

WHEN RECORDED RETURN TO:

City of Mesa (Beth Hughes-Ornelas)
55 North Center Street
Mesa, AZ 85201

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is entered into as of _____, 2017, by and between LOOP 202 & ELLIOT ROAD, LLC, a Delaware limited liability company ("Owner") and the CITY OF MESA, an Arizona municipal corporation (the "City"). Owner and City are collectively referred to herein as the "Parties," or individually as the "Party."

RECITALS:

A. Owner is the owner of approximately 47.782 acres of property located at the northwest corner of Elliot Road and Arizona State Route 202 and legally described in Exhibit A and depicted in Exhibit B (the "Property") within the City of Mesa, Arizona.

B. The Parties desire to enter into this Agreement for the purpose of "opting-in" to the Elliot Road Technology Corridor Planned Area Development Overlay, intending this document to be a "Development Agreement" within the meaning of A. R. S. § 9-500.05.

C. By "opting-in", the Owner agrees to the rezoning of its property to Limited Industrial (LI) with a Planned Area Development (PAD) Overlay as part of the Elliot Road Technology Corridor, as approved by the City Council on November 3, 2014 by Ordinance #5255. The PAD Overlay outlines the Development Standards and permitted and prohibited uses within the corridor.

D. The Owner and the City acknowledge that this development will be situated at a strategic location on Elliot Road near the proposed new entrance to the Phoenix-Mesa Gateway Airport and will therefore have planning and economic benefits to both the City and the Owners.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, and the mutual promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties state, confirm and agree as follows:

1. Owner's Duties and Obligations. Owner and its successors and assigns agree that the obligations set forth in this Agreement are covenants running with the land that are binding and enforceable upon Owner and its successors and assigns.

2. Prohibited Uses. Within the Property, the uses listed below shall not be allowed:

- Correctional Transitional Housing Facilities
- Clubs and lodges
- Cultural institutions
- Day Care Centers as a stand-alone use, allowed as a component of a service to on-site business and industry
- Places of worship
- Schools, public or private
- Animal sales and services
- Artist Studios
- Automobile/Vehicle Sales and Service
- Banks and Financial Institutions
- Building materials and services
- Commercial Recreation
- Eating and Drinking Establishments as a stand-alone use, allowed as a component of a service to on-site business and industry
- Farmer's Markets
- Food and Beverage Sales
- Funeral Parlors
- Light Fleet-Based Services
- Live-Work Units
- Maintenance and Repair Services
- Medical Marijuana Dispensaries
- Medical Marijuana Cultivation Facilities
- Parking, Commercial
- Personal Services
- Plant nurseries and garden centers
- Retail sales
- Swap meets and flea markets
- Tattoo and body piercing parlors
- Handicraft/custom manufacturing
- Light Assembly/Cabinetry
- Recycling facilities
- Warehouse and storage
- Airport land use classifications
- Transportation Facilities
- Outdoor storage
- Outdoor entertainment or activities
- Outdoor display

To the extent there is a disagreement between the Parties as to whether a use is allowed or permitted, such determination shall be submitted to the City's Zoning Administrator, who shall determine whether a proposed use is a prohibited use under this section of the Agreement, and such a decision shall be final and not subject to appeal. Notwithstanding anything to the contrary contained herein, the following uses, without limitation, shall be expressly permitted upon the Property: data center and related uses.

3. Term/Termination. This Agreement shall become effective on the date this Agreement is recorded in the Official Records of Maricopa County, Arizona, and shall continue in full force and effect until the Property is rezoned in the future. This Agreement shall automatically terminate upon the effective date of a City Council approved re-zoning in conflict with this Agreement.

4. General Provisions.

4.1 Recordation. This Agreement shall be recorded in its entirety in the Official Records of Maricopa County, Arizona, not later than ten days after its full execution by the Parties.

