

Staff Summary Report



Council Meeting Date: 1/08/09

Agenda Item Number: 24

SUBJECT: Request approval of an amendment to the Maintenance Agreement with The Pier at Town Lake (C2007-172A).

DOCUMENT NAME: 20090108PWCH01 IMPROVEMENT (ASSESSMENT) DISTRICTS (0805-80), IMPROVEMENT DISTRICT I.D. 180, PROJECT NO. 5103011

SUPPORTING DOCS: Yes.

COMMENTS: The developer of The Pier at Town Lake requested the City to allow enhanced pavement, lighting, landscaping and other amenities for this project. The amendment will document the developer's agreement to pay for the higher level of maintenance that will be required for the proposed enhancements.

PREPARED BY: Jim Bond, Assistant City Engineer (x8897)

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

APPROVED BY: Glenn Kephart, Public Works Manager (x8205)

LEGAL REVIEW BY: Cynthia McCoy, Assistant City Attorney (x2187)

FISCAL NOTE: The initial construction costs will be paid by Improvement District No. 180, City of Tempe Project No. 5103011.

RECOMMENDATION: Approve revised Maintenance Agreement for The Pier at Town Lake.

ADDITIONAL INFO: The Tempe City Council approved the original Maintenance Agreement at the September 20, 2007 Council meeting and a revised Maintenance Agreement at the December 6, 2007 Council meeting. Since the first revision was approved two additional areas (the relocated Levee Access Drive on the west side of the project and a landscape easement at the northeast corner of the project) have been added to the project requiring the Maintenance Agreement to be modified to include those areas.

WHEN RECORDED RETURN TO:

City of Tempe Basket

**FIRST AMENDMENT TO
MAINTENANCE AGREEMENT
(C2007-172A)**

This First Amendment to Maintenance Agreement (the "First Amendment") is entered into this 23 day of October, 2008 (the "Effective Date") by and between the City of Tempe, an Arizona municipal corporation (the "City") and Pier At Town Lake, L.L.C., a Delaware limited liability company ("Developer").

City and Developer are parties to a Development and Disposition Agreement dated as of July 6, 2006 (the "Development Agreement"), and that certain Maintenance Agreement (C2007-172A), dated as of September 20, 2007 (the "Original Agreement"), which was recorded January 18, 2008 in the records of the Maricopa County Recorder at Instrument No. 2008-052308. Capitalized terms used herein without definition shall have the meanings given such terms in the Original Agreement.

To facilitate development of the western portion of Developer's Property (as defined in the Original Agreement), Developer and the Arizona Board of Regents, acting for an on behalf of Arizona State University ("ASU") have entered a Facilities Use Agreement, dated June 19, 2008, which allows Developer to construct a levee access road, including all curbing and catch basins associated therewith (the "Access Road"), the eastern portion of which will be constructed on Developer's Property, and the western portion of which will be constructed on real property owned by ASU. The legal description and graphic depiction of the Access Road is attached hereto as Exhibit 1.

Developer desires to install on City Property along Clubview Drive, certain improvements (generally consisting of trees, lamp posts, and ornamental fencing) more particularly described on Exhibit 2 (the "Clubview Improvements"). City has agreed to grant Developer an easement for construction of the Clubview Improvements provided that Developer agrees to maintain such improvements.

City and Developer desire to amend the Original Agreement to delineate maintenance responsibilities for the Access Road and Clubview Improvements.

NOW THEREFORE, in consideration of the covenants, conditions and agreements set forth herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. **Acknowledgement of Recitals.** The parties acknowledge that the foregoing recitals are true and accurate.

2. **Amendment of Original Agreement.**

a. Section 1.3 of the Original Agreement is hereby amended in its entirety to read as follows:

1.3 Improvements. The term "Improvements" shall mean and refer to the improvements to the Plaza, the upgraded landscape improvements on the Linear Park described on *Exhibit A* attached hereto, and the Clubview Improvements.

b. Section 1.4 of the Original Agreement is hereby amended in its entirety to read as follows:

1.4 Infrastructure. The term "Infrastructure" shall mean and refer to the Access Road and the public infrastructure improvements being constructed by The Pier at Town Lake Improvement District No. 180, City of Tempe Project No. 5103010, excluding sewer and water lines and any infrastructure improvements located along Rio Salado Parkway.

c. A new Section 2.4 is hereby added to the Original Agreement as follows:

2.4 Clubview Improvements. Developer shall obtain all approvals and permits required for installation of the Clubview Improvements.

d. Developer's address for notice purposes as set forth in Section 5.2 of the Original Agreement is hereby amended to read:

If to Developer: 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

3. **Ratification of Original Agreement.** Except as amended hereby, the Original Agreement shall remain in full force and effect, and is hereby ratified and affirmed in all respects.

