

**AGREEMENT TO PURCHASE REAL PROPERTY
AND ESCROW INSTRUCTIONS
(Pepper and Robson Transaction)**

DATE: _____, 2020

SELLER: ***City of Mesa, an Arizona municipal corporation***
Address: 20 East Main Street, Suite 500
 Post Office Box 1466
 Mesa, Arizona 85211
 Attn: Kim Fallbeck
 Real Estate Services
Telephone: 480-644-2521
Facsimile: 480-644-3392
Email: kim.fallbeck@mesaaz.gov

BUYER: ***EV Development, LLC, a Delaware limited liability company***
Address: 844 N. 4th Avenue
 Phoenix, Arizona 85004
 Attn: Tim Sprague
Telephone: 602-325-1152
Facsimile: N/A
Email: tsprague@habitatmetro.com

ESCROW AGENT: ***Security Title Agency***
Address: 1630 S. Stapley Drive
 Suite 125
 Mesa, Arizona 85204
 Telephone: 480-874-7425
Facsimile: 480-718-7734
Escrow Officer: Kerry Hemphill
Email: Attn Kerry.hemphill@securitytitle.com
Escrow Number: _____

PROPERTY: The six contiguous parcels of real property located near the northeast corner of Pepper Place and Robson in Maricopa County, Arizona, legally described on Exhibit A attached hereto, consisting of approximately 38,944 sq. ft., and including all improvements, located on and all rights and privileges appurtenant to the real property (the "Property").

ARTICLE 1 AGREEMENT OF THE PARTIES

1.1 Agreement. In consideration of the mutual promises and covenants set forth in this Agreement, Seller agrees to sell to Buyer and Buyer agrees to buy the Property on the terms and conditions set forth in this Agreement. Seller and Buyer may be referred to herein individually as a “Party” or collectively as the “Parties.”

ARTICLE 2 SALES PRICE AND PAYMENT TERMS

2.1 Sales Price. The Parties acknowledge and agree that the Sales Price below was calculated based on an appraisal obtained and paid for by Seller. The total sales price which Buyer agrees to pay for the Property is Three Hundred Twenty-Five Thousand Dollars (\$325,000)(the “Sales Price”). The Sales Price is subject to the following terms and shall be payable as follows:

- (a) Earnest Money. Buyer agrees to pay ten percent (10%) of the Sales Price as the earnest money (the “Earnest Money”) which Buyer agrees to deposit in Escrow on the Opening Date.
- (b) At Closing, Buyer shall deposit with Escrow Agent the amount of Two Hundred Ninety-Two Thousand and Five Hundred Dollars (\$292,500.00) in cash or by wire transfer of immediately available funds (the “Closing Payment”).
- (c) Prior to or at Closing, Buyer shall have entered into the certain Development Agreement pertaining to the Property (the “Development Agreement”), attached hereto as Exhibit B. Buyer acknowledges that Seller would not have entered into this Agreement for this Sales Price but for Buyer’s agreement in the Development Agreement to timely Commence Construction (as defined in the Development Agreement) and to timely Complete Construction (as defined in the Development Agreement) of the Public Improvements and Private Improvements because, *inter alia*, the Seller would not have sold the Property if the Property were to remain undeveloped or not be promptly developed in the manner provided in the Development Agreement.

2.2 Earnest Money Provisions. All Earnest Money required by this Agreement shall be deposited by wire transfer or other form of immediately available funds to the account of Escrow Agent in the amount of the required Earnest Money. Escrow Agent is hereby instructed to deposit all Earnest Money in a federally-insured money market or similar account, subject to immediate withdrawal, at a bank or savings and loan institution located in Maricopa County, Arizona (an “Approved Investment Account”). Upon Closing, the Earnest Money and interest earned thereon shall be credited to the Sales Price.

2.3 Disbursements. Escrow Agent shall disburse the Earnest Money and interest earned thereon, and the Closing Payment, to Seller on the Closing Date less any funds required to take into account the prorations and other adjustments required of Seller by this Agreement. If the Earnest Money and applicable interest and the Closing Payment are not disbursed to Seller

on the Closing Date, such amounts shall be invested by Escrow Agent in an Approved Investment Account until the next business day following the Closing Date when they shall be disbursed to Seller together with all interest earned thereon following the Closing Date. Escrow Agent shall not charge any fee for such investment of the Earnest Money and earned interest. If the Earnest Money is forfeited to Seller as provided in this Agreement, such amounts, with any interest earned thereon, shall be paid immediately to Seller. If Buyer is entitled at any time to a refund of Earnest Money deposits held in Escrow, any interest earned thereon shall be paid to Buyer.

2.4 Non-Refundable Nature of Earnest Money. If Buyer cancels or terminates this Agreement, as permitted under the terms of this Agreement, prior to the end of the Feasibility Period, the Earnest Money shall be returned to Buyer. After the Feasibility Period, the Earnest Money shall be absolutely non-refundable to Buyer, except as otherwise expressly provided in Sections 5.1(a)(iv), 5.3, 9.1(b) and 11.2, in consideration for Seller giving and granting Buyer the right to purchase the Property as described in this Agreement and taking the Property off the market and not as a penalty.

ARTICLE 3 ESCROW

3.1 Establishment of the Escrow. An escrow for this transaction (the “Escrow”) is established with Escrow Agent, and Escrow Agent is engaged to administer the Escrow.

3.2 Opening Date. **Within three (3) business days** after the execution of this Agreement by both Buyer and Seller, Seller will deliver a fully executed copy of this Agreement (PDF is acceptable) to Escrow Agent and Buyer will deliver the Earnest Money as specified in Section 2.1(a). The date that this Agreement together with the Earnest Money deposit is delivered to Escrow Agent is referred to in this Agreement as the “Opening Date.” Escrow Agent shall notify Buyer and Seller in writing of the Opening Date

3.3 Acceptance of Escrow. By accepting the Escrow, Escrow Agent agrees to the terms of this Agreement as they relate to the duties of Escrow Agent.

3.4 Escrow Instructions. This Agreement constitutes escrow instructions to Escrow Agent. If Escrow Agent requires the execution of its standard form printed escrow instructions, Buyer and Seller agree to execute those instructions; however, those instructions will be construed as applying only to Escrow Agent’s engagement. If there are conflicts between the terms of this Agreement and the terms of the printed escrow instructions, the terms of this Agreement will control.

3.5 Escrow Cancellation Charges. If the Escrow fails to close because of Seller’s default, Seller will pay all customary Escrow cancellation charges. If the Escrow fails to close because of Buyer’s default or cancellation of this Agreement for any reason other than the default of Seller, Buyer will pay all customary Escrow cancellation charges. If the Escrow fails to close for any other reason, Seller and Buyer will each pay one-half of all customary Escrow cancellation charges, if any.

3.6 Insured Closing Letter. If Escrow Agent does not issue its own title insurance policies, but acts as an agent for the Title Insurer (as defined in Section 6.3), Escrow Agent will cause the Title Insurer to issue to the Parties, a closing protection letter or insured closing service in written form satisfactory to Buyer and Seller, within five (5) calendar days following the Opening Date.

ARTICLE 4 INFORMATION TO BE PROVIDED

4.1 Information and Other Items to Be Provided.

(a) Diligence Materials. During the Feasibility Period (as defined in Section 5.1(b)), Seller shall allow Buyer access, upon reasonable notice and during business hours, for review and copying of Seller's Real Estate Department's public records that relate to the Property (the "Seller's Materials"). Buyer shall be responsible, at Buyer's sole expense, to undertake any additional investigation desired by Buyer concerning the condition of the Property pursuant to the terms of the Access Agreement described in Section 5.1(b). Seller expressly does not warrant the truthfulness or accuracy of any fact, finding, conclusion, or opinion included in any of the Seller's Materials.

(b) Preliminary Title Report. Escrow Agent shall provide Buyer and Seller as soon as possible following the Opening Date with: (i) a commitment for an owner's title insurance policy (Form 2006) covering the Property to be issued by the Title Insurer to Buyer (the "Report"), which Report shall show the status of title to the Property as of the date of the Report and contain the express commitment of the Title Insurer to issue the Title Policy (described in Section 6.3), and (ii) legible copies of all documents referred to in the Report.

(c) Survey. Buyer, at its sole cost and expense, shall have a current ALTA survey of the Property (the "Survey") prepared by a registered land surveyor, licensed in the State of Arizona, satisfactory to Seller and Buyer, prior to expiration of the Feasibility Period. The Survey will include a legal description and depiction and indicate the acreage of the Property. The Survey shall be certified to be accurate, complete and correct to Buyer, Seller, and Title Insurer. Buyer shall provide Seller with three (3) copies of the Survey and Escrow Agent with one (1) copy of the Survey.

(d) Utility Easements. Seller is a public entity and there may be public improvements (e.g., water, sewer, electric, etc.) on the Property; accordingly, Seller shall retain rights, in the form of easements on, over, under and across the Property to provide for repair and maintenance of, continued use of, and access to, the existing pipes, conduits, utility lines and other facilities and infrastructures located either on the Property, or on adjacent property owned by Seller; including, but not limited to, an easement for the New Duct Bank Site (described in Section 4.4). The nature of the easements, the form of easement grant and the exact descriptions of all easement premises (collectively, the "Utility Easements") shall be in Seller's standard forms for such easements and limited to the specific use then existing, or so specified, at the time of the Closing. Seller, at its sole election, may either reserve the Utility Easements, or require Buyer to grant the Utility Easements to Seller (and/or any other named parties in the approved easement grants) at Closing, either by instrument, by map of dedication or by plat. If Buyer is

required to grant the Utility Easements to the City, the Buyer shall do so at no cost to the City. Any reserved Utility Easements shall be deemed an Approved Title Exception; and any Utility Easements granted by Buyer to Seller at Closing shall be recorded immediately after the Deed, and prior to any lien, claim or encumbrance against the Property by or in favor of Buyer. If the location, area, terms and conditions of the Utility Easements are not resolved and mutually approved by Seller and Buyer (in Seller's and Buyer's reasonable discretion) prior to Closing, either party may terminate this Agreement by delivery of written notice to the other Party, and the Parties shall have no further obligations or liability to each other pursuant to this Agreement except to the extent this Agreement expressly states that an obligation herein shall survive such termination.

