

When recorded, please return to:
CITY OF MESA
REAL ESTATE SERVICES
P.O. Box 1466
Mesa, AZ 85211-1466

AGREEMENT TO INSTALL AND MAINTAIN LANDSCAPING IN A PUBLIC RIGHT-OF-WAY (ROW Maintenance Agreement)

This AGREEMENT TO INSTALL AND MAINTAIN LANDSCAPING IN A PUBLIC RIGHT-OF-WAY (this “**Agreement**”) is made and entered into this ____ day of _____ 20__, (the “**Effective Date**”) by and between the CITY OF MESA, an Arizona municipal corporation (“**City**”), and MCDOWELL CITRUS 100, LLC, an Arizona limited liability corporation (“**Owner**”). City, Owner, and after the “**Transition Date**” (as that phrase is defined in Section 8 below) the Homeowners’ Association for the Development (“**HOA**”), are sometimes referred to collectively as the “**Parties**.”

RECITALS

A. Owner owns approximately 12.61 acres of real property located at 4004 E. Hermosa Vista Drive and legally described in Exhibit A and depicted in Exhibit B (the “**Property**”) within the City of Mesa, Arizona.

B. Pursuant to the Zoning, the approved development on the Property is a residential subdivision with 12 single-family detached homes commonly known as Estates at Hermosa Ranch (the “**Development**”).

C. Owner desires to build the Development and agrees to install and maintain landscaping in the west twenty-five feet of the 40th Street right-of-way alignment located north of Hermosa Vista Drive, approximately 400 feet east of North Maple, legally described in Exhibit C, and depicted in Exhibit D (the “**Landscape Area**”), and the City intends to relinquish maintenance responsibilities to the Owner.

D. Owner will create an HOA for the Development and Owner agrees to include the obligations in this Agreement in the Declaration of Covenants, Conditions, and Restrictions for the HOA, including but not limited to the installation, maintenance, repair and replacement of the Landscape Area.

E. Owner is responsible for installing the landscaping, in the Landscape Area, including but not limited to installing the necessary irrigation and electrical power connections and entering into new utility services agreements, as needed for such utility services. Owner is also

responsible for maintaining, repairing, and replacing the landscaping in the Landscape Area until the Transition Date.

F. The Parties desire to enter into this Agreement for the purposes described above and as further set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Preamble & Recitals. The foregoing preamble and recitals are incorporated herein and made a part hereof by this reference.

2. Owner's Obligation to Install Landscaping. Owner shall be responsible, at Owner's sole cost and expense, for the installation of the landscape improvements in the Landscape Area which include but are not limited to low water use trees, shrubs, ground cover or other plants; decomposed granite or other similar inorganic landscape material; and all components of an irrigation system (the "**Landscape Improvements**"). Owner shall design and install the Landscape Improvements in accordance with landscape plan(s) for the Development that Owner will submit to the City and the City may approve subject to ordinary City approval and permitting processes. All Landscape Improvements in the Landscape Area must be installed in the first phase of development.

3. Owner/HOA's Obligation to Maintain, Repair, and Replace. Owner, at Owner's sole cost and expense, and after the Transition Date the HOA, shall be responsible, for maintaining the Landscape Area in a good state of repair and in a clean, safe, and attractive manner, which includes, but is not limited to the following: (i) maintaining, repairing, and, when necessary, replacing the irrigation system within the Landscape Area including but not limited to all testing, adjusting, repairing, operation of the irrigation system and establishment and maintenance of water service to such area, (ii) pay for all costs associated with providing electrical power and water necessary to operate the irrigation system; (iii) keeping the Landscape Area free of weeds, undesirable grasses and litter, applying irrigation water, furnishing and applying insecticide/herbicide sprays and dust to combat diseases and other pests; (iv) replacing dead, diseased, or dying trees, shrubs, cactus or plants; (v) maintaining the Landscape Area so that the landscaping does not obstruct stormwater flow or cause any traffic hazards, including but not limited to, not allowing landscape growth in a manner that impedes, obstructs, impacts or interferes with a person's ability to see oncoming traffic or the passage on any street, sidewalk, or other passageway, or that limits the visibility of any traffic control device or signal; (vi) repairing damage caused by third parties, vehicles, and vandalism to the landscape area; and (vii) where such landscaping is subject to a sight visibility easement, as designated in a separately recorded plat, map of dedication or other instrument, the maintenance of such landscaping shall comply with the applicable requirements for such sight visibility easement. The City reserves the right and authority to enter upon the Landscape Area, to maintain such landscaping under all circumstances, including without limitation in the event that the Fire Chief or the Fire Chief's designee, the Building Official or the Building Official's designee, the Police Chief or the Police Chief's designee and/or the City Traffic Engineer or the City Traffic Engineer's designee, and/or the City's Fire Department or designee,

in his or her sole unfettered discretion, determines that trimming or removal of such landscaping is required because such landscaping impedes visibility, fire access or clearances.

