

WHEN RECORDED RETURN TO:

City of Mesa (Beth Hughes-Ornelas)  
55 North Center Street  
Mesa, AZ 85201

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is entered into \_\_\_\_\_, 2017, by and between MESA HAWES, LP, a Delaware limited partnership ("Owner") and the CITY OF MESA, an Arizona municipal corporation (the "City"). Owner and City are collectively referred to herein as the "Parties," or individually as the "Party."

### RECITALS:

A. Owner owns approximately 143.83 acres of property located at various sites adjacent to East Ray and Hawes Roads, legally described in Exhibit A, and depicted on the map attached as Exhibit B (the "Property") within the City of Mesa, AZ. At present, the Maricopa County Assessor has assigned the Property parcel numbers: 304-31-008H, 304-31-008K, 304-31-008L, 304-31-009X, 304-30-024J, and 304-30-025K.

B. The Parties desire to enter into this Agreement for the purpose of memorializing their agreements concerning the application of Section 9-8-3 of the Mesa City Code to the Property, intending this document to be a "Development Agreement" within the meaning of A. R. S. § 9-500.05.

C. In 2008 Owner dedicated approximately 14.7 acres of land to the City for the construction of a portion of East Ray Road and South Hawes Road and related sewer and water infrastructure ("Owner's Dedication"). The City constructed East Ray Road (the "Road Work") and related sewer and water infrastructure on the land that Owner dedicated, and Owner is preparing the Property for development.

D. After Owner's Dedication, and in connection with its construction of the road and infrastructure, the City extended sewer line and water line infrastructure along the East Ray Road roadway adjacent to the Property (the "Line Extension"; the Line Extension and Road Work are referred to as the "Improvements"). Under most circumstances, Section 9-8-3(H)(4) of the Mesa City Code would require Owner, when Owner further develops the Property and establishes water and sewer service for the Property, to reimburse the City for the Line Extension.

## **AGREEMENT:**

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, and the mutual promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties state, confirm and agree as follows:

### **1. Covenants of the Parties.**

1.1 Binding on Owner. Owner, its successors and assigns agree that the obligations set forth in this Agreement are covenants running with the land that are binding and enforceable upon Owner, its successors and assigns.

1.2 Binding on City. City, on its behalf and on behalf of each of its subdivisions and departments and City's successors, assigns, agrees that the obligations set forth in this Agreement are binding and enforceable upon City and each of its departments and subdivisions.

1.3 Utilities. In connection with the development of the Property, Owner will comply the City's Terms and Conditions for the Sale of Utilities, and all applicable provisions of the Mesa City Code. Such compliance includes, but is not limited to, Owner's payment of various fees for water meters, connection of sewer and water services to the Property, and usage of water and sewerage services.

1.4 MCC Section 9-8-3(H)(4). Notwithstanding the foregoing, Owner will not be responsible to re-pay the City for the cost of the Improvements, or any portion thereof. Owner may be responsible, however, for the cost of any future roadway, water, sewer, or utility improvements constructed on or within Hawes Road. Further, this Agreement does not release Owner from its obligation to construct any future improvements adjacent to the Property which are necessary because of the impact of development on the Property or required under City Code.

2. Term/Termination. This Agreement shall become effective on the date this Agreement is recorded and shall continue in full force and effect for fifty (50) years.

### **3. General Provisions.**

3.1 Recordation. This Agreement shall be recorded in its entirety in the Official Records of Maricopa County, Arizona, not later than ten (10) days after its full execution by the Parties.

