded and installed by town), and 14-4-5 (Notice of protected facility and associated charge) to make the protected facility designation and

protected facility charge available for drainage facilities (Jane Fairall)

- A2 Resolution No. 2020-130: Relating to Development; approving and authorizing the Mayor to sign the Mandarin Development Agreement for development north and northwest of the Interstate 10 and Tangerine Road traffic interchange; and authorizing the Town Engineer to sign a quit claim deed of abandonment for unneeded right-of-way in Mandarin (Jane Fairall)

ITEMS FOR DISCUSSION / POSSIBLE ACTION

- D1 Relating to Development and Public Works; update, discussion, and possible direction regarding public and private projects and development applications on the Town's [Marana Current and Proposed Projects](#) internet site (Jason Angell)
- D2 *Relating to Legislation and Government Actions; discussion and possible action regarding all pending state, federal, and local legislation/government actions and on recent and upcoming meetings of the other governmental bodies (Terry Rozema)*

EXECUTIVE SESSIONS

Pursuant to A.R.S. § 38-431.03, the Town Council may vote to go into executive session, which will not be open to the public, to discuss certain matters.

- E1 Executive Session pursuant to A.R.S. §38-431.03 (A), Council may ask for discussion or consideration, or consultation with designated Town representatives, or consultation for legal advice with the Town Attorney, concerning any matter listed on this agenda for any of the reasons listed in A.R.S. §38-431.03 (A).
- E2 Executive session pursuant to A.R.S. § 38-431.03(A)(7) for discussion or consultation with the Town Manager, Town Engineer, and Town Attorney, as designated representatives of the Town, in order to consider the Town's position and instruct its representatives regarding negotiations for the sale or lease of interests in real property located in Ora Mae Harn Park to Southwest Gas Corporation for the installation of natural gas facilities to connect to the El Paso Natural Gas pipeline.

FUTURE AGENDA ITEMS

Notwithstanding the Mayor's discretion regarding the items to be placed on the agenda, if three or more Council members request that an item be placed on the agenda, it must be placed on the agenda for the second regular Town Council meeting after the date of the request, pursuant to Marana Town Code Section 2-4-2(B).

ADJOURNMENT



Council-Regular Meeting

C1

Meeting Date: 12/01/2020

To: Mayor and Council

From: Cynthia Ross, Senior Planner

Date: December 1, 2020

Strategic Plan Focus Area:

Not Applicable

Subject: Resolution No. 2020-129: Relating to Development; approving a Preliminary Plat for Tortolita Ridge Lots 1-32 and Common Areas "A" through "C" located approximately .75 miles north of Moore Road on the west side of Tortolita Road. (Cynthia Ross)

Discussion:

Request

Baker and Associates, representing DR Horton Inc., is requesting the approval of a Preliminary Plat for Tortolita Ridge, Lots 1-32 and Common Areas "A" (Open Space/Drainage), "B" (Park), and "C" (Natural Undisturbed Open Space).

Zoning and Land Use

The Mayor and Town Council adopted Marana Ordinance 2018.023 on December 18, 2018, rezoning approximately 17.2 acres of land from 'R-80' Residential and Zone 'C' (Large Lot Zone) to 'R-8' Residential.

The existing R-8 zoning allows for single-family detached residential development at a minimum lot size of 8,000 square feet. The preliminary plat proposes 32 residential lots with a minimum lot size of 8,004 square feet, a maximum lot size of 9,832 square feet, and an average lot size of 8,402 square feet. The density proposed for this subdivision is 1.8 residences per acre. The R-8 development standards will apply and all lots will be subject to the Town's Residential Design Standards.

Single-Story Home Lots

Condition No. 20 of the rezoning ordinance requires Lots 1-14, 26-28, 33 and 34, as

shown on the rezoning conceptual land use plan, be restricted to single story. The plat translates the conceptual plan lots that will be restricted to single story as Lots 1-14, 24-26, and 31 and 32.

Recreation Area

Condition No. 21 of the rezoning ordinance requires the developer to construct a park area containing a ramada, BBQ pit, grassy area and picnic benches prior to approval of the 34th building permit. The applicant will provide a 5,225 square foot park area containing the amenities in the northwest portion of the subdivision prior to approval of the 32nd building permit.

Open Space

The clustered subdivision sets aside 7.82 acres or 45% of the site as natural undisturbed open space (NUOS), preserving the site's native vegetation and facilitating wildlife connectivity across the site.

Access and Traffic Circulation

The internal streets are public and will be maintained by the Town. Access will be provided from Tortolita Road, a two-lane minor local road that borders the easternmost property boundary. Condition No. 22 of the rezoning ordinance required developer construction of a 20-foot-wide emergency access drive with a stabilized surface capable of supporting fire apparatus. At the time of the rezoning request, it was anticipated that the emergency access drive would be provided from the proposed northerly cul-de-sac to Tortolita Road to the east, across the adjacent properties utilizing two 15' wide existing access easements. During the course of this plat review process, it was determined by Town staff and the applicant, that the aforementioned existing access easements do not provide access rights for use by this project to Tortolita Road.

Marana Subdivision Street Standards - Design Exception

A Design Exception application (Marana Case #ENG2009-007) was approved by Town Engineer Keith Brann to provide all the homes in the subdivision with automatic fire sprinklers, an allowable mitigating requirement for approval of a single point of access as outlined in Section 4.14.1.a.ii. of the Marana Subdivision Street Standards Manual, July 16 Edition. On November 17, 2020, a request to revise rezoning condition #22 found in Marana Ordinance 2018.023 (Marana Case No. PCM2009-001) was approved by the Town Council to replace the requirement for an emergency access with a condition that the property owners install automatic fire sprinkler systems in each home, acceptable to the Northwest Fire District.

Utility Service

Water Service will be provided to the subdivision by Tucson Water. Sewer service will be provided by Pima County Regional Wastewater Reclamation Department. TRICO Electric will provide service to the development. Fire protection service will be provided by Northwest Fire District.

Neighborhood Design Plan

The Town of Marana Residential Design Standards, Section 08.06 of the Marana Land

Development Code, require that a Neighborhood Design Plan (NDP) be submitted for review and approval along with the preliminary plat. The NDP is intended to ensure that the site aesthetics and amenities required by the Residential Design Standards and applicable zoning are provided. The NDP for the subdivision showing proposed landscaping and recreational areas have been attached to this report.

Staff Recommendation:

Planning Commission Recommendation

This preliminary plat was presented to the Planning Commission on November 18th, 2020 and received a unanimous, 6-0, recommendation to the Town Council.

Staff has reviewed the request against the requirements of Marana Ordinance No. 2018.023 and No. 2020.016, the Marana Land Development Code, the Marana General Plan, and the Marana Town Code. This preliminary plat is in substantial conformance with all required development regulations and staff recommends approval.

Suggested Motion:

I move to adopt Resolution No. 2020-129 approving a preliminary plat for Tortolita Ridge, Lots 1-32 and Common Areas "A" through "C" located approximately .75 miles north of Moore Road on the west side of Tortolita Road.

Attachments

Resolution No. 2020-129

Application

Location Map

Preliminary Plat

Neighborhood Design Plan

MARANA RESOLUTION NO. 2020-129

RELATING TO DEVELOPMENT; APPROVING A PRELIMINARY PLAT FOR TORTOLITA RIDGE LOTS 1-32 AND COMMON AREAS “A” THROUGH “C” LOCATED APPROXIMATELY .75 MILES NORTH OF MOORE ROAD ON THE WEST SIDE OF TORTOLITA ROAD.

WHEREAS the Mayor and Council of the Town of Marana adopted Marana Ordinance No. 2018.023 on December 18, 2018, approving a rezoning of 17.3 acres of land known as Tortolita Ridge from ‘R-80’ (Single-Family Residential) and Zone ‘C’ (Large Lot Zone) to ‘R-8’ (Single-Family Residential), and amending the 2010 Marana General Plan designation for the Rezoning Area from Rural Density Residential (RDR) to Low Density Residential (LDR); and

WHEREAS the Mayor and Council of the Town of Marana adopted Marana Ordinance No. 2020.016 on November 17, 2020, amending Ordinance 2018.023, eliminating the requirement for an emergency access road and replacing it with a requirement for installation of automatic fire sprinkler systems; and

WHEREAS Baker and Associates, representing DR Horton Inc., the current property owner, has applied for approval of a preliminary plat for Tortolita Ridge Lots 1-32 and Common Area “A” (Open Space/Drainage), “B” (Park), and “C” (Natural Undisturbed Open Space). located approximately .75 miles north of Moore Road on the west side of Tortolita Road; and

WHEREAS the Mayor and Town Council, at the regularly scheduled meeting on December 1, 2020, determined that the preliminary plat for Tortolita Ridge should be approved.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Town of Marana, Arizona, that the preliminary plat for Tortolita Ridge Lots 1-32 and Common Areas “A” through “C” is hereby approved.

PASSED AND ADOPTED by the Mayor and Council of the Town of Marana, Arizona, this 1st day of December, 2020.

Mayor Ed Honea

ATTEST:

APPROVED AS TO FORM:

Cherry Lawson, Town Clerk

Jane Fairall, Town Attorney



Development Services / maranaplanning@maranaAZ.gov

11555 West Civic Center Drive / Marana, AZ 85653

Ph (520) 382-2600 / Fax (520) 382-2641 / maranaAZ.gov

PROJECT APPLICATION

APPLICATION TYPE

- | | | | |
|--|--|--|---|
| ☐ Annexation | ☐ Development Plan | ☐ Development Plan Package | ☐ General Plan Amendment |
| ☐ Rezone | ☐ Minor Land Division | ☐ Significant Land Use Change | ☐ Conditional Use Permit |
| ☐ Specific Plan | ☐ Landscape Plan | ☐ Native Plant Plan/Exception | ☐ SWPP |
| ☐ Variance | ☐ Hydraulic Model | ☐ Sewer Capacity Assurance | ☐ Sign Program |
| ☐ Plat | ☐ Improvement Plan | ☐ Report (Type): _____ | ☐ Other: _____ |

PROJECT INFORMATION

Project Name: Tortolita Ridge

Description of Project: Single Family Residential

Number of Lots: 32

Parcel No.(s): 218-44-022H and 218-44-022L

Gross Area (Acres): 17.2

Project Address: 13423 N. Tortolita Road

Ref. Project No.:

CONTACT INFORMATION

Owner: DR Horton

Contact Name: Brent Davis

Address: 3580 W. Ina Road, Ste. 100

City: Tucson

State: AZ

Zip: 85741

Email: btDavis@drhorton.com

Phone No.: (520) 790-6005

Applicant: Same as above

Contact Name:

Address:

City:

State:

Zip:

Email:

Phone No.:

Consultant/Engineer: Baker & Assoc. Engineering

Contact Name: Marty Magelli, P.E.

Address: 3561 E. Sunrise Dr., #225

City: Tucson

State: AZ

Zip: 85718

Email: marty@baetucson.com

Phone No.: (520) 318-1950

OWNER/APPLICANT AUTHORIZATION

I hereby certify that the information set forth in this application are true and correct to the best of my knowledge and that I am either the owner of the property or that I have been authorized in writing by the owner to file this application. (If applicant is not the owner, attach written authorization from the owner.)

Brent Davis

Applicant Name (PRINT)

Signature

Date

FOR OFFICIAL USE ONLY

Project No. **PRV2006-001**

Date Received **6/19/2020**

Revision Date 08/29/2019

Hidden
Springs

**Subject
Property**

Tortolita
Reserve

Heritage Highlands
@ Dove Mountain

TORTOLITA ROAD

Quail
Crossing

DOVE MOUNTAIN BLVD

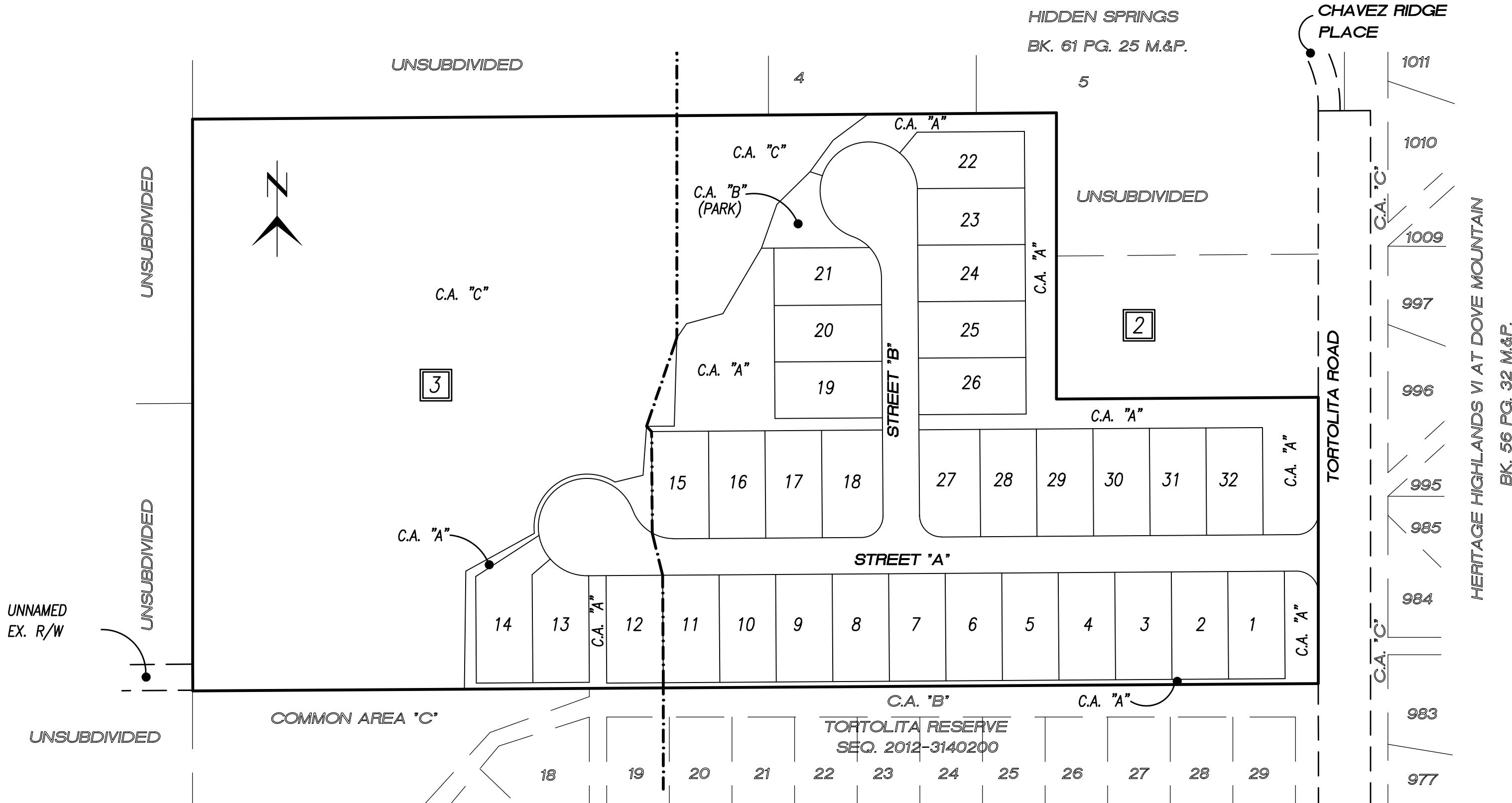
GENERAL NOTES

1. THE GROSS AREA OF THE SUBDIVISION IS 752,871 SF, OR 17.2 ACRES.
2. EXISTING ZONING IS R-8 (SINGLE FAMILY RESIDENTIAL) PER REZONING CASE PCZ1806-001, APPROVED ON DECEMBER 18, 2018 BY ORDINANCE 2018.023.
3. THIS DEVELOPMENT IS SUBJECT TO THE CONDITIONS AND AGREEMENTS OF ORDINANCE 2018.023. CONDITIONS INCLUDE:
- a. SINGLE STORY LOTS. CONDITION 20. LOTS 1-14, 26-28, 33 AND 34 AS DESIGNATED ON THE CONCEPTUAL LAND USE PLAN SHALL BE RESTRICTED TO SINGLE-STORY HOMES. THIS PLAT TRANSLATES THOSE CONCEPTUAL PLAN LOT NUMBERS TO LOTS 1-14, 24-26 AND 31 AND 32 WHICH SHALL BE RESTRICTED TO SINGLE-STORY HOMES (SEE SINGLE STORY BUILDING RESTRICTIONS TABLE).
- b. PARK AREA. CONDITION 21. THE PROPERTY OWNERS SHALL CONSTRUCT A PARK CONTAINING A RAMADA, PICNIC BENCHES, BARBEQUE PIT, AND GRASSY AREA PRIOR TO APPROVAL OF THE 34TH BUILDING PERMIT. BECAUSE THERE ARE 32 LOTS IN THIS SUBDIVISION, THE PROPERTY OWNERS SHALL CONSTRUCT SAID PARK PRIOR TO APPROVAL OF THE 32ND BUILDING PERMIT.
- d. PERIMETER WALL DESIGN. CONDITION 23. THE PERIMETER WALL DESIGN SHALL BE INCLUDED AS PART OF THE SUBDIVISION LANDSCAPING PLAN TO BE REVIEWED AND APPROVED BY THE TOWN PLANNING STAFF.
- e. NORTHWEST FIRE. CONDITION 16. BEFORE A CERTIFICATE OF OCCUPANCY CAN BE ISSUED FOR ANY UNIT ON THE REZONING AREA (THIS PLAT) THE PROPERTY OWNERS SHALL HAVE COMPLETED OR SHALL PROVIDE EVIDENCE TO THE TOWN'S SATISFACTION THAT THE PROPERTY OWNERS HAVE MADE A DILIGENT EFFORT TO COMPLETE THE PROCESS OF HAVING PIMA COUNTY ASSESSOR PARCEL NUMBER 218-44-022H ANNEXED INTO THE NORTHWEST FIRE DISTRICT.
4. THE ASSESSOR'S PARCEL NUMBERS FOR THIS PROJECT ARE 218-44-022H AND 218-44-022L.
5. THE NUMBER OF RESIDENTIAL LOTS IS 32.
6. GROSS DENSITY IS 1.8 RAC.
7. MINIMUM ALLOWABLE LOT SIZE: 8,000 SF (PER R-8 ZONING).
MINIMUM PROVIDED LOT SIZE: 8,004 SF (LOT 21).
AVERAGE LOT SIZE: 8,402 SF.
MAXIMUM PROVIDED LOT SIZE: 9,832 SF (LOT #14 - NOT A RESTRICTION).
MAXIMUM ALLOWABLE BUILDING HEIGHT: TWO STORIES OR 25', EXCEPT AS OTHERWISE PERMITTED. SEE ALSO SINGLE STORY BUILDING RESTRICTION CHART, THIS SHEET. BUILDING HEIGHTS MAY BE PERMITTED TO INCREASE A MAXIMUM OF TWENTY PERCENT (20%) TO PROVIDE A MAXIMUM BUILDING HEIGHT OF THIRTY (30) FEET SUBJECT TO THE REQUIREMENTS FOUND IN SECTION 17-6-13 AND APPROVAL OF THE TOWN COUNCIL.
8. APPROXIMATE AREAS:
COMMON AREA "A" (OPEN SPACE/DRAINAGE) 77,018 SF
COMMON AREA "B" (PARK) 5,225 SF
COMMON AREA "C" (NATURAL UNDISTURBED OPEN SPACE) 340,659 SF
9. BUILDING SETBACKS PER R-8 ZONING:
FRONT A MINIMUM OF SIXTEEN (16) FEET, EXCEPT WHERE GARAGES OPEN OR FACE DIRECTLY ONTO AN ABUTTING STREET, IN WHICH CASE THE GARAGE SETBACK SHALL BE A MINIMUM OF TWENTY (20) FEET. A MAXIMUM OF THIRTY-FIVE PERCENT (35%) OF THE LOTS MAY HAVE A REDUCED SETBACK TO THE SIXTEEN FEET, WITH THE BALANCE OF THE SETBACKS BEING TWENTY (20) FEET OR GREATER.
SIDE A MINIMUM OF FIVE (5) FEET, WITH A STREET SIDEYARD (SETBACK) HAVING A MINIMUM OF TEN (10) FEET.
REAR A MINIMUM OF TWENTY (20) FEET. WHERE THE FRONT YARD (SETBACK) IS INCREASED ABOVE THE TWENTY (20) FEET, THEN THE REAR YARD (SETBACK) MAY BE REDUCED ONE (1) FOOT FOR EACH FOOT OF INCREASE, BUT SHALL NOT BE REDUCED TO BELOW FIFTEEN (15) FEET. WHERE THE FRONT YARD (SETBACK) IS DECREASED BELOW THE MINIMUM TWENTY (20) FEET, THE REAR YARD (SETBACK) SHALL BE INCREASED ONE (1) FOOT FOR EACH FOOT OF DECREASE, BUT SHALL NOT BE REQUIRED TO BE OVER TWENTY-FIVE (25) FEET.
10. NO FURTHER SUBDIVISION OF ANY LOTS OR BLOCKS SHOWN HEREON WILL BE DONE WITHOUT THE WRITTEN APPROVAL OF THE MARANA TOWN COUNCIL.
11. PARKING PROVISIONS INCLUDE 2 PARKING SPACES FOR EACH LOT (32 LOTS X 2 = 64). ALL REQUIRED PARKING WILL BE OFF-STREET, ON-SITE.
12. TORTOLITA ROAD IS THE NEAREST PAVED ACCESS. IT IS ADJACENT TO THIS PROJECT.
13. TOTAL MILES OF NEW PUBLIC STREETS IS 0.26 MILES.
14. ALL WEATHER ACCESS WILL BE PROVIDED FOR ALL LOTS PRIOR TO ANY LOT RELEASE.
15. THE DESIGN SPEED FOR THIS PROJECT IS 25 MPH, WB-40 DESIGN VEHICLE.
16. ALL LOTS ARE "A" LOTS (FRONT DRAINING) UNLESS OTHERWISE SHOWN (SEE PLAN VIEW). "B" LOTS ARE 60'± FRONT/60'± REAR DRAINING, AND "B-1" LOTS ARE 20'± FRONT/100'± REAR DRAINING.
17. DEVELOPER WILL COVENANT TO HOLD TOWN OF MARANA, ITS SUCCESSORS AND ASSIGNS, HARMLESS IN THE EVENT OF FLOODING.
18. DRAINAGE WILL NOT BE ALTERED, DISTURBED, OR OBSTRUCTED WITHOUT THE APPROVAL OF THE MARANA TOWN COUNCIL.
19. THE AREA BETWEEN THE 100-YEAR FLOOD LIMITS REPRESENTS AN AREA THAT MAY BE SUBJECT TO FLOODING FROM A 100-YEAR FREQUENCY FLOOD AND ALL LAND IN THIS AREA WILL BE RESTRICTED TO USES THAT ARE COMPATIBLE WITH FLOODPLAIN MANAGEMENT AS APPROVED BY THE FLOODPLAIN ADMINISTRATOR.
20. ALL PUBLIC ROADS AND DRAINAGE IMPROVEMENTS ON OR ADJACENT TO THIS DEVELOPMENT SHALL BE CONSTRUCTED TO MINIMUM PAG STANDARDS AND SPECIFICATIONS FOR PUBLIC IMPROVEMENTS, 2015 EDITION, IN ACCORDANCE WITH PLANS ACCEPTED BY THE TOWN OF MARANA.
21. THIS PROJECT LIES WITHIN THE PLANNED WATER SERVICE AREA OF THE TUCSON WATER DEPARTMENT WHICH IS DESIGNATED BY THE DEPARTMENT OF WATER RESOURCES AS HAVING AN ASSURED WATER SUPPLY.
22. THIS PROJECT LIES WITHIN THE PLANNED WASTEWATER SERVICE AREA OF THE PIMA COUNTY REGIONAL WASTEWATER RECLAMATION DEPARTMENT.
23. THE ON-SITE SANITARY SEWAGE COLLECTION LINES WILL BE PUBLIC AND DESIGNED AND CONSTRUCTED TO PIMA COUNTY REGIONAL WASTEWATER RECLAMATION DEPARTMENT STANDARDS. ALL BUILDING CONNECTION SEWERS WILL BE PRIVATELY MAINTAINED.
24. A PROJECT CONSTRUCTION PERMIT MUST BE SECURED FROM PIMA COUNTY REGIONAL WASTEWATER RECLAMATION DEPARTMENT BEFORE BEGINNING ANY WORK ON THIS PROJECT.
25. ANY UTILITIES THAT MAY HAVE TO BE RELOCATED AS A RESULT OF THIS DEVELOPMENT WILL BE RELOCATED AT NO EXPENSE TO THE TOWN OF MARANA AND/OR PIMA COUNTY.
26. ALL NEW UTILITIES AND ALL EXISTING UTILITIES WITHIN OR CONTIGUOUS TO THIS SITE SHALL BE PLACED UNDERGROUND EXCEPT ELECTRICAL TRANSMISSION LINES CARRYING 48 KV OR GREATER, AND THOSE LINES WHICH CAN BE SHOWN TO EXIST IN CURRENT OR FUTURE ELECTRICAL TRANSMISSION CORRIDORS.
27. OBJECTS AND MATERIALS WITHIN SIGHT VISIBILITY TRIANGLES SHALL BE PLACED SO AS NOT TO INTERFERE WITH A VISIBILITY PLAN DESCRIBED BY TWO HORIZONTAL LINES LOCATED 30" AND 72" ABOVE FINISHED GRADE OF THE ROADWAY SURFACE, AND SHALL CONFORM TO THE TOWN OF MARANA SUBDIVISION STREET STANDARDS.
28. A HOMEOWNER'S ASSOCIATION WILL BE FORMED TO ACCEPT RESPONSIBILITY FOR MAINTENANCE, CONTROL, SAFETY, AND LIABILITY OF THE PRIVATE STREETS, PRIVATE DRAINAGEWAYS, DRAINAGE EASEMENTS, AND COMMON AREAS.

29. FIRE FLOW FOR THIS SUBDIVISION SHALL BE A MINIMUM OF 1000 GALLONS PER MINUTE FOR A MINIMUM DURATION OF 2 HOURS. FIRE HYDRANTS SHALL BE LOCATED WITH AN AVERAGE SPACING NO GREATER THAN 500 FEET AND NO GREATER DISTANCE THAN 250 FEET FROM ANY POINT ON A STREET OR FIRE APPARATUS ACCESS ROAD TO A FIRE HYDRANT. BLUE REFLECTIVE STREET MARKERS SHALL BE PERMANENTLY AFFIXED TO THE STREET SURFACE APPROXIMATELY 8 FEET FROM THE CURB NEAREST THE HYDRANT.
30. ALL WEATHER ACCESS ROADS CAPABLE OF SUPPORTING THE IMPOSED LOAD OF 75,000 POUNDS AND REQUIRED FIRE HYDRANTS PROVIDING THE REQUIRED FIRE FLOW SHALL BE INSTALLED, TESTED AND SERVICEABLE PRIOR TO THE INTRODUCTION OF COMBUSTIBLE CONSTRUCTION MATERIALS ON THE SITE.
31. A SIGN IDENTIFYING THE NAME OF THE BUILDER, LOT NUMBER AND ADDRESS SHALL BE POSTED IN A LOCATION VISIBLE FROM THE FIRE DEPARTMENT ACCESS ROAD. THE SIGN SHALL BE MAINTAINED IN A LEGIBLE CONDITION DURING ALL PHASES OF CONSTRUCTION BEGINNING WITH INSTALLATION OF THE FLOOR SLAB AND REMAINING UNTIL THE FINAL INSPECTION.
32. INSTALLATION OF ITEMS SUCH AS LANDSCAPING, IRRIGATION, SIGNAGE, MONUMENTS, WALLS AND DRAINAGE IMPROVEMENTS IN THE PUBLIC RIGHTS-OF-WAY SHALL REQUIRE A PERPETUAL LICENSE AGREEMENT FOR INSTALLATION, MAINTENANCE AND INDEMNIFICATION.
33. DWELLINGS OVER 3600 SQUARE FEET OF FLOOR AREA UNDER ROOF, HAVING ACCESS OVER 12% GRADE, ACCESS OVER 150 FEET FROM THE NEAREST STREET TO ALL PORTIONS OF THE EXTERIOR OF THE STRUCTURE OR LOCATED IN AREAS NOT MEETING MINIMUM FIRE FLOW REQUIREMENTS SHALL BE EVALUATED BY NORTHWEST FIRE DISTRICT FOR ADDITIONAL FIRE PROTECTION MEASURES.
34. ACCEPTED IMPROVEMENT PLANS WILL BE REQUIRED PRIOR TO FINAL PLAT ACCEPTANCE.
35. ACCEPTANCE OF THIS PLAN DOES NOT AFFIRM, CERTIFY, OR APPROVE ANY LAND DIVISION THAT MAY BE CONTRARY TO STATE LAW, NOR DOES IT CERTIFY THE EXISTENCE OR COMPLIANCE WITH ANY DEED RESTRICTIONS OR EASEMENTS.
36. THE CONDITIONS, COVENANTS, AND RESTRICTIONS GOVERNING THIS PROJECT WILL INCLUDE A PROVISION STATING THAT ALL NATURAL UNDISTURBED OPEN SPACE SHALL BE LEFT ENTIRELY UNDISTURBED AND IN THEIR NATURAL DESERT STATE, EXCEPT FOR UTILITY INSTALLATIONS, CONSTRUCTED DRAINAGE WAYS AND ROAD CROSSINGS, WHICH SHALL BE REVEGETATED WITH NATIVE SPACES SIMILAR TO THOSE FOUND IN THE SURROUNDING AREA.
37. ALL WALLS SHALL BE CONSTRUCTED OF, OR PAINTED, WITH GRAFFITI-RESITANT MATERIALS.
38. ALL SIGNAGE TO BE APPROVED UNDER A SEPARATE PERMIT.
39. THIS PROJECT IS SUBJECT TO DESIGN EXCEPTION PER TOM #ENG2009-007. CONDITION IS AS FOLLOWS:
- LOTS 1 THROUGH 32 WILL BE EQUIPPED WITH AUTOMATIC FIRE SPRINKLERS.

SINGLE STORY BUILDING RESTRICTION

- PER REZONING ORDINANCE NO. 2018.023, SECTION 3, CONDITION NO. 20, THE FOLLOWING LOTS SHALL BE RESTRICTED TO SINGLE STORY HOMES:
LOTS 1 - 14, LOTS 24 - 26 AND LOTS 31 - 32



SHEET LAYOUT

ACCEPTANCE

BASIS OF BEARINGS

THE BASIS OF BEARINGS FOR THIS SURVEY IS A STRAIGHT LINE BETWEEN A BRASS STEM IN CONCRETE (BRASS CAP MISSING) AT THE EAST 1/4 CORNER OF SECTION 26 AND A G.L.O. BRASS CAP AT THE NORTHEAST CORNER OF SECTION 26 ACCORDING TO THE FOLLOWING SUBDIVISION PLATS: HERITAGE HIGHLANDS VI AT DOVE MOUNTAIN, BOOK 56 AT PAGE 32 OF MAPS AND PLATS, AND HIDDEN SPRINGS, BOOK 61 AT PAGE 25 OF MAPS AND PLAT, RECORDS OF PIMA COUNTY. THE BEARING OF SAID LINE IS N 00°00'22" W.

BASIS OF ELEVATIONS

THE BASIS OF ELEVATIONS FOR THIS SURVEY IS THE RIM OF A SEWER MANHOLE (SEWER MANHOLE 4) APPROX. 43 FEET NORTH AND 51 FEET EAST OF THE SOUTHEAST CORNER OF THE SUBJECT PROPERTY. THE ELEVATION OF THE RIM OF THIS MANHOLE IS 2755.01 FEET, NAVD88 DATUM. ALL CONTOURS AND ELEVATIONS SHOWN ON THIS SURVEY ARE ON NAVD88 DATUM.

THE SOURCE OF THIS ELEVATION IS THE CENTERLINE INVERT OF SEWER MANHOLE 4 AS SHOWN ON THIS MAP AND PER THE PLANS TITLED "SPINE SEWER SYSTEM TO SERVE DOVE MOUNTAIN", PIMA COUNTY PLAN NO. G-97-099, SHEET 3 OF 6. THE PLAN CENTERLINE INVERT ELEVATION FOR THIS MANHOLE IS 2744.75 FEET, NGVD29 DATUM. TO CONVERT TO NAVD88 DATUM, 2.23 FEET WAS ADDED TO THIS ELEVATION PER THE LOCAL CONVERSION FACTOR FROM PIMA COUNTY SURVEY RECORDS. THE TRUE NAVD88 ELEVATION OF SAID MANHOLE INVERT IS 2,746.98 FEET AND THE RIM ELEVATION IS 2755.01 FEET.

OPEN SPACE CALCULATIONS

- LANDSCAPE BUFFERYARD PORTION OF COMMON AREA "A" = .5 ACRES (REVEG. OPEN SPACE)
- COMMON AREA "C" = 7.8 ACRES (NATURAL OPEN SPACE)
TOTAL REVEG. OPEN SPACE AND NATURAL OPEN SPACE = 8.3 ACRES (48% OF PROJECT AREA)

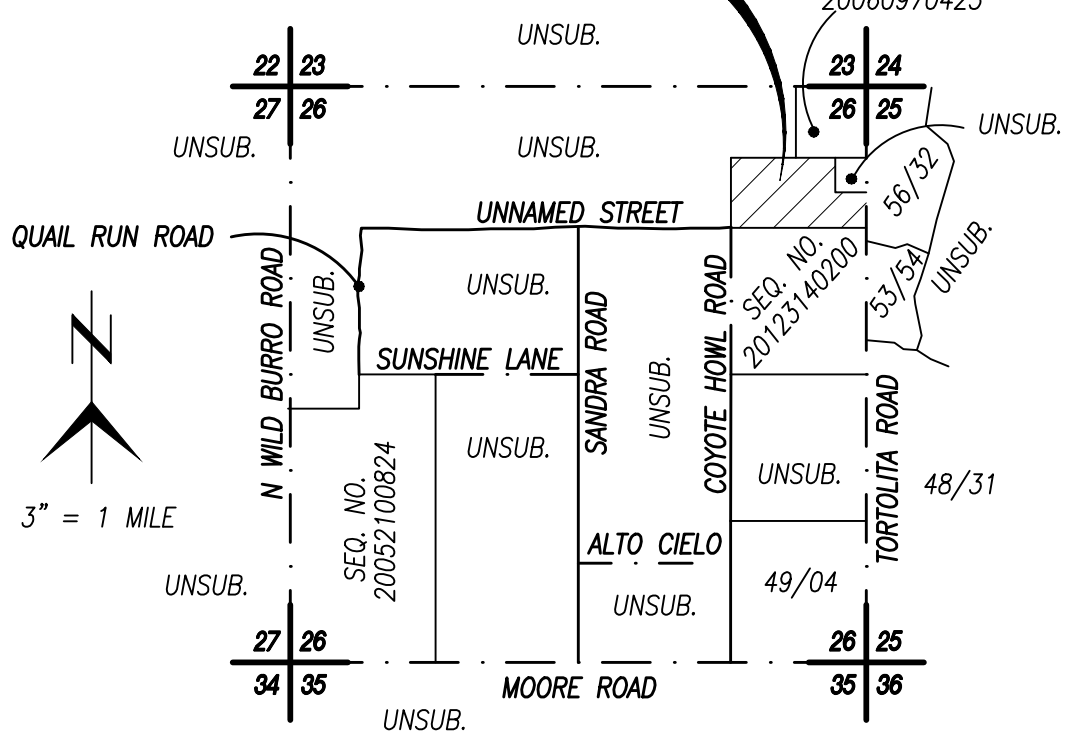
LANDSCAPE CALCULATIONS

LANDSCAPE BUFFERYARD AREA = 20,456 S.F.
TOTAL LANDSCAPED AREA = 79,275 S.F.

LOT COVERAGE CALCULATION

- TOTAL BUILDING AREA ALLOWED: 50%
TOTAL BUILDING AREA PROPOSED: 50% (TO BE CONFIRMED AT THE TIME OF BUILDING PERMITS)

THIS PROJECT



LOCATION PLAN

A PORTION OF SECTION 26, T11S, R12E,
G&SRB&M, TOWN OF MARANA, PIMA COUNTY, ARIZONA

LEGEND

- SUBDIVISION BOUNDARY
ROAD CENTERLINE
FOUND MONUMENT AND/OR SECTION CORNER OR 1/4 CORNER AS DESCRIBED
SURVEY MONUMENT TO BE SET
SET 1/2" REBAR TAGGED "RLS 23379" EXCEPT WHERE OTHERWISE SHOWN
RECORD DIMENSION PER PARCEL DEED
RECORD DIMENSION PER MAPS & PLATS 61/25
EASEMENT LINE (SEE ALSO NEW EASEMENT KEYNOTES)
PROPOSED PUBLIC SEWER/MANHOLE
EXISTING PUBLIC SEWER/MANHOLE (APPROXIMATE LOCATION)
PROPOSED WATER
EXISTING WATER (APPROXIMATE LOCATION)
EXISTING GAS (APPROXIMATE LOCATION)
EXISTING ELECTRIC TRANSFORMER (APPROXIMATE LOCATION)
EXISTING TELEPHONE PEDESTAL/FIBER OPTIC (APPROXIMATE LOCATION)
SIGHT VISIBILITY TRIANGLE ("SVT") AREA (EASEMENT TO BE GRANTED BY FINAL PLAT WHERE APPLICABLE)
DIMENSION: TORTOLITA ROAD - 240'x15' (NEAR SIDE); 190'x15' (FAR SIDE)
DIMENSION: INTERIOR STREETS - 240'x15' (NEAR SIDE); 190'x15' (FAR SIDE)
EXISTING CONTOURS
NEW PAVEMENT
EXISTING PAVEMENT
DRAINAGE CONCENTRATION/SHEETFLOW TEXT
PRELIMINARY PAD GRADES
PRELIMINARY SPOT GRADES
DETAIL #
SHEET #
ADDRESSING LOCATION/LOT ACCESS

OWNER/DEVELOPER:

DR. HORTON, INC., A DELAWARE CORPORATION
ATTN: BRENT DAVIS
3580 W. INA ROAD, STE. 100
TUCSON, AZ 85741-2270

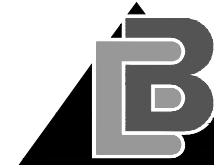
ADMINISTRATIVE ADDRESS

13423 N. TORTOLITA ROAD, MARANA, ARIZONA 85658

#PRV2006-001

P20WS00029

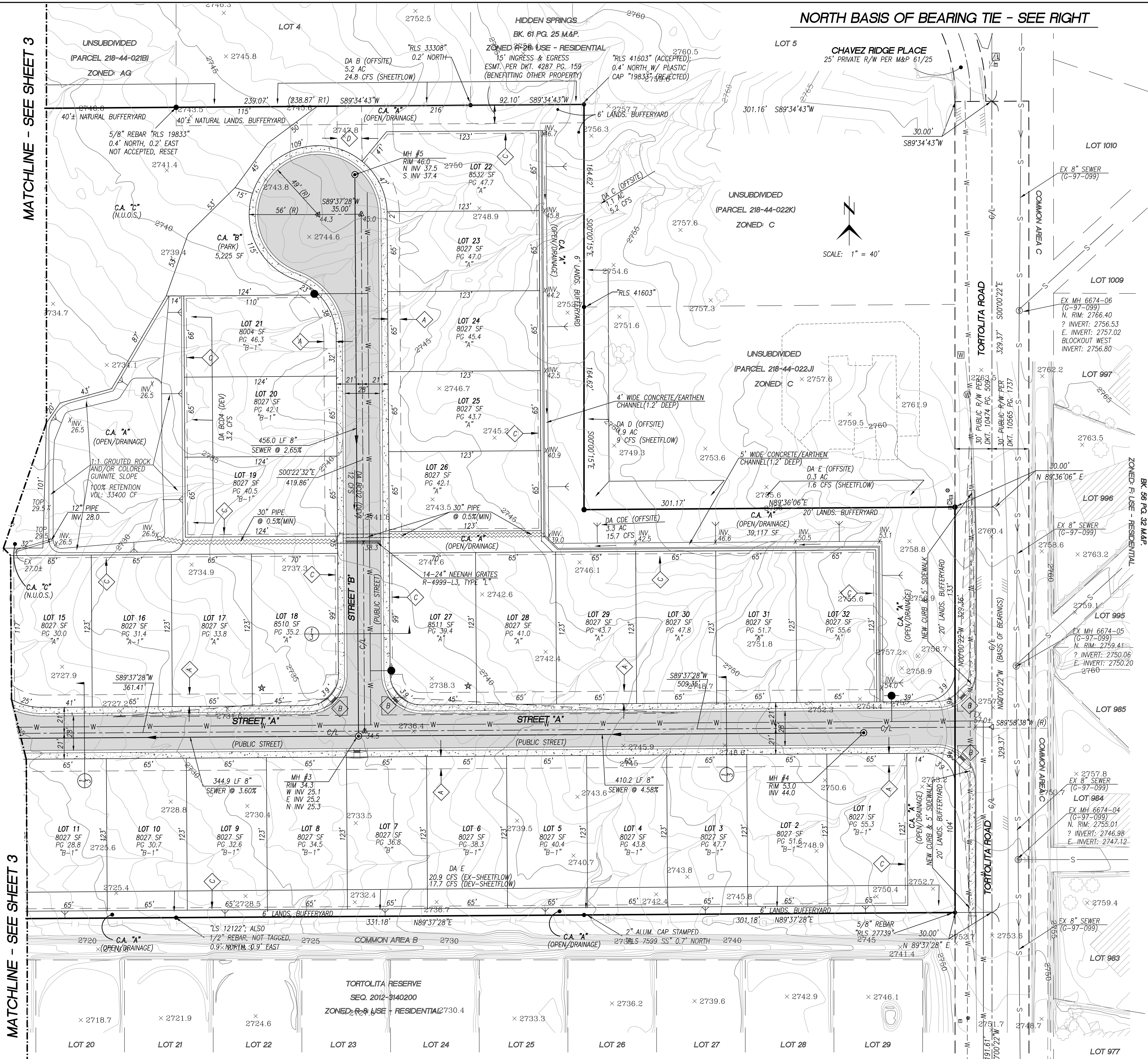
REFERENCE: PCZ1806-001; ENG2009-007



PRELIMINARY PLAT for
TORTOLITA RIDGE, LOTS 1 - 32
AND COMMON AREAS "A" (OPEN SPACE/DRAINAGE), "B" (PARK)
AND "C" (NATURAL UNDISTURBED OPEN SPACE)
BEING A PORTION OF SECTION 26, T11S, R12E, G&SRB&M,
TOWN OF MARANA, PIMA COUNTY, ARIZONA
Baker & Associates Engineering, Inc.
3561 E. Sunrise Drive, Suite #225 Tucson, Arizona 85718 (520) 318-1950 Fax (520) 318-1930

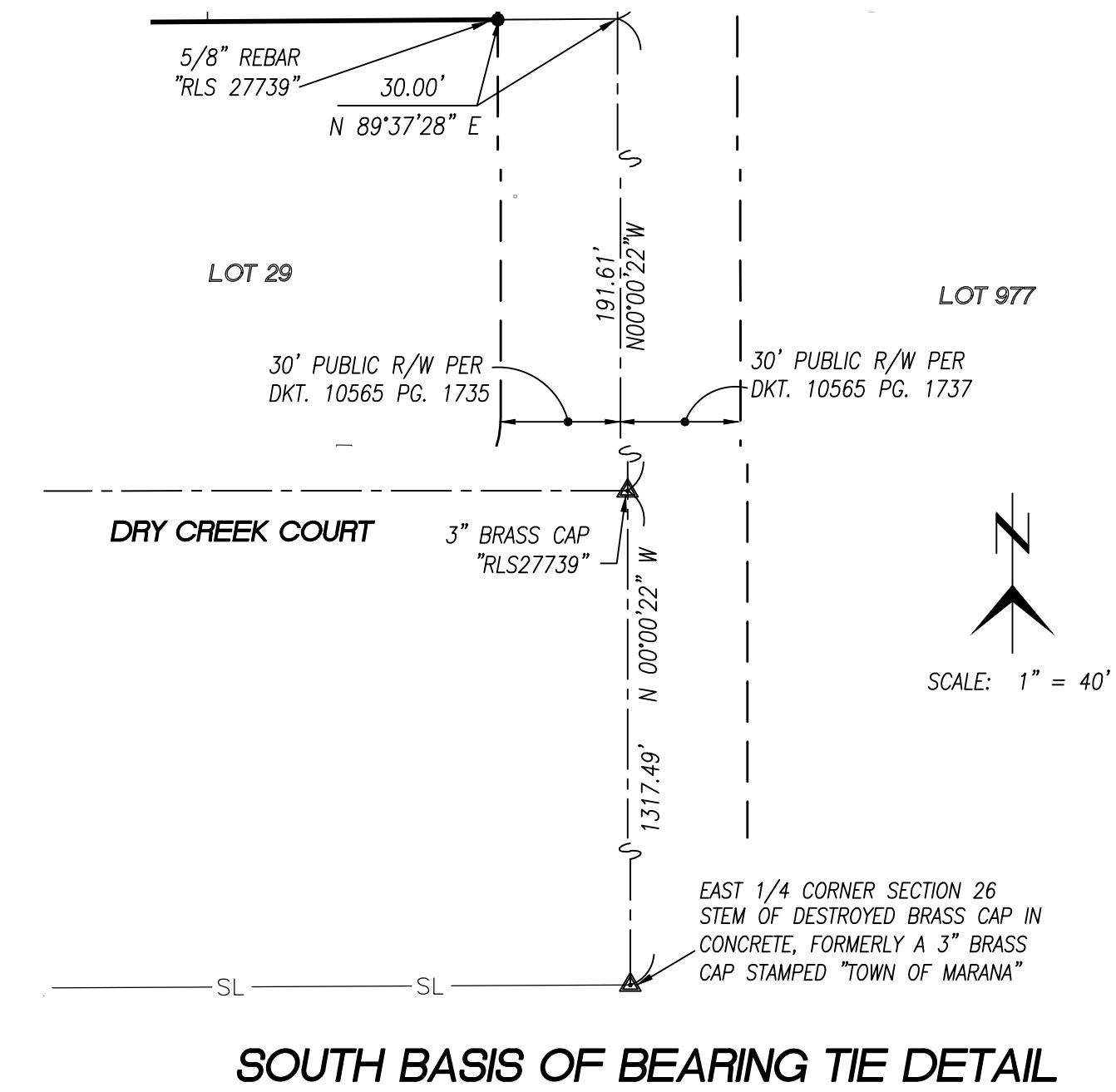
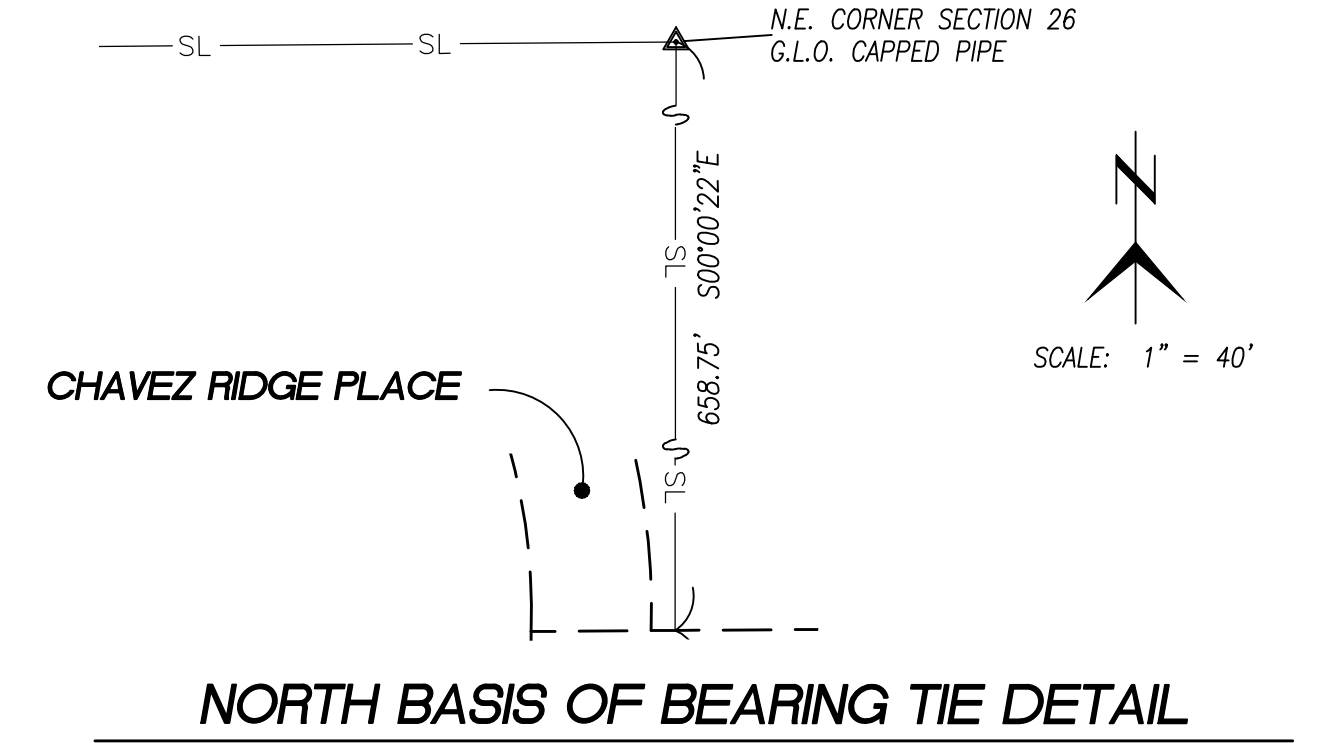
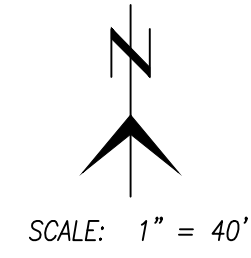
SCALE: HORIZ: 1" = 1/4" C.I.: N/A	DRAWN BY: JVA DESIGNED BY: MVM CHECKED BY: MVM	DATE: 6/16/20 REV. DATE: 8/20/20 REV. DATE: 11/3/20	DRAWING # 2492-MAR-PP1.DWG PLAN #2492	SHEET 1 of 3
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MATCHLINE - SEE SHEET 3



MATCHLINE - SEE SHEET 3

NORTH BASIS OF BEARING TIE - SEE RIGHT



SINGLE STORY BUILDING RESTRICTION

PER REZONING ORDINANCE NO. 2018.023, SECTION 3, CONDITION NO. 20, THE FOLLOWING LOTS SHALL BE RESTRICTED TO SINGLE STORY HOMES:
LOTS 1 - 14, LOTS 24 - 26 AND LOTS 31 - 32

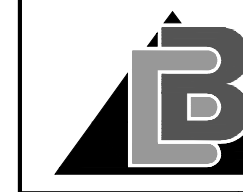
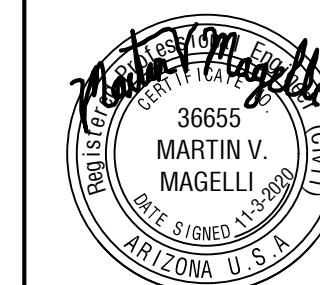
NEW EASEMENT KEYNOTES

