

5708-43-1-1--
Garcia

WHEN RECORDED RETURN TO:

City of Mesa
Attn: City Clerk
20 E. Main Street
Mesa, Arizona 85201

22-A074

**FIFTH 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: December 8, 2022

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

THIS FIFTH AMENDMENT TO PRE-ANNEXATION AND DEVELOPMENT AGREEMENT (MESA PROVING GROUNDS) (this “**Fifth 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**” and, together with the City, the “**Parties**”).

RECITALS

A. The Developer and the City are entering into this Fifth 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**”), the Second Amendment to the Pre-Annexation and Development Agreement dated November 21, 2013, as recorded in the Official Records of Maricopa County as Document No. 2013-1005620 (the “**Second Amendment**”), the Third Amendment to Pre-Annexation and Development Agreement dated December 15, 2016, as recorded in the Official Records of Maricopa County as Document No. 2016-0940133 (the “**Third Amendment**”) and the Fourth Amendment to Pre-Annexation and Development Agreement dated August 27, 2018, as recorded in the Official Records of Maricopa County as Document No. 2018-0657828 (the “**Fourth Amendment**” and, collectively with the First Amendment, the Second Amendment and the Third Amendment, the “**MPG Development Agreement**”).

C. The Developer is the Master Developer of that certain real property that is subject to the MPG Development Agreement. The property is located within the boundaries of the City of Mesa, Arizona and initially consisted of approximately three thousand one hundred fifty-four (3,154) acres (the “**Eastmark Project**”). The Eastmark Project, excluding therefrom any portion thereof as to which a termination has occurred pursuant to said Section 9.6(c) of the MPG Development Agreement, is hereinafter referred to as the “**Property**.”

D. Since the Parties first entered into the MPG Development Agreement, significant development has occurred in the Eastmark Project, and the Parties’ expectations for future development have adjusted to account for current and projected economic, market and site conditions. The Parties are entering into this Fifth Amendment to document negotiated agreements concerning changes to Article V and Section 3.14 of the MPG Development Agreement.

E. The EASTMARK COMMUNITY ALLIANCE, INC., (the “Alliance”), acknowledges, agrees and is executing this Fifth Amendment because the Alliance will be a successor in interest to the MPG Development Agreement and this Fifth Amendment pursuant to Section 9.6(a)(i) of the MPG Development Agreement and will be assuming certain obligations from Developer under the MPG Development Agreement and this Fifth Amendment, and will be assuming certain obligations from Developer under the First Amendment to the Amended and Restated Community Maintenance Agreement and all addendums, collectively, as may be amended from time to time (the “Community Maintenance Agreement”); and the transfer of these obligations from Developer to the Alliance is hereinafter referred to as the “Alliance’s Assumption.” The Alliance is a signatory to this Fifth Amendment for those purposes.

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

1. Parks/Great Park Construction and Master Plan. Section 3.14(a) of the MPG Development Agreement is hereby deleted in its entirety and replaced as follows and a new subsection (d) will be added as stated below:

(a) The PCD depicts an approximate 106-acre-site for the location of a Great Park (the “Great Park”), of which 90 acres shall be the responsibility of the Developer to construct park amenities. The Developer shall reserve sixteen (16) contiguous acres within the Property for the City to design and construct certain recreational amenities that it desires to locate within the southeast portion of the City (“Recreational Facility Site”) as legally described in Exhibit A and depicted in Exhibit B. 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 City so that it can provide the maintenance and operation of the Great Park at the time of dedication. 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. 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. 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 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).

(d) **Recreational Facility Site.** Developer will design and construct the amenities on the City's 16-acre Recreational Facility Site. The final design for the Recreational Facility Site shall be agreed to by City prior to Developer submitting for building permits. Developer must complete design and construction of the Recreational Facility Site within three (3) years of the Effective Date of this Fifth Amendment. Developer will be allowed to seek CFD financing for the Recreational Facility Site improvements following completion of construction of the improvements by Developer and City acceptance of such improvements. Upon completion of construction of the improvements to the Recreational Facility Site, Developer shall convey the Recreational Facility Site at no cost to City. After conveyance of the Recreational Facility Site, City shall be solely responsible for the operations and maintenance of the Recreational Facility Site. Developer agrees that the Recreational Facility Site will be owned and managed as a City park open to the general public and subject to all applicable park standards and regulations for operation. Developer agrees to and shall not seek CFD financing or CFD reimbursement for the land value of the Recreational Facility Site.

2. Skate Park/Disc Golf Course.

Sections 3.20, 3.21, 3.22 and 3.23 are hereby added to the MPG Development Agreement as follows:

3.20. Skate Park. The Parties agree that the approximately 3.40-acre park located on the north side of Point Twenty-Two Boulevard between South Pasteur and South Carver, inclusive of adequate public parking, as depicted on Exhibit C (the "**Skate Park**") has been designed and constructed by Developer at Developer's expense and shall be maintained, repaired, and replaced by Developer until the Alliance's Assumption of these obligations and thereafter the Alliance shall satisfy these obligations. Upon the recordation of the Skate Park Easement, as defined herein, the acreage for the Skate Park shall count toward Developer's obligation of the 90 acres included in the Great Park Master Plan as stated in 3.14(a) above. Developer and City agree that the Skate Park shall be open to the public, pursuant to a public access easement agreement substantially in the form attached hereto as Exhibit G (the "**Skate Park Easement**"). City and Alliance shall execute the Skate Park Easement to that effect. Developer agrees the land value of the Skate Park is not eligible for CFD financing. Developer may seek CFD financing for the value of the Skate Park Easement granted to City. The Parties intend that the value of the Skate Park Easement will be deemed equal to the eligible construction costs of the Skate Park improvements; provided, however, that such eligible construction costs are subject to approval by the CFD engineer and the District Board in their sole and absolute discretion. City shall have no liability or maintenance, repair, or replacement obligations for the Skate Park or other property interests granted pursuant to the Skate Park Easement.

3.21 Disc Golf Course. The Parties agree that the approximately 21.52-acre park, inclusive of adequate public parking, as depicted on Exhibit D commencing on the east side of Eastmark Parkway at a point approximately one-half mile south of Elliot Road (the "**Disc Golf Course**"), has been designed and constructed by Developer at Developer's expense and shall be maintained, repaired, and replaced by Developer until the Alliance's Assumption of these obligations and thereafter the Alliance shall satisfy these obligations. Upon the recordation of the Disc Golf Course Easement, as defined herein, the acreage for the Disc Golf Course,

inclusive of parking for the public, shall count toward Developer's obligation of the 90 acres included in the Great Park Master Plan as stated in 3.14(a) above. Developer and City agree that the Disc Golf Course shall be open to the public, pursuant to a public access easement agreement substantially in the form attached hereto as Exhibit H (the "**Disc Golf Course Easement**"). City and Alliance shall execute the Disc Golf Course Easement to that effect. Developer agrees the land value of the Disc Golf Course is not eligible for CFD financing. Developer may seek CFD financing for the value of the Disc Golf Course Easement granted to City. The Parties intend that the value of the Disc Golf Course Easement will be deemed equal to the eligible construction costs of the Disc Golf Course improvements; provided, however, that such eligible construction costs are subject to approval by the CFD engineer and the District Board in their sole and absolute discretion. City shall have no liability or maintenance, repair, or replacement obligations for the Disc Golf Course or other property interests granted pursuant to the Disc Golf Course Easement.

3.22 Enhanced Multi-Use Path Connection to the Great Park. To demonstrate the walkability of the Property and establish that the Great Park is part of the overall network of interconnected parks, Developer shall construct an enhanced multi-use path connecting the Disc Golf Course to phase four of the Great Park, as depicted on Exhibit E. The enhanced multi-use path will be located along the west side of Eastmark Parkway and north side of Warner Road and shall be developed with park-like amenities that include, but are not limited to, workout stations and enhanced landscaping. The enhanced multi-use path will be maintained, repaired, and replaced by Developer until the Alliance's Assumption of these obligations and thereafter the Alliance shall satisfy these obligations. City shall have no liability or maintenance, repair, or replacement obligations for the enhanced multi-use path. Developer agrees to and shall not seek CFD financing or CFD reimbursement for any aspect of the enhanced multi-use path.

3.23 Additional 8.76 Park Acreage. Developer shall design and construct the 8.76 acres ("**Additional Park Acreage**") which abuts the Recreational Facility Site to the west, at Developer's sole cost and expense. The final design for the amenities for the Additional Park Acreage shall be agreed to by City prior to Developer submitting for building permits. Developer must complete design and construction of the Additional Park Acreage within three (3) years of the Effective Date of this Fifth Amendment. Developer will be allowed to seek CFD financing for the Additional Park Acreage improvements following completion of the construction of the improvements by Developer and City acceptance of such improvements. Upon completion of construction of the improvements to the Additional Park Acreage by Developer, Developer shall convey the Additional Park Acreage, as depicted on Exhibit F, to City at no cost to City. The acreage for the Additional Park Acreage shall count toward Developer's obligation of the 90 acres included in the Great Park Master Plan as stated in 3.14(a) above. After conveyance of the Additional Park Acreage, City shall be solely responsible for the operations and maintenance of the Additional Park Acreage. Developer agrees that the Additional Park Acreage shall be owned and managed as a City park open to the general public and subject to all applicable park standards and regulations for operation. Developer agrees the land value of the Additional Park Acreage is not eligible for CFD financing.

3. Community Facilities Districts.

Article V is hereby amended to add Sections 5.3, 5.4 and 5.5 to the MPG Development Agreement as follows:

5.3 CFD Financing - Tax Exemption. To the extent the Skate Park and Disc Golf Course (or portions thereof) are financed with tax-exempt bonds issued by either or both of the Eastmark CFDs (as defined herein) the Developer and Alliance will not take any action nor fail to take any action with respect to the Skate Park and Disc Golf Course, which action or failure to act (i) is within its reasonable control and (ii) (a) would cause the interest on the CFD bonds to lose its exclusion from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), or (b) would cause interest on the CFD bonds to lose its exclusion from alternative minimum taxable income imposed on individuals as defined in Section 55(b)(2) of the Code; provided, however, that in the case of the alternative minimum tax imposed by Section 55(b)(2) of the Code on applicable corporations (as defined in Section 59(k) of the Code), interest on the CFD bonds is not excluded from the determination of adjusted financial statement income for tax years beginning after 2022. The foregoing covenant will remain in full force and effect notwithstanding the payment in full or defeasance of the CFD bonds until the date on which all obligations of the applicable CFD under the Code have been met.

5.4 The Parties agree that with respect to the Skate Park and the Disc Golf Course the Parties may enter into separate conveyance documents, in the normal course of the City's CFD conveyance process. With respect to the Skate Park and the Disc Golf Course, the Parties agree the conveyance of the easements or the property prior to CFD financing does not affect the Developer's ability to seek CFD financing in the future. The Parties acknowledge that Developer and the Alliance would not have conveyed the easements without the understanding that the value of the easements could be submitted for potential CFD financing, subject to the provisions of Sections 3.20 and 3.21 above.

