

When Recorded, Return To:

City of Tempe
31 East Fifth Street
Tempe, Arizona 85281
Attention: City Clerk

ACCESS EASEMENT AGREEMENT

This Access Easement Agreement (“**Agreement**”) is made and entered into as of the ____ day of October, 2015 (the “**Effective Date**”), by and between **W-BUTTES, LLC**, a Delaware limited liability company, its successors and/or assigns (“**Grantee**”), and **THE CITY OF TEMPE**, an Arizona municipal corporation, its successors and/or assigns (“**Grantor**”).

WITNESSETH

A. Grantor and Grantee are parties to that certain Lease Agreement dated November 20, 1984, as amended Addendum No. 1 dated May 30, 1986, Addendum No. 2 to Ground Lease dated February 20, 1987, Addendum No. 3 to Lease Agreement dated May 25, 1989, and Addendum No. 4 dated October _____, 2015 (collectively, the “**Lease**”).

B. Pursuant to the Lease, Lessor has leased to Lessee, and Lessee has leased from Lessor, the real property described therein (the “**Premises**”).

C. Grantor owns the real property adjacent to the Premises, a portion of which contains a private drive, the location of which is more particularly identified on **Exhibit A** attached hereto (the “**Easement Area**”).

D. Grantee uses the Easement Area to obtain access to certain portions of the Premises. Grantee has requested that Grantor provide an access easement for vehicular and pedestrian access across the Easement Area, and Grantor has agreed to do so on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree for themselves, and their successors and assigns as follows:

1. Grant of Easement. Grantor grants to Grantee and to its customers, patrons, licensees, tenants, guests, agents, contractors, employees, and invitees (collectively, the “**Permittees**”) a nonexclusive and appurtenant easement (the “**Access Easement**”) for the purpose of vehicular access, ingress, and egress upon, over, and across the private street located on the Easement Area. The Access Easement does not include parking rights and the Easement Area shall not be used for parking.

a. Existing Easements. The Access Easement is subject to all existing encumbrances whether recorded or not, including easements and licenses to which the Easement Area is subject. The Access Easement is granted without representation or warranty and subject to all existing encumbrances of record, including easements and licenses to which the Easement Area is subject.

b. Compliance with Laws. Grantee shall comply with all laws, statutes, acts, ordinances, rules, regulations, codes, and standards of legally constituted authorities with jurisdiction, applicable to its use of the Easement Area. Grantee shall not use the Easement Area for any purposes in violation of any applicable zoning or other laws. Grantee shall obtain or cause to be obtained at its expense, all permits, approvals and authorizations required by its activities and actions pursuant to this Agreement.

c. Reasonable Use of Access Easement. The Access Easement shall be used and enjoyed by Grantee and its Permittees in such a manner as not to unreasonably interfere with or obstruct access to, or use and enjoyment of, the adjacent properties. The Access Easement is intended for the passage of passenger cars and light trucks, and may not be used for parking or any other purpose.

d. Maintenance and Damage to Easement Area. Grantor, at Grantor's sole cost and expense, shall maintain the Easement Area; however, Grantee shall exercise its rights hereunder in a manner so as not to damage the Easement Area or Grantor's Property or any property that may at any time be located thereon. Grantee shall promptly repair any damage caused by Grantee or its Permittees, and shall restore Grantor's Property (including the Easement Area) or any property located thereon to substantially the same condition which existed immediately prior to the performance of any work thereon by or on behalf of the Grantee.

e. Reservation. Grantor reserves the right to use, occupy, and improve the Easement Area for any and all purposes not inconsistent with the rights granted herein.

2. Indemnification and Insurance. Grantee shall be responsible for damages, losses and expenses, including but not limited to, reasonable attorney's fees, court costs, and the costs of appellate proceedings, arising from or related to the acts of omissions of the Grantee and its Permittees on or about the Grantor Property, including the Easement Area.

