



MEMORANDUM

Date: June 26, 2014

To: Chairman and Members
Conservation Acquisition Commission

From: *NLF*
Nicole Fyffe,
Executive Assistant to the
County Administrator

Re: **Painted Hills Property Acquisition**

Background

On June 11, 2014 you were copied on a memorandum from County Administrator Chuck Huckelberry to the Pima County Board of Supervisors notifying them that an agreement had finally been reached with the Dallas Police and Fire Pension System to acquire the Painted Hills property – 286 acres of saguaro studded slopes, located between Anklam Road and Speedway Boulevard within the eastern foothills of the Tucson Mountains. This memorandum briefly summarized prior efforts to conserve the property since 1997, as well as the various owners of the property and development plans. If acquired, this property would be connected to Tucson Mountain Park through the development of an expanded culvert under Anklam Road and trails that would be developed on County-owned property, right of way across two private properties and Star Pass HOA natural open space.

The attached draft acquisition agreement is between the County and P & F Tucson Group LLC. The Dallas Police and Fire System is the signing member for the P & F Tucson Group LLC. Note that the acquisition agreement is still in draft form as a change in ownership name is underway, but not yet completed. We anticipate that the final agreement will look much like this draft.

The agreement states that the County will purchase the property for \$7.5 million. An initial payment of \$3 million will be due at closing. The remaining \$4.5 million will be made over five annual payments of \$1,061,029, which includes 5.75 percent interest, for a total cost of \$8,305,143. The City of Tucson and the County have been reserving \$3.55 million in 2004 open space bond funding for Painted Hills. The Conservation Acquisition Commission and the Bond Advisory Committee approved a bond ordinance in 2012 that added Painted Hills to the list of properties that could be acquired with the City's share of remaining County open space bond funding. The City's Mayor and Council at the time felt it was premature to approve the bond ordinance, and therefore the County's Board of Supervisors could not act on it. Now that an agreement has been reached, Mayor and Council are scheduled to act on the bond ordinance amendment on June 30 and the Board is scheduled to do the same on July 1. The

\$3.55 million in bond funding would cover the initial payment of \$3 million, and \$550,000 of the next payment. If there is a successful bond election in 2015 that includes funding for open space, then the remaining balance will be paid off in 2016, reducing some of the interest costs. If not, an alternative source of annual funding is the Star Pass Environmental Enhancement Fund.

Attached are photographs of the property taken in June, 2014 by Dean Knuth, our Communications Department Photographer.

The following biological resources assessment and future management assessment were provided by Kerry Baldwin, Pima County Natural Resources Superintendent. The Cultural Resources assessment was provided by Courtney Rose, Pima County Cultural Resources and Historic Preservation Division.

Biological Resources Assessment and Recommendations

Conservation Lands System (CLS): This property falls entirely within the Multiple Use classification of the CLS.

Priority Conservation Areas: This property falls within the habitat models of the majority of our vulnerable bat species including: Townsend's big-eared bat, Allen's big-eared bat, California leaf-nosed bat, Lessor long-nosed bat and the Mexican long-tongued bat. Small portions of the site also fall into the modeled habitats for the Abert's towhee and Bell's vireo. While the property does not have significant identified habitat for the special status species, it is a haven and important refuge for a diverse assemblage of native wildlife species in the area. Initial survey efforts have indicated the presence of all the typical fauna expected for the palo verde/Sonoran scrub community. Recent sightings of larger mammals include mule deer, bobcat, coyote, ringtail, grey fox, javelina, raccoon, jackrabbits and cotton-tailed rabbits.

Special Elements: The Painted Hills property is primarily made up of palo verde-mixed cacti habitat and Sonoran desert scrub. Dominant canopy species are the velvet mesquite (*Prosopis velutina*) and foothill palo verde (*Cercidium microphyllum*). There are several small washes along the edges of the property. The site has diverse topographical relief including a network of five small hill tops that rise up over 200 feet above the surrounding landscape.

Surrounding Land Ownership: This property is surrounded on all four sides with low density residential development. Speedway runs along the length of the northern boundary of the property. The adjacent residential lots are one acre or larger and some have minimal development. The south west edge of the property on Anklam Road starts directly across from the 22 acre Mary Henderson property acquired by the County in 2013. The property is about equal distance, approximately ½ mile, between the City of Tucson Greasewood Natural Resource Park to the east, the County Feliz Paseos Park on the west and Tucson Mountain Park on the south.

Summary and Recommendations: This large undeveloped property has been one of the keystone acquisitions desired in the Tucson Mountains for many years. The City, County and local conservation groups have all focused attention on past opportunities and need to acquire and conserve the site. It was previously identified in the 2004 Bond package. The property is a high quality urban habitat and offers connectivity options for both human recreationists and wildlife to Tucson Mountain Park and other conserved habitats. The property is an outstanding buffer resource for the edge of Tucson Mountain Park.

Management Issues

The property is undeveloped and in relatively undisturbed condition. This property should initially be managed under the County's Stewardship Tier of open space property management. The potential for creation of public use and associated recreational facilities in the future is very strong.

Because of its location within the developed suburban fringe, management activities will focus on routine monitoring, conservation area signage and possible perimeter fencing to limit public access at some locations and maintain current ecological values. The types of potential impacts anticipated would include unplanned development of social trails, native plant poaching, illegal off road vehicle use, invasive plant infestation and impacts to native wildlife by domestic pets running free in the area. The adjacent Mary Henderson property offers a unique opportunity to link a developed trail system on the Painted Hills property directly into the full Tucson Mountain Park trail system. Discussions have already been held to integrate the development of Mary Henderson and Painted Hills into one future project site.

It should be noted that the Phase 1 environmental assessment has been ordered, but not yet received. The County will not close on the property without these results. If the environmental assessment reveals concerns with the property, the acquisition agreement states that the County has the right to request that the seller address the issues, and the County has a right to terminate the agreement if such items are not addressed.

