

When Recorded Return to:

PRE-ANNEXATION DEVELOPMENT AGREEMENT

This pre-annexation development agreement ("**Agreement**") is entered into this _____ day of _____, 2022 ("**Effective Date**"), by and between the City of Maricopa, an Arizona Municipal Corporation ("**City**") and HAM Sunset, L.L.C., an Arizona limited liability company ("**Owner**"). Owner and City are collectively referred to herein as "**Parties**" and individually as "**Party**."

RECITALS

Owner owns that certain real property located in Pinal County, Arizona, consisting of approximately 374.060 acres and generally located at the southwest corner of Maricopa Road and Val Vista Road (the "**Property**"). The Property is legally described and depicted on Exhibit A, attached hereto.

Owner has commenced or will commence seeking entitlements for the Property from the Board of Supervisors and Planning and Zoning Commission of Pinal County (the "**County**"), Arizona, to enable Owner to develop the Property for residential and commercial uses.

The City desires to annex the Property into the corporate limits of the City at such time as the Property is contiguous to the City or is otherwise legally eligible for annexation, and Owner has agreed to support the City in annexation of the Property into the corporate limits of the City upon the terms and conditions set forth in this Agreement.

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, to facilitate development of the Property, and a pre-annexation agreement agreeing to future annexation of the Property pursuant to the terms of A.R.S. §9-471(T).

Now, therefore, in consideration of the foregoing premises and the mutual promises and agreements set forth herein, the parties hereto state, confirm and agree as follows.

AGREEMENTS

1. **Incorporation of Recitals.** The Parties acknowledge the accuracy of the foregoing Recitals, each of which is hereby incorporated into this Agreement by this reference and is made a part hereof.

2. **Effective Date.** This Agreement will be effective on the date on which all of the following has occurred with respect to the Property ("**Effective Date**"): (i) final approval of this Agreement by the City; (ii) execution by the duly authorized representatives of the Parties; and (iii) recordation in of this Agreement in the office of the Recorder of Pinal County, Arizona.

3. **Term.** This Agreement will remain in effect for ten (10) years from the Effective Date (the "**Term**") unless the Parties mutually agree to extend the Term.

4. **Annexation.**

4.1 Annexation Petition. Within thirty (30) days after the City notifies the Owner in writing that the Property is contiguous to the City or is otherwise legally eligible for annexation, the City will initiate the annexation process by filing a blank annexation petition with the Pinal County Recorder consistent with the requirements of A.R.S. §9-471, et seq., and all other applicable laws, ordinances and rules (the "**Annexation Laws**"), to annex the Property into the City. The City will timely publish, mail, and post the required notices and hold one or more public hearings, as required under the Annexation Laws and shall take all other steps required for annexation. Prior to the Council's consideration of annexation of the Property, the Owner will deliver to the City any reasonably required documents related to the Annexation duly executed by the Owner (the "**Annexation Documents**") and satisfying the applicable Annexation Laws. All fees and costs incurred in connection with statutory Annexation process shall be payable by the City.

4.2 Annexation of the Property. In compliance with the provisions of the Annexation Laws, the City, after complying with all statutory requirements, shall determine if annexation of the Property into the City is in its best interest. If the City determines Annexation of the Property is in its best interest, the City shall adopt an ordinance annexing the Property into the corporate limits of the City, which shall become effective and binding on the Parties on the date it becomes final (the "**Annexation Ordinance**" or "**Annexation**").

4.3 Automatic Termination of Agreement. The City and Owner hereby acknowledge and agree that this Agreement shall automatically terminate and be of no force or effect if the City's annexation of the Property does not, for any reason become effective and final pursuant to A.R.S. §9-471(D) on or before the expiration of the Term, as defined in Section 3 above.

4.4 Recording of Agreement. The Parties acknowledge and agree that this Agreement will be recorded in the office of the Recorder of Pinal County, Arizona, as means of providing notice to any of Owner's successors or assigns including, but not limited to, individual homeowners, of their obligation to deliver to the City any reasonably required documents related to the Annexation duly executed as requested by the City.

5. **Zoning.**

5.1 County Zoning and Preliminary Plat Approval. If the Property has been zoned or received preliminary plat approval by the County prior to Annexation, Owner shall not be required to rezone or replat the Property and, in addition to the Approved Entitlements referenced in Section 6.1 below, the City covenants that it shall recognize and allow the zoning, densities, and uses approved by the County.

