

When Recorded, Return To:

City Clerk  
City of Maricopa  
P. O. Box 610  
45145 W. Madison Avenue  
Maricopa, Arizona 85239

### DRAINAGE EASEMENT AGREEMENT

THIS DRAINAGE EASEMENT AGREEMENT (this "Agreement") is made as of this 17<sup>th</sup> day of April, 2012 by and between Capstone Resdev I, LLC, a Delaware limited liability company ("Grantor"), and the City of Maricopa, an Arizona municipal corporation ("Grantee"). Grantor and Grantee are collectively referred to herein as the "Parties" and individually as a "Party".

#### RECITALS:

A. WHEREAS, Grantor is the owner of certain real property located in the City of Maricopa ("City") and legally described on Exhibit A attached hereto ("Easement Area").

B. WHEREAS, on the terms and conditions set forth below, Grantor is willing to grant to Grantee an easement for the purpose ("Easement Purpose") of constructing, using, maintaining, operating, altering, repairing, replacing, reconstructing, inspecting and removing, at anytime and from time to time, certain drainage facilities generally consisting of a concrete-lined channel (the "Drainage Facilities") within the Easement Area.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

#### AGREEMENT:

1. Grant of Easement. Grantor hereby grants and conveys to Grantee, and its agents, employees, contractors, and subcontractors, a permanent, non-exclusive perpetual easement in gross (the "Drainage Easement") in, on, over, under, and across the Easement Area for the Easement Purpose.

2. Obstructions and Landscaping. Grantee may, from time to time, remove trees, bushes or other obstructions within the Easement Area to the extent reasonably necessary to carry out the purposes set forth herein.

3. Grantor's Use of Easement. Grantor shall not install, maintain or construct, or permit others to install, maintain or construct, any building, structure, or other facility on the Easement Area, nor shall Grantor alter, or permit others to alter, the ground level within the limits of the Easement Area in such a manner that would prohibit or materially interfere with the exercise of the rights granted herein. Grantor shall be entitled to construct roadway crossings,

including box culverts, over the Easement Area provided that such roadway improvements comply with all applicable laws and do not prohibit or materially interfere with the exercise of the rights granted herein. Grantor, however, retains the right to use the Easement Area for all uses which do not prohibit or materially interfere with the rights granted in this Agreement.

4. Indemnity. By accepting and recording this Easement, Grantee agrees to indemnify, defend and hold harmless Grantor, its successors, successors-in-title and assigns, for, from and against any and all claims, demands, liabilities, losses, damages, liens, costs and expenses (including reasonable attorneys' fees and costs) which may be claimed or asserted against Grantor, its successors, successors-in-title, or assigns, or the Easement Area, on account of or arising out of Grantee's exercise of the rights granted herein, provided that Grantee shall not be responsible for any claims arising from the gross negligence or intentional conduct of Grantor, its employees or agents. Grantee shall have no responsibility for pre-existing environmental contamination or liabilities. Such indemnity from the Grantee shall terminate upon termination of this Agreement, but it is expressly understood that such indemnity shall continue in full force and effect and be applicable to any and all acts which occurred before such termination.

5. Maintenance. Grantee, at its sole cost and expense, shall be responsible to cause or provide for the maintenance of the Drainage Facilities and Grantee shall maintain all such improvements in good condition and state of repair, free from trash and debris and in compliance with all applicable laws. If the Drainage Facilities are damaged or destroyed, Grantee shall, at its sole cost and expense, restore, repair and rebuild such damaged or destroyed Drainage Facilities to the same general condition as existed immediately prior to such damage or destruction, all in accordance with the requirements of applicable law. In the event Grantee fails to maintain and repair the Drainage Facilities, Grantor shall have the right, but not the obligation, after providing thirty (30) days prior written notice to Grantee, to enter upon the Easement Area and perform such maintenance and repairs. All costs and expenses incurred by Grantor in maintaining or repairing such improvements shall be immediately due and payable by Grantee to Grantor. If Grantor performs or causes to be performed maintenance and/or repairs to the Drainage Facilities pursuant to this Section 5, Grantor shall be liable for all liabilities, losses and damages on account of or arising out of the maintenance and/or repairs performed by or on behalf of Grantor.

