

WHEN RECORDED RETURN TO:

City of Mesa
Real Estate Services
Mail Stop 9909, PO Box 1466
Mesa, Arizona 85211-1466

SPACE ABOVE THIS LINE
FOR RECORDER’S USE

PERPETUAL EASEMENT AGREEMENT

This Perpetual Easement Agreement (“**Agreement**”) is made on this ____ day of _____, 2021, by and between Dobson Properties Sub-Fund, LLC, an Arizona limited liability company (“**Grantor**”) and the City of Mesa, a municipal corporation (“**Grantee**”). Grantor and Grantee may be herein referred to collectively as “**Parties**” and each individually as a “**Party**.”

RECITALS

A. Grantor has acquired fee ownership of that certain real property generally located at 139 North Dobson Road near the intersection of North Dobson Road and West Main Street within the city limits of City, totaling approximately 6.08 acres (Assessor Parcel Number: 135-48-003H) (“**Property**”).

B. The Property is located within Grantee’s downtown area, specifically the West Redevelopment Area within Grantee’s single Central Business District. To further the redevelopment of Grantee’s downtown, Grantee (designated as “City”) and Grantor (designated as “Developer”) entered into a development agreement pertaining to the Property dated _____, 20__ (“**Development Agreement**”). The Development Agreement involves the construction of a four-story, multi-family residential development with market-rate apartments and other public improvements on the Property (the “**Project**” as defined in the Development Agreement).

C. The Development Agreement, among other matters, required the Project to include two (2) east-west drive aisles connecting North Dobson Road to existing drive aisles on the eastern adjoining parcel, facilitating motor vehicle and pedestrian access through the Property and providing public access to the Valley Metro park and ride facility on the adjoining parcel and an additional access route for the fire department, other emergency personnel, and solid waste and recycling services, as well as landscape improvements along both drive aisles (collectively, the “**Thoroughfare**” as defined in the Development Agreement). The portion of the Property constituting the Thoroughfare is referred to in this Agreement the “**Easement Area**” and is legally described in Exhibit A which is attached to this Easement and incorporated into this Agreement for all purposes.

D. In accordance with the terms of the Development Agreement, Grantee agreed to accept conveyance of the Property from Grantor and subsequently lease the Property to Grantor for a specified period in exchange for Grantor meeting certain obligations, including: (i) Grantor constructing and operating the Project; (ii) Grantor constructing and maintaining the Thoroughfare; and (iii) Grantor giving Grantee the easement evidenced by this Agreement and as more fully set forth in Section 2.1 of this Agreement (“**Easement**”) allowing the public access to and use of the Thoroughfare (including, but not limited to, additional access routes to the Valley Metro park and ride facility, the Sycamore/Main Street light rail station, and businesses and events in downtown Mesa, and additional bus route for Webster Elementary School) at no cost to Grantee or to the public, as set forth in Section 4.7 of the Development Agreement and herein.

E. Grantor's agreement to construct and maintain the Thoroughfare, and to grant the Easement to Grantee on and over the Thoroughfare, was valuable partial consideration in Grantee's decision to lease the Property and to allow the development of the Project in accordance with the Development Agreement; and Grantee would not have entered into the Development Agreement, or agreed to accept ownership of the Property and lease the Property back to Grantor, but for Grantor's granting of the Easement to Grantee in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the foregoing, the mutual promises herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

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

2. Grant and Declaration of Easements.

2.1 Thoroughfare. Grantor hereby grants to Grantee, for the benefit of the public, a perpetual easement for access to and use of the Thoroughfare as set forth in this Section 2.1.