4.2 Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (C) given to a recognized and reputable overnight delivery service, to the address set forth below:

The City: City of Mesa
 20 East Main Street, Suite 750
 Mesa, Arizona 85211
 Facsimile: 480-644-2175
 Attn: City Manager

With copy to: Mesa City Attorney's Office
 20 East Main Street, Suite 850
 Mesa, Arizona 85211
 Attn: Jim Smith, Esq.

Owner: c/o EdgeConneX Holdings, LLC
2201 Cooperative Way
Suite 400
Herndon, VA 20171
Attention: Chris Flynn

With copies to : c/o EdgeConneX Holdings, LLC
2201 Cooperative Way
Suite 400
Herndon, VA 20171
Attention: General Counsel

and to: Tatusko Kennedy, PC
3016 Williams Drive, Suite 200
Fairfax, VA 22031
Attention: William H. Kennedy Jr.

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this Section. Notices shall be deemed received (A) when delivered to the party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

4.3 Choice of Law, Venue and Attorneys' Fees. The laws of the State of Arizona shall govern any dispute, controversy, claim or cause of action arising out of or related to this Agreement. The venue for any such dispute shall be Maricopa County, Arizona, and each Party waives the right to object to venue in Maricopa County for any reason. Neither Party shall be entitled to recover any of its attorneys' fees or other costs from the other Party incurred in any such dispute, controversy, claim, or cause of action, but each Party shall bear its own attorneys' fees and costs, whether the same is resolved through arbitration, litigation in a court, or otherwise.

4.4 Default. In the event a Party fails to perform or fails to otherwise act in accordance with any term or provision hereof (the "Defaulting Party") then the other Party (the "Non-Defaulting Party") may provide written notice to perform to the Defaulting Party (the "Notice of Default"). The Defaulting Party shall have 30 days from receipt of the Notice of Default to cure the default. In the event the failure is such that more than 30 days would reasonably be required to cure the default or otherwise comply with any term or provision herein, then the Defaulting Party shall notify the Non-Defaulting Party of such and the timeframe needed to cure such default, so long as the

Defaulting Party commences performance or compliance or gives notice of additional time needed to cure within said 30-day period and diligently proceeds to complete such performance or fulfill such obligation; provided further, however, that no such cure period shall exceed 90 days. Any written notice shall specify the nature of the default and the manner in which the default may be satisfactorily cured, if possible. If Owner assigns, transfers, or conveys all or any portion of the Property or its interest under this Agreement in accordance with the terms and provisions of this Agreement, a default by any Party shall not constitute a default by any other Party, and the City may only exercise its remedies against the defaulting Party.

4.5 Good Standing; Authority. Each Party represents and warrants that it is a duly formed and legally valid existing entity under the laws of the State of Delaware with respect to Owner, or a municipal corporation within Arizona with respect to the City, that this Agreement has been duly authorized by all necessary actions of such Party, and that the individuals executing this Agreement on behalf of their respective Party are authorized and empowered to bind the Party on whose behalf each such individual is signing.

4.6 Assignment. The provisions of this Agreement are binding upon and shall inure to the benefit and burden of the Parties, and all of their successors in interest and assigns.

4.7 Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between the Parties. No term or provision of this Agreement is intended to, or shall be for the benefit of any person, firm or entity not a party hereto, and no such other person, firm, or entity shall have any right or cause of action hereunder.

4.8 Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver of any breach shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant, or condition of this Agreement. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

4.9 Further Documentation. The Parties agree in good faith to execute such further or additional instruments and documents and to take such further acts as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

4.10 Fair Interpretation. The Parties have been represented by counsel in the negotiation and drafting of this Agreement and this Agreement shall be construed according to the fair meaning of its language. The rule of construction that ambiguities shall be resolved against the Party who drafted a provision shall not be employed in interpreting this Agreement.

4.11 Computation of Time. In computing any period of time under this Agreement, the date of the act or event from which the designated period of time begins to run shall not be included. The last date of the period so completed shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday. The time for performance of any obligation or taking any action under this Agreement shall be deemed to expire at 5:00 p.m. (Phoenix, Arizona time) on the last day of the applicable time period provided herein.

