

**CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATION**

cc: 11C
Amend No. _____

Date Prepared: December 1, 2010 Council Meeting Date: January 4, 2011

TO: Carl Swenson, City Manager

THROUGH: Susan J. Daluddung, Deputy City Manager

FROM: Scott Whyte, Economic Development Services Director

SUBJECT: Adopt a Resolution of Intention and a Resolution Ordering the Improvements for Maintenance Improvement District No. 1091, Terramar Parcel 9B.

RECOMMENDATION:

Discussion and possible action to approve the Petition for Formation and adopt the Resolution of Intention and Resolution Ordering the Improvements for the proposed Maintenance Improvement District No. 1091, Terramar Parcel 9B, located at Happy Valley Road and East of 75th Avenue.

SUMMARY:

Pursuant to the provision of A.R.S. § 48-574, *et. seq.*, Mayor and Council are empowered to adopt a Resolution Ordering the Improvements for formation of a Maintenance Improvement District. A Petition and Resolution of Intention are attached for formation of City of Peoria Maintenance Improvement District No. 1091, Terramar Parcel 9B, located at Happy Valley Road and East of 75th Avenue. In this special situation, in which all the property owners have presented a Petition for Formation, the ordinary publication and protest period are not required by law, and Council may then adopt a Resolution Ordering the Improvements when necessary, once the Resolution of Intention is first adopted. The Resolution Ordering the Improvements finalizes the formation of the Maintenance Improvement District process.

-
- Consent Agenda
 - Carry Over to Date: _____
 - Approved
 - Unfinished Business (Date heard previous: _____)
 - New Business
 - Public Hearing: No Action Taken

ORD. # _____ RES. # _____
LCON# _____ LIC. # _____
Action Date: _____

Council Communication
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This action allows Council to direct City staff to assume maintenance responsibility if the Homeowner's Association fails. Maintenance includes landscape, irrigation, and drainage facilities, located adjacent to and within the public rights-of-way and common area tracts. The cost for the maintenance will be assessed on the respective owner's property tax bill within the Boundary Map (see Exhibit B) in accordance with the Arizona State Law.

ATTACHMENTS:

1. Petition for Formation
2. Proposed Resolution of Intention to Create
3. Proposed Resolution Declaring Intention to Order

CONTACT:

Traci Varland, Engineering Technician II, x7612

PETITION, WAIVER AND CONSENT TO FORMATION
OF A MUNICIPAL IMPROVEMENT DISTRICT
BY THE CITY OF PEORIA

[1091]
MID#

[Terramar Parcel 9B-Rep1]
Subdivision Name

To: Honorable Mayor and Council
City of Peoria, Arizona

Pursuant to Arizona Revised Statutes, Section 48-574, the undersigned property owner respectfully petitions the City Council of the City of Peoria, Arizona (City Council) to order the formation of a Municipal Parkway Improvement District under Arizona Revised Statutes, Title 48, Chapter 4, Article 2. In support of this petition, the undersigned agrees to waive certain rights under the Arizona Improvement District Law and to consent to the formation and completion of the District.

1. Area of District. The proposed district is described by a map and by a legal description on Exhibit "A" that is attached hereto and incorporated herein by reference. The proposed district consists of 12.974 acres and is entirely within the corporate boundaries of the City of Peoria.
2. Ownership. The undersigned (is)(are) the sole owner(s) of the real property within the proposed district.
3. Purpose. The district is proposed to be formed for the purpose of the operation, maintenance, repair and improvements for landscape maintenance adjacent to designated streets and parkways within the proposed district.
4. Public Convenience and Necessity. The necessity for the proposed district is the for the operation, maintenance, repair and improvements for landscape maintenance adjacent to designated streets and parkways within the proposed district by the levying of special assessments in the proposed district.
5. Waiver and Consent. The petitioners with full knowledge of their rights being waived hereunder, hereby expressly waive:
 - (a) Any and all irregularities, illegalities or deficiencies which may exist in the acts or proceedings resulting in the adoption of the Resolution of Intention and the Resolution Ordering the Work;

- (b) Any necessity for publication and posting of the Resolution of Intention and the Notice of Proposed Improvements pursuant to A.R.S. §48-578;
- (c) All protest rights whatsoever under A.R.S. §48-579(A) and (B), which provide for protests against the work; and
- (d) All objections to the filing of and adoption by the City of the plans and specifications, the Engineer's estimate and the Assessment Diagram, all of which provide for the completion of the District.

