

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the “**Agreement**”) is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 202\_\_ (“**Effective Date**”) by and between the City of San Luis, an Arizona municipal corporation (the “**City**”) and Carol D. Upton, a single woman, (the “**Owner**”). This Agreement is entered into pursuant to City Resolution No. 2203.

### RECITALS

A. WHEREAS, A.R.S. § 9-500.05 authorizes the City to enter into development agreements with landowners and persons having an interest in real property located in the City; and

B. WHEREAS, Carol D. Upton, as a single woman, as her sole and separate property, owns the parcels of land identified as APN No. 775-37-186 (“Parcel 1”); and APN 775-37-185 (“Parcel 2”); and

C. WHEREAS, both parcels are currently zoned for commercial use bearing the zoning classification C-3; and

D. WHEREAS, at the northeast corner of Parcel 1 is a four-plex apartment which is a legal non-conforming use which uses for its parking a portion of Parcel 2; and

E. WHEREAS, Owner desires the option to develop high density residential development on Parcels 1 and 2; and

F. WHEREAS, City is in the process of improving the streets, alleyways, and sidewalks in the area of Parcels 1 and 2 in what is known as the Mesa Street Improvement Project and needs certain right of way as described on Exhibit A attached hereto and by this reference incorporated herein, and a temporary construction easement from Parcel 1 to develop and construct said project (the “Dedications”); and

G. WHEREAS, Parcels 1 and 2 would need to be rezoned to be able to be developed into high density residential use, and as part of said rezoning process, the City could condition said rezoning upon dedication of the right of way as described on Exhibit A and temporary construction easement; and

H. WHEREAS, A.R.S. § 9-500.05 provides, in part, that a development agreement can provide for the permitted uses of land; the density and intensity of uses; reservation or dedication of land for public purposes; conditions, terms, restrictions, and requirements for public infrastructure; conditions, terms, restrictions, and requirements relating to the governing 'body's intent to form a special taxing district pursuant to title 48; and any other matters relating to the development of the property; and

I. WHEREAS, the City and Owner desire to enter into an agreement to provide for the development of Parcel 1 and Parcel 2 as either apartments or condominiums and provide for the Dedications; and

J. WHEREAS, the City's governing body has authorized execution of this Agreement by Resolution No. 2203;

NOW, THEREFORE, the parties agree as follows:

## **AGREEMENT**

### **ARTICLE 1. SPLIT AND DEVELOPMENT OF PROPERTY**

1.1. Effective Date and Duration of Development Agreement. The term of this Agreement shall be for a period of fifteen (15) years from the Effective Date of the Agreement.

1.2. Rezoning. For the term of this Agreement, to the extent legally possible, City agrees to the future rezoning of Parcels 1 or 2 to the classification High Density Residential (R-3). City staff will recommend such rezoning.

1.3 Failure of Timely Performance. In the event that either party hereto fails to perform any of its obligations set forth in or contemplated by this Agreement in a timely manner, and should such failure not otherwise be excused by agreement of the parties or by the terms of this Agreement, such failure shall be considered a breach of this Agreement and the non-breaching party shall have their respective remedies set forth in Article 2 of this Agreement.

1.4 Dedication of Right of Way. At present time Owner shall convey the right of way as described on Exhibit A and grant a temporary construction easement over the remainder of Parcel 1. Owner agrees to deed by special warranty deed the right of way described on Exhibit A. The temporary construction easement shall terminate upon the completion of construction for the Mesa Street Project or June 30, 2023, whichever first occurs.

1.5 Development of Parcel 1. Existing on Parcel 1 is a four-plex apartment unit. Parking for these apartments is provided by 12 spaces on Parcel 2. Owner and the City agree this parking on Parcel 2 shall continue, as a matter of right, for use by the four-plex and any future developed apartments or condominiums on Parcel 1 and agrees to take such actions as needed or necessary to secure the right of persons occupying said current or future residential units to utilize said parking. If Owner should apply for a lot tie to tie Parcels 1 and 2 together, City agrees to approve said application provided there is compliance with the Subdivision Regulations of the City. Attached as Exhibit B is a proposed site plan for development of future apartments or

condominiums. What is proposed is the development of three units besides the existing four-plex. At the present time, current regulations of the City provide there must be two parking places per apartment or condominium unit. 4 of the 12 spaces on Parcel 2 may be used for the proposed new units under current regulations. Any development of new units, either apartments or condominiums, must comply with all appropriate development standards, including the zoning code, subdivision regulations, building and fire codes, and/or public works standards as they may exist at the time of actual development. The City agrees, in good faith, to cooperate with Owner Upton and/or any successor in interest, conditioned upon such compliance, to have development conform to the attached proposed site plan, Exhibit B.

