

**WHEN RECORDED RETURN TO:**

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

**PRE-ANNEXATION AND DEVELOPMENT AGREEMENT  
(AVALON CROSSING)**

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

**AND**

**PACIFIC PROVING, L.L.C.,  
a Delaware limited liability company**

THIS PRE-ANNEXATION DEVELOPMENT AGREEMENT (this “Agreement”) is entered into by and between the City of Mesa, an Arizona municipal corporation (the “City”), and Pacific Proving, L.L.C., a Delaware limited liability company (“Developer”). City and Developer are sometimes referred to herein collectively as the “**Parties**,” or individually as a “**Party**.”

#### RECITALS:

A. This Agreement pertains to a portion of real property already annexed into the City of Mesa, and a portion of real property located within Maricopa County and outside of the City’s municipal boundaries which the Developer is requesting to annex into the City concurrently with City Council consideration of this Agreement. More specifically, the real property consists of approximately one hundred sixty-two (162) acres in Maricopa County, Arizona (the “County Property”), and approximately twenty (20) acres in the City of Mesa, located south of Williams Field Road, north of the proposed alignment of the “Gateway Freeway” portion of State Route 24, east of Crismon Road, and west of Signal Butte Road, as more particularly described on Exhibit A and depicted on Exhibit B attached hereto and made a part hereof (Collectively the “**Property**”).

B. The Parties desire that the County Property be annexed into the corporate limits of the City and the Property be developed as an integral part of the City. A blank annexation petition has been filed with Maricopa County and meetings and hearings have been held in connection with the annexation of the County Property.

C. Concurrently with City Council’s consideration for approval of this Agreement and the annexation, Developer has submitted an application (identified as Case No. ZON18-00951) to grant the Property the zoning designation of Planned Community District (the “**PCD**”) as described in the Zoning Ordinance of the City of Mesa and, as required by the Zoning Ordinance, and submitted the Avalon Crossing Community Plan dated June 27, 2019 (the “**Avalon CP**”). The PCD together with the Avalon CP, if approved by Council, will constitute the zoning on the Property (collectively referred to as the “**Avalon PCD**”). This Agreement, along with the annexation and zoning requests, may be placed on the City Council agenda as a single item with multiple sub-parts that may be approved by City Council in one motion.

D. The development of the Property is predominantly residential, but also has a commercial component (the “**Project**”). The goal of the development of the Project is to integrate and unify these distinctive, yet complementary components.

E. The development of the Project pursuant to this Agreement and the Avalon PCD is acknowledged by the Parties to be consistent with the Mesa 2040 General Plan (the “**General Plan**”).

F. The Parties also acknowledge and agree that development of the Property pursuant to the Avalon PCD will result in planning and economic benefits to the City and its residents by: (a) providing a cohesive development that integrates well with the surrounding area, and (b) providing the City with a master planned community, offering an array of opportunities for retail, shopping, and recreation, as well as, diversity of residential neighborhoods and housing choices.

G. The Parties are entering into this Agreement pursuant to the provisions of A.R.S. § 9-500.05 in order to facilitate the annexation, municipal zoning designation and development of the Property by providing for, among other things: (i) phasing of the Development; (ii) the construction and installation of certain infrastructure improvements; (iii) limiting uses on the Property; and (iv) other matters related to the development of the Property.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing premises and mutual promises set forth in this Agreement, the City and Developer state, confirm, and agree as follows:

1. Recitals. The Parties hereby agree that the foregoing recitals are true and accurate and are hereby incorporated into this Agreement.

2. Planned Community District Development Regulations. The development of the Project shall be in accordance with the federal, state, county and City statutes, codes, laws (statutory and common law), ordinances, rules, regulations, permit requirements, and other requirements and official policies of the City, all as they may be amended from time to time, which apply to the development of the Project as of the date of any application or submission (collectively the “**Applicable Laws**”), this Agreement and the Avalon PCD. Further, the Avalon CP includes: general guidelines for the design and architectural elements of the buildings; administrative procedures; land use groups, permitted land uses, and allowed densities and intensities; and the Master Drainage Report, Master Water Report, Master Wastewater Report and Traffic Impact Analysis (collectively, the “**Avalon CP Reports**”). The Avalon CP and Avalon CP Reports include variations to the General Site Development Standards (as that term is defined in the Mesa Zoning Ordinance), such as lot coverages, lot sizes, lot widths, lot depths, lot mixture, setbacks, building heights, building envelopes and open space requirements and variations to certain subdivision and off-site improvement regulations in Mesa City Code Title 9 (collectively, the “**Development Modifications**”). Certain Development Modifications proposed within the Avalon CP Reports are subject to further submittals and approvals. The Project may be constructed as permitted with the Development Modifications subject to the terms and limitations of, and compliance with, the Mesa City Code (including but not limited to §§ 9-5-3(C), 9-6-7(C), and 9-8-04(C) and all other Applicable Laws.

