

E. Vistoso wishes to begin work on the restoration of the Big Wash (the "Project") pursuant to a restoration plan approved by the District and made part of this Agreement, in order to fulfill said obligation under the Development Agreement. The Project will include restoration of the original sixty-seven (67) acres as agreed to in the Development Agreement, plus an additional ten (10) acres, as described in Exhibit "A" attached hereto (the "Property"), all of which Property is located within the Town of Oro Valley (the "Town"). The Project is designed to include the removal of no more than 141,392 cubic yards of material from the Property (the "Excavation"), that area as described in Exhibit "B" attached hereto, although the exact amount of material to be excavated and area for excavation may change upon mutual written agreement of the Parties.

F. The restoration plan for the Project (the "Restoration Plan") attached hereto as Exhibit "C" includes a Xeroriparian Restoration Project Narrative (the "Narrative"), a conceptual Grading Plan, a conceptual Irrigation Plan, a conceptual Planting Plan, a hydraulic model and a sediment transport analysis, all of which have been reviewed and approved by the District.

G. The Project will be completed in conjunction with the development of an approximately 114-acre commercial/retail center called Oro Valley Marketplace, located east of an immediately adjacent to the Big Wash and also in the Town. Because the Project will be completed as part of the overall development of the Oro Valley Marketplace, the Town will be responsible for review and approval of the Grading, Planting and Irrigation Plans in the Restoration Plan, for the requirement and release of assurances (if any) and performance bonds, for issuance of all construction and building permits, and for final inspection and approval of all construction.

H. The Parties acknowledge that due to changed circumstances since the execution of the Development Agreement, some of the terms and provisions of this Agreement may amend and supersede the terms and provisions of the Development Agreement. For example, the size and scope of development of the Project in conjunction with the Oro Valley Marketplace will require that the deadline for completion of the restoration be extended past the original March 12, 2007 deadline established in the Development Agreement.

AGREEMENT

NOW, THEREFORE, the Parties hereto agree as follows:

1. **Term.** This Agreement shall commence on the date it is fully executed by both parties hereto (the "Effective Date") and shall remain in full force and effect until the date that is five (5) years after initial completion of the Project, unless earlier terminated as provided herein.

2. **Restoration Plan.** Vistoso shall, at its own cost and expense, conduct Excavation (as defined herein), restore native vegetation and wildlife habitat, conduct Maintenance (as defined herein) and perform all other restoration and construction and post-construction activities associated with the Project in substantial conformance with the approved Restoration Plan. The approval of the District's director (the "Director") shall be required for any material changes to the Restoration Plan.

3. **Work Standards.** All work shall be performed in a good and workmanlike manner, and all work and materials shall comply with all applicable federal, state and local laws and regulations, codes and standards. All work must not create a nuisance or material inconvenience for residents. Vistoso shall take all necessary steps and precautions to limit dust caused directly or indirectly by Project. Work shall only be conducted between 6:00 a.m. and sunset, Monday through Friday, and between the hours of 8:00 a.m. and 5:00 p.m. on Saturdays and Sundays.

4. **Contractors.** Vistoso shall contract only with responsible, licensed contractors, to perform work on the Project. Vistoso shall furnish the County with copies of all contracts and agreements with contractors entered into with respect to the Project. Vistoso shall cause each such contract or agreement to include provisions that (i) only Vistoso or its agents, successors, assigns or representatives, and not the County, is obligated under the contract, and (ii) all warranties with respect to the contractor's work, and materials used in the construction of the Project, shall run to and benefit the County as well as Vistoso or its agents, successors, assigns or representatives, for the term of this Agreement. Vistoso shall cause its contracts with engineers and other design professionals to name the County as a co-obligee under the contract except that

obligee riders with the County as the “dual obligee” for both the Excavation and construction component of the Project and for the post-construction monitoring and Maintenance (as defined herein) component of the Project, as these components are described in this Agreement and the Restoration Plan, based on the estimated cost for these components and pursuant to the assurance requirements of the Oro Valley Zoning Code Revised (“OVZCR”), Section 26.6, in the forms attached hereto as **Exhibit “D”**. In accordance with OVZCR, Section 26.6.I, a performance bond may be partially released as portions of the Project are completed upon inspection and approval. The Parties acknowledge that Vistoso may seek partial release of a performance bond and corresponding dual obligee rider. Vistoso shall provide written notice to the Town and the County that Vistoso requests partial or full release of any performance bond and corresponding dual obligee rider. The County shall coordinate with the Town to complete inspections of the Project with the Town in a reasonable time period and manner in order to expeditiously authorize release of any performance bond and corresponding dual obligee rider. If Vistoso fails to initiate and construct any or all of the Project or fails to complete the Project substantially as provided in this Agreement and the Restoration Plan, the County may, but is not required to, make a demand on the dual obligee rider or riders to complete the Project, including if necessary, restoring or correcting any deviation from this Agreement or the Restoration Plan.

B. Public Meeting. Vistoso shall conduct at least one public meeting with neighborhood representatives, including the Catalina Shadows and Palisades Point subdivisions, to discuss the proposed Project. Vistoso shall also identify a primary contact (“Project Ombudsman”) for neighbors with questions or concerns about the Project.

C. Baseline Conditions. In preparing the Restoration Plan, Vistoso shall have collected and documented sufficient detail on baseline conditions with respect to topography and vegetation location and density before the Project commencement. Such baseline conditions will assist in determining compliance with the Excavation limits described in **Section 8.C** and with post-construction channel and floodplain monitoring as described in the approved Narrative.

D. Improvement Plans. In order to obtain permits to construct the Project, Vistoso will be required to submit detailed improvement or construction plans (the “Improvement Plans”) for grading, irrigation system and landscaping installation to the Town for

approval, which Improvement Plans shall be in substantial conformance with the Restoration Plan. Vistoso shall simultaneously submit copies of such Improvement Plans and any subsequent revisions to the District which shall have ten (10) days from the date of receipt of the Improvement Plans to review for substantial conformance with the Restoration Plan and provide written comments to the Town in order to permit the Town to complete its review and provide comment to Vistoso.

