

**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 May 15, 2019, by and between RagingWire Data Centers, Inc., a Nevada corporation ("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. Owners are the owners of approximately 10.25 net acres of property located at the northwest corner of Elliot Road and Signal Butte Road and legally described in Exhibit A and depicted in Exhibit B (the "Property") within the City of Mesa, AZ.

B. The Parties desire to enter into this Agreement for the purpose of "opting-in" to the Elliot Road Technology Corridor Planned Area Development Overlay, intending this document to be a "Development Agreement" within the meaning of A. R. S. § 9-500.05.

C. By "opting-in" the Property Owner agrees to the rezoning of their property to Limited Industrial (LI) with a Planned Area Development (PAD) Overlay as part of the Elliot Road Technology Corridor, as approved by City Council on November 3, 2014 by Ordinance #5255. The PAD Overlay outlines the Development Standards and prohibited uses within the corridor.

D. The Owners and the City acknowledge that this development will be situated at a strategic location on Elliot Road near the proposed new entrance to the Phoenix-Mesa Gateway Airport and will therefore have planning and economic benefits to both the City and the Owners.

**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

1. Owner's Duties and Obligations. 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.

2. Prohibited Uses. Within the Property, the uses listed below shall not be allowed;

- Correctional Transitional Housing Facilities
- Clubs and lodges
- Cultural institutions
- Day Care Centers as a stand-alone use, allowed as a component of a service to on-site business and industry
- Places of worship
- Schools, public or private
- Animal sales and services
- Artist Studios
- Automobile/Vehicle Sales and Service
- Banks and Financial Institutions
- Building materials and services
- Commercial Recreation
- Eating and Drinking Establishments as a stand-alone use, allowed as a component of a service to on-site business and industry
- Farmer's Markets
- Food and Beverage Sales
- Funeral Parlors
- Light Fleet-Based Services
- Live-Work Units
- Maintenance and Repair
- Medical Marijuana Dispensaries
- Medical Marijuana Cultivation Facilities
- Parking, Commercial
- Personal Services
- Plant nurseries and garden centers
- Retail sales
- Swap meets and flea markets
- Tattoo and body piercing parlors
- Handicraft/custom manufacturing
- Light Assembly/Cabinetry
- Recycling facilities
- Warehouse and storage
- Airport land use classifications
- Transportation Facilities
- Outdoor storage
- Outdoor entertainment or activities
- Outdoor display

To the extent there is a disagreement between the parties as to whether a use is allowed or permitted, such determination shall be submitted to the City's Zoning Administrator, who shall determine whether a proposed use is a prohibited use under this section of the DA, and such a decision shall be final and not subject to appeal.

3. Term/Termination. This Agreement shall become effective on the date this Agreement is recorded and shall continue in full force and effect until the property is rezoned in the future. This Agreement shall automatically terminate upon the effective date of Council approved re-zoning in conflict with this Agreement.

4. General Provisions.

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

4.2 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: Jim Smith, Esq.

Owner: RagingWire Data Centers, Inc  
1625 West National Drive  
Sacramento, California 95834  
Attn: Legal Department

With copy to: Holland & Hart  
222 South Main Street, Suite 2200  
Salt Lake City, Utah 84101  
Attn: Carl Barton.

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 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.

4.3 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.

4.4 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.

4.5 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.

4.6 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.

4.7 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.

4.8 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.

4.9 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.

4.10 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.

4.13 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.

4.14 Conflict of Interest. 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.

4.16 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.

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

4.18 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.

4.19 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.

4.20 E-Verify. To the extent applicable under A.R.S. § 41-4401 and 23-214, Owner represents and warrants compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements of A.R.S. 23-214(A). Breach of the above-mentioned warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by City. The City retains the legal right to randomly inspect the papers and records of any employee who works under this Agreement to ensure compliance with the above-mentioned laws.

4.21 Prior Appropriation. Pursuant to ARS § 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 ON 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: \_\_\_\_\_  
Its: CITY MANAGER

ATTEST:

\_\_\_\_\_  
DeeAnn Mickelsen, City Clerk

APPROVED AS TO FORM

\_\_\_\_\_  
Jim Smith, City Attorney

STATE OF ARIZONA       )  
  )ss.  
County of Maricopa       )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by Christopher J. Brady, the City Manager for the CITY OF MESA, an Arizona municipal corporation.

