When recorded, return to:

City of Mesa
Attn: Real Estate Services
20 East Main Street
Mesa, Arizona 85201

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "**Agreement**") is entered into _____ _____, 20__, by and between the CITY OF MESA, an Arizona municipal corporation (the "**City**") and Desert Vista 100, LLC, an Arizona limited liability company (the "**Owner**"). City and Owner are sometimes referred to herein collectively as the "**Parties**," or individually as a "**Party**."

RECITALS:

A. Owner owns approximately 40 acres of real property located at 8063 E. McKellips Road within the City of Mesa Desert Uplands area of the City of Mesa, Arizona, as legally described in Exhibit A and depicted in Exhibit B (the "**Property**").

B. Owner desires to build a residential subdivision on the Property with 108 single-family detached homes referred to as "Monteluna" (the "**Project**").

C. In order to develop the Project, Owner must design, construct and install the offsite infrastructure improvements including, but not limited to, extending a gravity sewer line (the "**Sewer Line**") from the Property to the existing sewer main line improvements in the East McLellan alignment.

D. To connect to the existing sewer improvements in the East McLellan alignment, Owner desired that the Sewer Line cross land owned by the United States Department of the Interior Bureau of Land Management (the "**Bureau**"), as a result of which Right-of-Way Grant AZA-37782 dated July 20, 2020, was obtained from the Bureau (the "**Sewer Right-of-Way**"). But for Owner's desire to construct the Sewer Line across land owned by Bureau, City would not have entered into the Sewer Right-of-Way.

E. Owner now desires to extend the sewer line across the property owned by the Bureau (the "**Bureau Land**") within the Sewer Right of Way in accordance with the engineered improvement plans approved by the City of Mesa for the Monteluna subdivision.

F. In exchange for City securing and entering into the Sewer Right-of-Way grant with the Bureau, Owner, among other things, agrees to pay for all of the costs for the Sewer Right-of-Way as well as install and maintain the landscape improvements in the Permit Area as set forth in this Agreement.

G. Owner may create a homeowner's association for the Project (the "**HOA**") and if Owner creates an HOA, Owner shall include Owner's obligations in this Agreement in the Declaration of Covenants, Conditions, and Restrictions (the "**CC&Rs**") for the HOA. Upon the Transition Date, as defined in Section 10 below, the obligations of Owner will become the obligations of the HOA as set forth in this Agreement.

H. The Parties understand and acknowledge that this Agreement is a "Development Agreement" within the meaning of, and entered into pursuant to the terms of, A.R.S. § 9-500.05, and that the terms of this Agreement constitute covenants running with the Property as more fully described in this Agreement.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, and the mutual promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties state, confirm and agree as follows:

1. Owner's Duties and Obligations. Owner, its successors and assigns, agrees that the obligations set forth in this Agreement are covenants running with the land that are binding and enforceable upon Owner and, after the Transition Date, the HOA as its successor and assign.

2. Sewer and Other Off-Site Improvements. In order for the Project to develop and receive City services, Owner, at its sole cost and expense, must design, finance, construct and install the offsite infrastructure improvements (i.e. water, wastewater, drainage, and roadway improvements) (collectively, the "**Public Improvements**") required by the Mesa City Code. Additionally, in order for Project to connect to the City's sewer system, Owner must, in addition to constructing all laterals as necessary within the Property, extend the Sewer Line from the Property to the existing improvements in the East McLellan alignment by extending the Sewer Line through Bureau Land.

3. Grant of Sewer Right-of-Way to City. City, with the assistance of Owner and on Owner's behalf, obtained the Sewer Right-of-Way from the Bureau, a copy of which is attached hereto as Exhibit C, to allow Owner to construct the Sewer Line for the Project on the portion of Bureau Land legally described in Exhibit D and depicted in Exhibit E (the "**Permit Area**"), and thereafter for the City to own and operate the Sewer Line. Owner acknowledges and agrees the provision of sewer service is a substantial benefit to the Project and but for the Sewer Right-of-Way, City would not be able to provide sewer service to the Project. Owner agrees that in addition to constructing the Sewer Line, Owner (or after Transition Date, HOA) will pay all

costs described in Section 4 below associated with obtaining and maintaining the Sewer Right-of-Way, and further agrees to pay all costs associated with. removing, transplanting, and maintaining the landscaping within the Permit Area as set forth in Sections 5 and 6 of this Agreement.

4. Obligation of Owner, and after Transition Date the HOA, to Pay for the Costs of the Sewer Right-of-Way. Owner, (or after the Transition Date, HOA) at its sole cost and expense, is responsible for the following costs for the Sewer Right-of-Way:

a. Monitoring Fee. Owner has paid a one-time fee of one hundred thirty dollars ($130.00) to monitor the construction and operation of the Sewer Right-of-Way (the "**Monitoring Fee**").

b. Initial Rent for Sewer Right-of-Way. Owner has paid three thousand six hundred seventy-three dollars and fifty-six cents ($3,673.56) as rent (the rent with the Monitoring Fee collectively, the "**Permit Fees**") for the initial (30) year term of the Sewer Right-of-Way that commences on August 1, 2020, and expires on December 31, 2049 (the "**Initial Rent Term**").

c. Rent for Additional Terms and Adjustments to Rental Rate. Owner, or after the Transition Date HOA, shall reimburse City for the Sewer Right-of-Way rent for the next rent period (each additional period referred to as an "**Additional Rent Term**") according to the Bureau's then current rent schedule for the Sewer Right-of-Way (the "**Additional Rent**"), and shall continue to pay Additional Rent until such time as Bureau or City terminates the Sewer Right-of-Way. Provided further, if during the Initial Rent Term or Additional Rent Term the Bureau adjusts the rental schedule and requires additional rental fees, then Owner, or after Transition Date, HOA, shall reimburse City for the additional rental costs (the "**Additional Rental Fees**") within thirty (30) days of receipt of an invoice from the City.

5. Removing, Transplanting and Replacing Landscape Improvements in the Permit Area.

5.1 Removing or Disturbing Existing Landscape. The Parties acknowledge and agree that Owner may need to remove some or all of the existing plants, shrubs, trees and other vegetation (the "**Existing Landscape Improvements**") in the Permit Area to construct the Sewer Line. Owner further acknowledges and agrees that some of the Existing Landscape Improvements are identified as protected native plant species on the Native Plant Survey and Native Plant Preservation Plan (ADM20-00020) approved by City on March 9, 2020 (the "**Approved Native Plant Preservation Plan**"). Prior to removing or disturbing the Existing Landscape Improvements Owner shall consult with the Arizona Department of Agriculture and Horticulture (the "**ADAH**").

5.2 Transplanting and Replacing the Landscaping after Completion of Construction of the Sewer Line. After Owner has completed construction of the Sewer Line and City has accepted the Sewer Line, as set forth in Section 8, Owner shall, at its sole cost and expense, transplant the Existing Landscape Improvements to a location that: (i) is a minimum of

twelve (12) feet from the Sewer Line; (ii) does not interfere with access to the Sewer Line; and (iii) is in accordance with the Approved Native Plant Preservation Plan and the approved landscape plans for Monteluna (collectively the new landscape improvements and the transplanted Existing Landscape Improvements within the Sewer Right-of-Way are referred to as the "**Post Landscape Improvements**"). Within thirty (30) days after the installation of the Post Landscape Improvements Owner will conduct a post walk-through of the Permit Area to inventory the Post Landscape Improvements including the plant species (including the native plants), size, location and dimension, number and condition of the plants, shrubs, trees, and other vegetation that was transplanted or replaced (the "**Post Landscape Inventory**"), and provide City with a copy of the Post Landscape Inventory within thirty (30) days of the walk-through.

