RESOLUTION NO. 22-52

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF MARICOPA, ARIZONA, APPROVING AND ADOPTING A PRE-ANNEXATION DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MARICOPA AND AMARILLO MARKETPLACE, L.L.C., IN COMPLIANCE WITH A.R.S. §9-500.05 AND PURSUANT TO THE TERMS OF SENATE BILL 1594, FIFTY-FIFTH LEGISLATURE, SECOND REGULAR SESSION (TO BE CODIFIED AS A.R.S. §9-471(T)).

WHEREAS, pursuant to A.R.S. §9-500.05 and the terms of Senate Bill 1594, Fifty-Fifth Legislature, Second Regular Session (to be codified as A.R.S. §9-471(T)), Amarillo Marketplace, L.L.C. ("Owner") requested that the City of Maricopa enter into a Pre-Annexation Development Agreement in a form which is attached to this Resolution and by this reference made a part hereof; and

WHEREAS, the City of Maricopa believes that it is in the best interest of the City to enter into this Pre-Annexation Development Agreement in order to facilitate the annexation of the property subject to the Agreement.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Maricopa, Arizona, as follows:

Section 1. The City of Maricopa by the requisite vote of its City Council hereby approves and adopts, and authorizes and instructs its Mayor on behalf of the City of Maricopa to enter into the Pre-Annexation Development Agreement with Amarillo Marketplace, L.L.C., in the form attached to and made a part of this Resolution.

Section 2. Pursuant to A.R.S. §9-500.05(G), the provisions of this Resolution are not enacted as an emergency measure and shall not be effective for thirty (30) days.

PASSED AND ADOPTED by the Mayor and City Council of the City of Maricopa, Arizona this 6th day of September, 2022.

APPROVED:

Nancy Smith
Mayor

ATTEST:

Vanessa Bueras, MMC
City Clerk

CITY OF MARICOPA INCORPORATED 2003 MARICOPA, ARIZONA

APPROVED AS TO FORM:

Denis Fitzgibbons
City Attorney

00221095

When Recorded Return to:

OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
Dana Lewis

DATE/TIME: 09/22/2022 1700
FEE: $15.00
PAGES: 12
FEE NUMBER: 2022-101006

PRE-ANNEXATION DEVELOPMENT AGREEMENT

This pre-annexation development agreement ("Agreement") is entered into this 6th day of Sept., 2022 ("Effective Date"), by and between the City of Maricopa, an Arizona Municipal Corporation (**"City"**) and Amarillo Marketplace, LLC, an Arizona limited liability company (referred to herein as **"Owner"**). The Owner and City are collectively referred to herein as "**Parties**" and individually as "**Party**."

RECITALS

A. Owner owns that certain real property located in Pinal County, Arizona, consisting of approximately 16 acres and generally located on the northwest corner of W. Papago Road and N. Green Road (the "**Property**"). The Property is legally described and depicted on Exhibit A, attached hereto.

B. Once the Property is contiguous to the City or is otherwise legally eligible for annexation, Owner and City desire that the Property be annexed into the corporate limits of the City and be developed as an integral part of the City. The City will file a blank annexation petition with Pinal County Recorder Office that includes the Property and will notice and hold the requisite meetings and hearings in accordance with Arizona Revised Statutes ("A.R.S.") §9-471 *et seq.*

C. In accordance with A.R.S. §9-471(M), the City desires to annex the Property and intends to support a rezone of the Property that will permit densities and uses not greater than those permitted by the county immediately before annexation. Notwithstanding anything to the contrary set forth herein, to the extent a conflict is found between the terms of this Agreement and any future zoning approval, the zoning approval shall control.

D. The Parties understand and acknowledge that this Agreement is a "Development Agreement" within the meaning of, and entered into pursuant to the terms of, Arizona Revised Statutes ("A.R.S.") §9-500.05, in order to facilitate the Property development, and a pre-annexation agreement agreeing to future annexation of the Property pursuant to A.R.S. §9-471(T).