4. **Counterparts.** This First Amendment may be executed in counterparts.

"DEVELOPER"

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 23 day of October 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)



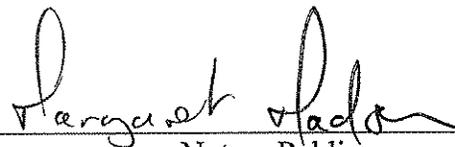

Notary Public

EXHIBIT A
ACCESS ROAD LEGAL DESCRIPTION AND DEPICTION

See Attached

**Access Road Legal Description
Pier Property**

A portion of land within TRACT A and Lot 3 as shown on the PIER 202 AMENDED subdivision plat in the records of the Maricopa County Recorder's Office, Maricopa County, City of Tempe, Arizona as shown on the accompanied exhibit titled CITY OF TEMPE ROADWAY EASEMENT, being more particularly described as follows:

Commencing at the West ¼ corner of said Section, thence South 89°21'07" East, 1290.01 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, 40.15 feet to the northerly right of way of Rio Salado Parkway and southwest corner of said TRACT A;

Thence North 0°21'08" West along the west line of said TRACT A, 25.00 feet to the POINT OF BEGINNING;

Thence departing said west line South 89°20'56" East, 12.50 feet;

Thence North 0°21'08" West, 261.83 feet to the beginning of a tangential curve concave to the southeast;

Thence northeasterly and easterly along said curve having a radius of 25.50 feet thru a central angle of 78°41'32" and a length of 35.02 feet;

Thence along a tangential line North 78°20'24" East, 20.50 feet;

Thence North 11°39'36" West, 8.11 feet to the south line of a Flood Control District of Maricopa County access easement adjoining Tempe Town Lake;

Thence along said access easement South 75°02'23" West, 7.75 feet;

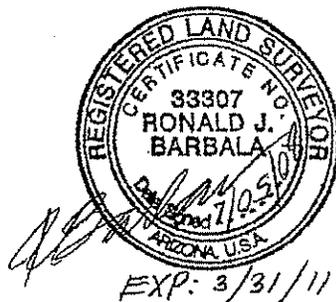
Thence along said access easement South 78°29'53" West, 44.86 feet to the northwest corner of said TRACT A;

Thence departing said access easement South 0°21'08" East, 287.96 feet along the west line of TRACT A to the POINT OF BEGINNING;

