

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
2011-0456474 05/31/11 03:39 PM
3 OF 3

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WHEN RECORDED RETURN TO:

City of Mesa
Attn: City Clerk
20 E. Main Street
Mesa, Arizona 85211

**FIRST AMENDMENT TO
PRE-ANNEXATION AND DEVELOPMENT AGREEMENT
(Mesa Proving Grounds)**

**CITY OF MESA, ARIZONA,
an Arizona municipal corporation**

AND

**DMB MESA PROVING GROUNDS LLC,
A Delaware limited Liability Company**

Dated: 5.16.2011

**FIRST AMENDMENT TO
PRE-ANNEXATION AND DEVELOPMENT AGREEMENT
(MESA PROVING GROUNDS)**

THIS FIRST AMENDMENT TO PRE-ANNEXATION AND DEVELOPMENT AGREEMENT (MESA PROVING GROUNDS) (the “**First Amendment**”) is entered into by and between the CITY OF MESA, ARIZONA, an Arizona municipal corporation (the “**City**”), and DMB MESA PROVING GROUNDS LLC, a Delaware limited liability company (the “**Developer**”) (collectively, “**Parties**”).

RECITALS

This First Amendment is predicated upon the following:

A. The Developer and the City are entering into this First Amendment pursuant to the provisions of A.R.S. § 9-500.05, which authorizes the City to enter into and amend a development agreement with a landowner or any other person having an interest in real property located in the City.

B. The Developer and the City are parties to the Pre-Annexation and Development Agreement dated November 3, 2008, as recorded in the Official Records of Maricopa County as Document No. 2008-0974930 (the “**MPG Development Agreement**”).

C. The Developer owns that certain real property that is the subject of the MPG Development Agreement. Such property is located in the City of Mesa, Arizona and consists of approximately three thousand one hundred fifty-four (3,154) acres, legally described on **Exhibit A** and depicted on **Exhibit B**, both attached hereto (the “**Property**”).

D. Due to market conditions and other business reasons, the Developer has determined and the City agrees that the construction of certain infrastructure projects will not proceed in accordance with the time frames as originally anticipated and established in the MPG Development Agreement.

E. This First Amendment is for the limited purpose of extending the time for performance of certain infrastructure construction obligations contained in the MPG Development Agreement, making changes relating to First Solar, Inc. being the first developer on the Property, and clarifying Developer’s responsibilities with regard to development of that portion of the Property legally described and depicted on **Exhibit C**, attached hereto (the “**First Solar Property**”).

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

1. **Extension of the Construction of Accelerated Public Improvements.** Exhibit G of the MPG Development Agreement is hereby deleted in its entirety and replaced with the Amended Exhibit G as set forth in **Exhibit D**, attached hereto.
2. **Accelerated Project List.** In accordance with the changes denoted in Section 1 above, Exhibit G-1 of the MPG Development Agreement is also hereby deleted in its entirety and replaced with Amended Exhibit G-1 as set forth in **Exhibit E**, attached hereto.
3. **Regional Infrastructure Buy-In Fees/Off-Site Right-of-Way.** Section 3.2(a)(ii) is hereby deleted in its entirety and replaced with a new Section 3.2(a)(ii) that reads as follows:
 - (ii) Buy-In #185, sixteen inch (16") water line on East Elliot Road, constructed under City of Mesa Project 90-90, which buy-in shall not apply to the portion of such water line located adjacent to the First Solar Property. Rate equals \$12.63 per linear foot; and

Section 3.2 (b) is hereby deleted in its entirety and replaced with a new Section 3.2 (b) that reads as follows:

- (b) Buy-in fees for future off-site infrastructure currently identified or identified in the future in the Master Reports or Development Unit Plans if such off-site infrastructure is constructed by a third party or the City, except for buy-in fees associated with the use of such infrastructure by the First Solar Property. In addition, if Developer utilizes, in conformance with City-approved plans, the Elliot Road sewer line to be constructed by City on the north boundary of the Property, then Developer shall pay Buy-in fees for it in accordance with the Rules.
4. **Transportation/Landscaping, Specialty Features, and Specialty Materials in Public Streets.** Section 3.6(b)(i) is hereby revised to add the following sentence to follow the first sentence:

Notwithstanding the preceding sentence, Developer has no obligation to design or install the landscaping within and next to the road rights-of-way adjacent to or within any public utility facilities easement on the First Solar Property, and will maintain such landscaping only if First Solar, Inc. does not assume the obligation to maintain such landscaping.

5. **Transportation/Landscape Maintenance for Arterial Street Medians.** Section 3.6(c) is hereby revised to add the following sentence to the end of the existing text:

Notwithstanding anything herein to the contrary, Developer has no obligation to design or install the Arterial Median Landscaping within and next to the road rights-of-way

adjacent to the First Solar Property, and will maintain and replace such landscaping only if First Solar, Inc. does not assume the obligation to maintain and replace such landscaping.

6. **Contribution Toward Fire Protection for the Property.** Section 3.12(a) is hereby deleted in its entirety and replaced with a new Section 3.2(b) that reads as follows:

The Developer shall pay to the City the sum of three million, three hundred thousand dollars (\$3,300,000.00) in three annual installments, which funds may be used by the City, at its discretion, for the acquisition of fire apparatus, operation and maintenance costs associated with providing fire service to the Property, or other expenses related to providing fire service to the Property. The first payment of one million eight hundred thousand dollars (\$1,800,000.00) shall be paid by the Developer prior to the issuance of the first building permit for vertical construction of any hospitality (e.g. hotels, resorts, etc.) or residential development on the Property. The second and third payments, each of which shall be seven hundred fifty thousand dollars (\$750,000.00), shall be paid by the Developer on the first and second anniversaries of payment of the first payment. The Developer will not receive credits against the City's Fire Impact Fee for this contribution.

7. **Establishment of Land Value.** Section 3.19 is hereby deleted in its entirety and replaced with a new Section 3.19 that reads as follows:

The value of the land to be conveyed upon sale to the City pursuant to Sections 3.12, paragraph (b) (Second Fire Station Site), 3.13 (Police Substation Site), 3.14 (16 acre City site for recreational amenities) and 3.15 (Library Site) shall be the fair market value which shall be established by appraisal at the time of sale as set forth in this section 3.19.

(a) Selection of Appraiser.

- (i) To select an appraiser, Developer and City, by 5:00 p.m. MST on the 5th day after Developer's receipt of written notice from City of City's intent to purchase any of the sites listed in this section 3.19 ("City Notice of Intent to Purchase"), City and Developer shall mutually select and appoint an appraiser who shall be a member of the American Institute of Real Estate Appraisers ("M.A.I.") with at least 10 years experience in appraising commercial real property.
- (ii) If the Parties fail to select an appraiser pursuant to sub-section 5(a) (i), above, the Parties shall select an appraiser pursuant to the procedure in this subsection. Developer and City, by 5:00 p.m. MST on the 15th day after Developer's receipt of written notice from City of City's intent to purchase any of the sites listed in this section 3.19 ("City Notice of Intent to Purchase"), City and Developer shall each appoint an appraiser who shall be a member of the American Institute of Real Estate Appraisers ("M.A.I.") with at least 10 years experience in appraising commercial real property and notify the other Party, in writing, of the name and address of their respective designated

appraiser. In the event a Party fails or refused to appoint an appraiser and provide written notice thereof to the other Party prior to the deadline set forth in the preceding sentence, the single appraiser appointed shall constitute the sole appraiser for the purpose of determining the Fair Market Value (as defined in this Section 3.19) for any land conveyance (the "Appraised FMV"). In the event both Parties appoint an appraiser in accordance with the procedures set forth above, the 2 appraisers shall together within 10 days thereafter appoint a third appraiser (the "Third Appraiser") who shall be an M.A.I. with at least the foregoing qualifications, and the Third Appraiser, by 5:00 p.m. MST on the 30th day after its appointment, shall determine the Appraised FMV on the land described in the City Notice of Intent to Purchase. In the event the 2 appraisers are unable to timely agree upon the Third Appraiser, either Party shall have the right, upon at least 5 days prior written notice to the other Party, to apply to the American Institute of Real Estate Appraisers or to the presiding judge of the Maricopa County Arizona Superior Court, for appointment of the Third Appraiser. Each Party agrees to pay its respective appraiser's fee plus ½ of the Third Appraiser's fee. For the purposes of this Agreement, the sole appraiser or the Third Appraiser, as applicable, shall appraise and determine the fair market value of the for the land referenced in the City Notice of Intent to Purchase based on the most current sales of comparable properties.

(b) Fair Market Value/Sales Price. As used in this Agreement, the term "Fair Market Value" means the most probable price estimated in terms of cash in United States dollars or comparable market financial arrangements which the land to be appraised would bring if exposed for sale in the open market, with reasonable time allowed in which to find a purchaser, and assuming that all infrastructure necessary to serve such land, including adjacent roadways and utility lines, is in place. If such necessary infrastructure is not in place at the time of purchase, Developer will install such necessary infrastructure as infrastructure for neighboring property is installed or at such other time as is agreed to by the Parties. The time period for determination of the Fair Market Value shall be the date set forth in Section 3.19(a), 5:00 p.m. MST on the 29th day after appointment of sole appraiser or the Third Appraiser. Notwithstanding the foregoing, the Sales Price which the City shall purchase property from Developer pursuant to this section shall be calculated on the Appraised FMV per net acre. Net acre shall be defined as the gross acreage minus the adjacent roadway rights-of-way of the land to be appraised.

(c) Appraisal. The sole appraiser or the Third Appraiser shall deliver the appraisal to both parties on the same day. The appraisal shall be drafted in such a way that both parties may rely upon the appraisal.

