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# Board of Supervisors Memorandum

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August 18, 2014

## Purchase Agreement for Painted Hills Property

### Introduction

On June 11, 2014, I notified the Board of Supervisors we had reached agreement on the major terms to purchase the 286-acre Painted Hills property for \$7.5 million plus interest over five years. On July 1, 2014, the Board approved the necessary bond ordinance amendment that made \$3.5 million in bond funding an eligible funding source for purchase of the property consistent with approvals by the Pima County Bond Advisory Committee and Pima County Conservation Acquisition Commission. The Board's action occurred the day after the City of Tucson's Mayor and Council recommended the bond ordinance amendment to the Board. On July 3, 2014, the County's Conservation Acquisition Commission approved a motion in support of the acquisition of the Painted Hills property with the \$3.5 million in bond funding as one of the funding sources. All acquisitions funded with 2004 open space bond funds must be supported by the Conservation Acquisition Commission before they can be considered by the Board.

In addition, staff received and reviewed the Phase 1 Environmental Assessment for the property, and the assessment revealed no evidence of recognized environmental conditions. However, a small construction debris pile was found on the southeastern parcel, along Anklam Road. The seller will be required to remove this debris prior to closing.

On the Board's August 18, 2014 agenda is a resolution authorizing approval of a purchase agreement for Painted Hills and its inclusion into the County's park system.

### Terms of Purchase Agreement

The purchase agreement is between Pima County and P & F Tucson Group, LLC. The Dallas Police and Fire System is the signing member for the P & F Tucson Group, LLC. The terms are as follows:

- Purchase price is \$7.5 million.
- At closing, the County will pay \$3 million, plus an amount not to exceed \$8,000 for closing costs and escrow fees.
- The County will pay the remaining \$4.5 million of the purchase price over five equal annual payments of \$1,061,028, which includes 5.75 percent interest, with the first of the five annual payments to occur on or before the first anniversary of the closing date.

- The County may prepay the balance at any time without penalty, which would then reduce the amount of interest.
- Total property acquisition cost would not exceed \$8,313,143.
- Closing is anticipated to occur in September 2014.

### Funding Sources

The initial payment of \$3 million in September 2014 would be funded with 2004 voter approved bond funding approved for this purpose. The remaining balance of 2004 bond funds totaling approximately \$500,000 would be used to offset half of the first term payment due on or before September 2015. Funding for the balance of the first annual payment could come from the County's Starr Pass Environmental Enhancement Fund revenues, as could the remaining term payments. However, if the County holds a successful bond election in November 2015 that includes an allocation for open space acquisitions, any remaining balance to be paid at that time could be paid through voter authorized bonds, thereby reducing interest payments.

### Status of Remaining 2004 Bond Funds for Open Space

If the Board approves the Painted Hills purchase agreement and the expenditure of \$3.5 million in 2004 voter approved bond funding as partial payment, then the only 2004 bond funds remaining for open space acquisitions would be \$1.5 million for the purchase of open space along the Santa Cruz River within the Town of Sahuarita. The Town has had difficulty identifying good candidate properties, as the majority of the land along the river is either State Trust land or land owned by Farmers Investment Co., which has plans to develop some land and set aside other lands for conservation in the distant future.

Ballot Question 1 approved by voters on May 18, 2004 authorized the County to sell \$174.3 million in general obligation bonds for the purpose of acquiring important natural areas and community open space (\$163.4 million), and for the purpose of acquiring land within the approach and departure corridors of Davis-Monthan Air Force Base (DMAFB) to prevent urban encroachment (\$10 million).

The network of national and state regional parks and protected natural areas in Pima County has grown dramatically over the past decade. With the purchase of the Painted Hills property 10 years after the election, Pima County will have acquired 53 properties; conserving 47,000 acres of land in fee, as well as nearly 130,000 acres of State grazing leases and federal grazing permits now managed for conservation as part of working ranches. This equates to 20 percent of the lands identified in the 2004 bond ordinance as priorities for conservation. Achieving a world-class network of parks and natural areas is an incremental process and will likely take several future bond authorizations to complete, combined with other funding sources like the Starr Pass Environmental Enhancement Fund.

The Honorable Chair and Members, Pima County Board of Supervisors  
Re: **Purchase Agreement for Painted Hills Property**  
August 18, 2014  
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The County spent the \$10 million authorized for purchases within the DMAFB approach/departure corridor on the acquisition of 18 parcels totaling 461 acres. The majority of land remaining within this area is State Trust land that may be conserved via federal and state land exchanges.

Recommendation

I recommend the Board of Supervisors approve the resolution authorizing approval of the Painted Hills purchase agreement and related purchase documents so the County can move forward with preserving this long sought after property and expanding Tucson Mountain Park.

Respectfully submitted,



C.H. Huckelberry  
County Administrator

CHH/dr – August 6, 2014

Attachments

c: Nicole Fyffe, Executive Assistant to the County Administrator  
Diana Durazo, Special Staff Assistant to the County Administrator

Resolution

**RESOLUTION AND ORDER NO. 2014 - \_\_\_\_\_**

**RESOLUTION OF THE PIMA BOARD OF SUPERVISORS  
APPROVING AND AUTHORIZING THE EXECUTION OF A  
PURCHASE AGREEMENT, PROMISSORY NOTE AND  
FIRST DEED OF TRUST BETWEEN PIMA COUNTY AND  
P&F TUCSON GROUP, LLC, A DELAWARE LIMITED  
LIABILITY COMPANY (“P&F”)**

**The Board of Supervisors of Pima County, Arizona finds:**

1. Pima County (the “County”), is desirous of acquiring by purchase from P&F (the “Seller”) approximately 286 fee acres of biologically valuable open space commonly known as the Painted Hills Property and located between West Anklam Road and West Speedway Boulevard, in Tucson, Arizona (the “Property”); and
2. P&F is desirous of selling the Property to the County; and
3. County and P&F have agreed upon the terms of a Purchase Agreement to effectuate the sale of the Property to the County; and
4. County has the authority under A.R.S. Sections 48-3603(A) and 11-932 to acquire lands and dedicate the same as Parks; and
5. The Property is being acquired for open space and conservation values and will be administered by the Pima County Department of Natural Resources, Parks and Recreation;

**NOW, THEREFORE, BE IT RESOLVED THAT:**

1. The Purchase Agreement is hereby approved.
2. The Board of Supervisors hereby designates the Property, as and when it is acquired, and all its associated parcels, as part of the Pima County Parks System.
3. The Chair of the Board of Supervisors is hereby authorized and directed to sign the Purchase Agreement for the County.
4. The Chair of the Board of Directors is hereby authorized to sign any and all additional documents related to the acquisition of the Property, including but not limited to the Promissory Note and First Deed of Trust in favor of Seller.
5. The various officers and employees of Pima County are hereby authorized and directed to perform all acts necessary and desirable to give effect to this Resolution.

**PASSED, ADOPTED AND APPROVED** this \_\_\_\_\_ day of August, 2014.

**PIMA COUNTY:**

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Sharon Bronson  
Chair, Board of Supervisors

ATTEST:

APPROVED AS TO FORM:

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Robin Brigode, Clerk of the Board

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Tobin Rosen, Esq.  
Deputy Pima County Attorney

# Purchase Agreement

<b>PIMA COUNTY DEPARTMENT OF: REAL PROPERTY SERVICES</b>  <b>PROJECT: Acquisition of Land</b>  <b>SELLER: P &amp; F Tucson Group, LLC</b>  <b>AMOUNT: Maximum \$8,313,143.00 including closing costs</b>	
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**PURCHASE AGREEMENT**

1. **PARTIES.** This Purchase Agreement ("**Agreement**") is made between PIMA COUNTY, a body politic and corporate of the State of Arizona ("**County**" or "**Buyer**"); and **P & F TUCSON GROUP, LLC, a Delaware Limited Liability Company** ("**Seller**"), or assigns. County and Seller are collectively referred to herein as the "**Parties**"; and individually as a "**Party**".

2. **BACKGROUND AND PURPOSE.** The Parties acknowledge that the following statements are true and correct:

2.1. Seller owns all right, title and interest in the real property in Pima County, Arizona described in **Exhibit A** and depicted on **Exhibit A-1**, consisting of the following parcels, all of which, together with all improvements located thereon, and all wells, water rights and mineral rights appurtenant to or associated with said parcels, including any and all Type 2 Water Rights, are hereinafter referred to as the "**Property**".

2.2. The purpose of this Agreement is to set forth the terms and conditions upon which Seller shall sell the Property to County.

3. **AGREEMENT DATE.** This Agreement shall be effective on the date Seller and Buyer have executed this Agreement (the "**Agreement Date**"). The date Buyer executes is the date this Agreement is signed by the Chair of the Pima County Board of Supervisors.

<b>EXEMPTION: A.R.S. §11-1134.A.3</b>	<b>Board of Supervisors: 8/18/2014</b>	<b>Right of Way <input type="checkbox"/> Parcel <input checked="" type="checkbox"/></b>
<b>Agent: MDS</b>	<b>11154-001 to 005</b>	<b>Activity # CPR.OSPHIL</b>
		<b>P<input checked="" type="checkbox"/> De <input type="checkbox"/> Do <input type="checkbox"/> E <input type="checkbox"/></b>

#### 4. **SALE OF PROPERTY.**

4.1. Purchase Price. The purchase price of the Property shall be Seven Million, Five Hundred Thousand Dollars (\$7,500,000.00) (the "**Purchase Price**"). The Purchase Price, plus interest paid on the carryback Note and Deed of Trust, plus closing costs and lender's title policy premium paid by Buyer shall not exceed the sum of Eight-Million Three-Hundred Thirteen Thousand One-Hundred Forty-Three Dollars (\$8,313,143.00).

#### 5. **PAYMENT TERMS.**

5.1 Closing Payment. Buyer shall pay Three-Million Dollars (\$3,000,000.00) of the Purchase Price (the "Closing Payment") in cash at Closing in United States Funds immediately available in Tucson, Arizona.

5.2 Payment of Balance. The Four-Million Five-Hundred Thousand Dollar (\$4,500,000.00) balance of the Purchase Price (the "Balance") shall be paid to Seller in cash in United States Funds immediately available in Tucson, Arizona, according to the Payment Schedule set forth in Section 6 below. Buyer may prepay the Balance at any time without penalty. Notwithstanding Section 6 below, in the event Buyer prepays the Balance, only that amount of interest which has accrued to the date of such prepayment on the then unpaid principal balance shall be due and payable in order to fully satisfy the Balance of the Note.

