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WHEN RECORDED RETURN TO:

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

SECOND 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: November 21, 2013

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

THIS SECOND AMENDMENT TO PRE-ANNEXATION AND DEVELOPMENT AGREEMENT (MESA PROVING GROUNDS) (the "**Second 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

A. The Developer and the City are entering into this Second 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, as amended by the First Amendment to Pre-Annexation and Development Agreement dated May 16, 2011, as recorded in the Official Records of Maricopa County as Document No. 2011-0456474 (the "First Amendment") (collectively, the "**MPG Development Agreement**").

C. The Developer owns and/or is the Master Developer of that certain real property that was originally subject to the MPG Development Agreement. Such property is located in the City of Mesa, Arizona and originally consisted of approximately three thousand one hundred fifty-four (3,154) acres, legally described on **Exhibit 1** and depicted on **Exhibit 2**, both attached hereto, it being acknowledged that the MPG Development Agreement thereafter terminated with respect to certain portions of such property pursuant to Section 9.6(c) thereof (which terminated property includes, but is not limited to, Parcel No. 2, according to that certain MINOR LAND DIVISION FOR "FIRST SOLAR" recorded in Book 1162 of Maps, page 45, official records of Maricopa County, Arizona) (such property described on **Exhibit 1** and depicted on **Exhibit 2**, but excluding therefrom any portion thereof as to which a termination has occurred pursuant to said Section 9.6(c), being hereinafter referred to as the "**Property**".

D. The Property is located within the study area included in the Mesa Gateway Strategic Development Plan, which was adopted by the City of Mesa on December 8, 2008 (the "**Strategic Plan**"). The Mesa Gateway area will be a place where a wide variety of businesses will find an economically efficient business climate and its workforce and residents will have access to the global resources desired of a knowledge-based economy. The Property is designated as "Mixed-Use Community" within the Strategic Plan and encouraging the expansion of non-residential and employment uses on the Property is consistent with the Strategic Plan.

E. 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. The Parties agree to extend those certain time frames as provided in this Second Amendment.

F. The MPG Development Agreement provides for Developer receiving certain development impact fee credits for certain improvements and obligating the City to expend certain development impact fee credits for future improvements. In this Second Amendment, Developer is agreeing to permanently and unconditionally waive and release City from all such development impact fee obligations, and in return, the City is agreeing to reimburse Developer from available bond funds for certain public infrastructure that is consistent with the Strategic Plan and promotes the strategic goal of continued economic development of non-residential projects as further described in this Second Amendment.

G. The Parties desire to amend the Development Agreement for the purposes described above and making other amendments as further set forth herein.

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

1. **Accelerated Project List**. Exhibit G-1 of the MPG Development Agreement is hereby deleted in its entirety and replaced with Amended Exhibit G-1 as set forth in **Exhibit 3**, attached hereto.

2. **Public Improvements.** The Parties agree to correct a typographical error in the last sentence of Section 4.1 of the MPG Development Agreement, the words "Article IV" are hereby replaced with "Section 4.1." In addition, new Sections 4.2 and 4.3 and subsections are hereby added to the MPG Development Agreement, which shall read in their entirety as follows:

> **4.2 Public Improvements For Streets.** There was a bond election on November 5, 2013 where the issuance of street and highway bonds was approved by the voters. The City agrees to expend up to $6,5000,000 from these bond funds (if such bonds are issued), on certain City public street improvements to support non-residential economic development within the Property and subject to the following terms and limitations:
>
> > **(a)** Developer agrees to submit to the City's City Manager projects within the Property that create economic development consistent with the Strategic Plan (e.g., non-residential uses) that need public street improvements. The Developer's submitted plan will include a description of the project, graphical representation of typical street sections, economic development impact projection, and timeline for the completion of the project and expected reimbursement. If the City Manager in his discretion approves such public street improvements as part of the economic development (which is an "**Approved Street Project**" individually and collectively the "**Approved Street Projects**"), Developer may seek reimbursement for the costs to construct and install (or cause the same to be done) the Approved Street Projects, subject to the maximum expenditure of $6,5000,000 (the **"Maximum Approved Street Project Costs"**) from the City's street and highway bond funds approved at the November 5, 2013 bond election.

The Maximum Approved Street Project Costs is a cap on the potential reimbursement Developer may seek under this Section 4.2. Procurement by Developer of all contracts relating to Approved Street Projects for which the Developer will seek to be reimbursed by the City shall strictly comply with the terms and conditions in **Exhibit K** to this Agreement and with A.R.S. Title 34 as determined by the City Engineer.

(b) Developer shall not receive reimbursement for improvements constructed prior to obtaining approval from the City Manager for such project. Public street improvements generally include such improvements as collector, arterial and economically significant streets, sidewalks, street lights and landscaping, but do not include water, sewer, or non-potable utilities.

