

PREPARED BY AND WHEN
RECORDED MAIL TO:

STEVEN R. PARSON, ESQ.
Shutts & Bowen LLP
1100 CityPlace Tower
525 Okeechobee Boulevard
West Palm Beach, FL 33401
(561) 835-8500

CONSTRUCTION AND RECIPROCAL ACCESS EASEMENT AGREEMENT

THIS CONSTRUCTION AND RECIPROCAL ACCESS EASEMENT AGREEMENT (this “**Agreement**”) is made as of the 28 day of May 2020 (the “**Effective Date**”), by and between and **AMERICA WALKS AT PORT ST. LUCIE, LLC**, an Ohio limited liability company, whose address is 2211 Medina Road, Suite 100, Medina, Ohio 44256 (“**America Walks**”), and **MATTAMY PALM BEACH LLC**, a Delaware limited liability company, whose address is 2500 Quantum Lakes Drive, Suite 215, Boynton Beach, Florida 33426 (“**Mattamy**”),

RECITALS:

WHEREAS, America Walks owns the real property located in St. Lucie, Florida as legally described and/or depicted on Exhibit “A” attached hereto and made a part hereof (the “**America Walks Property**”);

WHEREAS, Mattamy owns the real property located in St. Lucie, Florida, adjacent to the America Walks Property as legally described and/or depicted on Exhibit “B” attached hereto and made a part hereof (the “**Mattamy Property**”). Each of the America Walks Property and the Mattamy Property are sometimes referred to in this Agreement as the “**Property**”. A fee simple owner of a Property is sometimes referred to in this Agreement as an “**Owner**” or collectively as the “**Owners**”;

WHEREAS, Mattamy has agreed to provide a non-exclusive temporary construction easement to America Walks to allow for the construction of the Access Roadway (defined below) over a portion of the Mattamy Property legally described and/or depicted on the sketch attached hereto as Exhibit “C” and made a part hereof (the “**Construction Easement Area**”) on the terms and conditions of this Agreement; and

WHEREAS, each Owner has agreed to grant to the other Owner for the benefit of the America Walks Property and the Mattamy Property, respectively, a perpetual, non-exclusive cross access easement over a portion of the Property legally described and/or depicted on the sketch attached hereto as Exhibit “D” (the “**Access Roadway**”) and the improvements located thereon, as the same may be improved from time to time, on the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Recitals.** The recitals to this Agreement and the Exhibits referred to herein are true and correct and are hereby made a part of this Agreement.

2. **Grant of Temporary Construction Easement.** Subject to the terms and conditions of this Agreement, Mattamy grants to America Walks and its agents, employees, consultants, contractors, and subcontractors (the “**Permitted Parties**”) a non-exclusive temporary construction easement commencing upon the Effective Date and expiring on the date which is forty-eight (48) months after the Effective Date (the “**Construction Easement Expiration Date**”) for the benefit of the America Walks Property over, under, and across the Construction Easement Area to allow for the construction of the Access Roadway (the “**Construction Easement**”). America Walks shall provide construction plans for the Access Roadway (the “**Initial Plans**”) to Mattamy for its review and written approval, which approval shall not be unreasonably withheld, conditioned or delayed. Mattamy shall have ten (10) business days to review and provide comments to the Initial Plans. Failure to provide comments within such ten (10) business day period shall be deemed an approval of the Initial Plans.

3. **Use of Temporary Construction Easement.** America Walks and its Permitted Parties shall exercise the Construction Easement rights granted hereby in a reasonable manner and in compliance with all applicable laws, statutes, ordinances, rules, codes and regulations (“**Applicable Laws**”), and shall construct the Access Roadway in compliance with the Plans as approved by Mattamy and St. Lucie County, if applicable. America Walks and its Permitted Parties shall not: (a) install any improvements in the Construction Easement Area except for improvements in connection with the Access Roadway as depicted on the Initial Plans; (b) cause any damage to the Mattamy Property lying adjacent to the Construction Easement Area; or (c) cause or permit any lien or other encumbrance to be filed or recorded against the Construction Easement Area as a result of, or in any way related to, the use or exercise of the Construction Easement rights granted hereby and/or the acts or omissions of America Walks and/or its Permitted Parties.

4. **Future Improvements to and Use of the Access Roadway.** All construction, installation and maintenance by an Owner contemplated or required herein on the Access Roadway shall be performed in accordance with Applicable Laws, in a good, workmanlike, lien free manner using reputable contractors. Each Owner accessing or performing any installation, maintenance work on the Access Roadway shall maintain appropriate and adequate workers' compensation, liability and builders' risk insurance, as applicable, with solvent, reputable insurance companies (and with respect to such liability insurance, such policy shall name the other Owners as an additional insured). The Owners of the Mattamy Property shall not: (a) install any improvements in the Access Easement except for improvements in connection with the Access Roadway as depicted on the Future Plans (defined below); (b) cause any damage to the America Walks Property lying adjacent to the Access Roadway; or (c) cause or permit any lien or other encumbrance to be filed or recorded against the Access Roadway as a result of, or in any way related to, the use or exercise of the rights granted hereby and/or the acts or omissions of the Owners of the Mattamy Property and/or their Permitted Parties.

5. **Costs of Construction.** America Walks and Mattamy agree that the costs of design, permitting, and construction of the Access Roadway shall be funded as they become due and shall be shared between the parties as follows:

a. America Walks shall be solely responsible for one hundred percent (100%) of cost of the design, permitting and construction of the Access Roadway necessary to meet the minimum requirements for secondary access roads in accordance with Applicable Laws (the “**Minimum Requirements**”).

b. The Owner of the Mattamy Property shall be solely responsible for one hundred percent (100%) of the cost of the design, permitting and construction of any and all future improvements/modifications to the Access Roadway in excess of the Minimum Requirements, including, but not limited to, signaling, signage, lighting and landscaping (the “**Additional Roadway Costs**”). Prior to commencing any construction, modification and/or improvement to the Access Roadway, the owner of the Mattamy Property shall provide construction plans for such construction, modification and/or improvement to the Access Roadway (the “**Future Plans**”) to America Walks for its review and written approval, which approval shall not be unreasonably withheld, conditioned or delayed. America Walks shall have ten (10) business days to review and provide comments to the Future Plans. Failure to provide comments within such ten (10) business day period shall be deemed an approval of the Future Plans.

c. In the event that Mattamy and America Ways mutually agree to include additional design and improvements in excess of the Minimum Requirement in the Initial Plans for the design and construction of the Access Roadway (the cost of such additional design, permitting and construction referred to herein as the “**Mattamy Initial Roadway Costs**”), the Owner of the Mattamy Property shall reimburse America Walks for the Mattamy Initial Roadway Costs within five (5) business days after the earlier of: (i) a transfer, conveyance and/or sale of any portion of the Mattamy Property occurring after the Effective Date hereof; or (ii) the issuance of any permit and/or approval which permits the commencement of site, utility, grading and/or any other construction activity on any portion of the Mattamy Property (each, a “**Reimbursement Event**”), together with reasonable evidence of such expenditures in accordance with a mutually approved budget and design.

If America Walks fails complete construction of the Access Roadway by the date that is forty-eight (48) months after the Effective Date, subject to not less than sixty (60) days’ notice and cure, Mattamy may, but shall not be obligated to, construct the Access Roadway. In such event, America Walks shall reimburse Mattamy its share of the actual and reasonable third-party costs, but only to the extent necessary to meet the Minimum Requirements, within thirty (30) days following receipt of an invoice for such costs, together with reasonable evidence of such expenditures.