5.3 Security for Payment of Balance. At Closing, Buyer shall execute a Non-Recourse Promissory Note in favor of Seller in the amount of the Balance (the "Note") in substantial form as attached to this Agreement as **Exhibit B**. The Note shall bear interest at the rate of five and three quarters percent (5.75%) per annum, and shall be secured by a Non-Recourse First Deed of Trust and Assignment of Rents (the "DOT") on the Property in substantial form as attached to this Agreement as **Exhibit C** which shall be recorded in the office of the Pima County Recorder at Closing; provided, however, that both the Note and the DOT shall state that the obligations of the County are non-recourse, and that Seller's recourse in the event of a default by County is limited solely to the Secured Property. Seller shall deposit a Deed of Release and Reconveyance of the DOT (the "Deed of Release") with Escrow Agent at the Closing. Escrow Agent is instructed to

hold the Deed of Release until notified in writing by Seller that the Final Payment (defined hereinafter) has been made. Upon receipt of the Final Payment, Seller shall immediately notify Escrow Agent and Escrow Agent shall record the Deed of Release in the office of the Pima County Recorder. Buyer shall, at Buyer's expense, cause Escrow Company to issue to Seller at Closing an ALTA Lender's Policy of Title Insurance in the amount of the Balance.

## 6. **PAYMENT SCHEDULE.**

Unless Buyer elects to pay the Balance in full earlier pursuant to Section 5.2 above, Buyer shall pay the Balance in five (5) equal installments, each in the sum of One-Million Sixty-One Thousand Twenty-Eight Dollars and Sixty-Two Cents (\$1,061,028.62), with the first installment due on the first anniversary of the Closing Date and each subsequent installment due on succeeding anniversaries of the Closing Date until the Balance is paid in full.

## 7. **SELLER'S COVENANTS.**

7.1. No Salvage. Seller shall not salvage or remove any fixtures, improvements, or vegetation from the Property, but this shall not prohibit Seller from removing personal property prior to the Closing. In addition, prior to Closing, the Property shall not be materially degraded by Seller or otherwise materially changed in any material aspect by Seller.

7.2. Risk of Loss for Damage to Improvements. Seller shall bear the risk of loss or damage to the Property prior to Closing. After Closing, the risk of loss or damage to the Property shall rest with Buyer.

7.3. Government Approvals. Seller shall obtain all government approvals required to close the sale of the Property, if any.

7.4. Use of Property by Seller. Seller shall, during the term of this Agreement, use the Property on a basis substantially comparable to Seller's historical use thereof. Seller shall make no use of the Property other than the use being made of the Property as of the Agreement Date. Seller shall maintain the Property in substantially the same condition as it is presently in, ordinary wear and tear excepted, and without liens or encumbrances that Seller will be able to cause to be released before the Closing.

7.5. No Encumbrances. Seller shall not encumber the Property with any lien

that Seller will be unable to cause to be released before Closing, and Seller shall not be entitled to sell or exchange all or any portion of the Property before Closing.

## 8. INSPECTION AND ACCESS.

8.1. Inspection Period. For a period of forty-five (45) days commencing on the Agreement Date (the "**Inspection Period**"), Buyer (and its respective employees, agents, representatives and contractors) shall have the right to enter upon the Property (the "**Premises**") at reasonable times and from time to time, upon forty-eight (48) hours' notice by telephone to Seller, for the purpose of viewing, inspecting, testing, appraising, surveying and studying the Premises ("**Inspection**"). Buyer shall, promptly following any such Inspection, return the Premises to the condition it was in immediately prior to such Inspection. Buyer shall, and does hereby agree, to the extent permitted by law, to indemnify and defend Seller against, and hold Seller harmless from, all claims, damages, expenses, and actions arising from any negligence or wrongful misconduct of Buyer or Buyer's employees or agents, as a result of such Inspection.

8.2. Reports. Within ten (10) days after the Agreement Date, Seller shall provide copies to Buyer of use agreements regarding the Premises; service, management and other agreements regarding the Premises whose terms do not expire prior to the date of the Closing; permits, certificates, plans or specifications regarding the Premises; soils reports, property inspections, hazardous/toxic material or environmental reports regarding the Premises; surveys of the Premises; and registrations, test results and studies regarding any wells located on the Premises. During the term of this Agreement, Buyer shall deliver to Seller copies of all non-proprietary third party reports, studies, surveys, plats, engineering data or work product or other work product pertaining to the Premises as the same are prepared. If Buyer terminates this Agreement for any reason, all such third party reports, studies, surveys, plats or other work product shall be returned to Buyer. The delivery by Seller or Buyer to the other Party of any such third party reports, studies, surveys, plats, engineering data or work product or other work product shall be without any representation or warranty.

8.3. Environmental Inspection. If an environmental inspection recommends further testing or inspection, Buyer may elect by giving written notice to Seller to extend the Inspection Period for an additional forty-five (45) days, to conduct further investigations. If the Inspection Period is extended, the term "**Inspection Period**" shall then include the additional period.

8.4. Objection Notice. Buyer shall provide written notice to Seller, prior to expiration of the Inspection Period, of any items disapproved by Buyer as a result of Buyer's inspections (including environmental conditions) (the "**Objection Notice**"). If Buyer sends an Objection Notice, Seller may, within five (5) business days of receipt of the Objection Notice, notify Buyer if Seller is willing to cure any of the items to which Buyer objected (the "**Cure Notice**"). If Seller elects not to send Buyer a Cure Notice or if Seller's Cure Notice is not acceptable to Buyer, then Buyer may elect to terminate this Agreement in which case the Agreement shall be terminated and of no further force and effect. If Buyer fails to give the Objection Notice to Seller on or before the expiration of the Inspection Period, Buyer shall be deemed to have waived the right to give the Objection Notice and elected to proceed with Closing.

8.5. Closing Before Inspection Period Expires. Nothing in this Agreement shall preclude Buyer from electing to proceed with Closing prior to the expiration of the Inspection Period.

## 9. **ESCROW AND TITLE; BOND ORDINANCE AMENDMENT.**

9.1. Escrow and Title Agent. The Title Agent and Escrow Company shall be Title Security Agency, LLC ("**Title Company**"), Rhonda Herrera ("**Escrow Agent**") and this Agreement shall be used as escrow instructions in connection with the escrow established with Escrow Agent under this Agreement (the "**Escrow**"). Escrow Agent shall make reasonably suitable arrangements with Buyer, upon Buyer's request, to have Buyer execute any of the documents to be executed by Buyer as provided in this Agreement at the office of Escrow Agent that is located the closest to the office of Buyer.

### 9.2. Title Commitment.

9.2.1. **COMMITMENT.** Escrow Agent will distribute to Buyer and Seller a Commitment for Standard Owner's Title Insurance (the "**Commitment**") together with complete and legible copies of all documents which will remain as exceptions (the "**Exceptions**") to Buyer's policy of title insurance.

9.2.2. **PERMITTED EXCEPTIONS.** Seller shall deliver title to the Property at Closing subject only to the exceptions listed on [Exhibit D](#) hereto (the "**Permitted Exceptions**").

9.2.3. **AMENDED COMMITMENT.** In the event Title Company should

issue an Amended Commitment for Title Insurance which discloses an Exception(s) not previously disclosed, Buyer shall have five (5) days after receipt of the Amended Commitment and the new Exceptions (the "Disapproval Period") within which to notify Seller and the Escrow Agent in writing of Buyer's disapproval of any new Exceptions shown thereon (the "Disapproval Notice"). In the event of such disapproval, Seller shall have ten (10) days from the date of the Disapproval Notice in which to notify Buyer in writing whether Seller intends to eliminate each of the disapproved Exceptions prior to the Closing (the "Notice Period"). If Seller fails to notify Buyer of its intent with respect to the disapproved items within that time, or if Seller elects not to cure all disapproved items, Buyer may terminate this Agreement and the escrow will be canceled. If the Amended Commitment is issued less than fifteen (15) days prior to the date of the Closing, then the date of the Closing is extended until the end of the Disapproval Period and the Notice Period, if applicable.

9.2.4. *MONETARY LIENS.* Notwithstanding the above, Buyer need not expressly object to any monetary liens and encumbrances on the Property, all of which shall be removed before Closing, unless this Agreement expressly provides for the prorating of any such lien or encumbrance.

9.3. Title Policy. At Closing, Escrow Agent shall furnish Buyer a Standard Owner's Title Insurance Policy for the Property, in the amount of the Purchase Price, subject only to the Permitted Exceptions and the standard printed exceptions in the Policy, which Policy shall be paid for by Seller.

## 10. **CLOSING.**

10.1. Closing Date. The Closing of the sale of the Property to Buyer (the "**Closing**") shall take place at the offices of Escrow Agent. The Closing shall take place on or before the expiration of the Inspection Period and the Disapproval Period (the Disapproval Period and the Notice Period, and any extensions thereof), but no later than September 19, 2014, unless otherwise agreed to by the Parties.

10.2. Closing Costs. All escrow fees shall be equally divided between Seller and Buyer, and all recording and other costs related to the Closing shall be allocated by Escrow Agent in a manner customary with Escrow Agent's procedures in Pima County, Arizona.

10.3. Prorations. Property taxes, rents, and annual payment of assessments with interest, if any, shall be prorated as of the date of the Closing. If Seller's entire owned parcel is larger than the Property then the proration of taxes shall be for the proportion

of taxes assessed against Seller's entire parcel which is attributable to the Property.

10.4. Deliveries by Buyer at Closing. At Closing, Buyer shall deliver to Seller through Escrow the following:

10.4.1. The Closing Payment portion of The Purchase Price;

10.4.2. An executed Non-Recourse Promissory Note for the Balance of the Purchase Price;

10.4.3. An executed Non-Recourse Deed of Trust to secure Buyer's full performance of its payment obligations under the terms of the Non-Recourse Promissory Note;

10.4.4. Such additional documents as Seller or Escrow Agent may reasonably require to effectuate the Purchase.

10.5. Deliveries by Seller at Closing. At Closing, Seller or Escrow Agent, as appropriate, shall deliver to Buyer through Escrow the following:

10.5.1. An executed Special Warranty Deed ("**Deed**") in the form of [Exhibit E](#) attached, conveying fee simple title to the Property subject only to the Permitted Exceptions;

10.5.2. One or more assignments of all the well registrations, all the water rights certificated or claimed in which Seller has an interest and appurtenant to the Property, if any, and all certificated or claimed Grandfathered Type 2 water rights, if any; and

10.5.3. Such additional documents as Buyer or Escrow Agent may reasonably require to effectuate the Purchase.

10.6. Delivery of Possession. Seller shall deliver possession of the Property to Buyer at Closing.

11. **ENVIRONMENTAL LIABILITIES.** Buyer and Seller agree that neither Party is assuming any obligation of the other Party relating to any potential liability, if any, arising from the environmental condition of the Property, each Party remaining responsible for its obligations as set forth by law.