- A** NEW 10' PUBLIC UTILITY, ROADWAY MAINTENANCE AND SIGNAGE EASEMENT TO BE GRANTED BY THE FINAL PLAT
- B** NEW SIGHT VISIBILITY TRIANGLE ("SVT") EASEMENT AREA TO BE GRANTED TO THE PUBLIC BY THE FINAL PLAT (WHERE APPLICABLE)
- C** NEW 1' PRIVATE NO VEHICULAR ACCESS EASEMENT TO BE GRANTED BY THE FINAL PLAT
- D** NEW 20' PUBLIC SEWER EASEMENT TO BE GRANTED BY THE FINAL PLAT

#PRV2006-001

P20WS00029

REFERENCE: PC21806-001; ENG2009-007



PRELIMINARY PLAT for
TORTOLITA RIDGE, LOTS 1 - 32
AND COMMON AREAS "A" (OPEN SPACE/DRAINAGE), "B" (PARK)
AND "C" (NATURAL UNDISTURBED OPEN SPACE)
BEING A PORTION OF SECTION 26, T11S, R12E, G&SRB&M,
TOWN OF MARANA, PIMA COUNTY, ARIZONA
Baker & Associates Engineering, Inc.
3561 E. Sunrise Drive, Suite #225 Tucson, Arizona 85718 (520) 318-1950 Fax (520) 318-1930

SCALE: HORIZ: 1"=40' V: 1"=10'	DRAWN BY: JVA DESIGNED BY: MVM CHECKED BY: MVM	DATE: 6/16/20 REV. DATE: 8/20/20 REV. DATE: 11/3/20	DRAWING # 2492-MAR-PP1.DWG PLAN #2492	SHEET 2 OF 3
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SCALE: 1" = 40'

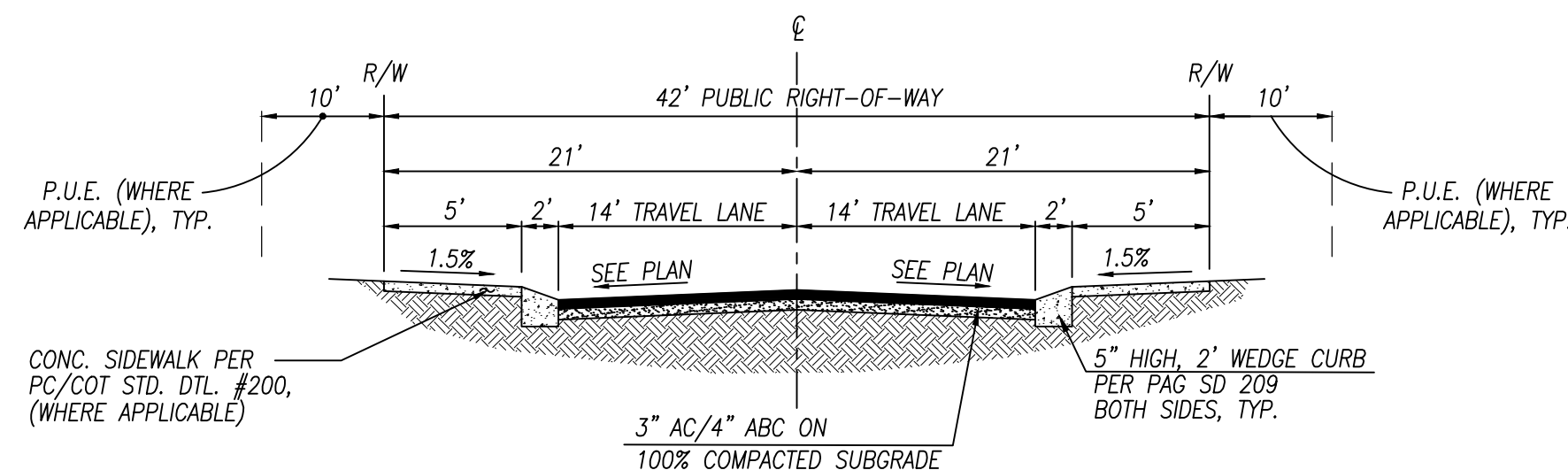
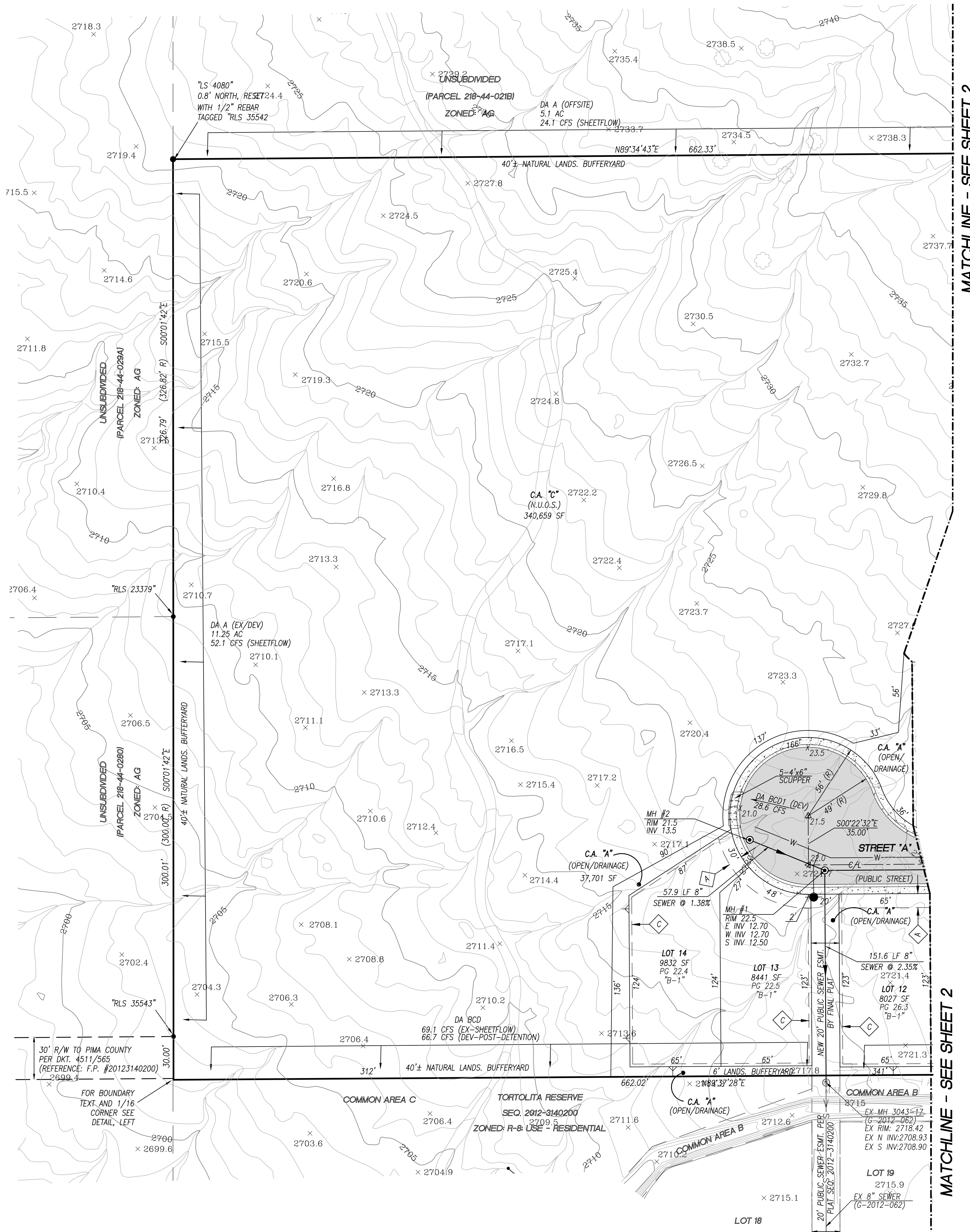
SCALE: 1" = 40'

30' R/W TO PIMA COUNTY
PER DKT. 4511/565
(REFERENCE: F.P. #20123140200)

1/2" REBAR "LS 4080"
PREVIOUSLY ACCEPTED
FOR PARCELS NORTH

2" ALUMINUM CAP
"RLS 12122"
ACCEPTED FOR
TORTOLITA RESERVE

BOUNDARY TEXT/
1/16 CORNER DETAIL



1 TYPICAL PUBLIC 42' ROADWAY X-SECTION

SINGLE STORY BUILDING RESTRICTION

- PER REZONING ORDINANCE NO. 2018.023, SECTION 3, CONDITION NO. 20, THE FOLLOWING LOTS SHALL BE RESTRICTED TO SINGLE STORY HOMES:

LOTS 1 - 14, LOTS 24 - 26 AND LOTS 31 - 32

NEW EASEMENT KEYNOTES

- A** NEW 10' PUBLIC UTILITY, ROADWAY MAINTENANCE AND SIGNAGE EASEMENT TO BE GRANTED BY THE FINAL PLAT
- B** NEW SIGHT VISIBILITY TRIANGLE ("SVT") EASEMENT AREA TO BE GRANTED TO THE PUBLIC BY THE FINAL PLAT (WHERE APPLICABLE)
- C** NEW 1' PRIVATE NO VEHICULAR ACCESS EASEMENT TO BE GRANTED BY THE FINAL PLAT
- D** NEW 20' PUBLIC SEWER EASEMENT TO BE GRANTED BY THE FINAL PLAT

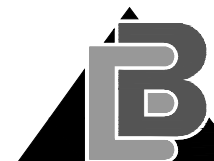
#PRV2006-001

P20WS00029

REFERENCE: PC21806-001; ENG2009-007



PRELIMINARY PLAT for
TORTOLITA RIDGE, LOTS 1 - 32
AND COMMON AREAS "A" (OPEN SPACE/DRAINAGE), "B" (PARK)
AND "C" (NATURAL UNDISTURBED OPEN SPACE)
BEING A PORTION OF SECTION 26, T11S, R12E, G&SRB&M,
TOWN OF MARANA, PIMA COUNTY, ARIZONA



Baker & Associates Engineering, Inc.

3561 E. Sunrise Drive, Suite #225 Tucson, Arizona 85718 (520) 318-1950 Fax (520) 318-1930

SCALE: HORIZ: 1"=40' C.I.=1'	DRAWN BY: JVA DESIGNED BY: MVM CHECKED BY: MVM	DATE: 6/16/20 REV. DATE: 8/20/20 REV. DATE: 11/3/20	DRAWING # 2492-MAR-PP1.DWG PLAN #2492	SHEET 3 of 3
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NEIGHBORHOOD DESIGN PLAN

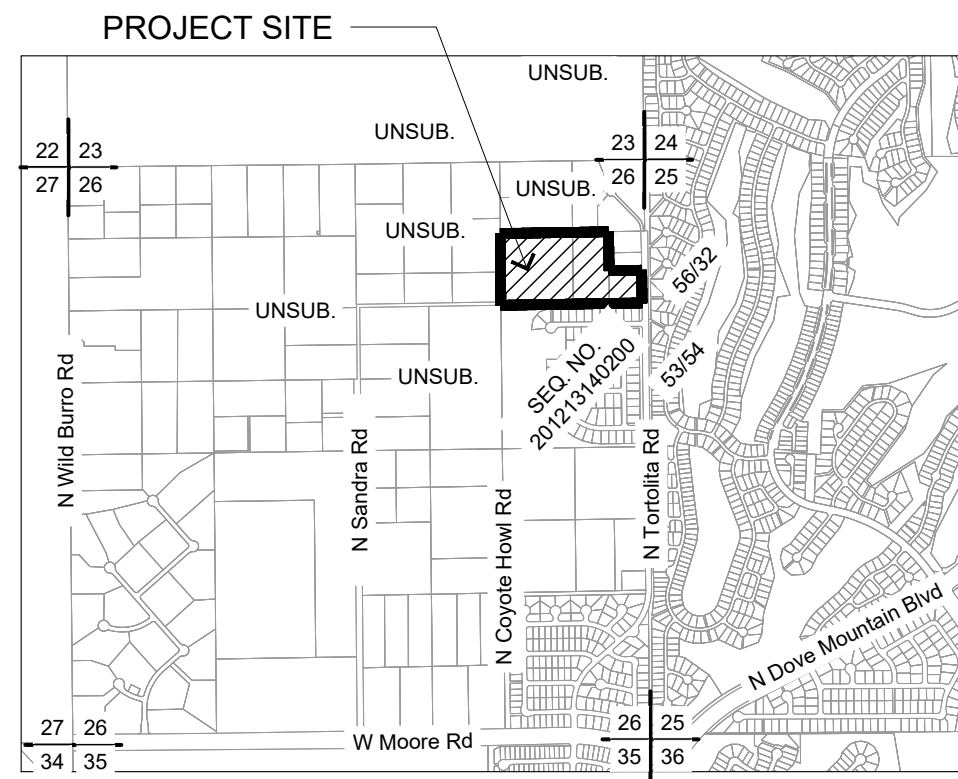
TORTOLITA RIDGE

(Lots 1-32)

TOWN OF MARANA

CASE #: LPR2008-001

OCTOBER 14, 2020



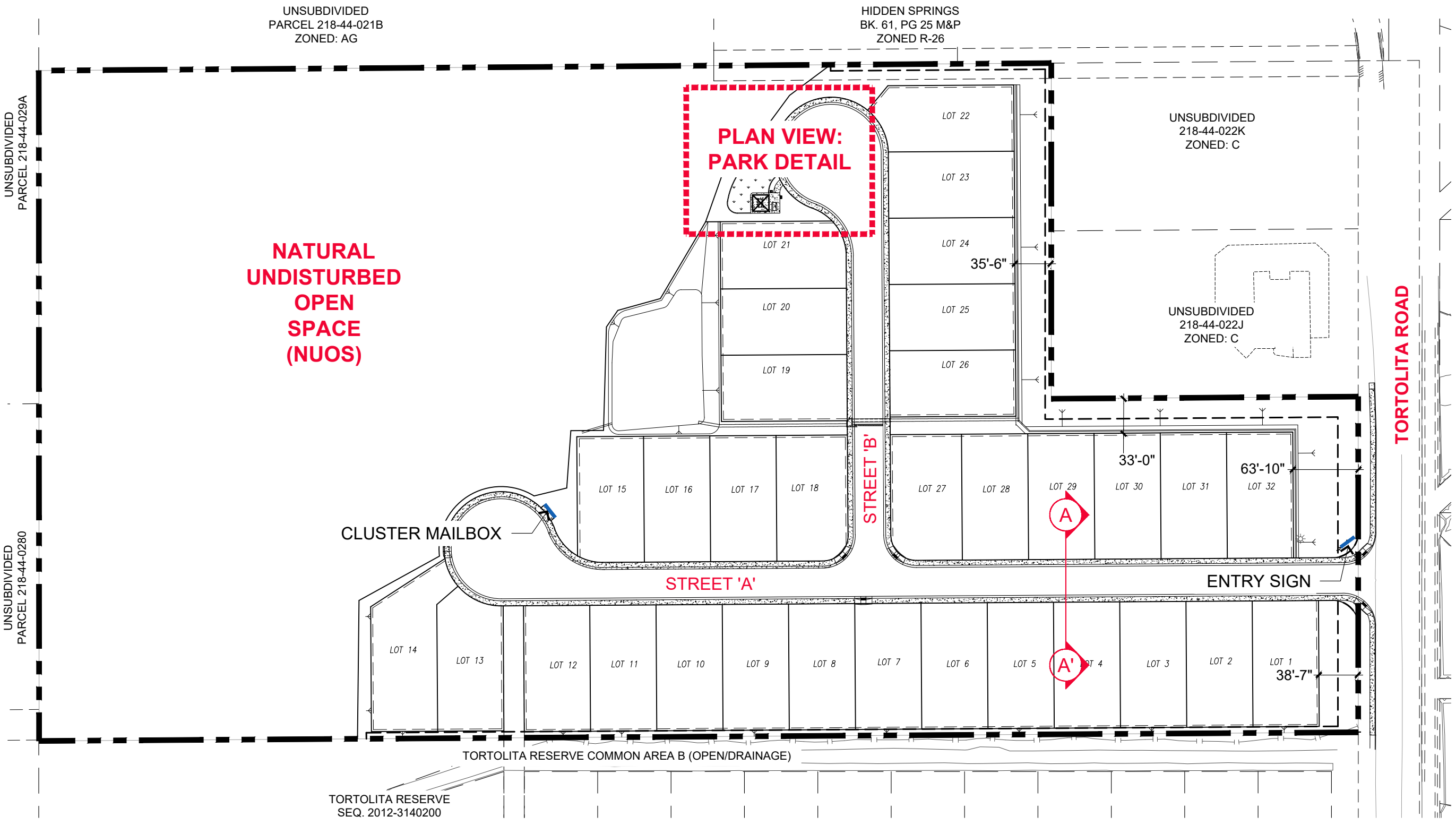
A PORTION OF SECTION 26,
T-11-S, R-12-E,
G&SRB&M, TOWN OF MARANA, PIMA COUNTY, ARIZONA

OWNER/DEVELOPER:
DR HORTON, INC.
3580 W. INA ROAD, STE. 100
TUCSON, AZ 85741
CONTACT: BRENT T. DAVIS
TEL: 520-790-6005

ENGINEER:
BAKER & ASSOCIATES ENGINEERING, INC.
3561 E. SUNRISE DRIVE, STE. 225
TUCSON, AZ 85718
CONTACT: MARTY MAGELLI
TEL: 520-318-1950

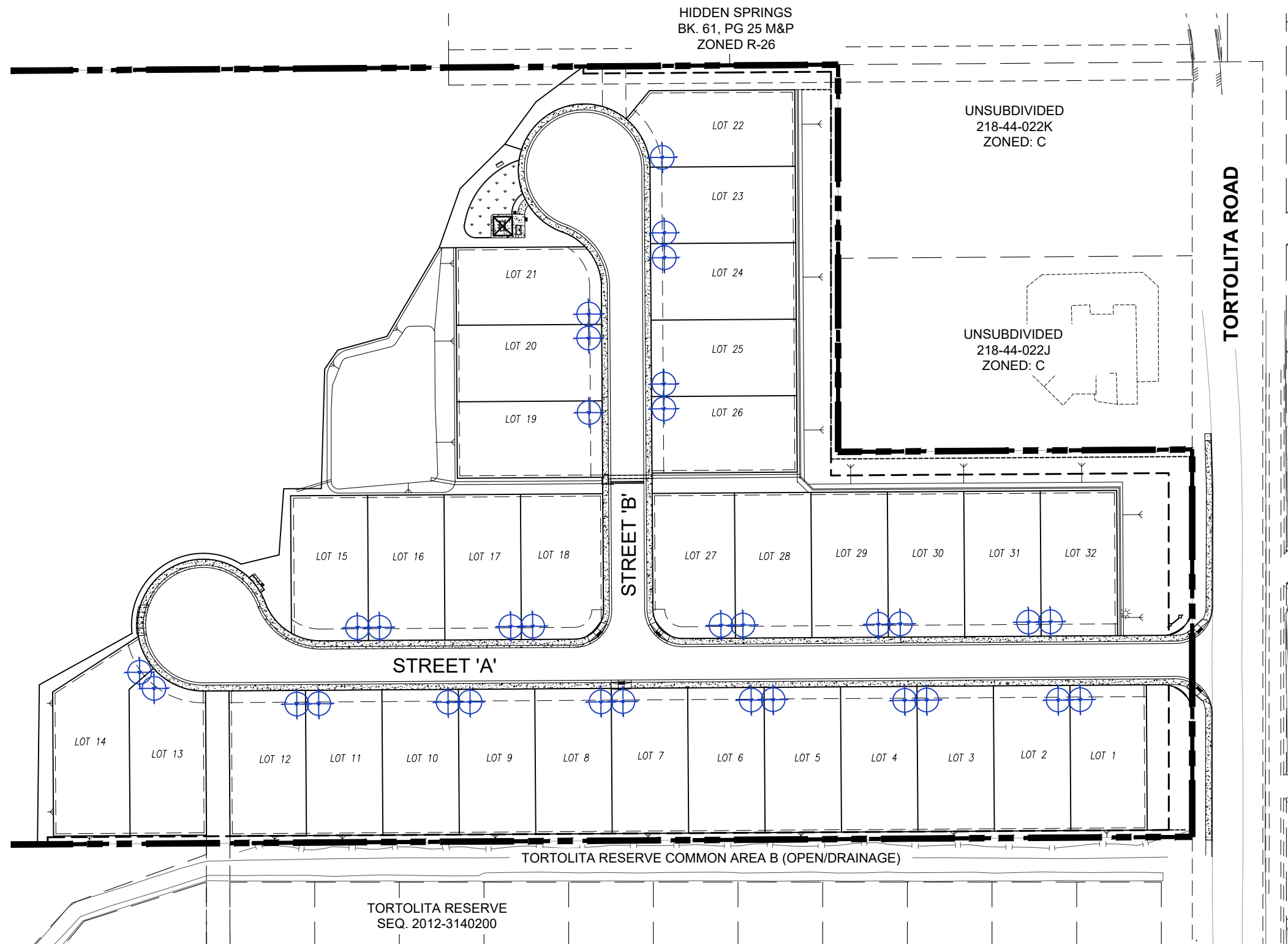
REFERENCE NUMBERS:
PRV-2006-001
PCZ-1806-001
NPP2008-001





NOTE: INFORMATION DEPICTED HERE IS
CONCEPTUAL AND SUBJECT TO CHANGE AT
TIME OF CONSTRUCTION.

PLAN: STREET TREES



LEGEND

 STREET TREE (PLANTED IN FIRST 10' OF EACH LOT)

NOTE: INFORMATION DEPICTED HERE IS CONCEPTUAL AND SUBJECT TO CHANGE AT TIME OF CONSTRUCTION.

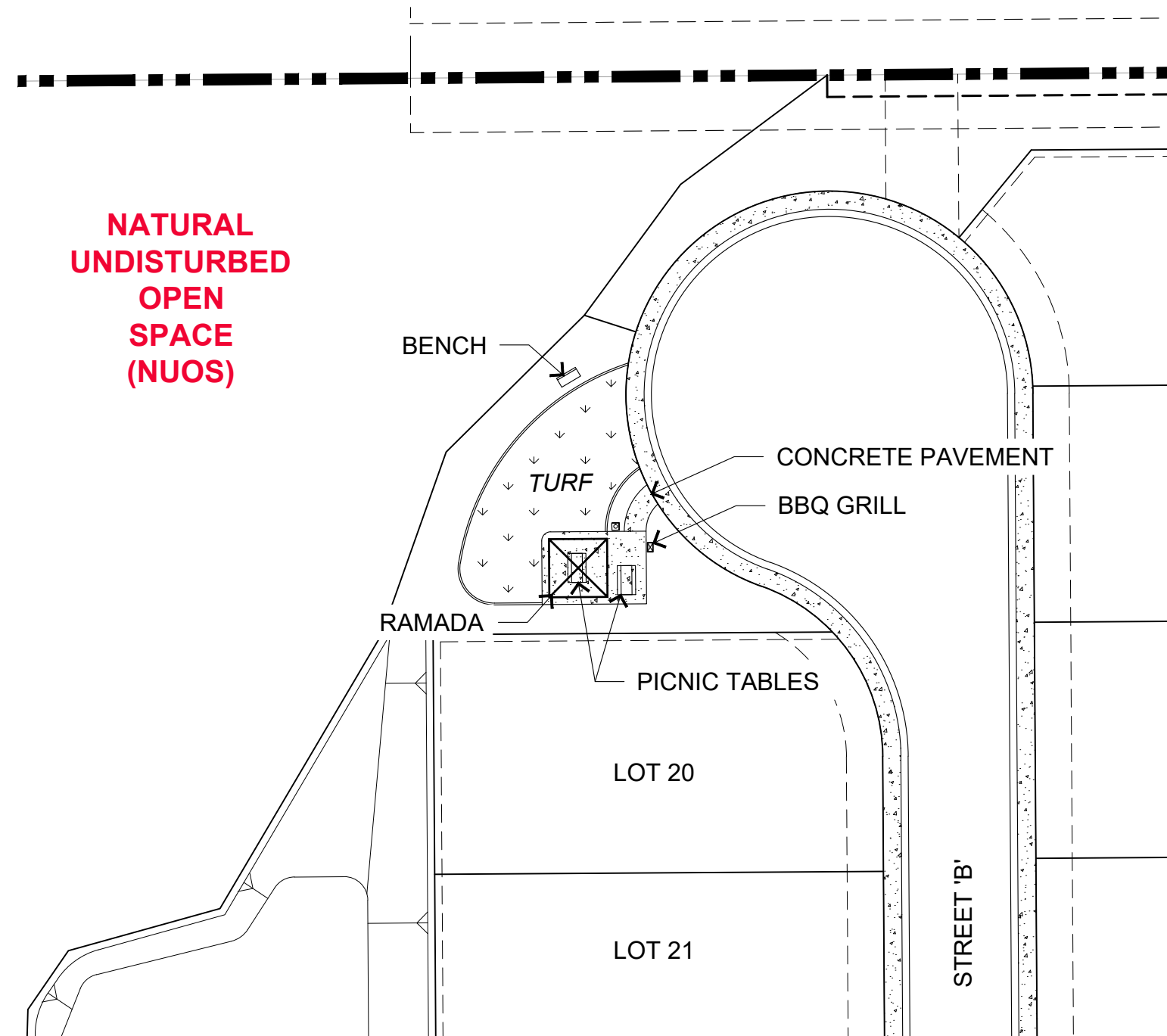
TORTOLITA RIDGE

AMENDED Regular Council Meeting 12/01/2020

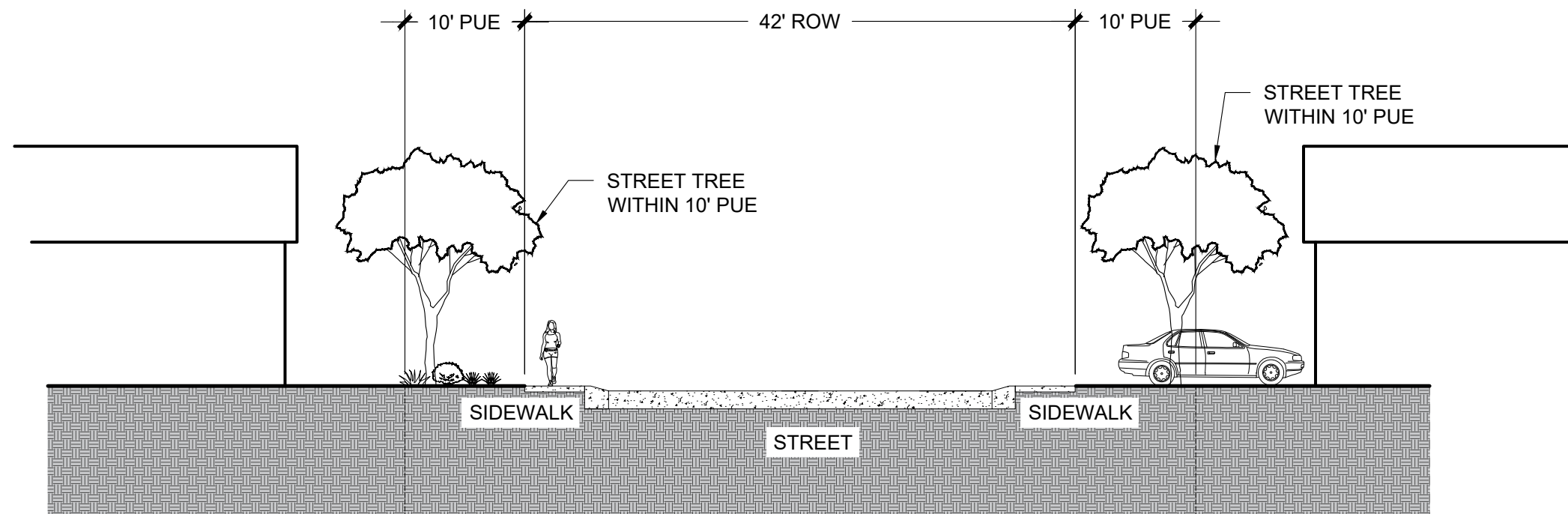
0' 50' 100'
SCALE: 1"=100'-0"
PROJECT: DRH-21 DATE: 08/19/20
FILE NAME: DRH21 NDP.DWG



 THE PLANNING CENTER
a division of TPC Group, Inc.
2100 N. 1st Avenue, Suite 200, Tucson, AZ 85701
Page 17 of 177

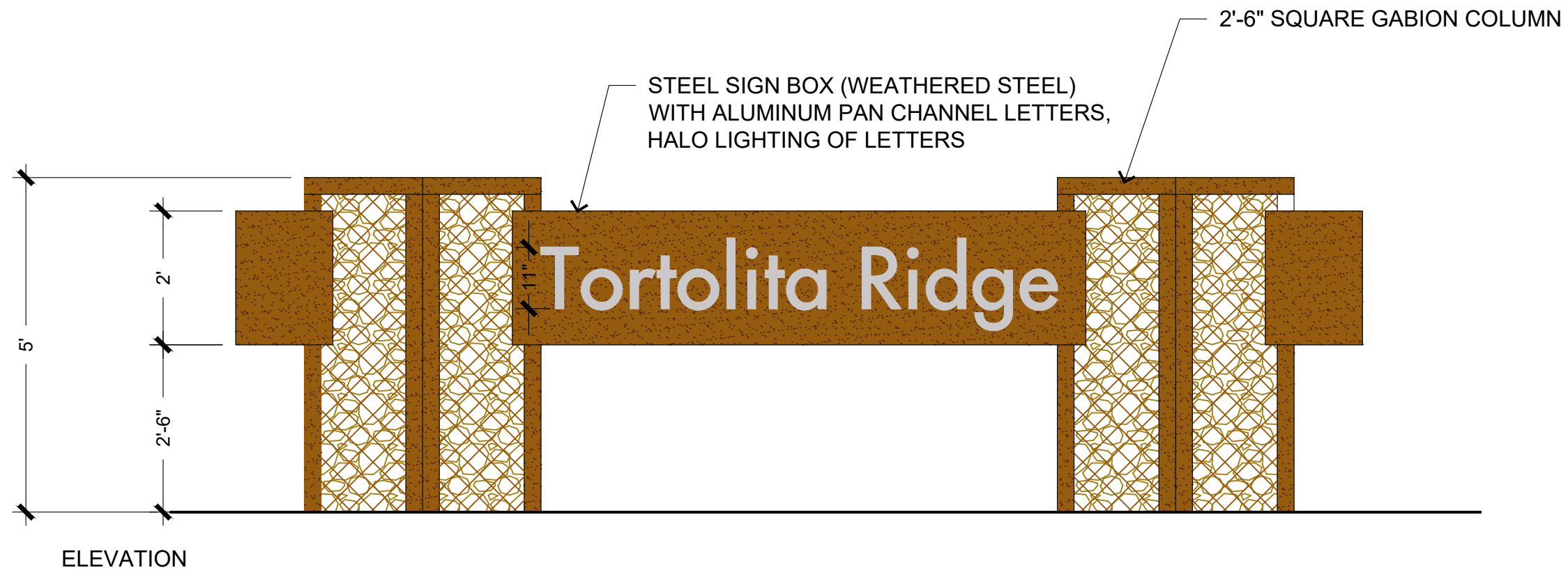
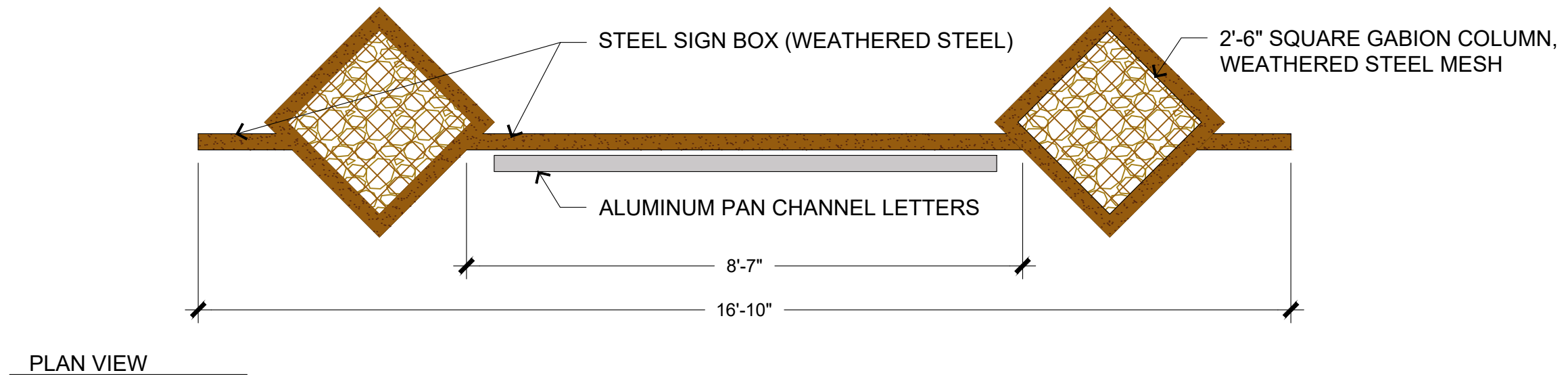


SECTION A-A': STREET



NOTE: INFORMATION DEPICTED HERE IS
CONCEPTUAL AND SUBJECT TO CHANGE AT
TIME OF CONSTRUCTION.

ENTRY SIGN



1 ENTRY SIGN ELEVATION

SCALE: 1/2" = 1'-0"

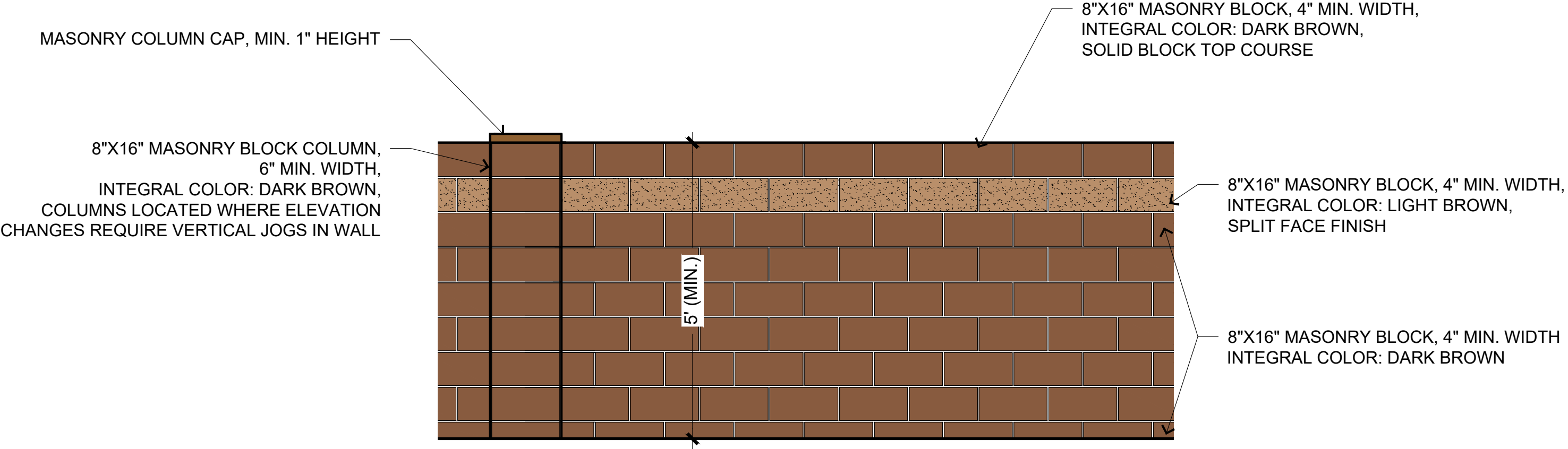
NOTE: INFORMATION DEPICTED HERE IS CONCEPTUAL AND SUBJECT TO CHANGE AT TIME OF CONSTRUCTION.

TORTOLITA RIDGE

AMENDED Regular Council Meeting 12/01/2020

PROJECT: DRH-21
FILE NAME: DRH21 NDP.DWG

DECORATIVE PERIMETER WALL

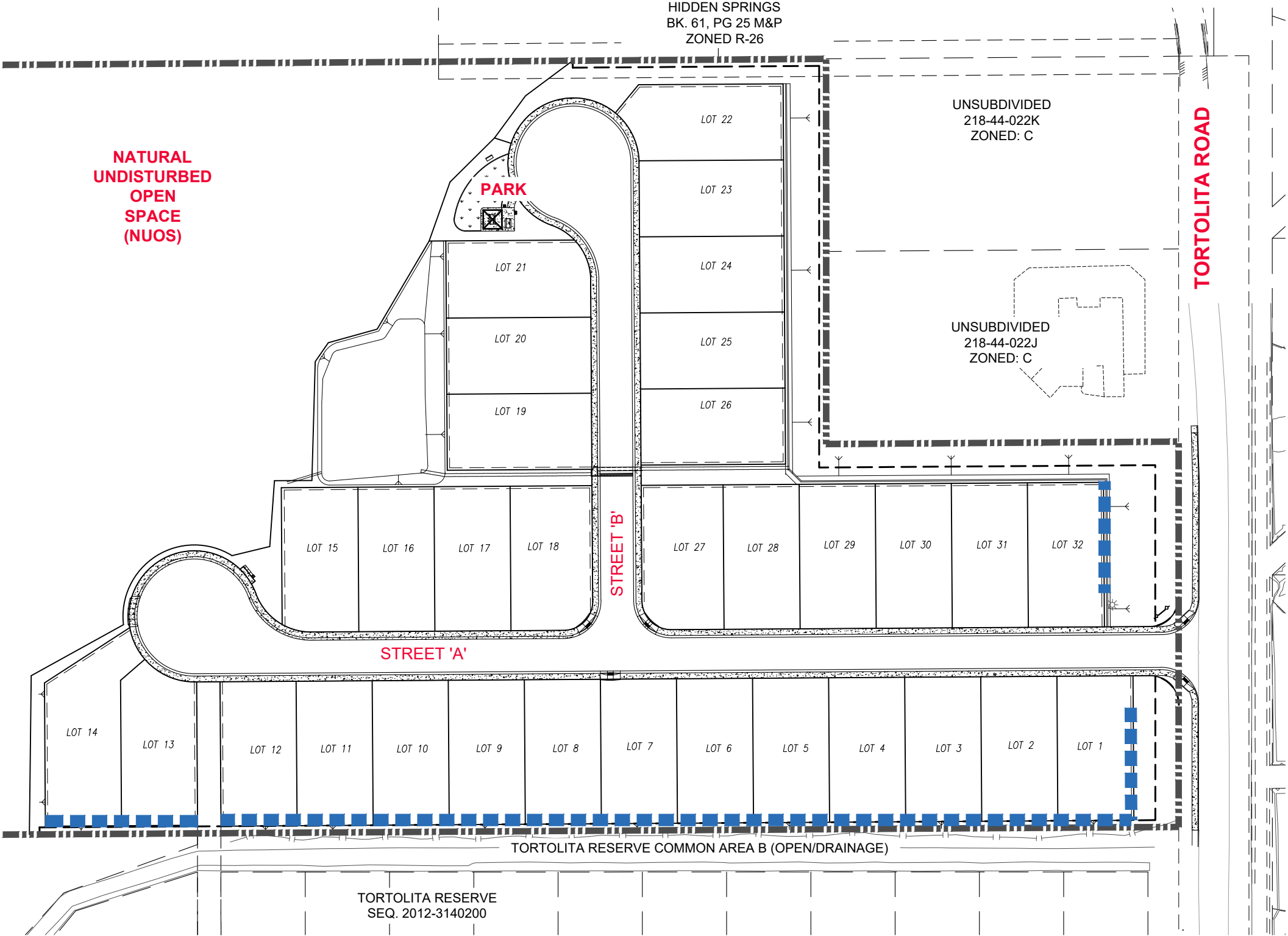


1 DECORATIVE PERIMETER WALL ELEVATION

SCALE: 1/2"=1'-0"

NOTE: INFORMATION DEPICTED HERE IS CONCEPTUAL AND SUBJECT TO CHANGE AT TIME OF CONSTRUCTION.

PLAN: DECORATIVE PERIMETER WALL



LEGEND

■ ■ ■ ■ ■ 5' DECORATIVE PERIMETER WALL

NOTE: ALL OTHER WALLS AT BACKS OF LOTS SHALL BE MASONRY WALLS WITH A MINIMUM HEIGHT OF 5'.

NOTE: INFORMATION DEPICTED HERE IS CONCEPTUAL AND SUBJECT TO CHANGE AT TIME OF CONSTRUCTION.



Council-Regular Meeting

C2

Meeting Date: 12/01/2020

To: Mayor and Council

From: Cherry L. Lawson, Town Clerk

Date: December 1, 2020

Subject: Approval of the Regular Council Meeting Summary Minutes of November 17, 2020, and the Council Study Session Meeting Summary Minutes of November 10, 2020, and the Council Study Session Meeting Summary Minutes of October 13, 2020 (Cherry L. Lawson).

Attachments

Regular Council Meeting Summary Minutes, 11/17/2020

Council Study Session Meeting Summary Minutes, 11/10/2020

Council Study Session Meeting Summary Minutes, 10/13/2020



MARANA TOWN COUNCIL

REGULAR COUNCIL MEETING

11555 W. Civic Center Drive, Marana, Arizona 85653
Council Chambers, November 17, 2020, at or after 6:00 PM

Ed Honea, Mayor
Jon Post, Vice Mayor
Patti Comerford, Council Member
Jackie Craig, Council Member
Herb Kai, Council Member
John Officer, Council Member
Roxanne Ziegler, Council Member

SUMMARY MINUTES

CALL TO ORDER AND ROLL CALL

Vice Mayor Post called the meeting to order at 6:00 PM and directed the Clerk to call the roll. Mayor Honea (Excused), Vice Mayor Post, Council Members: Jackie Craig, Patti Comerford, Roxanne Ziegler, John Officer, and Herb Kai.

PLEDGE OF ALLEGIANCE/INVOCATION/MOMENT OF SILENCE: Led by Vice Mayor Post.

APPROVAL OF AGENDA

Council Member Ziegler moved and Council Member Kai second the motion and removing Item A5 from the agenda. Motion passes, 6-0.

CALL TO THE PUBLIC

Vice Mayor Post opened the meeting to receive public comments. No comments were offered.

PROCLAMATIONS

Regular Council Meeting Summary Minutes 11/17/2020

AMENDED Regular Council Meeting 12/01/2020

Page 24 of 177

MAYOR AND COUNCIL REPORTS: SUMMARY OF CURRENT EVENTS

No reports offered.

MANAGER'S REPORT: SUMMARY OF CURRENT EVENTS

Interim Town Manager Terry Rozema reported the monthly statistics for October 2020 for single-family residential permits of 82 compared to 2019 of 79 issued. For the month of November, Marana stands at 34; November 2019 the Town issued 67. He provided an update to Covid-19 stating the Town has completed one month of being in Phase 2B return to work plan, despite the increase in numbers. The Town will continue to monitor the situation, as there are no plans at this time to change course.

PRESENTATIONS

P1 Relating to Budget; presentation of monthly financial revenues (July-October) of the Town's General Fund funds for the 2020-2021 fiscal year (Yiannis Kalaitzidis)

Finance Director Yiannis Kalaitzidis provided an overview of the monthly financial revenues (July-October) of the Town's General funds for the 2020-2021 fiscal year.

P2 Relating to Budget; presentation of first quarter results (July-September) for the Town's General Fund and other selected major funds for the 2020-2021 fiscal year (Yiannis Kalaitzidis)

Mr. Kalaitzidis provided a PowerPoint Presentation overview of the first quarter results (July-September) for the Town's General Fund and other selected major funds for the 2020-2021 fiscal year. *(A copy of the presentation is on file in the Town Clerk's Office for review.)*

CONSENT AGENDA

C1 Resolution No. 2020-120: Relating to Budget; approving the transfer of \$85,500 and \$650 in budgeted expenditure authority from the General Fund contingency line item to the restricted budget line items within the Police Department and the Legal Department, respectively, in the fiscal year 2019-2020 budget (Yiannis Kalaitzidis)

C2 Resolution No. 2020-121: Relating to Utilities: approving and authorizing the Mayor to sign a new intergovernmental agreement, effective December 1, 2020, between the Town of Marana and Pima County for provision of water consumption data and sewer user account billing services (Scott Schladweiler)

C3 Resolution No. 2020-122: Relating to Real Estate; approving and authorizing the Mayor to execute the First Amendment to Lease Agreement with Marana Chamber of Commerce, Inc. regarding the lease of Town-owned property located at 13251 N. Lon Adams Road (Jane Fairall)

C4 Resolution No. 2020-123: Relating to Real Estate; approving and authorizing the Mayor to execute a building access agreement with Qwest Corporation, d/b/a CenturyLink QC to grant access to the Town's property at 13249 North Lon Adams Road (Jane Fairall)

C5 Approval of the Council Regular Meeting Summary Minutes of October 20, 2020, and the Council Special Session Meeting Summary Minutes of October 20, 2020 (Cherry L. Lawson)

Council Member Ziegler moved and Council Member Officer second the motion approving the Consent Agenda and removing Item A5 from the agenda. Motion passes, 6-0.

LIQUOR LICENSES

BOARDS, COMMISSIONS AND COMMITTEES

B1 [Town Council acting as Floodplain Board] Resolution 2020-124: Relating to floodplain management; granting a variance to Marana Town Code Chapter 17-15 (Floodplain and Erosion Hazard Management Code) for property located at 4801 W. Flying Diamond (Keith Brann)

Town Engineer Keith Brann provided an overview of this item and the discussions from past Council Meetings related to the violation reported at the residence located at 4801 W. Flying Diamond had been expanded without first obtaining a required floodplain use permit. He explained the provisions of the Marana Town Code section 17-15-10.B.3, as well as FEMA guidelines pursuant to Section 1316 of the FIA of 1968 as amended related to the concerns of this property. Staff recommends the granting of a variance to dry flood proof the property at 4801 W. Flying Diamond subject to the following conditions:

1. Payment of floodplain variance fee per the Town's Comprehensive Fee Schedule (\$1,000);
2. Secure a Marana Floodplain Use Permit for the work;
3. Provide an Elevation Certificate of the work performed; and
4. Provide a Hold Harmless Agreement to the Town regarding the work.

Board Member Ziegler moved and Board Member Kai second the motion to adopt Resolution No. 2020-124, granting a variance to Marana Town Code Chapter 17-15 (Floodplain and Erosion Hazard Management Code) for property located at 4801 W. Flying Diamond. Motion passes, 6-0.

COUNCIL ACTION

A1 PUBLIC HEARING: Ordinance 2020.016: Relating to Development; amending Ordinance No. 2018.023 which rezoned approximately 17.3 acres of land known as Tortolita Ridge generally located 0.75 miles north of Moore Road on the west side of

Tortolita Road by eliminating the requirement for an emergency access road and replacing it with a requirement for installation of automatic fire sprinkler systems (Cynthia Ross)

[6:20 PM Minutes:] Vice Mayor Post opened the public hearing to receive public testimony on this item.

Senior Planner Cynthia Ross presented an overview of the request to amend Ordinance No. 2018.023 that rezoned approximately 17.3 acres of land known as Tortolita Ridge generally located 0.75 miles north of Moore Road on the west side of Tortolita Road by eliminating the requirement for an emergency access road, and replacing it with a requirement for installation of automatic fire sprinkler systems in each home as acceptable by the Northwest Fire District.

Ms. Ross stated staff recommends the adoption of Ordinance 2020.016, revising rezoning condition #22 found in Marana Ordinance 2018.023, with a condition that states the property owners shall install automatic fire sprinkler systems in each home acceptable to the Northwest Fire District.

The following individuals provided public testimony either in person or by submitted comments to the Town, summary.

Mark Johnson of the Tortolita Alliance (TA) submitted comments stating in summary that TA had previously submitted comments on the proposed Marana Subdivision Recreational Area Requirements. TA referenced its letter of 9/21/2020 to include a request to amend Title 17-Environmental Resource Preservation, Native Plant Protection and Landscape Requirements to require a Site Resource Inventory (SRI), and require (no option) a minimum of 30% of the site be preserved as Natural Undisturbed Open Space (NUOS) for all proposed subdivision. Further recommend a 45% NUOS for the Tortolita Ridge development.

[6:29 PM Minutes:] Vice Mayor Post closed the public hearing on this item.

Council Member Kai moved and Council Member Ziegler second the motion adopting Ordinance No. 2020.016, amending Ordinance No. 2018.023 by eliminating the requirement for an emergency access road and replacing it with a requirement for installation of automatic fire sprinkler systems. Motion passes, 6-0.

A2 PUBLIC HEARING: Resolution No. 2020-125: Relating to Development; approving a Conditional Use Permit to allow the development of a self-storage facility at 8611 N. Continental Reserve Loop in the Pima Farms North Specific Plan -Villas at Sombrero Peak (Cynthia Ross)

[6:30 PM Minutes] **Vice Mayor Post** opened the public hearing to receive public testimony on this item.

Ms. Ross provided an overview of Resolution No. 2020-125 approving a Conditional Use Permit to allow the development of a self-storage facility at 8611 N. Continental Reserve Loop in the Pima Farms North Specific Plan – Villas at Sombrero Peak. Staff finds that the proposal is consistent with the intent of the Town of Marana 2040 General Plan, the Town of Marana Land Development Code, and complies with the requirements of a conditional use permit.

The Planning Commission considered the request for the proposed Conditional Use Permit at a public hearing on October 28, 2020 and voted 6-0 to:

1. Recommend approval to the Town Council of the Conditional Use Permit subject to the addition of two new conditions: (1) Change the daily hours of operation from 6:00 a.m. – 10:00 p.m. to 7:00 a.m. to 9 p.m., and (2) Adjust the traffic pattern; requiring vehicles to enter from the west side of the covered loading area and exit to the east off Continental Reserve Loop.
2. Approve the National Self Storage at Continental Reserve Silverbell Road Corridor Overlay District design review application.

Ms. Ross stated staff recommends Council approve CUP2009-001 based on the recommended findings of fact and subject to the following conditions:

1. Outdoor RV or boat storage, and truck and trailer rentals, shall be prohibited at this facility.
2. Nothing that can be construed as building signage shall be visible through windows on the south side, east and west sides of the building.
3. All wall and site lighting shall be downward directed and shielded to prevent spillover to adjacent properties, and shall conform to the attached approved Lighting Plan.
4. All second floor windows facing south shall be fully opaque, spandrel black glass, except for the window lighting under the portico in the covered loading drive.
5. All second floor windows facing Continental Reserve Loop shall be fully opaque, spandrel black glass.
6. Daily hours of operation shall be 7:00 a.m. to 9:00 p.m.
7. Vehicles shall enter the business parking area from the west side of the covered loading area and exit to the east off Continental Reserve Loop.

Lexi Wells, Project Manager with the **Planning Center**, along with **Linda Morales, CEO** of the **Planning Center** and **Travis Marrow, President** of **National Self Storage** requested Council consideration of removing the two added conditions proposed by the Planning Center be removed. Rather than penalizing them for a concern that has not occurred, they would review any concerns that presents in the future. She presented a PowerPoint Presentation of the neighborhood outreach that was conducted at several points during the process. *(A copy of the PowerPoint is on file in the Town Clerk's Office.)*

Town Attorney Jane Fairall commented on the resolution approving the item stating, Items 1-6 are the original recommendations. Items 7 and 8 on the resolution are the additional conditions proposed by the Planning Commission. She noted the discrepancy from the Staff Report versus the proposed resolution.

Council Member Ziegler addressed the conditions as provided by **Ms. Wells** stating she does not appreciate the Planning and Zoning Commission making its recommendations to impose conditions on the applicant. She discussed having traveled to the area to view the concerns, but indicated it is a non-issue. She continued stating she would propose to maintain the hours proposed by the applicant of 6 a.m. to 10 p.m.