Further, the improvements described above are of more than local or ordinary public benefit.

In Witness whereof the parties have executed this Petition and waiver agreement

as of the _____ day of _____ 20____.

<p>Richfield Investments Print Property Owner Name DOMINIC LEUNG Print Name [Redacted] Address [Redacted] Signature</p>	<p>Date: _____</p>	<p>Property (Tax Parcel Numbers) 201-09-768 thru 201-09-799, inclusive _____</p>
<p>Print Property Owner Name _____ Print Name _____ Address _____ Signature _____</p>	<p>Date: _____</p>	<p>Property (Tax Parcel Numbers) _____ _____</p>

Accepted and approved by:

CITY OF PEORIA, ARIZONA, an
ARIZONA MUNICIPAL CORPORATION

ATTEST:

By _____
Bob Barrett, Mayor

City Clerk

APPROVED AS TO FORM:

Stephen M. Kemp, City Attorney

November 18, 2010

LEGAL DESCRIPTION FOR
TERRAMAR PARCEL 9B
MAINTENANCE IMPROVEMENT DISTRICT # 1091

All that part of "Terramar Parcel 9B - Replat", recorded in Book 1066 of Maps, Page 47, Maricopa County Records, a subdivision located in Southwest Quarter of Section 1, Township 4 North, Range 1 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Beginning at the Southwest Corner of said "Terramar Parcel 9B - Replat", being a Brass Cap in handhole marking the Southwest Corner of said Section 1, from which the Brass Cap in handhole marking the South Quarter Corner of said Section 1 bears South 89°44'28" East, a distance of 2,635.44 feet;

Thence, along the boundary of said "Terramar Parcel 9B - Replat", the following courses:

Thence North 00°05'53" East, a distance of 659.25 feet;

Thence South 89°44'58" East, a distance of 659.09 feet to herein designated "Point A";

Thence South 00°07'06" West, a distance of 659.35 feet;

Thence North 89°44'28" West, a distance of 658.86 feet to the Point of Beginning;

TOGETHER WITH THE FOLLOWING DESCRIBED PARCEL OF LAND:

Commencing at said "Point A";

Thence North 00°07'06" East, a distance of 131.34 feet to the True Point of Beginning;

Thence North 89°45'28" West, a distance of 330.00 feet;

Thence North 00°07'06" East, a distance of 396.00 feet;

Thence South 89°45'28" East, a distance of 330.00 feet;

Thence South 00°07'06" West, a distance of 396.00 feet to the True Point of Beginning.

Containing 12.974 Acres, more or less.



RESOLUTION NO. 2011-04

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PEORIA, ARIZONA, DECLARING ITS INTENTION TO CREATE AN IMPROVEMENT DISTRICT TO MAINTAIN LANDSCAPING INCLUDED WITHIN, NEAR AND ADJACENT TO A PARKWAY AND RELATED FACILITIES TOGETHER WITH APPURTENANT STRUCTURES AS SHOWN ON THE PLANS, FOR MAINTENANCE WITHIN AN AREA IN THE CITY OF PEORIA AS DESCRIBED HEREIN; ADOPTING PLANS FOR CITY OF PEORIA MAINTENANCE IMPROVEMENT DISTRICT NO. 1091, TERRAMAR PARCEL 9B, AS MORE PARTICULARLY DESCRIBED HEREIN, AND DECLARING THE WORK OR IMPROVEMENT TO BE OF MORE THAN LOCAL OR ORDINARY PUBLIC BENEFIT, AND THAT THE COST OF SAID WORK OR IMPROVEMENT SHALL BE ASSESSED UPON A CERTAIN DISTRICT, AND PROVIDING THAT THE PROPOSED WORK OR IMPROVEMENT SHALL BE PERFORMED UNDER ARIZONA REVISED STATUTES TITLE 48, CHAPTER 4, ARTICLE 2, AND AMENDMENTS THERETO AND DECLARING AN EMERGENCY.

