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WHEN RECORDED RETURN TO:

City of Mesa
Attn: Real Estate
20 E. Main Street
Mesa, AZ 85211

**PRE-ANNEXATION AND DEVELOPMENT AGREEMENT
(AVALON CROSSING)**

**CITY OF MESA, ARIZONA,
An Arizona municipal corporation**

AND

**PACIFIC PROVING, L.L.C.,
a Delaware limited liability company**

THIS PRE-ANNEXATION DEVELOPMENT AGREEMENT (this "Agreement") is entered into by and between the City of Mesa, an Arizona municipal corporation (the "City"), and Pacific Proving, L.L.C., a Delaware limited liability company ("Developer"). City and Developer are sometimes referred to herein collectively as the "**Parties**," or individually as a "**Party**."

RECITALS:

A. This Agreement pertains to a portion of real property already annexed into the City of Mesa, and a portion of real property located within Maricopa County and outside of the City's municipal boundaries which the Developer is requesting to annex into the City concurrently with City Council consideration of this Agreement. More specifically, the real property consists of approximately one hundred sixty-two (162) acres in Maricopa County, Arizona (the "County Property"), and approximately twenty (20) acres in the City of Mesa, located south of Williams Field Road, north of the proposed alignment of the "Gateway Freeway" portion of State Route 24, east of Crismon Road, and west of Signal Butte Road, as more particularly described on Exhibit A and depicted on Exhibit B attached hereto and made a part hereof (Collectively the "**Property**").

B. The Parties desire that the County Property be annexed into the corporate limits of the City and the Property be developed as an integral part of the City. A blank annexation petition has been filed with Maricopa County and meetings and hearings have been held in connection with the annexation of the County Property.

C. Concurrently with City Council's consideration for approval of this Agreement and the annexation, Developer has submitted an ^{Unofficial Document} application (identified as Case No. ZON18-00951) to grant the Property the zoning designation of Planned Community District (the "**PCD**") as described in the Zoning Ordinance of the City of Mesa and, as required by the Zoning Ordinance, and submitted the Avalon Crossing Community Plan dated June 27, 2019 (the "**Avalon CP**"). The PCD together with the Avalon CP, if approved by Council, will constitute the zoning on the Property (collectively referred to as the "**Avalon PCD**"). This Agreement, along with the annexation and zoning requests, may be placed on the City Council agenda as a single item with multiple sub-parts that may be approved by City Council in one motion.

D. The development of the Property is predominantly residential, but also has a commercial component (the "**Project**"). The goal of the development of the Project is to integrate and unify these distinctive, yet complementary components.

E. The development of the Project pursuant to this Agreement and the Avalon PCD is acknowledged by the Parties to be consistent with the Mesa 2040 General Plan (the "**General Plan**").

F. The Parties also acknowledge and agree that development of the Property pursuant to the Avalon PCD will result in planning and economic benefits to the City and its residents by: (a) providing a cohesive development that integrates well with the surrounding area, and (b) providing the City with a master planned community, offering an array of opportunities for retail, shopping, and recreation, as well as, diversity of residential neighborhoods and housing choices.

G. The Parties are entering into this Agreement pursuant to the provisions of A.R.S. § 9-500.05 in order to facilitate the annexation, municipal zoning designation and development of the Property by providing for, among other things: (i) phasing of the Development; (ii) the construction and installation of certain infrastructure improvements; (iii) limiting uses on the Property; and (iv) other matters related to the development of the Property.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises and mutual promises set forth in this Agreement, the City and Developer state, confirm, and agree as follows:

1. **Recitals.** The Parties hereby agree that the foregoing recitals are true and accurate and are hereby incorporated into this Agreement.

2. **Planned Community District Development Regulations.** The development of the Project 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, which apply to the development of the Project as of the date of any application or submission (collectively the "Applicable Laws"), this Agreement and the Avalon PCD. Further, the Avalon CP includes: general guidelines for the design and architectural elements of the buildings; administrative procedures; land use groups, permitted land uses, and allowed densities and intensities; and the Master Drainage Report, Master Water Report, ^{Unofficial Document} Master Wastewater Report and Traffic Impact Analysis (collectively, the "Avalon CP Reports"). The Avalon CP and Avalon CP Reports include variations to the General Site Development Standards (as that term is defined in the Mesa Zoning Ordinance), such as lot coverages, lot sizes, lot widths, lot depths, lot mixture, setbacks, building heights, building envelopes and open space requirements and variations to certain subdivision and off-site improvement regulations in Mesa City Code Title 9 (collectively, the "Development Modifications"). Certain Development Modifications proposed within the Avalon CP Reports are subject to further submittals and approvals. The Project may be constructed as permitted with the Development Modifications subject to the terms and limitations of, and compliance with, the Mesa City Code (including but not limited to §§ 9-5-3(C), 9-6-7(C), and 9-8-04(C) and all other Applicable Laws.

3. **Site Plan.** Each site plan for development within the Property shall specify the permitted uses on the Property by referencing the sub-land use groups or specific uses. The permitted uses on a specific site shall be limited to those uses specified on the approved site plan. All other uses not specified are prohibited.

4. **Phasing.** The Developer may develop the Project in phases. In the first phase of residential development on the Property, the Developer, at its sole cost and expense, shall construct the community park as further described in the Avalon CP. Additionally, prior to development within any development unit on the Property, Developer shall submit, for City review and approval, a phasing schedule and infrastructure phasing plan for the development unit which will include, but is not limited to, a plan for the interim use, maintenance and management of the undeveloped phase or phases.

5. **Private Neighborhood Parks.** Developer, at its sole cost and expense, is responsible for the maintenance of all improvements located within any and all private neighborhood parks, community open spaces and plazas contemplated by the Avalon PCD and designated as such on any approved final plats or site plans.

6. **Maintenance Agreement.** Developer will enter into a maintenance agreement for the private parks (including the community park), the parkway (if a parkway is requested by the Developer) and for other maintenance purposes in substantially the form attached hereto as **Exhibit C.** The maintenance agreement will set forth the respective rights and obligations of the Developer and the City and among other things obligates the Developer, at its sole cost and expense, to maintain the parks and certain landscape improvements, repair and replace asphalt surfaces, stub-out all underground utilities in the parkway and reimburse the City for the additional cost of maintenance, repair or replacement of certain non-standard improvements.

7. **Utility Improvements.** Developer, at its sole cost and expense, shall design, construct, install and connect all utility system improvements in accordance with the sizes, quantities and locations (including extension of lines across all frontages) for the provision of utility service to the Project and Property, including but not limited to, those identified in the Avalon CP Reports (the "**Improvements**"). All Improvements must comply with the requirements of the Mesa City Code and other applicable City Standards, including the Engineering Design Standards. Developer shall be responsible for payment of all applicable impact, development and permitting fees.

