

**EXHIBIT "A"**

**Legal Description of the Property**

The land referred to herein below is situated in the County of Maricopa, State of Arizona and is described as follows:

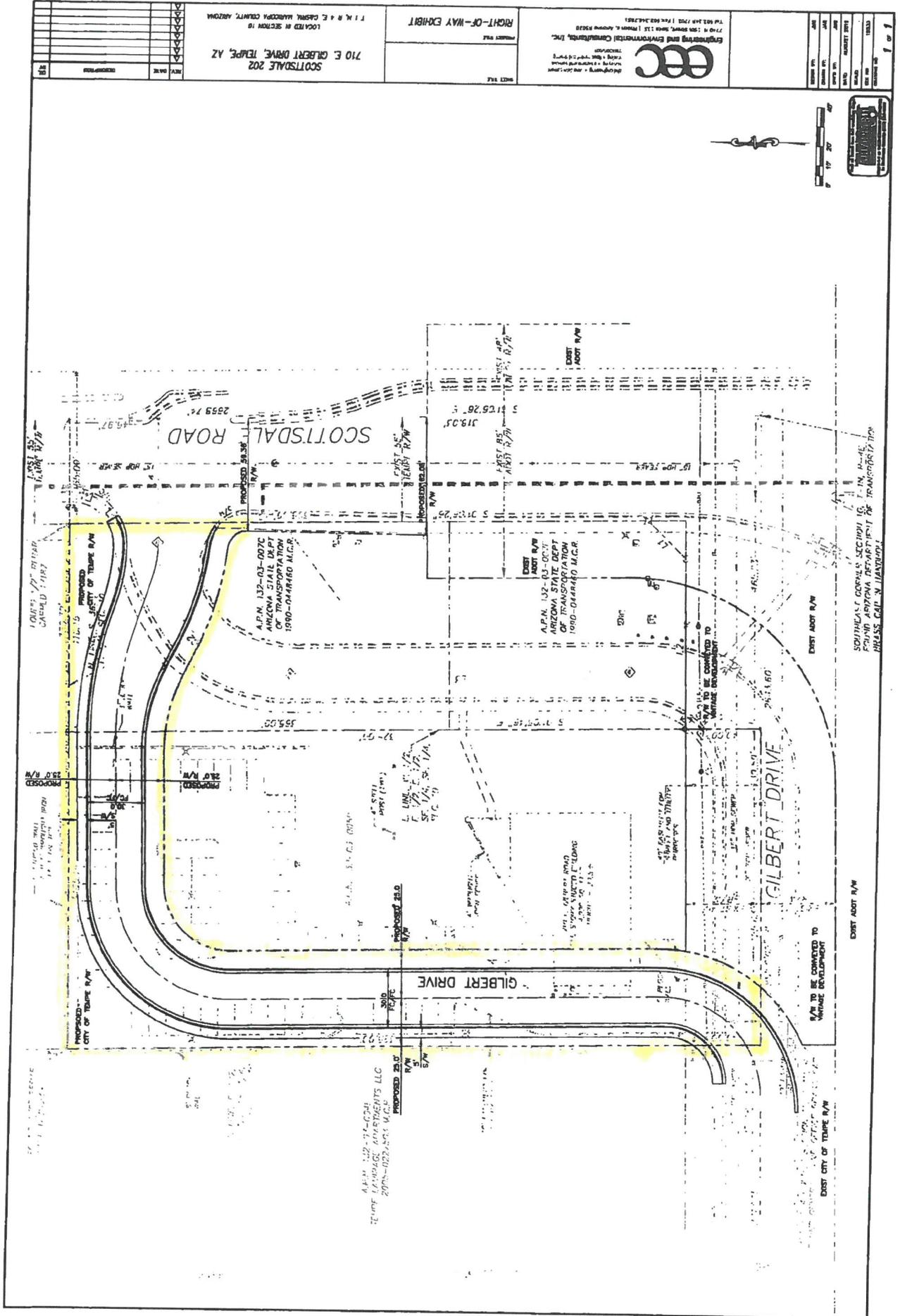
The South 365.00 feet of the West half of the East half of the East half of the Southeast quarter of the Southeast quarter of Section 10, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona



**Exhibit C**  
**Schedule of Performance**

Commence Construction of Relocated Drive	June 30, 2016
Substantially Complete Relocated Drive	January 31, 2017
Install landscaping	January 31, 2018

**EXHIBIT "D"**  
**New Location**



# EXHIBIT "E"

## ESCROW AGREEMENT

(C2015-\_\_\_\_\_)

THIS ESCROW AGREEMENT (“Agreement”) is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and among THE CITY OF TEMPE, an Arizona municipal corporation (“City”), Vintage Partners, LLC, an Arizona limited liability company (“Developer”), and [Fidelity National Title Insurance Company] (“Escrow Agent”).

