

WHEN RECORDED RETURN TO:

City of Mesa  
Real Estate Services  
20 East Main Street, Suite 500  
Mesa, Arizona 85211

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**DEVELOPMENT AGREEMENT**

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CITY OF MESA, ARIZONA,  
an Arizona municipal corporation

and

DESERT VISTA 100, LLC,  
an Arizona limited liability company

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\_\_\_\_\_, 2020

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## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "**Agreement**") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the CITY OF MESA, ARIZONA, an Arizona municipal corporation (the "**City**"), and DESERT VISTA 100, LLC, an Arizona limited liability company ("**Owner**"). The City and Owner are sometimes referred to herein collectively as the "**Parties**," or individually as a "**Party**."

### RECITALS

A. Pursuant to a Purchase and Sale Agreement and Escrow Instructions entered into between the City and Owner dated May 21, 2019, as amended ("**Purchase Agreement**"), Owner purchased from the City, approximately 115 +/- acres, as legally described in the attached Exhibit A-1 and depicted in the attached Exhibit A-2 (the "**Property**") located on the northwest corner of Recker and Thomas Roads in Mesa, Arizona. The Property does not include certain real property the City retained adjacent to the Property, specifically: (i) approximately 1 +/- acre(s) at the end of East Star Valley Road legally described in the attached Exhibit B-1 and depicted in the attached Exhibit B-2 that the City uses for the operation of a sewer lift station ("**Lift Station Property**"); and (ii) approximately 14 +/- acres north of the Property as legally described in Exhibit C-1 and depicted in Exhibit C-2 that the City intends to utilize for the development of a park ("**Nature Trail Property**").

B. The City and Owner acknowledge that this Agreement serves as part of the consideration for the sale of the Property as the City would not have sold the Property to Owner, but for Owner entering into this Agreement, and that the development of the Property pursuant to this Agreement will result in benefits to Owner.

C. The City and Owner acknowledge that the development of the Property pursuant to this Agreement will have planning and economic impacts to the City by: (i) requiring development of the Property to be consistent with the City's adopted general plan, as required by statute ("**General Plan**"), (ii) providing for the planning, design, engineering, construction, acquisition, and/or installation of public infrastructure in order to support anticipated development of the Property, (iii) increasing tax and other revenues to the City based on improvements to be constructed on the Property, (iv) creating employment through the construction of the Property consistent with this Agreement, (v) creating improved housing for citizens of the City, and/or (vi) increasing the demand for City services during and after the development of the Property.

D. The Parties hereby acknowledge that the execution of this Agreement is, and the development of the Property shall be, consistent with the City's General Plan and the City's ordinances relating to, and regulating, zoning and approval of the Preliminary Plat (as that term is defined in Section 1 below) within the City ("**Zoning**"). Prior to or contemporaneous with the execution of this Agreement, Owner obtained all Zoning approval for the Property necessary for the development of the Project (as that term is defined in Section 1 below).

E. In reliance upon the City's approval and adoption of this Agreement and the City's representation and covenant that it will provide and perform the undertakings set forth in this Agreement, Owner agrees, without limiting in any respect the specific provisions of this

which apply to the development of the Property or Project as of the Effective Date including, but not limited to, City Code, the General Plan & Zoning, City Building Regulations (Title 4, Mesa City Code), City Subdivision Regulations, and all related approvals or requirements by City Council or City boards.

E. **“A.R.S.”** means the Arizona Revised Statutes as now or hereafter enacted or amended.

F. **“City”** means the Party designated as City on the first page of this Agreement.

G. **“City Code”** means the Code of the City of Mesa, Arizona.

H. **“City Council”** means the City Council of the City.

I. **“Claim”** means, collectively, all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including attorneys’ fees, experts’ fees and court costs associated with all such matters).

J. **“Completion of Construction”** means the date on which one or more temporary or final certificates of occupancy (or letters of acceptance, as applicable) have been issued by City.

K. **“Default”** or **“Event of Default”** means one (1) or more of the events described in Section 9; provided, however, that such events shall not give rise to any remedy until effect has been given to all grace periods, cure periods and/or periods of Enforced Delay provided for in this Agreement and that in any such event the available remedies shall be limited to those set forth in Section 9.

L. **“Easement”** means a permanent easement for public or private utilities over, across, under, and upon the lands of the Property to construct, install, access, maintain, repair, reconstruct, replace, remove, operate and use for utilities and facilities (including, but not limited to, water, wastewater, gas, electric, pipes, conduit, cables, and switching equipment) including, but not limited to, the City’s standard Public Utilities Facilities Easement and Public Utilities Easement for City owned utilities on the Property, as well as utilities pertaining to the Third-Party Parcel.

M. **“Effective Date”** means the first date after all of the following has occurred: (i) the City Council has authorized its City Manager to execute this Agreement; (ii) this Agreement has been executed by the City Manager of the City and by a duly authorized representative of Owner; and (iii) this Agreement has been recorded in the Official Records.

N. **“Enforced Delay”** means as defined in Subsection 9.6.

O. **“General Plan”** means as defined in Recital C.

P. **“Lift Station”** means the sewer lift station owned and operated by the City on the Lift Station Property.

- Q. **“Lift Station Property”** means as defined in Recital A.
- R. **“Nature Trail”** means as defined in Subsection 5.1(A).
- S. **“Nature Trail Property”** means as defined in Recital A and legally described and depicted in Exhibits C-1 and C-2.
- T. **“Official Records”** means the Official Records of the County Recorder for Maricopa County, Arizona.
- U. **“Owner”** means the Party designated as Owner on the first page of this Agreement, and its successors in interest and assigns that conform with the requirements of this Agreement.
- V. **“Party”** or **“Parties”** means as designated on the first page of this Agreement.
- W. **“Plans”** means as defined in Subsection 3.3.
- X. **“Private Roadway Tracts”** means as defined in Subsection 4.4.
- Y. **“Preliminary Plat”** means the preliminary plat for the Project approved by the City’s Planning and Zoning Board on January 8, 2020.
- Z. **“Project”** means as defined in Subsection 3.1.
- AA. **“Property”** means as defined in Recital A and as legally described in Exhibit A-1 and as depicted in Exhibit A-2.
- BB. **“Purchase Agreement”** means as defined in Recital A.
- CC. **“Term”** means as described in Subsection 2.2.
- DD. **“Third Party”** or **“Third-Party”** means any person (as the term “person” is defined in Subsection 1(B) above) other than a Party, or an Affiliate of any Party.
- EE. **“Third-Party Parcel Owner”** means the owner of the Third-Party Parcel and their successors in interest.
- FF. **“Third-Party Parcel”** means that certain parcel of real property in Mesa, Arizona known as APN No. 141-39-001B that was transferred to Mountain States Telephone & Telegraph Co. via Special Warranty Deed dated May 15, 1986 recorded in the Official Records as Document No. 1986-0250938.
- GG. **“Transfer”** means any actual, attempted or purported transfer, assignment, conveyance, or encumbering of this Agreement, all or any part of Owner’s rights and obligations arising under or in respect of this Agreement, all or any portion of the Property, or any interest in Owner; provided, however that a pledge of this Agreement for financing for construction of the Project and encumbering of the Property by Owner in connection with such Third Party

Agreement, to the undertakings set forth in this Agreement, which the City has requested or required of Owner in order to advance the City's interests.

F. The Parties also understand and acknowledge that this Agreement is authorized by and entered into accordance with the terms of A.R.S. § 9-500.05 and A.R.S. § 9-500.11. The actions taken by the City pursuant to this Agreement are: (i) for economic development activities as that term is used in A.R.S. § 9-500.11, as the development of the Property will assist in the creation and retention of jobs in the City, will promote economic development within the City, will provide tangible and intangible economic benefits to the City and its residents, and in numerous other ways will improve and enhance the economic welfare of the residents of the City; and (ii) for the execution of a development agreement for the development of real property in Mesa, Arizona as authorized by A.R.S. § 9-500.05.

## AGREEMENT

Now, therefore, in consideration of the foregoing recitals and representations and the mutual promises contained in this Agreement, the Parties agree as follows:

1. **DEFINITIONS.** The below words and phrases, wherever used in this Agreement, shall be construed as defined in this Section unless, clearly from the context, a different meaning is intended. Words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The use of the term "shall" in this Agreement means a mandatory act or obligation.

A. **"Abandoned Star Valley Entrance"** means as defined in Subsection 4.1(D).

B. **"Affiliate"** as applied to any person, means any person directly or indirectly controlling, controlled by, or under common control with, that person or a blood relative or spouse of such person, if such person is a natural person. For the purposes of this definition: (i) **"control"** (including with correlative meaning, the terms "controlling," "controlled by" and "under common control"), as applied to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that person, whether through the ownership of voting securities, by contract or otherwise; and (ii) **"person"** means and includes natural persons, corporations, limited partnerships, general partnerships, joint stock companies, joint venture associations, limited liability companies, limited liability partnerships, trusts, land trusts, business trusts or other organizations, whether or not legal entities.

C. **"Agreement"** means this Agreement, as amended and restated or supplemented in writing from time to time, including all exhibits and schedules hereto. References to Sections, Subsections or Exhibits are to this Agreement unless otherwise qualified. The Recitals are incorporated herein by reference and form a part of this Agreement, but are not intended to expand the scope, number or nature of the obligations beyond those expressly set forth in the numbered sections of this Agreement.

D. **"Applicable Law"** means, collectively, the federal, state, county and local laws (statutory and common law), ordinances, rules, regulations, standards, permit requirements, and other requirements and official policies of the City, as may be amended or hereafter enacted,

construction financing shall not constitute a Transfer of this Agreement so long as Owner does not Transfer any of its rights or obligations arising under this Agreement, apart from a Transfer of the Property.

HH. “**Undeveloped Property**” means that certain portion of real property on the North of the Property that the Plans for the Project does not modify and that is, as of the Effective Date, intended by Owner to remain a part of the development of the Project as undeveloped and undisturbed open space land.

II. “**Zoning**” means as defined in Recital D.

JJ. “**Zoning Cases**” means, collectively, City Zoning Cases ZON19-00954 (minor General Plan amendment) and ZON19-00806 (rezoning and preliminary plat) for the Project and any amendments or modifications thereto.

## 2. **PARTIES AND TERM OF THIS AGREEMENT.**

2.1. **Parties to the Agreement.** The Parties to this Agreement are the City and Owner.

A. **City.** The City is a municipal corporation and a political subdivision of the State of Arizona, duly organized and validly existing under the laws of the State of Arizona, exercising its governmental functions and powers.

B. **Owner.** Owner is Desert Vista 100, LLC, an Arizona limited liability company, together with its successors in interest and assigns.

2.2. **Term.** Notwithstanding anything in this Agreement to the contrary, the term of this Agreement (“**Term**”) will begin on the Effective Date and shall automatically terminate on the thirtieth (30<sup>th</sup>) anniversary of the Effective Date, except as to those provisions set forth herein which specifically survive the termination of the remainder of this Agreement.