(e) Current Parking Obligations and Parking Easement. Buyer understands that City currently provides seventy-six (76) parking spaces on the Property for public, including parking for the Downtown Businesses (as that term is defined in the Development Agreement), and City permit parking (there are currently twenty-six [26] parking spaces for permit parking). Further, Seller discloses, and Buyer acknowledges, that there are parking permit holders currently utilizing the City Spaces (as that term is defined in the Development Agreement) on the Property for parking. Buyer has agreed to provide replacement parking for the City Spaces during construction of the Project as set forth in Section 4.16 of the Development Agreement. Additionally, Seller shall retain rights, in the form of a parking easement on, over, under and across the Property to provide for the operation and maintenance of, continued use of, and access to, the City Spaces located on the Property. Buyer, at no cost to Seller, shall grant the City a perpetual parking easement for parking as described and depicted in the parking easement attached to this Agreement as Exhibit C (the "Parking Easement"). At Closing Buyer shall execute and record the Parking Easement. The Parking Easement shall be deemed an Approved Title Exception. The Parking Easement shall be recorded immediately after the Deed, and prior to any lien, claim or encumbrance against the Property.

(f) Final Legal Description of the Property. While the Property is legally described in Exhibit A, Seller and Buyer agree that this legal description may need to be modified or corrected. Within the Feasibility Period, Buyer shall provide Seller a current ALTA Survey of the Property. The Parties recognize that the final legal description may need to be based on legal descriptions in deeds granting the Property to Seller or may need modifications or corrections based on the ALTA; regardless, the Parties shall agree upon a final legal description before the end of the Feasibility Period.

4.2 Zoning Clearance and Variances. A Zoning Clearance (as that term is defined in the Development Agreement) and variances are necessary for Buyer to build its intended Project on the Property as contemplated in the Development Agreement. Buyer is solely responsible, at its sole cost and expense, for obtaining the Zoning Clearance and variances; provided that Seller, as the current owner of the Property, will sign any necessary applications or documents required to allow the Buyer to submit and seek approval for the Zoning Clearance and variances. Seller is a municipal entity and its agreement to sell the Property and sign necessary applications or documents is separate from, and does not affect, the City's separate powers and authority as a governmental entity including but not limited to zoning, Zoning Clearance, and the variances. Should the City deny Buyer's Zoning Clearance request or variances, such a denial shall not be a default or breach by the Seller under this Agreement, and monetary damages or any other form

of relief shall not be assessed against the Seller for the City's decision to not approve the Zoning Clearance or variances, or other request to the City by Buyer for the Project.

4.3 Consolidation and Creation of Parcels. On or before Closing, Buyer, at its sole cost and expense, shall have undertaken all actions required to cause the consolidation of the Property into a single and unitary parcel ("Consolidation" or "Consolidate"). The legal description of the Property prepared in connection with the Consolidation will be substituted for the legal descriptions of the separate parcels presently constituting Exhibit A. City, as the property owner, will sign any necessary applications or documents required to allow the Buyer to Consolidate the Property.

4.4 Design of New Duct Bank. The Parties acknowledge there is 12 kV duct bank and associated improvements such as electrical conduit and a transformer (collectively the "Existing Duct Bank") on the Property that will need to be relocated to a new location ("New Duct Bank Site") before Developer can construct the Project. Prior to Closing, City, at its sole cost and expense, shall design a new duct bank and improvements for the New Duct Bank Site to enable the City to continue the City's electrical service ("New Duct Bank"). The New Duct Bank Site will be located so as to not interfere with the footprint of the building that is being built as part of the Project.

4.5 GPLET Lease. Buyer represents and has informed Seller that the Project will not proceed without a Government Property Lease Excise Tax Lease (the "GPLET Lease"). The Parties have negotiated the material terms of the GPLET Lease, but there are certain statutory notification requirements before the GPLET Lease may be considered by the Mesa City Council for approval. Seller will provide such statutory notification and thereafter bring the GPLET Lease to the City of Mesa's City Council for determination as to whether to approve the GPLET Lease in its sole and absolute discretion.

ARTICLE 5 CONDITIONS TO CLOSING

5.1 Conditions to Buyer's Obligation to Close. Buyer's obligations to close this transaction are subject to the satisfaction (or waiver by Buyer in writing), of the following conditions on and as of the expiration of the Feasibility Period unless a different date is specified:

(a) Title Review. Buyer shall be satisfied with the status of title to the Property as disclosed by the Report and the Survey. In that regard:

(i) Buyer shall have the later of: (i) thirty (30) Calendar Days following the Opening Date or (ii) ten (10) Business Days following receipt of the Survey and Report (the "Title Review Period") to approve or disapprove the status of title as shown by the Survey or the Report. If Buyer is dissatisfied with any exception to title as shown in the Report or the Survey that reflects a material flaw in Seller's title to the Property, then Buyer may, by giving notice to Seller and Escrow Agent within the Title Review Period, either:

(1) Cancel this Agreement; or

(2) Provisionally accept title subject to Seller's cure of the material flaw in Seller's title described in Buyer's notice either by removal of any disapproved matters, exceptions, or objections; or Seller obtaining title insurance endorsements satisfactory to Buyer against such matters, exceptions, and objections within five (5) Business Days following receipt of Buyer's notice (the "Seller's Title Cure Period"). If Seller does not remove such matters, exceptions and objections before the expiration of the Seller's Title Cure Period, then, Buyer's sole and exclusive remedies shall be either to waive such disapproved matters or to cancel this Agreement by giving written notice to Seller and Escrow Agent on or before the second (2nd) Business Day following expiration of the Seller's Title Cure Period. Seller shall have no obligation whatsoever to eliminate or obtain title insurance endorsements over any matters shown by the Report or Survey to which Buyer has made an objection.

(ii) If, prior to Closing, Escrow Agent issues a supplemental title report showing additional exceptions to title (a "Title Supplement"), Buyer shall have a period of time equal to five (5) Business Days from the date of receipt of the Title Supplement and a copy of each document referred to in the Title Supplement (a "Supplemental Title Review Period") in which to give notice of dissatisfaction as to any material title defect reflected by any additional exceptions shown in the Title Supplement. If Buyer is dissatisfied with any additional exception in the Title Supplement that reflects a material flaw in Seller's title to the Property, then Buyer may, by giving notice to Seller and Escrow Agent within the Supplemental Title Review Period, either:

(1) Cancel this Agreement; or

(2) Provisionally accept title subject to Seller's cure of the material flaw in Seller's title described in Buyer's notice by removal of any disapproved matters, exceptions, and objections, or Seller obtaining title insurance endorsements satisfactory to Buyer against such matters, exceptions, and objections within five (5) Business Days following issuance of the applicable Title Supplement (the "5-Day Period"). If Seller does not remove such matters, exceptions, and objections before the expiration of the 2-Day Period, then, Buyer's sole and exclusive remedy shall be either to waive such disapproved matters or to cancel this Agreement by giving written notice to Seller and Escrow Agent on or before the second (2nd) calendar day following expiration of the 5-Day Period. Seller shall have no obligation whatsoever to eliminate or obtain title insurance endorsements over any matters shown by the Title Supplement to which Buyer has made an objection.

(iii) If Buyer does not object to an exception to title as disclosed by the Survey, Report or Title Supplement within the Title Review Period or Supplemental Title Review Period, as applicable, the matter will be deemed to have been approved by Buyer. The matters shown in the Survey, Report and any Title Supplement (other than standard printed exceptions and exclusions that will be included in the Title Policy) that are approved or deemed approved by Buyer in accordance with this Section 5.1(a), including all existing permits, licenses, and easements on the Property, and any other matters approved by Buyer in writing, are referred to in this Agreement as the "Approved Title Exceptions."

(iv) Upon a cancellation by Buyer that is permitted under the provisions of Section 5.1 (b), all Earnest Money shall be returned to Buyer, together with all documents deposited in Escrow by Buyer. If Buyer's cancellation occurs outside the timeframes in which Buyer is allowed to cancel the Agreement under the provisions of Section 5.1 (b) or otherwise does not comply with the terms of this Section 5.1, all Earnest Money required to be paid prior to such date shall be paid to and retained by Seller unless the cancellation arises out of a new title exception voluntarily placed on the Property by Seller without Buyer's consent or deemed consent pursuant to Sections 5.1(a)(iii), in which case the Earnest Money shall be returned to Buyer upon such cancellation. Following any cancellation pursuant to this provision, all documents deposited in Escrow by Seller shall be returned to Seller and this Agreement shall terminate.

(b) Buyer's Investigations. Buyer shall have until 5:00 P.M. (Local Arizona Time) on September 15, 2020 (the "Feasibility Period") to conduct an investigation and inspection of the Property (subject to the obligation, which Buyer confirms, to restore any damage caused by its activities and to indemnify Seller as provided in the Access Agreement). Buyer's investigation may include, among other things: (1) the physical condition of the Property; (2) the environmental condition of the Property; and (3) the feasibility of Buyer's anticipated development of the Property and matters related thereto. Buyer shall execute the Access Agreement attached hereto as Exhibit D (the "Access Agreement") on the Opening Date, which shall govern the terms and conditions of Buyer's rights to access the Property prior to the Closing or earlier termination of this Agreement. If Buyer is not satisfied with its investigations and inspections with respect to the Property and this transaction, or if the Parties are unable to agree upon a final legal description for the Property, or for any reason or no reason whatsoever, then Buyer will have the right, exercisable in its sole discretion, to cancel this Agreement by delivering written notice of cancellation to Seller and Escrow Agent prior to the end of the Feasibility Period, in which case all Earnest Money deposited with Escrow Agent prior to cancellation shall be returned to Buyer.

(c) Development Agreement. Buyer and Seller shall have approved the Development Agreement for the Property prior to or at Closing.

(d) Zoning Clearance and Variances. On or before the end of the Feasibility Period, Buyer shall have obtained approval of the Zoning Clearance and variances for the Project as contemplated in the Development Agreement, which approval is subject to the City of Mesa governmental process and City Code for such approvals.

(e) Permits for the Private and Public Improvements. On or before Closing, Buyer shall have all permits ready for approval (i.e., all approvals but for payment of final fees) for the construction of all the Private Improvements and Public Improvements (as those terms are defined in the Development Agreement).