5.2 Adoption of Zoning Classifications. As soon as possible after adoption of the Annexation Ordinance, in accordance with A.R.S. §9-471(M), the City will adopt zoning classifications that permit densities and uses not greater than those permitted by the County immediately before final approval of the Annexation Ordinance. The City shall be responsible for all fees associated with the zoning process required by A.R.S. §9-471(M). Owner acknowledges that if Owner desires to change the zoning of the Property following Annexation, the City's approval of any rezoning of the Property may occur only after the Annexation Ordinance becomes final.

6. **Development of the Property.**

6.1 County Approvals. City agrees that it shall acknowledge, approve, and honor, and that Owner is authorized and entitled to construct and implement, all entitlements formally approved for the Property by the County prior to the date of Annexation, including without limitation, the types and uses, zoning, variances, densities and intensities, location of uses, minimum size of proposed lots and residences, and other standards of design permitted by the County, preliminary and final plats, and all engineering plans, as specifically and finally approved by the County for the Property ("**Approved Entitlements**"). From and after Annexation, City agrees to fully cooperate in processing the approval and issuance of plans, permits, specifications or plats that are consistent with the Approved Entitlements, provided that after Annexation, the City may require that Owner pay applicable fees that have not been paid to the County prior to Annexation. Owner and City agree that after County approval of the Approved Entitlements, any and all subsequent zoning ordinances or requirements, zoning restrictions, addenda, and revisions adopted by the City will not be applied to the Property to the extent they conflict with the Approved Entitlements, and the City shall not impose or enact additional conditions, overlays, exactions, requirements, dedications, development or other fees, rules or regulations applicable to or governing the development of the Property, including any requirement for the dedication of land or property, or the payment of fees or money for the planning, design, engineering, construction, acquisition, improvement maintenance or provision of public services or infrastructure improvements to lessen, offset, mitigate, or compensate for the burdens of

the development of the Property on the City to the extent they conflict with the Approved Entitlements, the City having acknowledged that all such burdens have been considered and are adequately accounted for by the conditions to development of the Property set forth in the Approved Entitlements, and this Agreement. If the County has not given final approval of any improvement plans at the time of Annexation, Owner shall submit such plans to the City for review and approval in accordance with the City's rules and regulations in effect at the time of submittal, provided however, that the City shall not require improvement plans that materially change the improvement plans for the Approved Entitlements. Such improvement plans include without limitation, roadway improvements, grading, drainage, water and sewer, landscaping, and lighting plans (the "**Improvement Plans**"). Notwithstanding anything to the contrary set forth herein, if there is a conflict between the terms of this Agreement and any zoning approval by the County ("**County Zoning**"), the County Zoning shall control and prevail.

6.2 City Communication with County. Prior to Annexation, and during any pending zoning, approval process for any tentative plat or final plat, Improvement Plans, permits or other entitlements with the County regarding the Property, the City shall not communicate on such pending entitlement matters with the County or any of its representatives without first disclosing to Owner the intent and purpose of such communications, and delivering a copy of such communication to Owner via electronic mail to the addresses set forth in Section 12.1.

6.3 Fees.

(a) Subject to Section 6.3(b) below, the City may impose development fees in accordance with state law after Annexation, but only to the extent that Owner has not paid fees for such services to the County.

(b) The City acknowledges and agrees that Owner will not owe the City any fees already paid by Owner to the County for Approved Entitlements, including, without limitation, approved zoning, preliminary or final plats, Improvement Plans, permits or other entitlements. Owner acknowledges and agrees that, after Annexation, Owner will be subject to any and all applicable fees of the City that arise after Annexation related to post-Annexation development of the Property, including, but not limited to, applicable filing fees, plan review fees, and building permit fees.

