

WHEN RECORDED RETURN TO:

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

PRE-ANNEXATION DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “**Agreement**”) is entered into as of the _____ day of _____, 2021, by and between the CITY OF MESA, an Arizona municipal corporation (“**City**”); PACIFIC PROVING, LLC., a Delaware limited liability company (“**Owner**”) and LEGACY CARES, INC., an Arizona non-profit corporation (“**Lessee**”). City, Owner and Lessee are herein referred to individually as a “**Party**,” and collectively as the “**Parties**.”

RECITALS

A. This Agreement pertains to certain real property located in Maricopa County (“**County**”) consisting of approximately three hundred thirty-seven (337) acres of land located on the east side of Ellsworth Road between the Williams Field Road alignment and Pecos Road, which is legally described on **Exhibits A and A-1** (the “**Property**”) and depicted on **Exhibits B and B-1**.

B. Owner owns the Property and desires to annex the Property into the corporate limits of the City, and cause the Property to be developed to City standards and receive City services.

C. A blank annexation petition has been filed with Maricopa County and the public hearing prior to the release of the petition was held in connection with the annexation of the Property into the City.

D. The Property is currently zoned Light Industrial (IND-2) for 295.3448 acres and Rural 43(RU-43) for 41.7205 acres in the County. Upon annexation, the 295.3448 acres will be zoned City of Mesa Light Industrial (LI) and the 41.7205 acres will be zoned City of Mesa Agricultural (AG), which is comparable to the current County zoning and will not permit densities and uses greater than those permitted by the County. The 41.7205 acres annexed into the City as AG shall be further rezoned Leisure and Recreation (LR).

E. The annexation, rezoning of the Property and this Agreement are intended to be approved concurrently at the same City of Mesa Council meeting and the Site Plan is intended to be approved by the Planning and Zoning Board before the City of Mesa Council’s approval of this Agreement.

F. Owner has leased the Property to Lessee for the development of a multi-use sports/recreation facility with ancillary uses (the “**Project**”) pursuant to a Ground Lease dated May 20, 2020 (“**Lease**”). A Memorandum of such Lease has been recorded among the official records of the Maricopa County Recorder on August 14, 2020 as document No 2020 0746371.

G. Owner’s obligations under this Agreement may be satisfied by Lessee. Lessee is a party and signatory to this Agreement, and Lessee agrees to be bound by and comply with the terms, conditions, and requirements of this Agreement.

H. The development of the Project pursuant to this Agreement is consistent with the Mesa 2040 General Plan (the “**General Plan**”) and the Mesa Gateway Strategic Development Plan.

I. The Parties acknowledge and agree that the development of the Property will result in significant planning and economic benefits to the City and its residents by (i) ensuring the Property is developed as an integral part of the City; (ii) providing for orderly, controlled and quality growth in the area; (iii) increasing tax and other revenues to the City based on improvements to be constructed within the Property; (iv) adding property to the tax rolls of the City; and (v) providing for other matters relating to the development of the Property.

J. The Parties are entering into this Agreement pursuant to the provisions of A.R.S. § 9-500.05 in order to facilitate the annexation, zoning and development of the Property by providing for, among other things the terms, conditions, limitations, restrictions and requirements for the annexation and development of the Property.

K. 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 in order to facilitate the development of the Property by providing for, among other things: (i) the permitted uses on the Property, (ii) Property restrictions; (iii) construction on the Property; (iv) infrastructure improvements; and (iv) other matters related to the development of the Property; and the terms of this Agreement constitute covenants running with the Property as more fully described in this Agreement.

L. The Parties also understand and acknowledge that this Agreement is intended to promote “economic development activities” within the meaning of and is entered into in 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.

AGREEMENT

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.** The below words and phrases, wherever used in this Agreement, shall be construed as defined in this Section unless, clearly from the context, a different meaning is

intended. Words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The use of the term “shall” in this Agreement means a mandatory act or obligation.

(a) “**ADWR**” means as defined in Section 5.2.4.

(b) “**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 J, inclusive, are incorporated into this Agreement by reference and form a part of this Agreement.

(c) “**Applicable Laws**” means as defined in Subsection 3.1 and also includes the City of Mesa’s Schedule of Fees and Charges, the Schedule of Rates Fees and Charges for Utilities, and the Applicable Water Laws.

(d) “**Applicable Water Laws**” means as defined in Subsection 5.2.4.

(e) “**Approved Plans**” means plans reviewed and approved by the City of Mesa.

(f) “**A.R.S.**” means the Arizona Revised Statutes as now or hereafter enacted or amended.

(g) “**City**” means the Party designated as City on the first page of this Agreement. In this Agreement any determination, authorization, consent, or approval by City may be made by its City Manager, City Engineer, City Traffic Engineer, or designee or a consultant, if deemed necessary by the City.

(h) “**City Code**” means the Code of the City of Mesa, Arizona, as amended from time to time.

(i) “**City Council**” means the City Council of City.

(j) “**City Indemnified Parties**” means the City and its officers, employees, elected and appointed officials, agents, and representatives.

(k) “**City Manager**” means the person designated by City as its City Manager.

(l) “**City Representative**” means as stated in Section 3.6.

(m) “**City System**” means the City of Mesa’s potable water treatment, transmission and distribution system.

(n) “**City Standards**” means as stated in Section 3.5.

(o) “**Claims**” means as stated in Section 14.1.

- (p) “**County Permits**” means as stated in Section 3.5.
- (q) “**County Work**” means as stated in Section 3.5.
- (r) “**Default**” or “**Event of Default**” means one or more of the events described in Section 12.1 or Section 12.2; 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 12.4.
- (s) “**Dispute**” means as defined in Section 13.
- (t) “**Effective Date**” means as defined in Section 9.
- (u) “**Fee**” means as defined in Subsection 4.1.
- (v) “**General Plan**” means *This is My Mesa: Mesa 2040 General Plan* as adopted by City, and as may be amended from time-to-time.
- (w) “**GPD**” means gallons per day.
- (x) “**GPM**” means gallon per minute.
- (y) “**Indemnity**” means as stated in Section 14.1.
- (z) “**Lessee**” means Legacy Cares, Inc., and its successors, assigns, and sub-lessees to the Property.
- (aa) “**Lessee Representative**” means as stated in Section 3.6.
- (bb) “**MLM**” means Multiple or Large Meter Customer.
- (cc) “**Notice**” means as defined in Subsection 15.8(a).
- (dd) “**Owner**” means Pacific Proving, LLC, and its successors and assigns to the ownership of the Property.
- (ee) “**Owner Representative**” means as stated in Section 3.6.
- (ff) “**Party**” or “**Parties**” means as defined on the first page of this Agreement.
- (gg) “**Project**” means as defined in Recital F.
- (hh) “**Property**” means as defined in Recital A.
- (ii) “**Public Infrastructure Improvements**” means the public infrastructure improvements described in **Exhibit F** and depicted on **Exhibit F-1** and **Exhibit F-2**.

(jj) “**Site Plan**” means the site plan as depicted on **Exhibit C**, as may amended from time to time in accordance with Applicable Laws.

(kk) “**Sustainable Service Agreement, or SSA**” means Sustainable Water Service Agreement required pursuant to City Code Title 8, Chapter 10, Section 9.

(ll) “**SWSA**” means Sustainable Water Service Application

(mm) “**Term**” means as defined in Section 9.

(nn) “**Utility Customer**” means Owner, Lessee, their successors and assigns, sublessees, contractors, or any other person, corporation, company, partnership, firm, association, or society with a City of Mesa utility account with a point of delivery which is located anywhere on the land constituting the whole of the Property as it is legally described on **Exhibit A** and **Exhibit A-1** depicted on **Exhibit B** and **Exhibit B-1** as of the Effective Date, regardless of any subsequent lot split, land subdivision, lease, partition, or other sale, division, conveyance, or any other change in the use of the Property.

(oo) “**Waiver**” means as defined in Subsection 15.11.

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

2. PURPOSE OF THIS AGREEMENT.

The purpose of this Agreement is to provide for the development of the Property in accordance with the General Plan, the Zoning, the Site Plan, and the terms of this Agreement; and to provide for the development of the Project, as stated in Recital F, and Public Infrastructure Improvements to be designed and constructed by Owner, or by Lessee; and to acknowledge the Owner, Lessee and City Undertakings.

3. DEVELOPMENT PLANS.

3.1 Applicable Laws and Development of Project. The development of the Property and Project by Owner and Lessee shall be in accordance with the federal, state, county and City statutes, codes, laws (statutory and common law), ordinances, rules, regulations, permit requirements, and other requirements and official policies of the City, all as they may be amended from time to time, and that apply to the development of the Project as of the date of any application or submission to the City (collectively the “**Applicable Laws**”).

3.2 Site Plan. The Project shall be developed in accordance with the Site Plan approved by the Planning and Zoning Board in accordance with the City’s Site Plan Review process. Owner and/or Lessee may seek a modification or an amendment to the Site Plan in accordance with the City’s Site Plan Review process.

3.3 Airport Overlay Area. A portion of the Property is located within the AOA2 of the Phoenix Mesa Gateway Airport Overlay Area AOA2 as depicted on **Exhibit E** and shall be developed pursuant to the restrictions stated in the City Code Title 11, Chapter 19.

3.4 Vesting. At all times that Owner and Lessee is not in Default of this Agreement, Owner and/or Lessee is permitted to develop the Property in accordance with and subject to the terms, conditions, limitations, restrictions and requirements of this Agreement, the Zoning, the Site Plan, and all Applicable Laws.

3.5 County Permits. The City acknowledges that Lessee has applied or obtained some or all permits from the County prior to annexation for mass grading, demolition, and the foundations, cores, shells, and interiors for Buildings A, B, and C as shown on the Site Plan, civil and utilities on the Property in order to commence construction of the Project (the “**County Work**”) on the Property (“**County Permits**”). Construction drawings for the County Work were submitted, concurrently to the County and the City for review. Owner and Lessee agree, prior to annexation, to have the County Work inspected and approved by the County and in compliance with the Mesa City Code, standards and regulations. City acknowledges that the County Work may not be completed prior to annexation. The County Work shall be done in accordance and in compliance with the Mesa City Code, standards and regulations applicable to such County Work (“**City Standards**”). Any permits issued by County shall be accepted by the City pursuant to Section 11-78-3 C. of the Mesa Zoning Code. Any County Work that has been inspected by the County or has received a Certificate of Completion from the County shall also require a building permit from the City to obtain a Certificate of Occupancy but shall not be re-inspected by the City. Owner and Lessee agree that if the County Work, constructed under the County Permits, prior to annexation of the Property into the City, is not structurally safe or doesn’t comply with the life safety requirements of the Mesa City Code, Owner and/or Lessee shall, at its own cost and expense, remove or modify such construction to bring such construction into compliance with Mesa City Code, standards and regulations.

3.6. Designated Representatives. To further the cooperation of the Parties in implementing this Agreement, City, Owner and Lessee each will designate and appoint a representative to act as a liaison between City and its various departments, Owner and Lessee. The initial representative for City will be City’s Development Services Project Manager (the “**City Representative**”), and the initial representative for Owner be its Project Manager, as identified by Owner from time to time (the “**Owner Representative**”) and the initial representative for Lessee be its Project Manager, as identified by Lessee from time to time (the “**Lessee Representative**”) The City Representative, and the Owner Representative and the Lessee Representative will be available at all reasonable times to discuss and review the performance of the Parties to this Agreement and the development of the Property.

4. **OWNER’S UNDERTAKINGS.**

4.1 Permit and Other Fees. Owner or Lessee shall pay the applicable building permit, inspection, development impact and all other applicable fees for the development of the Property (each, a “**Fee**”) in effect at the time of any application or submission. Owner or Lessee shall go through the City standard permit process for all permits for the Project and Public Infrastructure

Improvements, and the permits for the Public Infrastructure Improvements will include the City's standard language allowing the Owner or Lessee to access the City's rights-of-ways and easements in accordance with the Applicable Laws and compliance with the permits.

4.2 Public Infrastructure Improvements. As a condition to the development of the Project, and in order for the Property to obtain City utility services, Owner acknowledges and agrees that Owner must dedicate rights of way and easements (temporary, permanent or otherwise), and finance, design, construct (or cause to be constructed) and install certain Public Infrastructure Improvements (i.e., water, wastewater, drainage and roadway improvements) to applicable City standards. If the Project is developed in phases, the Public Infrastructure Improvements and dedication of easements (except for the deferral of Crismon Road, as stated in Section 4.3) shall be completed in Phase I of the Project. The Public Infrastructure Improvements include, but are not limited to, the improvements described in **Exhibit F** and depicted in **Exhibit F-1** and **Exhibit F-2** to this Agreement. The Public Infrastructure Improvements include the following categories of improvements:

(a) Williams Field Road Improvements: The public infrastructure improvements and dedication of rights-of-way and easements are described on **Exhibit F** and depicted on **Exhibit F-1** relating to Williams Field Road. Owner (or Lessee if Lessee designs and constructs the William Field Road Improvements) will be eligible for reimbursement of the Williams Field Road Improvements subject to the terms, conditions, requirements, and limitations set forth in Section 6.1 of this Agreement; provided further that the dedication of rights-of-way and easements will not be reimbursable and certain improvements listed on **Exhibit F** as not being eligible for reimbursement will not be reimbursable.