(d) Credit. To build certain infrastructure improvements as part of an agreement with First Solar, Inc., City has agreed to purchase certain land from Developer. In exchange for the purchase of such land, Developer agrees to credit City, in

amount equal to the amount City paid to purchase such land, against the future Appraised FMV of one or more of the parcels City may purchase pursuant to Sections 3.12(b) (Second Fire Station Site), 3.13 (Police Substation Site), 3.14 (Recreational Facility Site) and 3.15 (Library Site).

8. **Development of First Solar Property.** Notwithstanding any provision in the MPG Development Agreement to the contrary, the MPG Development Agreement imposes no responsibility or obligation on Developer to dedicate land or design, construct, operate, maintain, or fund any existing or required public or private infrastructure or service with respect to development and use of the First Solar Property as a photovoltaic solar module manufacturing facility and related improvements, except potentially landscape maintenance and replacement as set forth in other sections of this First Amendment. Any such costs will be borne by a party other than Developer, except potentially landscape maintenance and replacement as set forth in other sections of this First Amendment. This Section will automatically terminate if First Solar, Inc. does not purchase Phase I of the First Solar Property (as described in **Exhibit C**) within one year of the Effective Date.

9. **General Provisions.**

9.1. **Avigation Easement.** The City acknowledges that the form of Avigation Easement recorded in the Official Records of Maricopa County as Document No. 2011- 0357115 satisfies the requirement of Section 8.1 of the MPG Development Agreement once such Avigation Easement has been rerecorded to include the consent of lenders with an interest in the Property.

9.2 **Counterparts.** This First Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all parties may be physically attached to a single document.

9.3. **Headings.** The descriptive headings of the Paragraphs of this First Amendment are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

9.4. **Exhibits and Recitals.** Any exhibit attached hereto shall be deemed to have been incorporated herein by this reference with the same force and effect as if fully set forth in the body hereof. The Recitals set forth at the beginning of this First Amendment are hereby acknowledged and incorporated herein and the Parties hereby confirm the accuracy thereof.

9.5 **Good Standing; Authority.** Each of the Parties represents to the other (i) that it is duly formed and validly existing under the laws of Arizona, with respect to the Developer or a municipal corporation within the State of Arizona, with respect to the City, (ii) that it is a Delaware limited liability company or municipal corporation duly qualified to do business in the State of Arizona and is in good standing under applicable state laws, and (iii) that the individual(s) executing this First Amendment on behalf of the respective parties are authorized and empowered to bind the party on whose behalf each such individual is signing.

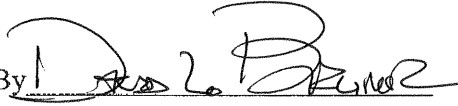
9.6. Recordation. This First Amendment shall be recorded in its entirety in the Official Records of Maricopa County, Arizona not later than ten (10) days after this First Amendment is executed by the City and the Developer.

10. Effect of First Amendment. This First Amendment shall be deemed to amend and supersede the MPG Development Agreement with respect to all terms, provisions and changes set forth in this First Amendment. To the extent of any conflict between the MPG Development Agreement and this First Amendment, including all Exhibits, the First Amendment shall control. Except as amended by this First Amendment, all terms, provisions and conditions of the MPG Development Agreement shall remain in full force and effect. Any capitalized terms not defined in this First Amendment shall have the meaning set forth in the MPG Development Agreement.

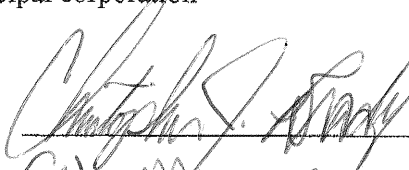
IN WITNESS WHEREOF, the Parties have executed this First Amendment to be effective on the date that this First Amendment is approved by the City Council (the "Effective Date").

DMB MESA PROVING GROUNDS LLC, a
Delaware limited liability company

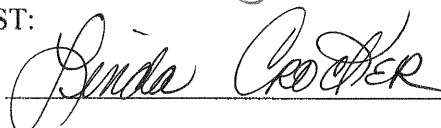
By: DMB Associates, Inc., an Arizona
corporation, its Manager

By: 
Its EDP/COO

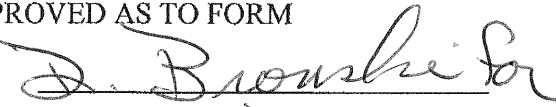
CITY OF MESA, ARIZONA, an Arizona
municipal corporation

By: 
Its: City Manager

ATTEST:

By: 
City Clerk

APPROVED AS TO FORM

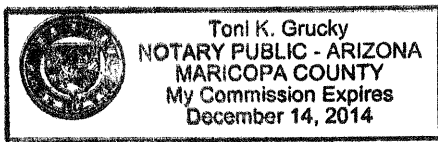
By: 
City Attorney, Debbie Spinner

STATE OF ARIZONA)

) ss.

COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 16th day of May, 2011, by David L. Bruner, the EVP/COO of DMB Mesa Proving Grounds LLC, a Delaware limited liability company.



Toni K. Grucky

Notary Public

My commission expires:

12/14/14

STATE OF ARIZONA)

) ss.

COUNTY OF MARICOPA)

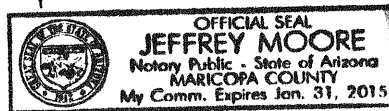
The foregoing instrument was acknowledged before me this 17th day of May, 2011, by CHRISTOPHER BRADY, City MANAGER of the City of Mesa, Arizona, an Arizona municipal corporation, who acknowledged that he/she signed the foregoing instrument on behalf of the City.

[Signature]

Notary Public

My commission expires:

1/31/15



EXISTING LENDER CONSENT

The undersigned, as Beneficiary (“**Existing Lender**”) under that certain DEED OF TRUST AND FIXTURE FILING (With Assignment of Rents and Security Agreement) (the “**Deed of Trust**”), by and between DMB MESA PROVING GROUNDS, LLC, a Delaware limited liability company (“**Developer**”), as Trustor, and FIRST AMERICAN TITLE INSURANCE COMPANY, a California corporation, as Trustee, dated December 28, 2006, and recorded on December 28, 2006 as Document No. 2006-1695609 in the Official Records of Maricopa County, Arizona, as modified by that Amendment to Deed of Trust and Fixture Filing (With Assignment of Rents and Security Agreement) dated December 28, 2009 and recorded May 28, 2010 as Document No. 20100456814 in the Official Records of Maricopa County, Arizona, in respect of certain real property which includes the Property that is the subject of this Amendment to Pre-Annexation and Development Agreement, dated May 16 2011, by and among the CITY OF MESA, ARIZONA, an Arizona municipal corporation, and Developer (the “**Amendment**”), but not as a party, hereby: (i) consents to the Amendment; (ii) acknowledges that the Amendment shall bind that portion of the Property that is subject to the Deed of Trust, as modified, and subject to the Amendment; (iii) approves the recordation of the Amendment; (iv) agrees that the Amendment shall continue in full force and effect, at Existing Lender’s option, in the event of foreclosure or trustee’s sale pursuant to such Deed of Trust or any other acquisition of title by the undersigned, its successors, or assigns, of all or any portion of the Property covered by such Deed of Trust; (v) represents and warrants that the undersigned has the requisite right, power and authorization to enter into, execute, and deliver this Existing Lender Consent on behalf of Beneficiary; and (vi) the execution and delivery of this Existing Lender Consent by Beneficiary is not prohibited by, and does not conflict with any other agreements or instruments to which Beneficiary is a party.

DATED: May 16, 2011

U.S. BANK NATIONAL ASSOCIATION, a national banking association,

By: 

Name: JOEL MINAMIDE

Its: VICE PRESIDENT

**CALIFORNIA ALL-PURPOSE
CERTIFICATE OF ACKNOWLEDGEMENT**

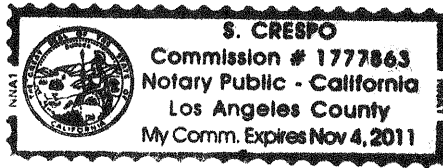
State of California
County of LOS ANGELES ss.:

On May 16, 2011 before me, S.Crespo, Notary Public, personally appeared Joel Minamide who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity-(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.
My Commission Expires: November 04, 2011

Signature  (Notary Seal),



LIST OF EXHIBITS

- A Legal Description of the Property
- B Map of the Property
- C First Solar Property
- D Amended Exhibit G - Accelerated Public Improvements
- E Amended Exhibit G-1 – Accelerated Project List

EXHIBIT A
Legal Description

Wood, Patel & Associates, Inc.
(480) 834-3300
www.woodpatel.com

Revised October 21, 2008
Revised June 16, 2008
September 24, 2007
WP #062753.26
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Exhibit 'A'

**PARCEL DESCRIPTION
Mesa Proving Grounds
Proposed Overall Boundary**

A parcel of land lying within Sections 14, 15, 22, 23, 26 and 27, Township 1 South, Range 7 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the northwest corner of said Section 15, a 3-inch Maricopa County Department of Transportation brass cap in handhole stamped 2007 RLS 35694, from which the north quarter corner of said Section 15, a 2-inch Maricopa County aluminum cap stamped RLS 38563, bears South 89°37'01" East (basis of bearing), a distance of 2639.46 feet;

THENCE along the north line of said Section 15, South 89°37'01" East, a distance of 50.01 feet, to the **POINT OF BEGINNING**;

THENCE continuing, South 89°37'01" East, a distance of 2589.45 feet, to the north quarter corner of said Section 15;

THENCE South 89°37'46" East, a distance of 2628.91 feet, to the northeast corner of said Section 15, a 3-inch Maricopa County brass cap flush stamped 2002 RLS 36563;