## 3. **PROJECT.**

3.1. **Project.** The “**Project**” that is the subject of this Agreement shall refer to the residential housing development on 115 +/- acres of the Property known as the “Reserve at Red Rock”, consisting of approximately 296 dwelling units to be developed as approved in the Zoning Cases.

3.2. **Compliance with Applicable Law.** Owner agrees that all design and development of the Property and Project shall comply with the terms of this Agreement, Applicable Law and any amendments thereto. All Applicable Law in effect at the time of development of any portion of the Property shall apply to such development. Owner shall pay all applicable fees related to the development and construction of the Project.

3.3. **Plans.** Development and construction of the Project shall be in accordance with the plans and specifications prepared and submitted by Owner, which shall comply with Applicable Law (including, specifically, the General Plan and Zoning, as may be amended from

time to time, and the Preliminary Plat), and which must be reviewed and approved by the City in accordance with its regular and customary procedures, except as specifically provided in Subsection 5.4 of this Agreement, including, but not limited to, the requirements of the Zoning Cases (“**Plans**”).

4. **OWNER OBLIGATIONS.**

4.1. **Platting; Abandonment & Easements.**

A. **General.** The development and construction of the Project shall be completed by Owner in accordance with Applicable Law, including the requirement that Owner must comply with the City’s platting process. In addition to the City’s standard platting requirements, Owner shall do or grant all of the below rights or actions that will be recorded in the plat.

B. **Abandonment of Right of Way (East Star Valley Street and North Shenandoah).** It is intended that the City, subject to City Council approval, will abandon the full public right of way for East Star Valley Street and North Shenandoah within the Property; Owner agrees that it shall grant a 40-foot wide Easement, with a 24-foot wide roadway, to the City for such abandoned City property during the final platting process. Owner’s financial obligation for consideration of the abandonment under A.R.S. § 28-7208 shall be deemed satisfied by Owner having allowed the City to retain the Nature Trail Property under the Purchase Agreement without a reduction in the sale price for the Property. Owner acknowledges that the Third-Party Parcel Owner may be entitled to a portion of the abandoned right of way pursuant to A.R.S. § 28-7205.

C. **Abandonment of Right of Way (West Redmont).** It is intended that the City, subject to City Council approval, will abandon the right of way for the west side Redmont Road driveway approach adjacent to North Recker Road. Owner’s financial obligation for consideration of the abandonment under A.R.S. § 28-7208 shall be deemed satisfied by Owner having allowed the City to retain the Nature Trail Property under the Purchase Agreement without a reduction in the sale price for the Property. City shall maintain all other existing right of way for Recker Road.

D. **Abandoned Star Valley Entrance.** As set forth in Subsection (B) above, the City intends, subject to City Council approval, to abandon East Star Valley Street. Owner acknowledges that the City must maintain certain rights related to utility infrastructure which shall be granted by Owner through Easement(s) to the City. Owner intends, subject to City approval, to eliminate the roadway entrance into the Property from North Recker Road to East Star Valley Street (“**Abandoned Star Valley Entrance**”). The Parties intend that the only improvements on the Abandoned Star Valley Entrance property shall be landscaping, sidewalks, pedestrian access, view fence, pedestrian gate, and water retention, that will be maintained at the sole cost of Owner, and that will allow ease of access to the utilities located in the Abandoned Star Valley Entrance property.

E. Public & Private Easements.

i. City Utilities. Owner shall grant the City an Easement for any portion of the Property containing City-owned public utilities, or relocated utilities necessary for the development of the Project, including wastewater utility infrastructure on the Property related to the Lift Station. The public utilities, infrastructure and improvements for which Easements shall be granted pursuant to this Subsection are those described in Exhibit D-1 and depicted in Exhibit D-2.

ii. Third-Party Parcel Owner. Prior to approval of the final plat, Owner shall grant the Third-Party Parcel Owner, with the Third-Party Parcel Owner written consent, an Easement or Easements for: any infrastructure or improvements of Third-Party Parcel Owner's that goes from Third-Party Parcel Owner's Property to the City right of way, and ingress and egress at all times for the Third-Party Parcel Owner and its invitees to the Third-Party Parcel. The infrastructure and improvements for which Easements shall be granted pursuant to this Subsection include, but are not limited to, those described in Exhibit D-1 and depicted in Exhibit D-2. The Easements Owner is to grant to Third-Party Parcel Owner are to ensure that Third-Party Parcel Owner is not adversely affected by the City's abandonment of any right of way pursuant to this Agreement. As such, in addition to any indemnification requirements set forth elsewhere in this Agreement, Owner shall pay, defend, indemnify and hold harmless the City and its officers, officials, agents, and employees from and against all Claims from the Third-Party Parcel Owner which arise from or relate to, in whole or in part: (a) the City's abandoning the right of way and any affect to Third-Party Parcel Owner's access to/from the Third-Party Parcel; (b) City's abandonment of right of way and infrastructure or improvements on the Property; or (c) Owner's failure to grant to Third-Party Parcel Owner the Easements required under this Agreement.

F. Additional Utilities Easements. While, prior to the sale of the Property, Owner and the City used commercially reasonable diligence to determine where any private or public infrastructure is located at the Property (see Exhibit D-1 and Exhibit D-2), the Parties acknowledge that additional infrastructure could exist. Owner agrees that if any other private or public infrastructure is found to be located at the Property, Owner will grant the owner of the infrastructure (whether that be the City, the Third Party Parcel Owner or a Third-Party) an Easement on the Property for the infrastructure, including ingress and egress; however, in the alternative, Owner may, with the permission of the owner of such infrastructure and at Owner's sole cost and expense, relocate the infrastructure and provide an Easement, including ingress and egress, in accordance with the requirements of Subsection (G) below.

G. Easement Requirements; Infrastructure Relocation. Easements granted by Owner to the City pursuant to this Agreement shall be granted via the City's standard Public Utilities Easement form agreement executed by Owner. If Owner desires to relocate any infrastructure (including utility lines) on the Property, and Owner gets approval from the owner of the infrastructure, then Owner may relocate the infrastructure and issue a new Easement for the relocated infrastructure location, including ingress and egress.



4.2. Lift Station.

A. Access to Lift Station. Owner shall ensure that throughout construction of the Project and thereafter, the City will retain continuous access to the Lift Station through the Property. The requirements of this Subsection shall survive the termination, cancellation or expiration of this Agreement and are enforceable by specific performance, or any means permitted in law or equity.

B. Traffic Limitation. As a part of its development of the Private Roadway Tracts on the Property, Owner intends to propose a method of differentiating and traffic calming of vehicular traffic internal to the community (not including City vehicles) to, from and near the Lift Station such as, by way of example but not limitation, narrowing the width of the roadway, changing the roadway surface, and/or the use of a type of construction material for the road surface on the portion of the Private Roadway Tract running immediately adjacent to the Lift Station Property; During the final platting process and subject to the City's sole approval, City agrees to reasonably work with Owner to accommodate a traffic calming in such area.

4.3. Roadway Improvements. The roadway improvements on the Property shall consist of private (interior local) streets (the "Private Roadway Tracts"). Owner, at its sole cost and expense, is responsible for the construction and maintenance of the Private Roadway Tracts.

4.4. Infrastructure Improvements. In accordance with the City's normal processes and procedures, and Applicable Law, Owner shall submit for the City's review and approval, the infrastructure improvements required for the Project including, but not limited to, water, wastewater, gas, roadways, streetlights and retention basins, which shall all be constructed and installed solely at Owner's expense.

4.5. Drainage Improvements. Owner, at its sole cost and expense, shall construct or cause to be constructed drainage improvements in accordance with the approved Master Drainage Report (and any amendments approved by the City) and Applicable Law.

4.6. Maintenance of the Property. Notwithstanding any Easements granted on the Property, it is the exclusive responsibility of Owner, at its sole cost and expense, to operate and maintain the Property, including any portion of the Property where an Easement is located, in accordance with Applicable Law and the requirements of this Agreement. The Owner shall not be responsible for the maintenance of the Nature Trail Property.

4.7. Homeowner's Association Assignment and Assumption. Owner shall be solely responsible to perform all obligations and requirements set forth in this Agreement that are the obligation of Owner; provided, however, following Completion of Construction of the Project, Owner may assign its rights and obligations under this Agreement, including provisions that survive termination of this Agreement, to a homeowners' association formed for that purpose and other purposes. Pursuant to the requirements of Subsection 10.2, any assignment of the provisions of this Agreement to a homeowners' association must be accomplished by a written instrument that is recorded in the Official Records and in which the rights and obligations are expressly assigned by Owner and assumed by the homeowner's association. If Owner's rights and obligations are assigned to a homeowner's association in accordance with the requirements of this

Agreement, then the insurance and indemnification requirements of Section 6 shall not apply to the homeowner's association.

5. **CITY OBLIGATIONS.** In consideration of Owner's prompt and punctilious performance of its obligations required by this Agreement, the City agrees as follows:

5.1. **Nature Trail.**

A. **Construction and Maintenance; No Third-Party Rights.** The City intends, to utilize the Nature Trail Property for the development of a City park that will be used by the general public and which may include a nature trail ("**Nature Trail**") and related parking. The City may develop, construct and maintain the Nature Trail and any related parking at the City's sole cost and expense, in the City's absolute discretion, and in accordance with Applicable Law. Nothing in this Agreement will be construed as a promise or guarantee creating a right in Owner or any Third Party related to the development and construction of the Nature Trail, parking for the Nature Trail or the Nature Trail Property.

B. **Schedule for Development; Impact on Construction of Project.** The Parties agree that the development, construction and maintenance of the Nature Trail and any related parking will be done at the sole and absolute discretion of the City, including the selection of the improvements to be constructed and the construction schedule. The construction schedule of the Nature Trail will not impede any permitting, issuance of a certificate of occupancy or other requirement for the lawful development of the Project.

C. **Fencing; Signage.** To assist the public in distinguishing between the Nature Trail Property and the Undeveloped Property, the City shall install and maintain, at its sole cost and expense, fencing on the southern border of the Nature Trail Property. The installation of the fencing will occur within six (6) months after both of the following have occurred: (i) the Owner, based on a survey of the Property, staking the northern border of the Undeveloped Property in a manner that reasonably allows the City to determine the border of the Property adjacent to the Nature Trail Property for the purpose of constructing the fence; and (b) the recording of the Agreement in the Official Records. Any fencing will be of a type decided by the City, at its sole discretion, but it is intended that a strand-wire range fence or a similar, simple fence type will be installed. Owner acknowledges and agrees that the location of the fencing installed by the City pursuant to this Subsection will be generally based upon the border of the Property and the Nature Trail Property, but that the exact location of the fencing will be determined by the City at its sole discretion, provided that the location of the fencing will at all times be on the Nature Trail Property. The City may also install periodic signage along or near the fence line that would reasonably notify the public when they are generally leaving the Nature Trail Property. Owner acknowledges that the sole purpose of any fencing or signage the City may install is to provide general notice to the public in the change of property status (public to private) between the Nature Trail Property and the Undeveloped Property, and that any fencing or signage installed by the City will not serve as a security measure or a guarantee to Owner that any unauthorized individuals or members of the public will not enter the Undeveloped Property. Owner may install on the Undeveloped Property, at its sole cost and discretion, additional signs and fencing, or any security measures, in accordance with Applicable Law.

