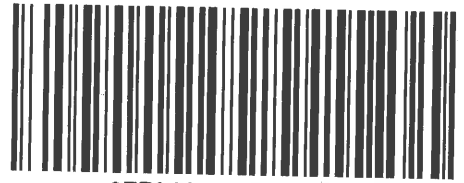


**When recorded mail to:
City of Mesa
Real Estate Services
P.O. Box 1466
Mesa, AZ 85211-1466**



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
2011-0504367 06/16/11 03:54 PM
2 OF 2

PALUMBOA

RECORDING COVER SHEET

**CAPTION HEADING: FIRST AMENDMENT TO DEVELOPMENT AGREEMENT
(Gaylord Entitlement Development Agreement)**

THIS DOCUMENT, previously recorded as 2011-0456473, IS BEING RE-RECORDED FOR THE SOLE PURPOSE OF ADDING A MISSING SIGNATURE PAGE FOR GAYLORD MESA, LLC.

DO NOT REMOVE

This is part of the official document.

16-

WHEN RECORDED RETURN TO:

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

**FIRST AMENDMENT TO
DEVELOPMENT AGREEMENT**

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

AND

**DMB MESA PROVING GROUNDS, LLC,
A Delaware limited liability company**

AND

**GAYLORD MESA, LLC,
a Delaware limited liability company**

(the "Gaylord Entitlement Development Agreement")

Date: May 16, 2011

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

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

RECITALS

This First Amendment is predicated upon the following:

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

B. The City, DMB and Gaylord 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. 2008-0974929 (the “**Gaylord Entitlement Development Agreement**”).

C. DMB owns that certain real property that is the subject of the Gaylord Entitlement Development Agreement. Such property is located in the City of Mesa, Arizona and consists of approximately three thousand one hundred fifty-four (3,154) acres, currently known as the Mesa Proving Grounds Property (the “**MPG Property**”).

D. Gaylord has entered into a contract (the “**Gaylord/DMB Purchase Agreement**”) to purchase from DMB, a portion of the MPG Property consisting of approximately one hundred (100) acres, legally described on **Exhibit A** and depicted on **Exhibit B**, both attached hereto (the “**Gaylord Property**”). Gaylord intends to develop the Gaylord Property as a hotel and resort and convention center (the “**Gaylord Project**”).

E. Due to market conditions and other business reasons, Gaylord and DMB have determined and the City agrees that the construction of the Gaylord Project will not proceed in accordance with the time frames as originally anticipated and established in the Gaylord Entitlement Development Agreement.

I. This First Amendment is for the purpose of extending the time by which the Project may be constructed. The City agrees that such extension is in the best interest of the citizens of the City.

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

1. **Extension of the Term.** The term of the Gaylord Entitlement Development Agreement as referenced in Section 6.1 is hereby deleted in its entirety and replaced with the following:

Term. This Agreement shall commence on the Effective Date, and shall terminate upon the completion of all performance obligations under this Agreement, unless earlier terminated as provided herein. The provisions of This Agreement shall become operative for all purposes on the date on which all or any portion of the Gaylord Property has been annexed into the City, provided, however, that such annexation occurs on or before December 31, 2009. Notwithstanding the foregoing, if the Gaylord/DMB Purchase Agreement is terminated prior to the conveyance of all or any portion of the Gaylord Property to Gaylord, or if the Gaylord Property has not been conveyed to Gaylord on or before December 31, 2017, this Agreement shall terminate without further action or notice required, and the Gaylord Property shall, thereafter, be released from and no longer be subject to or burdened by the covenants, conditions, restrictions, rights or provisions of this Agreement. Upon any such termination, even though not required to effectuate the termination, to provide record notice thereof, City, DMB and Gaylord shall execute, acknowledge, and record a notice of such termination in the Official Records of Maricopa County, Arizona, in the form attached hereto as Exhibit D.