(b) Ellsworth Road Improvements: The public infrastructure improvements and dedication of rights-of-way and easements are described on **Exhibit F** and depicted on **Exhibit F-1** and **Exhibit F-2**. The Ellsworth Road Improvements will be completed, and the rights of way and easements dedicated at the sole cost and expense of the Owner or Lessee, as the case may be, and will not be eligible for any reimbursement by the City.

(c) Crismon Road Improvements: The public infrastructure improvements and dedication of rights-of-way and easements are described on **Exhibit F** relating to Crismon Road. The Crismon Road Improvements will be completed, and the rights of way and easements dedicated at the sole cost and expense of the Owner or Lessee, as the case may be, and will not be eligible for any reimbursement by the City; provided, however, the Crismon Road Improvements will be deferred pursuant to Section 4.3 below. Since the rights-of-way of Crismon Road will be dedicated prior to the construction of Crismon Road, pursuant and in compliance with Mesa City Code Section 8-6-3(c), Owner or Lessee shall maintain, at their sole cost and expense, the rights-of-way free of garbage, junk, obstructions, and weeds or grass until construction commences on the road improvements within the right-of-way.

(d) Final Approved Public Improvement Plans: The Public Infrastructure Improvements as described in Subsections 4.2(a), (b), and (c) and as described and depicted

in **Exhibit F** and **Exhibit F-1** generally describes and depicts the required Public Improvements for the Project. Because the Project, including the Public Improvements, are still in the design and engineering phase and must go through the normal and customary permit and review process of the City, the final required Public Improvements as described and depicted in this Agreement may be modified as part of the normal and customary permit and review process in compliance with all Applicable Laws, and the actual required Public Infrastructure Improvements will be those public improvements shown on the final City-approved plans for the Project and Public Infrastructure Improvements.

4.3 **Deferral of Crismon Road Improvements.** Pursuant to Section 9-8-4(D)(2) of the City Code, the City agrees to temporarily defer (the “**Deferral Period**”) Owner’s or Lessee’s obligation to design, install, and construct the Public Infrastructure Improvements for Crismon Road, as stated in **Exhibit F** and depicted on **Exhibit F-1**, subject to the following terms and conditions:

(a) **End of Deferral Period.** The Deferral Period shall end (the “**End of the Deferral Period**”) at the earlier of: (i) Rezoning of 41.725 acres on the southeast portion of the Property as depicted in **Exhibit B-1** from LR to any other zoning District; (ii) Development of any building or multiple buildings in excess of 1000 sq. ft. (i.e., issuance of a building permit) on the 41.725-acre area on the southeast portion of the Property as depicted in **Exhibit B-1**; (iii) Development of any building (i.e., issuance of a building permit) occurs on the east side of Crismon Road adjacent to the Property; or (iv) when written notice from the City by its City Manager (such notice may be given in the City Manager’s sole and absolute discretion after consulting with the City Traffic Engineer) indicating the end of the deferral is provided to the Owner and Lessee. Provided, further, the City Manager (in his sole and absolute discretion) may elect to not have the conditions in subsections 4.3(a)(i), (ii) or (iii) in the prior sentence trigger the End of the Deferral Period and allow the Deferral Period to continue; and in such event, the City Manager shall provide Owner and Lessee written notice that the Deferral Period will continue despite the occurrence of an event under 4.3(a)(i), (ii) or (iii).

(b) **In-Lieu Payment.** In lieu of the Owner or Lessee designing, installing, and constructing the Public Infrastructure Improvements for Crismon Road, the City Manager (in his sole and absolute discretion) may elect to have Owner or Lessee make an In-Lieu Payment, within 60 days of receipt of request for the In-Lieu Payment from the City, in accordance with Section 9-8-4(D) of the City Code. If the City Manager elects for the Owner or Lessee to make the In-Lieu Payment, the Owner or Lessee shall make the In-Lieu Payment in compliance with Section 9-8-4(D)(1) of the City Code and the In-Lieu Payment shall be based on a cost estimate that is prepared by a professionally registered civil engineer and shall comply with the City Standards in effect at the time of making the In-Lieu Payment. The cost estimate shall be subject to approval by the City Engineer and shall include the costs for the design and construction of the Crismon Road Improvements, including all design, labor, and material costs, plus twenty percent (20%) for future contingency costs.

(c) Financial Assurances. In order to ensure that Owner or Lessee has the ability to construct the deferred Crismon Road Improvements, on every two-year anniversary of the Effective Date, Owner or Lessee shall provide written notice that the tangible net worth of the Owner (or Lessor) is at least five times the estimated then-current cost to complete the deferred Crismon Road Improvements, which notice will be on a form reasonably acceptable to Owner (or Lessor) and City and similar to other City forms. If Owner or Lessee fails or is unable to provide such written notice, the City Manager may elect to end the Deferral Period and require the design and construction of the Crismon Road Improvements (or require the In-Lieu Payment under Section 4.3(b)).

4.4 Dedication and Acceptance of Public Infrastructure Improvements. Upon completion by Owner or Lessee of any Public Infrastructure Improvements, the Owner shall comply with all Applicable Laws and City processes, and dedicate to the City, at no cost to the City, such Public Infrastructure Improvements free and clear of all liens and encumbrances and in accordance with City standards applicable to such dedication and acceptance.

4.5 Rights-of Way and Easements. Owner, at its sole cost and expense, and at no cost to the City, shall dedicate to the City all the rights-of-way and easements (temporary, permanent or otherwise) on or within the Property and Project (and on neighboring real property as necessary for the wastewater related Public Infrastructure Improvements down to Pecos Road), for the construction, installation, operation, maintenance, repair and replacement of the Public Infrastructure Improvements, as required by the City. Owner shall dedicate all rights-of-way and easements (including for Williams Field, Ellsworth and Crismon Road) prior to the issuance of the first building permit for the Project. Owner's obligations as set forth in this Section, shall survive the termination, cancellation, or expiration of this Agreement and are enforceable by specific performance, and any other means permitted in law or equity. Owner further agrees and acknowledges that the easement for the wastewater related Public Infrastructure Improvements on the neighboring real property must meet all City Engineering Standards and other requirements, including but not limited to having a minimum width of twenty (20) feet (subject to increase depending on reasonable needs of City), remaining clear of all landscaping and other obstructions and including a ten (10) foot all weather access road.

4.6 Warranty. Owner and/or Lessee shall give to the City a two-year warranty for all Public Infrastructure Improvements, which warranty shall begin on the date that the City accepts the Public Infrastructure Improvements, as applicable. Any material deficiencies in material or workmanship identified by City staff during the applicable warranty period shall be brought to the attention of the Owner and Lessee, who shall promptly remedy or cause to be remedied such deficiencies to the reasonable satisfaction of the City. Continuing material deficiencies in a particular portion of the Public Infrastructure Improvements shall be sufficient grounds for the City to require: (a) an extension of the warranty for an additional one-year period, and (b) the proper repair of, or the removal and reinstallation of the Public Infrastructure Improvements subject to such continuing deficiencies. Regardless of whether the applicable warranty period has expired, the Owner and/or Lessee agrees to repair any damage to the Public Infrastructure Improvements caused by Owner, Lessee or their agents on the Property. Nothing contained herein shall prevent the City, Owner or Lessee from seeking recourse against any third party for damage to the Public Infrastructure Improvements caused by such third party.

4.7 Traffic Signal Fee. Owner or Lessee, before the issuance of any City permit for the Project, shall pay the applicable in-lieu fee of eighty-seven thousand five hundred dollars (\$87,500.00) towards the cost of the traffic signal to be constructed at the intersection of Ellsworth Road and Williams Field Road.

4.8. Signage. Owner or Lessee shall provide signs in the locations as shown on the Site Plan, attached hereto as Exhibit C designating where Overnight Recreational Vehicle parking will be allowed and where it will be prohibited.

5. UTILITY SERVICE.

5.1 Municipal Utility Services Generally. All City utility service to the Property is made available subject to the terms, conditions, limitations, restrictions, requirements of, and compliance by the Utility Customer with, the Applicable Laws, the Terms and Conditions for the Sale of Utilities (the “**Terms and Conditions**”), and the payment of applicable utility rates, fees and charges (all as amended from time to time) and is otherwise provided in the manner offered to other similarly situated customers of the City. The City will use reasonable efforts to provide satisfactory utility services to the Property; provided, however service is not warranted or guaranteed and shall be subject to the City’s Terms and Conditions, the Water Shortage Management Plan, Force Majeure, and all measures taken collectively thereunder. City shall not create any special classification, rate, fee, or charge that is unduly discriminatory against Owner or Lessee.

5.2 Water Use and Service Limitations. The Property and the Project, and each Utility Customer receiving service thereon, is and shall be subject to the following limitations and restrictions, which shall apply to the entirety of the Property and the Project (and any other development on the Property):

(a) Water demand and use for all purposes is limited to and must not exceed five hundred fifty (550) acre-feet per year.

(b) Flow demand must remain under a maximum of five hundred thousand (500,000) gallons per day (“**GPD**”).

(c) The water utility service connection will be limited to a single meter of not to exceed six (6) inches (or multiple meters with a combined peak flow which is less than that of a single eight (8) inch meter), unless the Property is the subject of an approved and valid SSA.

(d) Peak demand in gallons per minute (“**GPM**”) through all meters must not exceed one thousand five hundred (1500) GPM.

(e) If after the recordation of this Agreement there is any lot split, land subdivision, lease, or other sale, division, conveyance, or any other change in the use of the Property that adds meters or creates additional Utility Customers with a point of

delivery located anywhere on the land constituting the whole of the Property (i.e., all the land constituting the Property as legally described on **Exhibit A** and **Exhibit A-1** and depicted on **Exhibit B** and **Exhibit B-1** as of the Effective Date), all such meters and Utility Customers shall remain subject to the limitations in this **Section 5** of this Agreement, and all such meters and Utility Customer accounts shall be consolidated by City for the purposes of determining compliance therewith. In addition, each resulting Utility Customer shall remain jointly and severally liable for compliance with the limitations in **Section 5** of this Agreement and subject to the remedies set forth in **Section 5.5** and this Agreement. Any Utility Customers, and Owner, Lessee and City may enter into a written amendment to this Agreement to document the amount and equity distribution of water use and demand as restricted and limited under this Agreement.

5.2.1 **Permitting.** The City reserves the right to refuse, and Owner and Lessee acknowledge and agree that City may deny, all permitting and other approvals associated with the Project, or any other expansion or modification to improvements on the Property or development on the Property that, in the reasonable judgement of the City, could result in water uses or demands beyond the limitations and restrictions allowed under **Section 5.2** hereof; the City's decision as to whether to deny such permits or approvals may be based on the projected water uses or demands, MLM Customer status, the historic water uses or demands for the Project and Property, past non-compliance with the limitations and restrictions in **Section 5.2** hereof, and whether a moratorium or shortage under the City's Water Shortage Management Plan has been declared, but shall not otherwise be unduly discriminatory against Owner or Lessee.

5.2.2 **On-site Mitigation Measures.** For the Property and the Project, Utility Customer (and any additional Utility Customers) shall take all measures as required to comply with the flow and peak demand limitations in **Section 5.2** and prevent excessive pressure fluctuations or otherwise disrupting utility service to other customers, including but not limited to, designing, engineering, constructing, operating and maintaining water storage on site as necessary and sufficient or other alternative measures to comply with the flow and peak demand limitations.

5.2.3 **Water Efficiency.** The Property and the Project shall use water efficient landscaping and irrigation systems and implement best management practices related to all-natural turfed areas on the Property. The Property and Project shall use low water use landscaping as necessary to comply with the Applicable Water Laws.

5.2.4 **State and Local Regulation of Water and Turf Related Facilities.** Owner and Lessee specifically acknowledge and agree that Arizona Revised Statutes Title 45 and other Applicable laws, including but not limited to Title 8 Chapter 10 of the City Code and other ordinances, rules, regulations and permit requirements of the City, Maricopa County, the Arizona Department of Water Resources ("**ADWR**") and the Arizona Department of Environmental Quality (the "**Applicable Water Laws**") may limit or restrict both the City's ability to provide water to the Property and Owner's or Lessee's ability to use water on the Property, including uses that would be subject to Title 45, Chapter 1, Article 3. The City will provide notice to ADWR, with the assistance of Owner or Lessee, that the project and Property should be identified as an individual user pursuant to A.R.S. §§ 45-565, 45-566, 45-567 and 45-568. Thereafter, the Project and Property will be subject to the Individual User requirements for natural turf-related facilities

under the Arizona Groundwater Code as adopted and administered by the Arizona Department of Water Resources, including but not limited to, Sections 5-112, 6.3, and 6-302 of the Third Management Plan, and Section 6.1.2.2 under the Fourth Management Plan. City, in recognition of both the benefits of the Project and the current and future unavailability of effluent at the Property, hereby grants and provides a variance for the Project from the Turf-related facility permit requirements under Title 8 Chapter 10 of the City Code as authorized under Section 8-10-7(C), provided Owner, Lessee and any additional Utility Customers remain in compliance with the provisions of this Agreement and the Individual User and other requirements under the Applicable Water laws. Owner and Lessee agree and acknowledge that the Individual User provisions of the Management Plans can be enforced by the City in addition to ADWR pursuant to this Agreement.