4.12 Conflict of Interest. Pursuant to A.R.S. § 38-503 and § 38-511, no member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. This Agreement is subject to cancellation pursuant to the terms of A.R.S. § 38-511.

4.13 Entire Agreement. This Agreement, together with the following Exhibits attached hereto (which are incorporated herein by this reference) constitute the entire agreement between the Parties:

Exhibit A: Legal Description of the Property
Exhibit B: Depiction of the Property

All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, are superseded by and merged in this Agreement.

4.14 Time of the Essence. Time is of the essence in this Agreement and with respect to the performance required by each Party hereunder.

4.15 Severability. If any provisions of this Agreement is declared void or unenforceable, such provisions shall be severed from this Agreement, which shall otherwise remain in full force and effect.

4.16 Proposition 207 Waiver. Developer hereby waives and releases the City from any and all claims under A.R.S. § 12-1134 et seq., including any right to compensation for reduction to the fair market value of the Property, as a result of the City's approval of this Agreement. The terms of this waiver shall run with the Property and shall be binding upon all subsequent landowners and shall survive the expiration or earlier termination of this Agreement.

4.17 E-Verify. To the extent applicable under A.R.S. § 41-4401 and 23-214, Owner represents and warrants compliance with all federal immigration laws and regulations that relate to its employees and its compliance with the E-verify requirements of A.R.S. 23-214(A). Breach of the above-mentioned warranty shall be deemed a material breach of the Agreement and may result in the termination of the

Agreement by City pursuant to Section 4.4 above. Subject to compliance with applicable law, the City retains the legal right to inspect the papers and records of any employee who works under this Agreement to ensure compliance with the above-mentioned laws.

4.18 Prior Appropriation. Pursuant to ARS § 42-17106, the City is a governmental agency which relies upon the appropriation of funds by its governing body to satisfy its obligations. City represents that it intends to pay all monies due under this Agreement if such funds have been legally appropriated. City agrees to actively request funding for future fiscal periods in order to satisfy the terms of this Agreement. However, in the event that an appropriation is not granted and operating funds are not otherwise legally available to pay the monies due or to become due under this Agreement during such fiscal year, City shall have the right to terminate the Agreement without penalty on the last day of the fiscal period for which funds were legally available. In the event of such termination, City agrees to provide a minimum of thirty (30) calendar days' advance written notice of its intent to terminate. If City elects to terminate this Agreement, Owner may waive the right to such monies within such thirty (30) day period and this Agreement will remain in full force and effect.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first set forth above:

"City"

CITY OF MESA, an Arizona municipal corporation

By: _____
Its: Christopher J. Brady, City Manager

ATTEST:

Dee Ann Mickelson, City Clerk

APPROVED AS TO FORM

James N. Smith, City Attorney

STATE OF ARIZONA)
)ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by Christopher J. Brady, the City Manager for the CITY OF MESA, an Arizona municipal corporation.

Notary Public

My Commission Expires:

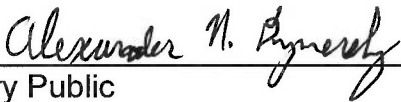
"Owner"

LOOP 202 & ELLIOT ROAD, LLC,
a Delaware limited liability company

By: 
Name: RANDALL W BROCKMAN
Title: CEO

STATE OF Virginia)
County of Fairfax) ss.

The foregoing instrument was acknowledged before me this 16 day of August, 2017, by Randall Brockman, the C.E.O. of LOOP 202 & ELLIOT ROAD, LLC, a Delaware limited liability company, on behalf thereof.


