ADOPTED BY THE RIO NUEVO
MULTIPURPOSE FACILITIES DISTRICT
BOARD OF DIRECTORS April 20, 2006

RESOLUTION NO. 2006-06

RESOLUTION APPROVING THE FINANCIAL PARTICIPATION AGREEMENT BETWEEN THE RIO NUEVO MULTIPUPOSE FACILITES DISTRICT AND THE CITY OF TUCSON FOR THE IMPROVEMENTS TO AVENIDA DEL CONVENTO AND CLEARWATER STREET.

WHEREAS, the City of Tucson has a Development and Exchange Agreement with Rio Development Company LLC for the Mercado District at Menlo Park; and

WHEREAS, the Development and Exchange Agreement includes a Private Improvement Agreement (PIA) whereby Rio Development will construct improvements for the Avenida del Convento and Clearwater Street; and

WHEREAS, The Avenida del Convento improvements are to be financed by the City of Tucson; and

WHEREAS, The City of Tucson has prepared a Financial Participation Agreement whereby the Rio Nuevo Multipurpose Facilities District assumes the financial responsibilities of the City toward Rio Development; and

WHEREAS, the Rio Nuevo Multipurpose Facilities District has approved funds for the Avenida del Convento and Clearwater Street improvements in the Westside General Expenses; and

NOW THEREFOR BE IT RESOLVED, that the Rio Nuevo Multipurpose Facilities District agrees to enter into the Financial Participation Agreement with the City of Tucson for the Avenida del Convento and Clearwater Street improvements.

PASSED, ADOPTED AND APPROVED this 20th day of April, 2006.

APPROVED:

Chair
Rio Nuevo Multipurpose Facilities
District Board

ATTEST:

Secretary
Rio Nuevo Multipurpose Facilities
District Board

APPROVED AS TO FORM:

Counsel
Rio Nuevo Multipurpose Facilities
District Board

REVIEWED BY:

Director
Rio Nuevo Multipurpose Facilities
District

ADOPTED BY THE
MAYOR AND COUNCIL

May 9, 2006

RESOLUTION NO. 20334

RELATING TO FINANCIAL PARTICIPATION AGREEMENTS; AUTHORIZING AND APPROVING A FINANCIAL PARTICIPATION AGREEMENT WITH THE RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT FOR PUBLIC INFRASTRUCTURE WORK AT THE MERCADO AT MENLO PARK; AND DECLARING AN EMERGENCY.

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF TUCSON, ARIZONA, AS FOLLOWS:

SECTION 1. The Financial Participation Agreement with the Rio Nuevo Multipurpose Facilities District for public infrastructure work at the Mercado at Menlo Park, attached hereto as Exhibit 1, is authorized and approved.

SECTION 2. The City Manager is authorized and directed to execute the aforementioned Agreement on behalf of the City of Tucson and the City Clerk is authorized and directed to attest the same.

SECTION 3. The various city officers and employees shall perform all acts necessary or desirable to give effect to this resolution.

SECTION 4. WHEREAS, it is necessary for the preservation for the peace, health and safety of the City of Tucson that this resolution become

immediately effective, an emergency is hereby declared to exist, and this resolution shall be effective immediately upon its passage and adoption.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Tucson, Arizona, May 9, 2006

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

REVIEWED BY:

CITY MANAGER

TR:tc
04/21/2006 8:02 AM

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Financial Participation Agreement

This Contract is entered into by and between:

The City of Tucson, a municipal corporation (hereinafter referred to as "the City"), under the authority of Chapter 4, Section 1 (11) and (29), Tucson City Charter, and Rio Nuevo Multipurpose Facilities District, a political subdivision of the State of Arizona, (hereinafter referred to as "Rio Nuevo"), under the authority of A.R.S. Title 48.4204.

WHEREAS, the City and Rio Nuevo currently own and jointly market various real property assets in the Downtown Tucson area;

WHEREAS, all parties hereto agree that more pedestrian-friendly, sustainable neighborhoods, coupled with appropriately constructed housing products in and around Downtown Tucson is a worthy goal, one that is consistent with adopted City redevelopment plans, particularly the Rio Nuevo Master Plan;

WHEREAS, the City and Rio Nuevo jointly offered for sale certain property located west of the Santa Cruz River along the south side of West Congress Street, subsequently purchased by Rio Development Company, LLC;

WHEREAS, said Rio Development Company, LLC, is under construction with a subdivision development known as the Mercado at Menlo Park, a mixed-use, pedestrian-friendly, sustainable new neighborhood, pursuant to the terms and conditions of a development and sale agreement with the City and Rio Nuevo ("the Agreement", attached hereto as Exhibit "A" and incorporated herein by reference); and

WHEREAS, the Agreement contains certain requirements for public financial participation in the development of public areas of the subdivision that requires joint cooperation by the City and Rio Nuevo;

NOW, THEREFORE, the parties hereto agree as follows:

SECTION 1. Purpose

The purpose of this contract is to set forth the responsibilities and obligations of the parties hereto regarding financial participation of City and Rio Nuevo in the Agreement.

SECTION 2. Payments from Rio Nuevo to Rio Development

It is in the public interest to further the development of the Mercado at Menlo Park subdivision. Therefore, in the interest of comity and equity, Rio Nuevo agrees to, on behalf of the City, assume those financial commitments of the City toward Rio Development Company, LLC, (for public infrastructure improvements) contained in the Agreement, in an aggregate amount not to exceed Four Million and no/100 Dollars ($4,000,000.00). Rio Nuevo agrees to tender payments as required in the Agreement pursuant to the terms and conditions of the Agreement, or any ancillary escrow or draw accounts mutually established to effect the terms and conditions of the Agreement.

SECTION 3. Method of Notice

All correspondence to the City relating to this contract shall be in writing and directed to: City of Tucson Real Estate Division, 201 North Stone Avenue, Tucson, AZ 85701 (facsimile to 791-5641), with a copy to City of Tucson City Attorney's Office, 255 West Alameda, 7th floor, Tucson, AZ 85701 (facsimile to 623-9803). All correspondence to Rio Nuevo relating to this contract shall be in writing and directed to: Rio Nuevo Office, Attention: Bill O'Malley, 52 West Congress Street, Tucson, AZ 85701 (facsimile to 791-3240).

SECTION 4. Termination

This contract shall terminate upon either party serving the other written notice not less than one hundred-twenty (120) days prior to the intended termination date. The terms and conditions outlined herein shall remain in full force and effect until December 31, 2007. This contract is subject to cancellation pursuant to the provisions of A.R.S. s 38-511.

SECTION 5. Effective Date

This contract shall be effective upon execution by both parties, and shall continue in effect until terminated in accordance with Section 4.

SECTION 6. Non-Discrimination

The parties hereto agree to be bound by applicable local, state and federal law governing equal employment opportunity and non-discrimination.

SECTION 7. Law to Apply & Legal Jurisdiction

This contract is made under and shall be construed according to the laws of the State of Arizona. Nothing in this Letter shall be construed as either limiting or extending the legal jurisdiction of either the City or Rio Nuevo.

SECTION 8. Arbitration

The parties hereto agree that should a dispute arise between them relating to this agreement, in any manner, and said dispute involves the sum of THIRTY THOUSAND AND NO/100 DOLLARS ($30,000.00) or less in money damages only, exclusive of interest, cost or attorney's fees, the parties will submit the matter to Binding Arbitration pursuant to the Rules of the American Arbitration Association and the decision of the arbitrators shall be final and binding upon the parties. Any such arbitration shall be conducted in Tucson, Arizona.

SECTION 9. Financial Obligations

The parties hereto recognize that the performance of each party may be dependent upon the appropriation of funds by the City Council of the City of Tucson and the Board of Rio Nuevo. Should the necessary funds fail to be appropriated, either party may cancel this Letter without further duty or obligation. The party unable to obtain funding will give notice to the other party as soon as reasonably possible after the unavailability of said funds becomes known.

IN WITNESS HEREOF, Rio Nuevo and the City have caused their respective names to be signed by their duly authorized officers on the day and year herein indicated.

Dated this ___ day of _____, 2006.

See page 3a

By: Ruben Suarez
As: Chair of the District Board
For: Rio Nuevo Multipurpose Facilities District, a political subdivision of the State of Arizona

Approved as to form
By: William A. Hicks III
As: Counsel to the District

Accepted this ___ day of _____, 2006.

See page 3a

By: Mike Hein
As: City Manager
For: City of Tucson, a municipal corporation

Approved as to form
By: Tobin Rosen
As: Principal Ass't City Attorney

S:updike/mou rio rio devco 4-06

SECTION 8. Arbitration

The parties hereto agree that should a dispute arise between them relating to this agreement, in any manner, and said dispute involves the sum of THIRTY THOUSAND AND NO/100 DOLLARS ($30,000.00) or less in money damages only, exclusive of interest, cost or attorney's fees, the parties will submit the matter to Binding Arbitration pursuant to the Rules of the American Arbitration Association and the decision of the arbitrators shall be final and binding upon the parties. Any such arbitration shall be conducted in Tucson, Arizona.

SECTION 9. Financial Obligations

The parties hereto recognize that the performance of each party may be dependent upon the appropriation of funds by the City Council of the City of Tucson and the Board of Rio Nuevo. Should the necessary funds fail to be appropriated, either party may cancel this Letter without further duty or obligation. The party unable to obtain funding will give notice to the other party as soon as reasonably possible after the unavailability of said funds becomes known.

IN WITNESS HEREOF, Rio Nuevo and the City have caused their respective names to be signed by their duly authorized officers on the day and year herein indicated.

Dated this 20 day of April, 2006.

By: Ruben Suarez
As: Chair of the District Board
For: Rio Nuevo Multipurpose Facilities District, a political subdivision of the State of Arizona

See page 3 of 3
Approved as to form
By:
As: Counsel to the District

Accepted this 9 day of May, 2006.

By: Mike Hein
As: City Manager
For: City of Tucson, a municipal corporation

Approved as to form
By: Tobin Rosen
As: Principal Ass't City Attorney

ATTEST:
City Clerk

S:updike/mou rio rio devco 4-06

EXHIBIT "A"

DEVELOPMENT AND EXCHANGE AGREEMENT

FOR

RIO DEVELOPMENT COMPANY, LLC

THIS AGREEMENT is entered into by and among the City of Tucson, ("Tucson"), and Rio Development Company, LLC, an Arizona limited liability company ("Developer"). Tucson and Developer are sometimes referred to in this Agreement as "the Party" or "the Parties".

RECITALS

A. Tucson is a municipal corporation of the State of Arizona.

B. Developer is Rio Development Company, LLC, an Arizona limited liability company. Developer intends to design and construct a mixed use subdivision that will include single-family residences, condominiums, commercial, retail, restaurant, and other complementary uses.

C. Pursuant to an Offer to Purchase previously executed on October 13, 2003, by Tucson and Developer, Tucson shall convey to Developer the property described in **Exhibit "A"**, consisting of approximately 13.6 acres ("Property"), in accordance with the terms and conditions of that Offer to Purchase, the First Amendment to the Offer to Purchase, dated October 13, 2003, the Second Amendment to the Offer to Purchase, dated October 13, 2003, and any subsequent amendments (collectively, the "Offer"), attached as **Exhibit "B"**. The Property, and any improvements existing or to be constructed on the Property, are collectively referred to in this Agreement as "the Premises".

D. Pursuant to the terms of the Offer to Purchase, Tucson shall authorize conveyance of the Property to Developer upon the effective date of both the approved Menlo Park Mercado District Planned Area Development ("PAD") and Tentative Plat ("Closing Date").

E. Additionally, Developer shall construct various public roadway infrastructure improvements located off the Property that will be dedicated to Tucson and for which Tucson shall reimburse Developer (the "Off-site Improvements"). The Parties will agree to the specific Off-site Improvements to be completed and the process for completion in the Private Improvement Agreement ("PIA") attached hereto as **Exhibit "C"** and incorporated herein by this reference. The terms of Tucson's reimbursement of Developer for the Off-site Improvements shall be included in this Agreement. The Off-site Improvements are depicted in the Draft Improvement Plan number 103010-B-001-0105, as referred to in the PIA.

F. Developer, in exchange for acceptance and payment of the Property from Tucson, and commitments made by Tucson herein, shall agree to develop the Property pursuant to this agreement and the Offer.

CITY CLERK NOTE: This is
EXHIBIT A TO EXHIBIT 1
TO RESOLUTION NO. 20334

G. This Agreement is intended to be a development agreement between Tucson and Developer pursuant to A.R.S. § 9-500.05 for purposes of determining development rights and obligations.

H. Tucson hereby expressly finds and determines that the consideration and commitments herein outlined from Developer and Tucson in this Agreement are justified based on the other consideration provided under this Agreement, including without limitation the economic development benefits to the community resulting from this Agreement.

AGREEMENT

NOW, THEREFORE, BASED ON THE FOREGOING RECITALS, WHICH ARE INCORPORATED HERE AS THE INTENTION OF THE PARTIES IN ENTERING INTO THIS AGREEMENT, the Parties hereby agree as follows:

1. Developer Rights and Obligations.

1.1 *Conditions of Conveyance and Development.* Developer shall develop the Premises and complete the Off-site Improvements in accordance with the PAD and development plans, plats, site plans and related construction drawings and improvement plans as have and shall be approved by Tucson. Developer shall initiate and proceed with development in accordance with the Offer. Except as may be otherwise set out in the PIA, Developer shall, at its expense, comply with all existing and future federal, state, county and municipal laws, ordinances, rules and regulations in connection with the use, operation, maintenance and construction of all improvements on the Premises.

1.2 *Right of Entry.* Developer shall have the right to enter the Premises at any time during the term of this Agreement for purposes of effecting design and construction of the Premises.

1.3 *Standards for Construction of Premises.*

1.3.1. Developer shall use and employ only licensed, bonded and qualified contractors.

1.3.2. All improvements shall be constructed in a good, workmanlike and first-class manner, and constructed and maintained in compliance with all applicable laws, rules, ordinances and regulations.

1.4 *Governmental Approvals.* Developer shall obtain all necessary government approvals, permits or licenses that are necessary to Developer's construction, operation, use or improvement of the Premises. If any certificate, permit, license or approval issued to Developer is cancelled, expires, lapses or is otherwise withdrawn by any such governmental authority, Developer shall make every effort to obtain replacement permits for the governmental approval to the satisfaction of Tucson. Failure to do so shall constitute a default under this Agreement.

1.5 *Payment Bond.* Before Developer begins construction upon the Premises, Tucson may at its option require Developer to post a payment bond in a form and with a surety company reasonably acceptable to Tucson, assuring that the improvements will be constructed in accordance with the approved plans. It is anticipated that the construction company selected by Developer will provide adequate bonding to fulfill the provisions of this Section.

1.6 *Mechanics' and Materialmen's Liens.* Developer shall promptly and diligently take whatever action is necessary to remove any mechanic's or materialmen's liens.

1.7 *Schedule.* "Start of Construction" shall be defined as the date on which work permitted by Tucson begins on the Premises. Start of Construction shall occur after the Closing Date and not later than 45 days after recording of the Final Plat, and shall be completed pursuant to the terms and conditions of this Agreement, with reasonable delay for force majeure events permitted. Residential models shall be completed and receive temporary certificates of occupancy within 24 months of Start of Construction with reasonable delay for force majeure events permitted. Pursuant to the Offer, this provision and the dates and times provided herein shall supercede the deadlines and liquidated damages provisions on Page 3 of 4 of Tucson's Request for Proposals, West Congress Residential Development Opportunity to which Developer responded.

