NEW APPLICATION

0000112052

ORIGINAL

City of Casa Grande
Engineering Division
North Operations Center
3181 North Lear Avenue
Casa Grande, Az. 85222
520-421-8625

Arizona Corporation Commission
DOCKETED
MAY 19 2010
DOCKETED BY nr

RECEIVED
2010 MAY 19 A 9:00
AZ CORP COMMISSION
DOCKET CONTROL

May 13, 2010

RE: Central Arizona Commerce Park
Peters Road Rail Crossing
City of Casa Grande

Arizona Corporation Commission Office of Railroad Safety
Attn: Chris Watson
2200 N. Central Avenue # 300,
Phoenix, AZ 85004.

RR-03639A-10-0206

Mr. Watson,

Attached are eleven copies of the submittal package for a private rail crossing of Peters Road between Burris Road and Thornton Road in the City of Casa Grande.

This request for a crossing is being made by Central Arizona Commerce Park and the City is in support of their desire to cross Peters Road to enable expansion of the Industrial Park and its ability to be served by rail.

This is the only location in Casa Grande that is suitable for such a use and the area is already designated in the General plan as Industrial. The parcels in question are in fact designated I-2 and I-1 heavy/light industrial.

This is a very important corridor for the City's future job growth and we look forward to working closely with you in the future to ensure that the crossing is made possible.

Please contact me, if you should have any questions at my direct line 520-421-8625 ext. 3300, on my cell phone at 520-251-3030 or at my email address (ptober@casagrandeaz.gov).

Sincerely,

Paul F. Tober

Paul F. Tober, P. E.
Traffic Engineer

Cc: Kevin Louis, Public Works Director
Greg Smith, City Engineer

Central Arizona Commerce Park (CAZCP)
Casa Grande, AZ

ACC Submittal

Table of Contents

1) Location Map
2) Conceptual drawings of proposed rail crossing
3) Letter from City Development Director regarding crossing and importance of area for job growth
4) Easement/Maintenance agreement with the City with legal description
5) City of Casa Grande resolution agreeing to Easement and Maintenance agreement
6) Easements from the properties to the south and the north of the proposed rail crossing.
7) MOU with UP and CAZCP for the proposed crossing
8) Industrial Track Agreement (ITA) between Union Pacific and CAZCP for main park switch yard
9) Agreement between CAZCP and San Pedro South Western for 3rd Party Switching operations
10) Traffic Impact Analysis document from South West Traffic Engendering (SWTE)

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AVERY® READY INDEX®

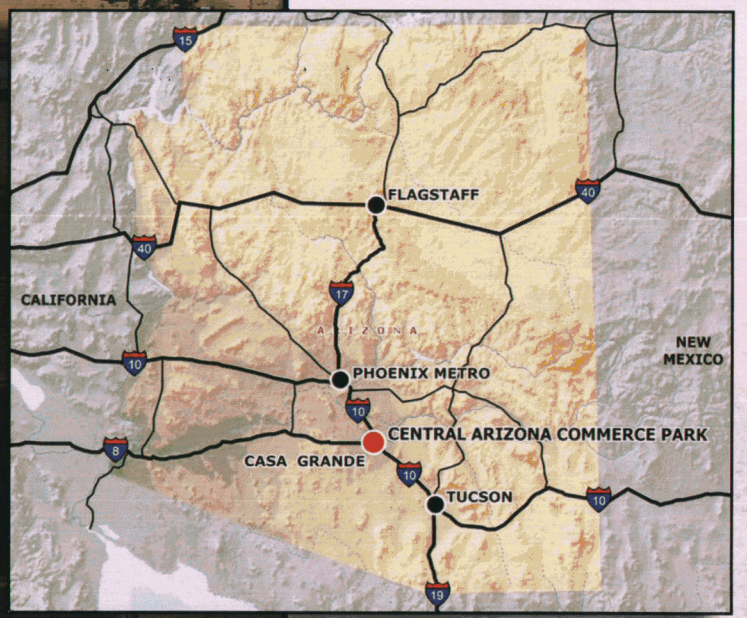
60008B

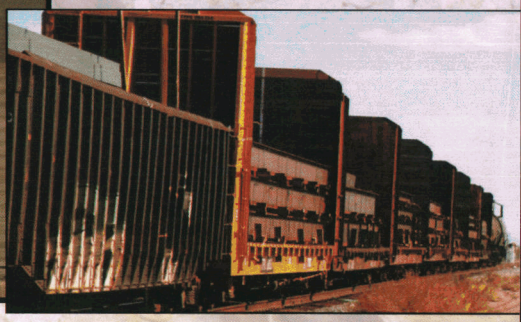
1

Central Arizona Commerce Park

±560 Rail Served Acres in Casa Grande, Arizona

Manufacturing | Retail | Distribution | Rail | Warehousing





ZONING: I-2 Heavy Industrial - accomodates most industrial uses

ACCESS: I-10 / I-8 / Union Pacific Rail
Access to major interstates, freeways and rail. Ideal location where transportation is a consideration.

BUILD TO SUIT: Design, buy, lease or build.

MANAGEMENT: Experienced team that ensures high standards.

INCENTIVES: Casa Grande Employment Enterprise Zone

UNION PACIFIC

FOR MORE INFORMATION, CONTACT:

Land Advisors ORGANIZATION

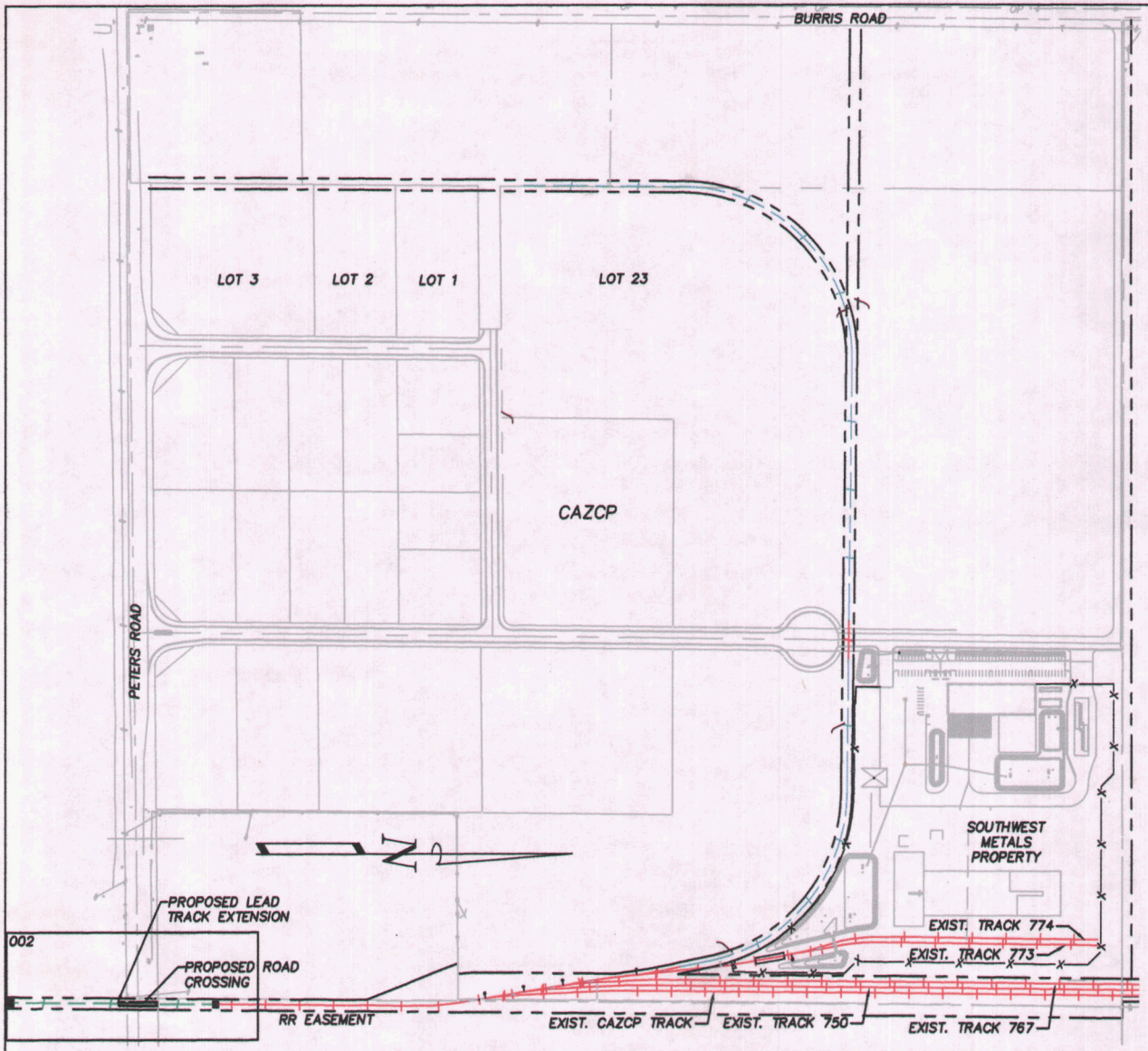
Kirk McCarville | 520.836.8801
Michele Pino | 480.483.8100

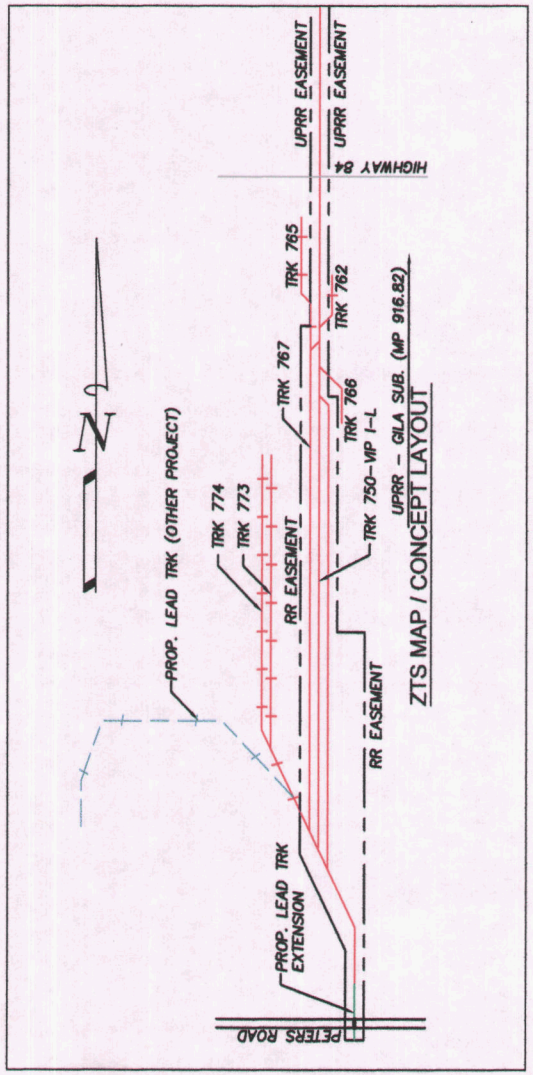
CENTRAL ARIZONA COMMERCE PARK
www.cazcp.com
Rail Served Rail Served Rail Served

Jackob Andersen | 480.209.[illegible]65
Tim Smith | 602.762.9622

© 2009 Central Arizona Commerce Park, LLC. All rights reserved.
No warranty or representation is made to the accuracy of the foregoing information. Terms and availability are subject to change or withdrawal without notice.

2





10% Design

REVISION #	BY	DATE	DESCRIPTION

MOUNTAIN STATES CONTRACTING
6813 W. Friar Drive
Glendale, AZ 85303
p: (800) 827-0743
f: (623) 842-0944

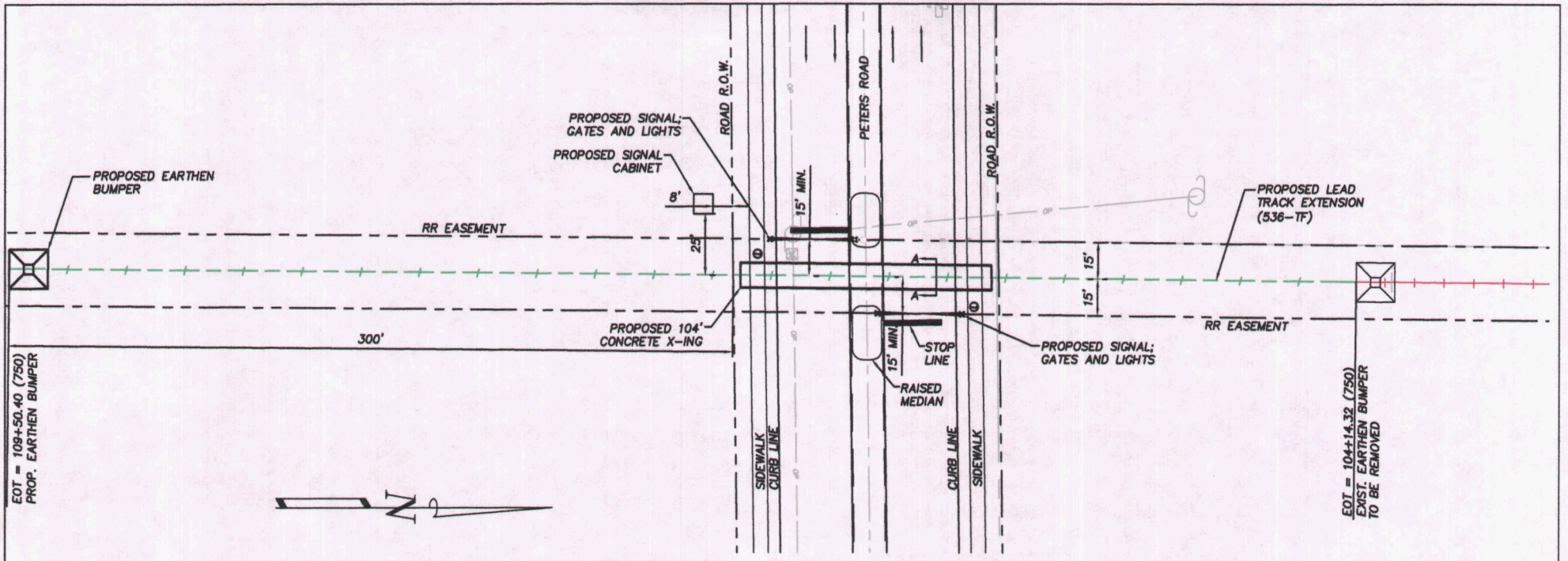
FIBER OPTIC CABLE! CALL BEFORE YOU DIG 1-800-336-9193

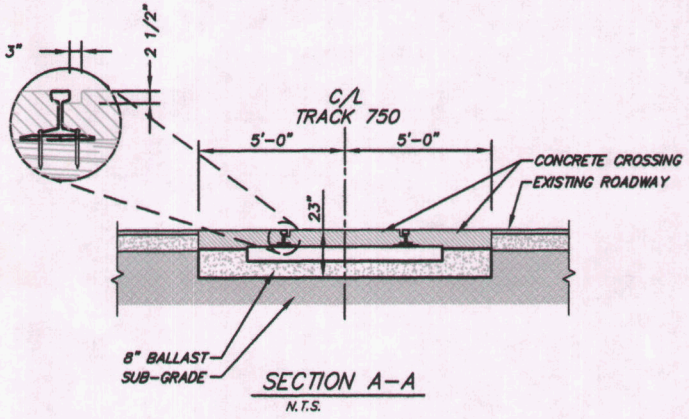
300' 0 300' 600'
SCALE: 1" = 300'

LEGEND:
- Existing Railroad Owned Trackage
- Existing Industry Owned Trackage
- Prop. Industrial Park Owned/ UP-Industry Switched Trackage
- Other Project Trackage
- Fence

DRAWN BY:	MEP
CHECK'D BY:	MEP
DATE:	January 5, 2010
SHEET NUMBER:	001 OF 002

For Use In Agreement With: UNION PACIFIC RAILROAD
And Central AZ Commerce Park
Tucson Service Unit
Milepost 916.82, Gila Subdivision
Casa Grande, Maricopa Co., AZ
TRACKAGE TO SERVE: Central AZ Commerce Park





SECTION A-A
N.T.S.

SCOPE OF WORK

WORK BY UPRR:

NONE

WORK BY MOUNTAIN STATES CONTRACTING:

REMOVE 1-EARTHEN BUMPER. INSTALL 536-TF INCLUDING 104' CONCRETE CROSSING AND 1- EARTHEN BUMPER.

OPERATING PLAN

NOT APPLICABLE

10% Design

REVISION #	BY	DATE	DESCRIPTION

MOUNTAIN STATES CONTRACTING
6813 W. Frier Drive
Glendale, AZ 85303
p: (800) 827-0743
f: (623) 842-0944

FIBER OPTIC CABLE! CALL BEFORE YOU DIG 1-800-336-9193

40' 0 40' 80'
SCALE: 1" = 40'

LEGEND:
Existing Railroad Owned Trackage
Existing Industry Owned Trackage
Prop. Industrial Park Owned/ UP-Industry Switched Trackage
Other Project Trackage
Fence

DRAWN BY:	MEP
CHECK'D BY:	MEP
DATE:	January 5, 2010
SHEET NUMBER:	002 OF 002

For Use In Agreemet With: UNION PACIFIC RAILROAD
And Central AZ Commerce Park
Tucson Service Unit
Milepost 916.82, Gila Subdivision
Casa Grande, Maricopa Co., AZ
TRACKAGE TO SERVE: Central AZ Commerce Park

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City of Casa Grande

May 12, 2009

Jackob Andersen
Central Arizona Commerce Park L.L.C
3666 N Miller Rd # 105
Scottsdale, AZ 85251

Re: rail crossing on Peters Rd. and support for I-2 Zoning

Dear Jackob:

I want to personally compliment you and your team for the successful completion of the rail served industrial park in Casa Grande's premiere employment corridor at the Thornton Road /Interstate 8 interchange. Rail served industrial property is a rare commodity in Arizona and the City of Casa Grande looks forward to assisting you with your efforts to expand the park.

Expansion of the rail served industrial park requires the extension of the rail spur across Peters Road which the City of Casa Grande supports. In addition, the City has designated the entire section of land lying South of Peters Road as Industrial/Manufacturing land use in the General Plan 2020. This comprehensive land use plan sets the stage for significant industrial development in the Thornton Road corridor which will be one of Arizona's largest employment centers. This center is already home to Daisy Brand Foods, Walmart Warehouse Distribution Center, National Vitamin Company, Graham Packaging, Southwest Metals, Mid State Services, Hexcel Corporation, Golden Eagle Distributing, Diamond Plastics, Bull Moose Tube, Price Industries and a host of other manufacturers and distributors.

The Industrial/Manufacturing land use designation will allow consideration of both I-1 (light industrial) and I-2 (Heavy Industrial) zoning applications.

Telephone: 520/421-8600 - Telefacsimile: 520/421-8602 - TDD: 520/421-8623
City Hall: 510 East Florence Boulevard - Casa Grande, Arizona 85222

City staff supports the idea of additional I-2 zoning where you are proposing to expand the rail served industrial park.

Please let me know if there is anything I can do to assist in your efforts to bring additional quality economic development to our area. Our development review team is professional in every way and fully understands the need to expedite reviews and permits when development comes knocking on the door.

Sincerely,

Rick Miller
Planning and Development Director

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C.G. Contract No. 410-5

EASEMENT AND MAINTENANCE AGREEMENT

This Easement and Maintenance Agreement ("Agreement") is made this 30th day of April, 2010 by and between City of Casa Grande, an Arizona Municipal Corporation, and Central Arizona Commerce Park, LLC an Arizona Limited Liability Corporation.

RECITALS

1. City of Casa Grande, Arizona is the owner of Real Property and Roadway as described on the attached Exhibits A and B, which are incorporated herein by reference.

2. Central Arizona Commerce Park, LLC is the developer of the Real Property abutting both the geographic North and South of the Real Property owned by City of Casa Grande. The legal description of the Central Arizona Commerce Park property is attached as Exhibit C, which is incorporated herein by reference.

3. Subject to the terms of this Agreement, the City of Casa Grande, Arizona intends to grant to Central Arizona Commerce Park, LLC, along with its successors in interest, a non-exclusive easement across a portion of land, named and dedicated as "Peters Road," for the purpose of constructing an at-grade railroad crossing joining the North and South parcels described in Exhibit C and owned by Central Arizona Commerce Park, together with the installation and maintenance of railroad at-grade crossing protection devices as required by the State of Arizona, Pinal County and City of Casa Grande, Arizona.

4. Whenever the term "CITY" is used in this Easement and Maintenance Agreement, it shall mean City of Casa Grande, Arizona. Whenever the term "CAZCP" is used in this Easement and Maintenance Agreement, it shall mean Central Arizona Commerce Park, LLC.

5. CITY and CAZCP are entering into this Easement and Maintenance Agreement for the purpose of allowing CAZCP to construct a railroad crossing to serve an Industrial Park under development by CAZCP. The industrial park that is under development will provide enhanced employment opportunity for the citizens of CITY and an increased tax base for CITY.

AGREEMENT

NOW. THEREFORE, for good and valuable considerations, the receipt and sufficiency of which is here by acknowledged, the parties hereto agree as follows:

1. Grant of Easement. Subject to the terms of this Agreement, CITY hereby grants and conveys to CAZCP and its permitted successors and assigns as set forth in this Agreement, a perpetual, non-exclusive easement over and across that certain real property as described on attached Exhibits A and B (the "Easement Property") for the purpose of constructing and maintaining an at-grade railroad crossing between parcels of land being developed by CAZCP as an industrial park. The property to be served by the railroad crossing is described in deeds recorded in the in the Office of the Pinal County Recorder as under document nos. 2009-098865, 2008-098161, and 2004-096571.