Cultural Resources Summary and Recommendations

This property has been surveyed for cultural resources. Old Pueblo Archaeology Center (OPAC) reports documenting the findings of these surveys include: *Cultural Resources Survey of 197-Acre Area Bounded by Anklam Road, the Alignment of Painted Hills Road, Speedway Boulevard, and the Alignment of El Moraga Road West of Tucson in Pima County, Arizona* (Wyman and Dart 2001) and *Cultural Resources Survey of 98.48 Acres between Speedway Boulevard and Anklam Road West of Tucson in Pima County, Arizona* (DeJongh and Dart 2006). Survey results in 2001 included a finding of no archaeological or historic sites in the eastern three parcels, and a finding in 2006 of one small historic artifact scatter and a rock concentration just north of Anklam Road in the western parcels. This site was originally recorded as AZ AA:16:471(ASM) during an earlier survey in 2004, and it was re-located and re-recorded by OPAC in 2006. The site recording exhausted the sparse research potential of this site, and the

Chairman and Members, Conservation Acquisition Commission

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OPAC report includes the recommendation that the site is not eligible for listing on the National Register of Historic Places. Isolated archaeological occurrences have also been identified on the property, suggesting that the area was prehistorically used for resource gathering or as a traveling corridor.

It is recommended that the County acquire these parcels to protect natural and cultural resources from disturbances caused by development. No further cultural resources survey is needed within the subject property.

Attachments

June 11, 2014 County Administrator memorandum

Draft acquisition agreement

Photographs

Location map, orthophoto, depiction map and Assessor's record maps

Affidavit of disclosure

Recommendation

Staff recommends the Commission support the purchase of the Painted Hills property as detailed in the draft acquisition agreement.

NF/dr

c: The Honorable Chairman and Members, Pima County Board of Supervisors
C.H. Huckelberry, County Administrator
Diana Durazo, Special Staff Assistant to the County Administrator



MEMORANDUM

Date: June 11, 2014

To: The Honorable Chair and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator

A handwritten signature in black ink, appearing to be "CH", is written over the printed name "C.H. Huckelberry".

Re: **Painted Hills Property Acquisition**

Background

As the Board will recall, the 1997 bond proposal for Open Space included the acquisition of property now known as Painted Hills. The allocated bond funding at that time was \$1.8 million for Painted Hills and the neighboring Dos Picos property. Ultimately, the funding was used to acquire a portion of the Dos Picos property.

The Painted Hills property was also eligible for acquisition as part of the 2004 bond program; and at the time of the election, it was estimated the cost to acquire it would be about \$4.5 million. The property was made up of two, separately-owned properties that were both approved for development of a total of 147 units, but they were never developed. The County was unable to reach agreement with the property owners; and in 2004 and 2005, through two transactions, the properties sold for a total of \$4.35 million. Then, in 2006 – again through two transactions – the properties were sold to a single investor, the Dallas Police and Fire Pension System, for \$27 million. In 2007, a cluster subdivision consisting of 260 lots was approved for the property. Subsequently, the real estate market collapsed in the Great Recession; and a number of development controversies arose with the property, including the provision of water service by the City of Tucson via Tucson Water.

More Recent Acquisition Discussions

There were a number of previous discussions regarding property acquisition; however, neither the County nor City of Tucson was ever able to come to financial terms to complete a transaction. In 2012, the County, with the approval of the City, was to reallocate \$3.55 million of 2004 bond funds earmarked primarily for open space within the City of Tucson but near or adjacent to Tucson Mountain Park. The City agreed in concept to reallocate these bond funds to a Painted Hills acquisition if a successful agreement could be reached.

The Honorable Chair and Members, Pima County Board of Supervisors

Re: **Painted Hills Property Acquisition**

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Past negotiations indicated the Dallas Police and Fire Pension System was requesting between \$10 and \$12 million for the property. Recently, an overture was made to the County to gauge our interest in negotiating acquisition of the property for approximately \$8.5 million; and we began active discussions for acquisition through the Pension System's agent, Ms. Keri Silvyn.

We have now reached an agreement to purchase the property from the Dallas Police and Fire Pension System as indicated in the attached June 10, 2014 letter. The down payment will come from authorized bonds, contingent on the City's formal adoption of a bond ordinance amendment; and the balance of funding will be by annual payments after the remaining balance of bond funds of approximately \$550,000 are used to offset the first term payment. In essence, the County will purchase the property over a five-year period.

If a future bond election does occur that includes an open space component for the property, any remaining balance to be paid at that time will be paid through voter authorized bonds.

The County has another optional source of revenue to make the remaining annual payments, the Starr Pass Environmental Enhancement Fund. In 2016, this fund will be substantially larger than it has been in the past. The funding ratio agreed to in the original agreement with the JW Marriot Starr Pass Hotel developer, beginning 2016 and extending to 2025, entitles the County to 75 percent of annual fund revenue, as opposed to 25 percent. We expect these revenues to be in the \$800,000 to \$1 million per year range for the remaining term of the agreement.

There are a number of options to continue to make the final payments to acquire this property. Given its size and geographical location, it is one of the more important open space acquisitions to increase the County's Tucson Mountain Park.

Attached is a graphic that shows the Painted Hills property connected to a trailhead using the Mary Henderson House and property, which has been conveyed to the County by the Arizona-Sonora Desert Museum. It connects the trailhead through a common area of Starr Pass to the County's existing Tucson Mountain Park. Hence, the open space of Tucson Mountain Park is connected to the Painted Hills property through the Starr Pass common area and the Mary Henderson trailhead connection.

As indicated in my letter, County staff will pursue a formal acquisition agreement with the Dallas Police and Fire Pension System. When completed, we will provide this acquisition agreement to the Board for final approval, completing this long sought after open space acquisition, which is a significant and strategic natural open space protection acquisition.