6. **Grant of Access Easement.** The Owners grant and convey to each other, their successors and assigns, and their Authorized Users (as hereinafter defined), an appurtenant, non-exclusive easement (the “**Access Easement**”) over, under, and across the Access Roadway for the purposes of providing vehicular and pedestrian access, ingress and egress to and from the Property and Becker Road. It is the express intent of the parties that the Access Easement shall

not merge into the fee interest of Mattamy held in the Access Roadway. As used in this Agreement, “**Authorized Users**” shall mean all of an Owner’s customers, agents, employees, consultants, suppliers, representatives, contractors, tenants, licensees, and providers of emergency services and utility services. The Access Easement shall be used and enjoyed by the Owners in such a reasonable manner as to cause the least possible interference with the use of the Access Roadway and the conduct and operations of the businesses at any time existing on the Property by the other Owner and/or their Authorized Users. The Access Easement granted herein shall automatically terminate upon dedication or platting of the Access Roadway as a public right-of-way. The Construction Easement and the Access Easement are collectively referred to herein as the “**Easements**”.

7. **Term of Easements.** The Construction Easement shall terminate upon the Construction Easement Expiration Date. The Access Easement shall be perpetual unless and until the Access Roadway is dedicated as a public-right-of-way as set forth above.

8. **Liens.** The Owners shall not permit (and shall promptly satisfy or transfer to bond) any construction lien, mechanic's lien, or other lien or encumbrance against another Owner’s Property, if such lien or encumbrance shall arise in connection with the exercise or fulfillment by an Owner (or any individual or entity claiming by, through, or under such party) of its rights or obligations under this Agreement.

9. **Repair and Maintenance of Access Roadway.** The obligation to repair and maintain the Access Roadway in good order, clean, and safe condition in accordance with Applicable Laws shall be apportioned between the Owners as follows:

a. During the period of time commencing with the completion of the Access Roadway in accordance with the Initial Plans and ending upon the occurrence of a Reimbursement Event, America Walks shall be solely responsible for the cost of the maintenance and repair of the Access Roadway.

b. From and continuing after the occurrence of a Reimbursement Event, the Owners of the Mattamy Property shall be responsible for the cost of the maintenance and repair of the Access Roadway until the Access Roadway is dedicated as a public right-of-way. Subject to the obligation of the Owners of the Mattamy Property to reimburse America Walks for the Mattamy Initial Roadway Costs set forth herein, Mattamy shall have the right to pursue and complete a public dedication of the Access Roadway.

10. **Insurance.** Each Owner, and their respective successors and assigns, shall maintain in full force and effect, with a reputable insurance company or companies licensed to provide insurance in the State of Florida, a policy of commercial general liability insurance against claims of liability, bodily injury, death and property damage occurring on, in or about such Owner’s Property in connection with, or in any way related, to the use and exercise of the Easements granted hereby and the negligent acts or omissions of the Owner or such Owner’s agents, employees, or contractors. Such insurance policy shall have limits of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate and shall name the other Owner(s) as additional insureds. Each Owner agrees to

furnish to the other Owner(s) requesting in writing, a certificate evidencing that the insurance required to be carried by such Owner is in full force and effect.

11. **Indemnification.** Each Owner shall defend, indemnify, and hold each other Owner harmless from and against any and all actions, causes of actions, claims, demands, liabilities, judgments, costs, and expenses whatsoever (including, without limitation, reasonable attorneys' fees at trial and appellate levels), arising out of or as a result of the exercise or fulfillment by such Owner, or any individual or entity claiming by, through, or under such Owner, of its rights or obligations under this Agreement.

12. **Defaults.** In the event of a default by any party or its successors or assigns under this Agreement, the non-defaulting party shall deliver to the defaulting party written notice specifying the default, and the defaulting party shall have thirty (30) days to remedy the same, failing which the non-defaulting party shall be entitled to proceed to cure the default (and shall have a license to do so) by the payment of money or performance of some other action for the account of the defaulting party, or seek damages, specific performance, injunctive relief, and any other legal or equitable remedy on account of such default, provided that each party hereby waives the right to terminate this Easement or seek and recover punitive, special and/or consequential damages. All of the remedies permitted or available to a party under this Agreement in law or in equity shall be cumulative and not alternative, and the invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy. Within thirty (30) days of written demand (including providing copies of invoices reflecting costs), the defaulting party shall reimburse the non-defaulting party for any sum reasonably expended by the non-defaulting party to cure the default, together with interest on that sum at the lesser of 10% per annum or the highest rate permitted by law. Any sums owed under this section shall be secured by a lien on the defaulting party's parcel and the improvements thereon, which lien shall be effective upon the non-defaulting party's recording of notice thereof in the Public Records of St. Lucie County, Florida.

