

LEASE AGREEMENT

This lease agreement ("Agreement") dated _____, 2024 ("Effective Date") is between the City of Mesa ("Lessor"), an Arizona municipal corporation, and the Mesa Historical Society, Inc. ("Lessee"), an Arizona non-profit corporation. Lessor and Lessee may be referred to in this Agreement as a "Party", or collectively as "Parties."

RECITALS

A. Lessor owns the real property located at 2331 N. Horne, Mesa, Arizona 85203, APNs 136-08-014A and 136-08-008A (the "Property").

B. On June 30, 1994, Lessee entered into a lease with Lessor for the Property. Lessee's lease was amended on three separate occasions: August 17, 1995, August 1, 2009, and July 1, 2013 (collectively, the "Prior Lease").

C. The Prior Lease permitted Lessee to use the Property for the purpose of operating a museum, specifically the Mesa Historical Museum located at the Old Lehi School 2345 N. Horne, Mesa, AZ 85203, (the "Museum"). Further, the Prior Lease permitted Lessee to sublease the Property to a charter school if the rent collected was used solely for Museum purposes.

D. The Prior Lease expires on June 30, 2024. Pursuant to the Prior Lease, upon expiration, Lessee will peacefully yield the Property and all improvements thereon to Lessor in good condition; however, Lessee wishes to continue leasing the Property from Lessor.

E. Lessor considers cultural facilities such as the Museum to serve important public purposes, such as: providing a sense of community and place by celebrating a collective heritage; offering a way to learn about the history of a particular area; preserving and promoting diverse social interests; and furnishing education on objects or items of artistic, cultural, or scientific significance for the study and enlightenment of the public.

F. Lessee is a non-profit corporation dedicated to the preservation of the history and heritage of the City of Mesa and the region. The existence and operation of a museum dedicated to the City of Mesa's history promotes Lessor as a location of importance in Arizona, serves to enhance the City of Mesa's reputation by bringing awareness to the unique history and role of the City of Mesa, and chronicling the City's and region's past.

G. A museum dedicated to the City of Mesa furthers Lessor's vision, mission, and goal of supporting arts and culture in the community, and in particular Lessor's belief that the advancement of heritage through the utilization of heritage resources is essential to the fabric of the community.

H. Lessor desires to lease the Property to Lessee, in pertinent part, for the continued operation of the Museum, for activities ancillary to the operation of the Museum, or for Lessee to sublease the Property to a charter school sublease.

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual covenants, conditions, and agreements hereinafter, and other good and valuable consideration, Lessor and Lessee agree as follows.

ARTICLE 1 LEASED PROPERTY

1.1 Lease of Property. Lessor hereby leases to Lessee, subject to the terms and conditions of this Agreement, the Property which is more specifically described in Exhibit A to this Agreement and all Improvements (defined in Section 5.1) thereon.

1.2 Condition of Property. Lessee acknowledges, represents, and agrees that the Property, including all Improvements thereon, are being provided "AS IS," and Lessee is not relying on any statement or representation of Lessor about the nature, condition, or size of the Property or Improvements. Lessee is solely relying upon its own inspection and investigation of the Property and Improvements.

1.3 Right to Use of Property; Covenant of Quiet Enjoyment. As of July 1, 2024, so long as Lessee shall perform all of its obligations under this Agreement and subject to Section 1.4, Lessee shall peaceably have and enjoy the use of the Property without hindrance from Lessor or anyone claiming by or through it. Subject to the terms and conditions of this Agreement, Lessee shall have the exclusive right to occupy and use the Property.

1.4 License; Easement. Notwithstanding Section 1.3, Lessee acknowledges that this Agreement and Lessee's use of the Property is subject to the license specifically described in Exhibit B (Building Entry Agreement) to this Agreement. Lessee agrees and consents to (without the need of any further notice or written approval) the use of the Property for Exhibit B. Lessee agrees and acknowledges that its use of the Property is further subject to, and Lessee consents to (without the need of any further notice or written approval): (i) the use of the Property for any future easements; (ii) the use of the Property for any future licenses; and (iii) any future use of the Property for purposes of access to, or use for, a cell tower or similar telecommunication use. Lessee agrees this Agreement shall automatically be subordinated to any such easement or license.

ARTICLE 2 USE OF PROPERTY

2.1 Permitted Use. Lessee may use the Property for: (i) operating a museum dedicated to the history of the City of Mesa; (ii) those uses ancillary to the operation of a museum including, but not limited to, exhibition, storage for reserve collections, laboratory and workshop space for exhibit conservation and preparation, facilities for teaching and studying, offices, admission to the public, and fundraising; and (iii) subleasing for use as a charter school for up to three years subject to all requirements of this Agreement. The permitted uses of the Property are expressly limited to those listed in this Section. Lessee shall not use the Property for any other purpose unless such other use has prior approval in writing from Lessor.

2.2 No Sale or Conveyance of the Property. Lessee may not sell or convey all or any part of the Property or Improvements.

2.3 No Unlawful Use. Lessee agrees that no business or use conducted or operated on the Property and no Improvements shall be conducted, operated, erected, placed upon, or maintained on the Property in violation of the terms and conditions of this Agreement, or any regulations, order or laws, statutes, bylaws, or ordinances of the City of Mesa, or of any governmental body having jurisdiction over the Property.

2.4 Compliance with Applicable Zoning. Lessee agrees to meet all applicable zoning requirements for the permitted uses of the Property.

2.5 Lessor Reservations. The Property is accepted by Lessee subject to any and all existing easements or other encumbrances of record or that an ALTA survey of the Property would reveal. Lessor shall have the right to install, lay, construct, maintain, repair, and operate such sanitary sewers, drains, storm water sewers, pipelines, manholes, connections; water, oil and gas pipelines; telephone and telegraph power lines; and such other appliances and appurtenances necessary or convenient to use in connection therewith ("Utility Improvements"), over, on, across or in proximity to the Property or any part thereof, as will not unreasonably interfere with Lessee's operations hereunder, and to enter upon the Property for such purposes. Lessor will provide Lessee with written notice of such entry no less than thirty (30) days prior to any construction in the Property. Lessor also reserves the right to grant easements, rights-of-way, and permits, over, on, across or in proximity to any portions of the Property, provided, that Lessor shall not exercise such rights so as to interfere unreasonably with Lessee's activities on the Property. Lessor agrees that any rights granted to any third parties by reason of this clause shall contain provisions that the Property shall be restored to its original condition, at no cost to Lessee, upon the completion of any construction.

ARTICLE 3 TERM

3.1 Term. The term of this Agreement shall be 20 years beginning July 1, 2024, and ending on June 30, 2044 (the "Term").

ARTICLE 4 RENT; EXPENSES; TAXES; PAYMENT

4.1 Rent. In consideration of the foregoing, Lessee agrees to pay Lessor a yearly rental fee of one dollar (\$1.00), paid in advance and is due at the time of executing this Agreement; plus, if applicable, all taxes levied upon Lessee's occupancy of the Property.

4.2 No City Expenses; Triple Net Lease. Lessee agrees to pay all expenses related to this Agreement or Lessee's use of the Property, and Lessee hereby indemnifies and holds Lessor harmless from any expenses related to Lessee's use of the Property, including any expenses, taxes, and insurance. It is the purpose and intent of the Parties that this Agreement be a so-called "triple net lease." As such, Lessor and Lessee intend and agree that the Rent and any additional rent shall be absolutely net to Lessor, so that this Agreement shall yield, net to Lessor the Rent and any additional rent specified in this Agreement. Lessor and Lessee intend and agree all costs, operating expenses, taxes, premiums, fees, interest, charges, expenses, reimbursements, and obligations of every kind and nature whatsoever relating to the Property shall be paid or discharged by Lessee, and each and every obligation that may arise or be related to the Property shall be performed by Lessee at its sole cost and expense.

4.3 Taxes. Lessee will pay, without notice (except as specifically provided herein), and without abatement, deduction or setoff, before any fine, penalty, interest, or cost may be added thereto, or become due or be imposed by operation of law for the nonpayment thereof, all sums, impositions, costs, expenses, and other payments and all taxes including personal property taxes and taxes on rents, leases, or occupancy, GPLET tax (if applicable, see Section 4.4), and

assessments, special assessments, enhanced municipal services district assessments, water and sewer rents, rates and charges, charges for public utilities, excises, levies, licenses and permit fees, and other governmental or quasi-governmental taxes or charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind or nature whatsoever which, at any time during the Term may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or with respect to, or become a lien on or encumbering, the Property, or any part thereof, or any appurtenances thereto, or any use or occupation of the Property.