E. 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 Sept. 6, 2022.

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:

1. ***Incorporation of Recitals.*** The Parties acknowledge the accuracy of the foregoing Recitals. Each of the foregoing Recitals 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"):

2.1. Adoption of this Agreement by the City,

2.2. Execution by the duly authorized representatives of the Parties,

2.3. Recordation 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 following the Effective Date unless the Parties mutually agree to extend the Term; provided, however, that any Termination of this Agreement without approval of an Annexation Ordinance requires at least two (2) years prior written notice of such termination (the "Termination Notice") to the other Party. If no Termination Notice is delivered at least two (2) years prior to the expiration of the ten (10) year Term or any extension Term granted herein, this Agreement shall automatically be extended for successive five (5) year Term periods until a two (2) year Termination Notice is delivered

4. ***Annexation***.

4.1. Annexation; Owner to Submit Signed Annexation Petition. Once 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 and all other application 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 a public hearing, as required under the Annexation Laws in connection with the annexation of the Property into the City. Prior to the Council's consideration of the annexation of the Property, the Owner will deliver to the City the appropriate petitions for Annexation duly executed by the Owner (the "Annexation Petition") and satisfying the applicable statutory requirements. The City shall be responsible for all fees associated with the statutory Annexation process.

4.2. Annexation of the Property. The City, after complying with all statutory requirements, will duly consider and determine if annexation of the Property into the City is in the best interest of the City in compliance with the provisions of A.R.S. § 9-471 *et seq*. The City, if shown to be in its best interest, will adopt an ordinance annexing the Property into the corporate limits of the City (the "Annexation Ordinance"). Notwithstanding the foregoing, the Owner acknowledges that the City's approval of any zoning of the Property will occur after the adoption of the Annexation Ordinance.

4.3. Automatic Termination of Agreement. The City and the 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 (including, but not limited to, the application of the recession and termination provisions set forth above) 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 the appropriate petitions for Annexation duly executed as requested by the City.

5. ***Zoning.***

5.1. In accordance with A.R.S. §9-471(M), shortly after the adoption of the Annexation Ordinance, the City will adopt zoning classifications that permit densities and uses not greater than those permitted by Pinal County (the "County") immediately before 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).

5.2. In the event Owner wants to rezone the Property to something other than as required by A.R.S. §9-471(M), Owner will submit to the City, as soon as possible after the adoption of the Annexation Ordinance, application for the approval of the desired zoning for the Property consistent with the City's standard processes. The Parties expressly acknowledge and agree that any future zoning will be consistent with the portions of the City's General Plan applicable to the Property. The Owner shall be responsible for all fees associated a zoning process other than that process required by A.R.S. §9-471(M).

6. ***Development of the Property***.

6.1. County Approvals. The City of Maricopa, in consideration of annexation into its municipal limits, hereby agrees to acknowledge and approve any zoning, preliminary or final plat, Improvement Plans, permits or other entitlements related to the Property which have received final approval from the County Board of Supervisors or Planning and Zoning Commission prior to approval of the Annexation Ordinance. In the event the County has not given final approval on any necessary improvement plans, 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. Such improvement plans include, but are not limited to, roadway improvements, grading, drainage, landscaping and lighting (the **"Improvement Plans"**). Prior to the City's approval of the Annexation Ordinance and during any pending zoning, 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 Board of Supervisors or Planning and Zoning Commission without first disclosing to Owner the

intent and purpose of such communications, and delivering a copy of such communication to the Owner via email to the address set forth in Section 8.1.

6.2. Development Agreements. Notwithstanding anything to the contrary set forth herein, the Parties hereby agree that any agreements approved by the County related to the Property shall be of no further force or effect and the City shall have no obligations pursuant thereto after the approval of the Annexation Ordinance. The Parties, in their sole and absolute discretion, may enter into an agreement related to the development of the Property after approval of the Annexation Ordinance.

6.3. City Rules and Regulations. Unless otherwise specifically set forth in the County approved zoning, preliminary or final plats, Improvement Plans, permits or other entitlements, the Owner hereby acknowledges and agrees that the development of the Property will comply with all applicable laws in place at the time such development commences including, but not limited to, the City's rules and regulations. The City shall be prohibited from requiring any change or alteration to previous County approved subdivision designs, lot sizes, building setbacks and/or garage width requirements as are set forth in any County approved zoning, tentative plats or final plats on the Property, even if such subdivision design and lot sizes building setbacks and/or garage width requirements are nonconforming to City codes and standards. Owner hereby agrees to pay all applicable City fees and charges related to the development of the Property including, but not limited to, development impact fees, review fees, and inspection fees.