8. Construction Phase.

A. Project Commencement and Completion. Vistoso shall cause the Project to be commenced in a reasonably prompt fashion, but no later than twelve (12) months after the date this Agreement is approved by the Board of Supervisors. Vistoso anticipates that the Excavation (as defined herein) shall take approximately four (4) months to complete. Vistoso shall begin the remainder of the Project within thirty (30) days after Vistoso completes the Excavation, or at a later date with approval from the Director, which approval shall not be unreasonably withheld. Vistoso shall complete the Project no later than March 12, 2009, unless a later date is approved by the Director.

B. Inspection and Monitoring. Vistoso shall conduct or have conducted ongoing periodic field inspections and monitoring of the Project site during construction to verify contractor compliance with this Agreement and the Restoration Plan and for certification to the Town in accordance with the project standard details and specifications. Such inspection and monitoring will include coordination with contractor and geotechnical engineer, preparation of daily log of events, plan interpretation, and coordination with Town field staff. Relevant field inspection and monitoring of the Project will include grading, drainage, excavation and backfill, on-site and off-site plant nurseries and salvaged plant storage areas. These inspection and monitoring reports will be submitted to the District on a monthly basis during the period of construction of the Project. The District may also choose to inspect the Project site and attend pre-construction meetings and shall provide Vistoso with at least forty-eight (48) hours advance notice of such inspection or attendance. The District shall have the power to stop work, if reasonable and necessary, to enforce this Agreement and the Restoration Plan. The District's inspection does not relieve Vistoso of any of its liability or obligations.

C. Use of Excavation Material. The Project is designed to require excavation of approximately 141,392 cubic yards of material from that portion of the Property described in Exhibit "B". Vistoso shall have the right to use material removed during the Excavation with payment to the County of \$4.00 per cubic yard. Neither the District nor the County warrant the suitability of such material for any subsequent use. No more than 141,392 cubic yards of material may be removed as part of the Excavation, and material may be removed only from the location described in Exhibit "B", unless the amount of material to be excavated or the area for excavation changes upon mutual written agreement of the Parties. Engineering certification of the amounts and locations of material removed is required. Vistoso shall comply with the method for determining and accounting for the material removed as established by determined by the Director and provided to Vistoso within thirty (30) days after the Effective Date. Unless otherwise agreed to in writing by the Parties, if Vistoso removes material from a location owned by the District or the County other than that described in Exhibit "B", or to a depth not permitted by the Restoration Plan or this Agreement, or in excess of 141,392 cubic yards, Vistoso shall replace the excess material and pay the County a penalty of twenty dollars (\$20.00) per cubic yard of excess material removed.

9. Post-Construction Phase.

A. Letter of Map Revision. Vistoso shall prepare and gain acceptance through the Federal Emergency Management Agency for a Letter of Map Revision ("LOMR") reflecting the revised floodplain resulting from the Project constructed according to the Restoration Plan. This LOMR will be required once any disturbance to the natural floodplain occurs whether or not the Project is completed.

B. Inspection and Maintenance. Vistoso shall, at its own cost, fund regular inspections and monitoring of the Property in conformance with the provisions of the Restoration Plan, including but not limited to channel and floodplain monitoring. The inspections and monitoring shall be conducted by an inspector (the "Inspector") to be selected by Vistoso and shall comport with the schedule and protocols established in the Restoration Plan. Additionally, Vistoso shall comply with the criteria established in the Restoration Plan for the continued

maintenance of Project including vegetation, irrigation systems and grading improvements, as necessary (the "Maintenance").

C. Limitations on Future Obligations. Vistoso shall be responsible to maintain and remediate the Property as described in the Restoration Plan except as provided below.

i. *Before Project Completion; Less than Total Destruction.* If a Catastrophic Event or Unlawful Act occurs before the Project achieves the success criteria established in the Restoration Plan and the Catastrophic Event or Unlawful Act destroys less than seventy-five (75) percent of the Project area, Vistoso shall be responsible for fully restoring the damaged area. In the event that Vistoso must repair damage to the Project area, the Parties shall reasonably coordinate to determine the most appropriate process to achieve the required restoration.

ii. *Before Project Completion; Total Destruction.* If a Catastrophic Event or Unlawful Act occurs before the Project achieves the success criteria and the Catastrophic Event or Unlawful Act destroys more than seventy-five (75) percent of the Project area, Vistoso shall not be responsible for restoring the damaged area.

iii. *After Project Completion.* Finally, if a Catastrophic Event or Unlawful Act occurs after the Project achieves the success criteria or the term of the Project is complete pursuant to the Restoration Plan, Vistoso shall not be responsible for restoring the damaged area.

iv. Catastrophic Event. A "Catastrophic Event" is defined as an event, including but not limited to, as spill of hazardous or toxic substance, a flood event, the impact of a vehicle or failing aircraft, a fire, or an outbreak of disease or pestilence, which has a material and detrimental impact on the quality of native vegetation, soils or wildlife of the Property within the Project area and over which Vistoso has no reasonable control.

v. Unlawful Act. An "Unlawful Act" is defined as the unlawful act of another and shall include but not be limited to, an event or series of events, such as the intentional dumping on the Property within the Project area or its watershed of a hazardous or

toxic substance, or the discharge of such a substance by any person or entity other than the County or District in violation of a statute, ordinance, regulation or permit, which event or series of events has a material and detrimental impact on the water quality, native vegetation, soils or wildlife of the Property within the Project area, and which event or series of events could not reasonably have been prevented by Vistoso.

D. Linear Trail/Bank Protection. As part of the development of Oro Valley Marketplace, Vistoso shall construct or have constructed a linear trail (which design has been approved by the County Parks and Recreation Department and the Town's Parks and Recreation Department) and bank protection (which design shall be reviewed and approved by the District) located on County property adjacent to the western boundary of the Oro Valley Marketplace.

i. Dedications. Upon completion of the linear trail and bank protection, Vistoso, or its successor in interest, shall dedicate to the County approximately 1.07 acres of additional real property on which the linear trail and bank protection will be located. Additionally, Section 4.4 of the Agreement originally required Vistoso to dedicate 145 acres of the flood plain of the Big Wash to the County. By special warranty deed recorded on August 15, 2002, in Docket 11864, Page 756, Vistoso dedicated to the County the required 145 acres plus an extra 3.13 acres. In further consideration for the County allowing Vistoso to construct the linear trail and bank protection on approximately 1.8 acres of County property adjacent to Oro Valley Marketplace, Vistoso, or its successor in interest, shall deed to the County two parcels totaling approximately 2.13 acres located in the northwest and southeast corners of the Oro Valley Marketplace which shall be maintained in perpetuity as natural open space. Vistoso shall convey this 2.13 acres, as described and depicted by special warranty deed substantially in the form attached hereto as Exhibit "E", after completion of grading and construction and inspection and approval of such grading and construction for the Project, but before completion of the Maintenance period.

ii. Maintenance. Upon completion of construction, inspection and approval of the bank protection, the County or the District shall accept the above-described bank protection for future maintenance, repair and replacement. Likewise, upon completion of construction, inspection and approval of the linear trail, the County and/or the District shall

connection with the Project. This indemnity shall survive only through the term of this Agreement.