### RECITALS

A. City and Developer are parties to that certain Development and Disposition Agreement [c2015-\_\_\_], dated as of \_\_\_\_\_, 2015, and recorded \_\_\_\_\_, 2015 at Instrument No. 2015-\_\_\_\_\_ Official Records of Maricopa County Recorder (the “Development Agreement”). Capitalized terms used herein without definition have the meanings given such terms in the Development Agreement.

B. In the Development Agreement, Developer agreed to construct the Relocated Drive in an area to be identified and approved by City (the “New Location”). On completion of construction of the Relocated Drive and certain other Improvements, Developer agreed to dedicate the New Location to the City for use as a public roadway and City agreed to convey the City Land to Developer.

C. To facilitate the exchange, the parties have agreed to execute the conveyance and dedication documents and place them into escrow on the terms and conditions set forth herein.

D. Escrow Agent has been retained to serve as escrow agent for the purposes of depositing funds, deeds and disbursement of funds, recording deeds in accordance with the terms and provisions hereinafter set forth.

E. City and Developer understand that the extent of the obligation of Escrow Agent hereunder is to receive and disburse monies and record documents in the manner hereinafter set forth, and Escrow Agent shall have no other obligations hereunder to the parties hereto.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and agreements contained herein, the parties hereto agree as follows:

### AGREEMENT

**1. Definitions.** Capitalized terms used herein without definition shall have the meanings given such terms in the DDA.

**2. Escrow.** Upon its receipt of executed counterparts of this Agreement, the Escrow Agent shall execute this Agreement and establish an escrow (the “**Escrow**”) for the purpose of receiving, holding, and distributing the documents referenced herein, in accordance with the terms of this Agreement.

**3. Deposits into Escrow.** The following documents have been or will be deposited with Escrow Agent:

(a) A fully executed and notarized plat or declaration of dedication in such form as may be required by City (the “Dedication Deed”) which shall dedicate the New Location to City for the use and benefit of the public.

(b) A fully executed and notarized special warranty deed conveying title to the City Land to Developer.

(c) The maintenance agreement contemplated by Section 3.3 of the Development Agreement.

(d) Cash or a performance and payment bond in the amount estimated to construct, install and place in service the landscaping and other Improvements not completed at the time of Closing as contemplated in Section 3.3.4 of the Development Agreement.

(e) On or before the Closing Date (as hereafter defined), each party shall execute and deliver to Escrow Agent, such documents as reasonably may be requested by the other party or by Escrow Agent, including easements, to consummate the transactions contemplated hereby.

**4. Developer Representations.** Developer acknowledges, represents and warrants to City that on the date of execution of this Agreement and as of Closing Date:

(a) The recitals contained in this Agreement are true and correct.

(b) The execution, delivery and performance of this Agreement by Developer and the execution and delivery of the Deed and all other documents required by this Agreement, require no governmental approval (other than the City) or the approval of any other person not heretofore obtained and do not violate, contravene or conflict with any law, order or regulation of any court or of other governmental authority or any contractual restrictions applicable to or binding upon Developer or on the Property.

(c) Developer owns (or has the right to acquire) fee title to the Property, and has the right to convey the Property to City.

(d) Developer acknowledges that creation of this Escrow and City’s deposit of any documents is not a waiver or relinquishment of any of City’s rights under the Development Agreement, and that no document delivered into Escrow by City are operative or of any force or effect unless and until the Closing hereunder occurs.

**5. Close of Escrow; Conditions.**

(a) City and Developer name Fidelity National Title Insurance Company (Christine Hughes) to serve as escrow agent ("Escrow Agent") for the purpose of consummating the transactions contemplated by this Agreement.