The Honorable Chair and Members, Pima County Board of Supervisors
Re: Painted Hills Property Acquisition
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CHH/mjk

Attachments

c: Nicole Fyffe, Executive Assistant to the County Administrator
Diana Durazo, Special Staff Assistant to the County Administrator
Chris Cawein, Director, Natural Resources, Parks and Recreation
Chair and Members, Conservation Acquisition Commission



COUNTY ADMINISTRATOR'S OFFICE

PIMA COUNTY GOVERNMENTAL CENTER
130 W. CONGRESS, FLOOR 10, TUCSON, AZ 85701-1317
(520) 724-8661 FAX (520) 724-8171

C.H. HUCKELBERRY
County Administrator

June 10, 2014

Ms. Keri Lazarus Silvyn
Lazarus, Silvyn and Bangs, PC
4733 E. Camp Lowell Drive
Tucson, Arizona 85712

Re: Offer to Purchase the 286-acre Painted Hills Property

Dear Ms. Silvyn:

This letter is to inform you and your clients that I am in agreement with your June 9, 2014 counteroffer regarding the County's purchase of the 286-acre Painted Hills property. Such agreement is contingent on the City of Tucson's Mayor and Council approving the necessary bond ordinance amendment that would enable the County to spend the City's share of County bond funding on the Painted Hills property. Our acceptance of your offer is based on your client's appraised value of the property dated 2012. The County's Conservation Acquisition Commission and Bond Advisory Committee already recommended the bond ordinance amendment in 2012.

My understanding of your counteroffer is as follows:

- The purchase price is \$7.5 million;
- The County will make an initial payment of \$3 million in Fiscal Year 2014/15 from the sale of open space bonds approved for this purchase;
- The County will pay an interest rate of 5.75 percent on the unpaid balance of \$4.5 million, to be paid in five equal payments of \$1,061,028.62, with interest accruing at closing and payments made annually on the closing date, for a total cost of \$8,305,143;
- The County will commit to full payment of the remaining balance in 2016 if a projected November 2015 bond election is successful for open space acquisitions; and
- A purchase agreement with terms and conditions acceptable to both the County and the Dallas Police and Fire Pension System.

Ms. Keri Lazarus Silvyn
Re: Offer to Purchase the 286-acre Painted Hills Property
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Thank you for your prompt responses during these recent negotiations. My staff will be in contact with you shortly to begin drafting the acquisition agreement and any other documents necessary to complete this transaction.

I will also be advising the Board of Supervisors of this pending transaction in the near future.

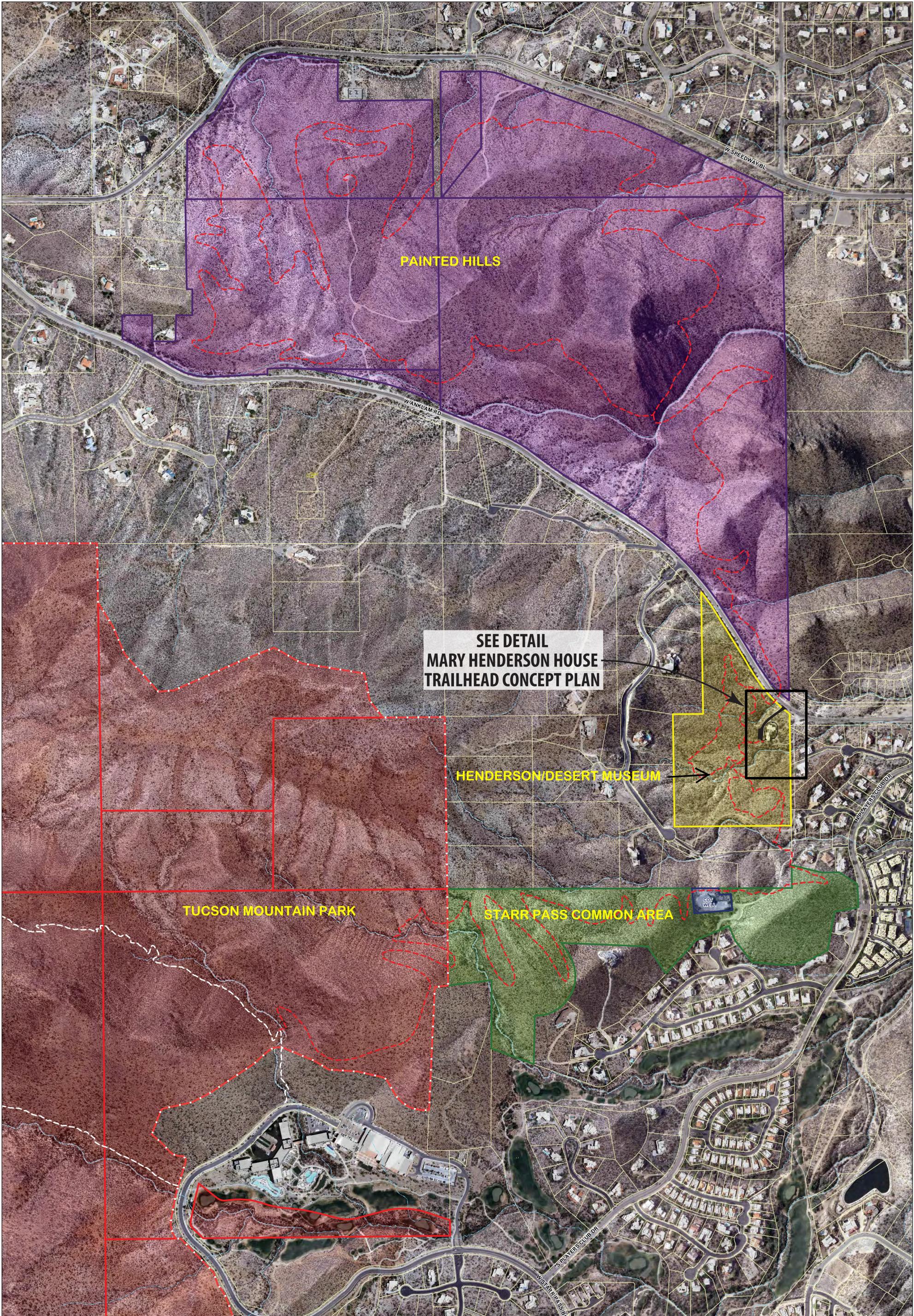
Sincerely,



C.H. Huckelberry
County Administrator

CHH/mjk

c: Nanette Slusser, Assistant County Administrator for Public Works Policy
Nicole Fyffe, Executive Assistant to the County Administrator
Diana Durazo, Special Staff Assistant to the County Administrator
Neil Konigsberg, Manager, Real Property Services