13. Compliance with Laws. The Parties shall comply with all federal, state, and local laws, rules and regulations applicable to them in performing their obligations under this Agreement. The laws and regulations of the State of Arizona shall govern the rights of the parties, the performance of this Agreement, and any disputes hereunder. Any action relating to this Agreement shall be brought in a court of the State of Arizona.

14. Independent Entities. The status of Vistoso and the County shall be that of independent entities. Neither Vistoso, nor Vistoso's directors, officers, agents or employees shall be considered employees of the County or be entitled to receive any employment-related fringe benefits under the Pima County Merit System, nor shall officers, agents or employees of the County or the District be deemed employees of Vistoso.

15. Liability to Contractors. Nothing in this Agreement shall create any obligation on the part of the County to pay or see to the payment of any money due any contractor or subcontractor of Vistoso, except as may be required by law.

16. Assignment. Vistoso shall not assign its rights under this Agreement, in whole or in part, without prior written approval of the County, which approval may be withheld in County's sole discretion, except that by approval of this Agreement, the County hereby approves Vistoso's assignment to Vestar OVM, L.L.C., or any entity in which Vestar OVM, L.L.C. or an affiliate of Vestar OVM, L.L.C. is a managing member, general partner, or manager. As used in this Section, the term "affiliate" shall mean an entity under common control with another entity.

17. Non-Discrimination. Vistoso shall not discriminate against any County employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin in the course of carrying out Vistoso's duties pursuant to this Agreement. To the extent applicable to Vistoso in carrying out its obligations under this Agreement and the Restoration Plan, Vistoso shall comply with the provisions of Executive Orders 75-5, as amended by Executive Order 99-4, which are incorporated into this Agreement by reference as if set forth in full herein.

18. Authority to Contract. Vistoso warrants its right and power to enter into this Agreement. If any court determines that County does not have authority to enter into this Agreement, County shall not be liable to Vistoso or any third party by reason of such determination or by reason of this Agreement.

19. Full And Complete Performance. The failure of the Parties or any one party to insist in one or more instances upon the full and complete performance with any of the terms or conditions of this Agreement to be performed on the part of the other, or to take any action permitted as a result thereof, shall not be construed as a waiver or relinquishment of the right to insist upon full and complete performance of the same, or any other covenant or condition, either in the past or in the future. The acceptance by any party of sums less than may be due and owing it at any time shall not be construed as an accord and satisfaction.

20. Cancellation for Conflict of Interest. This Agreement is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated into this Agreement by reference.

21. Termination. Upon a default under this Agreement, the Parties may pursue any remedies provided by law, including termination of this Agreement and entitlement to attorneys' fees and costs. No right or remedy is intended to be exclusive of any other right or remedy and each shall be cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Agreement.

22. Notices. Any notice required or permitted to be given under this Agreement shall be in writing and shall be served by hand delivery, by U.S. mail, or by facsimile (with an automatically generated notice of successful transmission), upon the other Parties as follows:

Pima County:
County Administrator
130 West Congress Street, 10th Floor
Tucson, Arizona 85701
Phone: (520) 740-8661
Fax: (520) 740-8171

Vistoso:
Richard Maes
Vistoso Partners, L.L.C.
1121 West Warner Road, Suite 109
Tempe, AZ 85284
Phone: (480) 831-2000
Fax: (480) 893-1604

With a copy to:

Suzanne Shields
Pima County Flood Control District
201 N. Stone Avenue, 4th Floor
Tucson, Arizona 85701-1207

Phone: (520) 740-6350
Fax: (520) 740-6749

And:

Office of the Pima County Attorney
Civil Division
32 North Stone Avenue, Suite 2100
Tucson, AZ 85701

Phone: (520) 740-5750
Fax: (520) 620-6556

With a copy to:

Lawrence S. Rollin, Esq.
Chandler & Udall, LLP
33 N. Stone Avenue, Suite 2100
Tucson, AZ 85701-1415

Phone: (520) 623-4353 x. 252
Fax: (520) 792-3426

And:

Allan J. Kasen, Esq.
Vestar Development Company
2425 E. Camelback Rd., Suite 750
Phoenix, AZ 85016

Phone: (602) 553-2644
Fax: (602) 955-2298

And:

Mary Beth Savel, Esq.
Lewis and Roca LLP
One South Church, Suite 700
Tucson, AZ 85701-1611

Phone: (520) 629-4418
Fax: (520) 879-4724

Notices shall be deemed given and received on the date of delivery to the appropriate address above. The Parties may change their notice address pursuant to this Section.

23. Force Majeure. Notwithstanding any other term, condition or provision of this Agreement to the contrary, if any party to this Agreement is precluded from satisfying or fulfilling any duty or obligation imposed upon it due to labor strikes, material shortages, war, civil disturbances, weather conditions, natural disasters, acts of God, or other events beyond the control of such party, the time period provided herein for the performance by such party of such duty or obligation shall be extended for a period equal to the delay occasioned by such events.

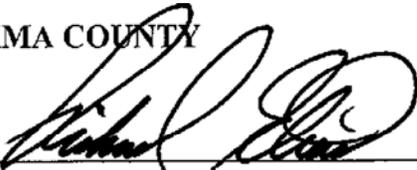
24. Severability. Each provision of this Agreement stands alone, and any provision of this Agreement found to be prohibited by law shall be ineffective to the extent of such

prohibition without invalidating the remainder of this Agreement, provided that such severance does not serve to defeat the overall intent of the parties in entering into this Agreement.

