

WHEN RECORDED RETURN TO:

City of Mesa  
55 North Center Street  
Mesa, AZ 85201

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is entered into \_\_\_\_\_, 20\_\_, by and between SIGNAL BUTTE INDUSTRIAL L.L.C., a Delaware limited liability company ("Owner"), MORTENSON DEVELOPMENT, INC., a Minnesota corporation ("Developer"), and the CITY OF MESA, an Arizona municipal corporation (the "City"). Owner, Developer, and City are collectively referred to herein as the "Parties," or individually as the "Party."

### RECITALS:

A. Owner owns approximately 64.5 acres of property (Maricopa County Assessor Parcel Number 304-01-992) located on the west side of Signal Butte Road, south of Guadalupe Road and north of Elliot Road (the "Property"), which is within the City of Mesa and is legally described on Exhibit A.

B. Developer plans to develop the Property with a multi-building industrial development (the "Project"). As a condition of rezoning (ZON21-01126), Developer must construct certain off-site improvements as part of the development of the Project. The required off-site improvements include, among other things, the construction of a third lane for southbound travel on Signal Butte Road (the "New Lane") within the right-of-way area extending from the Property's northernmost boundary along Signal Butte Road to the south approximately 920 feet (the "Area of Developer Responsibility"). Because the current configuration of Signal Butte Road is two lanes of travel in each direction, the addition of the New Lane will also require that Developer make alterations to and additions of pavement traffic markers and lane lines ("Striping Work") within the Area of Developer Responsibility.

C. Prior developers installed the pavement for the third southbound travel lane for Signal Butte Road north of the Property to Guadalupe Road and approximately 400 feet south of the Area of Developer Responsibility (the "Off-Property Roadway"). The Off-Property Roadway is, however, striped for two lanes of travel because if the Off-Property Roadway had been expanded to its ultimate design of three lanes prior to the expansion of Signal Butte Road to the south, then there would have been an unnecessarily dangerous bottleneck of traffic as it approached the northern boundary of

the Property. The Property, the Area of Developer Responsibility, and the Off-Property Roadway are depicted on Exhibit B.

D. With Developer's completion of the New Lane and Striping Work within the Area of Developer Responsibility, the City has determined that it is in the best interests of the City and the traveling public for the Off-Property Roadway to now be striped to transition to three lanes of travel. Because Developer will be performing the Striping Work within the Area of Developer Responsibility, the Parties agree that it is in the best interest of the traveling public and surrounding property owners (including the Owner) that both sections of Signal Butte Road (the Off-Property Roadway and Area of Developer Responsibility) be striped as a single project. Developer is willing to expand the scope of its Striping Work to include similar work on the Off-Property Roadway and City is willing to reimburse Developer for the cost and expenses of performing the additional work, subject to the terms and conditions in this Agreement.

E. The Parties desire to enter into this Agreement for the purpose of memorializing their agreement and intend this document to be a "Development Agreement" within the meaning of A.R.S. § 9-500.05.

F. The Parties acknowledge and agree, because the costs of the additional work to be performed by Developer and reimbursed by the City will not exceed \$100,000, the procurement of such services by the City is not subject to competitive selection requirements under either A.R.S. § 34-201 et. seq. or Mesa City Code, Title 1, Chapter 21.

#### **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. Covenants of the Parties.

1.1 Binding on Owner. Owner, its successors and assigns agree that the obligations set forth in this Agreement are covenants that are binding and enforceable upon Owner, its successors and assigns.

1.2 Binding on Developer. Developer, its successors and assigns agree that the obligations set forth in this Agreement are covenants that are binding and enforceable upon Developer, its successors and assigns.

1.3 Binding on City. City, on its behalf and on behalf of each of its subdivisions and departments and City's successors and assigns, agrees that the obligations set forth in this Agreement are binding and enforceable upon City and each of its departments and subdivisions.

2. Term/Termination. This Agreement shall become effective on the date this Agreement is recorded and shall automatically terminate when the first of the following two events occurs: (i) Satisfaction of each of Developer's and City's responsibilities as set forth in this Agreement, or (ii) Five years after the effective date of this Agreement, if neither Developer nor the City has materially performed under this Agreement nor taken any action to its detriment in reliance on this Agreement. Upon termination, the City's obligations under Section 4 hereof shall continue until the City has reimbursed Developer for all Off-Property Striping Work completed up through and including the termination date.