**SEE DETAIL
MARY HENDERSON HOUSE
TRAILHEAD CONCEPT PLAN**

PAINTED HILLS

HENDERSON/DESERT MUSEUM

TUCSON MOUNTAIN PARK

STARR PASS COMMON AREA

**TUCSON MOUNTAIN PARK
HENDERSON PROPERTY**

- Conceptual Trails
- Henderson Property
- Pima County Owned Parcels
- Starr Pass HOA
- Existing TUMP trails (white dashed)
- Park Boundary
- City of Tucson Well
- Painted Hills

1 inch = 300 feet

0 150 300 600
Feet



FIG 02 Tucson Mountain Park TUMP Henderson region 0.mxd 6/26/2018 8:30

DRAFT Acquisition Agreement

PIMA COUNTY DEPARTMENT OF: REAL PROPERTY SERVICES PROJECT: Acquisition of Land SELLER: P & F Tucson Group, LLC AMOUNT: Maximum \$8,313,143.00 including closing costs	
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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**"). 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.

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

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 Landmark Title Assurance Agency of Arizona, 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.

9.4 Bond Ordinance Amendments. Buyer's obligation to close is contingent upon the approval by the Mayor and Council of The City of Tucson, Arizona of appropriate amendments to its bond ordinances sufficient to allow Buyer to utilize the Buyer's share of existing bond funding currently allocated to the City of Tucson for the funding of Buyer's obligations pursuant to this Agreement, and upon the approval of a bond ordinance amendment by the Pima County Board of Supervisors adding the subject Property to the three (3) City of Tucson open space projects which were included in the 2004 Bond Program

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 provisions 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.

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

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: drohan@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@dpfp.org

with a copy to:

Keri Lazarus Silvyn, Esq.
Lazarus, Silvyn & Bangs, P.C.
4733 E. Camp Lowell Drive
Tucson, AZ 85712-1256
Telephone: 520.207.4464
E-mail: ksilvyn@lsblandlaw.com

If to Pima County:

Neil J. Konigsberg, Manager
Pima County Real Property Services
201 N Stone Ave, 6th Floor
Tucson, AZ 85701-1207
Telephone: 520.740.6313
E-mail: 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

If to Escrow Agent:

Rhonda Herrera, Escrow Agent
Landmark Title Assurance Agency
6640 N Oracle Rd, Ste 120
Tucson, AZ 85704
Telephone: 520.219.6451
E-mail: rhonda.draper@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.

