WHEN RECORDED RETURN TO:

City of Mesa
Attn: Real Estate Services
20 E. Main Street
Mesa, Arizona 85201

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AMENDED AND RESTATED

DEVELOPMENT AGREEMENT AND

PRE-ANNEXATION DEVELOPMENT AGREEMENT

"DESTINATION AT GATEWAY"

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CITY OF MESA, ARIZONA,
an Arizona municipal corporation

AND

BCB GROUP INVESTMENT, LLC,
an Arizona limited liability company

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_____ ____, 2024

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AMENDED AND RESTATED DEVELOPMENT AGREEMENT AND PRE-ANNEXATION DEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT AND PRE-ANNEXATION DEVELOPMENT AGREEMENT (this "**Agreement**") is made as of the ____ day of _____, 2024 (the "**Effective Date**"), by and between the CITY OF MESA, ARIZONA, an Arizona municipal corporation (the "**City**"); and BCB GROUP INVESTMENT, LLC, an Arizona limited liability company ("**Developer**"), its permitted successors and assigns. The City and Developer are sometimes referred to in this Agreement collectively as the "**Parties**," or individually as a "**Party**."

RECITALS

A. The City and Signal Butte 24, LLC entered into a retail development tax incentive agreement titled "Development Agreement 'Destination at Gateway'" dated August 10, 2020, recorded in the official records of Maricopa County, Arizona on July 20, 2020 as Recorder No. 2020-0649618, that Signal Butte 24, LLC assigned to Developer, and it is the intent of the Parties that this Agreement amend and replace such August 10, 2020 development agreement in its entirety. As of the Effective Date, Developer owns that certain unimproved real property located within the City and consisting of approximately 128 +/- acres of land, the legal description and depiction of which is attached as Exhibit A (the "**Property**").

B. Developer intends to develop the Property as a high quality, master-planned, mixed-use, commercial and multiple residence development known as "Destination at Gateway" (the "**Project**"). Developer intends the development of the Project to include an auto mall, a commercial area in which multiple retail establishments for motor vehicles will be located (the "**Auto Mall**"), consisting of up to six to eight (6-8) New Car Dealerships (as that term is defined herein) and which may include Used Car Dealerships and Motorcycle Dealerships (as those terms are defined herein); however, the construction and operation of only one (1) New Car Dealership is necessary as a part of the Conditions Precedent (as that term is defined below) for the tax incentives described herein. Developer intends to develop the Project over time in phases.

C. Contiguous to the corporate limits of the City and the Property, Developer owns approximately 27.1 +/- acres of land that is located in unincorporated Maricopa County, Arizona (the "**County**") that is legally described and depicted in the attached Exhibit B (the "**Additional Property**"). Developer intends to deliver a petition for annexation of the Additional Property to the City and, if such annexation meets all the legal requirements for an annexation and the annexation is consented to and approved by the City Council, then Developer desires to develop the Additional Property as a part of the Project as more fully set forth in Section 9 herein.

D. The Parties intend that the land uses contemplated by this Agreement are or will be made consistent with the City's zoning and land use ordinances (as amended from time to time, collectively, "**Zoning**"), the City's General Plan, as it may be amended from time to time (the "**General Plan**"), and this Agreement.

E. The City believes that development of the Project as described in this Agreement is appropriate and that development of the Project will generate substantial transaction privilege tax revenues for the City, particularly as it relates to the Auto Mall, which revenues would not be

generated without such development or which revenues will exceed those that would be generated by alternative uses of the Property.

F. The Parties acknowledge that development of the Project pursuant to this Agreement will result in significant planning, economic and other public benefits to the City and its residents by, among other things: (a) providing for the construction of extensive public improvements and infrastructure in and around the Property (described and in the highlighted area depicted in Exhibit C-1, the "**Public Improvements**"); (b) providing for planned and orderly development of the Property consistent with the City's General Plan and the Zoning; (c) increasing tax revenues to the City arising from or relating to the improvements to be constructed on the Property; (d) creating a substantial number of new jobs and otherwise enhancing the economic welfare of the residents of the City; (e) enhancing quality of life for the City's residents by providing local, state-of-the-art opportunities for the purchasing, leasing and servicing of motor vehicles; and (f) advancing the goals of the General Plan and the Zoning.

G. The Parties understand and acknowledge that this Agreement constitutes a "Development Agreement" within the meaning of A.R.S. § 9-500.05 and a "Retail Development Tax Incentive Agreement" within the meaning of A.R.S. § 9-500.11, and it shall be recorded against the interest of Developer in the Property in the Office of the Maricopa County Recorder to give notice to all persons of its existence and of the Parties' intent that the burdens and benefits contained herein be binding on and inure to the benefit of the Parties and all their successors in interest and assigns.

H. Developer represents that, pursuant to A.R.S. § 9-500.11(D)(2) that in the absence of the tax incentives offered to Developer under this Agreement, Developer would not locate the Project, specifically the Auto Mall, in Mesa in the same time, place or manner.

I. As required by A.R.S. § 9-500.11, the City Council expressly finds that: (i) a Notice of Intent to enter into this Agreement was adopted by the City Council on _____, a copy of which is on file with the City Clerk's Office as Resolution No. _____, and incorporated herein by this reference; (ii) the tax incentive contemplated by this Agreement is anticipated to raise more revenue than the amount of the incentive during the duration of this Agreement; (iii) that such finding has been verified by an independent third party; (iv) that Developer did not finance such independent third party verification or have input into the selection of the independent third party verifying the findings; and (v) in the absence of the tax incentives offered to Developer, neither Developer nor a similar development would locate in Mesa, Arizona in the same location, time, place or manner as contemplated by the Project. The findings in this Recital were determined by the City Council to be true and correct both if the Additional Property is annexed into the City and developed as a part of the Project, and if the Additional Property is not annexed into the City and/or is not developed as a part of the Project.

J. The City acknowledges that the public services and public infrastructure improvements to be provided by Developer, while necessary to serve development within the Project, also are needed in certain instances to facilitate and support the ultimate development of a larger land area that includes the Property. As such, certain portions of the public services and public infrastructure improvements to be provided by Developer will be provided as part of the early phases of development of the Project, prior to the time when such public services and public infrastructure improvements would otherwise be required to serve completed phases of

development within the Project and therefore prior to the time Developer might otherwise be required to provide or contribute to the cost of same and prior to the time that the expense of such public services and public infrastructure improvements otherwise would be justified by the phasing of development of the Project. Developer is willing to provide such public services and public infrastructure improvements earlier than otherwise required for its private development of the Property and Additional Property (as applicable) only with the assurances that Developer will be able to develop the Project as provided in this Agreement.

AGREEMENTS

Now, therefore, in consideration of the foregoing recitals and representations and the mutual promises contained in this Agreement, the Parties agree as follows:

1. **Definitions**. In this Agreement, unless a different meaning clearly appears from the context, the below words and phrases shall be construed as defined in this Section. Words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The use of the term "shall" in this Agreement means a mandatory act or obligation.

"**Additional Property**" means as defined in Recital C and as described and depicted in Exhibit B.

"**Additional Property Benefits**" means as defined in Section 9.2.

"**Additional Property Eligibility Requirements**" means as defined in Section 9.8.1.

"**Additional Property Public Improvements**" means as defined in Section 9.9.

"**Affiliate**" means any person directly or indirectly controlling, controlled by, or under common control with that person or a blood relative or spouse of such person, if such person is a natural person. For the purposes of this definition: (i) "**control**" (including with correlative meaning, the terms "**controlling**," "**controlled by**" and "**under common control**"), as applied to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that person, whether through the ownership of voting securities, by contract or otherwise; and (ii) "**person**" means and includes natural persons, corporations, limited partnerships, general partnerships, joint stock companies, joint ventures associations, limited liability companies, limited liability partnerships, trusts, land trusts, business trusts or other organizations, whether or not legal entities.

"**Agreement**" means this Agreement, as amended and restated or supplemented in writing from time to time, and includes all attached Exhibits and schedules. References to Sections or Exhibits are to this Agreement unless otherwise qualified. The Recitals set forth in Paragraphs A through H, inclusive, are incorporated by reference in, and form a part of, this Agreement but are not intended to expand the scope, number or nature of Developer's undertakings beyond those expressly set forth in the numbered Sections of or the Exhibits to this Agreement.

"**Annexation Ordinance**" means as defined in Section 9.5.

"**Annexation Petition**" means as defined in Section 9.5.

"**Applicable Laws**" means, collectively, the federal, state, county and local laws (statutory and common law), ordinances, rules, regulations, standards, permit requirements, and other requirements and official policies of the City, as they may be amended or hereafter enacted from time to time, which apply to the development of the Property or Project including, but not limited to, City Code, the General Plan & Zoning, City Building Regulations (Title 4, Mesa City Code), City Subdivision Regulations, and all related approvals or requirements by City Council or City boards.

"**Auto Mall**" is defined in Recital B.

"**A.R.S.**" means Arizona Revised Statutes as now or later enacted or amended.

"**City**" means the Party designated as City on the first page of this Agreement.

"**City Code**" means the Code of the City of Mesa, Arizona, as amended from time to time.

"**City Council**" means the City Council of the City.

"**City Indemnified Parties**" is defined in Section 10.1.

"**City Representative**" is defined in Section 14.1.

"**Claims**" is defined in Section 10.1.

"**Completion of Construction**" or "**Completed**" means, as to the Minimum Improvements and the Public Improvements as a whole, the date on which both of the following have occurred: (i) all final certificates of occupancy have been issued by the City for the Minimum Improvements, which issuance shall not be unreasonably withheld, conditioned or delayed; and (ii) with regard to the Public Improvements, one or more letters of acceptance from the appropriate administrative staff member of the City of the completed Public Improvements for warranty and maintenance in accordance with the policies, standards and specifications contained in Applicable Law, which acceptance shall not be unreasonably withheld, conditioned or delayed.

"**Conditions Precedent**" is defined in Section 4.2.

"**County**" means as defined in Recital C and refers to Maricopa County, Arizona.

"**Designated Lenders**" is set forth in Section 17.21.

"**Developer**" means the Party designated as "**Developer**" on the first page of this Agreement that constructs the Public Improvements and the Project, and its successors and assigns that conform with the requirements of this Agreement.

"**Developer Representative**" is defined in Section 14.1.

"**Economic Incentive Period**" is defined in Section 8.2.

"**Effective Date**" means as defined on Page 1.

"**Enforced Delay**" is defined in Section 13.6.

"**General Plan**" is defined in Recital D.

"**Indemnify**" is defined in Section 10.1.

"**Lender**" or "**Lenders**" is defined in Section 17.21.

"**Minimum Improvements**" is described in Section 4.1.

"**Monthly Tax Report**" is defined in Section 8.1(a).

"**Motorcycle Dealership**" means a franchised motorcycle brand dealership that sells or leases motorcycles at a retail level based on a dealership contract with one or more national or international motorcycle manufacturers (or their sales subsidiaries), that has received a license from the State of Arizona to be a motor vehicle or motorcycle dealer (if required by law), with the majority of revenue coming from the sale or lease of new motorcycles, in addition to the sales or leasing of previously owned motorcycles and the servicing of such new and previously owned motorcycles. The Motorcycle Dealership brand shall be of a comparable brand name to Harley Davidson, Yamaha, Triumph, or similar nationally or regionally recognized motorcycle dealership.

"**New Car Dealership**" means a franchised automobile brand dealership that sells or leases vehicles at a retail level based on a dealership contract with one or more national or international automobile manufacturers (or their sales subsidiaries), that has a New Motor Vehicle License from the State of Arizona, with the majority of revenue coming from the sale or lease of new vehicles, in addition to the sales or leasing of previously owned vehicles and the servicing of such new and previously owned vehicles.

"**Non-Performance**" or "**Event of Non-Performance**" means one or more of the events described in Section 13.1 or Section 13.2; provided, however, that such events shall not give rise to any remedy until effect has been given to all grace periods, cure periods and periods of Enforced Delay provided for in this Agreement.

"**Party**" or "**Parties**" means Developer and the City as designated on the first page of this Agreement and their permitted successors and assigns.

"**Project**" is defined in Recital B.

"**Property**" is defined in Recital A and legally described and depicted in Exhibit A.

"**Public Improvements**" means those public improvements that described and in the highlighted area depicted in Exhibit C-1 that Developer constructs or causes to be constructed for the Project that are directly related to the construction, development or operation of the Dealerships, that are not constructed for another project or development, and are in accordance with Section 5.1.1.

"**Public Improvement Costs**" means all reasonable costs, expenses, fees and charges actually incurred by Developer and paid to Third Party contractors, construction managers, architects, engineers, surveyors, consultants, attorneys, governmental agencies and other Third Parties for studies, reports, tests, inspections, reviews, materials, labor, design, engineering, surveying, site excavation and preparation, grading, drainage, removal, relocation and replacement of utility facilities and improvements, governmental permits and fees (excluding, impact fees), payment, performance and other bonds, and other similar costs and expenses reasonably necessary for the design, permitting, construction, installation, or provision of the Public Improvements.

"**Required Dedications**" is defined in Section 5.1.5 and described in Exhibit E-1.

"**Rezoning**" means as defined in Section 9.6.2.

"**Rezoning Ordinance**" means as defined in Section 9.6.2.

"**Sales Tax**" means, for the purposes of this Agreement, that portion of the City's transaction privilege sales and use taxes received by the City pursuant to the Tax Code of the City, as the same may change from time-to-time, and that is made part of the City's general fund that have not otherwise been dedicated or assigned to specific purposes. The Parties acknowledge that "Sales Tax" under this Agreement by definition are those Tax Code transaction privilege and use taxes that are made part of the City's general fund that are not otherwise dedicated or assigned to a specific purpose. As of the Effective Date, of the City's total 2.0% transaction privilege and use tax rate, 1.20% is considered Sales Tax that is subject to the Sales Tax Rebates calculation; the remaining .80% is dedicated or assigned to a specific purpose (.30% for the street maintenance fund, .25% for the quality-of-life fund, and .25% for public safety.) Changes in the Tax Code (including changes to the Sales Tax structure, the dedication or assignment of any portion of tax to a specific purpose, the tax rate, or taxable activities) may result in changes to the amount of the Sales Tax Rebates received by Developer.

"**Sales Tax Rebates**" is defined in Section 8.1.

"**Signal Butte Dedicated Right of Way**" is defined in Section 9.9.

"**Special Account**" is defined in Section 8.1(a).

"**State**" means the State of Arizona.

"**Tax Code**" means Title 5, Chapter 10 of the City Code.

"**Taxable Activities**" means as defined in Section 8.1.

"**Term**" means the period commencing on the Effective Date and terminating one (1) year after the termination of the Economic Incentive Period.

"**Third Party**" means any Person (as defined above in the definition of Affiliate) other than a Party or an Affiliate of any Party.

"**Total Incentive Amount**" is defined in Section 8.2.

"**Used Car Dealership**" means an automobile dealership that: (i) primarily deals in the purchase, sale, exchange or dealing in previously owned vehicles, but may offer service of automobiles as an ancillary use; (ii) has received a license from the State of Arizona to be a used car dealer; and (iii) is of a comparable brand name to Bill Luke Used Cars, Carmax, or similar nationally or regionally recognized automobile dealership that is open to the public to view and purchase inventory onsite.

"**Zoning**" is defined in Recital D.

2. [Reserved.]

3. **Scope and Regulation of the Project**.

3.1 Compliance with Applicable Laws. Developer agrees that all design and development of the Property, including the Project and Public Improvements, shall comply with the terms of this Agreement, Applicable Laws and any amendments thereto. All Applicable Laws in effect at the time of development of any portion of the Property shall apply to such development. Developer shall pay all applicable fees related to the development and construction of the Project.

3.2 Land Use Restrictions. Notwithstanding general allowances for land use under Zoning and the General Plan, Developer agrees to all the land use restrictions in the development and use of the Property which are set forth in this Section 3.2, and such land use restrictions shall survive the termination or expiration of this Agreement for a period of thirty (30) years from the Effective Date.

(a) A minimum of sixty percent (60%) of the acreage of the Property must be commercial development.