4. Compliance - City Code and Permits. Owner, and after the Transition Date, the HOA, shall comply with all applicable City of Mesa Code requirements, ordinances, and regulations. This Agreement does not modify, change, or alter the City of Mesa Code requirements, ordinances, or regulations, or enforcement thereunder.

5. Landscape Alterations and Failure to Maintain, Repair, and Replace. After installation of the Landscape Improvements, Owner and after the Transition Date the HOA, shall not make any additions, improvements, or other changes in the Landscape Area without going through the applicable City process and without the prior written approval of the City of Mesa's Development and Sustainability Department.

(a) Failure to Maintain, Repair, and Replace. If Owner or HOA fails to maintain, repair, or replace the Landscape Improvements in the Landscape Area or maintain the Landscape Area as required by this Agreement, after attempts have been made by City to notify Owner or HOA, the City's Code Compliance staff will take corrective action.

(b) No Obligation on City. City has no obligation to take over Owner's or HOA's obligations in this Agreement to maintain, repair, and replace the Landscape Improvements in the Landscape Area or maintain the Landscape Area.

6. City's Retained Rights and Future City Projects.

(a) City Retains All Rights. Nothing in this Agreement shall be construed to prevent or restrict, in any way, City from using or granting others the right to use or abandon the right-of-way or public easement property where the Landscape Area is located. This Agreement does NOT grant Owner or HOA any property rights to the Landscape Area.

(b) Future City Projects. The Landscape Area is City of Mesa right-of-way, and this Agreement is not intended, and shall not, in any way limit the City's ability to use the Landscape Area as public right-of-way. Without limiting the foregoing, this Agreement in no way affects the City's ability to use the Landscape Area for public improvement projects ("**Future City Project**") as determined by the City in its sole and unfettered discretion. If City uses a portion of the Landscape Area for a Future City Project, the Landscape Area under this Agreement may be modified so as to exclude such areas used for the Future City Project.

7. Term. The term of this Agreement shall be for a period of twenty-five (25) years from the Effective Date. The term shall automatically renew for successive renewal terms of fifteen (15) years each, unless the City provides written notice prior to the initial term or the renewal term (as applicable) that the City elects to terminate this Agreement.

8. Running of Benefits and Burdens; Assignment. This Agreement will be recorded against the tracts identified as retention, recreation, open space, drainage, landscape, medians or private streets on the final plat and depicted in Exhibit E, and which after the Transition Date, these tracts will be owned and maintained by the HOA. All provisions of this Agreement, including the benefits and burdens, are binding upon Owner and shall inure to the benefit of the successors and

assigns of the parties hereto. Notwithstanding the foregoing the Parties agree to the following: (i) before the Transition Date, all responsibilities and other obligations under this Agreement are the Owner's and notwithstanding anything to the contrary in this Agreement, Owner shall not assign its rights or obligations under this Agreement without the prior written consent of City which may be given or withheld in City's sole and unfettered discretion and any assignment by Owner without consent shall be void; (ii) after the date Owner transfers control of the HOA to the residents of the Development (the "**Transition Date**"), all responsibilities and other obligations of Owner under this Agreement are hereby assigned to HOA, and by executing this Agreement below, HOA hereby accepts the foregoing assignment and agrees to perform all ongoing maintenance and other obligations under this Agreement from and after the Transition Date; (iii) notwithstanding anything to the contrary in this Agreement, the HOA shall not assign its rights or obligations under this Agreement without the prior written consent of City which may be given or withheld in City's sole and unfettered discretion and any assignment by HOA without consent shall be void; and (iv) from and after the Transition Date, the liabilities and obligations of Owner under this Agreement shall terminate except as described in Section 9(d) and 12(i) of this Agreement