1.8 *Ownership of Improvements.* All improvements constructed or to be constructed on the Premises shall be and remain owned by Developer, except for those rights-of-way to be dedicated to Tucson by Final Plat.

1.9 *Signs.* Prior to the Closing Date, Developer may place signs on the Premises in conformance with applicable government regulations, with Tucson's prior written consent to design, size and location, said consent to be provided or denied by Tucson within no more than ten (10) business days of request by Developer.

1.10 *Graffiti.* Developer shall be solely responsible for graffiti abatement on the Premises after the Closing Date.

1.11 *Taxes, Fees, and Other Developer Payables.*

1.11.1. Developer shall bear, pay and discharge all of the following (which are collectively referred to in this Agreement as "Impositions") as they apply to the Premises at least 15 days before the last day when payment may be made without penalty or interest and before the nonpayment constitutes a default under the provisions of any mortgage until the Closing Date, after which date Developer shall be responsible for the Impositions as provided by law and/or under contract or other agreement:

1.11.1.1. All taxes, assessments, water rents, rates and charges, sewer rents, license and permit fees and all other governmental impositions and charges of every kind and nature whatsoever, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind or nature whatsoever, and each and every installment thereof, which shall prior to and during the term of this Agreement be charged, laid, levied, assessed, imposed, become due and payable or arise,

1.11.1.2. All taxes charged, laid, levied, assessed or imposed in lieu of or in addition to the foregoing under or by virtue of all present or future laws, ordinances, requirements, orders, directions, rules or regulations of the federal, state, county and municipal governments and of all other governmental authorities whatsoever, and in connection with the use, occupancy or possession of or grow due or payable out of or for the Premises or any part it, or any building, appurtenances or equipment on or in the Premises or any part of it, or the sidewalks or streets in front of or adjoining the Premises, or any rents or additional rents payable under this Agreement.

1.11.2. To the extent permitted by law and by any mortgage, Developer shall have the right to apply for the conversion of any special assessment for local improvements to cause the same to be payable in installments, and upon such conversion Developer shall be obligated to pay and discharge punctually only such of said installments (with interest and charges thereon) as shall become due and payable during the term of this Agreement.

1.11.3. Unless Developer makes advance monthly deposits of property or possessory interest taxes and other Impositions with a mortgagee, Tucson may require Developer on the first day of each month to deposit with Tucson an amount equal to each of the Impositions next becoming due (based on the most recent available billing information), less all sums already deposited (plus interest earned thereon not theretofore paid out), divided by the number of months until the month preceding the date upon which each such Imposition is due and payable, which deposits shall be held in escrow in an interest-bearing account by Tucson and, to the extent so held, shall be applied to the payment of each Imposition for which made. Any default by Developer in making any such deposit shall be treated as a default in the payment of rent, should Landlord invoke their right to require said deposits.

1.11.4. The Declaration of Covenants, Conditions, Restrictions and Grant of Easements for Rio Nuevo ("CC&Rs"), recorded in the records of Pima County, Arizona at Docket 11904, page 2528, requires Developer to contribute a proportionate share of common area maintenance expenses ("CAM Expenses"). In order to finalize the public report for the Premises and begin to sell, Developer must provide an estimate of homeowners association/business association fees. Therefore, Tucson shall cooperate with Developer to reach a mutually satisfactory understanding as to appropriate fees related to the CC&R's within ninety (90) days from the date of this agreement. Said resolution shall identify a "not to exceed" total CAM Expense to be assessed collectively on property owners within the Premises, along with appropriate annual increases. Developer and its future successors, assigns and any future property owners on the Premises shall not be obligated to pay any deficiencies in CAM Expenses otherwise incurred. Tucson shall effectuate any required amendment to the CC&Rs immediately subsequent to the resolution of this CAM Expense issue.

1.11.5. Developer shall pay, as they become due and payable, all fees, charges, taxes and expenses required for licenses and/or permits required for or occasioned by Developer's use of the Premises.

1.12 *Maintenance.* Developer shall and at its own cost and expense put, keep, replace, and maintain in good repair and in good, safe and substantial order and clean and first class condition, all improvements on the Premises or forming a part thereof, and their full equipment and appurtenances, both inside and outside, structural and nonstructural, extraordinary and ordinary, foreseen or unforeseen, no matter how the need or desirability for repairs may occur, and whether or not made necessary by wear, tear or defects, latent or otherwise; and shall use all reasonable precautions to prevent, and shall promptly repair or restore, any waste, damage or injury. Developer shall also at its own cost and expense put, keep, replace and maintain in good repair and in good, safe and substantial order and condition, and free from dirt, mud, ice, rubbish and any and all other obstructions or encumbrances, the sidewalks, vaults, areas and curbs in front of and adjacent to the Premises. The terms and conditions of this Section shall survive the Effective Date of this Agreement. The terms and

conditions of the PIA attached hereto as **Exhibit "C"** shall govern maintenance of the Off-site Improvements.

1.13 *Utilities.* Developer shall be responsible for obtaining any utility service agreement needed for the Premises. Developer shall pay when due all charges for utilities to the Premises.

1.14 *Affordable Housing.* Developer shall make their best effort to build a minimum of twenty-four (24) affordable housing units on the Premises. For purposes of this Section, "Affordable Housing" shall mean housing affordable to a person making 80% of area median income. Tucson Community Services will assist Developer in achieving this by providing technical assistance to Developer in seeking alternative financing through Federal, State, and local government agencies, including Tucson funding. All Affordable Housing units on the Premises will be constructed at the same standards and quality of construction and design as any other housing unit on the Premises and subject to the design review process detailed in the Mercado District Master Plan. The affordable units will be mixed throughout the project and not segregated to a single area.

2. <u>City Rights and Obligations</u>.

2.1 *Development Expenses Paid by Tucson.* Tucson hereby agrees to financially participate in the development of the Off-site Improvements. An escrow account shall be established with a title company (hereinafter referred to as the "escrow company") under contract to Tucson, in order to facilitate payment of the off-site Improvements, and to act as agent for Tucson and Developer with respect to receipt and distribution of funds. All costs associated with establishment and maintenance of said escrow account shall be the responsibility of Tucson. The escrow account shall be established in accordance with the terms and conditions of the Escrow Instructions, substantially in the form attached hereto as **Exhibit "D"** and incorporated herein by reference.

2.2 *Right of Entry.* Tucson shall have the continued right to enter the Premises for purposes of environmental and/or archaeological investigations at any time during the term of this agreement, with prior consent of Developer, said consent not to be unreasonably withheld.

2.3 *No Tucson Future Expenditures.* Tucson shall not be required to make any repairs or improvements to the Premises, following conveyance of the Premises to Developer, in connection with this Agreement, the terms and conditions of all attached and referenced Agreements notwithstanding.

2.4 *Temporary Revocable Easements.* It is anticipated that development of the Premises will include incorporation of private improvements on the public rights-of-way. Tucson shall process any requests for use of public rights-of-way for private purposes using a temporary revocable easement ("TRE") or permanent easement, as appropriate, and substantially in the form attached hereto as **Exhibit "E"**. Annual payments for TRE's will be waived by Tucson, but issuance of any TRE's will be subject to applicant securing right of way permits in accordance with the standards established in the PAD standard development review and building permit processes and approvals, as needed. Examples of the types of uses for TREs include, but are not limited to patio seating, temporary merchandise displays, beverage and food carts, portable propane heaters, portable lighting or seasonal decorative lighting, decorative displays associated with a store or business, roof drainage elements, awnings, etc.

2.5 *Air Right Conveyance.* It is anticipated that development of the Premises will include incorporation of private improvements placed above the public rights-of-way (for example, balconies and living space). Tucson shall process any requests for conveyance of air rights pursuant to a deed above public rights-of-way as a standard Real Estate Services ("RES") request using a form developed specifically for the Premises and mutually agreed to by the Parties within thirty (30) days after submittal of the first set of building plans for the Premises. Tucson shall waive all application fees associated therewith, and shall provide air right conveyance to applicant at no cost to applicant. As long as the request for conveyance or air right meets all standard development review and building permit requirements, Tucson shall not unreasonably withhold approval of such request.

2.6 *Landfill Mitigation.* Tucson acknowledges that a landfill mitigation effort continues on property within 1000 feet of the premises, and that said mitigation effort is to be completed under the direction of Tucson and without financial participation from Developer. Within 45 days from the Effective Date of this Agreement, Tucson shall create a website accessible by the public with up-to-date information on the status of the landfill mitigation.

2.7 *Mandatory Wells.* There are two methane monitoring well sites currently located on the Premises. Tucson shall maintain the existing wells for 10 years from the Effective Date of this Agreement or until mitigation of the landfill is complete and final reports are made to homeowners within 1,000 feet of the landfill. If necessary for development of the Premises and within ninety (90) days of written notice from Developer, Tucson shall complete the process to abandon the existing wells at Tucson's sole cost and expense and shall diligently pursue such abandonment to completion. Tucson shall further construct two new test wells, at Tucson's sole cost and expense, to be located as determined jointly by Tucson and Developer, at the perimeter of the Premises and shall maintain those wells for 10 years from the Effective Date of this Agreement or until mitigation of the landfill is complete and final reports are made to homeowners within 1,000 feet of the landfill.

2.8 *West Congress Street.* Tucson and Developer acknowledge the importance of West Congress Street from Interstate 10 to Grande Avenue as a gateway to Downtown Tucson, and Tucson shall make every effort to allocate Department of Transportation Capital Improvement Project funds toward West Congress Street streetscape and median improvements in the near future.

2.9 *Rio Nuevo Project.* Tucson shall manage development of the Rio Nuevo project in such a manner as to be compatible with the Developer's development, with adjacent Rio Nuevo project elements to be fully integrated with Developer's development as much as possible. Tucson shall grant Developer opportunities to participate in the selection process for future developers of property owned by Tucson that lie west of the Santa Cruz River, north of 22nd Street and south of Congress Street. Developer may opt out of the selection process, if it chooses to submit a proposal for the development.

2.10 *Stockpile and Dirt Donation.* As part of construction of the Premises, Developer intends temporarily to stockpile a substantial amount of dirt (approximately 30,000 cubic yards). Tucson shall permit such stockpiling pursuant to required permits and by granting an easement or license for such stockpiles on property on or near the future site of the Tucson Origins Heritage Park located south and eat of the Premises at a specific location within that site to be mutually determined by the Parties within 45 days of the Effective Date of this

Agreement. The dirt to be stockpiles as provides in this Section is valued at approximately $10.00 per ton. In consideration for the ability to stockpile this dirt, Developer shall donate all of the dirt stockpiled pursuant to this Section to Tucson at no cost. At such time as the dirt is stockpiled as described above, Tucson shall own and be responsible for the dirt and Developer shall have no further responsibility for such dirt.

2.11 Review of Grading and Building Plans. Tucson hereby agrees to review all grading and building plans for the Premises within 30 days of submittal. Any subsequent review of a set of plans shall be completed within 15 days of re-submittal.

3. Default Provisions.

3.1 *Developer Default.* Developer shall be in default under this Agreement if it:

3.1.1. Developer's Actions Constituting Default:

3.1.1.1. Fails to make payment of Impositions when due and does not cure such nonpayment within ten days after written notice from Tucson specifying the default complained of; or

3.1.1.2. Fails to perform any other covenant or condition of this Agreement and does not cure such failure within thirty (30) days after written notice from Tucson, or such allowable longer period of time in the event Developer is, in the opinion of Tucson, diligently attempting to cure the non-monetary default.

3.1.2. Suit for Possession or Payment. If Tucson sues to recover possession of the Premises, to recover any amount due under this Agreement, or for breach of any other covenant, and prevails in such lawsuit, the Developer shall pay to Tucson all reasonable expenses incurred therefor, including reasonable attorney fees.

3.1.3. Cure by Tucson. If Developer defaults under this Agreement, Tucson may, after prior written notice, cure the default for the account of and at the reasonable expense of the Developer. If Tucson is compelled to pay or elects to pay any sum of money or to do any act which will require the payment of any sum of money or is compelled to incur any expense, including reasonable attorney fees in instituting, prosecuting or defending any action to enforce Tucson's rights under this Agreement, the sums so paid by Tucson.

3.2 *Tucson Default.* Tucson shall be in default under this Agreement if it:

3.2.1. Tucson Actions Constituting Default:

3.2.1.1. Tucson fails to make payment upon receipt of valid requests when due and does not cure such nonpayment within ten days after written notice from Developer specifying the default complained of; or

3.2.1.2. Tucson fails to perform any other covenant or condition of this Agreement and does not cure such failure within thirty (30) days after written notice from Developer, or such allowable longer period of time in the event Tucson is, in the opinion of Developer, diligently attempting to cure the non-monetary default; or

4. General Provisions.

4.1 *Damage or Destruction.* If the Premises or any portion of it is destroyed or damaged through no fault or negligence of Developer in a way that materially hinders its

effective use, Developer shall make necessary repairs within a reasonable period of time, unless mutually deemed infeasible. Tucson shall have no obligation to repair any damage to any portion of the Premises.

4.2 *Zoning Compliance.* Tucson intends that the Premises and Off-Site Improvements be completed substantially as proposed by the Offer to Purchase, this Agreement, and Final Plat. Construction upon the Premises shall be in conformance with the requirements of the Tucson Land Use Code and PAD. This provision shall not preclude or limit Developer's right to seek text amendments, rezoning, or variances as may be permissible under and in accordance with the Land Use Code and Arizona law.

4.3 *Condemnation.* If the Premises are taken by eminent domain prior to the Closing Date, this Agreement shall terminate when title to the Premises vests in the condemning authority or when the condemning authority takes physical possession of the Premises, whichever occurs first. If a portion of the Premises is taken by eminent domain so Developer's use of the Premises is materially hindered, either Party shall have the right to terminate this Agreement by giving thirty days' written notice to the other Party. The right to terminate vests when title to the Premises vests in the condemning authority or when the condemning authority takes physical possession of the Premises, whichever occurs first. This Agreement shall continue unabated if a partial taking of the Premises by eminent domain leaves Developer reasonably able to use the Premises for its intended purposes. Prior to the Closing Date, Developer shall not be entitled to any portion of any award paid for a taking under the power of eminent domain and Tucson shall receive full amount of any such award, and all damages awarded as compensation for diminution in value of the fee value of the Premises shall belong to Tucson. Nothing in this paragraph shall affect Developer's right to claim and recover payments under federal or state uniform relocation acts or, if recoverable, for damage to Developer's business.

4.4 Indemnity and Insurance.

4.4.1. Disclaimer of Liability: Neither Party to this Agreement shall at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of the other Party's construction, maintenance, repair, use, management, operation, condition or dismantling of the facility on the Premises, except in the event of negligence.