4.4 Government Property Lease Excise Tax. It is the Parties' reasoned belief that this Agreement is not subject to excise tax liability and other restrictions imposed under the Government Property Lease Excise Tax ("GPLET") provisions of A.R.S. §§ 42-6201, *et seq.* Lessee hereby warrants that it is an organization exempt from taxation under § 501(c)(3) of the internal revenue code. Lessee further warrants any Subtenant is and will at all times be an organization exempt from taxation under § 501(c)(3) of the internal revenue code. Pursuant to A.R.S. § 42-6208(13) the Property is exempt. Further, if applicable, Lessee disclaims all right to seek any abatement of tax pursuant to A.R.S. § 42-6209. If any excise or other tax applicable to the Property or this Agreement becomes payable under GPLET or other real property tax statute, or any subsequently enacted statute, then Lessee shall be responsible for the payment of such tax, and the failure to pay such tax shall be an event of default. Should such tax become due and payable under GPLET or other real property tax statute, Lessee may, at Lessee's option, terminate this Agreement by giving written sixty (60) days written notice to Lessor. Lessee acknowledges that the termination of the Agreement by Lessee pursuant to this Section may not avoid payment of such taxes by Lessee as Lessee will be responsible for any such taxes due and owing through the termination of the Agreement and Lessee agrees to pay all expenses related to this Agreement or Lessee's or Lessee's sublessor's use of the Property, and Lessee hereby indemnifies and holds Lessor harmless from any expenses related to Lessee's or Lessee's sublessor's use of the Property, including any such taxes.

4.5 Obligations Unconditional. Lessee agrees—regardless of any event, occurrence or situation, whether foreseen or unforeseen, and however extraordinary—that it: (i) will not suspend or discontinue, or permit the suspension or discontinuance of, any payments provided for under this Agreement, (ii) will perform and observe all of its other agreements contained in this Agreement, and (iii) will not suspend the performance of its obligations hereunder for any cause, including, and without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction or damage to the Property, commercial frustration of purpose, any change in the tax or other laws or administrative rulings of, or administrative actions by the United States of America or the State of Arizona or any political subdivision of either.

4.6 Payment of Expenses. Lessee agrees to pay all expenses related to its use of the Property. In the event Lessee fails to pay for any expense related to the Property, or if Lessor in any way becomes obligated to or does pay for any expense related to the Property, Lessor shall itemize such expenses and shall invoice Lessee for same. Said expense will be due and payable, as additional rent, within thirty (30) days after the date of the invoice in which Lessor bills Lessee for such expense.

ARTICLE 5 IMPROVEMENTS

5.1 Improvements. The term “Improvements,” shall mean any and all additions, alterations, changes, fixtures, enhancements, or other improvements to the Property that are in existence on the Property as of the Effective Date of this Agreement or at any time during the Term.

5.2 Initial Improvements. Lessee shall not make any temporary or permanent Improvements to the Property, with a cost of more than five thousand dollars (\$5,000.00), without the approval of the Lessor in writing. Lessor’s approval shall not be unreasonably conditioned, withheld, or delayed. Lessee shall submit to Lessor complete architectural, electrical, and mechanical plans and specifications covering all such work, whether such work is to be done by Lessee or others. Such plans and specifications shall be prepared in such detail as Lessor may require, and Lessee agrees not to commence work upon any portion of the Property until Lessee has approved such plans and specifications. Any changes in said plans or specifications must be similarly approved by Lessor. Further, Lessee agrees to complete, at its own expense, all Improvements necessary for the Property to be operated as intended and allowed under this Agreement including, but not limited to, all furniture, equipment, trade fixtures, and other personal property needed by the Lessee to operate the Property as intended under this Agreement.

5.3 Improvements; Construction; and Maintenance. All Improvements shall be constructed and maintained in a good and workmanlike manner in compliance with all laws, code, rules, regulations, and orders of all governmental authorities having jurisdiction thereof. Lessee shall, at Lessee’s own expense, promptly remove from the Property all trash and debris that may accumulate in connection with any work in or on the Property associated with Improvements. Lessee shall be responsible for determining whether it is subject to any building/construction codes or permit requirements, and for compliance with them to the extent they are applicable to Lessee’s work. No such work shall be commenced without first submitting required plans and obtaining required permits from the City of Mesa (Lessor). All such work shall be permitted, inspected, and approved by the City of Mesa (Lessor).

ARTICLE 6 MECHANICS LIENS

6.1 Mechanics Liens. Lessee agrees to keep the Property free of any mechanics’ or materialman’s liens or other liens of any kind or nature for work done, labor performed, or material furnished thereon, and Lessee further agrees to defend, indemnify, and hold harmless Lessor from and against any and all claims, liens, demands, costs, and expenses of whatever nature for any such work done, labor performed, or materials furnished.

6.2 No Agency. Lessee is not an agent of the Lessor, nor an employee of the Lessor. Lessee, its agents, representatives, or employees are not authorized to act for or on behalf of Lessor as its agent, representative, employee, or otherwise, for any purpose including the constructing of any Improvements at the Property. Lessor is not an agent of Lessee, nor an employee of Lessee. Lessor, its agents, representatives, or employees are not authorized to act for or on behalf of Lessee as its agent, representative, employee, or otherwise, for any purpose.

**ARTICLE 7
UTILITIES**

7.1 Utilities. Lessee is responsible for and shall pay for all utilities supplied to, used, or consumed in or on the Property including, without limitation, all water, sewer, gas, electric, and waste disposal services as and when the charges become due and payable.

**ARTICLE 8
MAINTENANCE AND REPAIRS**

8.1 Lessee's Maintenance. Lessee at its sole cost and expense, shall take good care of the Property, make all repairs thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, and shall maintain and keep the Property and the sidewalks, curbs, and landscaping in a neat, clean, safe, sanitary, and orderly condition at all times. This includes, without limitation, the prevention of the accumulation of any trash, debris, or waste materials. For clarity, Lessor has absolutely no obligation during the Term for the maintenance, repair, or replacement of the Property or the Project (or any part thereto).

8.2 Lessor Right to Conduct Maintenance. In the event Lessee fails to maintain the Property in accordance with Section 8.1, Lessor shall have the right, but not the obligation, to perform any such maintenance or services at Lessee's sole expense. Said expense shall be due and payable, as additional rent, within thirty (30) days after the date of the invoice in which Lessor bills Lessee for such expense.

**ARTICLE 9
DAMAGE TO PROPERTY**

9.1 Lessee Obligations to Restore. If, at any time following the Effective Date, the Property, or any Improvement, or any part thereof, shall be damaged or destroyed by casualty or other occurrence of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, Lessee, at its sole cost and expense, and whether or not the insurance proceeds, if any, shall be sufficient for the purpose, shall repair, alter, restore, replace, or rebuild the same as nearly as possible to its value, condition, and character that existed immediately prior to such damage or destruction, and Lessee shall proceed and complete such restoration with reasonable diligence; and the restoration shall be performed by licensed and bondable Arizona contractors. Lessee shall immediately secure the Property and Improvements and undertake temporary repairs and work necessary to protect the public and to protect the Property and Improvements from further damage. If Lessee fails to commence such repairs and restoration within one hundred and eighty (180) days after the date of the damage or destruction, or if such work after commencement shall not proceed expeditiously, or if such work is not completed within 18 months after commencement, Lessor may terminate this Agreement and may seek any remedy allowed under this Agreement or in equity or law.

9.2 Payment of Insurance Proceeds. All proceeds from insurance policies obtained by Lessee to cover such damage or destruction (except proceeds to cover loss of Lessee's personal property) shall be used to repair and restore the Property as required under this Agreement.

9.3 Lease Obligations Continue. In no event shall Lessee be entitled to any abatement, allowance, reduction, or suspension of Rent (or any other amount owing under this Agreement) because part or all of the Property shall be untenable due to the partial or total destruction thereof.

Lessee's obligations under this Agreement shall continue regardless of any partial, substantial, or total destruction of the Property or any shortfall in insurance proceeds to complete the restoration; provided, however, if the Parties (each in their sole discretion) agree in writing to not use the insurance proceeds (from Lessee's property insurance) to restore the Property, then Lessee may terminate this Agreement through the following: (i) payment by Lessee to Lessor of all insurance proceeds for the Property (except proceeds to cover loss for Lessee's personal property) plus any deductible amount and any short fall amount in the insurance amount that is less than full replacement value, and (ii) a thirty (30) day written notice to Lessor. Such a termination shall be deemed to be the end of the Term of this Agreement. Lessor shall have no responsibility or liability for any damage or destruction by fire or other casualty and shall have no obligation to repair, restore, or rebuild the Property in such an event.

ARTICLE 10 INSURANCE

10.1 Insurance Coverage Required. As a condition precedent to the effectiveness of this Agreement, Lessee must procure and at all times maintain the following types and amounts of insurance for its operations at, and use of, the Property:

a. General Liability Insurance. General Liability insurance with minimum coverage of \$2,000,000 per occurrence and \$4,000,000 in the aggregate. The policy shall include, at a minimum, coverage for bodily injury, property damage, personal injury, products/completed operations, and blanket contractual covering, including the liability assumed under the indemnification provisions of this Agreement. If environmental pollution or environmental hazards are excluded from the General Liability policy, a separate Pollution Insurance Policy shall be required with minimum coverage of \$1,000,000 each occurrence / aggregate.

b. Property Insurance. Lessee is responsible for carrying fire and broad form property coverage for the Property, all Improvements, and permanent fixtures for the replacement value thereof on the Property. Lessor must be named as "Loss Payee" on the property insurance policy. All merchandise, furniture, floor coverings, and all personal property, and trade fixtures and equipment belonging to Lessee, and all persons claiming by or through Lessee, which may be on the Property, will be at the Property at Lessee's sole risk.

c. Workers' Compensation Insurance. Lessee must maintain workers' compensation insurance to cover obligations imposed against Lessee by federal and state law.