(f) New Solid Waste Enclosure. Developer acknowledges that Seller currently has several solid waste bins ("Bins") on the Property that provide solid waste collection services for the Downtown Businesses. The Bins will be relocated to a new location that is in close proximity to the Property as depicted in Exhibit E (the "New Solid Waste Site") in order to continue to serve the solid waste collection services for the Downtown Businesses (Buyer's

Project will have separate solid waste service and bins located on the Property. On or before Closing, Buyer, at its sole cost and expense, shall design and construct new solid waste enclosures for the Bins at the New Solid Waste Site as depicted on Exhibit E and any other improvements required for the operation of the Bins including, but not limited to, trench for the electric conduit servicing the compactors, install and cap conduit and wiring (to be energized at a later date), and build the enclosures (the “Solid Waste Enclosure”). The design and construction of the new Solid Waste Enclosure shall complement the aesthetics of the surrounding area and otherwise comply with Mesa City Code. Prior to Buyer constructing the Solid Waste Enclosure, Buyer shall submit its design of the Solid Waste Enclosure to Seller for review and approval to ensure the design and materials complement the area and complies with Mesa City Code and standards. After construction of the Solid Waste Enclosure, Seller, at its sole cost and expense, will relocate the Bins (or remove the Bins from the Property and provide new bins) to the Solid Waste Enclosure.

(g) Design of New Duct Bank. On or before Closing, Seller shall have completed the design of the New Duct Bank.

(h) GPLET Lease. The City of Mesa Council’s approval of the GPLET Lease prior to Closing.

5.2 Conditions to Seller’s Obligation to Close. Seller shall have no obligation to sell the Property to Buyer unless each of the following matters has been satisfied; provided, however, that Seller in its sole and unfettered discretion may elect to waive any such matter.

(a) Full Compliance. Seller’s obligation to close this transaction is subject to Buyer fully performing all of its obligations to be performed by Buyer on or before the Closing Date (unless waived by Seller in writing).

(b) Approval of this Agreement. The City of Mesa Council’s approval of the sale of the Property prior to Closing (Seller intends to obtain City Council approval prior to the City executing this Agreement).

(c) Development Agreement. The City of Mesa Council’s approval, and Buyer’s approval, of the Development Agreement for the Property prior to or at Closing.

(d) GPLET Lease. The City of Mesa Council’s approval, and Buyer’s approval, of the GPLET Lease prior to Closing.

(e) Zoning Clearance and Variances. On or before Closing, Buyer shall have obtained the approval of the Zoning Clearance for the Project as contemplated in the Development Agreement, which approval is subject to the City of Mesa governmental process and City Code for such approvals.

(f) Permits for the Private and Public Improvements. On or before Closing, Buyer shall have all permits ready for approval (i.e., all approvals but for payment of final fees) for the construction of all the Private Improvements and the Public Improvements described in the Development Agreement.

(g) Consolidation and Creation of Parcels. On or before Closing, Buyer, at its sole cost and expense, shall have undertaken all actions required to cause the Consolidation of the Property.

(h) Utility Easements. On or before Closing, Buyer shall have executed and delivered to Escrow Agent, for recordation by Escrow Agent, the Utility Easements (including, but not limited to, a Utility Easement for the New Duct Bank Site) in accordance with Section 4.1(d).

(i) Parking Easement. On or before Closing, Buyer shall have executed and delivered to Escrow Agent, for recordation by Escrow Agent, the Parking Easement attached hereto as Exhibit F.

(j) New Solid Waste Enclosure. On or before Closing, Buyer, at its sole cost and expense, shall have completed the design and construction of the Solid Waste Enclosure in accordance with Section 5.1(f).

(k) Financial and Contractual Ability to Perform. On or before Closing, Buyer shall have provided clear and sufficient evidence to establish to the City of Mesa's City Manager, as determined in his reasonable discretion, the financial ability of Buyer to perform the obligations in the Development Agreement, including the financial ability to construct all the Private Improvements and Public Improvements.

5.3 Return of Earnest Money. If Closing does not occur solely due to Section 5.2(b), 5.2(c), 5.2(d), 5.2(e), 5.2(k), or due the failure of Seller to comply with the terms of this Agreement, the Earnest Money shall be returned to Buyer, and the Parties shall have no further obligations or liability to each other pursuant to this Agreement except to the extent this Agreement expressly states that an obligation herein shall survive such termination.

ARTICLE 6

CLOSING DOCUMENTS; TITLE POLICIES

6.1 Seller's Closing Documents. On or before the Closing Date, Seller will deposit the following documents into the Escrow for delivery to Buyer at the Closing each of which will have been duly executed and, where appropriate, acknowledged:

(a) Deed. A Special Warranty Deed in the form attached hereto as Exhibit E (the "Deed") for conveyance of the Property.

(b) Development Agreement. The Development Agreement attached as Exhibit B.

(c) Parking Easement. The Parking Easement attached as Exhibit C.

(d) Title Insurance Affidavit. An affidavit from Seller to the Escrow Agent and Title Insurer regarding parties in possession and mechanic's and materialmen's liens, in customary form, stating information accurate at the time of Closing to Seller's actual knowledge

and belief, for Title Insurer to delete exceptions in the title insurance policy for parties in possession and mechanic's and materialmen's liens.

(e) Additional Documents. Such other documents as may be necessary or appropriate to transfer and convey the Property to Buyer and to otherwise consummate this transaction in accordance with the terms of this Agreement.

6.2 Buyer's Closing Documents. On or before the Closing Date and in addition to all funds required to be paid by Buyer, Buyer will deposit into the Escrow the following documents for delivery to Seller at the Closing, each of which will have been duly executed and, where appropriate, acknowledged:

(a) Deed. The Deed.

(b) Utility Easements. Forms of easement grants for the Utility Easements (including, but not limited to, a Utility Easement for the New Duct Bank Site) pursuant to Section 4.1(d).

(c) Parking Easement. The Parking Easement attached as Exhibit C.

(d) Development Agreement. The Development Agreement attached as Exhibit B.

(e) Resolution. A resolution formally adopted by Buyer authorizing the individual executing the Deed, Utility Easements, Parking Easement, and Development Agreement to sign these documents on behalf of Buyer.

(f) Additional Documents. Such other documents as may be necessary or appropriate to acquire the Property and to otherwise consummate this transaction in accordance with the terms of this Agreement.

6.3 Title Policy. At the Closing, and subject to Buyer's compliance with the terms of this Agreement including but not limited to obtaining an ALTA Survey of the Property, Seller will pay for a standard coverage owner's policy of title insurance (the "Title Policy") issued by Fidelity National Title Insurance Company (the "Title Insurer"), in the amount of the Sales Price, effective as of the Closing, insuring Buyer that fee simple title to the Property is vested in Buyer, subject only to the usual printed exceptions and exclusions contained in such title insurance policies and the Approved Title Exceptions. Buyer, if it desires, may obtain an ALTA extended policy of title insurance, which cost shall be paid by Buyer. The Title Policy shall contain endorsements, if any, that Seller has agreed to obtain to cure title objections of Buyer made pursuant to Section 5.1(a) and shall also contain any endorsements requested by Buyer that Title Insurer has agreed to issue. Seller shall have no obligation to provide endorsements to the Title Policy, however, Seller may, in its sole and absolute discretion, agree to provide endorsements to the Title Policy. Seller will satisfy Escrow Agent's standard requirements for issuance of such policy, other than those, if any, within Buyer's control. Buyer must satisfy all of Escrow Agent's requirements for issuance of any title insurance endorsements requested by Buyer.

ARTICLE 7 CLOSING THE TRANSACTION

7.1 Closing. The closing of this transaction (the “Closing” or “Close of Escrow”) is subject to and shall occur after the completion and satisfaction of all of the closing requirements in Article 5. After the completion and satisfaction of all of the closing requirements set forth in Article 5, Buyer and Seller shall promptly, in writing, inform Escrow Agent that these closing requirements have been satisfied. The Closing shall occur on or before June 1, 2021 (the “Closing Date”). If the date of the Closing would otherwise occur prior to expiration of a Supplemental Review Period, at Buyer’s request, the Closing Date shall be extended to the day following expiration of the Supplemental Review Period. The Closing shall occur in the offices of Escrow Agent. Notwithstanding anything in this Agreement to the contrary and provided that no notice or cure period shall apply to the following: if the requirements in Article 5 have not been satisfied and Closing has not occurred on or before September 1, 2021, then this Agreement shall automatically terminate and shall be of no further force or effect, and Buyer and Seller shall have no further obligations or liabilities hereunder, except for any obligations or liabilities which survive the termination of this Agreement.

7.2 Closing Costs and Prorations.

- (a) Escrow Fees. Buyer will pay the Escrow fees.
- (b) Title Insurance Fees. Seller will pay the entire premium for a standard coverage owner’s policy of title insurance in the amount of the Sales Price and the premium for endorsements (if any) which Seller, in its sole discretion, has agreed to obtain under Section 5.1. Buyer will pay the additional premium necessary to obtain the Title Policy described in Section 6.3 and the cost of any additional endorsements to such Title Policy requested by Buyer.
- (c) Recording Fees. Buyer will pay the cost of recording the Deed. Seller will pay the cost of removing liens, encumbrances or other title matters only if Seller, in its sole discretion, elects to undertake such matters under Section 5.1(a)(i)(2). Recording fees for any new loan(s) obtained by Buyer shall be paid by Buyer.
- (d) Taxes and Assessments. Real estate taxes, irrigation district assessments, and improvement assessment fees, if any, will be prorated in the escrow as of the Closing based upon the most current information then available to Escrow Agent.
- (e) Miscellaneous Closing Costs. Any other closing costs not provided for above will be paid by Buyer.

7.3 Payments and Disbursements to be Handled through the Escrow. The various charges, credits and prorations contemplated by this Agreement will be handled by Escrow Agent through the Escrow by appropriate charges and credits to Buyer and Seller, and each party shall pay its allocable closing costs and charges in cash. All amounts payable pursuant to this Agreement will be paid to Escrow Agent for disposition through the Escrow. Escrow Agent is authorized to make all disbursements to the parties and to third parties contemplated by this Agreement from funds deposited for those purposes, as necessary or appropriate to close this transaction.

