Staff Summary Report

Tempe

Council Meeting Date: 12/11/08 **Agenda Item Number:** _____

SUBJECT: This is the **second public hearing** to grant an easement to Pier at Town Lake, L.L.C., on a portion of City owned property along Clubview Drive within the Pier at Town Lake Project.

DOCUMENT NAME: 20081211PWCH08 **EASEMENTS (0904)**
ORDINANCE NO. 2008.67

SUPPORTING DOCS: Yes

COMMENTS: Pier at Town Lake will install certain landscaping improvements along Clubview Drive, a public road, and by separate agreement will agree to maintain the improvements.

PREPARED BY: Larry Shobe, Engineering Services Administrator (x8417)

REVIEWED BY: Andy Goh, Deputy PW Manager/City Engineer (x8896)

APPROVED BY: Glenn Kephart, Public Works Manager (x8779)

LEGAL REVIEW AS TO FORM: Cynthia McCoy, Assistant City Attorney (x2187)

FISCAL NOTE: N/A

RECOMMENDATION: Adopt Ordinance No. 2008.67 and authorize the Mayor to execute any necessary documents.

ORDINANCE NO. 2008.67

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, GRANTING AN EASEMENT TO PIER AT TOWN LAKE, L.L.C., ON A PORTION OF CITY OWNED PROPERTY KNOWN AS CLUBVIEW DRIVE, WITHIN THE SOUTHBANK PROJECT.

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WHEREAS, it has been determined that the City of Tempe owns certain real estate described herein, and

WHEREAS, Pier at Town Lake, L.L.C., has requested an easement to install and maintain certain landscaping and related improvements on said property.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:

Section 1. That the City of Tempe does hereby authorize the granting of an easement to Pier at Town Lake, L.L.C., on the property described on and in the form attached hereto as Exhibit "A".

Section 2. That easement and other rights granted to Pier Town Lake, L.L.C., shall be subject to the same encumbrances, liens, limitations, restrictions, and estates as exist on the land of which the easement is a part.

Section 3. The Mayor is hereby authorized to execute any documents that may be necessary to implement this Ordinance. Pursuant to City Charter, Section 2.12, ordinances are effective thirty (30) days after adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA

This _____day of December, 2008.

_____
Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

WHEN RECORDED, RETURN TO:

City of Tempe Basket

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT ("Easement") is entered into as of the _____ day of _____, 2008, by and between Pier at Town Lake, LLC, an Arizona limited liability company ("Grantee") and the CITY OF TEMPE, an Arizona municipal corporation ("Grantor").

RECITALS:

Grantor is the owner of certain real property generally located along Clubview Drive, in the South Bank Project within the City of Tempe, Arizona, more particularly described in Exhibit A hereto (the "Easement Area").

Grantee owns and is developing the real property adjacent to the Easement Area.

Grantor desires to grant to Grantee, and Grantee desires to receive from Grantor, an easement for the installation and maintenance of certain landscaping improvements in the Easement Area.

NOW, THEREFORE, in consideration of Ten and No/100 Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, Grantor and Grantee hereby agree as follows:

1. Grant of Easement. Grantor does hereby grant and convey to Grantee and Grantee's agents, contractors, invitees, employees, representatives, successors and assigns (collectively, the "Grantee Parties"), a non-exclusive right and easement to construct, utilize and maintain certain landscaping improvements, generally consisting of trees, lamp posts and ornamental fencing (the "Clubview Improvements") on the Easement Area.

2. Insurance. During the effective term of this easement and as a condition precedent to the effectiveness of this easement, the Grantee and its successors and assigns, at its own expense shall maintain in full force a policy or policies of comprehensive liability insurance, including property damage, written by one or more responsible insurance companies licensed to do business in Arizona, which shall insure the Grantee, the Grantor, including its officials, officers, employees, volunteers and agents, against liability for injury to persons and property and for the death of any person occurring in, on or about the Easement Area. The limits of such insurance shall not be less than $2,000,000 for each occurrence to include property damage, personal injury, bodily injury, products, and completed operations, with a $2,000,000 general aggregate. Said insurance limits shall be periodically reviewed to ensure coverage based on

market and risk requirements throughout the effective term of this easement. Said insurance shall be primary to the Grantor's self-insurance or any other insurance policy coverage applicable to the Grantor. The certificate of insurance shall be issued and shall name the Grantor, its employees, officers, officials, agents and volunteers as an additional insured and shall provide coverage for claims made after the effective term of the easement for occurrences during the effective term of this easement.