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

My Commission Expires:

**"Owner"**

RagingWire Data Centers, Inc.,  
A Nevada Corporation

By: Doug Adams

Name: Doug Adams

Title: President and CEO

STATE OF CALIFORNIA)

) ss.

County of Sacramento)

The foregoing instrument was acknowledged before me this 15 day of May, 2019, by \_\_\_\_\_, the \_\_\_\_\_ of RagingWire Data Centers, Inc., a Nevada corporation, on behalf of the corporation.

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

*See Attached*

My commission expires:

\_\_\_\_\_

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )

County of Sacramento )

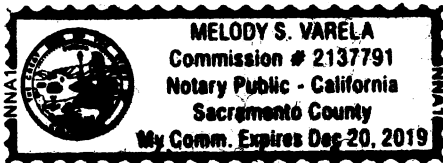
On May 15, 2019 before me, Melody Varela,  
Date Here Insert Name and Title of the Officer

personally appeared Douglas Adams  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Signature]  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: Development Agreement Document Date: May 15, 2019  
Number of Pages: 13 Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: Doug Adams  
☒ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_

EXHIBIT A  
TO DEVELOPMENT AGREEMENT

[Legal Description of the Property]

See following pages

Exhibit A  
**RAGING WIRE  
OPT IN PARCEL  
LEGAL DESCRIPTION**

A portion of Lot 1 of the Minor Land Division as recorded in Book 1325, Page 02, Maricopa County Records, Arizona, being situated within the South half of Section 11, Township 1 South, Range 7 East of the Gila and Salt River Meridian, Maricopa County, Arizona, being more particularly described as follows:

**COMMENCING** at a found 3 inch City of Mesa brass cap in hand hole accepted as the Southeast corner of said Section 11 from which a found 3 inch City of Mesa brass cap in hand hole accepted as the Northeast corner thereof bears North 00°37'26" West, 5276.06 feet;

Thence North 89°35'26" West, 2661.52 feet along the south line of the Southeast quarter of said Section 11 to the South quarter corner thereof;

Thence North 00°34'02" West, 65.01 feet along the north-south mid-section line of said Section 11 to the **POINT OF BEGINNING**;

Thence continuing along said mid-section line, North 00°34'02" West, 62.23 feet;

Thence leaving said mid-section line, North 89°30'35" West, 715.67 feet along the south line of said Lot 1;

Thence leaving said south line, North 00°02'17" East, 584.48 feet;

Thence South 89°50'00" East, 709.43 feet;

Thence South 00°34'02" East, 140.72 feet along said mid-section line;

Thence leaving said mid-section line, South 89°35'26" East, 55.01 feet;

Thence South 00°34'02" East, 510.07 feet;

Thence North 89°35'20" West, 55.01 feet along a line which is 65.00 feet north of and parallel with the south line of the southeast quarter of said Section 11 to the **POINT OF BEGINNING**.

The above described parcel contains a computed area of 445,952 sq. ft. (10.2376 acres) more or less and being subject to any easements, restrictions, rights-of-way of record or otherwise.