THENCE leaving said north line, along the north line of said Section 14, South 89°41'01" East, a distance of 2658.58 feet, to the north quarter corner of said Section 14, an iron pipe with no identification;

THENCE South 89°45'48" East, a distance of 2661.68 feet, to the northeast corner of said Section 14, a 3-inch Maricopa County brass cap flush stamped 2002 RLS 36563;

THENCE leaving said north line, along the east line of said Section 14, South 00°38'25" East, a distance of 33.00 feet, to the northeast corner of that certain parcel of land described in Document No. 2007-1007585, Maricopa County Records (M.C.R.);

THENCE leaving said east line, along the north line of said parcel of land, North 89°46'13" West, a distance of 40.57 feet, to the northwest corner of said parcel of land;

THENCE leaving said north line, along the westerly line of said parcel of land, South 00°39'10" East, a distance of 42.00 feet;

THENCE South 89°45'28" East, a distance of 15.17 feet;

THENCE South 03°26'56" East, a distance of 403.87 feet, to the southwest corner of said parcel of land;

THENCE leaving said westerly line, along the south line of said parcel of land, North 89°21'35" East, a distance of 5.60 feet, to the southeast corner of said parcel of land and the east line of said Section 14;

THENCE leaving said south line, along the east line of said Section 14, South 00°38'25" East, a distance of 2157.16 feet, to the east quarter corner of said Section 14, a 3-inch City of Mesa brass cap in handhole;

THENCE South 00°37'57" East, a distance of 2640.25 feet, to the southeast corner of said Section 14, a 1/2-inch rebar with illegible cap;

**Parcel Description
Mesa Proving Grounds
Proposed Overall Boundary**

Revised October 21, 2008
Revised June 16, 2008
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THENCE leaving said east line, along the east line of said Section 23, South 00°50'18" East, a distance of 2628.64 feet, to the east quarter corner of said Section 14, a 1/2-inch rebar with cap stamped RLS 29272;

THENCE South 00°42'59" East, a distance of 2597.28 feet, to the north line of that certain tract of land described in Docket 6414, page 56, Maricopa County Records (M.C.R.) and a point hereby designated as Point "A" for future reference in this description;

THENCE leaving said east line, along said north line, a line parallel to and 40 feet north of the south line of said Section 23, North 89°37'09" West, a distance of 2664.99 feet;

THENCE North 89°38'35" West, a distance of 2664.76 feet;

THENCE along said north line, a line parallel to and 40 feet north of the south line of said Section 22, North 89°36'10" West, a distance of 2658.23 feet;

THENCE continuing, North 89°38'34" West, a distance of 2597.52 feet, to the easterly right-of-way line of Ellsworth Road as described in Quit Claim Deed recorded in Docket 1606, page 249, (DKT.1) M.C.R.;

THENCE along said easterly right-of-way line, a line parallel to and 50 feet east of the west line of said Section 22, North 00°16'04" West, a distance of 25.00 feet;

THENCE leaving said DKT.1 and parallel line, South 89°38'34" East, a distance of 5.00 feet, to the easterly right-of-way line of Ellsworth Road as described in the Maricopa County Condemnation Order CV2003-015999, recorded in Document No. 2005-0714663 (DOC.1), M.C.R.;

THENCE along said easterly right-of-way line, a line parallel to and 55 feet east of the west line of said Section 22, North 00°16'04" West, a distance of 2571.31 feet;

THENCE North 00°14'45" West, a distance of 324.85 feet;

THENCE leaving said DOC.1, North 89°38'34" West, a distance of 5.00 feet, to said easterly right-of-way line per DKT.1;

THENCE along said easterly right-of-way line, a line parallel to and 50 feet east of the west line of said Section 22, North 00°14'45" West, a distance of 2310.10 feet;

THENCE leaving said parallel line, along a line parallel to and 50 feet east of the west line of the southwest quarter of said Section 15, North 00°42'29" West, a distance of 2638.13 feet;

THENCE North 00°34'56" West, a distance of 1177.68 feet;

THENCE leaving said parallel line, North 57°48'44" East, a distance of 17.61 feet, to a line parallel to and 65 feet east of the west line of said Section 15;

THENCE along said parallel line, North 00°34'56" West, a distance of 870.51 feet;

THENCE leaving said parallel line, North 89°25'04" East, a distance of 10.00 feet, to a line parallel to and 75 feet east of the west line of said Section 15;

THENCE along said parallel line, North 00°34'56" West, a distance of 484.70 feet;

THENCE leaving said parallel line, North 44°54'02" East, a distance of 21.03 feet, to a line parallel to and 65 feet south of the north line of said Section 15;

THENCE along said parallel line, South 89°37'01" East, a distance of 2548.36 feet;

THENCE South 89°37'46" East, a distance of 2628.95 feet;

THENCE leaving said parallel line, along a line parallel to and 65 feet south of the north line of said Section 14, South 89°41'01" East, a distance of 2659.74 feet;

THENCE leaving said parallel line, North 00°40'39" West, a distance of 32.00 feet, to the south line of that certain easement for highway purposes described in Docket 12368, page 462, M.C.R.;

THENCE along said south line, a line parallel to and 33 feet south of the north line of said Section 14, North 89°41'01" West, a distance of 2659.17 feet, to the south line of that certain easement for highway purposes described in Docket 12368, page 460, M.C.R.;

**Parcel Description
Mesa Proving Grounds
Proposed Overall Boundary**

Revised October 21, 2008
Revised June 16, 2008
September 24, 2007
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THENCE along said south line, a line parallel to and 33 feet south of the north line of said Section 15, North 89°37'46" West, a distance of 2628.93 feet;
THENCE continuing, North 89°37'01" West, a distance of 2588.90 feet, to the easterly right-of-way line of Ellsworth Road;
THENCE leaving said south line, along said easterly right-of-way line of Ellsworth Road, a line parallel to and 50 feet east of said Section 15, North 00°34'56" West, a distance of 33.00 feet, to the **POINT OF BEGINNING**.

TOGETHER WITH

Commencing at said Point "A":

THENCE along the east line of said Section 23, South 00°42'59" East, a distance of 40.01 feet, to the northeast corner of said Section 26, a 3-inch Maricopa County brass cap in pothole stamped 2002 RLS 36563, being the **POINT OF BEGINNING**;
THENCE leaving said east line, along the east line of said Section 26, South 00°43'36" East, a distance of 2644.19 feet, to the east quarter corner of said Section 26, a 2-inch Maricopa County aluminum cap stamped 2002 RLS 36563;
THENCE South 00°25'08" East, a distance of 2591.81 feet, to the northerly right-of-way line of Williams Field Road as described in the Maricopa County Condemnation Order CV2004-005453, recorded in Document No. 2005-0928928, M.C.R.;
THENCE along said northerly right-of-way line, a line parallel to and 33 north of the southeast quarter of said Section 26, North 89°33'33" West, a distance of 1325.51 feet;
THENCE leaving said northerly right-of-way line and said parallel line, South 00°34'39" East, a distance of 33.01 feet, to the south line of said Section 26;
THENCE along said south line, North 89°33'33" West, a distance of 1325.41 feet, to the south quarter corner of said Section 26, a 3-inch Maricopa County aluminum cap stamped 2002 RLS 38683;
THENCE North 89°38'20" West, a distance of 1119.51 feet, to a 1/2-inch rebar with tag stamped RLS 29272;
THENCE leaving said south line, North 00°28'37" East, a distance of 2730.93 feet, to a 1/2-inch rebar with tag stamped RLS 29272;
THENCE North 89°13'26" West, a distance of 1323.87 feet, to a 1/2-inch rebar with tag stamped RLS 29272;
THENCE North 00°23'52" East, a distance of 1531.75 feet, to a 1/2-inch rebar with tag stamped RLS 29272;
THENCE North 89°29'17" West, a distance of 3465.06 feet, to a 1/2-inch rebar with tag stamped RLS 29272;
THENCE North 52°18'31" West, a distance of 1625.16 feet, to the north line of said Section 27 and a 1/2-inch rebar with no identification;
THENCE along said north line, South 89°38'34" East, a distance of 1770.29 feet, to the north quarter corner of said Section 27, a 2-inch Maricopa County aluminum cap flush stamped 2002 RLS 36563;
THENCE South 89°36'10" East, a distance of 2658.23 feet, to the northeast corner of said Section 27, a 3-inch Maricopa County brass cap flush stamped 2002 RLS 36563;
THENCE leaving said north line, along the north line of said Section 26, South 89°38'35" East, a distance of 2664.76 feet, to the north quarter corner of said Section 26, a Maricopa County aluminum cap flush stamped 2002 RLS 36568;

**Parcel Description
Mesa Proving Grounds
Proposed Overall Boundary**

Revised October 21, 2008
Revised June 16, 2008
September 24, 2007
WP #062753.26
Page 4 of 6

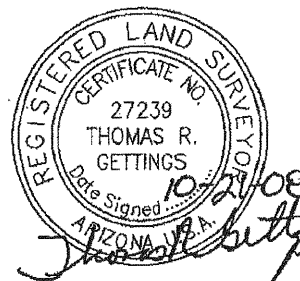
THENCE continuing, South 89°37'09" East, a distance of 2665.75 feet, to the **POINT OF BEGINNING**.

Containing 3,154.3527 acres, or 137,403,604 square feet of land, more or less.

Subject to existing rights-of-way and easements.