WHEREAS, the Mayor and Council of the City of Peoria, Arizona, declare that the Maintenance of the landscaping included within, near and adjacent to a parkway and related facilities in the District to be of more than local or ordinary public benefit, and further that the cost of said maintenance shall be assessed on a certain District; and

WHEREAS, the Mayor and Council of the City of Peoria, Arizona, declare that the maintenance of landscaping included within, near, and adjacent to a parkway and related facilities in the District is incidental to the maintenance and preservation of the parkway and related facilities, has aesthetic value, and maintains and increases the value of property within the District; and

WHEREAS, the City Council declares that the maintenance of landscaping included within and adjacent to a parkway and related facilities preserves and promotes the health, safety, and welfare of those citizens of the City of Peoria living within the District as well as preservation of the streets and parkways which may be adversely impacted by drainage and other water formations; and

WHEREAS, the City of Peoria declares that the maintenance of a landscaped buffer between a parkway and the adjacent developments reduces the visual and other impact of light, air and noise pollution and tends to increase personal and vehicular safety on the parkway and decreases the likelihood vehicular accidents will harm adjacent developments in furtherance of the health, safety and welfare of those citizens of the City living within the District; and

WHEREAS, the City Council declares that maintenance of landscaped drainage and other water control facilities and features within, near or adjacent to a parkway and related facilities tends to preserve the structural integrity of the parkway and mitigates flooding of adjacent areas and the structural integrity of the parkway and mitigates flooding of adjacent areas and the parkway by draining water to and from the parkway in furtherance of the health, safety and welfare of those citizens of the City of Peoria living within the District:

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF PEORIA AS FOLLOWS:

Section 1. Definitions.

In this Resolution, the following terms shall have the following meanings:

"Assessment Diagrams" shall mean those duplicate diagrams of the property contained in the Assessment District is to be filed with the Clerk and approved by the Mayor and Council.

"Assessment District" shall mean the lots, pieces or parcels of land lying within the boundaries described on Exhibit B attached hereto and as shown on the map on file with the City Engineer.

"City" shall mean the City of Peoria, Arizona.

"City Council" or "Council" shall mean the Mayor and Council of the City.

"Clerk" shall mean the City Clerk.

"Engineer" shall mean City Engineer.

"Lots" shall mean all lots, pieces or parcels of land lying within the Assessment District.

"Parkways" shall mean those streets and rights-of-way which are designated in Exhibit B as "Parkways," and specifically those portions of Pedestrian Facilities, Parks, Retention, Detention and Storm Water Management Facilities included within or adjacent to the Assessment District.

"Plans and Specifications" shall mean the engineer's estimate for the Maintenance Improvement District No. 1091 filed with the Clerk prior to the adoption of this Resolution.

"Superintendent of Streets" shall mean the City Engineer.

Section 2. Declaration of Intention to Order an Improvement.

The public interest or convenience requires, and it is the intention of the Mayor and Council of the City of Peoria, Arizona, to order the following work, hereinafter "Work," to be performed, to wit:

The maintenance of all landscaping, including replacement of landscape materials, in the area generally described as follows:

SEE EXHIBIT "A", LEGAL DESCRIPTION OF CITY OF PEORIA MAINTENANCE IMPROVEMENT DISTRICT NO. 1091

The Mayor and Council of the City of Peoria, Arizona designate as parkways, those areas set forth on Exhibit "B" Assessment Diagram in accordance with Title 48, Chapter 4, Article 2, Arizona Revised Statutes. The public interest and convenience require, and it is the intention of the City Council to order the Work adjacent to the designated parkways to be performed as stated herein. All items of the Work shall be performed as prescribed by the Plans and Specifications hereby

approved and adopted by the Council and on file in the Office of the City Engineer and no assessment for any lot shall exceed its proportion of the Estimate. The estimate of the cost and expenses of the work or improvements on file in the offices of the Superintendent of Streets and the Clerk of the City are hereby approved and adopted by the Mayor and Council of the City. In addition to the requirements of law, the procedures set forth in the City Code will be followed regarding acceptance of bids and setting tax levies. For purposes of this Resolution and of all resolutions, ordinances and notices pertaining to this Resolution, the improvement as herein described is hereby designated City of Peoria Maintenance Improvement District No. 1091.