4.4.2. Indemnification: Each Party shall, at their respective sole cost and expense, indemnify, defend and hold harmless (hereinafter referred to as "Indemnitor") the other Party and the officers, employees, boards, commissions, agents, attorneys, and contractors of the foregoing entity (hereinafter referred to as "Indemnitee"), from and against:

4.4.2.1. Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitee by reason of any act or omission of the Indemnitor, its personnel, employees, agents, contractors or subcontractors, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, libel, slander, invasion of privacy and unauthorized use of any trademark, trade name, copyright, patent, service mark or any other right of any person, firm or corporation, which may arise out of or be in any way connected with the construction, installation, operation,

maintenance, use or condition of the Premises or the Indemnitor's failure to comply with any federal, state or local statute, ordinance or regulation.

4.4.2.2. Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and other consultants), which are imposed upon, incurred by or asserted against the Indemnitee by reason of any claim or lien arising out of work, labor, materials or supplies provided or supplied to Indemnitor, its contractors or subcontractors, for the installation, construction, operation, maintenance or use of the Premises and, upon the written request of Indemnitee, Indemnitor shall cause such claim or lien covering the premises to be discharged or bonded within thirty (30) days following such request.

4.4.2.3. Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitee by reason of any financing or securities offering by Indemnitor or its affiliates for violations of the common law or any laws, statutes, or regulations of the State of Arizona or United States, including those of the Federal Securities and Exchange Commission, whether by Indemnitor or otherwise.

4.4.2.4. Indemnitor's obligation to indemnify the Indemnitees under this Agreement shall extend to claims, losses, and other matters covered hereunder that are alleged to be caused or contributed to by the negligence of one or more Indemnitees.

4.4.2.5. Each Party undertakes and assumes, for its respective officers, agents, affiliates, contractors and subcontractors and employees, all risk of dangerous conditions, if any, on or about the Premises, and hereby agrees to indemnify and hold harmless the Indemnitee against and from any claim asserted or liability imposed upon the Indemnitee for personal injury or property damage to any person (other than from Indemnitee's intentional acts or negligence) arising out of the Indemnitor's installation, operation, maintenance, condition or use of the Premises or Indemnitor's failure to comply with any federal, state or local statute, ordinance or regulation.

4.4.2.6. In the event any action or proceeding shall be brought against the Indemnitee by reason of any matter for which the Indemnitee are indemnified hereunder, Indemnitor shall, upon notice from the Indemnitee, at Indemnitor's sole cost and expense, resist and defend the same with legal counsel mutually selected by the Indemnitor and the Indemnitee; provided however, that no Party shall admit liability in any such matter on behalf of the other Party or settle any claim for which they are indemnified hereunder without written consent of the other Party.

4.4.2.7. Each Party shall give the other Party prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section. Nothing herein shall be deemed to prevent the Parties from cooperating with each other and participating in the defense of any litigation by their counsel. The Indemnitor shall pay all expenses incurred by the Indemnitee required or mandated by City Charter, State Statute or Federal regulations, in response to any such actions, suits or proceedings for which the Indemnitee seeks indemnification. These expenses shall include all out-of-pocket expenses such as attorney fees and shall also include the reasonable value of any services rendered by the Indemnitor's attorney[ies], and the actual expenses of the Indemnitor's agents,

employees or expert witnesses, and disbursements and liabilities assumed in connection with such suits, actions or proceedings but shall not include attorneys fees for services that are unnecessarily duplicative of services provided by the Indemnitee. If the Indemnitor requests the Indemnitee to assist it in such defense then the Indemnitor shall pay all expenses incurred by the Indemnitee in response thereto, including the Indemnitee's defending itself with regard to any such actions, suits or proceedings. These expenses shall include all out-of-pocket expenses such as attorney fees and shall also include the costs of any services rendered by the Indemnitee's attorney, and the actual expenses of the Indemnitee's agents, employees or expert witnesses, and disbursements and liabilities assumed by the Indemnitee in connection with such suits, actions or proceedings.

4.4.3. Insurance: Developer shall maintain, or cause to be maintained, in full force and effect and at its sole cost and expense, the following types and limits of insurance to be effective on the Closing Date:

4.4.3.1. Worker's compensation insurance meeting applicable statutory requirements and employer's liability insurance with minimum limits of One Hundred Thousand Dollars ($100,000) for each accident.

4.4.3.2. Comprehensive commercial general liability insurance with minimum limits of Three Million Dollars ($3,000,000) as the combined single limit for each occurrence of bodily injury, personal injury and property damage. The policy shall provide blanket contractual liability insurance for all written contracts, and shall include coverage for products and completed operations liability, independent contractor's liability; coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage. This liability coverage will extend to the temporary construction sites, as defined in the right of entry agreement.

4.4.3.3. Automobile liability insurance covering all owned, hired, and non-owned vehicles in use by Developer, its employees and agents, to comply with the provisions of state law with minimum limits of One Million Dollars ($1,000,000) as the combined single limit for each occurrence for bodily injury and property damage.

4.4.3.4. At the start of, during and only until completion of any Developer construction, builders all-risk insurance, together with an installation floater or equivalent property coverage covering cables, materials, machinery and supplies of any nature whatsoever which are to be used in or incidental to the construction of the Improvements. Upon completion of the Improvements, Developer shall substitute for the foregoing insurance policies of fire, extended coverage and vandalism and malicious mischief insurance on the Premises. The amount of insurance at all times shall be representative of the insurable values installed or constructed.

4.4.3.5. Business interruption insurance coverage in an amount sufficient to cover such loss of revenues, for the period of time which it would take, under normal circumstances, to repair or replace that part(s) of the Premises which is damaged and caused the loss of revenue (only if so desired by Developer).

4.4.3.6. All policies shall be written on an occurrence and not on a claims-made basis.

4.4.3.7. The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those stated.

4.4.4. Additional Insureds: All policies, except for worker's compensation and all risk property, shall include Tucson, and the officers, employees, boards, commissions, agents, attorneys, and contractors of the foregoing entities, as their respective interests may appear, as additional insureds (herein referred to as the "Additional Insureds"). Each policy which is to be endorsed to add Additional Insureds hereunder, shall contain the following cross-liability wording: "In the event of a claim being made hereunder by one insured for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is or may be made in the same manner as if separate policies had been issued to each insured hereunder." However, this condition does not operate to increase the insurance company's limit of liability.

4.4.5. Evidence of Insurance: Certificates of insurance for each insurance policy required to be obtained by Developer in compliance with this paragraph, along with written evidence of payment of required premiums shall be filed and maintained with Tucson. Developer shall immediately advise Tucson of any claim or litigation that may result in liability to Tucson.

4.4.6. Cancellation of Policies of Insurance: All insurance policies maintained pursuant to this Agreement shall contain the following endorsement: "At least sixty (60) days prior written notice shall be given to Tucson by the insurer of any intention not to renew such policy or to cancel, replace or materially alter same, such notice to be given by registered mail to the parties named in this paragraph of the Agreement."

4.4.7. Insurance Companies: All insurance shall be effected under valid and enforceable policies, insured by insurers licensed to do business by the State of Arizona or surplus line carriers on the State of Arizona Department of Insurance approved list of companies qualified to do business in the State of Arizona. All insurance carriers and surplus line carriers shall be rated A or better by A.M. Best Company.

4.4.8. Deductibles/Self Insurance or Retentions: All insurance policies may be written with deductibles, not to exceed $50,000 unless approved in advance by Tucson. Developer agrees to indemnify and save harmless Tucson, the Indemnitees and Additional Insureds from and against the payment of any deductible and from the payment of any premium on any Developer insurance policy required to be furnished by this Agreement.

4.4.9. Contractors: Developer shall require that each and every one of its contractors and their subcontractors who perform work on the Premises to carry, in full force and effect, adequate workers' compensation, comprehensive public liability and automobile liability insurance coverages of the type which Developer is required to obtain under the terms of this agreement.

4.5 *Hazardous Substance Indemnification.* Developer further agrees to hold Tucson harmless from and indemnify Tucson against any release of any hazardous substance caused by the intentional or negligent act of Developer or its contractors and any damage, loss, or expense or liability resulting from such release including all attorneys' fees, costs and penalties incurred as a result thereof except any release caused by the intentional act or

negligence of Tucson, its employees or agents, and in such case of Tucson's negligence, liability shall be based on comparative responsibility. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease.

4.6 *Acceptance of Premises.* By taking possession of the Premises, Developer accepts the Premises in the condition existing as of the Effective Date of this Agreement. Tucson makes no representation or warranty with respect to the condition of the Premises and Tucson shall not be liable for any latent or patent defect in the Premises. Developer has fully investigated the condition of the Premises, including without limitation the use or occupation that may be made of the Premises, Tucson's title to the Premises, and any subsurface or soil or fill conditions or any latent defects of the Premises. Tucson shall not be liable for any claims relating to the condition of the Premises. Notwithstanding the foregoing, if a material adverse environmental condition previously unknown to the Parties is discovered on the Premises during the term of this Agreement, Developer's sole remedy shall be either (a) to remediate the condition at its own cost and continue to exercise the rights and obligations under this Agreement or (b) to terminate this Agreement and seek reimbursement of actual out-of-pocket expenses made by Developer pursuant to this Agreement. Tucson shall not be required under this Agreement to remediate any environmental or other condition of the Premises.

4.7 *Estoppel Certificate.* Developer shall, at any time and from time to time upon not less than ten days prior request by Tucson, deliver to Tucson a statement in writing certifying that (a) so far as the person making the certificate knows, Tucson is not in default under any provisions of this Agreement; and (b) such other matters as Tucson may reasonably request. Similarly, Tucson shall provide to Developer a like statement in writing at any time and from time to time upon not less than ten days prior request by Developer.

4.8 *Notices.* All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested; to the following addresses:

Tucson:

City of Tucson, Real Estate Division
Attention: John Updike
P. O. Box 27210
Tucson, AZ 85726-7210

Copy to:

City of Tucson, City Clerk's Office
P. O. Box 27210
Tucson, AZ 85726-7210

And to: Rio Nuevo Office
52 West Congress Street, Tucson, AZ 85701

Developer: Rio Development Company, LLC
264 East Congress Street
P.O. Box 2223
Tucson, AZ 85702

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

4.9 *Successors and Assigns.*

4.9.1. This Agreement shall be binding upon and inure to the benefit of the Parties, their respective heirs, personal representatives, successors and assigns.

4.9.2. Developer may only assign all of its rights, duties and obligations under this Agreement to any entity which acquires all or substantially all of Developer's assets in the Premises by reason of a merger, acquisition or other business reorganization, which shall not be deemed a third party assignment.

4.10 *No Waiver of Strict Performance.* The failure of either Party to insist upon a strict performance of any of the agreements, terms, covenants and conditions of this Agreement shall not be deemed a waiver of any rights or remedies that either Party may have and shall not be deemed a waiver of any subsequent breach or default in any of such agreements, terms, covenants and conditions.

4.11 *Quiet Enjoyment.* Tucson covenants that, as long as Developer shall faithfully perform the agreements, terms, covenants and conditions hereof, Developer shall and may peaceably and quietly have, hold and enjoy the Premises for the Term hereby granted without molestation or disturbance by or from Tucson, subject, however, to all of the provisions of this Agreement and all encumbrances to which this Agreement is made subject and subordinate as herein provided.

4.12 *No Unlawful Occupancy.* Developer shall not use or occupy, nor permit or suffer, the Premises or any part thereof to be used or occupied for any unlawful or illegal or immoral business, use or purpose, nor for any disreputable or hazardous business use or purpose, nor in such a manner as to constitute a nuisance of any kind, nor for any purpose or in any way in violation of any present or future governmental laws, ordinances, requirement, orders, directions, rules or regulations. Developer shall immediately upon the discovery of any such unlawful, illegal, immoral, disreputable or hazardous use take all necessary steps, legal and equitable, to compel the discontinuance of such use and to oust and remove any sub-Developers, occupants or other persons of such unlawful, illegal, immoral, disreputable or hazardous use.

4.13 *Authority to Execute Agreement.* The individuals executing this Agreement hereby represent that they have full right, power, and authority to execute this Agreement on behalf of their respective Parties.

4.14 *Entire Agreement.* This Agreement constitutes the entire agreement and understanding of the parties pertaining to the subject matter of the Agreement and supersedes all offers, negotiations, and other agreements of any kind. All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, are superseded and merged in this Agreement. There are no representations or understandings of any kind not set forth herein.

4.15 *Governing Law.* This Agreement shall be construed in accordance with the laws of the State of Arizona.

4.16 *Non-Severability.* The provisions of this Agreement shall not be given effect individually, and to this end, the provisions of this Agreement are not severable.

4.17 *No Brokers.* The Parties acknowledge that no brokers were involved in this transaction, and no other parties are thus eligible for compensation as a result of this Agreement.

4.18 *Anti-Moratorium.* No moratorium, as that term is defined in A.R.S. § 9-463.06, shall be imposed on the Premises unless it is imposed pursuant to an ordinance that complies with A.R.S. § 9-463.06, as it may be amended.

4.19 *Headings.* The descriptive headings of the Sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the Agreement's provisions.

4.20 *Exhibits.* Any exhibit attached to this Agreement shall be deemed to have been incorporated in this Agreement by this reference with the same force and effect as if it were fully set forth in the body of the Agreement

4.21 *Further Acts.* Each of the Parties to this Agreement shall promptly and expeditiously execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

4.22 *Recordation.* This Agreement shall be recorded in its entirety in the official records of Pima County, Arizona not later than ten days after this Agreement is executed by all Parties and an Ordinance is enacted by the Tucson Mayor and Council authorizing this Agreement.

4.23 *Amendments.* No change or addition is to be made to this Agreement except by a written amendment executed by all of the Parties. An amendment shall be recorded in the official records of Pima County, Arizona within ten days after its execution.

4.24 *Time of Essence.* Time is of the essence of this Agreement.

4.25 *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.

4.26 *Attorneys' Fees.* In the event either Party hereto shall commence any civil action against the other to enforce or terminate this Agreement or to recover damages for the breach of any of the provisions, covenants or terms of this Agreement on the part of the other

Party, the prevailing Party in such civil action shall be entitled to recover from the other Party, in addition to any relief to which such prevailing Party may be entitled, all costs, expenses and reasonable attorneys' fees incurred in connection therewith.

4.27 *Counterparts.* This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all parties may be physically attached to a single document.

4.28 *Effective Date.* This Agreement is effective on November 1, 2004, 2004.

4.29 *Term/Termination Date.* This Agreement shall terminate ten (10) years from the Effective Date.

Executed this 25 day of OCTOBER, 2004.

By: Gale Marsland

As: Project Manager

For: Rio Development Company, LLC

Accepted this 1 day of November, 2004.

