

**RESOLUTION NO. 2022-29**

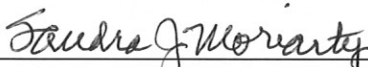
**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SEDONA,  
ARIZONA, APPROVING A SETTLEMENT AGREEMENT WITH SON SILVER WEST  
GALLERY, LLC, ETC., TO RESOLVE ONGOING LITIGATION.**

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY  
OF SEDONA as follows:

Section 1. That it is deemed in the best interest of the City of Sedona and its citizens that the City enter into a Settlement Agreement with Son Silver West Gallery, Inc., Linda Rose Robson Living Trust, William B. Robson Living Trust, and Rio Cody Robson which resolves ongoing litigation, provides for the operation of the Son Silver West art gallery, Sedona, Arizona, which Agreement is now on file in the office of the City Clerk of the City of Sedona.

Section 2. That the Mayor is authorized and directed to execute and deliver said agreement on behalf of the City of Sedona.

ADOPTED AND APPROVED by the Mayor and Council of the City of Sedona, Arizona, this 27<sup>th</sup> day of September, 2022.

  
\_\_\_\_\_  
Sandra J. Moriarty, Mayor

ATTEST:

  
\_\_\_\_\_  
JoAnne Cook, CMC, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Kurt W. Christianson, City Attorney

**SETTLEMENT AGREEMENT**  
**AND RELEASE OF CLAIMS**

**THIS SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS** (hereinafter, this “Agreement”) is entered into by and between the **CITY OF SEDONA, ARIZONA**, an Arizona municipal corporation (the “*City*”) and **SON SILVER WEST GALLERY, INC.** an Arizona corporation (“*Son Silver West*” or “SSW”), and Linda Rose Robson and William B. Robson, husband and wife, Linda Rose Robson and William B. Robson, trustees of the Linda Rose Robson Living Trust u/t/a dated July 12, 1999, William B. Robson and Linda Rose Robson, trustees of the William B. Robson Living Trust u/t/a dated July 12, 1999, and Rio Cody Robson, an unmarried man, (the Linda Rose Robson Living Trust, William B. Robson Living Trust, and Linda Rose, William B. and Rio Cody Robson are collectively called “the Robsons”). Hereinafter, the City, SSW and the Robsons are jointly referred to as the “parties”.

**RECITALS**

WHEREAS, within the Broken Arrow Subdivision, recorded at Map 2, Page 71 Coconino County Official Records, Tracts 40, 41 and 42 are owned by Linda Rose Robson and William B. Robson, trustees of the Linda Rose Robson Living Trust u/t/a dated July 12, 1999, Tract 45 is owned by Rio Cody Robson and Tract 49 is owned by William B. Robson and Linda Rose Robson, trustees of the William B. Robson Living Trust, and William B. Robson and Linda Robson (the “Property”). Tract 49 is also known as 365 Bowstring Drive. Tract 45 is also known as 61 Arrow Drive. Linda Rose Robson and William B. Robson, Trustees of the Linda Rose Robson Living Trust, as Lessor, and Son Silver West Gallery, Inc., as Lessee, have entered into an existing lease for the purpose of Son Silver West operating a commercial art gallery business on Tracts 41 and 42; and

WHEREAS, there is an existing retail business being conducted by Son Silver West on Tracts 41 and 42 of the Property pursuant to a conditional use permit approved by the City on or about September 15, 1992 which allowed a legal nonconforming commercial art gallery on Tract 42 to be expanded onto Tract 41 (CUP 92-3) and the September 15, 1992 staff report; the terms of the staff report and CUP 92-3 are hereby incorporated by reference into this Agreement; and

WHEREAS, on or about November 10, 2015, the City issued a Notice of Violation to Son Silver West in which various violations of the specific terms of CUP 92-3 and the Sedona Land Development Code were identified, along with the Corrective Actions required to bring the Son Silver West business into compliance with CUP 92-3 and the Sedona Land Development Code. Corrective Actions were designated with a capital letter and a number, e.g., A.5. The November 10, 2015 Notice of Violation is hereby incorporated by reference into this Agreement; and

WHEREAS, on June 3, 2016, the City of Sedona Board of Adjustment (BOA) heard an appeal made by Son Silver West regarding the November 10, 2015 Notice of Violation and issued an Order with respect to its findings. The BOA’s June 3, 2016 Order is hereby incorporated by reference into this Agreement; and

WHEREAS, on September 18, 2017, in Cause No. CV2016-00306, Hon. Dan Slayton of the Coconino County Superior Court entered a Final Judgment with respect to a Special Action Complaint brought by Son Silver West and the Robsons to challenge the June 3, 2016 decisions of the City of Sedona BOA. The Judgment upheld the BOA Order except as to Corrective Actions A.5, D.5 and D.6. Judge Slayton's Judgment is hereby incorporated by reference into this Agreement; and

WHEREAS, upon appeal by Son Silver West and the Robsons in Cause No. 1 CA-CV 17-0761, on October 30, 2018, the Arizona Court of Appeals, Division One, issued a Memorandum Decision in which the Court vacated Paragraphs 7 (Corrective Action D.2) and 10 (Corrective Action D.5) of the Superior Court's Final Judgment and reinstated the City of Sedona Board of Adjustment's decision regarding these Corrective Actions previously reversed by the Superior Court and affirmed the remainder of the Superior Court's Order. The Court of Appeals Memorandum Decision is hereby incorporated by reference into this Agreement; and

WHEREAS, on November 10, 2018, the City of Sedona issued a Notice of Violation to Son Silver West and the Robsons. On December 3, 2018, the City of Sedona issued a Notice of Violation to Son Silver West and the Robsons. The Notices of Violation are hereby incorporated by reference into this Agreement; and

WHEREAS, on January 24, 2019, the City of Sedona filed Cause No. CV201900022 in the Coconino County Superior Court seeking abatement of violations that remain out of compliance and authorization for injunctive relief authorizing the City to undertake such abatement, if necessary (hereinafter referred to as the "City's Complaint"). The City's Complaint is hereby incorporated by reference into this Agreement; and

WHEREAS, Son Silver West and the Robsons have submitted an engineered Site Plan of the Building and Shade Canopies Areas of Tracts 40, 41 and 42 and a Site Plan of Outdoor Retail Area of Tracts 41 and 42 (the "Outdoor Retail Area") based upon a scaled drawing prepared by the City of the allowable outdoor retail area (attached to this Agreement as Exhibits A and C, respectively) which have been determined by the parties to accurately reflect the conditions adopted in CUP 92-3 and which, if adhered to by Son Silver West, will establish compliance with CUP 92-3 and resolve all violations as identified in the November 10, 2018 and December 3, 2018 Notices of Violation; and

WHEREAS, Tracts 41 and 42 are located in Community Focus Area (CFA) 11: Morgan Road of the Sedona Community Plan. One of the listed attributes of CFA 11 is the existing nonconforming commercial uses; and

WHEREAS, the City's Complaint filed in Cause No. CV201900022 and all claims or counterclaims, whether asserted, unasserted, known or unknown, mandatory, or permissive arising out of or relating to the City's Complaint and the Notices of Violation shall collectively be referred to as the "Lawsuit"; and

WHEREAS, the Parties desire to fully settle the Lawsuit, including the merger herein of the orders, judgments and decisions of (i) the Board of Adjustment decision, (ii) the Coconino

County Superior Court Cause No. CV2016-00306, and (iii) Arizona Court of Appeals Cause No. 1CA-CV17-0761 and other issues as specified below, to buy their peace, and to avoid the attendant costs and expenses associated with further litigation directly or indirectly affecting one another with regard to the Property; and

WHEREAS, the Parties have reached agreement upon the terms and conditions of such settlement as set forth herein.

### **AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as set forth below:

1. **INCORPORATION OF RECITALS.** The parties acknowledge the accuracy of the foregoing Recitals and hereby incorporate them by this reference.

2. **SETTLEMENT TERMS.**

a. **Execution of Agreement.** The parties shall execute and deliver to each other an executed copy of this Agreement.

b. **Covenants of Son Silver West and the Robsons.** Son Silver West and the Robsons agree as follows:

(1) To remain in compliance with the conditions applicable to Tracts 41 and 42 and established in the September 15, 1992 staff report, adopted in association with CUP 92-3, and with CUP 92-3, all as adjudicated by the BOA, Judge Slayton and the Arizona Court of Appeals, and any minor adjustments as referenced by the Arizona Court of Appeals, which includes, as shown on Exhibit A, SSW Site Plan of Building and Shade Canopies Area:

- i. 4,900 square feet of retail space in enclosed buildings<sup>1</sup>
- ii. 5,563.81 square feet of Outdoor Retail Area<sup>2</sup>
- iii. 1,845 square feet of single family dwelling<sup>3</sup>
- iv. 620 square feet of storage space
- v. 1271 square feet of workshop<sup>4</sup>

(2) To not use more than the maximum allowable space on Tract 45 located at 61 Arrow Drive (APN 401-31-016) as a home occupation, as that use is defined in the Sedona Land Development Code, and to not use Tract 45 for

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<sup>1</sup> See Footnote #1 described on Footnote Addendum attached hereto.

<sup>2</sup> See Footnote #2 described on Footnote Addendum attached hereto.

<sup>3</sup> See Footnote #3 described on Footnote Addendum attached hereto.

<sup>4</sup> See Footnote #4 described on Footnote Addendum attached hereto.



commercial purposes including, but not limited to, fabrication, employee parking and warehousing of merchandise in support of the Son Silver West business activities, and to allow the City staff upon notice to have access to the residence at 61 Arrow Dr. for the purpose of inspection as identified herein.

- (3) To erect and maintain a Code compliant fence on the property line between the structure located at 61 Arrow Drive commonly referred to as “the chapel” and Tract 42 and that a residential-sized gate be maintained along the shared property line between Tracts 42 and 45. Further, that the chapel only be used for the owners and family friends’ personal religious or contemplative purposes and not for public use.
- (4) To ensure that the boundaries, buildings, walls, and fences of the Son Silver West business do not illegally encroach onto adjacent properties.
- (5) To not use more than the maximum allowable space on Tract 49 located at 365 Bowstring Dr. (APN 401-31-020) as a home occupation, as that use is defined in the Sedona Land Development Code, and to not use Tract 49 for commercial purposes including, but not limited to, fabrication, employee parking and warehousing of merchandise in support of the Son Silver West business activities, and to allow the City staff upon notice to have access to the residence at 365 Bowstring Dr. for the purpose of inspection as provided herein.
- (6) To prohibit the parking of vehicles on Tract 40 located at 1535 SR 179 (APN 401-31-011), to maintain a physical barrier between Tract 40 and Tract 41 at the south edge of the improved driveway on Tract 40, and to refrain from the use of Tract 40 for commercial purposes, except for the existing commercial drive which shall be used only for ingress and egress of automobiles and for the loading and unloading of shipments of business merchandise, equipment and supplies; provided, however, that unloading and loading of any such shipments shall occur before close of business by Son Silver West the same day as the arrival of the truck used for shipping and, provided further, that shipments received shall be removed from the commercial driveway area within 24 hours after being offloaded.<sup>5</sup> The northernmost 20 feet of the commercial drive shall be used only for ingress and egress with a center line striped and marked with paint accordingly. The remainder of the paved commercial drive shall be striped and marked with paint for unloading and loading of business merchandise, equipment and supplies within thirty (30) days after the Effective Date, and thereafter maintained.

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<sup>5</sup> See Footnote #5 described on Footnote Addendum attached hereto.

- (7) To install and maintain pre-approved screening or vegetative screening next to the existing wrought iron fencing, of a height not less than the height of the fencing, including the gates used for pedestrian access, on Tract 41 and Tract 42 along the frontage adjacent to State Route 179 so as to minimize visual impacts and maintain an attractive appearance of the Outdoor Retail Area.
- (8) To maintain all outdoor lighting fixtures to be shielded and dark-sky compliant in accordance with existing City code requirements.
- (9) To install permanent ground markers which will delineate the authorized Outdoor Retail Area as authorized in CUP 92-3 and accurately depicted on the site plan attached as Exhibit C. Further, that all areas and clear spaces on Tracts 40, 41 and 42 lying outside the Outdoor Retail Area shown on Exhibit C without a use designation, shall be kept open and free of any merchandise or other tangible items at all times and maintained in their current state. Further, the Robsons and SSW agree to not store, place, or locate anything, including but not limited to objects, items, merchandise, or artwork, whether for sale or not, at any exterior location on Tracts 40, 41 and 42 not within the Outdoor Retail Area as shown in Exhibits B and C and as described in Section 2(a)ii. of this Agreement without prior written permission from the City Community Development Director which shall not be unreasonably withheld. The City Community Development Director pre-approves only those non-retail items currently displayed outside the Outdoor Retail Area as recorded by video and photographs taken on July 12, 2021, by City staff and by photos provided by SSW to City staff on May 25, 2021.
- (10) To allow the City staff entry onto Tract 40, Tract 41 and Tract 42 at any time during regular business operating hours of Son Silver West for the purpose of conducting inspections, including the taking of photographs, for compliance with CUP 92-3 and this Agreement in accordance with the City's standard practices for inspecting commercial properties within the City of Sedona.
- (11) To promptly resolve any and all violations of CUP 92-3 or this Agreement identified through a properly conducted inspection by the City.

c. **Covenants of the City.** The City agrees as follows:

- (1) To provide written confirmation to Son Silver West and the Robsons that suspension of CUP 92-3 is no longer in effect and the Son Silver West business has been found to be in compliance with CUP 92-3 and this Agreement as of the date of this Agreement.

- (2) To issue current City business licenses to Son Silver West and the Robsons upon submittal of a complete application for Business Licenses, including payment of all associated licensing fees.
- (3) To voluntarily dismiss with prejudice Cause No. CV201900022 in the Coconino County Superior Court.

d. **Merger of Prior Legal Proceedings.** The Parties hereby agree that the orders, judgments and decisions of the (i) June 3, 2016 Board of Adjustment decision, (ii) Coconino County Superior Court Cause No. CV2016-00306, and (iii) Arizona Court of Appeals Cause No. 1 CA-CV17-0761 are hereby merged into the terms, covenants and conditions of this Agreement.