2.1.1 Description and Location. Grantor will cause to be constructed the Thoroughfare generally described and depicted on Exhibit B attached hereto, and as further described in Section 4.3(c) of the Development Agreement and Exhibit F to the Development Agreement. The Thoroughfare shall include those minimum improvements described in Section 4.3(c) of the Development Agreement, including: (i) an east-west drive aisle on the northern portion of the Property of approximately 18,341 square feet connecting North Dobson Road to an existing drive aisle on the eastern adjoining parcel providing access to the Valley Metro park and ride facility located in the northwest corner of the intersection of North Sycamore and West Main Street and providing additional access for the fire department, emergency personnel, and solid waste and recycling services; (ii) an east-west drive aisle on the southern portion of the Property of approximately 15,647 square feet connecting North Dobson Road to an existing drive aisle on the eastern adjoining parcel providing access to the Valley Metro park and ride facility located in the northwest corner of the intersection of North Sycamore and West Main Street and providing additional access for the fire department, emergency personnel, and solid waste and recycling services; and (iii) landscape improvements along both drive aisles. Grantor shall submit the design, layout and exact location of the Thoroughfare which is subject to approval by Grantee to determine if the Thoroughfare complies with this Easement and the Development Agreement.

2.1.2 Rights of Grantee and the Public. Upon completion of construction of the Thoroughfare, Grantee and the public shall have free, open and continuous access to and use of the Thoroughfare for pedestrian and vehicular ingress, egress, and access to the Valley Metro park and ride facility and to the Project, including use of the driveways, drive lanes, and drive aisles within the Thoroughfare.

2.2 No Right Granted to any Individual. Nothing in this Agreement confers any right or interest in the Easement Area or this Agreement to any individual or member of the public, it being expressly agreed to by Grantor and Grantee that, although the Easement is given for the use and benefit of the public, the sole Grantee of this Agreement is the City of Mesa, Arizona.

3. Interferences With and Obstructions to Grantee's and the Public's Use of the Easement Areas.

3.1 General. From and after the completion of construction of the improvements contemplated or required to be constructed in the Easement Area, Grantor shall not interfere with Grantee's and the public's right to the use of, and access to, the Easement Area as provided in this Agreement.

3.2 Structures and Other Obstructions in the Easement Areas. Within the Easement Area, Grantor shall not, whether directly or indirectly by granting permission, (i) construct, install, or place any building, structure, fence, access control, or other travel, parking, or access barrier; (ii) store materials of any kind; or (iii) permit any activity that impairs or restricts the Easement Areas other than as set forth in Section 4.

3.3 Grantee's Right to Remove Obstructions. Without limiting the grant of the Easement in this Agreement, Grantee shall have the right, but not the obligation, to stop any activity or remove anything constructed, installed or placed within the Easement Area that interferes with Grantee's or the public's use of, or access to, the Easement Area including, but not limited to, activities other than those set forth in Section 4, structures, improvements, fences, gates, barriers, materials, vehicles, and stored items.

4. Temporary Closure and Restrictions.

4.1 Closure or Restriction that Affects Grantee's or the Public's Use of or Access to the Easement Area. The Easement Area shall remain open at all times to ensure Grantee and the public have access to and can use the Easement Area. Grantor shall not close, restrict or otherwise limit Grantee's and the public's use of the Easement Area or any portion thereof; except Grantor may temporarily close, restrict or limit ("**Temporary Closure**") Grantee's and the public's use of and access to the Easement Area (i) if required in order to perform maintenance and repairs as required by this Easement, (ii) if required by law enforcement, or (iii) for a public health or safety emergency.

4.2 Notice of Closure. Grantor shall notify Grantee of any Temporary Closure which Grantor in good faith believes will last longer than thirty (30) days.

5. Control of Easement Area; Enforcement of Easement. The Easement shall not materially impair the rights of Grantor as a private property owner, including the rights of Grantor to control or restrict trespass, signage and camping, or create an interest in the Easement Area for Grantee or the public that would deem the Easement Area the real property of Grantee or the public (other than Grantee's and the public's express easement rights set forth herein) including, by way of example but not limitation, the creation of a right of way, or public park or other public forum. Although this Easement is granted to Grantee for the benefit of the public, the terms and conditions of this Agreement are enforceable only by the Parties, and the public shall not have any right to enforce the terms and conditions herein.