5.2. Utility Service. The City will provide utility services to the Project in the manner provided to other, similarly situated customers of the City subject to the terms and limitations of, and compliance with, Applicable Law (including, but not limited to, Mesa City Code Title 8), and the City's Terms and Conditions for the Sale of Utilities, as well as the payment of applicable utility rates, fees and charges as adopted and in effect.

5.3. Thomas Road and Recker Road. City agrees that no additional right of way will be required for Thomas Road. City also agrees that no additional right of way will be required for Recker Road, with the exception of additional right of way to achieve a fifty (50) foot, half-street right of way, for the southern portion of Recker Road, from Redmont Road to Thomas Road, adjacent to the site.

5.4. Subdivision Technical Review. City agrees to use reasonable efforts to process the Subdivision Technical Review plans, and civil and building permit improvement plans in an expeditious manner following submission by Owner of thorough and complete plans and other necessary documents, and to have the final plat scheduled to bring before City Council for approval, at City Council's sole and absolute discretion, prior to close of escrow of the Property.

5.5. Desert Uplands. City acknowledges that this Property is not located within the Desert Uplands and therefore is not subject to the Desert Uplands Guidelines; however, to minimize disturbance of natural landscaping, the City agrees that Owner shall be allowed to use retaining walls or multiple tiers of retaining walls, as reasonably needed, to grade the site in excess of five (5) feet with the lot perimeter six (6) foot wall permitted on top of the retaining wall in hillside areas. Retaining walls will be used to reduce the detrimental impact of the surrounding natural terrain and existing landscape.

5.6. Lift Station.

A. Odor Control. The Parties acknowledge and agree that: (i) the general purpose of the Lift Station is to serve as a facility to move wastewater from a lower to higher elevation, and that wastewater can produce an odor; and (ii) the City, as of the Effective Date, utilizes and will continue to utilize a commercially reasonable system for the diffusion of odors at the Lift Station.

B. Fencing, Gate, and Turnaround. The City agrees, in consultation with Owner but at City's sole discretion, cost and expense, to: (i) paint the screen wall around the Lift Station (ii) install new gates at the Lift Station, at the locations along the screen wall where gates exist as of the Effective Date, that are designed to decrease visibility into the area behind the gates; and (iii) to add decomposed granite or a similar material to the turnaround area at the Lift Station. The painting, installation of the new gates, and addition of the decomposed granite or similar material will all occur within six (6) months after the recording of this Agreement in the Official Records.

C. Landscaping. Owner may, at Owner's sole cost and obligation, install, maintain and improve landscaping around the exterior of the walls surrounding the Lift Station so long as the landscaping does not interfere with the City's operation of or access to the Lift Station.

6. **INDEMNITY; RISK OF LOSS; INSURANCE.**

6.1. **Indemnity by Owner.** Owner shall pay, defend, indemnify and hold harmless the City and its officers, officials, agents, and employees from and against all Claims which arise from or relate, in whole or in part, to any act or omission by Owner, or its employees, contractors, subcontractors, agents or representatives: (i) for the design, development or construction of the Project; or (ii) in fulfillment of Owner's obligations under this Agreement. The provisions of this Subsection shall not apply to Claims which are attributable solely to the gross negligence or willful misconduct in the performance of acts or omissions of the City, or its officers, officials, agents, or employees. The foregoing indemnity obligations, including those set forth in Subsection 4.1(E)(ii) above, shall survive the expiration or termination of this Agreement for a period equal to the applicable statute of limitations period.

6.2. **Risk of Loss.** Owner assumes the risk of any and all loss, damage or Claims to the Project.

6.3. **Insurance.** Owner shall be obligated to provide insurance amounts as provided in Applicable Law that are required for the development and construction of the Project including, but not limited to, work in or on the right of way.

7. **CITY REPRESENTATIONS.** The City represents and warrants to Owner that:

A. The City has the full right, power and authorization to enter into this Agreement, and the City's execution, delivery and performance of this Agreement has been duly authorized and agreed to in compliance with the requirements of the City Code.

B. All consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.

C. The City will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

D. The City knows of no litigation, proceeding, initiative, referendum, investigation or threat of any of the same specifically contesting the powers of the City or its officials with respect to this Agreement that has not been disclosed in writing to Owner.

E. The execution, delivery and performance of this Agreement by the City is not prohibited by, and does not conflict with, any other agreements, instruments, judgments or decrees to which the City is a party or is otherwise subject.

F. The City has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

8. **OWNER REPRESENTATIONS.** Owner represents and warrants to the City that:

A. Owner has the full right, power and authorization to enter into and perform this Agreement and of the obligations and undertakings of Owner under this Agreement, and the execution, delivery and performance of this Agreement by Owner has been duly authorized and agreed to in compliance with the organizational documents of Owner.

B. All consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.

C. Owner shall execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

D. As of the date of this Agreement, Owner knows of no litigation, proceeding or investigation pending or threatened against or affecting Owner, which could have a material adverse effect on Owner's performance under this Agreement that has not been disclosed in writing to the City.

E. This Agreement (and each undertaking of Owner contained herein) constitutes a valid, binding and enforceable obligation of Owner, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity. Owner shall defend the validity and enforceability of this Agreement in the event of any proceeding or litigation arising from its terms that names Owner as a party or which challenges the authority of Owner to enter into or perform any of its obligations hereunder and shall cooperate with the City in connection with any other action by a Third Party in which the City is a party and the benefits of this Agreement to the City are challenged. The severability and reformation provisions of Subsection 10.3 shall apply in the event of any successful challenge to this Agreement.

F. The execution, delivery and performance of this Agreement by Owner is not prohibited by, and does not conflict with, any other agreements, instruments, judgments or decrees to which Owner is a party or to which Owner is otherwise subject.

G. Owner has not paid or given, and will not pay or give, any Third Party any money or other consideration for obtaining this Agreement other than normal costs of conducting business and costs of professional services such as the services of architects, engineers and attorneys.

H. Owner has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

9. **EVENTS OF DEFAULT; REMEDIES.**

9.1. Events of Default. A “**Default**” or an “**Event of Default**” under this Agreement shall occur under this Agreement if a Party breaches any obligations required to be performed by it hereunder, subject to the provisions of Subsection 9.3.

9.2. Remedies. Whenever a Default occurs and is not cured (or, if appropriate, no cure is undertaken) by the defaulting Party in accordance with Subsection 9.3 of this Agreement, the non-defaulting Party's sole and exclusive remedies shall consist of and be limited to seeking injunction, specific performance, declaratory action, special action, or other, similar relief (whether characterized as mandamus, injunctive relief, specific performance or otherwise). Notwithstanding anything herein to the contrary, each Party expressly waives any and all right to terminate this Agreement, or seek damages as a remedy with respect to a Default. The specific performance remedy provided in this Subsection 9.2 shall be cumulative relief and shall not limit the City's right to seek damages under the indemnification and duty to defend and hold harmless provisions of this Agreement, or under any right the City has as the municipal government unit in which the Property is located.

9.3. Grace Periods; Notice and Cure. Upon the occurrence of an Event of Default by any Party, such Party shall, upon receipt of written notice from the non-defaulting Party, proceed promptly to cure or remedy such Default and, in any event, such Default shall be cured within 30 days after receipt of such notice, or, if such Default is of a nature that is not capable of being cured within thirty (30) days, the cure shall be commenced within such period and diligently pursued to completion but not to exceed ninety (90) days in total. The non-defaulting Party shall not exercise any remedies pursuant to Subsection 9.2 until and unless the applicable cure period described in this Subsection 9.3 has expired and the Default remains uncured.

9.4. Delays; Waivers. Except as otherwise expressly provided in this Agreement, any delay by any Party in asserting any right or remedy under this Agreement shall not operate as a waiver of any such rights or limit such rights in any way; and any waiver in fact made by such Party with respect to any Default by the other Party shall not be considered as a waiver of rights with respect to any other Default by the non-defaulting Party or with respect to the particular Default except to the extent specifically waived in writing. It is the intent of the Parties that this provision will enable each Party to avoid the risk of being limited in the exercise of any right or remedy provided in this Agreement by waiver, laches or otherwise at a time when it may still hope to resolve the problems created by the Default involved.

9.5. Rights and Remedies Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by either Party of any one or more of such rights shall not preclude the exercise by it, at the same or different times, of any other right or remedy for any other Default by the other Party.

9.6. Enforced Delay in Performance for Causes Beyond Control of Party. Neither the City nor Owner, as the case may be, shall be considered not to have performed its obligations under this Agreement in the event of enforced delay (an “**Enforced Delay**”) due to causes beyond its control and without its fault, negligence or failure to comply with Applicable Law, including, but not restricted to, acts of God, acts of public enemy, acts of the federal, state or local government, acts of the other Party, acts of a Third Party, litigation concerning the validity and

enforceability of this Agreement or relating to transactions contemplated hereby (including the effect of petitions for initiative or referendum), fires, floods, epidemics, pandemics, quarantine, restrictions, strikes, embargoes, labor disputes, and unusually severe weather or the delays of subcontractors or materialmen due to such causes, act of a public enemy, war, terrorism or act of terror, sabotage, or similar occurrence or any exercise of the power of eminent domain, condemnation, or other taking by the action of any governmental body on behalf of any public, quasi-public, or private entity, or declaration of moratorium or similar hiatus directly affecting the Property (whether permanent or temporary) by any public, quasi-public or private entity. In no event will Enforced Delay include any delay resulting from general economic or market conditions, unavailability for any reason of purchasers of portions of the Property, nor from the unavailability for any reason of particular contractors, subcontractors, vendors, investors or lenders desired by Owner in connection with the construction of the Project, it being agreed that Owner will bear all risks of delay which are not Enforced Delay. In the event of the occurrence of any such Enforced Delay, the time or times for performance of the obligations of the Party claiming delay shall be extended for a period of the Enforced Delay; provided that the Party seeking the benefit of the provisions of this Subsection shall, within ten (10) days after such Party knows of any such Enforced Delay, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Enforced Delay. Either Party's failure to notify the other of an event constituting an Enforced Delay shall not alter, detract from or negate its character as an Enforced Delay if such event of Enforced Delay were not known or reasonably discoverable by such Party. No period of Enforced Delay shall exceed a period of sixty (60) consecutive calendar days.