**12. SELLER'S REPRESENTATIONS AND WARRANTIES.**

12.1. Seller hereby warrants, to the best of its knowledge and belief (but without having undertaken any independent inquiry), that, except as disclosed in writing to Buyer within ten (10) days of the Agreement Date:

12.1.1. it is aware of no environmental conditions on the Property that would constitute a violation of any environmental law of the United States or the State of Arizona and has no knowledge of any pending or threatened proceeding by any agency, court or other governmental entity related to environmental conditions on the Property;

12.1.2. it is aware of no pollutants, contaminants, toxic or hazardous substances, and that during Seller's ownership of the Property no wastes or materials have been stored, used or are located on the Property, or within any surface or subsurface waters thereof; and that no underground storage tanks have been located on the Property except for a septic tank;

12.1.3. it is not aware of any pending or threatened administrative proceedings, arbitrations, lawsuits or other legal proceedings or claims by governmental agencies or third parties concerning the Property which would in any way affect, encumber or limit Buyer's fee title ownership of the Property;

12.1.4. it has no knowledge of any notice of violations from any governmental agency of any applicable local, state or federal ordinance, statutes, regulations or rules whether filed or threatened regarding the Property, except for a complaint with the Arizona Department of Water Resources which has been disclosed to Buyer; and

12.1.5. Seller shall make available to Buyer all documents relating to the Property that it has in its possession regarding the Property, including any and all surveys, information regarding wells and water rights, and environmental reports.

12.2. Seller represents that there are no leases, rental agreements, or agreements permitting someone to use or occupy any portion of the Property.

12.3. All representations and warranties contained herein shall survive the Closing.

**13. BROKER'S COMMISSION.** No broker or finder has been used and Buyer owes

no brokerage or finder's fees related to this transaction. Seller has sole responsibility to pay all brokerage or finder's fees to any agent employed by Seller.

14. **DEFAULT, REMEDIES, AND CONDITIONS PRECEDENT.** In the event either Party shall default under this Agreement, the other Party shall be entitled to pursue all rights and remedies available at law or in equity, including specific enforcement, except that to the extent a Party seeks a recovery of damages, damages shall be limited to recovery of actual damages (including any losses or penalties suffered by Buyer as a result of any violation of federal arbitration violations caused by a wrongful failure of Seller to perform) and neither Party shall be entitled to exemplary, punitive, special, indirect or consequential damages.

15. **EXHIBITS.** The following Exhibits to this Agreement are fully incorporated herein as if set forth at length. To the extent that any Exhibits to this Agreement or to any of the Exhibits hereto are not available at the execution thereof, they shall be added by the Parties prior to Closing and shall be in form and substance reasonably satisfactory to the Parties.

<a href="#"><u>Exhibit A</u></a>	<b>Description of Property</b>
<a href="#"><u>Exhibit A-1</u></a>	<b>Depiction Map of Property</b>
<a href="#"><u>Exhibit B</u></a>	<b>Form of Non-Recourse Promissory Note</b>
<a href="#"><u>Exhibit C</u></a>	<b>Form of Non-Recourse Deed of Trust</b>
<a href="#"><u>Exhibit D</u></a>	<b>Permitted Exceptions</b>
<a href="#"><u>Exhibit E</u></a>	<b>Form of Deed for Property</b>

16. **MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions shall apply to this Agreement:

16.1. Notices.

16.1.1. **WRITING.** All notices required or permitted to be given hereunder shall be in writing and may be given in person or by United States mail, by local or nationwide delivery/courier service or by electronic transmission (for instance, telecopy/fax to the telecopies/fax numbers indicated below or e-mail to the e-mail addresses indicated below).

16.1.2. **RECEIPT.** Such notices and other communications shall be deemed to be given and received as follows: (a) upon actual receipt, if delivered personally; (b) upon actual receipt, if transmitted by facsimile on a business day before 5:00 p.m. (Tucson time); (c) upon the next business day following transmission if

transmitted by facsimile on a day which is not a business day or if transmitted after 5:00 p.m. (Tucson time) on a business day; (d) upon actual receipt, if transmitted by e-mail on a business day before 5:00 p.m. (Tucson time); (e) upon the next business day following transmission if transmitted by e-mail on a day which is not a business day or if transmitted after 5:00 p.m. (Tucson time) on a business day; (f) the next business day, if delivered by overnight courier; or (g) three (3) days following deposit in the mail, if delivered by mail postage prepaid, addressed to that Party at his/her/their/its designated address. The designated address of a Party shall be the address of that Party shown below or such other address within the United States of America that any Party from time to time may specify by written notice to the other Parties at least fifteen (15) days prior to the Agreement Date of such change, but no such notice of change shall be effective unless and until received by the other Parties.

16.1.3. REJECTION. Rejection or refusal to accept, or inability to deliver because of changed address or because no notice of changed address is given, shall be deemed to be receipt of any such notice.

16.1.4. NOTICE TO ENTITY. Any notice to an entity shall be deemed to be given on the date specified in this Paragraph without regard to when such notice is delivered by the entity to the individual to whose attention it is directed and without regard to the fact that proper delivery may be refused by someone other than the individual to whose attention it is directed. If a notice is received by an entity, the fact that the individual to whose attention it is directed is no longer at such address or associated with such entity shall not affect the effectiveness of such notice.

16.1.5. ADDRESS. Seller and Buyer agree that any notice sent on their behalf by their attorney, if listed below, shall serve as notice by Seller or Buyer, as the case may be, to the other:

If to Seller:

Donald Rohan  
Interim Administrator  
Dallas Police and Fire Pension System  
4100 Harry Hines Blvd., Suite 100  
Dallas, TX 75219  
Telephone: 214.638.3863  
Fax: 214.638.3863  
E-mail: investments@dpfp.org

Josh Mond, Esq.  
General Counsel  
Dallas Police and Fire Pension System  
4100 Harry Hines Blvd, Suite 100  
Dallas, TX 75219  
Telephone: 214.638.3863  
Fax: 214.638.3863  
E-mail: [Jmond@dppf.org](mailto:Jmond@dppf.org)

*with a copy to:*

Keri Lazarus Silvyn, Esq.  
Lazarus, Silvyn & Bangs, P.C.  
420 W. Roosevelt Street  
Phoenix, AZ 85003  
Telephone: 520.207.4464  
E-mail: [ksilvyn@lsblandlaw.com](mailto:ksilvyn@lsblandlaw.com)

If to Pima County:

Neil J. Konigsberg, Manager  
Pima County Real Property Services  
201 N Stone Ave, 6<sup>th</sup> Floor  
Tucson, AZ 85701-1207  
Telephone: 520.740.6313  
E-mail: [Neil.Konigsberg@pima.gov](mailto:Neil.Konigsberg@pima.gov)

*with a copy to:*

Tobin Rosen, Deputy County Attorney  
Pima County Attorney's Office, Civil Division  
32 N Stone Ave, Ste 2100  
Tucson, AZ 85701-1412  
Telephone: 520.740.5750  
E-mail: [Tobin.Rosen@pcao.pima.gov](mailto:Tobin.Rosen@pcao.pima.gov)

If to Escrow Agent:

Rhonda Herrera, Escrow Agent  
Title Security Agency, LLC  
6640 N Oracle Rd, Ste 120  
Tucson, AZ 85704  
Telephone: 520.219.6451  
E-mail: [rhonda.drapeer@ltaz.com](mailto:rhonda.drapeer@ltaz.com)

16.2. Place of Execution. This Agreement is made and executed in Pima County.

16.3. Governing Law. This Agreement shall be subject to, and interpreted by and in accordance with, the laws of the State of Arizona. Any court action brought pursuant to this Agreement shall be brought and maintained in a court in Pima County, Arizona.

16.4. Entire Agreement. This Agreement is the entire Agreement of the Parties respecting the subject matter hereof. There are no other agreements, representations or warranties, whether oral or written, respecting the subject matter hereof.

16.5. Interpretation. This Agreement, and all the provisions of this Agreement, shall be deemed drafted by all of the Parties. This Agreement shall not be interpreted strictly for or against any Party, but solely in accordance with the fair meaning of the provisions hereof to effectuate the purposes and intent of this Agreement.

16.6. No Representations. Each Party has entered into this Agreement based solely upon the agreements, representations and warranties expressly set forth herein and upon his own knowledge and investigation. Neither Party has relied upon any representation or warranty of any other Party except any such representations or warranties as are expressly set forth herein.

16.7. Signing Authority. Each of the persons signing below on behalf of a Party represents and warrants that he or she has full requisite power and authority to execute and deliver this Agreement on behalf of the Party for whom he or she is signing and to bind such Party to the terms and conditions of this Agreement.

16.8. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original. This Agreement shall become effective only when all of the Parties shall have executed the original or counterpart hereof. This Agreement may be executed and delivered by a facsimile transmission of a counterpart

signature page hereof.

16.9. Attorney's Fees and Costs. In any action brought by a Party to enforce the obligations of any other Party, the prevailing Party shall be entitled to collect from the opposing Party to such action such Party's reasonable litigation costs and attorney's fees and expenses, including court costs, reasonable fees of accountants and experts, and other expenses incidental to the litigation in addition to all other relief, all of which shall be set by the judge and not by jury, to which the prevailing Party may be entitled.

16.10. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

16.11. No Third Party Beneficiaries. This is not a third party beneficiary contract. No person or entity other than a Party signing this Agreement shall have any rights under this Agreement, except as expressly provided in this Agreement.

16.12. Amendment. This Agreement may be amended or modified only in a writing signed by the Parties, which specifically references this Agreement.

16.13. No Partnership. Nothing in this Agreement shall be construed to create a partnership or joint venture, or to authorize any Party to act as agent for or representative of any other Party.

16.14. No Waiver. A Party may decide or fail to require full or timely performance of any obligation arising under this Agreement. The decision or failure of a Party hereto to require full or timely performance of any obligation arising under this Agreement (whether on a single occasion or on multiple occasions) shall not be deemed a waiver of any such obligation. No such decisions or failures shall give rise to any claim of estoppel, laches, course of dealing, amendment of this Agreement by course of dealing, or other defense of any nature to any obligation arising hereunder.