10.2 Evidence and Requirements for All Insurance Coverages. Upon the Effective Date, Lessee must provide Lessor with a Certificate(s) of Insurance (using the appropriate ACORD certificate) signed by the issuer with applicable endorsements. Lessor reserves the right to request additional copies of any or all of the policies, endorsements, or notices relating to the policies.

a. Lessee's Insurance Primary. Lessee's insurance will be primary of all other sources available. No policy will expire, be cancelled, or materially changed to affect the coverage available without advance written notice to the Lessor.

b. Approval by Risk Manager. All insurance certificates and applicable endorsements are subject to review and approval by Lessor's Risk Manager.

c. Waiver of Subrogation. All insurance policies (whether or not required by this Agreement) must contain a waiver of subrogation in favor of the City of Mesa, its agents, officials, volunteers, officers, elected officials, and employees (collectively, including Lessor, the "Indemnified Persons"); however, such waiver shall not apply to claims solely caused by the Lessor's gross negligence or willful misconduct.

d. Insurance Company. All policies must be from a company, or companies rated A- or better, authorized to do business in the State of Arizona.

10.3 Additional Insureds. The Indemnified Persons must be named and endorsed as additional insureds on all insurance policies (except workers' compensation), issued pursuant to this Section during the entire Term.

10.4 Lessor's Right to Adjust Insurance. Lessor may reasonably adjust the amount and type of insurance Lessee is required to obtain and maintain under this Agreement as reasonably required by Lessor's Risk Manager. Prior to making any adjustment in insurance, Lessor will consult with Lessee to determine the cost feasibility of Lessee to obtain such adjusted insurance. If Lessor reasonably believes Lessee can afford such adjusted insurance, Lessee will be required to obtain such adjusted insurance.

10.5 Use of Proceeds. Proceeds (or an equivalent amount of such proceeds) of any property damage insurance shall be applied as required by this Agreement.

10.6 No Limits on Indemnification. The procuring of any insurance policies shall not be construed to be a limitation upon Lessee's liability or viewed as a full performance on its part of the indemnification provisions of this Agreement.

ARTICLE 11 INDEMNIFICATION

11.1 Indemnification.

a. Lessee will pay, defend, protect, indemnify, and hold harmless, individually and collectively, the Indemnified Persons for, from, and against all liabilities, losses, damages, costs, expenses (including reasonable attorneys' fees and costs), causes of action (whether in contract, tort, or otherwise), suits, claims, demands, and judgments of every kind, character and nature whatsoever (collectively, the "Liabilities"), in whole or in part, directly or indirectly arising from or relating to Lessee's performance under this Agreement, or due to Lessee's, or its officers', directors', employees', agents', contractors', invitees' (including customers and guests), sublessees', or sublessees' invitees', customers', or guests', occupancy, activities or operations on, at, or of the Property including the following:

i. Any Liabilities, in whole or in part, directly or indirectly, arising out of or connected with the use, non-use, condition, or occupancy of the Property or any part thereof, for any accident, injury to, or death of any person or damage to property in or upon the Property during the Term;

ii. Any Liabilities, in whole or in part, directly or indirectly, arising out of or connected with the security for the Property and any parking lots (including, but not limited to, lack of security, and types of security installed);

iii. Any breach or violation by Lessee of any agreement, covenant, warranty, representation, or condition of this Agreement or, any other documents executed in connection with this Agreement;

iv. Any violation due to Lessee, or its officers, directors, employees, agents, contractors, invitees, or its sublessees of any contract, agreement, or restriction relating to the Property or any part thereof;

v. Any violation due to Lessee, or its officers, directors, employees, agents, contractors, invitees, or its sublessees of any law, ordinance, or regulation affecting the Property or any part thereof or the ownership, occupancy, or use thereof during the Term; and

vi. Any other Liabilities set forth in the terms of the Agreement.

b. However, Lessor shall be liable for Liabilities arising solely and exclusively from the gross negligence or willful misconduct of Lessor, its officers, directors, officials, employees, and agents while on official business at the Property.

11.2 Survival. The duty to indemnify, defend, and hold harmless requirements of Article 11 or as otherwise set forth in this Agreement shall survive the expiration or any termination of this Agreement.

ARTICLE 12 ENVIRONMENTAL INDEMNIFICATION

12.1 No Hazardous Materials and Indemnity. Lessee shall not bring onto, generate, use, store, or dispose of in, on, or about the Property any chemical or other substance that is considered hazardous, or through its use would create a hazardous waste as defined in Section 12.6. In addition to and without limitation of any other indemnities or obligations in this Agreement, Lessee shall pay, indemnify, defend, and hold the Indemnified Persons harmless against any Liabilities incurred by reason of any Hazardous Material on or affecting the Property, to the extent attributable to or caused by Lessee, its employees, agents, contractors, invitees, sublessees, or anyone acting on Lessee's behalf.

12.2 Remediation and Restoration. In addition to the requirements and indemnity in the above Article 11, if due to the actions or inactions of Lessee, its agents, contractors, invitees, sublessees, or anyone acting on Lessee's behalf, the presence of any Hazardous Material in or on the Property results in any contamination of the Property or any adjacent real property, including the contamination of groundwater, Lessee shall: (i) promptly, and with best efforts, take all actions at its sole cost and expense as are necessary to mitigate any immediate threat to human health; and (ii) undertake any action necessary to return the Property and other property (including the groundwater), as applicable, to the condition existing prior to the introduction of any Hazardous Material. Additionally, Lessee shall first obtain the written approval of Lessor before initiating the remediation or restoration actions.

12.3 Reimbursement of Costs to Lessor. If Lessee fails to remediate and restore the Property, as herein required, Lessee shall reimburse Lessor for all costs incurred by Lessor for the remediation and restoration of the Property.

12.4 Survival. The duty to indemnify, defend, and hold harmless requirements and the remediation and restoration requirements of Article 12 shall survive the expiration or any termination of this Agreement.

12.5 Lessee Right to Terminate. If any Hazardous Material or contaminated substances are discovered on the site and such materials are not attributable to or caused by Lessee, Lessee's agents, contractors, invitees, sublessees, or anyone acting on Lessee's behalf, Lessee has the right to terminate this Agreement immediately with written notice to Lessor. Any such written notice must identify and locate such Hazardous Material.

12.6 Definition of Hazardous Material. As used in this Article 12, the term "Hazardous Material" means any hazardous or toxic substance, material, or waste that is or becomes regulated by the United States, the State of Arizona, or any local government authority having jurisdiction over the Property. Hazardous material includes:

a. Any "hazardous substance" as that term is defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 United States Code §§ 9601 9675), including all amendments thereto or successor statutes;

b. "Hazardous waste" as that term is defined in the Resource Conservation and Recovery Act of 1976 (RCRA) (42 United States Code §§ 6901 6992K), including all amendments thereto or successor statutes;

c. Any pollutant, contaminant, or hazardous, dangerous, or toxic chemical, material, or substance, within the meaning of any other applicable federal, state, or local law, regulation, ordinance, or requirement (including consent decrees and administrative orders imposing liability or standards of conduct concerning any hazardous, dangerous, or toxic waste, substance, or material, now or hereafter in effect);

d. Petroleum products;

e. Radioactive material, including any source, special nuclear, or byproduct material as defined in 42 United States Code §§ 2011-22976-4 including all amendments thereto or successor statutes;

f. Asbestos in any form or condition; and

g. Polychlorinated biphenyls (PCBs) and substances or compounds containing PCBs.

ARTICLE 13 ENTRY BY LESSOR

13.1 Entry by Lessor. Lessor reserves the right to enter upon or have its employees, agents, contractors, and assignees enter upon the Property upon twenty-four (24) hours prior written notice to Lessee, for any reasonable purpose, including: (i) the inspection of the Property

to determine if the provisions of this Agreement are being complied with; (ii) to conduct environmental assessments and audits; and (iii) any actions necessary to remediate, abate, or cleanup any hazardous substances or environmental conditions at the Property in accordance with Article 12. Provided however, the notice to Lessee prior to Lessor's entry shall not be required in the event of an emergency. For clarity, entry upon of the Property and the associated required notice for the purpose of Utility Improvements is governed by Section 2.5.

13.2 Waiver of Claims. Lessee hereby waives any claim for damage, injury, or inconvenience to or interference with Lessee's operations, any loss of occupancy or quiet enjoyment of the Property, and any other loss occasioned by Lessor's entry unless such claim is a direct result from Lessor's negligent or intentional misconduct. Lessor shall have the right to use all means which Lessor deems necessary to gain access to the Property and Lessee's personal property, trade fixtures, and equipment in the event of an emergency and, following the emergency, Lessor shall notify Lessee of Lessor having accessed the Property.

