

**REAL PROPERTY EXCHANGE AGREEMENT
AND ESCROW INSTRUCTIONS**

DATED: To be effective as of _____, 2019 (the "Effective Date").

PARTIES: The Parties to this Real Property Exchange Agreement and Escrow Instructions (this "Agreement") are:

(a) WHANE OF MESA LIMITED PARTNERSHIP, L.L.L.P., An Arizona limited liability limited partnership ("Whane"); and

(b) CITY OF MESA, an Arizona municipal corporation ("City").

CITY PROPERTY: The real property located in Maricopa County, Arizona, legally described and depicted in Exhibit A, consisting of approximately 25,495 sq. ft., including all improvements located on and all rights and privileges appurtenant to the real property (the "City Property").

WHANE PROPERTY: The real property located in Maricopa County, Arizona, legally described and depicted in Exhibit B, consisting of approximately 36,166 sq. ft., including all improvements located on and all rights and privileges appurtenant to the real property (the "Whane Property").

ESCROW AGENT: Security Title Agency, an Arizona corporation, Attn: Kerry Hemphill

ESCROW NO.: _____

RECITALS

- A. City is the owner of the City Property, and Whane is the owner of the Whane Property. City and Whane desire and intend to exchange this property to each other through this Agreement.
- B. As part of a prior real estate transaction involving Whane selling property to Ragingwire Data Centers, Inc., a Nevada corporation ("Ragingwire"), Whane required Ragingwire to grant to the City a waterline easement that is recorded in the Official Records of the Maricopa County, Arizona, Recorder as Document No. 2019-0499823 on July 1, 2019 (the "Waterline Easement"). The Waterline Easement is essential for the City's future use of the Whane Property as a well site because it provides a connection from the Whane Property (i.e., future City well site property) to other City-owned property. The Waterline Easement, pursuant to its terms, will automatically terminate on January 1, 2020 if the Whane Property is not conveyed to the City on or before December 31, 2019. Thus, the Parties acknowledge and agree that the closing of the transaction contemplated under this Agreement must occur on or before December 31, 2019.
- C. The City Property, Whane Property, and the Waterline Easement have been appraised and the appraised value will be the purchase price for the property in this Agreement; more specifically, the purchase price of the City Property will be reduced by (i.e., a credit given for) the appraised value of the Whane Property and Waterline Easement.
- D. Subject to the terms and limitations of this Agreement, City and Whane agree to exchange the City Property and Whane Property.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Incorporation of Recitals. All of the forgoing Recitals are hereby incorporated as agreements of the Parties.

2. Purchase Price. The total purchase price for the City Property is one hundred eighty thousand dollars (\$180,000.00) (the "Purchase Price"), and the Purchase Price is payable as follows:

(a) Whane Property Credit. For the transfer of the Whane Property to the City at Closing, the Purchase Price shall be reduced by (i.e., Whane receives a credit in the amount of) one hundred thirty-five thousand dollars (\$135,000.00), which is the appraised value of the Whane Property.

(b) Waterline Easement Credit. For the transfer of the Waterline Easement to the City at Closing, the Purchase Price shall be reduced by (i.e., Whane receives a credit in the amount of) forty-five thousand dollars (\$45,000.00), which is the appraised value of the Waterline Easement.

(c) The Exchange is the Full Payment by Both Parties. The Parties agree that the Whane Property Credit and Waterline Easement Credit, which equals the Purchase Price, shall constitute full payment for the City Property; and the Parties agree that the transfer of the City Property to Whane at Closing shall constitute full payment for the Whane Property and Waterline Easement.

3. Escrow and Closing Related Matters.

(a) Escrow Agent, Escrow Instructions. The Parties agree that Security Title Agency will serve as "Escrow Agent" for this transaction. The standard form escrow instructions of Escrow Agent together with any provisions of this Agreement applicable to Escrow Agent shall constitute the escrow instructions between City, Whane and Escrow Agent. In the event of any conflict or inconsistency between the provisions of the standard form escrow instructions and this Agreement or any deed, instrument or document executed or delivered in connection with the transaction contemplated hereby, the provisions of this Agreement, or such deed, instrument or document, shall control.