25. Entire Agreement. This Agreement, including the recitals hereto, which are incorporated into this Agreement by reference, constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein, except that the Development Agreement shall remain in full force or effect unless the Development Agreement is superseded by any terms and conditions of this Agreement which may contradict the Development Agreement. This Agreement may be modified, amended, altered or extended only by a written amendment signed by the parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

PIMA COUNTY



Chair, Board of Directors of the Pima County Regional Flood Control District

Date: **DEC 12 2006**

VISTOSO PARTNERS, L.L.C., an Arizona limited liability company

By: B. D. A. Y.
Its: Manager

Date: 12-4-06

ATTEST



Clerk of the Board

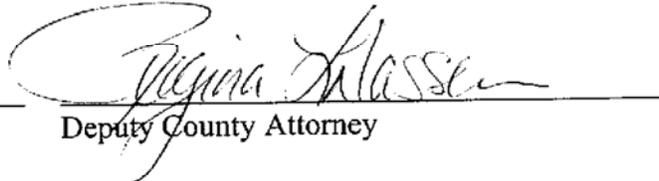
Date: **DEC 12 2006**

APPROVED AS TO CONTENT:



Suzanne Shields, Director
Pima County Flood Control District
201 N. Stone Avenue - 4th Floor
Tucson, AZ 85701-1207

APPROVED AS TO FORM:



Deputy County Attorney

11/10/06 10:00 AM

LIST OF EXHIBITS

- Exhibit "A" Legal Description of Project Area
- Exhibit "B" Maximum Limits of Area Approved for Excavation of Material
- Exhibit "C" Restoration Plan
- Exhibit "D" Forms of Performance Bonds and Dual Obligees Riders
- Exhibit "E" Special Warranty Deed for 2.13-acre natural open space dedication

1457000 20060214

Exhibit "A"

[Legal Description of Project Area]

11/10/00 10:00:00

November 28, 2006

WLB No. 185050-A004-1003X

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**BIG WASH RESTORATION AREA
77 ACRES
ORO VALLEY MARKETPLACE
RANCHO VISTOSO NEIGHBORHOOD 4**

Those portions of the Sections 31 and 32 Township 11 South, Range 14 East, and the West Half (W 1/2) of Section 5, Township 12 South, Range 14 East, Gila and Salt River Meridian, Town of Oro Valley, Pima County, Arizona, described as follows:

BEGINNING at the Southeast corner of said Section 31;

THENCE N 89°36'25" W, 349.44 feet;

THENCE N 30°45'57" W, 94.26 feet;

THENCE N 88°30'50" W, 204.84 feet;

THENCE S 48°11'37" W, 125.90 feet;

THENCE N 89°36'25" W, 220.17 feet;

THENCE N 21°15'14" W, 128.50 feet;

THENCE N 80°17'38" W, 353.09 feet;

THENCE N 82°10'04" W, 409.13 feet;

THENCE N 73°45'42" W, 201.68 feet;

THENCE N 68°00'46" W, 289.84 feet;

THENCE N 61°40'13" W, 165.42 feet;

THENCE N 24°58'18" W, 256.42 feet;

THENCE N 21°41'51" W, 75.33 feet to a point on the Southerly right-of-way line of Tangerine Road;

THENCE N 72°32'46" E, along said right-of-way line a distance of 292.30 feet;

THENCE N 88°32'46" E, along said right-of-way line a distance of 354.10 feet;

THENCE S 00°25'18" W, 278.68 feet;

THENCE S 65°39'22" E, 27.78 feet;

November 28, 2006

WLB No. 185050-A004-1003X

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- THENCE S 82°26'34" E, 647.75 feet;
- THENCE N 86°00'41" E, 489.32 feet;
- THENCE N 89°36'12" E, 371.49 feet;
- THENCE S 80°20'13" E, 91.94 feet;
- THENCE S 73°45'56" E, 33.59 feet;
- THENCE S 70°31'55" E, 152.85 feet;
- THENCE S 62°08'20" E, 44.45 feet;
- THENCE S 59°00'14" E, 153.73 feet;
- THENCE S 55°42'46" E, 37.26 feet;
- THENCE S 55°42'46" E, 183.29 feet;
- THENCE S 55°36'20" E, 534.38 feet;
- THENCE S 51°17'35" E, 141.03 feet;
- THENCE S 45°42'30" E, 143.85 feet;
- THENCE S 40°43'28" E, 139.96 feet;
- THENCE S 37°52'22" E, 94.50 feet;
- THENCE S 35°13'53" E, 60.92 feet;
- THENCE S 32°54'34" E, 75.69 feet;
- THENCE S 30°42'29" E, 53.86 feet;
- THENCE S 28°47'06" E, 59.28 feet;
- THENCE S 24°16'52" E, 205.40 feet;
- THENCE S 12°02'19" E, 206.82 feet;
- THENCE S 10°10'15" E, 405.00 feet;
- THENCE S 05°25'56" E, 531.45 feet;

November 28, 2006

WLB No. 185050-A004-1003X

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The
WLB
Group

THENCE S 00°51'46" E, 264.41 feet;

THENCE S 04°08'43" W, 454.85 feet;

THENCE N 64°19'31" W, 144.54 feet;

THENCE N 67°20'27" W, 198.58 feet;

THENCE N 76°32'07" W, 310.59 feet;

THENCE N 45°36'39" W, 145.64 feet;

THENCE N 14°44'23" W, 228.17 feet;

THENCE N 06°27'49" W, 305.63 feet;

THENCE N 08°02'51" W, 295.88 feet;

THENCE N 09°22'46" W, 408.91 feet;

THENCE N 11°23'05" W, 192.43 feet;

THENCE N 03°49'46" E, 228.07 feet;

THENCE N 57°11'06" W, 632.52 feet to a point on the West line of Section 5;

THENCE N 00°06'28" E, along said line a distance of 379.74 feet to the POINT OF BEGINNING.

CONTAINING 77 acres of land, more or less.

Prepared by:
THE WLB GROUP, INC.