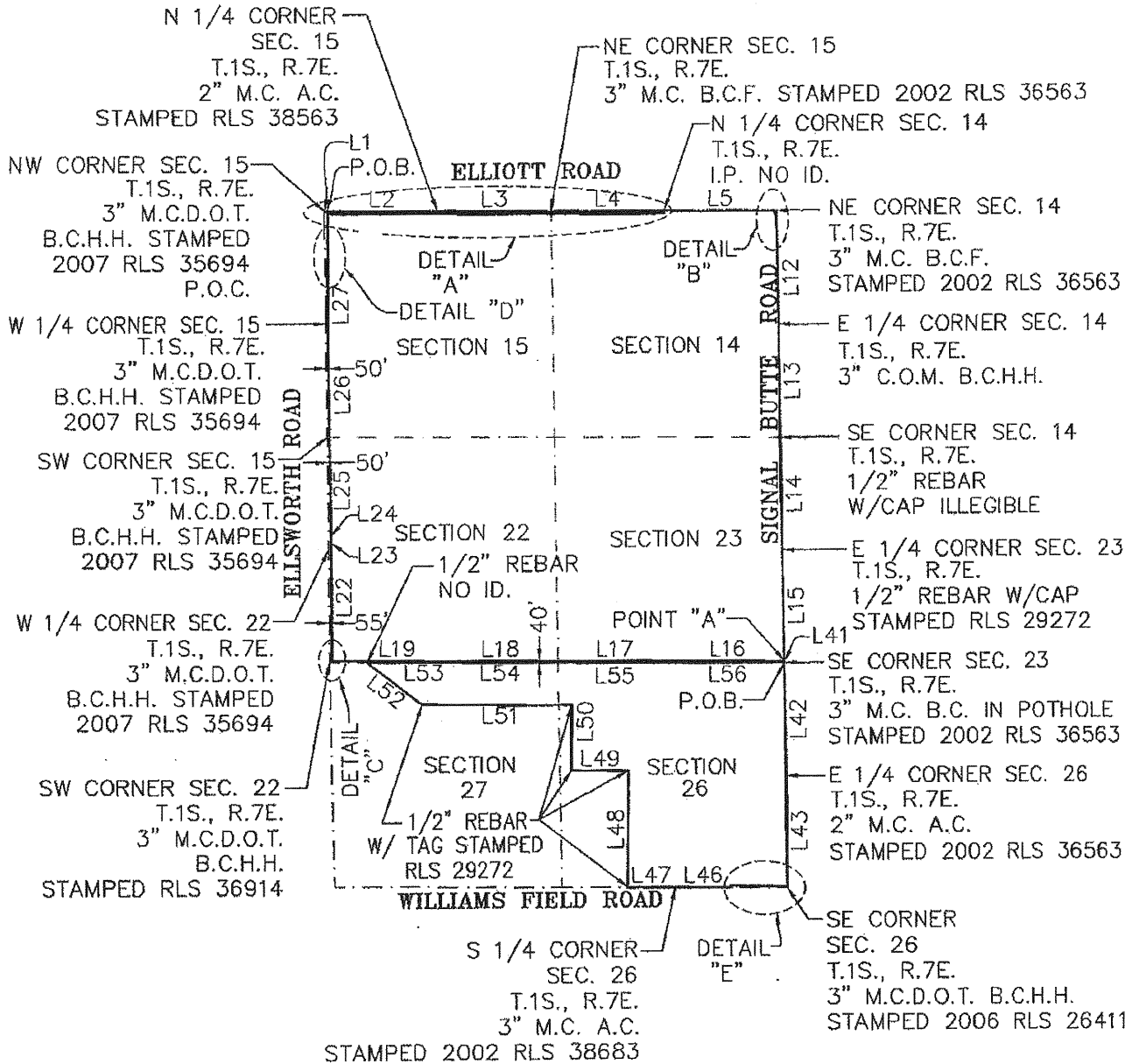
This parcel description is based on the unrecorded ATLA Survey of GM Proving Grounds prepared by CMX, dated November 21, 2006, job number 7405.01 and other client provided information. This parcel description is located within an area surveyed by WOOD/PATEL during the month of May, 2007 and any monumentation noted in this parcel description is within acceptable tolerance (as defined in Arizona Boundary Survey Minimum Standards dated 02/14/2002) of said positions based on said survey.

X:\Y-Drive\Parcel Descriptions\2006\062753.26 Mesa Proving Grounds Proposed Overall Boundary L02 Rev. 2.10-21-08.doc



EXPIRES 06-30-11

EXHIBIT B
Map of Property



WOOD/PATEL
1855 North Stapley Drive
Mesa, AZ 85203
Phone: (480) 834-3300
Fax: (480) 834-3320
PHOENIX • MESA • TUCSON • GOODYEAR

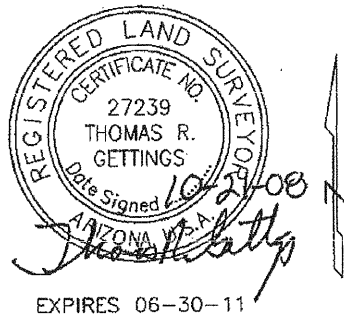
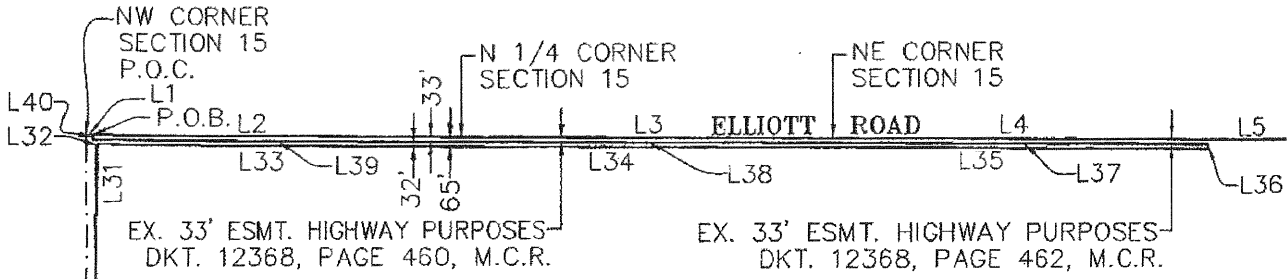


EXHIBIT "B"

MESA PROVING GROUNDS
PROPOSED OVERALL BOUNDARY
REVISED 10-21-08
WP#062753.26
PAGE 5 OF 6
NOT TO SCALE
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2753L02-DB\DWG\2753L02RR



DETAIL "A"
N.T.S.

LINE	BEARING	DISTANCE
L1	S89°37'01"E	50.01'
L2	S89°37'01"E	2589.45'
L3	S89°37'46"E	2628.91'
L4	S89°41'01"E	2658.58'
L5	S89°45'48"E	2661.68'
L6	S00°38'25"E	33.00'
L7	N89°46'13"W	40.57'
L8	S00°39'10"E	42.00'
L9	S89°45'28"E	15.17'
L10	S03°26'56"E	403.87'
L11	N89°21'35"E	5.60'
L12	S00°38'25"E	2157.16'
L13	S00°37'57"E	2640.25'
L14	S00°50'18"E	2628.64'
L15	S00°42'59"E	2597.28'
L16	N89°37'09"W	2664.99'
L17	N89°38'35"W	2664.76'
L18	N89°36'10"W	2658.23'
L19	N89°38'34"W	2597.52'
L20	N00°16'04"W	25.00'
L21	S89°38'34"E	5.00'
L22	N00°16'04"W	2571.31'
L23	N00°14'45"W	324.85'
L24	N89°38'34"W	5.00'
L25	N00°14'45"W	2310.10'
L26	N00°42'29"W	2638.13'
L27	N00°34'56"W	1177.68'
L28	N57°48'44"E	17.61'
L29	N00°34'56"W	870.51'
L30	N89°25'04"E	10.00'

LINE	BEARING	DISTANCE
L31	N00°34'56"W	484.70'
L32	N44°54'02"E	21.03'
L33	S89°37'01"E	2548.36'
L34	S89°37'46"E	2628.95'
L35	S89°41'01"E	2659.74'
L36	N00°40'39"W	32.00'
L37	N89°41'01"W	2659.17'
L38	N89°37'46"W	2628.93'
L39	N89°37'01"W	2588.90'
L40	N00°34'52"W	33.00'
L41	S00°42'59"E	40.01'
L42	S00°43'36"E	2644.19'
L43	S00°25'08"E	2591.81'
L44	N89°33'33"W	1325.51'
L45	S00°34'39"E	33.01'
L46	N89°33'33"W	1325.41'
L47	N89°38'20"W	1119.51'
L48	N00°28'37"E	2730.93'
L49	N89°13'26"W	1323.87'
L50	N00°23'52"E	1531.75'
L51	N89°29'17"W	3465.06'
L52	N52°18'31"W	1625.16'
L53	S89°38'34"E	1770.29'
L54	S89°36'10"E	2658.23'
L55	S89°38'35"E	2664.76'
L56	S89°37'09"E	2665.75'

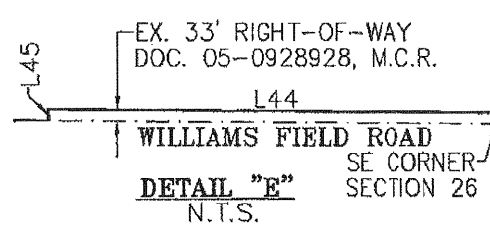
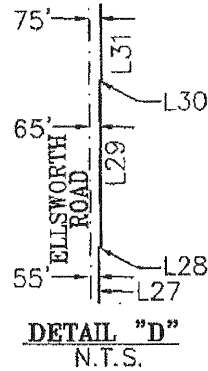
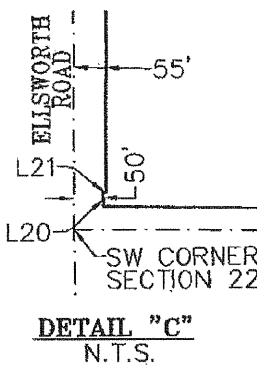
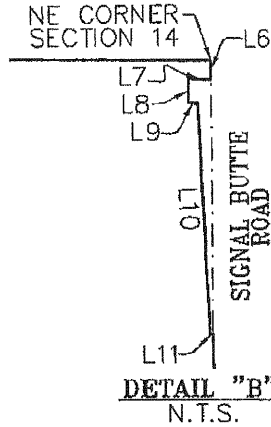


