

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 _____, 2020, by and between SIGNAL BUTTE GRID, 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. Owners are the owners of approximately 10.153 net acres of property the property located at the northwest corner of Elliot Road and Signal Butte Road and legally described in Exhibit A and depicted in Exhibit B (the "Property") within the City of Mesa, AZ.

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

D. The Owners 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, 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, 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
- 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 DA, and such a decision shall be final and not subject to appeal.

3. Term/Termination. This Agreement shall become effective on the date this Agreement is recorded 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 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
 Facsimile: 480-644-2498
 Attn: Jim Smith, Esq.

Owner: Signal Butte Grid, LLC
 c/o Able Grid Energy Solutions, Inc
 1495 Canyon Boulevard, Suite 218
 Boulder, CO 80302
 Attn: Eric Stoutenburg

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 City 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.

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 Arizona with respect to Owner, or a municipal corporation within Arizona with respect to the City 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.

4.13 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.

4.14 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.

4.16 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.

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

4.18 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.

4.19 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 land and shall be binding upon all subsequent landowners and shall survive the expiration or earlier termination of this Agreement.

4.20 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 their employees and their 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. The City retains the legal right to randomly inspect the papers and records of any employee who works under this Agreement to ensure compliance with the above-mentioned laws.

4.21 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, 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.

[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: CITY MANAGER

ATTEST:

DeeAnn Mickelsen, City Clerk

APPROVED AS TO FORM

Jim Smith, City Attorney

STATE OF ARIZONA)
)ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by Christopher J. Brady, the City Manager for the CITY OF MESA, an Arizona municipal corporation.

Notary Public

My Commission Expires:

"Owner"

Signal Butte Grid, LLC,
A Delaware limited liability company


By: 

Name: Eric Stoutenburg

Title: Vice President

STATE OF Colorado)
County of Boulder) ss.

The foregoing instrument was acknowledged before me this 24 day
of February, 2020, by Eric Stoutenburg, the Vice President of Signal
Butte Grid, LLC, a Delaware limited liability company, on behalf of the corporation.


Notary Public

My commission expires: July 31, 2023

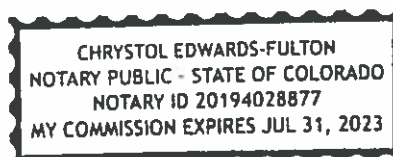


EXHIBIT A
TO DEVELOPMENT AGREEMENT

LOT 2 OF A LAND SPLIT MAP FILED WITH THE MARICOPA COUNTY RECORDER IN DOCUMENT NUMBER 2019-1017116, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A PARCEL OF LAND SITUATED IN A PART OF THE NORTH HALF OF THE SOUTHEAST QUARTER OF SECTION 11, TOWNSHIP 1 SOUTH, RANGE 7 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST QUARTER CORNER OF SAID SECTION 11, FROM WHICH THE SOUTHEAST CORNER OF SAID SECTION 11 BEARS SOUTH 00 DEGREES 37 MINUTES 10 SECONDS EAST, A DISTANCE OF 2638.27 FEET:

THENCE UPON AND WITH THE NORTH LINE OF SAID SOUTHEAST QUARTER OF SECTION 11, NORTH 89 DEGREES 32 MINUTES 16 SECONDS WEST. A DISTANCE OF 40.01 FEET TO THE NORTHWEST CORNER OF THAT CERTAIN PARCEL RECORDED IN DOCUMENT NUMBER 2001-433782, RECORDS OF MARICOPA COUNTY, ARIZONA;

THENCE UPON AND WITH THE WEST LINE OF SAID DOCUMENT NUMBER 2001-433782, BEING PARALLEL TO AND 40 FEET WEST OF THE EAST LINE OF SAID SECTION 11, SOUTH 00 DEGREES 37 MINUTES 10 SECONDS EAST, A DISTANCE OF 65.01 FEET TO THE POINT OF BEGINNING:

THENCE UPON SAID WEST LINE, SOUTH 00 DEGREES 37 MINUTES 10 SECONDS EAST A DISTANCE OF 845.17 FEET;

THENCE DEPARTING SAID WEST LINE, SOUTH 89 DEGREES 23 MINUTES 04 SECONDS EAST A DISTANCE OF 514.88 FEET:

THENCE NORTH 00 DEGREES 36 MINUTES 56 SECONDS WEST, A DISTANCE OF 863.86 FEET TO A POINT 65 FEET SOUTH OF THE AFORESAID NORTH LINE OF THE SOUTHEAST QUARTER OF SECTION 11:

THENCE PARALLEL TO AND 65.00 FEET SOUTH OF SAID NORTH LINE, SOUTH 89 DEGREES 32 MINUTES 16 SECONDS EAST, A DISTANCE OF 514.91 FEET TO THE POINT OF BEGINNING AND CONTAINING A COMPUTED AREA OF 442,263 SQUARE FEET OR 10.153 ACRES, MORE OR LESS.

EXHIBIT B
TO DEVELOPMENT AGREEMENT
DEPICTION OF THE PROPERTY

