

When recorded, return to:

**City of Mesa
P.O. Box 1466
Mesa, Arizona 85211-1466
Attn: City of Mesa, Real Estate Services Director**

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

For the

**CMC Development at
11444 East Germann Road
City of Mesa, Arizona**

Between

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

and

**COMMERCIAL METALS COMPANY
a Delaware corporation**

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

This Second Amendment to Development Agreement (“Second Amendment”) is made as of this ____ day of _____, 2018, by and between the City of Mesa, an Arizona municipal corporation (“City”) and Commercial Metals Company, a Delaware Corporation (“Owner”). City and Owner are sometimes referred to herein collectively as the “Parties,” or individually as a “Party.”

RECITALS:

A. City and Owner entered into that certain Development Agreement dated July 3, 2008 and recorded July 9, 2008 in Instrument No. 2008-0602876, records of Maricopa County, Arizona (the “Development Agreement”).

B. City and Owner entered into that certain First Amendment to Development Agreement dated December 28, 2010 and recorded January 3, 2011 as Instrument No. 2011-0001561, records of Maricopa County, Arizona (the “First Amendment”).

C. The Development Agreement provides, *inter alia*, for the deferment of certain offsite improvements (e.g., right-of-way improvements) along South Meridian Road and East Pecos Road as allowed by Mesa City Code (“M.C.C.”) 9-8-4(D)(2) and provides for the possibility of City Share Reimbursement for certain Oversize Improvements as allowed by the M.C.C. and the Development Agreement.

D. The First Amendment provided for the deferment of certain landscaping requirements and the installation of twenty-four feet (24’) of pavement along Pecos Road.

E. Owner desires to extend the Deferral Period another 10 years and allow for additional in-lieu alternatives to the Required Improvements.

IN CONSIDERATION of the foregoing recitals and representations and the mutual covenants and agreements and conditions in this Second Amendment, the Parties agree as follows:

1. Definitions. All capitalized words and phrases used in this Second Amendment shall have the same meanings as set forth in the Development Agreement and First Amendment, unless a different definition is set forth in this Second Amendment.

2. Obligation to Construct and Temporary Deferral of the Required Improvements.

(a) (ii) of Section 2(a) of the Development Agreement is deleted in its entirety and replaced with: “twenty (20) years from the date this Development Agreement is entered into.”

(b) A new Subsection (e) In-Lieu Alternative II is added as follows: “In lieu of constructing the Required Improvements, City, through its City Manager, may agree in writing to accept the following, from Owner, in lieu of causing the actual design, installation, and construction of the Required Improvements: (i) the grant or transfer of a permanent easement for,

and/or design and construction of retention basin(s), on/or about the property, for the benefit of the City, and/or (ii) other public improvements (which may include the grant or transfer of property rights to the City) on property for the benefit of the City. Said In-Lieu Alternative II options shall be requested in writing by the Owner and prior to commencement of any of the In-Lieu Alternative II options, the City Manager shall, in his sole discretion, determine if the alternative will be credited towards the Required Improvements, in whole or in part. Said In-Lieu Alternatives must be mutually acceptable to both Owner and City.

3. Counterparts. This Second Amendment may be executed in two or more counterparts, each of which shall be deemed an original and all so executed shall constitute one agreement, binding on the Parties.

4. Merger. The Development Agreement as amended by this Second Amendment shall remain the same in full force and effect.

IN WITNESS WHEREOF, the City has caused this Second Amendment to be duly executed in its name and by its City Manager, and Owner has signed the same, on or as of the date above written.

CITY OF MESA, ARIZONA
an Arizona municipal corporation

By: _____

Its: CITY MANAGER

APPROVED AS TO FORM:

MESA CITY ATTORNEY

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 9th day of July, 2018, by Christopher J. Brady, City Manager of the City of Mesa, Arizona, an Arizona municipal corporation, on behalf of the corporation.

Notary Public

My Commission Expires:
