

MULTI-USE PATHWAY EASEMENT AGREEMENT

DATE: March 26, 2013

PARTIES: **Glendale Elementary School District No. 40**
7301 North 58th Avenue
Glendale, Arizona 85301
("Seller")

City of Glendale, an Arizona municipal corporation
5850 West Glendale Avenue
Glendale, Arizona 85301
Attention: City Attorney
("City")

North American Title Company
Attention: Alix Graham, Branch Manager
4835 East Cactus Road, Suite 240
Scottsdale, Arizona 85254
("Escrow Agent")

RECITALS

The interest to be acquired is generally described as a multi-use pathway easement ("easement interest") in, over, and across that portion in the real property identified as Maricopa County Tax Parcel Nos. 102-06-005E and 102-06-430 located adjacent to Discovery Park and Discovery Elementary School in the City of Glendale, Arizona, in Maricopa County, Arizona and consists of approximately 0.177 acres (the "Easement"), described fully in Exhibits A and A1 attached.

The Seller is willing to provide an easement interest in the above-referenced property to the City, and the City is willing to compensate the Seller and to construct certain improvements on, in, and under the Easement under the terms and conditions set forth in this Agreement.

AGREEMENT

In consideration of the mutual promises and covenants set forth in this Agreement, the Seller agrees to grant to the City a Multi-Use Pathway Easement. The City agrees to pay the Seller for the easement interest and to construct improvements on, in, and under the Easement under the terms and conditions set forth in this Agreement.

1. SALES PRICE AND CONSIDERATION.

- A. The City is willing to Compensate the Seller Eight Thousand Seventy-Three Dollars (\$8,073) for the Multi-Use Pathway Easement to be acquired as described in Exhibit A and A1.
- B. The City in association with Arizona Department of Transportation (“ADOT”) and Federal Highway Administration (“FHWA”) intends to construct a multi-use pathway and associated improvements as shown in the construction plans for project number CM-GLN-0(220)A. The City, in conjunction with ADOT, will install a paved pathway from the west end of existing Discovery Drive to an existing concrete pathway located within Discovery Park and will accommodate pedestrian and bicycle traffic.
- C. The project will include provisions that will allow continued uninterrupted access by the Seller across the Multi-Use Pathway Easement to the vacant school property south of the Easement.
- D. The City will be responsible for all costs associated with the construction of the Multi-Use Pathway Easement and related improvements.
- E. Upon completion of the improvements, the City will be responsible for all operation and maintenance costs for the improvements located within the Multi-Use Pathway Easement including landscaping and any landscape irrigation at no cost to the Seller. The portion of the pathway outside the easement and within Discovery Park will be maintained as described in a separate agreement (Intergovernmental Agreement Between the City of Glendale and the Glendale Elementary School District No. 40 for the Development and Use of Joint Park Site, dated April 11, 1995).
- F. In the event this Agreement has not been approved by Seller within one hundred eighty (180) days of the date of this Agreement, then this Agreement shall terminate and neither party shall have any further obligation under its terms, except as expressly stated herein.

2. DISBURSEMENTS.

Upon the Close of Escrow, all sums due and payable shall be disbursed to the Seller.

3. PRELIMINARY TITLE REPORT.

Promptly following the opening of Escrow, the Escrow Agent shall deliver a current commitment for title insurance (the “Report”) issued by the Escrow Agent on the real property to the City and the Seller. The Report shall show the status of title to the property as of the date of the Report and shall be accompanied by legible copies of all documents referred to in the Report.