16.15. Breach. The repudiation, breach, or failure to perform any obligation arising under this Agreement by a Party after reasonable notice thereof shall be deemed a repudiation, breach, and failure to perform all of such Party's obligations arising under this Agreement.

16.16. Time of the Essence. Time is of the essence with respect to each obligation arising under this Agreement. The failure to timely perform an obligation arising hereunder shall be deemed a failure to perform the obligation.

16.17. Conflict of Interest. This Agreement is subject to cancellation within three (3) years after its execution pursuant to A.R.S. § 38-511 if any person significantly involved in initiating, negotiating, securing, drafting, or creating this Agreement on behalf of County is, at any time while this Agreement or any extension of the Agreement is in effect, an employee or agent of any other party to the Agreement with respect to the subject matter of the Agreement.

16.18. Assignment. Seller may assign its rights and obligations under this Agreement to a new corporate entity to be formed prior to Closing.

*REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK*

Buyer and Seller have executed this Agreement as of the dates set forth below.

**BUYER: PIMA COUNTY,  
a body politic and corporate of the State of Arizona:**

\_\_\_\_\_  
Sharon Bronson  
Chair, Board of Supervisors

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Robin Brigode, Clerk of the Board

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

\_\_\_\_\_  
Tobin Rosen, Deputy County Attorney, Civil Division

**SELLER:**  
**P & F Tucson Group, LLC,**  
**a Delaware Limited Liability Company:**

BY: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Date

And

BY: DALLAS POLICE AND FIRE PENSION  
Its: Member

By: \_\_\_\_\_

\_\_\_\_\_  
Date

Tax Parcel Numbers: 116-04-164A and -164B; 116-08-001C; 116-09-0060;  
and 116-07-1250.

## EXHIBIT A

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

PARCEL 1:

(State Tax Code: 116-07-1250)

All that part of the South half of the Southeast Quarter of Section 6 Township 14 South Range 13 East, Gila and Salt River Base and Meridian, Pima County, Arizona, lying South of the center line of West Speedway as same now exists and is paved on the ground;

EXCEPTING therefrom any part lying within the West half of the Southwest Quarter of the Southeast Quarter of said Section 6; and

FURTHER EXCEPTING that portion conveyed to Tucson Gas Electric Light & Power Company by Deed recorded in Docket 2043 page 546, records of Pima County, Arizona, described as follows:

The East 730 feet of that portion of the Southeast Quarter of the Southeast Quarter of said Section 6, lying Southerly of the center line of West Speedway, as now existing, EXCEPT the South 750 feet thereof.

(Jv arb 22)

PARCEL 2:

(State Tax Code: 116-08-001C)

The Northeast Quarter of the Northeast Quarter of Section 7, and that part of the West half of the Northeast Quarter of said Section 7, lying North of Gates Pass Road, according to the map of record in the office of the Pima County Recorder in Book 4 of Road Maps page 92; all in Township 14 South Range 13 East, Gila and Salt River Base and Meridian, Pima County, Arizona;

EXCEPTING therefrom the West 212 feet of the Northwest Quarter of the Northeast Quarter of said Section 7 lying North of Anklam Road as it existed on March 24, 1963;

FURTHER EXCEPTING that portion of the Northwest Quarter of the Northeast Quarter of said Section 7, and that portion of the Southwest Quarter of the Southeast Quarter of Section 6 Township 14 South Range 13 East, Gila and Salt River Base and Meridian, Pima County, Arizona, described as follows:

BEGINNING at the Southwest corner of the Northwest Quarter of the Northeast Quarter of said Section 7;

THENCE North 00 degrees 59 minutes 00 seconds West along the Quarter section line, a distance of 417.57 feet;

THENCE North 89 degrees 01 minutes 00 seconds East, a distance of 212.00 feet to a point, said point being the TRUE POINT OF BEGINNING;

THENCE North 00 degrees 59 minutes 00 seconds West, a distance of 894.68 feet to a point on the North line of said Section 7, said point being distant 212.00 feet from the North Quarter corner of said Section 7;

THENCE North 89 degrees 50 minutes 25 seconds East, along said North line, a distance of 436.56 feet to a point, said point being the Southeast corner of the Southwest Quarter of the Southwest Quarter of the Southeast Quarter of Section 6;

THENCE North 00 degrees 23 minutes 50 seconds West, a distance of 407.63 feet to a point on the South right of way of West Speedway;

**EXHIBIT A**  
(Continued)

THENCE from a tangent bearing North 53 degrees 39 minutes 50 seconds East, along the South right of way of West Speedway, along a curve to the left, having a radius of 1945.08 feet, subtended by an angle of 2 degrees 21 minutes 53 seconds, a distance of 75.19 feet to a point;

THENCE South 00 degrees 23 minutes 50 seconds East, a distance of 453.16 feet to a point;

THENCE South 01 degrees 56 minutes 25 seconds East, a distance of 687.65 feet to a point;

THENCE North 89 degrees 01 minutes 00 seconds East, a distance of 52.00 feet to a point;

THENCE South 00 degrees 59 minutes 00 seconds East, a distance of 200.00 feet to a point;

THENCE South 89 degrees 01 minutes 00 seconds West, a distance of 560.00 feet to the TRUE POINT OF BEGINNING.

FURTHER EXCEPTING that portion of the Northwest Quarter of the Northeast Quarter of said Section 7, described as follows:

BEGINNING at the Southwest corner of the Northwest Quarter of the Northeast Quarter of said Section 7;

THENCE North 0 degrees 59 minutes West along the Quarter section line, a distance of 417.57 feet;

THENCE North 89 degrees 01 minutes East, perpendicular to said Quarter section line, a distance of 452.00 feet to the TRUE POINT OF BEGINNING;

THENCE South 0 degrees 59 minutes East, parallel with said Quarter section line, a distance of 200.00 feet;

THENCE North 89 degrees 01 East, perpendicular to said Quarter section line, a distance of 180.00 feet;

THENCE North 00 degrees 59 minutes West, parallel with said Quarter section line, a distance of 200.00 feet;

THENCE South 89 degrees 01 minutes West, perpendicular to said Quarter section line, a distance of 180.00 feet to the TRUE POINT OF BEGINNING.

(JV arb 37)

PARCEL 3:

(State Tax Code: 116-04-164B)

A portion of the Southwest Quarter of Section 5, Township 14 South, Range 13 East, Gila and Salt River Base and Meridian, Pima County, Arizona, also being a portion of the Parcel Shown on the Record of Survey, recorded in Book 29 of Surveys at Page 90, records of Pima County, Arizona, described as follows:

BEGINNING at the Northwest corner of the Parcel shown on said Record of Survey, also being on the South right of way line of Speedway Boulevard and the East right of way line of El Camino Del Sombres;

THENCE North 89 degrees 48 minutes 40 seconds East 303.17 feet upon said South right of way line;

THENCE South 0 degrees 05 minutes 58 seconds West, 586.48 feet;

THENCE South 34 degrees 17 minutes 57 seconds West, 520.33 feet to said East right of way line;

THENCE North 0 degrees 30 minutes 16 seconds West 1015.36 feet upon said East right of way line to the POINT OF BEGINNING.

**EXHIBIT A**  
(Continued)

(Jv arb 171)

PARCEL 4:  
(State Tax Codes 116-04-164A & 116-09-0060)

A portion of the Southwest Quarter of Section 5, and the West half of Section 8, Township 14 South, Range 13 East, Gila and Salt River Base and Meridian, Pima County, Arizona, described as follows:

BEGINNING at the North Quarter corner of said Section 8, being a Pima County Highway Department brass capped pipe, as shown on the Record of Survey recorded in Book 29 of Surveys at Page 90, Pima County, Arizona;

THENCE South 0 degrees 41 minutes 26 East 22.35 feet upon the mid-section line of said Section 8;

THENCE continue South 0 degrees 41 minutes 26 seconds East 3873.24 feet upon said mid-section line to a non-tangent curve concave Northeasterly, on the North right of way of Anklam Road, as shown on said record of Survey, the radius point of said curve bears North 37 degrees 13 minutes 40 seconds East;

THENCE the following 12 courses, curves and distance upon said North right of way;

- 1) Northwesterly, upon the arc of said curve to the right, having a radius of 447.47 feet and a central angle of 7 degrees 32 minutes 49 seconds, for an arc distance of 58.94 feet;
- 2) North 45 degrees 13 minutes 31 seconds West 59.76 feet to a tangent curve concave Northeasterly;
- 3) Northwesterly upon the arc of said curve to the right, having a radius of 788.51 feet and a central angle of 16 degrees 00 minutes 05 seconds, for an arc distance of 220.21 feet;
- 4) North 29 degrees 13 minutes 26 seconds West, 14.81 feet to a tangent curve concave Southwesterly;
- 5) Northwesterly upon the arc of said curve to the left, having a radius of 5759.58 feet and a central angle of 4 degrees 01 minutes 49 seconds, for an arc distance of 405.14 feet;
- 6) North 33 degrees 15 minutes 15 seconds West 239.42 feet to a tangent curve concave Southwesterly;
- 7) Northwesterly upon the arc of said curve to the left, having a radius of 1939.86 feet and a central angle of 24 degrees 03 minutes 29 seconds, for an arc distance of 814.53 feet;
- 8) North 57 degrees 18 minutes 44 seconds West 664.30 feet to a tangent curve concave Northerly;
- 9) Westerly upon the arc of said curve to the right, having a radius of 2834.79 feet and a central angle of 5 degrees 28 minutes 08 seconds, for an arc distance of 270.58 feet;
- 10) North 51 degrees 50 minutes 37 seconds West 58.91 feet to a tangent curve concave Southerly;
- 11) Westerly upon the arc of said curve to the left, having a radius of 984.93 feet and a central angle of 16 degrees 28 minutes 50 seconds, for an arc distance of 283.31 feet;
- 12) North 68 degrees 19 minutes 27 seconds West, 458.58 feet to the West line of said Section 8, as shown on said Record of Survey;

THENCE departing said right of way, North 1 degrees 26 minutes 34 seconds West, 318.05 feet upon said West line to a one-sixteenth corner, as shown on said Record of Survey;

**EXHIBIT A**  
(Continued)

THENCE North 1 degrees 29 minutes 39 seconds West 1320.28 feet upon said West line to the South line of El Camino Del Sombres, as shown on said Record of Survey;