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8. **Utility Service.** City utility services will be provided in the manner provided to other similarly situated customers of the City subject to the terms and limitations of, and compliance with, the Applicable Laws (including, but not limited to, Mesa City Code Title 8, Chapter 10), the Terms and Conditions for the Sale of Utilities, as well as the payment of applicable utility rates, fees and charges as adopted and in effect.

9. **Drainage Improvements.** Developer, at its sole cost and expense, shall construct or arrange for the construction of drainage improvements in phases and in accordance with the approved Master Drainage Report (and any amendments approved by the City) and Applicable Laws.

10. **Transportation.**

10.1 **Transportation Master Plan.** The City has reviewed and approved the Traffic Impact Analysis prepared by Pacific Proving, LLC (the "**Master Transportation Study**") which identifies street improvements necessary to develop the Property. The Master Transportation Study may be amended over time subject to review and approval by the City. Additionally, Developer shall update the Master Transportation Study, for review and approval by the City, if there is any change to the land uses or densities permitted in the Avalon PCD.

10.2 **Transportation Infrastructure.** Developer, at its sole cost and expense, shall design, construct, install, and extend the necessary street improvements identified

in the Avalon PCD, the Master Transportation Study and this Agreement and as required by Applicable Laws (collectively referred to as the "Transportation Improvements"). Transportation Improvements may be installed in phases as needed to serve the portion of the Property being developed, subject to the City's review and approval of such phasing.

10.3 Traffic Signals.

10.3.1 Intersection of Community Street 1 and Williams Field Road. Upon the construction of Community Street 1 (as that term is used in the Master Traffic Study) at Williams Field Road, Developer, at its sole cost and expense, shall install the traffic signal at this intersection in accordance with City of Mesa Engineering and Design Standards.

10.3.2 Intersection of Crismon Road and Williams Field Road. Developer may either: (a) install, at Developer's sole cost and expense, a traffic signal at the intersection of Crismon Road and Williams Field Road in accordance with City of Mesa Engineering and Design Standards (Developer may seek proportionate reimbursement through any City Share program or other applicable City programs adopted and in effect), or (b) pay the City an in-lieu fee for the Developer's share of the traffic signal, pursuant to the current City Schedule of Fees and Charges, and the City will construct the traffic signal at such time as the City, in its sole and absolute discretion, deems the signal is necessary.

10.4 Turn Lanes. Developer, at its sole cost and expense, shall design, construct and install, pursuant to, and in accordance with, City of Mesa Engineering and Design Standards, the right and left turn lanes at ^{Unofficial Document}the following intersections: (i) Crismon Road and Williams Field Road; (ii) Community Street 1 and Williams Field Road; (iii) Community Street 2 (as that term is used in the Master Transportation Study) and Williams Field Road; and (iv) any other public streets that will serve the development.

10.5 Future Assessment of Driveways. The Parties acknowledge that the Developer has not provided, and the City has not evaluated, the individual driveway locations for the Property. Upon the submittal of each site plan for development on the Property, Developer shall submit, for review and approval by the City, the individual driveway locations for the portion of the property identified on the site plan. At that time, the City will determine if the proposed driveways will be full access, partial access, or right-in/right-out only. Developer, at its sole cost and expense, will be required to design, construct and install, in accordance with City of Mesa Engineering and Design Standards, all required Transportation Improvements, including but not limited to, any left and/or right turn lanes.

10.6 Private Streets. Developer in compliance with Mesa City Code and Applicable Laws may develop the Project with private streets and may gate specific communities within the Project that have private streets. If Developer requests private streets, Developer will submit, for review and approval by the City, the number and location of the private streets within the Project. Further, in order for the City to provide solid waste services to the Project, the gates the Developer installs must comply with the City's Solid Waste requirements, including but not limited to, exit only gates and remote control service, and such gates must be operational prior to the first certificate of occupancy for that particular community. The City may delay or deny any

certificate of occupancy for any structure Developer will construct on the Property if the Developer fails to comply with the City's Solid Waste requirements and all other Applicable Laws. Additionally, Developer shall grant to the City, at no cost to the City, an easement for police, fire, ambulance, solid waste collection (including, but not limited to, trash, recycling, green, and food waste), water, gas, storm drain line, or wastewater line installation and repair, and other similar public purposes, over any private streets within the Property. The Developer, its successors and assigns, shall, at its sole cost and expense, maintain the private streets in a manner such that City vehicles may safely and without undue wear and tear or damage, use the private streets for their intended purposes. The City has no obligation to maintain private streets constructed by Developer.

11. 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 and Developer, 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 on the earlier of: (a) completion of all performance obligations under this Agreement and the completion of construction of all phases of the Project on the Property, or (b) twenty (20) years from the Effective Date of this Agreement; unless this Agreement is terminated sooner pursuant to any earlier termination provision of this Agreement.

12. Default.

12.1 Events of Default. ^{Unofficial Document} Party shall be deemed to be in default under this Agreement if the defaulting Party breaches any obligations required to be performed by it hereunder, subject to the provisions of Section 12.3.

12.2 Remedies. Whenever a default occurs and is not cured (or, if appropriate, cure undertaken) by the defaulting Party in accordance with Section 12.3 of this Agreement, the non-defaulting Party's sole and exclusive remedies shall consist of and be limited to seeking injunction, specific performance, declaratory action, special action, or other similar relief (whether characterized as mandamus, injunctive relief, specific performance or otherwise). Notwithstanding anything herein to the contrary, each Party expressly waives any and all right to terminate this Agreement, and/or seek damages as a remedy with respect to a default. Additionally, the City may revoke any City approval, permit, or certificate of occupancy for the Project or on any portion thereof of, or for any structure on the Property that does not comply with the requirements in this Agreement. The specific performance remedy provided in this Section 12 shall be cumulative relief and shall not be a limitation on the City's other remedies.

12.3 Grace Periods; Notice and Cure. Upon the occurrence of an event of default by any Party, such Party shall, upon receipt of written notice from the non-defaulting Party, proceed promptly to cure or remedy such default and, in any event, such default shall be cured within thirty (30) days after receipt of such notice, or, if such default is of a nature that is not capable of being cured within thirty (30) days, the cure shall be commenced within such period and diligently pursued to completion. The non-defaulting Party shall not exercise any remedies pursuant to Section 12.2 until and unless the applicable

cure period described in this Section 12.3 has expired and the default remains uncured at such time.

12.4 Delays; Waivers. Except as otherwise expressly provided in this Agreement, any delay by any Party in asserting any right or remedy under this Agreement shall 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 shall not be considered as a waiver of rights with respect to any other default by the non-defaulting 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.