[6:40 PM Minutes:] Vice Mayor Post closed the public hearing on this item.

Council Member Comerford moved and Council Member Ziegler second the motion adopting Resolution No. 2020-125 excluding Items 7 and 8 from the improvements, and approving Items 1-6 on the original application. Motion passes, 6-0.

A3 PUBLIC HEARING: Ordinance No. 2020.017: Relating to Development; amending the Continental Ranch Specific Plan Chapter V. Development Regulations, revising regulations pertaining to Congregate Care Housing, and Chapter VII. Specific Plan Implementation, revising the procedures for approval of a site plan; and establishing an effective date (Brian D. Varney)

Resolution No. 2020-126: Relating to Development; declaring as a public record filed with the Town Clerk the amendments adopted by Ordinance No. 2020.017, amending the Continental Ranch Specific Plan; Chapter V. Development Regulations revising regulations pertaining to Congregate Care Housing, and Chapter VII. Specific Plan Implementation revising the procedures for approval of a site plan. (Brian D. Varney)

[6:46 PM Minutes:] Vice Mayor Post opened the public hearing to receive public testimony on this item.

Senior Planner Brian Varney provided an overview of Ordinance No. 2020.017, amending the Continental Ranch Specific Plan Chapter V. Development Regulations, revising regulations pertaining to Congregate Care Housing, and Chapter VII. Specific Plan Implementation, revising the procedures for approval of a site plan, and Resolution No. 2020-126, declaring as a public record filed with the Town Clerk the amendments adopted by Ordinance No. 2020.017. He explained the proposed amendments to the Continental Ranch Specific Plan, and requests from the applicant. He stated staff recommends approval of Ordinance No. 2020.017 and Resolution No. 2020-126.

The following individuals provided public testimony either in person or by submitted comments to the Town, summary. There were no public testimony offered.

[6:56 PM Minutes:] Vice Mayor Post closed the public hearing on this item.

Council Member Kai moved and Council Member Comerford second the motion to adopt Ordinance No. 2020.017 and Resolution No. 2020-126, approving amendments to Chapter V. Development Regulations and Chapter VII. Specific Plan Implementation of the Continental Ranch Specific Plan, and declaring the amendments as a public record filed with the Town Clerk. Motion passes, 6-0.

A4 PUBLIC HEARING: Ordinance No. 2020.018: Relating to Development; approving a rezoning of approximately 63.8 acres of land located on the north side of Avra Valley Road, approximately 0.70 miles east of the intersection of Avra Valley Road and Sandario Road, from 'C' Large Lot Zone and 'AG' Agricultural to 'HI' Heavy Industry (Anita McNamara)

[6:57 PM Minutes:] Vice Mayor Post opened the public hearing to receive public testimony on this item.

Long-Range Planner Anita McNamara provided an overview of Ordinance No. 2020.018 approving a rezoning of approximately 63.8 acres of land located on the north side of Avra Valley Road, approximately 0.70 miles east of the intersection of Avra Valley Road and Sandario Road, from 'C' Large Lot Zone and 'AG' Agricultural to 'HI' Heavy Industry. She provided the Recommended Findings of Fact as follows:

1. The property is currently zoned 'C' Large Lot Zone and 'AG; Agricultural. The proposed changed in zoning to 'HI' (Heavy Industry) is supported by the Employment (E) land use category of the Marana General Plan.
2. With the acceptance of the recommended conditions, the proposed rezoning is in compliance with all other development standards of the Land Development Code related to the proposed zoning classification.
3. The proposed rezoning, with acceptance of the recommended conditions, does not appear to be detrimental to the immediate area or to the health, safety and welfare of the inhabitants of the area and the Town of Marana.

Ms. McNamara stated the Planning Commission considered the request for the proposed rezoning on October 28, 2020. By a vote of 6-0, the Planning Commission voted to recommend approval to the Town Council. Further, staff recommends the adoption of Ordinance No. 2020.018, approving a rezoning of approximately 63.8 acres of land from 'C' Large Lot Zone and 'AG' Agricultural to 'HI' Heavy Industry.

The following individuals provided public testimony either in person or by submitted comments to the Town, summary.

Joseph Olsen, P.E. General Manager, Metropolitan Domestic Water Improvement District submitted a letter to Development Services requesting the following considerations to the proposed ordinance: (1) If applicable in Section 2, Item 6, include

the District in the review of any proposed septic system to ensure adequate setbacks from existing or planned well infrastructure is maintained. (2) Include in the list of prohibited uses in Section 2, Item 14 those uses that require an Aquifer Protection Permit. (3) Consideration of the 30-foot easement and 20-foot temporary construction easement as reflected in their request submitted to the town on November 12, 2020.

[7:03 PM Minutes:] Vice Mayor Post closed the public hearing.

Council Member Officer moved and Council Member Kai second the motion to adopt Ordinance No. 2020.018, approving a rezoning of approximately 63.8 acres of land from 'C' Large Lot Zone and 'AG' Agricultural to 'HI' Heavy Industry with the additions that Metro Water had requested to take into consideration the sewer and the other things that can be created around the airport.

Council Member Ziegler asked for clarification of the motion speaking to the letter that was received from Metro Water. She asked whether **Council Members Craig and Comerford** objected to the requested considerations in the letter. **Ms. McNamara** stated there is nothing within the letter that Town staff viewed as objectionable. That the Water Department is supportive of the comments that staff had made. The question is of the appropriateness to have those requested considerations as part of the Zoning Ordinance.

Ms. Fairall stated regarding the letter from Metro Water, requesting to be part of the review process is not appropriate, in her opinion to a rezoning ordinance. That is something the Town can discuss with Metro Water if it is appropriate for it to review submittals. Their second request to include as a prohibited use that requires an Aquifer Protection Permit that would be appropriate to include in the rezoning ordinance if the Council desire to include. Item 17 of the proposed ordinance already provides for prohibited uses such as landfills, waste disposal operations, and waste management facilities. Additionally, under Provision 13 (e) it also prohibits Manufacturing/processing and warehouse/storage of hazardous substances. That would be an appropriate item to include in the ordinance if requested by the Council.

Council Member Kai asked whether Metro Water main concern this item is having aquifers recovering in that area. **Ms. Fairall** stated she believes that is the concern. That if the Town wish to add the uses of the Aquifer Protection Permit, then, it should be included in the proposed ordinance as another condition of the ordinance.

Town Clerk Cherry Lawson requested the motion be restate for the record.

Council Member Officer stated with all of the things going on, with airports that have done things in the past, and with the Town's water issues at this time that we take into consideration [all] of these aspects as stated by **Town Attorney Jane Fairall**. As with Northwest Water, Marana would protect all that it could in that area.

Council Member Officer restated his motion upon the request of **Vice Mayor Post**.

Council Member Officer moved to adopt Ordinance No. 2020.018.

Vice Mayor Post asked for clarification as the restated motion was not stated the same as the initial motion offered. **Vice Mayor Post** asked whether the restated motion includes the proposed request from Metro Water. **Council Member Officer** stated it does not, as it is stated within the provisions of the ordinance.

Vice Mayor Post asked **Ms. Fairall** whether it is a condition in the staff report. **Ms. Fairall** replied stating there is no condition specifically stated referring to use requiring an Aquifer Protection Permit. However, there are those other uses that she stated earlier.

Council Member Ziegler asked whether Council agree or disagree with the letter that Metro Water submitted to the Town. She asked Council needs to delay a decision in order to review the letter submitted by Metro Water. **Ms. Fairall** stated the first condition that Metro Water has requested of the Town that they be included in the review process is not an appropriate request to add to the proposed rezoning ordinance. That is something that staff can speak with Metro Water about, and include them where staff deems appropriate. The second condition requesting the Town add another prohibited use. There are any number of prohibited uses because of its proximity to the airport. If the Council does want to include prohibited uses that require an Aquifer Protection Permit, this would be the opportunity to insert that language. She noted additional protections within the proposed ordinance that offers some protection. However, stated that **Water Director Scott Schladweiler** would be the best person to speak on this concern.

Vice Mayor Post stated personally, he does not feel as though it is necessary. Council would review the matter when presented. He expressed concern over the sale the property, and want to inform the Town of what it can do with the adjourning property. He would vote no to the motion offered by **Council Member Officer** as stated.

Mr. Schladweiler explained the nature of an Aquifer Protection Permit that it is something that regulates discharges and pollutants to the aquifer and protects groundwater. In this area, there are two major storage facilities. With the Metropolitan Wells that are drilled for the property that we sold to them, those wells will contribute to the Northwest Recharge and Delivery system, which will send water to Marana and its system in the near future. The actions we take to protect the groundwater in this area is to the Town's benefit.

Council Member Kai asked whether there is concern over groundwater used to by the fire department, and in relation to protection of groundwater. **Mr. Schladweiler** stated anything that includes fluorinated compounds is a concern. However, he is not certain whether that will be used in that area.

Development Director Jason Angell reminded Council that the Town owns the property that **Economic Development Director Curt Woody** would come before the Council each

time the Town looks to sell a portion of the property, that it would reveal the type of use that will be proposed for that location. That, if Council is concerned over selling the property to someone that is not a compatible use with the airport or bring forth an alarm of having some form of contamination to the groundwater, Council will ultimately decide whether it is a compatible use.

Council Member Officer amended his motion, Council Member Kai second the motion to approve Ordinance 2020.018 as proposed. Motion passes, 6-0.

A5 Resolution No. 2020-127: Relating to Finance; rescinding Section 3 of Mayor Honea's Amendment No. 4 to Proclamation of Local Emergency which temporarily waived the assessment of certain fees in the Town of Marana comprehensive fee schedule (Jane Fairall) **Item removed from the agenda.**

A6 Ordinance No. 2020.019: Relating to Offenses; revising Marana Town Code Title 11 (Offenses) by adding new Chapter 11-9 (Recreational Marijuana) relating to the regulation of recreational marijuana and renumbering the chapters that follow to conform; and declaring an emergency (Jane Fairall)

Resolution No. 2020-128: Relating to Offenses; declaring as a public record filed with the Town Clerk new Chapter 11-9 (Recreational Marijuana) of Title 11 (Offenses) of the Marana Town Code adopted by Marana Ordinance No. 2020.019 (Jane Fairall)

Ms. Fairall provided an overview of Ordinance No. 2020.019 revising the Marana Town Code stating the act allows marijuana establishments to sell recreational marijuana, and it does provide some power to municipalities to limit that. It allows municipalities to limit the number of or outright prohibit them, or to allow the current medical dispensaries to have a dual license to sell recreational marijuana. Staff is proposing that option to allow the current medical marijuana dispensaries to sell recreational marijuana, as the Town has limitations within the Land Development Code that does not allow for additional dispensaries until the Town grows by 50,000 more residents.

The League of Arizona Cities and Towns drafted the proposed model ordinance for options depending on the needs of the municipality. Town staff is recommending the option that allows for a dual licensee at the same location as the medical marijuana dispensaries as long as the business have a valid license. It would be subject to the same setbacks and other rules and regulations that are in the Land Development Code for medical marijuana dispensaries.

The proposition also allows a municipal to prohibit the use, cultivation, production or distribution on the Town's own property; that was included within the proposed ordinance as well. Also included is a prohibition of smoking marijuana in public and open spaces, though it is redundant as it is already in Prop 207.

Vice Mayor Post asked for a summation of Prop 207. **Ms. Fairall** explained Prop 207 allow the recreational use of marijuana by people over the age of 21 years. It would allow these medical marijuana establishments to dispense and sell marijuana to individuals over the age of 21 years; no medical marijuana card needed. It would also allow individuals to have in their possession a limited amount in public on them – the act speaks to a certain ounce amount a person can have on their person. It also allows for some cultivation (up to six plants) at home for persons over 21 years. It is taxable as a retain item under the Model Tax Code.

Council Member Kai asked about mandatory drug testing of its employees under the act, and whether under the act employers do not have to test its employees? **Ms. Fairall** replied stating it does not as there are some provisions within the proposition that nothing in the proposition prohibits an employer from having its own rules and policies related to drug use and testing of its employees. As a town, staff will need to review its own personnel policies related to drug and alcohol use and bring forward some revisions to the current policies.

Council Member Ziegler moved and Council Member Comerford moved to adopt Ordinance No. 2020.019 revising Marana Town Code Title 11 (Offenses) by adding new Chapter 11-9 (Recreational Marijuana) relating to the regulation of recreational marijuana and renumbering the chapters that follow to conform; and declaring an emergency as well as, Resolution No. 2020-128 declaring as a public record filed with the Town Clerk new Chapter 11-9 (Recreational Marijuana) of Title 11 (Offenses) of the Marana Town Code adopted by Marana Ordinance No. 2020.019. Motion passes, 6-0.

ITEMS FOR DISCUSSION / POSSIBLE ACTION

D1 Relating to Legislation and Government Actions; discussion and possible action regarding all pending state, federal, and local legislation/government actions and on recent and upcoming meetings of the other governmental bodies (Terry Rozema)

Mr. Rozema stated there is no report on federal or state concerns related to Covid-19. The legislative session will begin in January 2021, and the Town has drafted a list of priorities that staff will bring before the Council on December 15. Additionally, the Town has scheduled the Legislative Day Meeting with the legislators in Districts 9 and 11. The meeting will be held on December 11, 2020 at 9 a.m. at the MMC. Reminders and invitations will go out this week. This is an opportunity for Council Members to discuss opportunities for collaboration between Town Staff and our statewide Elected Officials

The Town is not tracking any bills at this time; and related to elections Legislative Districts 9 and 11 members were re-elected.

EXECUTIVE SESSIONS

Pursuant to A.R.S. § 38-431.03, the Town Council may vote to go into executive session, which will not be open to the public, to discuss certain matters.

Regular Council Meeting Summary Minutes 11/17/2020

E1 Executive Session pursuant to A.R.S. §38-431.03 (A), Council may ask for discussion or consideration, or consultation with designated Town representatives, or consultation for legal advice with the Town Attorney, concerning any matter listed on this agenda for any of the reasons listed in A.R.S. §38-431.03 (A).

FUTURE AGENDA ITEMS

Notwithstanding the Mayor's discretion regarding the items to be placed on the agenda, if three or more Council members request that an item be placed on the agenda, it must be placed on the agenda for the second regular Town Council meeting after the date of the request, pursuant to Marana Town Code Section 2-4-2(B).

ADJOURNMENT

Vice Mayor Post asked for a motion to adjourn the meeting.

Council Member Kai moved and Council Member Comerford second the motion to adjourn the meeting. Motion passes, 6-0. Meeting adjourned at 7:24 PM.

CERTIFICATION

I hereby certify that the foregoing are the true and correct minutes of the Marana Town Council meeting held on November 17, 2020. I further certify that a quorum was present.

Cherry L. Lawson, Town Clerk



**MARANA TOWN COUNCIL
STUDY SESSION**

**11555 W. Civic Center Drive, Marana, Arizona 85653
Council Chambers, November 10, 2020 at or after 6:00 PM**

**Ed Honea, Mayor
Jon Post, Vice Mayor
Patti Comerford, Council Member
Jackie Craig, Council Member
Herb Kai, Council Member
John Officer, Council Member
Roxanne Ziegler, Council Member**

SUMMARY MINUTES

CALL TO ORDER AND ROLL CALL:

Mayor Honea called the meeting to order at 6:00 PM and directed the Clerk to call the roll. **Mayor Honea, Vice Mayor Post, Council Members: Jackie Craig, Patti Comerford, Roxanne Ziegler, John Officer, and Herb Kai.**

PLEDGE OF ALLEGIANCE/INVOCATION/MOMENT OF SILENCE: Led by **Mayor Honea.**

APPROVAL OF AGENDA:

Council Member Ziegler moved and Council Member Kai second the motion approving the agenda as presented. Motion passes unanimously, 7-0.

DISCUSSION/DIRECTION/POSSIBLE ACTION

D1 Relating to Mayor and Council; selection of the Vice Mayor (Cherry L. Lawson)

Mayor Honea moved and Council Member Comerford second the motion to appoint Vice Mayor Jon Post to continue to serve as Vice Mayor for a two-year term.

Mayor Honea asked for a roll call vote.

Ayes: Mayor Honea, Vice Mayor Post, Council Members Comerford, Craig, Kai, and Officer.

Nays: Council Member Ziegler

Motion passes, 6-0.

D2 Relating to Development; Discussion and direction concerning proposed regional public infrastructure deal points for a development agreement for the Mandarin development project located north of I-10, north and northwest of the Tangerine Road traffic interchange (Jane Fairall)

Town Attorney Jane Fairall introduced **former Town Attorney Frank Cassidy** who provided an overview of the Mandarin development project.

Mr. Cassidy highlighted the below concerns and deal points:

- Lack of infrastructure in the area, and having someone to upfront the cost to have it installed. How best to deal with reimbursing the developer for the oversizing of the infrastructure. The four infrastructure items are:
 - First, is a 15-inch sewer that connects to the Tangerine Downtown Sewer that the Town installed a few years ago at Moore Road, and the future Clark Farms Road intersection. It will go underneath the freeway up to the western tip of Mandarin.
 - It will be sized for the whole area, but more than half of its size would be available for other developments.
 - The second is the off-site water, 16-inch water line. The line will end in front of the Quik Trip Gas Station.
 - It will go under the freeway, under the Union Pacific Railroad; it has to go inside a 32-inch pipe.
 - A 16-inch pipe is located inside of a sleeve that goes across that. An expensive piece of construction will go to the intersection of Mandarin Boulevard.
 - At that point, a 12-inch line will go into Mandarin. The town will only talk about the 16-inch line that goes to Tangerine Road. That 16-inch line will continue eastward and connect to the system that the town built in the Marana Technology Park.

- The third set of infrastructure is the series of drainage improvements. A drainage improvement runs along the eastside of Mandarinina, then travels along Tangerine and runs along Union Pacific Railroad. It then connects to a second regional drainage facility, referred to as Regional Detention Basin.
 - A northern channel that collects drainage from that sub-region, and takes it to that detention basin.
- A fourth area of infrastructure is non-potable. There is a requirement within zoning requiring them to serve the property with non-potable. However, the property is not located within the CMID district.
 - In order from the easiest to the most difficult, the 15-inch sewer.
 - The Town is proposing on the 15-inch sewer to have that as a protective facility under the Town's current Protective Facilities Ordinance that is located in the Utilities Chapter of the Town Code.
 - Protecting that facility, the Town would bring as part of the Development Agreement a Proposed Protected Facility fee, and other property owners who would connect to that, primarily the Tortolita Shadows to the north and to the former Deconsini property located further east. That sewer could potentially serve property as well as LA Mirage depending on how they would provide service to the area.
 - There is nearly 3,000 units of capacity available inside of that 15-inch line.
- The first deal point would be to authorize Town staff to move forward with identifying this as a Protective Facility, so to establish a fee that others looking to connect would pay. It would be a per unit charge for connection.
- The second deal point would address the water facility. The 16-inch water facility will be part of the inner-connect. The Town's long-term goal is to inner-connect all of its satellite water systems. The Town's Infrastructure Impact Fee Program for Water Facilities will continue to include inner-connections.
 - The Town would propose for the 16-inch water line, the Town would initially ask for a protected facility designation for that facility as well. The Town would then anticipate adding that 16-inch project to the Town's Impact Fee Program for the Water Infrastructure Impact Fee. Once it is in the Impact Fee Program, then others would simply pay the impact fee, and Mandarinina would certainly be entitled to a credit against the impact fee.
 - Propose to move forward and allow them to credit their full infrastructure impact fee until that facility is reimbursed. Doing so, would allow Mandarinina to receive reimbursement quickly.

Vice Mayor Post stated the Town could do both, but that it could remain a protected facility until the infrastructure impact fee is in place. He asked whether it would remain protected while the Town collects the fee on it. **Mr. Cassidy** replied stating that is correct.

Under state law, there is a two-year moratorium period. If someone initiates a subdivision before the Town's impact fee is in place, they will have two years that they would not have to pay the impact fee. The Town would leave the protected facility fee in place to cover the entire time-period so to recoup those fees, also for others who wish to tap into it.

Mr. Cassidy explained the question for the Council is whether it is comfortable is allowing the Town to reimburse the full amount of the infrastructure impact fee, until Mandarinina is reimburse; or, make it less.

- The third piece of infrastructure is to take all of those drainage facilities together. One way to pay for critical infrastructure is the drainage facilities are regional drainage facilities that are certainly critical infrastructure, is to get a developer to upfront them. If there is a developer who is willing to upfront the cost of that critical infrastructure, that appears to be a logical way to do that.
 - The Town would propose, like the 16-inch water line, the Town would suggest that it expand its protected facility program to include drainage facilities.
 - It would require a Town Code amendment that would come before the Council for its approval. The Council could consider the amendment on the same day as the Development Agreement. That way when the Town constructs a drainage facility, it can be reimbursed through the protected facility charges. When a developer builds a facility, it would be reimbursed and paid those fees. Currently, the Town does not have an impact fee for drainage; however, it could eventually end up having (as it has been discussed among staff; however, have not determined a good approach to it.) one.
 - The fallback approach is to do a protected facility. As another development needs to drain into this series of facilities, you determine how much flow will come from that development. Then you determine how much capacity is taken up, and you develop a fee for it. It is the same concept of putting water through a pipe.

Mr. Cassidy acknowledged **Clint Glass** who handles these types of issues is in the audience and could speak to Council on this matter.

Vice Mayor Post stated he would like to address some drainage concerns that may or may not be pertaining to the development agreement. **Mr. Cassidy** stated anything related to Mandarinina is up for discussion. He continued explaining the deal points.

- Related to the drainage facility, the Town suggests it go ahead and establish the protected facilities fees for each of those three facilities. The trouble with that is if you are the developer, and you only rely on that, that developer would not be

paid back until there is 100% development in the area. That is, until all of those facilities are completely filled-up. A significant portion of the future flows into this area is areas owned by State Lands. The Town has no idea of when that will come forward. Having these facilities in place, will make other development able to come forward.

- The Town would recommend that Council would allow a reimbursement from Construction Sales Tax generated by the Mandarin Development. That is, if they generate the Construction Sales Tax, it comes back to them. If others develop with water going into those facilities, those other developments would pay those protected facilities fees. Those fees are used to payback Mandarin. In using this approach, the revenues are generated by the development.
- If Council is okay with this concept, what remains to be discussed is how much of the Construction Sales Tax would be used to reimburse them. We have four pennies (\$.004) of Construction Sales Tax. By resolution, three of those four pennies are set aside for transportation. The Tangerine Corridor Project has been discussed for years, and the design concept report for that drainage comes to this facility. In north Marana, one of the cross sections for our major roads includes drainage facilities.
- The three pennies that has been set aside for transportation ought to be used to reimburse this developer for these drainage facilities. Once those facilities are paid in full, the remaining of those dollars come back to the Town, and the Town should leave the protected facilities in place. Despite the developer being fully paid, the Town wants to be repaid as well.

Town Engineer Keith Brann commented on the map sent to Council by the Tortolita Alliance organization stating that study was part of the Northwest Drainage Study the Town performed over the last year or two. That study was a refinement of the Tortolita Fan Study the Town did to change or affect the FEMA map. FEMA was going to put the entire northwest into the floodplain. CMG Drainage conducted that study as well with FEMA that affected the flood insurance rate maps. The study the Town conducted two years ago was a refinement of that study with modern software, better computing power and better typography. That it did not change the risk of flooding; however, showed us a much better fashion where the water actually went. The risk hazards were unchanged, but that it resulted in the Town knowing how much water there was.

He continued stating from that point, the Town was able to model improvements that changed the floodplain. That was the purpose of that study; namely does the Barnett Channel work, it does. The Town learned that as long as you take it up to the cap and capture the water at the overshoot. That was a big part of that study. The other part to that study involved looking at west of the river as well as the Marana Airport area. That led to another project, which is to remap the airport and get it out of the floodplain. That process is moving very well, and the Town has been receiving and providing information

back from FEMA. The Town looks to have that completed, but not necessarily out of the floodplain, the knowledge of the floodplain by years end. However, there is a timeframe before FEMA moves forward to remap the area. It is likely to be completed sometime next year.

The map that the Tortolita Alliance emailed to Council is the current effective floodplain of the Tortolita Fan, FEMA mapping. If you were in one of the blue areas, you would have to have flood insurance. **Mr. Brann** mentioned one of the comments from the Tortolita Alliance related to floodplain and this agreement related to the standard of care, or the "100 year" flood. The Town does not like to use the term of 100-year flood, as it is a misnomer – people think there is a flood every 100 years. It is not. He explained how the 100-year is defined, as 1/100 or one (1%) percent of occurring every year including back-to-back years. FEMA uses the term base flood, which the map is based upon; standard floodplain.

Tortolita Alliance ask why the Town does not use the 200-year flood or the 500-year flood. That is not the standard of care across the nation – the nation uses the 100-year flood except in cases where there is critical infrastructure. Critical facilities do design to a higher standard. Development does not design to that standard. That is more of a policy standard that is used across the country.

Council expressed concern with the ponding of water and its potential affect the Town drainage channels and neighboring structures in the future. **Mr. Brann** explained it is the policy of the Town when there is development especially in that area, a developer is not allowed to increase the flow leaving the site greater than that of the existing conditions. That is the purpose of the basin, to hold the water and metered it out at the existing flow rate. However, that only applies to the regional water that is intercepted by those ditches brought to those basins. Every drop of water that fall onto Mandarin is under the northwest policy, which is full retention.

Clint Glass of CMG Drainage Engineering, Inc. provided an explanation of the oversizing of the drainage stating when they had done the FEMA Flood Insurance Study Map in 2011 was to study two types of storms for the FEMA mapping. It is referred to as the regional type of storm. They looked at 3.5 to 4 inches of rainfall over the entire watershed, which is approximately 165 sq. miles. The runoff from that was determined that the flow-depth were mapped, that is the basis of the FEMA Floodplain Mapping.

He continued stating one of the requirements of the Town from that study was to analyze a non-regional storm, which looked at the possibility of higher intensity rainfall than that of FEMA requirements for the 100-year flood. That resulted in a mapping of determination for peak discharge that is based on 4.5 to 5 inches of rainfall during a 24-hour period over 165 sq. miles. That is in excess of what is required by FEMA, which would place the standards of most communities at requires. The level of safety is built-

into the determination of the peak discharge rate of which the channels were designed to handle. That is a factor of safety and is not related to a 200-year storm per se. However, they have accounted for a higher intensity of rainfall over that large area in sizing the channels.

Council continued discussing the drainage concerns within the community and across the highway related to water being metered and possible overflows, how it will be handled, and future cost involved for the Town.

Vice Mayor Post and Mayor Honea asked whether any of the Transportation Impact Fees collected would assist the Town with Tangerine Roadway widening. **Mr. Brann** replied stating Tangerine Roadway is in the Impact Fee Program for Phase 2. All development in the northeast would pay for Tangerine Roadway. Actually, that is project is in the northwest, and CAP Canal would benefit – not Tangerine Roadway.

Mr. Cassidy stated based on last year's mediation agreement with Mandarin, they are paying for the permanent part of the road that goes through Mandarin. By paying for that permanent road, it will become part of the Impact Fee Program. They will get impact fee credits for the money that they are putting in for those permanent improvements. The Town believes there will be some additional money after the credits given Mandarin. As **Mr. Brann** stated, to the extent it goes beyond that, would be applied to the other impact fee to the Northwest Roadway Impact Fee.

Mayor Honea stated after this project is build, the Town would need to have a structure of the CAP, and a stop light on Tangerine. Although it is not necessary today, eventually the Town will build that. He had hoped that the Town would be able to generate some of those funds with this project, as it will serve this project immensely. **Mr. Brann** replied stating it is his understanding of the agreement that it is a supercharge payback to the developers. For the next several years, all monies generated from this development will be to payback the developer. **Mayor Honea** expressed concern that Marana would likely have to use General Fund dollars to pay for some of the roadway construction in the future.

Council Member Ziegler asked what the numbers are for the project in that area. **Chad Rodriguez** stated for regional improvements, the estimate comes out to over \$23M; they are not being reimbursed for all of that. Based on some of their concept for plans of residential, commercial, light industrial, office and other opportunities that exist with Mandarin for them to move forward, with Construction Sales Tax and Impact Fees, he shows over \$32M that is generated for the total build-out for Mandarin. They are not requesting all of that back, not even 50% of it. They are requesting pay back on the front end. They are the financing mechanism that gets the infrastructure build, as they are not requesting reimbursement from the Town upfront. He stated they would do that. They wish to have pay back. One of the items discussed is the drainage that is a concern for

everyone. They look at the project from a cost aspect. They are only using 25% capacity from that channel on the north-end up to the pond. However, their request is for \$.75 reimbursement on the entire stretch even though down near Tangerine Road, he believes they would only use 10% of the channel. The rest is open to allow others to come in and use.

Vice Mayor Post thanked **Mr. Rodriguez** for not adding a CFD to the project. **Mr. Cassidy** replied stating as part of the agreement last year, it does allow Mandarin to request a CFD.

EXECUTIVE SESSIONS

Pursuant to A.R.S. § 38-431.03, the Town Council may vote to go into executive session, which will not be open to the public, to discuss certain matters.

E1 Executive Session pursuant to A.R.S. §38-431.03 (A), Council may ask for discussion or consideration, or consultation with designated Town representatives, or consultation for legal advice with the Town Attorney, concerning any matter listed on this agenda for any of the reasons listed in A.R.S. §38-431.03 (A).

FUTURE AGENDA ITEMS

Notwithstanding the Mayor's discretion regarding the items to be placed on the agenda, if three or more Council members request that an item be placed on the agenda, it must be placed on the agenda for the second regular Town Council meeting after the date of the request, pursuant to Marana Town Code Section 2-4-2(B).

ADJOURNMENT

Mayor Honea asked for a motion to adjourn the meeting.

Vice Mayor Post, moved and Council Member Officer second the motion to adjourn the meeting. Motion passes unanimously, 7-0. Meeting adjourned at 7:18 PM.

CERTIFICATION

I hereby certify that the foregoing are the true and correct minutes for the Study Session Meeting of the Marana Town Council meeting held on November 10, 2020. I further certify that a quorum was present.

Cherry L. Lawson, Town Clerk



**MARANA TOWN COUNCIL
STUDY SESSION**

**11555 W. Civic Center Drive, Marana, Arizona 85653
Council Chambers, October 13, 2020 at or after 6:00 PM**

**Ed Honea, Mayor
Jon Post, Vice Mayor
David Bowen, Council Member
Patti Comerford, Council Member
Herb Kai, Council Member
John Officer, Council Member
Roxanne Ziegler, Council Member**

SUMMARY MINUTES

CALL TO ORDER AND ROLL CALL:

Mayor Honea called the meeting to order at 6:00 PM and directed the Clerk to call the roll. **Mayor Honea, Vice Mayor Post, Council Members: Dave Bowen, Patti Comerford (Excused), Roxanne Ziegler, John Officer (Excused), and Herb Kai.**

PLEDGE OF ALLEGIANCE/INVOCATION/MOMENT OF SILENCE: Led by **Mayor Honea.**

APPROVAL OF AGENDA:

Council Member Bowen moved and Vice Mayor Post second the motion approving the agenda as presented. Motion passes, 5-0.

DISCUSSION/DIRECTION/POSSIBLE ACTION

D1 Relating to Budget; presentation, discussion and possible direction regarding consideration of funding sources for the construction, acquisition, maintenance, and

financing of critical infrastructure for the continued growth of the Town and safety of its residents (Yiannis Kalaitzidis)

Finance Director Yiannis Kalaitzidis provided a PowerPoint presentation overview regarding consideration of funding sources for the construction, acquisition, maintenance, and financing of critical infrastructure for the continued growth of the Town and safety of its residents. *(A copy of the presentation is on file in the Town Clerk's Office for review.)* Below are highlights of the presentation.

Mr. Kalaitzidis stated staff is not offering a recommendation during the presentation, as staff is making the examples available in an effort to facilitate conversation on the item.

Major Infrastructure Funding

- Marana continues to grow and is a driving force of new development
 - Residential Market Share
 - 5-year average, 2015-2019
 - Sahuarita, 10%
 - South Pinal, 9%
 - Oro Valley, 9%
 - Tucson, 20%
 - Pima County, 28%
 - Marana, 24% with 5% of total population of the Tucson Metro Area.
- Growth = Success
 - Timing of infrastructure key to development success
 - Build when development is happening
 - Build when circumstances dictate based on agreements
 - Build now to allow for future development
 - Unforeseen circumstances require flexibility
- Growth = Obligations
 - Obligation for Town to provide base infrastructure and amenities to residents
 - Policy driven obligations
 - Impact fee projects
 - Development agreement – shared costs
 - Intergovernmental agreements – shared costs
 - Infrastructure maintenance
 - Unforeseen circumstances
 - Water Quality Treatment Plants
 - Adonis Road Extension
 - Future projects to be discussed soon or unknown to us at this time.
- Historical Funding Sources
 - Local resources
 - Dedicated funds (Transportation, HURF)
 - Finance (Bonds, loans)

- Impact Fees
 - General Fund
- RTA, County
- Developer funding
- New revenue source – Sales tax increase
- Local resources
 - General Fund
 - Estimated available one-time funding at the end of FY2021 - \$21 million
 - Dedicated recurring funds (Transportation, HURF)
 - Impact Fees
 - Financing (Bonds, loans)
 - RTA
 - Developer funding
- Summary of Infrastructure Projects
 - *Slide on file in the Town Clerk's Office*
- Funding for Projects – Pay Go Example
 - *Slide on file in the Town Clerk's Office*
- Funding for Projects – Pay Go & Debt Financing Example
 - *Slide on file in the Town Clerk's Office*
- Next Steps – Requesting Council direction to present a program that considers:
 - How to fund existing project needs:
 - Use existing funding sources, including some portion of unrestricted reserves
 - Consider a dedicated sales tax
 - Consider consequences of each approach:
 - Impact of future growth
 - Deferral of projects and deterioration of existing infrastructure
 - Impact on health and safety and desired services for residents
- Sales Tax Comparison
 - Retail Sales Tax Rate by Jurisdiction

▪ South Tucson	5.0%
▪ Eloy	3.0%
▪ Tucson	2.6%
▪ Oro Valley	2.5%
▪ Phoenix	2.3%
▪ Sahuarita	2.0%
▪ Marana	2.0%
▪ Casa Grande	2.0%
▪ Chandler	1.5%
- Current Tax Table
 - *Slide on file in the Town Clerk's Office*

- By the Numbers – Estimates
 - *Slide on file in the Town Clerk's Office*
- Growth = Obligations: Obligation for Town to provide base infrastructure and amenities to residents
 - Policy driven obligations
 - Impact fee projects
 - Tangerine Farms Road
 - Twin Peaks, Rattlesnake pass
 - Marana Main Street
 - Development agreements – shared costs
 - Twin Peaks, Rattlesnake pass
 - Intergovernmental agreements – shared costs
 - Tangerine Road to I-10 [RTA funding]
 - NWRRDS [Metro Water District, Oro Valley]
 - Barnett Drainage Channel
- Unforeseen circumstances
 - Water Quality treatment plants
 - Adonis Road Extension
- Future projects to be discussed soon or unknown to us at this time.
- Funding Needed for Major Infrastructure Projects
 - Water Quality Projects
 - Water treatment plants – New sales tax, 1/10th or GF ongoing
 - Water Conveyance System Redundancy & Reliability Projects
 - NWRDDS – GF (10m) or new sales tax
 - Storm Drainage Management Projects
 - Barnett Channel – New sales tax and FEMA
 - Transportation Projects – New & Reconstruct/upgrade
 - Tangerine to I-10
 - Tangerine Farms Road
 - Twin Peaks, Rattlesnake pass
 - Marana Main Street

Mayor Honea expressed concern over raising taxes at this time during Covid-19, as there are families struggling financially. He continued stating the WIFA Loan is the only loan the town has at this time, and was a surprise to Council. The General Fund can be used to pay the \$1M per year for the Capital Debt Service without a tax increase. The funds for the Adonis Road Project, was paid by taking funds from other projects that were not needed at this time. He does not believe that neither of the two projects necessitate a half-cent sales tax increase.

He stated, the fact that the Town has to pay \$12M-17M to construct Tangerine Road, and we do not have the funds, \$9M needed for the NRRDS Project and we do not have the funds to complete.

Vice Mayor Post asked why the projects listed are not eligible for Impact Fees. **Mr. Kalaitzidis** replied stating the listed projects are eligible for Impact Fees. **Vice Mayor Post** asked why, then, is the amount not figured into the calculation. **Mr. Kalaitzidis** state the calculation assumes that Impact Fees will be collected at some point in the future to construct these projects. The slide is not available within this presentation. However, the Impact Fee plan provides for the amount that will be collected for the construction of a project. **Vice Mayor Post** asked whether any of the listed projects are eligible for Impact Fees. **Mr. Kalaitzidis** stated yes; NRRDS will be eligible once included in a future Water Impact Fee Plan. It is not included as of this day, but will be included in the future. Those Impact Fees would be collected over 10 to 15 year period for water projects. **Vice Mayor Post** expressed concern that the presentation does not provide a complete picture of what direction Council provides to Town staff.

Mr. Mehta stated, for example, the Water Treatment Campus is not eligible for Impact Fees. The Town would assume those costs when it has identified a solution for the groundwater. **Vice Mayor Post** replied stating though he agrees there are few homes that will tap onto that (ex: KB Homes), though others may tap on in the future. **Mr. Mehta** stated the Town incurred those costs very quickly. We received a loan and the hope is that through the lawsuit and any settlement that accompanies it from 3-M would go towards it. However at this time, we are not anticipating it, and the Town has to make a \$1M payment each year. **Vice Mayor Post** asked about the other projects. **Mr. Mehta** provided an overview of the projects listed in the presentation, as well as the possible financing of them. **Vice Mayor Post** expressed concern over how the projects are presented stating the residents would have to carry the additional tax burden to complete those projects. He continued stating he would support an additional tax increase, provided there is recovery of those funds to be used on future projects as the town grows. The presentation does not provided sufficient information to Council so that it is able to provide direction to Town staff.

Council Member Bowen asked whether **Vice Mayor Post** is concern that the positive impact of the fees are not represented in the presentation, that only the cost are presented. **Vice Mayor Post** replied that is correct. **Council Member Bowen** stated there would have to be projections of the impact fees collected over some period to offset some of these projects. He expressed concern regarding how the town would move forward to fund the projects, such as using reserve funds to fund them as the projects has to be done. **Vice Mayor Post** replied in agreement stating the Town needs to provide to Council a comprehensive list of all of the projects, funding source and perhaps do an RTA type program that indicates funds coming in and out into perpetuity. Doing so would provide

Council with the necessary information to make a decision regarding the funding of projects.

Council Member Ziegler stated there is no good time to raise taxes. She respectfully stated Council should not make broad statements to blame Town staff without providing evidence. She agrees with **Vice Mayor Post** comments related to the Town needing additional monies to fund projects, as Council has discussed the matter for a couple of years through the use of sales tax. Council could have provided much clearer direction to Town staff during several Study Session Meetings. **Vice Mayor Post** stated he has always been a proponent of an RTA style funding mechanism. **Council Member Ziegler** stated she is a proponent of raising the sales tax. That although she does not like increasing taxes, she is in favor of doing what is necessary for the town so that it continues to grow and maintain a level of service for the community.

Council Member Kai stated he supports the comments of **Council Member Ziegler**, as the Town is lagging behind on its tax rate at two (2%) percent. Marana is a growing community and it has 24% of new construction permits. He appreciates **Mayor Honea's** concerns related to Covid-19; however, people are still coming to Marana and taking up residence in the town. **Council Member Ziegler** stated Council would need to consider the number to increase, and collectively make a decision for the community.

Mayor Honea clarified his earlier statements related to the projects referencing Tangerine Road and RTA funding, that it was poor planning on the town. **Vice Mayor Post** replied stating he disagrees about the poor planning as the town has \$21M in the bank. The planning was well done to be able to set aside that amount in the bank. The Council has done a good job maintaining the Town of Marana, as it is maintenance people for its residents. However, the Town is in dire need of additional funds. He would like to review the full list of projects so to provide Council an opportunity to determine the desired sales tax to leverage bonds.

Mayor Honea inquired of the use of bed and utility tax asking whether it the half-cent is applied to those. **Mr. Kalaitzidis** replied stating in the particular model presented, it would not apply.

Council continued to discuss the merits of the projects and the funding mechanism to apply in an effort to look at the project list from Town staff. **Mr. Kalaitzidis** stated Town staff could provide Council a list of projects along with the projected income cash flows.

Vice Mayor Post stated he would like to see a set of criteria the Town uses to set a priority for projects that would be eligible for this source of funding.

Council Member Ziegler stated one of the items that came up during the discussion of the 2040 General Plan was a town recreation center. Marana has over 50,000 residents,

and the Town really needs to have its own recreation center, as there is a need for one. If Council increase the sales tax, would the recreation center be included within that list so that it, too? She commented on the success Town achieved when it issued a temporary sales tax for the construction of the newly built police building. It is possible to do something similar for a recreation center.

Mayor Honea issued an apology to Town staff for his earlier comments. He commented on the use of a sales tax that restrictions are placed on it, and is used for capital projects no supplementing O&M etc.

Mr. Mehta stated the direction is clear to Town staff. However, the presentation before the Council does not replace the information the Town presented to Council during the last fiscal year. That along with the information presented is as much the scenario as tonight. There was a specific question of how long and the minimum amount the Town would need to complete the immediate needed projects. It does not take away from the argument that was presented the previous fiscal year. It would be good to have a long-term critical infrastructure fund set-up that would not only address the items on the list, but would have the propensity to grow and handle certain projects in the future.

He continued stating when the Town speaks of being reimbursed through Development Impact Fees the Development Impact Fee will never bring back the full cost that is paid out. New development will pay; however, it will not be to the full amount. State law is such that a city or town can only charge for that portion that will be used in that capacity in that timeframe.

D2 Relating to Utilities; discussion and direction on water wheeling and recovering the cost of future water infrastructure or the excess-wheeled water cost (Frank Cassidy)

Town Attorney Frank Cassidy stated he and **Water Director Scott Schladweiler** worked on this item together. He provided a historical perspective of the wheeling agreement and how the Town arrived at this point, and a PowerPoint Presentation. *(A copy of the presentation is on file in the Town Clerk's Office.)*

Tucson Water started serving part of this area before the Town of Marana existed. Some of the areas that are town limits, Tucson Water has been serving those residents and businesses for decades. The reason why Tucson Water began serving areas outside of its limits is due to its belief that Tucson Water would be the water provider from mountain range to mountain range. As a result, they received a CAP accordingly by taking that position.

As water resources became more expensive, Tucson Water changed its policy and decided it would not provide services outside of the Tucson city limits. They eventually met with the Town and stated if the Town wanted Tucson Water to provide services, the

Town needs to pay the water resource fees. The Town started paying those fees, and have re-up the in paying through an intergovernmental agreement (IGA) during his tenure. The Town suggested Tucson Water sell its water system to the Town, as long as it has water in the pipes. Tucson Water has not decided to sell its system to the Town. As a result, the Town has been left with something of a patchwork deal of having to respond to the city's policy of which they will not expand into the town limits, without the Town of Marana participating.

Mr. Cassidy provided an overview of the IGA's with the City of Tucson explaining the Town's position that as long as there are properties in the Town of Marana that meets Tucson's service water policy, you will provide service and give the Town the water resource at the end of the year. Those properties would be Tucson Water customers. In August 2020, the Town reached a deal on the Wheeling Agreement. It allows the Town of Marana to use the Tucson Water pipes to wheel CAP water through the Tucson Water pipes to make a connection to areas right near Tucson Water has pipes that are far away from where Marana has pipes but that are in the town limits of Marana. He continued explaining that due to Marana is having to wheel through Tucson Water entire system, there are additional cost related to it.

Council Member Bowen asked when the Marana is wheeling water, is it physical wet water that is being wheeled, or providing Tucson Water credit so that they can provide its own water to Marana residents and businesses. **Mr. Cassidy** replied stating Marana takes its CAP and put an allocation of our CAP into **CAV-SARP** Tucson Recharge Facility. With that quantity of water, Tucson through its pipes provide service to Marana's properties. **Council Member Bowen** asked whether there is a sufficient way to do that without having to move Marana's water to Tucson Recharge Facility, given the policy. **Mr. Cassidy** replied stating he does not believe that is possible. Town staff tried to get the City to broaden the pre-existing IGA whereby Marana transfers to Tucson Water credit at the end of the year for all of the water that is used by new customers in Marana. However, Tucson Water rejected that offer.

Council Member Kai provided clarification to the water basin and the CAP to Council.

Vice Mayor Post asked whether the Town is able to recover those water credits or fully assume. **Mr. Cassidy** replied stating Marana does recover the cost in two ways, 1) Marana knows that it has that water resource obligation, each connection to Tucson Water for which Marana is obligated to provide water resources, has to pay a Water Resource Impact Fee. Marana would receive a lump sum amount to find water resources, and 2) a water rate element that is for water resources.

Mr. Cassidy stated Town staff is seeking direction from Council on the implementation of two wheeling policies, a Temporary Wheeling Policy, and a Permanent Wheeling Policy, as provided below:

“Temporary Wheeling” Policy: For development projects located where MW plans to extend its water infrastructure

- Allow wheeling only when the developer's cost to extend MW infrastructure would make the development project not financially feasible
- Even then:
 - Use wheeling temporarily -- until a MW main reaches the development
 - Require the developer, up front as a condition of service, to advance the development's fair share cost to extend the Town's water lines
 - Until a MW main reaches the development, customers in the development will pay a higher wheeled water rate

“Permanent Wheeling” Policy: For development projects located where MW DOES NOT plan to extend its water infrastructure:

- Require the developer to pay MW, up front as a condition of service, a financial contribution sufficient to cover the higher cost of wheeled water, giving MW the ability to charge customers in the development the same water rates as customers not served by wheeling

Mayor Honea opened the meeting to receive comment from the public. The following individual provided comments.

Ross McCallister, Developer of the Silverbell Gateway Apartments project who has been working with the Town for over 1 ½ years. Relating to its project, any fee at all will result in additional cost that will be passed on to the residents. That would result in higher rental rates, and would put pressure on affordability. The increase would result in them not being competitive as others in a similar market. He expressed concern with a proposed temporary fee being imposed that may be removed later.

Douglas Kennedy commented stating he had spent two years under development with Silverbell Gateway Apartments. He expressed concern with the water agreement with the City of Tucson Water. He complimented **Mr. Cassidy and Mr. Schladweiler** on their efforts to bring this forward. He stated he is responsible for this agreement, that if others can use it that would be fine as well. Tucson charges him an annual rate for the water allocation. He expressed concern with the proposed plan by the Town.

Mayor Honea closed the meeting to comment on this item.

Mayor Honea and Council Members discussed this item and provided direction to Town staff.

D3 Relating to Economic Development; update, discussion, and direction regarding possible establishment of a local small business assistance program to assist businesses

located within the Town of Marana impacted by the COVID-19 pandemic (Heath Vescovi-Chiordi)

Assistant to the Town Manager Heath Vescovi-Chiordi provided a brief PowerPoint Presentation on this item and asked for direction of the Council. *(A copy of the presentation is on file in the Town Clerk's Office for review.)*

- Requested research on this item in July 2020
- Staff was directed to look at business assistance examples in our region, as well as State and Federal programs
- Consider various additional factors as a result of research
- Present findings to Council for discussion and direction

Mayor Honea and Council Members discussed this item and provided direction to Town staff.

EXECUTIVE SESSIONS

Pursuant to A.R.S. § 38-431.03, the Town Council may vote to go into executive session, which will not be open to the public, to discuss certain matters.

[8:45 PM Minutes:]

Vice Mayor Post, moved and Council Member Bowen second the motion to enter into an executive session for the purpose provided in Item E2. Motion passes, 5-0.

E1 Executive Session pursuant to A.R.S. §38-431.03 (A), Council may ask for discussion or consideration, or consultation with designated Town representatives, or consultation for legal advice with the Town Attorney, concerning any matter listed on this agenda for any of the reasons listed in A.R.S. §38-431.03 (A).

E2 Executive Session pursuant to A.R.S. §38-431.03 (A)(4), for discussion with the Town's attorneys in order to consider the Town's position and instruct its attorneys regarding the terms of a proposed development agreement with Meritage Homes Arizona, Inc. pertaining to public infrastructure funding for the Rancho Marana 154 project.

[9:03 PM Minutes:]

Mr. Cassidy offered language for the Council to consider in its motion.

Vice Mayor Post moved and Council Member Bowen second the motion authorizing staff to negotiate an amendment to the Rancho Marana 154 development agreement along the lines discussed in executive session. Motion passes, 5-0.

FUTURE AGENDA ITEMS

Notwithstanding the Mayor's discretion regarding the items to be placed on the agenda, if three or more Council members request that an item be placed on the agenda, it must be placed on the agenda for the second regular Town Council meeting after the date of the request, pursuant to Marana Town Code Section 2-4-2(B).

ADJOURNMENT

Mayor Honea asked for a motion to adjourn the meeting.

Vice Mayor Post, moved and Council Member Bowen second the motion to adjourn the meeting. Motion passes, 5-0. Meeting adjourned at 9:04 PM.

CERTIFICATION

I hereby certify that the foregoing are the true and correct minutes for the Study Session Meeting of the Marana Town Council meeting held on October 13, 2020. I further certify that a quorum was present.

Cherry L. Lawson, Town Clerk



Council-Regular Meeting

A1

Meeting Date: 12/01/2020

To: Mayor and Council

Submitted For: Jane Fairall, Deputy Town Attorney

From: Frank Cassidy, Town Attorney

Date: December 1, 2020

Strategic Plan Focus Area:

Not Applicable

Subject: Ordinance No. 2020.020: Relating to Utilities; amending Marana Town Code Title 14 (Utilities), Chapter 14-4 (Construction and Financing of Utility Facilities) to modify sections 14-4-3 (Capacity requirements), 14-4-4 (Refund of cost of facilities funded and installed by town), and 14-4-5 (Notice of protected facility and associated charge) to make the protected facility designation and protected facility charge available for drainage facilities (Jane Fairall)

Discussion:

The Town Code currently allows only water and wastewater facilities to be designated as "protected facilities" with an associated "protected facility charge" payable by other benefiting property owners. This proposed agenda item would add drainage facilities to the type of facilities that can be designated as a "protected facility." This item is being brought forward as a result of the Council's discussion at the November 10 study session of the proposed Mandarin Development Agreement deal points.

A relatively simple Town Code revision is required to add drainage facilities to the list of potential protected facilities. Under the proposed provision, the Town Engineer will be responsible for the designation of protected drainage facilities. The Water Director is responsible for the designation of protected water and wastewater facilities. But otherwise, the process for making the designation and determining and giving notice of the associated protected facility charge are the same for drainage facilities as for water and wastewater facilities.

Staff Recommendation:

Staff recommends adoption of Ordinance No. 2020.020, making the protected facility designation under Town Code Chapter 14-4 available to drainage facilities.

Suggested Motion:

I move to adopt Ordinance No. 2020.020, making the protected facility designation under Town Code Chapter 14-4 available to drainage facilities.