1.6 Curb Cuts. Parcel 2 has a single curb cut for the driveway that serves the existing parking lot, and it is intended for said curb cut/driveway to remain. For Parcel 1, south of the existing four-plex apartment under the Public Works Standards of the City of San Luis, driveways must be a distance of 165 feet from each other. There presently exists room for two curb cuts/driveways for Parcel 1 under existing standards in addition to the curb cut/driveway on Parcel 2. For the term of this Development Agreement, there shall be a right to establish curb cuts/driveways on Parcel 1 conditioned on each curb cut/driveway being a minimum of 165 feet from another such curb cut/driveway without further conditions or restrictions to be imposed by the City.

1.7 Utility Connections. Any residential development of the property of Owner that is the subject of this Agreement shall have the right to connect to the water and wastewater utilities of City without further conditions or restrictions to be imposed by the City excepting building code regulation, environmental regulation, design and construction regulation, public works standards, and such connection fees that may exist at the time of development.

## **ARTICLE 2. MEDIATION AND DEFAULT**

2.1. Mediation. In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree there shall be a forty-five (45) day moratorium on litigation during which time the parties agree to attempt to settle the dispute by nonbinding mediation before the commencement of litigation. If the parties cannot agree upon the selection of a mediator within seven (7) days, either party may request the presiding judge of the Superior Court of Yuma County to assign a mediator from a list of mediators maintained by the Arizona Municipal Risk Retention Pool.

2.2. Default. Failure or unreasonable delay by any party to perform any term or provision of this Agreement for a period of ten (10) days after written notice thereof from another party shall constitute a default under this Agreement. If the default is of a nature that is not capable of being cured within ten (10) days, the cure shall be

commenced within such period and diligently pursued to completion. The notice shall specify the nature of the alleged default and the manner in which the default may be satisfactorily cured. In the event of a default hereunder by any party, the non-defaulting party shall be entitled to all remedies at both law and in equity, including, without limitation, specific performance and the right to perform the obligation(s) of which the defaulting party is in default and to immediately seek reimbursement from the defaulting party of all sums expended in order to cure such default, together with interest on all such sums from the date said sums are expended by the non-defaulting party for the purpose of curing the default to the date such sums are paid in full.

2.3. Jurisdiction and Venue. Jurisdiction and venue of any action shall be in any court of competent jurisdiction located in Yuma County, Arizona.

### **ARTICLE 3. CONFLICT OF INTEREST; REPRESENTATIVES NOT INDIVIDUALLY LIABLE**

3.1. Conflict of Interest. Pursuant to Arizona law, rules, and regulations, no member, official, or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. This Agreement is subject to the provisions of A.R.S. § 38-511.

3.2. No Personal Liability. No member, official, or employee of the City shall be personally liable to Owner, or any successor or assignee, (a) in the event of any default or breach by the City, (b) for any amount which may become due to the Owner or its successor or assign, or (c) pursuant to any obligation of the City under the terms of this Agreement.

### **ARTICLE 4. MISCELLANEOUS PROVISIONS**

4.1. Notices. All notices and communications provided for herein, or given in connection herewith, shall be validly made if in writing and delivered personally or sent by registered or certified mail, return receipt requested, or by delivery by United Parcel Service or FedEx where delivery can be tracked, postage prepaid to:

If to the City:           City Manager  
                                  City of San Luis  
                                  P.O. Box 1170  
                                  1090 E. Union Street  
                                  San Luis, Arizona 85349

If to the Owner:        Carol D. Upton  
                                  c/o Richardson and Richardson, P.C.