5.5 Intended Third-Party Beneficiaries. The Parties agree that the Eastmark CFDs are intended third-party beneficiaries of this Fifth Amendment with the right to enforce, bring actions, and sue under this Fifth Amendment including, but not limited to, the warranty, representations, waiver, and indemnity provisions under the MPG Development Agreement and this Fifth Amendment.

4. General Provisions.

4.1 Counterparts. This Fifth 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.

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

4.3 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 Fifth Amendment are hereby acknowledged and incorporated herein and the Parties hereby confirm the accuracy thereof.

4.4 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 and Delaware, 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 Fifth Amendment on behalf of the respective Parties are authorized and empowered to bind the Party on whose behalf each such individual is signing.

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

4.6 No Pledge of General Credit. The City's obligations under this Fifth 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 Fifth Amendment shall be construed to require the City to levy a tax, issue bonds, or call an election.

5. Developer Representations, Warranties and Assignment of Certain Obligations.

Developer represents and warrants that Developer has the full right, power and authorization to enter into and perform the obligations of this Fifth Amendment. Developer further represents and warrants to City and each of Eastmark Community Facilities District No. 1 (City of Mesa, Arizona) ("CFD No. 1") and Eastmark Community Facilities District No. 2 (City of Mesa, Arizona) ("CFD No. 2" and together with CFD No. 1, the "Eastmark CFDs") that the Alliance, as Grantor of the Skate Park Easement and the Disc Golf Course Easement, has the authority to grant the Skate Park Easement and the Disc Golf Course Easement. Developer hereby agrees to indemnify, defend, and hold City and the Eastmark CFDs and their respective officials, officers, and employees harmless from any claims, losses, actions, lawsuits, demands, damages, costs, expenses (including, but not limited to, experts fees and reasonable attorneys' fees and costs) and liabilities of whatever kind or nature (collectively, "Claims") that arise from or are related to, in whole or in part, any of the following: any allegation or assertion that the Alliance does not have the authority to grant the Skate Park Easement or the Disc Golf Course Easement. The Developer hereby waives any right it may have to challenge the ability of the Eastmark CFDs to issue bonds to fund or acquire any portion of, or interest in, the interests in real estate described in the Skate Park Easement or Disc Golf Course Easement. Developer further represents and warrants that when Developer assigns the outstanding obligations of the MPG Development Agreement to the Alliance pursuant to Section 9.6(a)(i) of the MPG Development Agreement, the representations and warranties stated in this paragraph are not subject to that assignment, shall remain and shall not merge with any assignment, shall not run with the land and Developer shall remain obligated under the MPG Development Agreement and this Fifth Amendment even after the assignment.

6. The Alliance Representations, Warranties and Assumption of Obligations. The Alliance as Grantor of the Skate Park Easement and the Disc Golf Course Easement, represents and warrants to City and each of the Eastmark CFDs that the Alliance has the authority to grant the Skate Park Easement and the Disc Golf Course Easement. The Alliance hereby agrees to indemnify, defend, and hold City and the Eastmark CFDs and their respective officials, officers, and employees harmless from any Claims that arise from or are related to, in whole or in part, any of the following: any allegation or assertion that the Alliance does not have the authority to grant Skate Park Easement and the Disc Golf Course Easement. The Alliance hereby waives any right it may have to challenge the ability of the Eastmark CFDs to issue bonds to fund or acquire any portion of, or interest in, the interests in real estate described in the Skate Park Easement or the Disc Golf Course Easement. The Alliance further represents and warrants that when Developer assigns the outstanding obligations of the MPG Development Agreement pursuant to Section 9.6(a)(i) of the MPG Development Agreement, the Alliance shall assume the obligations MPG Development Agreement, including but not limited to the obligations under this Fifth Amendment.

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

[Signatures on following pages]

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

DMB MESA PROVING GROUNDS LLC, a Delaware limited liability company

By: DMB/BROOKFIELD EASTMARK LLC, a Delaware limited liability company, its Manager

By: BROOKFIELD EASTMARK LLC, a Delaware limited liability company, its Administrative Member

By: [Signature]
Name: ERIC J. TUNE
Title: VICE PRESIDENT

By: [Signature]
Name: DEA McDONALD
Title: SR. VICE PRESIDENT

STATE OF ARIZONA)

) ss.

COUNTY OF MARICOPA)

The foregoing Fifth Amendment to the Pre-Annexation and Development Agreement was acknowledged before me this 12 day of December, 2022, by Eric J. Tune, the Vice President, and Dea McDonald, the Sr. Vice President of BROOKFIELD EASTMARK LLC, a Delaware limited liability company, in its capacity as Administrative Member of DMB/BROOKFIELD EASTMARK LLC, a Delaware limited liability company, in its capacity as Manager of DMB MESA PROVING GROUNDS LLC, a Delaware limited liability company, on behalf thereof.

[Signature]

Notary Public

My commission expires:

August 18, 2023



CITY OF MESA, ARIZONA, an Arizona municipal corporation

By: Christopher J. Brady
Its: City Manager

ATTEST:

By: Holly Moseley
City Clerk



APPROVED AS TO FORM

By: Margaret A. Roberts
For James N. Smith, City Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing Fifth Amendment to the Pre-Annexation and Development Agreement was acknowledged before me this 14th day of December, 2022 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.

Vanessa Wisneski
Notary Public

My commission expires:

February 10, 2025



EASTMARK COMMUNITY ALLIANCE, INC.,
an Arizona nonprofit corporation

By: *[Signature]*,
Its: President

STATE OF ARIZONA)

) ss.

COUNTY OF MARICOPA)

This foregoing Fifth Amendment to the Pre-Annexation and Development Agreement was acknowledged before me this 13th day of December, 2022, by Christina Renee Christ, the President, of EASTMARK COMMUNITY ALLIANCE, INC, an Arizona nonprofit corporation.

[Signature]

Notary Public

My commission expires:

August 18, 2023

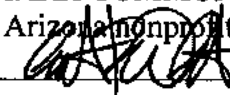


CONSENT AND ASSUMPTION OF OBLIGATIONS

The undersigned, EASTMARK COMMUNITY ALLIANCE, INC., an Arizona non-profit corporation, as the owner of all or a portion of the Disc Golf Course, hereby (i) agrees to and does assume all obligations of this Fifth Amendment as it relates to the Skate Park Easement and the Disc Golf Course Easement, in substantially the forms attached hereto, to be executed at a future date; (ii) agrees to and shall be bound by and comply with all the relevant terms, conditions, and requirements of this Fifth Amendment; (iii) represents and warrants that the undersigned has the requisite right, power and authorization to enter into and execute, at a future date, the Skate Park Easement and the Disc Golf Course Easement, in substantially the forms attached hereto and (iv) as applicable, represents and warrants Developer has the right and is duly authorized to grant the Skate Park Easement and the Disc Golf Course Easement that are the subject of this Fifth Amendment.

The undersigned further acknowledges and agrees that (a) Developer is currently responsible for all the obligations of the MPG Development Agreement and this Fifth Amendment, (b) pursuant to Section 9.6(a)(i) of the MPG Development Agreement, upon the complete assignment by Developer of all rights and obligations of the MPG Development Agreement, the Alliance shall also assume all of the outstanding obligations of the MPG Development Agreement, which shall constitute the Alliance's Assumption of all such obligations, (c) upon the complete assignment by Developer of all rights and obligations of the Community Maintenance Agreement to the Alliance, the Alliance shall also assume all of the outstanding obligations of the Community Maintenance Agreement, which shall constitute the Alliance's Assumption of all such obligations, and (d) upon recordation of the Skate Park Easement and the Disc Golf Course Easement, the Alliance shall have assumed all of the operations and maintenance, repair, and replacement obligations of this Fifth Amendment with respect to the Skate Park and the Disc Golf Course, which shall constitute the Alliance's Assumption of such obligations.

EASTMARK COMMUNITY ALLIANCE, INC.,
an Arizona nonprofit corporation

By: 

Its: President

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This foregoing Consent and Assumption of Obligations was acknowledged before me this 13th day of December, 2022, by Christina Renee Christian, the President of EASTMARK COMMUNITY ALLIANCE, INC, an Arizona nonprofit corporation.


Notary Public

My commission expires:
August 18, 2023
(0037641825)



EXHIBIT A

Legal description of Recreational Facility Site

PARCEL 8 OF THE FINAL PLAT FOR EASTMARK DEVELOPMENT UNITS 5 AND 6 ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 1660 OF MAPS, PAGE 14 AND AFFIDAVIT OF CORRECTION RECORDED APRIL 8, 2022 AS 2022-0312498 AND RECORDED APRIL 15, 2022 AS 2022-0333551 OF OFFICIAL RECORDS.

**FIFTH AMENDMENT TO PRE-ANNEXATION AND
DEVELOPMENT AGREEMENT**

Between

CITY OF MESA

AND

DMB MESA PROVING GROUNDS LLC

Exhibit B: (1 page)