ARTICLE 14 ASSIGNMENT; SUBLETTING

14.1 No Transfer or Assignment of Agreement; Subleasing.

a. Lessee shall not transfer or assign this Agreement, or any part of Lessee's interest in this Agreement without prior written consent of Lessor. Lessee shall not sublet the Property or any part thereof without prior written consent of Lessor, except that Lessee may sublease the Property to a subtenant ("Subtenant") for the sole purpose of use as a charter school, for a period of up to three years, subject to compliance with all the following terms and conditions:

i. Lessee shall require and collect rent from the Subtenant. All rent shall be used by the Lessee solely for operation of the Museum, those uses ancillary to the operation of a museum as set forth in Section 2.1, or to comply with Lessee's obligations and the terms of this Agreement, such as maintenance of the Property.

ii. Compliance by Subtenant with all applicable requirements associated with Improvements (e.g. building and fire codes), operation of the charter school (e.g. state education code, state Department of Education, and Mesa Public School requirements), and any use of the Property.

iii. The term of the sublease shall not exceed three years, beginning July 1, 2024, and ending June 30, 2027. Lessee may renew the sublease upon written permission of Lessor.

iv. The sublease shall be subject to all provisions of this Agreement, and Subtenant shall be obligated to comply with all the terms and conditions of this Agreement, and any breach of the terms and conditions of this Agreement by Subtenant is a breach by Lessee.

v. Subtenant shall be required to name and endorse the Indemnified Persons, as additional insureds on the subtenant's liability insurance which shall be primary. The sublease shall require any insurance policy to include a waiver of

subrogation in favor of the Indemnified Persons. The sublease shall require the subtenant to deliver a certificate of insurance to Lessor within thirty (30) days.

vi. Lessee shall deliver an executed copy of any sublease to Lessor within thirty (30) days of its execution.

14.2 Violations are Void. Any transfer, assignment, or sublease by Lessee contrary to the terms and conditions of this Agreement shall be void.

ARTICLE 15 DEFAULT; ABANDONMENT

15.1 Event of Default. The occurrence of any of the following shall constitute an event of default ("Event of Default") hereunder:

a. The filing of a petition by or against Lessee for adjudication as bankrupt or insolvent, or for its reorganization or for the appointment of a receiver or trustee of Lessee's property; an assignment by Lessee for the benefit of creditors or the taking of possession of the property of Lessee by any governmental officer or agency pursuant to statutory authority for the liquidation of Lessee.

b. Abandonment of the Property as provided in Subsection 15.2.

c. Failure of Lessee to pay any installment of the Rental Fee or any other amount due from Lessee under this Agreement, provided that Lessee does not cure such failure within fifteen (15) days after delivery by Lessor of a written notice of such failure.

d. Failure of the Lessee to perform any of its other obligations under this Agreement, provided that Lessee does not cure such failure within thirty (30) days after delivery by Lessor of a written notice of such default; however, if a cure of the default reasonably requires more than thirty (30) days to complete and Lessor agrees, then the time to cure shall be extended so long as the cure is being diligently pursued.

e. The filing of any mechanic's, materialmen's, or other lien of any kind against the Property because of any act or omission of Lessee which lien is not discharged by bonding or otherwise, within thirty (30) days of receipt of actual notice thereof by Lessee.

f. The failure of Lessee to maintain all insurance coverage required by this Agreement (and any cure must cover any lapsed or uncovered period of time).

g. The failure of Lessee to perform any of its other obligations under this Agreement, whether or not that failure is specifically identified as creating default in the language of this Agreement, including, but not limited to, the failure of Lessee to use the Property in accordance with this Agreement, provided that Lessee does not cure such failure within thirty (30) calendar days after delivery by Lessor of a written notice of such default; provided, however, if a cure of the default reasonably requires more than thirty (30) calendar days to complete and Lessor agrees, then the time to cure shall be extended so long as the cure is being diligently pursued.

15.2 Abandonment. If Lessee, prior to the expiration or other termination of this Agreement, relinquishes possession of the Property without Lessor's prior written consent, or fails to open for business under usual business hours or fails to use the Property for the permitted uses of the Property for a period of thirty (30) calendar days, such occurrence shall be deemed to be an abandonment of the Property and an Event of Default under this Agreement.

15.3 No Waivers. There shall be no implied waivers of any of the terms, conditions, covenants, or agreements set forth in this Agreement. No express waiver by a Party of any breach or default by another Party in the performance of its obligations under this Agreement shall be deemed to be a waiver of any subsequent default in the performance of any such obligations, and no express waiver shall affect an Event of Default (Section 15.1) in a manner other than as specified in the waiver, nor shall an express waiver prohibit a Party from later enforcing any of the terms and conditions of this Agreement against another Party. The consent or approval by a Party to or of any act by another Party requiring consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or for any subsequent similar acts.

15.4 Lessor Remedies Not Exclusive. If Lessee shall be in default and has not cured the default for the period set forth after written notice of the default, Lessor shall have the right to terminate this Agreement and/or to reenter the Property. Unless otherwise limited by the terms of this Agreement, Lessor's remedies set forth in this Agreement are cumulative and are not intended to be exclusive of any other remedies or means of redress to which Lessor may be entitled to resort, either in law or in equity, in case of any breach or threatened breach of any provisions of this Agreement.

15.5 Lessee Remedy of Specific Performance. In the event of a breach by Lessor of its obligations under this Agreement, Lessee's exclusive remedies shall be termination of this Agreement or an action for specific performance. Lessee shall not be entitled to monetary damages or any other remedy, whether at law or equity, arising from Lessor's breach of this Agreement. The Parties agree that due to the rights and obligations set forth in this Agreement and unique nature of the Property, specific performance is the appropriate remedy for Lessee's enforcement of this Agreement. However, nothing in this Section shall limit or restrict Lessee's right to seek injunctive relief to prevent irreparable harm.

ARTICLE 16 TERMINATION

16.1 Termination for Convenience. Lessor may terminate this Agreement, for any reason or for no reason whatsoever, upon not less than ninety (90) days prior written notice to the Lessee; and such termination shall be deemed to be the end of the Term. If so terminated, Lessee shall not receive any compensation or other consideration from Lessor.

16.2 Termination for Default by Lessee. If an Event of Default occurs as defined in Article 15 of this Agreement, Lessor may, at its election, without prejudice to any other rights and remedies available to Lessor at law or in equity, terminate this Agreement and the tenancy created thereby. In such case, Lessee shall surrender the Property to Lessor pursuant to Article 18.

16.3 Termination for Default by Lessor. In the event of a Lessor Default, Lessee may, at its election, terminate this Agreement and the tenancy created thereby. In such case, Lessee shall surrender the Property to Lessor pursuant to Article 18.

16.4 Lessor's Damages Relating to Termination. Lessor shall be entitled to recover from Lessee all damages incurred by Lessor by reason of a termination for an Event of Default by Lessee, which shall be paid following termination within thirty (30) days of invoice to Lessee for such costs.

ARTICLE 17 REMEDIES

17.1 Remedies. In the Event of Default as set forth, the non-defaulting Party shall have available the remedies provided in this Agreement. Neither Party shall be entitled to, and both specifically waive the right to seek, any incidental, special, or consequential damages from the other Party.

17.2 Vacating of the Property. Lessee shall peaceably quit the Property upon written notification to Lessee of Lessor's intent to reenter the Property and Improvements placed thereon by Lessee. The various rights, elections, and remedies of Lessor contained in this Agreement shall be cumulative, and no one of them shall be construed as exclusive of any other or of any right, priority, or remedy allowed or provided by law. Lessor shall use its best efforts to mitigate cost to Lessee.

ARTICLE 18 SURRENDER OF PROPERTY

18.1 Surrender of Property; Normal Wear and Tear. Upon expiration, default by Lessee, or termination of this Agreement, Lessee's right to occupy the Property and Improvements and exercise the privileges and rights granted under this Agreement shall cease, and Lessee shall surrender the same and leave the Property free of trash and debris, broom clean and in good condition, except for normal wear and tear except as otherwise provided for in this Agreement.

18.2 Voluntary Surrender. Lessee shall, on the last day of the Term of this Agreement, or upon any termination of this Agreement, truly surrender and deliver the Property along with any fixtures (other than trade fixtures) and permanent Improvements then located on the Property into the possession and use of Lessor, without fraud or delay, and in good order, condition, and repair, free and clear of Lessee or other occupants, free and clear of all liens and encumbrances other than those existing on the date of this Agreement, if any, without any payment or allowance whatsoever by Lessor.

18.3 Removal of Improvements. Following Lessee's surrender of the Property and Improvements, Lessor may elect to request Lessee remove all personal and permanent Improvements from the Property. If Lessor elects for such removal, Lessor will provide Lessee with written notice of such election within thirty (30) days of the Property's surrender. Lessee shall thereafter commence and complete said removal within thirty (30) days of the written notice. All trade fixtures, equipment, and other personal property installed or placed by Lessee in the Property which is not permanently affixed thereto shall remain the property of Lessee, and Lessee shall have the right at any time during the Term, to remove the same from the Property, provided that Lessee shall repair, at its sole cost, any damage caused by such removal. Any property not removed by Lessee within thirty (30) days after written notice shall become a part of the Property, and ownership thereof shall vest in Lessor. Lessee shall, however, remain financially liable to Lessor for the costs of repairs to the Property incurred because of Lessee's removal and/or relocation of property formerly belonging to Lessee and not otherwise removed from the Property

as provided herein, and shall remit to Lessor payment for such costs within thirty (30) days of Lessee's receipt of Lessor's invoice therefor.