Following the construction of the crossing in accordance with the approved plans and acceptance of the railroad crossing, CITY and CAZCP agree that they will execute an Easement Grant to be recorded in the office of the Pinal County Recorder describing the easement "as built."

2. Design of Railroad Crossing. The design of the railroad crossing shall comply with all design and safety requirements mandated by the railroad companies operating equipment over facility, CITY, the Arizona Corporation Commission, and any other local, state or federal governmental agency with jurisdiction over the construction or operation of railroad facilities within the CITY. Failure of CAZCP to obtain the necessary approvals by December 31, 2012 shall be grounds for termination of this Easement upon written notification by CITY to CAZCP of the intent to terminate the same. The City Manager or CITY may extend this deadline if he deems that such extension is in the best interest of CITY.

As a condition of approval of the design of the railroad crossing, CAZCP shall provide CITY with copies of all required approvals of the design.

3. Construction of Access Track. All construction shall be performed in compliance with all building and safety codes applicable to the construction of a railroad crossing. If requested by CITY following the issuance of a building permit, CAZCP shall, at its sole cost and expense, engage a civil engineer licensed by the Arizona Board of Technical Registration to act as a special inspector who will certify compliance with all applicable building and safety codes.

The construction of the railroad crossing shall be completed within 365 days of the issuance of the building permits. "Completion" means the construction of all of the improvements described on the permitted plans for the railroad crossing and the inspection and approval of the construction by the local building official or his designate.

4. Repair and Maintenance. CAZCP shall at all times maintain all components of the railroad crossing constructed under this Agreement to ensure that the crossing does not damage or otherwise impair Peters Road. CAZCP shall bear all costs of maintenance of the railroad crossing, and CITY shall have no liability or responsibility therefore.

CAZCP agrees that it shall periodically inspect the railroad crossing for defects and proper operation. Upon notice of a defect in any safety equipment, CAZCP will suspend use of the railroad crossing until adequate temporary safety measures to protect the traveling public are in place, or until the defect in the safety equipment is repaired. The type of temporary safety measures that must be employed shall be determined by CAZCP after reasonable consultation with CITY. However, the temporary safety measures employed shall, at a minimum, meet any applicable CITY standards for traffic control and otherwise provide a comparable level of safety as the automatic safety which was approved and installed during the construction of the railroad crossing. All costs of temporary safety measures shall also be borne by CAZCP.

5. Insurance and Liability. CAZCP and CITY agree that following the final inspection and approval of the construction of the railroad crossing, CITY shall have no obligation to maintain or otherwise no right to control the maintenance or use of the railroad crossing except as set forth in this Agreement. CAZCP agrees that it will defend, indemnify, and hold CITY harmless from all claims, demands, or causes of action of any type or nature arising out of the construction, maintenance, and operation of the railroad crossing.

CITY shall promptly give notice to CAZCP of any known claims or demands for compensation, including providing CAZCP with any demand letter, accident reports, investigative reports, or other documents relating to the demand for compensation.

(CAZCP) shall purchase and maintain throughout the term of the Easement, and at its sole expense, a general liability insurance policy with a reputable insurer authorized to do business in Arizona and reasonably acceptable to CITY, providing for at least $2 million in bodily injury liability coverage and $100,000 in property damage coverage. The limits of the coverage shall be increased annually by an amount equal to the Consumer Price Index for all goods published by the Bureau of Labor Statistics. If the Consumer Price Index is no longer published then CAZCP shall select a similar published index and use that index as a means of determining the minimum coverages required under this Paragraph. CITY, along with its officers and employees, shall be named as an additional insured under CAZCP policy for all actions arising out of the construction, maintenance and operation of the railroad crossing constructed under this Agreement. Each insurance policy shall provide at least thirty (30) days notice of cancellation or non-renewal and provide that notice of such

cancellation or non-renewal shall be provided to CITY. CAZCP shall provide certificates of insurance evidencing the policies set forth in this Paragraph to CITY annually. Failure to procure or maintain the insurance required by this Paragraph shall require CAZCP to immediately cease all use of the Easement until such insurance has been obtained, and CITY may, upon notice and at least thirty (30) days opportunity to cure, terminate this Easement if CAZCP does not keep such insurance in place. During any time that CAZCP has not obtained or maintained adequate insurance, CITY may obtain such insurance to protect its own interests and the full cost of such insurance shall be borne by CAZCP upon demand from CITY.

6. Covenant Running With The Land. The easement hereby granted by CITY over the Easement Property is appurtenant to the industrial park property under development by CAZCP and a burden upon the Easement Property. The dominant estate shall be the industrial park under development by CAZCP and the servient estate shall be the Easement Property. The easement, covenants and conditions herein contained shall run with the land and the benefits inure to the parties hereto as well as their heirs, successors, and assigns as set forth in Paragraph 7.

7. Assignment of Rights and Obligations by CAZCP.

CITY understands that the developer of the industrial park intends to initially transfer ownership of its rights and obligations under this Agreement to a property owner's association for the industrial park. CITY consent for any such assignment, as well as to any subsequent assignment by any party, shall be required but shall not be unreasonably withheld. As a condition of such Assignment, the assignee shall be required to specifically agree to the assignment in writing, as well as consent to and agree to be bound by all of the provisions of this Agreement (including but not limited to maintenance obligations, insurance obligations, and the duty to indemnify CITY). It shall not be unreasonable for CITY to object to an assignment if doing so would increase the possibility of default by the non-CITY party, (including but not limited to the initial transfer to the anticipated property owner's association if the provisions of any Covenants, Conditions, and Restrictions applicable to the property owner's association allow the dissolution of the association without adequate protection or assignment of liability for maintenance of the crossing or compliance with the remaining terms of this Agreement.) Any assignment or attempted assignment made in violation of this provision shall not serve to relieve an assigning party of any burden placed on it pursuant to this Agreement.

8. No Dedication for public Use. The provisions hereof are not intended to and do not constitute a dedication of the railroad crossing for public use, and the rights herein created are private and for the benefit only of the parties hereto, their heirs, successors and assigns, employees, tenants, subtenants, licensees and invitees.

9. No Partnership. It is agreed that nothing contained in the Agreement shall be deemed or construed as creating a partnership, joint venture, or any similar association between the parties hereto.

10. Notices. Unless otherwise required by law, all notices permitted or required to be given hereunder shall be in writing and shall be conveyed by (i) personal delivery (including delivery by any messenger or courier service) or (ii) the United States Postal Service, by certified or registered mail, postage prepaid, with return receipt requested, as follows:

If to Central Arizona Commerce Park, LLC:

Central Arizona Commerce Park, LLC
3666 N. Miller Road #105
Scottsdale, Arizona 85251

If to the City of Casa Grande:

City of Casa Grande
510 E. Florence Blvd.
Casa Grande, AZ 85122
Attention: City Manager

with a copy to:

City of Casa Grande
510 E. Florence Blvd.
Casa Grande, AZ 85122
Attention: City Clerk

Notice given by personal delivery shall be deemed to have been given upon delivery to the appropriate address, and notice given by United States Mail shall be deemed to have been given three business days after deposit in the United States Mail. Each party may designate from time to time another address in place of the address herein above set forth by notifying the other party in the same manner as provided in the paragraph.

11. Attorneys' fees. If either party to the Agreement shall breach its obligations hereunder or fail to fulfill or perform any of its covenants or obligations under this Agreement, that party shall pay all costs, including without limitation, reasonable attorneys' fees and expert witness fees, that may be incurred to enforce the terms covenants, conditions and provisions of this Agreement, or that may be incurred as a result of a default under or breach of this Agreement whether or not legal action is commenced.

12. Entire Agreement. All exhibits attached to this Agreement are incorporated into this Agreement by reference and made a part hereof. This Agreement, together with all exhibits, is the entire Agreement between the parties covering everything agreed upon or understood in connection with the Easement Property. There are no oral promises, conditions, representations, understandings. Interpretations or terms of any kind as conditions or inducements to the execution hereof or in effect between the parties.

13. Time is of the Essence. Time is of the essence with respect to the performance of all terms, covenants, conditions and provisions of this Agreement.

14. Applicable Law. This Agreement and the rights of the parties hereto shall be interpreted, governed and construed in accordance with the laws of the State of Arizona.

15. Section Headings. The section headings in this Agreement are inserted for convenience only and shall be disregarded in interpreting the terms, covenants, conditions and provisions of this Agreement.

16. Waiver. Either of the parties shall have the right to excuse or waive performance by the other party of any obligation under this Agreement by a writing signed by the party so excusing or waiving. No delay in exercising any right or remedy shall constitute a waiver thereof and no waiver by either party of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

17. Construction. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine, or neuter shall each include the masculine, feminine and neuter as the context requires.

18. Amendments. This Agreement or the terms hereof may be revoked or amended at any time by recording in the office of the County Recorder of Pinal County, Arizona, an instrument in writing reciting such revocation or amendment, bearing the acknowledged signature of the parties hereto, or their heirs, successors and assigns, together with any lien holders and other necessary parties.

19. E-Verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, CAZCP and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). CAZCP's or subcontractor's breach of the above-mentioned warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by City. CAZCP agrees to insert language similar to this paragraph in all contracts in which they

engage with subcontractors on this project to ensure that those subcontractors are meeting the requirements of the above-mentioned statutes. City retains the legal right to randomly inspect the papers and records of CAZCP and its subcontractors who work on the Agreement to ensure that CAZCP and its subcontractors are complying with the above-mentioned warranty. CAZCP and its subcontractors warrant to keep the papers and records open for random inspection during normal business hours by City. CAZCP and its subcontractors shall cooperate with City's random inspections including granting City entry rights onto its property to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

20. Compliance with A.R.S. §35-391.06 and 35-393.06. CAZCP, and his/her firm, certifies that it does not have, nor will it for the duration of this contract have, scrutinized business operations in Sudan or Iran as defined in A.R.S.§ 35-391.06 and 35-393.06.

CITY OF CASA GRANDE

By _____
James V. Thompson, City Manager

CENTRAL ARIZONA
COMMERCE PARK, LLC

By: Sunflower Development, Inc.,
Its Manager

By: _____ PRES.
Jackob H. Andersen, President

ATTESTED BY:

By _____
Gloria Leija, MMC, City Clerk

CITY OF CASA GRANDE INCORPORATED 1915 CASA GRANDE, ARIZONA

APPROVED AS TO FORM:

By _____
Brett D. Wallace, City Attorney

State of Arizona)
) ss
County of Pinal)

City Manager Acknowledgment

On this 30th day of April, 2010, James V. Thompson who acknowledged himself to be the Casa Grande City Manager personally appeared before the undersigned and that he, as such City Manager, being authorized to do so, executed the Agreement between Sunflower Development Inc. and the City (identified in City of Casa Grande records as C.G. Contract No. 410-5) in the capacity therein stated and for the purposes therein contained by signing his name.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

OFFICIAL SEAL
MARIA VAZQUEZ
NOTARY PUBLIC - State of Arizona
PINAL COUNTY
My Comm. Expires Dec. 21, 2010

Notary Public

My commission expires:_____

State of Arizona)
) ss
County of Pinal)

Jackob H. Andersen Acknowledgment

On this 27th day of April, 2010, Jackob Andersen personally appeared before the undersigned and acknowledged himself to be the President of Sunflower Development, Inc. (and he has the authority to sign for Sunflower Development, Inc. and Sunflower Development, Inc. can bind the other entity) being authorized so to do, executed the Agreement between Sunflower and the City (identified in City of Casa Grande records as C. G. Contract No. 410-5) in the capacity therein stated and for the purposed therein contained by signing his name.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

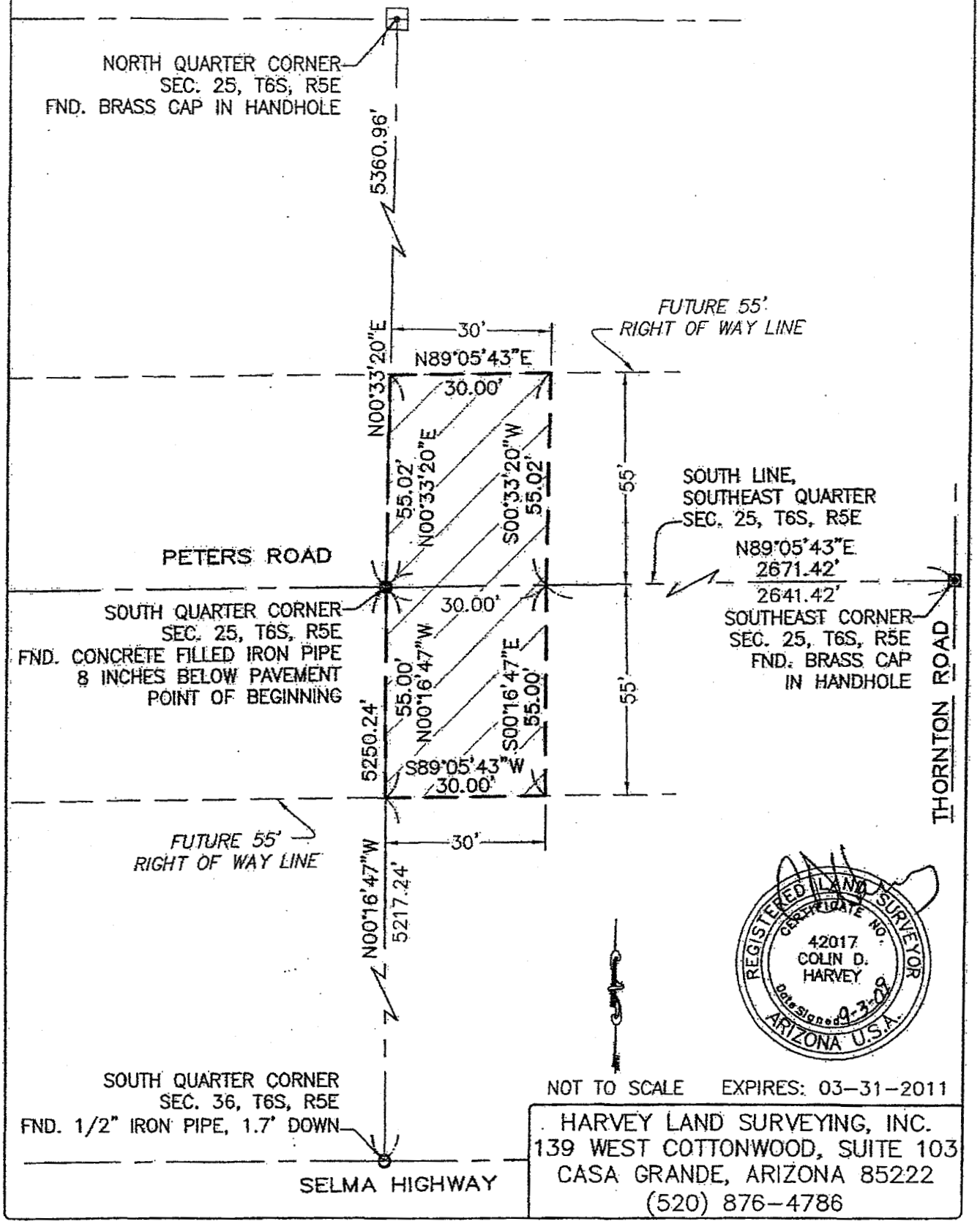
Notary Public

My commission expires:_____

OFFICIAL SEAL
MARIA VAZQUEZ
NOTARY PUBLIC - State of Arizona
PINAL COUNTY
My Comm. Expires Dec. 21, 2010

EXHIBIT A

EXHIBIT (2)
RAIL SPUR EASEMENT



HARVEY LAND SURVEYING, INC.
139 WEST COTTONWOOD, SUITE 103
CASA GRANDE, ARIZONA 85222
(520) 876-4786

EXHIBIT B

2/2

Harvey Land Surveying, Inc.
139 West Cottonwood Lane
Suite 103
Casa Grande, Arizona 85222

September 3, 2009

RAIL SPUR EASEMENT
LEGAL DESCRIPTION

THE WEST 30 FEET OF THE SOUTH 55 FEET OF THE SOUTHEAST QUARTER OF SECTION 25, AND THE WEST 30 FEET OF THE NORTH 55 FEET OF THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 6 NORTH, RANGE 5 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, PINAL COUNTY, ARIZONA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTH QUARTER CORNER OF SAID SECTION 25;

THENCE NORTH 00 DEGREES 33 MINUTES 20 SECONDS EAST ALONG THE NORTH-SOUTH MID-SECTION LINE OF SAID SECTION 25, A DISTANCE OF 55.02 FEET TO THE NORTH LINE OF THE SOUTH 55.00' OF SAID SOUTHEAST QUARTER;

THENCE NORTH 89 DEGREES 05 MINUTES 43 SECONDS EAST ALONG SAID NORTH LINE, A DISTANCE OF 30.00 FEET;

THENCE SOUTH 00 DEGREES 33 MINUTES 20 SECONDS WEST ALONG A LINE BEING 30.00 FEET EAST OF AND PARALLEL WITH THE NORTH-SOUTH MID-SECTION LINE OF SAID SECTION 25, A DISTANCE OF 55.02 FEET TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SECTION 25;

THENCE SOUTH 00 DEGREES 16 MINUTES 47 SECONDS EAST ALONG A LINE BEING 30.00 FEET EAST OF AND PARALLEL WITH THE NORTH-SOUTH MID-SECTION LINE OF SAID SECTION 36, A DISTANCE OF 55.00 FEET TO THE SOUTH LINE OF THE NORTH 55.00 FEET OF SAID NORTHEAST CORNER;

THENCE SOUTH 89 DEGREES 05 MINUTES 43 SECONDS WEST ALONG SAID SOUTH LINE, A DISTANCE OF 30.00 FEET THE NORTH-SOUTH MID-SECTION LINE OF SAID SECTION 36;

THENCE NORTH 00 DEGREES 16 MINUTES 47 SECONDS WEST ALONG SAID MID-SECTION LINE, A DISTANCE OF 55.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 3,301 SQUARE FEET [0.0758 ACRES] MORE OR LESS.

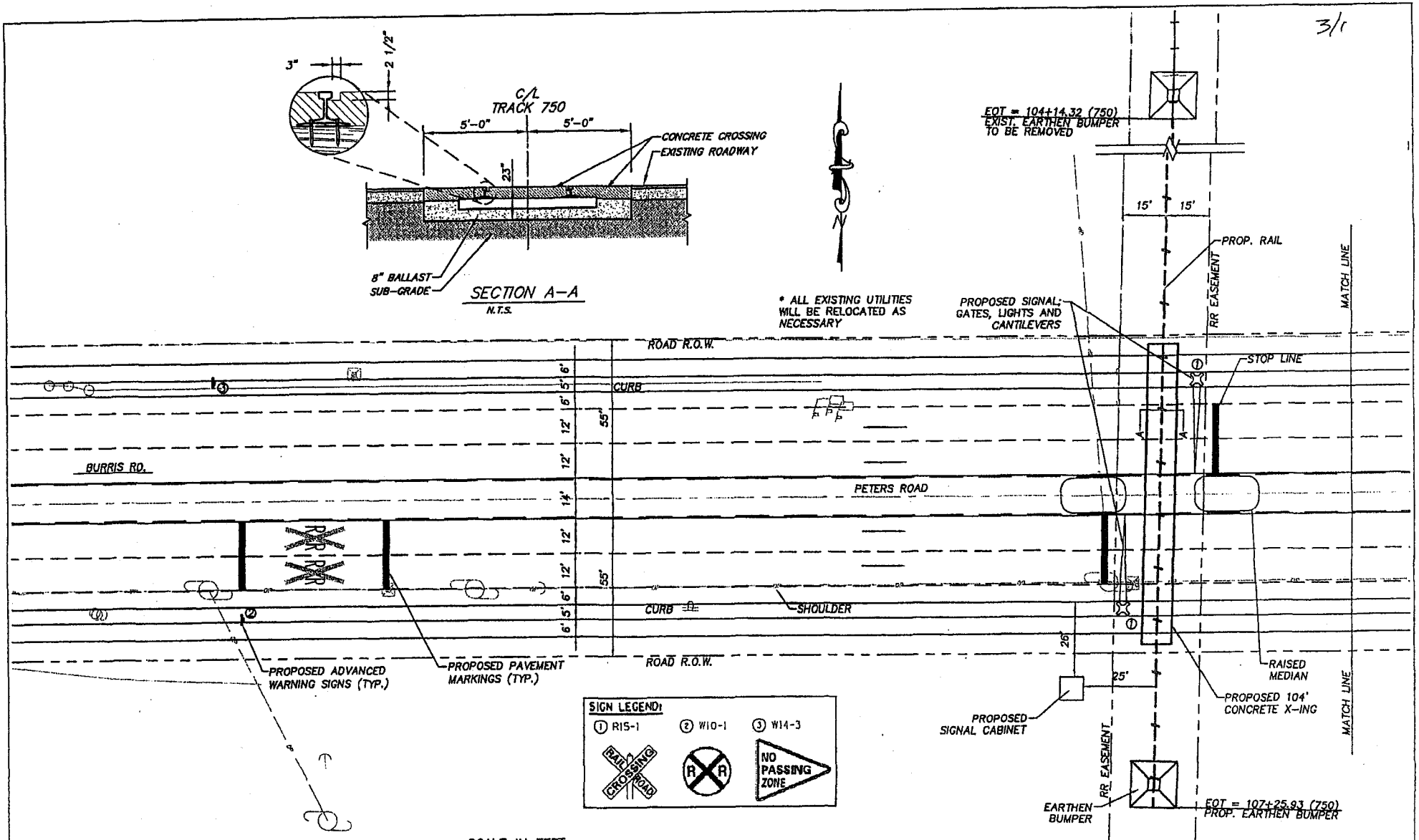
REGISTERED LAND SURVEYOR
CERTIFICATE NO.
42017
COLIN D.
HARVEY
Date Signed 9-3-09
ARIZONA U.S.A.