6. Term. This Easement and the easement, covenants and conditions and restrictions contained herein shall be perpetual unless otherwise cancelled or terminated by an agreement in writing signed by both Grantor and Grantee or their successor and assigns.

7. Covenants to Run With Land. Each of the easements, covenants, conditions, limitations or restrictions set forth herein are intended to create mutual benefits and burdens upon the Easement Area and to run with the land to the fullest extent provided by law, and shall be binding upon and insure to the benefit of the parties hereto, and their respective successors, assigns, licensees, contractors and agents.

8. Governing Law and Venue. The laws of the State of Arizona shall be governing the interpretation, validity, performance and enforcement of this Agreement. Any action at law or in equity brought by either party for the purpose of enforcing a right or rights provided for in

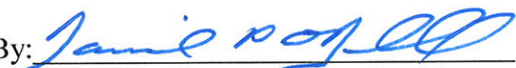
this Easement shall be brought in Pinal County Superior Court. The parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county or state.

[Balance of Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first set forth above.

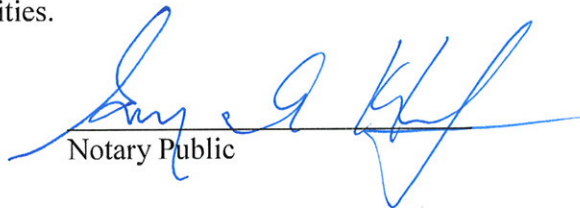
**GRANTOR:**

Capstone Resdev I, LLC,  
a Delaware limited liability company

By:   
Daniel P. O'Donnell, Vice President

STATE OF Ohio )  
) ss.  
County of Montgomery )

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of October, 2011, by Daniel P. O'Donnell, the Vice President of Capstone Resdev I, LLC, a Delaware limited liability company, for and on behalf of such entities.

  
Notary Public



Notary Seal/Stamp  
SUZANNE A. HATFIELD, Notary Public  
In and for the State of Ohio  
My Commission Expires June 3, 2012

**GRANTEE:**

CITY OF MARICOPA, a municipal corporation of the State of Arizona

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_ 2011, by \_\_\_\_\_, the \_\_\_\_\_ of the City of Maricopa, a municipal corporation of the State of Arizona, for and on behalf of the corporation.

\_\_\_\_\_  
Notary Seal/Stamp

\_\_\_\_\_  
Notary Public

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**  
**DRAINAGE CHANNEL EASEMENT**  
**DEDICATION**

A PORTION OF LAND LOCATED IN SECTION 35, TOWNSHIP 4 SOUTH, RANGE 3 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, PINAL COUNTY ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCING** AT THE EAST QUARTER CORNER OF SECTION 35 FROM WHICH THE SOUTHEAST CORNER OF SECTION 35 BEARS SOUTH 00° 40' 33" WEST, A DISTANCE OF 2,679.15 FEET;

**THENCE** SOUTH 00° 40' 33" WEST, A DISTANCE OF 364.04 FEET TO A POINT ALONG THE SOUTH LINE OF A 150 FOOT HIGHWAY EASEMENT AS RECORDED IN DOCKET 103, PAGE 373 P.C.R.;

**THENCE** NORTH 53° 49' 33" WEST ALONG SAID EASEMENT LINE, A DISTANCE OF 3021.00 FEET;

**THENCE** NORTH 36° 10' 26" EAST DEPARTING SAID SOUTH EASEMENT LINE, A DISTANCE OF 150.04 FEET TO THE NORTH LINE OF SAID EASEMENT AND TO THE **POINT OF BEGINNING** OF THE EASEMENT DESCRIBED HEREIN;