Attachments

Ordinance No. 2020.020

MARANA ORDINANCE NO. 2020.020

RELATING TO UTILITIES; AMENDING MARANA TOWN CODE TITLE 14 (UTILITIES), CHAPTER 14-4 (CONSTRUCTION AND FINANCING OF UTILITY FACILITIES) TO MODIFY SECTIONS 14-4-3 (CAPACITY REQUIREMENTS), 14-4-4 (REFUND OF COST OF FACILITIES FUNDED AND INSTALLED BY TOWN), AND 14-4-5 (NOTICE OF PROTECTED FACILITY AND ASSOCIATED CHARGE) TO MAKE THE PROTECTED FACILITY DESIGNATION AND PROTECTED FACILITY CHARGE AVAILABLE FOR DRAINAGE FACILITIES

WHEREAS Marana Town Code Title 14 (Utilities), Chapter 14-4 (Construction and Financing of Utility Facilities), sections 14-4-3 (Capacity requirements), 14-4-4 (Refund of cost of facilities funded and installed by town), and 14-4-5 (Notice of protected facility and associated charge) provide for the designation of water and sewer facilities as protected facilities and authorize the creation of a protected facility charge associated with those facilities; and

WHEREAS the Town Council finds that the best interests of the Town and its citizens and businesses are served by expanding the protected facility designation and protected facility charge to include drainage facilities.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF MARANA, ARIZONA, as follows:

SECTION 1. Marana Town Code Title 14 (Utilities), Chapter 14-4 (Construction and Financing of Utility Facilities) is hereby amended to revise section 14-4-3 (Capacity requirements) as follows (with additions shown with double underlining and deletions shown with ~~strikeouts~~):

14-4-3 Capacity requirements

- A. *Water, ~~or~~ wastewater, or drainage system capacity requirements.* The town water director may require an applicant to install "on-site" or "off-site" water and/or wastewater facilities of a size greater than is required to provide service to applicant's development, and the town engineer may require an applicant to install "on-site" or "off-site" drainage facilities of a size greater than is required to protect or serve applicant's development. This requirement to install oversized facilities is referred to as oversizing.
- B. [No changes]

- C. *Oversizing recovery charge.* The council may, at its sole option, designate the facility as a “protected facility” and establish an “oversizing recovery charge” to be charged proportionately to each subsequent use of the protected facility connection by non-participating property owners made to or benefiting from the oversizing.

SECTION 2. Marana Town Code Title 14 (Utilities), Chapter 14-4 (Construction and Financing of Utility Facilities) is hereby amended to revise section 14-4-4 (Refund of cost of facilities funded and installed by town) as follows (with additions shown with double underlining and deletions shown with ~~strikeouts~~):

14-4-4 Refund of cost of facilities funded and installed by the town

If a water, ~~or wastewater~~, or drainage facility is installed and funded by the town to provide water or wastewater service or drainage to a property not participating in the construction cost, the water director or town engineer may request that the council designate the facility as a “protected facility” and establish a “protected facility charge” to be charged proportionately to each subsequent use of the protected facility connection by non-participating property owners made to or benefiting from the protected facility.

SECTION 3. Marana Town Code Title 14 (Utilities), Chapter 14-4 (Construction and Financing of Utility Facilities) is hereby amended to revise section 14-4-5 (Notice of protected facility and associated charge) as follows (with additions shown with double underlining and deletions shown with ~~strikeouts~~):

14-4-5 Notice of protected facility and associated charge

- A. Not less than 30 days before the designation of a protected facility and the adoption of an oversizing recovery charge or protected facility charge, the water director (for water or wastewater facilities) or town engineer (for drainage facilities) shall notify owners of potentially affected property.
- B. Potentially affected property consists of lands the water director or town engineer reasonably believes are likely someday to be served or drained by the protected facility, taking into consideration topography, proximity, and (for water or wastewater facilities) normal water and sewer facility service and extension factors or (for drainage facilities) anticipated drainage flow attributes.
- C. [No changes]
- D. All of the following shall be included with the notice:
1. [No changes]
 2. The amount per equivalent demand unit, acre, unit of flow, or other similar measurement of the oversizing recovery charge or protected facility charge.
 3. [No changes]

4. [No changes]

E. [No changes]

SECTION 4. The various town officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this ordinance.

SECTION 5. All ordinances, resolutions, or motions and parts of ordinances, resolutions, or motions of the Council in conflict with the provisions of this ordinance are hereby repealed, effective as of the effective date of this ordinance.

SECTION 6. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, the decision shall not affect the validity of the remaining portions of this ordinance.

SECTION 7. This ordinance shall become effective on the thirty-first day after its adoption.

PASSED AND ADOPTED by the Mayor and Council of the Town of Marana, Arizona, this 1st day of December, 2020.

Mayor Ed Honea

ATTEST:

APPROVED AS TO FORM:

Cherry L. Lawson, Town Clerk

Jane Fairall, Town Attorney



Council-Regular Meeting

A2

Meeting Date: 12/01/2020

To: Mayor and Council

Submitted For: Jane Fairall, Deputy Town Attorney

From: Frank Cassidy, Town Attorney

Date: December 1, 2020

Strategic Plan Focus Area:
Not Applicable

Subject: Resolution No. 2020-130: Relating to Development; approving and authorizing the Mayor to sign the Mandarin Development Agreement for development north and northwest of the Interstate 10 and Tangerine Road traffic interchange; and authorizing the Town Engineer to sign a quit claim deed of abandonment for unneeded right-of-way in Mandarin (Jane Fairall)

Discussion:

This agenda item brings forward the Mandarin Development Agreement, key deal points of which were discussed at the November 10 Council study session. In addition to the deal points discussed on November 10, this DA carries forward the Mandarin Mediation Agreement, which was approved by the Council on October 29, 2019 by the adoption of Marana Resolution No. 2019-110. The Mandarin Mediation Agreement and its two amendments, which were not previously recorded, are attached as Exhibit A to the Mandarin DA. If the Mandarin DA is approved by the Council, the Mandarin Mediation Agreement will be recorded with it.

As discussed in the November 10 study session, the Mandarin DA provides for the designation of certain off-site sewer, off-site water, and on-site drainage facilities to be designated as "protected facilities" under Town Code Chapter 14-4 (as amended at tonight's meeting to add drainage facilities). Under the terms of the Mandarin DA, as the Developer is ready to move forward with construction of each of the protected facilities, a standard Town of Marana form of "Agreement for Construction of Facilities under Private Contract" will be brought forward for Council consideration. The Agreement for Construction of Facilities under Private Contract will contractually obligate the Developer to promptly construct the facility and will establish the

"oversizing recovery charge" associated with that particular protected facility. Benefited properties will be designated for each of the protected facilities, notice will be given to the owners of the benefited properties, and the oversizing recovery charges will be formally adopted as each Agreement for Construction of Facilities under Private Contract is brought forward.

The Mandarin DA provides for the oversized portion of the Offsite 15" Sewer to be reimbursed only through oversizing recovery charges to be adopted when the Agreement for Construction of Sewer Facilities under Private Contract (Exhibit D to the Mandarin DA) is brought forward to the Council. Based on the current cost estimate and capacity calculation for the offsite sewer, the Developer is eligible to receive \$1,218,164 in oversizing recovery charges for the offsite sewer.

The Mandarin DA provides for the Offsite 16" Potable Water Main that the Developer will build in the Tangerine Road right-of-way (under the freeway and the UPRR) to be reimbursed (i) through oversizing recovery charges to be adopted when the Agreement for Construction of Water Facilities under Private Contract (Exhibit E to the Mandarin DA) is brought forward to Council and (ii) through Water Infrastructure DIF credits. The Mandarin DA requires the Town to add the Offsite 16" Potable Water Main to its next Water Infrastructure DIF infrastructure implementation plan. Once the Offsite 16" Potable Water Main is included in the Town's Water Infrastructure DIF, the Developer will receive full credit or reimbursement of Water Infrastructure DIFs paid by development in Mandarin until the full cost of the Offsite 16" Potable Water Main is paid to the Developer through a combination of DIF credits and oversizing recovery charges. Based on the current cost estimate and capacity calculation for the offsite sewer, the Developer is eligible to receive a total reimbursement of the full \$1,363,643 cost of the offsite water main through a combination of oversizing recovery charges and Water Infrastructure DIF credits.

The Mandarin DA provides for the oversized portion of the three regional drainage facilities that the Developer will build to be reimbursed (i) through oversizing recovery charges to be adopted when the Agreement for Construction of Drainage Facilities under Private Contract (Exhibits F, G, and H to the Mandarin DA) are brought forward to Council and (ii) through Town reimbursement of the three-fourths "transportation" share of the Town's 4% construction sales tax revenues generated from within the Mandarin project boundaries and from the public infrastructure projects constructed by the Developer of Mandarin for the Mandarin project. To track the particular construction sales tax revenues that are available for reimbursement, the Mandarin DA includes a provision requiring the Developer's contractors to separately track Mandarin construction activities. Based on the current cost estimates and capacity calculations for the regional drainage facilities, the Developer is eligible to receive a combined total reimbursement of \$7,569,803 for the oversized portion of the regional drainage facilities. Of this amount, \$5,255,396 is for the oversized portion of the Regional Channel, \$693,278 is for the oversized portion of the North Channel, and \$1,621,129 is for the oversized portion of the Detention Basin. After these reimbursements are completed, the Town will continue to collect the oversizing recovery charges for the regional drainage facilities until the Town recovers the full amount of construction sales tax reimbursements to the Developer.

Certain deal points from the October 2019 Mandarinina Mediation Agreement are reiterated or clarified in the Mandarinina DA:

- The Mandarinina Development Agreement gives the Developer credit against roadway impact fees for the Developer's contributions toward the cost of permanent Adonis Road and Mandarinina Boulevard, as provided in the Mandarinina Mediation Agreement.
- The Mandarinina Mediation Agreement waives application and review fees through the approval of the Mandarinina block plat, including fees associated with the formation of a CFD for the Mandarinina property. The DA reiterates those fee waivers and includes language from previous DAs concerning bringing forward the CFD formation for Council consideration.

If approved, this resolution will also authorize the Town Engineer to sign a quit claim deed for right-of-way dedicated to the Town by the Developer for temporary Mandarinina Boulevard. The temporary right-of-way is no longer needed because of the Developer's dedication of permanent Mandarinina Boulevard pursuant to the Second Amendment to Mediation Agreement approved by Marana Resolution No. 2020-097 on September 1, 2020.

Financial Impact:

The financial impact of the Mandarinina DA will depend on when the Developer moves forward with development of the Mandarinina property. However, in all cases, the Mandarinina DA requires the Developer to up-front infrastructure costs, and provides for reimbursements to be paid out of revenues generated by the Mandarinina project itself or through oversizing recovery charges paid by other benefiting properties. The Mandarinina DA carries forward the Town's Adonis Road funding obligations and the Town's waiver of certain fees from the 2019 Mandarinina Mediation Agreement. But otherwise the Mandarinina DA does not require the Town to front the cost of any infrastructure needed to serve Mandarinina.

Staff Recommendation:

Town staff recommends adoption of Resolution 2020-130, approving and authorizing the Mayor to sign the Mandarinina Development Agreement and authorizing the Town Engineer to sign the quit claim deed for a portion of the temporary Mandarinina Boulevard right-of-way.

Suggested Motion:

I move to adopt Resolution 2020-130, approving and authorizing the Mayor to sign the Mandarinina Development Agreement and authorizing the Town Engineer to sign the quit claim deed for a portion of the temporary Mandarinina Boulevard right-of-way.

Attachments

Resolution No 2020-130

Mandarina DA with exhibits

Mandarina Blvd QCD

MARANA RESOLUTION NO. 2020-130

RELATING TO DEVELOPMENT; APPROVING AND AUTHORIZING THE MAYOR TO SIGN THE MANDARINA DEVELOPMENT AGREEMENT FOR DEVELOPMENT NORTH AND NORTHWEST OF THE INTERSTATE 10 AND TANGERINE ROAD TRAFFIC INTERCHANGE; AND AUTHORIZING THE TOWN ENGINEER TO SIGN A QUIT CLAIM DEED OF ABANDONMENT FOR UNNEEDED RIGHT-OF-WAY IN MANDARINA

WHEREAS the Marana Town Council created the Mandarinina Specific Plan on February 17, 2009, by its adoption of Marana Ordinance No. 2009.02; and

WHEREAS the Mandarinina Specific Plan governs the development of approximately 342.3 acres of land located north and northwest of the Interstate 10 and Tangerine Road traffic interchange; and

WHEREAS the Town's consultant and staff have negotiated the terms of a development agreement for the area governed by the Mandarinina Specific Plan; and

WHEREAS right-of-way dedicated to the Town by the Developer for temporary Mandarinina Boulevard is no longer needed because of the Developer's dedication of permanent Mandarinina Boulevard pursuant to the Second Amendment to Mediation Agreement approved by Marana Resolution No. 2020-097 on September 1, 2020; and

WHEREAS A.R.S. § 28-7203 authorizes a roadway or portion of a roadway to be exchanged with an abutting owner for all or part of a new public roadway; and

WHEREAS the Marana Town Council finds that this resolution is in the best interests of the Town and its citizens.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Town of Marana, Arizona, as follows:

SECTION 1. The Mandarinina Development Agreement is approved in the form provided in the agenda materials associated with this Council agenda item, and the Mayor is authorized to sign it on the Town's behalf.

SECTION 2. The Town Engineer is authorized to sign the quit claim deed of abandonment for a portion of temporary Mandarin Boulevard in substantially the form provided in the agenda materials associated with this Council agenda item.

SECTION 3. The Town Manager and staff are authorized to carry out the terms of the Mandarin Development Agreement and to take all other actions necessary or prudent to carry out this resolution.

PASSED AND ADOPTED by the Mayor and Council of the Town of Marana, Arizona, this 1st day of December, 2020.

Mayor Ed Honea

ATTEST:

APPROVED AS TO FORM:

Cherry L. Lawson, Town Clerk

Jane Fairall, Town Attorney

MANDARINA DEVELOPMENT AGREEMENT

Town of Marana, Arizona

THIS MANDARINA DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into by and between the TOWN OF MARANA (the "Town"), an Arizona municipal corporation; and MANDARINA, LLC (the "Developer"), a Colorado limited liability company. The Town and the Developer are sometimes collectively referred to as the "Parties," either of which is sometimes individually referred to as a "Party."

RECITALS

A. On February 17, 2009, the Council created the "Mandarina Specific Plan" by its adoption of Marana Ordinance No. 2009.02, recorded in the Pima County Recorder's office at Docket 13499, Page 8 (Sequence 20090340005).

B. The Mandarinina Specific Plan governs the development of approximately 342.3 acres of land referred to in this Agreement as the "Subject Property," legally described in Exhibit A to Marana Ordinance No. 2009.02, and consisting of land located north and northwest of the Interstate 10 and Tangerine Road traffic interchange.

C. Marana Ordinance No. 2009.02 includes a condition, referred to in this Agreement as the "Non-Potable Water Condition," requiring installation of a non-potable water system to serve the common open space areas and other landscaped amenities of the Subject Property.

D. The Developer owns the Subject Property.

E. Two lawsuits between the Parties relating to the Subject Property were settled under the terms of a mediation agreement dated October 30, 2019, as amended by a first amendment dated June 3, 2020, and a second amendment dated September 2, 2020, all of which are collectively referred to in this Agreement as the "Mandarina Mediation Agreement," a true and correct copy of which is attached as Exhibit A.

F. Consistent with the terms of the Mandarinina Mediation Agreement and pursuant to Part 5 (Implementation and Administration) section H(3) of the Mandarinina Specific Plan, the Developer applied for and the Town approved an administrative amendment to the Mandarinina Specific Plan dated October 30, 2019 (the "Administrative Amendment"), a true and correct copy of which is attached as Exhibit B.

G. The development contemplated by this Agreement complies with the Town's adopted and approved General Plan (as defined in A.R.S. § 9-461).

H. The development contemplated by this Agreement complies with the Mandarina Specific Plan as amended by the Administrative Amendment.

I. The Town is authorized by A.R.S. § 9-500.05 to enter into a development agreement with a land owner or other person or entity having an interest in real property located within the Town to facilitate development of the property by providing for, among other things, the conditions, terms, restrictions, and requirements for development and public infrastructure and the financing of public infrastructure.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated into this Agreement as though fully restated here, and the mutual covenants set forth in this Agreement, the Parties hereby agree as follows:

1. *Definitions.* The following definitions shall apply to this Agreement:

a. The “Administrative Amendment” is defined in recital F above.

b. “Construction Sales Tax Revenues” means three-quarters of the Town’s transaction privilege taxes (currently 4%) generated pursuant to Section 8-415 or 8-416 of the Marana Tax Code (or corresponding sections of successor codes) from construction contracting or speculative builder activities (i) on the Subject Property and (ii) from the Developer’s construction of the Oversized Public Facilities.

c. “Council” means the Mayor and Town Council of the Town.

d. “Credit” or “credits” when used to refer to fees and charges due from the Subject Property shall mean credits or reimbursements, at the Developer’s option. Unless and until directed otherwise, a credit shall be applied against fees otherwise payable from the Subject Property. If and when the Developer chooses instead to receive reimbursements, the full amount of fees will be charged to the Subject Property, and the amount which would otherwise be credited will instead be collected by the Town and placed in the Reimbursement Account (see subparagraph 7.a below).

e. The “Detention Basin” consists of those certain detention improvements anticipated to be designed and constructed by the Developer in the approximately 23.25-acre area located entirely within and at the northwest corner of the Subject Property, where the Regional Channel and the North Channel converge (see Exhibit C).

f. The “Developer” means MANDARINA, LLC, a Colorado limited liability company, or its successor in interest who is the master developer of the Subject Property.

g. “Development Regulations” is defined in paragraph 15 below.

h. “EDU” means “equivalent demand unit” or “equivalent dwelling unit.” This is the usage from a typical single-family residence based on available information.

i. The “Mandarina Detention Basin Oversizing Recovery Charge” is the oversizing recovery charge associated with the Detention Basin (see subparagraph 3.d.v below).

j. The “Mandarina North Channel Oversizing Recovery Charge” is the oversizing recovery charge associated with the North Channel (see subparagraph 3.d.iv below).

k. The “Mandarina Offsite Sewer Oversizing Recovery Charge” is the oversizing recovery charge associated with the Offsite 15-Inch Sewer (see subparagraph 3.d.i below).

l. The “Mandarina Offsite Water Main Oversizing Recovery Charge” is the oversizing recovery charge associated with the Offsite 16-Inch Potable Water Main (see subparagraph 3.d.ii below).

m. The “Mandarina Oversizing Recovery Charges” are, collectively, the Mandarina Offsite Sewer Oversizing Recovery Charge, the Mandarina Offsite Water Main Oversizing Recovery Charge, the Mandarina Regional Channel Oversizing Recovery Charge, the Mandarina North Channel Oversizing Recovery Charge, and the Mandarina Detention Basin Oversizing Recovery Charge.

n. The “Mandarina Regional Channel Oversizing Recovery Charge” is the oversizing recovery charge associated with the Regional Channel (see subparagraph 3.d.iii below).

o. The “Mandarina Specific Plan” is defined in recital A above.

p. The “Non-Potable Water Condition” is defined in recital C above.

q. The “North Channel” consists of those certain drainage channel improvements anticipated to be designed and constructed by the Developer in the approximately 5.06-acre area that follows the north boundary of the Subject Property, approximately 3.78 acres of which is located on the Subject Property.

r. The “Northwest Street Facilities Development Impact Fee” is the fee adopted by the Town pursuant to Section 4 of Marana Ordinance No. 2017.029.

s. The “Offsite 15-Inch Sewer” consists of those certain sewer infrastructure improvements anticipated to be designed and constructed by the Developer connecting from the Town’s existing 18” sewer located near the future intersection of Moore Road and Clark Farms Boulevard, crossing under Interstate 10 and the Union Pacific Railroad, where it will terminate near the northwest boundary of Mandarina (see Exhibit C).

t. The “Offsite 15-Inch Sewer Oversize Costs” means the Oversize Portion of the Reimbursable Costs of the Offsite 15-Inch Sewer.

u. The “Offsite 16-Inch Potable Water Main” consists of those certain water infrastructure improvements anticipated to be designed and constructed by the Developer connecting from the Town’s existing 16-inch water main located southwest of the intersection of Interstate 10 and Tangerine Road, under Interstate 10 and the Union Pacific Railroad within a 32” sleeve (also to be installed by the Developer), and terminating at the future intersection of Tangerine Road and Mandarina Boulevard (see Exhibit C).

v. The “Offsite 16-Inch Potable Water Main Costs” means the Reimbursable Costs of the Offsite 16-Inch Potable Water Main.

w. The “Offsite 16-Inch Potable Water Main Oversize Costs” means the Oversize Portion of the Offsite 16-Inch Potable Water Main Costs.

x. “Oversize Portion” means the percentage of capacity of a public improvement that is attributable to and available to properties other than the Subject Property.

y. The “Oversized Public Facilities” are the Offsite 15-Inch Sewer, the Offsite 16-Inch Potable Water Main, the Regional Channel, the North Channel, and the Detention Basin.

z. “Oversized Public Facilities Costs” means Reimbursable Costs of the Oversized Public Facilities.

aa. “Party” and “Parties” are defined in the introductory paragraph of this Agreement.

bb. The “Permanent Adonis Road and Mandarinina Boulevard Improvements Costs” are the total contribution from the Developer under the Mandarinina Mediation Agreement for the two-lane permanent Adonis Road roadway and the two-lane permanent Mandarinina Boulevard roadway constructed pursuant to the Mandarinina Mediation Agreement.

cc. The “Regional Channel” consists of that certain system of drainage channel improvements anticipated to be designed and constructed by the Developer in the approximately 30-acre area located entirely on and that follows the east and southwest boundaries of the Subject Property (see Exhibit C).

dd. The “Regional Drainage Improvements” are, collectively, the Regional Channel, the North Channel, and the Detention Basin (see Exhibit C).

ee. The “Regional Drainage Improvements Costs” means all costs, expenses, fees, transaction privilege taxes and charges actually incurred and paid by or on behalf of the Developer to contractors, architects, engineers, surveyors, governmental agencies, other professionals and consultants, and other third parties for materials, labor, planning, design, engineering, surveying, site excavation and preparation, governmental permits and payments, payment and performance bonds, other professional services, and all other costs and expenses related or incidental to and reasonably necessary for, the acquisition, improvement, construction, installation, or provision of the Regional Drainage Improvements and warranting the Regional Drainage Improvements for one year after completion.

ff. The “Regional Drainage Improvements Oversize Costs” means the Oversize Portion of the Reimbursable Costs of the Regional Drainage Improvements.

gg. “Reimbursable Costs” means all costs, expenses, fees, transaction privilege taxes and charges actually incurred and paid by or on behalf of the Developer to contractors, architects, engineers, surveyors, governmental agencies, other professionals

and consultants, and other third parties for materials, labor, planning, design, engineering, surveying, site excavation and preparation, governmental permits and payments, payment and performance bonds, other professional services, and all other costs and expenses related or incidental to and reasonably necessary for, the acquisition, improvement, construction, installation, or provision of the referenced improvements and warranting the referenced improvements for one year after completion. Reimbursable Costs shall not include and shall not accrue interest. For the Regional Drainage Improvements, "Reimbursable Costs" includes the value of the portion of the Subject Property used for the Regional Drainage Improvements at an assumed value of \$30,000 per acre.

hh. "Reimbursement Account" means a separate account within the Town's General Fund or accounted for by an appropriate book or ledger entry designation for the purpose of making Reimbursement Payments. See subparagraph 7.a below.

ii. "Reimbursement Payments" is defined in paragraph 7.b below.

jj. The "Subject Property" is defined in recital B above.

kk. The "Town" is the TOWN OF MARANA, an Arizona municipal corporation.

ll. The "Wastewater Facilities Development Impact Fee" is the fee adopted by the Town pursuant to Section 3 of Marana Ordinance No. 2014.013 and amended by Section 9 of Marana Ordinance No. 2017.029.

mm. "Water Amenities" are defined in paragraph 8 below.

nn. The "Water Infrastructure Development Impact Fee" is the fee adopted by the Town pursuant to Section 1 of Marana Ordinance No. 2014.013 and amended by Section 7 of Marana Ordinance No. 2017.029.

oo. The "Water Resources Development Impact Fee" is the fee adopted by the Town pursuant to Section 2 of Marana Ordinance No. 2014.013 and amended by Section 8 of Marana Ordinance No. 2017.029.

2. *Overview of reimbursements and credits.* The credits and reimbursements to the Developer under this Agreement are summarized as follows:

a. *The Offsite 15-Inch Sewer.* If the Developer constructs the Offsite 15-Inch Sewer, the Offsite 15-Inch Sewer Oversize Costs will be reimbursed to the Developer only through the Mandarin Offsite Sewer Protected Facility Charge (see subparagraph 3.d.i below).

b. *The Offsite 16-Inch Potable Water Main.* If the Developer constructs the Offsite 16-Inch Potable Water Main, reimbursement to the Developer for the Offsite 16-Inch Potable Water Main Costs shall be as follows:

i. Until the Offsite 16-Inch Potable Water Main is included in the Water Infrastructure Development Impact Fee, the Offsite 16-Inch Potable Water Main Oversize Costs will be reimbursed to the Developer through the Mandarinina Offsite Water Main Oversizing Recovery Charge (see subparagraph 3.d.ii below).

ii. After the Offsite 16-Inch Potable Water Main is included in the Water Infrastructure Development Impact Fee, and until the combined total amount of reimbursements to the Developer from the Mandarinina Offsite Water Main Oversizing Recovery Charge and Water Infrastructure Development Impact Fee credits and reimbursements equals the Offsite 16-Inch Potable Water Main Costs,

(a) The Subject Property will receive full credit against the Water Infrastructure Development Impact Fee; and

(b) The Town will require benefiting properties other than the Subject Property either to continue paying the Mandarinina Offsite Water Main Oversizing Recovery Charge or, at the Town's option, the Town will transfer an equivalent amount from each such benefiting property's Water Infrastructure Development Impact Fee into the Reimbursement Account (see subparagraph 7.a below).

c. *The Regional Drainage Improvements.* If and to the extent the Developer constructs the Regional Drainage Improvements, the Mandarinina Regional Drainage Improvements Oversize Costs will be reimbursed to the Developer through the Mandarinina Regional Channel Oversizing Recovery Charge (see subparagraph 3.d.iii below), the Mandarinina North Channel Oversizing Recovery Charge (see subparagraph 3.d.iv below), the Mandarinina Detention Basin Oversizing Recovery Charge (see subparagraph 3.d.v below), and through reimbursement of the Construction Sales Tax Revenues until the combined total amount of these reimbursements to the Developer equals the Regional Drainage Improvements Oversize Costs. To reimburse itself for reimbursements to the Developer from Construction Sales Tax Revenues, the Town will retain any Mandarinina Regional Channel Oversizing Recovery Charge, Mandarinina North Channel Oversizing Recovery Charge, and Mandarinina Detention Basin Oversizing Recovery Charge received after the Developer has received full reimbursement of the Regional Drainage Improvements Oversize Costs.

d. *Permanent Adonis Road and Mandarinina Boulevard Improvements Costs.* Permanent Adonis Road and Mandarinina Boulevard Improvements Costs are reimbursed to the Developer only through credits against Northwest Street Facilities Development Impact Fees payable for construction occurring on the Subject Property. The full Northwest Street Facilities Development Impact Fee will be due and payable for construction occurring on the Subject Property after the combined total of all credits equals the Permanent Adonis Road and Mandarinina Boulevard Improvements Costs.

e. *Costs of satisfying the Non-Potable Water Condition.* The Developer's only compensation for satisfying the Non-Potable Water Condition shall be a credit against the Water Resources Development Impact Fee as described in subparagraph 4.d below

3. *Protected facility designations and charges.* The Oversized Public Facilities are each sized to include elements and capacity sufficient to serve the Subject Property and other benefiting properties, but the benefiting properties and the extent of the oversizing are different for each of the Oversized Public Facilities.

a. *Tender of agreements for construction.* As the Developer is ready to contractually obligate itself to construct each of the Oversized Public Facilities, the Developer shall initiate the protected facility designation process by signing and tendering to the Town the form of "Agreement for Construction of Facilities under Private Contract" for that facility. Based on information available as of the preparation of this Agreement, the currently contemplated forms of "Agreement for Construction of Facilities under Private Contract" for each of the Oversized Public Facilities are attached as Exhibit D (Offsite 15-Inch Sewer), Exhibit E (Offsite 16-Inch Potable Water Main), Exhibit F (Regional Channel), Exhibit G (North Channel), and Exhibit H (Detention Basin).

b. *Updating of information.* Before tendering each of the agreements for construction to the Town, the Developer and its consultants shall work with the Town's staff to update the cost, benefited properties, and amount per EDU, acre, unit of flow, or other similar measurement of the oversizing recovery charge in the agreement to reflect the best available information.

c. *Presentation to Council.* After providing the notice to benefited properties as provided in Marana Town Code section 14-4-5, Town staff will present the agreement for construction to Council.

d. *Effect of approval.* Upon approval by Council:

i. The Agreement for Construction of Facilities under Private Contract for the Offsite 15-Inch Sewer will result in the establishment of the Mandarin Offsite Sewer Oversizing Recovery Charge.

ii. The Agreement for Construction of Facilities under Private Contract for the Offsite 16-Inch Potable Water Main will result in the establishment of the Mandarin Offsite Water Main Oversizing Recovery Charge.

iii. The Agreement for Construction of Facilities under Private Contract for the Regional Channel will result in the establishment of the Mandarin Regional Channel Oversizing Recovery Charge.

iv. The Agreement for Construction of Facilities under Private Contract for the North Channel will result in the establishment of the Mandarin North Channel Oversizing Recovery Charge.

v. The Agreement for Construction of Facilities under Private Contract for the Detention Basin will result in the establishment of the Mandarin Detention Basin Oversizing Recovery Charge.

e. *Reconciliation.* As construction is completed on each of the Oversized Public Facilities, a reconciliation agreement shall be brought forward for Council consideration

if the final costs, capacities, or other factors result in a need to revise the associated oversizing recovery charge.

f. Deposit into the Reimbursement Account. The Town shall deposit all Mandarinina Oversizing Recovery Charges into the Reimbursement Account (see subparagraph 7.a below).

4. *Development impact fees.* Nothing in this Agreement shall be construed as a waiver or reduction of development impact fees properly adopted by the Town pursuant to A.R.S. § 9-463.05 and applicable to the Subject Property.

a. *Currently applicable development impact fees.* As of the date of this Agreement, the following Town development impact fees apply to the Subject Property (as they may be amended from time to time):

i. The \$2,461 per EDU Parks and Recreation Facilities Development Impact Fee adopted by Marana Ordinance Nos. 2014.012 and 2017.029.

ii. The \$3,719 per EDU Northwest Street Facilities Development Impact Fee adopted by Marana Ordinance No. 2017.029 (subject to the credits to be applied per subparagraph 4.b below).

iii. The \$2,331 per five-eighths-inch water meter Water Infrastructure Development Impact Fee as amended by Marana Ordinance No. 2017.029 (subject to the credits to be applied per subparagraph 4.c below). Fees for larger water meters are higher.

iv. The \$3,050 per five-eighths-inch water meter Water Resources Development Impact Fee as amended by Marana Ordinance No. 2017.029 (subject to the credits to be applied per subparagraph 4.d below). Fees for larger water meters are higher.

v. The \$3,930 per five-eighths-inch water meter Wastewater Facilities Development Impact Fee as amended by Marana Ordinance No. 2017.029. Fees for larger water meters are higher.

b. *Credits to be applied to the Northwest Street Facilities Development Impact Fee.* Credits to be applied to the Northwest Street Facilities Development Impact Fee will be applied in accordance with the Mandarinina Mediation Agreement.

c. *Credits to be applied to the Water Infrastructure Development Impact Fee.* Credits to be applied to the Water Infrastructure Development Impact Fee will be applied as follows:

i. Once the Parties enter into the Agreement for Construction of Facilities under Private Contract for the Offsite 16-Inch Potable Water Main (see subparagraph 3.d.ii above), the Offsite 16-Inch Potable Water Main will be added to the next revision of the Town's infrastructure improvements plan supporting amendments to the Town's Water Infrastructure Development Impact Fee.

ii. From and after the effective date of the ensuing revision to the Town's Water Infrastructure Development Impact Fee, the Developer shall receive credits against Water Infrastructure Development Impact Fees payable for the Subject Property in the amount of the Offsite 16-Inch Potable Water Main Costs.

iii. The credits shall cease, and the Developer shall pay the full Water Infrastructure Development Impact Fee, when the sum of the following equal the Offsite 16-Inch Potable Water Main Costs:

(a) The cumulative credits against Water Infrastructure Development Impact Fees payable for the Subject Property; plus

(b) The cumulative total of all Mandarinina Offsite Water Main Oversizing Recovery Charges reimbursed to the Developer.

d. *Credits to be applied to the Water Resources Development Impact Fee.* If the Developer satisfies the Non-Potable Water Condition, the Developer shall be entitled to credit against the Water Resources Development Impact Fee for the resulting estimated potable water resources savings, as reasonably determined by the Water Director and reasonably accepted by the Developer's representative (see subparagraph 24.a below). The amount of credit shall be consistent with the water usage determined by the most recent water infrastructure improvement plan; specifically, for each acre-foot of potable water demand eliminated by having non-potable water delivered to the Subject Property, 3.3 EDUs of credit shall be given against the Water Resources Development Impact Fee.

5. *Tangerine Downtown Sewer Protected Facility Charge.* The Offsite 15-Inch Sewer connects to, and the Subject Property benefits from, the Tangerine Downtown Sewer. The Developer shall pay the Tangerine Downtown Sewer Protected Facility Charge of \$519.67 per EDU adopted by Marana Resolution No. 2019-027.

6. *Developer reimbursement for Regional Drainage Improvements Oversize Costs from Construction Sales Tax Revenues.* If and to the extent the Developer constructs the Regional Drainage Improvements, the Mandarinina Regional Drainage Improvements Oversize Costs will be reimbursed to the Developer through the Mandarinina Regional Channel Oversizing Recovery Charge (see subparagraph 3.d.iii above), the Mandarinina North Channel Oversizing Recovery Charge (see subparagraph 3.d.iv above), the Mandarinina Detention Basin Oversizing Recovery Charge (see subparagraph 3.d.v above), and through reimbursement of the Construction Sales Tax Revenues as described in this paragraph 6 until the combined total amount of these reimbursements to the Developer equals the Regional Drainage Improvements Oversize Costs.

a. *Regional Drainage Improvements construction and reimbursement.* As a condition precedent to receiving Reimbursement Payments for the Regional Drainage Improvements Oversize Costs under subparagraph 7.b of this Agreement, and not as a separate contractual obligation, the Developer shall, in conjunction with development of the Subject Property:

- i. Design and construct the Regional Drainage Improvements;
- ii. Transfer to the Town title to the land used for the Regional Drainage Improvements; and
- iii. Pay all Regional Drainage Improvements Costs as they become due.

b. *Developer cost statements and Town reimbursement for Regional Drainage Improvements Oversize Costs.* The Town shall make Reimbursement Payments to the Developer for the Regional Drainage Improvements Oversize Costs pursuant to subparagraph 7.b below. The Developer shall submit to the Town quarterly statements showing the actual Regional Drainage Improvements Oversize Costs incurred and paid to date. Quarterly statements shall be provided until the Developer has made final payment for the Regional Drainage Improvements, the one-year warranty for the last of the Regional Drainage Improvements has expired, and the Town has full maintenance responsibility for the Regional Drainage Improvements (see paragraph 14 below). The Developer shall provide the Town with invoices or other backup information reasonably requested by the Town to confirm the accuracy of the Developer's quarterly statements of costs.

c. *Effect of loss of Construction Sales Tax Revenues.* If the laws of the State of Arizona are revised during the term of this Agreement in a way that reduces or eliminates Construction Sales Tax Revenues, the Town shall make deposits into the Reimbursement Account from such funding, if any, that the Town receives under then-existing laws of the State of Arizona to replace the reduced or eliminated Construction Sales Tax Revenues, in an amount that is proportional, to the Construction Sales Tax Revenues that the Town would have received if the laws of the State of Arizona had not been so revised.

d. *No Town representation of sufficiency of Reimbursement Payments.* The Developer acknowledges and understands that the amount of the Construction Sales Tax Revenues depends on many factors and may be insufficient to pay all Regional Drainage Improvements Oversize Costs.

e. *Developer's audit.* Not more than once each calendar year, the Developer may, at its own cost, audit Town sales tax returns and other appropriate financial records of the Town to assure prompt and accurate deposit into the Reimbursement Account of all revenues as required pursuant to this Agreement. The Developer's audit authorized by this paragraph shall be subject to all applicable laws that may prohibit or limit the dissemination or use of transaction privilege tax and related information. Before the Developer's audit occurs, the Developer shall obtain and provide to the Town written waivers of confidentiality sufficient to satisfy the requirements of Arizona Revised Statutes § 42-2003(A)(6) from each taxpayer whose sales tax returns and other financial records are provided by the Town in connection with the audit.

f. *Annual report.* Within 45 days following the end of each Town fiscal year, the Town shall deliver to the Developer a report of all Construction Sales Tax Revenues

which have been utilized by the Town in determining the amount deposited into the Reimbursement Account. The report shall be restricted to information that may be released by the Town without violating applicable laws that may prohibit or limit the dissemination or use of transaction privilege tax and related information. The report will not contain information capable of identifying confidential information of any particular taxpayer unless and until the Developer has obtained and provided to the Town written waivers of confidentiality sufficient to satisfy the requirements of Arizona Revised Statutes § 42-2003(A)(6) from each taxpayer whose confidential information is revealed in the report.

g. Contractor and subcontractor disaggregation of tax information for the Oversized Public Facilities and the Subject Property; release of tax information. The Developer shall require each contractor and subcontractor responsible for the payment of Construction Sales Tax Revenues to separately report construction sales tax attributable to the Oversized Public Facilities or attributable to construction on the Subject Property. The Developer shall exercise reasonable efforts to obtain from each contractor and subcontractor doing work attributable to the Subject Property or the Oversized Public Facilities a consent to release of tax information in a form reasonably acceptable to the Town. If the separate report required by this subparagraph is not provided to the Town, the Town shall make a reasonable estimate of Construction Sales Tax Revenues based on all information available to the Town, including information provided by the Developer, and the good faith certification by the Town's Finance Director shall be considered final and binding upon the Developer. The final certification of the Town's Finance Director shall be subject to all applicable laws that may prohibit or limit the dissemination or use of transaction privilege tax and related information.

7. Reimbursements. All reimbursements under this Agreement shall be paid to the Developer as provided in this paragraph.

a. Reimbursement Account. Beginning with the first Construction Sales Tax Revenues generated from the Developer's construction of the Oversized Public Facilities or the development of the Subject Property, and ending upon the expiration of this Agreement; the Town shall deposit into the Reimbursement Account all of the following:

- i. The Construction Sales Tax Revenues as they are received from the Arizona Department of Revenue;
- ii. All Mandarinina Oversizing Recovery Charges; and
- iii. Any development impact fees paid for development on the Subject Property that is reimbursable to the Developer (see subparagraph 1.d above).

b. Reimbursement Payments. Within the first 30 days of each calendar quarter, the Town shall pay the Developer all funds in the Reimbursement Account ("Reimbursement Payments"). Reimbursement Payments shall begin the first calendar quarter after (a) the Developer has incurred Oversized Public Facilities Costs and (b) the Town

has funds in the Reimbursement Account. Any funds accrued in the Reimbursement Account and owed to the Developer but not yet disbursed to the Developer upon the expiration of this Agreement shall be paid to the Developer within 30 days after the expiration of this Agreement.

c. *Limitations.* During the Term of this Agreement, the Town shall not enter into any agreement or transaction which impairs the Town's ability to make Reimbursement Payments or the rights of the Developer under this Agreement, including, without limitation, the right to receive the Reimbursement Payments and the proceeds of the Reimbursement Account in accordance with the procedures established in this Agreement.

8. *Water Amenities.* The Developer may, in its sole and absolute direction, elect to design, construct and develop recreational lakes, water features, and other compatible improvement and amenities (the "Water Amenities"). The Town supports the concept of providing Water Amenities to current and future residents of the Town, so long as the Developer provides the permanent water resources necessary for any and all Water Amenities, and that those water resources shall not include treated effluent from the Subject Property (all of which the Town requires for its long-term water resource obligations, separate from and not including any Water Amenities). The Town recognizes the public value created by incorporating Water Amenities into neighborhood and commercial centers of the Town. The Parties acknowledge that future agreements may be necessary to address regulatory, permitting, design, management, and ownership aspects of the Water Amenities. As development of the Subject Property progresses, the Parties agree to cooperate in identifying all agreements necessary to develop the Water Amenities. The Developer acknowledges and agrees that any future agreement relating to Water Amenities is subject to federal, state, and county regulatory requirements and approvals and as such would be subject to the approval by the Council in its sole and absolute discretion.

9. *Inability of the Developer to satisfy the Non-Potable Water Condition.* The Parties acknowledge that the Cortaro-Marana Irrigation District is the only plausible provider of non-potable water to the Subject Property, and that the Developer is currently coordinating with the Cortaro-Marana Irrigation District to supply non-potable water to the Subject Property. If the Developer is unable to receive non-potable water service from the Cortaro-Marana Irrigation District in an economically feasible manner before development of the first subdivision on the Subject Property, Town staff will schedule for Council consideration an ordinance to remove or modify the Non-Potable Water Condition.

10. *CFD application fee waived.* Pursuant to paragraph 3.2 of the Mandarinina Mediation Agreement, application and review fees with respect to the formation of a community facilities district on the Subject Property are waived.

11. *Other future economic incentives.* The absence of language in this Agreement to address a particular form or type of economic incentive is not intended to imply that no such economic incentives will be available or forthcoming. On the contrary, the Parties

anticipate that future economic incentives will be the subject of future agreements or amendments to this Agreement if and when the Parties determine the economic incentives are necessary or beneficial (i) to induce one or more retail business facilities to locate on the Subject Property, (ii) to assist in the creation or retention of jobs, and/or (iii) to otherwise improve or enhance the economic welfare of the Town's inhabitants.

12. *Competitive bids required.* As a condition of and prerequisite to receiving any reimbursement under this Agreement, the Developer shall go through the competitive bidding process for the Oversized Public Facilities in compliance with Title 34 of the Arizona Revised Statutes.

13. *Term.* This Agreement shall become effective (the "Effective Date") upon the later of (i) its date of recording pursuant to paragraph 26 below and (ii) the effective date of the Town resolution approving this Agreement. The term of this Agreement shall begin on the Effective Date and, unless sooner terminated by the mutual consent of the Parties, shall automatically terminate and shall thereafter be void for all purposes on the 30th anniversary of the Effective Date. The Town's reimbursement obligations under paragraph 7.b above shall terminate on the earlier of (i) the date the Town has reimbursed the Developer for all of the Oversized Public Facilities Costs available for reimbursement under this Agreement or (ii) the 30th anniversary of the Effective Date.

14. *Maintenance.* Once the Oversized Public Facilities are completed by the Developer and accepted by the Town, and the one-year warranty applicable to each has expired, the Town shall have full maintenance responsibility for the Oversized Public Facilities.

15. *Development regulations.* The Subject Property shall be governed by the Mandarinina Specific Plan and this Agreement. The Marana Land Development Code, including the written rules, regulations, substantive procedures, and policies relating to development of land, adopted or approved by the Council (collectively the "Marana Development Code") in effect on the Effective Date shall apply to the extent not covered by the Mandarinina Specific Plan or this Agreement. The requirements of this paragraph are collectively referred to as the "Development Regulations." In the event of any express conflict, the following rules shall apply:

a. The Mandarinina Specific Plan as amended by the Administrative Amendment shall control over the terms of the Marana Development Code on all matters.

b. The Mandarinina Specific Plan as amended by the Administrative Amendment and the Marana Development Code shall control over the terms of this Agreement as to any zoning or other legislative matter.

c. This Agreement shall control over the terms of the Mandarinina Specific Plan as amended by the Administrative Amendment and the Marana Development Code as to any administrative or procedural matter.

16. *Development review.* The Subject Property shall be developed in a manner consistent with the Development Regulations and this Agreement, which together establish the basic land uses, and the densities, intensities and development regulations that apply

to the land uses authorized for the Subject Property. Upon the Developer's compliance with the applicable development review and approval procedures and substantive requirements of the Development Regulations, the Town agrees to issue such permits or approvals for the Subject Property as may be requested by the Developer.

17. *Permit and review fee waiver.* The Town will waive all Town plan review fees and inspection and construction permit fees for the Oversized Public Facilities.

18. *Town review and approval of plans.* Except as expressly provided in this Agreement, the Oversized Public Facilities are subject to the Town's normal plan submittal, review and approval procedures and construction inspection requirements.

19. *No partnership or joint venture.* Nothing in this Agreement shall be understood or construed to create or imply a partnership or joint venture between the Developer and the Town.

20. *Exercise of eminent domain.* If the Developer and the Town mutually determine that acquisition of third-party property rights are necessary and appropriate for the construction of public infrastructure contemplated by this Agreement or by the Mandarin Specific Plan as amended by the Administrative Amendment, the Developer will use commercially reasonable efforts to acquire the third-party property rights. The Developer shall not construct public infrastructure requiring acquisition of third-party property rights until either (i) the Developer has acquired the necessary third-party property rights pursuant to this paragraph or, (ii) the Town has obtained possession of the necessary third-party property rights by eminent domain, which the Town shall exercise by filing a condemnation lawsuit in the Superior Court of Pima County within 180 days after the Developer advises the Town in writing that it has been unable to obtain the necessary third-party property rights. If the Town exercises its power of eminent domain pursuant to this paragraph, the Developer shall pay all of the Town's costs of condemnation, including but not limited to the condemnation award to the property owners, costs of litigation, and the Town's reasonable attorneys' fees. If the Town settles a condemnation lawsuit, the Developer shall pay the settlement costs, provided that those costs do not exceed the higher of (a) 120% of the appraised value of the third-party property rights acquired or (b) an amount approved by the Developer.

21. *Lender provisions.* The Developer may provide a collateral assignment of this Agreement or assign or pledge the Developer's right to receive Reimbursement Payments under paragraph 7.b above to one or more lenders to finance development, construction, or operation of the Subject Property. The Developer shall notify the Town in writing of the collateral assignment or the assignment or pledge of Reimbursement Payments. If a lender is permitted under the terms of its agreement with the Developer to cure the non-performance and/or to assume the Developer's position with respect to this Agreement, the Town agrees to recognize the rights of the lender and to permit the lender to assume the rights and obligations of the Developer under this Agreement. Nothing in this Agreement shall be deemed to prohibit, restrict, or limit the right of a lender to take title to all

or any portion of the Subject Property, without the approval or consent of the Town, pursuant to a foreclosure proceeding, trustee's sale, or deed in lieu of foreclosure.

22. *Status statements.* The Town, the Developer, a purchaser (only with respect to the portion of the Subject Property being purchased), or a lender (only with respect to the portion of the Subject Property the lender encumbers with a loan or security interest) may request the Town and/or the Developer to provide, within fifteen business days of the request, a written statement that, to the best knowledge of the Party providing the statement, (a) this Agreement is in full force and effect and a binding obligation of the Party providing the statement, (b) this Agreement has not been amended or modified (or, if amended, identifying the amendments or modifications), (c) there is no known default by the Town or the Developer in the performance of their obligations under this Agreement (or, if there is a default, a description of the nature and extent of the default), and (d) any other matter reasonably requested including the balance or status of any required payment, reimbursement or other similar matter. The Town Manager is authorized to sign or provide the written statement on behalf of the Town. The Town and the Developer acknowledge that a statement provided pursuant to this paragraph may be relied upon by the requestor, but the Town and the Developer shall have no liability for monetary damages to the requestor in connection with, resulting from, or based upon any statement that was been provided in good faith by the Town or the Developer.

23. *Force majeure.* If any Party is unable to observe or perform any covenant or condition of this Agreement or of any of the agreements for construction (see paragraph 3 above) by reason of force majeure, then the failure to observe or perform the covenant or condition shall not constitute an event of non-performance under this Agreement so long as the Party uses commercially reasonable efforts to remedy with all reasonable speed the event or condition causing the inability to perform, and the covenant or condition can be cured within a reasonable amount of time. Force majeure as used in this paragraph means events due to causes beyond the Party's control and without its fault, negligence, or failure to comply with applicable laws. Acts of God, acts of terrorism, war, and strikes are examples of force majeure.

24. *Cooperation and alternative dispute resolution.*

a. *Appointment of representatives.* To further the commitment of the Parties to cooperate in the development of the Subject Property and the construction of the public improvements discussed in this Agreement, the Town and the Developer each shall designate and appoint a representative to act as a liaison between the Town and its various departments and the Developer. The initial representative for the Town is the Town Manager, and the initial representative for the Developer is Marcus Palkowitsh or a replacement to be selected by the Developer. The representatives shall be available at all reasonable times to discuss and review the performance of the Parties in the development of the Subject Property and the construction of the public improvements discussed in this Agreement.

b. *Non-performance; remedies.* If any Party does not perform under this Agreement (the “Non-Performing Party”) with respect to any of that Party’s obligations under this Agreement, any other Party (the “Demanding Party”) shall be entitled to give written notice in the manner prescribed in paragraph 25 below to the Non-Performing Party (and to a lender who has received a collateral assignment of this Agreement pursuant to paragraph 21 above), which notice shall state the nature of the non-performance claimed and make demand that such non-performance be corrected. The Non-Performing Party shall then have (i) 15 days from the date of the notice within which to correct the non-performance if it can reasonably be corrected by the payment of money, or (ii) 30 days from the date of the notice to cure the non-performance if action other than the payment of money is reasonably required, or if the non-monetary non-performance cannot reasonably be cured within 30 days, then such longer period as may be reasonably required, provided and so long as the cure is promptly commenced within 30 days and thereafter diligently prosecuted to completion. If any non-performance is not cured within the applicable time set forth in this paragraph, then the Demanding Party shall be entitled to begin the mediation and arbitration proceedings set forth in this paragraph. The Parties agree that due to the size, nature and scope of the Subject Property and the construction of the public improvements discussed in this Agreement, and due to the fact that it may not be practical or possible to restore the property to its condition prior to the Developer’s development and improvement work, once implementation of this Agreement has begun, money damages and remedies at law will likely be inadequate and that specific performance will likely be appropriate for the non-performance of a covenant contained in this Agreement. This paragraph shall not limit any contract or other rights, remedies, or causes of action that any Party may have at law or in equity.

c. *Mediation.* If there is a dispute under this Agreement which the Parties cannot resolve between themselves, the Parties agree that there shall be a 45-day moratorium on arbitration during which time the Parties agree to attempt to settle the dispute by nonbinding mediation before commencement of arbitration. The mediation shall be held under the commercial mediation rules of the American Arbitration Association. The matter in dispute shall be submitted to a mediator mutually selected by the Developer and the Town. If the Parties cannot agree upon the selection of a mediator within seven days, then within three days thereafter the Town and the Developer shall request the presiding judge of the Superior Court in and for the County of Pima, State of Arizona, to appoint an independent mediator. The mediator selected shall have at least five years’ experience in mediating or arbitrating disputes relating to real estate development. The cost of any such mediation shall be divided equally between the Town and the Developer. The results of the mediation shall be nonbinding on the Parties, and any Party shall be free to initiate arbitration after the moratorium.

d. *Arbitration.* After mediation, as provided for in subparagraph 24.c above, any dispute, controversy, claim or cause of action arising out of or relating to this Agreement shall be settled by submission of the matter by both Parties to binding arbitration

in accordance with the rules of the American Arbitration Association and the Arizona Uniform Arbitration Act, A.R.S. § 12-501 *et seq.*, and judgment upon the award rendered by the arbitrator(s) may be entered in a court having jurisdiction.