6.4 Post-Annexation Requirements. Following Annexation, City shall not apply to the Property any legislative or administrative land use regulation that would change, alter, impair, prevent, diminish, delay or otherwise impact the development or use of the Property as set forth in the Approved Entitlements, except as follows: (1) as specifically agreed to in writing by Owner; (2) future land use ordinances, rules, regulations, permit requirements and other requirements and official policies of the City enacted as necessary to comply with mandatory requirements imposed on the City by county, state or federal laws and regulations, court decisions, and other similar superior external authorities beyond the control of the City, provided that if any such mandatory requirement prevents or precludes compliance with this Agreement, if permitted by law,

such affected provision of this Agreement shall be modified as may be necessary to achieve the minimum permissible compliance with such mandatory requirements; and (3) future updates of, and amendments to existing building, plumbing; mechanical, electrical, and similar construction and safety related codes adopted by the City, which updates and amendments are generated by a nationally recognized construction/safety organization or by the County, state or federal governments. Nothing contained in this Agreement shall be interpreted as relieving Owner of any obligation that it may have with respect to laws and regulations enacted by the Federal government or the State of Arizona. Nothing contained in this Agreement shall alter or diminish the authority of the City to exercise its eminent domain powers.

6.5 Fire Services Agreement. The Parties acknowledge and agree to be bound by the Fire Protection Services Agreement by and between the City and the South Maricopa Fire Association dated _____, 2022, and recorded in the Official Records of Pinal County, Arizona, on _____, 2022, at _____.

6.6 Development Agreements. Notwithstanding anything to the contrary set forth herein, the Parties agree that upon Annexation, any development agreements between the County and Owner related to the Property shall be of no further force or effect and the City shall have no obligations under such agreements after the Annexation Ordinance. The Parties, in their sole and absolute discretion, may enter into an amendment of this Agreement after Annexation, but this Agreement shall remain in full force and effect.

6.7 City Rules and Regulations. Unless otherwise specifically set forth in the Approved Entitlements, zoning, preliminary or final plats, Improvement Plans, permits or other entitlements as approved by the County, Owner hereby acknowledges and agrees that after Annexation, except as otherwise approved by the County prior to Annexation, the development of the Property will comply with all applicable laws in place at the time such development commences, including without limitation, the City's rules and regulations. City shall not require any change or alteration to subdivision designs, lot sizes, building setbacks, or garage width requirements approved by the County or as are set forth in any County Approved Entitlements, including without limitation, approved zoning, tentative, preliminary, or final plats on the Property, even if such Approved Entitlements, subdivision designs, lot sizes, building setbacks, or garage width requirements do not conform to City codes and standards as of the date of Annexation, or thereafter. Subject to Sections 6.1 and 6.3, following Annexation, Owner agrees to pay all applicable City fees and charges related to the development of the Property, including without limitation, development impact fees, review fees, and inspection fees.

6.8 Review of Design and Construction Plans. Prior to Annexation Ordinance becoming final, Owner agrees to submit to the City a courtesy copy of any zoning, preliminary or final plat, improvement plans or other entitlements being submitted to the County. Notwithstanding anything to the contrary set forth herein, after the Annexation Ordinance becomes final, the City shall have the right and authority to review and approve the Improvement Plans and specifications related to the Property not then approved by

the County prior to any work related to those plans being commenced and, if there are any revisions to those plans and specifications after the work is commenced, the City shall have the right and authority to review and approve any revisions to the plans and specifications to ensure such plans and specifications are in accordance with applicable County approvals. In addition, following Annexation, the City shall have the right and authority to inspect the ongoing construction of the improvements to ensure that such construction is performed in accordance with the applicable plans and specifications therefor.

6.9 Construction. Following Annexation and except as otherwise approved by the County prior to Annexation, Owner shall construct or cause to be constructed all improvements necessary for the development of the Property at its sole cost and expense in a good and workmanlike manner in conformity with specifications, standards and engineering regularly applied by the City. Upon completion of the installation and construction of the improvements, Owner will convey any completed public roadway improvements to the City, lien and debt free, after acceptance of such improvements by the City in accordance with the City's standard practices. Owner will also provide a warranty related to such improvements as normally required by the City's rules and regulations.

6.10 Assurances. At the time of development after Annexation, Owner, or its successors and/or assigns, shall give the City financial assurances to assure completion of any necessary improvements in such form, substance and amount consistent with the applicable provisions of the City's subdivision ordinance.

7. **Infrastructure Plans**. Following Annexation, Owner will submit to the City for its records, the as built infrastructure plans as necessary and required for the Approved Entitlements. The infrastructure plans shall include without limitation, grading, drainage, sewer, water and roadway improvements ("**Infrastructure Plans**").