(b) Opening and Closing.

(i) The opening of escrow ("Opening of Escrow") shall be the date a fully executed copy of this Agreement is delivered to Escrow Agent.

(ii) The Close of the Escrow ("Closing" or "Closing of Escrow") shall be on or before December 16, 2019; provided that the Parties may extend the date but in no event shall the Closing occur after December 31, 2019.

(c) Insured Closing Protection Letter. At the Opening of Escrow, Escrow Agent shall deliver to each City and Whane, Security Title Agency's standard insured closing protection letter for both the City Property and Whane Property.

(d) Settlement Statement. Escrow Agent shall deliver a “pre-audit” settlement statement (the “Settlement Statement”) to the Parties for review and approval no later than one week prior to the Close of Escrow.

(e) Action at the Closing by City. At the Closing, City shall deliver or cause to be delivered to Escrow Agent (if not otherwise previously delivered) all of the following instruments dated as of the Closing, fully executed and, if appropriate, acknowledged, for prompt recordation, filing or delivery to Whane: a fully executed and acknowledged Special Warranty Deed (in the form agreed to by the Parties) transferring the City Property to Whane; and such other standard forms, instruments, and documents as are reasonably necessary or required by Escrow Agent to close the transaction.

(f) Action at the Closing by Whane. At the Closing, Whane shall deliver or cause to be delivered to Escrow Agent (if not otherwise previously delivered) all of the following instruments dated as of the Closing, fully executed and, if appropriate, acknowledged, for prompt recordation, filing or delivery to City: a fully executed and acknowledged Special Warranty Deed (in the form agreed to by the Parties) transferring the Whane Property to City; and such other standard forms, instruments, and documents as are reasonably necessary or required by Escrow Agent to close the transaction.

(g) Action at the Closing by Escrow Agent. At the Closing, Escrow Agent will: (i) record the Deed transferring the Whane Property to City and the Deed transferring the City Property to Whane in the Official Records of Maricopa County; (ii) disburse all funds in accordance with the Settlement Statement approved by the Parties; and (iii) do such other items requested by City and Whane, in writing, consistent with this Agreement.

(h) Closing Costs. All escrow fees and charges, recording costs, and all other charges or expenses incidental to the exchange of the City Property and Whane Property, except as otherwise herein expressly provided, shall be split 50/50 between City and Whane.

(i) Proration and Payment of Taxes and Assessments. Whane shall be responsible for paying a prorated amount (as determined by Escrow Agent) of all real property (and similar) taxes and assessments charged against the Whane Property as of the Closing Date; and Whane shall deposit such funds into Escrow prior to the Closing. The Parties acknowledge that City is a governmental entity not subject to real property taxes so no proration of taxes as to the City Property will be necessary.

(j) Title Report. As soon as practicable following the Opening of Escrow, Escrow Agent will prepare and deliver to City and Whane a commitment for title insurance for the City Property and Whane Property (respectively, as to the property each is acquiring) to include legible copies of all instruments of record referred to on Schedule B, Section II thereof and express the requirements of the title insurer for the issuance of an ALTA extended coverage title insurance policy in the amount of the appraised value for each property, respectively, that will insure City’s interest in the Whane Property and Whane’s interest in the City Property, subject only to title exceptions approved by the Parties as to the property being acquired by each of them. City shall have no obligation whatsoever to remove any title exceptions as to the City Property; and Whane shall have no obligation whatsoever to remove any title exceptions as to the Whane Property. Whane acknowledges and understands that City will not Close on the Whane Property if there is any financial or monetary encumbrance on the Whane Property.

(k) City’s Title Insurance Policy. At the Closing, Escrow Agent will deliver to City an ALTA extended coverage title insurance policy (or, if City elects, an owners’ title insurance policy) issued by Escrow Agent or its principal, or the unconditional commitment of the title insurer to issue such policy, insuring title to the Whane Property in City in the amount of the Whane Property Credit, subject to only the title exceptions approved by City. Whane shall pay the costs for an owners’ title insurance policy and City

shall pay the premium associated with the ALTA extended coverage and any endorsements issued to cure any title objections that City may elect to cure.

