

WHEN RECORDED RETURN TO:

City of Mesa
Attn: Real Estate Services
P. O. Box 1466
Mesa, Arizona 85211-1466

PUBLIC UTILITIES EASEMENT

This Public Utilities Easement (this “**PUE**”) is granted on this ____ day of _____, 2025, by OZ16 QOZB, LLC, a Utah limited liability company (“**Grantor**”) to the City of Mesa, an Arizona municipal corporation (“**City**”).

RECITALS

A. Grantor and City entered into that certain development agreement dated _____, 2025, recorded as Instrument No. _____, Records of Maricopa County, Arizona (the “**Development Agreement**”) pertaining to the development of certain real property owned by Grantor located near the southwest corner of S. Country Club Drive and W. Main Street in downtown Mesa.

B. To develop the property as set forth in the Development Agreement, a portion of S. Morris Street between W. Main Street and W. Mahoney Avenue (the “**Abandonment Area**”) needed to be abandoned by City, and the Mesa City Council approved the abandonment on _____, 2025 pursuant to Resolution No _____. The abandonment was recorded as Instrument No. _____, Records of Maricopa County, Arizona, and upon such recordation, title to the abandoned roadway vested with Grantor.

C. The Development Agreement requires Grantor, at no cost to City, to grant to City a perpetual non-exclusive public utility easement in, on, over, under, and across a portion of the Abandonment Area (the “**Easement Property**”) to provide for installation, repair, and maintenance of, continued use of, and access to both existing utilities improvements and future utilities improvements in the form of this PUE. The Easement Property is legally described in Exhibit A and depicted on Exhibit B.

D. The Development Agreement further requires this PUE be (i) executed by Grantor prior to City recording the abandonment of the Abandonment Area; and (ii) recorded in the Official Records of Maricopa County, Arizona immediately after the recording of the abandonment of the Abandonment Area, and prior to any lien, claim, encumbrance, or any other recording against the Abandonment Area.

E. Grantor’s agreement to grant the easement as set forth in this PUE was valuable partial consideration in City’s decision to abandon the Abandonment Area; and City would not have entered into the Development Agreement or agreed to abandon the Abandonment Area but for Grantor’s granting of the easement as set forth in this PUE to City.

Now, therefore, in consideration of the foregoing recitals and representations and the promises contained in this PUE, Grantor agrees as follows:

AGREEMENTS

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference.

2. Grant of Easement. Grantor hereby grants and conveys to City a perpetual non-exclusive public utility easement in, on, over, under, and across the Easement Property that is legally described on Exhibit A and depicted on Exhibit B. The dedication of the Easement Property is a dedication of a public utility easement to City that includes the following uses: to construct, install, access, maintain, repair, reconstruct, replace, remove, operate, and use for utilities and facilities (including, but not limited to, water, wastewater, gas, electric, storm water, pipes, conduit, cables, and switching equipment); conductors, cables, fiber optics, communication and signal lines; transformers, vaults, manholes; conduits, conductors, pipes, and cables; fire hydrants; and all appurtenances to all of the foregoing and all similar and related purposes to the foregoing (collectively, the “**Facilities**”), at such locations and elevations in, on, over, under, and across the Easement Property as City may now or in the future deem convenient or necessary. The public utility easement granted herein further includes the unrestricted right of vehicular and pedestrian ingress and egress to, from, and across the Easement Property. Additionally, City is authorized to permit others to use the Easement Property for all uses and Facilities allowed herein.

3. Grantor’s Uses. Grantor shall not, and shall not permit others to, construct, install, or place any building, structure, or improvement; drill any well; store materials of any kind; or alter ground level by cut or fill within the Easement Property without the prior written approval of City. Additionally, Grantor’s use of the Easement Property shall comply with all applicable City of Mesa codes and ordinances as may be amended from time to time; such code and ordinance requirements include, but are not limited to, having to obtain right-of-way and encroachments permits, as may be applicable. Grantor shall not grant or convey any rights related to the Easement Property that conflict or interfere with the rights herein given to City.

4. Improvements and Vegetation. City has the right (but not the obligation) to remove structures and improvements on the Easement Property whenever necessary to install, repair, replace, or maintain Facilities or use the Easement Property as permitted herein, and further has the right (but not the obligation) to trim, cut, and clear away trees, brush, or other vegetation on the Easement Property whenever reasonably necessary for its use, operation, maintenance of, and access to the Facilities or for safety or reliability reasons.

5. Relocation Costs and Treatment as Public Easement. The easement granted by this PUE will be treated as a public utility easement when determining the payment of relocation costs for the relocation of Salt River Project (SRP) and Southwest Gas Facilities on the Easement Property, as applicable. As used in this Section, the term “public utility easement” shall have the same meaning as “Easement, Public” in Mesa City Code § 9-1-1, as amended, and the easement granted by this PUE is subject to the requirements of Mesa City Code § 9-1-5(A), as amended.

6. Default; Remedies. Grantor will be in default of this PUE if Grantor fails to comply with any provision of this PUE (“**Default**”). Grantor agrees if a Default occurs, monetary damages

would not be an adequate remedy and City will be entitled to equitable relief, including a temporary restraining order, an injunction, and specific performance of this PUE, in addition to any other remedy available (including costs and damages), without any requirement to post a bond or other security or to prove actual damages or that monetary damages would not afford an adequate remedy. Grantor agrees not to oppose or otherwise challenge the appropriateness of equitable relief or the entry by a court of competent jurisdiction of an order granting equitable relief, in either case, consistent with the terms of this PUE. City's rights and remedies are cumulative, and the exercise by City of one or more of such rights or remedies will not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same Default or any other Default by Grantor.

