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TEMPE CITY ATTORNEY'S OFFICE
P.O. Box 5002
Tempe, AZ 85280
Attention: C. Brad Woodford

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97-0432440 06/26/97 01:44

MESA2 9 OF 27

CONSTRUCTION AND MAINTENANCE EASEMENT
AND AGREEMENT TO PURCHASE
Rio Salado Lake Improvements

C97-93

BY THIS CONSTRUCTION AND MAINTENANCE EASEMENT AND AGREEMENT TO PURCHASE ("Easement") entered into on the 18th day of June, 1997, the ARIZONA BOARD OF REGENTS ("ABOR") for and on behalf of ARIZONA STATE UNIVERSITY ("ASU"), and the CITY OF TEMPE, a municipality incorporated under the laws of the State of Arizona ("City"), agree as follows:

R E C I T A L S:

A. ASU owns certain real property located in Tempe, Arizona, that is in and adjacent to the Salt River Channel.

B. City intends to construct and maintain a lake to be known as Rio Salado Lake ("Lake") within the Salt River Channel as it traverses real property owned by ASU which is subject to that certain Construction and Maintenance Easement recorded in the official records of the Maricopa County Recorder's Office at No. 90-555427.

C. This Easement grants to the City certain limited rights in connection with construction of the improvements needed for the Lake and the right to inundate the property of ASU and to maintain or operate the Lake on the property of ASU, all subject to the terms herein. The Easement is not and shall not be interpreted or

construed as (i) agreement or consent by ASU to the assessment of or imposition of any other charge or fee on any property owned by ASU or any developer, on any lessee or other user of any property owned by ASU, or (ii) the grant of any other rights relating to the Rio Salado Lake and related improvements.

D. City desires to install upon ASU property adjacent the Salt River Channel (the "ASU Adjacent Property"), certain wells and pipelines to be used in the operation of the Rio Salado Lake. ASU is desirous of the construction of Rio Salado Lake by City to the benefit of both parties.

E. ASU is entering into this Easement in reliance upon the approval of the Proposed New Finance Plan for Lake Development of April 30, 1997, adopted by the Board of the Rio Salado Community Facilities District on May 1, 1997.

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

AGREEMENT

1. Construction Easement. ASU hereby grants to City an easement over that property located in Maricopa County, Arizona, which is more particularly described on the attached Exhibits ("ASU Property"):

Channel Ownership by ASU	Exhibits A-1 (legal), A-1-S (schematic)
Interceptor Area	Exhibits A-2 (legal), A-2-S (schematic)
Recovery Well No. 10	Exhibits A-3-C(legal), A-3-S (schematic)

Recovery Well No. 9	Exhibits A-4-C (legal), A-4-S (schematic)
Recovery Well No. 1	Exhibits A-5-C (legal), A-5-S (schematic)
Recovery Well No. 8	Exhibits A-6-C (legal), A-6-S (schematic)

for the purpose of constructing, at City's sole expense, wells, pipelines, and other improvements to accommodate the operation of the Rio Salado Lake in accordance with those plans and specifications on file with the City of Tempe Engineering Department known as Rio Salado Town Lake Project 90% Plans No. 946523-A, C, and D (together with such modifications thereof as are approved by ASU as provided in Paragraph 2, the "Plans") (The improvements described in the Plans are referred to herein as the "Rio Salado Lake Improvements", and the date the construction of such improvements commences is referred to herein as the "Commencement Date").

City shall have the right to permit independent contractors to perform the construction work described in this section, provided that City shall remain fully liable for the actions and inactions of such contractors. City shall have no right to construct or install any improvements on the ASU Property other than those indicated in the Plans. Anything in this Easement to the contrary notwithstanding, the only improvements that City may construct on the ASU Property outside the Salt River Flood Control Maintenance Easement (shown in Exhibit A-1-S) are the wells, the pipelines from the wells to the Salt River and the storm drain interceptor within the maintenance easement areas described in Exhibits A-2, A-3, A-4, A-5, and A-6 ("Wells/Pipelines/Interceptor Improvements").

Anything in the Plans to the contrary notwithstanding, (i) each well shall be constructed entirely within the area specified in the exhibits to this Easement for the respective maintenance easement and shall be located at or as close to the Salt River side boundary line of the maintenance easement as possible and as close to the middle of that boundary line as possible, and (ii) the pipelines shall follow as direct a line as possible from the wells to the Salt River riverbed and in any event shall not cross any boundary of the maintenance easements other than the Salt River side boundary. In exercising its easement rights for construction on said areas, City shall not unreasonably interfere with ASU's use of the construction areas and this easement shall terminate immediately upon completion of the Rio Salado Lake Improvements, and City shall execute, deliver and record any documents required by ASU evidencing such termination.

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2. Standards. The construction of the Rio Salado Lake Improvements by City shall be performed in a good and workmanlike manner, in compliance with all applicable laws, regulations and codes (including all required licenses and permits), and in accordance with the Plans. City shall have no right to amend or alter the Plans (including, without limitation, location, site, elevation, landscape, or other approved physical plan) without the prior written consent of ASU, which shall not be unreasonably withheld. City shall obtain in its own name and at its sole cost and expense any and all licenses, permits and approvals required to construct or maintain the Rio Salado Lake Improvements and to operate the Rio Salado Lake and shall provide ASU with copies of

all such permits, licenses and approvals. If any license, permit or approval or any condition or stipulation thereto could potentially negatively impact ASU, ASU shall have the prior right to approve such license, permit, approval, condition or stipulation. Notwithstanding any approval by ASU, City shall be solely responsible for the performance of all obligations under all licenses, permits, approvals, conditions and stipulations and ASU shall have no obligations under any licenses, permits, approvals, conditions or stipulations whatsoever. The construction of the Rio Salado Lake Improvements and the operation of the Rio Salado Lake shall be performed in a manner that will not damage the ASU Adjacent Property or the value or the ability to develop the ASU Adjacent Property. In addition to causing compliance with all laws, regulation and codes, City shall make every effort to cause the construction of the Rio Salado Lake Improvements to the maximum extent possible to be pursued to completion diligently and in an aesthetically pleasant and unobtrusive manner.

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The City shall also cause the relocation of the traffic control box located at the Southeast corner of Rural Road and Rio Salado Parkway to a location acceptable to ASU and the City. All construction activities of the City or its contractors relating to such relocation shall conform to the requirements set forth in this easement relating to construction of the Rio Salado Lake Improvements.

3. Maintenance Easement. ASU hereby grants to City an easement over that property located in Maricopa County, Arizona, which is more particularly described on the attached Exhibits

("Maintenance Easements Property"):

Southbank Interceptor	Exhibits A-2-M (legal), A-2-CM (schematic)
Recovery Well No. 10	Exhibits A-3-M (legal), A-3-CM (schematic)
Recovery Well No. 9	Exhibits A-4-M (legal), A-4-CM (schematic)
Recovery Well No. 1	Exhibits A-5-M (legal), A-5-CM (schematic)
Recovery Well No. 8	Exhibits A-6-M (legal), A-6-CM (schematic)

for the purpose of maintenance, at City's sole expense, the wells, pipelines and other improvements constructed thereon pursuant to this Easement to accommodate the operation of the Rio Salado Lake. In exercising its easement rights for maintenance, City shall not unreasonably interfere with ASU's use of the areas for purposes not inconsistent with the ^{Unofficial Document} maintenance of the Wells/Pipelines/Interceptor Improvements installed by City.

4. Lake Easement. ASU hereby grants to City an exclusive easement over the portion of the ASU Property (i) that is located north of the south shore control line and south of the north shore control line as such lines are shown in Schedule C of the Plans and (ii) that is a portion of the property described in Exhibit A-1 ("ASU Lakebed Property") (Note that the area of this easement is not shown in the exhibits hereto) for the purposes of creation and maintenance of the Rio Salado Lake, including the inundation of the ASU Lakebed Property. City shall obtain prior written approval from ASU before constructing or installing any improvements on the ASU Lakebed Property other than as shown on the Plans.

City acknowledges that, due to its continuing nature, the

easement in this Section 4 has value to the City. Accordingly, the City agrees that promptly after written request by ASU and approval of the sale by the Arizona Board of Regents (ABOR"), but in any event no more than sixty (60) days after such ASU request and ABOR approval, the City will purchase from ASU, the ASU Lakebed Property at Five Hundred Dollars (\$500.00) per acre. The conveyance to City shall be by special warranty deed in form and substance determined by ASU, which deed, among other provisions, will contain a disclaimer as to condition of the ASU Lakebed Property.

The grant in this Section 4 does not include management and control over activities conducted in, upon or above the Rio Salado Lake over the ASU Lakebed Property after completion of the Rio Salado Lake, which is the subject of separate negotiations between the City and ASU. The separate negotiations relate to access and use rights by ASU to the Rio Salado Lake, not just the portion of the Rio Salado Lake on the ASU Lakebed Property. If the City and ASU reach a mutually satisfactory agreement on access and use before consummation of the purchase and sale of the ASU Lakebed Property described above, at the request of ASU such agreement will be included in the deed for such purchase and sale or in another agreement between ASU and the City.