2. **Effect of Amendment.** This First Amendment shall be deemed to amend and supersede the Gaylord Entitlement Development Agreement with respect to all terms, provisions and changes set forth in this First Amendment. To the extent of any conflict between the Gaylord Entitlement Development Agreement and this First Amendment, the First Amendment shall control. Except as amended by this First Amendment, all terms, provisions and conditions of the Gaylord Entitlement Development Agreement shall remain in full force and effect.

3. **General Provisions.**

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

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

3.3 **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 First Amendment are hereby acknowledged and incorporated herein and the Parties hereby confirm the accuracy thereof.

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

3.5. Recordation. This First Amendment shall be recorded in its entirety in the Official Records of Maricopa County, Arizona not later than ten (10) days after execution of the First Amendment by the Parties.

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

DMB MESA PROVING GROUNDS LLC, a
Delaware limited liability company

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

By: David L. Bauer
Its EVP/COO

CITY OF MESA, ARIZONA, an Arizona
municipal corporation

By: Christopher J. Brady
Its: City Manager

ATTEST:

By: Linda Crocker
City Clerk

APPROVED AS TO FORM

By: *D. Bronski*

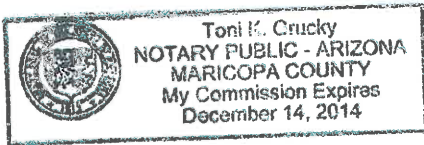
for City Attorney , *Debbie Spinner*

STATE OF ARIZONA)

) ss.

COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 17th day of May, 2011, by Daniel L. Bruner, the CEO of DMB Mesa Proving Grounds LLC, a Delaware limited liability company.



Toni K. Crucky
Notary Public

My commission expires:

12/14/14

STATE OF ARIZONA)

) ss.

COUNTY OF MARICOPA)

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

Jeffrey Moore
Notary Public

My commission expires:

1/31/15



GAYLORD:

GAYLORD MESA, LLC, a Delaware limited liability company

By: Bennett Westbrook

Its: VP

STATE OF TENNESSEE)

) ss.

COUNTY OF DAVIDSON)

Before me, the undersigned, a Notary Public of the State and County aforesaid, personally appeared Bennett Westbrook with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the Vice President of Gaylord Mesa, LLC, the within named bargainor, a Delaware limited liability company, and that he, as such VP, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself as Bennett Westbrook

WITNESS my hand, at office, this 7th day of June, 2011.

Jacquelyn D. Layfield
Notary Public

My commission expires:

5-20-14



My Comm. Expires
May 20, 2014

EXISTING LENDER CONSENT

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

DATED: MAY 16, 2011

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

By: 

Name: JOEL MINAMIDE

Its: VICE PRESIDENT

**CALIFORNIA ALL-PURPOSE
CERTIFICATE OF ACKNOWLEDGEMENT**

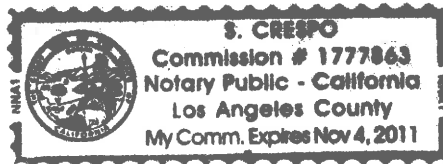
State of California
County of LOS ANGELES ss.:

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

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

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

Signature  (Notary Seal),



LIST OF EXHIBITS

A Legal Description of the Property

B Map of the Property

F:\Donna\MPG - amendments\FINAL DOCS\FINAL gaylord entitlement DA first_amendment final to city05.16.11.docx

EXHIBIT A
Legal Description of the Property

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

A PARCEL OF LAND LYING WITHIN SECTIONS 14 AND 15, TOWNSHIP 1 SOUTH, RANGE 7 EAST, OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 14, A 3-INCH MARICOPA COUNTY BRASS CAP FLUSH STAMPED 2002 RLS 36563, FROM WHICH THE NORTH QUARTER CORNER OF SAID SECTION 14, AN IRON PIPE WITH NO IDENTIFICATION, BEARS SOUTH 89°41'01" EAST (BASIS OF BEARING), A DISTANCE OF 2658.58 FEET;