9. Termination and Remedies.

(a) City's Termination for Convenience or Public Interest. City may terminate this Agreement, for any reason or for no reason whatsoever, upon not less than thirty (30) calendar days prior notice to Owner and after the Transition Date the HOA. If the City decides to abandon the Landscape Area or if the City of Mesa's City Engineer determines that the Landscape Area is needed by the City for a public improvement project, or other City or public uses, the termination may be for all of the Landscape Area or only a portion thereof. If the termination is only for a portion of the Landscape Area (i.e. a partial termination), this Agreement shall remain in full force and effect for the remaining portion of the Landscape Area that are not intended to be affected by such a partial termination. Further, if the City of Mesa's City Engineer determines that certain landscape materials or plantings need to be removed in the interest of the City or the public, City may immediately, and without notice, remove such landscape.

(b) Termination for Cause. If there is a breach of any term, condition, or requirement of this Agreement by Owner and after the Transition Date the HOA, that the Owner or HOA does not fully cure within thirty (30) calendar days of City's notice to Owner or HOA of such breach, City may terminate this Agreement.

(c) Remedies. If City breaches any of its obligations under this Agreement and fails to cure such breach within thirty (30) calendar days of Owner's or HOA's written notice to City, the sole and exclusive remedy of Owner or HOA shall be to seek specific performance. Owner and HOA expressly waive any and all right to seek damages of any kind or nature as a remedy against City. If Owner or HOA breaches this Agreement and fails to cure the breach within thirty (30) calendar days of City's written notice to Owner or HOA, City shall have and may seek all remedies available to City, including, but not limited to, reimbursement for costs to repair, maintain, and replace the Landscape Improvements, utility costs required to be paid by Owner or HOA, damages, costs, and all remedies in law and equity.

(d) Continuing Obligations. Termination of this Agreement does not terminate Owner's or HOA's obligations existing or arising prior to or simultaneous with, or attributable to, the termination or events leading to or occurring before termination.

10. Indemnity. To the fullest extent permitted by law, Owner and HOA shall indemnify, defend, and hold harmless the City of Mesa, its officials, officers, agents, representatives and employees, individually and collectively, from and against all fines, suits, claims, demands, actions and liability, loss, damage, costs, taxes, or expenses (including reasonable attorneys' fees and costs) arising, or related, in whole or in part from Owner or HOA, or Owner's or HOA's employees, representatives, agents, contractors' or anyone acting on Owner's or HOA's failure to: (i) comply with or fulfill the terms and obligations of this Agreement; (ii) use of Landscape Area and the City's right-of-way or public easement in an appropriate and safe manner; or (iii) maintain, repair, and replace the Landscape Improvements and maintain the Landscape Area in a good state of repair and in a clean, safe, and attractive manner as required by this Agreement including Section 3 of this Agreement. The indemnity, duty to defend, and hold harmless requirements stated herein shall include, but is not limited to, any and all claims for injury to persons, loss of life, or damage to property.

11. No Hazardous Materials. Owner, and after the Transition Date (defined in Section 8, above) the HOA, shall not bring onto the Landscape Areas any chemical or other substance that is considered hazardous, or through its use would create a hazardous waste, under the Arizona Hazardous Waste Management Act, A.R.S. § 49-901, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq., or the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq., or any other federal, state, county, or local law pertaining to hazardous waste or toxic substances (collectively "Hazardous Substances"). In addition to and without limitation of any other indemnities or obligations herein, Owner and HOA shall pay, indemnify, defend and hold City harmless against any loss or liability incurred by reason of any Hazardous Substance on or affecting the Landscape Areas that is attributable to or caused by Owner or HOA, its employees, agents, contractors, or anyone acting on Owner's or HOA's behalf.