10. **GENERAL PROVISIONS.**

10.1. **Governing Law; Choice of Forum.** This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa (or, as may be appropriate, in the Justice Courts of Maricopa County, Arizona, or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Subsection.

10.2. **Assignment; Restrictions.** The provisions of this Agreement are binding upon and shall inure to the benefit of the Parties, and all of their successors in interest and assigns. Unless otherwise specifically set forth herein, (i) prior to Completion of Construction of the Project, no assignment or similar Transfer of Owner's interest in the Property or Project (except for the sale of individual residential housing units), or this Agreement, or in the current management, ownership or control of Owner may occur without the prior written consent of City, which consent may be given or withheld in City's sole and unfettered discretion; however, the foregoing restriction will not apply to a one-time Transfer to an Affiliate of Owner upon City's reasonable determination that, (i) the management and control of the Affiliate transferee is materially the same as the management and control of Owner, and (ii) the Affiliate transferee evidences its assumption of all assigned rights and obligations. Following the Completion of Construction of the Project,

Owner's rights and obligations hereunder may be assigned or otherwise transferred, in whole or in part, without the express, written permission of the City, to a person who has acquired title to the Property or a portion thereof, including to the homeowner's association as described in Subsection 4.7 above. Any assignment or transfer of the provisions of this Agreement may only be accomplished by a written instrument recorded in the Official Records, expressly assigning such rights and obligations.

10.3. Limited Severability. The City and Owner each believe that the execution, delivery and performance of this Agreement is in compliance with Applicable Law. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring the City to do any act in violation of any Applicable Law, constitutional provision, law, regulation, City code or City charter), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. The Parties further agree, in such circumstances, to do all acts and to execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

10.4. Termination Upon Sale of Residential Lots. Except as otherwise provided herein, the Parties hereby acknowledge and agree that this Agreement is not intended to and shall not create conditions or exceptions to title or covenants running with the individual residential lots within the Property and any tracts or land intended to be dedicated or conveyed to the City, any other public or quasi-public entity, or any utility. Therefore, in order to alleviate any concern as to the effect of this Agreement on the status of title to any of the Property, so long as not prohibited by Applicable Law, this Agreement shall terminate without the execution or recordation of any further document or installment as to any individual residential lot and any tracts or land dedicated or conveyed to the City, any utility provider, any homeowner's association or any school district, and thereupon such individual residential lot and any tracts or land dedicated or conveyed to the City, any utility provider, any homeowner's association or any school district shall be released from and no longer be subject to or burdened by the provisions of this Agreement.

10.5. Construction. The terms and provisions of this Agreement represent the results of negotiations between the Parties, each of which has been or has had the opportunity to be represented by counsel of its own choosing, and none of which has acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings, and the Parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Agreement that ambiguous or conflicting terms or provisions contained in this Agreement shall be interpreted or construed against the Party who prepared or whose attorney prepared the executed Agreement or any earlier draft of the same.



10.6. Notices.

A. Addresses. Except as otherwise required by law, any notice required or permitted under this Agreement shall be in writing and shall be given by personal delivery, or by deposit in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this Subsection, or by any nationally recognized express or overnight delivery service (e.g. Federal Express or UPS), delivery charges prepaid:

If to the City:	City of Mesa Attn: City Manager 20 East Main Street Mesa, Arizona 85211
With a required copy to:	City of Mesa Attn: City Attorney 20 East Main Street, Suite 850 Mesa, Arizona 85211
If to Owner:	Desert Vista 100, LLC Attn: Jeff Blandford with a copy to Tom Lemon 3321 East Baseline Road Gilbert, Arizona 85234
With a required copy to:	Pew & Lake, PLC Attn: Sean B. Lake 1744 S. Val Vista Drive, Suite 217 Mesa, Arizona 85204

B. Effective Date of Notices. Any notice sent by United States Postal Service certified or registered mail shall be deemed to be effective the earlier of the actual delivery, or three (3) calendar days after deposit in a post office operated by the United States Postal Service. Any notice sent by a recognized national overnight delivery service shall be deemed effective two (2) calendar days after deposit with such service or its receipt (or refusal of receipt) by the addressee. Any notice personally delivered or delivered through a same-day delivery/courier service shall be deemed effective upon its receipt (or refusal to accept receipt) by the addressee. Any Party may designate a different person or entity or change the place to which any notice shall be given as herein provided.

10.7. Time of Essence. Time is of the essence of this Agreement and each provision hereof.

10.8. Attorneys' Fees and Costs. In the event of a Default by any Party and commencement of a subsequent legal action in an appropriate forum, the prevailing Party in any such dispute shall be entitled to reimbursement of its reasonable attorney's fees and court costs, including, but not limited to, its costs of expert witnesses, transportation, lodging and meal costs

of the parties and witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental costs of such dispute.

10.9. Waiver. Without limiting the other terms or provisions of this Agreement, the Parties agree that neither the failure nor the delay of any Party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver of such right, remedy, power or privilege, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

10.10. Third-Party Beneficiaries. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other agreement between the Parties. No term or provision of this Agreement is intended to, or shall be for the benefit of any person or entity not a Party hereto, and no such other person or entity shall have any right or cause of action, except: (i) the Third-Party Parcel Owner shall be a Third-Party beneficiary to the provisions of this Agreement specifically referring to the Third-Party Parcel; and (ii) the persons referred to in the indemnification provisions of Section 6 (or elsewhere in this Agreement) as being indemnified by a Party under this Agreement shall be Third-Party beneficiaries of such indemnification provisions.

10.11. Exhibits. Without limiting the provisions of this Agreement, the Parties agree that all references to this Agreement include all Exhibits designated in and attached to this Agreement, such Exhibits being incorporated into and made an integral part of this Agreement for all purposes.

10.12. Integration. Except as expressly provided herein, this Agreement constitutes the entire agreement between the Parties with respect to the subject matters hereof and supersedes any prior agreement, understanding, negotiation or representation regarding the subject matters covered by this Agreement.

10.13. Further Assurances. Each Party agrees to perform such other and further acts and to execute and deliver such additional agreements, documents, affidavits, certifications, acknowledgments and instruments as any other Party may reasonably require to consummate, evidence, confirm or carry out the matters contemplated by this Agreement or confirm the status of: (a) this Agreement as in full force and effect and (b) the performance of the obligations hereunder at any time during its Term.

10.14. Computation of Time. In computing any period of time under this Agreement, the date of the act or event from which the designated period of time begins to run shall not be included. The last date of the period so completed shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday. The time for performance of any obligation or taking any action under this Agreement shall be deemed to expire at 5:00 p.m. (Phoenix time) on the last day of the applicable time period provided herein.

10.15. Consents and Approvals. Wherever this Agreement requires or permits the consent or approval of a Party to any act, document, use or other matter, such consent or approval shall be given or denied by such Party in its reasonable discretion, unless this Agreement expressly provides otherwise.

10.16. Covenants Running With Land; Inurement. The covenants, conditions, terms and provisions of this Agreement relating to the use of the Property shall run with the Property and shall be binding upon, and shall inure to the benefit of, the Parties and their respective permitted successors in interest and assigns with respect to such Property. Wherever the term "Party" or the name of any particular Party is used in this Agreement such term shall include any such Party's permitted successors in interest and assigns.

10.17. Recordation. Within ten (10) days after this Agreement has been approved by the City and executed by the Parties the City shall cause this Agreement to be recorded in the Official Records of Maricopa County, Arizona.

10.18. Amendment. No change or addition is to be made to this Agreement except by written amendment executed by the City and Owner. Within ten (10) days after any amendment to this Agreement, such amendment shall be recorded in the Official Records. Upon amendment of this Agreement as established herein, references to "Agreement" or "Development Agreement" shall mean the Agreement as amended. If, after the effective date of any amendment(s), the Parties find it necessary to refer to this Agreement in its original, unamended form, they shall refer to it as the "Original Development Agreement." When the Parties mean to refer to any specific amendment to the Agreement which amendment is unmodified by any subsequent amendments, the Parties shall refer to it by the number of the amendment as well as its effective date.

10.19. Good Faith of Parties. Except where any matter is expressly stated to be in the sole discretion of a Party, in performance of this Agreement or in considering any requested extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily or capriciously and will not unreasonably withhold, delay or condition any requested approval, acknowledgment or consent.

10.20. Survival. All indemnifications contained in this Agreement shall survive the execution and delivery of this Agreement, the closing of any transaction contemplated herein, and the rescission, cancellation, expiration or termination of this Agreement upon the terms and for the period set forth in each respective Section or Subsection.

10.21. Nonliability of City Officials, Etc., and of Employees, Members and Partners, Etc. of Owner. No City Council member, official, representative, agent, attorney or employee of the City shall be personally liable to any of the other Parties hereto, or to any successor in interest or assigns to any of the other Parties, in the Event of Default or breach by the City or for any amount which may become due to any of the other Parties or their successors in interest or assigns, or with respect to any obligation of the City under the terms of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the liability of Owner under this Agreement shall be limited solely to the assets of Owner and shall not extend to or be enforceable against: (i) the individual assets of any of the individuals or entities who are shareholders, members, managers

constituent partners, officers or directors of the general partners or members of Owner; (ii) the shareholders, members or managers or constituent partners of Owner; or (iii) officers of Owner.

10.22. Conflict of Interest Statute. Pursuant to A.R.S. § 38-503 and § 38-511, no member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. This Agreement is subject to cancellation pursuant to the terms of A.R.S. § 38-511..

10.23. No Boycott of Israel. Owner certifies pursuant to A.R.S. § 35-393.01 that it is not currently engaged in, and for the duration of this Agreement will not engage in, a boycott of Israel.

10.24. Waiver. Owner hereby waives and releases the City from any and all claims under A.R.S. § 12-1134, *et seq.*, including any right to compensation for reduction to the fair market value of all or any part of the Property, as a result of the City's approval of this Agreement, the City's approval of Owner's Plans for the Project, the issuance of any permits, and all related Zoning (including the Zoning Cases), land use, building and development matters arising from, relating to, or reasonably inferable from this Agreement. The terms of the waiver in this Subsection shall run with all land that is the subject of this Agreement and shall be binding upon all subsequent landowners, assignees, lessees and other successors in interest, and shall survive the expiration or earlier termination of this Agreement.

10.25. Consent. Wherever the City's consent is required to be given in this Agreement, such consent will be the consent of the City Manager (or his/her designee), without the requirement of the prior approval of the City Council unless required by Applicable Law, City policy, or the City Manager, and the City Manager (or his/her designee) will enter into such amendments to this Agreement demonstrating such consent as deemed necessary or appropriate by the Parties.

10.26. Preserve State Shared Revenue. Notwithstanding any other provision or limitation of this Agreement to the contrary, if pursuant to A.R.S. § 41-194.01, the Attorney General determines that this Agreement violates any provision of state law or the Constitution of Arizona, The City and Owner shall use all and best faith efforts to modify the Agreement so as to fulfill each Parties obligations in the Agreement while resolving the violation with the Attorney General. If within thirty (30) days of notice from the Attorney General pursuant to and under the provisions of A.R.S. § 41-194.01(B)(1), the City and Owner cannot agree on the modifications to the Agreement, then this Agreement shall automatically terminate at midnight on the thirtieth (13) day after receiving such notice from the Attorney General, and upon such termination the Parties shall have no further obligations under this Agreement. Additionally, if the Attorney General determines that this Agreement may violate a provision of state law or the Constitution of Arizona under A.R.S. § 41-194.01(B)(2), and requires the posting of a bond under A.R.S. § 41-194.01(B)(2), the City shall be entitled to terminate this Agreement, unless Owner posts such bond; and, provided further, that if the Arizona Supreme Court, determines that this Agreement violates any provision of state law or the Constitution of Arizona, the City may terminate this Agreement and the Parties shall have no further obligations hereunder.

[SIGNATURES OF THE PARTIES APPEAR ON THE FOLLOWING PAGES]

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

CITY:

THE CITY OF MESA, Arizona, an Arizona municipal corporation

By: \_\_\_\_\_  
Christopher J. Brady, City Manager

ATTEST:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_, the \_\_\_\_\_ of the City of Mesa, Arizona, an Arizona municipal corporation, who acknowledged that he/she signed the foregoing instrument on behalf of the City.

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

My commission expires:

\_\_\_\_\_

**OWNER:**

DESERT VISTA 100, LLC,  
an Arizona limited liability company

By: *[Signature]*  
T. Lemon (Printed Name, Title)  
Authorized Agent

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

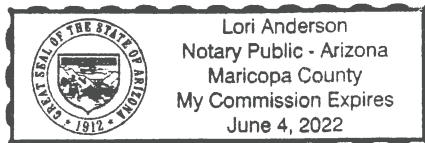
On April 25, 2020, before me, Lori Anderson, a Notary Public in and for said State, personally appeared T. Lemon, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his/her authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

*[Signature]*  
Notary Public

My commission expires:

06-04-22



## Table of Exhibits

- A. Property
  - A-1. Legal Description
  - A-2. Depiction
- B. Lift Station Property
  - B-1. Legal Description
  - B-2. Depiction
- C. Nature Trail Property
  - C-1. Legal Description
  - C-2. Depiction
- D. Easements
  - D-1. Legal Description
  - D-2. Depiction

**Exhibit A-1**

Property Legal Description



**EXHIBIT A-1**

**PARCEL DESCRIPTION**  
**Property**

A portion of Parcel 1, recorded in Document No. 1998-1185781, Maricopa County Records (MCR), and Parcel 3 and a portion of Parcel 2, recorded in Document No. 1998-1185780, MCR, lying within a portion of the southwest quarter of Section 25 and a portion of the southeast quarter of Section 26, Township 2 North, Range 6 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

**COMMENCING** at the southeast corner of said Section 26, a 3-inch City of Mesa brass cap in handhole, from which the south quarter corner of said Section 26, a 3-inch City of Mesa brass cap in handhole, bears South 89°54'11" West (basis of bearing), a distance of 2639.32 feet;  
**THENCE** along the south line of said Section 26, South 89°54'11" West, a distance of 60.17 feet;  
**THENCE** leaving said south line, North 00°05'49" West, a distance of 55.00 feet, to the north right-of-way line of East Thomas Road, as shown on Map of Dedication of Red Mountain Ranch, recorded in Book 292, page 20, MCR and the **POINT OF BEGINNING**;  
**THENCE** along said north right-of-way line, South 89°54'11" West, a distance of 2288.64 feet, to the east line of the west 290 feet of said southeast quarter;  
**THENCE** leaving said north right-of-way line, along said east line, North 00°28'34" East, a distance of 280.01 feet, to the north line of the south 335 feet of said southeast quarter;  
**THENCE** leaving said east line, along said north line, South 89°54'11" West, a distance of 290.01 feet, to the north-south mid-section line of said Section 26;  
**THENCE** leaving said north line, along said north-south mid-section line, North 00°28'34" East, a distance of 1819.99 feet, to a point hereby designated as Point "A" for future reference in this description;  
**THENCE** leaving said north-south mid-section line, North 78°33'00" East, a distance of 470.84 feet;  
**THENCE** North 64°47'47" East, a distance of 172.61 feet;  
**THENCE** North 87°55'01" East, a distance of 987.13 feet;  
**THENCE** North 83°14'58" East, a distance of 573.67 feet, to a point hereby designated as Point "B" for future reference in this description;  
**THENCE** North 70°42'37" East, a distance of 197.39 feet;  
**THENCE** South 85°20'01" East, a distance of 128.07 feet;  
**THENCE** South 39°36'50" East, a distance of 258.28 feet, to the westerly right-of-way line of North Recker Road as shown on Map of Dedication for North Recker Road, recorded in Book 309, page 3, MCR, and a point of intersection with a non-tangent curve;  
**THENCE** along said westerly right-of-way line, southwesterly along said non-tangent curve to the left, having a radius of 736.00 feet, concave southeasterly, whose radius bears South 43°17'39" East, through a central angle of 25°57'01", a distance of 333.35 feet, to the northerly line of that

**Parcel Description  
Property**

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certain parcel of land recorded in Document No. 1987-099975, MCR, and the beginning of a compound curve;

**THENCE** leaving said westerly right-of-way line, along said northerly line, southwesterly along said curve to the right, having a radius of 20.00 feet, concave northerly, through a central angle of  $89^{\circ}27'57''$ , a distance of 31.23 feet, to the westerly line of said parcel of land and the northerly right-of-way line of East Star Valley Street as shown on said Map of Dedication of Red Mountain Ranch and a point of intersection with a non-tangent line;

**THENCE** leaving said westerly line and said northerly line, South  $20^{\circ}10'02''$  West, a distance of 60.00 feet, to the southerly right-of-way line of said East Star Valley Street, the westerly line of that certain parcel of land recorded in Document No. 1987-099974, MCR and a point of intersection with a non-tangent curve;

**THENCE** leaving said southerly right-of-way line, along said westerly line, southeasterly along said non-tangent curve to the right, having a radius of 20.00 feet, concave southwesterly, whose radius bears South  $20^{\circ}13'16''$  West, through a central angle of  $89^{\circ}56'41''$ , a distance of 31.40 feet, to the westerly right-of-way line of North Recker Road as shown on said Map of Dedication of Red Mountain Ranch and the curves end;

**THENCE** leaving said westerly line, along said westerly right-of-way line, South  $20^{\circ}09'57''$  West, a distance of 352.29 feet, to the beginning of a curve;

**THENCE** southerly along said curve to the left, having a radius of 790.00 feet, concave easterly, through a central angle of  $13^{\circ}39'14''$ , a distance of 188.26 feet, to the most northerly corner of that certain parcel of land recorded in Document No. 1995-0047303, MCR;

**THENCE** leaving said westerly right-of-way line, along the northerly line of said certain parcel of land, South  $80^{\circ}46'02''$  West, a distance of 506.00 feet, to the northwest corner of said certain parcel of land;

**THENCE** leaving said northerly line, along the westerly line of said certain parcel of land, South  $00^{\circ}46'29''$  West, a distance of 123.36 feet;

**THENCE** South  $06^{\circ}07'15''$  East, a distance of 150.00 feet;

**THENCE** South  $21^{\circ}01'55''$  East, a distance of 313.00 feet, to the southwest corner of said certain parcel of land;

**THENCE** leaving said westerly line, along the southerly line of said certain parcel of land, North  $73^{\circ}51'58''$  East, a distance of 480.00 feet, to said westerly right-of-way line;

**THENCE** leaving said southerly line, along said westerly right-of-way line, South  $17^{\circ}03'39''$  East, a distance of 493.12 feet, to the beginning of a curve;

**THENCE** southwesterly along said curve to the right, having a radius of 12.00 feet, concave northwesterly, through a central angle of  $90^{\circ}00'00''$ , a distance of 18.85 feet, to the curves end;

**THENCE** South  $72^{\circ}56'21''$  West, a distance of 18.00 feet;

**THENCE** South  $17^{\circ}03'39''$  East, a distance of 60.00 feet, to a point of intersection with a non-tangent curve;

**THENCE** southeasterly along said non-tangent curve to the right, having a radius of 20.00 feet, concave southwesterly, whose radius bears South  $17^{\circ}03'39''$  East, through a central angle of  $89^{\circ}23'36''$ , a distance of 31.20 feet, to a point of intersection with a non-tangent line;

**THENCE** South  $17^{\circ}03'41''$  East, a distance of 147.98 feet, to a point of intersection with a non-tangent curve;

**THENCE** southerly along said non-tangent curve to the right, having a radius of 410.00 feet, concave westerly, whose radius bears South  $72^{\circ}56'21''$  West, through a central angle of  $14^{\circ}37'15''$ , a distance of 104.63 feet, to a point of intersection with a non-tangent curve;

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**THENCE** southwesterly along said non-tangent curve to the right, having a radius of 20.00 feet, concave northwesterly, whose radius bears South 87°33'37" West, through a central angle of 92°20'35", a distance of 32.23 feet, to the **POINT OF BEGINNING**.

**EXCEPT**

Commencing at Point "A";

**THENCE** South 31°37'36" East, a distance of 520.79 feet, to the **POINT OF BEGINNING**;  
**THENCE** South 87°31'51" East, a distance of 114.53 feet;  
**THENCE** South 08°18'51" East, a distance of 253.08 feet;  
**THENCE** South 02°36'13" East, a distance of 9.40 feet;  
**THENCE** South 89°54'14" West, a distance of 244.00 feet;  
**THENCE** North 01°26'42" West, a distance of 55.94 feet;  
**THENCE** North 24°11'08" East, a distance of 229.36 feet, to the **POINT OF BEGINNING**.

**ALSO EXCEPT**

Commencing at Point "B";

**THENCE** South 08°12'18" West, a distance of 210.53 feet, to the northeast corner of that certain parcel of land recorded in Document No. 1986-250938, MCR and the **POINT OF BEGINNING**;  
**THENCE** along the easterly line of said certain parcel of land, South 18°21'02" East, a distance of 161.81 feet, to the southeast corner of said certain parcel of land and a point of intersection with a non-tangent curve;  
**THENCE** leaving said easterly line, along the southerly line of said certain parcel of land, westerly along said non-tangent curve to the left, having a radius of 430.00 feet, concave southerly, whose radius bears South 02°04'43" West, through a central angle of 20°24'50", a distance of 153.20 feet, to the southwest corner of said certain parcel and a point of intersection with a non-tangent line;  
**THENCE** leaving said southerly line, along the westerly line of said certain parcel of land, North 18°20'27" West, a distance of 134.76 feet, to the northwest corner of said certain parcel of land;  
**THENCE** leaving said westerly line, along the northerly line of said certain parcel of land, North 71°39'02" East, a distance of 149.95 feet, to the **POINT OF BEGINNING**.

