

**FIRST AMENDMENT TO THE AMENDED AND RESTATED  
COMMUNITY MAINTENANCE AGREEMENT**

This First Amendment to the Amended and Restated Community Maintenance Agreement (this "Agreement") is made as of the 25<sup>th</sup> day of November, 2019 among DMB Mesa Proving Grounds LLC, a Delaware limited liability company ("MPG"), Eastmark Community Alliance, Inc., an Arizona nonprofit corporation (the "Community Alliance"), and the City of Mesa, an Arizona municipal corporation ("City").

**RECITALS**

A. MPG is the developer of the project located in the City of Mesa and commonly known as "Eastmark" (the "Development" or "Community").

B. The Development is governed, in part, by the Pre-Annexation and Development Agreement between MPG and the City, dated November 3, 2008 and recorded as Document No. 2008 0974930, official records of Maricopa County, Arizona, as amended by the First Amendment to Pre-Annexation and Development Agreement between MPG and the City, dated May 16, 2011 and recorded as Document No. 2011 0456474, official records of Maricopa County, Arizona; the Second Amendment to Pre-Annexation and Development Agreement between MPG, and the City, recorded as Document No. 2013-1005620, official records of Maricopa County, Arizona, the Third Amendment to Pre-Annexation and Development Agreement between MPG and the City, recorded as Document No. 2016-0940133, official records of Maricopa County, Arizona and the Fourth Amendment to Pre-Annexation and Development Agreement between MPG and the City, recorded as Document No. 2018 0657828, official records of Maricopa County, Arizona (as amended, the "PADA").

C. The Development is also governed, in part, by the Mesa Proving Grounds Community Plan dated November 3, 2008, on file with the City Clerk of the City of Mesa (the "Community Plan"). As part of the Community Plan, MPG has the ability to modify certain development standards applicable to the Development, some of which may require unique maintenance conditions.

D. The Community Alliance was created pursuant to the Declaration of Covenants, Conditions, Restrictions and Easements for DMB Mesa Community dated July 15, 2011 and recorded as Document No. 2011 0587857 (the "Community Declaration"), to provide Development-wide private governance.

E. Pursuant to Section 3.6(b)(ii) of the PADA, MPG may design and install in public streets within the Development, specialty poles for traffic control and street name signs, specialty street and sidewalk lighting, specialty street signage, and specialty paving materials, all of which are designated in the PADA as "Specialty Features and Materials". Some or all of the Specialty Features and Materials will be located in publicly dedicated rights-of-way within or adjacent easement areas.

F. Section 3.6(b)(ii) of the PADA requires that, at the Development Unit Plan stage of the planning process, MPG and the City will enter into one or more maintenance agreements concerning the Specialty Features and Materials.

G. Pursuant to Section 3.6(c) of the PADA, MPG and the City are to enter into a landscape maintenance agreement that provides for the City's maintenance (or contracting for the maintenance) of the landscaping within medians located in those portions of Elliott Road, Williams Field Road, Ellsworth Road and Signal Butte Road adjacent to the Community, and Ray Road through the Community (the "Community Medians"), which landscaping is designated in the PADA and in this Agreement as "Arterial Median Landscaping".

H. Pursuant to Section 3.14(b) of the PADA, MPG and the City are to enter into a park maintenance agreement that provides for MPG's maintenance (or contracting for the maintenance) of the park landscaping and other improvements located in the Great Park, including, if constructed, the Great Park Lake, which improvements are designated in the PADA and in this Agreement as the "Park Improvements".

I. MPG, the Community Alliance, and the City desire to set forth their agreement as to their respective rights and obligations regarding, among other things, the installation, maintenance, repair and replacement of the Specialty Features and Materials, Arterial Median Landscaping, the Great Park, and various other elements within the Community, including unique conditions arising from modified development standards applicable to the Development pursuant to the Community Plan.

J. The parties acknowledge and agree that this Agreement applies to the real property contained within **Exhibit A** as attached, to the public right-of-way located within or adjacent to such real property, but that it will be amended or supplemented from time to time to incorporate provisions specific to new Development Units or portions of new Development Units.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, MPG, the Community Alliance, and the City agree as follows:

1. Definitions. All capitalized terms used in this Agreement but not defined in the Agreement shall have the meanings given to them in the PADA.

2. Specialty Features and Materials.

a. Additional Specialty Features and Materials. In addition to the "Specialty Features and Materials" listed in the PADA, MPG may design and install in and around public streets within the Development (i) custom colored street lights, (ii) banner brackets designed to support vertical banners hung from non-standard street light poles, and (iii) planters to be located

mid-block on residential public streets, within City right-of-way. For purposes of this Agreement, the term “Specialty Features and Materials” means the foregoing banner brackets and stamped pavement, as well as the “Specialty Features and Materials” listed in the PADA.

b. Design of Specialty Features and Materials. MPG shall be responsible for the design of any and all Specialty Features and Materials desired by MPG, which design shall be consistent with the theming and character established in the Community Plan, and which shall be subject to approval by the City Traffic Engineer. Any request for approval of any Specialty Features and Materials shall expressly state that approval is requested for Specialty Features and Materials pursuant to this Agreement. Such design, with respect to specialty poles, must accommodate the attachment of City-standard signage, and, with respect to specialty street name signage, must accommodate attachment to City-standard poles as well as the specialty poles.

c. Installation of Specialty Features and Materials. MPG shall install any desired Specialty Features and Materials, in accordance with the construction permits granted by the City. Upon installation, the Specialty Features and Materials shall be deemed owned by the City, subject to acceptance by the City and subject to the terms of this Agreement.

d. Inventory of Approved Replacement Parts. The Community Alliance shall maintain an inventory (the “Replacement Inventory”) of replacement parts for all Specialty Features and Materials in such quantities as the City may, from time to time, reasonably deem appropriate. The Replacement Inventory shall be located within the Development in a location to be determined from time to time by the Community Alliance, provided that the Community Alliance shall give the City reasonable advance notice before any relocation of the Replacement Inventory and provided further that the location of the Replacement Inventory shall be accessible at all times to appropriate City personnel for the purposes described in this Agreement. The Community Alliance shall bear any and all costs and losses incurred due to any failure or refusal of any manufacturer of the Specialty Features and Materials to continue to manufacture or supply such items to the Replacement Inventory.