(c) Developer will coordinate with City regarding the scheduling timeframes for reimbursement with the bond issuances. Developer understands that due to bond limitations it may only seek reimbursement for Approved Street Projects (which have been completed in compliance with Exhibit K) within three (3) years of the issuance related to the Approved Street Project; and Developer may only submit for reimbursement after the issuance of such bonds. Further, City and Developer shall agree upon the method of dedicating the completed Approved Street Projects.

(d) Reimbursement to Developer for Approved Street Projects is subject to any and all limitations of the November 5, 2013 bond election, any issuance limitations, the availability of funds for reimbursement from such bond issuance, and any and all applicable limitations under state and federal law.

(e) Nothing in this Agreement obligates the City Council to issue bonds related to November 5, 2013 bond election, and if the City Council decides in its sole discretion not to issue any such bonds as contemplated by this Section 4.2, the City shall have no obligations, liability, or reimbursement obligation under this Section 4.2 or Exhibit K for claims related to this Section 4.2; provided, however, in such event, City will use good faith efforts to reimburse Developer under the terms of this Section 4.2 from available and uncommitted street capital project bond funds if such bond funds held by the City are lawfully available and uncommitted.

4.3 Public Improvements For Water/Wastewater. Contingent on the conditions and terms described in this Section 4.3, the City will reimburse up to $3,000,000 from future authorized utility bonds (i.e., a future bond election approval) on certain City public water and wastewater improvements to support non-residential economic development within the Property subject to the following terms and limitations:

(a) The City's obligations under this Section 4.3 are all contingent upon the City obtaining new and additional bonding authority that includes uncommitted funds for utility improvements (specifically, water and wastewater improvements) that can be spent within the Property. Accordingly, the City's obligations are

contingent on the following: (i) City Council calling a bond election, which election includes a question seeking authorization for water and sewer utility bond authority that includes uncommitted funds that may be spent on public water and wastewater improvements within the Property, (ii) voter approval on such utility bonds, and (iii) Council authorization, exercised at their sole discretion, to issue such utility bonds.

(b) If the conditions precedent in subsection (a) above are all met, Developer agrees to submit to the City's City Manager projects within the Property that create economic development consistent with the Strategic Plan (e.g., non-residential uses) that need public water or wastewater improvements. The Developer's submitted plan will include a description of the project, graphically representation of the water/wastewater improvements, economic development impact projection, and timeline for the completion of the project and expected reimbursement. If the City Manager in his discretion approves such public water or wastewater improvements as part of the economic development (which is an "**Approved Water/Wastewater Project**" individually and collectively the "**Approved Water/Wastewater Projects**"), Developer may seek reimbursement for the costs to construct and install (or cause the same to be done) the Approved Water/Wastewater Projects, subject to the maximum expenditure of $3,0000,000 (the **Maximum Approved Water/Wastewater Project Costs**") from the utility bond funds described in this Section 4.3. The Maximum Approved Water/Wastewater Project Costs is a cap on the potential reimbursement Developer may seek under this Section 4.3. Procurement by Developer of all contracts relating to Approved Water/Wastewater Projects for which the Developer will seek to be reimbursed by the City shall strictly comply with the terms and conditions in **Exhibit K** to this Agreement and with A.R.S. Title 34 as determined by the City Engineer.

(c) Developer shall not receive reimbursement for improvements constructed prior to obtaining approval from the City's City Manager for such project.

(d) If such utility bonds as described in this Section 4.3 receive voter authorization, Developer will coordinate with City regarding the scheduling timeframes for reimbursement with the bond issuances. Developer may not begin construction of an Approved Water/Wastewater Project until after the utility bonds as described in this Section 4.3 receive voter authorization. Developer understands that due to bond limitations Developer may only seek reimbursement for Approved Water/Wastewater Projects which have been completed in compliance with Exhibit K within three (3) years of the issuance related to the Approved Water/Wastewater Project; and Developer may only submit for reimbursement after the issuance of such utility bonds. Further, City and Developer shall agree upon the method of dedicating the completed Approved Water/Wastewater Projects.

(e) Reimbursement to Developer for Approved Water/Wastewater Projects is subject to any and all limitations of such future utility bonds as contemplated in

this Section 4.3, any issuance and subsequent bond authorization limitations, the availability of funds for reimbursement from such bond issuance, and any and all limitations under state and federal law.

(f) Nothing in this Agreement obligates the City Council to seek voter approval for future utility bonds as described in this Section 4.3 or to issue such bonds if there is voter approval after a bond election.

(g) If there is no election to authorize the utility bonds and/or there is no issuance of utility bonds as contemplated by this Section 4.3 within twenty (20) years of the Effective Agreement of this Second Amendment, the City shall have no obligations, liability, or reimbursement obligation under this Section 4.3, or Exhibit K for claims related to this Section 4.3; provided, however, in such event, City will use good faith efforts to reimburse Developer under the terms of this Section 4.3 from available and uncommitted water and sewer capital project bond funds if such bond funds held by the City are lawfully available and uncommitted.