3.2 Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to

have been duly given if (A) delivered to the party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (C) given to a recognized and reputable overnight delivery service, to the address set forth below:

The City: City of Mesa  
20 East Main Street, Suite 750  
Mesa, Arizona 85211  
Facsimile: 480-644-2175  
Attn: City Manager

With copy to: Mesa City Attorney's Office  
20 East Main Street, Suite 850  
Mesa, Arizona 85211  
Facsimile: 480-644-2498  
Attn: City Attorney

Owner: 202 Holdings  
8095 Othello Avenue  
San Diego, CA 92111  
Facsimile: 858-278-8397  
Attn: Todd Holzer

With copy to: Beus Gilbert PLLC  
701 North 44<sup>th</sup> Street  
Phoenix, AZ 85008  
Facsimile: 480-429-3100  
Attn: Jeffrey Blilie

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this Section. Notices shall be deemed received (A) when delivered to the party, (B) three (3) business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

3.3 Choice of Law, Venue and Attorneys' Fees. The laws of the State of Arizona shall govern any dispute, controversy, claim or cause of action arising out of or related to this Agreement. The venue for any such dispute shall be Maricopa County, Arizona, and each Party waives the right to object to venue in Maricopa County for any

reason. Neither Party shall be entitled to recover any of its attorneys' fees or other costs from the other Party incurred in any such dispute, controversy, claim, or cause of action, but each Party shall bear its own attorneys' fees and costs, whether the same is resolved through arbitration, litigation in a court, or otherwise.

3.4 Default. In the event a Party fails to perform or fails to otherwise act in accordance with any term or provision hereof (the "Defaulting Party") then the other Party (the "Non-Defaulting Party") may provide written notice to perform to the Defaulting Party (the "Notice of Default"). The Defaulting Party shall have 30 days from receipt of the Notice of Default to cure the default. In the event the failure is such that more than 30 days would reasonably be required to cure the default or otherwise comply with any term or provision herein, then the Defaulting Party shall notify the City of such and the timeframe needed to cure such default, so long as the Defaulting Party commences performance or compliance or gives notice of additional time needed to cure within said 30-day period and diligently proceeds to complete such performance or fulfill such obligation; provided further, however, that no such cure period shall exceed 90 days. Any written notice shall specify the nature of the default and the manner in which the default may be satisfactorily cured, if possible.

3.5 Good Standing; Authority. Each Party represents and warrants that it is a duly formed and legally valid existing entity under the laws of the State of Arizona with respect to Owner, or a municipal corporation within Arizona with respect to the City and that the individuals executing this Agreement on behalf of their respective Party are authorized and empowered to bind the Party on whose behalf each such individual is signing.

3.6 Assignment. The provisions of this Agreement are binding upon and shall inure to the benefit and burden of the Parties, and all of their successors in interest and assigns.

3.7 Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between the Parties. No term or provision of this Agreement is intended to, or shall be for the benefit of any person, firm or entity not a party hereto, and no such other person, firm, or entity shall have any right or cause of action hereunder.

3.8 Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver of any breach shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant, or condition of this Agreement. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

3.9 Further Documentation. The Parties agree in good faith to execute such further or additional instruments and documents and to take such further acts as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

3.10 Fair Interpretation. The Parties have been represented by counsel in the negotiation and drafting of this Agreement and this Agreement shall be construed according to the fair meaning of its language. The rule of construction that ambiguities shall be resolved against the Party who drafted a provision shall not be employed in interpreting this Agreement.

3.11 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, Arizona time) on the last day of the applicable time period provided herein.

3.12 Conflict of Interest. Pursuant to A.R.S. § 38-503 and A.R.S. § 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.

3.13 Entire Agreement. This Agreement, together with the following Exhibits attached hereto (which are incorporated herein by this reference) constitute the entire agreement between the Parties:

Exhibit A: Legal Description of the Property  
Exhibit B: Depiction of the Property

All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, are superseded by and merged in this Agreement.

3.14 Time of the Essence. Time is of the essence in this Agreement and with respect to the performance required by each Party hereunder.

3.15 Severability. If any provisions of this Agreement is declared void or unenforceable, such provisions shall be severed from this Agreement, which shall otherwise remain in full force and effect.

3.16 Proposition 207 Waiver. Developer 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 the Property, as a result of the City's approval of this Agreement. The terms of this waiver shall run with the land and shall be binding upon all subsequent landowners and shall survive the expiration or

earlier termination of this Agreement.