Containing 5,042,028 square feet or 115.7490 acres, more or less.

Subject to existing right-of-ways and easements.

This parcel description is based on client provided information and is located within an area surveyed by Wood, Patel & Associates, Inc. during the month of August, 2019. Any monumentation noted in this parcel description is within acceptable tolerance (as defined in Arizona Boundary Survey Minimum Standards dated 02/14/2002) of said positions based on said survey.

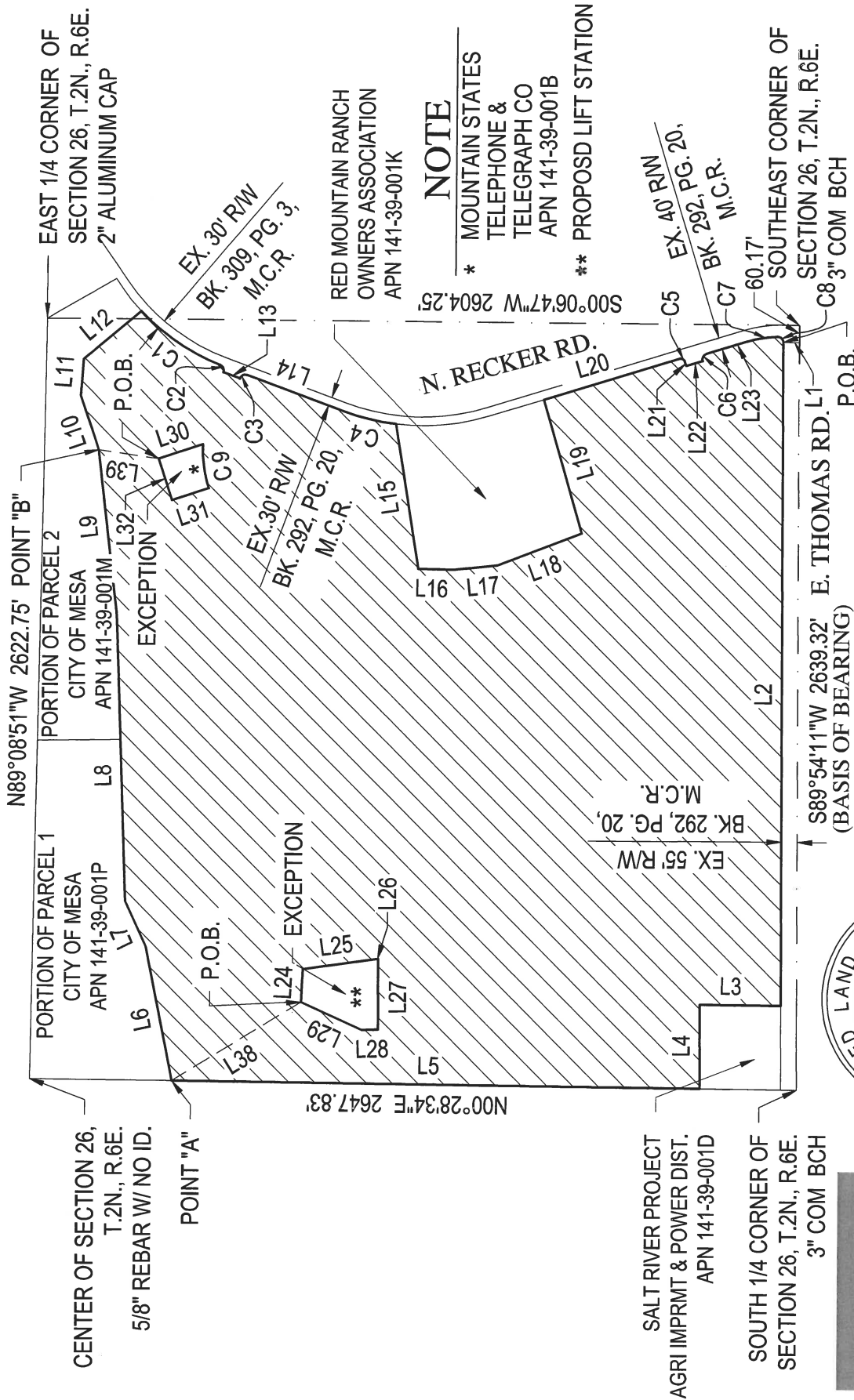
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EXPIRES 09-30-20

**Exhibit A-2**

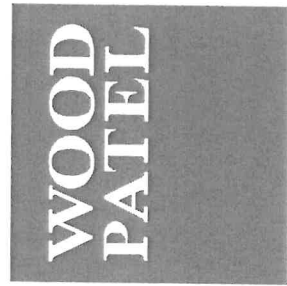
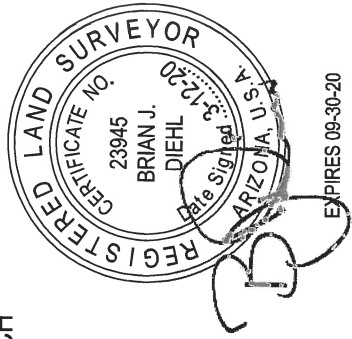
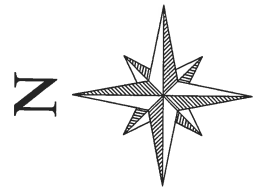
Property Depiction



**NOTE**

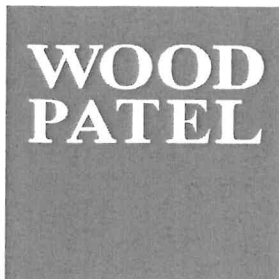
- \* MOUNTAIN STATES TELEPHONE & TELEGRAPH CO APN 141-39-001B
- \*\* PROPOSD LIFT STATION

**EXHIBIT "A-2"**  
 PROPERTY  
 REVISED 3/12/2020  
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 PAGE 1 OF 3  
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LINE TABLE		
LINE	BEARING	DISTANCE
L1	N00°05'49"W	55.00'
L2	S89°54'11"W	2,288.64'
L3	N00°28'34"E	280.01'
L4	S89°54'11"W	290.01'
L5	N00°28'34"E	1,819.99'
L6	N78°33'00"E	470.84'
L7	N64°47'47"E	172.61'
L8	N87°55'02"E	987.13'
L9	N83°14'58"E	573.67'
L10	N70°42'37"E	197.39'
L11	S85°20'01"E	128.07'
L12	S39°36'50"E	258.28'
L13	S20°10'02"W	60.00'
L14	S20°09'57"W	352.29'
L15	S80°46'02"W	506.00'
L16	S00°46'29"W	123.36'
L17	S06°07'15"E	150.00'

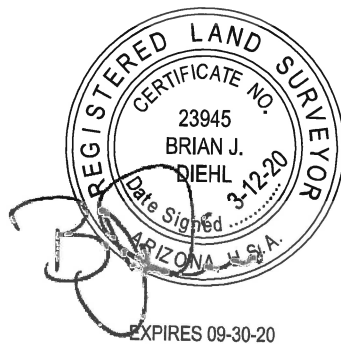
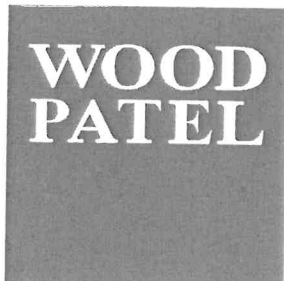
LINE TABLE		
LINE	BEARING	DISTANCE
L18	S21°01'55"E	313.00'
L19	N73°51'58"E	480.00'
L20	S17°03'39"E	493.12'
L21	S72°56'21"W	18.00'
L22	S17°03'39"E	60.00'
L23	S17°03'41"E	147.98'
L24	S87°31'51"E	114.53'
L25	S08°18'51"E	253.08'
L26	S02°36'13"E	9.40'
L27	S89°54'14"W	244.00'
L28	N01°26'42"W	55.94'
L29	N24°11'08"E	229.36'
L30	S18°21'02"E	161.81'
L31	N18°20'27"W	134.76'
L32	N71°39'02"E	149.95'
L38	S31°37'36"E	520.79'
L39	S08°12'18"W	210.52'



**EXHIBIT "A-2"**

PROPERTY  
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CURVE TABLE			
CURVE	DELTA	RADIUS	ARC
C1	25°57'01"	736.00'	333.35'
C2	89°27'57"	20.00'	31.23'
C3	89°56'41"	20.00'	31.40'
C4	13°39'14"	790.00'	188.26'
C5	90°00'00"	12.00'	18.85'
C6	89°23'36"	20.00'	31.20'
C7	14°37'16"	410.00'	104.63'
C8	92°20'35"	20.00'	32.23'
C9	20°24'50"	430.00'	153.20'



**EXHIBIT "A-2"**  
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**Exhibit B-1**

Lift Station Legal Description



Wood, Patel & Associates, Inc.  
480.834.3300  
www.woodpatel.com

Revised March 12, 2020  
Revised March 4, 2020  
February 19, 2020  
WP# 194961.01  
Page 1 of 1

## EXHIBIT B-1

### PARCEL DESCRIPTION Lift Station Property

A portion of Parcel 1, recorded in Document No. 1998-1185781, Maricopa County Records (MCR), and a portion of North Shenandoah Street, as shown on Map of Dedication for Red Mountain Ranch, recorded in Book 292, page 20, M.C.R., lying within the southeast quarter of Section 26, Township 2 North, Range 6 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

**COMMENCING** at the south quarter corner of said Section 26, a 3-inch City of Mesa brass cap in handhole, from which the center of said section, a 5/8-inch rebar with no identification, bears North 00°28'34" East (basis of bearing), a distance of 2647.83 feet;

**THENCE** along the north-south mid-section line of said section, North 00°28'34" East, a distance of 1713.85 feet;

**THENCE** leaving said north-south mid-section line, South 89°31'26" East, a distance of 276.80 feet, to the **POINT OF BEGINNING**;

**THENCE** South 87°31'51" East, a distance of 114.53 feet;

**THENCE** South 08°18'51" East, a distance of 253.08 feet;

**THENCE** South 02°36'13" East, a distance of 9.40 feet;

**THENCE** South 89°54'14" West, a distance of 244.00 feet;

**THENCE** North 01°26'42" West, a distance of 55.94 feet;

**THENCE** North 24°11'08" East, a distance of 229.36 feet, to the **POINT OF BEGINNING**.

Containing 49,997 square feet or 1.1478 acres, more or less.

Subject to existing right-of-ways and easements.