e. Maintenance of Specialty Features and Materials.

i. In connection with its review of the design of any Specialty Features and Materials, the City Traffic Engineer shall determine in his or her sole discretion whether the City will maintain the Specialty Features and Materials itself or require that the Community Alliance do so. The Community Alliance acknowledges that (except as otherwise stated in this Agreement), the City is generally inclined to maintain all Specialty Features and Materials that consist of transportation facilities or facilities that are intended to protect public safety.

ii. In all cases where the City Traffic Engineer determines that MPG shall maintain, repair and replace certain Specialty Features and Materials that will be located within City right-of-way, the City hereby grants to MPG, its successors and assigns, a license to enter upon all applicable dedicated right of way and easement areas to the extent reasonably necessary to effect such maintenance, repair and replacement,

subject to the terms of this Agreement, which license shall remain effective until this Agreement is terminated (if ever) in accordance with Section 21 below. MPG shall provide the City with not less than five (5) business days notice of its intended activities before entering upon any dedicated right-of-way in connection with such license, except that, in the case of an emergency presenting a threat to public health or safety (if MPG determines that it should act to address such emergency, which it shall not be obligated to do), MPG shall only be required to give such notice as early as reasonably possible under the circumstances and shall not be required to give such notice before taking action to address such emergency; provided, however, that nothing in this Subsection (e) shall excuse MPG from repairing any damage or correcting any other condition it may cause in taking action to address such emergency.

iii. In all cases where Specialty Features and Materials are to be attached to City-standard components, or vice versa (including by way of example only, where a City-standard street sign is to be attached to a non-standard pole), and the City Traffic Engineer determines that such Specialty Features and Materials are to be maintained by MPG, the City shall retain all responsibility for all maintenance, repair and replacement of the City-standard component and MPG shall have no responsibility to maintain, repair or replace the City-standard component. Notwithstanding the foregoing, MPG shall have the right to undertake minor maintenance and repair of City-standard component (including without limitation cleaning, painting, or tightening or remounting loose or fallen fixtures, etc.) from time to time without having, or thereby incurring, any obligation to do so.

iv. In all cases where the City Traffic Engineer determines that the City shall maintain, repair and replace certain Specialty Features and Materials, if MPG gives notice to the City that maintenance, repair or replacement of any Specialty Features and Materials is necessary, the City shall, at a minimum, respond with notice to MPG advising whether or when the City intends to undertake such maintenance, repair or replacement.

v. In the case of banner brackets, after approval of the design in accordance with Section 2(b) above, MPG shall be responsible for installation and maintenance of such brackets.

vi. In the case of planters, after approval of the design in accordance with Section 2(b) above, MPG shall be responsible for installation of such planters, including installation of the vertical curbs that form the boundary of the planters. Thereafter, the City shall be responsible for maintenance of the vertical curbs, and MPG shall be responsible for maintenance of the landscaping within the planter.

vii. In the case of stamped pavement, after approval of the design in accordance with Section 2(b) above, MPG shall be responsible for installation and maintenance of such pavement. The City shall have no obligation to maintain or repair any stamped pavement, but the City shall have the right, if MPG fails to maintain or

repair the stamped pavement, and if such failure continues for thirty (30) days after the City gives MPG notice of such failure (or, in the case of an emergency posing a threat to public health and safety, without need for prior notice), to undertake the required maintenance or repair, or the City may replace such pavement with City-standard paving, and, in either case, the City may thereafter recover from MPG all costs incurred by the City in connection with such maintenance. Subject to ordinary City permitting, MPG may replace the City-standard paving with stamped paving at a later date.

f. Correction of Defects. Notwithstanding that the City has approved of the use of the Specialty Features and Materials on the Property, if it is proven that the design, installation or manufacture of any of the Specialty Features and Materials is defective or causes either or both of the parties potentially to be subject to greater future liability or risk of liability to third parties, then, upon request by either party, MPG and the City shall confer and reach a mutually acceptable means to address the design, installation or manufacture problem within a reasonably prompt period of time.

3. Arterial Median Landscaping. Subject to Subsection 3(e) below, the following shall apply:

a. Pursuant to the PADA, MPG shall design and install the Arterial Median Landscaping, at MPG's expense, subject to ordinary City approval, permitting and acceptance processes and the terms of the PADA. MPG and the City acknowledge that MPG intends that the Arterial Median Landscaping will be enhanced in certain respects (which may include, for example, greater size and/or density of plant materials, different plant palettes, and heavier or more frequent watering) as compared to the City-standard landscaping found in other arterial medians.

b. Upon completion and acceptance of all or any portion of the Arterial Median Landscaping, (a) MPG shall thereafter maintain the accepted Arterial Median Landscaping, subject to obtaining from the City an annual right-of-way landscape maintenance permit, and, (b) as provided in Subsection 3(d) below, the City shall reimburse MPG, annually, the Standard Median Maintenance Costs (as defined below) for the median.

c. As used in this Section 3, the term "Standard Median Maintenance Costs" means the costs that would have been incurred by the City to maintain the Arterial Median Landscaping (or the portion thereof that has been accepted by the City), if the Community Medians (or applicable portions thereof) had been improved with City-standard landscaping. Such costs shall be determined based on the actual costs incurred by the City to maintain other arterial medians for each fiscal year during the term of this Agreement. The parties acknowledge that such actual costs incurred by the City for 2011 were \$0.19 per square foot. Upon request by MPG, the City shall provide to MPG the data underlying the City's calculation of the Standard Median Maintenance Costs and shall confer with MPG to address any questions or comments MPG may have on such data and such calculation.

d. No later than ninety (90) days after the expiration of each fiscal year during the term of this Agreement, the City shall send to MPG a statement of the Standard Median Maintenance Costs for such preceding fiscal year. No later than thirty (30) days thereafter, MPG shall send to the City a statement of the amount payable to MPG under this Section 3 for the preceding fiscal year, which shall be equal to the Standard Median Maintenance Costs multiplied by the total land area within the applicable medians (expressed in square feet) (the "Annual Median Cost Report"). In the case of Arterial Median Landscaping accepted by the City during the preceding fiscal year, the payment by the City for such year shall be prorated based on the date of acceptance. The City shall have sixty (60) days after its receipt of Annual Median Cost Report to either pay the Standard Median Maintenance Costs to MPG or to notify MPG of any objections to the Annual Median Cost Report. If the City timely gives notice of such objections, and if the parties do not resolve the matter by negotiation within thirty (30) days after such notice is given, then matter shall be resolved in accordance with Section 19 below. Until such objections are resolved pursuant to the foregoing process, the City shall make yearly payments to MPG in an amount equal to the prior yearly payment.

e. Notwithstanding the foregoing, the City shall be solely responsible for maintaining all Arterial Median Landscaping within the Elliot Road right-of-way at the City's sole expense.