3. Site Plan. Each site plan for development within the Property shall specify the permitted uses on the Property by referencing the sub-land use groups or specific uses. The permitted uses on a specific site shall be limited to those uses specified on the approved site plan. All other uses not specified are prohibited.

4. Phasing. The Developer may develop the Project in phases. In the first phase of residential development on the Property, the Developer, at its sole cost and expense, shall construct the community park as further described in the Avalon CP. Additionally, prior to development within any development unit on the Property, Developer shall submit, for City review and approval, a phasing schedule and infrastructure phasing plan for the development unit which will include, but is not limited to, a plan for the interim use, maintenance and management of the undeveloped phase or phases.

5. Private Neighborhood Parks. Developer, at its sole cost and expense, is responsible for the maintenance of all improvements located within any and all private neighborhood parks, community open spaces and plazas contemplated by the Avalon PCD and designated as such on any approved final plats or site plans.

6. Maintenance Agreement. Developer will enter into a maintenance agreement for the private parks (including the community park), the parkway (if a parkway is requested by the Developer) and for other maintenance purposes in substantially the form attached hereto as Exhibit C. The maintenance agreement will set forth the respective rights and obligations of the Developer and the City and among other things obligates the Developer, at its sole cost and expense, to maintain the parks and certain landscape improvements, repair and replace asphalt surfaces, stub-out all underground utilities in the parkway and reimburse the City for the additional cost of maintenance, repair or replacement of certain non-standard improvements.

7. Utility Improvements. Developer, at its sole cost and expense, shall design, construct, install and connect all utility system improvements in accordance with the sizes, quantities and locations (including extension of lines across all frontages) for the provision of utility service to the Project and Property, including but not limited to, those identified in the Avalon CP Reports (the “**Improvements**”). All Improvements must comply with the requirements of the Mesa City Code and other applicable City Standards, including the Engineering Design Standards. Developer shall be responsible for payment of all applicable impact, development and permitting fees.

8. Utility Service. City utility services will be provided in the manner provided to other similarly situated customers of the City subject to the terms and limitations of, and compliance with, the Applicable Laws (including, but not limited to, Mesa City Code Title 8, Chapter 10), the Terms and Conditions for the Sale of Utilities, as well as the payment of applicable utility rates, fees and charges as adopted and in effect.

9. Drainage Improvements. Developer, at its sole cost and expense, shall construct or arrange for the construction of drainage improvements in phases and in accordance with the approved Master Drainage Report (and any amendments approved by the City) and Applicable Laws.

10. Transportation.

10.1 Transportation Master Plan. The City has reviewed and approved the Traffic Impact Analysis prepared by Pacific Proving, LLC (the “**Master Transportation Study**”) which identifies street improvements necessary to develop the Property. The Master Transportation Study may be amended over time subject to review and approval by the City. Additionally, Developer shall update the Master Transportation Study, for review and approval by the City, if there is any change to the land uses or densities permitted in the Avalon PCD.

10.2 Transportation Infrastructure. Developer, at its sole cost and expense, shall design, construct, install, and extend the necessary street improvements identified

in the Avalon PCD, the Master Transportation Study and this Agreement and as required by Applicable Laws (collectively referred to as the “**Transportation Improvements**”). Transportation Improvements may be installed in phases as needed to serve the portion of the Property being developed, subject to the City’s review and approval of such phasing.

### 10.3 Traffic Signals.

10.3.1 Intersection of Community Street 1 and Williams Field Road. Upon the construction of Community Street 1 (as that term is used in the Master Traffic Study) at Williams Field Road, Developer, at its sole cost and expense, shall install the traffic signal at this intersection in accordance with City of Mesa Engineering and Design Standards.