6. Maintenance of Post Landscape Improvements.

6.1 Maintenance Obligations of Owner. The Post Landscape Improvements and the surface of the Permit Area shall be solely and exclusively maintained (including but not limited to replacing any dead or dying improvements) by Owner (or after the Transition Date, HOA), at its sole cost and expense, for a period of two (2) years commencing on the date of the post walk-through, which date must be identified on the Post Landscape Inventory (the "**Two-Year Obligation**"). During the Two-Year Obligation, the Post Landscape Improvements and the Permit Area shall be kept in good condition, and in compliance with Mesa City Code. City has no obligation to maintain or repair the Post Landscape Improvements during the Two-Year Obligation, but City has the right, but not the obligation, if Owner (or after the Transition Date, HOA) fails to maintain or replace the improvements and if such failure continues for thirty (30) days after City gives Owner (or after the Transition Date, HOA) notice, to undertake the required maintenance, and thereafter recover from Owner (or after the Transition Date, HOA) all costs incurred by City in connection with such maintenance.

6.2 City Maintenance Responsibility after Two Years. After the expiration of the Two-Year Obligation, City, at its sole cost and expense, is responsible for maintaining the Post Landscape Improvements. Prior to the expiration of the Two-Year Obligation, and before City becomes responsible for the maintenance of the Post Landscape Improvements, the City Parks, Recreation and Community Facilities Department has the right to inspect the Permit Area and Post Landscape Improvements to ensure Owner (or after the Transition Date, HOA) has maintained the Permit Area consistent with Owner's (or after the Transition Date, HOA's) obligations in this Agreement. If Owner (or after the Transition Date, HOA) has failed to maintain or replace the Post Landscape Improvements as set forth in this Agreement City may require Owner or HOA, as applicable, to perform the necessary maintenance or replacement of the Post Landscape Improvements; and City may defer its maintenance responsibilities and obligations until Owner or HOA completes the necessary maintenance. If Owner, or after Transition Date HOA, fails to perform the necessary maintenance within thirty (30) days of receipt of written notice from City, then City may elect to undertake the required maintenance, and thereafter recover from Owner, or after Transition Date HOA, all costs incurred by City in connection with such maintenance.

7. Compliance - City Code and Permits. Owner, and after Transition Date HOA, shall comply with all applicable laws (federal, state, and City statutes, codes (including but not

limited to Mesa City Code), laws (statutory and common law), ordinances, rules, regulations, permit requirements, and other requirements and official policies of the City, all as they may be amended from time to time, which apply to the development of the Project as of the date of any application or submission (collectively, the "**Applicable Laws**"). This Agreement does not modify, change, or alter Applicable Laws or the City of Mesa Code requirements, ordinances, or regulations, or enforcement thereunder.

8. Dedication and Acceptance of Sewer Line and other Public Improvements. Owner shall comply with all Applicable Laws (as that term is defined hereafter) and City processes, and dedicate to City by dedication, deed, plat recordation, or otherwise, at no cost to City, the Public Improvements including but not limited to the Sewer Line. All Public Improvements must be conveyed to City free and clear of all liens and encumbrances and in accordance with City standards applicable to such dedication and acceptance including but not limited to the City's Engineering Standards; and said acceptance of the Public Improvements by City will not be unreasonably withheld or delayed. With respect to such dedicated Public Improvements, Owner will provide a two (2) year warranty (which may be by assignment of a contractor's warranty) of materials, equipment and workmanship, in a form and content reasonably acceptable to City and the warranty shall begin on the date the City accepts the Public Improvements. Any material deficiencies in material or workmanship identified by City staff during the applicable warranty period shall be brought to the attention of the Owner or its assignee (who provided the warranty), who shall promptly remedy or cause to be remedied such deficiencies to the reasonable satisfaction of City. With respect to any Claims (as that term is defined in Section 12) arising prior to acceptance of the Public Improvements by City, Owner will bear all risk of, and will indemnify City and its officers, employees, elected and appointed officials, agents, representatives, and volunteers (collectively, the "**City Indemnified Parties**"), against any Claims for any injury (personal, economic or other) or property damage to any person, party or utility, arising from the condition, loss, damage to or failure of any of the Public Improvements or the Sewer Line. The obligations of indemnity set forth in this Section 8, expressly include all Claims relating to or arising from design, construction and structural engineering acts or omissions related in any way to, of or in connection with, the Public Improvements and the Sewer Line and other work and improvements on the Permit Area by or on behalf of Owner and shall survive the expiration or earlier termination of this Agreement; provided, however, the obligations of indemnity set forth in this Section 8 shall automatically terminate two years after acceptance of the Public Improvements including the Sewer Line by City.

9. Utility Service. City utility services will be provided to the Project in the manner provided to other similarly situated customers of City subject to the terms and limitations of and compliance with all Applicable Laws, Mesa City Code (including, but not limited to, Mesa City Code Title 8, Chapter 10), the Terms and Conditions for the Sale of Utilities, as well as the payment of applicable utility rates, fees and charges as adopted and in effect. Termination of this Agreement does not waive any City obligation otherwise existing under Applicable Laws with respect to established municipal utility service, including, as applicable, sewer service.

10. Transfer of Duties and Obligations to HOA. Owner may establish a homeowner's association for the Project (the "**HOA**"). If Owner creates an HOA, upon the

formation of the HOA and the transfer of the obligations of Owner under this Agreement to the HOA (the "**Transition Date**"), the HOA (without further act or writing required) is deemed fully, automatically and unconditionally to have assumed all obligations and responsibilities of Owner arising in or under this Agreement including but not limited to Additional Rent, Additional Rental Fees, the maintenance obligations of the Permit Area, the collection of the Relocation Cost (if applicable) and the obligations of indemnification in Section 12.1 that arise or relate to acts or omissions that occur after the Transition Date (the "**Duties**"); and Owner shall be released of any further Duties under this Agreement from and after the Transition Date. Owner shall include the Duties under this Agreement in the CC&Rs for the HOA and failure to include such obligations shall constitute a material breach of this Agreement. Provided further, any amendments or modifications to the CC&Rs that effect or may affect the Duties (i.e. alters, amends, changes, restricts, removes, or in any effects the Duties), requires prior written approval of City.

11. Relocation of Sewer Line. This Section 11 provides for a per Lot contribution from each purchaser of a lot in the Monteluna subdivision in the unlikely event the Sewer Line needs to be moved or relocated from the Permit Area.

11.1 Termination of Sewer Right-of-Way by Bureau. If the Bureau terminates, relinquishes, abandons or modifies the Sewer Right-of-Way, or does not renew it in the future, and such action necessitates the relocation of the Sewer Line from the Permit Area, then Owner or after Transition Date HOA and its members agree to contribute towards the costs associated with removing, moving and otherwise engineering a solution related to the Sewer Line improvements (the "**Relocation Cost**"). In such event, the owner of each lot (each a "**Lot**" and collectively, "**Lots**") in the proposed Monteluna subdivision (each a "**Lot Owner**" and collectively, "**Lot Owners**") hereby agrees to pay, in accordance with the payment terms of Section 11.3 below, either (i) one percent (1%) of the then current assessed valuation of the Lot Owner's Lot as determined by the Maricopa County Assessor or (ii) an equal and allocable share per Lot of the Relocation Cost (the "**Per Lot Contribution**"), whichever is less, as determined by City in its sole discretion. For the avoidance of doubt, this Section 11 only applies to a relocation of the Sewer Line caused by the loss of use or access to the Permit Area.