Grantee shall provide Grantor with duplicates of insurance policies maintained by the Grantee pursuant to this agreement and certificates of insurance relating thereto issued by the insurers. In the event the Grantee shall fail to maintain or renew any insurance policy required hereunder, or to pay the premiums therefor, Grantor and/or any mortgagee of structures or improvements on the property may, with fifteen (15) days prior written notice to the Grantee, at their respective options but without obligation to do so, procure such insurance or pay such premiums, and any sums expended therefor shall be repaid by the Grantee to the party expending the same upon demand, together with interest thereon at the rate of two percent (2%) above the "prime interest rate" charged by Bank One of America, N.A., or its successor, at the date of the payment until repaid by the Grantee.

The Grantee shall obtain the agreement of each insurance company in which a policy required hereunder is carried that such policy shall not be cancelled or terminated without thirty (30) days prior written notice to the Grantor.

3. Indemnification. Grantee shall indemnify, defend and hold each of Grantor and its officers, officials, employees, agents and volunteers harmless from and against any claims, expenses, liabilities, loss, damage and costs, including reasonable attorney's fees, in any actions or proceedings in connection therewith, incurred in connection with, related to, arising from, due to or as a result of (a) the death of any person or any accident, injury, loss or damage, however caused, to any person or property, or any other type of claim or loss, arising from or in connection with Grantee's exercise of, or use of, the easement rights set forth herein (except claims resulting from the gross negligence or willful misconduct of Grantor, or any user of the Easement Area, or any of the agents, servants or employees of Grantor, as applicable), wherever the same may occur, or (b) mechanics liens which arise from work performed by, or an behalf of, Grantee.

4. Liens. Grantee shall not create or permit to be created or allow to exist any mortgage, encumbrance or other lien upon the Easement Area, and shall provide City with lien waivers or other evidence of payment for any work performed on the Easement Area by or at the request of Grantee. If any mechanic's lien is filed against the Easement Area or Grantor's adjacent property as a result of services performed or materials furnished by or for the benefit of Grantee under this Easement, Grantee shall cause such lien to be discharged within thirty (30) days after receiving notice thereof either by paying the indebtedness which gave rise to such lien, or by posting bond or other security as shall be required by law to obtain such release and discharge.

5. Covenants Running With the Land. The terms, conditions and rights contained herein shall be covenants running with the land and shall be perpetual for so long as the Easement is used by Grantee for the stated purpose and Clubview Drive is used as a public street

or roadway. This Easement shall be recorded, and the terms and conditions contained herein shall bind, inure to the benefit of, and be enforceable by, Grantor, Grantee and their respective successors and assigns.

6. Notices. Whenever notice is required to be given pursuant to this Easement, the same shall be in writing, and either personally delivered, sent by a nationally recognized overnight delivery service, postage prepaid, or sent via United States certified mail, return receipt requested, postage prepaid, and addressed to the parties at their respective addresses as follows:

If to Grantor: City of Tempe, Arizona
31 E. Fifth Street
Tempe, AZ 85281
Attn: City Attorney

If to Grantee: Pier at Town Lake, LLC
8320 E. Hartford Drive, Suite 101
Scottsdale, AZ 85255
Attn: Peter Wolff
Phone: (602) 315-9595
Fax: (602) 296-0458

With a copy to: Lukins & Annis, P.S.
717 W. Sprague Ave., Suite 1600
Spokane, Washington 99201
Attn: James S. Black
Phone: (509) 455-9555
Fax: (509) 363-2466

or at such other addresses as any party, by written notice in the manner specified above to the other party hereto, may designate from time to time. Unless otherwise specified to the contrary in this Easement, all notices shall be deemed to have been given upon receipt (or refusal of receipt) thereof.