3.18 Prior Appropriation. Pursuant to A.R.S. § 42-17106, the City is a governmental agency which relies upon the appropriation of funds by its governing body to satisfy its obligations. City represents that it intends to pay all monies due under this Agreement if such funds have been legally appropriated. City agrees to actively request funding for future fiscal periods in order to satisfy the terms of this Agreement. However, in the event that an appropriation is not granted and operating funds are not otherwise legally available to pay the monies due or to become due under this Agreement, City shall have the right to terminate the Agreement without penalty on the last day of the fiscal period for which funds were legally available. In the event of such termination, City agrees to provide a minimum of thirty (30) calendar days' advance written notice of its intent to terminate.

[SIGNATURES OF THE PARTIES APPEAR ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first set forth above:

**"City"**

CITY OF MESA, an Arizona municipal corporation

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

ATTEST:

\_\_\_\_\_  
Dee Ann Mickelsen, City Clerk

APPROVED AS TO FORM

\_\_\_\_\_  
James Smith, City Attorney

STATE OF ARIZONA       )  
  )ss.  
County of Maricopa       )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by Christopher J. Brady, the City Manager for the CITY OF MESA, an Arizona municipal corporation.

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

My Commission Expires:

\_\_\_\_\_

**"Owner"**

MESA HAWES, LP, a Delaware limited partnership

By: MESA HAWES, INC., a Delaware corporation, General Partner

By: [Signature]  
Its: President  
Date: 2-8-2017

By: [Signature]  
Its: EVP  
Date: 2/8/17

STATE OF ARIZONA     )  
                                  )ss.  
County of Maricopa    )

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of February, 2017, by Todd Holzer, President MESA HAWES, INC., a Delaware corporation.

[Signature]  
Notary Public

My Commission Expires:

7-13-2020



STATE OF ARIZONA     )  
                                  )ss.  
County of Maricopa    )

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of February, 2017, by Patrick Kinney, Ex Vice Pres MESA HAWES, INC., a Delaware corporation.

[Signature]  
Notary Public

My Commission Expires:

7-13-2020





EXHIBIT A  
TO DEVELOPMENT AGREEMENT

(Legal Description of the Property)

**304-31-009X**

SW4 SW4 NW4 & SE4 SW4 NW4 SEC 21 EX TH POR OF W2 SW4 NW4 SEC 21 WH LIES N OF FOL DESC LN COM W4 COR SD SEC 21 BEING N 1D 06M W 2635.41F FR SW COR SD SEC 21 TH ALG W LN SD SEC 21 N 261.59F TO POB TH E 99.21F TH N 251.49F TH N 45D 21M E 102.43F TH N 81D 08M E 161.48F TH N 62D 00M E 351.05F TH N 53D 14M E 544.90F TH FR LOCAL TAN BEAR N 52D 10M E ALG CUR TO L RAD OF 3607.74 LEN OF 1017.07F TH FR LOCAL TAN BEAR N 41D 59M E ALG COMP CUR TO L RAD OF 4466.64F LEN OF 720.61F TH N 03D 55M E 105.18F TH N 29D 19M E 125.12 TO POE ON N LN SD SEC 21 BEING W 362.36F FR N4 COR SD SEC 21 & EX BEG SW COR SW4 NW4 SD SEC 21 TH N ALG W LN OF SW4 NW4 SD SEC 21 261.59F TH E ALG S ROW LN OF ADOT LOOP 202 65.00F TH S TO S LN OF SW4 NW4 SD SEC 21 261.69F TH W ALG S LN OF SW4 NW4 SEC 21 65.00F TO POB (P/F 08-0976743) & EX TH POR OF SW4 NW4 SEC 21 WH LIES BTWN EXISTING SELY ROW LN OF SD STATE ROUTE 202L & FOL DESC NEW ROW LN COM W4 COR SD SEC 21 BEING S 2631.67F FR NW COR SEC 21 TH ALG W LN SD SEC 21 N 261.60F TH E 65.00F TO POB ON EXISTING SLY ROW LN OF STATE ROUTE 202L TH ALG EXISTING E ROW LN OF HAWES RD S 30.18F TH E 435.97F TH S 33.66F TH S44D 21M E 283.63F TO E-W MID SEC LN SD SEC 21 TH ALG SD E-W MID SEC LN SEC 21 E 4607.67F TO POE ON E4 COR SD SEC 21 EX TH/FR ANY POR LY W/I NE4 SW4 NW4 SD SEC 21 (P/F 11-0565817)