By: James Keene

As: City Manager

For: City of Tucson, a municipal corporation

Approved as to form

By: Robert Rosen
for Asst. City Atty

ATTEST:

Kathleen S. Detrick Nov. 1, 2004

Attachments: Exhibit "A" – Legal Description of Premises (Tucson's Site)

Exhibit "B" – Offer to Purchase

Exhibit "C" – PIA

Exhibit "D" – Escrow Instructions

Exhibit "E" – Standard Form of Temporary Revocable Easement

October 11, 2004
WLB No. 103010-B-001-1003X
W:\LEGALS\103010\Rev-Boundary.doc

Exhibit "A"

LEGAL DESCRIPTION
RIO NUEVO
BOUNDARY

Portions of Blocks 1, 2, 3, 8, and 9 of the amended final plat of RIO NUEVO, BLOCKS 1 THRU 15, AND COMMON AREA A, COMMON AREA B, AND COMMON AREA C, recorded in the office of the Pima County Recorder, Pima County, Arizona, in Book 57 of Maps and Plats, Page 40 thereof, and lying within a portion of Section 14, Township 14 South, Range 13 East, Pima County, Arizona, described as follows:

BEGINNING at the Northwest corner of Block1 of said plat, said point lies on the southerly right-of-way line of Congress Street;

THENCE N 83°53'17" E, along the northerly line of said Blocks 1and 2, and said south right-of-way line a distance of 431.57 feet;

THENCE S 10°49'39" E, 911.15 feet;

THENCE S 26°48'16" W, 24.18 feet;

THENCE S 80°13'47" W, 207.30 feet;

THENCE S 81°20'34" W, 249.48 feet;

THENCE S 42°36'23" W, 38.00 feet;

THENCE S 47°23'37" E, 57.13 feet to a point of curvature of a tangent curve concave to the West;

THENCE Westerly along the arc of said tangent curve to the right, having a radius of 15.00 feet, a central angle of 90°00'00", for an arc distance of 23.56 feet to a point of tangency;

THENCE S 42°36'23" W, 15.31 feet to a point of curvature of a tangent curve concave to the North;

THENCE Southwesterly along the arc of said tangent curve to the right, having a radius of 246.00 feet, a central angle of 35°26'51", for an arc distance of 152.19 feet to a point of tangency;

THENCE S 78°03'14" W, 55.62 feet to a point on the West line of Block 9;

THENCE N 13°54'48" W, along said line a distance of 33.13 feet;

THENCE continue N 13°54'48" W, along said line (record N 13°54'59" W), 39.04 feet;

EXHIBIT A TO
EX 1 TO ORDINANCE NO. 10018

THENCE S 76°49'58" W, along said line a distance of 23.86 feet;

THENCE N 14°03'05" W, 583.20 feet, along said line (record N 14°04'09" W, 583.15 feet);

THENCE N 83°53'42" E, 269.22 feet, along said line (record N 83°50'38" E, 269.15 feet);

THENCE N 05°37'55" W, 471.32 feet, along said line (record N 05°37'22" W, 471.15 feet) to the **POINT OF BEGINNING**.

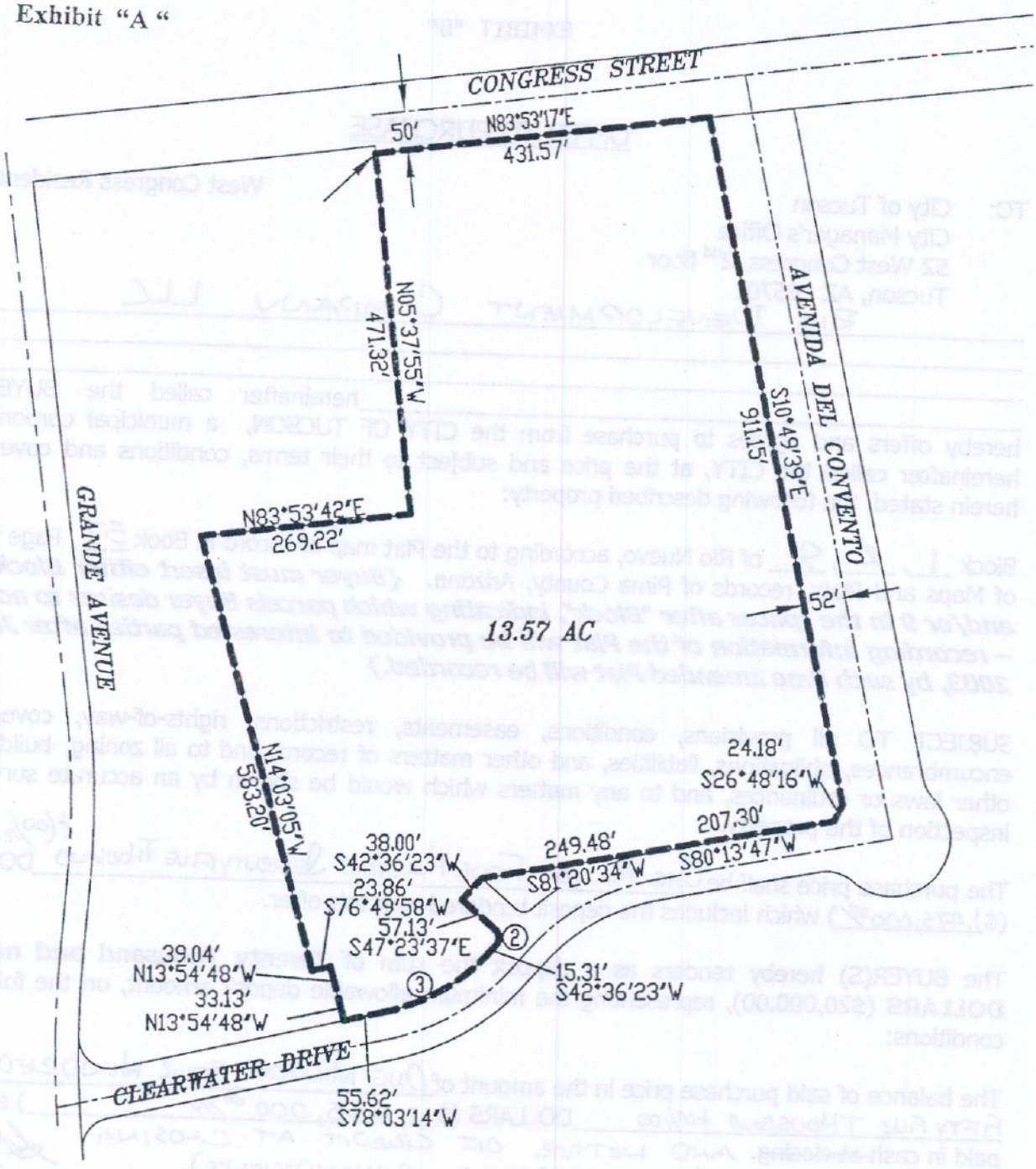
CONTAINING 13.57 acres of land, more or less.

Prepared by:
THE WLB GROUP, INC.

REGISTERED LAND SURVEYOR
CERTIFICATE No.
12214
JACK A.
BUCHANAN
DATE SIGNED
Arizona U.S.A.

Jack A. Buchanan, RLS
JAB:mo

Exhibit "A "



	R	L	T	DELTA
②	15.00'	23.56'	15.00'	90°00'00"
③	246.00'	152.19'	78.62'	35°26'51"

EXHIBIT TO ACCOMPANY DESCRIPTION OF
13.57 ACRE PARCEL
WITHIN
RIO NUEVO
SECTION 14, T. 14 S., R. 13 E., G.S.R.M.,
PIMA COUNTY, ARIZONA

1" =200'

The WLB Group Inc. WLB

WLB# project No. 103010-A001-1003
10-12-2004 N:\103010\MERCADO DISTRICT\EXHIBIT\LEGAL.DWG

EXHIBIT "B"

OFFER TO PURCHASE

TO: City of Tucson
City Manager's Office
52 West Congress, 2nd floor
Tucson, AZ 85701

West Congress Residential

RIO DEVELOPMENT COMPANY LLC

hereinafter called the BUYER(S), hereby offers and agrees to purchase from the CITY OF TUCSON, a municipal corporation, hereinafter called the CITY, at the price and subject to their terms, conditions and covenants herein stated, the following described property:

Block 1, 2, 9 of Rio Nuevo, according to the Plat map of record in Book 57, Page 40, of Maps and Plats, records of Pima County, Arizona. ***{Buyer must insert either Block 1, 2 and/or 9 in the spaces after "Block", indicating which parcels Buyer desires to acquire – recording information of the Plat will be provided to interested parties after July 7, 2003, by such time amended Plat will be recorded.}***

SUBJECT TO all provisions, conditions, easements, restrictions, rights-of-way, covenants, encumbrances, obligations, liabilities, and other matters of record, and to all zoning, building or other laws or ordinances, and to any matters which would be shown by an accurate survey or inspection of the property.

The purchase price shall be ONE MILLION FOUR HUNDRED SEVENTY FIVE THOUSAND & (00/100) DOLLARS ($1,475,000.00) which includes the deposit tendered with this offer.

The BUYER(S) hereby tenders as a deposit the sum of **Twenty Thousand and no/100 DOLLARS** ($20,000.00), representing the minimum allowable deposit amount, on the following conditions:

The balance of said purchase price in the amount of ONE MILLION FOUR HUNDRED FIFTY FIVE THOUSAND & 00/100 DOLLARS ($ 1,455,000.00) shall be paid in cash ~~at closing~~. AND LETTER OF CREDIT AT CLOSING (SEE ATTACHED AMENDMENT) 9-10-03

The closing date shall be within one hundred eighty (180) days from date of acceptance of this offer by the City. If the Buyer(s) fail to fulfill their part of this instrument within ninety (90) days from the date of acceptance of this offer by the City, the deposit tendered with this offer shall be forfeited to the City. This sale is subject to approval by the City Manager, and if forwarded for review, subject to approval of the Mayor and Council. The City reserves the right to reject any and all offers either at the City Manager or Mayor and Council level of authority.

EXHIBIT B TO
EX. 1 TO ORDINANCE NO. 10078

EX. A TO ORDINANCE NO. 9907

Ninety (90) days from the date of the bid opening are hereby given to the City to obtain official Mayor and Council acceptance of this offer. If accepted, the acceptance portion of this instrument shall be signed by the City and delivered to the Buyer(s) within ten (10) business days following the date of acceptance.

If this offer is not accepted, the amount of the deposit will be returned to the Buyer(s) with reasonable promptness. The escrow closing agent shall be Fidelity National Title Agency, Inc. City shall provide standard form of title insurance policy in the amount of the purchase price. If Buyer(s) requires(s) an extended ALTA title policy, Buyer(s) shall pay for cost of ALTA survey and all costs exceeding standard from of title insurance policy. Title insurance policy to be issued by Fidelity National Title Agency, Inc. All other title and escrow costs and expenses incidental to this transaction shall be charged to the parties in the customary manner. There shall be no adjustment in the sales price as a result of the ALTA survey. Possession of the property shall be given to Buyer(s) on closing.

If applicable, the Buyer(s) acknowledge(s) DANIELLE DAVIDSON, AGENT as his/their Broker/Agent. As a result of this sale, the City agrees to pay a commission fee on closing to said Broker/Agent. If deposit is forfeited and/or this transaction does not close, no commission will be paid. No commission fee will be paid if Broker/Agent is also a Principal/Buyer. Commission fee shall be ~~4% (four percent)~~, under the terms and conditions noted herein. Commission will be paid only to qualified Arizona Licensed Brokers. 1% (ONE PERCENT) 9-10-05

The Buyer(s) understand(s) and acknowledge(s) that the utility locations and/or dimensions shown herein and in the sales brochure are based on information believed to be reliable; however, the City does not guarantee or warrant this information. Building and occupancy permits are subject to availability of water/sewer capacity at time of actual application.

Except as specifically set forth in this Agreement, Seller has not made, nor authorized anyone to make, any warranty or representation about the present or future physical or environmental condition of the subject property and no such representation or warranty shall be implied. Buyer expressly acknowledges that no such warranty or representation has been made and that Buyer is not relying upon any warranty or representation whatsoever, except as may be expressly set forth in this agreement. Buyer acknowledges and agrees that, having been given the opportunity to inspect the property, Buyer is relying solely upon its own investigation of the property and not on any information provided or to be provided by the Seller.

Buyer further acknowledges that any information provided or to be provided by or on behalf of Seller with respect to the property was obtained from a variety of sources, and that Seller has not made any independent investigation or verification of such information, and makes no representations or warranties as to the accuracy or completeness of such information. Buyer further acknowledges that, to the maximum extent allowed by law, the sale of the subject property is made in an "as is" condition and with all faults.

Buyer agrees to commence residential construction by no later than November 1, 2004, and shall pay Seller an amount of $500.00 (five hundred and no/100 dollars) per day as liquidated damages for each day delay from this schedule. Buyer further agrees that no less than five residential dwelling units shall be sufficiently complete so as to allow actual occupancy of the units as a residential dwelling by no later than March 1, 2005 and shall pay Seller an additional penalty of $500.00 (five hundred and no/100 dollars) per day for each day delay from this schedule. Buyer acknowledges that part of the inducement of the transaction is the provision of residential units within the project area and Buyer further acknowledges that the City will suffer damage in the event that the residential development is delayed, therefore in lieu of the City's actual damages, which the parties acknowledge would be difficult to ascertain, the parties agree that the liquidated damages provided for herein would be sufficient to compensate the City for the Buyer's failure to perform.

Buyer shall accept the subject property "as is" and in its condition on the date of the Closing, subject only to the express provisions, if any, of this agreement. Buyer, for and on behalf of itself, and its heirs, successors, and/or assigns, hereby releases and agrees to hold harmless Seller, its Mayor and Council, Boards, Committees, and Commissions, officers and employees, from and against any and all claims that it may now or hereafter have against Seller for any cost, loss, liability, damage, expense, demand, claim, or cause of action arising or alleged to have arisen from or relating to any defect or condition, including environmental matters, affecting the property or any portion thereof. The hold-harmless provisions of this section shall survive the closing.

Transfer of property, if sold, shall be by City of Tucson form of Special Warranty Deed. All terms, covenants, conditions and provisions herein contained, including all development guidelines, shall extend to and be binding upon the parties, their assignees, heirs, devisees, personal representatives or other successors in interest, irrespective of how said interest was acquired. All conditions of sale referenced in the Request for Proposals issued by the City of Tucson in association with the conveyance of this property are made a part hereof by reference, and shall amend this Offer to Purchase accordingly.

Amendments/Additional Conditions or Contingencies:

(SEE ATTACHMENTS) 9-10-03

This instrument contains the entire agreement between the City and the Buyer(s). All understandings, conversations and communications, oral or written, between the parties hereto, or on behalf of either of them, are merged into and superseded by this instrument and shall be of no further force or effect.

DATED this 10 day of September, 2003.

BUYER(S) SIGNATURE

DIXON@THERIVER.COM
E-MAIL ADDRESS

P.O. Box 235
ST. DAVID AZ 85630
ADDRESS OF BUYER(S)

520 212 5800
928 244 3320 (FAX)
TELEPHONE & FAX NUMBER

ACCEPTANCE

The hereinabove offer to purchase City property at the price and according to the terms, covenants, conditions, and provisions above stated is hereby accepted pursuant to approval by the Mayor and Council. The City agrees to pay applicable brokerage fee upon close of escrow to

_____

_____ ***{to be filled in by Buyer and/or Buyer's agent/broker}***

DATED this 13th day of October, 2003.

CITY OF TUCSON, a municipal corporation

By _____
MAYOR

ATTEST:

By _____
City Clerk

APPROVED AS TO FORM:

By _____
City Attorney

OFFER AND ACCEPTANCE READ AND CONCURRED:

DATED this 10 day of Sept., 2003.