is **not** recordable and therefore **not** recorded with
this

**FIFTH AMENDMENT TO PRE-ANNEXATION AND
DEVELOPMENT AGREEMENT**

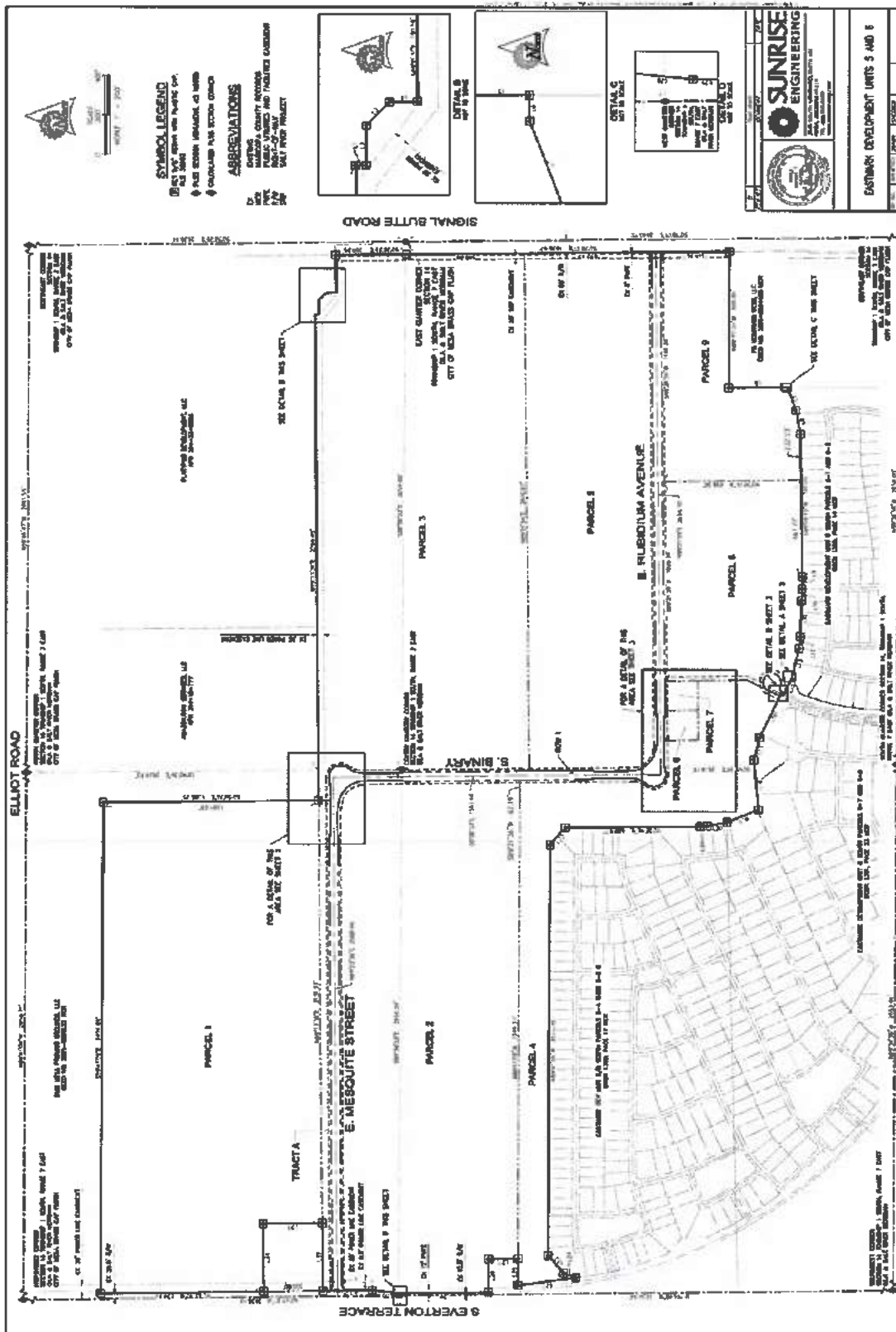
Exhibit B: (1 page)

is on file and can be viewed at:

Real Estate Department
City of Mesa
20 E. Main Street, 5th Floor
Mesa, AZ 85201

EXHIBIT B

Depiction of Recreational Facility Site



**FIFTH AMENDMENT TO PRE-ANNEXATION AND
DEVELOPMENT AGREEMENT**

Between

CITY OF MESA

AND

DMB MESA PROVING GROUNDS LLC

Exhibit C: (1 page)

is **not** recordable and therefore **not** recorded with
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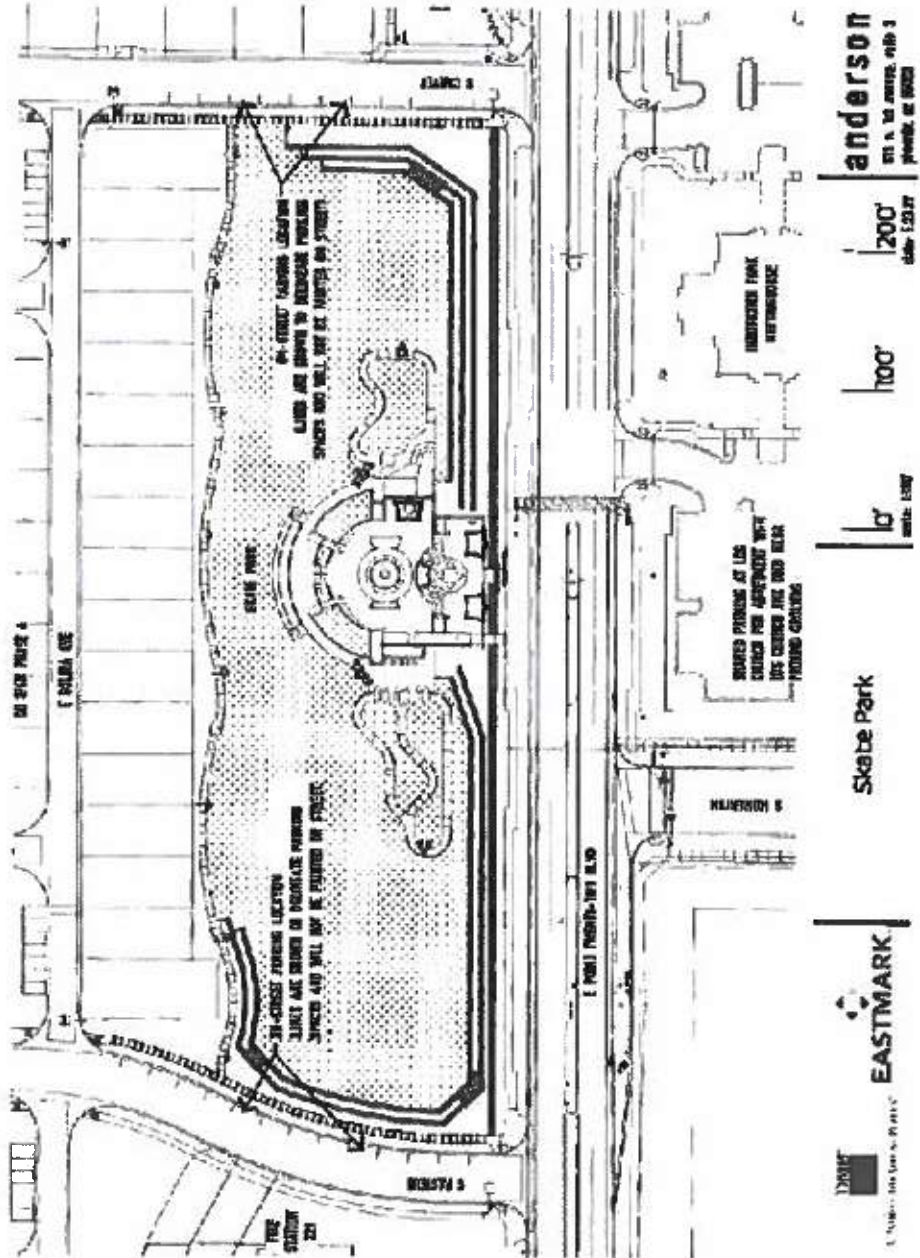
**FIFTH AMENDMENT TO PRE-ANNEXATION AND
DEVELOPMENT AGREEMENT**

Exhibit C: (1 page)

is on file and can be viewed at:

Real Estate Department
City of Mesa
20 E. Main Street, 5th Floor
Mesa, AZ 85201

EXHIBIT C
Depiction of Skate Park Including Parking



**FIFTH AMENDMENT TO PRE-ANNEXATION AND
DEVELOPMENT AGREEMENT**

Between

CITY OF MESA

AND

DMB MESA PROVING GROUNDS LLC

Exhibit D: (1 page)

is **not** recordable and therefore **not** recorded with
this

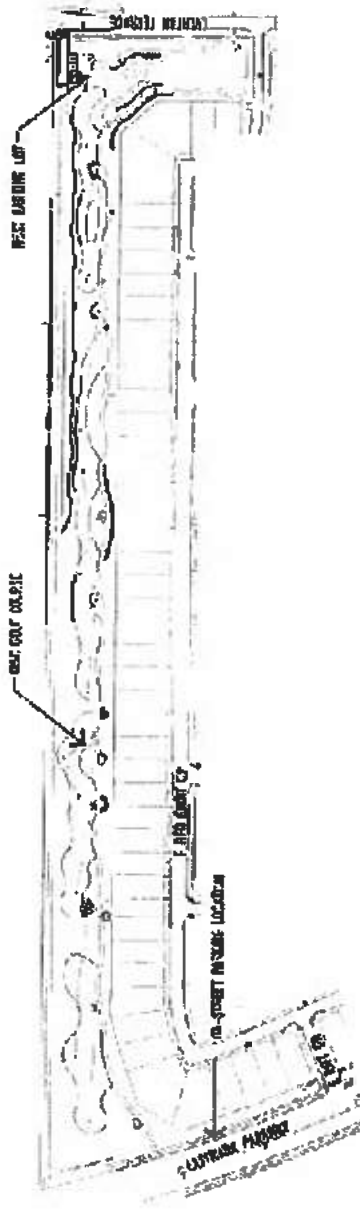
**FIFTH AMENDMENT TO PRE-ANNEXATION AND
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Exhibit D: (1 page)

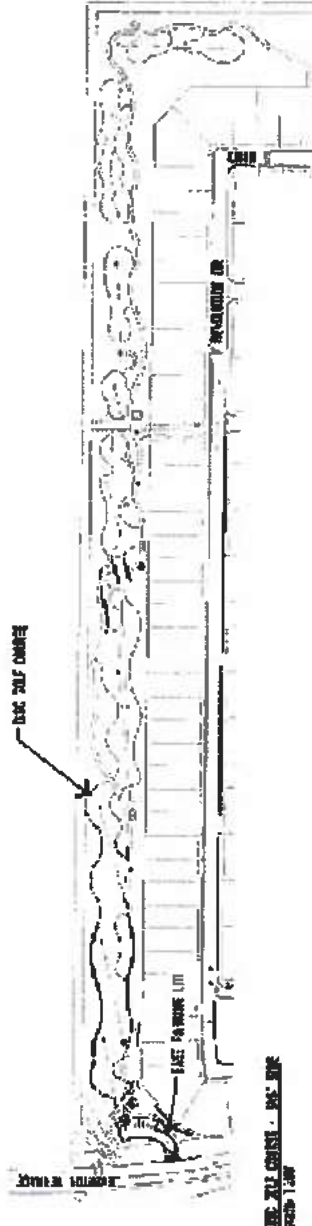
is on file and can be viewed at:

Real Estate Department
City of Mesa
20 E. Main Street, 5th Floor
Mesa, AZ 85201

EXHIBIT D
Depiction of Disc Golf Course Including Parking



DISC GOLF COURSE - WEST SIDE
 SCALE 1:100



DISC GOLF COURSE - EAST SIDE
 SCALE 1:100

DMT **EASTMARK** **anderson**
 10' 1200' 1600'
 Scale 1:100 for all sheets
 175 N. 1st Street, Suite 300
 Phoenix, AZ 85003

**FIFTH AMENDMENT TO PRE-ANNEXATION AND
DEVELOPMENT AGREEMENT**

Between

CITY OF MESA

AND

DMB MESA PROVING GROUNDS LLC

Exhibit E: (1 page)