5.2.5 Water Shortage Management Plan. The Project and Property are subject to the City's Water Shortage Management Plan and any restrictions, reductions, prohibitions, limitations, and other measures implemented thereunder, and City will provide notice, if any, as required under the City's Water Shortage Plan before implementing any such restrictions or other measures.

5.2.6 MLM Customer Application and Sustainable Service Agreement. The limitations and restrictions set forth in Section 5.2 shall apply and remain in full force and effect on the Property and Project unless the City approves an appropriate Utility Customer as a Multiple or Large Meter ("MLM") Customer, and the approved MLM Customer enters and remains in compliance with an approved Sustainable Service Agreement. In the event a Utility Customer desires to become an MLM Customer, such Utility Customer (with Owner's written authorization and consent to be bound in the case of any Utility Customer other than Owner) must prepare and submit to the City a Sustainable Water Service Application ("SWSA") which will include additional information regarding demand for the Property and Project. This Agreement does not constitute a determination as to MLM eligibility or approval of the SWSA or an SSA, which is made by the City Council in its sole and absolute discretion. If approved as an MLM Customer, Owner acknowledges that under the SSA, among other obligations Owner (or Lessee or other Utility Customer) must purchase, at the MLM Customer's sole cost and expense, water supplies from third parties in a legal and physical form and quantity acceptable to the City in its sole and absolute discretion and transfer such supplies to City. The amount of such supplies and the level of service will be limited to the volume established in the SSA, as authorized by City Code Title 8, Chapter 10.

5.3 Wastewater. Owner acknowledges and agrees that the private wastewater collection system on the Property must include facilities to maintain a controlled rate of wastewater discharge with peak flow rates consistent with the City's design standards and the City's wastewater collection system capacity, not to exceed three times the average hourly flow rate unless authorized in advance in writing by the City's Water Resources Department Director, which may be granted or denied in his sole discretion and such authorization may be subject to other conditions and limitations. Owner, Lessee or Utility Customer shall be solely responsible for compliance with all wastewater permitting and discharge requirements under the Applicable Laws, including but not limited to Title 8, Chapter 4 of the Mesa City Code and all pretreatment requirements adopted thereunder, all as applicable at the time of discharge.

5.4 Private Line Agreement. As permitted and in conformance with the Applicable Laws, City and Owner may in the future enter into the City's standard private line agreement for the Williams Field Road water line whereby, subject to the terms and conditions of the City's standard Private Line Agreement, the developer of the north side of Williams Field Road will pay its pro rata share of the costs of water line extensions required pursuant to this Agreement and from which such property owner receive service.

5.5 Additional Water Use Remedies of the City. Water use for the Property and Project in excess of five hundred fifty (550) acre-feet per year, flow demand of greater than five hundred thousand (500,000) GPD, or peak demand in excess of one thousand five hundred gallons per minute (1500 GPM) shall constitute a default of this Agreement and violation of applicable provisions of the Mesa City Code unless Lessee or Owner has an approved and valid SSA with the City, in which case use must comply with the terms of the SSA. In addition to all remedies available under the City Code, and at law and equity, the City may, at its sole discretion, take or require measures (including specific performance by Owner, Lessee, and any Utility Customer) to limit water use at the Project and Property in the event of such a default or violation, including, but not limited to:

- a) Reductions in meter sizing and meter count.
- b) Installation or implementation of valving, flow control, or other devices or measures which limit flow.
- c) Reduction or elimination of overseeding.
- d) Implementation of field levelling and other water conservation and drainage improvement measures.
- e) Reductions in natural turfed acreage (to include artificial turf substitution in addition to outright removal).
- f) Installation of on-site or expanded storage and associated pumping capacity.

6. **CITY UNDERTAKINGS.** In consideration of the timely and satisfactory performance by Owner of the Owner Undertakings, City will perform the following undertakings:

6.1 Reimbursement of Williams Field Road Improvements. Because the Williams Field Road Improvements are public improvements that are part of the City's CIP Program and were included in the City's 2020 Mesa Moves Bond Program and will facilitate development and access to the Phoenix-Mesa Gateway Airport, City will reimburse Owner (or Lessee) for certain portions of the Williams Field Road Improvements subject to the terms and limitations of this Section. Upon completion of the Public Infrastructure Improvements required under Section 4.2(a) and (b) and acceptance by City with a warranty as provided in Sections 4.6 for the Public Infrastructure Improvements, City will reimburse Owner (or Lessee if Lessee constructed the Public Infrastructure Improvements), in the amount of the lesser of the actual cost of the Williams

Field Road Improvements or one million five hundred thousand dollars (\$1.5M), and in no event shall the reimbursement under this Agreement for the Public Infrastructure Improvements or the Project exceed one million five hundred thousand dollars (\$1.5M). In order to be eligible for reimbursement such improvements must be contracted and constructed in compliance with all Applicable Laws including, but not limited to, Title 34 of the Arizona Revised Statutes and the City's public bidding procedures. Owner or Lessee will be solely responsible for the payment of all costs for improvements in excess of one million five hundred thousand dollars (\$1.5M). Further, the dedication of rights-of-way and easements will not be reimbursable and certain improvements listed on **Exhibit F** as not being eligible for reimbursement will not be reimbursable. The Ellsworth Road Improvements and Crismon Road Improvements are not eligible for reimbursement.

7. **Prohibited Uses.** Owner and Lessee acknowledge that certain uses on the Property, are not compatible with the surrounding area and are therefore prohibited on the Property. Notwithstanding anything in Applicable Laws (including but not limited to the Zoning) to the contrary, the uses stated in **Exhibit D** will at all times, during the Term of this Agreement, also be prohibited on the Property.

8. **Legal Nonconforming Uses.** The parties acknowledge and agree as of the Effective Date, no legal nonconforming structures, buildings, lots, signs, billboards or uses exist on the Property.

9. **Term.** This Agreement shall become effective on the date on which all the following events have occurred: this Agreement has been adopted and approved by the City Council, executed by duly authorized representatives of City, Owner and Lessee, and recorded in the office of the Recorder of the County (the "**Effective Date**"). Notwithstanding anything in this Agreement to the contrary, the term of this Agreement ("**Term**") will begin on the Effective Date and shall automatically terminate fifty (50) years from the Effective Date of this Agreement, unless this Agreement is terminated sooner pursuant to any earlier termination provision of this Agreement.

10. **Owner's and Lessee's Representations.** Owner and Lessee represent and warrant to City that:

10.1 Owner and Lessee have the full right, power and authorization to enter into and perform the obligations of this Agreement, and Owner's and Lessee's execution, delivery and performance of this Agreement have been duly authorized and agreed to in compliance with Owner's and Lessee's organizational documents and Applicable Law.

10.2 All consents and approvals necessary for Owner's and Lessee's execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with Owner's and Lessee's execution, delivery and performance of this Agreement.

10.3 Owner and Lessee will promptly execute and acknowledge, when appropriate, all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

10.4. As of the date of this Agreement, Owner and Lessee have no actual knowledge of any litigation, proceeding or investigation pending or threatened against or affecting Owner or Lessee which could have a material adverse effect on Owner's or Lessee's performance under this Agreement that has not been disclosed in writing to City.

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

10.6 Owner and Lessee have 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, financial advisors, brokers and attorneys.

10.7 Owner and Lessee have been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

11. City Representations. City represents and warrants to Owner that:

11.1 Subject to the terms and provisions of this Agreement, City has the full right, power and authority to enter into this Agreement and perform this Agreement and each of the obligations and undertakings of City 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.

11.2 All consents and approvals necessary for the execution, delivery and performance of this Agreement by City have been obtained, and no further action needs to be taken in connection with City's execution, delivery and performance of this Agreement.

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

11.4 As of the date of this Agreement, 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 Owner.

12. Default and Remedies.

12.1 Events of Default by Owner or Lessee. "Default" or an "Event of Default" by Owner and/or Lessee under this Agreement will mean the occurrence of one or more of the following (subject to Section 12.3):

(a) Any representation or warranty made in this Agreement by Owner or Lessee was materially inaccurate when made or is proven to be materially inaccurate during the Term and has an adverse impact on City's or Owner's or Lessee's ability to perform under this Agreement.

(b) Foreclosure (or deed in-lieu of foreclosure) upon any mechanic's, materialmen's, or other lien on the Property or upon any improvements on such Property, but such lien will not constitute a Default if Owner or Lessee deposits in escrow sufficient funds to discharge the lien or otherwise bonds over such liens in a customary fashion.

(c) Owner or Lessee transfers or attempts to transfer or assign this Agreement in violation of Section 15.3.

(d) Owner and/or Lessee fails to observe or perform any other covenant, obligation or agreement required of it under this Agreement, including complying with the terms, conditions, limitations, restrictions, and requirements of Section 5 of this Agreement regarding water use and demand on the Property.

12.2 Events of Default by City. Default or an Event of Default by City under this Agreement will mean one or more of the following (subject to Section 12.3):

(a) Any representation or warranty made in this Agreement by City was materially inaccurate when made or is proven to be materially inaccurate during the Term and has an adverse impact on City's or Owner's or Lessee's ability to perform under this Agreement.

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

(c) City transfers or attempts to transfer or assign this Agreement in violation of Section 15.

12.3 Grace Periods; Notice and Cure. 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 must 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 must be commenced within such period and diligently pursued to completion, but not to exceed ninety (90) days in total. Provided further, if Owner and/or Lessee is working diligently and in good faith to cure a non-monetary Default, the City Manager, in the City Manager's sole discretion, may extend the period of time the Owner and/or the Lessee has to cure the non-monetary Default for another ninety (90) days, however, in no event shall the overall period of time for completion exceed one hundred eighty (180) days.

12.4 Remedies for Default. Whenever any Event of Default occurs and is not cured (or cure undertaken) by the defaulting Party in accordance with Section 12.3 of this Agreement, the other Party may take any of one or more of the following actions, subject to any additional notice and cure periods provided in this Section 12.4:

12.4.1 Remedies of City. City's sole remedies for an uncured Event of Default by Owner and/or Lessee other than for an Event of Default under Section 5.5 will consist of the following:

(i) If an uncured Event of Default by Owner and/or Lessee occurs with respect to Owner and/or Lessee's failure to construct or develop the Public Infrastructure Improvements in accordance with the terms of this Agreement, City may suspend any of its obligations under this Agreement and may terminate this Agreement by written notice thereof to Owner and Lessee. Notwithstanding the foregoing, at any time, City may seek special action or other similar relief (whether characterized as injunction or otherwise), requiring Owner and/or Lessee to undertake and to fully and timely perform its obligations under this Agreement and/or undertake and to fully and timely address a public safety concern or to enjoin any construction or activity undertaken by Owner and/or Lessee which is not in accordance with the terms of this Agreement.

(ii) Notwithstanding the foregoing, the limitations on City's remedies will not limit City's remedies for actions against Owner and/or Lessee with respect to the obligations of indemnification, duty to defend and hold harmless including, but not limited to, City's ability to seek damages in relation thereto.

(iii) Notwithstanding the foregoing, City has and retains its specific rights set forth in Section 5.5, in addition to any other rights or remedies granted to or reserved by City in this Agreement that survive termination.

(iv) In no event shall City be entitled to punitive, consequential, or special damages, except as remedy under the indemnity provisions of this Agreement or as specifically provided in Section 5.5.

12.4.2 Remedies of Owner. Owner's exclusive remedies for an 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, specific performance or otherwise), requiring City to undertake and to fully and timely perform its obligations under this Agreement, and Owner hereby waives any and all right to recover actual, punitive, consequential, special, and any other type of damages whatsoever.

12.5 Delays; Waivers. Except as otherwise expressly provided in this Agreement (including, but not limited to, Force Majeure under Section 12.6, 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.