By _____
~~BROKER~~/AGENT

Page 1, attachment:

Amendment to Offer to Purchase:

A five hundred thousand dollar ($500,000.00) letter of credit payable to the City of Tucson will be supplied at closing. The use of the letter of credit shall be restricted to funding improvements on City owned property or rights of way and specifically limited to:

I. Two hundred and fifty thousand dollars ($250,000.00) shall be identified and used for integration of the Landers Apartments with the newly planned West Congress Residential Development.

II. One hundred and twenty five thousand dollars ($125,000.00) shall be identified and used for improvements above City standards for public right of way on the residential site.

III. One hundred and twenty five thousand dollars ($125,000.00) shall be used for improvements in Public Plazas on the residential site.

9-10-03

page 1b

a

Amendment 2 to Offer to Purchase:

Offer to Purchase, Page 1 of 4, shall be amended to revise balance of purchase price to be paid as follows:

The balance of said purchase price in the amount of One Million Four Hundred Fifty Five Thousand and no/100 Dollars ($1,455,000.00) shall be paid in cash as closing.

Exhibit "A, Page 1, attachment, is hereby revised to read solely as follows:

City of Tucson shall commit to construct City's appropriate share of right of way improvements immediately east of Block 2, from Congress Street south a minimum of 530 feet. City of Tucson shall commit to construct Avenida Acequia Primera and the extension of Clearwater Drive, as shown on the final plat recorded in Book 57 at Page 40, Pima County Recorder's Office, Pima County, Arizona, at a time mutually agreed to by Buyer and City.

Offer to Purchase, Page 2 of 4, shall be amended to remove the reference to a real estate agent as Broker/Agent for Buyer. No commission fee shall be applicable nor paid as a result of this agreement.

Offer to Purchase, Page 4 of 4, shall be amended to add the following:

Buyer agrees to be bound by, and City agrees to accept, the response to the Request for Proposals as an attachment to the Offer to Purchase. Buyer shall therefore be required to develop the Property substantially as shown in the Request for Proposal, and shall be required to retain the team composition substantially as shown in the Request for Proposal. Substantive substitutions may be made to team composition or development plans only with prior written consent of City.

Amendment 2 to Offer to Purchase:

Offer to Purchase, Page 4 of 4, shall be amended in the Acceptance clause as follows:

The hereinabove offer to purchase City property at the price and according to the terms, covenants, conditions, and provisions above stated is hereby accepted pursuant to approval by the Mayor and Council, and closing shall be conditioned upon the execution of a mutually satisfactory development agreement between City and Buyer. The City agrees that no brokerage fee shall apply to this or any subsequent agreement between City and Buyer.

Dated this 8 day of October, 2003.

Gerald Dixon, Buyer
P. O. Box 235
St. David, AZ 85630

Accepted this 13th day of October, 2003

By: Mayor of City of Tucson

Kathleen S. Detrick
Attest by City Clerk of City of Tucson

Approved as to form
By: Principal Assistant City Attorney
Of: City of Tucson

S:updike/amendment 2 to offer to purchase

OFFER AND ACCEPTANCE FORM

TO THE CITY OF TUCSON:

The Undersigned hereby offers and agrees to furnish the material or service in compliance with all terms, scope of work, conditions, specifications, and amendments in the Request for Proposal. The undersigned must also execute and return the accompanying Offer to Purchase.

RIO DEVELOPMENT COMPANY LLC
Company Name

P.O. BOX 235
Address

ST. DAVID AZ 85630
City State Zip

Signature of Person Authorized to Sign 9-10-03

GERALD J. DIXON
Printed Name

MANAGING MEMBER
Title

Phone: 520 212 5800 Fax: 928 244 3320

ACCEPTANCE OF OFFER

The Offer is hereby accepted.

The Contractor is now bound to sell the materials or services listed by the attached contract and based upon the Request for Proposal, including all terms, conditions, specification, scope of work, amendments, the Contractor's Offer and any best and final offers, as accepted by the City. This contract shall henceforth be referred to as Contract No. CMO 2003-____. The Contractor has been cautioned not to commence any billable work or to provide any material or service under this contract until Contractor receives purchase order, or is otherwise directed to do so in writing by the undersigned.

City of Tucson, a municipal corporation
October 8, 2003.

Tobin Rosen, Esq.
As Principal Assistant City Attorney, and not personally

John R. Updike
As Project Manager, and not personally

Awarded this 13th day of October 2003

James Keene
As City Manager, City of Tucson, and not personally

{A0004392.DOC/}

Exhibits

The following Exhibits are incorporated by reference herein:

A. Amended Plat of Premises and Environs (NOT INCLUDED)

B. Offer to Purchase (Exhibit A to Ordinance)

C. Non-collusion affidavit form

D. Corporate certificate form

s:updike/West Congress RFP final draft.doc

{A0004392.DOC/}

EXHIBIT "C"

NON-COLLUSION AFFIDAVIT STATEMENT

State of Arizona)
County of Pima) ss,

Gerald J. Dixon, being first duly sworn and says;

That he/~~she~~ is MANAGING MEMBER
(Party or officer of the firm, etc.)

The party making the foregoing Proposal, that such Proposal is genuine and non-collusive or sham; that said proposer has not colluded, conspired, connived or agreed, directly or indirectly, with any proposer or person, to put in a sham Proposal, or to refrain from proposing, and has not, in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference with any person, to fix or control the submission or selection of proposals, the offering price of an affiant or of any other proposer, or to fix overhead, profit or cost element of said offering price, or of that of any other proposer, or to fix overhead, profit or cost element of said offering price, or of that of any other proposer, or to secure any advantage against the City of Tucson.

That he/she has examined and carefully prepared the foregoing Proposal from the materials provided, and has checked the same in detail before submitting the foregoing Proposal; that the undersigned is duly authorized to make this affidavit.

Firm Name: Rio Development Co. LLC

By: Gerald J. Dixon

Title: Managing member

Subscribed and sworn before me this 10 day of Sept, 2003

Kandy K Unrast
Notary Public

My Commission Expires: _____

OFFICIAL SEAL
KANDY K. UNRAST
Notary Public - Arizona
COCHISE COUNTY
My Commission Expires
June 2, 2007

{A0004392.DOC/}

EXHIBIT "D"

CORPORATE CERTIFICATE

IF CORPORATION OR LEGAL ENTITY OTHER THAN INDIVIDUAL, FILL OUT THE FOLLOWING CERTIFICATE:

I, GERALD J. DIXON, certify that I am the

MANAGING MEMBER of the LIMITED LIABILITY COMPANY
(type of entity)

who signed this Proposal on behalf of RIO DEVELOPMENT COMPANY LLC
(name of entity)

by authority of its governing body, and within the scope of its powers.

(Corporate Seal)

Name

{A0004392.DOC/}

EXHIBIT "C"

PRIVATE IMPROVEMENT AGREEMENT

CONTRACT NO. _____

THIS AGREEMENT is made and entered into this ___ day of _____, 20___, by and between the CITY OF TUCSON, a municipal corporation, hereinafter called the "City", and RIO DEVELOPMENT COMPANY, LLC, hereinafter called the "Applicant".

WITNESSETH:

WHEREAS, the Applicant desires to construct improvements in the public rights-of-way within the City of Tucson at _____, a subdivision of Pima County, Arizona, the map or plat of which is recorded in the office of the County Recorder of Pima County, Arizona in Book _____ of Maps and Plats at page _____, thereof and;

WHEREAS, the required plans for said Improvements will be approved by the City Engineer, and/or the Director of Pima County Wastewater Management (as applicable).

WHEREAS, the Applicant desires that the City take possession of and maintain said Improvements upon completion; and

WHEREAS, the City is willing to accept and maintain said Improvements, provided that the Improvements meets City standards and is done in accordance with City requirements.

NOW THEREFORE, in consideration of the matters herein set forth, the parties agree as follows:

1. The Improvements. The Applicant shall install and construct at Applicant's sole cost and expense, except as stated herein below in Paragraph 10, the Improvements set forth and in accordance with the draft improvement plan number 103010-B-001-0105 ("Improvement Plan"), and General Conditions for Private Improvement Agreements mutually approved by City and Applicant and attached hereto, and by this reference made a part hereof, hereafter referred to as the "Improvements." Applicant shall provide a list of the Construction Contractor, sub-contractors and other consultants in the form attached as Exhibit "A" prior to commencement of construction and shall use only those listed contractors and consultants for the Improvements unless the City Engineer approves in writing the use of other contractors or consultants. Improvements shall include, but not be limited to the following:

EXHIBIT C TO

EX 1 TO ORDINANCE NO. 10078

S:\PDIKE/RIO DEVELOPMENT PIA FINAL 11-04 DOC

(a) Paving, curb, sidewalk, landscaping and irrigation systems, traffic signal, bus pullout and shelter, and drainage improvements to be installed at the following location in the City of Tucson, Pima County, Arizona, to wit:

(b) The installation, excavation, back-filling, grading from property line to property line, clearing and grubbing, geotechnical, and cleanup necessary to complete all Improvements shall be performed in accordance with City of Tucson/Pima County Standard Specifications and Details as located and indicated on the Improvement Plan.

(c) Drainage Improvements, including storm drains and drainage structures; Utility Trenches: utility trenches, water, reclaimed water, sewers, dry utilities, and other utilities that occur in the right-of-way shall be installed as shown on the Improvement Plan.

(d) Wheelchair ramps and concrete sidewalk shall be installed as shown on the Improvement Plan.

(e) Street signs shall be installed at all intersections in accordance with City regulations.

(f) Survey Monuments shall be installed as shown on the City approved final plat.

(g) Street lighting.

2. Term. The Improvements shall be completed within two years of signing of this contract pursuant to the approval by the City Engineer, and in conformance with City requirements.

3. Professional Consultants.

(a) A Professional Engineer, licensed to practice in Arizona and hereinafter referred to as the "Engineer-of-Record," shall be retained by the Applicant, and shall provide construction surveillance and establish the line and grade layout for the Improvements as it progresses. Applicant must list the "Engineer-of-Record" in Exhibit "A".

(b) The Applicant may also retain a Professional Land Surveyor, licensed to practice in Arizona and hereinafter referred to as the "Surveyor-of-Record," as an alternative to the Engineer-of-Record for the establishment of line and grade layout for the Improvements as it progresses. Applicant must list the "Surveyor-of-Record" in Exhibit "A".

(c) The Applicant must list the "Materials Testing Laboratory" in Exhibit "A".

5. Conveyance and Acceptance of Improvements.

(a) The Applicant shall and does hereby grant, bargain, sell, convey, transfer, and deliver to the City the Improvements to be installed, pursuant to this Agreement, said Improvements being free and clear of all liens, claims, charges, and encumbrances, upon acceptance of the Improvements by the City Engineer.

(b) The City shall accept title to, and take possession of, the said Improvements upon completion of the Improvements to the satisfaction of the City Engineer; provided, however, that sidewalks will not be immediately required along the frontage of unimproved residential lots within two feet of the property line on the date of acceptance. Any remaining sidewalks shall be installed within two (2) years of the date of acceptance for operation and maintenance by the City.

6. Notification. The Applicant shall notify in writing the occupants of all properties abutting the periphery of the development. Notification shall include a description of the Improvements, the approximate dates that construction will take place and a telephone number and individual to contact if further information is desired. Notification shall be accomplished no later than one (1) week prior to the commencement of any construction activities on any street improvements affecting travel or access.

7. Guarantee. The Applicant shall guarantee the Improvements against defective materials or workmanship for a period of one (1) year from the final acceptance of the Improvements for maintenance and operation. Any repair Improvements or replacement requested by the City pursuant to said guarantee shall be completed within sixty (60) days of written notice to the Applicant of the specific work to be completed at no expense to the City. Applicant shall irrevocably assign any and all Contractor guarantees or warranties for said Improvements to the City.

8. Material Tests.

(a) The Applicant and/or the contractor shall, prior to placement of materials, furnish the City Engineer with a certified report that materials to be used in the proposed construction are in compliance with the requirements of the City of Tucson/Pima County Standard and Details.

(b) Except as otherwise stated herein, the Applicant shall pay the full cost of material tests required by the City and shall provide to the City the identity of the Materials Testing Laboratory in Exhibit "A". The Improvements shall be subject to inspection and approval by the City as the Improvements progress.

9. Special Conditions.

(a) All barricading shall be in compliance with the "*Street Barricading and Channelization Manual for Temporary Traffic Control*", published by the City of Tucson Traffic Engineering Division.

(b) Applicant shall contact the City Engineering Materials Laboratory at 791-3127, 48-hours prior to placement of any asphalt-concrete pavement for approval of the asphalt-concrete mix prior to its placement.

(c) All staking for control and construction shall be furnished by the Engineer-of-Record or Surveyor-of-Record named in Exhibit "A".

(d) Construction surveillance shall be performed by the Engineer-of-Record named in Exhibit "A".

(e) Upon completion of the Improvements outlined in this Agreement, the Engineer-of-Record and Surveyor-of-Record (if applicable) shall within ten (10) days, furnish the City Engineer's Office with the following:

(i) The ORIGINAL, mylar plan set, said plan set to be stamped "AS-BUILT" in letters no smaller than one quarter-inch high on each sheet of plan set and sealed by Engineer-of-Record and Surveyor-of-Record (if applicable) on cover sheet.

(ii) A blue-line, "AS-BUILT" plan set for use by the City inspector for final inspection.

(iii) An Engineer-of-Record Letter of Certification stating: "I hereby certify that this project has been constructed in substantial conformance with the Pima County/City of Tucson Standard Specifications and Details for Public Improvements, the Development Standards of the City of Tucson, and the plans approved by the City Engineer. Exceptions are shown as "AS-BUILT" notations added to the approved plans at my direction." The letter shall be sealed, signed and dated by the Engineer-of-Record.

(iv) A Surveyor-of-Record Letter of Certification (if applicable) stating: "I hereby certify that this project was constructed in substantial conformance to the line, grade and location as shown on the plans as approved by the City Engineer. Any exceptions are shown as "AS-BUILT" notations added to the approved plans at my direction." The letter shall be sealed, signed and dated by the Surveyor-of-Record and shall include:

(v) A list of installed materials and quantities for the Improvements.

(vi) All inspection notes relating to the Improvements.

(vii) All materials' testing data relating to the Improvements.

(f) City of Tucson Engineering Division personnel shall perform a final on-site inspection of said Improvement. If the inspection reveals deficiencies in the Improvements, additional or correcting Improvements shall be performed by the Applicant prior to acceptance of said Improvement by the City Engineer.

NO IMPROVEMENTS SHALL BE STARTED PRIOR TO THE EXECUTION OF THIS PRIVATE IMPROVEMENT AGREEMENT BY THE CITY ENGINEER'S OFFICE AND

THE RECEIPT BY APPLICANT OF ALL APPLICABLE PERMITS. APPLICATIONS FOR THESE PERMITS MUST BE OBTAINED FROM THE CITY ENGINEER'S OFFICE.

10. Allocation of Costs of Design, Construction and Engineering.

(a) Applicant's Responsibility. Applicant shall be responsible for design, engineering, survey and construction related to all elements of the Development except for areas noted below, which will be the financial responsibility of the City. Applicant will be responsible for the costs of design required for integration of the Lander Apartments with the newly planned West Congress Residential Development. Applicant will be responsible for the costs of design, engineering and construction of all "on street" parking on the southern thirty-three (33) feet of West Congress Street improved area. Applicant shall be fully responsible for implementation of all aspects of this Development, and shall meet all applicable local, state and federal regulations related to said implementation in selecting contractors, managing contractors, executing contracts for Improvements and all other pertinent construction related matters.