THENCE North 89 degrees 44 minutes 57 seconds East, 30.00 feet upon said South right of way line to the East right of way line of El Camino Del Sombres;

THENCE departing said right of way line, North 34 degrees 17 minutes 57 seconds East 520.33 feet;

THENCE North 0 degrees 05 minutes 58 seconds East 586.48 feet to the South right of way line of Speedway Boulevard, as shown on said Record of Survey;

THENCE North 89 degrees 48 minutes 40 seconds East 13.35 feet, upon said South right of way line, as shown on said Record of Survey, to a tangent curve concave Southerly;

THENCE Easterly, upon said South right of way line, as shown on said Record of Survey, upon the arc of said curve to the right, having a radius of 405.74 feet and a central angle of 25 degrees 31 minutes 11 seconds, for an arc distance of 180.72 feet;

THENCE South 64 degrees 40 minutes 09 seconds East 625.47 feet upon said South right of way line, as shown on said Record of Survey, to the South right of way line of Speedway Boulevard described in the Quit Claim Deed recorded in Docket 12035,. Page 3937, records of Pima County, Arizona;

THENCE the following 10 courses, curves, and distances upon the South right of way line described in said Quit Claim Deed;

- 1) South 72 degrees 01 minutes 38 seconds East 251.97 feet to a tangent curve concave Southerly;
- 2) Easterly upon the arc of said curve to the right, having a radius of 2789.93 feet and a central angle of 3 degrees 59 minutes 59 seconds, for an arc distance of 194.76 feet;
- 3) South 68 degrees 01 minutes 39 seconds East 124.91 feet to a tangent curve concave Southerly;
- 4) Easterly upon the arc of said curve to the right, having a radius of 2789.93 feet and a central angle of 3 degrees 00 minutes 01 seconds, for an arc distance of 146.09 feet;
- 5) South 65 degrees 01 minutes 38 seconds East 449.43 feet to a tangent curve concave Southerly;
- 6) Easterly upon the arc of said curve to the right, having a radius of 17,113.76 feet and a central angle of 0 degrees 30 minutes 01 seconds, for an arc distance of 149.43 feet;
- 7) South 64 degrees 31 minutes 37 seconds East 39.49 feet to a tangent curve concave Southerly;
- 8) Easterly upon the arc of said curve to the right, having a radius of 1071.28 feet and a central angle of 8 degrees 30 minutes 40 seconds, for an arc distance of 159.14 feet;
- 9) South 56 degrees 00 minutes 57 seconds East 49.56 feet to a tangent curve concave Northeasterly;
- 10) Southeasterly upon the arc of said curve to the left, having a radius of 647.56 feet and a central angle of 12 degrees 43 minutes 26 seconds, for an arc distance of 143.81 feet to the mid-section line of said Section 5, as shown on said Record of Survey;

THENCE South 0 degrees 31 minutes 46 seconds East 5.69 feet upon said mid-section line to the POINT OF BEGINNING.

**EXHIBIT A**  
(Continued)

The basis for bearing for this legal description of the Record of Survey in Book 29 of Surveys at Page 90, Pima County, Arizona.

(Jv arb 7 for Section 8 & arb 172 for Section 5)

SECTIONS 05, 06, 07, 08  
TOWNSHIP 14 SOUTH  
RANGE 13 EAST

PAINTED HILLS OPEN SPACE

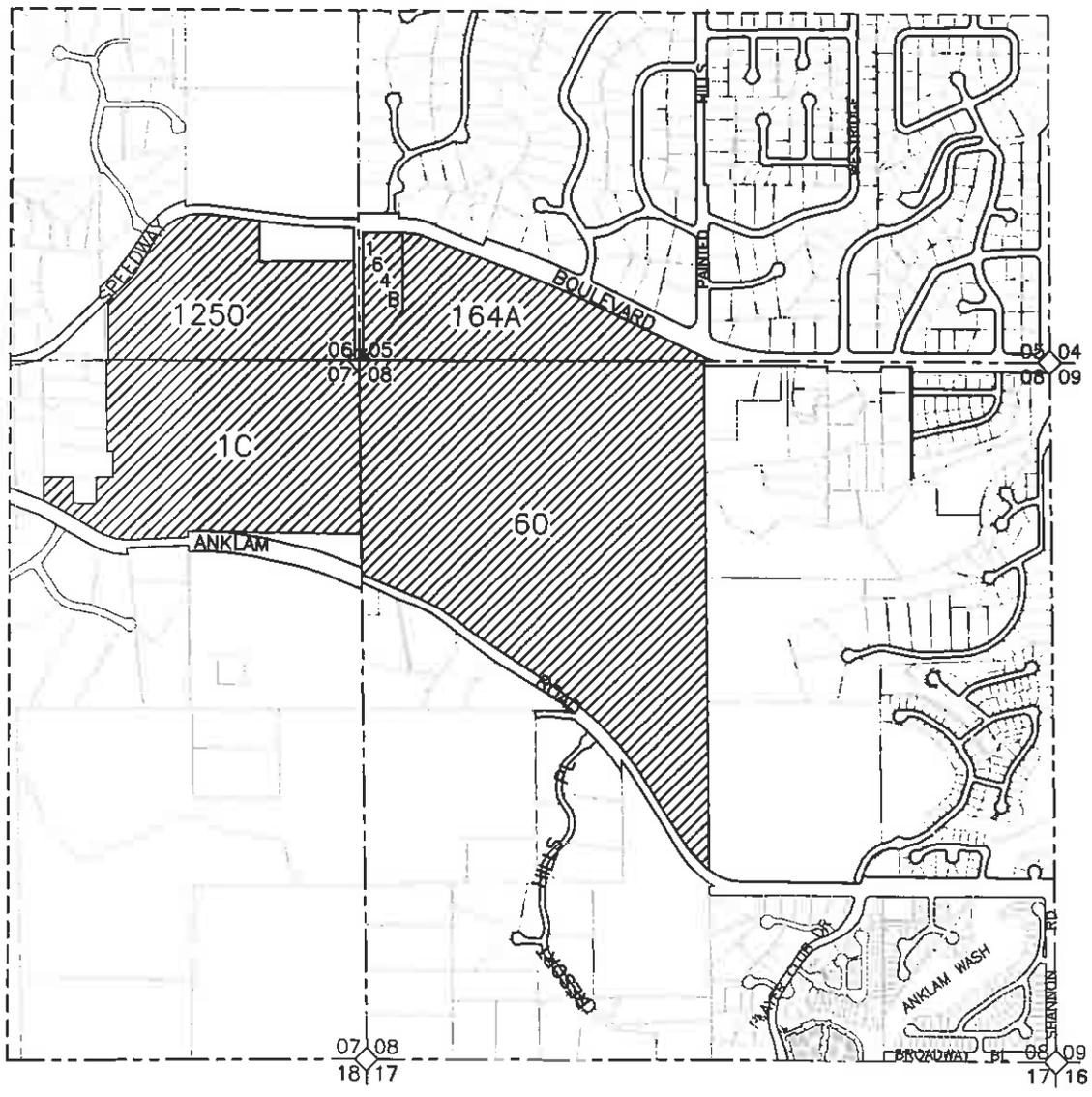
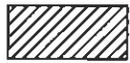


EXHIBIT "A-1"

 SUBJECT PARCELS



PIMA COUNTY DEPARTMENT OF TRANSPORTATION  
ENGINEERING INFORMATION MANAGEMENT

DRAWING NOT TO SCALE

DRAWN BY: CPerez

DATE: 06/20/2014

## NON-RECOURSE PROMISSORY NOTE

\$4,500,000.00

\_\_\_\_\_, 2014<sup>1</sup>  
Tucson, Arizona

**FOR VALUE RECEIVED, PIMA COUNTY, ARIZONA**, a political subdivision of the State of Arizona ("Borrower"), promises to pay to the order of **P&F Tucson Group, LLC**, a Delaware Limited Liability Corporation, or such other person as Lender may from time to time designate in writing (collectively, "Lender"), at \_\_\_\_\_, or by wire transfer to Lender's bank account or at such other place as Lender may from time to time designate in writing, in lawful money of the United States of America, the principal sum of **FOUR MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS** (\$4,500,000.00), together with interest thereon and such other amounts as may be payable by Borrower to Lender pursuant to the terms and conditions of this Note, in accordance with the following terms and conditions:

1. **Interest.** Principal of this Note shall bear interest, from the date of this Note until repaid to Lender, at the per annum rate of **five and three-quarters percent (5.75%)** (the "Interest Rate"), calculated on the basis of a 360-day year consisting of twelve 30-day months, and for prepayments only the actual number of days elapsed during any partial month for which interest is being charged; *provided*, that if any payment due hereunder is not paid on the due date the principal of this Note shall bear interest at the per annum rate of **seven percent (7.0%)** (the "Default Rate") from the due date of such payment until the default is cured.

2. **Payments of Principal and Interest.** Subject to the provisions of Section 6 hereof regarding prepayment of principal of this Note, and the provisions of Section 10 hereof regarding the rights and remedies of Lender upon the occurrence of an Event of Default, Borrower will pay Lender five level annual principal and interest payments in the amount of **One-Million Sixty-One Thousand Twenty-Eight Dollars and Sixty-Two Cents** (\$1,061,028.62), on \_\_\_\_\_<sup>2</sup> of each year beginning \_\_\_\_\_<sup>3</sup>, 2015.

3. **Final Maturity.** Subject to the provisions of Section 10 hereof regarding the rights and remedies of Lender upon the occurrence of an Event of Default, the entire unpaid principal balance of this Note, together with all accrued and unpaid interest and all other amounts then due Lender under this Note, shall be due and payable in full on \_\_\_\_\_<sup>4</sup>, 2019 (the "Maturity Date").

4. **Application of Payments.** Lender shall apply all payments made under this Note or the indebtedness evidenced hereby in the following order of priority: (a) first, to any late charges, costs, fees or other amounts then due and payable to Lender under this Note or the Deed of Trust (as defined herein) (other than the principal of this Note and accrued and unpaid interest

<sup>1</sup> Month and day of Closing to be inserted.

<sup>2</sup> Month and day of Closing to be inserted.

<sup>3</sup> Month and day of Closing to be inserted.

<sup>4</sup> Month and day of Closing to be inserted.

### EXHIBIT B

thereon); (b) second, to accrued and unpaid interest on the principal balance of the Note; and (c) last, to the payment of principal of this Note.