This parcel description is based on client-provided information and is located within an area surveyed by Wood, Patel & Associates, Inc. during the month of August, 2019. Any monumentation noted in this parcel description is within acceptable tolerance (as defined in Arizona Boundary Survey Minimum Standards dated 02/14/2002) of said positions based on said survey.

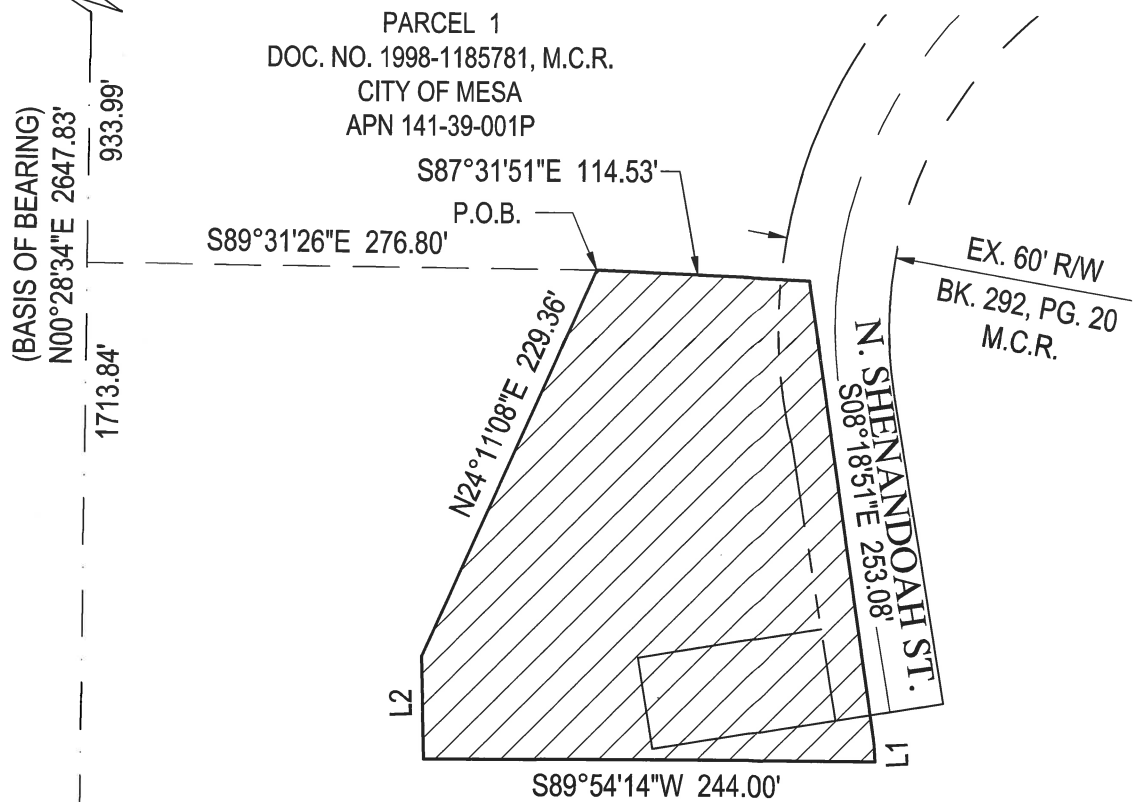
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**Exhibit B-2**

Lift Station Depiction

CENTER OF SECTION 26,  
T.2N., R.6E.  
5/8" REBAR W/ NO ID.



(BASIS OF BEARING)  
N00°28'34\"/>

933.99'  
1713.84'

PARCEL 1  
DOC. NO. 1998-1185781, M.C.R.  
CITY OF MESA  
APN 141-39-001P

S87°31'51\"/>

P.O.B.

S89°31'26\"/>

EX. 60' R/W  
BK. 292, PG. 20  
M.C.R.

N. SHENANDOAH ST.  
S08°18'51\"/>

N24°11'08\"/>

L2

L1

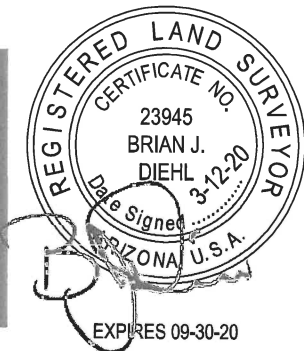
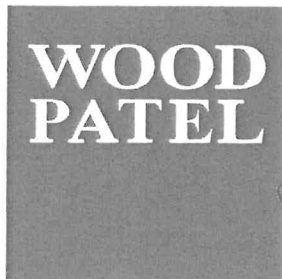
S89°54'14\"/>

PARCEL 1  
DOC. NO. 1998-1185781, M.C.R.  
CITY OF MESA  
APN 141-39-001P

E. THOMAS ROAD

SOUTH 1/4 CORNER OF  
SECTION 26, T.2N., R.6E.  
3\"/>

LINE TABLE		
LINE	BEARING	DISTANCE
L1	S02°36'13\"/>	9.40'
L2	N01°26'42\"/>	55.94'



**EXHIBIT "B-2"**  
LIFT STATION PROPERTY  
REVISED 3/12/2020  
WP# 194961.01  
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NOT TO SCALE

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**Exhibit C-1**

Nature Trail Property Legal Description

Wood, Patel & Associates, Inc.  
480.834.3300  
www.woodpatel.com

Revised March 12, 2020  
March 4, 2020  
WP# 194961.01  
Page 1 of 2

## EXHIBIT C-1

### PARCEL DESCRIPTION Nature Trail Property

A portion of Parcel 1, recorded in Document No. 1998-1185781, Maricopa County Records (MCR), and a portion of Parcel 2, recorded in Document No. 1998-1185780, MCR, lying within the southwest quarter of Section 25 and the southeast quarter of Section 26, Township 2 North, Range 6 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

**COMMENCING** at the east quarter corner of said Section 26, a 2-inch aluminum cap, from which the southeast corner of said Section 26, a 3-inch City of Mesa brass cap in handhole, bears South 00°06'47" West (basis of bearing), a distance of 2604.25 feet, said east quarter corner being the **POINT OF BEGINNING**;

**THENCE** along the easterly line of said Parcel 2, South 29°56'28" East, a distance of 276.63 feet, to the westerly right-of-way line of Recker Road, as shown on Map of Dedication for North Recker Road, recorded in Book 309, page 3, MCR;

**THENCE** leaving said easterly line, along said westerly right-of-way line, South 54°56'53" West, a distance of 36.82 feet, to the beginning of a curve;

**THENCE** southwesterly along said curve to the left, having a radius of 736.00 feet, concave southeasterly, through a central angle of 08°14'32", a distance of 105.88 feet, to a point of intersection with a non-tangent line;

**THENCE** leaving said westerly right-of-way line, North 39°36'50" West, a distance of 258.28 feet;

**THENCE** North 85°20'01" West, a distance of 128.07 feet;

**THENCE** South 70°42'37" West, a distance of 197.39 feet;

**THENCE** South 83°14'58" West, a distance of 573.67 feet;

**THENCE** South 87°55'02" West, a distance of 987.13 feet;

**THENCE** South 64°47'47" West, a distance of 172.61 feet;

**THENCE** South 78°33'00" West, a distance of 470.84 feet, to the north-south mid-section line of said Section 26;

**THENCE** along said north-south mid-section line, North 00°28'34" East, a distance of 492.82 feet, to the center of said Section 26;

**Parcel Description  
Nature Trail Property**

Revised March 12, 2020  
March 4, 2020  
WP# 194961.01  
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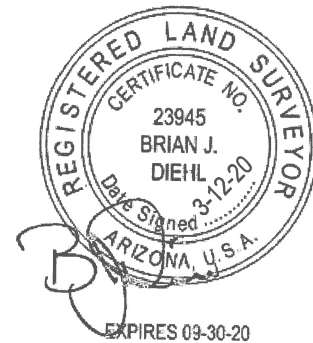
**THENCE** leaving said north-south mid-section line, along the east-west mid-section line of said Section 26, South 89°08'51" East, a distance of 2622.75 feet, to the **POINT OF BEGINNING**.

Containing 774,128 square feet or 17.7715 acres, more or less.

Subject to existing right-of-ways and easements.

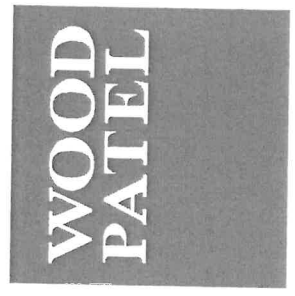
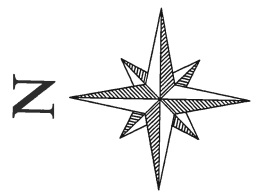
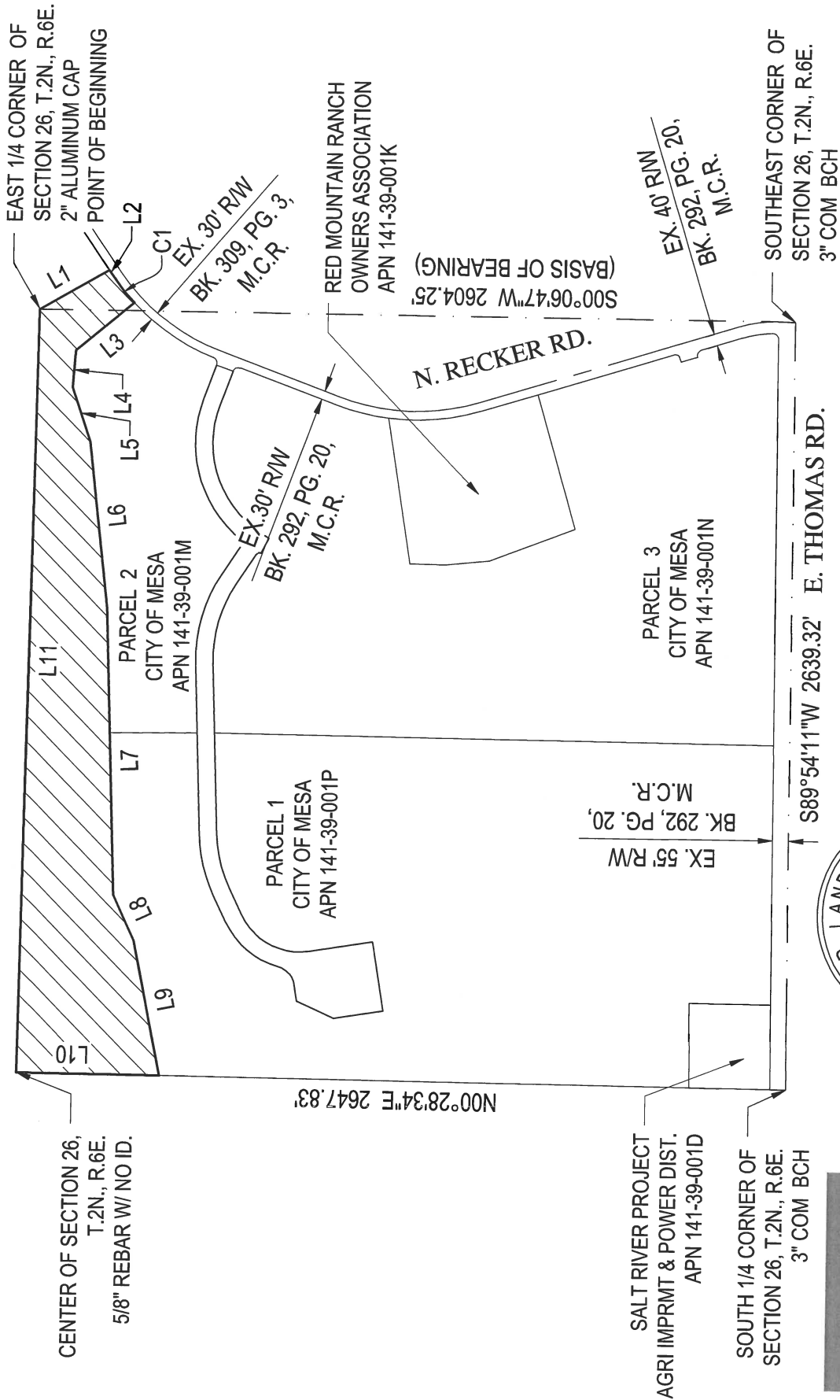
This parcel description is based on client provided information and is located within an area surveyed by Wood, Patel & Associates, Inc. during the month of August, 2019. Any monumentation noted in this parcel description is within acceptable tolerance (as defined in Arizona Boundary Survey Minimum Standards dated 02/14/2002) of said positions based on said survey.