4. Perimeter Landscaping Along Arterials. MPG shall be responsible, at its own expense, for the maintenance of any and all landscaping improvements located within and along the outer edge of the public right-of-way in those portions of Williams Field Road, Ellsworth Road and Signal Butte Road adjacent to the Development (except as modified by other agreements) and Ray Road through the Development. Where such landscaping is subject to a sight visibility easement, as designated in a separately recorded plat, map of dedication or other instrument, the maintenance of such landscaping by the land owner shall comply with the applicable requirements for such sight visibility easement. The City reserves the right and authority to enter upon any such right-of-way to maintain such landscaping under all circumstances, including without limitation in the event that the City's Fire Department or Environmental Management and Sustainability Department determines that trimming or removal of such landscaping is required because such landscaping impedes fire access or vehicular clearances. As to all parcels of property within the Development with frontage along Elliot Road, the owner of the subject parcel shall be responsible, at its own expense, for the maintenance of any and all landscaping improvements located within and along the outer edge of the public right-of-way.

5. Other Right-of Way Landscaping. MPG shall be responsible, at its own expense, for the maintenance of any and all landscaping improvements located within non-arterial public right-of-way within the Development (including irrigation facilities and associated private utility lines, if any), whether located in medians within non-arterial streets or otherwise. Where such landscaping is subject to a sight visibility easement, as designated in a separately recorded plat, map of dedication or other instrument, the maintenance of such landscaping shall comply with the applicable requirements for such sight visibility easement.

6. Great Park.

a. Pursuant to the PADA, MPG shall design and install the Park Improvements, including but not limited to recreational amenities, landscaping, retention and storm water basins and other such drainage improvements, at MPG's expense, subject to ordinary City approval, permitting and acceptance processes and the terms of the PADA. MPG and the City acknowledge that the Park Improvements will be built in phases and that MPG intends that the Park Improvements, in some phases, will include Specialty Features and Materials and otherwise will include landscaping and other improvements that are enhanced in certain respects as compared to the standard improvements found in other City parks.

b. Notwithstanding the provisions of Section 2(b) above, as part of the approval process for each phase of the Great Park, MPG will provide the City's Parks Department 30/60/90 plans for review and collaborate to determine which improvements in such phase are City-standard and which are Specialty Features and Materials.

c. The City shall maintain the Park Improvements, and except as set forth in any mutually agreed Addendum to this Agreement, the Community Alliance shall reimburse the City for the Specialty Park Maintenance Costs as provided in Subsection 6(d) below. In the case of City-Standard improvements within the Great Park, maintenance shall be conducted in accordance with the City's published park maintenance standards, as amended from time to time ("Standard Park Maintenance"). In the case of Specialty Features and Materials, as part of the approval process for each phase of the Great Park, the City's Parks Department and the Community Alliance will collaborate to develop a set of maintenance standards for Specialty Features and Materials ("Specialty Park Maintenance"). Prior to the development of each phase of the Great Park, the City, MPG and the Community Alliance shall (i) prepare an assessment of proposed improvements and designate whether such improvements are deemed to require Specialty Park Maintenance or Standard Park Maintenance, and (ii) shall attach to this Agreement an Addendum approved by each of the City, MPG and the Community Alliance, describing the Specialty Features and Materials located in such phase and indicating resulting responsibilities for maintenance and costs of maintenance. The mutually approved Addenda for Phases 1, 2 and 3 of the Great Park are attached hereto and incorporated herein by this reference.

d. As used in this Section 6, the term "Standard Park Maintenance Costs" means the per-acre costs that would have been incurred by the City to maintain the Great Park (or the portions thereof that have been accepted by the City), if the Great Park (or applicable portions thereof) had been improved with City-standard park improvements, and the term "Specialty Park Maintenance Costs" means all costs actually incurred by the City in maintaining the Great Park in excess of Standard Park Maintenance Costs. Except as set forth in any mutually agreed Addendum to this Agreement, the City's calculation of Standard Park Maintenance Costs shall be based on the actual costs incurred by the City to maintain City-standard improvements within the City's public parks for each fiscal year during the term of this Agreement. The parties acknowledge that the Standard Park Maintenance Costs for 2011 were \$7,647.82 per acre. Upon request by the Community Alliance, the City shall provide to the Community Alliance the data underlying the City's calculation of the Specialty Park

Maintenance Costs and shall confer with the Community Alliance to address any questions or comments the Community Alliance may have on such data and such calculation.

e. No later than ninety (90) days after the expiration of each fiscal year during the term of this Agreement, the City shall send to the Community Alliance a statement of the amount payable by the Community Alliance under this Section 6 for the preceding fiscal year, including a statement of both the Standard Park Maintenance Costs and the Specialty Park Maintenance Costs, accompanied by a reasonably detailed accounting of such costs (collectively, the "Annual Park Cost Report"). In the case of Park Improvements accepted by the City during the preceding fiscal year, the payment by the Community Alliance for such year shall be prorated based on the date of acceptance. The Community Alliance may accept such payment without prejudice to its rights under this Subsection 6(e). The Community Alliance shall have sixty (60) days after its receipt of Annual Park Cost Report to notify the City of any objections to the Annual Park Cost Report. If the Community Alliance timely gives notice of such objections, and if the parties do not resolve the matter by negotiation within thirty (30) days after such notice is given, then matter shall be resolved in accordance with Section 19 below. Until such objections are resolved pursuant to the foregoing process, MPG shall make annual payments to the City in an amount equal to the prior annual payment.

f. All land and improvements located within the area legally described on Exhibit "B" attached hereto (the "BASIS Retention Basin Area"), which area is the subject of the Easement Agreement (BASIS Retention Basin Area) between BASIS Schools, Inc., an Arizona nonprofit corporation, and the City, recorded as Document No. 20140414396, official records of Maricopa County, Arizona, shall be treated as if they were within the Great Park for all purposes of this Section 6; provided that the acreage of the BASIS Retention Basin Area shall not be included in calculating the Standard Park Maintenance Costs. The Community Alliance agrees to reimburse the City annually for the entire cost incurred by the City for maintaining this area.