3. **NOTICE.** Unless otherwise specifically provided in this Agreement, all notices, demands or other communication to be given shall be in writing and shall be deemed to have been duly delivered upon personal delivery or three (3) business days after deposit in the U.S. Postal System or one (1) business day after the sending of email notice (given between the hours of 8 am and 5 pm on a business day):

To City:  
City of Sedona  
Attn: Sedona Community Development Director  
102 Roadrunner Drive  
Sedona, Arizona 86336  
jmcneely@sedonaaz.gov

Copy To:  
Sedona City Attorney  
102 Roadrunner Drive  
Sedona, Arizona 86336  
kchristianson@sedonaaz.gov

To Son Silver West:  
Rio Cody Robson  
1476 State Route 179  
Sedona, Arizona 86336  
rio@sonsilverwest.com

Copy To:  
Francis J. Slavin  
Francis J. Slavin, P.C.  
2198 East Camelback Road, Suite 285  
Phoenix, Arizona 85016  
b.slavin@fjslegal.com

William and Rose Robson  
25 Alpine Ln.  
Sedona, Arizona 86336  
bill@sonsilverwest.com

Either party may change the notice recipient or address by giving written notice to the other party as provided above.

4. MUTUAL RELEASE. In consideration of the terms, conditions and releases in this Agreement, the parties agree that:

- a. The City hereby fully, completely, and finally releases and forever discharges Son Silver West and the Robsons from any and all claims, demands, actions, or causes of action of any nature whatsoever relating to, accruing or arising at any time from the beginning of the world through the date of the execution and delivery hereof, whether known or unknown, whether contingent or not contingent, whether or not in litigation, related to Cause No. S-0300-CV2016-00306 and 1 CA-CV 17-0761, the Notices of Violation that triggered such Cause, and the Lawsuit.
- b. Son Silver West and the Robsons hereby fully, completely, and finally release and forever discharge the City and its officers, employees and agents from any and all claims, demands, actions, or causes of action of any nature whatsoever relating to, accruing or arising at any time from the beginning of the world through the date of the execution and delivery hereof, whether known or unknown, whether contingent or not contingent, whether or not in litigation, related to Cause No. S-0300-CV2016-00306 and 1 CA-CV 17-0761, the Notices of Violation that triggered such Cause, and the Lawsuit.
- c. The claims, demands, actions, and causes of action released and discharged in subparagraphs 4(a)-(b) above includes, without limitation, any claims for any damages sustained at any time, whether before or after the date of the execution and delivery hereof, and whether or not known, anticipated, suspected, or expected in any way related to or arising out of the claims that were or could have been brought in the Lawsuit or otherwise asserted.
- d. To the extent that any applicable federal or state law, rule, or regulation might make the releases and discharges set forth in paragraph 4(a)-(b) above inapplicable as to matters as to which any of the parties hereto have no knowledge, anticipation, suspicion, or expectation, each of the parties hereto hereby waives and relinquishes any and all of the rights and benefits to which it may be entitled under any such law, rule, or regulation. Each of the parties hereto hereby further acknowledges that such party may hereafter discover facts in addition to, or different from, those which such party now knows or believes to be true regarding the subject matter of the releases and discharges set forth in paragraph 4(a)-(b) above, but that, notwithstanding any such discovery, each of the parties hereto intends that the releases and discharges set forth in paragraph 4(a)-(b) above shall be full, complete,

and final releases and discharges as set forth herein.

5. FULL AND FINAL SETTLEMENT. Each party declares that the terms of this Agreement have been completely read and are fully understood and voluntarily accepted for the purpose of making, respectively as the context may be, a full and final compromise, adjustment and settlement and release for all claims released herein, disputed or otherwise, between and among the parties hereto. This Agreement constitutes the full, complete, final, and exclusive expression of all of the representations, warranties, covenants, promises, and agreements of the parties hereto relative to the subject matter hereof.

6. WARRANTY OF CAPACITY TO EXECUTE AGREEMENT. Each party represents and warrants to each other party that such party (i) has the entire right and exclusive authority to execute this Agreement, (ii) is not under any disability which could affect the capacity of such party to execute this Agreement and (iii) has not sold, assigned, transferred, conveyed, encumbered, hypothecated, or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Agreement.

7. NO ADMISSION OF LIABILITY. The parties are entering into this Agreement in order to buy such party's peace and avoid further litigation with each other and the costs and expenses associated therewith, and in so doing, each of the parties denies any and all liability and defenses and states that the settlement made herein is entirely a compromise.

8. REMEDIES UPON BREACH. If any party to this Agreement materially breaches the terms of the Agreement, the non-breaching party may exercise any and all remedies available to such party under Arizona law, including, without limitation, if applicable, bringing a lawsuit for monetary damages or specific performance. THE PARTIES HERETO EXPRESSLY COVENANT AND AGREE THAT IN THE EVENT OF LITIGATION ARISING FROM THIS AGREEMENT, NEITHER PARTY SHALL BE ENTITLED TO AN AWARD OF ATTORNEY FEES, EITHER PURSUANT TO CONTRACT, PURSUANT TO A.R.S. § 12-341.01 (A) AND (B), OR PURSUANT TO ANY OTHER STATE OR FEDERAL STATUTE, COURT RULE, CASE LAW, OR COMMON LAW. THE PARTIES AGREE THAT ALL DISPUTES ARISING UNDER THIS AGREEMENT SHALL BE FILED IN THE COCONINO COUNTY SUPERIOR COURT IN FLAGSTAFF, ARIZONA.

9. EXHIBITS. All exhibits attached to this Agreement are incorporated herein by reference as though fully set forth in this Agreement. The exhibits are as follows:

Exhibit A: Son Silver West Gallery Site Plan of Building and Shade Canopies Area

Exhibit B: Legal Description of Perimeter of Son Silver West Outdoor Retail Area

Exhibit C: Son Silver West Gallery Site Plan of Outdoor Retail Area

Full-size copies of Exhibit A and Exhibit C are on file with the City of Sedona Community Development Department.



10. WAIVER, MODIFICATION, AND AMENDMENT OF AGREEMENT. This Agreement shall not be waived, modified, or amended, except by written agreement signed by the parties.

11. SEVERABILITY. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, such provision will be fully severable and the remainder of the Agreement will remain enforceable and not affected thereby.

12. GOVERNING LAW. The validity, construction, interpretation, and administration of this Agreement will be governed by the laws of the State of Arizona.

13. HEADINGS. The headings set forth herein are inserted for convenience of the parties only, and shall not be used to interpret or construe or in any way affect the meanings of the terms and provisions of this Agreement.

14. COUNTERPARTS. This Agreement may be signed in any number of counterparts. All counterparts are deemed to constitute one and the same instrument, and each counterpart is deemed to be an original of that instrument. A facsimile signature on any counterpart shall be deemed an original signature by the parties.

15. BINDING EFFECT. This Agreement is binding upon and shall inure to the benefit of the parties, and their respective heirs, devisees, executors, administrators, beneficiaries, successors, and assigns.

16. TIME. Time is of the essence with respect to the performance of all terms, covenants, conditions and provisions of this Agreement.

17. VOLUNTARINESS AND ASSISTANCE OF LEGAL COUNSEL. Each party acknowledges that such party is freely and voluntarily entering into this Agreement, uncoerced by any other person, and that such party has been represented by competent legal counsel of such party's own choice or has had the opportunity to do so regarding this Agreement and fully understands the same. This Agreement reflects a good faith resolution of claims reached after arm's-length negotiations and without coercion and not in reliance upon any representations or promises not contained herein.

18. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties as to the subject matter of this Agreement. There are no agreements, understandings, warranties, or representations among the parties as to the subject matter of this Agreement, except as set forth in this Agreement. All prior and contemporaneous agreements, representations, negotiations and understandings of the parties, oral or written, are superseded and merged into this Agreement. No provision of this Agreement may be amended, modified, supplemented, changed, waived, discharged or terminated, except by an instrument in writing signed by the party against whom enforcement of the amendment, modification, supplementation, change, waiver, discharge or termination is sought.

19. NO CONSTRUCTION AGAINST ANY PARTY. This Agreement has been negotiated by all of the parties hereto and shall not be interpreted more strictly against any party hereto on the basis that such party's counsel drafted this Agreement or any specific part thereof.

20. REMEDIES CUMULATIVE. All rights and remedies of any party under this Agreement are cumulative and non-exclusive and may be exercised singularly or concurrently.

21. SURVIVAL. All representations, warranties and covenants contained in this Agreement shall continue and survive execution of this Agreement and shall be binding upon the party making the representation, warranty, or covenant.

22. COOPERATION AND OTHER DOCUMENTS. The parties shall execute and deliver all other documents, mutually cooperate and take all other action as any party may reasonably request from time to time, before or after the execution of this Agreement, in order to further the intent of, and effectuate the parties' interest(s) and the transaction(s) provided for by this Agreement.

23. SUBMISSION TO JURISDICTION; VENUE; WAIVER OF JURY TRIAL. **THE PARTIES TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, DO THE FOLLOWING: (1) SUBMIT TO PERSONAL JURISDICTION IN THE STATE OF ARIZONA WITH RESPECT TO ANY ACTION ARISING FROM OR RELATING TO THIS AGREEMENT; (2) AGREE THAT THE SUPERIOR COURT OF ARIZONA, COCONINO COUNTY (SITTING IN FLAGSTAFF, ARIZONA) SHALL HAVE EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ALL CLAIMS OR DISPUTES BETWEEN THE PARTIES PERTAINING DIRECTLY OR INDIRECTLY TO THIS AGREEMENT; (3) WAIVE ANY CLAIM THAT THE COURT IN SUBPART (2) IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE; (4) AGREE THAT THE EXCLUSIVE CHOICE OF FORUM SET FORTH IN THIS PARAGRAPH SHALL NOT PRECLUDE ANY PARTY FROM ENFORCING OR SEEKING TO ENFORCE ANY JUDGMENT IN ANY OTHER APPROPRIATE JURISDICTION; AND (5) ACKNOWLEDGE AND AGREE THAT (i) ANY CONTROVERSY WHICH MAY ARISE UNDER, AS A RESULT OF, OR IN CONNECTION WITH THIS AGREEMENT WOULD BE BASED UPON DIFFICULT OR COMPLEX ISSUES; AND (ii) AS A RESULT, ANY LAWSUIT ARISING OUT OF ANY SUCH CONTROVERSY SHALL BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.**

24. APPROVAL OF FORM OF AGREEMENT. The form of this Agreement has been approved by counsel for the Parties.

25. NO THIRD-PARTY BENEFICIARIES. This Agreement is made and entered into for the sole protection and benefit of the parties. No person other than the parties and their successors in interest shall have any right of action based upon any provision of this Agreement.

[SIGNATURES ON FOLLOWING PAGES]

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

CITY OF SEDONA, ARIZONA, an Arizona  
municipal corporation

Sandra J. Moriarty  
Sandra J. Moriarty, Mayor

ATTEST:

JoAnne Cook  
JoAnne Cook, City Clerk

APPROVED AS TO FORM:

Kurt W. Christianson  
Kurt W. Christianson, City Attorney

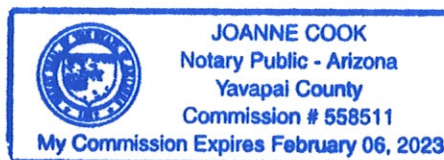
STATE OF ARIZONA       )  
                                      ) ss.  
County of Yavapai       )

On this 8th day of November, 2022, before me personally appeared Sandra J. Moriarty, the Mayor of the CITY OF SEDONA, ARIZONA, an Arizona municipal corporation, for and on behalf thereof, whose identity was proven to me on the basis of satisfactory evidence to be the person who she claims to be and acknowledged that she signed the above/attached documents.

JoAnne Cook  
Notary Public

My Commission Expires:

2/06/2023




**SON SILVER WEST GALLERY, INC.**By: 

Linda Rose Robson

Its: President

Wyoming  
STATE OF ~~ARIZONA~~ )  
Teton ) ss.  
County of ~~Yavapai~~ )

The foregoing instrument was acknowledged before me this 11 day of October, 2022 by Linda Rose Robson, President of Son Silver West Gallery, Inc. on behalf of the corporation.

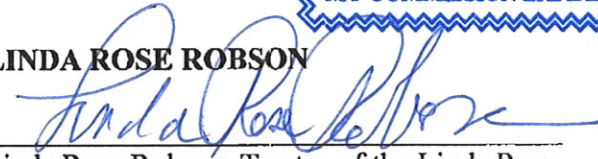
  
Notary Public

My Commission Expires:

09/15/2028


DESERE DICKSON  
NOTARY PUBLIC  
STATE OF WYOMING  
COMMISSION ID: 167499  
MY COMMISSION EXPIRES: 09/15/2028

**LINDA ROSE ROBSON**

  
Linda Rose Robson, Trustee of the Linda Rose Robson Living Trust u/t/a dated July 12, 1999

Wyoming  
STATE OF ~~ARIZONA~~ )  
Teton ) ss.  
County of ~~Yavapai~~ )

The foregoing instrument was acknowledged before me this 11 day of October, 2022 by Linda Rose Robson, Trustee of the Linda Rose Robson Living Trust u/t/a dated July 12, 1999.

  
Notary Public

My Commission Expires:

09/15/2028

DESERE DICKSON  
NOTARY PUBLIC  
STATE OF WYOMING  
COMMISSION ID: 167499  
MY COMMISSION EXPIRES: 09/15/2028



WILLIAM B. ROBSON

William B. Robson

William B. Robson, Trustee of the Linda Rose Robson Living Trust u/t/a dated July 12, 1999.

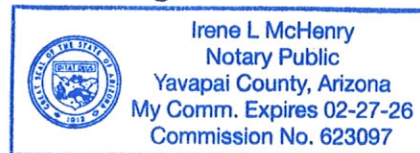
STATE OF ARIZONA       )  
                                      ) ss.  
County of Yavapai       )

The foregoing instrument was acknowledged before me this 7 day of October, 2022 by William B. Robson, Trustee of the Linda Rose Robson Living Trust u/t/a dated July 12, 1999.

Irene L McHenry  
Notary Public

My Commission Expires:

02-27-26



WILLIAM B. ROBSON

William B. Robson

William B. Robson, Trustee of the William B. Robson Living Trust u/t/a dated July 12, 1999.

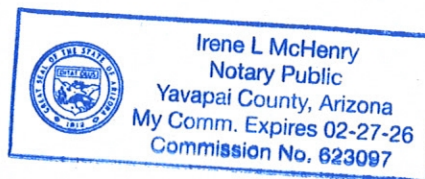
STATE OF ARIZONA       )  
                                      ) ss.  
County of Yavapai       )

The foregoing instrument was acknowledged before me this 07 day of October, 2022 by William B. Robson, Trustee of the William B. Robson Living Trust u/t/a dated July 12, 1999.