25. *Notices.* All notices, requests and other communications under this Agreement shall be given in writing and either (i) personally served on the party to whom it is given, or (ii) mailed by registered or certified mail, postage prepaid, return receipt requested, or (iii) sent by private overnight courier such as Federal Express, addressed as follows:

If to the Town:

TOWN OF MARANA
11555 W. Civic Center Drive, Bldg. A3
Marana, Arizona 85653-7006
Telephone: (520) 382-1900
Email: townmanager@maranaAZ.gov

If to the Developer:

MANDARINA, LLC
720 South Colorado Boulevard, Suite 940N
Denver, Colorado 80246
Attn: Marcus Palkowitsh
Telephone: (303) 399-9804
Email: marcus@mspcompanies.com

All notices shall be deemed given when delivered or, if mailed as provided above, on the second day after the day of mailing, and if sent by overnight courier, on the next day after the date of deposit with the courier. Any Party may change its address for the receipt of notices at any time by giving written notice thereof to the other Party in accordance with the terms of this section. The inability to deliver notice because of a changed address of which no notice was given, or rejection or other refusal to accept any notice, shall be deemed to be the effective receipt of the notice as of the date of such inability to deliver or rejection or refusal to accept. In addition to mailed notice, a courtesy email copy will be sent the same day (but the email notice will not satisfy the notice requirement of this paragraph 25).

26. *Recordation.* After this Agreement has been executed by the Parties, the Town shall record this Agreement in the office of the Pima County Recorder.

27. *Miscellaneous.*

- a. This Agreement may not be modified except in a writing signed by the Parties.
- b. Time is of the essence of this Agreement.

c. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona, and any lawsuit to enforce any provision of this Agreement or to obtain any remedy with respect to this Agreement shall be brought in the

Pima County Superior Court, and for this purpose the Parties expressly and irrevocably consent to the jurisdiction of the Pima County Superior Court.

d. If any Party fails to perform any of its obligations under this Agreement or if a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the prevailing Party shall be entitled to its reasonable attorneys' fees and costs consistent with A.R.S. § 12-341.01.

e. This Agreement may be executed in identical counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument. In addition, this Agreement may contain more than one counterpart of the signature pages and this Agreement may be executed by the affixing of the signature pages, and all of such counterpart signature pages shall be read as though one, and they shall have the same force and effect as though all the signers had signed a single signature page.

f. Exhibits referred to in and attached to this Agreement are incorporated by reference as if set forth in full in the text of this Agreement.

g. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors in interest and assigns; provided, however, that (i) upon the conveyance of all of the Developer's holdings in the Subject Property to a single grantee, the Developer shall automatically be released from any further obligation or liability under this Agreement and this Agreement shall thereafter bind the grantee; and (ii) in no event shall this Agreement be binding on or burden the property of a purchaser of a home on the Subject Property.

h. This Agreement is subject to A.R.S. § 38-511, which provides for cancellation of contracts in certain instances involving conflicts of interest.

[Signature page follows.]

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LIST OF EXHIBITS

- | | |
|-----------|--|
| Exhibit A | The Mandarinina Mediation Agreement |
| Exhibit B | Administrative Amendment to the Mandarinina Specific Plan |
| Exhibit C | Depiction of Public Improvements map |
| Exhibit D | Form of Agreement for Construction of Facilities under Private Contract for the Offsite 15-Inch Sewer |
| Exhibit E | Form of Agreement for Construction of Facilities under Private Contract for the Offsite 16-Inch Potable Water Main |
| Exhibit F | Form of Agreement for Construction of Facilities under Private Contract for the Regional Channel |
| Exhibit G | Form of Agreement for Construction of Facilities under Private Contract for the North Channel |
| Exhibit H | Form of Agreement for Construction of Facilities under Private Contract for the Detention Basin |

EXHIBIT A TO MANDARINA DEVELOPMENT AGREEMENT

Dale S. Zeitlin (#006615)
ZEITLIN & ZEITLIN, P.C.
5050 North 40th Street, Suite 330
Phoenix, Arizona 85018
Telephone: (602) 648-5222
Email: Dale@zeitlinlaw.com
Attorneys for Mandarin. LLC

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR PIMA COUNTY

MANDARINA, LLC, a Colorado limited
liability company,

Plaintiff,

v.

TOWN OF MARANA, a municipal
corporation,

Defendant.

Case No.: C20161982

MEDIATION AGREEMENT

(Assigned to the Honorable
D. Douglas Metcalf)

TOWN OF MARANA, an Arizona
municipal corporation,

Plaintiff,

v.

MANDARINA, LLC, a Colorado limited
liability company; and PIMA COUNTY
TREASURER,

Defendants.

Case No.: C20184425

(Assigned to the Honorable
Janet C. Bostwick)

The parties, the Town of Marana ("Town") and Mandarin, LLC ("Mandarin"), participated in a mediation pursuant to Rule 80(a) Ariz. R. Civ. Proc. before the Honorable Lawrence H. Fleischman that occurred on June 20, 2019. The parties have reached this agreement (this "Mediation Agreement") to settle the above referenced cases (the "Pending Litigation") as follows:

1. AGREEMENTS RE ADONIS ROAD

1.1. In the lawsuit *Town of Marana v. Mandarin, LLC* C20184425 (the "Eminent Domain Action"), the Town condemned right-of-way for the construction of Adonis Road

EXHIBIT A TO MANDARINA DEVELOPMENT AGREEMENT

1 through the property owned by Mandarinina (the "Mandarinina Property"). Adonis Road has
2 not yet been constructed and is currently being designed as a temporary (i.e., not designed
3 to the Town's permanent street standards) two-lane roadway located in an alignment not
4 consistent with future development of the Mandarinina Property as depicted on the
5 development plan that is attached and incorporated herein as Exhibit 1.

6 1.2. Pursuant to this Mediation Agreement, Adonis Road is being realigned to
7 accommodate future development of the Mandarinina Property as depicted on the
8 development plan that is attached and incorporated herein as Exhibit 1, but the Town or a
9 third party acting pursuant to an agreement with the Town will within two years of this
10 Mediation Agreement construct Adonis Road as a temporary two-lane roadway
11 ("Temporary Adonis Road") and Mandarinina Road Link (defined in paragraph 1.4.2
12 below) as a temporary two-lane roadway. The construction of Temporary Adonis Road
13 and Mandarinina Road Link will include the installation of stock-tight fencing at the 150-
14 foot Adonis Road right-of-way boundaries from the north boundary of the Mandarinina
15 Property to Mandarinina Link Road, and will include the installation of stock-tight fencing
16 at the 51-foot temporary Mandarinina Road Link right-of-way boundaries from Adonis
17 Road to Tangerine Road, all as shown on the map attached and incorporated herein as
18 Exhibit 2. The parties acknowledge that upon the development of the Mandarinina Property,
19 Temporary Adonis Road will need to be removed and replaced with a permanent roadway
20 that is in compliance with Mandarinina's Specific Plan ("Permanent Adonis Road") as
21 further described in Section 1.10 below.

EXHIBIT A TO MANDARINA DEVELOPMENT AGREEMENT

1 1.3. The portion of Permanent Adonis Road that runs parallel to the Union Pacific
2 Railroad will be redesigned and constructed such that the closest point to the Union Pacific
3 Railroad will be 500 feet, as depicted on Exhibit 1.

4 1.4. Within 30 days after the Effective Date of this Mediation Agreement,
5 Mandarinina shall dedicate to the Town the following-described public right-of-way:

6 1.4.1. The 150-foot right-of-way needed for the four-lane Permanent Adonis
7 Road through the Mandarinina Property, as described and depicted on Exhibit 3.

8 1.4.2. A 51-foot interim right-of-way at or near the east boundary of the
9 Mandarinina Property, connecting Adonis Road to Tangerine Road (the "Mandarinina
10 Road Link"), as described and depicted on Exhibit 4.

11 1.5. Any additional right-of-way needed for the construction of the four-lane
12 Permanent Adonis Road and the permanent road to be constructed as Mandarinina
13 Boulevard shall be dedicated to the Town at no additional cost when it is needed, and any
14 right-of-way dedicated pursuant to this Mediation Agreement for the four-lane Permanent
15 Adonis Road or for the Mandarinina Road Link that the Town Engineer and Mandarinina
16 determine is not needed for the actual construction of those permanent roads shall be
17 vacated to Mandarinina or its successor in interest at no cost pursuant to A.R.S. § 28-7203
18 ("roadway exchange"). The vacated right-of-way for the Mandarinina Road Link shall be
19 returned to Mandarinina no later than 30 days after conditional acceptance by the Town of
20 the permanent road to be constructed as Mandarinina Boulevard.

21 1.6. On or before the Effective Date of this Mediation Agreement, the Town shall
22 provide all necessary engineering information to Mandarinina to design Temporary Adonis

EXHIBIT A TO MANDARINA DEVELOPMENT AGREEMENT

1 Road and the Mandarin Road Link as temporary two-lane roadways (consistent with the
2 existing temporary two-lane roadway design for the balance of Adonis Road).

3 1.7. Mandarin shall pay for and, within 60 days after the Effective Date of this
4 Mediation Agreement, shall submit to the Town Engineer the design plans for Temporary
5 Adonis Road and the Mandarin Road Link as temporary two-lane roadways (consistent
6 with the existing temporary two-lane roadway design for the balance of Adonis Road)
7 within the right-of-way described in Section 1.4 above.

8 1.7.1. Temporary Adonis Road will be designed and built within the west 75
9 feet of the new Adonis Road right-of-way.

10 1.7.2. Mandarin's revisions to the Temporary Adonis Road design shall
11 include design off-site of the Mandarin Property to the extent necessary to tie in the
12 revised alignment to the portion of the temporary two-lane Adonis Road located north
13 of the Mandarin Property. Mandarin shall not be responsible for any offsite right-of-
14 way, easements, or improvements not on the Mandarin Property.

15 1.7.3. The Town shall review and provide comments for the design plans for
16 Temporary Adonis Road submitted by Mandarin within 30 days after receipt of the
17 design plans. Mandarin shall submit plan revisions to the Town Engineer within 30
18 days after receipt of the Town's plan review comments.

19 1.7.4. The escrow instructions for the Escrow Account (see Section 1.11 below)
20 shall authorize (but not require) the Town to withdraw sufficient funds from the
21 Escrow Account to complete the design of Temporary Adonis Road and the Mandarin
22

EXHIBIT A TO MANDARINA DEVELOPMENT AGREEMENT

1 Road Link as two-lane roadways described in this Section 1.7 if Mandarinina fails to do
2 so within the timeframes set forth in this Section 1.7.

3 1.8. Within 30 days after the Town's receipt from Mandarinina of title to the right-
4 of-way described in Section 1.4 above, the Town shall do all of the following:

5 1.8.1. Dismiss the Eminent Domain Action.

6 1.8.2. Return to Mandarinina clear title to any portion of the right-of-way sought
7 in the Eminent Domain Action and not included in the right-of-way described in
8 Section 1.4 above.

9 1.8.3. Record a release of lis pendens with the Pima County Recorder.

10 1.9. The parties will work together so that the connections where Adonis Road
11 leaves the Mandarinina Property, both on the north and south ends of the Mandarinina
12 Property, comply with the Town's engineering and safety standards.

13 1.10. Through the Mandarinina Property, phased with development as it occurs on
14 the Mandarinina Property, Mandarinina shall design and construct Adonis Road as a
15 permanent two-lane roadway (one lane in each direction) that fully complies with the
16 ultimate street standards of the Mandarinina Specific Plan, as more specifically depicted in
17 Exhibit 5.

18 1.10.1. When designing the two-lane Permanent Adonis Road, Mandarinina shall
19 undertake sufficient design and technical analysis of the ultimate construction of
20 Adonis Road as a four-lane road so that the two-lane ultimate Adonis Road
21 improvements constructed by Mandarinina will function with and will not need to be
22 removed or substantially modified upon the construction of the final two lanes of the

EXHIBIT A TO MANDARINA DEVELOPMENT AGREEMENT

1 ultimate four-lane cross-section of Adonis Road, but in no circumstance shall the Town
2 require Mandarinina to provide the Town with design and technical plans that exceed
3 30% of final design and technical plans.

4 1.10.2. Any Mandarinina obligation associated with paying for the cost of design
5 and/or construction of Permanent Adonis Road as a four-lane roadway shall be
6 proportional to the traffic impact of development on the Mandarinina Property, but only
7 as the traffic impact of development on the Mandarinina Property exceeds the capacity
8 provided by the two-lane Permanent Adonis Road.

9 1.11. Within 30 days after the Effective Date of this Mediation Agreement, the
10 Town shall contribute \$900,000 into an escrow account (the "Escrow Account") to be held
11 by a Tucson-area title company of Mandarinina's choice (the "Escrow Agent") and
12 disbursed in accordance with the terms of this Mediation Agreement. The escrow
13 instructions for the Escrow Account shall:

14 1.11.1. Permit Mandarinina to withdraw funds in the Escrow Account to pay
15 Mandarinina's costs to design and construct Adonis Road on the Mandarinina Property as
16 a permanent roadway, as contemplated by Section 1.10 above.

17 1.11.2. Authorize the Town to withdraw funds in the Escrow Account to pay
18 costs to design Temporary Adonis Road and Mandarinina Road Link, but only in the
19 event that Mandarinina does not perform its obligations described in Section 1.7 above.

20 1.12. At least 60 days before commencement of construction of Adonis Road as a
21 two-lane permanent roadway through the Mandarinina Property pursuant to Section 1.10 of
22 this Mediation Agreement, the Town shall deposit into the Escrow Account an additional

EXHIBIT A TO MANDARINA DEVELOPMENT AGREEMENT

1 \$1,100,000 for the removal of Temporary Adonis Road and for the design and
2 construction of Permanent Adonis Road through the Mandarinina Property. The Town's
3 obligation to deposit the additional \$1,100,000 into the Escrow Account shall be waived
4 if the two-lane Permanent Adonis Road is designed and constructed by or on behalf of the
5 Town. The design and construction of the two-lane Permanent Adonis Road by or on
6 behalf of the Town will satisfy all of Mandarinina's obligation for capacity on the two-lane
7 Permanent Adonis Road.

8 1.13. The Town agrees the Mandarinina Road Link will have a full movement un-
9 signalized traffic intersection at Tangerine Road until Tangerine Road is widened or until
10 the intersection meets warrants for a traffic light (whichever first occurs), at which time
11 the Mandarinina Road Link will be reconfigured to have a three-quarter access point on
12 Tangerine Road, as depicted in Exhibit 6. The Town has determined that the intersection
13 does not meet separation requirements for a traffic light.

14 1.14. The parties agree the intersection described in Section 1.13 above may also
15 be used by the Town to temporarily avoid the Adonis Road crossing of the Central Arizona
16 Project (CAP).

17 1.15. At no time shall Mandarinina be restricted by the Town from developing the
18 Mandarinina Property because the Town has not yet completed the Adonis Road crossing
19 of the CAP and the connection east of the CAP crossing to Tangerine Road.

20 1.16. Not less than 30 days prior to the commencement of construction on the
21 Mandarinina Property of a section or segment of Permanent Adonis Road or Mandarinina
22 Boulevard, the Town shall amend its infrastructure improvements plan ("IIP") adopted

EXHIBIT A TO MANDARINA DEVELOPMENT AGREEMENT

1 pursuant to A.R.S. § 9-463.05, relating to municipal development impact fees ("DIFs"),
2 to add the section or segment of Permanent Adonis Road and/or Mandarinina Boulevard, to
3 allow all of the following (to the extent permitted by law):

4 1.16.1. The recapture and reimbursement to the Town through street facilities
5 DIFs of the lesser of (i) the \$2,000,000 deposited by the Town into the Escrow Account
6 or (ii) half of the IIP-determined anticipated cost of the permanent two-lane Adonis
7 Road through the Mandarinina Property; and

8 1.16.2. All Transportation DIF-creditable costs beyond those set forth in
9 Subsection 1.16.1 above shall be fully creditable or reimbursable to Mandarinina.
10 Mandarinina shall receive 100% credit or reimbursement, at its election, from all street
11 and related facilities DIFs paid within the Mandarinina Property until all such costs have
12 been recaptured by Mandarinina.

13 1.17. The Town or others will continue to have sole responsibility for the design
14 and construction of Adonis Road beyond the boundaries of the Mandarinina Property,
15 including the CAP crossing and the Adonis Road connection east of the CAP crossing to
16 Tangerine Road. Except for the design of the transition of Temporary Adonis Road to the
17 previous alignment in the area 296.30 feet north of the Mandarinina Property, in no event
18 shall Mandarinina be responsible for the design and construction of Adonis Road outside
19 the boundaries of the Mandarinina Property.

20 1.18. Except as provided in Subsection 1.10.2 above, Mandarinina shall be
21 responsible for the redesign and construction of the two-lane Permanent Adonis Road
22 through the Mandarinina Property only.

EXHIBIT A TO MANDARINA DEVELOPMENT AGREEMENT

1.19. If Mandarinina sells a portion of the Mandarinina Property to a successor owner(s), Mandarinina may, at its election, assign a portion of its rights to use and withdraw funds from the Escrow Account, by written agreement between Mandarinina and the successor owner. If Mandarinina sells the Mandarinina Property and has no further obligation to design and construct any portion of Permanent Adonis Road, Mandarinina shall assign the rights to use and withdraw funds from the Escrow Account to the successor owner.

2. AMENDMENTS TO THE MANDARINA SPECIFIC PLAN

2.1. In the lawsuit *Mandarina, LLC v. Town of Marana*, C20161982, (the “Inverse Condemnation Action”) Mandarinina alleged certain claims against the Town arising from the Town’s decision to eliminate the planned interchange at Tangerine Road and Interstate-10 (I-10). The Town denied the claims. Nevertheless, the parties recognize that it is in their mutual interest to amend the Mandarinina Specific Plan. Therefore, Mandarinina and the Town will work together cooperatively and diligently to review and complete the amendment to the Mandarinina Specific Plan to include, without limitation, those certain modifications of land uses, areas of land uses, and modifications of the on-site roadway network and roadway dedication requirements, as set forth on Exhibit 1.

2.2. The parties have agreed that the amendments/modifications to the Mandarinina Specific Plan can be accomplished through an administrative process as set forth in the Mandarinina Specific Plan §H(3).

EXHIBIT A TO MANDARINA DEVELOPMENT AGREEMENT

1 3. WAIVER OF FEES

2 3.1. The Town shall waive Town of Marana application and review fees through
3 the approval of the final block plat covering the Mandarinina Property (but not for
4 subdivision plats for individual blocks of the block plat).

5 3.2. The Town shall also waive any Town of Marana application and review fees
6 that may otherwise be incurred with respect to the formation of a Community Facilities
7 District for the Mandarinina Property.

8 4. MISCELLANEOUS

9 4.1. Binding Arbitration. Judge Fleischman shall serve in the role of arbitrator, and
10 shall have the authority to resolve any disputes between the parties. Any such decision by
11 Judge Fleischman shall be binding on the parties. Judge Fleischman shall have the
12 authority to order modifications to the language of this Mediation Agreement that is
13 consistent with parties' settlement intentions as reasonably interpreted by Judge
14 Fleischman. The parties hereby waive any right to initiate an action in any court with
15 respect to this Agreement, other than an appeal of a binding arbitration decision by Judge
16 Fleischman.

17 4.2. Dismissal of Pending Litigation. Upon the Town Council approving this
18 Mediation Agreement and the amendments/modifications to the Mandarinina Specific Plan:
19 (i) the Inverse Condemnation Action will be dismissed with prejudice, each side to bear
20 its own attorneys' fees and costs; (ii) in the Eminent Domain Action, the Town and
21 Mandarinina shall enter into a stipulation to place the case on the inactive calendar until it
22 is dismissed pursuant to Section 1.8 of this Mediation Agreement; and Mandarinina shall

EXHIBIT A TO MANDARINA DEVELOPMENT AGREEMENT

1 keep the money previously paid by the Town for the taking of Adonis Road, but
2 Mandarinina waives any further compensation based on the redesign and relocation of
3 Adonis Road, and the increase in right-of-way required for Adonis Road, beyond the
4 compensation provided for as described in this Mediation Agreement. If necessary, the
5 parties will stipulate to the continuance of the Pending Litigation on the inactive calendar
6 for so long as necessary and until this Mediation Agreement is approved by the Town
7 Council and Mr. Palkowitsh.

8 4.3. Agenda. Once the terms of this Mediation Agreement have been agreed to by
9 the representatives of both parties, the Town will place it on the agenda of the next
10 scheduled Marana Town Council Meeting for approval. This Mediation Agreement is not
11 effective and binding on the parties until accepted by the Town Council for the Town of
12 Marana, and by Marcus Palkowitsh on behalf Mandarinina, LLC (the "Effective Date").

13 4.4. Cooperation. The Town will work with Mandarinina cooperatively and
14 diligently to complete the items contemplated within this Mediation Agreement and to
15 facilitate the development of the Mandarinina Property.

16 4.5. Compromise. The settlement reflected in this Mediation Agreement represents
17 a compromise and settlement of disputed claims and does not constitute an admission of
18 any fact, or of liability with respect to any claim by any party.

19 4.6. Attorneys' fees re Pending Litigation and this Agreement. The parties shall
20 bear their own attorneys' fees and costs incurred in the Pending Litigation and in the
21 preparation of this Mediation Agreement.

22

EXHIBIT A TO MANDARINA DEVELOPMENT AGREEMENT

1 4.7. Binding Effect. The provisions of this Mediation Agreement are binding upon
2 and shall inure to the benefit of the parties and their respective heirs, personal
3 representatives, successors and assigns.

4 4.8. Attorneys' Fees. If either party to this Mediation Agreement initiates or
5 defends any legal action or proceeding with the other party in any way connected with this
6 Mediation Agreement, including an arbitration proceeding before Judge Fleischman, the
7 prevailing party in any such legal action or proceeding, in addition to any other relief
8 which may be granted, whether legal or equitable, shall be entitled to recover from the
9 losing party in any such legal action or proceeding its reasonable costs and expenses of
10 suit, including reasonable attorneys' fees and expert witness fees. If either party to this
11 Mediation Agreement initiates or defends any legal action or proceeding with a third party
12 because of the violation of any term, covenant, condition or agreement contained in this
13 Mediation Agreement by the other party to this Mediation Agreement, then the party so
14 litigating shall be entitled to recover its reasonable costs and expenses of suit, including
15 reasonable attorneys' fees and expert witness fees, incurred in connection with such
16 litigation from the other party to this Mediation Agreement. All such costs and attorney's
17 fees shall be deemed to have accrued on commencement of any such legal action or
18 proceeding and shall be enforceable whether or not such legal action or proceeding is
19 prosecuted to judgment. Attorneys' fees under this Section include attorneys' fees on any
20 appeal and in any bankruptcy or similar or related proceeding in federal or state courts.
21 Any dispute as to the amounts payable pursuant to this Section shall be resolved by the
22 court and not by a jury.

EXHIBIT A TO MANDARINA DEVELOPMENT AGREEMENT

1 4.9. Waivers. No waiver of any of the provisions of this Mediation Agreement shall
2 constitute a waiver of any other provision, whether or not similar, nor shall any waiver be
3 a continuing waiver. Except as expressly provided in this Mediation Agreement, no waiver
4 shall be binding unless executed in writing by the party making the waiver. Either party
5 may waive any provision of this Mediation Agreement intended for its benefit; provided,
6 however, such waiver shall in no way excuse the other party from the performance of any
7 of its other obligations under this Mediation Agreement.

8 4.10. Notices. All notices shall be in writing and shall be made by hand delivery,
9 email, express delivery service, freight prepaid, or by certified mail, postage prepaid,
10 return receipt requested. Notices will be delivered or addressed to the parties at the
11 addresses or email addresses hereinafter set forth or at such other address as a party may
12 designate to the other party in writing. Any such notice shall be deemed to be given and
13 received and shall be effective (a) on the date on which the notice is delivered, if notice is
14 given by hand delivery; (b) on the date of actual receipt, if the notice is sent by express
15 delivery service; (c) on the date on which it is received or rejected as reflected by a receipt
16 if given by United States mail, addressed and sent as aforesaid; and (d) when transmitted,
17 in the case of email transmission; provided, however, that if transmission after 5:00 p.m.,
18 Arizona time on such day, then the email transmission will be deemed to have been given
19 and received and become effective on the next succeeding day.

20 If to Mandarin: Mandarina, LLC
21 720 S. Colorado Blvd., Ste. 940N
22 Denver, Colorado 80246
 Tel: (303) 399-9804
 Email: marcus@mspcompanies.com

EXHIBIT A TO MANDARINA DEVELOPMENT AGREEMENT

Attn: Marcus Palkowitsh

With a copy to: Dale S. Zeitlin
Zeitlin & Zeitlin, P.C.
5050 N. 40th Street, Ste. 330
Phoenix, Arizona 85018
Tel: (602) 648-5222
Email: Dale@zeitlinlaw.com

If to the Town: Town of Marana
11555 W. Civic Center Dr.
Marana, Arizona 85653
Tel: (520) 382-1900
Email: clerk@maranaaz.gov
Attn: Town Clerk

With a copy to: Town Attorney
Marana Legal Department
11555 W. Civic Center Dr.
Marana, Arizona 85653
Tel: (520) 382-1900
Email: fcassidy@maranaaz.gov

4.11. Further Documentation. Each party agrees in good faith to execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this Mediation Agreement.

4.12. Counterparts. This Mediation Agreement may be executed in counterparts (and by different parties to this Mediation Agreement in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract.

4.13. Construction. Unless the context of this Mediation Agreement clearly requires otherwise or unless otherwise expressly stated in this Mediation Agreement, this Mediation Agreement shall be construed in accordance with the following:

EXHIBIT A TO MANDARINA DEVELOPMENT AGREEMENT

1 4.13.1. Use of Certain Words. References to the plural include the singular and
2 to the singular include the plural and references to any gender include any other gender.
3 The part includes the whole; the terms "include" and "including" are not limiting; and
4 the term "or" has, except where otherwise indicated, the inclusive meaning represented
5 by the phrase "and/or." The words "hereof," "herein," "hereby," "hereunder," and
6 similar terms in this Mediation Agreement refer to this Mediation Agreement as a
7 whole and not to any particular provision of this Mediation Agreement.

8 4.13.2. References. References in this Mediation Agreement to "Articles,"
9 "Sections," or Exhibits are to the Articles and Sections of this Mediation Agreement
10 and the Exhibits to this Mediation Agreement. Any reference to this Mediation
11 Agreement includes any and all amendments, extensions, modifications, renewals, or
12 supplements to this Mediation Agreement. The headings of this Mediation Agreement
13 are for purposes of reference only and shall not limit or define the meaning of any
14 provision of this Mediation Agreement.

15 4.14. Construing the Agreement. Each of the parties to this Mediation Agreement
16 acknowledges that such party has had the benefit of independent counsel with regard to
17 this Mediation Agreement and that this Mediation Agreement has been prepared as a result
18 of the joint efforts of all parties and their respective counsel. Accordingly, all parties agree
19 that the provisions of this Mediation Agreement shall not be construed or interpreted for
20 or against any party to this Mediation Agreement based upon authorship or any other
21 factor but shall be construed and interpreted according to the ordinary meaning of the
22

EXHIBIT A TO MANDARINA DEVELOPMENT AGREEMENT

1 words used so as to fairly accomplish the purposes and intentions of all parties to this
2 Mediation Agreement.

3 4.15. Partial Invalidity. If any portion of this Mediation Agreement is determined
4 to be unconstitutional, unenforceable or invalid, such portion of this Mediation Agreement
5 shall be stricken from and construed for all purposes not to constitute a part of this
6 Mediation Agreement, and the remaining portion of this Mediation Agreement shall
7 remain in full force and effect and shall, for all purposes, constitute the entire Mediation
8 Agreement.

9 4.16. Governing Law. This Mediation Agreement shall be construed according to
10 the laws of the State of Arizona, without giving effect to its conflict of laws principles.

11 4.17. Time of Essence; Time Periods. Time is of the essence of this Mediation
12 Agreement. The time for performance of any obligation or taking any action under this
13 Mediation Agreement shall be deemed to expire at 5:00 o'clock p.m. (local Arizona time)
14 on the last day of the applicable time period provided for in this Mediation Agreement. If
15 the time for the performance of any obligation or taking any action under this Mediation
16 Agreement expires on a Saturday, Sunday or legal holiday, or any other day that Escrow
17 Agent is closed for business, the time for performance or taking such action shall be
18 extended to the next succeeding day which is not a Saturday, Sunday or legal holiday or
19 day on which Escrow Agent is closed for business.

20 4.18. Entire Agreement. This Mediation Agreement constitutes the entire
21 agreement between the parties pertaining to the subject matter contained in this Mediation
22 Agreement. All prior and contemporaneous agreements, representations and

EXHIBIT A TO MANDARINA DEVELOPMENT AGREEMENT

1 understandings of the parties, oral or written, are superseded by and merged in this
2 Mediation Agreement. No supplement, modification or amendment of this Mediation
3 Agreement shall be binding unless in writing and executed by the Town and Mandarin.

4 APPROVED BY:

5 ZEITLIN & ZEITLIN, P.C.

SIMS MACKIN, LTD.

6 BY: /s/ Dale S. Zeitlin
Dale S. Zeitlin (#006615)
7 5050 N. 40th Street, Suite 330
Phoenix, AZ 85018
8 *Attorneys for Mandarin, LLC*

BY: /s/
Catherine M. Bowman (#011713)
3031 N. Central Avenue, Suite 870
Phoenix, AZ 85012
Attorneys for Town of Marana

9 TOWN OF MARANA LEGAL
DEPARTMENT

THE FLEISHMAN LAW FIRM, P.C.

10 BY: /s/ Frank Cassidy
Frank Cassidy (#007358)
11 1555 West Civic Center Drive
Marana, AZ 85653-7006
12 *Attorneys for Town of Marana*

BY: /s/
The Honorable Lawrence H. Fleishman
P.O. Box 27646
Tucson, AZ 85726
13 *Mediator*

14 The "Town":

"Mandarina":

15 TOWN OF MARANA, an Arizona
municipal corporation

MANDARINA, LLC, a Colorado limited
liability company

16 By: Ed Honea
Ed Honea, Mayor

By: MSP INVESTMENT CO., LLP, a
Colorado limited liability
partnership, its Manager

17 Date: 10/30/19

By: _____
18 Marcus Palkowitsh, Partner

19 ATTEST:

Date: _____

20 Cherry L. Lawson
Cherry L. Lawson, Town Clerk

EXHIBIT A TO MANDARINA DEVELOPMENT AGREEMENT

1 understandings of the parties, oral or written, are superseded by and merged in this
2 Mediation Agreement. No supplement, modification or amendment of this Mediation
3 Agreement shall be binding unless in writing and executed by the Town and Mandarinina.

4 APPROVED BY:

5 **ZEITLIN & ZEITLIN, P.C.**

SIMS MACKIN, LTD.

6 BY: /s/ Dale S. Zeitlin

BY: /s/

Dale S. Zeitlin (#006615)

Catherine M. Bowman (#011713)

7 5050 N. 40th Street, Suite 330

3031 N. Central Avenue, Suite 870

Phoenix, AZ 85018

Phoenix, AZ 85012

8 *Attorneys for Mandarinina, LLC*

Attorneys for Town of Marana

9 **TOWN OF MARANA LEGAL
DEPARTMENT**

THE FLEISHMAN LAW FIRM, P.C.

10 BY: /s/

BY: /s/

11 Frank Cassidy (#007358)

The Honorable Lawrence H. Fleishman

11555 West Civic Center Drive

P.O. Box 27646

12 Marana, AZ 85653-7006

Tucson, AZ 85726

Attorneys for Town of Marana

Mediator

13 **The "Town":**

"Mandarina":

14 **TOWN OF MARANA**, an Arizona
15 municipal corporation

MANDARINA, LLC, a Colorado limited
liability company

16 By: _____

By: **MSP INVESTMENT CO., LLP**, a
Colorado limited liability
partnership, its Manager

Ed Honea, Mayor

17 Date: _____

By: 

Marcus Palkowitsh, Partner

18 ATTEST:

Date: 10/28/2019

19
20 Cherry L. Lawson, Town Clerk

EXHIBIT A TO MANDARINA DEVELOPMENT AGREEMENT

1 understandings of the parties, oral or written, are superseded by and merged in this
2 Mediation Agreement. No supplement, modification or amendment of this Mediation
3 Agreement shall be binding unless in writing and executed by the Town and Mandarinina.

4 APPROVED BY:

5 ZEITLIN & ZEITLIN, P.C.

6 BY: /s/ Dale S. Zeitlin
7 Dale S. Zeitlin (#006615)
8 5050 N. 40th Street, Suite 330
9 Phoenix, AZ 85018
10 *Attorneys for Mandarinina, LLC*

9 TOWN OF MARANA LEGAL 10 DEPARTMENT

11 BY: /s/
12 Frank Cassidy (#007358)
13 11555 West Civic Center Drive
14 Marana, AZ 85653-7006
15 *Attorneys for Town of Marana*

14 The "Town":

15 TOWN OF MARANA, an Arizona
16 municipal corporation

17 By: _____
18 Ed Honea, Mayor

19 Date: _____

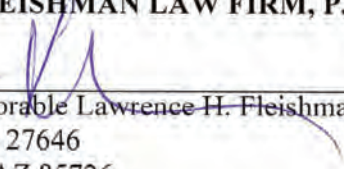
20 ATTEST:

21 _____
22 Cherry L. Lawson, Town Clerk

SIMS MACKIN, LTD.

BY: /s/
Catherine M. Bowman (#011713)
3031 N. Central Avenue, Suite 870
Phoenix, AZ 85012
Attorneys for Town of Marana

THE FLEISHMAN LAW FIRM, P.C.

BY: /s/ 
The Honorable Lawrence H. Fleishman
P.O. Box 27646
Tucson, AZ 85726
Mediator

"Mandarina":

MANDARINA, LLC, a Colorado limited
liability company

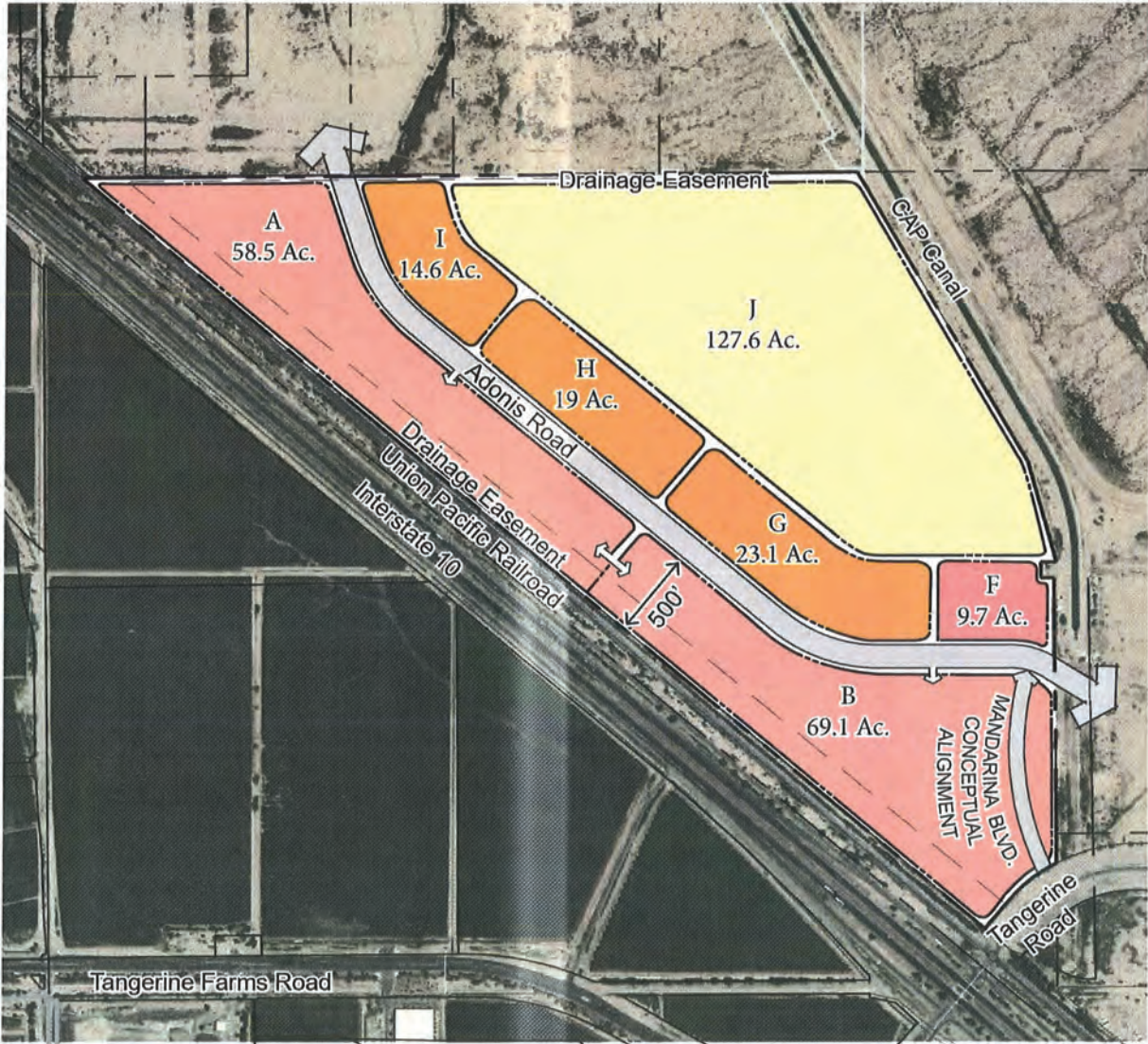
By: **MSP INVESTMENT CO., LLP**, a
Colorado limited liability
partnership, its Manager

By: _____
Marcus Palkowitsh, Partner

Date: _____

EXHIBIT A TO MANDARINA DEVELOPMENT AGREEMENT

EXHIBIT 1 TO THE MANDARINA MEDIATION AGREEMENT



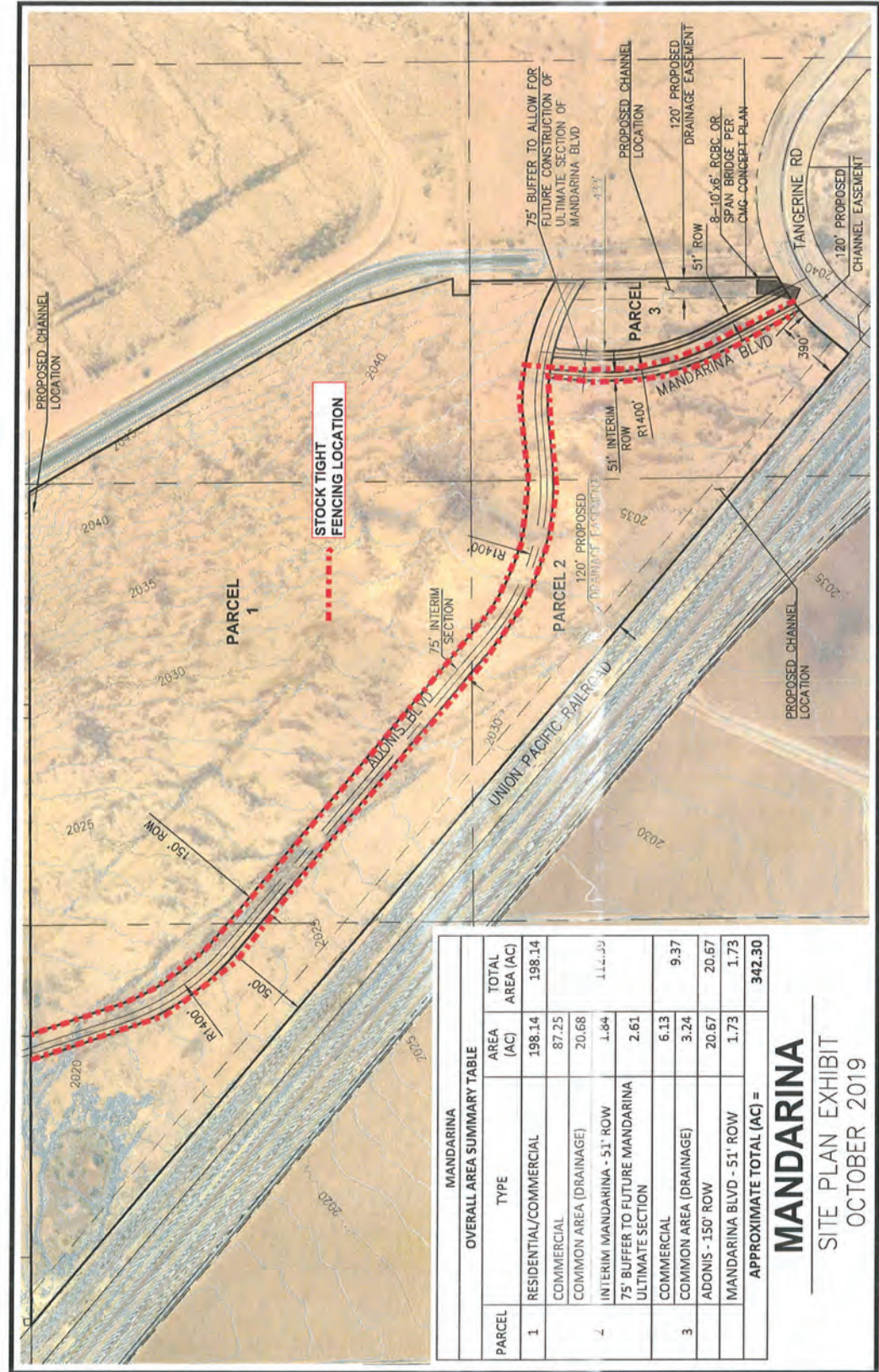
LEGEND

- Mandarina Transportation Corridor
- Mandarina Village Center
- Mandarina Corridor
- Tortolita Corridor
- Adonis Road (20.7 Acres)



EXHIBIT A TO MANDARINA DEVELOPMENT AGREEMENT

EXHIBIT 2 TO THE MANDARINA MEDIATION AGREEMENT



MANDARINA OVERALL AREA SUMMARY TABLE			
PARCEL	TYPE	AREA (AC)	TOTAL AREA (AC)
1	RESIDENTIAL/COMMERCIAL	198.14	198.14
	COMMERCIAL	87.25	
	COMMON AREA (DRAINAGE)	20.68	
2	INTERIM MANDARINA - 51' ROW	1.84	114.39
	75' BUFFER TO FUTURE MANDARINA ULTIMATE SECTION	2.61	
	COMMERCIAL	6.13	
3	COMMON AREA (DRAINAGE)	3.24	9.37
	ADONIS - 150' ROW	20.67	
	MANDARINA BLVD - 51' ROW	1.73	
APPROXIMATE TOTAL (AC) =			342.30

EXHIBIT A TO MANDARINA DEVELOPMENT AGREEMENT

EXHIBIT 3 TO THE MANDARINA MEDIATION AGREEMENT

September 18, 2019
Psomas #7MAN190101

EXHIBIT A

LEGAL DESCRIPTION RIGHT-OF-WAY

A portion of those parcels recorded in Docket 13752, Page 852, records of Pima County, Arizona, located in Section 36, Township 11 South, Range 11 East, and in General Land Office Lot 3 of the southwest one-quarter of Section 31, Township 11 South, Range 12 East, Gila & Salt River Meridian, Pima County, Arizona, described as follows:

COMMENCING at the northwest corner of said Section 36, monumented by a 3-1/4" aluminum cap, marked "T11S, R11E, S26|S25/S35|S36, PSOMAS 2006, RLS 18557", from which the north one-quarter corner of said section, monumented by a lead capped pipe, marked "X", bears N 89°31'27" E (basis of bearing for this legal description) a distance of 2646.83 feet as shown in Record of Survey Book 55, Page 84, records of said Pima County;

THENCE along the north line of the northwest one-quarter of said Section 36, N 89°31'27" E a distance of 1838.62 feet to the **POINT OF BEGINNING**;

THENCE continue along the said north line, N 89°31'27" E a distance of 157.83 feet;

THENCE S 18°35'38" E a distance of 531.22 feet to a point of curvature of a tangent curve concave to the northeast;

THENCE southeasterly upon the arc of said curve, to the left, having a radius of 1325.00 feet and a central angle of 31°36'36" for an arc length of 731.00 feet;

THENCE S 50°12'14" E a distance of 2417.41 feet to a point of curvature of a tangent curve concave northerly;

THENCE easterly upon the arc of said curve, to the left, having a radius of 1325.00 feet and a central angle of 45°05'29" for an arc length of 1042.77 feet;

THENCE N 84°42'17" E a distance of 255.19 feet to a point of curvature of a tangent curve, concave southerly;

THENCE easterly upon the arc of said curve, to the right, having a radius of 1475.00 feet and a central angle of 35°01'09" for an arc length of 901.52 feet to the east line of said parcel recorded in Docket 13752, Page 852 and shown in said record of survey;

THENCE upon said east line, S 00°37'06" E a distance of 176.31 feet;

EXHIBIT A TO MANDARINA DEVELOPMENT AGREEMENT

THENCE N 58°27'44" W a distance of 47.15 feet to a point curvature of tangent curve, concave southerly;

THENCE westerly upon the arc of said curve, to the left, having a radius of 1325.00 feet and a central angle of 36°49'59" for an arc length of 851.79 feet;

THENCE S 84°42'17" W a distance of 255.19 feet to a point of curvature of a tangent curve, concave northerly;

THENCE westerly upon the arc of said curve, to the right, having a radius of 1475.00 feet and a central angle of 45°05'29" for an arc length of 1160.81 feet;

THENCE N 50°12'14" W a distance of 2417.41 feet to a point of curvature of a tangent curve, concave northeasterly;

THENCE northwesterly upon the arc of said curve, to the right, having a radius of 1475.00 feet and a central angle of 31°36'36" for an arc length of 813.76 feet;

THENCE N 18°35'38" W a distance of 580.30 feet to the **POINT OF BEGINNING**.

Containing an area of 20.67 acres, more or less.

See Exhibits B-1 & B-2 attached hereto and made a part hereof.

Prepared By:
Psomas



Ernest Gomez, AZ. R.L.S. 27739

EXHIBIT A TO MANDARINA DEVELOPMENT AGREEMENT

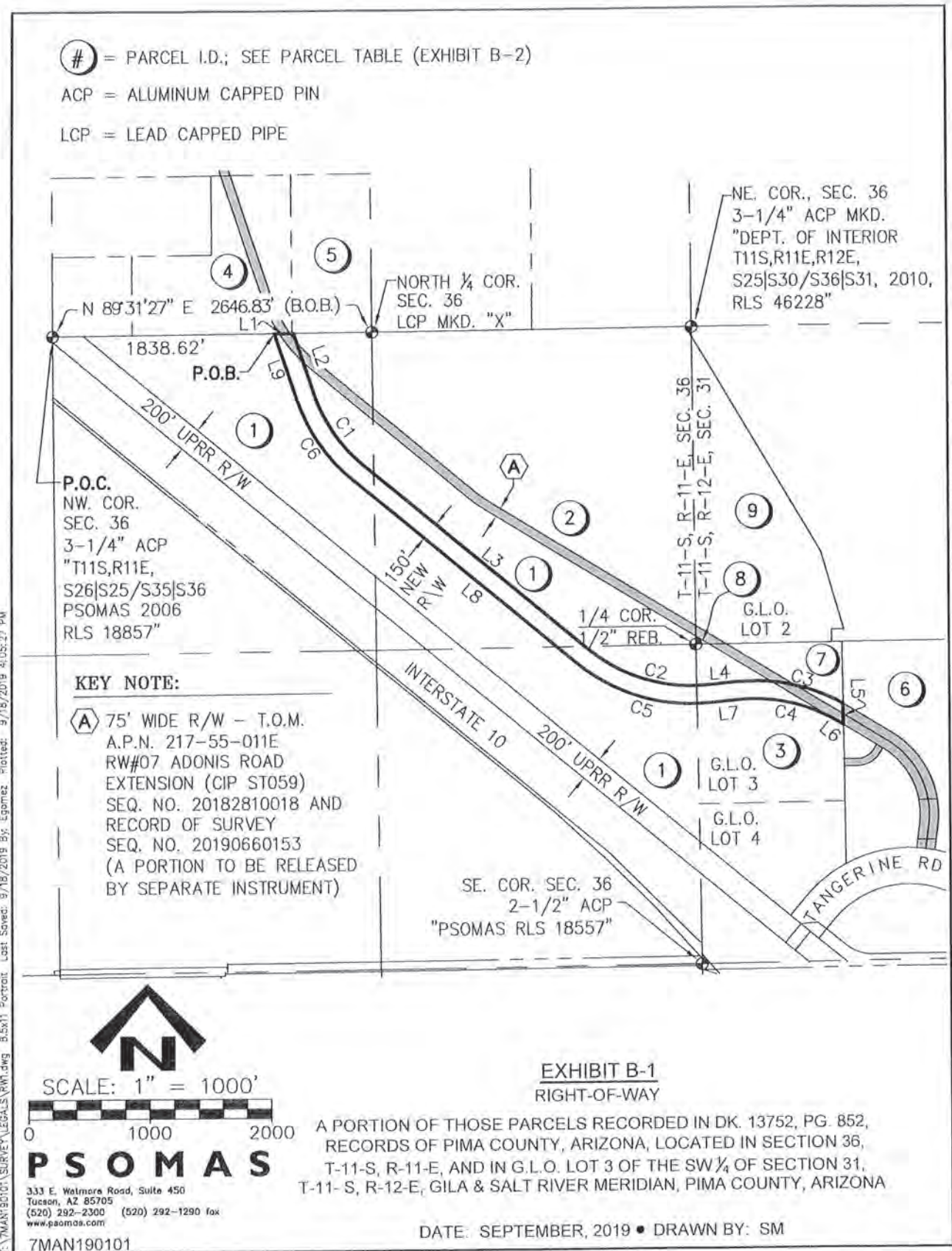


EXHIBIT A TO MANDARINA DEVELOPMENT AGREEMENT

PARCEL TABLE

KEYNOTE	APN	OWNER	DOCKET	PAGE	SEQUENCE NO.
①	217-55-011C	MANDARINA LLC	13752	852	20100360173
②	217-55-011D	MANDARINA LLC	13752	852	20100360173
③	218-49-002B	MANDARINA LLC	13752	852	20100360173
④	217-33-006A/B	STEWART TITLE & TRUST No. 3564	10814	781	19980910339
⑤	217-33-0070	STEWART TITLE & TRUST No. 3564	10814	781	19980910339
⑥	218-49-003C/D/E	TANGERINE INVESTMENT PARTNERS LLC	7347	207	20101210571
⑦	218-49-002C	MANDARINA LLC	13752	852	20100360173
⑧	218-49-001F	MANDARINA LLC	13752	852	20100360173
⑨	218-49-001E	MANDARINA LLC	13752	852	20100360173

CURVE TABLE

CURVE	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	731.00'	1325.00'	31°36'36"	S 34°23'56" E	721.77'
C2	1042.77'	1325.00'	45°05'29"	S 72°44'58" E	1016.06'
C3	901.52'	1475.00'	35°01'09"	S 77°47'08" E	887.55'
C4	851.79'	1325.00'	36°49'59"	N 76°52'43" W	837.19'
C5	1160.81'	1475.00'	45°05'29"	N 72°44'58" W	1131.09'
C6	813.76'	1475.00'	31°36'36"	N 34°23'56" E	803.48'

LINE TABLE

LINE	BEARING	DISTANCE
L1	N 89°31'27" E	157.83'
L2	S 18°35'38" E	531.22'
L3	S 50°12'14" E	2417.41'
L4	N 84°42'17" E	255.19'
L5	S 00°37'06" E	176.31'
L6	N 58°27'44" W	47.15'
L7	S 84°42'17" W	255.19'
L8	N 50°12'14" W	2417.41'
L9	N 18°35'38" W	580.30'

EXHIBIT B-2

LINE, CURVE & PARCEL TABLES

A PORTION OF THOSE PARCELS RECORDED IN DK. 13752, PG. 852, RECORDS OF PIMA COUNTY, ARIZONA, LOCATED IN SECTION 36, T-11-S, R-11-E, AND IN G.L.O. LOT 3 OF THE SW ¼ OF SECTION 31, T-11-S, R-12-E, GILA & SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA

DATE: SEPTEMBER, 2019 • DRAWN BY: SM

PSOMAS

333 E. Wetmore Road, Suite 450
Tucson, AZ 85705
(520) 292-2300 (520) 292-1290 fax
www.psomas.com

7MAN190101

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EXHIBIT A TO MANDARINA DEVELOPMENT AGREEMENT

EXHIBIT 4 TO THE MANDARINA MEDIATION AGREEMENT

September 23, 2019
Psomas #7MAN190101

EXHIBIT A

LEGAL DESCRIPTION RIGHT-OF-WAY

A portion of those parcels recorded in Docket 13752, Page 852, records of Pima County, Arizona, located in General Land Office Lot 3 and Lot 4 of the southwest one-quarter of Section 31, Township 11 South, Range 12 East, Gila & Salt River Meridian, Pima County, Arizona, described as follows:

COMMENCING at the southwest corner of said Section 31, monumented by a 2-1/2" aluminum cap, marked "T11S, R11E, S1|S6/S36|S31, T12S, R12E, PSOMAS, RLS 18557", from which the west one-quarter corner of said section, monumented by a 1/2" rebar, bears N 00°42'58" W (basis of bearing for this legal description) a distance of 2644.10 feet as shown in Record of Survey Book 55, Page 84, records of said Pima County;

THENCE upon the west line of said southwest one-quarter of Section 31, N 00°42'58" W a distance of 2153.73 feet to the proposed southerly right-of-way of Adonis Rd, lying on the arc of a non-tangent curve, concave northerly, a radial line of said curve through said point having a bearing of S 01°36'41" E;

THENCE easterly upon the arc of said curve, to the left, having a radius of 1475.00 feet and a central angle of 3°41'02" for an arc length of 94.84 feet;

THENCE N 84°42'17" E a distance of 255.19 feet to a point of curvature of a tangent curve, concave southerly;

THENCE easterly upon the arc of said curve, to the right, having a radius of 1325.00 feet and a central angle of 10°25'33" for an arc length of 241.10 feet to the **POINT OF BEGINNING**;

THENCE continue easterly upon the arc of said curve, to the right, having a radius of 1325.00 feet and a central angle of 4°27'30" for an arc length of 103.10 feet to a point of cusp of a radial curve, concave southeasterly;

THENCE southwesterly upon the arc of said curve, to the left, having a radius of 25.00 feet and a central angle of 95°09'29" for an arc length of 41.52 feet;

THENCE S 4°25'51" W a distance of 164.10 feet to a point of curvature of a tangent curve, concave easterly;

THENCE southerly upon the arc of said curve, to the left, having a radius of 1500.50 feet and a central angle of 32°25'16" for an arc length of 849.07 feet;

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Page 1 of 2

EXHIBIT A TO MANDARINA DEVELOPMENT AGREEMENT

THENCE S 27°59'25" E a distance of 509.28 feet to the northerly right-of-way of Tangerine Road, recorded in Docket 11487, Page 2029, records of said Pima County, lying on the arc of a non-tangent curve, concave southeasterly, a radial line of said curve through said point having a bearing of N 37°36'17" W;

THENCE southwesterly upon the arc of said curve, to the left, having a radius of 1104.95 feet and a central angle of 2°41'38" for an arc length of 51.95 feet;

THENCE N 27°59'25" W a distance of 519.16 feet to a point of curvature of a tangent curve, concave easterly;

THENCE northerly upon the arc of said curve, to the right, having a radius of 1551.50 feet and a central angle of 32°25'16" for an arc length of 877.92 feet;

THENCE N 4°25'51" E a distance of 169.27 feet to a point of curvature of a tangent curve, concave southwesterly;

THENCE northwesterly upon the arc of said curve, to the left, having a radius of 25.00 feet and a central angle of 89°18'01" for an arc length of 38.96 feet to the **POINT OF BEGINNING**.