(b) A maximum of forty percent (40%) of the Property that is zoned General Commercial, may be used for multiple residence.

(c) As depicted in the attached Exhibit D-1, residential uses, including multiple residence, are prohibited in the: (a) southwest corner of the intersection of South Signal Butte Road and East Williams Field Road for an area of five (5) acres; and (b) southeast corner of the intersection of South Signal Butte Road and East Williams Field Road, within two hundred feet (200') of East Williams Field Road south for a distance of seven-hundred fifty feet (750') east of the South Signal Butte Road centerline, and within two hundred feet (200') east of the South Signal Butte Road centerline; all of the aforementioned measurements being measured from the right-of-way lines after required dedication. Residential uses are permitted to have access points out to South Signal Butte Road, allowing for not more than reasonable two-way access and appurtenant landscaping, but shall not otherwise have arterial street frontage within the areas prohibited for residential use in this Section 3.2(c).

(d) Notwithstanding the foregoing in Section 3.2(b) and (c), if the Property is approved for rezoning to a Zoning residential district (RS, RSL, or RM) set forth in Mesa City Code 11-5-2, as to the portion of the Property that is rezoned, it will be considered an automatic amendment to the land use restrictions in Section 3.2(b) and (c) of this Agreement, without further act or amendment required, and such use will be subject to allowed residential uses

and conditions of the residential zoning district

(e) Prohibited & Restricted Uses. The following land uses, as set forth and defined in the Mesa Zoning Ordinance, as amended, shall be prohibited and restricted on the Property as set forth below:

(i) Airport Land Use Classifications, including Aircraft Refueling Stations, Aircraft Light Maintenance, Airport Transit Stations, Airport Related Long-Term Parking Lots, Heliports, Transportation Facilities, shall be prohibited except that aircraft related manufacturing, modification, supply, distribution, or similar type uses shall be an allowed use.

(ii) All Marijuana Uses including, but not limited to, Recreational Dispensaries, Medical Dispensaries, and Cultivation Facilities shall be prohibited; provided, however, that if Applicable Laws are amended related to marijuana, that would otherwise allow the sale of marijuana on the Property, that such sale of marijuana will be allowed as an ancillary use to a principal use.

(iii) Standalone Animal Sales and Services, including Kennels and Veterinary Services shall be prohibited.

(iv) Automobile Rentals shall be prohibited as a principal use but shall be allowed as an accessory use to a New Car Dealership or Used Car Dealership.

(v) Automobile/Vehicle Service and Repair, Major as a principal use shall be prohibited but shall be allowed as an accessory use to a permitted use, including allowed as part of a New Car Dealership, Motorcycle Dealership, or Used Car Dealership service center.

(vi) Automobile/Vehicle Service and Repair, Minor as a use shall be limited to either: (a) two (2) locations as a principal use; or (b) one (1) location as a principal use and one (1) location as an accessory use when developed with a commercial or retail sales principal use that is unrelated to motor vehicles or motorcycles. Automobile/Vehicle Service and Repair, Minor shall be allowed as an accessory use to a permitted principal use as part of a New Car Dealership, Motorcycle Dealership, or Used Car Dealership service center.

(vii) Automobile/Vehicle washing facilities as a principal use shall be prohibited but shall be allowed as an accessory use to a permitted use, including allowed as part of a New Car Dealership, Motorcycle Dealership, or Used Car Dealership.

(viii) Boat and Recreational Vehicle Storage and Mini-Storage shall be prohibited.

(ix) Lumberyards and Contractor Yards shall be prohibited as a principal use shall be prohibited but shall be allowed as an accessory use to a permitted use.

(x) Correctional Transitional Housing Facility (CTHF) shall be prohibited.

(xi) Commercial Recreation, Large Scale shall be prohibited, except that fitness centers and gymnasiums shall be permitted as a principal or accessory use.

(xii) Funeral Parlors and Mortuaries shall be prohibited.

(xiii) Live-Work Units shall be prohibited.

(xiv) Parking, Commercial shall be prohibited. For the purposes of clarity, Parking, Commercial does not include the parking of new or used vehicle inventory directly related to any New Car Dealership, Motorcycle Dealership, or Used Car Dealership on the Property.

(xv) Recycling Facilities, including Reverse Vending Machines, Small Indoor Collection Facilities, and Large Collection Facilities, shall be prohibited.

(xvi) Service Stations shall be limited to a maximum of one (1) principal use facility on the Property, but additional gas facilities shall be allowed as an accessory use to a permitted use.

(xvii) Solar Farms shall be prohibited.

(xviii) Towing and Impound shall be prohibited.

(xix) Utilities, Major shall be prohibited.

(xx) Stand-alone food and/or beverage service Drive-Thru Facilities shall be limited to a maximum of five (5) on the Property. For the purposes of clarity, (i) a food and/or beverage service Drive-Thru Facility on an end-cap does not count towards the maximum number of Drive-Thru Facilities allowed; and (ii) Drive-Up ATM/Teller Windows and Pick-Up Window Facilities are not Drive-Thru Facilities.

3.3 City Review and Approval of Plans. Developer recognizes that development and construction of the Property and Project are subject to the City's normal and customary planning, engineering and building plan submittal, review, approval and inspection processes and related fees. The City will use its reasonable efforts to facilitate its regulatory processes including, but not limited to, use permit, variance, design review, building permit and inspection processes, within the time normally associated with the City's regulatory processes then in effect.

3.4 City Services. The City will make available City utility services (including water and wastewater, and natural gas within the City's service area) to the Property through the City's regular systems in the manner provided to other similarly situated customers within the City and without special rights or remedies. Service availability is also subject to extension of the water and wastewater systems to and across all frontages of the Property by Developer at Developer's sole cost and expense (gas extensions may also require Developer contribution). For the avoidance of doubt, any City service(s) shall be subject to and conditioned on compliance with the Mesa City Code (including the Water Shortage Management Plan and measures taken thereunder), the Terms and Conditions for the Sale of Utilities, all other Applicable Laws, and the timely payment of

applicable rates, fees, and charges, all of the foregoing as are in effect at any given time. Additionally, and notwithstanding the provisions of any other Section of this Agreement, any obligations the City may have under this Section: (i) shall be limited to those demands estimated for the Property in the applicable Master Plans on file with the City as of Effective Date; (ii) are contingent on the Arizona Department of Water Resources continuing the City's designation of Assured Water Supply under A.R.S. § 45-576 and no moratorium having been declared under A.R.S. § 9-463.06; and (iii) in all events shall expire and terminate on the tenth (10th) anniversary of the Effective Date. Nothing herein constitutes the waiver of or any limitation on the City's ability to enforce or adopt additional wastewater pretreatment requirements, nor the acceptance or approval by the City of Developer or any other occupant of the Property as an MLM Customer under Title 8 Chapter 10 of the Mesa City Code.

3.5 Design Elements.

3.5.1 Design Standards. The Project will be developed in accordance with comprehensive design guidelines demonstrating high-quality architectural design for the Project. Developer will submit comprehensive design guidelines to the City prior to the approval of any site plan. To ensure the high-quality architectural design for the Project, the comprehensive design guidelines will be subject to review and a recommendation of approval by the design review board, and final review and approval of the design guidelines by the Planning Director.

3.5.2 Public Address System. In the event an exterior public address system is utilized at a New Car Dealership, Used Car Dealership, or Motorcycle Dealership located on a parcel adjacent to a parcel containing single-family residential housing, the decibel level of the public address system shall not exceed the greater of either: (i) 60 decibels measured at the property line of the single-family residential parcel, or (ii) the decibel of the ambient noise level at the property line of the single-family residential parcel. Compliance with this Subsection will be demonstrated through a noise study showing that the public address system does not increase the existing noise level at the single-family residential property line. For the purposes of this Subsection the term "adjacent" shall include parcels separated by public or private roadway, or right-of-way. The requirements in this Subsection do not apply to noise generated by a public address system due to an emergency alarm or security measures.

3.5.3 Lighting. For any New Car Dealership, Used Car Dealership, or Motorcycle Dealership, any exterior light fixture containing lighting that emits at a 150-wattage equivalent (e.g. 23 LED watts) shall be fully shielded (full cutoff) from visibility at the property line to reduce glare and light-spillage onto nearby properties. In addition to any lighting requirements set forth in the City Code (including City Code Section 11-30-5), Developer agrees that all photometric studies submitted to City to obtain a permit in accordance with City Code Section 4-1-4 for any New Car Dealership, Used Car Dealership, or Motorcycle Dealership shall conform to the City Code and demonstrate compliance with this Subsection 3.5.3.

4. **Minimum Improvements; Conditions Precedent**.

4.1 Minimum Improvements. The "**Minimum Improvements**" shall consist of the first New Car Dealership at the Project that is open for business to the public on a full-time basis which requires, at a minimum, the issuance of a certificate of occupancy, which may be a

temporary certificate of occupancy. Developer acknowledges that the Public Improvements must be Completed and accepted by the City in accordance with the terms of this Agreement prior to issuance of the final certificate of occupancy by the City for the first New Car Dealership.

4.2 Completion of Conditions Precedent for Receipt of Sales Tax. Developer acknowledges and agrees that the Sales Tax Rebates are intended to reimburse Developer for the Public Improvements as permitted under Applicable Law, including A.R.S. § 9-500.11 and A.R.S. § 42-6010, that are constructed by Developer in accordance with the requirements of this Agreement, including Title 34 of A.R.S. As a condition to any right to receive any of the Sales Tax Rebates all of the following shall take place on or before the dates listed subject to Enforced Delay (collectively, "**Conditions Precedent**"): (i) Completion of Construction and acceptance by the City of the Public Improvements on or before April 1, 2028; (ii) the Required Dedications must be made to the City in Section 5.1.5 on or before April 1, 2028; (iii) Completion of Construction of the Minimum Improvements on or before July 1, 2029; and (iv) the first New Car Dealership shall be open for business to the public on a full-time basis on or before July 1, 2029 which requires, at a minimum, the issuance of a certificate of occupancy. Provided further, notwithstanding any other provisions of this Agreement~~,~~, if the Conditions Precedent are not satisfied on or before December 31, 2029, Developer will not have met the conditions required to receive tax incentives under this Agreement and will not be entitled to nor receive the Sales Tax Rebates, Sales Tax incentive, or any other financial or tax related incentives granted under this Agreement related to development of the Property and this Agreement shall automatically terminate without further act or notice required except for the obligations of Indemnity the use restrictions in Section 3.2 and Section 9.8.4 which shall survive for a period of thirty (30) years from the Effective Date, and other obligations that expressly survive the termination of this Agreement.

5. **Public Improvements**.

5.1 Public Improvements. Developer shall plan, design, construct and dedicate to the City, subject to the terms and conditions of this Agreement, the Public Improvements but only to the extent the Public Improvements are not otherwise constructed by the City, improvement districts, community facilities districts, utility companies, neighboring property owners, Arizona Department of Transportation, or other agencies or divisions of the State or Maricopa County.

5.1.1 Design, Bidding, Construction and Dedication; Auto Mall Related. In addition to other requirements set forth in this Agreement for the reimbursement of, to be eligible for reimbursement, the Public Improvements shall be:

(a) planned, designed, bid, constructed and dedicated in compliance with Applicable Laws including, without limitation, Title 34 of A.R.S and the City's procurement and public bidding procedures; and

(b) directly related to the construction, development, or operation of the Auto Mall (i.e., the retail development activity) on the Property in order to meet the requirements of A.R.S.§ 9-500.11. The Parties acknowledge that the Auto Mall is only a portion of the Project that will be developed on the Property, which also includes other commercial retail and multi-family residential. Those Public Improvements for the Project that are not directly related to the construction, development, or operation of the Auto Mall are

ineligible for reimbursement. City and Developer may modify the Public Improvements set forth in the Exhibits that are eligible for reimbursement to comply with the requirements of this Subsection, by mutual written consent of the Parties, each at its own sole and absolute discretion, and subject to Applicable Law.

5.1.2 City Review and Approval of Plans. Developer recognizes that development and construction of the Public Improvements pursuant to this Agreement are subject to the City's normal engineering plan submittal, review and approval processes, and day-to-day inspection services.

5.1.3 Payment of Public Improvement Costs. Developer shall pay all Public Improvement Costs as the same become due.

5.1.4 Dedication, Acceptance and Maintenance of Public Improvements. When the Public Improvements are completed, Developer shall dedicate, and the City shall accept, such Public Improvements in accordance with Applicable Law, and upon such reasonable and customary conditions as the City may impose including, without limitation, a two (2) year workmanship and materials contractor's warranty, which represents a period similar to what the City is requiring as of the Effective Date for comparable developments in the vicinity of the Project. Upon acceptance by the City, the Public Improvements shall become public facilities and property of the City; the City shall be solely responsible for all subsequent maintenance, replacement or repairs of the Public Improvements. With respect to any Claims arising prior to acceptance of the Public Improvements by the City, Developer shall bear all risk of, and shall Indemnify the City Indemnified Parties against any Claim arising prior to the City's acceptance of the Public Improvements arising from the condition, loss, damage to or failure of any of the Public Improvements, except to the extent caused solely by the gross negligence or willful acts or omissions of the City Indemnified Parties. In order for such portion of the Public Improvements to be dedicated to the City (and thus be eligible for reimbursement as Public Improvement Costs), that portion of East Williams Field Road right-of-way on East Williams Field Road adjacent to and within the Property that is presently Maricopa County right-of-way must be annexed by and incorporated into the City.

5.1.5 Required Dedications. Prior to the date required for Completion of Construction of the Minimum Improvements and Public Improvements, and as an element of the Condition Precedent to any obligation of City to make any Sales Tax Rebates payment to Developer, Developer will dedicate and construct in accordance with City requirements (see City of Mesa Standard Detail M-19.01), and City will accept the dedication, of the rights-of-way as further described in Exhibit E-1 to this Agreement ("**Required Dedications**").

5.1.6 Additional Obligations Regarding S. 110th Street. As a part of the Required Dedications listed in Exhibit E-1 and the Public Improvements described and in the highlighted area depicted in Exhibit C-1, Developer will be constructing and dedicating to the City Public Improvements on the west half of S. 110th Street. The City acknowledges that as a part of the Project, Developer will be applying to the City to abandon the right of way of E. Underwood Avenue between South Signal Butte Road and S. 110th Street. All Public Improvements and Required Dedications related to S. 110th Street must be complete prior to Developer submitting its application for abandonment of the E. Underwood Avenue right of way. Developer acknowledges that the abandonment of E. Underwood Avenue, which is subject to City Council approval, could

result in a claim for which Developer must Indemnify the City Indemnified Parties in accordance with Section 10, specifically Section 10.2.

5.2 East Williams Field Road Water & Sewer. City Code Sections 9-6-4(D)(4) and 9-8-3(H)(4), as applicable, authorize a "private line agreement" requiring subsequent users of a water and/or sewer line(s) to pay a share of the cost of a line extension at such time as they take service from the line extension if service is taken during the term of the private line agreement. It is anticipated that a development east of the Project will construct the East Williams Field Road water and/or sewer line(s) and the developer of such property will enter into a private line agreement with the City. Should the City enter into a private line agreement for the water and/or sewer lines in East Williams Field Road with a Third-Party property owner, Developer will pay the applicable fee(s) set forth in the private line agreement for taking service from the water and/or sewer line(s). Any fees or costs of Developer paid pursuant to the private line agreement are ineligible for reimbursement as Public Improvement Costs under the Sales Tax Rebates (see Section 8.1).

6. **Public Improvement Costs Compliance**. In order for Public Improvement Costs to be eligible for the Sales Tax Rebates economic incentive set forth in Section 8.1, the Public Improvement Costs must be in compliance with the requirements of this Agreement, including the requirements of Title 34 of A.R.S. Within ninety (90) days of the acceptance of the Public Improvements by the City, Developer shall submit to the City Development Services Department staff documentation showing the Public Improvement Costs meet the requirements of this Agreement. Documentation to support the Public Improvement Costs include evidence of paid itemized receipts or invoices, lien releases, and proof of payment, and contracts with contractors and subcontractors. The City Development Services Department shall review the Public Improvement Costs for compliance. Developer agrees that it will work with City Development Services Department staff in the provision of information and documentation necessary for the reasonable determination of the eligibility of Public Improvement Costs for reimbursement under this Agreement. Any Public Improvement Costs claimed by Developer that are not deemed by the City Development Services Department to be in compliance with the requirements of this Agreement shall be deemed disallowed and ineligible for reimbursement from the Sales Tax Rebates or any tax or other financial incentive under this Agreement. Any decision related to the disallowance of Public Improvement Costs may be appealed in accordance with Section 14.2.

