

## PERMIT REGARDING FILLING A LARGE WATER BODY

A. This Permit is granted by the City of Mesa, Arizona, (“City”) to Action Zone Business 17, LLC, a Utah limited liability company f/k/a Power 17, LLC (“Owner”) and effective this \_\_\_\_ day of September 2021 (“Effective Date”).

B. Owner owns the following real property (the “Owner’s Property”) in Mesa, Maricopa County, Arizona:

Address: \_\_\_\_\_

consisting of approximately thirty-seven (37) acres of land located southeast of the intersection of Power Road and Warner Road with Parcel Number 304-30-009X.

C. Owner proposes to install a large water feature on the Property which will constitute an “Artificial Lake” – a body of water with a surface area greater than 12,320 square feet - as defined in Mesa City Code (“M.C.C.”) 8-10-1 (the “Pool”).

D. Under M.C.C. 8-10-7(A), filling an “Artificial Lake” is unlawful within the water service area of the City except where the Lake is to be filled exclusively with certain sources of water, including effluent, and requires the authorization in the form of a Permit from the City.

E. The City Council of the City, being satisfied that certain conditions will be met regarding the Pool in accordance with MCC 8-10-7, approved the construction, installation, filling and refilling of the Pool by Resolution #\_\_\_\_, subject to compliance by Owner with the terms and conditions of this Permit.

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference.

2. Permitted Lake. City hereby permits Owner to construct, install, fill, refill and otherwise own, operate and maintain the Pool as described in the Recitals on the Property, provided it is filled and refilled exclusively with effluent, and in accordance with all relevant plans approved by the City. Owner may withdraw the effluent in the form of long-term storage credits from a duly permitted well located on the Property, or on an immediately adjacent parcel. Pool usage and well withdrawals shall not exceed twenty-five (25) acre-feet per year on average. Measures must be taken to minimize evaporation loss of water from the Pool. In addition, Owner shall implement an effective water conservation program.

3. City Service and Backflow Prevention. Owner agrees that it shall obtain water utility service for all domestic, landscaping, and other uses not related to the Pool from the City. Owner acknowledges that all City utility service is made available subject to the terms and limitations of, and Owner's continued compliance with, the City's Terms and Conditions for the Sale of Utilities, the Mesa City Code, all other Applicable Laws, the timely payment of applicable rates, fees and charges, and in the manner provided to other similarly situated customers, without special rights or remedies. Owner further acknowledges that as a result of the Pool and the use of a well to recover effluent based long-term storage credits to fill same, Owner will be required to install backflow prevention devices at the point of service as well as at various points of use on the Property, all in accordance with MCC Title 8, Chapter 1.

4. Compliance with Laws. Owner shall comply with all applicable Federal, State, and Local laws, regulations, and ordinances, including but not limited to the Arizona Groundwater Code, (ARS 45-401 et seq) and the Arizona Lakes Bill (ARS 45-131 et seq). Owner shall comply with any applicable conservation requirements under the Management Plans a adopted and administered directly by ADWR. Owner shall comply with all applicable City of Mesa Code requirements, ordinances, and regulations. This Permit does not modify, change, or alter the City of Mesa Code requirements, ordinances, or regulations; accordingly, separate from this Permit, Owner shall obtain all other applicable permits and approvals as required by the City of Mesa for the construction or installation of improvements on the Property, including but not limited to, the Pool.

5. Effluent. Owner, at its sole cost and expense, shall be responsible for obtaining effluent supplies to be used in the Pool and nothing in this Permit creates any obligation on the part of Mesa with respect to water supplies to be used in the Pool or otherwise.

6. Liability and Damages. Owner shall be solely responsible and liable for any and all damages, injuries, and losses arising from, or related to, the design, construction, installation, location, operation, or maintenance of the Pool.

7. Termination. If there is a breach of any term, condition, or requirement of this Permit by Owner that Owner does not fully cure within thirty (30) calendar days of Mesa's notice to Owner of such breach, Mesa may terminate this Permit. Mesa shall incur no expense or liability for terminating the Permit.

8. Term. This Permit shall have a term of twenty (20) years unless terminated earlier pursuant to Section 7 by City.

9. General Provisions. No waiver of any default of breach of any of the terms or conditions of this Permit by Owner shall be construed to be a waiver of any succeeding breach or default. This Permit shall be governed by the laws of the State of Arizona without regard to choice of law rules. Any modifications of this Permit must be in writing. Assignment of this Permit must be

approved by the City in advance in writing, which approval shall be at the City's sole and absolute discretion.

10. Notice of Service. All notices and demands required or permitted by this Permit shall be in writing and shall be deemed to have been given properly when (i) sent by certified mail (postage fully prepaid) to the respective address below or to such other address furnished by either Party to the other pursuant to this section; or (ii) delivered personally to the Parties hereto.

<u>Notice to Owner</u>	<u>Notice to Mesa</u>	(and)	<u>Notice to Mesa</u>
At the address for Owner's Property as listed in Recital A to this Agreement:	Attn: City Attorney City of Mesa P.O. Box 1466 Mesa, AZ 85211-1466		Attn: Water Director City of Mesa P.O. Box 1466 Mesa, AZ 85211-1466

**CITY OF MESA, a municipal corporation**

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Jake West, Water Resources Department Director

**Acknowledged and Agreed**

**ACTION ZONE BUSINESS 17, LLC, OWNER**

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