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: DONALD ROHAN
Its: Manager

_____ 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.

Photographs







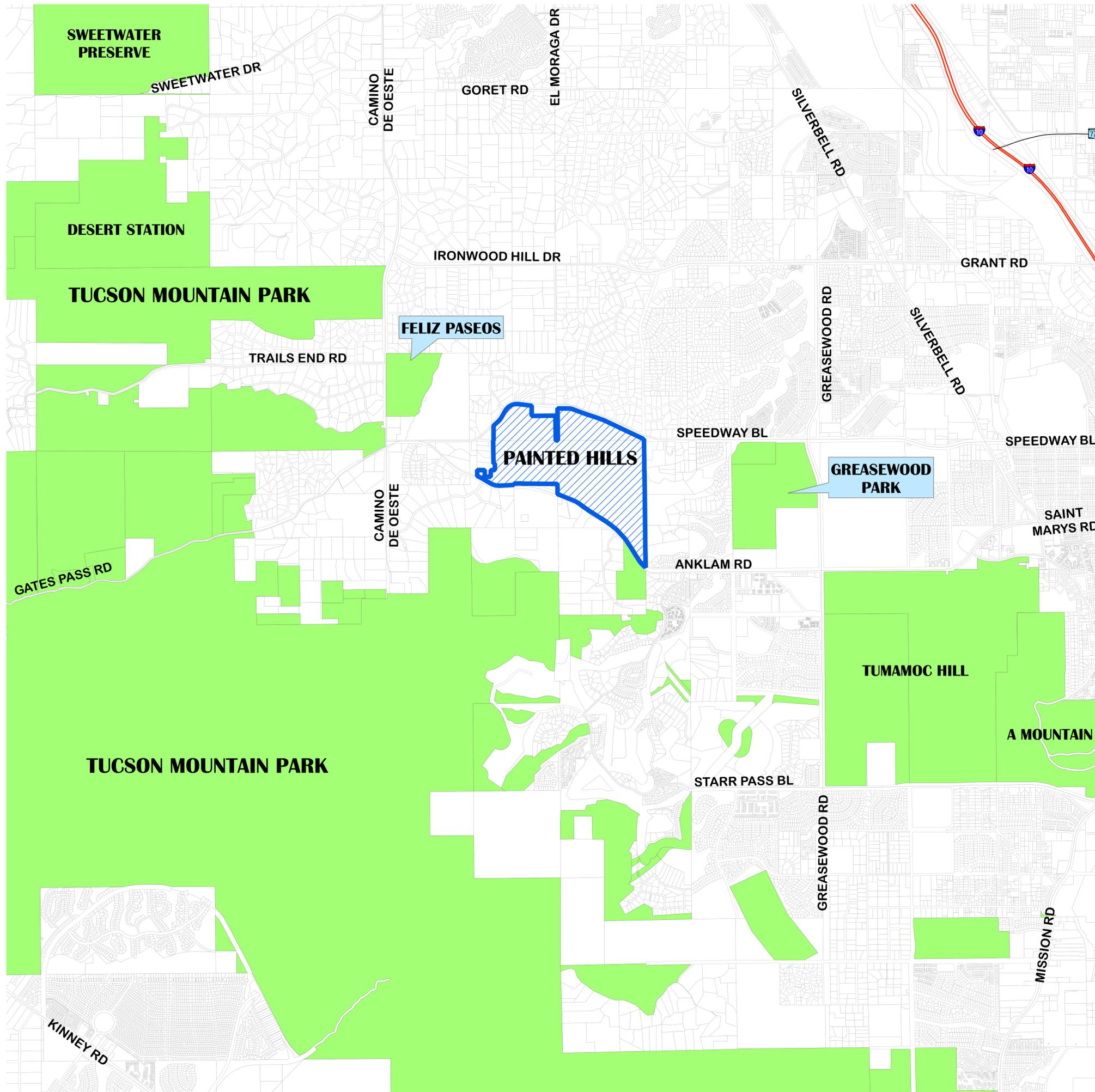






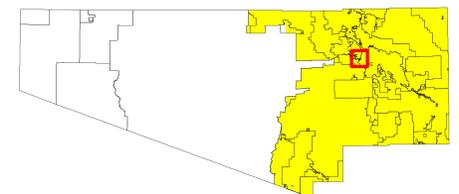
Location Map
Ortho Photo
Depiction Map
Assessor's Record Map

PAINTED HILLS



-  Painted Hills Parcels
-  Existing Reserves
-  Parcel Lines
-  Administrative Boundaries
-  Major Street
-  State Highway
-  Interstate Highway

Pima County Index Map
Index Map Scale 1:1,500,000



The information depicted on this display is the result of digital analyses performed on a variety of databases provided and maintained by several governmental agencies. The accuracy of the information presented is limited to the collective accuracy of these databases on the date of the analysis. Pima County Information Technology Department Geographic Information Systems makes no claims regarding the accuracy of the information depicted herein. This product is subject to the GIS Division Disclaimer and Use Restrictions.