7. **City's Undertakings**. The City acknowledges that it has begun the process of the design of South Signal Butte Road from East Williams Field Road to State Route 24, funded by Proposition 400 monies and other general fund monies, and the construction is scheduled to be completed on or before December 31, 2024. The City will proceed in the construction of South Signal Butte Road in a commercially reasonable fashion based on the availability of funding. The design, construction, funding and approval of the South Signal Butte Road construction shall be at the sole discretion of the City and subject to City Council approval at the City Council's sole discretion.

8. **Economic Incentives**. Prior to entering into this Agreement, the City Council found and determined, that the development of the Project: (a) will substantially enhance the economic health of the City; (b) will result in a net increase or retention of jobs in the City; (c) will add to the City's tax base; (d) will otherwise improve or enhance the economic welfare and quality of life of the residents and businesses of the City; (e) would not otherwise occur in the City without

these incentives; and (f) demonstrates the potential to generate revenues and other benefits to the City, which outweigh or are not disproportionate to the costs associated with these incentives. Accordingly, the City shall pay to Developer the Sales Tax Rebates in accordance with this Section 8.

8.1 Sales Tax Rebates; Taxable Activities. In consideration of Developer's constructing or causing to be constructed the Public Improvements and otherwise satisfying the conditions of this Agreement, including meeting the requirements of the Conditions Precedent, the City shall rebate and pay to Developer (the "**Sales Tax Rebate(s)**"), up to and not exceeding the Total Incentive Amount (see Section 8.2), which shall be calculated as an amount measured by fifty percent (50%) of the Sales Tax actually received by the City that are derived from Taxable Activities conducted during the Economic Incentive Period. Developer acknowledges that this Agreement in no way binds the City Council or any taxing authority to prevent future modifications to Applicable Laws related to taxation, including the Tax Code. The Sales Tax Rebates shall be determined, deposited into the City's Special Account, and paid to Developer as set forth in this Section 8. For the purposes of this Agreement "**Taxable Activities**" means all taxable activities, as set forth in the Tax Code, from the operation of New Car Dealerships or Used Car Dealerships, including automobile and parts sales, and the taxable portions of vehicle service and operations, that generate transaction privilege sales tax revenue for the City in, on, or within the Property during the Economic Incentive Period. Taxable Activities shall also include all taxable activities, as set forth in the Tax Code, from the operation of Motorcycle Dealerships, including motorcycle and parts sales, and the taxable portions of motorcycle service and operations, that generate transaction privilege sales tax revenue for the City in, on, or within the Property that is generated during the Economic Incentive Period after the issuance of a final certificate of occupancy and opening for business to the public on a full-time basis of two (2) New Car Dealerships. Any transaction privilege sales tax revenue generated by a Motorcycle Dealership prior to the issuance of a final certificate of occupancy and opening for business to the public on a full-time basis of the two (2) New Car Dealerships shall not be considered a Taxable Activity and such tax shall not be calculated towards or be included as a part of the Sales Tax Rebate.

(a) Accounting. The Sales Tax Rebates shall be accounted for by the City separately from the tax revenues credited to the City's general fund in a special account (the "**Special Account**"). The Special Account shall be a bookkeeping record of the City and the City shall not be required to deposit the funds reflected in the account in a separate account at a bank or other financial institution. The first credit to the Special Account shall be made after the Conditions Precedent are met and within sixty (60) days following the City's receipt of a monthly transaction privilege tax report, which includes Sales Tax actually received by the City from any of the Taxable Activities ("**Monthly Tax Report**"), and subsequent credits to the Special Account shall be made within sixty (60) days following the City's receipt of each subsequent Monthly Tax Report until the Total Incentive Amount (as defined in Section 8.2) has been paid to the Developer, the expiration of the Economic Incentive Period, or the termination of this Agreement, whichever first occurs. The bi-annual Sales Tax Rebates paid to Developer pursuant to Section 8.1 shall be debited by the City from the Special Account. Although the City has no obligation to deposit Sales Tax in an interest-bearing account, any interest that may accrue on the Special Account shall be added to and become part of the Sales Tax Rebates, but shall not be

deemed to: (i) increase the Total Incentive Amount; or (ii) to accrue for the benefit of Developer unless the Conditions Precedent are met.

(b) Conditions Precedent. Notwithstanding the accumulation of funds in the Special Account, Developer shall have no rights in the Special Account, and no payment of Sales Tax Rebates shall be made to Developer from the Special Account, until Developer meets the Conditions Precedent. During the period beginning on the Completion of Construction of the Minimum Improvements, Sales Tax Rebates shall accumulate in the Special Account for disbursement to Developer after the Conditions Precedent are met. The Special Account shall terminate if the Conditions Precedent are not met in accordance with Section 4.2, and all funds and interest accrued thereon (if any) shall be retained by the City free and clear of any claims by Developer.

(c) Rebate Payments.

(i) The first payment of Sales Tax Rebates from the Special Account shall be made by the City to the Developer by the 31st day of the month of January or July, whichever comes first, following the Developer having met the Conditions Precedent requirements and the City having received the subsequent Monthly Tax Reports and Sales Tax for the applicable period.

(ii) Subsequent payments of Sales Tax Rebates from the Special Account will be made by the 31st day of the month in January and July for each successive six (6) month period within sixty (60) days following the City's receipt of the subsequent Monthly Tax Reports and Sales Tax for the applicable period, until the earlier of (a) full payment of the Total Incentive Amount, (b) expiration of the Economic Incentive Period, or (c) termination of this Agreement.

8.2 Limitations on Payments to Developer. In consideration of Developer constructing or causing to be constructed the Public Improvements and meeting the Conditions Precedent, the City shall pay Sales Tax Rebates in an amount up to the cost of the sum of all Public Improvement Costs that meet the requirements of this Agreement not to exceed Fourteen Million Four Hundred Thousand and 00/100 ($14,400,000.00) (the "**Total Incentive Amount**") with respect to Taxable Activities that occur during the Economic Incentive Period. The Sales Tax Rebates shall be deemed to accrue during the Economic Incentive Period if the Taxable Activities from which the Sales Tax Rebates arise occurred during the Economic Incentive Period; under no circumstances shall Developer be entitled to any Sales Tax Rebates for Taxable Activities that occur after the expiration of the Economic Incentive Period. "**Economic Incentive Period**" means a period of time commencing with the issuance of the final certificate of occupancy for the first New Car Dealership at the Project, and expiring twelve (12) years thereafter. The Economic Incentive Period may be extended up to three (3) times, for a period of three (3) years per extension, for each subsequent New Car Dealership receiving a final certificate of occupancy, so long as any subsequent New Car Dealership(s) are opened prior to the expiration of the then current Economic Incentive Period, resulting in a maximum possible Economic Incentive Period of twenty-one (21) years if all eligible extensions are taken. The construction and development of Used Car Dealerships or Motorcycle Dealerships shall not impact and have no bearing on the period of time constituting the Economic Incentive Period. Developer acknowledges that, to incentivize the construction and operation of the Auto Mall generating Sales Tax at the Project, the amount of the

Sales Tax Rebates is structured such that only one operating (1) New Car Dealership is needed as a part of the Conditions Precedent necessary to receive the Sales Tax Rebate; however, for the Project to generate enough Sales Tax from Taxable Activities for Developer to be eligible to realize the full Total Incentive Amount, the Project must consist of a Auto Mall with multiple operating motor vehicle dealerships during the Economic Incentive Period.

8.3 Determination of Amount of Sales Tax Revenues Received by the City. The City Manager (or designee) shall determine the amount of Sales Tax for each month (or partial month if applicable) with respect to the New Car Dealerships and Used Car Dealerships, and, if applicable, Motorcycle Dealerships.

8.4 Computation and Report of Sales Tax Revenues. In conjunction with the bi-annual payment of Sales Tax Rebates, the City will deliver to Developer a report of the Sales Tax revenues collected from the Taxable Activities within the Project. Such report shall contain the cumulative City received Sales Tax from Taxable Activities for the six-month period from the New Car Dealerships and Used Car Dealerships, and, if applicable, Motorcycle Dealerships. Any such report shall be subject to Applicable Laws that may prohibit or limit the dissemination or use of the foregoing information required for such report, including confidentiality requirements of the Arizona Department of Revenue. If necessary to meet confidentiality requirements, the City will require the completion of a consent to release tax information.

8.5 Multiple Business Locations. The Arizona Department of Revenue requires that each business with multiple locations in the State has a separate location code in order to separately report the transaction privilege tax for each location. Developer shall ensure that each New Car Dealership, Used Car Dealership, and Motorcycle Dealership located in, on, or within the Property is properly licensed with the Arizona Department of Revenue pursuant to Applicable Laws and has a unique location code used for the purposes of reporting Sales Tax which will also be used by City to calculate the Sales Tax Rebate.

8.6 City's Prepayment Right. Prepayment of the Total Incentive Amount by the City, in whole or in part, is permitted at any time, and from time to time, without penalty. The City may authorize such prepayment through any means available to the City.

9. **Additional Property**.

9.1 Status of Additional Property. Developer acknowledges and agrees that, as of the Effective Date, the Additional Property: (i) is not within the corporate limits of the City; (ii) is not entitled to connection to any City utility services, including water and wastewater; (iii) does not generate Sales Tax from Taxable Activities; (iv) any improvements or infrastructure related to the Additional Property are not eligible for reimbursement as a part of the Sales Tax Rebates or any other financial incentive in this Agreement; and (v) is not considered to be a part of the Property on which the Project will be located that is the subject of this Agreement.

9.2 Purpose; Additional Property Benefits. Developer desires to have the Additional Property annexed into the corporate limits of the City in order to develop the location as a part of the Project that is the subject of this Agreement, specifically for the receipt of the following benefit by Developer ("**Additional Property Benefit**"): to have the Sales Tax collected during the Economic Incentive Period for Taxable Activities from any New Car Dealerships and

Used Car Dealerships, and, if applicable, Motorcycle Dealerships, constructed on the Additional Property to be eligible to be counted towards the Sales Tax Rebates and to have such Sales Tax applied towards the Total Incentive Amount for the Project in the same manner as for the Sales Tax collected during the Economic Incentive Period for Taxable Activities on the Property. The Additional Property Benefits are further described in Section 9.8.2.

9.3 Benefits to City. The Parties acknowledge and agree that the development of the Additional Property as a part of the Project within the corporate limits of the City would result in planning and economic benefits to the City and its residents by: (i) increasing tax and other revenues to the City based on improvements to be constructed related to the Additional Property and Project; (ii) adding additional real property to the tax rolls of the City; (iii) providing for the design, construction and financing of public infrastructure to service the Additional Property; and (iv) providing for other matters relating to the development of the Additional Property.

9.4 Findings. The Parties acknowledge that the statements and findings set forth in the Recitals are applicable to the Additional Property, including the finding set forth in Recital I that, in the absence of the tax incentives offered to Developer, neither Developer nor a similar development would locate on the Additional Property in Mesa, Arizona in the same location, time, place or manner as contemplated by the Project.

9.5 Annexation. Developer reasonably believes that the Additional Property is eligible for annexation into the corporate limits of the City. Developer will deliver to the City a petition for annexation of the Additional Property that is duly executed by all necessary property owners in accordance with Applicable Laws ("**Annexation Petition**"). Upon receipt of the completed Annexation Petition, the City will process the application in accordance with the provisions of A.R.S. § 9-471 *et seq.* related to annexation and the City's regular processes and procedures. If the requirements for annexation are met, City staff will submit an ordinance to the City Council that may be adopted at the sole and absolute discretion of the City Council, and such ordinance would annex the Additional Property into the corporate limits of the City ("**Annexation Ordinance**").

9.6 Zoning.

9.6.1 Comparable Zoning. As of the Effective Date, the Additional Property is zoned in the County as Commercial (C-3). Pursuant to A.R.S. § 9-471 and Section 9.5 City staff intends to present to the City Council for approval, in conjunction with the Annexation Ordinance, a City zoning classification for the Additional Property of General Commercial (GC), which allows for densities and uses of the Additional Property that are not greater than those permitted by the County immediately before annexation.

9.6.2 Rezoning. Developer acknowledges that if the Additional Property is annexed into the City, it desires for the Additional Property to be developed as a part of the Project with the Auto Mall and retail on the site and, if the General Commercial (GC) zoning designation does not support the use and development of the Additional Property, then Developer must apply for a rezoning of the Additional Property to the appropriate City zoning designation ("**Rezoning**"). For a Rezoning, Developer shall apply to the City for the Rezoning in such a manner and in such a timeframe as to reasonably allow the Rezoning to be placed on the same City

Council agenda as the Annexation Ordinance. If the Annexation Ordinance is approved by the City Council, at its sole and absolute discretion, and the Rezoning is thereupon determined by the City Council, at its sole and absolute discretion, to be in the best interest of the City and in compliance with Applicable Laws, the City Councill may adopt an ordinance for the Rezoning ("**Rezoning Ordinance**").

9.7 RESERVED.

9.8 Additional Property Benefits Eligibility Requirements.

9.8.1 Prerequisites. For the Developer to be eligible to receive the Additional Property Benefit, the following eligibility requirements must be met (collectively, the "**Additional Property Eligibility Requirements**"):

(a) The following approvals will be obtained by Developer, in accordance with Applicable Laws, within four (4) years from the Effective Date subject to Enforced Delay:

(i) Approval of the Annexation Ordinance by the City Council which may be given at its sole and absolute discretion;

(ii) If the Rezoning is needed for Developer's desired use of the Additional Property, approval of the Rezoning Ordinance by the City Council which may be given at its sole and absolute discretion; and

(iii) Approval of a site plan for the Additional Property from the City in accordance with its normal processes and procedures that contains, at a minimum, at least one (1) New Car Dealership, and such approval, will be at the City's sole and absolute discretion.

(b) There shall be no infrastructure or improvements on or constructed related to the Additional Property. For the purpose of this Section 9.8.1(b), the following shall not be considered the construction of any infrastructure or improvements related to the Additional Property: (i) grading of the Additional Property; and (ii) any improvements made to the Signal Butte Dedication in accordance with Section 9.9 below.

9.8.2 Satisfaction of Requirements. If Developer has timely met the Additional Property Eligibility Requirements, the City shall notify Developer in writing of the date the requirements were all met and, as of such date, the Developer shall be eligible for the Additional Property Benefit as follows:

(a) The Additional Property shall be incorporated as a part of the "Property" as that term is defined and used herein, and the legal description and depiction of the Additional Property set forth in Exhibit B shall be deemed incorporated into Exhibit A, and the Additional Property shall be subject to all terms and conditions in this Agreement related to the Property, including those requirements related to A.R.S. § 9-500.05, except that the use restrictions set forth in Section 9.8.4 shall remain on the Additional Property and control the use of the Additional Property.

(b) The Additional Property shall be deemed a part of the "Project" as that term is defined and used herein, subject to all terms and conditions in this Agreement related to the Project.

(c) The Sales Tax collected for Taxable Activities from any New Car Dealerships, Used Car Dealerships, and, if applicable, Motorcycle Dealerships, on the Additional Property shall be eligible to be included towards the Sales Tax Rebates for the Project subject to the requirements provided herein.

9.8.3 Failure to Meet Requirements. If Developer fails to meet the requirements set forth in Section 9.8.2 above, including timely meeting the Additional Property Prerequisites, such failure shall not be an Event of Non-Performance by Developer, but Developer shall not be entitled to the Additional Property Benefits or any benefits herein related to the Additional Property Benefits.