**304-30-024J**

SE4 NE4 SEC 20 EX TH POR WH LIES N OF FOL DESC LN COM S4 COR SD SEC 20 TH ALG N-S MID SEC LN SD SEC 20 N 2450.09F TO POB TH FR LOCAL TANG BEAR N 77D 31M E ALG CUR TO LT RAD 7879.44F LEN OF 980.06F TH N 74D 30M E 768.06F TH N 76D 36M E 833.47F TH S 44D 38M E 53.91F TH S 206.50F TH E 86.42F TO POE ON E LN SD SEC 20 SD LN BEING N 261.59F FR E4 COR SD SEC (P/F 03-1317755) & EX TH POR DAF BEG SE COR NE4 SEC 20 TH W ALG S LN SE4 NE4 SD SEC 20 65.00F TH N TO S ROW LN OF ADOT LOOP 202 261.51F TH E ALG SD S ROW TO E LN SE4 NE4 SD SEC 20 65.00F TH S ALG E LN SE4 NE4 SD SEC 20 261.59F TO POB (P/F 08-0976742) & EX TH POR SE4 NE4 SEC 20 WH LIES BTWN EXISTING SLY ROW LN STATE ROUTE 202L & FOL DESC NEW ROW LN COM E4 COR SD SEC 20 TH ALG E LN SD SEC 20 N 261.60F TH W 86.42F TO POB ON EXISTING SLY ROW LN SD STATE ROUTE 202L TH S 81D 56M W 913.46F TH S 74D 31M W 462.55 TO POE ON E-W MID SEC LN SD SEC 20 BEING W 1435.06F FR SD E4 COR SEC 20 (P/F 2011-0565817)

**304-30-025K**

NE4 SE4 SEC 20 EX E 65F TH/OF (P/F 08-0976744)

**304-31-008H**

TH POR OF N2 SW4 SEC 21 LY W OF WLY ROW LN STATE ROUTE 24 (GATEWAY FREEWAY) P/F 11-0565817 SD WLY ROW LN DAF COM S4 COR SD SEC 21 BEING S 5264.19F FR N4 COR SD SEC 21 TH ALG N-S MID SEC LN SD SEC 21 N 26.87F TO POB TH N 34D 19M W 216.45F TH N 29D 33M W 448.10F TH N 23D 55M W 142.66F TH N 29D 22M W 827.02F TH N 41D 46M W 316.86F TH N 46D 09M W 623.68F TH N 44D 21M W 744.77F TO POE ON SD E-W MID SEC LN SEC 21 BEING 700.72 FR SD W4 COR SEC 21 EX W 65F N2 SW4 SEC 21 (P/F 08-0976745)