4. REVIEW PERIOD.

- A. The City shall have twenty (20) days (the "Review Period") following receipt of the Report to approve or disapprove matters related to title as shown by the Report. If the Escrow Agent issues a supplemental or amended title report showing additional exceptions to title (an "Amended Report"), the City shall have a period of time equal to ten (10) business days (a "Supplemental Review Period") from the date of receipt of the Amended Report and a copy of each document referred to in the Amended Report in which to give notice of dissatisfaction as to any additional exceptions. If the City is dissatisfied with any exception to title as shown in the Report or an Amended Report, then, at its sole option, the City may either (i) cancel this Agreement by giving notice of cancellation to the Seller and the Escrow Agent within the Review Period, or Supplemental Review Period, as appropriate, or (ii) the City may provisionally accept the title subject to the Seller's removal of any disapproved matters, exceptions or objections, in which case the Seller shall use its best efforts to remove the matters, exceptions, or objections or obtain title insurance endorsements satisfactory to the City against such matters, exceptions and objections before the close of escrow; provided, however, that such best efforts shall not require the Seller to expend any funds. If the Seller cannot remove such matters, exceptions and objections before the close of escrow, then upon demand the City may terminate this Agreement without further obligation to the Seller, or the City may waive such objections and the transaction shall close as scheduled.
- B. Notwithstanding anything herein contained to the contrary, Seller shall be under an affirmative obligation to eliminate the following title matters on or before the Close of Escrow, and the City shall have no obligation to object to the same for such removal: (i) any voluntary financing liens against the Property that may be satisfied by cash payment; (ii) any judgment liens, mechanics' or materialmen's liens, tax liens or other non-consensual monetary liens that may be satisfied by a cash payment, other than liens for non-delinquent real estate taxes and permitted assessments; or (iii) any farm or other lease or occupancy right.

5. MULTI-USE PATHWAY EASEMENT.

At the Close of Escrow, Seller shall convey a Multi-Use Pathway Easement in, over, and across the property to the City in a form and substance satisfactory to the City, which Easement shall not be subject to any defects, exceptions, easements, encumbrances, covenants, conditions, restrictions, mining claims or liens, except: (i) the matters set forth in the Report (other than the standard printed exceptions) which have been accepted in writing by City; or (ii) any additional matters accepted in writing by City.

6. REQUIRED APPROVALS.

- A. City and Seller acknowledge and agree that all of Seller's obligations are contingent upon approval of this Agreement by Seller's Governing Board. If Seller's Governing Board approves this Agreement, then this Agreement shall

continue in full force and effect but if Seller notifies City that Seller's Governing Board has rejected or revoked its acceptance of this Agreement, then this Agreement shall terminate and neither party shall have further obligation under its terms, except as expressly stated herein.

- B. City and Seller acknowledge and agree that all City obligations are contingent upon approval of this Agreement by City's City Council. If City's City Council approves this Agreement, then this Agreement shall continue in full force and effect but if City notifies Seller that City's City Council has rejected or revoked its acceptance of this Agreement, then this Agreement shall terminate and neither party shall have further obligation under its terms, except as expressly stated herein.

7. TITLE POLICIES.

At the close of escrow, Escrow Agent shall, at the City's expense, provide the City with a separate owner's policy of title insurance issued by the Escrow Agent on the Property together with any endorsements required by the City and specifically insuring against any mechanics' and materialmen's liens on the Property notwithstanding that work may have been performed on the property, in the full amount of the sales price paid by the City, as applicable, effective as of the close of escrow, insuring the City that a permanent Easement in and to the Property is vested in the City, each subject only to the usual printed exceptions and exclusions contained in such title insurance policies, and to any other matters approved in writing by the City. The obligations of Escrow Agent to provide the title policies called for in this Section shall be satisfied if, at the close of escrow, Title Company has issued a binding commitment to issue each policy in the form required by this Section, and if each such policy is delivered within a reasonable time following the Close of Escrow.

8. ESCROW.

An escrow for this transaction has been established with the Escrow Agent, and the Escrow Agent is hereby employed to handle the escrow. This Agreement constitutes escrow instructions to the Escrow Agent and a copy shall be deposited with the Escrow Agent for this purpose. Should the Escrow Agent require the execution of its standard form printed escrow instructions, the City and the Seller agree to execute same; however, such instructions shall be construed as applying only to the Escrow Agent's employment, and if there are conflicts between the terms of this Agreement and the terms of the printed escrow instructions, the terms of this Agreement shall control. Escrow shall be deemed open (the "Opening of Escrow") when one fully executed original of this Agreement has been delivered to Escrow Agent. Escrow Agent shall advise City and Seller in writing of the date of Opening of Escrow.