8. **Infrastructure and Design Standards**. The infrastructure and design standards, requirements and specifications identified in the Approved Entitlements shall be applicable to the development of the Property. To the extent there is no identification of a particular standard, the existing County design standards and specifications shall apply to the development of the Property until Annexation and the City design standards and specifications shall apply to the development of the Property after Annexation. Upon Annexation, City and Owner acknowledge that amendments to the Infrastructure Plans and/or the infrastructure and design standards and specifications for any improvements not commenced under the Infrastructure Plans as of the date of Annexation and thereafter, may be necessary from time to time. If City and Owner jointly determine that amendments are necessary to the Infrastructure Plans and infrastructure and design standards and specifications for the Property, Owner and the City (through an authorized administrative official), to the extent permitted by applicable law, shall effectuate such amendment(s). Such City administrative approval shall not be unreasonably denied.

9. **Streets.** Except as such standards are otherwise set forth in the Approved Entitlements and as may be modified under Section 6.4, following Annexation, Owner shall construct the streets and roadways in compliance with the City standards in existence as of the date of construction. Determination by Owner of whether interior subdivision streets will be dedicated to the public or remain private shall be made following Annexation and no later than the tentative subdivision plat is submitted to the City for approval for each platted subdivision.

10. **Val Vista Road Alignment.** The City covenants that if the alignment of Val Vista Road is altered from its alignment as of the Effective Date, City will consider Owner's concerns regarding any future alignment proposals. Notwithstanding anything to the contrary set forth herein, which alignment to support shall be based on the City's sole and absolute discretion.

11. **Cooperation and Alternative Dispute Resolution.**

11.1 Appointment of Representatives. To further the cooperation of the parties in implementing this Agreement, the City and Owner shall each designate and appoint a representative to act as a liaison between the City and its various departments and Owner. The initial representative for the City (the "**City Representative**") shall be _____, and the initial representative for Owner shall be Harry Zeitlin (the "**Owner Representative**"). The representatives shall be available at all reasonable times to discuss and review the performance of the parties to this Agreement and the development.

11.2 Default. Failure or unreasonable delay by either party to perform or otherwise act in accordance with any term or provision hereof shall constitute a breach of this Agreement and, if the breach is not cured within thirty (30) days after written notice thereof from the other party (the "**Cure Period**"), shall constitute a default under this Agreement; provided, however, that if the failure is such that more than thirty (30) days would reasonably be required to perform such action or comply with any term or provision hereof, then the party shall have such additional time as may be necessary to perform or comply so long as the party commences performance or compliance within said thirty (30) day period and diligently proceeds to complete such performance or fulfill such obligation. Any notice of a breach shall specify the nature of the alleged breach in the manner in which said breach may be satisfactorily cured, if possible.

11.3 Dispute Resolution. In the event a dispute arises under this Agreement which the Parties cannot resolve between themselves, the Parties agree that there shall be a ninety (90) day moratorium on litigation during which time the Parties agree to attempt to settle the dispute by non-binding mediation before commencement of litigation. The mediation shall be held under the Commercial Mediation Rules of the American Arbitration Association ("**AAA**") but shall not be under the administration of the AAA. The matter in dispute shall be submitted to a mediator mutually selected by Owner and the City. If the Parties cannot agree upon the selection of a mediator within ten (10) days, then within five (5) days thereafter, the City and Owner shall request that the Presiding

Judge of the Superior Court in and for the County of Pinal, State of Arizona, appoint the mediator. The cost of any such mediation shall be divided equally between the City and Owner. The results of the mediation shall be nonbinding with any Party free to initiate litigation upon the conclusion of the latter of the mediation or of the ninety (90) day moratorium on litigation. The mediation shall be completed in one day (or less) and shall be confidential, private, and otherwise governed by the provisions of A.R.S. §12-2238.