12.6 Force Majeure in certain Performance for Causes Beyond Control of Party. Neither City nor Owner and/or Lessee, as the case may be, will be considered not to have performed its obligations under this Agreement 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), an outbreak of communicable disease, epidemics and pandemics (including quarantines and other similar governmental exercise of police power), strikes, embargoes, labor disputes, fires, floods, 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 Property (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, nor from the unavailability for any reason of particular contractors, subcontractors, vendors, investors or lenders desired by Owner and/or Lessee in connection with the design and construction of the Project, it being agreed that Owner and/or Lessee will bear all risks of delay, which are not Force Majeure. Additionally, Force Majeure will not excuse a failure by Owner, Lessee and any Utility Customer to comply with the restrictions, limitations and requirements set forth in Section 5.2 hereof. 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 12.6, within thirty (30) days after such event, must notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Force Majeure.

12.7 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.

13. Dispute Resolution. The Parties agree if a dispute arises with respect to this Agreement, the Parties shall cooperate, diligently and in good faith to resolve all matters under this Agreement in accordance with this Section. The Parties shall use all reasonable efforts to resolve any dispute, controversy or claim (the “**Dispute**”) through good faith negotiations. If Owner and/ or Lessee has a Dispute, Owner and/or Lessee and City staff shall work in good faith to resolve the Dispute. If after a meeting, in good faith, between Owner and/or Lessee and City staff, aimed at reaching an amicable solution, the Dispute cannot be resolved, the Dispute shall be escalated to the Assistant City Manager or Deputy City Manager and the Owner and/or the Lessee of the Property to attempt to resolve the Dispute. If after a meeting, in good faith negotiations between Owner and/or Lessee and Assistant City Manager or Deputy City Manager, the Dispute is not resolved by the Owner and/or Lessee and the Assistant City Manager or Deputy City Manager, the Dispute shall be escalated to Owner and/or Lessee and the City Manager. If after the good faith negotiations

between Owner and/or Lessee and City Manager the Dispute is not resolved, the Dispute may be brought before a court of competent jurisdiction in Maricopa County, Arizona.

14. Indemnity and Risk of Loss.

14.1 Indemnity of City by Owner. Owner and/or Lessee will pay, defend, indemnify and hold harmless “**City Indemnified Parties**” from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including reasonable attorneys’ fees, experts’ fees and court costs associated with such matters; all of the foregoing, collectively “**Claims**”) which arise or result from or in connection with or relate in any way, whether in whole or in part, to (i) the design, construction and structural engineering of the Public Infrastructure Improvements and other work and improvements by or on behalf of Owner and/or Lessee, ii) any act or omission by Owner and/or Lessee, or its employees, contractors, subcontractors, agents or representatives, undertaken in fulfillment of Owner and/or Lessee’s other obligations under this Agreement, (iii) any loss or damages to the City Utility System or third parties or other Claims resulting from a failure to comply with the terms, conditions, limitations, restrictions and requirements set forth in Section 5.2 of this Agreement, or (iv) any loss of or reduction in state shared monies arising in connection with a claim brought or maintained by the Arizona Attorney General under A.R.S. § 41-194.01 (collectively, “**Indemnity**”). It is the specific intent of the Parties to this Agreement that the Indemnity of the City Indemnified parties shall apply to all Claims except those resulting from the sole and exclusive negligence of the City Indemnified Parties. The Indemnity obligations set forth in (i) in this Section related to the Public Infrastructure Improvements will not apply to the extent that the Owner and/or Lessee obligations related to Public Infrastructure Improvements for the Crismon Road Improvements are satisfied by In-Lieu Payment (i.e., Owner and/or Lessee do not design or construct such improvements), and shall otherwise survive for a period of two (2) years following acceptance of the Public Infrastructure Improvements by the City. The Indemnity obligations of this Section (ii) and (iv) shall survive for a period of two (2) years after the expiration or earlier termination of this Agreement. The Indemnity obligation of this Section (iii) for failure to comply with Section 5.2 of this Agreement shall survive for the longer of the life of the Project or the Term of this Agreement.

14.2 Risk of Loss. Owner and/or Lessee assumes the risk of any and all loss, damage or Claims to the Public Infrastructure Improvements unless and until title is transferred to City, at which time City assumes the risk of any and all loss, damage or Claims to any portion of the Public Infrastructure Improvements transferred to the City. At the time title to the Public Infrastructure Improvements is transferred to City by dedication deed, or otherwise, Owner and/or Lessee will, to the extent allowed by law, assign to City any unexpired warranties relating to the design, construction and/or composition of such Public Infrastructure Improvements and Owner and/or Lessee shall have no liability therefor, unless specifically stated otherwise herein. Acceptance of the Public Infrastructure Improvements will be conditioned on City’s receipt of the two-year warranty of workmanship, materials and equipment set forth in Section 4.6 in form and content reasonably acceptable to City, provided however that such warranty or warranties may be provided by Owner and/or Lessee’s contractor or contractors directly to City and are not required from Owner and/or Lessee, and that any such warranties will extend from the date of completion of any Public Infrastructure Improvement, any component thereof, or the work of any specific trade or contractor, as applicable.

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

15. General Provisions.

15.1 Recordation. This Agreement shall be recorded in its entirety, except for exhibits deemed not recordable by the Maricopa County Recorder's Office, in the Maricopa County Recorder's Office not later than ten days after its full execution by the Parties.

15.2 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 15.2.

15.3 Successors and Assignment. Neither party may assign this Agreement without the prior written consent of the other Party. The provisions of this Agreement are binding upon and shall inure to the benefit of the Parties, and all of their successors in interest and assigns; provided, however, that Owner's rights and obligations hereunder may be assigned, in whole or in part, only to a person or entity that has acquired title to the Property or a portion thereof and only by a written instrument recorded in the Official Records of Maricopa County, Arizona, expressly assigning such rights and obligations. In the event of a complete or partial assignment Owner, all or a portion of Owner's rights and obligations hereunder shall terminate effective upon the assumption by Owner's assignee of such rights and obligations and the delivery of that executed assignment agreement to the City Manager.

15.4 Limited Severability. City and Owner 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.

15.5 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.

15.8 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 Subsection, or (iii) any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), delivery charges prepaid:

The City:	City of Mesa 20 East Main Street, Suite 750 Mesa, Arizona 85211 Attn: City Manager
With copy to:	Mesa City Attorney’s Office 20 East Main Street, Suite 850 Mesa, Arizona 85211 Attn: City Attorney
Lessee:	Legacy Cares Inc. 19550 N. Grayhawk Dr, Unit 1078 Scottsdale, AZ 85255 Attn: Chad Miller
With Copy to:	Beus Gilbert McGroder, PLLC 701 N. 44 th Street Phoenix, AZ 85008 Attn: Paul E. Gilbert, Esq.
Owner:	Pacific Proving, LLC 2801 E. Camelback Rd., #450

Phoenix, Arizona 85016
Attention: Andrew Cohn

With Copy to:

Burch & Cracchiolo, PA
1800 N. Central Ave., Ste. 1700
Phoenix, Arizona 85004
Attention: Andrew Abraham, Esq.

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this Section. Notices shall be deemed received (A) when delivered to the party, or (B) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

(b) Changes of Address. Addresses of the Parties may be changed by Notice given to the other Parties (each, an **"Updated Address"**) in strict compliance with this Section.

15.9 Section Headings and References. The Section headings contained in this Agreement are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement. Any references in this Agreement to a **"Section"** or a **"Subsection"** shall include all subsections and paragraphs thereof.

15.10 Third Party Beneficiaries. No person or entity will be a third-party beneficiary to this Agreement, except for: (i) permitted transferees or assignees to the extent that they assume or succeed to the rights and/or obligations of Owner under this Agreement.

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

15.12 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.

15.13 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.

15.14 Exhibits. 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.

15.15 Computation of Time. In computing any period of time under this Agreement, the date of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so completed shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday. The time for performance of any obligation or taking any action under this Agreement shall be deemed to expire at 5:00 p.m. (Arizona time) on the last day of the applicable time period provided herein.

15.16 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.

15.17 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.

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

15.19 Amendments to this Agreement. All amendments to this Agreement must be signed by City and Owner and shall be recorded in the Official Records of Maricopa County, Arizona within ten (10) days after execution. Upon amendment of this Agreement, references to “**Agreement**” or “**Development Agreement**” will mean the Agreement as amended. 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. For purposes of clarity as to who must sign an amendment to this Agreement, the following shall apply:

(a) City Manager or City Council Approval for an Amendment. As provided in the resolution approving this Agreement certain amendments may be reviewed and approved by the City Manager, in the City Manager’s sole discretion. The City through its City Attorney shall determine whether an amendment may be approved by the City Manager pursuant to the resolution approving this Agreement and such determination shall be final. All other amendments are subject to approval by the City Council.

15.20 Covenants Running with The Land; Inurement. The covenants, conditions, terms and provisions of this Agreement shall run with each portion of the Property and shall be binding upon and shall inure to the benefit of the Parties, Lessees, Sublessees and their respective permitted successors and assigns with respect to the Property. Wherever the term "Party" or the name of any

particular Party is used in this Agreement, such term shall include any such Party's permitted successors and assigns.

15.21 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 or any assignment hereof, 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.

15.22 Proposition 207 Waiver. Owner hereby waive and release City (“**Waiver**”) from any and all claims under A.R.S. § 12-1134, *et seq.*, including any right to any permits approved by Maricopa County that is not in compliance with the Mesa City Code, any right to any compensation for reduction to the fair market value of all or any part of the Property, as a result of City’s approval of this Agreement, any and all restrictions and requirements imposed on Owner, the Project and the Property by this Agreement, the Zoning, the City’s approval of Owner’s plans and specifications for the Project, the issuance of any permits, and all related zoning, land use, building and development matters arising from, relating to, or reasonably inferable from this Agreement or from any “land use law” (as such term is defined in the aforementioned statute sections). The terms of this Waiver shall run with all land that is the subject of this Agreement and shall be binding upon all subsequent landowners, assignees, lessees and other successors, and shall survive the expiration or earlier termination of this Agreement.

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

15.24 Legacy Cares Inc. The Parties acknowledge that the Owner has leased the Property to Legacy Cares Inc., to develop the Property pursuant to the Lease. Legacy Cares Inc., by executing this Agreement and the Assumption of Obligations, attached hereto as **Exhibit G**, agrees to assume and be bound by the obligations of this Agreement.

15.25 Oversized Required Infrastructure Improvements. Pursuant to and in compliance with Mesa City Code, the City's standard City Share process will be applied to the Project for oversized regional improvements requested by the City.

15.26. Attorneys' Fees Provisions.

(a) Between the Parties. In the event of a breach by any Party and commencement of a subsequent legal action in an appropriate forum, the prevailing Party in any such dispute will be entitled to reimbursement of its reasonable attorneys' fees and court costs, including, but not limited to, its reasonable costs of expert witnesses, transportation, lodging and meal costs of out-of-town parties and witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental costs of such dispute.

(b) Third-Party Claim Naming Owner and/or Lessee. Owner and/or Lessee at its sole cost and expense will defend the validity and enforceability of this Agreement in the event of any proceeding or litigation which challenges the authority of Owner and/or Lessee to enter into or perform any of its obligations in this Agreement 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. City will cooperate with Owner and Lessee in connection with any action by a Third Party in which Owner or Lessee (but not City) is a party in such action and the benefits of this Agreement to City are challenged.

(c) Third-Party Claim Naming City. City at its sole cost and expense, and by counsel of its own choosing, will defend the validity and enforceability of this Agreement in the event of any proceeding or litigation arising from its terms that names City as a party (either naming City alone or including Owner and/or Lessee) to such proceeding or litigation which challenges (i) the authority of City to enter into this Agreement or perform any of its obligations under this Agreement, (ii) the validity or any term or condition of this Agreement, or (iii) subject to City's rights described in Section 15.23 of this Agreement, the compliance of this Agreement with any state or federal law (including but not limited to a claim or determination arising under A.R.S. § 41-194.01; provided, however, that Owner and/or Lessee (within thirty days of written demand from City) must reimburse City for one-half of City's attorneys' fees and costs incurred in any such action; and further provided that City has no obligation to participate in such action if City has incurred attorneys' fees in excess of \$50,000.00 after reimbursement by Owner and/or Lessee.

(d) Severability. The severability and reformation provisions of Section 15.4 will apply in the event of any successful challenge to this Agreement.

15.27 Survival. The provisions contained in Section 4.5 (Rights of Ways and Easements), Section 5, (Utility Services), Section 7, (Prohibited Uses), Section 14.1 (Indemnity), and Section 15.22 (Proposition 207 Waiver) shall survive the execution and delivery of this Agreement and the rescission, cancellation, expiration or termination of this Agreement.

15.28 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.

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: Christopher J. Brady
Its: City Manager

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
James N. Smith, City Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by Christopher J. Brady, the City Manager of the City of Mesa, Arizona, an Arizona municipal corporation, who acknowledged that he signed the foregoing instrument on behalf of City.

Notary Public

My commission expires:

OWNER:

PACIFIC PROVING, LLC,
a Delaware limited liability company

By: Andrew Cohn
Its: Authorized Representative

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 11th day of MARCH, 2021,
by ANDREW COHN the Authorized Rep of PACIFIC PROVING LLC,
INC., a Delaware limited liability company.