Containing an area of 1.85 acres, more or less.

See Exhibits B-1 & B-2 attached hereto and made a part hereof.

Prepared By:
Psomas



Ernest Gomez, AZ. R.L.S. 27739

EXHIBIT A TO MANDARINA DEVELOPMENT AGREEMENT

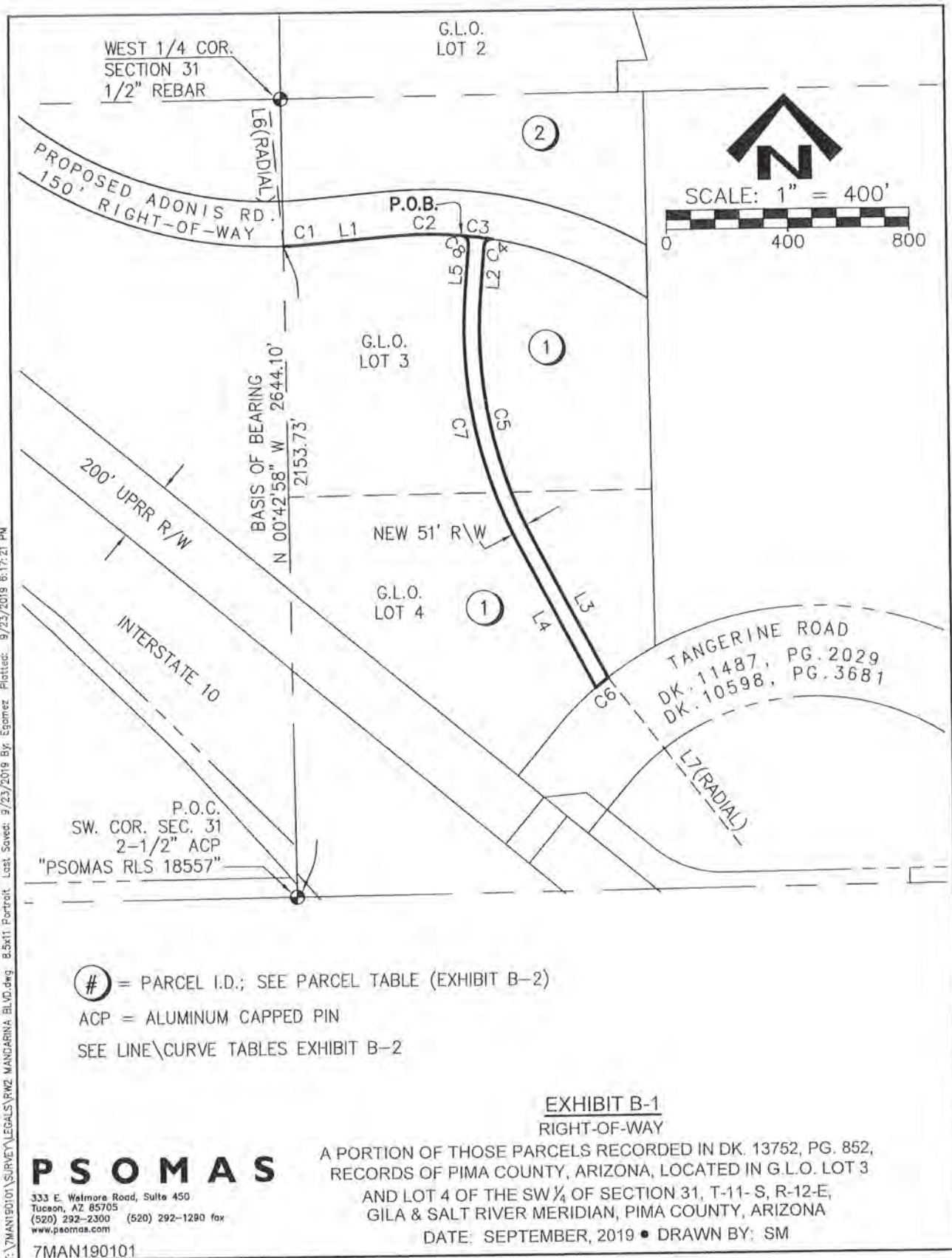


EXHIBIT A TO MANDARINA DEVELOPMENT AGREEMENT

PARCEL TABLE

KEYNOTE	APN	OWNER	DOCKET	PAGE	SEQUENCE NO.
①	218-49-002B	MANDARINA LLC	13752	852	20100360173
②	218-49-002C	MANDARINA LLC	13752	852	20100360173

CURVE TABLE

CURVE	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	94.84'	1475.00'	3°41'02"	N 86°32'48" E	94.82'
C2	241.10'	1325.00'	10°25'33"	N 89°55'04" E	240.77'
C3	103.10'	1325.00'	4°27'30"	S 82°38'25" E	103.08'
C4	41.52'	25.00'	95°09'29"	S 52°00'35" W	36.91'
C5	849.07'	1500.50'	32°25'16"	S 11°46'47" E	837.78'
C6	51.95'	1104.95'	2°41'38"	S 51°02'54" W	51.95'
C7	877.92'	1551.50'	32°25'16"	N 11°46'47" W	866.26'
C8	38.96'	25.00'	89°18'01"	N 40°13'10" W	35.14'

LINE TABLE

LINE	BEARING	DISTANCE
L1	N 84°42'17" E	255.19'
L2	S 04°25'51" W	164.10'
L3	S 27°59'25" E	509.28'
L4	N 27°59'25" W	519.16'
L5	N 04°25'51" E	169.27'
L6	S 01°36'41" E	1475.00' RADIAL
L7	N 37°36'17" W	1104.95' RADIAL

EXHIBIT B-2

LINE, CURVE & PARCEL TABLES

A PORTION OF THOSE PARCELS RECORDED IN DK. 13752, PG. 852, RECORDS OF PIMA COUNTY, ARIZONA, LOCATED IN G.L.O. LOT 3 AND LOT 4 OF THE SW¼ OF SECTION 31, T-11-S, R-12-E, GILA & SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA

DATE: SEPTEMBER, 2019 • DRAWN BY: SM

PSOMAS

333 E. Wainmore Road, Suite 450
Tucson, AZ 85705
(520) 292-2300 (520) 292-1290 fax
www.psomas.com

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EXHIBIT A TO MANDARINA DEVELOPMENT AGREEMENT

EXHIBIT 5 TO THE MANDARINA MEDIATION AGREEMENT

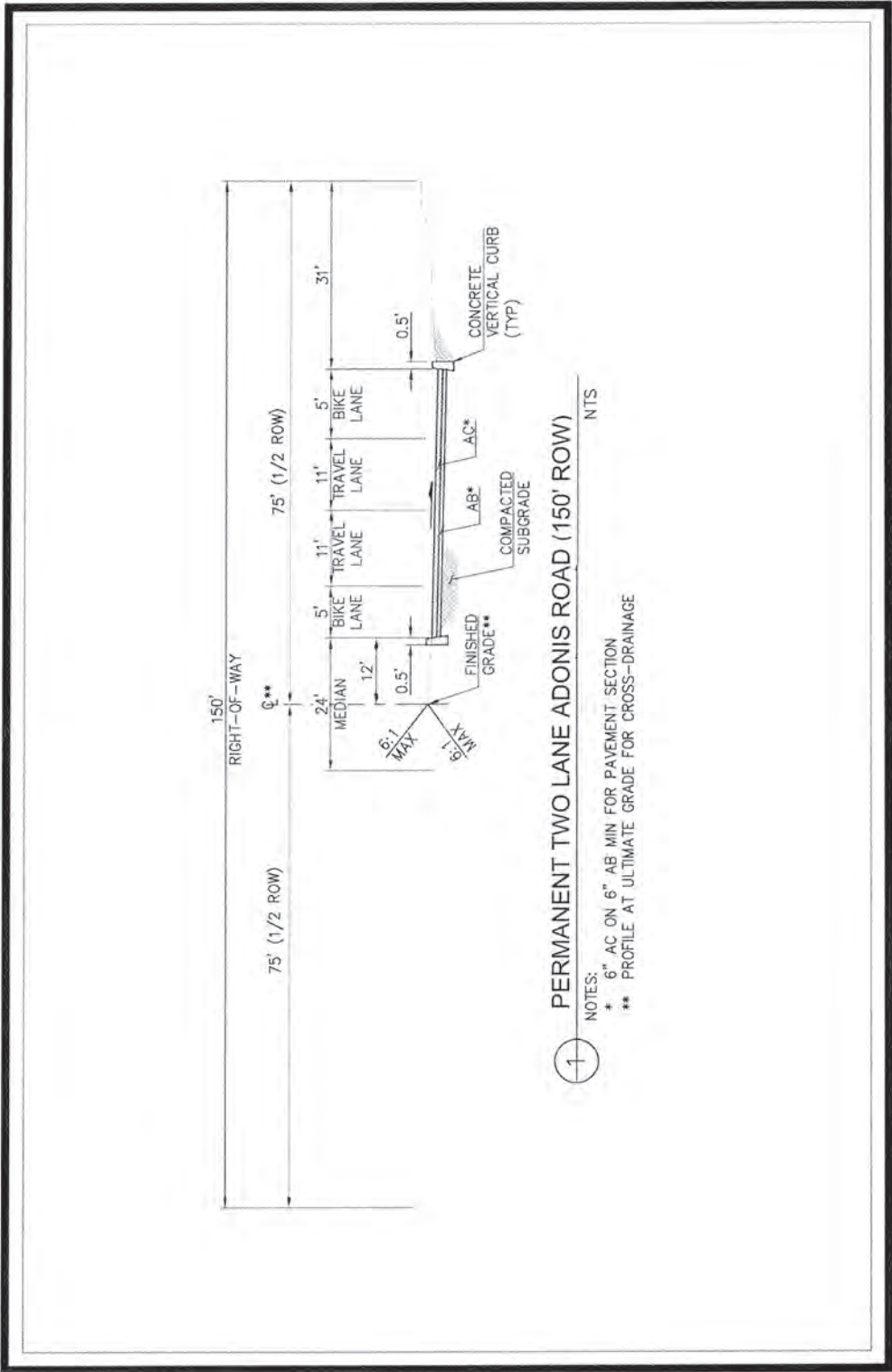


EXHIBIT 6 TO THE MANDARINA MEDIATION AGREEMENT

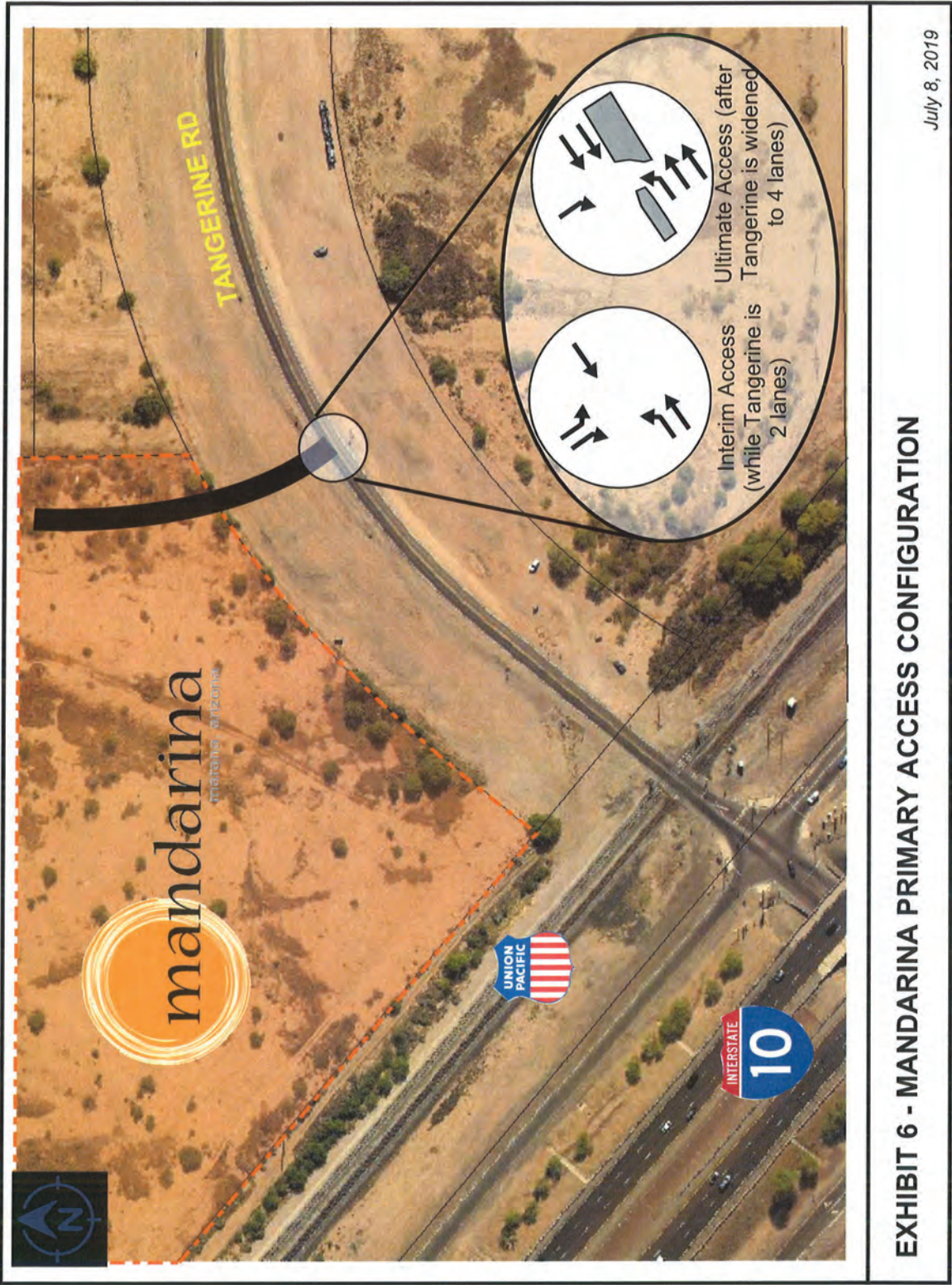


EXHIBIT A TO MANDARINA DEVELOPMENT AGREEMENT

FIRST AMENDMENT TO MANDARINA MEDIATION AGREEMENT

Town of Marana, Arizona

THIS FIRST AMENDMENT TO MANDARINA MEDIATION AGREEMENT (this "Amendment") is made and entered into by and between the TOWN OF MARANA (the "Town"), an Arizona municipal corporation; and MANDARINA, LLC ("Mandarina"), a Colorado limited liability company. The Town and Mandarinina are sometimes collectively referred to as the "Parties," either of which is sometimes individually referred to as a "Party."

RECITALS

A. The Parties entered into a "MEDIATION AGREEMENT" (the "Mediation Agreement") dated October 30, 2019, in settlement of two then-pending lawsuits, entitled *Mandarina, LLC v. Town of Marana*, Pima County Superior Court case number C20161982, and *Town of Marana v. Mandarinina, LLC*, Pima County Superior Court case number C20184425.

B. Construction of and funding for Adonis Road was an element of the Mediation Agreement.

C. At the time of the Mediation Agreement, Adonis Road was anticipated to be constructed by a third-party developer pursuant to development agreements.

D. As a result of an amendment to the development agreements with the third-party developer, the Town will now construct Adonis Road.

E. Adonis Road and Mandarinina Road Link have been designed as temporary two-lane roadways.

F. The Parties now desire to amend the Mediation Agreement to facilitate the Town's construction of the segment of Adonis Road located on the Mandarinina Property as a permanent two-lane road.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated into this Amendment as though fully restated here, and the mutual covenants set forth in the Mediation Agreement, the Parties hereby agree as follows:

1. *Definitions from the Mediation Agreement.* Terms that are used in both the Mediation Agreement and in this Amendment shall have the definitions found in the Mediation Agreement.

2. *Town construction of the Adonis Road Improvements.* As soon as possible and in any event no later than October 30, 2021, the Town shall procure, construct, and complete the

EXHIBIT A TO MANDARINA DEVELOPMENT AGREEMENT

"Adonis Road Improvements," consisting of the three roadway segments to be constructed pursuant to the "Adonis North GMP," the "Mandarina GMP," and the "Mandarina Road Link GMP" as defined in paragraph 8 below. The Adonis North GMP and the Mandarin Road Link GMP roadway segments will be constructed as temporary two-lane roadways consistent with already-completed design plans, and the Mandarin GMP roadway segment will be constructed according to the Psomas plans to be submitted pursuant to paragraph 4 below.

3. *The CMAR.* The Town shall construct the Adonis Road Improvements using a construction-manager-at-risk form of procurement authorized by A.R.S. § 34-603. The Town's construction manager procured for the construction of the Adonis Road Improvements is referred to in this amendment as the "CMAR." The Town has already begun the CMAR procurement process, and anticipates selection of the CMAR by July 31, 2020.

4. *Design of the Subject Improvements.* At Mandarin's cost, the engineering firm Psomas will, as soon as possible (with a goal of having final plans approval by September 15, 2020), provide plans for the construction of the following-described improvements on the Mandarin Property, which improvements are together referred to as the "Subject Improvements," and for the transition from the Subject Improvements to the roadway segment to be constructed pursuant to the Adonis North GMP:

a. A two-lane permanent Adonis Road roadway (the north/east two lanes of the four-lane ultimate Adonis Road roadway), to a "permanent interim cross-section" of four inches of asphaltic concrete over a six inch aggregate base course, consistent with the cross section exhibit attached to this Amendment as Exhibit A.

b. Curbs and sidewalks and the top two inches of asphalt are excluded from initial construction; but will be provided by Mandarin in phases as the Mandarin Property is developed, so that the final two-lane permanent Adonis Road roadway will be consistent with the cross section exhibit attached to this Amendment as Exhibit B.

c. As constructed pursuant to this Amendment, the two-lane permanent Adonis Road roadway shall only extend as far east as its future permanent intersection with Mandarin Road Link as depicted on Exhibit 2 to the Mediation Agreement and not to the east Mandarin Property boundary.

5. *Stock-tight fencing.* The cost for all required stock-tight fencing (four-wire barbed) for Adonis Road within the Mandarin Property will be paid for by Mandarin.

6. *Expedited plan review.* The Town will expedite review and approval of the Psomas plans with a goal of having them reviewed and approved by September 15, 2020.

7. *Description and acquisition of right-of-way for transition north of the Mandarin Property.* The roadway segment to be constructed pursuant to the Adonis North GMP includes a transition north of the Mandarin Property to the Subject Improvements on the Mandarin Property. For the transition north of the Mandarin Property, Mandarin shall provide to the Town the design, legal description, and depiction of the additional required Adonis Road right-of-way from the property owner to the north. The Town shall

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FIRST AMENDMENT TO MANDARINA MEDIATION AGREEMENT

- 2 -

EXHIBIT A TO MANDARINA DEVELOPMENT AGREEMENT

acquire the necessary right-of-way as provided in paragraph 1.7.2 of the Mediation Agreement and in Marana Ordinance No. 2012.05 (adopting the Tortolita Shadows Specific Plan).

8. *GMP*. As part of the Town's preconstruction services contract with the CMAR, the Town shall obtain from the CMAR a guaranteed maximum price (GMP) for the construction of the Adonis Road Improvements (the "Total GMP"). The Total GMP shall consist of the following three separate GMPs:

a. A GMP for the segment of temporary Adonis Road located north of the Subject Improvements (the "Adonis North GMP"). The Adonis North GMP includes all improvements north of the Mandarinina Property, including the transition from the temporary two-lane Adonis Road cross-section to the Subject Improvements.

b. A GMP for the Subject Improvements (the "Mandarina GMP").

c. A GMP for the segment of temporary Mandarinina Road Link located south of the Subject Improvements (the "Mandarina Road Link GMP").

9. *Payment for the Adonis Road Improvements*.

a. The Town shall be responsible to pay all costs associated with the construction of the roadway segments to be constructed pursuant to the Adonis North GMP and the Mandarinina Road Link GMP.

b. The funds for the construction of the roadway segment to be constructed pursuant to the Mandarinina GMP shall be provided as follows:

i. The Town shall pay the first \$1,100,000 pursuant to paragraph 1.12 of the Mediation Agreement.

ii. The Town shall pay the next \$972,281 from the funds it would have spent to construct temporary two-lane Adonis Road through Mandarinina.

iii. Mandarinina shall pay from the Escrow Account established pursuant to paragraph 1.11 of the Mediation Agreement the remaining balance of the \$900,000 previously deposited pursuant to paragraph 1.11 of the Mediation Agreement after Mandarinina's payment of design costs (see paragraph 4 above). If not fully needed to cover the cost of the Mandarinina GMP, any balance shall remain available to Mandarinina for use in accordance with the Mediation Agreement.

iv. If needed after applying the funding described in subparagraphs 9.b.i, ii, and iii above, Mandarinina shall pay any remaining balance of the Mandarinina GMP into the Escrow Account within 14 calendar days after Mandarinina receives the Mandarinina GMP. If the remaining balance required by this subparagraph is not timely paid, this Amendment is automatically terminated, and the rights and duties of the Parties shall be as set forth in the Mediation Agreement.

EXHIBIT A TO MANDARINA DEVELOPMENT AGREEMENT

10. *Earthwork equipment crossing of Adonis Road.* During development of the Mandarinina Property, the Town shall allow earthwork equipment to cross Adonis Road with appropriate protection of the roadway and with appropriate traffic control to be reviewed and approved by the Town in connection with the submittal for and issuance of one or more applicable right-of-way use permits pursuant to Marana Town Code Chapter 12-7 ("Construction in Town rights-of-way").

11. *Pavement cuts moratorium exemption.* After construction of the permanent interim cross-section of the Subject Improvements as described in subparagraph 4.a above, Mandarinina shall be exempt from the Town's moratorium on pavement cuts as set forth in Marana Town Code section 12-7-9 ("Additional requirements for specified asphalt pavements") until curbs and sidewalks and the top two inches of asphalt are constructed (see subparagraph 4.b above).

12. *Remainder of the Mediation Agreement unchanged.* Except as revised in this Amendment, the Mediation Agreement shall remain unchanged.

13. *Term.* This Amendment shall become effective (the "Effective Date") on the last Party's signature date below, and shall terminate upon completion of construction of and payment for the Adonis Road Improvements, unless earlier terminated by operation of subparagraph 9.b.iv above.

14. *Miscellaneous.*

a. The Mediation Agreement as amended by this Amendment may not be modified except in a writing signed by the Parties.

b. This Amendment may be executed in identical counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument. In addition, this Amendment may contain more than one counterpart of the signature pages and this Amendment may be executed by the affixing of the signature pages, and all of such counterpart signature pages shall be read as though one, and they shall have the same force and effect as though all the signers had signed a single signature page.

c. This Amendment is subject to A.R.S. § 38-511, which provides for cancellation of contracts in certain instances involving conflicts of interest.

[Remainder of page left blank. Signature page follows.]

EXHIBIT A TO MANDARINA DEVELOPMENT AGREEMENT

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment as of the last date set forth below their respective signatures, with an Effective Date determined as set forth in paragraph 13 above.

THE "TOWN":

TOWN OF MARANA, an Arizona municipal corporation

By: Ed Honea
Ed Honea, Mayor

Date: 6-3-2020

ATTEST:

Cherry L. Lawson
Cherry L. Lawson, Town Clerk

APPROVED AS TO FORM:

Frank Cassidy
Frank Cassidy, Town Attorney

"Mandarina":

MANDARINA, LLC, a Colorado limited liability company

By: MSP INVESTMENT CO., LLP, a Colorado limited liability partnership, its Manager

By: Marcus Palkowitsh
Marcus Palkowitsh, Partner

Date: 06/2/2020

LIST OF EXHIBITS

- Exhibit A Adonis Road permanent interim cross section exhibit
- Exhibit B Adonis Road Mandarina development cross section exhibit

EXHIBIT A TO MANDARINA DEVELOPMENT AGREEMENT

EXHIBIT A TO FIRST AMENDMENT TO MANDARINA MEDIATION AGREEMENT

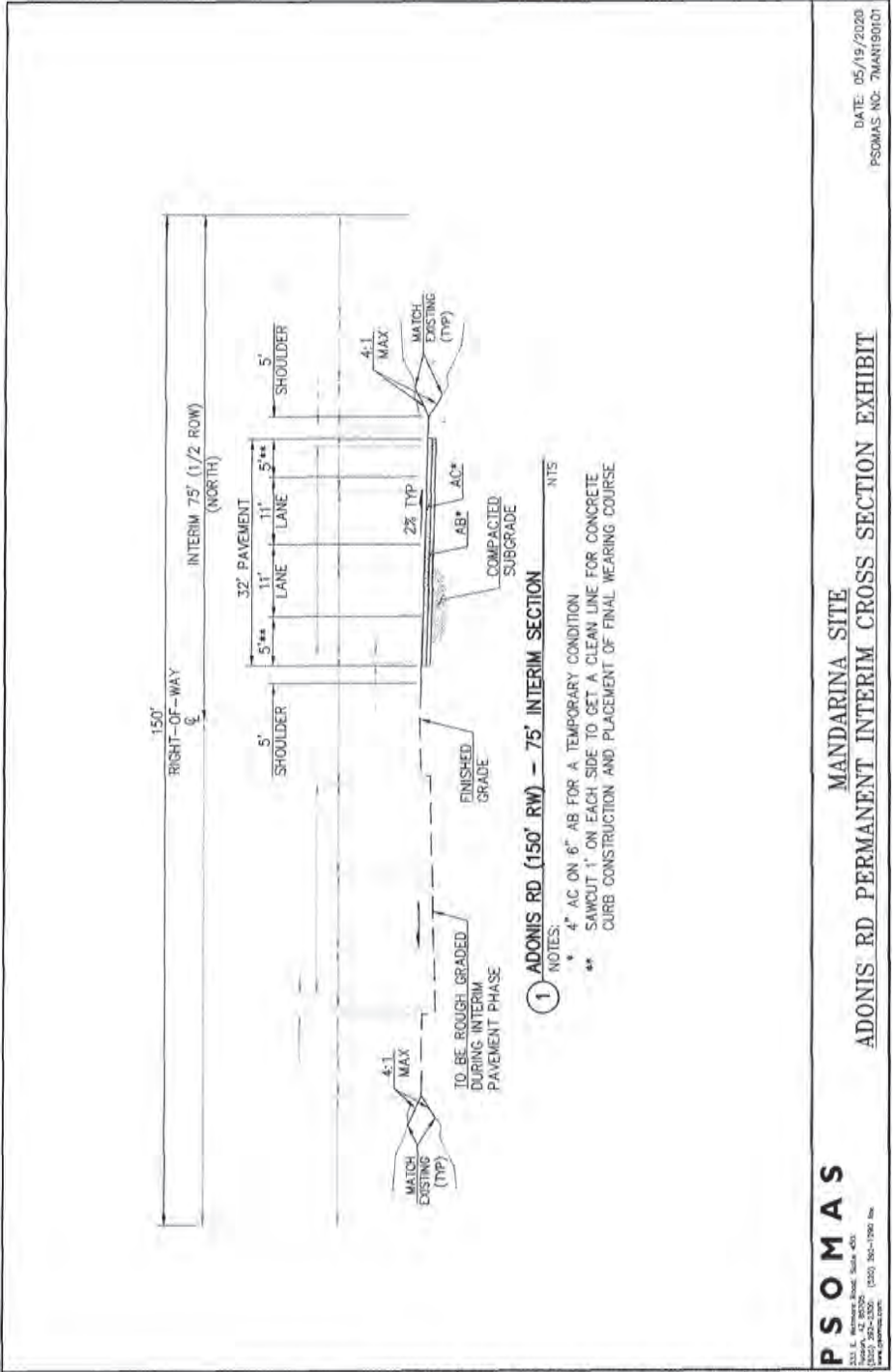


EXHIBIT A TO MANDARINA DEVELOPMENT AGREEMENT

EXHIBIT B TO FIRST AMENDMENT TO MANDARINA MEDIATION AGREEMENT

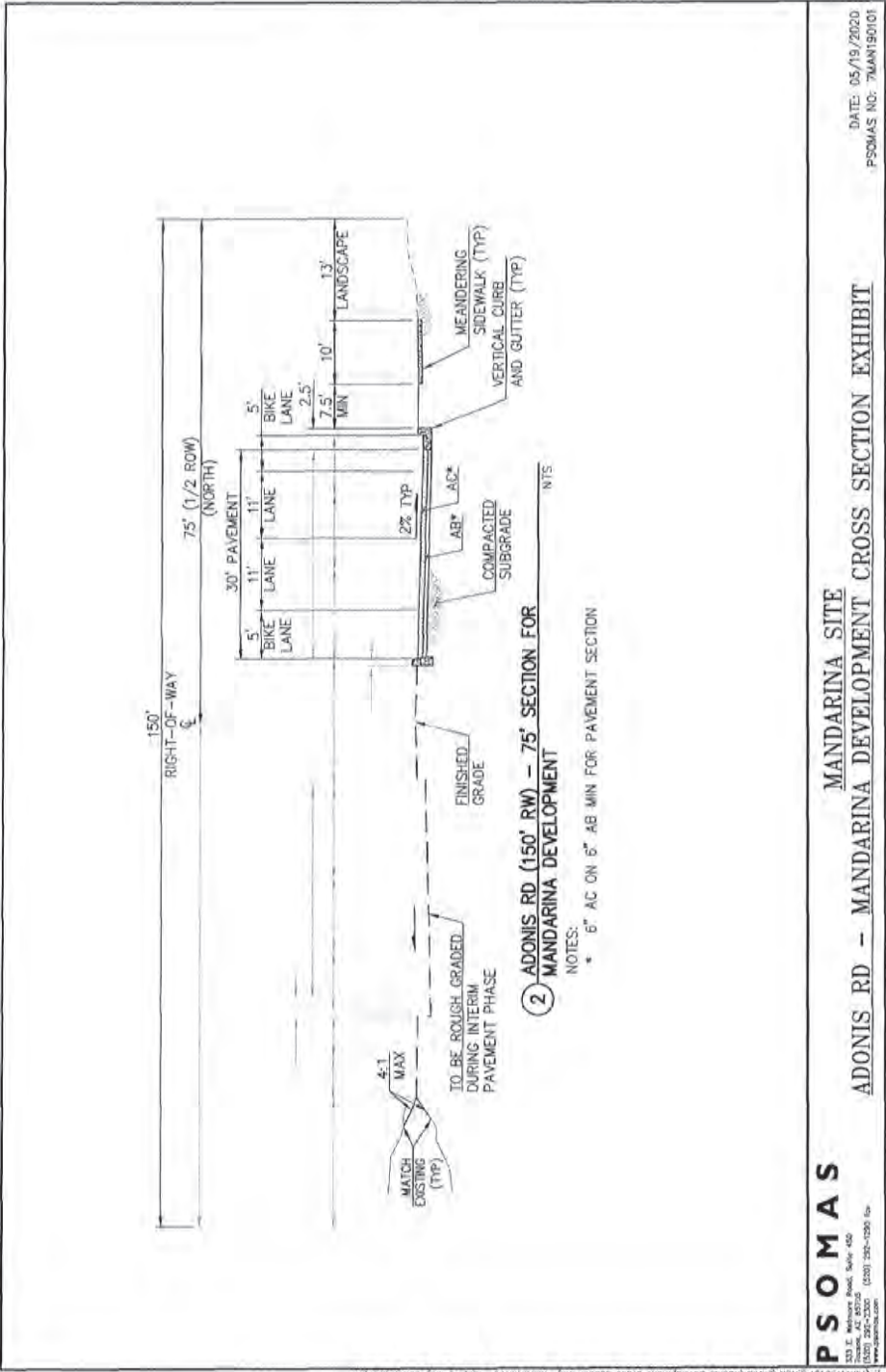


EXHIBIT A TO MANDARINA DEVELOPMENT AGREEMENT

SECOND AMENDMENT TO MANDARINA MEDIATION AGREEMENT

Town of Marana, Arizona

THIS SECOND AMENDMENT TO MANDARINA MEDIATION AGREEMENT (this "Amendment") is made and entered into by and between the TOWN OF MARANA (the "Town"), an Arizona municipal corporation; and MANDARINA, LLC ("Mandarina"), a Colorado limited liability company. The Town and Mandarinina are sometimes collectively referred to as the "Parties," either of which is sometimes individually referred to as a "Party."

RECITALS

A. The Parties entered into a "MEDIATION AGREEMENT" (the "Mediation Agreement") dated October 30, 2019, in settlement of two then-pending lawsuits, entitled *Mandarina, LLC v. Town of Marana*, Pima County Superior Court case number C20161982, and *Town of Marana v. Mandarinina, LLC*, Pima County Superior Court case number C20184425.

B. The Parties entered into a "FIRST AMENDMENT TO MANDARINA MEDIATION AGREEMENT" (the "First Amendment") dated June 3, 2020, amending the Mediation Agreement to accommodate construction of Adonis Road by the Town of Marana with Mandarinina providing a funding contribution to facilitate construction of Adonis Road on the Mandarinina Property as a permanent two-lane road.

C. The Parties now desire to further amend the Mediation Agreement as amended by the First Amendment to facilitate construction of a portion of Mandarinina Road Link as a permanent two-lane road.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated into this Amendment as though fully restated here, and the mutual covenants set forth in the Mediation Agreement, the First Amendment, and this Amendment, the Parties hereby agree as follows:

1. *Definitions of terms.* Terms used in this Amendment shall have the definitions found in the Mediation Agreement as amended by the First Amendment and as further amended by this Amendment.

2. *Mandarina Boulevard defined and Mandarinina Link Road redefined.*

a. "Mandarina Boulevard" means A two-lane permanent Mandarinina Boulevard and its transition to temporary two-lane roadway between Adonis Road and Station 20+88 of "INTERIM MANDARINA BLVD (PUBLIC STREET)" as shown on the plans entitled "PUBLIC PAVING IMPROVEMENT PLAN FOR MANDARINA/INTERIM

EXHIBIT A TO MANDARINA DEVELOPMENT AGREEMENT

ADONIS ROAD AND MANDARINA BLVD (SOUTHERN PORTION OF ADONIS ROAD ROW ONLY)" prepared by Psomas and bearing an engineering stamp dated January 8, 2020.

b. "Mandarina Link Road" means the section of temporary road located south of Mandarina Boulevard described in subparagraph a above.

3. *Revision to the Subject Improvements.* The improvements referred to as the "Subject Improvements" as defined in paragraph 4 of the First Amendment are now defined to include all of the following-described improvements on the Mandarina Property:

a. A two-lane permanent Adonis Road roadway (the north/east two lanes of the four-lane ultimate Adonis Road roadway) to a "permanent interim cross-section" of three inches of asphaltic concrete over a four inch aggregate base course over a six inch cement treated subgrade, consistent with the cross section exhibit attached to the First Amendment as Exhibit A.

b. Curbs and sidewalks and the top two inches of asphalt are excluded from initial construction of Adonis Road described in subparagraph a above, but will be provided by Mandarina in phases as the Mandarina Property is developed, so that the final two-lane permanent Adonis Road roadway will be consistent with the cross section exhibit attached to the First Amendment as Exhibit B.

c. A two-lane permanent Mandarina Boulevard to a "permanent interim cross-section" of three inches of asphaltic concrete over a four inch aggregate base course over a six inch cement treated subgrade, consistent with the cross section exhibit attached to this Amendment as Exhibit C, and its transition to temporary two-lane roadway connecting to Mandarina Link Road.

d. Curbs and sidewalks and the top two inches of asphalt are excluded from initial construction of permanent Mandarina Boulevard described in subparagraph c above, but will be provided by Mandarina in phases as the Mandarina Property is developed, so that the final two-lane permanent Mandarina Boulevard roadway will be consistent with the cross section exhibit attached to this Amendment as Exhibit D.

e. As constructed pursuant to the First Amendment as amended by this Amendment, the two-lane permanent Adonis Road roadway shall only extend as far east as its intersection with Mandarina Boulevard as constructed pursuant to subparagraph c above and not to the east Mandarina Property boundary.

4. *Payment for the Adonis Road Improvements.* Paragraph 9 of the First Amendment is amended by deleting subparagraph b.ii and replacing it with the following:

ii. The Town shall pay the next \$1,134,742 from the funds it would have spent to construct temporary two-lane Adonis Road through the Mandarina Property and to construct the temporary two-lane segment now replaced by permanent Mandarina Boulevard.

EXHIBIT A TO MANDARINA DEVELOPMENT AGREEMENT

5. *Earthwork equipment crossing of Mandarinina Boulevard and Mandarinina Link Road.* During development of the Mandarinina Property, the Town shall allow earthwork equipment to cross Mandarinina Boulevard and Mandarinina Link Road with appropriate protection of the roadway and with appropriate traffic control to be reviewed and approved by the Town in connection with the submittal for and issuance of one or more applicable right-of-way use permits pursuant to Marana Town Code Chapter 12-7 ("Construction in Town rights-of-way").

6. *Remainder of the Mediation Agreement and First Amendment unchanged.* Except as revised in and/or as revised by applying the revised definitions of terms in this Amendment, the Mediation Agreement as amended by the First Amendment shall remain unchanged.

7. *Term.* This Amendment shall become effective (the "Effective Date") on the last Party's signature date below, and shall terminate upon completion of construction of and payment for the Adonis Road Improvements, unless earlier terminated by operation of subparagraph 9.b.iv of the First Amendment.

8. *Miscellaneous.*

a. The Mediation Agreement as amended by the First Amendment and this Amendment may not be modified except in a writing signed by the Parties.

b. This Amendment may be executed in identical counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument. In addition, this Amendment may contain more than one counterpart of the signature pages and this Amendment may be executed by the affixing of the signature pages, and all of such counterpart signature pages shall be read as though one, and they shall have the same force and effect as though all the signers had signed a single signature page.

c. This Amendment is subject to A.R.S. § 38-511, which provides for cancellation of contracts in certain instances involving conflicts of interest.

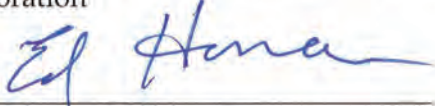
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EXHIBIT A TO MANDARINA DEVELOPMENT AGREEMENT

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment as of the last date set forth below their respective signatures, with an Effective Date determined as set forth in paragraph 7 above.

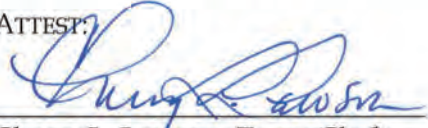
THE "TOWN":

TOWN OF MARANA, an Arizona municipal corporation

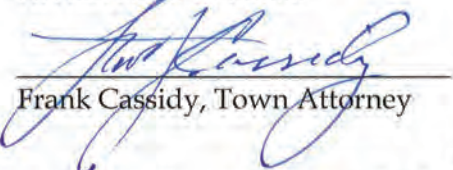
By: 
Ed Honea, Mayor

Date: 9/2/2020

ATTEST:


Cherry L. Lawson, Town Clerk

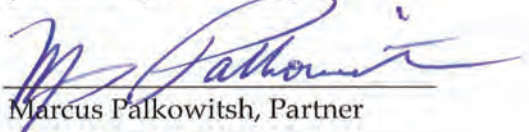
APPROVED AS TO FORM:


Frank Cassidy, Town Attorney

"Mandarina":

MANDARINA, LLC, a Colorado limited liability company

By: MSP INVESTMENT CO., LLP, a Colorado limited liability partnership, its Manager

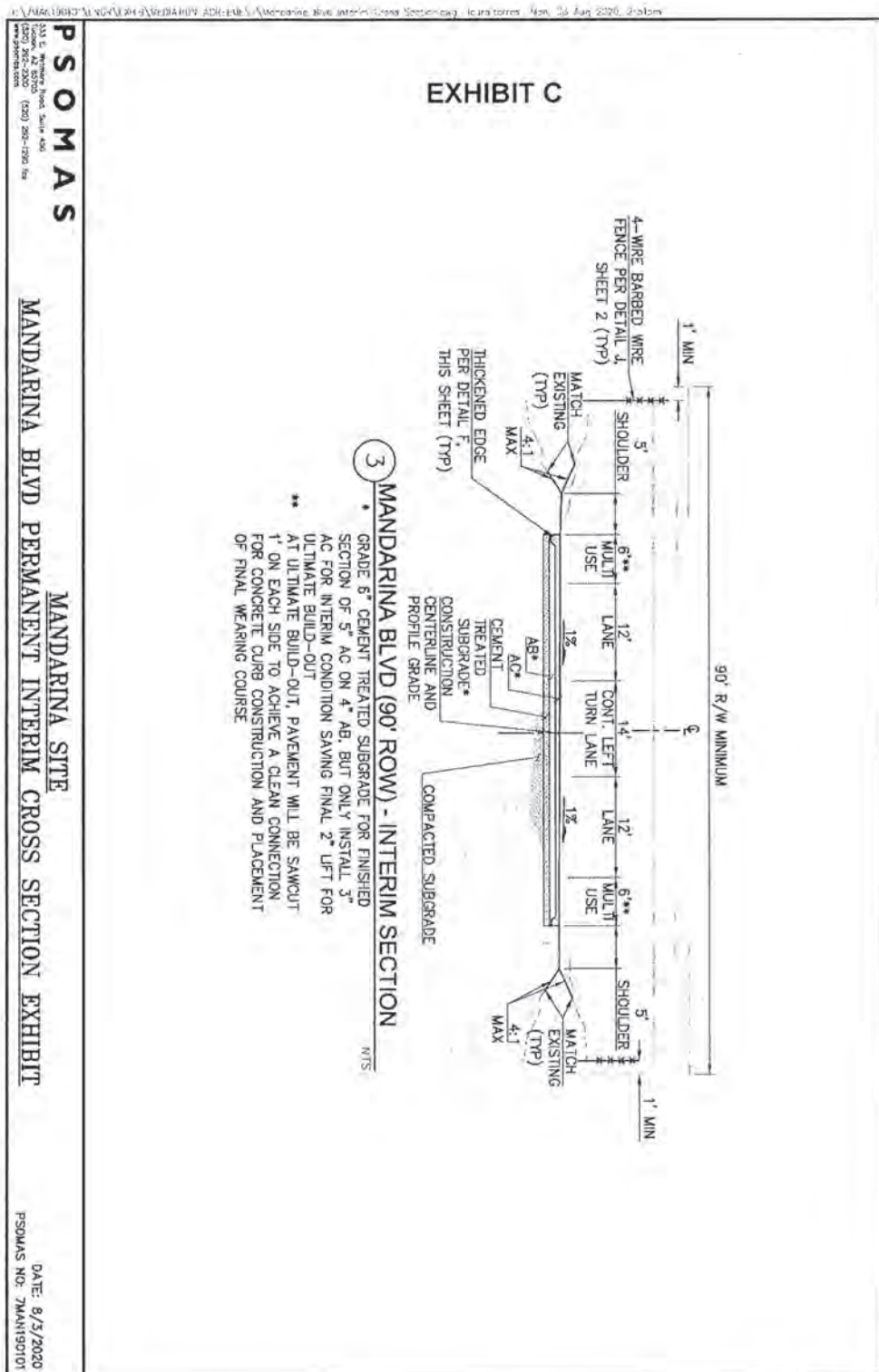
By: 
Marcus Palkowitsh, Partner

Date: 8.31.2020

LIST OF EXHIBITS

- Exhibit C Mandarinina Boulevard permanent interim cross section exhibit
- Exhibit D Mandarinina Boulevard ultimate cross section exhibit

EXHIBIT A TO MANDARINA DEVELOPMENT AGREEMENT



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SECOND AMENDMENT TO MANDARINA MEDIATION AGREEMENT

EXHIBIT A TO MANDARINA DEVELOPMENT AGREEMENT

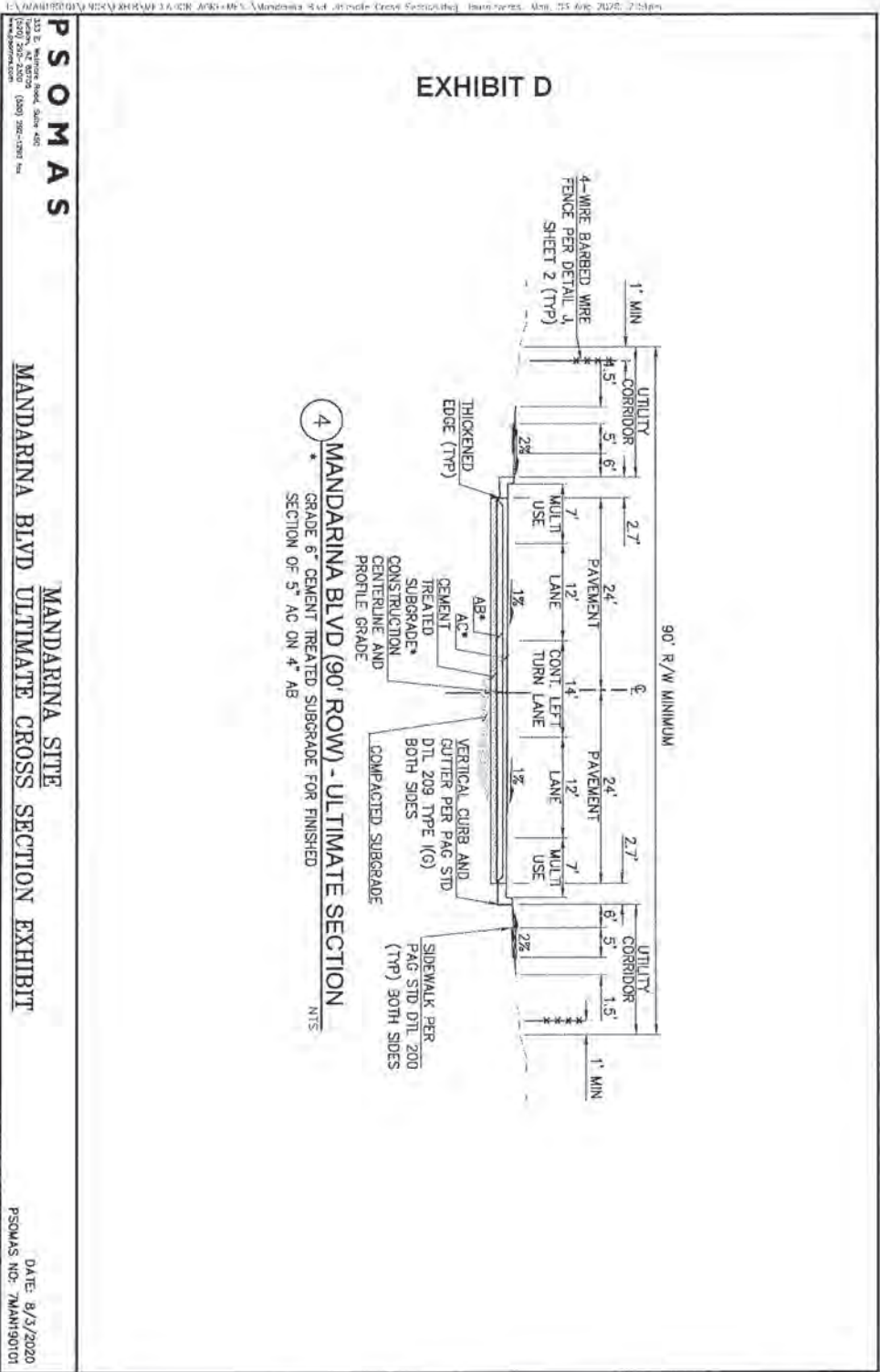


EXHIBIT B TO MANDARINA DEVELOPMENT AGREEMENT

ADMINISTRATIVE CHANGE TO THE MANDARINA SPECIFIC PLAN

Whereas the Mandarinina Specific Plan was initially adopted pursuant to Marana Ordinance No. 2009.02, dated February 17, 2009 ("Mandarina Specific Plan").