9. OPENING AND CLOSING DATES.

Escrow will be opened subject to terms of this Agreement. The Closing of this transaction and escrow (referred to in this Agreement as the "Closing" or the "Close of

Escrow”) shall occur on the latter of _____, or two weeks after the expiration of any Supplemental Review Period.

10. ESCROW CANCELLATION CHARGES.

If the escrow fails to close because of the Seller’s default, the Seller shall be liable for all customary escrow cancellation charges. If the escrow fails to close because of the City’s default, the City shall be liable for all customary escrow cancellation charges. If the escrow fails to close for any other reason, the Seller and the City shall each be liable for one-half of all customary escrow cancellation charges. If the escrow fails to close, all other obligations under this Agreement shall terminate.

11. CLOSING COSTS.

- A. Upon the Close of Escrow, the City agrees to pay the entire cost of a standard coverage owner’s policy of title insurance.
- B. Upon the Close of Escrow, the City agrees to pay escrow charges, and the cost of any endorsements issued in connection with such policy.
- C. Real estate taxes and irrigation assessments, either existing or proposed, shall remain the responsibility of Seller. Improvement liens and other special assessments shall likewise remain the responsibility of Seller.
- D. The City agrees that all other closing costs payable by the City and the Seller will be paid by the City. On or before the Close of Escrow, the City agrees to deposit with Escrow Agent a warrant in an amount sufficient to pay the purchase price and all closing costs payable by the City.
- E. The parties agree that there has not been and shall be no broker or representative acting for either party in this transaction that is entitled to a fee or commission.
- F. The obligations of this paragraph shall survive Close of Escrow.

12. POSSESSION AND USE.

The right to use the Easement property shall be delivered to the City upon the Close of Escrow. From time to time before the Close of Escrow, the City may enter upon the property with the City’s representatives and agents for the purpose of examining the property, conducting soil tests and engineering feasibility studies, and planning the proposed development of the property.

13. RISK OF LOSS.

Except as otherwise provided, the risk of loss or damage to the property and all liability to third persons shall continue to be borne by Seller except as may be limited by the terms of the Multi-Use Pathway Easement. This obligation shall survive Close of Escrow.

14. SELLER'S REPRESENTATIONS AND WARRANTIES.

The Seller makes the following representations and warranties which shall apply to the property; constitute a material part of the Easement consideration; are true and accurate on the Opening Date; remain true and accurate upon Close of Escrow; and shall survive Close of Escrow:

- A. Action. All actions on the part of the Seller which are required for the execution, delivery, and performance by the Seller of this Agreement and each of the documents and agreements to be delivered by the Seller at the closing have been duly and effectively taken.
- B. Enforceable Nature of Agreement. Subject to Section 6 above, this Agreement and each of the documents and agreements to be delivered by the Seller at the closing constitute legal, valid, and binding obligations of the Seller, enforceable against the Seller in accordance with their terms.
- C. Violations; Consents; Defaults. Neither the execution of this Agreement, nor the performance by Seller will result in any breach or violation of the terms of any law, rule, ordinance, or regulation or of any decree, judgment or order to which the Seller is a party now in effect from any court or governmental body. There are no consents, waivers, authorizations or approvals from any third party necessary to be obtained by the Seller in order to carry out the transactions contemplated by this Agreement. The execution and delivery of this Agreement and performance by the Seller will not conflict with, or result in a breach of, any of the terms, conditions or provisions of, or constitute a default under, or result in the creation of any new, or the acceleration of any existing, lien, charge, or encumbrance upon the Easement property, or any indenture, mortgage, lease, agreement or other instrument to which the Seller is a party or by which the Seller or any of its assets may be bound.
- D. Litigation. The Seller is not a party to any pending or threatened action, suit, proceeding or investigation, at law or in equity or otherwise, in, for, or by any court or governmental board, commission, agency, department or officer, arising from or relating to the property or to the past or present operations and activities of the Seller upon or relating to the property.
- E. Governmental Restrictions. The Seller has not received, nor is aware of, any notifications, restrictions, or stipulations from the United States of America, the State of Arizona, Maricopa County, or any other governmental authority requiring any work to be done on the property or threatening the use of the property. There are no pending or threatened condemnation proceedings affecting any portion of the property.
- F. Title. Fee simple title to the property is currently vested in the Seller.