3. Developer Obligations. Developer agrees:

3.1 To perform, or cause to be performed, striping and pavement marking work on Signal Butte Road from the northern limit of the Property to an area approximately 300' south of Guadalupe Road and from the southern limit of the Area of Developer Responsibility approximately 400' south, which such area is depicted as the Off-Property Roadway on Exhibit B hereof (the "Off-Property Striping Work"). The scope and location of the Off-Property Striping Work shall be consistent with the certain Offsite Improvement Plans for Pursuit Park prepared by Ware Malcomb Civil Engineering dated June 20, 2023 (Job No. PHX21-0042) and approved by the City on June 26, 2023, except that the Off-Property Striping Work shall also include the area from the southern limit of the Area of Developer Responsibility approximately 400' south.

3.2 To comply with all terms of any permits required for the performance of the Off-Property Striping Work, including all requirements for insurance and conformance with the City of Mesa Engineering & Design Standards.

3.3 To provide City with proof of payment and copies of all invoices from contractors and/or subcontractors performing the Off-Property Striping Work and lien releases with a formal written request for reimbursement following the completion of the Off-Property Striping Work and City's final acceptance thereof (which the City shall not unreasonably withhold, condition or delay). Reimbursable costs shall not exceed \$100,000.

3.4 To bear all risk of loss, damage, or failure to the Off-Property Striping Work until final acceptance by the City.

3.5 To assign to the City all of Developer's rights and privileges concerning warranty and maintenance of the Off-Property Striping Work following City's final acceptance of the same.

3.6 To defend, indemnify, and hold harmless City from all claims, demands, costs, expenses, damages, losses, obligations, judgments, or lawsuits (collectively "Claims") that arise from any act or omission of Developer, its contractors, or its agents undertaken in fulfillment of Developer's obligations under the Agreement prior

to final acceptance of the Off-Property Striping Work by the City; provided, however, that the duty to indemnify shall not extend to Claims arising from the sole and exclusive negligence or willful misconduct of City or its agents.

4. City Obligations. City agrees:

4.1 To accept responsibility for reimbursement to Developer for costs and expenses specific to the Off-Property Striping Work, not to exceed \$100,000. For purposes of this Agreement, "costs and expenses specific to the Off-Property Striping Work" include both "hard" and "soft" third-party and other construction costs actually and reasonably incurred by Developer in the construction of the Off-Property Striping Work, including, without limitation, costs of labor, materials and supplies, permit fees, development and construction managements costs, and costs of insurance.

4.2 To inspect the Off-Property Striping Work and upon confirmation that the work has been performed in compliance with all permits, plans, and design standards, notify Developer of its final acceptance of the work (which the City shall not unreasonably withhold, condition or delay).

4.3 To process payment for reimbursement within forty-five (45) days following the receipt of a written reimbursement request with all required documentation.

4.3 To assume ownership of the product of the Off-Property Striping Work and to maintain the same after the completion and final acceptance.

5. General Provisions.

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

5.2 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: City Attorney

Owner: Asset Manager – Signal Butte  
C/O Lasalle Investment Management, Inc.  
333 W. Wacker Drive, Suite 2300  
Chicago, Illinois 60606

Developer: Mortenson Development  
433 S Farmer Ave, Suite 101  
Tempe, AZ 85281  
Attn: George Forristall

copy to: Snell & Wilmer L.L.P  
Attn: Nicholas Wood and Michael Maerowitz  
One E. Washington Street, Suite 270  
Phoenix, Arizona 85004

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 (3) 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.

5.3 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. No Party shall be entitled to recover any of its attorneys' fees or other costs from any 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.

5.4 Default. In the event that any Party defaults in the performance of its obligations contained in this Agreement, the non-defaulting party shall have all

remedies available at law and at equity, according to the laws of the State of Arizona.

5.4.1 Failure or unreasonable delay by any Party to perform or otherwise act in accordance with any term or provision hereof shall constitute a breach of this Agreement. The non-breaching party shall notify the breaching party in writing of the breach, specify the nature of the alleged breach and the manner in which said breach may be satisfactorily cured, if possible. If the breach can be, but is not, cured within thirty (30) days after written notice thereof (the "Cure Period"), the breach shall constitute a default under this Agreement.

5.4.2 Nothing contained in Section 5.4 is intended to limit City's right to declare a default or terminate this Agreement immediately in the event any act or omission by Developer or its contractor in connection with this Agreement poses an unreasonable risk of harm or liability to the City or the public.

5.5 Good Standing; Authority. Each Party represents and warrants that it is a duly formed and legally valid existing entity under the laws of its State of organization and the State of Arizona with respect to Owner and Developer, 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.

5.6 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.

5.7 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.

5.8 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.

5.9 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.

5.10 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.

5.11 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.

5.12 Conflict of Interest. Pursuant to A.R.S. § 38-503 and A.R.S. § 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.

5.13 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: Scope of Off-Property Striping Work

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

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

5.15 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.