6. Signage. Grantor may, at its sole cost and expense, place signage within the Easement Area provided that Grantor does so in accordance with all applicable laws, rules, and regulations regarding signage and the signage does not interfere with the rights of Grantee and is not in violation of this Agreement.

7. Maintenance and Repairs. Grantor shall, at its sole cost and expense, be responsible for all repairs, maintenance, and replacement obligations of any kind whatsoever in the Easement Area, including but not limited to, maintenance of all improvements, including but not limited to pavement, landscaping, irrigation, and lighting. All maintenance and repairs shall be completed in a sound, clean, safe, and attractive manner, in accordance with industry standards and in compliance with all applicable laws, rules and regulations. Grantee shall have no maintenance or repair obligations under this Agreement or in the Easement Area.

8. Security. This Agreement does not impose any security obligations on Grantor or Grantee. Grantor may, but shall not be obligated to, at its sole cost and expense, provide security or install security improvements in the Easement Area including, but not limited to, bollards, fences, security cameras, and Grantor shall be responsible for any permits or fees required in connection therewith by applicable law; provided, however, that no security measures installed by Grantor may restrict public access to and use of the Easement Area in violation of this Agreement.

9. Encumbrance. This Easement and the easement rights and obligations created and granted in this Agreement shall run with the land as a burden upon the Easement Area, for the benefit of Grantee and the public.

10. Grantor's Use of Easement Area. Grantor reserves the right to the use and enjoyment of the Property, so long as such use and enjoyment does not interfere with Grantee's and the public's rights in this Easement, and is otherwise in compliance with the terms of this Agreement and the Development Agreement. Provided further, Grantor's use of the Easement Area shall comply with all applicable City of Mesa codes and ordinances, as may be amended from time to time.

11. Waiver of Claims. Grantor, as the fee owner of the Property, on behalf of itself and its successors and assigns, hereby waives and releases any and all claims, demands, suits, or rights of action against Grantee, its officers, officials, employees or volunteers, resulting or arising, in whole or in part, from Grantee's or the public's use of the Easement Area including, but not limited to, claims for damages.

12. Insurance. Grantor shall procure and maintain for the duration of the Easement, at Grantor's sole cost and expense, the following insurance:

(a) General liability insurance for personal injury, bodily injury (including wrongful death) and damage to property with a combined single limit of not less than Three Million and No/100 Dollars (\$3,000,000.00), per occurrence, in, on or at the Easement Area, insuring against any and all liability and claims for injury to persons or damage to property which may arise from or in connection to accessing and using the Easement Area and/or criminal acts, and for injuries to persons or damages to property which may arise from or in connection with this Easement by Grantor, its agents, subtenants, employees, contractors, licensees or invitees. At the time this Agreement was executed and delivered by the Parties, the amount of general liability insurance described in this Agreement is reasonable; however, the Parties recognize that this Agreement creates a perpetual obligation of, and relationship between, Grantor and Grantee; and that inflation, an increase in Grantee's self-insured retention, and other economic pressures arising after the date of this Agreement may, over time, cause the amount stated above to be inadequate and may need to be adjusted to provide the protection reasonably required and expected by Grantee. Accordingly, Grantor agrees that, during the duration of the Easement declared, granted and established in this Agreement, Grantor shall maintain general liability insurance in amounts which are standard and reasonable for the sorts of activities being conducted at or from the Easement Area, in amounts sufficient to provide adequate public liability as contemplated by this Section 12. The Parties agree to review the general liability insurance coverage amount every five (5) years and work in good faith to adjust the coverage to provide the protection required and expected by Grantee but in no event less than Three Million and No/100 Dollars (\$3,000,000.00) aggregate coverage with respect to any one (1) accident occurring in, on or at the Easement Areas.