1745 S. Alma School Road, Suite 100  
Mesa, AZ 85210 and

Carol D. Upton  
13/37 Milson Road  
Cremorne Point, NSW 2090, Australia

or to such other addresses as either party may from time to time designate in writing and deliver in a like manner. Any such change of address notice shall be given at least ten (10) days before the date on which the change is to become effective. Notices given by mail shall be deemed delivered 72 hours following deposit in the United States Postal Service in the manner set forth above.

4.2. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the parties of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or of any other provision of this Agreement.

4.3. Headings. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions of the Agreement.

4.4. Authority. The undersigned represent to each other that they have full power and authority to enter into this Agreement and that all necessary actions have been taken to give full force and effect to this Agreement. The Owner represents and warrants that it is duly formed and validly existing under the laws of the State of Arizona and that it is duly qualified to do business in the State of Arizona and is in good standing under applicable state laws. The Owner and the City warrant to each other that the individuals executing this Agreement on behalf of their respective parties are authorized and empowered to bind the party on whose behalf each individual is signing. The Owner represents to the City that by entering into this Agreement, the Owner has bound the property and all persons and entities having any legal or equitable interest therein to the terms of the Agreement. This Agreement may be executed in counterparts, any of which may be an original.

4.5. Assignment. After the Effective Date, Owner shall have the right to assign the rights of Owner under this Development Agreement to any entity or person, provided that any such assignment does not violate any of the terms and conditions of this Agreement or any law, rule, regulation, order, writ, judgment, injunction or decree. In the event of such assignment, any Assignee shall assume all obligations of Owner hereunder in order for such assignment to be effective, and Owner is not released from her obligations to the City under this Development Agreement if any remain unsatisfied.

4.6. Entire Agreement. This contract constitutes the entire agreement between the parties.

4.7. Amendment of the Agreement. This Agreement may be amended, in whole or in part and with respect to all or any portion of the property, only with the mutual written consent of the parties to this Agreement or by their successors in interest or assigns. No modification of this Agreement is binding on either party unless the modification is in writing and signed by the parties. The City shall record the amendment or cancellation in the official records of the Yuma County Recorder.

4.8. Severability. If any provision of the Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect.

4.9. Governing Law. The laws of the State of Arizona shall govern the interpretation and enforcement of this Agreement. The parties agree that venue for any action commenced in connection with this Agreement shall be proper only in a court of competent jurisdiction located in Yuma County, Arizona, and the parties hereby waive any right to object to such venue.

4.10. Recordation of Agreement and Subsequent Amendment; Cancellation. This Agreement and any amendment or cancellation of it shall be recorded in the official records of the Yuma County Recorder no later than ten (10) days after the City and the Owner execute such agreement, amendment, or cancellation, as required by A.R.S. § 9-500.05.

4.11. Attorneys' Fees and Costs. If either party brings a legal action either because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees and court costs.

4.12. Notice of Conveyance or Assignment. The Owner shall give notice to the City of any sale of the entire property at least ten (10) days prior to the effective date of the sale.

4.13. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement, and no person or entity not a party hereto shall have any right or cause of action hereunder.

4.14. No Agency Created. Nothing contained in this Agreement shall create any partnership, joint venture, or agency relationship between the parties.

4.15. Non-Liability of City Officials and Employees. Except for mandamus and other special actions, no member, official, or employee of the City shall be personally liable to Owner, or any successor in interest, in the event of any default or breach by the City or for any amount that may become due to the Owner or successor, or under any obligation under the terms of this Agreement.

4.16. Time is of the Essence. Time is of the essence of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

**City of San Luis, Arizona**  
An Arizona Municipal  
Corporation

\_\_\_\_\_  
Gerardo Sanchez, Mayor

ATTEST:

\_\_\_\_\_  
Sonia Cornelio, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Kay Marion Macuil, City  
Attorney

**Owner**

\_\_\_\_\_  
Carol D. Upton

STATE OF ARIZONA     )  
  ) ss.  
County of Yuma         )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of December 2021 by Gerardo Sanchez, Mayor of the City of San Luis, Arizona, a municipal corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

STATE OF                    )  
                                  ) ss.  
County of                 )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of  
\_\_\_\_\_ 20\_\_ by Carol D. Upton.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