13. **Miscellaneous Provisions.**

a. **Notice.** Notices given or served pursuant hereto or in connection herewith, must be in writing, and may be given either by (i) certified mail and shall be deemed delivered on the third (3rd) business day after such notice, properly addressed and with postage prepaid, is deposited in the United States mail; or (ii) by personal delivery or overnight delivery, charges prepaid, and shall be deemed delivered when actually received (or delivery is refused) by the party to whom it is addressed. Such notices shall be given to the parties hereto at the addresses set forth in the preamble. Any party hereto may, at any time by giving five (5) days' written notice to the other party hereto, designate any other party or address in substitution of any foregoing party or address to which such notice shall be given.

b. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

c. **Further Assurances.** The parties hereto agree to execute any and all further instruments and documents and take all such action as may be reasonably required by any party hereto to effectuate the terms, provisions and intent of this Agreement.

d. **Termination; Amendment.** This Agreement may not be terminated, amended or modified in any respect except by further agreement in writing duly executed by the parties hereto, or their respective successors or permitted assigns.

e. **Severability.** If any of the provisions of this Agreement or the application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement or the application of such provision to the persons or situations other than those as to which it shall have been invalid or unenforceable, shall not be affected thereby and shall continue to be valid and be in force to the fullest extent permitted by law.

f. **Captions.** The headings and captions in this Agreement are for convenience and reference only and in no way define, limit, or describe the scope of the intent of this Agreement.

g. **Construction.** All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the party or parties may require.

h. **Applicable Law.** The validity of this Agreement and all of its terms and provisions as well as rights and duties of the parties hereunder, shall be interpreted and construed in accordance with the laws of the State of Florida. Venue for any action involving this Agreement shall lie in St. Lucie County, Florida.

i. **Covenants Running with the Land.** It is intended that the terms, covenants and conditions set forth in this Agreement shall be construed as both covenants and conditions and that they shall run with the land and be affirmatively enforceable against the parties hereto, and any successor and assign hereof, and shall continue to be an easement and covenants benefiting, binding, and running with the land.

j. **Counterparts.** This Agreement may be executed in counterparts; all such counterparts together being deemed a single document.

k. **Attorneys' Fees.** In the event of any dispute arising under this Agreement, the prevailing party in such action shall be entitled, in addition to all other relief granted or awarded by the court, to a judgment for its reasonable attorneys' and paralegals' fees and costs incurred by reason of such action and all costs of mediation, arbitration, suit at both the trial and appellate levels, and any bankruptcy action. This provision shall survive any termination of this Agreement or the rights granted hereby.

l. **Jury Trial Waiver.** The parties each knowingly, voluntarily and intentionally waive any right which either of them may have to a trial by jury with respect to any litigation or legal proceeding based upon or arising directly, indirectly or otherwise in connection with, out of, related to this Agreement including, by way of example but not limitation, any course of conduct, course of dealings, verbal or written statements or acts or omissions of either party which in any way relate to this Agreement. The parties have specifically discussed and negotiated for this waiver and understand the legal consequences of it.

[Signatures appear on the following pages]

IN WITNESS WHEREOF, the parties executed this Agreement the date first written above.

Signed, sealed and delivered in the presence of:

AMERICA WALKS AT PORT ST. LUCIE, LLC, an Ohio limited liability company

[Signature]
Name: PHILIP HELON

By: Kevin M. Brokaw

[Signature]
Name: DOUGLAS C. LEHR

Name: Kevin M. Brokaw

Title: Authorized Agent

STATE OF ~~FLORIDA~~ OHIO
COUNTY OF MEDINA

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 26th day of May, 2020, by Kevin Brokaw, as Authorized Agent of America Walks at Port St. Lucie, LLC, an Ohio limited liability company, on behalf of the company, who is personally known to me or has produced _____ as identification.

(NOTARY SEAL)



PHILLIP HELON
Attorney At Law
NOTARY PUBLIC
STATE OF OHIO
My Commission Has
No Expiration Date
Section 147.03 O.R.C.