ARTICLE 19 SALE OF PROPERTY AND ESTOPPEL CERTIFICATE

19.1 Sale by Lessor. If there is a sale or other conveyance by Lessor of its interest in the Property, provided that the purchaser of the Property assumes this Agreement and all of Lessor's obligations hereunder, Lessor shall be automatically freed and released from all liability accruing from and after the date of such sale or conveyance respecting the performance of any covenant or obligation on the part of Lessor contained in this Agreement to be performed. Upon such a sale or conveyance, the covenants and obligations contained in this Agreement on the part of Lessor shall be binding on its successors or assigns. Lessor and any of its successors in interest agree not to disturb or otherwise interfere with Lessee's possession of the Property for the unexpired Term of the Agreement, except as otherwise provided herein. After such sale or conveyance, Lessee shall be bound to such successor or assign who becomes the new Lessor under this Agreement; and Lessor shall attorn to such successor or assign said attornment to be effective and self-operative without the execution of any further instruments on the part of either Party.

19.2 Estoppel Certificate. Both Parties shall, without charge, certify by written instrument duly executed and acknowledged by the Party, and certified to the requesting Party and to any prospective lender or purchaser the following, to the extent such information is true and correct at the time such request is made: (i) as to whether this Agreement is in full force and effect along with the amount and current status of the Property Rent and other amounts due hereunder; (ii) as to whether this Agreement has been modified or amended in any respect or describing such modifications or amendments, if any; (iii) as to whether there are any existing defaults, to the knowledge of the Party executing the certificate, and specifying the nature of such defaults, if any; and (iv) as to whether that Party has assigned or transferred its interests or any portion thereof in this Agreement. Any such certificate may be relied upon by the requesting Party and any prospective purchaser or lender to whom the same was certified. Such certification shall be given within sixty (60) days after written request from the other Party.

ARTICLE 20 HOLDING OVER

20.1 Holdover. In the event Lessee shall lawfully hold possession of the Property after the Term, then such holding over shall be considered a tenancy from month to month and governed by the same conditions and covenants as contained in this Agreement except that the amount of Rent outlined in Subsection 4.1 that Lessee must pay to Lessor will be increased such that Lessee will pay Lessor by the first of each month during the hold over tenancy a monthly rent of five hundred dollars (\$500.00). In the event Lessee holds over, Lessee shall be liable for all of Lessor's direct and consequential damages, which shall include, without limitation, costs, fees, expenses, damages, and attorneys' fees incurred by Lessor as a result of Lessee's holding over, and damages and expenses incurred by Lessor for its inability to deliver possession of the Property to a new tenant.

**ARTICLE 21
GENERAL PROVISIONS**

21.1 Notices. All notices given by either Party to the other shall be given in writing and shall be addressed to the Parties at the addresses below. Notices shall be deemed properly served when sent by certified or registered mail or hand delivered to the addresses stated below. Any notice shall be deemed to have been received two (2) business days after the date of mailing, or upon actual receipt if hand delivered.

To Lessor: City of Mesa
20 E. Main Street
P.O. Box 1466
Mesa, AZ 85211
Attn: Real Estate Services
Phone: 480-644-2577
Email: Propertymanagement@mesaaz.gov

A copy of all notices to Lessor shall also be sent or delivered to:

City of Mesa
P.O. Box 1466
Mesa, AZ 85211-1466
Attn: City Attorney

To Lessee: Mesa Historical Society, Inc.
Old Lehi School
2345 N. Horne

Mesa, AZ 85203
Attn: Susan Ricci, Executive Director
Phone: 480-835-2286
Email: Exec@mesamuseum.org

21.2 Independent Legal Relationship. Nothing contained in this Agreement shall create any partnership, joint venture, or other arrangement between Lessor and Lessee. Except as expressly provided herein, 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.

21.3 Successors and Assigns. The covenants contained herein shall, subject to the provisions as to assignment, apply to, and bind the heirs, successors, executors, administrators, and assigns of all the Parties hereto.

21.4 No Ownership Interest in Property. Lessee has no ownership interest in the Property.

21.5 Amendments. This Agreement sets forth all of the agreements and understandings of the Parties and is not subject to modification except in writing, signed by the Parties.

21.6 Binding Agreement. This Agreement shall be the only agreement between the Parties pertaining to the Property. It is understood that there are no oral agreements between the

Parties hereto affecting this Agreement, and this Agreement supersedes and cancels all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the Parties hereto with respect to the subject matter hereof, and none shall be used to interpret or construe this Agreement.

21.7 Governing Law. Any dispute with respect to this Agreement and the rights and duties created by this Agreement will be governed by the laws of the State of Arizona and litigated in a court of competent jurisdiction in Maricopa County, Arizona.

21.8 Severability. If any provision of this Agreement is declared invalid, void, or unenforceable (or is construed as requiring a Party to do any act in violation of any applicable law, including any constitutional provision, law, regulation, City Code or City Charter), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect. In such an event, this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits to the Parties as if such severance and reformation were not required. Unless prohibited by any applicable law, the Parties further shall perform all acts and execute, acknowledge, and/or deliver all amendments, instruments, and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

21.9 Survivability. All warranties, representations, and duties to indemnify, defend, and hold harmless shall survive the termination, cancellation, or expiration of this Agreement. Additionally, all obligations to restore or replace the Property shall survive the termination or expiration of this Agreement as well as any other section which reasonably should survive shall survive.

21.10 Non-Waiver of Rights. No waiver or default by a Party of any of the terms, conditions, covenants, or agreements hereof to be performed, kept, or observed shall be construed or act as a waiver of any subsequent default of any of the terms, covenants, conditions, or agreements herein contained to be performed, kept or observed, and a Party shall not be restricted from later enforcing any of the terms and conditions of this Agreement.

21.11 Governmental Capacity. Any approvals Lessee is required to obtain from Lessor under this Agreement are in addition to and separate from approvals Lessee must obtain from the City of Mesa in its governmental capacity, including, but not limited to, applicable approvals required under the City of Mesa Building Code or Zoning Ordinance. Notwithstanding anything in this Agreement to the contrary, this Agreement does not affect the City of Mesa in its governmental capacity. Any decisions required of the City Council are made at its sole and absolute discretion.

21.12 Termination under A.R.S. § 38-511. This Agreement is subject to termination under A.R.S. § 38-511.

21.13 No Personal Liability of Officials of Lessor or Lessee. None of the covenants, stipulations, promises, agreements, and obligations of the Parties contained herein shall be deemed to be covenants, stipulations, promises, agreements, or obligations of any agents, officials, volunteers, officers, elected officials, and employees of a Party in their individual capacity, and no recourse shall be had for the payment for any claim based thereon or any claim hereunder against any agents, officials, volunteers, officers, elected officials, or employees of the Party.

21.14 Third Party Beneficiaries. This Agreement is intended to be only for the benefit of the Parties hereto. No third-party beneficiaries have any enforceable rights under this Agreement, except that the Indemnified Persons referenced herein who has the right to be indemnified, defended, or held harmless by a Party has the right to enforce such defense, indemnification, or hold harmless provisions.

21.15 Drug Free Workplace. Lessee shall require a drug-free workplace for all employees working at the Property. Specifically, Lessee's employees who are working at the Property shall be notified by the Lessee that they are prohibited from the manufacture, distribution, dispensation, possession, or unlawful use of a controlled substance on the Property. Lessee shall ensure that employees do not use or possess illegal drugs while performing their duties on the Property.

21.16 E-Verify Requirements. To the extent applicable under A.R.S. §§ 41-4401 and 23-214, Lessee 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 breach of the Agreement and may result in the termination of the Agreement by Lessor. Lessor retains the legal right to randomly inspect the papers and records of any employee who works under this Agreement or on the Property to ensure compliance with the above-mentioned laws.

21.17 Headings. The various headings and numbers herein and the grouping of the provisions of this Agreement into separate sections and paragraphs are for the purpose of convenience only and shall not be considered a part hereof.

21.18 Incorporation of Recitals. The recitals set forth herein are acknowledged by the Parties to be true and correct and are incorporated herein by this reference.

21.19 Construction. The terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings. The Parties each hereby waive the application of any rule of law which would interpret or construe any ambiguous or conflicting terms against the Party who prepared or whose attorney prepared the executed Agreement or any earlier draft of the same.

21.20 Execution of Documents. Lessee has full power and authority to execute, deliver, and perform this Agreement and the other documents to which it is a party and to enter and carry out the transactions contemplated by those documents. The execution, delivery, and performance of this Agreement, and any other documents related to the Property, to Lessee's knowledge, does not, and will not, violate any current provision of law applicable to Lessee or its organizational documents, and, to Lessee's knowledge, does not, and will not, conflict with or result in a default under any agreement or instrument to which Lessee's is a party or by which it is bound.