EXHIBIT "B"

MESA PROVING GROUNDS
 PROPOSED OVERALL BOUNDARY
 REVISED 10-21-08
 WP#062753.26
 PAGE 6 OF 6
 NOT TO SCALE
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WOOD/PATEL
 1855 North Stapley Drive
 Mesa, AZ 85203
 Phone: (480) 834-3300
 Fax: (480) 834-3320
 PHOENIX • MESA • TUCSON • GOODYEAR

EXHIBIT C
First Solar Property

Amended Exhibit G – Accelerated Public Improvements

EXHIBIT C

Wood, Patel & Associates, Inc.
(602) 335-8500
www.woodpatel.com

March 28, 2011
WP # 103564
Page 1 of 3
See Exhibit "A"

PARCEL DESCRIPTION
Mesa Proving Grounds

Proposed First Phase Parcel

A parcel of land lying within Section 14, Township 1 South, Range 7 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the northeast corner of said section, a 3-inch Maricopa County brass cap flush stamped 2002 RLS 36563, from which the east quarter corner of said section, a 3-inch City of Mesa brass cap in handhole, bears South 00°38'25" East (basis of bearing), a distance of 2635.16 feet;
THENCE along the east line of said section, South 00°38'25" East, a distance of 89.01 feet;
THENCE leaving said east line, South 89°21'35" West, a distance of 65.00 feet, to the westerly line of that certain parcel of land described in Document No. 2009-0976919, Maricopa County Records (M.C.R.), and the west line of the east 65 feet of said section, and the **POINT OF BEGINNING**;
THENCE leaving said westerly line, along said west line, South 00°38'25" East, a distance of 2191.88 feet;
THENCE leaving said west line, South 89°21'35" West, a distance of 190.59 feet;
THENCE North 00°38'25" West, a distance of 49.89 feet;
THENCE North 45°38'25" West, a distance of 56.57 feet;
THENCE South 89°21'35" West, a distance of 69.42 feet;
THENCE North 00°38'25" West, a distance of 17.78 feet;
THENCE South 89°33'35" West, a distance of 2420.00 feet;
THENCE North 00°38'25" West, a distance of 2142.56 feet, to the south line of the north 65 feet of said section;
THENCE along said south line, South 89°41'01" East, a distance of 123.69 feet;
THENCE South 89°45'48" East, a distance of 2031.79 feet;
THENCE leaving said south line, South 00°14'12" West, a distance of 10.00 feet, to the south line of the north 75 feet of said section;
THENCE along said south line, South 89°45'48" East, a distance of 550.00 feet, to the westerly line of that certain parcel of land described in said Document No. 2009-0976919, M.C.R.;

Parcel Description
Mesa Proving Grounds
Proposed First Phase Parcel

March 28, 2011
WP # 103564
Page 2 of 3
See Exhibit "A"

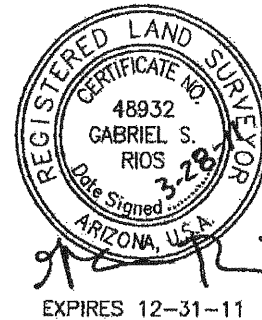
THENCE leaving said south line, along said westerly line, South 45°12'09" East, a distance of 21.37 feet, to the **POINT OF BEGINNING**.

Containing 133.1717 acres, or 5,800,958 square feet of land, more or less.

Subject to existing rights-of-way and easements.

This parcel description is based on client provided information and is located within an area surveyed by Wood, Patel & Associates, Inc. during the month of May, 2007 and any monumentation noted in this parcel description is within acceptable tolerance (as defined in Arizona Boundary Survey Minimum Standards dated 02/14/2002) of said positions based on said survey.

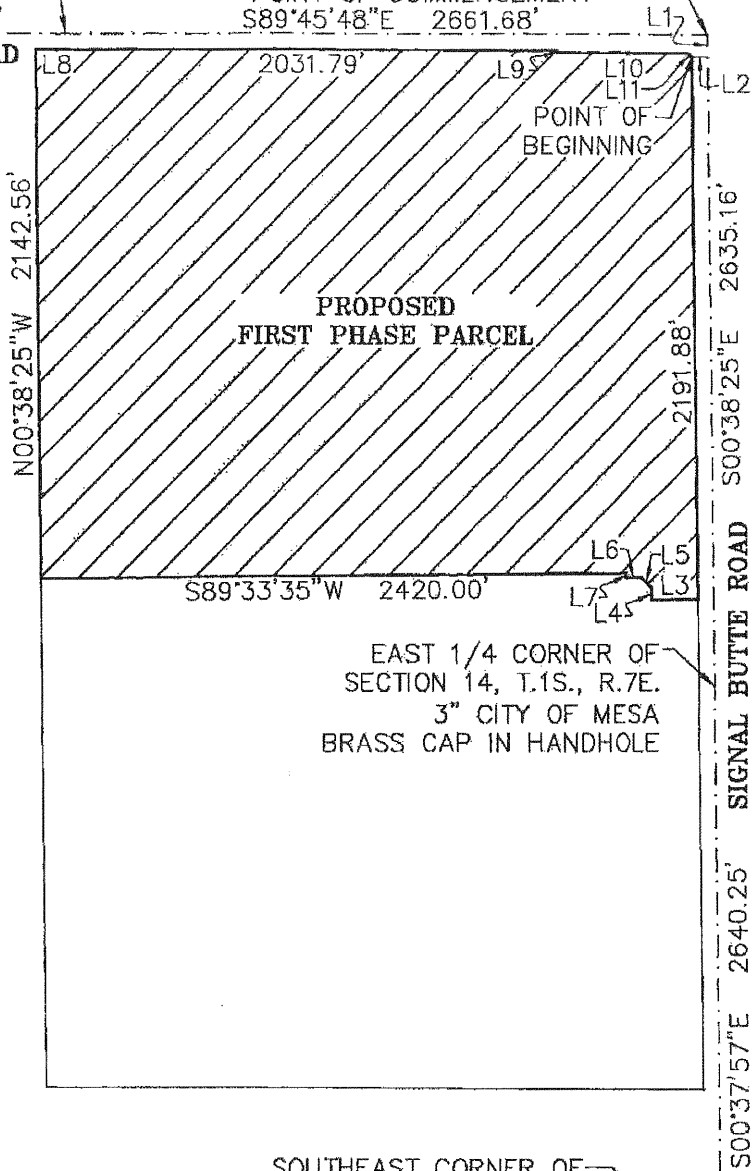
Y:\WP\Parcel Descriptions\2010\Parcel Descriptions\103564 Mesa Proving Grounds Proposed First Phase Parcel L03 03-28-11.doc



NORTH 1/4 CORNER OF SECTION 14, T.1S., R.7E.
IRON PIPE W/NO IDENTIFICATION

NORTHEAST CORNER OF SECTION 14, T.1S., R.7E.
3" MARICOPA COUNTY BRASS CAP FLUSH
STAMPED 2002 RLS 36563
POINT OF COMMENCEMENT

NORTHWEST CORNER OF SECTION 14, T.1S., R.7E.
3" MARICOPA COUNTY BRASS CAP FLUSH
STAMPED 2002 RLS 36563



LINE TABLE		
LINE	BEARING	DISTANCE
L1	S00°38'25"E	89.01'
L2	S89°21'35"W	65.00'
L3	S89°21'35"W	190.59'
L4	N00°38'25"W	49.89'
L5	N45°38'25"W	56.57'
L6	S89°21'35"W	69.42'
L7	N00°38'25"W	17.78'
L8	S89°41'01"E	123.69'
L9	S00°14'12"W	10.00'
L10	S89°45'48"E	550.00'
L11	S45°12'09"E	21.37'



EXPIRES 12-31-11

WOOD/PATEL

2051 West Northern
Phoenix, AZ 85021
Phone: (602) 335-8500
Fax: (602) 335-8580
PHOENIX • MESA • TUCSON

SOUTHEAST CORNER OF SECTION 14, T.1S., R.7E.
1/2" REBAR W/ CAP
ILLEGIBLE

EXHIBIT "A"
MESA PROVING GROUNDS
PROPOSED FIRST PHASE PARCEL

03-28-11
WP# 103564
PAGE 3 OF 3
NOT TO SCALE

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Wood, Patel & Associates, Inc.
(602) 335-8500
www.woodpatel.com

March 28, 2011
WP # 103564
Page 1 of 2
See Exhibit "A"

PARCEL DESCRIPTION
Mesa Proving Grounds

Proposed Second Phase Parcel

A parcel of land lying within Section 14, Township 1 South, Range 7 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the southeast corner of said section, a ½-inch rebar with cap illegible, from which the east quarter corner of said section, a 3-inch City of Mesa brass cap in handhole, bears North 00°37'57" West (basis of bearing), a distance of 2640.25 feet;

THENCE along the east line of said section, North 00°37'57" West, a distance of 1003.40 feet;

THENCE leaving said east line, South 89°22'03" West, a distance of 65.00 feet, to the west line of the east 65 feet of said section and the **POINT OF BEGINNING**;

THENCE leaving said west line, North 89°45'48" West, a distance of 2720.10 feet;

THENCE North 00°38'25" West, a distance of 2065.59 feet;

THENCE North 89°33'35" East, a distance of 2420.00 feet;

THENCE South 00°38'25" East, a distance of 17.78 feet;

THENCE North 89°21'35" East, a distance of 69.42 feet;

THENCE South 45°38'25" East, a distance of 56.57 feet;

THENCE South 00°38'25" East, a distance of 49.89 feet;

THENCE North 89°21'35" East, a distance of 190.59 feet, to the west line of the east 65 feet of said section;

THENCE along said west line, South 00°38'25" East, a distance of 354.26 feet;

THENCE South 00°37'57" East, a distance of 1636.84 feet, to the **POINT OF BEGINNING**.

Containing 129.4498 acres, or 5,638,833 square feet of land, more or less.

Subject to existing rights-of-way and easements.

This parcel description is based on client provided information and is located within an area surveyed by Wood, Patel & Associates, Inc. during the month of May, 2007 and any monumentation noted in this parcel description is within acceptable tolerance (as defined in Arizona Boundary Survey Minimum Standards dated 02/14/2002) of said positions based on said survey.

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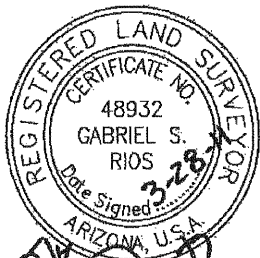
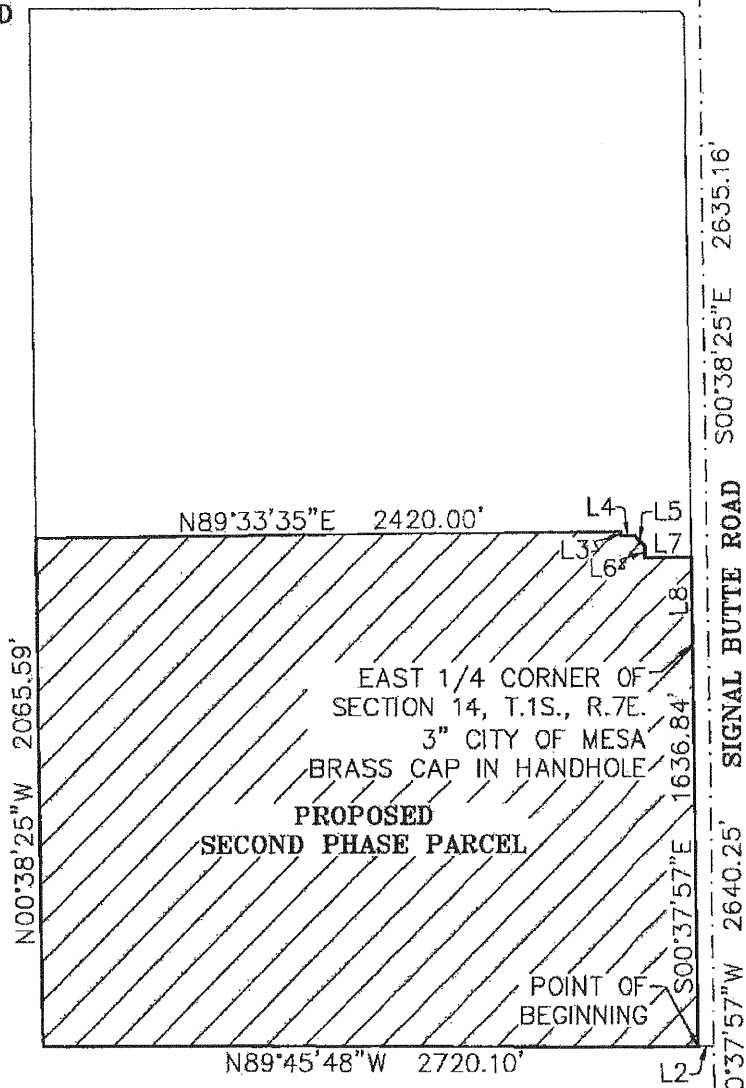
EXPIRES 12-31-11

NORTH 1/4 CORNER OF
SECTION 14, T.1S., R.7E.
IRON PIPE W/NO
IDENTIFICATION

NORTHEAST CORNER OF
SECTION 14, T.1S., R.7E.
3" MARICOPA COUNTY
BRASS CAP FLUSH
STAMPED 2002 RLS 36563
S89°45'48"E 2661.68'

NORTHWEST CORNER OF
SECTION 14, T.1S., R.7E.
3" MARICOPA COUNTY
BRASS CAP FLUSH
STAMPED 2002 RLS 36563

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N00°37'57"W	1003.40'
L2	S89°22'03"W	65.00'
L3	S00°38'25"E	17.78'
L4	N89°21'35"E	69.42'
L5	S45°38'25"E	56.57'
L6	S00°38'25"E	49.89'
L7	N89°21'35"E	190.59'
L8	S00°38'25"E	354.26'



EXPIRES 12-31-11

WOOD/PATEL
2051 West Northern
Phoenix, AZ 85021
Phone: (602) 335-8500
Fax: (602) 335-8580
PHOENIX • MESA • TUCSON

SOUTHEAST CORNER OF
SECTION 14, T.1S., R.7E.
1/2" REBAR W/ CAP
ILLEGIBLE
POINT OF COMMENCEMENT

EXHIBIT "A"
MESA PROVING GROUNDS
PROPOSED SECOND PHASE PARCEL
03-28-11

WP# 103564
PAGE 2 OF 2
NOT TO SCALE

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EXHIBIT D
Amended Exhibit G -- Accelerated Public Improvements

EXHIBIT G

ACCELERATED PUBLIC IMPROVEMENTS

The Accelerated Public Improvements shall be designed, engineered, bid and constructed on the terms and conditions stated in Article IV of the Agreement and as follows.

1. **Definitions.** All section references refer to this **Exhibit G**, unless otherwise noted. All definitions contained within **Exhibit G** apply solely to the provisions contained within **Exhibits G and G-1**.

(a) **"Accelerated Project List"** means as defined in Section 4.1 of the Agreement and which is attached as **Exhibit G-1**.

(b) **"Completion of Construction"** means the date on which: (i) as to the private improvements (*i.e.*, the improvements described in Section 3), when one or more temporary or final certificates of occupancy have been issued by the City and such improvements are open for business to the public; and (ii) as to the Accelerated Public Improvements, final acceptance by the City of the completed Accelerated Public Improvements for maintenance in accordance with the policies, standards and specifications contained in applicable City ordinances.

(c) **"Engineering and Procurement Requirements"** means as described in Section 5(a).

(d) **"Maximum City Cost"** means all Project Costs incurred up to \$17,800,000.

(e) **"Notice Not to Proceed"** means written notice not to proceed with the design, acquiring of necessary easements and/or rights-of-way, engineering, bidding and construction of the Accelerated Public Improvements.

(f) **"Project Costs"** means all actual costs and expenses incurred to design, acquire necessary easements and/or rights-of-way, engineer, bid and construct the Accelerated Public Improvements or portions thereof, as applicable; provided, however, (i) Project Costs for Project 1 shall be the cost that would be incurred to design, engineer, bid and construct a twelve inch (12") wastewater interceptor and, unless Developer otherwise agrees, the Project Costs attributed to construction shall be the lowest and best bid received by the City pursuant to a bid solicitation issued in conjunction with the bid solicitation for Project 1; (ii) and Project Costs for Project 2(a) shall be based on a percentage of the pro-rata share of the total design flow of the water line.

(g) **"Project Schedule"** means as described in Section 2.

(h) **"Projects"** means the projects included in the Accelerated Project List, and the Projects are individually referred to as a **"Project."**

2. **Project Schedule.** The Parties acknowledge that the Accelerated Project List reflects the designated dates for design, construction contract award and Completion of Construction of the Accelerated Public Improvements, and that the City has already completed construction of the Ray Road Wastewater Interceptor and is nearing completion of the the Non-Potable System Projects- Raw Water Line Turnout Structure for S CAP. In order to timely complete the Accelerated Public Improvements, Developer acknowledges and agrees that it shall timely make Development Unit submittals and provide accurate and complete engineering information to the City as described and required in the schedule in the Accelerated Project List attached as Exhibit G-1 (the "Project Schedule") so that the City may design, engineer, bid and award construction contracts for the Accelerated Public Improvements within the timeframes in the Project Schedule. Subject to Developer's compliance with its requirements in the Project Schedule and in Article IV and this Exhibit G, and unless Developer timely provides the City with a deferral letter as provided in Section 2(b) or a Notice Not to Proceed as provided in Section 3, the City shall timely complete the requirements in the Project Schedule, which includes timeframes for designing, bidding and Completion of Construction of (including acquisition of rights of way and easements) the Accelerated Public Improvements. Notwithstanding the foregoing, City may elect to construct any of the Accelerated Public Improvements regardless of whether Developer has provided a deferral letter pursuant to subsection (b) below or a Notice Not to Proceed. Should City elect to do so: 1) the construction will be completed at City's sole construction cost; 2) except for the right of way necessary to construct Half Street Elliot-Phase 1 and Signal Butte Water Transmission Main adjacent to First Solar Property, which shall be purchased by City from Developer, Developer shall dedicate the right of way necessary to construct the project within 60 days written request of City that includes legal descriptions of the required right of way; 3) all construction related costs (including design) shall be credited against the Maximum City Costs as referenced in Section 4.1 of the Agreement; 4) Developer shall be relieved of any duty to reimburse City for the costs of construction pursuant to Section 3 of this Exhibit G; and 5) it will not impact the deadlines of other Projects on Exhibit G-1.

(a) **Mutually Agreed Extensions.** Developer and the City may mutually agree to extend any dates listed in the Project Schedule.