(b) City's Responsibility. The City shall pay for the following (the "City-Financed Items") as part of the completion of the Development as depicted on the Improvement Plan (payment shall include design, engineering, surveying, and construction for the list below):

(i) Improvements to the Avenida del Convento right-of-way from Congress Street south to Clearwater/Cushing, including, but not limited to, those specific improvements listed in Section 1 of this Agreement.

(ii) Traffic signal at Congress/Avenida del Convento.

(iii) Bus pullout and shelter on Congress Street at Avenida del Convento.

(iv) Improvements to the Clearwater/Cushing right-of-way from Avenida del Convento to Grande, including the T intersection at Grande and including, but not limited to, those specific improvements listed in Section 1 of this Agreement.

(v) Access road to south of Clearwater/Cushing from Grande eastward, including, but not limited to, those specific improvements listed in Section 1 of this Agreement.

(vi) Cul-de-sac at Avenida del Convento and Clearwater/Cushing.

(vii) Management costs for design and construction of the City-Financed Items. The management costs shall be eight percent (8%) of the total costs of the above City-Financed Items.

(c) Payment. City shall pay for the City-Financed Items as outlined in the Development and Exchange Agreement for Rio Development Company, LLC approved simultaneously with this Agreement.

PRIVATE IMPROVEMENT AGREEMENT

GENERAL CONDITIONS

CONTRACT NO. _____ PLAN NO. _____

SECTION 1: Definition of Terms

The word "City" as used in these General Conditions refers to the City of Tucson, Arizona as represented by the governing body consisting of the Mayor and Council, or a designated representative authorized to act for the governing body.

The term "City Engineer" refers to the duly constituted City official authorized to perform engineering functions on behalf of the City of Tucson.

The term "Applicant" refers to the person, firm, or corporation that has entered into a Private Improvement Agreement with the City of Tucson.

SECTION 2: Intent of these General Conditions

The intent of these General Conditions is to provide for the construction and completion of the Improvements described by Private Improvement Agreement, Contract Number «PIA» , as shown on City of Tucson Plan No. «PLANNUMBER» , on file in the Office of City Engineer. Except as set forth herein below, in Paragraph 18, Applicant shall, at Applicant's sole cost and expense, furnish all labor, material (including suitable material for all necessary fills), tools, transportation, and required supplies to complete this Improvements (plan number and PIA contract number to be provided prior to start of construction).

SECTION 3: Inspection of Improvements

The Applicant shall prosecute the Improvements only in the presence of an authorized agent of the City. Any Improvements done in the absence of such agent shall be subject to rejection. The Applicant shall furnish the authorized agent of the City reasonable facilities for obtaining full information, at all times, regarding the character, quality, and quantities of material and labor used.

SECTION 4: Protection of Persons and Property

The Applicant shall adopt every practical means to minimize interference with traffic and inconvenience, discomfort, or damage to the public. Unless otherwise expressly specified, the Applicant shall prevent injury to all pipes, sewers, conduits, or other structures, public and/or private lawns, gardens, shrubbery and trees, encountered in the Improvements. Applicant's general contractor shall provide proof of liability insurance at all times during the construction and completion of the Improvements during the course of the Improvements.

The Applicant shall take all necessary precautions for the safety of employees on the Improvements, and shall comply with all applicable provisions of Federal, State, and Municipal safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the premises where the Improvements are being performed. The Applicant shall erect and properly maintain, at all times, as required by the conditions and progress of the Improvements, all necessary safeguards for the protection of workers and the public, and shall post danger signs warning against any and all hazards. Barricades and electric warning lights and notices of types approved by the City Engineer to guard the public against danger shall be erected and maintained by the Applicant, in strict accordance with the latest edition of "Street Barricading and Channelization Manual for Temporary Traffic Control" furnished by the Transportation Department, and to the extent sufficient to adequately make the street reasonable safe for use by the public. Flare pots or similar burning devices shall not be used unless approved by the City Engineer.

SECTION 5: Conformance to Plans

All Improvements done under this Private Improvement Agreement shall be done in accordance with the Improvement Plan, City of Tucson Development Standards, and the Pima County/City of Tucson Standard Specifications and Details for Public Improvements and said Improvements shall, during its progress, be at all times subject to inspection of the City Engineer.

SECTION 6: Procedure

The Applicant will notify the City Engineer twenty-four (24) hours prior to the commencement of construction. The Improvements shall be commenced and carried on at such points, and in such order of procedure as may, from time to time, be necessary in the public interest as determined by the City Engineer. Every second cross-residential street shall be kept open to traffic unless otherwise permitted by the City Engineer.

Permission for closing a major arterial street must be obtained from the City Traffic Engineer, forty-eight (48) hours in advance of the closing.

SECTION 7: Permits

The Applicant shall obtain all necessary permits and licenses for Improvements performed under the Private Improvement Agreement, give all necessary notices, pay all fees required by law, comply with all laws, ordinances and regulations relating to the Improvements, public health, and safety. All Right-of-Way Excavation Permits will be kept current until completion and acceptance of the project by the City.

SECTION 8: Defective Improvements

The inspection by the City Engineer of the Improvements shall not relieve the Applicant of any of the obligations to fulfill the Private Improvement Agreement. Defective Improvements shall be made good in a manner satisfactory to the City Engineer. Unsuitable materials may be rejected and shall immediately be removed by the Applicant from the site.

SECTION 9: Suspension of Improvements

The City reserves the right to suspend the whole, or any part, of the Improvements herein specified if deemed in its interest to do so.

SECTION 10: Materials

Materials used in the construction shall be available for sampling and tests prior to being used in the Improvements. Materials that fail to meet the requirements, if on the Improvements site, shall be removed therefrom.

SECTION 11: Traffic

a) Improvements shall be accomplished so that there will be a minimum of traffic interruption. If it becomes necessary to close a street entirely during certain phases of the Improvements, the City of Tucson Police and Fire Departments must be notified of the closing and opening of said street, and the Applicant must furnish and place all necessary detour signs even though these signs must, at times by direction of the City Engineer, be placed beyond the limits of the Improvements.

b) If directed by the City Engineer, the Applicant shall erect and maintain, at strategic locations, signs with minimum dimensions of 42" x 60". These signs shall be illuminated during hours of darkness and shall contain the following legend:

WARNING - 6" Letters

CONSTRUCTION ZONE AHEAD - 5" Letters

PLEASE DRIVE CAREFULLY (Name of Contractor) - 4" or 5" Letters

SECTION 12: Street Name and Traffic Signs

a) The Applicant shall remove and store all street-name signs and posts which are in the way of this Improvement. The Applicant shall replace said signs in concrete at the proper locations at the completion of the Improvement. The contractor shall be liable for any loss or damage to said signs.

b) All stop signs and other traffic warning signs must be maintained at all times. If it is necessary to remove such signs for construction purposes, flaggers will be required until such signs can be replaced.

c) All signage must be installed/re-installed before any traffic is allowed on newly constructed streets.

SECTION 13: Use of Water

The Applicant shall make suitable prior arrangements with the City of Tucson Water Utility for any use of construction water.

SECTION 14: Dust Control

The Applicant will ensure, at all times, that adequate measures are taken to control dust on all streets on the job, and any adjacent streets on which equipment is being operated or on which traffic is detoured.

It shall be the responsibility of the Applicant to obtain all required permits for Air Pollution Control from the Pima County Health Department.

SECTION 15: Completion of Job

The Applicant shall remove all forms, false Improvements, excavated materials, construction stakes, and replace, repair, or renew any property damage incurred during the progress of the Improvements, and leave the Improvements in a condition satisfactory to the City Engineer before Improvements is considered complete.

Any old material belonging to the City shall be neatly piled or stored within the job area as directed by the City Engineer.

SECTION 16: Cooperation of the Contractor

a) The Applicant shall, at all times, be present at the Improvements, or be represented by a properly designated and competent agent, who shall give the Improvements the constant attention necessary to facilitate its satisfactory progress to completion. This agent, or superintendent, shall be capable of reading and thoroughly understanding the plans and specifications, have full authority to execute the instruction or directions of the City Engineer without delay and supply such materials, tools, plant equipment, and labor

as may be required. Instructions or directions given to the Superintendent, or properly designated agent, on the Improvements, shall be considered as having been given to the Applicant. Such Superintendent or properly designated agent shall be in attendance at all times during progress of the Improvements, irrespective of the amount of the Improvements that may have been sublet. The name of this agent, or Superintendent, shall be furnished to the City Engineer before the commencement of Improvements.

b) The Applicant shall employ only competent and efficient laborers, mechanics, or artisans. Whenever, (in the opinion of the City Engineer) any superintendent, or worker employed by the Applicant or the subcontractors, does not perform the Improvements in a proper manner; or is disrespectful, intemperate, disorderly, or otherwise objectionable, they shall, at the written request of the City Engineer, be removed and not again employed on the Improvements without the written consent of the City Engineer.

SECTION 17: Damage to Persons and Property

In addition to the liability imposed by law upon the Applicant and/or the contractors on account of bodily injury or death suffered through the Applicant or the contractor's negligence, which liability is not impaired on otherwise affected hereby, Applicant's general contractor shall provide proof of liability insurance at all times during the construction and completion of the Improvements during the course of the Improvements.

SECTION 18: Competitive Bid Process

(a) *City Financed Items.* City shall administer an invitation for bid for a construction contract for the City-Financed Items. Applicant shall prepare the construction documents required for the bid process, and shall make a recommendation to the City on the contract award prior to the City awarding such contract. After award, the construction contract shall be assigned to the Applicant, who will then be responsible for managing and administering the construction contract. Upon assignment the City shall have no further duties or obligations under the contract except as set forth herein, and applicant shall hold the City harmless, indemnify and defend the City against any and all claims arising under the contract. City shall have approval authority over all change orders applying to the City Financed Items only. A contingency fund shall be established to accommodate the change orders that are likely to occur to mitigate the landfill that occurs under portions of Clearwater/Cushing.

(b) *Applicant Improvements.* Applicant shall be responsible for administration of bids and contracts for all Improvements, other than the City Financed Improvements, and shall have sole authority over change orders on any Improvements other than the City Financed Improvements.

SECTION 19: AIA Standard Contract Paragraph Re: Payment Processes The Developer shall prepare Pay Requests for submittal to an assigned City representative for approval and processing. The Engineering Consultant for the project shall approve the Pay Requests before submittal to the City. The Pay Requests will be prepared for

services rendered as of the first day of each calendar month in terms of the estimated percentage of construction completed by the Construction Contractor at the time of billing. Final payment will be made when the construction contract is declared satisfactorily accomplished, mylar and electronic as-builts have be forwarded to and approved by the City, and copies of all final, approved submittals have been forwarded to the City. City shall make payment within 30 days of Pay Request date.

IN WITNESS WHEREOF, the Applicant has executed, or has caused this instrument to be executed, by its property officer, thereunto duly authorized, and the City has caused this instrument to be executed by the City Engineer as of the day and year first above written.

CITY OF TUCSON, a municipal corporation.

By: _____
For/By City Engineer

The above terms and conditions have been read and are hereby agreed to and accepted by the following Applicant:

SIGNATURE:_____ Date:_____
OWNER, TRUST HOLDER OR AUTHORIZED AGENT

For: _____
Please Print Company Name

EXHIBIT 'A' TO PRIVATE IMPROVEMENT AGREEMENT NO. «PIA»

ENGINEER-OF-RECORD: _____

COMPANY: _____

CONTACT PERSON: _____ PHONE NUMBER: _____

CONSTRUCTION CONTRACTOR: _____

COMPANY: _____

CONTACT PERSON: _____ PHONE NUMBER: _____

SURVEYOR-OF-RECORD: _____

COMPANY: _____

CONTACT PERSON: _____ PHONE NUMBER: _____

MATERIAL TESTING LABORATORY: _____

COMPANY: _____

CONTACT PERSON: _____ PHONE NUMBER: _____

_____: _____

COMPANY: _____

CONTACT PERSON: _____ PHONE NUMBER: _____

_____: _____

COMPANY: _____

CONTACT PERSON: _____ PHONE NUMBER: _____

_____: _____

COMPANY: _____

CONTACT PERSON: _____ PHONE NUMBER: _____

Exhibit "D"

ESCROW INSTRUCTIONS

Escrow No.: 720965-SMR Date: October 26, 2004 Escrow Officer: Shawna Ruboyianes

RIO DEVELOPMENT COMPANY, LLC

HEREIN CALLED "OWNER", whose address is:

PO Box 2223, Tucson, AZ 85702

whose Phone is: 370-3028 and

City of Tucson, a municipal corporation

HEREIN CALLED "CITY", whose address is:

201 N. Stone Avenue, 6th Floor, Tucson, AZ 85701,

whose Phone is: 791-4181

hereby employ TICOR Title Agency of Arizona, Inc. to act as Escrow Agent in connection with an Agreement made by City and Owner, wherein the City shall deposit funds into escrow, in the sum of $x,xxx,xxx.xx for Off-Site Improvements.

The property concerned in this transaction is located in Pima County, Arizona and is described as follows:

See Exhibit A attached hereto and made a part hereof.

On a regular draw schedule, Escrow Agent is to pay from said funds all amounts provided to Escrow Agent. Said amounts shall be mutually agreed upon by City and Owner and provided to Escrow Agent in writing, along with a copy of the invoice. Escrow Agent shall obtain a Lien Release from each party to be paid prior to releasing payment.

City and Owner authorize Escrow Agent, in the event conflicting demand is made upon it concerning these instructions, or the escrow, at its election, to hold any funds and documents deposited hereunder until an action shall be brought in a court of competent jurisdiction to determine the right of City and Owner or to file an action in interpleader. Deposit by Escrow Agent of said documents and funds, after deducting therefrom its charges and expenses and attorneys' fees incurred in connection with any such court action, shall relieve Escrow Agent of all further liability and responsibility.

City and Owner will indemnify and save harmless Escrow Agent against all costs, damages, attorneys' fees, expenses and liabilities which it may incur or sustain in connection with these instructions or the escrow or any court action arising therefrom and will pay the same upon demand.

City and Owner direct that no notice, demand or change in these instructions shall be of effect unless given in writing and that these instructions, and any supplement thereto, given mutually by the parties to Escrow Agent, shall constitute the complete instructions, notwithstanding any agreement which City and Owner may have to the contrary.

The respective addresses of City and Owner as set forth herein, or the last notice of change thereof filed with Escrow Agent, shall be used by Escrow Agent in mailing any Notice, Demand or Declaration to either party.

City and Owner grant to Escrow Agent a lien upon and authority to reimburse itself: (1) for its charges and for any damages or expenses which it may incur or sustain in connection herewith from all of the rights, title and interest of either the City or the Owner in all of the documents and money deposited hereunder or otherwise held by Escrow Agent; (2) for any other indebtedness due Escrow Agent from Owner from all right, title and interest of Owner; or, (3) for any other indebtedness due Escrow Agent from City from all right, title and interest of City in all of the documents and funds deposited hereunder.