6.4. Review of Design and Construction Plans. Prior to approval of the Annexation Ordinance, 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 approval of the Annexation Ordinance, the City shall have the right and authority to review and approve the Improvement Plans and specifications related to the Property 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, to review and approve any revisions to the plans and specifications to ensure such plans and specifications are in accordance with applicable County approvals or City standards. In addition, 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.

6.5. Construction. Owner shall construct or cause to be constructed all improvements necessary for the development of the Property at their sole cost and expense. Owner shall construct and install all improvements 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.

6.6. Fees. The City hereby acknowledges and agrees that Owner will not owe the City any fees already paid by Owner to the County for approved zoning, preliminary or final plats, Improvement Plans, permits or other entitlements. Owner hereby acknowledges and agrees that, after approval of the Annexation Ordinance, Owner will be subject to any and all applicable fees of the City related to the development of the Property.

6.7 Assurances. At the time of development after approval of the Annexation Ordinance, 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. ***Cooperation and Alternative Dispute Resolution.***

7.1. 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 Ricky A. Horst and the initial representative for Owner shall be Michael Koslow (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.

7.2. 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.

7.3 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 but shall not be under the administration of the AAA unless agreed to by the Parties in writing, in which case all administrative fees shall be divided evenly between the City and Owner. 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 mediator selected shall have at least ten (10) years' experience in mediating or arbitrating disputes relating to real property. 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.

8. ***Notices and Filings.***

8.1 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, AZ 85122
denis@fitzgibbonslaw.com

Owner: Amarillo Marketplace, LLC
Attn: Michael Koslow
5346 East Calle De Norte
Phoenix, AZ 85018

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

8.2 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.

9. *General.*

9.1. 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.

9.2. 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.

9.3 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.

9.4. Successors and Assigns. Except for assignments to Transferees as permitted in Section 9.9 (for which the City's consent it not required), 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.

9.5. 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.

9.6. 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.

9.7. 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.

9.8. 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.

9.9. 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.

9.10. 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.

9.11. 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.

9.12. 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.

9.13 Attorney Fees. In the event 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.

9.14 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.

9.15 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.

9.16 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.

OWNER:

AMARILLO MARKETPLACE, LLC
an Arizona limited liability company

By: Arizona Capital Properties Management, LLC
An Arizona limited liability company
It: Manager

By: The Michael and Patricia Koslow Family Revocable Trust dated August 31, 2019
Its: Member

By: _____
Michael Koslow, Trustee

By: _____
Patricia Koslow, Trustee

CITY OF MARICOPA,
an Arizona municipal corporation

By: _____, Mayor

ATTEST:

_____
Vanessa Bueras, MMC
City Clerk

APPROVED AS TO FORM:

_____
Denis M. Fitzgibbons
City Attorney

April 12, 2006

LEGAL DESCRIPTION FOR
AMARILLO CREEK
GROSS COMMERCIAL PARCEL

That part of the Southeast Quarter of Section 17, Township 5 South, Range 3 East, of the Gila and Salt River Meridian, Pinal County, Arizona, more particularly described as follows:

Beginning at the Aluminum Cap marking the Southeast Corner of said Section 17, from which the 1/2" Iron Bar marking the East Quarter Corner of said Section 17 bears North 00°00'21" West, a distance of 2,694.20 feet;

Thence South 88°25'22" West, along the South line of the Southeast Quarter of said Section 17, a distance of 715.24 feet to a point on the Easterly line of a 100' El Paso Gas Pipeline Easement as recorded in Docket 575 Page 177 and Docket 575 Page 179, Pinal County Records;

Thence along the Easterly line of said 100' El Paso Gas Pipeline Easement the following courses:

Thence North 00°00'21" West, a distance of 37.47 feet;

Thence North 13°18'38" West, a distance of 855.50 feet;

Thence North 89°59'39" East, departing said Easterly line, a distance of 911.85 feet to a point on the East line of the Southeast Quarter of said Section 17;

Thence South 00°00'21" East, along aid East line, a distance of 850.40 feet to the Point of Beginning.

Containing 16.000 Acres, more or less.