7.4 Final Disbursement to Seller. Upon the Closing or prior to such date as expressly required by this Agreement, all amounts paid according to Sections 2.1 will be disbursed to Seller.

7.5 Buyer's Obligation to Deposit Additional Funds. On or before the Closing, Buyer will deposit with Escrow Agent cash in an amount sufficient to pay all closing costs and other amounts payable by or otherwise chargeable to Buyer.

7.6 IRS Reporting at Closing. Escrow Agent agrees to be the designated "reporting person" under Section 6045(e) of the U.S. Internal Revenue Code with respect to the real estate transaction described in this Agreement and to prepare, file and deliver such information, returns and statements as the U.S. Treasury Department may require by regulations or forms in connection therewith, including Form 1099-B.

7.7 Recording and Filing of Documents. At the Closing, the Escrow Agent shall record, in the Maricopa County Recorder's Office, without any delay whatsoever and prior to any lien, claim or encumbrance against the Property by or in favor of Buyer, the following documents in prescribed order: the Deed, the Development Agreement, the Utility Easements (including, but not limited to, a Utility Easement for the New Duct Bank Site) and the Parking Easement to Seller. The obligations of this Section 7.7 shall not merge with the Deed or any Closing documents and shall survive the Closing.

ARTICLE 8 ADDITIONAL COVENANTS

8.1 Possession. Sole and exclusive possession of the Property will be delivered to Buyer upon the Closing, subject only to the Approved Title Exceptions, Development Agreement, easements, and the restrictions set forth in the Deed.

8.2 Risk of Loss. Except as provided in the Access Agreement, the risk of loss or damage to the Property and all liability to third persons until the Closing will be borne by Seller.

8.3 Right to Enter and Inspect the Property. Subject to the Access Agreement, from time to time prior to the Closing, Buyer may enter the Property with Buyer's representatives, contractors, and agents to examine the Property, conduct soil tests, environmental studies, engineering feasibility studies, and other tests and studies, and to plan the proposed development of the Property pursuant to the terms of the Access Agreement.

8.4 Brokerage. If any person asserts a claim to a finder's fee, brokerage commission or other compensation on account of alleged employment as a finder or broker or performance of services as a finder or broker in connection with this transaction, the party under whom the finder or broker is claiming shall be fully responsible for all claims related thereto and, to the extent authorized by law, shall indemnify, pay, defend and hold the other party harmless for, from, and against any claims related thereto. This indemnity will survive the Closing or the cancellation of this Agreement.

ARTICLE 9 REPRESENTATIONS AND WARRANTIES

9.1 Representations and Warranties of Seller.

(a) Seller represents that:

(i) As of the date hereof, to the best of Seller's actual knowledge, there are no pending, threatened or contemplated actions, suits, proceedings or investigations, at law or in equity, or otherwise in, for or by any court or governmental board, commission; agency, department or office arising from or relating to this transaction, the Property or the operations of Seller on the Property.

(ii) Seller has not granted any options or rights of first refusal to purchase all or any part of the Property.

(iii) Subject to Seller's City Council's approval of this transaction and the express terms and limitations in this Agreement, the person or persons executing this Agreement on behalf of Seller are duly authorized to do so and thereby bind Seller hereto without the signature of any other party.

(iv) Subject to Seller's City Council's approval of this transaction, Seller has all requisite power and authority to enter into and perform this Agreement and to incur the obligations provided for herein and has taken all action necessary to authorize the execution, delivery and performance of this Agreement subject to the express terms and limitations in this Agreement.

(v) As of the date hereof, to the best of Seller's actual knowledge, Seller has received no written notice of any noncompliance with any Federal, state or local laws, regulations and orders relating to environmental matters with respect to the Property.

(b) Inaccuracy of Representation. If a matter represented by Seller under this Agreement was true as of the date of this Agreement, but subsequently is rendered or determined to be materially untrue, inaccurate or incomplete (collectively "Material Inaccuracy"), then Buyer's sole and exclusive remedies are those provided in Section 11.2 of this Agreement; provided further, that if Buyer knows of the Materially Inaccuracy before Closing and Buyer does not elect to cancel this Agreement and Closes this transaction, Buyer shall be deemed to have waived any and all claims and remedies for such Materially Inaccuracy.

(c) Actual Knowledge of Seller. When used in this Agreement, the term "actual knowledge of Seller" (or words of similar import) shall mean and be limited to the actual (and not imparted, implied or constructive) current knowledge of Jeff McVay, Downtown Transformation Manager, and Jeff Robbins, Economic Development Project Manager. Notwithstanding anything herein to the contrary, neither Mr. McVay nor Mr. Robbins are parties to this Agreement, and neither shall have any personal liability or liability whatsoever with respect to any matters set forth in this Agreement or Seller's representations and/or warranties herein being or becoming untrue, inaccurate or incomplete in any respect.

9.2 Representations and Warranties of Buyer.

(a) Buyer represents that:

(i) The person or persons executing this Agreement on behalf of Buyer are duly authorized to do so and thereby bind Buyer hereto without the signature of any other party.

(ii) Buyer has all requisite power and authority to enter into and perform this Agreement and to incur the obligations provided for herein and has taken all action necessary to authorize the execution, delivery and performance of this Agreement, subject to the express terms and limitations in this Agreement. Buyer is a duly formed Delaware limited liability company.

(iii) The execution, delivery and performance of this Agreement by Buyer does not result in any violation of, and does not conflict with or constitute a default under, any present agreement, mortgage, deed of trust, indenture, credit extension agreement; license, security agreement or other instrument to which Buyer is a party, or any judgment, decree, order; statute, rule or governmental regulation.

(iv) No approvals or consents by third parties or governmental authorities are required in order for Buyer to consummate the transactions contemplated hereby.

(b) Inaccuracy of Representation. If a matter represented by Buyer under this Agreement was true as of the date of this Agreement, but subsequently is rendered or determined to be materially untrue, inaccurate or incomplete (collectively “Material Inaccuracy”), then Seller’s sole and exclusive remedies are those provided in Section 11.1 of this Agreement; provided further, that if Seller knows of the Materially Inaccuracy before Closing and Seller does not elect to cancel this Agreement and Closes this transaction, Seller shall be deemed to have waived any and all claims and remedies for such Materially Inaccuracy.

(c) Actual Knowledge of Buyer. When used in this Agreement, the term “actual knowledge of Buyer” (or words of similar import) shall mean and be limited to the actual (and not imparted, implied or constructive) current knowledge of Wm. Timothy Sprague and John Hill. Notwithstanding anything herein to the contrary, neither Mr. Sprague nor Mr. Hill are parties to this Agreement, and neither shall have any personal liability or liability whatsoever with respect to any matters set forth in this Agreement or Buyer’s representations and/or warranties herein being or becoming untrue, inaccurate or incomplete in any respect.

9.3 Survival. Each of the representations and warranties contained in Sections 9.1 and 9.2, whether made by Seller or Buyer, shall be true and correct as of the Closing (subject to modification as expressly permitted by this Agreement) and shall survive the Closing and the delivery of the Deed to Buyer for a period of two (2) years.

ARTICLE 10 RELEASE

10.1 Release from Representations and Warranties. Except as is otherwise expressly provided in Section 9.1 of this Agreement, Seller hereby specifically disclaims any warranty (oral or written) concerning: (i) the nature and condition of the Property and its suitability for any and all activities and uses that Buyer may elect to conduct on the Property; (ii) the manner, construction, condition and state of repair or lack of repair of any improvements located on the Property; (iii) the nature and extent of any right-of-way, lien, encumbrance, license, reservation, condition, or otherwise; (iv) the compliance of the Property or its operation with any laws, rules, ordinances or regulations of any government or other body, it being specifically understood that Buyer shall have full opportunity during the Feasibility Period, to determine for itself the condition of the Property; and (v) any other matter whatsoever except as expressly set forth in this Agreement. The sale of the Property as provided for in this Agreement is made on a strictly “AS IS” “WHERE IS” basis as of the Closing Date. Except as otherwise expressly provided in this Agreement or in any Closing documents, Buyer expressly acknowledges that, in consideration of the agreements of Seller in this Agreement, SELLER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF QUANTITY; QUALITY; CONDITION, HABITABILITY, MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, ANY IMPROVEMENTS LOCATED ON THE PROPERTY OR ANY SOIL CONDITIONS RELATED TO THE PROPERTY.

BUYER SPECIFICALLY ACKNOWLEDGES THAT BUYER IS NOT RELYING ON (AND SELLER HEREBY DISCLAIMS AND RENOUNCES) ANY REPRESENTATIONS OR WARRANTIES MADE BY OR ON BEHALF OF SELLER OF ANY KIND OR NATURE WHATSOEVER. FURTHER, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, BUYER, FOR BUYER AND BUYER’S SUCCESSORS AND ASSIGNS, HEREBY RELEASES SELLER FROM AND WAIVES ANY AND ALL CLAIMS AND LIABILITIES AGAINST SELLER FOR, RELATED TO, OR IN CONNECTION WITH, ANY ENVIRONMENTAL CONDITION AT THE PROPERTY (OR THE PRESENCE OF ANY MATTER OR SUBSTANCE RELATING TO THE ENVIRONMENTAL CONDITION OF THE PROPERTY), INCLUDING, BUT NOT LIMITED TO, CLAIMS AND/OR LIABILITIES RELATING TO (IN ANY MANNER WHATSOEVER) ANY HAZARDOUS, TOXIC OR DANGEROUS MATERIALS OR SUBSTANCES LOCATED IN, AT, ABOUT OR UNDER THE PROPERTY, OR FOR ANY AND ALL CLAIMS OR CAUSES OF ACTION (ACTUAL OR THREATENED) BASED UPON, IN CONNECTION WITH OR ARISING OUT OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, 42 U.S.C. § 9601, *ET SEQ.* (“CERCLA”); THE RESOURCE CONSERVATION AND RECOVERY ACT, 42 U.S.C. § 6901, *ET SEQ.* (“RCRA”); AND THE SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT, 42 U.S.C. § 9601, *ET SEQ.* (“SARA”) OR ANY OTHER CLAIM OR CAUSE OF ACTION (INCLUDING ANY FEDERAL OR STATE BASED STATUTORY, REGULATORY OR COMMON LAW CAUSE OF ACTION) RELATED TO ENVIRONMENTAL MATTERS OR LIABILITY WITH RESPECT TO OR AFFECTING THE PROPERTY.