(l) Whane's Title Insurance Policy. At the Closing, Escrow Agent will deliver to Whane an ALTA extended coverage title insurance policy (or, if Whane elects, an owners' title insurance policy) issued by Escrow Agent or its principal, or the unconditional commitment of the title insurer to issue such policy, insuring title to the City Property in Whane in the amount of the Purchase Price, subject only to the title exceptions approved by Whane. City shall pay the costs for an owners' title insurance policy and Whane shall pay the premium associated with the ALTA extended coverage and any endorsements issued to cure any title objections that Whane may elect to cure.

4. Condition and Inspection of the Property. The City Property and Whane Property, and any improvements located in or on the respective property, will be conveyed in an "as-is" "where-is" condition as of the Closing Date, with no representations or warranties of any nature whatsoever except as otherwise specifically set forth in this Agreement. Each Party shall have the right to enter upon the property it is acquiring for the purpose of obtaining or updating engineering reports, soils tests, studies and other investigations so long as such Party provides reasonable advance notice to the other Party of any entry and so long as Party restores those portions of the property impacted by the Party's soils tests, studies and other investigations to the condition existing prior to Party's entry thereon.

5. Absolute Right to Terminate Before Closing. Either City or Whane may terminate this Agreement, for any reason or no reason whatsoever, at any time prior to the Close of Escrow by delivering written notice to the other Party and to Escrow Agent indicating its election to terminate; and such a termination shall not result in any claim for damages or any other cause of action in law or equity whatsoever. Upon Escrow Agent's receipt of such notice, this Agreement shall terminate and the Party terminating this Agreement shall promptly pay all escrow fees and charges; other than the payment of such escrow fees and charges by the Party terminating this Agreement, neither Party shall have any further obligations or liabilities under this Agreement.

6. Representations and Warranties of City. City acknowledges, represents, warrants and covenants to Whane that the following are true as of the Effective Date and will be true as of the Closing, and in entering into this Agreement Whane is relying upon, the following:

(a) To the best of City's actual knowledge, there are no pending, threatened or contemplated actions, suits, proceedings or investigations, at law or in equity, or otherwise in, for or by any court or governmental board, commission; agency, department or office arising from or relating to this transaction or the City Property.

(b) To the best of City's actual knowledge, City has not granted any options or rights of first refusal to purchase all or any part of the City Property.

(c) The person or persons executing this Agreement on behalf of City are duly authorized to do so and thereby bind City hereto without the signature of any other person or entity.

(d) City has received no written notice and has no actual knowledge of any noncompliance with any federal, state, local laws, regulations, or orders relating to environmental matters with respect to the City Property. City has received no written notice and has no actual knowledge that City is a potentially responsible party for a federal, state, or local clean-up site or corrective action with respect to the City Property under any environmental law, regulation, or order.

The phrases "to the best of City's actual knowledge" or "actual knowledge" or similar phrases in the above sections mean and are limited to the actual (and not imparted, implied, or constructive) knowledge of Kim

AKY

Fallbeck, City of Mesa Real Estate Services Administrator. Notwithstanding anything in this Agreement to the contrary, Ms. Fallbeck is not a party to this Agreement and shall not have any personal liability or liability whatsoever with respect to any matters set forth in this Agreement or City's representation and warranties herein being or becoming untrue, inaccurate, or incomplete.

7. Representations and Warranties of Whane. Whane acknowledges, represents, warrants and covenants to City that the following are true as of the Effective Date and will be true as of the Closing, and in entering into this Agreement City is relying upon, the following:

(a) To the best of Whane's actual knowledge, there are no pending, threatened or contemplated actions, suits, proceedings or investigations, at law or in equity, or otherwise in, for or by any court or governmental board, commission; agency, department or office arising from or relating to this transaction or the Whane Property.