Each party represents and warrants to the other that it has not engaged or dealt with any broker or any other person who would be entitled to any brokerage commission concerning the sale of the ASU Lakebed Property. To the extent permitted by law, each party agrees to indemnify and hold the other entirely free and harmless for, from, and against any loss, damage, liability, or expense

(including, without limitation, attorney fees) arising from any claim by any broker or any other person for brokerage commissions because of any act or omission of such party or its representatives. To the extent permitted by law, each party further agrees to defend the other at its sole cost and expense from any such claims. Notwithstanding any other provisions of this Easement to the contrary, City acknowledges and agrees that ASU makes no representations or warranties, express or implied, including, without limitation, any warranties of habitability, good and workmanlike construction, suitability and fitness for intended purpose, with respect to any aspect of the ASU Property. City is purchasing the ASU Lakebed Property with all faults and defects, apparent and otherwise, and strictly in an "AS IS" condition. Except as set forth in Section 11 of this Easement, City accepts and agrees to bear all ^{Unofficial Document} risks regarding all attributes and conditions, latent or otherwise of the Property. City has made or will make prior to the closing of the sale of the ASU Lakebed Property, its own inspection and investigation of the ASU Lakebed Property and surrounding area, including, without limitation, its subsurface, soil, engineering and other conditions and requirements, whether there are any eminent domain or other public or quasi-public takings of the ASU Lakebed Property and to the present use or occupancy of the ASU Lakebed Property. City is entering into this Easement and purchasing the ASU Lakebed Property based upon its own inspection and investigation and not in reliance on any statement, representation, inducement or agreement of ASU. City agrees that neither ASU nor anyone acting on behalf of ASU has

made any representation, guarantee or warranty whatsoever, either written or oral, concerning, the ASU Property except as specifically set forth herein.

5. Prior Rights. City acknowledges that the easement and other rights granted herein are subject to all existing rights and reservations of third parties affecting the easement areas that appear in the Maricopa County records or the Arizona Secretary of State files, that would be disclosed by an inspection or survey of said property or that have been disclosed to City by ASU. City shall have no right to engage in or permit any act that would be contrary to or inconsistent with any such rights or reservations of third parties. City agrees that it will not engage in or permit any acts or omissions by any of its contractors, subcontractors, that are contrary to or inconsistent with, or cause ASU to be in breach of, the terms and conditions of any documents granting rights and reservations to third parties in the ASU Property. After the date of this Easement, ASU shall not grant to any other person or entity any rights that are inconsistent with or contrary to the rights granted to City hereunder.

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6. Construction and Maintenance Access Easements. City and ASU agree to negotiate in good faith for an appropriate construction and maintenance access easement for the City (any such easement granted hereafter by ASU is referred to herein as the "Access Easement").

7. Insurance. The City shall procure and shall maintain so long as any Easement granted herein is in effect and shall cause each of its contractors that perform any construction, maintenance,

or other activity on ASU Property or the property covered by the Access Easement during construction of the Rio Salado Lake Improvements or at any time thereafter while any easement granted herein is in effect to obtain and maintain, all at no expense to ASU, at all times:

(a) Comprehensive Commercial General Liability insurance with a minimum combined single limit of not less than Five Million Dollars (\$5,000,000) for each occurrence. The Policy shall contain severability of interests provisions, and shall include coverage for the following:

- (i) Bodily Injury;
- (ii) Broad Form Property Damage (including, without limitation, completed operations);
- (iii) Personal Injury (including, without limitation, coverage for ^{Unofficial Document} contractual and employee acts);
- (iv) In the case of contractors and subcontractors, Blanket Contractual Liability, including, without limitation, coverage applicable to the contractor's or subcontractor's obligations under their agreements with City or the contractor;
- (iv) In the case of contractors and subcontractors, Contractor's and Subcontractor's Protective Liability;
- (v) In the case of contractors and subcontractors, products and completed operations, which shall extend for one year past acceptance,

cancellation, or termination of the services or work under the contractor's or subcontractor's agreements with the City or the contractor;

(vi) Coverage for the hazards commonly referred to as XCU.

(b) Insurance to protect against claims under Workers' or Workmen's Compensation, disability, benefit and other similar employee benefit acts in the amount of the statutory limits and employer's liability in a minimum amount of \$100,000.

(c) Insurance applicable to claims for damages because of bodily injury or death or any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle in a minimum amount of \$1,000,000.

(d) In the case of contractors and subcontractors, Builder's Risk Insurance in an amount ^{Unofficial Document} equal to the full amount of the contractor's or subcontractor's contract with the City or the Contractor.

Each policy shall be issued by an insurance company authorized to do business in the State of Arizona. The foregoing policies shall be endorsed to include the ABOR, ASU, the State of Arizona and the regents, officers, employees, agents, and representatives thereof as additional insureds and shall stipulate that the insurance afforded shall be primary insurance and that any insurance carried by ABOR, ASU, the State of Arizona, or the regents, officers, employees, agents, and representatives thereof shall be excess and not contributory insurance to that provided by City, a contractor or a subcontractor. Certificates of Insurance

satisfactory to ASU shall be delivered to ASU by the City prior to any activity on ASU Property and, by each contractor, at least ten (10) days prior to that contractor doing any construction, maintenance, or other work at any time during the existence of any easement herein and at least ten (10) days prior to the expiration of each such insurance policy. Each certificate shall state that the premiums have been paid in full and shall provide that the coverages described therein will not be cancelled until at least thirty (30) days prior written notice to ASU. In the case of contractors, the certificates shall identify the respective contract.

The contracts of City with contractors shall contain a waiver of recovery and subrogation as to all claims which may arise from actions and inactions under or related to the contracts in favor of ABOR, ASU, the State of ^{Unofficial Document} Arizona and the regents, officers, employees, agents, and representatives thereof. City hereby waives all rights of recovery and subrogation as to all claims which may arise from actions and inactions on or related to the ASU Property or the property covered by the Access Easement in favor of ABOR, ASU, the State of arizona and the regents, officers, employees, agents, and representatives thereof.

8. Bonds. At least ten (10) days prior to the commencement of construction of the Rio Salado Lake Improvements, City shall cause, at no expense to ASU, the entity performing the construction to obtain and record payment and performance bonds that comply with the provisions of A.R.S. §§34-222. City shall cause ASU to be provided with copies of such bonds prior to the commencement of

construction.

9. No Liens. If any lien is filed against the ASU Property or the property covered by the Access Easement, in connection with the construction, operation, or maintenance of the Rio Salado Lake Improvements or the Rio Salado Lake, City shall within thirty (30) days thereafter, at City's expense, cause the lien to be fully discharged by either paying the obligation secured thereby in full or by obtaining and posting a surety bond in accordance with A.R.S. §33-1004. If City fails to fully discharge any such lien within said thirty (30) day period, ASU may (without obligation) pay the claim secured by such lien and any costs, and the amount so paid, together with reasonable attorneys' fees incurred in connection therewith, shall be immediately due and payable from City to ASU. If any claims of lien are filed against the ASU Property or the property covered by the Access Easement, the party receiving notice of such lien shall immediately notify the other party in writing.

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10. Operation, Maintenance and Post Construction Restoration. City shall, at its sole expense, maintain and operate the Rio Salado Lake Improvements, and the Rio Salado Lake, in good condition and repair and obtain and comply with all required licenses and permits and with all applicable laws, regulations and codes at all times. Upon completion of construction of the Rio Salado Lake Improvements, City shall promptly remove any unused construction materials and any construction waste materials or substances and other construction debris, shall restore/repair any damage to the ASU Property and the property covered by the Access Easement, including, without limitation, the surface features

(landscaping, utility lines, asphalt, concrete, etc.) in the construction easement areas to their pre-construction condition and shall generally restore as nearly as practicable the ASU property and the property covered by the Access Easement, to its condition prior to commencement of construction, subject to the rights to maintain certain improvements granted elsewhere in this Easement. In addition, on a continuing basis, the well sites shall be maintained in an aesthetically pleasant manner. If construction of any or all of the Rio Salado Lake Improvements is abandoned, City shall promptly remove all construction materials and all partially or completely constructed improvements from the ASU Property and the property covered by the Access Easement and shall restore/repair any damage to the ASU Property (including, without limitation, landscaping, utility lines, asphalt, and concrete) to its preconstruction condition and shall generally restore as nearly as practicable the ASU Property and the property covered by the Access Easement, to its condition prior to commencement of construction. In addition, if after the Rio Salado Lake Improvements are constructed, any of the Rio Salado Lake Improvements or the Access Easement are abandoned by the City, and City shall remove the improvements and shall restore the ASU Property and the property covered by the Access Easement to its condition prior to commencement of construction or such less costly restored condition as may be reasonably requested by ASU.

In addition, if after the Rio Salado Lake Improvements are constructed, the Rio Salado Lake Improvements are abandoned so that there is no Rio Salado Lake, City shall restore the ASU Lakebed

Property to its condition prior to commencement of construction of the Rio Salado Lake Improvements or to such less costly restored condition as may be reasonably requested by ASU.