7. Maintenance of Private Neighborhood Parks; Drainage Improvements. MPG shall be responsible, at its own expense, for the maintenance of all improvements located within all neighborhood parks and plazas contemplated by the Community Plan (collectively, the "Neighborhood Parks"), including landscaping improvements, drainage and retention improvements and recreational amenities located with such Neighborhood Parks. The City shall have no obligation to maintain or repair such improvements, but the City shall have the right, if MPG fails to maintain or repair the drainage and retention improvements located with such Neighborhood Parks as required for their proper operation, and if such failure continues for thirty (30) days after the City gives MPG notice of such failure (or, in the case of an emergency posing threat to health and safety, without need for prior notice), to undertake the required maintenance, and thereafter recover from MPG all costs incurred by the City in connection with such maintenance.

8. Drainage Crossing under Public Streets. MPG shall be responsible for keeping drainage pipes and culverts running beneath City right-of-way with the Development free from debris and other materials that impeded the proper flow of stormwater through such pipes and



culverts. The City shall provide MPG with any necessary license or easement to enable MPG to enter upon the right-of-way in connection with such maintenance. If MPG's failure to maintain such pipes and culverts results in any damage to other City improvements, MPG also shall repair such other City improvements.

9. Maintenance of Sidewalks and Landscaping within Public Utility and Facilities Easements. The parties acknowledge that MPG intends to install (or require third party homebuilders to install) sidewalks and landscaping improvements within areas that are subject to public facilities and utilities easements benefitting the City. Maintenance of the landscaping improvements shall be the responsibility of the owner of the underlying real property, at such owner's expense. Maintenance of the sidewalks shall be the responsibility of the City. The Community Alliance shall be responsible for reimbursing the City for all costs associated with maintaining the sidewalks.

10. Maintenance of Certain Non-Standard Street Improvements. MPG and the City acknowledge that MPG's design for some streets in the Community will include "hammerheads", "chicanes" and other non-standard configurations that include areas that may not be able to be swept with City street sweeping vehicles. Accordingly, MPG agree that any areas within such non-standard configurations that cannot be swept with City street sweeping vehicles will be swept by MPG on a periodic basis, so as to achieve a degree of cleanliness comparable to the areas that are swept by the City.

11. Maintenance of Private Street Improvements. MPG and the City acknowledge that some streets in the Community will be private. Maintenance of the private streets shall be the responsibility of the Community Alliance at the Community Alliance's expense.

12. Maintenance of City Utility Improvements within Private Streets. MPG and the City acknowledge that some streets in the Community will be private, but may have public water, sewer and storm drain utilities. Maintenance of the City utilities shall be the responsibility of the City at the City's expense. In the event the City removes or damages any private street improvements while performing maintenance on the City utility improvements, the City shall be responsible for repairing and restoring the private street improvements at the City's cost.

13. "No Parking" Areas – Neighborhood Parks. The parties acknowledge that the City may establish "no parking" areas along certain exterior boundaries of Neighborhood Parks. The parties agree, as an interim measure, not to require the painting of curbs or the placement of signs to designate such "no parking" areas, provided that all parties acknowledge the City's authority to require the painting of curbs or the placement of signs in the future. The specific locations of these "no parking" areas are to be shown on the recorded plat. If at any time the Fire Chief or designee, and/or the City Traffic Engineer or designee, or the Environmental Management and Sustainability Department Director or designee, at their sole discretion, determines that the curb side parking hinders traffic and/or public safety's response, the City agrees to paint the curbs and/or post no-parking signs in the "no parking" areas, as determined by the City Traffic Engineer, using City standard materials.

14. “No Parking” Areas – Private Streets. The parties acknowledge that MPG will establish “no parking” areas along certain private streets and drives within the Community. MPG will install “no parking” signage at strategic locations along the private streets to designate such “no parking” areas. The parties agree, as an interim measure, not to require the painting of curbs to designate such “no parking” areas, provided that all parties acknowledge the City’s authority to require the painting of curbs. The specific locations of these “no parking” areas are to be shown on the recorded plat. If at any time the Fire Marshall or designee, and/or the City Traffic Engineer or designee, at their sole discretion, determines that the curb side parking hinders traffic and/or public safety’s response, MPG and the Community Alliance agrees to paint the curbs and/or post no-parking signs in the “no parking” areas, as determined by the Fire Marshall.

15. Maintenance Standards. All maintenance, repair or replacement work required or permitted to be performed by or on behalf of MPG (including by its employees, agents and contractors) will comply with the requirements of applicable City, state and federal standards then in effect for work done in, on or about a public street or a public park (as applicable), including all applicable procedures regarding safety and regarding minimizing any inconvenience to the public.

16. Solid Waste Collection. MPG and the City acknowledge that MPG’s design for some streets in the Community will include “hammerheads” and other non-standard configurations that include areas that may not be able to be accessed with City solid waste and recycling collection vehicles. MPG acknowledges that all such non-standard configurations are subject to City approval, and MPG agrees that any non-accessible areas will be identified on the recorded plats covering such areas, and that such recorded plat also shall designate “trash collection” areas that will be required to be used by owners of those lots that are not accessible by City solid waste collection vehicles. For residential subdivisions with homes that exceed a one hundred (100) foot pull distance for solid waste or recycling pick-up (“Applicable Subdivisions”), the City will not be responsible for insuring that trash receptacles are properly pulled and located at the designated trash receptacle location. The Community Alliance will be responsible for managing and insuring that solid waste or recycling receptacles are in their proper location for Applicable Subdivisions, including any cost associated with such efforts. Additionally, for Applicable Subdivisions, trash receptacle locations will be identified by a brass cap marker designating the associated lot. Parking is not permitted at the designated trash receptacle locations. If such streets are private, then the Community Alliance will be responsible for monitoring parking compliance.