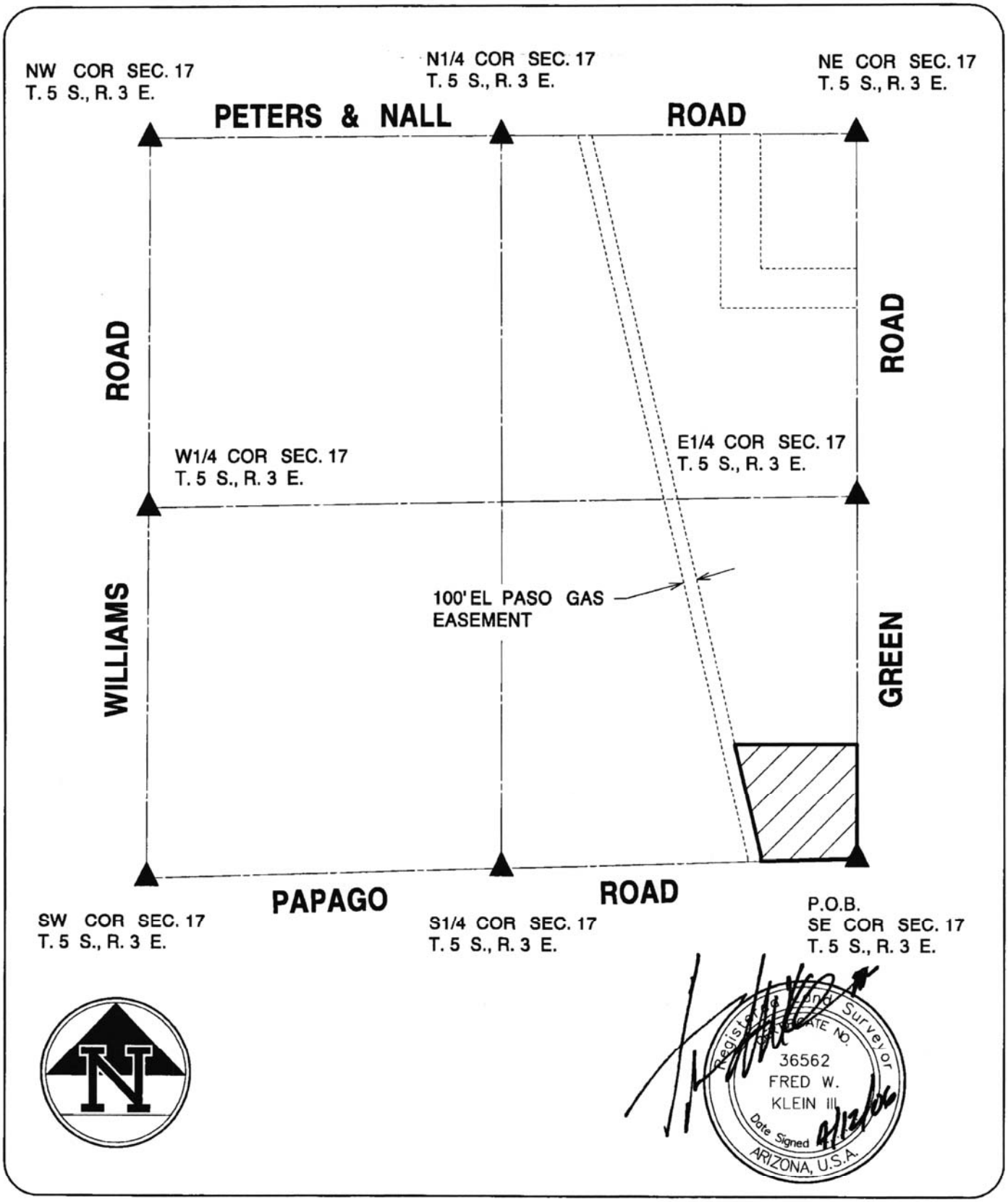

EXHIBIT FILE: EHCOMM.DGN DATE:09/14/05	**AMARILLO CREEK** **GROSS COMMERCIAL PARCEL**	JOB NO 030049
CVL 4550 North 12th Street Phoenix, Arizona 85014 Telephone 602-264-6831 http://www.cvlci.com	**Coe & Van Loo Consultants, Inc.**	SHEET 1 OF 1