11. Environmental Conditions. ASU and City recognize that due to the uncertain and unknown nature of former activities on the ASU Property or the property covered by the Access Easement by third persons, including without limitation the potential past disposal of hazardous substances or other industrial wastes and the proximity of the ASU Property or the property covered by the Access Easement to the federal South Indian Bend Wash Superfund Site, "environmental conditions" may exist or have existed in the past on the ASU Property or the property covered by the Access Easement. For purposes of this Easement the term "environmental conditions" shall mean any condition, whether now existing or occurring hereafter, with respect to ^{Unofficial Document} soil, ambient air, surface waters, groundwaters or other waters of the United States of the State of Arizona on the ASU Property or the property covered by the Access Easement which could require remedial action and/or may result in claims or demands by and/or liabilities to third parties including, without limitation, governmental entities. If at any time after the date of this Easement and during the existence of this Easement, including without limitation during the course of construction, operation, or maintenance of the Rio Salado Lake Improvements or the Rio Salado Lake, City becomes aware of any environmental condition, City shall within 24 hours thereafter notify ASU in writing of such environmental condition and, at the request of ASU, shall cease any construction activity. Upon

receiving such notice, ASU shall be entitled to take whatever actions ASU deems appropriate in order to avoid or minimize any liability of ASU that could arise as a result of the environmental condition. City shall reasonably cooperate with ASU in dealing with such environmental condition, which cooperation may include, without limitation, altering or suspending the construction of the Rio Salado Lake Improvements. After the Commencement Date, City shall have sole responsibility for and at its own cost and expense shall pay for remediation of each and all environmental conditions ("City Environmental Conditions") to the extent that the environmental condition on, above, or under the ASU Property or the property covered by the Access Easement results from or is aggravated by the acts or omissions of (I) any of City's contractors, subcontractors, lessees or other persons or entities working on the Rio Salado Lake Improvements, operating or maintaining the Rio Salado Lake Improvements or the Rio Salado Lake or performing any other activity for or authorized by the City, (II) City, or (III) any elected official, agent or representative of the City. After the commencement of the first filling of the Rio Salado Lake, City shall have sole responsibility for and at its own cost and expense shall pay for remediation of all environmental conditions on, above, or under the ASU Lakebed Property ("Lakebed Environmental Conditions") except for (i) Lakebed Environmental Conditions existing on the date of this Easement (but only to the extent not aggravated after the Commencement Date) and (ii) Lakebed Environmental Conditions resulting from the negligent acts or omissions of the State of Arizona, ABOR, ASU, or the regents,

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officers, employees, representatives or agents or ABOR or ASU. Other than as provided in this Section 11, City shall have no responsibility for the remediation of any other environmental condition on, above, or under the ASU Property or the property covered by the Access Easement. City shall indemnify, defend, protect, and hold harmless ASU, the ABOR, the State of Arizona and their regents, officers, employees, representatives and agents from and against any and all liabilities, fines, claims, costs, expenses (including, without limitation, reasonable attorney's fees and costs of litigation and arbitration, mediation, or other dispute resolution procedures) relating to any Lakebed Environmental Condition or any City Environmental Condition to the extent that City is responsible for such environmental condition under this Section 11. To the extent that City is responsible for such environmental condition under ^{Unofficial Document} this Section 11 and to the extent requested by ASU, City shall promptly remediate any Lakebed Environmental Condition and any City Environmental Condition as necessary to comply with all environmental laws. Prior to initiating any such remediation, the City must submit remediation plans and a schedule for such remediation to ASU for its approval, which shall not be unreasonably withheld or delayed. Upon such approval, the City shall promptly carry out the approved remediation plan. Nothing contained herein shall be construed as an assumption of liability by ASU as to any environmental condition on the ASU Property or the property subject to the Access Easement. City represents and warrants to ASU that City is not aware of any environmental condition on any portion of the ASU Property, or the

property covered by the Access Easement, as of the date of this Easement. ASU shall reasonably cooperate with City in dealing with such environmental conditions as far as practical to prevent the delay of construction of the Rio Salado Lake, provided that such cooperation shall not require ASU to incur any expense or any obligation to any third party and that such cooperation shall not involve a substantial use of personnel or other resources of ASU.

12. Term. City's easement rights to construct the Rio Salado Lake Improvements and City's access rights in the Access Easement shall expire on the earlier of (i) the completion of the Rio Salado Lake Improvements or (ii) on the fifth anniversary of the date of this Easement. All other rights, obligations and provisions within this Easement, including the maintenance and operating rights and obligations described herein shall be perpetual, except as follows:

- (i) this ^{Unofficial Document} easement may be modified by an amendment executed by City and ASU; and
- (ii) to the extent that any right, privilege, or easement herein granted, or any part thereof, shall at any time be abandoned and permanently cease to be used for the purpose herein granted, such right, privilege, or easement shall automatically cease and revert to ASU, its successors and assigns.

13. Indemnity. City shall defend, protect, and indemnify ASU, ABOR, the State of Arizona and their regents, officers, employees, representatives and agents from and against any and all liabilities, fines, claims, costs, expenses (including, without

limitation, reasonable attorney's fees and costs of litigation and arbitration, mediation, or other dispute resolution procedures) (such claims and liabilities include, without limitation, injury or death of third persons and damage to the property of third persons) (i) arising as a result of any activity, work or occurrence performed, permitted, or suffered by City, any elected official, employee, agent, or representative of City, any contractor, subcontractor, lessee or any other person or entity working on the Rio Salado Lake Improvements, maintaining or operating the Rio Salado Lake Improvements or the Rio Salado Lake or performing any other activity for or authorized by the City or any other employee, agent, or representative of the City on or about the ASU Property or the property covered by the Access Easement, or (ii) arising from the breach by City of any obligation of the City in this Easement, or (iii) arising from the failure by any contractor or subcontractor to comply with any term or condition in this Easement referring to contractors or subcontractors, or (iv) arising from violation by City, any elected official, employee, agent or representative of City or any such contractor, subcontractor, lessee, person, entity, employee, agent, or representative of the prior rights of third parties referred to in Section 5 of this Easement, or (v) arising from any event which event occurs after commencement of the first filling of the Rio Salado Lake and which event occurs on, above, or under the ASU Lakebed Property.

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14. Manner and Timing of Maintenance and Other Post-Construction Activities. In conducting maintenance, operating, and other activities in the easements granted herein after completion

of construction of the Rio Salado Lake Improvements, the City shall make a reasonable effort to carry out the maintenance, operating, and other activities at times and in a manner that would be as non-disruptive of the lessees and other persons using the Adjacent Property owned by ASU.

15. Notices. All notices, demands, requests, consents and approvals which may, or are required to be given by any party to any other party hereunder, or by law, shall be in writing and either (i) sent by United States mail, registered or certified, postage prepaid, return receipt requested, or (ii) personally delivered, and addressed as follows, and shall be deemed to have been given upon the date of delivery or upon the date of first refusal to accept delivery, at the address specified below:

ASU: Arizona State University
Tempe, Arizona 85287-2303
Unofficial Document
Attention: Jennus Burton
Associate Vice President
for Administrative Services

With a Copy to: Office of the General Counsel
Arizona State University
Tempe, Arizona 85287-2003

City: City of Tempe
140 E. Fifth Street, Suite 301
Tempe, Arizona 85281
Attention: City Attorney's Office

or such other address as either party may from time to time specify in writing to the other in the manner aforesaid.

16. Covenants Run With Land. All provisions of this Easement shall run with the land and shall be binding upon and inure to the benefit of the successors and assigns of ASU. Although City shall have the right to permit certain other parties to exercise its rights and perform its obligations hereunder as described in

Section 1, City shall have no other rights to assign or transfer its rights or obligations under this Easement.

17. Title. ASU makes no representations or warranties as to the condition of title to the ASU Property or the property covered by the Access Easement, including without limitation ASU's ownership of all or any portion of the ASU Property or the property covered by the Access Easement of the ASU Property or the property covered by the Access Easement. To the extent ASU does not own any portion of the ASU Property or the property covered by the Access Easement, the rights granted herein shall have no effect with respect to such portion not owned by ASU.

18. Attorney's Fees. In the event either party hereto finds it necessary to bring an action at law or other proceeding against the other party to enforce any of the terms, covenants, or conditions hereof or any ^{Unofficial Document} instrument executed pursuant to this Easement, or by reason of any breach or default hereunder or thereunder, the party prevailing in any such action or proceeding shall be paid all costs and reasonable attorneys' fees by the other party, and in the event any judgment is secured by such prevailing party all such costs and attorneys' fees shall be included in any such judgment. The reasonableness of such costs and attorneys' fees shall be determined by the court and not the jury.

19. Amendment. The terms and provisions of this Easement may be amended, modified or cancelled, in whole or in part, only by an instrument in writing executed by City and ASU or ASU's successors or assigns.

20. Governing Law. This Easement, its construction, validity

and effect, shall be governed and construed by and in accordance with the laws of the State of Arizona.

21. No Partnership. It is understood and agreed between the parties hereto that nothing herein contained shall be deemed, held or construed as the creation of a partnership or joint venture as between the parties hereto.

22. Incorporation of Exhibits. All exhibits attached hereto are by this reference incorporated herein as though set forth in full.

23. Captions. The captions and headings of the various sections of this Easement are for convenience and identification only, and shall not be deemed to limit or define the contents of the respective sections.

24. Partial Validity. The invalidity or unenforceability of any provision of this Easement ^{Unofficial Document} shall not affect the validity or enforceability of any of the other provisions hereof.

25. Time Periods. All time periods contained herein shall refer to calendar days, except where express reference is made to business days. Business days shall be defined to mean all days except Saturdays, Sundays and legal holidays. If any time period specified in this Easement expires on a non-business day, such time period shall be extended to the first proceeding business day.

26. Conflict of Interest. The parties acknowledge that this Easement is subject to and may be cancelled in accordance with the provisions of Section 38-511, Arizona Revised Statutes.

27. Arbitration. In the event of a dispute under this Easement, the parties agree to use arbitration to the extent

required by Sections 12-1518 and 12-133, Arizona Revised Statutes, and rules promulgated thereunder.

28. Nondiscrimination. The parties agree to comply at all times with all applicable state and federal laws, rules, regulations and executive order governing equal employment opportunity, immigration, nondiscrimination (including, without limitation, the Americans with Disabilities Act) and affirmative action.

29. Failure of Legislature to appropriate. The parties agree that notwithstanding any provision of this Easement to the contrary, if performance under this Easement by ASU shall ever be dependent upon the appropriation of funds by the State Legislature of Arizona (the "Legislature"), and if the Legislature should fail to appropriate the necessary funds for such performance, then, by written notice to City, ASU may cancel this Easement and have no further duty or obligation to City hereunder. City recognizes and understands that appropriation is a legislative act and is beyond the control of ASU.