3. **Economic or Development Declines**. Developer agrees that if there are changes in the economy or other factors that result in material delays or declines in the development of the Property, the City Manager, in his discretion, may take such in consideration as to whether to approve a particular street or water/wastewater project.

4. **Exhibit K.** As referenced in Section 2 above, a new Exhibit K is hereby added to the MPG Development Agreement as set forth in **Exhibit 4**, attached hereto.

5. **Transportation/Landscape Maintenance for Arterial Street Medians.** Section 3.6(c) of the MPG Development Agreement is hereby replaced to read in its entirety as follows:

> The Parties have entered into a Community Maintenance Agreement dated June 12, 2012, as may be amended from time to time, that by its terms satisfies in full the obligations of the parties as to the requirements previously contained in this Section 3.6(c).

6. **Wells/Conveyance of Existing Wells and Well Sites/City Construction of New Wells.** Section 3.10(b) of the MPG Development Agreement is hereby revised to read in its entirety as follows (deletions are shown by strikeout and additions by underscore):

> In order to provide for service by the City of water to the Property as set forth in this Agreement, the Developer agrees that it shall convey not fewer than four (4) nor more than six (6) well sites located on the Property to the City for the potable system, and one (1) well site for the non-potable system at locations mutually agreeable to the Parties. ~~Pursuant to the process for providing credits set forth in MCC § 5-17-9, the Developer shall receive credits against the City's Water Impact Fees for the value of the land conveyed for the potable well sites.~~ The City will purchase the potable well sites pursuant to Section 3.19. After the conveyance of the well sites, the City shall construct, at its sole cost and expense, all potable system wells to be located on the Property. The City and the Developer further agree and acknowledge that there are existing wells on the Property. Where feasible as indicated by any hydrogeologic studies, conducted by the

City at no cost to the Developer except pursuant to Article IV, or system demands and where compatible with adjacent intended land uses, all conveyed well sites shall be located within 660 feet of existing groundwater production wells, in order to facilitate the drilling of the new wells as replacement wells in accordance with A.R.S. § 45-598 and other Applicable Water Laws. In all such cases, to the extent that the Developer conveys, upon the City's written request, such existing groundwater production wells to the City without cost to the Developer, then such existing groundwater production wells shall be conveyed by the Developer in "as-is" condition and at no charge to the City. Notwithstanding the foregoing, Developer shall, at its sole cost and expense, abandon such existing groundwater production wells not conveyed to the City in accordance with the Applicable Water Laws. Additionally, prior to such abandonment Developer will limit use of water from the existing wells on the Property to construction activities on the Property. All use of water from the existing well sites shall be in accordance with the Applicable Water Laws. Developer will not receive development impact fee credits for its conveyance of any well sites under the provisions of this Section 3.10(b).

7. **Fire Protection/Contribution Toward Fire Protection for the Property.** A typographical error in the First Amendment resulted in the accidental renumbering of Section 3.12(a). The Parties hereby clarify that the revision contained in Section 6 of the First Amendment should be a restatement of Section 3.12(a), not a new Section 3.2(b).

8. **Fire Protection/Developer's Conveyance/Reservation of Land for Permanent Fire Station Sites on the Property.** The first two sentences of Section 3.12(b) of the MPG Development Agreement are hereby combined into the following sentence, to read in its entirety as follows (deletions are shown by strikeout and additions by underscore):

Developer shall convey to the City two (2) sites for the construction of permanent fire stations on the Property as set forth below:~~, The Parties currently anticipate that if two (2) fire stations are constructed on the Property, one fire station will be located in either Development Unit 3 or 4, and the second fire station will be in either Development Unit 7 or 8~~

9. **Police Services/Developer's Reservation of a Site for a Permanent Police Station.** Section 3.13(a) of the MPG Development Agreement is hereby revised to read in its entirety as follows (deletions are shown by strikeout and additions by underscore):

If requested by the City, Developer ~~shall~~ agrees to reserve one (1) site for sale to the City for the construction and operation of ~~one (1)~~ a police substation on the Property ("**Police Substation Site**"). ~~The Police Substation Site shall be located in either Development Unit 3, 6, or 7, in a specific location mutually acceptable to the City and the Developer. Upon~~ With the submission of each Development Unit Plan ~~for Development Units 3, 6, and 7~~, the City ~~and the Developer shall~~ will consider the need for a Police Substation Site within the particular Development Unit. If City determines it needs a Police Substation Site, Developer and City will work in good faith to mutually agree upon the Police Substation Site.~~, and promptly upon~~ Unless otherwise agreed to in writing between Developer and the City's City Manager, ~~U~~upon the Developer's payment of funds pursuant to Section 3.12, paragraph (c), and in conjunction with a subdivision plat, the