(b) **Developer Deferral Letter.** On or before the earliest of December 15, 2014 or the date that is ninety (90) days prior to the date designated in the Project Schedule for the construction contract award for any of the Projects, Developer may provide Mesa's City Manager with written notice that the designated outside date for Completion of Construction is to be extended, in each instance to a date not later than December 15, 2017, in which event (i) the outside date designated in the Project Schedule for such Completion of Construction shall be extended to the date designated by Developer, not later than December 15, 2017, and all other applicable dates designated in the Project Schedule shall be extended by the same period of time; and (ii) the City's costs incurred in connection with any such notice and extension shall be included in reimbursable Project Costs.

(c) **Construction Water.** It is anticipated that Developer may need construction water prior to the completion of the Non-Potable System Projects- Raw Water Line from CAP to Treatment Plant and Non- Potable Flow Control Structure, Piping, and Individual

Meters/Flow Control at Each Lake; the Parties agree to cooperate, diligently and in good faith, and at Developer's sole cost, to design and install interim facilities as necessary for the City to timely provide construction water to Developer, at the applicable water rate, until Completion of Construction of Non-Potable System Projects-Raw Water Line from CAP to Treatment Plant and Non-Potable Flow Control Structure, Piping, and Individual Meters/Flow Control at Each Lake.

3. **Developer's Obligation to Reimburse City.** If, as of March 15, 2018, there has not been the Completion of Construction on the Property of not less than 1200 rooms and/or suites of full-service, first-class hotel improvements consistent in overall quality, range of facilities and services with other facilities rated "four-diamond properties" by the American Automobile Association or if Developer provides a Notice Not to Proceed after February 6, 2009 (as described below), then Developer shall reimburse the City for all Project Costs incurred up to the cap of the Maximum City Cost, subject to the following additional terms and limitations:

(a) **Notice Not to Proceed and Effect of Same.** Developer may provide the City with a Notice Not to Proceed at any time and with respect to any Project on the Accelerated Project List in which event the City shall have no further obligations relative to the Accelerated Public Improvements except as provided in (ii) Notice Not to Proceed After February 6, 2009, upon reimbursement to the City and Developer's assumption of responsibility for the remaining Accelerated Public Improvements. The effect of Developer's provision of a Notice Not to Proceed shall be as described below:

(i) **Notice Not to Proceed Before February 6, 2009.** If Developer provides Mesa's City Manager with a Notice Not to Proceed on or before February 6, 2009, Developer shall have no obligation to reimburse the City for Project Costs except as provided in clause (ii).

(ii) **Developer's Responsibility for Reimbursement of Project Costs for Ray Road Wastewater Interceptor and the Non-Potable System Projects- Raw Water Line Structure for S Cap and Non-Potable System Projects-Raw Water Line from CAP to Treatment Plant.** Notwithstanding anything herein to the contrary, if the minimum hotel construction condition described above is not timely satisfied or if Developer provides the City with a Notice Not to Proceed, Developer shall be obligated to reimburse the City for the Project Costs incurred to design, engineer, bid and construct the Ray Road Wastewater Interceptor (costs associated with the base twelve inch (12") interceptor) and the Non-Potable System Projects-Raw Water Line Structure for S Cap and Non-Potable System Projects-Raw Water Line from CAP to Treatment Plant (shall be based on a percentage of the pro-rata share of the total design flow of the water line).

(b) **Payment.** All Project Costs Developer is obligated to reimburse shall be due and payable to the City sixty (60) days following City's written notice for payment. If Developer is obligated to pay for future Project Costs, City may send a notice for payment, with reasonable supporting documentation, after the Completion of Construction of any Project for contracts entered into prior to Mesa's City Manager actually receiving the Notice Not to Proceed and, otherwise, upon completion of the design, acquisition of necessary easements and/or rights-of-way, and/or engineering work or at stages during the completion of such work at the City's

election. If Developer fails to timely pay any Project Costs payable by Developer to the City, such amount shall bear interest from the date which is sixty (60) days following Developer's receipt of notice from the City at the rate of six percent (6%) per annum until paid in full.

4. **Final Work to Reach the Maximum City Cost.** If the City determines, at any time, that the costs of the Accelerated Public Improvements will exceed the Maximum City Cost, the City shall promptly notify Developer of this determination. Thereafter, the City and Developer shall promptly, and in all events within thirty (30) days, meet in order to determine whether (i) the City will retain responsibility for the design, engineering and/or construction (as applicable) of the remaining work in respect of the Accelerated Public Improvements, in which case Developer will reimburse the City as provided for in Section 3(b); (ii) Developer will assume responsibility for the design, engineering and/or construction contract award (as applicable) of the remaining work in respect of the Accelerated Public Improvements, in which case the City will reimburse Developer as provided for in Section 4(a); provided, however, in no event shall the City be required to expend more than the Maximum City Cost, and/or (iii) the scope of any or all of the uncompleted work in respect of the Accelerated Public Improvements will be limited or modified so that the Project Costs of the remaining work in respect of the Accelerated Public Improvements is within the Maximum City Cost.

(a) **City Reimbursement to Developer.** If Developer assumes responsibility for the design, engineering, bidding and/or construction (as applicable) of any of the Accelerated Public Improvements pursuant to Section 4 or 6, provided that Developer complies with the terms of Article IV and this Exhibit G, the City shall reimburse Developer for the Accelerated Public Improvements, or portions thereof, that Developer designs, engineers, bids and/or constructs (as applicable) in an amount not to exceed the difference of: (Maximum City Cost [i.e., \$17,800,000]) minus (all Project Costs incurred by the City) equals the "Reimbursement Cap". The City shall pay Developer, subject to the Reimbursement Cap, the applicable reimbursement amount within sixty (60) days following Completion of Construction of each Project or, if the City and Developer have mutually agreed concerning a lesser scope of work, applicable portion thereof; provided, if the City fails to timely pay any Project Costs payable by the City to Developer, such amount shall bear interest from the date on which such payment was due at the rate of six percent (6%) per annum until paid in full.

5. **Developer Construction.** In the event that the Parties so determine following termination of the City's obligations under Article IV and this Exhibit G or, in the event of the City's default and failure to cure as provided in Section 6, Developer may assume responsibility for the design, engineering, bid and/or construction of all or the applicable portions of the work in respect of the Accelerated Public Improvements. If Developer assumes responsibility for any such work:

(a) **Developer Obligations.** Developer shall, at its sole cost, complete the design, engineering, bidding, and/or construction, as applicable, or cause the same to be done, and (if applicable) dedicate to the City the Accelerated Public Improvements, or portions thereof, that have been assumed by Developer, subject to the terms and conditions of this Agreement and in compliance with the City's Code, ordinances, engineering standards, procurement

requirements, guidelines, and all applicable State statutes, and state procurement laws and requirements (the "Engineering and Procurement Requirements").

(i) **Design, Bidding, Construction and Dedication.** Any such Accelerated Public Improvements, or portions thereof, shall be designed, bid, constructed and dedicated, as applicable, in accordance with the Engineering and Procurement Requirements, including, without limitation, the City's normal plan submittal, review and approval processes, day-to-day inspection requirements, insurance requirements and financial assurance requirements. Additionally, Developer shall comply with all public bid and procurement Rules deemed applicable by the City Engineer and City Attorney with respect to the design and construction of the Accelerated Public Improvements for which the Developer will seek reimbursement from the City.

(ii) **Payment of Accelerated Public Improvement Costs.** The Developer shall pay all Accelerated Public Improvement costs as the same become due; provided that City shall be obligated to provide reimbursement as described in Section 4 (a) above.

(iii) **Dedication, Acceptance and Maintenance of Public Improvements.** Upon Developer's Completion of Construction of any Project, Developer shall dedicate and the City shall accept such Accelerated Public Improvements in accordance with the Engineering and Procurement Requirements and upon such reasonable and customary conditions as the City may impose, including, without limitation, a one (1) year workmanship and materials contractor's warranty in form and content conforming to the City's customary requirements for like-kind improvements.

(iv) **Authorization to Use City Plans.** The City and Developer acknowledge that Developer may be taking over the design, engineering and construction of one or more Projects for which the City may have started or partially completed the design, engineering or construction. To the extent permitted by the Engineering and Procurement Requirements, the City shall be deemed to have granted Developer the non-exclusive right to use all design and engineering plans, and approvals then in existence and in the possession of the City with respect to the Accelerated Public Improvements, as necessary to complete and/or proceed with the design, engineering, bid and construction of such Accelerated Public Improvements.

(v) **Right of Entry.** Subject to compliance with the Engineering and Procurement Requirements, Developer and its agents and contractors shall have the right to enter, remain upon and cross over any City easement or right-of-way to the extent reasonably necessary to design, engineer or construct such Accelerated Public Improvements (or portion thereof).

6. **Non-Performance.** This Section 6 shall apply solely in connection with the rights and obligations of the City and Developer under Article IV of the Agreement and this Exhibit G. If the City or Developer, respectively, fails to perform its obligations under Article IV and this Exhibit G, and such failure continues for a period of sixty (60) days after written notice thereof from the other Party (the "Cure Period"), such failure shall constitute a default

under Article IV and this Exhibit G (a "Default"); provided, however, that if the failure is such that more than sixty (60) days would reasonably be required to perform such action or comply with any term or provision hereof, then such Party shall have such additional time as may be necessary to perform its obligations so long as such Party commences performance or compliance within said sixty (60) day period and diligently proceeds to complete such performance. Any notice of an alleged Default shall specify the nature of the alleged Default and the manner in which the alleged Default may be satisfactorily cured. If a Default is not cured within the Cure Period, the remedies of Developer and the City shall consist of and shall be limited to the following:

(a) **City Remedies.** Whenever a Default occurs and is not cured (or, if appropriate, cure undertaken) by Developer within the Cure Period accordance with this Section 6, the City's sole and exclusive remedies shall consist of and be limited to the following:

(i) If Developer has made the election to design, engineer, bid, and/or construct the Accelerated Public Improvements (or portions thereof) under Section 4 or 6(b), the City's actual damages, which the Parties agrees shall be the actual direct costs to complete any design, engineering, bidding and/or construction of Accelerated Public Improvements which Developer is then obligated for, and not any other damages of any kind or nature.