(b) All policies of insurance procured by Grantor shall be from insurance companies authorized to do business in the state of Arizona, and annually Grantor shall provide Grantee with a Certificate of Insurance with applicable endorsements naming the Grantee, its agents, officers, elected officials, volunteers and employees as additional insureds up to the full coverage limit. Grantor's insurance policies shall be the sole and primary insurance coverage and must contain a waiver of transfer rights of recovery (waiver of subrogation) in favor of Grantee, its agents, officers, elected officials, employees, and volunteers. Any insurance the City may have, and its self-insured retention, shall not be contributory to the coverage provided by Grantor.

13. Indemnification. Grantor shall indemnify, defend, pay, and hold harmless Grantee and its agents, representatives, officers, directors, elected and appointed officials and employees, (collectively, "**Indemnified Parties**") for, from and against any and all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations judgements, liabilities, and suits (including, but not limited to, injury and death to persons and loss of or damage to property, reasonable attorneys' fees, experts' fees and court costs associated with all such matters) (all of the foregoing, collectively "**Claims**") imposed upon or asserted against the Indemnified Parties, arising out of, related to, or in connection with, in whole or in part, from any of the following: (i) Grantor's or its employees', tenants', subtenants', licensees', sublicenses', contractors', subcontractors', independent contractors', agents', clients', or invitees' (collectively, "**Grantor's Agents**") use of the Easement Area, which includes, but is not limited to, security or lack or adequacy of security; (ii) the public's use of the Easement area, which includes, but is not limited to, security or lack or adequacy of security; (iii) Grantor or Grantor's Agents use or nonuse of, or any condition created by Grantor or Grantor's Agents on, the Property or the Easement Area or any part thereof and the improvements thereon; (iv) performance of any labor or service or the furnishing of any materials or other property with respect to the Property or Easement Area, or any part thereof and any improvements thereon for Grantor or Grantor's Agents; (v) the design or construction of the improvements on the Property or the Easement Area and all subsequent design, construction, engineering, and other work and improvements by or on behalf of Grantor or Grantor's Agents associated with the Property or the Easement Area and the improvements thereon; (vi) Grantor's obligation to repair, maintain, and operate the Easement Area as required by this Easement; (vii) any failure on the part of Grantor or Grantor's Agents to comply with any applicable laws in the use, development,

maintenance or operation of the Easement Area; (viii) any failure of Grantor or Grantor's Agents to comply with any Hazardous Materials Laws (as that term is defined in the Development Agreement); (ix) the storage, handling, treatment, release or disposal of Hazardous Materials on the Property or contamination of the Property by Hazardous Material if attributable to the actions or omissions of Grantor or Grantor's Agents; provided, however, the foregoing duty to indemnify, defend, and hold the Indemnified Parties harmless shall not apply as to Claims that arise solely from the gross negligence or intentional actions of the Indemnified Parties.

Promptly after Grantee receives a formal written notice of claim against Grantee that may be subject to Grantor's obligations to Indemnify the Indemnified Parties under this Agreement, Grantee will deliver written notice thereof to Grantor, and Grantee will tender sole control of the indemnified portion of the Claim to Grantor, but Grantee shall have the right to approve counsel, which approval shall not be unreasonably withheld or delayed. If and to the extent that Grantee's failure to deliver written notice to Grantor within a reasonable time after Grantor receives notice of any such Claim is materially prejudicial to Grantor's ability to defend such action, Grantor shall be relieved of any liability to the Grantee under this indemnity to the extent caused by Grantee's failure to timely deliver written notice of the Claim. Upon Grantor's acceptance of a tender from Grantee without a reservation of right, Grantee may not settle, compromise, stipulate to a judgment, or otherwise take any action that would adversely affect Grantor's right to defend the Claim.

14. Limitation on Grantee's Liability. In addition to the indemnification rights of Section 13, Grantee shall have no liability whatsoever, in any form or for any purpose, whether for public liability, property damage or injury to persons, related to the public's use of the Easement Areas. The foregoing sentence does not limit any vicarious liability Grantee may have under applicable law for the acts of its employees.