7. Severability. If any term, provision or condition in this Easement shall, to any extent, be invalid or unenforceable, the remainder of this Easement (or the application of such term, provision or condition to persons or circumstances other than in respect of which it is invalid or unenforceable) shall not be affected thereby, and each term, provision and condition of this Easement shall be valid and enforceable to the fullest extent permitted by law.

8. Governing Law; Venue. The terms and provisions of this Easement shall be governed by and construed in accordance with the laws of the State of Arizona. With respect to any suit, action or proceeding relating to this Easement (each a "Proceeding"), the parties hereto each irrevocably: (a) agree that any such Proceeding shall be commenced, brought, tried, litigated and consummated in the courts of the State of Arizona located in the County of Maricopa or (as applicable) the United States District Court for the District of Arizona, (b) submit to the exclusive jurisdiction of the courts of the State of Arizona located in the County of Maricopa and the United States District Court for the District of Arizona, and (c) waive any

objection which they may have at any time to the laying of venue of any Proceeding brought in any such court, waive any claim that any Proceeding brought in any such court has been brought in an inconvenient forum, and further waive the right to object, with respect to such Proceeding, that any such court does not have jurisdiction over such party.

9. Counterparts. This Easement may be executed by the parties in counterparts. Each such counterpart shall be deemed an original and all such counterparts, taken together, shall constitute one and the same agreement.

10. Captions. The section headings appearing in this Easement are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or define the text of any section or subsection hereof.

11. Further Assurances. Each party agrees that it will execute and deliver such other documents and take such other action as may be reasonably requested by the other party to effectuate the purposes and intention of this Easement.

12. No Waiver. The failure of either party to enforce at any time any provision of this Easement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Easement or any part hereof or the right of such party thereafter to enforce each and every such provision. No waiver of any breach of this Easement shall be held to constitute a waiver of any other or subsequent breach.

13. No Oral Change. This Easement cannot be changed orally or by course of conduct, and no executory agreement, oral agreement or course of conduct shall be effective to waive, change, modify or discharge it in whole or in part unless the same is in writing and is signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

14. No Third Party Beneficiaries. Grantor and Grantee agree and acknowledge that, except as expressly set forth herein, there are no intended third party beneficiaries of this Easement nor any of the rights and privileges conferred herein.

15. Waiver of Jury Trial. Grantor and Grantee, by this Section, waive trial by jury in any action, proceeding, or counterclaim brought by either of the parties to this Easement against the other on any matters whatsoever arising out of or in any way connected with this Easement, the relationship of Grantor and Grantee, Grantee's use or occupancy of the Easement Area, or any other claims, and any emergency statutory or any other statutory remedy.

IN WITNESS WHEREOF, the parties hereto have caused this Easement to be executed as of the day and year first above written.

GRANTOR

CITY OF TEMPE

By: _____

Name: _____

Title: _____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____ City Attorney

PIER AT TOWN LAKE, LLC,
an Arizona limited liability company
By: PIER AT TOWN LAKE MANAGER, LLC,
an Arizona limited liability company
Its Manager
By: 4Brothers, LLC,
a Washington limited
liability company,
Its Manager

By_____
Fritz H. Wolff, its Manager

State of ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2008, by Fritz H. Wolff, the Manager of 4Brothers, LLC, as Manager of Pier at Town Lake Manager, LLC, as Manager of Pier at Town Lake, LLC, an Arizona limited liability company, on behalf of the Company.

(Seal and Expiration Date)

_____
Notary Public

EXHIBIT "A"