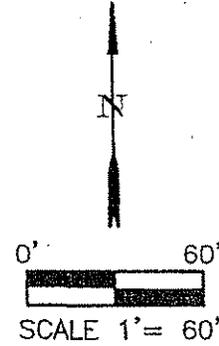
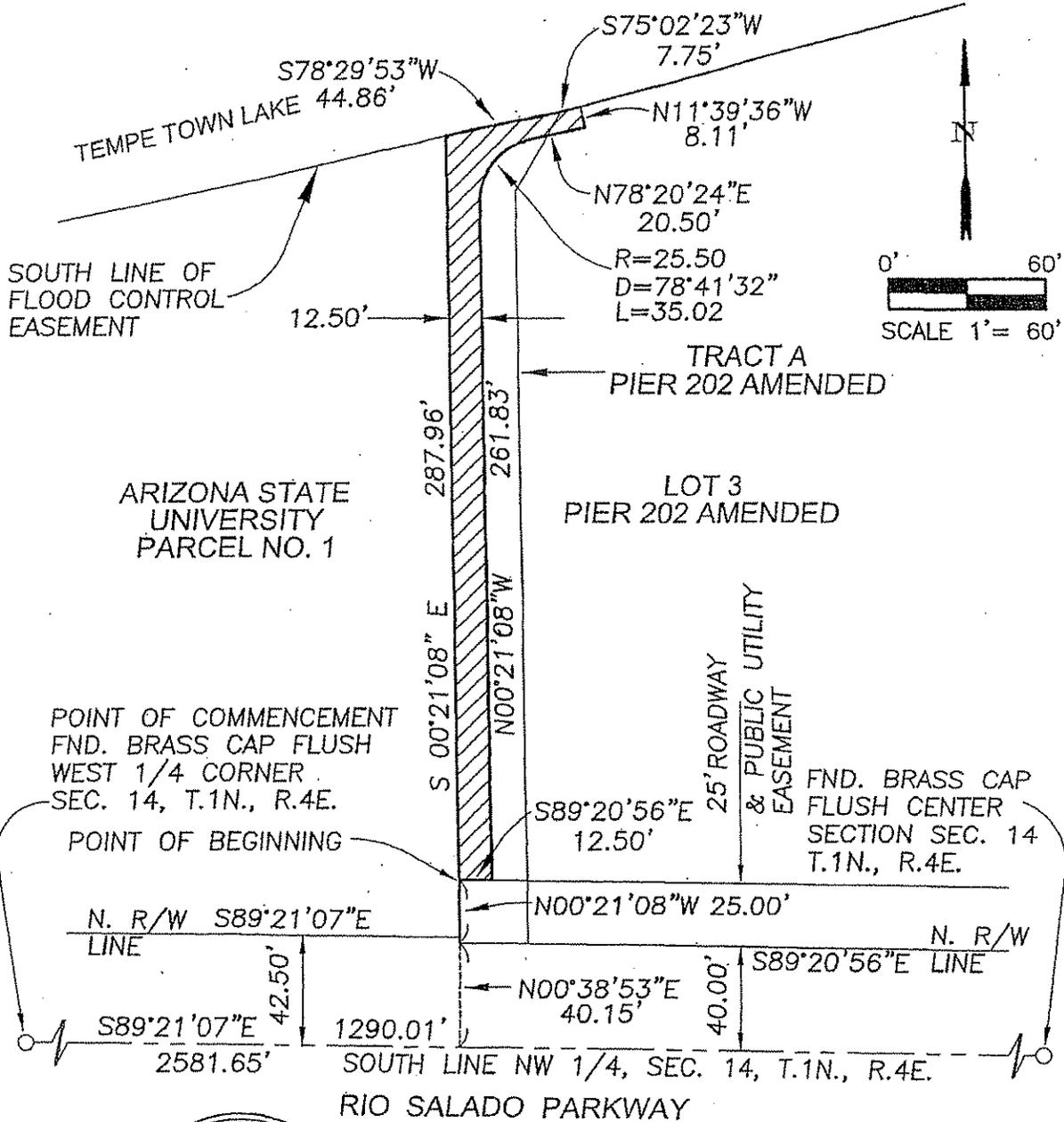
END OF DESCRIPTION

Written July 5, 2008
Ron Barbala, LS 33307

sheet 1 of 2



A PORTION OF TRACT A AND LOT 3, PIER 202 AMENDED,
 ACCORDING TO BOOK 949, PAGE 48,
 RECORDS OF MARICOPA COUNTY, ARIZONA



Geomatics Consulting Group, Inc.
 3021 West Juniper Avenue Phoenix, Arizona 85053
 Office 602.942.8110 Facsimile 602.548.3028 www.geomaticsconsultinggroup.com

CITY OF TEMPE
 ROADWAY EASMENT
 EXHIBIT A-1

EXPIRES 3-31-2011

PROJECT NO. 081248	DATE: JULY 5, 2008
DRAWN BY: JDH/RJB	SHEET: 2 OF 2

**Access Road Legal Description
ASU Property**

A portion of land within the South ½ of the South ½ of the Southwest ¼ of the Northwest ¼ of Section 14, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, City of Tempe, Arizona as shown on the accompanied exhibit titled CITY OF TEMPE ROADWAY EASEMENT, being more particularly described as follows:

Commencing at the West ¼ corner of said Section, thence South 89°21'07" East, 1290.01 feet along the east-west mid-section line of said Section and basis of bearings;

Thence departing said mid-section line North 0°35'35" East, 42.50 feet to the northerly right of way of Rio Salado Parkway and POINT OF BEGINNING;

Thence North 0°21'08" West along the west line of TRACT A as shown on the PIER 202 AMENDED subdivision plat in the records of the Maricopa County Recorder's Office, 310.52 feet to the south line of a Flood Control District of Maricopa County access easement adjoining Tempe Town Lake;

Thence along said access easement South 76°57'36" West, 16.19 feet;

Thence departing said access easement South 41°54'57" East, 4.96 feet;

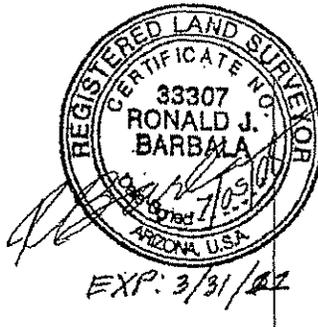
Thence South 0°21'08" East, 285.74 feet to the beginning of a tangential curve concave to the northwest;

Thence southerly and southwesterly along said curve having a radius of 24.00 feet thru a central angle of 45°40'02" and a length of 19.13 feet to the north right of way line of Rio Salado Parkway;

Thence departing said curve South 89°21'07" East, 19.73 feet along said right of way line to the POINT OF BEGINNING.