15. Events of Default. Grantor shall be in default of this Agreement if Grantor breaches any of the terms, covenants, restrictions or conditions under this Easement or fails to fully and timely perform any of Grantor's obligations under this Agreement and such failure continues for thirty (30) days after Grantor's receipt of written notice of such default from Grantee (each, an "**Event of Default**"). Grantee, may in its sole discretion, upon request by Grantor, extend the period in which Grantor may cure an Event of Default.

16. Remedies for Events of Default. Upon the occurrence of an Event of Default by Grantor, Grantee may take any of the following actions:

- (a) enjoin any breach by Grantor;
- (b) remedy any breach at Grantee's sole cost and expense, and recover all amounts expended by Grantee from Grantor;
- (c) seek or obtain any other equitable or legal remedies or monetary damages against Grantor; or
- (c) seek or obtain specific performance.

16.1 Rights and Remedies Cumulative. The rights and remedies hereunder are cumulative, and the exercise of any one or more of such rights or remedies shall not preclude the exercise, at the same or different times, of any other right or remedy available and the exercise or failure to exercise any right or remedy shall in no event be construed as a waiver or release thereof or any other right or remedy.

16.2 Effect of Event of Default. No Event of Default shall terminate the Easement or this Agreement or render the Easement or provisions of this Agreement invalid or unenforceable, nor shall any such Event of Default entitle Grantor to cancel, rescind, or otherwise terminate the Easement or this Agreement.

17. Obligations of Grantor During Term of Lease. Whenever the term "Grantor" is used in this Easement, it will mean and refer to the owner of the Easement Area described in Exhibit A and such person's successors and assigns; provided, however, at any time that the City of Mesa owns or otherwise holds fee title to the Easement Area and has leased the Easement Area pursuant to a Government Property Improvements Lease (or other instrument; each, the "**Lease**"), all of Grantor's obligations under this Easement (including but not limited to

Grantor's obligations of indemnity of the Indemnified Parties, as Grantee) shall be fully and unconditionally assumed and discharged by the tenant named in the Lease during the term of the Lease, and for all periods thereafter for which such obligations may survive.

18. Perpetual Nature of Easement. The Easement, and Grantee's and the public's rights granted by this Agreement, shall be perpetual and shall not terminate.

19. Notices.

(a) Addresses. Except as otherwise required by law, any notice required or permitted under this Agreement will be in writing and will be given by (i) personal delivery, or (ii) any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), delivery charges prepaid:

If to Grantee: City of Mesa
Attn: City Manager
20 East Main Street
Mesa, Arizona 85211

and

City of Mesa
Attn: Downtown Transformation Manager
20 East Main Street
Mesa, Arizona 85211

With a required copy to: City of Mesa
Attn: City Attorney
20 East Main Street, Suite 850
Mesa, Arizona 85201

If to Grantor: Starpoint Properties
Attn: Sandy Schmid
433 Camden, Suite 1000
Beverly Hills, CA 90210

With required copy to: Starpoint Properties
Attn: Mike Treiman General Counsel
433 Camden, Suite1000
Beverly Hills, CA 90210

(b) Effective Date of Notices. Any notice sent by a recognized national overnight delivery service will be deemed effective one (1) business day after deposit with such service. Any notice personally delivered or delivered through a same-day delivery/courier service will be deemed effective upon its receipt (or refusal to accept receipt) by the addressee. Any Party may designate a different person or entity or change the place to which any notice will be given as herein provided.

20. Ownership and Authority to Execute. The individuals executing this Agreement represent and warrant: (i) that he or she is authorized to do so on behalf of the Party for which he or she is signing; and (ii) that he or she has full legal power and authority to bind the Party for which they are signing in accordance with the terms herein and, if necessary, has obtained all required consents or delegations of such power and authority.