10.3.2 Intersection of Crismon Road and Williams Field Road. Developer may either: (a) install, at Developer’s sole cost and expense, a traffic signal at the intersection of Crismon Road and Williams Field Road in accordance with City of Mesa Engineering and Design Standards (Developer may seek proportionate reimbursement through any City Share program or other applicable City programs adopted and in effect), or (b) pay the City an in-lieu fee for the Developer’s share of the traffic signal, pursuant to the current City Schedule of Fees and Charges, and the City will construct the traffic signal at such time as the City, in its sole and absolute discretion, deems the signal is necessary.

10.4 Turn Lanes. Developer, at its sole cost and expense, shall design, construct and install, pursuant to, and in accordance with, City of Mesa Engineering and Design Standards, the right and left turn lanes at the following intersections: (i) Crismon Road and Williams Field Road; (ii) Community Street 1 and Williams Field Road; (iii) Community Street 2 (as that term is used in the Master Transportation Study) and Williams Field Road; and (iv) any other public streets that will serve the development.

10.5 Future Assessment of Driveways. The Parties acknowledge that the Developer has not provided, and the City has not evaluated, the individual driveway locations for the Property. Upon the submittal of each site plan for development on the Property, Developer shall submit, for review and approval by the City, the individual driveway locations for the portion of the property identified on the site plan. At that time, the City will determine if the proposed driveways will be full access, partial access, or right-in/right-out only. Developer, at its sole cost and expense, will be required to design, construct and install, in accordance with City of Mesa Engineering and Design Standards, all required Transportation Improvements, including but not limited to, any left and/or right turn lanes.

10.6 Private Streets. Developer in compliance with Mesa City Code and Applicable Laws may develop the Project with private streets and may gate specific communities within the Project that have private streets. If Developer requests private streets, Developer will submit, for review and approval by the City, the number and location of the private streets within the Project. Further, in order for the City to provide solid waste services to the Project, the gates the Developer installs must comply with the City’s Solid Waste requirements, including but not limited to, exit only gates and remote control service, and such gates must be operational prior to the first certificate of occupancy for that particular community. The City may delay or deny any

certificate of occupancy for any structure Developer will construct on the Property if the Developer fails to comply with the City's Solid Waste requirements and all other Applicable Laws. Additionally, Developer shall grant to the City, at no cost to the City, an easement for police, fire, ambulance, solid waste collection (including, but not limited to, trash, recycling, green, and food waste), water, gas, storm drain line, or wastewater line installation and repair, and other similar public purposes, over any private streets within the Property. The Developer, its successors and assigns, shall, at its sole cost and expense, maintain the private streets in a manner such that City vehicles may safely and without undue wear and tear or damage, use the private streets for their intended purposes. The City has no obligation to maintain private streets constructed by Developer.

11. Term. This Agreement shall become effective on the date on which all the following events have occurred: this Agreement has been adopted and approved by the City Council, executed by duly authorized representatives of City and Developer, and recorded in the office of the Recorder of the County (the "**Effective Date**"). Notwithstanding anything in this Agreement to the contrary, the term of this Agreement ("**Term**") will begin on the Effective Date and shall automatically terminate on the earlier of: (a) completion of all performance obligations under this Agreement and the completion of construction of all phases of the Project on the Property, or (b) twenty (20) years from the Effective Date of this Agreement; unless this Agreement is terminated sooner pursuant to any earlier termination provision of this Agreement.

12. Default.

12.1 Events of Default. Any Party shall be deemed to be in default under this Agreement if the defaulting Party breaches any obligations required to be performed by it hereunder, subject to the provisions of Section 12.3.

12.2 Remedies. Whenever a default occurs and is not cured (or, if appropriate, cure undertaken) by the defaulting Party in accordance with Section 12.3 of this Agreement, the non-defaulting Party's sole and exclusive remedies shall consist of and be limited to seeking injunction, specific performance, declaratory action, special action, or other similar relief (whether characterized as mandamus, injunctive relief, specific performance or otherwise). Notwithstanding anything herein to the contrary, each Party expressly waives any and all right to terminate this Agreement, and/or seek damages as a remedy with respect to a default. Additionally, the City may revoke any City approval, permit, or certificate of occupancy for the Project or on any portion thereof of, or for any structure on the Property that does not comply with the requirements in this Agreement. The specific performance remedy provided in this Section 12 shall be cumulative relief and shall not be a limitation on the City's other remedies.