11.2 Disclosure and Consent. Owner agrees to include the obligation of each Lot Owner to pay the Per Lot Contribution in the recorded CC&Rs and the HOA operating documents for the Project, which is supported by the expected benefit of continued wastewater service. Additionally, Owner shall give each potential purchaser of a Lot a disclosure document that discloses the obligation of each Lot Owner to pay the Per Lot Contribution in the event the Sewer Line is relocated as set forth in this Section 11, which may result in temporary service interruption, and that each Lot Owner is bound by the provisions and terms in this Section 11. Each purchaser shall acknowledge in writing that they received and understood the disclosure document and agree to the terms and provisions contained in this Section 11.

11.3 Notice and Payment of Relocation Cost. After City has relocated the Sewer Line under this Section 11, City shall have the right to collect the Relocation Cost and will provide HOA (or prior to the Transition Date, Owner) ninety (90) days notice of the Relocation Cost. Thereafter, HOA (or prior to the Transition Date, Owner) shall assess and collect from each

Lot Owner (including Owner for any unsold Lots owned by Owner, if any) the Per Lot Contribution, which assessment may be spread equally over five (5) years. The HOA shall pay to City the Relocation Cost in five (5) equal annual payments, made on behalf of the Lot Owners.

12. Indemnity and Risk of Loss.

12.1 Indemnity. Owner (or HOA, as applicable) will pay, defend, indemnify and hold harmless City and City Indemnified Parties from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including attorneys' fees, experts' fees and court costs associated with such matters; all of the foregoing, collectively, "**Claims**") which arise from or relate in any way, whether in whole or in part, to any act or omission by Owner (or after the Transition Date, HOA if the Claim arises or relates to acts or omissions that occur after the Transition Date), or its employees, contractors, subcontractors, agents or representatives, (i) undertaken in fulfillment of Owner's (or HOA's) obligations under this Agreement, or (ii) relating to the installation or location of the Post Landscape Improvements, or (iii) relating to the maintenance of the Post Landscape Improvements during the Two-Year Obligation and any time period after the expiration of the Two-Year Obligation to cure any maintenance issues that Owner (or HOA, as applicable) is responsible for as set forth in Section 6.2, or (iv) termination of the Sewer Right-of-Way by Bureau prior to acceptance of the Public Improvements by City (which acceptance shall be granted in accordance with Section 8).

12.2 Risk of Loss. Owner assumes the risk of any and all physical loss, damage or claims to the Public Improvements and the Sewer Line unless and until title to the Public Improvements and the Sewer Line is transferred to City. At the time title to the Public Improvements is transferred to City by dedication, deed, plat recordation, or otherwise, Owner will, to the extent allowed by law, assign to City any unexpired warranties relating to the design, construction and/or composition of the Public Improvements and the Sewer Line and Owner shall have no liability therefor, unless specifically stated otherwise herein. Acceptance of the Public Improvements and Sewer Line is conditioned on City's receipt of the two (2) year warranty of workmanship, materials and equipment set forth in Section 8.

13. Termination and Remedies.

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

13.2 Remedies. If City breaches any of its obligations under this Agreement and fails to cure such breach within the notice and cure period in Section 16.4 below, the sole and exclusive remedy of Owner or HOA, as applicable, shall be to seek specific performance. Owner and HOA expressly waive any and all right to seek damages of any kind or nature as a remedy against City. If Owner or HOA breaches this Agreement and fails to cure the breach within the notice and cure period in Section 16.4, City shall have and may seek all remedies

available to City, including, but not limited to, reimbursement for costs to repair, maintain, and replace the landscape improvements (Existing Landscape Improvements and Post Landscape Improvements) and costs associated with the Sewer Right-of-Way grant (including but not limited to Permit Fees, Additional Rent, Additional Rental Fees) and all remedies in law and equity; provided that in any action for money damages City will not seek punitive, consequential or incidental damages.

14. Insurance. During the period of any construction involving the Public Improvements and Sewer Line, and with respect to any construction activities relating to the Public Improvements and Sewer Line, Owner will obtain and provide City with certificates of insurance showing Owner is carrying, or causing its contractor(s) to carry, builder's risk insurance, comprehensive general liability and worker's compensation insurance policies in amounts and coverages set forth in Exhibit F. Such policies of insurance will be placed with financially sound and reputable insurers, and Owner will use reasonable and good faith efforts to require the insurer to give at least thirty (30) days advance written notice of cancellation to City, and Owner will name City as an additional insured on such policies.

15 Term. The term of this Agreement (the "**Term**") for thirty (30) years commencing on the Effective Date. The Term shall automatically renew for successive renewal terms of ten (10) years each (each a "**Renewal Term**"). Notwithstanding anything in this Agreement to the contrary, this Agreement shall automatically terminate, if the City becomes the land owner of the Permit Area. Additionally, if the Sewer Right-of-Way is not renewed by the Bureau or is otherwise terminated by the Bureau, this Agreement shall automatically terminate, provided, however, that all obligations of indemnification and the relocation provisions and obligations of Section 11 will survive in accordance with the terms of this Agreement.

16. General Provisions.

16.1 Recordation. Within ten (10) das after this Agreement has been executed by the Parties, City will cause this Agreement to be recorded in the Official Records of Maricopa County, Arizona.

16.2 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 City:	City of Mesa Attn: City Manager 20 East Main Street, Suite 750 Mesa, Arizona 85211
With a required copy to:	City of Mesa Attn: City Attorney 20 East Main Street, Suite 850

Mesa, Arizona 85201

Owner:	Desert Vista 100, LLC Attn: Jeff Blandford and Tom Lemon 3321 East Baseline Road Gilbert, Arizona 85234
With a required copy to:	Gibson Knecht PC Attn: Jim Gibson 7250 North 16th Street, Suite 412 Phoenix, Arizona 85020

(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.

16.3 Choice of Law, Venue and Attorneys' Fees. The laws of the State of Arizona shall govern any dispute, controversy, claim or cause of action arising out of or related to this Agreement. The venue for any such dispute shall be Maricopa County, Arizona, and each Party waives the right to object to venue in Maricopa County for any reason. Neither Party shall be entitled to recover any of its attorneys' fees or other costs from the other Party incurred in any such dispute, controversy, claim, or cause of action, but each Party shall bear its own attorneys' fees and costs, whether the same is resolved through arbitration, litigation in a court, or otherwise.

16.4 Default. In the event a Party fails to perform or fails to otherwise act in accordance with any term or provision hereof (the "**Defaulting Party**") then the other Party (the "**Non-Defaulting Party**") may provide written notice to perform to the Defaulting Party (the "**Notice of Default**"). The Defaulting Party shall have 30 days from receipt of the Notice of Default to cure the default. In the event the failure is such that more than thirty (30) days would reasonably be required to cure the default or otherwise comply with any term or provision herein, then the Defaulting Party shall notify the Non-Defaulting Party of the need for more time to cure the default and the timeframe needed to cure such default. If the Defaulting Party commences performance or compliance or gives notice of additional time needed to cure within said 30-day period and diligently proceeds to complete such performance or fulfill such obligation the additional timeframe needed to cure the default shall be granted; however, no such cure period shall exceed ninety (90) days. Any written notice shall specify the nature of the default and the manner in which the default may be satisfactorily cured, if possible.