17. City Maintenance Authority.

a. The City reserves its existing authority to undertake any maintenance, repair or replacement of the Park Improvements and the Specialty Features and Materials, including without limitation any maintenance, repair or replacement that is (a) required, in the reasonable opinion of the City Manager, or designee, to address an emergency or threat to public safety, in which event no notice or opportunity to cure is required, or (b) otherwise appropriate

under applicable City standards, subject to notice and cure as provided in Section 14(b) below. To the extent that the City does not already have the authority to undertake the foregoing maintenance, repair or replacement of the Park Improvements and the Specialty Features and Materials, MPG here grants such authority to the City.

b. If the City determines that MPG has failed to perform maintenance, repair or replacement of any Park Improvements or Specialty Features and Materials that is appropriate under the terms of this Agreement (other than to address an emergency or threat to public safety, in which event no notice or opportunity to cure is required), the City shall give MPG not less than five (5) business days' written notice of such determination and MPG shall have until the end of such five (5) business day period to undertake such maintenance, repair or replacement before the City may exercise the remedies provided in Section 23 below.

c. In any case in which the City undertakes any maintenance, repair or replacement of any Specialty Features and Materials, the City shall use replacement parts stockpiled in the Replacement Inventory, except (i) where the supply of relevant replacement parts in the Replacement Inventory is insufficient, the City may use City-standard replacement parts from the City's own inventory, or (ii) where the City determines that an emergency or threat to public safety dictates that City-standard replacement parts from the City's own inventory be used, the City may do so. If replacement parts from the City's inventory are used in connection with the maintenance, repair or replacement of any Specialty Features and Materials, MPG may later replace such City-standard parts with parts from the Replacement Inventory, and return such City-standard parts to the City's inventory; provided that such City-standard parts shall be returned in substantially the same condition as when such parts were installed by the City, subject to ordinary wear and tear. If MPG or its contractor damages any such City-standard part before returning it to the City, MPG shall be responsible for the cost of repairing such damage or, if necessary, replacing such part.

18. Financial Assurance. Promptly after execution of this Agreement, MPG shall deposit with the City the sum of Fifty Thousand Dollars (\$50,000.00) by wire transfer (the "Maintenance Deposit"). The City shall keep the Maintenance Deposit in a segregated account and may draw upon the Maintenance Deposit to recover any costs incurred by the City that MPG is required to pay to the City pursuant to this Agreement, and that are not so paid within thirty (30) days after the date due. If any part of the Maintenance Deposit is applied by the City pursuant to this Section 18, then on an annual basis, MPG shall deposit with the City a sum equal to the amount so applied in order to restore the Maintenance Deposit to its original sum; provided that, if at any time the City gives notice to MPG that the balance of the Maintenance Deposit has fallen below \$10,000, then MPG shall make such restorative deposit within thirty (30) days after such notice.

19. Dispute Resolution. All claims, disputes and other contested matters between the Parties arising out of or relating to this Agreement or the breach thereof, shall be addressed in accordance with Section 6.2 of the PADA.

20. Effectiveness. This Agreement shall be effective immediately upon its execution by both parties.

21. Term. The rights and obligations set forth in this Agreement shall continue for twenty-five (25) years from the effective date of this Agreement, and shall be automatically renewed for successive renewal terms of fifteen (15) years each, unless, no sooner than one hundred eighty (180) days and no later than sixty (60) days before the end of the initial term or a renewal term (as applicable), either party gives notice to the other that the rights and obligations set forth under this Agreement shall be terminated at the end of such initial or renewal term. Before the effective date of any such termination, the City shall elect (and give notice to MPG of its election) whether to assume responsibility for all maintenance, repair and replacement of the Specialty Features and Materials, provided that (if the City elects to assume such responsibility) the City's responsibility shall be limited to maintaining and repairing all such Specialty Features and Materials in accordance with prevailing City standards and replacing any or all such Specialty Features and Materials (as and when the City deems appropriate) with City-standard facilities. If the City elects not to assume such responsibility, then MPG shall be responsible for the cost of replacing the Specialty Features and Materials with City-standard facilities.

22. Running of Benefits and Burdens; Assignment. All provisions of this Agreement, including the benefits and burdens, are binding upon and shall inure to the benefit of the successors and assigns of the parties hereto. Notwithstanding the foregoing, the parties agree that the ongoing ownership, operation and maintenance obligations of MPG may be assigned only as follows: (a) pursuant to an assignment of some or all of such obligations to the Community Alliance, or one or more other property owners' association(s) established by MPG, (b) pursuant to a partial assignment of obligations pertaining to the Arterial Median Landscaping to a community facilities district established for purposes that include maintenance of public roadways, (c) pursuant to a partial assignment of obligations pertaining to Specialty Features and Materials to a developer of land within the Community or to a property owners' association established by such developer, or (d) as part of a complete assignment, from MPG to a successor master developer, of all unassigned rights and obligations of MPG under this Agreement and under the PADA. In all such cases, MPG agrees to provide the City with written notice of any assignment of all or any rights and obligations of MPG within a reasonable period of time following such assignment, which shall include the assignee's commitment to pay and perform the applicable obligations of MPG under this Agreement. In the case of any assignment to the Community Alliance or another property owners' association, the foregoing written notice of any assignment shall be accompanied by evidence of the property owners' association's financial ability to assume and irrevocable commitment to perform MPG's obligations hereunder. Upon compliance with the foregoing, including the City's receipt of the applicable notice, MPG's liabilities under this Agreement shall terminate as to the obligations assigned. Except as set forth in this Section 22, no party may assign any of its rights under this Agreement without the prior written consent of the other party. By its signature below, the Community Alliance agrees to accept any assignment(s) by MPG of any or all obligations of MPG under this Agreement, pursuant to this Section 22.