Whereas the Owner of the land included within the boundaries of the Mandarinina Specific Plan desires to remove and delete the references in the Mandarinina Specific Plan to access to the new Interstate-10/Tangerine Road interchange. The Owner desires to amend the Land Use Summary in Part 2.2 of the Mandarinina Specific Plan to set forth the revised acreages in each respective planning area without changing the cumulative acreage in Mandarinina. The Owner of the land within the Mandarinina Specific Plan desires to develop the land according to the revised Land Use Concept plan, the revised Circulation Concept plan and the revised Trail Concept plan all as shown in Exhibit A attached hereto. The Owner of Mandarinina desires to develop the land in conformance with the design guidelines and standards of Mandarinina to provide consistency within the overall community.

Whereas the Town of Marana desires to have consistent development regulations within a community.

Whereas Part 5.H.3 of the Mandarinina Specific Plan authorizes the Planning Director to administratively make minor changes to the Specific Plan provided such changes are not in conflict with the overall intent as expressed in the Mandarinina Specific Plan.

Whereas Part 5.H.3 further categorizes administrative changes to include the addition of new information to the Specific Plan maps or text that does not change the effect of any regulations or guidelines.

Whereas Part 5.H.3 also categorizes changes in land use designation boundaries, division of plan areas or combinations of areas as administrative changes.

Whereas the Town of Marana Development Services Director (Planning Director) has determined that the modifications and amendments to the Mandarinina Specific Plan set forth in Exhibit A attached hereto would not conflict with the overall intent of the Mandarinina Specific Plan and the Specific Plan is hereby modified as follows:

EXHIBIT B TO MANDARINA DEVELOPMENT AGREEMENT

Upon approval hereof, the text and exhibits on pages 9, 10, 11, 17, and 21 shall be revised as shown on the attached Exhibit A.

This administrative change to the Mandarinina Specific Plan is hereby approved as of October 30, 2019.

A handwritten signature in black ink, appearing to read "J. Dell", written over a horizontal line.

Town of Marana Development Services
Director

Mandarina, LLC, a Colorado limited
liability company

By: MSP Investment Co., LLP, a
Colorado limited liability partnership,
its Manager

A handwritten signature in blue ink, appearing to read "M. Palkowitsh", written over a horizontal line.

Marcus Palkowitsh, Partner

EXHIBIT B TO MANDARINA DEVELOPMENT AGREEMENT

Exhibit A



mandarina

DEVELOPMENT PLAN

C. Development Plan Concept

The Mandarinina Specific Plan provides the framework for a diverse project that responds to market demands and the Town of Marana vision while maximizing development opportunities for the site. By integrating a variety of well planned land uses which may include and are not limited to retail, commercial, and office uses, single-family and multi-family residences, a balanced community is envisioned.

Mandarina is influenced by its proximity to strong transportation corridors and its inclusion in the Single Central Business District. The strong retail and commercial land use component shall provide employment and tax revenue opportunities for the Town of Marana. The provision of a variety of housing options, appealing to all household types from families to empty-nesters, shall create a diverse community. Integrated residential uses shall provide opportunities for pedestrian friendly, walkable, live/work environments and a network of trails shall provide connections to existing and future open space areas and among the various neighborhoods in the area. (See Exhibit 2.C.1 - Land Use Concept, pg. 10)

This plan envisions an area that can accommodate growth, create a destination and function as a gateway, both to the east and to the north as transit plans and transportation alternatives evolve. The balance of uses, consistent with the economic vision for the area, shall be a catalyst and a partner in “Marana’s vision as a self-sustaining community that meets the needs of its citizens...”¹

¹ Marana General Plan 2007, Appendix C, Land Use Decision Keys

D. Land Use Concept

The four Planning Areas in Mandarinina represent a gradation of uses, with the most transportation influenced uses planned for the area adjacent to the Interstate.

1. Mandarinina Land Use Planning Areas

The four Planning Areas, described in this section, shall guide the implementation of the Mandarinina Specific Plan. Refer to Part 3 - Development Standards, of this document for proposed land uses for each Planning Area. Land use transition and development standards shall create a project in which the integrated mix of uses creates a place that people want to live, work, play and shop—helping build a successful Marana for the future.

1.1 Mandarinina Transportation Corridor (MTC)

The Mandarinina Transportation Corridor is directly adjacent to Interstate 10 and is designed to take advantage of the high visibility from the Interstate. Uses permitted in the Mandarinina Transportation Corridor benefit from convenient access to a strong transportation network and the proposed inter-city rail connection.

1.2 Mandarinina Village Center (MVC)

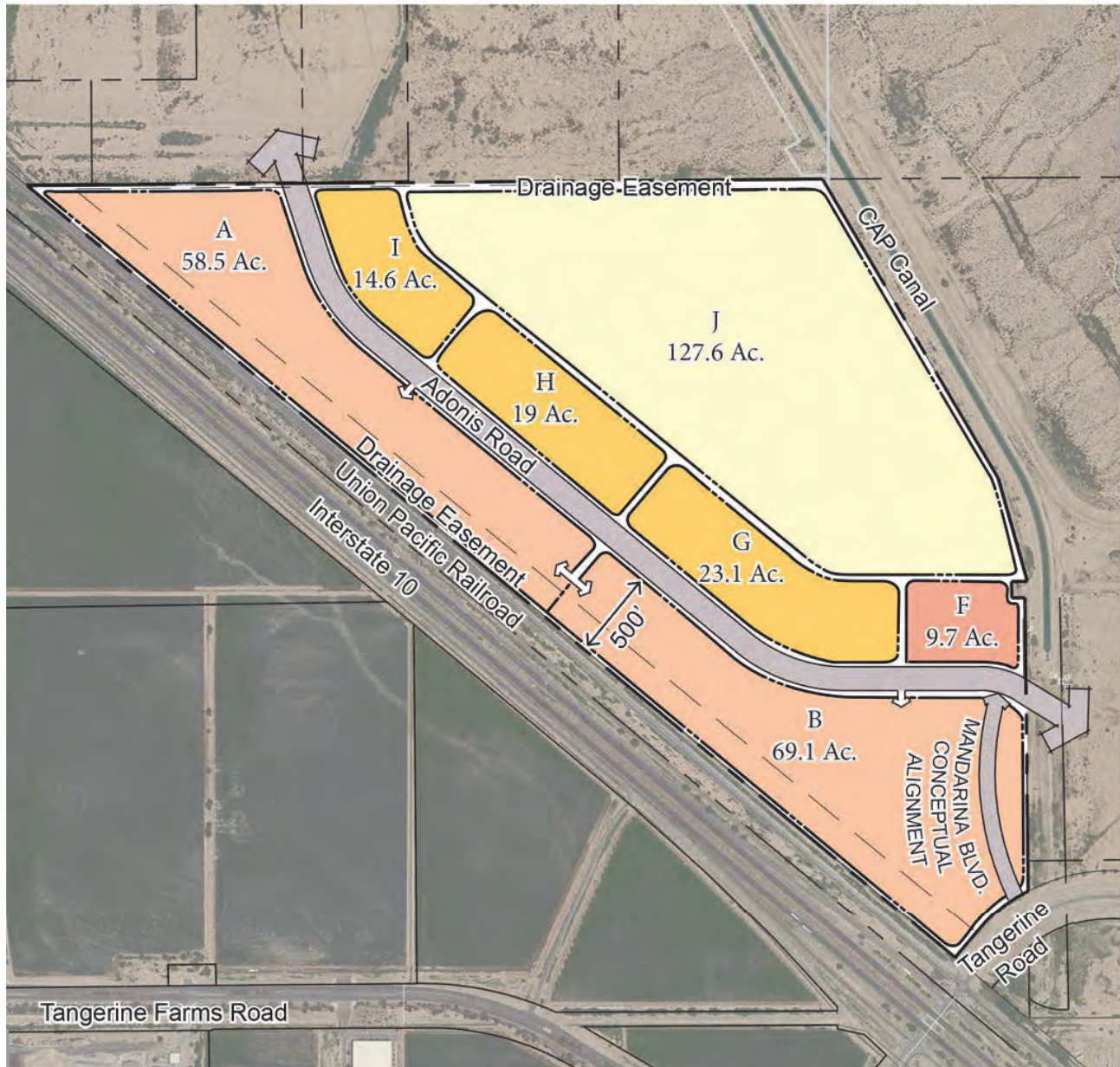
The Mandarinina Village Center shall be located at the intersection of Adonis Road and

EXHIBIT B TO MANDARINA DEVELOPMENT AGREEMENT

mandarina

DEVELOPMENT PLAN

EXHIBIT 2.C.1 - LAND USE CONCEPT



LEGEND

- Mandarina Transportation Corridor
- Mandarina Village Center
- Mandarina Corridor
- Tortolita Corridor



0 500 1,000
Scale: 1"=1,000'

EXHIBIT B TO MANDARINA DEVELOPMENT AGREEMENT



DEVELOPMENT PLAN

Mandarina Boulevard. The location of the Mandarin Village Center makes it the central core of the Mandarin community as well as a gateway to Oro Valley, Northwest Tucson and the communities east of the interstate. A broad range of retail and employment opportunities shall create a vibrant regional destination. Its pedestrian orientation shall create an exciting walkable hub with a vibrant sense of community. Homes may be integrated into this area, offering residents myriad opportunities for work and play.

1.3 Mandarin Corridor (MC)

The Mandarin Corridor holds a prime position adjacent to Adonis Road. The Mandarin Corridor area shall support uses that benefit from the proximity to a major arterial. Uses in this planning area may be related to those within the Mandarin Transportation Corridor, taking advantage of the vehicle traffic generated by the Mandarin Transportation Corridor uses.

1.4 Tortolita Corridor (TC)

The Tortolita Corridor is uniquely situated to take advantage of both the natural beauty of the area and the proximity to the shops, employment and services that are proposed in the other Planning Areas. Nearby open space, regional and local trails and the planned CAP Canal Trail shall provide visitors and residents with easy access to recreational opportunities and breathtaking views of the region's mountains. Uses proposed for this Planning Area are likely to be less intense, incorporating the dramatic backdrop of the open space into its unique character.

2. Land Use Summary

Parcels and their respective acreage are identified for each Planning Area in Table A.

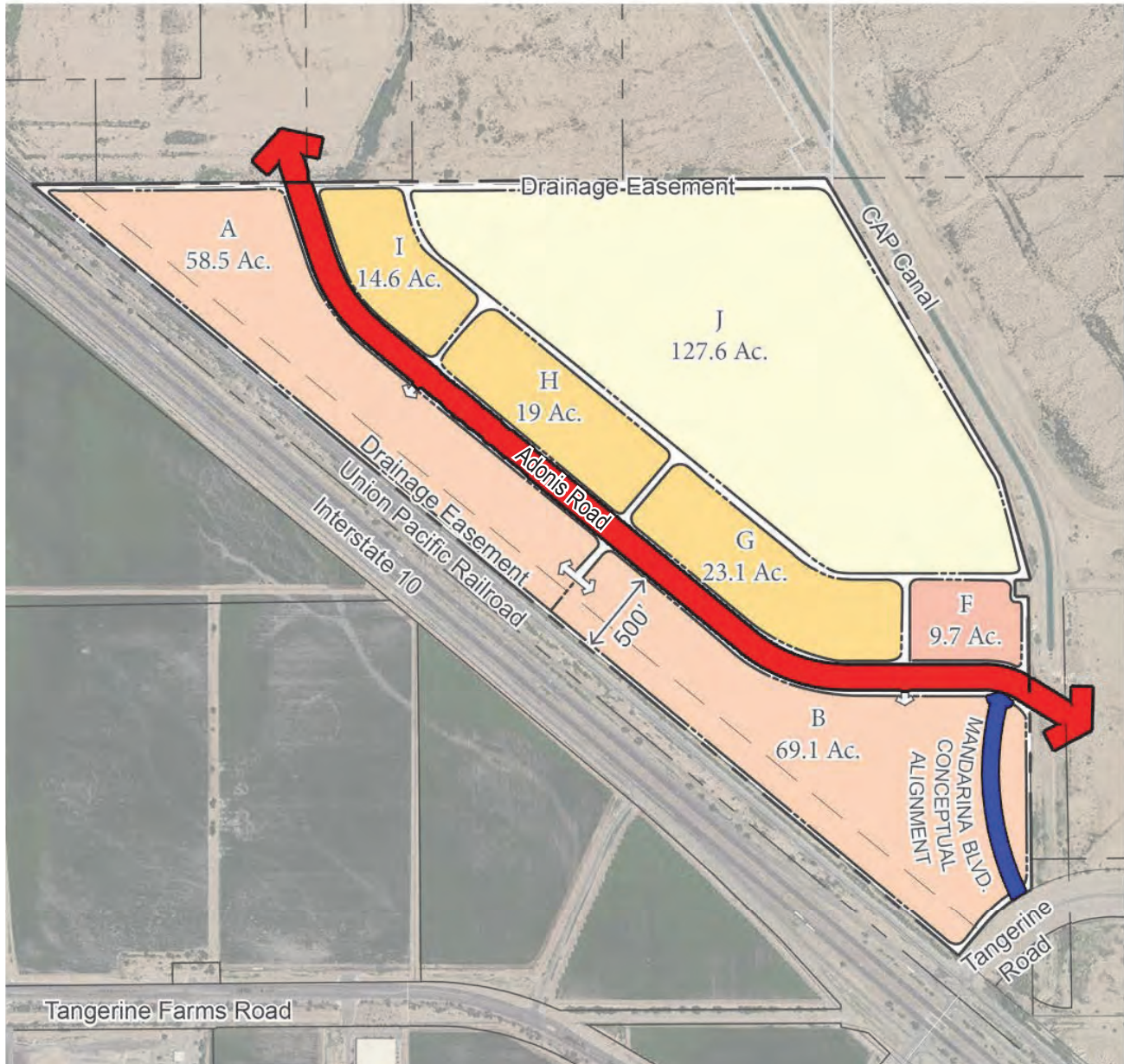
Table A: Land Use Summary		
Parcel	Planning Area	Area (Acres)
A	MTC	58.5
B	MTC	69.1
F	MVC	9.7
G	MC	23.1
H	MC	19.0
I	MC	14.6
J	TC	127.6
Adonis Road		20.6
TOTAL		342.2

EXHIBIT B TO MANDARINA DEVELOPMENT AGREEMENT

mandarina

DEVELOPMENT PLAN

EXHIBIT 2.H.1 - CIRCULATION CONCEPT



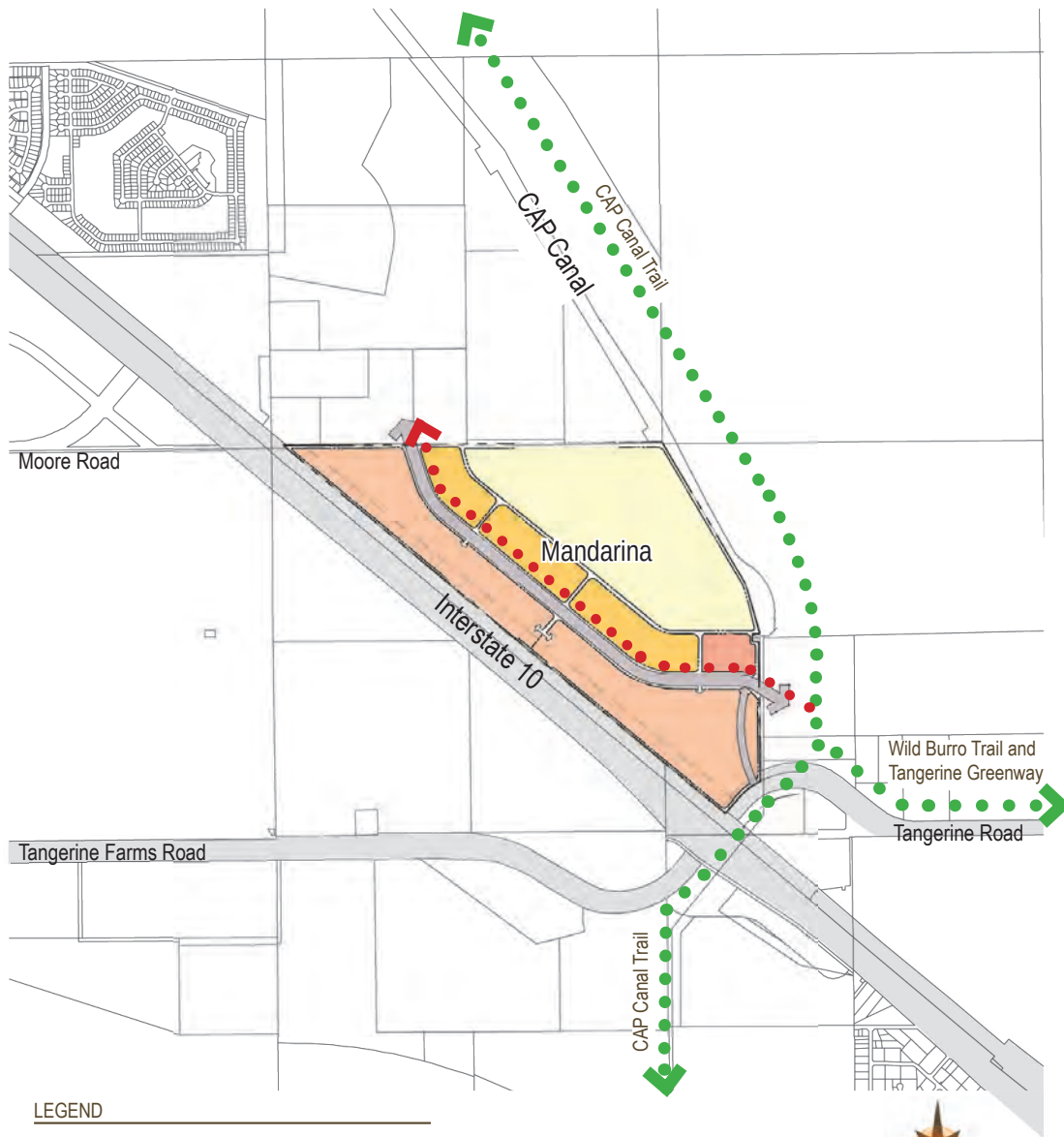
LEGEND

- ← Arterial Road
- ← Collector Road



0 500 1,000
Scale: 1"=1,000'

EXHIBIT B TO MANDARINA DEVELOPMENT AGREEMENT



LEGEND

- Proposed Mandarinina Trail
- Proposed Trail Route

Note: CAP Canal trail is conceptual and final location may change at the discretion of The Town of Marana. The developer shall coordinate with the Town to determine the best location for the Mandarinina Trail.

Source: Pima County Land Information System, Town of Marana General Plan & Town of Marana Northwest Area Plan

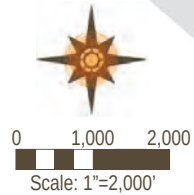


EXHIBIT C TO MANDARINA DEVELOPMENT AGREEMENT

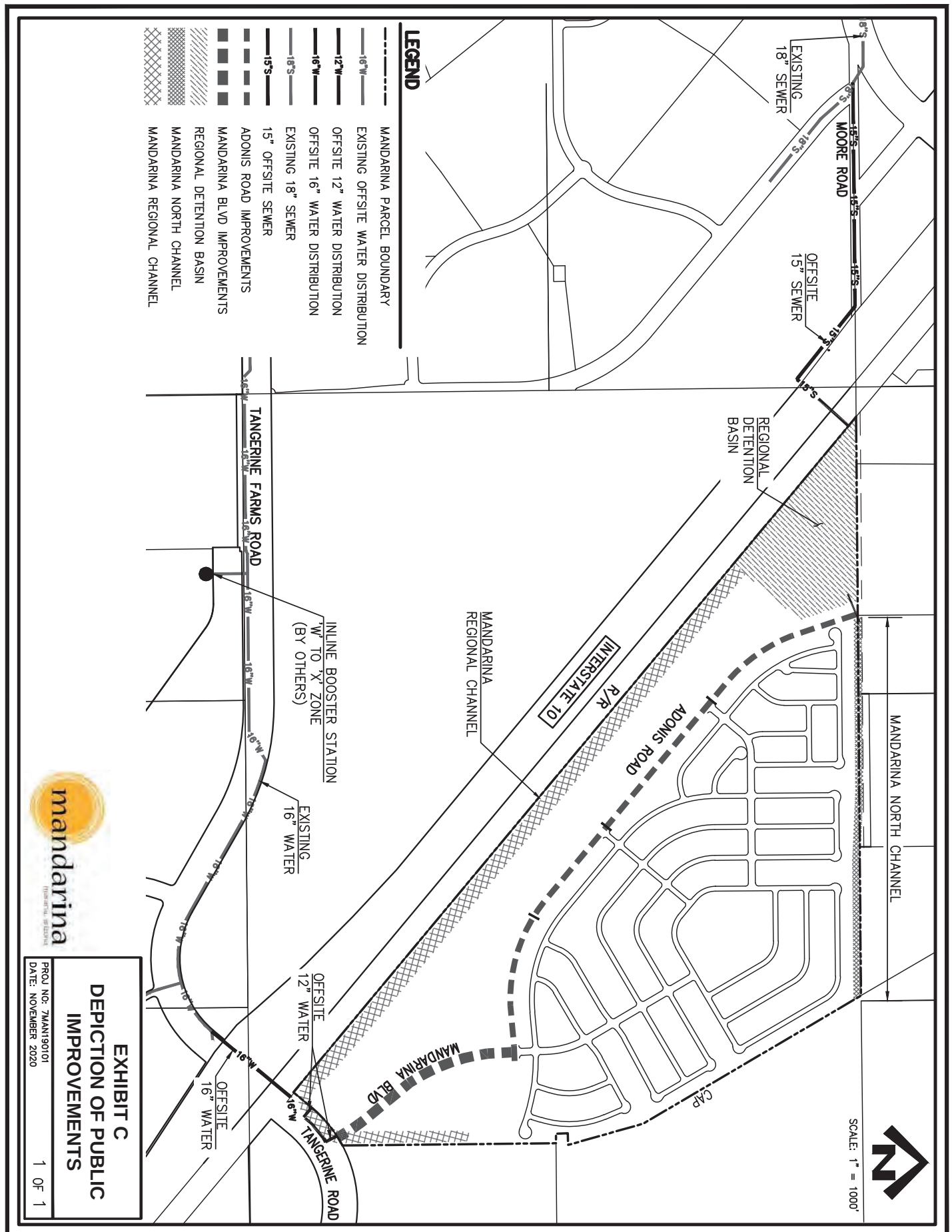


EXHIBIT D TO MANDARINA DEVELOPMENT AGREEMENT

TOWN OF MARANA AGREEMENT FOR CONSTRUCTION OF SEWER FACILITIES UNDER PRIVATE CONTRACT Mandarina Offsite Sewer

THIS AGREEMENT (this "Agreement") is entered into by and between the TOWN OF MARANA, an Arizona municipal corporation (the "Town"), and MANDARINA, LLC, a Colorado limited liability company (the "Developer"). The Town and the Developer are sometimes collectively referred to as the "Parties," each of which is sometimes individually referred to as a "Party."

RECITALS

A. This Agreement is entered into and authorized pursuant to Title 14 of the Marana Town Code as it may be amended from time to time ("Marana Town Code Title 14").

B. The Developer desires for the Town to provide sewer service to the land described and depicted in the Mandarinina Specific Plan, adopted by Marana Ordinance No. 2009.02, recorded in the Pima County Recorder's office at Docket 13499, Page 8 (Sequence 20090340005), and amended by an administrative amendment dated October 30, 2019, whose land area is referred to in this Agreement as the "Subject Property."

C. The Developer is the owner of the "Subject Property."

D. As a condition of securing sewer service from the Town for the Subject Property, the Developer agrees to install those certain sewer infrastructure improvements (the "Developer-Installed Facility") in accordance with the required plans, specifications, and materials as outlined and depicted in the Plan for Mandarinina Offsite Public 15" Sewer, Plan No. ENG_____, sealed by [Engineering Firm] on [Date] and approved by the Town of Marana Water Director on [Date] (the "Facility Plan"), which is on file in the office of the Town of Marana Water Department.

E. The Parties are also parties to the "Mandarina Development Agreement," recorded in the Pima County Recorder's office on December 4, 2020 at Sequence 2020_____ and approved by Marana Resolution No. 2020-_____, adopted by the Marana Town Council on December 1, 2020.

F. The Mandarinina Development Agreement governs development of the Subject Property and anticipates the Developer's installation of the Developer-Installed Facility, which is referred to in the Mandarinina Development Agreement as the "Offsite 15-Inch Sewer."

EXHIBIT D TO MANDARINA DEVELOPMENT AGREEMENT

G. If constructed as designed, the Developer-Installed Facility will include elements and capacity sufficient to serve other new Town customers, and to that extent the Parties wish to provide for partial reimbursement to the Developer in accordance with Marana Town Code section 14-4-3 (capacity requirements).

H. If constructed as designed, the current total estimated construction cost for the Developer-Installed Facility is \$2,054,036.

I. The Developer-Installed Facility has capacity for 4,927 EDUs. The Subject Property is estimated to have a total of 2,005 EDUs, leaving excess capacity in the Developer-Installed Facility of 2,922 EDUs.

J. The Developer desires that the Town take ownership of, operate, and service the Developer-Installed Facility.

K. The Town is willing to accept the Developer-Installed Facility and permit it to be connected to the Town sewer system provided it meets Town standards and the work is done in accordance with Town requirements.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants set forth in this Agreement, the Parties hereby agree as follows:

1. The Developer-Installed Facility

1.1. *Developer installation of the Developer-Installed Facility.* The Developer has designed and shall install, at the Developer's own expense (subject to the reimbursement provisions of this Agreement), the sewer infrastructure improvements as depicted in the Facility Plan. The sewer infrastructure improvements depicted on the Facility Plan are referred to in this Agreement as the "Developer-Installed Facility," and shall conform to the design standards of the Pima County Regional Wastewater Reclamation Department and the Town of Marana Town Code Title 14 and special specifications and details as approved by the Town and by this reference made a part of this Agreement. The Facility Plan shall include a plan note identifying the Developer-Installed Facility as a new sewer facility and shall show any and all alterations to the existing sewer system. Construction and installation of the Developer-Installed Facility in accordance with the Facility Plan, including without limitation all labor, materials, equipment, supplies, and tools required for the construction and installation, is referred to in this Agreement as the "Work."

1.2. *Competitive bids.* As a condition of and prerequisite to receiving any reimbursement under this Agreement, the Developer shall go through the competitive bidding process for the Work in compliance with Title 34 of the Arizona Revised Statutes.

1.3. *Work by licensed contractor.* The Work shall be performed by a contractor properly licensed by the State of Arizona as determined by the Arizona Registrar of Contractors. In addition to any other contractor's license classifications required by the Arizona Registrar of Contractors, the contractor shall hold contractor's license classifications A, A-12 and A-16.

EXHIBIT D TO MANDARINA DEVELOPMENT AGREEMENT

1.4. *Payment of connection fees.* Before any service connections are made from the Town's sewer system to the Developer-Installed Facility, the person or entity seeking the service connection shall pay to the Town the connection fees and any other fees required by Marana Town Code Title 14.

1.5. *Developer-Installed Facility acceptance by Town.* Service connections shall not be made to the Developer-Installed Facility, and the Developer-Installed Facility shall not be connected to the Town's sewer system, until the Developer-Installed Facility has been accepted by the Town in accordance with Marana Town Code Title 14.

1.6. *Developer's certification.* Execution of this Agreement certifies that the Developer has reviewed the Facility Plan and all other specifications applicable to the Work and has approved and agrees with the location of all service lines.

1.7. *Termination for lack of Work.* Approval of the Facility Plan shall lapse and this Agreement shall terminate if more than one year has passed since the date of this Agreement and the Work has not begun, or if the Work is discontinued for a period of one year.

1.8. *Oversizing Recovery Charge.* The Parties have determined that the Developer-Installed Facility will have sufficient capacity to serve an additional 2,922 EDUs as a result of and upon completion of the Work and after connection of 2,005 EDUs on the Subject Property. Consequently, pursuant to Marana Town Code section 14-4-3 (C), the Town hereby establishes an "oversizing recovery charge" of \$416.89 per EDU for connections whose capacity is made possible as a result of the Work. For purposes of this paragraph, all of the following apply:

1.8.1. The oversizing recovery charge shall be payable only until the Developer-Installed Facility reaches its design capacity, currently anticipated to be for an additional 2,922 EDUs whose capacity is made possible as a result of the Work or until the termination of the Mandarin Development Agreement, whichever occurs first. Based on the oversizing recovery charge of \$416.89 per EDU, the Parties' current estimate of the Developer's total potential reimbursement through oversizing recovery charges for the Developer-Installed Facility is \$1,218,164.

1.8.2. The Town will deposit the oversizing recovery charge payments for constructed EDUs benefitted by the Developer-Installed Facility in the "Reimbursement Account" established pursuant to the Mandarin Development Agreement, and will reimburse the Developer in accordance with the "Reimbursement Payments" provision of the Mandarin Development Agreement.

1.8.3. The Developer shall have a beneficial ownership interest in the service area for the Developer-Installed Facility sufficient to prohibit connection in that area unless and until the oversizing recovery charge is paid.

1.8.4. One EDU is a typical single-family residence served by a five-eighths inch meter. EDU equivalencies for other uses and meter sizes shall be based on standard Town equivalency tables and calculations.

EXHIBIT D TO MANDARINA DEVELOPMENT AGREEMENT

1.8.5. The number of EDUs subject to the oversizing recovery charge has been calculated assuming the development of 2005 lots on the Subject Property served by five-eighths inch meters. If the actual number of lots and size of meters used to develop the Subject Property results in a different EDU count, the number of EDUs required to pay the oversizing recovery charge shall be adjusted accordingly, based on standard Town equivalency tables and calculations, and the “oversizing recovery charge” set forth in subparagraph 1.8.1 above shall be re-calculated accordingly.

1.8.6. The Parties acknowledge that final construction quantities and amounts will be provided after construction of the Developer Installed-Facility is completed.

1.8.7. The Town makes no guarantee that the Developer will receive full reimbursement of the Developer’s cost of completing the Work.

2. Engineering and Inspection

2.1. *Registered civil engineer.* The Developer shall employ a registered Civil Engineer to design, lay out, establish control lines for and certify the layout of the Work according to the Facility Plan.

2.2. *Town inspector’s authority.* Any inspector authorized by the Town shall have full inspection authority over the Work.

2.3. *Inspection provisions.* The Developer shall furnish the Town’s inspector with all facilities reasonably necessary to inspect the Work. The Work shall be subject to Town inspection at all times. Defective work shall be corrected in a manner satisfactory to the Town’s inspector. Inspection by the Town is for the purpose of ensuring compliance with plans and specifications only. The Town makes no guarantee as to the safety or engineering soundness of plans prepared by the Developer or any contractor.

2.4. *Payment of Town inspector’s overtime cost.* If scheduling by the Developer’s contractor reasonably requires the Town’s inspector to work overtime, the Developer or Developer’s contractor shall pay the Town for any additional salaries, expenses or employee benefits relating to the overtime. For purposes of this paragraph, overtime is any time over 40 hours worked in a seven-day work period, any time over eight hours worked Monday through Friday, and any time worked on weekends and legal holidays observed by the Town.

3. Preconstruction Procedure

3.1. *Request to begin construction.* The Developer shall submit a written request to begin construction to the Town five working days before the Work is to commence.

3.2. *Construction permit.* This Agreement shall be completed, signed and notarized, and returned to the Town prior to issuance of a construction permit for the Work.

3.3. *Start and completion of the Work.* No portion of the Work shall begin until the Town has issued a construction permit specifying the starting date and a reasonable time for completion.

EXHIBIT D TO MANDARINA DEVELOPMENT AGREEMENT

3.4. *Progress of the Work.* The Work shall be commenced and carried on at such points and in such order as may be directed by the Town.

3.5. *Materials sampling and testing.* Materials shall be available for sampling and testing by the Town prior to being used in the Work. Materials that fail to meet Town specification shall be removed from the site.

3.6. *Permits and approvals.* The Developer shall, at Developer's expense, obtain all necessary permits and licenses for the Work, pay all fees and comply with all laws, ordinances and regulations relating to the Work. Town permit fees for the Work are waived pursuant to the Mandarin Development Agreement.

4. Construction

4.1. *Developer's presence on site.* The Developer, or Developer's designated agent, shall be present at all times during performance of the Work. The name of the Developer's designated agent and the contractor performing the Work shall be furnished to the Town before the Work begins. Instructions given by the Town to the designated agent shall be deemed to have been given to the Developer.

4.2. *Competence and diligence.* The Developer shall employ only competent and efficient laborers, mechanics or artisans on the Work, and the Developer agrees to perform diligently to complete the Work on or before the completion date given in the notice to proceed.

4.3. *Alterations to the existing Town sewer system.* The Developer shall, at Developer's expense, make any and all alterations to the existing sewer system either on-site or off-site necessitated by paving, drainage, or other improvements caused by the development of the Subject Property.

4.4. *Worksite safety.* The Developer shall require all contractors and subcontractors performing any portion of the Work to comply with all safety requirements of the Occupational Safety and Hazards Act as set forth by the Federal Government and as implemented by the State of Arizona. The Developer or its contractors shall be solely responsible for all fines or other penalties provided for by law for any violations of the Occupational Safety Hazards Act.

5. Dedication

5.1. *Transfer of the Developer-Installed Facility to the Town.* Upon the Town's final acceptance of the Work, the Developer shall at no cost grant, bargain, sell, convey, transfer and deliver to the Town the Developer-Installed Facility free and clear of all liens, claims, charges or encumbrances.

5.2. *One-year warranty.* The Developer guarantees the Work to be free from all failures due to poor workmanship or materials for a period of one year from the date of the Town's final acceptance of the Work.

EXHIBIT D TO MANDARINA DEVELOPMENT AGREEMENT

5.3. *Other conflicting construction prohibited.* The Developer shall not construct or allow the construction of any utility, structure, building, or other improvement that would interfere with the operation or maintenance of the Developer-Installed Facility.

5.4. *Developer's obligation to maintain finished grade.* The Developer guarantees that all service lines and other sewer facilities on the Subject Property will be to finished grade and that Developer will remain responsible for raising or lowering said services as required until the Subject Property is fully developed.

5.5. *Acceptance by the Town.* The Town shall accept title to and take possession of the Developer-Installed Facility when the Work has been completed to the satisfaction of the Town. Subject to the Developer's continuing obligations under this Agreement, the Town shall operate and service the Developer-Installed Facility after taking over possession of it under this paragraph.

6. Miscellaneous

6.1. *Indemnity.* Developer shall indemnify, defend, and hold harmless the Town, its Mayor and Council, officers and employees, boards, committees and commissions from and against any loss, claim, suit, demand, cause of action, or liability of any nature, including but not limited to damage to property and injuries to persons, including death, arising or alleged to have arisen, in whole or in part, out of any negligent act or omission of the Developer or any contractor, subcontractor, or any person employed directly or indirectly by any of them in the performance of the Work or in the operation of the Developer-Installed Facility.

6.2. *Binding effect.* This agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the Parties.

6.3. *Consent required for assignment.* The Developer may not assign this Agreement without the prior written consent of the Town.

6.4. *Cancellation for conflict of interest.* This Agreement is subject to A.R.S. § 38-511, which provides for cancellation in certain instances involving conflict of interest.

[Signature page follows.]

EXHIBIT D TO MANDARINA DEVELOPMENT AGREEMENT

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the last date set forth below their respective signatures.

THE "TOWN":

TOWN OF MARANA, an Arizona municipal corporation

By: [SPECIMEN ONLY]
Ed Honea, Mayor

Date: _____

ATTEST:

[SPECIMEN ONLY]
Cherry L. Lawson, Town Clerk

APPROVED AS TO FORM:

[SPECIMEN ONLY]
Jane Fairall, Town Attorney

STATE OF COLORADO)
ss

County of _____)

The foregoing instrument was acknowledged before me on _____ by Marcus Palkowitsh, Partner of MSP INVESTMENT CO., LLP, a Colorado limited liability partnership, Manager of MANDARINA, LLC, a Colorado limited liability company (the "Developer"), on its behalf.

(Seal)

The "Developer":

MANDARINA, LLC, a Colorado limited liability company

By: MSP INVESTMENT CO., LLP, a Colorado limited liability partnership, its Manager

By: [SPECIMEN ONLY]
Marcus Palkowitsh, Partner

Date: _____

[SPECIMEN ONLY]
Notary Public

EXHIBIT E TO MANDARINA DEVELOPMENT AGREEMENT

TOWN OF MARANA AGREEMENT FOR CONSTRUCTION OF WATER FACILITIES UNDER PRIVATE CONTRACT Mandarina Offsite Water

THIS AGREEMENT (this "Agreement") is entered into by and between the TOWN OF MARANA, an Arizona municipal corporation (the "Town"), and MANDARINA, LLC, a Colorado limited liability company (the "Developer"). The Town and the Developer are sometimes collectively referred to as the "Parties," each of which is sometimes individually referred to as a "Party."

RECITALS

A. This Agreement is entered into and authorized pursuant to Title 14 of the Marana Town Code as it may be amended from time to time ("Marana Town Code Title 14").

B. The Developer desires for the Town to provide water service to the land described and depicted in the Mandarinina Specific Plan, adopted by Marana Ordinance No. 2009.02, recorded in the Pima County Recorder's office at Docket 13499, Page 8 (Sequence 20090340005), and amended by an administrative amendment dated October 30, 2019, whose land area is referred to in this Agreement as the "Subject Property."

C. The Developer is the owner of the "Subject Property."

D. As a condition of securing water service from the Town for the Subject Property, the Developer agrees to install those certain water infrastructure improvements (the "Developer-Installed Facility") in accordance with the required plans, specifications, and materials as outlined and depicted in the Water Plan for Mandarinina Offsite Public 16" Water, Zone ____ Transmission Main, Plan No. ENG_____, sealed by [Engineering Firm] on [Date] and approved by the Town of Marana Water Director on [Date] (the "Facility Plan"), which is on file in the office of the Town of Marana Water Department.

E. The Parties are also parties to the "Mandarina Development Agreement," recorded in the Pima County Recorder's office on December 4, 2020 at Sequence 2020_____ and approved by Marana Resolution No. 2020-_____, adopted by the Marana Town Council on December 1, 2020.

F. The Mandarinina Development Agreement governs development of the Subject Property and anticipates the Developer's installation of the Developer-Installed Facility, which is referred to in the Mandarinina Development Agreement as the "Offsite 16-Inch Potable Water Main."

EXHIBIT E TO MANDARINA DEVELOPMENT AGREEMENT

G. If constructed as designed, the Developer-Installed Facility will include elements and capacity sufficient to serve other new Town customers, and to that extent the Parties wish to provide for partial reimbursement to the Developer in accordance with Marana Town Code section 14-4-3 (capacity requirements).

H. If constructed as designed, the current total estimated construction cost for the Developer-Installed Facility is \$1,363,643.

I. Based on the water modeling for the development of the Subject Property, and assuming 2,000 gallons per minute of capacity is set aside for fire flow, the Town concludes that the Developer-Installed Facility will have total capacity for 2,730 EDUs. The Parties currently assume that 2,005 EDUs will be developed on the Subject Property, which would leave excess capacity in the Developer-Installed Facility of 725 EDUs.

J. The Developer desires that the Town take ownership of, operate, and service the Developer-Installed Facility.

K. The Town is willing to accept the Developer-Installed Facility and permit it to be connected to the Town water system provided it meets Town standards and the work is done in accordance with Town requirements.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants set forth in this Agreement, the Parties hereby agree as follows:

1. The Developer-Installed Facility

1.1. *Developer installation of the Developer-Installed Facility.* The Developer has designed and shall install, at the Developer's own expense (subject to the reimbursement provisions of this Agreement and the Mandarin Development Agreement), the water infrastructure improvements as depicted in the Facility Plan. The water infrastructure improvements depicted on the Facility Plan are referred to in this Agreement as the "Developer-Installed Facility," and shall conform to the design standards of the City of Tucson Water Department and the Town of Marana Town Code Title 14 and special specifications and details as approved by the Town and by this reference made a part of this Agreement. The Facility Plan shall include a plan note identifying the Developer-Installed Facility as a new water facility and shall show any and all alterations to the existing water system. Construction and installation of the Developer-Installed Facility in accordance with the Facility Plan, including without limitation all labor, materials, equipment, supplies, and tools required for the construction and installation, is referred to in this Agreement as the "Work."

1.2. *Competitive bids.* As a condition of and prerequisite to receiving any reimbursement under this Agreement, the Developer shall go through the competitive bidding process for the Work in compliance with Title 34 of the Arizona Revised Statutes.

1.3. *Work by licensed contractor.* The Work shall be performed by a contractor properly licensed by the State of Arizona as determined by the Arizona Registrar of Contractors.

EXHIBIT E TO MANDARINA DEVELOPMENT AGREEMENT

In addition to any other contractor's license classifications required by the Arizona Registrar of Contractors, the contractor shall hold contractor's license classifications A, A-12 and A-16.

1.4. *Payment of connection fees.* Before any service connections are made from the Town's water system to the Developer-Installed Facility, the person or entity seeking the service connection shall pay to the Town the connection fees and any other fees required by Marana Town Code Title 14.

1.5. *Developer-Installed Facility acceptance by Town.* No service connections shall be made from the Town's water system to the Applicant-Installed Facility until the Applicant-Installed Facility has been accepted by the Town in accordance with Marana Town Code Title 14.

1.6. *Developer's certification.* Execution of this Agreement certifies that the Developer has reviewed the Facility Plan and all other specifications applicable to the Work and has approved and agrees with the location of all service lines.

1.7. *Termination for lack of Work.* Approval of the Facility Plan shall lapse and this Agreement shall terminate if more than one year has passed since the date of this Agreement and the Work has not begun, or if the Work is discontinued for a period of one year.

1.8. *Oversizing Recovery Charge.* The Parties have determined that the Developer-Installed Facility will have sufficient capacity to serve an additional 725 EDUs as a result of and upon completion of the Work and after connection of 2,005 EDUs on the Subject Property. Consequently, pursuant to Marana Town Code section 14-4-3 (C), the Town hereby establishes an "oversizing recovery charge" of \$499.50 per EDU for connections whose capacity is made possible as a result of the Work. For purposes of this paragraph, all of the following apply:

1.8.1. The oversizing recovery charge shall be payable only until the Developer-Installed Facility reaches its design capacity, currently anticipated to be for an additional 725 EDUs made possible as a result of the Work or until the termination of the Mandarin Development Agreement, whichever occurs first. Based on the oversizing recovery charge of \$499.50 per EDU, the Parties' current estimate of the Developer's total potential reimbursement from the Town from oversizing recovery charges under this Agreement is \$362,137.50.

1.8.2. The Town will deposit the oversizing recovery charge payments for constructed EDUs benefitted by the Developer-Installed Facility in the "Reimbursement Account" established pursuant to the Mandarin Development Agreement, and will reimburse the Developer in accordance with the "Reimbursement Payments" provision of the Mandarin Development Agreement.

1.8.3. The Developer shall have a beneficial ownership interest in the service area for the Developer-Installed Facility sufficient to prohibit connection in that area unless and until the oversizing recovery charge is paid.

EXHIBIT E TO MANDARINA DEVELOPMENT AGREEMENT

1.8.4. One EDU is a typical single-family residence served by a five-eighths inch meter. EDU equivalencies for other uses and meter sizes shall be based on standard Town equivalency tables and calculations.

1.8.5. The number of EDUs subject to the oversizing recovery charge has been calculated based on a calculated 16" pipe capacity and assuming the development of 2005 lots on the Subject Property served by five-eighths inch meters. If the actual pipe capacity and/or the actual number of lots and size of meters used to develop the Subject Property results in a different EDU count, the number of EDUs required to pay the oversizing recovery charge shall be adjusted accordingly, based on standard Town equivalency tables and calculations, and the "oversizing recovery charge" set forth in subparagraph 1.8.1 above shall be re-calculated accordingly.

1.8.6. The Parties acknowledge that final construction quantities and amounts will be provided after construction of the Developer Installed-Facility is completed.

1.8.7. The Town makes no guarantee that the Developer will receive full reimbursement of the Developer's cost of completing the Work.

2. Engineering and Inspection

2.1. *Registered civil engineer.* The Developer shall employ a registered Civil Engineer to design, lay out, establish control lines for and certify the layout of the Work according to the Facility Plan.

2.2. *Town inspector's authority.* Any inspector authorized by the Town shall have full inspection authority over the Work.

2.3. *Inspection provisions.* The Developer shall furnish the Town's inspector with all facilities reasonably necessary to inspect the Work. The Work shall be subject to Town inspection at all times. Defective work shall be corrected in a manner satisfactory to the Town's inspector. Inspection by the Town is for the purpose of ensuring compliance with plans and specifications only. The Town makes no guarantee as to the safety or engineering soundness of plans prepared by the Developer or any contractor.

2.4. *Payment of Town inspector's overtime cost.* If scheduling by the Developer's contractor reasonably requires the Town's inspector to work overtime, the Developer or Developer's contractor shall pay the Town for any additional salaries, expenses or employee benefits relating to the overtime. For purposes of this paragraph, overtime is any time over 40 hours worked in a seven-day work period, any time over eight hours worked Monday through Friday, and any time worked on weekends and legal holidays observed by the Town.

3. Preconstruction Procedure

3.1. *Request to begin construction.* The Developer shall submit a written request to begin construction to the Town five working days before the Work is to commence.

3.2. *Construction permit.* This Agreement shall be completed, signed and notarized, and returned to the Town prior to issuance of a construction permit for the Work.

EXHIBIT E TO MANDARINA DEVELOPMENT AGREEMENT

3.3. *Start and completion of the Work.* No portion of the Work shall begin until the Town has issued a construction permit specifying the starting date and a reasonable time for completion.

3.4. *Progress of the Work.* The Work shall be commenced and carried on at such points and in such order as may be directed by the Town.

3.5. *Materials sampling and testing.* Materials shall be available for sampling and testing by the Town prior to being used in the Work. Materials that fail to meet Town specification shall be removed from the site.

3.6. *Permits and approvals.* The Developer shall, at Developer's expense, obtain all necessary permits and licenses for the Work, pay all fees and comply with all laws, ordinances and regulations relating to the Work. Town permit fees for the Work are waived pursuant to the Mandarin Development Agreement.

4. Construction

4.1. *Developer's presence on site.* The Developer, or Developer's designated agent, shall be present at all times during performance of the Work. The name of the Developer's designated agent and the contractor performing the Work shall be furnished to the Town before the Work begins. Instructions given by the Town to the designated agent shall be deemed to have been given to the Developer.

4.2. *Competence and diligence.* The Developer shall employ only competent and efficient laborers, mechanics or artisans on the Work, and the Developer agrees to perform diligently to complete the Work on or before the completion date given in the notice to proceed.

4.3. *Paving.* The Applicant shall identify and locate all water valves prior to paving and set valve boxes to final grade after paving.

4.4. *Alterations to the existing Town water system.* The Developer shall, at Developer's expense, make any and all alterations to the existing water system either on-site or off-site necessitated by paving, drainage, or other improvements caused by the development of the Subject Property.

4.5. *Worksite safety.* The Developer shall require all contractors and subcontractors performing any portion of the Work to comply with all safety requirements of the Occupational Safety and Hazards Act as set forth by the Federal Government and as implemented by the State of Arizona. The Developer or its contractors shall be solely responsible for all fines or other penalties provided for by law for any violations of the Occupational Safety Hazards Act.

5. Dedication

5.1. *Transfer of the Developer-Installed Facility to the Town.* Upon the Town's final acceptance of the Work, the Developer shall at no cost grant, bargain, sell, convey, transfer and deliver to the Town the Developer-Installed Facility free and clear of all liens, claims, charges or encumbrances.

EXHIBIT E TO MANDARINA DEVELOPMENT AGREEMENT

5.2. *One-year warranty.* The Developer guarantees the Work to be free from all failures due to poor workmanship or materials for a period of one year from the date of the Town's final acceptance of the Work.

5.3. *Other conflicting construction prohibited.* The Developer shall not construct or allow the construction of any utility, structure, building, or other improvement that would interfere with the operation or maintenance of the Developer-Installed Facility.

5.4. *Developer's obligation to maintain finished grade.* The Developer guarantees that all service lines, meters, and meter boxes on the Subject Property will be to finished grade and that the Developer will remain responsible for raising or lowering said services as required until the Subject Property is fully developed.

5.5. *Acceptance by the Town.* The Town shall accept title to and take possession of the Developer-Installed Facility when the Work has been completed to the satisfaction of the Town. Subject to the Developer's continuing obligations under this Agreement, the Town shall operate and service the Developer-Installed Facility after taking over possession of it under this paragraph.

6. Miscellaneous

6.1. *Indemnity.* Developer shall indemnify, defend, and hold harmless the Town, its Mayor and Council, officers and employees, boards, committees and commissions from and against any loss, claim, suit, demand, cause of action, or liability of any nature, including but not limited to damage to property and injuries to persons, including death, arising or alleged to have arisen, in whole or in part, out of any negligent act or omission of the Developer or any contractor, subcontractor, or any person employed directly or indirectly by any of them in the performance of the Work or in the operation of the Developer-Installed Facility.

6.2. *Binding effect.* This agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the Parties.

6.3. *Consent required for assignment.* The Developer may not assign this Agreement without the prior written consent of the Town.

6.4. *Cancellation for conflict of interest.* This Agreement is subject to A.R.S. § 38-511, which provides for cancellation in certain instances involving conflict of interest.

[Signature page follows.]

EXHIBIT E TO MANDARINA DEVELOPMENT AGREEMENT

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the last date set forth below their respective signatures.

THE "TOWN":

TOWN OF MARANA, an Arizona municipal corporation

By: [SPECIMEN ONLY]
Ed Honea, Mayor

Date: _____

ATTEST:

[SPECIMEN ONLY]
Cherry L. Lawson, Town Clerk

APPROVED AS TO FORM:

[SPECIMEN ONLY]
Jane Fairall, Town Attorney

STATE OF COLORADO)
ss

County of _____)

The foregoing instrument was acknowledged before me on _____ by Marcus Palkowitsh, Partner of MSP INVESTMENT CO., LLP, a Colorado limited liability partnership, Manager of MANDARINA, LLC, a Colorado limited liability company (the "Developer"), on its behalf.

(Seal)

The "Developer":

MANDARINA, LLC, a Colorado limited liability company

By: MSP INVESTMENT CO., LLP, a Colorado limited liability partnership, its Manager

By: [SPECIMEN ONLY]
Marcus Palkowitsh, Partner

Date: _____

[SPECIMEN ONLY]
Notary Public

EXHIBIT F TO MANDARINA DEVELOPMENT AGREEMENT

TOWN OF MARANA AGREEMENT FOR CONSTRUCTION OF DRAINAGE FACILITIES UNDER PRIVATE CONTRACT Mandarina Regional Channel

THIS AGREEMENT (this "Agreement") is entered into by and between the TOWN OF MARANA, an Arizona municipal corporation (the "Town"), and MANDARINA, LLC, a Colorado limited liability company (the "Developer"). The Town and the Developer are sometimes collectively referred to as the "Parties," each of which is sometimes individually referred to as a "Party."

RECITALS

A. This Agreement is entered into and authorized pursuant to Title 14 of the Marana Town Code as it may be amended from time to time ("Marana Town Code Title 14").