16.5 Good Standing; Authority. Each Party represents and warrants that it is a duly formed and legally valid existing entity under the laws of the State of Arizona with respect to Owner, or a municipal corporation within Arizona with respect to the City and that the

individuals executing this Agreement on behalf of their respective Party are authorized and empowered to bind the Party on whose behalf each such individual is signing.

16.6 Assignment. Except as provided in Section 16.12 below, the provisions of this Agreement are binding upon and shall inure to the benefit and burden of the Parties, and all of their successors in interest and assigns. Notwithstanding the foregoing, the Parties agree to the following: (i) prior to the Transition Date, Owner shall not assign its rights or obligations under this Agreement without the prior written consent of City, which consent may be given or withheld in City's sole and unfettered discretion and any assignment by Owner without consent is void; provided however, the foregoing restriction will not apply up to a maximum of two assignments to an affiliate entity (other than the HOA) under common control with Owner (a "**Permitted Assign**") in connection with the conveyance of the Property to the Permitted Assign (such assignment shall not require consent by City) and upon such assignment the Permitted Assign assumes the rights and obligations of Owner under this Agreement and Owner is released from any further responsibilities and obligations under this Agreement from and after the date of assignment; and (ii) from and after the Transition Date, the HOA shall not assign its rights or obligations under this Agreement without the prior written consent of City, which consent may be given or withheld in City's sole and unfettered discretion and any assignment by HOA without consent is void.

16.7 Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between the Parties. No term or provision of this Agreement is intended to, or shall be for the benefit of any person, firm or entity not a party hereto, and no such other person, firm, or entity shall have any right or cause of action hereunder.

16.8 Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver of any breach shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant, or condition of this Agreement. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

16.9 Further Documentation. The Parties agree in good faith to execute such further or additional instruments and documents and to take such further acts as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

16.10 Fair Interpretation. The Parties have been represented by counsel in the negotiation and drafting of this Agreement and this Agreement shall be construed according to the fair meaning of its language. The rule of construction that ambiguities shall be resolved against the Party who drafted a provision shall not be employed in interpreting this Agreement.

16.11 Computation of Time. In computing any period of time under this Agreement, the date of the act or event from which the designated period of time begins to run shall not be included. The last date of the period so completed shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday. The time for performance of any

obligation or taking any action under this Agreement shall be deemed to expire at 5:00 p.m. (Phoenix, Arizona time) on the last day of the applicable time period provided herein.

16.12 Termination Upon Sale of Residential Lots. Except as expressly set forth in Section 11, the Parties hereby acknowledge and agree that this Agreement is not intended to and shall not create conditions or exceptions to title or covenants running with the individual residential lots within the Property and any tracts or land intended to be dedicated or conveyed to City, any other public or quasi-public entity, any utility provider or any school district. Therefore, in order to alleviate any concern as to the effect of this Agreement on the status of title to any of the Property, so long as not prohibited by law, the provisions of this Agreement, except for Section 11, shall terminate without the execution or recordation of any further document or instrument as to any individual residential lot and any tracts or land dedicated or conveyed to City, any utility provider, or any school district, and thereupon such individual residential lot and any tracts or land dedicated or conveyed to City, any utility provider, or any school district shall be released from and no longer be subject to or burdened by the provisions of this Agreement except Section 11.

16.13 Conflict of Interest. Pursuant to A.R.S. § 38-503 and A.R.S. § 38-511, no member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. This Agreement is subject to cancellation pursuant to the terms of A.R.S. § 38-511.

16.14 Entire Agreement. This Agreement, together with the following Exhibits attached hereto (which are incorporated herein by this reference) constitute the entire agreement between the Parties:

Exhibit A:	Legal Description of the Property
Exhibit B:	Depiction of the Property
Exhibit C:	Sewer Right-of-Way
Exhibit D:	Legal Description of the Permit Area
Exhibit E:	Depiction of the Permit Area
Exhibit F:	Insurance Requirements

All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, are superseded by and merged in this Agreement.

16.15 Time of the Essence. Time is of the essence in this Agreement and with respect to the performance required by each Party hereunder.

16.16 Severability. If any provisions of this Agreement are declared void or unenforceable, such provisions shall be severed from this Agreement, which shall otherwise remain in full force and effect.

16.17 Proposition 207 Waiver. Owner hereby waives and releases City (the "**Waiver**") from any and all claims under A.R.S. §12-1134, *et seq.*, including any right to compensation for reduction to the fair market value of all or any part of the Property, as a result of City's approval of this Agreement, any and all restrictions and requirements imposed on Owner, the Project and the Property by this Agreement and all related development matters arising from, relating to, or reasonably inferable from this Agreement. The terms of this Waiver shall run with all land that is the subject of this Agreement and shall be binding upon all subsequent landowners, assignees, lessees and other successors, and shall survive the expiration or earlier termination of this Agreement.

16.18 E-Verify. To the extent applicable under A.R.S. § 41-4401 and A.R.S. § 23-214, Owner 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 material breach of the Agreement and may result in the termination of the Agreement by City. The City retains the legal right to randomly inspect the papers and records of any employee who works under this Agreement to ensure compliance with the above-mentioned laws.

16.19 Prior Appropriation. Pursuant to A.R.S. § 42-17106, the City is a governmental agency which relies upon the appropriation of funds by its governing body to satisfy its obligations. City represents that it intends to pay all monies due under this Agreement if such funds have been legally appropriated. City agrees to actively request funding for future fiscal periods in order to satisfy the terms of this Agreement. However, in the event that an appropriation is not granted and operating funds are not otherwise legally available to pay the monies due or to become due under this Agreement, City shall have the right to terminate the Agreement without penalty on the last day of the fiscal period for which funds were legally available. In the event of such termination, City agrees to provide a minimum of thirty (30) calendar days' advance written notice of its intent to terminate.

16.20 Preserve State Shared Revenue. Notwithstanding any other provision of, or limitation in, this Agreement to the contrary, if pursuant to A.R.S. § 41-194.01 the Attorney General determines that this Agreement violates any provision of state law or the Constitution of Arizona, City and Owner shall use all and best faith efforts to modify the Agreement so as to fulfill each Parties obligations in the Agreement while resolving the violation with the Attorney General. If within thirty days of notice from the Attorney General pursuant to and under the provisions of A.R.S. § 41-194.01(B)(1), City and Owner cannot agree to modify this Agreement so as to resolve the violation with the Attorney General, this Agreement shall automatically terminate at midnight on the thirtieth day after receiving such notice from the Attorney General, and upon such termination the Parties shall have no further obligations under this Agreement. Additionally, if the Attorney General determines that this Agreement may violate a provision of state law or the Constitution of Arizona under A.R.S. § 41-194.01(B)(2), and requires the posting of a bond under A.R.S. § 41-194.01(B)(2), City shall be entitled to terminate this Agreement, except if Owner posts such bond, if required; and provided further, that if the Arizona Supreme Court, determines that this Agreement violates any provision of state law or the Constitution of Arizona, City may terminate this Agreement and the Parties shall have no further rights, interests or obligations in this Agreement or claim against the other Party for a breach or default under

this Agreement.

16.21 Surviving Provisions. All duties of Owner or HOA, as applicable, to indemnify, defend, and hold harmless shall survive the termination, cancellation, or expiration of this Agreement.

[SIGNATURES OF THE PARTIES APPEAR ON THE FOLLOWING PAGES]

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

"**City**"

City of Mesa, Arizona
An Arizona Municipal Corporation

By:_____
Christopher J. Brady, City Manager

APPROVED AS TO FORM

By: _____
James N. Smith, City Attorney

STATE OF ARIZONA)
)ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by Christopher J. Brady, the City Manager for the CITY OF MESA, an Arizona municipal corporation.

