

WHEN RECORDED RETURN TO:

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

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “Agreement”) is entered into by and between the CITY OF MESA, an Arizona municipal corporation (the “City”) and Mesa BA Land LLC, a Delaware limited liability company (the “Owner”). City and Owner are collectively referred to herein as the “Parties,” or individually as a “Party.”

RECITALS

A. Owner owns approximately 10.7 +/- acre(s) of property within the 9600 to 9900 Blocks of East Williams Field Road, located north of Williams Field Road and West of State Route 24 Gateway Freeway consisting of a portion of APN(s) 313-25-859W, as legally described in Exhibit A (the “Property”).

B. Owner applied to annex the Property into the City of Mesa (Case No. ANX22-01007). In conjunction with the approved annexation, the City Council approved Zoning Case No. ZON22-01010 that assigned a zoning designation of Light Industrial to the Property (“Zoning Case”).

C. Owner desires to use the Property for a project known as the “Legacy Gateway Hotels” consisting of three (3) hotel buildings totaling approximately 68,850 square feet, as well as two (2) retail buildings with approximately 12,075 square feet of retail space (the “Project”). To develop the Project, Owner also requested and received a Site Plan Review approval for an Initial Site Plan, a Council Use Permit for a hotel within an Airport Overflight Area Two (AOA 2), and a Special Use Permit (SUP) to exceed the permitted height in the Airfield Overflight Area (AOA).

D. Owner has committed to the City that it intends to use the Property for hotel and retail space; however, the Parties have agreed to set certain limits on the allowed uses and activities on the Property to ensure the Property is used in line with the Project as it was presented to City Council for the Zoning Case, and to agree to such other terms and conditions related to the Property as provided herein.

D. The Parties desire to enter into this Agreement for the primary purpose of limiting the land uses and activities permitted on the Property as may be otherwise permitted by Title 11 of the Mesa City Code (“Mesa Zoning Ordinance”) and intend this document to be a “Development Agreement” within the meaning of A.R.S. § 9-500.05.

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 and its successors and assigns agree that the obligations set forth in this Agreement are covenants running with the land that are binding and enforceable upon Owner and its successors and assigns.

2. Prohibited Uses and Activities: General. In addition to other land use restrictions or prohibitions under the Mesa Zoning Ordinance or Mesa City Code, the below land uses and activities set forth in this Section 2 are not allowed and are prohibited on any portion of the Property. The land uses and activities shall have the same meaning as set forth in the Mesa Zoning Ordinance unless otherwise noted.

- A. Animal Sales and Services, Kennels
- B. Animal Sales and Services, Veterinary Services
- C. Automobile/Vehicle Sales and Leasing
- D. Automobile/Vehicle Repair, Major
- E. Automobile/Vehicle Service and Repair, Minor
- F. Automobile/Vehicle Washing
- G. Boat and Recreational Vehicle Storage
- H. Caretakers' Residences
- I. Contractors' Yards
- J. Correctional Transitional Housing Facility (CTHF)
- K. Dual Licensee Facilities
- L. Freight/Truck Terminals and Warehouses
- M. Funeral Parlors and Mortuaries
- N. Hospitals
- O. Large Vehicle and Equipment Sales, Service and Rental
- P. Large Collection Facilities
- Q. Marijuana Establishment
- R. Marijuana Cultivation Facilities
- S. Marijuana Infusion Facility
- T. Medical Marijuana Dispensary
- U. Mini-Storage
- V. Outdoor Storage
- W. Parking, Commercial
- X. Schools, Public or Private (as permitted by law)
- Y. Tattoo and Body Piercing Parlors
- Z. Towing and Impound
- AA. Warehouse and Wholesale

3. RESERVED.

4. Disputes. The limitations on uses and activities in Section 2 are material and essential provisions of this Agreement and City would not have entered into this Agreement but for their inclusion herein. To the extent there is a disagreement between the Parties as to whether a use or activity is allowed or permitted under this Agreement, such determination shall be submitted to the City's Zoning Administrator, who shall determine whether the proposed use or activity is prohibited or restricted and such decision shall be deemed a final decision of the Zoning Administrator that may be appealed in accordance with Chapter 77 of the Mesa Zoning Ordinance.