**THENCE** NORTH 53° 49' 40" WEST ALONG THE NORTH LINE OF SAID EASEMENT, A DISTANCE OF 1018.86 FEET.

**THENCE** NORTH 35° 23' 37" EAST, A DISTANCE OF 24.15 FEET;

**THENCE** SOUTH 54° 25' 48" EAST, A DISTANCE OF 192.48 FEET;

**THENCE** SOUTH 52° 44' 10" EAST, A DISTANCE OF 78.53 FEET;

**THENCE** SOUTH 57° 14' 32" EAST, A DISTANCE OF 64.24 FEET;

**THENCE** SOUTH 57° 14' 20" EAST, A DISTANCE OF 114.97 FEET;

**THENCE** NORTH 46° 28' 01" EAST, A DISTANCE OF 22.52 FEET;

**THENCE** SOUTH 56° 14' 56" EAST, A DISTANCE OF 78.09 FEET;

**THENCE** SOUTH 53° 41' 05" EAST, A DISTANCE OF 46.48 FEET;

**THENCE** SOUTH 57° 31' 06" EAST, A DISTANCE OF 23.13 FEET;



**THENCE SOUTH 63° 14' 18" EAST, A DISTANCE OF 19.24 FEET;**

**THENCE SOUTH 54° 13' 37" EAST, A DISTANCE OF 63.64 FEET;**

**THENCE SOUTH 63° 05' 18" EAST, A DISTANCE OF 10.98 FEET;**

**THENCE SOUTH 53° 27' 49" EAST, A DISTANCE OF 134.87 FEET;**

**THENCE SOUTH 51° 44' 41" EAST, A DISTANCE OF 26.65 FEET;**

**THENCE SOUTH 60° 10' 03" EAST, A DISTANCE OF 9.38 FEET;**

**THENCE SOUTH 62° 11' 22" EAST, A DISTANCE OF 155.96 FEET;**

**THENCE SOUTH 53° 49' 43" EAST, A DISTANCE OF 32.08 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF STONEGATE ROAD, SAID POINT ON A CURVE CONCAVE NORTHWESTERLY, AND HAVING A RADIUS OF 1460.00 FEET AND A RADIAL BEARING OF NORTH 54° 16' 24" WEST;**

**THENCE ALONG THE ARC OF SAID CURVE AND SAID WEST RIGHT-OF-WAY LINE, THROUGH A CENTRAL ANGLE OF 00° 23' 05", A DISTANCE OF 9.81 FEET;**

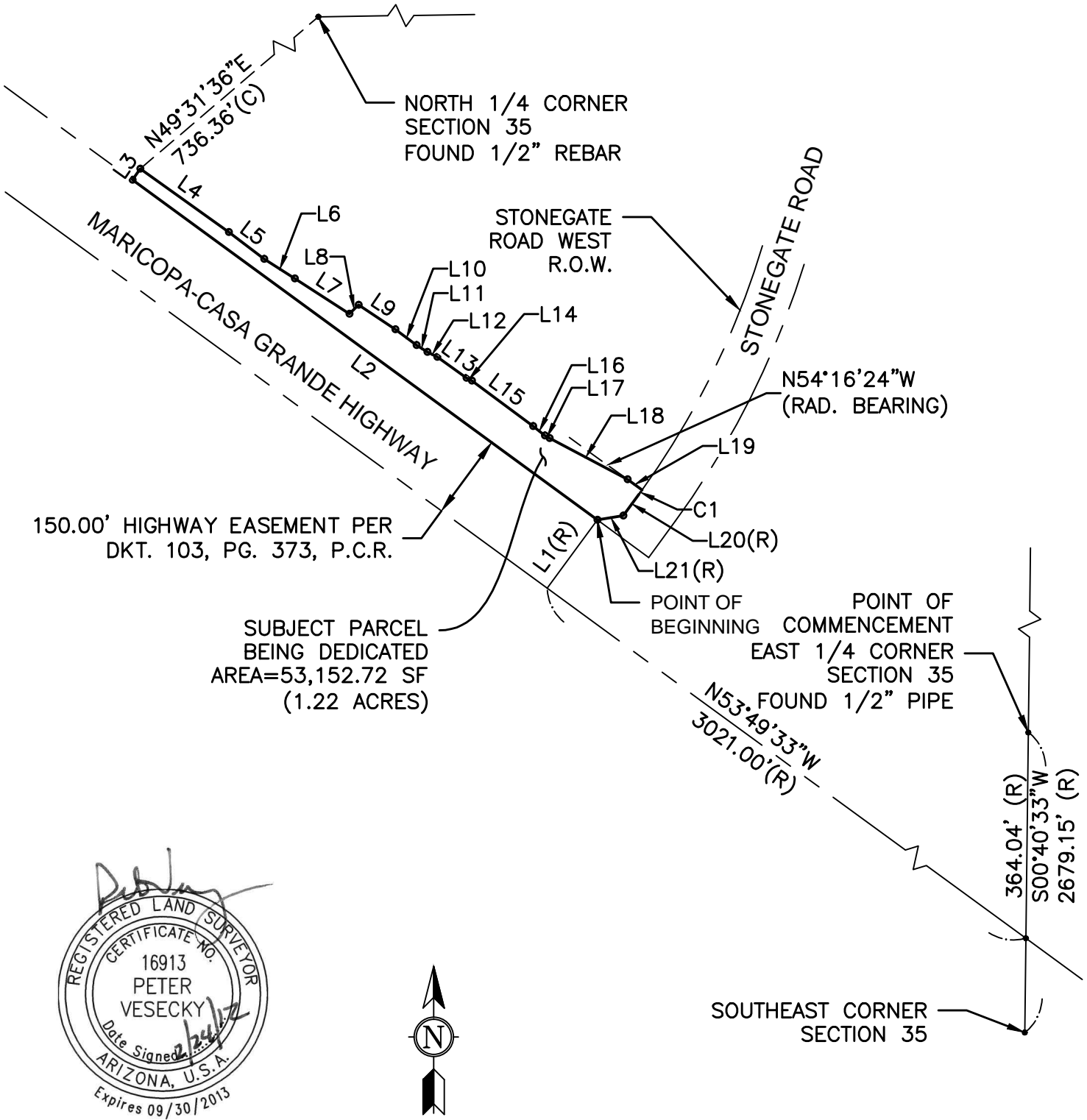
**THENCE SOUTH 36° 10' 17" WEST, CONTINUING ALONG SAID WEST RIGHT-OF-WAY LINE, A DISTANCE OF 46.61 FEET;**