_____
Notary Public

My Commission Expires:

_____

"**Owner**"

Desert Vista 100, LLC
An Arizona limited liability company

By: T. Lemon
Name/Title Authorized Agent.

STATE OF Arizona)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 2nd day of December, 2020, by Tom Lemon, the Authorized Agent of Desert Vista 100, LLC, an Arizona limited liability company, on behalf of the company.

Sonya K Dougan
Notary Public

My commission expires:

March 8, 2022

SONYA K. DOUGAN
Notary Public - State of Arizona
MARICOPA COUNTY
My Commission Expires
March 08, 2022

EXHIBIT A
TO DEVELOPMENT AGREEMENT

(Legal Description of the Property)

December 2, 2020

EXHIBIT "A"
LEGAL DESCRIPTION FOR
THE PROPERTY
(MONTELUNA)

That part of the Northwest Quarter of the Northeast Quarter of Section 8, Township 1 North, Range 7 East of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Beginning at the City of Mesa Brass Cap in hand hole marking the North Quarter Corner of said Section 8, from which the City of Mesa Brass Cap in hand hole marking the Northeast Corner of said Section 8 bears North 89°59'28" East, a distance of 2,640.33 feet;

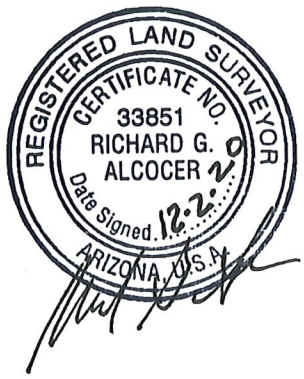
Thence North 89°59'28" East, along the North line of the Northeast Quarter of said Section 8, a distance of 1,320.16 feet to the Northeast Corner of the Northwest Quarter of the Northeast Quarter of said Section 8;

Thence South 00°04'56" West, along the East line of the Northwest Quarter of the Northeast Quarter of said Section 8, a distance of 1,319.73 feet to the Southeast Corner thereof;

Thence South 89°59'49" West, along the South line of the Northwest Quarter of the Northeast Quarter of said Section 8, a distance of 1320.88 feet to the Southwest Corner thereof;

Thence North 00°06'48" East, along the West line of the Northwest Quarter of said Section 8, a distance of 1,319.60 feet to the True Point of Beginning.

Containing 1,742,645 Square Feet or 40.005 Acres, more or less.

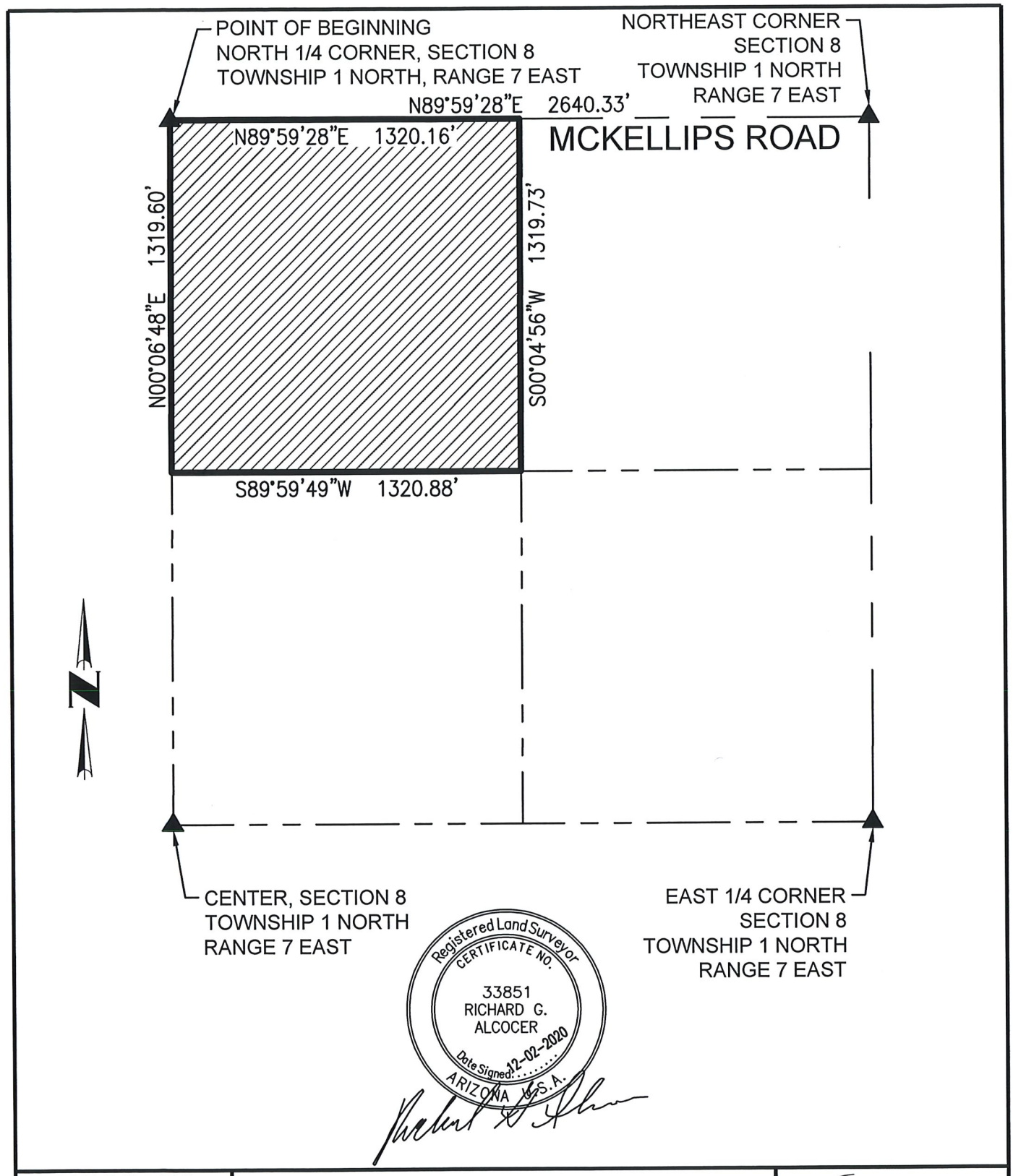


4550 N 12th Street | Phoenix AZ 85014 | 602.264.6831 | (F) 602.264.0928

CVL CONSULTANTS

EXHIBIT B
TO DEVELOPMENT AGREEMENT

(Depiction of the Property)



SCALE 1" = 500'	MONTELUNA	CVL CONSULTANTS CELEBRATING 60 YEARS
EXHIBIT "B"	PROPERTY	1 OF 1
4550 North 12th Street Phoenix, Arizona 85014 Phone 602-264-6831 http://www.cvlci.com		

N:\01\0328401\CADD\Exhibits\VX.EXHIBIT.B-120220.dwg **MikeR December 2, 2020**

EXHIBIT C
TO DEVELOPMENT AGREEMENT

(Sewer Right-of-Way)

Form 2800-14
(August 1985)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

RIGHT-OF-WAY GRANT/TEMPORARY USE PERMIT

Issuing Office
Lower Sonoran Field Office

Serial Number
AZA-37782

1. A (right-of-way) (permit) is hereby granted pursuant to:

   a. ☑ Title V of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761);

   b. ☐ Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185);

   c. ☐ Other *(describe)* _____

2. Nature of Interest:

   a. By this instrument, the holder CITY OF MESA receives a right to construct, operate, maintain, and terminate a GRAVITY SANITARY SEWER LINE on public lands (or Federal land for MLA Rights-of-Way) described as follows:

   GILA AND SALT RIVER MERIDIAN

   T. 1 N., R. 7 E.,
   Section 8, SWNE.

   b. The right-of-way or permit area granted herein is 30' feet wide, 1,320' feet long and contains 0.909 acres, more or less. If a site type facility, the facility contains N/A acres.

   c. This instrument shall terminate on December 31, 2049, 30 years from its effective date unless, prior thereto, it is relinquished, abandoned, terminated, or modified pursuant to the terms and conditions of this instrument or of any applicable Federal law or regulation.

   d. This instrument ☑ may ☐ may not be renewed. If renewed, the right-of-way or permit shall be subject to the regulations existing at the time of renewal and any other terms and conditions that the authorized officer deems necessary to protect the public interest.

   e. Notwithstanding the expiration of this instrument or any renewal thereof, early relinquishment, abandonment, or termination, the provisions of this instrument, to the extent applicable, shall continue in effect and shall be binding on the holder, its successors, or assigns, until they have fully satisfied the obligations and/or liabilities accruing herein before or on account of the expiration, or prior termination, of the grant.

(Continued on page 2)

3. Rental:

For and in consideration of the rights granted, the holder agrees to pay the Bureau of Land Management fair market value rental as determined by the authorized officer unless specifically exempted from such payment by regulation. Provided, however, that the rental may be adjusted by the authorized officer, whenever necessary, to reflect changes in the fair market rental value as determined by the application of sound business management principles, and so far as practicable and feasible, in accordance with comparable commercial practices.

4. Terms and Conditions:

a. This grant or permit is issued subject to the holder's compliance with all applicable regulations contained in Title 43 Code of Federal Regulations parts 2800 and 2880.

b. Upon grant termination by the authorized officer, all improvements shall be removed from the public lands within N/A days, or otherwise disposed of as provided in paragraph (4)(d) or as directed by the authorized officer.

c. Each grant issued pursuant to the authority of paragraph (1)(a) for a term of 20 years or more shall, at a minimum, be reviewed by the authorized officer at the end of the 20th year and at regular intervals thereafter not to exceed 10 years. Provided, however, that a right-of-way or permit granted herein may be reviewed at any time deemed necessary by the authorized officer.

d. The stipulations, plans, maps, or designs set forth in Exhibit(s) A and B , dated 06/15/2020 , attached hereto, are incorporated into and made a part of this grant instrument as fully and effectively as if they were set forth herein in their entirety.

e. Failure of the holder to comply with applicable law or any provision of this right-of-way grant or permit shall constitute grounds for suspension or termination thereof.

f. The holder shall perform all operations in a good and workmanlike manner so as to ensure protection of the environment and the health and safety of the public.

IN WITNESS WHEREOF, The undersigned agrees to the terms and conditions of this right-of-way grant or permit.

(Signature of Holder)	(Signature of Authorized Officer)
City Engineer	LOWER SONORAN FIELD MANAGER
(Title)	(Title)
7/14/2020	7/30/2020
(Date)	8/4/2020 (Effective Date of Grant)

EXHIBIT A
RIGHT-OF-WAY STIPULATIONS

1. All applicable regulations in accordance with 43 CFR 2800.

2. In the event that the public land underlying the right-of-way (ROW) encompassed in this grant, or a portion thereof, is conveyed out of Federal ownership and administration of the ROW or the land underlying the ROW is not being reserved to the United States in the patent/deed and/or the ROW is not within a ROW corridor being reserved to the United States in the patent/deed, the United States waives any right it has to administer the right-of-way, or portion thereof, within the conveyed land under Federal laws, statutes, and regulations, including the regulations at 43 CFR Part 2800, including any rights to have the holder apply to the BLM for amendments, modifications, or assignments and for BLM to approve or recognize such amendments, modifications, or assignments. At the time of conveyance, the patentee/grantee, and their successors and assigns, shall succeed to the interests of the United States in all matters relating to the right-of-way, or portion thereof, within the conveyed land and shall be subject to applicable State and local government laws, statutes, and ordinances. After conveyance, any disputes concerning compliance with the use and the terms and conditions of the ROW shall be considered a civil matter between the patentee/grantee and the ROW Holder.

3. Any cultural and/or paleontological resources (historic or prehistoric site or object) discovered by the holder or any person working on the holder's behalf, on public or federal land, shall be immediately reported to the authorized officer. The holder shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the authorized officer. An evaluation of the discovery will be made by the authorized officer to determine appropriate actions to prevent the loss of significant cultural or scientific values. The holder will be responsible for the cost of evaluation and any decision as to proper mitigation measures will be made by the authorized officer after consulting with the holder.

4. The holder shall protect all survey monuments found within the right-of-way. Survey monuments include but are not limited to, General Land Office and Bureau of Land Management Cadastral Survey Corners, reference corners, witness points, U.S. Coastal and Geodetic benchmarks and triangulation stations, military control monuments, and recognizable civil (both public and private) survey monuments. In the event of obliteration or disturbance of any of the above, the holder shall immediately report the incident, in writing, to the authorized officer and the respective installing authority if known. Where General Land Office or Bureau of Land Management right-of-way monuments or references are

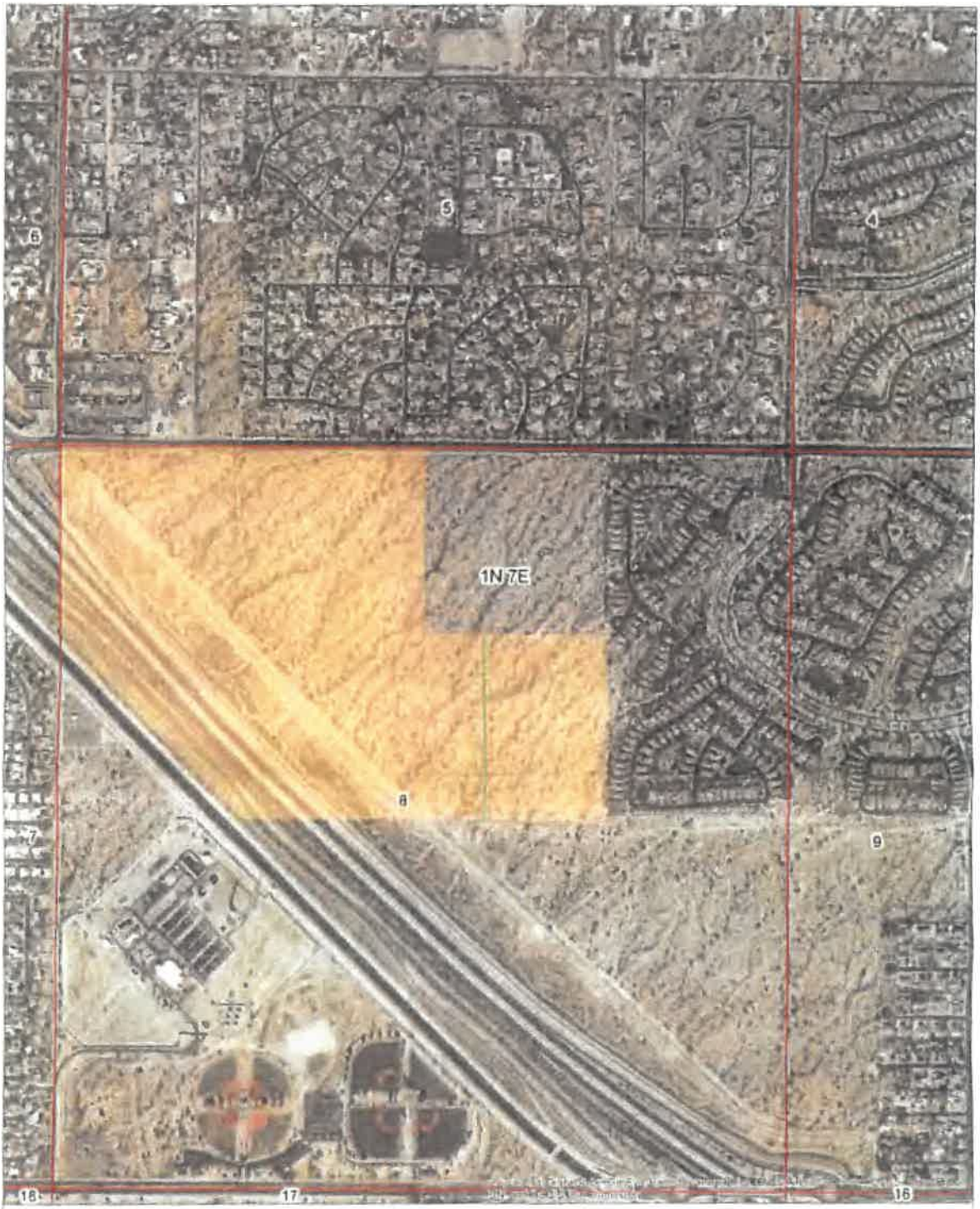
obliterated during operations, the holder shall secure the services of a registered land surveyor or a Bureau cadastral surveyor to restore the disturbed monuments and references using surveying procedures found in the Manual of Surveying Instructions for the Survey of Public Lands in the United States, latest edition. The holder shall record such survey in the appropriate county and send a copy to the authorized officer. If the Bureau cadastral surveyors or other Federal surveyors are used to restore the disturbed survey monument, the holder shall be responsible for the survey cost.