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**FIFTH AMENDMENT TO PRE-ANNEXATION AND
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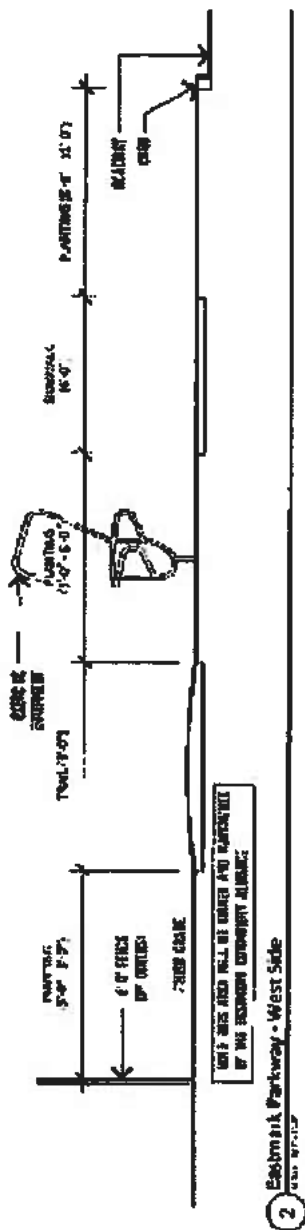
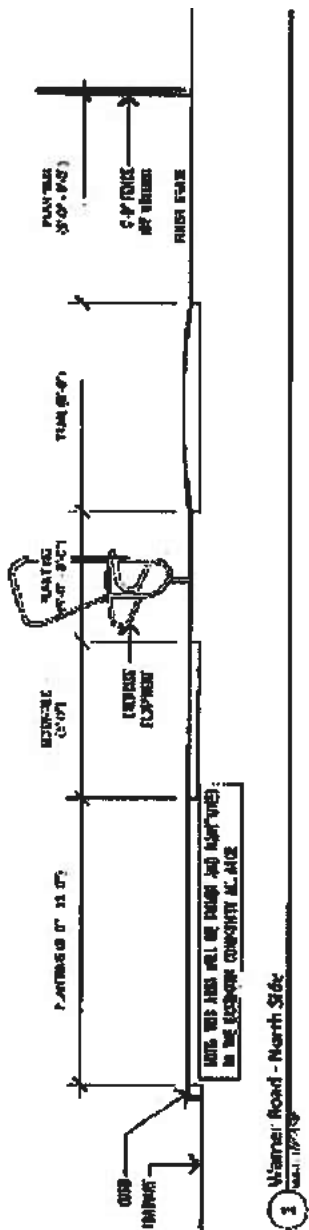
Exhibit E: (1 page)

is on file and can be viewed at:

Real Estate Department
City of Mesa
20 E. Main Street, 5th Floor
Mesa, AZ 85201

EXHIBIT E

Depiction of Enhanced Multiuse Path Connection to the Great Park



DME
A Division of Eastman Park, Inc.

EASTMARK

Enhanced Multi-Use Path
Connecting Great Park Phase 4 to
the Disc Golf Course

10.66' (with 3.03.27)

5.33'

0' (with 2.18' + 1'-0")

anderson
605 N. 1st Avenue, Suite 3
Placerville, CA 95367

**FIFTH AMENDMENT TO PRE-ANNEXATION AND
DEVELOPMENT AGREEMENT**

Between

CITY OF MESA

AND

DMB MESA PROVING GROUNDS LLC

Exhibit F: (1 page)

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**FIFTH AMENDMENT TO PRE-ANNEXATION AND
DEVELOPMENT AGREEMENT**

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is on file and can be viewed at:

Real Estate Department
City of Mesa
20 E. Main Street, 5th Floor
Mesa, AZ 85201

EXHIBIT F
Depiction of Additional 8.76 Park Acreage

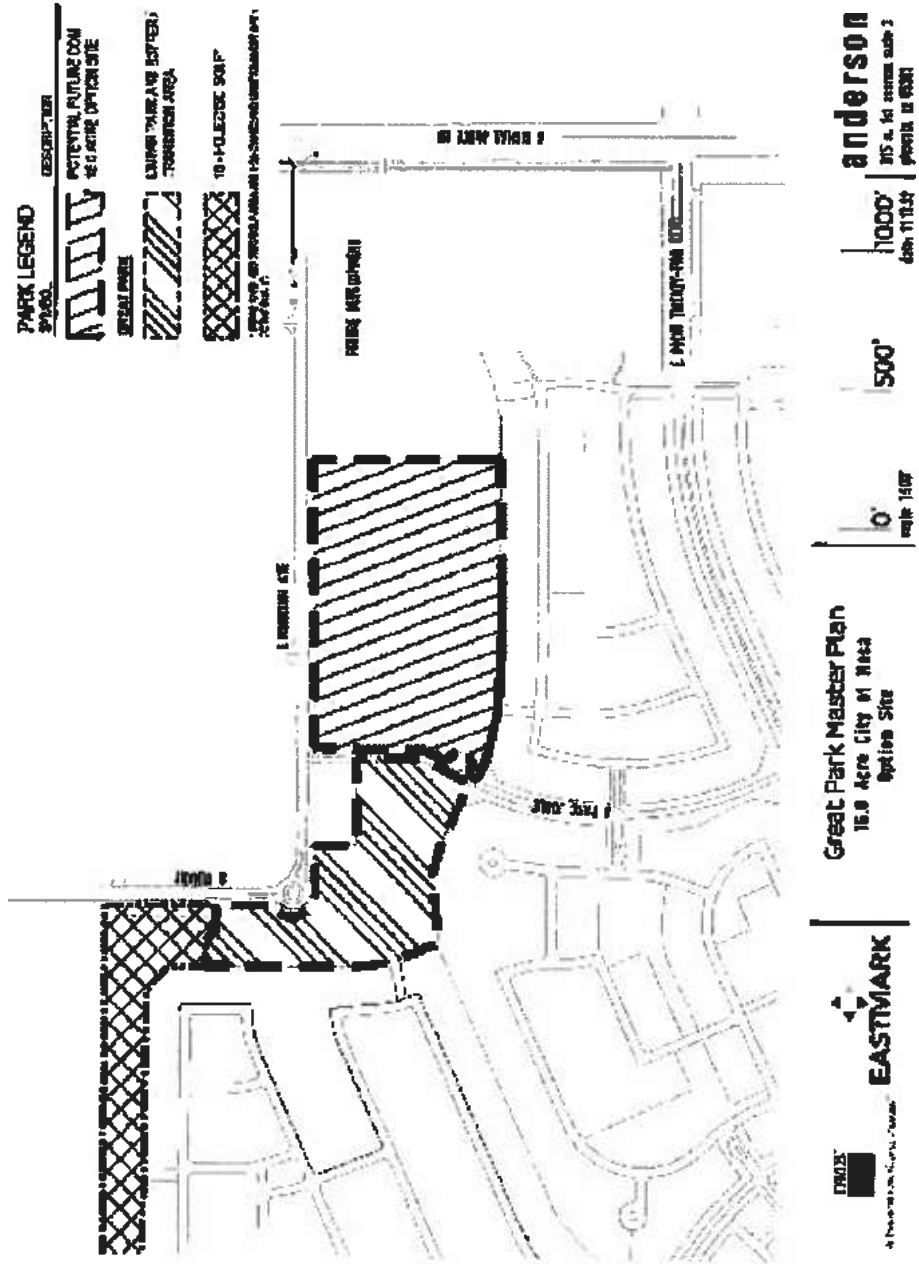


EXHIBIT G

Form Easement for the Skate Park

When Recorded, Return to:

City of Mesa
 Real Estate Services
 PO Box 1466
 Mesa, Arizona 85211-1466

**PUBLIC ACCESS EASEMENT AGREEMENT
 (Skate Park)**

This Public Access Easement Agreement (this "Agreement") is made and entered into as of _____, 2023 (the "Effective Date") between EASTMARK COMMUNITY ALLIANCE, INC., an Arizona nonprofit corporation ("Grantor"), and the City of Mesa, an Arizona municipal corporation ("City"). Grantor and City may be referred to herein collectively as the "Parties" and individually as a "Party."

RECITALS

A. Grantor is the owner of that certain real property located in the City of Mesa, County of Maricopa, State of Arizona, legally described as on Exhibit A and further described as Tract F, FINAL PLAT for EASTMARK - DU 3/4 NORTH PHASE 4 MDR recorded in the Official Records of Maricopa County as Document No. 20190943242 (the "Property").

B. The Property has been developed with a skate park and related improvements, including public parking (collectively, the "Skate Park").

C. Grantor and City desire to establish a perpetual easement in, on, over, under, across and through the Property for the benefit of the public.

D. The Parties agree that the Skate Park has been completed and Grantor shall maintain, repair, and replace the Property and Skate Park improvements at Grantor's sole cost and expense.

E. The Parties hereto desire to enter into this Agreement to provide that the Skate Park will be open for public use, on the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and City hereby agree as follows:

1. Easement. Subject to the terms and conditions set forth in this Agreement, Grantor hereby grants to City an easement, for the benefit of the public, in, on, over, under, across, and through the Property for purposes of: (i) access to the public for pedestrian ingress and egress and (ii) recreational use of the Skate Park by the public.

2. Term. The easement granted in Section 1 above shall become effective upon the recording of this Agreement in the official records of the Maricopa County Recorder. This Agreement shall remain in full force and effect for the longer of: (i) 40 years, (ii) as long as the Property, in whole or in part, is used as a skate park, or (iii) as long as any community facilities district bonds that are now

or hereafter issued to fund or acquire any portion of, or interest in, the Skate Park are outstanding unless the applicable community facilities district receives an opinion of legal counsel nationally recognized for expertise in municipal finance that such termination shall not adversely affect either the tax-exempt status or the enforceability of the bonds; provided, further, that the term may be modified if the City, through its City Manager, and the Grantor, through its Board, both agree (each in their sole and absolute discretion) to modify the term of this Agreement in a written amendment recorded in the official records of the Maricopa County Recorder. With respect to termination of this Agreement, Parties agree that, within 60 days of such termination, Parties in interest will record a termination of this Agreement in the official records of the Maricopa County Recorder.

3. Use by City and the Public. Upon recordation of this Agreement, City and the public shall have free, open, and continuous access to and use of the Property for: (i) pedestrian ingress and egress, and (ii) recreational use of the Skate Park.

4. Grantor's Operation of the Skate Park. Grantor, as owner of the Property, reserves the right to set the Skate Park's hours of operations and for use of the Skate Park for special events; provided, that the hours of operation shall generally be consistent with the hours of operation for the Eastmark Great Park and the public shall have equal access to and use of the Skate Park and Property as the residents of the Eastmark Development; and further provided that the number of days the Skate Park is may be used for special events shall not exceed thirty-five (35) days per calendar year, unless Grantor obtains the prior written approval of City for additional days; and City may, from time-to-time, request Grantor, and Grantor shall, provide documentation as to the operation and restriction to the public of the Skate Park including, but not limited to, the number of days the Skate Park has been used for special events.

5. Maintenance, Repair, and Replacement of Property and Skate Park. Grantor shall, at its sole cost and expense, be responsible for all repair, maintenance, and replacement obligations of any kind whatsoever for the Property and the Skate Park, including but not limited to, maintenance, repair, and replacement of all improvements, including but not limited to pavements, sidewalks, landscaping, irrigation, lighting, and all other Skate Park amenities. All maintenance, repairs, and replacement shall be completed in a sound, clean, safe, and attractive manner, in accordance with City standards, in compliance with all applicable laws, rules and regulations and at a level of maintenance, repair, and replacement and upkeep equal or superior to Phase 4 of the Eastmark Great Park. City shall have no maintenance, repair, or replacement obligations for the Property or the Skate Park; and the First Amendment to the Amended and Restated Community Maintenance Agreement and all addendums, collectively, as may be amended from time-to-time (the "Community Maintenance Agreement") for the Eastmark Great Park does NOT apply to the Property (under this Agreement) or the Skate Park.