23. Default; Dispute Resolution. If either party fails to perform any of its obligations under this Agreement, the other party may give the non-performing party not less than five (5) business days notice of and opportunity to cure the failure. If the non-performing party fails to cure the failure within said period of time, the other party may require that MPG and the City Manager of the City of Mesa, or designee, confer and use their reasonable best efforts to resolve the dispute. If the dispute cannot be resolved to the mutual satisfaction of the parties, either or both of the parties may seek any remedy, legal or equitable, available to it, pursuant to Section 19 above, both parties agreeing that specific performance shall be available as a remedy in such event. Notwithstanding the foregoing, however, any action seeking specific performance of a party's maintenance or repair obligations under this Agreement shall be limited to such remedy and may not also include a prayer for monetary damages.

24. Notices. Except as otherwise required by law, any notice, demand or other communication required or permitted under this Agreement shall be in writing and shall be (a) sent by United States mail, certified or registered, return receipt requested, postage prepaid, or (b) sent by any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), with all postage and other delivery charges prepaid. Each party shall be entitled to change its address for notices from time to time by delivering to the other parties notice thereof in the manner provided under this Section 24. All notices shall be sent to each party at the address set forth following its name below:

To City of Mesa:	City of Mesa P.O. Box 1466 Mesa, AZ 85201-1466 Attention: City Manager
With a copy to:	City of Mesa P.O. Box 1466 Mesa, AZ 85201-1466 Attn: City Attorney
To MPG:	DMB Mesa Proving Grounds LLC c/o Brookfield Arizona Management LLC Attention: Dea McDonald 14646 Kierland Boulevard Suite 270 Scottsdale, Arizona 85254
With a copy:	Gordon E. Hunt, Esq. Biskind, Hunt & Semro, PLC 8501 N. Scottsdale Rd., Suite 155 Scottsdale, Arizona 85253

To the Community Alliance: Eastmark Community Alliance, Inc.  
c/o DMB Community Life Inc.  
7600 E. Doubletree Ranch Rd., Suite 250  
Scottsdale, Arizona 85258  
Attn: Chadwick Reed

Any notice sent by United States Postal Service certified or registered mail shall be deemed to be effective the earlier of the actual delivery, or three (3) business days after deposit in a post office operated by the United States Postal Service. Any notice sent by a recognized national overnight delivery service shall be deemed effective one (1) business day after deposit with such service.

25. Further Assurances. Each party shall execute, acknowledge and deliver to the other such other documents, and shall take such other actions, as the other may reasonably request in order to carry out the intent and purposes of this Agreement.

26. Headings. The headings in this Agreement are for reference only and shall not limit or define the meaning of any provision of this Agreement.

27. Time of Essence. Time is of the essence of this Agreement. The foregoing to the contrary notwithstanding, if this Agreement requires any act to be done or action to be taken on a date that falls on a Saturday, Sunday or legal holiday, such act or action shall be deemed to have been timely done or taken if done or taken on the next succeeding day that is not a Saturday, Sunday or legal holiday.

28. Waiver. The waiver by any party of any right granted under this Agreement shall not be deemed a waiver of any other right granted hereunder, nor shall the same be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived.

29. Entire Agreement. This Agreement contains the entire understanding of the parties with respect to the subject matter hereof.

30. Amendment. This Agreement may not be altered or amended except pursuant to an instrument in writing signed by all of the parties hereto.

31. Construction. This Agreement is the result of negotiations between the parties. Accordingly, the terms and provisions of this Agreement shall be construed in accordance with their usual and customary meanings, and the parties hereby waive the application of any rule or law that otherwise might require the construction of this Agreement against the party who (or whose attorney) prepared the executed Agreement.

32. Attorneys' Fees. In the event of litigation to enforce or interpret any provisions of this Agreement or rights arising hereunder, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs.

33. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona, without regard to the conflict of laws rules applicable in the State of Arizona.

34. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one in the same instrument, which instrument shall be deemed fully executed when one or more counterparts have been executed by each of the parties.

35. Satisfaction of PADA Requirements. This Agreement shall be deemed to satisfy in full the obligations of the parties to enter into the maintenance agreements pursuant to Sections 3.6(b)(ii), 3.6(c) and 3.14(b) of the PADA (the "PADA Maintenance Agreement Obligations"), insofar as such obligations apply to Development Unit 7-S. As and when this Agreement is amended or when supplemented to include provisions specific to new Development Units or portions of new Development Units, the amendment or supplement shall be deemed to satisfy in full the PADA Maintenance Agreement Obligations insofar as they apply to the applicable new Development Units or portions of new Development Units. In the event of any conflict between the terms of this Agreement (and/or the terms of any amendment or supplement to this Agreement) and the terms of the PADA, the terms of this Agreement (or the amendment or supplement to this Agreement) shall govern.

36. Action by Eastmark Residential Association. The City agrees that if Eastmark Residential Association, Inc., a non-profit corporation (the "Association"), or an owner of private land within the Development (an "Owner") properly pays or performs any obligation of MPG or the Community Alliance under this Agreement, the City will accept such payment or performance, provided that accepting performance from the Association or an Owner shall not be deemed to waive of any rights against MPG or the Community Alliance for any failure to pay or perform any other obligation under this Agreement.

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

THE CITY OF MESA, an Arizona municipal corporation

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

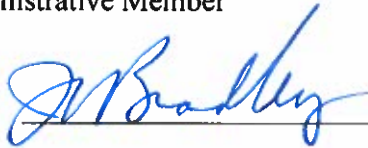
Name: \_\_\_\_\_

Title: \_\_\_\_\_

DMB MESA PROVING GROUNDS LLC, a Delaware limited liability company

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

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

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

Name: John Bradley

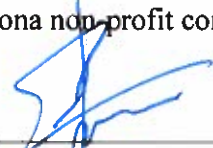
Its: President

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

Name: Dea McDonald

Its: Vice President

EASTMARK COMMUNITY ALLIANCE, INC.,  
an Arizona non-profit corporation

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

Name: Eric Tune

Its: President



STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of November, 2019, by Christopher J. Brady, the City Manager of THE CITY OF MESA, an Arizona municipal corporation, on behalf of the municipal corporation.

