WHEN RECORDED RETURN TO:

City of Mesa
Attn: Real Estate
20 East Main Street
Mesa, Arizona 85211

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DEVELOPMENT AGREEMENT

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CITY OF MESA, ARIZONA,
an Arizona municipal corporation

AND

3W MANAGEMENT, LLC,
an Arizona limited liability company

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November __, 2017

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DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made as of the ____ day of November, 2017, by and between the CITY OF MESA, ARIZONA, an Arizona municipal corporation (the "**City**"); and 3W MANAGEMENT, LLC, an Arizona limited liability company ("**Developer**"). City and Developer are sometimes referred to in this Agreement collectively as the "**Parties**," or individually as a "**Party**."

RECITALS

A. Developer wishes to develop and redevelop certain improved and unimproved real property located generally near the intersection of South Pomeroy and Main Street in Mesa, into a mixed-use commercial and residential project, including structured parking and public improvements, as generally described in this Agreement ("**Project**").

B. The Project includes (i) certain real property and improvements owned by City, including the Pomeroy Parking Garage ("**Pomeroy Garage**") and portions of the parcel of land on which it is located (the "**Pomeroy Parcel**") as legally described in Exhibit A-1 to this Agreement; (ii) certain property formerly in the public right-of-way, but which has been abandoned ("**ROW**") as legally described in Exhibit A-2 to this Agreement; (iii) air rights immediately above the Pomeroy Garage ("**Air Rights**") as legally described in Exhibit A-3 to this Agreement; and (iv) certain real property owned by City ("**Land**") as legally described in Exhibit A-4 to this Agreement.

C. City has caused the existing tenant's rights in the Land to be returned to City, conditioned on the satisfaction of certain Developer Undertakings described in this Agreement.

D. Developer has proposed certain improvements to the Pomeroy Garage, as well as construction over and around the Pomeroy Garage.

E. City is willing to lease and license a portion of the Pomeroy Parcel, the ROW, the Air Rights and the Land to Developer conditioned upon the satisfaction of certain Developer Undertakings described in this Agreement. The portion of the Pomeroy Parcel, the ROW, the Air Rights, and the Land proposed to be leased to Developer are generally depicted on Exhibit A-5 and may be referred to collectively in this Agreement as the "**Premises**."

F. Upon completion, the Project will consist of commercial, retail or restaurant space (or both), office space, market rate apartments, row homes, parking garage expansion and certain public improvements.

G. Developer has determined, to its satisfaction, (i) the structural capability of the Pomeroy Garage (including required improvements and cost estimates for such improvements) to support construction by Developer of the Minimum Improvements proposed over and around the Pomeroy Garage; (ii) the Project's viability (including, but not limited to, market demand, site utilization, anticipated tenant and owner mix, estimated development costs and operating pro formas), and (iii) its financial ability to execute, complete, market and operate the Project.

H. City acknowledges that the development of the Project in conformity with this

Agreement and the Approved Plans is appropriate and that such development will promote the City's vision for the redevelopment and revitalization of its downtown.

I. City also believes that the development of the Project in conformity with this Agreement and the Approved Plans will generate substantial monetary and non-monetary benefits for City, including, without limitation, by, among other things: (i) providing for planned and orderly development of the Project consistent with the City's General Plan and the Zoning; (ii) increasing tax revenues to City arising from or relating to the improvements to be constructed on the Premises; (iii) creating new jobs and otherwise enhancing the economic welfare of the residents of City; (iv) providing a new residential area in City's downtown; (v) providing certain new public infrastructure to benefit City and its residents; (vi) providing a vibrant, new retail/restaurant area in City's downtown to benefit City's residents; and (vii) otherwise advancing the redevelopment goals of City.

J. City also acknowledges its intention and ability to provide the City Undertakings described in this Agreement, subject to the terms and conditions of this Agreement.

K. As a condition of, and concurrent with, development of the Project, and subject to the other terms and conditions of this Agreement, Developer has agreed to advance or otherwise cause to be provided all funds required for, and otherwise to finance the construction and completion of, the Minimum Improvements, subject to and in accordance with the terms of this Agreement, and to complete all of the Developer Undertakings, including the provision of the Public Improvements.

L. 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 will constitute covenants running with the Premises as more fully described in this Agreement.

M. The Parties also understand and acknowledge that this Agreement is intended to promote "economic development activities" within the meaning of, and entered into accordance with the terms of A.R.S. §9-500.11. The actions taken by City pursuant to this Agreement are for economic development activities as that term is used in A.R.S. §9-500.11, will assist in the creation and retention of jobs, and will in numerous other ways improve and enhance the economic welfare of the residents of City.

N. City is entering into this Agreement as an administrative act to implement and to facilitate development of the Project consistent with the policies of City reflected in the previously adopted General Plan and the Zoning.

AGREEMENTS

Now, therefore, in consideration of the foregoing recitals and representations and the mutual promises contained in this Agreement, the Parties agree as follows:

1. **DEFINITIONS**.

In this Agreement, unless a different meaning clearly appears from the context:

(a) "**Additional Public Improvements**" means as defined in Section 4.7.

(b) "**Affiliate**," as applied to any person, means any person directly or indirectly controlling, controlled by, or under common control with, that person or a blood relative or spouse of such person, if such person is a natural person. For the purposes of this definition, (i) "**control**" (including with correlative meaning, the terms "controlling," "controlled by" and "under common control"), as applied to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that person, whether through the ownership of voting securities, by contract or otherwise, and (ii) "**person**" means and includes natural persons, corporations, limited partnerships, general partnerships, joint stock companies, joint ventures associations, limited liability companies, limited liability partnerships, trusts, land trusts, business trusts or other organizations, whether or not legal entities.

(c) "**Agreement**" means this Agreement, as amended and restated or supplemented in writing from time to time, and includes all exhibits and schedules hereto. References to Articles, Sections or Exhibits are to this Agreement unless otherwise qualified. The Recitals set forth in Paragraphs A through N, inclusive, are incorporated into this Agreement by reference and form a part of this Agreement.

(d) "**Air Rights**" means as defined in Recital B.

(e) "**Apartments**" means as defined in Section 4.3(a).

(f) "**Applicable Laws**" means as defined in Section 3.2(a).

(g) "**Approved Plan**" or "**Approved Plans**" means as defined in Section 3.1(a).

(h) "**A.R.S.**" means the Arizona Revised Statutes as now or hereafter enacted or amended.

(i) "**Cap**" means as defined in Section 4.7.

(j) "**City**" means the Party designated as City on the first page of this Agreement.

(k) "**City Code**" means the Code of the City of Mesa, Arizona, as amended from time to time.

(l) "**City Council**" means the City Council of City.

(m) "**City Courts**" means the City of Mesa Municipal Court Building located at 250 East 1st Avenue.

(n) "**City Manager**" means the person designated by City as its City Manager.

(o) "**City Representative**" means as defined in Section 10.1.

(p) **"City Undertakings"** means as defined in Article 5.

(q) "**Claims**" means as defined in Section 6.1.

(r) "**Commencement of Construction**," "**Commence Construction**," "**Commence**" or "**Commencement**" means both (i) the obtaining of permits by Developer that are required to begin the construction of vertical improvements on the Premises, and (ii) the actual commencement of physical construction operations on the Premises in a manner necessary to achieve Completion of Construction.

(s) **"Commercial Project"** means as defined in Section 4.3(a).

(t) "**Completion of Construction**," "**Complete Construction**," "**Complete**" or "**Completion**" means the date (or dates) on which one or more temporary or final certificates of occupancy have been issued by City for the Minimum Improvements and the Minimum Public Improvements (and Additional Public Improvements, if applicable) have been accepted by City Council or appropriate administrative staff member of City for maintenance in accordance with the policies, standards and specifications contained in applicable City ordinances, which acceptance will not be unreasonably withheld, conditioned or delayed, and Section 5.8 of this Agreement.

(u) **"Compliance Date"** means as defined in Section 4.12.

(v) **"Concept Plans"** means as defined in Section 4.3 and as depicted on Exhibit C-1. and Exhibit C-2.

(w) "**Default**" or "**Event of Default**" means one or more of the events described in Section 9.1 or Section 9.2; provided, however, that such events will not give rise to any remedy until effect has been given to all grace periods, cure periods and/or periods of Force Majeure provided for in this Agreement, and that in any event the available remedies will be limited to those set forth in Section 9.4.

(x) "**Designated Lenders**" means as set forth in Section 11.21.

(y) "**Developer**" means the Party designated as Developer on the first page of this Agreement, and its successors and assigns that conform with the requirements of this Agreement.

(z) "**Developer Representative**" means as defined in Section 10.1.

(aa) **"Developer Undertakings"** means as defined in Article 4.

(bb) "**Effective Date**" means the date on which all of the following has occurred: this Agreement has been adopted and approved by the City Council, executed by duly authorized representatives of City and Developer, and recorded in the office of the Recorder of Maricopa County, Arizona.

(cc) "**Encroachment**" means as defined in Section 5.6.

(dd) "**Extended Compliance Date**" means as defined in Section 4.12.

(ee) "**Fees**" means as defined in Section 3.2(b).

(ff) "**Force Majeure**" means as defined in Section 9.6.

(gg) "**General Plan**" means *This is My Mesa: Mesa 2040 General Plan* as adopted by City.

(hh) "**Indemnity**" means as defined in Section 6.1.

(ii) "**Land**" means as defined in Recital B.

(jj) **"Lease"** means the lease attached to this Agreement as Exhibit P.

(kk) "**Lender**" or "**Lenders**" means as defined in Section 11.21.

(ll) "**License**" means as defined in Section 5.2.

(mm) "**Main Street Apartments**" means as defined in Section 4.3(a).

(nn) "**M.C.C.**" means as defined in Section 5.6(a).

(oo) "**Minimum Improvements**" means as defined in Section 4.3.

(pp) "**Minimum Public Improvements**" means as defined in Section 4.4.

(qq) "**MPI Actual Expenditure**" means as defined in Section 4.7.

(rr) "**Notice**" means as defined in Section 11.5(a).

(ss) "**Party**" or "**Parties**" means as defined on the first page of this Agreement.

(tt) "**Permit**" means as defined in Section 5.6(a).

(uu) "**Phasing and Mitigation Plan**" means as described in Exhibit M-1 and Exhibit M-2.

(vv) "**Pomeroy Garage**" means as defined in Recital B.

(ww) "**Pomeroy Garage Improvements**" means as described in and depicted on Exhibit E-1 and Exhibit E-2.

(xx) "**Pomeroy Parcel**" means as defined in Recital B.

(yy) "**Pomeroy Road**" means that street in downtown Mesa, Arizona, commonly known as South Pomeroy.

(zz) "**Pomeroy Road Portion**" means as defined in Section 5.1.

(aaa) "**Premises**" means as defined in Recital E.

(bbb) "**Project**" means as defined in Recital A.

(ccc) "**Public Improvements**" means the Minimum Public Improvements and the Additional Public Improvements.

(ddd) "**Reimbursable Public Improvement Costs**" means as defined in Section 4.7.

(eee) "**Residential Project**" means as defined in Section 4.3(a).

(fff) "**ROW**" means as defined in Recital B.

(ggg) "**Row Homes**" means as defined in Section 4.3(a).

(hhh) "**Sky Apartments**" means as defined in Section 4.3(a).

(iii) "**Stairwell Access and Elevator Improvements**" means as described in and depicted on Exhibit E-2.

(jjj) "**Tenants**" means as defined in Section 5.2.

(kkk) "**Term**" means as defined in Section 2.3.

(lll) "**Third Party**" means any person (as defined in Section 1(b) above) other than a Party, or an Affiliate of any Party.

(mmm)**"Transfer"** means as defined in Section 11.2.

(nnn) "**Zoning**" or "**Zoning Ordinance**" means the Zoning Ordinance of City, as the same may be amended from time-to-time during the Term.

2. PARTIES AND PURPOSE OF THIS AGREEMENT.

2.1 Parties to the Agreement; Term**Error! Bookmark not defined.** The Parties to this Agreement are City and Developer.

(a) City. City is the City of Mesa, Arizona, a municipal corporation and a political subdivision of the State of Arizona, duly organized and validly existing under the laws of the State of Arizona, exercising its governmental functions and powers.

(b) Developer. Developer is 3W Management, LLC, an Arizona limited liability company, duly organized and validly existing under the laws of the State of Arizona.

2.2 Purpose. The purpose of this Agreement is to provide for the development of the Project in accordance with the Approved Plans and this Agreement; to provide for the Minimum Improvements and the Public Improvements to be designed and constructed by

Developer or at Developer's direction; and to acknowledge the Developer Undertakings and the City Undertakings.

2.3 Term. The term of this Agreement ("**Term**") is that period of time, commencing on the Effective Date, and terminating on the date on which the Parties have performed all of their obligations under this Agreement and the Lease terminates in accordance with its terms (unless this Agreement has been terminated earlier pursuant to Article 9); provided, however, that all obligations of Indemnity, whether set forth in Section 6.1 or in the Lease, will survive in accordance with the terms of Section 6.1 or the Lease, as applicable.

3. SCOPE AND REGULATION OF DEVELOPMENT.

3.1 Development Plans.

(a) Approved Plans. Development of the Project will be in accordance with one or more plans (each, an "**Approved Plan**," or, collectively, "**Approved Plans,**" as the same may be amended from time-to-time) prepared and submitted by Developer to City for approval, and which shall (i) comply with the General Plan and the Zoning, and (ii) set forth the basic land uses, phasing (if applicable) of the Public Improvements and Minimum Improvements, and all other matters relevant to the development of the Project in accordance with this Agreement. Review and approval of the Approved Plans, or any amendment to an Approved Plan, will be undertaken by City in accordance with its regular and customary procedures and this Agreement.

(b) Approval Process. The process for the submittal, review and approval of (i) the Approved Plans, and (ii) the Project's design elements, including without limitation building materials, colors, architectural plans, landscaping, enhanced paving plans (if any), irrigation, lighting, exterior cooling, pedestrian linkages, signage and the character of the improvements, are subject to City's ordinary submittal, review and approval processes then in effect. The Parties will cooperate reasonably in processing the approval or issuance of any permits, plans, specifications, plats or other development approvals requested by Developer in connection with development of the Project. With respect to the foregoing, City will designate one employee during the term of planning and construction to manage or supervise the zoning and building review process, and will use commercially reasonable efforts to provide that the same inspectors are used during the construction process to provide consistency in inspection and comment.

(c) Cooperation in the Implementation of the Approved Plans. Developer and City will work together using commercially reasonable efforts throughout the pre-development and development stages to resolve any City comments regarding implementation of the Approved Plans.

3.2 Development Regulation.

(a) Applicable Laws. For purposes of this Agreement, the term "**Applicable Laws**" means the federal, state, county and local laws (statutory and common law) ordinances, rules, regulations, permit requirements, and other requirements and official policies

of City, 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.

(b) Permit and Other Fees. Building permit, inspection, development and other similar fees for the development of the Project ("**Fees**") will be those in effect at the time of any application or submission.

(c) Customized Review Schedule. Review and approval of all plans, applications and other submissions by or on behalf of Developer will be in accordance with the customized review and fee schedule set forth in Exhibit B. The customized review schedule will not result in or require the payment of an additional Fee by Developer for expediting the processing and approval of Developer's submittals.

4. **DEVELOPER UNDERTAKINGS**. In consideration of the timely performance by City of the City Undertakings, Developer will perform the obligations contained in this Article 4 (the "**Developer Undertakings**") as follows:

4.1 Demolition of Existing Improvements. Developer, at Developer's sole cost and expense, and in compliance with all Applicable Laws, will demolish and remove all existing improvements and other materials on the Premises that are required to be demolished and removed in connection with the Approved Plans and the construction of the Project, including but not limited to the abatement of any asbestos, lead, or other hazardous materials (as defined in the Lease) on the Premises.

4.2 Environmental Remediation; Environmental Compliance. Developer, at Developer's sole cost and expense, and in compliance with all Applicable Laws, will undertake and complete all required removal and remediation of Hazardous Materials (as defined in the Lease) from the Project. Developer's construction (and subsequent use and occupancy) of the Project will at all times comply with all Hazardous Materials Laws (as defined in the Lease).

4.3 Minimum Improvements. Developer, at Developer's sole cost and expense, and in compliance with Article 3 of this Agreement and all Applicable Laws, will construct the following improvements ("**Minimum Improvements**") as generally depicted on developer's concept plans ("**Concept Plans**") attached to this Agreement as Exhibit C-1 ("Residential Concept Plan") and Exhibit C-2 ("Commercial and Improvement Concept Plan"), respectively, and with building elevations and landscaping as generally rendered on Exhibit D, all as more particularly to be shown on the Approved Plans, as follows:

(a) The Minimum Improvements will consist of: (i) a minimum of eighteen thousand (18,000) rentable square feet of commercial, retail/restaurant or office premises on or along Main Street (the "**Commercial Project**"); (ii) a minimum of sixty-four (64) "micro" or "studio" units of not less than three hundred and fifty (350) square feet per unit ("**Main Street Apartments**"), a minimum of one hundred and ninety-six (196) market-rate apartments consisting of not fewer than one hundred (100) one-bedroom, forty-three (43) two-bedroom and fourteen (14) three- (or more) bedroom units, and expressly excluding any "studio" or "micro" units (collectively, "**Sky Apartments**"; and, together with the Main Street Apartments, collectively, the "**Apartments**"), containing a minimum of one hundred and eighty thousand (180,0000) square feet total, under roof; (iii) a minimum of twelve (12) row homes

containing a minimum of twenty-four thousand, two hundred (24,200) square feet total under roof (the "**Row Homes**"; the Apartments and the Row Homes, collectively, the "**Residential Project**"); (iv) additional structured parking of not fewer than one hundred forty (140) parking spaces; (v) all required structural improvements within, appurtenant to or for the Pomeroy Garage to support the addition of four stories of residential development and landscaping above the Pomeroy Garage; (vi) a walled yard and associated improvements to the City Courts property to create a shared refuse location; and (vii) additional private improvements added to the Pomeroy Garage to support the Commercial Project and the Residential Project, as depicted on Exhibit E-1, Exhibit E-2 and the Approved Plans (the "**Pomeroy Garage Improvements**") including certain private improvements to the Pomeroy Garage for private and public access (as depicted on Exhibit E-2 and the Approved Plans (the "**Stairwell Access and Elevator Improvements**"). Notwithstanding the foregoing, the City Manager has the authority to make administrative adjustments in the amounts and areas described in this Section 4.3(a) in order to accommodate reasonable changes necessitated by design and construction matters discovered or determined subsequent to the execution of this Agreement by the Parties.

(b) The Approved Plans may be amended by Developer from time to time, and any such amendments will be approved by City subject to the customized review schedule and in accordance with Applicable Laws.

4.4 Minimum Public Improvements. Developer, at Developer's sole cost and expense, will construct all public improvements as described in Exhibit F-1 and depicted on Exhibit F-2 ("**Minimum Public Improvements**"), including, but not limited to, (i) streetscape improvements to Pomeroy Road; (ii) improvements to Gateway Park; (iii) safety and lighting improvements to the Pomeroy Garage required by City (including, by way of example and not of limitation, call boxes and screening); and (iv) other City Court security measures added to the Pomeroy Garage required by City.

4.5 Title 34. In connection with its design and construction of the Minimum Public Improvements, Developer will comply with all public bidding and similar requirements of Applicable Laws.

4.6 Payment and Performance Bonds. In connection with its construction of the Minimum Improvements and the Public Improvements, Developer will provide City with payment and performance bonds (which may be dual-obligee bonds with Developer's lender or lenders, that name City as an additional obligee), or other forms of financial assurance, in a form (or forms) reasonably satisfactory to City, to ensure full and timely completion of the Project.

4.7 Reimbursement by City for Public Improvements. Upon (i) completion in accordance with the Approved Plans of all Minimum Improvements and Minimum Public Improvements, (ii) verification of amounts and payment in full by Developer by the City Engineer, (iii) the dedication to and acceptance by City of the Minimum Public Improvements in accordance with Section 4.14 of this Agreement, and (iv) compliance with Applicable Laws (including but not limited to Title 34), City will reimburse Developer its actual cost of design and construction of the Minimum Public Improvements (the "**Reimbursable Public Improvement Costs**"), but not to exceed $3,000,000.00 (the "**Cap**"). Notwithstanding the foregoing, in order for Developer to be eligible to receive any reimbursement for the Minimum Public Improvements, Developer must establish to City's reasonable satisfaction, that Developer

has expended at least $4,500,000.00 to Third Parties on the design and construction of the Minimum Public Improvements (the "**MPI Actual Expenditure**"). Subject to and conditioned upon the Completion of the Minimum Public Improvements, the MPI Actual Expenditure and compliance with Title 34, Developer may also request reimbursement for its approved costs incurred in connection with public improvements to Gateway Park Drive as described in Section 5.4 of this Agreement, and a mid-block pedestrian passageway, as generally described in Exhibit G-1 and depicted on Exhibit G-2 ("**Additional Public Improvements**"), to the extent that any portion of the Cap remains available after completion of, and reimbursement to Developer for, the Minimum Public Improvements. Reimbursement of the Reimbursable Public Improvement Costs will be in the form of credits against Base Rent required to be paid under the Lease and parking and other fees required to be paid under the License, but not exceeding the amount of the Cap, all as more fully set forth in the Lease and the License.

4.8 Program Compliance. Developer, at Developer's sole cost and expense, during the Term, and in compliance with all Applicable Laws, will comply in all material respects with those programs and policies set forth and described on Exhibit H. The Parties agree and acknowledge that the City Manager will have the right and ability, without need for City Council approval, to make minor adjustments to Exhibit H that are agreed by the Parties and are consistent with the intent of the Parties and this Agreement, and thereupon to enter into such amendments to this Agreement as deemed necessary or appropriate by the Parties.

4.9 On-Site Amenities. Developer, at Developer's sole cost and expense, during the Term, and in compliance with all Applicable Laws, will cause the Residential Project to include and will offer to Tenants (as defined in Section 5.2) the on-site amenities set forth and described on Exhibit I. The Parties agree and acknowledge that the City Manager will have the right and ability, without need for City Council approval, to make minor adjustments to Exhibit I that are agreed by the Parties and are consistent with the intent of the Parties and this Agreement, and thereupon to enter into such amendments to this Agreement as deemed necessary or appropriate by the Parties.

4.10 Unit Amenities. Developer, at Developer's sole cost and expense, during the Term, and in compliance with all Applicable Laws, will cause individual rental units within the Residential Project to include and contain the unit amenities set forth and described on Exhibit J. The Parties agree and acknowledge that the City Manager will have the right and ability, without need for City Council approval, to make minor adjustments to Exhibit J that are agreed by the Parties and are consistent with the intent of the Parties and this Agreement, and thereupon to enter into such amendments to this Agreement as deemed necessary or appropriate by the Parties.

4.11 Exterior Quality Standards. Developer, at Developer's sole cost and expense, during the Term, and in compliance with all Applicable Laws, will comply in all material respects with those exterior quality standards described on Exhibit K. The Parties agree and acknowledge that the City Manager will have the right and ability, without need for City Council approval, to make minor adjustments to Exhibit K that are agreed by the Parties and are consistent with the intent of the Parties and this Agreement, and thereupon to enter into such amendments to this Agreement as deemed necessary or appropriate by the Parties.

4.12 Compliance Dates. Developer will perform or complete each of the following on or before the date set forth below for the applicable act (each, a "**Compliance Date**"):

(a) On or before April 1, 2018, Developer will have delivered its first permit package (grading, drainage and utility work) for the Project to the City for review and approval in accordance with Section 3.1 of this Agreement, and will have paid an amount equal to eighty-five percent (85%) of the Fees for the Project, as estimated by the Parties. Any excess will be held by City until the revenue is earned by City and will be "trued up" at the time of approval of Developer's third and final permit package.

(b) On or before April 1, 2018, Developer (or an assignee permitted pursuant to Section 11.2.1) will have executed and delivered the Lease and the License to City.

(c) On or before June 1, 2018, Developer will have delivered its second permit package (concrete work, interior work in the Garage, and the podium for the Main Street building) for the Project to be delivered to the City for review and approval in accordance with Section 3.1 of this Agreement.

(c) On or before July 1, 2018, Developer will have delivered its third (and final) permit package (framing of Apartments, and area above the podium) for the Project to be delivered to the City for review and approval in accordance with Section 3.1 of this Agreement, and will have paid all unpaid and remaining Fees for the Project.

(d) On or before July 1, 2018, Developer will Commence Construction of work included in the first permit package.

(e) On or before September 1, 2018, Developer will Commence Construction of work included in the second permit package.

(f) On or before November 1, 2018, Developer will Commence Construction of work included in the third permit package.

(g) On or before December 31, 2020, Developer will Complete Construction of the Minimum Improvements and all Minimum Public Improvements.

The City Manager, in his sole discretion, may extend any of the foregoing dates for a period of time not to exceed forty-five (45) days per extension, with a maximum of three (3) extensions per event (each, an "**Extended Compliance Date**"). In the event of any extension by the City Manager, each subsequent Compliance Date (including any corresponding dates for performance or acts by City set forth in Article 5 of this Agreement) will automatically be adjusted in conformity.

4.13 City Services. During the Term, Developer will contract for and use all City of Mesa services, including (but not limited to) City's solid waste and recycling services.

4.14 Dedication of Public Improvements. Upon not fewer than ninety (90) days advance request by City, or upon completion of any portion, segment or phase of the Public

Improvements offered for dedication by Developer and accepted by City, Developer will dedicate and grant to City the Public Improvements and all real property or real property interests owned by Developer which (i) constitute a part of the Public Improvements; and (ii) are reasonably necessary for right-of-way purposes or otherwise required for the construction, maintenance, or operation of the Public Improvements on or within the Project.

(a) With respect to such dedicated Public Improvements, Developer will demonstrate to City's reasonable satisfaction that all contractors and suppliers of materials have been paid for their work and will provide a two (2) year warranty (which may be by assignment of a contractor's warranty) of materials and workmanship.

(b) With respect to the Reimbursable Public Improvements, and as a condition to any obligation of City to reimburse Developer, Developer will provide City with true and correct copies of materials requested by City to show payment in full and establish Developer's actual costs of design and construction for the requested reimbursements.

(c) Certificates of occupancy (or temporary certificates of occupancy, as applicable) for any portion of the Minimum Improvements or other portions of the Project, will be issued by City in a sequence that follows Developer's construction schedule. Upon completion of certain portions of the Minimum Improvements or other portions of the Project, including such Minimum Public Improvements as are reasonably determined by City to be necessary to support such portion of the Minimum Improvements, Developer may request inspections; and upon approval of such work will receive certificates of occupancy (or temporary certificates of occupancy, as applicable) for the completed areas.

4.15 Prohibited Uses. Notwithstanding anything in Applicable Laws (including but not limited to the Zoning), the uses described on Exhibit L will at all times be prohibited on the Project.

4.16 Displaced Parking Obligation. Developer acknowledges that City presently provides approximately four hundred and seventy-five (475) parking spaces in the Garage to Maricopa County, the adjacent branch of Wells Fargo Bank, N.A., Benedictine University and the City Courts (collectively, "**Permittees**"), as well as the public. At all times during the construction of the Minimum Public Improvements, Developer, at its sole cost and expense, (i) will provide replacement parking for the Permittees and the public acceptable to Permittees and otherwise resolve all temporary parking issues with Permittees; and (ii) will indemnify, defend, pay and hold harmless City for, from and against any and all claims against City by Permittees that Permittees' parking in the Garage has been or is being restricted or impaired by the acts of Developer pursuant to this Agreement

5. **CITY UNDERTAKINGS**. In consideration of the timely performance by Developer of the Developer Undertakings, City will perform the obligations contained in this Article 5 (the "**City Undertakings**") as follows:

5.1 Abandonment of a Portion of Pomeroy Road. Concurrently with the Parties' execution and delivery of this Agreement, City will abandon as a public right-of-way the portion of the roadway that is no longer needed for public roadway or right-of-way purposes (the

"**Pomeroy Road Portion**"), and will include the Pomeroy Road Portion in the real property being leased to Developer pursuant to the Lease.

5.2 Pomeroy Garage. Upon timely compliance by Developer with Section 4.12(a) and Section 4.12(b) of this Agreement, City will enter into a license agreement with Developer (the "**License**") on or before April 15, 2018 (or any applicable Extended Compliance Date) in the form attached as Exhibit B to the Lease, to grant to Developer the right, *inter alia*, to enter into the Pomeroy Garage and construct the Pomeroy Garage Improvements and to sub-license parking spaces in the Pomeroy Garage to Developer's commercial, office and residential subtenants ("**Tenants**"). Developer's access to the Pomeroy Garage (including the basement) for the purposes of construction of the Minimum Improvements and the Minimum Public Improvements will be in accordance with the Phasing and Mitigation Plan attached to this Agreement as Exhibit M-1 and Exhibit M-2. Notwithstanding the foregoing, the Parties agree that the Phasing and Mitigation Plan will be revised prior to Developer's receipt of building permits or Commencement of Construction. The City Manager is authorized to approve such revisions administratively and without further approval of the City Council required.

5.3 Pomeroy Road. City will provide Developer the right to make certain improvements in and along the existing right-of-way along Pomeroy Road as described in Section 4.4, subject in all events to conditions, plans and specifications that have been approved by City in its sole discretion (which improvements may result in a partial realignment of Pomeroy Road. Developer's access to Pomeroy Road for the purposes of construction of such improvements will be in accordance with the Phasing and Mitigation Plan attached to this Agreement as Exhibit M-1 and Exhibit M-2.

5.4 Gateway Park Drive. City will provide Developer the right to make certain improvements in and along the City-owned parcel along the Gateway Park Drive alignment as described in Exhibit G-1 and depicted on Exhibit G-2, subject in all events to conditions, plans and specifications that have been approved by City in its sole discretion.

5.5 Gateway Park. City will provide Developer access to Gateway Park for the purpose of constructing certain renovations to Gateway Park as described in Exhibit F-1 and depicted on Exhibit F-2, subject in all events to conditions, plans and specifications that have been approved by City in its sole discretion, and further subject to review and approval by City, acting through any applicable board or committee.

5.6 Encroachment into Right-of-Way. Subject to compliance with this Agreement and all Applicable Laws, City will permit those certain encroachments above the first floor that are (i) balconies, shade structures, and building masses appurtenant to upper-floor habitable space and (ii) affixed signage that are over the public right-of-way (collectively, the "**Encroachments**") subject to the following terms, conditions, limitations, and requirements:

(a) Under the Mesa City Code ("**M.C.C.**"), encroachments in Mesa's right-of-way and public easements are prohibited except with the authorization of a right-of-way permit under M.C.C. 9-2-3(A). This Section 5.6 is intended to be such a permit (the "**Permit**").

(b) City permits Developer to construct and maintain only the Encroachments depicted on Exhibit N. The Encroachments shall be above the first-floor level

and at the heights above-grade and extend only into that portion of the right-of-way as depicted on Exhibit O. The City Engineer has the authority to make adjustments to the Encroachments in order to accommodate reasonable changes necessitated by design or construction matters discovered or determined subsequent to the execution of this Agreement. No at-grade encroachments are permitted under this Section 5.6; Developer may request at-grade encroachments through the standard City processes and standard City encroachment agreement.

(c) This Permit does not otherwise modify, change or alter City's Code requirements, ordinances or regulations; accordingly, separate from this Agreement, Developer will obtain all applicable permits and approvals as required by City for the construction, installation and maintenance of the Encroachments.

(d) Developer will be solely responsible and liable for, and defend, indemnify, and hold harmless the City and its City Council members, officers and employees from and against, any and all Claims arising from, or related to, the design, construction, installation, location or maintenance of the Encroachments, the use of the right-of-way for the Encroachments, or the maintenance, repair, or replacement of the Main Street Sidewalk Improvements as described in Section 5.6(e). The obligations to defend, indemnify, and hold harmless are in addition to, and do not limit, the Indemnity obligations in Section 6.1.

(e) Developer acknowledges that the Encroachments may make the maintenance, repair, and replacement of the sidewalk, curb, and gutter (collectively, the "Main Street Sidewalk Improvements") along that portion of Main Street adjacent to the Property more expensive. Accordingly, Developer at its sole cost and expense agrees to maintain, repair, and replace the Main Street Sidewalk Improvements.

(f) Developer, at its sole cost and expense, and at all times, will maintain the Encroachments and Main Street Sidewalk Improvements in a first-class, sound, clean and attractive manner. Developer will repair any and all damage to the Encroachments and Main Street Sidewalk Improvements, including but not limited to, damage caused by third parties, vehicles, vandalism, and damage caused by contractors and utility companies while working in the right-of-way or public easement.

(g) This Permit is a nonexclusive license and nothing in this Agreement will be construed to prevent or restrict, in any way, City from using or granting others the right to use the right-of-way or public easement property where the Encroachment is located so long as such use does not unreasonable interfere with Developer's use as permitted under this Section 5.6.

(h) All provisions of this Permit, including the benefits and burdens, run with the land and are binding upon and shall inure to the benefit of the successors and assigns of City and Developer. Developer may not assign its rights under this Permit apart from an assignment of the Agreement and without the prior written consent of City, which consent may be given or withheld in City's sole discretion. Any purported assignment without City's consent is void (and not voidable), and the purported assignee will acquire no rights under this Permit.

(i) The provisions of this Section 5.6 run with the land and will survive the expiration or any earlier termination of this Agreement and the Lease upon the exercise of the

purchase option for the Premises granted to the Tenant named in the Lease; provided, however, that this Permit will expire if the Compliance Dates are not timely met.

(k) Developer may apply from time-to-time for additional encroachment permits in accordance with all applicable City processes.

5.7 Lease of Premises. Upon timely compliance by Developer with Section 4.12(a) and Section 4.12(b) of this Agreement, City will execute and deliver the Lease to Developer on or before April 15, 2018 (or any applicable Extended Compliance Date).

5.8 Acceptance and Maintenance of Public Improvements. When the Public Improvements (or a discrete portion of such Public Improvements as agreed by City in its sole discretion) are completed, then upon written request of City or Developer, Developer will dedicate and City will accept such Public Improvements in accordance with Applicable Laws and upon such reasonable and customary conditions as City may impose, including without limitation a two (2) year contractor's warranty of workmanship and materials. Upon acceptance by City, but in all events subject to the obligations of Developer of maintenance, repair and replacements set forth in this Agreement, the Lease and the License, the Public Improvements will become public facilities and property of City and City will be solely responsible for all subsequent maintenance, replacement or repairs. With respect to any claims arising prior to acceptance of the Public Improvements by City, Developer will bear all risk of, and will indemnify City and its officials, employees and City Council members, against any claim arising prior to City's acceptance of the Public Improvements from 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, except to the extent caused by the negligence or willful acts or omissions of City and its officials, employees and City Council members, agents or representatives.

5.9 Maintenance Obligations for Non-Standard Improvements. In the event that any of the Public Improvements (or any component of the Public Improvements) within any City right-of-way or easement are deemed by City's Engineer to be non-standard, or in the event that any of the Public Improvements (or any component of the Public Improvements) within Gateway Park are deemed by City's Parks Recreation Community Facilities Department Director to be non-standard, City will require, and Developer agrees to execute prior to Completion of Construction, a maintenance agreement that obligates Developer to pay and reimburse City for all additional cost of maintenance (including repair or replacement) of such non-standard Public Improvements.

5.10 Security and Traffic Control. City will work cooperatively with Developer during construction of the Project to permit Developer, at its sole cost and expense, to provide security for the Pomeroy Garage and traffic control at Main Street and Pomeroy Street in accordance with the Phasing and Mitigation Plan attached to this Agreement as Exhibit M-1 and Exhibit M-2.

6. **INDEMNITY; RISK OF LOSS**.

6.1 Indemnity of City by Developer. Developer will pay, defend, indemnify and hold harmless City and its City Council members, officers and employees 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 to any act or omission by Developer, or its employees, contractors, subcontractors, agents or representatives, undertaken in fulfillment of Developer's obligations under this Agreement (collectively, "**Indemnity**"). The obligations of Indemnity set forth in this Section 6.1 (i) 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 existing Pomeroy Garage, and all subsequent design, construction, engineering, and other work and improvements by or on behalf of Developer, and (ii) survive the expiration or earlier termination of this Agreement; but the obligations of Indemnity expressly exclude criminal acts by third parties that occur in the Pomeroy Garage. For the purposes of the foregoing sentence, "criminal acts by third parties" do not include criminal acts committed by, upon or involving Developer's (as Tenant named in the Lease) subtenants at the Premises or Developer's (as Licensee named in the License) sublicensees, or any invitees or such subtenants or sublicensees.

6.2 Risk of Loss. Developer assumes the risk of any and all loss, damage or claims to the Minimum Improvements and to any portion of the Public Improvements unless and until title to the Public Improvements is transferred to City. At the time title to the Public Improvements is transferred to City by dedication deed, plat recordation, or otherwise, Developer will, to the extent allowed by law, assign to City any unexpired warranties relating to the design, construction and/or composition of such Public Improvements. Acceptance of the Public Improvements will be conditioned on City's receipt of a two (2) year warranty of workmanship, materials and equipment, in form and content reasonably acceptable to City, provided however that such warranty or warranties may be provided by Developer's contractor or contractors directly to City and are not required from Developer, and that any such warranties will extend from the date of completion of any Public Improvement, any component thereof, or the work of any specific trade or contractor, as applicable.

6.3 Insurance. During the period of any construction involving the Public Improvements, and with respect to any construction activities relating to the Public Improvements, Developer will obtain and provide City with proof of payment of premiums and certificates of insurance showing that Developer is carrying, or causing its contractor(s) to carry, policies of insurance in amounts and coverages set forth on Exhibit Q. Such policies of insurance will be placed with financially sound and reputable insurers, require the insurer to give at least thirty (30) days advance written Notice of cancellation to City, and will name City as an additional insured on such policies.

7. **CITY REPRESENTATIONS**. City represents and warrants to Developer that:

7.1 City has the full right, power and authorization to enter into and perform this Agreement and each of City's obligations and undertakings under this Agreement, and City's execution, delivery and performance of this Agreement have been duly authorized and agreed to in compliance with the requirements of the City Code.

7.2 All consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.

7.3 City will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

7.4 City knows of no litigation, proceeding, initiative, referendum, investigation or threat of any of the same contesting the powers of City or its officials with respect to this Agreement that has not been disclosed in writing to Developer.

7.5 The execution, delivery and performance of this Agreement by City is not prohibited by, and does not conflict with, any other agreements, instruments or judgments or decrees to which City is a party or is otherwise subject.

7.6 City has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

8. **DEVELOPER REPRESENTATIONS**. Developer represents and warrants to City that:

8.1 Developer has the full right, power and authorization to enter into and perform this Agreement and of the obligations and undertakings of Developer under this Agreement, and the execution, delivery and performance of this Agreement by Developer has been duly authorized and agreed to in compliance with the organizational documents of Developer.

8.2 All consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.

8.3 Developer will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

8.4 As of the date of this Agreement, Developer knows of no litigation, proceeding or investigation pending or threatened against or affecting Developer, which could have a material adverse effect on Developer's performance under this Agreement that has not been disclosed in writing to City.

8.5 This Agreement (and each undertaking of Developer contained in this Agreement) constitutes a valid, binding and enforceable obligation of Developer, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity. Developer at its sole cost and expense will defend the validity and enforceability of this Agreement in the event of any proceeding or litigation arising from its terms that names Developer as a party or which challenges the authority of Developer to enter into or perform any of its obligations hereunder and will cooperate with City in connection with any other action by a Third Party in which City is a party and the benefits of this Agreement to City are challenged. The severability and reformation provisions of Section 11.3 will apply in the event of any successful challenge to this Agreement.

8.6 The execution, delivery and performance of this Agreement by Developer is not prohibited by, and does not conflict with, any other agreements, instruments, judgments or decrees to which Developer is a party or to which Developer is otherwise subject.

8.7 Developer has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement other than normal costs of conducting business and costs of professional services such as the services of architects, engineers and attorneys.

8.8 Developer has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

9. **EVENTS OF DEFAULT; REMEDIES**.

9.1 Events of Default by Developer. "**Default**" or an "**Event of Default**" by Developer under this Agreement will mean one or more of the following:

(a) Any representation or warranty made in this Agreement by Developer was materially inaccurate when made or will prove to be materially inaccurate during the Term;

(b) Developer fails to comply with any Compliance Dates or Extended Compliance Dates, as applicable, established in this Agreement for the Commencement of Construction or the Completion of Construction, for any reason other than Force Majeure;

(c) Foreclosure (or deed in lieu of foreclosure) upon any mechanic's, materialmen's or other lien on the Premises prior to Completion of Construction or upon any improvements on the Premises, but such lien will not constitute a Default if Developer deposits in escrow sufficient funds to discharge the lien or otherwise bonds over such liens in a customary fashion;

(d) Developer transfers or attempts to transfer or assign this Agreement in violation of Section 11.2; or

(e) Developer fails to observe or perform any other covenant, obligation or agreement required of it under this Agreement.

9.2 Events of Default by City. Default or an Event of Default by City under this Agreement will mean one or more of the following:

(a) Any representation or warranty made in this Agreement by City was materially inaccurate when made or will prove to be materially inaccurate during the Term; or

(b) City fails to observe or perform any other covenant, obligation or agreement required of it under this Agreement.

9.3 Grace Periods; Notice and Cure.

(a) Upon the occurrence of an Event of Default by any Party, such Party will, upon written Notice from the other Party, proceed immediately to cure or remedy such Default and, in any event, such Default will be cured within thirty (30) days after receipt of such Notice; or, if such Default is of a nature is not capable of being cured within thirty (30) days will be commenced within such period and diligently pursued to completion, but in no event exceeding ninety (90) days in total.

(b) Notwithstanding the foregoing, the requirements of Notice and opportunity to cure described in Section 9.3(a) will not apply to any Event of Default arising or occurring as a result of Developer's failure to perform or satisfy any Compliance Date (or any applicable Extended Compliance Date) set forth in Section 4.12 of this Agreement (except for the Completion of Construction in Section 4.12(g) of this Agreement); and the failure of Developer to perform or satisfy any such Compliance Date or any applicable Extended Compliance Date other than Section 4.12(g) will entitle City immediately, and without further act or Notice required, to have any of its remedies set forth in Section 9.4(a), including, but not limited to, termination of this Agreement and the Lease.

9.4 Remedies for Default. Whenever any Event of Default occurs and is not cured (or cure undertaken) by the defaulting Party in accordance with Section 9.3 of this Agreement, the other Party may take any of one or more of the following actions:

(a) Remedies of City. City's sole remedies for an uncured Event of Default by Developer will consist of, and will be limited to the following:

(i) If an uncured Event of Default by Developer occurs prior to Completion of Construction and with respect to Developer's failure to construct or develop the Minimum Improvements and/or the Public Improvements in accordance with the terms of this Agreement, City may suspend any of its obligations under this Agreement, may terminate this Agreement by written Notice thereof to Developer, and may terminate the Lease in accordance with the terms of the Lease.

(ii) Notwithstanding the foregoing, at any time City may seek special action or other similar relief (whether characterized as mandamus, injunction or otherwise), requiring Developer to undertake and to fully and timely address a public safety concern or to enjoin any construction or activity undertaken by Developer which is not in accordance with the terms of this Agreement.

(iii) Notwithstanding the foregoing, City at any time may seek indemnity (including but not limited to an action for damages) arising under Developer's obligations of Indemnity set forth in Section 6.1.

(iv) Notwithstanding the foregoing, City at any time may enforce its rights given under any bond or similar financial assurance given or provided by or for the benefit of Developer pursuant to this Agreement.

(v) Notwithstanding the foregoing, City at any time may seek (and recover) its actual damages incurred as a result of Developer's failure to complete the

Project; provided, however, that City waives any right to receive or recover speculative, consequential, punitive, exemplary, special or other similar damages due to Developer's default.

(b) Remedies of Developer. Developer's exclusive remedies for an uncured Event of Default by City will consist of and will be limited to a special action or other similar relief (whether characterized as mandamus, injunction or otherwise), requiring City to undertake and to fully and timely perform its obligations under this Agreement.

9.5 Delays; Waivers. Except as otherwise expressly provided in this Agreement, any delay by any Party in asserting any right or remedy under this Agreement will not operate as a waiver of any such rights or limit such rights in any way; and any waiver in fact made by such Party with respect to any Default by the other Party will not be considered as a waiver of rights with respect to any other Default by the performing Party or with respect to the particular Default except to the extent specifically waived in writing. It is the intent of the Parties that this provision will enable each Party to avoid the risk of being limited in the exercise of any right or remedy provided in this Agreement by waiver, laches or otherwise at a time when it may still hope to resolve the problems created by the Default involved.