5. Holder shall maintain the right-of-way in a safe, usable condition, as directed by the authorized officer.

6. The holder shall perform all operations in a good and workmanlike manner so as to ensure protection of the environment and the health and safety of the public.

7. The holder shall conduct all activities associated with the construction, operation, and termination of the right-of-way within the authorized limits of the right-of-way.

8. During construction, the holder shall provide for the safety of the public entering the right-of-way.



Arizona

Map Location

No warranty is made by the Bureau of Land Management as to the accuracy, reliability, or completeness of these data for individual use or aggregate use with other data. Decisions in this document only apply to BLM lands

City of Mesa Proposed Sewer Line

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
HASSAYAMPA FIELD OFFICE

AZA-37782
EXHIBIT B - MAP
JUNE 15, 2020
1:8,000

0 0.075 0.15 0.3 Miles

N

Proposed Sewer Line Right-of-Way

Bureau of Land Management

EXHIBIT D
TO DEVELOPMENT AGREEMENT

(Legal Description of the Permit Area)

August 27, 2020

EXHIBIT "D"
LEGAL DESCRIPTION FOR
MONTELUNA
SEWER PIPELINE RIGHT-OF-WAY

That part of the Northeast Quarter of Section 8, Township 1 North, Range 7 East of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the City of Mesa Brass Cap in hand hole marking the North Quarter Corner of said Section 8, from which the City of Mesa Brass Cap in hand hole marking the Northeast Corner of said Section 8 bears North 89°59'28" East, a distance of 2,640.33 feet;

Thence South 00°06'48" West, along the West line of the Northeast Quarter of said Section 8, a distance of 1,319.60 feet to the Northwest Corner of the Southwest Quarter of the Northeast Quarter of said Section 8;

Thence North 89°59'49" East, along the North line of the Southwest Quarter of the Northeast Quarter of said Section 8, a distance of 504.92 feet to the True Point of Beginning;

Thence continuing North 89°59'49" East, along said North line, a distance of 30.00 feet;

Thence South 00°00'32" East, departing said North line, a distance of 1,319.79 feet to a point on the South line of the Northeast Quarter of said Section 8, from which the Brass Cap stamped 11890 1982 marking the East Quarter Corner of said Section 8 bears North 89°59'57" East, a distance of 2,105.45 feet;

Thence South 89°59'57" West, along said South line, a distance of 30.00 feet;

Thence North 00°00'32" West, a distance of 1,319.79 feet to the True Point of Beginning.

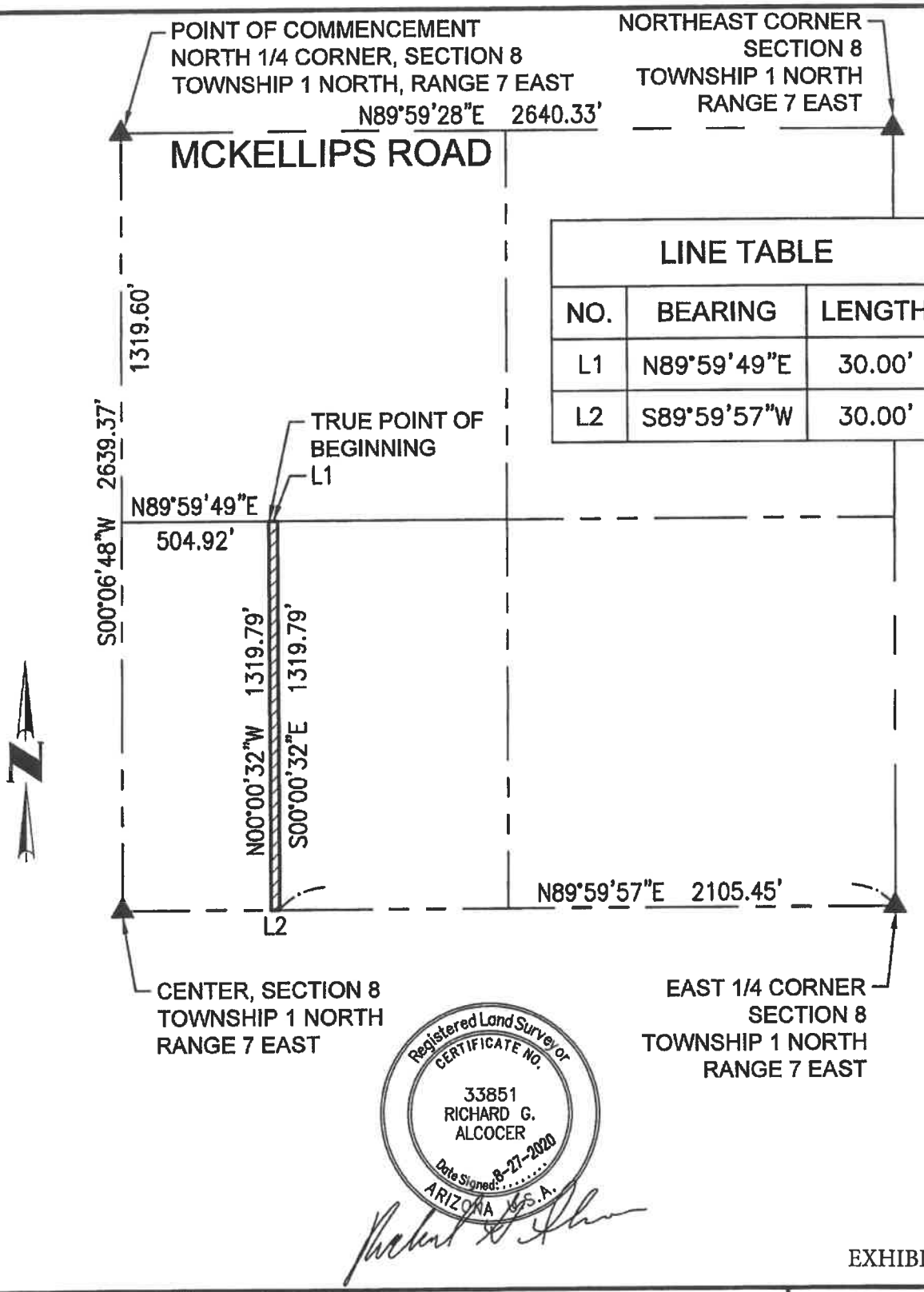
Containing 39,594 Square Feet or 0.909 Acres, more or less.