[Signature]
Notary Public, State of ~~Florida~~ OHIO
Name: Phillip Helon
My commission expires: _____
Serial No.: _____

Signed, sealed and delivered
in the presence of:

MATTAMY PALM BEACH LLC, a
Delaware limited liability company

Krystal Traver
Name: Krystal Traver
Cherene Zaccardo
Name: Cherene Zaccardo

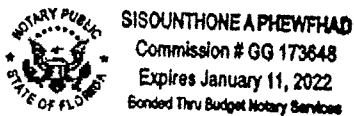
By: [Signature]
Name: ANTHONY PALUMBO
Title: VICE PRESIDENT

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 26th day of May Anthony Palumbo, 2020 by Anthony Palumbo, as Vice President of and on behalf of MATTAMY PALM BEACH LLC, a Delaware limited liability company, who is personally known to me or who has produced FL Driver License as identification.

(NOTARY SEAL)



[Signature]
Notary Public, State of Florida
Name: _____
My commission expires: _____
Serial No.: _____

SCHEDULE OF EXHIBITS

<u>Exhibit "A"</u>	Legal Description and/or Sketch of America Walks Property
<u>Exhibit "B"</u>	Legal Description and/or Sketch of Mattamy Property
<u>Exhibit "C"</u>	Legal Description and/or Sketch of Construction Easement Area
<u>Exhibit "D"</u>	Legal Description and/or Sketch of Access Roadway

EXHIBIT "A"

Legal Description and/or Sketch of America Walks Property

Tract D, of SOUTHERN GROVE REPLAT NO. 30, according to the Plat thereof, as recorded in Plat Book 87, Page 17, of the Public Records of St. Lucie County, Florida.

EXHIBIT "B"

Legal Description and/or Sketch of Mattamy Property

Tract G, of SOUTHERN GROVE REPLAT NO. 30, according to the Plat thereof, as recorded in Plat Book 87, Page 17, of the Public Records of St. Lucie County, Florida.