THENCE ALONG THE NORTH LINE OF SAID SECTION 14, SOUTH 89°41'01" EAST, A DISTANCE OF 39.69 FEET;

THENCE LEAVING SAID NORTH LINE, SOUTH 00°18'59" WEST, A DISTANCE OF 65.00 FEET, TO A LINE PARALLEL TO AND 65 FEET SOUTH OF THE NORTH LINE OF SAID SECTION 14 AND THE POINT OF BEGINNING;

THENCE ALONG SAID PARALLEL LINE, SOUTH 89°41'01" EAST, A DISTANCE OF 668.06 FEET;

THENCE LEAVING SAID PARALLEL LINE, SOUTH 00°19'04" WEST, A DISTANCE OF 123.74 FEET, TO THE BEGINNING OF A CURVE;

THENCE SOUTHWESTERLY ALONG SAID CURVE, HAVING A RADIUS OF 600.00 FEET, CONCAVE NORTHWESTERLY, THROUGH A CENTRAL ANGLE OF 65°33'36", A DISTANCE OF 686.54 FEET, TO A POINT OF REVERSE CURVATURE;

THENCE SOUTHWESTERLY ALONG SAID CURVE, HAVING A RADIUS OF 667.50 FEET, CONCAVE SOUTHEASTERLY, THROUGH A CENTRAL ANGLE OF 27°53'18", A DISTANCE OF 324.90 FEET, TO A POINT OF REVERSE CURVATURE;

THENCE SOUTHWESTERLY ALONG SAID CURVE, HAVING A RADIUS OF 600.00 FEET, CONCAVE NORTHWESTERLY, THROUGH A CENTRAL ANGLE OF 46°41'44", A DISTANCE OF 489.00 FEET, TO THE CURVE'S END;

THENCE SOUTH 84°41'06" WEST, A DISTANCE OF 201.54 FEET, TO THE BEGINNING OF A CURVE;

THENCE SOUTHERLY ALONG SAID CURVE, HAVING A RADIUS OF 400.00 FEET, CONCAVE EASTERLY, THROUGH A CENTRAL ANGLE OF 154°58'10", A DISTANCE OF 1081.89 FEET, TO THE CURVE'S END;

THENCE SOUTH 70°17'04" EAST, A DISTANCE OF 222.34 FEET, TO THE BEGINNING OF A CURVE;

THENCE SOUTHERLY ALONG SAID CURVE, HAVING A RADIUS OF 360.00 FEET, CONCAVE WESTERLY, THROUGH A CENTRAL ANGLE OF 110°19'51", A DISTANCE OF 693.23 FEET, TO A POINT OF REVERSE CURVATURE;

THENCE SOUTHWESTERLY ALONG SAID CURVE, HAVING A RADIUS OF 400.00 FEET, CONCAVE SOUTHEASTERLY, THROUGH A CENTRAL ANGLE OF 28°31'02", A DISTANCE OF 199.09 FEET, TO A POINT OF INTERSECTION WITH A NON-TANGENT LINE;

THENCE SOUTH 65°48'55" WEST, A DISTANCE OF 1174.12 FEET;

THENCE NORTH 24°1'05" WEST, A DISTANCE OF 1828.61 FEET;

THENCE NORTH $01^{\circ}25'09''$ WEST, A DISTANCE OF 1015.15 FEET;

THENCE SOUTH $89^{\circ}37'50''$ EAST, A DISTANCE OF 1855.27 FEET, TO THE BEGINNING OF A CURVE;