Irene L McHenry  
Notary Public

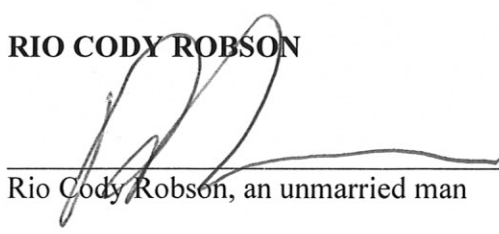
My Commission Expires:

02-27-26





**RIO CODY ROBSON**

  
Rio Cody Robson, an unmarried man

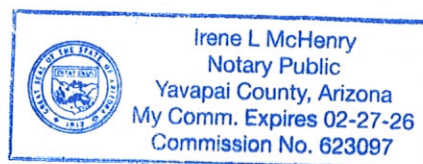
STATE OF ARIZONA       )  
                                      ) ss.  
County of Yavapai        )

The foregoing instrument was acknowledged before me this 07 day of October, 2022 by Rio Cody Robson.

  
Notary Public

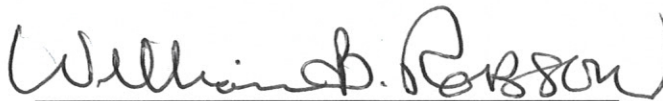
My Commission Expires:

02-27-26



**LINDA ROSE AND WILLIAM B. ROBSON**

\_\_\_\_\_  
Linda Rose Robson

  
William B. Robson, her spouse

STATE OF ARIZONA       )  
                                      ) ss.  
County of Yavapai       )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022 by Linda Rose Robson.

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

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

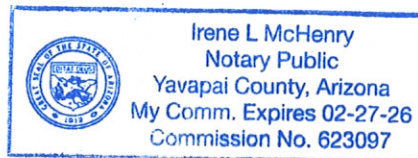
STATE OF ARIZONA       )  
                                      ) ss.  
County of Yavapai       )

The foregoing instrument was acknowledged before me this 07 day of October, 2022 by William B. Robson.

Irene L McHenry  
Notary Public

My Commission Expires:

02-27-26



**RIO CODY ROBSON**

\_\_\_\_\_  
Rio Cody Robson, an unmarried man

STATE OF ARIZONA       )  
                                  ) ss.  
County of Yavapai       )

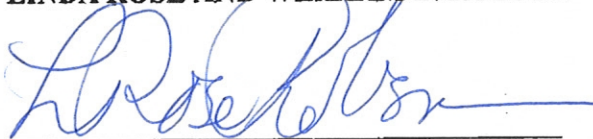
The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022 by Rio Cody Robson.

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

My Commission Expires:

\_\_\_\_\_

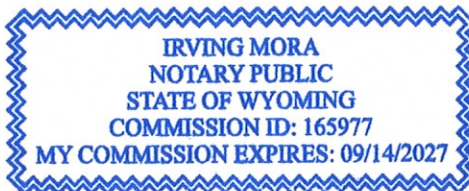
**LINDA ROSE AND WILLIAM B. ROBSON**



\_\_\_\_\_  
Linda Rose Robson

\_\_\_\_\_  
William B. Robson, her spouse

Wyoming  
STATE OF ~~ARIZONA~~ )  
Teton ) ss.  
County of ~~Yavapai~~ )



The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of October, 2022 by Linda Rose Robson.

[Signature]  
Notary Public

My Commission Expires:

09/14/2027

STATE OF ARIZONA )  
 ) ss.  
County of Yavapai )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022 by William B. Robson.

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

My Commission Expires:

\_\_\_\_\_

**EXHIBIT A  
TO  
SETTLEMENT AGREEMENT**

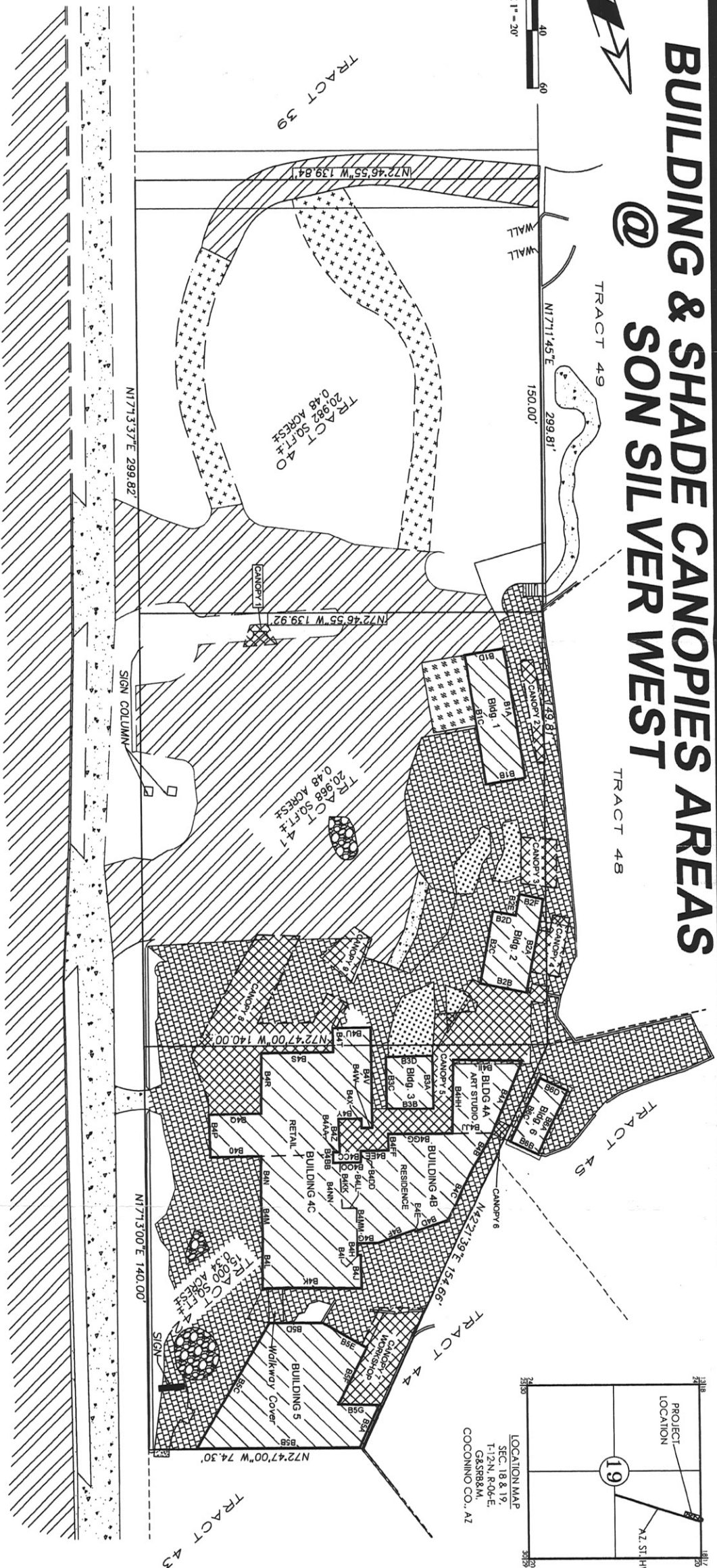
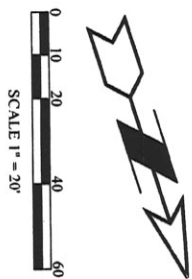
**Building & Shade Canopies Areas @ Son Silver West filed the 26<sup>th</sup> day of October, 2022 at Recording No. 3962923 in the Official Records of the Recorder of Coconino County, Arizona.**