Notary Public

My commission expires:

December 31, 2018

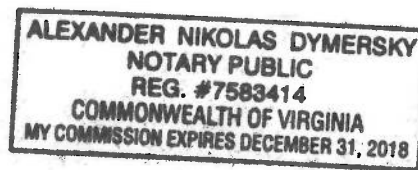


EXHIBIT A
TO DEVELOPMENT AGREEMENT

[Legal Description of the Property]

See following pages

Parcel No. 1:

A portion of the South 250 feet of the Northwest quarter of Section 9, Township 1 South, Range 7 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

Beginning at a brass cap flush marking the West quarter corner of said Section 9, which bears North 00 degrees 57 minutes 01 seconds West 2635.13 feet from a brass cap in handhole marking the Southwest corner of said Section 9, said point being the Point of Beginning:

Thence North 00 degrees 57 minutes 06 seconds West along the West line of said Section 9, 250.07 feet to a point on the South line of "Village at Hawes", according to plat recorded in Book 628 of Maps, Page 7 records of the Maricopa County Recorder;

Thence South 89 degrees 38 minutes 37 seconds East 663.85 feet along the South line of said "Village at Hawes" to the Southwest corner of "Eastridge Unit 3", according to plat recorded in Book 492 of Maps, Page 45, records of the Maricopa County Recorder;

Thence South 89 degrees 38 minutes 37 seconds East along a portion of the South line of said "Eastridge Unit 3", 664.41 feet to a point;

Thence South 00 degrees 55 minutes 26 seconds East 250.06 feet;

Thence North 89 degrees 38 minutes 37 seconds West 1328.14 feet to the Point of Beginning.

Parcel No. 2:

A portion of the Southwest quarter of Section 9, Township 1 South, Range 7 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at a brass cap in handhole marking the Southwest corner of said Section 9, which bears South 00 degrees 57 minutes 01 seconds East 2635.13 feet from a brass cap flush marking the West quarter corner of said Section 9;

Thence along the West section line of said Section 9 North 00 degrees 57 minutes 01 seconds West, 2305.74 feet to the Point of Beginning:

Thence North 00 degrees 57 minutes 01 seconds West, 329.39 feet;

Thence South 89 degrees 38 minutes 37 seconds East, 1328.14 feet;

Thence South 00 degrees 55 minutes 23 seconds East, 329.49 feet;

Thence North 89 degrees 38 minutes 21 seconds West 1327.99 feet to the Point of Beginning.

Parcel No. 3:

A portion of the Southwest quarter of Section 9, Township 1 South, Range 7 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at a brass cap in handhole marking the Southwest corner of said Section 9, which bears South 00 degrees 57 minutes 01 seconds East 2635.13 feet from a brass cap flush marking the West quarter corner of said Section 9;

Thence along the West line of said Section 9, North 00 degrees 57 minutes 01 seconds West 1976.35 feet to the Point of Beginning;

Thence North 00 degrees 57 minutes 01 seconds West, 329.39 feet;

Thence South 89 degrees 38 minutes 21 seconds East 1327.99 feet

Thence South 00 degrees 55 minutes 23 seconds East, 329.49 feet;

Thence North 89 degrees 38 minutes 04 seconds West 1327.83 feet to the Point of Beginning

Parcel No. 4:

A portion of the Southwest quarter of Section 9, Township 1 South, Range 7 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at a brass cap in handhole marking the Southwest corner of said Section 9, which bears South 00 degrees 57 minutes 01 seconds East 2635.13 feet from a brass cap flush marking the West quarter corner of said Section 9;

Thence along the West line of said Section 9, North 00 degrees 57 minutes 01 seconds West 1317.57 feet to the Point of Beginning;

Thence North 00 degrees 57 minutes 01 seconds West, 658.78 feet;

Thence South 89 degrees 38 minutes 04 seconds East 1327.83 feet

Thence South 00 degrees 55 minutes 23 seconds East, 658.99 feet;

Thence North 89 degrees 37 minutes 32 seconds West 1327.53 feet to the Point of Beginning.

EXHIBIT B
TO DEVELOPMENT AGREEMENT
DEPICTION OF THE PROPERTY
[SEE ATTACHED]

304-03-039

304-03-040 (part)

304-03-011H

304-03-011Q

304-03-011K

304-03-011L

304-03-011M

304-03-011N