**THENCE SOUTH 81° 10' 21" WEST, CONTINUING ALONG SAID WEST RIGHT-OF-WAY LINE, A DISTANCE OF 46.67 FEET TO THE **POINT OF BEGINNING** OF THE EASEMENT DESCRIBED HEREIN;**

**CONTAINS 53,152.72 FEET OR 1.22 ACRES MORE OR LESS.**



EXHIBIT "B"  
DRAINAGE CHANNEL EASEMENT  
DEDICATION





**EXHIBIT "B"**  
**DRAINAGE CHANNEL EASEMENT**  
**DEDICATION**

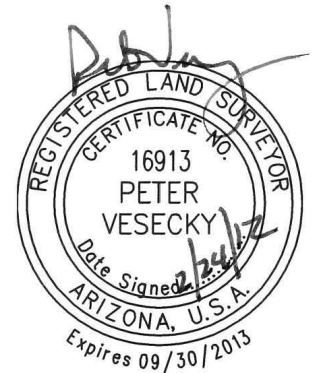
LINE TABLE (CALCULATED)		
LINE	LENGTH (FEET)	BEARING
L1	150.04	N36°10'26"E
L2	1018.86	N53°49'40"W
L3	24.15	N35°23'37"E
L4	192.48	S54°25'48"E
L5	78.53	S52°44'10"E
L6	64.24	S57°14'32"E
L7	114.97	S57°14'20"E

LINE TABLE (CALCULATED)		
LINE	LENGTH (FEET)	BEARING
L8	22.52	N46°28'01"E
L9	78.09	S56°14'56"E
L10	46.48	S53°41'05"E
L11	23.13	S57°31'06"E
L12	19.24	S63°14'18"E
L13	63.64	S54°13'37"E
L14	10.98	S63°05'18"E

LINE TABLE (CALCULATED)		
LINE	LENGTH (FEET)	BEARING
L15	134.87	S53°27'49"E
L16	26.65	S51°44'41"E
L17	9.38	S60°10'03"E
L18	155.96	S62°11'22"E
L19	32.08	S53°49'43"E
L20	46.61	S36°10'17"W
L21	46.67	S81°10'21"W

CURVE TABLE (CALCULATED)					
CURVE #	LENGTH (FEET)	RADIUS (FEET)	DELTA	TANGENT (FEET)	CHORD
C1	9.81	1460.00	000°23'05"	4.90	S35°55'08"W

(R) - RECORDED (CABINET H, SLIDE 053 P.C.R.)  
(C) - CALCULATED  
P.C.R. - PINAL COUNTY RECORDS  
RAD. - RADIAL



## CLOSURE

### DRAINAGE CHANNEL EASEMENT DEDICATION

Precision, 1 part in: 723106.915'  
Error distance: 0.003'  
Error direction: N36° 26' 16.94"E  
Area: 53152.72 Sq. Ft.