(b) The "Closing Date" shall be the date on which the parties have made all required deliveries of documents and the plat and deeds are duly recorded, but in no event shall the Closing Date occur later than the date specified in the Development Agreement. The Closing Date may be changed by mutual written agreement of the parties.

(c) Escrow fees, closing costs, transfer taxes, recording fees and all other escrow and closing costs of the consummation of this transaction shall be paid by Developer. City will not provide any funds in connection with the Escrow or the closing of the transaction contemplated herein.

(d) Escrow Agent shall not record any document unless and until it shall have received all of the following items:

(i) Written confirmation from City that the City has issued a certificate of completion for the Relocated Drive; and

(ii) Written confirmation from City that Developer has performed and complied with each and every undertaking to be performed by Developer under this Agreement and the Development Agreement as a condition to the consummation of the conveyance of the City Land; and

(iii) Written confirmation from any third party whose consent is required as a condition to recording of the plat, that Developer has performed and complied with every other obligation to be performed by Developer at or before the Closing pursuant to any agreement, instrument or document to which Developer or the Property is subject; and

(iv) Written confirmation from Developer that each representation and warranty made in this Agreement is true as of Closing Date.

(e) On receipt of the items referenced in subparagraph (d) above, Escrow Agent is authorized and directed to take the following actions (the "Closing"):

(i) record any easements against the City Land required to confirm the rights of utilities currently located within the right of way;

(ii) record the plat or deed of dedication;

(iii) record the deed conveying the City Land to Developer.

(g) City may at any time or times on or before the Closing Date, in its unfettered discretion, waive any of the foregoing conditions to its obligations hereunder and to the consummation of this Agreement, but any such waiver shall be effective only if contained in the writing signed by City and delivered to Escrow Agent. However, if any of the foregoing conditions are not fulfilled or waived by the date specified in the Development Agreement or such other date as City and Developer may have agreed in writing, then Escrow Agent is hereby directed to return to City the documents delivered by it and to terminate this Agreement.

**6. Indemnification of Escrow Agent.**

The parties hereby agree to indemnify, defend and hold harmless Escrow Agent against but not limited to all costs, damages, attorneys fees, expenses and liabilities which Escrow Agent may incur or sustain in connection with this Escrow Agreement, or any court action arising therefrom, and to pay the same upon demand, except claims arising out of Escrow Agent's negligence, bad faith, recklessness, intentional misconduct or breach of the Agreement.

**7. Conflicting Demands.** If conflicting demands are made upon Escrow Agent, Escrow Agent may hold any money or documents subject to such conflicting demands until the rights of the parties making such conflicting demands be determined by court action. Escrow Agent may interplead said parties, whereupon Escrow Agent shall be fully relieved of any and all liability in regard to such demands and the parties hereunder.

**8. Instruction to Escrow Agent.** This Agreement shall constitute joint instructions to Escrow Agent from the Parties and the amounts deposited shall be disbursed and dealt with by Escrow Agent in strict accordance with the following:

(a) **Money Market Account.** Escrow Agent may deposit or invest the amounts deposited in a money market account reasonably acceptable to the parties (provided the deposited amounts are available for immediate withdrawal, as and when required under the Agreement). Interest monies earned on such money market account(s) will be added to the Escrow Account funds to be utilized for costs and fees related to the Agreement. It is understood by the parties that the Escrow Agent is not providing management nor oversight functions with respect to a payment made on behalf of another, nor has significant economic interest in connection with the payment; and therefore, would not be responsible for issuing information returns to the IRS under IRC section 6041 and/or Rev. Rul. 73-90.

(b) **Limitation of Liability.** Escrow Agent shall not be liable for any action taken or omitted by it, except for its own negligence, bad faith or willful misconduct; nor shall it be liable or responsible for the validity, enforceability or sufficiency of any document furnished to it pursuant to any provision thereof; nor shall it be responsible for any representation or statements made in any of those documents.

(c) **Advice of Counsel:** Escrow Agent shall be entitled to rely upon advice of counsel concerning legal matters and upon any document or notice delivered to it hereunder which it believes to be genuine or to have been presented by a proper person.

(d) **Compensation:** Escrow Agent shall be entitled to receive compensation for its services hereunder in accordance with its rate schedule. Escrow Agent is hereby authorized to deduct from first monies available its fees. **Note: A reasonable charge will be made for extraordinary services rendered.**

9. **Cancellation.** This Agreement may be canceled only upon written approval of all parties hereto except as otherwise provided in the Escrow Agreement. Escrow Agent's action upon cancellation shall consist of final disbursement of funds upon written direction of either the parties or by court action, which ever is applicable.