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IN WITNESS WHEREOF, the parties have entered into this Easement as of the date first set forth above.

CITY OF TEMPE, a municipal corporation

By: Neil G. Giuliano
Mayor

ATTEST:

Aileen R. Dowler
City Clerk

**CONSTRUCTION AND MAINTENANCE EASEMENT
EXISTING CHANNEL AND LEVEE
ARIZONA BOARD OF REGENTS PARCELS
(MCA 132-31-004, 132-23-001B)**

Portions of the Northeast quarter of Section 15 and the Northwest quarter of Section 14, Township 1 North, Range 4 East of the Gila and Salt River Meridian, City of Tempe, County of Maricopa, State of Arizona, being more particularly described as follows:

Parcel 1

The South half of the Northeast quarter of said Section 15, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian.

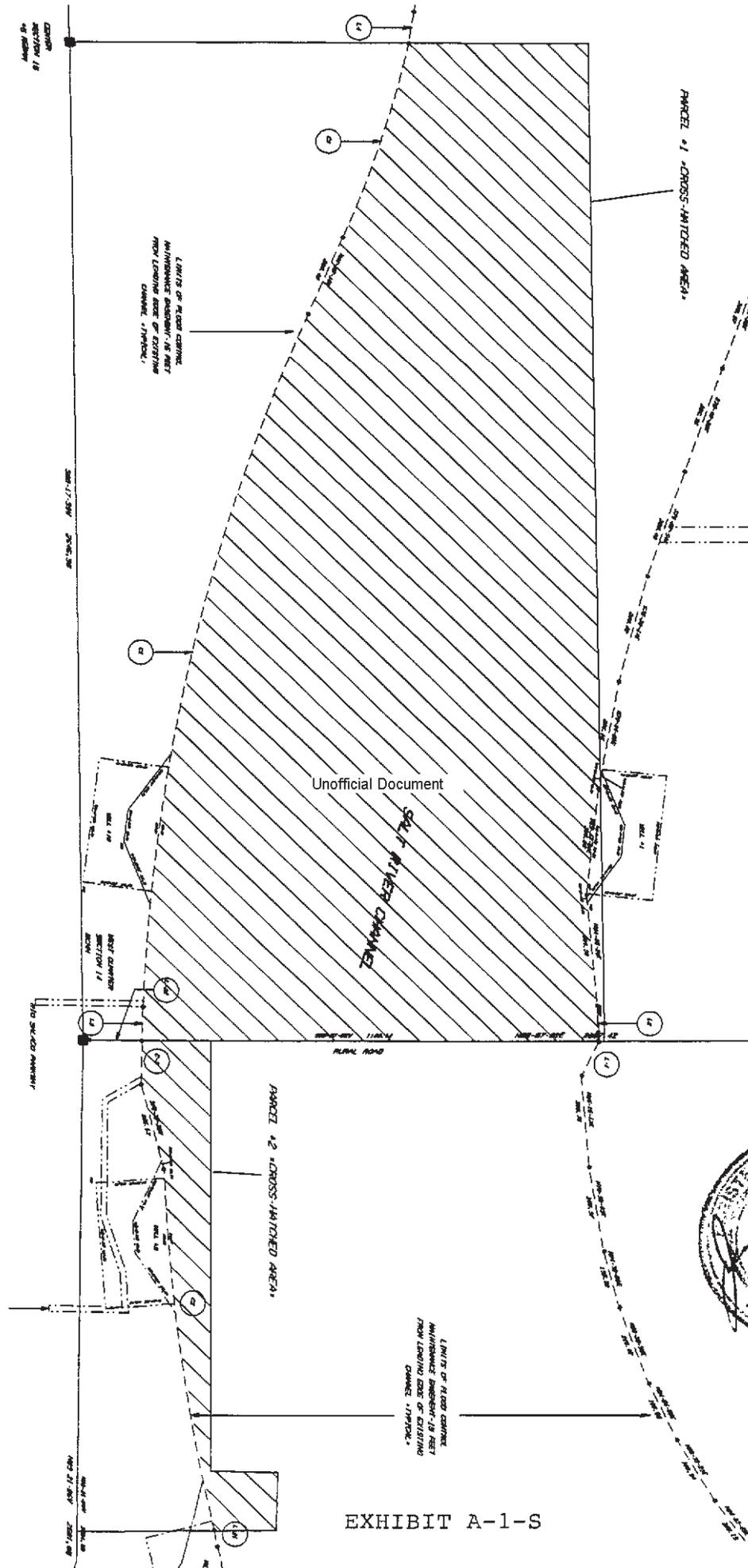
Except any portion lying South of the South and North of the North "Limits of Flood control Maintenance Easement" line as shown on Sheet 5 of 5 of that certain exhibit recorded in Book 365, page 34 of Maps, at the Office of the Maricopa County Recorder.

Parcel 2

The South half of the South half of the ^{Unofficial Document} quarter of the Northwest quarter of said Section 14, and also the Southeast quarter of the Northeast quarter of the Southeast quarter of the Southwest quarter of the Northwest quarter of said Section 14.

Except any portion lying South of the South "Limits of Flood Control Maintenance Easement" line as shown on Sheet 2 of 2 of that certain exhibit recorded in Book 365, page 35, of Maps at the Office of the Maricopa County Recorder.





Unofficial Document

SOUTH RIVER CHANNEL

PARCEL #1 "CROSS-HATCHED AREA"

PARCEL #2 "CROSS-HATCHED AREA"

LIMITS OF FLOOD CONTROL MAINTENANCE DISTRICT - 10 FEET FROM LANDING SIDE OF EXISTING CHANNEL - 17990L.

LIMITS OF FLOOD CONTROL MAINTENANCE DISTRICT - 10 FEET FROM LANDING SIDE OF EXISTING CHANNEL - 17990R.



EXHIBIT A-1-S

**CONSTRUCTION AND MAINTENANCE EASEMENT
SOUTH BANK INTERCEPTOR-RURAL ROAD CONNECTION**

A parcel of land being a portion of the Southeast quarter of Section 15, Township 1 North, Range 4 East of the Gila and Salt River Meridian, City of Tempe, County of Maricopa, State of Arizona being more particularly described as follows:

Commencing at the East quarter corner of said Section 15;

Thence South 00 degrees 08 minutes 02 seconds West along the East line of said Southeast quarter, 248.47 feet;

Thence departing said East line, North 89 degrees 51 minutes 58 seconds West, 65.00 feet to a point common to the South right of way line of Rio Salado Parkway and the West right of way of Rural Road.

Thence North 85 degrees 51 minutes 52 seconds West ^{Unofficial Document} 67.59 feet to the True Point of Beginning;

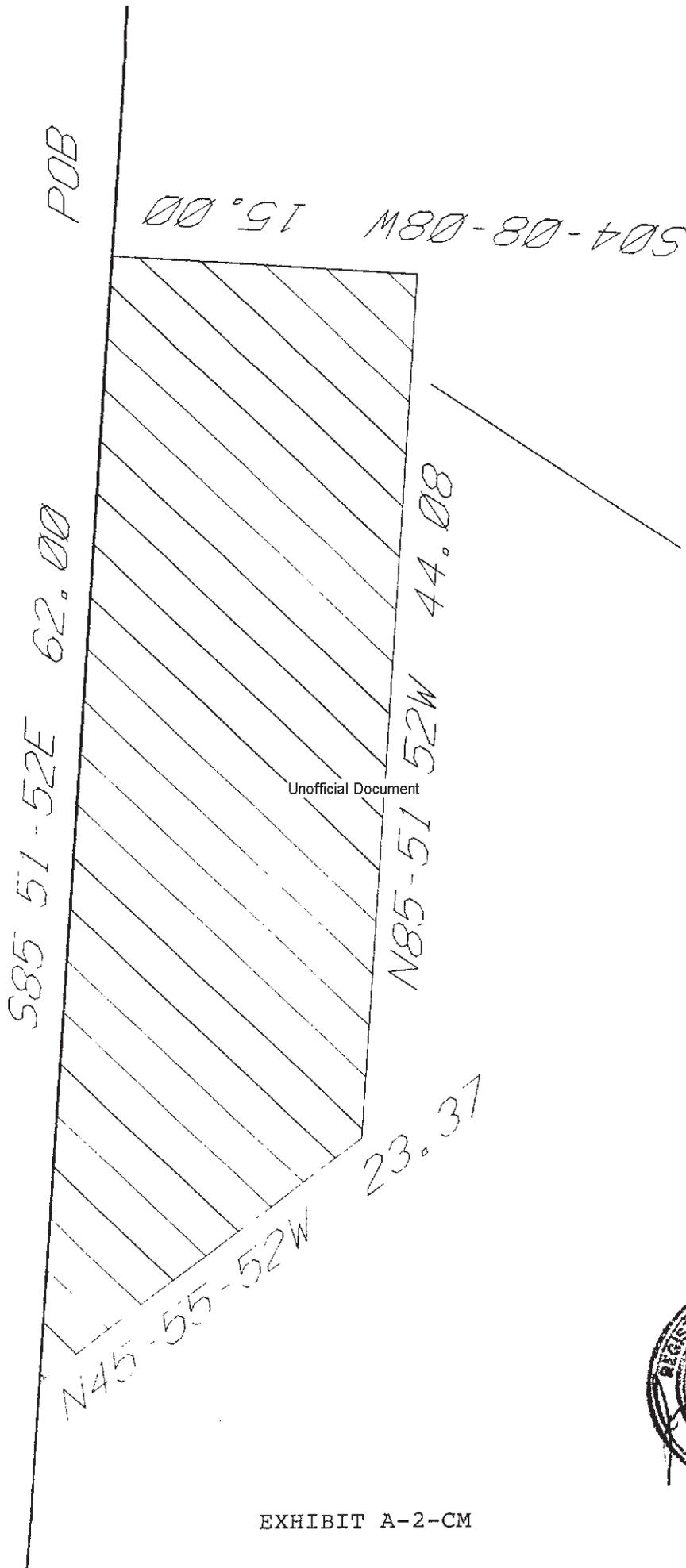
Thence departing said right of way, South 4 degrees 08 minutes 08 seconds West 15.00 feet;

Thence North 85 degrees 51 minutes 52 seconds West 44.08 feet;

Thence North 45 degrees 55 minutes 52 seconds West 23.37 feet to a point on said South right of way;

Thence continuing along said right of way, South 85 degrees 51 minutes 52 seconds East, 62.00 feet to the True Point of Beginning.