Lisa Bullington
Notary Public

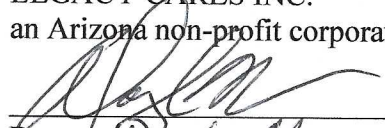
My commission expires:

APRIL 12, 2023



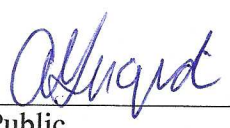
LESSEE:

LEGACY CARES INC.
an Arizona non-profit corporation


By: Douglas Moss
Its: President

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 12th day of March, 2021,
by Douglas Moss the President of LEGACY CARES INC., an
Arizona non-profit corporation.



Notary Public

My commission expires:

1922

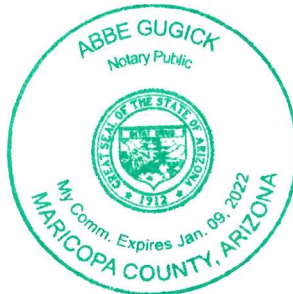


EXHIBIT A

LEGACY SPORTS ZONING EXHIBIT LEGAL DESCRIPTION

A portion of land being situated within Section 34 and the West Half of Section 35, Township 1 South, Range 7 East of the Gila and Salt River Meridian, Maricopa County, Arizona, being more particularly described as follows:

COMMENCING at a 3 inch Maricopa County DOT brass cap in hand hole accepted as the Northwest corner of said Section 34, from which a 3 inch Maricopa County DOT brass cap flush accepted as the West Quarter corner thereof bears South 01°09'59" East, 2640.78 feet;

Thence South 01°09'59" East, 396.98 feet along the west line of the Northwest Quarter of said Section 34;

Thence leaving said west line, North 88°50'01" East, 60.00 feet to the **POINT OF BEGINNING**;

Thence South 46°15'28" East, 14.12 feet;

Thence North 88°39'03" East, 460.56 feet to the beginning of a tangent curve, concave southerly, having a radius of 1230.00 feet;

Thence easterly along said curve, through a central angle of 04°37'56", an arc length of 99.44 feet to a non-tangent line;

Thence South 03°16'59" West, 10.00 feet to a non-tangent curve, concave southwesterly, having a radius of 1220.00 feet, the center of which bears South 03°16'59" West;

Thence southeasterly along said curve, through a central angle of 35°59'45", an arc length of 766.46 feet to a non-tangent line;

Thence South 50°43'16" East, 283.00 feet to the beginning of a tangent curve, concave northeasterly, having a radius of 1090.00 feet;

Thence southeasterly along said curve, through a central angle of 68°30'25", an arc length of 1303.28 feet to a tangent line;

Thence North 60°46'19" East, 202.36 feet;

Thence South 28°54'47" East, 137.83 feet to the southerly right of way line of SR 24 described within the Order of Immediate Possession filed as Document No. 2019-0309832, Maricopa County Records;

**THENCE THE FOLLOWING THREE (3) COURSES ALONG SAID
SOUTHERLY RIGHT OF WAY LINE:**

Thence North 62°24'04" East, 333.41 feet;

Thence North 67°38'39" East, 120.37 feet;

Thence North 62°24'04" East, 168.55 feet to the southwesterly line of a proposed electrical easement;

**THENCE THE FOLLOWING THREE (3) COURSES ALONG SAID
SOUTHWESTERLY LINE:**

Thence South 42°18'10" East, 793.39 feet;

Thence South 60°22'57" East, 824.06 feet;

Thence South 64°14'29" East, 489.96 feet;

Thence leaving said southwesterly line, South 06°41'37" East, 158.81 feet;

Thence South 89°40'28" East, 190.67 feet;

Thence South 00°23'45" West, 943.31 feet;

Thence South 89°18'06" West, 1161.37 feet;

Thence North 07°47'39" West, 655.99 feet;

Thence North 58°43'43" West, 539.48 feet;

Thence South 00°00'00" East, 1754.09 feet;

Thence North 89°34'13" West, 2692.11 feet to the easterly line of the Restricted Use Easement described within Docket 12949, Page 199, Maricopa County Records;

Thence North 44°34'12" West, 1358.41 feet along said easterly line;

Thence leaving said easterly line, North 01°10'02" West, 228.88 feet along a line which is 60.00 feet east of and parallel with the west line of the Southwest Quarter of said Section 34;

Thence leaving said parallel line, North 01°09'59" West, 2245.44 feet along a line which is 60.00 feet east of and parallel with the west line of the Northwest Quarter of said Section 34 to the **POINT OF BEGINNING**.

EXCEPT THAT PARCEL HEREIN DESCRIBED AS EXCEPTION A:

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

COMMENCING at a 3 inch Maricopa County DOT brass cap in hand hole accepted as the West Quarter corner of said Section 34, from which a 3 inch Maricopa County DOT brass cap flush accepted as the Southwest corner thereof bears South 01°10'02" East, 2640.88 feet;

Thence South 01°10'02" East, 235.80 feet along the west line of the Southwest Quarter of said Section 34;

Thence leaving said west line, North 88°49'58" East, 65.00 feet to the **POINT OF BEGINNING**;

Thence North 01°10'02" West, 31.89 feet along a line being 65.00 feet east of and parallel with said west line;

Thence leaving said parallel line, North 88°49'58" East, 92.00 feet;

Thence South 01°10'02" East, 75.00 feet along a line being 157.00 feet east of and parallel with said west line;

Thence leaving said parallel line, South 88°49'58" West, 51.23 feet to the easterly line of the Restricted Use Easement described within Docket 12949, Page 199, Maricopa County Records;

Thence North 44°34'12" West, 59.33 feet along said easterly line to the **POINT OF BEGINNING**.

AND EXCEPT THAT PARCEL HEREIN DESCRIBED AS EXCEPTION B:

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

COMMENCING at a 3 inch Maricopa County DOT brass cap in hand hole accepted as the West Quarter corner of said Section 34, from which a 3 inch Maricopa County DOT brass cap flush accepted as the Northwest corner thereof bears North 01°09'59" West, 2640.78 feet;

Thence North 01°09'59" West, 753.16 feet along the west line of the Northwest Quarter of said Section 34;

Thence leaving said west line, North 88°50'01" East, 65.00 feet to the **POINT OF BEGINNING**;

Thence North 01°09'59" West, 75.00 feet along a line being 75.00 feet east of and parallel with said west line;

Thence leaving said parallel line, North 88°50'01" East, 92.00 feet;

Thence South 01°09'59" East, 75.00 feet along a line being 157.00 feet east of and parallel with said west line;

Thence leaving said parallel line, South 88°50'01" West, 92.00 feet to the **POINT OF BEGINNING**.

AND EXCEPT THAT PARCEL HEREIN DESCRIBED AS EXCEPTION C:

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

COMMENCING at a 3 inch Maricopa County DOT brass cap in hand hole accepted as the West Quarter corner of said Section 34, from which a 3 inch Maricopa County DOT brass cap flush accepted as the Northwest corner thereof bears North 01°09'59" West, 2640.78 feet;

Thence North 01°09'59" West, 1785.24 feet along the west line of the Northwest Quarter of said Section 34;

Thence leaving said west line, North 88°50'01" East, 75.00 feet to the **POINT OF BEGINNING**;

Thence North 01°09'59" West, 75.00 feet along a line being 75.00 feet east of and parallel with said west line;

Thence leaving said parallel line, North 88°50'01" East, 82.00 feet;

Thence South 01°09'59" East, 75.00 feet along a line being 157.00 feet east of and parallel with said west line;

Thence leaving said parallel line, South 88°50'01" West, 82.00 feet to the **POINT OF BEGINNING**.

The above described parcel contains a computed area of 12,865,218 sq. ft. (295.3448 acres) more or less and being subject to any easements, restrictions, rights-of-way of record or otherwise.

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

Prepared by: HILGARTWILSON, LLC
2141 E. Highland Avenue, Suite 250
Phoenix, AZ 85016
Project No.: 2063
Date: August 2020



EXHIBIT A-1

LEGAL DESCRIPTION OF PROPERTY (41.7205 ACRES)

**LEGACY
REZONE AREA
LEGAL DESCRIPTION**

A portion of land as described in the Special Warranty Deed recorded in Document No. 2004-0748707, Maricopa County Records, being situated within the East Half of Section 34 and the Southwest Quarter of Section 35, Township 1 South, Range 7 East of the Gila and Salt River Meridian, Maricopa County, Arizona, being more particularly described as follows:

COMMENCING at a found 2 inch Aluminum cap accepted as the East Quarter corner of said Section 34 from which a found 3 inch Maricopa County brass cap flush accepted as the Northeast corner thereof bears North 00°41'42" West, 2631.77 feet;

Thence South 89°32'25" East, 159.39 feet along the east-west mid-section line of said Section 35;

Thence leaving said east-west mid-section line, South 00°23'45" West, 341.08 feet to the **POINT OF BEGINNING**;

Thence South 00°23'45" West, 380.25 feet to the beginning of a tangent curve, concave northwesterly, having a radius of 6065.00 feet;

Thence southwesterly along said curve, through a central angle of 04°27'09", an arc length of 471.31 feet to a non-tangent line;

Thence North 89°34'13" West, 1687.21 feet;

Thence North 00°00'00" East, 1754.09 feet;

Thence South 58°43'43" East, 539.48 feet;

Thence South 07°47'39" East, 655.99 feet;

Thence North 89°18'06" East, 1161.37 feet to the **POINT OF BEGINNING**.

The above described parcel contains a computed area of 1,817,347 sq. ft. (41.7205 acres) more or less and being subject to any easements, restrictions, rights-of-way of record or otherwise.

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

Prepared by: HILGARTWILSON, LLC
2141 E. Highland Avenue, Suite 250
Phoenix, AZ 85016
Project No.: 2063
Date: June 2020

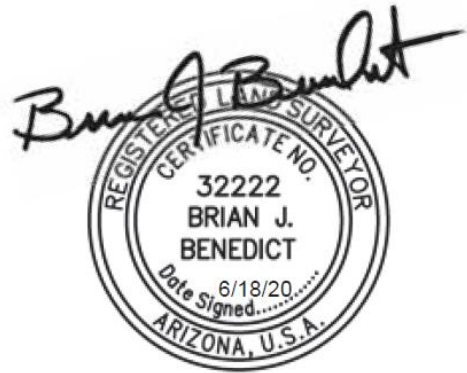
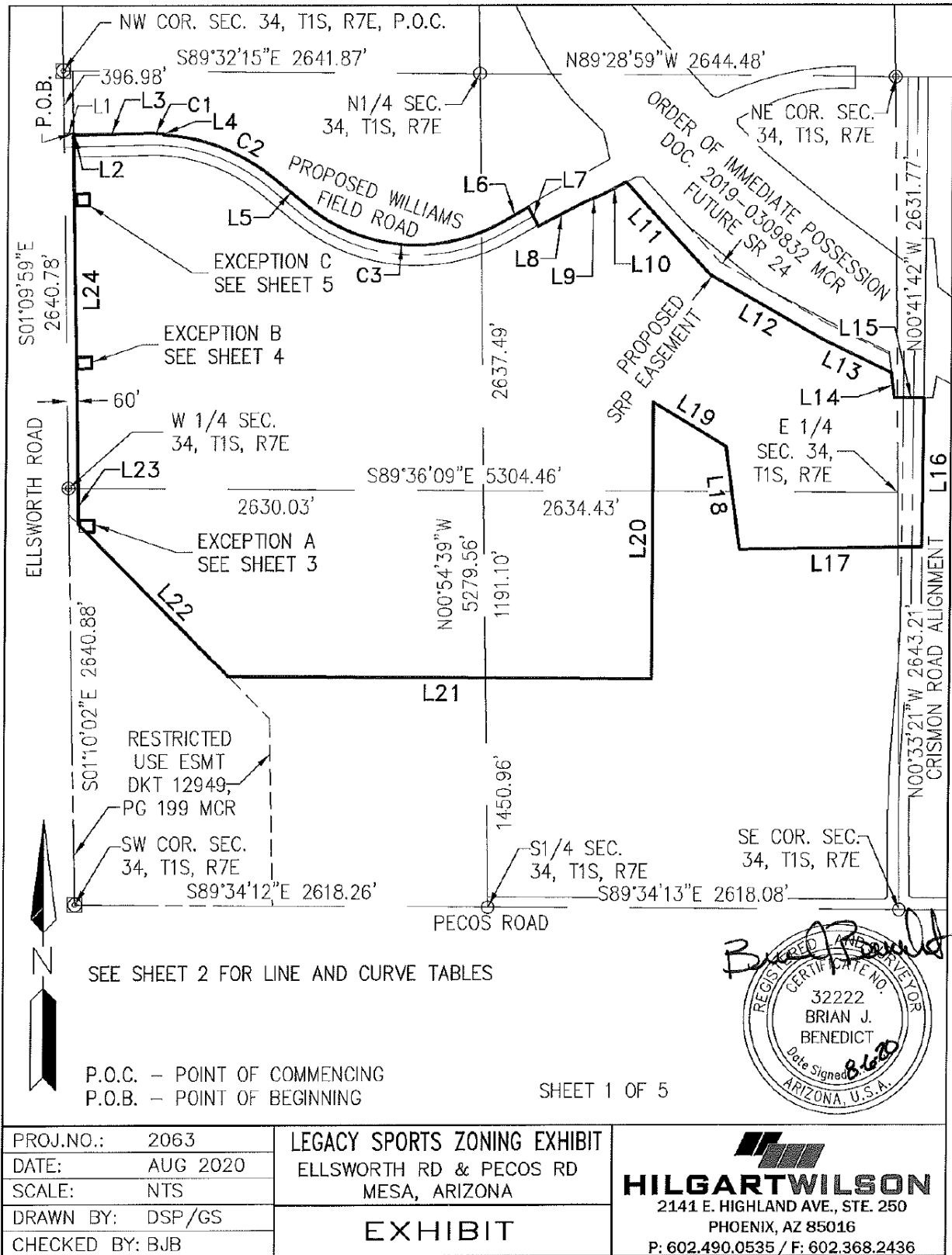