(b) To the best of Whane's actual knowledge, Whane has not granted any options or rights of first refusal to purchase all or any part of the Whane Property.

(c) The person or persons executing this Agreement on behalf of Whane are duly authorized to do so and thereby bind Whane hereto without the signature of any other person or entity.

(d) Whane has received no written notice and has no actual knowledge of any noncompliance with any federal, state, local laws, regulations, or orders relating to environmental matters with respect to the Whane Property. Whane has received no written notice and has no actual knowledge that Whane is a potentially responsible party for a federal, state, or local clean-up site or corrective action with respect to the Whane Property under any environmental law, regulation, or order.

8. Possession. Sole and exclusive possession of the City Property will be delivered to Whane upon the Closing subject only to the title exceptions approved by Whane; and the sole and exclusive possession of the Whane Property will be delivered to City upon the Closing subject only to the title exceptions approved by City.

9. Risk of Loss. The risk of loss or damage to the Whane Property and all liability to third persons until the Closing will be borne by Whane; and the risk of loss or damage to the City Property and all liability to third persons until the Closing will be borne by City.

10. Survival. Each of the representations and warranties contained in Sections 6 and 7 above, whether made by City or Whane, shall be true and correct as of the Closing and shall survive the Closing and the delivery of the Deeds to each Party for a period of two (2) years.

11. Brokerage Disclosure. Whane discloses, and City acknowledges, one or more affiliates of Whane are licensed real estate brokers or salespersons in the State of Arizona.

12. Brokerage. If any person asserts a claim to a finder's fee, brokerage commission or other compensation on account of alleged employment as a finder or broker or performance of services as a finder or broker in connection with this transaction, the Party under whom the finder or broker is claiming shall be fully responsible for all claims related thereto and, to the extent authorized by law, shall indemnify, pay, defend and hold the other Party harmless for, from, and against any claims related thereto. This indemnity will survive the Closing or the cancellation of this Agreement.

13. Counterparts and Facsimile Signature. This Agreement may be executed in counterparts and by facsimile signature.



IN WITNESS WHEREOF, the Parties have executed this Real Property Exchange Agreement and Escrow Instructions as of the Effective Date.

CITY:

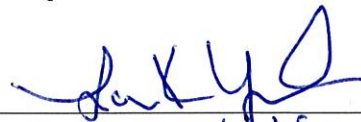
City of Mesa,
an Arizona municipal corporation

By: _____
Christopher J. Brady
City Manager

WHANE:

WHANE OF MESA LIMITED PARTNERSHIP, L.L.P.,
an Arizona limited liability limited partnership

By: LKY Real Estate, L.L.C.,
an Arizona limited liability company,
its general partner

By: 
Name: LARRY K YOUNG
Title: MANAGER

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

City Attorney

LKY

ESCROW AGENT ACCEPTANCE:

The undersigned Escrow Agent accepts this Agreement and agrees to perform the acts applicable to Escrow Agent in accordance with the terms of this Agreement, including, without limitation, satisfying any and all requirements of Internal Revenue Service 6045 with respect to this transaction. Escrow Agent acknowledges it has received a fully executed original (or copy) of this Agreement as of the date set forth underneath its signature below.

SECURITY TITLE AGENCY

By: _____
Its: Escrow Officer
Date: _____



EXHIBIT A

(Legal Description and Depiction of the City Property)

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EXHIBIT A

CITY OF MESA LEGAL DESCRIPTION

A portion of the Warranty Deed recorded as Document No. 1996-0853735 of Maricopa County Records, Arizona, being situated within the Southeast quarter 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, 101.28 feet along the south line of said Southeast quarter;

Thence leaving said south line, North 00°24'34" East, 70.00 feet;

Thence North 89°35'26" West, 399.98 feet along a line that is parallel with and 70.00 feet north of said south line to the east line of said Warranty Deed;

Thence continuing along said parallel line, North 89°35'26" West, 150.00 feet to the **POINT OF BEGINNING**;

Thence continuing along said parallel line, North 89°35'26" West, 150.00 feet to the west line of said deed;

Thence along said west line, North 00°37'16" West, 170.00 feet to the northwest corner of said deed;

Thence South 89°35'26" East, 150.00 feet along the north line of said deed;

Thence leaving said north line, South 00°37'16" East, 170.00 feet to the **POINT OF BEGINNING**.