- G. Leases and Agreements. There are no unrecorded leases, arrangements, agreements, understandings, options, contracts, or rights of first refusal, or liens on crops affecting or relating to the property to be acquired in any way.
- H. Compliance. To the best of the Seller's knowledge, the Seller has complied, in all respects, with all laws, ordinances, rules, regulations, requirements and orders of federal, state, or local governments and/or their agencies with respect to the Property.
- I. Environmental Matters. The Seller has not been advised that either the Seller or the property is in material violation of applicable environmental law, regulation, ordinance or order of any government entity, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended; the Resource Conservation and Recovery Act, as amended; the Federal Clean Water Act, as amended; the Federal Clean Air Act, as amended, the Federal Toxic Substances Control Act, as amended; and any regulations promulgated thereunder, or any other federal, state, or local laws relating to contamination of or adverse effects on the environment. In addition, the Seller has not been advised that the property or any underlying groundwater contains any material concentrations of regulated substances, hazardous substances, hazardous materials, toxic substances, or similar substances, residues, and waste.
- J. Taxes. The Seller does not have any liability for any taxes, or any interest or penalty in respect thereof, of any nature that may be assessed against the City, or that are, or may become a lien against the property.
- K. Mechanics' Lien. No work has been performed on or about the property or to any improvements located thereon within six (6) months prior to the opening date that could give rise to any mechanics' or materialmen's liens whatsoever.
- L. Existing Improvements. The Seller does not warrant the condition of any existing improvements on the property. The City accepts these improvements in an "as is" condition.

15. CITY'S REPRESENTATIONS AND WARRANTIES.

The City makes the following representations and warranties which constitute a material part of the Agreement consideration, which are true and accurate as of the date of this Agreement, and will be true and accurate as of the close of escrow, and which shall survive the Close of Escrow:

- A. Authority. The City has full power and authority to enter into and to perform its obligations under this Agreement. The persons executing this Agreement on behalf of the City have full power and authority to do so, to perform every act, and to execute and deliver every document and instrument necessary or appropriate to consummate the transactions contemplated; and

B. Enforceable Nature of Agreement. This Agreement and each of the documents and agreements delivered by the City at the Closing constitutes a legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms.

16. INDEMNITY.

To the extent permitted by law, each party to this Agreement agrees to indemnify the other party and hold it harmless for, from and against all claims, damages, costs and expenses (including attorneys' fees and costs) attributable, directly or indirectly, to the breach by such Indemnifying Party of any obligation hereunder, or the inaccuracy of any representation or warranty made by such Indemnifying Party herein, or in any instrument delivered pursuant thereto, or in connection with the transactions contemplated. In addition, the Seller hereby covenants and agrees to indemnify and hold the City harmless for, from and against any and all claims, damages, costs and expenses (including attorneys' fees and costs) relating in any way to the property and accruing before Close of Escrow, even though now unknown and unsuspected. These obligations shall survive Close of Escrow.

17. SELLER'S REMEDIES.

If the City fails to deposit the sales price required under this Agreement, or to perform when due any other act required by this Agreement, then the Seller's sole and exclusive remedy shall be to cancel this Agreement and the escrow, without further liability; the cancellation to be effective immediately upon the Seller giving written notice of cancellation to City and Escrow Agent.

18. CITY'S REMEDIES.

If the Seller fails to perform when due any act required by this Agreement, then, in addition to any and all other remedies available to the City at law or in equity, including the right to have specific performance of this Agreement, the City may cancel this Agreement and the escrow, without further liability, such cancellation to be effective immediately upon the City giving written notice of cancellation to the Seller and the Escrow Agent.

19. COOPERATION.

The Seller shall cooperate fully with the City in obtaining any necessary governmental approvals to the transfer of any item of property being sold to the City under this Agreement.

20. BINDING EFFECT.

The provisions of this Agreement are binding upon, and shall inure to the benefit of, the parties and their respective heirs, personal representatives, executors, administrators, successors and assigns. These obligations shall survive Close of Escrow.

21. ATTORNEYS' FEES.

If either party brings any action to enforce its rights under this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and court costs as determined by the court. This obligation shall survive Close of Escrow.