21. Priority of Agreement. In the event of a conflict or ambiguity between this Agreement and the Development Agreement, or between this Agreement and any other document, agreement or instrument given or existing between Grantor and Grantee, the terms of this Agreement will prevail.

22. Governing Law, Venue and Jurisdiction. This Agreement 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 Agreement 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). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section 22.

23. Severability and Construction. If any provision of this Agreement is or becomes illegal, is found to be null or void for any reason or is held unenforceable by a court of competent jurisdiction, then the remaining portions of this Agreement shall remain in full force and effect so long as removing the severed portion does not materially alter the overall intent of this Agreement. This Agreement shall be given a reasonable construction so that the intention of the Parties is implemented. Grantor and Grantee acknowledge and agree: (i) they were advised and had the opportunity to obtain independent legal counsel to review this Agreement; (ii) this Agreement is the product of arm's length negotiations among the Parties and shall not be construed against any Party due to authorship; and (iii) the Parties understand the terms and conditions contained in this Agreement.

24. Amendments. This Agreement 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 Parties hereto, or their successors and assigns, and duly recorded in the Official Records of Maricopa County, Arizona.

25. Running of Benefits and Burdens. The benefits and burdens, and the covenants and agreements in this Agreement shall run with and burden the land and shall extend and inure in favor and to the benefit of, and shall be binding on, Grantor and Grantee and their respective successors and assigns.

26. Exhibits. The exhibits attached to this Agreement are incorporated as if fully set forth herein.

27. Attorneys' Fees and Costs. In the event of a breach by any Party and commencement of a 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, including, but not limited to, its costs of expert witnesses, transportation, lodging and meal costs of the parties and witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental costs of such dispute.

28. Business Days. If the last day of any time period stated in this Agreement or the date on which any obligation to be performed under this Agreement falls on a Saturday, Sunday or legal holiday (or day on which the offices of the City of Mesa are closed), then the duration of such time period or the date of performance, as applicable, will be extended so that it will end on the next succeeding day which is not a Saturday, Sunday or legal holiday.

29. Recordation. After this Agreement has been executed by the Parties, Grantee will cause this Agreement to be recorded in the Official Records of Maricopa County, Arizona.

30. No Boycott of Israel. Grantor certifies pursuant to A.R.S. § 35-393.01 that it is not currently engaged in, and for the duration of this Easement will not engage in, a boycott of Israel.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, _____ has caused its name to be executed by its duly authorized representative(s) this _____ day of _____, 2021.

GRANTOR:

By _____

Its _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing Perpetual Easement Agreement was acknowledged before me this _____ day of _____, 2021, by _____, acting as _____, for _____, who executed the foregoing instrument for the purposes therein contained.

Notary Public

(Notary Stamp/Seal)

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

IN WITNESS WHEREOF, _____ has caused its name to be executed by its duly authorized representative(s) this _____ day of _____, 2021.

GRANTEE:

By _____

Its _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing Perpetual Easement Agreement was acknowledged before me this _____ day of _____, 2021, by _____, acting as _____, for _____, who executed the foregoing instrument for the purposes therein contained.

Notary Public

(Notary Stamp/Seal)