Jack A. Buchanan, RLS
JAB: mo



11/28/06 00:00:00

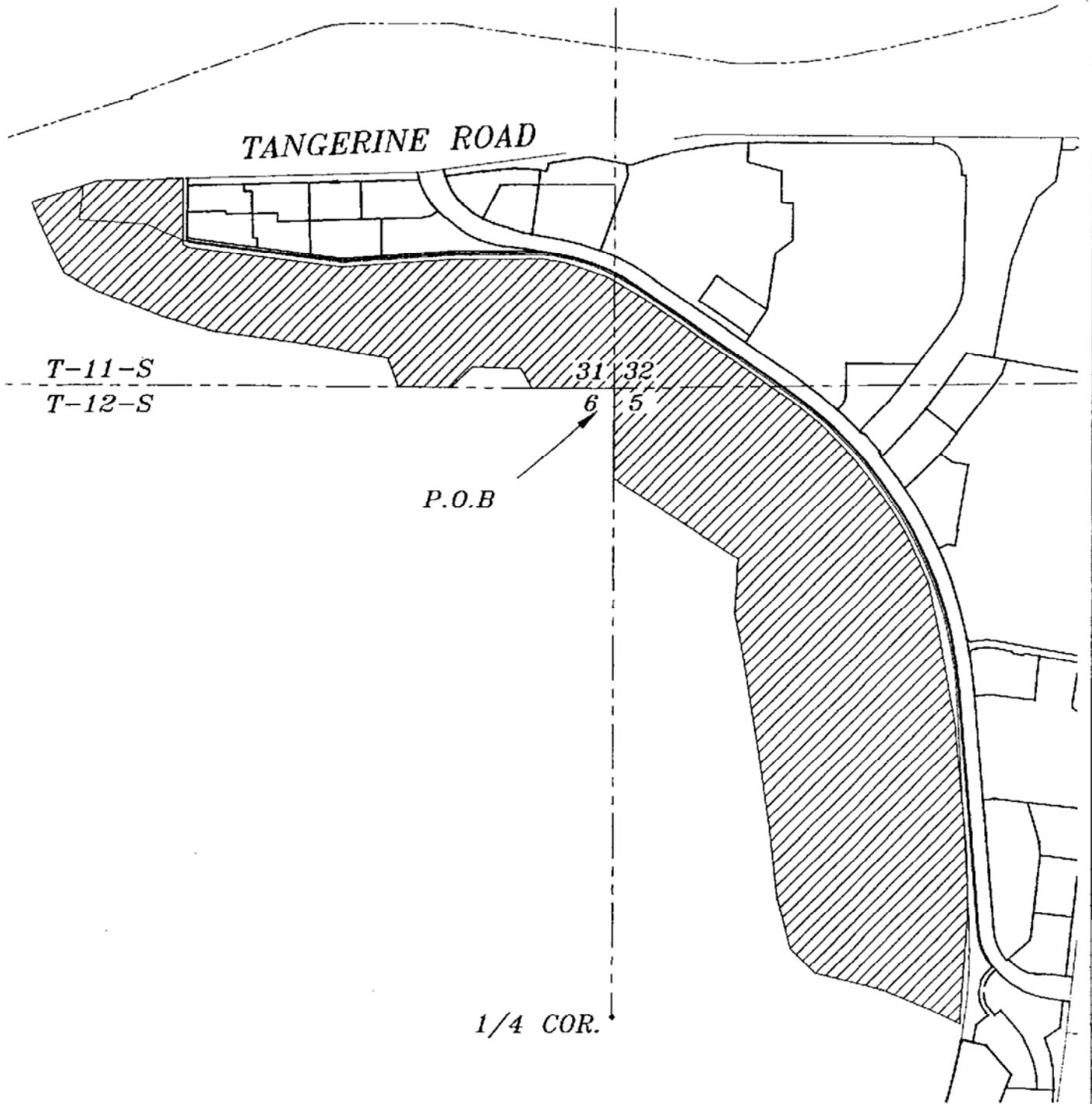


EXHIBIT TO ACCOMPANY DESCRIPTION OF
BIG WASH RESTORATION AREA
ORO VALLEY MARKETPLACE
SECTIONS 31 & 32, T. 11 S., R. 14 E., G.S.R.M.,
SECTION 5, T. 12 S., R. 14 E., G.S.R.M.,
PIMA COUNTY, ARIZONA

Plotted: Nov. 29, 2006
 WLB# project No. 185050-E001-1003
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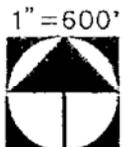


Exhibit "B"

[Maximum Limits of Area Approved for Excavation of Material]



**DEPICTION OF AREA FROM WHICH
THE FILL MATERIAL MAY BE EXCAVATED
WITHIN**

**RANCHO VISTOSO XERO-RIPARIAN
RESTORATION PROJECT**

WLB# project No. 185050-V-E01
11-20-05 1:\185050\42\185050\05\MARKETS\DEPICTION OF FILL REMOVAL.DWG



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Exhibit "C"

[Restoration Plan]

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PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That Vestar OVM, L.L.C., an Arizona limited liability company ("Vestar"), as Principal, and _____, a corporation, duly licensed to conduct a general surety business in the State of Arizona, as Surety, are held and firmly bound unto the TOWN OF ORO VALLEY, an Arizona municipal corporation (the "Town"), as Obligee, in the penal sum of Two-million-six-hundred-eighty-nine-thousand-four-hundred-fifty-four Dollars (\$2,689,454.00), for which payment, well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

WHEREAS, Vistoso Partners, L.L.C. ("Vistoso") entered into a Restoration Agreement with Pima County and Pima County Regional Flood Control District dated xx/xx/xxxx, and recorded at Docket _____, Page _____ of the official records of Pima County (the "Restoration Agreement"). The Restoration Agreement requires completion of certain improvements in the "Big Wash" floodplain area as detailed in the "Restoration Plan" attached to and incorporated by reference in the Restoration Agreement. The property to be improved is located within the Town. The Town will be responsible for review and approval of the completion of improvements as provided in the Restoration Agreement and the Restoration Plan. Vistoso has assigned to Vestar the responsibility to complete construction of the improvements as required in the Restoration Agreement and Restoration Plan. This bond will satisfy the requirement to post a bond to the Town of Oro Valley as required in Section 7 of the Restoration Agreement.