The above described parcel contains a computed area of 25,495 sq. ft. (0.5853 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.

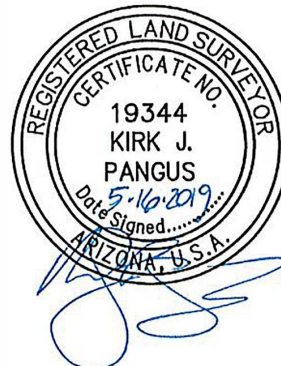
Prepared by: HILGARTWILSON, LLC

2141 E. Highland Avenue, Suite 250

Phoenix, AZ 85016

Project No. 1817

Date: May 2019



Handwritten initials "KJP" in blue ink.

LINE TABLE		
LINE NO.	DIRECTION	LENGTH
L1	N89°35'26"W	101.28'
L2	N00°24'34"E	70.00'
L3	N89°35'26"W	399.98'
L4	N89°35'26"W	150.00'
L5	N89°35'26"W	150.00'
L6	N00°37'16"W	170.00'
L7	S89°35'26"E	150.00'
L8	S00°37'16"E	170.00'



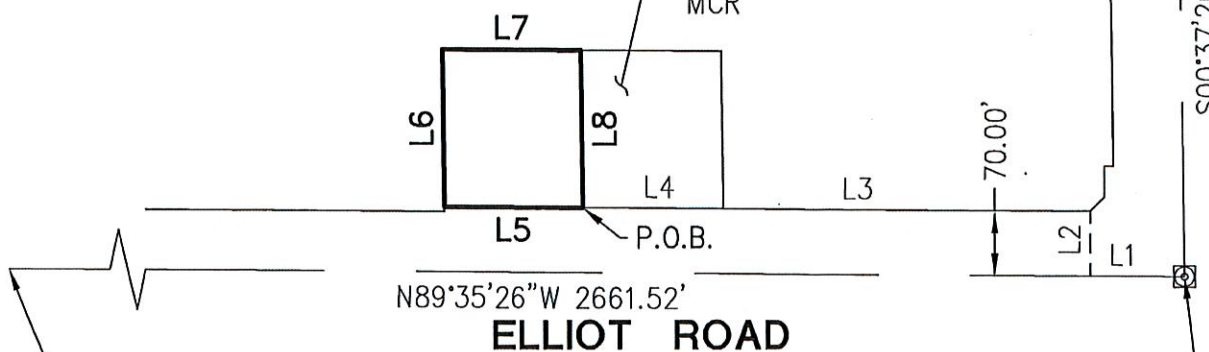
NORTHEAST CORNER
SECTION 11, T1S, R7E
FOUND 3" CITY OF MESA
BRASS CAP IN HAND HOLE
DOWN 3"

SIGNAL BUTTE ROAD

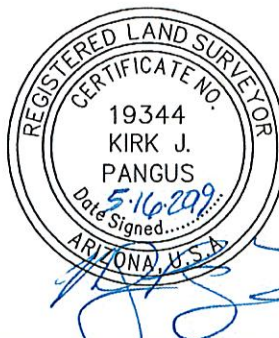
S00°37'26"E 5276.06'

LOT 1
MINOR LAND DIVISION
BK 1325, PG 02, MCR

WARRANTY DEED
DOC. NO. 1996-0853735,
MCR



SOUTH QUARTER CORNER
SECTION 11, T1S, R7E
NOTHING FOUND
CALCULATED FROM
BK 1325 PG 2, MCR



SOUTHEAST CORNER
SECTION 11, T1S, R7E
FOUND 3" CITY OF MESA
BRASS CAP IN HAND HOLE
DOWN 6" P.O.C.