AND

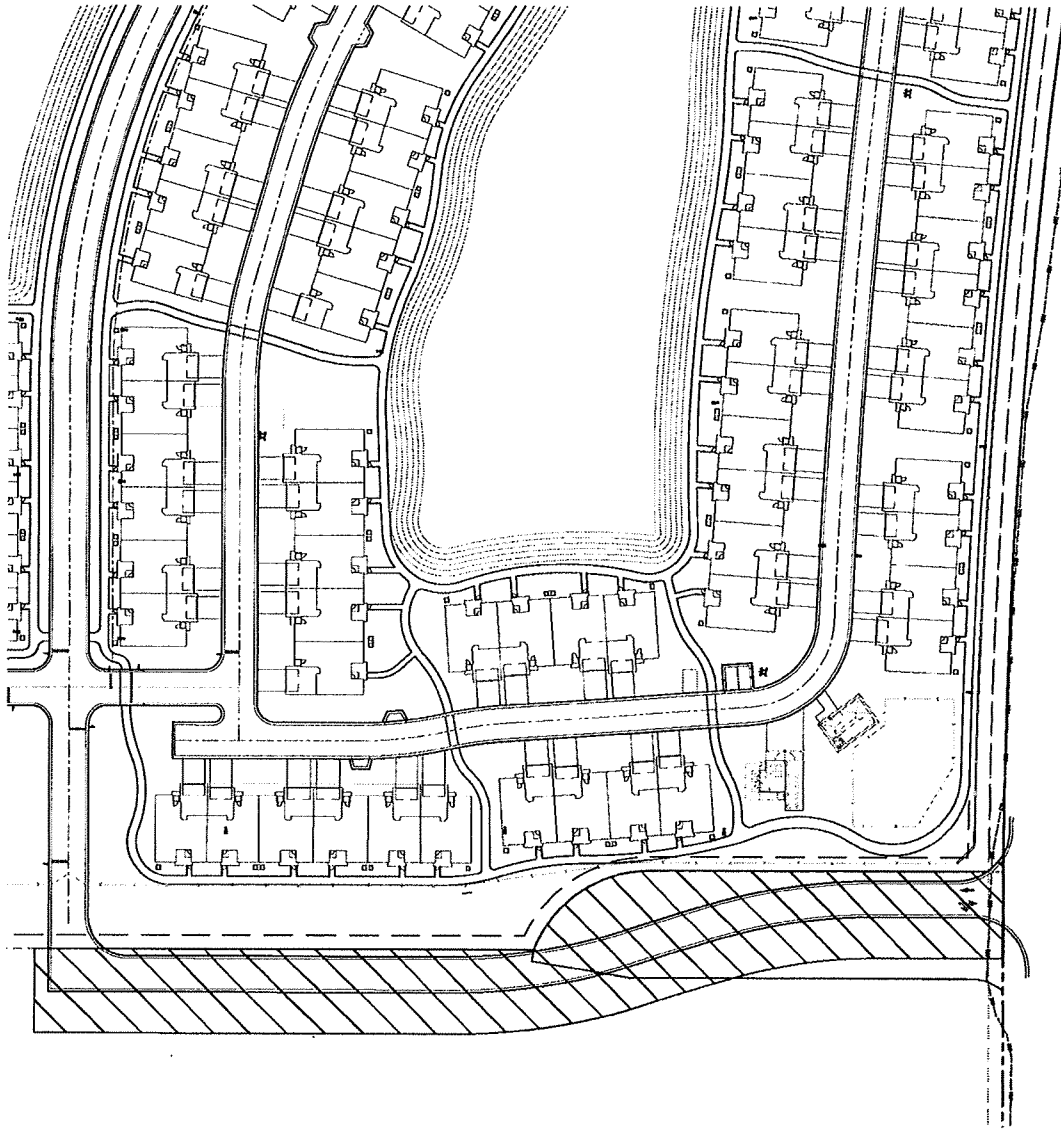
Tract A, of SOUTHERN GROVE REPLAT NO. 30, according to the Plat thereof, as recorded in Plat Book 87, Page 17, of the Public Records of St. Lucie County, Florida.

EXHIBIT "C"

Legal Description and/or Sketch of Construction Easement Area

Plotted By: Camille, Sheet No: AMERICA WALKS Layout: 014 (2) May 27, 2020 02:16:47pm H:\GdL_C04\14944801-America WALKS\CADD\VP-01\VIEW\BT 0 AND 3 EAST AREA.dwg

The document together with the schedule and zoning ordinances herein, is an instrument of service to be used only for the specific purpose and work for which it was prepared. It is not to be construed as a contract or as a representation of any kind. It is the responsibility of the client to verify the accuracy of the information and to provide the necessary data for the preparation of the document. It is the responsibility of the client to provide the necessary data for the preparation of the document.