EXPIRES 03-31-2011

EXHIBIT C

3/1

* ALL EXISTING UTILITIES WILL BE RELOCATED AS NECESSARY

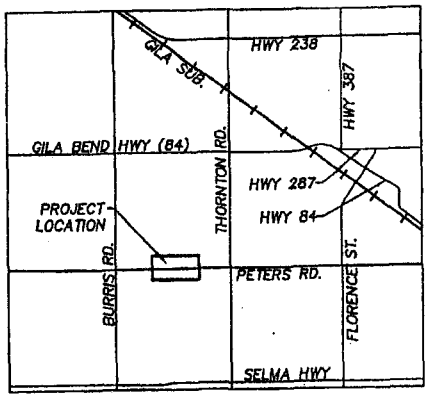


UNION PACIFIC RAILROAD COMPANY
TUCSON SERVICE UNIT
GILA SUBDIVISION
MILE POST 915.82
CASA GRANDE, MARICOPA Co., ARIZONA

CAZCP PETERS ROAD
PROPOSED CROSSING
9/21/09

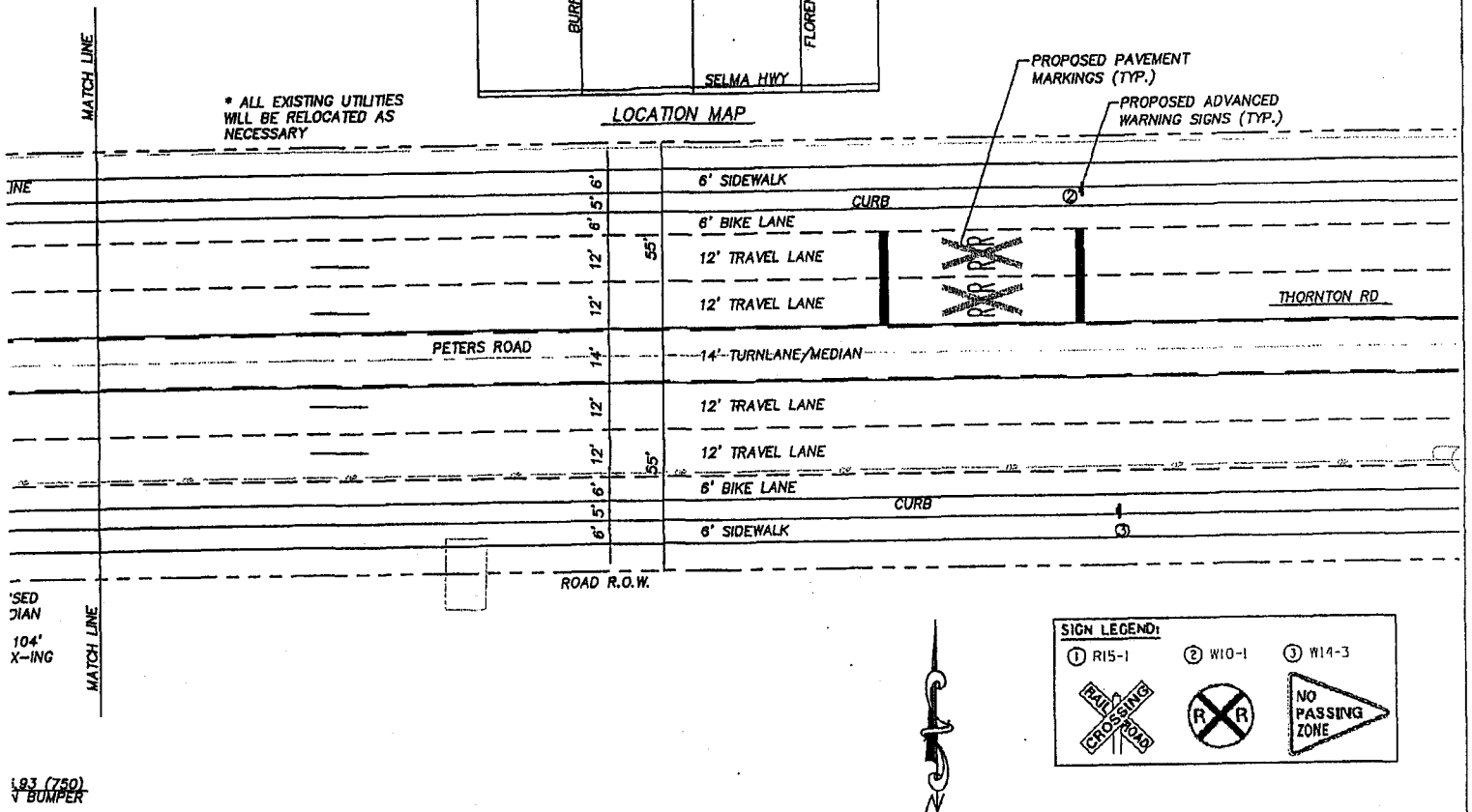
MOUNTAIN STATES CONTRACTING
800-827-0743
623-842-0793
fax 623-842-0944
8813 W. Friar Dr. - Glendale, AZ 85303

3/2



LOCATION MAP

* ALL EXISTING UTILITIES WILL BE RELOCATED AS NECESSARY



SIGN LEGEND:

1. R15-1
2. W10-1
3. W14-3

SCALE IN FEET

0 30'

CAZCP PETERS ROAD
PROPOSED CROSSING
9/21/09

UNION PACIFIC RAILROAD COMPANY
TUCSON SERVICE UNIT
GILA SUBDIVISION
MILE POST 918.82
CASA GRANDE, MARICOPA Co., ARIZONA

MOUNTAIN STATES CONTRACTING
800-827-0743
623-842-0743
fax 623-842-0944
6813 W. Frier Dr. • Glendale, AZ 85303

5

ORDINANCE NO. 2629

AN ORDINANCE OF THE COUNCIL OF THE CITY OF CASA GRANDE, ARIZONA, AUTHORIZING THE CITY TO ENTER INTO AN EASEMENT AND MAINTENANCE AGREEMENT WITH CENTRAL ARIZONA COMMERCE PARK, L.L.C.; AND EXECUTION OF THE EASEMENT AND MAINTENANCE AGREEMENT BY THE CITY MANAGER.

BE IT ORDAINED by the Council of the City of Casa Grande, Arizona, as follows:

The Mayor and Council of the City of Casa Grande hereby authorize:

1. An Easement and Maintenance Agreement with Central Arizona Commerce Park, L.L.C. for a private rail spur easement across Peters Road; and

2. Execution by the City Manager of an Easement and Maintenance Agreement (identified in City records as C.G. Contract No. 410-5).

PASSED AND ADOPTED by the Mayor and Council of the City of Casa Grande, Arizona, this 19th day of April, 2010.

Robert M. Jackson
Mayor

ATTEST:

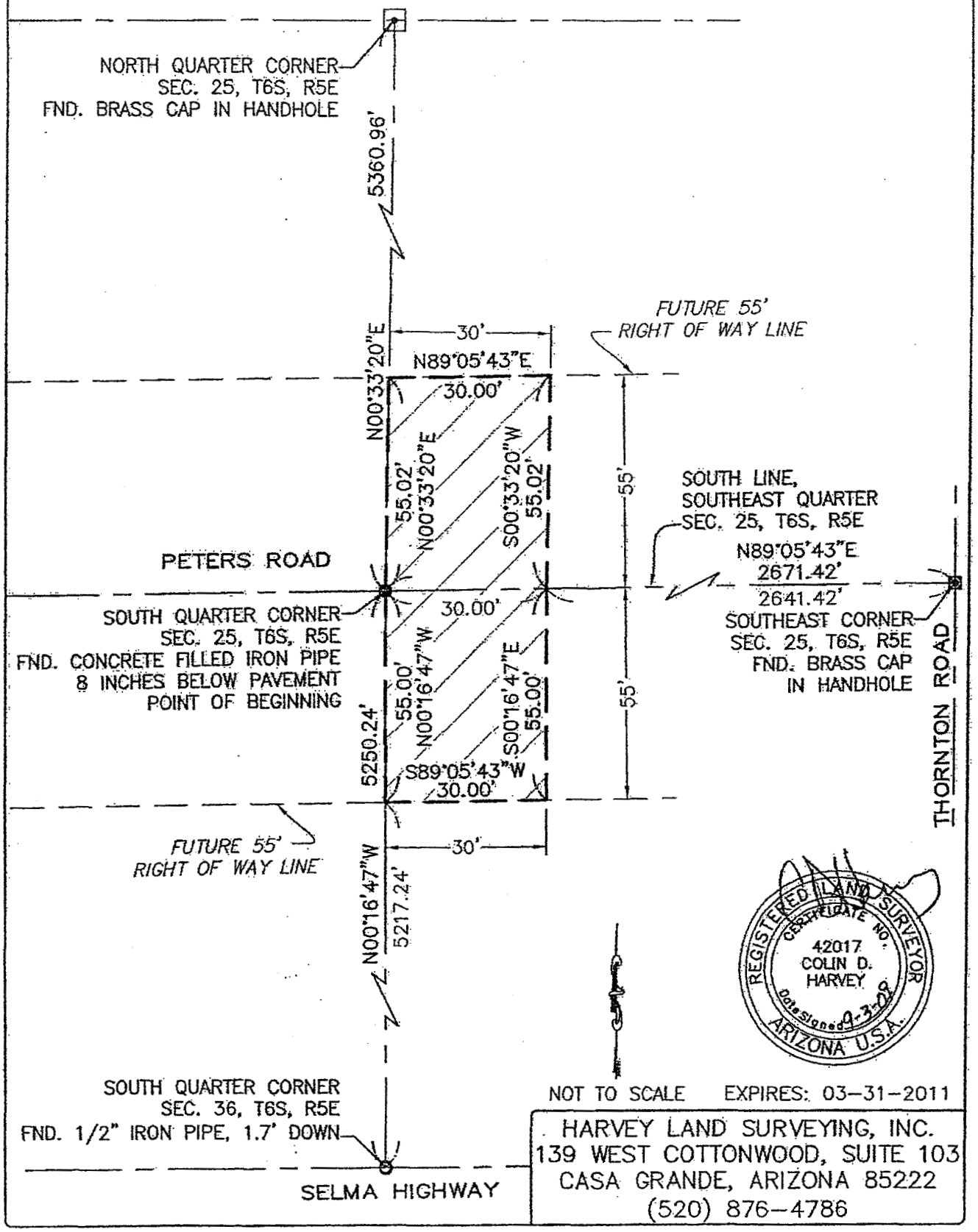
Remilie S. Miller, CMC
Deputy City Clerk

CITY OF CASA GRANDE INCORPORATED 1915 CASA GRANDE, ARIZONA

APPROVED AS TO FORM:

Brett Wallace
City Attorney

EXHIBIT 2/1
RAIL SPUR EASEMENT



HARVEY LAND SURVEYING, INC.
139 WEST COTTONWOOD, SUITE 103
CASA GRANDE, ARIZONA 85222
(520) 876-4786

2/2

Harvey Land Surveying, Inc.
139 West Cottonwood Lane
Suite 103
Casa Grande, Arizona 85222

September 3, 2009

RAIL SPUR EASEMENT
LEGAL DESCRIPTION

THE WEST 30 FEET OF THE SOUTH 55 FEET OF THE SOUTHEAST QUARTER OF SECTION 25, AND THE WEST 30 FEET OF THE NORTH 55 FEET OF THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 6 NORTH, RANGE 5 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, PINAL COUNTY, ARIZONA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTH QUARTER CORNER OF SAID SECTION 25;

THENCE NORTH 00 DEGREES 33 MINUTES 20 SECONDS EAST ALONG THE NORTH-SOUTH MID-SECTION LINE OF SAID SECTION 25, A DISTANCE OF 55.02 FEET TO THE NORTH LINE OF THE SOUTH 55.00' OF SAID SOUTHEAST QUARTER;

THENCE NORTH 89 DEGREES 05 MINUTES 43 SECONDS EAST ALONG SAID NORTH LINE, A DISTANCE OF 30.00 FEET;

THENCE SOUTH 00 DEGREES 33 MINUTES 20 SECONDS WEST ALONG A LINE BEING 30.00 FEET EAST OF AND PARALLEL WITH THE NORTH-SOUTH MID-SECTION LINE OF SAID SECTION 25, A DISTANCE OF 55.02 FEET TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SECTION 25;

THENCE SOUTH 00 DEGREES 16 MINUTES 47 SECONDS EAST ALONG A LINE BEING 30.00 FEET EAST OF AND PARALLEL WITH THE NORTH-SOUTH MID-SECTION LINE OF SAID SECTION 36, A DISTANCE OF 55.00 FEET TO THE SOUTH LINE OF THE NORTH 55.00 FEET OF SAID NORTHEAST CORNER;

THENCE SOUTH 89 DEGREES 05 MINUTES 43 SECONDS WEST ALONG SAID SOUTH LINE, A DISTANCE OF 30.00 FEET THE NORTH-SOUTH MID-SECTION LINE OF SAID SECTION 36;

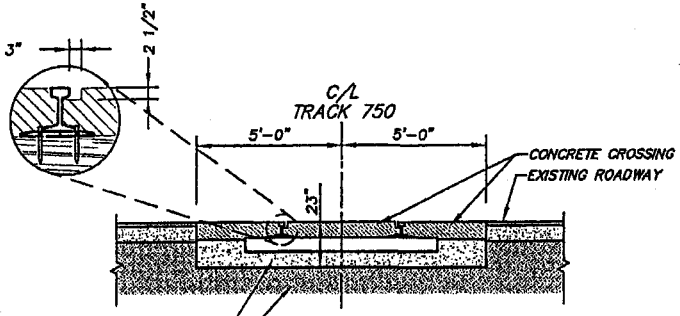
THENCE NORTH 00 DEGREES 16 MINUTES 47 SECONDS WEST ALONG SAID MID-SECTION LINE, A DISTANCE OF 55.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 3,301 SQUARE FEET [0.0758 ACRES] MORE OR LESS.

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
42017
COLIN D.
HARVEY
Date Signed 9-3-09
ARIZONA U.S.A.

EXPIRES 03-31-2011

3/1



SECTION A–A
N.T.S.

* ALL EXISTING UTILITIES WILL BE RELOCATED AS NECESSARY

EOT = 104+14.32 (750)
EXIST. EARTHEN BUMPER TO BE REMOVED

15' 15'

PROP. RAIL

RR EASEMENT

MATCH LINE

PROPOSED SIGNAL: GATES, LIGHTS AND CANTILEVERS

STOP LINE

ROAD R.O.W.

CURB

6' 5' 6' 12' 12' 14' 12' 12' 6' 5' 6'

55'

55'

BURRIS RD.

PETERS ROAD

CURB

SHOULDER

26'

25'

ROAD R.O.W.

PROPOSED ADVANCED WARNING SIGNS (TYP.)

PROPOSED PAVEMENT MARKINGS (TYP.)

RAISED MEDIAN

PROPOSED 104' CONCRETE X-ING

PROPOSED SIGNAL CABINET

RR EASEMENT

EARTHEN BUMPER

EOT = 107+25.93 (750)
PROP. EARTHEN BUMPER

SIGN LEGEND:

① R15-1 ② W10-1 ③ W14-3

SCALE IN FEET
0 30'

CAZCP PETERS ROAD
PROPOSED CROSSING
9/21/09

UNION PACIFIC RAILROAD COMPANY
TUCSON SERVICE UNIT
GILA SUBDIVISION
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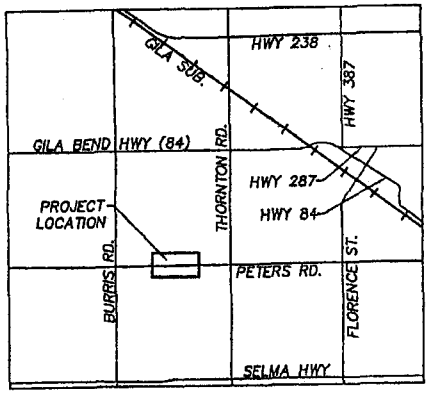
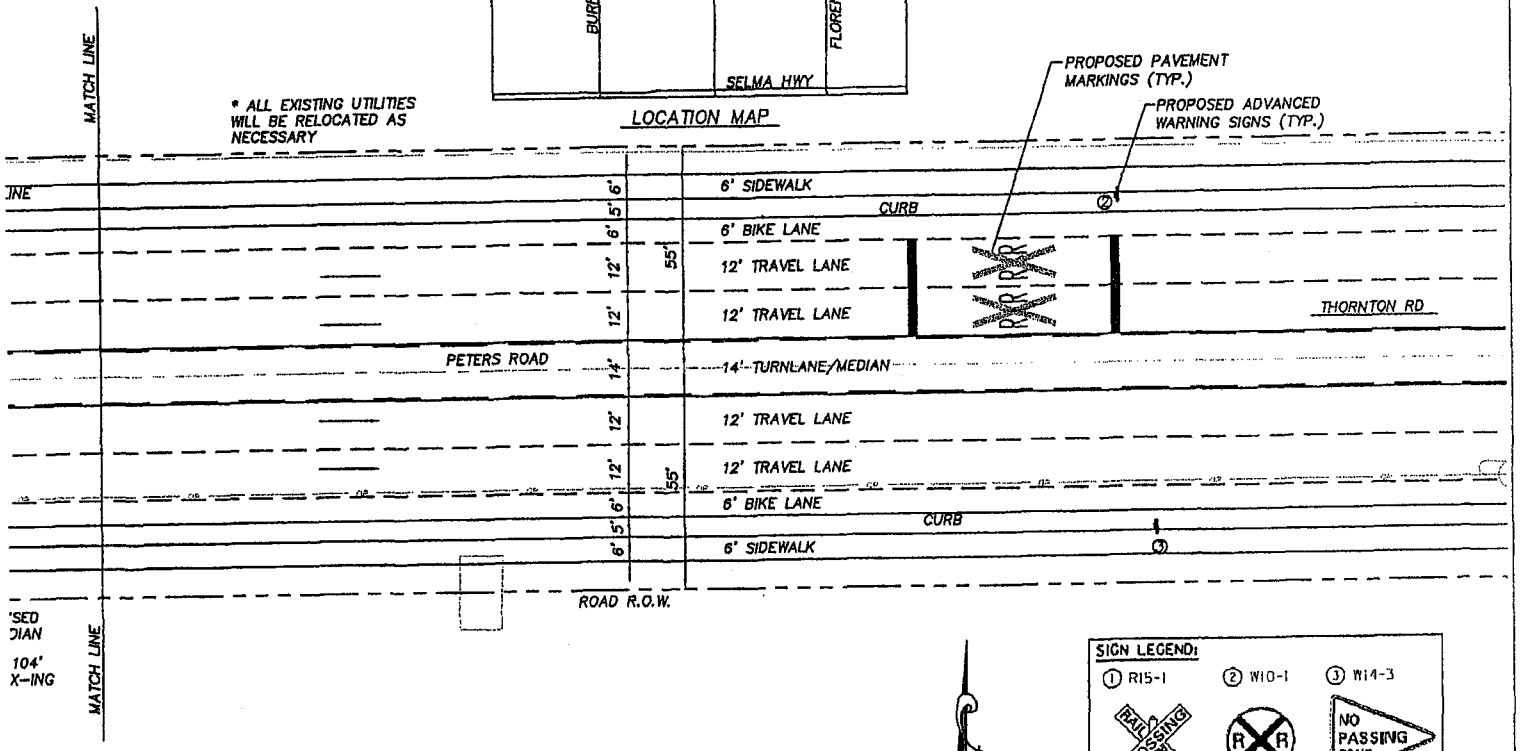
3/2

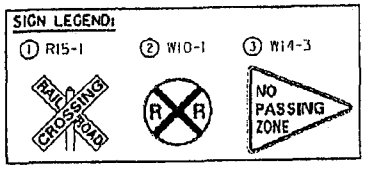


LOCATION MAP

* ALL EXISTING UTILITIES WILL BE RELOCATED AS NECESSARY



SIGN LEGEND:



SCALE IN FEET

0 30'

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800-827-0743
623-847-0743
fax 623-847-0944
8813 W. Frier Dr. · Glendale, AZ 85303

6

WHEN RECORDED MAIL TO:

OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
LAURA DEAN-LYTLE

(4)

Casa Grande 21 Investment LLC
Attn: Jackob H. Andersen
3666 N. Miller Rd. #105
Scottsdale, AZ 85251

DATE/TIME: 12/18/08 1440
FEE: $14.00
PAGES: 4
FEE NUMBER: 2008-120493

1648455

DO NOT REMOVE THIS COVER SHEET. IT IS NOW PART OF THE RECORDED DOCUMENT.