12. Notices and Filings.

12.1 Manner of Serving. Any notice or other communication required or permitted to be given under this agreement shall be in writing and shall be deemed to have been duly given if (i) delivered to the party at the address set forth below, (ii) deposited in the U.S. mail, registered or certified, return receipt requested, to the address set forth below, or (iii) given to a recognized and reputable overnight delivery service, to the address set forth below:

The City: City of Maricopa
Attn: Rick Horst, City Manager
39700 West Civic Center Plaza
Maricopa, Arizona 85138
Rick.Horst@maricopa-az.gov

City of Maricopa
Attn: Denis Fitzgibbons, City Attorney
1115 E. Cottonwood Lane, Suite 150
Casa Grande, Arizona 85122
denis@fitzgibbonslaw.com

Owner: Zeitlin Capital, LLC
Attn: Harry Zeitlin
5050 North 40th Street, Suite 380
Phoenix, Arizona 85018
harry@zeitlincapital.com

Dawn Zeitlin
Post Office Box 15662
Phoenix, Arizona 85060
dawn@zeitlinlaw.com,

or to such other addresses as either party hereto may from time to time designate in writing and delivery in a like manner.

12.2 Mailing Effective. Any notice or other communication directed to a party to this Agreement shall become effective upon the earliest of the following: (i) actual receipt by the party; (ii) delivery to the addressed of the party; or (iii) if given by certified or

registered U.S. Mail, return receipt requested, 72 hours after deposit with the United States Postal Service, addressed to the party.

13. General.

13.1 Waiver. No delay in exercising any right or remedy shall constitute a waiver. No waiver by the City or Owner of any breach of a covenant or condition of this Agreement shall be construed as a waiver of any proceeding or succeeding breach of the same or any other covenant or condition of this Agreement. No waiver shall be effective unless in writing and signed by the granting party.

13.2 Council Action Requirement. The Parties acknowledge that, notwithstanding any language of this Agreement, no act, requirement, payment, or other agreed upon action to be done or performed by the City, which would, under any law require formal action, approval, or concurrence by the City Council, will be required to be done or performed by the City unless and until formal Council action has been taken and completed. This Agreement in no way acquiesces to or obligates the City to perform a legislative act.

13.3 Further Acts. Each party agrees in good faith to execute such further or additional instruments and documents and to take such further acts as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement. However, the Parties acknowledge that City is limited in its actions by law and ordinances.

13.4 Successors and Assigns. This Agreement cannot be assigned by either party without written consent of the other party. Such consent shall not be unreasonably withheld. Owner's rights and obligations hereunder may only be assigned to a person or entity that has acquired the Property or a portion thereof and only by a written instrument, recorded in the Official Records of Pinal County, Arizona, expressly assigning such rights and obligations, except as otherwise provided. All of the provisions hereof shall inure to the benefit of and be binding upon the successors and assigns for the parties hereto.

13.5 No Partnership; Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other agreement between Owner and the City. No term or provision of this Agreement shall be for the benefit of any person or entity not a party hereto and no such other person or entity shall have any right or cause of action hereunder.

13.6 Indemnification. To the fullest extent allowed by law, Owner shall indemnify, protect, defend and hold harmless the City, its Council members, officers, employees, and agents from any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, out of the exercise of this Agreement by Owner.

13.7 Entire Agreement. This Agreement and all exhibits thereto constitute the entire agreement between the Parties hereto pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, are hereby superseded and merged herein.

13.8 Amendment. No change or addition is to be made this Agreement except by written amendment executed by the parties hereto. Within ten (10) days after any amendment to this Agreement, such amendment shall be recorded in the Official Records of Pinal County, Arizona. Owner acknowledges and understands that no modification of this Agreement shall have any force or effect unless approved by the City Council in a public meeting.

13.9 Assignment. The rights and obligations of Owner under this Agreement may be transferred or assigned, in whole or in part, by a written instrument, to any subsequent owner or person (each, a "**Transferee**") having an interest in all or any portion of the Property ("**Transferred Property**"), pursuant to which the Transferee expressly accepts and assumes the rights and obligations of Owner which are assigned by Owner to such Transferee with respect to such Transferred Property. Upon the conveyance or other disposition (other than in trust pursuant to the granting of a deed of trust related solely to financing of the Property) (a "**Transfer**") of any portion of the Transferred Property, the Transferee shall be deemed to be a party to this Agreement with respect to such Transferred Property, and the prior owner shall have no further obligations under this Agreement regarding the Transferred Property arising from and after the date of Transfer of such Transferred Property. An assignment of rights may be on a non-exclusive basis. Such transfer or assignment shall relieve Owner of its obligations under this Agreement and the Transferee shall be deemed to be the "Owner" under this Agreement.