5. Tenants. Owner acknowledges that the prohibition and restrictions on uses or activities in this Agreement applies to Owner and all tenants, subtenants, licensees, sublicensees, or other occupants of any portion of the Property during the term of this Agreement (collectively, "Tenant").

6. Term/Termination. This Agreement shall become effective on the date this Agreement is recorded in accordance with Section 7.1 and shall continue in full force until automatically terminated upon the earlier of either: (a) fifty (50) years after the effective date or (b) termination by the mutual written agreement of Owner and City.

7. General Provisions.

7.1. Recordation. This Agreement shall be recorded in its entirety in the Official Records of Maricopa County, Arizona, no later than ten (10) days after its full execution by the Parties.

7.2. Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if: (1) delivered to the Party at the address set forth below; (2) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address of the Party set forth below, postage prepaid; or (3) given to a recognized and reputable overnight delivery service, delivery charges prepaid, to the Party at the address set forth below. The addresses set forth in this Section 7.2 may be modified by a Party at any time by such Party designating in writing by notice duly given pursuant to this Section.

City: City of Mesa
Attn: City Manager
20 East Main Street, Suite 750
Mesa, Arizona 85201

with a copy to: Mesa City Attorney's Office
Attn: City Attorney
20 East Main Street, Suite 850
Mesa, Arizona 85201

with a copy to: City of Mesa Development Services Department
Attn: Planning Director
55 N. Center
Mesa, Arizona 85211

Owner: Mesa BA Land LLC
Attn: Andrew Cohn
2801 E. Camelback Rd., Suite 450
Phoenix, Arizona 85016

with a copy to: Gammage & Burnham, PLC
Attn: Susan E. Demmitt
40 N. Central Ave., 20th Floor
Phoenix, Arizona 85004

Notices shall be deemed received: (i) when delivered to the Party; (ii) three (3) business days after being placed in the U.S. Mail, properly addressed, with sufficient postage; or (iii) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. Although a copy of a notice shall be provided to the applicable Party address noted as “with a copy to”, such copy shall not be deemed as providing notice to a Party in accordance with the requirements of this Agreement.

7.3. Choice of Law, Venue, and Attorneys’ Fees. The laws of the State of Arizona shall govern any dispute, controversy, claim, or cause of action (collectively, “Dispute”) arising out of or related to this Agreement. The venue for any Dispute shall be in Maricopa County, Arizona, and each Party specifically 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 Dispute, and each Party shall bear its own attorneys’ fees and costs, whether the Dispute is resolved through arbitration, litigation, or otherwise.

7.4. Default. In the event a Party fails to perform or otherwise fails to 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 thirty (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 the applicable term(s) or provision(s) in this Agreement, then the Defaulting Party shall notify the Non-Defaulting Party of such and the timeframe needed to cure such default and, so long as the Defaulting Party commences performance or compliance or gives notice of additional time needed to cure within the required thirty (30) day period and diligently proceeds to complete such performance or fulfill such obligation, then the time to cure the default shall be extended for the requested reasonable cure period; however, no such extended 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.

7.5. Remedy/Equitable Relief. The Parties agree that damages alone are not an adequate remedy for the breach of any provision of this Agreement. In the event Owner fails to perform or fails to otherwise act in accordance with any term or provision hereof City shall be entitled, subject to any cure period set forth in this Agreement, to immediately seek enforcement of this Agreement by means of specific performance, injunction, or other equitable relief, without any requirement to post bond or other security. The specific performance remedy provided in this Section 7.5 shall be cumulative relief and shall not be a limitation on City's other remedies, including the right to seek contract damages under this Agreement. Additionally, City reserves the right to withhold any City permits or approvals needed to develop, construct, or improve any portion of the Property and may revoke any City approval, permit, or certificate of occupancy if Owner allows any of the Property prohibited uses or activities, or violated any of the restrictions/limitations, identified in this Agreement.

7.6. Good Standing; Authority. Owner represents and warrants that it is either, as applicable, duly formed and a legally valid existing entity under the laws of the State of Arizona or that it is a foreign entity registered with the Arizona Corporation Commission and is legally authorized to transact affairs or conduct business in Arizona. City represents and warrants that it is a municipal corporation in Arizona. Each Party represents and warrants that the individual(s) 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.