5.16 Prior Appropriation. Pursuant to A.R.S. § 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 prior to the termination of this Agreement 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. In the event of termination under this Section 5.16, the City's obligations under Section 4 hereof shall continue until the City has reimbursed Developer for all Off-Property Striping Work completed up through and including the termination date.

5.17 A.R.S. § 35-394. Each Party certifies that it does not currently, and agrees for the duration of the contract that it will not, use:

5.17.1 The forced labor of ethnic Uyghurs in the People's Republic of China.

5.17.2 Any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

5.17.3 Any contractors, subcontractors, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China

If any Party becomes aware during the term of the Agreement that it is not in compliance with this Section 5.17, the Party shall notify each other Party within five (5) business days after becoming aware of the noncompliance. Failure of the Party to provide a written certification that the Party has remedied the noncompliance within one hundred eighty (180) days after notifying the public entity of its noncompliance shall result in the termination of this Agreement unless the Term of this Agreement shall end prior to said one hundred eighty (180) day period.

5.18 Immigration Compliance. To the extent applicable under A.R.S. § 41-4401 and 23-214, the Parties warrant compliance with all federal immigration laws and regulations that relate to their employees and contractors 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.

[SIGNATURES OF THE PARTIES APPEAR ON THE 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: \_\_\_\_\_  
Christopher J. Brady, City Manager

ATTEST:

\_\_\_\_\_  
Holly Moseley, City Clerk

APPROVED AS TO FORM

\_\_\_\_\_  
James Smith, City Attorney

STATE OF ARIZONA     )  
  )ss.  
County of Maricopa     )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by Christopher J. Brady, the City Manager for the CITY OF MESA, an Arizona municipal corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_





**EXHIBIT A**  
Legal Description of the Property

The Property

Lot 1, Land Split, recorded in Book 1499 of Maps, Page 40, Official Records of Maricopa County, Arizona.

More particularly described as:

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;

EXCEPTING THEREFROM THE EAST 40 FEET AS DESCRIBED IN THAT CERTAIN PARCEL RECORDED IN DOCUMENT NUMBER 2001- 433782, RECORDS OF MARICOPA COUNTY, ARIZONA;

ALSO EXCEPTING THEREFROM THE FOLLOWING:

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

THENCE UPON AND WITH THE EAST LINE OF SAID SOUTHEAST QUARTER OF SECTION 11, NORTH 00 DEGREES 37 MINUTES 10 SECONDS WEST, A DISTANCE OF 1319.14;

THENCE DEPARTING SAID EAST LINE, UPON AND WITH THE SOUTH LINE OF THE AFORESAID NORTH HALF OF THE SOUTHEAST QUARTER OF SECTION 11, NORTH 89 DEGREES 33 MINUTES 43 SECONDS WEST, A DISTANCE OF 40.01 FEET TO THE SOUTHWEST CORNER OF THE AFORESAID DOCUMENT NUMBER 2001-433782, AND BEING THE POINT OF BEGINNING;<sup>Unofficial Document</sup>

THENCE NORTH 89 DEGREES 33 MINUTES 43 SECONDS WEST A DISTANCE OF 514.99 FEET;

THENCE DEPARTING SAID SOUTH LINE, NORTH 00 DEGREES 36 MINUTES 56 SECONDS WEST, A DISTANCE OF 1254.36 FEET, TO A POINT 65.00 FEET SOUTH OF THE NORTH LINE OF THE AFORESAID SOUTHEAST QUARTER OF SECTION 11;

THENCE UPON AND WITH A LINE PARALLEL TO AND 65.00 FEET SOUTH OF THE SAID NORTH LINE, SOUTH 89 DEGREES 32 MINUTES 16 SECONDS EAST, A DISTANCE OF 514.91 FEET TO A POINT ON THE WESTLINE OF AFORESAID PARCEL DESCRIBED IN DOCUMENT NUMBER 2001-433782;

THENCE UPON AND WITH SAID WEST LINE AND PARALLEL TO AND 40.00 FEET WEST OF, THE AFORESAID EAST SECTION LINE, SOUTH 00 DEGREES 37 MINUTES 10 SECONDS EAST A DISTANCE OF 1254.14 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL CONTAINS A COMPUTED AREA OF 2,810,772 SQUARE FEET OR 64.526 ACRES, MORE OR LESS.

Further less and except that portion of Lot 1 conveyed to the City of Mesa for use as a public right of way pursuant to, and designated as "Right-of-Way" or "R/W" on, that certain "Map of Dedication of 'Pursuit Park'" recorded September 20, 2023, with the Maricopa County Recorder in Book 1758, Page 36 as Instrument No. 20230492299.