9.6 Force Majeure. Neither City nor Developer, as the case may be, will be considered not to have performed its obligations under this Agreement or in Default in the event of force majeure ("**Force Majeure**") due to causes beyond its control and without its fault, negligence or failure to comply with Applicable Laws, including, but not restricted to, acts of God, acts of public enemy, litigation concerning the validity and enforceability of this Agreement or relating to transactions contemplated hereby (including the effect of petitions for initiative or referendum), fires, floods, epidemics, pandemics, quarantine, restrictions, strikes, embargoes, labor disputes, and unusually severe weather or the delays of subcontractors or materialmen due to such causes, act of a public enemy, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), nuclear radiation, declaration of national emergency or national alert, blockade, insurrection, riot, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain, condemnation, or other taking by the action of any governmental body on behalf of any public, quasi-public, or private entity, or declaration of moratorium or similar hiatus directly affecting the Project (whether permanent or temporary) by any public, quasi-public or private entity. In no event will Force Majeure include any delay resulting from general economic or market conditions, unavailability for any reason of particular tenants of portions of the Project, nor from the unavailability for any reason of particular contractors, subcontractors, vendors, investors or lenders desired by Developer in connection with the development of the Project, it being agreed that Developer will bear all risks of delay which are not Force Majeure. In the event of the occurrence of any such Force Majeure, the time or times for performance of the obligations of the Party claiming delay will be extended for a period of the Force Majeure; provided that the Party seeking the benefit of the provisions of this Section 9.6, within thirty (30) days after such event, will notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Force Majeure.

9.7 Rights and Remedies Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by either Party of any one or more of such rights will not

preclude the exercise by it, at the same or different times, of any other right or remedy for any other Default by the other Party.

10. **COOPERATION AND DESIGNATED REPRESENTATIVES**.

10.1 Representatives. To further the cooperation of the Parties in implementing this Agreement, City and Developer each will designate and appoint a representative to act as a liaison between City and its various departments and Developer. The initial representative for City will be City's Downtown Transformation Manager (the "**City Representative**"), and the initial representative for Developer will be its Project Manager, as identified by Developer from time to time (the "**Developer Representative**"). City's and Developer's Representatives will be available at all reasonable times to discuss and review the performance of the Parties to this Agreement and the development of the Project.

11. **MISCELLANEOUS PROVISIONS**.

11.1 Governing Law; Choice of Forum. 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 will 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 11.1.

11.2 Restrictions on Assignment and Transfer.

11.2.1 Restriction on Transfers Assumption of Developer's Obligations by Transferee. Prior to Completion of Construction, no assignment or similar transfer of Developer's interest in the Premises or this Agreement, or in the current management, ownership or control of Developer (each, a "**Transfer**") may occur without the prior written consent of City, which consent may be given or withheld in City's sole and unfettered discretion; provided, however, that the foregoing restriction will not apply to a one-time Transfer to an Affiliate of Developer upon City's reasonable determination that the management and control of the Affiliate transferee is materially the same as the management and control of Developer as of the Effective Date. The restrictions on Transfer set forth in this Section 11.2 will terminate automatically, and without further Notice or action, upon Completion of Construction; provided, however, that unless the Transfer occurs prior to the Commencement of Construction, no Transfer will release or discharge Developer from any of its obligations arising in or under this Agreement, including but not limited to the obligations of Indemnity set forth in Section 6.1; and further provided that, upon a Transfer, the transferee (without further act or writing required) is deemed fully, automatically and unconditionally to have assumed all obligations of Developer arising in or under this Agreement, including but not limited to all obligations of Indemnity set forth in Section 6.1. No voluntary or involuntary successor in interest to Developer may acquire any rights or powers under this Agreement, except as expressly set forth in this Agreement, and any Transfer in violation of this Agreement will be void, and not voidable.

11.2.2 Transfers by City. City's rights and obligations under this Agreement will be non-assignable and non-transferable, without the prior express written consent of Developer, which consent may be given or withheld in Developer's sole and unfettered discretion.

11.3 Limited Severability. City and Developer each believes that the execution, delivery and performance of this Agreement are in compliance with all Applicable Laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring City to do any act in violation of any Applicable Laws, constitutional provision, law, regulation, City code or City charter), such provision will be deemed severed from this Agreement and this Agreement will otherwise remain in full force and effect; provided that this Agreement will retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. The Parties further agree, in such circumstances, to do all acts and to execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

11.4 Construction. The terms and provisions of this Agreement represent the results of negotiations between the Parties, each of which has been or has had the opportunity to be represented by counsel of its own choosing, and none of which has acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Agreement will be interpreted and construed in accordance with their usual and customary meanings, and the Parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Agreement that ambiguous or conflicting terms or provisions contained in this Agreement will be interpreted or construed against the Party who prepared or whose attorney prepared the executed Agreement or any earlier draft of the same.

11.5 Notices.

(a) Addresses. Except as otherwise required by law, any notice required or permitted under this Agreement (each, a "**Notice**") will be in writing and will be given by (i) personal delivery, (ii) deposit in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this Section, or (iii) 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
Mesa, Arizona 85211

If by United States Postal Service:
Post Office Box 1466
Mesa, Arizona 85211-1466

and

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

If by United States Postal Service:
Post Office Box 1466
Mesa, Arizona 85211-1466

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

If by United States Postal Service:
Post Office Box 1466
Mesa, Arizona 85211-1466

If to Developer: 3W Management, LLC
Attn: Tony Wall
7349 N. Via Paseo del Sur, Suite 515
Scottsdale, Arizona 85258

With a required copy to: AZ Strategies LLC
Attn: Karrin Taylor Robson
3344 East Camelback Road, Suite 100
Phoenix, Arizona 85018

With a required copy to: Gallagher & Kennedy, P.A.
Attn: Dana Stagg Belknap
2575 East Camelback Road
Phoenix, Arizona 85016

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(b) Effective Date of Notices. Any Notice sent by United States Postal Service certified or registered mail will be deemed to be effective the earlier of the actual delivery, or three (3) business days after deposit in a post office operated by the United States Postal Service. 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 provided.

11.6 Time of Essence. Time is of the essence of this Agreement and each provision hereof.

11.7 Article and Section Headings. The Article and 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.

11.8 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 attorney's 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.

11.9 Waiver. Without limiting the provisions of Section 9.5 of this Agreement, the Parties agree that neither the failure nor the delay of any Party to exercise any right, remedy, power or privilege under this Agreement will operate as a waiver of such right, remedy, power or privilege, nor will any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor will any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver will be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

11.10 Third Party Beneficiaries. No person or entity will be a third party beneficiary to this Agreement, except for permitted transferees, assignees, or lenders under Section 11.21 to the extent that they assume or succeed to the rights and/or obligations of Developer under this Agreement, and except that the indemnified Parties and persons referred to in the indemnification provisions of Section 6.1 (or elsewhere in this Agreement) will be third party beneficiaries of such indemnification provisions.

11.11 Exhibits. Without limiting the provisions of Section 1 of this Agreement, the Parties agree that all references to this Agreement include all Exhibits designated in and attached to this Agreement, such Exhibits being incorporated into and made an integral part of this Agreement for all purposes.

11.12 Integration. Except as expressly provided in this Agreement, this Agreement constitutes the entire agreement between the Parties with respect to the subject matters hereof and supersedes any prior agreement, understanding, negotiation or representation regarding the subject matters covered by this Agreement.

11.13 Further Assurances. Each Party agrees to perform such other and further acts and to execute and deliver such additional agreements, documents, affidavits, certifications, acknowledgments and instruments as any other Party may reasonably require to consummate, evidence, confirm or carry out the matters contemplated by this Agreement or confirm the status of (a) this Agreement as in full force and effect and (b) the performance of the obligations hereunder at any time during its Term.

11.14 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, 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.

11.15 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 may be provided by the City Manager (or designee) unless otherwise specified or required by Applicable Laws.

11.16 Covenants Running With Land; Inurement. The covenants, conditions, terms and provisions of this Agreement relating to use of the Premises will run with the Premises and will be binding upon, and will inure to the benefit of the Parties and their respective permitted successors and assigns with respect to the Premises. 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.

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

11.18 Amendment. Except as otherwise expressly provided for or permitted in this Agreement (for example, for administrative adjustments that may be made by the City Manager or designee, including the approval of Extended Compliance Dates), no change or addition is to be made to this Agreement except by written amendment executed by City and Developer. Within ten (10) days after any amendment to this Agreement, such amendment will be recorded in the Official Records of Maricopa County, Arizona. Upon amendment of this Agreement, references to "Agreement" or "Development Agreement" will mean the Agreement as amended. If, after the effective date of any amendment(s), the parties find it necessary to refer to this Agreement in its original, unamended form, they will refer to it as the "Original Development Agreement." When the Parties mean to refer to any specific amendment to the Agreement which amendment is unmodified by any subsequent amendments, the Parties will refer to it by the number of the amendment as well as its effective date.

11.19 Good Faith of Parties. Except where any matter is expressly stated to be in the sole discretion of a Party, in performance of this Agreement or in considering any requested extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily or capriciously and will not unreasonably withhold, delay or condition any requested approval, acknowledgment or consent.

11.20 Survival. All indemnifications contained in Section 6.1 of this Agreement will survive the execution and delivery of this Agreement, the closing of any transaction contemplated in this Agreement, and the rescission, cancellation, expiration or termination of this Agreement upon the terms and for the period set forth in each respective Section.

11.21 Rights of Lenders. City is aware that Developer may obtain financing or refinancing for acquisition, development and/or construction of the real property and Minimum Improvements (and appurtenant Public Improvements) to be constructed on the Premises, in

whole or in part, from time to time, by one or more Third Parties (individually a "**Lender**", and collectively the "**Lenders**"). In the event of an Event of Default by Developer, City will provide Notice of such Event of Default, at the same time Notice is provided to Developer, to not more than two (2) of such Lenders as previously designated by Developer to receive such Notice (the "**Designated Lenders**") whose names and addresses were provided by written Notice to City in accordance with Section 11.5. City will give Developer copies of any such Notice provided to such Designated Lenders and, unless Developer notifies City that the Designated Lenders names or addresses are incorrect (and provides City with the correct information) within three (3) business days after Developer receives its copies of such Notice from City, City will be deemed to have given such Notice to the Designated Lenders even if their names or addresses are incorrect. Developer may provide notices to other Lenders. If a Lender is permitted, under the terms of its non-disturbance agreement with City to cure the Event of Default and/or to assume Developer's position with respect to this Agreement, City agrees to recognize such rights of the Lender and to otherwise permit the Lender to assume all of the rights and obligations of Developer under this Agreement. City will, at any time upon reasonable request by Developer, provide to any Lender an estoppel certificate or other document evidencing that (i) this Agreement is in full force and effect and (ii) no Event of Default by Developer exists hereunder (or, if appropriate, specifying the nature and duration of any existing Event of Default). Upon request by a Lender, City will enter into a separate non-disturbance agreement with such Lender, in the form attached to this Agreement as Exhibit R, or in such other form requested by Lender that is acceptable to City in its sole discretion.

11.22 Nonliability of City Officials, Etc., and of Employees, Members and Partners, Etc. of Developer. No City Council member, official, representative, agent, attorney or employee of City will be personally liable to any of the other Parties hereto, or to any successor in interest to any of the other Parties, in the event of any Default or breach by City or for any amount which may become due to any of the other Parties or their successors, or with respect to any obligation of City under the terms of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the liability of Developer under this Agreement will be limited solely to the assets of Developer and will not extend to or be enforceable against: (i) the individual assets of any of the individuals or entities who are shareholders, members, managers constituent partners, officers or directors of the general partners or members of Developer; (ii) the shareholders, members or managers or constituent partners of Developer; or (iii) officers of Developer.

11.23 Conflict of Interest Statute. This Agreement is subject to, and may be terminated by City in accordance with, the provisions of A.R.S. §38-511.

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

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

CITY

CITY OF MESA, ARIZONA, an Arizona municipal corporation

By: _____
Its: _____

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

APPROVAL OF SECTION 5.6:

By: _____
City Engineer

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this _____ day of November, 2017, by _____ the _____ of the City of Mesa, Arizona, an Arizona municipal corporation, who acknowledged that he/she signed the foregoing instrument on behalf of City.

_____
Notary Public

My commission expires:
_____

DEVELOPER

3W MANAGEMENT, LLC, an Arizona limited liability company

By: _____
Its: _____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this _____ day of November, 2017, by _____, the _____ of 3W Management, LLC, an Arizona limited liability company, who acknowledged that he/she signed the foregoing instrument on behalf of Developer.

_____
Notary Public

My commission expires:
_____

EXHIBIT A-1
TO DEVELOPMENT AGREEMENT

LEGAL DESCRIPTION OF POMEROY PARCEL

EXHIBIT A-1 - LEGAL DESCRIPTION OF POMEROY PARCEL

Wood, Patel & Associates, Inc.
(602) 335-8500
www.woodpatel.com

PARCEL DESCRIPTION
The Grid
Parcel 2 Lease

A portion of that certain parcel of land described in Docket 14814, page 0174, Maricopa County Records (M.C.R.), lying within Section 22, Township 1 North, Range 5 East of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the intersection of Pomeroy Street (north) and Pomeroy Street (east), a brass cap in handhole, from which the intersection of Pomeroy Street (west) and Pomeroy Street (south), a brass cap in handhole, bears South 89°48'22" East (basis of bearing), a distance of 240.98 feet;
THENCE South 00°11'38" West, a distance of 2.92 feet, to a line parallel with and 2.92 feet south of the east/west monument line of said Pomeroy Street;
THENCE along said parallel line, North 89°48'22" West, a distance of 6.50 feet, to a line parallel with and 6.50 feet west of the north/south monument line of said Pomeroy Street;
THENCE leaving said east/west parallel line, along said north/south parallel line, South 00°11'21" West, a distance of 39.58 feet, to the south right-of-way line of said Pomeroy Street and the **POINT OF BEGINNING**;
THENCE along said south right-of-way line, South 89°48'22" East, a distance of 223.02 feet, to the east line of said certain parcel of land and an angle point in the right-of-way line of said Pomeroy Street;
THENCE leaving said south right-of-way line, along said east line and the west right-of-way of said Pomeroy Street, South 00°07'45" West, a distance of 225.00 feet;
THENCE leaving said east line and said west right-of-way line, North 89°48'22" West, a distance of 48.79 feet;
THENCE North 00°00'00" East, a distance of 20.76 feet;
THENCE South 89°47'56" East, a distance of 29.22 feet;
THENCE North 00°11'23" East, a distance of 163.63 feet;
THENCE North 89°44'03" West, a distance of 19.62 feet;
THENCE North 00°07'41" West, a distance of 19.26 feet;
THENCE North 89°47'12" West, a distance of 321.93 feet;
THENCE South 00°20'17" West, a distance of 19.32 feet;
THENCE North 89°42'26" West, a distance of 19.76 feet;
THENCE South 00°11'39" West, a distance of 154.05 feet;
THENCE North 90°00'00" West, a distance of 1.69 feet;
THENCE South 00°00'00" East, a distance of 19.29 feet;
THENCE North 90°00'00" East, a distance of 18.67 feet;
THENCE South 00°11'38" West, a distance of 11.20 feet;
THENCE North 89°48'22" West, a distance of 35.92 feet, to the west line of said certain parcel of land;
THENCE along said west line, North 00°07'45" East, a distance of 225.00 feet;

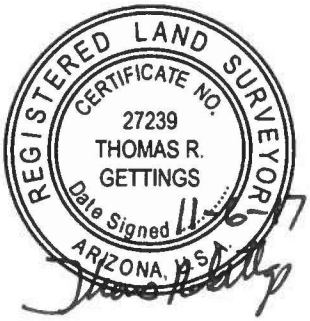
THENCE leaving said west line, South 89°48'22" East, a distance of 176.98 feet, to the **POINT OF BEGINNING**.

Containing 17,885 square feet or 0.4106 acres, more or less

Subject to existing right-of-way and easements.

This parcel description was prepared without the benefit of survey field work and is based on the client provided unrecorded ALTA Survey of 34 S. Pomeroy Street, prepared by Alliance Land Surveying LLC, dated April 26, 2017, job number 170416, and other client provided information. Any monumentation noted in this parcel description is based on said ALTA Survey.

Y:\WP\Parcel Descriptions\2017\174663 The Grid Parcel 2 Lease L04 11-06-17.docx



EXPIRES 06-30-20

EXHIBIT A-1 - LEGAL DESCRIPTION OF POMEROY PARCEL

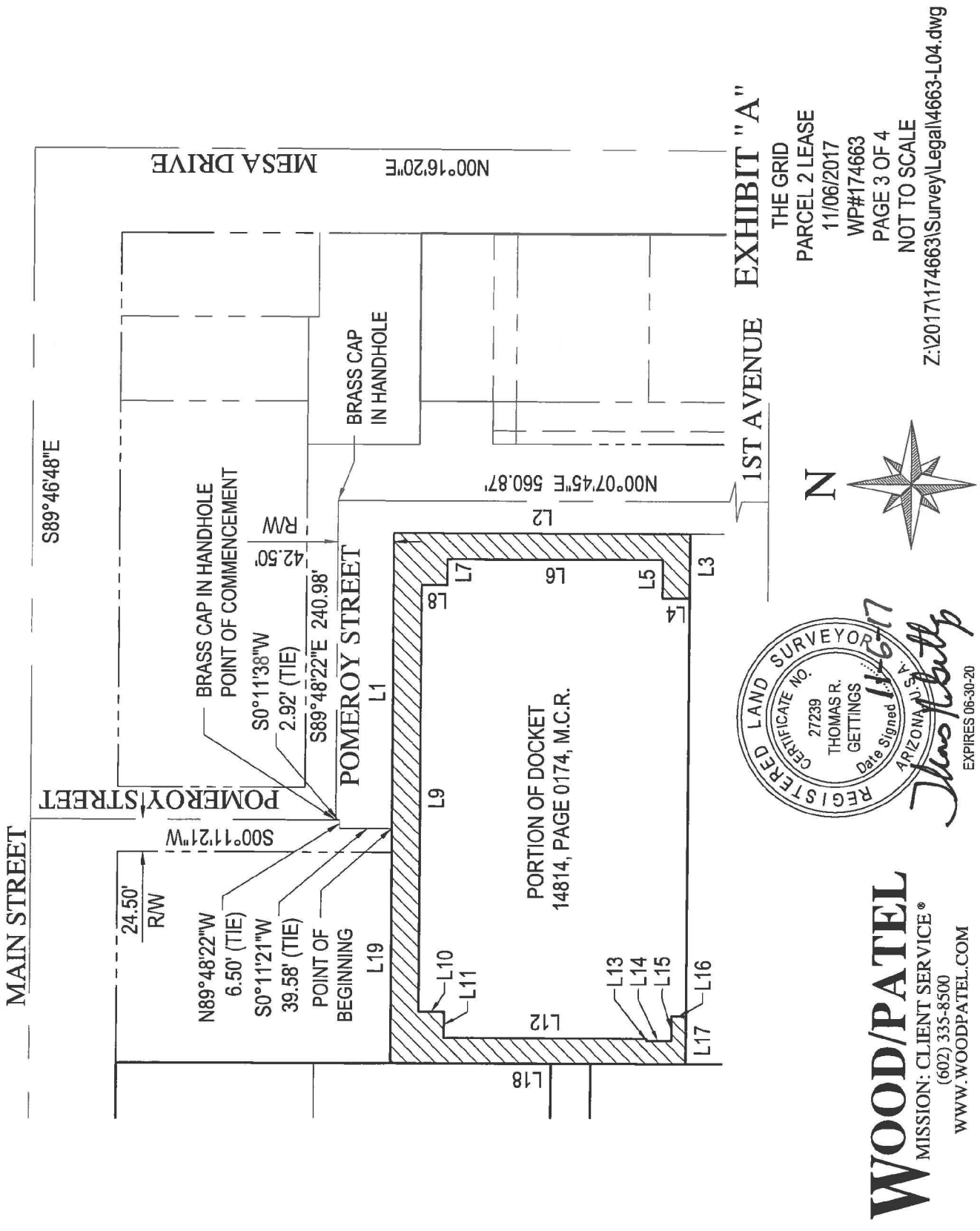


EXHIBIT A-1 - LEGAL DESCRIPTION OF POMEROY PARCEL

LINE TABLE		
LINE	BEARING	DISTANCE
L1	S89°48'22"E	223.02'
L2	S00°07'45"W	225.00'
L3	N89°48'22"W	48.79'
L4	N00°00'00"E	20.76'
L5	S89°47'56"E	29.22'
L6	N00°11'23"E	163.63'
L7	N89°44'03"W	19.62'
L8	N00°07'41"W	19.26'
L9	N89°47'12"W	321.93'
L10	S00°20'17"W	19.32'

LINE TABLE		
LINE	BEARING	DISTANCE
L11	N89°42'26"W	19.76'
L12	S00°11'39"W	154.05'
L13	N90°00'00"W	1.69'
L14	S00°00'00"E	19.29'
L15	N90°00'00"E	18.67'
L16	S00°11'38"W	11.20'
L17	N89°48'22"W	35.92'
L18	N00°07'45"E	225.00'
L19	S89°48'22"E	176.98'

WOOD/PATEL
MISSION: CLIENT SERVICE®
(602) 335-8500
WWW.WOODPATEL.COM

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
27239
THOMAS R.
GETTINGS
Date Signed 11-6-17
ARIZONA, U.S.A.
EXPIRES 06-30-20

N

EXHIBIT "A"

THE GRID
PARCEL 2 LEASE
11/06/2017
WP#174663
PAGE 4 OF 4
NOT TO SCALE
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EXHIBIT A-2
TO DEVELOPMENT AGREEMENT

LEGAL DESCRIPTION OF ROW

EXHIBIT A-2 - LEGAL DESCRIPTION OF ROW

Wood, Patel & Associates, Inc.
(602) 335-8500
www.woodpatel.com

Revised October 31, 2017
October 27, 2017
WP# 174663

See Exhibit "A"

PARCEL DESCRIPTION
The Grid
Right-of-Way Abandonment

A parcel of land lying within Section 22, Township 1 North, Range 5 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

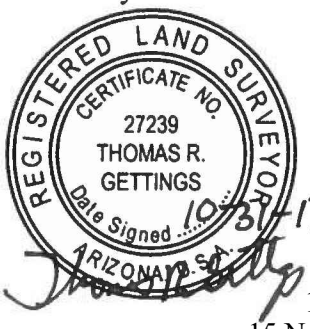
COMMENCING at the intersection of Pomeroy Street (north) and Pomeroy Street (east), a brass cap in handhole, from which the intersection of Pomeroy Street (west) and Pomeroy Street (south), a brass cap in handhole, bears South 89°48'22" East (basis of bearing), a distance of 240.98 feet;
THENCE South 00°11'38" West, a distance of 2.92 feet, to a line parallel with and 2.92 feet south of the east/west monument line of said Pomeroy Street;
THENCE along said parallel line, North 89°48'22" West, a distance of 6.50 feet, to a line parallel with and 6.50 feet west of the north/south monument line of said Pomeroy Street, and the **POINT OF BEGINNING;**
THENCE leaving said east/west parallel line, along said north/south parallel line, South 00°11'21" West, a distance of 39.58 feet, to the south right-of-way line of said Pomeroy Street;
THENCE leaving said north/south parallel line, along said south right-of-way line, North 89°48'22" West, a distance of 18.00 feet, to an angle point in the right-of-way line of said Pomeroy Street;
THENCE leaving said south right-of-way line, along the west right-of-way line of said Pomeroy Street, North 00°11'21" East, a distance of 208.09 feet, to the south right-of-way line of Main Street;
THENCE leaving said west right-of-way line, along the easterly prolongation of said south right-of-way line, South 89°46'48" East, a distance of 18.00 feet, to said north/south parallel line;
THENCE along said north/south parallel line, South 00°11'21" West, a distance of 168.51 feet, to the **POINT OF BEGINNING.**

Containing 3,746 square feet or 0.0860 acres, more or less

Subject to existing right-of-way and easements.

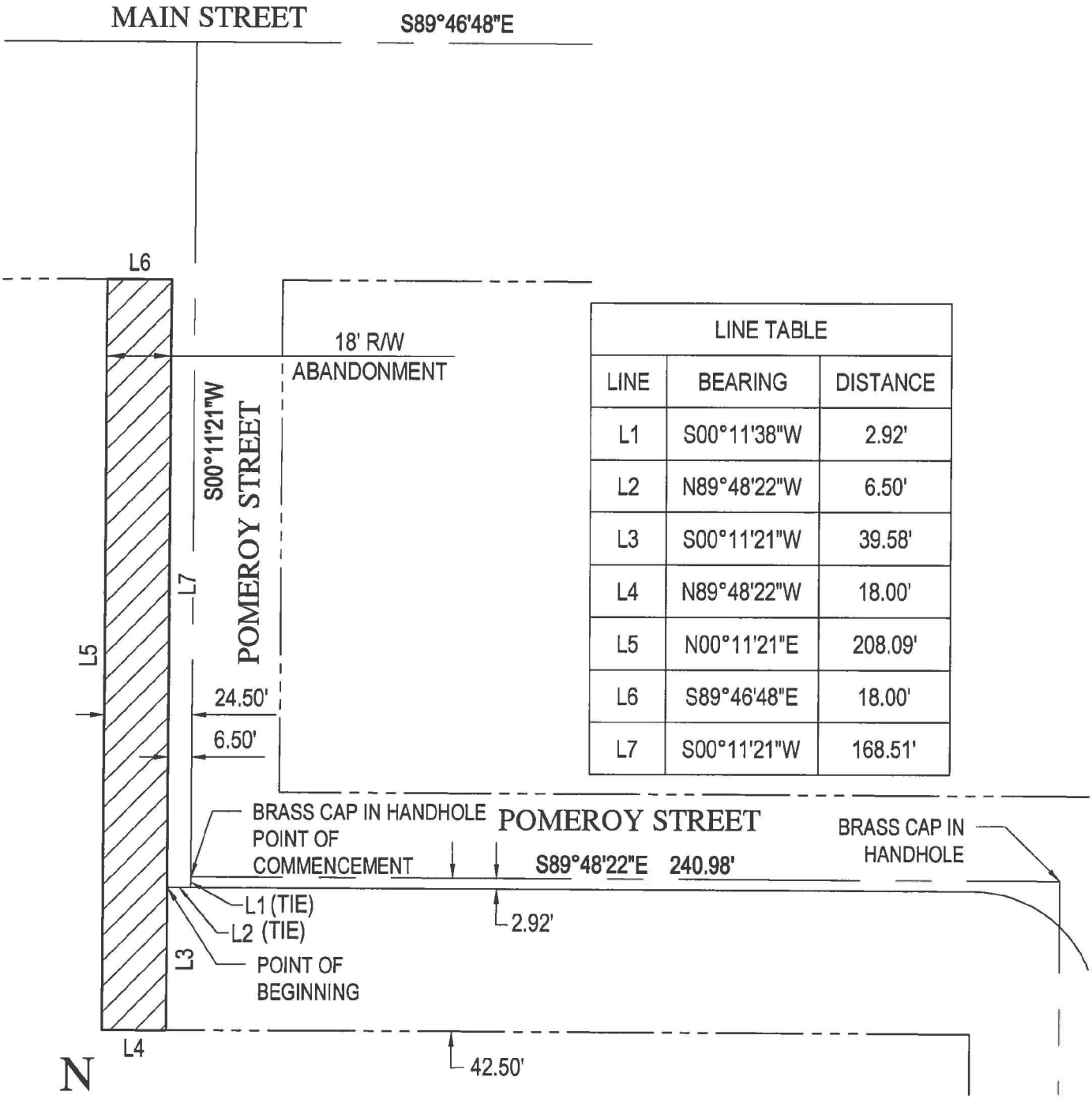
This parcel description was prepared without the benefit of survey field work and is based on the client provided unrecorded ALTA Survey of 34 S. Pomeroy Street, prepared by Alliance Land Surveying LLC, dated April 26, 2017, job number 170416, and other client provided information. Any monumentation noted in this parcel description is based on said ALTA Survey.

Y:\WP\Parcel Descriptions\2017\174663 The Grid Right-of-Way Abandonment L01R01 10-31-17.docx



EXPIRES 06-30-20

EXHIBIT A-2 - LEGAL DESCRIPTION OF ROW



LINE TABLE		
LINE	BEARING	DISTANCE
L1	S00°11'38"W	2.92'
L2	N89°48'22"W	6.50'
L3	S00°11'21"W	39.58'
L4	N89°48'22"W	18.00'
L5	N00°11'21"E	208.09'
L6	S89°46'48"E	18.00'
L7	S00°11'21"W	168.51'

EXHIBIT "A"

THE GRID
RIGHT-OF-WAY ABANDONMENT
REVISED 10/31/2017
WP# 174663
PAGE 2 OF 2
NOT TO SCALE
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(602) 335-8500
WWW.WOODPATEL.COM

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
27239
THOMAS R.
GETTINGS
Date Signed 10-31-17
ARIZONA U.S.A.

EXPIRES 06-30-20

EXHIBIT A-2 - LEGAL DESCRIPTION OF ROW

Wood, Patel & Associates, Inc.
(602) 335-8500
www.woodpatel.com

PARCEL DESCRIPTION
The Grid
Right-of-Way Abandonment

A parcel of land lying within Section 22, Township 1 North, Range 5 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the intersection of Pomeroy Street (north) and Pomeroy Street (east), a brass cap in handhole, from which the intersection of Pomeroy Street (west) and Pomeroy Street (south), a brass cap in handhole, bears South 89°48'22" East (basis of bearing), a distance of 240.98 feet;
THENCE South 00°11'38" West, a distance of 2.92 feet, to a line parallel with and 2.92 feet south of the east/west monument line of said Pomeroy Street, and the **POINT OF BEGINNING**;
THENCE along said parallel line, South 89°48'22" East, a distance of 217.02 feet, to the beginning of a curve;
THENCE leaving said parallel line, southeasterly along said curve to the right, having a radius of 34.50 feet, concave southwesterly, through a central angle of 89°56'06", a distance of 54.15 feet, to a line parallel with and 10.50 feet east of the north/south monument line of said Pomeroy Street, and the curves end;
THENCE along said parallel line, South 00°07'45" West, a distance of 200.15 feet, to the beginning of a curve;
THENCE leaving said parallel line, southerly along said curve to the right, having a radius of 34.50 feet, concave westerly, through a central angle of 21°21'06", a distance of 12.86 feet, to the curves end;
THENCE South 21°28'51" West, a distance of 18.67 feet;
THENCE North 89°48'22" West, a distance of 25.83 feet, to the west right-of-way line of said Pomeroy Street;
THENCE along said west right-of-way line, North 00°07'45" East, a distance of 225.00 feet, to an angle point in the right-of-way line of said Pomeroy Street;
THENCE leaving said west right-of-way line, along the south right-of-way line of said Pomeroy Street, North 89°48'22" West, a distance of 223.02 feet, to a line parallel with and 6.50 feet west of the north/south monument line of said Pomeroy Street;
THENCE leaving said south right-of-way line, along said parallel line, North 00°11'21" East, a distance of 39.58 feet, to a line parallel with and 2.92 feet south of the east/west monument line of said Pomeroy Street;

Parcel Description
The Grid
Right-of-Way Abandonment

October 27, 2017
WP# 174663

THENCE leaving said north/south parallel line, along said east/west parallel line, South 89°48'22" East, a distance of 6.50 feet, to the **POINT OF BEGINNING**.

Containing 17,721 square feet or 0.4068 acres, more or less

Subject to existing right-of-way and easements.

This parcel description was prepared without the benefit of survey field work and is based on the client provided unrecorded ALTA Survey of 34 S. Pomeroy Street, prepared by Alliance Land Surveying LLC, dated April 26, 2017, job number 170416, and other client provided information. Any monumentation noted in this parcel description is based on said ALTA Survey.

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EXPIRES 06-30-20

EXHIBIT A-2 - LEGAL DESCRIPTION OF ROW

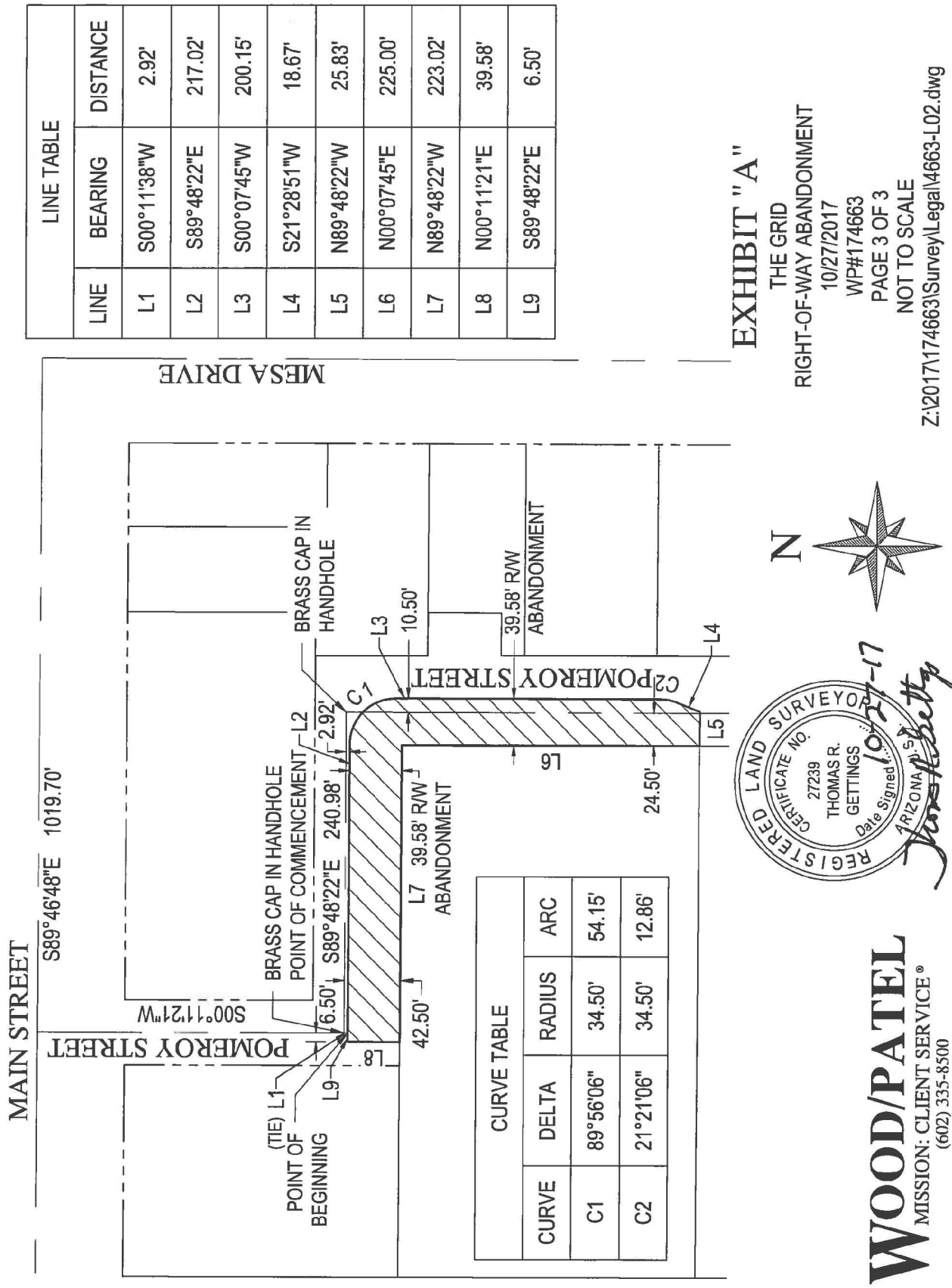

EXHIBIT A-3
TO DEVELOPMENT AGREEMENT

LEGAL DESCRIPTION OF PARCEL OVER WHICH AIR RIGHTS ARE LOCATED

EXHIBIT A-3 - LEGAL DESCRIPTION OF PARCEL OVER WHICH AIR RIGHTS ARE LOCATED

Wood, Patel & Associates, Inc.
(602) 335-8500
www.woodpatel.com

PARCEL DESCRIPTION
The Grid
Parcel 2 Air Space Lease

A portion of that certain parcel of land described in Docket 14814, page 0174, Maricopa County Records (M.C.R.), lying within Section 22, Township 1 North, Range 5 East of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the intersection of Pomeroy Street (north) and Pomeroy Street (east), a brass cap in handhole, from which the intersection of Pomeroy Street (west) and Pomeroy Street (south), a brass cap in handhole, bears South 89°48'22" East (basis of bearing), a distance of 240.98 feet;
THENCE South 00°11'38" West, a distance of 2.92 feet, to a line parallel with and 2.92 feet south of the east/west monument line of said Pomeroy Street;
THENCE along said parallel line, North 89°48'22" West, a distance of 6.50 feet, to a line parallel with and 6.50 feet west of the north/south monument line of said Pomeroy Street;
THENCE leaving said east/west parallel line, along said north/south parallel line, South 00°11'21" West, a distance of 60.85 feet, to the **POINT OF BEGINNING**;
THENCE South 89°47'12" East, a distance of 183.90 feet;
THENCE South 00°07'41" East, a distance of 19.26 feet;
THENCE South 89°44'03" East, a distance of 19.62 feet;
THENCE South 00°11'23" West, a distance of 163.63 feet;
THENCE North 89°47'56" West, a distance of 29.22 feet;
THENCE South 00°00'00" East, a distance of 20.76 feet;
THENCE North 89°48'22" West, a distance of 315.29 feet;
THENCE North 00°11'38" East, a distance of 11.20 feet;
THENCE South 90°00'00" West, a distance of 18.67 feet;
THENCE North 00°00'00" East, a distance of 19.29 feet;
THENCE North 90°00'00" East, a distance of 1.69 feet;
THENCE North 00°11'39" East, a distance of 154.05 feet;
THENCE South 89°42'26" East, a distance of 19.76 feet;
THENCE North 00°20'17" East, a distance of 19.32 feet;

EXHIBIT A-3 - LEGAL DESCRIPTION OF PARCEL OVER WHICH AIR RIGHTS ARE LOCATED

THENCE South 89°47'12" East, a distance of 138.03 feet, to the **POINT OF BEGINNING**.

Containing 72,115 square feet or 1.6555 acres, more or less

Subject to existing right-of-way and easements.

This parcel description was prepared without the benefit of survey field work and is based on the client provided unrecorded ALTA Survey of 34 S. Pomeroy Street, prepared by Alliance Land Surveying LLC, dated April 26, 2017, job number 170416, and other client provided information. Any monumentation noted in this parcel description is based on said ALTA Survey.

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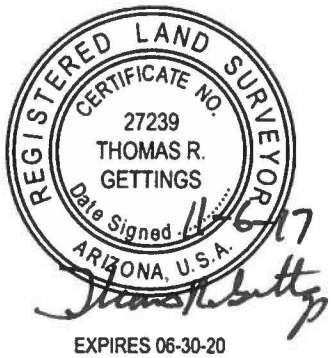

EXPIRES 06-30-20

EXHIBIT A-3 - LEGAL DESCRIPTION OF PARCEL OVER WHICH AIR RIGHTS ARE LOCATED

LINE TABLE		
LINE	BEARING	DISTANCE
L1	S89°47'12"E	183.90'
L2	S00°07'41"E	19.26'
L3	S89°44'03"E	19.62'
L4	S00°11'23"W	163.63'
L5	N89°47'56"W	29.22'
L6	S00°00'00"E	20.76'
L7	N89°48'22"W	315.29'
L8	N00°11'38"E	11.20'
L9	S90°00'00"W	18.67'
L10	N00°00'00"E	19.29'
L11	N90°00'00"E	1.69'
L12	N00°11'39"E	154.05'
L13	S89°42'26"E	19.76'
L14	N00°20'17"E	19.32'
L15	S89°47'12"E	138.03'

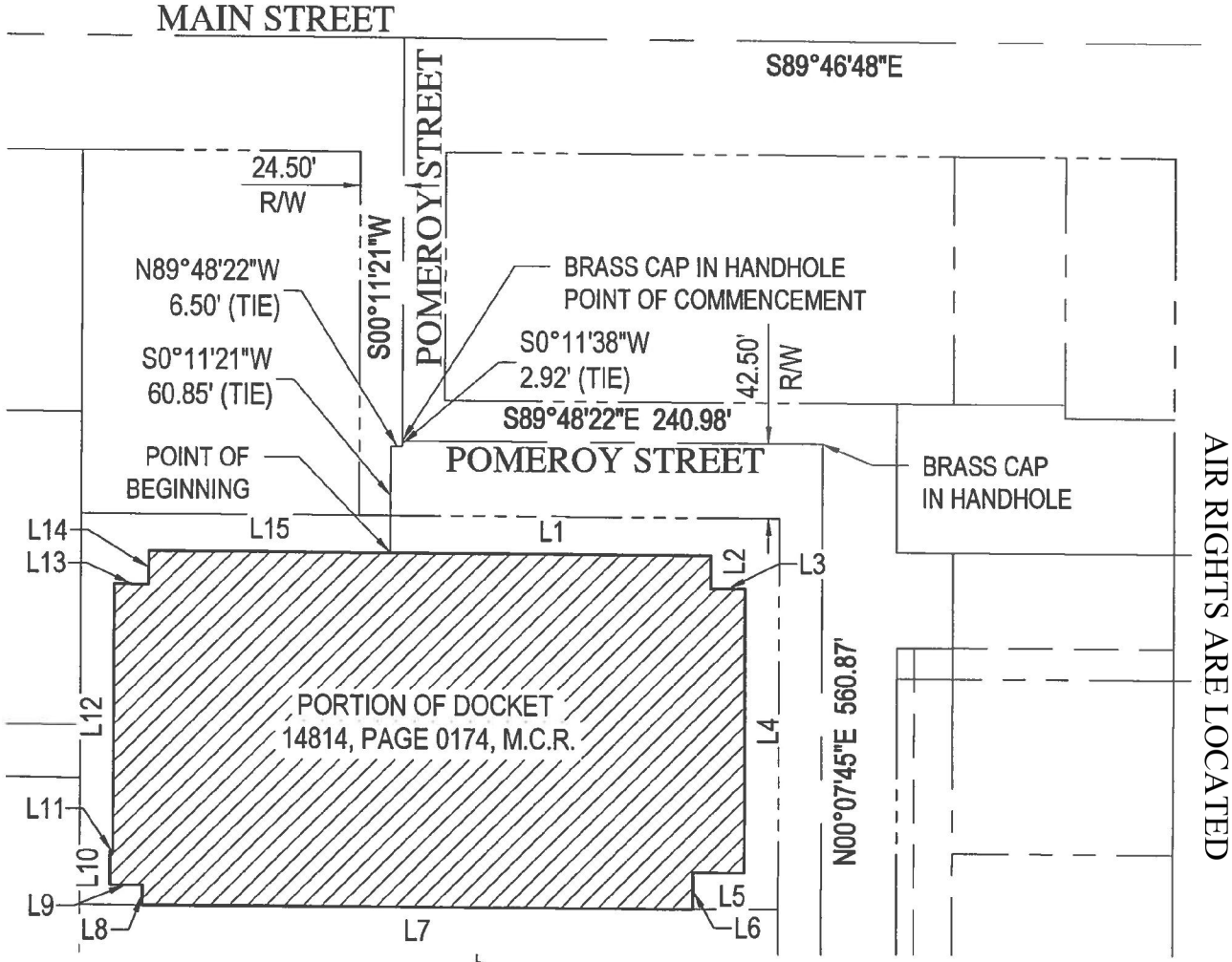

EXHIBIT "A"

THE GRID
PARCEL 2 AIR SPACE LEASE
11/06/2017
WP#174663
PAGE 3 OF 3
NOT TO SCALE
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REGISTERED LAND SURVEYOR
CERTIFICATE NO.
27239
THOMAS R.
GETTINGS
Date Signed 11-6-17
ARIZONA, U.S.A.