DOCUMENT TO BE RECORDED:

Permanent Rail Easement

Unofficial

RECCVT

PERMANENT RAIL EASEMENT

KNOW ALL PERSONS BY THESE PRESENTS:

The undersigned "Grantor(s)" AUZA RANCHES, L.L.C., an Arizona Limited Liability Company, for and in consideration of $10.00 and other good and valuable consideration, receipt of which is hereby acknowledged, does hereby grant(s) unto PETERS & BURRIS, L.L.C., an Arizona Limited Liability Company ("Grantee"), a perpetual Easement, for Rail Right-of-Way under, over through and across the following described real estate:

A PORTION OF THE SOUTHEAST QUARTER OF SECTION 25, TOWNSHIP 6 NORTH, RANGE 5 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, PINAL COUNTY, ARIZONA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTH QUARTER CORNER OF SAID SECTION 25;

THENCE NORTH 00 DEGREES 33 MINUTES 20 SECONDS EAST ALONG THE NORTH-SOUTH MID-SECTION LINE OF SAID SECTION 25, A DISTANCE OF 2675.48 FEET TO THE CENTER OF SAID SECTION 25;

THENCE NORTH 89 DEGREES 51 MINUTES 18 SECONDS EAST ALONG THE EAST-WEST MID-SECTION LINE OF SAID SECTION 25, A DISTANCE OF 15.00 FEET;

THENCE SOUTH 00 DEGREES 33 MINUTES 20 SECONDS WEST ALONG A LINE BEING 15.00 FEET EAST OF AND PARALLEL WITH SAID NORTH-SOUTH MID-SECTION LINE, A DISTANCE OF 1409.90 FEET;

THENCE SOUTH 89 DEGREES 28 MINUTES 40 SECONDS EAST, A DISTANCE OF 15.00 FEET;

THENCE SOUTH 00 DEGREES 33 MINUTES 20 SECONDS WEST ALONG A LINE BEING 30.00 FEET EAST OF AND PARALLEL WITH THE NORTH-SOUTH MID-SECTION LINE, A DISTANCE OF 1265.00 FEET TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SECTION 25;

THENCE SOUTH 89 DEGREES 05 MINUTES 43 SECONDS WEST ALONG SAID SOUTH LINE, A DISTANCE OF 30.01 FEET TO THE TRUE POINT OF BEGINNING.

(hereinafter called "Easement Area") for the purpose of constructing, reconstructing, repairing enlarging, operating and maintaining rail uses, together with the necessary appurtenances thereto, under, over, through, and across said Easement Area.

This Easement shall be subject to the following terms and conditions:

1. ERECTION OF STRUCTURES PROHIBITED. Grantor shall not erect any structure over or within the Easement Area without obtaining the prior written approval of the Grantee.
2. RIGHT OF ACCESS. The Grantee, or assigns, shall have the right of access to the Easement Area and have all rights of ingress and egress reasonably necessary for the use and enjoyment of the Easement Area as herein described, including but not limited to, the right to remove any unauthorized obstructions or structures placed or erected on the Easement Area.
3. EASEMENT RUNS WITH LAND. This Easement shall be deemed to run with the land and shall be binding on Grantor and on Grantor's successors and assigns.

Grantor does HEREBY COVENANT with the Grantee that Grantor holds said real estate described in this Easement by title in fee simple; that Grantor has good and lawful authority to convey the same; and said Grantor covenant to WARRANT AND DEFEND the said premises against the lawful claims of all persons whomsoever.

Grantor does hereby relinquish all rights of dower, homestead and distributive share, if any, in and to the interests conveyed by this Easement.

GRANTOR(S):

AUZA RANCHES, L.L.C.

BY Joe Auza

NAME Joe Auza

TITLE Owner

STATE OF ARIZONA)
) SS
COUNTY OF Pinal)

On this 15th day of December, 2008, before me the undersigned Notary Public, personally appeared Joe Auza who acknowledged that he executed the foregoing Agreement for the purposes expressed therein.

NOTARY PUBLIC Emily Bautista

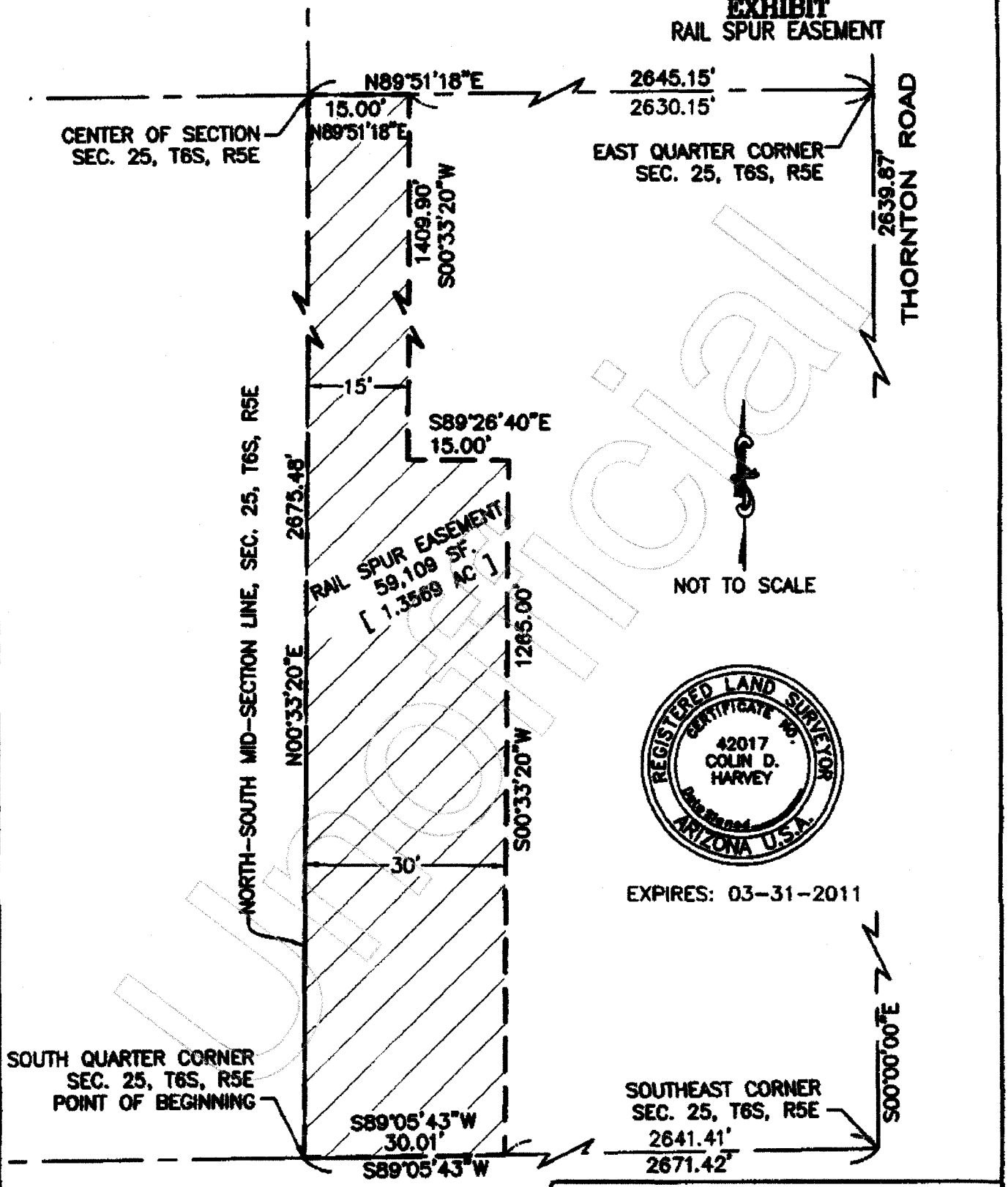
OFFICIAL SEAL
EMILY BAUTISTA
NOTARY PUBLIC - State of Arizona
PINAL COUNTY
My Comm. Expires July 13, 2012

My commission expires:

July 13, 2012

Unofficial

EXHIBIT
RAIL SPUR EASEMENT



DATE: 12/01/2008

HARVEY LAND SURVEYING, INC.
139 WEST COTTONWOOD, SUITE 103
CASA GRANDE, ARIZONA 85222
(520) 876-4786

Unofficial

PERMANENT RAIL EASEMENT

The undersigned Grantor(s) Daley Revocable Trust consideration of the sum of $1.00 and other valuable consideration, hereby grant(s) unto Peters + Burris L.L.C. a perpetual Easement, for Rail Right-of-Way under, over, through and across the following described real estate:

A PORTION OF THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 6 SOUTH, RANGE 5 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, PINAL COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTH QUARTER CORNER OF SAID SECTION 36 FROM WHICH THE NORTHEAST CORNER OF SAID SECTION BEARS NORTH 89 DEGREES 05 MINUTES 43 SECONDS EAST, 2671.42 FEET DISTANT THEREFROM AND FROM WHICH THE SOUTH QUARTER CORNER OF SAID SECTION BEARS SOUTH 00 DEGREES 16 MINUTES 47 SECONDS EAST, 5250.24 FEET DISTANT THEREFROM;

THENCE NORTH 89 DEGREES 05 MINUTES 43 SECONDS EAST ALONG THE NORTH LINE OF SAID NORTHEAST QUARTER A DISTANCE OF 30.00 FEET;

THENCE SOUTH 00 DEGREES 16 MINUTES 47 SECONDS EAST PARALLEL WITH SAID NORTH-SOUTH MID-SECTION LINE, A DISTANCE OF 200.00 FEET;

THENCE SOUTH 89 DEGREES 05 MINUTES 43 SECONDS WEST, A DISTANCE OF 30.00 FEET TO SAID NORTH-SOUTH MID-SECTION LINE;

THENCE NORTH 00 DEGREES 16 MINUTES 47 SECONDS WEST ALONG SAID NORTH-SOUTH MIDSECTION LINE, A DISTANCE OF 200.00 FEET TO THE POINT OF BEGINNING.

(hereinafter called "Easement Area") for the purpose of constructing, reconstructing, repairing, enlarging, operating and maintaining rail uses, together with the necessary appurtenances thereto, under, over, through, and across said Easement Area.

This Easement shall be subject to the following terms and conditions:

1. ERECTION OF STRUCTURES PROHIBITED. Grantor shall not erect any structure over or within the Easement Area without obtaining the prior written approval of the Grantee.
2. RIGHT OF ACCESS. The Grantee, or assigns, shall have the right of access to the Easement Area and have all rights of ingress and egress reasonably necessary for the use and enjoyment of the Easement Area as herein described, including but not limited to, the right to remove any unauthorized obstructions or structures placed or erected on the Easement Area.
3. EASEMENT RUNS WITH LAND. This Easement shall be deemed to run with the land and shall be binding on Grantor and on Grantor's successors and assigns.

Grantor does HEREBY COVENANT with the Grantee that Grantor holds said real estate described in this Easement by title in fee simple; that Grantor has good and lawful authority to convey the same; and said Grantor covenant to WARRANT AND DEFEND the said premises against the lawful claims of all persons whomsoever.

Each of the undersigned hereby relinquishes all rights of dower, homestead and distributive share, if any, in and to the interests conveyed by this Easement.

Signed, sealed and delivered this 4th day of May, A.D. 2009.

Daley Revocable Trust By:
Steven M. Daley

Harvey Land Surveying, Inc.
139 West Cottonwood Lane
Suite 103
Casa Grande, Arizona 85222

April 30, 2009

EXHIBIT
RAIL SPUR EASEMENT – JAMESTOWN ESTATES

A PORTION OF THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 6 SOUTH, RANGE 5 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, PINAL COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTH QUARTER CORNER OF SAID SECTION 36 FROM WHICH THE NORTHEAST CORNER OF SAID SECTION BEARS NORTH 89 DEGREES 05 MINUTES 43 SECONDS EAST, 2671.42 FEET DISTANT THEREFROM AND FROM WHICH THE SOUTH QUARTER CORNER OF SAID SECTION BEARS SOUTH 00 DEGREES 16 MINUTES 47 SECONDS EAST, 5250.24 FEET DISTANT THEREFROM;

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THENCE SOUTH 00 DEGREES 16 MINUTES 47 SECONDS EAST PARALLEL WITH SAID NORTH-SOUTH MID-SECTION LINE, A DISTANCE OF 200.00 FEET;

THENCE SOUTH 89 DEGREES 05 MINUTES 43 SECONDS WEST, A DISTANCE OF 30.00 FEET TO SAID NORTH-SOUTH MID-SECTION LINE;

THENCE NORTH 00 DEGREES 16 MINUTES 47 SECONDS WEST ALONG SAID NORTH-SOUTH MIDSECTION LINE, A DISTANCE OF 200.00 FEET TO THE POINT OF BEGINNING.

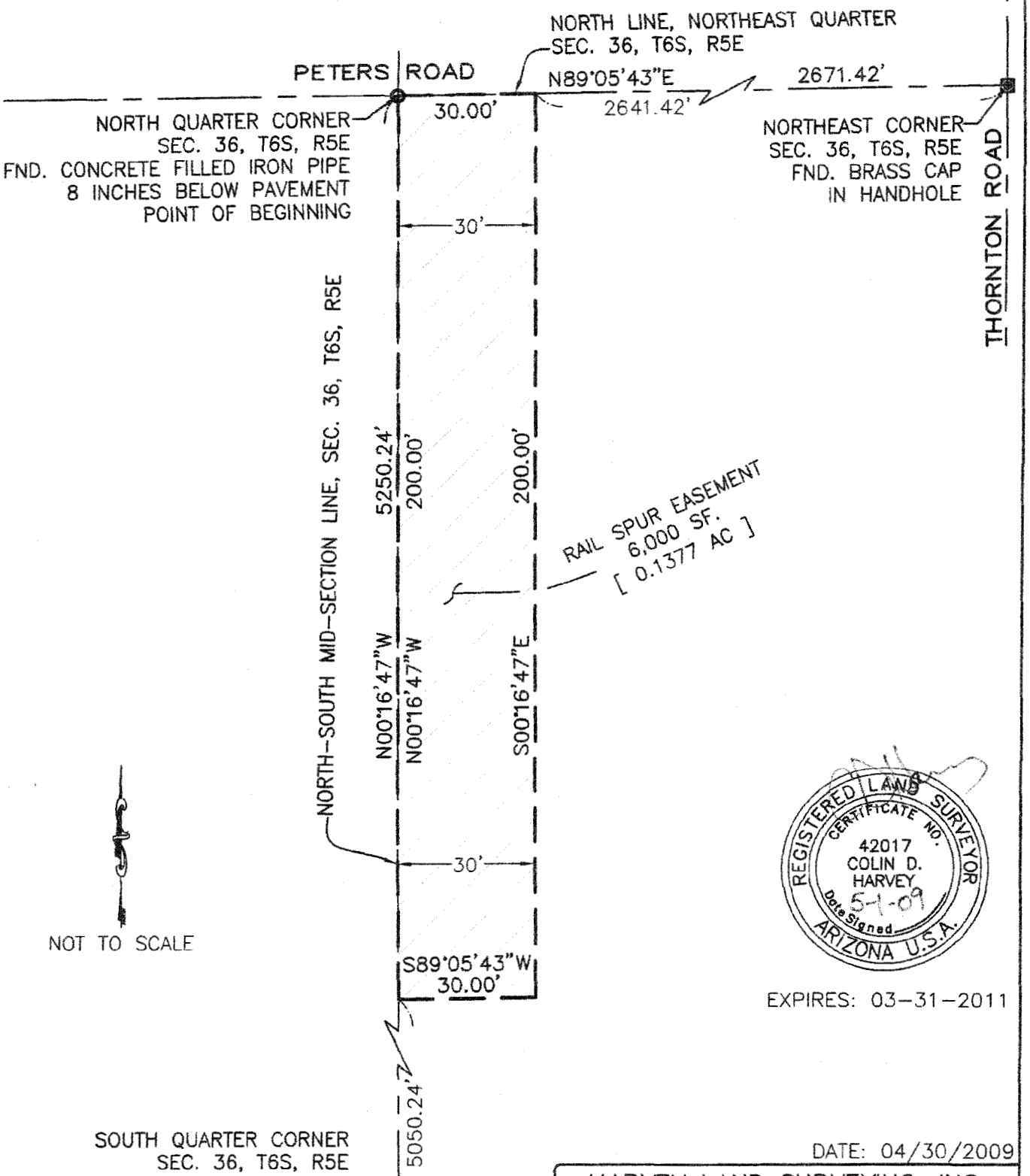
CONTAINING 6,000 SQUARE FEET [0.1377 ACRES] MORE OR LESS.

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
42017
COLIN D.
HARVEY
Date Signed 5-1-09
ARIZONA U.S.A.

EXPIRES 03/31/2011

EXHIBIT

RAIL SPUR EASEMENT – JAMESTOWN ESTATES



REGISTERED LAND SURVEYOR
CERTIFICATE NO.
42017
COLIN D.
HARVEY
Date Signed 5-1-09
ARIZONA U.S.A.

EXPIRES: 03–31–2011

DATE: 04/30/2009

HARVEY LAND SURVEYING, INC.
139 WEST COTTONWOOD, SUITE 103
CASA GRANDE, ARIZONA 85222
(520) 876–4786

7

Central Arizona Commerce Park LLC
Casa Grande, AZ
01/29/2010

UNION PACIFIC RAIL ACCESS MEMORANDUM OF UNDERSTANDING

Union Pacific Railroad Company ("UP") has reviewed Central Arizona Commerce Park's ("Company") request for rail service in Casa Grande, AZ as depicted on the conceptual plan dated January 10, 2010. UP is pleased to notify you that we are looking forward to working with you on developing new rail service to Central Arizona Commerce Park's Casa Grande, AZ location. Based on the conceptual plan and representations made to UP, UP agrees to move forward with its track authorization process subject to Company satisfying the conditions detailed below. This memorandum ("MOU") is being provided to Company to outline the infrastructure elements that UP requires to efficiently and safely provide rail service to Company's expanded existing facility (the "Facility") and to establish an understanding of UP's track authorization process. The criteria outlined below are consistent with Union Pacific's Guidelines for Rail Service and Union Pacific's Industry Track Standards, a link to which can be found at http://www.uprr.com/customers/attachments/industry_guidelines.pdf.

In addition to the requirements of Union Pacific's Guidelines for Rail Service and Union Pacific's Industry Track Standards, the following terms and conditions must be met prior to Company proceeding with its expansion construction:

- Company must accommodate drop and pull service with no storage on UP trackage.
- Proposed public road crossing involves only privately owned trackage. UPRR will not operate over the new at grade road crossing.
- Company will need to submit application for the new at grade crossing with the state and local authority as may be required.

Once Company has satisfied the aforementioned terms and conditions, the next steps in UP's track authorization process are as follows:

1. Company will work with its UP Marketing and Sales representative to prepare a Customer Service Plan, if applicable, and determine the rail service Company would receive and the corresponding rates. Additionally, the UP Marketing and Sales representative will coordinate with other UP departments to determine any other requirements necessary for UP to provide service to Customer.
2. Company must prepare the Facility's track design/construction drawings and submit them to UP via the Engineering Document Exchange (web application) for approval.
3. Company must execute a Supplemental Industrial Track Agreement with UP.

UP shall only authorize construction of the industry track upon the execution of an Industrial Track Agreement.

Union Pacific's offer of conditional acceptance shall expire if Company does not execute and return this MOU to Steve McGill, Union Pacific Railroad, 280 S 400 W, Salt Lake City, UT, 84101.

Once executed, this MOU shall terminate twelve (12) months after execution unless Company has requested an extension of the MOU. The extension must be requested in writing and approved by Union Pacific.

Central Arizona Commerce Park LLC
Casa Grande, AZ
01/29/2010

Company understands that Union Pacific will not authorize construction of the planned industry tracks until the entire track authorization process is complete. Company understands that at no time prior to authorization of track construction is UP agreeing to provide rail service at Facility. Further, Company understands that Union Pacific will not operate on industry owned tracks until UP has approved the Facility track design/construction drawings and Company has fully executed an Industrial Track Agreement with Union Pacific. Additionally, Company understands that all of UP's approvals and authorizations are based on Company's representation of particular volumes and commodities that will be shipped to and/or from the Facility. Any changes in volumes or commodities may change UP's requirements to provide service to the Facility. Consequently, if volumes or commodities change after rail service has begun, UP may not be able to meet Company's expectation for increased or additional rail service without Company making modifications to the infrastructure or constructing additional infrastructure.

ACKNOWLEDGEMENT: I HAVE READ AND UNDERSTAND UP'S REQUIREMENTS FOR NEW SERVICE AS SET FORTH ABOVE:

Central Arizona Commerce Park LLC
3666 N. Miller Rd. #105
Scottsdale, AZ 85251

By: _____

Printed Name: Jack de Andersen

Title: Managing Member

Date: 2/3/2010

Union Pacific Railroad Company

By: _____

Printed Name: Steven M. McGill

Title: Director Bus Development

Date: 2/10/10

8

January 15, 2009

Via E-mail Only
Mr. Jackob Andersen
Central Arizona Commerce Park, LLC
3666 N. Miller Road, #105
Scottsdale, AZ 85251

Re: Industry Track Construction on Union Pacific's VIP Industrial Lead Opposite Milepost 916.82, VIP Industrial Lead, in Casa Grande, Arizona – My File 2528-84

Dear Jackob:

Thank you for returning via e-mail the signed Industry Track Contract with evidence of insurance for the above-referenced rail project. Attached to this e-mail is a copy of the fully executed agreement and your contractor may begin track construction.