NOW, THEREFORE, if Principal shall, as its own cost and expense, at or within the time required under the Agreement, faithfully install and complete the improvements in substantial compliance with the Agreement and the specifications for such improvements, then this obligation shall be void, otherwise to remain in full force and effect, subject to the following conditions:

1. The Town may initiate forfeiture proceedings upon the occurrence of the following:
 - a. Abandonment of the Restoration Plan. The Restoration Plan will be presumed abandoned when there has been no development activity for one year or when the condition of the property may be harmful to the health, safety and welfare of the community and/or adjacent property owners.
 - b. Failure of the Principal to work diligently to cure a violation within 30 days of issuance of a violation notice.

- c. Failure of the Principal to meet Town requirements and failure to work diligently to correct the situation within 30 days of notice by the Town.
2. If Obligee determines that forfeiture is required, the Surety may complete the necessary improvements within the time allowed by the Restoration Agreement and the Restoration Plan, or any extension thereof, as may be granted by such Obligee and deliver them to the Obligee for approval, or pay to the Obligee the amount necessary, not to exceed the penal sum hereof, based upon estimates provided by the Obligee, to carry out completion of the improvements. It being further understood that upon completion of the improvements, any unexpended funds shall be returned to Surety.
3. This bond shall remain in full force and effect until (a) the improvements have been fully installed and accepted by Obligee, (b) a portion of the improvements have been installed and accepted by Obligee, or (c) the release and surrender of this bond by Obligee, whichever shall first occur.
4. Ten percent (10%) of the face amount of this bond shall remain in effect and continue after completion and acceptance of the improvements by Obligee for a period of one year from the date of acceptance to guaranty the improvements against any defective work or labor done, or defective materials furnished, in the performance of the improvements.
5. As part of the obligation secured hereby, there shall be included costs, reasonable expenses and fees, including reasonable attorneys' fees incurred by Obligee in successfully enforcing such obligations, all to be taxed as costs and included in any judgment rendered.
6. Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Restoration Agreement or Restoration Plan, the work to be performed hereunder or to the specifications of the Restoration Agreement or Restoration Plan relating to the improvements shall, in any way, affect its obligation of this bond. Surety does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Restoration Agreement or Restoration Plan, the work or to the specifications of the Restoration Agreement or Restoration Plan.
7. No right of action shall accrue hereunder to or for the use of any persons, firm or corporation, other than Obligee. The rights and obligations under this bond are for the exclusive benefit of Obligee and may not be assigned, hypothecated or transferred for any purpose, unless consented to in writing by Obligee and executed by Principal and Surety.

TOWN OF ORO VALLEY, an Arizona municipal corporation

By: _____
David Andrews

Its: Town Manager

ATTEST:

Kathryn E. Cuvelier, Town Clerk

Date: _____

11/10/00 000000

DUAL OBLIGEE RIDER

To be attached to and form a part of Bond No. _____

On behalf of: Vestar OVM, L.L.C., an Arizona limited liability company, Principal

Given to: Town of Oro Valley, an Arizona municipal corporation, Obligee

For: Monitoring and maintenance of those certain improvements in the "Big Wash" floodplain area as detailed in the Restoration Plan accompanying the Restoration Agreement by, between and among Vistoso Partners, L.L.C., Pima County and Pima County Regional Flood Control District, dated xx/xx/xxxx, and recorded at Docket _____, Page _____ of the official records of Pima County.

Consent is hereby given by the Principal, Surety and the Town of Oro Valley, to include the name of:

Pima County Regional Flood Control District

as additional Obligee under this bond.

The foregoing, however, is subject to the following further provisions:

The aggregate liability of the Surety under said bond to the said Obligees, as their interests may appear, is limited to the penal sum of the said bond, and provided, further, that the Surety may, at its option, make any payments under said bond on check issued jointly to the said Obligees.

Signed, sealed and dated this ___ day of _____, 20 ____.

Vestar OVM, L.L.C., an Arizona limited liability
company

By: _____

Its: _____

Date: _____

STATE OF ARIZONA)
) ss:
COUNTY OF PIMA)

On this _____ day of _____, 20____ before me personally appeared _____ to me known, who, being by me duly sworn, did depose and say that he/she reside(s) in Pima County, Arizona and that he/she is the Principal _____ of the _____, the corporation which executed the Performance Bond; that he/she knows the seal of the corporation; that the seal affixed to the instrument is the corporate seal; that is/was so affixed by order of the Board of Directors of the corporation, and that he/she signed his/her name to the instrument by like order.

NOTARY PUBLIC

My Commission Expires: _____

Surety: _____

By: David G. Jensen, Attorney-in-Fact

STATE OF ARIZONA)
) ss:
COUNTY OF PIMA)

On this _____ day of _____, 20__ before me personally appeared _____ known to me to be the person whose name is subscribed to this instrument as the Attorney-in-Fact of _____ of _____ and acknowledged to me that he/she subscribed the name of _____ as Surety, and his/her own name as Attorney-in-Fact.

NOTARY PUBLIC

My Commission Expires: _____

1-200-921 0007-15

TOWN OF ORO VALLEY, an Arizona municipal corporation

By: _____
David Andrews

Its: Town Manager

ATTEST:

Kathryn E. Cuvelier, Town Clerk

Date: _____

FINANCIAL SERVICES

Exhibit "E"

[Special Warranty Deed for 2.13-acre natural open space dedication]

120921 00077

Exhibit "E"

SPECIAL WARRANTY DEED

For valuable consideration, VISTOSO PARTNERS, L.L.C., an Arizona 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 Exhibit "A" attached hereto and by this reference made a part hereof (the "Property")

together with all rights and appurtenances thereto.

SUBJECT TO: all matters of record and all matters that an accurate survey would show, and provided further that Grantee shall use the Property only as "natural open space" subject to the restrictions identified in Section 6 of the Development Agreement between Pima County and Stone Canyon L.L.C., recorded on March 12, 2002 at Docket 11754, Page 2682, of the official records of Pima County, Arizona.

Grantor warrants the title to the Property against all acts of Grantor and no other, subject to the matters above set forth.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed this _____ day of _____, 200____.

GRANTOR:

VISTOSO PARTNERS, L.L.C., an Arizona limited liability company

By: _____
Name: _____
Title: _____

1200921 0007-8

STATE OF ARIZONA)
)
County of _____)

ss

This instrument was acknowledged before me this _____ day of _____, 200__, by _____, as _____, of Vistoso Partners, L.L.C., an Arizona limited liability company.