SOUTH BANK INTERCEPTOR
EASEMENT LIMITS



EXHIBIT A-2-CM

**CONSTRUCTION EASEMENT-RECOVERY WELL #10
SECTION 15, TOWNSHIP 1 NORTH, RANGE 4 EAST**

A parcel of land being a portion of the Northeast quarter of Section 15, Township 1 North, Range 4 East of the Gila and Salt River Meridian, City of Tempe, County of Maricopa, State of Arizona, being more particularly described as follows:

Commencing at the East quarter corner of said Section 15, and from which point the Northeast corner of said Section 15 bears North 00 degrees 07 minutes 02 seconds East;

Thence South 89 degrees 17 minutes 39 seconds West along the East/West mid-section line of said Section 15, 418.20 feet;

Thence departing said mid-section line, North 00 degrees 42 minutes 21 seconds West 5.54 feet to the True Point of Beginning;

Thence North 82 degrees 31 minutes 54 seconds West; 330.00 feet;

Thence North 7 degrees 28 minutes 06 seconds East; 179.04 feet to a point on a curve, concave to the North, and having a radius of 5165.75 feet and from which point a radial line bears North 9 degrees 27 minutes 55 seconds ^{Unofficial Document} East, said curve also being a portion of the South "Limits of Flood Control Maintenance Easement" line as shown on Sheet 5 of 5 of that certain exhibit recorded in Book 365, page 34 of Maps, at the Office of the Maricopa County Recorder;

Thence Easterly and to the left along the arc of said curve and said limits 330.06 feet through a central angle of 3 degrees 39 minutes 39 seconds and to which point a radial line bears South 5 degrees 48 minutes 16 seconds West;

Thence departing said curve and said limits, South 7 degrees 28 minutes 06 seconds West, 178.08 feet to the True Point of Beginning.



**MAINTENANCE EASEMENT-RECOVERY WELL #10
SECTION 15, TOWNSHIP 1 NORTH, RANGE 4 EAST**

A parcel of land being a portion of the Northeast quarter of Section 15, Township 1 North, Range 4 East of the Gila and Salt River Meridian, City of Tempe, County of Maricopa, State of Arizona being more particularly described as follows:

Commencing at the East quarter corner of said Section 15;

Thence South 89 degrees 17 minutes 39 seconds West along the East/West mid-section line of said Section 15, 500.98 feet;

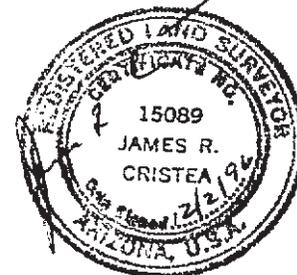
Thence departing said mid-section line, North 00 degrees 42 minutes 21 seconds West, 114.21 feet to the True Point of Beginning;

Thence North 82 degrees 31 minutes 54 seconds West, 105.23 feet;

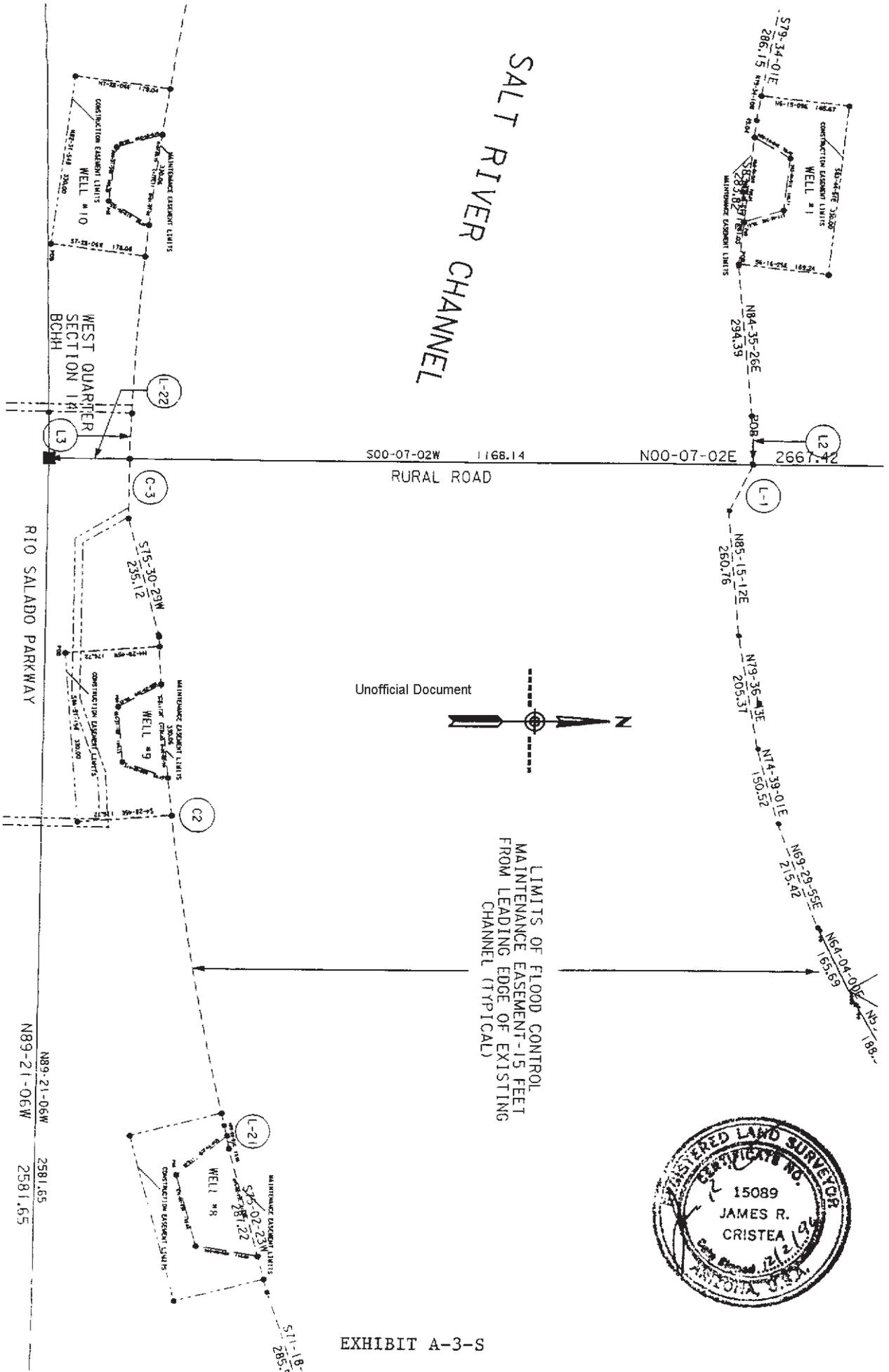
Thence North 16 degrees 29 minutes 39 seconds West, 88.50 feet to a point on a curve, concave to the North, and having a radius of 5,165.75 feet and from which point a radial line bears North 8 degrees 27 minutes 03 seconds East, said curve also being a portion of the South "Limits of Flood Control Maintenance Easement" line as shown on Sheet 5 of 5 of that certain exhibit recorded in Book 365, Page 34 of Maps at the Office of the Maricopa County Recorder;

Thence Easterly and to the left along the arc of said curve and said limits 177.11 feet through a central angle of 1 degrees 57 minutes 52 seconds and to which point a radial line bears South 6 degrees 29 minutes 11 seconds West;

Thence departing said curve and said limits South 31 degrees 25 minutes 51 seconds West, 88.47 feet to the True Point of Beginning.