6. Alteration of Property. Any desired alteration to the Property including, without limitation, the Skate Park amenities, by Grantor shall require written mutual agreement of the Parties. All costs of such improvements or changes shall be borne by Grantor unless otherwise mutually agreed.

7. No Obstructions, Conveyance or Limited Access. Grantor hereby agrees not to block, or allow the blockage, in any way, restrict or impede access to or from, or full use of, the Property and the Skate Park by City and the public except: (i) as may be reasonably necessary on a temporary basis for the repair, maintenance, and replacement of the Property and the Skate Park amenities, or (ii) as to limit use of the Skate Park during special events as permitted under Section 4 of this Agreement. Grantor shall not convey to any third party any easement, license, or any other interest or right of use of the Property and the Skate Park that would impair or limit the easement rights granted to the City and the public herein.

8. **Construction of Barriers.** No wall, fence, or barrier other than those approved by the City shall be constructed or erected on the Property that shall impair the use or exercise of any of the easement rights granted herein, or the ingress, egress, access and movement of City and the public over the Property.

9. **Indemnification.** Grantor shall, to the maximum extent permitted by law, indemnify, defend, and hold harmless City, and its officials, officers, and employees, (each, a "**City Indemnitee**") and collectively, the "**City Indemnitees**") for, from and against all claims, losses, actions, lawsuits, demands, damages, costs, expenses (including, but not limited to, experts fees and reasonable attorneys' fees and costs) and liabilities of whatever kind or nature (collectively, "**Claims**"), that arise from or are related to, in whole or in part, any of the following: (i) the ingress, egress, access, entry on or use of the Property or Skate Park by Grantor, its directors, officers, employees, contractors, or Grantor's members or the residents, property owners, or lessees of the Eastmark Development or their invitees, and additionally (ii) during or relating, in whole or in part, to any Special Event (as defined below), for the ingress, egress, access, entry on or use of the Property or Skate Park by members of the public; except for claims arising from the sole and exclusive negligence or willful misconduct of City or any City Indemnitee. As used in this Section 9, the term "**Special Event**" means an event or other use of the Property or the Skate Park by Grantor or its officials, employees, contractors, residents, or licensees that would or does result in loss of the qualified immunity (i.e., the required showing of "willful, malicious or grossly negligent conduct") to City Indemnitees under A.R.S. §33-1551, as may be amended from time-to-time, including but not limited to any use or event by Grantor that charges an admission fee or other consideration (as contemplated in A.R.S. §33-1551(G)(5)(a)) that results in the loss of the qualified immunity under this statute. "**Eastmark Development**" means all property within the Eastmark Development (i.e., all the property within that certain real property located in Maricopa County, Arizona consisting of approximately three thousand one hundred fifty-four (3,154) acres legally described in Exhibit A attached to the PADA recorded in the Official Records of the Maricopa County Recorder's Office as Document No. 2008-0974930 that was developed, or is used or occupied, for residential purposes (including, single family and multi-family residential uses).

10. **Representation, Warranty, Waiver, and Indemnity.** Grantor and City warrant and represent, each to the other, that it has full power and authority to enter into this Agreement. Grantor further warrants and represents to City and each of Eastmark Community Facilities District No.1 (City of Mesa, Arizona) ("**CFD No. 1**") and Eastmark Community Facilities District No.2 (City of Mesa, Arizona) ("**CFD No. 2**") (CFD No. 1 together with CFD No. 2 the "**Eastmark CFDs**") that it has the authority to grant the easement set forth in Section 1 above and to enter into this Agreement. Grantor hereby agrees to indemnify, defend and hold City and the Eastmark CFDs and their respective officials, officers, and employees harmless from any Claims that arise from or are related to, in whole or in part, any of the following: any allegation or assertion that Grantor does not have the authority to grant this easement or enter into this Agreement. Grantor hereby waives any right it may have to challenge the ability of the Eastmark CFDs to issue bonds to fund or acquire any portion of, or interest in, the Property. For purposes of any bonds issued by the Eastmark CFDs pertaining to the Skate Park, Grantor and City intend that the value of the easement granted pursuant to this Agreement would be equal to the eligible construction costs of the Skate Park improvements; provided, however, that such eligible construction costs are subject to approval by the respective engineers and boards of directors of the Eastmark CFDs.

11. **Notices.** Any notices or communications hereunder shall be in writing and shall be personally delivered, or sent by first class mail, certified or registered, postage prepaid, or by national overnight courier, with charges prepaid for next business day delivery, or by email, provided that such email shall be promptly followed by delivery of such notice pursuant to one of the other foregoing delivery methods, addressed to the addressee Party at the address or addresses listed below, or to such other address or addresses as such Party may from time to time designate in writing. Notices shall be

deemed received upon actual receipt of the notice by the Party being sent the notice, or on the following business day if sent by overnight courier, or on the expiration of three (3) business days after the date of mailing.

If to Grantor: Eastmark Community Alliance, Inc.
c/o Cohere Life, Inc.
7600 E. Doubletree Ranch Rd., Suite 250
Scottsdale, Arizona 85258
Attn: Chadwick Reed

with a copy to: Carpenter, Hazelwood, Delgado & Bolen
1400 E Southern Ave, #400
Tempe, Arizona 85282
Attn: Chad Miesen

If to the City: City of Mesa
Parks, Recreation & Commercial Facilities
200 South Center Street, Building 1
Mesa, AZ 85210
Attn: Department Director

With a copy to: City of Mesa
City Attorney's Office
20 East Main Street, Suite 850
Mesa, AZ 85201
Attn: City Attorney

12. **Governing Law.** This Agreement shall in all respects be interpreted, enforced, and governed by and under the laws of the State of Arizona, without reference to its choice of law principles or provisions.

13. **Entire Agreement.** This Agreement supersedes all previous oral and written agreements between and representations by or on behalf of the Parties hereto and constitutes the entire agreement of the Parties with respect to the subject matter hereof. This Agreement may not be amended except by a written agreement executed by both Parties.

14. **Binding Effect.** This Agreement and the covenants and agreements herein contained shall run with the land and shall be binding on, and inure to the benefit of, the Parties hereto and their respective successors and assigns.

15. **Remedies and Attorneys' Fees.** In addition to any other remedies available herein or at law or in equity, City shall have the right to maintain an action for specific performance for Grantor's obligations under this Agreement (including, but not limited to, obligations related to operations and limited number of special events under Section 4 and maintenance, repair, and replacement obligations under Section 5), and Grantor agrees that City may not otherwise have an adequate remedy for damages for such a breach; and therefore, Grantor agrees that specific performance is appropriate and may be obtained as a remedy to enforce the obligations under this Agreement. Additionally, the Parties agree that they shall have the right to bring an action for actual damages sustained as a result of a breach of this Agreement (but specifically excluding exemplary, punitive, or consequential damages; provided further that these exclusions and limitations shall not apply or limit the indemnity obligations under this Agreement) and/or to enjoin or otherwise restrain any such breach, or continuing breaches thereafter. All

costs and expenses incurred by the prevailing party to seek damages from, or equitable relief against, the non-prevailing party as a result of breaches of this Agreement, together with the prevailing party's reasonable attorneys' fees, expert witness fees, costs of tests and analyses, deposition and trial transcript costs and costs of court shall be assessed against, and paid by, the non-prevailing party. A party shall be deemed to have prevailed in any such action (without limiting the generality of the foregoing) if such party obtains substantially the relief sought by it in the action, irrespective of whether such action is prosecuted to judgment. Attorneys' fees shall include, without limitation, fees incurred in discovery, contempt proceedings, and bankruptcy litigation. The non-prevailing party(ies) shall also pay the attorney's fees and costs incurred by the prevailing party in any post judgment proceedings to collect and enforce the judgment. The covenant in the preceding sentence is separate and several and shall survive the merger of this provision into any judgment on this Agreement.

16. **No Waiver.** Any waiver with respect to any provision of this Agreement shall not be effective unless in writing and signed by the Party against whom it is asserted. The waiver of any provision of this Agreement by a Party shall not be construed as a waiver of a subsequent breach or failure of the same term or condition or as a waiver of any other provision of this Agreement.

17. **Intended Third-Party Beneficiaries.** The Parties agree that the Eastmark CFDs are intended third beneficiaries of this Agreement with the right to enforce, bring actions, and sue under this Agreement including, but not limited to, the warranty, representations, waiver, and indemnity provisions under Section 10 of this Agreement.

18. **Third-Party Beneficiary Limited to Eastmark CFDs.** Except as provided in Section 17 above, the provisions of this Agreement are for the exclusive benefit of the Parties and their successors and assigns and shall not be deemed to confer any rights upon any person, except such Parties and their successors and assigns, subject to the limitations on assignment set forth in this Agreement.

19. **Conflict of Interest Statute.** This Agreement is subject to, and may be terminated by City in accordance with, the provisions of A.R.S. § 38-511.

20. **Captions.** The captions in this Agreement are for reference only and shall in no way define or interpret any provision hereof.

21. **Severability.** If any provision of this Agreement shall be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the full extent permitted by law, provided the material provisions of this Agreement can be determined and effectuated.

22. **Counterparts.** This Agreement may be executed in identical counterpart copies, each of which shall be an original, but all of which taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth below each signature, effective upon the Effective Date first written above.

[signatures on separate pages to follow]

"Grantor" EASTMARK COMMUNITY ALLIANCE, INC., an Arizona nonprofit corporation

By: _____

Its: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 202 ., by
the _____ of
EASTMARK COMMUNITY ALLIANCE, INC., an Arizona nonprofit corporation.

Notary Public

My commission expires:

"City"

CITY OF MESA, an Arizona municipal corporation

By: _____

Its: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 202__,
by _____, the _____ of
CITY OF MESA, an Arizona municipal corporation.

Notary Public

My commission expires:

EXHIBIT A

Legal Description of Property

Tract F, FINAL PLAT for EASTMARK – DU 3/4 NORTH PHASE 4 MDR, a subdivision according to the plat recorded in Book 1495 of Maps, Page 36, Official Records of Maricopa County, Arizona.

EXHIBIT H

Form Easement for the Disc Golf Course

When Recorded, Return to:

City of Mesa
Real Estate Services
PO Box 1466
Mesa, Arizona 85211-1466

**PUBLIC ACCESS EASEMENT AGREEMENT
(Disc Golf Course)**

This Public Access Easement Agreement (this "Agreement") is made and entered into as of _____, 202_ (the "Effective Date") between EASTMARK COMMUNITY ALLIANCE, INC., an Arizona nonprofit corporation ("Grantor"), and the City of Mesa, an Arizona municipal corporation ("City"). Grantor and City may be referred to herein collectively as the "Parties" and individually as a "Party."