12.3 Grace Periods; Notice and Cure. Upon the occurrence of an event of default by any Party, such Party shall, upon receipt of written notice from the non-defaulting Party, proceed promptly to cure or remedy such default and, in any event, such default shall be cured within thirty (30) days after receipt of such notice, or, if such default is of a nature that is not capable of being cured within thirty (30) days, the cure shall be commenced within such period and diligently pursued to completion. The non-defaulting Party shall not exercise any remedies pursuant to Section 12.2 until and unless the applicable

cure period described in this Section 12.3 has expired and the default remains uncured at such time.

12.4 Delays; Waivers. Except as otherwise expressly provided in this Agreement, any delay by any Party in asserting any right or remedy under this Agreement shall not operate as a waiver of any such rights or limit such rights in any way; and any waiver in fact made by such Party with respect to any default by the other Party shall not be considered as a waiver of rights with respect to any other default by the non-defaulting Party or with respect to the particular default except to the extent specifically waived in writing. It is the intent of the Parties that this provision will enable each Party to avoid the risk of being limited in the exercise of any right or remedy provided in this Agreement by waiver, laches or otherwise at a time when it may still hope to resolve the problems created by the default involved.

12.5 Rights and Remedies Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by either Party of any one or more of such rights shall not preclude the exercise by it, at the same or different times, of any other right or remedy for any other default by the other Party.

13. Miscellaneous Provisions.

13.1 Governing Law; Choice of Forum. This Agreement will be deemed to be made under, will be construed in accordance with, and will be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this Agreement will be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa (or, as may be appropriate, in the Justice Courts of Maricopa County, Arizona, or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section 13.1.

13.2 Attorneys' Fees. No 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. Each Party shall bear its own attorneys' fees and costs, whether the same is resolved through arbitration, litigation in a court, or otherwise.

13.3 Assignment. The provisions of this Agreement are binding upon and shall inure to the benefit of the Parties, and all of their successors in interest and assigns; provided; however, that Developer's rights and obligations hereunder may only be assigned in whole, and only to a person or entity that has acquired an interest in the Property or a portion thereof and only by a written instrument recorded in the Official Records of Maricopa County, Arizona, expressly assigning such rights and obligations. In the event of a complete assignment by Developer, all of Developer's rights and obligations hereunder shall terminate effective upon the assumption by the Developer's assignee of such rights and obligations and the execution of an addendum that recognizes the assignment with respect to the interest in the Property, or portion thereof, transferred or conveyed. Developer assigning all of its interest shall submit an addendum on the

form attached hereto as Exhibit D, and when such addendum has been approved and countersigned by the City Manager, it shall be incorporated into and become a part of this Agreement.

13.4 Termination Upon Sale of Residential Lots. Except as otherwise provided herein, the Parties hereby acknowledge and agree that this Agreement is not intended to and shall not create conditions or exceptions to title or covenants running with the individual residential lots within the Property and any tracts or land intended to be dedicated or conveyed to the City, any other public or quasi-public entity, any utility provider, any homeowner association (i.e. A.R.S. § 33-1802(1)) or any school district. Therefore, in order to alleviate any concern as to the effect of this Agreement on the status of title to any of the Property, so long as not prohibited by law, this Agreement shall terminate without the execution or recordation of any further document or installment as to any individual residential lot and any tracts or land dedicated or conveyed to the City, any utility provider, any homeowner association or any school district, and thereupon such individual residential lot and any tracts or land dedicated or conveyed to City, any utility provider, any homeowner association or any school district shall be released from and no longer be subject to or burdened by the provisions of this Agreement.

13.5 Limited Severability. City and Developer each believes that the execution, delivery and performance of this Agreement are in compliance with all Applicable Laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring City to do any act in violation of any Applicable Laws, constitutional provision, law, regulation, City code or City charter), such provision will be deemed severed from this Agreement and this Agreement will otherwise remain in full force and effect; provided that this Agreement will retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. The Parties further agree, in such circumstances, to do all acts and to execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

13.6 Construction. The terms and provisions of this Agreement represent the results of negotiations between the Parties, each of which has been or has had the opportunity to be represented by counsel of its own choosing, and none of which has acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Agreement will be interpreted and construed in accordance with their usual and customary meanings, and the Parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Agreement that ambiguous or conflicting terms or provisions contained in this Agreement will be interpreted or construed against the Party who prepared or whose attorney prepared the executed Agreement or any earlier draft of the same.