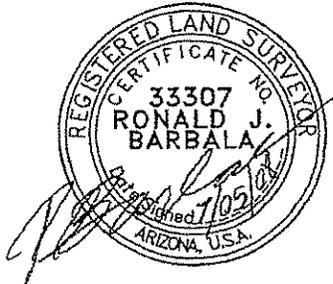
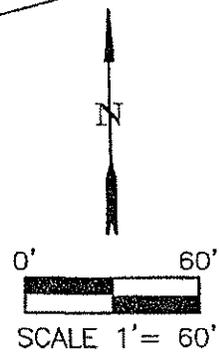
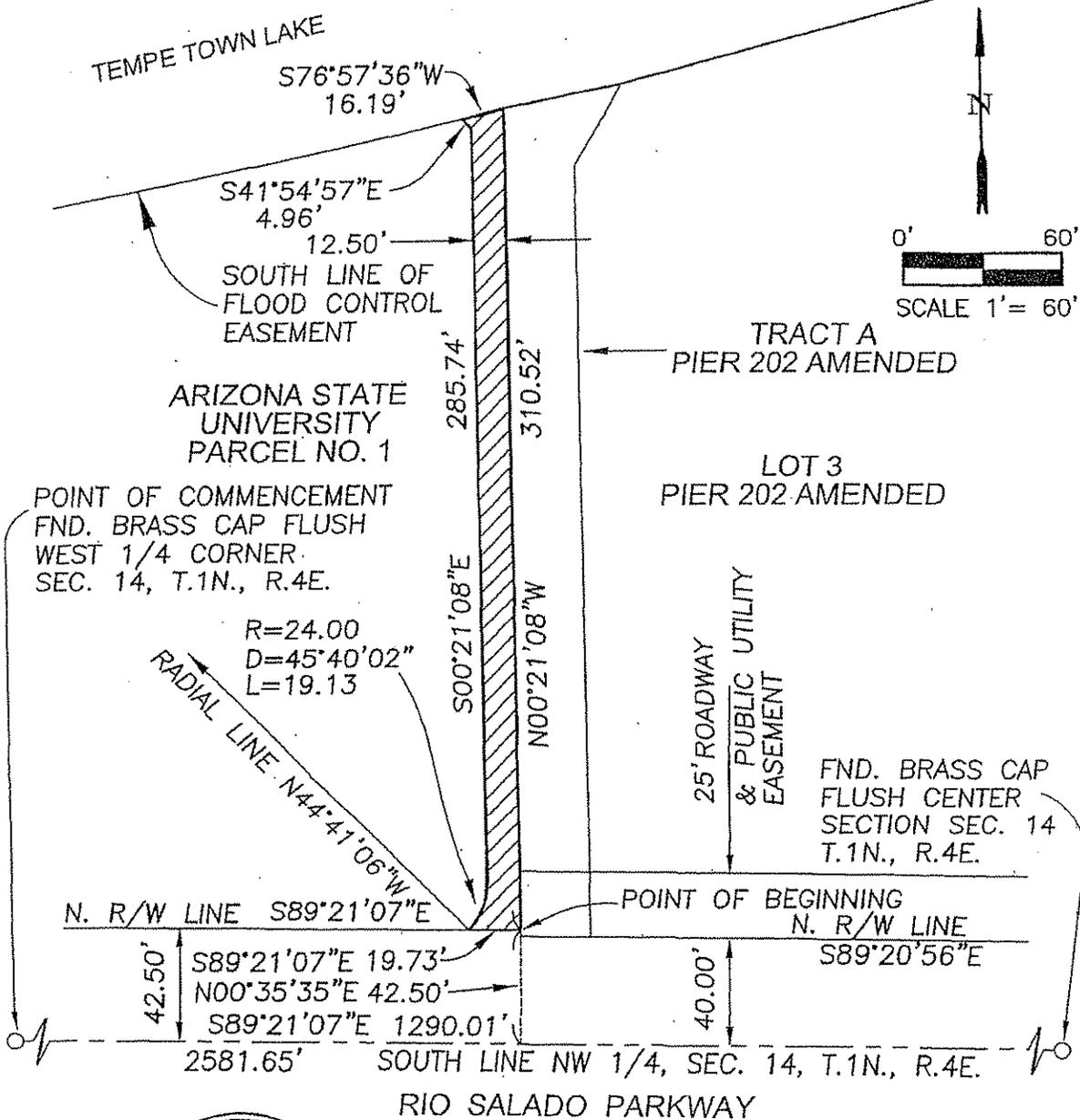
END OF DESCRIPTION