Arrangements must be made for your contractor to contact the following Union Pacific representative, **in writing**, a minimum of **ten (10) working days** prior to start of track construction so that appropriate safety precautions may be taken:

Tom Hyatt, Director-Track Maintenance
Union Pacific Railroad
1255 S. Campbell Avenue
Tucson, AZ 85713
Telephone (520) 629-2204 Fax (520) 629-2310
E-mail: tohyatt@up.com

Your company will be billed for any flagging protection provided by Union Pacific pursuant to the agreement. Our Telecommunications Operation Center must also be contacted at **1-800-336-9193** for fiber optic information prior to track construction. Please also contact the following Union Pacific representative to schedule final inspection of the track(s):

Aziz Aman, Manager-Industry & Public Projects
Union Pacific Railroad
2073 E. Jade Drive
Chandler, AZ 85286
Telephone (480) 415-2364 Fax (480) 802-4335
E-mail: aaman@up.com

We received the signed originals yesterday and will sign and return one fully executed counterpart to you after processing in our records department.

If you have any questions concerning the terms of the agreement, please feel free to contact me any time. Thank you for contacting Union Pacific -- and have a safe day!

Sincerely yours,

MILLI SCHEER
Senior Product Manager-Industrial Development
Telephone (402) 544-4621 Fax (402) 233-2212
E-mail address: mmscheer@up.com

ITC Ind Dev-New Trk 03/01/03
Form Approved, AVP-Law
Last Modified: 11/15/2006

Folder No 2528-84
Revised 11/19/2008

INDUSTRY TRACK CONTRACT
ARTICLES OF AGREEMENT

THIS AGREEMENT is made and entered into as of the 13 day of January, 2009, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, to be addressed at 1400 Douglas Street, Omaha, NE 68179 (hereinafter the "Railroad"), and **CENTRAL ARIZONA COMMERCE PARK**, an Arizona corporation, to be addressed at 3666 North Miller Road, No. 105, Scottsdale, Arizona 85251 (hereinafter the "Industry").

RECITALS:

The Industry desires the construction, maintenance and operation of a 3,211-foot extension of the Railroad's Track 750, 2,742-foot extension of the Railroad's Track 767 and 3,068 foot Track A (hereinafter collectively "Track") on the Railroad's VIP Industrial Lead opposite Milepost 916.82, Gila Subdivision, in Casa Grande, Pinal County, Arizona, as shown on the drawing dated October 10, 2008, marked **Exhibit A**, hereto attached and hereby made a part hereof.

AGREEMENT:

NOW, THEREFORE, IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

Article 1. **TRACK TO BE CONSTRUCTED BY INDUSTRY.**

A. The Industry, at its own expense and subject to the prior approval of the Railroad, will perform all grading and install all necessary drainage facilities required in connection with the construction of the Track to the standards and satisfaction of the Railroad, and arrange to modify any overhead and/or underground utilities to meet Railroad specifications.

B. The Industry, at its own expense, will also install the Track as shown on Exhibit A dated October 10, 2008.

Article 2. **RIGHT-OF-WAY AND PRIVILEGE.**

The Industry shall procure any needed right-of-way, public authority or permission for construction, maintenance and operation of the Track outside the limits of the Railroad's right-of-way. The Industry shall pay any fees or costs imposed by any public authority or person for the privilege of constructing, maintaining and operating the Track.

Article 3. **GRANT OF RIGHT; USE AND OPERATION OF THE TRACK.**

A. During the term hereof and subject to the terms and conditions set forth in this Agreement, Railroad hereby grants to Industry the right, at Industry's sole cost and responsibility, to construct, own, keep, maintain, repair and use Industry's private section of Track where located on and along Railroad's right-of-way.

B. The Railroad shall operate the Track subject to any applicable tariffs or rail transportation contracts and the terms of this Agreement, but the Railroad shall not be obligated to operate or maintain the Track (and the Industry shall not have any claim against the Railroad) if the Railroad is prevented or hindered from doing so by the Industry's breach or by acts of God, public

authority, strikes, riots, labor disputes, or other cause beyond its control. The Railroad shall have the right to use the Track when not to the detriment of the Industry.

C. The use and operation of the Track shall also be in accordance with the terms and conditions set forth in **Exhibit B**, hereto attached and hereby made a part hereof.

Article 4. **OWNERSHIP OF THE TRACK.**

The Industry shall own the extended portions of Track 750 and Track 767 and all of Track A.

Article 5. **MAINTENANCE OF THE TRACK STRUCTURE (RAIL, TIES, BALLAST, OTHER TRACK MATERIAL).**

The Industry, at its expense, shall maintain the track structure for the Track

Article 6. **MAINTENANCE OF RIGHT-OF-WAY AND TRACK APPURTENANCES.**

The Industry, at its expense, shall perform the following maintenance of the right-of-way and track appurtenances for the Track:

1. Remove snow, ice, sand and other substances and maintain drainage and grading as needed to permit safe operation over the track.

2. Maintain all appurtenances to the track (other than an automatic signal system), including without limitation, gates, fences, bridges, undertrack unloading pits, loading or unloading devices and warning signs above, below or beside the track.

Article 7. **INDUSTRY TO GIVE NOTICE; FLAGGING.**

The Industry shall comply with the flagging provisions contained in Section 1(i) of **Exhibit B** prior to entering Railroad's right-of-way for the purpose of performing any construction or maintenance of the Track as set forth in this Agreement.

Article 8. **CONSTRUCTION, MAINTENANCE AND REPAIRS BY INDUSTRY TO CONFORM TO RAILROAD STANDARDS.**

Track construction, maintenance and repair work performed by the Industry shall conform to the Railroad's standards. If, in the judgment of the Railroad, any portion of the Track is non-conforming and/or unsafe for railroad operations, the Railroad shall not be obligated to operate over the Track.

Article 9. **NON-DISCLOSURE; CONFIDENTIALITY.**

Except to the extent that disclosure of information contained in this Agreement is required by law, the contents of this Agreement shall not be disclosed or released by any party without the written consent of all other parties to this Agreement.

Article 10. **CONSENT OF THE RAILROAD TO CERTAIN FACILITIES OR OPERATIONS.**

The Railroad hereby consents to the performance by the Industry of intraplant switching over the portion of Track 750 from the derail at Engineering Station 62+50 to the end of the track, over the portion of Track 767 from the derail at Engineering Station 2+41 to the end of the track and over all of Track A; subject to the terms, provisions and conditions set forth in this Agreement and to any prior regulatory approval that may be needed

Article 11. TERM.

This Agreement shall take effect as of the date of this Agreement and shall continue in full force and effect until terminated as herein provided.

Article 12. INSURANCE

A. The Industry, at its expense, shall obtain the insurance described in Exhibit C, hereto attached and hereby made a part hereof, and provide a certificate or certificates of insurance certifying to the effectiveness of such insurance to the person named in Paragraph C below.

B. If the Industry will be using the Track to store and/or handle hazardous materials, the Industry, in addition to the other coverage to be obtained by the Industry as provided herein, must also obtain "Pollution Liability Coverage Form Designated Sites" CG 00-39 and furnish the Railroad with an original certificate of insurance evidencing this coverage.

C. All insurance certificates and correspondence shall be addressed and sent to: Union Pacific Railroad Company, Real Estate Department, 1400 Douglas Street, Stop 1690, Omaha, NE 68179-1690.

Article 13. SPECIAL PROVISION.

A. The Railroad agrees to provide rail service to the Track by placing a single block of inbound cars on a designated Industry-owned receiving track for switching by a third party. The Industry agrees to spot the cars for its tenants and deliver the outbound shipments to an Industry-owned designated delivery track for pickup by the Railroad.

B. The Industry agrees to ensure that cars made available for pickup by Railroad are coupled and air hoses laced, and the placement of individual cars at specific loading or unloading spots within the Industry's facility will not be performed by the Railroad.

C. The Industry agrees to manage the flow of inbound cars so that it only receives the volume of cars the designated Industry-owned receiving track has capacity for. The Railroad may terminate this Agreement for any departure from the terms of this Article 13.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

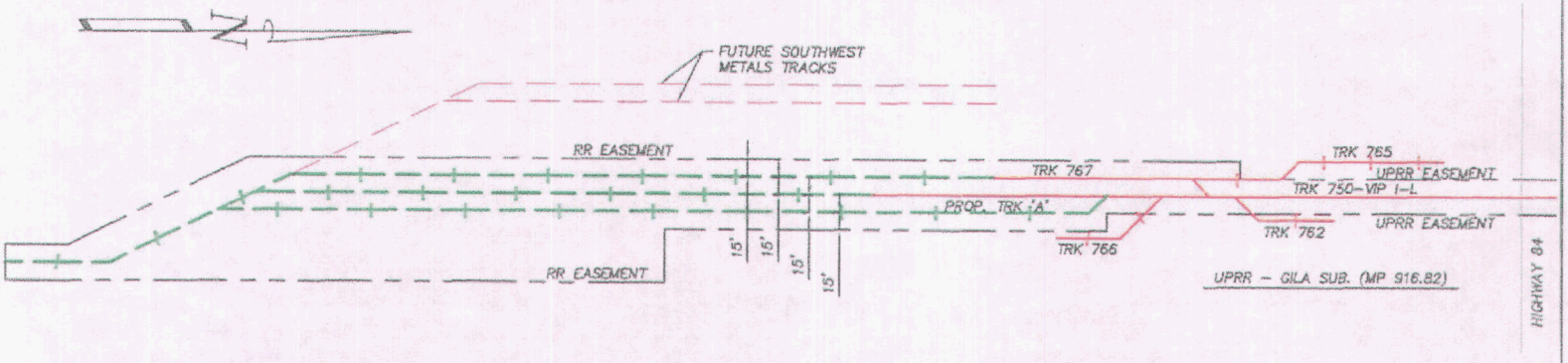
By _____
General Director Industrial Development

Witness:

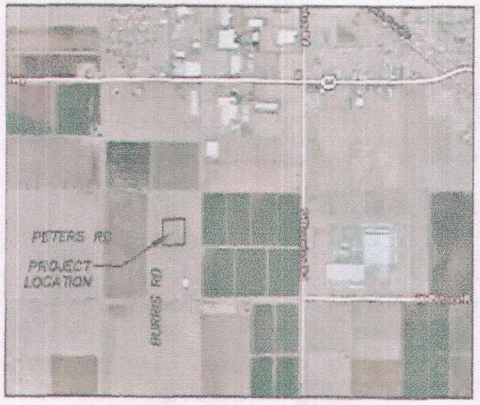
CENTRAL ARIZONA COMMERCE PARK

By _____
Printed Name _____
Title _____

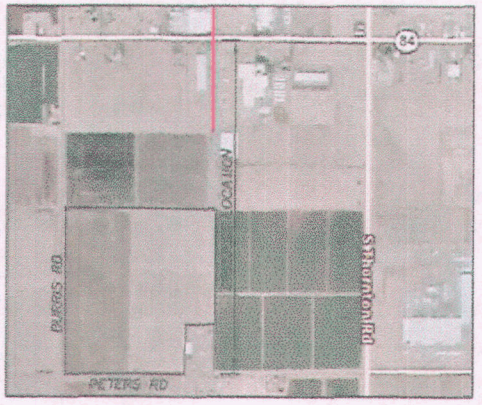
ZTS MAP / CONCEPT LAYOUT



VICINITY MAP



VICINITY MAP



UPRR (REGIONAL MANAGER IND. DEVELOPMENT)

Steve Burke
3165 S. Alma School Road, Ste. 29, PMB 218
Chandler, AZ 85248
PH (480) 704-3506
ssburke@up.com

UPRR (MANAGER SPECIAL PROJECTS-IND. & PUBLIC)

Aziz Aman, P.E.
1301 E Harrison Street
Phoenix, AZ, 85034
PH (480) 415-2364
aaman@up.com

ABBREVIATIONS

B/O	BAD ORDER
EOT	END OF TRACK
LHTO	LEFT HAND TURNOUT
MP	MILEPOST
PC	POINT OF CURVATURE
PS	POINT OF SWITCH
PT	POINT OF TANGENCY
R.O.W.	RIGHT OF WAY
RHTO	RIGHT HAND TURNOUT
TF	TRACK FEET
T/O	TURNOUT

SHEET INDEX

SHEET 1 - COVER SHEET
SHEET 2 - PROPOSED RAIL LAYOUT
SHEET 3 - PROPOSED RAIL LAYOUT
SHEET 4 - PROPOSED RAIL LAYOUT
SHEET 5 - PROPOSED RAIL LAYOUT

EXHIBIT "A"
PETER & BURRIS, LLC (CENTRAL AZ COMMERCE PARK)
AUGUST 5, 2008
UPRR - TUCSON DIVISION, GILA SUB./VIP IND-LEAD, MP 916.82
CASA GRANDE, PINAL Co., ARIZONA

REVISION #	BY	DATE	DESCRIPTION
1	MEP	10/10/08	LINE SYMBOLOGY CHANGED & TRACK NOTES ADDED

EXHIBIT "A"

MOUNTAIN STATES CONTRACTING
800-827-0743
623-842-0743
fax 623-842-0944
6813 W. Frier Dr. • Glendale, AZ 85303

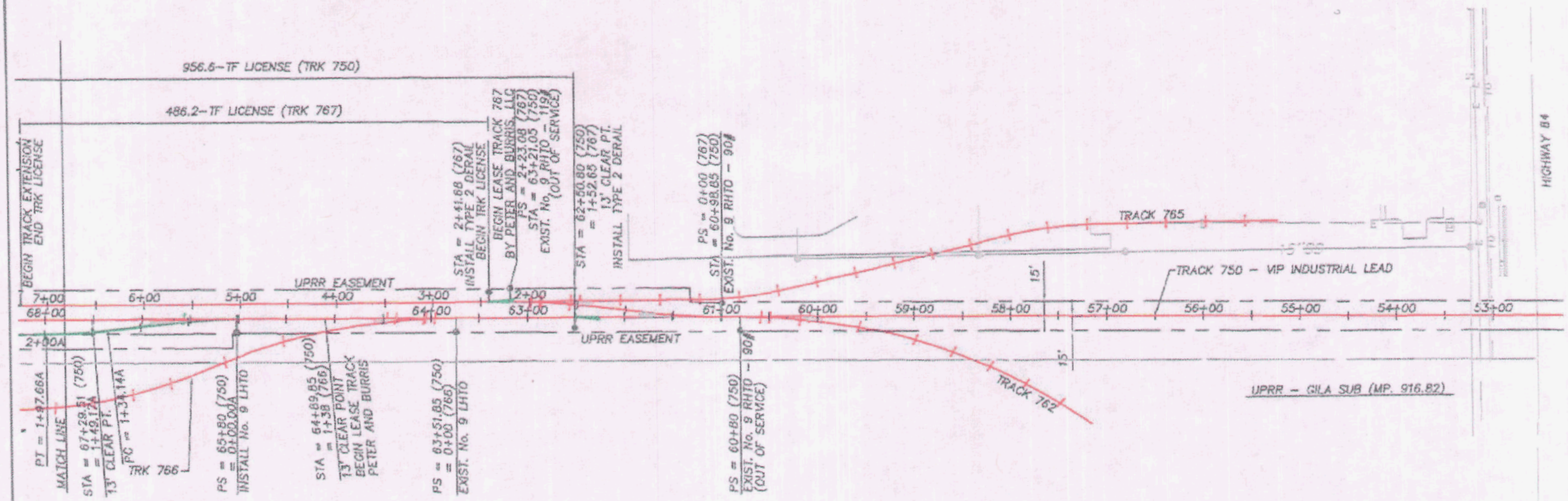
FIBER OPTIC CABLE! CALL BEFORE YOU DIG 1-800-336-9159

Drawn By:	mep
Date:	October 10, 2008
Scale:	1" = 100'
Cad File:	08-10 Exhibit A 012.dwg
Dwg No.	001

LEGEND:
- Existing Railroad Owned Trackage
- Existing Industry Owned Trackage
- Proposed Industry Owned Trackage
- Existing Waterline (W)
- Existing Storm Sewer (ST)
- Fence (X)

UNION PACIFIC RAILROAD

Milepost 916.82, Gila Sub., VIP Ind-Lead
Casa Grande, Pinal Co., Arizona
TRACKAGE TO SERVE:
Peter & Burris, LLC (Central AZ Commerce Park)



SCOPE OF WORK

WORK BY UPRR:

NONE

WORK BY MOUNTAIN STATES CONTRACTING:

INSTALL 9,210-TF INCLUDING 1-No. 9 LHTO, 3-No. 9 RHTO's, 2-TYPE 2 DERAIL, & 1-EARTHEN BUMPER.

REMOVE 1-No. 9 RHTO.

100' 0 100' 200'

SCALE: 1" = 100'

REVISION #	BY	DATE	DESCRIPTION
1	MEP	10/10/08	LINE SYMBOLOGY CHANGED & TRACK NOTES ADDED

EXHIBIT "A"

MOUNTAIN STATES CONTRACTING
800-827-0743
623-842-0743
fax 623-842-0944
6613 W. Friar Dr. · Glendale, AZ 85303

FIBER OPTIC CABLE! CALL BEFORE YOU DIG 1-800-336-6193

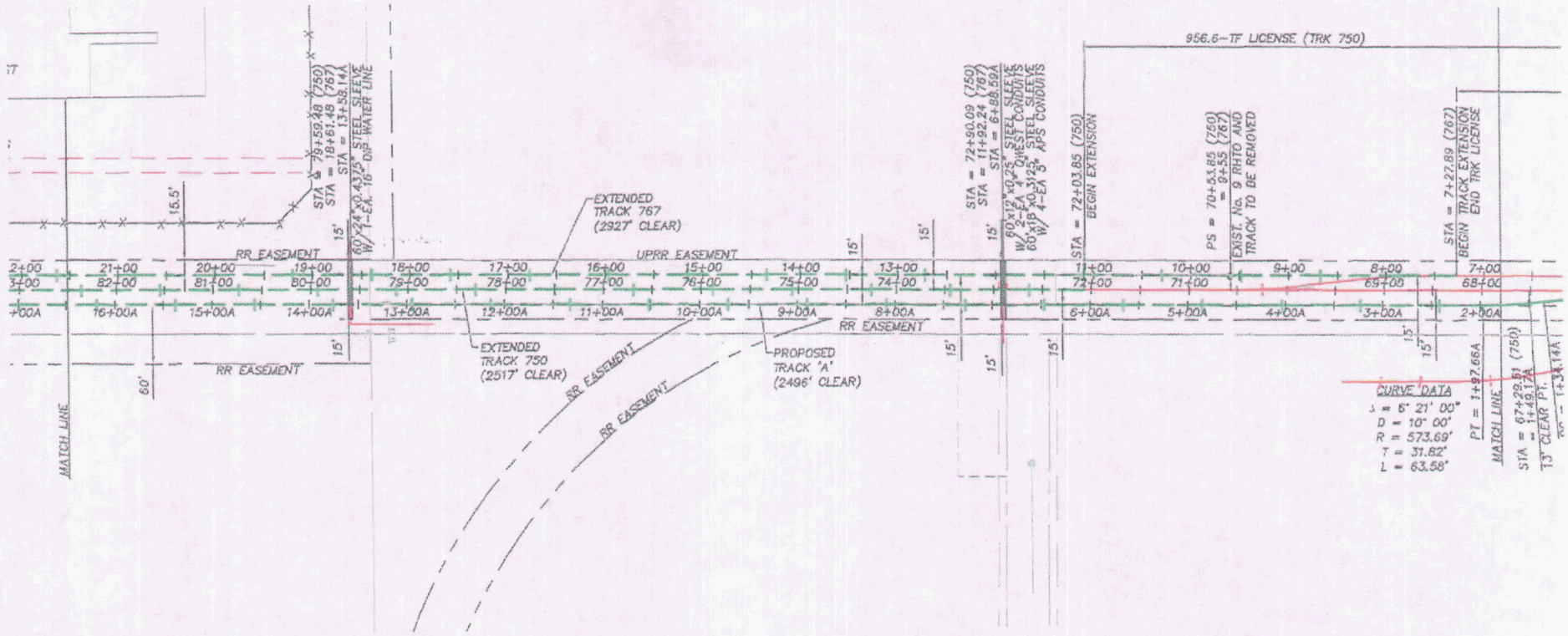
UNION PACIFIC

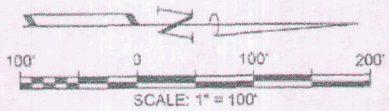
Drawn By:	mep
Date:	October 10, 2008
Scale:	1" = 100'
Cad File:	08-10 Exhibit A 012.dwg
Dwg No.	002

LEGEND:
- Existing Railroad Owned Trackage
- Existing Industry Owned Trackage
- Proposed Industry Owned Trackage
- Existing Waterline (W)
- Existing Storm Sewer (ST)
- Fence (X)

UNION PACIFIC RAILROAD

Milepost 916.82, Gila Sub., VIP Ind-Lead
Casa Grande, Pinal Co., Arizona
TRACKAGE TO SERVE:
Peter & Burris, LLC (Central AZ Commerce Park)





REVISION #	BY	DATE	DESCRIPTION
1	MEP	10/10/08	LINE SYMBOLOGY CHANGED & TRACK NOTES ADDED

EXHIBIT "A"

MOUNTAIN STATES CONTRACTING
800-827-0743
623-842-0743
fax 623-842-0944
6813 W. Frier Dr. - Glendale, AZ 85303