EXHIBIT B

DEPICTION OF THE PROPERTY (295.3448 ACRES)



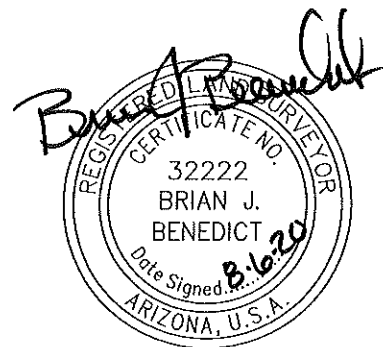
{00389486.5}

Legacy Sports PADA (00387343-27xC14DE) received from City of Mesa 20(750518.3)


LINE TABLE		
LINE NO.	DIRECTION	LENGTH
L1	N88°50'01"E	60.00'
L2	S46°15'28"E	14.12'
L3	N88°39'03"E	460.56'
L4	S03°16'59"W	10.00'
L5	S50°43'16"E	283.00'
L6	N60°46'19"E	202.36'
L7	S28°54'47"E	137.83'
L8	N62°24'04"E	333.41'
L9	N67°38'39"E	120.37'
L10	N62°24'04"E	168.55'
L11	S42°18'10"E	793.39'
L12	S60°22'57"E	824.06'

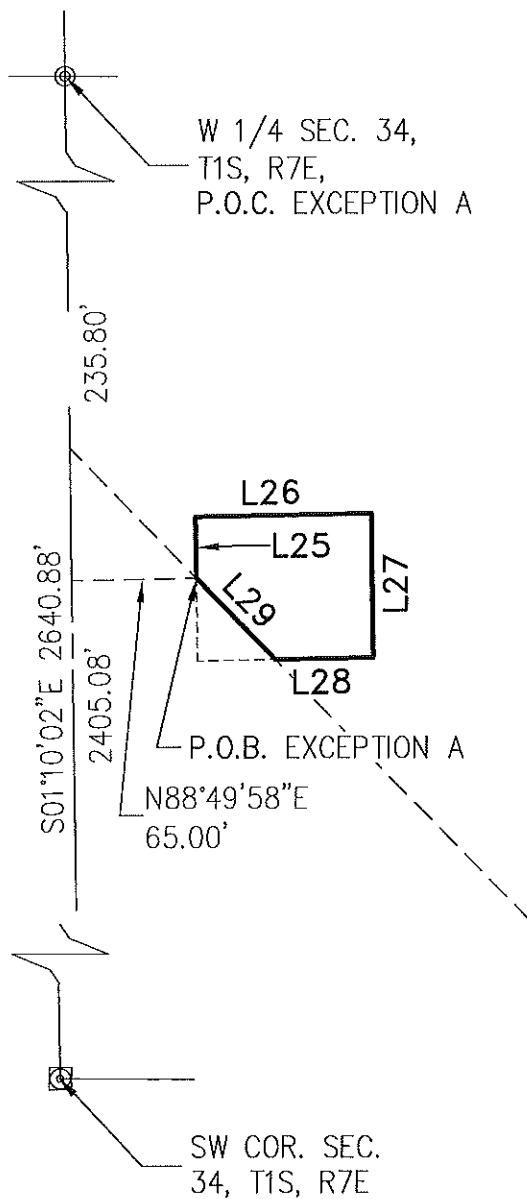
LINE TABLE		
LINE NO.	DIRECTION	LENGTH
L13	S64°14'29"E	489.96'
L14	S06°41'37"E	158.81'
L15	S89°40'28"E	190.67'
L16	S00°23'45"W	943.31'
L17	S89°18'06"W	1161.37'
L18	N07°47'39"W	655.99'
L19	N58°43'43"W	539.48'
L20	S00°00'00"E	1754.09'
L21	N89°34'13"W	2692.11'
L22	N44°34'12"W	1358.41'
L23	N01°10'02"W	228.88'
L24	N01°09'59"W	2245.44'

CURVE TABLE			
CURVE NO.	RADIUS	DELTA	LENGTH
C1	1230.00'	4°37'56"	99.44'
C2	1220.00'	35°59'45"	766.46'
C3	1090.00'	68°30'25"	1303.28'

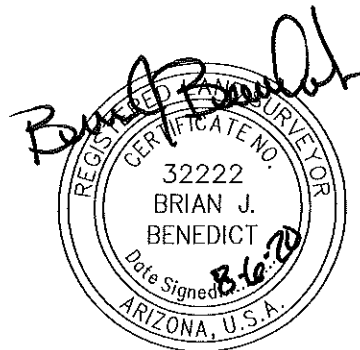


SHEET 2 OF 5

PROJ.NO.:	2063	LEGACY SPORTS ZONING EXHIBIT ELLSWORTH RD & PECOS RD MESA, ARIZONA	 HILGARTWILSON 2141 E. HIGHLAND AVE., STE. 250 PHOENIX, AZ 85016 P: 602.490.0535 / F: 602.368.2436
DATE:	AUG 2020		
SCALE:	NONE		
DRAWN BY:	DSP/GS	EXHIBIT	
CHECKED BY:	BJB		




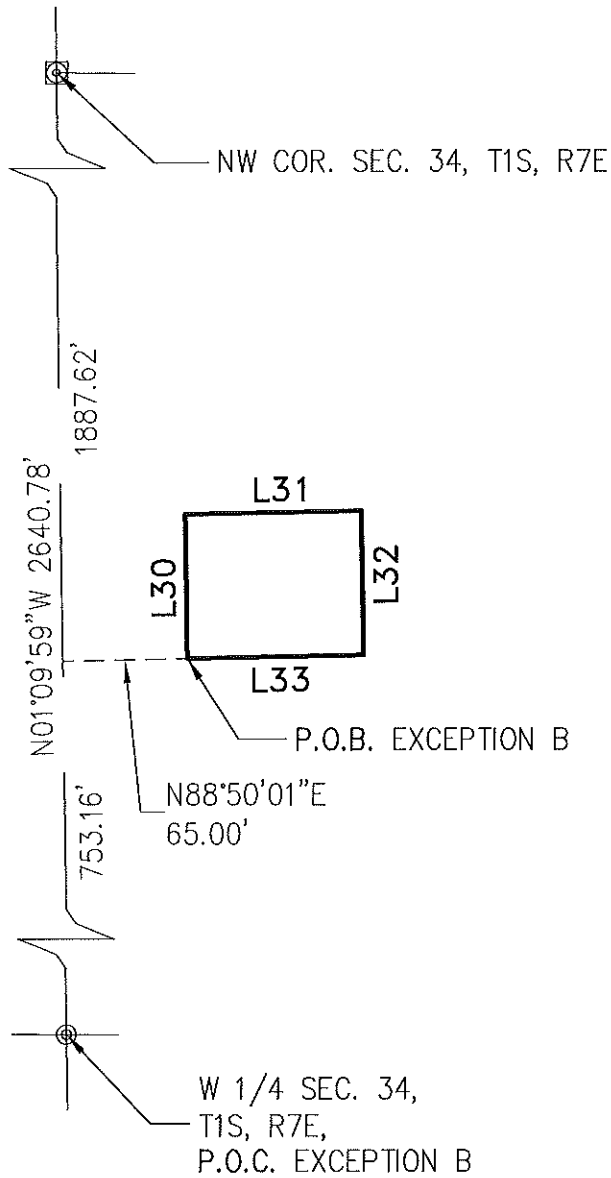
LINE TABLE		
LINE NO.	DIRECTION	LENGTH
L25	N01°10'02"W	31.89'
L26	N88°49'58"E	92.00'
L27	S01°10'02"E	75.00'
L28	S88°49'58"W	51.23'
L29	N44°34'12"W	59.33'



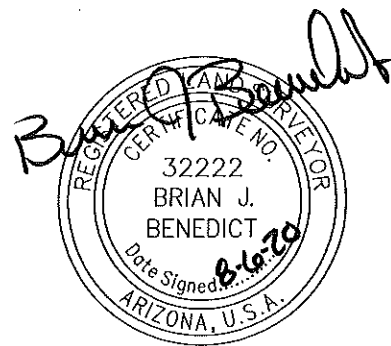
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P.O.B. — POINT OF BEGINNING

SHEET 3 OF 5

PROJ.NO.: 2063	LEGACY SPORTS ZONING EXHIBIT ELLSWORTH RD & PECOS RD MESA, ARIZONA	 HILGARTWILSON 2141 E. HIGHLAND AVE., STE. 250 PHOENIX, AZ 85016 P: 602.490.0535 / F: 602.368.2436
DATE: AUG 2020		
SCALE: NTS		
DRAWN BY: DSP/GS	EXHIBIT	
CHECKED BY: BJB		




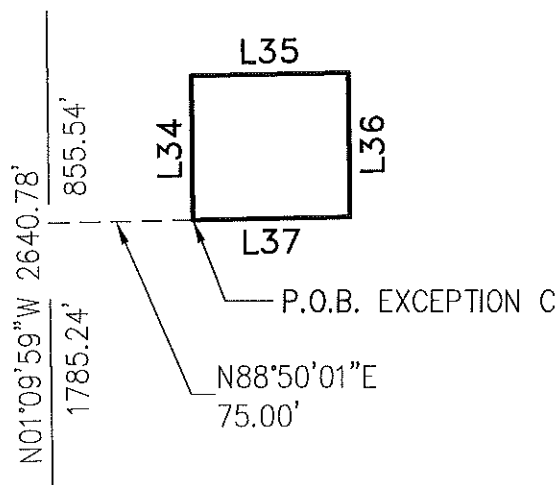
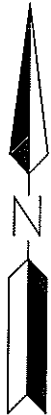
LINE TABLE		
LINE NO.	DIRECTION	LENGTH
L30	N01°09'59\"W	75.00'
L31	N88°50'01\"E	92.00'
L32	S01°09'59\"E	75.00'
L33	S88°50'01\"W	92.00'



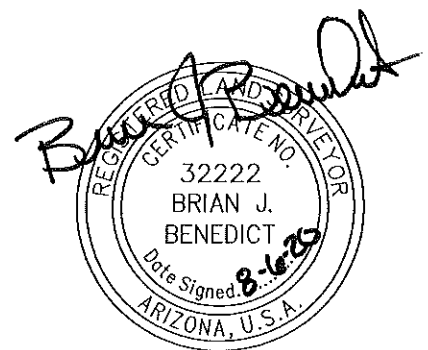
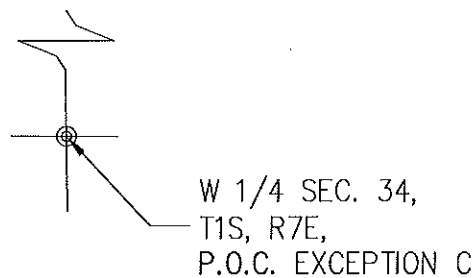
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P.O.B. — POINT OF BEGINNING

SHEET 4 OF 5

PROJ.NO.: 2063	LEGACY SPORTS ZONING EXHIBIT ELLSWORTH RD & PECOS RD MESA, ARIZONA	 HILGARTWILSON 2141 E. HIGHLAND AVE., STE. 250 PHOENIX, AZ 85016 P: 602.490.0535 / F: 602.368.2436
DATE: AUG 2020		
SCALE: NTS		
DRAWN BY: DSP/GS	EXHIBIT	
CHECKED BY: BJB		



LINE TABLE		
LINE NO.	DIRECTION	LENGTH
L34	N01°09'59\"W	75.00'
L35	N88°50'01\"E	82.00'
L36	S01°09'59\"E	75.00'
L37	S88°50'01\"W	82.00'