Written July 5, 2008
Ron Barbala, LS 33307



sheet 1 of 2

PART OF THE S 1/2 OF THE S 1/2 OF THE
 SW 1/4 OF THE NW 1/4, SEC. 14, T.1N., R.4E.,
 GILA AND SALT RIVER BASE & MERIDIAN,
 MARICOPA COUNTY, CITY OF TEMPE, ARIZONA



EXPIRES 3-31-2011



Geomatics Consulting Group, Inc.
 3021 West Juniper Avenue Phoenix, Arizona 85053
 Office 602.942.8110 Facsimile 602.548.3028 www.geomaticsconsultinggroup.com

CITY OF TEMPE ROADWAY EASEMENT EXHIBIT A-1	
PROJECT NO. 081248	DATE: JULY 5, 2008
DRAWN BY: JDH/RJB	SHEET: 2 OF 2

EXHIBIT B
CLUBVIEW IMPROVEMENTS LEGAL DESCRIPTION AND DEPICTION

See Attached

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 $\frac{1}{4}$ corner of Section 14, Township 1 North, Range 4 East of the Gila and Salt River Base Line and Principal Meridian, thence South $89^{\circ}21'07''$ 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 $0^{\circ}38'53''$ East, 40.09 feet to the northerly right of way of Rio Salado Parkway and southeast corner of said subdivision;

Thence North $31^{\circ}07'18''$ East along the east line of said subdivision, 783.58 feet;

Thence continuing along the east line of said subdivision North $47^{\circ}29'10''$ East, 538.01 feet to the POINT OF BEGINNING;

Thence North $42^{\circ}30'50''$ West along the west line of said TRACT A, 3.64 feet;

Thence along a curve concave southwesterly with a radial bearing of North $42^{\circ}30'50''$ West having a radius of 38.63 feet thru a central angle of $172^{\circ}42'47''$ and a length of 116.44 feet;

Thence South $35^{\circ}13'37''$ East, 0.50 feet;

Thence along a curve concave northerly with a radial bearing of North $35^{\circ}13'37''$ West having a radius of 24.00 feet thru a central angle of $82^{\circ}42'47''$ and a length of 34.65 feet;

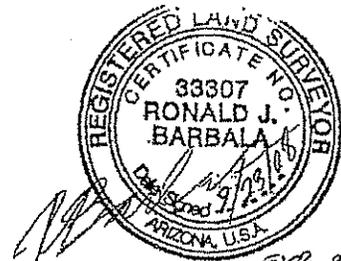
Thence departing said west line North $47^{\circ}29'10''$ East, 4.14 feet;

Thence along a curve concave northerly with a radial bearing of North $47^{\circ}29'10''$ East having a radius of 19.86 feet thru a central angle of $82^{\circ}42'47''$ 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 $172^{\circ}42'47''$ and a length of 127.41 feet to the POINT OF BEGINNING.

END OF DESCRIPTION

Written Sep 23, 2008
Ron Barbala, LS 33307



PROJECT NO.: 2006-8000.10	DATE: 09-23-08	BY: RB	PROJECT MGR.: KM	SCALE: N.T.S.	FILE: PL_ESMT
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 <p>7373 E. Doubletree Ranch Road Suite B-155 Scottsdale, Arizona 85256 480-285-3000 FAX 480-285-3100</p>	SOUTHBANK MAINTENANCE EASEMENT	1/2