RECITALS

- A. Grantor is the owner of that certain real property located in the City of Mesa, County of Maricopa, State of Arizona, legally described on Exhibit A and further depicted on the FINAL PLAT for EASTMARK DISC GOLF COURSE recorded in the Official Records of Maricopa County as Document No. 20190117874 (the "Property").
- B. The Property has been developed with a disc golf course and related improvements, including public parking (collectively, the "Disc Golf Course").
- C. Grantor and City desire to establish a perpetual easement in, on, over, under, across and through the Property for the benefit of the public.
- D. The Parties agree that the Disc Golf Course has been completed and Grantor shall maintain, repair, and replace the Property and Disc Golf Course improvements at Grantor's sole cost and expense.
- E. The Parties hereto desire to enter into this Agreement to provide that the Disc Golf Course will be open for public use, on the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and City hereby agree as follows:

1. Easement. Subject to the terms and conditions set forth in this Agreement, Grantor hereby grants to City an easement, for the benefit of the public, in, on, over, under, across, and through the Property for purposes of: (i) access to the public for pedestrian ingress and egress and (ii) recreational use of the Disc Golf Course by the public.

2. **Term.** The easement granted in Section 1 above shall become effective upon the recording of this Agreement in the official records of the Maricopa County Recorder. This Agreement shall remain in full force and effect for the longer of: (i) 40 years, (ii) as long as the Property, in whole or in part, is used as a disc golf course, or (iii) as long as any community facilities district bonds that are now or hereafter issued to fund or acquire any portion of, or interest in, the Disc Golf Course are outstanding unless the applicable community facilities district receives an opinion of legal counsel nationally recognized for expertise in municipal finance that such termination shall not adversely affect either the tax-exempt status or the enforceability of the bonds; provided, further, that the term may be modified if the City, through its City Manager, and the Grantor, through its Board, both agree (each in their sole and absolute discretion) to modify the term of this Agreement in a written amendment recorded in the official records of the Maricopa County Recorder. With respect to termination of this Agreement, Parties agree that, within 60 days of such termination, Parties in interest will record a termination of this Agreement in the official records of the Maricopa County Recorder.

3. **Use by City and the Public.** Upon recordation of this Agreement, City and the public shall have free, open, and continuous access to and use of the Property for: (i) pedestrian ingress and egress, and (ii) recreational use of the Disc Golf Course.

4. **Grantor's Operation of the Disc Golf Course.** Grantor, as owner of the Property, reserves the right to set the Disc Golf Course's hours of operations and for use of the Disc Golf Course for special events; provided, that the hours of operation shall generally be consistent with the hours of operation for the Eastmark Great Park and the public shall have equal access to and use of the Disc Golf Course and Property as the residents of the Eastmark Development; and further provided that the number of days the Disc Golf Course is may be used for special events shall not exceed thirty-five (35) days per calendar year, unless Grantor obtains the prior written approval of City for additional days; and City may, from time-to-time, request Grantor, and Grantor shall, provide documentation as to the operation and restriction to the public of the Disc Golf Course including, but not limited to, the number of days the Disc Golf Course has been used for special events.

5. **Maintenance, Repair, and Replacement of Property and Disc Golf Course.** Grantor shall, at its sole cost and expense, be responsible for all repair, maintenance, and replacement obligations of any kind whatsoever for the Property and the Disc Golf Course, including but not limited to, maintenance, repair, and replacement of all improvements, including but not limited to pavements, sidewalks, landscaping, irrigation, lighting, and all other Disc Golf Course amenities. All maintenance, repairs, and replacement shall be completed in a sound, clean, safe, and attractive manner, in accordance with City standards, in compliance with all applicable laws, rules and regulations and at a level of maintenance, repair, and replacement and upkeep equal or superior to Phase 4 of the Eastmark Great Park. City shall have no maintenance, repair, or replacement obligations for the Property or the Disc Golf Course; and the First Amendment to the Amended and Restated Community Maintenance Agreement and all addendums, collectively, as may be amended from time-to-time (the "Community Maintenance Agreement") for the Eastmark Great Park does NOT apply to the Property (under this Agreement) or the Disc Golf Course.

6. **Alteration of Property.** Any desired alteration to the Property including, without limitation, the Disc Golf Course amenities, by Grantor shall require written mutual agreement of the Parties. All costs of such improvements or changes shall be borne by Grantor unless otherwise mutually agreed.

7. **No Obstructions, Conveyance or Limited Access.** Grantor hereby agrees not to block, or allow the blockage, in any way, restrict or impede access to or from, or full use of, the Property and the Disc Golf Course by City and the public except: (i) as may be reasonably necessary on a temporary basis for the repair, maintenance, and replacement of the Property and the Disc Golf Course amenities, or (ii) as to limit use of the Disc Golf Course during special events as permitted under Section 4 of this Agreement. Grantor shall not convey to any third party any easement, license, or any other interest or right of use of the Property and the Disc Golf Course that would impair or limit the easement rights granted to the City and the public herein.

8. **Construction of Barriers.** No wall, fence, or barrier other than those approved by the City shall be constructed or erected on the Property that shall impair the use or exercise of any of the easement rights granted herein, or the ingress, egress, access and movement of City and the public over the Property.

9. **Indemnification.** Grantor shall, to the maximum extent permitted by law, indemnify, defend, and hold harmless City, and its officials, officers, and employees, (each, a "City Indemnitee" and collectively, the "City Indemnitees") for, from and against all claims, losses, actions, lawsuits, demands, damages, costs, expenses (including, but not limited to, experts fees and reasonable attorneys' fees and costs) and liabilities of whatever kind or nature (collectively, "Claims"), that arise from or are related to, in whole or in part, any of the following: (i) the ingress, egress, access, entry on or use of the Property or Disc Golf Course by Grantor, its directors, officers, employees, contractors, or Grantor's members or the residents, property owners, or lessees of the Eastmark Development or their invitees, and additionally (ii) during or relating, in whole or in part, to any Special Event (as defined below), for the ingress, egress, access, entry on or use of the Property or Disc Golf Course by members of the public; except for claims arising from the sole and exclusive negligence or willful misconduct of City or any City Indemnitee. As used in this Section 9, the term "Special Event" means an event or other use of the Property or the Disc Golf Course by Grantor or its officials, employees, contractors, residents, or licensees that would or does result in loss of the qualified immunity (i.e., the required showing of "willful, malicious or grossly negligent conduct") to City Indemnitees under A.R.S. §33-1551, as may be amended from time-to-time, including but not limited to any use or event by Grantor that charges an admission fee or other consideration (as contemplated in A.R.S. §33-1551(G)(5)(a)) that results in the loss of the qualified immunity under this statute. "Eastmark Development" means all property within the Eastmark Development (i.e., all the property within that certain real property located in Maricopa County, Arizona consisting of approximately three thousand one hundred fifty-four(3,154) acres legally described in Exhibit A attached to the PADA recorded in the Official Records of the Maricopa County Recorder's Office as Document No. 2008-0974930 that was developed, or is used or occupied, for residential purposes (including, single family and multi-family residential uses).

10. **Representation, Warranty, Waiver, and Indemnity.** Grantor and City warrant and represent, each to the other, that it has full power and authority to enter into this Agreement. Grantor further warrants and represents to City and each of Eastmark Community Facilities District No.1 (City of Mesa, Arizona)("CFD No. 1") and Eastmark Community Facilities District No.2 (City of Mesa, Arizona)("CFD No. 2") (CFD No. 1 together with CFD No. 2 the "Eastmark CFDs") that it has the authority to grant the easement set forth in Section 1 above and to enter into this Agreement. Grantor hereby agrees to indemnify, defend and hold City and the Eastmark CFDs and their respective officials, officers, and employees harmless from any Claims that arise from or are related to, in whole or in part, any of the following: any allegation or assertion that Grantor does not have the authority to grant this easement or enter into this Agreement. Grantor hereby waives any right it may have to challenge the ability of the Eastmark CFDs to issue bonds to fund or acquire any portion

of, or interest in, the Property. For purposes of any bonds issued by the Eastmark CFDs pertaining to the Disc Golf Course, Grantor and City intend that the value of the easement granted pursuant to this Agreement would be equal to the eligible construction costs of the Disc Golf Course improvements; provided, however, that such eligible construction costs are subject to approval by the respective engineers and boards of directors of the Eastmark CFDs.

11. **Notices.** Any notices or communications hereunder shall be in writing and shall be personally delivered, or sent by first class mail, certified or registered, postage prepaid, or by national overnight courier, with charges prepaid for next business day delivery, or by email, provided that such email shall be promptly followed by delivery of such notice pursuant to one of the other foregoing delivery methods, addressed to the addressee Party at the address or addresses listed below, or to such other address or addresses as such Party may from time to time designate in writing. Notices shall be deemed received upon actual receipt of the notice by the Party being sent the notice, or on the following business day if sent by overnight courier, or on the expiration of three (3) business days after the date of mailing.

If to Grantor: Eastmark Community Alliance, Inc.
 c/o Cohere Life, Inc.
 7600 E. Doubletree Ranch Rd., Suite 250
 Scottsdale, Arizona 85258
 Attn: Chadwick Reed

with a copy to: Carpenter, Hazelwood, Delgado & Bolen
 1400 E Southern Ave, #400
 Tempe, Arizona 85282
 Attn: Chad Miesen

If to the City: City of Mesa
 Parks, Recreation & Commercial Facilities
 200 South Center Street, Building 1
 Mesa, AZ 85210
 Attn: Department Director

With a copy to: City of Mesa
 City Attorney's Office
 20 East Main Street, Suite 850
 Mesa, AZ 85201
 Attn: City Attorney

12. **Governing Law.** This Agreement shall in all respects be interpreted, enforced, and governed by and under the laws of the State of Arizona, without reference to its choice of law principles or provisions.

13. **Entire Agreement.** This Agreement supersedes all previous oral and written agreements between and representations by or on behalf of the Parties hereto and constitutes the entire agreement of the Parties with respect to the subject matter hereof. This Agreement may not be amended except by a written agreement executed by both Parties.

14. **Binding Effect.** This Agreement and the covenants and agreements herein contained shall run with the land and shall be binding on, and inure to the benefit of, the Parties hereto and their respective successors and assigns.