12.5 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 shall 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. Miscellaneous Provisions.

13.1 Governing Law; Choice of Forum. This Agreement will be deemed to be made under, will be construed in accordance with, and will be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this Agreement will be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa (or, as may be appropriate, in the Justice Courts of Maricopa County, Arizona, or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section 13.1.

13.2 Attorneys' Fees. No Party shall be entitled to recover any of its attorneys' fees or other costs from the other Party incurred in any such dispute, controversy, claim or cause of action. Each Party shall bear its own attorneys' fees and costs, whether the same is resolved through arbitration, litigation in a court, or otherwise.

13.3 Assignment. 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 Developer's rights and obligations hereunder may only be assigned in whole, and only to a person or entity that has acquired an interest in 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 assignment by Developer, all of Developer's rights and obligations hereunder shall terminate effective upon the assumption by the Developer's assignee of such rights and obligations and the execution of an addendum that recognizes the assignment with respect to the interest in the Property, or portion thereof, transferred or conveyed. Developer assigning all of its interest shall submit an addendum on the

form attached hereto as Exhibit D, and when such addendum has been approved and countersigned by the City Manager, it shall be incorporated into and become a part of this Agreement.

13.4 Termination Upon Sale of Residential Lots. Except as otherwise provided herein, the Parties hereby acknowledge and agree that this Agreement is not intended to and shall not create conditions or exceptions to title or covenants running with the individual residential lots within the Property and any tracts or land intended to be dedicated or conveyed to the City, any other public or quasi-public entity, any utility provider, any homeowner association (i.e. A.R.S. § 33-1802(1)) or any school district. Therefore, in order to alleviate any concern as to the effect of this Agreement on the status of title to any of the Property, so long as not prohibited by law, this Agreement shall terminate without the execution or recordation of any further document or installment as to any individual residential lot and any tracts or land dedicated or conveyed to the City, any utility provider, any homeowner association or any school district, and thereupon such individual residential lot and any tracts or land dedicated or conveyed to City, any utility provider, any homeowner association or any school district shall be released from and no longer be subject to or burdened by the provisions of this Agreement.

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

13.6 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.

13.7 Notices.

a. **Addresses.** Except as otherwise required by law, any notice required or permitted under this Agreement (each, a "Notice") will be in writing and will be given by (i) personal delivery, (ii) deposit in the United States mail, certified or registered, return receipt

requested, postage prepaid, addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this Section, or (iii) any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), delivery charges prepaid:

If to City:

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

If by United States Postal Service:

Post Office Box 1466
Mesa, Arizona 85211-1466

With a required copy to:

City of Mesa
Attn: City Attorney
20 East Main Street, Suite 850
Mesa, Arizona 85201

If by United States Postal Service:

Post Office Box 1466
Mesa, Arizona 85211-1466

If to Developer:

Pacific Proving, LLC
Attention: Andrew Cohn and
Lisa Bullington
2201 E. Camelback Road, Suite 650
Phoenix, AZ 85018

With a required copy to:

Beus Gilbert PLLC
Attention: Paul E. Gilbert and
Cassandra Ayres
701 N. 44th Street
Phoenix, AZ 85008

b. Effective Date of Notices. Any Notice sent by United States Postal Service certified or registered mail will be deemed to be effective the earlier of the actual delivery, or three (3) business days after deposit in a post office operated by the United States Postal Service. Any Notice sent by a recognized national overnight delivery service will be deemed effective one (1) business day after deposit with such service. Any Notice personally delivered or delivered through a same-day delivery/courier service will be deemed effective upon

its receipt (or refusal to accept receipt) by the addressee. Any Party may designate a different person or entity or change the place to which any Notice will be given as provided.

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

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

13.10 Waiver. The Parties agree that neither the failure nor the delay of any Party to exercise any right, remedy, power or privilege under this Agreement will operate as a waiver of such right, remedy, power or privilege, nor will any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor will any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver will be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

13.11 Third Party Beneficiaries. No person or entity will be a third party beneficiary to this Agreement, except for permitted transferees or assignees to the extent that they assume or succeed to the rights and/or obligations of Developer under this Agreement.

13.12 Exhibits. The ^{Unofficial Document} 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.

13.13 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.

13.14 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.

13.15 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.

13.16 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.

13.17 Covenants Running With Land; Inurement. Except as provided in Section 13.4, the covenants, conditions, terms and provisions of this Agreement relating to use of the Premises will run with the Premises and will be binding upon, and will inure to the benefit of the Parties and their respective permitted successors and assigns with respect to the Premises. Wherever the term "Party" or the name of any particular Party is used in this Agreement such term will include any such Party's permitted successors and assigns.

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

13.19 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.

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

13.21 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, 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.

13.22 Survival. The provisions contained in Sections 3, 5, 6 and 10.6 of this Agreement will survive the execution and delivery of this Agreement and the rescission, cancellation, expiration or termination of this Agreement.

13.23 Nonliability of City Officials, Etc., and of Employees, Members and Partners, Etc. of Developer. No City Council member, official, representative, agent, attorney or employee of City will be personally liable to any of the other Parties hereto, or to any successor in interest to any of the other Parties, in the event of any Default or breach by City or for any amount which may become due to any of the other Parties or their successors, or with respect to any

obligation of City under the terms of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the liability of Developer under this Agreement will be limited solely to the assets of Developer and will not extend to or be enforceable against: (i) the individual assets of any of the individuals or entities who are shareholders, members, managers constituent partners, officers or directors of the general partners or members of Developer; (ii) the shareholders, members or managers or constituent partners of Developer; or (iii) officers of Developer.

13.24 Developer's Representations. Nothing contained herein shall be deemed to obligate Developer to develop any portion of the Property or to complete construction of any of the Improvements.

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

13.26 Proposition 207 Waiver. By executing this Agreement, Developer, on behalf of itself and all successors-in-interest to all or any portion of the Property hereby fully, completely and unconditionally waives any right to claim diminution in value or claim for just compensation for diminution in value under A.R.S. §12-1134, et seq. arising out of any City action permitted to be taken by City pursuant to this Agreement. This waiver constitutes a complete release of any and all claims and causes of action that may arise or may be asserted under A.R.S. §12-1134, *et seq.* as it exists or may be enacted in the future or that may be amended from time to time with regard to the Property respecting any City actions permitted to be taken by City pursuant to this Agreement.

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[SIGNATURES OF THE PARTIES APPEAR ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date(s) written below.