B. The Developer desires for the Town to issue flood control use permits for development on the land described and depicted in the Mandarinina Specific Plan, adopted by Marana Ordinance No. 2009.02, recorded in the Pima County Recorder's office at Docket 13499, Page 8 (Sequence 20090340005), and amended by an administrative amendment dated October 30, 2019, whose land area is referred to in this Agreement as the "Subject Property."

C. The Developer is the owner of the "Subject Property."

D. As a condition of receiving flood control use permits from the Town for the Subject Property, the Developer agrees to install those certain drainage infrastructure improvements (the "Developer-Installed Facility") in accordance with the required plans, specifications, and materials as outlined and depicted in the Plan for Mandarinina Regional Channel, Plan No. ENG_____, sealed by [Engineering Firm] on [Date] and approved by the Marana Town Engineer on [Date] (the "Facility Plan"), which is on file in the office of the Town of Marana Development Engineering Department.

E. The Parties are also parties to the "Mandarina Development Agreement," recorded in the Pima County Recorder's office on December 4, 2020 at Sequence 2020_____ and approved by Marana Resolution No. 2020-_____, adopted by the Marana Town Council on December 1, 2020.

F. The Mandarinina Development Agreement governs development of the Subject Property and anticipates the Developer's installation of the Developer-Installed Facility, which is referred to in the Mandarinina Development Agreement as the "Regional Channel."

EXHIBIT F TO MANDARINA DEVELOPMENT AGREEMENT

G. If constructed as designed, the Developer-Installed Facility will include elements and capacity sufficient to provide drainage to other currently vacant Town properties, and to that extent the Parties wish to provide for partial reimbursement to the Developer in accordance with Marana Town Code section 14-4-3 (capacity requirements).

H. If constructed as designed, the total cost of the Developer-Installed Facility is \$7,002,106, which is the sum of the current total estimated construction cost for the Developer-Installed Facility of \$6,102,106 and the total estimated land value of \$900,000 (Subject Property land area to be used for the Developer-Installed Facility is 30 acres, valued at \$30,000 per acre).

I. The Developer-Installed Facility has a capacity of 3207 cubic feet per second. The Subject Property is estimated to discharge 800 cubic feet per second, leaving excess capacity in the Developer-Installed Facility of 2407 cubic feet per second.

J. The Developer desires that the Town take ownership of, operate, and service the Developer-Installed Facility.

K. The Town is willing to accept the Developer-Installed Facility and permit it to be connected to the system of Town-maintained drainage facilities provided it meets Town standards and the work is done in accordance with Town requirements.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants set forth in this Agreement, the Parties hereby agree as follows:

1. The Developer-Installed Facility

1.1. *Developer installation of the Developer-Installed Facility.* The Developer has designed and shall install, at the Developer's own expense (subject to the reimbursement provisions of this Agreement), the drainage infrastructure improvements as depicted in the Facility Plan. The drainage infrastructure improvements depicted on the Facility Plan are referred to in this Agreement as the "Developer-Installed Facility," and shall conform to the design standards of the Pima County Regional Flood Control District and the Town of Marana Town Code Title 14 and special specifications and details as approved by the Town and by this reference made a part of this Agreement. The Facility Plan shall include a plan note identifying the Developer-Installed Facility as a new drainage facility and shall show any and all alterations to the existing drainage system. Construction and installation of the Developer-Installed Facility in accordance with the Facility Plan, including without limitation all labor, materials, equipment, supplies, and tools required for the construction and installation, is referred to in this Agreement as the "Work."

1.2. *Competitive bids.* As a condition of and prerequisite to receiving any reimbursement under this Agreement, the Developer shall go through the competitive bidding process for the Work in compliance with Title 34 of the Arizona Revised Statutes.

1.3. *Work by licensed contractor.* The Work shall be performed by a contractor properly licensed by the State of Arizona as determined by the Arizona Registrar of Contractors.

EXHIBIT F TO MANDARINA DEVELOPMENT AGREEMENT

In addition to any other contractor's license classifications required by the Arizona Registrar of Contractors, the contractor shall hold contractor's license classifications A and A-12.

1.4. *Developer-Installed Facility acceptance by Town.* No flood plain use permits will be issued in reliance on the Developer-Installed Facility, and the Developer-Installed Facility will not be accepted for maintenance as part of the Town's drainage system, until the Developer-Installed Facility has been accepted by the Town in accordance with Marana Town Code Title 14.

1.5. *Developer's certification.* Execution of this Agreement certifies that the Developer has reviewed the Facility Plan and all other specifications applicable to the Work.

1.6. *Termination for lack of Work.* Approval of the Facility Plan shall lapse and this Agreement shall terminate if more than one year has passed since the date of this Agreement and the Work has not begun, or if the Work is discontinued for a period of one year.

1.7. *Oversizing Recovery Charge.* The Parties have determined that the Developer-Installed Facility will have excess capacity of 2407 cubic feet per second as a result of and upon completion of the Work and after the discharge of 800 cubic feet per second from the Subject Property. Consequently, pursuant to Marana Town Code section 14-4-3 (C), the Town hereby establishes an "oversizing recovery charge" of \$2,183.38 per cubic foot per second for drainage discharges to the Regional Channel. For purposes of this paragraph, all of the following apply:

1.7.1. The oversizing recovery charge shall be payable only until the Developer-Installed Facility reaches its design capacity; currently anticipated to be for an additional 2407 cubic feet per second discharges to the Developer-Installed Facility.

1.7.2. Based on the oversizing recovery charge of \$2,183.38 per cubic foot per second, the Parties' current estimate of the total potential reimbursement through oversizing recovery charges for the Developer-Installed Facility is \$5,255,395.66.

1.7.3. The oversizing recovery charge payments for development benefitted by the Developer-Installed Facility shall be payable as described in the Mandarin Development Agreement.

1.7.4. The Developer shall have a beneficial ownership interest in the Developer-Installed Facility sufficient to prohibit drainage discharge into it from newly developed properties unless and until the oversizing recovery charge is paid.

1.7.5. The drainage discharge into the Developer-Installed Facility from newly developed properties shall be determined by a drainage report prepared by a licensed civil engineer and approved by the Town Engineer.

1.7.6. The 800 cubic feet per second drainage discharge from the Subject Property has been calculated assuming certain development on the Subject Property. If the actual development of the Subject Property results in a different drainage discharge from the Subject Property, the remaining available capacity of the Developer-Installed

EXHIBIT F TO MANDARINA DEVELOPMENT AGREEMENT

Facility, and the total potential reimbursement through oversizing recovery charges, shall be re-calculated accordingly.

1.7.7. The Parties acknowledge that final construction quantities and amounts will be provided after construction of the Developer Installed-Facility is completed.

1.7.8. The Town makes no guarantee that the Developer will receive full reimbursement of the Developer's cost of completing the Work.

2. Engineering and Inspection

2.1. *Registered civil engineer.* The Developer shall employ a registered Civil Engineer to design, lay out, establish control lines for and certify the layout of the Work according to the Facility Plan.

2.2. *Town inspector's authority.* Any inspector authorized by the Town shall have full inspection authority over the Work.

2.3. *Inspection provisions.* The Developer shall furnish the Town's inspector with all facilities reasonably necessary to inspect the Work. The Work shall be subject to Town inspection at all times. Defective work shall be corrected in a manner satisfactory to the Town's inspector. Inspection by the Town is for the purpose of ensuring compliance with plans and specifications only. The Town makes no guarantee as to the safety or engineering soundness of plans prepared by the Developer or any contractor.

2.4. *Payment of Town inspector's overtime cost.* If scheduling by the Developer's contractor reasonably requires the Town's inspector to work overtime, the Developer or Developer's contractor shall pay the Town for any additional salaries, expenses or employee benefits relating to the overtime. For purposes of this paragraph, overtime is any time over 40 hours worked in a seven-day work period, any time over eight hours worked Monday through Friday, and any time worked on weekends and legal holidays observed by the Town.

3. Preconstruction Procedure

3.1. *Request to begin construction.* The Developer shall submit a written request to begin construction to the Town five working days before the Work is to commence.

3.2. *Construction permit.* This Agreement shall be completed, signed and notarized, and returned to the Town prior to issuance of a construction permit for the Work.

3.3. *Start and completion of the Work.* No portion of the Work shall begin until the Town has issued a construction permit specifying the starting date and a reasonable time for completion.

3.4. *Progress of the Work.* The Work shall be commenced and carried on at such points and in such order as may be directed by the Town.

3.5. *Materials sampling and testing.* Materials shall be available for sampling and testing by the Town prior to being used in the Work. Materials that fail to meet Town specification shall be removed from the site.

EXHIBIT F TO MANDARINA DEVELOPMENT AGREEMENT

3.6. *Permits and approvals.* The Developer shall, at Developer's expense, obtain all necessary permits and licenses for the Work, pay all fees and comply with all laws, ordinances and regulations relating to the Work. Town permit fees for the Work are waived pursuant to the Mandarin Development Agreement.

4. Construction

4.1. *Developer's presence on site.* The Developer, or Developer's designated agent, shall be present at all times during performance of the Work. The name of the Developer's designated agent and the contractor performing the Work shall be furnished to the Town before the Work begins. Instructions given by the Town to the designated agent shall be deemed to have been given to the Developer.

4.2. *Competence and diligence.* The Developer shall employ only competent and efficient laborers, mechanics or artisans on the Work, and the Developer agrees to perform diligently to complete the Work on or before the completion date given in the notice to proceed.

4.3. *Alterations to the existing Town drainage system.* The Developer shall, at Developer's expense, make any and all alterations to the existing drainage system either on-site or off-site necessitated by paving, drainage, or other improvements caused by the development of the Subject Property.

4.4. *Worksite safety.* The Developer shall require all contractors and subcontractors performing any portion of the Work to comply with all safety requirements of the Occupational Safety and Hazards Act as set forth by the Federal Government and as implemented by the State of Arizona. The Developer or its contractors shall be solely responsible for all fines or other penalties provided for by law for any violations of the Occupational Safety Hazards Act.

5. Dedication

5.1. *Transfer of the Developer-Installed Facility to the Town.* Upon the Town's final acceptance of the Work, the Developer shall at no cost grant, bargain, sell, convey, transfer and deliver to the Town the Developer-Installed Facility free and clear of all liens, claims, charges or encumbrances.

5.2. *One-year warranty.* The Developer guarantees the Work to be free from all failures due to poor workmanship or materials for a period of one year from the date of the Town's final acceptance of the Work.

5.3. *Other conflicting construction prohibited.* The Developer shall not construct or allow the construction of any utility, structure, building, or other improvement that would interfere with the operation or maintenance of the Developer-Installed Facility.

5.4. *Developer's obligation to tie to finished grade.* The Developer guarantees that all drainage facilities on the Subject Property will be tied to the finished grade of the Developer-Installed Facility.

EXHIBIT F TO MANDARINA DEVELOPMENT AGREEMENT

5.5. *Acceptance by the Town.* The Town shall accept title to and take possession of the Developer-Installed Facility when the Work has been completed to the satisfaction of the Town. Subject to the Developer's continuing obligations under this Agreement, the Town shall operate and service the Developer-Installed Facility after taking over possession of it under this paragraph.

6. Miscellaneous

6.1. *Indemnity.* Developer shall indemnify, defend, and hold harmless the Town, its Mayor and Council, officers and employees, boards, committees and commissions from and against any loss, claim, suit, demand, cause of action, or liability of any nature, including but not limited to damage to property and injuries to persons, including death, arising or alleged to have arisen, in whole or in part, out of any negligent act or omission of the Developer or any contractor, subcontractor, or any person employed directly or indirectly by any of them in the performance of the Work or in the operation of the Developer-Installed Facility.

6.2. *Binding effect.* This agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the Parties.

6.3. *Consent required for assignment.* The Developer may not assign this Agreement without the prior written consent of the Town.

6.4. *Cancellation for conflict of interest.* This Agreement is subject to A.R.S. § 38-511, which provides for cancellation in certain instances involving conflict of interest.

[Signature page follows.]

EXHIBIT F TO MANDARINA DEVELOPMENT AGREEMENT

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the last date set forth below their respective signatures.

THE "TOWN":

TOWN OF MARANA, an Arizona municipal corporation

By: [SPECIMEN ONLY]
Ed Honea, Mayor

Date: _____

ATTEST:

[SPECIMEN ONLY]
Cherry L. Lawson, Town Clerk

APPROVED AS TO FORM:

[SPECIMEN ONLY]
Jane Fairall, Town Attorney

STATE OF COLORADO)
ss

County of _____)

The foregoing instrument was acknowledged before me on _____ by Marcus Palkowitsh, Partner of MSP INVESTMENT CO., LLP, a Colorado limited liability partnership, Manager of MANDARINA, LLC, a Colorado limited liability company (the "Developer"), on its behalf.

(Seal)

The "Developer":

MANDARINA, LLC, a Colorado limited liability company

By: MSP INVESTMENT CO., LLP, a Colorado limited liability partnership, its Manager

By: [SPECIMEN ONLY]
Marcus Palkowitsh, Partner

Date: _____

[SPECIMEN ONLY]
Notary Public

EXHIBIT G TO MANDARINA DEVELOPMENT AGREEMENT

TOWN OF MARANA AGREEMENT FOR CONSTRUCTION OF DRAINAGE FACILITIES UNDER PRIVATE CONTRACT Mandarina North Channel

THIS AGREEMENT (this "Agreement") is entered into by and between the TOWN OF MARANA, an Arizona municipal corporation (the "Town"), and MANDARINA, LLC, a Colorado limited liability company (the "Developer"). The Town and the Developer are sometimes collectively referred to as the "Parties," each of which is sometimes individually referred to as a "Party."

RECITALS

A. This Agreement is entered into and authorized pursuant to Title 14 of the Marana Town Code as it may be amended from time to time ("Marana Town Code Title 14").

B. The Developer desires for the Town to issue flood control use permits for development on the land described and depicted in the Mandarinina Specific Plan, adopted by Marana Ordinance No. 2009.02, recorded in the Pima County Recorder's office at Docket 13499, Page 8 (Sequence 20090340005), and amended by an administrative amendment dated October 30, 2019, whose land area is referred to in this Agreement as the "Subject Property."

C. The Developer is the owner of the "Subject Property."

D. As a condition of receiving flood control use permits from the Town for the Subject Property, the Developer agrees to install those certain drainage infrastructure improvements (the "Developer-Installed Facility") in accordance with the required plans, specifications, and materials as outlined and depicted in the Plan for Mandarinina North Channel, Plan No. ENG_____, sealed by [Engineering Firm] on [Date] and approved by the Marana Town Engineer on [Date] (the "Facility Plan"), which is on file in the office of the Town of Marana Development Engineering Department.

E. The Parties are also parties to the "Mandarina Development Agreement," recorded in the Pima County Recorder's office on December 4, 2020 at Sequence 2020_____ and approved by Marana Resolution No. 2020-_____, adopted by the Marana Town Council on December 1, 2020.

F. The Mandarinina Development Agreement governs development of the Subject Property and anticipates the Developer's installation of the Developer-Installed Facility, which is referred to in the Mandarinina Development Agreement as the "North Channel."

EXHIBIT G TO MANDARINA DEVELOPMENT AGREEMENT

G. If constructed as designed, the Developer-Installed Facility will include elements and capacity sufficient to provide drainage to other currently vacant Town properties, and to that extent the Parties wish to provide for partial reimbursement to the Developer in accordance with Marana Town Code section 14-4-3 (capacity requirements).

H. If constructed as designed, the total cost of the Developer-Installed Facility is \$929,006, which is the sum of the current total estimated construction cost for the Developer-Installed Facility of \$815,606 and the total estimated land value of \$113,400 (Subject Property land area to be used for the Developer-Installed Facility is 3.78 acres, valued at \$30,000 per acre).

I. If constructed as designed, the Developer-Installed Facility will also use 1.28 acres of land valued at 38,400 (valued at \$30,000 per acre), which was dedicated at no cost by Stewart Title and Trust under Trust No. 3564.

J. The Developer-Installed Facility has a capacity of 1604 cubic feet per second. The Subject Property is estimated to discharge 407 cubic feet per second, leaving excess capacity in the Developer-Installed Facility of 1197 cubic feet per second.

K. The Developer desires that the Town take ownership of, operate, and service the Developer-Installed Facility.

L. The Town is willing to accept the Developer-Installed Facility and permit it to be connected to the system of Town-maintained drainage facilities provided it meets Town standards and the work is done in accordance with Town requirements.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants set forth in this Agreement, the Parties hereby agree as follows:

1. The Developer-Installed Facility

1.1. *Developer installation of the Developer-Installed Facility.* The Developer has designed and shall install, at the Developer's own expense (subject to the reimbursement provisions of this Agreement), the drainage infrastructure improvements as depicted in the Facility Plan. The drainage infrastructure improvements depicted on the Facility Plan are referred to in this Agreement as the "Developer-Installed Facility," and shall conform to the design standards of the Pima County Regional Flood Control District and the Town of Marana Town Code Title 14 and special specifications and details as approved by the Town and by this reference made a part of this Agreement. The Facility Plan shall include a plan note identifying the Developer-Installed Facility as a new drainage facility and shall show any and all alterations to the existing drainage system. Construction and installation of the Developer-Installed Facility in accordance with the Facility Plan, including without limitation all labor, materials, equipment, supplies, and tools required for the construction and installation, is referred to in this Agreement as the "Work."

EXHIBIT G TO MANDARINA DEVELOPMENT AGREEMENT

1.2. *Competitive bids.* As a condition of and prerequisite to receiving any reimbursement under this Agreement, the Developer shall go through the competitive bidding process for the Work in compliance with Title 34 of the Arizona Revised Statutes.

1.3. *Work by licensed contractor.* The Work shall be performed by a contractor properly licensed by the State of Arizona as determined by the Arizona Registrar of Contractors. In addition to any other contractor's license classifications required by the Arizona Registrar of Contractors, the contractor shall hold contractor's license classifications A and A-12.

1.4. *Developer-Installed Facility acceptance by Town.* No flood plain use permits will be issued in reliance on the Developer-Installed Facility, and the Developer-Installed Facility will not be accepted for maintenance as part of the Town's drainage system, until the Developer-Installed Facility has been accepted by the Town in accordance with Marana Town Code Title 14.

1.5. *Developer's certification.* Execution of this Agreement certifies that the Developer has reviewed the Facility Plan and all other specifications applicable to the Work.

1.6. *Termination for lack of Work.* Approval of the Facility Plan shall lapse and this Agreement shall terminate if more than one year has passed since the date of this Agreement and the Work has not begun, or if the Work is discontinued for a period of one year.

1.7. *Oversizing Recovery Charge.* The Parties have determined that the Developer-Installed Facility will have excess capacity of 1197 cubic feet per second as a result of and upon completion of the Work and after the discharge of 407 cubic feet per second from the Subject Property. Consequently, pursuant to Marana Town Code section 14-4-3 (C), the Town hereby establishes an "oversizing recovery charge" of \$579.18 per cubic foot per second for drainage discharges to the North Channel. For purposes of this paragraph, all of the following apply:

1.7.1. The oversizing recovery charge shall be payable only until the Developer-Installed Facility reaches its design capacity; currently anticipated to be for an additional 1197 cubic feet per second discharges to the Developer-Installed Facility.

1.7.2. Stewart Title and Trust under Trust No. 3564 shall have a credit of \$38,400 toward the Developer-Installed Facility oversizing recovery charge.

1.7.3. Based on the oversizing recovery charge of \$579.18 per cubic foot per second, and subtracting the credit in the previous subparagraph, the Parties' current estimate of the total potential reimbursement through oversizing recovery charges for the Developer-Installed Facility is \$693,278.46.

1.7.4. The oversizing recovery charge payments for development benefitted by the Developer-Installed Facility shall be payable as described in the Mandarin Development Agreement.

EXHIBIT G TO MANDARINA DEVELOPMENT AGREEMENT

1.7.5. The Developer shall have a beneficial ownership interest in the Developer-Installed Facility sufficient to prohibit drainage discharge into it from newly developed properties unless and until the oversizing recovery charge is paid.

1.7.6. The drainage discharge into the Developer-Installed Facility from newly developed properties shall be determined by a drainage report prepared by a licensed civil engineer and approved by the Town Engineer.

1.7.7. The 407 cubic feet per second drainage discharge from the Subject Property has been calculated assuming certain development on the Subject Property. If the actual development of the Subject Property results in a different drainage discharge from the Subject Property, the remaining available capacity of the Developer-Installed Facility, and the total potential reimbursement through oversizing recovery charges, shall be re-calculated accordingly.

1.7.8. The Parties acknowledge that final construction quantities and amounts will be provided after construction of the Developer Installed-Facility is completed.

1.7.9. The Town makes no guarantee that the Developer will receive full reimbursement of the Developer's cost of completing the Work.

2. Engineering and Inspection

2.1. *Registered civil engineer.* The Developer shall employ a registered Civil Engineer to design, lay out, establish control lines for and certify the layout of the Work according to the Facility Plan.

2.2. *Town inspector's authority.* Any inspector authorized by the Town shall have full inspection authority over the Work.

2.3. *Inspection provisions.* The Developer shall furnish the Town's inspector with all facilities reasonably necessary to inspect the Work. The Work shall be subject to Town inspection at all times. Defective work shall be corrected in a manner satisfactory to the Town's inspector. Inspection by the Town is for the purpose of ensuring compliance with plans and specifications only. The Town makes no guarantee as to the safety or engineering soundness of plans prepared by the Developer or any contractor.

2.4. *Payment of Town inspector's overtime cost.* If scheduling by the Developer's contractor reasonably requires the Town's inspector to work overtime, the Developer or Developer's contractor shall pay the Town for any additional salaries, expenses or employee benefits relating to the overtime. For purposes of this paragraph, overtime is any time over 40 hours worked in a seven-day work period, any time over eight hours worked Monday through Friday, and any time worked on weekends and legal holidays observed by the Town.

3. Preconstruction Procedure

3.1. *Request to begin construction.* The Developer shall submit a written request to begin construction to the Town five working days before the Work is to commence.

EXHIBIT G TO MANDARINA DEVELOPMENT AGREEMENT

3.2. *Construction permit.* This Agreement shall be completed, signed and notarized, and returned to the Town prior to issuance of a construction permit for the Work.

3.3. *Start and completion of the Work.* No portion of the Work shall begin until the Town has issued a construction permit specifying the starting date and a reasonable time for completion.

3.4. *Progress of the Work.* The Work shall be commenced and carried on at such points and in such order as may be directed by the Town.

3.5. *Materials sampling and testing.* Materials shall be available for sampling and testing by the Town prior to being used in the Work. Materials that fail to meet Town specification shall be removed from the site.

3.6. *Permits and approvals.* The Developer shall, at Developer's expense, obtain all necessary permits and licenses for the Work, pay all fees and comply with all laws, ordinances and regulations relating to the Work. Town permit fees for the Work are waived pursuant to the Mandarin Development Agreement.

4. Construction

4.1. *Developer's presence on site.* The Developer, or Developer's designated agent, shall be present at all times during performance of the Work. The name of the Developer's designated agent and the contractor performing the Work shall be furnished to the Town before the Work begins. Instructions given by the Town to the designated agent shall be deemed to have been given to the Developer.

4.2. *Competence and diligence.* The Developer shall employ only competent and efficient laborers, mechanics or artisans on the Work, and the Developer agrees to perform diligently to complete the Work on or before the completion date given in the notice to proceed.

4.3. *Alterations to the existing Town drainage system.* The Developer shall, at Developer's expense, make any and all alterations to the existing drainage system either on-site or off-site necessitated by paving, drainage, or other improvements caused by the development of the Subject Property.

4.4. *Worksite safety.* The Developer shall require all contractors and subcontractors performing any portion of the Work to comply with all safety requirements of the Occupational Safety and Hazards Act as set forth by the Federal Government and as implemented by the State of Arizona. The Developer or its contractors shall be solely responsible for all fines or other penalties provided for by law for any violations of the Occupational Safety Hazards Act.

5. Dedication

5.1. *Transfer of the Developer-Installed Facility to the Town.* Upon the Town's final acceptance of the Work, the Developer shall at no cost grant, bargain, sell, convey, transfer and deliver to the Town the Developer-Installed Facility free and clear of all liens, claims, charges or encumbrances.

EXHIBIT G TO MANDARINA DEVELOPMENT AGREEMENT

5.2. *One-year warranty.* The Developer guarantees the Work to be free from all failures due to poor workmanship or materials for a period of one year from the date of the Town's final acceptance of the Work.

5.3. *Other conflicting construction prohibited.* The Developer shall not construct or allow the construction of any utility, structure, building, or other improvement that would interfere with the operation or maintenance of the Developer-Installed Facility.

5.4. *Developer's obligation to maintain finished grade.* The Developer guarantees that all drainage facilities on the Subject Property will be tied to the finished grade of the Developer-Installed Facility.

5.5. *Acceptance by the Town.* The Town shall accept title to and take possession of the Developer-Installed Facility when the Work has been completed to the satisfaction of the Town. Subject to the Developer's continuing obligations under this Agreement, the Town shall operate and service the Developer-Installed Facility after taking over possession of it under this paragraph.

6. Miscellaneous

6.1. *Indemnity.* Developer shall indemnify, defend, and hold harmless the Town, its Mayor and Council, officers and employees, boards, committees and commissions from and against any loss, claim, suit, demand, cause of action, or liability of any nature, including but not limited to damage to property and injuries to persons, including death, arising or alleged to have arisen, in whole or in part, out of any negligent act or omission of the Developer or any contractor, subcontractor, or any person employed directly or indirectly by any of them in the performance of the Work or in the operation of the Developer-Installed Facility.

6.2. *Binding effect.* This agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the Parties.

6.3. *Consent required for assignment.* The Developer may not assign this Agreement without the prior written consent of the Town.

6.4. *Cancellation for conflict of interest.* This Agreement is subject to A.R.S. § 38-511, which provides for cancellation in certain instances involving conflict of interest.

[Signature page follows.]

EXHIBIT G TO MANDARINA DEVELOPMENT AGREEMENT

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the last date set forth below their respective signatures.

THE "TOWN":

TOWN OF MARANA, an Arizona municipal corporation

By: [SPECIMEN ONLY]
Ed Honea, Mayor

Date: _____

ATTEST:

[SPECIMEN ONLY]
Cherry L. Lawson, Town Clerk

APPROVED AS TO FORM:

[SPECIMEN ONLY]
Jane Fairall, Town Attorney

STATE OF COLORADO)
ss

County of _____)

The foregoing instrument was acknowledged before me on _____ by Marcus Palkowitsh, Partner of MSP INVESTMENT CO., LLP, a Colorado limited liability partnership, Manager of MANDARINA, LLC, a Colorado limited liability company (the "Developer"), on its behalf.

(Seal)

The "Developer":

MANDARINA, LLC, a Colorado limited liability company

By: MSP INVESTMENT CO., LLP, a Colorado limited liability partnership, its Manager

By: [SPECIMEN ONLY]
Marcus Palkowitsh, Partner

Date: _____

[SPECIMEN ONLY]
Notary Public

EXHIBIT H TO MANDARINA DEVELOPMENT AGREEMENT

TOWN OF MARANA AGREEMENT FOR CONSTRUCTION OF DRAINAGE FACILITIES UNDER PRIVATE CONTRACT Mandarina Detention Basin

THIS AGREEMENT (this "Agreement") is entered into by and between the TOWN OF MARANA, an Arizona municipal corporation (the "Town"), and MANDARINA, LLC, a Colorado limited liability company (the "Developer"). The Town and the Developer are sometimes collectively referred to as the "Parties," each of which is sometimes individually referred to as a "Party."

RECITALS

A. This Agreement is entered into and authorized pursuant to Title 14 of the Marana Town Code as it may be amended from time to time ("Marana Town Code Title 14").

B. The Developer desires for the Town to issue flood control use permits for development on the land described and depicted in the Mandarinina Specific Plan, adopted by Marana Ordinance No. 2009.02, recorded in the Pima County Recorder's office at Docket 13499, Page 8 (Sequence 20090340005), and amended by an administrative amendment dated October 30, 2019, whose land area is referred to in this Agreement as the "Subject Property."

C. The Developer is the owner of the "Subject Property."

D. As a condition of receiving flood control use permits from the Town for the Subject Property, the Developer agrees to install those certain drainage infrastructure improvements (the "Developer-Installed Facility") in accordance with the required plans, specifications, and materials as outlined and depicted in the Plan for Mandarinina Detention Basin, Plan No. ENG_____, sealed by [Engineering Firm] on [Date] and approved by the Marana Town Engineer on [Date] (the "Facility Plan"), which is on file in the office of the Town of Marana Development Engineering Department.

E. The Parties are also parties to the "Mandarina Development Agreement," recorded in the Pima County Recorder's office on December 4, 2020 at Sequence 2020_____ and approved by Marana Resolution No. 2020-_____, adopted by the Marana Town Council on December 1, 2020.

F. The Mandarinina Development Agreement governs development of the Subject Property and anticipates the Developer's installation of the Developer-Installed Facility, which is referred to in the Mandarinina Development Agreement as the "Detention Basin."

EXHIBIT H TO MANDARINA DEVELOPMENT AGREEMENT

G. If constructed as designed, the Developer-Installed Facility will include elements and capacity sufficient to provide drainage to other currently vacant Town properties, and to that extent the Parties wish to provide for partial reimbursement to the Developer in accordance with Marana Town Code section 14-4-3 (capacity requirements).

H. If constructed as designed, the total cost of the Developer-Installed Facility is \$2,733,436, which is the sum of the current total estimated construction cost for the Developer-Installed Facility of \$2,035,936 and the total estimated land value of \$697,500 (Subject Property land area to be used for the Developer-Installed Facility is 23.25 acres, valued at \$30,000 per acre).

I. The Developer-Installed Facility has a storage capacity of 231 acre-feet. The Subject Property is estimated to require 94 acre-feet of storage, leaving excess storage capacity in the Developer-Installed Facility of 137 acre-feet.

J. The Developer desires that the Town take ownership of, operate, and service the Developer-Installed Facility.

K. The Town is willing to accept the Developer-Installed Facility and permit it to be connected to the system of Town-maintained drainage facilities provided it meets Town standards and the work is done in accordance with Town requirements.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants set forth in this Agreement, the Parties hereby agree as follows:

1. The Developer-Installed Facility

1.1. *Developer installation of the Developer-Installed Facility.* The Developer has designed and shall install, at the Developer's own expense (subject to the reimbursement provisions of this Agreement), the drainage infrastructure improvements as depicted in the Facility Plan. The drainage infrastructure improvements depicted on the Facility Plan are referred to in this Agreement as the "Developer-Installed Facility," and shall conform to the design standards of the Pima County Regional Flood Control District and the Town of Marana Town Code Title 14 and special specifications and details as approved by the Town and by this reference made a part of this Agreement. The Facility Plan shall include a plan note identifying the Developer-Installed Facility as a new drainage facility and shall show any and all alterations to the existing drainage system. Construction and installation of the Developer-Installed Facility in accordance with the Facility Plan, including without limitation all labor, materials, equipment, supplies, and tools required for the construction and installation, is referred to in this Agreement as the "Work."

1.2. *Competitive bids.* As a condition of and prerequisite to receiving any reimbursement under this Agreement, the Developer shall go through the competitive bidding process for the Work in compliance with Title 34 of the Arizona Revised Statutes.

1.3. *Work by licensed contractor.* The Work shall be performed by a contractor properly licensed by the State of Arizona as determined by the Arizona Registrar of Contractors.

EXHIBIT H TO MANDARINA DEVELOPMENT AGREEMENT

In addition to any other contractor's license classifications required by the Arizona Registrar of Contractors, the contractor shall hold contractor's license classifications A and A-12.

1.4. *Developer-Installed Facility acceptance by Town.* No flood plain use permits will be issued in reliance on the Developer-Installed Facility, and the Developer-Installed Facility will not be accepted for maintenance as part of the Town's drainage system, until the Developer-Installed Facility has been accepted by the Town in accordance with Marana Town Code Title 14.

1.5. *Developer's certification.* Execution of this Agreement certifies that the Developer has reviewed the Facility Plan and all other specifications applicable to the Work.

1.6. *Termination for lack of Work.* Approval of the Facility Plan shall lapse and this Agreement shall terminate if more than one year has passed since the date of this Agreement and the Work has not begun, or if the Work is discontinued for a period of one year.

1.7. *Oversizing Recovery Charge.* The Parties have determined that the Developer-Installed Facility will have excess storage capacity of 137 acre-feet as a result of and upon completion of the Work and after the 94 acre-feet of storage capacity required for development of the Subject Property. Consequently, pursuant to Marana Town Code section 14-4-3 (C), the Town hereby establishes an "oversizing recovery charge" of \$11,833.06 per acre-foot for storage capacity used in the Detention Basin. For purposes of this paragraph, all of the following apply:

1.7.1. The oversizing recovery charge shall be payable only until the Developer-Installed Facility reaches its design capacity; currently anticipated to be for an additional 137 acre-feet of storage capacity used in the Developer-Installed Facility.

1.7.2. Based on the oversizing recovery charge of \$11,833.06 per acre-foot, the Parties' current estimate of the total potential reimbursement through oversizing recovery charges for the Developer-Installed Facility is \$1,621,129.22.

1.7.3. The oversizing recovery charge payments for development benefitted by the Developer-Installed Facility shall be payable as described in the Mandarin Development Agreement.

1.7.4. The Developer shall have a beneficial ownership interest in the Developer-Installed Facility sufficient to prohibit drainage discharge into it from newly developed properties unless and until the oversizing recovery charge is paid.

1.7.5. The storage capacity required at the Developer-Installed Facility for newly developed properties shall be determined by a drainage report prepared by a licensed civil engineer and approved by the Town Engineer.

1.7.6. The 94 acre-feet of storage capacity required for development of the Subject Property has been calculated assuming certain development on the Subject Property. If the actual development of the Subject Property results in a different storage capacity required for development of the Subject Property, the remaining available capacity of

EXHIBIT H TO MANDARINA DEVELOPMENT AGREEMENT

the Developer-Installed Facility, and the total potential reimbursement through over-sizing recovery charges, shall be re-calculated accordingly.

1.7.7. The Parties acknowledge that final construction quantities and amounts will be provided after construction of the Developer Installed-Facility is completed.

1.7.8. The Town makes no guarantee that the Developer will receive full reimbursement of the Developer's cost of completing the Work.

2. Engineering and Inspection

2.1. *Registered civil engineer.* The Developer shall employ a registered Civil Engineer to design, lay out, establish control lines for and certify the layout of the Work according to the Facility Plan.

2.2. *Town inspector's authority.* Any inspector authorized by the Town shall have full inspection authority over the Work.

2.3. *Inspection provisions.* The Developer shall furnish the Town's inspector with all facilities reasonably necessary to inspect the Work. The Work shall be subject to Town inspection at all times. Defective work shall be corrected in a manner satisfactory to the Town's inspector. Inspection by the Town is for the purpose of ensuring compliance with plans and specifications only. The Town makes no guarantee as to the safety or engineering soundness of plans prepared by the Developer or any contractor.

2.4. *Payment of Town inspector's overtime cost.* If scheduling by the Developer's contractor reasonably requires the Town's inspector to work overtime, the Developer or Developer's contractor shall pay the Town for any additional salaries, expenses or employee benefits relating to the overtime. For purposes of this paragraph, overtime is any time over 40 hours worked in a seven-day work period, any time over eight hours worked Monday through Friday, and any time worked on weekends and legal holidays observed by the Town.

3. Preconstruction Procedure

3.1. *Request to begin construction.* The Developer shall submit a written request to begin construction to the Town five working days before the Work is to commence.

3.2. *Construction permit.* This Agreement shall be completed, signed and notarized, and returned to the Town prior to issuance of a construction permit for the Work.

3.3. *Start and completion of the Work.* No portion of the Work shall begin until the Town has issued a construction permit specifying the starting date and a reasonable time for completion.

3.4. *Progress of the Work.* The Work shall be commenced and carried on at such points and in such order as may be directed by the Town.

3.5. *Materials sampling and testing.* Materials shall be available for sampling and testing by the Town prior to being used in the Work. Materials that fail to meet Town specification shall be removed from the site.

EXHIBIT H TO MANDARINA DEVELOPMENT AGREEMENT

3.6. *Permits and approvals.* The Developer shall, at Developer's expense, obtain all necessary permits and licenses for the Work, pay all fees and comply with all laws, ordinances and regulations relating to the Work. Town permit fees for the Work are waived pursuant to the Mandarin Development Agreement.

4. Construction

4.1. *Developer's presence on site.* The Developer, or Developer's designated agent, shall be present at all times during performance of the Work. The name of the Developer's designated agent and the contractor performing the Work shall be furnished to the Town before the Work begins. Instructions given by the Town to the designated agent shall be deemed to have been given to the Developer.

4.2. *Competence and diligence.* The Developer shall employ only competent and efficient laborers, mechanics or artisans on the Work, and the Developer agrees to perform diligently to complete the Work on or before the completion date given in the notice to proceed.

4.3. *Alterations to the existing Town drainage system.* The Developer shall, at Developer's expense, make any and all alterations to the existing drainage system either on-site or off-site necessitated by paving, drainage, or other improvements caused by the development of the Subject Property.

4.4. *Worksite safety.* The Developer shall require all contractors and subcontractors performing any portion of the Work to comply with all safety requirements of the Occupational Safety and Hazards Act as set forth by the Federal Government and as implemented by the State of Arizona. The Developer or its contractors shall be solely responsible for all fines or other penalties provided for by law for any violations of the Occupational Safety Hazards Act.

5. Dedication

5.1. *Transfer of the Developer-Installed Facility to the Town.* Upon the Town's final acceptance of the Work, the Developer shall at no cost grant, bargain, sell, convey, transfer and deliver to the Town the Developer-Installed Facility free and clear of all liens, claims, charges or encumbrances.

5.2. *One-year warranty.* The Developer guarantees the Work to be free from all failures due to poor workmanship or materials for a period of one year from the date of the Town's final acceptance of the Work.

5.3. *Other conflicting construction prohibited.* The Developer shall not construct or allow the construction of any utility, structure, building, or other improvement that would interfere with the operation or maintenance of the Developer-Installed Facility.

5.4. *Developer's obligation to maintain finished grade.* The Developer guarantees that all drainage facilities on the Subject Property will be tied to the finished grade of the Developer-Installed Facility.

EXHIBIT H TO MANDARINA DEVELOPMENT AGREEMENT

5.5. *Acceptance by the Town.* The Town shall accept title to and take possession of the Developer-Installed Facility when the Work has been completed to the satisfaction of the Town. Subject to the Developer's continuing obligations under this Agreement, the Town shall operate and service the Developer-Installed Facility after taking over possession of it under this paragraph.

6. Miscellaneous

6.1. *Indemnity.* Developer shall indemnify, defend, and hold harmless the Town, its Mayor and Council, officers and employees, boards, committees and commissions from and against any loss, claim, suit, demand, cause of action, or liability of any nature, including but not limited to damage to property and injuries to persons, including death, arising or alleged to have arisen, in whole or in part, out of any negligent act or omission of the Developer or any contractor, subcontractor, or any person employed directly or indirectly by any of them in the performance of the Work or in the operation of the Developer-Installed Facility.

6.2. *Binding effect.* This agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the Parties.

6.3. *Consent required for assignment.* The Developer may not assign this Agreement without the prior written consent of the Town.

6.4. *Cancellation for conflict of interest.* This Agreement is subject to A.R.S. § 38-511, which provides for cancellation in certain instances involving conflict of interest.

[Signature page follows.]

EXHIBIT H TO MANDARINA DEVELOPMENT AGREEMENT

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the last date set forth below their respective signatures.

THE "TOWN":

TOWN OF MARANA, an Arizona municipal corporation

By: [SPECIMEN ONLY]
Ed Honea, Mayor

Date: _____

ATTEST:

[SPECIMEN ONLY]
Cherry L. Lawson, Town Clerk

APPROVED AS TO FORM:

[SPECIMEN ONLY]
Jane Fairall, Town Attorney

STATE OF COLORADO)
ss

County of _____)

The foregoing instrument was acknowledged before me on _____ by Marcus Palkowitsh, Partner of MSP INVESTMENT CO., LLP, a Colorado limited liability partnership, Manager of MANDARINA, LLC, a Colorado limited liability company (the "Developer"), on its behalf.

(Seal)

The "Developer":

MANDARINA, LLC, a Colorado limited liability company

By: MSP INVESTMENT CO., LLP, a Colorado limited liability partnership, its Manager

By: [SPECIMEN ONLY]
Marcus Palkowitsh, Partner

Date: _____

[SPECIMEN ONLY]
Notary Public

QUIT CLAIM DEED OF ABANDONMENT

Exempt: A.R.S. § 11-1134 (A) (3)

THE TOWN OF MARANA, an Arizona municipal corporation, hereby quit claims in favor of MANDARINA, LLC, a Colorado limited liability company, the following described real property situated in Pima County, Arizona:

SEE LEGAL DESCRIPTION ATTACHED AS EXHIBIT A AND DEPICTION AND
LINE TABLES ATTACHED AS EXHIBIT B-1 AND EXHIBIT B-2,
RESPECTIVELY, ATTACHED TO THIS QUIT CLAIM DEED OF
ABANDONMENT AND INCORPORATED HERE BY THIS REFERENCE

DATED December _____, 2020.

THE TOWN OF MARANA, an Arizona
municipal corporation

APPROVED AS TO FORM:

By: _____
Keith Brann, Town Engineer*

Jane Fairall, Town Attorney

*Per Marana Resolution No. 2020-_____

STATE OF ARIZONA)

SS

County of Pima)

The foregoing instrument was acknowledged before me on December ____, 2020, by Keith Brann, Town Engineer of THE TOWN OF MARANA, an Arizona municipal corporation, on its behalf.

(Seal)

Notary Public

November 12, 2020
Psomas #7MAN190101

EXHIBIT A

LEGAL DESCRIPTION RIGHT-OF-WAY TO BE ABANDONED

A portion of the right-of-way parcel recorded in Sequence No. 20193400150, records of Pima County, Arizona, located in General Land Office Lot 3 of the southwest one-quarter of Section 31, Township 11 South, Range 12 East, Gila & Salt River Meridian, Pima County, Arizona, described as follows:

COMMENCING at the southwest corner of said Section 31, monumented by a 2-1/2" aluminum cap, marked "T11S, R11E, S1|S6/S36|S31, T12S, R12E, PSOMAS, RLS 18557", from which the west one-quarter corner of said section, monumented by a 1/2" rebar, bears N 00°42'58" W (basis of bearing) a distance of 2644.10 feet as shown in Record of Survey Book 55, Page 84, records of said Pima County;

THENCE upon the west line of said southwest one-quarter of Section 31, N 00°42'58" W a distance of 2153.73 feet to the southerly right-of-way of Adonis Road as recorded in said Sequence No. 20193400150, lying on the arc of a non-tangent curve, concave northerly, a radial line of said curve through said point having a bearing of S 01°36'41" E;

THENCE easterly upon the arc of said curve, to the left, having a radius of 1475.00 feet and a central angle of 3°41'02" for an arc length of 94.84 feet;

THENCE N 84°42'17" E a distance of 255.19 feet to a point of curvature of a tangent curve, concave southerly;

THENCE easterly upon the arc of said curve, to the right, having a radius of 1325.00 feet and a central angle of 10°25'33" for an arc length of 241.10 feet to the **POINT OF BEGINNING**;

THENCE continue easterly upon the arc of said curve, to the right, having a radius of 1325.00 feet and a central angle of 4°27'30" for an arc length of 103.10 feet to a point of cusp of a radial curve, concave southeasterly;

THENCE southwesterly upon the arc of said curve, to the left, having a radius of 25.00 feet and a central angle of 95°09'29" for an arc length of 41.52 feet;

THENCE S 4°25'51" W a distance of 164.10 feet to a point of curvature of a tangent curve, concave easterly;

THENCE southerly upon the arc of said curve, to the left, having a radius of 1500.50 feet and a central angle of 20°58'13" for an arc length of 549.18 feet to a point on the

arc of a non-tangent curve, concave northeasterly, a radial line of said curve through said point having a bearing of S 54°55'04" W;

THENCE northwesterly upon the arc of said curve, to the right, having a radius of 1355.00 feet and a central angle of 06°58'26" for an arc length of 164.92 feet to a point on the arc of a non-tangent curve, concave easterly, a radial line of said curve through said point having a bearing of S 79°20'55" W;

THENCE northerly upon the arc of said curve, to the right, having a radius of 1551.50 feet and a central angle of 15°04'56" for an arc length of 408.41 feet;

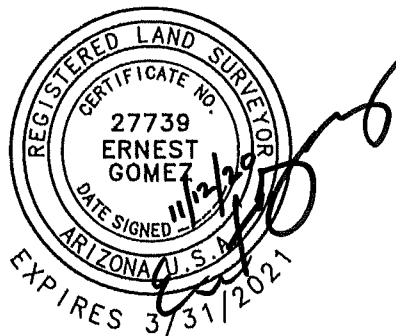
THENCE N 4°25'51" E a distance of 169.27 feet to a point of curvature of a tangent curve, concave southwesterly;

THENCE northwesterly upon the arc of said curve, to the left, having a radius of 25.00 feet and a central angle of 89°18'01" for an arc length of 38.96 feet to the **POINT OF BEGINNING**.

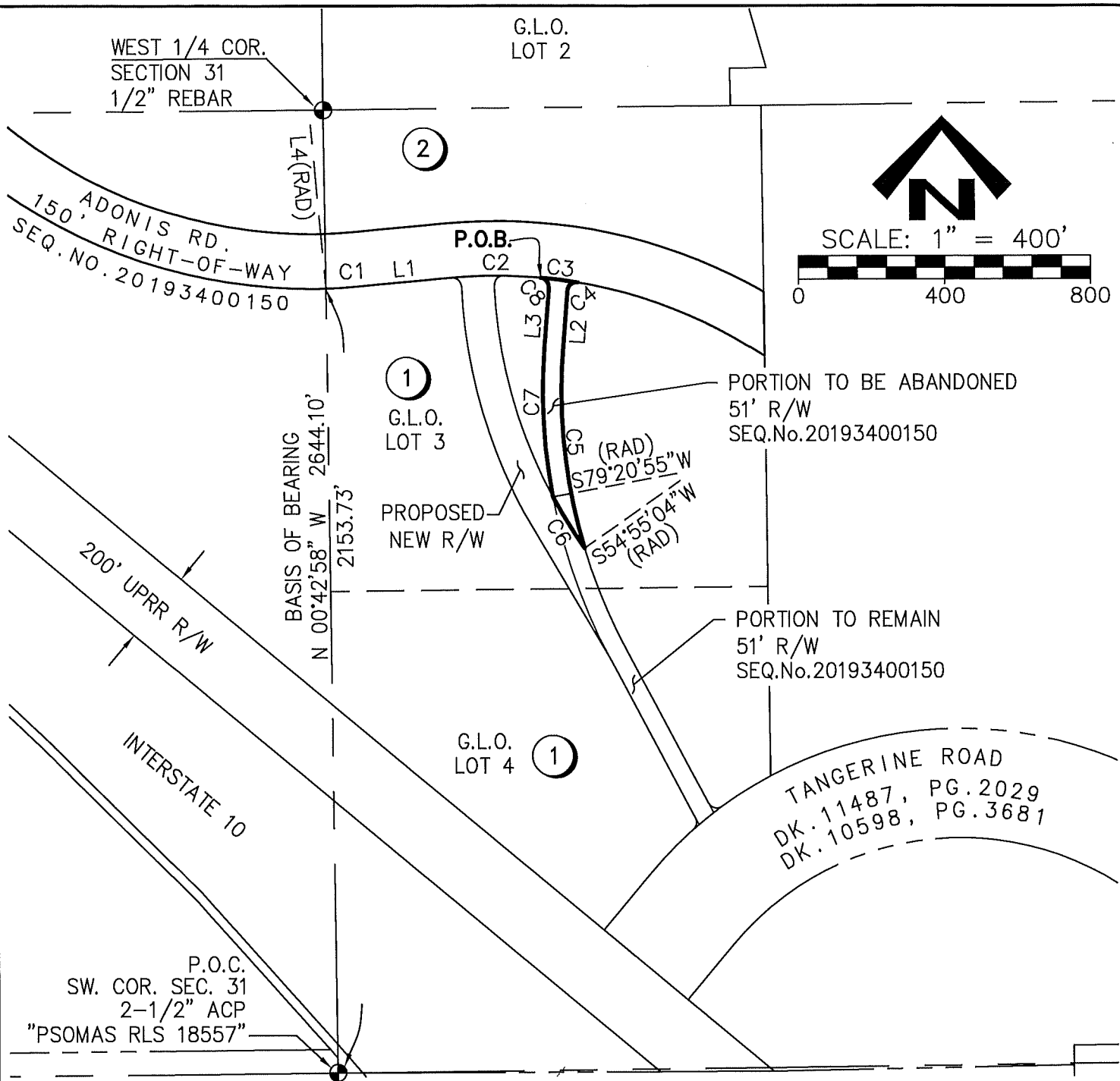
Containing an area of 0.79 acres, more or less.

See Exhibits B-1 & B-2 attached hereto and made a part hereof.

Prepared By:
Psomas



Ernest Gomez, AZ. R.L.S. 27739



= PARCEL I.D.; SEE PARCEL TABLE (EXHIBIT B-2)

ACP = ALUMINUM CAPPED PIN

SEE LINE\CURVE TABLES EXHIBIT B-2

PSOMAS

333 E. Wetmore Road, Suite 450
Tucson, AZ 85705
(520) 292-2300 (520) 292-1290 fax
www.psomas.com

7MAN190101

AMENDED Regular Council Meeting 12/01/2020

EXHIBIT B-1

RIGHT-OF-WAY TO BE ABANDONED

A PORTION OF THE R/W PARCEL RECORDED IN SEQ. No. 20193400150, RECORDS OF PIMA COUNTY, ARIZONA, LOCATED IN G.L.O. LOT 3

OF THE SW 1/4 OF SECTION 31, T-11- S, R-12-E, GILA & SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA

DATE: NOVEMBER, 2020 • DRAWN BY: RAL
Page 176 of 177

PARCEL TABLE

KEYNOTE	APN	OWNER	DOCKET	PAGE	SEQUENCE NO.
①	218-49-002B	MANDARINA LLC	13752	852	20100360173
②	218-49-002C	MANDARINA LLC	13752	852	20100360173

CURVE TABLE

CURVE	ARC LENGTH	RADIUS	DELTA ANGLE
C1	94.84'	1475.00'	3°41'02"
C2	241.10'	1325.00'	10°25'33"
C3	103.10'	1325.00'	4°27'30"
C4	41.52'	25.00'	95°09'29"
C5	549.18'	1500.50'	20°58'13"
C6	164.92'	1355.00'	06°58'26"
C7	408.41'	1551.50'	15°04'56"
C8	38.96'	25.00'	89°18'01"

LINE TABLE

LINE	BEARING	DISTANCE
L1	N 84°42'17" E	255.19'
L2	S 04°25'51" W	164.10'
L3	N 04°25'51" E	169.27'
L4	N 37°36'17" W	1104.95' RADIAL

EXHIBIT B-2

LINE, CURVE AND PARCEL TABLES

A PORTION OF THE R/W PARCEL RECORDED IN SEQ. No. 20193400150,
RECORDS OF PIMA COUNTY, ARIZONA, LOCATED IN G.L.O. LOT 3

OF THE SW ¼ OF SECTION 31, T-11- S, R-12-E,
GILA & SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA

DATE: NOVEMBER, 2020 • DRAWN BY: RAL

PSOMAS

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Tucson, AZ 85705
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7MAN190101