15. **Remedies and Attorneys' Fees.** In addition to any other remedies available herein or at law or in equity, City shall have the right to maintain an action for specific performance for Grantor's obligations under this Agreement (including, but not limited to, obligations related to operations and limited number of special events under Section 4 and maintenance, repair, and replacement obligations under Section 5), and Grantor agrees that City may not otherwise have an adequate remedy for damages for such a breach; and therefore, Grantor agrees that specific performance is appropriate and may be obtained as a remedy to enforce the obligations under this Agreement. Additionally, the Parties agree that they shall have the right to bring an action for actual damages sustained as a result of a breach of this Agreement, (but specifically excluding exemplary, punitive, or consequential damages; provided further that these exclusions and limitations shall not apply or limit the indemnity obligations under this Agreement) and/or to enjoin or otherwise restrain any such breach, or continuing breaches thereafter. All costs and expenses incurred by the prevailing party to seek damages from, or equitable relief against, the non-prevailing party as a result of breaches of this Agreement, together with the prevailing party's reasonable attorneys' fees, expert witness fees, costs of tests and analyses, deposition and trial transcript costs and costs of court shall be assessed against, and paid by, the non-prevailing party. A party shall be deemed to have prevailed in any such action (without limiting the generality of the foregoing) if such party obtains substantially the relief sought by it in the action, irrespective of whether such action is prosecuted to judgment. Attorneys' fees shall include, without limitation, fees incurred in discovery, contempt proceedings, and bankruptcy litigation. The non-prevailing party(ies) shall also pay the attorney's fees and costs incurred by the prevailing party in any post judgment proceedings to collect and enforce the judgment. The covenant in the preceding sentence is separate and several and shall survive the merger of this provision into any judgment on this Agreement.

16. **No Waiver.** Any waiver with respect to any provision of this Agreement shall not be effective unless in writing and signed by the Party against whom it is asserted. The waiver of any provision of this Agreement by a Party shall not be construed as a waiver of a subsequent breach or failure of the same term or condition or as a waiver of any other provision of this Agreement.

17. **Intended Third-Party Beneficiaries.** The Parties agree that the Eastmark CFDs are intended third-party beneficiaries of this Agreement with the right to enforce, bring actions, and sue under this Agreement including, but not limited to, the warranty, representations, waiver, and indemnity provisions under Section 10 of this Agreement.

18. **Third-Party Beneficiary Limited to Eastmark CFDs.** Except as provided in Section 17 above, the provisions of this Agreement are for the exclusive benefit of the Parties and their successors and assigns and shall not be deemed to confer any rights upon any person, except such Parties and their successors and assigns, subject to the limitations on assignment set forth in this Agreement.

19. **Conflict of Interest Statute.** This Agreement is subject to, and may be terminated by City in accordance with, the provisions of A.R.S. § 38-511.

20. **Captions.** The captions in this Agreement are for reference only and shall in no way define or interpret any provision hereof.

21. **Severability.** If any provision of this Agreement shall be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the full extent permitted by law, provided the material provisions of this Agreement can be determined and effectuated.

22. **Counterparts.** This Agreement may be executed in identical counterpart copies, each of which shall be an original, but all of which taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth below each signature, effective upon the Effective Date first written above.

[signatures and exhibits on separate pages to follow]

"Grantor" EASTMARK COMMUNITY ALLIANCE, INC., an Arizona nonprofit corporation

By: _____

Its: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 202 ,
by _____, the _____ of
EASTMARK COMMUNITY ALLIANCE, INC., an Arizona nonprofit corporation.

My commission expires:

Notary Public

"City"

CITY OF MESA, an Arizona municipal corporation

By: _____

Its: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 202__,
by _____, the _____ of
CITY OF MESA, an Arizona municipal corporation.

Notary Public

My commission expires:

EXHIBIT A

Legal Description of the Property

(Disc Golf Course)

Parcel No. 1 (Holes 1 through 9):

Tracts A, B and C, FINAL PLAT for EASTMARK DISC GOLF COURSE, a subdivision according to the plat recorded in Book 1441 of Maps, Page 35, Official Records of Maricopa County, Arizona,

and

Tract G, FINAL PLAT for EASTMARK DEVELOPMENT UNIT 6 - INFRASTRUCTURE FOR PARCELS 4-6 AND 9-23, a subdivision according to the plat recorded in Book 1343 of Maps, Page 15, Official Records of Maricopa County, Arizona,

Parcel No. 2 (Holes 10 through 18):

Tracts F and G, FINAL PLAT for EASTMARK DISC GOLF COURSE, a subdivision according to the plat recorded in Book 1441 of Maps, Page 35, Official Records of Maricopa County, Arizona,

Together with the following described parcel of real property:

[See attached]

LEGAL DESCRIPTION

A PORTION OF PARCEL 4, AS SHOWN ON THE FINAL PLAT FOR EASTMARK DEVELOPMENT UNITS 5 AND 6, RECORDED BOOK 1660 OF MAPS PAGE 14, MARICOPA COUNTY RECORDS, LOCATED IN THE SOUTHWEST QUARTER (SW 1/4) OF SECTION FOURTEEN (14), TOWNSHIP ONE (1) SOUTH, RANGE SEVEN (7) EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID PARCEL 4 MONUMENTED WITH A 5/8" REBAR WITH A PLASTIC CAP TAGGED "31020";

THENCE SOUTH 89°41'03" EAST, ALONG THE NORTH LINE OF SAID PARCEL 4, A DISTANCE OF 136.13 FEET;

THENCE SOUTH 89°41'09" EAST, ALONG SAID NORTH LINE, A DISTANCE OF 2349.37 FEET;

THENCE NORTH 89°21'36" EAST, ALONG SAID NORTH LINE, A DISTANCE OF 62.19 FEET;

THENCE SOUTH 00°38'24" EAST, ALONG THE EAST LINE OF SAID PARCEL 4, A DISTANCE OF 343.45 FEET;

THENCE SOUTH 09°10'15" EAST, ALONG SAID EAST LINE, A DISTANCE OF 40.35 FEET;

THENCE SOUTH 00°38'33" EAST, ALONG SAID EAST LINE, A DISTANCE OF 86.36 FEET;

THENCE LEAVING SAID EAST LINE, NORTH 89°41'05" WEST, A DISTANCE OF 248.20 FEET TO THE SOUTHEAST CORNER OF LOT 196 EASTMARK DEVELOPMENT UNIT 5/6 SOUTH PARCELS 6-4 TO 6-6, 6-9 AND 6-17 RECORDED IN BOOK 1360 OF MAPS PAGE 171, MARICOPA COUNTY RECORDS;

THENCE NORTH 0°38'46" WEST ALONG THE EAST LINE OF SAID LOT 196 AND THE WEST LINE OF PARCEL 4, A DISTANCE OF 241.94 FEET;

THENCE NORTH 47°58'26" WEST ALONG THE SOUTH LINE OF SAID PARCEL 4, A DISTANCE OF 115.17 FEET;

THENCE NORTH 89°41'05" WEST ALONG SAID SOUTH LINE, A DISTANCE OF 2070.75 FEET;

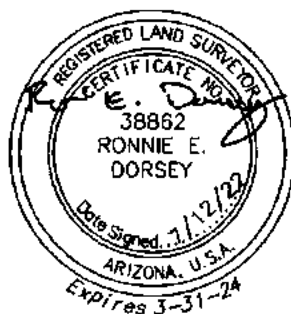
THENCE SOUTH 48°15'52" WEST ALONG THE LOT LINE, A DISTANCE OF 118.74 FEET;

THENCE SOUTH 20°40'53" WEST ALONG THE LOT LINE, A DISTANCE OF 66.38 FEET;

THENCE NORTH 07°43'52" WEST ALONG THE WEST LINE OF SAID PARCEL 4, A DISTANCE OF 294.60 FEET TO THE POINT OF BEGINNING;

CONTAINS 469196 SQUARE FEET OR 10.7713 ACRES OF LAND, MORE OR LESS.

SEE ATTACHED EXHIBIT "A" BY REFERENCE MADE A PART HERETO.

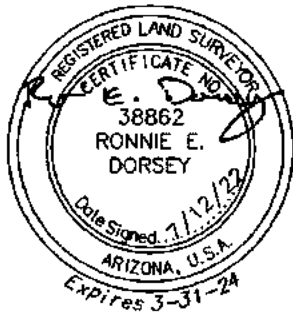


2045 SOUTH VINEYARD, SUITE 101
MESA, ARIZONA 85210
TEL 480.768.8600 • FAX 480.768.8609
www.sunrise-eng.com



EXHIBIT "A"

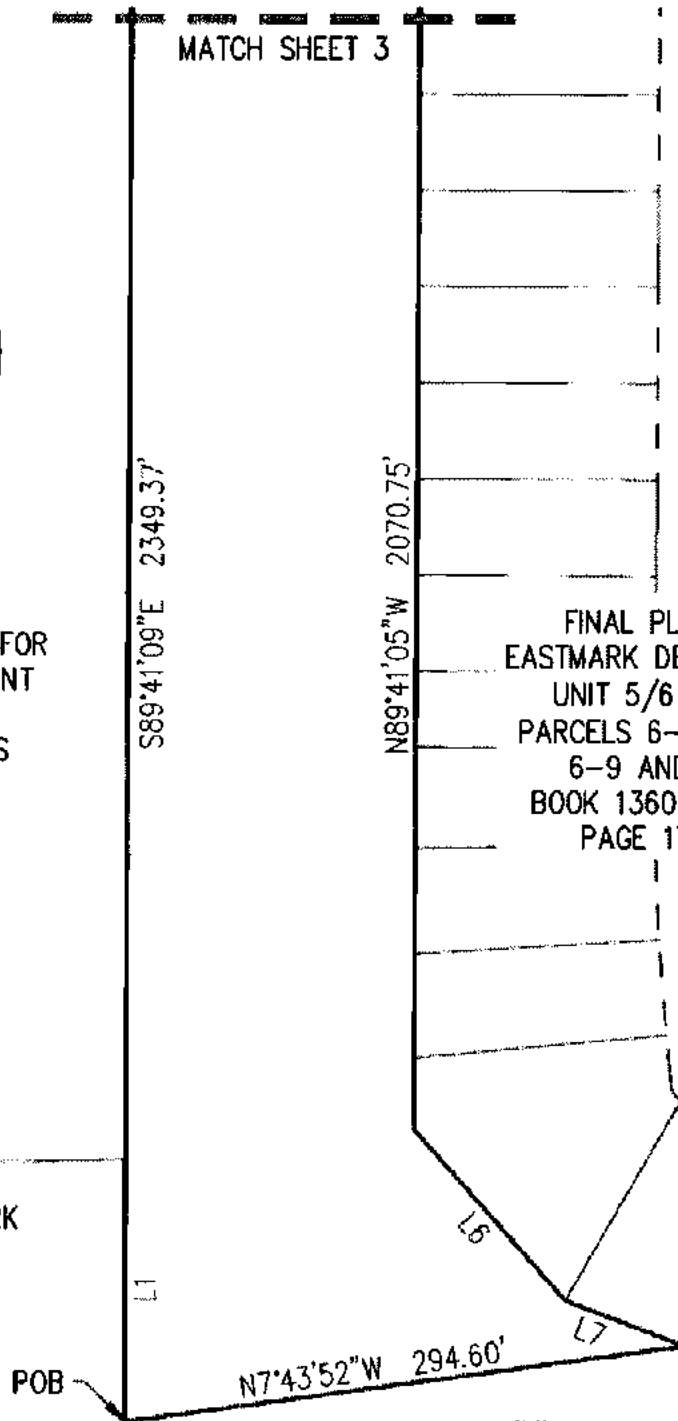
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PARCEL 2 FINAL PLAT FOR
EASTMARK DEVELOPMENT
UNIT 5 AND 6
BOOK 1660 OF MAPS
PAGE 14 MCR