9.8.4 Use Restrictions.

(a) Residential Prohibited. After the Property is annexed and this Agreement is applicable to the Additional Property, Residential uses, including multiple family, shall be prohibited on the Additional Property. Notwithstanding the foregoing in this Section 9.8.4(a), if the Additional Property or a portion of the Additional Property is approved for rezoning by City to a Zoning residential district (RS, RSL, or RM) set forth in Mesa City Code 11-5-2, as to the portion of the Additional Property that is rezoned, it will be considered an automatic amendment to the land use restrictions in this Section 9.8.4(a) of this Agreement, without further act or amendment required, and such use will be subject to allowed residential uses and conditions of the residential zoning district.

(b) General Prohibition. After the Property is annexed and this Agreement is applicable to the Additional Property, all the same prohibited uses that are listed for the Property under Section 3.2(e) shall also be prohibited on the Additional Property.

9.8.5 Required Dedications. Developer agrees that, if the Annexation Ordinance is approved by the City Council, whether or not it is done in a timely manner that would permit Developer to be eligible for the Additional Property Benefit, Developer shall make the Additional Property Required Dedications described in Exhibit E-2 in accordance with Applicable Laws and such dedications shall be incorporated into the "Required Dedications" as that term is defined and used herein and the Additional Property Required Dedications described in Exhibit E-2 shall be deemed incorporated into Exhibit E-1, and shall be subject to all terms and conditions in this Agreement related to the Required Dedications.

9.9 Additional Property Right-of-Way. Notwithstanding the foregoing in this Section 9, Developer acknowledges that a portion of the Additional Property that is highlighted in Exhibit C-2 ("**Additional Property Right-of-Way**") is necessary for the completion of the public infrastructure for the Signal Butte Road right of way and related improvements described herein as the Additional Property Public Improvements (see Section 9.9.1 below).

9.9.1 Dedication and Transfer as Right-of-Way. Developer shall, within ninety (90) days of the Effective Date, cause the real property constituting the Additional Property

Right-of-Way to be dedicated as right-of-way to Maricopa County, Arizona. Following dedication to Maricopa County, the Additional Property Right-of-Way will be eligible for transfer to the City as county right-of-way in accordance with A.R.S. § 9-471, which is subject to the approval, each at its sole and absolute discretion, of the Maricopa County Board of Supervisors and the City Council. If the transfer to City of the Additional Property Right-of-Way is accomplished in accordance with the requirements of Applicable Laws, then Developer shall construct public improvements and infrastructure in and around the Additional Property Right-of-Way that are described and in the highlighted area depicted in Exhibit C-2 ("**Additional Property Public Improvements**") and such public improvements and infrastructure will be subject to Section 9.9.3 below.

9.9.2 Failure to Dedicate and Transfer as Right-of-Way. In the event either (i) Developer fails for any reason to dedicate the Additional Property Right-of-Way to Maricopa County within ninety (90) days of the Effective Date, or (ii) if dedicated as right-of-way by Developer within the required time and the Additional Property Right-of-Way fails to be transferred by Maricopa County to City as right-of-way for any reason, then the Additional Property Right-of-Way shall continue to be deemed a part of the Additional Property for all purposes under this Agreement, and if the Additional Property is annexed into City as set forth in Section 9.5, then Developer shall construct the public infrastructure and improvements described herein as the Additional Property Public Improvements and such public improvements and infrastructure will be subject to Section 9.9.3 below.

9.9.3 Additional Property Public Improvements. The Additional Property Public Improvements shall be: (i) incorporated into the "Public Improvements" as that term is defined and used herein; (ii) deemed incorporated into Exhibit C-1; (iii) subject to all terms and conditions in this Agreement related to the Public Improvements, including the requirements related to eligibility for reimbursement; (iv) completed within eighteen (18) months of transfer (Section 9.9.1) or annexation (Section 9.9.2), as applicable; and (iv) as the Additional Property Public Improvements will be incorporated into the "Public Improvements", the costs, expenses, fees and charges actually incurred by Developer and paid to a Third Party for the Additional Property Public Improvements that meet the definition of "Public Improvement Costs" may be eligible for reimbursement under the Sales Tax Rebates in accordance with the terms and conditions in this Agreement, including that the Additional Property Public Improvements must be constructed in accordance with all the requirements in Section 5.1. For the purposes of clarity, Developer acknowledges that the failure of the Additional Property Public Improvements to be constructed in the jurisdictional limits of City shall preclude the inclusion of such improvements as a part of the Public Improvements, and the improvements will not be eligible for reimbursement under the Sales Tax Rebates in accordance with the terms and conditions of this Agreement.

10. **Indemnity; Risk of Loss**.

10.1 Indemnity. Developer will pay, defend, indemnify and hold harmless (collectively, "**Indemnify**") City and its City Council members, officers, officials, agents, volunteers and employees (collectively, including the City, ("**City Indemnified Parties**") for, from and against any and all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including attorneys' fees, experts' fees and court costs associated) which may be imposed upon, incurred by or asserted against the City Indemnified Parties by Third Parties ("**Claims**") which arise from or relate in any way, whether in whole or in

part, to: (i) any act or omission by Developer, or its employees, contractors, subcontractors, agents or representatives, undertaken in fulfillment of Developer's obligations under this Agreement, including the development and construction of the Project; or (ii) any loss of or reduction in State shared monies arising in connection with a claim brought or maintained under A.R.S. § 41-194.01 or A.R.S. § 42-6010 as a result of this Agreement. The obligation of Developer to Indemnify shall extend to and encompass all costs incurred by the City Indemnified Parties in defending against the Claims including, but not limited to, attorney, witness and expert fees, and any other litigation-related expenses. The provisions of this Section, however, will not apply to Claims to the extent such Claims are solely and directly caused by the acts or omissions of the City Indemnified Parties. The obligations of Developer under this Section shall survive the expiration of this Agreement.

10.2 Indemnity: Devaluation Claims. The duty of Developer to Indemnify the City Indemnified Parties shall include any Claims by adjacent landowners to the Property that their parcels have been devalued as a result of City's agreements, acts and undertakings set forth in this Agreement or the development of the Project.

10.3 Risk of Loss. Developer assumes the risk of any and all loss, damage or claims to any portion of the Public Improvements unless and until title to the Public Improvements is transferred to the City. At the time title to the Public Improvements is transferred to the City by dedication deed, plat recordation, or otherwise, Developer will, to the extent allowed by law, assign to the City any unexpired warranties relating to the design, construction and/or composition of such Public Improvements. Acceptance of the Public Improvements shall be conditioned on the City's receipt of a two (2) year warranty of workmanship, materials and equipment, which represents a period similar to what the City is requiring as of the Effective Date for comparable developments in the vicinity of the Project, in form and content reasonably acceptable to the City; provided, however, that such warranty or warranties may be provided by Developer's contractor or contractors directly to the City and are not required from Developer, and that any such warranties shall extend from the date of completion of any Public Improvement, any component thereof, or the work of any specific trade or contractor, as applicable.

10.4 Insurance. During the applicable period of time set forth in Exhibit F, Developer will obtain and provide City with proof of payment of premiums and certificates of insurance showing that Developer is carrying, or causing its contractor(s) to carry, policies of insurance in amounts and coverages set forth on Exhibit F. Such policies of insurance will be placed with financially sound and reputable insurers, require the insurer to give at least thirty (30) days advance written Notice of cancellation to City, and will name City as an additional insured on such policies.

11. **City Representations**. The City represents and warrants to Developer that as of the Effective Date:

11.1 The City has the full right, power and authorization to enter into and perform this Agreement and each of the City's obligations and undertakings under this Agreement, and the City's execution, delivery and performance of this Agreement have been duly authorized and agreed to in compliance with the requirements of the City Code.

11.2 All consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.

11.3 The City will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

11.4 The City knows of no litigation, proceeding, initiative, referendum, investigation or threat of any of the same contesting the powers of the City or its officials with respect to this Agreement that has not been disclosed in writing to Developer.

11.5 This Agreement (and each undertaking of the City contained herein), constitutes a valid, binding and enforceable obligation of the City, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity.

11.6 The execution, delivery and performance of this Agreement by the City is not prohibited by, and does not conflict with, any other agreements, instruments or judgments or decrees to which the City is a party or is otherwise subject.

11.7 The City has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

12. **Developer Representations**. Developer represents and warrants to the City that as of the Effective Date:

12.1 Developer has the full right, power and authorization to enter into this Agreement and perform its undertakings contemplated by this Agreement, and the execution, delivery and performance of this Agreement by Developer has been duly authorized and agreed to in compliance with the organizational documents of Developer.

12.2 All consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.

12.3 Developer knows of no litigation, proceeding or investigation pending or threatened against or affecting Developer contesting the validity or enforceability of this Agreement or Developer's performance under this Agreement.

12.4 Developer will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

12.5 This Agreement (and each undertaking of Developer contained herein) constitutes a valid, binding and enforceable agreement of Developer, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity.

12.6 The execution, delivery and performance of this Agreement by Developer is not prohibited by, and does not conflict with, any other agreements, instruments, judgments or decrees to which Developer is a party or to which Developer is otherwise subject.

12.7 Developer has not paid or given, and will not pay or give, any Third Party any money or other consideration for obtaining this Agreement other than normal costs of conducting business and costs of professional services such as the services of architects, engineers and attorneys.

12.8 Developer has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

13. **Events of Non-Performance; Remedies**. An event of Non-Performance under this Agreement does not constitute a legal breach or default. It is the intent of the Parties that, in the case of such an event (whether or not it might otherwise be characterized as a breach or default), the other Party to this Agreement shall have only the rights and remedies set forth in this Section.

13.1 Events of Non-Performance by Developer. Non-Performance or an Event of Non-Performance by Developer under this Agreement shall mean one or more of the following:

(a) Any representation or warranty made in this Agreement by Developer was materially inaccurate when made;

(b) Developer fails to comply with the dates established in this Agreement for the Completion of Construction of the Minimum Improvements or Public Improvements, for any reason other than an Enforced Delay, or to timely make the Required Dedications, unless such dates are extended by the City in its sole and absolute discretion;

(c) Developer transfers or attempts to transfer or assign this Agreement in violation of Section 17.2 below; or

(d) Developer fails to observe or perform any other covenant, obligation or agreement required of it under this Agreement.

13.2 Events of Non-Performance by the City. Non-Performance or an Event of Non-Performance by the City under this Agreement shall mean one or more of the following:

(a) Any representation or warranty made in this Agreement by the City was materially inaccurate when made or shall prove to be materially inaccurate during the Term;

(b) Subject to the terms of Section 8 above, the City fails to make Sales Tax Rebates payments to Developer as provided in this Agreement; or

(c) The City fails to observe or perform any other covenant, obligation or agreement required of it under this Agreement.

13.3 Grace Periods; Notice and Cure. Upon the occurrence of an Event of Non-Performance by any Party, such Party shall, upon written notice from a performing Party, proceed immediately to cure or remedy such Non-Performance and, in any event, such Non-Performance

shall be cured within thirty (30) days (or twenty (20) days in the event of a monetary non-performance or ninety (90) days if the Non-Performance relates to the date for Completion of Construction of the Minimum Improvements) after receipt of such notice.

13.4 Remedies on Non-Performance. Whenever any Event of Non-Performance occurs and is not cured (or cure undertaken) in accordance with Section 13.3 above the performing Party may take any of one or more of the following actions:

13.4.1 Remedies of the City. The City's exclusive remedies for an Event of Non-Performance by Developer shall consist of, and shall be limited to, the following:

(a) The City may suspend any of its obligations under this Agreement, other than the deposit of the Sales Tax Rebates into the Special Account pursuant to Section 8.1(a) above, during the period of the Non-Performance. If the Non-Performance is not cured within the grace period provided in Section 13.3, the City may terminate this Agreement by written Notice thereof to Developer, in which event the Special Account also shall terminate and the Developer will have no rights to the funds therein.

(b) If an Event of Non-Performance by Developer occurs at any time relating to public health or safety or to unlawful construction or other activity which is not in accordance with the terms of this Agreement, the City may seek special action or other similar relief (whether characterized as mandamus, injunction or otherwise), requiring Developer to address the public health or safety concern or to enjoin the unlawful construction or other activity undertaken by Developer which is not in accordance with the terms of this Agreement.

(c) The remedies provided in this Section 13.4.1 shall not limit the City's right to seek damages related to Developer's duty to Indemnify the City under the provisions of this Agreement, or under any right the City has as the municipal government unit in which the Property is located.

13.4.2 Remedies of Developer. Developer's exclusive remedy for an Event of Non-Performance by the City shall consist of and shall be limited to seeking specific performance by the City of its obligations under this Agreement. Developer waives any right to seek consequential, punitive, multiple, exemplary or any other damages from the City for an Event of Non-Performance.

13.5 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 Non-Performance by the other Party shall not be considered as a waiver of rights with respect to any other Non-Performance by the performing Party or with respect to the particular Non-Performance 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 Non-Performance involved.

13.6 Enforced Delay in Performance for Causes Beyond Control of Party. Whether stated or not, all periods of time in this Agreement are subject to this Section. Neither

the City nor Developer, as the case may be, shall be considered in Non-Performance of its obligations under this Agreement in the event of enforced delay (an "**Enforced Delay**") due to causes beyond its control and without its fault, negligence or failure to comply with Applicable Laws, including, but not restricted to, acts of God. In no event will Enforced Delay include any delay resulting from general economic or market conditions, unavailability for any reason of particular tenants or purchasers of portions of the Project, nor from the unavailability for any reason of particular contractors, subcontractors, vendors, investors or lenders desired by Developer in connection with the Project, it being agreed that Developer will bear all risks of delay which are not Enforced Delay. In the event of the occurrence of any such Enforced Delay, the time or times for performance of the obligations of the Party claiming delay shall be extended for a period of the Enforced Delay; provided that the Party seeking the benefit of the provisions of this Section 13.6 shall, within thirty (30) days after such Party knows (or reasonably should have known) of any such Enforced Delay, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Enforced Delay; provided, however, that either Party's failure to notify the other of an event constituting an Enforced Delay shall not alter, detract from or negate its character as an Enforced Delay if such event of Enforced Delay were not known or reasonably discoverable by such Party; and provided further, that no period of Enforced Delay may exceed ninety (90) calendar days.

14. **Cooperation and Alternative Dispute Resolution**.

14.1 Representatives. To further the cooperation of the Parties in implementing this Agreement, the City and Developer each shall designate and appoint a representative to act as a liaison between the City and its various departments and Developer. The initial representative for the City shall be the City staff member assigned as the Project Manager (the "**City Representative**") and the initial representative for Developer shall be its Project Manager, as identified by Developer from time to time (the "**Developer Representative**"). The City's and Developer's Representatives shall be available at all reasonable times to discuss and review the performance of the Parties to this Agreement and the development of the Property.

14.2 Impasse. The City acknowledges and agrees that it is desirable for Developer to proceed rapidly with the implementation of this Agreement and the development of the Property. Accordingly, the Parties agree that if at any time Developer believes an impasse has been reached with City staff on any issue affecting the Property which is not an Event of Non-Performance, Developer shall have the right to immediately appeal to the City Representative for an expedited decision pursuant to this Section. If the Developer and City Representative cannot resolve the impasses, the Developer has the right to meet with the City Manager or his designee.

14.3 Mediation. If there is a dispute hereunder which is not an Event of Non-Performance and which the Parties cannot resolve between themselves in the time frame set forth in Section 14.2 above, the Parties agree that there shall be a ninety (90) day moratorium on litigation during which time the Parties agree to attempt to settle the dispute by non-binding mediation before commencement of litigation using a mediator agreed upon by the Parties and all administrative fees shall be divided evenly between the City and Developer.

15. Defense of Agreement. Developer will Indemnify the City and defend the validity and enforceability of this Agreement, at its sole cost and expense, in the event of any Third Party challenge to the validity and enforceability of this Agreement or any proceeding or litigation

arising from its terms that names the City or Developer as a party or which challenges the authority of the Parties to enter into or perform any of its obligations hereunder. Developer will cooperate with the City and will otherwise meet its obligation to Indemnify the City set forth herein in connection with any other action by a Third Party in which the City is a party and the benefits of this Agreement to the City are challenged. The severability and reformation provisions of Section 17.3 below shall apply in the event of any successful challenge to this Agreement.