Grantee and its successors and assigns, at its own expense shall at all times maintain in full force a policy or policies of comprehensive liability insurance, including property damage, written by one or more responsible insurance companies licensed to do business in Arizona, which shall insure the Grantee, the Grantor, including its officials, officers, employees, volunteers and agents, against liability for injury to persons and property and for the death of any person arising from or related to the acts of omissions of the Grantee and its Permittees on or about the Grantor Property, including the Easement Area. The limits of such insurance shall be consistent with those required in the Lease. Said insurance limits shall be periodically reviewed by Grantor's Risk Manager and adjusted as necessary to ensure coverage based on market and risk requirements throughout the effective term of this Agreement. Said insurance shall be primary to the Grantor's self-insurance or any other insurance policy coverage

And a copy to:

Snell & Wilmer L.L.P.
One Arizona Center
400 E. Van Buren St., Suite 1900
Phoenix, AZ 85004
Attn: Joyce K. Wright

or to such other street address as may be designated by the respective parties in writing from time to time.

6. Entire Agreement. This Agreement supersedes all agreements previously made between the parties related to its subject matter, except to the extent of applicable terms and conditions set forth in the Lease.

7. Attorneys' Fees. In the event any action, suit or proceeding is brought by any party to enforce compliance with this Agreement, to exercise any rights or remedies under this Agreement or to declare the rights of the parties to this Agreement, the party prevailing in such action shall be entitled to receive from the non-prevailing party all costs and expenses, including expert witness fees and expenses, of such action, suit or proceeding, together with such sum as the court, and not the jury, may adjudge as reasonable attorneys' fees.

8. Choice of Law. This Agreement is made and is to be performed in the State of Arizona and shall be governed by the internal, substantive laws of the State of Arizona without regard to any conflict of laws or principles.

9. Successors and Assigns. Except as provided in this Agreement to the contrary, all of the terms, covenants and conditions contained in this Agreement shall run with the Premises and shall be binding upon, and shall inure to the benefit of, each of the parties hereto and their respective successors and assigns.

10. Conflict of Interest. Pursuant to A.R.S. §38-511, this Agreement is subject to cancellation if within three years after its execution, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City is an employee or agent of the other party to this Agreement in any capacity or a consultant to the other party to this Agreement with respect to the subject matter of this Agreement.

11. Captions. The section headings appearing in this Agreement are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or define the text of any section or subsection hereof.

12. Further Assurances. Each party agrees that it will execute and deliver such other documents and take such other action as may be reasonably requested by the other party to effectuate the purposes and intention of this Agreement.

13. No Waiver. The failure of either party to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the

validity of this Agreement or any part hereof or the right of such party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

14. No Oral Change. This Agreement cannot be changed orally or by course of conduct, and no executory agreement, oral agreement or course of conduct shall be effective to waive, change, modify or discharge it in whole or in part unless the same is in writing and is signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

15. No Third Party Beneficiaries. Grantor and Grantee agree and acknowledge that, except as expressly set forth herein, there are no intended third party beneficiaries of this Agreement nor any of the rights and privileges conferred herein.

16. Waiver of Jury Trial. Grantor and Grantee, by this Section, waive trial by jury in any action, proceeding, or counterclaim brought by either of the parties to this Agreement against the other on any matters whatsoever arising out of or in any way connected with this Agreement, the relationship of Grantor and Grantee, Grantee's use or occupancy of the Easement Area, or any other claims, and any emergency statutory or any other statutory remedy.

17. Severability. If any term, provision or condition in this Easement shall, to any extent, be invalid or unenforceable, the remainder of this Easement (or the application of such term, provision or condition to persons or circumstances other than in respect of which it is invalid or unenforceable) shall not be affected thereby, and each term, provision and condition of this Easement shall be valid and enforceable to the fullest extent permitted by law.

18. No Dedication. Nothing contained herein shall be deemed to constitute any dedication to the public or for public use of any portion of the Easement Area.

19. Counterparts. This Easement may be executed by the parties in counterparts. Each such counterpart shall be deemed an original and all such counterparts, taken together, shall constitute one and the same agreement.

20. Time of the Essence. Time is of the essence of all provisions of this Agreement in which time is a relevant factor.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have caused this Easement to be executed as of the day and year first above written.

GRANTOR:

CITY OF TEMPE,
an Arizona municipal corporation

By: _____
Mark W. Mitchell, Mayor

ATTEST:

Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:

Judith R. Baumann, City Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing document was acknowledged before me this _____ day of _____, 2015, by Mark W. Mitchell, Mayor of THE CITY OF TEMPE, an Arizona municipal corporation, who, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires:

Exhibit A
“Easement Area”

[see attached]



Aulerich & Associates, Inc.