P.O.C. - POINT OF COMMENCING
P.O.B. - POINT OF BEGINNING

SHEET 5 OF 5


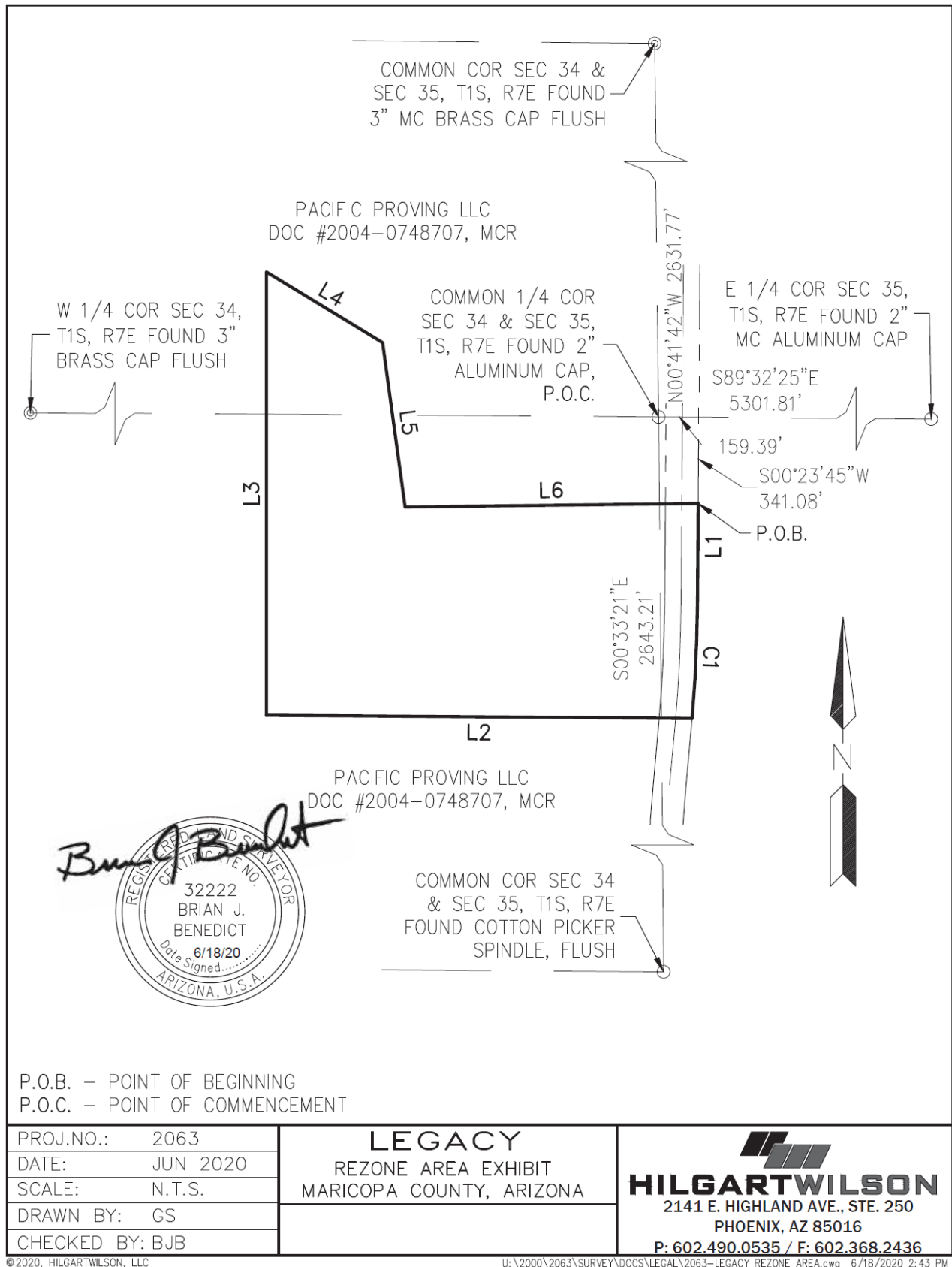
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DATE: AUG 2020		
SCALE: NTS	EXHIBIT	
DRAWN BY: DSP/GS		
CHECKED BY: BJB		

EXHIBIT B-1

DEPICTION OF THE PROPERTY (41.3 Acres)

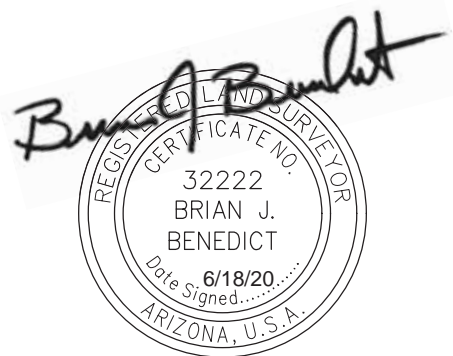


{00389486.5}

Legacy Sports PADA (00387343-27xC14DE) received from City of Mesa 20(750518.3)

LINE TABLE		
LINE NO.	DIRECTION	LENGTH
L1	S00°23'45"W	380.25'
L2	N89°34'13"W	1687.21'
L3	N00°00'00"E	1754.09'
L4	S58°43'43"E	539.48'
L5	S07°47'39"E	655.99'
L6	N89°18'06"E	1161.37'

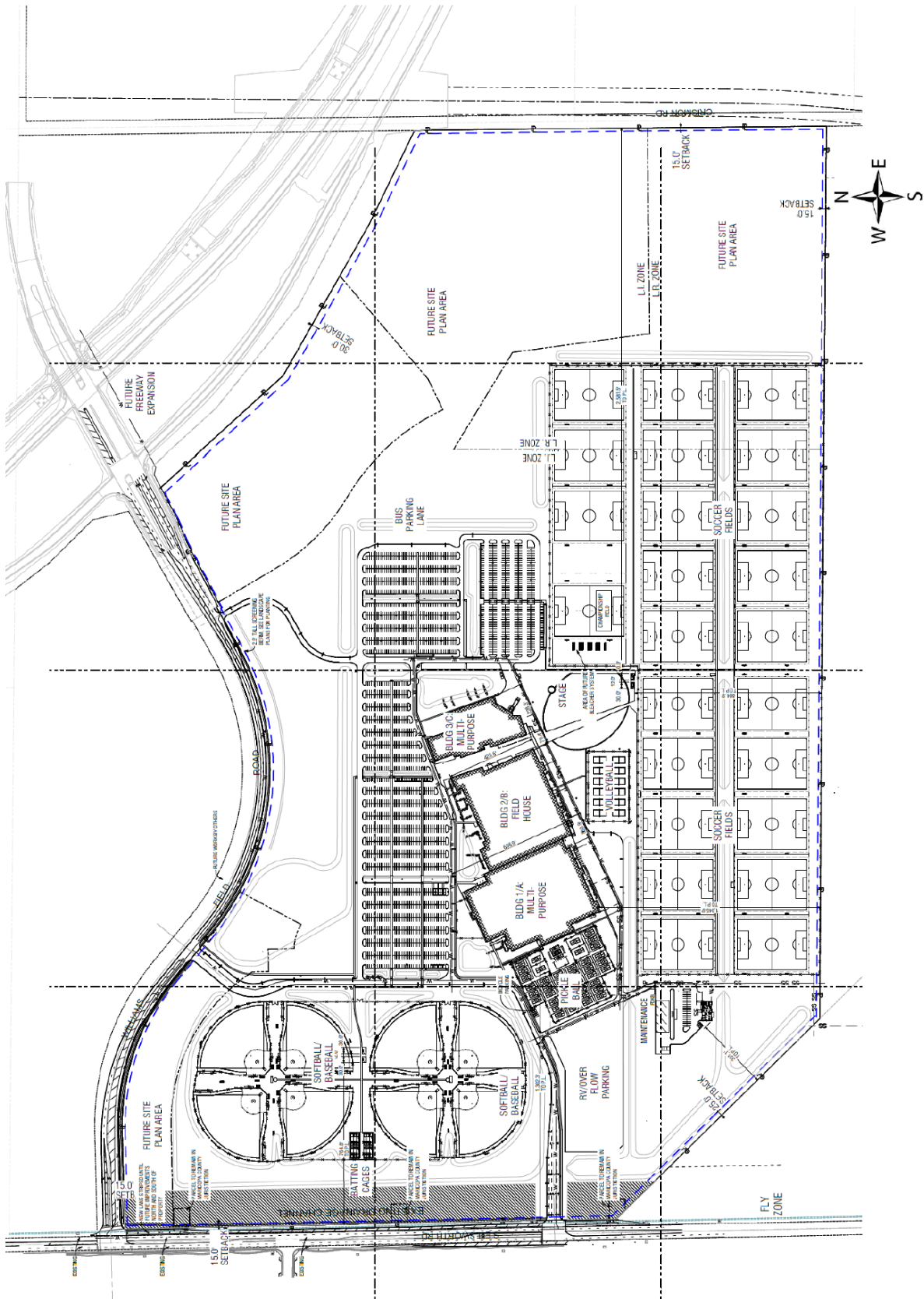
CURVE TABLE			
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C1	6065.00'	4°27'09"	471.31'



PROJ.NO.: 2063	LEGACY REZONE AREA EXHIBIT MARICOPA COUNTY, ARIZONA	 HILGARTWILSON 2141 E. HIGHLAND AVE., STE. 250 PHOENIX, AZ 85016 P: 602.490.0535 / F: 602.368.2436
DATE: JUN 2020		
SCALE: NONE		
DRAWN BY: GS		
CHECKED BY: BJB		

EXHIBIT C

SITE PLAN



{00389486.5}

Legacy Sports PADA (00387343-27xC14DE) received from City of Mesa 20(750518.3)

EXHIBIT D
PROHIBITED USES

Prohibited Land Uses on ±295 acres to be zoned Light Industrial (LI)

Towing and impound

Building materials and services

Light Fleet-Based Services

Medical Marijuana Dispensaries

Medical Marijuana Cultivation Facilities

Recreational Marijuana Dispensaries

Parking, Commercial

Plant nurseries and garden centers

Tattoo and body piercing parlors

Recycling facilities

Contractor's yards

Mini Storage

Outdoor storage

Overnight RV Parking and camping (including but not limited to motorhomes, campervans, caravans, fifth-wheel trailers, popup campers, truck campers, tents, and horse and auto trailers with living quarters), except those participating in scheduled, hosted sporting events on the property, for a period of not more than three days (72 consecutive hours) within any seven-day period, such events not to run concurrently.

Prohibited Land Uses on ±41 acres to be zoned Leisure and Recreation (LR)

Overnight RV Parking and camping (including but not limited to motorhomes, campervans, caravans, fifth-wheel trailers, popup campers, truck campers, tents, and horse and auto trailers with living quarters), except those participating in scheduled, hosted sporting events on the property, for a period of not more than three days (72 consecutive hours) within any seven-day period, such events not to run concurrently.

The prohibited land uses listed above shall be interpreted in the same manner by the City's Zoning Administrator as he/she interprets any other land uses as defined in the Mesa Zoning Ordinance.

Legacy Sports PADA (00387343-27xC14DE) received from City of Mesa 20(750518.3)

EXHIBIT F

REQUIRED PUBLIC INFRASTRUCTURE IMPROVEMENTS

Williams Field Road South Side Improvements:

The following public infrastructure represents a general list of half street improvements adjacent to the Property. The final, approved improvement plans and Traffic Impact Analysis (TIA) will ultimately govern specific required improvements necessary for access to the Property:

- Right-of-way and easement (temporary, permanent, or otherwise) dedication in accordance with City of Mesa Standard Detail M-19.01 and City Code prior to issuance of any building permit for the Project.
- Pavement (including ±300' connection within ADOT SR24 right-of-way)
- Curb
- Gutter
- Sidewalk and ADA Ramps
- Driveway Access Points
- Turn Lanes based on recommendations from the final approved Traffic Impact Analysis
- Deceleration Lanes
- Bike lanes
- Signing and Striping
- Streetlights
- Water Lines
- Dry Utilities/Trenching
- Landscape in the right-of-way that is required by City
- Traffic signal at Williams Field Road and Legacy Drive (not eligible for reimbursement)

Ellsworth Road East Side Improvements (not eligible for reimbursement):

The following public infrastructure improvements represents a general list of half street improvements adjacent to the Property. The final, approved improvement plans and TIA will ultimately govern specific required improvements necessary for access to the Property:

- Right-of-way and easement (temporary, permanent or otherwise) dedication in accordance with City of Mesa Standard Detail M-19.01 and City Code prior to issuance of any building permit for the Project.
- Pavement
- Curb
- Gutter
- Sidewalk and ADA Ramps

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Legacy Sports PADA (00387343-27xC14DE) received from City of Mesa 20(750518.3)