16. Preserve State Shared Revenue. Notwithstanding any other provision of, or limitation in, this Agreement to the contrary, if the City's State shared revenue is withheld or is subject to being withheld under either A.R.S. § 41-194.01 or A.R.S. § 42-6010 as a result of this Agreement, the below provisions shall apply, as applicable:

16.1 A.R.S. § 41-194.01. If pursuant to A.R.S. § 41-194.01 the Attorney General determines that this Agreement violates any provision of state law or the Constitution of Arizona and the City and Developer are not able (after good faith attempts) to modify the Agreement so as to resolve the violation with the Attorney General within thirty (30) days of notice from the Attorney General pursuant to and under the provisions of A.R.S. § 41-194.01(B)(1), this Agreement shall automatically terminate at midnight on the thirtieth (30th) day after receiving such notice from the Attorney General, and upon such termination the Parties shall have no further obligations under this Agreement. Additionally, if the Attorney General determines that this Agreement may violate a provision of state law or the Constitution of Arizona under A.R.S. § 41-194.01(B)(2), and the Arizona Supreme Court requires the posting of a bond under A.R.S. § 41-194.01(B)(2), the City shall be entitled to terminate this Agreement, except if Developer posts such bond; and provided further, that if the Arizona Supreme Court determines that this Agreement violates any provision of state law or the Constitution of Arizona, the City may terminate this Agreement and the Parties shall have no further obligations hereunder.

16.2 A.R.S. § 42-6010. If a court of competent jurisdiction determines that this Agreement or the Sales Tax Rebates are a violation of A.R.S. § 42-6010 that would result in a withholding by the Arizona Department of Revenue in the City's State shared revenue as a penalty under A.R.S. § 42-6010(B), this Agreement shall automatically terminate at midnight on the day after receiving notice of the court's ruling, and upon such termination the Parties shall have no further obligations under this Agreement. Additionally, if the Attorney General or any State agency determines that this Agreement may violate A.R.S. § 42-6010 the City shall be entitled to terminate this Agreement and the Parties shall have no further obligations hereunder.

17. **Miscellaneous Provisions**.

17.1 Governing Law; Choice of Forum. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). The Parties wish to confer jurisdiction, to the extent possible, upon the Superior Court of Maricopa County for the purpose of coordinating and centralizing any required judicial administration of this Agreement. Accordingly, any action brought to interpret, enforce or construe any provision of this Agreement shall 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 the exclusive 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 17.1.

17.2 Assignments.

17.2.1 Restrictions on Assignment and Transfer. Restrictions on Assignment and Transfer. BCB Group Investment, LLC recognizes that the operation of the New Car Dealerships are of particular concern to the City to ensure the success of the Project and that it is important that any assignee of BCB Group Investment, LLC, has the qualifications necessary for the success of the Project as an Auto Mall. As such, the City will permit (without further consent) a one-time assignment of all of Developer's rights under this Agreement to Buyer or to another person or entity that (i) currently (either itself or through an affiliated entity) operates multiple New Car Dealerships in the United States of America, and (ii) possesses (either itself or through an affiliated entity) the experience, financial strength, past history and technical ability to construct the Project and the Public Improvements and otherwise to perform the obligations of Developer under this Agreement to a commercially reasonable standard ("Permitted Assignee"). Other than the one-time assignment to the Permitted Assignee as described in the previous sentence, this Agreement may not be assigned without the prior written consent of the City, at its sole and absolute discretion. Notwithstanding City's consent to an assignment or an assignment requiring no consent, any such assignment shall not relieve Developer of any obligations under this Agreement (including but not limited to obligations of indemnity), except that BCB Group Investment, LLC will be relieved of its obligations under this Agreement that may arise after the date of assignment, upon assignment to the Permitted Assignee and Permitted Assignee's assumption of all of such obligations arising from and after the date of the assignment. No permitted assignment, including to the Permitted Assignee, may be of less than all of Developer's rights and obligations under this Agreement. The City will make any reimbursements required under this Agreement solely to the Developer that develops and constructs the Public Improvements, and not to multiple persons or parties. Moreover, no voluntary or involuntary successor in interest to Developer may acquire any rights under this Agreement except as expressly set forth in this Section 17.2.1 and any assignment or transfer in violation of this Section 17.2.1 will be void and not voidable, and the purported assignee or transferee will acquire no rights under this Agreement. Nothing in this Section 17.2.1 shall in any way restrict, limit or impair the right of Developer to sell, lease, assign, pledge, hypothecate or otherwise transfer, in whole or in part, Developer's interest in the Property, including (but not limited to) sales of individual pads or parcels to entities intending to construct and operate New Car Dealerships on or from such pads or parcels.

17.2.2 Transfers by City. The City's rights and obligations under this Agreement shall be non-assignable and non-transferable, without the prior express written consent of Developer, which consent may be given or withheld in Developer's sole and unfettered discretion.

17.3 Limited Severability. The 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 the City to do any act in violation of any Applicable Laws, constitutional provision, law, regulation, City code or City charter), such provision shall be

deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall 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.

17.4 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 shall 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 shall be interpreted or construed against the Party who prepared or whose attorney prepared the executed Agreement or any earlier draft of the same.

17.5 Notices.

17.5.1 Addresses. Except as otherwise required by law, any notice required or permitted under this Agreement (each, a "Notice") shall be in writing and shall be given by (i) personal delivery, (ii) deposit in the United States certified, registered or express mail, 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, for next business day delivery:

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

With a required copy to:
Mesa City Attorney's Office
20 East Main Street, Suite 850
Mesa, Arizona 85211
Facsimile: 480-644-2498
Attn: City Attorney

If to Developer:
BCB Group Investment, LLC
Attention: Walt Brown
7500 East McDonald
Suite 100A
Scottsdale, AZ 85250

BCB Group Investments, LLC
Attention: Duane Wilkes
2401 W. Bell Road
Phoenix, AZ 85023

With a required copy to: Pew & Lake, PLC
Attention: Sean B. Lake
1744 S. Val Vista Drive, Suite 217
Mesa, Arizona 85204

17.5.2 Effective Date of Notices. Any Notice sent by United States Postal Service certified, registered or express mail shall 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 shall 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 shall be deemed effective upon its receipt or refusal to accept receipt by the addressee. Notices transmitted digitally or electronically or by facsimile may be offered as a courtesy, but do not constitute "Notice" for the purposes of this Section 17.5. Notwithstanding the foregoing, no payment shall be deemed to be made until actually received in good and available funds by the intended payee. Any Party may designate a different person or entity or change the place to which any Notice shall be given as herein provided.

17.5.3 Payments. Unless otherwise agreed to by the Parties, payments shall be made and delivered in the same manner as Notices or by wire transfer; provided, however, that payments shall be deemed made only upon actual receipt by the intended recipient.

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

17.7 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.

17.8 Attorneys' Fees and Costs.

17.8.1 Between the Parties. In the event of a breach by any Party and commencement of a subsequent legal action in an appropriate forum, the prevailing Party in any such dispute will be entitled to reimbursement of its reasonable attorneys' fees and court costs, including, but not limited to, its reasonable costs of expert witnesses, transportation, lodging and meal costs of out-of-town parties and witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental costs of such dispute.

17.8.2 Third-Party Claim Naming Developer. Developer at its sole cost and expense, and by counsel of its own choosing, and subject to its reasonable business judgment, will defend the validity and enforceability of this Agreement in the event of any proceeding or litigation arising from its terms that names Developer as a party or which challenges the authority of Developer to enter into or perform any of its obligations hereunder or the enforceability of any term or condition of this Agreement. City will cooperate with Developer in connection with any action by a Third Party in which Developer (but not City) is a party in such action and the benefits of this Agreement to City are challenge.

17.8.3 Third-Party Claim Naming City. City at its sole cost and expense, and by counsel of its own choosing, will defend the validity and enforceability of this Agreement in the event of any proceeding or litigation arising from its terms that names City as a party to such proceeding or litigation and which challenges (i) the authority of City to enter into this Agreement or perform any of its obligations under this Agreement, (ii) the enforceability of any term or condition of this Agreement, or (iii) the compliance of this Agreement with any Applicable Laws (including, but not limited to a claim or determination arising under A.R.S. § 41-194.01); provided, however, that Developer (within thirty days of written demand from City) must reimburse City for one-half of City's actual out-of-pocket attorneys' fees and costs incurred under this Section 17.8.3; and further provided that City has no obligation to maintain such defense if City has incurred actual out-of-pocket attorneys' fees in excess of $50,000 after reimbursement by Developer. City may settle any such proceeding or litigation on such terms and conditions as City may elect in its sole and absolute discretion, but at no expense or liability to Developer without Developer's approval, however the term "expense or liability to Developer" shall not include the loss of any benefit anticipated by Developer to be obtained by Developer under this Agreement, including the Sales Tax Rebate.

17.9 Waiver. Without limiting the provisions of Section 13.5 above, the Parties agree that neither the failure nor the delay of any Party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver of such right, remedy, power or privilege, nor shall 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 shall 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 shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

17.10 Third Party Beneficiaries. No person or entity shall be a third party beneficiary to this Agreement, except for permitted transferees, assignees, or lenders under Section 17.2 above to the extent that they assume or succeed to the rights and/or obligations of Developer under this Agreement, and except that the indemnified Parties referred to in the indemnification provisions of Section 10.1 above (or elsewhere in this Agreement) shall be third party beneficiaries of such indemnification provisions.

17.11 Exhibits. Without limiting the provisions of Section 1 of this Agreement, 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.

17.12 Integration. Except as expressly provided herein, 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.

17.13 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.

17.14 Business Days. If the last day of any time period stated in this Agreement or the date on which any obligation to be performed under this Agreement shall fall on a Saturday, Sunday or legal holiday, then the duration of such time period or the date of performance, as applicable, shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday or legal holiday.

17.15 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 shall be given or denied by such Party in its reasonable discretion, unless this Agreement expressly provides otherwise.

17.16 Covenants Running With Land; Inurement. The covenants, conditions, terms and provisions of this Agreement relating to use of the Property shall run with the Property and shall be binding upon, and shall inure to the benefit of the Parties and their respective permitted successors and assigns with respect to such Property. Wherever the term "Party" or the name of any particular Party is used in this Agreement such term shall include any such Party's permitted successors and assigns.

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

17.18 Amendment. 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 the City and Developer. Within ten (10) days after any amendment to this Agreement, such amendment shall be recorded in the Official Records of Maricopa County, Arizona. Upon amendment of this Agreement as established herein, references to "Agreement" or "Development Agreement" shall mean the Agreement as amended. The effective date of any duly processed minor or major amendment shall be the date on which the last representative for the Parties executes the Agreement. 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 shall 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 shall refer to it by the number of the amendment as well as its effective date.

17.19 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.

17.20 Survival. The provisions of Section 3.2 and Section 3.3 (land use restrictions), Section 10 (indemnification) and Section 16 (State shared revenue) above shall all survive the execution and delivery of this Agreement, the closing of any transaction contemplated herein, and the rescission, cancellation, expiration or termination of this Agreement.

17.21 Rights of Lenders. The City is aware that Developer may obtain financing or refinancing for acquisition, development and/or construction of the real property and/or improvements to be constructed on the Property, in whole or in part, from time to time, by one or more Third Parties (individually a "**Lender**", and collectively the "**Lenders**"). In the event of an Event of Non-Performance by Developer, the City shall provide notice of such Event of Non-Performance, at the same time notice is provided to Developer, to not more than two (2) of such Lenders as previously designated by Developer to receive such notice (the "**Designated Lenders**") whose names and addresses were provided by written notice to the City in accordance with Section 17.5 above. The City shall give Developer copies of any such notice provided to such Designated Lenders and, unless Developer notifies the City that the Designated Lenders names or addresses are incorrect (and provides the City with the correct information) within three (3) business days after Developer receives its copies of such notice from the City, the City will be deemed to have given such notice to the Designated Lenders even if their names or addresses are incorrect. Developer may provide notices to other Lenders. If a Lender is permitted, under the terms of its non disturbance agreement with the City, to cure the Event of Non-Performance and/or to assume Developer's position with respect to this Agreement, the City agrees to recognize such rights of the Lender and to otherwise permit the Lender to assume all of the rights and obligations of Developer under this Agreement. The City shall, at any time upon reasonable request by Developer, provide to any Lender an estoppel certificate or other document evidencing that this Agreement is in full force and effect and that no Event of Non-Performance by Developer exists hereunder (or, if appropriate, specifying the nature and duration of any existing Event of Non-Performance); provided, however, the City shall not be required to subordinate its position to Lender. Upon request by a Lender, the City will enter into a separate non disturbance agreement with such Lender, consistent with the form attached hereto as Exhibit G.

17.22 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 the City shall 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 Non-Performance or breach by the 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 the City under the terms of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the liability of Developer under this Agreement shall be limited solely to the assets of Developer and shall not extend to or be enforceable against: (a) 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; (b) the

shareholders, members or managers or constituent partners of Developer; or (c) officers of Developer.

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

17.24 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.

17.25 City Council Action. The City and Developer acknowledge that, notwithstanding any language of this Agreement or any subsequent additional document, no act, requirement, payment or other agreed-upon action to be done or performed by the City which would, under any federal, state or city constitution, statute, charter provision, ordinance or regulation, require formal action, approval or concurrence by the City Council, will be required to be done or performed by the City unless and until said formal City Council action has been taken and completed. "Completion" under this provision means that such City Council action is no longer subject to referendum action. This Agreement does not bind the City Council or remove its independent authority to make determinations related to formal action of the City Council in any way.

17.26 Waiver of Claims Pursuant to A.R.S. § 12-1134 *et seq*. Developer hereby waives and releases City ("**Waiver**") 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 all or any part of the Property, as a result of City's approval of this Agreement, any and all restrictions and requirements imposed on Developer, the Project and the Property by this Agreement or the Zoning, City's approval of Developer's plans and specifications for the Project, the issuance of any permits, and all related zoning, land use, building and development matters arising from, relating to, or reasonably inferable from this Agreement. The terms of this Waiver shall run with all land that is the subject of this Agreement and shall be binding upon all subsequent landowners, assignees, lessees and other successors, and shall survive the expiration or earlier termination of this Agreement.