City shall purchase from the Developer the Police Substation Site. The City in its sole discretion will determine the need for a Police Substation with the submission of a Development Unit Plan or separately. The City will purchase, unless otherwise agreed to in writing by Developer and City, the Police Substation Site pursuant to Section 3.19. City is under no obligation to construct a police substation. The Developer will not receive credits against the City's ~~Police~~ Public Safety Impact Fee for its conveyance of the Police Substation Site. ~~The Police Substation Site will not be larger than six (6) acres in size at the City's discretion, and as centrally located in the chosen Development Unit as possible and feasible for the Developer and the City.~~ If City decides to construct a police substation, ~~The~~ City ~~shall~~ will be solely responsible for the costs of designing and constructing a permanent police substation. ~~on the Police Substation Site.~~

10. **Parks/Great Park Construction and Master Plan.** Section 3.14(a) of the MPG Development Agreement is hereby revised to read in its entirety as follows (deletions are shown by strikeout and additions by underscore):

The PCD depicts an approximate 106-acre site for the location of a Great Park (the "**Great Park**"). The Developer shall reserve sixteen (16) contiguous acres within the Great Park for the City to construct certain recreational amenities that it desires to locate within the southeast portion of the City~~, which recreational amenities may include an aquatic center, sports courts, and a recreational facility~~ ("**Recreational Facility Site**"). Upon request by the City, the Developer shall sell to the City the Recreational Facility Site. Prior to commencement of development of the Great Park, the Developer shall generate a master plan for the Great Park that has been mutually agreed upon by the Developer and the City ("**Great Park Master Plan**"). The Great Park Master Plan will include provisions for lake design, retention, landscaping, improvements and other amenities. The Developer may construct and dedicate improvements to the Great Park in phases which are reasonably approved by the City so that the City can provide the maintenance and operation of the Great Park at the time of dedication. ~~Pursuant to the process for providing credits set forth in MCC § 5-17-9, the Developer shall receive credits against the City's Parks Impact Fees for its dedication of ninety (90) acres of land for the Great Park and for the costs to plan, design, engineer, permit and construct/install improvements to the Great Park, which the Parties agree are "key public facilities" pursuant to MCC § 5-17-9. To the extent that the Great Park construction costs exceed the available Park Impact Fee credits, then the City will provide a cash payment pursuant to MCC § 5-17-9(J).~~ The improvements to the Great Park may include non-potable water storage facilities, which may be owned by City for purposes of irrigating the Great Park. Upon completion of construction of the initial improvements to the Great Park, the Developer shall convey to the City the portion of the Great Park on which such initial improvements have been constructed~~, which shall be responsible for the operation and cost of maintaining the Great Park pursuant to the provisions of Section 3.14, paragraph (b)~~. Upon completion of the construction of future phases, Developer shall convey to the City the portion of the Great Park on which such future phases of improvements have been constructed~~, which shall be responsible for the operation and cost of maintaining the Great Park pursuant to the provisions of Section 3.14, paragraph (b)~~. It is the Developer's intent to utilize the Great Park for retention of storm water runoff from other

areas within the Property. The Developer will work with the City to ensure that the design of all hard surfaced courts, tot lots, play equipment, building structures, parking lots and other specialty amenities remain above the storm water retention inundation line. Up to five (5) school sites may be located adjacent to the Great Park; it is the Parties' intent that the City and the relevant school district arrange for the joint use by the public and such school district of the facilities within the Great Park located adjacent to the school site(s). Developer will not receive development impact fee credits for its conveyance of the Great Park, or any portion thereto, the Recreational Facility Site or for any improvements or amenities thereon or for improvements and benefits Developer provides under the provisions of this Section 3.14(a).

11. **Parks/Great Park Maintenance.** Section 3.14(b) of the MPG Development Agreement is hereby revised to read in its entirety as follows:

The Parties have entered into a Community Maintenance Agreement dated June 12, 2012, as may be amended from time to time, that by its terms satisfies in full the obligations of the parties as to the requirements previously contained in this Section 3.14(b).

12. **Parks/Great Park Lake.** Section 3.14(c) of the MPG Development Agreement is hereby revised to read in its entirety as follows (deletions are shown by strikeout and additions by underscore):

The improvements to the Great Park Lake may include non-potable and potable water storage facilities, which may be owned by City for purposes of irrigating the Great Park. Specifically, the Developer intends to construct a lake that will be owned by the City. Notwithstanding subparagraph (b) above, the Developer shall initially fill the Great Park Lake, subject to the Applicable Water laws, the Terms and Conditions, and applicable Utility Rates, without reimbursement from the City. ~~After dedication the Developer shall operate and maintain the lake at its sole cost and expense.~~