EXPIRES 06-30-20

WOOD/PATEL
MISSION: CLIENT SERVICE ®
(602) 335-8500
WWW.WOODPATEL.COM

EXHIBIT A-4
TO DEVELOPMENT AGREEMENT

LEGAL DESCRIPTION OF LAND

EXHIBIT A-4 - LEGAL DESCRIPTION OF LAND

Wood, Patel & Associates, Inc.
(602) 335-8500
www.woodpatel.com

PARCEL DESCRIPTION
The Grid
Parcel 1

That certain parcel of land described in Document 2012-0629802, Maricopa County Records (M.C.R.), lying within Section 22, Township 1 North, Range 5 East of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the intersection of Pomeroy Street (north) and Pomeroy Street (east), a brass cap in handhole, from which the intersection of Pomeroy Street (west) and Pomeroy Street (south), a brass cap in handhole, bears South 89°48'22" East (basis of bearing), a distance of 240.98 feet;
THENCE South 00°11'38" West, a distance of 2.92 feet, to a line parallel with and 2.92 feet south of the east/west monument line of said Pomeroy Street;
THENCE along said parallel line, North 89°48'22" West, a distance of 6.50 feet, to a line parallel with and 6.50 feet west of the north/south monument line of said Pomeroy Street, and the **POINT OF BEGINNING**;
THENCE leaving said east/west parallel line, along said north/south parallel line, South 00°11'21" West, a distance of 39.58 feet, to the south right-of-way line of said Pomeroy Street;
THENCE leaving said north/south parallel line, along said south right-of-way line, North 89°48'22" West, a distance of 18.00 feet, to an angle point in the right-of-way line of said Pomeroy Street, also being the southeast corner of said certain parcel of land, and the **POINT OF BEGINNING**;
THENCE leaving said south right-of-way line, along the south line of said certain parcel of land, North 89°48'22" West, a distance of 158.98 feet, to the southwest corner of said certain parcel of land;
THENCE leaving said south line, along the west line of said certain parcel of land, North 00°07'45" East, a distance of 208.16 feet, to the northwest corner of said certain parcel of land, also being the south right-of-way line of Main Street;
THENCE leaving said west line, along the north line of said certain parcel of land and said south right-of-way line, South 89°46'48" East, a distance of 159.20 feet, to the northeast corner of said certain parcel of land;

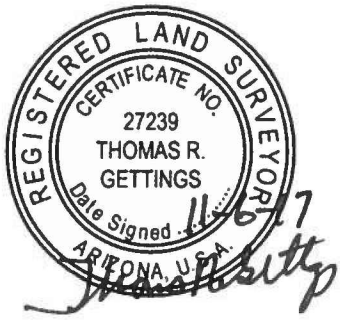
THENCE leaving said north line and said right-of-way line, along the east line of said certain parcel of land and the west right-of-way line of Pomeroy Street, South 00°11'21" West, a distance of 208.09 feet to the **POINT OF BEGINNING.**

Containing 33,110 square feet or 0.7601 acres, more or less

Subject to existing right-of-way and easements.

This parcel description was prepared without the benefit of survey field work and is based on the client provided unrecorded ALTA Survey of 34 S. Pomeroy Street, prepared by Alliance Land Surveying LLC, dated April 26, 2017, job number 170416, and other client provided information. Any monumentation noted in this parcel description is based on said ALTA Survey.

Y:\WP\Parcel Descriptions\2017\174663 The Grid Parcel 1 L03 11-06-17.docx



EXPIRES 06-30-20

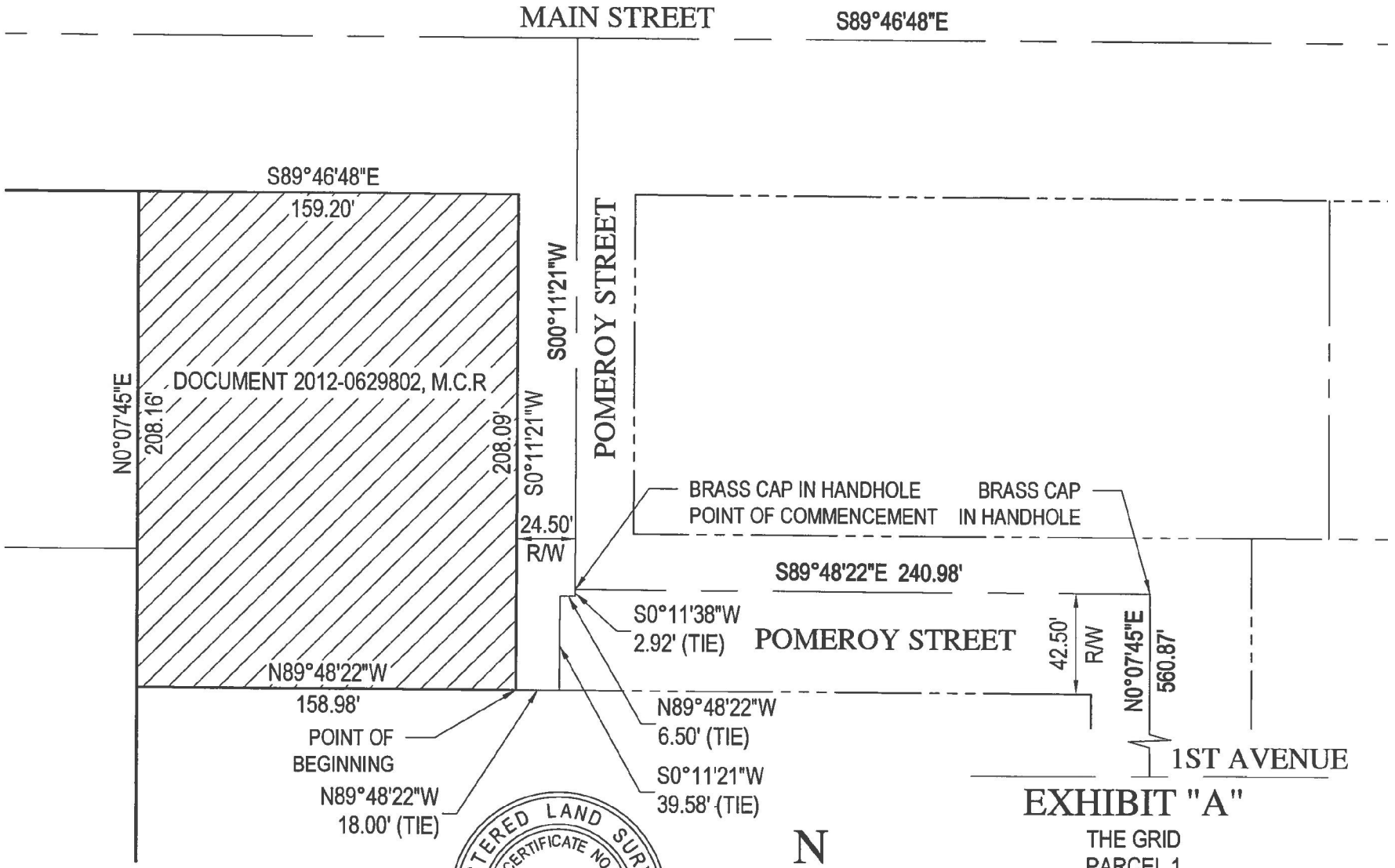


EXHIBIT A-4 - LEGAL DESCRIPTION OF LAND

EXHIBIT "A"

THE GRID
PARCEL 1
11/06/2017
WP#174663
PAGE 3 OF 3
NOT TO SCALE
Z:\2017\174663\Survey\Legal\4663-L03.dwg

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
27239
THOMAS R.
GETTINGS
Date Signed 11-6-17
ARIZONA, U.S.A.

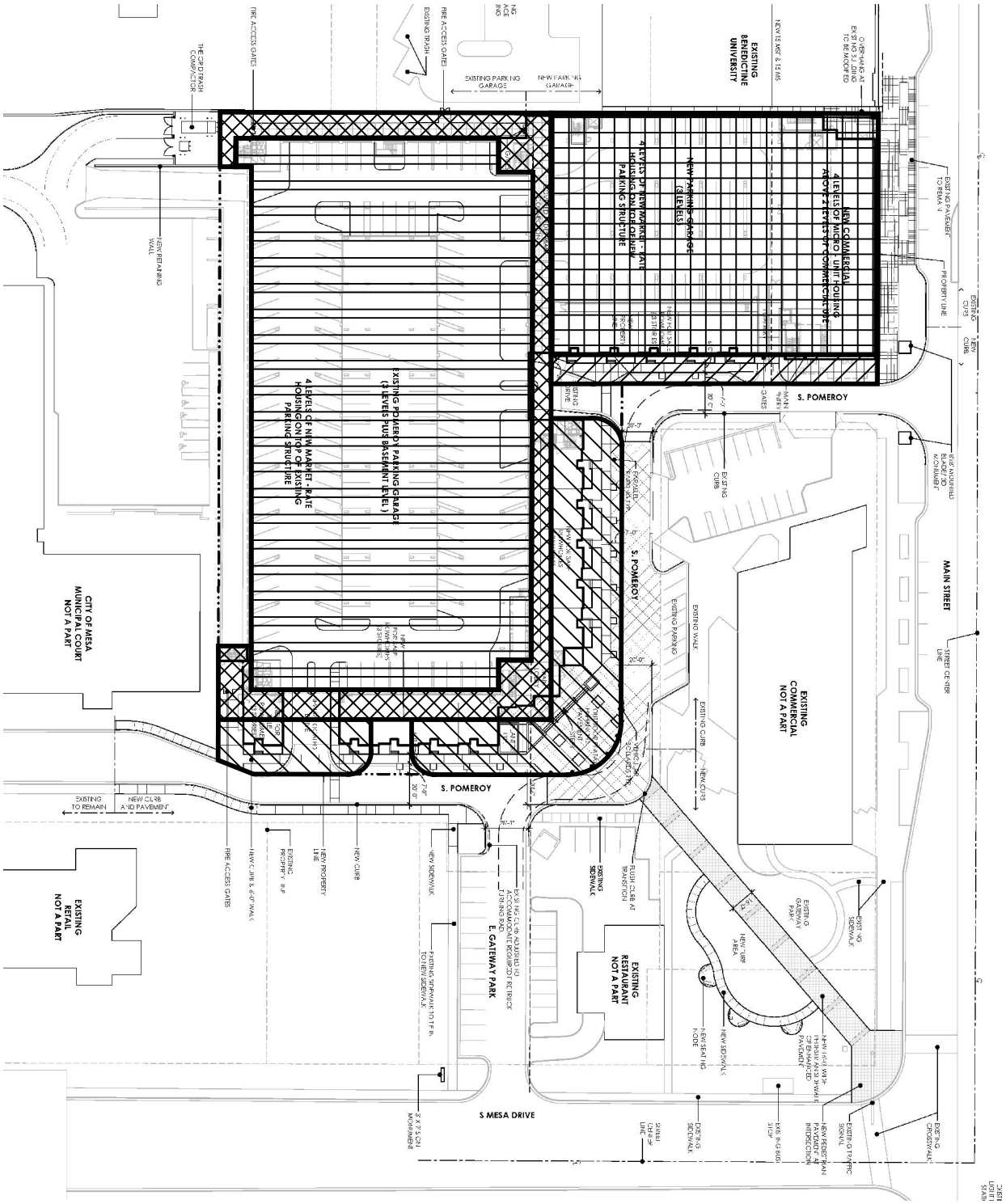
EXPIRES 06-30-20

WOOD/PATEL
MISSION: CLIENT SERVICE ®
(602) 335-8500
WWW.WOODPATEL.COM

EXHIBIT A-5
TO DEVELOPMENT AGREEMENT

GENERAL DEPICTION OF PREMISES

EXHIBIT A-5 - GENERAL DEPICTION OF PREMISES



Land

ROW

Pomeroy Parcel

Parcel Over Which Air Rights Are Located

ROW

15 Nov 17

EXHIBIT B
TO DEVELOPMENT AGREEMENT

CUSTOMIZED REVIEW SCHEDULE

Exhibit B

Customized Review Schedule

The City and the Developer have agreed to this Customized Review Schedule. The implementation of the Customize Review Schedule will follow periodic Project Review discussions between the City's review staff and the Development/Project Team during the preparation of the Project Plans and Documents.

Project Review Meetings as follows:

1. Initial Code assumption discussion
2. 50% Construction Document Meeting
4. Plan Review Comment Review Session

Submittal Process:

Submittal of plans for The GRID will be through the DIMES system. As requested, City staff will assist developer in plan submittal. Plans for the project are expected to be submitted in three packages. City and Developer will both provide a single point of contact during the entire plan review process.

First Permit Package:

The first permit package, with an "Expedite Approval Letter" from the Building Official, will be submitted to the Development Services Department for construction plan review on or before April 1, 2018 and generally includes grading, drainage, and utility work.

First Review:

From the Date of the First Submittal Acceptance, the City will return construction plan review comments to the Developer within ten (10) City of Mesa business days.

> *Following the completion of the First Review, should there be only be minor unresolved plan review comments that need to be addressed prior to the issuance of building permit(s), the Building Official has the option to extend the First Review period by an additional five (5) business days to allow the Development/Project Team to address such minor comments without a Second Review.*

Second Review:

From the date of the Second Submittal Acceptance, the City will return construction plan review comments to the Developer within five (5) City of Mesa business days.

> *Following the completion of the Second Review, should there be unresolved plan review comments that need to be addressed prior to the issuance of building permit(s), the City point of contact will call a meeting within 24 hours of the completion of the Second Review to discuss any such unresolved plan review comments. If there remain unresolved plan review comments that require re-submittal of the permit package, the Building Official has the option to extend the Second Review period by an additional five (5) business days.*

Second Permit Package:

The second permit package, with an "Expedite Approval Letter" from the Building Official, will be submitted to the Development Services Department for construction plan review on or before June 1,

2018 and generally includes concrete work, interior improvements to Pomeroy garage, and podium for Main Street Building.

First Review:
From the Date of the First Submittal Acceptance, the City will return construction plan review comments to the Developer within ten (10) City of Mesa business days.

> *Following the completion of the First Review, should there be only be minor unresolved plan review comments that need to be addressed prior to the issuance of building permit(s), the Building Official has the option to extend the First Review period by an additional five (5) business days to allow the Development/Project Team to address such minor comments without a Second Review.*

Second Review:
From the date of the Second Submittal Acceptance, the City will return construction plan review comments to the Developer within five (5) City of Mesa business days.

> *Following the completion of the Second Review, should there be unresolved plan review comments that need to be addressed prior to the issuance of building permit(s), the City point of contact will call a meeting within 24 hours of the completion of the Second Review to discuss any such unresolved plan review comments. If there remain unresolved plan review comments that require re-submittal of the permit package, the Building Official has the option to extend the Second Review period by an additional five (5) business days.*

Third Permit Package:
The third permit package, with an "Expedite Approval Letter" from the Building Official, will be submitted to the Development Services Department for construction plan review on or before July 1, 2018 and generally includes apartments above Pomeroy garage, rowhomes, and commercial and residential above the Main Street Building podium.

First Review:
From the Date of the First Submittal Acceptance, the City will return construction plan review comments to the Developer within ten (10) City of Mesa business days.

> *Following the completion of the First Review, should there be only be minor unresolved plan review comments that need to be addressed prior to the issuance of building permit(s), the Building Official has the option to extend the First Review period by an additional five (5) business days to allow the Development/Project Team to address such minor comments without a Second Review.*

Second Review:
From the date of the Second Submittal Acceptance, the City will return construction plan review comments to the Developer within five (5) City of Mesa business days.

> *Following the completion of the Second Review, should there be unresolved plan review comments that need to be addressed prior to the issuance of building permit(s), the City point of contact will call a meeting within 24 hours of the completion of the Second Review to discuss any such unresolved plan review comments. If there remain unresolved plan review comments that*

require re-submittal of the permit package, the Building Official has the option to extend the Second Review period by an additional five (5) business days.

The Plans:

The Developer provides the City assurance that the quality of the building plans, including the coordination of construction documents between the design disciplines, will warranty the timing of the Customized Review Schedule. The City, in its sole discretion, will not be responsible for compliance with the Customized Review Schedule if the plans do not represent a quality, 100 percent design and completeness submittal. Should issues with the quality and completeness of the plans arise, the City will notify the Developer prior to the end of the review period and will meet immediately to resolve the issues.

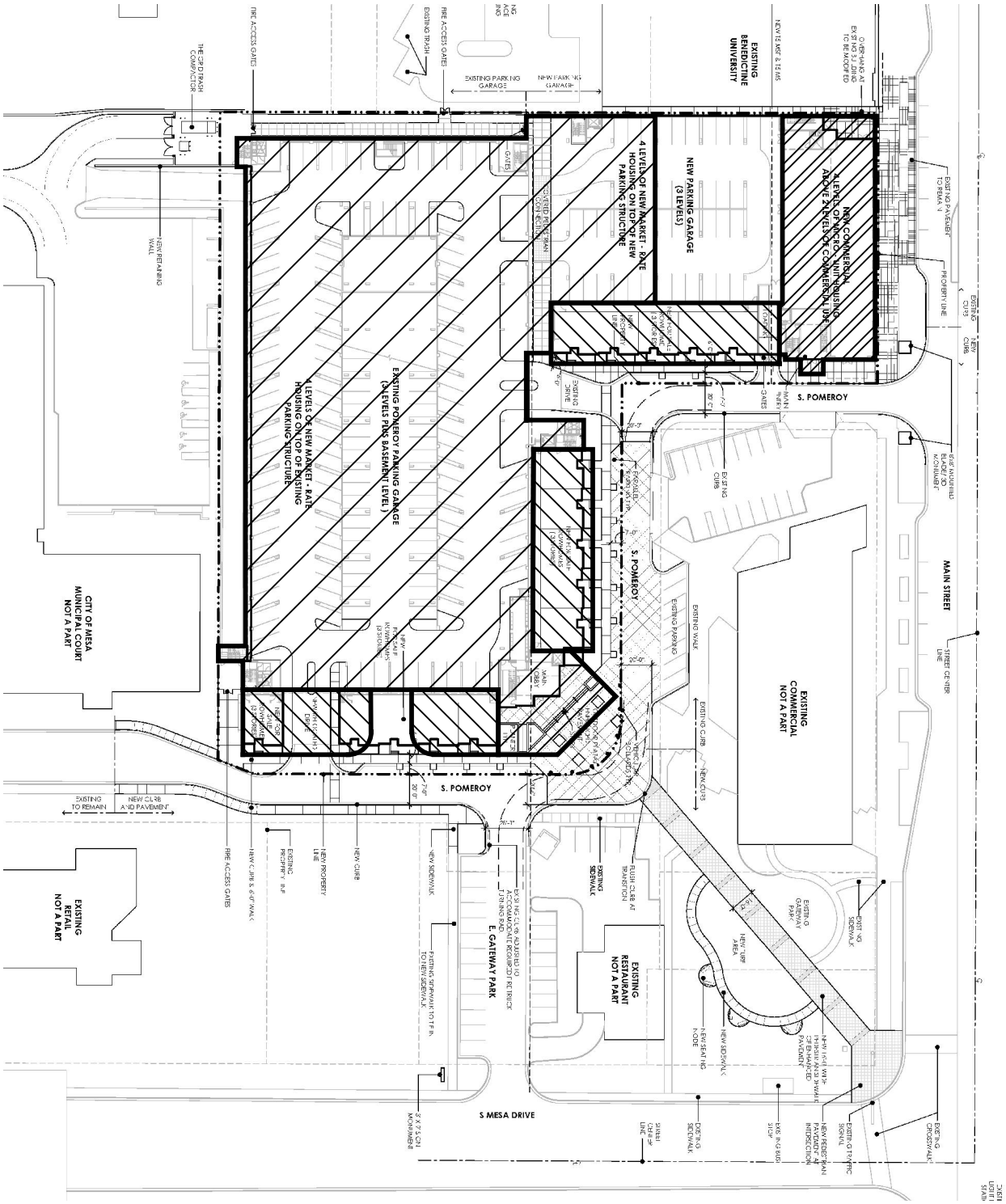
FEES:

Plan Review Fees will be charged to the Project, as shown below. Eighty-five (85) percent of the estimated plan review fees, for all three permit packages will be deposited with the City at the time of submittal of the first permit package. The City will place the estimated plan review fees in a liability account and will draw from that account as permits are submitted/issued. Should there be a discrepancy between the estimated and actual plan review fees, any over- or under-payments will be resolved with the issuance building permits for the third permit package.

EXHIBIT C-1
TO DEVELOPMENT AGREEMENT

RESIDENTIAL CONCEPT PLAN

EXHIBIT C-1 - RESIDENTIAL CONCEPT PLAN (MINIMUM IMPROVEMENTS)



Residential Project

Apartments

- Main Street Apartments
- Sky Apartments

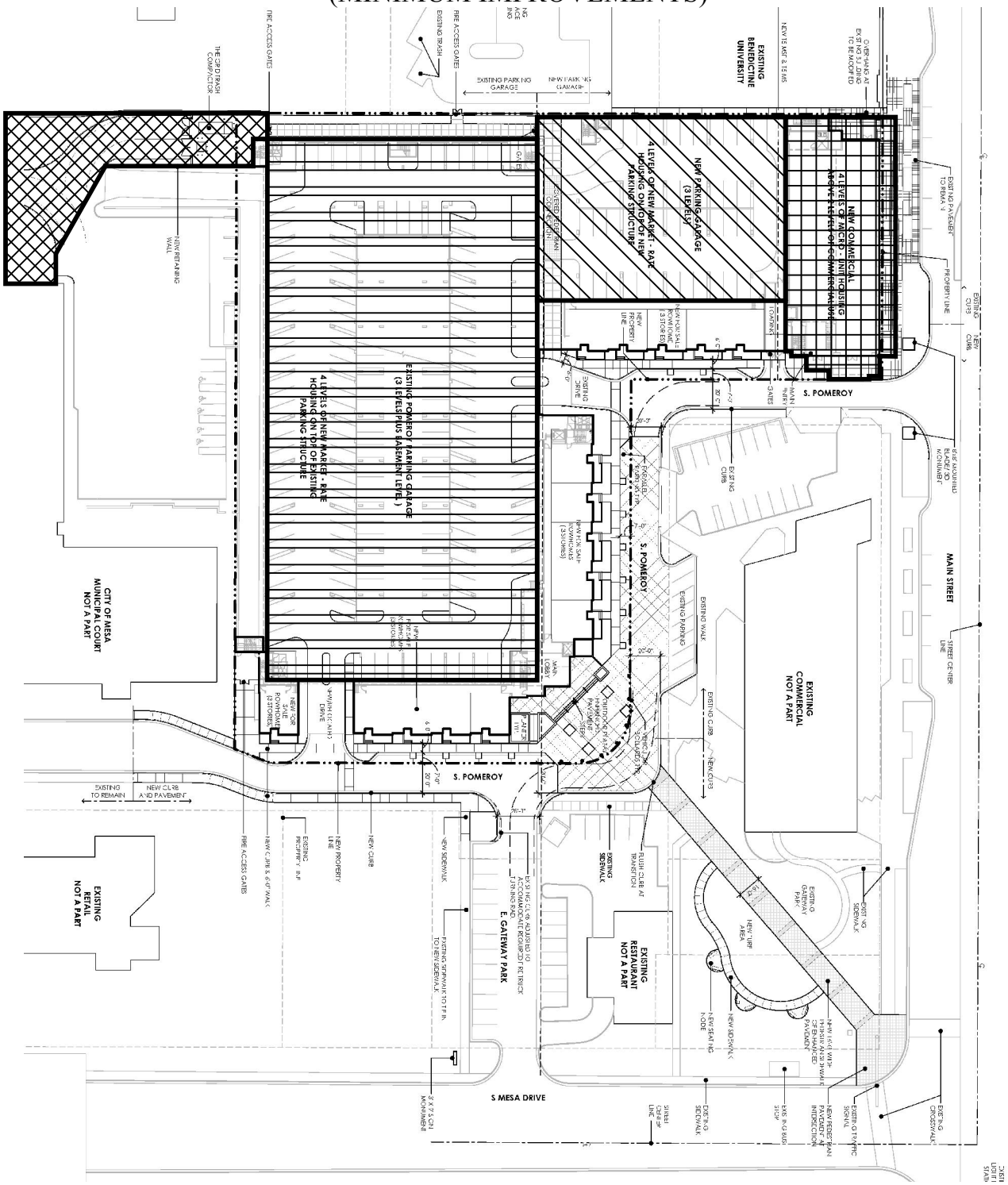
Row Homes

15 Nov 17

EXHIBIT C-2
TO DEVELOPMENT AGREEMENT

COMMERCIAL AND IMPROVEMENT CONCEPT PLAN

EXHIBIT C-2 - COMMERCIAL & IMPROVEMENT CONCEPT PLAN
(MINIMUM IMPROVEMENTS)



Commercial Project

Additional Structured Parking

Pomeroy Garage Structural Improvements. (See Exhibit E)

Sanitation Yard and Access Improvements

15 Nov 17

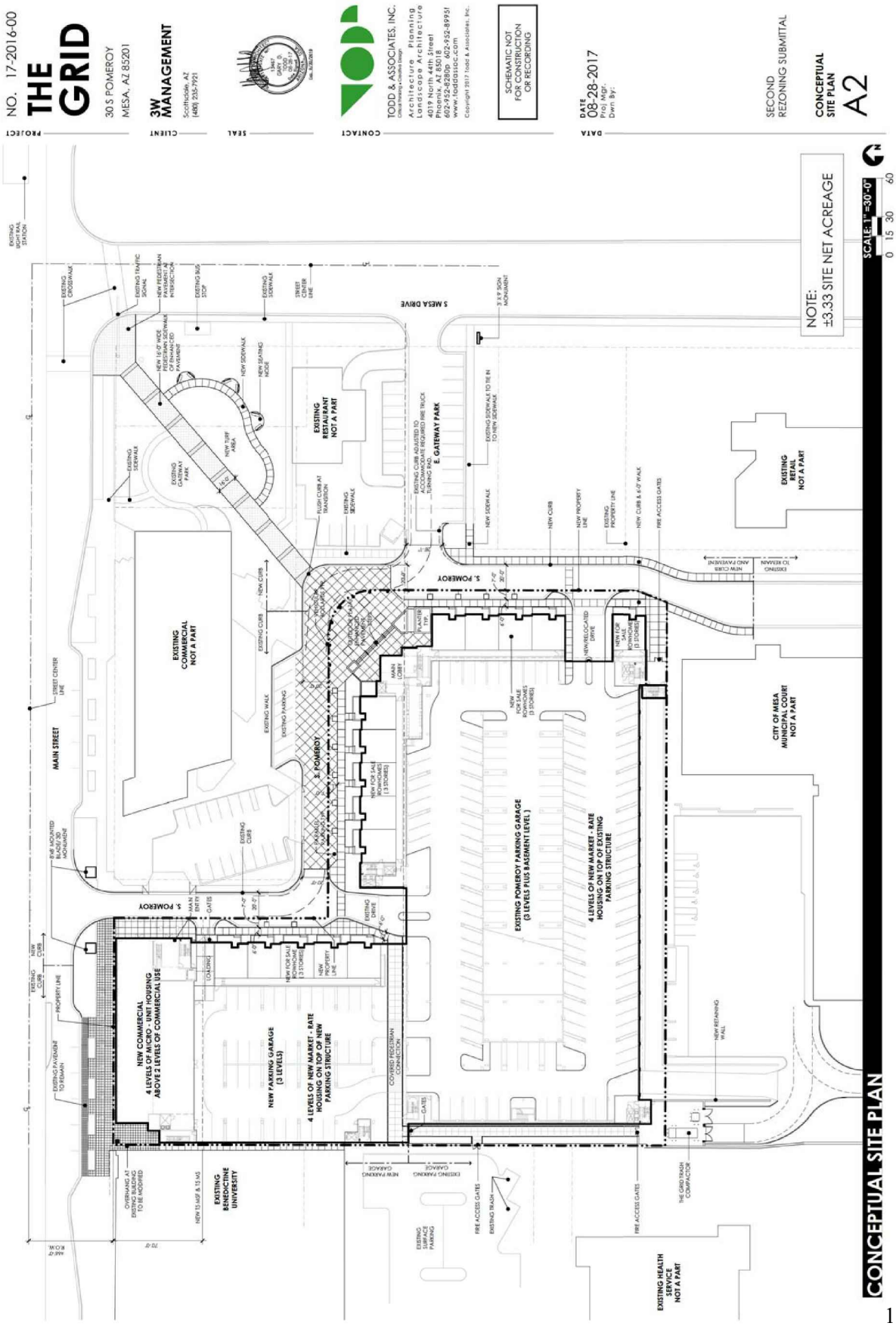
EXHIBIT D
TO DEVELOPMENT AGREEMENT

PROJECT SITE PLAN, ELEVATIONS, AND LANDSCAPING

EXHIBIT D - PROJECT SITE PLAN, ELEVATIONS AND LANDSCAPING

(On file with the City of Mesa, City Clerk's Office)

EXHIBIT D - PROJECT SITE PLAN, ELEVATIONS AND LANDSCAPING




NO. 17-2016-00
PROJECT
THE GRID
30 S POMEROY
MESA, AZ 85201
CLIENT
3W MANAGEMENT
Scottsdale, AZ
(480) 235-7921
SEAL
CONTACT
TODD & ASSOCIATES, INC.
Architecture Planning
Landscape Architecture
4019 North 44th Street
Phoenix, AZ 85018
602-952-8280p 602-952-8995f
www.toddassoc.com
Copyright 2017 Todd & Associates, Inc.
SCHEMATIC NOT FOR CONSTRUCTION OR RECORDING
DATE
08-28-2017
Proj Mgr:
Dwn By:
SECOND REZONING SUBMITTAL
BUILDING ELEVATION
A8
CONCEPTUAL NORTH ELEVATION - 1
SCALE: 1/16" = 1'-0"
0 8 16 32
STUCCO
METAL SHADE ELEMENT
MECHANICAL UNITS SCREENED BY PARAPET WALL
CONCEPTUAL SOUTH ELEVATION - 2
SCALE: 1/16" = 1'-0"
0 8 16 32
BRICK
STUCCO
METAL SHADE ELEMENT
MECHANICAL UNITS SCREENED BY PARAPET WALL
POOL
NEW GARAGE
RH-1
CONCEPTUAL EAST ELEVATION - 3
SCALE: 1/16" = 1'-0"
0 8 16 32
BRICK
STUCCO
MECHANICAL UNITS SCREENED BY PARAPET WALL
EXISTING GARAGE


NO. 17-2016-00
PROJECT
THE GRID
30 S POMEROY
MESA, AZ 85201
CLIENT
3W MANAGEMENT
Scottsdale, AZ
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Construction Administration
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SCHEMATIC NOT FOR CONSTRUCTION OR RECORDING
DATA
DATE 08-28-2017
Proj. Mgr.:
Dwn. By:
SECOND REZONING SUBMITTAL
BUILDING ELEVATION
A9
CONCEPTUAL EAST ELEVATION - 1
SCALE: 1/16" = 1'-0"
0 8 16 32
BRICK
MECHANICAL UNITS SCREENED BY PARAPET WALL
STUCCO
METAL RAILING
the GRID
CONCEPTUAL NORTH ELEVATION - 2
SCALE: 1/16" = 1'-0"
0 8 16 32
STUCCO
METAL RAILING
MECHANICAL UNITS SCREENED BY PARAPET WALL
NEW GARAGE
RH-1
the GRID


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PROJECT
THE GRID
30 S POMEROY
MESA, AZ 85201
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SCHEMATIC NOT FOR CONSTRUCTION OR RECORDING
DATA
DATE
08-28-2017
Proj Mgr.:
Dwn By:
SECOND REZONING SUBMITTAL
BUILDING ELEVATION
A10
CONCEPTUAL SOUTH ELEVATION - 1
SCALE: 1/16" = 1'-0"
0 8 16 32
BRICK
METAL RAILING
STUCCO
MECHANICAL UNITS SCREENED BY PARAPET WALL
STUCCO
BRICK
WOVEN WIRE MESH ON TUBE STEEL FRAME
CONCEPTUAL WEST ELEVATION - 2
SCALE: 1/16" = 1'-0"
0 8 16 32
METAL SHADE ELEMENT
STUCCO
BRICK
METAL ROOF
BRICK
MECHANICAL UNITS SCREENED BY PARAPET WALL
METAL RAILING
STUCCO
STUCCO
BRICK
WOVEN WIRE MESH ON TUBE STEEL FRAME

EXHIBIT D - PROJECT SITE PLAN, ELEVATIONS AND LANDSCAPING

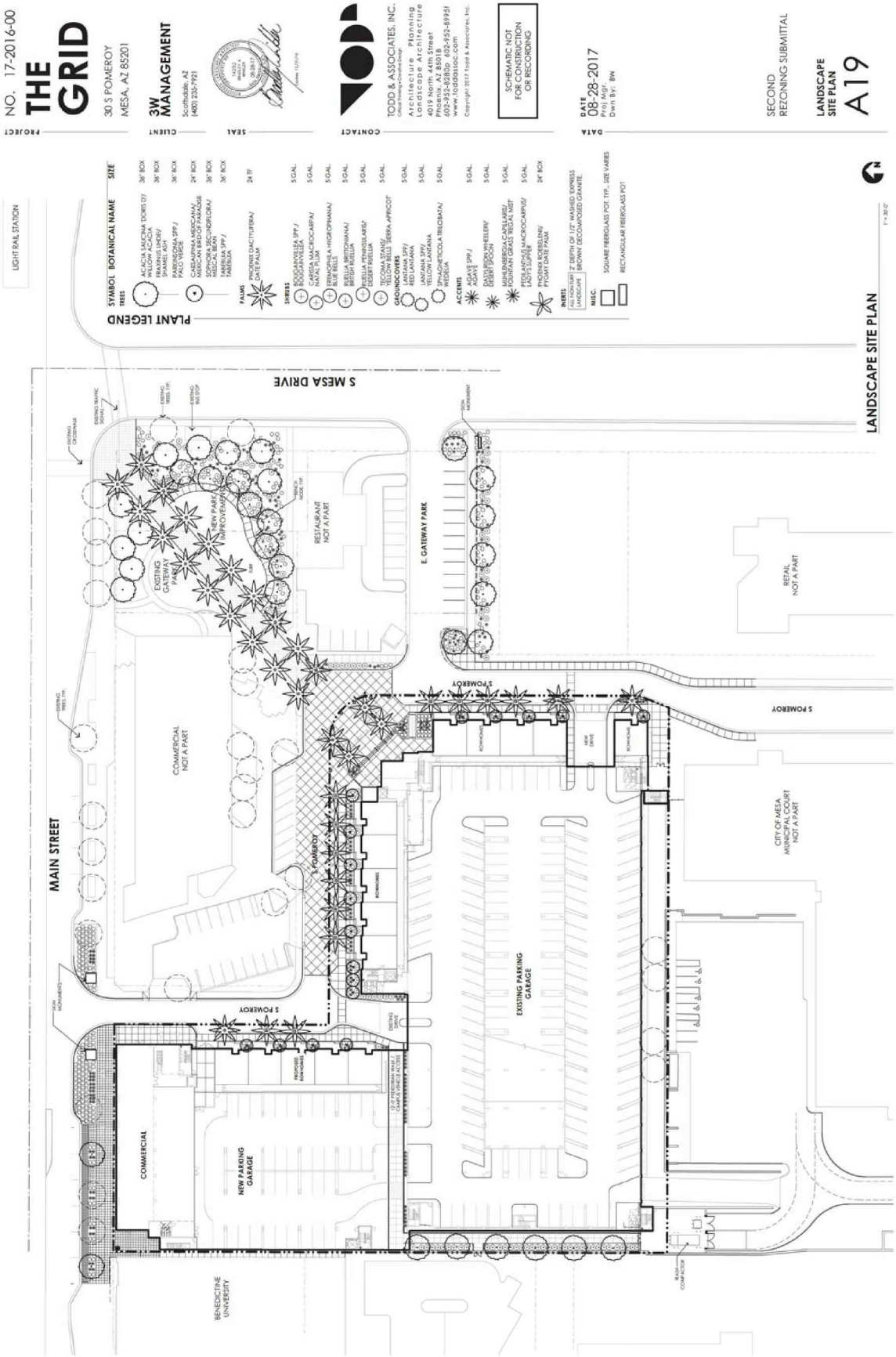


EXHIBIT D - PROJECT SITE PLAN, ELEVATIONS AND LANDSCAPING

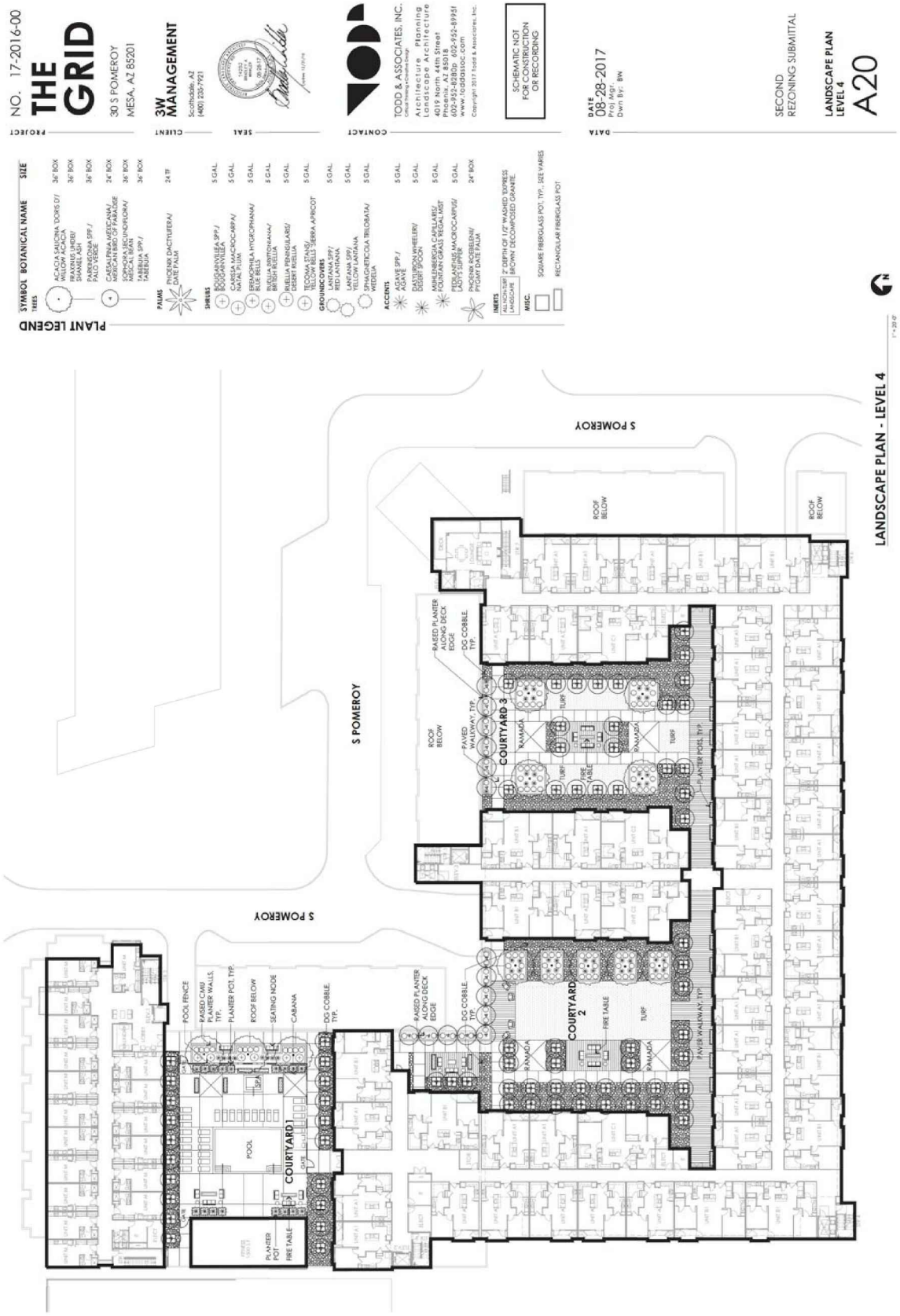
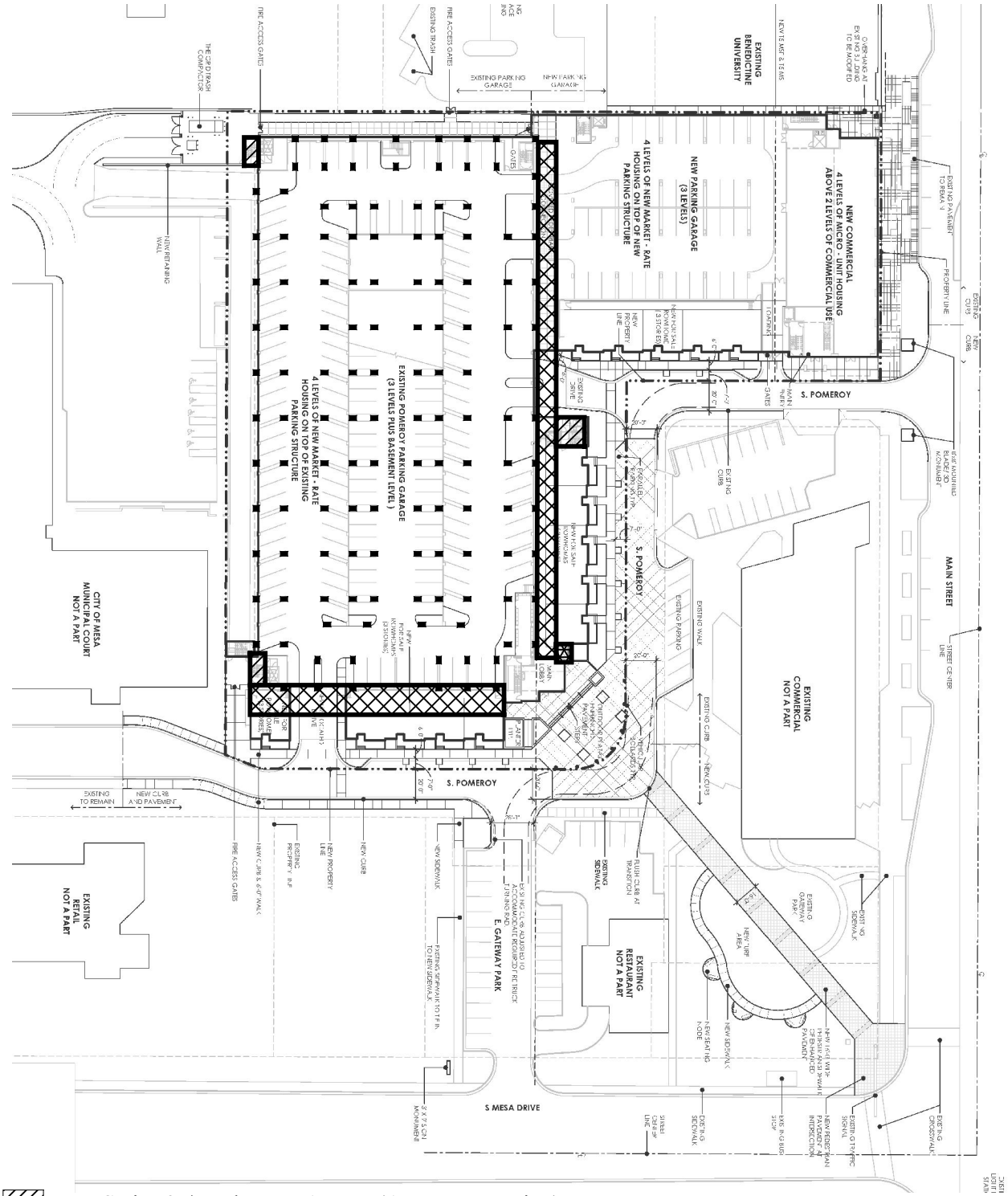


EXHIBIT E-1
TO DEVELOPMENT AGREEMENT

POMEROY GARAGE IMPROVEMENTS

EXHIBIT E-1 - POMEROY GARAGE PRIVATE IMPROVEMENTS



New Stairs & /or Elevator Access (Approx. Location)

New Structure to Support New Construction (Approx Location)

Re-Work/Locate Garage Venting and Exit Stairs (As Needed)