5. **Late Charge.** Borrower recognizes that, should any payment required by this Note not be paid when the same becomes due and payable, Lender will incur extra expenses for the handling of delinquent payments and the loss of the use of the money due, the exact amount of such extra expense being impossible to ascertain, but that a charge equal to One Hundred Dollars (\$100.00) for each day of such delinquent payment would be a fair approximation of the expense so incurred by Lender for the handling of delinquent payments and the loss of the use of the money due. Therefore, if any payment is not paid on or before ten (10) days after the due date thereof, without further notice, and without prejudice to the right of Lender to collect any other amounts provided to be paid herein or to declare a default hereunder, the delinquent payment will be subject to a late charge equal to One Hundred Dollars (\$100.00) for each day of such delinquent payment. The late charge shall be paid by Borrower to Lender in addition to such delinquent payment

6. **Prepayments.** Borrower may voluntarily prepay all or any portion of the principal balance of this Note, together with accrued and unpaid interest on the portion of the principal balance of this Note that is being repaid. All such prepayments shall be applied in the manner provided in Section 4 above and the amount applied to the payment of principal of this Note shall be applied in the inverse order of maturity.

7. **Security, Note is Non-Recourse.** This Note is secured by that certain Non-Recourse Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the "Deed of Trust") of even date herewith from Borrower in favor of Lender encumbering certain real property located in Pima County, Arizona, as more particularly described therein (the "Property"). In the event of any default by Borrower under this Note, Lender shall look solely to Borrower's interest in the Property for satisfaction of the Borrower's obligations under this Note. In the event of foreclosure or non-judicial sale of the Property pursuant to the Deed of Trust, Lender shall not pursue any action for any deficiency against Borrower. Lender specifically releases and holds Borrower, its officers, employees, elected officials and agents harmless from and against any personal liability under this Note.

8. **Contracted For Rate of Interest.** The contracted for rate of interest of the loan contemplated hereby, without limitation, shall consist of the following:

(a) The Interest Rate, calculated and applied to the principal balance of this Note in accordance with the provisions of this Note and the Deed of Trust;

(b) The Default Rate calculated and applied to the principal balance in accordance with the provisions of this Note and the Deed of Trust; and

(c) All Additional Sums (as hereinafter defined), if any.

Borrower agrees to pay an effective contracted for rate of interest which is the sum of the Interest Rate referred to in Section 8(a) above, plus any additional amounts of interest resulting from the application of the Default Rate referred to in Section 8(b) above, and the Additional Sums, if any, referred to in Section 8(c) above.

9. **Additional Sums.** All fees, charges, goods, things in action or any other sums or things of value (other than the interest resulting from the Interest Rate and the Default Rate), paid or payable by Borrower (collectively, the "Additional Sums"), whether pursuant to this Note or any other document or instrument in any way pertaining to this transaction, or otherwise with respect to this transaction, that, under the laws of the State of Arizona, may be deemed to be interest with respect to this transaction, for the purpose of any laws of the State of Arizona that may limit the maximum amount of interest to be charged with respect to this transaction, shall be payable by Borrower as, and shall be deemed to be, additional interest, and for such purposes only, the agreed upon and "contracted for rate of interest" of this transaction shall be deemed to be increased by the rate of interest resulting from the Additional Sums. Borrower understands and believes that this transaction complies with the usury laws of the State of Arizona; however, if any interest or other charges in connection with this lending transaction are ever determined to exceed the maximum amount permitted by law, then Borrower agrees that (a) the amount of interest or charges payable under this transaction shall be reduced to the maximum amount permitted by law and (b) any excess amount previously collected from Borrower in connection with this transaction that exceeded the maximum amount permitted by law, shall be credited against the principal balance of this Note then outstanding. If the outstanding principal balance hereunder has been paid in full, the excess amount paid shall be refunded to Borrower and Borrower agrees to accept such refund.

10. **Event of Default; Acceleration.** Upon the occurrence of any of the following acts, omissions or events ("Event of Default"), the principal of this Note, together with accrued and unpaid interest thereon, and all other amounts outstanding under this Note and the Deed of Trust shall, at the option of Lender, be immediately due and payable:

(a) The failure of Borrower to make any interest or principal installment payment due under this Note (including the interest and principal installment payment due on the Maturity Date), whether at maturity, by acceleration, or otherwise, in accordance with the terms of this Note; or

(b) The failure of Borrower to pay any late charges, costs, fees or other amounts then due and payable to Lender under this Note or the Deed of Trust (other than the installment payments referenced in subsection (a) above) in accordance with the terms of this Note or the Deed of Trust, on or before five (5) days after Borrower's receipt of written notice of such non-payment; or

(c) The failure of Borrower to punctually and properly perform any other covenant, condition or agreement contained in this Note or the Deed of Trust; or

(d) The sale, transfer, conveyance, assignment or other disposal of, or further encumbrance of, all or any part of the Property in violation of Paragraph 10 of the Deed of Trust; or

(e) Any representation or warranty of Borrower set forth in this Note or the Deed of Trust is false or misleading in any material respect when made; or

(f) Any material default under the Purchase Agreement dated September \_\_\_\_, 2014 between Lender and Borrower (the "Agreement") or any agreement or instrument executed by Borrower in connection with the Agreement, and the failure to cure such material default on or before thirty (30) days after Borrower's receipt of written notice of such failure from Lender; or

(g) The filing of a proceeding in bankruptcy or arrangement or reorganization by or against Borrower pursuant to the Federal Bankruptcy Code, as amended, or any insolvency or similar law, Federal or state, which is now or hereafter in force, including without limitation:

(i) Borrower files a voluntary petition in bankruptcy or is adjudicated as bankrupt or insolvent, or files any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future extraterritorial, Federal, state, or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or seeks or consents to or acquiesces in the appointment of any trustee, receiver or liquidator (or other similar official) of the collateral for the Note or for Borrower, or makes any general assignment for the benefit of creditors, or admits in writing its inability to pay or fails to pay its debts generally as they become due, or consents to the appointment of a "custodian", as that term is defined in the Bankruptcy Code, of all or substantially all of its property; or

(ii) A court of competent jurisdiction enters an order, judgment or decree approving a petition filed against Borrower seeking any reorganization, dissolution or similar relief under any present or future extraterritorial, Federal, state, or other statute, law, or regulation relating to bankruptcy, insolvency or other relief for debtors, or Borrower is the subject of an order for relief entered by such a court and such order, judgment or decree remains unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the first date of entry thereof, or any trustee, receiver, custodian or liquidator (or other similar official) of the collateral for this Note or for Borrower is appointed without the consent or acquiescence of Borrower and such appointment remains unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive); or

(iii) A writ of execution or attachment or any similar process is issued or levied against all or any part of or interest in the property of Borrower, and such execution, attachment or similar process is not released, bonded, satisfied, vacated or stayed within sixty (60) days after its entry or levy.

11. **Time of Essence.** Time is of the essence of this Note and each provision hereof.

12. **Waiver by Lender.** No delay on the part of Lender in exercising any right, power or privilege hereunder shall operate as a waiver thereof, and no single or partial exercise of any right, power or privilege hereunder shall preclude other or further exercise thereof, or be deemed to establish a custom or course of dealing or performance between the parties hereto, or preclude the exercise of any other right, power or privilege.

13. **Costs of Enforcement.** Borrower agrees to pay to Lender on demand all reasonable expenses or other costs, including attorneys' fees and expert witness fees, incurred by Lender in

connection with the enforcement or collection against Borrower of any obligation hereunder or against Borrower of any provision of the Deed of Trust, and in connection with or arising out of any litigation, investigation or proceeding instituted by any governmental entity or any other person with respect to the Deed of Trust, whether or not suit is instituted, including, but not limited to, such costs or expenses arising from the enforcement or collection against Borrower of this Note or the Deed of Trust in any state or Federal bankruptcy or reorganization proceeding.

14. **Waivers of Borrower.** Borrower (for itself and its successors and assigns), and any endorsers and guarantors hereof, by virtue of such endorsement or guaranty, respectively, hereby waive, except as is set forth herein, presentment for payment, protest and demand, notice of protest, demand and of dishonor and nonpayment of this Note, and expressly agree that this Note, or any payment hereunder, may be extended from time to time before, at, or after maturity of the obligations evidenced hereby, without in any way affecting the liability of Borrower hereunder, or the validity of any mortgage, pledge, lien or security interest given to secure payment hereof.

15. **Governing Law; Waiver of Jury Trial.** This Agreement is governed by and will be construed in accordance with the laws of the State of Arizona, without regard to its conflict of laws rules. Lender and Borrower acknowledge and agree that any controversy which may arise under this Note or the Deed of Trust or with respect to the transactions contemplated hereby or thereby would be based upon difficult and complex issues and, therefore, the parties agree that any lawsuit arising out of any such controversy shall be tried in a court of competent jurisdiction in Pima County, Arizona by a judge sitting without a jury.

16. **Assignment.** This Note shall inure to the benefit of the successors and assigns of Lender.

**Remainder of this page intentionally left blank**

**IN WITNESS WHEREOF;** Borrower has executed this Promissory Note as of the date first above written.

**PIMA COUNTY, ARIZONA**, a political subdivision of the State of Arizona

By: \_\_\_\_\_  
Sharon Bronson, Chair, Board of Supervisors

ATTEST:

\_\_\_\_\_  
Robin Brigode, Clerk of the Board

APPROVED AS TO FORM:

\_\_\_\_\_  
Tobin Rosen, Civil Deputy County Attorney

EXHIBIT ONLY ..... DO NOT EXECUTE

**WHEN RECORDED MAIL TO:**

Keri Silvyn, Esq.  
Lazarus, Silvyn & Bangs, P.C.  
4733 East Camp Lowell Drive  
Tucson, AZ 85712

**NON-RECOURSE DEED OF TRUST, SECURITY AGREEMENT AND ASSIGNMENT  
OF RENTS**

DATE: \_\_\_\_\_, 2014

TRUSTOR: PIMA COUNTY, ARIZONA  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

Trustor's  
Organizational I.D.: \_\_\_\_\_

BENEFICIARY: P&F Tucson Group,, LLC, a Delaware Limited Liability Corporation

TRUSTEE: Title Security Agency, LLC  
6640 N Oracle Rd, Ste 120  
Tucson, AZ 85704  
Telephone: 520.219.6451

PROPERTY in Pima County, State of Arizona, described as:

See **Exhibit "A"** attached hereto and incorporated herein  
by reference.