(ii) If Developer is obligated to reimburse the City under Section 3, recovery of any amounts owing to the City pursuant to Section 3, together with the City's attorneys' fees and court costs.

(iii) Specific performance, an injunction, special action, declaratory relief or other similar relief requiring Developer to undertake and fully and timely perform its obligations under this Agreement.

(iv) All such remedies shall be cumulative and not exclusive of one another, and the exercise of any one or more of the remedies shall not constitute a waiver or election with respect to any other available remedy.

(b) **Developer Remedies.** Whenever a Default occurs and is not cured (or, if appropriate, cure undertaken) by the City in accordance with this Section 6, Developer's sole and exclusive remedies shall consist of and be limited to the following:

(i) Specific performance, an injunction, special action, declaratory relief or other similar relief requiring the City to undertake and fully and timely perform its obligations under this Agreement. The City further agrees that specific performance, special action, declaratory or injunctive relief is appropriate in the event of a failure to timely perform its obligations as set forth in the Project Schedule.

(ii) Developer may elect to assume responsibility for the design, engineering, bid and/or construction of the Accelerated Public Improvements (or portions thereof) under the terms of Section 5; and, if Developer makes such election and the City does not timely reimburse Developer, the City expressly acknowledges and agrees that Developer

may seek damages from the City, which the Parties agree shall be limited to the amount of the Reimbursement Cap, together with interest pursuant to Section 4(a) (if applicable) and Developer's attorneys' fees and court costs, and not for any other damages of any kind or nature..

(iii) If Developer is precluded from assuming responsibility for the design, engineering, bid and/or construction of the Accelerated Public Improvements (or portions thereof) under the terms of Section 7 for any reason other than Developer's Default, the City expressly acknowledges and agrees that Developer may seek damages from the City, which the Parties agree shall be limited to the amount of the Reimbursement Cap, together with Developer's attorneys' fees and court costs, and not for any other damages of any kind or nature.

(iv) Except as expressly provided in the above Section 6(b)(ii) and 6(b)(iii), Developer expressly waives any and all right to seek damages of any kind or nature as a remedy with respect to a Default by the City, although any order or equitable decree may require the City to reimburse monies it may be obligated to reimburse pursuant to this Agreement.

(v) All such remedies shall be cumulative and not exclusive of one another, and the exercise of anyone or more of the remedies shall not constitute a waiver or election with respect to any other available remedy.

(c) **Limitation on Damages.** Claims for damages (when and if permitted) shall be limited to actual and consequential damages as of the time of entry of judgment and the City and Developer hereby waive any right to seek special, punitive, multiple, exemplary or other similar damages.

7. Enforced Delay In Performance For Causes Beyond Control of Party.

Neither the City nor Developer, as the case may be, shall be considered to have caused an Event of Default with respect to its obligations under Article IV or this Exhibit G in the event of a delay (an "Enforced Delay") due to causes beyond its control and without its fault, negligence or failure to comply with the Rules and Regulations, including, but not restricted to, acts of God, acts of a Third Party, fires, floods, epidemics, quarantine, restrictions, strikes, embargoes, labor disputes and unusually severe weather or the delays of subcontractors or materialmen due to such causes, act of a public enemy, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), nuclear radiation, declaration of national emergency or national alert, blockade, insurrection, riot, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain by any governmental body on behalf of any public, quasi-public, or private entity, or declaration of moratorium or similar hiatus directly affecting the Property by any governmental entity. In no event will Enforced Delay include any delay resulting from general economic or market conditions, unavailability for any reason of particular tenants or purchasers of portions of the Property, from the unavailability of financing or financing on terms acceptable to a Party, from labor shortages, from any time required by the City to review, comment upon, or process any plan, submittal or approval, nor from the unavailability for any reason of particular materials or other supplies, contractors, subcontractors, vendors, investors or lenders desired by a Party. It is understood and agreed that the Parties will bear all risks of delay which are not Enforced Delay. In the event of the occurrence of any such Enforced Delay, the time or times for performance of the obligations of the Party claiming delay

shall be extended for a period of the Enforced Delay; provided that the Party seeking the benefit of the provisions of this Section 7, shall, within thirty (30) days after such Party knows or reasonably should know of any such Enforced Delay, first notify the other Party or Parties of the specific delay in writing and claim the right to an extension for the period of the Enforced Delay; provided, however, that if such Party provides such notice more than thirty (30) days after such Party knows of such an Enforced Delay, the length of the Enforced Delay shall be measured from the date which is thirty (30) days prior to such notice.

EXHIBIT E
Amended Exhibit G-1 – Accelerated Project List

**EXHIBIT E to 1st amendment to MPG Entitlementment PADA
Exhibit G-1**

ACCELERATED PROJECT LIST - 05/11/2011 (Page 1 of 2)

<u>Description (1)</u>	Project Limits/Developer Responsibilities Constructed with City Funding	Date Final Design Criteria Needed from Developer	Developer to Submit Final DUP Master Reports No Later Than	City to Start Design No Later Than	Earliest Date City will Advertise for Bids	Construction Contract Award by Council No Later Than	Construction Complete by City No Later Than
Completed Projects:							
Ray Road Wastewater Interceptor	Limits: From the East Maricopa Interceptor to the intersection of Ellsworth Road and Ray Road. Developer's Responsibilities: All costs associated with the base 12 inch diameter interceptor including all right-of-way costs.	Complete	N/A (Size to be based on Water Master Report)	Complete	Complete	Complete	Complete
Non-Potable System Projects - Raw Water Line Turnout Structure for S CAP	Limits: From the CAP Canal to the South Water Treatment Plant Developer's Responsibilities: All project costs associated with a prorated share of the CAP line based on capacity. the project based on a percentage of the total design flow for the water line.	Complete	N/A (Size to be based on Non-Potable Water Master Report)	Complete	Complete	Complete	Complete
Projects:							
1/2 Street Elliot - Phase 1	Limits: Adjacent to FAB 1	NA	April 28, 2011	4/28/2011	Nov. 1, 2011	3/29/2012	Nov. 15, 2012
Signal Butte Water Transmission Main	Limits: From Elliot Road south to Ray Road. Developer's Responsibilities: All project costs associated with the base 16 inch diameter transmission main.	2/6/2014	N/A (Size to be based on Water Master Report)	FY 13/14	FY 12/13	7/31/2016	7/31/2017
1/2 Street Elliot - Phase 2	Limits: 1/2 Street improvements - between FAB 1 and Ellsworth Road	NA	April 1, 2012	FY 13/14	FY 12/13	7/31/2016	7/31/2017
Partial Ellsworth Roads	Limits to be determined based on funding availability.	NA	April 1, 2012	FY 13/14	FY 12/13	12/31/2016	12/31/2017

EXHIBIT E (Page 2 of 2)

Description (1)	Project Limits/Developer Responsibilities Constructed with City Funding	Date Final Design Criteria Needed from Developer	Developer to Submit Final DUP Master Reports No Later Than	City to Start Design No Later Than	Earliest Date City will Advertise for Bids	Construction Contract Award by Council No Later Than	Construction Complete by City No Later Than
Projects (Continued):							
Non-Potable System Projects - Raw Water Line from CAP to Treatment Plant and Turnout Instruments	Limits: From the CAP Canal to the South Water Treatment Plant Developer's Responsibilities: All project costs associated with a prorated share of the CAP line based on capacity of the project based on a percentage of the total design flow for the water line.	2/06/2009 (This includes any additional flow required for Gaylord or other uses)	N/A (Size to be based on Non-Potable Water Master Report + Final Design Criteria from adjacent column)	90% Complete	FY 14/15	12/31/2016	12/31/2017
Non-Potable System Backup Well (2)	Developer's Responsibilities: The full cost of the backup well built to City standard practices.	Same as for raw water line	N/A (Same as for Raw Water Line)	FY 15/16	FY 14/15 (3)	12/31/2016 (4)	12/31/2017
Non-Potable Flow Control Structure, Piping, and Individual Meters/Flow Control at Each Lake (2)	Limits: South CAP Treatment Plant to the Great Park lake and the golf course lake. Developer's Responsibilities: The full cost of a flow control structure near the turnout to the Water Treatment Plant, the full cost of the pipelines to each lake, the full cost of the flow meters and control valves, and the full cost of any appurtenances required to make the system functional and maintainable.	02/06/2014 (This includes any additional flow required for Gaylord or other uses)	N/A (Size to be based on Non-Potable Water Master Report + Final Design Criteria from adjacent column)	FY 15/16	FY 14/15	12/31/2016	12/31/2017

MAXIMUM CITY COST = \$17,800,000

- (1) All design and engineering requirements to be determined by the City.
- (2) Specific improvements are to be determined by the City Engineer and such improvements are to be limited so that the total cost of all the accelerated public improvements does not exceed \$17,800,000.
- (3) Wells are bid in two packages, 1) Drilling, and 2) Equipping. The results of the drilling and testing are necessary to size the equipment to be installed in the second bid package. The advertisement date provided in this column is for the advertisement of the first contract, drilling. DMB must dedicate the site prior to starting this advertisement.
- (4) This date is the contract award for the second contract, equipping.