**304-31-008L**

TH POR OF N2 S2 SW4 SEC 21 LY W OF WLY ROW LN STATE ROUTE 24 (GATEWAY FREEWAY) P/F 11-0565817 SD WLY ROW LN DAF COM S4 COR SD SEC 21 BEING S 5264.19F FR N4 COR SD SEC 21 TH ALG N-S MID SEC LN SD SEC 21 N 26.87F TO POB TH N 34D 19M W 216.45F TH N 29D 33M W 448.10F TH N 23D 55M W 142.66F TH N 29D 22M W 827.02F TH N 41D 46M W 316.86F TH N 46D 09M W 623.68F TH N 44D 21M W 744.77F TO POE ON SD E-W MID SEC LN SEC 21 BEING 700.72 FR SD W4 COR SEC 21 EX ANY POR LY W/ THE FOL DESC PROP BEG SW COR SD SEC 21 TH N 01D 07M W ALG W LN SD SW4 SEC 21 TO NW COR OF S2 SW4 SEC 21 1317.66F TH E ALG N LN SD S2 SW4 SEC 21 65.02F TH S 01D 07M E 568.79F TH S 45D 21M E 21.49F TH E 549.98F TH S 10F TH E TO PT ON E LN SD SW4 SEC 21 2017.40F TH S ALG SD E LN SD SW4 SEC 21 130.01F TH W 2555.42F TH S 44D 38M W 20.93F TH S 01D 07M E 549.98F TH N 88D 53M W 10F TH S 01D 07M E TO PT ON S LN SW4 SEC 21 28.55F TH W ALG SD S LN SW4 SEC 21 65.02F TO POB (P/F 08-0976741) & EX POR OF S2 SW4 SD SEC 21 DAF BEG SW COR SD SEC 21 2637.73F TO S4 COR SEC 21 TH N ALG E LN SD SW4 SEC 21 723.00F TO PT ON N ROW LN RAY RD TH W ALG N ROW LN RAY RD 440.00F TO POB TH W ALG N ROW LN RAY RD 60.00F TH N 35.00F TH E 60.00F TH S 35.00 F TO POB (P/F 09-0814846)

**304-31-008K**

S2 S2 SW4 SEC 21 EX ANY POR LY W/ TH FOL DESC PROP BEG SW COR SD SEC 21 TH N 01D 07M W ALG W LN SD SW4 SEC 21 TO NW COR OF S2 SW4 SEC 21 1317.66F TH E ALG N LN SD S2 SW4 SEC 21 65.02F TH S 01D 07M E 568.79F TH S 45D 21M E 21.49F TH E 549.98F TH S 10F TH E TO PT ON E LN SD SW4 SEC 21 2017.40F TH S ALG SD E LN SD SW4 SEC 21 130.01F TH W 2555.42F TH S 44D 38M W 20.93F TH S 01D 07M E 549.98F TH N 88D 53M W 10F TH S 01D 07M E TO PT PN S LN SW4 SEC 21 28.55F TH W ALG SD S LN SW4 SEC 21 65.02F TO POB (P/F 08-0976741) & EX TH POR OF SW4 SEC 21 WH LIES BTWN FOL DESC NEW ROW LN NO 1 COM S4 COR SD SEC 21 BEING S 5264.19F FR N4 COR SD SEC 21 TH ALG N-S MID SEC LN SD SEC 21 N 26.87F TO POB TH N 34D 19M W 216.45F TH N 29D 33M W 448.10F TH N 23D 55M W 142.66F TH N 29D 22M W 827.02F TH N 41D 46M W 316.86F TH N 46D 09M W 623.68F TH N 44D 21M W 744.77F TO POE ON SD E-W MID SEC LN SEC 21 BEING E 700.72 FR SD W4 COR SEC 21 & NEW ROW LN NO. 2 COM S4 COR SD SEC 21 TH ALG N-S MID SEC LN SD SEC 21 N 1230.95F TO POB TH N 35D 28M W 521.80F TH N 34D 16M W 738.03F TH N 29D

07M W 310.02F TH N 18D 15M W 107.76F TO POE ON SD E-W MID SEC LN SD SEC  
21 BEING W 3530.34F FR E4 COR SEC 21 EX TH PT OF RAY ROAD LY W OF N-S  
MID SEC LN D SEC 21 BEING 130.00 FT IN WIDTH LOC IN SE4 SW4 SD SEC 21  
(P/F 11-0565817)

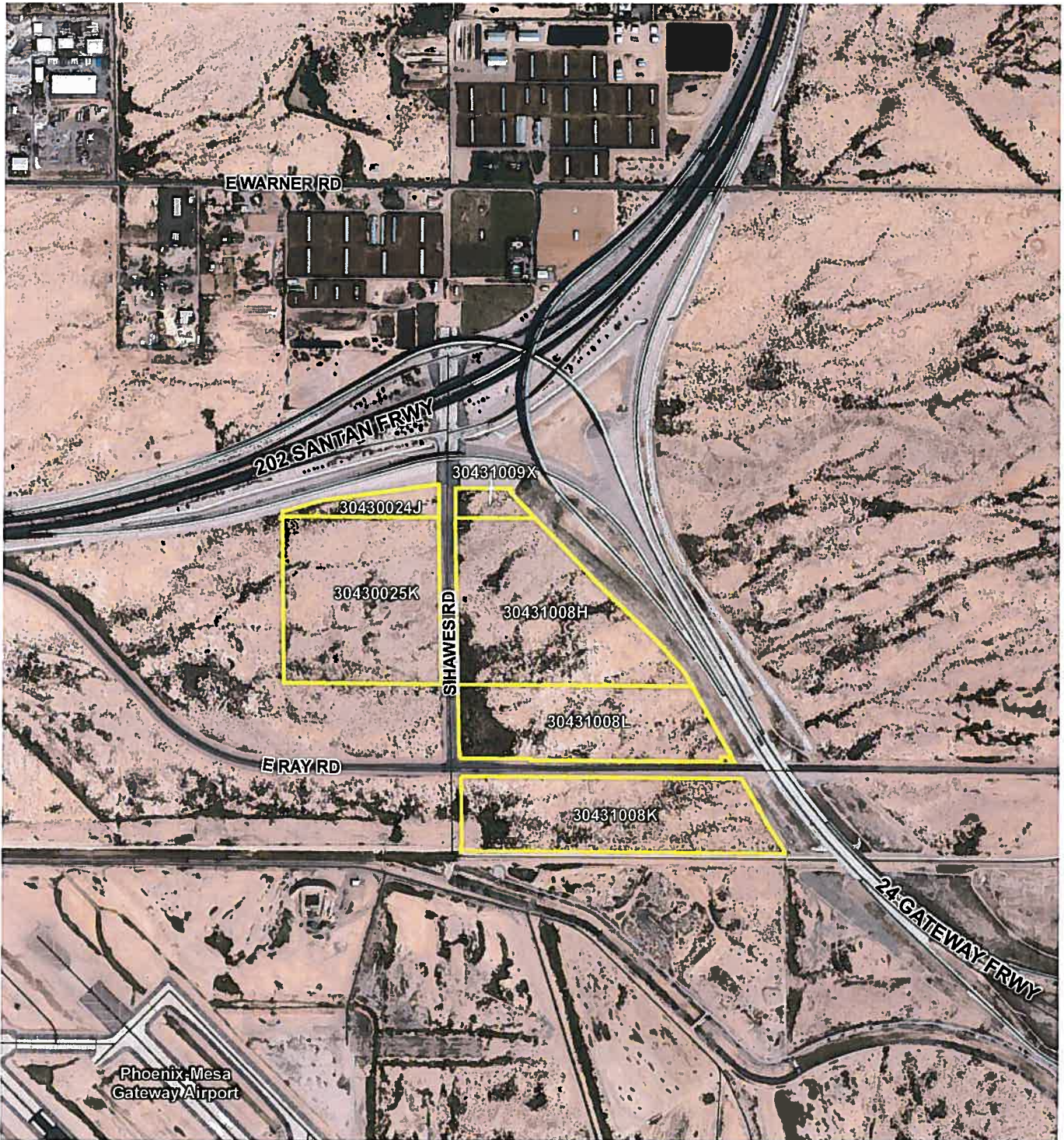
**EXHIBIT B  
TO DEVELOPMENT AGREEMENT**

**(Depiction of the Property)**

**(see following page)**



# EXHIBIT "B"



 Subject

 Parcels