22. WAIVERS.

No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver be a continuing waiver. Except as expressly provided in this Agreement, no waiver shall be binding unless executed in writing by the party making the waiver. Either party may waive any provision of this Agreement intended for its benefit; provided, however, the waiver shall in no way excuse the other party from the performance of any of its other obligations under this Agreement. The terms of this Section shall survive Close of Escrow.

23. CONSTRUCTION.

This Agreement shall be subject to, and construed according to, the laws of the State of Arizona without the application of any principles of conflicts of law that would require or permit the application of the laws of any other jurisdiction. The terms of this Section shall survive Close of Escrow.

24. TIME.

Time is of the essence of this Agreement.

25. NOTICES.

Notices shall be in writing and shall be given by personal delivery, by deposit in the United States mail, certified mail, return receipt requested, postage prepaid, or by express delivery service, freight prepaid, in each case by delivery to the Seller and the City at the addresses set forth on the first page of this Agreement or at such other address as a party may designate in writing. The date notice is given shall be the date on which the notice is delivered, if notice is given by personal delivery, or five (5) calendar days after the date of deposit in the mail or with an express delivery service, if the notice is sent through the United States mail. A copy of any notice given to a party shall also be given to the Escrow Agent by regular mail. These obligations shall survive Close of Escrow.

26. FURTHER DOCUMENTATION.

Each party agrees in good faith to execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement. This obligation shall survive Close of Escrow.

27. TIME PERIODS.

Except as expressly provided for herein, the time for performance of any obligation or taking any action under this Agreement shall be deemed to expire at 5:00 p.m. (Phoenix time) on the last day of the applicable time period provided herein. If the time for the performance of any obligation or taking any action under this Agreement expires on a Saturday, Sunday or legal holiday, the time for performance or taking such action shall be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday.

28. CONFLICTS.

This Agreement is subject to cancellation by the City, without penalty or further obligation, under A.R.S. § 38-511, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City is, at any time during the Agreement, an employee or agent of any other party to the Agreement in any capacity, or a consultant to any other party.

29. AMENDMENTS.

Any amendments or modifications to this Agreement must be in writing, executed by both parties, and are subject to City Council approval. This Agreement constitutes the entire agreement of the parties and supersedes any negotiations, discussions, undertakings, correspondence or informal agreements of the parties. The terms of this Section shall survive Close of Escrow.

30. INTERPRETATION.

Both parties have been or have had the opportunity to be represented by counsel in negotiating and approving this Agreement. This Agreement shall be interpreted, applied and enforced according to the fair meaning of its terms and shall not be construed in favor of, or against, either party, regardless of which party may have drafted or proposed any of its provisions or terms. The terms of this Section shall survive Close of Escrow.

31. ORIGINALS.

This Agreement is executed in triplicate and each executed copy shall be considered an original. The terms of this Section shall survive Close of Escrow.

(Signatures appear on the following page.)

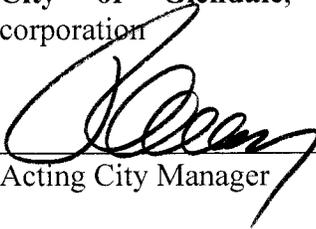
SELLER

Glendale Elementary School District No. 40

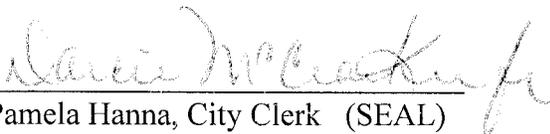
By: 
Its:

BUYER

City of Glendale, an Arizona municipal corporation


Acting City Manager

ATTEST:


Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

Escrow Agent hereby accepts employment to handle the escrow establishment by this Agreement in accordance with the terms set forth in this Agreement.

North American Title Company

By: Alix Graham, Branch Manager

WHEN RECORDED, RETURN TO:

City Clerk, City of Glendale
5850 West Glendale Avenue, Suite 455
Glendale, Arizona 85301

EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

That for the consideration of \$8,073 and other valuable considerations,
Glendale Elementary School District No. 40, GRANTOR, hereby grants to the City of Glendale, a
municipal corporation in the State of Arizona, GRANTEE, an easement for **multi-use pathway**
purposes within that certain real property situated in Maricopa County, Arizona, described as
follows:

FOR LEGAL DESCRIPTION SEE EXHIBIT "A" ATTACHED
HERETO AND MADE A PART HEREOF BY REFERENCE.