PROJ.NO.: 1817	RAGING WIRE - EXISTING WELL REMAINDER N.W.C. OF SIGNAL BUTTE ROAD & ELLIOT ROAD MESA, ARIZONA
DATE: MAY 2019	
SCALE: N.T.S.	
DRAWN BY: KM	
CHECKED BY: KJP	EXHIBIT

HILGARTWILSON
2141 E. HIGHLAND AVE., STE. 250
PHOENIX, AZ 85016
P: 602.490.0535 / F: 602.368.2436

Handwritten signature/initials

EXHIBIT B
(Legal Description and Depiction of the Whane Property)

slv

EXHIBIT B

WHANE OF MESA LEGAL DESCRIPTION

A portion of Lot 1 of the Minor Land Division as recorded in Book 1325, Page 2, Maricopa County records, being situated within 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 GLO bras cap accepted as the West quarter corner of said Section 11 from which a found stem of a broken brass cap accepted as the Southwest corner of said Section 11 thereof bears South 00°22'51" East, 2639.00 feet;

Thence South 89°32'16" East, 1125.64 feet along the east-west mid-section line of said Section 11 to the west line of said Lot 1 and to the **POINT OF BEGINNING**;

Thence leaving said mid-section line, North 00°22'34" West, 250.03 feet along the west line of said Lot 1 to the northwest corner thereof;

Thence South 89°32'16" East, 1587.54 feet along the north line of said Lot 1 to the east right of way line of South Santa Rita Road per the Final Plat of Santa Rita Ranch Parcel 7 as recorded in Book 470, Page 39 records of Maricopa County, Arizona;

Thence leaving said north line, South 00°27'44" West, 5.00 feet;

Thence North 89°32'16" West, 1582.46 feet along a line which is 5.00 feet south of and parallel with the north line of said Lot 1;

Thence leaving said parallel line, South 00°22'34" East, 245.03 feet along a line which is 5.00 feet east of and parallel with the west line of said Lot 1;

Thence leaving said parallel line, South 89°32'16" East, 175.02 feet along the east-west mid-section line;

Thence leaving said midsection line, South 00°22'34" East, 150.02 feet along a line which is 180.00 feet east of and parallel with the west line of said Lot 1;

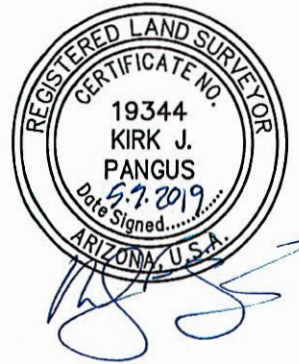
Thence leaving said parallel line, North 89°32'16" West, 180.02 feet along a line which is 150.00 feet south of and parallel with the said east-west mid-section line to the west line of said Lot 1;

Thence North 00°22'34" West, 150.02 feet along said west line to the **POINT OF BEGINNING**.