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**Exhibit C-2**

Nature Trail Property Depiction

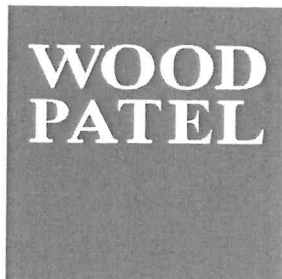


**EXHIBIT "C-2"**  
NATURE TRAIL PROPERTY  
REVISED 3/12/2020  
WP# 194961.01  
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NOT TO SCALE



LINE TABLE		
LINE	BEARING	DISTANCE
L1	S29°56'28"E	276.63'
L2	S54°56'53"W	36.82'
L3	N39°36'50"W	258.28'
L4	N85°20'01"W	128.07'
L5	S70°42'37"W	197.39'
L6	S83°14'58"W	573.67'
L7	S87°55'02"W	987.13'
L8	S64°47'47"W	172.61'
L9	S78°33'00"W	470.84'
L10	N00°28'34"E	492.82'
L11	S89°08'51"E	2,622.75'

CURVE TABLE			
CURVE	DELTA	RADIUS	ARC
C1	8°14'32"	736.00'	105.88'



**EXHIBIT "C-2"**  
 NATURE TRAIL PROPERTY  
 REVISED 3/12/2020  
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 NOT TO SCALE

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**Exhibit D-1**

Easements Legal Description

**EXHIBIT D-1**  
**PARCEL DESCRIPTION**  
**Easements**

Existing Public Waterline Easement recorded in Document No. 1987-349675, Maricopa County Records (MCR) and described as follows:

That portion of Sections 25 and 26, Township 2 North, Range 6 East of the Gila and Salt River Base and Meridian. County of Maricopa, State of Arizona, being more particularly described as follows:

**COMMENCING** at the southwest corner of said Section 25, also being the intersection of the monument lines of Thomas Road and Recker Road:

**THENCE** North 00°16'37" East, 57.45 feet along the monument line of Recker Road as recorded on the Map of Dedication of Red Mountain Ranch in Book 292, page 20, in the Office of the Maricopa County Recorder, Maricopa County, Arizona, to the beginning of a curve concave to the west, having a radius of 450.00 feet;

**THENCE** 134.88 feet along said curve through a central angle of 17°10'26";

**THENCE** North 16°53'50" West, 932.51 feet to the beginning of a curve concave to the east, having a radius of 760.00 feet;

**THENCE** 493.79 feet along said curve through a central angle of 37°13'36";

**THENCE** continuing North 20°19'46" East, 444.40 feet to the beginning of a curve concave to the southeast, having a radius of 706.00 feet;

**THENCE** departing said Map of Dedication of Red Mountain Ranch 156.51 feet along said curve through a central angle of 12°42'06" to the **TRUE POINT OF BEGINNING**.

**THENCE** on a radial line North 56°58'09" West, 60.00 feet;

**THENCE** North 33°01'52" East, 20.00 feet;

**THENCE** South 56°58'09" East, 59.09 feet;

**THENCE** South 62°11'57" East, 173.49 feet;

**THENCE** South 27°48'03" West, 20.00 feet;

**THENCE** North 62°11'57" West, 174.41 feet, to the **TRUE POINT OF BEGINNING**.

**TOGETHER WITH**

Existing Gas Line Easement recorded in Document No. 1990-285499, MCR and described as follows:

An easement 20 feet in width being 10 feet on each side of the following described centerline:

**BEGINNING** at a point on the north line of the southeast quarter of Section 26, Township 2 North, Range 6 East, Gila and Salt River Base and Meridian, Maricopa County, Arizona; said point lying South 88°58'59" East, a distance of 10.00 feet from the northwest corner of said southeast quarter;

**THENCE** South 00°25'43" West (basis of bearings according to the Map of Dedication of Red Mountain Ranch, Book 292 of Maps, page 20, Maricopa County Recorder) parallel to and 10.00 feet easterly from the west line of said southeast quarter a distance of 914.69 feet; thence South

**Parcel Description  
Easements**

March 4, 2020  
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Page 2 of 3

87°34'46" East a distance of 353.80 feet to a point on a non-tangent curve, said curve being the westerly right-of-way line of East Star Valley Street according to said Book 292 of Maps, page 20, and from said point the center point of said curve bears South 82°18'58" East a distance of 280.00 feet.

The northerly terminus of said easement being the north line of said southeast quarter and the easterly terminus being the westerly right-of-way line of said East Star Valley Street.

**TOGETHER WITH**

Existing Electric Easement recorded in Document No. 1990-232431, MCR and described as follows:

A portion of the northwest quarter of the southwest quarter of Section 25, and the northeast quarter of the southeast quarter of Section 26, in Township 2 North, Range 6 East, Gila and Salt River Base and Meridian, Maricopa County, Arizona.

Said easement being a strip of land 5.0 feet in width, the north line of which extends westward along the mid-section line of said Section 26, and the northeasterly line of which extends from the west quarter corner of said Section 25;

**THENCE** South 29°49'03" East along the southeasterly line of West Hills, as recorded in Book 317 of Maps, page 43, records of Maricopa County, Arizona, a distance of 276.93 feet to a point on the northwesterly right-of-way line of North Recker Road, as dedicated in Book 309 of Maps, page 3, records of Maricopa County, Arizona.

**TOGETHER WITH**

Star Valley Street, North Shenandoah Road, and Public Utility Easements as shown on Map of Dedication of Red Mountain Ranch, recorded in Book 292, page 20, MCR, lying within the southeast quarter of Section 26, Township 2 North, Range 6 East, of the Gila and Salt River Meridian, Maricopa County, Arizona.

**TOGETHER WITH**

North Recker Road and Public Utility Easements as shown on Map of Dedication for North Recker Road, recorded in Book 309, page 3, MCR, lying within the southwest quarter of Section 25 and the southeast quarter of Section 26, Township 2 North, Range 6 East, of the Gila and Salt River Meridian, Maricopa County, Arizona.

These descriptions are based on client provided information and are located within an area surveyed by Wood, Patel & Associates, Inc. during the month of August, 2019. Any monumentation noted in this parcel description is within acceptable tolerance (as defined in Arizona Boundary Survey Minimum Standards dated 02/14/2002) of said positions based on said survey.

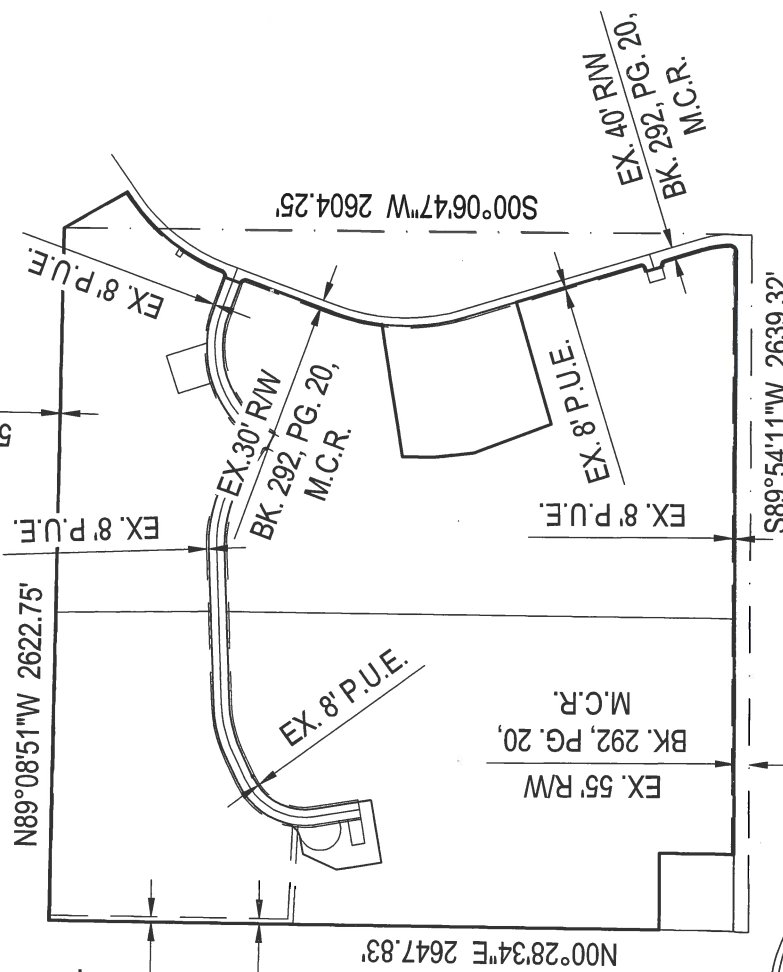
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**Exhibit D-2**

**Easements Depiction**

5' ELECTRIC EASEMENT  
DOC.90+232431-MCR



20' PUBLIC WATER LINE EASEMENT  
DOC 1987-383943 M.C.R.

20' GAS LINE EASEMENT  
DOC 1990-285499 M.C.R.



**WOOD  
PATEL**



**EXHIBIT "D-2"**  
EASEMENTS

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EXPIRES 09-30-20