12. General Provisions.

(a) Notices. Except as otherwise required by law, any notice, demand or other communication required or permitted under this Agreement shall be in writing and shall be (a) sent by United States mail, certified or registered, return receipt requested, postage prepaid, or (b) sent by any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), with all postage and other delivery charges prepaid. Each party shall be entitled to change its address for notices from time to time by delivering to the other parties notice thereof in the manner provided under this Section 12(a). All notices shall be sent to each party at the address set forth following its name below:

To City of Mesa:

City of Mesa
P.O. Box 1466
Mesa, AZ 85201-1466
Attention: City Manager

With a copy to:

City of Mesa
P.O. Box 1466
Mesa, AZ 85201-1466
Attn: City Attorney

To McDowell Citrus 100, LLC:

McDowell Citrus 100, LLC
3321 E. Baseline Road
Gilbert, Arizona 85234
Attn: Jeff Blandford or Tom Lemon

With a copy to:

Pew & Lake, PLC
1744 S. Val Vista, Suite 217
Mesa, AZ 85204
Attn: Reese L. Anderson

To HOA:

Estates at Hermosa Ranch HOA
3321 E. Baseline Road
Gilbert, Arizona 85234
Attn: Jeff Blandford or Tom Lemon

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) business 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 one (1) business day after deposit with such service.

(b) Further Assurances. Each party shall execute, acknowledge and deliver to the other such other documents, and shall take such other actions, as the other may reasonably request in order to carry out the intent and purposes of this Agreement.

(c) Headings. The headings in this Agreement are for reference only and shall not limit or define the meaning of any provision of this Agreement.

(d) Time of Essence. Time is of the essence of this Agreement. The foregoing to the contrary notwithstanding, if this Agreement requires any act to be done or action to be taken on a date that falls on a Saturday, Sunday or legal holiday, such act or action shall be deemed to have been timely done or taken if done or taken on the next succeeding day that is not a Saturday, Sunday or legal holiday.

(e) Waiver. The Parties agree that no waiver of any default of breach of any of the terms or conditions of this Agreement shall be construed to be a waiver of any succeeding breach or default

(f) Entire Agreement. This Agreement contains the entire understanding of the parties with respect to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, pertaining to the subject matter hereof are hereby superseded.

(g) A.R.S. § 38-511 Notice. This Agreement may be subject to cancellation pursuant to A.R.S. § 38-511.

(h) Governing Law and Venue. This Agreement shall be governed by the laws of the State of Arizona without regard to choice of law rules. City has not waived its claims procedures as respects to this Agreement. The Parties agree that the only venue for any action regarding this Agreement shall be in Maricopa County, Arizona.

(i) Amendment or Modification. An amendment or modification of this Agreement shall only be effective if it is in writing and approved by City and Owner, before Transition Date and after Transition Date, City and HOA.

(j) Severability. If any terms, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

(k) Construction. This Agreement is the result of negotiations between the parties. Accordingly, the terms and provisions of this Agreement shall be construed in accordance with their usual and customary meanings, and the parties hereby waive the application of any rule or law that otherwise might require the construction of this Agreement against the party who (or whose attorney) prepared the executed Agreement.

(l) Attorneys' Fees. In the event of litigation to enforce or interpret any provisions of this Agreement or rights arising hereunder, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs.

(m) No Third-Party Beneficiaries. No term or provision of this Agreement is intended to or shall be for the benefit of any person not a party hereto, and no such other person shall have any right or cause of action hereunder.

(n) Surviving Provisions. All duties of Owner and HOA to indemnify, defend, and hold harmless shall survive the Transition Date, termination, cancellation, or expiration of this Agreement.

[Signatures Appear on the Following Pages]

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

THE CITY OF MESA,
an Arizona municipal corporation

By: _____

Name: _____

Title: _____

[illegible]

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, the _____ of THE CITY OF MESA, an Arizona municipal corporation, for and on behalf of thereof.

Notary Public

My Commission Expires:

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

MCDOWELL CITRUS 100, LLC,
an Arizona limited liability company

By: *[Signature]*

Name: Thomas H. Lemon

Its: Authorized Agent, v. P.
Land Acq. & Development.

STATE OF ARIZONA)
) ss
County of Maricopa)

The foregoing instrument was acknowledged before me this 13 day of February, 2020, by THOMAS H. LEMON, the AUTH AGENT, v. P. LAND of MCDOWELL CITRUS 100, LLC, an Arizona limited liability company, for and on behalf of thereof.