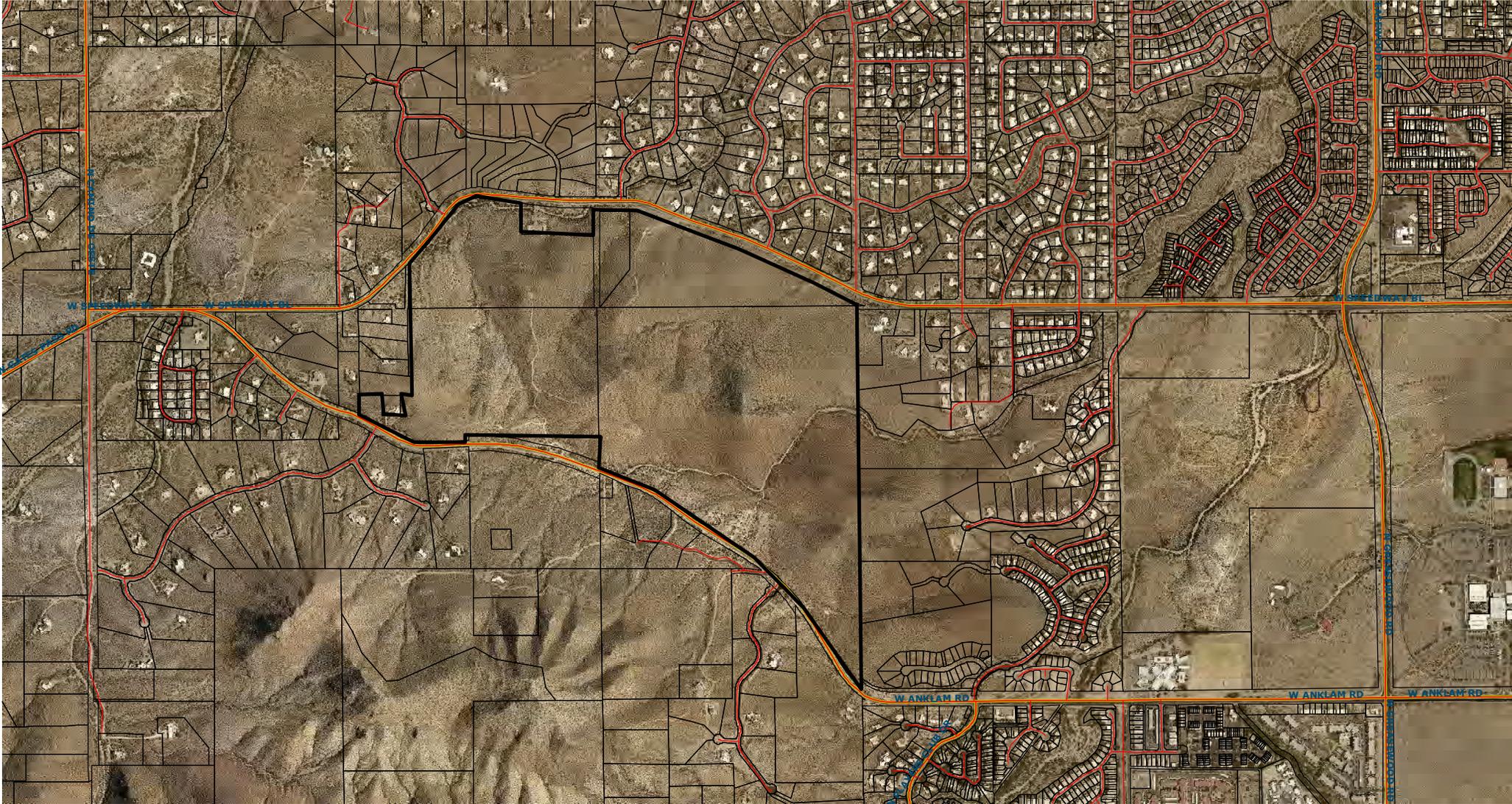
Scale 1:12,000

GEOGRAPHIC INFORMATION SERVICES



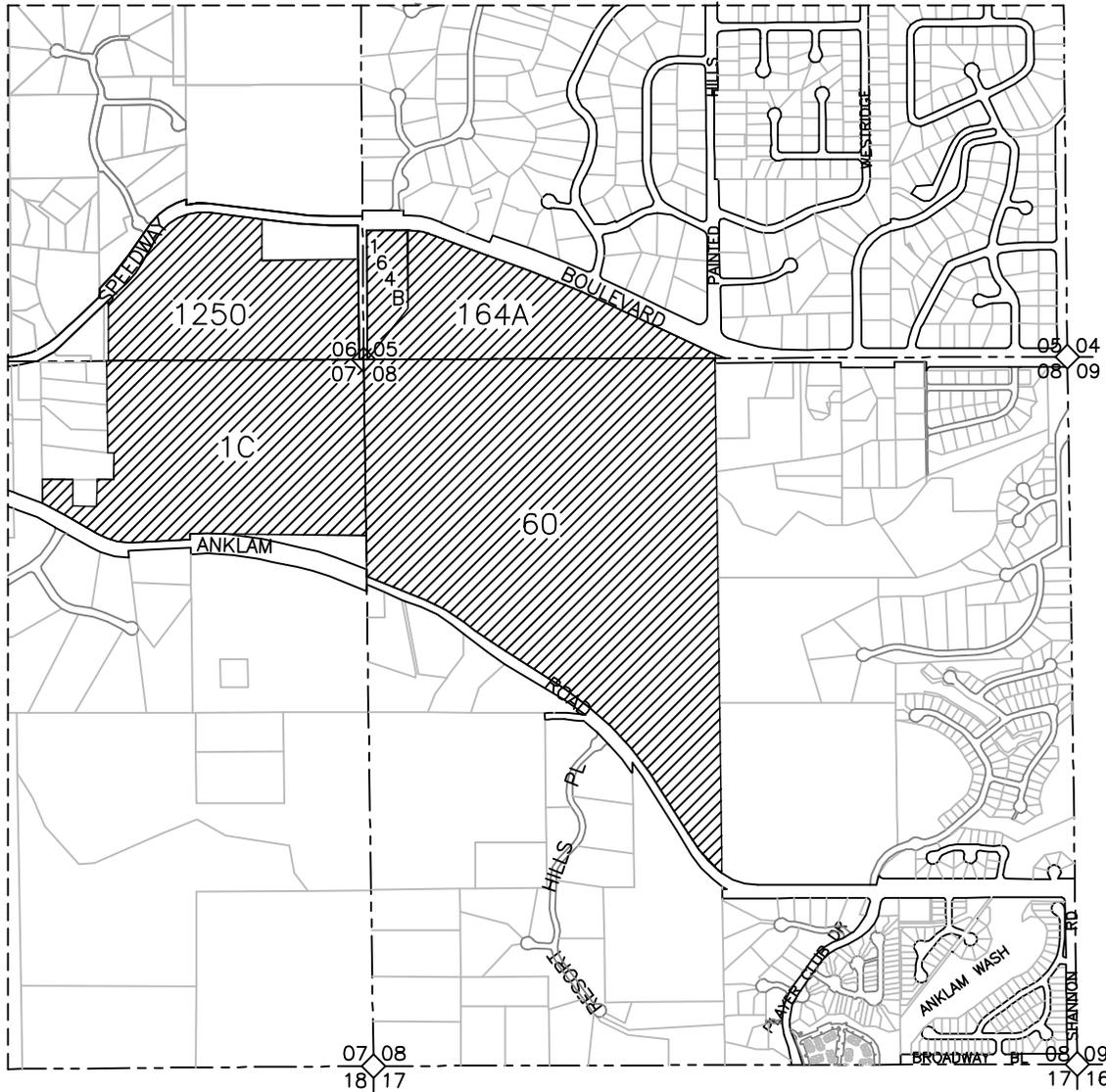
Pima County Geographic Information Services
201 North Stone Avenue - 9th Floor
Tucson, Arizona 85701-1207
(520)740-6370 - FAX:(520)798-3429
<http://www.dot.pima.gov>
\\gislib\specproj\fyffe\cmo0524\mxdsl\PaintedHillsBuffer2.mxd MP