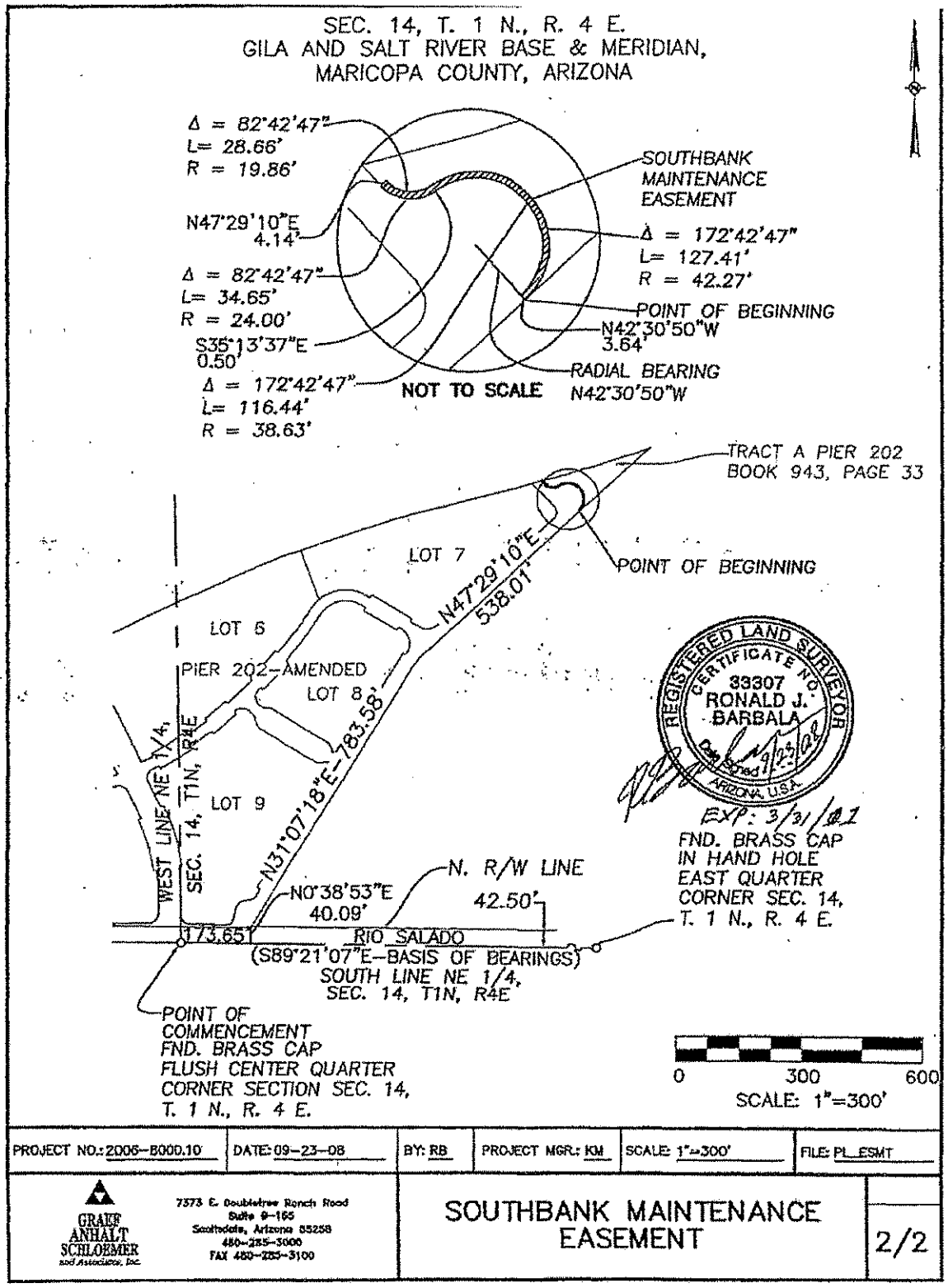
SEC. 14, T. 1 N., R. 4 E.
GILA AND SALT RIVER BASE & MERIDIAN,
MARICOPA COUNTY, ARIZONA
Δ = 82°42'47"
L= 28.66'
R = 19.86'
N47°29'10"E
4.14'
Δ = 82°42'47"
L= 34.65'
R = 24.00'
S35°13'37"E
0.50'
Δ = 172°42'47"
L= 116.44'
R = 38.63'
SOUTHBANK
MAINTENANCE
EASEMENT
Δ = 172°42'47"
L= 127.41'
R = 42.27'
POINT OF BEGINNING
N42°30'50"W
3.64'
RADIAL BEARING
N42°30'50"W
NOT TO SCALE
TRACT A PIER 202
BOOK 943, PAGE 33
LOT 7
POINT OF BEGINNING
N47°29'10"E
538.01'
LOT 6
PIER 202-AMENDED
LOT 8
783.58'
LOT 9
WEST LINE NE 1/4,
SEC. 14, T1N, R4E
N31°07'18"E
N. R/W LINE
N0°38'53"E
40.09'
42.50'
173.65'
RIO SALADO
(S89°21'07"E-BASIS OF BEARINGS)
SOUTH LINE NE 1/4,
SEC. 14, T1N, R4E
POINT OF
COMMENCEMENT
FND. BRASS CAP
FLUSH CENTER QUARTER
CORNER SECTION SEC. 14,
T. 1 N., R. 4 E.
REGISTERED LAND SURVEYOR
CERTIFICATE NO.
33307
RONALD J.
BARBALA
ARIZONA, U.S.A.
EXP: 3/31/01
FND. BRASS CAP
IN HAND HOLE
EAST QUARTER
CORNER SEC. 14,
T. 1 N., R. 4 E.
0
300
600
SCALE: 1"=300'
PROJECT NO.: 2006-B000.10
DATE: 09-23-08
BY: RB
PROJECT MGR.: KM
SCALE: 1"=300'
FILE: PL_ESMT
GRAUF
ANHALT
SCHLOEMER
and Associates, Inc.
7373 E. Doubletree Ranch Road
Suite 9-165
Scottsdale, Arizona 85258
480-285-3000
FAX 480-285-3100
SOUTHBANK MAINTENANCE
EASEMENT
2/2