7.7. Assignments; Runs with the Land. The provisions of this Agreement are binding upon and shall inure to the benefit and burden of the Parties, and their successors in interest and assigns, and Tenants. Wherever the term "Party" or the name of any particular Party is used in this Agreement such term will include any such Party's permitted successors and assigns.

7.8. No Partnership or Joint Venture; 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 third-party person, firm, or entity shall have any right or cause of action hereunder.

7.9. 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.

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

7.11. Fair Interpretation. The Parties have each been represented by counsel or been given the opportunity to be represented by a counsel of its choosing in the negotiation and drafting of this Agreement, and no such counsel or other representative of the Party negotiating this Agreement has acted under any duress or compulsion, whether legal, economic, or otherwise. 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.

7.12. Computation of Time. A “business day” shall mean a City business day which is any day Monday through Thursday except for a legal holiday. In computing any time period under this Agreement, the date of the act or event from which the designated time period 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 in this Agreement.

7.13. Conflict of Interest. Pursuant to A.R.S. § 38-503 and A.R.S. § 38-511, no member, official, or employee of 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.

7.14. Entire Agreement. This Agreement, together with the following Exhibit(s) attached hereto (which are incorporated herein by this reference), constitute the entire agreement between the Parties regarding the subject matter hereof:

- A. Exhibit A: Legal Description of the Property
- B. RESERVED

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

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

7.16. Severability. If any provision(s) of this Agreement is/are declared void or unenforceable, such provision(s) shall be severed from this Agreement, which shall otherwise remain in full force and effect.

7.17. Amendments. Any change, addition, or deletion to this Agreement requires a written amendment executed by both City and Owner. Within ten (10) days after any amendment to this Agreement, such executed amendment shall be recorded in the Official Records of Maricopa County, Arizona.

7.18. Proposition 207 Waiver. Owner hereby waives and releases City 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 the Property, as a result of City’s approval of this Agreement. The terms of this waiver shall run with the land and shall be binding upon all subsequent landowners and shall survive the expiration or earlier termination of this Agreement.

7.19. Preservation of 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 Arizona Attorney General determines that this Agreement violates any provision of state law or the Constitution of Arizona (including A.R.S. § 42-6201 *et seq.*), City and Owner shall use all and best faith efforts to modify the Agreement so as to fulfill each Parties rights and obligations in the Agreement while resolving the violation with the Attorney General. If within thirty (30) 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 (30th) 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 the Arizona Supreme Court 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 or Owner 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. The computation of time set forth in Section 7.12 shall be superseded by the computation of time utilized by the Arizona Attorney General's Office for alleged violations of A.R.S. § 41-194.01.

7.20. Covenant. Notwithstanding any express or implied covenant of good faith and fair dealing applicable to this Agreement, (a) any act of a Party that may be exercised in its sole discretion is not a breach of such covenant, and (b) such covenant does not require any Party to extend any date for payment or performance set forth in this Agreement.

7.21. Consents and Approvals. Wherever this Agreement requires or permits the consent or approval of a Party to any act, document, use or other matter, such consent or approval may be given or denied by such Party in its reasonable discretion, unless this Agreement expressly provides otherwise. Any consent or approval required by this Agreement for City may be provided by the City Manager or their designee unless otherwise specified or required by law; the City Manager or their designee does not have the authority to consent or approve acts that require the approval of the City Council unless the City Council expressly provides the City Manager or their designee with such authority. In accordance with the requirements of this Section 7.21, the City Manager or their designee is expressly authorized to execute and deliver: (i) all amendments to this Agreement so long as such modifications do not materially alter the overall structure of the agreement as it was presented to the City Council; and (ii) other transaction documents required by, contemplated under, or authorized in this Agreement.

7.22. References to Authority. Any reference to a statute, ordinance, regulation, law or similar legal authority in this Agreement refers to the legal authority as it existed on the effective date or as the same may be amended from time-to-time during the term.

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

7.24. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all Parties may be physically attached to a single document.

[SIGNATURES OF THE PARTIES APPEAR ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

CITY

CITY OF MESA, ARIZONA,
An Arizona municipal corporation

By: _____

Its: _____

Date: _____

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM

By: _____
City Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me, a notary public, this ____ day of _____, 20____, by _____, the _____ of the City of Mesa, an Arizona municipal corporation, who acknowledged that he/she signed the foregoing instrument on behalf of City.