CITY:

CITY OF MESA, ARIZONA, an Arizona municipal corporation

By: Christopher J. Brady

Its: City Manager

ATTEST:

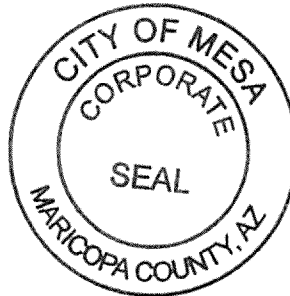
By: DeeAnn Mickelson

City Clerk

APPROVED AS TO FORM:

By: Charlotte McDermott
for City Attorney

Unofficial Document



STATE OF ARIZONA)

) ss.

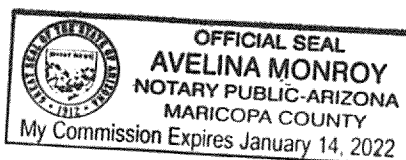
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 28th day of August, 2019, by CHRISTOPHER J. BRADY the City Manager of the City of Mesa, Arizona, an Arizona municipal corporation, who acknowledged that he/she signed the foregoing instrument on behalf of City.

Avelina Monroy
Notary Public

My commission expires:

January 14, 2022



DEVELOPER:

Pacific Proving, L.L.C., a Delaware limited liability company

By: 

Andrew M. Cohn
Authorized Rep.

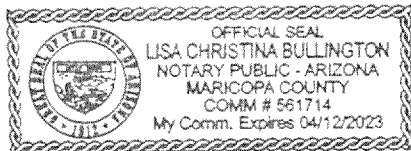
Its: _____

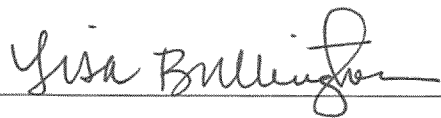
STATE OF ARIZONA)

) ss.

COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 26th day of August, 2019, by Andrew Cohn, the Auth. Rep. of Pacific Proving, LLC, an Unofficial Document Delaware LLC, the Developer named in the foregoing Development Agreement, who acknowledged that he signed the foregoing Development Agreement on behalf of Developer.





Notary Public

My commission expires:

4-12-23

EXHIBIT A TO DEVELOPMENT AGREEMENT**LEVINE GM
SECTION 35
LEGAL DESCRIPTION**

A portion of land being situated within the north 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 found 3 inch Maricopa County brass cap flush accepted as the Northwest corner of said Section 35, from which a found 2 inch Maricopa County aluminum cap accepted as the West quarter corner thereof bears South 00°41'42" East, 2631.77 feet;

Thence South 89°38'00" East, 144.75 feet along the north line of the Northwest quarter of said Section 35 to the **POINT OF BEGINNING**;

Thence continuing along said north line, South 89°38'00" East, 2504.31 feet;

Thence South 89°33'17" East, 1325.38 feet along the north line of the Northeast quarter of said Section 35 to a found brass cap in hand hole accepted as the 16th corner;

Thence leaving said north line, South 00°38'51" East, 2387.77 feet along the east line of the west half of said Northeast quarter;

Thence leaving said east line, South 89°03'06" West, 678.21 feet along the proposed north Right of Way line of State Route 24;

Thence along said Right of Way line the following 8 courses:

Thence North 82°18'24" West, 539.29 feet;

Thence North 77°53'26" West, 546.48 feet;

Thence North 73°46'14" West, 751.01 feet;

Thence North 67°26'09" West, 440.67 feet;

Thence North 64°01'16" West, 303.30 feet;

Thence North 56°23'50" West, 486.04 feet;

Thence North 52°48'23" West, 311.36 feet;

Thence North 53°23'44" West, 161.11 feet to the east property line as described in the Special Warranty Deed recorded in Document No. 2012-0932138, Maricopa County records, Arizona;

Thence leaving said right of way line and along the east line of said Special Warranty Deed, North 00°23'52" East, 75.40 feet;

Thence continuing along said east line, South 89°36'08" East, 65.00 feet;

Thence continuing along said east line, North 00°23'52" East, 1098.29 feet to the **POINT OF BEGINNING**.

The above described parcel contains a computed area of 7,945,763 sq. ft. (182.4096 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.

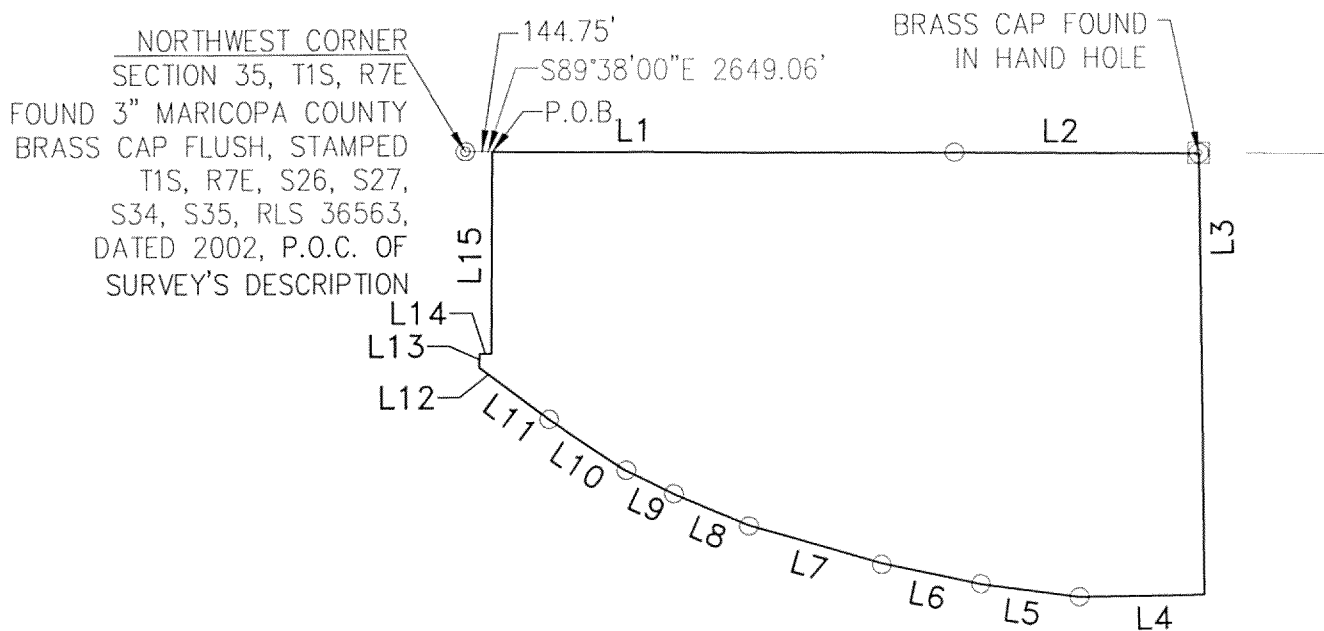
Proposed State Route location as defined by Rosendahl Engineering Survey.