SALT RIVER CHANNEL

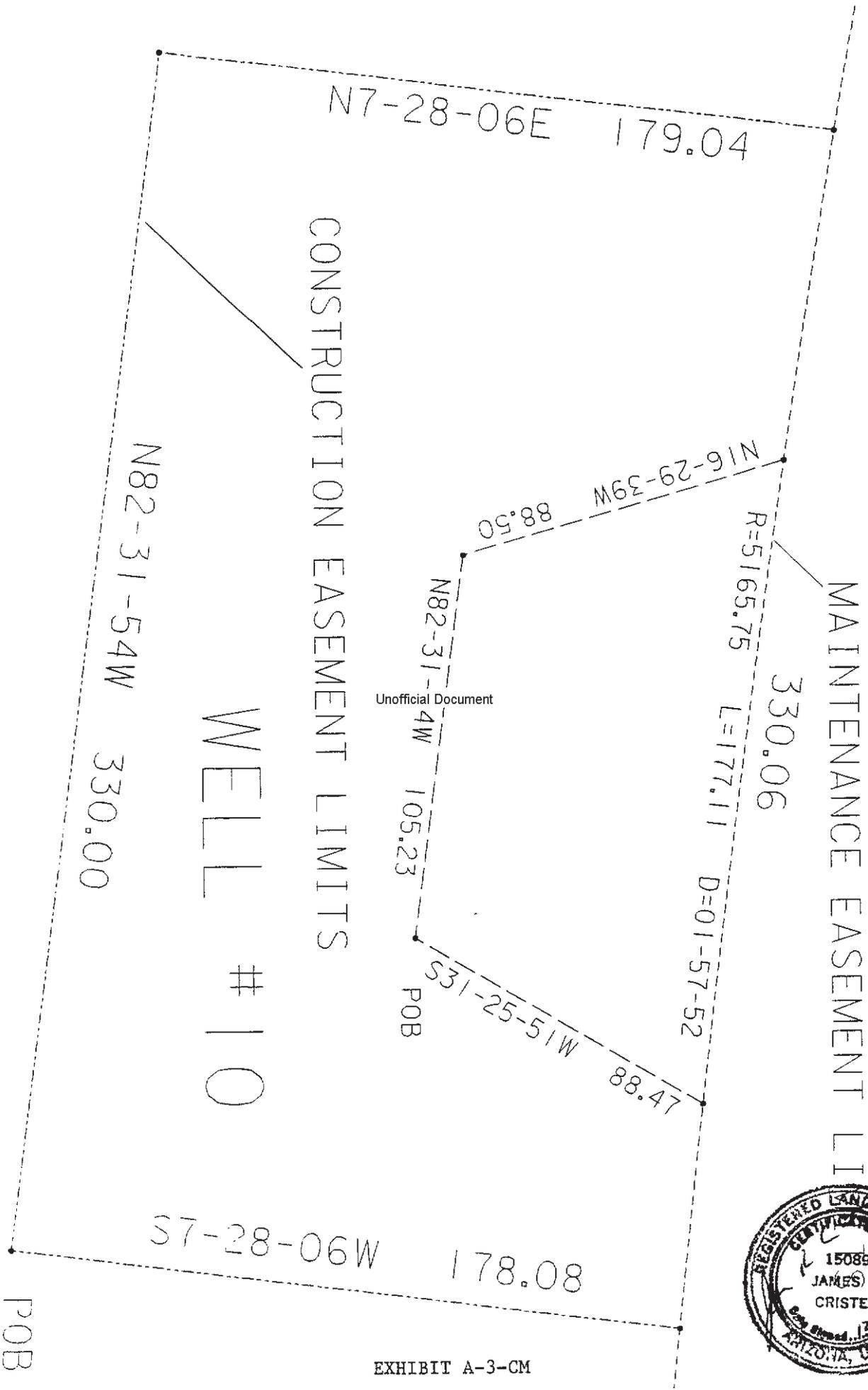


Unofficial Document

LIMITS OF FLOOD CONTROL
MAINTENANCE EASEMENT - 15 FEET
FROM LEADING EDGE OF EXISTING
CHANNEL (TYPICAL)



EXHIBIT A-3-S



Unofficial Document



**CONSTRUCTION EASEMENT-RECOVERY WELL #9
SECTION 14, TOWNSHIP 1 NORTH, RANGE 4 EAST**

A parcel of land being a portion of the Northwest quarter of Section 14, Township 1 North, Range 4 East of the Gila and Salt River Meridian, City of Tempe, County of Maricopa, State of Arizona, being more particularly described as follows:

Commencing at the West quarter corner of said Section 14, and from which point the Northwest corner of said Section 14 bears North 00 degrees 07 minutes 02 seconds East;

Thence South 89 degrees 21 minutes 06 seconds East along the East/West mid-section line of said Section 14, 375.21 feet;

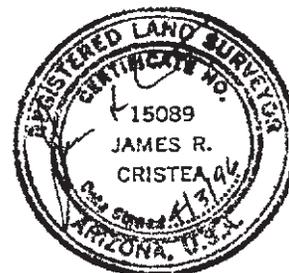
Thence departing said mid-section line, North 00 degrees 38 minutes 54 seconds East, 38.24 feet to the True Point of Beginning;

Thence North 4 degrees 28 minutes 45 seconds West, 176.72 feet to a point on a curve, concave to the North, and having a radius of 5111.41 feet and from which point a radial line bears North 2 degrees 37 minutes 46 seconds West; said curve also being a portion of the South "Limits of Flood Control Maintenance Easement" line as shown on Sheet 2 of 2 of that certain exhibit recorded in Book 365, page 35 of Maps at the Office of the Maricopa County Recorder;

Thence Easterly and to the left along the arc of said curve and said limits 330.06 feet through a central angle of 3 degrees 41 minutes 59 seconds and to which point a radial line bears South 6 degrees 19 minutes 45 seconds East;

Thence departing said curve and said limits, South 4 degrees 28 minutes 45 seconds East, 176.72 feet;

Thence South 85 degrees 31 minutes 15 seconds West, 330.00 feet to the True Point of Beginning.



**MAINTENANCE EASEMENT-RECOVERY WELL #9
SECTION 14, TOWNSHIP 1 NORTH, RANGE 4 EAST**

A parcel of land being a portion of the Northwest quarter of Section 14, Township 1 North, Range 4 East of the Gila and Salt River Meridian, City of Tempe, County of Maricopa, State of Arizona being more particularly described as follows:

Commencing at the West quarter corner of said Section 14;

Thence South 89 degrees 21 minutes 06 seconds East along the East/West mid-section line of said Section 14, 476.96 feet;

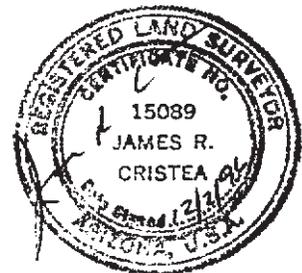
Thence departing said mid-section line, North 00 degrees 38 minutes 54 seconds East, 139.94 feet to the True Point of Beginning;

Thence North 28 degrees 26 minutes 30 seconds West, 90.47 feet to a point on the South "Limits of Flood Control Maintenance Easement" line as shown on Sheet 2 of 2 of that certain exhibit recorded in Book 365, page 35 of Maps at the Office of the Maricopa County Recorder; Said point also being the beginning of a curve, concave to the North, and having a radius of 5111.41 feet and from which Unofficial Document line bears North 3 degrees 27 minutes 20 seconds West;

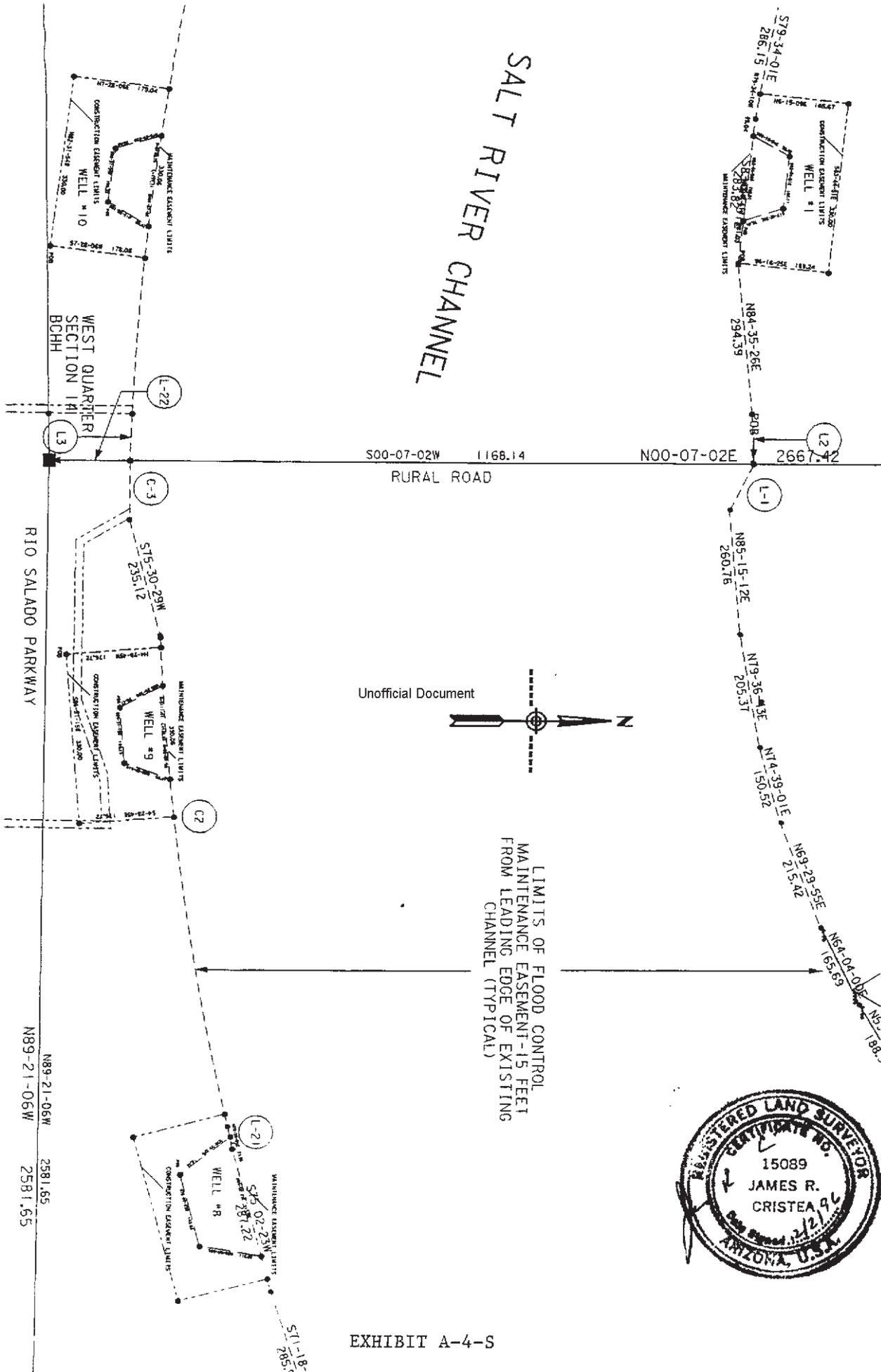
Thence Easterly and to the left along the arc of said curve and said limits 182.63 feet through a central angle of 02 degrees 02 minutes 50 seconds and to which point a radial line bears South 5 degrees 30 minutes 10 seconds East;

Thence departing said curve and said limits, South 19 degrees 29 minutes 00 seconds West, 90.47 feet;

Thence South 85 degrees 31 minutes 15 seconds West, 109.13 feet to the True Point of Beginning.