# Exhibit A

LEGAL DESCRIPTION

A PORTION OF THE WEST HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 12, TOWNSHIP 11 SOUTH, RANGE 25 WEST, GILA & SALT RIVER BASE & MERIDIAN, YUMA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 12;

THENCE S89°42'37"E ALONG THE NORTH LINE OF SAID SECTION 12, A DISTANCE OF 662.74 FEET TO THE NORTHWEST CORNER OF THE SAN LUIS TOWNSITE ADDITION NO. 1 AND NO. 9 AS RECORDED IN BOOK 4 OF PLATS, PAGE 97 IN THE OFFICE OF THE YUMA COUNTY RECORDER'S OFFICE, YUMA COUNTY;

THENCE S0°27'22"W ALONG THE SAID SAN LUIS TOWNSITE NO. 1 WEST BOUNDARY LINE TO A POINT A DISTANCE OF 725.35 FEET, SAID POINT BEING 60.00 FEET SOUTHERLY OF THE U.S.B.R. TRANSMISSION RIGHT OF WAY LINE, SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING;

THENCE CONTINUING S0°27'22"W ALONG THE WEST BOUNDARY LINE OF THE SAID SAN LUIS TOWNSITE NO. 1, A DISTANCE OF 593.60 FEET;

THENCE S0°03'20"W ALONG THE WEST BOUNDARY LINE OF THE SAID SAN LUIS TOWNSITE NO. 1, A DISTANCE OF 4.44 FEET;

THENCE N89°41'10"E TO A POINT ON THE U.S.B.R. EAST MAIN CANAL EASTERLY RIGHT OF WAY LINE, A DISTANCE OF 3.08 FEET;

THENCE N03°05'20"E ALONG THE SAID U.S.B.R. EAST MAIN CANAL EASTERLY RIGHT OF WAY LINE, A DISTANCE OF 12.78 FEET TO POINT ON A CURVE TO THE LEFT;

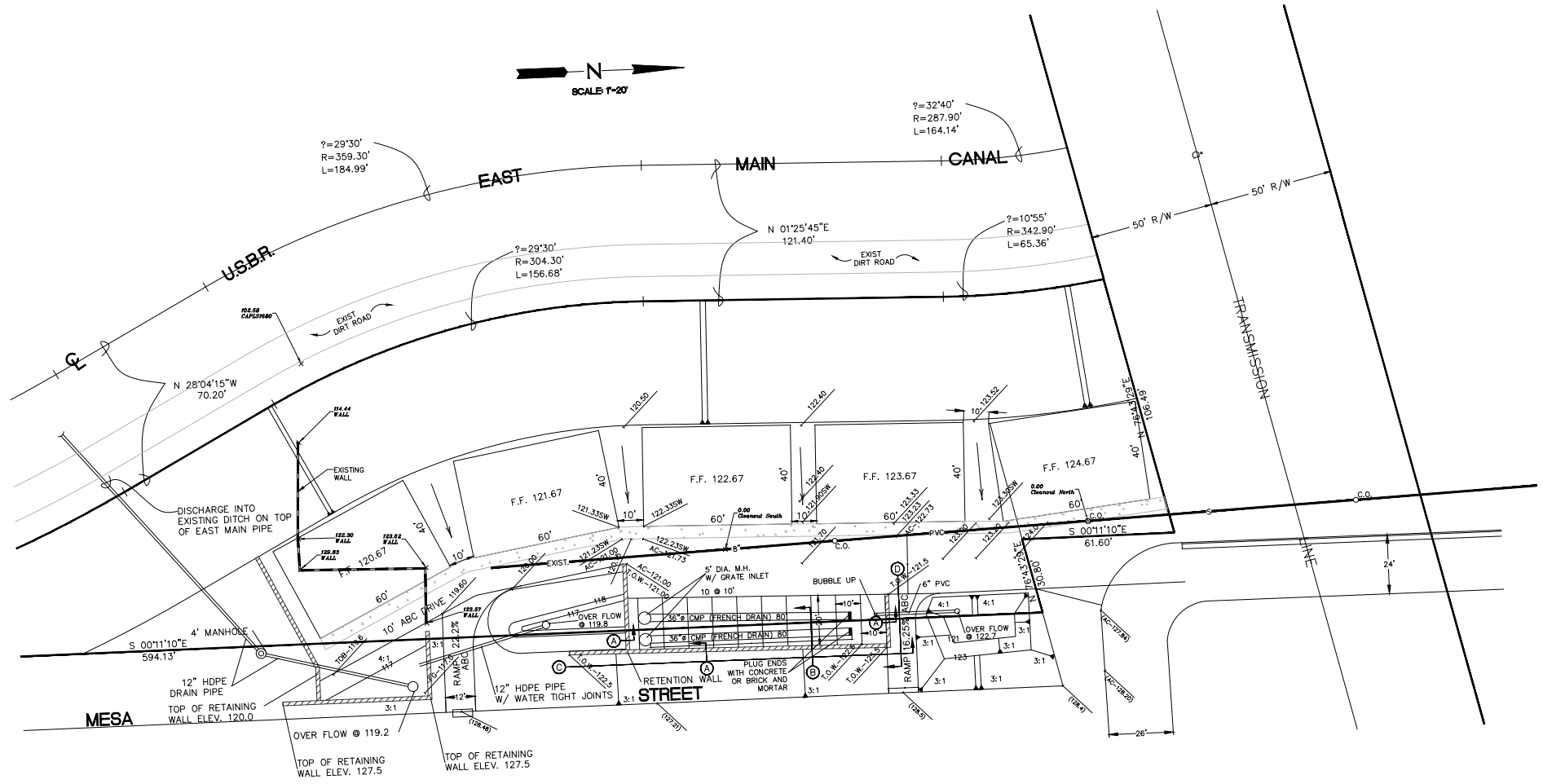
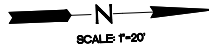
THENCE NORTHWESTERLY ALONG THE SAID CURVE OF RADIUS 533.30 FEET AN ARC LENGTH OF 138.03 FEET, SAID CURVE ALSO BEING THE SAID U.S.B.R. EAST MAIN CANAL EASTERLY RIGHT OF WAY LINE, TO A POINT 30.00 WEST OF THE SAID SAN LUIS TOWNSITE NO. 1 WEST BOUNDARY LINE;