13. **Library.** Section 3.15 of the MPG Development Agreement is hereby revised to read in its entirety as follows (deletions are shown by strikeout and additions by underscore):

~~The Developer shall reserve for sale to the City a site for the location of a public library ("Library Site").~~ If the City, in its sole discretion determines a need for a public library, City may purchase a library site pursuant to Section 3.19 subject to the ~~The~~ Developer and the City ~~shall~~ mutually agreeing on the location of the library site. ~~Library Site, which shall be sized to accommodate a 35,000 square foot building,~~ The size of the library site will be determined by the programming needs of the library, as determined by the City, together with required parking, and which may be co-located, upon the agreement of the Developer and the City, with other public or educational uses. ~~In consideration of the Developer's reservation of the Library Site, the City agrees that it shall use City library Impact Fees collected within the City as of the date of this Agreement and library Impact Fees collected on the Property after the date of this Agreement for the construction of the library on the Library Site. The Developer shall sell the Library Site to the City at such time as the City demonstrates that it has funds sufficient to design, construct, and operate the library on the Library Site. The parties~~

~~acknowledge that the library will be important to the community, and the parties agree to cooperate in the planning and design of the library to ensure that the library complements the overall urban fabric and architecture of the community.~~ The City is under no obligation to purchase a library site or construct a public library. The Developer will not receive any future credits against the Library Impact Fee for its conveyance of a library site.

14. **Impact Fee Credits.** Section 3.18 of the MPG Development Agreement is hereby deleted and replaced in its entirety as follows:

> The Developer will not receive, and hereby unconditionally and permanently agrees to waive any right to, any credits against impact fees for dedicating or conveying property or the design, construction, or installation of any improvements in or on the Property that arises out or is related to this Development Agreement; provided, however, that if the City adopts new impact fees in the future that includes a new Necessary Public Service Impact Fee Category (e.g., a street impact fee, which is an impact fee category that does not currently exist in the City of Mesa), the waiver contained in this Section 3.18 shall not apply to such new impact fee category.

15. **Establishment of Land Value**. Section 3.19 of the MPG Development Agreement is hereby revised to add "3.10(b) (potable well sites)," after the word "Sections" in the first line. Additionally, in further consideration of Developer not receiving and waiving the right to development impact fee credits under this Second Amendment, the City agrees to eliminate a credit obligation in the amount of $570,970 Developer owes to City under Section 3.19(d). Accordingly, the Parties agree that Section 3.19(d) is hereby deleted in its entirety.

16. **General Provisions**.

16.1. Counterparts. This Second 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.

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

16.3. 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 Second Amendment are hereby acknowledged and incorporated herein and the Parties hereby confirm the accuracy thereof.

16.4 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 Second Amendment on behalf of the respective parties are authorized and empowered to bind the party on whose behalf each such individual is signing.

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

16.6 Mortgagee Rights. The parties hereto acknowledge and agree that all of Developer's rights and benefits under the MPG Development Agreement, as amended by this Second Amendment, shall inure to the benefit of any party acquiring title to the Property or any portion thereof under or pursuant to a mortgage foreclosure, trustee's sale or deed in lieu of foreclosure or trustee's sale, or otherwise.

16.7 No Pledge of General Credit. The City's obligations under this Second Amendment shall not constitute an indebtedness or pledge of the general credit of the City within the meaning of any constitutional, charter, or statutory provision relating to the incurring of indebtedness or a pledge of the full faith and credit of the City. Nothing contained in this Second Amendment shall be construed to require the City to levy a tax, issue bonds, or call an election.

17. **Effect of Second Amendment**. This Second Amendment shall be deemed to amend and supersede the MPG Development Agreement with respect to all terms, provisions and changes set forth in this Second Amendment. To the extent of any conflict between the MPG Development Agreement and this Second Amendment, including all Exhibits, the Second Amendment shall control. Except as amended by this Second 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 Second Amendment shall have the meaning set forth in the MPG Development Agreement.

[Signatures on following pages]

IN WITNESS WHEREOF, the Parties have executed this Second Amendment to be effective on the date that this Second 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 Project Manager

By _____

Its Senior Vice President

CITY OF MESA, ARIZONA, an Arizona municipal corporation

By: _____

Its: City Manager

CITY OF MESA CORPORATE SEAL MARICOPA COUNTY, AZ.

ATTEST:

By: _____

City Clerk

APPROVED AS TO FORM

By: _____

City Attorney

STATE OF ARIZONA)

) ss.

COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 11th day of November, 2013, by N. Dea McDonald, the Senior V.P. of DMB Mesa Proving Grounds LLC, a Delaware limited liability company.

OFFICIAL SEAL
MERISSA WILLIAMS
NOTARY PUBLIC - State of Arizona
MARICOPA COUNTY
My Comm. Expires July 4, 2015

Notary Public

My commission expires: July 4, 2015

STATE OF ARIZONA)

) ss.

COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 21st day of November 2013, 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.

OFFICIAL SEAL
ANN WEBSTER
Notary Public - State of Arizona
MARICOPA COUNTY
My Comm. Expires May 27, 2014

Notary Public

My commission expires:

May 27, 2014

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 Nov. 21, 2013, 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: NOVEMBER 6, 2013

[Signatures on following page]

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

By: _____

Name: BRIAN A SUMMERS

Its: VICE PRESIDENT

STATE OF _____)
)ss.
County of _____)

The foregoing was acknowledged before me this ___ day of _____, 2013, by _____, the _____ of U.S. BANK NATIONAL ASSOCIATION, a national banking association.

_____
Notary Public

My Commission Expires:

_____

See attached

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of San Bernardino }

On Nov. 7, 2013 (Date) before me, Linda Cordero Notary Public (Here Insert Name and Title of the Officer),

personally appeared Blair A Simmons (Name(s) of Signer(s))

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.

Signature Linda Cordero (Signature of Notary Public)

LINDA CORDERO
Commission # 2040999
Notary Public - California
San Bernardino County
My Comm. Expires Oct 9, 2017

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
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LIST OF EXHIBITS

1	Legal Description of the Property
2	Map of the Property
3	Amended Exhibit G-1 – Accelerated Project List
4	Exhibit K – Public Improvements

EXHIBIT 1
Legal Description

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

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;

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.;

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;

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.

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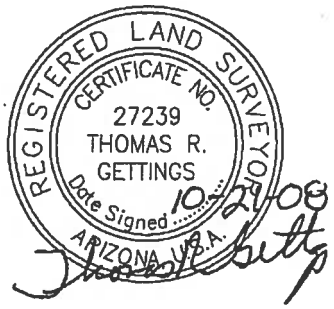
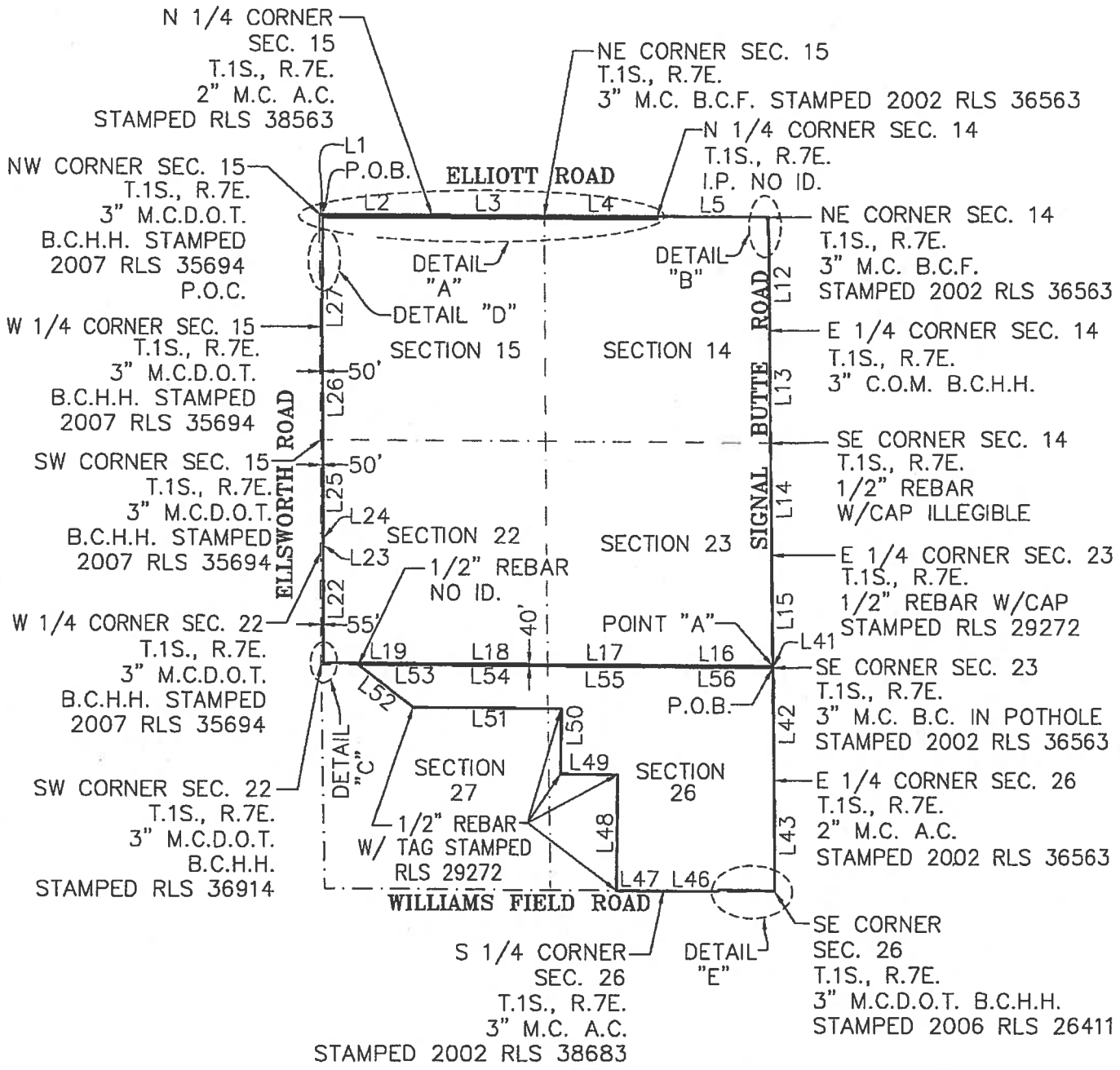