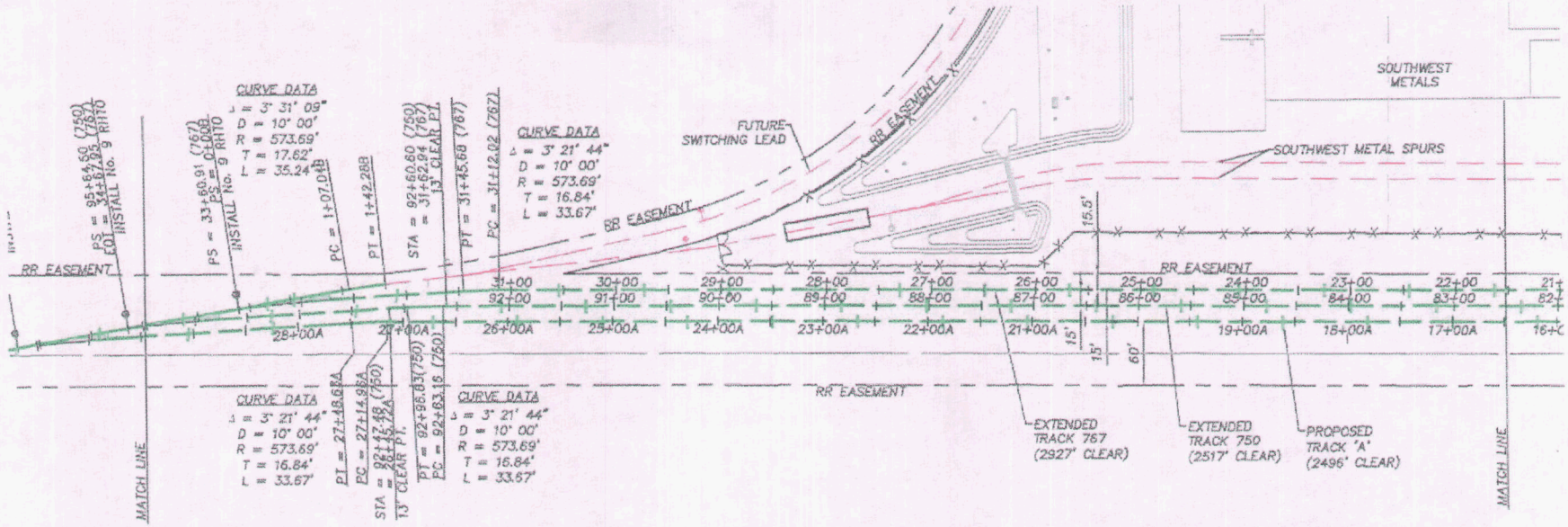
FIBER OPTIC CABLE! CALL BEFORE YOU DIG 1-800-336-0193

Drawn By:	mep
Date:	October 10, 2008
Scale:	1" = 100'
Cad File:	08-10 Exhibit A 012.dwg
Dwg No.	003

LEGEND:
- Existing Railroad Owned Trackage
- Existing Industry Owned Trackage
- Proposed Industry Owned Trackage
- Existing Waterline
- Existing Storm Sewer
- Fence

UNION PACIFIC RAILROAD

Milepost: 916.82, Gila Sub., VIP Ind-Lead
Casa Grande, Pinal Co., Arizona
TRACKAGE TO SERVE:
Peter & Burris, LLC (Central AZ Commerce Park)



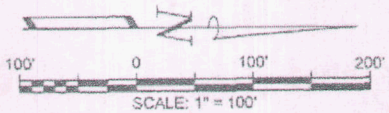


EXHIBIT "A"

REVISION #	BY	DATE	DESCRIPTION
1	MEP	10/10/08	LINE SYMBOLOGY CHANGED & TRACK NOTES ADDED

MOUNTAIN STATES CONTRACTING
800-827-0743
623-842-0743
fax 623-842-0944
6813 W. Frier Dr. • Glendale, AZ 85303

FIBER OPTIC CABLE! CALL BEFORE YOU DIG 1-800-336-6193

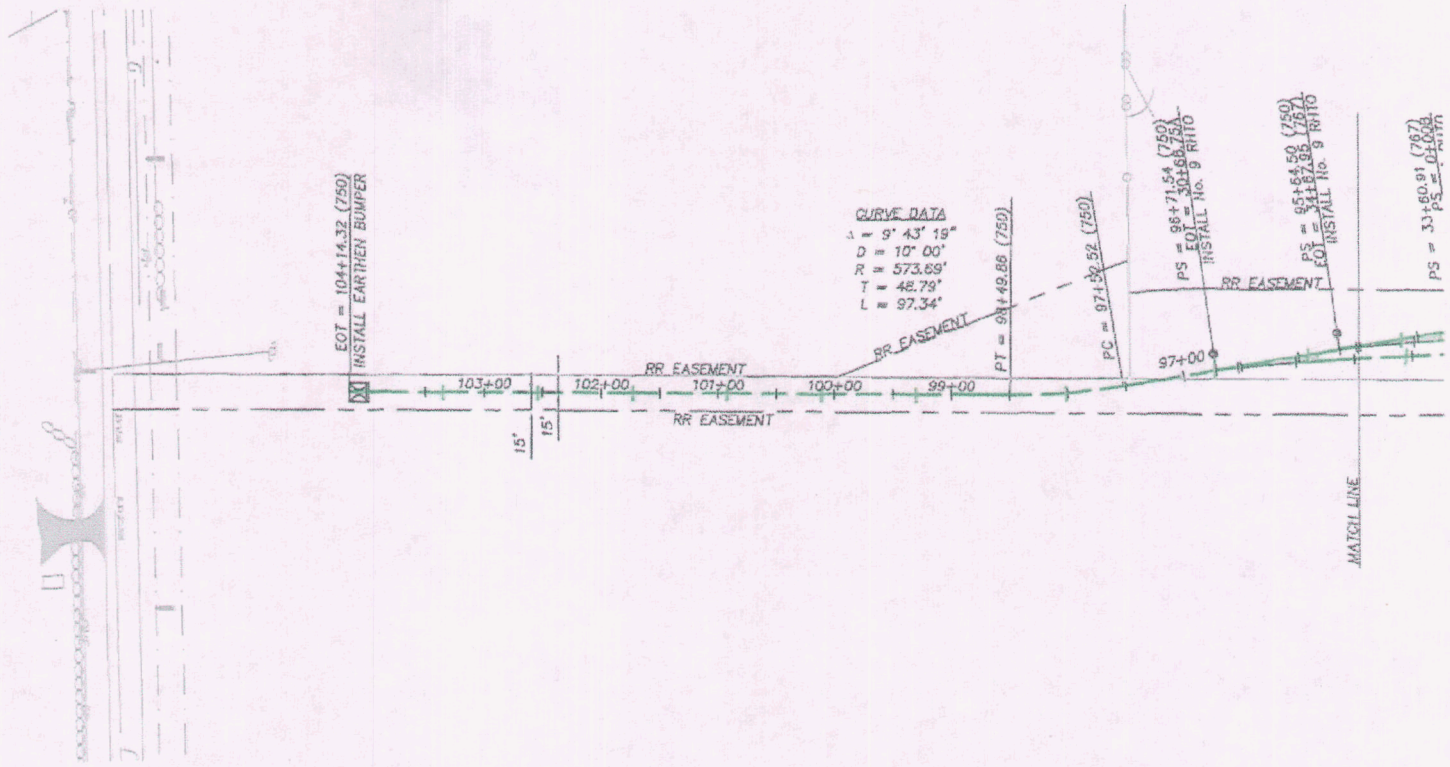
UNION PACIFIC

Drawn By:	mep
Date:	October 10, 2008
Scale:	1" = 100'
Cad File:	08-10 Exhibit A 012.dwg
Dwg No.	004

LEGEND:
- Existing Railroad Owned Trackage
- Existing Industry Owned Trackage
- Proposed Industry Owned Trackage
- Existing Waterline (W)
- Existing Storm Sewer (ST)
- Fence (X)

UNION PACIFIC RAILROAD

Milepost 916.82, Gila Sub., VIP Ind-Lead
Casa Grande, Pinal Co., Arizona
TRACKAGE TO SERVE:
Peter & Burris, LLC (Central AZ Commerce Park)



100' 0 100' 200'

SCALE: 1" = 100'

REVISION #	BY	DATE	DESCRIPTION
1	MEP	10/10/08	LINE SYMBOLOGY CHANGED & TRACK NOTES ADDED

EXHIBIT "A"

MOUNTAIN STATES CONTRACTING
800-827-0743
623-842-0743
fax 623-842-0944
6813 W. Frier Dr. - Glendale, AZ 85303

FIBER OPTIC CABLE! CALL BEFORE YOU DIG 1-800-336-6180

Drawn By:	mep
Date:	October 10, 2008
Scale:	1" = 100'
Cad File:	08-10 Exhibit A 012.dwg
Dwg No.	005

LEGEND:
- Existing Railroad Owned Trackage
- Existing Industry Owned Trackage
- Proposed Industry Owned Trackage
- Existing Waterline — W —
- Existing Storm Sewer — ST —
- Fence — X —

UNION PACIFIC RAILROAD

Milepost 916.82, Gila Sub., VIP Ind-Lead
Casa Grande, Pinal Co., Arizona
TRACKAGE TO SERVE:
Peter & Burris, LLC (Central AZ Commerce Park)

Section 1 SAFETY

(a) Clearances/Impairments. The Industry shall not permit or maintain any building, platform, fence, gate, vehicle, or other structure, obstruction or material of any kind, closer to the Track than the standard clearances of the Railroad *without the prior written consent of the Railroad*. The *standard clearances of the Railroad are* (i) horizontally, nine (9) feet from the centerline of the Track, and (ii) vertically, twenty-three (23) feet above the top of the rail of the Track. For any portion of the Track that is curved, the standard horizontal clearance shall be increased one and one-half inches for each degree of curvature. All doors, windows and gates shall be of the sliding type or open away from the Track if opening them toward the Track would impair clearances. Any moveable appliance, including, but not limited to, dock plates and loading or unloading spouts or equipment, that impairs the standard clearances only when in use, shall be securely stored or fastened by the Industry when not in use so as to not impair such clearances. If greater clearances are required by the National Electrical Safety Code or by statute, regulation or other competent public authority, the Industry shall comply therewith and shall obtain any necessary public authority and Railroad consent to impair clearances before creating an impairment. Any structure, material or other obstruction (whether in use or not) which is closer to the Track than the Railroad's standard clearances or applicable public authority, whichever distance is greater, shall be considered an impairment, whether or not consented to or permitted by the Railroad or public authority.

(b) Facilities. The Industry shall not construct, locate, maintain or permit the construction or erection of any pits, loadout facilities, buildings, private crossings, beams, pipes, wires, or other obstructions or installations of any kind or character (hereinafter "Facilities") over or under the Track without the prior written consent of the Railroad. If the Industry is not in full compliance with any Standards issued by any authorized Authority, the Railroad, after notifying the Industry of its noncompliance and the Industry's failure within thirty (30) days of such notice to correct such noncompliance, may elect to take whatever action is necessary to bring the Track and any Railroad property into compliance with such Standards, PROVIDED, HOWEVER, that if Industry's failure to comply with Standards interferes with, obstructs or endangers Railroad mainline or yard operations in any way, Railroad may initiate compliance action immediately upon written notification to Industry. The Industry shall reimburse the Railroad for all costs (including, but not limited to, consulting, engineering, clean-up, disposal, legal costs and attorneys' fees, fines and penalties) incurred by the Railroad in complying with, abating a violation of, or defending any claim of violation of such Standards. A waiver by the Railroad of the breach by the Industry of any covenant or condition of this Agreement shall not impair the right of the Railroad to avail itself of any remedy for any subsequent breach thereof.

(c) Walkways. The Industry, at its expense, shall provide and maintain a clear and safe pathway for Railroad employees along both sides of the Track beyond the clearance point. If walkways are required by statute or regulation, the Industry, at its expense, shall ensure that walkways are built and maintained to conform with such statute or regulation.

(d) Industry to Train and Oversee Employees. The Industry shall have a non-delegable duty and responsibility to train and oversee its employees and agents as to proper and safe working practices while performing any work in connection with this Agreement, or any work associated with the Railroad serving the Industry over the Track.

(e) Standards. The Industry shall comply with all applicable ordinances, regulations, statutes, rules, decisions and orders including, but not limited to, safety, zoning, air and water quality, noise, hazardous substances and hazardous wastes (hereinafter "Standards") issued by any federal, state or local governmental body or agency (hereinafter "Authority").

(f) Railcars Containing Hazardous Materials. If the Industry uses the Track for the purpose of shipping, receiving or storing railcars containing hazardous materials, as defined by the Department of Transportation (the "DOT"), the Industry will comply with and abide by all DOT regulations as set out in 49 Code of Federal Regulations, Parts 100-199, inclusive, as amended from time to time, and provisions contained in applicable Circular's of the Bureau of Explosives, Association of American Railroads, *including any and all amendments and supplements thereto*. The term "Standards" defined in Section 1(e) shall include (but is not limited to) regulations referenced in this subsection (f).

(g) Telecommunications and Fiber Optic Cable Systems. Telecommunications and Fiber optic cable systems may be buried on the Railroad's property. Industry shall telephone the Railroad during normal business hours (7:00 a.m. to 9:00 p.m., Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if telecommunications or fiber optic cable are buried anywhere on the Railroad's premises to be used by the Industry. If it is, Industry will telephone the telecommunication company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the cable and will commence no work on Railroad's property until all such protection or relocation has been accomplished.

(h) Fire Precautions. Industry shall not permit, place, pile, store, or stack any flammable material within ten (10) feet of centerline of the Track. Industry shall remove or otherwise control vegetation adjacent to the Track so that it does not constitute a fire hazard. Industry shall ensure that suitable firefighting equipment is available and in working order.

(i) Notice and Flagging. Prior to entering Railroad's right of way or other property for the purpose of performing any maintenance, repair, or reconstruction of the Track as set forth in this Agreement, and/or constructing additional track segments connecting to the Track, the Industry and/or its contractors are required to first notify the Railroad's local Manager of Track Maintenance at least ten (10) working days in advance of such work so that the Railroad can determine if flagging and/or other protection is needed. If Railroad deems that flagging and/or other protection is needed, no work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicles(s), or thing(s) shall be located, operated, placed, or stored within 25 feet of the Track or any other track of Railroad at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. If flagging or other special protective or safety measures are performed by the Railroad, such services will be provided at Industry's expense with the understanding that if the Railroad provides any flagging or other services, the Industry shall not be relieved of any of its responsibilities or liabilities set forth herein. Industry shall promptly pay to Railroad all charges connected with such services within 30 days after presentation of a bill. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight hour day for the class of flagman used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and Unemployment Compensation, supplemental pension, Employer's Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect on the day that the flagging is provided. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays; two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between the Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized Governmental Agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, the Industry shall pay on the basis of the new rates and charges. Reimbursement to the Railroad will be required covering the full eight hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by said flagman following the flagman assignment to work on the project for which the Railroad is required to pay the flagman and which could not reasonably be avoided by the Railroad by assignment of such flagman to other work, even though the Industry and/or Industry's contractors may not be working during such time. When it becomes necessary for the Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, the Industry or Industry's contractors must provide the Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, the Industry will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to the Railroad if flagging services are needed again after such five (5) day cessation notice has been given Railroad.

Section 2. LIABILITY.

(a) For purposes of this Section, the following definitions shall apply.

(1) "Railroad": the Railroad and its officers, agents and employees.

(2) "Industry": the Industry and its officers, agents and employees.

(3) "Party": the Railroad or the Industry.

(4) "Third Person": any individual, corporation or entity other than the Railroad or the Industry.

(5) "Loss" means loss of or damage to the property of any Third Person or Party and/or injury to or death of any Third Person or Party. "Loss" shall also include, without limitation, the following associated expenses incurred by a Party: costs, expenses, the cost of defending litigation, attorneys' fees, expert witness fees, court costs, the amounts paid in settlement, the amount of the judgment, and pre-judgment and post-judgment interest and expenses arising from analysis and cleanup of any incident involving the release of hazardous substances or hazardous wastes.

(b) Except as otherwise specifically provided in this Agreement, all Loss related to the construction operation, maintenance, use, presence or removal of the Track shall be allocated as follows:

(1) The Railroad shall indemnify Industry from and against Loss arising from or growing out of the negligent acts or omissions of the Railroad.

(2) The Industry shall indemnify Railroad from and against Loss arising from or growing out of the negligent acts or omissions of the Industry or arising from:

(i) any impairment of the Track by Industry as described in Section 1(a);

(ii) the Industry's failure to construct or adequately maintain pathways or walkways as required by Section 1(c);

(iii) Intraplant switching;

(iv) the Industry's failure to comply with Standards, as required by Section 1(e),

(v) any explosion or leakage or evaporation of hazardous substances or hazardous wastes shipped, received or stored by Industry resulting from Industry's failure to comply with DOT and other applicable regulations as set forth in Sections 1(e) and 1(f) of Exhibit B, or

(vi) any damage to Industry's cargo or commodity stored in railcars on the Track resulting from any act or event beyond the control of Railroad including, without limitation, any Act of God and specifically including water damage from whatever source including drainage runoff and leakage.

(3) Subsection 2(b)(2), subparagraphs (i) through (v), apply regardless of whether the Railroad had notice of, consented to, or permitted the aforesaid impairments, failures, non-compliance with Standards, wastes or substances, and whether or not the Railroad or a Third Person contributes to cause the Loss.

(4) Except as otherwise more specifically provided in this Agreement, Railroad and Industry shall pay equal parts of the Loss that arises out of the joint or concurring negligence of the Railroad and the Industry, whether or not the acts or omissions of a Third Person contribute to cause the Loss; PROVIDED, however, that nothing in this Agreement shall be construed as impairing the right of either party to seek contribution or indemnification from a Third Person.

(5) Industry expressly and specifically assumes potential liability under this subsection (b) for claims or actions brought by Industry's own employees. Industry waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify Railroad under this subsection (b). Industry acknowledges that this waiver was mutually negotiated by the parties hereto.

(6) No court or jury findings in any employee's suit pursuant to any worker's compensation act or the Federal Employer's Liability Act against a party to this Agreement may be relied upon or used by Industry in any attempt to assert liability against Railroad.

Section 3. REARRANGEMENT OF TRACK; ADDITIONAL TRACKAGE.

(a) The Railroad may rearrange or reconstruct the Track or modify its elevation in order to develop or change nearby Railroad property or tracks, provided that the Industry shall continue to have similar trackage without additional cost to the Industry. If, however, the change in the Track, or its appurtenances, is required by or as a result of any law, ordinance, regulation, or other contingency over which the Railroad has no control, the Industry shall bear the cost of the change.

(b) All references in this Agreement to Track shall apply to the Track as constructed, even if it differs or varies from its depiction on Exhibit A. References in this Agreement to Track shall also apply to rearrangements, reconstructions, extensions or additions to the Track.

Section 4. PAYMENT OF BILLS, ASSIGNABLE COSTS.

(a) Bills for expenses properly chargeable to the Industry pursuant to this Agreement shall be paid by the Industry within thirty days after presentation by the Railroad except as otherwise provided. Bills not paid within thirty days shall be subject to interest at the then current rate charged by the Railroad.

(b) "Cost" or "expense" for the purpose of this Agreement shall be all assignable costs and expenses including all current Railroad cost additives. Material shall be charged at its current value when and where used. Assignable costs are any costs incurred by the Railroad that are directly or indirectly attributable to the construction, maintenance or operation of the Track that the Railroad has not specifically agreed to pay under the terms of this Agreement.

(c) Industry shall pay or arrange to have paid to Railroad all accessorial charges that, pursuant to UP-6000 series tariff publications or any successor publications, are assessed on railcars destined to or originating from the Track, including without limitation demurrage, switching, reconsignments and weighing charges.

Section 5. GOVERNMENTAL RESTRICTIONS.

This Agreement is made subject to all applicable laws, rules and regulations of the United States Government or any state, municipal, or local governmental authority now or hereafter in effect.

Section 6. TERMINATION.

(a) Industry may terminate this Agreement upon thirty (30) days' written notice to Railroad.

(b) Railroad may terminate this Agreement by sending ninety (90) days' written notice to Industry's last known address.

(1) If Industry is in default in the performance of any covenant or promise in this Agreement and continues in default for a period of forty-five (45) days after receiving such notice of default from the Railroad, PROVIDED, HOWEVER, that if a default by the Industry is deemed by the Railroad to be unusually dangerous or hazardous, the Railroad may immediately suspend its performance under this Agreement during the thirty day default cure period. Such termination shall be effective ninety (90) days after the Railroad sent notice of default if default still exists and no further notice of termination shall be required.

(2) upon ninety (90) days' written notice if continued operation of Track becomes impracticable due to abandonment or embargo of rail lines, or if the continued presence of the Track would interfere with Railroad operations (including but not limited to, line changes, construction of new lines, or railroad installation of facilities). In the event Railroad terminates this Agreement pursuant to this subparagraph, Railroad shall attempt to provide Industry a substitute switch connection if such a switch connection would be reasonably practicable, could be made safely, and would furnish sufficient business to justify the cost of construction and maintenance.

(c) Termination of this Agreement for any reason shall not affect any of the rights or obligations that the parties hereto may have accrued, or liabilities, accrued or otherwise, which may have arisen prior thereto.

Section 7. SURRENDER UPON TERMINATION.

Upon termination of this Agreement howsoever, the Industry shall vacate and surrender the quiet and peaceable possession of any right-of-way or other property owned by the Railroad upon which the Track is located. The Railroad shall have the right to remove the portion of the Track it owns. Not later than the last day of the term of this Agreement, the Industry, at its sole cost and expense, shall (a) remove from the Railroad's right-of-way or other property all (i) portions of the Track owned by the Industry, (ii) obstructions, (iii) contamination caused by or arising from the use of the Track for purposes of the Industry, Facilities (as defined in Section 1(b)) and other property not belonging to the Railroad or a third party, located thereon and (b) restore the Railroad's right-of-way to as good a condition as the same was in before the date of this Agreement. If the Industry fails to perform such removal and restoration, or if the work performed by the Industry is not satisfactory to the Railroad, the Railroad may perform the work at Industry's expense. Any portion of the Track owned by Industry and not removed as provided herein may, at Railroad's election, be deemed abandoned and Railroad, at Industry's sole cost and expense, may remove such portion(s) of the Track from Railroad's property and dispose of same and restore Railroad's property. If Railroad performs such track removal and/or disposal,

the Industry agrees to reimburse the Railroad, within thirty (30) days of its receipt of billing from the Railroad, for all costs and expenses incurred by Railroad (less any resulting salvage value) in connection therewith.