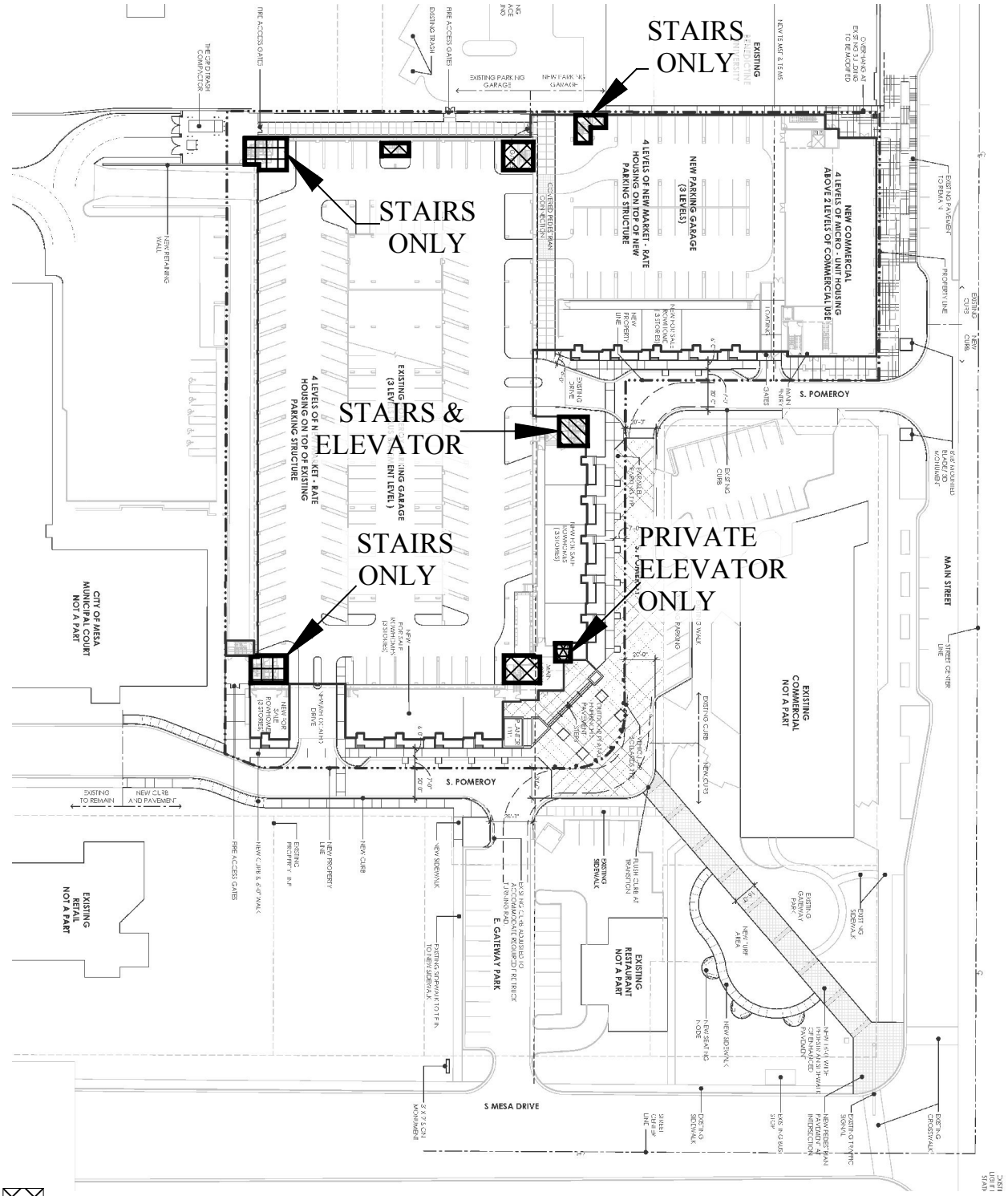
New Private Elevator for Resident Access Levels 1-8 (Developer Owns), No Public Access

15 Nov 17

EXHIBIT E-2
TO DEVELOPMENT AGREEMENT

STAIRWELL ACCESS AND ELEVATOR IMPROVEMENTS

EXHIBIT E-2 - STAIRWELL ACCESS AND ELEVATOR IMPROVEMENTS



Existing to be Removed

Existing to be Removed, Rebuilt (City owns Levels B-3, Developer Leases Air Rights)

New Stairs/Elevator with Public/City Access Levels B-3

New Private Elevator for Resident Access Levels 1-8 (Developer Owns), No Public Access

15 Nov 17

EXHIBIT F-1
TO DEVELOPMENT AGREEMENT

DESCRIPTION OF MINIMUM PUBLIC IMPROVEMENTS

EXHIBIT F-1 – DESCRIPTION OF MINIMUM PUBLIC IMPROVEMENTS

Safety and Lighting Improvements to the Pomeroy Garage

- Upgrade lighting to LED bulbs
- Add elevator access (shared) proximate to the midpoint of the north façade
- Replace existing stairwells with new staircases with secured access points for the basement and residential uses
- Paint the interior of the garage to provide a more vibrant and safe feel

Streetscape Improvements to Pomeroy Road

- Relocate or add public utilities in or along Pomeroy Road
- Remove traffic "porkchop" at Pomeroy Road and Main Street
- Add Pavers to the east-west portion of Pomeroy Road as the drivable surface

Along the south and west sides of Pomeroy Road:

- Add paver sidewalks
- Add street light poles to match Mesa's Fiesta District with lifestyle banners
- Add trees (in structured earth) or palms along the street frontage to create some pedestrian shade with a street tree pattern
- Provide deep water bubblers for all street trees
- Add up lights to street trees
- Add Fiesta District benches
- Add Fiesta District trash receptacles

Gateway Park

- Pavers
- Trim / prune / remove existing vegetation
- New mass plantings
- Pots with succulents and cactus or seasonal flowers
- New trees or palms
- Deepwater bubblers for trees
- Up light trees
- Pathway lighting (Fiesta District style if available)
- Interactive / art lighting
- Dog station(s)
- Fiesta District benches
- Fiesta District trash receptacles
- Moveable furniture and shade umbrellas
- Art or sculpture

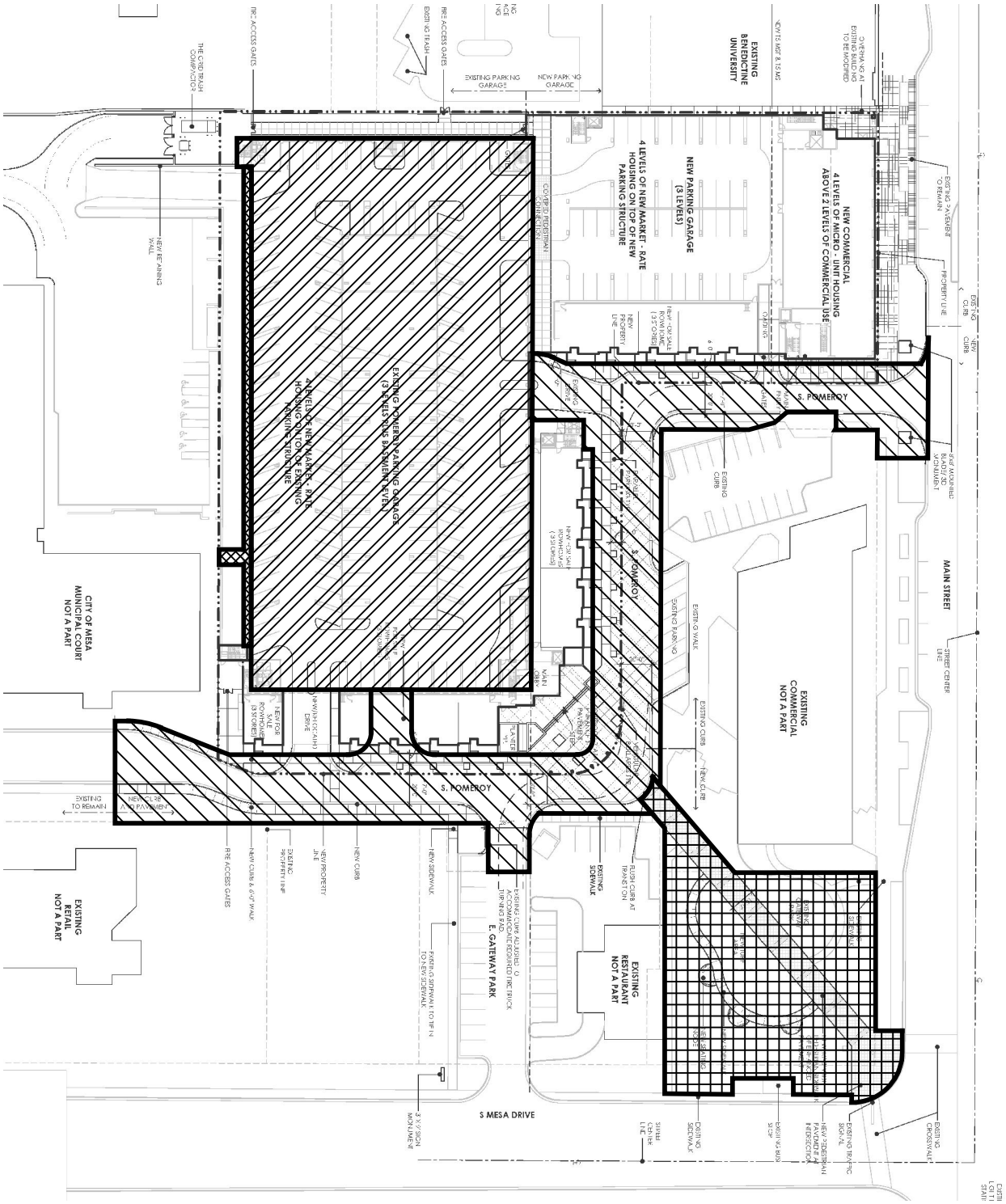
City Court Security Measures

- Screening along portions of the south façade of the garage to obscure site lines to the Court Building from the garage
- A canopy to shield users of the staircase exiting the garage along the south façade from objects being thrown from above

EXHIBIT F-2
TO DEVELOPMENT AGREEMENT

DEPICTION OF MINIMUM PUBLIC IMPROVEMENTS

EXHIBIT F-2 - DEPICTION OF MINIMUM PUBLIC IMPROVEMENTS



Safety & Lighting Improvements to the Pomeroy Garage

Streetscape Improvements to Pomeroy Road

City Court Security Measures

Gateway Park

15 Nov 17

EXHIBIT G-1
TO DEVELOPMENT AGREEMENT

DESCRIPTION OF ADDITIONAL PUBLIC IMPROVEMENTS

EXHIBIT G-1 – DESCRIPTION OF ADDITIONAL PUBLIC IMPROVEMENTS

Gateway Park Drive

- Relocate or add public utilities in or along Gateway Park Drive

Along the sides of Gateway Park Drive:

- Add paver sidewalks
- Add street light poles to match Mesa's Fiesta District with lifestyle banners
- Add trees (in structured earth) or palms along the street frontage to create some pedestrian shade with a street tree pattern
- Provide deep water bubblers for all street trees
- Add up lights to street trees
- Add Fiesta District benches
- Add Fiesta District trash receptacles

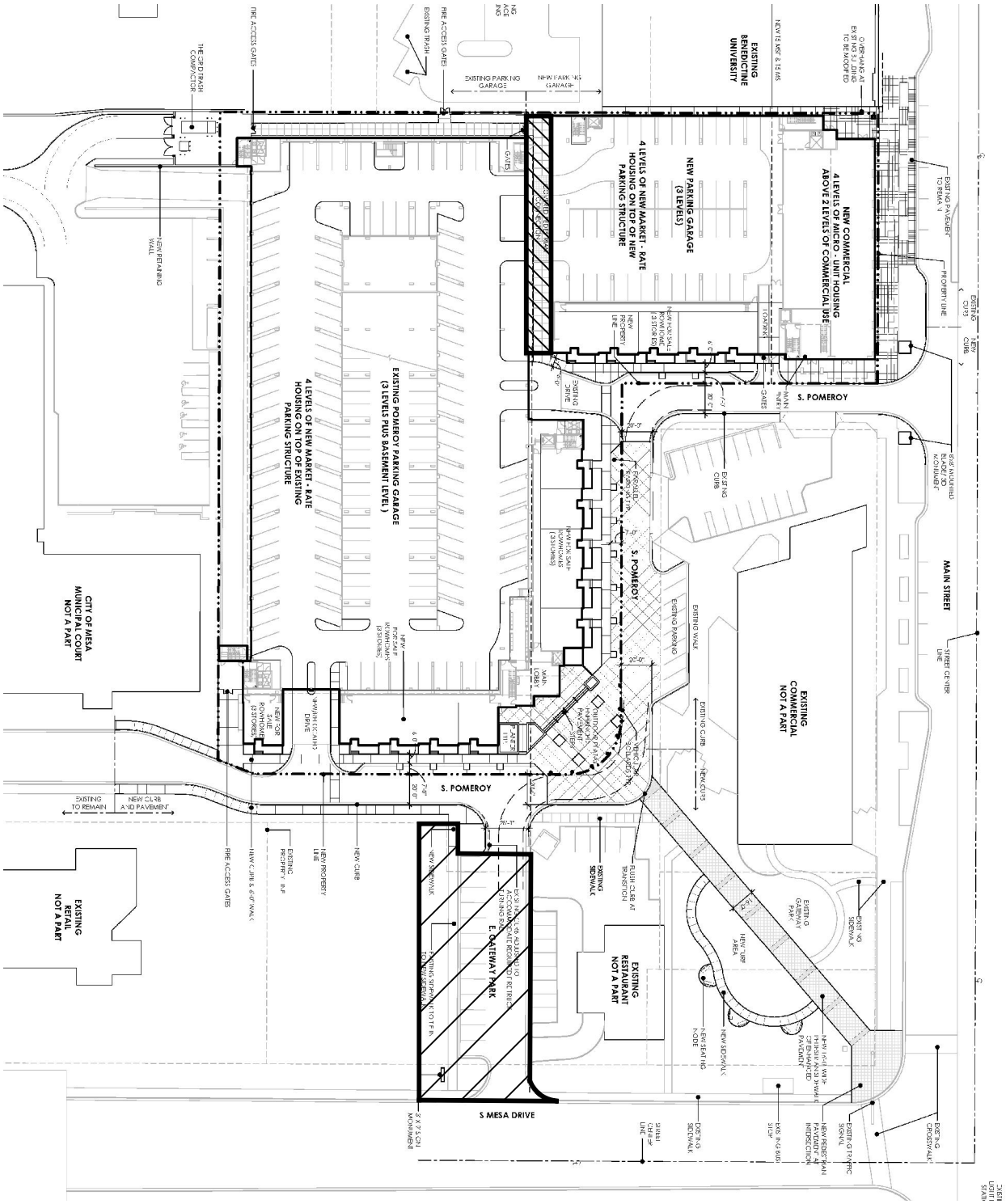
Mid-Block Pedestrian Passage

- LED pathway lighting
- Stamped and colored concrete or pavers
- Pots with succulents and cactus or seasonal flowers
- Up light structural elements and/or artwork
- Interactive / art lighting
- Bike stations / valet
- Fiesta District benches
- Fiesta District trash receptacles
- Moveable furniture
- Art or sculptures

EXHIBIT G-2
TO DEVELOPMENT AGREEMENT

DEPICTION OF ADDITIONAL PUBLIC IMPROVEMENTS

EXHIBIT G-2 - DEPICTION OF ADDITIONAL PUBLIC IMPROVEMENTS



Gateway Park Drive

Mid Block Pedestrian Passage

15 Nov 17

EXHIBIT H
TO DEVELOPMENT AGREEMENT

PROGRAM COMPLIANCE

EXHIBIT H
PROGRAM COMPLIANCE

1. All new construction by Developer for the Residential Project and the Commercial Project will be designed and constructed to LEED Silver Standard or equivalent other green/sustainable building rating method, such as WELL Building (https://www.wellcertified.com/) agreed upon with City. Developer may, at its election and sole cost, have the building certified by the chosen rating agency. In the event Developer chooses to self-certify compliance with the chosen rating method, Developer will promptly provide City, through the building permitting and inspection process, certification of compliance with the rating standards, but in no event later than Completion of Construction.
2. Developer will implement a waste recycling program during construction, with a goal of recycling 75 % of construction waste and a requirement of recycling no less than 50% of construction waste, which program will include, without limitation, diverting construction and land-clearing debris, except soils, from disposal in landfills and incinerators, redirecting recyclable recovered resources back to the manufacturing process, and redirecting reusable materials to appropriate sites.
3. Developer is to obtain from City and provide to residential units (in common) trash disposal and recyclable bins/dumpster/compactor for their use for solid refuse. Developer and the residential property management company will participate in the City of Mesa Multi-Unit Recycling Program. Developer and its residential property management company will work in good faith with the Mesa Environmental Management and Sustainability Department to promote and educate residents on residential recycling upon occupancy of units. Developer also agrees to contract for and use the City of Mesa solid waste and recycling services.
4. Developer will design to Crime Prevention Through Environmental Design (CPTED) principles and will participate in the Tri-Star Program of the Mesa Police Department as a Level Three Property.

EXHIBIT I
TO DEVELOPMENT AGREEMENT

ON-SITE AMENITIES

EXHIBIT I
ON-SITE AMENITIES

All On-Site Amenities are owned and maintained by Developer at Developer's sole cost and expense:

1. Covered/structured parking for each residential unit
2. Outdoor pool
3. Wi-Fi offered within all resident common areas, excluding hallways
4. For all Apartments, secure residential building entries and controlled access to on-site amenities
5. Secure off-street bicycle storage (1 bicycle storage space per 5 Sky Apartments, and 1.5 bicycle storage spaces per 5 Main Street Apartments)
6. Pet-friendly policies for Sky Apartments, dog-washing facility
7. Community room which may be used for any of the following: party room, fitness, lounge, bar, maker space, study, game room, event space
8. Centralized resident package delivery and receiving, which may be unmanned
9. Minimum three (3) electric car charging stations
10. Trash compactor as depicted on the Concept Plan and approved plans for the Project
11. Common laundry facility for Main Street Apartments

EXHIBIT J
TO DEVELOPMENT AGREEMENT

UNIT AMENITIES

EXHIBIT J
UNIT AMENITIES

1. For Sky Apartments, private deck, balcony, or patio (minimum 75 percent of units)
2. High speed internet access offered within each residential unit
3. Walk-in closet within each two and three bedroom residential unit
4. In the Sky Apartments and Row Homes, a washer and dryer within each residential unit
5. High quality appliances (refrigerator, stove/oven, dishwasher, microwave)
6. Energy star rating for all major appliances (washer, dryer, refrigerator, stove/oven, dishwasher, microwave)
7. High quality plumbing fixtures
8. Water wise rating for plumbing fixtures (faucets, toilets, shower heads)
9. Central heating and air-conditioning to each residential unit, individually controlled
10. Programmable thermostat for each residential unit
11. Hard solid or natural kitchen and bathroom countertop materials for each residential unit (e.g., stone, engineered stone, polished concrete); no veneer or laminate
12. Tile, hardwood, or similar flooring in at least living areas, bathroom, and kitchen (no linoleum). Carpet okay for bedrooms.
13. Minimum 9-foot ceilings
14. Ceiling fans with integrated lighting in living room and bedrooms
15. At least one USB charging outlet in kitchen, living room, and bedrooms
16. LED or equivalent lighting throughout each residential unit
17. Mid-grade or higher cabinetry, to include Rigid Thermofoil Cabinets equivalent to Encore or Hilton Cabinets 500 Series
18. A Sound Transmission Class (STC) of 55, or greater, on exterior and party walls, floors, and ceilings, as defined by the Uniform Building Code
19. An Impact Isolation Class (IIC) of 55, or greater, on party walls, floors, and ceilings, as defined by the Uniform Building Code

EXHIBIT K
TO DEVELOPMENT AGREEMENT

EXTERIOR QUALITY STANDARDS

EXHIBIT K
EXTERIOR QUALITY STANDARDS

1. All exterior elevations except the parking garages will incorporate high quality design, i.e., four-sided architecture
2. Minimum three high quality and durable exterior building materials (such as but not limited to glass, steel panels, exposed concrete, brick veneer and/or sand finish stucco) o neew construction
3. All building mounted equipment screened from public view
4. All exterior building vents, such as furnace and dryer, are integrated into the building architecture
5. Energy star rated exterior residential windows
6. For the south and west building façades (not including courtyard façades) of the Sky Apartments, integrate shade elements for exterior windows of south and west facing residential units
7. Pedestrian shade elements integrated into building façade and/or streetscape
8. Minimum seventy-five percent (75%) ground floor transparency along Main Street frontage
9. Incorporation of one (1) attached neon, or equivalent, project identification sign into Main Street facade
10. Incorporation of pedestrian scale signage, e.g., blade or projecting, for ground floor commercial tenant space(s), as appropriate for individual Tenants
11. Incorporation of a consistent sign area, incorporated into the building's architecture for one attached sign per ground floor commercial tenant space
12. Pedestrian areas incorporate pavers, stamped or colored concrete, or similar paving materials; scored concrete may be used along Main Street matching the existing design concept
13. Minimum thirty-six inch (36") box size trees planted approximately thirty-five feet (35') on center along Main Street in the approximate location of the existing Desert Museum trees if existing trees are not preserved in place. Minimum thirty-six inch (36") box size trees planted approximately thirty-five feet (35') on center along Project side of Pomeroy. All trees (other than permitted palms) will have integrated grates, or equivalent, and be planted within a minimum 500 cubic feet of structured soil.
14. All on-site landscape will either be native or desert adapted species as included in *Landscape Plants for the Arizona Desert* http://www.amwua.org/plants/; or Phoenix date palm

EXHIBIT L
TO DEVELOPMENT AGREEMENT

PROHIBITED USES

EXHIBIT L
PROHIBITED USES

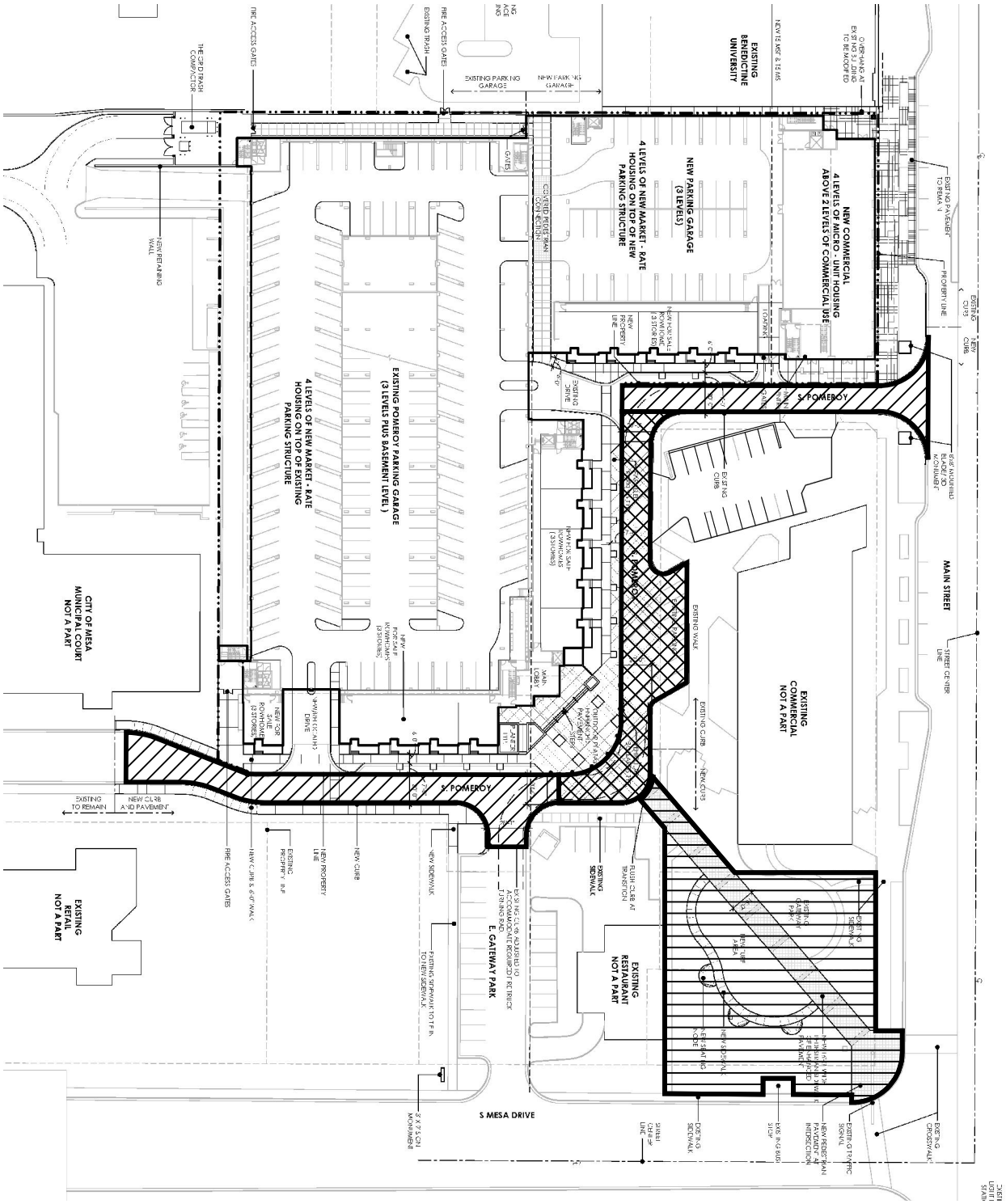
The Project will develop with land uses consistent with Chapter 64 of the Mesa Zoning Ordinance. In addition, the uses listed below are expressly prohibited from the Project:

1. Group Residential, as defined by Chapter 64 of the Zoning Ordinance
2. Non-chartered Financial Institution, as defined by Chapter 64 of the Zoning Ordinance
3. Pawn Shops, as defined by Chapter 64 of the Zoning Ordinance
4. Social Service Facilities, as defined by Chapter 64 of the Zoning Ordinance
5. Tattoo and Body Piercing Parlors, as defined by Chapter 64 of the Zoning Ordinance
6. Group Residential, as defined by Chapter 86 of the Zoning Ordinance
7. Off-Track Betting Establishment, as defined by Chapter 86 of the a Zoning Ordinance
8. All sales of marijuana, including Medical Marijuana Dispensary, as defined by Chapter 86 of the Zoning Ordinance
9. Package liquor stores, except as part of a restaurant or bar concept
10. Kennels, as defined by Chapter 64 of the Zoning Ordinance

EXHIBIT M-1
TO DEVELOPMENT AGREEMENT

DEPICTION OF PHASING AND MITIGATION PLAN

EXHIBIT M-1 - DEPICTION OF PHASING AND MITIGATION PLAN



Closed During Gateway Park Construction

Closed During Road Re-Alignment

Closed Throughout Construction

15 Nov 17

EXHIBIT M-2
TO DEVELOPMENT AGREEMENT

PHASING AND MITIGATION PLAN

EXHIBIT M-2
PHASING AND MITIGATION PLAN

PHASING:

Project Phasing at this time includes three Plan Review Submittal Packages. The Submittal of Packages will move us to commencement of construction more quickly.

Submittal Package 1 will include: Site work, demolition of existing parking lot, relocation of utilities.

Submittal Package 2 will include: The new Parking Garage, the Podium for the Main Street Building and the Structural Work in the existing Pomeroy Parking Garage.

Submittal Package 3 will include: Framing and finishes of all residential units, landscape, hardscape, renovation of The Park and any other associated tasks.

Specific phasing of construction activities will be defined in an update to the Phasing and Mitigation Plan prior to commencement of construction as required below.

CONSTRUCTION MITIGATION PLAN:

Developer and its contractors shall minimize the impact construction work on the Project has on adjacent businesses and City operations as provided in this Mitigation Plan as may be amended from time to time with the approval of each Party.

The Developer and contractors will take the following steps to minimize disruption and inconvenience for the businesses adjacent to the Project:

Communication:
The Developer will distribute general Construction Update emails and/or paper flyers to all neighboring businesses, organizations, and property owners within a quarter-mile radius of the Project Site. The emails and/or flyers will contain information regarding any unusual or extraordinary construction events and the timing of such activities. It will also include construction progress and any potential impact from the 30-day look ahead schedule. Representatives of the Municipal Courts and the City will be invited to regular construction meetings.

Parking:
During construction work in the existing Pomeroy Garage, there will be times when a portion or the entire Pomeroy Garage cannot be used for public parking, parking for the Municipal Courts, or parking for Wells Fargo office employees. Dates for partial and full closure of the Pomeroy Garage are as follows:

Floors to be Closed	Dates of Closure
TBD with final construction Plans	TBD with final construction plans

These closures are subject to change in future agreed upon amendments to this Mitigation Plan. Developer will provide at least 45 days written notice before proposing to change any dates of closure.

During all partial or full closures, Developer shall provide secure parking for courts employees and customers, and Wells Fargo employees in locations within a quarter mile radius of the existing Pomeroy Garage. If any temporary parking locations are farther than a quarter-mile radius of the existing Pomeroy Garage, developer shall provide a shuttle service (from ½ hour before to ½ hour after business and City hours) to transport individuals to and from the temporary parking site. At least 45 days before the first closure, Developer will provide an updated Mitigation Plan with a map depicting the location of the temporary parking sites in relation to the existing Pomeroy Garage. The updated Mitigation Plan shall also include details regarding number of parking spaces being provided at each temporary parking site.

Construction Parking will be offsite, until such time that construction workers can park in the existing garage and the new garage. The Pomeroy Parking Garage closure will be minimized as much as possible during the course of construction. Construction workers will be repeatedly notified that parking in adjacent business parking lots is prohibited.

City approval of the updated Mitigation Plan is required prior to commencing construction on the Pomeroy Garage.

Noise:
The Developer will take all commercially reasonable steps to reduce construction noise during the course of the regular workday. For example, concrete pours will be scheduled for early morning to avoid conflicts with the work environments. In addition, neighboring businesses, organizations, and property owners within a quarter-mile radius shall be notified five (5) calendar days in advance of any extreme conditions of construction which may impact their operation.

Any activity that may create sufficient noise to interfere with Court proceedings shall be scheduled on a Friday, Saturday Sunday, or Court holiday. If construction noise interferes with the City's ability to hold court proceedings in the Municipal Courts, Developer will immediately stop its contractors and/or subcontractors from engaging in the activity causing such noise; and Developer shall ensure that its contractors and subcontractors do not engage in any further activity that could interfere with Court proceedings.

Hours of Work:
During the course of construction, construction works hours will be as follows:

April through September 5:00 am to 7 pm
October through March 7:00 am to 6 pm

At times during construction, it may be necessary for work to take place in two shifts. The City staff will be notified in advance of such times and the number of days that the two shift components of the work will take place.

During high impact or excessively noisy work the Developer will schedule such work before and after normal work hours to reduce the impact on neighboring businesses.

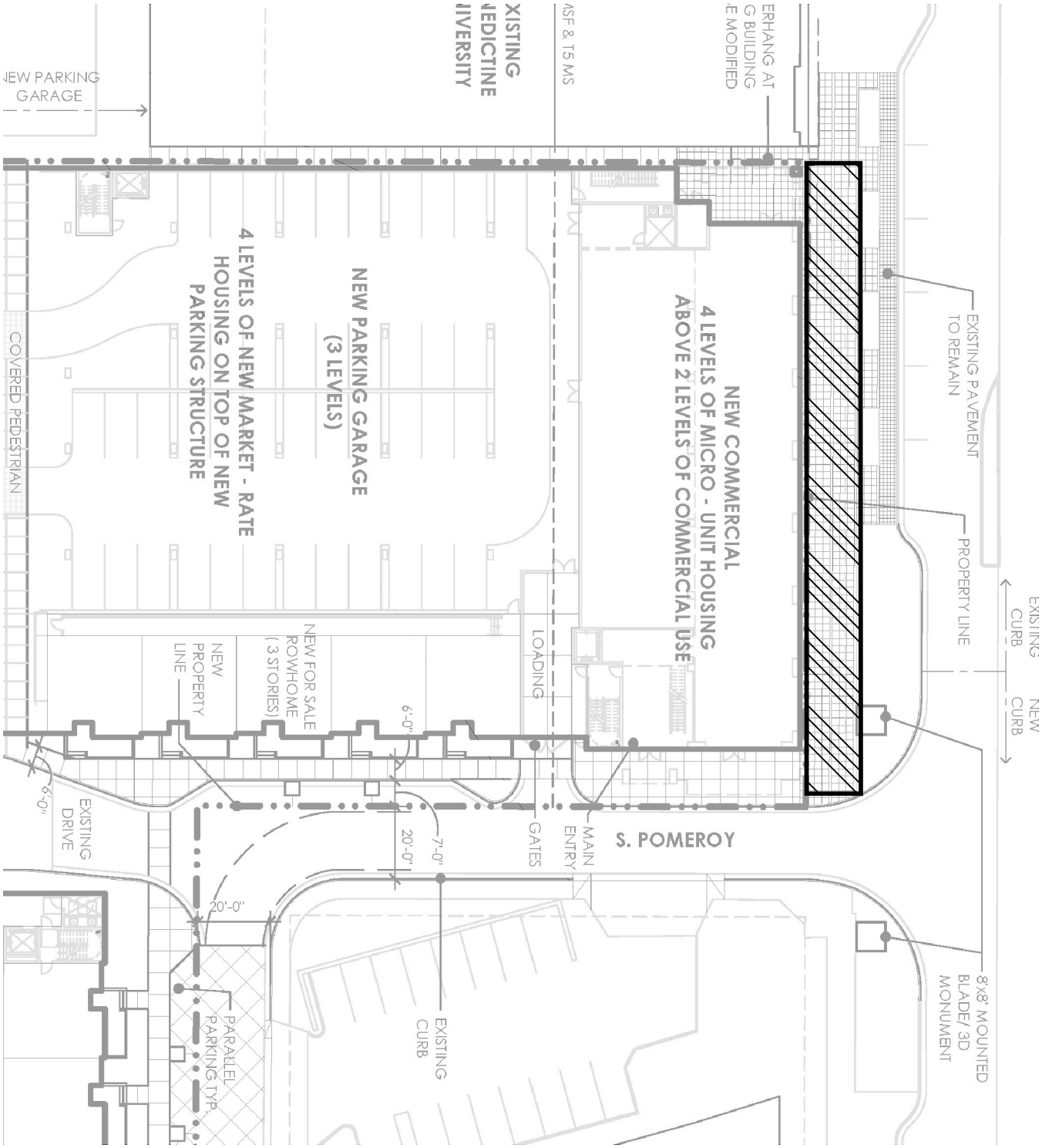
Closure of East/West Pomeroy:

The Developer has requested the closure of the portion of Pomeroy Road running east and west in order to use that location for the project tower crane, construction trailers, dumpsters and material storage. Public access to the Wells Fargo Bank branch office and Pete's Fish and Chips will be maintained during construction. Developer shall provide City with a detailed Construction Staging Map depicting which portions of Pomeroy will be closed due to construction activities. Map must also show any temporary fencing, dumpster locations, material stock areas, signage, and locations of any major construction equipment. Closure of Pomeroy is subject to the City's prior approval of the Construction Staging Map, and Developer obtaining and paying for all applicable City permits and fees.

EXHIBIT N
TO DEVELOPMENT AGREEMENT

MAIN STREET ENCROACHMENT PLAN DETAIL

EXHIBIT N - MAIN STREET ENCROACHMENT PLAN DETAIL

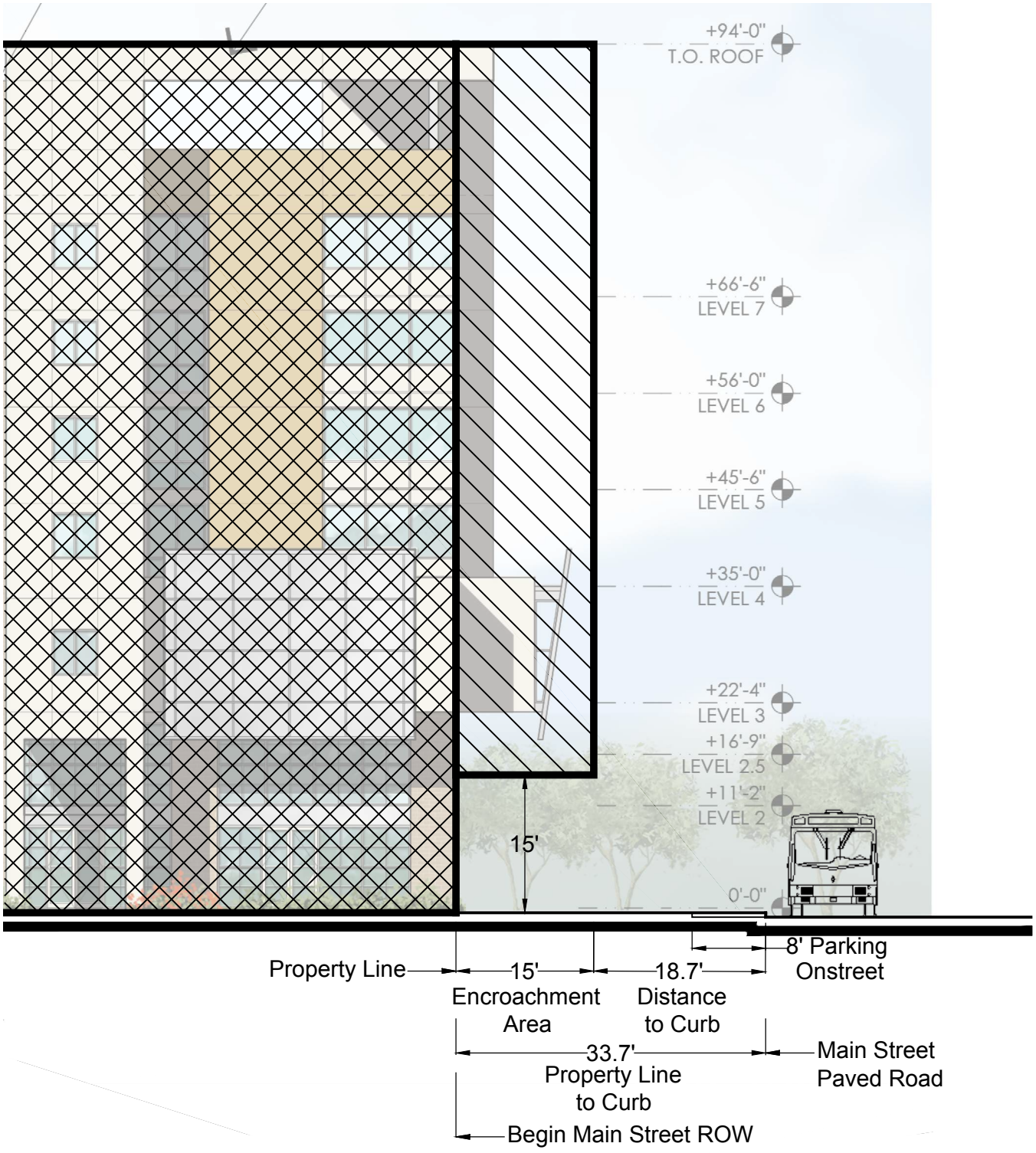


Main Street
Upper Level Encroachments

EXHIBIT O
TO DEVELOPMENT AGREEMENT

MAIN STREET ENCROACHMENT SECTION

EXHIBIT O - MAIN STREET ENCROACHMENT SECTION



Building Envelope

Encroachment Area

NOTE: Rendering in Background is for Illustrative Purposes only
Measurments are approximate

15 Nov 17

EXHIBIT P
TO DEVELOPMENT AGREEMENT

LEASE

GROUND AND AIR LEASE

This Ground and Air Lease ("Lease") is made as of the ___ day of _____ 2018 ("Effective Date") , by and between the City of Mesa, Arizona, an Arizona municipal corporation ("Landlord"), and _____, a(n) _____ ("Tenant"). Landlord and Tenant may be referred to herein individually as a "Party" or collectively as the "Parties."

RECITALS

As background to this Lease, the Parties state, recite, acknowledge and agree as follows, each of which will be a material term of this Lease:

A. Landlord is the owner of certain real property and real property interests located near the intersection of South Pomeroy and Main Street in Mesa, Arizona (collectively, the "Premises"). Landlord wishes to cause the development of the Premises by Tenant for the construction of mixed-use residential, commercial and office improvements, additional structured parking, and certain public improvements, all in accordance with that certain "Development Agreement" dated _____ and entered into between Landlord (as "City" named in the Development Agreement) and Tenant (as "Developer" named in the Development Agreement), and to cause the construction of certain other improvements on the appurtenant Licensed Area as defined in the Development Agreement (collectively, the "Project").

B. Pursuant to the Development Agreement, Landlord has agreed to lease the Premises to Tenant, and Tenant has agreed to lease the Premises from Landlord and thereafter to construct the Project on the Premises (and the Licensed Area).

C. The Premises consists of (i) portions of the parcel of land on which the Pomeroy Garage (the "Pomeroy Garage") is located as legally described in Exhibit A-1 to this Lease (the "Pomeroy Parcel"); (ii) certain property formerly in the public right-of-way, but which has been abandoned ("ROW") as legally described in Exhibit A-2 to this Lease; (iii) air rights immediately above the Pomeroy Garage ("Air Rights") as legally described in Exhibit A-3 to this Lease; and (iv) certain adjacent unimproved real property ("Land") as legally described in Exhibit A-4 to this Lease. The Premises is generally depicted in Exhibit A-5 to this Lease.

D. The Parties now agree to enter into this Lease on the terms and conditions set forth in this Lease.

SECTION 1 – FUNDAMENTAL LEASE PROVISIONS

Commencement Date:	_____, 2018.
Landlord:	City of Mesa, Arizona, an Arizona municipal corporation, and any successor, assign or person or entity hereafter acquiring the Landlord's interest in all or a portion of this Lease.
Tenant:	_____, a(n) _____, and any permitted successors, assigns or persons or entities hereafter acquiring all of Tenant's interest in this Lease.
Premises:	As defined in Recital C and Section 2.2.
Project:	Any and all buildings, structures, facilities, infrastructure and improvements erected, constructed or situated by Tenant on, over, under and upon the Premises or any part thereof during the Term, including any site improvements or temporary improvements, including improvements to the Licensed Area, and all as more particularly described in, and required to be constructed in accordance with, the Development Agreement (including, but not limited to, the Minimum Improvements and the Minimum Public Improvements, as defined in the Development Agreement).
Lease Term:	As defined in Section 3.
Rent:	As defined in Section 4.
Permitted Uses:	As defined in Section 8.1.
Prohibited Uses:	As defined in Section 8.2.
Project Documents:	This Lease, the Development Agreement, and the License Agreement

The foregoing Fundamental Lease Provisions are an integral part of this Lease, and each reference in the body of this Lease to any Fundamental Lease Provision will be construed to incorporate all of the terms set forth above with respect to such Provisions. In the event there is any conflict between any provisions contained in this Section 1 and the balance of this Lease, the balance of this Lease will control. All of the foregoing Recitals and all Exhibits to this Lease are fully incorporated into this Lease, and are made a part of this Lease for all purposes.

SECTION 2 - LEASE OF PREMISES

2.1. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the promises, terms and conditions contained in this Lease, Landlord hereby leases the Premises to Tenant, and Tenant hereby leases the Premises

from Landlord. Tenant acknowledges that, as of the Commencement Date, it has inspected the Premises, is familiar with the condition of the Premises and the condition of title to the Premises, and accepts the same "as is" in its present condition, with no representation by, of or from Landlord, except as expressly set forth in Subsection 28.1.

2.2. The Premises do not include any improvements presently existing; nor do the Premises include any improvements to be constructed on the Premises by Tenant during the Term of the Lease. The Parties agree and acknowledge that no "government property improvement" as defined in A.R.S. §42-6201 is included in this Lease.

2.3. In connection with its development and use of the Premises, Tenant requires access into the Garage for the construction of certain required improvements and, subsequently, the right to use certain parking spaces within the Garage (the "Licensed Area"). Tenant agrees and acknowledges that the Licensed Area is not being leased to Tenant by Landlord, and is not subject to this Lease; however, Tenant's use of the Licensed Area will be in accordance with a separate "License Agreement" executed by Landlord (as Licensor) and Tenant (as Licensee) concurrently with this Lease and in the form attached to this Lease as Exhibit B (the "License Agreement").

2.4 Tenant is permitted to maintain projections from the Premises onto or over certain Landlord-owned real property, as shown on the Approved Plans (as defined in the Development Agreement).

2.5 Notwithstanding the lease of the Premises to Tenant, Tenant agrees and acknowledges that, during the Term of this Lease, the public shall have access to certain sidewalks, walkways stairs and elevators as generally depicted on Exhibit A-6. This public access will not be a breach by Landlord of Tenant's right of quiet enjoyment of the Premises.

SECTION 3 - TERM

3.1. The term of this Lease ("Term") commences on the Commencement Date and will continue thereafter for a period of fifty (50) years, unless the Term is sooner terminated [or extended as permitted in this Lease]. Provided Tenant is not then in default hereunder beyond the expiration of any applicable cure period, Tenant may exercise its option to extend the lease term for one (1) additional term of forty-nine (49) years upon the same terms and conditions set forth in this Lease. In order to exercise such option to extend the lease term, Tenant will give to Landlord written notice of its election to do so not more than sixty (60) months, and not less than twenty-four (24) months, prior to the commencement date of any applicable extension period. If this Lease is extended in accordance with this Section 3.1, the Term will include any applicable extension period.

3.2. "Commencement Date" means the date set forth in Section 1 (Fundamental Lease Provisions).

3.3. This Lease will terminate automatically with no further action or notice necessary if Tenant fails to have met any of the Compliance Dates (as defined in the Development Agreement) required by Development Agreement with respect to the phased Commencement of Construction (as defined in the Development Agreement) of the Minimum

Improvements and the Public Improvements (each as defined in the Development Agreement) as set forth in Section 4.12(d), Section 4.12(e) or Section 4.12(f) of the Development Agreement (or such later date as may be permitted by the terms of the Development Agreement). If this Lease terminates pursuant to this Section 3.3, both Landlord and Tenant acknowledge and agree that they will have no claims of any kind, whether legal, equitable or otherwise, against the other Party related to the Lease termination or the Project Documents, and each Party will bear its respective fees and costs incurred in connection with the Project and this Lease.