Prepared by: HILGARTWILSON, LLC
2141 E. Highland Avenue, Suite 250
Phoenix, AZ 85016
Project No. 2063
Date: March 2019

Unofficial Document

**EXHIBIT B TO DEVELOPMENT AGREEMENT
DEPICTION**

Unofficial Document



LINE TABLE		
LINE NO.	DIRECTION	LENGTH
L1	S89°38'00"E	2504.31'
L2	S89°33'17"E	1325.38'
L3	S00°38'51"E	2387.77'
L4	S89°03'06"W	678.21'
L5	N82°18'24"W	539.29'
L6	N77°53'26"W	546.48'
L7	N73°46'14"W	751.01'
L8	N67°26'09"W	440.67'
L9	N64°01'16"W	303.30'

LINE TABLE		
Unofficial Document		
LINE NO.	DIRECTION	LENGTH
L10	N56°23'50"W	486.04'
L11	N52°48'23"W	311.36'
L12	N53°23'44"W	161.11'
L13	N00°23'52"E	75.40'
L14	S89°36'08"E	65.00'
L15	N00°23'52"E	1098.29'




PROJ.NO.: 2063	LEVINE GM - SECTION 35	 HILGARTWILSON 2141 E. HIGHLAND AVE., STE. 250 PHOENIX, AZ 85016 P: 602.490.0535 / F: 602.368.2436
DATE: AUG 2019	MARICOPA COUNTY, ARIZONA	
SCALE: NTS	EXHIBIT	
DRAWN BY: SL		
CHECKED BY: AT		

EXHIBIT C TO DEVELOPMENT AGREEMENT

MAINTENANCE AGREEMENT

Unofficial Document

COMMUNITY MAINTENANCE AGREEMENT (Avalon Crossing)

This Community Maintenance Agreement (this "Agreement") is made as of the ____ day of _____, 2019, among Pacific Proving, L.L.C., a Delaware limited liability company ("Developer") and the City of Mesa, an Arizona municipal corporation ("City"). City and Developer are sometimes referred to herein collectively as the "**Parties**," or individually as a "**Party**."

RECITALS

A. Developer owns certain real property located south of Williams Field Road, north of the proposed alignment of the "Gateway Freeway" portion of State Route 24, east of Crismon Road, and west of Signal Butte Road on which Developer has begun or plans to begin development of a residential and commercial project commonly known as "Avalon Crossing" (the "**Development**"). A depiction of the Development is attached hereto as **Exhibit A**.

B. The Development is governed by the Pre-Annexation and Development Agreement between Developer and City, dated _____, _____ and recorded as Document No. _____ in the official records of Maricopa County, Arizona (the "**PADA**") and the Avalon Crossing Community Plan adopted by the Council of the City of Mesa on _____, 2019, by Ordinance _____, on file with the City Clerk of the City of Mesa (the "**Community Plan**"). The Community Plan allows the Developer to design and install a parkway within the Development as designated in a separately recorded plat, map of dedication or other instrument (the "**Parkway Easement**").

C. The Development includes the design and installation of improvements in sidewalks, pedestrian areas, parks, the Parkway Easement and other areas generally open to the public. Some of the improvements will be located in publicly dedicated rights-of-way or adjacent easement areas (collectively, "**City Rights-of-Way**").

D. Developer and City desire to set forth in this Agreement each Party's respective rights and obligations regarding, among other things, the installation, maintenance and replacement of improvements in the Parkway Easement and various other elements within the Development.

E. The Parties acknowledge and agree that this Agreement applies to the real property contained in Exhibit A as attached.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer and the City agree as follows:

1. Definitions. All capitalized terms used in this Agreement but not defined in the

Agreement shall have the meanings given to them in the PADA.

2. Arterial Median Landscaping.

a. Developer shall design and install the arterial median landscaping, at Developer's expense, subject to ordinary City approval, permitting and acceptance processes.

b. Upon completion and acceptance of all or any portion of the arterial median landscaping, City shall thereafter maintain the accepted arterial median landscaping pursuant to standard and customary landscape maintenance standards.

3. Perimeter Landscaping Along Arterials. Developer shall be responsible, at Developer's expense, for the maintenance of any and all landscaping improvements located within and along the outer edge of the City Rights-Of-Way in those portions of Crismon Road and Williams Field Road adjacent to the Development. Where such landscaping is subject to a sight visibility easement, as designated in a separately recorded plat, map of dedication or other instrument, the maintenance of such landscaping by the Developer shall comply with the applicable requirements for such sight visibility easement. The City reserves the right and authority to enter upon any City Rights-Of-Way to maintain such landscaping under all circumstances, including without limitation in the event that the City's Fire Department in its sole discretion determines that trimming or removal of such landscaping is required because such landscaping impedes fire access or vehicular clearances.

4. Other Rights-Of-Way Landscaping. Developer shall be responsible, at Developer's expense, for the maintenance of any and all landscaping improvements located within non-arterial City Rights-Of-Way within the Development (including irrigation facilities and associated private utility lines, if any), whether located in medians within non-arterial streets or otherwise. Where such landscaping is subject to a sight visibility easement, as designated in a separately recorded plat, map of dedication or other instrument, the maintenance of such landscaping shall comply with the applicable requirements for such sight visibility easement. The City reserves the right and authority to enter upon any such City Rights-Of-Way, including round-a-bouts, to maintain such landscaping under all circumstances, including without limitation in the event that the City's Fire Department in its sole discretion determines that trimming or removal of such landscaping is required because such landscaping impedes fire access or vehicular clearances.

5. Parkway Easement Landscaping. If a parkway and/or Parkway Easement are utilized, Developer, at its sole cost and expense, shall be responsible for the installation, maintenance, repair, and replacement of any and all improvements located within the Parkway Easement, including but not limited to, landscape improvements, drainage and retention improvements, and the stub-outs for all underground utilities. Such improvements shall be designed to meet the City's minimum standard requirements. Irrigation systems designed for watering and/or sprinkling any turf within the Parkway Easement shall utilize low water use systems to protect any asphalt surfaces from potential deterioration resulting from overspray. In the event that overspray directly results in the need for repair or replacement of asphalt surfaces sooner than the City's reasonable and customary standard maintenance timelines ("Accelerated

Repair”), then the City may make such Accelerated Repair and draw down the Maintenance Deposit created pursuant to Section 10 below. If the City determines that such Accelerated Repair is necessary, then the City shall give prompt notice to Developer pursuant to Section 15 of this Agreement of its intention to make such Accelerated Repair, and if Developer disagrees that such Accelerated Repair is necessary, then the Parties shall utilize the dispute resolution procedures set forth in Section 14 of this Agreement to attempt to resolve such disagreement. Developer agrees to replenish the Maintenance Deposit in accordance with Section 10. City shall use its best efforts to promptly inform Developer of any resident complaints, if any, relating to the maintenance of the Parkway Easement landscaping or deterioration of asphalt surfaces.