Surveying & Engineering

1030 E. Guadalupe Road · Tempe, Arizona 85283
Phone (480) 839-4000 · Fax (480) 345-9259

PROJ. NO.: 12-10-03

PAGE: 1 OF 3 PAGES

DATE: 12/03/12

EXHIBIT "A"

25.00 FOOT EASEMENT FOR INGRESS EGRESS

A 25.00 FOOT STRIP OF LAND BEING A PORTION OF THE NORTHWEST QUARTER OF SECTION 29, TOWNSHIP 1 NORTH RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, LYING 12.50 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

COMMENCING AT THE CENTER OF SAID SECTION 29 FROM WHICH THE NORTH QUARTER CORNER BEARS NORTH 00°07'15" EAST, 2649.60 FEET;

THENCE NORTH 00°07'15" EAST, 682.39 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "A", SAID POINT ALSO BEING THE **POINT OF BEGINNING**;

THENCE NORTH 84°08'27" WEST, 366.77 FEET;

THENCE SOUTH 87°52'57" WEST, 148.00 FEET;

THENCE SOUTH 71°55'04" WEST, 234.35 FEET;

THENCE SOUTH 62°20'30" WEST, 148.49 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 464.62 FEET, WHOSE CENTER BEARS NORTH 26°09'19" WEST, A CENTRAL ANGLE OF 22°24'39", FOR AN ARC LENGTH OF 181.73 FEET;

THENCE SOUTH 86°18'42" WEST, 100.39 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 259.52 FEET, A CENTRAL ANGLE OF 94°44'37", FOR AN ARC LENGTH OF 429.14 FEET;

THENCE NORTH 01°04'00" EAST, 105.38 FEET;

THENCE NORTH 00°00'00" EAST, 148.81 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 262.32 FEET, A CENTRAL ANGLE OF 22°51'21", FOR AN ARC LENGTH OF 104.64 FEET;

THENCE NORTH 24°37'50" WEST, 55.71 FEET MORE OR LESS TO SOUTH RIGHT-OF-WAY LINE OF WEST COURT WAY AT RIGHT-ANGLES WITHOUT HAVING ANY GAPS BEING THE **POINT OF TERMINUS**.

BEGINNING AT SAID POINT "A" THENCE SOUTH 84°08'27" EAST, 14.52 FEET;

THENCE NORTH 86°21'21" EAST, 51.02 FEET TO THE **POINT OF TERMINUS**.

DESCRIBED EASEMENT BEING IN AND FORMING A PART OF THE CITY OF TEMPE AND COMPRISING AN AREA OF 52,227 SQUARE FEET OR 1.18 ACRES MORE OR LESS.



EXPIRES: 03/31/14



Aulrich & Associates, Inc.