SECTION 4 – RENT

4.1. Beginning on the Lease Commencement Date and continuing throughout the term of the Lease, Tenant will pay "Rent" to Landlord, without notice or demand, for the use and occupancy of the Premises during the Term of this Lease, as set forth on Exhibit C.

4.2. Rent and any Additional Charges (as defined and provided for in Section 5), will be paid in lawful money of the United States of America to the "City of Mesa, Arizona" payable at 20 East Main Street, Mesa, Arizona 85211, Attn: Real Estate Administrator, or to such other place or person as Landlord may designate in writing to Tenant from time to time.

4.3. If Tenant fails or neglects to pay any amount due and payable to Landlord hereunder, and the delinquency continues for five (5) days after such amount is due (or in the case of payments other than Rent, within fifteen (15) days after Tenant receives written notice of such amount), then beginning on the sixteenth (16th) day, Tenant will pay to Landlord a late payment charge in the amount of ten percent (10%) of the delinquent amount; and said late payment charge will be in addition to, and not in lieu of, any other rights Landlord may have, including (but not limited to) Landlord's rights granted in Section 20 of this Lease.

4.4 Pursuant to the Development Agreement, Tenant is entitled to a credit against Rent ("Rent Credit") for its Reimbursable Public Improvement Costs (as defined in the Development Agreement), in accordance with the PI Cap Credit described on Exhibit C. At any time that Tenant is not in default of any term or condition of this Lease, and provided that a portion of the PI Cap Credit remains available for offset, Tenant may offset, against any applicable monthly charge of Rent then owing (but not against Additional Charges, or any other amounts owing under or in connection with this Lease), the amounts shown in Exhibit C. Notwithstanding the foregoing, (i) in the event of a Default, the Rent Credit will be deemed fully extinguished; (ii) the Rent Credit is not transferrable to any leasehold mortgagee that succeeds to the interest of Tenant pursuant to Section 17 of this Lease, and will be deemed fully extinguished in such event; (iii) the Rent Credit will not reduce any obligation of Tenant owing to Landlord as a result of Tenant's Default pursuant to Section 18 of this Lease; and (iv) any unutilized portion of the Rent Credit will not reduce the Purchase Price for the Premises in the event Tenant exercises its Purchase Option pursuant to Section 30 of this Lease.

SECTION 5 - ADDITIONAL CHARGES

All taxes, including the City transaction privilege tax, assessments, insurance premiums, charges, costs and expenses which Tenant assumes, agrees or is obligated by law to

pay hereunder, together with all interest and penalties that may accrue thereon in the event of Tenant's failure to pay the same as herein provided, and all other damages, costs and expenses which Landlord may suffer or incur for which Tenant is liable under this Lease, and any and all other sums which may become due, by reason of any default of Tenant or failure on Tenant's part to comply with the agreements, terms, covenants and conditions of this Lease on Tenant's part to be performed, will be referred to herein as "Additional Charges" and, in the event of their nonpayment, Landlord will have, with respect thereto, all rights and remedies herein provided and available in law or equity in the event of nonpayment of Rent. If not paid when due, all Rent and any Additional Charges payable to Landlord will accrue interest at ten percent (10%) per annum from their due date until paid.

SECTION 6 – NO COUNTERCLAIM OR ABATEMENT OF RENT

Except for the Rent Credit, Rent and Additional Charges and all other sums payable by Tenant hereunder will be paid without notice, demand, counterclaim, setoff, recoupment, deduction or defense of any kind or nature and without abatement, suspension, deferment, diminution or reduction.

SECTION 7 - TAXES, ASSESSMENTS AND UTILITIES

7.1. It is the intention of the Parties hereto that, insofar as the same may be lawfully done, Landlord will be free from all costs, expenses, obligations and all such taxes, assessments and all such other governmental impositions and charges, and that this Lease will yield net to Landlord not less than the Rent reserved hereunder, throughout the Term. Tenant will pay and discharge, as and when the same become due and payable without penalty, all real estate, personal property, business, transaction privilege, occupation and occupational license taxes and assessments (including, but not limited to, amounts that would customarily be assessed by SID 228 and paid [whether as a required or a voluntary payment] by a private property owner) and all other governmental taxes, impositions and charges of every kind and nature, general or special, foreseen or unforeseen, whether similar or dissimilar to any of the foregoing, which at any time during the Term of this Lease be or become due and payable by Landlord or Tenant and which are levied, assessed or imposed:

a. Upon or with respect to, or will be or become liens upon, the Premises and the Garage, or any portion thereof or any interest of Landlord or Tenant therein or under this Lease (other than liens created or granted by Landlord in its capacity as the fee owner of the real property constituting the Premises, as opposed to liens created by Landlord in its capacity as a municipality, which are subject to this Section 7);

b. Upon or with respect to the possession, operation, management, maintenance, alteration, repair, rebuilding, use or occupancy of the Premises and the Garage, or any portion thereof; and

c. Upon this transaction or any document to which Tenant is a party or is bound, creating or transferring an interest or an estate in the Premises, under or by virtue of any present or future law, statute, charter, ordinance, regulation, or other requirement of any governmental authority.

7.2. Tenant has the right to contest any claim, tax or assessment levied against the Premises or any interests therein and property thereon during the term of the Lease or from Tenant's activities by posting bonds to prevent enforcement of any lien resulting therefrom. Tenant agrees to protect and hold Landlord harmless (and all interest of Landlord in the Premises) and all interests therein and improvements thereon for, from and against any and all claims, taxes, assessments and like charges and from any lien therefor or sale or other proceedings to enforce payment thereof, and all costs in connection therewith, but only as to those that arise or occur during the Term of this Lease. Landlord agrees to cooperate with Tenant and will promptly execute and deliver for filing any appropriate documents with reference to any such contest when so requested by Tenant.

7.3. Tenant, upon Landlord's written request, will furnish to Landlord, within twenty (20) days thereafter, proof of the payment of any taxes, impositions or charges which Tenant and not Landlord has the obligation to pay under the provisions of this SECTION 7.

7.4. Tenant will be solely responsible for, and will pay the cost of, constructing or installing utility hookups from existing utility installations to the Premises and will be solely responsible for, and will pay the cost of, all utility services consumed by Tenant on the Premises.

SECTION 8 – USE OF PREMISES

8.1. Permitted Uses. Subject to Section 8.2, the Project and Premises will be developed in accordance with the Development Agreement and used in accordance with Applicable Laws, including the Zoning (collectively, the "Permitted Uses"). Tenant will use the Premises solely for the Permitted Uses and not for any other purpose without the prior written consent of Landlord, which consent may be withheld, conditioned or delayed in Landlord's sole, absolute and unfettered discretion. Tenant will not use or permit the Premises to be used in violation of the Regulatory Requirements as defined in Section 11, below. Use of the Premises in violation of the terms of this Section 8 will cause Tenant to be in default hereunder; however, Tenant will have the right to cure said default pursuant to the provisions of Section 18 of this Lease.

8.2. Prohibited Uses. Tenant will not use, or permit the use of, the Premises for any use or purpose listed in Exhibit D to this Lease (the "Prohibited Uses").

SECTION 9 – CONSTRUCTION OF IMPROVEMENTS

Tenant, at its sole cost and expense, will cause to be constructed and completed the Minimum Improvements, the Public Improvements, and all other buildings, structures, facilities and other leasehold improvements, fixtures, and equipment constituting the Project (collectively, the "Improvements") on the Premises in compliance with the Development Agreement, the City-approved Site Plan, the Zoning, and all generally applicable City requirements which are consistent with the use of the Premises as permitted by the Development Agreement. During the Term, Tenant will operate and maintain, at its sole cost and expense, all Improvements on the Premises in compliance with all Applicable Laws, including but limited to, the Americans with Disabilities Act. Tenant will pursue diligently the construction of all Improvements to completion. For purposes of this Lease, the term "Applicable Laws" means the federal, state,

county and local laws (statutory and common law) ordinances, rules, regulations, permit requirements, and other requirements and official policies of the City of Mesa, as they may be amended from time to time, which apply to the development, use and operation of the Premises and the Improvements during the Term of this Lease.

SECTION 10 – MAINTENANCE AND REPAIRS

10.1. Tenant at all times during the Term of this Lease, and at Tenant's sole cost and expense, will keep and maintain the Premises in good order and repair and in a clean and sanitary condition, including but not limited to all buildings, facilities, structures, driveways, landscaped areas, and other improvements included within the Premises (including all exterior painted surfaces of all buildings, structures and improvements included within the Premises), and all equipment and appurtenances, both interior and exterior, structural and non-structural, ordinary or extraordinary, howsoever the necessity or desirability of repairs may occur, but excluding any Public Improvements (as defined in the Development Agreement) located on or within the Premises. All repairs, replacements and renewals will be made promptly and be equal in quality and class to the original work. Tenant waives any right created by any legal requirement (now or hereafter in force) to make repairs to the Premises at Landlord's expense, it being understood that Landlord will in no event be required to make any alterations, improvements or repairs during the Term; except that if any damage to the buildings, facilities, structures, or improvements on the Premises, or to any equipment or appurtenances located thereon, will have been solely as a result of Landlord's grossly negligent or intentional actions (but expressly excluding any matter pertaining to or arising from the condition of the Premises as of the Effective Date), Landlord will pay the cost therefore to Tenant.

10.2. Tenant will provide and maintain a solid waste compactor to benefit the Premises at a location within the Licensed Area set forth in the Approved Plans, in which to place any solid waste, and cause such solid waste to be removed for recycling or disposal as often as is required to maintain a sanitary condition. Tenant (and any subtenants) are obligated to utilize City of Mesa commercial solid waste services at rates established by the City Council, for so long as the City is willing to continue to provide such services.

SECTION 11 – REGULATORY REQUIREMENTS

11.1. Tenant will promptly observe and comply with all present and future laws, ordinances, requirements, rules and regulations of all governmental authorities having or claiming jurisdiction over the Premises or any part thereof and of all requirements in written insurance policies covering the Premises or any part thereof required in Section 15 below (the "Regulatory Requirements"). Without limiting the generality of the foregoing, Tenant will also procure each and every permit, license, certificate or other authorization required in connection with the lawful and proper use of the Premises or required in connection with any building, structure or improvement hereafter erected thereon.

11.2. Tenant covenants and agrees not to use, generate, release, manage, treat, manufacture, store, or dispose of, on, under or about, or transport to or from (any of the foregoing hereinafter described as "Use") the Premises any Hazardous Materials (other than De Minimis Amounts). Tenant further covenants and agrees to pay all costs and expenses

associated with enforcement, removal, remedial or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to Use of any Hazardous Materials in any amount by Tenant, its employees, agents, invitees, subtenants, licensees, assignees or contractors. For purposes of this Lease (1) the term "Hazardous Materials" includes but not be limited to asbestos, urea formaldehyde, polychlorinated biphenyls, oil, petroleum products, pesticides, radioactive materials, hazardous wastes, biomedical wastes, toxic substances and any other related or dangerous, toxic or hazardous chemical, material or substance defined as hazardous or regulated or as a pollutant or contaminant in, or the Use of or exposure to which is prohibited, limited, governed or regulated by, any Hazardous Materials Laws; (2) the term "De Minimis Amounts" means, with respect to any given level of Hazardous Materials, that such level or quantity of Hazardous Materials in any form or combination of form (i) does not constitute a violation of any Hazardous Materials Laws and (ii) is customarily employed in, or associated with, similar facilities; and (3) the term "Hazardous Materials Laws" means any federal, state, county, municipal, local or other statute, law, ordinance or regulation now or hereafter enacted which may relate to or deal with the protection of human health or the environment, including but not be limited to the Comprehensive Environment Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901; the Federal Water Pollution Control Act, 33 U.S.C. Section 1251, et seq.; the Toxic Substances Control Act of 1976, 15 U.S.C. Section 2601, et seq.; Ariz. Rev. Stat. Ann., Title 49 (the "Arizona Environmental Quality Act of 1986"); and any rules or regulations legally adopted or promulgated pursuant to any of the foregoing as they may be amended or replaced from time to time.

11.3. Either party has the right, at its sole cost and expense, to contest the validity of any Regulatory Requirements applicable to the Premises by appropriate proceedings diligently conducted in good faith provided, however, that no such contest will subject the other party to any liability, cost or expense.

11.4. Landlord agrees to join in the execution of any instruments which may reasonably be required in order for Tenant to procure the issuance of any licenses, occupational permits, building permits or other government approvals required by Tenant in its use, occupancy or construction of the Premises in accordance with the Development Agreement. Tenant will indemnify, defend, pay and hold harmless Landlord for, from and against any expense or loss whatsoever occasioned by Landlord's presence as a party to any such instrument, application or permit, except to the extent caused solely by the grossly negligent or intentional bad acts of Landlord, its agents, representatives, officers, directors, elected and appointed officials and employees.

SECTION 12 – LIENS

12.1. Subject to Section 17 of this Lease, Tenant has no authority to do any act or make any contract that may create or be the basis for any lien, mortgage or other encumbrance upon any interest of Landlord in the real property included within the Premises, provided however that Tenant is not prohibited from entering into any contracts in Tenant's capacity as a tenant, rather than as the title holder of said real property. Should Tenant cause any construction, alterations, rebuildings, restorations, replacements, changes, additions, improvements or repairs

to be made on the Premises, or cause any labor to be performed or material to be furnished thereon, therein or thereto, neither Landlord nor the real property included within the Premises will under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished, and Tenant will be solely and wholly responsible to contractors, laborers and materialmen performing such labor and furnishing such material.

12.2. If, because of any error, act, or omission (or alleged error, act or omission) of either Tenant or Landlord, any mechanics', materialmen's or other lien, charge or order for the payment of money will be filed or recorded against the real property included within the Premises or against Landlord (whether or not such lien, charge or order is valid or enforceable as such), Tenant or Landlord, as the case may be, will, at its own expense, either cause the same to be discharged of record or bonded over pursuant to A.R.S. § 33-1004 within thirty (30) days after either has received from the other a written notice requesting such discharge.

12.3. Landlord will keep the fee title free and clear of all liens and encumbrances that may adversely affect Tenant's leasehold interest in this Lease.

SECTION 13 – PROPERTY AND PUBLIC LIABILITY INSURANCE

Tenant will at all times, throughout the Term of this Lease, keep the Premises insured pursuant to the requirements set forth in Exhibit E.

SECTION 14 – DAMAGE OR DESTRUCTION

14.1. In the event of damage to or destruction of any of the buildings, structures or improvements included within the Premises by fire or other casualty, Tenant will give Landlord and any mortgagee immediate notice thereof and will at its own expense and whether or not the insurance proceeds are sufficient for the purpose, promptly commence and thereafter diligently pursue completion of the repair, restoration or rebuilding of the same so that upon completion of such repairs, restoration or rebuilding, the value and rental value of the buildings, structures or improvements will be substantially equal to the value and rental value thereof immediately prior to the occurrence of such fire or other casualty.

14.2. Notwithstanding anything to the contrary contained herein, if the buildings, structures or improvements included within the Premises should be rendered untenable by fire or other casualty during the last five (5) years of the Lease to the extent of fifty percent (50%) or more of the replacement cost of said buildings, structures or improvements, Tenant may, at Tenant's option, terminate this Lease, provided however, that Tenant will pay all casualty insurance proceeds received or receivable by reason of the destruction of said buildings, structures or improvements in the following order of priority: (1) to any leasehold mortgagees in the order of their priority for the outstanding balances of said mortgages; (2) to Tenant for the costs of restoring the Premises substantially to its condition on the Lease commencement Date; (3) to Landlord for any unpaid Rent; and (4) any residual to Tenant. Tenant's option to terminate will be evidenced by a written notice given to Landlord within sixty (60) days after the occurrence of such damage or destruction.

SECTION 15 – INDEMNIFICATION

15.1. Tenant will indemnify, defend, pay and hold Landlord, its agents, representatives, officers, directors, elected and appointed officials and employees harmless for, from and against any and 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") imposed upon or asserted against Landlord, its agents, representatives, officers, directors, elected or appointed officials, and employees, by reason of any of the following: (i) any act or omission by Tenant, or its employees, contractors, subcontractors, agents or representatives, undertaken in fulfillment of Tenant's obligations under this Lease; (ii) any use or nonuse of, or any condition created by Tenant on the Premises or any part thereof; (iii) any accident, injury to or death of persons (including workmen) or loss of or damage to property occurring on or about the Premises or any part thereof; (iv) performance of any labor or services or the furnishing of any materials or other property with respect to the Premises or any part thereof; (v) any failure on the part of Tenant to comply with any of the matters set forth in Section 11 of this Lease, including but not limited to any failure by Tenant to clean up any Hazardous Materials; and (iv) 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 existing Garage, and all subsequent design, construction, engineering and other work and improvements by or on behalf of Tenant (collectively, "Indemnity").

15.2. In the event Landlord, its agents, representatives, officers, directors, elected and appointed officials, and employees should be made a defendant in any action, suit or proceeding brought by reason of any the occurrences described in this Section 15, Tenant will at its own expense resist and defend such action, suit or proceeding or cause the same to be resisted and defended by counsel designated by Tenant and reasonably approved by Landlord. Except for the negligent or intentional acts of Landlord, its agents, representatives, officers, directors, elected and appointed officials, and employees, if any such action, suit or proceeding should result in a final judgment against Landlord, Tenant will promptly satisfy and discharge such judgment or will cause such judgment to be promptly satisfied and discharged. .

15.3. Notwithstanding the terms and conditions contained in Subsection 15.2 above, Tenant is required to indemnify, defend, pay and hold harmless Landlord, its agents, representatives, officers, directors, elected and appointed officials, and employees in the event negligence is imputed by operation of law against Landlord, its agents, representatives, officers, directors, elected and appointed officials, and employees as a result of the actions or non-action of Tenant, its agents, servants, employees, directors, representatives, officials, customers, vendors, guests, licensees or invitees on the Premises.

15.4. Tenant's obligations of Indemnity will survive the expiration or earlier termination of this Lease.

SECTION 16 – ASSIGNMENT AND SUBLETTING

16.1. Assignment.

a. Prior to Completion of Construction (as defined in the Development Agreement) of all of the Minimum Improvements and Minimum Public Improvements (each as defined in the Development Agreement), no assignment or similar transfer of Tenant's interest in the Premises or this Lease, or in the current management, ownership or control of Tenant (each, a "Transfer") may occur without the prior written consent of Landlord, which consent may be given or withheld in Landlord's sole and unfettered discretion; provided, however, that the foregoing restriction will not apply to a one-time Transfer to an Affiliate (as defined in the Development Agreement) of Tenant upon Landlord's reasonable determination that the management and control of the Affiliate transferee is materially the same as the management and control of Tenant as of the Effective Date. The restrictions on Transfer set forth in this Section 16.1(a) will terminate automatically, and without further notice or action, upon Completion of Construction (as defined in the Development Agreement); provided, however, that no Transfer will release or discharge Tenant from any of its obligations arising in or under this Lease, including but not limited to the obligations of Indemnity set forth in Section 15; and further provided that, upon a Transfer, the transferee (without further act or writing required) is deemed fully, automatically and unconditionally to have assumed all obligations of Tenant arising in or under this Lease, including but not limited to all obligations of Indemnity set forth in Section 15. No voluntary or involuntary successor in interest to Tenant will acquire any rights or powers under this Lease, except as expressly set forth herein, and any Transfer in violation of this Lease will be void, and not voidable.

b. Notwithstanding any term or provision of Section 16.1(a) or Section 17 to the contrary, this Lease (and Tenant's interest in the Premises) may not be transferred, assigned or hypothecated separately or apart from Tenant's (as Developer) interest in, and rights and obligations under, the Development Agreement, and Tenant's (as Licensee) interest in, and rights and obligations under, the License; and any transfer, assignment or hypothecation in violation of this Section 16.1(b) will be void, and not voidable.

c. Tenant has the right at any time and from time to time during the Term of this Lease to assign or otherwise encumber by way of mortgages, deeds of trust or other documents or instruments, all or any part of its right, title and interest in and to this Lease to any person or entity for the purpose of obtaining financing in accordance with the terms and conditions of Section 17.

16.2. Subleases. Tenant may sublet all or any portion of the Premises and all, any portion of or any space within any buildings or structures located on the Premises, for any Permitted Use without first obtaining the written consent of Landlord, but Landlord is hereby given the right to inspect all subleases upon reasonable notice to Tenant. A sublease will (i) not relieve Tenant of its liability for the full performance of all of the terms, agreements, covenants and conditions of this Lease unless otherwise agreed to by Landlord; (ii) not grant any rights to the subtenant which are inconsistent with the rights of Tenant under this Lease; (iii) be expressly subject and subordinate to each and every provision of this Lease; (iv) have a term that expires on or before the expiration of the Term; and (v) provide that if Landlord succeeds to Tenant's position, Landlord will not be liable to subtenant for any prepayment of more than one (1) month's Base Rent, or for deposits or other payments which have not been actually delivered to Landlord by the subtenant, provided however, that the rent and common area maintenance (CAM) charges may be allocated in differing amounts between each sublease. Any and all

sublease agreements will also provide that in the event of termination, re-entry, or dispossession by Landlord under this Lease, Landlord may, at its option, take over all of the right, title and interest of Tenant as sublessor under such sublease, and such subtenant will, at Landlord's option, attorn to Landlord pursuant to the then executory provisions of the sublease, except that Landlord will not (a) be liable for any previous act or omission of Tenant under the sublease; (b) be subject to any offset not expressly provided in the sublease, that theretofore accrued to the subtenant against Tenant; or (c) be bound by any previous modification of such sublease or by any previous prepayment of more than one (1) month's Base Rent.

SECTION 17 – HYPOTHECATION OF LEASEHOLD ESTATE

17.1. Subject to Section 16.1(b), Tenant has the right to mortgage its interest in this Lease (but in no event the fee interest of the real property included within the Premises and the Licensed Area) to a bank, insurance company or other bona fide institutional lender without first obtaining the written consent of Landlord, provided that any leasehold mortgage will be subject and subordinate to the rights of Landlord hereunder. As used in this Section 17 and throughout this Lease, the noun "mortgage" includes a deed of trust, the verb "mortgage" includes the creation of a deed of trust, and the word "mortgagee" includes the beneficiary under a deed of trust. Within five (5) days of entering into a leasehold mortgage, Tenant will provide written notice to Landlord of such leasehold mortgage.

17.2. If Tenant mortgages this Lease in accordance with Subsection 17.1 and has furnished Landlord the name and mailing address of the mortgagee, then Landlord will not be empowered to terminate this Lease by reason of the occurrence of any default hereunder (except as expressly provided in Section 3.3), unless Landlord has given the mortgagee under such leasehold mortgage a copy of its notice to Tenant of such default and the default has continued for ninety (90) days after the mortgagee has been given such notice.

17.3. The leasehold mortgagee will have the right to remedy any Default under this Lease and Landlord will accept such performance by or at the instance of such leasehold mortgagee as if the same had been made by Tenant.

17.4. In case of Default, Landlord may not terminate this Lease by reason of the occurrence of such Default if leasehold mortgagee, within ninety (90) days after the giving of notice of such Default as provided in Subsection 17.2**,** has commenced foreclosure or similar proceedings under the mortgage for the purpose of acquiring Tenant's interest in this Lease and thereafter diligently prosecutes the same; provided that during the pendency of such foreclosure proceedings and the period of redemption, the leasehold mortgagee remedies any existing Defaults under this Lease that are capable of being remedied by the leasehold mortgagee, pays to Landlord, when due, all Rent, Additional Charges and other sums due hereunder and performs or causes to be performed all other agreements, terms, covenants and conditions arising out of or contained herein in this Lease.

17.5. The leasehold mortgagee, or a third-party purchaser, may become the legal owner or successor and holder of the leasehold estate under this Lease without first obtaining the written consent of Landlord, by foreclosure of its leasehold mortgage or as a result of the assignment of this Lease in lieu of foreclosure. Upon becoming the owner or successor and

holder of the leasehold estate, leasehold mortgagee or third party purchaser may have all rights, privileges, obligations and liabilities of the original Tenant, except that leasehold mortgagee or third party purchaser may have the right to assign its interest under this Lease and, provided the assignee assumes and agrees to perform and be bound by all of the terms hereof, to be relieved of further liability hereunder.

17.6. Landlord agrees that the name of the leasehold mortgagee may be added to the "Loss Payable Endorsement" of any and all insurance policies required to be carried by Tenant under this Lease, and provided the leasehold mortgagee remains a mortgagee or becomes the legal owner and holder of the leasehold estate under this Lease, it may receive and hold insurance proceeds thereunder on the condition that the insurance proceeds be applied in the manner specified in this Lease.

17.7. Landlord agrees that in the event of termination of this Lease by reason of the bankruptcy of Tenant or any Default by Tenant, that Landlord will enter into a new lease for the Premises with the leasehold mortgagee or its nominee for the remainder of the Term effective as of the date of such termination, at the Rent, and upon the terms, provisions, covenants and agreement contained in this Lease, subject to the rights, if any, of the parties then in possession of any part of the Premises, provided:

a. The mortgagee or its nominee must make written request upon Landlord for the new lease agreement within thirty (30) days after the date the mortgagee receives written notice from Landlord of such termination and the Rent due and unpaid. The written request must be accompanied by any then due payments of Rent under this Lease and the satisfaction of all uncured defaults of Tenant (expressly including all matters required in Section 17.7(c) below); and the mortgagee or nominee must execute and deliver the new lease agreement within thirty (30) days after Landlord has delivered it.

b. The mortgagee or its nominee must pay to Landlord, at the time of execution and delivery of the new lease agreement, any and all sums which would then be due pursuant to this Lease but for such termination and, in addition thereto, any reasonable expenses, including reasonable attorney's fees, which Landlord has incurred by reason of such default, including the costs of negotiation, approval and recording the new lease agreement.

c. In order to succeed to Tenant's interest under this Lease, and to receive a new lease agreement pursuant to Section 17.7(c), the mortgagee or its nominee must perform and observe all covenants in this Lease to be performed by Tenant and must further remedy any other defaults under covenants which Tenant was obligated to perform under the terms of this Lease. If there are any continuing or past defaults that the mortgagee cannot cure due solely to the circumstances of the default, then the performance requirement will be waived.

d. The new lease agreement will be expressly made subject to the rights that survive, if any, of Tenant under this Lease and the rights of any subtenants.

e. The tenant under the new lease agreement will have the same right, title and interest in and to the Premises as Tenant has under this Lease.

f. If, after receiving a notice of default under this Lease, the leasehold mortgagee decides to foreclose or otherwise exercise remedies against Tenant, Landlord agrees to forebear from the exercise of any remedies available to Landlord under this Lease for so long as the leasehold mortgagee pays all Rent hereunder, and otherwise performs or causes to be performed the obligations of Tenant hereunder, as and when due, and diligently pursues the exercise of such remedies, including without limitation, any period during which the leasehold mortgagee seeks possession of the Premises pursuant to judicial proceedings (including any period during which the leasehold mortgagee is subject to a stay imposed by any court). Notwithstanding anything to the contrary, Landlord agrees to recognize as "Tenant" under this Lease the leasehold mortgagee, its nominee or any purchaser at a foreclosure sale or by assignment in lieu of foreclosure.

17.8. Except in connection with a leasehold mortgagee's exercise of any right it may have to obtain a new lease under Subsection 17.6 above, or any purchase, assumption or other acquisition in Subsection 17.6 above, a leasehold mortgagee will not, as a condition to the exercise of its rights hereunder, be required to assume any personal liability for the payment and performance of the obligations of Tenant hereunder, and any such payment or performance or other act by the leasehold mortgagee hereunder will not be construed as an undertaking by such leasehold mortgagee to assume such personal liability.

SECTION 18 – DEFAULTS BY TENANT

18.1. Each of the following occurrences will be a default ("Default") of this Lease:

a. If Tenant fails to pay any Rent, Additional Charges or any other sum due hereunder promptly when due (a "Payment Breach") and such Payment Breach continues for twenty (20) days after notice thereof in writing to Tenant.

b. If Tenant fails to perform or comply with any of the other covenants, agreements, conditions or undertakings herein to be kept, observed and performed by Tenant other than a Payment Breach (but expressly not including the occurrence of any event referred to in subparagraphs (c) and (d) of this Subsection 18.1, for which no cure period is given) and such failure continues for thirty (30) days after notice thereof in writing to Tenant (or such longer period as may be specified in this Lease, e.g., Section 19.2); provided, however, that no period to cure will be permitted with respect to the defaults listed in Section 3.3.

c. If Tenant voluntarily files any petition, or has an involuntary petition filed on its behalf, under any chapter or section of the Federal Bankruptcy Code or any similar law, state or federal, whether now or hereafter existing, or files an answer admitting insolvency or inability to pay its debts; provided however, that Tenant shall not remain in Default if Tenant continues timely to pay all Rent and Additional Charges and otherwise fully comply with all other terms and conditions of this Lease.

d. If Tenant makes an assignment for the benefit of its creditors.

e. If Tenant breaches any term or provision of the Development Agreement, beyond any applicable cure period granted in the Development Agreement.

f. If Tenant breaches any term or provision of the License, beyond any applicable cure period granted in the License.

18.2. Upon the occurrence of any Default, Landlord will have the right, at its election, to reenter the Premises and the buildings, structures and improvements then situated thereon, or any part thereof, and to expel, remove and put out Tenant and all persons occupying or upon the same under Tenant, using such force as may be necessary in so doing, and again to possess the Premises and enjoy the same as in their former estate and to take full possession of and control over the Premises and the buildings, structures and improvements thereon and to have, hold and enjoy the same and to receive all rental income of and from the same. No reentry by Landlord will be deemed an acceptance of a surrender of this Lease, nor will it absolve or discharge Tenant from any liability under this Lease. Upon such reentry, all rights of Tenant to occupy or possess the Premises will cease and terminate.

18.3. Upon the occurrence of any Default, Landlord may give written notice to Tenant stating that this Lease will terminate on the date specified by such notice, and upon the date specified in such notice this Lease and the real property hereby demised and all rights of Tenant hereunder will terminate. Upon such termination, Tenant will quit and peacefully surrender to Landlord the Premises and the buildings, structures and improvements then situated thereon.

18.4. Notwithstanding the foregoing, in the event of a Default specified in Section 3.3, this Lease, all rights of Tenant under this Lease, will automatically and without notice terminate. Upon such termination, Tenant will quit and peacefully surrender to Landlord the Premises and the buildings, structures and improvements then situated thereon.

18.5. At any time and from time to time after such reentry, Landlord may re-let the Premises and the buildings, structures and improvements thereon, or any part thereof, in the name of Landlord or otherwise, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term of this Lease), and on such conditions (which may include concessions or free rental) as Landlord, in its reasonable discretion, may determine and may collect and receive the rental therefore. Even though it may re-let the Premises, Landlord will have the right thereafter to terminate this Lease and all of the rights of Tenant in or to the Premises.

18.6. Unless Landlord has notified Tenant in writing that it has elected to terminate this Lease, no such reentry or action in lawful detainer or otherwise to obtain possession of the Premises will relieve Tenant of its liability and obligations under this Lease; and all such liability and obligations will survive any such reentry. In the event of any such reentry, whether or not the Premises and the buildings, structures and improvements thereon, or any part thereof, have been relet, Tenant will pay to Landlord the entire Rent and all other Additional Charges required to be paid by Tenant up to the time of such reentry under this Lease, and thereafter Tenant, until the end of what would have been the Term of this Lease in the absence of such reentry, will be liable to Landlord and will pay to Landlord, as and for liquidated and agreed damages for Tenant's Default:

a. The amount of Rent and Additional Charges which would be payable under this Lease by Tenant if this Lease were still in effect, less

b. The net proceeds of any reletting, after deducting all of Landlord's reasonable expenses in connection with such reletting, including without limitation all reasonable repossession costs, brokerage commissions, legal expenses, attorneys' fees, alteration costs and expenses of preparation for such reletting.

18.7. In the event of any Default by Tenant, Landlord will have, in addition to any specific remedies provided in this Lease, the right to invoke any right or remedy allowed by law or in equity or by statute or otherwise, including the right to enjoin such breach.

18.8. Each right and remedy of Landlord provided for in this Lease will be cumulative and in addition to every other right or remedy provided for in this Lease now or hereafter existing at law or in equity or by statute or otherwise; and the exercise or beginning of the exercise by Landlord of any one or more of such rights or remedies will not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

18.9. Any violation of any covenant or provision of this Lease, whether by act or omission, by any subtenant or any other persons occupying any portion of the Premises or any buildings, structures or improvements thereon under the rights of Tenant will be deemed a violation of such provision by Tenant and a Default under this Lease; provided, however, that any such violation will not be deemed to be a Default under this Lease if and so long as Tenant in good faith and at its own expense takes and diligently pursues any and all steps it is entitled to take and which steps if completed will cure said Default and otherwise fully and timely performs all of Tenant's obligations under this Lease.

18.10. Notwithstanding any other provision of this Section 18, but expressly subject to Section 3.3, Landlord agrees that if the Default complained of (other than for (i) a Payment Breach; (ii) the occurrence of any event referred to in subparagraphs (c) and (d) of this Subsection 18.1; (iii) a Default specified in Section 3.3 of this Lease; or (iv) a breach of Section 19.2 of this Lease), is of such a nature that the same cannot reasonably be cured within the thirty (30) day period for curing as specified in the written notice given to Tenant in connection with such default, then such default will be deemed to be cured if Tenant, within such period of thirty (30) days, will have commenced the curing of the default and will continue with all due diligence to effect such curing and completes such cure; but no extension of time permitted by this Section 18.10 may exceed ninety (90) days.

SECTION 19 – OPERATING COVENANT

19.1. Tenant covenants and agrees that following completion of the Improvements contemplated by this Lease and for the remainder of the Term, it will continuously and without interruption offer for sublease, at "market" rent, any vacant space within the Improvements and will have available to the Premises competent personnel (who may be employees or independent contractors) to sublease and maintain the improvements in a manner which conforms to commercially reasonable management practices for comparable facilities, ("Operating Covenant"); provided, however, that the Operating Covenant will not apply during any period when the Premises are untenantable by reason of fire or other casualty or by eminent domain. The Parties acknowledge that the occurrence of vacancies from time to time

will not constitute a breach of the Operating Covenant. Notwithstanding the foregoing, Tenant may request of Landlord a waiver of the provisions of this Section 19 if it determines that economic factors and conditions make it impractical to comply therewith.

19.2. Subject to the rights of any leasehold mortgagee otherwise set forth herein, if Tenant fails to use commercially reasonable efforts to fulfill the Operating Covenant and such failure is not cured within the applicable cure period, then, as Landlord's exclusive remedy for such failure, Landlord may terminate this Lease upon ninety (90) days prior written notice to Tenant after which all obligations of Tenant and Landlord under this Lease will terminate and be of no further force and effect.

SECTION 20 – ASSIGNMENT OF RENTS, INCOME AND PROFITS

Subject to the rights of its leasehold mortgagee, Tenant hereby absolutely and irrevocably assigns to Landlord all rents, income and profits accruing to Tenant from permitted subtenants of all or a portion of the Premises and the buildings, structures or improvements thereon, together with the right to collect and receive the same; provided that so long as Tenant is not in default hereunder, Tenant will have the right to collect and retain such rents, income and profits. Landlord will apply to rent and other monies due hereunder the net amount (after deducting all costs and expenses incident to the collection thereof and the operation and maintenance, including repairs, of the Premises) of any rents, income and profits so collected and received by it. Notwithstanding the foregoing, if Tenant mortgages its leasehold interest pursuant to Subsection 17.1 and the mortgagee requires an assignment of rents, income and profits as part of its security, then during the Term of this Lease, the assignment herein will be junior to the assignment in favor of the mortgagee.

SECTION 21 – WAIVER OF PERFORMANCE

No failure by Landlord or Tenant to insist upon the strict performance of any term or condition hereof or to exercise any right, power or remedy consequent upon a breach thereof and no submission by Tenant or acceptance by Landlord of full or partial Rent or Additional Charges during the continuance of any such breach will constitute a waiver of any such breach or of any such term. No waiver of any breach will affect or alter this Lease, which will continue in full force and effect, nor the respective rights of Landlord or Tenant with respect to any other then existing or subsequent breach.

SECTION 22 – REMEDIES CUMULATIVE

Each right, power and remedy provided for in this Lease or now or hereafter existing at law, in equity or otherwise is cumulative and concurrent and will be in addition to every other right, power or remedy provided for in this Lease or now or hereafter existing at law, in equity or otherwise; and the exercise or beginning of the exercise of any one or more of the rights, powers or remedies provided in this Lease will not preclude the simultaneous or later exercise of any or all such other rights, powers or remedies.

SECTION 23 – TITLE TO BUILDINGS AND IMPROVEMENTS

23.1. During the Term, title to all Improvements constructed on the Premises by Tenant (except the Public Improvements constructed by Tenant pursuant to the Development Agreement and dedicated to Landlord) will be in the Tenant.

23.2. Subject to the exercise by Tenant of its Purchase Option pursuant to Section 30, on the expiration or sooner termination of this Lease term, title to all Improvements which constitute or are a part of the Premises, exclusive of trade fixtures and personal property of Tenant and subtenants, will (without the payment of compensation to Tenant or others) vest in Landlord free and clear of all claims and encumbrances on such Improvements by Tenant, and anyone claiming under or through Tenant. The Improvements will be surrendered to Landlord in "as is" condition. Upon request, Tenant will then quitclaim to Landlord its possessory interest in the Improvements. Tenant agrees to and will defend, indemnify and hold Landlord harmless from and against all liability and loss which may arise from the assertion of any claims and any encumbrances on such Improvements that arose during the Lease Term; provided, however, such duty to indemnify and hold harmless will not apply to any claims or encumbrances which are attributable to the acts or conduct of the Landlord. Additionally, Tenant will assign to Landlord without representation or warranty of any kind, and Landlord will be entitled to the benefit of, any licenses, warranties or guarantees applicable to equipment, systems, fixtures or personal property conveyed or otherwise transferred to, or for the benefit of, Landlord under this Lease. The foregoing notwithstanding, Tenant will not quitclaim its possessory interest in the aforementioned Improvements to Landlord until such Improvements have been inspected by Landlord and they have been determined not to present a potential environmental hazard. This Section 23 will survive the expiration or earlier termination of this Lease. Notwithstanding anything contained herein to the contrary, while this Lease remains in effect, Tenant alone will be entitled to claim depreciation on the buildings, structures, improvements, additions and alterations therein included within the Premises, and all renewals and replacements thereof, for all taxation purposes.

SECTION 24 – ATTORNEYS FEES

In the event Landlord should bring suit for possession of the Premises, for the recovery of any sum due hereunder, or for any other relief against Tenant, declaratory or otherwise, arising out of a breach of any term or condition of this Lease, or in the event Tenant should bring any action for any relief against Landlord, declaratory or otherwise, arising out of this Lease, the prevailing Party will be entitled to receive from the other Party reasonable attorneys' fees and reasonable costs and expenses, which have accrued on the commencement of such action and will be enforceable whether or not such action is prosecuted to judgment.

SECTION 25 – PROVISIONS SUBJECT TO APPLICABLE LAW

All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law and are intended to be limited to the extent necessary so that they will not render this Lease invalid or unenforceable under any applicable law. If any term or condition of this Lease is held to be invalid, illegal or unenforceable or against public policy, such provision will be deemed stricken from this Lease

and the validity of the other terms of this Lease will in no way be affected thereby and this Lease, absent the stricken provision, will otherwise remain in full force and effect.

SECTION 26 – RIGHT TO CURE TENANT'S DEFAULTS

Except with respect to Tenant's failure to operate its business, in the event Tenant is in default of this Lease, which default remains uncured after the expiration of any applicable cure period provided herein, and if such default continues for thirty (30) days after written notice from Landlord of the default and of Landlord's intent to cure such default, Landlord may at any time, without further notice, cure such breach for the account and at the expense of Tenant. If Landlord at any time, by reason of such breach, is compelled to pay or elects to pay any sum of money or to do any act that will require the payment of any sum of money, or is compelled to incur any expense, including reasonable attorneys' fees, in instituting, prosecuting or defending any actions or proceedings to enforce Landlord's rights under this Lease or otherwise, the sum or sums so paid by Landlord, with all interest, costs and damages, will be deemed to be Additional Charges and will be due from Tenant to Landlord on the first day of the month following the incurring of such expenses or the payment of such sums.

SECTION 27 – NOTICES

All notices, demands, requests, consents, approvals and other communications required or permitted hereunder will be in writing and will be deemed to have been given upon personal delivery to the respective Party, after delivery by personal service or a nationally recognized overnight courier service (e.g., UPS, Federal Express), or within three (3) days after the same has been mailed by registered or certified mail, postage prepaid and return receipt requested, at the address shown below:

To Tenant: _____
Attn: _____
_____
_____

With a copy to: AZ Strategies LLC
Attn: Karrin Taylor Robson
3344 East Camelback Road, Suite 100
Phoenix, Arizona 85018

With a copy to: Gallagher & Kennedy, P.A.
Attn: Dana Stagg Belknap
2575 East Camelback Road
Phoenix, Arizona 85016

With a copy to: 3W Management, LLC
Attn: Tony Wall
7349 N. Via Paseo del Sur, Suite 515
Scottsdale, Arizona 85258

To Landlord: City of Mesa
Attn: City Manager
20 East Main Street
Mesa, Arizona 85211

If by United States Postal Service:
Post Office Box 1466
Mesa, Arizona 85211-1466

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

If by United States Postal Service:
Post Office Box 1466
Mesa, Arizona 85211-1466

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

If by United States Postal Service:
Post Office Box 1466
Mesa, Arizona 85211-1466

or at such other address as either Party may from time to time designate in writing to the other.

SECTION 28 – WARRANTIES OF THE PARTIES

28.1. Landlord hereby makes the following representations and warranties, each of which (i) is material and is being relied upon by Tenant in entering into this Lease, and (ii) is true in all respects as of the date hereof:

a. Landlord owns the real property included within the Premises.

b. Landlord has the full right, power and authority to enter into and perform Landlord's obligations pursuant to this Lease and to lease the real property included within the Premises to Tenant in the manner contemplated in this Lease subject only to the consent and approval of the Mesa City Council.

c. Except as otherwise disclosed in this Lease, no other person or entity other than Tenant has a right to possession of all or any part of the real property included within the Premises.

d. To the extent of Landlord's actual knowledge, this Lease does not violate any contract, agreement or instrument to which Landlord is a party, or is otherwise subject.

e. No third party has any option or preferential right to purchase all or any part of the Premises.

f. Landlord has not received or given any written notice that the Premises or the operations thereon are in violation of any governmental law or regulation, including, without limitation, any Hazardous Materials Laws or the Americans with Disabilities Act, nor is Landlord aware of any such violation.

For the purposes of this Section 28.1, the actual knowledge of Landlord will be and mean the actual knowledge, without further duty of inquiry, of the Downtown Transformation Manager of the City of Mesa.

28.2. Upon Tenant performing all covenants of this Lease to be performed by Tenant, and upon compliance with all of the requirements of Tenant (as Developer) set forth in the Development Agreement, Tenant will have quiet, exclusive and undisturbed use, possession and enjoyment of the Premises, together with all appurtenances thereto without hindrance or ejection by any person lawfully claiming by, through or under Landlord.

28.3. Tenant hereby makes the following representations and warranties to Landlord, each of which (i) is material and is being relied upon by Landlord in entering into this Lease, and (ii) is true in all respects as of the date hereof:

a. Tenant is a duly formed and validly existing _____, formed under the laws of the State of _____.

b. Tenant has the full right, power and authority to enter into and perform Tenant's obligations pursuant to this Lease and to lease the real property included within the Premises from Landlord in the manner contemplated in this Lease.

c. To the extent of Tenant's actual knowledge, neither this Lease nor Tenant's contemplated use of the Premises, as contemplated by this Lease, violates any contract, agreement or instrument to which Tenant is a party, or is otherwise subject.

For the purposes of this Subsection 28.3, the actual knowledge of Tenant will be and mean the actual knowledge, without further duty of inquiry, of _____, the _____ of Tenant.

SECTION 29 – UNSUBORDINATED LEASE

This is an unsubordinated lease. Landlord is not and will not be obligated to subordinate its rights and ownership interest in the real property included within the Premises to any loan, encumbrance or other lien that Tenant may place against Tenant's leasehold interest.

SECTION 30 – PURCHASE OPTION

30.1. Option to Purchase. Landlord hereby grants to Tenant the exclusive option to purchase the entirety of the Premises ("Purchase Option") according to the terms and conditions hereinafter set forth.