SEC. 14, T. 1 N., R. 4 E.
 GILA AND SALT RIVER BASE & MERIDIAN,
 MARICOPA COUNTY, ARIZONA



$\Delta = 82^{\circ}42'47''$
 $L = 28.66'$
 $R = 19.86'$

$N47^{\circ}29'10''E$
 $4.14'$

$\Delta = 82^{\circ}42'47''$
 $L = 34.65'$
 $R = 24.00'$

$S35^{\circ}13'37''E$
 $0.50'$

$\Delta = 172^{\circ}42'47''$
 $L = 116.44'$
 $R = 38.63'$

SOUTHBANK
 MAINTENANCE
 EASEMENT

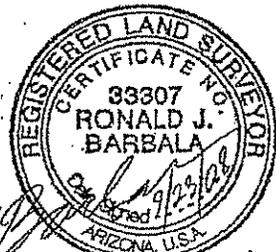
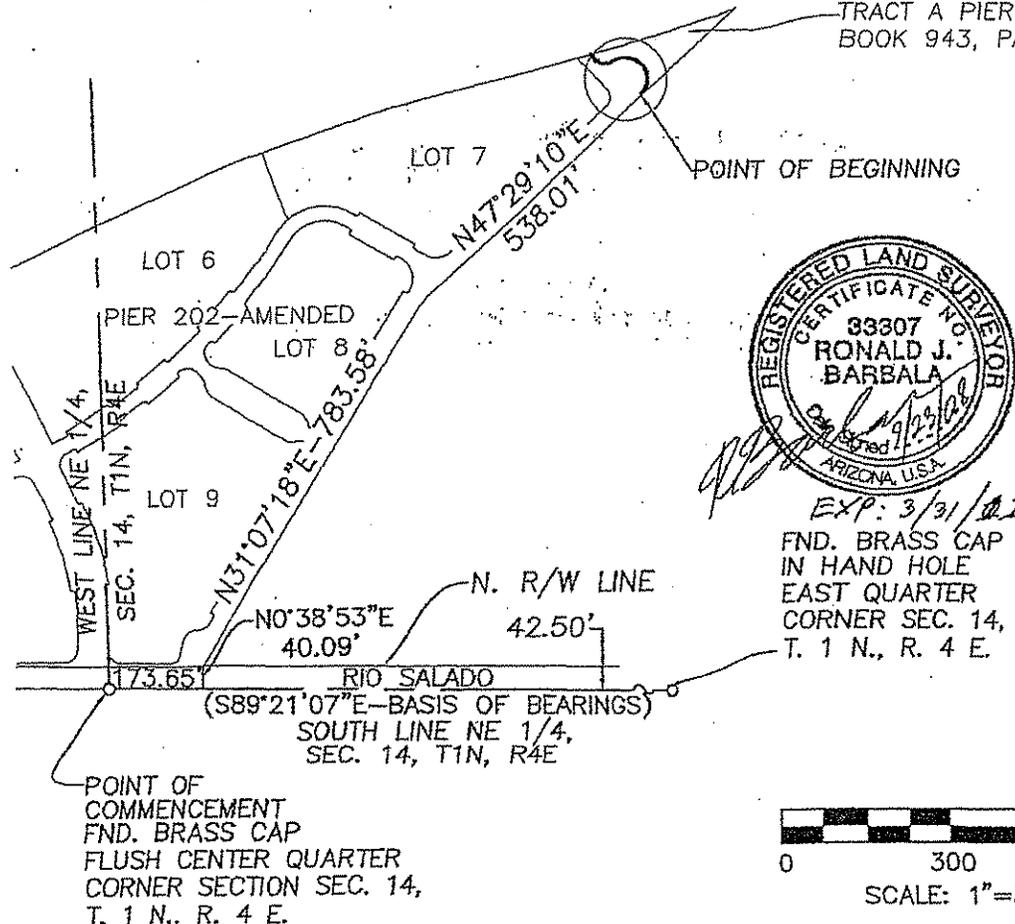
$\Delta = 172^{\circ}42'47''$
 $L = 127.41'$
 $R = 42.27'$

POINT OF BEGINNING
 $N42^{\circ}30'50''W$
 $3.64'$

RADIAL BEARING
 $N42^{\circ}30'50''W$

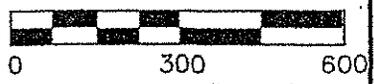
NOT TO SCALE

TRACT A PIER 202
 BOOK 943, PAGE 33



EXP: 3/31/21

FND. BRASS CAP
 IN HAND HOLE
 EAST QUARTER
 CORNER SEC. 14,
 T. 1 N., R. 4 E.



SCALE: 1"=300'

PROJECT NO.: 2006-8000.10	DATE: 09-23-08	BY: RB	PROJECT MGR.: KM	SCALE: 1"=300'	FILE: PL_ESMT
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7373 E. Doubletree Ranch Road
 Suite B-185
 Scottsdale, Arizona 85258
 480-285-3000
 FAX 480-285-3100

SOUTHBANK MAINTENANCE
 EASEMENT