SALT RIVER CHANNEL



LIMITS OF FLOOD CONTROL
 MAINTENANCE EASEMENT-15 FEET
 FROM LEADING EDGE OF EXISTING
 CHANNEL (TYPICAL)

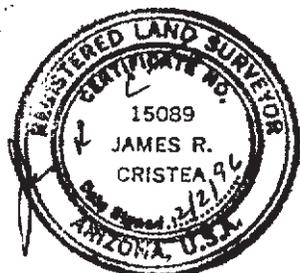


EXHIBIT A-4-S

MAINTENANCE EASEMENT LIMITS

330.06

R=5111.41 L=182.63 D=02-02-50

WELL #9

Unofficial Document

POB

S85-31-15

109.13

S19-29-00W

90.47

N28-26-30W

90.47

POB

S85-31-15

109.13

S19-29-00W

90.47

N4-28-45W

176.72

CONSTRUCTION EASEMENT LIMITS

S85-31-15W

330.00

POB

S4-28-45E 176.72



**CONSTRUCTION EASEMENT-RECOVERY WELL #1
SECTION 15, TOWNSHIP 1 NORTH, RANGE 4 EAST**

A parcel of land being a portion of the Northeast quarter of Section 15, Township 1 North, Range 4 East of the Gila and Salt River Meridian, City of Tempe, County of Maricopa, State of Arizona, being more particularly described as follows:

Commencing at the East quarter corner of said Section 15;

Thence North 00 degrees 07 minutes 02 seconds East along the East line of said Northeast quarter, 1287.19 feet;

Thence departing said East line, North 89 degrees 52 minutes 58 seconds West, 391.62 feet to a point on the North "Limits of Flood Control Maintenance Easement" line as shown on Sheet 5 of 5 of that certain exhibit recorded in Book 365, page 34 of maps at the Office of the Maricopa County Recorder, said point also being the True Point of Beginning;

Thence continuing along said limits, North 83 degrees 44 minutes 51 seconds West, 281.03 feet;

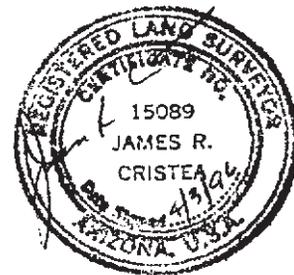
Unofficial Document

Thence continuing along said limits, North 79 degrees 34 minutes 10 seconds West, 49.04 feet;

Thence departing said limits, North 6 degrees 15 minutes 09 seconds East, 165.67 feet;

Thence South 83 degrees 44 minutes 51 seconds East, 330.00 feet;

Thence South 6 degrees 16 minutes 25 seconds East, 169.24 to the True Point of Beginning.



**MAINTENANCE EASEMENT-RECOVERY WELL #1
SECTION 15, TOWNSHIP 1 NORTH, RANGE 4 EAST**

A parcel of land being a portion of the Northeast quarter of Section 15, Township 1 North, Range 4 East of the Gila and Salt River Meridian, City of Tempe, County of Maricopa, State of Arizona, being more particularly described as follows:

Commencing at the East quarter corner of said Section 15;

Thence North 00 degrees 07 minutes 02 seconds East along the East line of said Northeast quarter, 1295.94 feet;

Thence departing said East line, North 89 degrees 52 minutes 58 seconds West, 473.10 feet to a point on the North "Limits of Flood Control Maintenance Easement" line as shown on Sheet 5 of 5 of that certain exhibit recorded in Book 365, page 34 of maps at the Office of the Maricopa County Recorder, said point also being the True Point of Beginning;

Thence continuing along said limits, North 83 degrees 44 minutes 52 seconds West, 165.81 feet;

Thence departing said limits, North 30 ^{Unofficial Document} minutes 54 seconds East, 78.42 feet;

Thence South 83 degrees 44 minutes 51 seconds East, 102.11 feet;

Thence South 17 degrees 42 minutes 36 seconds East, 78.41 feet to the True Point of Beginning.