7. Representations and Warranties; Authority to Execute. Grantor represents and warrants to City that: (a) Grantor is the owner of the Easement Property; (b) Grantor has the full right, power, and authorization to enter into and perform this PUE and of the obligations and undertakings of Grantor under this PUE, and the execution, delivery, and performance of this PUE by Grantor has been duly authorized and agreed to in compliance with the organizational documents of Grantor; (c) Grantor has obtained all consents and approvals necessary for the execution, delivery, and performance of this PUE, and no further action needs to be taken by Grantor in connection with such execution, delivery, and performance; (d) on the date of this PUE, Grantor has no actual knowledge of any litigation, proceeding, or investigation pending or threatened against or affecting Grantor that could have a material adverse effect on Grantor's performance under this PUE; and (e) the easement granted by this PUE is granted free and clear of all liens, claims, and encumbrances.

8. Recordation. Immediately after the recording of the abandonment of the Abandonment Area (as more fully described in the Development Agreement), City will cause this PUE to be recorded in the Official Records of Maricopa County, Arizona, and such recording of this PUE will be prior to any lien, claim, encumbrance, or any other recording against the Abandonment Area, of which the Easement Property is a part.

9. Priority. In the event of a conflict or ambiguity between this PUE and the Development Agreement, or between this PUE and any other document, agreement, or instrument previously given with respect to the subject matter of this PUE, the terms of this PUE will prevail.

10. Governing Law, Venue, and Jurisdiction. This PUE will be deemed to be made under, will be construed in accordance with, and will be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce, or construe any provision of this PUE must be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa (or, as may be appropriate, in the Justice Courts of Maricopa County, Arizona, or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action). Grantor irrevocably consents to jurisdiction and venue in such courts for such purposes and agrees not to seek transfer or removal of any action commenced in accordance with the terms of this Section.

11. Amendments; Termination. This PUE may not be modified or amended in any respect, or canceled, terminated, or rescinded, in whole or in part, except by a written instrument acknowledged and signed by both Grantor and City, or their successors and assigns, and duly recorded in the Official Records of Maricopa County, Arizona.

12. Running of Benefits and Burdens. The benefits and burdens, and the covenants and agreements in this PUE run with and burden the Easement Property and shall extend and inure in favor and to the benefit of, and shall be binding on, City and Grantor and their respective successors and assigns.

13. Time of Essence. Time is of the essence of this PUE and each provision hereof.

14. Section Headings. The section headings contained in this PUE are for convenience in reference only and are not intended to define or limit the scope of any provision of this PUE.

15. Attorneys' Fees and Costs. In the event of a breach by Grantor of City and commencement of subsequent legal action in an appropriate forum, the prevailing party in any such dispute will be entitled to reimbursement of its reasonable attorneys' fees and court costs.

Signature of Grantor on the following page.

IN WITNESS WHEREOF, _____ has caused its name to be executed by its duly authorized representative(s) this _____ day of _____, 2025.

GRANTOR:

OZ16 QOZB, LLC,
a Utah limited liability company

By: _____
Name: _____
Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing Public Utilities Easement was acknowledged before me this _____ day of _____, 2025, by _____, acting as _____, for _____, who executed the foregoing instrument for the purposes therein contained.

Notary Public

(Notary Stamp/Seal)

This instrument is exempt from the real estate transfer fee and affidavit of legal value required under A.R.S. §§ 11-1132 and 11-1133 pursuant to the exemptions set forth in A.R.S. §§ 11-1134(A)(2) and/or (A)(3).

**Exhibit A to PUE
Legal Description of Easement Property**

Bowman

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June 30, 2025
PROJECT # 051417-02-001

**LEGAL DESCRIPTION
19' PUE**

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 22, TOWNSHIP 1 NORTH, RANGE 5 EAST, OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 22, FROM WHICH POINT THE CENTER QUARTER CORNER OF SAID SECTION 22 BEARS SOUTH 89°47'53" EAST (BASIS OF BEARINGS), A DISTANCE OF 2608.43 FEET;

THENCE SOUTH 89°47'53" EAST, ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 22, A DISTANCE OF 231.73 FEET;

THENCE DEPARTING SAID NORTH LINE, SOUTH 00°12'07" WEST, A DISTANCE OF 66.00 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 89°47'53" EAST, A DISTANCE OF 19.00 FEET;

THENCE SOUTH 00°13'45" WEST, A DISTANCE OF 191.22 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT, CONCAVE SOUTHERLY, HAVING A RADIUS OF 49.48 FEET, AND A RADIUS POINT WHICH BEARS SOUTH 12°57'26" WEST;

THENCE WESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 12°45'19", AN ARC DISTANCE OF 11.01 FEET TO A POINT OF TANGENCY;

THENCE NORTH 89°47'53" WEST, A DISTANCE OF 8.08 FEET;

THENCE NORTH 00°13'45" EAST, A DISTANCE OF 190.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 3,614 SQ.FT. OR 0.0830 ACRES, MORE OR LESS.



Bowman • 1600 N Desert Drive, #210 • Tempe, Arizona 85288 • P: 480.629.8830

Exhibit B to PUE **Depiction of Easement Property**