30.2. Exercise of Purchase Option. The Purchase Option granted herein will become effective and Tenant will have the right to exercise the Purchase Option hereunder at any time during the Term after the Completion of Construction of the Minimum Improvements and Minimum Public Improvements as defined in the Development Agreement ("Option Period"), provided that Tenant's right to exercise the Purchase Option will be conditioned upon Tenant curing any default then existing under this Lease. The Purchase Option granted herein may be exercised by Tenant at any time during the Option Period by Tenant delivering written notice of exercise to Landlord.

30.3. Conveyance of Premises.

a. Purchase Price. The Purchase Price for the Premises will be the fair market value of the Premises as unimproved at the time of Tenant's exercise of its Purchase Option. In the event that Landlord and Tenant are unable to agree on the fair market value of the Premises, then Landlord and Tenant will select an appraiser who is a member of MAI or AIA and has at least twenty years' experience in appraising commercial properties ("Appraiser"), and then deliver to the Appraiser each of such Party's determination of the fair market value of the Premises. The Appraiser will then select one value that the Appraiser reasonably determines to be the closer to the fair market value of the Premises, and that value will be the Purchase Price. In the event one Party does not submit its determination of fair market value of the Premises to the Appraiser, then the Purchase Price will be the fair market value of the Premises as determined and submitted by the other Party.

b. Conveyance of Title and Delivery of Possession. Landlord and Tenant agree to perform all acts necessary for conveyance in sufficient time for the Premises to be conveyed within ninety (90) days after delivery to Landlord of Tenant's notice of exercise of the Purchase Option or on the last day of the Rental Period, whichever first occurs. Landlord's entire interest in the Premises will be conveyed by Special Warranty Deed in the form of Exhibit F. The Premises will be conveyed to Tenant in its "as-is, where-is" condition, with no representation of Landlord with respect to any matter regarding the physical condition of the Premises, including but not limited to the presence or absence of Hazardous Materials or compliance with any Regulatory Requirements. All expenses in connection with conveyance of the Land to Tenant including, but not limited to, title insurance (if requested by Tenant), recordation and notary fees and all other closing costs (including escrow fees if use of an escrow is requested by Tenant), will be paid by Tenant. Notwithstanding Tenant's actual possession of the Premises pursuant to this Lease, possession of the Premises will be deemed formally delivered to Tenant concurrently with the conveyance of title, although Tenant will bear all risk of loss or damage.

c. In addition to the foregoing, Tenant's excise of the Purchase Option is conditioned upon Tenant's assumption, in perpetuity, of all of the obligations of Licensee of the License.

d. Concurrently with the delivery of the Special Warranty Deed to Tenant, Tenant will grant to Landlord, in a form reasonably satisfactory to Landlord, a permanent, non-exclusive easement for the benefit of the public, on and over all private walks and walkways along the street known as East Pomeroy. In the alternative, Landlord may elect to reserve such easement in the Special Warranty Deed.

e. In the event of a breach of Landlord of its obligations arising under this Section 30, Tenant's sole remedy will be to seek specific enforcement (or comparable equitable remedy) of this Lease. Any such action must be commenced by Tenant within ninety (90) days of the alleged breach, and any action commenced later than such date will be deemed barred. Tenant waives all right to seek damages (whether actual, consequential, special, exemplary, speculative, or punitive) from or against Landlord in the event of a breach by Landlord of this Section 30.

SECTION 31 - ESTOPPEL CERTIFICATE

Landlord or Tenant, as the case may be, will execute, acknowledge and deliver to the other, within fifteen (15) days following request therefor, a written certificate in a recordable form certifying (a) that this Lease is in full force and effect without modification except as to those specified in said certificate, and (b) the dates, if any, to which Rent, Additional Charges and other sums payable hereunder have been paid, (c) that no notice has been received by Landlord or Tenant of any default which has not been cured, except as to defaults specified in said certificate, and (d) any other matters as may be reasonably so requested. Any such certificate may be relied upon by any prospective purchaser, assignee, subtenant or encumbrancer of the Premises or any part thereof. Either Party's failure to deliver such certificate within the time permitted hereby will be conclusive upon such Party that this Lease is in full force and affect, except to the extent any modification has been represented by the requesting Party, that there are no uncured defaults in such Party's performance, and that not more than one years rent has been paid in advance.

SECTION 32 – COOPERATION

To further the cooperation of the Parties in implementing the provisions of this Lease, Landlord and Tenant each will designate and appoint a representative to act as a liaison between the Landlord and its various departments and Tenant. The initial representative for Landlord (the "Landlord Representative") will be the Downtown Transformation Manager of the City of Mesa (or equivalent employee); and the initial representative for the Tenant (the "Tenant Representative") will be _____, the Tenant's _____. The representatives will be available at all reasonable times to discuss and review the performance of the Parties to this Lease and the development and maintenance of the Premises and the Licensed Area.

SECTION 33 – MEMORANDUM FOR RECORDING

Within ten (10) days after the Commencement Date of this Lease, Landlord and Tenant will execute and cause to be recorded with the Maricopa County Recorder's Office, and any other public or private official, a Memorandum of Ground Lease in substantially the form set forth in Exhibit G evidencing the existence of this Lease.

SECTION 34 – PARTIES BOUND

This Lease will be binding upon and inure to the benefit of and be enforceable by the Parties hereto, their personal representatives, their respective successors in office and permitted assigns of the Parties hereto for the entire Term of this Lease.

SECTION 35 – TIME OF ESSENCE

Time is declared to be of the essence of this Lease.

SECTION 36 -- SECTION HEADINGS; REFERENCES; INTERPRETATION

The section headings contained in this Lease are for purposes of convenience and reference only and will not limit, describe or define the meaning, scope or intent of any of the terms or provisions hereof. All grammatical usage herein will be deemed to refer to the masculine, feminine, neuter, singular or plural as the context may require. If the last day of any time period stated herein falls on a Friday, Saturday, Sunday or legal holiday in the State of Arizona, then the duration of such time period will be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday in the State of Arizona.

SECTION 37 – IMPASSE

The Parties agree that if at any time Tenant reasonably believes an impasse has been reached with Landlord on any issue affecting the Premises, Tenant will have the right to immediately appeal the issue to the City Manager for an expedited decision pursuant to this Section 37. If the issue on which an impasse is reached is an issue where a final decision can be reached by City staff, the City Manager will give Tenant a final decision within 30 days after Tenant's request for an expedited decision. If the issue is one where a final decision requires action by the City Council, the City Manager will schedule a City Council hearing on the issue within 30 days after Tenant's request for an expedited decision; provided, however, that if the issue is appropriate for review by City's Planning and Zoning Commission, the matter will be first submitted to the Planning and Zoning Commission within 30 days, and then to the City Council.

SECTION 38 – SEVERABILITY

If any provision of this Lease is declared void, unenforceable or against public policy, such provision will be deemed stricken and severed from this Lease, with the remainder of the Lease to remain in full force and effect.

SECTION 39 – GOVERNING LAW AND CHOICE OF FORUM

This Lease will be governed by and construed in accordance with the substantive laws of the State of Arizona without giving effect to the principles of conflict of laws. Any action brought to interpret, enforce or construe any provision of this Lease will be commenced and maintained solely and exclusively in the Superior Court of Maricopa County, Arizona (or, as

may be appropriate, in the Justice Courts of Maricopa County or in the United States District Court for the District of Arizona if, and only if, the Maricopa County Superior Court lacks or declines jurisdiction over such action).

SECTION 40 – PAYMENT OF COSTS AND EXPENSES

Whenever, in this Lease, anything is to be done or performed by Tenant or Landlord, unless otherwise expressly provided to the contrary, it will be done or performed at the sole cost and expense of Tenant or Landlord as the case may be.

SECTION 41 – NO WARRANTIES

Tenant acknowledges and covenants to Landlord that it has made a complete investigation of the real property included within the Premises, the surface and sub-surface conditions thereof, the present and proposed uses thereof, and agrees to accept all the same "as is" except as expressly provided in Section 2. Tenant further agrees that, except as expressly provided herein, no representation or warranty, expressed or implied, in fact or by law, has been made by Landlord or anyone else, as to any matter, fact, condition, prospect or anything else of any kind or nature.

SECTION 42 – BROKERS OR AGENTS

Each party represents and warrants to the other that such party has had no dealings or discussions with any broker or agent (licensed or otherwise) in connection with this Lease and each party covenants to pay, hold harmless and indemnify the other party from and against any and all losses, liabilities, damages, costs and expenses (including reasonable legal fees) arising out of or in connection with any breach of this representation and warranty.

SECTION 43 – CONSENT OR APPROVAL

Except as otherwise expressly provided herein, any consent or approval required in this Lease will not be unreasonably withheld, conditioned or delayed, and if neither approval nor rejection is given within a time period specified in this Lease as to any particular approval which may be requested by one party of the other (or, if no such time is specified, then within thirty (30) days after request for approval is given by a Notice), then the approval thus requested will be conclusively and irrevocably deemed to have been given. The requesting Party will be entitled to seek specific performance at law and will have such other remedies as are reserved to it under this Lease, but in no event will Landlord or Tenant be responsible for damages to anyone for such failure to give consent or approval.

SECTION 44 – DELAY OF PERFORMANCE

Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, acts of terrorism, and other causes beyond the control of the Party obligated to perform, will excuse the performance by such Party for a period equal to any

such prevention, delay or stoppage, except the obligations imposed with regard to rental and other monies to be paid by Tenant pursuant to this Lease.

SECTION 45 – RELATIONSHIP

This is a ground lease. This Lease will not be construed as creating a joint venture, partnership or any other cooperative or joint arrangement between Landlord and Tenant, and it will be construed strictly in accordance with its terms and conditions. Nothing contained herein is intended to confer a benefit upon any third parties.

SECTION 46 – LEASE AMENDMENT

This Lease may be amended only upon written agreement by the Parties. In the event a Party wishes to amend one or more provisions of this Lease, it will make a written request to the other Party setting forth the nature of the request. In the event the Parties agree upon the terms of the proposed Lease modifications, Landlord's approval of any proposed amendments will be subject to its City Council's review and approval. Notwithstanding the foregoing, administrative and non-material amendments to this Lease may be made by the City Manager on behalf of Landlord without the requirement of public hearing and City Council approval.

SECTION 47 – FURTHER INSTRUMENTS AND DOCUMENTS

Landlord and Tenant will, upon request from the other, promptly acknowledge and deliver to the other any and all further documents, instruments or assurances reasonably requested or appropriate to evidence or give effect to the provisions of this Lease.

SECTION 48 – INTEGRATION CLAUSE; NO ORAL MODIFICATION

This Lease is the result of arms-length negotiations between parties of roughly equivalent bargaining power and represents the entire agreement of the Parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Lease are hereby revoked and superseded by this Lease. This Lease will not be construed for or against either Party as a result of its participation, or the participation of its counsel, in the preparation and/or drafting of this Lease or of any exhibits or documents prepared to carry out the intent of this Lease. No representations, warranties, inducements or oral agreements have been made by any of the Parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Lease. This Lease may not be changed, modified or rescinded, except as provided for herein, absent a written agreement signed by Landlord and Tenant. Any attempt at oral modification of this Lease will be void and of no effect.

SECTION 49 – COUNTERPARTS

This Lease may be executed in any number of counterparts, each of which will be deemed to be an original and all of which together will comprise but a single instrument.

SECTION 50 – CONFLICT OF INTEREST

This Lease is subject to cancellation pursuant to the provisions of A.R.S. §38-511 relating to conflicts of interest.

SECTION 51 – NO BOYCOTT OF ISRAEL

Tenant certifies pursuant to A.R.S. §35-393.01 that it is not currently engaged in, and for the Term of this Lease will not engage in, a boycott of Israel.

The balance of this page is blank; signatures are on the following page.

IN WITNESS WHEREOF, the Parties have executed this Ground Lease to be effective as of the Effective Date.

Landlord:	Tenant:
City of Mesa, Arizona, an Arizona municipal corporation By:_____ Christopher J. Brady, City Manager ATTEST: By:_____ DeeAnn Mickelsen, City Clerk APPROVED AS TO FORM: By:_____ James W. Smith, City Attorney	_____, a(n) _____ By: _____ Name: _____ Its: _____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing Ground Lease was acknowledged before me this ___ day of _____, 201__, by _____, the _____ of _____, a(n) _____, on behalf of the Tenant.

_____
Notary Public

My Commission Expires:

_____

EXHIBIT A-1
TO GROUND AND AIR RIGHTS LESASE

LEGAL DESCRIPTION OF POMEROY PARCEL

EXHIBIT A-1 - LEGAL DESCRIPTION OF POMEROY PARCEL

Wood, Patel & Associates, Inc.
(602) 335-8500
www.woodpatel.com

PARCEL DESCRIPTION
The Grid
Parcel 2 Lease

A portion of that certain parcel of land described in Docket 14814, page 0174, Maricopa County Records (M.C.R.), lying within Section 22, Township 1 North, Range 5 East of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the intersection of Pomeroy Street (north) and Pomeroy Street (east), a brass cap in handhole, from which the intersection of Pomeroy Street (west) and Pomeroy Street (south), a brass cap in handhole, bears South 89°48'22" East (basis of bearing), a distance of 240.98 feet;
THENCE South 00°11'38" West, a distance of 2.92 feet, to a line parallel with and 2.92 feet south of the east/west monument line of said Pomeroy Street;
THENCE along said parallel line, North 89°48'22" West, a distance of 6.50 feet, to a line parallel with and 6.50 feet west of the north/south monument line of said Pomeroy Street;
THENCE leaving said east/west parallel line, along said north/south parallel line, South 00°11'21" West, a distance of 39.58 feet, to the south right-of-way line of said Pomeroy Street and the **POINT OF BEGINNING**;
THENCE along said south right-of-way line, South 89°48'22" East, a distance of 223.02 feet, to the east line of said certain parcel of land and an angle point in the right-of-way line of said Pomeroy Street;
THENCE leaving said south right-of-way line, along said east line and the west right-of-way of said Pomeroy Street, South 00°07'45" West, a distance of 225.00 feet;
THENCE leaving said east line and said west right-of-way line, North 89°48'22" West, a distance of 48.79 feet;
THENCE North 00°00'00" East, a distance of 20.76 feet;
THENCE South 89°47'56" East, a distance of 29.22 feet;
THENCE North 00°11'23" East, a distance of 163.63 feet;
THENCE North 89°44'03" West, a distance of 19.62 feet;
THENCE North 00°07'41" West, a distance of 19.26 feet;
THENCE North 89°47'12" West, a distance of 321.93 feet;
THENCE South 00°20'17" West, a distance of 19.32 feet;
THENCE North 89°42'26" West, a distance of 19.76 feet;
THENCE South 00°11'39" West, a distance of 154.05 feet;
THENCE North 90°00'00" West, a distance of 1.69 feet;
THENCE South 00°00'00" East, a distance of 19.29 feet;
THENCE North 90°00'00" East, a distance of 18.67 feet;
THENCE South 00°11'38" West, a distance of 11.20 feet;
THENCE North 89°48'22" West, a distance of 35.92 feet, to the west line of said certain parcel of land;
THENCE along said west line, North 00°07'45" East, a distance of 225.00 feet;

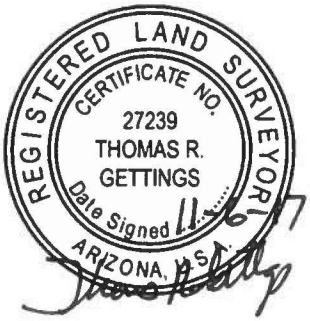
THENCE leaving said west line, South 89°48'22" East, a distance of 176.98 feet, to the **POINT OF BEGINNING**.

Containing 17,885 square feet or 0.4106 acres, more or less

Subject to existing right-of-way and easements.

This parcel description was prepared without the benefit of survey field work and is based on the client provided unrecorded ALTA Survey of 34 S. Pomeroy Street, prepared by Alliance Land Surveying LLC, dated April 26, 2017, job number 170416, and other client provided information. Any monumentation noted in this parcel description is based on said ALTA Survey.

Y:\WP\Parcel Descriptions\2017\174663 The Grid Parcel 2 Lease L04 11-06-17.docx



EXPIRES 06-30-20

EXHIBIT A-1 - LEGAL DESCRIPTION OF POMEROY PARCEL

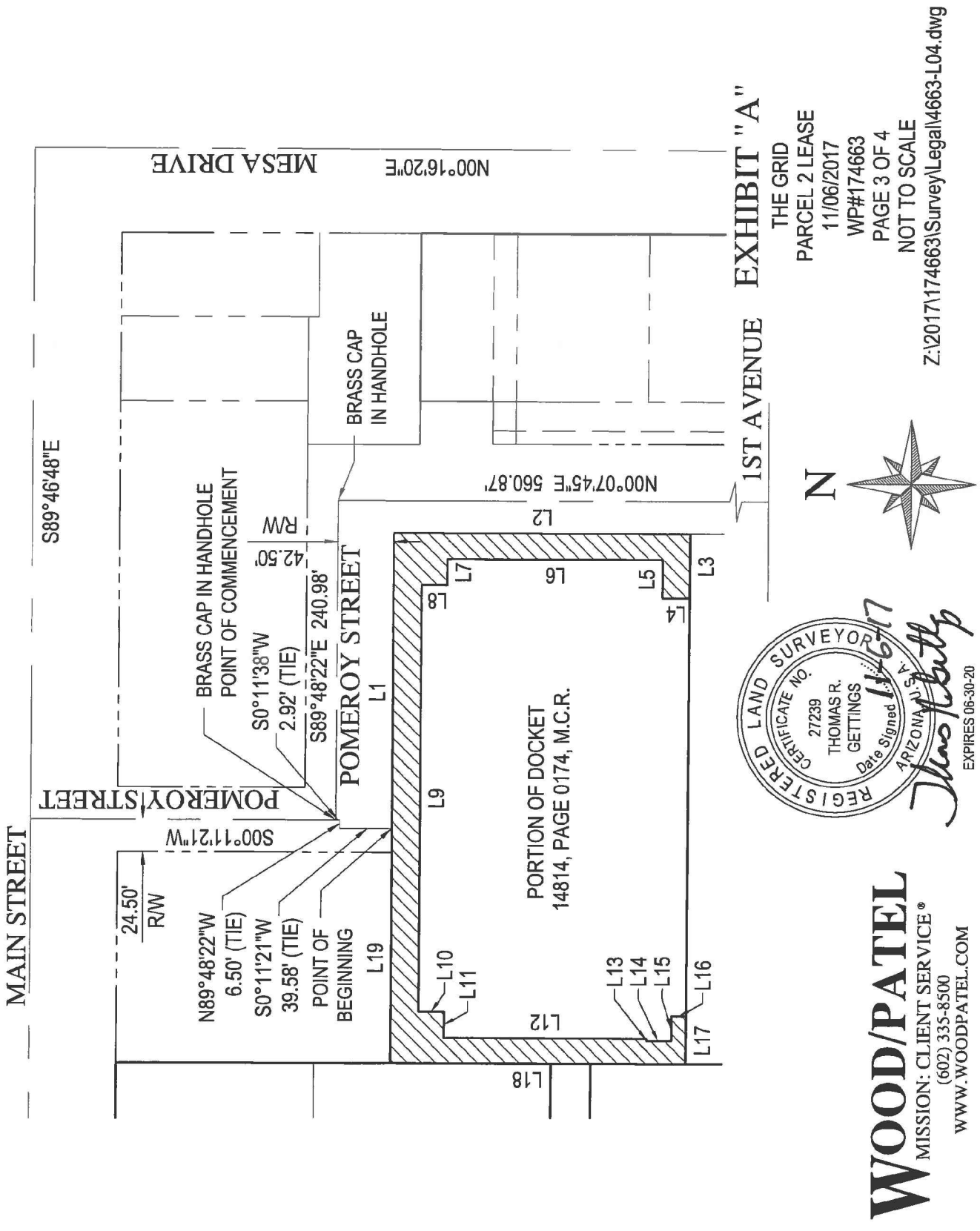


EXHIBIT A-1 - LEGAL DESCRIPTION OF POMEROY PARCEL

LINE TABLE		
LINE	BEARING	DISTANCE
L1	S89°48'22"E	223.02'
L2	S00°07'45"W	225.00'
L3	N89°48'22"W	48.79'
L4	N00°00'00"E	20.76'
L5	S89°47'56"E	29.22'
L6	N00°11'23"E	163.63'
L7	N89°44'03"W	19.62'
L8	N00°07'41"W	19.26'
L9	N89°47'12"W	321.93'
L10	S00°20'17"W	19.32'

LINE TABLE		
LINE	BEARING	DISTANCE
L11	N89°42'26"W	19.76'
L12	S00°11'39"W	154.05'
L13	N90°00'00"W	1.69'
L14	S00°00'00"E	19.29'
L15	N90°00'00"E	18.67'
L16	S00°11'38"W	11.20'
L17	N89°48'22"W	35.92'
L18	N00°07'45"E	225.00'
L19	S89°48'22"E	176.98'

WOOD/PATEL
MISSION: CLIENT SERVICE®
(602) 335-8500
WWW.WOODPATEL.COM

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
27239
THOMAS R.
GETTINGS
Date Signed 11-6-17
ARIZONA, U.S.A.
EXPIRES 06-30-20

N

EXHIBIT "A"

THE GRID
PARCEL 2 LEASE
11/06/2017
WP#174663
PAGE 4 OF 4
NOT TO SCALE
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EXHIBIT A-2
TO GROUND AND AIR RIGHTS LESASE

LEGAL DESCRIPTION OF ROW

EXHIBIT A-2 - LEGAL DESCRIPTION OF ROW

Wood, Patel & Associates, Inc.
(602) 335-8500
www.woodpatel.com

Revised October 31, 2017
October 27, 2017
WP# 174663

See Exhibit "A"

PARCEL DESCRIPTION
The Grid
Right-of-Way Abandonment

A parcel of land lying within Section 22, Township 1 North, Range 5 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

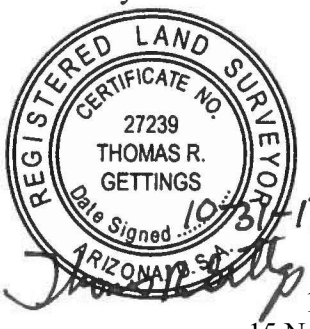
COMMENCING at the intersection of Pomeroy Street (north) and Pomeroy Street (east), a brass cap in handhole, from which the intersection of Pomeroy Street (west) and Pomeroy Street (south), a brass cap in handhole, bears South 89°48'22" East (basis of bearing), a distance of 240.98 feet;
THENCE South 00°11'38" West, a distance of 2.92 feet, to a line parallel with and 2.92 feet south of the east/west monument line of said Pomeroy Street;
THENCE along said parallel line, North 89°48'22" West, a distance of 6.50 feet, to a line parallel with and 6.50 feet west of the north/south monument line of said Pomeroy Street, and the **POINT OF BEGINNING;**
THENCE leaving said east/west parallel line, along said north/south parallel line, South 00°11'21" West, a distance of 39.58 feet, to the south right-of-way line of said Pomeroy Street;
THENCE leaving said north/south parallel line, along said south right-of-way line, North 89°48'22" West, a distance of 18.00 feet, to an angle point in the right-of-way line of said Pomeroy Street;
THENCE leaving said south right-of-way line, along the west right-of-way line of said Pomeroy Street, North 00°11'21" East, a distance of 208.09 feet, to the south right-of-way line of Main Street;
THENCE leaving said west right-of-way line, along the easterly prolongation of said south right-of-way line, South 89°46'48" East, a distance of 18.00 feet, to said north/south parallel line;
THENCE along said north/south parallel line, South 00°11'21" West, a distance of 168.51 feet, to the **POINT OF BEGINNING.**

Containing 3,746 square feet or 0.0860 acres, more or less

Subject to existing right-of-way and easements.

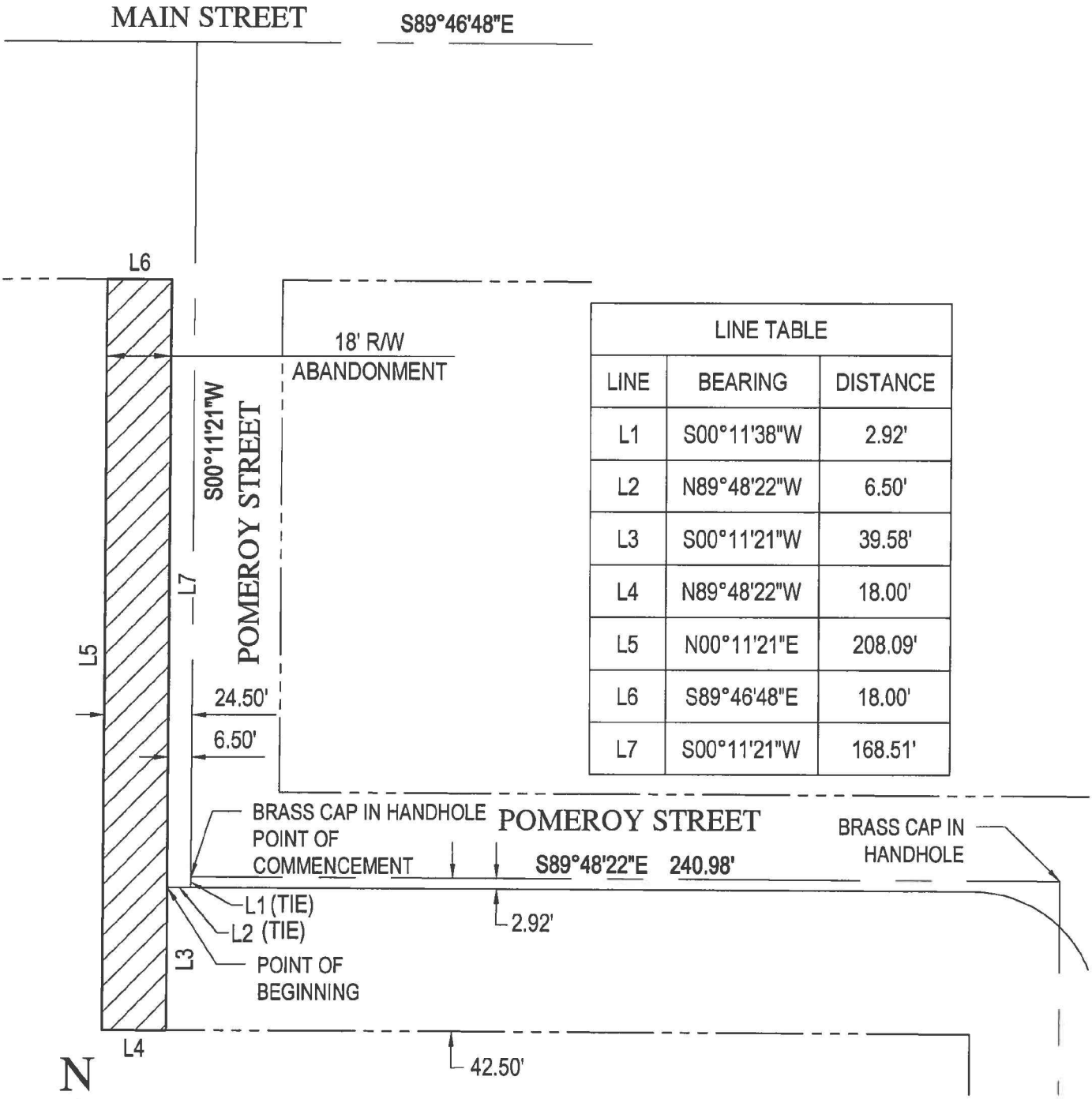
This parcel description was prepared without the benefit of survey field work and is based on the client provided unrecorded ALTA Survey of 34 S. Pomeroy Street, prepared by Alliance Land Surveying LLC, dated April 26, 2017, job number 170416, and other client provided information. Any monumentation noted in this parcel description is based on said ALTA Survey.

Y:\WP\Parcel Descriptions\2017\174663 The Grid Right-of-Way Abandonment L01R01 10-31-17.docx



EXPIRES 06-30-20

EXHIBIT A-2 - LEGAL DESCRIPTION OF ROW



LINE TABLE		
LINE	BEARING	DISTANCE
L1	S00°11'38"W	2.92'
L2	N89°48'22"W	6.50'
L3	S00°11'21"W	39.58'
L4	N89°48'22"W	18.00'
L5	N00°11'21"E	208.09'
L6	S89°46'48"E	18.00'
L7	S00°11'21"W	168.51'

EXHIBIT "A"

THE GRID
RIGHT-OF-WAY ABANDONMENT
REVISED 10/31/2017
WP# 174663
PAGE 2 OF 2
NOT TO SCALE
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WOOD/PATEL
MISSION: CLIENT SERVICE ®
(602) 335-8500
WWW.WOODPATEL.COM

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
27239
THOMAS R.
GETTINGS
Date Signed 10-31-17
ARIZONA U.S.A.

EXPIRES 06-30-20

EXHIBIT A-2 - LEGAL DESCRIPTION OF ROW

Wood, Patel & Associates, Inc.
(602) 335-8500
www.woodpatel.com

PARCEL DESCRIPTION
The Grid
Right-of-Way Abandonment

A parcel of land lying within Section 22, Township 1 North, Range 5 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the intersection of Pomeroy Street (north) and Pomeroy Street (east), a brass cap in handhole, from which the intersection of Pomeroy Street (west) and Pomeroy Street (south), a brass cap in handhole, bears South 89°48'22" East (basis of bearing), a distance of 240.98 feet;
THENCE South 00°11'38" West, a distance of 2.92 feet, to a line parallel with and 2.92 feet south of the east/west monument line of said Pomeroy Street, and the **POINT OF BEGINNING**;
THENCE along said parallel line, South 89°48'22" East, a distance of 217.02 feet, to the beginning of a curve;
THENCE leaving said parallel line, southeasterly along said curve to the right, having a radius of 34.50 feet, concave southwesterly, through a central angle of 89°56'06", a distance of 54.15 feet, to a line parallel with and 10.50 feet east of the north/south monument line of said Pomeroy Street, and the curves end;
THENCE along said parallel line, South 00°07'45" West, a distance of 200.15 feet, to the beginning of a curve;
THENCE leaving said parallel line, southerly along said curve to the right, having a radius of 34.50 feet, concave westerly, through a central angle of 21°21'06", a distance of 12.86 feet, to the curves end;
THENCE South 21°28'51" West, a distance of 18.67 feet;
THENCE North 89°48'22" West, a distance of 25.83 feet, to the west right-of-way line of said Pomeroy Street;
THENCE along said west right-of-way line, North 00°07'45" East, a distance of 225.00 feet, to an angle point in the right-of-way line of said Pomeroy Street;
THENCE leaving said west right-of-way line, along the south right-of-way line of said Pomeroy Street, North 89°48'22" West, a distance of 223.02 feet, to a line parallel with and 6.50 feet west of the north/south monument line of said Pomeroy Street;
THENCE leaving said south right-of-way line, along said parallel line, North 00°11'21" East, a distance of 39.58 feet, to a line parallel with and 2.92 feet south of the east/west monument line of said Pomeroy Street;

Parcel Description
The Grid
Right-of-Way Abandonment

October 27, 2017
WP# 174663

THENCE leaving said north/south parallel line, along said east/west parallel line, South 89°48'22" East, a distance of 6.50 feet, to the **POINT OF BEGINNING**.

Containing 17,721 square feet or 0.4068 acres, more or less

Subject to existing right-of-way and easements.

This parcel description was prepared without the benefit of survey field work and is based on the client provided unrecorded ALTA Survey of 34 S. Pomeroy Street, prepared by Alliance Land Surveying LLC, dated April 26, 2017, job number 170416, and other client provided information. Any monumentation noted in this parcel description is based on said ALTA Survey.

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EXPIRES 06-30-20

EXHIBIT A-2 - LEGAL DESCRIPTION OF ROW

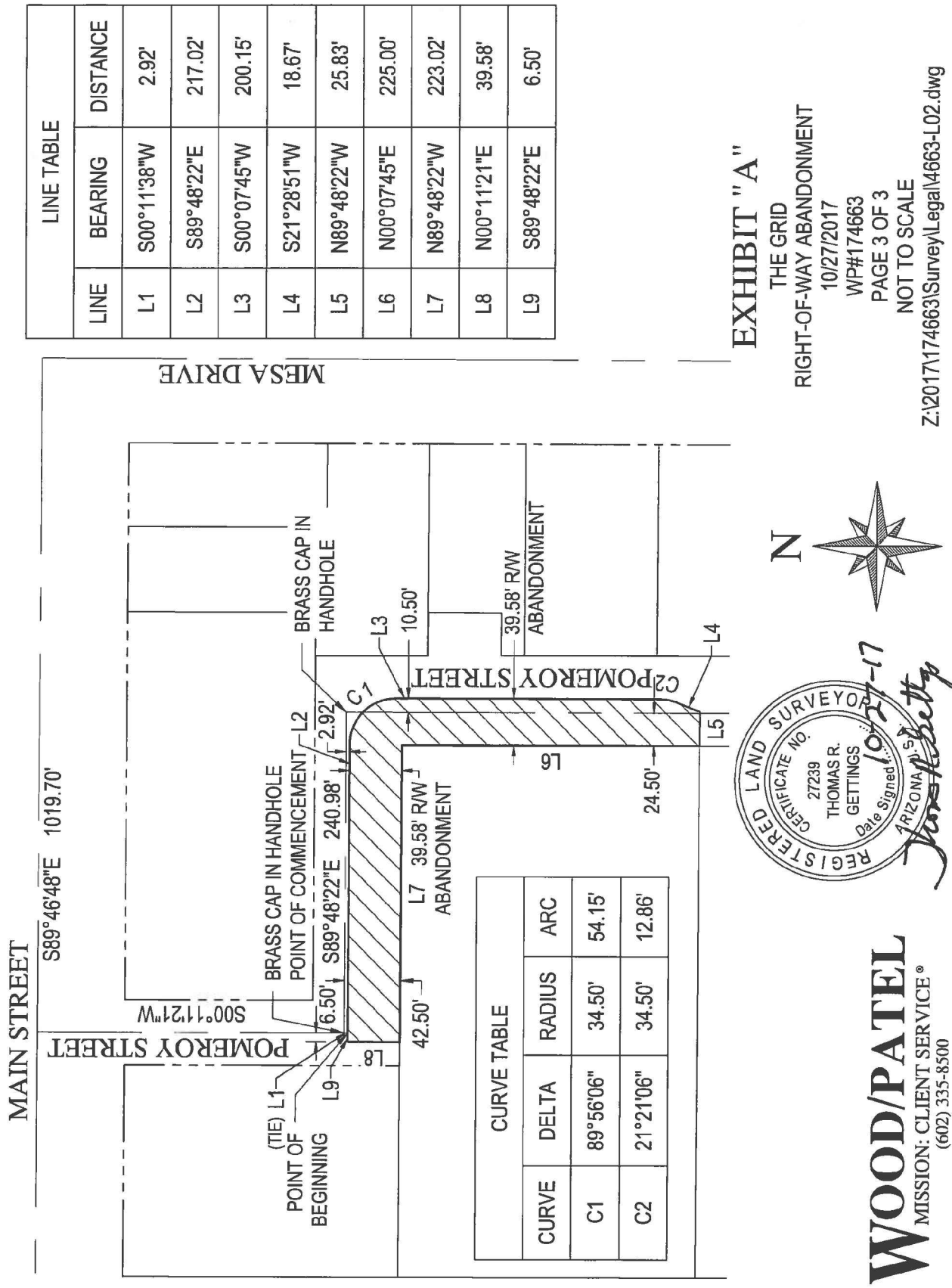

EXHIBIT A-3
TO GROUND AND AIR RIGHTS LESASE

LEGAL DESCRIPTION OF PARCEL OVER WHICH AIR RIGHTS ARE LOCATED

EXHIBIT A-3 - LEGAL DESCRIPTION OF PARCEL OVER WHICH AIR RIGHTS ARE LOCATED

Wood, Patel & Associates, Inc.
(602) 335-8500
www.woodpatel.com

PARCEL DESCRIPTION
The Grid
Parcel 2 Air Space Lease

A portion of that certain parcel of land described in Docket 14814, page 0174, Maricopa County Records (M.C.R.), lying within Section 22, Township 1 North, Range 5 East of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the intersection of Pomeroy Street (north) and Pomeroy Street (east), a brass cap in handhole, from which the intersection of Pomeroy Street (west) and Pomeroy Street (south), a brass cap in handhole, bears South 89°48'22" East (basis of bearing), a distance of 240.98 feet;
THENCE South 00°11'38" West, a distance of 2.92 feet, to a line parallel with and 2.92 feet south of the east/west monument line of said Pomeroy Street;
THENCE along said parallel line, North 89°48'22" West, a distance of 6.50 feet, to a line parallel with and 6.50 feet west of the north/south monument line of said Pomeroy Street;
THENCE leaving said east/west parallel line, along said north/south parallel line, South 00°11'21" West, a distance of 60.85 feet, to the **POINT OF BEGINNING**;
THENCE South 89°47'12" East, a distance of 183.90 feet;
THENCE South 00°07'41" East, a distance of 19.26 feet;
THENCE South 89°44'03" East, a distance of 19.62 feet;
THENCE South 00°11'23" West, a distance of 163.63 feet;
THENCE North 89°47'56" West, a distance of 29.22 feet;
THENCE South 00°00'00" East, a distance of 20.76 feet;
THENCE North 89°48'22" West, a distance of 315.29 feet;
THENCE North 00°11'38" East, a distance of 11.20 feet;
THENCE South 90°00'00" West, a distance of 18.67 feet;
THENCE North 00°00'00" East, a distance of 19.29 feet;
THENCE North 90°00'00" East, a distance of 1.69 feet;
THENCE North 00°11'39" East, a distance of 154.05 feet;
THENCE South 89°42'26" East, a distance of 19.76 feet;
THENCE North 00°20'17" East, a distance of 19.32 feet;

EXHIBIT A-3 - LEGAL DESCRIPTION OF PARCEL OVER WHICH AIR RIGHTS ARE LOCATED

THENCE South 89°47'12" East, a distance of 138.03 feet, to the **POINT OF BEGINNING**.

Containing 72,115 square feet or 1.6555 acres, more or less

Subject to existing right-of-way and easements.

This parcel description was prepared without the benefit of survey field work and is based on the client provided unrecorded ALTA Survey of 34 S. Pomeroy Street, prepared by Alliance Land Surveying LLC, dated April 26, 2017, job number 170416, and other client provided information. Any monumentation noted in this parcel description is based on said ALTA Survey.

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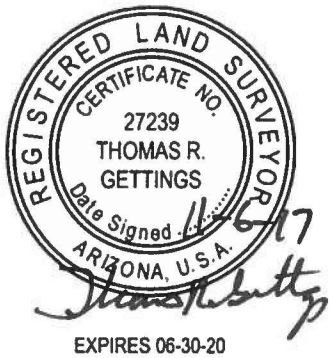

EXPIRES 06-30-20

EXHIBIT A-3 - LEGAL DESCRIPTION OF PARCEL OVER WHICH AIR RIGHTS ARE LOCATED

LINE TABLE		
LINE	BEARING	DISTANCE
L1	S89°47'12"E	183.90'
L2	S00°07'41"E	19.26'
L3	S89°44'03"E	19.62'
L4	S00°11'23"W	163.63'
L5	N89°47'56"W	29.22'
L6	S00°00'00"E	20.76'
L7	N89°48'22"W	315.29'
L8	N00°11'38"E	11.20'
L9	S90°00'00"W	18.67'
L10	N00°00'00"E	19.29'
L11	N90°00'00"E	1.69'
L12	N00°11'39"E	154.05'
L13	S89°42'26"E	19.76'
L14	N00°20'17"E	19.32'
L15	S89°47'12"E	138.03'

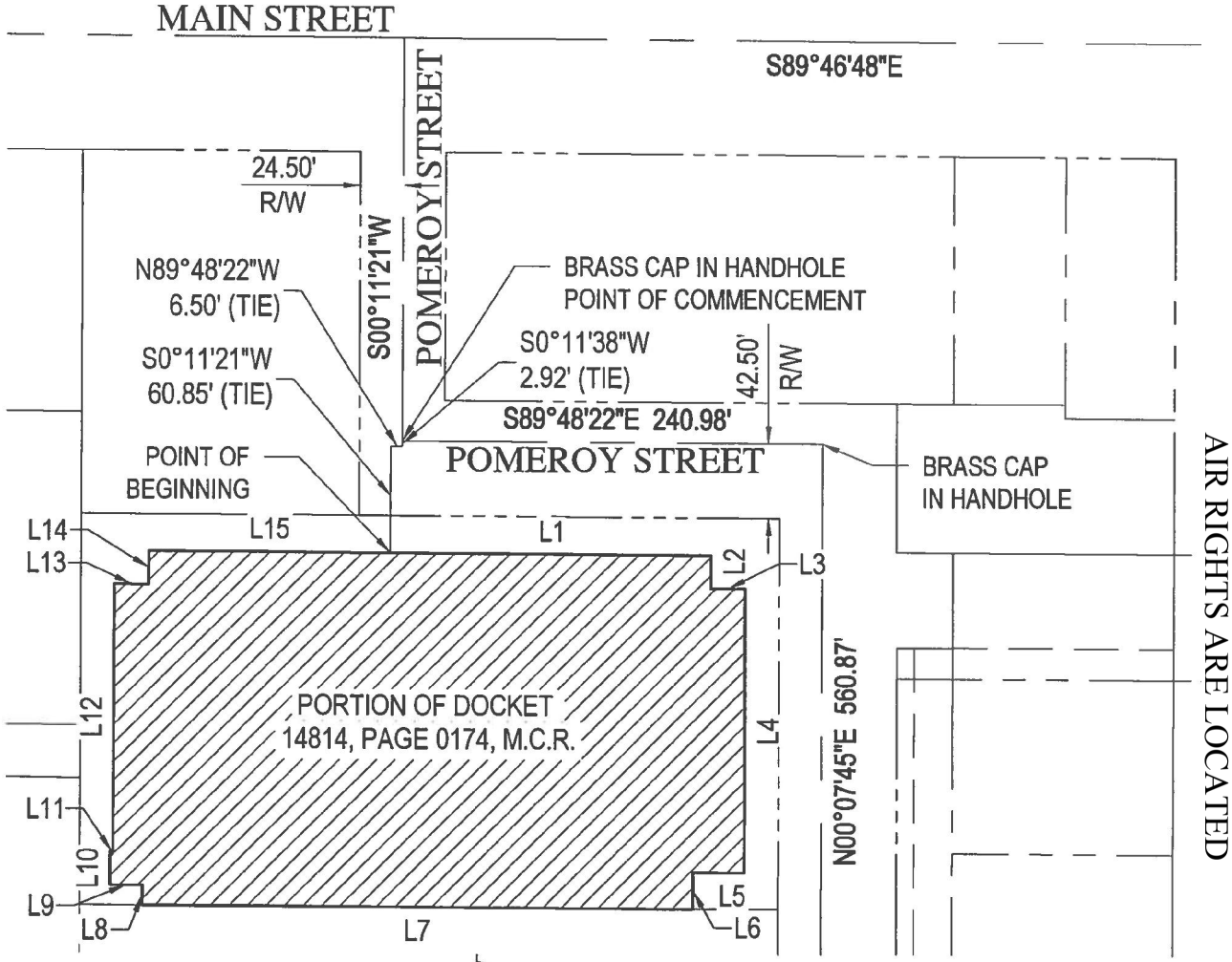

EXHIBIT "A"

THE GRID
PARCEL 2 AIR SPACE LEASE
11/06/2017
WP#174663
PAGE 3 OF 3
NOT TO SCALE
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N

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
27239
THOMAS R.
GETTINGS
Date Signed 11-6-17
ARIZONA, U.S.A.