# BUILDING & SHADE CANOPIES AREAS @ SON SILVER WEST

BUILDING WALL LENGTH TABLE

WALL No.	LENGTH (ft.)
BUILDING 1	
B1A	45.01
B1B	13.81
B1C	45.13
B1D	13.74
BUILDING 2	
B2A	33.09
B2B	15.69
B2C	25.51
B2D	8.00
B2E	7.50
B2F	8.45
BUILDING 3	
B3A	18.41
B3B	16.16
B3C	18.03
B3D	16.10
BUILDING 4	
B4A	28.36
B4B	12.41
B4C	20.80
B4D	11.67
B4E	0.60
B4F	13.46
B4G	7.48
B4H	4.21
B4I	1.15
B4J	11.28
B4K	34.4
B4L	20.25
B4M	10.50
B4N	16.12
B4O	17.71
B4P	14.45
B4Q	18.24
B4R	21.10
B4S	24.97
B4T	8.07
B4U	13.15
B4V	16.16
B4W	3.70
B4X	3.20
B4Y	8.00
B4Z	11.22
B4AA	2.30
B4AB	3.50
B4AC	9.60
B4AD	3.70
B4AE	9.70
B4AF	5.52
B4AG	22.24
B4HH	25.73
B4I	24.00
B4J	13.89
B4K	13.89
B4L	21.50
B4M	5.09
B4N	12.67
B4NN	2.35
B4O	7.25
BUILDING 5	
B5A	16.20
B5B	57.17
B5C	50.00
B5D	18.58
B5E	17.30
B5F	21.77
B5G	14.13
BUILDING 6	
B6A	24.45
B6B	10.51
B6C	24.45
B6D	10.51



## ARIZONA STATE HIGHWAY 179

### NOTES:

1. THIS DRAWING IS BASED UPON A.L.T.A./N.S.P.S. LAND TITLE SURVEY OF TRACTS 40-42 OF BROKEN ARROW SUBDIVISION AS RECORDED IN BOOK 2 OF MAPS OF PLATS, PAGE 71, RECORDS OF COCONINO COUNTY, AS PREPARED BY ALTA LAND SURVEY, INC. DATED JUNE 13, 2017, PROJECT 17-157, RECORDED IN DOCUMENT #39323997 ON OCTOBER 22, 2021
2. ALL DIMENSIONS SHOWN ARE EXTERIOR WALL MEASUREMENTS.
3. THIS DRAWING DOES NOT SHOW EASEMENTS, UTILITIES, OR SITE IMPROVEMENTS. REFER TO REFERENCED A.L.T.A. SURVEY (NOTE 1), FOR THIS DATA.
4. BUILDING 4 INTERIOR WALL LOCATIONS ARE PER INFORMATION PROVIDED BY THE OWNER

### LEGEND:

- ADJACENT PROPERTY LINE
- CANOPY/OVERHANG LINE
- PROPERTY LINE
- BUILDING 4 INTERIOR WALL
- ASPHALT PAVEMENT
- BRICK PAVERS
- BUILDING
- CONCRETE AREA
- DIRT AREA
- CANOPY SHADE STRUCTURE

### RECORDING DATA:

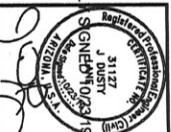
STATE OF ARIZONA }  
COUNTY OF COCONINO } SS

FILED FOR RECORD AT THE REQUEST OF LANE ENGINEERING, LLC THIS  
DAY OF 2022  
IN BOOK OF MAPS OF SURVEYS AT PAGE THEREOF.  
FEE NO.

WITNESS MY HAND AND OFFICIAL SEAL THE DAY AND YEAR ABOVE WRITTEN.

COCONINO COUNTY RECORDER/DEPUTY COUNTY RECORDER

ELECTRONICALLY



**LANE ENGINEERING, LLC**

Dusty (480) 319-3300 Direct @ Mesa Office  
Tom (520) 632-5777 Direct @ Tucson Office

RESULTS OF ENGINEERING SURVEY @ SON SILVER WEST GALLERY  
Building and Shade Canopies Areas  
Located in Tracts 40, 41, & 42, Broken Arrow Subdivision, M & P 2-73, Sedona, Arizona in Coconino County, Arizona

Sheet  
1 of 1

By: \_\_\_\_\_ Date: \_\_\_\_\_  
By: \_\_\_\_\_ Date: \_\_\_\_\_  
By: \_\_\_\_\_ Date: \_\_\_\_\_

Date: August 28, 2021  
Scale: 1" = 20'

Drawn: \_\_\_\_\_  
Checked: \_\_\_\_\_  
Approved: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**EXHIBIT B  
TO  
SETTLEMENT AGREEMENT**

**Legal Description of Perimeter of Sun Silver West Outdoor Retail Area Certified by J.  
Dusty Lane, RPE – 9/07/21**

September 7, 2021

**EXHIBIT B  
LEGAL DESCRIPTION  
SON SILVER WEST – OUTDOOR RETAIL AREA-SEDONA, ARIZONA  
LOCATED IN A PORTION OF TRACT 41 & TRACT 42  
OF BROKEN ARROW SUBDIVISION  
RECORDED IN MAPS AND PLATS BOOK 2, PAGE 71  
RECORDS OF COCONINO COUNTY, ARIZONA**

COMMENCING AT an untagged 1-inch Open Iron Pipe at the Northeast corner of said Tract 41, said point also being the Southeast corner of said Tract 42,

Thence along the North Property Line of said Tract 41, at North 72 degrees 47 minutes 00 seconds West, a distance of 1.71 feet to Point "A", [set Witness Corner, a 2" Aluminum Washer on PK Nail at 0.50 Feet West of Actual Point "A"], said Point "A" being **THE TRUE POINT OF BEGINNING OF SUBJECT OUTDOOR RETAIL AREA;**

Thence North 17 degrees 13 minutes 37 seconds East, a distance of 114.64' feet [Line ORA1], to Point "B", [set Witness Corner, a 2" Aluminum Washer on PK Nail at 0.58 feet West of Actual Point "B"];

Thence North 79 degrees 31 minutes 33 seconds West, a distance of 32.36 feet [Line ORA2], to Point "C", [set a 2" Aluminum Washer on PK Nail];

Thence South 48 degrees 27 minutes 49 seconds West, a distance of 16.45 feet [Line ORA3], to Point "D", [set Witness Corner, a 2" Aluminum Washer on PK Nail at 0.75 feet South of Actual Point "D"];

Thence South 06 degrees 45 minutes 27 seconds West, a distance of 12.08 feet [Line ORA4], to Point "E", [set Witness Corner, a 2" Aluminum Washer on PK Nail at 0.50 feet East of Actual Point "E"];