Notary Public

My Commission Expires:

EXEMPTION: A.R.S. § 11-1134.A.3	Board of Supervisors Approval: _____, 200__
--	---

This is attached as Exhibit "E" to _____, recorded _____

1100921 000176



**OPEN SPACE NORTHWEST
ORO VALLEY MARKET PLACE
RANCHO VISTOSO NEIGHBORHOOD 4**

That portion of the Southeast Quarter (SE 1/4) of Section 31, Township 11 South, Range 14 East, Gila and Salt River Meridian, Town of Oro Valley, Pima County, Arizona, described as follows:

COMMENCING at the Southeast corner of said Section 31;

THENCE N 89°36'25" W, along the South line of said Southeast Quarter (SE 1/4) a distance of 1815.16 feet;

THENCE N 00°23'35" E, 604.55 feet to the **POINT OF BEGINNING**.

THENCE N 66°22'57" W, 186.79 feet;

THENCE N 86°29'54" W, 278.45 feet;

THENCE N 07°02'41" E, 148.21 feet to a point on the Southerly right-of-way line of Tangerine Road;

THENCE N 72°32'46" E, along said right-of-way line a distance of 63.13 feet;

THENCE N 88°32'46" E, along said right-of-way line a distance of 373.12 feet;

THENCE S 00°29'53" W, 267.34 feet to the **POINT OF BEGINNING**.

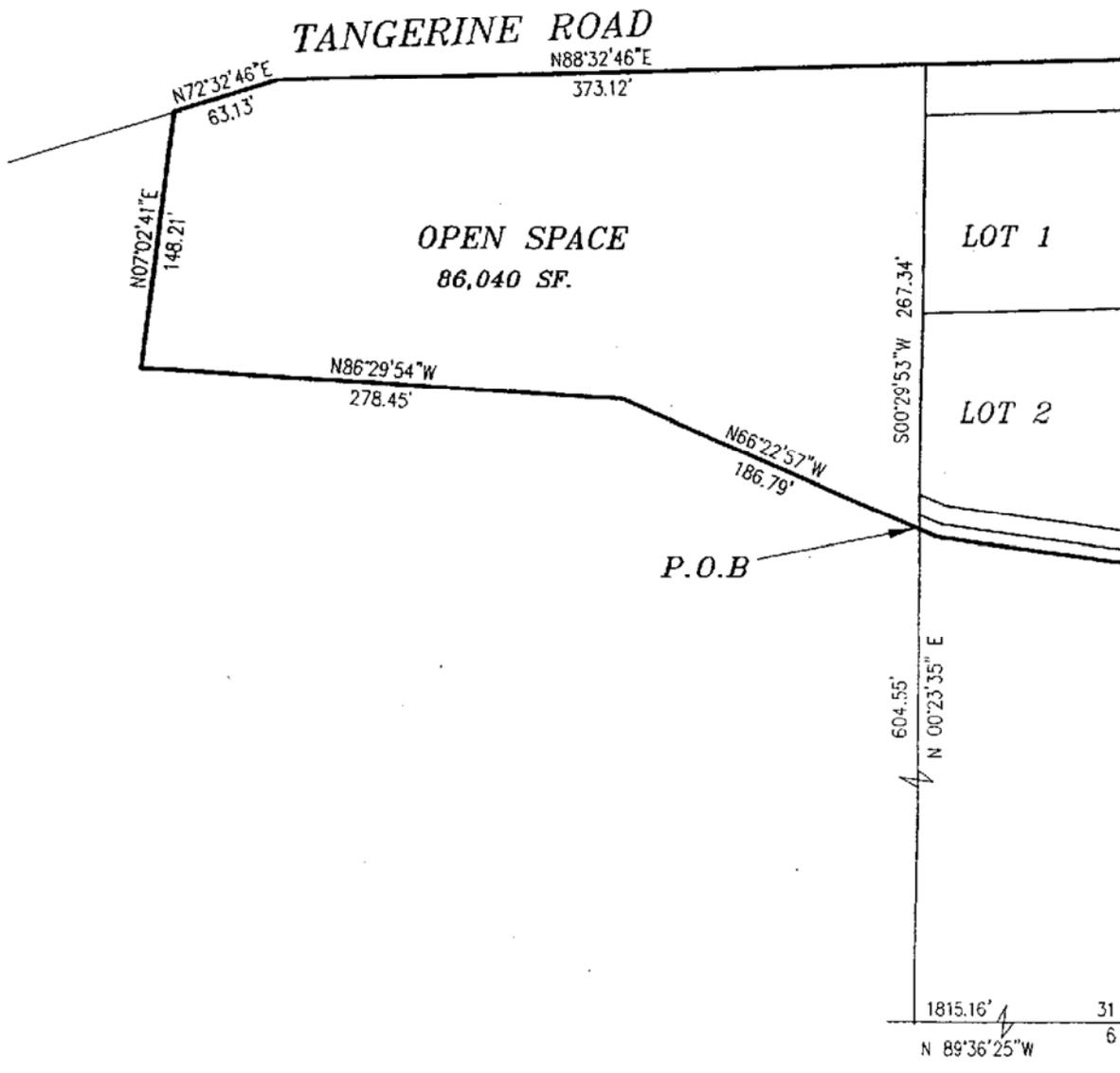
CONTAINING 86,040 square feet or 1.98 acres of land, more or less.

Prepared by:
THE WLB GROUP, INC.

Jack A. Buchanan, RLS
JAB: mo



11/28/06 000000



**EXHIBIT TO ACCOMPANY DESCRIPTION OF
OPEN SPACE
WITHIN
ORO VALLEY MARKETPLACE
SECTION 31, T. 11 S., R. 14 E., G.S.R.M.,
PIMA COUNTY, ARIZONA**

Plotted: Nov. 29, 2006
 WLB# project No. 185050-E001-1003
 N: \185050\NEIGH4\Oro Valley Marketplace\EXHIBITS\Open Space NW.dwg
 W: \LEGALS\185050\NH04\OVM\OPEN SPACE NW.doc



H:\0000 000001



**OPEN SPACE SOUTHEAST
ORO VALLEY MARKETPLACE
RANCHO VISTOSO NEIGHBORHOOD 4**

That portion of the West Half (W 1/2) of Section 5, Township 12 South, Range 14 East, Gila and Salt River Meridian, Town of Oro Valley, Pima County, Arizona, described as follows:

COMMENCING at the West Quarter corner of said Section 5;

THENCE S 63°48'18" E, 1867.92 feet to the **POINT OF BEGINNING**.