EXPIRES 06-30-11

EXHIBIT 2
Map of Property



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

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
27239
THOMAS R.
GETTINGS
Date Signed 10-21-08
ARIZONA, U.S.A.

EXPIRES 06-30-11

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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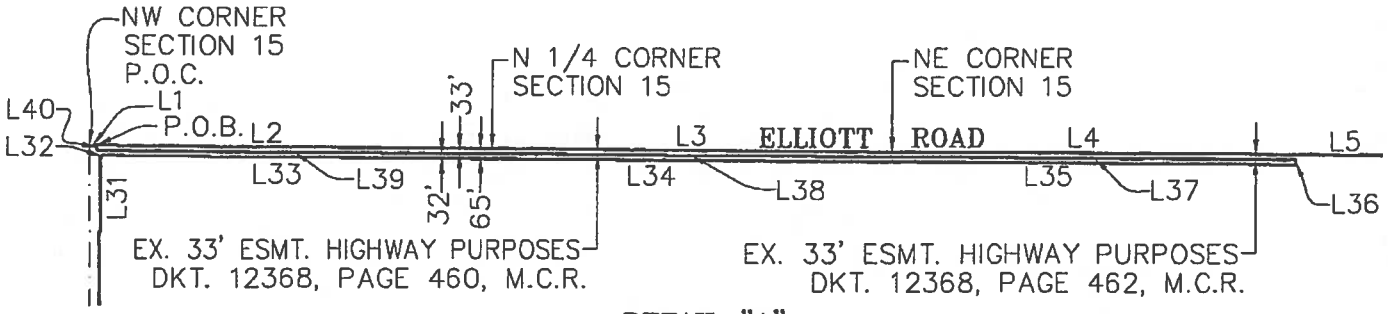
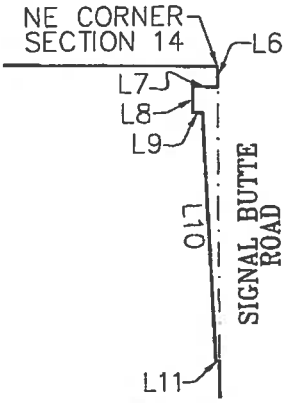


DETAIL "A"
N.T.S.

LINE TABLE		
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 TABLE		
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'



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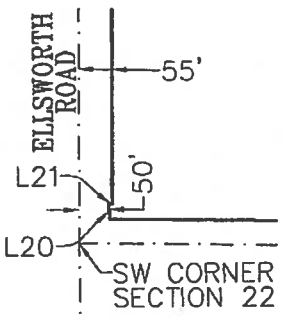

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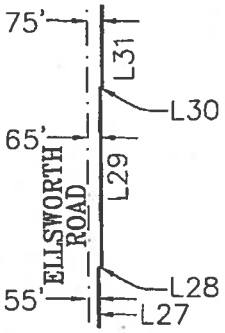

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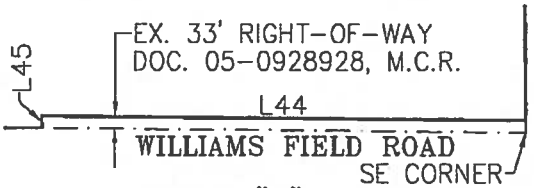

DETAIL "E"
N.T.S.

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

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
27239
THOMAS R.
GETTINGS
Date Signed 10-29-08
ARIZONA U.S.A.