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

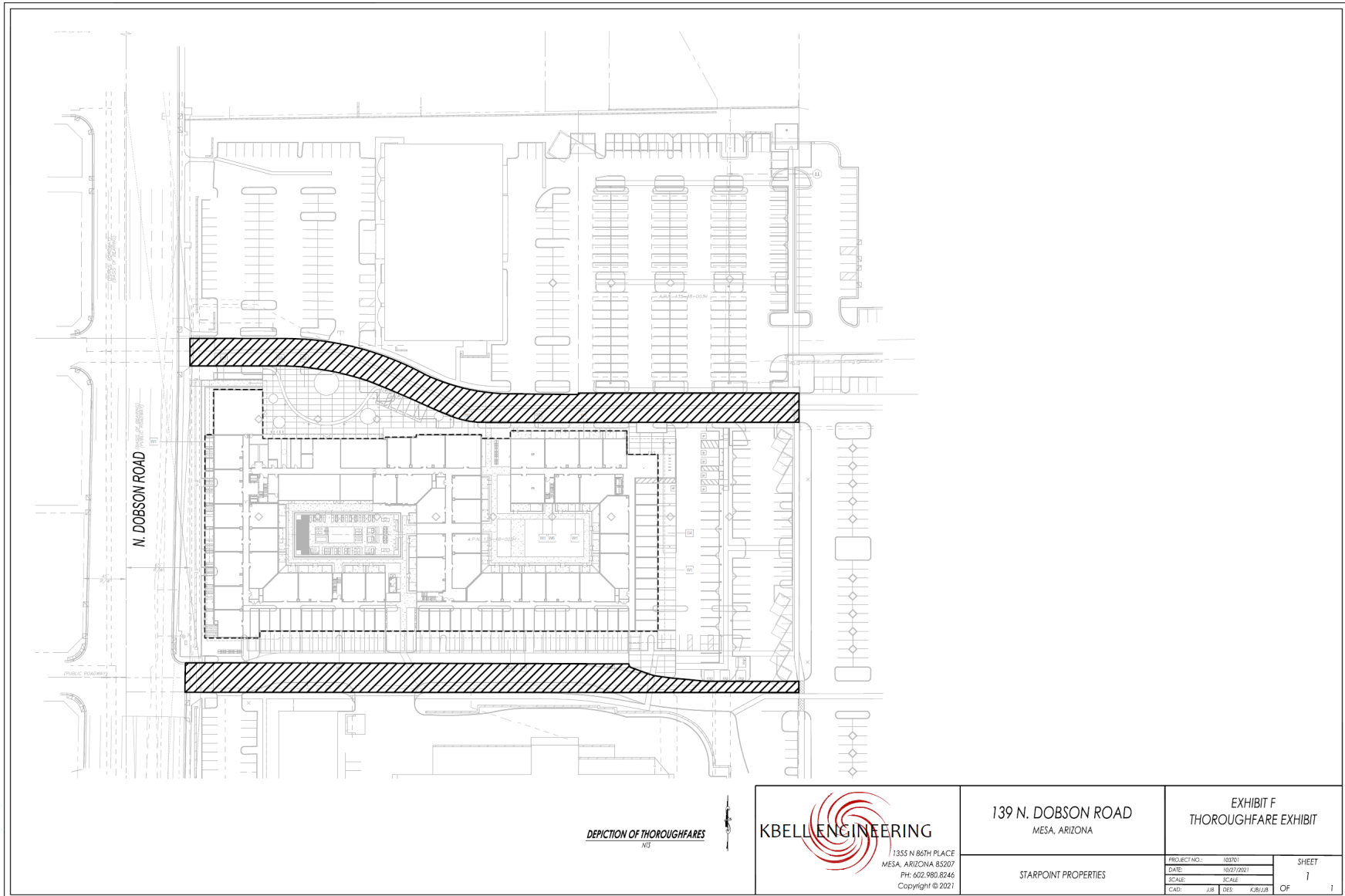
Exhibit A

Easement Area: Legal Description

[To be attached per Section 4.7(a) of the Development Agreement]

Exhibit B
Thoroughfare: Depiction

EXHIBIT B - DEPICTION OF THOROUGHFARE



DEPICTION OF THOROUGHFARES
N3

KBELL ENGINEERING
 1355 N 86TH PLACE
 MESA, ARIZONA 85207
 PH: 602.980.8246
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139 N. DOBSON ROAD
 MESA, ARIZONA

STARPOINT PROPERTIES

EXHIBIT F		SHEET
THOROUGHFARE EXHIBIT		
PROJECT NO.	103701	1 OF 1
DATE	10/27/2021	
SCALE	SCALE	
CAD: JRB	DES: KJB/JRB	