10. **Resignation.** Escrow Agent has the right to resign upon written notice thereof mailed to the Parties thirty (30) days prior to the effective date. If such right is exercised, all funds and documents shall be delivered to a mutually appointed substitute Escrow Agent or as otherwise directed by the Parties hereto.

#### 11. **General Provisions.**

(a) **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors, heirs and assigns.

(b) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, but all of which shall together constitute one and the same instrument.

(c) **Construction.** This Agreement is intended to express the mutual intent of the parties hereto and thereto, and irrespective of the party preparing any document, no rule of strict construction shall be applied against any party.

(d) **Attorneys' Fees.** Should either party institute any action or arbitration proceeding to enforce any provision hereof, or for a declaration of such party's rights or obligations hereunder, or for any judicial remedy, the prevailing party shall be entitled to be reimbursed by the losing party for all costs and expenses incurred thereby including, but not limited to, such amount as the court may adjudge to be reasonable attorneys' fees for the services rendered the party finally prevailing in any such action or proceeding.

(e) **Enforceability.** The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if the invalid or unenforceable provision were admitted.

(f) **Entire Agreement.** This Agreement, the Exhibits attached hereto, and the documents and instruments executed and delivered in connection herewith contain the sole and entire agreement and understanding of the parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, and understandings related hereto are hereby merged herein. No representations, oral or otherwise, express or implied other than those contained herein and in said other documents have been made by any party hereto. There

are no other agreements, understandings, restrictions, or warranties, oral or otherwise, between the parties hereto with respect to the subject matter hereof.

(g) Waiver, Modification and Amendment. No provision hereof may be waived unless in writing, signed by all parties hereto. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein. This Agreement may be modified or amended only by a written agreement executed by all of the parties hereto.

(h) Construction and Jurisdiction in Venue. This Agreement and Exhibits hereto shall be construed in accordance with the laws of the State of Arizona. Venue for any action regarding this Agreement shall be in Maricopa County.

(i) Time of Essence. Time is of the essence of this Agreement and of each and every provision herein.

(j) Notices and Communications. All notices, approvals and other communications provided for herein or given in connection herewith shall be validly given, made, delivered or served, if in writing and sent by either: (i) in person (i.e., by personal delivery); (ii) facsimile; (iii) e-mail transmission; (iv) United States Postal Service, postage prepaid, certified, return receipt requested; or (v) nationally recognized overnight courier (e.g., Federal Express, Airborne, UPS), to the address of the intended recipient as set forth below, or to such other addresses as a party may from time to time designate in writing and deliver in a like manner:

If to City:       City Manager  
                           31 East 5th Street  
                           Tempe, Arizona 85281

With a copy to:   City of Tempe  
                           Attn: City Attorney  
                           31 East 5th Street  
                           Tempe, Arizona 85281

If to Developer:   Vintage Partners, LLC  
                           2502 E. Camelback Road  
                           Suite 214  
                           Phoenix, AZ 85016  
                           Attn: David C. Scholl

With a copy to:   Gary L. Birnbaum, Esq.  
                           Dickinson Wright  
                           1815 N. Central, Suite 1400  
                           Phoenix, AZ 85004

If to Escrow Agent: Fidelity National Title Insurance Company  
                           60 East Rio Salado Parkway

Notices, approvals and other communications provided for herein shall be deemed delivered and received upon the earliest of personal delivery, one (1) business day after confirmed facsimile or e-mail transmission, three (3) business days following deposit with the United States Postal Service with postage prepaid, or one (1) business day following deposit with a nationally recognized overnight courier, as herein above provided, prepaid and addressed as set forth above. Any notices delivered and received after 5:00 p.m., Arizona time, or on a Saturday, Sunday or federal or Arizona state holiday shall be deemed delivered and received on the business day immediately following the day such notice would have otherwise been deemed delivered hereunder. The inability to deliver notice because of a changed address of which no notice was given, or the rejection or other refusal to accept any notice, shall be deemed to be the effective receipt of the notice as of the date of such inability to deliver or rejection or refusal to accept.

**[Signatures appear on following pages.]**