BUYER REPRESENTS TO SELLER THAT BUYER HAS CONDUCTED, OR WILL CONDUCT BEFORE CLOSING, SUCH INVESTIGATIONS OF THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AS BUYER DEEMS NECESSARY TO SATISFY ITSELF AS TO THE CONDITION OF THE PROPERTY AND THE EXISTENCE OR NONEXISTENCE OR CURATIVE ACTION TO BE TAKEN WITH RESPECT TO ANY HAZARDOUS OR TOXIC SUBSTANCES ON OR DISCHARGED FROM THE PROPERTY AND WILL RELY SOLELY ON SAME AND NOT ON ANY INFORMATION PROVIDED BY OR ON BEHALF OF SELLER OR ITS AGENTS OR EMPLOYEES WITH RESPECT THERETO, OTHER THAN SUCH REPRESENTATIONS, WARRANTIES, AND COVENANTS OF SELLER AS ARE EXPRESSLY SET FORTH IN THIS AGREEMENT OR IN ANY CLOSING DOCUMENTS.

UPON CLOSING, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, BUYER SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING, *BUT NOT* LIMITED TO, CONSTRUCTION DEFECTS AND ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY BUYER'S INVESTIGATIONS, AND BUYER, ON CLOSING, SHALL BE DEEMED TO HAVE WAIVED, RELINQUISHED, AND RELEASED SELLER FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING CAUSES OF ACTION IN TORT), LOSSES, DAMAGES, LIABILITIES, COSTS, AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COURT COSTS) OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, THAT BUYER MIGHT HAVE ASSERTED OR ALLEGED AGAINST SELLER, AT ANY TIME BY REASON OF OR ARISING OUT OF ANY LATENT OR PATENT CONSTRUCTION DEFECTS OR PHYSICAL CONDITIONS, VIOLATIONS OF ANY APPLICABLE LAWS (INCLUDING, WITHOUT LIMITATION, ANY ENVIRONMENTAL LAWS) AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES, OR MATTERS REGARDING THE PROPERTY EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT.

BUYER AGREES THAT SHOULD ANY CLEANUP, REMEDIATION, OR REMOVAL OF HAZARDOUS SUBSTANCES OR OTHER ENVIRONMENTAL CONDITIONS ON THE PROPERTY BE REQUIRED AFTER THE DATE OF CLOSING, SUCH CLEANUP, REMOVAL, OR REMEDIATION SHALL BE THE RESPONSIBILITY OF AND SHALL BE PERFORMED AT THE SOLE COST AND EXPENSE OF BUYER.

Buyer acknowledges and agrees that the provisions contained in this Section 10.1 were a material factor in Seller's acceptance of the sales price and that Seller was unwilling to sell the property to Buyer unless Seller was released as expressly set forth above. BUYER, WITH BUYER'S COUNSEL, HAS FULLY REVIEWED THE DISCLAIMERS AND WAIVERS SET FORTH IN THIS AGREEMENT AND UNDERSTANDS THEIR SIGNIFICANCE AND EFFECT. BUYER ACKNOWLEDGES AND AGREES THAT THE DISCLAIMERS AND OTHER AGREEMENTS SET FORTH IN THIS AGREEMENT ARE AN INTEGRAL PART OF THIS AGREEMENT; AND THAT SELLER WOULD NOT HAVE AGREED TO SELL THE PROPERTY TO BUYER FOR THE SALES PRICE WITHOUT THE DISCLAIMERS AND OTHER AGREEMENTS SET FORTH IN THIS AGREEMENT. THE TERMS AND CONDITIONS OF THIS SECTION 10.1 WILL EXPRESSLY SURVIVE THE CLOSING,

ARE NOT SUBJECT TO THE TIME LIMITATION SET FORTH IN SECTION 9.3 AND WILL NOT MERGE WITH THE PROVISIONS OF ANY CLOSING DOCUMENTS.

ARTICLE 11 REMEDIES

11.1 Seller's Remedies. If Buyer fails to deposit the Closing Payment (as defined in Section 2.1(b)) in the time and manner set forth in this Agreement or to perform when due any other act required by this Agreement, then provided that Seller has fully performed its obligations in accordance with this Agreement, Seller's sole and exclusive remedy shall be to: (i) cancel this Agreement and the Escrow, such cancellation to be effective immediately upon Seller giving written notice of cancellation to Buyer and Escrow Agent, and (ii) to receive the Earnest Money paid pursuant to Section 2.1(a) from Buyer as liquidated damages and not as a penalty, the Parties agreeing and hereby stipulating that the exact amount of damages would be extremely difficult to ascertain and that such amount constitutes a reasonable and fair approximation of such damages. Immediately following Seller's cancellation as described herein and without further instructions from Buyer, the Earnest Money shall be released by Escrow Agent to Seller in payment of the liquidated damages amount payable to Seller pursuant to this Section 11.1. Following such cancellation and payment of the liquidated damage amount, both Parties shall be relieved of and released from any further liability under this Agreement, except that in addition to payment of the liquidated damage amount, (a) the indemnification obligations of Buyer set forth in this Agreement and in the Access Agreement shall survive the cancellation or Closing of Escrow and shall be performable and owing by Buyer to Seller; and (b) Seller shall also have the right (if it is the prevailing party) to collect from Buyer all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by Seller if Buyer disputes Seller's right to cancel this transaction and receive liquidated damages as provided herein.

11.2 Buyer's Remedies. If Seller fails to perform when due any act required by this Agreement to be performed, then, provided Buyer has fully performed its obligations in accordance with this Agreement, Buyer's sole and exclusive remedy hereunder is to elect one of the following remedies: (i) cancel this Agreement and the Escrow and receive the return of all Earnest Money (and Escrow Agent is hereby instructed to deliver any such amounts in Escrow to Buyer), such cancellation to be effective immediately upon Buyer giving written notice of cancellation to Seller and Escrow Agent; or (ii) seek specific performance of this Agreement, provided that no such action for specific performance shall require Seller to do any of the following: (a) change the condition of the Property, remove or relocate anything on the Property, or restore or rebuild any improvement on the Property; or (b) expend money or post a bond to remove a title encumbrance or defect or to correct any matter shown on a survey or title report covering the Property; or (iii) seek reimbursement from Seller for Buyer's actual, out-of-pocket costs incurred in an amount not to exceed, and shall be capped at, \$150,000. Buyer shall also have the right (if it is the prevailing party) to collect from Seller those costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by Buyer if: (1) Seller disputes Buyer's right to receive the return of the Earnest Money in the event of Seller's default as described herein and Buyer's election to cancel this Agreement and receive the Earnest Money, or (2) Buyer seeks and obtains specific performance of this Agreement. Except as expressly permitted in this Section 11.2, Buyer hereby waives any right to seek, and shall not be

entitled to seek or recover, actual, consequential, exemplary, or punitive damages or any other type of damages or any other legal or equitable remedy against Seller.

11.3 Notice of Breach; Remedies. In the case of an alleged breach of this Agreement by either Party, the Party shall not be considered to be in breach and no remedies may be pursued for such breach until a written notice describing the alleged breach and the action required to cure the breach has been given to the allegedly defaulting Party and such Party has failed to cure the default within thirty (30) calendar days thereafter; or, if the cure cannot reasonably be completed within the thirty-day period and the defaulting Party has commenced the cure within the thirty-day period and is diligently pursuing the cure, the defaulting Party shall have up to an additional sixty (60) days to cure. Notwithstanding any contrary provision of this Agreement, the provisions of Article 11 shall not limit the Parties' rights in connection with any indemnity granted pursuant to this Agreement or the Access Agreement, or limit Seller's rights to collect any amounts payable by Buyer to Seller pursuant to Section 2.1.

ARTICLE 12 GENERAL PROVISIONS

12.1 Certain Definitions. As used in this Agreement, certain capitalized terms are defined as follows:

(a) "Business Day" means a day other than (i) a Friday, Saturday or Sunday; (ii) a legal holiday of the City of Mesa, and (iii) a legal holiday on which national banking associations are not open for general banking business.

(b) "Claims" means any and all obligations, debts, covenants, conditions, representations, costs, and liabilities and any and all demands, causes of action, and claims, of every type, kind, nature or character, direct or indirect, known or unknown, absolute or contingent, determined or speculative, at law, in equity or otherwise, including attorneys' fees and litigation and court costs.

12.2 Assignment. No assignment or similar transfer of Buyer's interest in this Agreement, or in the current management, ownership or control of Developer (each, a "Transfer") shall 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 up to a maximum of two Transfers to an Affiliate (as defined in the Development Agreement) of Buyer upon City's reasonable determination that the management and control of the Affiliate transferee is materially the same as the management and control of Buyer as of the Effective Date. In connection with any assignment approved by Seller: (a) the assignee shall assume the obligations of Buyer hereunder pursuant to an assignment agreement which inures to the benefit of and is enforceable by Seller, and (b) Seller shall be provided with an executed copy of the assignment agreement at least ten (10) calendar days prior to the Closing. Any assignment in violation of this Section 12.2 shall be void, and not voidable, and the purported assignee shall acquire no rights under this Agreement.

12.3 Binding Effect. Except as limited by Section 12.2, the provisions of this Agreement are binding upon and will inure to the benefit of the parties and their respective heirs, personal representatives, successors and assigns.

12.4 Attorneys' Fees. In any suit, action, or proceeding: (a) to enforce and/or defend this Agreement or any modification hereof; (b) to interpret this Agreement or any modification hereof, and/or (c) arising out of or related to this Agreement or any modification hereof, the Prevailing Party shall be entitled to recover from the non-prevailing party reasonable attorneys' fees, costs of suit, and any other relief granted by the court, whether or not any judgment is entered. The phrase "Prevailing Party" within the meaning of this Section includes, without limitation, a party who agrees to dismiss an action or proceeding upon the other's payment of the sums allegedly due or performance of the covenants allegedly breached, or who obtains substantially the relief sought by it.