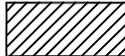
11 JUN 2014



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

PAINTED HILLS OPEN SPACE



 SUBJECT PARCELS



4017.DWG

PIMA COUNTY DEPARTMENT OF TRANSPORTATION
ENGINEERING INFORMATION MANAGEMENT

DRAWING NOT TO SCALE

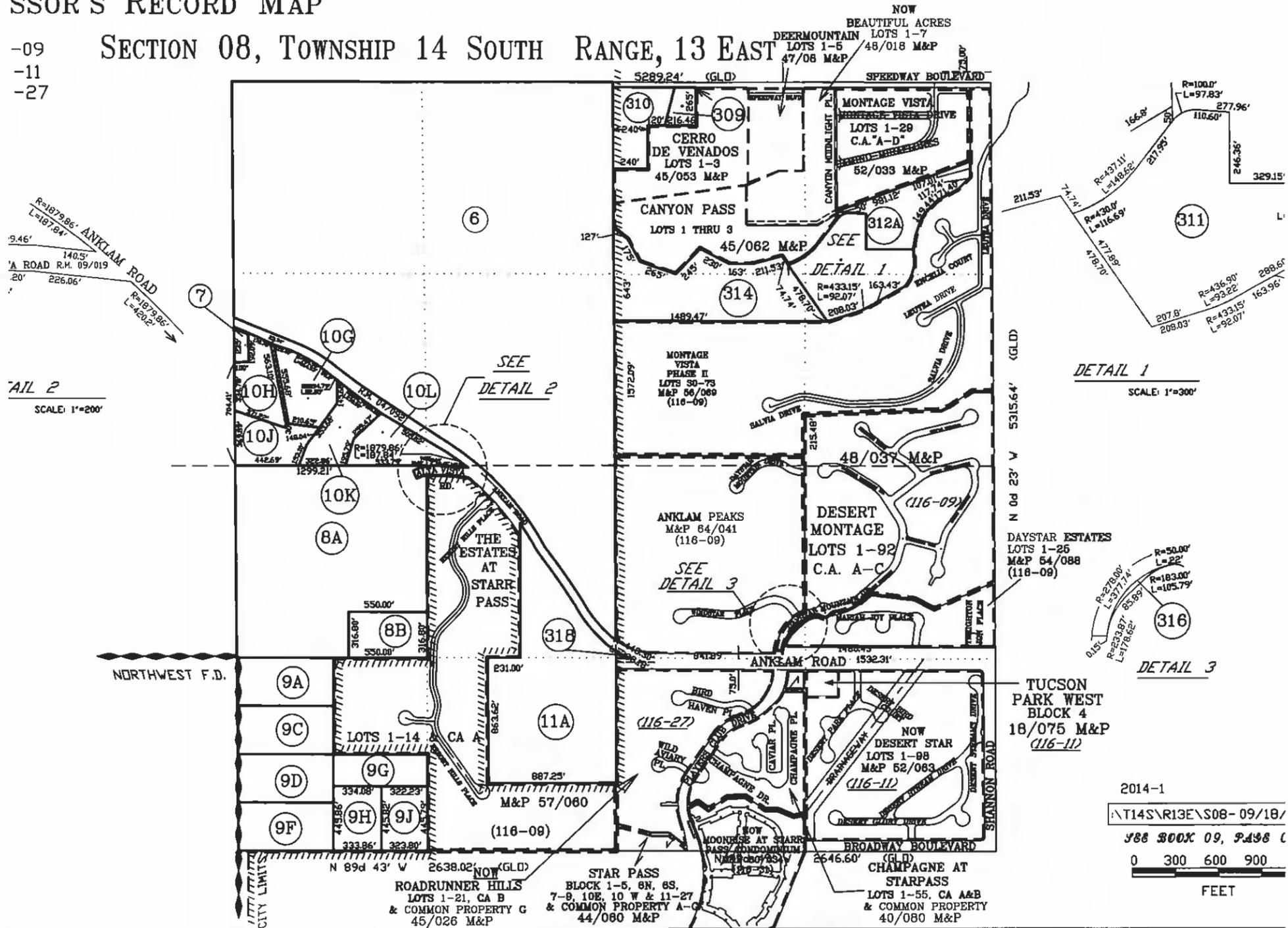
DRAWN BY: CPerez

DATE: 06/20/2014

SSOR'S RECORD MAP

-09
-11
-27

SECTION 08, TOWNSHIP 14 SOUTH RANGE, 13 EAST



DETAIL 1
SCALE: 1"=300'

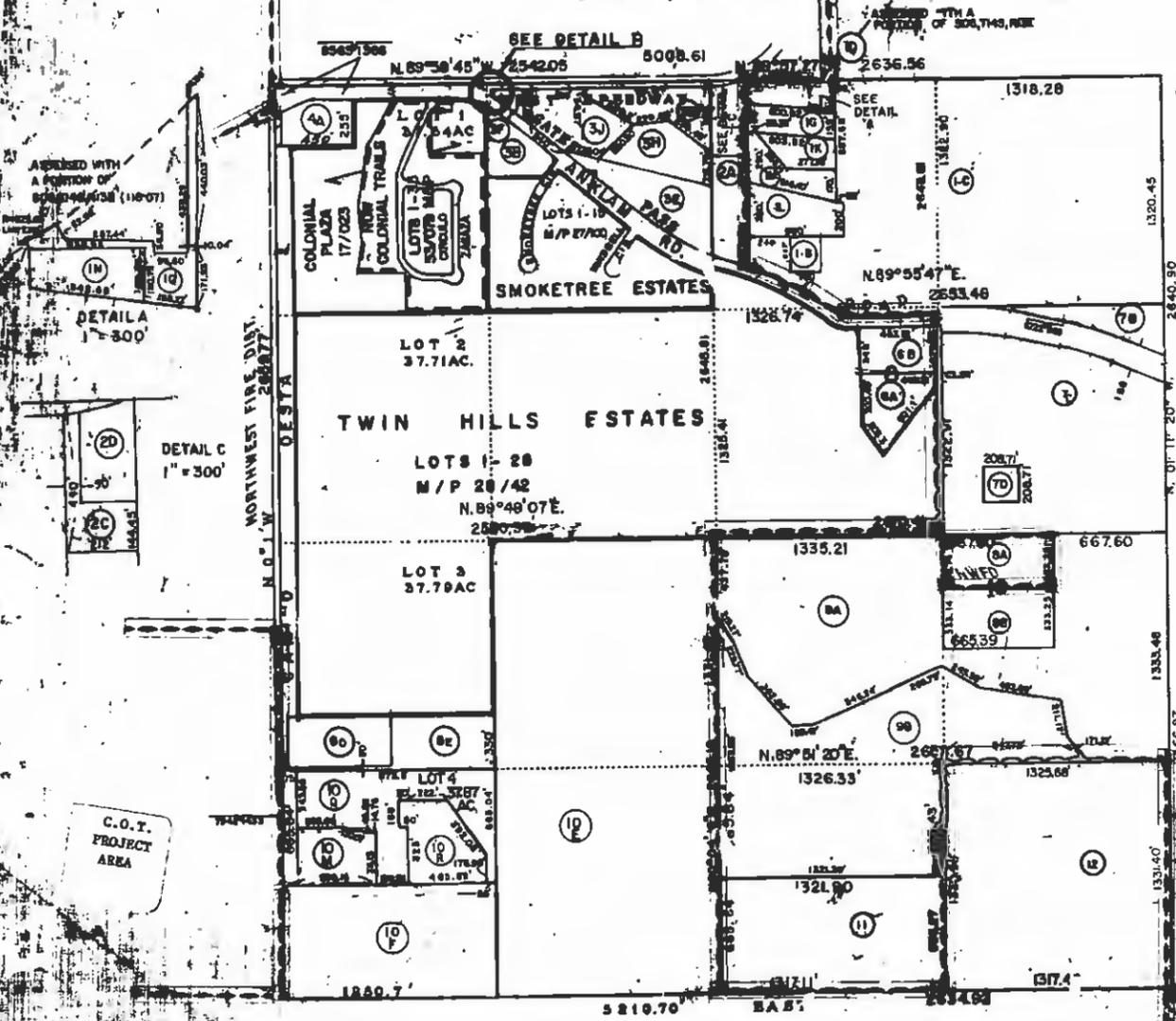
DETAIL 3

TAIL 2
SCALE: 1"=200'