Surveying & Engineering

1030 E. Guadalupe Road · Tempe, Arizona 85283

Phone (480) 839-4000 · Fax (480) 345-9259

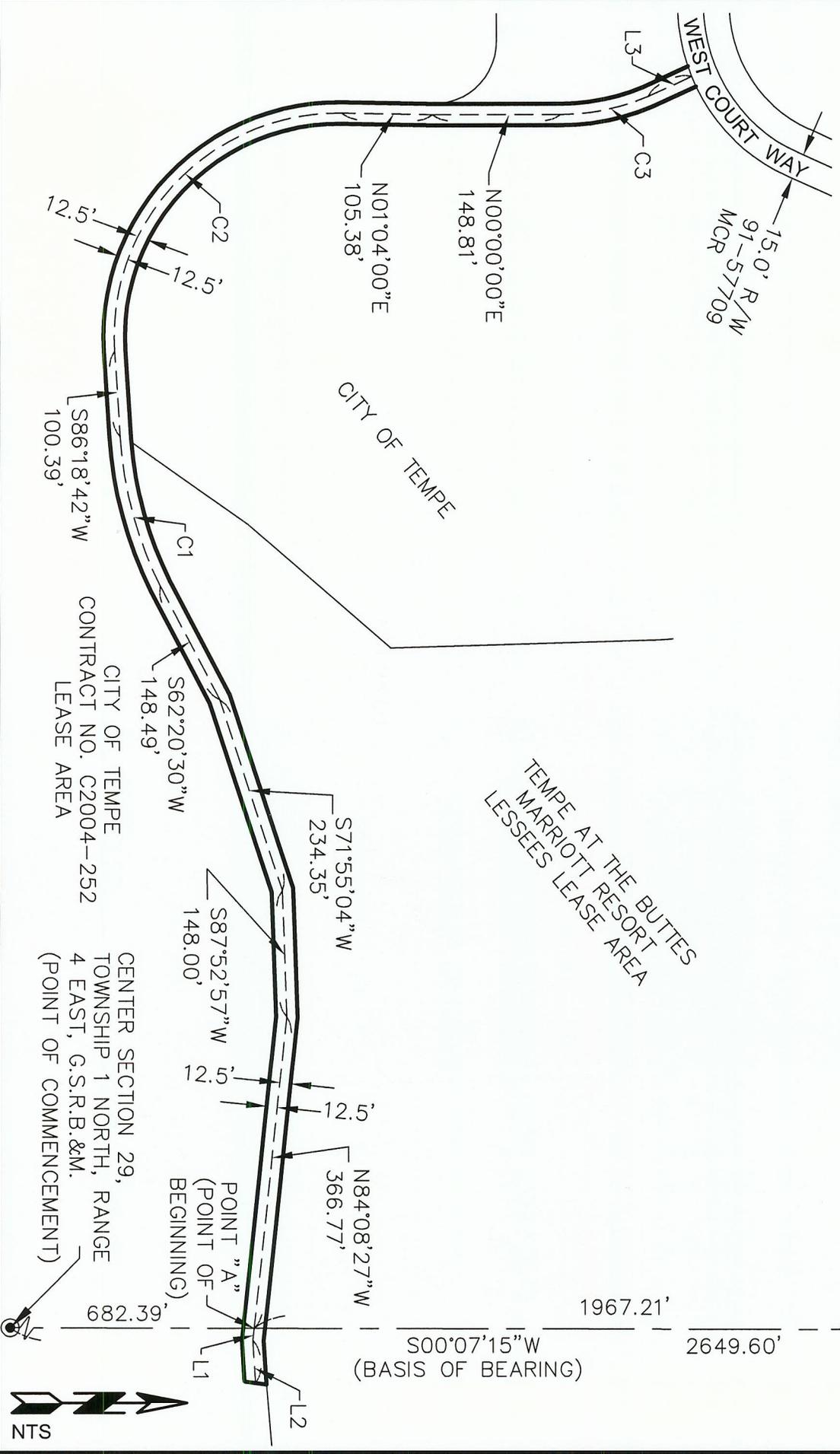
EXHIBIT "A"

PROJ. NO.: 12-10-03

PAGE: 2 OF 3 PAGES

DATE: 12/04/12

N 1/4 CORNER
SECTION 29, TOWNSHIP
1 NORTH, RANGE 4
EAST G.S.R.B.&M.





Aulerich & Associates, Inc.

Surveying & Engineering

1030 E. Guadalupe Road · Tempe, Arizona 85283

Phone (480) 839-4000 · Fax (480) 345-9259

PROJ. NO.: 12-10-03

PAGE: 3 OF 3 PAGES

DATE: 12/04/12

EXHIBIT "A"

LEGEND

R/W	RIGHT-OF-WAY
MCR	MARICOPA COUNTY RECORD
-----	CENTERLINE PROPOSED 25.00 FOOT ACCESS EASEMENT
—————	PROPOSED ACCESS EASEMENT LINE
—— — —	MONUMENT LINE

LINE TABLE

LINE	BEARING	DISTANCE
L1	S84°08'27"E	14.52'
L2	N86°21'21"E	51.02'
L3	N24°37'50"W	55.71'

CURVE TABLE

CURVE	LENGTH	DELTA	RADIUS
C1	181.73'	22°24'39"	464.62'
C2	429.14'	94°44'37"	259.52'
C3	104.64'	22°51'21"	262.32'

BASIS OF BEARING:

THE EAST LINE OF THE NORTHWEST QUARTER OF SECTION 29, TOWNSHIP 1 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, AS SHOWN ON SUBDIVISION OF WINDRUSH CONDOMINIUMS, BOOK 224 OF MAPS, PAGE 14, MARICOPA COUNTY RECORDS.

SAID BEARING = SOUTH 00° 07' 15" WEST

(CITY OF TEMPE MUNICIPAL SURVEY CONTROL = SOUTH 00° 09' 25" WEST)