6. Maintenance of Sidewalks within Parkway Easement and City Rights-Of-Way. The Parties acknowledge that Developer may install (or require third party homebuilders or developers to install) sidewalks within areas that are subject to Parkway Easement or City Rights-Of-Way benefitting the City. Maintenance of the sidewalks shall be the responsibility of the City.

7. Maintenance of Neighborhood Parks, Open Spaces, and Drainage Improvements. Developer shall be responsible, at Developer’s sole expense, for the maintenance of all improvements located within all the neighborhood parks (including the Community Park), open spaces (including trails) and plazas contemplated by the Community Plan and designated as such on approved final plats or site plans, including landscaping improvements, drainage and retention improvements and recreational amenities located within such areas. The City shall have no obligation to maintain or repair such improvements, but the City shall have the right, if Developer fails to maintain or repair the ^{Unofficial Document} ~~landscaping~~ and retention improvements located within such areas as required for their proper operation, and if such failure continues for thirty (30) days after the City gives Developer notice of such failure (or, in the case of an emergency posing threat to health and safety, without need for prior notice), to undertake the required maintenance, and thereafter recover from Developer all costs incurred by the City in connection with such maintenance.

8. License. The City hereby grants to Developer, its successors and assigns, a revocable license, inclusive of the City’s insurance requirements, to enter upon all applicable dedicated public right-of-way and easement areas to the extent reasonably necessary to effect any necessary maintenance, repair and replacement of landscaping, subject to the terms of this Agreement. The City reserves the right to revoke the license, created by this Agreement, at any time and require Developer to apply for a permit through the City’s ordinary permitting process, for each maintenance event in the in the right-of-way or easement areas. Developer shall provide the City’s Right-of-Way Manager with not less than five (5) business days’ notice of its intended activities before entering upon any dedicated right-of-way or easement areas in connection with such license, except that, in the case of an emergency presenting a threat to public health or safety (if Developer determines that it should act to address such emergency, which it shall not be obligated to do), Developer shall only be required to give such notice as early as reasonably possible under the circumstances and shall not be required to give such notice before taking action to address such emergency; provided, however, that nothing in this Section 8 shall excuse Developer from the responsibility to repair any damage or correct any other condition it may cause in taking action to address such emergency.

9. **Maintenance Standards.** All maintenance, repair or replacement work required or permitted to be performed by or on behalf of Developer (including by its employees, agents and contractors) will comply with the requirements of applicable City, state and federal standards then in effect for work done in, on or about a public street or a public park (as applicable), including all applicable procedures regarding safety and regarding minimizing any inconvenience to the public.

10. **Financial Assurance.** Prior to pulling any construction permit, Developer shall deposit with the City the sum of twenty-five thousand dollars (\$25,000.00) by wire transfer (the "**Maintenance Deposit**"). The City shall keep the Maintenance Deposit in a segregated account and may draw upon the Maintenance Deposit to recover any costs incurred by the City in accordance with this Agreement. On an annual basis, Developer shall deposit with the City a sum equal to the amount drawn down by the City in order to restore the Maintenance Deposit to its original sum; provided that, if at any time the City gives notice to Developer that the balance of the Maintenance Deposit has fallen below five thousand dollars (\$5,000.00), then Developer shall make such restorative deposit within thirty (30) days after such notice. The Maintenance Deposit shall be returned to the Developer or homeowners association, as applicable, upon the termination of this Agreement. For purposes of returning the Maintenance Deposit, the Developer shall remain entitled to the return of the initial Maintenance Deposit and any restorative deposits(s) made by Developer (to the extent not used by the City pursuant to this Section), and any homeowners association shall be entitled to the return of any restorative deposits(s) made by the homeowners association (to the extent not used by the City pursuant to this Section).

Unofficial Document

11. **Effectiveness.** This Agreement shall be effective immediately upon its execution by both Parties (the "**Effective Date**").

12. **Term.** The rights and obligations set forth in this Agreement shall continue for twenty-five (25) years from the Effective Date and will automatically renew for successive renewal terms of fifteen (15) years each, unless, no sooner than one hundred eighty (180) days and no later than sixty (60) days before the end of the initial term or a renewal term (as applicable), either Party gives notice to the other that the rights and obligations set forth under this Agreement shall be terminated at the end of such initial or renewal term.

13. **Running of Benefits and Burdens; Assignment.** All provisions of this Agreement, including the benefits and burdens, are binding upon and shall inure to the benefit of the successors and assigns of the Parties hereto. Notwithstanding the foregoing, the Parties agree that the ongoing ownership, operation and maintenance obligations of Developer may be assigned only as follows: (a) pursuant to an assignment of some or all of such obligations to a homeowners association, and/or one or more other property developers association(s) established by Developer, or (b) as part of a complete assignment, from Developer to a successor master developer, of all unassigned rights and obligations of Developer under this Agreement and under the PADA. In all such cases, Developer agrees to provide the City with written notice of any assignment of all or any rights and obligations of Developer within a reasonable period of time following such assignment, which shall include the assignee's commitment to pay and perform

the applicable obligations of Developer under this Agreement. In the case of any assignment to a homeowners' association and/or another property developer's association, the foregoing written notice of any assignment shall be accompanied by evidence of the homeowner or property developer's association's financial ability to assume, and irrevocable commitment to perform Developer's obligations hereunder. Upon compliance with the foregoing, including the City's receipt of the applicable notice, Developer's future liabilities under this Agreement shall terminate as to the obligations assigned. Except as set forth in this Section 13, a Party may not assign any of its rights under this Agreement without the prior written consent of the other Party.

14. Default; Dispute Resolution. If either Party fails to perform any of its obligations under this Agreement, or if the Developer disputes a proposed Accelerated Repair as described in Section 5 of this Agreement ("Asserting Party"), the Asserting Party may give the non-performing party not less than five (5) business days' notice of and opportunity to cure the failure. If the non-performing party fails to cure the failure within said period of time, the Asserting Party may require that Developer and the City Manager of the City of Mesa, or designee, confer and use their reasonable best efforts to resolve the dispute. If the dispute cannot be resolved to the mutual satisfaction of the Parties, either or both of the Parties may seek any remedy, legal or equitable, available to it, including that specific performance shall be available as a remedy in such event. Notwithstanding the foregoing, however, any action seeking specific performance of a Party's maintenance or repair obligations under this Agreement shall be limited to such remedy and may not also include a prayer for monetary damages.