EXHIBIT D TO

EX 1 TO ORDINANCE NO. 10078

Exhibit "D "

Time is of the essence of these instructions.

All disbursements may be made by check of TICOR Title Agency of Arizona, Inc.

All expenses of this transaction are to be paid by City.

Owner:	City:
Rio Development Company, LLC, an Arizona limited liability company	City of Tucson, a municipal corporation
By: Gerald J. Dixon, Managing Member	By:

October 11, 2004
WLB No. 103010-B-001-1003X
W:\LEGALS\103010\Rev-Boundary.doc

Exhibit "A"

LEGAL DESCRIPTION
RIO NUEVO
BOUNDARY

Portions of Blocks 1, 2, 3, 8, and 9 of the amended final plat of RIO NUEVO, BLOCKS 1 THRU 15, AND COMMON AREA A, COMMON AREA B, AND COMMON AREA C, recorded in the office of the Pima County Recorder, Pima County, Arizona. in Book 57 of Maps and Plats, Page 40 thereof, and lying within a portion of Section 14, Township 14 South, Range 13 East, Pima County, Arizona, described as follows:

BEGINNING at the Northwest corner of Block1 of said plat, said point lies on the southerly right-of-way line of Congress Street;

THENCE N 83°53'17" E, along the northerly line of said Blocks 1and 2, and said south right-of-way line a distance of 431.57 feet;

THENCE S 10°49'39" E, 911.15 feet;

THENCE S 26°48'16" W, 24.18 feet;

THENCE S 80°13'47" W, 207.30 feet;

THENCE S 81°20'34" W, 249.48 feet;

THENCE S 42°36'23" W, 38.00 feet;

THENCE S 47°23'37" E, 57.13 feet to a point of curvature of a tangent curve concave to the West;

THENCE Westerly along the arc of said tangent curve to the right, having a radius of 15.00 feet, a central angle of 90°00'00", for an arc distance of 23.56 feet to a point of tangency;

THENCE S 42°36'23" W, 15.31 feet to a point of curvature of a tangent curve concave to the North;

THENCE Southwesterly along the arc of said tangent curve to the right, having a radius of 246.00 feet, a central angle of 35°26'51", for an arc distance of 152.19 feet to a point of tangency;

THENCE S 78°03'14" W, 55.62 feet to a point on the West line of Block 9;

THENCE N 13°54'48" W, along said line a distance of 33.13 feet;

THENCE continue N 13°54'48" W, along said line (record N 13°54'59" W), 39.04 feet;

Exhibit A to Exhibit D to Exhibit 1
to Ordinance No. 10078

THENCE S 76°49'58" W, along said line a distance of 23.86 feet;

THENCE N 14°03'05" W, 583.20 feet, along said line (record N 14°04'09" W, 583.15 feet);

THENCE N 83°53'42" E, 269.22 feet, along said line (record N 83°50'38" E, 269.15 feet);

THENCE N 05°37'55" W, 471.32 feet, along said line (record N 05°37'22" W, 471.15 feet) to the **POINT OF BEGINNING.**

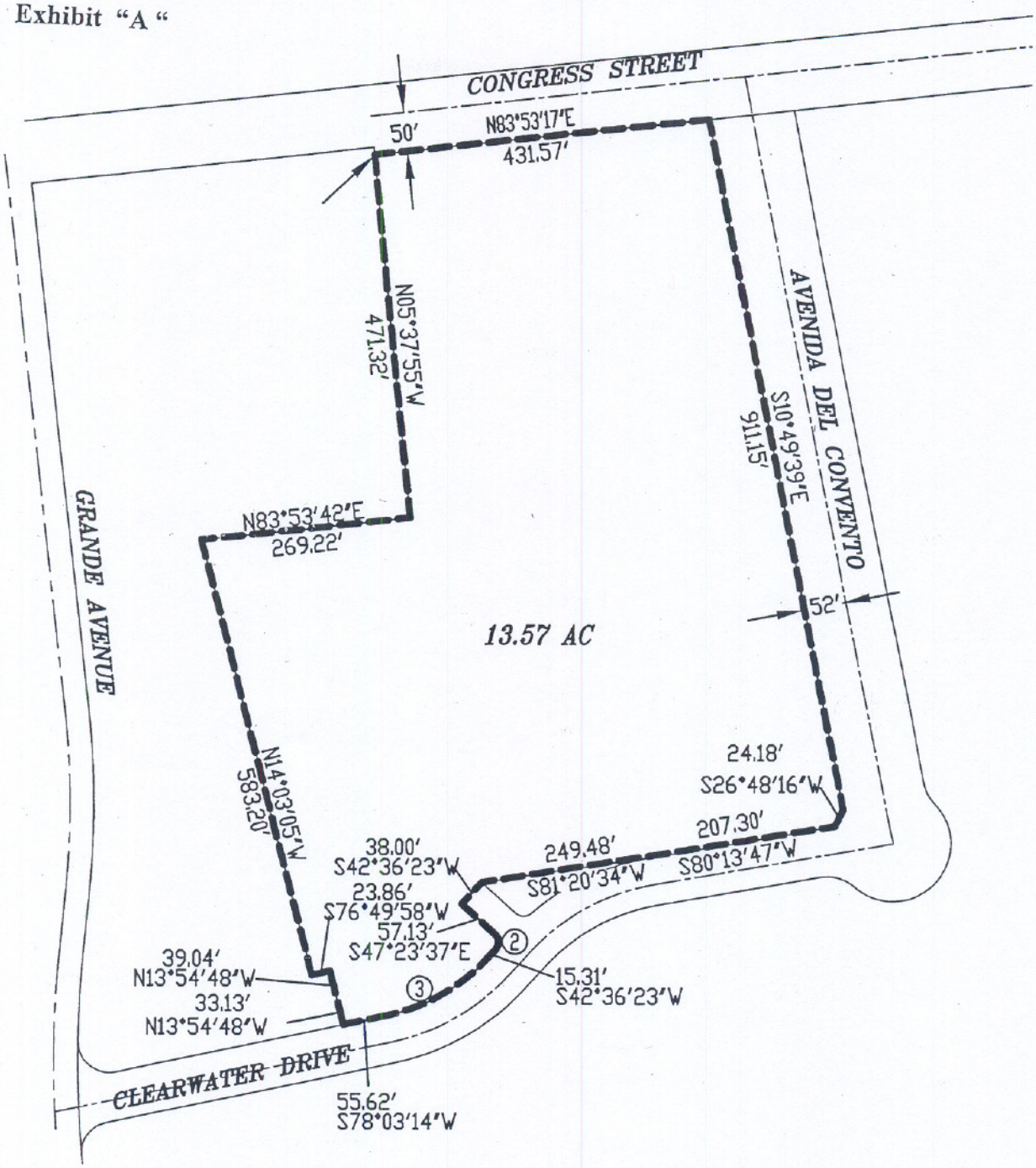
CONTAINING 13.57 acres of land, more or less.

Prepared by:
THE WLB GROUP, INC.

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
12214
JACK A.
BUCHANAN
DATE SIGNED
Arizona U.S.A.

Jack A. Buchanan, RLS
JAB:mo

Exhibit "A "



	R	L	T	DELTA
②	15.00'	23.56'	15.00'	90°00'00"
③	246.00'	152.19'	78.62'	35°26'51"

EXHIBIT TO ACCOMPANY DESCRIPTION OF
13.57 ACRE PARCEL
WITHIN
RIO NUEVO
SECTION 14, T. 14 S., R. 13 E., G.S.R.M.,
PIMA COUNTY, ARIZONA

1"=200'

The WLB Group Inc. WLB

WLB# project No. 103010-A001-1003
10-12-2004 N:\103010\MERCADO DISTRICT\EXHIBIT\LEGAL.DWG

EXHIBIT "E"

TEMPORARY REVOCABLE EASEMENT

For and in consideration of the sum of $XXXX and other valuable consideration, the City of Tucson, a municipal corporation, hereinafter called City, grants to XXXXXXXXX hereinafter called Grantee:

> **A temporary revocable easement for _____ within the XXXXXXXXX right of way, the location of said easement being shown on the sketch and legal description attached as EXHIBIT "A" and made a part hereof**

and subject to the following terms and conditions:

1. The purpose of this easement is for XXXXXXXXXXXXXXXXXX in the XXXXXXXXXX right of way, in connection with the Grantee's business known as XXXXXXXX. The XXXXXXXXXXX will be built in compliance with the City of Tucson [DESCRIBE AND LIST CITY CODE REQUIREMENTS]. The XXXXXXXXXXXXXXXXXXX shall be designed to comply with the City of Tucson Planning Department's General Plan policies and Design Guidelines and shall be architecturally integrated with the adjoining facility. Grantee shall obtain all necessary permits prior to the installation/construction of the XXXXXXXXXXXXX. The area shall be Blue Staked in accordance with the provisions of State law prior to any construction activities.

2. The term of this Temporary Revocable Easement is one year, unless otherwise revoked, beginning on the date of approval and renewable or revocable at the will of the Real Estate Administrator.

3. The annual fee for renewal is $XXX.XX per year for five (5) years from the date of approval. At the beginning of the sixth year, the fee may increase to a fair market rate based on appraisal. In the event the annual fee is not paid within thirty days of the annual renewal date, a $50 late fee will be added to the annual renewal fee for each month or portion of a month that the annual fee remains unpaid.

4. The granting of said Temporary Revocable Easement by the City for use of portions of said public right-of-way is not a representation by the City of either the practicability, safety or use of the area, and shall create no liability upon or cause of action against the City.

5. In addition to the liability imposed by law upon the Grantee's negligence, which liability is not impaired or otherwise affected hereby, the Grantee hereby agrees to defend, indemnify and hold harmless the City, its officers, boards, commissions, employees, and agents against and from any and all claims, demands, causes of action, complaints, suits, losses, damages (including damage to City property) injuries and liabilities whatsoever (including those for costs, expenses, and attorney's fees), or any part thereof which arise by reason of injury to any person or persons, including death, or property damage, resulting from any act or omission of the Grantee or anyone directly or indirectly employed by it in the prosecution of any work and maintenance and use of said Temporary Revocable Easement.

EXHIBIT E TO

EX. 1 TO ORDINANCE NO. 10078

166369.1

EXHIBIT "E"

RES No. XXXX-XX

6. For so long as said Temporary Revocable Easement shall be in force and effect, the Grantee shall maintain public liability and bodily injury insurance in the amount of $500,000.00 for each individual person, $1,000,000.00 for each occurrence and $100,000.00 property damage for each occurrence, and shall cause the City to be named as co-insured for all purposes under such insurance. Grantee shall require that the insurance carrier shall provide the City with a certificate of coverage containing a provision for a 30-day notice of cancellation. The certificate of insurance shall be kept current and mailed to the City at:

City of Tucson/Real Estate Division
ATTN: Property Management
P O Box 27210
Tucson Arizona 85726-7210

Please reference "TRE XXXX-XXX" in the description area of the insurance certificate.

7. This Temporary Revocable Easement shall be revocable at will of the Real Estate Administrator of the City of Tucson. Revocation shall be effected by, and be effective upon giving notice in writing to the Grantee. The Grantee shall remove any and all items within, and any improvements and/or materials used therefore from said Temporary Revocable Easement Area, all at no cost to the City, within 30 days following the request by the City to do so, or the City may remove and dispose of and charge the cost to the Grantee, should Grantee fail to effect such removal.

8. The Grantee shall be barred from collecting damages from the City for the loss, removal or destruction of all items or any improvements and/or materials, or for any resulting or residual damage or injury to Grantee's premises or uses thereof occasioned by the removal of said improvements and/or materials.

9. The proposed construction and TRE area shall be Blue Staked in accordance with the provisions of State law prior to any construction activities. The Grantee and its assignees or successors will assume full responsibility and cost for any damage to existing utility franchise that may be caused by the installation of encroachments by the Grantee or developer that include, but are not limited to, walls, fences or landscaping within the right of way.

10. If any of the said improvements/materials are required to be removed in order for any utility to perform regular maintenance duties/functions, said removal and any replacement of the aforementioned improvements/materials will be accomplished by Grantee at no cost to the utility or the City of Tucson.

11. In the event that this TRE is canceled by the City for failure of the Grantee to comply with any of its terms or conditions, the fee to reinstate this TRE will be $200.00.

EXHIBIT "E"

RES No. XXXX-XX

Grantee (Applicant):

DATED this _____ day of_____, 20___.

COMPANY:_____

By (Print):_____

Signature:_____

Title: _____

STATE OF ARIZONA)
)ss.
COUNTY OF PIMA)

This instrument was acknowledged before me

this _____ day of _____, 20_____,

by _____.

MY COMMISSION EXPIRES:
(seal)

_____
Notary Public

DJK[rev. 09/2004]
RES No. XXXX-XX

Grantor (City of Tucson):

DATED this _____ day of_____, 20____.

APPROVED AS TO FORM:

_____
Principal Assistant City Attorney

CITY OF TUCSON, a municipal corporation

By:_____
For: City Manager

STATE OF ARIZONA)
)ss.
COUNTY OF PIMA)

This instrument was acknowledged before me
this _____ day of _____, 20____,

by _____.

MY COMMISSION EXPIRES:
(seal)

AMENDMENT THREE TO OFFER TO PURCHASE

This Amendment amends and modifies the terms and conditions of that certain Offer to Purchase, hereinafter called the OFFER, between Rio Development Company LLC, hereinafter called the BUYER(S) and City of Tucson, a municipal corporation, hereinafter called the CITY, dated September 10, 2003 and accepted and approved on October 13, 2003; and that certain AMENDMENT 2 to the Offer to Purchase, dated October 8, 2003 and accepted October 13, 2003. The amendments are as follows:

The dates for commencement of construction and completion of residential units as set forth in Paragraph 1, page 3 of the OFFER, shall be amended as stated in the Development Agreement by and between the parties hereto. The revision of dates contained in the Development Agreement shall not serve to modify liquidated damage clauses contained in the Offer to Purchase, which shall continue to apply to the revised dates as contained in the Development Agreement.

The legal description shown on Page 1 of the OFFER is hereby revised and amended as attached and shown on Exhibit "A".

Exhibit A, Page 1 attachment contained in AMENDMENT 2 shall be amended as stated in the Private Improvement Agreement.

DATED this _____day of _____, 2004.