13.10 Authority. Each of the parties represents and warrants to the other that the persons executing this Agreement on behalf of the respective parties are authorized and empowered to bind the party on whose behalf each such individual is signing.

13.11 Severability. If a court of competent jurisdiction declares any provision of this Agreement void or unenforceable such provisions shall be severed from this Agreement, which shall otherwise remain in full force and effect.

13.12 Governing Law and Venue. This Agreement shall be interpreted and governed according to the laws of the State of Arizona. The venue for any dispute hereunder shall be Pinal County, Arizona.

13.13 Attorney Fees. If it becomes necessary for a party to this Agreement to employ legal counsel or to bring an action at law or other proceedings to enforce any of the terms, covenants or conditions of this Agreement, the non-prevailing party will pay the other party's reasonable expenses, including, but not limited to, expert witness fees, and reasonable attorney fees incurred because of the breach.

13.14 Construction of Agreement. This Agreement has been arrived at by negotiation and shall not be construed against either Party or against the Party who prepared the last draft.

13.15 Recordation. This Agreement shall be recorded in its entirety in the Official Records of Pinal County, Arizona, not later than ten (10) days after its full execution. Either Party, upon the request of the other Party, will record an acknowledgment of the fulfillment of the terms of this Agreement once the requirements of the Agreement have been fulfilled.

13.16 Survival and Expiration. All agreements, representations, indemnities and warranties made in the Agreement shall survive the termination of this Agreement only as expressly set forth in this Agreement. Otherwise, the Agreement shall expire upon completion.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date and at the time the Board approves and adopts this Agreement.

HAM SUNSET, L.L.C., an Arizona limited liability company

By: 
Harry Zeitlin

Its: Manager

CITY OF MARICOPA, an Arizona municipal corporation

By: _____
Christian Price, Mayor

ATTEST:

Vanessa Bueras, MMC
City Clerk

APPROVED AS TO FORM:

Denis M. Fitzgibbons
City Attorney

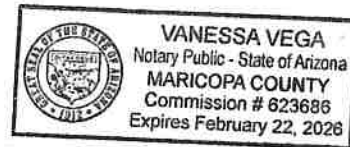
STATE OF ARIZONA)
) ss.
County of Maricopa)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this 18th day
of July, 2022, by Harry Zeitlin, Manager of HAM Sunset, L.L.C.

Vanessa Vega
Notary Public

My commission expires:

February 22, 2026



STATE OF ARIZONA)
) ss.
County of _____)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this _____
day of _____, 2022, by Christian Price, Mayor, City of Maricopa.

Notary Public

My commission expires:

STATE OF ARIZONA)
) ss.
County of _____)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this _____
day of _____, 2022, by Vanessa Burns, City Clerk, City of Maricopa.

Notary Public

My commission expires:

STATE OF ARIZONA)
) ss.
County of _____)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this _____
day of _____, 2022, by Denis M. Fitzgibbons, City Attorney, City of Maricopa.

Notary Public

My commission expires:

ESCROW NO.: 240-080500163-021

EXHIBIT "A"

A parcel of land lying in and being a part of Section 28, Township 5 South, Range 3 East, Gila and Salt River Base and Meridian, Pinal County, Arizona, more particularly described as follows:

□COMMENCING at the Northwest corner of said Section 28, the TRUE POINT OF BEGINNING;

THENCE North 89 degrees 58 minutes 45 seconds East, a distance of 5329.05 feet to the Northeast corner of Section 28;

□THENCE South 0 degrees 16 minutes 00 seconds West, a distance of 2951.34 feet;

□THENCE South 87 degrees 58 minutes 24 seconds West, a distance of 5380.90 feet;

THENCE North 01 degrees 08 minutes 33 seconds East, a distance of 135.00 feet to the West quarter corner of Section 28;

THENCE North 01 degrees 08 minutes 06 seconds East, a distance of 3005.30 feet to the TRUE POINT OF BEGINNING;

EXCEPT that portion of the East half of the East half of said Section 28, described as follows:

BEGINNING at the Northeast corner of said Section 28;