Section 8. NOTICES.

(a) Any notice, consent or approval that either party hereto desires or is required to give to the other party under this Agreement shall be in writing. The notice, consent or approval shall be deemed to have been given to the Industry by serving the Industry personally or by mailing the same, postage prepaid, to the Industry at the last address known to the Railroad. Notice may be given to the Railroad by mailing the same, postage prepaid to Union Pacific Railroad Company, Attention: Real Estate Department, 1400 Douglas Street, Omaha, Nebraska 68179.

(b) Notices involving a notice of default or termination shall be by certified mail, return receipt requested, and such notice shall be deemed given on the date deposited with the United States Postal Service.

Section 9. ASSIGNMENT; USE BY THIRD PARTIES.

The Industry shall not assign this Agreement or permit use of the Track by anyone other than the Industry without the prior written consent of the Railroad. The Industry shall notify the Railroad in writing of any assignment to an affiliate prior to the effective date of the assignment. For any departure from the terms of this Section, the Railroad may terminate this Agreement. The Railroad shall not unreasonably withhold its consent to an assignment of this Agreement.

Section 10. SUCCESSORS AND ASSIGNS.

Subject to the provisions of Section 9, the rights and obligations contained in this Agreement shall pass to and be binding upon the heirs, executors, administrators, successors and assigns of the parties to this Agreement.

EXHIBIT C

Union Pacific Railroad
Contract Insurance Requirements

Side Track

Industry shall, at its sole cost and expense, procure and maintain during the life of this Agreement (except as otherwise provided in this Agreement) the following insurance coverage:

A. **Commercial General Liability** insurance. Commercial general liability (CGL) with a limit of not less than $1,000,000 each occurrence and an aggregate limit of not less than $2,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

B. ***Umbrella or Excess*** *insurance.* If Industry utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

Other Requirements

C. All policy(ies) required above must include Railroad as "Additional Insured" using ISO Additional Insured Endorsement CG 20 26 (or a substitute form providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Industry's liability under the indemnity provisions of this Agreement.

D. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.

E. Industry waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.

F. Prior to commencing the work, Industry shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.

G. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state in which the Track is located.

H. The fact that insurance is obtained by Industry, or by Railroad on behalf of Industry, will not be deemed to release or diminish the liability of Industry, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Industry or any third party will not be limited by the amount of the required insurance coverage.

9

Between the San Pedro Railroad Operating Company, LLC, a wholly owned subsidiary of the Arizona Railroad Group, LLC, an Arizona Limited Liability Corporation, and Central Arizona Commerce Park, LLC, an Arizona Limited Liability Corporation.

THIS AGREEMENT, made this 15th day of June, in the year 2009, between San Pedro Railroad Operating Company, LLC (hereinafter, SPSR), having its principal offices at 796 E. Country Club Drive, Benson, AZ 85602 and the Central Arizona Commerce Park, LLC, its successor or assigns (hereinafter, CAZCP) located at 3666 N. Miller Road #105, Scottsdale, AZ 85251.

WHEREAS, CAZCP has decided to engage SPSR as its exclusive private (non-common carrier) turnkey industrial park switching service as outside the regulatory jurisdiction of the federal Surface Transportation Board and other federal laws applicable to common carrier railroads operating in interstate commerce;

WHEREAS, SPSR wishes to provide private (non-common carrier) turnkey industrial park switching services to the business entities located within CAZCP on this basis; and

WHEREAS, the parties agree that the terms of this agreement shall be interpreted in the broadest possible way.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the parties agree as follows:

1. **DESCRIPTION OF SERVICES TO BE PROVIDED**

CAZCP engages SPSR to provide, as its exclusive representative, private, non-common carrier turnkey industrial park switching services exempt from the federal regulatory jurisdiction of the federal Surface Transportation Board and other federal laws

governing railroads. Operating under the name "Central Arizona Commerce Park" SPSR will provide services to all rail-served business entities and facilities located within CAZCP as shown more precisely on the attached hereto, made a part hereof and marked as Exhibit "A" (hereafter the "Rail Line"). SPSR will make its rail switching services operational in coordination with CAZCP's completion of track construction and opening of the Union Pacific (UP) interchange track at Casa Grande, AZ. SPSR shall provide services on an "as needed basis", with the nature and frequency of such services to be determined by SPSR's arrangements with each individual customer. SPSR agrees to provide its service in a professional, high-quality manner commensurate with prudent industry standards. This agreement specifically covers rail operations in the industrial park as shown in Exhibit "A." Any expansion of rail switching operations outside the current boundaries of the Park, either by extending the rail lines into adjoining properties or annexing additional properties into the Park, shall be the subject of a separate addendum to this agreement.

2. EQUIPMENT, PERSONNEL, AND ADMINISTRATIVE FUNCTIONS

A. Track material, locomotive(s), and other equipment

CAZCP will construct and provide the initial track, interchange track, right-of-way, structures, and other rail support systems in accordance with the industrial railroad standards mutually agreed upon between CAZCP and the UP. Thereafter, SPSR will maintain such track and structures as provided herein as specified below.

SPSR will initially provide one locomotive and add additional locomotives as traffic levels dictate. SPSR will purchase or lease these locomotives, which will be of a generic road-switcher type. SPSR will equip crews with mobile phones for communication purposes and will also provide a maintenance truck.

B. Crews

SPSR will provide fully trained and qualified operations personnel to perform locomotive engineer and conductor (switchmen) functions. It is SPSR's intent to employ a remotely controlled locomotive to reduce operations personnel costs. SPSR crews will conduct other duties such as locomotive maintenance and repair, track, and right-of-way maintenance and repair, and other functions. The lead crew-member will report to SPSR's General Manager.

C. Locomotive Servicing

Except for heavy repairs, which SPSR will contract, SPSR's train operations personnel will provide routine locomotive maintenance and servicing functions. CAZCP will provide a locomotive storage and servicing track area equipped with an inspection pit and a barbed wire, fenced enclosure. SPSR will obtain an above-ground double-walled fuel tank from a local distributor or fuel directly from the distributor truck.

D. Administrative, marketing, and communication functions

The SPSR may locate a small modular office located near the locomotive servicing area to serve as SPSR's railroad operations center. SPSR will conduct administrative tasks such as car supply, location and tracing, quotations for rates and services, marketing, communications with customers and line haul railroads and operational matters.

SPSR will work directly with CAZCP to assist with marketing opportunities and to aid it in attracting new rail-served industry clients to the CAZCP. SPSR will also provide marketing support directly to the rail-served customers within CAZCP to assist them with obtaining rail service quotes.

SPSR will establish and maintain good communications with the UP division superintendents, trainmasters, and train crews. When requested, the SPSR will act as a liaison between CAZCP, CAZCP customers and the Class I carrier

3: SPSR's COMPENSATION FOR PROVIDING RAIL SERVICE

SPSR will act as an independent contractor to the CAZCP and will receive a switching fee from the park rail-served customers for each car handled. Additionally SPSR reserves the right to assess customers for charges as indicated in the attached Exhibit "B" entitled Sample Industry Sidetrack Agreement. SPSR shall have the right to impose switching charges for additional moves above and beyond the original car placement as well as for car storage, car repairs, or other additional services. In no event will SPSR or its affiliates use the CAZCP rail lines to assist or facilitate any customers outside the CAZCP development without prior written approval from CAZCP.

4: SPSR'S COMPENSATION FOR CAZCP

For the initial seven year term of this Agreement, SPSR will pay CAZCP $1 per year for its use of the CAZCP rail facilities. For the five year renewal term, SPSR and CAZCP will negotiate an agreement to share revenues as appropriate. If, during the course of any full year of switching operations by SPSR beginning in year one (1) of the Agreement running through year seven (7), the annual carloads handled by the SPSR exceed 1,000, the CAZCP shall be entitled to receive a royalty of 20% of the railcar switching fee from SPSR for each car in excess of 1,000 for that year. As an example: if SPSR handles 1,250 carloads in year two (2) at $250 per railcar, the CAZCP would receive $12,500 from the SPSR as a traffic bonus ($50 times 250 carloads = $12,500). This payment shall be made within 30 days after the close of the rail operations year. Rail operations year is defined as the twelve month period beginning with the first month in which railcars are switched into the Park.

5: ASSETS INSTALLED BY TENANTS

Any improvements or fixtures installed by SPSR shall remain SPSR property and SPSR shall be entitled to take said assets with them upon the termination of this Agreement provided that they can be removed without damaging the property. If they cannot be removed without damage, CAZCP shall pay SPSR for net liquidated value of those improvements or fixtures. Any improvements or fixtures made by CAZCP shall remain CAZCP property during the term of and expiration of this Agreement.

6: MAINTENANCE OF THE PREMISES

Except as noted below SPSR shall, as its own expense, maintain the right-of-way and track structure to the Federal Railroad Administration's Class 1 track standards. SPSR shall, at its own expense, maintain the right-of-way, track structure, and other rail support facilities to the same condition they were in at the commencement of the Agreement term, normal wear and tear excepted. SPSR will maintain such track as provided herein as specified when tracks are stabilized and the contractor's warranty is satisfied. In addition SPSR will use its best efforts to keep the right of way free of accumulated weeds, brush, discarded track materials, and other debris. SPSR shall have reasonable rights for ingress and egress to the track by such vehicles, equipment, and materials necessary to maintain and provide maintenance service in accordance with this Agreement. In performing its operations hereunder, SPSR shall not unduly obstruct or impede the operations of any business entities or customers within CAZCP. In the course of conducting any maintenance or emergency repairs SPSR shall have the responsibility for contacting all public utilities that may be affected by any excavation or digging on the premises to ensure that there is no danger in conducting such activity.

Customers will at their own expense construct and maintain their own rail sidings to a condition acceptable to SPSR and CAZCP.

In compliance with the standards of the state of Arizona and Pinal County, CAZCP will be responsible for maintenance and repair of any automated highway crossing signals in the park. In addition CAZCP will be responsible for capital projects such as the construction and expansion of Park rail infrastructure, installation of switches to access rail-served customer sites and CAZCP will be responsible for the construction of any track or switches that may be required by the UP for interchange and yard facilities.

7: TERMS AND RENEWAL OPTIONS

The terms of this Agreement shall be seven (7) years, commencing at the start of the first rail operations year, unless terminated prior thereto or extended to a later date in accordance with the terms of this Agreement. SPSR shall have the option to renew this agreement for an additional five (5) year term provided there are no uncured defaults or material breaches outstanding at the end of the agreement term. SPSR shall exercise this option by giving written notice of its intent to exercise at least sixty (60) days prior to the date of expiration of this Agreement. The parties agree to negotiate an arrangement for SPSR to share with CAZCP a portion of its annual revenues during the five year option term after deducting SPSR's operating and capital costs associated with the CAZCP service.

Notwithstanding the foregoing terms the SPSR or CAZCP may, at the conclusion of the second year of this agreement, terminate this agreement by giving ninety (90) days written notice of its intent to cancel. This cancellation term shall be strictly limited to a lack of rail business in the Park. Specifically, if at the end of year two (2) of the agreement rail traffic in the park has not reached an annualized volume of at least 400 carloads based on the rail traffic volume in months 23 and 24 of the agreement.

8: RESPONSIBILITY FOR CAR HIRE OR DEMURRAGE

Individual customers will be responsible for paying any car hire or demurrage charges to the line haul railroads over and above the free time granted by the UP.

9: **INSURANCE**

During the terms of this Agreement, SPSR shall obtain and maintain in force at all times railroad liability insurance covering its operations, maintenance, and use of the premises including, but not limited to, all tracks, sidetracks and spurs, bridges and structures, signals, and right-of-way located upon or comprising said premises. SPSR's insurance shall cover death and injury to railroad employees and all invitees as well as for damage or destruction to and replacement of lading, railroad equipment and other property including any claims involving environmental damage and the release or discharge of hazardous materials.

SPSR shall obtain insurance from a carrier acceptable to CAZCP naming CAZCP as an additional insured. The coverage shall provide a minimum $5 million ($5,000,000) per occurrence and a minimum aggregate limit of $10 million ($10,000,000) with a deductible not greater than $100 thousand ($100,000) from an insurance company that is "A" rated or better. The limits will meet or exceed the Union Pacific.

10. **TAXES AND UTILITIES**

CAZCP shall pay, when due, all taxes, assessments, and government charges of any kind that may be lawfully assessed or levied against the property or with respect to SPSR's operations on the premises. SPSR shall pay, when due, all charges for utilities arising out of SPSR's use and operation of the premises.

11. **LANDLORD'S RIGHT TO INSPECT; RECORDKEEPING**

CAZCP shall be entitled to inspect the subject rail premises upon seven business days' written notice. SPSR shall, within 7 business days of its receipt, provide CAZCP with any and all reports pertaining to the physical condition of the premises issued by any

federal or state agencies having regulatory jurisdiction over the track, right-of-way, bridges and structures, and signals including, but not limited to, the Arizona Department of Transportation, the Federal Railroad Administration, the United States Environmental Protection Agency, and the Arizona agency having jurisdiction over environmental matters. Within 30 days after the anniversary of the SPSR's start up of operations, SPSR shall provide to CAZCP with an annual Track and Infrastructure Maintenance Report that identifies all track, signal, right-of-way, and facility maintenance work and improvements undertaken during the year just concluded.

Within (60) days after the anniversary of the SPSR's start up of operations under this Agreement SPSR shall furnish CAZCP with its annual financial report prepared in accordance with generally accepted accounting practices and signed by its chief financial officer or accountant for operations conducted over the premise. CAZCP reserves the right to inspect and audit SPSR's financial statements and underlying records upon 30 days' written notice.

12. ALLOCATION OF LIABILITY; INDEMNIFICATION

Liability for death, personal injury, or property damage, including liability for any environmental claims within the meaning of applicable federal and state laws pertaining to the condition of the environment and transportation, use, or spillage of hazardous materials, shall be allocated between the parties as follows:

a. CAZCP shall defend, indemnify, and hold harmless SPSR against any and all liabilities, expenses, claims, or causes of action relating to conditions or events that occurred before the commencement of this Agreement or after its termination (except for conditions caused by SPSR's occupancy or use of the Premises);

b. CAZCP shall defend, indemnify, and hold harmless SPSR against any and all liabilities, expenses, claims or causes of action, including attorney's fees, involving death or injury to SPSR employees, officers, or agents or damage or destruction to property (or

to the employees, officers, or agents or property of third parties) where the actions of CAZCP or CAZCP employees, officers, licensees, or agents, were responsible for such liabilities, expenses, claims or causes of action. For the purpose of this section railroad locomotives and cars owned by third parties shall be considered the property of SPSR.

c. SPSR shall defend, indemnify, and hold harmless CAZCP against any and all liabilities, expenses, claims or causes of action, including attorney's fees, involving death or injury to CAZCP employees, officers, or agents or damage or destruction to CAZCP property (or to the employees, officers, or agents or property of third parties) where the actions of SPSR, or its employees, officers, licensees, or agents, were responsible for such liabilities, expenses, claims or causes of action.

d. CAZCP and SPSR shall each be responsible and shall defend, indemnify, and hold harmless the other against any for all liabilities, expenses, claims or causes of action, including attorney's fees, involving death or injury to employees, officers, or agents or damage or destruction to property where the actions of both parties were responsible for said liabilities, expenses, claims or causes of action or where fault cannot be ascertained.

e. Notwithstanding the above provisions, each party will defend, indemnify, and hold harmless the other party and its officers, agents, employees, successors, and assigns against any and all liabilities, expenses, claims, or causes of action, including attorney's fees, arising from that party's violation of or from its failure to comply with any provisions of this Agreement or violations of law, regardless of whether the negligence of the other party, its officers, agents, or employees, and regardless of degree, contributed thereto.

f. CAZCP shall be responsible for and shall defend, indemnify, and hold SPSR harmless for the actions of any parties who obtained rights under easements, licenses, and crossing permits granted by it.

13. THIRD PARTY RIGHTS

CAZCP may grant such leases, licenses, permits, agreements, and other rights to third parties for communications lines, pipelines, wire lines, real estate leases, and side track leases on CAZCP owned railroad right-of-way upon 30 days' written notice to SPSR and subject to SPSR's review and approval, which shall not be unreasonably withheld.

14. NON-ASSIGNABILITY

SPSR or CAZCP shall not assign, mortgage, or hypothecate this Agreement nor permit the Premises to be occupied or used for any purpose other than those uses contemplated herein. SPSR's or CAZCP's shareholders and management may assign this Agreement or transfer control upon either's written consent, which shall not be unreasonably withheld. Moreover; SPSR or CAZCP may grant trackage rights, occupancy rights, licenses or permits to third parties for railroad-related purposes to the extent permitted by this Agreement. In the event of a sale of the Park by CAZCP this agreement will either be transferred to the buyer at SPSR's concurrence or SPSR may terminate the agreement.

15. WAIVER

The failure of SPSR or CAZCP to insist upon strict performance of any of the covenants or conditions of this Agreement shall not be construed as a waiver of any legal rights or claims. Nothing contained in this Agreement shall be deemed in derogation of any right or remedy that SPSR or CAZCP may have at law or equity.

16. MATERIAL BREACH, CURE, AND TERMINATON

A. The existence of a default or a material breach shall be a basis for terminating the Agreement. Upon discovery of a default or a material breach, the party who is in default or who has committed the breach shall have thirty (30) calendar days in which to make a

good faith effort to contest or cure the default or breach from the time that notice of the default or breach is transmitted to that party in accordance with the notice provisions herein. If the breaching party has not cured the alleged default or breach at the end of the notice period, the other party may terminate this Agreement by giving the other party at least thirty (30) day's written notice of termination in accordance with the notice provisions herein.

B. The following shall be grounds entitling CAZCP to terminate the Agreement:

(1) Failure to maintain the track, right-of-way, bridges, and structures, as required herein.

(2) Conducting operations in a manner deemed unsafe or hazardous by a state or federal agency having jurisdiction or deemed unsafe or hazardous under customary industry practices.

(3) Failure to keep records or provide CAZCP access to the premises or records as required herein.

(4) Failure to provide switching services as provided herein.

(5) Committing acts or allowing others to commit acts on the right-of-way that would be deemed a violation of state or federal environmental laws, failure to promptly remove hazardous substances from the right-of-way, or failure to promptly eliminate an environmental hazard or emission that would be deemed to violate state or federal environmental laws.

(6) Failure to maintain insurance as required herein.

(7) Failure to pay all utilities as required herein, unless contested.

(8) Any assignment, mortgage, hypothecation, or transfer of this Agreement or the rights

created by it except in the manner prescribed herein.

(9) Exercising as its own any property rights reserved by CAZCP.

(10) Using or permitting others to use the property for an illegal purpose.

C. The following shall be grounds entitling SPSR to terminate this Agreement:

(1) CAZCP's failure to construct and provide the track, right-of-way, structures, and, signals which are the subject of this agreement to the agreed upon standard or in contravention of the contractor or manufacturer's warranty;

(2) CAZCP's failure to provide and maintain in proper working condition any automated highway crossing signals on the property.

(3) CAZCP's failure to construct and expand agreed upon capital projects such as the park rail infrastructure and such additional track that may be required by the UP/SPSR interchange.

(4) Failure of CAZCP to provide SPSR with reasonable rights of ingress and egress to the track and facilities to enable SPSR to properly maintain such;

(5) Committing acts or allowing others to commit acts on the right-of-way that would be deemed a violation of state or federal laws including environmental laws, failure to promptly remove hazardous substances from the right-of-way, or failure to promptly eliminate an environmental hazard or emission that would be deemed to violate state or federal environmental laws.

(6) Using or permitting others to use the property for an illegal purpose.

(7) A destruction on account of Force Majeure of the premises including right-of-way, track, and structures of such magnitude that SPSR cannot in its reasonable discretion economically reinstate service over the premises.

D. Upon receiving notice of termination by CAZCP, SPSR shall peacefully surrender possession of the premises, promptly removing all of its property and leave the premises in the same physical condition as it was at the completion of the track's construction, normal wear and tear excepted. In addition SPSR shall provide notice of termination to all customers on the premises and connecting railroads. Upon receiving notice of termination from CAZCP, SPSR may discontinue rail service and vacate the premises without incurring any further liability in accordance with its Sidetrack Agreements. SPSR shall provide notice of termination to all customers on the premises and connecting railroads.

17. EMINENT DOMAIN AND CONDEMNATION

If at any time during the term of this Agreement, the premises or any part thereof or any interest therein shall be taken under eminent domain or condemnation, or if a suit or other action shall be instituted for the taking or condemnation of the premises to a governmental or other public authority, agency, or body, then this Agreement at the option of SPSR may terminate immediately.