21.21 Authority. The person executing this Agreement on behalf of, or as a representative for the Lessee warrants that they are duly authorized to execute and deliver this Agreement on behalf of the respective party and that this Agreement is binding upon the Lessee in accordance with the terms and conditions herein.

21.22 Counterparts. This Agreement and any addendum may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute

one and the same instrument. The signature pages of one or more counterparts may be removed from the counterparts and the signature pages all attached to a single instrument so that the signatures of all Parties may be physically attached to a single document. The Parties agree that they may reflect and confirm their agreement to be bound hereby, and their execution and delivery of this Agreement, by transmitting a signed copy of the signature page by email to another Party hereto.

[SIGNATURE PAGES TO FOLLOW]

EXECUTED to be effective on the date specified above.

LESSOR, City of Mesa, an Arizona municipal corporation,

By: _____

Date: _____

Printed Name: _____

Title: _____

APPROVED AS TO FORM:

By: _____

City Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2024, by _____, the _____ of the City of Mesa, an Arizona municipal corporation, on behalf of Lessor.

Notary Public

My commission expires:

LESSEE, Mesa Historical Society, Inc.,

By: _____

Date: _____

Greg Marek
Mesa Historical Society, Chair

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2024, by _____, the _____ of the City of Mesa, an Arizona municipal corporation, on behalf of Lessee.

Notary Public

My commission expires:

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Commence at Northwest corner of the Southeast quarter of Section 2;

thence South along the quarter section line, a distance of 421.00 feet;

thence South 89°57'28" East, a distance of 66.00 feet to the East right-of-way line of Horne and the POINT OF BEGINNING of the herein described parcel;

thence North, a distance of 8.00 feet;

thence South 89°57'28" East, a distance of 217.00 feet;

thence North 00°41'37" West, a distance of 315.00 feet; thence North 89°54'31" West, a distance of 40.18 feet;

thence North 00°53'12" West, a distance of 65.00 feet to the South right-of-way line of Lehi Road;

thence South 89°57'28" East along said South right-of-way line, a distance of 306.25 feet;

thence South, a distance of 264.00 feet;

thence North 89°57'28" West, a distance of 3.25 feet;

thence South, a distance of 124.00 feet;

thence North 89°57'28" West, a distance of 475.00 feet, to the POINT OF BEGINNING;
Containing 2.44 acres of land, more or less.

EXHIBIT B

Building Entry Agreement

EXHIBIT B

BUILDING ENTRY AGREEMENT

This Building Entry Agreement ("Agreement") is made and entered into as of the "Effective Date" (as defined below) by and between The City of Mesa ("Building Owner") and Qwest Corporation d/b/a CenturyLink QC ("Licensee").

BACKGROUND:

Building Owner owns that certain real property having an address of 2331 N. Horne, Mesa, AZ ("Property"), and owns the building located on the Property ("Building"). Building Owner is willing to grant a license to Licensee pursuant to the terms and conditions of this Agreement.

For good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, Building Owner and Licensee agree as follows:

1. **License.** Building Owner grants Licensee a license ("License") so that Licensee can provide communications services to its customers, including tenants and occupants of the Building. This grant of License permits Licensee, its employees, agents, contractors and affiliates: (a) to enter into, access and use all parts of the Building, up to and including the roof and any of Building Owner's conduit, which is deemed necessary by Licensee for Licensee to construct, install, operate, maintain, upgrade, monitor and remove any cables and miscellaneous equipment (collectively, "Equipment") at any time or from time to time in order to provide such communications services; and (b) to construct, install, operate, maintain, upgrade, monitor and remove Equipment at any time and from time to time over, upon, under, through and along the Property (and in any of Building Owner's conduit that may be located on the Property), including entrance facilities from the public right of way to the Building, as is deemed necessary by Licensee so that Licensee can provide such communication services, as well as the right of reasonable ingress and egress over and across the Property to access such Equipment. Prior to installation of cables and miscellaneous equipment, Licensee shall provide Building Owner with plans for such installation and shall only proceed with installation upon approval of the plans by Building Owner. Nothing contained in this Section will be construed as: (i) granting to Licensee any property or ownership rights in the Property or Building Owner's other real or personal property, except as may be provided for in this Agreement; (ii) granting to Building Owner any right, title or interest in and to the Equipment; or (iii) creating a partnership or joint venture between Building Owner and Licensee. Licensee will have exclusive use of any conduit it installs on the Property.

2. **Construction.** Prior to the commencement of any work in or near the Building (including periodic installation of the Equipment), Licensee will, at its expense, prepare and deliver to Building Owner plans describing all proposed work. Licensee will: (a) perform all work in a safe manner consistent with prudent construction standards; (b) perform all work in such a way as to minimize unreasonable interference with the operation of the Building; and (c) obtain prior to the commencement of any work all federal, state and municipal permits, licenses and approvals required in connection with such construction and work.

3. **Equipment.** All risk associated with the Equipment will be borne by Licensee. Building Owner will not interfere with Licensee's use, operation or maintenance of the Equipment. Building Owner will not be liable for damage to, theft of, misappropriation of, or loss of, the Equipment regardless of the cause. Within 90 days of the expiration or termination of this Agreement, Licensee will, either (i) at its expense, remove some or all Equipment and its personal property from the Building and the Property, and repair all damage caused by such removal, reasonable wear and tear excepted, or (ii) abandon some or all of the Equipment in place, unavailable for use if agreed to by Building Owner.

4. **Termination; Term.** This Agreement will terminate upon the earliest to occur of: (a) the date which is 30 days following Building Owner's notice to Licensee that Licensee is in default under this Agreement (unless Licensee has cured such default within such 30 day period); (b) the 30th day following

(\$2,000,000) covering personal injury, bodily injury, death, property damage, products/completed operations and contractual liability; (c) Commercial Automobile Liability with limits not less than \$1,000,000 combined single limit per occurrence covering bodily injury and property damage for all owned, non-owned and hired vehicles used in connection with the performance of this Agreement; and (d) "All Risk" property insurance covering its Equipment and other personal property in sufficient amounts to cover any loss of such Equipment and personal property.

Building Owner, its affiliates, subsidiaries, and parent, as well as the officers, directors, employees and agents of all such entities will be included as additional insureds on the policies described in subsections (b) and (c) above. The coverage described in subsection (b) will be primary and not contributory to insurance which may be maintained by Building Owner, subject to the indemnification provisions of this Agreement. Prior to Licensee commencing any work under this Agreement, Licensee will make available to Building Owner evidence of the insurance required herein. Evidence of Licensee's insurance is available at www.centurylink.com/moi.

8. **Miscellaneous.** (a) Licensee may assign this Agreement with the written consent of the Building Owner; (b) Building Owner acknowledges that the consideration received by it in connection with the grant License is the enhanced value of the Building to current or potential tenants or occupants attributable to the installation of the Equipment, and therefore, at no time will Building Owner charge Licensee any monetary fee or assessment of any kind in connection with the License and this Agreement; (c) Building Owner acknowledges that Licensee may retain third parties to exercise its rights under this Agreement, and Licensee will cause the removal from the Building or the Property of any such third party to which Building Owner reasonably objects and for which Building Owner gives notice of objection; (d) This Agreement represents the full understanding of the parties with respect to its subject matter and cannot be modified or amended except in a writing signed by all of the parties; (e) the Parties hereto acknowledge that this Agreement is subject to cancellation by the Parties pursuant to the provisions of ARS §38-511..

9. **Counterparts, Facsimile and Electronic Mail Signatures.** This Agreement may be signed in several counterparts, each of which will be fully effective as an original and all of which together will constitute one and the same instrument. Signatures to this Agreement may be transmitted by facsimile or electronic mail, and signatures so transmitted will be deemed the equivalent of delivery of an original signature.

10 **Effective Date.** This Agreement is effective on the date it is last signed by all parties ("Effective Date").