17.27 Consent. Wherever the City's consent is required to be given in this Agreement, such consent will be the consent of the City Manager (or his/her designee), without the requirement of the prior approval of the City Council unless required by Applicable Law, City policy, or the City Manager, and the City Manager (or his/her designee) will enter into such amendments to this Agreement demonstrating such consent as deemed necessary or appropriate by the Parties.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

DEVELOPER

BCB GROUP INVESTMENT, LLC, an Arizona limited liability company

By: _____

Printed name: _____

Title: _____

STATE OF ARIZONA

COUNTY OF MARICOPA

On _____, 2024, before me, _____, a Notary Public in and for said State, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____

(Seal)

[SIGNATURE PAGE CONTINUES]

CITY

CITY OF MESA, an Arizona municipal corporation

By: _____
Christopher J. Brady, City Manager

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

[SEAL]

LIST OF EXHIBITS

Exhibit A: Legal Description and Depiction of the Property

Exhibit B: Legal Description and Depiction of the Additional Property

Exhibit C-1: Property Public Improvements Description & Depiction

Exhibit C-2: Additional Property Public Improvements Description & Depiction

Exhibit D-1: Residential Use Restricted Areas

Exhibit D-2: RESERVED

Exhibit E-1: Property Required Dedications

Exhibit E-2: Additional Property Required Dedications

Exhibit F: Insurance

Exhibit G: Non-Disturbance and Recognition Agreement

EXHIBIT A

LEGAL DESCRIPTION AND DEPICTION OF THE PROPERTY

[SEE ATTACHED]

Legal Description
Destination at Gateway
Rezone – City of Mesa Parcels

Job No. 20-1076 1/25/2023

Portions of the Northeast Quarter of Section 35 and the Northwest Quarter of Section 36, Township 1 South, Range 7 East of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the Northeast Corner of said Section 35 and the Northwest Corner of said Section 36, being marked by a 3" City of Mesa brass cap in handhole, from which the North Quarter Corner of said Section 36, bears South 89 degrees 26 minutes 10 seconds East, 2634.27 feet;

thence along the North line of the Northwest Quarter of said Section 36, South 89 degrees 26 minutes 10 seconds East, 1317.14 feet;

thence along the East line of the Northwest Quarter of the Northwest Quarter of said Section 36, South 0 degrees 29 minutes 14 seconds East, 1319.32 feet;

thence along the North line of the Southeast Quarter of the Northwest Quarter of said Section 36, South 89 degrees 23 minutes 39 seconds East, 1309.99 feet to the beginning of a non-tangent curve, concave Northwest, from which the radius point bears North 85 degrees 40 minutes 33 seconds West a distance of 1431.03 feet;

thence along the centerline of South Mountain Road as described in Document No. 1990-286929 of Maricopa County Records, Southwesterly 396.08 feet along the arc of said curve to the right through a central angle of 15 degrees 51 minutes 30 seconds;

thence continuing along said centerline, South 20 degrees 10 minutes 57 seconds West, 104.76 feet to the beginning of a curve, concave Southeast, having a radius of 1430.75 feet;

thence continuing along said centerline, Southwesterly 513.63 feet along the arc of said curve to the left through a central angle of 20 degrees 34 minutes 08 seconds;

thence continuing along said centerline, South 0 degrees 23 minutes 11 seconds East, 136.79 feet;

thence along the Northerly right-of-way line of State Route 24, North 89 degrees 53 minutes 19 seconds West, 163.42 feet;

thence continuing along said Northerly right-of-way line, North 89 degrees 52 minutes 51 seconds West, 1181.21 feet;

thence continuing along said Northerly right-of-way line, North 83 degrees 16 minutes 55 seconds West, 851.23 feet;

thence continuing along said Northerly right-of-way line and the Westerly prolongation thereof, North 89 degrees 50 minutes 49 seconds West, 217.05 feet;

thence along the East line of the Northeast Quarter of said Section 35, North 0 degrees 35 minutes 19 seconds West, 1049.09 feet;

thence along the South line of the Northeast Quarter of the Northeast Quarter of said Section 35, North 89 degrees 23 minutes 45 seconds West, 663.67 feet;

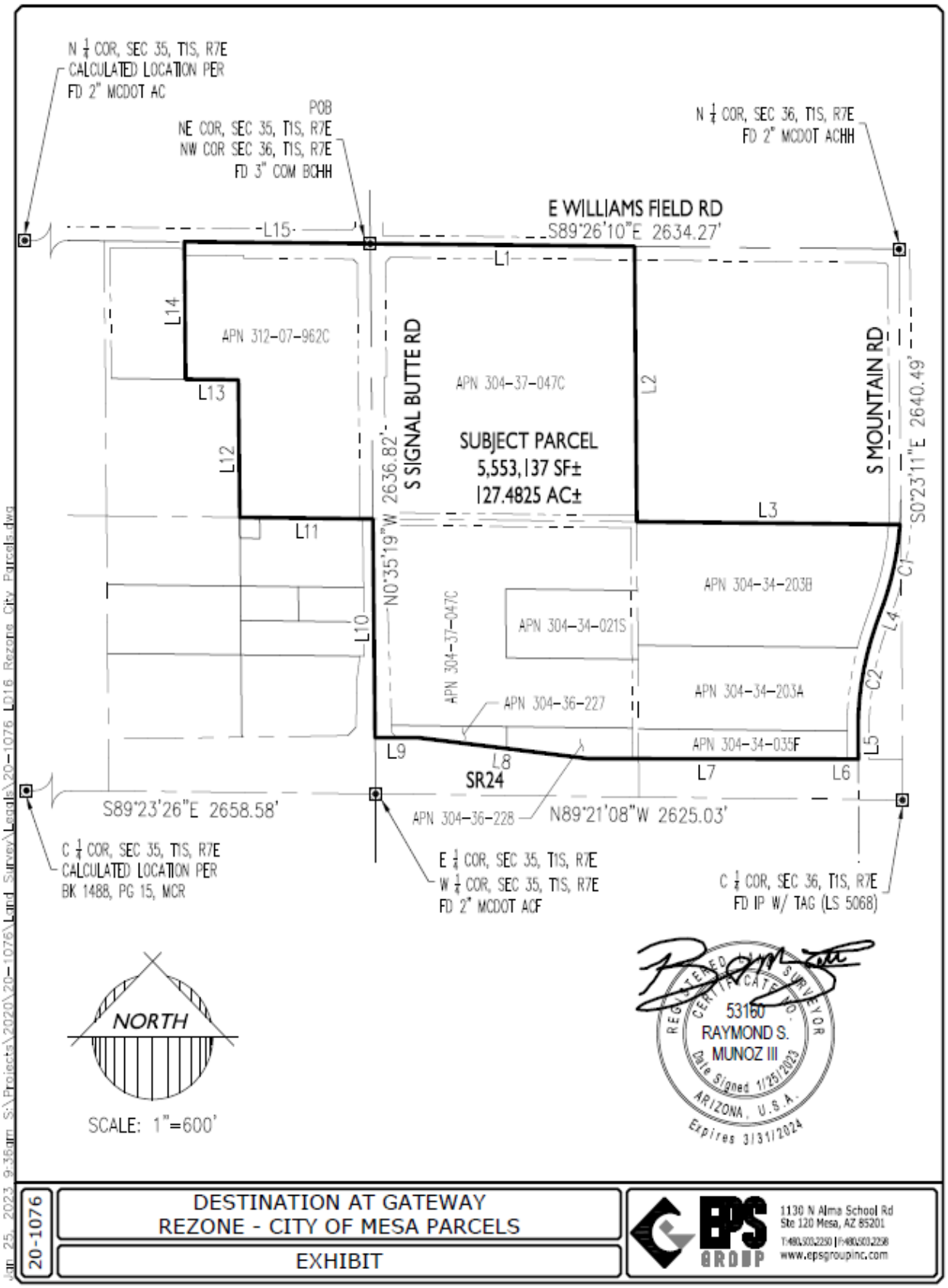
thence along the West line of the East Half of the Northeast Quarter of the Northeast Quarter of said Section 35, North 0 degrees 32 minutes 42 seconds West, 659.15 feet;

thence along the South line of the North Half of the Northeast Quarter of the Northeast Quarter of said Section 35, North 89 degrees 23 minutes 58 seconds West, 263.09 feet;

thence along the Easterly boundary of that parcel described in Document No. 2019-0494932 of Maricopa County Records, North 0 degrees 30 minutes 05 seconds West, 659.13 feet;

thence along the North line of the Northeast Quarter of said Section 35, South 89 degrees 24 minutes 11 seconds East, 925.26 feet to the **POINT OF BEGINNING**.

Contains 5,553,137 square feet or 127.4825 acres, more or less.


N ¼ COR, SEC 35, T1S, R7E
CALCULATED LOCATION PER
FD 2" MCDOT AC
POB
NE COR SEC 35, T1S, R7E
NW COR SEC 36, T1S, R7E
FD 3" COM BCHH
N ¼ COR, SEC 36, T1S, R7E
FD 2" MCDOT ACHH
E WILLIAMS FIELD RD
S89°26'10"E 2634.27'
L15
L1
L14
APN 312-07-962C
L13
L12
S SIGNAL BUTTE RD
APN 304-37-047C
SUBJECT PARCEL
5,553,137 SF±
127.4825 AC±
2636.82'
N0°35'19"W
L2
S MOUNTAIN RD
S0°23'11"E 2640.49'
L3
L11
APN 304-34-203B
APN 304-34-021S
APN 304-37-047C
L10
C1
L4
C2
APN 304-36-227
APN 304-34-203A
APN 304-34-035F
L5
L9
L8
L7
L6
SR24
S89°23'26"E 2658.58'
APN 304-36-228
N89°21'08"W 2625.03'
C ¼ COR, SEC 35, T1S, R7E
CALCULATED LOCATION PER
BK 1488, PG 15, MCR
E ¼ COR, SEC 35, T1S, R7E
W ¼ COR, SEC 35, T1S, R7E
FD 2" MCDOT ACF
C ¼ COR, SEC 36, T1S, R7E
FD IP W/ TAG (LS 5068)
NORTH
SCALE: 1"=600'
REGISTERED LAND SURVEYOR
CERTIFICATE NO.
53160
RAYMOND S.
MUNOZ III
Date Signed 11/25/2023
ARIZONA, U.S.A.
Expires 3/31/2024
20-1076
DESTINATION AT GATEWAY
REZONE - CITY OF MESA PARCELS
EXHIBIT
EPS GROUP
1130 N Alma School Rd
Ste 120 Mesa, AZ 85201
T:480.503.2250 | F:480.503.2258
www.epsgroupinc.com
Jan 25, 2023, 9:36am S:\Projects\2020\20-1076\Land Survey\Legals\20-1076 L016 Rezone City Parcels.dwg

LINE TABLE		
LINE	BEARING	LENGTH
L1	S89°26'10"E	1317.14'
L2	S00°29'14"E	1319.32'
L3	S89°23'39"E	1309.99'
L4	S20°10'57"W	104.76'
L5	S00°23'11"E	136.79'
L6	N89°53'19"W	163.42'
L7	N89°52'51"W	1181.21'
L8	N83°16'55"W	851.23'

LINE TABLE		
LINE	BEARING	LENGTH
L9	N89°50'49"W	217.05'
L10	N00°35'19"W	1049.09'
L11	N89°23'45"W	663.67'
L12	N00°32'42"W	659.15'
L13	N89°23'58"W	263.09'
L14	N00°30'05"W	659.13'
L15	S89°24'11"E	925.26'

CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	CHORD	CHORD BRG
C1	396.08'	1431.03'	15°51'30"	394.81'	S12°15'12"W
C2	513.63'	1430.75'	20°34'08"	510.88'	S09°53'53"W

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
53160
RAYMOND S.
MUNOZ III
Date Signed 1/25/2023
ARIZONA, U.S.A.
Expires 3/31/2024

20-1076

DESTINATION AT GATEWAY
REZONE - CITY OF MESA PARCELS

EXHIBIT

EPS GROUP
1130 N Alma School Rd
Ste 120 Mesa, AZ 85201
T:480.503.2250 | F:480.503.2258
www.epsgroupinc.com

Jan 25, 2023 9:36am S:\Projects\2020\20-1076\Land Survey\Legal\20-1076_L016_Rezone_City_Parcels.dwg

EXHIBIT B

LEGAL DESCRIPTION AND DEPICTION OF THE ADDITIONAL PROPERTY

[SEE ATTACHED]

Legal Description
Destination at Gateway
Rezone – Maricopa County Parcels

Job No. 20-1076 1/25/2023

A portion of the Northeast Quarter of Section 35, 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 35, being marked by a 2" Maricopa County Department of Transportation aluminum cap flush, from which the Northeast Corner of said Section 35, being marked by a 3" City of Mesa brass cap in handhole, bears North 0 degrees 35 minutes 19 seconds West, 2636.82 feet;

thence along the East line of said Northeast Quarter, North 0 degrees 35 minutes 19 seconds West, 281.25 feet to the **POINT OF BEGINNING**;

thence along the Northerly right-of-way line of State Route 24 and the prolongation thereof, South 89 degrees 12 minutes 21 seconds West, 1328.64 feet;

thence along the West line of the Southeast Quarter of said Northeast Quarter, North 0 degrees 30 minutes 14 seconds West, 740.02 feet;

thence along the North line of the South Half of the North Half of the Southeast Quarter of said Northeast Quarter, South 89 degrees 23 minutes 38 seconds East, 663.91 feet;

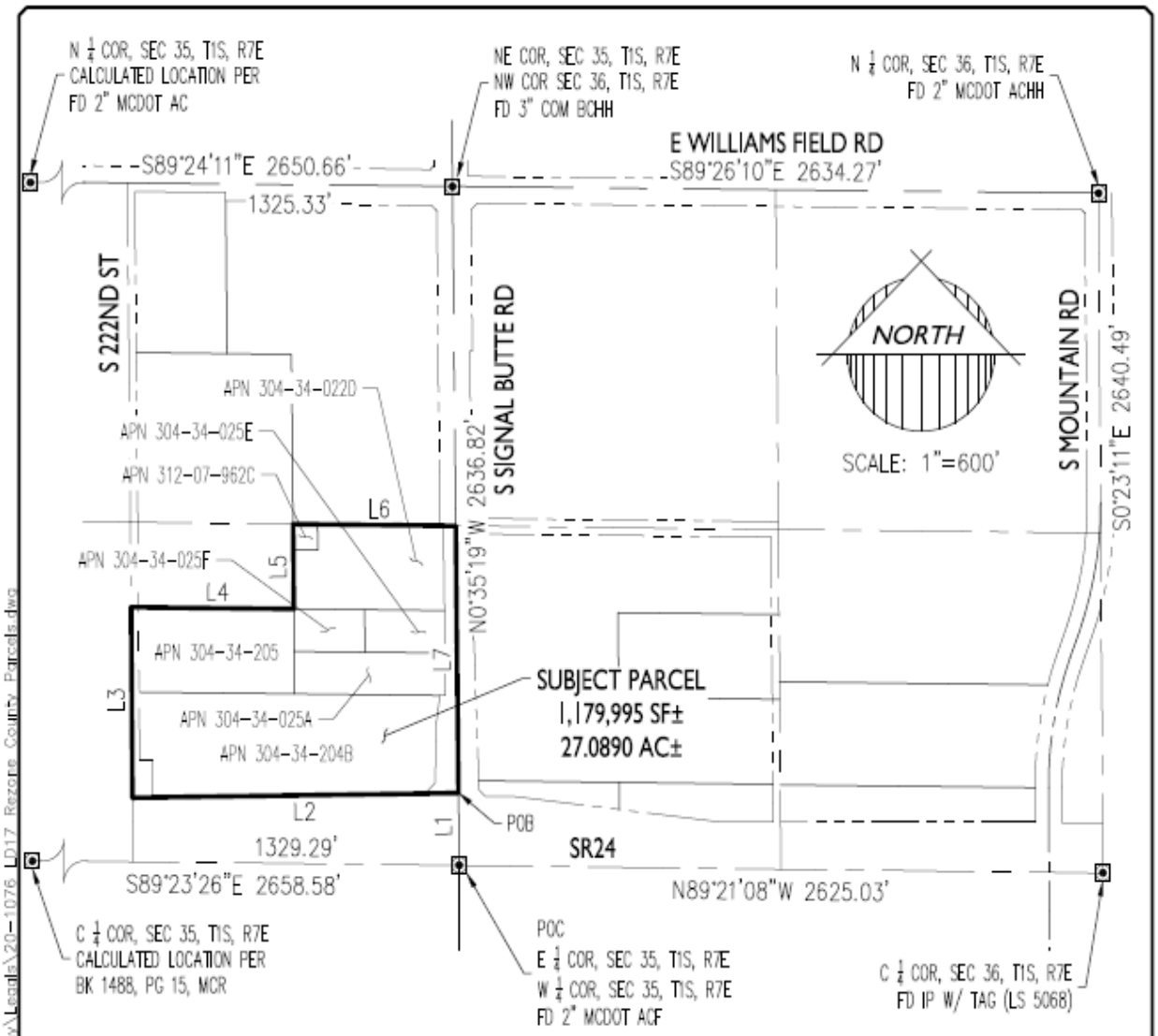
thence along the West line of the East Half of the Southeast Quarter of said Northeast Quarter, North 0 degrees 32 minutes 42 seconds West, 329.57 feet;

thence along the North line of the Southeast Quarter of said Northeast Quarter, South 89 degrees 23 minutes 45 seconds East, 663.67 feet;

thence along the East line of said Northeast Quarter, South 0 degrees 35 minutes 19 seconds East, 1037.16 feet to the **POINT OF BEGINNING**.

Contains 1,179,995 square feet or 27.0890 acres, more or less.