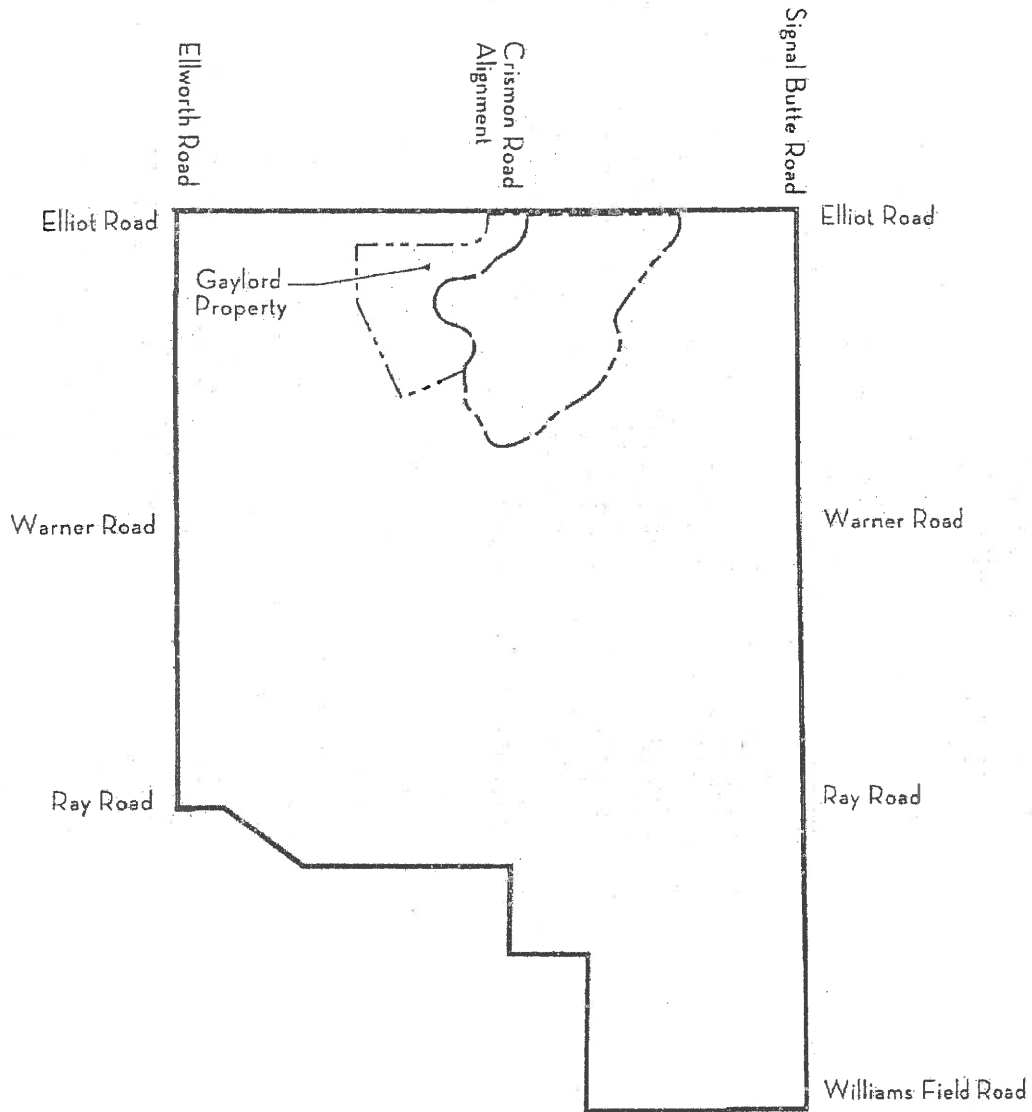
THENCE NORTHEASTERLY ALONG SAID CURVE, HAVING A RADIUS OF 368.50 FEET, CONCAVE NORTHWESTERLY, THROUGH A CENTRAL ANGLE OF $91^{\circ}05'35''$, A DISTANCE OF 585.87 FEET, TO THE CURVE'S END;

THENCE NORTH $00^{\circ}43'25''$ WEST, A DISTANCE OF 151.51 FEET, TO THE POINT OF BEGINNING.

EXHIBIT B
Map of the Property

EXHIBIT B

Depiction of Property



MESA PROVING GROUNDS



North
N.T.S.
27 Oct 08