EXHIBIT "A"

LEGAL DESCRIPTION:

A portion of land within TRACT A as shown on the PIER 202 subdivision plat recorded in Book 943 at Page 33 in the records of the Maricopa County Recorder's Office, Maricopa County, Arizona as shown on the accompanied exhibit titled SOUTHBANK MAINTENANCE EASEMENT, being more particularly described as follows:

Commencing at the Center ¼ corner of Section 14, Township 1 North, Range 4 East of the Gila and Salt River Base Line and Principal Meridian, thence South 89°21'07" East, 173.65 feet along the east–west mid–section line of said Section and basis of bearings;

Thence departing said mid–section line North 0°38'53" East, 40.09 feet to the northerly right of way of Rio Salado Parkway and southeast corner of said subdivision;

Thence North 31°07'18" East along the east line of said subdivision, 783.58 feet;

Thence continuing along the east line of said subdivision North 47°29'10" East, 538.01 feet to the POINT OF BEGINNING;

Thence North 42°30'50" West along the west line of said TRACT A, 3.64 feet;

Thence along a curve concave southwesterly with a radial bearing of North 42°30'50" West having a radius of 38.63 feet thru a central angle of 172°42'47" and a length of 116.44 feet;

Thence South 35°13'37" East, 0.50 feet;

Thence along a curve concave northerly with a radial bearing of North 35°13'37" West having a radius of 24.00 feet thru a central angle of 82°42'47" and a length of 34.65 feet;

Thence departing said west line North 47°29'10" East, 4.14 feet;

Thence along a curve concave northerly with a radial bearing of North 47°29'10" East having a radius of 19.86 feet thru a central angle of 82°42'47" and a length of 28.66 feet to a point of reverse curvature;

Thence along a tangential curve concave southwesterly having a radius of 42.47 feet thru a central angle of 172°42'47" and a length of 127.41 feet to the POINT OF BEGINNING.

END OF DESCRIPTION

Written Sep 23, 2008
Ron Barbala, LS 33307

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
33307
RONALD J.
BARBALA
Date Signed 9/23/08
ARIZONA, U.S.A.
EXP: 3/31/11

PROJECT NO.: 2006–B000.10	DATE: 09–23–08	BY: RB	PROJECT MGR.: KM	SCALE: N.T.S.	FILE: PI_ESMT

GRAEF ANHALT SCHLOEMER and Associates, Inc.
7373 E. Doubletree Ranch Road
Suite D–155
Scottsdale, Arizona 85258
480–285–5900
FAX 480–285–3100

SOUTHBANK MAINTENANCE EASEMENT

1/2