THENCE N00°27'22"E ALONG A LINE PARALLEL TO AND 30.00 WEST OF THE WEST BOUNDARY LINE OF THE SAID SAN LUIS TOWNSITE NO. 1, TO A POINT 60.00 FEET SOUTHERLY OF THE U.S.B.R. TRANSMISSION LINE RIGHT OF WAY LINE, A DISTANCE OF 443.18 FEET;

THENCE N77°22'01"E ALONG A LINE PARALLEL TO AND 60.00 FEET SOUTHERLY OF THE SAID U.S.B.R. TRANSMISSION RIGHT OF WAY LINE, A DISTANCE OF 30.80 FEET TO THE TRUE POINT OF BEGINNING;

CONTAINING A GROSS AREA OF 0.351 ACRES (15,320.21 SQUARE FEET)

# Exhibit B



PRELIMINARY PLAN  
NOT FOR CONSTRUCTION

HENLEY LOT LINE SURVEY

TOPOGRAPHIC SURVEY

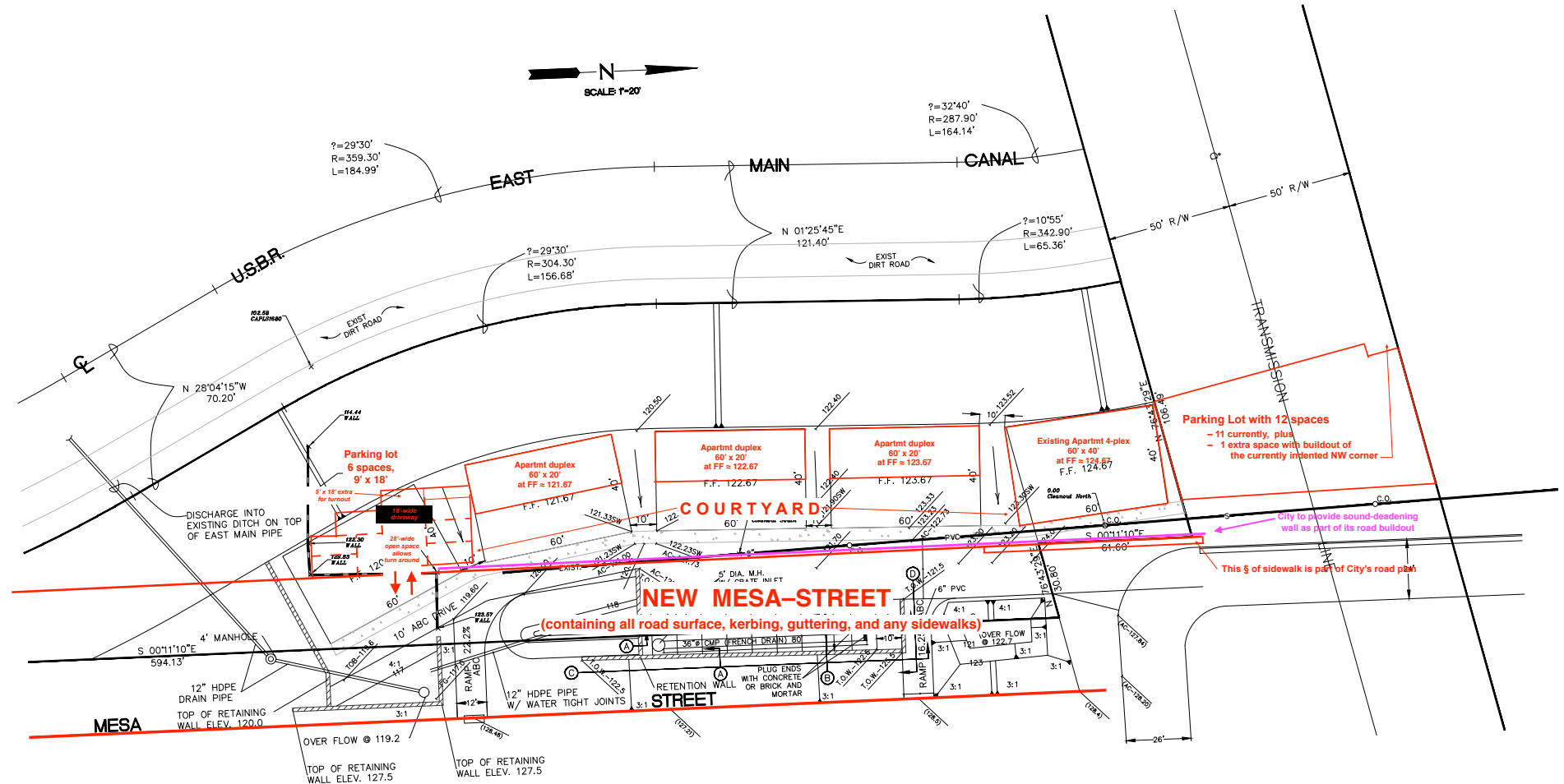
**NEA**  
Nicklaus Engineering Inc.  
1851 West 24th Street P.O. Box 6029  
YUMA, ARIZONA 85364 (928)344-8374  
Email: net@nelaw.com

SCALE: AS SHOWN  
DATE: NOV., 2014  
DES. BY: A.C.K.  
DRAWN BY: R.N.  
SURVEYED BY: R.S.  
JOB No.: 014-0108  
FILE No.: --  
SHEET -- OF --

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THE USE OF THESE DRAWINGS AND SPECIFICATIONS SHALL BE RESTRICTED TO THE ORIGINAL SITE OR WHICH THEY WERE PREPARED AND REPRODUCTION OR REUSE OF ANY PORTION OF THESE DRAWINGS IN WHOLE OR IN PART IS PROHIBITED. TITLE TO THE PLOTS AND SPECIFICATIONS REMAINS WITH THE SURVEYOR UNLESS OTHERWISE SPECIFIED. PLEASE CONTACT WITH THESE PLANS AND SPECIFICATIONS IMMEDIATELY UPON RECEIPT OF THESE DRAWINGS.



PRELIMINARY PLAN  
NOT FOR CONSTRUCTION

HENLEY LOT LINE SURVEY

TOPOGRAPHIC SURVEY



Nicklaus Engineering Inc.  
1851 West 24th Street P.O. Box 6029  
YUMA, ARIZONA 85364 (928)344-8374  
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