4550 N 12th Street | Phoenix AZ 85014 | 602.264.6831 | (F) 602.264.0928

CVL CONSULTANTS

EXHIBIT E
TO DEVELOPMENT AGREEMENT

(Depiction of the Permit Area)



LINE TABLE		
NO.	BEARING	LENGTH
L1	N89°59'49"E	30.00'
L2	S89°59'57"W	30.00'

Registered Land Surveyor
CERTIFICATE NO.
33851
RICHARD G.
ALCOCER
Date Signed: 8-27-2020
ARIZONA U.S.A.

EXHIBIT E

SCALE 1" = 500' EXHIBIT "E"	MONTELUNA SEWER PIPELINE RIGHT-OF-WAY	CVL CONSULTANTS CELEBRATING 60 YEARS 1 OF 1
4550 North 12th Street Phoenix, Arizona 85014 Phone 602-264-6831 http://www.cvlci.com		

N:\01\0328401\CADD\Exhibits\VX.EXHIBIT.E.dwg TomD August 27, 2020

EXHIBIT F
TO DEVELOPMENT AGREEMENT

(Insurance)

EXHIBIT F TO DEVELOPMENT AGREEMENT

CITY OF MESA INSURANCE REQUIREMENTS

Owner, at its sole cost and expense, will maintain insurance coverage as follows:

A. Property. During the period of any construction involving the Public Improvements, builder's risk insurance on an all-risk, replacement cost basis for the Public Improvements.

B. Liability. During the period of any construction involving the Public Improvements, insurance covering the Owner and (endorsing as an additional insured) City against liability imposed by law or assumed in any written contract, and/or arising from personal injury, bodily injury or property damage, with a limit of liability of $5,000,000.00 per occurrence with a $5,000,000.00 products/completed operations limit and a $10,000,000.00 general aggregate limit. Such policy must be primary and written to provide blanket contractual liability, broad form property damage, premises liability and products and completed operations.

C. Contractor. During the period of any construction involving the Public Improvements, each of the general or other contractors with which the Owner contracts for any such construction will be required to carry liability insurance of the type and providing the minimum limits set forth below:

(1) Workman's Compensation insurance and Employer's Liability with limits of $1,000,000.00 per accident, $1,000,000.00 per disease and $1,000,000.00 policy limit disease.

(2) Commercial general liability insurance on a $5,000,000.00 per occurrence basis providing coverage for (and endorsing the City as additional insured for):

Products and Completed Operations
Blanket Contractual Liability
Personal Injury Liability
Broad Form Property Damage
X.C.U.

(3) Business automobile liability including all owned, non-owned and hired autos with a limit of liability of not less than $1,000,000.00 combined single limit for personal injury, including bodily injury or death, and property damage.

D. Architect. In connection with any construction involving the Public Improvements, the Owner's architect will be required to provide architect's or engineer's professional liability insurance with a limit of $1,000,000.00 per claim. This policy, or other policies, will cover claims for a period of not less than two (2) years after the dedication and acceptance of the Public Improvements by City in accordance with the provisions of Section 8 of this Agreement.

E. Engineer. In connection with any construction involving the Public Improvements, the Owner's soils engineer or environmental contractor will be required to provide engineer's

professional liability insurance with a limit of $1,000,000.00 per claim. This policy, or other policies, will cover claims for a period of not less than two (2) years after the Completion of the Construction involving the Public Improvements.

F. CPI Adjustments. The minimum coverage limits set forth above will be adjusted every five (5) years by rounding each limit up to the million-dollar amount which is nearest the percentage of change in the Consumer Price Index (the "**CPI**") determined in accordance with this paragraph. In determining the percentage of change in the CPI for the adjustment of the insurance limits for any year, the CPI for the month October in the preceding year, as shown in the column for "All Items" in the table entitled "All Urban Consumers" under the "United States City Averages" as published by the Bureau of Labor Statistics of the United States Department of Labor, will be compared with the corresponding index number for the month of October one (1) year earlier.

G. Primary Coverage. Owner's insurance coverage will be primary insurance with respect to City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by City, its officers, officials, agents, and employees will be in excess of the coverage provided by Owner and will not contribute to it.

H. Indemnities. Coverage provided by the Owner will not be limited to the liability assumed under the indemnification provisions of the Agreement.

I. Waiver of Subrogation. All policies will contain a waiver of subrogation against City, its officers, officials, agents, and employees.

J. Notice of Cancellation: Owner will use reasonable and good faith efforts to cause each insurance policy to include provisions to the effect that it may not be suspended, voided, cancelled, or reduced in coverage except after thirty (30) days' prior written notice has been given to City. Such notice must be provided directly to City in accordance with the provisions of Section 16.2 of the Agreement.

K. Acceptability of Insurers: Insurance is to be placed with insurers duly licensed of approved unlicensed companies in the State of Arizona and with an "A.M. Best" rating of not less than A- VII. City in no way warrants that the above-required minimum insurer rating is sufficient to protect Owner from potential insurer insolvency.

L. Endorsements and Verification of Coverage: Owner will furnish City with endorsements naming the City, its officers, officials, agents, and employees as additional insureds. The endorsements will be original certificates of insurance on ACCORD forms approved by City. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict of limit coverage

will be clearly noted on the certificate of insurance.

(1) All certificates are to be received and approved by City before the Commencement of Construction ("**Commencement of Construction**" means both (i) the obtaining of permits by Owner that are required to begin the construction of vertical improvements, and (ii) the actual commencement of physical construction operations in a manner necessary to achieve Completion of Construction.) Each insurance policy must be in effect at or prior to the Commencement of Construction and must remain in effect for the duration of the Agreement. Failure to maintain the insurance policies as required by this Agreement or to provide timely evidence of renewal will be considered a material breach of the Agreement.

(2) All certificates required by this Agreement will be sent directly to City of Mesa, Attn: Lisa Lorts, Risk Manager, 20 E. Main Street, P.O. Box 1466, Mesa, Arizona 85211- 1466. City reserves the right to require complete, certified copies of all insurance policies and endorsements required by this Exhibit F at any time.

M. Approval: Any modification or variation from the insurance requirements in this Exhibit F must have prior approval from the City Manager (or designee), whose decision will be final. Such action will not require formal contract amendment, but may be made by administrative action.

N. Miscellaneous. References to "Owner" in this Exhibit F will mean Owner and include its general contractor(s). References to "the Agreement" will mean the Development Agreement of which this Exhibit F is a part. Capitalized terms not otherwise defined in this Exhibit F will have the meanings set forth in the Agreement. City in no way warrants that the minimum limits contained herein are sufficient to protect Owner from liabilities that might arise, and Owner may purchase such additional insurance as Owner determines necessary.