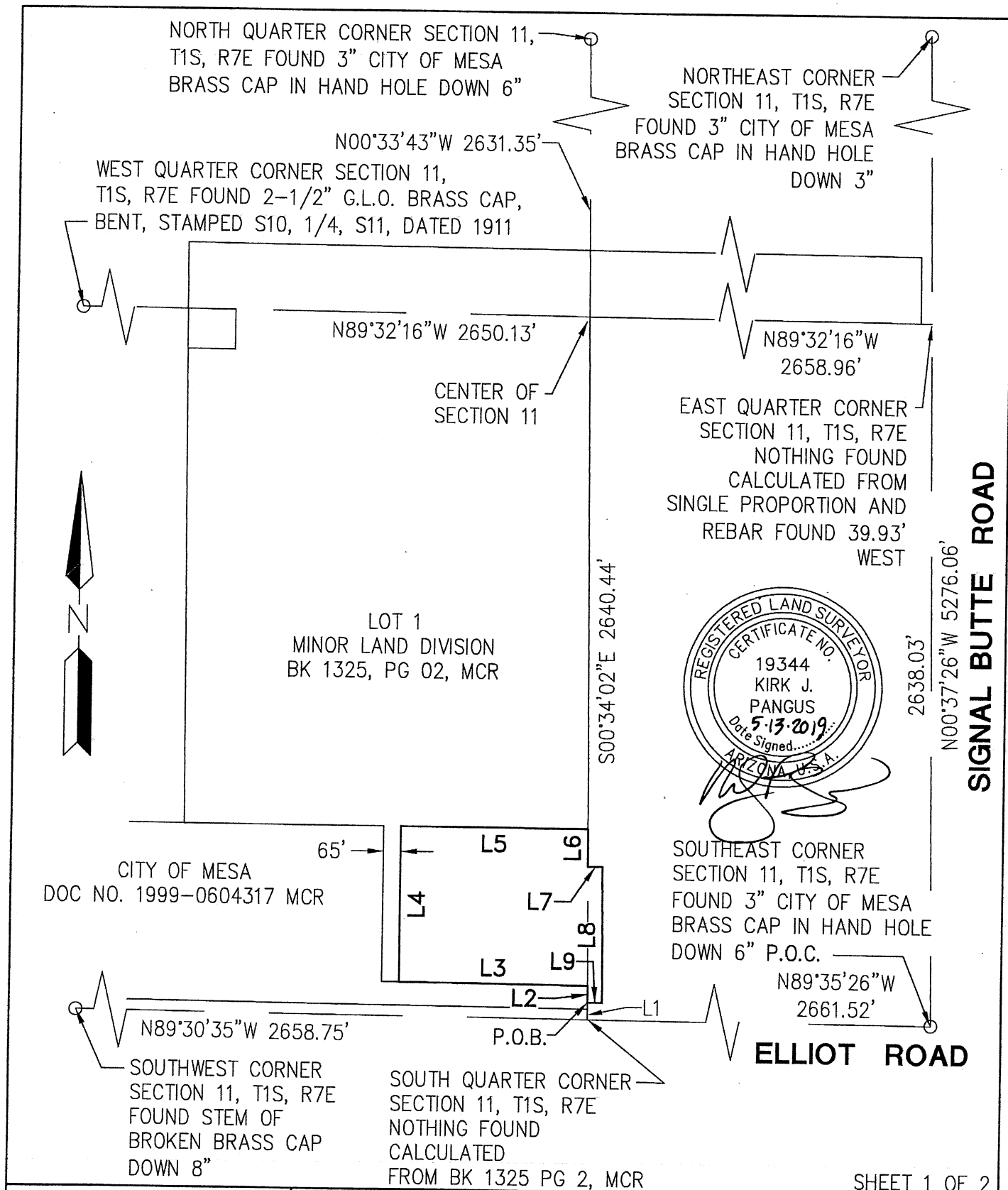
The description shown hereon is not to be used to violate any subdivision regulation of the state, county and/or municipality or any land division restrictions.


Prepared by: HILGARTWILSON, LLC  
2141 E. Highland Avenue, Suite 250  
Phoenix, AZ 85016  
Project No. 1817  
Date: May 2019



EXHIBIT B  
TO DEVELOPMENT AGREEMENT  
DEPICTION OF THE PROPERTY

# Exhibit B



PROJ.NO.: 1817	RAGING WIRE - OPT IN PARCEL N.W.C. OF SIGNAL BUTTE ROAD & ELLIOT ROAD MESA, ARIZONA	 <b>HILGARTWILSON</b> 2141 E. HIGHLAND AVE., STE. 250 PHOENIX, AZ 85016 P: 602.490.0535 / F: 602.368.2436
DATE: MAY 2019		
SCALE: NTS		
DRAWN BY: KM		
CHECKED BY: KJP	<b>EXHIBIT</b>	


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# Exhibit B

LINE TABLE		
LINE NO.	DIRECTION	LENGTH
L1	N00°34'02"W	65.01'
L2	N00°34'02"W	62.23'
L3	N89°30'35"W	715.67'
L4	N00°02'17"E	584.48'
L5	S89°50'00"E	709.43'
L6	S00°34'02"E	140.72'
L7	S89°35'26"E	55.01'
L8	S00°34'02"E	510.07'
L9	N89°35'20"W	55.01'



SHEET 2 OF 2

PROJ.NO.: 1817	RAGING WIRE - OPT IN PARCEL N.W.C. OF SIGNAL BUTTE ROAD & ELLIOT ROAD MESA, ARIZONA	 <b>HILGARTWILSON</b> 2141 E. HIGHLAND AVE., STE. 250 PHOENIX, AZ 85016 P: 602.490.0535 / F: 602.368.2436
DATE: MAY 2019		
SCALE: NTS		
DRAWN BY: KM		
CHECKED BY: KJP	<b>EXHIBIT</b>	
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