THENCE N 80°45'19" E, 111.84 feet to a point on the arc of a non-tangent curve concave to the West, on the Westerly right-of-way line of Oracle Road, a radial line through said point bears S 72°54'59" E;

THENCE Southerly along said right-of-way line and the arc of a non-tangent curve to the right, having a radius of 3719.72 feet, and a central angle of 1°16'56", for an arc length of 83.24 feet to a point;

THENCE N 71°38'03" W, along said right-of-way line a distance of 50.00 feet to a point on the arc of a non-tangent curve concave to the West, a radial line through said point bears S 71°38'03" E;

THENCE Southerly along said right-of-way line and the arc of a non-tangent curve to the right, having a radius of 3669.72 feet, and a central angle of 1°01'17", for an arc length of 65.41 feet to a point;

THENCE N 08°41'15" W, 108.72 feet to the **POINT OF BEGINNING**.

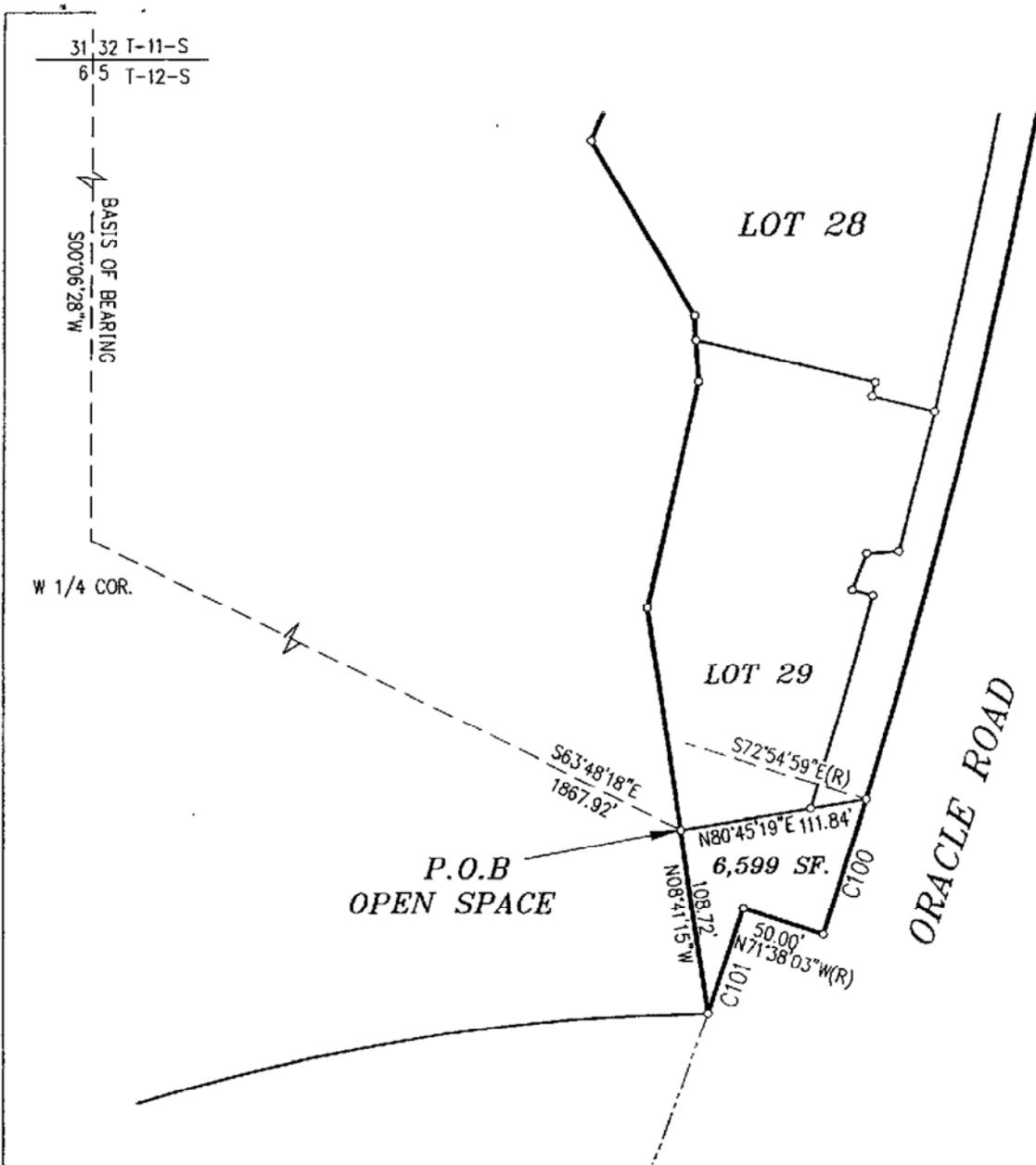
CONTAINING 6,599 square feet or 0.15 acres of land, more or less.

The Basis of Bearing for this legal is the West line of said Section 5, which is S 00°06'28" W.

Prepared by:
THE WLB GROUP, INC.

Jack A. Buchanan, RLS
JAB: mo





LOT LINE CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	TANGENT	CHORD
C100	83.24'	3719.72'	1°16'56"	41.62'	83.24'
C101	65.41'	3669.72'	01°01'17"	32.71'	65.41'

**EXHIBIT TO ACCOMPANY DESCRIPTION OF
 OPEN SPACE
 WITHIN
 ORO VALLEY MARKETPLACE
 SECTION 5, T. 12 S., R. 14 E., G.S.R.M.,
 PIMA COUNTY, ARIZONA**

Plotted: Nov. 29, 2006

WLB# project No. 185050-E001-1003
 N: \185050\WEIGH4\Oro Valley Marketplace\EXHIBITS\Open Space SE.dwg
 W: \LEGALS\185050\NH04\OVM\OPEN SPACE SE.doc



PLANNING 0000003