EPS Group, Inc. • 1130 N. Alma School Rd, Suite 120 • Mesa, AZ 85201
Tel (480) 503-2250 • Fax (480) 503-2258
S:\Projects\2020\20-1076\Land Survey\Legals\20-1076 LD17 Rezone County Parcels.docx



LINE TABLE		
LINE	BEARING	LENGTH
L1	S00°35'19"E	281.25'
L2	S89°12'21"W	1328.64'
L3	N00°30'14"W	740.02'
L4	S89°23'38"E	663.91'

LINE TABLE		
LINE	BEARING	LENGTH
L5	N00°32'42"W	329.57'
L6	S89°23'45"E	663.67'
L7	S00°35'19"E	1037.16'

53160
RAYMOND S.
MUNOZ III
Date Signed 1/25/2023
ARIZONA, U.S.A.
Expires 3/31/2024

Jan 25, 2023 10:32am S:\Projects\2020\20-1076\Land Survey\Legals\20-1076 LD17 Rezone County Parcels.dwg

20-1076

DESTINATION AT GATEWAY
REZONE - MARICOPA COUNTY PARCELS

EXHIBIT

EPS GROUP
1130 N Alma School Rd
Ste 120 Mesa, AZ 85201
T:480.503.2250 | F:480.503.2258
www.epsgroupinc.com

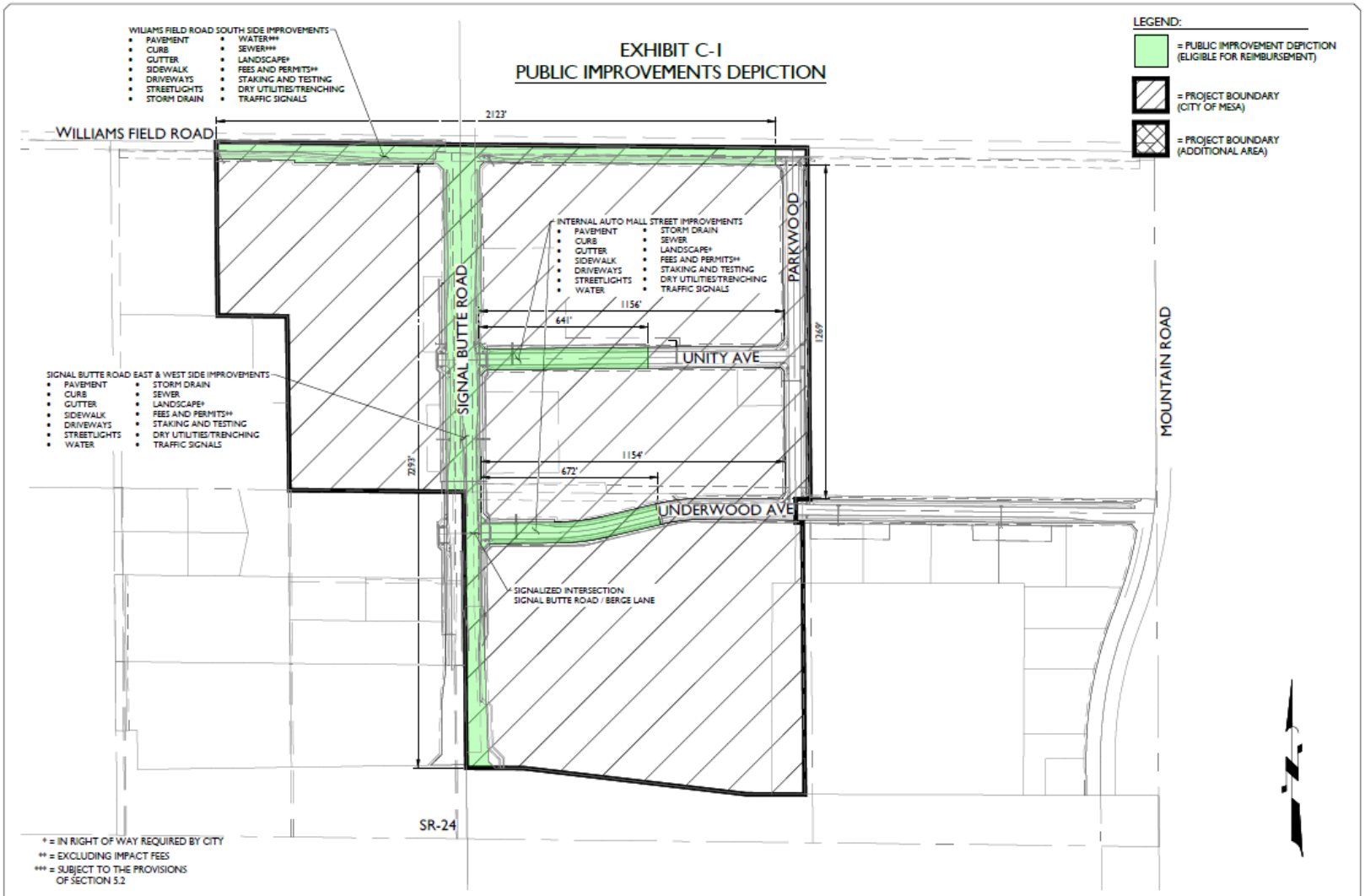
EXHIBIT C-1

PROPERTY PUBLIC IMPROVEMENTS DESCRIPTION & DEPICTION

(SEE BELOW AND ATTACHED)

Public Improvements means the improvements listed on the attached and constructed to City standards within the highlighted depicted areas, that meet the requirements of Section 5. Public Improvements shall be planned, designed, bid, constructed and dedicated in compliance with Applicable Laws including, without limitation, Title 34 of A.R.S and the City's procurement and public bidding procedures.

{00524752.1}



20-1076

Destination at Gateway

C-1 Public Improvements Depiction Exhibit

EPS GROUP
1130 N. Alma School Rd
Suite 120 Mesa, AZ 85201
T:480.503.2250 | F:480.503.2258
www.epsgroupinc.com

Jan 19, 2024 4:01pm S:\Projects\2020\20-1076\Civil_Construction Documents\Exhibit\DA Exhibits\20-1076 - Exhibit C-1 - Public Improvements Depiction Exhibit.dwg

EXHIBIT C-2

ADDITIONAL PROPERTY PUBLIC IMPROVEMENTS

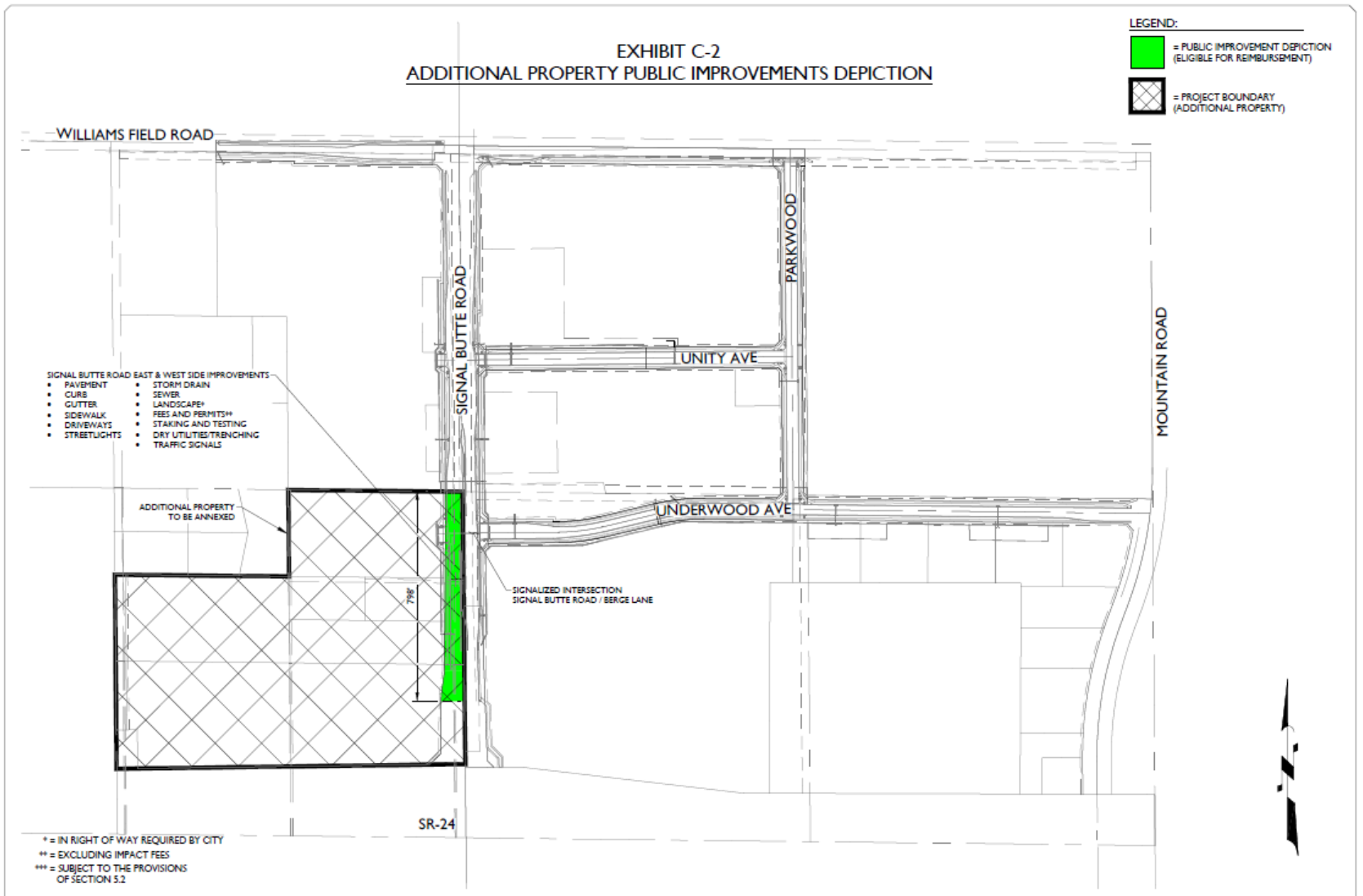
DESCRIPTION & DEPICTION

(SEE BELOW AND ATTACHED)

Additional Property Public Improvements means the improvements listed on the attached and constructed to City standards within the highlighted depicted areas, that meet the requirements of Section 5. The Additional Property Public Improvements shall be planned, designed, bid, constructed and dedicated in compliance with Applicable Laws including, without limitation, Title 34 of A.R.S and the City's procurement and public bidding procedures.

{00524752.1}

EXHIBIT C-2
ADDITIONAL PROPERTY PUBLIC IMPROVEMENTS DEPICTION



20-1076

Destination at Gateway

C-2 Additional Property Public Improvements Depiction Exhibit

EPS GROUP
1130 N. Alma School Rd
Suite 120 Mesa, AZ 85201
T:480.503.2250 | F:480.503.2258
www.epsgroupinc.com

Feb 05, 2024 7:13pm S:\Projects\2020\20-1076\Civil_Construction Documents\Exhibit\DA Exhibits\20-1076 - Exhibit C-2 - Public Improvements Depiction Exhibit.dwg

EXHIBIT D-1

RESIDENTIAL USE RESTRICTED AREAS

SEE ATTACHED

{00524752.1}

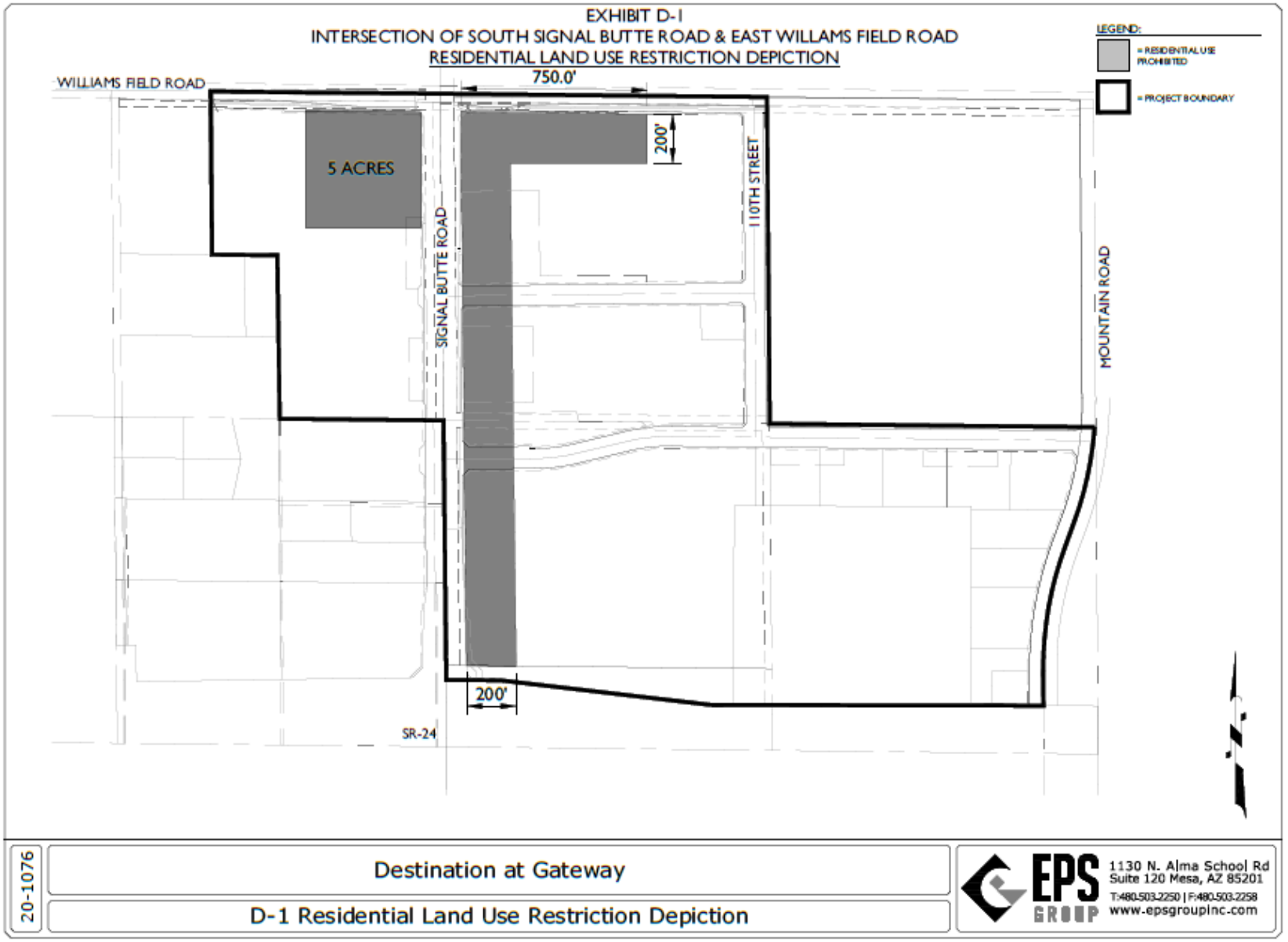


EXHIBIT D-1
INTERSECTION OF SOUTH SIGNAL BUTTE ROAD & EAST WILLAMS FIELD ROAD
RESIDENTIAL LAND USE RESTRICTION DEPICTION
LEGEND:
= RESIDENTIAL USE PROHIBITED
= PROJECT BOUNDARY
WILLIAMS FIELD ROAD
750.0'
5 ACRES
200'
SIGNAL BUTTE ROAD
110TH STREET
MOUNTAIN ROAD
200'
SR-24
20-1076
Destination at Gateway
D-1 Residential Land Use Restriction Depiction
EPS GROUP
1130 N. Alma School Rd
Suite 120 Mesa, AZ 85201
T:480.503.2250 | F:480.503.2258
www.epsgroupinc.com
Feb 20, 2024 4:30pm S:\Projects\2020\20-1076\Civil_Construction Documents\Exhibit\DA Exhibits\20-1076 - Exhibit D-1 - Residential Land Use Restriction Depiction.dwg

EXHIBIT E-1

PROPERTY REQUIRED DEDICATIONS

Dedicate Right of Way in accordance with City of Mesa Standard Detail M-19.01 and City Code, which shall at a minimum include the following:

A. South half of East Williams Field Road and PUFE (arterial street)
B. East and west halves of South Signal Butte Road and PUFE (arterial street)
C. East and west halves of South Parkwood and PUFE (collector street)
D. North and south halves of East Unity Avenue and E Underwood Avenue and PUFE (collector streets)
E. East half of South Mountain Road and PUFE (arterial street)

EXHIBIT E-2

ADDITIONAL PROPERTY REQUIRED DEDICATIONS

Dedicate Right of Way in accordance with City of Mesa Standard Detail M-19.01 and City Code, which shall at a minimum include the following: west half of South Signal Butte Road and PUFE (arterial street).