PROPOSED 60' WIDE
CONSTRUCTION EASEMENT AREA

PSLUSD PROJECT NO. 5355
CITY OF PSL PROJECT NO. 20-039

EX-11

AMERICA WALKS

CONSTRUCTION EASEMENT

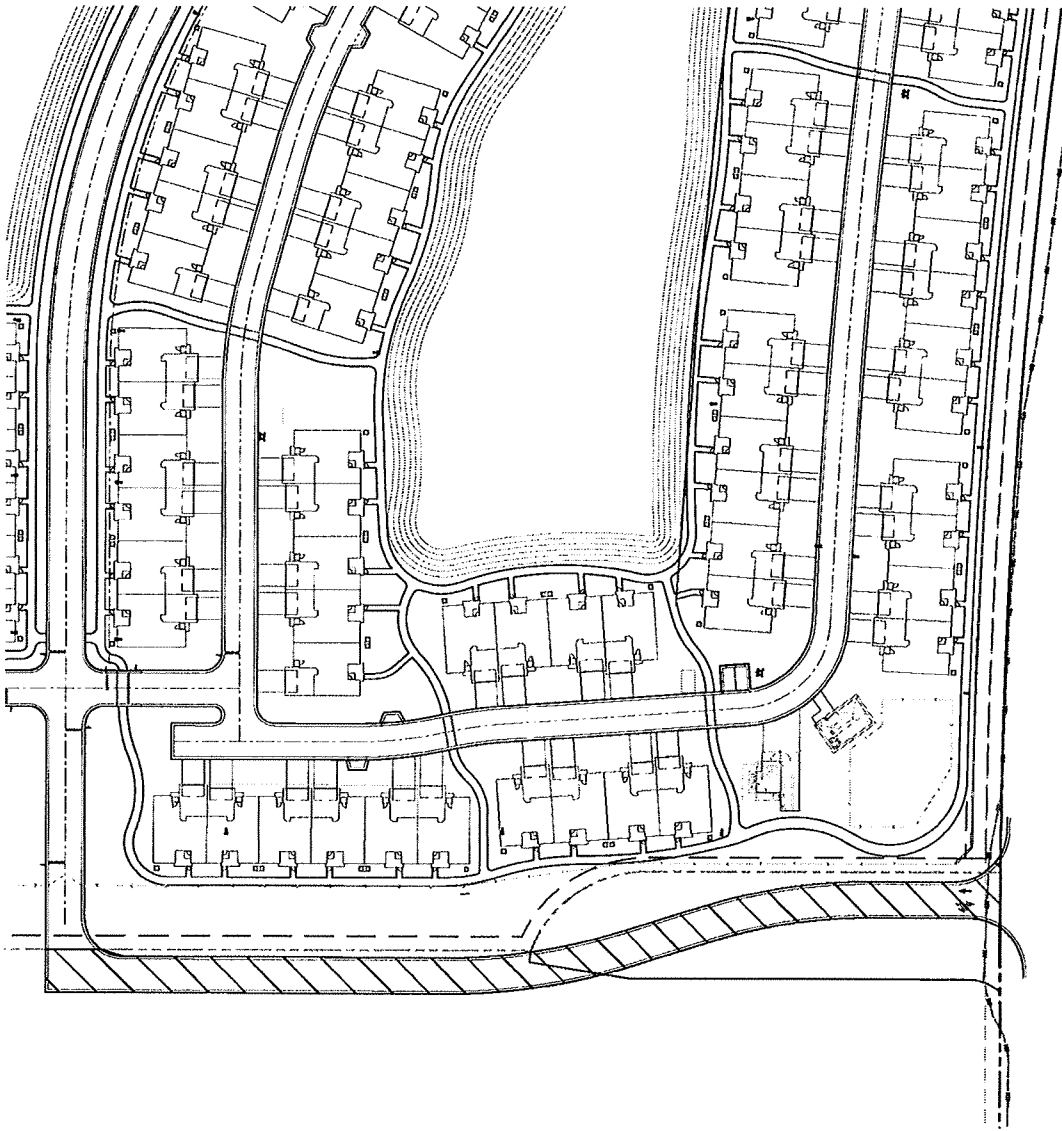
JOIA PROJECT 149948001	LICENSED PROFESSIONAL
DATE 05/28/2020	BROOKS A. SPOKLER, PE

Kimley»Horn

EXHIBIT "D"

Legal Description and/or Sketch of Access Roadway

Plot14 By Concept 2019-05-28 09:51 AM 14.24 44.55 10001 CI 4 May 27 2020 08:09:58m C:\OR_BOOK\4426\001-Prop\14\1424\001\B\1424\001 CI 4 AND D EAST ECG 35.dwg
 This document, together with the separate and partial's drawings hereby, is an attachment of records, is prepared only for the specific purpose and work for which it was prepared. None of the information on this document should be relied upon without the authorization and obligation of the Engineer or the Association. It shall be without liability to the Engineer or the Association.



PSUSD PROJECT NO. 5355
 CITY OF PALM SPRINGS PROJECT NO. 20-039

EXH1

AMERICA WALKS

ACCESS

NOA PROJECT: 149946001	LICENSED PROFESSIONAL BROOKS A. SHORLER, PE
DATE: 05/28/2020	

Kimley»Horn

PROPOSED 26' WIDE INITIAL ACCESS ROADWAY