"Licensee"

Qwest Corporation d/b/a CenturyLink QC

By: Karen Caine
Name: Karen Caine
Title: ROW Agent
Signature Date: 6-23-16

"Building Owner"

The City of Mesa

By: Elizabeth Hanning
Name: Elizabeth Hanning
Title: City Engineer
Signature Date: 6/23/16

EDKEY 2345 N HORNE

EAST

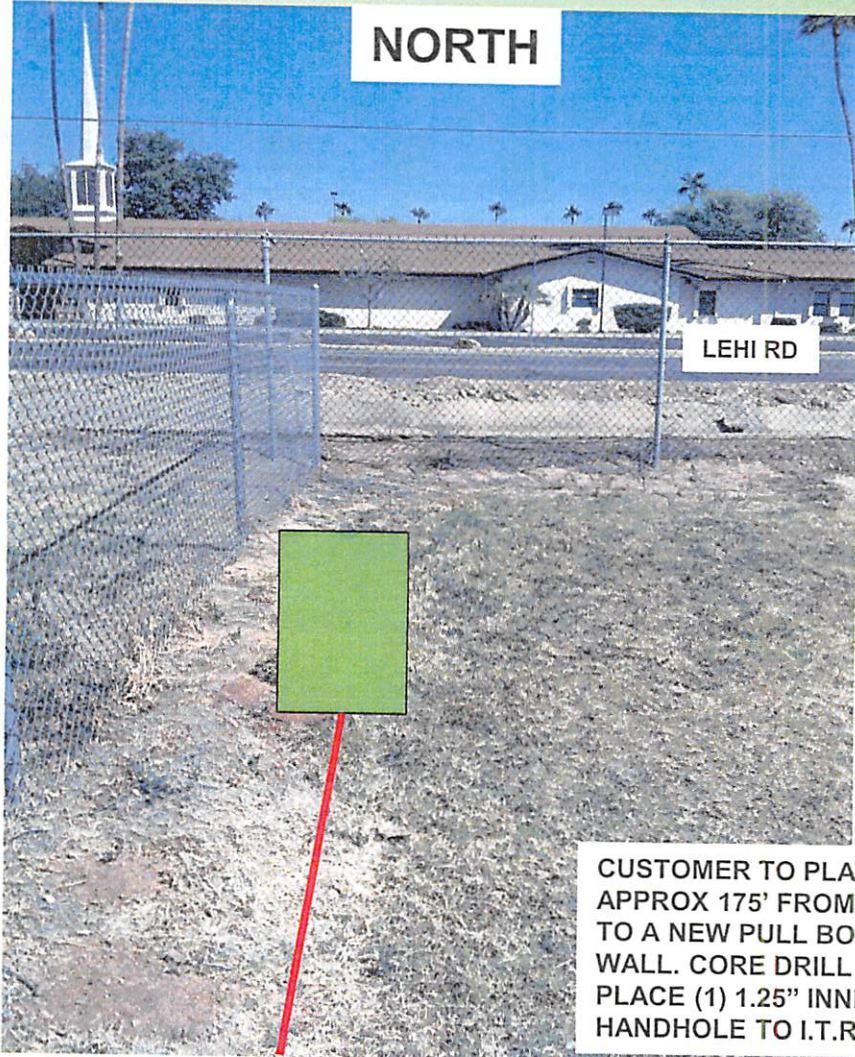


SOUTH



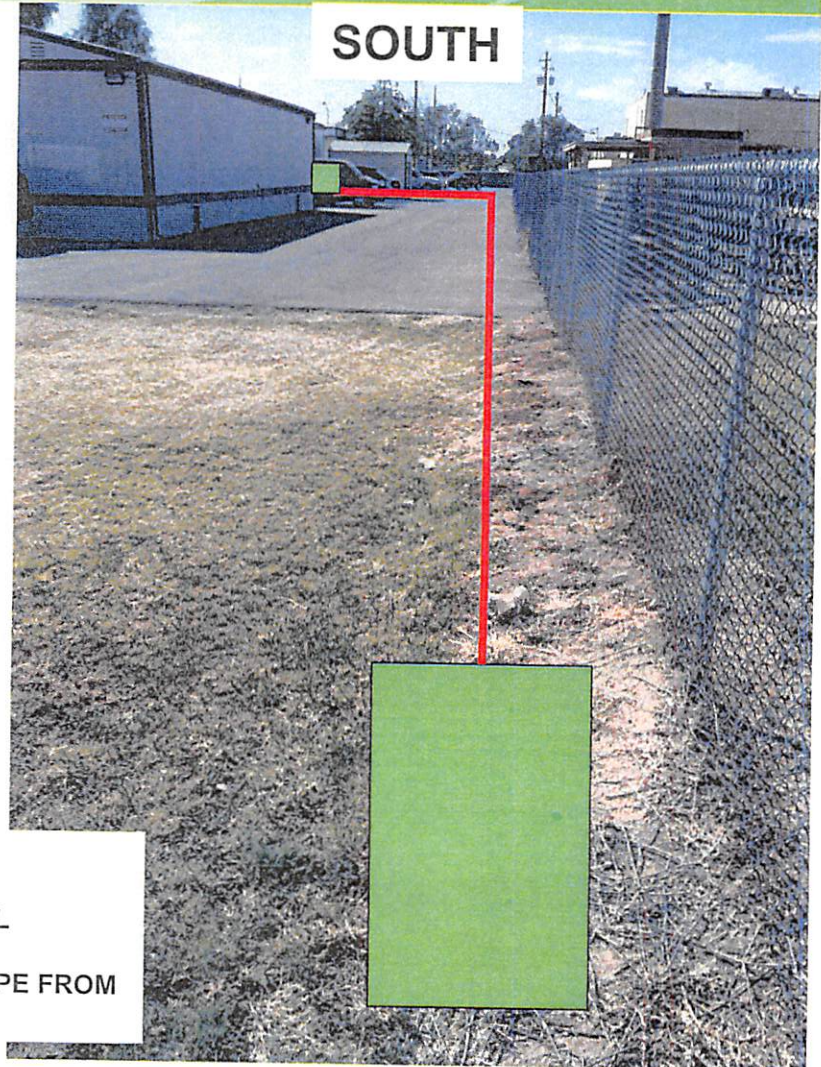
EDKEY 2345 N HORNE

NORTH



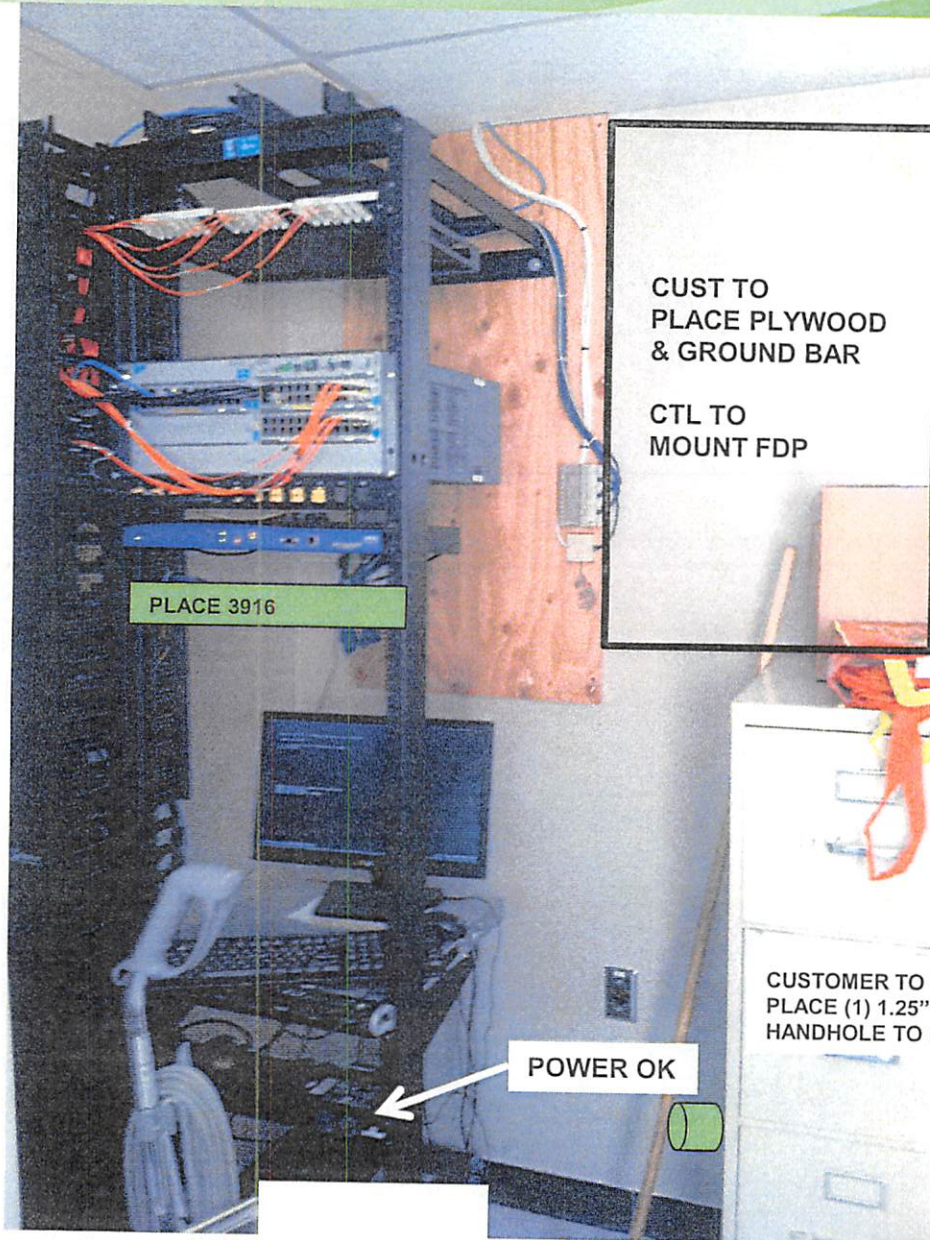
LEHI RD

SOUTH



CUSTOMER TO PLACE (1) 2" PVC
APPROX 175' FROM NEW HANDHOLE
TO A NEW PULL BOX ON THE EXTERNAL
WALL. CORE DRILL INTO TRAILER.
PLACE (1) 1.25" INNERDUCT W/MULETAPE FROM
HANDHOLE TO I.T.ROOM.