SALT RIVER CHANNEL

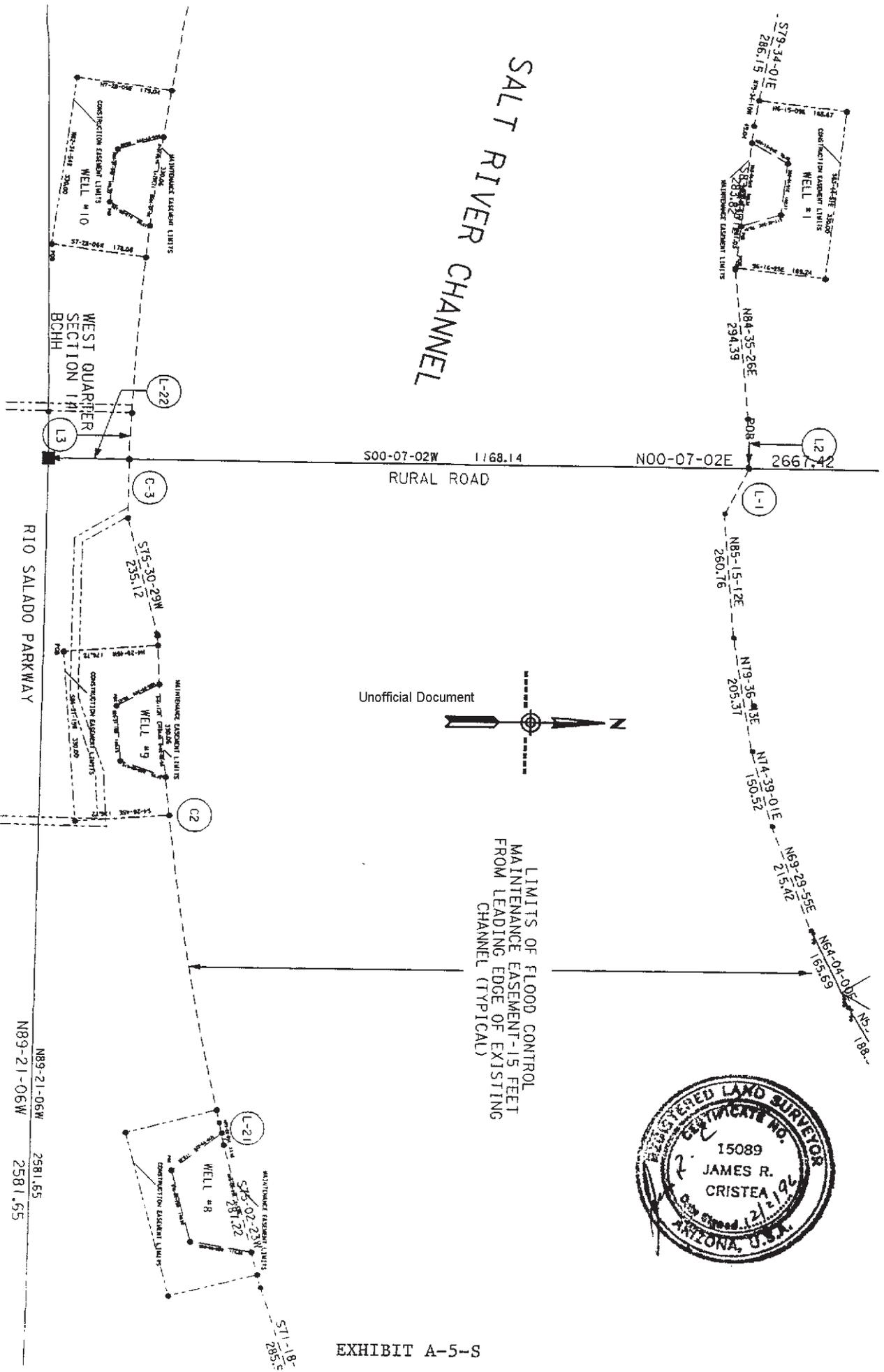


EXHIBIT A-5-S

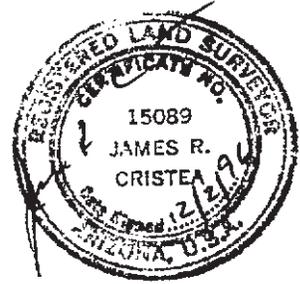
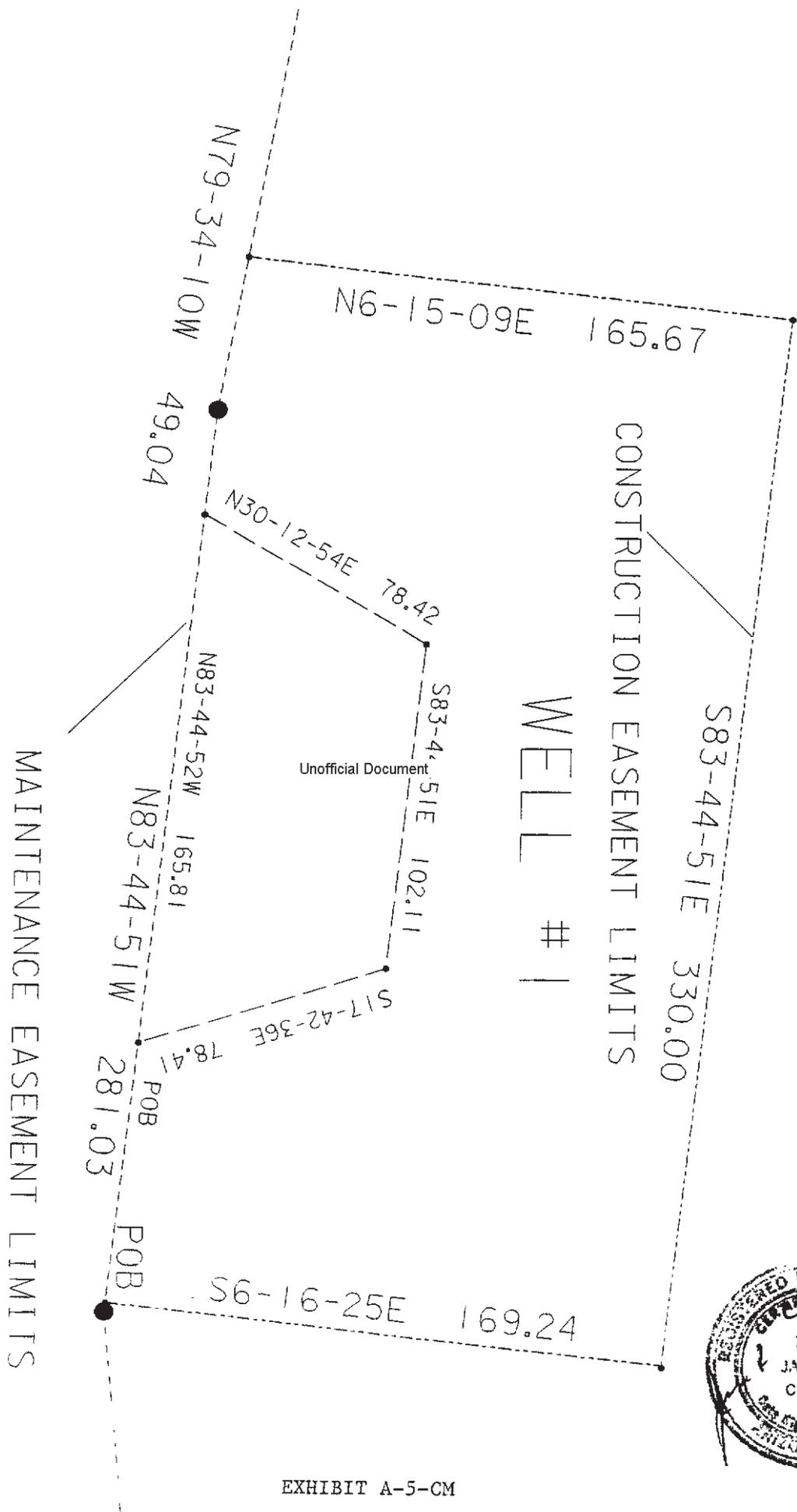


EXHIBIT A-5-CM

**CONSTRUCTION EASEMENT-RECOVERY WELL #8
SECTION 14, TOWNSHIP 1 NORTH, RANGE 4 EAST**

A parcel of land being a portion of the Northwest quarter of Section 14, Township 1 North, Range 4 East of the Gila and Salt River Meridian, City of Tempe, County of Maricopa, State of Arizona, being more particularly described as follows:

Commencing at the West quarter corner of said Section 14;

Thence South 89 degrees 21 minutes 06 seconds East along the East/West mid-section line of said Section 14, 1308.29 feet;

Thence departing said mid-section line, North 00 degrees 38 minutes 54 seconds East, 177.43 feet to the True Point of Beginning;

Thence North 14 degrees 57 minutes 37 seconds West, 175.82 feet to a point on a curve concave to the North, and having a radius of 5111.41 feet and from which point a radial line bears North 12 degrees 51 minutes 29 seconds West; said curve also being on the South "Limits of Flood Control Maintenance ^{Unofficial Document} Easement" line as shown on Sheet 2 of 2 of that certain exhibit recorded in Book 365, Page 35 of Maps at the Office of the Maricopa County Recorder;

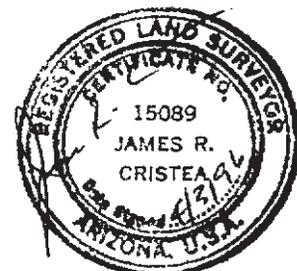
Thence Easterly and to the left along the arc of said curve and said limits 24.16 feet through a central angle of 00 degrees 16 minutes 15 seconds and to which point a radial line bears South 13 degrees 07 minutes 44 seconds East;

Thence continuing along said limits, North 78 degrees 28 minutes 01 seconds East, 44.81 feet;

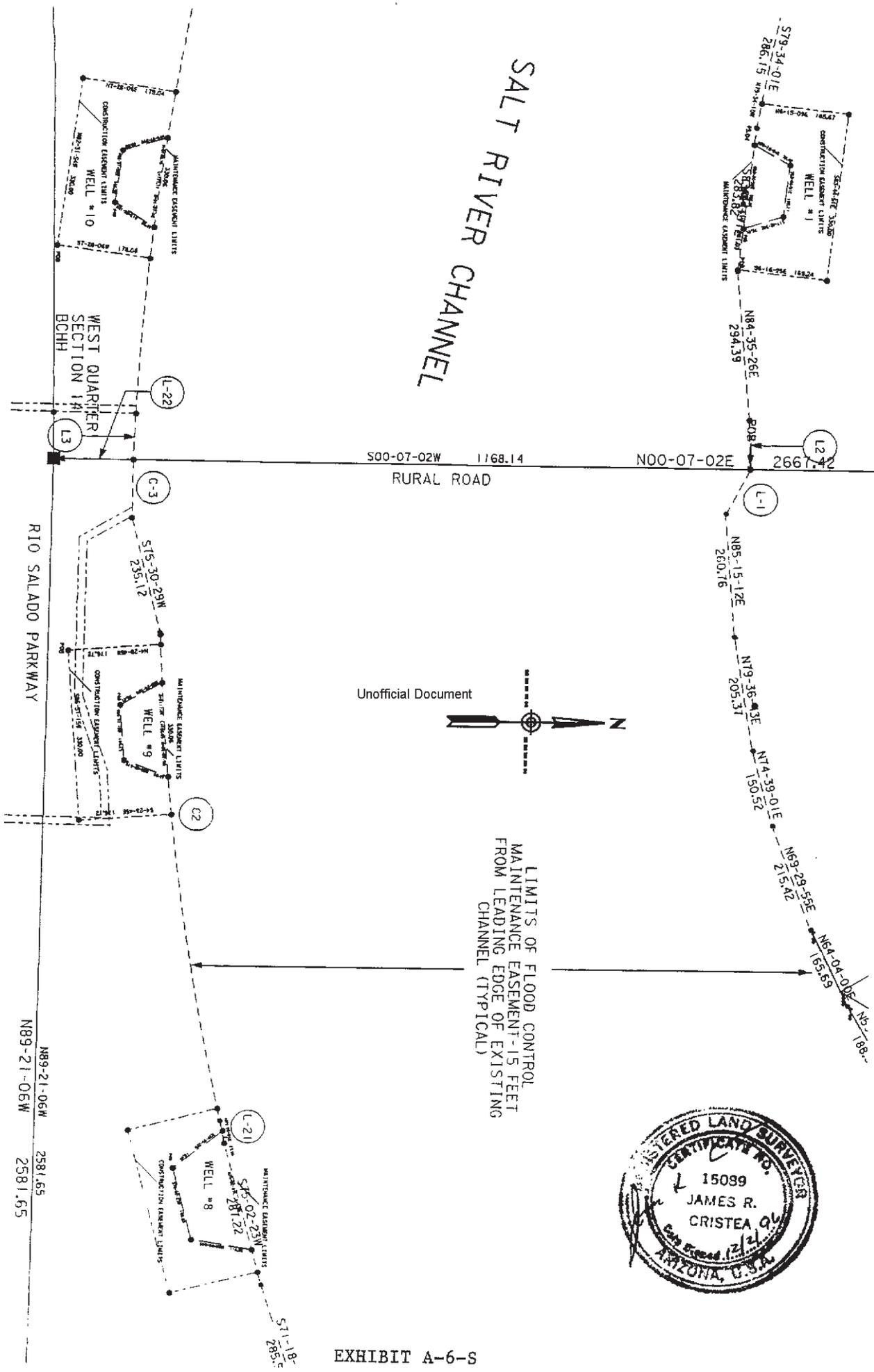
Thence continuing along said limits, North 75 degrees 02 minutes 23 seconds East, 261.12 feet;

Thence departing said limits, South 14 degrees 57 minutes 37 seconds East, 172.30 feet;

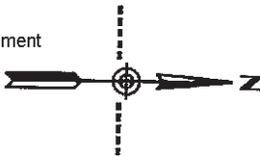
Thence South 75 degrees 02 minutes 23 seconds West, 330.00 feet to the True Point of Beginning.



SALT RIVER CHANNEL



Unofficial Document



LIMITS OF FLOOD CONTROL
MAINTENANCE EASEMENT-15 FEET
FROM LEADING EDGE OF EXISTING
CHANNEL (TYPICAL)



CONSTRUCTION EASEMENT LIMITS

MAINTENANCE EASEMENT LIMITS

WELL #8

POB

N38-55-22W 118.44

N78-28-01E 23.95

N75-02-23E 215.50

S75-02-23N

Unofficial Document

143.83

M80-00-60S 88.91