#### 13.7 Notices.

a. Addresses. Except as otherwise required by law, any notice required or permitted under this Agreement (each, a “**Notice**”) will be in writing and will be given by (i) personal delivery, (ii) deposit in the United States mail, certified or registered, return receipt



requested, postage prepaid, addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this Section, or (iii) any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), delivery charges prepaid:

If to City: City of Mesa  
Attn: City Manager  
20 East Main Street  
Mesa, Arizona 85211

*If by United States Postal Service:*

Post Office Box 1466  
Mesa, Arizona 85211-1466

With a required copy to: City of Mesa  
Attn: City Attorney  
20 East Main Street, Suite 850  
Mesa, Arizona 85201

*If by United States Postal Service:*

Post Office Box 1466  
Mesa, Arizona 85211-1466

If to Developer: Pacific Proving, LLC  
Attention: Andrew Cohn and  
Lisa Bullington  
2201 E. Camelback Road, Suite 650  
Phoenix, AZ 85018

With a required copy to: Beus Gilbert PLLC  
Attention: Paul E. Gilbert and  
Cassandra Ayres  
701 N. 44<sup>th</sup> Street  
Phoenix, AZ 85008

b. Effective Date of Notices. Any Notice sent by United States Postal Service certified or registered mail will 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 will be deemed effective one (1) business day after deposit with such service. Any Notice personally delivered or delivered through a same-day delivery/courier service will be deemed effective upon

its receipt (or refusal to accept receipt) by the addressee. Any Party may designate a different person or entity or change the place to which any Notice will be given as provided.

13.8 Time of the Essence. Time is of the essence of this Agreement and each provision hereof.

13.9 Section Headings. The Section headings contained in this Agreement are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement.

13.10 Waiver. The Parties agree that neither the failure nor the delay of any Party to exercise any right, remedy, power or privilege under this Agreement will operate as a waiver of such right, remedy, power or privilege, nor will any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor will any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver will be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

13.11 Third Party Beneficiaries. No person or entity will be a third party beneficiary to this Agreement, except for permitted transferees or assignees to the extent that they assume or succeed to the rights and/or obligations of Developer under this Agreement.

13.12 Exhibits. The Parties agree that all references to this Agreement include all Exhibits designated in and attached to this Agreement, such Exhibits being incorporated into and made an integral part of this Agreement for all purposes.

13.13 Integration. Except as expressly provided in this Agreement, this Agreement constitutes the entire agreement between the Parties with respect to the subject matters hereof and supersedes any prior agreement, understanding, negotiation or representation regarding the subject matters covered by this Agreement.

13.14 Further Assurances. Each Party agrees to perform such other and further acts and to execute and deliver such additional agreements, documents, affidavits, certifications, acknowledgments and instruments as any other Party may reasonably require to consummate, evidence, confirm or carry out the matters contemplated by this Agreement or confirm the status of (a) this Agreement as in full force and effect and (b) the performance of the obligations hereunder at any time during its Term.

13.15 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 day 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. (Arizona time) on the last day of the applicable time period provided herein.

13.16 Consents and Approvals. Wherever this Agreement requires or permits the consent or approval of a Party to any act, document, use or other matter, such consent or approval may be given or denied by such Party in its reasonable discretion, unless this Agreement expressly provides otherwise. Any consent or approval required by this Agreement may be provided by the City Manager (or designee) unless otherwise specified or required by Applicable Laws.

13.17 Covenants Running With Land; Inurement. Except as provided in Section 13.4, the covenants, conditions, terms and provisions of this Agreement relating to use of the Premises will run with the Premises and will be binding upon, and will inure to the benefit of the Parties and their respective permitted successors and assigns with respect to the Premises. Wherever the term “Party” or the name of any particular Party is used in this Agreement such term will include any such Party's permitted successors and assigns.

13.18 Recordation. Within ten (10) days after this Agreement has been executed by the Parties, City will cause this Agreement to be recorded in the Official Records of Maricopa County, Arizona.