**EDKEY
2345 N HORNE**



PLACE 3916

CUST TO
PLACE PLYWOOD
& GROUND BAR

CTL TO
MOUNT FDP

POWER OK

CUSTOMER TO CORE DRILL INTO TRAILER.
PLACE (1) 1.25" INNERDUCT W/MULETAPE FROM
HANDHOLE TO I.T.ROOM. APPROX 175'.

EDKEY

2345 N HORNE

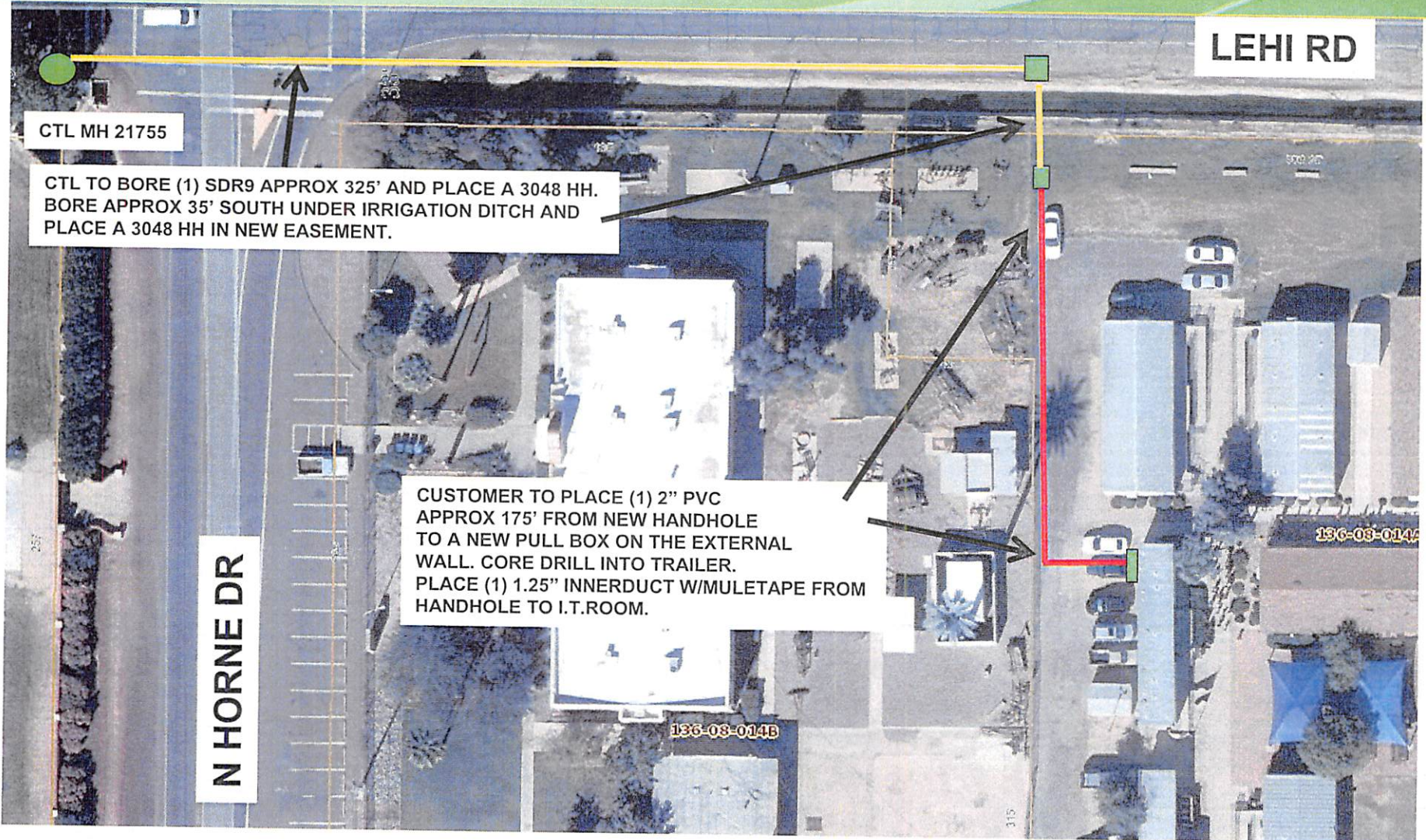
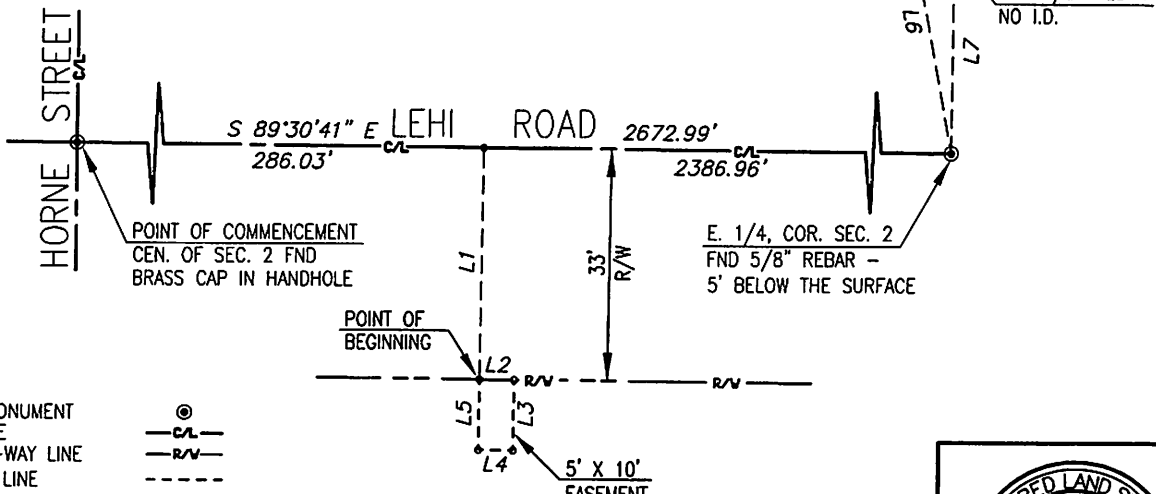


EXHIBIT B

LINE	BEARING	DISTANCE
L1	S 00°29'19" W	33.00'
L2	S 89°30'41" E	5.00'
L3	S 00°29'19" W	10.00'
L4	N 89°30'41" W	5.00'
L5	N 00°29'19" E	10.00'
L6	N 10°57'28" W	61.54'
L7	N 00°14'53" E	28.64'



LEGEND

SURVEY MONUMENT
 CENTERLINE
 RIGHT-OF-WAY LINE
 EASEMENT LINE



A.P.N. 136-08-014-A
 (R1)



CENTURY LINK JOB NO.: N.082033
 SECTION: 2
 TOWNSHIP: 1 NORTH
 RANGE: 5 EAST
 DATE: MAY 4, 2016
 SHEET 2 OF 2

REFERENCE DOCUMENTS
 DEED
 1. DOC. 94-0247292



STATEWIDE SERVICE IN ARIZONA
www.alliancelandsurveying.com

7900 N. 70th AVENUE TEL (623) 872-2200
 SUITE 104 FAX (623) 872-1616
 GLENDALE, AZ 86303

EXHIBIT A

A portion of that parcel of land described in Quit Claim Deed No. 1994-0247292, records of Maricopa County, Arizona, being located in a portion of the Southeast quarter of Section 2, Township 1 North, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, being more particularly described as follows;

COMMENCING at the Center of said Section 2, monumented with a brass cap in handhole which bears North 89 degrees 30 minutes 41 seconds West 2672.99 feet from the East quarter corner of said Section 2, monumented with a 5/8" rebar;
Thence along the North line of the Southeast quarter of said Section 2, South 89 degrees 30 minutes 41 seconds East 286.03 feet;
Thence South 00 degrees 29 minutes 19 seconds West 33.00 feet to a point on a line 33.00 feet South of and parallel with the North line of the Southeast quarter of said Section 2, said point being the POINT OF BEGINNING;
Thence along said parallel line, South 89 degrees 30 minutes 41 seconds East 5.00 feet;
Thence South 00 degrees 29 minutes 19 seconds West 10.00 feet to a point on a line 43.00 feet South of and parallel with the North line of the Southeast quarter of said Section 2;
Thence along said parallel line, North 89 degrees 30 minutes 41 seconds West 5.00 feet;
Thence North 00 degrees 29 minutes 19 seconds East 10.00 feet to a point on a line 33.00 feet South of and parallel with the North line of the Southeast quarter of said Section 2, said point being the POINT OF BEGINNING.

Comprising 0.001 acres or 50 square feet, subject to all easements of record.



CENTURY LINK JOB NO.: N.082033
SECTION: 2
TOWNSHIP: 1 NORTH
RANGE: 5 EAST
DATE: MAY 4, 2016
SHEET 1 OF 2

REFERENCE DOCUMENTS
DEED
1. DOC. 94-0247292



STATEWIDE SERVICE IN ARIZONA
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