[Signature]

My Commission Expires:

06-04-22

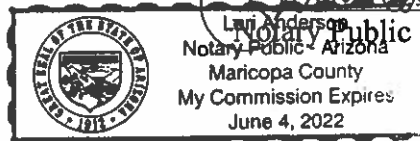


Exhibit A
(Legal Description of the Property)

EXHIBIT A

LEGAL DESCRIPTION

A PORTION OF THE NORTHEAST QUARTER OF SECTION 4, TOWNSHIP 1 NORTH, RANGE 6 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA AND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND BRASS CAP IN HAND HOLE MARKING THE CENTER OF SECTION 4, LYING NORTH 89 DEGREES 56 MINUTES 54 SECONDS WEST (BASIS OF BEARING), A DISTANCE OF 2642.80 FEET FROM THE EAST QUARTER CORNER OF SAID SECTION 4, BEING MARKED BY A BRASS CAP IN HAND HOLE;

THENCE NORTH 00 DEGREES 16 MINUTES 36 SECONDS EAST, 40.00 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 00 DEGREES 16 MINUTES 36 SECONDS EAST, 1283.22 FEET;
THENCE SOUTH 89 DEGREES 53 MINUTES 18 SECONDS EAST, 319.30 FEET;
THENCE SOUTH 15 DEGREES 03 MINUTES 48 SECONDS EAST, 1134.32 FEET;
THENCE NORTH 89 DEGREES 56 MINUTES 54 SECONDS WEST, 212.10 FEET;
THENCE NORTH 00 DEGREES 13 MINUTES 13 SECONDS WEST, 10.82 FEET;
THENCE NORTH 89 DEGREES 56 MINUTES 54 SECONDS WEST, 206.59 FEET;
THENCE SOUTH 00 DEGREES 16 MINUTES 36 SECONDS WEST, 198.54 FEET;
THENCE NORTH 89 DEGREES 56 MINUTES 54 SECONDS WEST, 170.61 FEET TO THE POINT OF BEGINNING.

NET AREA IS 549,444 S.F. AND/OR 12.6134 AC. MORE OR LESS.



**ALLEN
CONSULTING
ENGINEERS, INC.**

4111 E. VALLEY AUTO DRIVE, SUITE 103
MESA, ARIZONA 85206
PHONE (480) 844-1666

**ESTATES AT HERMOSA RANCH
LEGAL DESCRIPTION**

JOB NUMBER 95070	DRAWING EXHIBITS-BOUNDARY	DATE 11-01-19
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Exhibit B
(Depiction of the Property)