Section 3. Determination of Need.

In the opinion of the City Council, the Work is of more than local or ordinary public benefit. The City Council hereby orders that all amounts due or to become due with respect to the Work shall be chargeable upon the respective lots, pieces and parcels of land within the Assessment District.

Section 4. Preparation of Assessment Diagrams.

The City Engineer is hereby authorized and directed to prepare duplicate diagrams (Assessment Diagrams) of the property contained within the Assessment District. The diagrams shall show each separate lot, numbered consecutively, the approximate area in square feet of each lot, and the location of the lot in relation to the work proposed to be done.

Section 5. Exclusion of Certain Property.

Any public street or alley within the boundaries of the Assessment District is hereby omitted from the assessment hereafter to be made. Any lot belonging to the United States, the State, a county, city, school district or any political subdivision or institution of the State or county, which is included within the Assessment District shall be omitted from the assessment hereafter made.

Section 6. Officers Not Liable.

In no event will the City of Peoria or any officer thereof be liable for any portion of the cost of said Improvement District nor for any delinquency of persons or property assessed.

Section 7. Annual Statement.

The City Council shall make annual statements and estimates of the expenses of the District which shall be provided for by the levy and collection of ad valorem taxes upon the assessed value of all real and personal property in the District as provided in A.R.S. § 48-574 and amendments thereto.

Section 8. Statutory Authority.

The Work and all proceedings pertaining thereto shall be performed under the provisions of Title 48, Article 2, specifically Section 48-574, and all amendments thereto and pursuant to Article I, Section 3, (8) of the Peoria City Charter.

Section 9. Delegation of Authority.

The City Engineer is hereby authorized to fill in any blanks and to make any minor corrections necessary to complete the Plans and Specifications and the Contract Documents.

PASSED AND ADOPTED by the Mayor and Council of the City of Peoria, Arizona, this 4th day of January 2011.

Bob Barrett, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Stephen M. Kemp, City Attorney

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CERTIFICATION OF CITY ENGINEER

I hereby certify that I have read the description set out under the definition "Assessment District" and approve the same. I further certify that I have read the description set out under the definition "Work" and approve the same.

Andrew Granger, Engineering Director

CERTIFICATION OF CITY CLERK

I hereby certify that the above and foregoing Resolution No. 11-_____, duly passed by the Mayor and Council of the City of Peoria, Arizona at a regular meeting held on _____, 2011 and that a quorum was present there and that the vote thereon was _____ ayes and _____ nays. _____ were no vote or absent.

City Clerk, City of Peoria

November 18, 2010

LEGAL DESCRIPTION FOR
TERRAMAR PARCEL 9B
MAINTENANCE IMPROVEMENT DISTRICT # 1091

All that part of "Terramar Parcel 9B - Replat", recorded in Book 1066 of Maps, Page 47, Maricopa County Records, a subdivision located in Southwest Quarter of Section 1, Township 4 North, Range 1 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Beginning at the Southwest Corner of said "Terramar Parcel 9B - Replat", being a Brass Cap in handhole marking the Southwest Corner of said Section 1, from which the Brass Cap in handhole marking the South Quarter Corner of said Section 1 bears South 89°44'28" East, a distance of 2,635.44 feet;

Thence, along the boundary of said "Terramar Parcel 9B - Replat", the following courses:

Thence North 00°05'53" East, a distance of 659.25 feet;

Thence South 89°44'58" East, a distance of 659.09 feet to herein designated "Point A";

Thence South 00°07'06" West, a distance of 659.35 feet;

Thence North 89°44'28" West, a distance of 658.86 feet to the Point of Beginning;

TOGETHER WITH THE FOLLOWING DESCRIBED PARCEL OF LAND:

Commencing at said "Point A";

Thence North 00°07'06" East, a distance of 131.34 feet to the True Point of Beginning;

Thence North 89°45'28" West, a distance of 330.00 feet;

Thence North 00°07'06" East, a distance of 396.00 feet;

Thence South 89°45'28" East, a distance of 330.00 feet;

Thence South 00°07'06" West, a distance of 396.00 feet to the True Point of Beginning.