12.5 Waivers. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision, whether or not similar, nor will any waiver be a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver. Either party may waive any provision of this Agreement intended for its benefit; provided, however, such waiver will in no way excuse the other party from the performance of any of its other obligations under this Agreement.

12.6 Construction. The terms and provisions of this Agreement represent the results of negotiations among the parties, each of which has been represented by counsel of its own choosing, and neither of which has acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Agreement shall 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 shall be interpreted or construed against the party whose attorney prepared the executed Agreement or any earlier draft of the same.

12.7 Severability. If any provision of this Agreement is unenforceable, the remaining provisions shall nevertheless be kept in effect.

12.8 No Partnership. Any and all provisions, implications, or interpretations of or from this Agreement to the contrary notwithstanding, no partnership, joint venture or other relationship is created, implied or acknowledged between or among the Parties.

12.9 Time. Time is of the essence of this Agreement.

12.10 Notices.

(a) Notices will be in writing and will be given by (i) personal delivery, or (ii) any nationally recognized courier service (*e.g.*, Federal Express or UPS) sent for next Business Day delivery. Notices will be delivered or addressed to Seller, Buyer and Escrow Agent at the addresses set forth on the first page of this Agreement or at such other address or number as a Party may designate in writing. The date notice is deemed to have been given, received and

become effective will be: (a) the date on which the notice is delivered, if notice is given by personal delivery, or (b) the date of actual receipt, if the notice is sent by courier.

(b) Copies of all notices shall also be provided as follows:

Buyer's Attorney: Burch & Cracchiolo
1850 N. Central Ave. 17th Floor
Phoenix, AZ 85004
Attn: Sharon J. Oscar
Telephone: 602.234.9916
Email: soscar@bcattorneys.com

Seller's Attorney: *If given by personal delivery or courier:*

James N. Smith
City Attorney, City of Mesa
20 E. Main St., Suite 850
Mesa, Arizona 85201

12.11 Further Documentation. Each Party agrees in good faith to execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

12.12 Time Periods. Except as expressly provided for in this Agreement, the time for performance of any obligation or taking any action under this Agreement will be deemed to expire at 5:00 o'clock p.m. (Mesa Local Time) on the last day of the applicable time period provided for in this Agreement. If the time for the performance of any obligation or taking any action under this Agreement expires on a Friday, Saturday, Sunday or legal holiday of the City of Mesa, the time for performance or taking such action will be extended to the next succeeding day which is not a Friday, Saturday, Sunday or legal holiday of the City of Mesa.

12.13 Headings and Counterparts. The headings of this Agreement are for purposes of reference only and will not limit or define the meaning of any provision of this Agreement. This Agreement may be executed in any number of counterparts, each of which will be an original but all of which will constitute one and the same instrument.

12.14 Entire Agreement. This Agreement includes the following Exhibits:

<u>Exhibit A</u>	Legal Description of Property
<u>Exhibit B</u>	Development Agreement
<u>Exhibit C</u>	Parking Easement
<u>Exhibit D</u>	Access Agreement

Exhibit E

Depiction of Enclosure Improvements on the New Solid Waste Site

Exhibit F

Special Warranty Deed and Property Restrictions with Right of Reverter

This Agreement and the above Exhibits constitutes the entire agreement between the parties pertaining to the subject matter contained in this Agreement. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are superseded by and merged in this Agreement. No supplement, modification or amendment of this Agreement will be binding unless in writing and executed by Buyer and Seller.

12.15 Compliance with State Law Restrictions. The obligations of Seller, pursuant to the provisions of this Agreement which require the expenditure of funds do not constitute a general obligation or indebtedness of Seller within the meaning of any constitutional or statutory debt limitation or restriction, and do not obligate Seller to make any expenditure from proceeds from ad valorem taxes or obligations to which any general taxing authority is pledged or from its general funds unless the expenditure has been duly budgeted if and to the extent required by law and is within all budget and expenditure limitations of, and is not in conflict with, the Constitution or laws of the State of Arizona.

12.16 Applicability of Certain Statutes. Notice is hereby given of the applicability of A.R.S. § 12-133, § 12-1518, and § 38-511.

12.17 Nondiscrimination. Buyer and Seller agree to comply with all applicable state and federal laws, rules, regulations and executive orders governing equal employment opportunity, immigration, nondiscrimination, including the Americans with Disabilities Act, and affirmative action.

12.18 Records. To the extent required by A.R.S. § 35-214, Buyer and Seller agree to retain all records relating to this Agreement and to make those records available at all reasonable times for inspection and audit by the other party or the Auditor General of the State of Arizona during the term of this Agreement and for a period of five (5) years after the completion of this Agreement. The records shall be provided at a location designated by the requesting party upon reasonable notice to the other.

12.19 Governing Law, Jurisdiction, Venue. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall 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 may only be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa (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); Seller and Buyer 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.

12.20 Section 1031 Exchange. The Parties acknowledge that Buyer may elect to qualify this transaction as a like-kind exchange of property under Section 1031 of the Internal Revenue

Code of 1986, as amended (the “IRC” and a “Section 1031 Exchange”). If Buyer so elects to qualify this transaction as an exchange of Property under IRC Section 1031, then Seller agrees to reasonably cooperate to effectuate such an exchange, provided that:

(a) such cooperation shall not affect or alter in any way the terms of this Agreement or require Seller to expedite any approval or review required under this Agreement;

(b) Seller shall not have any responsibility with respect to the tax consequences of such exchange or its qualification under IRC Section 1031, and Buyer shall be responsible for the payment of any and all additional title, Escrow or brokerage fees and costs which may be incurred in connection with such an exchange;

(c) any Escrow relative to the exchange property shall expressly provide that the Seller shall have no personal liability of any kind or nature in connection therewith;

(d) closing under this Agreement in the form of an exchange transaction shall not be a condition precedent to any Closing, cause a delay in any Closing, or cause any expense to Seller; and

(e) Seller shall incur not liability of any kind if the sale of the Property does not Close or does not Close in time so as to allow Buyer to qualify this transaction as an exchange of Property under IRC Section 1031.

The Parties each acknowledge that if the Buyer elects to structure this transaction as an exchange, the form of such exchange transaction may be, at the election of Buyer, either a simultaneous exchange of property or a non-simultaneous exchange of property in accordance with the provisions of the Treasury Regulation § 1.1031(d)-1, as amended, including without limitation, through the use of a “qualified trust” within the meaning of Treasury Regulation §1.1031(k)-1(g)(3)(iii). Buyer hereby waives any right to seek actual, consequential, exemplary, or punitive damages or any other type of damages or any other legal or equitable remedy against Seller arising out or related to: (i) this Section 12.20, or (ii) the failure, for any reason including but not limited to a breach of this Agreement by Seller, to Close in time so as to allow Buyer to qualify this transaction as an exchange of Property under IRC § 1031.

12.21 Violation of State Law. Preserve State Shared Revenue. Notwithstanding any other provision of, or limitation in, this Agreement to the contrary, if pursuant to A.R.S. § 41-194.01 the Attorney General determines that this Agreement violates any provision of state law or the Constitution of Arizona and Seller and Buyer are not able (after good faith attempts) to modify the Agreement so as to resolve the violation with the Attorney General within thirty days of notice from the Attorney General pursuant to and under the provisions of A.R.S. § 41-194.01(B)(1), this Agreement shall automatically terminate at midnight on the thirtieth day after receiving such notice from the Attorney General, and upon such termination the Parties shall have no further obligations under this Agreement. Additionally, if the Attorney General determines that this Agreement may violate a provision of state law or the Constitution of Arizona under A.R.S. § 41-194.01(B)(2), and requires the posting of a bond under A.R.S. § 41-194.01(B)(2), Seller shall be entitled to terminate this Agreement, except if Buyer posts such bond, if required; and provided further, that if the Arizona Supreme Court determines that this

Agreement violates any provision of state law or the Constitution of Arizona, Seller may terminate this Agreement, and in which event neither Party will have any further rights or interest in this Agreement or claim against the other Party for a breach or default under this Agreement.

12.22 NO BINDING CONTRACT UNTIL EXECUTION. NEITHER THE PREPARATION NOR THE DELIVERY OF THIS AGREEMENT TO BUYER FOR EXAMINATION SHALL BE DEEMED TO BE AN OFFER BY SELLER TO SELL THE PROPERTY BUT SHALL BE MERELY A PART OF THE NEGOTIATIONS BETWEEN BUYER AND SELLER.

[All signatures appear on the following pages.]

Buyer and Seller have executed this Agreement as of the date first above written.

SELLER:

City of Mesa, an Arizona municipal corporation

Christopher J. Brady
City Manager

Pursuant to Resolution of the Mayor and Council adopted

_____.

BUYER:

EV Development, LLC, a Delaware limited liability
company

Name: _____

Title: _____

The undersigned Escrow Agent accepts the
engagement to handle the Escrow on the terms
and conditions described herein.

SECURITY TITLE AGENCY

By: _____

Name: _____

Title: _____

OPENING DATE: _____

**EXHIBIT A TO AGREEMENT TO PURCHASE REAL PROPERTY
AND ESCROW INSTRUCTIONS**

LEGAL DESCRIPTION OF REAL PROPERTY

**EXHIBIT A
LEGAL DESCRIPTION**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF MARICOPA, STATE OF ARIZONA, AND IS DESCRIBED AS FOLLOWS:

PARCEL NO. 1: (APN NO. 138-35-010A)

Lot 11, of PEPPER DRIVE TRACT, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 8 of Maps, page 22;

EXCEPT THE West 14.16 feet thereof.

(NOTE: A plat of Mesa, recorded in Book 23 of Maps, page 18, records of Maricopa County, Arizona, purports to show the within property as Lot 11, Tract A, MESA.)

PARCEL NO. 2: (APN NO. 138-35-011)

Lot 12, of PEPPER DRIVE TRACT, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 8 of Maps, page 22.

(NOTE: A plat of Mesa recorded in Book 23 of Maps, Page 18, records of Maricopa County, Arizona, purports to show the within property as Lot 12, Tract A, MESA.)

PARCEL NO. 3: (138-35-012)

Lots 13 and 14, of PEPPER DRIVE TRACT, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 8 of Maps, page 22.

PARCEL NO. 4: (138-35-053)

The West 53 feet of the East 321.25 feet of the South 135 feet of Lot 8, Block 5, of MESA CITY, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 3 of Maps, page 11.