15. Notices.

a. Address. ^{Unofficial Document} Except as otherwise required by law, any notice required or permitted under this Agreement (each, a "Notice") will be in writing and will be given by (i) personal delivery, (ii) deposit in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this Section, or (iii) any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), delivery charges prepaid:

If to City:

City of Mesa
Attn: City Manager
20 East Main Street
Mesa, Arizona 85211
If by United States Postal Service:
Post Office Box 1466
Mesa, Arizona 85211-1466

With a required copy to:

City of Mesa
Attn: City Attorney
20 East Main Street, Suite 850
Mesa, Arizona 85201
If by United States Postal Service:
Post Office Box 1466
Mesa, Arizona 85211-1466

If to Developer: Pacific Proving, LLC
 Attention: Andrew Cohn and
 Lisa Bullington
 2801 E. Camelback Road, Suite 450
 Phoenix, AZ 85016

With a required copy to: Beus Gilbert PLLC
 Attention: Paul E. Gilbert and
 Cassandra Ayres
 701 N. 44th Street
 Phoenix, AZ 85008

b. Effective Date of Notices. Any Notice sent by United States Postal Service certified or registered mail will be deemed to be effective the earlier of the actual delivery, or three (3) business days after deposit in a post office operated by the United States Postal Service. Any Notice sent by a recognized national overnight delivery service will be deemed effective one (1) business day after deposit with such service. Any Notice personally delivered or delivered through a same-day delivery/courier service will be deemed effective upon its receipt (or refusal to accept receipt) by the addressee. Any Party may designate a different person or entity or change the place to which any Notice will be given as provided.

16. **Further Assurances.** Each Party shall execute, acknowledge and deliver to the other such other documents, and shall take such other actions, as the other may reasonably request in order to carry out the intent and purposes of this Agreement.

Unofficial Document

17. **No Third-Party Beneficiaries.** This Agreement is intended for the exclusive benefit of the Parties. Nothing set forth in this Agreement is intended to create, or will create, any benefits, rights, or responsibilities in any third parties.

18. **Headings.** The headings in this Agreement are for reference only and shall not limit or define the meaning of any provision of this Agreement.

19. **Exhibits and Recitals.** The recitals and exhibits attached to this Agreement are incorporated as if fully set forth herein as terms of this Agreement.

20. **Time of Essence.** Time is of the essence of this Agreement. The foregoing to the contrary notwithstanding, if this Agreement requires any act to be done or action to be taken on a date that falls on a Saturday, Sunday or legal holiday, such act or action shall be deemed to have been timely done or taken if done or taken on the next succeeding day that is not a Saturday, Sunday or legal holiday.

21. **Waiver.** The waiver by any Party of any right granted under this Agreement shall not be deemed a waiver of any other right granted hereunder, nor shall the same be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived.

22. **Entire Agreement.** This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof.

23. **Amendment.** This Agreement may not be altered or amended except pursuant to an instrument in writing signed by all of the Parties hereto.

24. **Surviving Provisions.** Notwithstanding any completion, termination, or other expiration of this Agreement, all provisions which, by the terms of reasonable interpretation thereof, set forth rights and obligations that extend beyond completion, termination, or other expiration of this Agreement, will survive and remain in full force and effect. Except as specifically provided in this Agreement, completion, termination, or other expiration of this Agreement will not release any Party from any liability or obligation arising prior to the date of termination.

25. **Construction.** This Agreement is the result of negotiations between the Parties. The Parties acknowledge and agree: (a) they were advised and had the opportunity to obtain independent legal counsel to review this Agreement; (b) this Agreement is the product of arm's length negotiations among the Parties and shall not be construed against any Party due to authorship; and (c) the Parties understand the terms and conditions contained herein. The terms and provisions of this Agreement shall be construed in accordance with their usual and customary meanings, and the Parties hereby waive the application of any rule or law that otherwise might require the construction of this Agreement against the Party who (or whose attorney) prepared the executed Agreement.

26. **Attorneys' Fees.** Unofficial Document In the event of litigation to enforce or interpret any provisions of this Agreement or rights arising hereunder, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs.

27. **Ownership and Authority to Execute.** The individuals executing this document represent and warrant that: (i) he or she is authorized to do so on behalf of the Party for which they are signing; and (ii) he or she has full legal power and authority to bind the Party for which they are signing in accordance with the terms herein and, if necessary, has obtained all required consents or delegations of such power and authority.

28. **Governing Law, Venue, Jurisdiction, and Severability.** This instrument shall be construed in accordance with the laws of the State of Arizona. A Party shall bring any action related to a dispute arising out of this Agreement in a court of appropriate venue and jurisdiction in Maricopa County, State of Arizona. If any provision of this Agreement is or becomes illegal, is found to be null or void for any reason or is held unenforceable by a court of competent jurisdiction, then the remaining portions of the Agreement shall remain in full force and effect so long as removing the severed portion does not materially alter the overall intent of the Agreement.

29. **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.

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

31. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one in the same instrument, which instrument shall be deemed fully executed when one or more counterparts have been executed by each of the Parties.

IN WITNESS WHEREOF, the Parties have executed this instrument as of the date first written above.

[signature pages follow]

Unofficial Document

THE CITY OF MESA, an Arizona municipal corporation

By: _____
 Name: _____
 Title: _____

ATTEST:

 City Clerk

APPROVED AS TO FORM:

 City Attorney

STATE OF ARIZONA)
) ss.
 County of Maricopa)

Unofficial Document

The foregoing instrument was acknowledged before me this ____ day of ____, 2019, by
 _____, the _____ of THE CITY OF MESA, an
 Arizona municipal corporation, on behalf of the municipal corporation.