EXHIBIT F

INSURANCE

City of Mesa Insurance Requirements

Developer, at its sole cost and expense, will maintain insurance coverage as follows:

A. Property. During the period of any construction involving the Public Improvements and for a period of not less than three (3) years following completion of construction, and with respect to any construction activities relating to the same, builder's risk insurance on an all-risk, replacement cost basis for the Public Improvements.

B. Liability. During the Term of the Agreement, insurance covering the Developer and (endorsing as an additional insured) City against liability imposed by law or assumed in any written contract, and/or arising from personal injury, bodily injury or property damage, with a limit of liability of $5,000,000.00 per occurrence with a $5,000,000.00 products/completed operations limit and a $10,000,000.00 general aggregate limit. Such policy must be primary and written to provide blanket contractual liability, broad form property damage, premises liability and products and completed operations.

C. Contractor. During the period of any construction involving the Public Improvements and for a period of not less than three (3) years following completion of construction, and with respect to any construction activities relating to the same, each of the general or other contractors with which the Developer contracts for any such construction will be required to carry liability insurance of the type and providing the minimum limits set forth below:

(1) Workman's Compensation insurance and Employer's Liability with limits of $1,000,000.00 per accident, $1,000,000.00 per disease and $1,000,000.00 policy limit disease.

(2) Commercial general liability insurance on a $5,000,000.00 per occurrence basis providing coverage for (and endorsing the City as additional insured for):

Products and Completed Operations

Blanket Contractual Liability

Personal Injury Liability

Broad Form Property Damage

X.C.U.

(3) Business automobile liability including all owned, non-owned and hired autos with a limit of liability of not less than $1,000,000.00 combined single limit for personal injury, including bodily injury or death, and property damage.

D. Architect. In connection with any construction involving the Public Improvements, and with respect to any construction activities relating to the same, the Developer's architect will

be required to provide architect's or engineer's professional liability insurance with a limit of $1,000,000.00 per occurrence. This policy, or other policies, will cover claims for a period of not less than three (3) years after the completion of construction involving the Property and the Public Improvements.

E. Engineer. During the period of any construction involving the Public Improvements, and with respect to any construction activities relating to the same, the Developer's soils engineer or environmental contractor will be required to provide engineer's professional liability insurance with a limit of $1,000,000.00 per occurrence. This policy, or other policies, will cover claims for a period of not less than three (3) years after the completion of the construction involving the Property and the Public Improvements.

F. Primary Coverage. Developer's insurance coverage will be primary insurance with respect to City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by City, its officers, officials, agents, and employees will be in excess of the coverage provided by Developer and will not contribute to it.

G. Indemnities. Coverage provided by the Developer will not be limited to the liability assumed under the indemnification provisions of the Agreement.

H. Waiver of Subrogation. All policies will contain a waiver of subrogation in favor of the City, its officers, officials, agents, and employees.

I. Notice of Cancellation**:** Each insurance policy will include provisions to the effect that it may not be suspended, voided, cancelled, or reduced in coverage except after thirty (30) days' prior written notice has been given to City. Such notice must be provided directly to City in accordance with the provisions of Section 17.5 of the Agreement.

J. Acceptability of Insurers**:** Insurance is to be placed with insurers duly licensed of approved unlicensed companies in the State of Arizona and with an "A.M. Best" rating of not less than A- VII. City in no way warrants that the above-required minimum insurer rating is sufficient to protect Developer from potential insurer insolvency.

K**.** Endorsements and Verification of Coverage**:** Developer will furnish City with endorsements naming the City, its officers, officials, agents, and employees as additional insureds. The endorsements will be original certificates of insurance on ACCORD forms approved by City. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict of limit coverage will be clearly noted on the certificate of insurance.

(1) All certificates are to be received and approved by City before the commencement of construction of the Public Improvements. Each insurance policy must be in effect at or prior to the commencement of construction (after obtaining required permits actual commencement of physical construction) and must remain in effect for the duration set forth in this Exhibit F or, if no date is specified, the term of the Agreement. Failure to maintain the insurance policies as required by this Agreement or to provide timely evidence of renewal will be considered a material breach of the Agreement.

(2) All certificates required by this Agreement will be sent directly to City of Mesa, Attn: Lisa Lorts, Risk Manager, 20 E. Main Street, P.O. Box 1466, Mesa, Arizona 85211-1466. City reserves the right to require complete, certified copies of all insurance policies and endorsements required by this Exhibit F at any time.

L. Approval**:** Any modification or variation from the insurance requirements in this Exhibit F must have prior approval from the City Manager (or designee), whose decision will be final. Such action will not require formal contract amendment, but may be made by administrative action.

M. Miscellaneous. References to "Developer" in this Exhibit F will mean Developer and include its general contractor(s). References to "the Agreement" or "this Agreement" will mean the Development Agreement of which this Exhibit F is a part. Capitalized terms not otherwise defined in this Exhibit F will have the meanings set forth in the Agreement. City in no way warrants that the minimum limits contained herein are sufficient to protect Developer from liabilities that might arise, and Developer may purchase such additional insurance as Developer determines necessary.

EXHIBIT G

NON-DISTURBANCE AND RECOGNITION AGREEMENT

When recorded, return to:
_____
_____
_____

==========

NON-DISTURBANCE AND RECOGNITION AGREEMENT

==========

THIS NON-DISTURBANCE AND RECOGNITION AGREEMENT (this "**NDRA**") is made as of the ___ day of _____, 20___, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, by and among: (a) _____, LLC, an Arizona limited liability company ("**Developer**"); (b) _____ ("**Lender**"); and (c) City of Mesa, Arizona, an Arizona municipal corporation ("**City**").

1. Recitals.

1.1 Developer is the present developer under a Development Agreement entered into with the City, dated _____ ___, 202__, and recorded in the Official Records of Maricopa County, Arizona at _____ (the "**Agreement**"), which Agreement sets forth certain rights and responsibilities of Developer with respect to the development of that certain real property referred to in the Agreement (and herein) as the "**Property**," and more particularly described in Exhibit A.

1.2 Developer's obligations arising under the Agreement include, but are not limited to, the acquisition and/or development of the Property, and/or the construction of improvements upon the Property, and the construction of certain "**Public Improvements**" as defined in the Agreement in and around the Property (collectively, the "**Obligations**").

1.3 Lender has agreed to lend money to Developer, and Developer will execute certain loan documents (the "**Loan Documents**") including, but not limited to, a *Deed of Trust, Assignment of Rents, Security Agreement and Financing Statement* for the use and benefit of Lender (the "**Deed of Trust**") and a *Collateral Assignment of Rights under Development Agreement* (the "**Assignment**") to secure the loan from Lender to Developer (the "**Loan**"). The Deed of Trust and the Assignment will be recorded in the Official Records of Maricopa County, Arizona and will encumber the Property.

1.4 Lender has certain rights under the Loan Documents in the event of a default by Developer of its obligations either under the Loan Documents or the Agreement including, but not limited to, the right of Lender to be substituted for Developer under the Agreement and to assume Developer's position with respect to the Agreement; and the Agreement states in Section 17.21 that a Lender may be allowed to assume Developer's rights and obligations (collectively, "**Developer's Position**") with respect to the Agreement.

1.5 Accordingly the parties have executed this NDRA to be effective as of the date set forth above.

2. Subordination. Subject only to the specific provisions of: (a) Section 3 of this NDRA regarding the right of Lender to assume Developer's Position with respect to the Agreement; and (b) Section 4 of this NDRA regarding non-disturbance and recognition, all rights of Developer and Lender under the Deed of Trust are and shall continue to be junior, inferior, subject and subordinate to the Agreement, as it may later be modified, amended, restated or replaced.

3. Notice of Developer Non-Performance.

3.1 If Lender is a "Designated Lender" as defined in Section 17.21 of the Agreement, City shall give Lender written notice of any Non-Performance by Developer (the "**Notice**") under the Agreement and thirty (30) days following the expiration of Developer's cure period under the Agreement to cure such Non-Performance (as the Agreement exists as of the date of this NDRA), prior to terminating the Agreement or invoking such other remedies as may be available to City under the Agreement.

3.2 Lender shall have the option, following Lender's receipt of the Notice, and within the time period set forth herein for curing the Non-Performance of Developer, in its sole election either: (a) to cure the Non-Performance of Developer, in which event Developer shall retain its position with respect to the Agreement; or (b) in addition to any other remedies available to Lender under law, equity or contract (including, but not limited to, the Loan Documents) to assume Developer's Position with respect to the Agreement (to "**Assume**" or an "**Assumption**"). Lender shall give written notice to City of its intention to Assume on or before the expiration of any applicable cure period available to Lender.

3.3 If Lender agrees to Assume Developer's Position with respect to the Agreement, Lender and City shall execute an amendment to the Agreement (an "**Amendment**") and shall cause the Amendment to be recorded in the Official Records of Maricopa County, Arizona. The Amendment shall state that Lender has fully assumed Developer's Position with respect to the Agreement, and that Lender is thereafter substituted for Developer with respect to all Obligations, payment and performance rights and responsibilities arising under or in connection with the Agreement. The execution or approval by Developer of the Amendment shall not be necessary or required, and upon execution and recordation of the Amendment, City shall: (a) look to Lender and/or Developer for performance of the Obligations under the Agreement; and (b) make to Lender all payments, and render all

performance required to be made by the City, required to be made to Developer under the Agreement.

3.4 In connection with: (a) any foreclosure by Lender (whether by notice or judicially) of the Deed of Trust, or any other acquisition by Lender of the Property in lieu of such foreclosure (collectively, a "**Foreclosure**"); and (b) the transfer of the Property to a third-party purchaser or purchasers (by way of illustration and not in limitation, a purchaser or purchasers at a trustee's sale conducted pursuant to A.R.S. § 33-810) concurrently with such Foreclosure or thereafter (a "**Purchaser**"), Developer's Position under the Agreement shall accompany and be deemed covenants running with the Property, and the Purchaser shall be deemed to have assumed Developer's Position with respect to the Agreement. Upon the acquisition of the Property by a Purchaser, City shall: (i) look to Purchaser and/or Developer for performance of the Obligations under the Agreement; and (ii) make to Purchaser all payments, and render all performance required to be made by the City, required to be made to Developer under the Agreement.

3.5 Until an Assumption as defined herein, nothing in this NDRA shall constitute an assumption by Lender of any Obligation. Developer shall continue to be liable for all of the Obligations thereunder and shall perform all such Obligations, shall comply with all terms and conditions of the Agreement applicable to Developer, and shall take such steps as may be necessary or appropriate to secure performance by the City under the Agreement.

3.6 Whether before or after an Assumption as defined herein, nothing in this NDRA shall constitute a release of Developer of any Obligation.

4. Non-Disturbance and Recognition.

4.1 In the event that City institutes any proceedings to enforce the Agreement, City agrees that, so long as Lender is not in default (beyond any applicable cure period provided to Lender under this NDRA) under the Agreement:

4.1.1 City shall not interfere with or disturb Lender's rights under the Agreement and this NDRA; and

4.1.2 Lender shall not be made a party to any proceeding commenced pursuant to the Agreement, unless Lender is determined to be a necessary party for purposes of maintaining the action or securing other necessary relief not involving the termination of Lender's interest under the Deed of Trust or the Assignment, provided that nothing herein shall prevent City from giving any required notice to Lender.

4.2 Upon and following an Assumption, Lender shall recognize the City's rights under the Agreement for the balance of the Term thereof. The recognition described in this Section 4.2 shall automatically become effective upon an Assumption by Lender.

5. Estoppel.

5.1 City and Developer hereby confirm to Lender that as of the date of this NDRA and to the best of their respective actual knowledge:

a) Neither City nor Developer has received a Notice of Non-Performance under the Agreement;

b) The Agreement has not been assigned, modified or amended in any way except as set forth in Recital 1.1 of this NDRA;

c) The Agreement is in full force and effect; and

d) [IF APPROPRIATE] "Completion of Construction of the Minimum Improvements", as defined in the Agreement occurred on _____.

6. Miscellaneous.

6.1 This NDRA shall be binding upon and inure to the benefit of City, Developer and Lender and their respective successors and assigns, including, without limitation, any successful bidder at any judicial foreclosure or trustee's sale.

6.2 Except as otherwise required by law, any notice required or permitted under this NDRA shall be in writing and shall be given by personal delivery, or by 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 such party may designate in writing pursuant to the terms of this Section, or by any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), delivery charges prepaid:

If to City: _____
_____
_____

With Required Copy to: _____
_____
_____

If to Developer: _____
_____
_____

With Required Copy to: _____
_____
_____

If to Lender: _____
_____
_____
_____

With Required Copy to: _____
_____
_____
_____

Any notice sent by United States Postal Service certified or registered mail shall 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 shall 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 shall 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 shall be given as herein provided, by giving notice to the other parties as provided in this Section 6.2.

6.3 This NDRA is delivered in and relates to property located in Maricopa County, Arizona and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the substantive laws and judicial decisions of the State of Arizona (regardless of Arizona conflict of laws principles or the residence, location, domicile or place of business of the parties and their constituent principals) and applicable federal laws, rules and regulations, subject to Section 17.1 of the Agreement.

6.4 This NDRA integrates all of the terms and conditions of the parties' agreement regarding the subordination of the Deed of Trust and Lender's interest thereunder to the Agreement, and supersedes all prior oral or written agreements with respect to such subordination (only to the extent, however, as would affect the priority between the Agreement and the Deed of Trust). This NDRA may not be modified or amended except by a written agreement signed by the parties or their respective successors in interest.

6.5 This NDRA may be executed and acknowledged in one or more counterparts, each of which may be executed by one or more of the signatory parties. Signature and notary pages may be detached from the counterparts and attached to a single copy of this NDRA physically to form one legally effective document.

6.6 This NDRA is subject to, and may be terminated by the City in accordance with, the provisions of A.R.S. § 38-511.

6.7 Each party to this NDRA represents and warrants to the others that all necessary company, corporate and/or governmental approvals, consents and authorizations have been obtained prior to the execution of this NDRA by such party, and that the person executing this NDRA on behalf of such party is duly authorized to do so to bind such party.

6.8 Capitalized terms not defined herein shall have the definitions set forth in the Agreement.

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY

IN WITNESS WHEREOF, the parties hereto have each caused this NDRA to be executed on or as of the day and year first above written.

"CITY" CITY OF MESA, an Arizona municipal corporation

By: _____

Its: _____

"DEVELOPER"

"LENDER"

_____

_____, a(n) Arizona _____

_____

By: _____

Name: _____

Its: _____

Acknowledgment by City

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STATE OF ARIZONA

COUNTY OF MARICOPA

The foregoing was acknowledged before me this day of _____, 202__, by _____, the City _____ of the City of Mesa, on behalf of the City.

_____
Notary Public

My Commission Expires:

_____

Acknowledgment by Developer

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STATE OF ARIZONA

COUNTY OF MARICOPA

On _____, 202__, before me, _____, a Notary Public in and for said State, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____ (Seal)

Acknowledgment by Lender

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STATE OF _____)
) ss.
County of _____)

The foregoing was acknowledged before me this day of _____, 202__, by _____, the _____of _____, a _____, on behalf of the _____.

_____
Notary Public

My Commission Expires:

_____

EXHIBIT A
TO
NON-DISTURBANCE AND RECOGNITION AGREEMENT
(LEGAL DESCRIPTION OF THE PROPERTY)

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