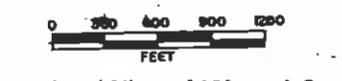
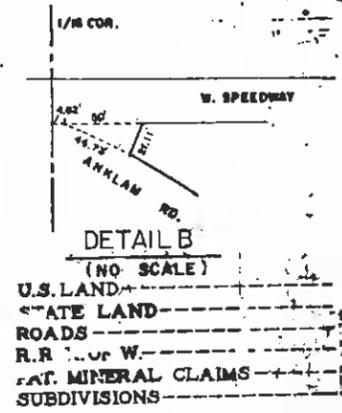
2014-1
T14S13E S08-09/10/
SEE BOOK 09, PAGE 1
0 300 600 900
FEET

116-08

SECTION 7, TOWNSHIP 14 SOUTH, RANGE 13 EAST



C.O.T. PROJECT AREA



SEE BOOK 5 PAGE 25 R. 3
SEE BOOK 1, PAGE 52, R. 3
2013-1

SCANNED 141307

Affidavit of Disclosure

When recorded mail to:

Pima County Real Property Services
201 N. Stone Ave., 6th Floor
Tucson, AZ 85701-1215

AFFIDAVIT OF DISCLOSURE
PURSUANT TO A.R.S. §33-422

I, P&F Tucson Group, LLC (“Seller(s)”) being duly sworn, hereby make this Affidavit of Disclosure relating to the real property situated in the unincorporated area of: Pima, County, State of Arizona, located at: between Speedway Blvd. and Anklam Road in T145, R13E, Sections 5,6,7 & 8 and legally described as:

Legal description attached hereto as Exhibit “A”.

(“Property”).

1. There is is not...legal access to the property, as defined in A.R.S. §11-809.
Unknown

Explain: Access from Speedway and Anklam

2. There is is not...physical access to the property. Unknown

Explain: Access from Speedway and Anklam

3. There is is not...a statement from a licensed surveyor or engineer available stating whether the Property has physical access that is traversable by a two-wheel drive passenger motor vehicle.

4. The legal and physical access to the property is is not...the same. Unknown
 Not applicable.

Explain:

If access to the parcel is not traversable by emergency vehicles, the county and emergency service providers may not be held liable for any damages resulting from the inability to traverse the access to provide needed services.

5. The road(s) (is/are) publicly maintained privately maintained not maintained not applicable. If applicable, there is is not...a recorded road maintenance agreement.

If the roads are not publicly maintained, it is the responsibility of the Property owner(s) to maintain the roads and roads that are not improved to county standards and accepted for maintenance are not the county's responsibility.

6. A portion or all of the Property is is not...located in a FEMA designated regulatory floodplain. If the property is in a floodplain, it may be subject to floodplain regulation.

7. The Property is is not...subject to Fissures or Expansive Soils Unknown
Explain: _____

8. The following services are currently provided to the Property: water sewer electric natural gas single party telephone cable television services.

9. The Property is is not...served by a water supply that requires the transportation of water to the Property.

10. The Property is served by a private water company a municipal water provider a private well a shared well no well. If served by a shared well, the shared well is is not a public water system, as defined by the Safe Drinking Water Act (42 United States Code §300f).

Notice to buyer: if the property is served by a well, private water company or a municipal water provider the Arizona Department of Water Resources may not have made a water supply determination. For more information about water supply, contact the water provider.

11. The Property does does not...have an on-site wastewater treatment facility (i.e., standard septic or alternative system to treat and dispose of wastewater). Unknown. If applicable: a) the Property will will not...require installation of an on-site wastewater treatment facility; b) the on-site wastewater treatment facility has has not...been inspected.

12. The Property has been has not...been subject to a percolation test. Unknown

13. The Property does does not...meet the minimum applicable county zoning requirements of the applicable zoning designation.

14. The sale of the Property does does not...meet the requirements of A.R.S. §11-809 regarding land divisions. If those requirements are not met, the property owner may not be able

to obtain a building permit. The seller or property owner shall disclose each of the deficiencies to the buyer.

Explain: _____

15. The Property is is not...located in the clear zone of a military airport or ancillary military facility, as defined in A.R.S. §28-8461. (Maps are available at the State Real Estate Department's website.)

16. The Property is is not...located in the high noise or accident potential zone of a military airport or ancillary military facility, as defined in A.R.S. §28-8461. (Maps are available at the State Real Estate Department's website.)

17. Notice: If the Property is located within the territory in the vicinity of a military airport or ancillary military facility, the Property is required to comply with sound attenuation standards as prescribed by A.R.S. §28-8482. (Maps are available at the State Real Estate Department's website.)

18. The Property is is not...located under military restricted airspace. Unknown. (Maps are available at the State Real Estate Department's website.)

19. Use of the Property is is not limited in any way relating to an encumbrance of title due to a lis pendens, a court order or a state real estate department order of a pending legal action. If the use of the property is limited due to an encumbrance of title, the seller or property owner shall disclose the limitations to the buyer.

Explain: _____

This affidavit of disclosure supersedes any previously recorded Affidavit of Disclosure.

I certify under penalty of perjury that the information contained in this affidavit is true, complete and correct according to my best belief and knowledge.

Dated this 23rd day of June 2014 by:
(DATE) (YEAR)

Seller's name (print) DONALD C. ROHAN Signature: [Signature]

Seller's name (print) _____ Signature: _____

STATE OF ~~ARIZONA~~ TEXAS)
) ss
County of ~~Pima~~ DALLAS)

SUBSCRIBED AND SWORN before me this 23rd day of June, 2014
(DATE) (YEAR)

By Donald C. Rohan

[Signature]
Notary Public

My commission expires
11-10-2015



Buyer(s) hereby acknowledges receipt of a copy of this Affidavit of Disclosure this

_____ day of _____
(DATE) (YEAR)

Buyer's name:

Real Property Services: _____ Signature: _____
(Print Name)