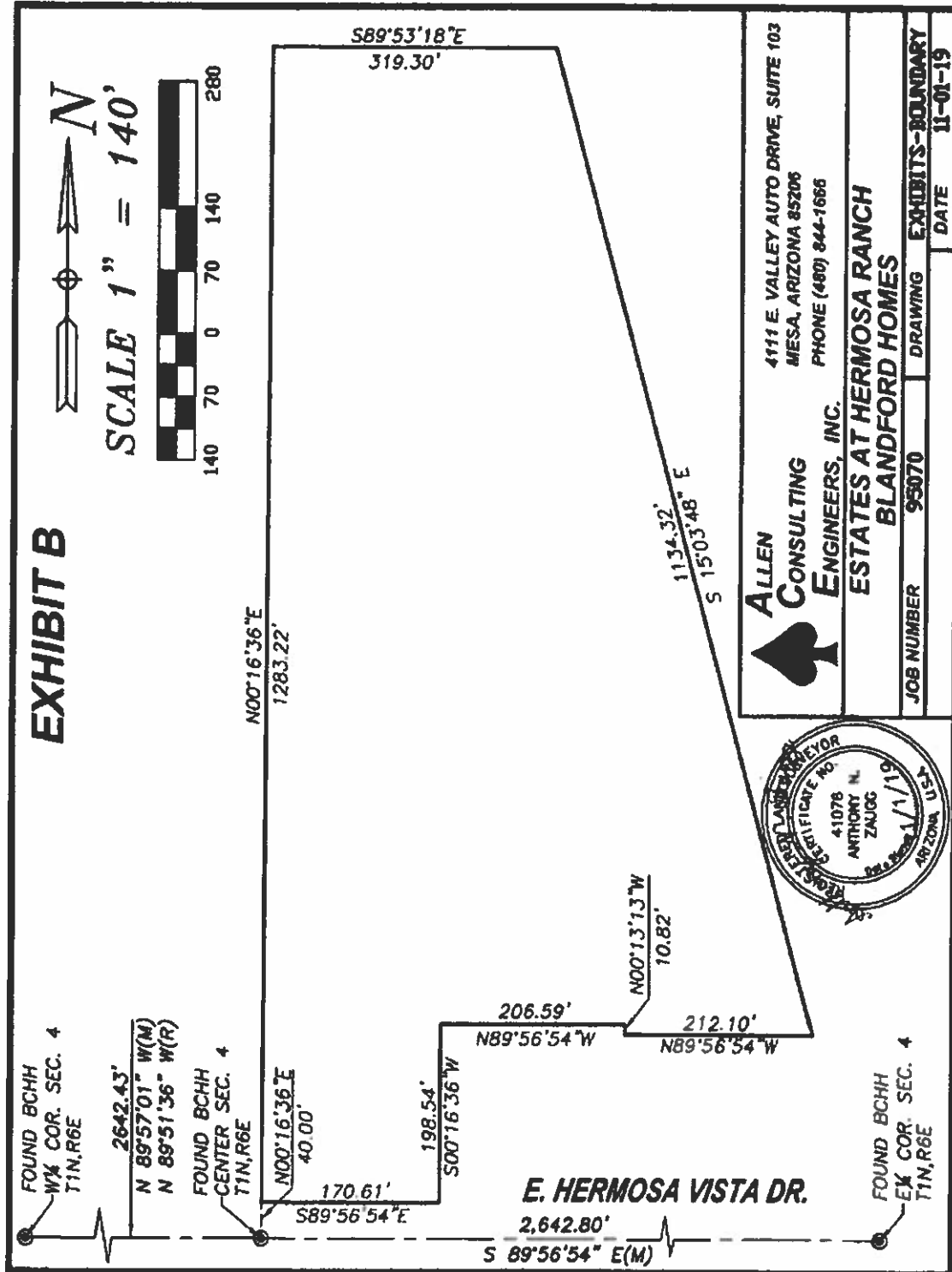


Exhibit C
(Legal Description of the Landscape Area)

EXHIBIT C

LEGAL DESCRIPTION

A PORTION OF THE NORTHEAST QUARTER OF SECTION 4, TOWNSHIP 1 NORTH, RANGE 6 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA AND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND BRASS CAP IN HAND HOLE MARKING THE CENTER OF SECTION 4, LYING NORTH 89 DEGREES 56 MINUTES 54 SECONDS WEST (BASIS OF BEARING), A DISTANCE OF 2642.80 FEET FROM THE EAST QUARTER CORNER OF SAID SECTION 4, BEING MARKED BY A BRASS CAP IN HAND HOLE;

THENCE NORTH 00 DEGREES 16 MINUTES 36 SECONDS EAST, 40.00 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 89 DEGREES 49 MINUTES 38 SECONDS WEST, PARALLEL WITH AND 40 FEET NORTH OF THE EAST-WEST MIDSECTION LINE OF SAID SECTION 4, TO THE SOUTHEAST CORNER OF TRACT "C" OF VISTA ESTANCIA , RECORDED IN BOOK 531 OF MAPS, PAGE 24, RECORDS OF MARICOPA COUNTY, ARIZONA; 40.00 FEET;

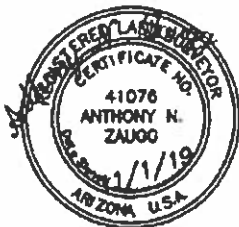
THENCE NORTH 44 DEGREES 59 MINUTES 56 SECONDS EAST, 21.25 FEET;

THENCE NORTH 00 DEGREES 16 MINUTES 36 SECONDS EAST, ALONG THE EAST LINE OF LOTS 18 & 19 OF SAID VISTA ESTANCIA SUBDIVISION, 220.26 FEET TO POINT ON A CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 55.00 FEET WITH A CENTRAL ANGLE OF 57°00'28";

THENCE NORTHEASTERLY ALONG SAID CURVE A DISTANCE OF 54.72 FEET;

THENCE SOUTH 00 DEGREES 16 MINUTES 36 SECONDS WEST, 281.42 FEET TO THE POINT OF BEGINNING.

NET AREA IS 6,822 S.F. AND/OR 0.156 AC. MORE OR LESS.