ACCEPTED AND AGREED:

By: Rio Development Company LLC
Gerald Dixon
P.O. Box 235
St. David, AZ 85630

By: Mayor of City of Tucson

Attest by City Clerk of the City of Tucson

Approved as to form
By: Principal Assistant City Attorney
Of: City of Tucson

EX. 2 TO ORDINANCE NO. 10078

October 11, 2004
WLB No. 103010-B-001-1003X
W:\LEGALS\103010\Rev-Boundary.doc

Exhibit "A "

LEGAL DESCRIPTION
RIO NUEVO
BOUNDARY

Portions of Blocks 1, 2, 3, 8, and 9 of the amended final plat of RIO NUEVO, BLOCKS 1 THRU 15, AND COMMON AREA A, COMMON AREA B, AND COMMON AREA C, recorded in the office of the Pima County Recorder, Pima County, Arizona, in Book 57 of Maps and Plats, Page 40 thereof, and lying within a portion of Section 14, Township 14 South, Range 13 East, Pima County, Arizona, described as follows:

BEGINNING at the Northwest corner of Block1 of said plat, said point lies on the southerly right-of-way line of Congress Street;

THENCE N 83°53'17" E, along the northerly line of said Blocks 1and 2, and said south right-of-way line a distance of 431.57 feet;

THENCE S 10°49'39" E, 911.15 feet;

THENCE S 26°48'16" W, 24.18 feet;

THENCE S 80°13'47" W, 207.30 feet;

THENCE S 81°20'34" W, 249.48 feet;

THENCE S 42°36'23" W, 38.00 feet;

THENCE S 47°23'37" E, 57.13 feet to a point of curvature of a tangent curve concave to the West;

THENCE Westerly along the arc of said tangent curve to the right, having a radius of 15.00 feet, a central angle of 90°00'00", for an arc distance of 23.56 feet to a point of tangency;

THENCE S 42°36'23" W, 15.31 feet to a point of curvature of a tangent curve concave to the North;

THENCE Southwesterly along the arc of said tangent curve to the right, having a radius of 246.00 feet, a central angle of 35°26'51", for an arc distance of 152.19 feet to a point of tangency;

THENCE S 78°03'14" W, 55.62 feet to a point on the West line of Block 9;

THENCE N 13°54'48" W, along said line a distance of 33.13 feet;

THENCE continue N 13°54'48" W, along said line (record N 13°54'59" W), 39.04 feet;

THENCE S 76°49'58" W, along said line a distance of 23.86 feet;

THENCE N 14°03'05" W, 583.20 feet, along said line (record N 14°04'09" W, 583.15 feet);

THENCE N 83°53'42" E, 269.22 feet, along said line (record N 83°50'38" E, 269.15 feet);

THENCE N 05°37'55" W, 471.32 feet, along said line (record N 05°37'22" W, 471.15 feet) to the **POINT OF BEGINNING**.

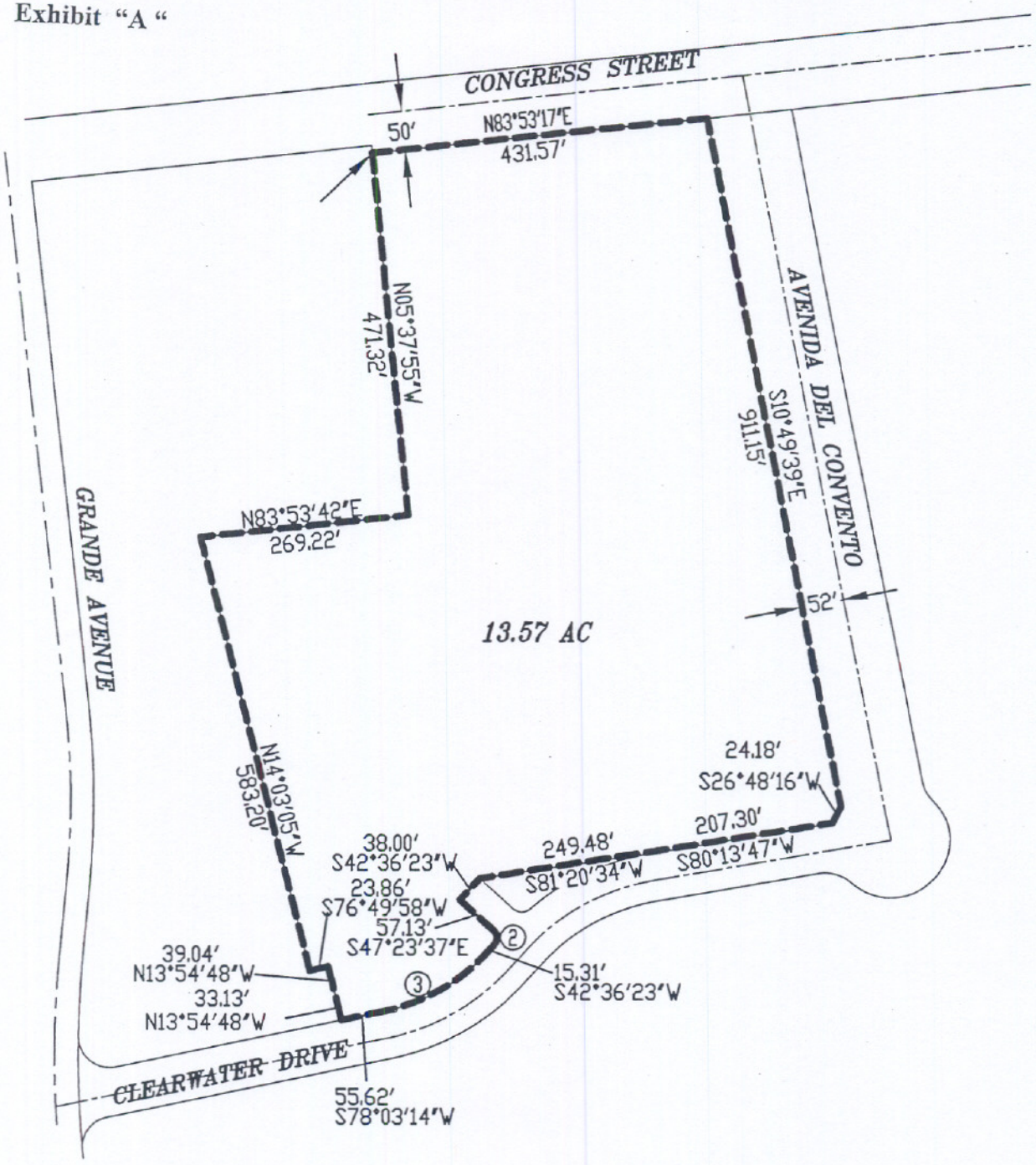
CONTAINING 13.57 acres of land, more or less.

Prepared by:
THE WLB GROUP, INC.

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
12214
JACK A.
BUCHANAN
DATE SIGNED
Arizona U.S.A.

Jack A. Buchanan, RLS
JAB:mo

Exhibit "A "



	R	L	T	DELTA
2	15.00'	23.56'	15.00'	90°00'00"
3	246.00'	152.19'	78.62'	35°26'51"

EXHIBIT TO ACCOMPANY DESCRIPTION OF
13.57 ACRE PARCEL
WITHIN
RIO NUEVO
SECTION 14, T. 14 S., R. 13 E., G.S.R.M.,
PIMA COUNTY, ARIZONA

1" = 200'

The WLB Group Inc. WLB

WLB# project No. 103010-A001-1003
10-12-2004 N:\103010\MERCADO DISTRICT\EXHIBIT\LEGAL.DWG

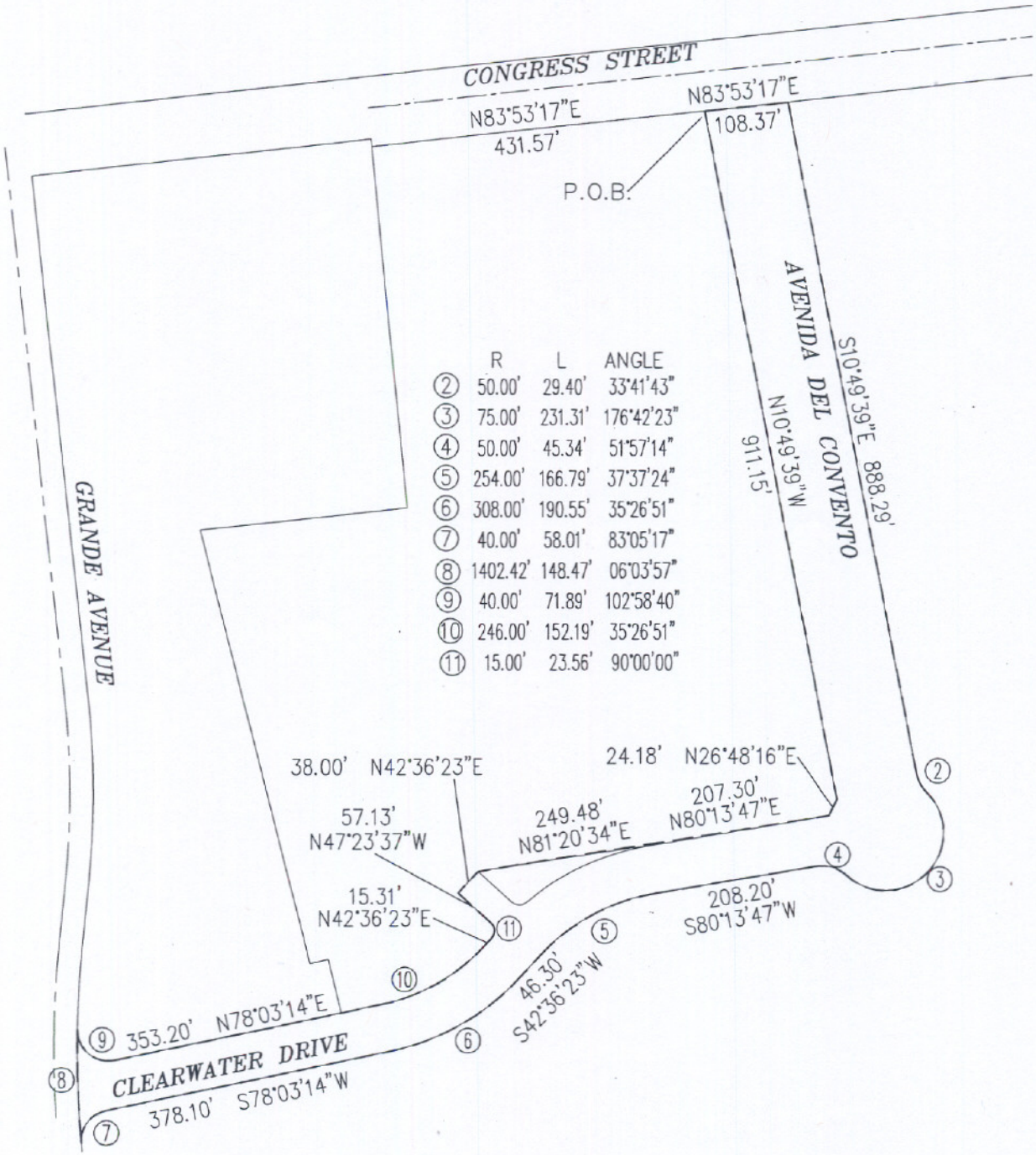


EXHIBIT TO ACCOMPANY DESCRIPTION OF
Right-of-Way
WITHIN
RIO NUEVO
SECTION 14, T. 14 S., R. 13 E., G.S.R.M.,
PIMA COUNTY, ARIZONA

1" = 200

EX 3 TO ORDINANCE NO. 10078

The WLB Group Inc. WLB

WLB# project No. 103010-A001-1003
05-06-2004 N:\103010\MERCADO DISTRICT\EXHIBIT\LEGAL.DWG

October 11, 2004
WLB No. 103010-B-001-1003X
W:\LEGALS\103010\ROW.doc

LEGAL DESCRIPTION
RIO NUEVO
RIGHT-OF-WAY

Portions of Blocks 2, 3, 8, and 9 of the amended final plat of RIO NUEVO, BLOCKS 1 THRU 15, AND COMMON AREA A, COMMON AREA B, AND COMMON AREA C, recorded in the office of the Pima County Recorder, Pima County, Arizona, in Book 57 of Maps and Plats, Page 40 thereof, and lying within a portion of Section 14, Township 14 South, Range 13 East, Pima County, Arizona, described as follows:

COMMENCING at the Northwest corner of Block 1 of said plat, said point lies on the southerly right-of-way line of Congress Street;

THENCE along a plat bearing of N 83°53'17" E, along the northerly line of said Blocks 1and 2, and said south right-of-way line a distance of 431.57 feet to the **POINT OF BEGINNING**;

THENCE continue N 83°53'17" E, along said right-of-way line a distance of 108.37 feet;

THENCE S 10°49'39" E, 888.29 feet to a point of curvature of a tangent curve concave to the Northeast;

THENCE Southerly along the arc of said tangent curve to the left, having a radius of 50.00 feet, a central angle of 33°41'43", for an arc distance of 29.40 feet to a point of reverse curve;

THENCE Southwesterly along the arc of said reverse curve to the right, having a radius of 75.00 feet, a central angle of 176°42'23", for an arc distance of 231.31 feet to a point of reverse curve;

THENCE Westerly along the arc of said reverse curve to the left, having a radius of 50.00 feet, a central angle of 51°57'14", for an arc distance of 45.34 feet to a point of tangency;

THENCE S 80°13'47" W, 208.20 feet to a point of curvature of a tangent curve concave to the Southeast;

THENCE Southwesterly along the arc of said tangent curve to the left, having a radius of 254.00 feet, a central angle of 37°37'24", for an arc distance of 166.79 feet to a point of tangency;

THENCE S 42°36'23" W, 46.30 feet to a point of curvature of a tangent curve concave to the North;

THENCE Southwesterly along the arc of said tangent curve to the right, having a radius of 308.00 feet, a central angle of 35°26'51", for an arc distance of 190.55 feet to a point of tangency;

THENCE S 78°03'14" W, 378.10 feet to a point of curvature of a tangent curve concave to the Southeast;

EX. 4 TO ORDINANCE NO. 10078

October 11, 2004
WLB No. 103010-B-001-1003X
W:\LEGALS\103010\ROW.doc

THENCE Southwesterly along the arc of said tangent curve to the left, having a radius of 40.00 feet, a central angle of 83°05'17", for an arc distance of 58.01 feet to a point of a cusp of a curve on the Easterly right-of-way line of Grande Avenue recorded in Book 57 of Maps and Plats, Page 40;

THENCE Northerly along said right-of-way line and the arc of said curve to the right, having a radius of 1402.42 feet, a radial line through said point bears S 84°57'57 " W, a central angle of 6°03'57", for an arc distance of 148.47 feet to a point of a cusp of a curve;

THENCE Easterly along the arc of said curve to the left, having a radius of 40.00 feet, a radial line through said point bears N 88°58'06 " W, a central angle of 102°58'40", for an arc distance of 71.89 feet to a point of tangency;

THENCE N 78°03'14" E, 353.20 feet to a point of curvature of a tangent curve concave to the Northwest;

THENCE Easterly along the arc of said tangent curve to the left, having a radius of 246.00 feet, a central angle of 35°26'51", for an arc distance of 152.19 feet to a point of tangency;

THENCE N 42°36'23" E, 15.31 feet to a point of curvature of a tangent curve concave to the West;

THENCE Northerly along the arc of said tangent curve to the left, having a radius of 15.00 feet, a central angle of 90°00'00", for an arc distance of 23.56 feet to a point of tangency;

THENCE N 47°23'37" W, 57.13 feet;

THENCE N 42°36'23" E, 38.00 feet;

THENCE N 81°20'34" E, 249.48 feet;

THENCE N 80°13'47" E, 207.30 feet;

THENCE N 26°48'16" E, 24.18 feet;

THENCE N 10°49'39" W, 911.15 feet to the **POINT OF BEGINNING**.

CONTAINING 4.31 acres of land, more or less.
Prepared by:
THE WLB GROUP, INC.

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
12214
JACK A.
BUCHANAN
DATE SIGNED
Arizona U.S.A.