THENCE South 00 degrees 17 minutes 57 seconds West along the East line of Section 28, a distance of 2631.35 feet to the East quarter corner of Section 28;

THENCE South 00 degrees 18 minutes 28 seconds West along the East line of Section 28, a distance of 320.00 feet;

□THENCE South 88 degrees 00 minutes 20 seconds West, a distance of 105.25 feet;

THENCE North 00 degrees 18 minutes 12 seconds East, a distance of 2955.04 feet to a point on the North line of Section 28;

THENCE South 89 degrees 59 minutes 03 seconds East, a distance of 105.00 feet to the POINT OF BEGINNING; and

EXHIBIT "A"

(Continued)

ALSO EXCEPT the North 75 feet of the West half of said Section 28; and

ALSO EXCEPT the South 40 feet of the North 115 feet of the West 275 feet of the West half of said Section 28;

ALSO EXCEPT the North 75 feet of the West 150 feet of the East half of said Section 28

ALSO EXCEPT that part of the Northwest quarter of Section 28, Township 5 South, Range 3 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona, more particularly described as follows:

COMMENCING at the 1/2" Iron Bar marking the Northwest corner of said Section 28, from which the 1/2" Iron Bar with Pinal County Cap marking the West quarter corner of said Section 28 bears South 01 degrees 07 minutes 51 seconds West, a distance of 3004.65 feet;

THENCE South 01 degrees 07 minutes 51 seconds West along the West line of the Northwest quarter of said Section 28, a distance of 1443.62 feet;

THENCE South 88 degrees 52 minutes 09 seconds East departing said West line, a distance of 63.00 feet to the TRUE POINT OF BEGINNING;

THENCE continuing South 88 degrees 52 minutes 09 seconds East, a distance of 5.00 feet;

THENCE South 59 degrees 15 minutes 37 seconds East, a distance of 30.90 feet;

THENCE South 88 degrees 52 minutes 09 seconds East, a distance of 20.17 feet to a point on a line which is parallel with and 115.03 feet Easterly, as measured at right angles, from the West line of the Northwest quarter of said Section 28;

THENCE South 01 degrees 07 minutes 51 seconds West along said parallel line, a distance of 95.00 feet;

EXHIBIT "A"

(Continued)

THENCE North 88 degrees 52 minutes 09 seconds West departing said parallel line, a distance of 20.17 feet to a point on a line which is parallel with and 94.86 feet Easterly, as measured at right angles, from the West line of the Northwest quarter of said Section 28;

THENCE South 01 degrees 07 minutes 51 seconds West along said parallel line, a distance of 45.00 feet;

THENCE South 61 degrees 07 minutes 51 seconds West departing said parallel line, a distance of 31.00 feet;

THENCE North 88 degrees 52 minutes 09 seconds West, a distance of 5.02 feet to a point on a line which is parallel with and 63.00 feet Easterly, as measured at right angles, from the West line of the Northwest quarter of said Section 28;

THENCE North 01 degrees 07 minutes 51 seconds East along said parallel line, a distance of 170.77 feet to the TRUE POINT OF BEGINNING;

TOGETHER WITH all rights, including water rights, and appurtenances thereto.

EXCEPTING THEREFROM all coal, oil, gas, and mineral deposits as conveyed to DRH Energy, Inc., a Colorado corporation, recorded March 27, 2007 in Fee No. 2007-036589, Official Records.

28
E.
AR BENT

VAL VISTA

ROAD

NE
T.
FND

N89°58'45"E 2664.09'(M)

N89°58'45"E 5329.05'(L)
N89°58'45"E 5328.18'(M)

N89°58'45"E 2664.09'(M)

N1/4 CORNER SEC. 28
T. 5 S., R. 3 E.
NOT FOUND, CALCED POSITION

ROAD

N01°08'06"E 3005.30'(L)
N01°07'51"E 3004.65'(M)

THIS

PROJECT

N00°43'50"E
2817.70'(M)

CENTER OF SEC. 28
T. 5 S., R. 3 E.
NOT FOUND, CALCED POSITION

S00°16'00"W(L)
S00°17'57"W 2631.35'(L)
S00°15'50"W 2630.89'(M)

ROAD

28
WITH
P

S86°00'28"W
2694.01'(M)

S86°00'28"W
2694.43'(M)

SECTION

28

A