**ALLEN
CONSULTING
ENGINEERS, INC.**

4111 E. VALLEY AUTO DRIVE, SUITE 103
MESA, ARIZONA 85206
PHONE (480) 844-1668

LANDSCAPE EASEMENT LEGAL DESCRIPTION

JOB NUMBER	95070	DRAWING	EXHIBIT-LANDSCAPE
SHEET	1 OF 2	DATE	11-01-19

Exhibit D
(Depiction of the Landscape Area)

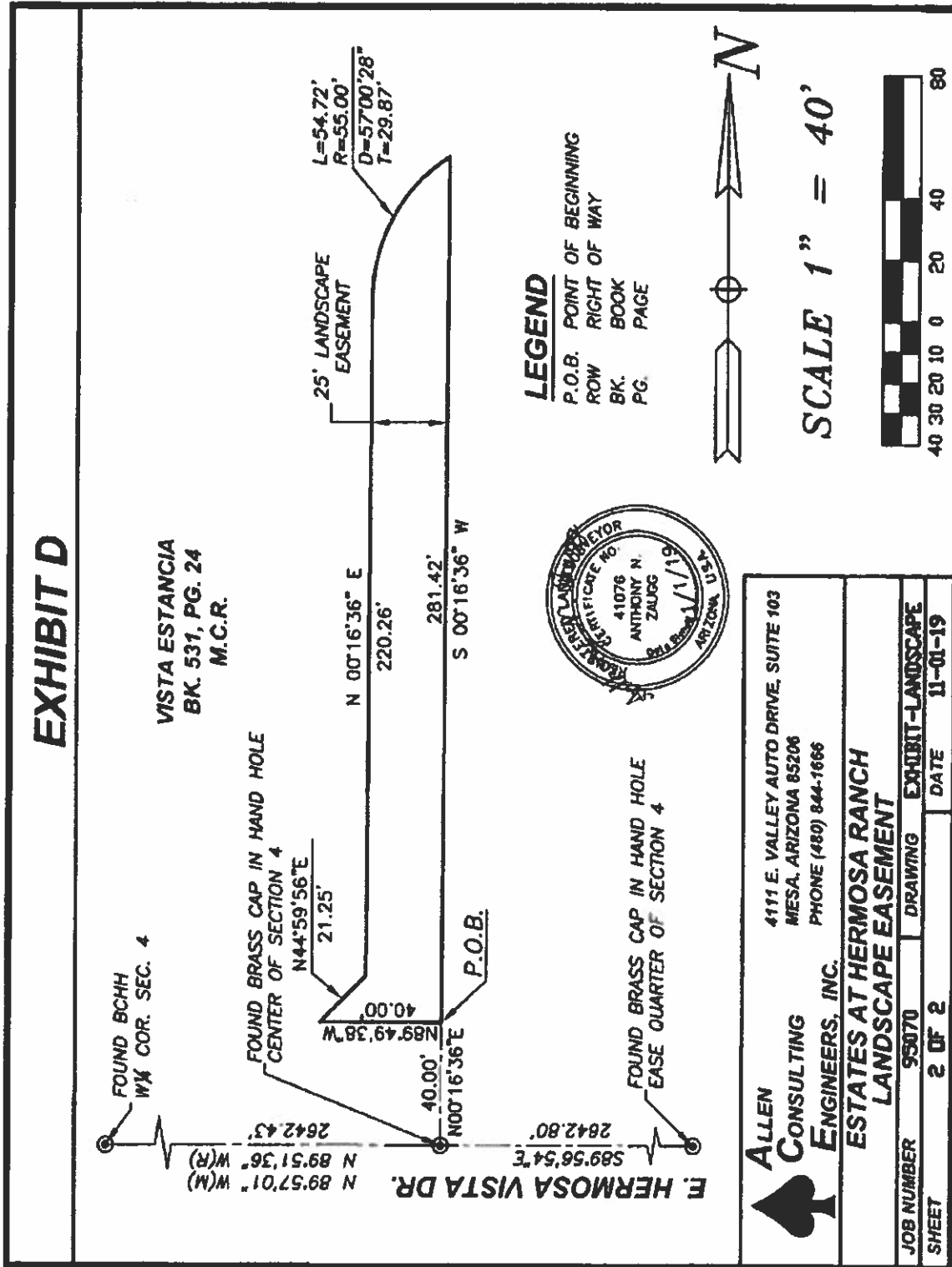


Exhibit E

(Depiction of Final Plat Tracts Owned by HOA to be Encumbered by this Agreement)