EXPIRES 06-30-20

WOOD/PATEL
MISSION: CLIENT SERVICE ®
(602) 335-8500
WWW.WOODPATEL.COM

EXHIBIT A-4
TO GROUND AND AIR RIGHTS LESASE

LEGAL DESCRIPTION OF LAND

EXHIBIT A-4 - LEGAL DESCRIPTION OF LAND

Wood, Patel & Associates, Inc.
(602) 335-8500
www.woodpatel.com

PARCEL DESCRIPTION
The Grid
Parcel 1

That certain parcel of land described in Document 2012-0629802, Maricopa County Records (M.C.R.), lying within Section 22, Township 1 North, Range 5 East of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the intersection of Pomeroy Street (north) and Pomeroy Street (east), a brass cap in handhole, from which the intersection of Pomeroy Street (west) and Pomeroy Street (south), a brass cap in handhole, bears South 89°48'22" East (basis of bearing), a distance of 240.98 feet;
THENCE South 00°11'38" West, a distance of 2.92 feet, to a line parallel with and 2.92 feet south of the east/west monument line of said Pomeroy Street;
THENCE along said parallel line, North 89°48'22" West, a distance of 6.50 feet, to a line parallel with and 6.50 feet west of the north/south monument line of said Pomeroy Street, and the **POINT OF BEGINNING**;
THENCE leaving said east/west parallel line, along said north/south parallel line, South 00°11'21" West, a distance of 39.58 feet, to the south right-of-way line of said Pomeroy Street;
THENCE leaving said north/south parallel line, along said south right-of-way line, North 89°48'22" West, a distance of 18.00 feet, to an angle point in the right-of-way line of said Pomeroy Street, also being the southeast corner of said certain parcel of land, and the **POINT OF BEGINNING**;
THENCE leaving said south right-of-way line, along the south line of said certain parcel of land, North 89°48'22" West, a distance of 158.98 feet, to the southwest corner of said certain parcel of land;
THENCE leaving said south line, along the west line of said certain parcel of land, North 00°07'45" East, a distance of 208.16 feet, to the northwest corner of said certain parcel of land, also being the south right-of-way line of Main Street;
THENCE leaving said west line, along the north line of said certain parcel of land and said south right-of-way line, South 89°46'48" East, a distance of 159.20 feet, to the northeast corner of said certain parcel of land;

THENCE leaving said north line and said right-of-way line, along the east line of said certain parcel of land and the west right-of-way line of Pomeroy Street, South 00°11'21" West, a distance of 208.09 feet to the **POINT OF BEGINNING.**

Containing 33,110 square feet or 0.7601 acres, more or less

Subject to existing right-of-way and easements.

This parcel description was prepared without the benefit of survey field work and is based on the client provided unrecorded ALTA Survey of 34 S. Pomeroy Street, prepared by Alliance Land Surveying LLC, dated April 26, 2017, job number 170416, and other client provided information. Any monumentation noted in this parcel description is based on said ALTA Survey.

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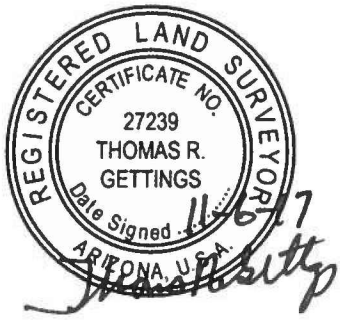

EXPIRES 06-30-20

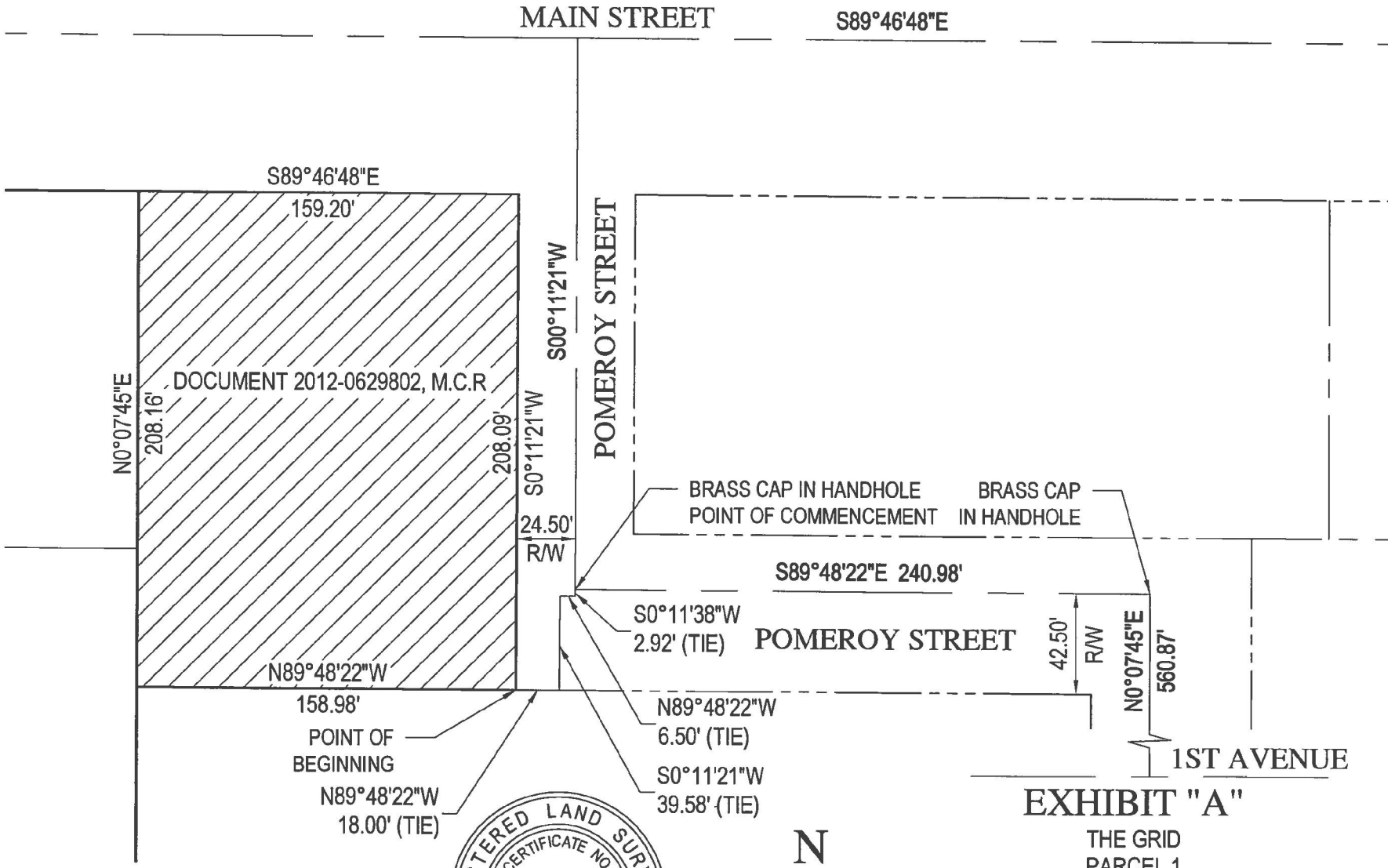

EXHIBIT A-4 - LEGAL DESCRIPTION OF LAND

EXHIBIT "A"

THE GRID
PARCEL 1
11/06/2017
WP#174663
PAGE 3 OF 3
NOT TO SCALE
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REGISTERED LAND SURVEYOR
CERTIFICATE NO.
27239
THOMAS R.
GETTINGS
Date Signed 11-6-17
ARIZONA, U.S.A.

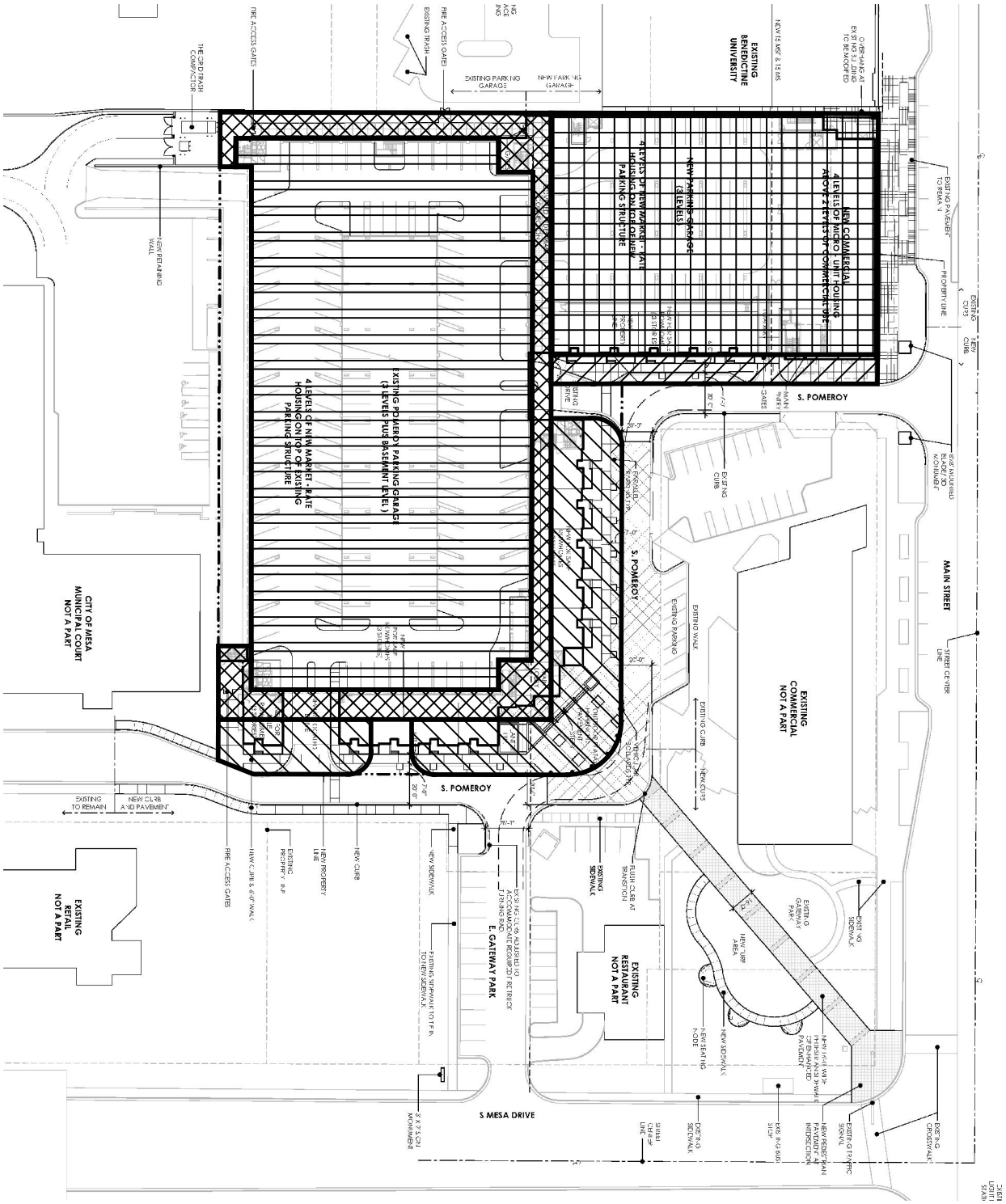
EXPIRES 06-30-20

WOOD/PATEL
MISSION: CLIENT SERVICE ®
(602) 335-8500
WWW.WOODPATEL.COM

EXHIBIT A-5
TO GROUND AND AIR RIGHTS LESASE

GENERAL DEPICTION OF LEASED AREA

EXHIBIT A-5 - GENERAL DEPICTION OF LEASED AREA



Land

ROW

Pomeroy Parcel

Parcel Over Which Air Rights Are Located

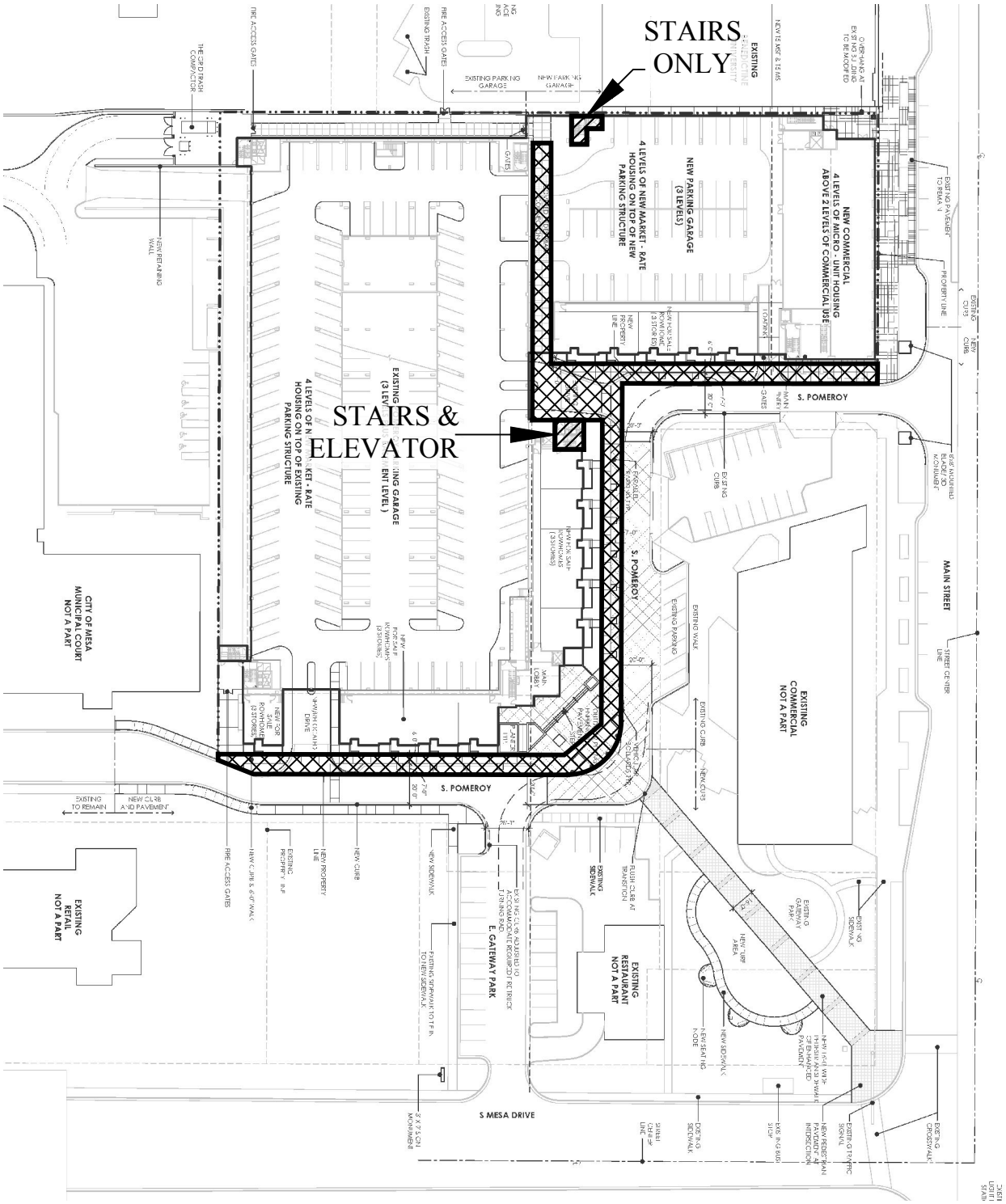
ROW

15 Nov 17

EXHIBIT A-6
TO GROUND AND AIR RIGHTS LESASE

DEPICTION OF PUBLIC ACCESS AREAS

EXHIBIT A-6 - DEPICTION OF PUBLIC ACCESS AREAS



Public Stairs & /or Elevator Access (Approx. Location)

Public Access Sidewalk and Mid Block Passage

EXHIBIT B
TO GROUND AND AIR RIGHTS LESASE

LICENSE AGREEMENT

LICENSE AGREEMENT

This License Agreement (the "Agreement") is entered into as of this ____ day of _____, 2018 (the "Effective Date" of this Agreement), by and between the City of Mesa, an Arizona municipal corporation ("Licensor") and _____ LLC, an Arizona limited liability company ("Licensee"). Each of Licensor and Licensee may be referred to in this Agreement as a "Party," or collectively as the "Parties."

RECITALS

A. Licensor is the owner of that certain real property located in Maricopa County, Arizona, a portion of which has been leased to Licensee (as "Tenant" named therein) by Licensor (as "Landlord" named therein) pursuant to the terms of a ground and air rights lease executed and dated concurrently with this Agreement (the "Lease"). The portion of Licensor's real property that has been leased to Licensee pursuant to the Lease is referred to in this Agreement as the "Premises."

B. Licensor additionally is the owner of a public parking garage ("Garage") on real property that is adjacent to a portion of the Premises. A portion of the Premises consists of the "air rights" above the Garage. Whereas Licensor will remain the owner and operator of the Garage, Licensee now assumes certain maintenance, repair, and other obligations as set forth in this Agreement.

C. Licensor (as "City" named therein) and Licensee (as "Developer" named therein) are also parties to a development agreement dated November ___, 2018 (the "Development Agreement") in which Licensor and Licensee have undertaken certain obligations with respect to the development of the Premises by Licensee (as Developer), which includes certain improvements required to be made by Licensee (as Developer) to the Garage at Licensee's sole cost and expense.

D. Licensee requires access to the Garage during the term of the Lease in order to accomplish its construction obligations under the Development Agreement, and to provide parking in connection with its operation and subleasing of the Premises pursuant to the Lease.

E. Licensor has agreed to grant to Licensee, and Licensee desires to receive from Licensor, an irrevocable, nonexclusive (subject, however, to the terms of this Agreement), non-delegable license on, over and across the Licensed Area (as defined below) for the purpose of using the Licensed Area for (i) certain construction work required by the Development Agreement, (ii) parking only of non-commercial automobiles and motorcycles (no boats, jet skis, trailers, etc.), and (iii) maintenance and other reasonably related purposes (including but not limited to required repairs and replacements) in connection with Licensee's permitted use of the Premises pursuant to the Lease (collectively, the "Licensed Activities"), subject to the terms, conditions and limitations set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Grant of License. Licensor hereby grants to Licensee an irrevocable, non-exclusive (subject, however to the terms of this Agreement), non-delegable license upon, over and across those portions of the Garage depicted on Exhibit A (the "Licensed Area") to the extent reasonably necessary or appropriate for the Licensed Activities to be conducted or performed on or at the respective Licensed Area (collectively, the "License").

2. Term of Agreement. The License granted by this Agreement is effective from and after the date of this Agreement, and the term of this Agreement is concurrent with the Lease. In the event that Licensee (as Tenant named in the Lease) exercises its option granted in the Lease to purchase the Premises, then the License granted by this Agreement will be deemed to run with the land in perpetuity, and the obligations of Licensee as set forth and described in this Agreement will thereupon be fully and automatically assumed by the fee owner upon the transfer of title.

3. Not a Lease; Encumbrances Prohibited. This Agreement constitutes a license with respect to the Licensed Activities in the Licensed Area, and not a lease or other interest in real property. Licensee will not permit or allow to be placed any lien, charge or encumbrance of any nature on the Garage or any portion of the Licensed Area and will keep the Licensed Area free and clear of all liens and encumbrances.

4. Relationship to Development Agreement and Lease. Pursuant to the Development Agreement, Licensee has certain construction obligations with respect to the Licensed Area, and those obligations are governed in all respects by the Development Agreement. Licensee's obligations with respect to its use and maintenance of the Licensed Area are governed solely by this Agreement.

5. Licensed Activities. Licensee is permitted to conduct and perform only the Licensed Activities described in Exhibit B, and only with respect to the applicable Licensed Areas depicted on Exhibit A. Although Licensee is not required to cause its subtenants and sublicensees to use all of the Spaces (as defined in this Agreement), Licensee is obligated to make all payments required by Section 10 of this Agreement; and all other Licensed Activities described in this Agreement are mandatory, and not permissive.

6. Parking. Parking in the Garage is permitted only in designated "striped" stalls or spaces (each, a "Space"; or collectively, "Spaces"). Subject to the payment by Licensee of the License Fee and Licensee's compliance with all other terms and conditions of this Agreement, parking by Licensee and its sublicensees is permitted pursuant to this Agreement in those Spaces described on Exhibit C to this Agreement (each, a "Licensed Space"; or, if more than one, the "Licensed Spaces"). Parking in the Licensed Spaces is permitted only for non-commercial automobiles and motorcycles; the parking of trailers, commercial vehicles, boats, jet-skis and similar motorized forms of transportation are expressly prohibited in the Garage. No vehicle

may be parked or maintained in the Garage pursuant to this Agreement as a form of advertising for any subtenant or sublicensee of Licensee.

(a) Licensor retains the right to all Spaces except the Licensed Spaces described on Exhibit C ("City Spaces"). Licensee may sublicense the Licensed Spaces only to Licensee's permitted residential and commercial subtenants existing under the Lease. Nothing in this Agreement is intended to restrict the use of Licensed Spaces by commercial invitees of Licensee and its subtenants at the Premises.

(b) Licensee, at its sole cost and expense, may construct, and thereafter operate and maintain, an entry "gate" or similar control device (the "Gate"), to restrict entry to the Licensed Spaces to Licensee's sublicensees. The Gate will be placed within the Garage at a location agreed by Licensor and Licensee that does not restrict or impede Licensor's access to the City Spaces. Any Spaces within the Garage that are used (in whole or in part) for the placement and maintenance of the Gate, turn-around areas, and other purposes related to the design and placement of the Gate, will be included within the number of Licensed Spaces allocated to Licensee and subject to the Licensee Fee described in Section 8.

(c) Not more than five (5) months nor less than three (3) months before each anniversary date of this Agreement, Licensee may submit a request to Licensor for reallocation of the Licensed Spaces, which reallocation may reduce the number of Licensed Spaces subject to this Agreement, but may not increase the number of Licensed Spaces subject to this Agreement. The reallocation may be approved by the City Manager (or designee) on behalf of the Licensor. Following Licensor's approval of the requested reallocation, which approval will not be unreasonably withheld, Licensee will be responsible, at its sole cost and expense, for relocating the Gate to a location approved by Licensor that reflects the reduced number of Licensed Spaces allocated to Licensee. The cost of such relocation must include all required repairs to the Garage caused by the removal of the existing Gate, including (but not limited to) restriping of the affected Spaces. The reallocation will be deemed effective on the applicable anniversary date of this Agreement. In the event that Licensee does not submit a timely request for reallocation of the Licensed Spaces, the number of Licensed Spaces allocated to Licensee will remain the same as the allocation for the previous year.

(d) Notwithstanding the foregoing, Licensee is not permitted to reduce its number of allocated Licensed Spaces below one hundred and fifty (150) Spaces.

(e) Licensee may charge its sublicensees a sublicense fee for each Licensed Space.

7. Construction and Maintenance within Licensed Area. Licensee accepts the Licensed Area in its current "as-is", "where-is" condition, with all faults, whether latent or patent. Licensee will cause all required construction within the Licensed Area to be completed at Licensee's sole cost and expense, and in accordance with the Development Agreement. Thereafter, Licensee will maintain the Licensed Area during the term of this Agreement at Licensee's sole cost and expense, in good condition and repair (including all repairs and replacements) and in accordance with all requirements of the Approved Plans (as defined in the Development Agreement) and all applicable laws, including Hazardous Materials Laws (as

defined in the Lease). Further, Licensee will be solely responsible for: (i) all structural repairs, replacements, and structurally related maintenance costs for the Garage and Licensed Areas, which will include, but is not limited to, all pillars, walls, and ramps for exiting Garage on all levels; (ii) all repair and replacement costs for the stairwells and elevators. Licensor will only be obligated to repair and maintain the non-structural improvements in the basement of the Garage and to make routine repairs (i.e., normal wear and tear) in areas of the Garage that are not licensed to Licensee under this Agreement.

8. Security. Licensee acknowledges and understands that the Licensor provides no security at or for the Garage and agrees that the Licensor will have no obligation to provide security at the Garage. In the event that Licensor elects, in its sole discretion, to provide security for the basement or any other portion of the Garage, it will do so solely for the benefit of Licensor, and Licensor's employees and invitees, and Licensee and Licensee's employees, agents, contractors, subtenants, sublicensees and invitees are not (and will not be) either intended or unintended beneficiaries of such security measures and are not authorized to rely on such security. Licensee is solely responsible, at its sole cost and expense, for: (i) the security for Licensee's, and Licensee's subtenants' and sublicensees', employees, agents, clients, and invitees at the Garage; (ii) the security for the personal property (including all vehicles) of Licensee, and of Licensee's subtenants and sublicensees, and their employees, agents, clients, and invitees at the Garage; and (iii) the security of third parties and users of the Garage to the extent such security-related events or incidents arise or are related to Licensee's, or Licensee's subtenants' or sublicensees' (including their employees, agents, clients, and invitees) use of the Garage. Licensee will ensure that it, and its tenants and subtenants (including their employees, agents, clients, and invitees) use the Property in a safe and secure manner and in compliance with all applicable laws. Licensor agrees Licensee, at its sole cost and expense, may implement security measures at the Garage provided that Licensee gives reasonable prior notice to Licensor if such measures involve the installation of improvements at the Garage; and further provided that no such security measures implemented by Licensee will restrict or impair the right of Licensor and the public to use those portions of the Garage that are not subject to the exclusive use granted to Licensee by this Agreement. In addition to, and without limiting any other indemnity in this Agreement, Licensee will indemnify, defend, pay and hold Licensor and its City Council members, officers and employees harmless for, from and against any and all claims or damages (including, but not limited to, injury and death to persons and loss of or damage to property) arising from or related to Licensee's, or its subtenants' or sublicensees', employees', agents', clients', and invitees' use of the Garage or the security at the Garage (including, but not limited to, adequacy of security, lack of security, and types of security installed).

9. Reserve Fund. Licensee will pay into and fund an account for the payment of anticipated capital repair and replacement costs for Licensee's required maintenance of the Licensed Area (the "Reserve Fund"). The Reserve Fund will not be used by Licensee to pay routine and regular maintenance costs or costs of repairs or replacements under $5,000.00 per event or item, as applicable.

(a) Promptly following completion of Licensee's required construction within the Licensed Area, but before the use of the Licensed Area by Licensee's sublicensees, Licensee will deposit the sum of $25,000.00 (the "Initial Deposit") into the Account (as defined below),

which amount must be maintained in the Account until the fifth (5^{th}) anniversary of the Effective Date.

(b) Thereafter, on the fifth (5^{th}) anniversary of the Effective Date, and for each of the next four (4) years, Licensee will deposit $5,000.00 into the Account (the "Annual Deposit"). Thereafter, on the tenth (10^{th}) anniversary of the Effective Date, and each fifth anniversary thereafter, Licensor and Licensee will review the repair and replacement history of the Licensed Area for the previous five (5) years and reasonably determine whether the amount of the Annual Deposit should be increased; and if the Parties so determine, the Annual Deposit will be as determined by the Parties until the next fifth anniversary. Any change in the amount of the Annual Deposit may be approved by the City Manager (or designee) on behalf of the Licensor.

(c) At no time will the Account be funded in an amount less than the Initial Deposit.

(d) The Account will be maintained by Licensee in a federally chartered bank or a bank licensed by the State of Arizona, as reasonably approved by Licensor, and all withdrawals will require the signatures of authorized representative of both Licensor and Licensee. Licensee will cause statements of the Account to be delivered to Licensor not less frequently than annually.

(e) Licensor will reasonably approve all withdrawals from the Account for approved capital repairs and replacements upon delivery to Licensor of a statement from Licensee describing the capital repair and replacement and including bids or estimates from the entity proposed to make the capital repair or replacement. Upon completion of the capital repair or replacement in accordance with the request and Licensor's approval, and the delivery of a statement or certification that the work has been completed, Licensor will co-sign a check from the Account (or otherwise approve a withdrawal or debit from the Account) to the vendor in the authorized amount. In no event will Licensor be required to deposit any monies into the Account, and any shortfall will be paid solely by Licensee. In the event that Licensor reasonably determines that any capital repair or replacement is governed by any applicable public bidding or similar requirements, Licensee will comply with all such requirements at Licensee's sole cost and expense.

10. License Fee. In consideration of Licensee's construction of the Licensed Area Improvements in and on the Licensed Areas as required by the Development Agreement, and Licensee's maintenance of the Licensed Area at Licensee's sole cost and expense during the term of this Agreement, Licensee will pay a monthly fee to Licensor for the License (the "License Fee") as set forth in Exhibit D.

11. Open to the Public; Non-Exclusive Use by Licensee. Subject to reasonable periods of closure for maintenance and repair (such as re-striping or re-surfacing of the parking and drive areas), and Licensee's exclusive right to use and sublicense the designated licensed Spaces, the Licensed Area will at all times be open to the public, and Licensee's use of the Licensed Areas is non-exclusive. Licensee acknowledges that the basement floor of the Garage is restricted, and Licensee's access to the basement floor of the Garage is limited solely to

construction required by the Development Agreement, and structural repairs required by this Agreement.

12. Utility Fees and Services. Licensee, at Licensee's sole cost and expense, and during the term of this Agreement, will provide all utility services required for the Licensed Areas (excluding the basement of the Garage) and will pay, before delinquency, all charges (including but not limited to any deposits) for utilities so provided. To the extent practicable, all utilities provided to the Licensed Areas will be metered separately from utilities provided to the basement of the Garage; but electric service for existing (that is, in place and in operation as of the Effective Date) components (e.g., lighting) in the Garage, will be paid by Licensor. Electrical service for new components (e.g., completed by Licensee pursuant to the terms of the Development Agreement, and particularly including (and not limited to) all elevators in the Garage, will be paid solely by Licensee. Licensor will not be liable in damages or otherwise for any failure or interruption of any utility services to the Licensed Area.

13. Insurance; Indemnity.

(a) Throughout the term of this Agreement, Licensee will procure and maintain, at its sole cost and expense, insurance against claims for injuries to person or damages to property which may arise from or in connection with the use by Licensee of the Licensed Area and Garage, and the obligations set forth in the Agreement including, but not limited to, the maintenance and repair obligations and indemnity obligations of this Agreement. The terms and coverages for the insurance will be as set forth in Exhibit E to this Agreement.

(b) In addition, Licensee will pay, defend, indemnify and hold harmless Licensor and its City Council members, officers and employees 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") imposed upon or asserted against Licensor, its agents, representatives, officers, directors, elected or appointed officials, and employees, by reason of any of the following: (i) any act or omission by Licensee, or its employees, contractors, subcontractors, agents or representatives, undertaken in fulfillment of Licensee's obligations under this Agreement ; (ii) any use or nonuse of, or any condition created by Licensee on or at the Garage or any part thereof; (iii) any accident, injury to or death of persons (including workmen) or loss of or damage to property occurring on or about the Garage or any part thereof caused or created in whole or in part by Licensee or its employees, contractors, subcontractors, agents, representatives, sublicensees or subtenants under the Lease (and invitees of any of the foregoing); (iv) performance of any labor or services or the furnishing of any materials or other property with respect to the Garage or any part thereof relating to an obligation of Licensee under this Agreement; (v) any failure on the part of Licensee to comply with Hazardous Materials Laws; and (vi) 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 existing Garage, and all subsequent design, construction, engineering and other work and improvements by or on behalf of Licensee (collectively, "Indemnity"). Licensee's obligations of Indemnity will survive the expiration or earlier termination of this Agreement; but the obligations of Indemnity expressly exclude criminal acts by third parties that occur in the Garage other than theft of or damage to property in the Mail Room and in any portion of the Licensed Area

provided for bicycle parking and storage. For the purposes of the foregoing sentence, "criminal acts by third parties" do not include criminal acts committed by, upon or involving Licensor's (as Tenant named in the Lease) subtenants at the Premises or Licensee's sublicensees, or any invitees or such subtenants or sublicensees.

14. Storage and Nuisances Prohibited. The Licensed Area will not be used for the storage of vehicles, equipment or materials; provided, however, that nothing in this Agreement will be deemed to prohibit secure bicycle parking for Licensee's subtenants and sublicensees. All vehicles parked in the Garage must be fully operational. Licensee will not use the Licensed Area, nor permit the Licensed Area to be used in a manner that creates or causes to be created nuisances or hazards to the public health or safety.

15. Permits. Licensee will, at its sole cost and expense, obtain all permits, licenses and authorizations which may be required by Licensor or any other governmental authorities with respect to the Licensed Activities. Licensee will not engage in or permit any conduct in the Licensed Area which violates any law, ordinance, permit or governmental regulation, or which violates the terms of this Agreement.

16. Default. If Licensee fails to pay any sum due under this Agreement promptly when due and such failure continues for ten (10) days after notice thereof in writing to Licensee, or if Licensee fails to perform or comply with any of the other agreements, conditions or undertakings of this Agreement and such default continues for thirty (30) days after notice thereof in writing to Licensee (each, a "Default"), Licensor will have the right, at its election, to seek any remedy available to Licensor under the Development Agreement or the Lease. Notwithstanding the foregoing, a Default of this Agreement by Licensee will be a breach or default both of the Lease and of the Development Agreement, and a breach or default of either the Lease by Tenant or the Development Agreement by Developer will be a breach of this Agreement; and notice of such breach or default under either the Lease or the Development Agreement, sent either to the Tenant named in the Lease or the Developer named in the Development Agreement, as applicable, and in accordance with the "Notice" provisions of the Lease or the Development Agreement, as applicable, will, without further act or notice required, constitute Notice to Licensee of a Default of this Agreement.

17. Attorneys' Fees. In the event of any litigation or other legal proceedings between the Parties, the prevailing Party as determined by the court, will be entitled to the payment by the non-prevailing Party of its reasonable attorneys' fees, court costs and litigation expenses, as determined by the court. In no event will Licensor or Licensee (or their respective successors or permitted assigns) be liable for any special, consequential, incidental, punitive or exemplary damages.

18. No Partnership; Assignment. It is not intended by this Agreement to, and nothing contained in this Agreement will, create any partnership, joint venture, landlord-tenant or similar arrangement between the Parties, other than that of Licensor and Licensee. No term or provision of this Agreement is intended to, or will, be for the benefit of any person, firm, organization or corporation not a party to, and no such other person, firm, organization or corporation will have any right or cause of action hereunder. Other than in connection with a permitted transfer under the Lease of Licensee's entire leasehold interest in the Premises, and an express assumption by

an assignee of all of Licensee's obligations under this Agreement, Licensee may not assign its rights under this Agreement or grant to any other person the right to utilize the Licensed Area (other than Licensee's permitted residential sublicensees) without the prior written consent of Licensor, which consent Licensor may grant or withhold in its sole discretion.

19. Descriptive Headings. The captions used in this Agreement are for reference only and are not to be construed as a part of this Agreement.

20. Applicable Law. This Agreement will be governed by, and construed in accordance with, the substantive laws of the State of Arizona without giving any effect to the principles of conflicts of law.

21. Incorporation of Recitals and Exhibits. Each of the recitals set forth above and each of the exhibits attached hereto are hereby incorporated into this Agreement and made a part hereof. Subject in all events to Licensee's obligations under the Development Agreement and the Lease, this Agreement constitutes the entire Agreement between Licensor and Licensee pertaining to the use of the Licensed Area and the grant of the License and supersedes all prior agreements, understandings and representations with respect thereto. This Agreement may not be modified, amended, supplemented or otherwise changed except by a writing executed by both Licensor and Licensee. Licensee agrees, acknowledges and understands that certain amendments to this Agreement may require the approval of the City Council acting in its sole discretion.

22. Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together will constitute one in the same instrument.

23. Severability. If any term, provision or covenant contained in this Agreement will, to any extent, be invalid or unenforceable, the remainder of this Agreement will not be affected thereby, and each term, provision and condition hereof will be valid and enforceable to the fullest extent permitted by law.

24. Notices. All notices, demands, requests, consents, approvals and other communications required or permitted in this Agreement (each, a "Notice"), will be in writing and will be deemed to have been given upon personal delivery to the respective Party, after delivery by personal service or a nationally recognized overnight courier service (e.g., UPS, Federal Express), or within three (3) days after the same has been mailed by registered or certified mail, postage prepaid and return receipt requested, at the address shown below:

To Licensee: _____
_____
_____
_____

With a copy to: 3W Management, LLC
Attn: Tony Wall
7349 N. Via Paseo del Sur, Suite 515
Scottsdale, Arizona 85258

With a copy to: AZ Strategies LLC
Attn: Karrin Taylor Robson
3344 East Camelback Road, Suite 100
Phoenix, Arizona 85018

With a copy to: Gallagher & Kennedy, P.A.
Attn: Dana Stagg Belknap
2575 East Camelback Road
Phoenix, Arizona 85016

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

If by United States Postal Service:
Post Office Box 1466
Mesa, Arizona 85211-1466

and

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

If by United States Postal Service:
Post Office Box 1466
Mesa, Arizona 85211-1466

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

If by United States Postal Service:
Post Office Box 1466
Mesa, Arizona 85211-1466

or at such other address as either Party may from time to time designate in writing to the other.

25. No Recordation. The Parties agree that this Agreement may not be recorded in the Official Records of Maricopa County, Arizona, and the recordation of this Agreement by either Party will be a Default of this Agreement by such Party.

26. Conflict of Interest Statute. This Agreement is subject to, and may be terminated by Licensor in accordance with, the provisions of A.R.S. §38-511.

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

IN WITNESS WHEREOF, Licensor and Licensee have executed this Agreement as of the date first written above.

LICENSOR:

THE CITY OF MESA, an Arizona municipal corporation

By: _____
Name: _____
Title: _____

LICENSEE:

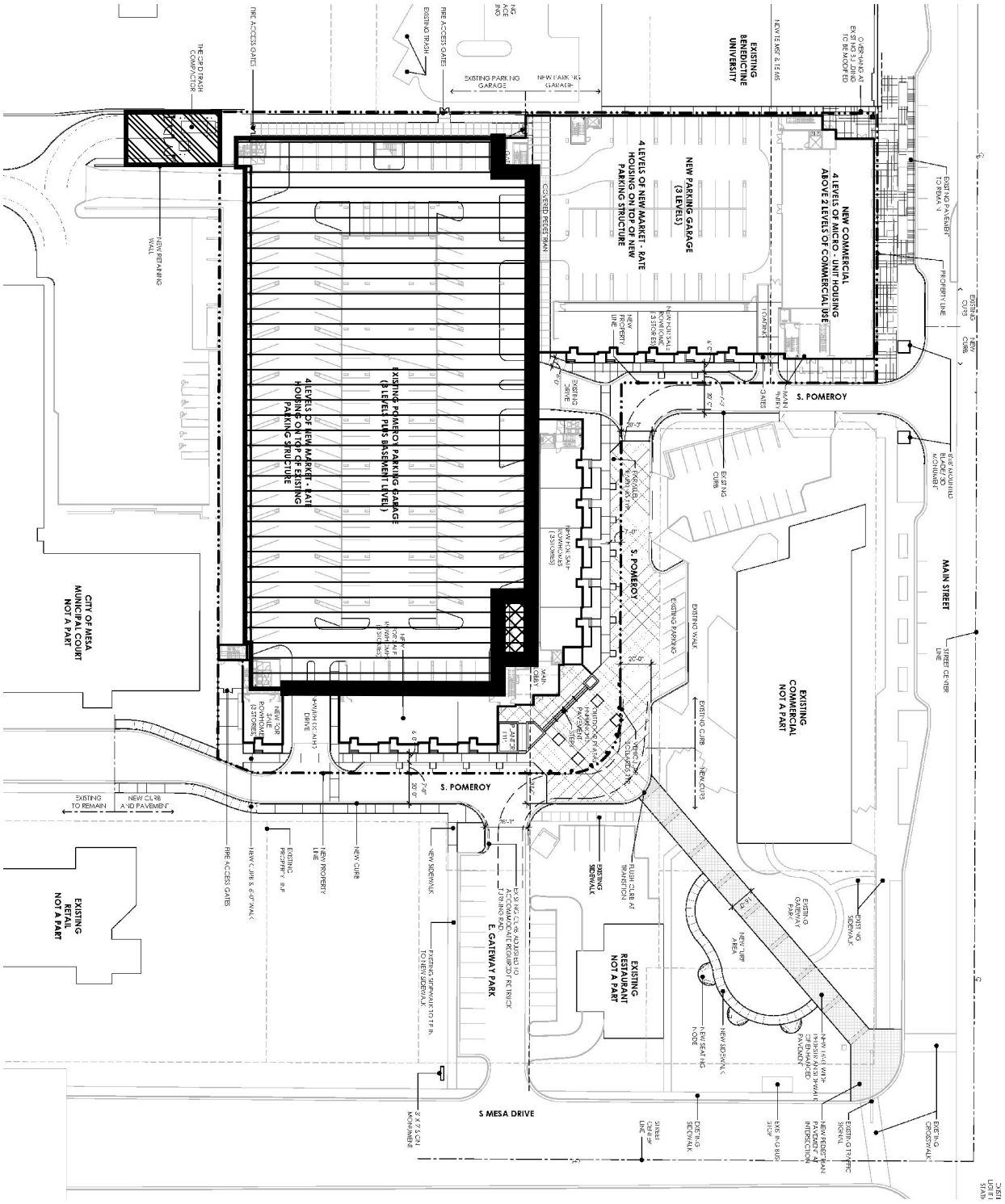
_____ LLC, an Arizona limited liability company

By: _____
Name: _____
Title: _____

EXHIBIT A
TO LICENSE AGREEMENT

DEPICTION OF LICENSED AREA

EXHIBIT A - DEPICTION OF LICENSED AREA



Pomeroy Parking Garage Structure, Access, Dedicated Parking & Bike Parking

Direct Access to Parking Garage, Row Homes & Adjacent Entry Points

Mail Room /1st Floor Only

Trash Compactor / Sanitation Yard (Joint Use with Courts)

15 Nov 17

EXHIBIT B
TO LICENSE AGREEMENT

DESCRIPTION OF LICENSED ACTIVITIES

EXHIBIT B
Description of Licensed Activities

Licensed Area (portion of Garage)	Licensed Activity Permitted
Basement floor	Structural, mechanical and plumbing improvements required by the Development Agreement to support and service the addition of four stories of residential development and landscaping above the Garage; thereafter, all required repairs and replacements (including but not limited to structural repairs and replacements) as reasonably determined by Licensor. Access for routine maintenance and parking is prohibited.
First floor; ramp to second floor; second floor; ramp to third floor; third floor	Structural, mechanical and plumbing improvements required by the Development Agreement to support and service the addition of four stories of residential development and landscaping above the Garage; restriping of parking stalls; thereafter, all required maintenance, repairs and replacements (including but not limited to structural repairs and replacements) as reasonably determined by Licensor. Construction, operation and maintenance of an entry gate on an upper level to restrict access to higher floors to permitted sublicensees. Parking by Licensee's subtenants is permitted in accordance with Exhibit C.
Roof	Structural, mechanical and plumbing improvements required by the Development Agreement to support and service the addition of four stories of residential development and landscaping above the Garage; thereafter, all required maintenance, repairs and replacements (including but not limited to structural repairs and replacements) as elected by Licensee or reasonably determined by Licensor.
Mail Room	Ownership and maintenance of United States Postal Service approved mailboxes for Licensee's subtenants in the Premises;

	ownership and maintenance of private delivery service lockers or similar systems (e.g., Amazon® Hub®) which may be in an enclosed, secured room built within the ground level of the Garage; all improvements owned and maintained solely by Licensee.
Trash Compactor and Sanitation Yard	Ownership, maintenance and continuous operation (including collection) of a trash compactor, recycling dumpster, grease trap interceptor (or similar devices as may be reasonably approved by Licensor as technologies develop) in the area of the Garage depicted in Exhibit A-2, including all repair and replacement of the compactor (or similar device); all clean-up costs beyond normal trash collection. This Licensed Activity is subject to all City of Mesa Ordinances, rules, terms and conditions applicable to solid waste maintenance, collection and pick up, as the same may be amended from time-to-time. The use of these facilities may be shared with the City Courts of the City of Mesa, as Licensor may elect.
Row Home Entry Points	Licensee will have the right to modify exterior enclosing walls to allow direct access (for vehicles and pedestrians) from the existing Garage to the new garage, from the Garage to the mail room, from the mail room to the new building, and from the Garage to the row homes (individually or in common). Licensee will have the right to physical access to the Garage at all of these locations (and similar locations as reasonably determined by Licensor).
Secure Bicycle Parking and Storage	Throughout the Garage, Licensee may install secure bicycle parking and storage. This may take the form of lockers, elevated locking racks, enclosed areas or as reasonably determined by Licensor.
Stairwells	Licensee will have the right to: (i) remove and replace the existing stair wells at the southwest and southeast corners of the garage (the new stair wells may also include mechanical and sanitation

	facilities); (ii) remove all staircases from the basement level and replace them with staircases in common, but secured from the upper levels at the southwest and southeast corners; (iii) remove the staircases at the northeast and northwest corners and not replace them; (iv) add a new staircase (owned by Licensee) with City/public access to levels 1-3 north of the existing staircase in the northwest corner (outside of but proximate to the Licensed Area); (v) add a staircase (owned by Licensee) (outside of but proximate to the Licensed Area) with City/public access to levels basement-3 at the mid-point north of the garage (this staircase must be secured at the basement level); and (vi) remove the staircase at the midpoint of the west end of the garage and replace it with vehicular or bicycle parking. All of the staircases may also be used by the Licensee to provide access to the residential and landscape areas above the garage (such access may be secured by the Licensee). All City/public access to staircases owned by Licensee will be solely for the benefit of the public properly using the parking garage facility. See Exhibit E-2 to the Development Agreement ("Stairwell Access and Elevator Improvements") for approximate locations.
Elevators	Licensee will provide an elevator, outside of but proximate to the Licensed Area, with City/public access to levels basement-3 at the mid-point north of the garage. This access will be solely for the benefit of the public properly using the parking garage facility. This elevator will owned by the Licensee and must be secured at the basement level. The elevator may also be used by the Licensee to provide access to the residential and landscape areas above the Garage. Such access may be secured by the Licensee.
Southern boundary (exterior of Garage)	Licensee may use the area south of the garage for support columns for Sky Apartments (as defined in the Development

	Agreement). Licensee may also use the same area (above the existing Garage) for shade devices and architectural embellishments as reasonably determined and approved by Licensor. These areas will not be included in the leasable area of the Premises.