 Notary Public

My Commission Expires:

PACIFIC PROVING, L.L.C., a Delaware limited liability limited company

By: _____
Name: _____
Its: _____

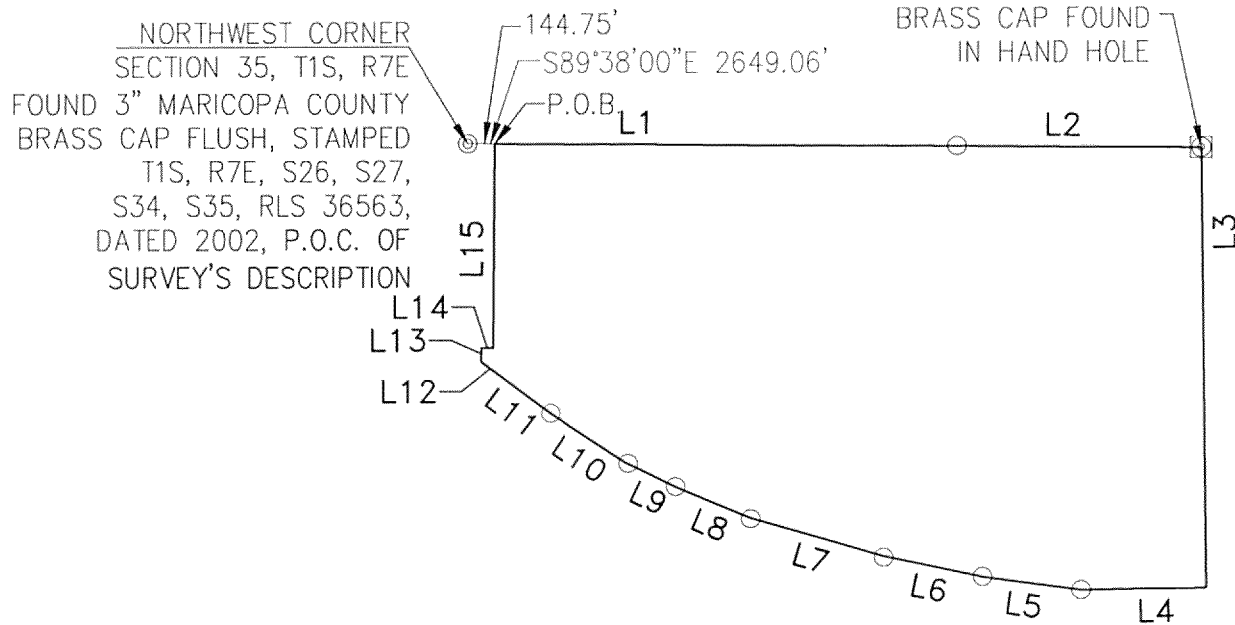
STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by _____, for and on behalf of **PACIFIC PROVING, L.L.C., a Delaware limited liability company**, as _____ of **PACIFIC PROVING, L.L.C., a Delaware limited liability limited company**.

Unofficial Document

Exhibit "A" to Maintenance Agreement
[Depiction of Development]

Unofficial Document



LINE TABLE		
LINE NO.	DIRECTION	LENGTH
L1	S89°38'00"E	2504.31'
L2	S89°33'17"E	1325.38'
L3	S00°38'51"E	2387.77'
L4	S89°03'06"W	678.21'
L5	N82°18'24"W	539.29'
L6	N77°53'26"W	546.48'
L7	N73°46'14"W	751.01'
L8	N67°26'09"W	440.67'
L9	N64°01'16"W	303.30'

Unofficial Document

LINE TABLE		
LINE NO.	DIRECTION	LENGTH
L10	N56°23'50"W	486.04'
L11	N52°48'23"W	311.36'
L12	N53°23'44"W	161.11'
L13	N00°23'52"E	75.40'
L14	S89°36'08"E	65.00'
L15	N00°23'52"E	1098.29'




PROJ.NO.: 2063	LEVINE GM - SECTION 35 MARICOPA COUNTY, ARIZONA EXHIBIT	 HILGARTWILSON 2141 E. HIGHLAND AVE., STE. 250 PHOENIX, AZ 85016 P: 602.490.0535 / F: 602.368.2436
DATE: AUG 2019		
SCALE: NTS		
DRAWN BY: SL		
CHECKED BY: AT		

EXHIBIT D TO DEVELOPMENT AGREEMENT

ASSIGNMENT FORM

Unofficial Document

**ASSIGNMENT AND ASSUMPTION OF
DEVELOPMENT AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT (this "**Assignment**") is made and entered into as of the ____ day of _____ 20__, (the "**Effective Date**") by and between _____, a _____ company (hereinafter called "**Assignor**"), and _____, a _____ company (hereinafter called "**Assignee**").

RECITALS

A. Pacific Proving, L.L.C., a Delaware limited liability company, owns certain real property located south of Williams Field Road, north of the proposed alignment of the "Gateway Freeway" portion of State Route 24, east of Crismon Road, and west of Signal Butte Road on which Developer has begun or plans to begin development of a residential and commercial project commonly known as "Avalon Crossing" (the "**Property**").

B. Assignor and the City of Mesa (the "**City**") are parties to that certain Pre-Annexation and Development Agreement, dated _____, _____, and recorded as Document No. _____ on _____, _____, in the official records of Maricopa County, Arizona (the "**Agreement**") and the Avalon Crossing Community Plan adopted by the Council of the City of Mesa on _____, 2019, by Ordinance _____, on file with the City Clerk of the City of Mesa.

Unofficial Document

C. Assignor has certain rights and obligations under the Agreement.

D. Assignor desires to transfer and assign to Assignee all of its right, title and interest in and to, and arising under, the Agreement, and Assignee desires to assume all of the obligations of Assignor under the Agreement and to be bound by all of the terms, conditions and provisions thereof in place of Assignor.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

AGREEMENT

1. **Assignment and Assumption.**

1.1 In accordance with Section 13.3 of the Agreement, Assignor does hereby irrevocably grant, sell, convey, assign, transfer, set over and deliver unto Assignee all of Assignor's right, title and interest in and to, and arising under, the Agreement.

1.2 Assignee hereby unconditionally assumes and agrees to perform all of the duties, obligations and promises of Assignor as set forth in or arising under the Agreement, to be bound by all of the terms, conditions and provisions of the Agreement

and to do any and all acts and things required under the Agreement to be done by Assignor.

1.3 In accordance with Section 13.3 of the Agreement, by its authorized signature below, City hereby acknowledges and consents to this Assignment and agrees that Assignor is released from all of Assignor's duties and obligations under the Agreement that arise from and after the Effective Date.

2. Miscellaneous.

2.1 The parties shall execute such additional documents and do such other acts as may be reasonably necessary to fully implement the intent of this Assignment.

2.2 This Assignment shall be governed by and construed according to the laws of the State of Arizona.

2.3 This Assignment shall be binding upon, and shall inure to the benefit of, the parties hereto and their heirs, personal representatives, successors and assigns.

2.4 This Agreement may be executed in any number of counterparts. Each such counterpart hereof shall be deemed an original, but all counterparts shall constitute but one agreement. Facsimile signatures shall be permitted and when transmitted shall be deemed an original for all purposes.

2.5 For purposes of Section ~~Unofficial Document~~ of the Agreement, the address for Developer is hereby changed to the following:

Company

Attention:

Address

[Signatures on Next Page]

The parties have executed this Assignment as of the date indicated above.

ASSIGNOR:

By: _____

By: _____

ASSIGNEE:

By: _____

By: _____

Unofficial Document

Acknowledged, accepted and agreed to by City:

By: _____

Name: _____

Its: _____