Thence South 17 degrees 12 minutes 25 seconds West, a distance of 44.83 feet [Line ORA5], to Point "F", [set a 2" Aluminum Washer on PK Nail];

Thence South 67 degrees 13 minutes 49 seconds East, a distance of 17.78 feet [Line ORA6], to Point "G", [set Witness Corner, a 2" Aluminum Washer on PK Nail at 0.50 feet East of Actual Point "G"];

Thence South 15 degrees 55 minutes 45 seconds West, a distance of 15.46 feet [Line ORA7], to Point "H", [set Witness Corner, a 2" Aluminum Washer on PK Nail at 0.50 feet East of Actual Point "H"];

Thence North 73 degrees 50 minutes 49 seconds West, a distance of 17.24 feet [Line ORA8], to Point "I", [set a 2" Aluminum Washer on PK Nail];

Thence South 18 degrees 02 minutes 07 seconds West, a distance of 21.05 feet [Line ORA9], to Point "J", [set a 2" Aluminum Washer on PK Nail];

The North 73 degrees 17 minutes 44 seconds West, a distance of 24.94 feet [Line ORA10], to Point "K", [set a 2" Aluminum Washer on PK Nail];

Thence South 38 degrees 26 minutes 45 seconds West, a distance of 42.27 feet [Line ORA11], to Point "L", [set a 2" Aluminum Washer on PK Nail in Asphalt];

Thence South 73 degrees 23 minutes 36 seconds East, a distance of 41.37 feet [Line ORA12], to point "M", [set a 2" Aluminum Washer on PK Nail in Asphalt];

Thence South 77 degrees 31 minutes 54 seconds East, a distance of 36.97 feet [Line ORA13], to Point "N", [set Witness Corner, a 2" Aluminum Washer on PK Nail at 0.42 feet Northwest of Actual Point "N"];

Thence North 17 degrees 13 minutes 37 seconds East, a distance of 34.64 feet [Line ORA14], to Point "A", said point being THE TRUE POINT OF BEGINNING OF SUBJECT OUTDOOR RETAIL AREA.

Total Perimeter Area of Outdoor Retail Area	= 6,649.75 square feet.
Minus Exception Area (Walkways & Planters) as determined by City of Sedona	= <u>(-1,086.14 square feet)</u>
<b>Total Net Outdoor Retail Display Area</b>	<b>= 5,563.61 square feet</b>

Note, this Legal Description is based upon the "Outdoor Retail Area @ Son Silver West" for Tracts 41 & 42 of Broken Arrow Subdivision, Records of Coconino County, Arizona as Recorded in Maps and Plats Book 2 at Page 71.



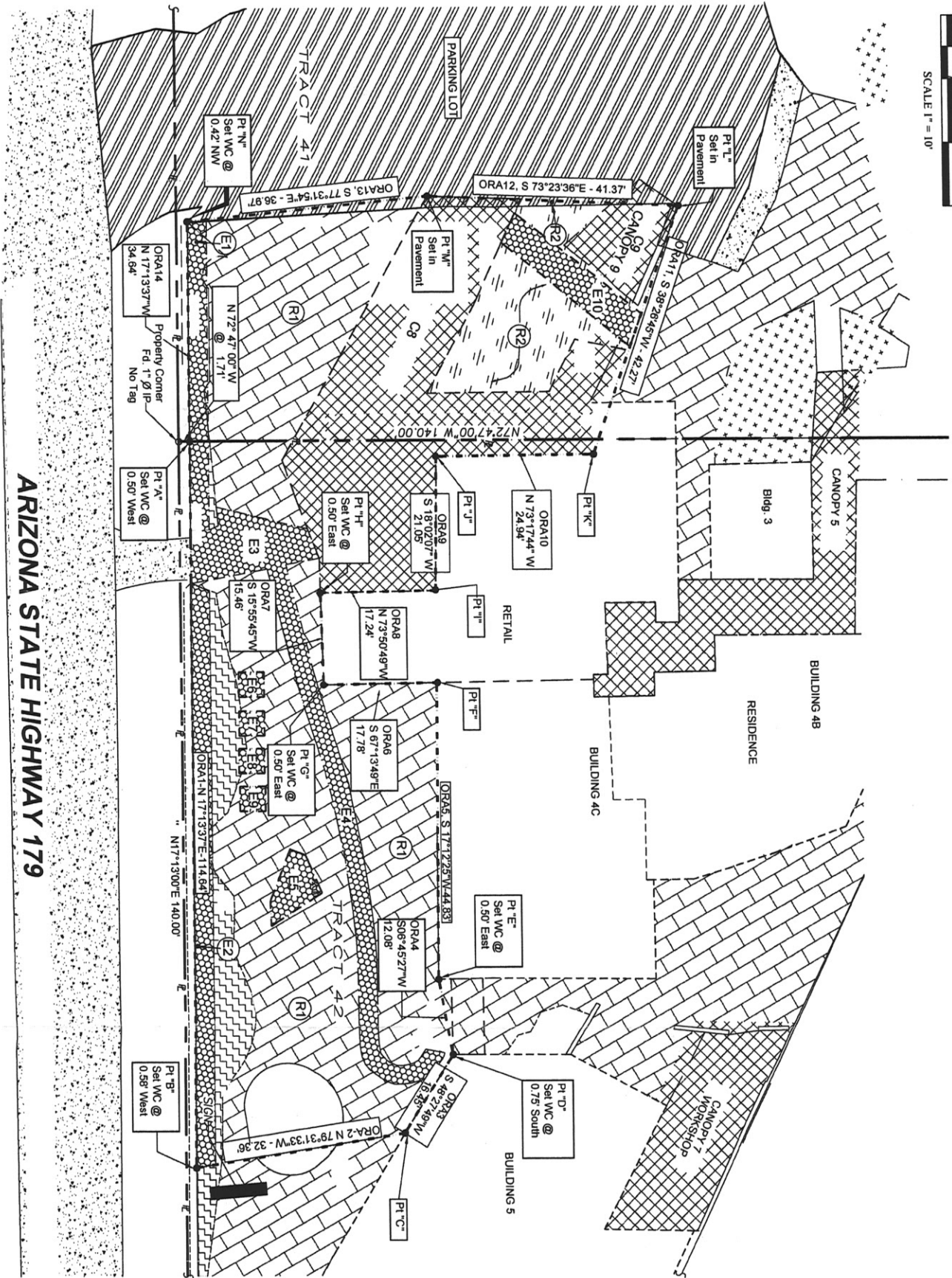
**EXHIBIT C  
TO  
SETTLEMENT AGREEMENT**

**Outdoor Retail Area @ Son Silver West filed the 26<sup>th</sup> day of October, 2022 at Recording No. 3962924 in the Official Records of the Recorder of Coconino County, Arizona.**