Containing 12.974 Acres, more or less.



Resolution No. 2011- 04

EXHIBIT "B"

IS ON FILE IN THE

CITY OF PEORIA

CITY CLERK'S OFFICE

CITY OF PEORIA, ARIZONA

NOTICE

OF THE PASSAGE OF A RESOLUTION ORDERING THE IMPROVEMENT CONSISTING OF AUTHORIZING THE MAINTENANCE OF LANDSCAPING INCLUDED WITHIN, NEAR, AND ADJACENT TO A PARKWAY AND RELATED FACILITIES TOGETHER WITHIN APPURTENANT STRUCTURES AS SHOWN ON THE PLANS FOR THE IMPROVEMENT DISTRICT KNOWN AS CITY OF PEORIA MAINTENANCE IMPROVEMENT DISTRICT NO. 1091, TERRAMAR PARCEL 9B.

This notice is given pursuant to the provisions of Title 48, Chapter 4, Article 2, Sections 48-571 to 48-619, both inclusive, Arizona Revised Statutes, as amended.

On the 4th day of January 2011 the Mayor and Council of the City of Peoria adopted Resolution No. 2011-05; ordering the improvements of maintaining landscaping included within, near, and adjacent to a parkway and related facilities together within appurtenant structures shown on the plans, within the corporate limits of the City and creating an Improvement District known as the City of Peoria Maintenance Improvement District No. 1091, pursuant to Title 48, Chapter 4, Arizona Revised Statutes; and amendments thereto for the purpose of maintaining landscaping included within, near, and adjacent to a parkway and related facilities together within appurtenant structures, which includes a charge for the maintenance of landscaping and other related items, together with all appurtenant structures as shown on the plans; and directing that this notice been given.

Any owner, or any other person having an interest in any lot, piece or parcel of land situated within the above-described assessment district, who claims that any of the provisions, acts or proceedings relative to the above described improvements are irregular, defective, illegal, erroneous or faulty, may file with the City Clerk, Room 150, 8401 West Monroe Street, Peoria, Arizona 85345, within 15 days from the date of the first publication of this notice, a written notice specifying in what way said acts or proceedings are irregular, defective, illegal, erroneous or faulty.

Further information concerning City of Peoria Maintenance Improvement District No. 1091 may be obtained by contacting Mr. Andrew Granger, Engineering Director, City of Peoria, Arizona, 8401 West Monroe, Peoria, Arizona 85345, (623) 773-7367.

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DATED AND SIGNED this _____ day of _____, 2011.

Andrew Granger
Superintendent of Streets
City of Peoria, Arizona

RESOLUTION NO. 2011-05

RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PEORIA, ARIZONA DECLARING ITS INTENTION TO ORDER THE IMPROVEMENTS OF A CERTAIN AREA WITHIN THE CORPORATE LIMITS OF THE CITY AND CREATING AN IMPROVEMENT DISTRICT KNOWN AS THE CITY OF PEORIA MAINTENANCE IMPROVEMENT DISTRICT NO. 1091, TERRAMAR PARCEL 9B; PROVIDING THAT THE COST OF THE MAINTENANCE OF THE LANDSCAPING INCLUDED WITHIN, NEAR, AND ADJACENT TO A PARKWAY AND RELATED FACILITIES TOGETHER WITH APPURTENANT STRUCTURES AS SHOWN ON THE PLANS, SHALL BE ASSESSED UNDER THE PROVISIONS OF TITLE 48, CHAPTER 4, ARTICLE 2, ARIZONA REVISED STATUTES, AS AMENDED; AND DECLARING AN EMERGENCY.

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF PEORIA, ARIZONA, THAT:

SECTION 1. The public interest or convenience require and it is the intention of the Mayor and Council of the City of Peoria, Arizona to order the maintenance of landscaping within the proposed district and that the cost of maintaining landscaping included within, near, and adjacent to a parkway and related facilities together with appurtenant structures be assessed upon a certain improvement district to be known as Peoria Maintenance Improvement District No. 1091.