Veronica Gonzalez  
Notary Public

My Commission Expires:  
May 10, 2022

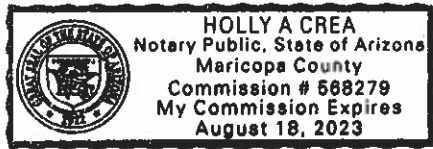


STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

The foregoing instrument was acknowledged before me this 3 day of October, 2019, by John Bradley & Dea McDonald the President & VP 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.

Holly A. Crea  
Notary Public

My Commission Expires:  
August 18, 2023



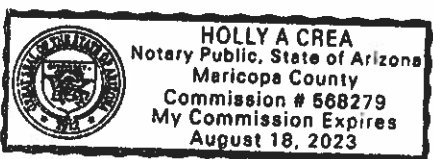
STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

The foregoing instrument was acknowledged before me this 3 day of October, 2019, by Eric Tune, the President of EASTMARK COMMUNITY ALLIANCE, INC., an Arizona non-profit corporation, on behalf of the non-profit corporation.

Holly A. Crea  
Notary Public

My Commission Expires:

August 18, 2023



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**EXHIBIT A**  
**Properties Included within Community Maintenance Agreement**  
**(December 31, 2018)**

Final Plat	Book and Page	Maricopa County Recordation Number
<b>Map of Dedications/Final Plats for Roadways</b>		
MOD Eastmark Phase I	Book 1117, Page 47	2012-0554777
MOD for Eastmark Phase II	Book 1166, Page 8	2013-0954754
Final Plat for Eastmark – DU6S Infrastructure	Book 1287, Page 33	2016-0631379
Final Plat for Eastmark – DU6S Infrastructure for Parcels 4-6 and 9-23	Book 1343, Page 15	2017-0694909
Final Plat for Eastmark – DU3/4 East Phase 2 Infrastructure	Book 1332, Page 6	2017-0476605
Map of Dedication for Eastmark DU 3/4 Tracts “LL” & “UU”	Book 1291, Page 25	2016 -0689643
Map of Dedication for East Point Twenty- Two Boulevard & South Ellsworth Road	Book 1376, Page 8	2018-0204947
Final Plat for Eastmark Development Units 3/4 Infrastructure for Commercial Parcels	Book 1462, Page 27	2019-0411350
Final Plat for Eastmark Development Unit 6 – Infrastructure for Commercial Parcels	Book 1376, Page 19	2018-0204997
<b>Development Unit 3/4</b>		
Minor Land Division for Eastmark Commercial	Book, 1357, Page 35	2017-0898340
Final Plat for Eastmark DU 3/4 Parcels 3/4- 1 to 3/4-3	Book, 1276, Page 3	2016-0393258
Final Plat for Eastmark DU 3/4 Parcels 3/4- 5 to 3/4-7	Book 1332, Page 5	2017-0476484
Re-Plat a portion of Eastmark DU 3/4 Parcels 3/4-1 through 3/4-3	Book 1343, Page 16	2017-0695029
Final Plat for Eastmark Development Unit 3/4, Lots 1 through 4	Book 1407, Page 1	2018-0655008
<b>Development Unit 3/4 North</b>		
Final Plat for Eastmark DU 3/4 North Phase 1	Book 1463, Page 23	2019-0418586
Final Plat for Eastmark DU 3/4 North Phase 2 and 3	Book 1462, Page 42	2019-0412833
<b>Development Unit 3 South</b>		
Final Plat for Eastmark DU 3 South Parcel 3-1	Book 1231, Page 20	2015-0393019
Final Plat for Eastmark DU 3 South Parcel 3-2	Book 1231, Page 19	2015-0393018
Final Plat for Eastmark DU 3 South Parcel	Book 1231, Page 21	2015-0393020

3-3		
<b>Development Unit 5</b>		
Final Plat for Eastmark Development Unit 5, Parcels 5-1 and 5-2	Book 1414, Page 30	2018-0725674
<b>Development Unit 6</b>		
Final Plat for Eastmark DU-6 South Parcels 6-1 and 6-2	Book 1295, Page 14	2016-0781617
Final Plat for DU-6 South Parcel 6-3	Book 1303, Page 38	2016-0938474
Final Plat for Eastmark DU-5/6 South Parcels 6-4 to 6-6, 6-9 and 6-17	Book 1360, Page 17	2017-0945487
Final Plat for Eastmark DU-6 South Parcels 6-7 and 6-8	Book 1291, Page 23	2016-0689612
Final Plat for Eastmark DU-6 South Parcels 6-10 thru 6-15	Book 1343, Page 16	2017-0694766
Final Plat for Eastmark DU 5/6 South Parcels 6-16 and 6-18 to 6-23	Book 1379, Page 8	2017-0254571
Minor Land Division for Eastmark Project Orange	Book 1358, Page 19	2017-0908824
Minor Land Division for Mt. Elbert Data Center	Book 1358, Page 20	2017-0908825
Final Plat for Eastmark Development Unit 6 South, Parcel 6-3 Commercial Replat	Book 1371, Page 46	2018-0143064
Final Plat for Eastmark Disc Golf Course	Book 1441 Page 35	2019-0117874
<b>Development Unit 7</b>		
Final Plat for Eastmark DU-7 South Parcel 7-1	Book 1117, Page 48	2012-0554778
Final Plat for Eastmark DU-7 South Parcel 7-2	Book 1117, Page 49	2012 -0554779
Final Plat for Eastmark DU-7 South Parcel 7-3A	Book 1117, Page 50	2012-0554780
Final Plat for Eastmark DU-7 South Parcel 7-3B	Book 1118, Page 1	2012-0554781
Final Plat for Eastmark DU-7 South Parcel 7-4A	Book 1118, Page 2	2012-0554782
Final Plat for Eastmark DU-7 South Parcel 7-4B	Book 1118, Page 3	2012-0554783
Final Plat for Eastmark DU-7 South Parcel 7-5	Book 1118, Page 4	2012-0554784
Final Plat for Eastmark DU-7 North Parcels 7-6, 7-7, 7-8, 7-9, 7-10, 7-11 and 7-12	Book 1167, Page 43	2013-1006031
Final Plat for Eastmark DU-7 North Parcels 7-13, 7-14, 7-15, 7-16 and 7-17	Book 1171, Page 32	2014-0009518