TO HAVE AND TO HOLD the Easement herein described for the use and benefit of the public as
right of way for multi-use pathway purposes.

IN WITNESS WHEREOF, the Glendale Elementary School District has caused its corporate name
to be signed by the undersigned officers thereunto duly authorized.

Dated the 10 day of August, 2016

GLENDALE ELEMENTARY SCHOOL DISTRICT NO. 40

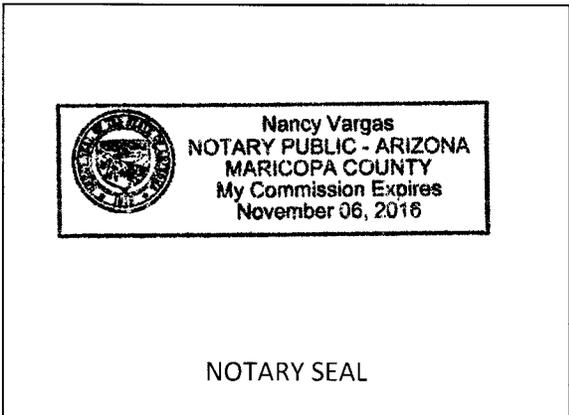
By: 

By: _____

ACKNOWLEDGEMENT

STATE OF _____)
) SS.
COUNTY OF _____)

On this, the _____ day of _____, 20____, before me, the undersigned officer, personally appeared _____ and _____ who acknowledged themselves to the _____ and _____ of **Glendale Elementary School District No. 40**, and that , as such officers respectively, being authorized to so do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation, by themselves as such officers.



NOTARY PUBLIC

My commission Expires: _____

EXHIBIT A
LEGAL DESCRIPTION FOR
MARYLAND MULTI-USE PATH EASEMENT

That portion of the South half of Section 11, Township 2 North, Range 1 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, being more particularly described as follows:

COMMENCING at the South quarter corner of said Section 11 (brass cap in handhole) from which the Southwest corner of said Section 11 (brass cap - flush) bears South 89°32'32" West, 2609.27 feet;

thence North 00°16'19" East, 1820.02 feet along the North-South mid-section line of said Section 11 to the POINT OF BEGINNING;

thence departing said North-South mid-section line, South 89°22'03" West, 86.18 feet;

thence North 59°47'56" West, 39.01 feet to the Southeast corner of a park site as described in Instrument No. 95-0220886 records of Maricopa County, Arizona;

thence North 00°16'19" East, 58.32 feet along the easterly line of said park site;

thence departing said easterly line, South 30°57'23" East, 27.00 feet;

thence North 89°22'03" East, 106.00 feet to said North-South mid-section line from which the Center of said Section 11 bears North 00°16'19" East, 752.45 feet;

thence South 00°16'19" West, 35.00 feet along said North-South mid-section line;

thence departing said North-South mid-section line, North 89°22'03" East, 65.01 feet;

thence South 00°16'19" West, 20.00 feet;

thence South 89°22'03" West, 65.01 feet to the POINT OF BEGINNING.