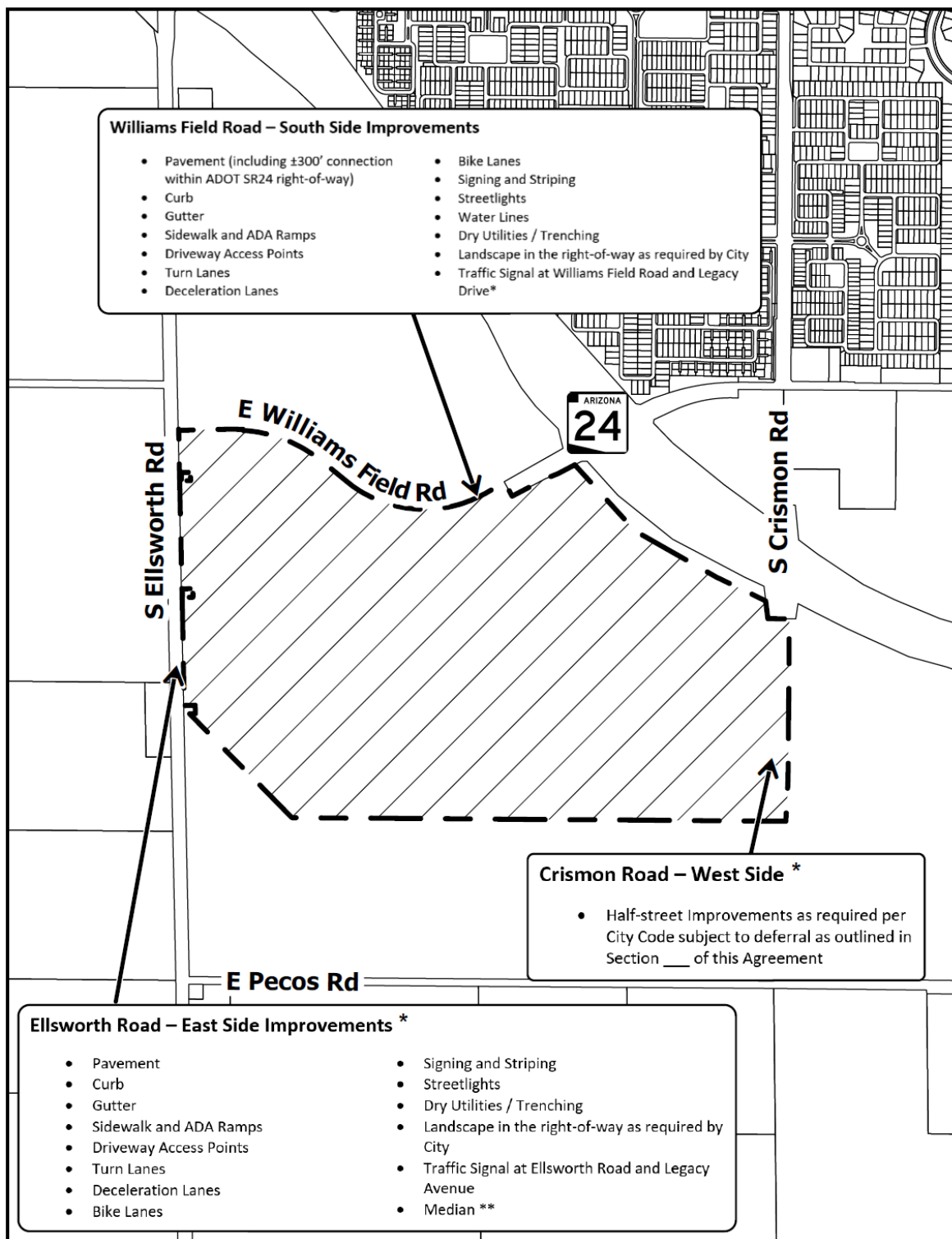
- Driveway Access Points
- Turn Lanes based on recommendation from the final approved Traffic Impact Analysis
- Deceleration Lanes
- Bike lanes
- Signing and Striping
- Streetlights
- Dry Utilities/Trenching
- Landscape in the right-of-way that is required by City
- Traffic signal at Ellsworth Road and Legacy Avenue
- Median (modifications to accommodate entrance at Legacy Avenue)
- Sewer line through private property within a minimum 20' PUF (±1,470 LF extension north from an existing sewer line in Pecos Road to the Property as generally depicted in Exhibit F2)

Crismon Road West Side Improvements (not eligible for reimbursement):

- Right of Way and easement dedication in accordance with City of Mesa Standard Detail M-19.01 and City Code subject to deferral as outlined in Section 4.3 of this Agreement.
- Half street improvements as required under City Code subject to deferral as outlined in Section 4.3 of this Agreement.

EXHIBIT F-1

DEPICTION OF REQUIRED PUBLIC INFRASTRUCTURE IMPROVEMENTS



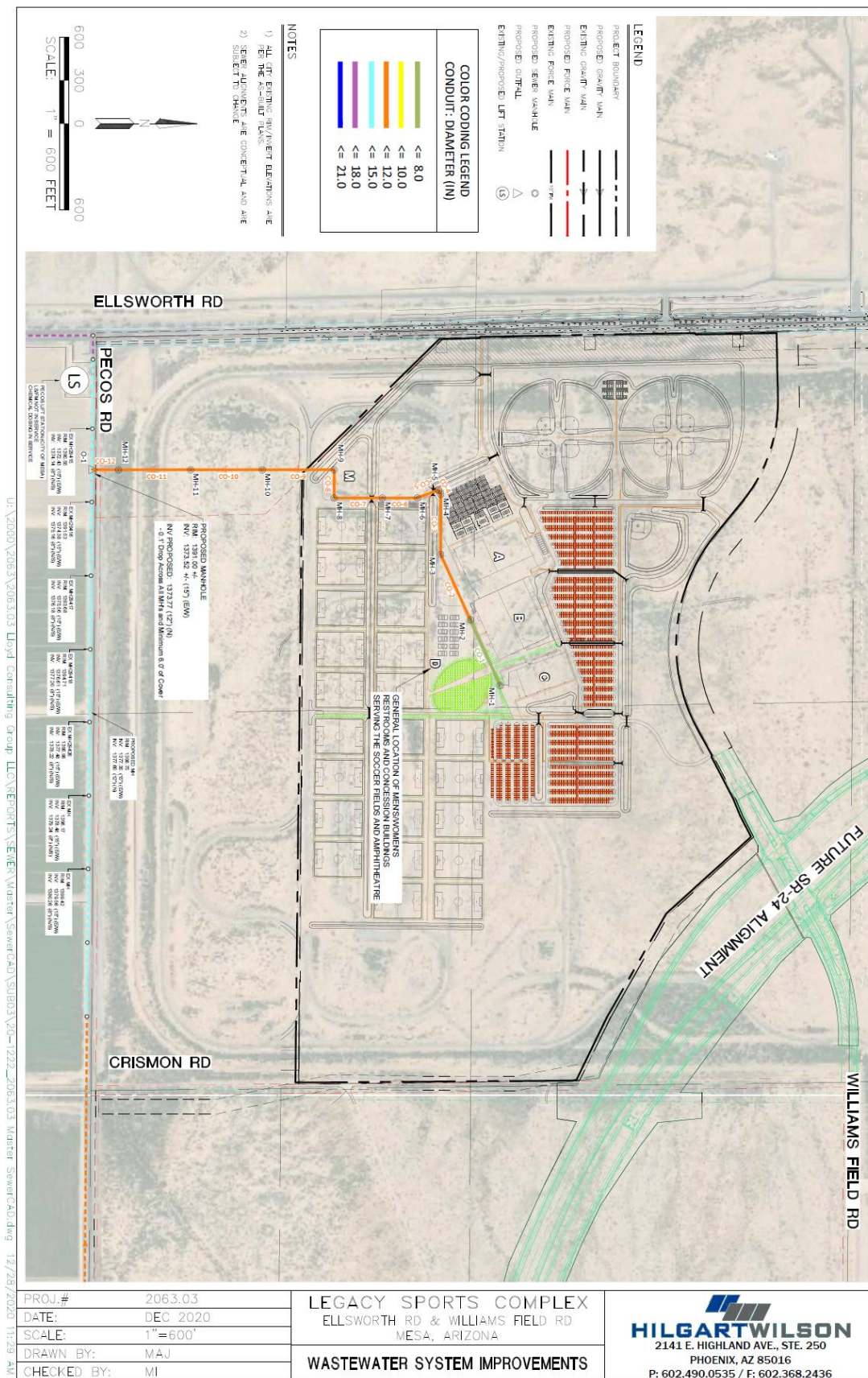
* Not Eligible for Reimbursement

** Modifications to accommodate entrance at Legacy Avenue

{00389486.5}

Legacy Sports PADA (00387343-27xC14DE) received from City of Mesa 20(750518.3)

EXHIBIT F-2

 $\{00389486.5\}$

Legacy Sports PADA (00387343-27xC14DE) received from City of Mesa 20(750518.3)

EXHIBIT H

CITY OF MESA INSURANCE REQUIREMENTS

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

- A. Liability. During the Term of the Agreement, Owner or Lessee shall provide insurance covering the Owner or the Lessee and endorsing City as an additional insured 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 \$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.
- B. Property. During the period of any construction involving the Public Infrastructure Improvements, builder's risk insurance on an all-risk, replacement cost basis for the Public Infrastructure Improvements.
- C. Contractor. During the period of any construction involving the Public Infrastructure Improvements, each of the general or other contractors with which the Owner or Lessee contracts for any such construction will be required to carry liability insurance of the type and providing the minimum limits set forth below:
 - (1) Workman's Compensation insurance and Employer's Liability with limits of required by Applicable Law.
 - (2) Commercial general liability insurance on a \$5,000,000.00 per occurrence basis providing coverage for (and endorsing the City as additional insured for):
 - Products and Completed Operations
 - Blanket Contractual Liability
 - Personal Injury Liability
 - Broad Form Property Damage X.C.U.
 - (3) Business automobile liability including all owned, non-owned and hired autos with a limit of liability of not less than \$1,000,000.00 combined single limit for personal injury, including bodily injury or death, and property damage.
- D. Architect. In connection with any construction involving the Public Infrastructure Improvements, the Owner or Lessee'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 Property and the Public Infrastructure Improvements.
- E. Engineer. In connection with any construction involving the Public Infrastructure Improvements, the Owner or Lessee'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 Property and the Public Infrastructure Improvements.

- F. CPI Adjustments. The minimum coverage limits set forth above will be adjusted every five (5) years by rounding each limit up to the million-dollar amount which is nearest the percentage of change in the Consumer Price Index (the "CPI") determined in accordance with this paragraph. In determining the percentage of change in the CPI for the adjustment of the insurance limits for any year, the CPI for the month October in the preceding year, as shown in the column for "All Items" in the table entitled "All Urban Consumers" under the "United States City Averages" as published by the Bureau of Labor Statistics of the United States Department of Labor, will be compared with the corresponding index number for the month of October one (1) year earlier.
- G. Primary Coverage. Owner or Lessee's insurance coverage will be primary insurance with respect to City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by City, its officers, officials, agents, and employees will be in excess of the coverage provided by Owner or Lessee and will not contribute to it.
- H. Indemnities. Coverage provided by the Owner or Lessee will not be limited to the liability assumed under the indemnification provisions of this Agreement.
- I. Waiver of Subrogation. All policies will contain a waiver of subrogation against City, its officers, officials, agents, and employees.
- J. Notice of Cancellation: Owner and/or Lessee will use reasonable and good faith efforts to cause each insurance policy to include provisions to the effect that it may not be suspended, voided, cancelled, or reduced in coverage except after thirty (30) days' prior written notice has been given to City. Such notice must be provided directly to City in accordance with the provisions of Section 15 of this Agreement.
- K. Acceptability of Insurers: Insurance is to be placed with insurers duly licensed of approved unlicensed companies in the State of Arizona and with an "A.M. Best" rating of not less than A- VII. City in no way warrants that the above-required minimum insurer rating is sufficient to protect Owner from potential insurer insolvency.
- L. Endorsements and Verification of Coverage: Owner and/or Lessee will furnish City with endorsements naming the City, its officers, officials, agents, and employees as additional insureds. The endorsements will be original certificates of insurance on ACCORD forms approved by City. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict of limit coverage will be clearly noted on the certificate of insurance.
- (1) All certificates are to be received and approved by City before the Commencement of Construction. Each insurance policy must be in effect at or prior to the Commencement of Construction and must remain in effect for the duration of the Agreement. Failure to maintain the insurance policies as required by this Agreement or to provide timely evidence of renewal will be considered a material breach of the Agreement.
- (2) All certificates required by this Agreement will be sent directly to City of Mesa, Attn: Lisa Lorts, Risk Manager, 20 E. Main Street, P.O. Box 1466, Mesa, Arizona 85211-1466. City reserves the right to require complete, certified copies of all insurance policies and endorsements required by this Exhibit H at any time.
- M. Approval: Any modification or variation from the insurance requirements in this Exhibit G must have prior approval from the City Manager (or designee), whose decision will be

final. Such action will not require formal contract amendment but may be made by administrative action.

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