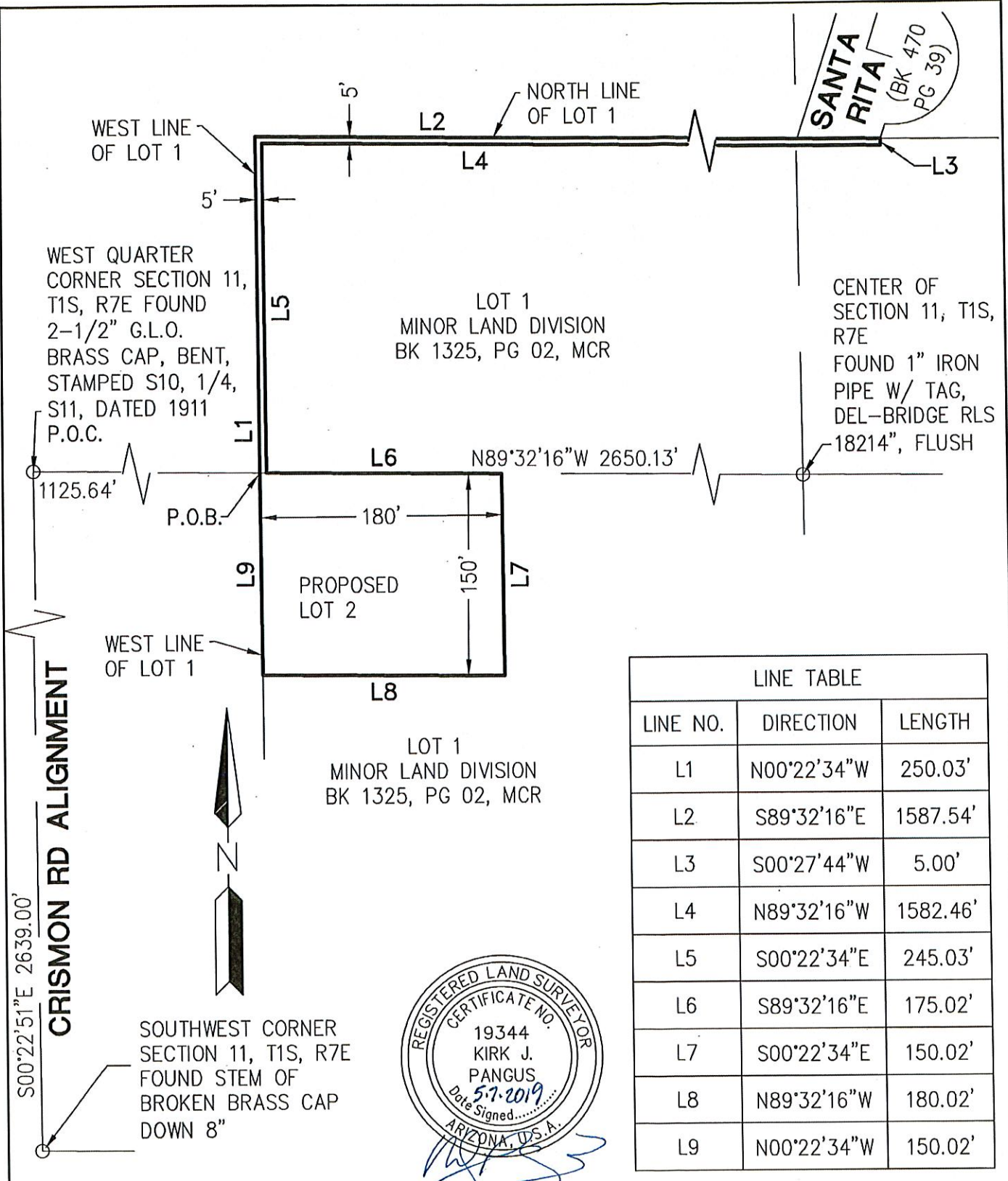
The above described parcel contains a computed area of 36,166 sq. ft. (0.8303 acres) more or less and being subject to any easements, restrictions, rights-of-way of record or otherwise.

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



A handwritten signature in blue ink, located in the bottom right corner of the page.



LINE TABLE		
LINE NO.	DIRECTION	LENGTH
L1	N00°22'34"W	250.03'
L2	S89°32'16"E	1587.54'
L3	S00°27'44"W	5.00'
L4	N89°32'16"W	1582.46'
L5	S00°22'34"E	245.03'
L6	S89°32'16"E	175.02'
L7	S00°22'34"E	150.02'
L8	N89°32'16"W	180.02'
L9	N00°22'34"W	150.02'



PROJ.NO.: 1817
 DATE: MAY 2019
 SCALE: N.T.S.
 DRAWN BY: KM
 CHECKED BY: KJP

RAGING WIRE - PROPOSED LOT 2
 N.W.C. OF SIGNAL BUTTE ROAD & ELLIOT ROAD
 MESA, ARIZONA
EXHIBIT


HILGARTWILSON
 2141 E. HIGHLAND AVE., STE. 250
 PHOENIX, AZ 85016
 P: 602.490.0535 / F: 602.368.2436

Handwritten signature