Notary Public

My Commission Expires:

OWNER

Mesa BA Land LLC
a Delaware limited liability company

By: _____

Its: _____

Date: _____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me, a notary public, this ____
day of _____, 20____, by _____, as _____
of _____, a(n) _____.

Notary Public

My Commission Expires:

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

(SEE ATTACHED)

**PACIFIC PROVING GROUNDS
HOTEL BOUNDARY
LEGAL DESCRIPTION**

A portion of land being situated within the North Half of Section 34 and the Southeast Quarter of section 27, Township 1 South, Range 7 East of the Gila and Salt River Meridian, Maricopa County, Arizona, being more particularly described as follows:

COMMENCING at a found 2 inch Aluminum cap accepted as the North Quarter corner of said Section 34 from which a found 3 inch brass cap in hand hole accepted as the Northwest corner thereof bears North 89°32'15" West, 2641.87 feet;

Thence North 89°32'15" West, 90.26 feet along the north line of the Northwest Quarter of said Section 34;

Thence leaving said north line, South 00°27'45" West, 238.30 feet to the **POINT OF BEGINNING**;

Thence North 60°23'46" East, 595.50 feet to the southerly Right of Way line of SR 24 according to the Order of Immediate Possession Recorded in Document No. 2019-0309832, Maricopa County Records, proposed State Route 24;

Thence the following four (4) courses along said southerly Right of Way line:

Thence South 31°25'27" East, 76.10 feet;

Thence South 37°52'05" East, 205.50 feet;

Thence South 44°56'24" East, 284.05 feet;

Thence South 13°35'22" East, 20.71 feet;

Thence leaving said southerly Right of Way line, South 60°23'46" West, 47.00 feet;

Thence South 29°36'14" East, 110.00 feet;

Thence South 60°23'46" West, 60.00 feet;

Thence South 29°36'14" East, 40.00 feet to said southerly Right of Way line;

Thence the following two (2) courses along said southerly Right of Way line;

Thence South 60°23'46" West, 535.45 feet;

Thence South 28°54'47" East, 13.52 feet to the northerly Right of Way line of Williams Field Road according to Document No. 2021-0967909, Maricopa County Records;

Thence South 62°16'40" West, 61.76 feet along said northerly Right of Way line;