Final Plat for Eastmark DU-7 South Parcel 7-18	Book 1118, Page 5	2012-0554785
Final Plat for Eastmark DU-7 South Parcel 7-19	Book 1118, Page 6	2012-0554786
Final Plat for Eastmark DU-7 South Parcel 7-20	Book 1118, Page 7	2012-0554787
Final Plat for Eastmark DU-7 South Parcel 7-21	Book 1119, Page 8	2012-0554788
Final Plat for Eastmark Parcel 7-50	Book 1145, Page 43	2013-0370660
Final Plat for Eastmark Parcel 7-50 (Phase 2)	Book 1201, Page 12	2014-0613632
Final Plat for Eastmark 7-51	Book 1269, Page 21	2016-0265031
Final Plat for Eastmark DU7 Parcels 7-52, 7-53, and 7-54	Book 1403, Page 31	2018-0612399
Final Plat for Eastmark Lot 6 of 7-50 (BASIS Re-Plat)	Book 1336, Page 6	2017-0545029

Addendum to Eastmark Community Maintenance Agreement  
Great Park Phases 1 and 2

1. This Addendum shall apply to the portions of the Great Park legally described as Lot 1, according to Final Plat for Eastmark 7-50, recorded in Book 1145 of Maps, Page 43, official records of Maricopa County, Arizona ("Phase 1") and Lot 5, according to Final Plat for Eastmark 7-50 (Phase 2), recorded in Book 1201 of Maps, Page 12, official records of Maricopa County, Arizona ("Phase 2").

2. The City has inspected and accepted for maintenance the park improvements for Phase 1 and Phase 2 as set forth in the applicable plans approved by the City. Such improvements include Specialty Features and Materials requiring Specialty Park Maintenance. Accordingly, the City shall maintain Phase 1 and Phase 2, and the Community Alliance shall reimburse the City, as the Specialty Park Maintenance Costs for Phase 1 and Phase 2, an annual amount equal to One Hundred Eighteen Thousand Dollars (\$118,000) plus the Applicable Cost Adjustment (as defined below). The foregoing sum shall be due and payable on July 31 of each calendar year beginning with July 31, 2019.

3. As used in this Addendum, the term "Applicable Cost Adjustment" means an adjustment that shall be made (not more often than annually) with (a) the Applicable CPI Adjustment (as defined below) for all expenses except utility and commodity costs, and (b) the greater of 3.5% per year or the Applicable CPI Adjustment for all utility and commodity cost categories, and (c) the landscape maintenance contract rebid or renewal with an applicable CPI adjustment amount.

4. As used in this Addendum, the term "Applicable CPI Adjustment" means an adjustment that shall be made when the City renews with a CPI adjustment if requested by the contractor or City rebids the landscape maintenance contract at a new cost, and, calculated as follows:

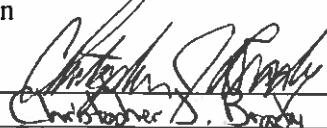
$$\text{CPI Adjustment} = (C/M - 1) \times \$118,000$$

where "C" is equal to the Consumer Price Index (as defined below) for June of the City's fiscal year in which the CPI Adjustment is calculated and "M" is equal to the Consumer Price Index for June of 2019. For example, if the Consumer Price Index for June 2019 is 250 and the Consumer Price Index for June 2020 is 275, then the Applicable CPI Adjustment for July 2020 shall be \$11,800.

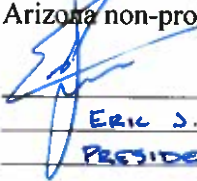
5. As used in this Addendum, the term "Consumer Price Index" means the United States Consumer Price Index for all Urban Consumers (CPI-U), U.S. City Average, all items, published by the United States Bureau of Labor Statistics; provided that, if the Consumer Price Index is no longer published at the adjustment date, for any reason whatsoever, then the City shall substitute a comparable statistic published by an agency of the United States Government or, if no such statistic exists, a comparable statistic published by a publication of recognized authority and most closely approximating the result which would have been achieved by the Consumer Price Index.

DATED: Oct. 3<sup>rd</sup>, 2019.

THE CITY OF MESA, an Arizona municipal corporation

By:   
Name: Christopher S. Brady  
Title: City Manager

EASTMARK COMMUNITY ALLIANCE, INC., an Arizona non-profit corporation

By:   
Name: ERIC J. TUNE  
Title: PRESIDENT

Addendum to Community Maintenance Agreement  
Great Park Phase 3

1. This Addendum shall apply to the portion of the Great Park legally described as Parcel 7-52, according to Final Plat for Eastmark DU7 Parcels 7-52, 7-53 and 7-54, recorded in Book 1403 of Maps, Page 31, official records of Maricopa County, Arizona ("Phase 3").


2. Phase 3 does not contain Specialty Features and Materials. Phase 3 shall require only Standard Park Maintenance. Accordingly, the City shall maintain Phase 3 at its sole cost and expense, and MPG and the Community Alliance shall have no obligation to maintain or pay for the maintenance of Phase 3.

3. Notwithstanding anything to the contrary in this Addendum, the City shall not be required to undertake any maintenance of Phase 3 until (a) Phase 3 has been improved with the park improvements set forth in the applicable plans approved by the City, and (b) the City has inspected and accepted such improvements for City maintenance, all in accordance with ordinary City processes.

IN WITNESS WHEREOF, the City and the Community Alliance have executed this Addendum as of Oct. 3<sup>rd</sup>, 2019.

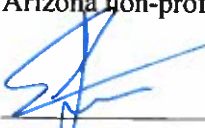
THE CITY OF MESA, an Arizona municipal corporation

By:  
Name:  
Title:

  
\_\_\_\_\_  
Christopher S. Dray  
City Manager

EASTMARK COMMUNITY ALLIANCE, INC., an Arizona non-profit corporation

By:  
Name:  
Title:

  
\_\_\_\_\_  
ERIC J. TUNGE  
PRESIDENT