# OUTDOOR RETAIL AREA @ SON SILVER WEST



ARIZONA STATE HIGHWAY 179

## NOTES:

1. THIS DRAWING IS BASED UPON A.L.T.A./N.S.P.S. LAND TITLE SURVEY OF TRACTS 40-42 OF BROKEN ARROW SUBDIVISION AS RECORDED IN BOOK 2 OF MAPS OF PLATS, PAGE 71, RECORDS OF COCONINO COUNTY, AS PREPARED BY ALTA LAND SURVEY, INC. DATED JUNE 13, 2017, PROJECT 17-157, RECORDED IN DOCUMENT #39323997 ON OCTOBER 22, 2021
2. OUTDOOR RETAIL AREA SHOWN IS BASED UPON WORK DONE BY THE CITY OF SEDONA ENGINEERING DEPARTMENT. TOTAL PERIMETER SIZE OF OUTDOOR RETAIL AREA = 6,649.75 SQ. FT. TOTAL SIZE OF EXCEPTION AREAS = 1,086.14 SQ. FT. TOTAL SIZE OF OUTDOOR RETAIL AREA = 5,563.61 SQ. FT.
3. ALL DIMENSIONS SHOWN ARE EXTERIOR WALL MEASUREMENTS.
4. THIS DRAWING SHOWS AREAS OF OUTDOOR RETAIL AREA.
5. THIS DRAWING DOES NOT SHOW EASEMENTS, UTILITIES, OR SITE IMPROVEMENTS. REFER TO REFERENCED A.L.T.A. SURVEY (NOTE 1), FOR THIS DATA.
6. BRASS WASHERS ON PK NAILS WERE SET WHERE POSSIBLE AT THE OUTDOOR RETAIL AREA PERIMETER (W.C. REPRESENTS "WITNESS CORNER" WHERE ACTUAL POINTS COULD NOT BE SET DUE TO BUILDING AND SITE IMPROVEMENT CONSTRAINTS).

## OWNER

WILLIAM B. ROBSON AND LINDA ROSE ROBSON,  
AS TRUSTEES OF THE LINDA ROSE ROBSON LIVING TRUST  
1478 AZ HWY 179  
SEDONA, AZ 86336

## RECORDING DATA:

STATE OF ARIZONA }  
COUNTY OF COCONINO } SS

FILED FOR RECORD AT THE REQUEST OF LANE ENGINEERING, LLC  
ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2022  
IN BOOK \_\_\_\_\_ OF MAPS OF SURVEYS AT PAGE \_\_\_\_\_ THEREOF.  
FEE NO. \_\_\_\_\_

WITNESS MY HAND AND OFFICIAL SEAL THE DAY AND YEAR ABOVE WRITTEN.

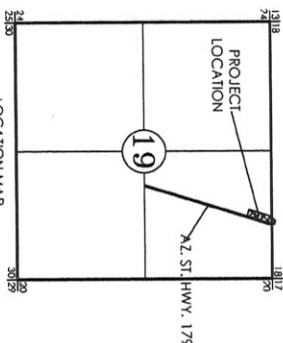
ELECTRONICALLY

COCONINO COUNTY RECORDER/DEPUTY COUNTY RECORDER

SON SILVER WEST GALLERY @ SEDONA  
Site Plan of Outdoor Retail Area for Tracts 41 & 42 of Broken Arrow Subdivision, M & P 2172  
Sedona, Arizona in Coconino County, Arizona

EXCEPTION AREAS TABLE FOR RETAIL AREA AS PROVIDED BY CITY OF SEDONA		
Retail Area (C)-(With Canopy)		
(Sq. Ft.)	Total	Description
C8	1484.81	Canopy 8 Area
C9	181.58	Canopy 9 Area
	1666.39 Sq. Ft.	
Retail Area (R)- Uncovered (No Canopy)		
(Sq. Ft.)	Total	Description
R1	4435.03	Along SR-179, From Exist. Fence to Canopy 8 & Bldg. 4C & Bldg. 5
R2	584.33	East of Parking Area, From Canopy 9 to Canopy 8
	4983.36 Sq. Ft.	
Exception Area (E)		
(Sq. Ft.)	Total	Description
E1	145.83	Along SR-179, From Fence/R North 3 Feet (West)
E2	264.87	Along SR-179, From Fence/R North 3 Feet (East)
E3	154.89	Entrance Area/Walkway From SR-179
E4	275.83	Emergency Walkway 3 Feet Wide, From Above Entrance to Gate Between Bldg. 4C & Bldg. 5
E5	55.01	Planter, Irregular as Shown on Survey
E6	16.00	Tree/Planters, Average Area for 4 Planters = 16 Sq. Ft.
E7	16.00	Tree/Planters, Average Area for 4 Planters = 16 Sq. Ft.
E8	16.00	Tree/Planters, Average Area for 4 Planters = 16 Sq. Ft.
E9	16.00	Tree/Planters, Average Area for 4 Planters = 16 Sq. Ft.
E10	125.71	Walkway 5 Feet Wide, From Canopy 8 to West Side of Canopy 9
	-1086.14 Sq. Ft.	
TOTAL (C)(R)	6649.75 Sq. Ft.	Net Retail Area, R2
TOTAL (E)	-1086.14 Sq. Ft.	Exception Areas E1 thru E10
NET (R)	5563.61 Sq. Ft.	Outdoor Retail Area, C8, C9, R1, & R2 Less Exception Areas (E1 thru E10)

- Notes:
1. Areas for C8, C9, R1 & R2 are from AutoCad Drawing provided by Lane Engineering, LLC on 10-05-2019
  2. Areas for E1 thru E10 are based on Field Measurements performed on 10-02-2019 by James Crowley, RLS at Son Silver West transferred to AutoCad Drawing Provided by Lane Engineering, LLC on 10-05-2019.



**SETTLEMENT AGREEMENT**  
**(SON SILVER WEST GALLERY)**  
**FOOTNOTE ADDENDUM**

**FOOTNOTE # 1.** Both the Board of Adjustment and the Final Judgment of the Coconino County Superior Court mandated a staff review of the specific site dimensions that constitute the allowable indoor retail space so that acknowledged discrepancies could be resolved. This number (4,900 sf) represents a reconciliation of the intended, allowable indoor retail space under CUP 92-3. The original site plan referenced and adopted in CUP 92-3 was not to scale. The engineered site plan attached hereto as Exhibit A accurately reflects the intended square footage at issue as depicted in the original site plan adopted in CUP 92-3. CUP 92-3 identifies 1,300 sf for a “pottery shop with kiln.” That 1,300 sf has been merged into the overall allowable retail square footage of 4,900 sf identified in 2(b)(1)(i) and not separately referenced in this Agreement so as not to result in a duplication in accounting.

**FOOTNOTE # 2.** The location of the 5,563.61 sf of Outdoor Retail Area is described on Exhibit B and delineated on Exhibit C attached hereto. The on-the-ground location of the Outdoor Retail Area shall be designated by metal flush mounted monuments set by an Arizona registered land surveyor in substantial conformance with Exhibit C. The Outdoor Retail Area was calculated by taking 6649.75 sf of gross outdoor retail area and subtracting ten Exception Areas (E1-E10) which total 1086.14 sf to obtain the 5563.61 sf of net Outdoor Retail Area.

**FOOTNOTE #3.** Per the Sedona Land Development Code, up to 25% of the single-family dwelling may be used for a home occupation. The 25% allowable square footage for home occupation would be approximately 461 sf.

**FOOTNOTE #4.** Buildings 2 and 3 and Canopy 7 shown on Exhibit A.

**FOOTNOTE #5.** As part of the SR 179 improvements, in the mid 2000’s, Arizona Department of Transportation officials discussed with the City the use of a portion of Tract 40 to construct a new driveway that would accommodate a new median break and left turn lane to support ingress/egress to the Son Silver West business and the circulation of large delivery trucks to the site which would eliminate any backing up of large trucks on SR 179.