(NOTE: A plat of Mesa recorded in Book 23 of Maps, Page 18 purports to show said premises as a portion of Lot 8, Blok 5, Tract B, Mesa.)

PARCEL NO. 5: (138-35-054)

The West 10.15 feet of the South 135 feet of Lot 8, of PEPPER DRIVE TRACT, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 8 of Maps, page 22.

(NOTE: A plat of Mesa recorded in Book 23 of Maps, Page 18 purports to show said premises as a portion of Lot 8. of Tract B. Block 5. Mesa.)

EXHIBIT A
(Continued)

PARCEL NO. 6: (138-35-056)

That part of Lot 8, Block 5, of MESA CITY, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 3 of Maps, page 11, more particularly described as follows:

BEGINNING at a point in the East line of said Lot 8, Block 5, at the intersection of North McDonald Street and Pepper Drive being 135 feet Northerly from the Southeast corner of said Lot 8;

RUNNING THENCE Westerly along the South line of Pepper Drive 218 ¼ feet to the TRUE POINT OF BEGINNING;

THENCE running Southerly 135 feet parallel to the East line of said Lot 8 to an alley;

THENCE running Westerly along the North line of said alley 50 feet;

THENCE running Northerly 135 feet parallel to the West line of the said Lot 8 to the South line of Pepper Drive;

THENCE Easterly 50 feet along said South line of Pepper Drive to the TRUE POINT OF BEGINNING.

APN: 138-35-011, 13835-010A, 138-35-053, 138-35-054, 138-35-012, 138-35-056

EXHIBIT B TO AGREEMENT TO PURCHASE REAL PROPERTY
AND ESCROW INSTRUCTIONS

DEVELOPMENT AGREEMENT

EXHIBIT C TO AGREEMENT TO PURCHASE REAL PROPERTY
AND ESCROW INSTRUCTIONS

PARKING EASEMENT

**EXHIBIT D TO AGREEMENT TO PURCHASE REAL PROPERTY
AND ESCROW INSTRUCTIONS**

ACCESS AGREEMENT

(To be inserted)

EXHIBIT E TO AGREEMENT TO PURCHASE REAL PROPERTY
AND ESCROW INSTRUCTIONS

DEPICTION OF ENCLOSURE IMPROVEMENTS ON THE NEW SOLID WASTE SITE

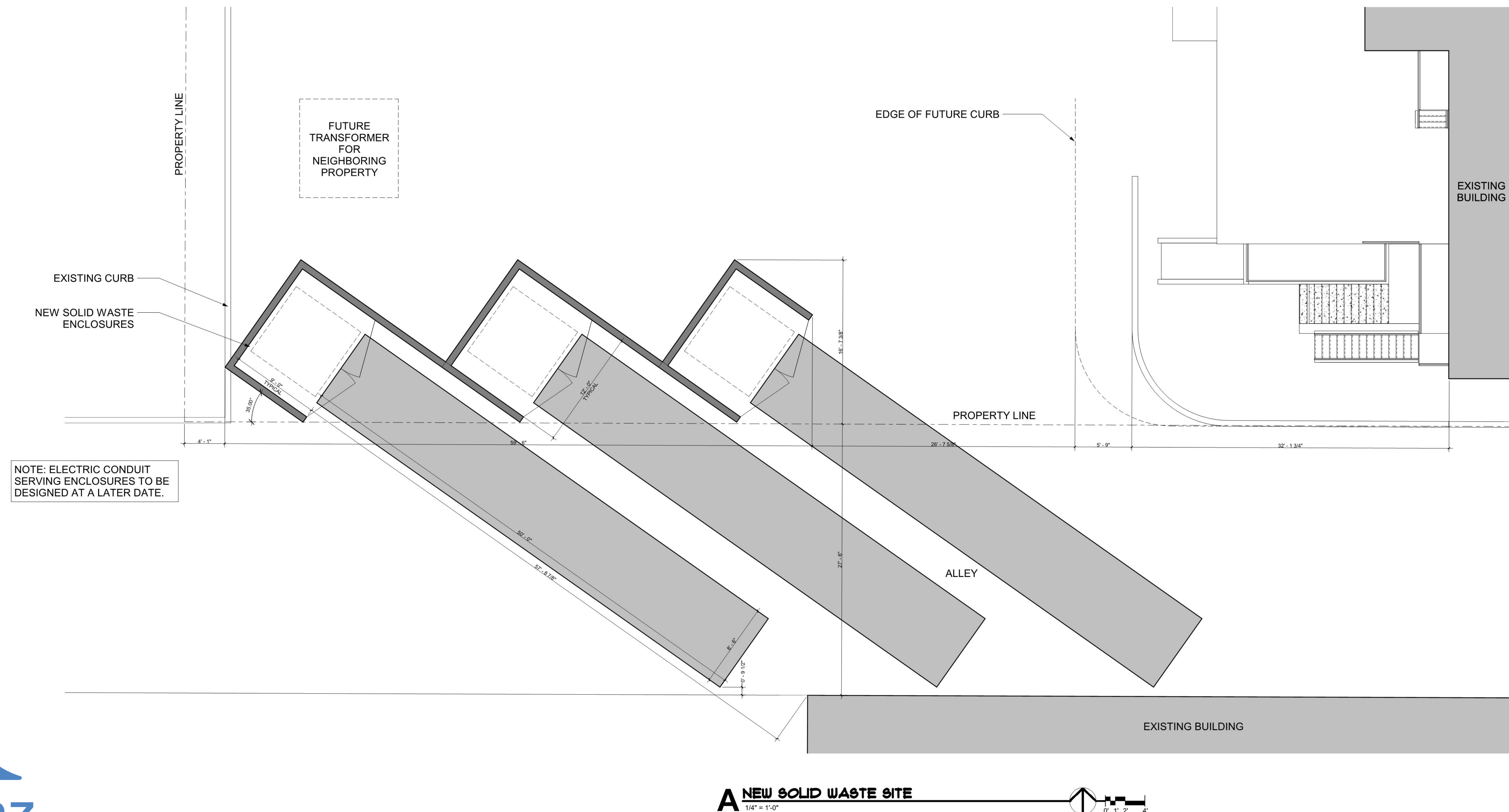
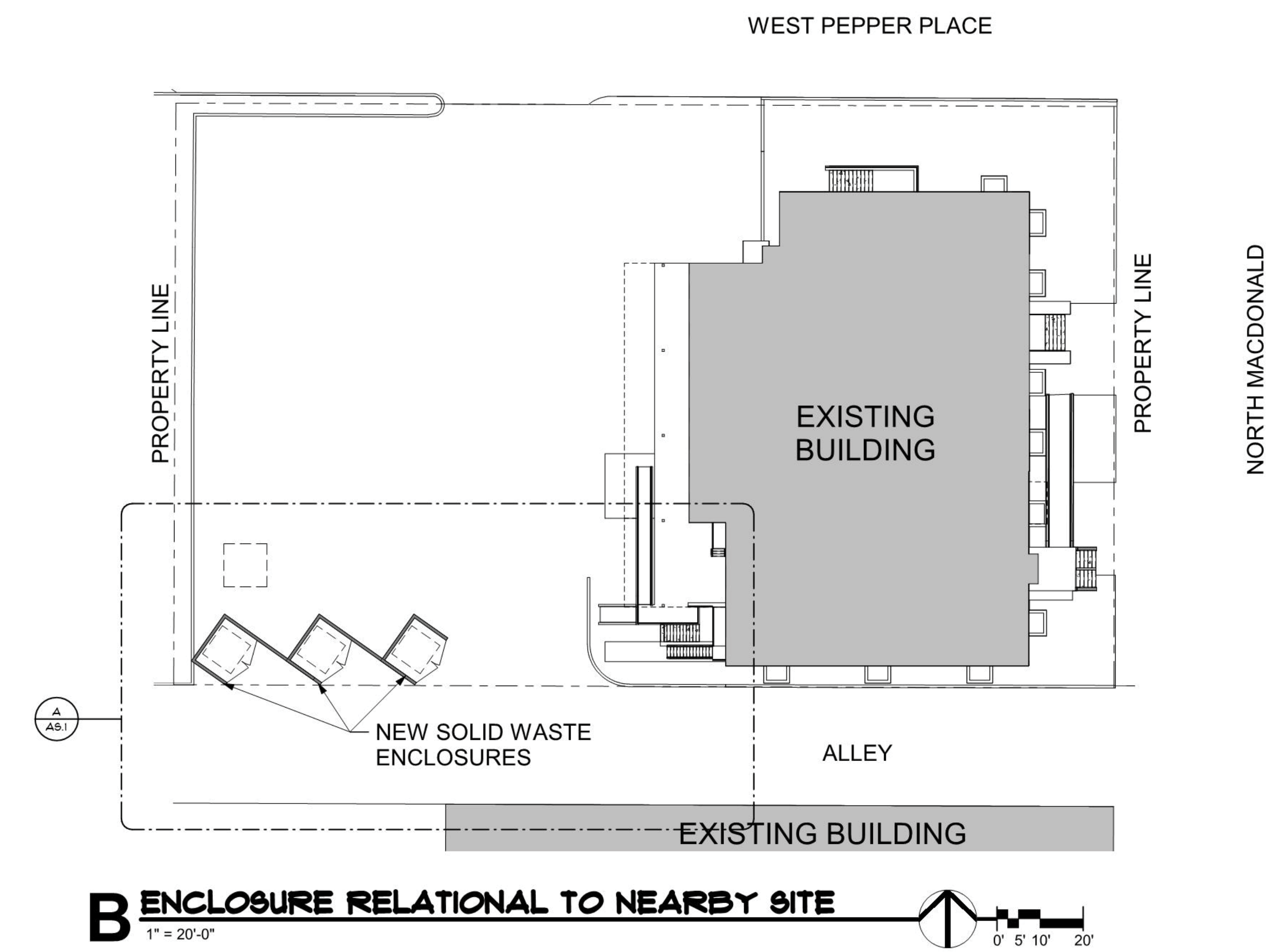


EXHIBIT F TO AGREEMENT TO PURCHASE REAL PROPERTY
AND ESCROW INSTRUCTIONS

**SPECIAL WARRANTY DEED AND PROPERTY RESTRICTIONS WITH RIGHT OF
REVERTER**

When Recorded, Mail to:

**SPECIAL WARRANTY DEED
AND PROPERTY RESTRICTIONS WITH RIGHT OF REVERTER**

For the consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration received, the CITY OF MESA, an Arizona municipal corporation (the "**Grantor**"), does hereby convey to EV DEVELOPMENT, LLC, a Delaware limited liability company (the "**Grantee**"), all of Grantor's right, title and interest in and to the following described real property in Maricopa County, Arizona, together with all improvements on the following described real property and all of Grantor's interest in any rights and privileges appurtenant to the following described real property (the "**Property**"):

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

SUBJECT TO all matters of record shown on EXHIBIT B attached hereto and made a part hereof; and all applicable municipal, county, state or federal zoning and use regulations; and

FURTHER SUBJECT TO the following terms, covenants, conditions, restrictions and right of reversion in favor of Grantor (collectively, the "**Covenants and Reverter**"):

1. **Covenants Regarding Use of Property.** The Property shall be developed and operated only in accordance with the terms, conditions, covenants, restrictions and limitations set forth and included in that certain Development Agreement dated _____ between Grantor (as "City" named therein) and Grantee (as "Developer" named therein), and recorded in the Official Records of Maricopa County as Recording No. _____ (the "**Development Agreement**") which includes, but is not limited to Grantee's obligation to Commence Construction and Complete Construction (as those terms are defined in the Development Agreement) of the Public Improvements (as defined in the Development Agreement) and the Private Improvements (as defined in the Development Agreement) within the time limitations required in the Development Agreement and further subject to the limitations on uses set forth in the Development Agreement. All of the foregoing conditions, covenants, restrictions, limitations and obligations of the Development Agreement are collectively, the "**Covenants**" under this Special Warranty Deed and Property Restrictions with Right of Reverter (this "**Deed**"). Without limiting the foregoing, and by way of example, if Grantee (as Developer under the Development Agreement) fails to Commence Construction or Complete Construction of the Improvements (as defined in the Development Agreement) according to the Development Agreement or is otherwise in default of any term or condition of the Development Agreement, Grantor has all rights including the Right of Reverter as set forth in Section 2 below. Grantee agrees and acknowledges that the Covenants and Reverter (i) have been bargained for with Grantor, (ii) constitute a material portion of the consideration from Grantee to Grantor for the conveyance of the Property from Grantor to Grantee, and (iii) do not constitute a forfeiture or penalty.

2. **Reverter.** Grantee and its successors and assigns will at all times during the Reverter Term (as defined in Section 3 below) comply and abide with all of the Covenants set forth in this Deed, including all subparts of this Deed. If Grantee or any successor or assign of Grantee fails at any time or times during the Reverter Term to comply and abide with, or to continue to comply and abide with, any term, condition, covenant, restriction or limitation included in the Covenants, Grantee, or its successors or assigns, as the case may be, will have a period of sixty (60) successive calendar days commencing upon and immediately following the date of delivery of a written notice from Grantor identifying such failure (the "**Default Notice**"), during which sixty (60) day period of time (i) such failure must cease or be cured to the fullest extent objectively possible, or (ii) the cessation or cure of such failure must have been commenced in good faith and be in the process of being diligently pursued to completion, in

which case the cessation or cure of said failure must occur to the fullest extent objectively possible no later than one hundred and eighty (180) consecutive calendar days immediately following the delivery of the Default Notice. By acceptance of this Deed, Grantee acknowledges and agrees that the breach of any term, condition, covenant, restriction or limitation included in the Covenants not cured in accordance with the express provisions of this Section 2, shall cause title to, full ownership of and all rights and benefits to the Property to revert to Grantor or its successors and assigns (the “**Reversionary Owner**”) immediately and automatically upon the recordation by Reversionary Owner of a notice in the Official Records of Maricopa County, Arizona, of Reversionary owner’s intent to cause the reversion of the Property, which notice shall refer specifically to this Section 2 (the “**Reverter**”). Promptly following the recordation by Reversionary Owner of the notice described in the immediately preceding sentence and payment by Reversionary Owner to Grantee (or its successors or assigns) the sum of \$325,000.00 (being the amount paid by Grantee to Grantor for the Property), the Reversionary Owner shall have the right of immediate re-entry on and exclusive possession of the Property free and clear of all claims arising after the date of recordation of this Deed; and Grantee (and its successors and assigns) shall have no further rights or interest in or to the Property. In addition, Grantee agrees and acknowledges that the Covenants are covenants running with the land and the breach of any of them, or the continuance of any breach which is not cured as set forth above, may be enjoined or remedied by appropriate proceedings by the Reversionary Owner, but by no other person.

3. Duration. The Covenants and Reverter shall apply and continue to apply to the Property at all times hereafter from the date of recordation of this Deed until both of the following has occurred (the “**Reverter Term**”): (i) Buyer has Completed Construction of, and the City of Mesa has issued a final certificate (or certificates, as applicable) of occupancy for, the Private Improvements required in the Development Agreement, and (ii) the Buyer has Completed Construction of, and the City of Mesa has issued letters of acceptance for, the Public Improvements required in the Development Agreement. Upon the satisfaction of conditions (i) and (ii) as stated in the immediately prior sentence (*i.e.*, the expiration of the Reverter Term), the Covenants and Reverter in this Deed shall be deemed automatically, and without further act or instrument required, extinguished and released; provided, for purposes of clarity, the extinguishment and release of the Covenants and Reverter in this Deed shall not affect in any way Grantee’s continuing covenants and obligations set forth, and assumed by Grantee, in the Development Agreement or in any easement granted by Grantee to Grantor (including, but not limited to, the Parking Easement as described in the Development Agreement and which Parking Easement is recorded as the next sequential instrument following this Deed in the Official Records of Maricopa County), all of which survive the extinguishment and release of the Covenants and Reverter in this Deed. If the Covenants and Reverter in this Deed are extinguished and released as provided above in this Section 3, and upon request from Grantee, Grantor shall record a document evidencing such extinguishment and release (to provide greater clarity in the chain of title as to the release and extinguishment) in a form commercially reasonable to Grantor and Grantee.

4. Enforcement. In addition to the remedies set forth above, all remedies at law and in equity shall be available to Grantor in enforcing the Covenants and Reverter; and Grantor may bring, but is not limited to, an action to obtain specific performance and/or injunctive relief to compel compliance with the terms of the Covenants and Reverter. The election of one remedy shall not exclude the election of another. No waiver or estoppel shall be created or be deemed to exist by the failure to take enforcement action for a violation of these terms.

5. Waiver. No delay or omission on the part of Reversionary Owner in exercising any right, power or remedy provided in this Deed in the event of the breach of the covenants, conditions and restrictions herein shall be construed as a waiver thereof or acquiescence therein or thereto, and no right of action shall accrue in favor of, nor shall any action be brought or maintained by, anyone whomsoever against the Reversionary Owner for or on account of the Reversionary Owner’s failure to bring any action on account of any breach of the covenants, conditions and restrictions contained in this Deed, or for imposing covenants, conditions and restrictions in this deed which may be unenforceable by the Reversionary Owner. Neither Grantor nor Grantee waive any applicable statute of limitations.

6. Severability. In the event any one or more of the foregoing provisions or covenants, conditions and restrictions is declared for any reason, by a court of competent jurisdiction, to be null and void, the judgment or decree shall not in any manner whatsoever, effect, modify, change, abrogate or nullify any of the covenants, conditions, reservations, restrictions not declared to be void or unenforceable, but all of the remaining covenants, conditions, reservations and restrictions not expressly held to be void or unenforceable shall continue unimpaired and in full force and effect.

7. Notices. Wherever in this Deed it shall be required or permitted that notice or demand be given or served by either Grantor or Grantee to or on the other, such notice or demand shall be given or served, and shall not be deemed to have been duly given or served unless in writing and forwarded by (i) certified or registered mail, return receipt requested and postage prepaid, or (ii) by personal delivery (which may include public or private express delivery and overnight courier services) addressed to Grantor or Grantee as follows:

If to Grantor: City of Mesa
Attn: City Attorney
20 East Main Street, Suite 800
Mesa, Arizona 85211

If to Grantee: EV Development, LLC
Attn: Tim Sprague
844 N. 4th Avenue
Phoenix, Arizona 85004

Either Grantor or Grantee may change such address by written notice in the manner specified above for the giving of notices to the other. Notice shall be deemed delivered and received three (3) business days following deposit with the United States Postal Service if forwarded by certified or registered mail in accordance with the provisions of Section 7(i) above, or upon personal delivery if delivered by personal delivery in accordance with Section 7(ii) above.

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 _____, 20__, and Grantee has accepted the Covenants and Reverter by executing this Special Warranty Deed to be effective as of the same date.

[Signature Pages Follow]

GRANTOR:

CITY OF MESA, 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 himself/herself to be the _____ of the CITY OF MESA, an Arizona municipal corporation and that, being authorized so to do, he/she executed the foregoing instrument for the purposes herein contained on behalf of the Grantor.

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

Notary Public

(Seal)

GRANTEE:

EV Development, LLC, a Delaware limited liability
company

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 him/herself to be the
_____ of EV Development, LLC, a Delaware limited liability company, and that, being
authorized so to do, he/she executed the foregoing instrument for the purposes herein contained on behalf of the
Grantee.

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

Notary Public

(Seal)

EXHIBIT "A" TO SPECIAL WARRANTY DEED

LEGAL DESCRIPTION OF PROPERTY

**EXHIBIT A
LEGAL DESCRIPTION**

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EXHIBIT A
(Continued)

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THENCE running Southerly 135 feet parallel to the East line of said Lot 8 to an alley;

THENCE running Westerly along the North line of said alley 50 feet;

THENCE running Northerly 135 feet parallel to the West line of the said Lot 8 to the South line of Pepper Drive;

THENCE Easterly 50 feet along said South line of Pepper Drive to the TRUE POINT OF BEGINNING.

APN: 138-35-011, 13835-010A, 138-35-053, 138-35-054, 138-35-012, 138-35-056

EXHIBIT "B" TO SPECIAL WARRANTY DEED

MATTERS OF RECORD

(To be inserted)