The estimate of the cost and expenses for the maintenance of the landscaping on file with the Superintendent of Streets and the City Clerk is approved and adopted by the Mayor and Council of the City.

SECTION 2. The maintenance of the landscaping, therefore, in the opinion of the Mayor and Council of the City, are of more than local or ordinary public benefit, and are of special benefit to the respective lots, pieces and parcels of land within the real property described herein. The Mayor and Council of the City make and order that the cost and expense for the maintenance of the landscaping included within, near, and adjacent to a parkway and related facilities together with appurtenant structures be chargeable upon a district to be known and designated as the City of Peoria Maintenance Improvement District No. 1091 and as described and bounded as set forth on Exhibits A and B attached, and

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declare that the district in the City benefited by the maintenance of landscaping included within, near, and adjacent to a parkway and related facilities together with appurtenant structures to be assessed, to pay the costs and expenses thereof in proportion to the benefits derived therefrom.

The City shall not assess the costs and expenses for the maintenance of landscaping included within, near, and adjacent to a parkway and related facilities together with appurtenant structures, which are for the general public benefit against the respective lots, pieces and parcels of land located within the boundaries of the City of Peoria Maintenance Improvement District No. 1091 and if a portion of the costs and expenses for the maintenance of landscaping is for the general public benefit, the City shall assess the boundaries of the City of Peoria Maintenance Improvement District No. 1091 only that portion of such costs and expenses which benefits the lots, pieces and parcels of land located within the boundaries of the City of Peoria Maintenance Improvement District No. 1091.

SECTION 3. The costs and expense for the maintenance of landscaping shall be made and all proceedings therein taken; that the Superintendent of Streets of the City shall post or cause to be posted notices thereof; that the City Clerk shall certify to the passage of this Resolution of Intention; that the Engineer shall prepare duplicate diagrams of the City of Peoria Maintenance Improvement District No. 1091 described in Section 2 of this Resolution to be assessed to pay the costs and expenses thereof, under and in accordance with the provisions of Title 48, Chapter 4, Article 2, Arizona Revised Statutes, as amended.

SECTION 4. The majority of owners of all of the real property within the proposed district have executed a Petition for formation of a Maintenance Improvement District and the City Council has verified the ownership of the property. Publication and posting of the notice of the passage of the Resolution of Intention will be completed as prescribed by the State Statues.

SECTION 5. Any Resolutions or parts of Resolutions in conflict with the provisions of this Resolution are hereby repealed.

SECTION 6. The immediate operation of the provisions of this Resolution is necessary for the preservation of the public peace, health and safety and an emergency is declared to exist, and this Resolution will be in full force and effect from and after its passage and approval by the Mayor and Council of the City of Peoria, Arizona as required by law and is exempt from the referendum provisions of the Constitution and laws of the State of Arizona.

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PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City
of Peoria, Arizona, this 4th day of January, 2011.

Bob Barrett, Mayor

Date Signed: _____

ATTEST:

Wanda Nelson, City Clerk

APPROVED AS TO FORM:

Stephen M. Kemp, City Attorney

November 18, 2010

LEGAL DESCRIPTION FOR
TERRAMAR PARCEL 9B
MAINTENANCE IMPROVEMENT DISTRICT # 1091

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Thence South 00°07'06" West, a distance of 659.35 feet;

Thence North 89°44'28" West, a distance of 658.86 feet to the Point of Beginning;

TOGETHER WITH THE FOLLOWING DESCRIBED PARCEL OF LAND:

Commencing at said "Point A";

Thence North 00°07'06" East, a distance of 131.34 feet to the True Point of Beginning;

Thence North 89°45'28" West, a distance of 330.00 feet;

Thence North 00°07'06" East, a distance of 396.00 feet;

Thence South 89°45'28" East, a distance of 330.00 feet;

Thence South 00°07'06" West, a distance of 396.00 feet to the True Point of Beginning.

Containing 12.974 Acres, more or less.



Expires: 6/30/2013



Resolution No. 11-05

EXHIBIT "B"

IS ON FILE IN THE

CITY OF PEORIA

CITY CLERK'S OFFICE