This Deed of Trust is made among Trustor, Beneficiary and Trustee who agree as follows:

1. **Grant and Conveyance.** For value received, Trustor irrevocably grants, conveys and assigns to Trustee in Trust, with power of sale, certain real property located in Pima County, Arizona, and more particularly described in Exhibit A attached hereto (the "Land"), together with the following: (i) all buildings, structures and improvements located on the Land, including, without limitation, all irrigation ditches, gates, valves, pumps, tanks, and wells; (ii) all of Trustor's right, title and interest in and to all appurtenances, hereditaments, interests, privileges, easements, rights-of-way, reversions, remainders, development rights, well rights, water rights, and air rights (including any grandfathered groundwater or other groundwater or surface water rights) appurtenant to the Land, including, without limitation, all irrigation ditches, gates, valves, pumps, tanks, and wells, if any; (iii) all of Trustor's right, title and interest in and to all oil, gas, and mineral rights relating to the Land not previously reserved; (iv) all of Trustor's right, title and interest, on a non-exclusive basis, in and to all plans, specifications, plats, assessments,

agreements, reports, studies, and surveys relating to the Land or improvements located thereon, and all warranties applicable thereto; and (v) all of Trustor's right, title and interest in and to any other rights or privileges appurtenant to the Land or, on a non-exclusive basis, any other rights or privileges used in connection with the Land and together with the Land and items (i) through (v) above, the "Property"). All components of the Property are deemed encumbered hereby and are declared to be part of the real estate whether or not physically attached to the Land.

2. Obligations Secured. This Deed of Trust is given for the purpose of securing, in such order of priority as Beneficiary may elect:

(a) Payment of the sum of FOUR MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$4,500,000.00), which may include, without limitation, future advances of principal made after the date hereof, with interest thereon, extension and other fees, late charges and attorneys' fees, according to the terms of that Promissory Note of even date herewith, made by Trustor payable to the order of Beneficiary, and all extensions, modifications, renewals or replacements thereof (the "Note"); and

(b) Payment, performance and observance by Trustor of each covenant, condition, provision and agreement contained herein and in the Purchase Agreement dated \_\_\_\_\_, 2014 between Trustor and Beneficiary (the "Agreement"), and of all monies expended or advanced by Beneficiary pursuant to the terms hereof, or to preserve any right of Beneficiary hereunder, or to protect or preserve the Trust Property or any part thereof;

All of the indebtedness and obligations secured by this Deed of Trust are hereinafter collectively called the "Obligations Secured". All capitalized terms used herein without definition shall have the meanings attributed to such terms in the Note.

3. Payment of Obligations Secured. Trustor shall perform and pay when due and before delinquency: (a) all Obligations Secured hereby; (b) all liens, taxes, assessments, fines, impositions and charges of every type or nature affecting the Property; and (c) all costs, fees and expenses of this Trust including, without limitation, all fees of Trustee.

4. Maintenance of Property; No Construction. Trustor shall neither commit nor permit to occur any waste upon the Property. Trustor shall keep the Property free of rubbish and other unsightly or unhealthful conditions. Trustor shall neither use nor permit the use of the Property in violation of any applicable statute, ordinance or regulation, including, without limitation, any Environmental Laws (as defined below). Trustor shall not seek to modify or amend the zoning or other protected development rights related to the Property, or subdivide, plat, dedicate for public use, or restrict or grant any easements relating to the Property. Trustor shall not commence or undertake any grading, development or construction activities on the Property. Trustor shall pay or cause to be paid before delinquent all taxes and assessments of every kind, nature and description levied or assessed on or against the Property and, upon request by Beneficiary, shall deliver to Beneficiary, at least ten (10) days before they become delinquent, receipts showing payment of all such taxes and assessments and shall pay when due all dues and charges for water and water delivery, electricity, gas, sewers, waste removal, bills for repairs, and any and all other claims, encumbrances and expenses incident to the ownership of the Property.

5. Protection by Trustor. Trustor shall defend, at Trustor's expense, any action or proceeding purporting to affect Trustor's interest in the Property or the liens, rights or powers of Beneficiary or Trustee, or seeking to impose any liability on Beneficiary or Trustee because of any act or omission of Trustor. Trustor shall and does hereby agree to indemnify and hold Beneficiary and Trustee harmless from any such action or proceeding.

6. Protection by Beneficiary or Trustee; Reimbursement. Beneficiary or Trustee or both of them are authorized at their election to appear in and defend any action or proceeding purporting to affect the Property or the liens, rights or powers of Beneficiary or Trustee; to pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior hereto; and, in exercising any such powers, to pay reasonable expenses, employ counsel, and to pay counsel's reasonable fees and costs. Without obligation to do so, Beneficiary or Trustee may pay any amount or perform any obligation which is required of Trustor hereunder and which is not paid or performed by Trustor within 10 days after receipt of written notice by Trustor with respect to any payment obligation or within 30 days after receipt of written notice by Trustor with respect to any performance obligation (except in either case, in the event of an emergency Beneficiary shall not be required to provide any prior notice), or take any other action or incur any other expense to protect the Property and the security hereof. All amounts so paid or expenses so incurred by Trustee or Beneficiary shall bear interest at the Default Rate from the date incurred until repaid in full, and shall be secured by this Deed of Trust as a lien on the Property. Unless otherwise agreed, such amounts or expenses with interest shall be payable within 10 days after written notice to Trustor requesting such payment. Neither Beneficiary nor Trustee shall be obligated to perform or discharge any obligation or duty to be performed or discharged by Trustor under any lease, declaration or covenant.

7. Environmental Laws. Trustor agrees to indemnify, defend and hold Beneficiary harmless for, from and against and to reimburse Beneficiary with respect to, any and all claims, demands, causes of action, loss, damage, liabilities, costs and expenses, including but not limited to Beneficiary's costs, of any and every kind or character, known or unknown, fixed or contingent, asserted against or incurred by Beneficiary at any time and from time to time by reason of or arising out of any violation of any "Environmental Law", as hereinafter defined, in effect and any and all matters arising out of any act, omission, event or circumstance first existing or first occurring after the date hereof for which any party may claim Beneficiary has liability (including without limitation the presence on the Land or release from the Land of hazardous substances or solid waste disposed of or otherwise released from the Land), regardless of whether the act, omission, event or circumstance constituted a violation of any Environmental Law at the time of its existence or occurrence; provided, however, such indemnity shall not apply with respect to matters existing as of the date hereof, or caused by or arising out of the gross negligence or willful misconduct of Beneficiary. The terms "hazardous substance" and "release" shall have the meanings specified in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), and the terms "solid waste" and "disposed" shall have the meanings specified in the Resource Conservation and Recovery Act of 1976 ("RCRA"); provided, in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment and shall apply retroactively to matters existing prior to the date hereof, and provided further to the extent that state laws establish a meaning for "hazardous substance," "release," "solid waste" or "disposal" which is broader than that specified in either

CERCLA or RCRA, such broader meaning shall apply and shall apply retroactively to matters existing prior to the date hereof. The provisions of this paragraph shall survive the release of this Deed of Trust or any foreclosure of this Deed of Trust and shall continue thereafter in full force and effect. As used herein, the term "Environmental Law" shall include CERCLA, RCRA, all state and local government law of like nature, as each may now exist or be hereinafter amended, supplemented or replaced and any other laws of the United States of America or state or local government now existing or hereafter enacted which pertain to hazardous or toxic substances on or from the Land, the environmental condition of the Land or the environmental contamination of or from the Land.

8. Assignment of Leases and Rents. As additional security for the Obligations Secured, Trustor hereby gives to and confers upon Beneficiary the right, power, and authority, during continuance of this Trust, to collect and all rents, issues, profits or income arising from the Property (the "property income"), reserving to Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such property income as it becomes due and payable. Upon any such default, Beneficiary may at any time, without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such property income, including that past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of the Property, the collection of such property income, and the application thereof as aforesaid, shall not cure or waive any default or notice of Trustee's Sale hereunder or invalidate any act done pursuant to said notice.

9. Security Agreement. That in addition to creating a lien against the Property, this Deed of Trust constitutes a security agreement within the meaning of the Arizona Uniform Commercial Code (the "Code") and is intended to and does hereby create a lien on and security interest in favor of Beneficiary in all fixtures, equipment, property income and other personal property of Trustor, and all replacements and substitutions thereof, including, without limitation, all of Trustor's right, title and interest as beneficiary in, to and under the Trust and the Trust Agreement (the "Personal Property"), at any time situated on or used in connection with the maintenance and operation of the Property, or related to the ownership of the Property. Trustor shall not amend, modify, supplement, restate, replace or terminate the Trust Agreement without the prior written consent of Beneficiary. This Deed of Trust shall be self-operative with respect to such Personal Property, but Trustor shall execute and deliver on demand from Beneficiary one or more security agreements, financing statements and other instruments as Beneficiary may request in order to impose the lien hereof more specifically upon any such Personal Property, the terms and conditions thereof to be as required by Beneficiary, in Beneficiary's sole and absolute discretion. Trustor agrees that all property of every nature and description, whether real or personal, covered by this Deed of Trust, together with all Personal Property covered by the security interest granted hereby, are encumbered as one unit, and upon default by Trustor under the Note secured hereby, or under this Deed of Trust, or any security agreement given pursuant to this paragraph, in addition to the remedies available to a secured party under the Code, this Deed of Trust and such security interest, at Beneficiary's option, may be foreclosed or sold in the

same proceeding, and all of the Property (both real property and personal property) may, at Beneficiary's option, be sold as such in one unit as a going business, subject to the provisions of Arizona Revised Statutes § 33-810(A). The filing of any financing statement relating to any Personal Property or rights or interest generally or specifically described herein shall not be construed to diminish or alter any of Beneficiary's rights or priorities hereunder.

10. Due on Sale. Except as otherwise provided in this instrument, Trustor shall not sell, transfer, convey, assign or otherwise dispose of, or further encumber, all or any part of the Property subject to this Deed of Trust, or any interest therein, voluntarily or involuntarily, by operation of law or otherwise.

11. Condemnation. Any award of damages in connection with any condemnation or taking of or for injury to any of the Property by reason of public use or for damages for private trespass or injury thereto shall be paid to Beneficiary as a prepayment under the Note until all Obligations Secured have been fully satisfied.

12. Default. Trustor shall be in default hereunder to the extent permitted by law, if: (a) Trustor fails to perform or pay on time any of the Obligations Secured and such failure is not cured within the notice and cure period, if any, provided for in the Note; (b) Trustor breaches any other covenant or provision hereof (other than the payment of money) and such failure continues for 30 days after Trustor's receipt of written notice from Beneficiary.