18. NOTICE

All notices required pursuant to this Agreement shall be in writing and addressed to the parties at their respective addresses as set forth below. All such notices shall be deemed duly given if personally delivered or if deposited in the United States mail, registered or certified, return receipt requested. This section shall not be construed as waiving proper service of process. Notice to each party will be to the following:

Attn: Scott Parkinson

Attn: Jackob Andersen or Tim Smith

San Pedro & Southwestern Railroad
c/o P.O. Box 1420
Benson, AZ 85602

Central Arizona Commerce Park, LLC
c/o 3666 N. Miller Road #105
Scottsdale, AZ 85251

19. SECTION HEADINGS

Section and paragraph headings in this Agreement are for ease of reference only and shall have no bearing on the construction or interpretation of this Agreement.

20. ENTIRE AGREEMENT

This Agreement and the exhibits and attachments set forth all the covenants, provisions, agreements, conditions and understandings between the parties, and there are no other covenants, promises, agreements, conditions or understandings, either oral or written, between them. No modification or addition to this Agreement shall be binding or effective unless executed in writing as an amendment to this instrument and signed by the parties.

21. PARTIAL ILLEGALITY

If any provision of this Agreement is held to be illegal, the remainder of the Agreement shall not be affected thereby.

22. GOVERNING LAW

This Agreement and all rights of the parties thereunder shall be governed by the laws of the State of Arizona.

23. DISPUTE RESOLUTION

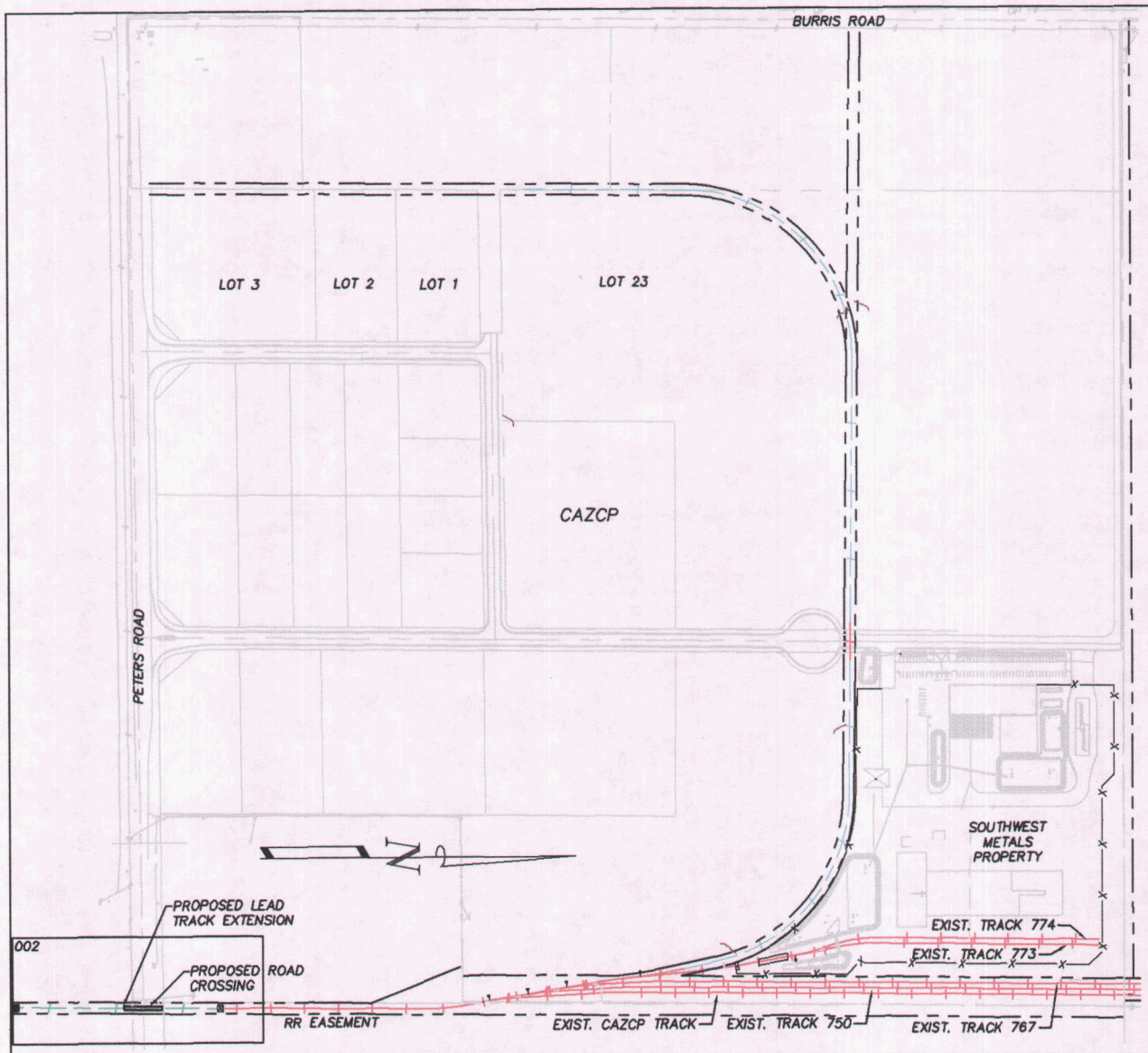
All disputes between the parties shall be resolved through arbitration pursuant to the commercial arbitration rules of the American Arbitration Association.

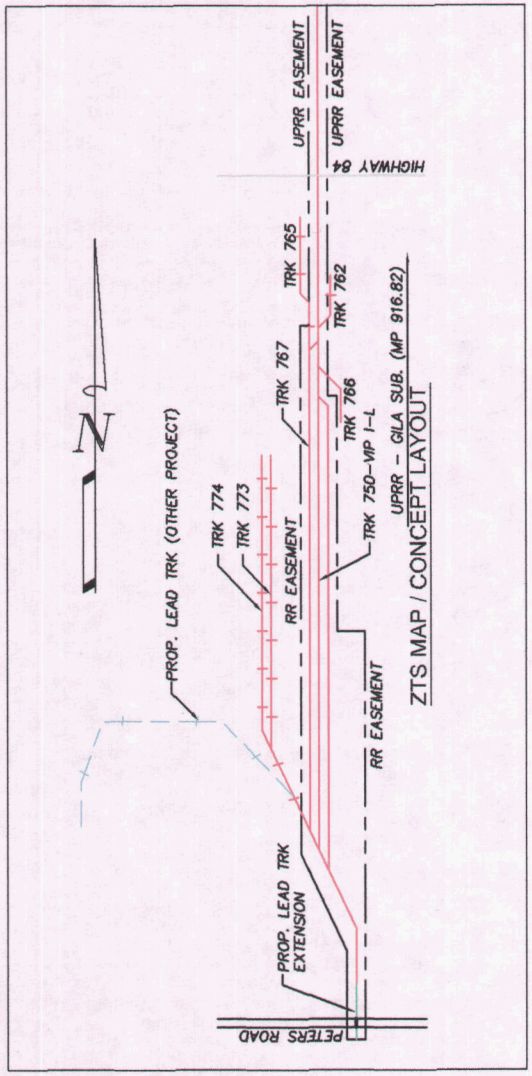
24. FORCE MAJEURE

SPSR shall have no obligation to operate over any portion of the premises as to which it is prevented or hindered from operating by Acts of God, public authority, strikes, riots, labor disputes, orders of the STB, or any cause beyond its control; PROVIDED, HOWEVER, SPSR shall use its best efforts to take whatever action is necessary or appropriate to be able to resume operations. In the event of damage or destruction caused by an Act of God, SPSR shall commence repairs at its own expense within 30 days of the occurrence causing same and shall pursue such repairs with reasonable diligence. Where the premises is substantially destroyed by Force Majeure but SPSR can economically and feasibly make repairs to restore the premises and service over it, SPSR shall initiate efforts to obtain federal, state, local, or private funding, including insurance proceeds, to restore the premises and service over it and shall make such repairs as expeditiously as possible.

IN WITNESS WHEREOF, the parties hereto have set their hands and seal the day and year written on page one of this Agreement.

San Pedro Railroad Operating Company, LLC	Central Arizona Commerce Park, LLC
NAME SCOTT L. PARKINSON	NAME JACOB ANDERSEN
TITLE GENERAL MANAGER	TITLE MANAGING PARTNER





10% Design

REVISION #	BY	DATE	DESCRIPTION

MOUNTAIN STATES CONTRACTING
6813 W. Frier Drive
Glendale, AZ 85303
p: (800) 827-0743
f: (623) 842-0944

FIBER OPTIC CABLE! CALL BEFORE YOU DIG 1-800-336-9193

300' 0 300' 600'
SCALE: 1" = 300'

LEGEND:
- Existing Railroad Owned Trackage
- Existing Industry Owned Trackage
- Prop. Industrial Park Owned/ UP-Industry Switched Trackage
- Other Project Trackage
- Fence

DRAWN BY: MEP
CHECK'D BY: MEP
DATE: January 5, 2010
SHEET NUMBER:
001 OF 002

For Use In Agreemet With: **UNION PACIFIC RAILROAD**
And *Central AZ Commerce Park*
Tucson Service Unit
Milepost 916.82, Gila Subdivision
Casa Grande, Maricopa Co., AZ
TRACKAGE TO SERVE: *Central AZ Commerce Park*

10

SOUTHWEST TRAFFIC ENGINEERING, LLC

TECHNICAL MEMORANDUM

INDUSTRIAL AREA IMPROVEMENT DISTRICT RAIL CROSSING REVIEW

CASA GRANDE, ARIZONA

29 MARCH 2010

Registered Professional Engineer (Civil)
CERTIFICATE NO.
42636
CHRISTOPHER
B. WILLIAMS
Date Signed 3-29-10
ARIZONA, U.S.A.

Expires 6-30-11

PREPARED FOR

JAAG
7865 SOUTH STEPHANIE LANE, #100
TEMPE, ARIZONA 85284

SOUTHWEST TRAFFIC ENGINEERING, LLC
3838 NORTH CENTRAL AVENUE, SUITE 1810
PHOENIX, AZ 85012
T 602.266.SWTE (7983) F 602.266.1115

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TECHNICAL MEMORANDUM
INDUSTRIAL AREA IMPROVEMENT DISTRICT
RAIL CROSSING REVIEW

Project Description

The Industrial Area Improvement District (IAID) is an area proposed for industrial development near the northeast corner of Burris Road/Peters Road in Casa Grande, Arizona. The vicinity of the project is shown in **Figure 1**. The improvement district site is located as shown in **Figure 2**. The project would consist of industrial development spread over the approximately 1,280 acres as shown in **Figure 2**. Access to the IAID site will be from the existing roadway network including State Route 84 (SR 84), Peters Road, Selma Highway, Burris Road and Thornton Road. The first expected development within the IAID is the CAZCP site which is ±121 acres located on the north side of Peters Road, approximately 600 feet east of Burris Road.

The purpose of this technical memorandum is to review the proposed new rail crossing of Peters Road between Thornton Road and Burris Road.

Traffic volume projections used in this memorandum were generated in the *Industrial Area Improvement District Traffic Impact Analysis* completed on March 29, 2010.

Rail Crossing Review

A part of the project includes a proposed "at-grade" new rail crossing of Peters Road located approximately one-half mile west of Thornton Road. This crossing will have a post-mounted flashing-light signal along with an automatic gate assembly and will serve only the Industrial Area Improvement District. Approximately two trains are projected to traverse this location on a daily basis according to preliminary estimates of the site developers and their experience with similar sites. With two trains crossing a day a 'conservative' estimate is that one of these crossings could occur during the peak hour of street traffic on Peters Road.

The key element of this technical memorandum is to determine the projected queue at the proposed rail crossing of Peters Road and examine its impact on the local street network.

Peters Road Queue

For eastbound and westbound traffic on Peters Road, a calculation can be made to check the queues that may be expected when a train is crossing the roadway. In a typical hour one train could be expected to cross Peters Road assuming that the two train crossings have some distribution throughout the workday. If the peak hour traffic was also distributed throughout the hour then a simple calculation can be made to determine the maximum queue length for both the eastbound and westbound directions using the full project buildout traffic generated in the *Industrial Area Improvement District Traffic Impact Analysis* dated March 29, 2010.

Figure 1 – Vicinity Map

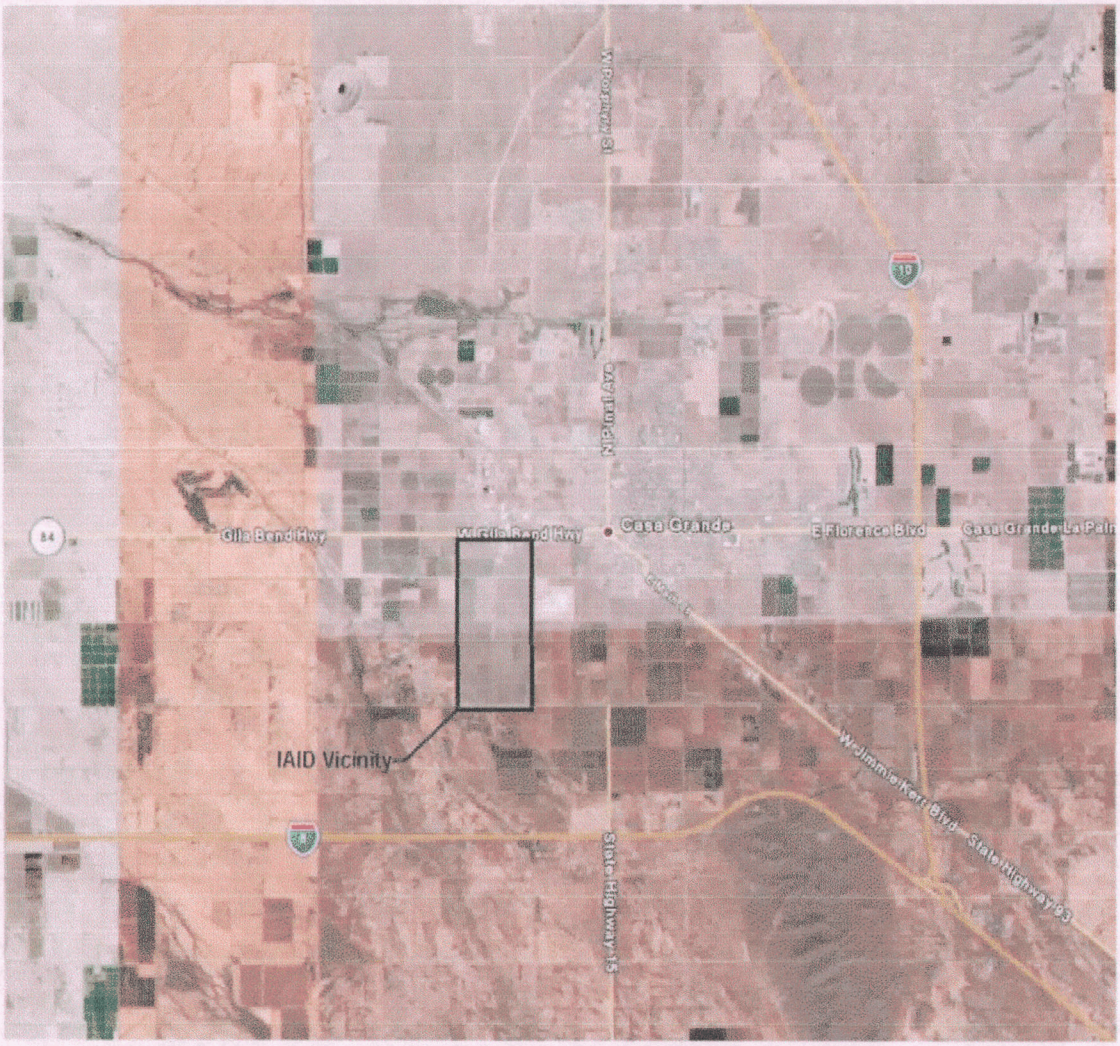
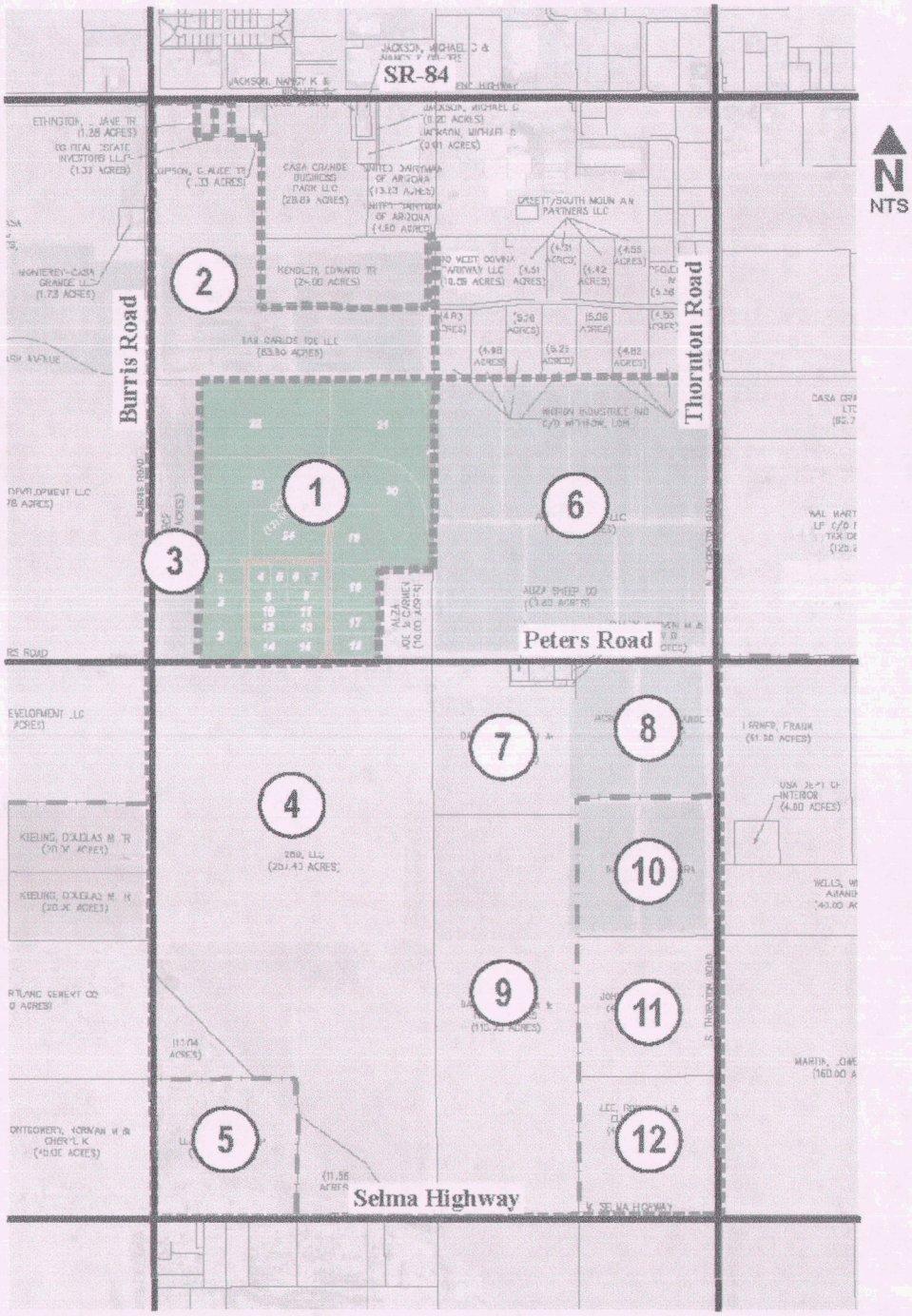


Figure 2 – Site Plan



Legend

(X) = Traffic Analysis Zone

Peters Road Traffic Volumes - Area Buildout 2030

(693 WB vehicles per hour) / (60 minutes) =	11.55 vehicles per minute
(610 EB vehicles per hour) / (60 minutes) =	10.17 vehicles per minute

Assume an average 7 minute maximum down-gate time for the train:

Arizona Corporation Commission Regulations state, "...no railroad shall cause a public grade crossing to be blocked by railroad equipment in excess of 10 continuous minutes."

WB: Total queue = (7 minutes) x (11.55 vehicles per minute) = 81 vehicles in queue
EB: Total queue = (7 minutes) x (10.17 vehicles per minute) = 72 vehicles in queue

WB: Total Queue Length = (81 vehicles) x (25-foot per vehicle) = 2,025 feet
Queue at gate = (2,025 feet) / (2 lanes) = 1,013 feet

EB: Total Queue Length = (72 vehicles) x (25-foot per vehicle) = 1,800 feet
Queue at gate = (1,800 feet) / (2 lanes) = 900 feet

The total available space for this queue is approximately 2,600 feet before a significant impact is felt at either Thornton Road or Burris Road. This analysis is a 'worst case' scenario considering that only two rail crossings are expected per day and buildout conditions.

Using the same methodology for current traffic volumes:

Peters Road Existing Traffic Volumes

(46 WB vehicles per hour) / (60 minutes) =	0.77 vehicles per minute
(55 EB vehicles per hour) / (60 minutes) =	0.92 vehicles per minute

WB: Total queue = (7 minutes) x (0.77 vehicles per minute) = 6 vehicles in queue
EB: Total queue = (7 minutes) x (0.92 vehicles per minute) = 7 vehicles in queue

WB: Total Queue Length = (6 vehicles) x (25-foot per vehicle) = 150 feet
Queue at gate = (150 feet) / (2 lanes) = 75 feet

EB: Total Queue Length = (7 vehicles) x (25-foot per vehicle) = 175 feet
Queue at gate = (175 feet) / (2 lanes) = 88 feet

Conclusion

Considering the low traffic volumes on Peters Road and the low number of projected trains on the proposed private rail line, traffic operations are expected to experience a minimal delay from the new rail crossing in the near term.

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