PARCEL 2 OF EASTMARK
WELL SITE 4
MINOR LAND DIVISION
BOOK 1542 PAGE 45

MATCH SHEET 3



FINAL PLAT FOR
EASTMARK DEVELOPMENT
UNIT 5/6 SOUTH
PARCELS 6-4 TO 6-6,
6-9 AND 6-17
BOOK 1360 OF MAPS
PAGE 17 MCR

TRACT "I" PER EASTMARK
DU6 INFRASTRUCTURE FOR
PARCELS 4-6 AND 9-23
BOOK 1660 OF MAPS
PAGE 14 MCR

LEGEND

POB	POINT OF BEGINNING
R/W	RIGHT OF WAY
MCR	MARICOPA COUNTY RECORDS
	SUBJECT PARCEL BOUNDARY
	OTHER PROPERTY LINE
	EXISTING R/W LINE



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p:\p\rockfield Residence\08225 DU6 Mesquite\Survey\dwg\PARCEL 4 LAE.dwg Jul 12, 2022 02:58PM luis.ecastrocmpp

EXHIBIT "A"



SCALE: 1"=100'

MATCH SHEET 4

S89°41'09"E 2349.37'

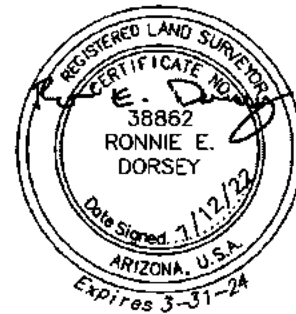
N89°41'05"W 2070.75'

PARCEL 2 FINAL PLAT FOR
EASTMARK DEVELOPMENT
UNIT 5 AND 6
BOOK 1660 OF MAPS
PAGE 14 MCR

FINAL PLAT FOR
EASTMARK DEVELOPMENT
UNIT 5/6 SOUTH
PARCELS 6-4 TO 6-6,
6-9 AND 6-17
BOOK 1360 OF MAPS
PAGE 17 MCR

LEGEND

POB	POINT OF BEGINNING
R/W	RIGHT OF WAY
MCR	MARICOPA COUNTY RECORDS
	SUBJECT PARCEL BOUNDARY
	OTHER PROPERTY LINE
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MATCH SHEET 2

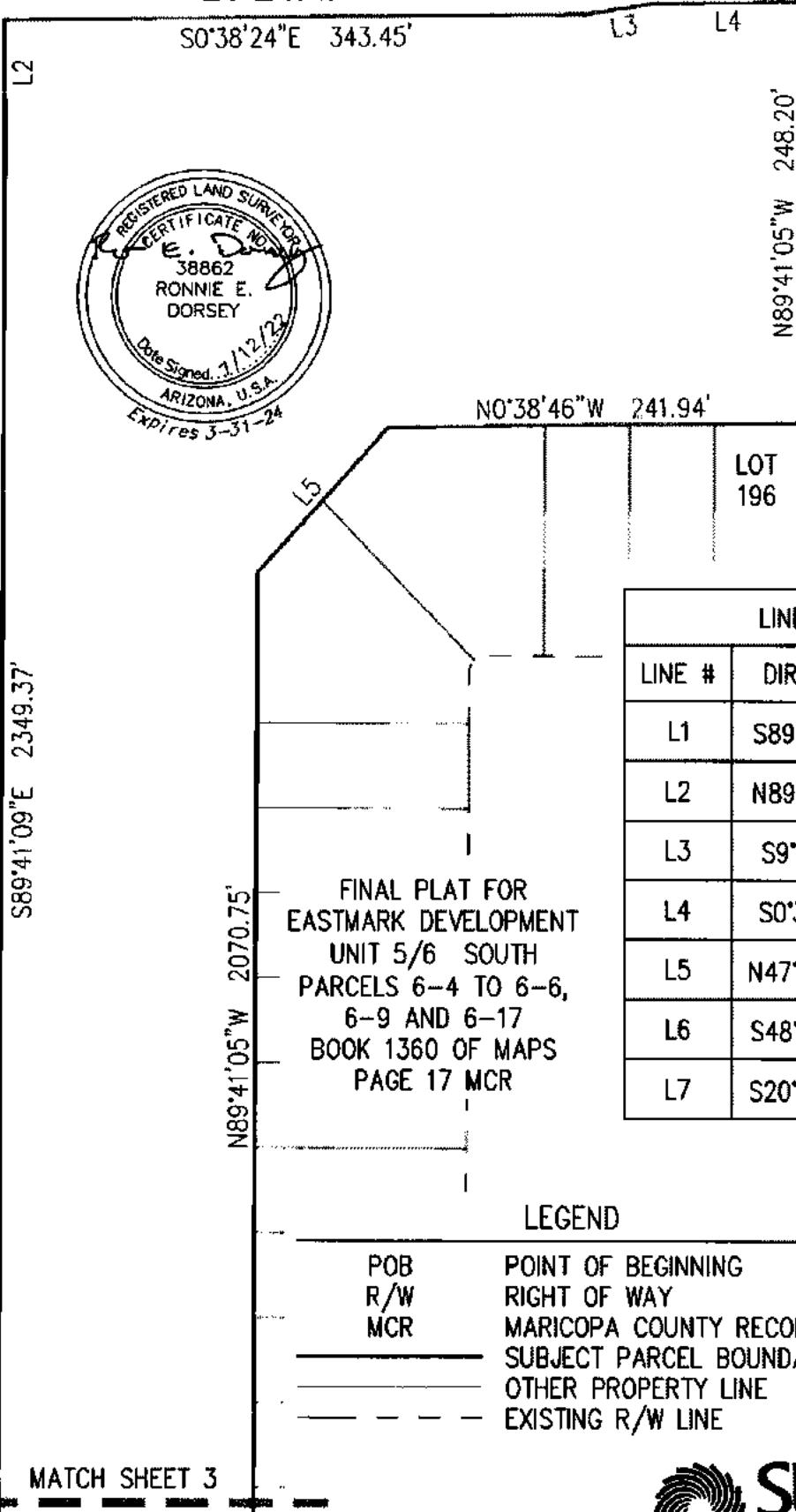
P:\Brookfield Residential\08223 DUB Mesquite\Survey\dwg\PARCEL_4_L&E.dwg Jul 12, 2022 02:58PM kls.ecostocompny

EXHIBIT "A"

S. BINARY



PARCEL 2 FINAL PLAT FOR
EASTMARK DEVELOPMENT
UNIT 5 AND 6
BOOK 1660 OF MAPS
PAGE 14 MCR



LINE TABLE		
LINE #	DIRECTION	LENGTH
L1	S89°41'03"E	136.13'
L2	N89°21'36"E	62.19'
L3	S9°10'15"E	40.35'
L4	S0°38'33"E	86.36'
L5	N47°58'26"W	115.17'
L6	S48°15'52"W	118.74'
L7	S20°40'53"W	66.38'

FINAL PLAT FOR
EASTMARK DEVELOPMENT
UNIT 5/6 SOUTH
PARCELS 6-4 TO 6-6,
6-9 AND 6-17
BOOK 1360 OF MAPS
PAGE 17 MCR

LEGEND

- POB POINT OF BEGINNING
- R/W RIGHT OF WAY
- MCR MARICOPA COUNTY RECORDS
- SUBJECT PARCEL BOUNDARY
- OTHER PROPERTY LINE
- - - EXISTING R/W LINE



SCALE: 1"=100'

MATCH SHEET 3



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RESOLUTION NO. 11983

A RESOLUTION OF THE COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, APPROVING AND AUTHORIZING THE CITY MANAGER TO ENTER INTO A FIFTH AMENDMENT TO THE MESA PROVING GROUNDS PRE-ANNEXATION AND DEVELOPMENT AGREEMENT WITH DMB MESA PROVING GROUNDS LLC, AND RELATED EASEMENT AGREEMENTS WITH THE EASTMARK COMMUNITY ALLIANCE, INC.

WHEREAS, the City of Mesa and DMB Mesa Proving Grounds LLC, entered into a development agreement dated November 3, 2008 (the "Development Agreement") detailing various promises by both parties relating to the development of approximately 3,154 acres of real property located south of Elliot Road and east of Ellsworth Road (the "Property"); and

WHEREAS, the Development Agreement is recorded in the Official Records of the Maricopa County Recorder's Office as Document No. 2008-0974930; and

WHEREAS, a First Amendment to the Development Agreement was entered into between the parties dated May 16, 2011, and is recorded in the Official Records of the Maricopa County Recorder's Office as Document No. 2011-0456474; and

WHEREAS, a Second Amendment to the Development Agreement was entered into between the parties dated November 21, 2013, and is recorded in the Official Records of the Maricopa County Recorder's Office as Document No. 2013-1005620, which provided that DMB Mesa Proving Grounds LLC, was to receive proceeds from the 2013 Street and Highway Bonds to support non-residential economic development projects within the Property; and

WHEREAS, a Third Amendment to the Development Agreement was entered into between the parties dated December 15, 2016, and is recorded in the Official Records of the Maricopa County Recorder's Office as Document No. 2016-0940133, which identified the public street improvements referenced above to mean the construction of Elliot Road as an arterial road, generally between Ellsworth and Signal Butte Roads; and

WHEREAS, a Fourth Amendment to the Development Agreement was entered into between the parties dated August 27, 2018, and is recorded in the Official Records of the Maricopa County Recorder's Office as Document No. 2018-0657828, to document the remaining obligations and modified agreements concerning the construction of public infrastructure on the Property; and

WHEREAS, Developer desires to amend the Development Agreement with a Fifth Amendment to the Pre-Annexation and Development Agreement (Mesa Proving Grounds) (the "Fifth Amendment") and related easement agreements as described therein (the "Easement Agreements") to resolve the outstanding obligations related to the Great Park, and

WHEREAS, the City Council hereby determines and finds that the Fifth Amendment and Easement Agreements further the original purpose of the Development Agreement.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:

Section 1: That the Fifth Amendment and the Easement Agreements are hereby approved.

Section 2: That the City Manager, Christopher J. Brady, or his designated representative, is authorized to execute the Fifth Amendment and the Easement Agreements together with all other documents necessary to carry out the provisions of the Fifth Amendment and Easement Agreements. Additionally, the City Manager is further authorized to enter into, and make amendments and modifications, administrative, technical, procedural and non-material modifications to the Fifth Amendment, Easement Agreements, and all of the exhibits thereto, as needed.

PASSED AND ADOPTED by the Council of the City of Mesa, Maricopa County, Arizona this 8 day of December 2022

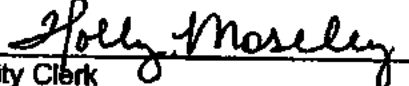


APPROVED:



Mayor

ATTEST:



City Clerk