EXHIBIT C
TO LICENSE AGREEMENT

DESCRIPTION OF SPACES

EXHIBIT C
Description of Spaces

The number and location of the Licensed Spaces are as described in this Exhibit; however, after the completion of the improvements to the Pomeroy Parking Garage (the "Garage") and the construction by Licensee of a new parking garage on the leased Premises (the "New Garage"), the Parties will create a detailed depiction of the parking spaces to show where the Licensed Spaces, City Spaces (and other improvements) are located.

The Garage has 596 spaces on levels 1 through 3 (the basement spaces are exclusively for Licensor's use and are not being licensed). Licensee is licensed 339 spaces subject to the following reduction in spaces: Licensee will be making certain improvements to the Garage (such as adding support columns for improvements above the Garage), and these improvements will reduce the current number of spaces in the Garage. For every space lost (below 596) in the Garage (levels 1-3) due to construction, improvements, and re-stripping, the number of Licensed Spaces will be reduced on a one-for-one basis. By way of example, if after the construction, improvements, and re-stripping to the Garage there are 556 spaces on levels 1-3 (a loss of 40 spaces), then the Licensed Spaces would be 299 (339 – 40 = 299). After the construction, improvements, and re-stripping, the Parties shall agree upon the number of Licensed Spaces. As to parking in the Garage and the New Garage and the location of certain spaces, the Parties further agree:

Garage

1. Ten (10) of the Licensed Spaces will be located on the east end of the ground level of the Garage and will be for exclusive use by the Grid Rowhomes.
2. Ten (10) of the Licensed Spaces will be located on the north end of the ground level of the Garage and will be for exclusive use by the Grid Rowhomes.
3. Five (5) of the Licensed Spaces will be located in the northeast corner of the ground level of the Garage for use by tenants using the Grid Mail Room.
4. Sixty-one (61) of the Licensed Spaces will be located on the ground level of the Garage and will be at all times shared, non-exclusive, and available for all public and commercial uses.
5. Other than the Licensed Spaces describe in numbered paragraphs 1 through 4 above (which consists of 86 Licensed Spaces), all the remaining Licensed Spaces will be on Garage levels 2 and 3 and the ramps, and these Licensed Spaces may be gated.
6. Thirteen (13) spaces in the Garage will continue to be handicapped stalls for use by all handicap users of the Garage.

New Garage

a. At least thirty-three (33) ground-level spaces in the New Garage will be at all times shared, non-exclusive, and available for all public and commercial uses. All other spaces in the New Garage will be only for the use of the Grid tenants.

EXHIBIT D
TO LICENSE AGREEMENT

SCHEDULE OF LICENSE FEES

Exhibit D

Schedule of License Fees

	Monthly Rate (300 spaces)	Yearly Rate (300 spaces)[1,2]	PI Cap Credit (Monthly)[3, 4]	PI Cap Credit (Yearly)[3,4]	Monthly Rate w/PI Cap Credit	Yearly Rate w/PI Cap Credit
During Construction	Developer shall provide replacement parking for current permitted parking spaces and Mesa Courts employees displaced during construction, at its sole costs.					
Years 3 -5 ($20/space)	$6,000	$72,000	$4,500	$54,000	$1,500	$18,000
	Monthly Rate (250 spaces)	**Yearly Rate (250 spaces)[1,2]**	**PI Cap Credit (Monthly)[3, 4]**	**PI Cap Credit (Yearly)[3, 4]**	**Monthly Rate w/PI Cap Credit**	**Yearly Rate w/PI Cap Credit**
Years 6-10 ($25/space)	$6,250	$75,000	$4,687.50	$56,250	$1,562.50	$18,750
Year 11 ($30/space)	$7,500	$90,000	$5,625	$67,500	$1,875	$22,500
Year 12 ($35/space)	$8,750	$105,000	$6,562.50	$78,750	$2,187.50	$26,250
Years 13-99	Based on then Council approved parking rate/space/month, or if such fee ceases to exist in the future, the Parties shall negotiate in good faith and agree upon a commercially reasonable rate (which shall in no event be less than the previously applicable rate)					

[1]Developer shall have the right to reduce the number of parking spaces licensed on a yearly basis, but at no time will the developer license less than 150 parking spaces. After monthly/annual payments for the minimum 150 licensed parking spaces, the additional parking license fee will be assessed per/space licensed, up to the maximum 340 spaces.

[2]Calculations shown in this table represent assumed number of parking spaces licensed. Actual monthly and yearly License Rates will be based on actual number of parking spaces licensed. Additionally, if Licensee is entitled to Rent Credits (i.e., PI Cap Credits) under the terms of the Development Agreement, the PI Cap Credits will be used as described in this Exhibit and Lease Exhibit C to reduce the License Fee (and the Rent under the Lease) until the Credits are used (up to the Cap) between the License Fees and Rent or are extinguished under the terms of the Development Agreement, Lease, or License at which point the License Fee shall be as described in the "Monthly Rate" and "Yearly Rate" columns. Because the use of the Credits will be based on future variables (such as the number of licensed parking spaces and the use of the Credits under the Lease) this Exhibit does not show or establish when the Credits will be used up, which the Parties shall agree to when all such future variable are determined.

[3]For Years 3-15, the maximum PI Cap Credit shall not exceed 75% of the License Rate. After Year 15, the maximum PI Cap Credit shall not exceed 50% of the License Rate.

[4] License Fee Credit available only to reimburse for those Minimum Public Improvements and Additional Public Improvements that have been completed and accepted by the City Engineer, up to the $3,000,000 Cap. License Fee Credits are only available after Year 3 of the License Agreement.

EXHIBIT E
TO LICENSE AGREEMENT

INSURANCE REQUIREMENTS

EXHIBIT E
Insurance Requirements

Licensee will procure and maintain insurance during the applicable "Coverage Period," as shown on the below chart, against claims for injury to persons or damage to property which may arise from or in connection with the Garage and/or in the performance of work or construction of the Garage by Licensee, its agents, representatives, employees, contractors, or subcontractors.

The insurance requirements herein are minimum requirements for the Agreement, of which this Exhibit is a part (the "License"), and in no way limits the indemnity covenants contained in the License. Licensor in no way warrants that the minimum limits contained herein are sufficient to protect Licensee from liabilities that might arise from or in connection with the Garage, and Licensee is free to purchase additional insurance as Licensee may determine.

A. MINIMUM SCOPE AND LIMITS OF INSURANCE: Licensee will provide coverage during the Coverage Period and with limits of liability not less than those stated below.

Type	Amount	Coverage Period
General Liability (which will include operations, products, completed operations, and contractual liability coverage)	With limits not less than $25,000,000 combined single limit per occurrence and not less than $25,000,000 general aggregate.	Coverage will be in effect upon or prior to and remain in effect for the Term of the License.
Property (all risks of loss including risks covered by fire and extended coverage, terrorism, vandalism and malicious mischief)	In an amount not less than full replacement cost of structure and all fixtures.	Coverage will be in effect upon or prior to the earlier of when the Builder's Risk policy is no longer in effect or when substantial completion of construction and a temporary or final certificate of occupancy is obtained, and coverage will thereafter remain in effect for the remainder of the Term of the License.
Commercial Automobile Liability	With limits not less than $1,000,000 each occurrence, Combined Single Limit for bodily injury and property damage covering owned, non-owned and hired auto	Coverage will be in effect upon or prior to and remain in effect for the Term of the License.

	coverage as applicable.	
Business Interruption Coverage (can be endorsed to the Property policy)	Minimum 12 months' rent and ongoing operating expenses	Coverage will be in effect upon or prior to the earlier of when the Builder's Risk policy is no longer in effect or when substantial completion of construction and a temporary or final certificate of occupancy is obtained, and coverage will thereafter remain in effect for the remainder of the Term of the License.
Workers' Compensation Employers' Liability	Statutory Limits $500,000 each accident, each employee	Coverage will be in effect upon or prior to and remain in effect for the Term of the License.
Liquor Liability	$5,000,000	Coverage will be in effect upon or prior to and remain in effect for the Term of the License, provided Licensee sells and/or serves alcohol
Builder's Risk	In an amount not less than the estimated total cost of construction.	Coverage will be in effect upon or prior to any construction activities and maintained until the substantial completion of construction and a temporary or final certificate of occupancy is obtained.
Owner's and Contractor's Protective Liability	$25,000,000	Coverage will be in effect upon or prior to any construction activities and maintained until the substantial completion of construction and a temporary or final certificate of occupancy is obtained.
Professional Liability	$2,000,000	Coverage will be in effect upon or prior to any construction activities and maintained until the substantial completion of construction and a

		temporary or final certificate of occupancy is obtained.
Blanket Crime Policy	$5,000,000	Coverage will be in effect upon or prior to and remain in effect for the Term of the License.
Boiler and Machinery Coverage	$25,000,000	Coverage will be in effect upon or prior to the earlier of when the Builder's Risk policy is no longer in effect or when substantial completion of construction and a temporary or final certificate of occupancy is obtained, and coverage will thereafter remain in effect for the remainder of the Term of the License.

B. ADDITIONAL INSURANCE REQUIREMENTS: The policies will include, or be endorsed to include, provisions with the following effect:

1. Licensor, and its agents, officials, volunteers, officers, elected officials, and employees, will be named as additional insureds and added by endorsements on all general liability insurance policies and commercial automotive liability policies.

2. On insurance policies where the Licensor is to be named as an additional insured, the Licensor will be named as additional insured to the full limits and to the same extent of coverage as the insurance purchased by Licensee, even if those limits of coverage are in excess of those required by the License.

3. The Licensee's insurance coverage will be primary and non-contributory with respect to all other Licensor insurance sources.

4. All policies will include a waiver of subrogation rights in favor of the Licensor, its agents, officials, volunteers, officers, elected officials, and employees. Licensee will obtain a workers' compensation policy that is endorsed with a waiver of subrogation in favor of Licensor for all work performed by Licensee, its employees, agents, contractors and subcontractors. Licensee agrees to obtain any endorsement that may be necessary to comply with this waiver of subrogation requirement.

5. All general liability policies will include coverage for explosion, collapse, underground work, and contractual liability coverage, which will include (but is not limited to) coverage for Licensee's indemnification obligations under the License.

6. Licensor will be named as Loss Payee on all property insurance policies. Proceeds of any property damage insurance will be applied as required by Section 14 of this License.

C. EXCESS OR UMBRELLA POLICY: In addition to a primary policy, an excess or umbrella policy may be used to meet the minimum requirements if the excess or umbrella coverage is written on a "following form" basis.

D. NOTICE OF CANCELLATION: Each insurance policy will include provisions to the effect that it will not be suspended, voided, cancelled, or reduced in coverage except after thirty (30) days' prior written notice has been given to Licensor. Such notice will be sent directly to Risk Management, City Attorney's Office, City of Mesa, 20 E. Main Street, P.O. Box 1466, MS-1077, Mesa, Arizona 85211.1466.

E. ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers duly licensed or authorized to do business in the State of Arizona and with an "A.M. Best" rating of not less than A- VII. Licensor in no way warrants that the above-required minimum insurer rating is sufficient to protect the Licensee from potential insurer insolvency.

F. ENDORSEMENTS AND VERIFICATION OF COVERAGE: Licensee will provide Licensor with Certificates of Insurance signed by the Issuer with applicable endorsements for all policies as required herein. All Certificates of Insurance and any required endorsements are to be received and approved by the Licensor before the applicable Coverage Period. Each applicable insurance policy required by the License must be in effect at or prior to and remain in effect for the Coverage Period. All Certificates of Insurance and endorsements will be sent directly to the City Attorney, City Attorney's Office, City of Mesa, 20 E. Main Street, P.O. Box 1466, MS-1077, Mesa, Arizona 85211-1466. Licensor reserves the right to require complete copies of all insurance policies required by the License at any time, but not more than once each twelve consecutive months during the Term of the License.

G. LICENSEE'S DEDUCTIBLES AND SELF-INSURED RETENTIONS: Any deductibles or self-insured retention in excess of $250,000 will be declared to and be subject to approval by Licensor. Licensee will be solely responsible for the payment of any deductible or self-insured amounts and waives any rights it may have to seek recovery of such amounts from Licensor and its agents, officials, volunteers, officers, elected officials, and employees.

H. LICENSEE'S CONTRACTORS AND DESIGN PROFESSIONALS: Licensee will require and verify that the general contractor and all subcontractors maintain reasonable and adequate insurance with respect to any work on or at the Garage, all such policies will include: (i) a waiver of subrogation rights in favor of the Licensor, its agents, officials, volunteers, officers, elected officials, and employees, (ii) a waiver of liability in favor of the Licensor, its agents, officials, volunteers, officers, elected officials, and employees releasing and holding harmless the same from any and all

liability for any and all bodily injury, including death, and loss of or damage to property, and (iii) Licensor, and its agents, officials, volunteers, officers, elected officials, and employees, will be named as additional insureds and added by endorsements on all general liability insurance policies and commercial automotive liability policies. Licensee will require all design professionals (e.g., architects, engineers) to obtain Professional Liability Insurance with limits of liability not less than those stated in the above chart.

I. LICENSOR'S RIGHT TO ADJUST. With written notice to Licensee of not less than 60 days, Licensor may reasonably adjust the amount and type of insurance Licensee is required to obtain and maintain under this License as reasonably required by Licensor from time-to-time.

J. FAILURE TO PROCURE. If Licensee fails to procure or maintain any insurance required hereunder, Licensor may, but is not required to, procure and maintain any or all of the insurance required of Licensee under this License. In such event, all costs of such insurance procured and maintained by Licensor will be the responsibility of Licensee and will be fully reimbursed to Licensor within ten (10) business days after Licensor's request payment thereof.

EXHIBIT C
TO GROUND AND AIR RIGHTS LESASE

SCHEDULE OF RENT

Exhibit C
SCHEDULE OF RENT

Year 1[3]	Monthly Lease Rate	Yearly Lease Rate	PI Cap Credit (Monthly)[1]	PI Cap Credit (Yearly)[1]	Monthly Lease w/PI Cap Credit[2]	Yearly Lease w/PI Cap Credit[2]
Construction Rate	$1,000	$12,000	N/A	N/A	$1,000	$12,000
Year 2[3]						
Lease up period	$2,500	$30,000	N/A	N/A	$2,500	$30,000
Years 3-15						
6% Lease	$18,850	$226,200	$14,137.50	$169,650	$4,712.50	$56,550
Years 16-17						
7% Lease	$22,000	$264,000	$11,000	$132,000	$11,000	$132,000
Years 18-20						
7% Lease	$22,000	$249,000	$11,000	$132,000	$11,000	$132,000
Years 21-99	Based on 7% monthly/annually of the then appraised value of the property every 7 years					

[1] Rent Credit available only to reimburse for those Minimum Public Improvements and Additional Public Improvements that have been completed and accepted by the City Engineer, up to the $3,000,000 Cap. Rent Credits are only available after Year 3 of the Lease. Additionally, if Tenant is entitled to Rent Credits (i.e., PI Cap Credits) under the terms of the Development Agreement, the PI Cap Credits will be used as described in this Exhibit and License Exhibit D to reduce the Rent (and the License Fees under the License) until the Credits are used (up to the Cap) between the Rent and License Fees or are extinguished under the terms of the Development Agreement, Lease, or License at which point the Rent shall be as described in the "Monthly Lease Rate" and "Yearly Lease Rate" columns. Because the use of the Credits will be based on future variables (such as the number of licensed parking spaces and the use of the Credits under the Lease) this Exhibit does not show or establish when the Credits will be used up, which the Parties shall agree to when all such future variable are determined.

[2] For Years 3-15, the maximum Rent Credit that can be used to offset the Rent shall not exceed 75% of the Rent. After Year 15, the maximum Rent Credit to offset the Rent shall not exceed 50% of the Rent.

[3] If Developer does not meet the Compliance Dates in Section 4.12, including but not limited to timely submittal of plans, paying for permits, and Commencing Construction timely, the Rent for the remainder of the Construction Rate and Lease Up periods shall be $22,000/month.

[4] Starting in the 21st year of the Lease and every 7 years thereafter, the Rent shall be based on 7% of the fair market value of the Premises (as unimproved property and air rights) as follows: one hundred and twenty days before the 21st year of the Lease (and every 7 years thereafter), the Parties (if they Parties are unable to agree upon the fair market value of the Premises unimproved) shall each create a list of three appraisers and provide such list to the other Party. The appraisers on the lists shall be members of the American Institute of Real Estate Appraisers ("M.A.I.") with at least 10 years of experience in appraising commercial real property. The Parties shall act in good faith to select one appraiser from one of the lists as the primary appraiser (the "Primary Appraiser") and to select from the other list another appraiser to be the review appraiser (the "Review Appraiser") (the Primary Appraiser and Review Appraiser shall be from different lists). If the Parties cannot so agree within thirty (30) days of providing the lists, either Party may, upon at least 5 days prior written notice to the other Party, apply to the American Institute of Real Estate Appraisers or to the presiding judge of the Maricopa County Arizona Superior Court, for selecting such appraisers. Within 45 days after selecting the Primary Appraiser, the Primary Appraiser shall provide the Parties with an appraisal of the Premises that determines the fair market value of the Premises (as unimproved). Within 15 days after receiving such appraisal, either Party may provide notice to the other Party that they disagree with the Primary Appraiser's fair market value of the Premises and engage the Review Appraiser to appraise the Premises. If such notice is not provided, the fair market value of the Premises shall be as stated in the Primary Appraiser's appraisal, unless the Parties agree in writing to another amount for the fair market value of the Premises. If notice that a Party disagrees with the Primary Appraiser's determination is provided, the Parties agree that the Premises shall be appraised by the Review Appraiser; and, then, within 30 days of engaging the Review Appraiser, the Review Appraiser shall provide the Parties with an appraisal of the Premises that determines the fair market value of the Premises (as unimproved); the Parties shall negotiate in good faith based on the two appraisals to agree upon a fair market value of the Premises that falls within the range of the two appraisals. If the Parties cannot so agree within thirty (30) days of receiving the Review Appraiser's appraisal, either Party may, upon at least 5 days prior written notice to the other Party, apply to presiding judge of the Maricopa County Arizona Superior Court, (or file suit in Maricopa County Arizona Superior Court) for a determination of the fair market value of the Premises. Each Party agrees to pay one-half (½) of the fees for the appraisals. The date of valuation for the appraisals shall be the date the appraisal is completed.

EXHIBIT D
TO GROUND AND AIR RIGHTS LESASE

PROHIBITED USES

Exhibit D
PROHIBITED USES

The uses listed below are expressly prohibited from the Premises:

1. Group Residential, as defined by Chapter 64 of the Zoning Ordinance
2. Non-chartered Financial Institution, as defined by Chapter 64 of the Zoning Ordinance
3. Pawn Shops, as defined by Chapter 64 of the Zoning Ordinance
4. Social Service Facilities, as defined by Chapter 64 of the Zoning Ordinance
5. Tattoo and Body Piercing Parlors, as defined by Chapter 64 of the Zoning Ordinance
6. Group Residential, as defined by Chapter 86 of the Zoning Ordinance
7. Off-Track Betting Establishment, as defined by Chapter 86 of the a Zoning Ordinance
8. All sales of marijuana, including Medical Marijuana Dispensary, as defined by Chapter 86 of the Zoning Ordinance
9. Package liquor stores, except as part of a restaurant or bar concept
10. Kennels, as defined by Chapter 64 of the Zoning Ordinance

EXHIBIT E
TO GROUND AND AIR RIGHTS LESASE

INSURANCE REQUIREMENTS

Exhibit E
INSURANCE REQUIREMENTS

Tenant shall procure and maintain insurance during the applicable "Coverage Period," as shown on the below chart, against claims for injury to persons or damage to property which may arise from or in connection with the Premises and/or in the performance of work or construction of the Premises by Tenant, its agents, representatives, employees, contractors, or subcontractors.

The insurance requirements herein are minimum requirements for the Lease, of which this Exhibit is a part (the "Lease"), and in no way limits the indemnity covenants contained in the Lease. Landlord in no way warrants that the minimum limits contained herein are sufficient to protect Tenant from liabilities that might arise from or in connection with the Premises, and Tenant is free to purchase additional insurance as Tenant may determine.

A. MINIMUM SCOPE AND LIMITS OF INSURANCE: Tenant shall provide coverage during the Coverage Period and with limits of liability not less than those stated below.

Type	Amount	Coverage Period
General Liability (which shall include operations, products, completed operations, and contractual liability coverage)	With limits not less than $25,000,000 combined single limit per occurrence and not less than $25,000,000 general aggregate.	Coverage shall be in effect upon or prior to and remain in effect for the Term of the Lease.
Property (all risks of loss including risks covered by fire and extended coverage, terrorism, vandalism and malicious mischief)	In an amount not less than full replacement cost of structure and all fixtures.	Coverage shall be in effect upon or prior to the earlier of when the Builder's Risk policy is no longer in effect or when substantial completion of construction and a temporary or final certificate of occupancy is obtained, and coverage shall thereafter remain in effect for the remainder of the Term of the Lease.
Commercial Automobile Liability	With limits not less than $1,000,000 each occurrence, Combined Single Limit for bodily injury and property damage covering owned, non-owned and hired auto coverage as applicable.	Coverage shall be in effect upon or prior to and remain in effect for the Term of the Lease.
Business Interruption Coverage (can be endorsed to the Property policy)	Minimum 12 months' rent and ongoing operating expenses	Coverage shall be in effect upon or prior to the earlier of when the Builder's Risk policy is no longer in effect

		or when substantial completion of construction and a temporary or final certificate of occupancy is obtained, and coverage shall thereafter remain in effect for the remainder of the Term of the Lease.
Workers' Compensation Employers' Liability	Statutory Limits $500,000 each accident, each employee	Coverage shall be in effect upon or prior to and remain in effect for the Term of the Lease.
Liquor Liability	$5,000,000	Coverage shall be in effect upon or prior to and remain in effect for the Term of the Lease, provided Tenant sells and/or serves alcohol
Builder's Risk	In an amount not less than the estimated total cost of construction.	Coverage shall be in effect upon or prior to any construction activities and maintained until the substantial completion of construction and a temporary or final certificate of occupancy is obtained.
Owner's and Contractor's Protective Liability	$25,000,000	Coverage shall be in effect upon or prior to any construction activities and maintained until the substantial completion of construction and a temporary or final certificate of occupancy is obtained.
Professional Liability	$2,000,000	Coverage shall be in effect upon or prior to any construction activities and maintained until the substantial completion of construction and a temporary or final certificate of occupancy is obtained.
Blanket Crime Policy	$5,000,000	Coverage shall be in effect upon or prior to and remain in effect for the Term of the Lease.
Boiler and Machinery	$25,000,000	Coverage shall be in effect

Coverage		upon or prior to the earlier of when the Builder's Risk policy is no longer in effect or when substantial completion of construction and a temporary or final certificate of occupancy is obtained, and coverage shall thereafter remain in effect for the remainder of the Term of the Lease.

B. ADDITIONAL INSURANCE REQUIREMENTS: The policies shall include, or be endorsed to include, provisions with the following effect:

1. Landlord, and its agents, officials, volunteers, officers, elected officials, and employees, shall be named as additional insureds and added by endorsements on all general liability insurance policies and commercial automotive liability policies.

2. On insurance policies where the Landlord is to be named as an additional insured, the Landlord shall be named as additional insured to the full limits and to the same extent of coverage as the insurance purchased by Tenant, even if those limits of coverage are in excess of those required by the Lease.

3. The Tenant's insurance coverage shall be primary and non-contributory with respect to all other Landlord insurance sources.

4. All policies shall include a waiver of subrogation rights in favor of the Landlord, its agents, officials, volunteers, officers, elected officials, and employees. Tenant shall obtain a workers' compensation policy that is endorsed with a waiver of subrogation in favor of Landlord for all work performed by Tenant, its employees, agents, contractors and subcontractors. Tenant agrees to obtain any endorsement that may be necessary to comply with this waiver of subrogation requirement.

5. All general liability policies shall include coverage for explosion, collapse, underground work, and contractual liability coverage, which shall include (but is not limited to) coverage for Tenant's indemnification obligations under the Lease.

6. Landlord shall be named as Loss Payee on all property insurance policies. Proceeds of any property damage insurance shall be applied as required by Section 14 of this Lease.

C. EXCESS OR UMBRELLA POLICY: In addition to a primary policy, an excess or umbrella policy may be used to meet the minimum requirements if the excess or umbrella coverage is written on a "following form" basis.

D. NOTICE OF CANCELLATION: Each insurance policy shall include provisions to the effect that it shall not be suspended, voided, cancelled, or reduced in coverage except after thirty (30) days' prior written notice has been given to Landlord. Such notice shall be sent directly to Risk Management, City Attorney's Office, City of Mesa, 20 E. Main Street, P.O. Box 1466, MS-1077, Mesa, Arizona 85211.1466.

E. ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers duly licensed or authorized to do business in the State of Arizona and with an "A.M. Best" rating of not less than A- VII. Landlord in no way warrants that the above-required minimum insurer rating is sufficient to protect the Tenant from potential insurer insolvency.

F. ENDORSEMENTS AND VERIFICATION OF COVERAGE: Tenant shall provide Landlord with Certificates of Insurance signed by the Issuer with applicable endorsements for all policies as required herein. All Certificates of Insurance and any required endorsements are to be received and approved by the Landlord before the applicable Coverage Period. Each applicable insurance policy required by the Lease must be in effect at or prior to and remain in effect for the Coverage Period. All Certificates of Insurance and endorsements shall be sent directly to the City Attorney, City Attorney's Office, City of Mesa, 20 E. Main Street, P.O. Box 1466, MS-1077, Mesa, Arizona 85211-1466. Landlord reserves the right to require complete copies of all insurance policies required by the Lease at any time, but not more than once each twelve consecutive months during the Term of the Lease.

G. TENANT'S DEDUCTIBLES AND SELF-INSURED RETENTIONS: Any deductibles or self-insured retention in excess of $250,000 shall be declared to and be subject to approval by Landlord. Tenant shall be solely responsible for the payment of any deductible or self-insured amounts and waives any rights it may have to seek recovery of such amounts from Landlord and its agents, officials, volunteers, officers, elected officials, and employees.

H. TENANT'S CONTRACTORS AND DESIGN PROFESSIONALS: Tenant shall require and verify that the general contractor and all subcontractors maintain reasonable and adequate insurance with respect to any work on or at the Premises, all such policies shall include: (i) a waiver of subrogation rights in favor of the Landlord, its agents, officials, volunteers, officers, elected officials, and employees, (ii) a waiver of liability in favor of the Landlord, its agents, officials, volunteers, officers, elected officials, and employees releasing and holding harmless the same from any and all liability for any and all bodily injury, including death, and loss of or damage to property, and (iii) Landlord, and its agents, officials, volunteers, officers, elected officials, and employees, shall be named as additional insureds and added by endorsements on all general liability insurance policies and commercial automotive liability policies. Tenant shall require all design professionals (e.g., architects, engineers) to obtain Professional Liability Insurance with limits of liability not less than those stated in the above chart.

I. LANDLORD'S RIGHT TO ADJUST. With written notice to Tenant of not less than 60 days, Landlord may reasonably adjust the amount and type of insurance Tenant is required to obtain and maintain under this Lease as reasonably required by Landlord from time-to-time.

J. FAILURE TO PROCURE. If Tenant fails to procure or maintain any insurance required hereunder, Landlord may, but is not required to, procure and maintain any or all of the insurance required of Tenant under this Lease. In such event, all costs of such insurance procured and maintained by Landlord shall be the responsibility of Tenant and shall be fully reimbursed to Landlord within ten (10) business days after Landlord's request payment thereof.

EXHIBIT F
TO GROUND AND AIR RIGHTS LESASE

FORM OF SPECIAL WARRANTY DEED

Exhibit F
FORM OF SPECIAL WARRANTY DEED

When Recorded, Mail to:

SPECIAL WARRANTY DEED

For the consideration of the sum of Ten Dollars ($10.00) and other valuable consideration received, the City of Mesa, Arizona ("**Grantor**"), does hereby convey to _____ ("**Grantee**"), all of Grantor's right, title and interest in and to the following described real property (the "**Property**") situated in Maricopa County, Arizona, together with all improvements thereon and all of Grantor's interest in any rights and privileges appurtenant thereto:

SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS
REFERENCE MADE A PART HEREOF;

and further together with all rights and obligations of Developer granted in Section 5.6 ("Encroachment into Right-of-Way") of that certain "Development Agreement" dated November ___, 2017, between the City of Mesa, Arizona, and 3W Management, LLC, an Arizona limited liability company, recorded in the Official Records of Maricopa County, Arizona, on or about _____, as Recording No. 2017-_____ (the "**Development Agreement**");

and further together with all rights and obligations of Licensee granted in that certain "License" dated _____, and which is described in Section 5.2(b) of the Development Agreement;

SUBJECT matters of record and to any and all conditions, easements, encroachments, rights-of-way, or restrictions which a physical inspection, or accurate ALTA survey, of the Property would reveal; and all applicable municipal, county, state or federal zoning and use regulations.

AND GRANTOR hereby binds itself and its successors to warrant and defend the title against all of the acts of Grantor and no other, subject to the matters set forth above.

IN WITNESS WHEREOF, Grantor has caused this Special Warranty Deed to be executed as of this ___ day of _____, 2____.

GRANTOR:

City of Mesa, Arizona, an Arizona municipal corporation

By:_____
Name: _____
Its:_____

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this the ____ day of _____, 20__, before me, the undersigned Notary Public, personally appeared _____, who acknowledged ____self to be the _____ of the City of Mesa, Arizona, an Arizona municipal corporation; and that, being authorized so to do, __he executed the foregoing instrument.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____
Notary Public

My Commission Expires:

_____

ACCEPTANCE BY GRANTEE

IN WITNESS WHEREOF, Grantee has accepted this Special Warranty Deed as of this ___ day of _____, 2____.

GRANTEE:

[Name]

By:_____
Name: _____
Its:_____

STATE OF _____)
) ss.
County of _____)

On this the ____ day of _____, 20__, before me, the undersigned Notary Public, personally appeared _____, who acknowledged ____self to be the _____ of _____; and that, being authorized so to do, __he executed the foregoing instrument.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____
Notary Public

My Commission Expires:

_____

EXHIBIT G
TO GROUND AND AIR RIGHTS LESASE

MEMORANDUM OF LEASE

Exhibit G
MEMORANDUM OF LEASE

WHEN RECORDED RETURN TO:

_____
_____
_____
_____
_____

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MEMORANDUM OF LEASE

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THIS MEMORANDUM OF LEASE shall evidence that there is in existence a Lease as hereinafter described. It is executed by the Landlord and Tenant for recording purposes only as to the Lease hereinafter described, and it is not intended and shall not modify, amend, supersede or otherwise effect the terms and provisions of the Lease.

1. Name of Document: Ground and Air Lease (the "Lease")

2. Name of Landlord: City of Mesa, Arizona ("Landlord")

3. Name of Tenant: _____ ("Tenant")

4. Address of Landlord: City of Mesa
Attn: City Clerk
20 East Main Street
Mesa, Arizona 85211

5. Address of Tenant: _____
_____
_____
_____

6. Date of Lease: _____, 2018 ("Commencement Date")

7. Initial Lease Term: Commencing on the Commencement Date and expiring fifty (50) years thereafter.

8. Option to Extend: Tenant has the option to extend the Initial Lease Term for one (1) additional period of forty-nine (49) years.

9. Demised Premises: The real property more particularly described in **Exhibit "A"** attached to this Memorandum of Lease.

A copy of the Lease is maintained at the offices of Landlord and Tenant at their respective addresses set forth above.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum of Lease to be effective as of _____, 2018.

Landlord:

City of Mesa, Arizona, an Arizona municipal corporation

By: _____
Name: _____
Its: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this the ____ day of _____, 2018, before me, the undersigned Notary Public, personally appeared _____, who acknowledged ____self to be the _____ of the City of Mesa, Arizona, an Arizona municipal corporation; and that, being authorized so to do, __he executed the foregoing instrument.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____
Notary Public

My Commission Expires:

_____

Tenant:

_____
a(n) _____

By: _____
Name: _____
Its: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this the ____ day of _____, 2018, before me, the undersigned Notary Public, personally appeared _____, who acknowledged ____self to be the _____ of _____, a(n) _____; and that, being authorized so to do, __he executed the foregoing instrument.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____
Notary Public

My Commission Expires:

_____

EXHIBIT Q
TO DEVELOPMENT AGREEMENT

CITY OF MESA INSURANCE REQUIREMENTS

EXHIBIT Q
CITY OF MESA INSURANCE REQUIREMENTS

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 Developer 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 Developer contracts for any such construction will be required to carry liability insurance of the type and providing the minimum limits set forth below:

i) 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.

ii) 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.

iii) 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 Developer'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 three (3) years after the completion of construction involving the Parcels and the Public Improvements.

E. Engineer. In connection with any construction involving the Public Improvements, the Developer'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 three (3) years after the completion of the construction involving the Project and 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. Developer'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 Developer and will not contribute to it.

H. Indemnities. Coverage provided by the Developer 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**:** Each insurance policy will include provisions to the effect that it will not be suspended, voided, cancelled, or reduced in coverage except after thirty (30) days' prior written Notice has been given to City. Such Notice will be provided directly to City in accordance with the provisions of Section 11.5.

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 Developer from potential insurer insolvency.

L**.** Endorsements and Verification of Coverage**:** Developer 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.

All certificates are to be received and approved by City before the Commencement 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.

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 Insurance Exhibit at any time.

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

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

EXHIBIT R
TO DEVELOPMENT AGREEMENT

NON-DISTURBANCE AND RECOGNITION AGREEMENT

When recorded, return to:

_____

_____

_____

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NON-DISTURBANCE AND RECOGNITION AGREEMENT

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THIS NON-DISTURBANCE AND RECOGNITION AGREEMENT (this "**NDRA**") is made as of the ___ day of _____, 20___, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, by and among: (a) _____ ("**Developer**"); (b) _____ ("**Lender**"); and (c) City of Mesa, Arizona, an Arizona municipal corporation ("**City**").

1. Recitals.

1.1 Developer is (a) the present developer under a Development Agreement entered into with City, dated _____, 20___, and recorded in the Official Records of Maricopa County, Arizona, at _____ (the "**Agreement**"), which Agreement sets forth certain rights and responsibilities of Developer with respect to the development of that certain real property referred to in the Agreement (and in this NDRA) as the "**Property**," and more particularly described in Exhibit "A" attached hereto; and (b) the tenant under a Ground Lease entered into with City (as Landlord), dated _____, 20___, and a memorandum of which was recorded in the Official Records of Maricopa County, Arizona, at _____ (the "**Lease**"), which Lease sets forth certain rights and responsibilities of Developer with respect to the leasing of the Property (the "**Leasehold**").

1.2 Developer's obligations arising under the Agreement include but are not limited to the acquisition or development of the Project, and the construction of improvements upon the Property, and the construction of certain "**Public Improvements**" (as defined in the Agreement) in and around the Property (collectively, the "**Obligations**").

1.3 Lender has agreed to lend money to Developer, and Developer will execute certain loan documents (the "**Loan Documents**") including but not limited to a leasehold deed of trust for the use and benefit of Lender (the "**Deed of Trust**") and a collateral assignment of Developer's rights under the Agreement (the "**Assignment**") to secure a loan from Lender to Developer (the "**Loan**"). The Deed of Trust and the Assignment will be recorded in the Official Records of Maricopa County, Arizona, and will encumber the Leasehold (but not the Property).

1.4 Lender has certain rights under the Loan Documents in the event of a Default by Developer of its obligations either under the Loan Documents or the Agreement, including but not limited to the right of Lender to be substituted for Developer under the

Agreement and to assume Developer's position with respect to the Agreement; and the Agreement states in Section 11.21 thereof that a Lender may be allowed to assume Developer's rights and obligations with respect to the Agreement (collectively, "**Developer's Position**").

1.5 Accordingly the parties have executed this NDRA to be effective as of the date set forth above.

2. No Subordination. Subject only to the specific provisions of (i) Section 3 of this NDRA regarding the right of Lender to assume Developer's Position with respect to the Agreement and (ii) Section 4 of this NDRA regarding non-disturbance and recognition, all rights of Developer and Lender under the Deed of Trust are and will continue to be junior, inferior, subject and subordinate to the Agreement, as it may hereafter be modified, amended, restated or replaced.

3. Notice of Developer Default.

3.1 If Lender is a "Designated Lender" as defined in Section 11.21 of the Agreement, City will give Lender written Notice of any claimed Event of Default by Developer (the "**Notice**") under the Agreement and 30 days following the expiration of Developer's cure period under the Agreement to cure such claimed Event of Default (as the Agreement exists as of the date of this NDRA), prior to terminating the Agreement or invoking such other remedies as may be available to City under the Agreement.

3.2 Lender shall have the option, following Lender's receipt of the Notice, and within the time period set forth in this NDRA for curing an Event of Default of Developer, in its sole election either: (a) to cure the Default of Developer, in which event Developer will retain its position with respect to the Agreement; or (b) in addition to any other remedies available to Lender under law, equity or contract (including but not limited to the Deed of Trust and the Assignment) to assume Developer's Position with respect to the Agreement (to "**Assume**" or an "**Assumption**"). Lender will give written notice to City of its intention to Assume on or before the expiration of any applicable cure period available to Lender.

3.3 If Lender agrees to Assume Developer's Position with respect to the Agreement, Lender and City will execute an amendment to the Agreement (an "**Amendment**") and will cause the Amendment to be recorded in the Official Records of Maricopa County, Arizona. The Amendment will state that Lender has fully assumed Developer's Position with respect to the Agreement, and that Lender is thereafter substituted for Developer with respect to all Obligations, payment and performance rights and responsibilities arising under or in connection with the Agreement. The execution or approval by Developer of the Amendment will not be necessary or required, and upon execution and recordation of the Amendment, City will (i) look to Lender and/or Developer for performance of the Obligations under the Agreement and (ii) make to Lender all payments, and render all performance required to be made by the City, required to be made to Developer under the Agreement.

3.4 In connection with (i) any foreclosure by Lender (whether by notice or judicially) of the Deed of Trust, or any other acquisition by Lender of the Leasehold in lieu of such foreclosure (collectively, a "**Foreclosure**") and (ii) the transfer of the Leasehold to a third-party purchaser or purchasers (by way of illustration and not in limitation, a purchaser or

purchasers at a trustee's sale conducted pursuant to A.R.S. §33-810) concurrently with such Foreclosure or thereafter (a "**Purchaser**"), the Developer's Position under the Agreement will accompany and be deemed covenants running with the Leasehold, and the Purchaser will be deemed to have assumed Developer's Position with respect to the Agreement. Upon the acquisition of the Leasehold by a Purchaser, City will (i) look to Purchaser and/or Developer for performance of the Obligations under the Agreement and (ii) make to Purchaser all payments, and render all performance required to be made by the City, required to be made to Developer under the Agreement.

3.5 Until an Assumption as defined in this NDRA, nothing in this NDRA will constitute an assumption by Lender of any Obligation. Developer will continue to be liable for all of the Obligations thereunder and will perform all such Obligations, will comply with all terms and conditions of the Agreement applicable to Developer, and will take such steps as may be necessary or appropriate to secure performance by City under the Agreement.

3.6 Whether before or after an Assumption as defined in this NDRA, nothing in this NDRA will constitute a release of Developer of any Obligation.

4. Nondisturbance and Recognition.

4.1 In the event that City institutes any proceedings to enforce the Agreement, City agrees that, so long as Lender is not in default (beyond any applicable cure period provided to Lender under this NDRA) under the Agreement:

4.1.1 City will not interfere with or disturb Lender's rights under the Agreement and this NDRA; and

4.1.2 Lender will not be made a party to any proceeding commenced pursuant to the Agreement, unless Lender is determined to be a necessary party for purposes of maintaining the action or securing other necessary relief not involving the termination of Lender's interest under the Deed of Trust or the Assignment, provided that nothing in this NDRA will prevent City from giving any required notice to Lender.

4.2 Upon and following an Assumption, Lender will recognize the City's rights under the Agreement for the balance of the Term thereof. The recognition described in this Section 4.2 will automatically become effective upon an Assumption by Lender.

5. Estoppel

5.1 City and Developer hereby confirm to Lender that as of the date of this NDRA and to the best of their respective actual knowledge:

a) Neither City nor Developer has acted or failed to act in a manner giving rise to an Event of Default under the Agreement;

b) The Agreement has not been assigned, modified or amended in any way except as set forth in Recital 1.1;

c) The Agreement is in full force and effect; and

d) [IF APPROPRIATE] "Completion of Construction", as defined in the Agreement occurred on _____.

6. Miscellaneous.

6.1 This NDRA will be binding upon and inure to the benefit of City, Developer and Lender and their respective successors and assigns, including, without limitation, any successful bidder at any judicial foreclosure or trustee's sale.

6.2 Except as otherwise required by law, any notice required or permitted under this NDRA will be in writing and will be given by (i) personal delivery, (ii) deposit in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the parties at their respective addresses set forth below, or at such other address as such party may designate in writing pursuant to the terms of this Section, or (iii) 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
Mesa, Arizona 85211

With required copy to: City of Mesa
Attn: City Attorney
20 East Main Street
Mesa, Arizona 85211

If to Developer: _____
_____
_____

With required copy to: _____
_____
_____

If to Lender: _____
_____
_____
_____

With required copy to: _____
_____
_____
_____

Any notice sent by United States Postal Service certified or registered mail will be deemed to be effective the earlier of the actual delivery, or three (3) business days after deposit in a post office

operated by the United States Postal Service. 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, by giving notice to the other parties as provided in this Section 6.2.

6.3 This NDRA is delivered in and relates to property located in Maricopa County, Arizona, and the rights and obligations of the parties hereunder will be governed by and construed in accordance with the substantive laws and judicial decisions of the State of Arizona (regardless of Arizona conflict of laws principles or the residence, location, domicile or place of business of the parties and their constituent principals) and applicable federal laws, rules and regulations, subject to Section 11.1 of the Agreement.

6.4 This NDRA integrates all of the terms and conditions of the parties' agreement regarding the subordination of the Deed of Trust and Lender's interest thereunder to the Agreement, and supersedes all prior oral or written agreements with respect to such subordination (only to the extent, however, as would affect the priority between the Agreement and the Deed of Trust). This NDRA may not be modified or amended except by a written agreement signed by the parties or their respective successors in interest.

6.5 This NDRA may be executed and acknowledged in one or more counterparts, each of which may be executed by one or more of the signatory parties. Signature and notary pages may be detached from the counterparts and attached to a single copy of this NDRA physically to form one legally effective document.

6.6 This NDRA is subject to, and may be terminated by the City in accordance with, the provisions of A.R.S. §38-511.

6.7 Each party to this NDRA represents and warrants to the others that all necessary company, corporate and/or governmental approvals, consents and authorizations have been obtained prior to the execution of this NRDA by such party, and that the person executing this NRDA on behalf of such party is duly authorized to do so to bind such party.

6.8 Capitalized terms not defined in this NDRA will have the definitions set forth in the Agreement.

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY

IN WITNESS WHEREOF, the parties hereto have each caused this NDRA to be executed on or as of the day and year first above written.

"CITY"

CITY OF MESA, an Arizona municipal corporation

By: _____
Its:_____

"DEVELOPER"

_____

By: _____
Name:_____
Its:_____

"LENDER"

_____,
a(n) Arizona _____

By: _____
Name:_____
Its: _____

Acknowledgment by City

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STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing was acknowledged before me this day of _____, 20__, by _____, the City _____ of the City of Mesa, Arizona, on behalf of the City.

_____
Notary Public

My Commission Expires:
_____

Acknowledgment by Developer

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STATE OF ARIZONA)
) ss.
County of _____)

The foregoing was acknowledged before me this day of _____, 20__, by _____, the _____ of _____, on behalf of the _____.

_____
Notary Public

My Commission Expires:
_____

Acknowledgment by Lender

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STATE OF ARIZONA)
) ss.
County of _____)

The foregoing was acknowledged before me this day of _____, 20_, by _____, the _____of _____, a _____, on behalf of the _____.

_____
Notary Public

My Commission Expires:
_____

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