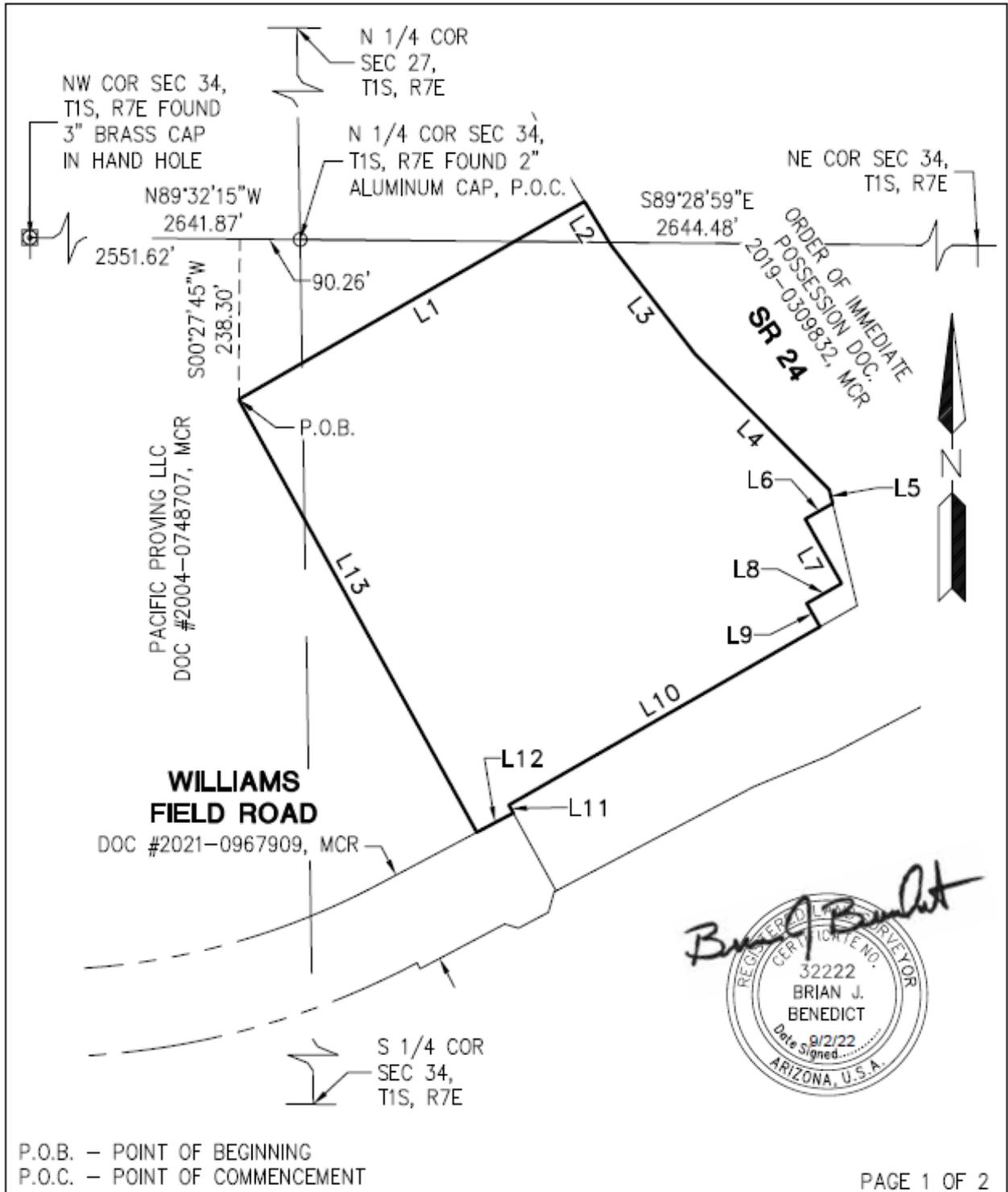
Thence leaving said northerly Right of Way line, North 29°01'14" West, 734.80 feet to the **POINT OF BEGINNING**.

The above described parcel contains a computed area of 464,600 sq. ft. (10.666 acres) more or less and being subject to any easements, restrictions, rights-of-way of record or otherwise.

The description shown hereon is not to be used to violate any subdivision regulation of the state, county and/or municipality or any land division restrictions.

Prepared by: HILGARTWILSON, LLC
2141 E. Highland Avenue, Suite 250
Phoenix, AZ 85016
Project No.: 2063
Date: September 2022





PROJ.NO.: 2063	HOTEL WILLIAMS FIELD RD & SR 24 MESA, ARIZONA	HILGARTWILSON 2141 E. HIGHLAND AVE., STE. 250 PHOENIX, AZ 85016 P: 602.490.0535 / F: 602.368.2436
DATE: JULY 2022		
SCALE: N.T.S.	EXHIBIT	
DRAWN BY: BJB		
CHECKED BY: BJB		

LINE TABLE		
LINE NO.	DIRECTION	LENGTH
L1	N60°23'46"E	595.50'
L2	S31°25'27"E	76.10'
L3	S37°52'05"E	205.50'
L4	S44°56'24"E	284.05'
L5	S13°35'22"E	20.71'
L6	S60°23'46"W	47.00'
L7	S29°36'14"E	110.00'
L8	S60°23'46"W	60.00'
L9	S29°36'14"E	40.00'
L10	S60°23'46"W	535.45'
L11	S28°54'47"E	13.52'
L12	S62°16'40"W	61.76'
L13	N29°01'14"W	734.80'



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PROJ.NO.: 2063	HOTEL WILLIAMS FIELD RD & SR 24 MESA, ARIZONA	 HILGARTWILSON 2141 E. HIGHLAND AVE., STE. 250 PHOENIX, AZ 85016 P: 602.490.0535 / F: 602.368.2436
DATE: SEPT 2022		
SCALE: NONE	EXHIBIT	
DRAWN BY: BJB		
CHECKED BY: BJB		