13. Remedies, Deed of Trust is Non-Recourse. Upon any default by Trustor, Beneficiary may declare all sums secured hereby to be immediately due and payable in full, and may accelerate the Obligations Secured, and Beneficiary shall have the right to cause Trustee to sell the Property or any part thereof as provided by applicable law. All provisions of the law of the state where the Land is located relating to deeds of trust are incorporated by reference herein. In lieu of sale pursuant to the power of sale conferred hereby, this Deed of Trust may be foreclosed in the same manner provided by law for the foreclosure of mortgages on real property. In any such judicial foreclosure, Beneficiary shall recover its reasonable attorneys' fees together with all costs and expenses, including without limitation, all court costs, experts' fees and cost of evidence of title. Beneficiary shall have all rights and remedies available to it hereunder and at law or in equity, and all remedies shall be cumulative and may be pursued concurrently or consecutively to the extent permitted by law. In the event of any default by Trustor under the Note which this Deed of Trust secures or under this Deed of Trust, Beneficiary shall look solely to Trustor's interest in the Property for satisfaction of the Trustor's obligations under the Note or under this Deed of Trust. In the event of foreclosure or non-judicial sale of the Property pursuant to this Deed of Trust, Beneficiary shall not pursue any action for any deficiency against Trustor. Beneficiary specifically releases and holds Trustor, its officers, employees, elected officials and agents harmless from and against any personal liability under the Note which the Deed of Trust secures and under this Deed of Trust.

14. Actions by Trustee. At any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary, without affecting the personal liability of any person for payment of the Obligations Secured hereby, Trustee may consent to the making of any map or plat of the Property, join in granting any easement thereon or in any extension agreement or agreement subordinating the lien or charge hereof.

15. Waiver of Remedies. Time is of the essence hereof. Acceptance of payment of money after its due date shall not constitute any waiver under this Deed of Trust or of Beneficiary's right to require prompt payment of all other sums when due. No extension of time for payment or renewal of the Obligations Secured or the release from any personal liability of any person directly or contingently liable for any indebtedness secured hereby shall affect the lien or priority of this Deed of Trust. The taking by Beneficiary of any other collateral for the Obligations Secured hereby shall in no way affect or impair the lien or priority of this Deed of Trust and Beneficiary may resort for the payment of the Obligations Secured to its several securities in such order and manner as Beneficiary may determine. Any forbearance by Beneficiary in exercising any remedy or right hereunder shall not be a waiver of or preclude the subsequent exercise of any such remedy or right. The Trustor shall pay all costs of recordation and the release fees of Trustee, if any.

16. Notice. Except for any notice required under applicable law to be given in another manner, any notice to Trustor or Beneficiary provided for in this Deed of Trust shall be given in the manner, and shall be deemed received at the time, provided in the Agreement. Unless a Request for Notice is recorded as provided by law, notice of any Trustee's sale shall be sent solely to Trustor's address set forth therein.

17. Parties Bound. This Deed of Trust applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, personal representatives, administrators, executors, successors and assigns. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and neuter and conversely and the singular number includes the plural and conversely. The term "Trustor" shall mean all persons named as Trustor herein, whether one or more, and Trustor's obligations shall be joint and several. "Trustee" shall include all successor trustees.

18. Trustee. Trustee accepts this Deed of Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee may, but is not obligated to, notify any party hereto of any pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party, unless brought by Trustee. Beneficiary may appoint a successor Trustee in the manner prescribed by law. Trustor and Beneficiary authorize Trustee, in the event any demand or notice is made or tendered to it concerning this Deed of Trust or the Property, to hold any money and documents and to withhold action or performance until an action shall be brought in a court of competent jurisdiction to determine the rights asserted or the propriety of the demand, notice or action requested and Trustee shall be without liability or responsibility for awaiting such court action. A successor Trustee herein shall, without conveyance from the predecessor Trustee, succeed to all its predecessor's title, estate, rights, powers and duties. Trustee may resign at any time by mailing or delivering notice thereof to Beneficiary and Trustor and, having so resigned, shall be relieved of all further liability and responsibility to Trustor, Beneficiary or otherwise hereunder. Trustee shall not be liable for any action taken in its discretion and in good faith or upon advice of counsel or upon any information supplied or direction given by Beneficiary.

19. Governing Law; Severability. The state and local laws applicable to this Deed of Trust shall be the laws of the jurisdiction in which the Land is located. The foregoing sentence shall not limit the applicability of federal law to this Deed of Trust. In the event that any

provision or clause of this Deed of Trust conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust that can be given effect without the conflicting provision, and to this end the provisions of this Deed of Trust are declared to be severable.

20. Integration. This instrument constitutes the entire understanding of the parties, each of whom has been, or has had the opportunity to be, represented by counsel of each party's choosing, and have been bargained for and are negotiated agreements that set forth the entire agreement with respect to the terms thereof, and there are no oral or written statements, representations, agreements or understandings which modify, amend or vary, or purport to modify, amend or vary any of the terms of such documents.

21. Security Intended. Notwithstanding any provision hereof to the contrary, the parties intend that this document constitute security for the payment and performance of the Obligations Secured as provided elsewhere herein, and shall be a "deed of trust" as defined in A.R.S. §33-801. If despite that intention a court of competent jurisdiction shall determine that this document does not qualify as a "trust deed" or "deed of trust" within the meaning and purview of Chapter 6.1, Title 33, Arizona Revised Statutes, then, ab initio, this instrument shall be deemed a realty mortgage under A.R.S. §33-702, and shall be enforceable as such, the Trustor shall be deemed a "mortgagor," the Beneficiary shall be deemed a "mortgagee," the Trustee shall have no capacity but shall be disregarded and all references to the "Trustee" herein shall be deemed to refer to the "mortgagee" to the extent not inconsistent with interpreting this instrument as though it were a realty mortgage. As a realty mortgage, Trustor as mortgagor shall be deemed to have conveyed the Property ab initio to the Beneficiary as mortgagee, such conveyance as a security to be void upon condition that Trustor pay and perform all its Obligations Secured hereby.

22. Release of Deed of Trust. At such time as all of the Obligations Secured have been paid or otherwise satisfied in full, Beneficiary shall irrevocably and unconditionally release and reconvey the Property then held hereunder without any covenant or warranty, express or implied. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto." Beneficiary has no obligation to grant any partial release or partial reconveyance of the Property from the lien of this Deed of Trust.

*[Signatures on following page]*

IN WITNESS WHEREOF, this Deed of Trust is executed as of the day and year first above written.

PIMA COUNTY, ARIZONA, a political subdivision of the State of Arizona

\_\_\_\_\_  
Sharon Bronson, Chair, Board of Supervisors

ATTEST:

\_\_\_\_\_  
Robin Brigode, Clerk of the Board

APPROVED AS TO FORM:

\_\_\_\_\_  
Tobin Rosen, Civil Deputy County Attorney

STATE OF ARIZONA        )  
                                      ) ss.  
County of Pima            )

The foregoing instrument was acknowledged me, the undersigned Notary Public, this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by Sharon Bronson, the Chair of the Board of Supervisors of PIMA COUNTY, ARIZONA, a political subdivision of the State of Arizona, on behalf thereof.

\_\_\_\_\_  
Notary Public

(Seal)

**EXHIBIT A**

Legal Description

EXHIBIT ONLY ..... DO NOT EXECUTE

 <b><i>First American Title</i></b>	Commitment for Title Insurance
	ISSUED BY <b>First American Title Insurance Company</b>
<b>Schedule BII</b>	

File No.: 600-28251-RDH

**EXCEPTIONS**

The policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

1. TAXES AND ASSESSMENTS collectible by the County Treasurer, a lien not yet due and payable for the following year:  
  
2014
2. RESERVATIONS contained in the Patent from the United States of America, recorded August 15, 1931 in Book 154 of Deeds, Page 565 reading as follows:  
RESERVED from the lands hereby granted a right of way thereon for ditches or canals constructed by the authority of the United States of America. Excepting and reserving, however, to the United States all the coal and other minerals in the lands so entered and patented, together with the right to prospect for, mine, and remove the same pursuant to the provisions and limitations of the Act of December 20, 1916 (30 Stat., 862)
3. RESERVATIONS contained in the Patent from the United States of America, recorded August 31, 1929 in Book 137 of Deeds, Page 406 reading as follows:  
RESERVED from the lands hereby granted a right of way thereon for ditches or canals constructed by the authority of the United States of America. Excepting and reserving, however, to the United States all the coal and other minerals in the lands so entered and patented, together with the right to prospect for, mine, and remove the same pursuant to the provisions and limitations of the Act of December 20, 1916 (30 Stat., 862)
4. RESERVATIONS contained in the Patent from the United States of America, recorded January 07, 1942 in Book 245 of Deeds, Page 62 reading as follows:  
RESERVED from the lands hereby granted a right of way thereon for ditches or canals constructed by the authority of the United States of America. Excepting and reserving, however, to the United States all the coal and other minerals in the lands so entered and patented, together with the right to prospect for, mine, and remove the same pursuant to the provisions and limitations of the Act of December 20, 1916 (30 Stat., 862)
5. EASEMENT and rights incident thereto, as set forth in instrument:  
  
Recorded in Book        59 of Miscellaneous Records  
Page    562  
Purpose        Utilities

**Exhibit D**



When Recorded Return to:

Pima County Real Property Services  
Attn.: Michael D. Stofko, Esq.  
201 N. Stone Avenue, 6<sup>th</sup> Floor  
Tucson, AZ 85701-1215

### SPECIAL WARRANTY DEED

For valuable consideration, P&F Tucson Group, LLC, a Delaware Limited Liability Company ("Grantor") does hereby convey to Pima County, a political subdivision of the State of Arizona, the following described property situated in Pima County, Arizona:

SEE LEGAL DESCRIPTION ON ATTACHED **EXHIBIT "A"** AND LOCATION MAP AS DEPICTED ON ATTACHED **EXHIBIT "A-1"**.

SUBJECT TO all matters of record as set forth on **Exhibit B**.

And it warrants and defends the title against all acts of the Grantor and no other, subject to all matters of record.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2014.

EXEMPTION: A.R.S. § 11-1134.A.3.		Board of Supervisors Approval: 8/18/2014	
Agent: MDS	File: 11,154-001 thru -005	Activity CPR.OSPHIL	P [X] De [ ] Do [X] E [ ]

EXHIBIT E