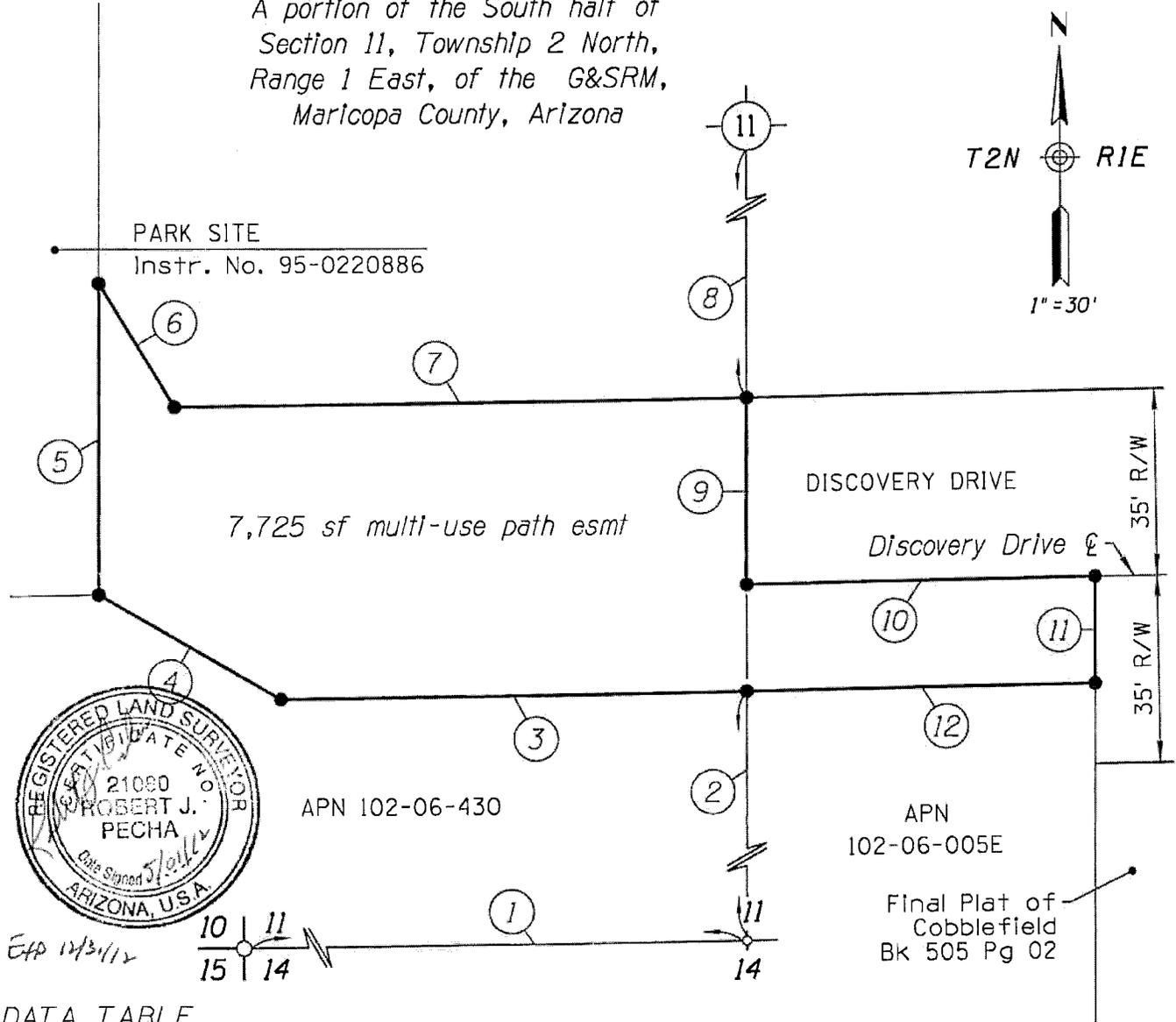
Said easement contains 7,725 square feet or 0.1773 acres more or less.



EXHIBIT A1

MARYLAND MULTI-USE PATH EASEMENT

A portion of the South half of
Section 11, Township 2 North,
Range 1 East, of the G&SRM,
Maricopa County, Arizona



DATA TABLE

1	S89°32'32"W	2609.27'	7	N89°22'03"E	106.00'
2	N00°16'19"E	1820.02'	8	N00°16'19"E	752.45'
3	S89°22'03"W	86.18'	9	S00°16'19"W	35.00'
4	N59°47'56"W	39.01'	10	N89°22'03"E	65.01'
5	N00°16'19"E	58.32'	11	S00°16'19"W	20.00'
6	S30°57'23"E	27.00'	12	S89°22'03"W	65.01'

Scale
0 15 30



7720 North 16th Street
Suite 100 - Phoenix, AZ
85020 - 602.371.1100

GLENDALE ONBOARD TRANSPORTATION PROGRAM
MARYLAND MULTI-USE PATH EASEMENT
79TH AVE & DISCOVERY DR (MARYLAND AVE)