**Side 7: Line**  
Direction: N46° 28' 01.00"E  
Distance: 22.520'  
Easting: 17223.3904'  
Northing: 11920.3023'

**Point of Beginning**

Easting: 17645.7790'  
Northing: 11540.2465'

**Side 8: Line**  
Direction: S56° 14' 56.00"E  
Distance: 78.090'  
Easting: 17288.3190'  
Northing: 11876.9166'

**Side 1: Line**

Direction: N53° 49' 40.00"W  
Distance: 1018.860'  
Easting: 16823.3078'  
Northing: 12141.5923'

**Side 9: Line**  
Direction: S53° 41' 05.00"E  
Distance: 46.480'  
Easting: 17325.7712'  
Northing: 11849.3898'

**Side 2: Line**

Direction: N35° 23' 37.00"E  
Distance: 24.150'  
Easting: 16837.2953'  
Northing: 12161.2792'

**Side 10: Line**  
Direction: S57° 31' 06.00"E  
Distance: 23.130'  
Easting: 17345.2828'  
Northing: 11836.9683'

**Side 3: Line**

Direction: S54° 25' 48.00"E  
Distance: 192.480'  
Easting: 16993.8595'  
Northing: 12049.3142'

**Side 11: Line**  
Direction: S63° 14' 18.00"E  
Distance: 19.240'  
Easting: 17362.4620'  
Northing: 11828.3049'

**Side 4: Line**

Direction: S52° 44' 10.00"E  
Distance: 78.530'  
Easting: 17056.3581'  
Northing: 12001.7653'

**Side 12: Line**  
Direction: S54° 13' 37.00"E  
Distance: 63.640'  
Easting: 17414.0956'  
Northing: 11791.1025'

**Side 5: Line**

Direction: S57° 14' 32.00"E  
Distance: 64.240'  
Easting: 17110.3817'  
Northing: 11967.0057'

**Side 13: Line**  
Direction: S63° 05' 18.00"E  
Distance: 10.980'  
Easting: 17423.8865'  
Northing: 11786.1328'

**Side 6: Line**

Direction: S57° 14' 20.00"E  
Distance: 114.970'  
Easting: 17207.0639'  
Northing: 11904.7912'

**Side 14: Line**

Direction: S53° 27' 49.00"E  
 Distance: 134.870'  
 Easting: 17532.2517'  
 Northing: 11705.8402'

**Side 21: Line**

Direction: S81° 10' 21.00"W  
 Distance: 46.670'  
 Easting: 17645.7809'  
 Northing: 11540.2490'

**Side 15: Line**

Direction: S51° 44' 41.00"E  
 Distance: 26.650'  
 Easting: 17553.1789'  
 Northing: 11689.3394'

**Side 16: Line**

Direction: S60° 10' 03.00"E  
 Distance: 9.380'  
 Easting: 17561.3159'  
 Northing: 11684.6732'

**Side 17: Line**

Direction: S62° 11' 22.00"E  
 Distance: 155.960'  
 Easting: 17699.2617'  
 Northing: 11611.9101'

**Side 18: Line**

Direction: S53° 49' 43.00"E  
 Distance: 32.080'  
 Easting: 17725.1585'  
 Northing: 11592.9764'

**Side 19: Curve**

Curve direction: Clockwise  
 Radius: 1460.000'  
 Arc length: 9.810'  
 Delta angle: 0.3847 (d)  
 Tangent: 4.900'  
 Chord direction: S35° 55' 08.00"W  
 Chord angle: [-90.2525 (d)]  
 Deflection angle: [89.7475 (d)]  
 Chord distance: [9.803']  
 Easting: 17719.4074'  
 Northing: 11585.0371'

**Side 20: Line**

Direction: S36° 10' 17.00"W  
 Distance: 46.610'  
 Easting: 17691.8981'  
 Northing: 11547.4110'