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

13.20 Amendments. Except as otherwise expressly provided for or permitted in this Agreement, no change or addition is to be made to this Agreement except by written amendment executed by City and Developer. Within ten (10) days after any amendment to this Agreement, such amendment will be recorded in the Official Records of Maricopa County, Arizona. Upon amendment of this Agreement, references to “Agreement” or “Development Agreement” will mean the Agreement as amended. If, after the effective date of any amendment(s), the parties find it necessary to refer to this Agreement in its original, unamended form, they will refer to it as the “Original Development Agreement.” When the Parties mean to refer to any specific amendment to the Agreement which amendment is unmodified by any subsequent amendments, the Parties will refer to it by the number of the amendment as well as its effective date.

13.21 Good Faith of Parties. Except where any matter is expressly stated to be in the sole discretion of a Party, in performance of this Agreement or in considering any requested extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily or capriciously and will not unreasonably withhold, delay or condition any requested approval, acknowledgment or consent.

13.22 Survival. The provisions contained in Sections 3, 5, 6 and 10.6 of this Agreement will survive the execution and delivery of this Agreement and the rescission, cancellation, expiration or termination of this Agreement.

13.23 Nonliability of City Officials, Etc., and of Employees, Members and Partners, Etc. of Developer. No City Council member, official, representative, agent, attorney or employee of City will be personally liable to any of the other Parties hereto, or to any successor in interest to any of the other Parties, in the event of any Default or breach by City or for any amount which may become due to any of the other Parties or their successors, or with respect to any

obligation of City under the terms of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the liability of Developer under this Agreement will be limited solely to the assets of Developer and will not extend to or be enforceable against: (i) the individual assets of any of the individuals or entities who are shareholders, members, managers constituent partners, officers or directors of the general partners or members of Developer; (ii) the shareholders, members or managers or constituent partners of Developer; or (iii) officers of Developer.

13.24 Developer's Representations. Nothing contained herein shall be deemed to obligate Developer to develop any portion of the Property or to complete construction of any of the Improvements.

13.25 No Boycott of Israel. Developer certifies pursuant to A.R.S. §35-393.01 that it is not currently engaged in, and for the duration of this Agreement will not engage in, a boycott of Israel.

13.26 Proposition 207 Waiver. By executing this Agreement, Developer, on behalf of itself and all successors-in-interest to all or any portion of the Property hereby fully, completely and unconditionally waives any right to claim diminution in value or claim for just compensation for diminution in value under A.R.S. §12-1134, et seq. arising out of any City action permitted to be taken by City pursuant to this Agreement. This waiver constitutes a complete release of any and all claims and causes of action that may arise or may be asserted under A.R.S. §12-1134, *et seq.* as it exists or may be enacted in the future or that may be amended from time to time with regard to the Property respecting any City actions permitted to be taken by City pursuant to this Agreement.

[SIGNATURES OF THE PARTIES APPEAR ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date(s) written below.

**CITY:**

CITY OF MESA, ARIZONA, an Arizona municipal corporation

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

Its: \_\_\_\_\_

**ATTEST:**

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

City Clerk

**APPROVED AS TO FORM:**

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

City Attorney

STATE OF ARIZONA )

) ss.

COUNTY OF MARICOPA )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by \_\_\_\_\_ the \_\_\_\_\_ of the City of Mesa, Arizona, an Arizona municipal corporation, who acknowledged that he/she signed the foregoing instrument on behalf of City.

\_\_\_\_\_

Notary Public

My commission expires:

\_\_\_\_\_

**DEVELOPER:**

Pacific Proving, L.L.C., a Delaware limited liability company

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

Its: \_\_\_\_\_

STATE OF ARIZONA        )

) ss.

COUNTY OF MARICOPA    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, an \_\_\_\_\_, the Developer named in the foregoing Development Agreement, who acknowledged that he signed the foregoing Development Agreement on behalf of Developer.

\_\_\_\_\_

Notary Public

My commission expires:

\_\_\_\_\_

**EXHIBIT A TO DEVELOPMENT AGREEMENT**

**LEGAL DESCRIPTION**

**EXHIBIT B TO DEVELOPMENT AGREEMENT**

**LEGAL DEPICTION**



**EXHIBIT C TO DEVELOPMENT AGREEMENT**

**MAINTENANCE AGREEMENT**

**EXHIBIT D TO DEVELOPMENT AGREEMENT**

**ASSIGNMENT FORM**