EXPIRES 06-30-11

EXHIBIT "B"

MESA PROVING GROUNDS
PROPOSED OVERALL BOUNDARY
REVISED 10-21-08
WP#062753.26
PAGE 6 OF 6
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EXHIBIT 3

Amended Exhibit G-1 – Accelerated Project List

{00098179.14}

EXHIBIT D to 2nd Amendment to MPG Entitlement PADA

ACCELERATED PROJECT LIST - 08/14/2013 (Page 1 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
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
1/2 Street Elliot - Phase 1	**Limits:** Adjacent to FAB 1	Complete	Complete	Complete	Complete	Complete	Complete
Projects:							
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.	NA	N/A (Size to be based on Water Master Report)	7/10/2016	6/3/2017	9/1/2017	9/1/2018
1/2 Street Elliot - Phase 2	**Limits:** 1/2 Street improvements - between FAB 1 and Ellsworth Road	NA	3/11/2016	7/10/2016	6/3/2017	9/1/2017	9/1/2018
Partial Ellsworth Roads	Limits to be determined based on funding availability.	NA	3/11/2016	7/10/2016	6/3/2017	9/1/2017	9/1/2018

{00098179.14}

EXHIBIT D to 2nd Amendment to MPG Entitlement PADA

ACCELERATED PROJECT LIST - 08/14/2013 (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. The project is based on a percentage of the total design flow for the water line.	7/10/2016(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)	7/10/2016	6/3/2017	9/1/2017	9/1/2018
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)	7/10/2016	6/3/2017	9/1/2017	9/1/2018
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.	7/10/2016 (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)	7/10/2016	6/3/2017	9/1/2017	9/1/2018

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.

EXHIBIT 4

Exhibits K – Public Improvements

EXHIBIT K

PUBLIC IMPROVEMENTS

The Approved Projects 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 K**, unless otherwise noted. All definitions contained within **Exhibit K** apply solely to the provisions contained within **Exhibit K**.

(a) "Completion of Construction" means the date on which final acceptance by the City of the completed Approved Projects for maintenance in accordance with the policies, standards and specifications contained in applicable City ordinances.

(b) "Project Costs" means all actual costs and expenses incurred to construct the Approved Project or portions thereof, as applicable, and, unless Developer otherwise agrees, the Project Costs attributed to construction shall be the lowest and best bid received by the City.

(c) "Approved Projects" means the Approved Street Projects and Approved Water/Wastewater Project (if there is funding for such projects) that are approved by the City's City Manager pursuant to Sections 4.2 and 4.3, and the Approved Projects are individually referred to as an **"Approved Project."**

2. **Developer Design and Construction.** Developer will be responsible for the design of all portions of the work in respect of the Approved Projects at no cost to the City, 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"**).

(a) Bidding, Construction and Dedication. Any such Approved Projects, or portions thereof, for which the design has been procured by Developer at no cost to the City shall be bid, constructed and dedicated, as applicable, by the Developer 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.

(b) Payment of Approved Projects Costs. Subject to the terms and limitations of Sections 4.2 and 4.3, the City shall reimburse Developer for costs for the Approved Projects incurred by Developer in compliance with the Engineering and Procurement Requirements within ninety (90) days following Completion of Construction of each Approved Project or, if the City and Developer have mutually agreed concerning a lesser scope of work, applicable portion thereof. The amount of potential reimbursement and other limitations, conditions, and requirement for Approved Projects are further set forth in Sections 4.2 and 4.3.

(c) **Right of Entry**. Subject to compliance with the Engineering and Procurement Requirements (including obtaining applicable permits), 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 such Approved Projects (or portion thereof).

4. **Non-Performance**. This Section 4 shall apply solely in connection with the rights and obligations of the City and Developer under Sections 4.2 and 4.3 of the Agreement and this **Exhibit K**. If the City or Developer, respectively, fails to perform its obligations under Sections 4.2 and 4.3 and this **Exhibit K**, 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 Sections 4.2 and 4.3 and this Exhibit K (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 4, the City'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 Developer to undertake and fully and timely perform its obligations under this Agreement.

(ii) 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 4, 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 Sections 4.2 and 4.3; provided, however, no such relief can be obtained against the City's City Council to perform any act or approve any measure, resolution, act, or ordinance, including but not limited to no such relief can require the City Council to seek voter approval for bonds nor require the City Council to authorize the issuance of bonds.

(ii) Developer is responsible for the design, engineering, bid and/or construction of the Approved Projects (or portions thereof) under the terms of Sections 4.2 and 4.3, as applicable, and this Exhibit K; and, subject to the terms and limitation of Sections 4.2 and 4.3, as applicable, and this Exhibit K, if the City does not timely reimburse Developer for Approved Projects, the City expressly acknowledges and agrees that Developer may seek damages from the City, which the Parties agree shall be limited to the reimbursement amount Developer is entitled to for the Approved Projects; provided further, damages for the Approved Street Projects may not exceed the Maximum Street Project Costs and the damages for the Approved Water/Wastewater Projects (if any) may not exceed the of the Maximum Water/Wastewater Cost, and Developer's attorneys' fees and court costs, and not for any other damages of any kind or nature.

(iii) Except as expressly provided in the above Section 4(b)(ii), 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 any one 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 damages as of the time of entry of judgment and the City and Developer hereby waive any right to seek consequential, special, punitive, multiple, exemplary or other similar damages.